

## **Until the Parliament otherwise provides**

There are various sections of the *Constitution* that states the words "*until the Parliament otherwise provides*". This may cause confusion to some not familiar with the subsequent enactments, but they are nevertheless consistent with the *Constitution*. The basis of this confusion is due to the text of the particular provision remaining completely unaltered, and this leads some to believe that a current interpretation as held by the courts is unconstitutional. The alteration of the actual text of the *Constitution* requires a referendum under section 128, but the Parliament is thereby empowered to create legislation "*otherwise providing*" for the subject matter under section 51(xxxvi).

It is important to note the words "*until the Parliament otherwise provides*" when it appears in various provisions of the *Constitution*, and then apply the current interpretation, as most of those sections have in fact already been "*otherwise provided*" for.

According to [The Annotated constitution of the Australian Commonwealth](#) by Quick and Garran, at page 647:

*"There are no less than twenty-two provisions in the Constitution in which it is enacted that the law of the Constitution shall be to a certain effect "until the Parliament otherwise provides." By implication this confers on the Parliament authority to provide "otherwise." Sub-section xxxvi. has been introduced to give the Parliament express power to provide "otherwise." The result is that the Parliament can alter the Constitution in respect to the following matters:*

- (1.) GOVERNOR-GENERAL'S SALARY. —May be increased or diminished (sec. 3).
- (2.) SENATE ELECTORATES. - Each State may be divided into electoral divisions (sec. 7).
- (3.) QUEENSLAND SENATORIAL DIVISIONS.— May be abolished (sec. 7).
- (4.) NUMBER OF SENATORS. —May be increased or diminished, but so that no Original State shall have less than six (sec. 7).
- (5.) STATE ELECTORAL LAWS. —Regulating the election of senators may be superseded by Federal electoral laws (sec. 10).
- (6.) QUORUM OF SENATE.— May be increased or reduced (sec. 22).
- (7.) MODE OF ASCERTAINING QUOTA.— Maybe altered (sec. 24).
- (8.) ELECTORAL DIVISIONS. —Federal electoral divisions for House of Representatives may supersede State-made electoral divisions (sec. 29).
- (9.) QUALIFICATION OF ELECTORS. —Federal law prescribing the qualification of electors may supersede State laws (sec. 30).
- (10.) STATE ELECTORAL LAWS. —Regulating the election of the members of the House of Representatives may be superseded by Federal electoral laws (sec. 31).
- (11.) QUALIFICATION OF MEMBERS. —May be altered (sec. 34).
- (12.) QUORUM OF HOUSE. —May be increased or reduced (sec. 39).
- (13.) PENALTY FOR SITTING WHEN DISQUALIFIED. —May be altered (sec. 46).
- (14.) DISPUTED ELECTIONS. —Mode of settling may be altered (sec. 47).
- (15.) PAYMENT OF MEMBERS.—May be increased or reduced (sec. 48).
- (16.) NUMBER OF MINISTERS. —May be increased (sec. 65).
- (17.) SALARIES OF MINISTERS. —May be increased (sec. 66).
- (18.) APPOINTMENT AND REMOVAL OF NON-POLITICAL OFFICERS.— May be regulated (sec. 67).
- (19.) CONDITIONS AND RESTRICTIONS ON APPEALS. —May be regulated (sec. 73).

(20) APPLICATION OF CUSTOMS AND EXCISE REVENUE.— Ten years after the establishment of Commonwealth the Braddon clause may be repealed or altered (sec. 87).

(21.) FINANCIAL ASSISTANCE TO STATES.—Ten years after the establishment of the Commonwealth the Parliament may determine not to grant further financial assistance to States (sec. 96).

(22.) AUDIT.—Parliament may make audit laws (sec. 97)."

[Page 647](#) of *The Annotated constitution of the Australian Commonwealth* by Quick and Garran:

§ 223. "Until the Parliament Otherwise Provides."

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## Examples:

Section 22: *"Quorum: Until the Parliament otherwise provides, the presence of at least one-third of the whole number of the senators shall be necessary to constitute a meeting of the Senate for the exercise of its powers."*

[Rod Culleton](#) alleged that the Senate was inquorate when it resolved to refer him to the Court of Disputed Returns. He overlooked the *"until the Parliament otherwise provides"* in this provision, as the quorum was amended down to one-fifth by the *House of Representatives (Quorum) Act 1989*. One can also note his misreading of section 47:

*"Disputed elections – Until the Parliament otherwise provides, any question respecting the qualification of a senator or of a member of the House of Representatives, or respecting a vacancy in either House of the Parliament, and any question of a disputed election to either House, shall be determined by the House in which the question arises."*

[Rod Culleton](#) also tried to substantiate his claims that the Senate was "wrong at law" when it referred him to the Court of Disputed Returns, with a UK precedent *Hilary Term [2014] UKSC 3*, but again overlooked *"until the parliament otherwise provides"*. In 1902 the Parliament did *"otherwise provide"* that the High Court would be the federal Court of Disputed Returns, in Part XVI of the *Commonwealth Electoral Act 1902*. This is now provided for in Part XXII of the *Commonwealth Electoral Act 1918*.

## **Section 3 - Governor General to be paid in pounds**

Some adherents insist that the Governor General must be paid in pounds, citing 3 of the *Commonwealth Constitution* which provides:

*"Salary of Governor-General: There shall be payable to the Queen out of the Consolidated Revenue fund of the Commonwealth, for the salary of the Governor-General, an annual sum which, until the Parliament otherwise provides, shall be ten thousand pounds. The salary of a Governor-General shall not be altered during his continuance in office."*

The ten thousand pounds specified by the Constitution referred to the currency in use in Australia in 1901, pound sterling. This was replaced by the Australian pound in 1910, which was linked to the gold standard at parity to £ sterling until 1931. When the United Kingdom abandoned the gold standard in 1931, the Australian pound was devalued and traded at a discount to pound sterling of around 25%. The Australian pound was replaced by the Australian dollar on 14 February 1966, where £1 Australian equaled A\$2.

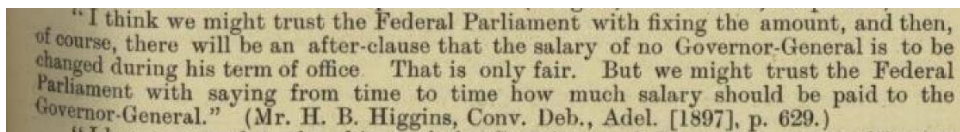
The salary remained unchanged at £10,000 until the introduction of decimal currency in Australia in 1966 when it became A\$20,000 and remained unchanged until 1974. The 1st Governor-General, Lord Hopetoun, received no allowance for maintaining Government Houses in Melbourne and Sydney nor for staff, travel or other expenses. Instead the Governor-General was required to meet these from the fixed salary. The 2nd Governor-General, Baron Tennyson fared slightly better, with an allowance for the operation of Government House in Melbourne and Sydney, and the Official Secretary to the Governor-General was paid by the Australian government. The Governor-General was required to meet staff salaries and some household expenses from their salary. The requirement to meet staff salaries

continued until the retirement of the 12th Governor-General, Sir William McKell, with half his salary going on "staff sustenance". The contribution to household expenses continued until the retirement of the 17th Governor General, Sir Paul Hasluck.

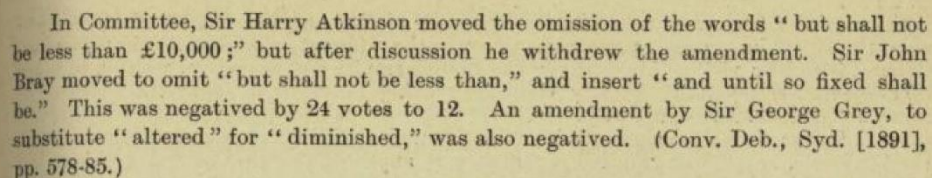
Until 2001, Governors-General did not pay income tax on their salary; this was changed after the Queen agreed to pay tax. Today, the salary is set to be slightly higher than that of the Chief Justice of the High Court, over a five-year period.

Section 3 of the *Constitution* entrusted to the Federal Parliament to "*otherwise provide*" for the salary amount. They did so before the appointment of Sir John Kerr as the 18th Governor-General in 1974, increasing the salary to \$30,000 with the passing of the [Governor-General Act 1974](#), and have since set the salary of each incoming Governor-General by amending this Act, consistent with the final paragraph of section 3 of the *Constitution*.

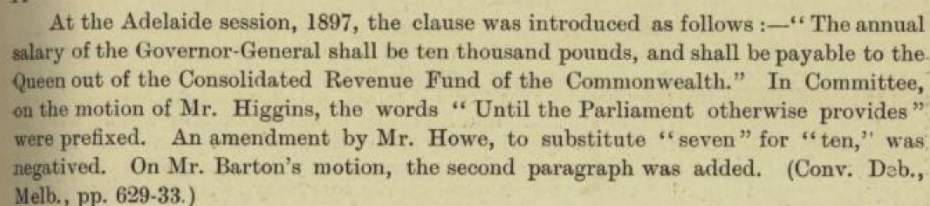
[Page 401](#) of *The annotated constitution of the Australian Commonwealth* by Quick and Garran:



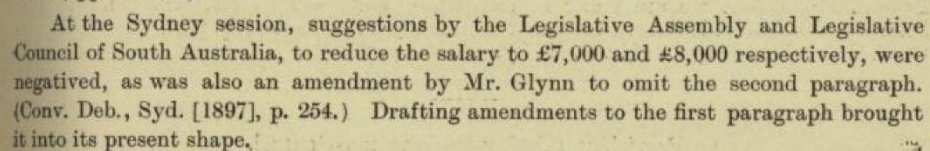
"I think we might trust the Federal Parliament with fixing the amount, and then, of course, there will be an after-clause that the salary of no Governor-General is to be changed during his term of office. That is only fair. But we might trust the Federal Parliament with saying from time to time how much salary should be paid to the Governor-General." (Mr. H. B. Higgins, Conv. Deb., Adel. [1897], p. 629.)



In Committee, Sir Harry Atkinson moved the omission of the words "but shall not be less than £10,000;" but after discussion he withdrew the amendment. Sir John Bray moved to omit "but shall not be less than," and insert "and until so fixed shall be." This was negatived by 24 votes to 12. An amendment by Sir George Grey, to substitute "altered" for "diminished," was also negatived. (Conv. Deb., Syd. [1891], pp. 578-85.)



At the Adelaide session, 1897, the clause was introduced as follows:—"The annual salary of the Governor-General shall be ten thousand pounds, and shall be payable to the Queen out of the Consolidated Revenue Fund of the Commonwealth." In Committee, on the motion of Mr. Higgins, the words "Until the Parliament otherwise provides" were prefixed. An amendment by Mr. Howe, to substitute "seven" for "ten," was negatived. On Mr. Barton's motion, the second paragraph was added. (Conv. Deb., Melb., pp. 629-33.)



At the Sydney session, suggestions by the Legislative Assembly and Legislative Council of South Australia, to reduce the salary to £7,000 and £8,000 respectively, were negatived, as was also an amendment by Mr. Glynn to omit the second paragraph. (Conv. Deb., Syd. [1897], p. 254.) Drafting amendments to the first paragraph brought it into its present shape.

There have been various amendments to the *Governor-General Act 1974*, the last amendment was via the [Governor-General Amendment \(Salary\) Bill 2019](#), to set the salary for the incoming Governor-General David Hurley. The Queen agreed to extend the appointment of the current Governor-General, Sir Peter Cosgrove, until that time.

Like all the other sections of the *Constitution* that state "*until the Parliament otherwise provides*" the text of this provision remains completely unaltered. This may cause confusion to some not familiar with the subsequent enactments, but it is nevertheless consistent with the *Constitution*. The Parliament is empowered to create legislation "*otherwise providing*" for the subject matter under section 51(xxxvi), but the alteration of the text of the *Constitution* requires a referendum under section 128.

Pounds are no longer in existence as a currency in Australia. I believe it was Galdron J who made the very good point that the *Constitution* should be read as if it is being read for the very first time, and to apply a modern meaning. As Windeyer J noted in [Ex parte Professional Engineers' Association \(1959\) 107 CLR 208](#) at 267: "Law is to be accommodated to changing facts..." Following the constitutional technique which has been approved in the [Engineers Case \(1920\) 28 CLR 129](#), plain English should be used in interpretation. It is also important to use connotation rather than denotation (See *Engineers* at 142-3 and 151; and also see [Grain Pool of Western Australia v Commonwealth \(2000\) 202 CLR 479](#) at 493).

In [Walter v Mackay Regional Council \[2015\] FCCA 351](#), (At 5) [David Walter](#) argued unsuccessfully during bankruptcy proceedings that legislation passed in Australia since 1966 is unconstitutional because it has been signed by Governor Generals who were paid in dollars, not pounds as specified by the constitution.

<https://freemandelusion.com/wp-content/uploads/2019/06/walter-v-mackay-regional-council-2015-fcca-351.pdf>

[Peter Gargan](#) argued the same point to press the former officer's case in a [letter to the then prime minister](#), Malcolm Turnbull, in April 2016. He urged Turnbull to call a "referendum to normalise the currency" as "no legislation since 1966 has been legitimately approved by any Governor General because none of them have been paid in legitimate currency". He also wrote to a lawyer involved in ongoing bankruptcy proceedings against Walter to upbraid him for not engaging with issues he was raising, including "currency fraud".

There have been a number of other litigants who raised similar currency arguments before the courts, including Leonard Clampett and Brian Fyffe. (See *Clampett v Hill [2007] QCA 394*, *Clampett v Kerslake (Electoral Commissioner of Queensland) [2009] QCA 104*, *Clampett v Magistrate Cornack [2012] QSC 123*, and *Fyffe v State of Victoria [2000] HCA 31*.) None of these cases have ever been successful, as the matter was already determined prior, in Allan Skyring's cases. (See *Re Skyring's Application (No 2) (1985) 59 ALJ 561*, and *Re Skyring [2013] QSC 197*.) See article on "[Cash is no good for debts! – section 115](#)" and under the Tag "[The Currency Argument](#)".

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