

Where's the Commonwealth of Australia?



A popular OPCA concept in Australia is the theory that because the government publications often have the title "*The Australian Government*" this verifies the original "*Government of the Commonwealth of Australia*" has been usurped, and is now under foreign administration.

Wherever they find it, adherents point to the decreased use of the term "*the Commonwealth*" in popular discourse as evidence that "the Commonwealth" and its associated Constitution has been "removed" from the people.



Similarly, the popular use of the term "*the constitution*" is believed to not in fact be referring to "*the Constitution of the Commonwealth of Australia*" but some alternate constitution, presumably invented by Bob Hawke under the *Australia Acts 1986*.

For better or worse, it is the same entity, of which there is only one, and the same constitution, of which there is only one.

The "two governments" narrative is a typical motif of the US Sovereign Citizen movement, but this Australian version was largely concocted by Scott Bartle in his documentary "*What the FUQ*" or "*Frequently Unanswered Questions of the Australian Government*". In the film he asks various authorities from "*The Australian Government*" to prove they are in fact the legitimate "*Commonwealth of Australia*", but unfortunately he received no response.

To the paranoid OPCA mind, their non-response of course, confirms the fact they aren't.

So why did they change from "*Commonwealth of Australia*" to "*The Australian Government*" anyway? The answer is amazingly simple. They didn't. If you look at a copy of the Constitution (sorry, I mean "*the Constitution of the Commonwealth of Australia*") you'll notice that the official country name is the "*Commonwealth of Australia*".

Put simply, "*Commonwealth*" refers to the type of nation created by federation.

The Constitution was written over a period of about a decade before Federation in 1901. It is said that Henry Parkes, affectionately known as the father of federation, suggested the term "*Commonwealth*" when the drafting process of the Constitution was beginning. A vote was taken and a substantial majority of the delegates at the 1891 Constitutional Convention in Sydney accepted the name "*Commonwealth of Australia*".

At the later Constitutional Conventions there were other potential names suggested. In the 1901 [Commentaries on the Constitution of the Commonwealth of Australia](#), Robert Garran wrote (in ss 17):

"Other names were submitted for consideration before federation, such as "United Australia," "Federated Australia," "The Australian Dominion," "The Federated States of Australia" etc, but the name "Commonwealth" was generally accepted as the description of the federal unit."

They wrote that *Webster Dictionary* in 1901 defined "*Commonwealth*":

"A Commonwealth is a State consisting of a certain number of men united by compact, or tacit agreement under one form of government and one system of laws. It is applied more appropriately to governments which are considered free or popular, but rarely or improperly to absolute governments. Strictly, it means a government in which the general welfare is regarded rather than the welfare of any particular class."

[Webster's](#) (now known as *Merriam Webster*) mentioned the phrase "*the common good*" when defining a "*Commonwealth*":

"A commonwealth is a nation, state, or other political unit: such as:

- a) one founded on law and united by compact or tacit agreement of the people for the common good*
- b) one in which supreme authority is vested in the people*
- c) republic"*

But back at federation, mentioning republicanism was a sure-fire way to get yourself removed from public life. Hence a few delegates dissented on the vote to call the country the "*Commonwealth of Australia*":

"The only objections raised to it being that it was suggestive of republicanism, owing to its association with the Commonwealth of England, under Oliver Cromwell's Protectorate."

But Maitland rejoiced in the return of the term "*Commonwealth*". As mentioned in [Sue v Hill \[1999\] HCA 30](#), (at 84) he wrote in 1901:

"There is no cause for despair when 'the people of New South Wales, Victoria, South Australia, Queensland and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland'. We may miss the old words that were used of Connecticut and Rhode Island: 'one body corporate and politic in fact and name'; but 'united in a Federal Commonwealth under the name of the Commonwealth of Australia' seems amply to fill their place. And a body politic may be a member of another body politic."

So ultimately, "Commonwealth" describes the type of nation.

It is called "*Australia*", no matter what one wants to call the federation of colonies it was composed of. And so logically, it follows that the government of this "*Australia*" is called... "*The Australian Government*"...

The [Acts Interpretation Acts 1901](#) in Part 2B, provides that:

"Australia means the *Commonwealth of Australia* and, when used in a geographical sense, includes Norfolk Island, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands, but does not include any other external Territory."

The very simple concept of shortening the nomenclature seems to have led to this flawed belief.

It was noted in The Australian Law Journal in January 1974, that the Federal Government had undergone the replacement in official usage of the terms "*the Commonwealth of Australia*" with "*Australia*" and "*the Commonwealth Government*" with "*the Australian Government*". Even the Commonwealth of Australia Gazette was renamed the Australian Government Gazette, and various definitions were added to the *Acts Interpretation Acts 1901* to remove any confusion in regard to the renaming of various Commonwealth departments.

The journal also mentions the Victorian State Cabinet raising concerns over the issue, concluding that the use of the nomenclature will have to be accepted, that such a promotion is legitimate, and does not run counter to any constitutional prohibition.

The term "Australian Government"

The present Government of the Commonwealth of Australia has in a number of different ways made known its dislike for the terms "Commonwealth of Australia" and "Commonwealth Government", and its preference for their replacement in official usage, as far as legally possible, by the appellations "Australia" and "Australian Government", respectively.

In Canberra, the practice of substitution of the changed nomenclature has already gone very far. One important illustration may be given. On 2nd July, 1973, the *Commonwealth of Australia Gazette* was renamed the *Australian Government Gazette*, and all subsequent issues have borne this title. The last issue of the *Gazette* to be published under the old title was Number 79 of 30th June, 1973. This alteration in the title of the *Gazette* was preceded by an amendment made by the *Acts Interpretation Act 1973* (assented to, 19th June, 1973) to the *Acts Interpretation Act 1901-1966*, whereby the term "The *Gazette*" was to mean the *Commonwealth of Australia Gazette* published before the relevant date, and the *Australian Government Gazette* after that date. Also par. (a) of s. 17 of the principal Act was deleted and replaced by a provision declaring that the term "Australia" or the term "The Commonwealth" should mean the Commonwealth of Australia. In his second reading speech on the Bill containing these amendments, the Minister for the Capital Territory said (see Cth. Parl. Debs., 24th May, 1973, p. 2642): "The Bill also contains provisions to give effect to the Government's intention to use, wherever possible, the term 'Australia' to signify the Australian nation. This involves adopting the name 'Australian Government Gazette' in place of the 'Commonwealth of Australia Gazette', the use of the imprint 'Government Printer of Australia' instead of 'Commonwealth Government Printer' on official documents and the use of the term 'Australia' instead of 'Commonwealth' in legislation."

Incidentally also, commencing in February 1974, the periodical publication *Current Commonwealth Publications* (CCP), listing available publications issued by Commonwealth departments and instrumentalities, has been retitled *Current Publications of the Australian Government* (CPAG).

The official use of the new terminology by Commonwealth Ministers and by Departments based in Canberra prompted a decision in January this year by the Victorian State Cabinet that Victorian Government departments, instrumentalities, and agencies should thenceforth use the term "Commonwealth Government" in preference to "Australian Government" in correspondence and communications, as far as practicable. In a circular to Victorian State Departments conveying the terms of this decision, the Secretary of the Victorian Premier's Department pointed out that there is no authority in the *Australian Constitution* for the use of the term "Australian Government", all references in the Constitution being to the entity, the Commonwealth of Australia, while the Federal Parliament was described in that instrument as "The Parliament of the Commonwealth".

The circular concluded with the following parenthetical paragraph: "(It is realized that some Commonwealth departments and agencies have been renamed by statute to introduce the term 'Australian Government', and these titles will have to be accepted. This does not however affect the general application of the Cabinet decision.)"

Apart from the point that the Australian Constitution makes reference not to the "Australian Government", but to the "Executive Government of the Commonwealth" and to the "Parliament of the Commonwealth", other objections to the rejection of the word "Commonwealth" are: (a) that the use of the term "Australian Government" implies that the Government in Canberra is the government of the whole of Australia, whereas by reason of the division of powers under the Constitution this is not true, since Australia is governed by six State Governments as well as by the Government of the Commonwealth; and (b) that the word "Commonwealth" well conveys the political fact that the Federation of Australia is a union of peoples as distinct from a union of Governments.

While the Constitution does not expressly authorise the use of the terms sought to be promoted by the present Commonwealth Government, nevertheless it would seem that, provided certain limits are not overstepped, such promotion is legitimate. These limits to the sponsorship at an official level of "Australian Government" and "Australia" can better be illustrated than closely defined. For example, in the absence of amendments to the Constitution, the Commonwealth Parliament and the Commonwealth Government could not legally prohibit officials and members of the public from the use of the terms "Commonwealth of Australia", "Government of the Commonwealth", and "Parliament of the Commonwealth", these being laid down in the Constitution, nor seem to compel them under threat of legal process to use the substitutes, "Australia", "Australian Government", and "Australian Parliament" where the constitutional terms would otherwise be appropriate. Again, in proceedings in the High Court, the Commonwealth could not appear as plaintiff or defendant on the record as "Australia" but only as the "Commonwealth of Australia". The High Court, itself a creation of the Constitution, would naturally insist upon the Commonwealth being given its formal name and style under the Constitution. On the other hand, the renaming of official departments and of official publications so as to refer to "Australian Government" rather than to "Commonwealth Government" does not run counter to any constitutional prohibition.

It may be of interest to recall that the emergence of the term "Commonwealth" to describe an Australian Federation was more or less a case of historical accident. At the 1891 Convention summoned to consider the subject of Federation, the Constitutional Committee voted for "Commonwealth" by a majority of only one, and if that Committee had not supported this appellation and allowed it to appear in the "Draft Bill to

Constitute the Commonwealth of Australia" presented to the plenary session by Sir Samuel Griffith as Chairman of the Committee, it would probably never have been adopted (see La Nauze, "The Name of the Commonwealth of Australia", 15 *Historical Studies* (1971), at pp. 60-61; and the same author's *The Making of the Australian Constitution* Melbourne University Press (1972), at pp. 138-139, and 152). Delegates and members of the public regarded the term "Commonwealth" as having, to some extent, a republican connotation, inconsistent with loyalty to the British Crown. Indeed, as late as January 1900 Queen Victoria seemed to think the use of the term reflected an anti-monarchical intention, and she doubtless would have preferred the word "Dominion". As it was, the vote in favour of "Commonwealth" at the plenary session of the 1891 Convention was twenty-six to thirteen. In view of the Victorian Government's endorsement of "Commonwealth" early this year, it may seem ironic that in 1891, subsequent to the Convention, the Victorian Parliament rejected the term "Commonwealth" during its consideration of the Draft Bill (La Nauze, 15 *Historical Studies* (1971), at p. 62). At a later Convention, that of 1897, Sir Josiah Symon, a South Australian delegate, argued unsuccessfully that the name of the Federation should be simply "Australia". In the period 1891-1900 the term "Commonwealth" continuously gained ground, and became generally accepted.

Sir Henry Parkes was entirely responsible for suggesting "Commonwealth" to the 1891 Convention. It has been said that this reflected his admiration for the statesmen of what was known as the "Commonwealth" in the period of Cromwell's administration, prior to 1660 (see Harrison Moore, *The Constitution of the Commonwealth of Australia* (2nd ed., 1910), at pp. 65-66), but other historical evidence indicates that the name "Commonwealth" appealed to him for other reasons of a literary and historical nature, while he could not have overlooked the appearance in 1888 of Bryce's classical work, *The American Commonwealth*, since he and other statesmen of the Australian colonies were so concerned with the United States as a model for the proposed Australian Federation (La Nauze, 15 *Historical Studies* (1971), at pp. 63-69).

Finally, it may be mentioned that in the period 1891-1900 many influential persons supported the name "Commonwealth". Edmund Barton, for instance, later to become first Prime Minister of the Commonwealth, defended the name, saying: "I venture the assertion that I know of none better and none stouter" (La Nauze, *The Making of the Australian Constitution* (Melbourne University Press (1972), at p. 138). *Press* (1972), at p. 138).

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