

## **Explaining Australia's Constitution**

**Here you will find a set of seven papers outlining how our constitution came about and why our Australian Founding Fathers decided, just over a hundred years ago, that Australia should be a Constitutional Monarchy and not a republic.**

**The papers can be individually downloaded. Each has a number of questions at the end.**

**School and other teachers are welcome to use these papers as a civics lesson for their students. Individuals may wish to download these papers to themselves learn a bit about our Constitutional Monarchy.**

# Explaining Australia's Constitution

## PAPER 1

### WELCOME TO PARADISE AUSTRALIA

Today, Australia is considered to be a paradise with people from all over the world wanting to come and live here. However, it was not always so. Portuguese, Dutch and English sailors, and it is even believed the ancient Phoenicians had, for centuries, been visiting the north and western coastal areas, but no one at the time knew how big the land was or whether it was one area or composed of many islands.

The land, for thousands of years had been inhabited by the ancestors of present day Aborigines. Whilst they lacked the readily available resources to improve their lot as occurred in other parts of the world, they did adapt to the harsh environment and survived. However they were not builders of cities but were a nomadic tribe hunting and surviving from what they could gather from the wild land.

The sighting of a strange object floating in the water and the spectacle of strange white creatures walking on the sand would therefore have both frightened and excited the local inhabitants, for, as far as we are aware, Captain James Cook was the first European to locate, to land on and to map the east coast of Australia.

He had been charting the coastline of New Zealand and then set sail to try to locate Australia. His ship, the Endeavour, was blown off course – a terrifying time for the entire crew – but land was eventually sighted by a Lieutenant Hicks eventually sighted by a Lieutenant Hicks. That land, halfway between present day Melbourne and Sydney, is now called Point Hicks.

The Endeavour sailed on and anchored at Botany Bay and Captain Cook claimed the country in the name of the King of Great Britain who was at the time King George III. In 1770, there were two main European powers which were extending their territory. One was Great Britain and the other was France and there was great competition amongst the two to gain territories which would both protect and expand their empires. However, once it was determined that the land known as Terra Australis was not a threat to the British or French possessions in India and elsewhere, there was no further interest in what was to Europe an isolated and somewhat hostile land.

However, the situation changed when, in 1783, the American Colonies won independence. For many years Britain had transported its unwanted convicts to the Americas as there was no room in the British gaols to hold the huge numbers sentenced to imprisonment, many for stealing small items like a loaf of bread to feed themselves! British cities, and especially London, were becoming far too overcrowded, even when old rotting wooden ships, called hulks, were used as makeshift prisons.

The British Government therefore decided that a new penal colony would be established in Australia, even though it was a long way away, and commissioned Captain Arthur Phillip to be its first Governor.

A few months later, in May 1787, Governor Phillip sailed from Portsmouth with six convict ships, three store ships and two man-o-war ships and arrived at Botany Bay in January 1788. However, it was clearly seen that the surrounding land would not be suitable for a settlement and Captain

Phillip explored a little further and established a colony at Port Jackson, which is now the site of the present day Sydney. The east coast of Australia, including the island of Tasmania, was named 'New South Wales'.

Interestingly, a French fleet commanded by the Comte de La Pérouse arrived at Botany Bay just after the British fleet had moved to Port Jackson. However, lacking food and water, which the British were also short of, the French left soon afterwards and unfortunately were wrecked on the reefs of the Vanikoro Islands which are within the Solomon Islands.

Before Governor Phillip set sail from Portsmouth, he had been given instructions from King George III who, as a staunch Christian, was very concerned that the Aborigines should be treated well and protected, particularly from the convict settlers. In his Instructions to Phillip, which were dated the 25th day of April 1787, the King insisted that he was: *"to endeavour by every possible means to open an Intercourse with the Natives and to conciliate their affections, enjoining all Our Subjects to live in amity and kindness with them. And if any of Our Subjects shall wantonly destroy them, or give them any unnecessary Interruption in the exercise of their several occupations. It is our Will and Pleasure that you do cause such offenders to be brought to punishment according to the degree of the Offence."*

It was therefore always the intention of the British Administration to treat kindly with the Aborigines, although some officers and many settlers did not do so.

It is true that the British came to these lands and displaced those that were here before, but it is also true that, had it not been them, it would have been the French and later almost certainly the Germans. Australia would never have known British Law and the Westminster system of government, which in spite of any deficiencies are certainly far superior to any other system. Furthermore, there would certainly have been no Australia as we know it today.

### QUESTIONS:

Who, amongst Captain Cook's crew was the first to sight the coastline of Australia?

What was the name of Captain Cook's ship?

Where, in Australia, did Captain Cook eventually anchor and explore the surrounding land?

Which were the two main European Powers at the time?

For what reason did the British Government decide to establish a colony in Australia?

When did Captain Arthur Phillip and his fleet land in Australia?

What was the name to the land claimed by Britain?

Where was the new Colony eventually established?

Who was its first Governor?

Who was the King of Great Britain at the time?

In a few words describe the instructions given by the King regarding dealings with the natives in Australia?

# Explaining Australia's Constitution

## PAPER 2

### HUGE COUNTRY - FRACTIOUS COLONIES.

The first settlers found life to be extremely hard, but because they came from harsh backgrounds, they fortunately had the stamina to be able to tame the land and to build the foundation of the great nation Australia is today.

It was not long before the early pioneers started to explore the interior of this new land. They found that the huge landmass of just under three million square miles in area was mainly desert or land lacking sufficient water to be properly arable. It was thus that as the British settlements increased, they were all mainly on the coastal areas.

Governor Phillip's First Fleet of 1788 comprised 756 convicts and 550 freemen - including officers, sailors and marines and their families, all crammed into eleven ships. Whilst some died of hardship and many of the freemen returned to England, the white population expanded quickly within twenty years to over ten thousand. They spread throughout the area, but mainly established agricultural enterprises around the Eastern seaboard. Towns and then cities grew up to service these industries and by 1859 the Australian continent had been divided into the six Colonies we now know as States. Because of the enormous distances between what became Capitals in the new States, a central administration was obviously not practicable and in 1850, the British Parliament passed the 'Australian Colonies Government Act' to enable parliaments in each of the Colonies to be established, each answerable direct to London.

At first these colonies were very competitive and sometimes aggressive against each other, but towards the end of the nineteenth century railway and telegraph linked the States and made travel between them much easier and the idea of being 'Australian' began to be celebrated in songs and poems. With each Colony taxing goods from other Colonies, it made common sense to establish a common customs and taxation system.

Furthermore, the threat of invasion as Germany and Russia expanded their empires (particularly with a German settlement in New Guinea) also brought home the precarious situation Australia was in, being so far from the homeland of Great Britain halfway across the world and with the closest military support in India.

By the 1890s, the six Colonial Parliaments started to debate uniting into one nation.

### ORGANISING A NATION:

These debates led to Constitutional Conventions, the first of which, the Australasian Federation Convention, was held in Melbourne in 1890 and was attended by representatives from all Australasian Colonies, including New Zealand.

In 1891, seven representatives from each Colony met in Sydney as 'the National Australasian Convention'. This Convention established a sub committee which was empowered with drafting a new constitution. The committee comprised: Edmund Barton (from New South Wales), Andrew Inglis Clark (from Tasmania), Samuel Griffith (from Queensland), and Charles Kingston (from South Australia). These representatives, who are now called our Founding or sometimes our

Federating, Fathers, drafted a document which, although based on the British Westminster system, also incorporated provisions from the constitutions of the United States, Canada and Switzerland. In 1893 a decision was made to put the draft constitution to the Australian people at a referendum. However, this did not occur immediately. In 1897 and 1898 and there were two further Conventions and then referendums were held in all colonies, excepting Western Australia which at the time was still objecting to joining a union with the Eastern States, although it later held a referendum and joined into the new Federation. New Zealand, although originally involved in the early Conventions decided to go their separate way.

The referendums in the five States were passed and in May 1900, the Commonwealth of Australia Constitution Act 1900 was passed by the British Parliament, and was signed by Queen Victoria on 9th July 1900, and so became law.

Today there is criticism that our Constitution was originally established by an Act of the British Parliament, but this is because that was the only Parliament which had jurisdiction over the Australian Colonies and the authority to relinquish control of what became the Australian States which were united into the 'Commonwealth of Australia' with its own independent and sovereign parliament.

The Australian Constitution was therefore not a British creation but was specially drafted by Australian Statesmen to suit the requirements of what was to become the brand new country of Australia. It was then voted upon and accepted by the Australian electorate of the time.

It was thus, on the 1st of January 1901, that the Commonwealth of Australia was proclaimed in Centennial Park in Sydney and later that year, on the 9th May 1901, the first Commonwealth Parliament was opened in the Exhibition Building in Melbourne at which Edmund Barton, a drafter of the new Constitution, was elected as the first Prime Minister of Australia.

Because Australia was a new nation, it had no capital of its own. Provision had been made in the Constitution that the new capital should be "*in the State of New South Wales, and be distant not less than one hundred miles from Sydney*" and, after much deliberation, the present site of the Australian Capital Territory was chosen and a new city, called Canberra was built. Twenty six years following Federation on the 9th of May 1927, the new Parliament House was opened by the then Duke and Duchess of York, later King George VI and Queen Elizabeth (the late Queen Mother).

In May, 1988, sixty one years later, their daughter, our present Queen, opened the new Parliament House in which the Parliament currently sits.

## QUESTIONS

What did the early settlers find when they explored the interior of Australia?

By 1859, how many Colonies had been established in Australia?

What were the main reasons for the Colonies to discuss uniting into a federation?

In what year was the first Australian Federation Convention held?

What nationalist were the people who drafted the Australian Constitution?

Who voted to accept the new Constitution – the British people or the Australian people?

On what date was the Commonwealth of Australia proclaimed?

What was the name of the new capital of Australia?

# Explaining Australia's Constitution

## PAPER 3

### OUR UNIQUE CONSTITUTION

The Australian Constitution differs from all other Constitutions in the world with its unique Preamble which bases the Federation on the blessing of Almighty God: *“Whereas the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, (Western Australia was a couple of months late in holding its referendum but joined in time for the Federation ceremonies in January 1901) 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, and under the Constitution hereby established.”*

It was in this manner that Australia was established as a Christian nation. This does not mean that Christianity became the established religion, for Section 116 of the Constitution ensures freedom of worship, but that Australia was founded on the same Christian principles that led to the creation of British Law and British Justice.

The Constitution also brought together the six separate Australian colonies into one nation as a federation. This means that whilst they still retained their parliaments and with their own constitutions individually under The Crown, they all ceded central authority to a Federal Parliament with a lower House of Representatives elected directly by the people on a separate electoral basis with no connection to the State Parliaments, and a Senate elected on a State basis because, as well as being a House of Review, its purpose is also to represent the interests of each State in the Federation.

When drawing up a Constitution to suit the unique conditions of the new nation of Australia, it was the choice of the Delegates to the Constitutional Conventions that, when Australia became a nation in its own right, it would continue as a restrictive Monarchy ‘under the Crown of the United Kingdom’ with the Monarch represented by a Governor-General where the authority of the nation would be vested in The Crown and not solely in a body of politicians.. They could have opted for a republican form of government, as had occurred a hundred years earlier in the United States of America. But they chose to depart from the sort of Westminster Government that had developed in Great Britain by establishing that the Constitution could only be changed by a State based referendum, thereby making The Crown subject to the will of the Australian People

The Australian Constitution is therefore not like the other British type Constitutions which are all subject to the will of the respective Parliaments.

There were sound reasons for retaining the British Monarch as our own Australian Monarch. We had no quarrel with Britain, as the Americans did over taxes, and the Australians of the day wanted to be a part of the democratic institutions of government which the British had developed and nurtured.

### HOW THE CROWN PROTECTS US FROM OBLIGATED POLITICIANS:

Today some question how in having the arrangement of an ultimate (or de-jure) Head of State who is unelected, be democratic. The fact is that, by not being elected, The Queen and the Governor-General are free to exercise total impartiality as they are not beholden to a political process. On the other hand, should we have an elected Head of State, that person would have to campaign like a politician and would require extensive campaign funding which means that major backers would expect favourable treatment and special access in a similar manner to that which they now enjoy with Cabinet Ministers. The president (if that is what he/she might be called) and presidential candidates would have such events as fund-raising luncheons resulting in the tarnishing of the integrity and impartiality we currently experience under our present system.

Similarly if a president was appointed by the Parliament, there would eventually be some sort of pre-selection in the same manner as political parties select their candidates. Presidential candidates would be required to canvass for support, either directly or behind the scenes, with the result that their impartiality would be impaired.

Because the Governor-General is appointed by The Queen, he rises above party politics, even if he had previously been a politician. This is because, following appointment, his allegiance is to The Crown (and thereby the people) and not to the political party in government or in opposition.

When we talk about The Crown, we do not mean the jewelled headpiece worn by The Queen, but what is in reality an institution which has, at times, been described as ‘the Corporation of the State’. It is in the name of ‘The Crown’ that the law is enforced and the Defence Forces operate. Officials of the government are employed by ‘The Crown’ and public lands are held in the name of ‘The Crown’. The Crown has therefore come to mean not authoritarian power wielded by one or more persons, but rather the symbol of the people it protects.

When the British Colonies in America became independent, they established a Constitution that essentially replaced the King with a President who continues to this day to hold immense power in his own right. Whilst, in Australia, the powers of Nation, under the Crown, are exercised by a Parliament elected by the people, the United States President retains much the same sort of imperial authority that King George III exercised over two hundred and thirty years ago, except that in the USA its Cabinet is selected from outside the elected Parliament.

In its first hundred years the United States of America had a civil war, countless internal territorial wars and a presidential assassination (to date four Presidents have been assassinated and there have been another five attempted assassinations), whereas in the first hundred years since Australia Federated, there have been no internal wars and only one constitutional crisis which was speedily resolved by a vote of all the Australian people. This is because power is not concentrated in one individual, but in the Government and the Parliament, and even then that power is not absolute but is subject to checks exercised constitutionally, and mainly discretely, by the Governor-General whose allegiance is to The Crown - thereby to the people and not to the Prime Minister who may have nominated him (or her as the case will be once Ms Quentin Bryce is appointed Governor-General).

The people of the Australia of the 1890s did not want to make a clean break, as occurred in the United States, but wanted to allow our independence to evolve on a friendly basis for another two or three decades. As a part of what was called in those days ‘the Imperial Family’, it became customary to hold Imperial Conferences with representatives of the ‘Dominions’; those nations which had their own Parliament but which remained under The Crown and which, were at the time, called ‘Dominions’..

At the Imperial Conference held in 1926, it was decided that the process of evolution to sovereignty was complete and that the 'Dominions' were totally independent of any control of the British Government and that this should now be formally put into words in what is called the Statute of Westminster. The opening words of this Statute best explain what was then and is today the situation: *"inasmuch as the Crown is the symbol of the free association of the members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown"*

Being 'under The Crown' and having as our Monarch a Queen who is also Queen of fifteen other nations has many compensations and few disadvantages. It is a criticism that The Queen does not reside in Australia. However, an absent monarchy means that we do not pay a salary to The Queen and contribute nothing towards her upkeep or even towards her costs as Queen of Australia. In fact, other than for official visits, The Queen does not cost the Australian taxpayer one cent! From time to time the Government extends an invitation to Her Majesty to visit Australia and, in accordance with normal practice, the expenses of the visit are paid by the Government. However, the same practice extends to all State Visits ... just as when the Governor-General (or in some cases the Prime Minister) is invited to another country. Although the media make much of the expenses for a Visit of The Queen, they are a fraction of the expenses the Australian taxpayer must bear for visits even by Heads of small states.

The Crown has been simply described as 'government under a Constitutional Monarchy', but this simplistic explanation does not accurately illustrate its real meaning.

### **QUESTIONS:**

In what way does the Australian Constitution differ from most other Constitutions?

What did the Constitution do as far as the six Australian Colonies were concerned?

Why did the Australian delegates to the Federation Conventions want to retain The Crown in the new Australian Constitution?

What is the benefit in having a 'Head of State' who is not elected?

What happens because the Governor-General is appointed by the Queen?

What is 'The Crown'?

What was decided at the Imperial Conference of 1926?

Does the Australian taxpayer pay for the upkeep of The Queen?

# Explaining Australia's Constitution

## PAPER 4

### THE POWERFUL CHECKS AND BALANCES IN AUSTRALIA'S CONSTITUTION:

All nations have an immense power which is made up of its land and the people who inhabit it. It incorporates the law and those who uphold it. An individual controlling this power is called a dictator. The world has seen many dictatorships, such as the ancient Kingdoms or the current Republic of Zimbabwe. Over the past few hundred years, a system was developed to better control this 'power' with various checks and balances. This system is called a Constitutional Monarchy where the Monarch, or Governor-General is checked by the Parliament and the Parliament is checked by the Monarch/Governor-General and the Courts and where all are checked by the people. It is a system that has been refined over the centuries and whilst there are many inadequacies, it does work as has been proven in Australia, which has had no civil wars or major constitutional crisis in its hundred years of existence as a Constitutional Monarchy.

Under our system, neither the Prime Minister nor the Parliament can seize control of the nation, simply because the power is permanently vested in The Crown.

Some people, who agree that this arrangement works, say: "*Why can't we keep the system but do away with The Queen?*" The problem is that a Constitutional Monarchy cannot work where all participants are elected, because the election process corrupts the participants.

In the United States of America, the President is elected by the people. To achieve an election he has to raise millions of dollars for his campaign. This means that he is beholden to major campaign contributors who may be individuals, or corporations.

Individuals are often rewarded by ambassadorships and corporations by favourable financial treatment.

In Australia, the Prime Minister may act in this corrupt manner but the Governor-General is hardly worth bribing because he exercises no government authority and the Prime Minister can request his dismissal if he is found to act beyond his ceremonial and constitutional duties, whereas if we had a president elected by the people, he, or she, would be a much more politically powerful individual and we could well see constitutional crisis after crisis.

If our constitutional system was not working, then that would be the time to risk a republic, but is it really worth throwing away what we have, just because many people do not understand our system, or worse because some show an antipathy towards The Queen and any association, however remote, with the United Kingdom?

### FUTURE CONSTITUTIONAL FINE-TUNING:

Should the Constitution ever be updated, after all it is a hundred years old, it would be appropriate to incorporate the conventional practices of having a Prime Minister and Cabinet as well as an

Executive Council. The Constitution also incorporates a provision under Section 59 which states: *“The Queen may disallow any law within one year from the Governor-General's assent, and such disallowance on being made known by the Governor-General by speech or message to each of the Houses of the Parliament, or by Proclamation, shall annul the law from the day when the disallowance is so made known.”* This was incorporated as no one knew how the new Federal Parliament would evolve or the difficulties that may have eventuated. However the process, under the Constitution, worked smoothly and there were no problems at all. Consequently, there is no reason why this section should remain.

As the Australian Parliament found its feet and the Government became more competent in administering the nation, it, together with the Canadian Government started to agitate for a greater independence from the British Government, particularly at the Imperial Conference of 1926.

As a result of ensuing discussions, it was agreed that the Governor-General, although still to be appointed by the Monarch, was thereafter to be nominated by the Government of the respective country. From 1901, by consensus of both the British and the Australian Governments, the Governor-General was recognised as their link between each. The Governor-General was also to assume the constitutional and ceremonial role of the Monarch in Australia and thereafter the British Government was to have no jurisdiction over the Governor-General who was to accept the formal advice tendered to him by the Australian Government. This agreement was put into the Statute of Westminster and thereafter a High Commissioner, another term for an Ambassador, was appointed to represent the interests of the British Government and to liaise with the Australian authorities. Today all diplomats of ambassadorial rank to member nations of the Commonwealth are called ‘High Commissioners’.

Whilst Federation gave Australia independence, it was as a result of the Imperial Conferences and the Statute of Westminster that saw that independence mature.

### **THE GOVERNOR-GENERAL IS OUR REFEREE:**

When the British Empire, with its more than fifty countries was spread around it was impossible for both the Sovereign and the British (or Imperial) Government to be personally present everywhere and it was feasible for each country, or State, to be administered by a Governor. Sometimes a Governor was called an Administrator, and in the case of the Supreme Governor of India, a Viceroy. At the time of Federation, each State in Australia had a Parliament and a Governor, appointed by the British Monarch. The Governors each reported back to the British Government as well as to the Monarch.

Other than becoming a republic, our Founding Fathers could well have opted to become a separate Monarchy and invited a son of Queen Victoria to become the King of Australia. This was not an unreasonable thought particularly in view of the long distance from London, however, to have our own King, or as America does, our own President, was simply not worth the cost and a president was considered to be far too risky as any interference in the Government's running of the country could well have led to a political crisis. After all, under our system, it is the Parliament which is elected to govern, not the Monarch or the Governor-General.

These options were never seriously considered as, under the Australian Constitution, the role of the Governor-General is similar to a Trustee of the Constitution and the rights of the people, not in the administration of the government as that is carried out by the Cabinet and its Chairman, the Prime Minister otherwise termed the ‘Head of Government’..

At the time of Federation and for a few decades thereafter the Governor-General was appointed by the British Monarch following nomination by the British Government. It was normal practice for the Governor-General to act as the liaison and to report to the British Government and this process was accepted by the Australian Government and Parliament until the Imperial Conference of 1926, at which time the system was revised to accord to the independent sovereignty of Australia and other Realms.

Under our Constitution (section 61), "*The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative...*"

Our Constitution does not mention a Prime Minister or Cabinet because the Governor-General is advised by what is termed an Executive Council established by section 62 of the Constitution, which he chairs. The Executive Council is the equivalent of the Privy Council in the UK and comprises Ministers and Parliamentary Secretaries but not, as in the UK, the Leader of the Opposition.

It is in this way that the Government can effectively manage the nation with the confidence of Parliament, which is elected by the people at regular intervals currently every three years.

We have regular elections to enable the people to vote a Government out of office, should it lose their confidence. A prime responsibility of the Governor-General is to ensure that a Parliament goes to the people prior to the expiry of its term of office.

The Governor-General is the Representative of The Queen. This does not mean that he, or she is The Queen's minion, but that he/she represents the institution of The Crown and as such assumes the role of effective Head of State. The Governor-General also has powers vested directly in him/her by the Constitution, including the position of Commander in Chief of the Armed Forces.

Unlike in the period following Federation, for over seventy five years, the Governor-General has not reported anything to the British Government, for his dealings are solely with the Australian Government. Nor does he report everything to Her Majesty and, in fact, does not answer to The Queen on matters of State nor does The Queen give instructions or even advice to the Governor-General.

The Governor-General can enact no law except "*with the advice and consent*" of both houses of our parliaments. This is the framework of our system.

But the monarch, under our Australian Constitution, has no personal say in our affairs.

In this way, the ultimate power of the State is placed above party politics. The great strength in the existence of the Crown and its conventional political neutrality is that it denies ultimate power to others.

The Governor-General may be a political nominee, but the appointment is always that of the Queen's. Once appointed Governor-General or Governor, however, the appointee is thereafter as free from direction by politicians (or the Queen) as any judge. A Governor-General or Governor is not the puppet of the politician nominating him. He or she retains personal integrity to act above party politics when exercising the vice-regal powers as the Queen's representative, and stands in the same relationship to our houses of parliament as a constitutional monarch would do.

There are a number of ceremonial and social duties which are the responsibility of the Governor-General which are similar to a non-executive Head of State. A number of charities depend on the Governor-General's patronage and support. However there are also constitutional duties, which are far more important, as the constitutional role of the Governor-General is similar to that of a trustee ensuring that all the parties participating in the governing of the nation play fair by the people.

The website of the Governor-General lists his duties as:

- \* dissolves the Parliament and issues writs for new elections;
- \* commissions the Prime Minister and appoints other Ministers after elections;
- \* gives assent to laws when they have been passed by the two Houses of Parliament - the Senate and the House of Representatives;
- \* acts on the advice of Ministers through the Executive Council to issue Regulations and proclamations under existing laws; appoint Federal judges; ambassadors and high commissioners to overseas countries and other senior government officials; issue Royal Commissions of Enquiry; exercise the prerogative of mercy; and
- \* authorises many other executive decisions by Ministers such as raising government loans or approving treaties with foreign governments.

As Commander-in-Chief, the Governor-General has an important ceremonial role to play. He attends military parades and special occasions such as Anzac Day at the Australian War Memorial, and presents colours and other insignia to units of the Australian Defence Force.

There are many other ceremonial duties performed by the Governor-General. For example, he or she:

- \* receives and entertains visiting heads of state, heads of government and other prominent visitors to Australia;
- \* opens new sessions of the Commonwealth Parliament;
- \* receives the credentials of ambassadors and some high commissioners appointed to represent their countries in Australia;
- \* conducts investitures at which people receive awards under the Australian Honours system for notable service to the community, or for acts of bravery; and
- \* receives and formally entertains many Australian citizens and representatives of organisations active in the life of the community.

A major constitutional role of the Governor-General is to ensure that elections are held at or before the appointed time. Should a Prime Minister refuse to go to the people, then, unless the nation is in a state of war or national emergency, the Governor-General has no alternative but dismiss the Prime Minister and appoint a caretaker Prime Minister who will agree to go to the polls.

Once the election has been held, the Governor-General then commissions the leader of the political party which has the most seats (or votes) in the parliament, (or the most likely to be able to control a majority of votes), to form a government. Thereafter the Governor-General must accept the advice of the Government and must assent to Bills passed by the Parliament, unless such Bills clearly contravene the Constitution, because once elected, that parliament speaks with the voice of the people. It has been considered that by himself, the Governor-General cannot determine whether any Bill contravenes the Constitution and must give Assent and allow the Opposition or other interested parties to take the matter to the High Court for judgment.

A Governor-General can, of course, express – in private - his concerns to the government. Many members of the public write in to the Governor-General and most receive a bland response. However, their views are considered and frequently taken up in private discussions with the Prime Minister or Cabinet Minister concerned and often result in a Bill being amended. In fact, Australian Governors-General have returned Acts back to the Parliament for amendment on no less than fourteen occasions. However, the decision of the government backed by a consensus in the parliament is paramount.

As with The Queen in the United Kingdom, the Governor-General may advise and caution the ministers, but contrary to the misguided notions of some ‘barrack-room lawyers’, a government cannot be overruled for to do so would be to overrule the majority will of the people.

### **THE HEAD OF STATE MUST BE INDEPENDENT:**

The current debate on change to our constitution commenced nearly twenty years ago. Since that time there has been an unproductive argument over who is our Head of State, leading to intense confusion on all sides.

When we federated into one nation in 1901, the term ‘Head of State’ was relatively unknown. However over the past fifty years it has been commonly used in new countries to describe the individual who wields power within the respective nation. The reason why there is some confusion over the use of this term in Australia is because our system is different from republics, because ours is a constitutional monarchy with a sovereign represented by a Governor-General who also assumes independent powers under the Constitution. Our system is therefore one of many checks and balances where all those in authority keep a watch on the other and in this manner safeguard the interests of the people.

If we are to use the term ‘Head of State’ then the first or ‘prime’ Head is The Queen, but once she has appointed a Governor-General he (or she) assumes the position of the Monarch in the country and The Queen thereafter plays no further part in administrative affairs. The reason why we say The Queen is the ‘prime’ Head of State is because a major part of our constitutional checks and balances is that The Queen appoints and, when petitioned by the Prime Minister, has the power to dismiss the Governor-General.

The Prime Minister advises The Queen of the person he wishes to nominate for Governor-General and it is convention that The Queen always accepts the nomination. It may reasonably be asked ‘Why do we need The Queen and why cannot the Prime Minister just nominate the Governor-General himself?’ The reason, of course, is that if the Prime Minister was empowered to himself appoint and dismiss the Governor-General it would make that Office subservient instead of supervisory, as is the case at present where the Governor-General is allegiant to The Crown and therefore to the people and not to any politician. Whilst it is practice for the Monarch to accept the nomination of the Prime Minister, this does not mean that if a totally unsuitable nomination is made, it cannot be questioned. The procedure is a part of the checks and balances which make up our constitutional arrangements for the protection of the democracy of the people.

Constitutional experts say that we therefore have two Heads of State, a de jure Head in The Monarch and a de facto Head in the Governor-General. However few people can understand these terms and I prefer to say that The Queen is the ‘prime’ Head of State and the Governor-General the effective Head.

## QUESTIONS:

What makes up the 'power of a nation'?

Because we are a Constitutional Monarchy, what can the Prime Minister and the Parliament not do?

What changes were made regarding the Governor-General after 1926?

What are the duties of the Governor-General similar to?

Does being the Queen's Representative mean that the Governor-General is told by The Queen what to do?

What is the great strength of The Crown in our political system, being biased or being neutral?

Who is Australia's Commander-in-Chief?

Does the Governor-General ensure that elections are held at proper times?

Why does the Australian Constitution not mention a 'Head of State'?

Who is the Prime Head of State?

Why?

Who nominates the person to be Governor-General?

Who appoints that person as Governor-General?

Why?

# Explaining Australia's Constitution

## PAPER 5

### PLEBISCITE VS REFERENDUM:

It seems that the Federal Government will hold a plebiscite on the subject of a republic. However, many people are understandably confused about what is a plebiscite and what is a referendum.

Essentially, a plebiscite is a non-binding official government opinion poll and a referendum is constitutionally structured vehicle for actual change to the Constitution. A plebiscite by itself cannot amend the Constitution. A referendum, if passed, can.

Plebiscites, and even referendums, are fairly alien to the Westminster system where the procedure of governance rests with the constitutionally elected parliaments and not through a continuous participation of the people, as is the case in Switzerland. Australia is an exception to the rule, as our constitution can only be changed by a vote of the people at referendum.

In fact when the Constitution Act of 1900 was passing through the British parliament, the inclusion of Section 128, the referendum process, was questioned as not being true to the spirit of Westminster.

Plebiscites have their origin in early Roman times, before the establishment of the empire when Rome was ruled by two groups, the Patricians, or nobles, and the Plebeians, or commoners, whose Council was called the 'Concilium Plebis' or 'plebiscita'.

The first plebiscite held in Australia was in 1916, during World War 1, on the subject of conscription for service overseas. Since this was a matter of amending the Defence Act, which only allowed for conscription within Australia, there was no need to amend the constitution and thus no requirement for a formal referendum. All that was actually necessary was simply the passage of an amending act through the House of Representatives and the Senate. However, the then Prime Minister, Billy Hughes, lacked control of the Upper House and intended using what was termed an 'Advisory Referendum', or plebiscite, win to force the Senate into accepting his legislation. However the vote was lost by around 2% (49% for and 51% against). In 1917, Hughes had the numbers in the Senate but felt obliged to put the matter again by plebiscite to the people, but on this occasion the numbers were even higher against and it was thus that Australia had no conscription for overseas service in the Great War.

There was thereafter only one more plebiscite put to the people, although, in 1974, the Whitlam government conducted a public opinion poll and following the results, changed the National Anthem from 'God Save The Queen' to 'Advance Australia Fair'. The poll was not a plebiscite as it was voluntary with no formalities of voting. However, in 1977, at the same time as four referendum proposals, the Fraser Government conducted a formal plebiscite, termed a 'National Song Poll', which resulted in a clear majority for 'Advance Australia Fair', which was then adopted as the National Anthem.

State and local governments have used plebiscites quite often to determine which way the Parliament or Council should proceed.

A referendum is covered by Section 128 of our Australian Constitution which sets out a rather complex method of voting to ensure that the interests of the smaller States are not swamped by the larger, Eastern, States. Section 128 requires that to succeed, a referendum must carry a majority of States Australia-wide and a majority of votes in a majority of States. This means that to succeed, a vote must have received 50% plus one votes throughout Australia and the same in four of the six States.

Whilst Monarchists are not opposed to the concept of a plebiscite as a means of determining the mood of the people, we do believe that, to hold a plebiscite on the issue of removing our current Constitution without putting forward specific details of any alternative - which would be the case in a referendum - is tantamount to asking for a vote of no-confidence in our current system of governance!

If such a plebiscite succeeds, it could disturb our political stability and may well form the ingredients which could lead to a constitutional crisis.

For this purpose, it would be far better if the Government and republicans could decide on how they actually propose to amend our Constitution rather than proceeding along a potentially divisive pathway of attacking what we have without proposing any viable alternative.

### **THE CONSTITUTION IS YOUR SAFEGUARD:**

Should the Government proceed with its republican agenda, we believe that the Australian people will decide for themselves on the best course of action for the nation. The problem that will face monarchists is that we will be facing a Government, backed by the Labor Party, its unions, big business and the media. However, all that we ask is that each and every voter carefully consider the options put before them and do not accept the hyperbole of media spin and rush into change. Remember always that our Constitution was not a British creation, but was drafted by Australians and then voted upon by Australians and designed to specifically suit the new nation of Australia. It has since ensured continuous political and economic stability for over a hundred years. It deserves more than to be simply thrown aside because some fail to appreciate that this stability and this continuity is due to BEING 'under The Crown' and having, as Trustee of our Constitution, our Australian Governor-General.

### **QUESTIONS:**

What is a 'plebiscite'?

What did British politicians question in our Constitution as 'not being true to the spirit of Westminster'?

How many plebiscites has a Federal Government held in Australia since Federation?

What were they?

Which section in our Constitution covers the holding of a referendum?

If a plebiscite was held, what could it disturb?

# Explaining Australia's Constitution

## SUPPLEMENTARY PAPER A-1

### THE QUEEN

When Australia was discovered by Captain James Cook in 1770, George III was King. It was under his granddaughter, Queen Victoria, just 131 years later, that the Australian colonies federated into one sovereign and independent Nation. Today Elizabeth II, the great-great granddaughter of Victoria is our present Queen.

Due to the difficulties and time taken in travelling from one side of the world to the other, it was impossible for earlier monarchs to visit Australia, although Queen Victoria did send her son, Prince Alfred, the (then) Duke of Edinburgh, to Australia in 1867. Unfortunately Prince Alfred was shot by an Irish rebel at Collaroy in Sydney but despite this upset, the two sons of Alfred's brother, the then Prince of Wales, later Edward VII, visited in 1881. One of these sons, the Duke of Cornwall, together with his wife, represented his grandmother, Queen Victoria, at the opening of the first Parliament in 1901. The Duke and Duchess were later to become King George V and Queen Mary.

The next Royal Visit was in 1920 by their son, Edward, Prince of Wales, later to become the uncrowned king, Edward VIII.

In 1927, Prince Edward's brother, Prince Albert, Duke of York, visited Australia, together with his wife, to open the (now old) Parliament House in Canberra. On Edward's abdication, Albert became King as George VI and his wife, queen Elizabeth, known as the late Queen Mother.

1934 saw a visit by their brother, the Duke of Gloucester, who returned after the War as Governor-General serving from 1946-7. The next Royal visit was by Queen Elizabeth II with her husband, the Duke of Edinburgh, in 1954. This was the first ever visit by a reigning monarch and since that time there have been numerous visits by Her Majesty and other members of the Royal Family.

The Queen's father became King on the abdication of her uncle, King Edward VIII in 1936. Attitudes were different at that time and people were against his proposed marriage to a divorced woman. The Prime Minister of Australia was amongst those consulted and he was the first to respond with a vehement objection to the marriage.

No one ever thought at the time that Princess Elizabeth would ever become Queen. She was born on the 21st of April 1926 and named Elizabeth, not after Queen Elizabeth I, but after her mother. But when her father became King, Princess Elizabeth, only 9 years old, was trained for her future role as Queen.

Ever since the commencement of the Second World War, Princess Elizabeth was determined to play her part and not sit idly by in spite of the onerous responsibilities which had been added to her educational studies. Reaching her 18th birthday, she joined the Auxiliary Territorial Service, training in driving and vehicle maintenance.

The Princess could easily have avoided joining up by simply claiming that by the time she was of age the end of the War was now in sight. However, the calibre of the person who was to become our Queen can be found in the comment she made many years later that it was the only time in her life when she had been able seriously to test her own capabilities against others of her own age.

In 1947, Princess Elizabeth, in a broadcast to celebrate her 21st birthday whilst on a tour of South Africa, established the principles upon which she would reign with this extraordinary and inspiring vow:

*"I declare before you all that my whole life, whether it be long, or short, shall be devoted to your service and the service of our great Imperial Commonwealth to which we all belong. , But I shall not have strength to carry out this resolution unless you join in it with me, as I now invite you to do; I know that your support will be unfailingly given. God bless all of you who are willing to share it."*

In July of that year, the Princess became engaged to her third cousin Prince Philip of Greece. They married on the 20th November 1947.

On the 6th February 1952, King George VI died and his daughter became Queen. Under the system of Constitutional Monarchy, there is no break between reigns. This means that immediately one monarch dies, his or her heir becomes monarch. There is a phrase which describes this: 'The King is dead. God Save The King'.

Queen Elizabeth was crowned on the 2nd June 1953. At her Coronation, Her Majesty swore an oath to govern the peoples of Australia and her other realms "*according to their respective laws and customs*". She had also said in a radio broadcast at the time: "*I want to show that the Crown is not merely an abstract symbol of our unity but a personal and living bond between you and me.*"

She is unique in that She, more than any other king or queen who has gone before her, has selflessly dedicated her life to her people without regard for her own benefit or personal comfort. Indeed at no time has she ever misbehaved or even lost her temper in public despite the many aggravations there must have been for her to do so.

During her long reign, she has travelled more miles than all of Her Prime Minister's put together. She has read more State Documents and discussed more issues with Commonwealth and Foreign Heads of State and Government than any elected official. Her average work-day is as long as any Prime Minister.

When at Buckingham Palace, She usually commences work on the red Dispatch boxes containing parliamentary and diplomatic papers immediately following breakfast. The boxes follow Her wherever She travels along with a contingent of secretaries who handle possibly the most voluminous amount of correspondence any person in the world receives. It is a most amazing thing that a letter to the Prime Minister can take anything up to three months to be acknowledged, whereas a letter to The Queen will generally be replied to within a fortnight!

Added to this is a schedule of appointments which would daunt most people. Rarely a day will pass without some sort of official function, either in the Palace itself or somewhere in the country.

The position of 'Head of the Commonwealth' is one which The Queen greatly cherishes, but which also brings its own massive work-load. Her Majesty sees Her position as a peacemaker and in this regard has achieved great success.

Visits to foreign and Commonwealth countries also consume a tremendous amount of time and are extremely onerous, particularly when one considers that both The Queen and the Duke are in their eighties!

The Queen has reigned for over fifty-five years and is the fifth monarch in British history to have done so. Her Majesty is now the oldest monarch to ever sit on the Throne. Both George III and his granddaughter Victoria were her age (82) when they died.

Over the years the immense popularity earned by The Queen has transposed into a virtual veneration of Her Majesty, not just by monarchists but also by republicans.

This is possibly because Her Majesty represents ideals in a way politicians can never do. These ideals represent stability, continuity, security and the national good. Hundreds of charities and associations are helped through Royal Patronage. Thousands of The Queen's subjects receive messages sent on the occasion of special birthdays and wedding anniversaries.

Each year in June, Australians have a holiday called 'The Queen's Birthday Holiday' which has often received strong and often crude criticism from republicans and media alike. However, this holiday is Australia's oldest public holiday, having been so proclaimed by Captain Arthur Phillip just five months following his landing, on the 4th June 1788, that date being the actual birthday of King George III. Whilst Her Majesty was born on the 21st April 1927, the Australian Government continues to celebrate the Birthday in June as a matter of convenience. If they were to celebrate it in April it would be too close to Easter. Western Australia actually observes the Queen's Birthday in September or October because it celebrates its Foundation Day in late May or early June.

In the United Kingdom, the Official Queen's Birthday is not an official holiday but is also set on a Saturday in June because the weather is warmer and more conducive for crowds to view the ceremony of Trooping the Colour.

The Queen's Birthday is also celebrated as a holiday in most Commonwealth countries which have The Queen as their Sovereign. Even Fiji, although now a republic, has retained its Queen's Birthday Holiday. Canada celebrates its Queen's Birthday on the Monday on or before 24 May which was the birthday of Queen Victoria.

As Head of the Commonwealth, The Queen brings together 53 independent countries into one voluntary association. Her Majesty personally knows all of the Heads of State and Government.

As Sovereign, The Queen is the authority from which all official honours, decorations and medals emanate. The Queen is Sovereign of the Order of Australia together with all other Australian civic and military Orders.

When in Canada in 1987, The Queen described our monarchical system of government as follows: *"Parliamentary democracy has fostered tolerance and flexibility - a good balance between individual rights and collective responsibilities. And this is because the Constitutional Monarchy has always placed the emphasis on people in community - as it were, a national family with the Sovereign as its head."*

Whenever asked about being replaced by a President, Her Majesty has always said that “*it is a matter for the Australian people to decide.*” That is our system and that is why it works so very well.

#### QUESTIONS

What is the date of The Queen’s birth?

Who was she named after?

Did Princess Elizabeth avoid war service?

What did Princess Elizabeth declare she would do in a broadcast on her 21<sup>st</sup> birthday?

What date did Princess Elizabeth become Queen?

Why?

What does The Queen’s average day consist of?

How long has The Queen reigned?

Is she the oldest person to sit on the Throne?

What is Australia’s oldest public holiday?

When in Canada in 1987, what did the Queen say the Constitutional Monarchy places emphasis on?

If the Queen was asked a question about the republic, what would she say?

# Explaining Australia's Constitution

## SUPPLEMENTARY PAPER A-2

### OUR AUSTRALIAN NATIONAL FLAG

There is a tremendous amount of misinformation propagated about the Australian Flag. It is not a symbol of British imperialism but of Australian nationalism.

Following the federation of the six Australian colonies into one nation, a competition was held to design an Australian flag. It brought forward an amazing 32,823 entries from around the world. The Australian judges selected the current design and the new, unique, Australian flag was flown for the first time from the temporary Parliament House, at the Exhibition Building in Melbourne in September 1901

The Flag has been designed on a vivid blue background and comprises three components: The Union Jack, which represents the Patron Saints of the United Kingdom St George of England, St. David of Wales, St. Andrew of Scotland and St. Patrick of Ireland. The crosses of these Saints have been incorporated into the Australian Flag, not to symbolise domination from Britain, but to honour the early settlers who sweated and laboured to create modern Australia.

The white Commonwealth Star's seven points represent the six States with one point representing the two Territories and the Southern Cross represents all those, including the original inhabitants, the Aborigines, who live in this great country, under the constellation.

Each September, Australia celebrates National Flag Day which commemorates the first time the flag was flown on September the 3rd 1901.

Many republicans support the flag and say nothing will change if we become a republic. However, given that so many who support a republic are anti-British, it stands to reason that the first thing that will change should we become a republic, will be our magnificent flag. This is why the Australian Monarchist League says "*Save the Constitution – Save the Flag.*"

#### QUESTIONS:

How was the design of the Australian Flag chosen?

When was it first flown?

What does the Union Jack represent?

What does the Commonwealth Star represent?

If Australia becomes of republic, do you think the Australian Flag will remain unchanged?