

CONSTITUTION

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PRELIMINARY NOTE.

CONSTITUTIONAL ORIGINS AND DEVELOPMENT.

Almost the whole of the territory now constituting the State of Queensland was formerly portion of the Colony of New South Wales. By Letters Patent and Commission of April 2, 1787, the first governor of that Colony was given authority within an area bounded on the north by the parallel of latitude of the northernmost point of Cape York Peninsula, on the west by the 135th meridian of east longitude and on the south by a specified parallel of latitude, "including all the islands adjacent in the Pacific Ocean within the latitudes aforesaid." In 1827 the western boundary was extended to the 129th meridian of east longitude, the present boundary of Western Australia.

Preliminary Note.

The first step towards the erection into a separate Colony of the northern portion of New South Wales was taken upon the enactment by the Imperial Parliament of The Australian Constitutions Act, 1842, *post*. Section 51 of that Act authorised the Crown to erect into a separate colony or colonies any territories forming portion of New South Wales and not lying southward of the twenty-sixth degree of south latitude. The territory which might be separated was extended by The Australian Constitutions Act, 1850, s. 34, *post*, which made a grant of authority to constitute as a separate colony or colonies such portions of New South Wales as lay northward of the thirtieth degree of south latitude, upon the petition of the inhabitant householders of any such territory.

Section 52 of The Australian Constitutions Act, 1842, *post*, had empowered the Crown to appoint members of a legislative council, which might legislate for the government of any colony created under the powers above mentioned, subject to limitations set out. Under s. 35 of The Australian Constitutions Act, 1850, *post*, a Legislature so constituted might establish a legislative council of which two-thirds of the members should be elected by the inhabitants and the remaining members should be appointed by the Crown.

The authority to constitute a colony and to provide for its government was preserved and confirmed by The New South Wales Constitution Act, 1855, s. 7 (Imperial), *post*, and s. 46 of the Bill scheduled thereto, which statute and Bill conferred on the Colony of New South Wales the system of responsible government now long enjoyed by all the Australian States.

On June 6, 1859, came the Letters Patent establishing as an independent colony, to be known as the Colony of Queensland, so much of the Colony of New South Wales as lay to the north of the present boundary between this State and New South Wales and to the east of the 141st meridian of east longitude. Under power conferred by The Australian Colonies Act, 1861, s. 2, *post*, the territory lying to the north of the 26th parallel of south latitude and between the 141st meridian of east longitude and the present western boundary of Queensland, was annexed to Queensland. See Letters Patent of March 13, 1862, recited in the Letters Patent constituting the Office of Governor, *post*. By Proclamation and Deed of Transfer of August 22, 1872, islands within sixty miles of the coast were added to the Colony. In 1879 Islands in Torres Strait were annexed. See The Queensland Coast Islands Act of 1879, *post*. It may be noted that the term "Queensland" when used in an Act ordinarily refers to Queensland and its dependencies (Acts Shortening Act of 1867, s. 10, title Acts).

The Letters Patent of June 6, 1859, *post*, went on to appoint the first governor of the new Colony and to provide him with the powers essential to the performance of his office. As to the date at which such Letters Patent became operative, see The Colonial Letters Patent Act, 1863 (Imperial), *post*. The Letters Patent were accompanied by an Order in Council of the same date, which conferred upon the Colony its first constitution. A Legislative Council and a Legislative Assembly were established (clause 1), and the Crown was empowered with their consent and advice "to make laws for the peace, welfare and good government of the colony, in all cases whatsoever" (clause 2). All laws in force in the Colony upon the coming into force of the Order in

Council were to remain in force until altered by the Legislature. For a summary of the provisions of the Order in Council, see the judgment of Lukin J. in *Taylor v. A.-G.*, [1917] St. R. Qd. 208, at p. 226 (reversed on appeal, 23 C.L.R. 457). Certain doubts as to the validity of the Letters Patent and Order in Council were removed by The Australian Colonies Act, 1861, s. 3 (Imperial), *post*. The Order in Council was repealed, with the exception of clauses 14 and 22, which are printed below, by the Repealing Act of 1867 (31 Vic. No. 39).

THE LEGISLATURE AND LEGISLATIVE POWERS.

Clause 22 of the Order in Council of June 6, 1859, *post*, empowered the Legislature by reserved bill to alter or repeal the Order in Council **itself, with the exception of one clause**. In the Constitution Act of 1867, *post*, the Parliament of Queensland exercised this power by enacting substantially the whole of the provisions of the Order in Council, with the exceptions of clause 22 itself and of clause 14. Section 2 of the Constitution Act of 1867, *post*, vested power to legislate for the "peace welfare and good government" of the colony in the Crown acting with the advice and consent of the Legislative Council and the Legislative Assembly. The Legislative Council was subsequently abolished by The Constitution Act Amendment Act of 1922, *post*, and cannot be restored without a favourable vote at a referendum of electors (The Constitution Act Amendment Act of 1934, s. 3, *post*). The Legislature has power to make alterations in the system of representation in the Legislative Assembly, under s. 10 of the Constitution Act of 1867, *post*.

Legislative Powers.—The power to legislate for the "peace welfare and good government" of the State is, within its limits, a full and plenary power similar to that of the Imperial Parliament itself, and bounded by none of the restrictions inherent in merely delegated power. See *Apollo Candle Co. v. Powell* (1885), 10 App. Cas. 282. A limitation of importance is the restriction of the competence of the Legislature to the territory of Queensland and persons and things therein. See *Macleod v. A.-G. for New South Wales*, [1891] A.C. 455; *Commissioner of Stamp Duties v. Millar* (1932), 48 C.L.R. 618. In certain cases jurisdiction has been extended by express enactment of the Imperial Parliament, as, e.g., The Admiralty Offences (Colonial) Act, 1860 (Imperial), title CRIMINAL LAW. As to criminal jurisdiction of Queensland Courts, see The Criminal Code (1899), ss. 12-14, 406, 433, 434, 539, title CRIMINAL LAW; The Australian Courts Act, 1828 (Imperial), s. 4, *post*; The Offences at Sea Act, 1806 (Imperial); The Admiralty Offences (Colonial) Act, 1849 (Imperial); The Courts (Colonial) Jurisdiction Act, 1874 (Imperial), title CRIMINAL LAW. Further limitations on legislative power are that Acts must not be inconsistent with Acts of the Imperial Parliament or regulations or orders thereunder in force in Queensland (The Colonial Laws Validity Act, 1865, ss. 2-4 (Imperial), *post*), or with Acts passed by the Commonwealth Parliament within its legislative powers (Commonwealth Constitution, s. 109, title COMMONWEALTH AND STATES), and must not interfere with the freedom of trade, commerce and intercourse among the States (*Ibid.*).

The power of the Queensland Parliament to alter the provisions of the Constitution Acts appears to be still derived partly from clause 22 of the Order in Council of June 6, 1859, *post*. See *Cooper v. Commissioner of Income Tax* (1907), 4 C.L.R. 1304, at p. 1314; *McCawley v. R.*,

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[1920] A.C. 691. It has been now established by judgment of the Privy Council that the provisions of the Constitution Act of 1867 are not clothed by law with any peculiar constitutional quality which prevents their alteration in the same manner as any other statute (*McCawley v. R.*, *supra*). The power to legislate with respect to the constitution and powers of the Legislature itself and of the courts of justice is also supported by s. 5 of The Colonial Laws Validity Act, 1865 (Imperial), *post* (*Taylor v. A.-G.* (1917), 23 C.L.R. 457). That Act, however, allows of the imposition by the Legislature itself of certain fetters on freedom of such legislative action (see *A.-G. v. Trethowan*, [1932] A.C. 526).

The raising and expenditure of public moneys is made subject to the control of Parliament in accordance with the Constitution Act of 1867, ss. 18, 19, 34, 35, 37-39, *post*, and The Audit Acts, 1874 to 1936, title AUDIT. For obvious reasons it was thought to be of no purpose to print the numerous Appropriation Acts standing unrepealed on the statute book. The Legislature has complete control of unalienated lands of the Crown by virtue of the Constitution Act of 1867, ss. 30, 40, *post*.

The Legislative Assembly.—The duration of the Legislative Assembly is limited to three years (The Constitution Act Amendment Act of 1890, *post*), a period which cannot be extended by Parliament without the approval of a majority of the electors voting at a referendum (The Constitution Act Amendment Act of 1934, s. 4, *post*). Annual sessions must be held (Constitution Act of 1867, s. 3, *post*). The holding of sessions and the prorogation and dissolution of Parliament are governed by the Constitution Act of 1867, ss. 12, 27, *post*, and the Letters Patent Constituting the Office of Governor, clause 9, *post*. Writs for election of members are the subject of the Legislative Assembly Act of 1867, ss. 9-11, 14, *post*.

Certain persons are disqualified from being elected to, or holding a seat in, the Legislative Assembly, by the Constitution Act of 1867, ss. 6, 7, *post*, the Legislative Assembly Act of 1867, ss. 3, 7, *post*, The Officials in Parliament Act of 1896, s. 5, *post*, The Constitution (Legislative Assembly) Act of 1933, *post*, The Elections Act of 1915, ss. 39, 40 (title ELECTIONS), and The Criminal Code (1899), s. 104 (title CRIMINAL LAW). Acts constituting public offices also frequently disqualify the holders of such offices from membership of the Legislative Assembly or Executive Council, as, e.g., The Acting Judges Act of 1873, s. 5, title SUPREME COURT; The Land Act of 1910, s. 20 (3), and The Land Acts Amendment Act of 1931, s. 11 (4), title LAND; The Railways Act of 1914, s. 9, title RAILWAYS AND TRAMWAYS; The Insurance Act of 1916, s. 5, title INSURANCE; The Industrial Conciliation and Arbitration Act of 1932, s. 6 (2), title LABOUR. Members must take an oath or affirmation of allegiance in accordance with the Constitution Act of 1867, s. 4, *post*. The amounts and payment of salaries of the speaker, chairman of committees and members of the Legislative Assembly are governed by The Constitution Act Amendment Act of 1896, *post*, and The Officials in Parliament Act of 1896, *post*. Members of the Legislative Assembly are entitled to exemption from service on juries under The Jury Act of 1929, s. 8 (title JURIES), and to free railway travel under The Railways Act of 1914, s. 115, title RAILWAYS AND TRAMWAYS.

The Legislative Assembly must elect a speaker to preside at its meetings, under the Legislative Assembly Act of 1867, s. 12, *post*. Provision with respect to quorum and voting, including voting by members prevented from attending by ill-health, is made by ss. 13, 15-18 of that Act. The House is empowered to make standing rules and orders for the purposes set out in the Constitution Act of 1867, s. 8, *post*. Standing rules and orders were adopted by the Legislative Assembly on August 10, 1911 (approved by Governor on August 17, 1911), and amendments thereto were adopted on July 6, 1922 (approved July 7, 1922) and August 23, 1932 (approved August 24, 1932). The powers and privileges of the House are the subject of ss. 41-50 and 52 of the same Act.

Further provisions of the statute law relating to Parliament and the constitution are the Acts Shortening Act of 1867, ss. 1, 4, title ACTS; The Defamation Law of Queensland (1889), ss. 40, 41, title DEFAMATION (stay of actions for defamation in respect of publication of papers by order of the Legislative Assembly); The Criminal Code (1899), Chapters 6-8 and ss. 78, 371, 374, 375 (1), 381, 488 III., 699, title CRIMINAL LAW; and The Vagrants, Gaming, and Other Offences Act of 1931, s. 37A, title VAGRANTS.

THE CROWN, THE GOVERNOR AND THE EXECUTIVE COUNCIL.

The Crown remains one of the constituent authorities of Parliament (Constitution Act of 1867, s. 2, *post*). In addition the Crown retains the executive power enjoyed by it at a time when the territory of Queensland was governed by the Crown as part of the newly established Colony of New South Wales, except in so far as such power has been restricted by statute. See Halsbury's Laws of England (2nd ed.), Vol. 11, pp. 73, 127. In this State, however, its power is ordinarily exercised by the Governor, whose office is constituted by the Letters Patent of June 10, 1925, *post*. The manner in which the Governor shall exercise his office is prescribed in many respects by the provisions of such Letters Patent and by the Royal Instructions to the Governor of the same date, *post*. With regard to reservation of Acts, see the Australian States Constitution Act, 1907, s. 1 (Imperial), *post*; clause 7 of the Royal Instructions to the Governor, *post*; The Australian Constitutions Act, 1842, s. 33 (Imperial), *post*; The Colonial Laws Validity Act, 1865, s. 4 (Imperial), *post*.

A Commission is printed under this title, *post*, appointing a Lieutenant-Governor to carry out the duties and powers of the Office of Governor in case of the death, incapacity, removal or departure of the Governor. In addition a Dormant Commission, dated October 29, 1900, *post*, provides for cases in which it may not be competent for the Governor or Lieutenant-Governor to administer the government, by appointing for that purpose the Chief Justice for the time being, or, in default of him, the Senior Judge of the State. The salary of the Governor and of any officer administering the Government is provided for by The Constitution Act of 1867 Amendment Act of 1905, *post*, and The Governor's Salary Act of 1872, *post*.

By the Letters Patent of June 6, 1859, constituting the Colony, clause 3, *post*, and by the Letters Patent of June 10, 1925, constituting the Office of Governor, clause 4, *post*, it is directed that there shall be an Executive Council for the State. The Executive Council is to consist

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of such persons as are members thereof in accordance with any Act of Parliament, and such additional persons as the Governor appoints thereto. The Executive Council is thus a body having legal status, and in this respect is to be distinguished from the Cabinet (*R. v. Davenport* (1874), 4 S.C.R. 99). To enable Ministers of the Crown to sit in Parliament, The Officials in Parliament Act of 1896, *post*, excepts proclaimed officers of the Crown, up to the number of ten, from the disqualification thereby imposed on persons holding offices of profit under the Crown.

References in Acts to the Governor acting with the advice of the Executive Council are ordinarily made by the expression "Governor in Council." See Acts Shortening Act of 1867, s. 10, title ACTS. Provision for the discharge of the functions of one Minister by another is made by The Officials in Parliament Act of 1896, s. 8, *post*, and The Department of Justice Act of 1876, *post*.

The appointment of judges and public officers is dealt with by the Constitution Act of 1867, ss. 14-17, *post*. The holding of public offices is not affected by the demise of the Crown. See *ibid.*, s. 15; The Demise of the Crown Act of 1910, *post*; The Demise of the Crown Act 1901 (Imperial), *post*; The Colonial Offices Act, 1830 (Imperial), *post*.

See also the title CROWN.

RELATIONS OF THE COMMONWEALTH AND THE STATE OF QUEENSLAND.

The relations between the Commonwealth and the States are dealt with in the Preliminary Note to the title COMMONWEALTH AND STATES. Where question may arise whether some of the provisions of an Act are invalid as being *ultra vires* or inconsistent with Commonwealth legislation, it is a common practice to insert a provision declaring it to be the intention of the Legislature that the Act shall nevertheless be law to the extent to which it is within the competence of the Legislature. See, e.g., The Wheat and Wheat Products Act of 1935, s. 3 (title AGRICULTURE); for the effect of such provisions, see notes to that section.

THE LAW IN FORCE IN QUEENSLAND.

For a statement of the position, see the Preliminary Note to the title ACTS.