

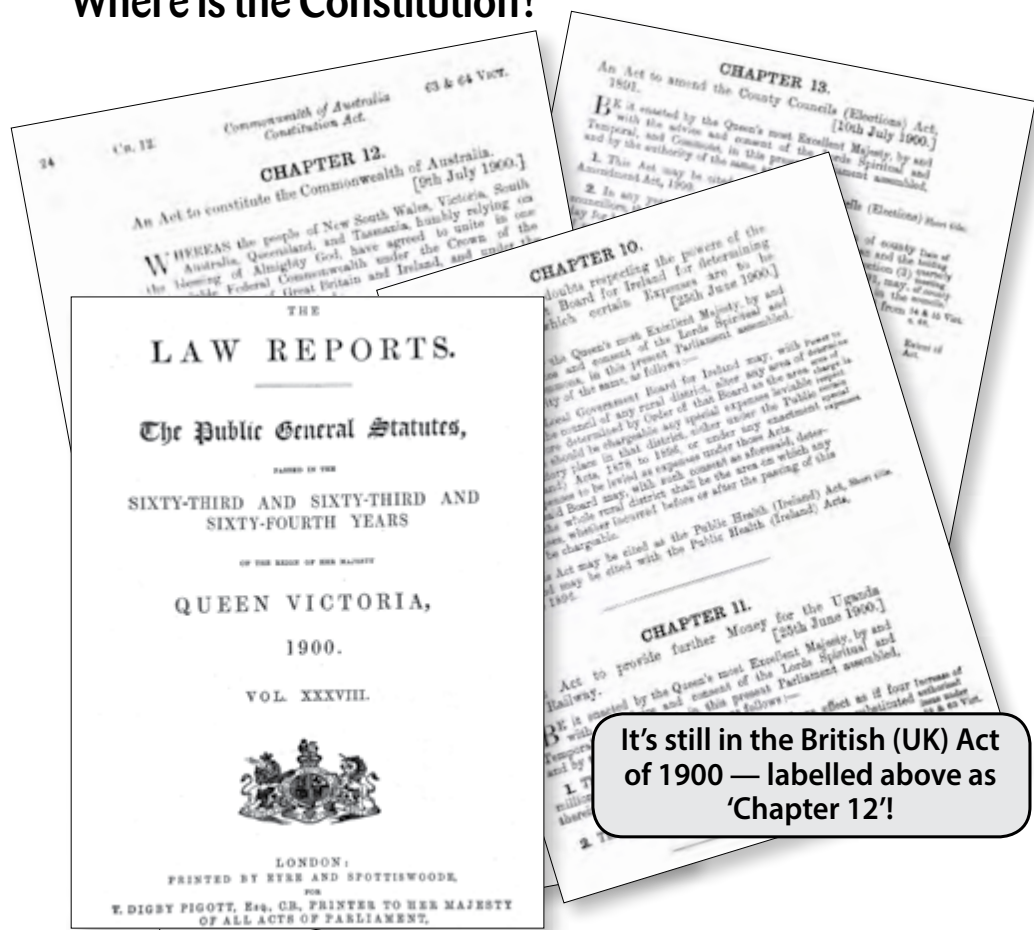


# Hats off to our federal Constitution!

CONVERSATIONS ABOUT OUR AUSTRALIAN FEDERAL CONSTITUTION

with John Christensen

## Where is the Constitution?



## Should our Constitution have an Australian home?

### An Australian home for our Constitution?

As we saw on the previous page, our federal Constitution forms part of a British or United Kingdom ('UK') Act of Parliament. It was passed by the UK Parliament in 1900 to operate as part of the law of Australia. At the time Australians were living in a group of British colonies and their new federal government took its authority from that Act. At its birth, Australia itself was a British colony. But since at least the end of the Second World War, it has been recognised internationally as an independent nation.

In view of Australia's evolution from colony to independent nation, it seems odd that its fundamental constitutional law still forms part of that Act of 1900. Should our Constitution have an *Australian* home? If so, how could that be done?

### 'Relocation' — what does it mean?

One way to give our Constitution an Australian home would be to 'relocate' it. This would require the authority of a constitutional amendment. The essential idea is that the powers and functions conferred by the Constitution would be transferred from the UK Act to an Australian document — without affecting the identity, operation or continuity of the Constitution. In effect the text of the Australian document would be regarded legally as the *same* Constitution rather than a new Constitution.

### Some questions about relocation

People sometimes ask, if our Constitution appears in a UK Act of Parliament, shouldn't the UK Parliament make the change? The answer is that the Constitution has a dual aspect: it forms part of a UK Act of Parliament but it was made as a law to apply in Australia. From the beginning it was always anticipated that the Australian people through their federal parliament — with the support of a referendum — could make changes to their Constitution. The Constitution confers power for this purpose without the need for any involvement of the UK Parliament. Since 1901 the Constitution has been amended in this way on eight occasions. The changes to implement relocation would be expressed to apply to the Constitution only so far as it is part of the law of Australia. Relocation is ultimately a question for the Australian people.

Relocation has nothing to do with so-called republic issues. It assumes that if the Constitution is given an Australian home the Queen and Governor-General would remain part of it because that's how our Constitution stands at present. ►

► The question of Australia becoming a republic is a completely separate issue. In fact, if a President were substituted for our present Head of State, the Constitution would still remain part of the UK Act.

The process of giving the Constitution an Australian home could also provide the occasion for addressing some other constitutional issues. For example, the awkward structure of the Constitution Act: it contains a preamble and a number of sections — known as 'covering clauses' — that precede the Constitution itself. Another issue is the fact that Australia's fundamental constitutional law is spread over more than one law or enactment. This is an unnecessary complication. A different kind of issue is that very few Australians are aware of their Constitution. The very process of giving the Constitution an Australian home could help overcome this lack of awareness.

## Yes, but why bother?

### Reasons for relocation

- **Appropriateness:** in view of our status in the world as an independent nation our Constitution should be found in an Australian document.
- **Simplicity and coherence:** relocation would bring four constitutional enactments together into a single instrument which would contain all of Australia's enacted constitutional law; the preliminary provisions of the Constitution Act (the 'covering clauses') that have a continuing operation would be moved into the text of the Constitution itself.
- **Australian source:** relocation would make it clear that the Constitution has an Australian source; the relocation would complete the labours of the Convention delegates who negotiated and drafted the Constitution in and for Australia.
- **Increased profile and 'ownership':** the participation of specially elected delegates in a national signing ceremony would raise the profile of the Constitution and give it increased ownership in the Australian community.
- **Continuity:** relocation would not make Australia a republic — provisions about the Queen and Governor-General would remain; nor would relocation affect the balance of Commonwealth and State powers. Though a major event in the life of the nation, relocation would not disrupt the life of Australians or their governments.
- **Ease of implementation:** although the details may appear complex, and lengthy consultation with voters would be necessary, relocation could be implemented with a vote at a single referendum.

## Here's how we could do it

The relocation could be effected by an amendment of the Constitution passed in the usual way (ie a law passed by the Commonwealth Parliament approved at a referendum). Since 1986 at least, it has been possible to make changes to the Constitution Act and Constitution *to the extent that they are part of the law of Australia*.

The law to effect the relocation would:

- repeal section 25 of the Constitution
- specify that the objects of relocation are:
  - to transform the legal environment of the Constitution from a United Kingdom Act of Parliament to an Australian instrument in keeping with the status of Australia as an independent nation
  - to maintain the identity, continuity and continued effect of the Constitution as relocated in the Australian instrument
- authorise the making of a document containing the provisions of the Constitution (with the changes outlined in this brochure); the document would be 'the Australian instrument'
- require the Commonwealth, the States, the Australian Capital Territory and the Northern Territory to appoint a number of delegates as follows:
  - Commonwealth ..... [say]. ..... 20;
  - each State ..... [say]. ..... 10;
  - Australian Capital Territory ..... [say]. ..... 5;
  - Northern Territory ..... [say]. ..... 5.
- authorise the delegates to certify the Australian instrument to be the Constitution
- on certification, transfer all powers and functions under each provision of the Constitution to the corresponding provision of the Australian instrument
- provide that the Australian instrument becomes the Constitution at the same time
- authorise the Commonwealth to repeal the Constitution Act of 1900, the Statute of Westminster and the Australia Acts to the extent to which they form part of the law of Australia.

For more information see: [ozhomenow.net](http://ozhomenow.net)



# An overview of what needs to be done to relocate our Constitution

