

[Extracts]

**Quick and Garran's**  
**Annotations of the *Commonwealth of Australia Constitution Act***

[At Page 345]            **Covering Clauses—Operation of the Constitution and Laws.**

5. This Act<sup>32</sup>, and all laws<sup>33</sup> made by the Parliament of the Commonwealth under the Constitution, shall be binding on the courts, judges, and people<sup>34</sup> of every State and of every part of the Commonwealth<sup>35</sup>, notwithstanding anything in the laws of any State<sup>36</sup>; and the laws of the Commonwealth<sup>37</sup> shall be in force on all British ships<sup>38</sup>, the Queen's ships of war excepted<sup>40</sup>, whose first port of clearance<sup>39</sup> and whose port of destination are in the Commonwealth.

[At Page 346]            **§ 32. "This Act."**

The expression "This Act" occurs in Clauses 1, 2, 3, 4, 5, 6, and 8. The Act consists of Clauses 1 to 9 inclusive, and Clause 9 enacts the Constitution; so that the Constitution is unquestionably a part of the Act.

[At Page 346]            **§ 33. "And all Laws."**

No difficulty is suggested by the words, "and all laws made by the Parliament of the Commonwealth under the Constitution." The words "under the Constitution" are words of limitation and qualification.

[At Page 353]            **§ 34. "Shall be Binding on the Courts, Judges and People."**

Under this clause, the Act, the Constitution, and laws of the Commonwealth made in pursuance of its powers, will be the supreme law of the land, binding on the Courts, Judges, and people of every State, notwithstanding anything to the contrary in the laws of any State. The latter words operate as a rescission of all State laws incompatible with the Act, with the Constitution, and with such laws as may be passed by the Parliament of the Commonwealth in the exercise of its Constitutional rights. Therefore, by this clause, coupled with sections 106 to 109, all the laws of a State, constitutional as well as ordinary, will be in effect repealed so far as they are repugnant to the supreme law. All the laws of any State, so far as not inconsistent with the supreme law, will remain in force until altered by the proper authority.

[At Page 354]            **§ 35. "And of Every Part of the Commonwealth."**

**TERRITORIAL LIMITS.**—The Constitution and laws of the Commonwealth are in force within the territorial limits of the Commonwealth. By the law of nations the territorial limits of a country are allowed to extend into every part of the open sea within one marine league from the coast, measured from low water mark. This coastal margin is called "territorial waters," or the "three-mile limit."

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RE: *Commonwealth of Australia Constitution Act* from 1<sup>st</sup> January 1901, *inter alia* with the *Commonwealth of Australia Constitution Act* 1900 (UK) [63 & 64 Vict.] [Ch. 12]

[At Pages 356 and 357]      **§ 36 “The Laws of Any State.”**

The laws of the States will comprise the following classes:—

- (i.) Imperial Acts relating to the Constitution  
and government of the colonies when they become States:
- (ii.) Imperial Acts relating to matters of ordinary legislation  
expressly applicable to the colonies when they become States:
- (iii.) The Common law so far as applicable  
and not modified by colonial or State legislation:
- (iv.) Laws of the realm of England made applicable to some colonies  
by the general terms of the Act of 9 George IV. c. 83,  
and not since repealed or amended by colonial legislation:
- (v.) Acts relating to constitutional matters  
as well as to matters of ordinary legislation  
passed by the colonial or State legislatures  
in the exercise of Statutory authority conferred by Imperial law.

All these laws will remain in full force and effect until they become inconsistent with—

- (1) The Commonwealth of Australia Constitution Act, or
- (2) some Act amending the Constitution, or
- (3) laws to be made thereunder by the Parliament of the Commonwealth.

By the Constitution of the colonies their legislatures have power to make laws in and for those colonies respectively in all cases whatsoever. When those colonies become States their large powers will by degrees be considerably cut down, although they will be compensated for the loss of direct authority by their representation in the Federal Parliament. The jurisdiction of that Parliament will over-lap and in time will considerably contract the realm of State jurisdiction. As the federal legislation within the area of enumerated powers acquires activity and increases in volume, the State laws within that area will be gradually displaced by federal laws, but until they are so displaced through repugnancy they will retain their original vitality and be binding on the people of their respective States.

[At Page 357]      **§ 37. “The Laws of the Commonwealth.”**

This is a more suitable and comprehensive expression than the one which appears at the beginning of this clause, viz., “this Act and all laws made by the Parliament of the Commonwealth.” The laws of the Commonwealth will consist of the following classes:—

- (I.) The Commonwealth of Australia Constitution Act.
- (II.) Alterations of the Constitution pursuant to the provisions of Chapter VIII.
- (III.) Laws made by the Parliament of the Commonwealth under the Constitution.

It will be noticed that the second group of laws as above classified will not be laws made by the Parliament; they may be laws proposed either by one or both of the Federal Chambers, subject to certain conditions, and afterwards approved by the qualified electors of the Commonwealth and assented to by the Governor-General or by the Queen.

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