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# The Constitution of Western Australia

An Exploration

 Springer

# We the People

of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common Defence, promote the general Welfare, and secure these Blessings of Liberty to ourselves and our Posterity, do hereby constitute in Congress assembled the following Constitution for the United States of America.

## Article 1.

**Section 1.** All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

**Section 2.** The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and seven Years a Citizen of the United States, and who, when elected, shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and including Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative, and until such Enumeration shall be made, the State of New Hampshire shall be entitled to three, Maryland five, Virginia three, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Electors in that State shall, in the Manner of Election to fill such Vacancies.

The House of Representatives shall choose their Speaker and other Officers; and shall have the sole Power of Impeachment.

**Section 3.** The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years, and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Clases. The Seats of the Senators of the first Class, shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Death, Resignation, or otherwise, during the Term of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall fill such Vacancies.

No Person shall be Senator, who shall not have attained to the Age of thirty Years, and been seven Years a Citizen of the United States, and who, when elected, shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The great Officers of the United States, shall be President, Vice President, and Judges of the Supreme Court, and such other Officers as may be established by Law.

The Senate shall choose their other Officers, and also a President pro tempore in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of Honor, Trust, or Profit under the United States; but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment, and Punishment, according to Law.

**Section 4.** The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.

The Congress shall assemble at least once in every Year, and such Meetings shall be on the first Monday in December, unless they shall by Law appoint a different Day.

**Section 5.** Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties, as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any Question shall, at the Desire of one fifth of the Members present, be entered on the Journal.

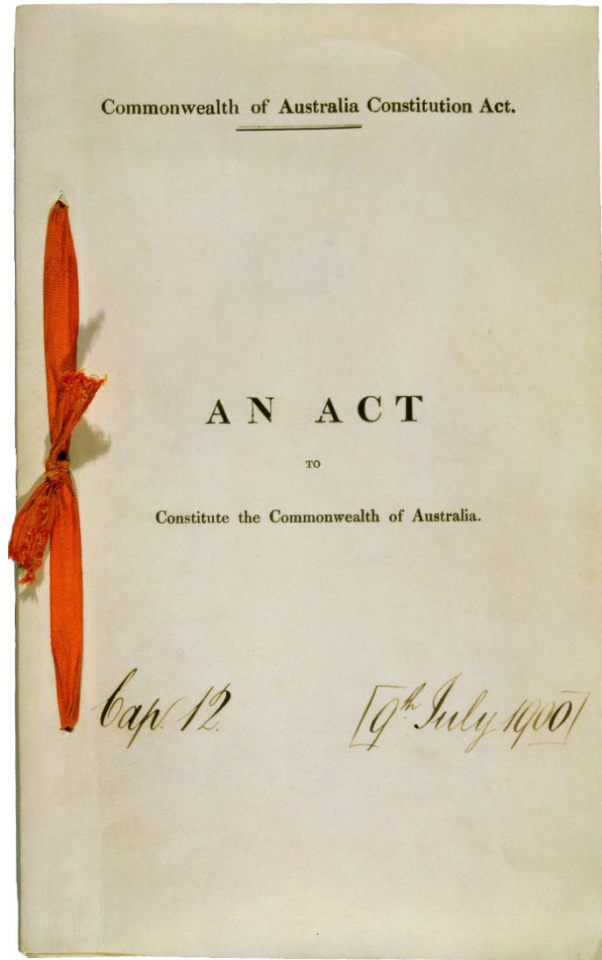
Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three Days, nor to any other Place than that in which the two Houses shall be sitting.

**Section 6.** The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony, and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such Time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

William J. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as to the Matter of Increase or Decrease of Taxes, Duties, Imposts and Excises, and all other Bills shall have the same Force and Effect as if they had been passed by the Senate of the United States.

# The “Washminster Mutation”



## 61. Executive power

The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative ...

## 62. Federal Executive Council

There shall be a Federal Executive Council to advise the Governor-General in the government of the Commonwealth, and the members of the Council shall be chosen and summoned by the Governor-General and sworn as Executive Councillors, and shall hold office during his pleasure.

THE  
CONSTITUTION,  
OR FRAME OF  
GOVERNMENT,  
FOR THE  
COMMONWEALTH  
OF  
*MASSACHUSETTS,*

Agreed on by the DELEGATES of the PEOPLE, in CONVENTION, begun and held at *CAMBRIDGE* on the first Day of *September* 1779, and continued, by Adjournments, to the second Day of *March* 1780, afterwards

RATIFIED by the PEOPLE,

And took Place on the 15th Day of *October*, 1780.

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THE FIRST WORCESTER EDITION.

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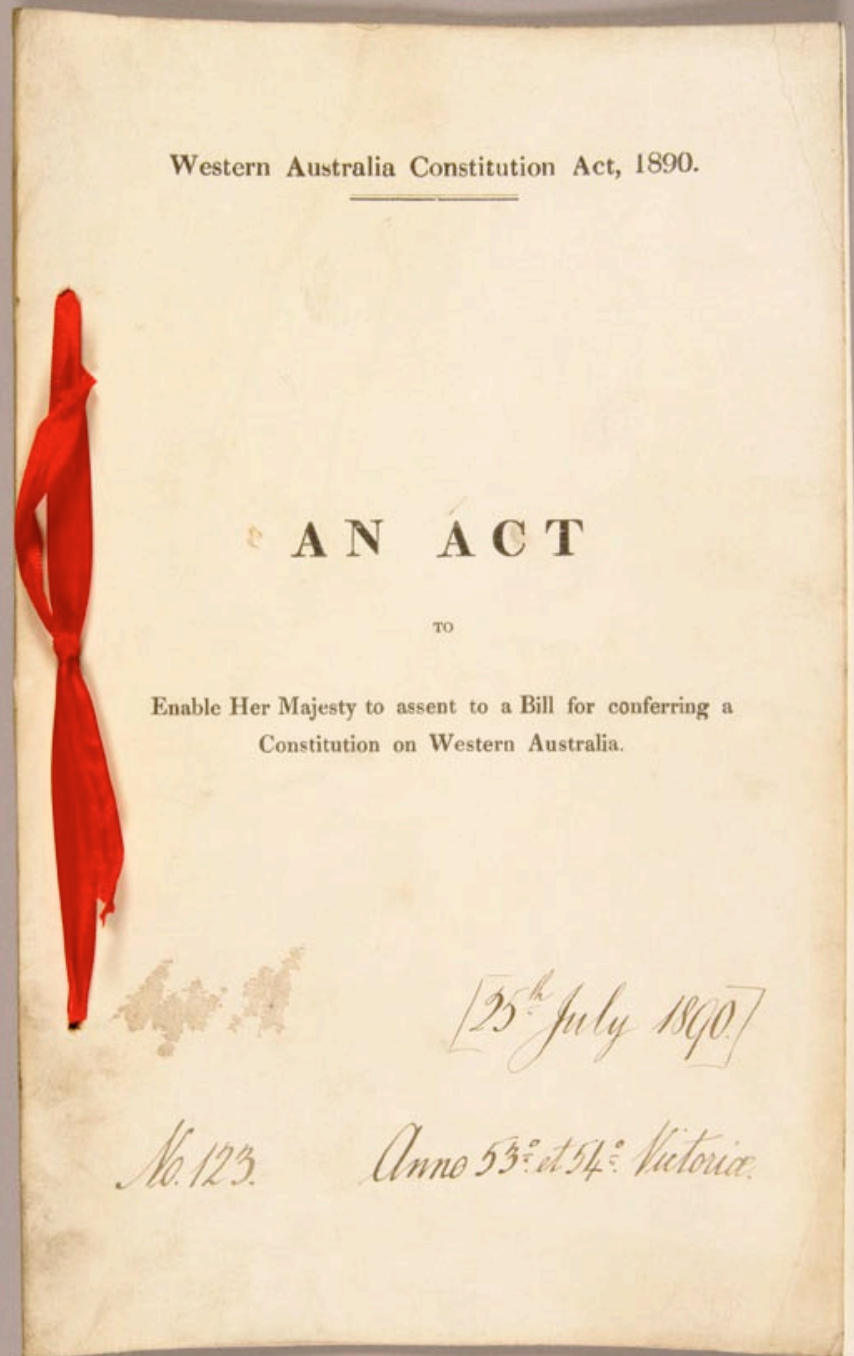
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## Constitution Act 1889 (WA)



## Western Australia Constitution Act 1890 (Imp)



# Constitution Acts Amendment Act 1899



## *Constitution Act 1889, Section 70*



70. There shall be payable to Her Majesty, in every year, out of the Consolidated Revenue Fund the sum of Five thousand pounds ... to be appropriated for the welfare of the Aboriginal Natives, and expended in providing them with food and clothing when they would be otherwise destitute, in promoting the education of Aboriginal children ... and in assisting generally to promote the preservation and well-being of the Aborigines. ...if and when the gross revenue of the Colony shall exceed Five hundred thousand pounds ... an amount equal to one per centum ... shall, for the purposes of this section, be substituted....



*“limited though it was and ultimately doomed though it proved to be, [section 70] was an attempt at achieving some kind of balance between those peoples who were here before and those who came after”*

- Kwaymullina 2016:136

*“The pervasive privileging of settler voices over those of Indigenous peoples is no accident; it is a necessary part of creating and sustaining settler-colonialism....”*

- Kwaymullina 2019: 122



*“grave reflection on the honour and integrity of the people of the Colony ... have not deserved to be branded as an unjust and inhumane people”*

- Letter from Premier John Forrest to his Excellency, the Governor, 1897



*“The Government were considered able to make laws and control the white inhabitants of the colony, and do everything necessary for the protection of life and property; but yet were not considered sufficiently worthy to make laws for the control of the poor aborigines’*

- John Forrest, Premier. WA *Parliamentary Debates*, Legislative Assembly, 11 November 1897, 394.



Western Australia.

ANNO SEXAGESIMO PRIMO

VICTORIÆ REGINÆ.

No. V.

A BILL INTITLED

AN ACT to further amend the Constitution Act of 1889, and for the better Protection of the Aboriginal Race of Western Australia.

[Reserved, 14th December, 1897.]

WHEREAS the welfare of the Aboriginal Race will be better promoted if entrusted to a sub-department of the State under the control of a responsible Minister of the Crown, with a provision for the appropriation of a sum of Five thousand pounds per annum for the use of such sub-department, to be supplemented by annual votes as occasion may require: Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

WESTERN AUSTRALIA.



ANNO QUINTO

EDWARDI SEPTIMI REGIS,

XIV.

No. 14 of 1905.

AN ACT to make provision for the better protection and care of the Aboriginal inhabitants of Western Australia.

[Reserved, 23rd December, 1905.]

## ***Constitution Act 1889, amendment of 2015***



“And whereas the Parliament resolves to acknowledge the Aboriginal people as the First People of Western Australia and traditional custodians of the land, the said Parliament seeks to effect a reconciliation with the Aboriginal people of Western Australia:

...”

# The Executive Branch in the *Con Act 1889*



**The *Constitution Act 1899* had seven parts:**

- I. Parliamentary
- II. Electoral
- III. Elective Council
- IV. Judicial
- V. Legal
- VI. Financial
- VII. Miscellaneous

... conspicuous by its absence being....

# The Fusion of Powers



***Constitution Act 1889*** (current):

Part I — Parliamentary

## **2. Legislature to be constituted in Western Australia**

(2) The Parliament of Western Australia consists of the Queen and the Legislative Council and the Legislative Assembly.

(If you think that's just a vestige of colonial times, think again...)



# “Executive Offices” in the *Con Act 1889*



## Part I – Parliamentary

### Section 28

...there shall be five principal executive offices of the Government liable to be vacated on political grounds....

## Part VII – Miscellaneous

### Section 74

The appointment to all public offices ... shall be vested in the Governor in Council, with the exception of appointments of officers liable to retire from office on political grounds, which ... shall be vested in the Governor alone.

# “Manner and Form”



## *Colonial Laws Validity Act 1865*

*An Act to remove doubts as to the validity of colonial laws*

**5. Every colonial legislature shall have ... and be deemed at all times to have had, full power to make laws respecting the constitution, powers, and procedure of such legislature; **provided that such laws shall have been passed in such manner and form as may from time to time be required by any Act of Parliament, letters patent, order in council, or colonial law for the time being in force in the said colony.****

# Giving with one hand....



## ***Commonwealth Constitution:***

### **106. Saving of Constitutions**

The Constitution of each State of the Commonwealth shall, subject to this Constitution, continue as at the establishment of the Commonwealth ... until altered in accordance with the Constitution of the State.

# But Did Australia Remain a Colony after Federation?



## *Statute of Westminster 1931*

**2. (1)** The *Colonial Laws Validity Act, 1865*, shall not apply to any law made after the commencement of this Act by the Parliament of a Dominion.

**9. (2)** Nothing in this Act shall be deemed to require the concurrence of the Parliament or Government of the Commonwealth of Australia, in any law made by the Parliament of the United Kingdom with respect to any matter within the authority of the States of Australia, not being a matter within the authority of the Parliament or Government of the Commonwealth of Australia, in any case where it would have been in accordance with the constitutional practice existing before the commencement of this Act that the Parliament of the United Kingdom should make that law without such concurrence.





# The Original Entrenchment Provision



73. The Legislature of the colony shall have full power and authority from time to time by any Act to repeal or alter any of the provisions of this Act: Provided always, that it shall not be lawful to present to the Governor for Her Majesty's assent any Bill by which any change in the constitution of the Legislative Council or of the Legislative Assembly shall be effected unless the second and third readings of such Bill shall have been passed with the concurrence of an absolute majority....

# Asymmetrical Amendment: the 1978 changes



**73(2)** A Bill that —

- (a) expressly or impliedly provides for the abolition of or alteration in the office of Governor; or
- (b) expressly or impliedly provides for the abolition of the Legislative Council or of the Legislative Assembly; or
- (c) expressly or impliedly provides that the Legislative Council or the Legislative Assembly shall be composed of members other than members chosen directly by the people; or
- (d) expressly or impliedly provides for a reduction in the numbers of the members of the Legislative Council or of the Legislative Assembly; or
- (e) expressly or impliedly in any way affects any of the following sections of this Act, namely — sections 2, 3, 4, 50, 51 and 73,  
shall not be presented for assent by or in the name of the Queen unless —
- (f) the second and third readings of the Bill shall have been passed with the concurrence of an absolute majority of the whole number of the members for the time being of the Legislative Council and the Legislative Assembly, respectively; and
- (g) the Bill has also prior to such presentation been approved by the electors in accordance with this section,**

# Sovereignty at Last! *The Australia Act 1986*



*An Act to bring constitutional arrangements affecting the Commonwealth and the States into conformity with the status of the Commonwealth of Australia as a sovereign, independent and federal nation.*

## **3. Termination of restrictions on legislative powers of Parliaments of States**

(1) The Act of the Parliament of the United Kingdom known as the Colonial Laws Validity Act 1865 shall not apply to any law made after the commencement of this Act by the Parliament of a State.

# But What About ‘Manner and Form’?



## **6. Manner and form of making certain State laws**

Notwithstanding sections 2 and 3(2) above, a law made after the commencement of this Act by the Parliament of a State respecting the constitution, powers or procedure of the Parliament of the State shall be of no force or effect unless it is made in such manner and form as may from time to time be required by a law made by that Parliament, whether made before or after the commencement of this Act.

# Time for a Refresh?



## **Preamble** [*Constitution Act 1889*, current]

Whereas by the 32nd section of the Imperial Act passed in the session holden in the 13th and 14th years of the Reign of Her present Majesty 2, intituled “An Act for the better Government of Her Majesty’s Australian Colonies”, it was among other things enacted that, notwithstanding anything thereinbefore contained, it should be lawful for the Governor and Legislative Council of Western Australia, from time to time, by any Act or Acts, to alter the provisions or laws for the time being in force under the said Act or otherwise concerning the election of the elective members of such Legislative Council, and the qualification of electors and elective members, or to establish in the said Colony, instead of the Legislative Council, a Council and a House of Representatives, or other separate Legislative Houses, to consist of such members to be appointed or elected by such persons and in such manner as by such Act or Acts should be determined, and to vest in such Council and House of Representatives, or other separate Legislative Houses, the powers and functions of the Legislative Council for which the same might be substituted; and whereas it is expedient that the powers vested by the said Act in the said Governor and Legislative Council should now be exercised, and that a Legislative Council and a Legislative Assembly should be substituted for the present Legislative Council, with the powers and functions hereinafter contained;

# Consolidation?



WESTERN AUSTRALIA

LEGISLATIVE COUNCIL  
[HON JOHN COWDELL]

**CONSTITUTION OF WESTERN AUSTRALIA BILL 1997**

# Form over Substance?



“The purpose of this Bill is to overcome some of the deficiencies of the Western Australian Constitution. The Bill consolidates the *Constitution Act 1889* and the *Constitution Acts Amendment Act 1899* into one Act. It reorders the sections of these Acts so that they are arranged in five parts, preliminary, the Parliament, the Executive Government, the Judiciary and Local Government. Obsolete sections of the Acts are removed. Nine sections of the *Constitution Acts Amendment Act 1899* (those sections pertaining to parliamentary qualifications and disqualification) are transferred to the *Electoral Act 1907* in the *Electoral Amendment (Constitutional Provisions) Bill 1997*. The *Constitution of Western Australia Bill 1997* does not in any way alter or change the substance of any of the current provisions of the *Constitution Act 1889* or *Constitution Acts Amendment Act 1899*.”