

## **Documenting a democracy: [www.foundingdocs.gov.au](http://www.foundingdocs.gov.au)**

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It might be hard to believe that in a democracy as young as the Commonwealth of Australia, surveying the path of constitutional development and identifying the relevant legal instruments was untrodden scholarly ground. It is probably harder to believe that not one of the States in the Federation, nor the Northern Territory, had ever attempted a similar exercise. Telling eight stories of constitutional development and finding the instruments that shaped the plot-lines thus offered a unique challenge at the Centenary of Federation. Presented with the opportunity, Australia's eight government archives produced an innovative means of putting the nation's key constitutional charters where they belong — before those whose lives they shape.

The 'founding documents project', initiated in 1999, was a nationwide partnership, with a network of professional skills provided by a panel of constitutional scholars and historians, and teams of archivists, conservators, photographers and transcribers in each State, the Northern Territory, and Canberra. The work involved identifying, locating, digitising, interpreting, and publishing online the original documents effecting the constitutional development of the Commonwealth, the six States, and the Northern Territory. The resulting website was intended as just a beginning in telling Australia's constitutional story.

For most of Australia's first century of government, the quantities of Instructions, Letters Patent and Proclamations imported from Westminster and Whitehall were matched only by the cargoes of despatches, reports and accounts making the return voyage. Identifying and locating the most important documents should have been relatively straightforward given the amount of documentation exchanged, and the significance of the documents sought. Surely six distant colonies, all born of a well-established marriage of Crown authority and parliamentary accountability, would have carefully preserved the muniments of their governance — of their very existence?

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From the outset it was clear that the process of establishing the criteria and identifying the documents would be matched in complexity and significance by the challenge of actually locating the originals. A strict budget — funded by the eight government archives with a grant from the History and Education program of the National Council for the Centenary of Federation — meant the size of the website, and thus the number of documents, was as strictly limited. A national advisory panel of specialist scholars was responsible for setting the criteria and deciding which documents to include from the list compiled by the eight historians appointed to write the nominations. In a unique two-day meeting, the panel selected 99 documents — the smallest number that could be achieved applying the criteria consistently.

The panel placed the documents in three categories: first, the essential founding documents or ‘birth certificates’ of each colony, the Northern Territory, and the Commonwealth. The earliest of these documents is the Secret Instructions issued to James Cook in 1768, authorising him to take possession of the unmapped coast he named New South Wales.

The next category defines those documents that made significant changes to the constitutional development of each place, such as Queensland’s *Constitution Act Amendment Act* which eliminated the State’s Upper House in 1922.

A third category was added in recognition of the different characteristics of each part of the Federation, and of the multitude of different pasts comprising Australia’s story. For instance the 1895 *Constitution (Female Suffrage) Act* granting women in South Australia the vote was included as an Australian first, the law that opened the way to the uniform franchise for women through the inclusion of section 41 in the Australian Constitution. In general though, constitutional development was narrowly rather than broadly defined, covering the establishment or alteration of territorial boundaries, the establishment and core development of parliaments and courts, and major constitutional reforms shaping Australian democracy. The document sought in each case was the original legal instrument effecting each change.

This meant for instance that documents like drafts, copies, petitions, failed legislation, and overturned statutes did not make the grade. The 1963 Yirrkala bark petitions make a notable exception to this rule. These petitions, records of the House of Representatives, were included as the first recognition by an Australian parliament of an indigenous legal document in traditional form, with the text of the document not only the English and Gumatj words, but also the images painted on the bark by the Yolngu petitioners. While the bark petitions were easy to locate — if not so easy to digitise — the search for other documents was complicated, expensive, and frustrating. The collections of all the government archives, the State libraries, and the National Library yielded only a small proportion of the documents. It soon became obvious that each Colony had developed administrative oddities that were intriguing for both historians and archivists, but required the combined investigative talents of Sherlock Holmes and D I Burnside to resolve.

In Victoria, for instance, it seems the records of the Lands Titles Office had been accorded the most secure and controlled storage in the 19<sup>th</sup> century, as constitutional documents had also been placed there. The vaults of that agency eventually yielded the long-sought assent original of the *Electoral Act 1856*, the document that made Victoria the first Australian Colony (and the first legislature anywhere in the world) to adopt the

practice of the secret ballot. Although William Boothby pioneered this reform, the South Australian law was enacted two weeks later, making the Victorian document the one for the website and thus the goal of a long and intensive search.

The variations in parliamentary procedures over time, and geographically, also complicated the search. The practice in the House of Representatives, for instance, is to print four copies with the 'assent block', of a Bill originating in that House. When the Bill has been passed by both Houses, two of these documents become the 'assent originals' when they are signed by the Governor-General to enact the legislation. The other two become stamped copies. One of the assent originals becomes a record of the originating House of the Parliament, the other a record of the Executive. An effect of the (albeit adjusted) doctrine of the separation of powers is that these records are kept separately, and thus the National Archives holds the assent originals transferred from the Attorney-General's Department and the Office of the Governor-General. In contrast, the Victorian Parliament at one time apparently produced three 'assent originals', one of which went to the Supreme Court. This was the provenance of the assent original of the Victorian *Electoral Act 1856* digitised for the website, as this document, the only assent original found, was deposited in the Titles Office when the Supreme Court ran out of storage space.

In other States, key constitutional charters also languished forgotten in vaults and in cupboards. Once all possible leads had been exhausted, almost one quarter of the 99 constitutional instruments identified had not been found and the search then extended to London where all but six of the missing documents were found. It is salutary to consider the implications of this finding, that a significant proportion of Australia's key founding documents had in fact never been to Australia at all. Some were located in the Public Record Office in London, others in the House of Lords Record Office. The assent originals of Acts of the British Parliament held in the House of Lords included pre-1850 documents comprising vellum 'webs', stitched together and stored as rolls. A supplementary grant to the project enabled the commissioning of a leading London photographer to work with a senior archivist at the House of Lords, where every page of every document was photographed for digitising in Australia. These documents covered the century from the 1787 *New South Wales Courts Act* to the 1890 *Act to enable Her Majesty to assent to a Bill for conferring a Constitution on Western Australia*.

The assent original of the last of the six British Acts establishing Australian constitutions, the 1900 *Commonwealth of Australia Constitution Act*, was the only one of these documents already in Australia. The Act itself had not arrived until 1988, with agreement by the British Government to give the document to the people of Australia negotiated in 1990. The original Commission of Assent to the Act had been in Australia ninety years then, as Queen Victoria had presented the elaborate document to Edmund Barton when she signed her assent on 9 July 1900. The other 'assent original', a plainer version, is held in the House of Lords.

When the founding documents website was launched in July 2000, the National Archives was already busy on the next step — creating a new Federation Gallery where the original Commonwealth charters could be placed on permanent exhibition in the national capital. When that Gallery was opened in January 2001, the *Commonwealth of Australia Constitution Act* and its Assent were re-united for the first time in the hundred years since the enactment that created the nation. The Gallery also includes the other

two 'birth certificates' — the 1900 Letters Patent establishing the Office of Governor-General, and the Proclamation of the Inauguration Day of the Commonwealth — and three of the most significant documents marking constitutional change in the Commonwealth's first century. These are the assent originals of Acts of the Australian Parliament: the 1942 *Statute of Westminster Adoption Act*, the 1967 *Constitution Alteration (Aboriginals) Act*, and the 1986 *Australia Act* that completed the process of State and British legislation to untie all but that final constitutional ties to Britain.

All of the partners in this timely project remain interested in the possibility of similarly placing on permanent exhibition the actual documents that shaped each State and the Northern Territory. For now, the documents reflecting the defining moments in the constitutional history of each part of the nation are available to all Australians in virtual form. An unexpected outcome has been the high level of international use of the website — in a typical week 2 500 visitors access the website from a variety of countries large and small — France, the USA, Germany, Sao Tome, Belgium, Japan, the Czech Republic, Taiwan, Vietnam, the Netherlands, Canada, Norway, Austria, Malaysia, Tonga, India.

When the Commonwealth of Australia Constitution Bill was before the Houses of Parliament in 1900, constant reference was made to the proposed new nation as an experiment in nation-building. The Commonwealth was to be a fresh start in southern seas where a nation 'born in peace and not in war' could show the way to the older, battle-scarred warhorses of the north. One hundred years later, Australia's story, told through the key documents through which our government and laws were built, is a centennial account of progress made, a cyber-report not just to Whitehall, but to the world. ▲