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**[90-2375] Indivisibility of the Crown** The constitutional provisions of the States reflected the dependent status of the Australian colonies and the newly established Commonwealth of Australia at the beginning of the 20th century. [1](#) The provisions also embodied the conception of the Crown as indivisible: the Queen of the United Kingdom of Great Britain and Ireland was the sovereign of all parts of the British Empire, and She acted on the advice of Her United Kingdom Ministers in the execution of Her powers in relation to all Her dominions. [2](#) The notion of indivisibility of the Crown is expressed in one of the covering clauses of the Commonwealth Constitution, which provides that the provisions of the Commonwealth Constitution referring to the Queen 'shall extend to Her Majesty's heirs and successors in the sovereignty of the United Kingdom'. [3](#) The indivisibility of the Crown has been described as inconsistent with the distinct existence of autonomous governments within the Queen's dominions. [4](#)

The presumption that a statute is not intended to bind the Crown extends beyond the Crown in right of the enacting legislature to the Crown in right of the other polities forming the federation. [5](#)

### Notes

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[1.](#) *New South Wales v Commonwealth (Seas and Submerged Lands Case)* (1975) 135 CLR 337 at 373; [8 ALR 1](#); 50 ALJR 218 ✖ per Barwick CJ.

[2.](#) Constitutional Commission, *Final Report*, AGPS, Canberra, 1988, p 79.

[3.](#) (IMP) Commonwealth of Australia Constitution Act 1900 s 2 (63 & 64 Vic c 12); Commonwealth Constitution cl 2.

[4.](#) Constitutional Commission, *Final Report*, AGPS, Canberra, 1988, pp 76, 79. The indivisibility of the Crown has also been described as a 'shibboleth': see Sawyer G, *Australian Federalism in the Courts*, Melbourne University Press, Melbourne, 1967, p 124; however, (IMP) Commonwealth of Australia Constitution Act 1900 s 2 (63 & 64 Vic c 12) continues to assert the truth of the notion of the indivisibility of the Crown.

The Queen acts in a different capacity in respect of each of Her politically autonomous realms: *Pochi v MacPhee* (1982) 151 CLR 101; 56 ALJR 878 ⬆ sub nom *Pochi v Minister for Immigration and Ethnic Affairs* [\(1982\) 43 ALR 261](#) ⬆; *Nolan v Minister for Immigration and Ethnic Affairs* (1988) 165 CLR 178 at 184, 185-6; [80 ALR 561](#); 62 ALJR 539 ✖ per Mason CJ, Wilson, Brennan, Deane, Dawson and Toohey JJ. As to the divisibility of the Crown within the Australian federation (where the Crown is said to be present in right of the Commonwealth and in right of each of the States) see *Minister for Works*

(WA) v *Gulson* (1944) 69 CLR 338 at 350-1; [1944] ALR 349; (1944) 18 ALJ 208 © per Latham CJ; *Bank of New South Wales v Commonwealth (Bank Nationalisation Case)* (1948) 76 CLR 1 at 262 ⚠ per Rich and Williams JJ, at 362-3 per Dixon J; [1948] 2 ALR 89; (1948) 2 ALJ 191 ⚠; *Commonwealth v Anderson* (1960) 105 CLR 303 at 318; [1961] ALR 354; (1960) 34 ALJR 323 ⚠ per Menzies J. See also Zines L, *The High Court and the Constitution*, 3rd ed, Butterworths, Sydney, 1992, p 272.

5. *Jacobsen v Rogers* (1995) 182 CLR 572 at 585; [127 ALR 159](#); 69 ALJR 131 ⚠ per Mason CJ, Deane, Dawson, Toohey and Gaudron JJ.