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USA	LexisNexis Group, New York, NEW YORK LexisNexis, Miamisburg, OHIO

National Library of Australia Cataloguing-in-Publication entry

Author:	Hanks, Peter.
Title:	Constitutional Law in Australia.
Edition:	3rd edition.
ISBN:	9780409327137(pbk.) 9780409327144 (hbk.) 9780409329735 (ebook)
Notes:	Includes index.
Subjects:	Constitutional Law — Australia.
Other Authors/Contributors:	Gordon, Frances, Hill, Graeme.
Dewey Number:	342.94

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First edition 1991, second edition 1996.

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Inquiries should be addressed to the publishers.

Typeset in Optima and Bembo.

Printed in Australia by Ligare Pty Ltd (NSW).

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Preface

This book is the third edition of the text written by Peter Hanks, first published in 1991 with a second edition in 1996. Two colleagues from the Victorian Bar, Frances Gordon and Graeme Hill, have joined Peter Hanks in writing this third edition. Peter acknowledges that, without their contribution, this book would not have been written.

As with the first and second editions, this third edition explores themes and issues of the law relating to the structure and function of government in Australia, in both its institutional and federal aspects. The book reflects our understanding that constitutional law is concerned with the ways in which public power is institutionally organised and applied, with the relations between the institutions that exercise public power, and with the relations between those institutions and other social interests. It also reflects our perception of the political dimensions of constitutional law — as both reflecting and constructing the political process.

Because this is a lawyer's book, much of the material on which it draws is the work of lawyers, particularly the justices of the High Court. Those men and women have played, and now play, an influential role in moulding and remoulding our structures and processes of government, and a considerable amount of their work has been creative and sensitive to Australia's needs. We hope that our study of their work will be accepted as it is intended — as a constructively critical review of one aspect of Australia's political system. Other sources on which we have drawn include legislation, parliamentary debates, official publications and the work of other legal scholars (our debts to them will be obvious from the footnote references and the bibliography).

The preface to the second edition acknowledged that the book was particularly inspired by a great legal scholar and humanist, Geoffrey Sawer. Geoffrey's scholarship and insights continue to inform much of the thinking that went into this, the third, edition.

This third edition is substantially longer than the second edition: perhaps the expansion, in breadth of coverage and depth of analysis, might be part of the reason for the extended delay in producing this edition. The more credible explanation is simply that practising as a barrister leaves little time for the type of thinking and writing that must go into a book such as this third edition.

Some of the growth can be attributed to the activities of the High Court since 1996. The catalogue of significant decisions over the past 15 years is too long to reproduce here — but it would have to include *New South Wales v The Commonwealth* (the *Work Choices* case) (2006) 229 CLR 1, which reaffirmed the Court's expansive approach to the

corporations power, s 51(xx), and relegated the industrial arbitration power, s 51(xxxv), to a very long footnote in Australia's constitutional law; *Austin v The Commonwealth* (2003) 215 CLR 185, which has explained and extended State governments' immunity from Commonwealth laws; *Pape v Federal Commissioner of Taxation* (2009) 238 CLR 1, which has charted a new direction (or directions) for the Commonwealth's power to spend money; *Ha v New South Wales* (1997) 189 CLR 465, which affirmed a national-oriented approach to the States' inability to impose taxes on goods; and *Betfair v Western Australia* (2008) 234 CLR 418, which emphasised the strength of the protection that s 92 gives to interstate trade within the new, internet-based, economy.

As we have already confessed, the completion of this book has been delayed by the demands of our professional commitments. Work as a barrister is no doubt intellectually challenging and rewarding, but it is also very demanding. We must thank our publisher and its ever-helpful staff (especially Kerry Paul and Geraldine MacLurcan) for their patience and support over the past two years. Catherine Britton, Julie King, Michelle Nichols and Louise Scahill edited the manuscript and supervised the production of tables of cases and statutes. We are particularly grateful to them for their efficient and clear-minded contributions.

Although this book is a joint effort, Frances Gordon worked on Chapters 4, 7 (which combines two chapters from the second edition) and 10, and Graeme Hill worked on Chapters 2, 5, 8 and 9. Peter Hanks contributed to the final version of each of those chapters, and wrote Chapters 1, 3 (which also combines two chapters from the second edition) and 6.

We must acknowledge the invaluable help of two highly accomplished research assistants: Christopher Tran assisted with research for Chapters 2, 3, 6 and 8; and Olaf Ciolek assisted with research for Chapters 5 and 9. Without their focused and efficient work, this edition could not have been completed.

Each of us is deeply indebted to our partners and family for their encouragement, and their forbearance, during the writing of this book.

Peter Hanks
Frances Gordon
Graeme Hill
November 2011

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