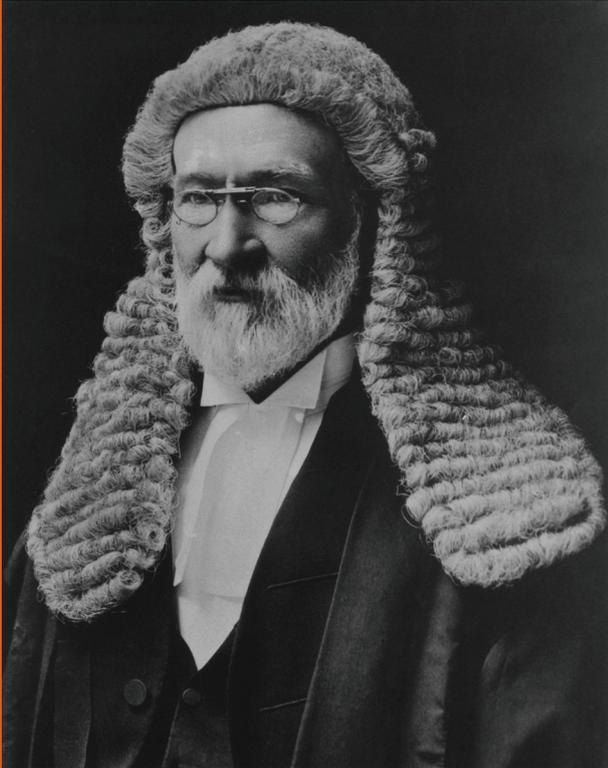


The Right Honourable Sir Samuel Griffith GCMG, QC

(b. 21.6.1845 d. 9.8.1920) (Chief Justice from 1903-1919)



Samuel Griffith of Queensland was an unusual type of Australian politician who compelled respect even in the press for his professional ability, however critically his activities in politics might be viewed. Men might condemn his record as a past premier of Queensland, but they never forgot that he was not merely legally qualified but an able and learned lawyer, calm, curious and clear in exposition; a type of lawyer politician who could be appointed to a Chair of Law or to a Chief Justiceship without a whisper of professional criticism.

La Nauze 1972

Samuel Griffiths was born in Merthyr Tydfil in Wales in 1845 and moved to Australia from Wales when he was eight years old. His father was a religious minister and the family moved around the South East Queensland and Newcastle areas. He completed an arts degree at the University of Sydney and graduated with first-class honours in classics, mathematics and natural science. He was a brilliant student. At the age of 18 he became an articled clerk at a law firm in Queensland. By



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this stage he was already interested in politics and had begun attending debates in Parliament and publishing articles in the Queensland Guardian. He was admitted to the Queensland bar in 1867 and became Queen's Counsel in 1876.

Griffith was elected to the Queensland Parliament in 1872 and was the Liberal Party Premier of Queensland twice, in the 1880s and early 1890s. He was one of the main instigators of Federation. There was a lot of mistrust amongst the people who wrote our Constitution and Griffith had intense rivalries with other federationists. After the death of the NSW federationist Henry Parkes in 1896, Griffith took over the main role of advocating for Federation.

Samuel Griffiths was influential in the drafting of the Constitution in 1891, written on board the Queensland government steamship the *Lucinda* on the Hawkesbury River.

Griffith was not directly involved in the later drafting, as he had become Chief Justice of Queensland in 1893 and the colony of Queensland chose not to attend the sessions of the second convention. But he did write extensively about the 1897-98 conventions and in the end much of the Griffith draft wording remained in the Constitution. Griffith also encouraged Queenslanders to vote 'yes' in the Federation referendum.

Although the High Court of Australia was established in 1901 by Section 71 of the Constitution, the appointment of the first Bench had to await the passage of the Judiciary Act in 1903. The first sitting of the High Court took place in the Banco Court of the Supreme Court building in Melbourne on 6 October 1903. It was a distinguished Bench was comprised of three people who had been prominent in Federation. They were:

- The Chief Justice, Sir Samuel Griffith, former Premier and former Chief Justice of Queensland.
- Sir Edmund Barton, the first Prime Minister of Australia and Leader of the Constitutional Conventions which led to Australia becoming a Federation in 1901.

- Richard Edward O'Connor, a former Minister of Justice and Solicitor-General of New South Wales and the first Leader of the Government in the Senate.

Because the early Justices of the High Court had been involved in writing our Constitution, they had a good understanding of the intentions of the Constitution and as such were comfortable using their power. As the first Chief Justice of the High Court, Samuel Griffith was instrumental in setting the standards of the High Court, along with Justice Edmund Barton. Many of the participants within our new nation's institutions, the Parliament, the Executive and the Judiciary, had been involved in creating our Constitution and understood their roles in it. The exception to this were the Governors-General who were appointed to the role by the British Monarch and who were less familiar with our Constitution.

Two Governors-General, Lord Northcote in 1904 and the Earl of Dudley in 1909 refused to dissolve the Parliament after consulting with Chief Justice Samuel Griffith. In fact, in the early days of Federation the British born Governors-General had quite a frosty relationship with Government Ministers and consulted with Griffith (and Barton) on many occasions. Today, this would likely be viewed as quite inappropriate. Our Constitution was deliberately made very brief. As such there are many things not expressly contained within it. In the early years of Federation, when the Constitution and the Federal Parliament were new, there were many aspects of our constitutional and legal arrangements still to be worked out. Griffith was instrumental in ensuring the authority of the new High Court and in interpreting the nation's new Constitution. Griffith was keen to ensure that the High Court was a truly national institution, including by circuiting to the major capital cities. This brought the Court into conflict with the government of the day, which was unwilling to provide for travel expenses. This led to a flurry of tense correspondence between the Chief Justice, and the Attorney-General of the day, Josiah Symon and the prospect of the High Court going 'on strike'. However, Symon's successor, Isaac Isaacs (later to be Chief Justice), ultimately acceded to the Court's demands. It was an important early illustration of institutional independence.

Chief Justice Griffith continued to sit on the Court until 1919, though infrequently after he suffered a stroke in 1917. Upon his retirement, he remarked "I hope ... that I may venture to claim, with Othello, that 'I have done the state some service in my time'. He died in 1920.

Chief Justice Griffith's quotes in constitutional decisions that encapsulate the vision of him as Chief Justice

1. Two key developments of the Griffith Court were the establishment of the doctrines of implied immunities of instrumentalities and reserved powers (key words: reserve powers)

2. Chief Justice Griffith delivered the judgment of the Court in *D'Emden v Pedder* [1904] HCA 1; 1 CLR 91, in which the Court, in holding that the Commonwealth was immune from Tasmanian stamp duty, stated (at 109) that:

In considering the respective powers of the Commonwealth and of the States it is essential to bear in mind that each is, within the ambit of its authority, a sovereign State, subject only to the restrictions imposed by the Imperial connection and to the provisions of the Constitution, either expressed or necessarily implied.

(Principle: federalism)

3. Writing separately in *Municipal Council of Sydney v Commonwealth* [1904] HCA 50; (1904) 1 CLR 208, Griffith CJ similarly stated (at 231) that:

It is manifest from the whole scope of the Constitution that, just as the Commonwealth and State are regarded as distinct and separate sovereign bodies, with sovereign power limited only by the ambit of their authority under the Constitution, so the Crown, as representing those several bodies, is to be regarded not as one, but as several juristic persons, to use a phrase which well expresses the idea.

(Principle: federalism)

4. Chief Justice Griffith also delivered the judgment of the Court in *Peterswald v Bartley* [1904] HCA 21; 1 CLR 497, in which the Court, in construing the term "excise" narrowly, stated (at 507):

In construing a Constitution like this it is necessary to have regard to its general provisions as well as to particular sections, and to ascertain from its whole purview whether the power to deal with such matters was intended to be withdrawn from the States, and conferred upon the Commonwealth.

(Principle: federalism)

5. The Court also noted (at 509) that:

[T]he Constitution was framed in Australia by Australians, and for the use of the Australian people.

(Principle: what is the Australian Constitution?)

6. In *Attorney-General (NSW) v Brewery Employees Union of New South Wales* [1908] HCA 94; 6 CLR 469, Griffith CJ reaffirmed the doctrine of reserved powers, stating (at 503) that:

[I]t should be regarded as a fundamental rule in the construction of the Constitution that when the intention to reserve any subject to the States to the exclusion of the Commonwealth clearly appears, no exception from that reservation can be admitted which is not expressed in clear and unequivocal words.

7. In the same case, Griffith CJ explained the duty of the High Court in interpreting the Constitution (at 500) as follows:

Its duty is limited to an examination of the Constitution and a declaration of its meaning. It would indeed be a lamentable thing if this Court should allow itself to be guided in the interpretation of the Constitution by its own notions of what it is expedient that the Constitution should contain or the Parliament should enact.

8. Similarly, in *Waterside Workers' Federation of Australia v J W Alexander Ltd* [1918] HCA 56; (1918) 25 CLR 434, Griffith CJ emphasised (at 441) that:

Any inconvenience which may follow from giving effect to the express provisions of the Constitution cannot be considered in determining their meaning.

