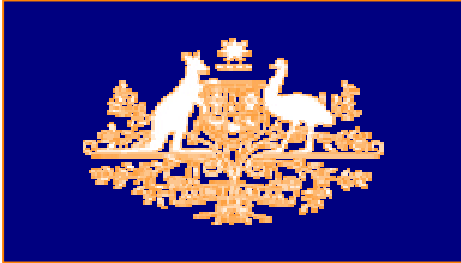


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## *Australia's Constitution*



### *What is a Constitution?*

A constitution is a set of rules for governing or managing the affairs of a country, State or any organisation, such as a basketball or football club. These rules may be unwritten and based on tradition or conventions. Most constitutions are formal written documents that people are able to read.

### *What is the Australian or Federal Constitution?*

The Australian Constitution originated in the 1890s when the delegates and representatives from the Australian Colonies drafted a document which would unite the Colonies into a federal system. The Constitution sets out the rules, principles and structures under which the national government must operate. It establishes:

- the structure for the federal system of government
- the basis for relations between the central government and the States.

### *State Constitutions*

Each State has its own written Constitution. South Australia's Constitution was passed in 1856. The Northern Territory's and the Australian Capital Territory's constitutions exist as self-government Acts passed by the Commonwealth Parliament.

### *When was the Constitution written?*

Before 1901 the Australian States were separate colonies of the British Empire. The idea of federation was first discussed in the mid 19th century. Work on drafting an Australian Constitution began in the 1890's at a series of conventions in 1891 and 1897-98, including one in Adelaide in April 1897. Referendums were conducted in each Colony to seek the approval of the people of the Constitution Bill. Voting was voluntary in all colonies and eligibility was generally restricted to males 21 years and over. South Australia women were able to vote at the referendum because they gained the franchise in 1894.

The Constitution Bill was approved by the people in most Colonies at the 1899 referendums. Delegates from each Colony took the Constitution Bill to Britain to be passed by the British (Imperial) Parliament. After negotiated amendments to the Bill between the Australian delegates and the British Government, the Bill passed through the British Parliament unamended and was assented to by Queen Victoria on 9 July 1900.

On 17 September 1900 Queen Victoria proclaimed the Act to commence the new Australian nation on Tuesday, 1 January 1901. The Queen allowed Western Australia to be an original State of the federation as it had passed its referendum by September 1900.

Since 1901 the British Parliament has passed a number of statutes that have given the Commonwealth and the States greater independence and autonomy. For example, appeals to the Privy Council were finally abolished in 1986 with the enactment of the *Australia Act 1986*. None of this is mentioned in the Constitution.

### *Who was it written by?*

Appointed delegates and elected representatives from most of the colonies participated in drafting the Constitution Bill. Prominent representatives from South Australia included John Cockburn, John William Downer and Charles Cameron Kingston. Edmund Barton, was a NSW representative who later became the first Prime Minister of the new nation.

### *Who for?*

The Constitution was written for all of the people of Australia.

### *How is it structured?*

The *Commonwealth of Australia Constitution Act* consists of two main parts. The first part includes a Preamble and 8 covering clauses. This part can only be changed by the British Parliament. The actual Australian Constitution is Clause 9 of the Act. It consists of 8 chapters and 128 sections.

The first part includes a preamble and 8 covering clauses.

The **Preamble** or introduction states that the people, “relying on the blessing of Almighty God”, have agreed to the union of the 5 original founding colonies. Western Australia was admitted by federation) under the Crown of the United Kingdom.

The covering clauses were necessary to establish the federation but are now largely of historic interest only.

The second part includes the actual Australian Constitution in Clause 9. The first three chapters of the Constitution outline the three main powers of government – legislative, executive and judicial.

Chapter 1 provides for an elected Parliament comprised of an *upper house*, a Senate to safeguard the interests of the States, and a *lower house*, a House of Representatives to reflect the democratic wishes of the people

Chapter 2 provides that a Governor-General exercises executive power as the Queen’s representative. The Governor-General is Australia’s resident head of state who acts on the advice of a Federal Executive Council. By convention this body is comprised of the Prime Minister and the Cabinet Ministers.

Chapter 3 provides for the creation of the High Court of Australia as the nation’s most superior court. It is vested with jurisdiction to be the final court of appeal and the court which resolves constitutional disputes.

Chapters 4, 5 and 6 deal with Commonwealth/State relations and the admission of new States.

Chapters 7 deals with the Territories and the nation’s capital. Chapter 8 outlines the procedure of changing the wording in the Constitution. The main stage in that process is a referendum where the people of Australia have to vote by secret ballot to change the Constitution.

## How is the Constitution relevant to us today? Who uses it?

Unknowingly all Australians are affected by the Constitution in their everyday lives. The Commonwealth makes laws for our national defence and the payment of income tax. Without the Constitution the Commonwealth Parliament could not pass laws to allow CentreLink to pay age pensions or unemployment allowances. The States have the power to legislate to provide for compulsory education and a system of hospitals to treat the ill and the injured.

The Constitution is the fundamental foundation of our democratic system of government. It protects people's rights by clearly prescribing what powers the various government agencies can exercise and which ones they cannot. People can challenge a law in the High Court if they believe it has been made or enforced in a manner not allowed in the Constitution.

The Australian Constitution does not include a Bill of Rights. In fact it has very few human right protections in it at all. Three human rights that are in the Constitution include:

Section 51(31) prohibits the Commonwealth from taking people's property not on "just terms". This right was the basis of the famous Australian movie, "The Castle".

Section 80 guarantees trial by jury for certain federal offences

Section 116 prevents the Commonwealth from passing a law to establish a religion, make religious worship compulsory or to prohibit citizens practising any religion.

Some prominent dates in Australia's constitutional history:

1903 – The High Court of Australia was created

1942 – Australia ratified the Statute of Westminster which prevented Britain from interfering with Australian laws

**1946** - A successful referendum allowed the Commonwealth to provide a wider range of social service benefits to returned servicemen and women.

1967 – A successful referendum amended section 51(26) to allow the Commonwealth to make laws about Aboriginal People and the discriminatory provision in section 127 was repealed.

1977 – A successful referendum changed the way of filling casual senate vacancies, Territorians were allowed to vote at referendums federal judges had to retire at 70 years of age.

1999 – The republic referendum was unsuccessful but there is a general belief in the community that the issue will be debated again and another referendum put to the people on the issue.

### *The future of our Constitution - YOUR ROLE*

These Constitutional School Conventions are designed to encourage you to learn about and be critical of *your* Constitution. You will have the opportunity to discuss possible changes other students. Hopefully you will be more informed to discuss these issues with your friends, family and other members in the community.

Issues such as a Bill of Rights, the role of the Prime Minister, Aboriginal reconciliation and the environment are not addressed in our Constitution. It will be up to you and all Australians to decide if these, and other issues, should be included in the future or whether the Constitution should remain as it is.

Remember - if the Constitution is to be 'updated' and you are 18 or over, an Australian citizen and on the electoral roll you can have your say - **vote**.