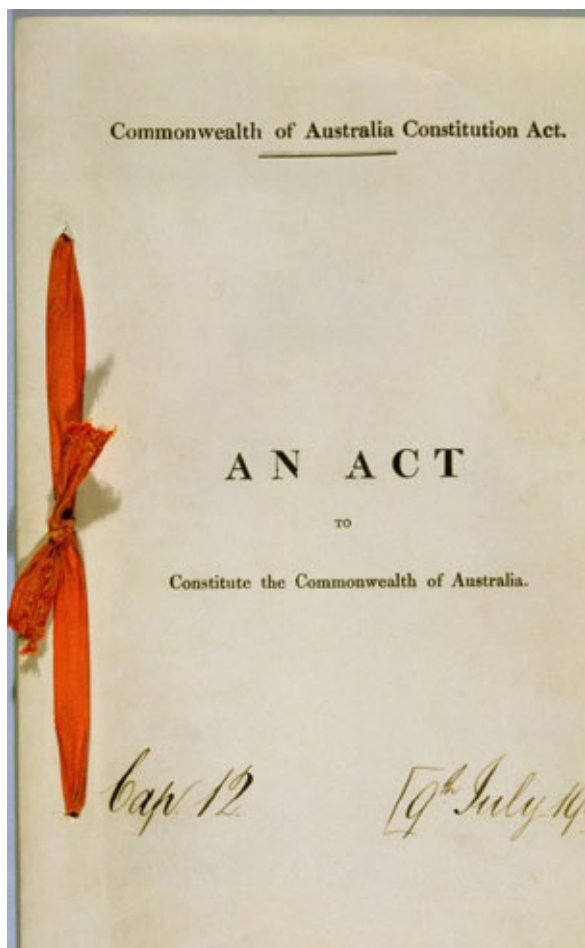


# Closer Look

A series of discussion papers for secondary teachers and students

## The Australian Constitution



### Introduction

The Australian Constitution is the set of rules by which Australia is run. It took effect on 1 January 1901 and to this day is the blueprint for how Australia is governed. It includes details on the composition of the Australian Parliament, how Parliament works, what powers the Parliament has, how federal and state Parliaments share power and the roles of the Executive Government and the High Court.

This paper covers the following areas of content:

- How Australia acquired its Constitution
  - Drafting the Constitution
  - Passing the Constitution
  - Introducing the Constitution
- Contents of the Constitution
- Key features of the Constitution
- The Constitution and the High Court
- How the Constitution can be changed
- Conclusion

### How Australia acquired its Constitution

#### Drafting the Constitution

Before 1901 Australia did not exist as a nation. It was a collection of six British colonies which were partly self-governing, but under the law-making power of the British Parliament.

During the 1890s representatives of the colonies came together at special meetings called constitutional conventions to try to agree on a draft constitution which would provide for a new level of national government. A constitution was drafted by representatives of the colonies who met at five conventions in 1890, 1891, 1897 (twice) and in 1898. Each colony then held referendums. The draft constitution was modified further at a premiers' conference in 1899, which was followed by another series of referendums.

#### Passing the Constitution

The Constitution was approved, with one small exception, by the people of New South Wales, Victoria, Queensland, Western Australia, South Australia and Tasmania. Australian delegates then travelled to the

British Parliament in London with a bill (proposed law) enabling Australia to become its own nation. This bill included the Constitution. There were some further amendments before the legislation was passed by the British Parliament in 1900 as the *Commonwealth of Australia Constitution Act*.

Queen Victoria signed the *Commonwealth of Australia Constitution Act* containing section 9 which stated that on and after 1 January 1901, the colonies of New South Wales, Victoria, South Australia, Queensland, Tasmania and Western Australia would be united and known as the Commonwealth of Australia.

The colonies became states of Australia and the new federal Parliament of the Commonwealth (now also known as the Parliament of Australia) was formed. Western Australia was not a party to the initial agreement but did agree to be included before the Commonwealth of Australia was officially established on 1 January 1901.

### Introducing the Constitution

Sir John Quick and Sir Robert Randolph Garran were major participants in Australia's move to federation. They collaborated on a book called *The Annotated Constitution of the Australian Commonwealth*. Published in 1901, the book contains historical and comparative studies of constitutions and constitutional issues including a section titled *Commentaries on the Constitution of the Commonwealth of Australia*. This book is still regarded today as the most comprehensive authority on constitutional matters.



Portrait of Sir Robert Randolph Garran (1867 - 1957). Image by permission of the National Library of Australia.



Portrait of Sir John Quick (1852 - 1932). Permission kindly given by Trust Company Limited (Trustee for the Portia Geach Estate).

### Contents of the Constitution

Chapter & section	Contents
Chapter 1: The Parliament	Sections 1 to 60 describe the composition and power of the federal Parliament.
Chapter 2: The Executive Government	Sections 61 to 70 describe the power of the most formal elements of executive government including the Queen, Governor-General and the Federal Executive Council.

Chapter 3: The Judicature	Sections 71 to 80 describe the composition and power of the High Court, federal court and state courts.
Chapter 4: Finance and Trade	Sections 81 to 105 describe rules for money, property and interstate trade.
Chapter 5: The States	Sections 106 to 120 describe the rights and powers of the states.
Chapter 6: New States	Sections 121 to 124 deal with various issues regarding states and territories.
Chapter 7: Miscellaneous	Sections 125 to 126 deal with establishing a seat of government and the Queen's power to authorise the Governor-General to appoint deputies.
Chapter 8: Alteration of the Constitution	Section 128 describes a basic procedure for altering the Australian Constitution.

Although many sections appear to be simple, they have led to different interpretations and legal arguments over the last century. Section 51 has turned out to be particularly significant because it lists the areas in which the Australian Parliament can make laws. These areas include taxes, defence, trade and commerce with other countries, marriage and divorce, immigration, postal services, invalid and old-age pensions.

Also of particular importance is Section 109, which states that if the Commonwealth and a state Parliament both pass laws on the same subject, the Commonwealth law over-rides the state law.

Surprisingly, the Constitution does not mention the Prime Minister or the Cabinet, both of which are central to the working of government and the Parliament. For these and other reasons, some people argue that the Constitution is out of date and that constitutional reform is needed.

## Key features of the Constitution

Australia is a federal system in which the Constitution divides power between a national government (the Commonwealth) and state governments.

The Constitution describes the key features of the Australian federal system, including:

- the basic rules for the operation of the federation and the powers of the federal Parliament
- a federal government which governs the nation
- separate state governments, constitutions and laws which govern the individual states
- power and authority that is shared between federal and state parliaments, governments and courts
- a bicameral system with:
  - single member representation for the House of Representatives. This system is designed to elect major parties and support efficient government.
  - multi-member representation for the Senate. This system elects 12 senators for each state and is designed to protect the interests of the states.
- the High Court of Australia, which is the final court of appeal. The High Court interprets the Australian Constitution, and resolves legal disputes between the Australian Parliament or government and the states.

## The Constitution and the High Court

As a set of rules, a constitution requires interpretation and the adjudication of disputes which arise from those rules. People may wish and are entitled to test the meaning and application of a constitution. In Australia, it is the principal function of the High Court of Australia to interpret the constitution and to decide disputes about its meaning.

Sometimes the High Court is asked to decide whether it is the federal government or a state government which has the authority and responsibility to deal with a matter. At other times, because the Constitution provides specific limits to what the federal government is empowered to do, the High Court may be asked to decide whether a law made by the federal government is valid either in whole or in part.

## How the Constitution can be changed

The Australian Constitution can be changed by referendum according to the rules set out in Section 128 of the Constitution.

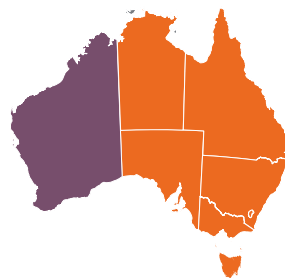
A referendum is a national ballot on a question to change a part of the Australian Constitution. In a referendum the Parliament asks each Australian on the electoral roll to vote. Australians aged 18 years or older are eligible to vote on a specified change to the Constitution.

If a majority of people in a majority of states and a majority of people across the nation as a whole, (called a double majority) vote yes, then the part of the Constitution in question is changed. Otherwise the Constitution remains unchanged.

Since 1906, when the first referendum was held, Australia has had 19 referendums in which 44 separate questions to change the Australian Constitution have been put to the people. Only 8 changes have been agreed to, covering such topics as Senate elections, Aboriginals and the retirement of Judges.

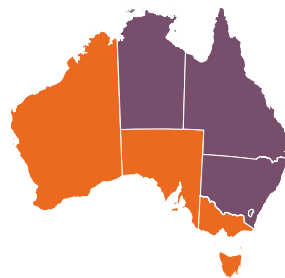
### CHANGING *the* AUSTRALIAN CONSTITUTION

The Australian Constitution can only be changed with the support of the majority of Australian voters **and** a majority of voters in at least four states.



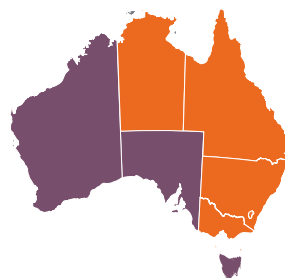
#### SCENARIO ONE CHANGE THE CONSTITUTION

- ✓ Majority of Australian voters
- ✓ Majority of voters in at least four states



#### SCENARIO TWO DON'T CHANGE THE CONSTITUTION

- ✗ Majority of Australian voters
- ✓ Majority of voters in at least four states



#### SCENARIO THREE DON'T CHANGE THE CONSTITUTION

- ✓ Majority of Australian voters
- ✗ Majority of voters in at least four states

## Conclusion

For more than 100 years the Australian Constitution has been providing the basic rules by which Australia is governed. It is of continuing importance to Australia because it is the legal and political foundation on which our nation is built and continues to function.

## More information

The Australian Constitution <http://www.aph.gov.au/senate/general/constitution/index.htm>

Commentaries on the Constitution of the Commonwealth of Australia  
<http://purl.library.usyd.edu.au/setis/id/fed0014>

Constitutional referendums <http://www.aph.gov.au/library/handbook/referendums/index.htm>

Video – What is Parliament?

<http://www.peo.gov.au/multimedia/video/whatIsParliament/transcript.html>

Fact Sheet Series

- 31 The Constitution <http://www.peo.gov.au/students/fss/fss31.html>
- 35 Separation of Powers <http://www.peo.gov.au/students/fss/fss35.html>
- 17 Governor-General <http://www.peo.gov.au/students/fss/fss17.html>
- 13 Prorogation of Parliament and Dissolution of the House of Representatives  
<http://www.peo.gov.au/students/fss/fss13.html>
- 33 Double Dissolution <http://www.peo.gov.au/students/fss/fss33.html>

FAQ 1 Federation [http://www.peo.gov.au/faq/faq\\_1.html](http://www.peo.gov.au/faq/faq_1.html)

FAQ 2 The Constitution [http://www.peo.gov.au/faq/faq\\_2.html](http://www.peo.gov.au/faq/faq_2.html)

FAQ 24 High Court of Australia [http://www.peo.gov.au/faq/faq\\_24.html](http://www.peo.gov.au/faq/faq_24.html)

Australia's Constitution pocket edition <http://www.peo.gov.au/publications/const.html>

Records of the Australasian Federal Conventions of the 1890s  
<http://www.aph.gov.au/Senate/pubs/records.htm>

Parliamentary Handbook: Referendums and Plebiscites  
<http://www.aph.gov.au/library/handbook/referendums/index.htm>