

Power and the Constitution Online Program

Part A: The Constitution Background Notes

The Australian Constitution

A constitution is a set of rules or laws outlining how a system of government will operate. Components of a constitution can include a description of the institutional structures of the government, the conditions under which power is held and used, and how the constitution itself can be changed.

The Australian Constitution establishes Australia as a representative democracy, where people elect representatives to make decisions and laws on their behalf, in Parliament. The Constitution was created as a result of the Federation movement, which saw the six British colonies join together to create an independent nation. The Australian Constitution contains eight chapters which outline how power is divided and can be used within Australia's federal government, issues relating to Federation and the process for making changes to the Constitution.

Constitutions are not limited to representing whole nations. In Australia each of the states have their own constitution. Western Australia's Constitution Act became law in 1890, eleven years before the Australian Constitution came into effect.

Federation and the Constitutional Conventions

Prior to 1901 Australia was made up of six separate British colonies - New South Wales, Tasmania, Victoria, Western Australia, South Australia and Queensland. Each colony developed their own Parliament, laws and administration and were responsible for a range of government activities. Defence and foreign policy remained the responsibility of the British government.

The Northern Territory was still part of South Australia during this time. It wasn't until 1947 when the Northern Territory had its own Parliament, a Legislative Council to make laws. The Australian Capital Territory (ACT) didn't come into existence until 1911, created to be the national capital.

In the late 1880s the Australian Federation movement emerged, as representatives from around Australia acknowledged there was a need for a national government to manage issues such as trade, defence and immigration as the colonies were becoming more interconnected.

In the 1890s delegates from the colonies came together several times at Conventions to discuss what a federated Australia would look like and create a draft for a future Australian Constitution. Following the 1897-1898 Federation Conventions a series of referendums were held around the country, asking the people to approve the proposed Australian Constitution.

Delegates from Western Australia attended all conventions, but the colony leaders were hesitant about Federation. At the time there was an economic boom in Western Australia due to the discovery of gold, and strong gains in farming and timber. The other colonies were experiencing more of an economic depression so some people in Western Australia were concerned that the colony's economic and political power would be weakened by joining a Federation.

Not all people in Western Australia shared the same views, people in the Eastern Goldfields and Albany were in favour of Federation believing their rights and interests would be better protected.

By 1899 all the colonies except Western Australia had held referendums and voted 'yes' to the Constitution. By July 1900 Western Australia participated in a referendum and also voted 'yes'.

Australia was the first nation to take their proposed constitution to the people for approval, making it unique at the time, however, it still had to be approved by the British Parliament before Federation could proceed. In March 1900 a representative from each colony (an observer attended from Western Australia, as they had still not formally agreed to federate yet) travelled to London to present the proposed Commonwealth of Australia Constitution Bill to the British Parliament. Edmund Barton attended from New South Wales, Alfred Deakin from Victoria, Charles Kingston from South Australia, Philip Fysh from Tasmania, James Dickson from Queensland, and Stephen Henry Parker from Western Australia. The Bill finally passed on 5 July 1900 and gained Royal Assent when Queen Victoria signed the Act on 9 July 1900.

On 1 January 1901 the Australian Constitution was proclaimed and the newly federated nation of Australia came into being. As the first nation to have its Constitution approved by a public vote, Australia enshrined its democratic nature and the principle of representative government from the very beginning.

Influences of the Australian Constitution

When drafting the Australian Constitution, colony delegates looked at the constitutional structures of several other countries, but were influenced mostly by the British model and the United States of America model. Australia's resulting Constitution and system of government has been dubbed the 'Washminster system' combining the Parliamentary structure, responsible government, and associated traditions of the Westminster system from Britain with the concept of federalism and the division of powers between State and Federal governments from the Washington system in America.

Another prominent influence was Switzerland, which required a popular vote of the people (known as a referendum) to make changes to their Constitution. The Australian Constitution includes this feature but requires a double majority 'yes' result (a national majority of voters from the states and territories; and a majority of 'yes' voters in a majority of the states) to make a change, meaning it can be very difficult for changes to be approved. The double majority vote was included in the Australian Constitution to protect the rights of states with smaller populations.

The Legislature

Chapter One of the Australian Constitution is titled *the Parliament*, and sets up a bicameral (two house) Federal Parliament system to act as the Legislature (law making) arm of government. As Australia is a Constitutional Monarchy, this system also features a link to Britain by including the Monarch as the symbolic Head of State who is represented at a federal level in Australia by the Governor-General.

Chapter One goes into specific detail about what the Federal Parliament has power to make laws on, with limited detail about the actual structure and operation of the institution instead, relying on unwritten traditions and customs from Britain known as conventions.

The Governor-General

Chapter Two of the Constitution recognises the role of the Governor-General to serve as a representative of The Queen of Britain (at the time Queen Victoria, but there is a clause in the original Constitution Act specifying that any reference to "The Queen" also covers her successors), holding and exercising powers assigned by the Monarch and the Constitution itself.

There are many powers the Governor-General technically has, but by convention they are only used on the advice of the government.

The legislative powers of the Governor-General include; the ability to dissolve Parliament, issuing the writs for a federal election, summoning Parliament to sit and to provide Royal Assent to Bills that have passed through both Houses of Parliament. The Governor-General is also the head of the Executive arm of government.

The House of Representatives

The House of Representatives is the lower house of the Federal Parliament. It was designed to be the 'people's house' with members directly chosen by the people. The number of members representing each state depends on their populations, but cannot drop below five, as stipulated by the Australian Constitution.

Currently there are 150 Members of the House of Representatives, who each represent one of Australia's 150 electorates. Each electorate represents approximately the same number of people, although the number of electorates can change. At the 2025 federal election the House of Representatives changed from 151 to 150 members following a redistribution by the Australian Electoral Commission. Members are elected for a three-year term at each election, meaning they can serve less than three years if an election is called early, but not more.

Australia has a system of **responsible government**, which means the government of the day has to have the support of the lower house. The government is decided based on the group or political party holding a majority of seats in the House of Representatives.

In the House of Representatives, members meet to represent the views of Australians, and to discuss, debate and vote on matters of national and international importance. Proposed laws or changes to existing laws can be introduced in this house, where they are subject to discussion and debate by members before they are voted on. The house also serves to closely examine the work of the government, especially during question time.

The Senate

The Senate is the upper house of the Federal Parliament. It was designed to be the 'state's house' with the same number of members chosen from each state, and each state voting as a single electorate - known as proportional representation. The number of members from each state was originally six, but increased to 12 in 1983. There are also two members representing each territory, meaning the total number of senators is 76.

By having the same number of members from each state, the Senate was designed to protect the interests of states with smaller populations like Western Australia and Tasmania, allowing them to have an equal voice in national decisions, ensuring the Parliament was not dominated by the states with larger populations. The Senate was also designed as a house of review - a bill that passes the House of Representatives must also pass the Senate without change before it can go to the Governor-General to receive Royal Assent and become a law.

Each Senator representing a state (not the territories) is elected for a six-year term, with half of the Senate seats generally going for election every three years. Senators representing the territories are only elected for three-year terms.

The Constitution gives the Governor-General the power to call a 'double dissolution' election if there is a disagreement between the two Houses, and the Senate repeatedly fails to pass a bill from the House of Representatives. Normally, the Governor-General only does this on the advice of the Prime Minister. When this happens every Senate seat goes up for election, with 36 Senators being chosen to serve a "long term," and 36 chosen to serve a "short term," allowing future elections to continue the half-seat rotation.

Sections of the Constitution

Some key sections in Chapter One of the Constitution regarding the structure and powers of the Parliament are as follows:

Section 7: The Senate shall be composed of senators for each State, directly chosen by the people of the State, voting, until the Parliament otherwise provides, as one electorate. The Parliament may make laws increasing or diminishing the number of senators for each State, but so that equal representation of the several Original States shall be maintained and that no Original State shall have less than six senators. The senators shall be chosen for a term of six years

Section 24: The House of Representatives shall be composed of members directly chosen by the people of the Commonwealth, and the number of such members shall be, as nearly as practicable, twice the number of the senators... the number of members to be chosen in each State shall be determined by dividing the number of the people of the State... But notwithstanding anything in this section, five members at least shall be chosen in each Original State.

Section 28: Every House of Representatives shall continue for three years from the first meeting of the House, and no longer, but may be sooner dissolved by the Governor-General.

Section 58: When a proposed law passed by both Houses of the Parliament is presented to the Governor-General for the Queen's assent, he shall declare, according to his discretion, but subject to this Constitution, that he assents in the Queen's name, or that he withholds assent, or that he reserves the law for the Queen's pleasure. *Note: As above, any mention of "the Queen" in the Constitution can be read to include Queen Victoria's successors.*

Constitutional Conventions

Conventions are an important part of the operation of the law and government in Australia. They are unwritten traditions, assumptions and practices which mainly originate from the British Westminster system, some dating back hundreds of years.

Constitutional conventions are unwritten assumptions about the structure and operation of Australia's federal government. The Constitution makes no reference to the Prime Minister, forming a government, ministerial responsibility or even the principle of responsible government, but these are all important features of Australia's system of government that have their own regulations based on constitutional convention.

Another key constitutional convention in Australia relates to the powers of the Governor-General, which suggests that they should only exercise their constitutional powers on the advice of the Prime Minister.



Find us on



WA.gov.au

 The Constitutional Centre of WA

Produced by the Department of the Premier and Cabinet 2022.

Acknowledgement of Country The Government of Western Australia acknowledges the traditional custodians throughout Western Australia and their continuing connection to the land, waters and community. We pay our respects to all members of the Aboriginal communities and their cultures; and to Elders both past and present.