

The Australian Constitution and the High Court

The Australian **Constitution** is a document that outlines how Australia is to be governed. It came into operation on 1 January 1901. In simple terms, the Constitution can be thought of as a 'rule book' that sets out how our nation is to be run or managed.

The Constitution created the Commonwealth Parliament and outlined the areas in which it can make law. The Constitution also protects some basic rights of the Australian people and empowers the High Court of Australia to interpret and resolve **disputes** involving the meaning of the Australian Constitution itself.



chapter 12

Source 1 The High Court of Australia was established by the Australian Constitution in 1901 and is the highest court in the Australian court hierarchy.

12A

How does the Australian Constitution work?

- 1 Why do you think it might be good that our country has a 'rule book' or Constitution? What would happen if we didn't have one?
- 2 Do you know any of the basic rights or features outlined in the Constitution?
- 3 Have you ever visited our Commonwealth Parliament, or have you seen it on TV? What were your impressions?

12B

What role does the High Court of Australia play in interpreting the Constitution?

- 1 What do you know about the High Court of Australia? Do you know where it is located or what it looks like?
- 2 What do you think the High Court does? Why is it called the 'High Court'?

12.1 The Australian Constitution – an introduction

A Constitution is a document that creates the basic structure and powers of an organisation, state or nation.

Why have a Constitution?

Many organisations, including schools, local sporting clubs, community groups and volunteer organisations (like Rotary, and RSL clubs) have a constitution that outlines the aims of the organisation and the rules regarding how it will be governed and operate. Australia also has a national or Commonwealth Constitution that outlines how our country is to be governed. Indeed, the Australian Constitution, which came into operation on 1 January 1901, is the document that created and outlined the law-making powers of the Commonwealth Parliament and created the High Court of Australia.

Reasons for establishing Australia's Constitution

Prior to the Australian Constitution being established in 1901, Australia consisted of six separate British colonies – Victoria, New South Wales, Queensland, Tasmania, South Australia and Western Australia. Each of these had the power to make laws for its own residents, while also being under the authority of the British parliament.

While this system of government worked when our country was relatively small, as the population grew, problems started to arise from the lack of consistent laws between the colonies. By the late 1800s support grew for the idea of Australia becoming a **federation** where each of the colonies would become the states of Australia and be united by one central or federal parliament. Under this system, the new federal parliament would be given the power to make certain laws in areas of national interest that applied to all Australians. Reasons for federation included:

- *to increase economic growth.* Many supporters of federation believed the economy could grow more rapidly if the colonies had consistent trade, banking and commercial laws and common infrastructure. By the end of the 19th century the separate colonies had imposed various taxes (or tariffs) on one another that limited inter-colony trade and the existence of three separate railway systems, each with different gauge railway tracks, made trade and travel difficult.
- *to improve national defence.* By the late 1800s, there were fears that the separate colonies, each of which had its own individual 'militia' (or army), would not be able to defend themselves from potential European 'invasion' and would benefit from having

one uniform defence force that was capable of protecting the entire country.

- *to enhance the national identity.* By the late 1800s, with more than three-quarters of the population being born in Australia, many citizens felt an increased sense of national pride, recognising the Australian, rather than British, culture and way of life. The desire to minimise the arrival of non-British immigrants and the lack of a common immigration policy also increased support for federation.

In 1891 the first of a series of meetings, known as **constitutional conventions**, were held, where representatives from each colony considered a draft Commonwealth Constitution that would essentially create and outline the law-making powers of the new central Commonwealth Parliament. After the draft Constitution was approved by the representatives of the colonies, the voters in each colony, and the British Parliament, it came into operation. On Federation Day, 1 January 1901, Australia became a nation.

The purpose of the Australian Constitution

The Australian Constitution created established Australia as an independent nation and set out the rules by which it would be governed. More precisely, the Constitution:

- established a federal system of government in Australia where the nation consisted of six states, each with the power to make laws for the residents of that state, and one central or federal parliament, with the power to make laws that apply to the entire country
- created and outlined the law-making powers of the Commonwealth Parliament
- outlined the structure of the Commonwealth Parliament, stating that it must consist of two houses and the Crown
- created the High Court of Australia to resolve disputes over the meaning of the Constitution
- outlined and protected some basic rights of the Australian people by placing restrictions on the law-making powers of the Commonwealth and state parliaments. For example, the Constitution prevents the Commonwealth Parliament from making law that imposes or restricts religious practices
- ensured that the Australian parliamentary system be based upon various parliamentary principles such as the principle of representative and responsible government and the **separation of powers** (examined in Chapter 11).



Source 1 Delegates from each of the colonies meet together in 1890 at a constitutional conference to discuss Federation.

Check your learning 12.1

Remember and understand

- 1 What is a Constitution?
- 2 Explain three reasons the colonies throughout Australia agreed to become a united federal nation on 1 January 1901.
- 3 Explain three main purposes of the Australian Constitution.

Apply and analyse

- 4 Explain why the Australian Commonwealth Parliament is often referred to as federal parliament.
- 5 State three laws that are made by the Commonwealth Parliament. Explain the benefits of having these laws made by the Commonwealth Parliament.

Evaluate and create

- 6 Draw a cartoon or image that demonstrates the main reasons that the colonies supported federation.
- 7 The people listed below had significant involvement in the creation of Australia's Constitution. Conduct some Internet research to discover how these people influenced the Constitution and any other important roles they held. Present your findings in a multimedia format such as PowerPoint, Prezi, or Publisher Brochure.
 - Sir Henry Parkes
 - Edmund Barton
 - Andrew Inglis Clark
 - Samuel Griffith
 - Sir Richard Baker
 - Sir Robert Randolph
 - Garran John Quick



Source 2
Sir Edmund Barton attended constitutional conventions and became Australia's first prime minister.

12.2 How the Australian Constitution works

The Australian Constitution was carefully drafted to provide a stable and long-lasting system of government for Australia. Its function was also to define the law-making powers of the newly established Commonwealth Parliament.

The law-making powers of the Commonwealth Parliament

One of the main roles of the Australian Constitution was to create the Commonwealth Parliament and outline its law-making powers. This means the Commonwealth Parliament can only make laws in the areas specifically stated in the Constitution as belonging to the Commonwealth Parliament. These are referred to as specific areas of law-making power. Most of the **specific powers** of the Commonwealth Parliament are listed in Section 51 of the Constitution and include the power to make laws on:

- marriage and divorce
- currency (i.e. bank notes and coins)
- taxation (e.g. the goods and services tax)
- social welfare benefits (e.g. the aged pension and unemployment benefits)
- trade and commerce (e.g. with other countries and between the states)
- defence (e.g. naval and military forces)
- customs and excise (i.e. taxes on the production or export of goods).

Any areas of law-making power that are *not* stated in the Constitution as specifically belonging to the Commonwealth Parliament belong solely to the state parliaments. These are referred to as **residual powers**. For example, the Constitution does not mention or give the Commonwealth the power to make laws in many areas including:

- adoption, surrogacy or IVF technology (which did not exist in 1901)
- childcare and education
- public transport
- water and electricity supply

As such, the state parliaments have the sole power to make laws in these areas.



Source 1 Some areas in which the Commonwealth Parliament can make laws include matters related to defence, mining, and marriage.



Exclusive powers

Areas in which only the Commonwealth can make laws. For example:

- currency
- defence
- customs and border protection

Concurrent powers

Areas in which the Commonwealth and the states can make laws. For example:

- marriage and divorce
- taxation
- census data and statistics

Source 2 The specific law-making powers of the Commonwealth Parliament

Types of specific law-making powers

The specific law-making powers of the Commonwealth Parliament that are outlined in the Constitution, can be divided into two types – exclusive or concurrent powers.

Exclusive powers

Exclusive powers refer to those specific areas of law-making power that *only* the Commonwealth Parliament can make law in. For example, only the Commonwealth is able to make laws in the areas of currency, defence, and customs and excise duties.

Concurrent powers

Concurrent powers are those specific areas of law-making power that are shared by both the Commonwealth and state parliaments. For example, both the Commonwealth and the state parliaments can make laws in the areas of taxation, marriage, and census and statistics. If the state and Commonwealth Parliaments pass laws in concurrent or shared areas of power that conflict, the Commonwealth's law will prevail over, or override, the state law.

Changing the Constitution

The Australian Constitution took many years to draft and was carefully framed to provide a stable and long lasting system of government for Australia. One of the key features of our Constitution is that it cannot be

easily altered and cannot be altered by the government of the day without the approval of the Australian people. This aims to reduce the risk of a federal government misusing its power and changing the Constitution to promote its own interests.

The only way the wording of the Australian Constitution can be altered is via a process called a **referendum**. The referendum process is outlined in the Constitution itself (in section 128) and involves a compulsory public vote. 12A How does the Australian Constitution work?

The referendum process

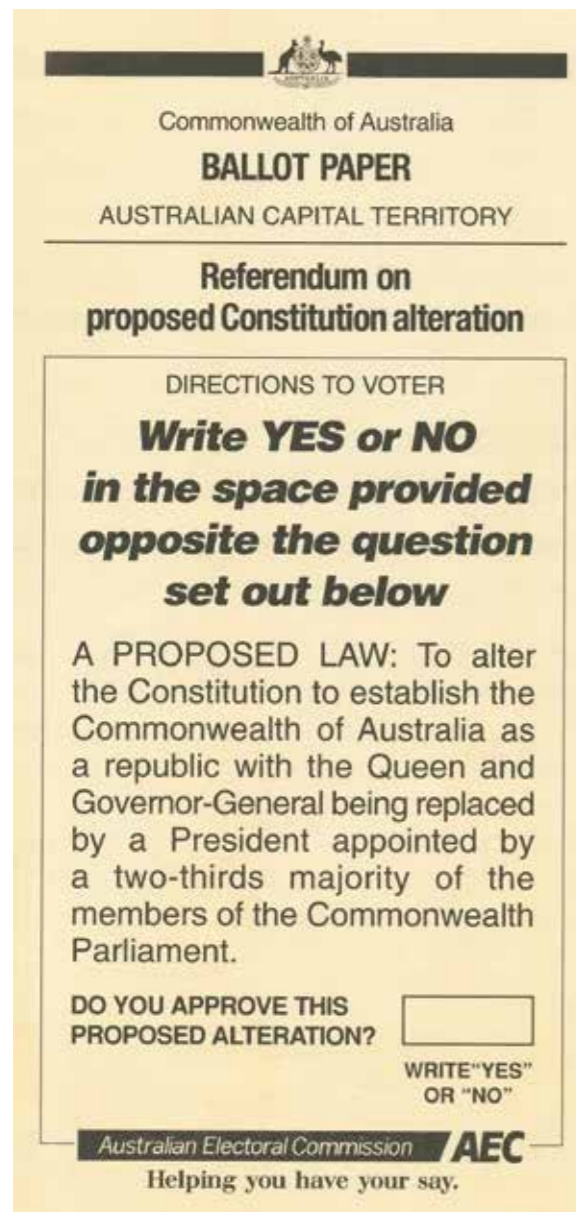
A proposed change to the wording of the Constitution must be drafted and generally approved by a majority of members in both houses of Commonwealth Parliament. Between two and six months later, the proposed change must be put to the Australian people in a compulsory public vote and approved by a **double majority** of eligible Australian voters. This means the proposal must be approved by:

- a majority of voters throughout the whole of Australia, including the territories
- a majority of voters in at least four out of six states.

Once approved by a double majority of Australian voters, the proposed change must be given **royal assent** – that is, final approval by the Governor-General on behalf of the Crown, or Queen.

Strengths of the referendum process

- The referendum process requires the support of the Australian public, which prevents the federal government from changing the Constitution to benefit its own agenda.
- A compulsory public vote means the Constitution is only changed if it has great support from the entire community rather than just a small number of people who choose to vote.
- The requirement that a referendum must be passed by a double majority of voters makes sure that any change to the Constitution has a large amount of public support, including support from most of the states.



Source 3 The ballot paper from the ACT for the 1999 republic referendum

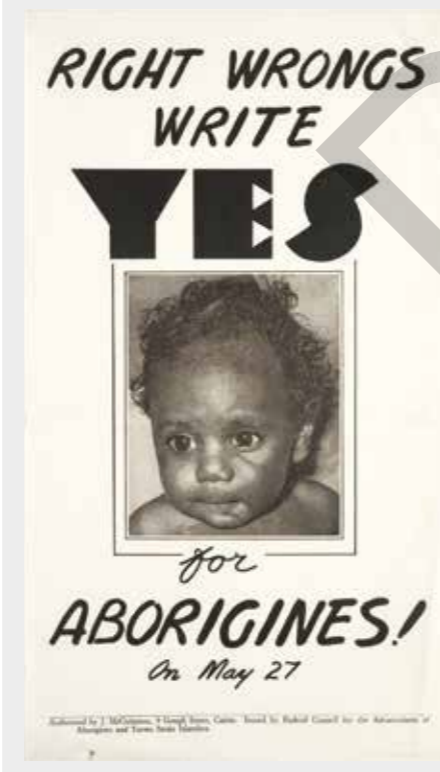
casestudy

Why was the 1967 referendum so important?

Australia's most successful referendum took place in 1967, when over 90 per cent of voters agreed that the Constitution should be changed to give the Commonwealth Parliament the power to make laws for all Australians including 'Aboriginal people', who had previously been exempted from the Constitution. This change was extremely important because it reduced the possibility of discrimination against Aboriginal peoples. The referendum also allowed the Constitution to be changed so that Aboriginal people could be counted when determining the size of the population.

The success of the referendum also had symbolic significance, as it demonstrated the willingness of many non-Indigenous Australians to accept and recognise the rights of Indigenous Australians.

Today, the date of the historic 1967 referendum (27th May) marks the commencement of National Reconciliation Week – when the Australian community recognises and celebrates the Aboriginal and Torres Strait Islander peoples, including acknowledging and promoting the understanding of past injustices suffered by these Indigenous Australians.



Source 4 A poster urging Australians to vote 'yes' to the 1967 referendum

Problems with the referendum process

Since Federation, 44 proposals to change the Constitution have been put to the Australian voters at referendums, but only eight have been successful. Reasons referendums tend to fail include:

- voters may vote against a proposal to change the Constitution if they do not understand the proposal or are disinterested
- proposals for change are unlikely to succeed if both major political parties do not support the change,

- because many people vote in accordance with the views of their chosen political party
- the double majority provision is very difficult to achieve, particularly the requirement for the residents of at least four states to support the change
- for convenience and to reduce costs, referendums are often held at the same time as a federal election and people are more concerned with voting for the government rather than the proposal for constitutional change.

Check your learning 12.2

Remember and understand

- 1 Distinguish between specific and residual powers and list five examples of each type of power.
- 2 What is an exclusive power?

Apply and analyse

- 3 Suggest one reason why some specific areas of law-making power might have been designated as being exclusive powers of the Commonwealth Parliament. Provide two examples to support your response.
- 4 Explain two strengths and two weaknesses of changing the Constitution via a referendum.
- 5 Below is a selection of proposals for changing the Constitution that have been put to Australian voters. Consider each and decide whether you would accept or reject each proposal. Give reasons for your choice.

Proposals for changing the Constitution:

- The 1999 proposal to make Australia a republic, by altering the Constitution to replace the Queen's representative as a part of the Commonwealth Parliament with a President.
- The 1988 proposal to change the maximum terms for members of the Commonwealth Parliament (from three years for the House of Representative and six years for the Senate) to four years.
- The 1977 proposal to change the retirement of Judges for all Federal courts to 70 years.
- The 1988 proposal to include a section in the Constitution requiring that all parliamentary elections in Australia be fair and democratic.

Evaluate and create

- 6 Using a multimedia format, prepare a flow chart that outlines the process for changing the Constitution via a referendum.
- 7 Conduct some research at the Australian Electoral Commission website and provide answers to the following questions:
 - a Who is required to vote in a compulsory referendum?
 - b What were the proposals and result of the last referendum held in Australia in 1999?
 - c What was the cost of the referendum held in Australia in 1999?
 - d What was the date, proposal and year of the first referendum held after Federation?
 - e Which three referendums have been passed by the largest majority of Australian voters?
 - f Which three referendums have failed by the greatest percentage of Australia voters?
- 8 Briefly explain how the Australian Constitution can be changed via referendum and provide one example of a successful referendum and one example of an unsuccessful referendum. You may wish to download the booklet *Closer Look: The Australian Constitution* from the Parliament Education Office website, which provides an excellent overview of the Australian Constitution, including examples of referendums and relevant High Court Cases.

12A rich task

Constitutional recognition of Indigenous Australians

A **preamble** is a short introduction, commonly provided at the beginning of an Act of Parliament (or a Constitution), which explains its broad aims and objectives. Over recent years, support has grown in favour of changing the preamble in Australia's Constitution to include a statement that recognises the Aboriginal and Torres Strait Islander peoples as being the first occupiers of Australia. It is hoped that making such a change to the Constitution will formally recognise and acknowledge the unique Aboriginal and Torres Strait Islander cultures, and the significant way in which these cultures have enriched our national identity. It is also hoped it would promote an awareness and respect for Aboriginal and Torres Strait Islander peoples and Indigenous cultures, languages, heritage and rights.



Source 1 Red Bean Republic encourages young people to support the constitutional recognition of Aboriginal and Torres Strait Islander peoples.



Source 2 Adam Goodes, Australian of the Year 2014, and fellow Australian Football League champion, Michael O'Loughlin, show their support of Constitutional recognition of Indigenous Australians via the Recognise Organisation.

skilldrill: Reasoning and interpretation

Gathering and assessing the reliability of information

Having the ability to gather and sort relevant information and ideas from a range of sources is an important skill. It enhances your ability to make an informed decision, especially considering that not all information is accurate and reliable. For example, while the Internet is a valuable source of information, you must remember that information found there may be factually incorrect. It may also have been prepared in a biased manner by an

individual or group who wishes to promote one particular view or perspective.

When you are conducting research into an issue or topic and gathering your information it is vital that you carefully check its reliability and authenticity. The following steps can help you assess the reliability of information you gather.

Step 1 Gather your information from a range of sources. These could include a variety of different websites, newspapers, magazines, local papers and documents.

Step 2 Decide if the information is factual or opinion-based.

Step 3 Identify if the information been prepared by a recognised authority – such as a government, university or expert panel – that has specialist knowledge in the area being examined. Websites that have an .edu suffix are often for universities or schools, so the information should be reliable.

Step 4 Find out if the individual or organisation that prepared the information is independent and impartial. Alternatively, find out if they have a special interest in, or stand to benefit from, presenting a one-sided view.

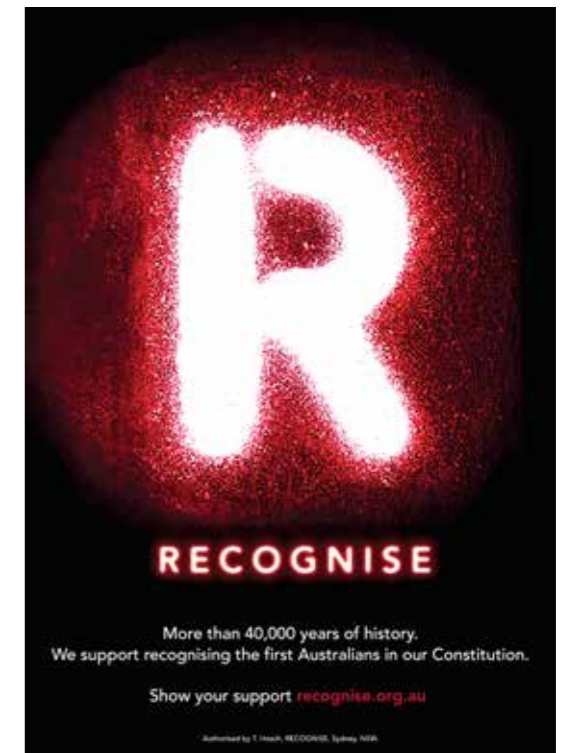
Step 5 Check if the information you have gathered can be supported or verified by another source.

If you are not sure that your information has been created by a dependable source, you should try to gather additional information from an alternative source to verify its authenticity. As a final tip, you should also check the date on which your information was prepared to make sure it is current and relevant.

Apply the skill

- 1 Conduct an Internet search to find relevant and reliable information about the campaign to change the preamble in the Australian Constitution to include recognition of the Aboriginal and Torres Strait Islander peoples. Follow the steps in the skilldrill to help you assess the reliability of the information you gather.
- 2 Use your information to prepare a written report on the campaign to recognise Aboriginal and Torres Strait Islander peoples in the Australian Constitution. Your report should include:
 - an introduction that explains the general proposal
 - an explanation of the role of two groups or organisations that support the constitutional recognition, such as Recognise and ANTaR.

- a short discussion about whether or not these organisations have an independent and impartial view
- an explanation of arguments against or difficulties associated with changing the Constitution
- a short conclusion that explains your own personal view on the topic
- a list of all the sources (including URLs) from which you obtained your evidence, and a brief comment regarding the reliability and accuracy of the information gathered from each source.



Source 3 Recognise is an organisation that develops awareness of the need to recognise Aboriginal and Torres Strait Islander peoples in our Constitution.

Extend your understanding

- 1 Using the Internet, research and download a copy of the current preamble to the Australian Constitution. After reading it, write a new preamble (maximum of 500 words) for the Constitution. When preparing your preamble consider:
 - what parts of the existing preamble you would like to keep or discard

- the key values and principles that you might like to acknowledge in your preamble, including whether or not you would like to specifically recognise the Aboriginal and Torres Strait Islander peoples.

12.3 The Australian Constitution and the High Court

The High Court, located in Canberra, is the highest in Australia's court hierarchy. It is the only court that has the power to interpret the Constitution.

Interpreting the Constitution

The High Court is needed to interpret the Constitution. In addition to creating and outlining the law-making powers of the Commonwealth Parliament and providing a process for changing the Constitution, the Australian Constitution (in section 71) established the High Court of Australia to hear and resolve disputes over the meaning of the Constitution. In fact, the High Court of Australia is the only court in Australia with the power to interpret the meaning of the words and phrases in the Australian Constitution.



Source 1 Seven judges (known as Justices) sit on the full bench of the High Court to hear disputes involving the interpretation of the Australian Constitution.

case study

Interpreting the Constitution

In the cases of *R v Brislan (1935)* and *Jones v Commonwealth (1965)* the High Court of Australia was called upon to interpret the wording of the Australia Constitution. Seven Justices of the High Court were required to interpret whether the Commonwealth Parliament's specific power to make laws with regard to 'postal, telegraphic, telephonic, and other like services' included the power to make laws on radio and television broadcasting, respectively. In each case, the High Court broadly interpreted the phrase 'other like services' to include radio and television broadcasting, and in doing so, while not changing the actual wording of the Constitution, effectively expanded the Commonwealth's power to make laws in these areas of communication that were not even created when the Constitution was written.



Source 2 New technologies create many areas of law-making not foreseen by those who wrote the Constitution in 1901.

Keeping the Constitution relevant

The High Court helps keep the Constitution relevant. While those who drafted the Australian Constitution took great time and care to make sure that it was clearly worded, it was necessary to describe some of the Commonwealth's law-making powers in rather broad or general terms so the Commonwealth would have the power to make laws in areas that were not in existence at the time. Over the years, the use of these broad terms has caused disputes, which the High Court has been called upon to resolve. For example, the Constitution gives the Commonwealth Parliament the broad power to make laws with respect to '*Postal, telegraphic, telephonic, and other like services*'. Do you think this means the Commonwealth Parliament has the power

to make laws in the areas of communication that were created after the 1900s, including making laws about radio and television broadcasting and the Internet?

As illustrated in many High Court cases, like the *Brislan* and *Jones* cases, by interpreting the meaning of the words and phrases in the Constitution, the High Court can help keep the Constitution relevant and up-to-date. It can allow, when appropriate, for new technologies to be included in the Commonwealth's law-making powers.

The High Court as 'umpire'

When interpreting the meaning of the Constitution, the High Court is able to act as an independent and impartial umpire to check that the Commonwealth Parliament does not make laws that exceed its constitutional law-making power.

case study

Can the Constitution restrict packaging?

In 2012, the High Court was called to determine whether the Commonwealth Parliament had the constitutional power to pass the *Tobacco Plain Packaging Act (2011)*, a law banning cigarette companies from using logos, brand images and promotional text on their tobacco products. It would require all tobacco products sold in Australia to be presented in a plain package and contain specific health warnings.

While the law was introduced by the Labor Federal Government in an attempt to discourage smoking and reduce its harmful affects, it was challenged by some major tobacco companies. These companies, including British American Tobacco and Philip Morris, claimed the plain packaging laws breached the Australian Constitution by unfairly allowing the federal government to acquire or seize their intellectual property – that is, their trademarks, branding and logos. Section 51 (xxxii) of the Constitution bans the Commonwealth from unfairly acquiring property without giving adequate compensation. The High Court, however, ruled in favour of the government and declared the Commonwealth Parliament's law constitutionally valid. In simple terms, the High Court ruled that the government was not

Protecting the rights of the Australian people

Finally, when resolving disputes between individuals and the state and Commonwealth Parliaments over the meaning of the Constitution, the High Court is able to interpret the Constitution and **imply** that various rights of the Australian people exist – even though they are not expressly stated. For example, although the Constitution does not explicitly state that Australians have the right to freely discuss and debate political issues – referred to as the **freedom of political communication** – in various cases throughout the years, the High Court has decided that this right is suggested or implied in the Constitution.

acquiring the use of the tobacco companies' intellectual property but was simply restricting the way in which the tobacco companies could use their logos and trademarks.



Source 3 The High Court has declared the Commonwealth's 'tobacco plain packaging' laws to be constitutionally valid.

casestudy

Can the High Court protect our freedom of speech?

In the case of *Australian Capital Television Pty Ltd v Commonwealth* (1992), the High Court was required to resolve a dispute relating to the freedom of speech. In simple terms, court had to determine whether a Commonwealth law banning political parties from making political broadcasts and placing advertising on radio and television during election campaigns was unfair and made in breach of the Constitution. The court decided that while our Constitution does not expressly mention or protect the broad right to 'freedom of speech' in Australia, it does indirectly imply that Australians have a more narrow right to 'freedom of political communication'. This is because the Constitution states that the government must make laws that *represent* the views and values of the people – which suggests that political parties should be able to

advertise their views and policies prior to an election so people can make an informed decision when voting to elect the government.



Source 4 Political parties and their candidates are allowed to advertise their views before an election so that voters can make an informed choice when voting.

Resolving disputes

Over the years, the High Court has also been called upon to resolve disputes involving whether or not a state or Commonwealth law has been made in breach of any existing Australian law. In addition, it has also

resolved issues involving international human rights treaties and conventions that Australia has agreed to uphold. It has declared any **contravening** laws, or laws that breach the Constitution, invalid. In this way the High Court can help protect the basic human rights of Australian citizens.

casestudy

What was the 'Malaysian Solution'?

In mid-2011, the Australian federal government made an agreement with the Malaysian government regarding the offshore settlement of asylum seekers who had arrived on Australian shores. Under the proposed agreement, commonly known as the 'Malaysian Solution', the Malaysian government agreed to accept 800 asylum seekers, who had arrived on Australian shores and were being held in detention centres. In return, Australia would receive 4000 refugees who were waiting for re-settlement in Malaysia.

The agreement caused great controversy in Australia. Many refugee, human rights and legal organisations believed the proposal was inhumane.

They stated it was against the spirit of the Refugee Convention – under which Australia has agreed to treat refugees and asylum seekers with respect and compassion – and in breach of the *Commonwealth Migration Act*. Amongst other obligations, this Act requires asylum seekers who arrive in Australia to have legal protection from further persecution.

In the 2011, lawyers acting on behalf of two Afghani asylum seekers lodged a challenge against the Malaysian Solution in the High Court, which subsequently held that the proposal breached the existing *Migration Act* and was therefore illegal. The case illustrated the ability of the High Court to declare laws and proposals that breach existing Australian law and human rights treaties and conventions invalid.

casestudy

Can the High Court influence laws on bikie gangs?

In 2013, the Queensland state parliament, under the leadership of Liberal National Premier Campbell Newman, introduced a range of laws referred to as the 'anti-association' laws. These were designed to reduce the power and amount of illegal activities undertaken by criminal gangs, including criminal motorcycle or 'bikie' gangs, in Queensland. For example, the *Tattoo Parlours Act* 2013, banned members or associates of a criminal organisation – including criminal bikie gangs – from owning, operating or working in a tattoo or 'body art' studio. Another law banned members of criminal bikie gangs, such as the Hells Angels and Comancheros, from entering licensed premises while wearing their gang or club 'uniforms'.

Perhaps the most controversial of the new laws was the *Criminal Law (Criminal Organisations Disruption) Amendment Act* 2013, which made it illegal, amongst other activities, for three or more members of a criminal gang to associate together in a public place.

In March 2014, lawyers representing a group of criminal bikie gangs lodged an application to the High Court to have the Queensland anti-association laws declared invalid. The lawyers claimed the laws were invalid because they breached the Australian

Constitution, by violating the basic right of all Australians – including bikies – to freedom of association. Or, in other words, the freedom to peacefully meet together in public to discuss and express their views. The challenge was ultimately rejected by the court.



Source 5 The introduction of anti-association laws in Queensland has prompted other states to consider and implement the same action.

Check your learning 12.3

Remember and understand

- Using examples to support your response, explain why the High Court might be needed to interpret the Australian Constitution.

Apply and analyse

- Explain what the following statement means: 'The High Court can help keep the Constitution relevant in a modern society'.
- Suggest two areas that have recently been created through the development of new technologies that would not have been envisaged in 1901 when the Australian Constitution was being drafted.

- Explain the importance of the following High Court cases:

- Australian Capital Television Pty Ltd v Commonwealth* (1992)
- British American Tobacco Australasia Limited v Commonwealth* (2012)

- State the name of two 'anti-association' laws introduced by the Queensland government in 2013 and explain what each of these laws banned.
 - Explain why the Queensland government introduced the anti-association laws.
 - Why were the anti-association laws challenged in the High Court?

12B rich task

Freedom of 'hate speech'

Over the years, the High Court of Australia has ruled that the Australian Constitution implies that Australians have the right to freedom of political communication (that is, the right to express their political views). But what exactly does this mean, and to what extent should people have the freedom to express their political views? For example, should an individual or group have the legal right to make public comments on political issues – for example, same-sex marriage, adoption, abortion, or euthanasia – that might be considered cruel or offensive? Or should our freedom to political communication be restricted?

Preaching in a public space

In February 2013, in the case of *Attorney-General for South Australia v Corporation of the City of Adelaide* – known as the Corneloup Case – the High Court caused controversy. It ruled a local council by-law banning two brothers from 'preaching in a public space without a permit' was legally valid and did not breach the implied constitutional right to political communication.

The contentious High Court case originated back in 2009, after Caleb and Samuel Corneloup were fined by the Adelaide Council, for breaching a council by-law that banned individuals and groups from 'preaching, canvassing or haranguing' in a public space without a permit. The Corneloup brothers regularly gave public addresses in the Adelaide CBD to 'preach the Gospel' and offer their views on a range of religious, social and political topics. These included pornography, abortion, teenage binge drinking and same-sex marriage. The brothers were fined after the Council received complaints from local traders that some of the opinions expressed by the brothers were disruptive, homophobic, racist and offensive.



Source 1 To what extent should people have the freedom to express their political views?

In 2010, the Corneloup brothers mounted a successful challenge against the Council's by-law in the South Australian District court. They claimed the law restricted their right to free speech, and was made beyond the Council's legal authority. In 2011, the Council lodged an appeal against this verdict. The Full Court of the Supreme Court of South Australia dismissed the appeal, claiming the by-law breached the implied constitutional right of the brothers to have freedom of political communication.

In 2013, however, the High Court reversed this decision and ruled the Council's by-law did not breach the implied right to political communication and was made within the Council's power to make by-laws for the good governance of the local area. The Council and various individuals who were adversely affected by the brothers' preaching obviously supported the verdict. Others, however, believe it sets a dangerous precedent – restricting the right to freedom of political communication by allowing local councils to suppress individuals expressing their opinions in public spaces.

skilldrill: Reasoning and interpretation

Creating a timeline

Timelines are an effective way to organise and present information and ideas so they may be more easily understood and evaluated. Constructing a timeline involves presenting information – such as key terms, events and concepts – in a logical chronological or sequential order to illustrate a sense of time and a common relationship. Displaying events and concepts in a sequential order helps develop a linear perspective, and can assist in the analysis and evaluation information and ideas.

To create a timeline, follow these steps:

- Step 1** Consider the length of time you want to represent on your timeline. You may want to show, for example, 1901 CE to 1999 CE.
- Step 2** Divide the timeline evenly into suitable blocks of time. For example, if you were illustrating the success of referendums since federation, you could prepare a timeline of the years since 1901, in 10-year intervals.

Step 3 After determining your time intervals, you need to accurately measure and mark the dates of your intervals.

Step 4 Mark specific events on the timeline, including their dates. Provide a brief description or explanation of the significant events you have entered.

Apply the skill

- Using the information provided, create a timeline of the Corneloup Case, *Attorney-General for South Australia v Corporation of the City of Adelaide and Ors HCA 3* [2013]. Your timeline should include the dates, and provide an accompanying explanation, of the significant stages of the case. It should cover the period from when the Corneloup brothers were alleged to have initially breached the Adelaide Council's by-law, to the final High Court of Australia decision.

Extend your understanding

- Explain whether or not you believe the High Court's decision effectively restricted the right of the Corneloup brothers, and all Australians, to freedom of political communication.
- Explain to what extent restrictions should be placed on individuals with respect to their right to express their views on controversial political issues in public spaces.