



AUSTRALIAN CONSTITUTION CENTRE

The rule of law in detail

The rule of law, on which our Constitution is based, restricts the powers of governments, corporations and individuals, and protects against the exercise of power without a lawful basis. In fact, covering clause 5 of our Constitution provides that the Constitution *"and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the courts, judges, and people of every State and of every part of the Commonwealth"*. It is a central idea in most modern democracies and dates back as least as far as the philosopher Aristotle, who famously expressed a preference for the "rule of law" rather than the "rule of men". It has been said that the law restrains and civilises power and is a safeguard, not a menace. Everyone is subject to and constrained by the law. Put simply, no-one is above or beyond the law. It is not about law and order, or rule by lawyers.

What is the rule of law?

At its most basic, the rule of law refers to the idea that every person is subject to the laws of the land regardless of their status. It also refers to the idea that you cannot be punished or have your rights affected other than in accordance with a law, and only after a breach of the law has been established in a court of law. But, it can mean much more. It can reflect both reality and what we aspire to. It can refer to the Separation of Powers between the Parliament, the Government and the Courts, the idea that courts should be separate and independent from government. It can mean that the law should be capable of being known by anyone and that you cannot be punished for something you do unless at the time you do it, it was against the law. It can refer to the idea that everyone is entitled to a fair trial. It can refer to the presumption of innocence and that people should have a right to confidential communications with their lawyers. It can refer to the idea that you should have the right to challenge the lawfulness of Government actions in the courts if you are directly affected by them. It can mean that Government Ministers do not

have the power to relax the criminal law. The Commonwealth Parliament cannot be the judge of the extent of its own power. It means that the law must be accessible and so far as possible intelligible, clear and predictable and there must be means for resolving legal disputes without prohibitive cost or lengthy delay.

Closely related to the rule of law is the concept of the principle of legality. Basically, this means that when Courts come to interpret a law passed by Parliament, it will interpret the law in such a way as to be consistent with fundamental rights unless Parliament makes it very clear that they intend to affect those rights. What are those fundamental rights? They include the right to have done to your body only things you consent to, the right not to have your freedom of movement restrained other than with lawful authority, the right to peaceful enjoyment of your property, the right not to be forced to incriminate yourself, the right of access to the courts, the right not to be deprived of your property without compensation, and freedom of speech and association.

Why is it important?

The principle of the rule of law gives us a predictable and ordered society. Every person, regardless of who they are, is subject to the same law and has access to the courts. The rule of law promotes justice and individual freedom. It provides a shield against the arbitrary exercise of power. It ensures that those who judge whether something is legal or illegal are independent of the people and institutions whose actions are being challenged. It is central to our democracy and fundamental to our Constitution.



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Questions:

1. What is the rule of law?
2. How does the rule of law protect the Australian people?
3. Why do you think everyone deserves a fair trial?

