



AUSTRALIAN CONSTITUTION CENTRE

Rights

The world has changed significantly since the Constitution was written. Rights are now at the forefront of the minds of many. However, the Australian Constitution contains very few written rights. It was a deliberate decision of the authors of our Constitution to trust the democratic process to protect rights. However, in the Constitution, you'll find property rights, the right to a trial by jury, the right to be treated equally by each State and religious freedoms. On top of that, through decisions the High Court has made we have an implied right to vote and an implied right to political communication. Our Constitutional rights include:

- Section 51(xxxi) the acquisition by the Commonwealth of property on just terms
- Section 75(v) which allows officers of the Commonwealth, including government Ministers, to have their actions challenged if they are unlawful
- Section 80 the right to a trial by jury for serious Commonwealth offences
- Section 92 free trade and commerce
- Section 116 religious freedom
- Section 117 equality of treatment in each state

In interpreting the Constitution, the High Court has found that certain democratic rights of freedom, political communication and certain voting rights are implied. However, these rights are more limited than they seem. If you are a prisoner in jail for more than a certain number of years, you cannot vote. The States do not have to comply with Section 51(xxxi). Some trials in State courts do not have a jury. Religious freedoms are limited under the Constitution, and the Parliament can introduce legislation for another purpose which has the effect of restricting religious rights. Students from one State may not be able to take advantage of student priced tickets on public transport in another State, meaning they are treated unequally by that State. And if a law infringes on the implied right to political communication, but that is not the purpose of the law, then it may

probably stand. An individual's rights under the Constitution often must be balanced with the protection of the whole community.

There other ways in which rights are protected by the Constitution. Under the Australian Constitution we have the right to be protected from our country becoming a dictatorship. One way we are protected is that only the courts can exercise Judicial power. The Government cannot lock up their opposition and throw away the key. This is what we call the Separation of Powers. If someone is especially affected by a law of Parliament, they can go to the High Court to challenge its constitutional validity. When Courts interpret the laws passed by parliaments, they start with the assumption that unless Parliament is very clear, it does not intend to interfere with fundamental rights.

Of course, Parliaments around the country have passed many laws which can protect people's rights, such as can be found in anti-discrimination legislation.

But individual rights also have to be balanced against community needs, and with rights come responsibilities. Those responsibilities might not be found in the Constitution, but they are part of our law and culture – things like the obligation to vote, the importance of being informed about what is happening in the community, obeying the law, and important values like respect and tolerance.



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Questions:

1. Why did the writers of the Australian Constitution not include a lot of written rights?
2. How does the High court of Australia protect our rights?
3. How do parliaments protect our rights?

