

What is a Constitution and Why is it Binding? (Student Resource)

A Constitution is the ultimate rule book. It gives power and places limits on that power. That's what makes Constitutions so interesting – they are all about power.

What bodies have a Constitution?

Many organisations have a Constitution. A tennis club or a student representative council may have a Constitution. It will usually create the organisation and set out the main office holders (such as a President, a Treasurer and a Secretary). It might also establish a governing body (such as a committee). It will say what powers they have, what their role is, and what checks there are on their powers (eg whether the members of the group can vote to override the actions of the office-holders).

The Constitution sets out the rules for the organisation, how they are enforced and how they can change. For example, it could say how meetings are called, how many meetings must be held in a year, how votes are taken in a meeting and how many people must attend the meeting for it to count. Most importantly, a Constitution should say how the rules, including the Constitution itself, can be changed. This might require a vote of all members or maybe the committee can change some rules on its own.

What about the Constitution of a country?

In many countries great respect is paid to the Constitution. Why is it so special? It is the top law in the country, because it is the one from which all other laws gain their authority. This is because the Constitution creates the bodies that make laws and gives them the power to do so.

So what will you find in the Constitution of a

country? The key thing it does is establish the main institutions to govern the country. Usually there are at least three. First, there is a legislature (or 'Parliament') to enact the laws. Second, there is an Executive Government to decide on policies, spend government money and run the country. Third, there is a Supreme or High Court that interprets and applies the law, decides on the constitutionality of laws and hears appeals.

The reason for separating power into these three different branches is to ensure no one gets all the power and becomes dictator. Each branch can act as a check on the others so that they don't get out of control.

The Constitution generally says who gets to be members of these bodies and how. For example, it might say that the Parliament is made up of two Houses of members who are elected by the people or chosen in some other way. It might say that members of the Executive Government must be elected representatives in Parliament, or separately elected or even nominated by a monarch or an elected President. It might say that judges are chosen by the Executive Government, but are then independent and can only be removed by Parliament. In practice, the technical details about how these people are chosen or elected are usually set out in separate laws, made by the Parliament. But these laws, as with all laws, have to comply with the basic rules set out in the Constitution.

Once the Constitution establishes the different branches, it then gives them powers, and puts limits on those powers and how they can be exercised. It also sets out how the branches work with each other, and what their relationship is with the people.

Money is another really important aspect of governing, because you can't get anything done unless you have money to pay for it. So a Constitution usually has sections that deal with

raising money (eg taxes) and also who can spend the money that has been collected. It might also deal with business matters, such as trade.

Rights and freedoms are things we expect to find in Constitutions. Most of us have heard of the US Bill of Rights, including the first amendment right of free speech and 'taking the 5th', which means exercising a right against self-incrimination. Most Constitutions contain a 'bill of rights'. This protects the people from the actions of the branches of government (such as laws that might take freedoms away). Australia's Constitution is rather unusual because it doesn't have many rights set out in it. The people who wrote the Constitution did not think it necessary, as the people, Parliament and the courts could be trusted to protect rights.

A Constitution also needs a rule that says how the Constitution can be changed in the future. The Commonwealth Constitution uses a referendum, but Constitutions in other countries can be changed by Parliament, with special voting majorities, or by elected constitutional conventions or other methods.

Why is a Constitution binding?

What gives a Constitution its force? Constitutions can be imposed by a conqueror, after a war, or by a coloniser, or by whoever has effective control over a territory. Most commonly these days, a Constitution is adopted by the people of the territory, by way of a referendum or a body that represents them, such as a convention or constituent assembly.

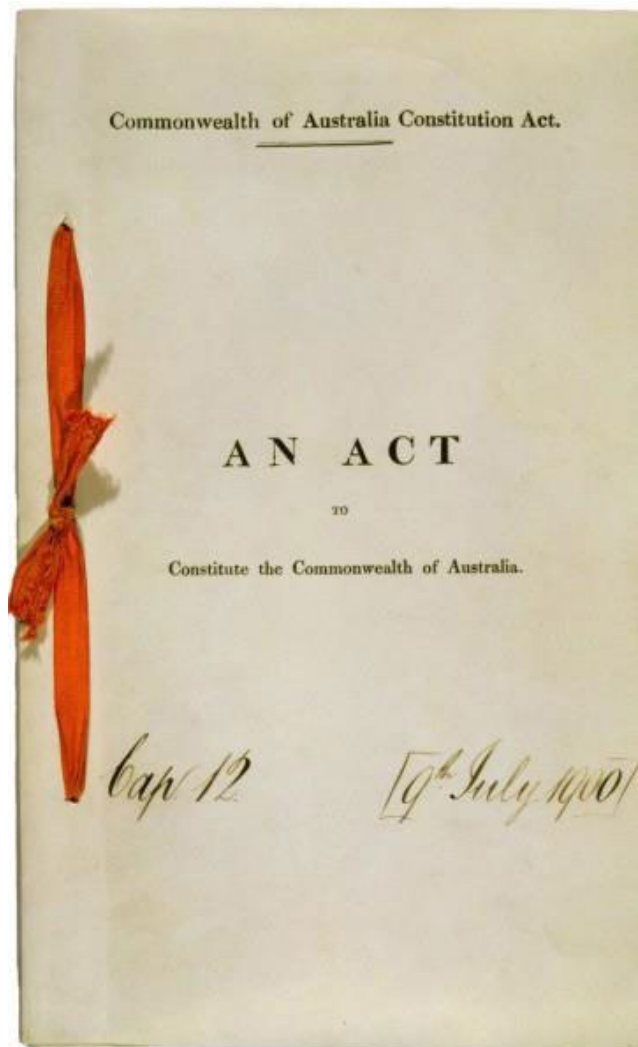
A Constitution gets its ongoing power and legitimacy from the fact that the people support it and are willing to obey it. While people may be unhappy about some aspects of a Constitution, they generally support its existence and its rule over them, because they feel safer and are more prosperous in a rule-based society.

When a majority of the people no longer support a Constitution, it may be amended (ie changed), replaced or even overturned in a revolution. One study has shown that more than half of all Constitutions have been replaced or overturned by the time they turn 18 years old. Only about 19% of Constitutions reach 50 years of age.

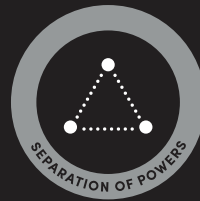
Australia's Constitution at the federal level came into being on 1 January 1901, making it quite elderly. While it was written in Australia, and approved by the people of each of the Australian colonies in a referendum, it was given effect in the United

Kingdom as section 9 of a British Act of Parliament, the Commonwealth of Australia Constitution Act 1900. This was because Australia was a colony in the British Empire and Britain still ruled Australia. So the original source of the Constitution's power was Britain's Imperial power over Australia.

But over time, that British power was given up and Australia became independent while keeping the same Constitution. The High Court of Australia now says that the basis for the Australian Constitution is 'popular sovereignty'. This means that the people rule, and the Constitution is binding because the people accept it, obey it and have chosen not to change it.



Commonwealth of Australia
Constitution Act 1900 (UK)
Source: National Archives of Australia



What is a Constitution and Why is it Binding? (Teacher Resource)

A Constitution is the source of ultimate authority in a society. It confers power, limits that power and controls how other rules are made.

What bodies have a Constitution?

Many ordinary community groups have a Constitution, from sporting clubs to corporations. Most Constitutions cover the same types of matters. They usually constitute the organisation, by establishing it, and detail its membership (eg how a person becomes a member and ceases to be a member). They set out the main office holders (such as a President, a Treasurer and a Secretary) and how they are elected or chosen. Sometimes they establish a governing body (such as a committee or board) which runs the organisation.

The Constitution will normally set out the objects of the organisation. It will explain the functions, roles and powers of the various officers and any governing committee. It will impose limits on those powers and may set out disciplinary procedures for breaches of the rules.

A Constitution will normally also set out the rules for running the organisation, how those rules are enforced and how they can be changed. For example, it could say how meetings are called, how many meetings must be held in a year, how votes are taken in a meeting and the quorum (ie the minimum number of members) needed for a valid meeting. It is likely to detail who chairs the meeting, what records are kept and how money is collected, spent and accounted for.

Most importantly, a Constitution should say how the rules, including the Constitution itself, can be changed. This might require a vote of all members. In some cases the committee or board may be empowered to make changes. Most States have model Constitutions for clubs that are incorporated associations – but they tend to be quite

complicated and legalistic, so are not really suitable for use by students.

Constitutions of nations and subnational states

In many countries, especially the United States of America, great respect is paid to the Constitution. This is often because it is the founding document of a nation. Some Constitutions also set out the history and values of the nation in their preamble, giving citizens an emotional and nationalistic attachment to the Constitution. Poetic words and soaring rhetoric can be used to bring people together under a Constitution, especially in the wake of a war or a revolution.

But Constitutions are more about the nuts and bolts of running a country, than inspiration and rhetoric. The key thing Constitutions do is establish the main institutions to govern the country. Usually there are at least three. First, there is a legislature to enact the laws. Second, there is an Executive Government to decide on policies, spend government money and run the country. Third, there is a Supreme or High Court that interprets and applies the law, decides on the constitutionality of laws and hears appeals. Sometimes, in more modern Constitutions, there is a fourth branch, known as the accountability branch. It includes bodies such as an anticorruption commission, an Ombudsman, an Auditor-General and other bodies that keep a check on the exercise of official power.

Constitutions usually separate powers amongst these branches to ensure that all power is not concentrated in one set of hands. Each of the three main branches can act as a check on the others so that they don't get out of control. This can be supported by the fourth branch with its accountability bodies.

The Constitution will ordinarily set out the basic rules for determining how people become members of these bodies. For example, it might say that the legislature, which we call 'Parliament', is comprised of two Houses, each of which has members who are elected by the people or chosen in some other way. It might say that the Executive Government is drawn from the elected representatives in Parliament (if it is a system of responsible government), or it might be separately elected or even nominated by a monarch or elected President (in a Presidential system of Government, like in the United States). It might say that judges are chosen by the Executive Government, but are then independent and can only be removed after a vote of both Houses of Parliament. The technical details about elections and how judges are chosen are usually set out in separate laws, enacted by the Parliament. But these laws, as with all laws, must comply with the basic rules set out in the Constitution.

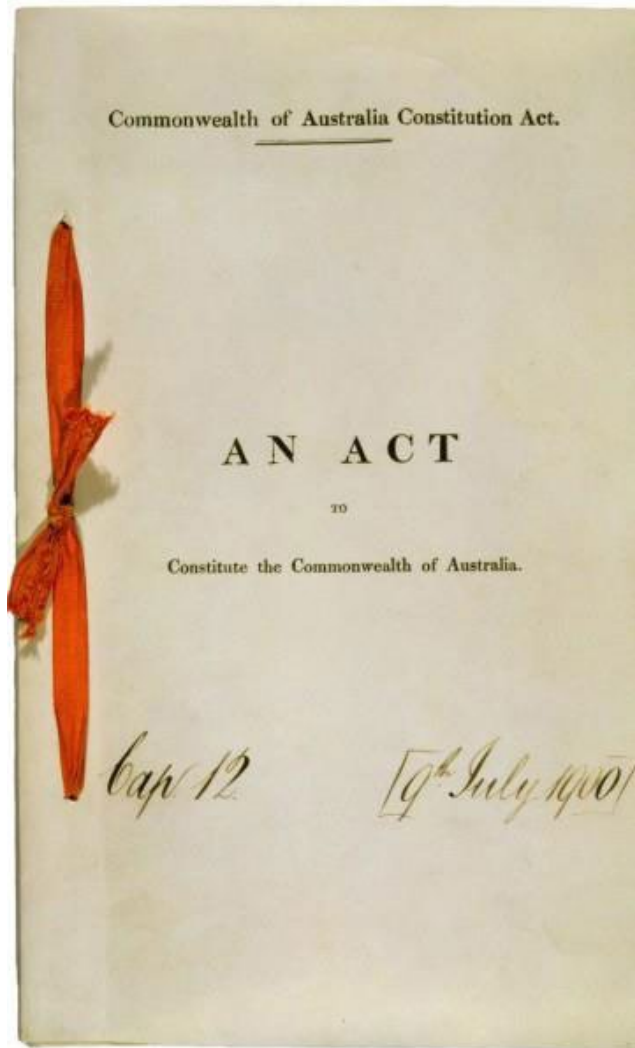
Once the Constitution establishes the different branches, it then confers powers on them, and limits the extent of those powers and how they can be exercised. In a federal system, it will distribute those powers between the different levels of government. The Constitution will also ordinarily deal with how the various branches interact with each other, and what their relationship is with the people.

A Constitution will usually contain detailed measures about government finances. It will address the power to impose taxes, what happens to all money received by the government (eg placing it into a consolidated fund) and how money is then paid out of that fund for particular purposes (i.e. the appropriation of the money) and then spent. Constitutions also often deal with commercial and economic matters such as trade and commerce.

Most Constitutions contain some kind of statement of rights and freedoms, often in the form of a bill of rights. Students will often be familiar with aspects of the US Bill of Rights, including the right to freedom of speech, the right to bear arms, the right against self-incrimination, the right to due process and equality before the law. Australia's Constitution is unusual in having very few rights in it. The framers of the Commonwealth Constitution were conscious of the US Bill of Rights, and there were debates about including some aspects of it, but in the end very little of it survived in the final draft of the Commonwealth Constitution. They thought that rights were adequately protected by the common law and that Parliaments could be trusted not to detract from them.

A Constitution also needs a rule that says how the Constitution can be changed in the future. In Australia, we use a referendum at the national level to change the Constitution, but in other places it can be changed by the legislature, usually with

special majorities voting in favour of change, or by elected constitutional conventions or other methods.



Commonwealth of Australia
Constitution Act 1900 (UK)
Source: National Archives of Australia

The Australian States each have their own Constitution. These Constitutions were originally enacted well before the Commonwealth Constitution. Most were first passed in the 1850s, but have been re-enacted since and therefore have a new date. The New South Wales Constitution, for example, was first enacted in 1855 and then re-enacted after federation in 1902. It is known as the Constitution Act 1902 (NSW). It provides for the existence of the NSW Parliament and the NSW Executive Government, and protects the independence of judges. It also recognises the existence of a system of local government. Parts of the NSW Constitution can be amended by an ordinary Act of Parliament, but other parts require the approval of the NSW people in a referendum.

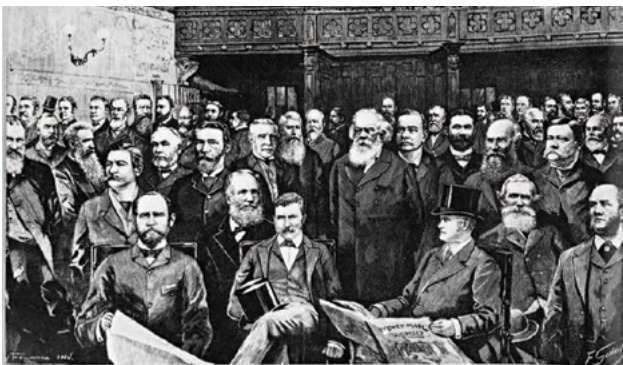
Why is a Constitution binding?

What gives a Constitution its force? Constitutions can be imposed by a conqueror, after a war, or by a coloniser, or by whoever has effective control over a territory. Most commonly these days, a Constitution is adopted by the people of a geographical territory, by way of a referendum or by a body that represents them, such as a convention or constituent assembly.

For example, after the end of apartheid, South Africa adopted a new Constitution. It was negotiated in a multi-party process which agreed on the constitutional principles. It was then formally written and adopted by an elected Constitutional Assembly. The third step was certification by the Constitutional Court that the final version of the Constitution was consistent with the constitutional principles that had earlier been agreed upon. This failed the first time, but after the draft Constitution was amended, the Constitutional Court certified it the second time, in 1996.

A Constitution finds its ongoing power and legitimacy in the fact that the people support it and are willing to obey it. While people may be unhappy about some aspects of a Constitution, they generally support its existence and its rule over them, because they feel safer and are more prosperous in a rule-based society. Sometimes this is described as a 'social contract'.

When a majority of the people no longer support a Constitution, it may be amended, replaced or even overturned in a revolution. Ginsburg, Elkins and Melton have written about 'The Lifespan of Written Constitutions'. They noted that change is often due to shocks and crises, such as war, the merging or secession of states, regime change and institutional crises. More adaptable Constitutions tend to survive longer. More than half of all Constitutions have been replaced or overturned by the time they turn 18 years old. Only about 19% of Constitutions reach 50 years of age. Australia's Constitution is quite elderly, having survived well over a century, and is showing no sign of imminent death.



Delegates to the 1891 Federation Convention in Sydney
Source: National Archives of Australia

While Australia's Constitution is one of the oldest written Constitutions in the world, some countries, like the United Kingdom and New Zealand, don't have a formalised written Constitution, as such and are therefore not counted. They have a collection of statutes which have 'constitutional' status, because they do constitutional types of things, such as establishing the institutions of government, conferring and limiting powers and conferring and protecting individual rights and freedoms.

Australia's Constitution at the federal level came into being on 1 January 1901. While it was written in Australia, and approved by the people of each of the Australian colonies in a referendum, it was enacted in the United Kingdom as section 9 of a British Act of Parliament, the Commonwealth of Australia Constitution Act 1900. This was because Australia was a colony in the British Empire and Britain still ruled as the colonising power. So the original source of its power was Britain's Imperial power over Australia.

But over time, that British power was given up and Australia became independent while keeping the same Constitution. The High Court of Australia now says that the basis for the Australian Constitution is 'popular sovereignty'. This means that the people rule, and the Constitution is binding because the people accept it, obey it and have chosen not to change it. Full power is in Australian hands to replace the Constitution with a new one, or to make amendments to it to change the system of government (see the 1999 republic referendum).

Constitutional 'borrowing' from other nations

Many Constitutions copy provisions from other older Constitutions. Normally it is considered to be 'plagiarism' and wrong to copy the work of others – but there is a good reason to do it when writing a Constitution. This is because you want to see how particular phrases or sections have operated in practice and how courts have interpreted them elsewhere. Did a provision cause any problems? Did it fail, when tested, to deal with important matters?

If you are doing something as important as making a Constitution for a country, you want to avoid mistakes. You also want to give your own courts some guidance as to how words and phrases should be interpreted. So if there is already jurisprudence, from a respected court of another country, which deals with the same phrase, then that is likely to influence courts in your country dealing with the new constitutional provision. This gives it some stability and certainty about how it is likely to be interpreted.

United States influence

Some sections of the Commonwealth Constitution were copied from parts of the United States Constitution. The framers of the Commonwealth Constitution relied upon how the US Supreme Court had interpreted those sections, thinking that this would provide guidance to the new High Court, rather than starting from scratch. For the first couple of decades, US Supreme Court decisions were influential in Australia, especially in the interpretation of provisions dealing with federalism. That influence began to disappear as Australian courts built up their own law on the interpretation of the Constitution.

Many other parts of the Commonwealth Constitution came from provisions in the Constitutions of the Australian colonies, and had already been interpreted by courts in Australia. Some could also be traced back to provisions in British legislation, and had been interpreted by British courts. Most Constitutions draw on a range of sources.

Writing a constitution today

These days it is much easier to access Constitutions of other countries. This is because there are now databases with English translations of Constitutions from around the world. One of these is 'Constitute'. On this web-site, different types of provisions are categorised, so you can compare them from Constitutions across the world. For example, you can click on a heading to find the constitutional amendment procedure in every Constitution, and scroll through them until you find the one you like best. This allows you to build your own Constitution. Students have previously used this site to write their own Constitution for Mars or for a mythical island.

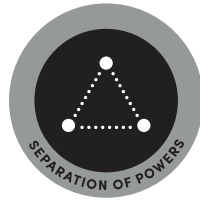


Topic 6.2: Lesson/ Activities One



AUSTRALIAN
CONSTITUTION
CENTRE

Introduction to Writing Your Own Constitution



Time/Lesson	Learning Goal
<ul style="list-style-type: none">1 hour	<ul style="list-style-type: none">Students understand what a Constitution is for and what should be included in it.

Teacher Reference Document:

TRD 49: What is a Constitution and Why is it Binding? (Student Resource)

TRD 50: What is a Constitution and Why is it Binding? (Teacher Resource)

This is the only lesson/activities where students integrate all six principles that underlie the Australian Constitution:

- Democracy
- The rule of law
- Separation of powers
- Federalism
- Nationhood
- Rights

Teacher Instruction

Lesson outlines and guiding questions:

- Teacher chooses from amongst the following three scenarios for students to write a Constitution or describe what should be included in it.
- It is 2050 and planet earth is becoming uninhabitable. Children in the class are leaving earth on board a spaceship. They have to write a Constitution on how they will be governed both on their journey and on the new planet or space station where they are going to start their new lives. What should they include?
- What sort of things should be included in a Constitution for your student representative body or your local sports club? How do you make the body accountable? How do you make sure it runs efficiently and fairly? Who should be given power and how? What powers should they be given? What limits should be placed on their power? How can the Constitution be changed or replaced if you don't like how it is operating? Students could be asked to prepare a set of rules or 'Constitution' for that body or describe what types of rules should be included.
- Prepare a Constitution for a fictional world with which you are familiar from popular culture or from reading a class text. It could be a Constitution for the Galactic Republic in Star Wars. It could be a Constitution for Harry Potter's world of witchcraft and wizardry, which confers power on the Ministry of Magic, declares the rights of muggles, witches, wizards and squibs, and protects against the dark arts. It could be a federal Constitution to bring together the 13 districts of Panem after the fall of President Snow and the revolution led by Katniss Everdeen in Suzanne Collins' The Hunger Games. What provisions would it include to stop a dictator taking control again? What rights would it give adults and children? How would the 'Peacekeepers' be controlled?
- Extension Activities:
 - Imagine an alien has come to earth and wants to understand how earthlings govern themselves. Ask students to explain this to the alien by writing a one-page summary of how the Australian Constitution establishes the system of government. This should include the federal system, which distributes power between the Commonwealth and the States, the separation of powers, which separates power amongst the legislative, executive and judicial arms of government, and the application of the rule of law.
 - Age of the Constitution: Australia's Constitution is quite old. Most Constitutions have been replaced before they turn 18 years old. Ask students why they think the Commonwealth Constitution has lasted for so long. Is it just because it is hard to change, or is it a good rule book? Find a list of the age of different Constitutions and play a guessing game about which countries have the oldest constitutions. Try to think of reasons why some countries have changed Constitutions a lot, while other countries have kept the same Constitution for over 100 years. What do the countries with the oldest constitutions have in common? A lot of countries with new Constitutions have had revolutions. What type of governments tend to avoid revolutions?
 - Students discuss the 2023 proposed amendment to the Constitution to recognize Aboriginal and Torres Strait Islander peoples in the Constitution and provide a means for their voices to be heard by Parliament and the Government by establishing a body called a Voice. Students could be asked to analyse the different arguments being made for and against the proposed constitutional amendment and the techniques used by each side to influence voters. Students could be asked to consider the influence of social media upon this referendum and what risks and benefits it could provide.

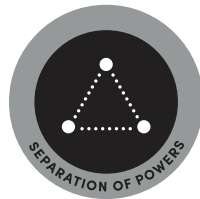


Topic 6.2: Lesson/ Activities Two



AUSTRALIAN
CONSTITUTION
CENTRE

What would you do if you had to write a new Constitution for a new colony?



Time/Lesson

- 1 hour

Learning Goal

Having been introduced to basic concept of a Constitution, students demonstrate an understanding of Constitutions, rules and laws through an interactive learning resource, that puts the students in the role of establishing their own colony.

Rationale

To demonstrate an understanding of colonisation, establishment of a Constitution and the problems associated with ensuring a fair and equitable society.

Assumed Prior Learning

Students' understanding of general rules and laws observed by themselves, family members and people they know. Prior knowledge about the Constitution, levels of government and the history of colonisation.

Success Criteria

Students can demonstrate, through an interactive learning tool, how a planet could be colonised, creating a fair and equitable society for all. Students justify their thinking through a short presentation of their work.

Resources

- Smartboard with access to PowerPoint to guide discussions
- Whiteboard, Whiteboard markers
- Talking ball/talking stick
- Access to Interactive learning tool
- Access to computers/iPads

Teaching Reference Document

- TRD 49: What is a Constitution and why is it binding? Student
- TRD 50: What is a Constitution and why is it binding? Teacher

Tuning In

Activate Prior Knowledge

- Teacher revisits previous lessons, by referring back to display of 'thoughts' around rules and laws, and the 'big juicy questions' they have posed about rules and laws. Students can refer to the words on the classroom word wall.
- Teacher revises the introduction lessons on the Australian Constitution.
- Teacher displays the question 'What would you need to do, to establish a new colony?'

Teacher Instruction

- Students will be demonstrating what they know from the topic.
- Teacher explains to the students that the students are going to colonise a new planet that has been found, using an interactive learning tool. (Resource 2)
- Teacher displays and talks through the learning resource with the class, explaining to them that they will be able to:
 - Choose a character (eg a Governor, a citizen and a convict) based on their 'story.'
 - Arrive at their new planet and walk around the planet (using a map), looking for key information that will help them to colonise their new planet (students will be able to explore the terrain, meet aliens that are already inhabitants of the planet, meet the other characters in the colony, find the resources they have).
 - Begin to build the colony (students can add houses out of the resources they have, roads, organise transport, plant produce etc).
 - Solve some problems that begin to arise (like speeding, stealing of food, animals going wild etc).
 - Begin to establish levels of Government that are fair and equitable for all.
 - Establish a Constitution for the new Colony using drag and click options.

Group Independent Learning

- Students work through the interactive learning tool, teacher allows plenty of time to complete this task, and makes observations about student choices.
- At the end of the learning tool, students are encouraged to either email their responses to the teacher, or print them for their own or their teacher's observations.
- Students present their Colony to either the whole class, or to a small group.

Wrapping It Up

- Teacher displays an image of the Constitution of Australia. Teacher reminds the students that this is 'Our Nation's Rule Book.'
- Students sit in a circle, and using a talking ball/stick, spend time answering the question 'I believe it is important to have a Constitution because...'

Differentiation

Support

Students who have difficulty with reading when using the online learning tool will be able to use the audio prompts to help step through the activity.

Extension

Students could create a picture book that tells the story of Colonisation on a new planet, using their Online Learning Tool as a basis for their story.

Assessment Strategies

Teacher can use observations from the students' Interactive Learning Tool, as well as their presentation about their new Colony, to make judgements about students' learning throughout the series of lessons (Teacher #1 and 2 Resource) 6.2: Lesson 2.



What would you
need to do, to establish
a new Colony?

Interactive Learning Tool

Establishing a New Colony

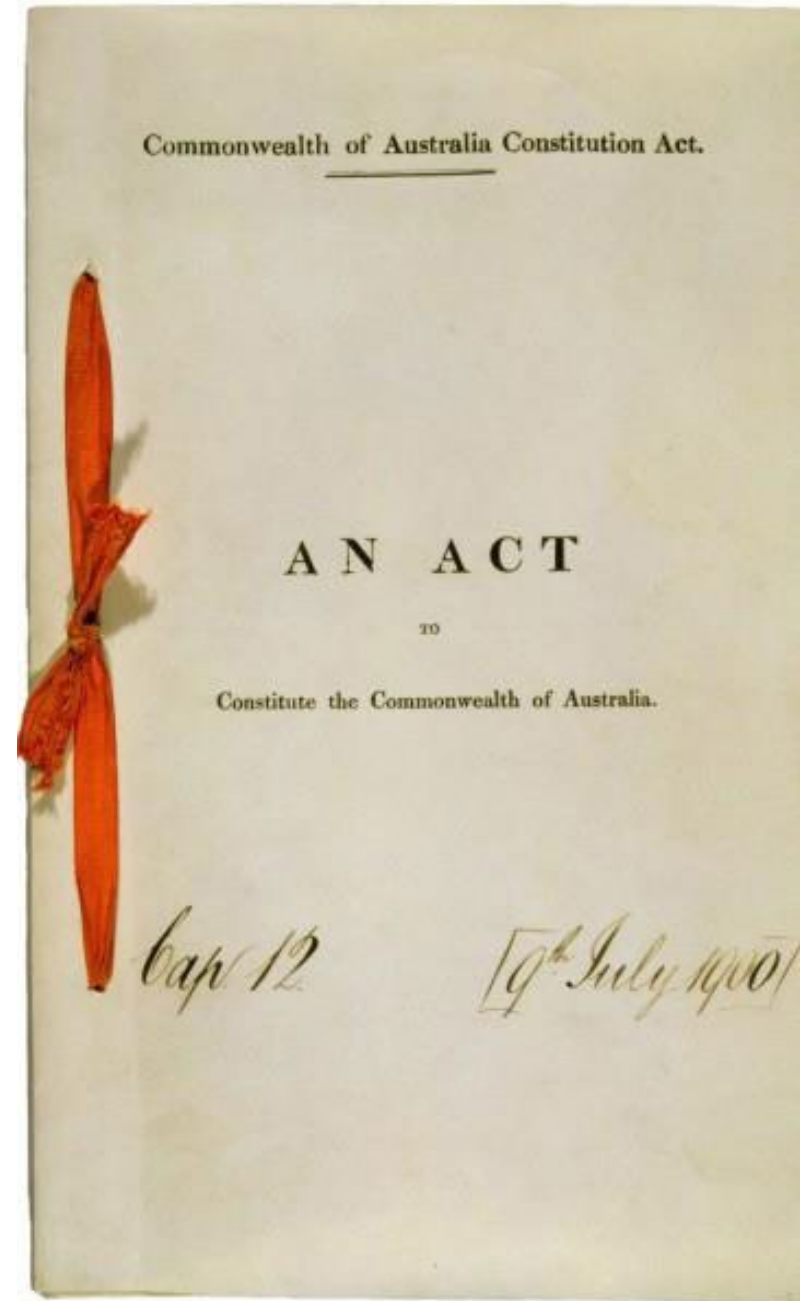
Our Nation's Rule Book

I think it is important

to have a

Constitution

because...



HASS Skills Rubric Teacher Resource #1: Topic 6.2: Lesson 2

		A	B	C	D	E
Questioning	Pose questions to investigate people, events, places and issues (ACHASSI073 - Scootle)					
Researching	Locate and collect information and data from different sources, including observations (ACHASSI074 - Scootle) Record, sort and represent data and the location of places and their characteristics in different formats, including simple graphs, tables and maps, using discipline-appropriate conventions (ACHASSI075 - Scootle) Sequence information about people’s lives and events (ACHASSI076 - Scootle)					
Analyzing	Examine information to identify different points of view and distinguish facts from opinions (ACHASSI077 - Scootle) Interpret data and information displayed in different formats, to identify and describe distributions and simple patterns (ACHASSI078 - Scootle)					
Evaluating and reflecting	Draw simple conclusions based on analysis of information and data (ACHASSI079 - Scootle) Interact with others with respect to share points of view (ACHASSI080 - Scootle) Reflect on learning to propose actions in response to an issue or challenge and consider possible effects of proposed actions (ACHASSI081 - Scootle)					
Communicating	Present ideas, findings and conclusions in texts and modes that incorporate digital and nondigital representations and discipline- specific terms (ACHASSI082 - Scootle)					

Establishing a New Colony Teacher Resource #2: Topic 6.2 Lesson 2

		A	B	C	D	E
Civics and Citizenship	<p>The roles of local government and local citizens, including those related to sustainable choices around resources in areas such as waste management, land use and environmental protection of local places (AC9HS4K08)</p> <p>The differences between 'rules' and 'laws', why laws are important and how they affect the lives of people (AC9HS4K09) the diversity of cultural, religious and/or social groups to which they and others in the community belong and their importance to identity (AC9HS4K10)</p>					
History	<p>The causes for the establishment of the first British colony in Australia in 1788 (AC9HS4K03)</p> <p>The significant events and experiences of groups and individuals on the journey of the First Fleet and following their arrival (AC9HS4K04)</p> <p>The effects of contact with other people on First Nations People of Australia and Places, following the arrival of the First Fleet and how this was perceived by the First Nations Australians as an invasion (AC9HS4K05)</p>					
Geography	<p>The custodial responsibility First Nations People of Australia have for Country/Place, and how this influences views about sustainable resource allocation and development strategies (AC9HS4K07)</p>					
English	<p>Listen for key points and information and contribute to discussions, acknowledging another's perspective, linking their response to the topic and sharing and extending ideas, speaking in a clear coherent manner (AC9E4LY02)</p> <p>plan, create, rehearse and deliver a range of structured and coherent oral and/or multimodal presentations for different audiences and purposes, with integrated learned content, and a range of vocal effects for clarity (AC9E4LY07)</p>					