



Teacher Reference Document 54



AUSTRALIAN
CONSTITUTION
CENTRE

Unit 6: The Constitution, Federalism and Westminster System – Year 6 -
Civics and Citizenship (C & C) Strand: Government & Democracy

Topic 6.2: Introducing different elements in the Australian Constitution,
Westminster influences, and the covering clauses and Preamble.

What is the significance of the Preamble to the Constitution Act?

Australia's Constitution is formally contained in section 9 of a British Act of Parliament – the [Commonwealth of Australia Constitution Act 1900](#). The reason was to give it a status above that of an ordinary statute of the Commonwealth Parliament, and to prevent it being changed except by a special method – the approval of the people in a referendum. This Act (rather than the Constitution itself, which sits in section 9) contains a 'preamble'. What is its purpose, how is it used and should it be changed?

What is a preamble?

A preamble is an introductory statement at the beginning of a statute (i.e. a law passed by Parliament) which usually explains its background, why the law came into being and what are its purpose and aims. In a Constitution, it sometimes sets out the principles upon which a Constitution is based or the hopes of the new country.

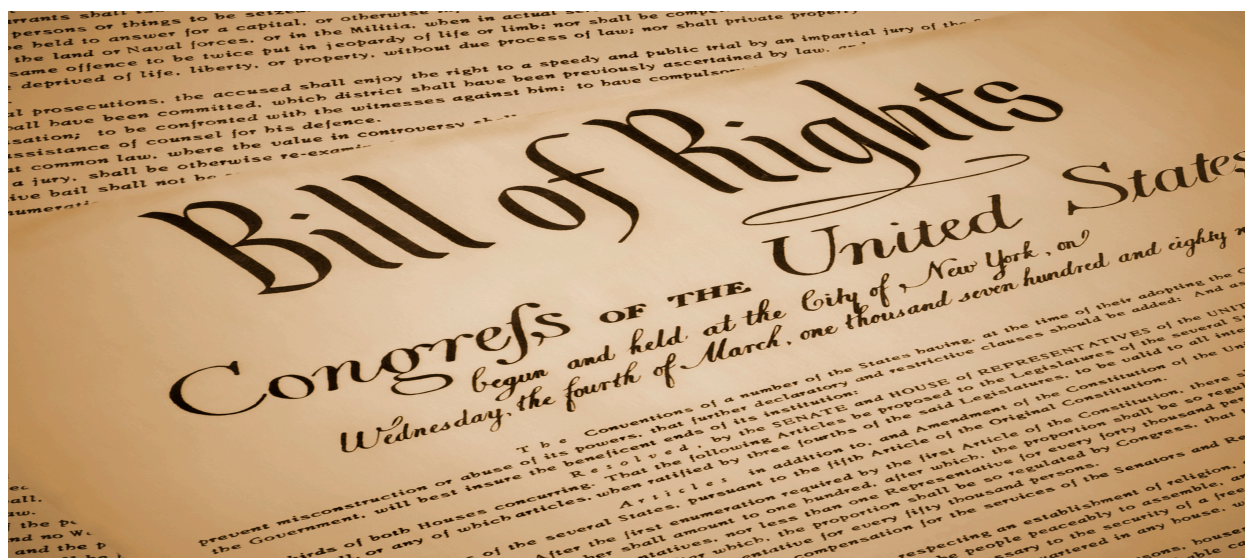
For example, the preamble to the United States Constitution sets out a list of aspirations, such as establishing justice, insuring domestic tranquility, providing for the common defence, promoting the general welfare and securing the blessings of liberty.

What is in the preamble to the Constitution Act?

The [preamble](#) to the Commonwealth of Australia Constitution Act is much more restrained. The main part of it says:

"Whereas the people of New South Wales, Victoria, South Australia, Queensland and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established:

And whereas it is expedient to provide for the admission into the Commonwealth of other Australasian Colonies and possessions of the Queen:"



United States Bill of Rights
Source: IStock



Preamble to the Australian Constitution
Source: Wiki Commons

This preamble tells us a few important things. First, it sets out some history. It tells us there were pre-existing political communities that were colonies of the Queen, which came together voluntarily to form a federation under a Constitution. It names those colonies, but misses out Western Australia, because it had not yet agreed to join at the time the Act was passed in July 1900. It recognises that others might join in the future, and it extends this to 'Australasian Colonies and possessions of the Queen', which could include New Zealand or Fiji or other islands in the Pacific under British Imperial power.

Second, it declares that the federation came about because of the agreement of the people of the various colonies. That agreement was shown by their approval in referendums. This provides a basis for a theory of 'popular sovereignty' – that the ultimate force behind the Constitution is the will of the people. This is a theory the High Court relies on today.

Third, it tells us that this federation is 'under the Crown of the United Kingdom of Great Britain and Ireland'. That is an historical statement, as there is no longer a Crown in that form, as much of 'Ireland' is no longer under the Crown. But it was also a political statement, as it placed the Commonwealth 'under' the British Crown. This raises questions of how to deal with the preamble if Australia becomes a republic.

Fourth, it refers to uniting 'in one indissoluble Federal Commonwealth'. This was included to deal with the issue of 'secession' (i.e. a State seeking to leave the Commonwealth, as [Western Australia](#) sought unsuccessfully to do in 1933).

The word 'indissoluble' was included in response to the horrors of the American Civil War, which was still within living memory at the time the Constitution was drafted. The framers of the Constitution wanted to make clear that secession was not an option – federation was a deal that once entered was intended to continue forever.

Fifth, it refers to 'humbly relying on the blessing of Almighty God'. The framers of the Constitution had not wanted to include this. It was put there reluctantly as a result of public petitions. It was clear, however, that the 'God' referred to was not intended to be an exclusively Christian one. It was intended to be inclusive of all religions, including Islam, Judaism and Hinduism.

What is the purpose of the preamble and how can it be used?

A preamble can be used to explain, to educate and to inspire. It may have a symbolic role or simply be a factual statement of history.

Where preambles become controversial is in their use by courts. There is a principle of statutory interpretation that where the provisions of a statute or Constitution are ambiguous (i.e. they could be interpreted in a number of different ways), a court can look at the preamble to clarify how the provisions should be interpreted. A preamble is treated as the 'key to open the minds of the makers of the Act' and the problems they intended to resolve. But if the words of the statute or Constitution are plain and clear, they should be applied without consideration of the preamble.



*Prime Minister, John Howard, proposed a referendum to insert a preamble in the Constitution in 1999, but it failed.
Source: Wiki Commons*

In some countries the preamble has been used by the courts to establish implied rights or to impose limitations on the way constitutional provisions are interpreted. In Canada, for example, the preamble has been used to give effect to parliamentary privilege and the principle of judicial independence, striking down the validity of laws that breach these principles. While so far the courts in Australia have made little use of the preamble, the possibility that they might do so is a factor that makes politicians quite wary of including broad concepts such as 'the rule of law' in a constitutional preamble. It would be hard to predict how such phrases might be used by a court in the future.

Changing the preamble or inserting one in the Constitution itself

One of the many things missing from the preamble is appropriate recognition of Aboriginal and Torres Strait Islander peoples.

Sometimes it is said that Aboriginal and Torres Strait Islander peoples should be 'recognised in the preamble'.

But is it appropriate that they be recognised in the preamble to the Commonwealth of Australia Constitution Act - which is a British Act of Parliament? First, you cannot change the past. The preamble reflects what people thought in the 1890s. It would seem odd to re-write such a statement to pretend that Indigenous recognition had occurred then, when it had not. Secondly, why would Indigenous Australians want to be recognised in this British Act? Surely it would be better to be recognised in the Constitution itself (especially if the British Act is jettisoned if Australia becomes a republic)?

In 1999, it was proposed to insert a [new preamble](#) at the beginning of the Constitution itself. But the content of the proposed preamble was controversial and the referendum failed. So the Constitution itself still has no preamble, and the British Act in which it is contained retains a preamble that is an historic statement of its time.



Topic 6.2: Lesson/ Activities Six

The Preamble in the
Constitution Act:
What does that mean?



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Time/Lesson

- 1 hour

Learning Goal

- Students develop a basic understanding of what a constitutional Preamble is and are introduced to the Preamble in the Constitution Act.

Teaching Reference Document

- TRD 54: What is the Significance of the Preamble in the Constitution Act?

Teacher Instruction

Lesson outlines and guiding questions:

- Research and discuss the Preamble as described in the TRD "What is the significance of the Preamble to the Constitution Act?"
- Look at the opening page of the Australian Constitution (9 July 1900) Why isn't Western Australia mentioned?
- List five important things the preamble tells us and explain what they mean in your own words.
 1. Some history facts.
 2. Federation came about because of the agreement of the people of the various colonies. How did they agree?
 3. Who or what was Federation under?
 4. Why was "one indissoluble Federal Commonwealth" included?
 5. Why was "humbly relying on the blessing of Almighty God" included?
- 6. Revise some of the different perspectives, attitudes and beliefs in decades since federation particularly regarding the rights of women and Indigenous Australians. What might you put in a preamble today, which was not included back in 1900? What statements of history might you include about things that have happened since? What common values and aspirations might you include? Who or what might you recognise?
- 7. Class discussion then students draft a new 300 word preamble they think reflects contemporary Australia and our nation's aspirations. (This exercise may be used for assessment).

