



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.

A new preamble for the Australian Constitution fails in a 1999 referendum

Most Australians could probably tell you that the introduction (known as a 'preamble') to the US Constitution starts with the words: "We the people of the United States..." and talks about justice and the blessings of liberty. How many Australians know the opening words to Australia's Constitution? Actually, the Commonwealth Constitution starts with a table of contents. It does not exactly fire the imagination or inspire the soul to greater good, but it is perhaps a good indication of the functional nature of this document.

The Commonwealth Constitution is set out in section 9 of a British Act of Parliament – the [Commonwealth of Australia Constitution Act 1900](#). That Act (rather than the Constitution itself) contains its own preamble, and eight other sections that are now known as the 'covering

clauses'. Then section 9 says: 'The Constitution of the Commonwealth shall be as follows:-', after which it sets out the table of contents and then the full text of the Constitution.

The [preamble](#) to the British Act refers to the people of the various colonies, 'humbly relying on the blessing of Almighty God', agreeing 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'. It has a few problems. One is that it misses out mention of Western Australia, as it had not yet agreed to join the federation at the time the Act was passed by the British Parliament. Another is that a spot of dirt on a page at the time of reprinting resulted in a semi-colon being included after the word 'Queensland', with it being printed that way for many decades without anyone correcting it. This goes to show that in the pre-digital age you could change the Constitution just by adding dirt!

The 1999 Preamble Referendum Proposal

In 1999, in the midst of the debate about a republic, the Prime Minister, John Howard, proposed a second referendum question.

*Preamble to the Australian Constitution
Source: Wiki Commons*





*Les Murray in 1999 concluded that the preamble had been 'crippled by compromise, whereas the people in their mercy took it out and shot it'.
Source: Wiki Commons*

This one would insert a preamble at the beginning of the Commonwealth Constitution (leaving untouched the existing preamble at the start of the British Act). A preamble usually [introduces and explains](#) the context of the enactment of a Constitution. So if the Constitution were to be changed to introduce a republic, a new preamble to explain this would make sense. But because this amendment was going to be voted upon, without knowing whether the republic question would succeed, the preamble could not refer to the republic or the Crown. It also needed to be consistent with the text of the Constitution, but [arguably](#) this was not the case.

The first version of the proposed preamble was written by the Australian poet, [Les Murray](#), and altered by the Prime Minister, John Howard. It may have been poetic, but parts of it were not clear. The [penultimate paragraph](#), for example, said:

'Australia's democratic and federal system of government exists under law to preserve and protect all Australians in an equal dignity which may never be infringed by prejudice or fashion or ideology nor invoked against achievement.'

This left some people scratching their heads. Why may 'equal dignity' never be 'invoked against achievement' and what on earth was this supposed to mean? How does our federal system 'preserve' our 'equal dignity' against infringement by 'fashion'? Underlying these questions was a more fundamental one – what is a preamble meant to do?

Is it there to inspire or to explain? As a court may draw upon a preamble when interpreting the Constitution, it is pretty important that you know what it means before it is inserted in the Constitution.

After what Les Murray described as a 'brown blizzard of contempt and vilification' in the media directed at the draft preamble, it was re-drafted by Howard in conjunction with Senator Aden Ridgeway, the only Aboriginal Senator at the time, and his party, the Australian Democrats. The [second version](#) was less poetic but made more sense.

One of its most controversial references was to 'honouring Aborigines and Torres Strait Islanders, the nation's first people, for their deep kinship with their lands and for their ancient and continuing cultures which enrich the life of our country'. While it was an improvement on the reference to the 'inhabitation' of Australia by 'Aborigines and Torres Strait Islanders', many thought that it did not go far enough, especially because Aboriginal and Torres Strait Islander peoples had long sought more substantive constitutional reform. The preamble was therefore opposed by a number of Indigenous groups. In particular, there was objection to the word 'kinship' which did not properly describe the relationship of Indigenous Australians to their lands and waters.

Concern about how the preamble might be [used in constitutional interpretation](#) led the Commonwealth to propose in addition a new section 125A which would have said that the Preamble had 'no legal force and shall not be considered in interpreting this Constitution or the law in force in the Commonwealth'.

Some argued that it was ineffective, as the High Court might still take into account any values or aspirations in the preamble, regarding them as signifying current community values. Others thought it odd that the High Court could still use the preamble in the British Act, which had been enacted 100 years earlier, but not a modern preamble. Yet others thought it made a [mockery](#) of the sentiments expressed in the preamble and was insulting that once Aboriginal people and Torres Strait Islanders were finally recognised and honoured in the Constitution for the first time, it then effectively said: 'but we don't really mean it and you can't rely on it'.

The [Yes and No Cases](#)

The Yes case argued that the preamble would allow the Australian people to highlight the values and aspirations which unite them and would contribute to the process of reconciliation with Indigenous Australians.

The No case argued that the preamble was a 'rush job' without sufficient input from the people, that there was legal uncertainty about its impact and that it was more likely to divide than unite Australians. It said it was absurd to vote on a Preamble before knowing whether Australia would become a republic or not.

The Question

A Proposed Law: To alter the Constitution to insert a preamble.

Do you approve this proposed alteration?

The Result

The referendum was held on 6 November 1999. It failed overall and failed in all States, even though it had bipartisan support. It achieved fewer votes than the republic proposal.

	NSW	QLD	SA	Tas	Vic	WA	Total#
For	1,647,378	686,644	371,965	111,415	1,268,044	383,477	4,591,563
Against	2,261,960	1,405,841	604,245	200,906	1,718,331	720,542	7,080,998
Informal*	39,144	16,174	10,325	3,343	30,341	10,436	112,474

#Total includes Territory votes. * Informal votes are not counted in determining majorities





Topic 6.2: Lesson/ Activities Seven

Writing a preamble for the Australian Constitution



AUSTRALIAN
CONSTITUTION
CENTRE

Time/Lesson

- 1 hour

Teaching Reference Document

- TRD 54: What is the significance of the preamble to the Constitution Act?
- TRD 55: A new preamble for the Australian Constitution fails in a 1999 referendum

"The [preamble to the United States Constitution](#) provides 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."

"One of the many things missing from the preamble in the Australian Constitution 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 - 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?"

Consider why consultations with Indigenous peoples, leading up to the Uluru Statement from the Heart, showed that they preferred practical recognition by the creation of a Voice to Parliament and the Government, rather than symbolic recognition in a preamble.

Resources

- Thinking routine: Question Stats
- Pocket Edition of Australia's Constitution or online copy
- Access to the internet to research preambles to other Constitutions, such as the South African Constitution, on sites such as 'Constitute - The World's Constitutions to Read, Search and Compare'

Teacher Instruction

Lesson outlines and guiding questions:

- Students link to the proposed new Preamble 1999 as discussed in the TRD.
- Students discuss which of the common bond values are most important to them.
- Students write their own new aspirational preamble for the Australian Constitution.
 - 250 words.
 - 500 words (extension activity).
 - Consider including some of the values in the online document 'Australian Citizenship: Our common bond' such as commitment to parliamentary democracy, Australian laws, freedom, respect, fairness and equality.
- And don't forget to give appropriate recognition of Aboriginal and Torres Strait Islander peoples.

Extension students: Research preambles from the Constitutions of other countries and report on how they recognise their Indigenous peoples.

