



Index and Introduction



AUSTRALIAN
CONSTITUTION
CENTRE

Unit 14: The High Court and Constitutional Interpretation – Year 10 – C & C Strand:
Laws & Citizens

Topic 10.1: The High Court and Constitutional Interpretation

Year Level: 10:

Achievement Standard:

By the end of Year 10, students compare and evaluate the key features and values of systems of government and analyse the role of the High Court. Students evaluate a range of factors that sustain democratic societies. When researching, students evaluate a range of questions to investigate Australia's political and legal systems and critically analyse information gathered from different sources for relevance, reliability and omission. They account for and evaluate different interpretations and points of view on civics and citizenship issues. When planning for action, students take account of multiple perspectives and ambiguities, use democratic processes, and negotiate solutions to an issue. Students develop and present evidenced-based arguments incorporating different points of view on civics and citizenship issues. They evaluate ways they can be active and informed citizens in different contexts.

Curriculum link: the role of the Parliament and the High Court of Australia in protecting rights under the Constitution, common law, and through federal and state statute law. [AC9HC10K03](#)

- explaining the role of the High Court in interpreting and applying the law, using contemporary Australian examples including cases
- comparing the effectiveness of a constitutional bill of rights, such as in the USA, with a statutory bill of rights, such as in New Zealand

Prior Learning Required: Unit 8 (The Separation of Powers) & unit 10 (The implied freedom of political communication)

Key takeaways

1. The High Court can create precedents and develop the common law by interpreting the Constitution
2. The difference between 'original intent' and 'dynamic interpretation'
3. Understand the jurisdiction of the High Court
4. Research and share outcomes of cases where the Constitution was interpreted by the High Court
5. Interpreting the Constitution today compared to the 1890's
6. The High Court and its jurisdiction
7. Cases affecting rights of Aboriginal and Torres Strait Islander People Australians including *Mabo*, the Hindmarsh bridge construction and *Wilson v Minister for Aboriginal and Torres Strait Islander Affairs*
8. Testing the powers of the Commonwealth in the High Court: SoP in action the High Court

Learning goals include: Understanding the High Court can create law by interpreting the Constitution, the difference between 'original intent' and 'dynamic interpretation', and evaluating the merits of the interpretation of the Constitution by the High Court becoming law. Students research High Court cases, share outcomes of cases and discuss dissenting judgements including why Justices can sometimes disagree on a decision. All laws must be authorised by the Constitution and their validity may be challenged and struck down by the Court. Students study actual cases where the High Court has interpreted the Constitution and that the High Court's interpretation of the Constitution becomes law. They achieve this through researching cases, debate and sharing their findings with the rest of the class.



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Topic Summary

Students should understand the constitutional role of the High Court and constitutional interpretation including:

- That the High Court is now the highest appellate court in the Australian judicial system. It hears appeals from State, Territory and federal courts
- That the High Court has original jurisdiction in interpreting and applying the Constitution (For example, in 2017, the High Court found that dual citizens couldn't be in Parliament (because of section 44 of the Constitution) causing havoc with MP disqualifications.)
- That all laws must be authorised by the Constitution and their validity may be challenged and struck down by the courts
- The techniques used by the High Court to interpret the Constitution, including consideration of 'original intent', focus on the text and structure of the Constitution, the use of precedent and reliance on fundamental constitutional principles, such as the separation of powers, and 'reading down' statutes to ensure their validity
- To examine the jurisdiction of the High Court and explore examples of High Court judgements in interpreting and applying Australian law,
- Study the High Court case in the 1990's that relate to the building of the Hindmarsh Island Bridge. The first (*The Kartinyeri Case*-the interpretation of the race power) concerned the separation of powers and whether a female judge can be appointed to advise a male Minister on an Aboriginal cultural heritage matter that is 'secret women's business' and cannot be told to a male. The High Court decided the appointment was invalid as it was a political role that was incompatible with her judicial office.
- Study the second High Court case in the 1990's (*Secret Women's Business and Women Judges – The Wilson Case*) concerned the validity of legislation that excluded the operation of Aboriginal cultural heritage legislation to allow the Bridge to be built. It raised the question of the interpretation of the 'race power' in the Constitution and whether it could only be used for the benefit of Aboriginal people. Both cases raise issues of constitutional interpretation, including original intent, focus on the text, the application of principles and techniques of interpretation.

Teaching Reference Documents (TRD's) and Activities/lessons

TRD 124: The Constitution-How should it be Interpreted?

Lesson One: The High Court and interpretation of the Constitution

TRD 125: The Jurisdiction of the High Court of Australia

Lesson Two: The Jurisdiction of the High Court

TRD 126: Secret Women's Business and Women Judges – *The Wilson Case: Wilson v Minister for Aboriginal and Torres Strait Islander Affairs*

Lesson Two: Interpretations of the Constitution by the High Court

TRD 127: *The Kartinyeri Case*-the interpreting the race power: Challenges to the construction of the Hindmarsh Bridge

TRD 128: Attempts to expand the Commonwealth's Industrial Relations and Corporations Powers fail at referendums: *The Work Choices Case 2006*

Lesson/Activities Three: To understand how the High Court interprets the the Constitution by considering a number of examples.

Special First Nations Peoples Disclaimer: In some First Nations communities hearing recordings, seeing images or the names of deceased persons, may cause sadness or distress and, in some cases, offend against strongly held cultural prohibitions. The [AIATSIS website](#) has more information.

Special Terminology First Nations Peoples: Teachers may note that much of the above discussion refers to Aboriginal people, rather than 'Aboriginal and Torres Strait Islander peoples'. This is because the original terminology, including in the 1960s, did not make this distinction. Teachers should take care to contextualise this historical usage and contrast it with the terminology used more accurately today.

It is often said that Aboriginal and Torres Strait Islander people were not counted in the census until after 1967. That is not true. They were counted from the very first census if they lived near settlements - just not if they were in remote areas that the census officials did not reach. The census figures in the first part of each census excluded what they described as 'full-blood' Aboriginal people, but included all other Aboriginal people. 'Full-blood' Aboriginal people were, however, included in tables at the end of each chapter in the census. Teachers should be aware that this terminology used in the census is now viewed as offensive and may be regarded as disturbing to students. Accordingly, teachers may wish to be cautious in its use and careful to contextualise it if using it in class. Census reports contain a wealth of material about the lives of Aboriginal and Torres Strait Islander people, but the description and categorisation of that information would need to be contrasted with the attitudes of today.

In Unit 2, Teacher Reference Document (TRD) 10, in discussing 'when the British arrived in 1788' the First Nations Peoples name of Warrane' (pronounced Wah-rang) has been added. In other units when teaching about place names, teachers are likewise encouraged to use the First Nations Peoples' name.