

CURRICULUM CONTEXT

Level: Years 10–12

Curriculum area: History / Legal studies

A new preamble for the Australian Constitution?

In this learning sequence students explore the role and function of the preamble in the Australian Constitution. They also consider what a new preamble might say, and identify values they would want to see included if a new preamble were to be developed. The materials were prepared for the Australian Government by Professor John Williams and Dr Clement Macintyre for the 14th National Schools Constitutional Convention, held in Canberra on 17–19 March 2009.

Background

The Australian Curriculum Studies Association (ACSA) has been responsible for developing the program and learning sequence for the National Schools Constitutional Conventions run by the Australian Government Department of Education, Employment and Workplace Relations each year from 2002 to 2010.

Each year over 100 senior high school students have been selected to represent their state or territory at the National Schools Constitutional Convention (NSCC). The event seeks to promote understanding and informed discussion amongst young Australians about the Australian Constitution and system of government. A different topic is selected each year to help students explore aspects of the Australian Constitution and its significance today.

The Australian Electoral Commission (AEC) contributes to the NSCC each year by conducting a 'referendum' to allow students to understand the electoral process that is required before the Australian Constitution can be changed. This IDEAS resource does not allow for students to participate in a referendum, but you can visit the AEC website <http://www.aec.gov.au/pdf/education/resources/referendums.pdf> to access the information sheet on constitutional referendums.

Learning outcomes

Students will :

- develop an understanding of the role and function of the preamble in the Australian Constitution
- analyse what the preamble says about what it is to be an Australian
- consider the options for a new preamble to the Australian Constitution
- evaluate the significance of the content of the preamble

References

National Schools Constitutional Convention

http://www.curriculum.edu.au/cce/national_schools_constitutional_convention,8980.html

Australian Electoral Commission factsheet on Constitutional Referendums

<http://www.aec.gov.au/pdf/education/resources/referendums.pdf>

Discovering Democracy unit on a Constitutional preamble

<http://www.civicsandcitizenship.edu.au/cce/default.asp?id=9590>

University of Melbourne Fact Sheet 1.7: Australia's Constitutional Preamble

<http://cccs.law.unimelb.edu.au/download.cfm?DownloadFile=98E311A4-B0D0-AB80-E2EBB8BE205C9735>

John Howard's 1999 Exposure Draft of Proposed New Preamble to the Australian Constitution

<http://www.abc.net.au/referendum99/preambles/howard.htm>

Getting started

1. Distribute **Worksheet 1: Background briefing**. Allow students time to read the background material and ensure that they are familiar with the role and significance of the Australian Constitution. As a class, discuss the meaning of the term 'preamble'. Then, in small groups, ask students to complete **Worksheet 2: Current preamble to the Australian Constitution**. This activity asks students to read the existing preamble and relate it to Australian society, both at the time the Constitution was written and today.

Students at work

2. In this activity, students will explore preambles for constitutions from other countries to determine the extent to which they reflect the history or character of the individual nations. Distribute a copy of **Worksheet 3: Preambles to the constitutions of USA and India** to each student. Once students have completed the sheet, share their responses in a class discussion, highlighting the similarities and differences in language and sentiment.
3. Allow time for each student to read the excerpts from the preambles of three different countries on **Worksheet 4: Whose preamble is this?** You may choose to do this as a whole class using a Smartboard or distribute copies of the reproducible worksheet. Then, in small groups, students should try to identify the country that developed each preamble. As a class, share students' responses and their reasons for selecting the countries that they did. The language and sentiments used to create a preamble can make the identification of the country of origin very difficult! Constitution A is from the Republic of South Africa, Constitution B is from Iran and Constitution C is from Indonesia.
4. There is strong momentum in the Australian community to change the existing preamble to the Australian Constitution. In a class discussion, students should consider the role and purpose of a preamble. Develop a list of points for and against adopting a new preamble. The case *for* change could include:
 - the preamble should reference Australia's diverse population and our Indigenous peoples
 - the existing preamble is part of an Act of the British Parliament and Australia's preamble should reflect our history as an independent nation
 - the preamble should make specific mention of Australia's democratic values and rights and freedoms.

The case *against* change could include:

- the current preamble works well so there is no need to change it
- Australia's population is diverse and it would be difficult to define the values of people from hundreds of different cultures
- the Australian people voted against a change in a referendum in 1999 and are unlikely to vote for a change now
- while there is community discussion about Australia becoming a republic, any change to the preamble should wait until it is decided whether to change the Constitution to make Australia a republic.

4. *continued*

Ask students to complete **Worksheet 5: To change or not to change?** where they record their own thoughts about whether Australia needs a new constitutional preamble. The worksheet activity also challenges students to think about the legal standing of any new preamble.

5. Students will hold a range of views about how relevant the current preamble is to contemporary Australia. Regardless of this, in the following activities students will focus on creating an alternative preamble. Ask students to work in groups and discuss the dominant Australian values that should be included in any proposed Australian Constitutional preamble. Encourage students to identify the dominant and defining characteristics — both positive and negative — that they would wish to see expressed as a statement of Australian identity, and record the group's ideas on **Worksheet 6: Australian values**. Then students should complete the lower half of the worksheet individually.
6. Distribute **Worksheet 7: The power of words**. In this activity students reflect on the consequences that might arise if selected values/principles were to be included in the Constitutional preamble. Invite students to share their ideas in a class discussion that focuses on the ramifications of using particular concepts in a preamble.
7. Develop a class list of possible values/principles that your students would like to include in a new preamble to the Constitution, and then ask each student to write down the five values/principles from this list that they rate as most important. Tabulate the student lists to ascertain the five most important values/principles to the class.
8. As a class, create a new preamble for the Constitution that includes the five selected values/principles. You may like to use some of the language from the preamble that was developed at the 2009 National Schools Constitutional Convention on this issue:
We the people of Australia drawn from many places and backgrounds, form a democratic, just and free nation.
We acknowledge the first peoples of the land. The Aboriginal people and Torres Strait Islanders suffered under colonisation. The reconciliation of past injustices is the commitment of all Australians.
Our shared history is shaped by mateship and the camaraderie of a confident people committed to a fair go for all.
Committed to the rule of law as a cornerstone of our liberty and freedom we possess the rights of our shared humanity. Australia is a multicultural nation.
We are united in our diversity and respect our differences.
We hereby affirm and adopt the Constitution of the Commonwealth of Australia.
This preamble has no legal force and cannot be used to interpret either the Constitution or any statute.
9. Explain to students the electoral process of a referendum that would need to be followed if the Australian people were to decide about making any change to the Constitution. Take a class vote to allow your students to decide how they would vote if there was a referendum about replacing the existing preamble with the one developed by the class.

Background briefing

A preamble to an Act of Parliament is an introduction to that legislation. Preambles may be short or detailed and serve to outline the reasons behind the enactment of the law and the purpose(s) for which it was passed. Most Australian legislation does not have a preamble. However, where preambles do exist they tend to be used to explain context, express a sentiment or outline the Parliament's reason for taking certain actions.

Many of the world's Constitutions also have preambles. Like the preambles to "ordinary laws", they serve a purpose in that they outline such matters as the history of the decision to unite, or touch upon the political process that was used to bring into force a new Constitution. Frequently, they will also say something about the values and ideals of the community.

Consistent with our history, the Australian Constitution is an Act of the British Parliament. The Constitution was in fact attached to that British Act which had a number of "covering clauses" that introduced the Constitution. The preamble to the British Act has come to be seen as the preamble to the Constitution proper. It states that:

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:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

A Constitutional preamble also has relevance when interpreting the rest of the Constitution. Occasionally courts, when interpreting laws, make reference to the objectives or purposes of the Act that defines those laws. So, for instance, a court might refer to the preamble in the *Animal Care and Protection Act 2001* (Qld) to interpret the rest of the Act consistent with the preamble's stated objectives to "promote the responsible use and care of animals". However, should a reference to "the People" in the preamble to the Australian Constitution give rise to an implication of legal equality and thus a limitation on the Commonwealth Parliament's powers? In other words, can courts use the general and often vague phrases in a Constitutional preamble to expand or contract the powers of the Parliament? There is a lively debate as to whether courts should be allowed to use a preamble to a Constitution to interpret — and especially to invalidate — laws made under it.

A provocative example of the use of a preamble by the Parliament to inform the interpretation of an Act is found in the legislation that was used to attempt to ban the Communist Party in 1950. The preamble to the *Communist Party Dissolution Act 1950* (Cth) says:

Whereas the Australian Communist Party, in accordance with the basic theory of communism, as expounded by Marx and Lenin, engages in activities or operations designed to assist or accelerate the coming of a revolutionary situation, in which the Australian Communist Party, acting as a revolutionary minority, would be able to seize power and establish a dictatorship of the proletariat:

And Whereas the Australian Communist Party also engages in activities or operations designed to bring about the overthrow or dislocation of the established system of government of Australia and the attainment of economic, industrial or political ends by force, violence, intimidation or fraudulent practices:

And Whereas the Australian Communist Party is an integral part of the world communist revolutionary movement, which, in the King's dominions and elsewhere, engages in espionage and sabotage and in activities or operations of a treasonable or subversive nature...

This shows that a preamble can be used for much more than 'scene setting'. In this case the preamble contains a political argument intended as a justification for the validity of the legislation. However, despite the Parliament's intent, when the constitutional legitimacy of the Act was challenged in the High Court, the Court chose not to use the preamble as a conclusive statement of the Act's validity — and in 1951 by a majority of six to one the Court found that the legislation was unconstitutional. This is perhaps an extreme example of the non-use of a preamble and in part can be explained by the Parliament's attempt to instruct the Court as to the validity of its legislation.

While Constitutions are, in one sense, Acts of Parliaments, they are of course special Acts. In their case, the preamble will do much more than set out the reasons and objects of the Act. We can see signs of this in the *Racial Discrimination Act 1975* (Cth) as this is intended to reflect the aspirational nature of the international cooperation in eliminating all forms of racial discrimination. However, as an Act of the Australian Parliament it can do little to shape the behaviour of another nation. In the *Racial Discrimination Act 1975* (Cth) the preamble states:

An Act relating to the Elimination of Racial and other Discrimination

WHEREAS a Convention entitled the "International Convention on the Elimination of all Forms of Racial Discrimination" (being the Convention a copy of the English text of which is set out in the Schedule) was opened for signature on 21 December 1965:

AND WHEREAS the Convention entered into force on 2 January 1969:

AND WHEREAS it is desirable, in pursuance of all relevant powers of the Parliament, including, but not limited to, its power to make laws with respect to external affairs, with respect to the people of any race for whom it is deemed necessary to make special laws and with respect to immigration, to make the provisions contained in this Act for the prohibition of racial discrimination and certain other forms of discrimination and, in particular, to make provision for giving effect to the Convention:

In this case the preamble is designed to express the authority and history behind the international agreement and cooperation in the elimination of all forms of racial discrimination. In other words, when preambles are used in legislation, they have a variety of purposes and may have differing consequences.

WORKSHEET 2

Current preamble to the Australian Constitution

Consider the current preamble to the Australian Constitution:

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:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

What if anything does this say about Australia in 1900?

What if anything does it say about Australia now?

WORKSHEET 3

Preambles to the constitutions of USA and India

Consider the preambles of the USA Constitution...

Preamble to the Constitution of the United States of America

We the People of the United States, in Order to form a more perfect Union, establish Justice, ensure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

...and the Indian Constitution

Preamble to the Indian Constitution

We, the people of India, having solemnly resolved to constitute India into a sovereign socialist, secular, democratic republic and to secure to all its citizens:

Justice, social, economic and political;

Liberty of thought, expression, belief, faith and worship;

Equality of status and of opportunity;

And to promote among them all

Fraternity assuring the dignity of the individual and the unity and integrity of the nation;

In our constituent assembly this twenty-sixth day of November, 1949, do hereby adopt, enact and give to ourselves this constitution.

Are there any common themes that are expressed in these? Are there significant differences in language or in sentiment between them? Do the preambles tell you anything about the history or character of these nations?

Themes

Differences

Reflections on what these Constitutions tell us about the USA and India

WORKSHEET 4

Whose preamble is this?

Read the following three extracts provided below. Can you tell what country they are from?

Constitution of country "A"

We, the people of ...,

Recognise the injustices of our past;

Honour those who suffered for justice and freedom in our land;

Respect those who have worked to build and develop our country; and

Believe that belongs to all who live in it, united in our diversity.

We therefore, through our freely elected representatives, adopt this Constitution as the supreme law of the Republic so as to

- Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;
- Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law;
- Improve the quality of life of all citizens and free the potential of each person; and
- Build a united and democratic ... able to take its rightful place as a sovereign state in the family of nations

Constitution of country "B"

The Constitution of the Islamic Republic of ... advances the cultural, social, political, and economic institutions of ... society based on Islamic principles and norms, which represent an honest aspiration of the Islamic Ummah. This aspiration was exemplified by the nature of the great Islamic Revolution of ..., and by the course of the Muslim people's struggle, from its beginning until victory, as reflected in the decisive and forceful calls raised by all segments of the populations. Now, at the threshold of this great victory, our nation, with all its beings, seeks its fulfillment.

Constitution of country "C"

Whereas freedom is the inalienable right of all nations, colonialism must be abolished in this world as it is not in conformity with humanity and justice;

And the moment of rejoicing has arrived in the struggle of the ... freedom movement to guide the people safely and well to the threshold of the independence of the state of ... which shall be free, united, sovereign, just and prosperous;

By the grace of God Almighty and impelled by the noble desire to live a free national life, the people of ... hereby declare their independence.

Subsequent thereto, to form a government of the state of ... which shall protect all the people of ... and their entire native land, and in order to improve the public welfare, to advance the intellectual life of the people and to contribute to the establishment of a world order based on freedom, abiding peace and social justice, the national independence of ... shall be formulated into a constitution of the sovereign Republic of ... which is based on the belief in the One and Only God, just and humanity, the unity of ..., democracy guided by the inner wisdom of deliberations amongst representatives and the realization of social justice for all of the people of ...

Constitution A is from _____

Constitution B is from _____

Constitution C is from _____

WORKSHEET 5

To change or not to change?

Do you think that there should be a new preamble to the Australian Constitution? Justify your response with reference to at least two different reasons.

Now, assume that the decision has been made to create a new preamble. Think about the status of the new preamble: should it serve as a symbolic statement to articulate the nation’s achievements and aspirations, or should it play a significant legal role in relation to the Constitution?

Remember that it is possible that any new preamble may subsequently be used by the Government, the Parliament or the Courts to interpret the Constitution. For instance, the abstract value of “freedom” might be seen as initially attractive. However, it surely could not be an absolute value that would allow someone the freedom to steal the property of others, or drive a car on the wrong side of the road. Similarly, an open declaration of democratic values may result in unforeseen consequences: for example, endorsing the unconditional right to vote may (possibly unintentionally) extend that right to children, to non-citizens and to long-term prisoners. While there are arguments for and against these groups having the right to vote, arguably it would not be best to settle this matter through a statement in a Constitutional preamble.

Do you think that a new preamble should have a legal role in relation to interpreting the Australian Constitution? Why?

WORKSHEET 6

Australian values

As a group discuss the dominant Australian values that should be included in any proposed Australian Constitutional preamble. Think about what sort of national story the preamble should tell. Identify the dominant and defining characteristics — both positive and negative — that you would wish to see expressed as a statement of the Australian identity. These might be very abstract concepts that are aspirational in their intent. They might also be pretty stark statements of what we are and what we have done.

Dominant values

Defining characteristics

Then... **as an individual** list about 10 of those things that you consider to be the values, ideas, sentiments that you would wish to see in any proposed preamble. Again, this list should be a frank assessment of Australia. Don't be afraid to list the best and the worst — just make sure that you give an honest assessment of what defined and defines Australia.

- 1 _____
- 2 _____
- 3 _____
- 4 _____
- 5 _____
- 6 _____
- 7 _____
- 8 _____
- 9 _____
- 10 _____

WORKSHEET 7

The power of words

Reflect upon four concepts/values from the list you made on **Worksheet 6: Australian values** and consider the implications of including these in a Constitutional preamble.

Value / concept / principle: (for example) freedom

Attraction: (for example) universal value, rule of law, enjoys wide acceptance

Possible consequences: (for example) can't be defined, not a precise term, may have endless application, may prevent the application of widely accepted laws

Value / concept / principle: _____

Attraction: _____

Possible consequences: _____

Value / concept / principle: _____

Attraction: _____

Possible consequences: _____

Value / concept / principle: _____

Attraction: _____

Possible consequences: _____

Value / concept / principle: _____

Attraction: _____

Possible consequences: _____