



RULE OF LAW

EDUCATION CENTRE

**SUBMISSION
REGARDING THE
PROPOSED ACARA
HUMANITIES AND SOCIAL
SCIENCES CURRICULUM**



**THE FUTURE OF OUR
PARLIAMENTARY DEMOCRACY
AND RULE OF LAW IS AT RISK**

If people do not know what the rule of law is or what it means to them, then that is exactly why it must be taught, and from an early age.

Democracy is not inherited. It is not an automatic machine that runs itself. It must be conspicuously produced and taught through each generation after another where they must learn to acquire the knowledge and understanding, and skills required to maintain a constitutional democracy. Curricula must provide time for depth of study to support students in learning about the past to fully understand how they can prepare themselves to participate in their future.

The proposed Humanities and Social Sciences curriculum from ACARA, scheduled for release in 2022, directs teachers to gloss over content that recognises the importance of when and how Australia's main democratic beliefs of parliamentary democracy and the rule of law were introduced into Australia. Instead, the new curriculum prominently directs study towards presenting one-sided accounts of history. It encourages students to view Australian history over the past 233 years, as a brutal and damaging time and fails to foster respect and support for quintessential Australian values and democratic beliefs. Important lessons on our pillars of democracy and how we got here have been drowned in copious amount of additional content, and it seems things will not improve anytime soon.

This raises two important questions:

1. What will Australia's democracy look like into the future if this is the path ACARA wants to take?
2. How can we instil in future generations the civic virtue that is required to maintain democratic values within Australian society?

The answers to these questions can surely only be found in a citizenry that, while acknowledging injustices, feels great pride in recognising past achievements from significant events and influential individuals that have struggled for democratic rights and freedoms. Events from the past have delivered Australian society the freedoms and rights of individuals it has today. Future generations can only learn how to respond to change by having a deep and balanced understanding of events from the past, as they remind us as a society of what works and what does not. Therefore, denying citizens the reason to celebrate living in one of the safest and fairest countries in the world will only lead to the breakdown of the very same safe and fair society.

'Citizenship is a cornerstone of Australia's inclusive and pluralist democracy... we cannot be complacent about our future as a strong, safe and cohesive society. It is time for a national conversation about the role of citizenship in shaping our future.'

-Australian Citizenship – Australian Government Publication 2017



What will Australia’s democracy look like into the future if this is the path ACARA wants to take?

The following reports demonstrate the current lack of deep understanding surrounding Australian society’s current discourse:

NAP Civics and Citizenship Assessment 2019

Year 6 students had less interest in a range of civics and citizenship issues and less confidence to actively engage in civic action than in 2016.

Students with more interest or more confidence were more likely to have higher levels of achievement, particularly in Year 10.

Edelman 2020 Trust Barometer

61% Australians distrust the government because they serve the interests of only the few, even more than business, media and non-government organisations.

Lowy Institute 2019

65% Australians say democracy is preferable to any other form of government, 22% say in some circumstances a non-democratic government can be preferable and 12% say that for someone like me, it doesn’t matter what kind of government we have.

This data reflects outcomes that should alarm every education sector across the board.

The Lowy Institute 2019 finding that 12% of Australian’s believe that *it doesn’t matter what kind of government we have*, is highly concerning and demonstrates that many Australians currently do not understand or value the key beliefs that underpin the rule of law in our parliamentary democracy, and this needs significant improvement.

The proposed curriculum will hasten this trend and will create a generation of students who do not understand nor value their role in participating and engaging productively in Australian society.

The *NAP Civics and Citizenship National Report 2019*, provides examples how this trend can be reversed. It states that students who had acquired a deeper understanding of civic responsibility, had developed more interest in civic issues and a greater belief in the value of civic action. They were more confident to actively engage and show intentions to promote important issues in the future.

Promoting the rule of law through education also helps learners acquire the knowledge, skills, values and attitudes they need to contribute constructively to society. It allows them to positively shape public institutions and their policies, thereby encouraging non-violent and peaceful avenues of civic engagement.

-UNODC Strengthening the rule of law through education

Therefore, any proposed curriculum must prioritise a deep understanding of civic responsibility through a focus on our democratic pillars and an appreciation of those past events that have positively shaped our nation.

How can we instil in future generations a civic virtue that is required to maintain democratic values within Australian society?

1. The Curriculum must encourage students to value the role of laws in our society

Students are taught how to recognise different forms of government around the world; however, time has never been enough to study these models in depth, including the opportunity to develop a deeper understanding of the principles and mechanisms that have provided the most important developments of modern Australia - the introduction of the rule of law.

Arriving with the First Fleet as a set of Instructions from the British Government, principles of the rule of law have served to establish the foundations of the Australian system of governance. This foundation ensured that the law was applied equally and fairly to all, including those in power.

Fostering public understanding of how the rule of law operates, needs resources to be directed at young people through a robust and sustained civic education program.

These resources must:

- ensure students understand the role of the law in society to protect human rights, therefore enabling a safe and fair society;
- maintain equality for all citizens, ensuring everyone, including those in power, follows the law
- present fundamental questions which address laws currently operating in Australia, and determine how they impact certain groups in society – regardless of race, gender, or background;
- teach about how law-making legislation is made by the people and must be open and transparent

To provide the best opportunities for students in learning about how a successful democracy operates according to the law, all sources of information that introduces bias, prejudice, emotion, and personal influences must be avoided.

Example 1: Year 4 Civics and Citizenship

The following proposed description has two elaborations that direct learning away from **how** and **why** the rule of law operates in Australian society for the benefit of every citizen:

AC9HS4K09 – the difference between ‘rules’ and ‘laws’, why laws are important and how they affect the lives of people.

- *distinguishing between ‘laws’ (for example, speeding in school zones) and ‘rules’ (for example, sun safety in the school) (AC9HS4K09_E1)*
- *exploring the purpose of laws and recognising that laws apply to everyone in society (AC9HS4K09_E2)*
- *discussing examples of laws and why they are important to students’ lives (AC9HS4K09_E3)*
- ***investigating the impact of laws on First Nations Australians (for example, environmental laws, native title laws and laws concerning sacred sites) (AC9HS4K09_E4)***
- ***investigating the customary lore of First Nations Australians and how they relate to people and places for example, the lore covers rules of living, skin groups, broad roles of men and women, economic affairs, marriage and other activities, (AC9HS4K09_E5)***

The fourth and fifth elaborations provide alternative content and create distractions away from the initial concept of the description and opens the door for educators to introduce politicised content. The content of this description has been diluted by these additional elaborations and inhibits students from being able to

develop a deep understanding of the law in Australia and how it safeguards all citizens. Rather than introduce these elaborations in Year 4 when students are just starting to grasp these initial concepts, they should be removed from the Year 4 Curriculum and addressed in later school years - alongside content surrounding native title.

The curriculum should focus on the key role of the rule of law within Australia and how this foundation helps citizens to successfully live together, builds a sense of fairness in groups and protects and supports the needs of individuals, including those less fortunate or disadvantaged.

2. The Curriculum must encourage students to develop a proper understanding of our key democratic beliefs

Students must not only know what operation and functions of government structures are in place, but why they are so valuable in protecting our rights against arbitrary power. New curricula address students learning about important processes that effect Australia's democracy; however, it does not direct instruction to investigate *why* these processes and mechanisms exist and *how they came to be in the first place*.

There is no opportunity in this content to address the benefits of these processes and mechanisms and what would happen to Australian society if they broke down.

Example 2: Year 5 Civics and Citizenship

AC9HS5K08 - the roles and responsibilities of the three levels of government in Australia's democracy

- sorting and categorising the roles and responsibilities of the three levels of government (local, state/territory and federal) (AC9HS5K08_E1)
- identifying issues where federal and state parliaments both have the power to make laws, and recognising that federal law will override the state law if federal and state laws conflict on these issues (AC9HS5K08_E2)
- identifying instances where there may be multiple levels of government involved (for example, in relation to the environment such as management of the Murray–Darling river system) (AC9HS5K08_E3)

The data gained from the surveys on civic education outcomes in Australia clearly show that the why of roles and responsibilities in government is in serious need of attention. Students need to be able to answer:

- Why do we need two houses of Parliament?
- Why is there separation of powers between the Legislature, Executive, and Judiciary?
- Why is freedom of the press important?
- Why do we limit the term for those in power?
- Why should the law apply to everyone?
- Why do we need checks and balances?

Students' ability in providing answers to these questions will demonstrate deep understanding of how principles in the rule of law underpin Australian democracy, therefore developing a greater appreciation of the importance of why these mechanisms must be valued and protected.

More time also needs to be allocated within the curriculum for students to experience these principles at work, such as knowing how to run an election; engage in debate that is informed, fair, and respectful; be involved in civic activities, including community campaigns, and communicating ways to facilitate change. Providing the best teaching expertise, along with enough time for students to fully engage, will support their learning in gaining a more comprehensive understanding of why these fundamental concepts and processes must occur in Australian society.

Only this can provide the best opportunities for students to take ownership to become active and effective citizens into the future.

A society that supports the rule of law is not one composed of uncritical and obedient citizens; rather it is one whose citizens understand and respect just laws, are aware of their function, know how to engage with them constructively and how to challenge them, as needed, within the appropriate mechanisms and institutions.

-UNODC Strengthening the rule of law through education

3. The Curriculum must teach students to value the significant achievements in Australia's past

History and civics education are linked, as historical events have shaped the development of Australia's representative democracy. The struggle for liberty in Australia has not been easily achieved and students currently demonstrate a limited historical awareness or knowledge of this.

Culture matters a great deal when it comes to a country's propensity to control corruption and be effectively governed by the rule of law. The proposed curriculum descriptions from Year 3 through to Year 10 are too broad and open to interpretation, therefore providing no opportunity for students to study historical content in depth. Multiple elaborations for each description provide too many options for teachers, elaborations are biased towards investigating one interest group, and little time is allocated to teach each one comprehensively.

Example 3: Year 6 History

AC9HS6K02 description below does not teach students how to value the significant achievements of past individuals and enable them to identify what skills they will need to have to become effective citizens in future. The deliberate focus towards the experiences of one interest group detracts teachers from being able to adequately explore the experiences of Australian democracy and citizenship changes that have occurred over time.

Also, elaboration AC9HS6K02_E6 for this description, serves to distract young minds by investigating concepts that would have limited information and possibly inaccurate, at best.

AC9HS6K02 – experiences of Australian democracy and citizenship and how they have changed, including the status and rights of First Nations People of Australia, migrants, women and children

- *investigating the lack of citizenship rights for First Nations Australians in Australia, illustrated by controls on movement and residence, the forcible removal of children from their families leading to the Stolen Generations, and poor pay and working conditions (AC9HS6K02_E1)*
- *describing the significance of the 1962 right to vote federally and the importance of the 1967 referendum for First Nations Australians to be included in the census. (AC9HS6K02_E2)*
- *investigating the stories of individuals or groups who advocated or fought for rights in twentieth-century Australia (for example, Jack Patten or the Aborigines Progressive Association) (AC9HS6K02_E3)*

- *investigating the experiences of democracy and citizenship of women (for example, the suffragette movement, the bar on married women working, equal pay, the Sex Discrimination Act 1984) (AC9HS6K02_E4)*
- *investigating the experiences of democracy and citizenship of all citizens, including First Nations Australians and migrant groups (for example, White Australia Policy, internment camps during World War II, assimilation policies, anti-discrimination legislation, multiculturalism, Reconciliation, mandatory detention, pay and working conditions) (AC9HS6K02_E5)*
- *investigating the experiences of democracy and citizenship of children who were placed in orphanages, homes and other institutions (for example, their food and shelter, protection, education and contacts with family) (AC9HS6K02_E6)*
- *investigating the contribution of Australian citizens across a range of fields to Australia and the world (for example, the arts, science, sport, education), including First Nations Australians, a range of cultural and social groups, and women and men drawn from the National Living Treasures list, the Australian Dictionary of Biography or the Australian Honours lists (AC9HS6K02_E7)*

Teachers faced with such a wide choice in content to teach, may provide interesting options that suit their agenda, but this does not focus on explicit teaching of Australian values and the benefits of hard-fought citizenry.

It is often constructive to accentuate the positive about what makes Australia different/special. Australians, who have familiarised themselves with the Eureka story, have understood the importance and the lasting significance of the Eureka Rebellion for the enduring nature of democracy in Australia—a country which is one of the oldest continuous democracies in the world.

-Ron Manners, A little rebellion now and then is a very good thing!

Example 5: Year 5 History

The first elaboration connected to the description below, AC9HS5K03_E1 contains multiple topics, each one marking an important milestone in the development of Australian democracy and requiring intensive study. Unfortunately, multiple significant events in one elaboration, with a total of three elaborations to measure the level of student achievement for one descriptor, clearly demonstrates that time constraints will be limited to adequately study these events in detail. This creates a disadvantage for students in gaining a sound understanding of the political environment of the times.

Furthermore, studying content from *all three* elaborations to measure success in achieving this description is not compulsory, therefore leading the decision on what to teach with the teacher. For example, teachers may or may not choose to have their students study the tragic events of the Eureka Stockade, which is a key moment in Australia's path to parliamentary democracy. Even if they do, then the students' research will be time constrained, leading to superficial treatment of the topic, resulting in a lack of deep understanding of the significance this rebellion achieved in securing democratic rights for all Australians today.

AC9HS5K03 – the effects of important developments or events on an Australian colony, and the role of significant First Nations Australian and British arrivals in the developments or events

- ***investigating an event or development and explaining its economic, social or political impact on a colony (for example, the consequences of frontier conflict events such as the Myall Creek Massacre, the Pinjarra Massacre; the impact of South Sea Islanders on sugar farming and the timber industry; the impact of the Eureka Stockade on the development of democracy; the impact of internal***

exploration and the advent of rail on the expansion of farming; Bennelong as a mediator between two cultures) (AC9HS5K03_E1)

- *creating ‘what if’ scenarios by constructing different outcomes for a key event (for example, ‘What if Peter Lalor had encouraged gold miners to pay rather than resist licence fees?’, ‘What if Arthur Phillip had not captured Bennelong?’, ‘What if Chinese immigrants were not allowed to land in Robe, SA during the gold rush?’, ‘What if Governor Macquarie had not opened the Parramatta Native Institution?’) (AC9HS5K03_E2)*
- *exploring the personal and social motivations and actions of an individual or group that shaped a colony, including First Nations People of Australia (AC9HS5K03_E6)*

The second elaboration for this description, AC9HS5K03_E2 will not extract informative and insightful responses from students, as all these events were borne out of circumstances that had unfolded and deemed to be necessary at the time – regardless of whether they were fair decisions for those involved, or not. Aside from the fact that no evidence exists to support effective study of these concepts, prefacing the *what if* completely ignores the actual historical environment between authorities and the people that led up to each event.

A more effective elaboration to include would be to *challenge students to consider what would happen if a similar decision or action were made in today’s environment. How would the people be impacted by such an upheaval, and what possible recourse would need to occur to correct it?*

Directing study to explicitly focus on recognising the work of remarkable individuals throughout Australian history that have helped to achieve democratic rights and liberties for all citizens, must include:

- the British Home Secretary Lord Sydney issuing the First Charter of Justice in 1787 to Arthur Phillip in establishing a penal colony, securing the foundations of the rule of law in Australia from the very beginning of European settlement and beginning the road to establishing Australia’s Supreme Court as we know it today;
- the story of Henry and Susannah Kable - two convicts who were granted equal rights for property and fair representation resulting in the first civil case in Australian history;
- the Eureka Stockade - a pivotal moment in achieving democratic rights and freedoms for all individuals.

These significant historical events receive a token mention in the new curriculum, yet the impact from each event and associated individuals benefit all Australians today. Additional, unnecessary content that serves political interests needs to be removed to create more time to be allocated in the new curriculum, with a reduction in the number of elaborations focussed towards studying the contributions of remarkable individuals and significant events that have shaped Australia’s democracy.

This must become a priority, particularly across Stages 2, 3 and 4.

Students must also be encouraged to investigate different viewpoints, so they can get a balanced view and be able to make their own decisions, not ones that have been directed towards a particular view or content, to the exclusion of others. ACARA recognises this in its aims and rationale. However, the proposed content pitches current thinking and ideas against historical events by misrepresenting the context in which they occurred in the past. Historical events must be viewed and acknowledged as reflecting the circumstances and actions of people and governments at that time. Interpreting contemporary ideas and concepts without considering the facts and context of historical events, directs

students to make judgements and form opinions that are inaccurate. Ignoring the economic and social upheaval of past times does not support students' understanding of how events evolved into the systems and processes that we live under today.

Only this would provide students with the opportunity to learn from the actions of individuals and significant events from the past and to become independent thinking individuals.

Safeguarding our democracy

The achievements from Western civilisation have formed the foundation of the rule of law in Australia. The pursuit of limiting government through procedural mechanisms, such as bicameralism; a constitution collectively formed by the people; a separation of powers between the legislature, executive and judiciary; and federalism, have all helped form one of the most successful democracies in the world today.

Utilising primary resources is paramount to support students in learning how to make reflective and informed decisions, and this must happen from the early years of schooling.

Historical content from 1790 to the present day should become priority in the Humanities and Social Sciences curriculum. More intense focus towards explicit direction and instruction will provide students with greater opportunity to develop a deep understanding of how Australian history has delivered the egalitarian society we all enjoy today. The phrase 'rule of law' must be embedded into future curricula to help develop familiarity with the language, therefore supporting classroom discussions. Providing informative, equal and fair representative curricula content will lead to outcomes that will benefit all citizens, minority groups included.

Cultural value can promote or undermine law-abidingness through the personal values that most members in a society acquire. There is substantial evidence that such value acquisition occurs largely during childhood and early adolescence.

-Goodnow, 1997; Knafo and Schwartz, 2004

The Australian education system will only deliver an effective, well-educated citizenry through acknowledging and celebrating significant events and individuals throughout our history, up to the present day. Students must be encouraged to develop qualities in agency and action. Only through learning from the achievements and mistakes of the past, can we help to build a safe and cohesive society into the future, for all Australians.