

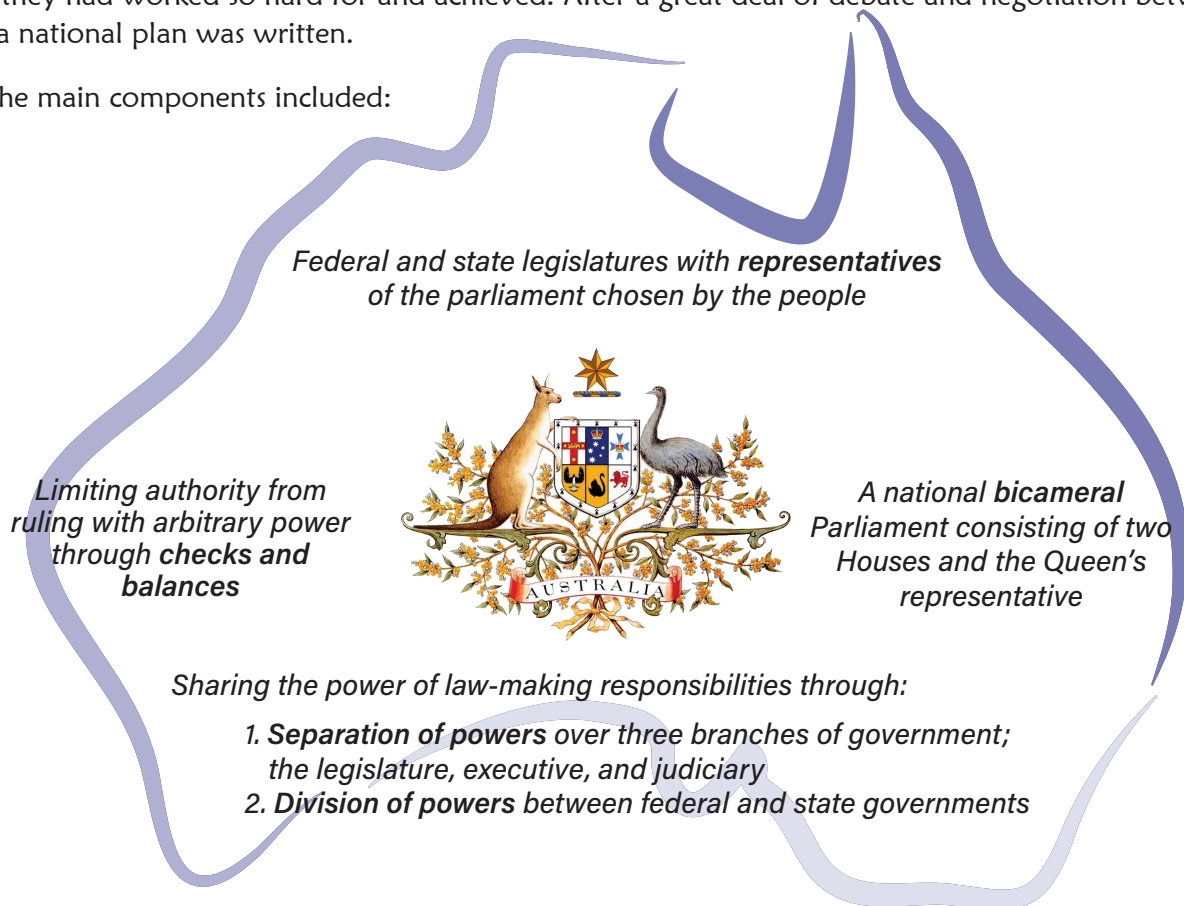


The Australian Constitution

The Australian Constitution is a set of rules, or principles by which Australia is governed. It is a blueprint which provides a plan for establishing a national government and lays the foundation for Australian democracy. This important document came into effect on January 1, 1901 when all the independent colonies came together and formed a federation.

The Australian Constitution was created from experiences born through colonial hardship, inequality, and denial of basic liberties. Since the time of early European settlement, the colonies followed English rules that were adapted for managing the penal settlements. Six separate colonies were established through the 1800s; New South Wales, Victoria, Queensland, South Australia, Tasmania, and Western Australia. Leaders began to think about how they could all come together and live under the same set of rules, yet still keep the individual freedoms they had worked so hard for and achieved. After a great deal of debate and negotiation between all colonies, a national plan was written.

Some of the main components included:



The Rule of Law

The rule of law is a concept, that both the government and citizens know the law and are ruled by it. Australian legislature fairly represents its citizens by creating laws the people will be able and willing to be guided by.

The Australian Constitution recognises and supports the rule of law by providing a legal system that is fair and accessible for all citizens.

The Constitution protects citizens from **arbitrary power**. This occurs when a ruling body makes decisions in its own authority and not according to the law, and without consequence. Arbitrary power is not fair as it takes the decision-making process away from the people, which can result in unjust outcomes.

In Australia, all persons and organisations, including the government are subject and accountable to the law.

The law is clear, known, and enforced.



The Constitution Protects All Citizens

The court system, called the **Judiciary** is independent and resolves disputes in a fair and public manner without being influenced by what a government would like an outcome to be. Instead, the courts decide outcomes according to the law. The Constitution also provides protections for the Judiciary, so they can remain independent and impartial.

Another important principle of the Constitution is **equality before the law**. Everyone, regardless of their wealth, status, race, gender, or beliefs in society have access to equal representation and justice. A person can only be punished for breaking a law and through proper legal processes. This means, that all people are presumed innocent until evidence shows their guilt. Penalties for crimes are determined by a judge and then enforced.

The Constitution has other mechanisms that uphold the rule of law, such as ensuring every citizen living in Australian society has fundamental rights.

Due Process

The right to access legal services

The right to a fair trial

The right to appeal

The Separation of Powers

The Constitution details how the separation of powers are responsible for decision-making and law-making between three branches of power. These mechanisms distribute the power to govern and limit arbitrary authority:



The Parliament has the power to make and change the law (Chapter I)



The Executive Council has the power to put law into action through various government departments (Chapter II)



The Judiciary has the power to make judgements on law (Chapter III)

The Constitution does not provide details of how the executive body will be managed; instead, the government has the option to decide how it will exercise that power. The Cabinet was formed as an administrative arrangement for government decision-making and is composed of selected Government Ministers, along with the Prime Minister leading as Chief Adviser. Whilst the Cabinet is an administrative decision-making body, the Federal Executive Council, presided over by the Governor General, has the power to formally implement government decisions.

TASK 1

Draw a diagram showing the three branches of government which represent the **separation of powers**.

Provide a brief explanation about each branch and **why** their roles are so important in upholding the rule of law in Australia's Constitution.

TASK 2

Investigate the Australian **Commonwealth Coat of Arms**.

Create a FACT card about this important symbol of Australian unity, including an explanation about each element represented.

Include a diagram on your fact card.