



Amending the Australian Constitution

Constitutional recognition and enshrinement

The *Australian Constitution* (Constitution) is Australia's supreme law which establishes the framework of Australia's system of democratic government.

The Constitution 'identifies and distributes' power between three branches of federal government:

- the Parliament - which is empowered to make laws (legislation) with respect to a number of specified matters;
- the Executive Government - in effect, the elected government of the day acting through its Ministers; and
- the Judicature - through the High Court of Australia (and other federal courts created by Parliament).

What is a referendum?

'Referendum' is the term given to the process by which all Australian people on the Electoral Roll vote on whether to approve a proposed law to amend the Constitution.

This vote follows approval by Parliament of the proposed law. Both steps must be performed in accordance with a process provided by section 128 of the Constitution.

For a proposed constitutional amendment to be approved by the people at a referendum it must be approved by:

- a majority of all voters; and
- a majority of voters in a majority of the States.

This is referred to as the 'double majority'.



What is the difference between amending the Constitution and Parliament making a law?

The Constitution is the supreme law of the nation. It provides for the powers through which the institutions of federal government – Parliament, the Executive Government and the High Court – may operate. It has a special status in that it cannot be changed in the same way as other laws can, and it overrides other laws passed by Commonwealth or State Parliaments. Accordingly, amending the Constitution requires the approval of the Australian public, through the formal referendum process.

In contrast, legislation –the nation’s federal laws– is made by Federal Parliament under powers granted to it by the Constitution. Parliament regularly makes changes to existing laws or creates new laws within its constitutional limits.

What is the process to amend the Constitution?

Section 128 of the Constitution dictates a two-step process to amend the Constitution:

1. passage through Parliament of a proposed law to amend the Constitution; and
2. a vote by Australian people to either approve or reject the proposed law to change the Constitution (the referendum).

The *Referendum (Machinery Provisions) Act 1984* (Cth) provides further provisions in relation to the carrying out of the referendum itself.



Together, the process to amend the Constitution involves the following steps:

Parliament passes a proposed
law to amend the Constitution



The proposed law to amend the Constitution must be passed by an absolute majority of each House of the Federal Parliament. Within two to six months after its passage through Parliament a proposed law is to be submitted to electors. In specific circumstances, a proposed amendment can proceed to a referendum if it is passed by only one House of the Parliament on two separate occasions.

The Governor-General issues
a writ



The Governor-General issues a writ (a formal written order) for the submission of the proposed law to the electors to be voted on in a referendum. The writ must appoint the date of:

- a. *the close of the electoral rolls* - the seventh day after the issue of the writ;
- b. *the voting day (which must be a Saturday)* - a day between 33 and 58 days from the issue of the writ; and
- c. *the return of the writ*, which certifies the outcome of the referendum - no more than 100 days after the issue of the writ.



Yes/No Pamphlet



Official pamphlets containing arguments 'for' and 'against' the proposed law (for and against arguments) may be put to voters. The Electoral Commissioner (Commissioner) is required to post such pamphlets to the household of each elector if the Commissioner is provided with 'for' and 'against' arguments authorised by a majority of members of Parliament who voted for and against the proposed law, respectively.

Any 'for' and 'against' arguments must be forwarded to the Commissioner within four weeks of Parliament passing the proposed law. If the Commissioner receives 'for' and 'against' arguments, the Commissioner must post the pamphlets not less than 14 days before referendum voting day.



Voting Day



On the day of the referendum, eligible voters are given a ballot paper on which they can indicate their support (by writing 'yes' in the space provided) or opposition (by writing 'no' in the space provided) to the proposed amendment question.



Royal Assent

If a proposed amendment is approved by the 'double majority', it is presented to the Governor-General for Royal Assent and becomes part of the Constitution.

Who can vote at a referendum?

It is compulsory by law for all eligible Australian citizens aged 18 and older to enrol and (once enrolled) vote in referendums and federal elections.

Why are referendums important?

Referendums ensure Australians continue to 'own' the Constitution, which is appropriate as the supreme law which provides for Australia's democratic system of government. The benefits of having the referendum process include:

- **Providing for the democratic process:** referendums provide a direct democratic process whereby citizens can express their views directly.
- **Legitimacy:** referendums provide for a sense of legitimacy to the outcome because the decision has been made directly by the people.
- **Participation:** referendums increase participation in the democratic process and give Australians a sense of ownership over the Constitution.
- **Durability:** when an amendment to the Constitution is made it can only be changed through another referendum, consequently the process ensures stability in the core principles underpinning the way in which Australia is governed.
- **Reflecting change:** Being able to amend the Constitution allows it to act as a 'living document', which evolves, as necessary, along with the nation and its values and priorities.

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Authorised by the Law Council of Australia, 24 Lonsdale Street, Braddon ACT 2612