

# Constitutional Law

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# Week 1 and 2 - Constitutional Interpretation and Change

## Constitutional Change

Written in the 1890s, there has not been much change.

Section 128 of the Constitution provides that a referendum (initiated by Parliament - legislation for a referendum must pass through parliament), can change the wording of the Constitution.

A double majority is required:

- Majority of voters overall in country
- Majority of people in majority of states

44 historical referendums

8 successful

*Referendum (Machinery Provisions) Act 1984 (Cth)* - how referendums work

- section 45 penalty for failing to vote at referendum.

Australia is described as the 'frozen continent' constitutionally speaking.

Common answers:

- Don't know, vote no
- If it ain't broke, don't fix it

### Australian Republic

1999 referendum.

Include Bill of Rights.

Australia already has some essential features of a republic. The Governor General is effectively our head of state.

## Constitutional Interpretation

The purposive approach to interpreting legislation in s 15AA of the Acts Interpretation Act.

However there is no set approach for Constitutional interpretation so the judges have a choice in their interpretation.

Kirby J believes there should be a uniform approach.

### Literalism/textualism

The words of a Constitutional text - but nothing else.

Dictionary. Legal meaning stays constant.

Appealing but limited; runs out quickly

*Attorney-General (NSW) v Brewery Employees Union of NSW (Union Label Case)* (1908) 6 CLR 469

- power to legislate regarding trade and commerce.
- The literal words of section 51(i) of the Constitution.
- Should use clear words in cases where the intention is clear that power is for the states alone.

### Originalism: Intentionalism

What was intentionally meant by the framers? Looking for the intention of the people who wrote the constitution.