

# Designing our political and legal system

On 1 January 1901 the Commonwealth of Australia, as we know it today, officially came into existence. It was created when the six former British colonies federated, to become six states—New South Wales, Queensland, South Australia, Tasmania, Western Australia and Victoria. Ten years later, in 1911, the two territories—the Australian Capital Territory and the Northern Territory—came into being as part of the Australian Commonwealth.

Altogether, the new nation became known as Australia. With the making of the new nation came the need for new rules. An important document, known as the Australian Constitution, was written to explain how this new nation would operate and what the main features of its government would be. The foundation of the Australian Government is based on the British Westminster system and is shaped by the Australian Constitution.

# The Australian Constitution

## Making the rules

In its most simple form, a constitution is a set of rules. Constitutions exist for many different groups, including businesses, school groups and sporting clubs. Constitutional documents outline how the particular group will be run and the procedures that need to be followed.

## Australia's Constitution

When **Federation** took place in 1901 there was a need for a set of rules stating how Australia would be governed. This set of rules came into effect on 1 January 1901 and is known as the **Australian Constitution**.

Australia's Constitution is a large and complex document containing eight chapters and 128 sections. Some of the key features of the chapters are described in Source 1.1.1.

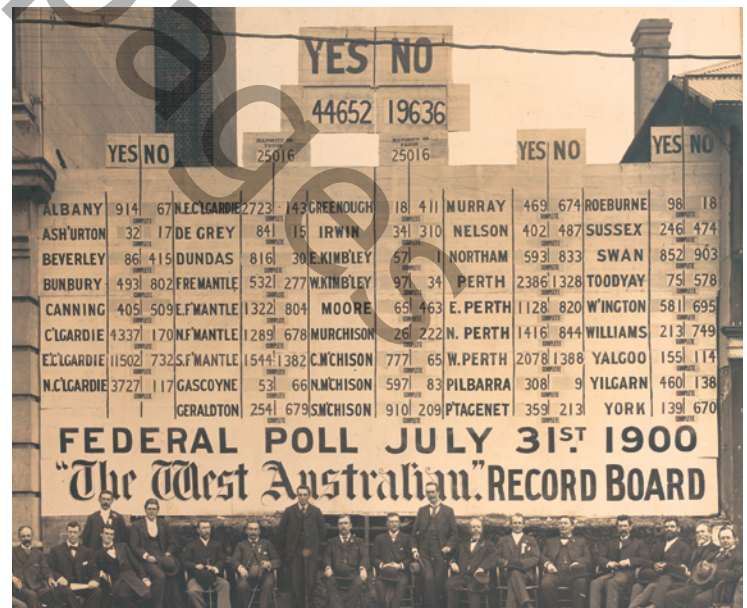
Chapter	Features
1	Describes how the federal parliament is made up of two Houses—the Upper House, or Senate, and the Lower House, or House of Representatives (a bicameral government)—and the Queen as the Head of State.
2	Describes the power of key people such as the Queen and the governor general.
3	Relates to the federal courts, including the High Court of Australia, which can settle disputes about the Constitution.
4	Deals with money and trade.
5 and 6	Explains the division of powers and the relationship between the Commonwealth, or federal, government and the states and territories.
7	Outlines where the capital of Australia should be and how the governor general has the right to appoint deputies.
8	Explains how the Constitution can be changed by referendum.

**Source 1.1.1** Some key features of the Australian Constitution

The Constitution describes how federal parliament is made up and how it works, how the power of the government is divided between various governmental institutions and the roles that each one plays in governing Australia. The Constitution also lists the areas in which the federal government has the power to make laws. Anything that the Constitution does not specifically say the federal government must do, the states can choose to do. It is possible for both federal and state governments to pass laws dealing with a particular issue, but in those cases the Constitution says the federal law is the one that needs to be followed.

While the document does not explicitly state all of the rights of Australian citizens, as constitutions from some other countries do, it does define some, such as the right to choose a religion.

In addition to the Australian Constitution, each Australian state has its own constitution. The two territories (ACT and Northern Territory) have similar documents called self-government acts. This means they are able to govern themselves, but do not have their own constitution.



**Source 1.1.2** Western Australia was the final state to agree to federate, on 31 July 1900, paving the way for the Commonwealth of Australia to come into existence and the Australian Constitution to be written.

## Differing state and federal roles

The Australian Constitution lists those areas of government that come under federal and state responsibilities.

Federal government	State government
foreign policy	schools
currency	hospitals
immigration	roads and railways
defence	police
weights and measures	mining and agriculture
social security	prisons
trade and commerce	public transport
postal and communication services	utilities such as electricity and water

**Source 1.1.3** Differing jobs of the federal and state governments

## Changing the Australian Constitution

The Australian Constitution can only be changed if the majority of Australian people agree. For any changes to be made they must be proposed, usually by politicians or lobby groups, and then put to a **referendum** or vote. Then all eligible voters in Australia must vote in the referendum. A majority of voters in a majority of states have to vote 'yes' for a change to be made to the Constitution. Since 1901 there have been 44 referendums. These have varied in purpose, from changing the timing of Senate elections to giving the Commonwealth the ability to make laws about the aviation industry. Only eight changes have been agreed to in that time.

One important change was made in 1967, when Australians voted to include Aboriginal people in the census or count of the Australian population and give the federal government the power to make laws for Australians of Aboriginal and Torres Strait Islander descent. This referendum saw the

highest 'yes' vote ever recorded, with more than 90 per cent of voters agreeing to make the change to the Constitution.



**Source 1.1.4** Bill Onus, Victorian Aborigines' Advancement League President, in a 1967 march for Aboriginal rights.

### ACTIVITIES

#### Remembering and understanding

- 1 What is a constitution?
- 2 When did Australia's Constitution come into effect?
- 3 List at least four things the Constitution describes.
- 4 How many referendums have there been since 1901?

#### Applying and analysing

- 5 Identify the stages in the process required to change the Constitution.

#### Evaluating and creating

- 6 Determine why the referendum in 1967 saw the highest 'yes' vote ever recorded in a federal referendum.

# The separation of powers

## The three branches of government

There are three main branches of the Australian Government—the **parliament** or **legislature**, the **executive** and the **judiciary**. These groups, and the roles they play in governing our nation, are outlined in the Australian Constitution. The power to make and manage federal law is divided between the three groups and is known as the separation of powers. The parliament makes and amends the law, the executive puts the law into action and the judiciary makes judgements about the law. These roles have been separated to avoid one group having all the power.

This separation of powers is one key to the success of Australia’s government. It means that each of the three branches of government acts separately, and as a check on the others. That means they keep the other branches from gaining too much power or acting **oppressively**. For example, the executive branch may want a law, but the legislature has to pass it. The judiciary has the power to say if the law is against the Constitution and therefore should not be in place.

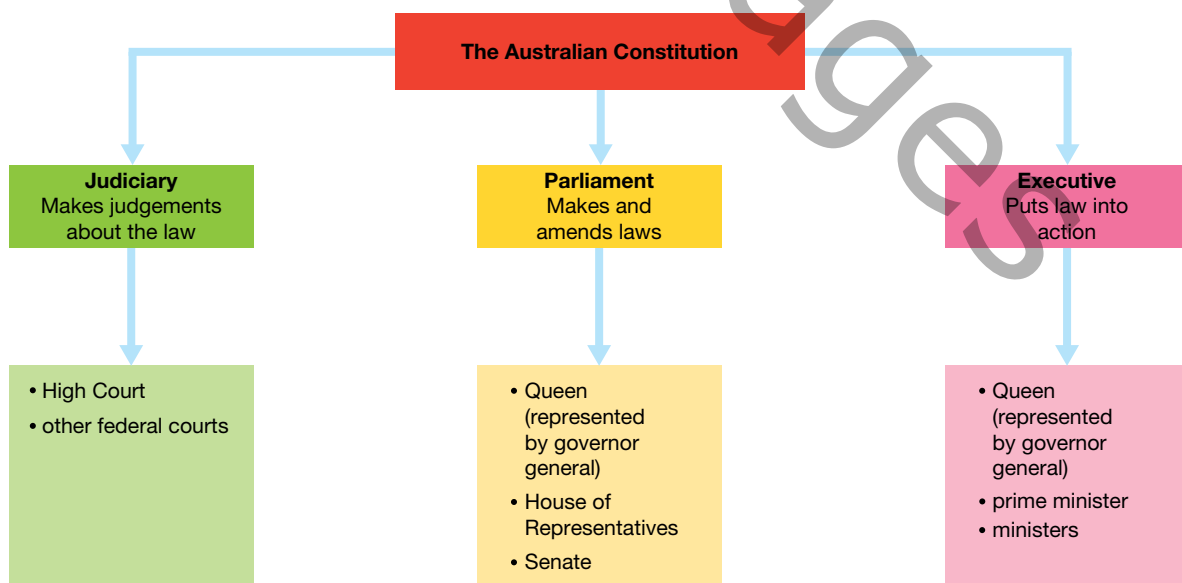
Australia does not have a complete separation of powers because some of the roles overlap. The prime minister, for example, is part of both the parliament and the executive.

## The Parliament

Parliament is also known as the legislature, and is made up of:

- Queen Elizabeth II, who is Queen of the United Kingdom, Australia, New Zealand and also Head of the Commonwealth. She is represented in Australia by the **governor general**
- the **Senate** and the **House of Representatives**, which collectively are known as the Houses of Parliament.

The Parliament of Australia passes legislation to make laws. Any proposed laws need to be agreed to by both Houses of Parliament before they become law. The two Houses have equal powers, although the Senate has a number of restrictions relating to introducing and amending some kinds of laws. The governor general also has a role in making laws, by basically giving his or her approval or assenting to acts.



**Source 1.2.1** The Australian Constitution sets out the powers of the three branches of government to make and manage federal laws.

Some of the other roles of the Parliament of Australia are:

- providing the members of the executive government from the political party that wins the election
- providing the place where the government is formed
- providing representation for the Australian people through 150 members in the House of Representatives and 76 senators
- providing a check on the work done by the government through debates and questioning issues during question time
- authorising, or approving, the executive government to spend public money.



**Source 1.2.2** The leader of the governing party becomes the prime minister. Julia Gillard was the 27th prime minister of Australia and the first woman to hold this position. The prime minister is part of both the parliament and the executive.

## The executive

The executive is made up of the Queen, represented by the governor general, and the cabinet and ministry, led by the **prime minister**. The job of the executive is to carry out the day-to-day government and administration of the country and to carry out the laws made by the parliament. The governor general, as the Queen's representative, is part of the executive because Australia is a **constitutional monarchy**.

A constitutional monarchy is a form of government where the powers of the ruling monarch—a king or queen—are limited by law and usually carried out only on the advice of the elected government. Australia's Head of State is Queen Elizabeth II. Queen Elizabeth is also Queen of the United Kingdom and several other countries, but her role in Australia is quite separate from her role in the UK. The head of state is a formal, symbolic and ceremonial job, and in Australia the Queen's tasks have been delegated to her representative, the governor general.

### The roles of the governor general and the Queen

The governor general is effectively the Queen's representative in Australia and performs the ceremonial functions on behalf of the Queen. The tasks of the governor general are written in the Constitution and can include:

- appointing and dismissing executive councillors and ministers
- appointing judges
- being the commander-in-chief of the defence forces
- deciding when parliament meets, suspending and dissolving parliament
- issuing writs for general elections
- recommending government spending to parliament
- signing off on proposed new laws
- blocking or proposing amendments to any laws passed by the Houses of Parliament
- receiving and entertaining official visitors to Australia.



**Source 1.2.3** Prime Minister Gough Whitlam was dismissed by Australia's governor general on 11 November 1975.

The Constitution also gives the governor general the power to act independently in some areas. For example, the governor general is able to dissolve the House of Representatives or both Houses (called a double dissolution) in exceptional circumstances.

For example, in 1975, the then governor general, Sir John Kerr, made history by using his reserve powers to sack Gough Whitlam's Labor government. The Liberal Opposition had blocked money going to the government. Kerr appointed the Opposition leader, Malcolm Fraser, as temporary prime minister on the understanding that Fraser would approve the supply of money and call an election.

These powers are reserve powers not clearly defined in the Constitution, and the governor general usually acts on the advice of the prime minister.

### The prime minister

The prime minister is the head of government and leader of the executive. He or she is the person who leads the party voted into office by the Australian people. The prime minister has a great deal of power to select the government and determine what its priorities will be. The prime minister is also the chief adviser to the governor general.

Australia's current prime minister, Malcolm Turnbull, is the fourth prime minister to hold office since 2013, and has recently won a second term of office. There have been 29 prime ministers in Australia and 45 elections up to 2016. Sometimes the prime minister may change without an election. Reasons for this could be that the prime minister died while in office or there has been a party leadership change.

### Did you know?

On Sunday 17 December 1967 the 17th Australian prime minister, Harold Holt, disappeared while swimming at a beach on Point Nepean in Victoria. Despite a massive search, his body has never been found and there have been many conspiracy theories about the day that Australia lost a prime minister.

### Cabinet

The **cabinet** is the group of senior ministers who make government policy for running the country. This group is made up of senior politicians, selected and presided over by the prime minister. There are currently 30 ministers, selected by the prime minister, with around 19 senior ministers managing the major departments, which include Agriculture and Water Resources, Foreign Affairs and Trade, Treasury, and Industry, Innovation and Science.



Source 1.2.4 The High Court of Australia, in Canberra

## The judiciary

The power to interpret laws and to make judgements on them rests with the judiciary. This is done through courts such as the High Court, which is the highest court in Australia, and other federal courts. The High Court was established by the Constitution, while the other courts were created by legislation of the parliament.

The High Court consists of a chief justice and six other judges. Judges are appointed by the governor general after advice from the prime minister and cabinet, and can only be removed from their position by the governor general. Once they are on the bench, judges keep the position until they retire or reach the age of 70 years, when they are forced to step down by law.

One of the major roles of the High Court is to interpret the Constitution.

### ACTIVITIES

#### Remembering and understanding

- 1 What are the three main branches of the Australian government?
- 2 List the three bodies that make up the Australian Parliament.
- 3 What is the job of the executive?
- 4 Who selects the ministers to form the cabinet?

#### Applying and analysing

- 5 Construct a diagram showing the roles of and the relationship between Australia's three branches of government.
- 6 Identify other roles of the High Court.

#### Evaluating and creating

- 7 Investigate why Governor General John Kerr dismissed the Whitlam Labor Government in 1975.
- 8 Determine why Australia has had four prime ministers since 2013 and decide what this reveals about Australia's parliament.