

THE SEPARATION OF POWERS

A glossary and activity sheet for this poster can be found at <http://www.ruleoflaw.org.au/education/posters/>

The Separation of Powers describes the way in which the law gives power to the arms of government in Australia. It ensures government remains fair and accountable by creating checks and balances on the use of power.

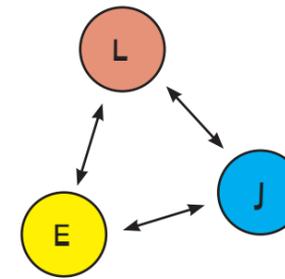
It is essential under the rule of law that the use of power is lawful, and can be challenged.

Power is balanced between the Judiciary, Legislature and Executive, so each can act as a check on the power of the other.

Checks

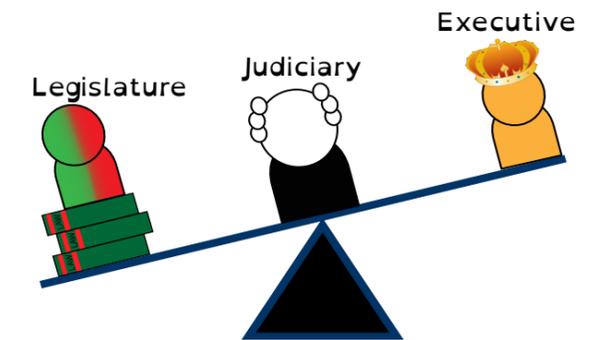
Checks are mechanisms which allow each arm of Government to review or override the actions of the other two arms.

There are many different checks on power within Australian Government. They all aim to ensure accountability, which means that legal decisions can be challenged and that all arms of Government act according to the law. Checks are essential in maintaining the rule of law.



Balances

Power is balanced between the three arms of Government, so checks can operate. If power was not balanced and one arm was too powerful, checks on that arm would not be effective. This means that each arm should only use power according to the Australian Constitution.



The Judiciary

Checks and Balances

The Judiciary can strike down laws made by the Legislature, and declare actions of the Executive unlawful. This is one of the most important checks on the power of Government because it provides a legal process in the courts for individuals to challenge the decisions of the Government.

The Judiciary includes judges and the courts which exist to interpret the law when there is a legal dispute.

Judges must make decisions based on the law and provide reasons for their decisions.

Judges have the power to make various orders to give effect to their decisions.

\$ A judge's pay cannot be reduced while they hold office \$

A High Court Justice can only be removed from office by the Governor-General after a vote in both houses of Parliament.

The Judicial Oath

When sworn in to office, judges make the following oath to '...do right to all manner of people according to law without fear or favour, affection or ill-will' (be fair and impartial)

The High Court

The High Court of Australia provides one of the most important checks on the power of Government in Australia.

It is an independent and impartial decision making body which has the power to overrule the decisions of all lower courts and to declare laws invalid and actions of the Executive unlawful.

Justices of the High Court are appointed by the Governor-General on the recommendation of the Prime Minister/Attorney-General.

Chief Justice



Justices



The Executive

The Governor-General



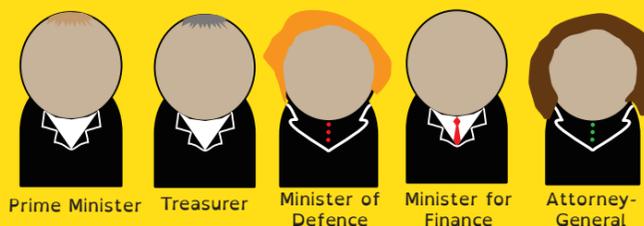
The GG has ultimate power over the Commonwealth of Australia. This power is usually exercised on the advice of the Executive Council and its Ministers.

The GG gives royal assent to laws passed by the Legislature, and has 'reserve powers', one of which is to dismiss the Prime Minister, which are only used in exceptional circumstances.

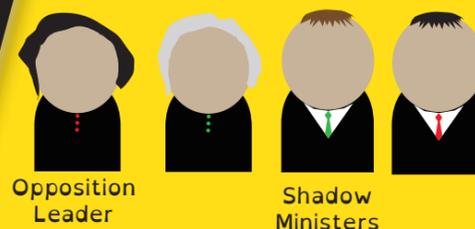
Members of the Legislature are elected, sworn in by the GG and can be appointed as members of the Federal Executive Council.

The Federal Executive Council

They have the power to implement laws passed by the Parliament and are in charge of Government Agencies and Departments. They have powers, defined by law, to deal with social, economic or environmental issues as they arise. They must only use power in the way set out by law.



The Shadow Cabinet and "The Opposition"



The Shadow Cabinet are not part of the Executive, and have no official status other than being members of the Parliament. They 'shadow' relevant Government Ministers and question the actions of the Executive in Parliament.

The Opposition is another check on the power of the Executive. They are frequently critical of Government policy and legislation.

The Legislature

The Legislature, which includes the Houses of Parliament, the Senate (red) and the House of Representatives (green), and the representatives who are elected to them.

The legislature is responsible for drafting, debating and voting on new laws, and amendments to existing laws.

In Australia there is not a "true" separation between the Legislature and Executive, because those appointed to the Executive are also members of Parliament.

States and Territories are allocated seats in the House of Representatives based on the population of the State or Territory.

The Senate provides for proportional representation of States and Territories. All States have 12 Senators and Territories 2

The House of Representatives		The Senate	
34	14	6	6
NSW		6	6
27	10	9	3
VIC		9	3
25	4	7	4
QLD		7	4
10	5	8	4
WA		8	4
9	2	7	5
SA		7	5
4	1	6	6
TAS		6	6
1	1	1	1
ACT		1	1
1	1	1	1
NT		1	1

Checks and Balances

The Legislature acts as a check on the Judiciary because it can pass laws which override the decisions of the courts.

Members of the legislature may also ask questions of the executive during Question Time in Parliament. They are also vocal in the media about current issues.