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. See the boxes surrounded by the green lines for an explanation of some of the checks on power which operate in Australian Government.

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.

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.

The Judiciary
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 to provide reasons for their decisions. Judges have the power to make various orders to give effect to their decisions.

The High Court
The High Court of Australia provides one of the most important checks on the power of Government in Australia. It ensures the courts for individuals to challenge the decisions of the Government.

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 House of Representatives
The House of Representatives is the lower house of Parliament. It is the main legislative chamber and the representative body of the people.

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

The Federal Executive Council
Members of the Government are appointed as Ministers to 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 Opposition
The Opposition are another check on the power of the Executive. They are frequently critical of Government policy and legislation.

The Governor-General
The Governor-General (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.

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

However, laws should not be retrospective, which means the legislature cannot reverse the decision of a court, only change the law from the time it is proclaimed.

The Rule of Law Institute of Australia is an independent, not-for-profit organisation which promotes discussion of the rule of law in Australia. It supports principles such as access to justice, the presumption of innocence, fair trials as well as accountability and transparency in Government.