

THE SEPARATION OF POWERS

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

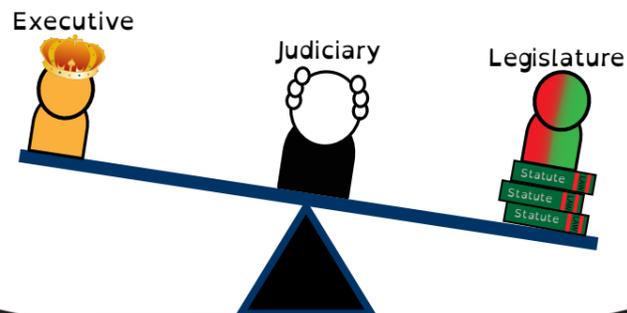
The Separation of Powers describes the way in which the law gives power to the **arms of government** in Australia. It ensures government remains fair and accountable by creating **checks and balances** on the use of power.

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

Definitions for words which are **bold/underlined** can be found in the glossary.

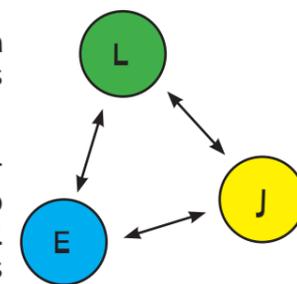
Balances
Power is balanced between the three arms of Government, so checks can operate. If power was not balanced and one arm was too powerful, checks on that arm would not be effective. This means that each arm should only use power according to the Australian Constitution.



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 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 \$\$

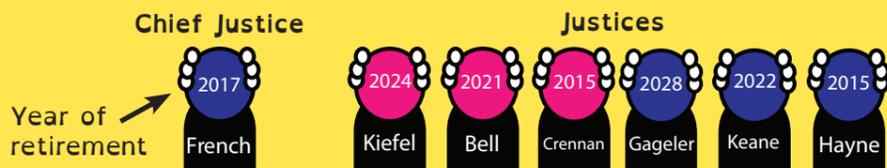
A High Court Justice can only be removed from office by the Governor-General after a vote in both houses of Parliament.

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.

The Executive

The Governor-General

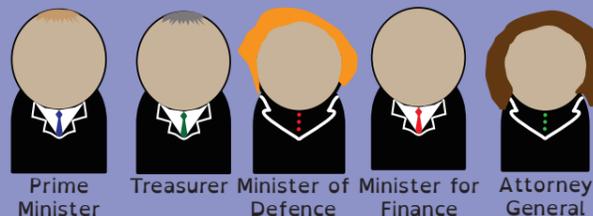


The GG has ultimate power over the Commonwealth of Australia. This power is usually exercised on the advice of the Executive Council and its Ministers.

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.

The Federal Executive Council

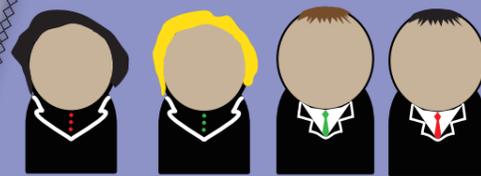
Members of the Legislature are appointed as Ministers to the Federal Executive Council.



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 Shadow Cabinet and "The Opposition"



Opposition Leader, Shadow Ministers

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 and the representatives who are elected to them, is responsible for drafting, debating and voting on new laws, and amendments to existing laws.

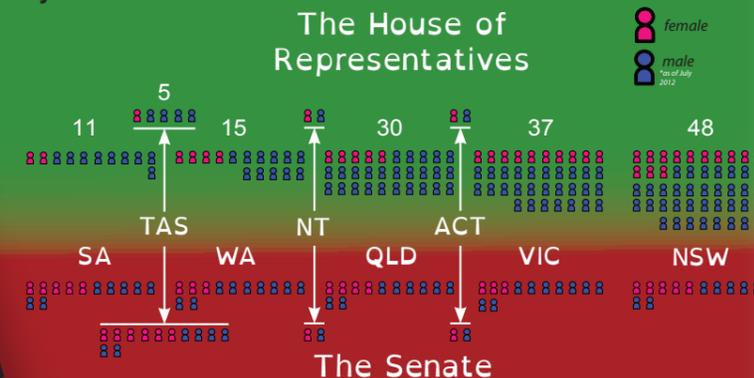
In Australia there is not a "true" separation between the Legislature and Executive, because those appointed to the Executive are also members of Parliament.

The Legislature 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 Federal Parliament which sits in Canberra is bicameral which means it has two houses: the House of Representatives and the Senate.

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 Senators each.

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.

