The separation of powers is the idea that there are checks and balances on the powers of government. The Australian Constitution creates three arms of government which check each other’s use of power...

### The Parliament

**Elected representatives** in the House of Representatives and the Senate debate and pass statute law.

- **Senators:** 76
- **Members of the House of Representatives:** 150
- **Political parties represented:** 11

The Senate is bicameral which means that there are two houses: the House of Representatives and the Senate. Elected representatives in the Australian Parliament represent approximately 24 million Australians from 6 States and 2 Territories.

**How busy is the Parliament?**

In the 2014/15 financial year, 172 Bills were introduced, totalling 6395 pages. The Parliament passed 177 Bills in the 2015 calendar year.

### The Executive

 Ministers appointed by the Governor-General use powers granted by the law to run the country.

The Governor-General (GG) is the Queen’s representative in Australia, and is the head of the Executive. The GG must give “assent” to any bill passed by the Parliament before it becomes law.

The GG asks the leader of the political party with the most seats in the House of Representatives to form a government. That person becomes the Prime Minister, and selects other members of Parliament to be ministers of government departments who become the Federal Executive Council.

The Cabinet, consisting of members of Federal Executive Council, makes decisions about running the country. Discussions and documents at these meetings are confidential for reasons of national security and to allow government departments to give honest and frank advice to the Ministers about how to exercise their powers.

### The Judiciary

**Checks on the Power of Judges**

Precedents established by judgments can be overridden by the Parliament passing a law. This does not mean the Parliament can change the judgment of a court, but it can pass a law to prevent the courts interpreting the law that way in the future.

For example, in 2015, the Parliament passed a law which overruled the precedent set in X7 v Australian Crime Commission (see opposite) which stated that a person could not be forced by the Australian Crime Commission to answer questions about matters for which they had not yet been tried.

### The High Court and the Separation of Powers

The High Court and the other courts are the main way individual rights are protected in Australia. If a person believes a law is unconstitutional, or that an action of government is unlawful they can challenge the law or government in the courts. Judges are required to be independent, impartial and make decisions based on the law.

**Cases Where the High Court has acted as a Check on the Power of the Parliament or Executive:**

- **R v Wilson** [1934] HCA 63 - the High Court freed a well-known German Communist immigrant, who had been detained after failing a language test in Scottish Gaelic, saying the Federal Government was not obeying the laws passed by the Federal Parliament.
- **Sankey v Whitlam** [1978] HCA 43 - the High Court required the Federal Government to hand over certain important documents to the Court, saying that the ‘privilege’ that the Federal Government claimed over them was actually much narrower than the Government claimed.
- **Plaintiff S157/2002 v Commonwealth** [2003] HCA 2 - the High Court prevented the banning of the Australian Communist Party, saying that the Federal Parliament did not have the power to make the laws under which it was to be banned.
- **Xy v Australian Crime Commission** [2013] HCA 29 - the High Court prevented the deportation of an asylum seeker from Australia to Malaysia as part of the Federal Government’s so-called “Malaysia Solution”, saying that the Federal Government was not obeying the laws passed by the Federal Parliament, which required certain human rights protections to be in place.

**Protecting the Independence of Judges**

The independence of judges and the courts is protected from outside influence to ensure that decisions made by judges are based on the law, and are made without fear or favour.

The Executive may not reduce the pay of a judge while they hold office.

A judge can only be removed for proven misconduct or incapacity. The decision to remove a judge is made by the Governor-General following a joint sitting of the Senate and House of Representatives that votes to remove them.

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The current justices of the High Court are:

- **Chief Justice**: Kiefel
- **Deputy Chief Justice**: French
- **Justice**s: Bell, Nettle, Keane, Gordon, Gageler

The year indicates the year the justice will be 70 years old. The judges of Federal Courts must retire at the age of 70.

“TREASURY” by Catherine McNicol, cilart

The year 2014/15 is a joint sitting of the Senate and House of Representatives.