

The difference between

**SEPARATION OF
POWERS**

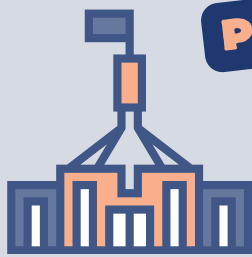
and

**DIVISION OF
POWERS**

Separation of Powers

The power of the government to make decisions on behalf of the people is separated into three branches to ensure one body is not too powerful, and the other bodies can keep a check on each other.

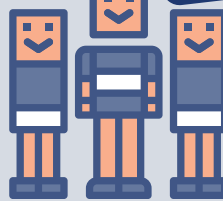
Legislative



POWER

The power to
make and change
laws

Executive



POWER

The power to
enforce the laws
and put them into
action

Judicial



POWER

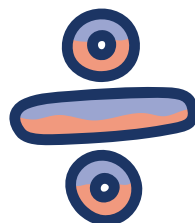
The power to
resolve disputes
about law

Division of Powers

At Federation, the power to make laws was split between the Federal and State Governments. This allowed the Federal Government to handle national issues while letting the States manage their own affairs.

Federal
Government

POWER



State
Government
(and Local Gvt)

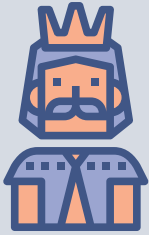
POWER

Note: The Australian Constitution shows both 'separation of powers' and 'division of powers,' even though these terms are not directly mentioned. Because some powers overlap, the separation of powers is not absolute. Local government is not included in the Constitution but is considered as part of the division of powers.

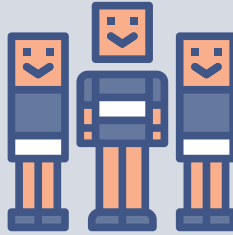
Executive Powers

The power to enforce the laws
and put them into action

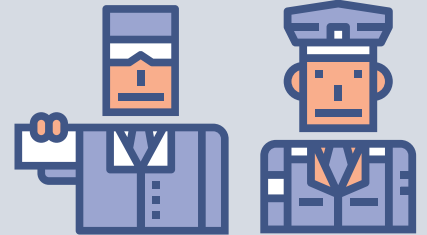
Who



Governor General



Prime Minister and members of the Legislature that are appointed as Ministers of Government departments.



Staff of the Government departments are called public servants and include the police and army.

How



Australian Constitution: Chapter II sets out the executive powers of the Australian Government. Powers of the executive are also outlined in legislation as well as in common law. All actions of the executive must be in accordance with the law.

Under the Constitution, the Governor-General has ultimate power over the Commonwealth of Australia. However, this power is usually exercised on the advice of the Executive Council and its Ministers (the Cabinet).

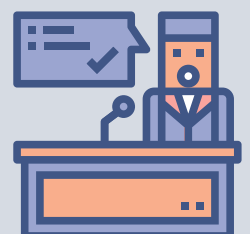
Parliament can delegate authority to the Executive to make laws.

Checks

The Executive is the largest and most powerful branch of Government as it has the power and strength to enforce the law.

An independent judiciary is an important check on the power of the Executive to ensure their actions are lawful.

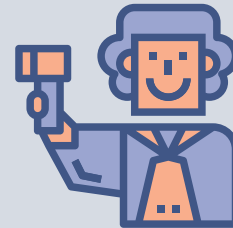
The Legislature also checks the power of the Executive and holds them accountable for their decisions through parliamentary scrutiny and question time.



Judicial Powers

The power to resolve disputes
about the law

Who



Judges and the Courts

Judicial oath:

*to do right to all manner of people according to the
law, without fear or favour, affection or ill will.*

How



Australian Constitution: Chapter III establishes the High Court of Australia as the highest court ie final court of appeal.

The Judiciary has the power to create law in the form of case law (common law). The decisions of lower courts are reviewable on appeal to higher courts. The High Court also makes decisions about how the Constitution should be interpreted.

The Constitution protects judges remuneration and length of service from government interference.

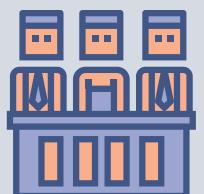
Checks

The Judiciary must be independent and impartial.

They are independent so they can be an effective check on the power of the Legislature and Executive. This allows them to make decisions based on the law and not government policy. They have the power to strike down any laws made by the Legislature that are outside their power, or to declare actions of the Executive unlawful.

They must also be impartial as they administer justice fairly and equally to all, irrespective of their own personal opinions and bias.

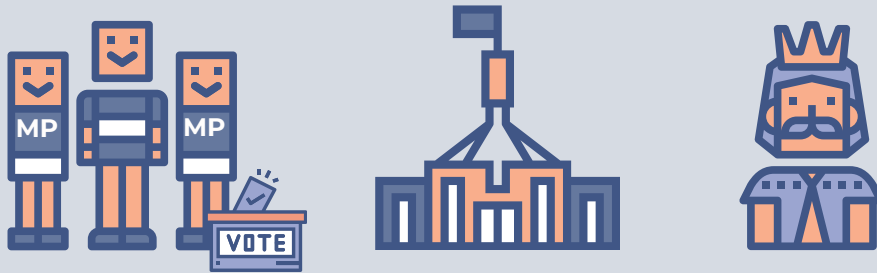
Parliamentary Sovereignty means the Legislature can override a Courts interpretation of an ordinary law by passing or amending a law.



Legislative Powers

The power to make and change laws.

Who



Members are elected to Parliament through a vote by the people of Australia. There is a bi-cameral system with two Houses of Parliament: the House of Representative and the Senate. The Governor-General gives final Assent to Bills passed.

How



Australian Constitution: Chapter I outlines (or enumerates) the areas the Federal Government can make laws. The State Governments have residual and concurrent powers. This is called the Division of Powers.

If there is an inconsistency, Federal laws override State Laws.

Parliamentary sovereignty means the Legislature has the power to make (or unmake) any law within its legal powers.

Checks

Parliamentary rules and procedures, as well as the bi-cameral system of government, provide an important check on legislative power. They ensure laws are not made in secret or without adequate scrutiny and debate. This includes the role of the Governor-General is giving royal assent to all laws passed by the Legislature.

An independent judiciary also provides a check on the Legislature to ensure all legislation is lawful and within the powers of the Legislature.

Parliamentary Sovereignty is held in check through regular elections where the people have the power to elect/re-elect Members of Parliament who make laws on behalf of the people. This accountability relies on freedom of speech, freedom of the media and an implied freedom of political communication.

