



# The Separation of Powers

The separation of powers is an idea that is based on the Westminster parliamentary system of government. This system ensures equality in justice by having checks and balances to keep the government decision-making fair and accountable on its use of power. It is essential the system follows ideals and principles surrounding the rule of law – where the use of power must be lawful, equally available to all citizens, and can be challenged.

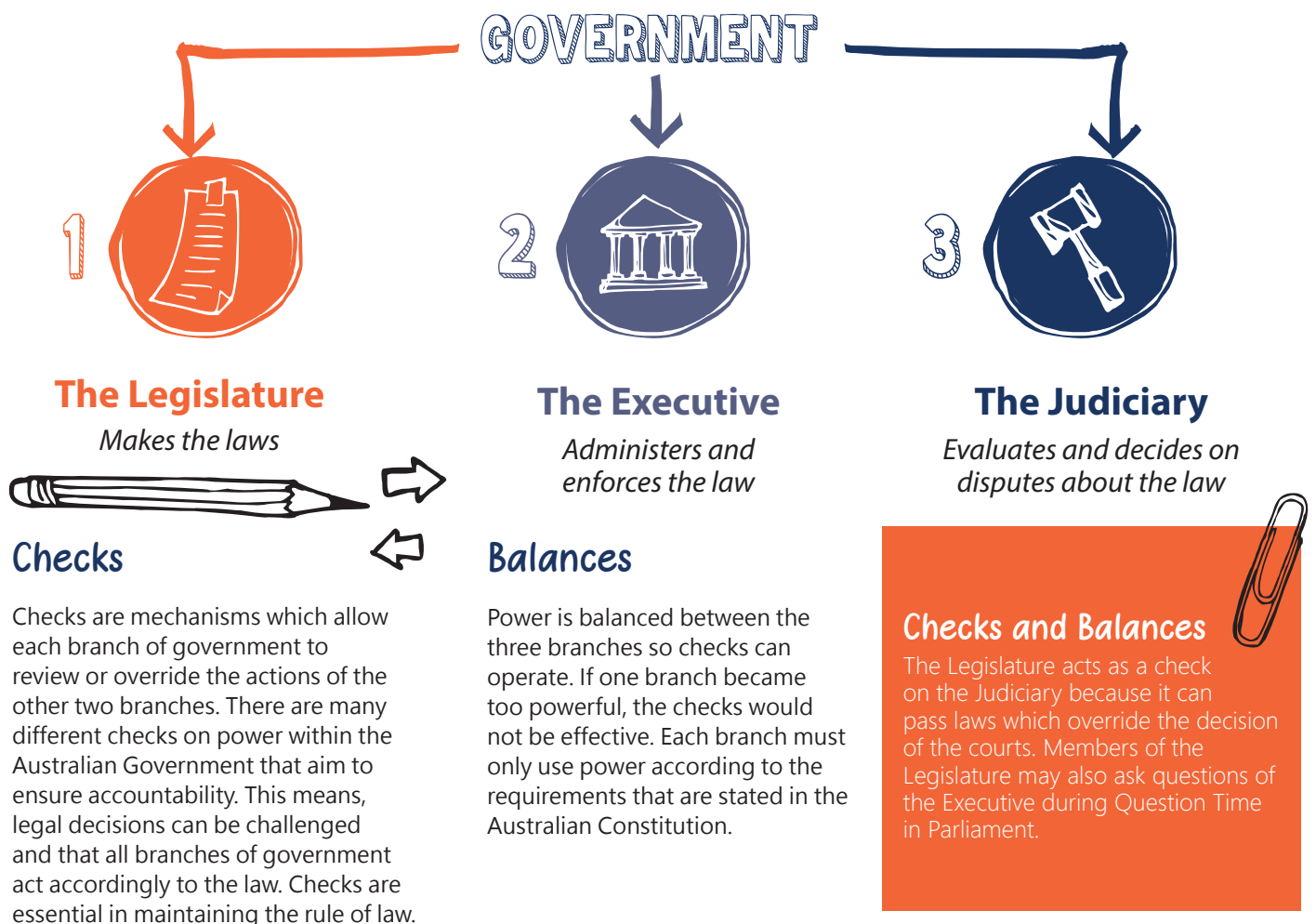


## Some of these principles include

- ✧ All Australians should be treated equally by the law and should obey the law
- ✧ The law should be fair, so that people and the authorities are willing to be ruled by it
- ✧ Laws should be clear and expressed in general terms for everyone to understand
- ✧ Laws should be stable and not change frequently
- ✧ Law-making should be guided by open and clear rules



The Australian Constitution provides for three branches of power to ensure that checks and balances are maintained regarding decisions in law making





Lets break down each level so you can get a better understanding of the various roles, and how they operate.



## The Legislature Parliament

The legislature is a **bicameral** system as it is made up of two Houses, the **SENATE** and the **HOUSE OF REPRESENTATIVES**. All representatives are elected by the people.

The Parliament is responsible for drafting, debating, and

voting on new laws, and determining amendments to existing laws.

States and territories are allocated seats in the House of Representatives based on the population of the state or territory. The Senate provides for additional representation of states and territories.

All states have 12 senators and territories have 2.



## The Executive Council

This branch is made up of all government ministers and the Governor-General. The Prime Minister is the **Chief Advisor**.

The **Governor-General** is the Queen's representative in this council and has ultimate power over the Commonwealth of Australia, by providing approval to laws that have been passed by the parliament. The Governor General also has reserve powers, such as being able to dismiss the Prime Minister, although this is only used in exceptional circumstances.

The Cabinet is an administrative body made up of senior government ministers, including the Prime Minister. They are appointed to the Cabinet by the Governor General on the advice of the Prime Minister. The Council is the focal point of the decision-making process of government. However, it is not recognised as a legal force by the Constitution of Australia. Whilst certain decisions may be made by government in the Cabinet, they must then

be passed through the Federal Executive Council, which does have legal force according to the Constitution. In effect, the Federal Executive Council meets only to give official approval to decisions that have already been made in the Cabinet. Checks and Balances.

The Cabinet has the power to implement laws passed by parliament and oversee government agencies and departments which are defined by law. This is so the government can deal with social, economic or environmental issues that arise in Australian society. But the Cabinet does not make the law, **it must only use power in the way that is set out by the law**.

The **Shadow Cabinet**, also known as the **Opposition**, are not part of the Executive and have no official status other than being members of the parliament. The Opposition questions the actions of relevant government ministers and are frequently critical of government policy and legislation. This provides another check on the power of government.



## The Judiciary

The Judiciary is the system of judges and federal 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. The Judicial Oath is a promise that is made by a judge when they are sworn into office:

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

It is important that a judge is seen as independent and impartial. They must treat all people equally and be free from external pressures so they can make decisions in accordance with the law.

The **High Court** is the highest level of the judiciary and provides one of the most important checks on the power of government in Australia. It is an independent decision-making body which has the power to overrule any decision of all lower courts, or to declare laws made by the Executive Council unlawful or invalid where

they are contrary to the Constitution. The Constitution contains clauses to safeguard the independence of the judiciary including provisions outlining their appointment and removal.

One of the most important checks on power can involve an **Appeal**. This is a request for a higher court to review a lower court's decision because a party loses or is unhappy with the decision made by the lower court. An appeal can be taken all the way to the High Court and all Australian citizens have access to this level of 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.



For more information go to: [Australian Law Reform Commission](http://AustralianLawReformCommission)



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1. What is the Westminster System of government and how is it related to the Australian Parliament?

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2. What are the three branches that form the separation of powers?

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3. Explain your understanding of the role and responsibility of each branch, including how it helps to maintain the rule of law in Australian society:

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4. What is the Legislature and how is it formed?

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5. Explain the difference between the House of Representatives and the Senate.  
Why it is important to have a bicameral system of government?

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6. What is the purpose and function of Cabinet? Explain why it exists even though it is not recognised as a legal force according to the Australian Constitution.

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7. Investigate and explain why the House of Representatives is furnished in green and the Senate in red. Are they the same or different to the colours found in the British Parliament? If they are different, explain how.



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8. What groups, or people might try and improperly influence a judge?

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9. The Judiciary provides one of the most important checks on the power of government. Give an example of how the judiciary can stop the Government from having absolute power.

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Provide the questions for this crossword puzzle



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