



## Fact sheet: Separation of powers

The Tasmanian system of government is based on the Westminster model, developed in the United Kingdom. The Separation of powers is a key aspect of this model. It means that in order to prevent any person or group from abusing their power, the institution of government is distributed between three different branches which each have a specific role. These branches are called the Legislative, the Executive and the Judiciary.

### The Legislative

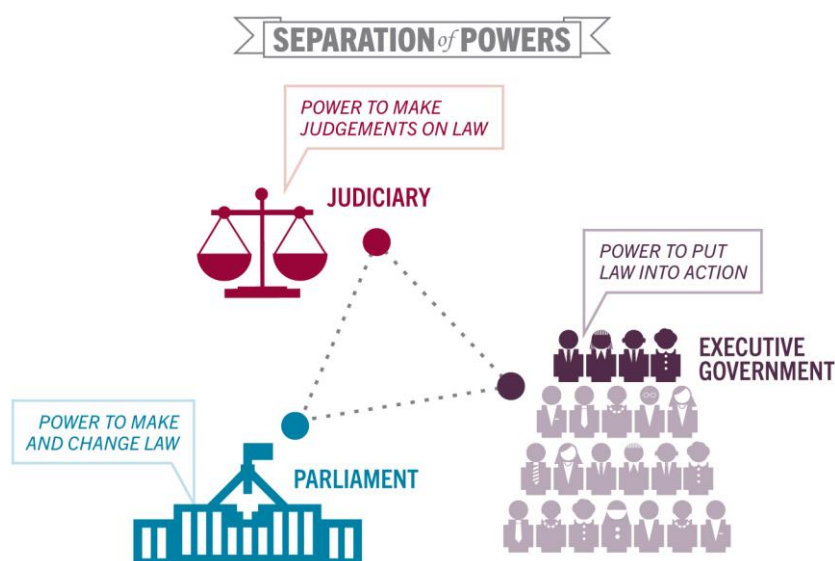
The Legislative power is held by the Parliament made of the Governor of Tasmania, the House of Assembly and the Legislative Council. They have the power to create and amend law.

### The Executive

The Executive power is held by the Government. They are responsible for the administration of the various Government agencies and in doing so for implementing Laws. According to the principle of “Responsible Government”, the party, or parties, which can gain or hold a majority on the floor of the lower House, the House of Assembly, after an election forms, and retains, Government.

### The Judiciary

The Courts with jurisdiction in Tasmania interpret the law and makes judgements about the law. The Supreme Court of Tasmania is the highest court and hears matters in criminal and civil law and appeals.



Source: [https://www.peo.gov.au/uploads/image\\_gallery/the-law/PEO\\_0701\\_separation-powers.jpg](https://www.peo.gov.au/uploads/image_gallery/the-law/PEO_0701_separation-powers.jpg)

## Limitations to the Separation of Powers in Tasmania

The separation of the executive, legislative and judicial systems is only theoretical because 'there is inevitably an overlap between the different powers. Indeed, responsible government itself is arguably a compromise of the doctrine of the separation of powers in that the ultimate heads of executive departments are also members of the governing party in the legislature.' [1] Moreover, such theories of Parliament and law-making have not remained static and a 'more recent view is that policy consideration underlying the process of law-making are to some extent relevant in finding what was intended by the legislation.'

Reflecting this evolution in the mid-1980s Tasmanian legislation authorised the use of extrinsic material — background documents — so that the judicial system could better determine the meaning of Parliament's principal output, statutes. Produced by public servants 'Fact Sheets' and 'Clause Notes' form background documents that assist in resolving any 'ambiguity or doubt as the meaning' of a statute, and 'help establish the purpose or object underlying an Act or provisions in an Act.'

<sup>[1]</sup>This and following citations: D.C. Pearce & R. S. Geddes *Statutory interpretation in Australia* (5<sup>th</sup> Ed.) NSW: Butterworths, 2001 p.52.

Adapted from:

*Tasmania's Principal Constitutional Features,*

<http://www.parliament.tas.gov.au/php/Principal%20Constitutional%20Features.htm>, retrieved on 04/09/2017

*Separation of Powers: Parliament, Legislative and Judiciary,*

[https://www.peo.gov.au/uploads/peo/docs/fact-sheets/separation\\_powers.pdf](https://www.peo.gov.au/uploads/peo/docs/fact-sheets/separation_powers.pdf), retrieved on 04/09/2017