

Foundation Studies

Business Environments

Part 1: The Australian Government Environment

Unit 1

The Australian Legal Foundation

Lecturer:

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Acknowledgement of Country

UNSW acknowledges the Bidjigal, Gadigal, Ngunnawal and Ngambri, who are the Traditional Custodians of, and whose communities remain connected to, the unceded territories on which the University's main campuses are located. We pay our respects to Aboriginal and Torres Strait Islander Elders past and present for their custodianship of Country, and celebrate the cultural knowledge, stories, songlines, ancestors and dreamings of Aboriginal and Torres Strait Islander people, the First Peoples of Australia.

Overview

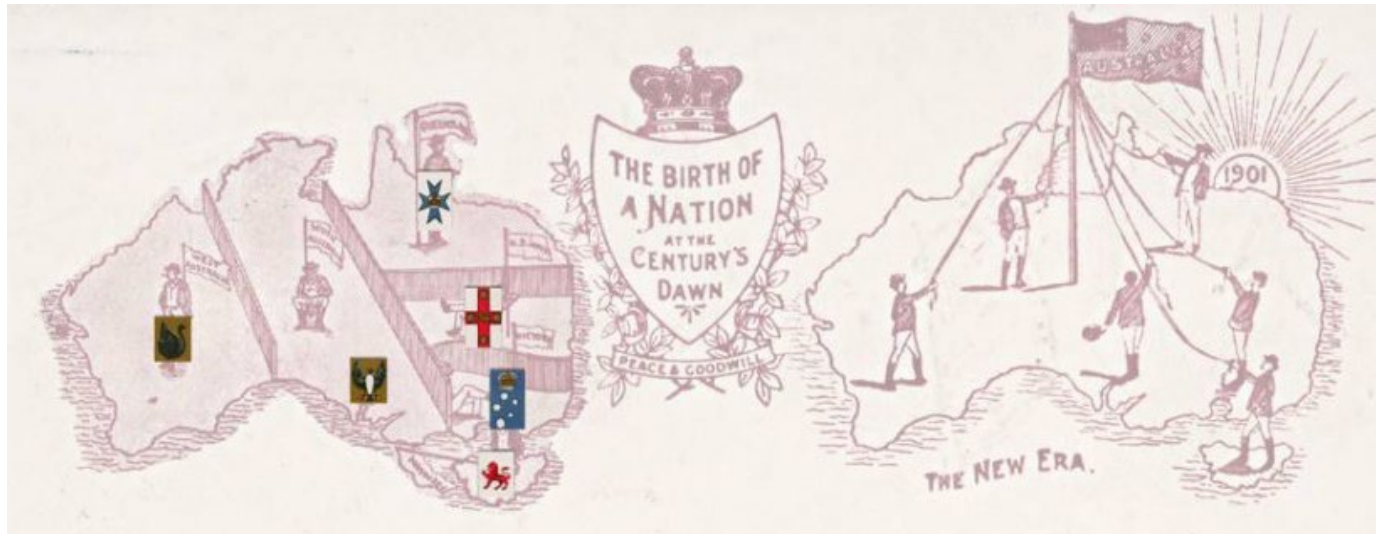
- Australian Democracy
- Federation of Australia
- The Australian Constitution
 - Division of powers
 - Separation of powers
- Sources of law
 - Recognising cases and legislation
- Meanings of “common law” and “civil law”

Australian Democracy

- What is democracy?
 - Democracy means 'rule by the people'.
 - In a democracy, the people have the power to participate in decision-making, such as voting at elections.
- Representative democracy: In Australia, citizens elect representatives to make decisions on their behalf.
 - All Australian citizens over the age of 18 must vote in elections.
- Australia's elected national government is answerable to the Parliament for its actions.
 - The Prime Minister leads a Cabinet of ministers, who are responsible for decisions made by their department.

Federation

- Federal System of Government
- What is Federation?
 - A political and economic union of the states and the Commonwealth



[Picture Source](#)

Australia as a Federation

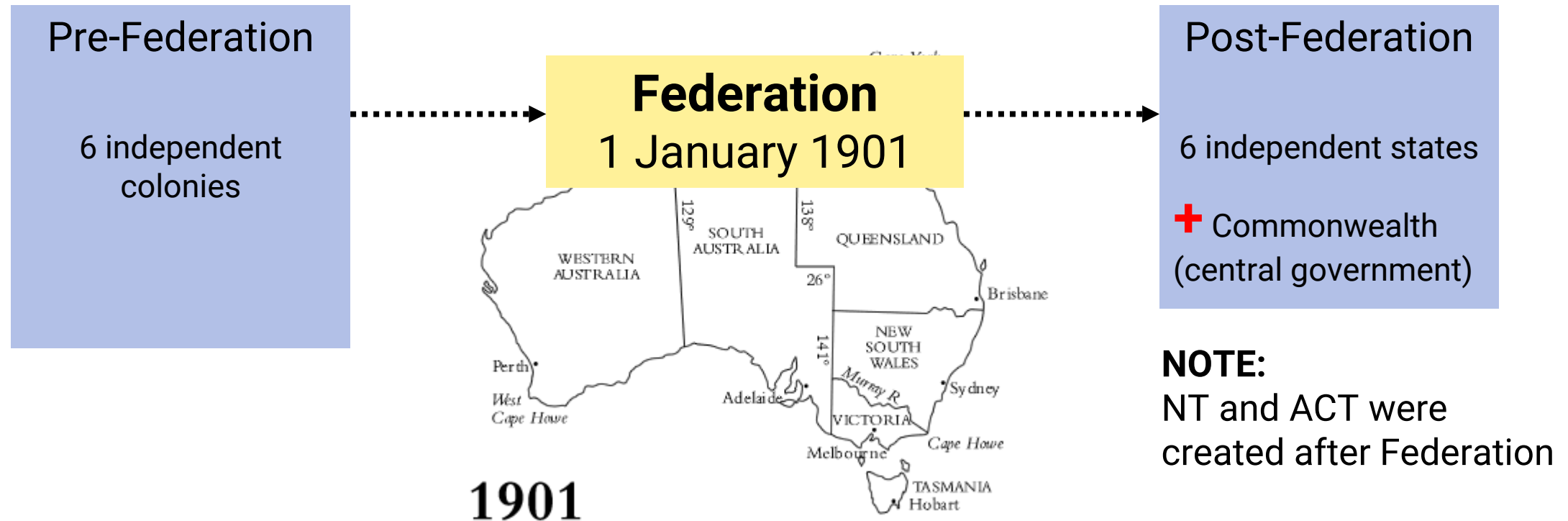
- Before 1901 the present Australian States were separate colonies of the then British Empire.
- Federation of Australia – 1 January 1901
- Two-tiered political and legal systems
([federal](#) and [state](#))
- Before 1901, Australia was not a nation – it was six separate British colonies
- During the 1890s, representatives from each colony met to create a set of rules for how this new nation would work – these rules are found in the [Australian Constitution](#)

Australia as a Federation

- The Australian Constitution (1901) established a federal system of government, based on the British (Westminster) tradition of government.
- Each colony became a state with its own parliament that enacted law for the state.
- Each colony handed over certain law-making powers to a central parliament called the Commonwealth Parliament.
- Powers are distributed between a national government (the Commonwealth) and the six states (New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia). (See Division of Power)
- The Australian Capital Territory and the Northern Territory have self-government arrangements.

Watch video from Parliamentary Education Office (PEO)
<https://peo.gov.au/understand-our-parliament/history-of-parliament/federation/australias-federation>
Duration: 3 min 24

Australia as a Federation



Australia as a Federation

- The Australian coat of arms consists of a shield containing the badges of the six Australian states symbolising federation.



[Picture Source](#)

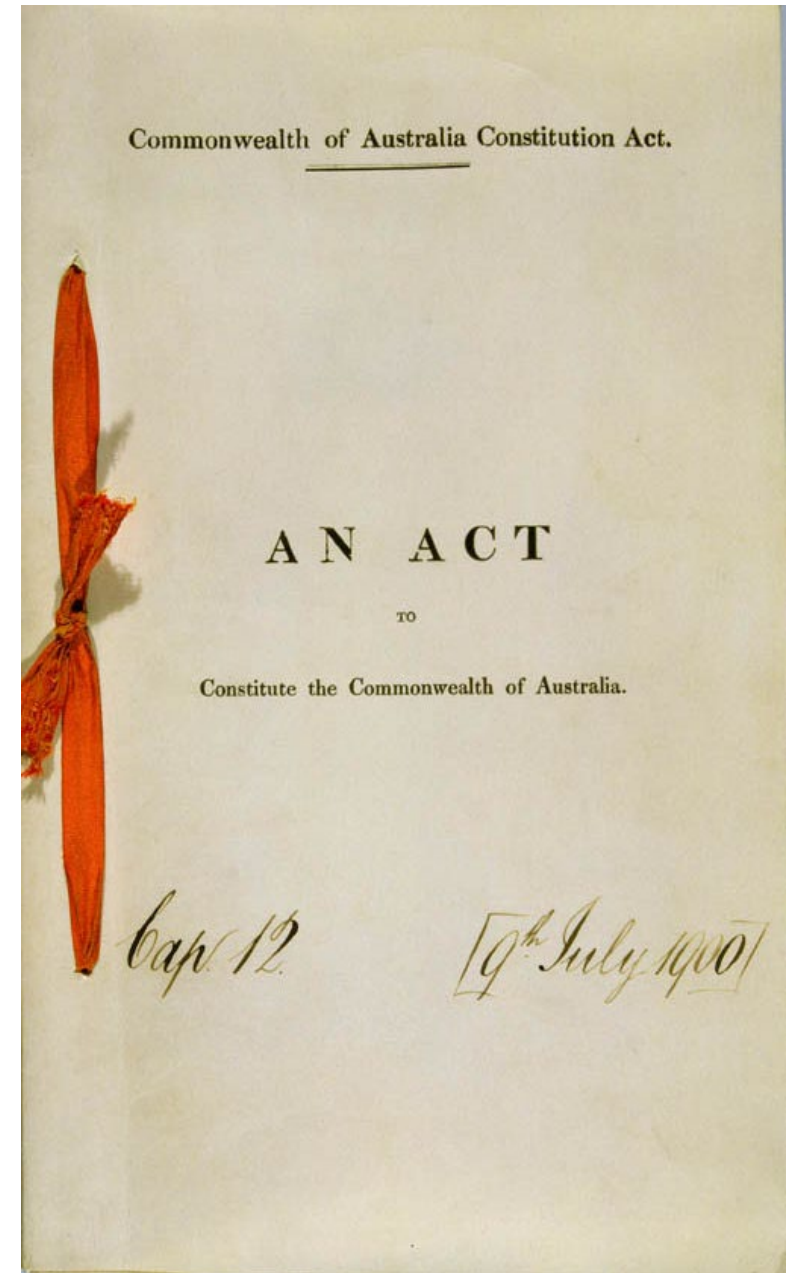
The Australian Constitution

- The Australian Constitution originated as an agreement under which the former colonies came together as states in a federation.
- Establishes the form of the federal government (that is, the Commonwealth, national or central government)
- Contains the set of rules for how Australia is governed
 - It outlines the functions and structure of Parliament
 - It establishes the powers of Parliament
 - It provides for the settling of disputes about the Constitution
 - It outlines the procedures for changing the Constitution
- With Federation, the states gave some of their powers to the Commonwealth Government. The powers given by the states were specified in the Commonwealth Constitution (see Division of powers)

Watch video from Parliamentary Education Office (PEO)
<https://peo.gov.au/understand-our-parliament/how-parliament-works/the-australian-constitution/the-constitution>

Duration: 2 min 25

Business Environments



[Picture Source](#)

Federal Structure

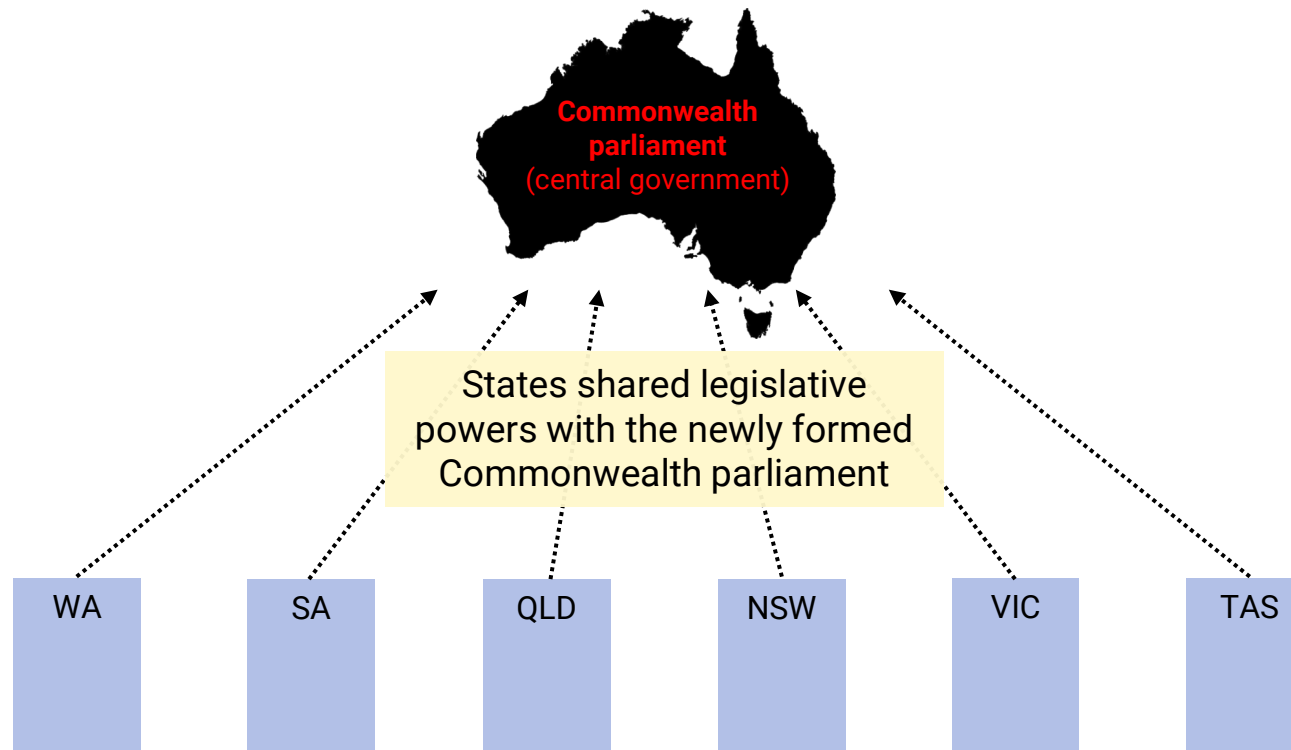
- **9 Parliaments / Legislatures**

- 1 x Federal Parliament at central level
- 6 x State Parliaments
- 2 x Territory Parliaments

- Each has power to make binding laws within the limits of their constitutional powers

Division of Powers

- Sharing of legislative (law-making) powers between the Commonwealth and the states
- The Constitution sets out clearly the division of powers between the State and Federal Governments.



Division of Powers

Exclusive powers

- Exercisable only by the Commonwealth Parliament
 - E.g. customs and excise, military forces, currency, immigration

Division of Powers

Concurrent powers

- Exercisable by both Commonwealth and states parliaments
 - E.g. consumer protection, banking, insurance, industrial relations
- **Section 109** – What happens when there is inconsistency between a state/territory law and a Commonwealth law?
 - Commonwealth law will prevail
 - State/territory law will be invalid to the extent of the inconsistency

Division of Powers

Residual powers

- Exercisable only by the state parliament
 - E.g. education, health, local government

Laws a Person Needs to Follow in Australia

When living in a state in Australia, a person needs to be aware of and follow three main types of laws:

1. **Commonwealth (Federal) laws:** These are made by the Australian Parliament and apply to everyone in the country. They cover areas like immigration, defense, and taxation.
2. **State laws:** Specific to the state you live in. Each state has its own set of laws created by the state parliament. These laws cover things like education, health services, and criminal law specific to that state.
3. **Local laws:** Local councils create by-laws that apply within their specific areas. These can include rules about waste management, building permits, and local parks.

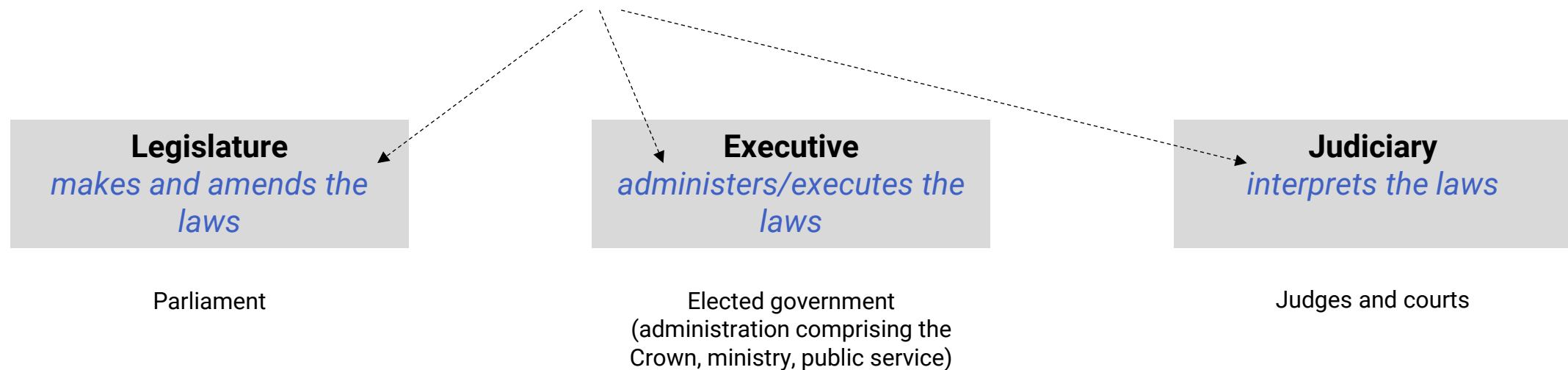


Separation of Powers

- Law-making, law-enforcing, law-interpreting powers should be vested in separate arms of the government
- Denies complete power given to any one arm
 - Prevent abuses of power
 - Reduces opportunity for corruption and bias

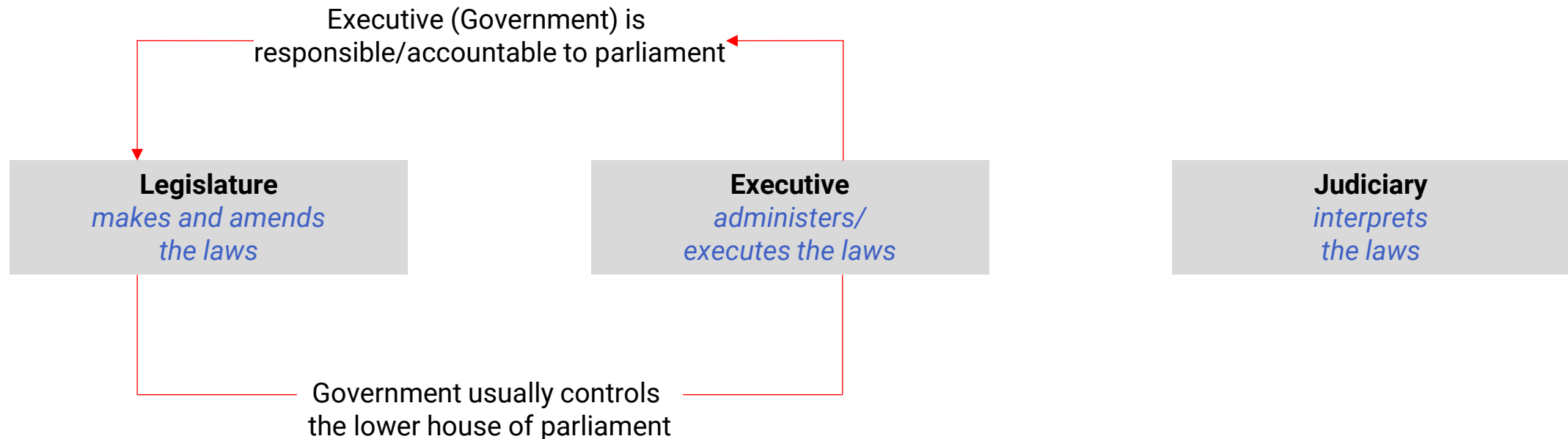
Separation of Powers

Three distinct **functions** of government should be kept apart



Separation of Powers

- In practice, no complete separation of powers in Australia between the **Executive** and the **Legislature**
 - The Prime Minister and the executive ministers (Executive) are elected members of the Commonwealth Parliament (Legislature)
 - Responsible government



Sources of Law

- **Enacted law:** Body of law enacted (made) by parliaments
- Also known as:
 - Statute law
 - Legislation
 - Act of Parliament

Sources of Law

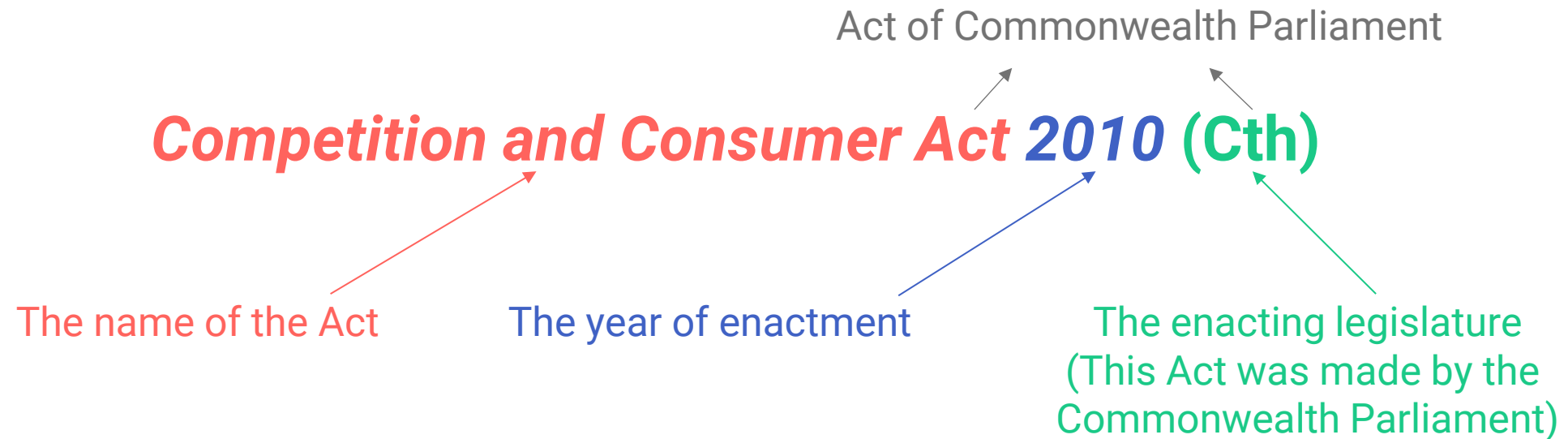
- **Unenacted law:** Body of law made by the courts. Principles and rules based on decisions of judges.
- Also known as:
 - Common law
 - Case law
 - Precedent

Sources of Law

Identifying Legislation

- Each Act has a name
e.g. *Competition and Consumer Act 2010* (Cth)

Jurisdiction	Abbreviation
Commonwealth	Cth
Australian Capital Territory	ACT
Northern Territory	NT
New South Wales	NSW
Queensland	Qld
South Australia	SA
Tasmania	Tas
Victoria	Vic
Western Australia	WA



Sources of Law

Identifying Case Law

- After a case is decided, a written 'law report' is published
- Each case has its own citation, e.g.

L Shaddock & Partners Pty Ltd v Parramatta City Council (1981) 150 CLR 225

The name of the case

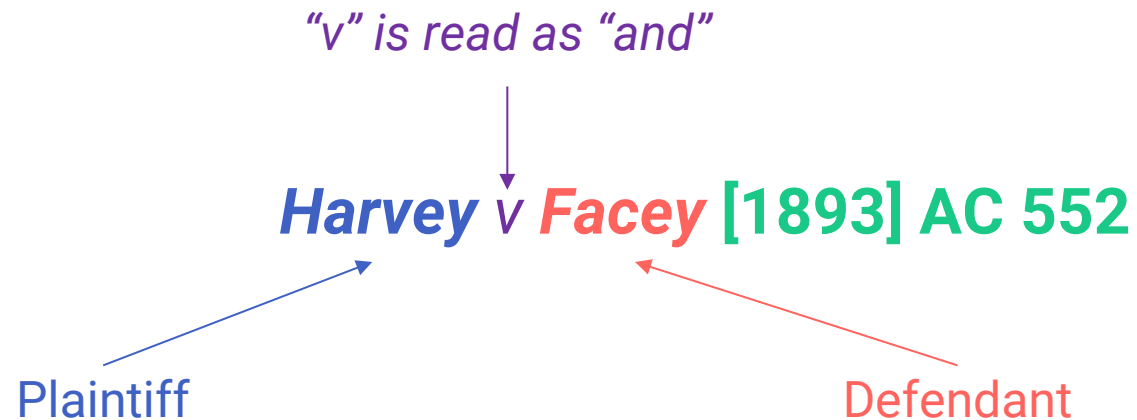
The year of the law report

The law report series

Sources of Law

Identifying Case Law

- A plaintiff is the party who initiates a lawsuit (an action) before a court
- A defendant is the party defending an action



Meanings of “Common Law”

“Common law” has several meanings

- System of law (developed in England)
- Unenacted law
- Case law from common law courts
(distinct from the law of equity from equity courts)

Meanings of “Civil Law”

“Civil law” has several meanings

- System of law (based on the civilian code of ancient Rome)
- Matters between person and person regarding the enforcement of rights and the carrying out of obligations (distinct from criminal law)

End of Lecture

Next week:

The Legal Environment of Business: The Australian Legal System



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