**Year 12**

**Politics & Law**

***UNIT 3***

**Federalism**

Sovereignty- is the supreme authority of a state- no higher political or legal power exists

Federalism- “a system of government in which the sovereignty is divided between a central government and two or more regional governments”

Separation of powers

S.O.P is a concept brought about by philosophe Montesquieu in the 1700’s, who proposed that government shall be separated into independent bodies to prevent arbitrary government.

* legislative: Is bicameral and is the law-making parliament
* executive: Makes policy and controls government administration
* Judiciary: courts that interpret the law and administer penalties

These powers are outlined in the chapters of the constitution- chapter 1 outlines legislative power, 2 outlines executive and 3 outlines judicial power.

Federal systems

Little cooperation between the levels of government

Coordinate federalism

Aka dual federalism- even balance of power between central and regional governments

Cooperative federalism

Strong central governments and regional lacks autonomy

Coercive

federalism

Australian Federalism

The Founding Fathers intended for Australian federalism to be coordinate or cooperative however over time it has become more coercive. Australian federalism operates through a division of powers between the commonwealth and 6 states. Allocating powers to each level of government achieves a division of powers…

3 levels of government:

Local- Responsible for rubbish, footpaths and parks

State- Transport, education and health

Federal- Defence, Immigration & Trade

The constitution divides the power within the constitution by making them exclusive, concurrent or residual…

Belong only to the commonwealth and are found in section 52 of the constitution

Exclusive Powers

Concurrent Powers

Are those specified in section 51, they belong to both the states and commonwealth

Belong to the states and are unspecified in the constitution.

Residual Powers

Commonwealth Financial Powers

The financial powers of the commonwealth are major reasoning behind the balance of power favouring the commonwealth.

* Section 51 (2)- Taxation

This power allows the central government to raise taxes- since the second world war, through the Uniform Tax Case 1942 the commonwealth has been the sole collector of income tax

* Section 90- customs, duties and excise power

Establishes that the collection of custom and excise duties was tan exclusive power of the commonwealth to prevent states introducing border taxes.

* Section 96- The Grants Power

This allows the commonwealth to add conditions they believe are fit, to any grants given to the states. These are called tied or special purpose grants. E.g. in 2013 Julia Gillard offered Tasmania 400 million in education if they agreed to sign to the Gonski education programme

* Section 87- The ‘Braddon Blot’

For a period of ten years following federation, the commonwealth were required to pay the states 75% surplus revenue from its collection of taxes established in section 90. However, following the ten years they were not required to do so.

* Section 92- trade between states shall be absolutely free

Prevents states from making laws to introduce tax that would advantage themselves and disadvantage other states.

* Vertical Fiscal Imbalance

VFI is a term used to describe inequality between expenditure and revenue meaning the commonwealth collects more revenue than it needs and the state spend more than the revenue they collect. Horizontal Fiscal Equalisation is what assists in reducing VFI.State governments should receive funding from the pool of GST from the commonwealth grants commission with the amount being given on consideration of the state’s ability to provide facilities and service. It is used to balance VFI and ensure each state has the same standards of facilities

Other sources of Commonwealth Power

* Commonwealth Grants Commission

The CGC is to distribute commonwealth funds under section 96- they administer the grants. A key purpose of the CGC is to achieve Horizontal Fiscal Equalisation (HFE) They are also responsible for the distribution of GST (Goods and services tax)

* Referral of powers

The transfer of an area of authority of a state parliament to the Commonwealth parliament

under provisions of s. 51 (xxxvii) of the Commonwealth Constitution (Australia). This is the

only one way (Commonwealth cannot refer powers to the States) and it is not

reversible.”

Eg; transfer of power for non-metropolitan railways in TAS and SA in 1975

because the states could not afford it, and it was not important for the government

Council of Australian Governments

“The Council of Australian Governments is the peak intergovernmental forum in Australia.

COAG comprises the Prime Minister, State Premiers, Territory Chief Ministers and the

President of the Australian Local Government Association. COAG can be used to

demonstrate cooperation between the Commonwealth and the States (cooperative

federalism)

E.g.- Intergovernmental agreement on national counter-terrorism arrangements

On October 5th 2017 leaders agreed to establish a National Facial Biometric Matching capability. They signed an agreement on identity matching services under which the agreement agencies of jurisdiction will be able to access passport, visa, citizenship and drivers license images

High Court Interpretation

* High Court of Australia is the single most important agent of constitutional change since federation
* The High Court’s decisions have fundamentally altered the way the constitution operates
* Section 71 establishes the High Court and Section 76 grants its jurisdiction

*Why is it so influential?*

* When the High Court interprets a case in which any of the exclusive or concurrent powers are in dispute the outcome can redefine the powers and so change the balance of powers between levels of government.

*History of High Court Interpretation*

*Defending states power:*

* Doctrines of interpretation- Rules, guidelines and policies that court use when deciding the meaning of a statute or constitution
* Avoids the centralising tendencies in the constitution
* Ensures consistency between successive decisions and that court decisions are coherent

*Protecting the states concurrent powers during the High Court’s early period:*

* Doctrine of reserved powers- Assumed that the constitution intended to reserve the residual powers of the states because it was a ‘federal constitution’ and thus implied the states would have substantial power

*Protecting the states residual powers during the High Court’s early period:*

* Doctrine of Implied Immunities of Instrumentalities protects the powers of the states

*Cases defending State power from 1903 to 1920:*

* Railway Servants Case 1906- Dispute between WA and the commonwealth about the right to legislate working conditions for workers employed by WA government. The court applied the doctrine of implied immunities of instrumentalities, found that commonwealth industrial laws passed under S.51 (xxxv) could not apply to state government railway employees.

*Increasing commonwealth power: 1920-1971:*

* The wording of the constitution centralises power in Canberra this is primarily because state powers are unspecified and cannot be interpreted by the High Court

*A case eroding state legislative powers:*

* The Engineers Case 1920- A trade union was involved in an industrial dispute with a sawmilling factory owned by the WA govt. The commonwealth sought to legislate because it felt it had the power under section 51 (xxxv) to make laws for state businesses when a dispute crossed state borders. The HC agreed to give a much wider interpretation of the section which reversed the precedent of the Railway Servants Case

**Taxation powers**

*A case increasing commonwealth financial power:*

* The Uniform Tax Case 1942- S.51 (ii)- the taxation power is a concurrent power that allows both levels of government to raise revenue by various taxes. The uniform tax case 1942 allowed the commonwealth to be the sole collector of income tax. During the WWII the states passed over their collection of income tax to the commonwealth to pay for war effort, however following the war the states did not receive the right to collect the tax back. The states attempted to challenge the act however the High Court found it constitutional and therefor the states have been forced to levy a range of smaller taxes to make up the shortfall of revenue.

*Section 109 and ‘covering the field’:*

The section states that if state and commonwealth law conflict state law becomes invalid. Later on the high court began interpretating section 109 more widely, the court accepted that when legislating under s.51 concurrent head of power commonwealth could specify within an act that its law intends to be the only law in that field, meaning it ‘covers the field’.

*Cases that limited commonwealth power:*

Communist Party Case 1951- The liberal Menzies government attempted to ban the communist party however this was struck down as it was unconstitutional.

*Cases that favoured the Commonwealth:*

Uniform Tax Case 1957- The states attempted to challenge the tax laws that the commonwealth used to seize income tax however the high court uphekd most of its decisions in the uniform tax case 1942

**external affairs power Section 51(xxix)**

*Expansion of commonwealth power- section 51 (xxix) external affair:*

External affairs power- S.51 (xxix) allows the commonwealth to sign treaties or internation agreements with other countries and then ratify these by passing a statute through commonwealth parliament. S.109 then makes any state laws in conflict with the treaty invalid.

Tasmanian Dams 1983- This case used the Koowarta as precedent ( prevented QLD govt from stopping an aboriginal man purchasing a lease on land because he was aboriginal- 1982) to prevent the Tasmanian government damming the Gordon-below- Franklin River. Using s.51 (xxix) it passed the World Heritage Properties conservation act 1983.

*Case concerning financial powers:*

Ha and Hammond v NSW cases 1997- State governments had levied fees on the sale of tobacco and business franchise fees. In these cases the High court found these fees ti be excise which are exclusive to the commonwealth under s.90.

**corporations power, Section 51(xx)**

*Expansion of Commonwealth power- Section 51(xx) corporations power:*

Corporations power- s.51 (xx) provides the commonwealth with power to legislate anything relating to incorporated bodies such as companies, charities, non-profit organisations etc.

WorkChoice 2006- commonwealth industrial relations law introduced by the Howard govt. The industrial relations power in s.51 (xxxv) limits the commonwealth’s involvement in interstate industrial disputes and makes conciliation and arbitration the only ways to resolve disputes. Therefor WorkChoice which was an industrial law was passed using s.51 (xx) the corporations power instead which states that foreign corporations and trading or financial corporations formed within the limits of the commonwealth. This was challenged by the states and unions in the high court in May of 2006- in which the states lost.

**Changing the constitution**

*Referendum*

A referendum is the only formal means of changing the wording of the constitution. It is a nationwide vote that requires a double majority (50% + 1 of the peoples votes and 4/6 states) to pass and is outlined in section 128 of the constitution

* Directly involves the people in the process of government
* They do not lead to rapid or radical change
* They are difficult to pass as the need for a double majority which therefor makes
* The proposal must be passed by both houses of parliament, receive a double majority and then receive royal assent (parliamentary approval, approval by the people and vice regal approval)
* The vote must be put to the people no earlier than 2 months or no later than 6 months after it has been passed through parliament

Since federation only 8/44 referendums have been successful:

1. 1906 Senate Elections 🡪 changed sitting days of the Senate under section 13  
2. 1910 State Debts 🡪 expanded Commonwealth power to take over state debts (altered section 105)  
3. 1928 State Debts 🡪 established Loans Council; added 105A  
4. 1946 Social Services 🡪 after World War Two; gave the Commonwealth power to legislative to create welfare (eg; maternity allowances)  
5. 1967 Aborigines 🡪 allowed the Commonwealth to make laws about Aborigines and count them in the census (removed section 127 and altered section 51 (xxvi))  
6. 1977 Casual Vacancies 🡪altered section 15; if a death occurs in the Senate the seat is to be filled by a member of the same party  
7. 1977 Territorial Vote 🡪 included territory electors as part of the majority of electors (altered section 128)  
8. 1977 Retirement of Judges 🡪 set retirement age to 70 (altered section 72)

Reasons for referendum failure:

* Institutional Factors
* Result from the rules and structure of the referendum process
* Double majority requirement; a referendum in 1977 got 62.2% but only 3 states
* Yes or no question; complex issues attract a no vote, the 1999 Republic Referendum was made deliberately complex by conservative John Howard, there is often a suspicion that proposals are for the benefit of the federal government
* Political Factors
* Difficult to achieve bipartisan support
* Support needed by government, opposition and state premiers (who often receive ‘political points’ for standing up against the government)
* People will often vote with their political party
* Opposition by a major party may make a no vote definite
* Attitudinal Factors
* The Commonwealth is just extending its powers, such as the 1911 Legislative Powers referendum
* ‘Distrust No’, ‘No Opinion No’ and ‘Satisfactory No’
* Conservative values; why do we need to change something that works?

*Characteristics of referendum success:*

* Minor change🡪 If the proposal will only result in a small change people are more likely to give support
* Not a ‘grab for power’🡪 If people believe that the proposal is not intended to give Canberra more power then there will be more trust in its intention
* If it is seen as the ‘right thing to do’🡪 If proposals do give power to the commonwealth there still may be support if people feel as though it is manifestly good or necessary. E.g. Social services increased power if Canberra to pay social welfare. The people themselves were benefited by this
* Wide Support🡪 bipartisan support from major parties are more likely to pass, it is highly influential. The two state debts referendums succeeded because the state governments approval of the commonwealth taking over their debts
* They do not generate strong ‘No’ campaigns🡪 If the bill authorising the referendum is opposed then there will be public funds available for a No campaign. This promotes the no idea and shows the negative impacts of voting yes and turns voters off

*The High Court*

Section 76 of gives power to the High Court to interpret the constitution. The constitution limits federal power and creates a balance of power, however the courts interpretation may influence these things.

Interpretation affecting meaning:

* A case arises when parties dispute the meaning of the constitution🡪 They High Court can only deal with matters that have been brought to them in a dispute
* The court must decide what the constitution means and in recent times it has seen a shift in favour of the commonwealth and tends to read the constitution literally.
* It may impact the **balance of powers** or discovery of **implied rights**

**Balance of power-** Authority does not rest within a single branch of government, powers are divided between arms of government and are therefore ‘equal’

**Implied Rights-** Those that are not stated in the constitution but are discovered by the high court in interpretation of it

They affect the balance of power by…

* Protecting states from Commonwealth power 🡪 1906 Railway Servants Case; ‘implied immunities of instrumentalities’
* Extending Commonwealth financial power 🡪 Uniform Tax 1942; federal government becomes sole collector of income tax post WW2
* Extending Commonwealth legislative power 🡪 Engineers Case 1920; Justices began reading the Constitution literally (section 51)
* Extending Commonwealth External Affairs 🡪 Tasmanian Dams 1983; Franklin River Dam becomes control of Commonwealth
* Extending Commonwealth Corporations Powers 🡪 WorkChoices 2006

Constitutional Rights:

A function of the constitution is to define the relationship between citizens and their government. The protects the freedoms and entitlement of citizens. It may…

* Prevent govts. from limiting freedoms
* Oblige govts. To provide certain entitlements

They are protected as they are only influenced by judicial interpretation

The Australian constitution is not rights based like the US

* S. 41: Creates a transitional right to vote at the time of federation
* S.80: Creates an entitlement to trial by jury in federal indictable offences
* S.116: Prevents Australia having an official religion (right of freedom of religion)
* S.117: Prevents discrimination against any citizen based on their state
* S.92: Ensure trade, commerce and intercourse between states is free (economic freedom)
* S.51 (31): Ensures that if commonwealth resumes property of a person it must compensate them on ‘just terms’

Importance:   
The High Court’ interpretation is one of the most important methods of changing the constitution, despite being informal. This is due to the difficulty of passing a referendum, in a high court ruling only a panel on 5-7 judges must agree on the matter.

***Referral of Powers (Federal and state cooperation)***

Section 51 (37) allows states to voluntarily refer any of their residual or concurrent powers to the commonwealth.

* It only affects the referring state and is one way and irreversible.
* It is an informal method as the power to change rests with the states. The commonwealth cannot compel a state to refer their powers.
* It is not often utilised but has made it possible for the commonwealth to enact legislation it would otherwise lack.
* The high failure rate of proposals in the referendum process makes this method important in keeping the constitution relevant, however does not have much impact
* It allows for consistency of laws e.g. National Uniform Gun Laws allowed the commonwealth to make gun laws that would protect the nation after all states gave up the power to make laws on the matter

E.g.

* Family law🡪 All states except Western Australia referred family law to the commonwealth
* Tasmanian Railways Act 1975🡪 referred the power over railways to the commonwealth

The referral of powers has not had a large impact on the federal balance of power but has allowed the constitution to adapt to contemporary needs

*Unchallenged legislation (Federal and state cooperation)*

Commonwealth legislation mist be lawful under the constitution otherwise it is struck donw as ‘ultra vires’ by the High Court. However a law that does breach may not be brought to the High Courts attention (unchallenged legislation) which is done if there is belief the law causes no harm, there is little change to the balance of powers and it is manifestly beneficial or necessary.

e.g.….

* CSIRO (Commonwealth Scientific and Industrial Research Organisation):
* Is the nations most important institution for scientific development
* The Science and Industry Research Act 1949 established the CSIRO
* There is no constitutional head of power giving the commonwealth power to pass this act, however it is an obviously good idea and therefor has not been in dispute.

Cross vesting: Giving state courts power to hear federal cases and vice versa. It is a procedure under s.71.The Commonwealth’s Jurisdiction of Courts Act 1987 reduces the costs and inconveniences for those seeking access to the justice system. It is sensible but had no constitutional grounds.

*Other Methods*

Use of financial powers:

* Australia has highest VFI 🡪 Commonwealth is more favourable financial position
* ss 86 & 90 gives the Commonwealth exclusive power to collect customs & excise (this actually means a lot tax)
* s 87 The Braddon Clause (after Premier Braddon of Tasmania) aimed to ensure the distribution of the Commonwealth surplus to the states. This was spent after 10 years and the Commonwealth legislated to stop the surplus distribution as soon as it could
* Since then the Commonwealth Grants Commission has decided on the distribution of the surplus
* Horizontal Fiscal Equalisation (to ensure uniform living standards across Australia)
* Uniform Tax Case 1942
* Ha Vs NSW 1997
* s 96 allows the Commonwealth to grant money to the states “as the [Commonwealth] parliament thinks fit” Thus the Commonwealth has complete discretion in how it grants money to the states

New states:

* New States – would require existing states to surrender territory – highly unlikely
* New States – Northern Territory – no need for an existing state to surrender territory. A referendum on statehood was rejected by Territorians.
* Repeal of the *Commonwealth of Australia Constitution Act 1900*

*Aboriginal recognition*

* Reconciliation- to bring into agreement or harmony. It is a ‘coming together’ as a nation with the aims to achieve justice, recognition and healing
* 1967 referendum: Aboriginals and Torres Strait Islanders should be counted in the census and allow the commonwealth to make laws relating specifically reading indigenous people. It had the biggest ‘yes’ vote with 90% support
* Mabo Decision 1982- Recognised Australia was not terra nullius and recognised that indigenous people had lived in Australia lived in Australia for a long time, creating the Native Title Act 1993
* Bringing them home report 2000
* 1992 Keating’s Redfern Speech- Says that they have not done a very good job and acknowledged that there was discrimination and exclusion. It was the first time this was acknowledged
* Kevin Rudd’s apology to the stolen generation 2008- Apologies for the governments actions that inflicted pain for the indigenous, for the suffering of the stolen generations. Acknowledging those impacted by what happened and apologises for these actions

Uluru convention 2017

* Indigenous leaders from across the country have outright rejected the idea of mere recognition in the constitution, instead calling for a representative body to be enshrined in the nation's founding document and a process established working towards treaties.
* "We seek constitutional reforms to empower our people and take a rightful place in our own country”
* majority endorsed a referendum to establish a permanent Indigenous advisory body.
* "History would indicate that to succeed, not only must there be overwhelming support, but minimal — or at least tepid — opposition," Mr Turnbull said.
* "We told [Mr Turnbull] and he said 'Nope, we're not doing that'. Why [even] ask us?"

Elements of change-

* A statement acknowledging aboriginal and Torres Strait Islanders peoples as the first Australians
* Amending the existing race power in section 51 (26) of the constitution or deleting it and insert a new power for the commonwealth to make laws for indigenous peoples.
* Inserting a guarantee against racial discrimination, section 116a, into the constitution
* Deleting section 25 which contemplates the possibility of a state government excluding some Australians from voting on the basis of their race

Likely or Unlikely?

* The recognise Australia organisation, which was supporting and promoting aboriginal recognition, has been shut down after government funding was cut- show the unlikelihood of changes being made
* It is unlikely that these proposals will be completed as there is a lack of support from the government
* Noah Pearson- their views have been expressed but now things need to be done about it
* The government is preoccupied with the same sex marriage proposal- it is not the priority and keeps being pushed back by other proposals
* Around 10 years until it happens because the lack of support for Malcolm Turnbull
* The lack of bipartisan support in parliament would mean that even if it were to go to a referendum support may lack and may see a repeat of 1999 republic referendum where the wording of the question was manipulated because of the governments stance

***Functions of commonwealth parliament***

***Theory vs in practice***

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| --- | --- | --- |
|  | **Theory** | **Practice** |
| **Representation** | The commonwealth parliament is elected by the people (as required by s.24 &s.7) and thus represents the people. Elected representatives of the house of reps acted according to the…   * **Delegate Representation:**   A member of parliament is the mouthpiece of the people and represents their concerns   * **Trustee Representation:**   A member of parliament is entrusted by those who elect them to make representation to the parliament. They use their judgement to decide the best interests of the electorate   * **Sovereign state interest:**   Represents the interest of the states within parliament | * **Partisan Representation:**   Members of parliament represent their parties’ policies rather than acting as delegates or trustee.   * **Mirror Representation:**   The senate tends to have more diverse candidates and therefore more diverse representation as well as the election of minor. Micro |
| **Legislating** | The parliament is a legislature- a bicameral law makes institution that in theory makes laws that…   1. Are scrutinised by the statutory process 2. Have diverse input 3. Can be initiated by any members of parliament 4. Follows statutory process | 1. **Gagging the second reading debate:**   During the second reading the government may use one of it members or back benchers to move a motion that the bill be put to a vote. Because the government has majority in the house of rep’s gag motions almost always pass.   1. **Guillotining the Debate:**   Before the debate commencing the government may move a motion that the time be set to a certain limit- the government control this because it has controlling vote in the house   1. **Flood-gating Bills:**   The government may introduce a lot of bills to overwhelm the procedures of the statutory process, it pushes legislation through quickly   1. **Dealing with Bills:**   HOR:  -Controversial bills isiially originating from the government pass through their house through the usual way.  -uncontested bulls pass through the federation chamber.  SENATE:  The diverse composition of the senate contributes to the democratic diversity of input. |
| **Responsibility** | It holds the executive government to account…   1. A government exists only so long as it maintains the support of the lower house 2. Individual ministers may be dismissed by censure motions- holding accountable the conduct of ministers 3. Ministers must answer questions put to them by parliament during question time 4. Scrutinising government spending 5. Parliament has standing and select committees. | The party that wins a majority of HOR seats forms the executive government   1. The dominance of disciplined political parties will almost never lose support of the lower house. 2. Motions of no-confidence and censure motions moved by the opposition will always be defeated ‘on party lines’   The individual and collective ministerial responsibility are not effective in practice |
| **Debate** | It is the nation’s premier forum for the discussion of issues   1. A number of opportunities exist for members of parliament to debate  * Grievances, urgency motions, private members business and matter of public importance are linked to the representative function * Second reading debates are linked to the legislative function * Ministerial statements and question time are linked to the responsibility function  1. Parliament privilege protect debate and creates the ultimate freedom of speech. | The debate function suffers from the executive dominance that undermines the theoretical operation   1. The government can restrict opportunities for debate when it allocates time for a sitting day 2. Grievances, urgency motions, matterers of public importance, private member business, adjournment debate and other debate opportunities are diminished when the government extends business. 3. Gags and guillotines limit debate during the legislative process as discussed above 4. The floor of the house is highly adversarial as the government and opposition compete with each other for political advantage which can influence things such as question time |

**Section 7-** The senate shall be composed if senators for each state, directly chosen by the people of the state, voting, until the parliament otherwise provides, as one electorate

**Section 24-** The House of Representatives shall be composed of members directly chosen by the people of the Commonwealth, and the number of such members shall be, as nearly as practicable, twice the number of the senators.

**Section 51-** The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth, e.g. (i) trade, (ii) taxation

**Section 53-** the Senate shall have equal power with the House of Representatives in respect of all proposed laws except regarding proposals regarding revenue and money

Parliament is the focus of law making and derives its authority from the people. It expresses community will and represents all sections and interests

*The Decline of Parliament Thesis:*

The decline of parliamentary thesis is the view that the House is controlled by the Government and has simply become a ‘rubber stamp’.

Representative function- Decline due to:

* The predominant position of political parties that demand loyalty from their members
* A majoritarian electoral system that guarantees a ‘two and a half party system’ eliminating diversity in the HOR

Legislative Function- Decline due to:

* The dominance of the political executive deriving from the disciplined party system in proposing and selecting bills for introduction to the HOR and prevents private members bills
* The dominance of the political executive in the house and its committees virtually guarantees passage of government initiated legislature

Responsibility Function- Decline due to:

* The overwhelming dominance of the executive over the HOR
* The ability of the political executive to create and pass standing orders of the house especially around question time
* The undermining of the theoretical west minister conventions of responsible government

Debate Function- Decline due to:

* The ability of the executive to gag and guillotine the debate through tis control of standing orders in the HOR
* A majoritarian electoral system that creates a lack of diversity in the HOR results in deficiency of views being expressed

**Political Mandates: Theory vs. Practice**

*Mandate-* The authority provided by voters to a successful political party to pursue its policies in parliament. The winning party or coalition have a right to a government mandate to enact legislation and carry out administration based on the policies put to the people on the election that brought it to power.

*Historical reaction to illegitimate power*

* French Revolution: 1789, an ineffective king was overthrown by popular revolution
* Russian Revolution: 1917, an ineffective and unpopular tsar was overthrown by coup d’état

*Justification of sovereign power*

* No higher political or legal power- sovereignty is vested in the people in democracy. Citizens delegate it to a government in an election

*Westminster chain of accountability*

* Responsible government…

- Executive power indirectly from the people via the HOR

- Legislative power to the people through elections

* Elections are the mechanisms by which the people delegate sovereignty

*Types of Mandates*

* Will of the majority mandate: Executive government can claim legitimacy as they were chosen and elected by the people
* Right to oppose mandate: Oppositions right to check and balance mandate
* Balance of power mandate: Right to represent minority mandate

*Parties may promise to…*

1. Pass specific new laws; Turnbull called the 2016 double dissolution election on the basis of reintroducing the Australian Building & Construction Commission, the bills for which had been twice rejected by the senate
2. Repeal specific old laws: in 2013 Tony Abbotts liberal opposition promised to appeal the carbon and mining tax
3. General approach in specific policy area: 2013 Abbott promised to stop the boats, a policy which requires the cooperation of neighbouring countries and would change the migration act
4. Broad changes designed to achieve a general goal: 2013 Abbott’s opposition promised budget repair ad return government budget to surplus. The re-elected Turnbull government had same objective

**Roles and powers of the Governor General**

**The Governor General**

* The Governor General is appointed by the Queen on advice of the Prime Minister, and appointment is usually for five years
* Ensures the stability of government and the legality of government
* Relationship to parliament 🡪 the Governor General can force the ‘dissolution’ of parliament and also may refuse a request from the Prime Minister to dissolve parliament
* Relationship to government 🡪 the Governor General appoints an Executive Council and departments of state
* The Governor General has the right ‘to be consulted, to encourage and to warn’ and so he has an opportunity to reflect community values
* As of 2016, the current Governor General is Sir Peter Cosgrove

*Sections of the Constitution*

Section 61  
The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth.

Section 62  
There shall be a Federal Executive Council to advise the Governor-General in the government of the Commonwealth, and the members of the Council shall be chosen and summoned by the Governor-General and sworn as Executive Councillors, and shall hold office during his pleasure.

Section 63  
The provisions of this Constitution referring to the Governor-General in Council shall be construed as referring to the Governor-General acting with the advice of the Federal Executive Council.

Section 64  
The Governor-General may appoint officers to administer such departments of State of the Commonwealth as the Governor-General in Council may establish. Such officers shall hold office during the pleasure of the Governor-General. They shall be members of the Federal Executive Council, and shall be the Queen's Ministers of State for the Commonwealth.

Section 68  
The command in chief of the naval and military forces of the Commonwealth is vested in the Governor-General as the Queen's representative.

Section 28  
Every House of Representatives shall continue for three years from the first meeting of the House, and no longer, but may be sooner dissolved by the Governor-General.

Section 57  
If the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously. But such dissolution shall not take place within six months before the date of the expiry of the House of Representatives by effluxion of time.

Section 72  
The Justices of the High Court and of the other courts created by the Parliament:   
(i) Shall be appointed by the Governor-General in Council;

(ii) Shall not be removed except by the Governor-General in Council, on an address from both Houses of the Parliament in the same session, praying for such removal on the ground of proved misbehaviour or incapacity;

(iii) Shall receive such remuneration as the Parliament may fix; but the remuneration shall not be diminished during their continuance in office.

*Powers of the Governor General*

* Express Powers
* “Constitutional powers of the Governor General that by convention are exercised on behalf of the will of parliament. They are fictional or ceremonial powers such as assenting to laws (s.58) and opening parliament
* Reserve Powers
* "Constitutional powers of the Governor General that may, under certain circumstances, be exercised on the Governor General’s own initiative. These include the power to call an election when there is a hung parliament (s.28) and the power to dismiss a Prime Minister under some circumstances
* Legislative Powers
* Ability of the Governor General to dissolve the HOR (s.28)
* Joint sitting of parliament (s.57)
* Opening of Parliament
* Executive Powers
* Found in chapter two of the Constitution
* Appointing members of the FEC (s. 62 and s. 64)
* Appointing senior government officials (s. 67)
* Commander in Chief of the Armed Forces (s.68)

*Roles of the Governor General*

|  |  |  |
| --- | --- | --- |
| **CONSTITUTIONAL** | **CEREMONIAL** | **NON-CEREMONIAL** |
| * Issuing writs for elections; Abbott election 2013 * Appointment of judges to the High Court; Michelle Gordon by Cosgrove in 2015 * Institute a Royal Commission; Institutional responses to a child sex abuse by Bryce in 2013 | * Swearing in a new Ministry; Turnbull via Cosgrove Feb 2016 * Foreign Dignitaries; Cosgrove for Obama at 2014 G20 | * Public engagements; Cosgrove at 100th Anniversary ANZAC day in New Zealand * Sir Paul Hasluck (on Ceremonial powers) 🡪 “Australians both expect and appreciate statements by a Governor-General on matters of current concern at a level different from that of party-political controversy” |

* Sir John Kerr 🡪 “The Governor General acts on advice but he can question it. He can obtain the reasons for what he is being asked to do and make suggestions about them but he must not get into political controversy, be partisan or try to act politically himself. He must try not to manipulate the political process.”

*The 1975 Crisis*

* Gough Whitlam was Prime Minister on the 2nd December 1972 and began to implement a number of domestic reforms, including equal pay for women, abolishing university fees and increasing pensions, however these all required a lot of money
* Economic problems 🡪 rising unemployment, inflation, in 1973 food prices rose by 19%, low economic growth
* Gair Affair
* At the beginning of 1974 the balance of power was held by 3 DLP senators and a half-senate election was due soon, with 5 seats up for re-election in each state
* In one DLP senator resigned then the ALP could win another seat, and so Queensland Senator Vince Gair was secretly offered by Whitlam to become ambassador to Ireland
* The story broke out on the 2nd April 19 74, and the Opposition stopped him from taking up the post (‘Night of the Long Prawns’)
* In early 1974 the Senate had rejected 6 government bills twice, and so on the 18th May parliament was dissolved and new elections held
* The Bills were reintroduced but once again failed, and so on the 30th July it was decided that there would be a joint sitting of parliament (6th and 7th August 1974). The legislation was easily passed
* Convention of the State government choosing Senator replacements made Labor’s Senate problems worse
* Loan Affair
* Minister of Mineral and Energy negotiated with a Pakistani broker to secure a $400 million load from the Middle Easy
* Whitlam forced him to resign, but his government was seen as irresponsible
* The Senate, with a Coalition majority, kept blocking supply bills in the hope that Governor General, Sir John Kerr, would dismiss Gough Whitlam as Prime Minister
* Fraser and Kerr began talking of their intentions, however Whitlam was not informed that there was a possibility that Kerr was concerned and thinking of dismissing him
* At a meeting on the 30th October, Whitlam refused to compromise
* Kerr contacted former Liberal Attorney General, Sir Barwick, asking for advice (conflict of interest)
* On the 11th November 1975, Kerr told Whitlam that under section 64 of the Constitution, his commission as Prime Minister was withdrawn
* Whitlam 🡪 “Well may we say ‘God save the Queen’, because nothing with save the Governor General”
* Broken Conventions
* Homegrown Conventions
* If a Senate seat becomes vacant, the government of his state should send a new Senator from the same party (changed in the 1977 referendum)
* Westminster Conventions
* The faction that can command a majority in the lower house forms the executive
* The executive is accountable to the lower house (not upper) and must resign on a vote of no confidence of the lower house
* The head of state (Governor General) acts on the advice of the Prime Minister and Cabinet

**Roles and powers of the Prime Minister, cabinet and ministry**

*Structure of the ‘real executive’*

|  |  |  |
| --- | --- | --- |
| Executive institution | | Executive office holders |
| Ministry | Cabinet (inner ministry) | Prime Minister |
| Cabinet level ministers |
| Outer ministry | Junior ministers |
| Assistant ministers |

***FEC***

* To present legislation to the GG for Royal Assent in accordance with Section 58 of the Constitution
* To advise the GG on various matters including the appointment of senior public servants and High Court Justices
* A wide definition of the administrative executive includes police forces, Directors of Public Prosecutors and special investigative bodies such as Royal commissions and anti-corruption commissions

***The Prime Minister***

* Is the leader of the party holding the majority in the HOR, it is currently Malcolm Turnbull
* The leader of the house majority is called upon by the GG to form a government
* The prime minister is not mentioned in the constitution and has no strict constitutional legality. Instead all authority stems from Westminster conventions

*The Cabinet Handbook refers to the roles and powers of the PM as follows:*

* Being responsible for the membership of the cabinet and cabinet committees- determines and regulates all cabinet arrangements for the government
* Advising the GG on appointment of ministers
* As chair of the cabinet the PM sets the cabinets agenda and determines when and where meetings take place

Power Derives from…

* **Being the leader of the majority party in the HoR**- This position gives the power to determine the processes and procedures of the house and to control the passage of legislation and debate.
* **Being the chairperson of cabinet meetings-** gives prime ministerial power to determine the business and priorities of government. Therefor the PM’s priorities are the governments priorities
* **Access to information-** The PM is the most informed individual in the entire political system. “information is power”
* **Patronage-** As the leader of the majority part and the leader of bainet the PM has the power to…
* Appoint parliamentary member of their party to the ministry as junior or assistant ministers
* Promote members of the outer ministry into the cabinet
* Allocate portfolios amongst ministers
* Demote any minister or assistant minister
* Dismiss any minister or assistant minister

Power is limited by…

* **Not having a personal mandate-** The Australian prime minister is not an elected individual by the people. In America, the president has a personal mandate. This is the same as the right to govern mandate, that is claimed by the political party in government, not by the individual.
* **Lack of solidarity and unity in cabinet-** Dissatisfied ministers can lead the proceedings of cabinet to the media as a way of undermining the prime minister.
* **Having rivals within Cabinet or the parliamentary party-** Most challenges to the PM’s authority is from within their own cabinet. Many ministers are ambitious individuals with leadership aspirations and may achieve the PM position by deposing the current leader and taking their place
* **The constraints imposed by their own party**- Prime ministers must face their party in part room meetings where their answer to their own backbenchers. The party may depose its leader and elect a new one
* **The constraints imposed by a coalition party- must** follow the agreements of both political parties
* **Federalism-** Powers of government are divided and therefor as leader of the executive cannot control all matters
* **The size and nature of the house of majority-** To gain a comfortable majority is hard and their power can be in danger if there is only a marginal majority
* **The opposition-** The opposition is constantly opposing to the PM and checking the power of the government. They use strategies to turn people against the PM and portray them badly
* **Negative media attention-** The weaknesses of the PM are always publicised and there are constant polls on preferred PM, disapproval and approval ratings.
* **Minority government-** Success as a PM is dependent on support of other parties.
* PM – ‘*primus inter pares’* (first among equals) within Parliament, however caucus is still influential

Examples to limits to prime ministerial power…

* **Paid Parental Leave (2015):** Abbott wanted to change his policy so that new paretns would only receive 18 weeks of financial support for the state or government but not both. It could not pass through the senate and illustrated the limit of PM power and role of the opposition
* **Carbon Tax (2012):** Julia Gillard broke her mandate due to a need of support from the greens and independents to form government during a hung parliament. She was attacked by the opposition and Abbott won the next election

***Ministers***

* Are members of the executive along with the PM
* Together with assistant ministers they form ministry and in the case of senior ministers, cabinet
* Must be members of parliament as required by section 64
* They are chosen by the PM and appointed formally by the GG
* Ministers hold powerful positions within the executive:
* To manage portfolios: This means they are responsible for a department of the public service
* To participate in cabinet meeting and deliberations on matters of pilivy development, plan political strategy, deal with crisis and help maintain the narrative of government
* Publically support cabinet decisions even if they disagree with them (the convention of Cabinet solidarity)
* Answer to the parliament under the convention of individual ministry responsibility ( for their personal probity, political integrity and management of their portfolio)

Junior and assistant ministers

* The division of the inner and outer ministry is important as business size and complexity of government have grown enormously since WWII
* Junior ministers are not permanent members of Cabinet and are part of the outer ministry. They hold portfolios in areas of less important government activity
* Assistant ministers is a relatively new term, a change from parliamentary secretaries- they may administer smaller departments or assist ministers.
* Junior and assistant ministers may be called to cabinet meetings if cabinet is scheduled to discuss their department

***Cabinet***

* “The council of senior ministers who are empowered by the Government to take binding decisions on its behalf”
* Is a product of convention- there is no mention in the constitution
* The cabinet is the executive committee of senior ministers of the crown drawn from and responsible to the parliament and formally appointed by the GG
* Composed of 30 ministers

Cabinet conventions…

*Cabinet secrecy:*

* Best decisions are made through rigorous and informed discussion, debate and argument in cabinet room.
* Discussions are minuted and recorded by clerical employees who are sworn to secrecy
* The law requires that cabinet meeting are secret for 30 years
* Secrecy allows for viewpoints to be argued free from judgement and media scrutiny

*Cabinet solidarity*

* The secrecy allows for a single government position on any single matter
* Decisions within cabinet meetings can be made by…
* Consensus: All ministers agree
* Majority: most of the cabinet agree
* Prime ministerial authority: in which the PM imposes their will in cabinet
* Part room pressure: Wider governing parties parliamentary members apply pressure to their senior members to obtain a decision they prefer
* No matter how the decision is made all ministers must pubically agree with the decision
* Any minister who cannot public support a decision must step down

Cabinet committees

* Cabinet may be subdivided into smaller groups of ministers for the purpose of focusing on specific areas of government activity e.g. from the Abbott cabinet is the national security committee (NSC) which focused major international security issues of importance in Australia
* They are also formed in areas of general government activity. All governments excluding the turnbull government form a an expenditure review committee (ERC) which examines the budgets of government.
* Cabinet committees meet separately to main cabinet and report their decisions to whole cabinet for approval.

West Minister chain of accountability

1. The people directly elect a parliament in a general election
2. The lower house of the parliament chooses a government by giving it confidence to a group of ministers who form a cabinet
3. These indirectly elected cabinet ministers head the appointed government departments and provide democratically mandates policy direction
4. Government departments implement the mandated policy under their minister’s direction and provide expert advice to the Minister
5. The parliament representing the people hold the ministers collectively and individually responsible for their administration of government under west minister convention

Roles of Cabinet…

The cabinet has many roles as the ‘Committee of the executive’ and is therefor referred to as the ‘engine room’ of government

* **Developing and communicating the narrative and vision of government-** governments need to tell a story to the community about the direction in which the nation is heading. Cabinet solidarity ideology and discipline provide the narrative
* **Developing and implementing policies:** policies drive cabinets agenda and may be implemented through legislation or regulation
* **Coordinating the machinery of government-** Political power flows to other arms of government and bureaucratic power is guided, restrained and accountable by the West Minister chain of accountability
* **Acting as an information exchange-** the cabinet holds a lot of information and helps manage the flow of information, looking at its priority before it is acted upon
* **Responding to crises-** Events such as natural disasters of international emergencies may impact Australia and are dealt with by cabinet who exercise power rapidly and decisively 🡪 Gillard Govt’s 2010-11 Flood Levy in response to the Queensland Floods; Rudd’s Global Financial Crisis Stimulus Package 2009, where all families received $5 000

**Roles and Powers of the Opposition and shadow ministry**

* Second largest party in the house of representatives
* Formed by convention- not in the constitution
* Currently Bill Shorten and Labor party
* Has an officially recognised function: Is an essential part of the democratic system of government. The importance of the Opposition is that they provide scrutiny via adversarial competition with sitting government
* The opposition form a shadow ministry, where senior members of oppositions directly correspond a government minister
* Role of the opposition:
* Hold government accountability (hold up parliament, discredit parliament, use media to criticise government, develop relationships with outside agencies)
* Be viable alternative government (provides alternative government actions or policies, ready to form government if they are voted in as a government following elections, show stability)

“The duty of the opposition is not just to oppose for opposition sake but to oppose selectively. No government is always wrong on anything” – Menzies on the role of the opposition

* Role of the leader of the opposition:
* Leads opposition party
* Alternate PM
* Chairing weekly party meetings
* Leading the development of party policy
* Selecting opposition members and senators to be shadow ministers
* Leading the team of shadow ministers which is called the shadow cabinet
* Acting as the chief spokesperson for the party inside and outside parliament.
* Leading the party in an election
* Represents their electorate
* Presenting alternate policies to the government and Australian people
* Utilises the expertise in the community as an information and advisory resource due to the limitations of staffing and resources of an opposition
* Provided with a special salary

***Shadow Ministry:*** The opposition front bench composed of spokesperson for each of the ministerial portfolios of government. Each spokesperson scrutinises a government ministers, they are an alternative government

* Holding the government to account:
* ***Question time:*** a key procedure associated with the responisbilty of the parliament which occurs at 2pm every parliamentary sitting day. Any private member may ask any minister a question concerning their portfolio area, their conduct or other matters relating to how they carry out their role
* ***Moving censure motions or motions of no confidence:*** a censure motion is a motion to discipline a minister or the government. A successful censure motion in the HOR would by convention require a minister to step down. No confidence motions are similar to a censure motion, except that instead of being directed against a specific act of the executive or one of its ministers it is aimed at the whole government in general.
* ***Debate:*** The opposition use opportunities to speak against the government tor highlight matter embarrassing to the government. To frustrate the oppositions, use of parliamentary debates they may use its majority to amend standing orders and reduce debate opportunities.
* ***Calling for quorum:*** A quorum is a minimum number of members required in the house for a valid vote to be taken. The law specifies that the quorum for the HOR is one fifth of the total ministers.
* ***Refusing pairs:*** When granting pairs the opposition agrees to remove one of its own members from the chamber and from any votes, for each absent member of the party. This preserves the balance of power in the HOR and preserves the governments majority. If the opposition wishes to frustrate the government they may refuse pairs and the government must summons its MHR’s to return to the chamber.
* ***Calling for divisions:*** voting on the voices is when they may be asked to just say ‘aye’ or ‘nay’. Divisions is when they are asked to leave their seats and move to the right to vote yes and left to vote no. Divisions take up a lot more time and frustrate the government
* Can opposition have more impact…
* Join forces with minor parties and independents
* Committees to debate govt legislation
* QT in chamber
* Block legislation: *1975 Lib/Nat coalition used # in Senate to block the supply bill and action that culminated in GG John Kerr dismissing PM (Whitlam)*
* Factors that affect the success of the opposition…
  + Impartiality of the Speaker
  + Lack of Resources
  + Executive dominance
* Ultimately the opposition has to do its job and then the polls on the PM will drop

***Contemporary issue relating to legal power:***

***Section 44***

* Section 44(i) of the Australian Constitution, which prohibits members of either house from having allegiance to a foreign power.
* The High Court of Australia had previously held that someone who holds dual citizenship is ineligible for election unless they have taken "reasonable steps" to renounce the foreign citizenship before nomination
* Citizenship Seven🡪 between august and September 2017, parliamentary members were referred to the High Court. Ludlam and Waters resigned their senate seats and Canavan resigned from the Ministry. The Court's unanimousdecision, determined that Canavan and Xenophon had been eligible for election, unlike the other five who were dual citizens at the time of nomination
* In November 2017, several resignations followed the high court’s decision
* The High Court sat as the Court of disputed returns under the electoral act 1918 that has the task of holding parliamentarians accountable to the constitutional validity of their election
* Why was it useful…
* Rule of Law: political power doesn’t make exempt from law
* Literalist Court: black letter
* Role of GG: reserve power
* Role of HCA: sole interpreter of Constitution (and its alter-ego as Court of Disputed Returns)
* Love for independent judiciary & SoP

**Contemporary issue relating to Political Power**

**Senate Voting Reform (2016)**

*Political Power*

What was changed?

In 2016 Senate voting system was changed to allow optional preferential voting both above and below the line. Voters were now required to number 6 boxes above the line or 12 below the line. These changes were proposed to prevent micro parties from get getting elected via preference swapping

What were the arguments for the reform?

* Voters would be in control of their vote
* Minor parties wouldn’t be able to swap preferences in order to secure senate seats
* The bill would empower voters
* The reform would ensure that future election results would truly reflect the people

What were the arguments against the reform?

* The proposed reform would mean that the Australian demographic is not equally represented
* Dominance by major parties 🡪led to high court challenge
* Concerns with exhausted votes

High Court Challenge:

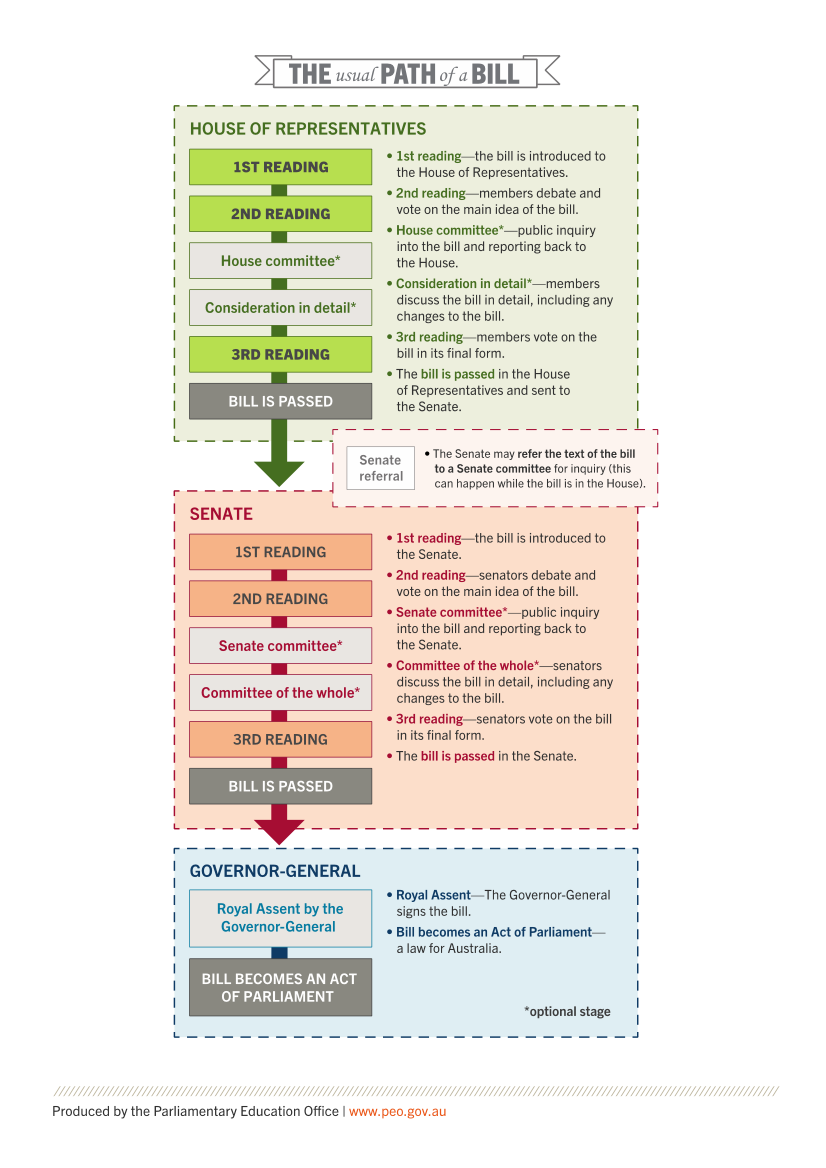
South Australian family first senator, Bob Day lodged a High court challenge against the changes, following the passage of the senate voting reforms. He argued that the changes were ‘unconstitutional’ for multiple reasons.

1. Above and below the line voting breached the requirements in section 9 of the constitution as they constituted two different methods,(Aus Constitution requires the voting ‘’method[…]be uniform for all the states”).
2. The senate was not ‘*directly chosen by the people’* as they were voting for parties rather than candidates.
3. Day was concerned with the problem of exhausted votes, claiming that the votes would not reflect the electors in the election of candidates.

The challenge was rejected with the high court regarding Days’ arguments as ‘untenable’ (Tworney. A, 2016)

**\*Exhausted Votes**: Exhausted votes are ballot papers that show no further valid preference for any candidate and must be set aside from the count.

**Influences on Law Making**

*Law Making Process in parliament (2) …*

* **Introduction & first reading** 🡪 A minister or member of either House may introduce a Bill. After the introduction, the Clerk reads the title of the Bill
* **The Second Reading** 🡪 the member/minister in charge of the Bill starts the second reading by explaining the intention of the proposed. All members are entitled to make one speech during that debate.
* **House Committee** 🡪 Public inquiry into bill and reporting back to the house. The proposal may be sent to a standing committee
* **Consideration in detail**🡪 Members discuss the bill in detail and propose any amendments.
* **Third Reading** 🡪 members vote on the bill in its final form
* **Presentation to the Other House** 🡪 the Bill is then sent to the other House where the same procedure takes place
* **Royal Assent by the Government General** 🡪 having passes through both Houses, the Bill is presented to the Governor General, who assents to it in the name and on behalf of the Queen
* **Proclamation** 🡪 the Bill is proclaimed as an Act of Parliament
* Parliament is responsible for statute laws (acts of a legislature that declare, proscribe, or command something; a specific law, expressed in writing. A statute is a written law passed by a legislature on the state or federal level)

*Law Making Process in the courts…*

**Common Law**🡪 Law that is based on custom or previous judgements of the courts.

It provides a body of decisions for those areas of law not covered by the statute laws passed by parliaments. The core principle of common law is stare decisis, ‘To stand by what has been decided’. The decisions of higher courts form binding precedents to be followed in the decisions of lower courts.

However, there are restrictions on Judge-made laws, as it can only be established in a higher court and if there is no previous precedent set.

**Doctrine of Precedent**🡪 A decision of a higher court must be followed by lower courts when dealing with similar cases

**Statutory Interpretation**🡪interpretation of statute by judges whereby they give meaning to particular words or phrases

This is vital to influencing law making as even though parliament established the law, the courts decide the meaning of it and can alter the statute

They may interpret it…

* Literal/black letter interpretation: meaning is derived from the words in the statute
* Golden Rule: Judges refer to the general aim of legislation to interpret inconsistent part of the act
* Mischief Rule: Judges assess the purpose of the legislation if literal interpretation or golden rule would lead to absurdity

**Parliamentary Sovereignty**🡪The principle that the parliament is the final authority on all law. This therefor can overpower statutory interpretation of the courts as parliament is the most powerful law making body and can abrogate any common-law decision.

POLITICAL PARTIES

* “an organised group of people with at least roughly similar political aims and opinions, that seeks to influence public policy by getting its candidates elected to public office”
* Political parties within parliament have a major influence on law making as they have the ability to initiate new legislation
* Role of political parties:
  + To allow for political participation
  + To control Government
  + To express alternate values
  + To allow for expression of conflict and division

*Major Parties*…

* Parties that realistically can achieve a majority of seats in the lower house.
* Traditionally Australia has been a ‘two-party-preferred’ system where either the Australian Labor Party or the Liberal-National Coalition has been in Government since around 1949.
* Characteristics:
* support base that includes a significant proportion of the electorate
* an organisational structure that provides it with the ability to contest in elections
* beliefs and policies that can appeal to the values of the majority of Australians
* Major parties have a significant influence over parliamentary law making as they have the power to introduce bills and because of their large support base have a higher change of their legislation passing

Minor Parties…

* Aim to achieve parliamentary representation to influencethe legislative agenda. They are supported by a smaller proportion of the electorate and generally focus on a more limited number of policy objectives
* They can influence the legislative agenda by holding the balance of power in the senate. This means that the major parties would be dependent on the minor party’s numbers in the Senate to either pass or block their legislation.

Micro Parties…

* Many very small groups stand candidates for elections as a way of promoting a single issue. These groups aim to raise the profile of their cause and to exert indirect influence on larger parties
* Most micro parties would be considered pressure groups
* Micro parties try and influence the legislative agenda by bringing attention to single issues

*Political parties influence on parliamentary law making:*

Political parties have a significant influence on parliamentary law making. Major parties hold a substantial amount of influence as they have significant power over legislation and are able to generate bills and pass acts of parliament. Minor parties have a moderate influence in regards to parliamentary law making as they have some power to suggest amendments and combine with other parties to increase their power over legislation. Micro parties have limited influence, they have little to no power in regards to parliament law making.

1993 Native Title Act (major parties)

The Mabo decision (199e2) recognised Australia was not terra nullius and recognised that indigenous people had lived in Australia lived in Australia for a long time. The Keating government endorsed the decision and established the Native Title Act (1993)

2011 Carbon Tax (minor parties)

* Julia Gillard had promised to never enact carbon tax however broke that mandate as she needed support from Greens members due to 2010 hung parliament.
* The minor parties moderate power is evident by the Carbon Tax as Gillard was unable to pass any of her own bills without the Greens support and they were able to influence the legislative agenda.

*Political Parties influence on court law making:*

Political parties influence over court law making is far less than its influence in parliament.

Political parties are able to be a part of a court proceeding that leads to a new law, or a change in the law. But due to parliamentary sovereignty they can alter any common law decision by introducing new legislation.

Communist Party of Australia v Commonwealth of Australia (1951) (2)

* Parliament found it necessary to pass the Communist Party Dissolution Act in order to dissolve the Australian Communist Party and forfeit their property to the Government however the High Court struck down the Act under the constitution parliament did not have the power to make such laws.
* Six of the seven High Court Justices ruled against the Act
* This was a landmark case in Australian High Court history, however the influence of the political party itself was not immense, it was arguably the High Court who had influence over the government

PRESSURE GROUPS

* any organized associations that attempts to influence public policy, either to change it or maintain it.
* E.g. The Animal Justice Party or The Arts Party
* There are two types…
* Sectional: based on identifiable subgroups of society and focus on achieving ‘selective benefits’ for their members. Business groups such as the Business Council of Australia are examples.
* Promotional: formed to advance a cause they believe will benefit the broader community, such as the Australian Conservation Foundation.
* Strategies…
* Direct lobbying: direct communication with law makers who have contact with decision makers
* Submissions to parliament: Make an inquiry, like an argument or statement seeking to influence law making or make amendments to bills.
* Direct action: Taking form of action like street marches
* Court action: taking legal action to argue their interpretation of statutes
* Advertising: Using media to communicate with the public
* Celebrities: using them to endorse a pressure groups objective
* Pressure group success…
* Quality of leadership (high-profile figures)
* Size of direct membership
* Scale of community support
* Level of professionalism
* Availability of financial resources
* Strategic importance and prestige
* They are a vital link between government and the people

*Pressure Groups influence on parliamentary law making:*

* Pressure groups seek to influence political decision makers such as the PM and Cabinet, influential parliamentarians
* They have indirect impact through their ability to influence public opinion

The Australian Council of Trade Unions (ACTU) (3)

* In the 2007 election, the ACTU spent $13 million on media campaigns against Howard’s WorkChoice therefor they had a large influence on the outcome of election and the WorkChoice Bill and Rudd’s subsequent Fair Work Act 2009

The Australian Medical Association (AMA) (3)

* in regular contact with a large number of politicians, political parties and government ministers
* has close relationships with the various Health Department, therefor has a high

chance of being able to influence law making

*Pressure Groups influence on Court law making:*

Rowe & Anor v Electoral Commissioner (2010)

* Get Up! Won a High Court challenge to overturn the unconstitutional aspects of the electoral act 1918
* The case regarded the 2006 Electoral and Referendum Amendment Act in which the electoral roll closes on the day on which the electoral writ is issued for new or re-enrolling voters, and three days after the writ is issued for voters updating enrolment details.
* They claimed that they were unconstitutional in regards to s.7 & 24 which related to implied right to vote

INDIVIDUALS

* Individuals within parliament may refer to independent members, who are not a part of the executive.
* Individuals can join political parties and pressure groups. Individuals can also act along to influence public policy by becoming directly involved
* They may join a special interest group, attend public meetings, generate letters, bring media attention to the matter of interest
* Individuals are usually unsuccessful because…
* They lack resources (money and time)
* They don’t have access to key decision makers
* Lack organisational support and are on their own

Individuals influence on parliament law making…

* Nick Xenophon was an important individual and his support was crucial for the coalition to pass senate reforms
* Individuals may have close ties with politicians (lobbyists) such as Michael Wooldridge 🡪 formed Health Minister; lobbied for Royal College of General Practitioners and Research Australia

Individuals main influence on parliament law making is through **Private Members Bills**

However these are difficult to succeed with. Around 1000 PMB’s have been proposed with only 29 passing since federation.

Commonwealth Electoral Bill (1924)

* Compulsory voting introduced by Herbert Payne

Euthanasia Laws Bill (1996)

* Kevin Andrews amended the 1995 Act in Victoria to make euthanasia much more stricter. (The patient now had to have the agreement of four specific doctors)

Same Sex Marriage Bill (2017)

* The most recent successful private members bill is the Same sex marriage Bill
* On the 15 November 2017 Dean Smith (liberal backbencher) introduced a bill to amend the Marriage Act 1961 to redefine the ‘union of man and women’ to the ‘union of two people’.
* The Bill passed the third reading stage in the House on 7 December 2017 and received Royal Assent the following day.
* Prime Minister Malcolm Turnbull postponed the vote in the HoR until the plebiscite results were available to claim public support.
* It was after the results came in Turnbull allowed a conscience vote in the HoR

Individuals influence on court law making…

Williams 1 (2012)

Ronald Williams, Queensland father of six who challenged the constitutionality of the commonwealth’s national school chaplaincy program.

* The chaplaincy program was introduced by Howard in 2006
* Howard was funding schools to have Chaplains which William challenged saying the executive was going beyond their scope of power- the funding not supported by section 61 there is no power for the executive to fund chaplaincy
* There was no parliamentary authorisation of the spending of the money (hadn’t been passed as legislation)

Williams 2 (2014)

* Rudd and Gillard passed legislation that would allow that chaplaincy program to continue Williams challenged claiming that the funding is not the benefit of students and won the High Court Case
* The influence of the Williams cases 1 & 2 was on *court law making.* By bringing the case to the High Court the funding was deemed invalid. Therefore, to achieve the funding, under section 96 grants are made to the states (tied grants)

Mabo (1992)

* Eddie Mabo
* Recognised a new common law in the form of land title- ‘native title act’. The High Court abolished the legal principle of ‘terra nullius’ (nobodies land) and Australian land law was now in doubt by this decision. There was concern about the status of certain property
* Eddie Mabo’s case *influenced court law making*- it changed Australian land laws and brought into question the status of properties. To clarify the newly created Common Law, the commonwealth parliament had to pass the native title act 1993.

Lane v Morrison (2009)

* Brian Lane
* The High Court determined that Colonel Peter Morrison, a Military Judge, could not proceed with trying charges against Mr Brian Lane, a former member of the Royal Australian Navy (RAN), because the legislation creating the Australian Military Court, in which the charges were to be heard, was constitutionally invalid under section 51 (6)

|  |  |  |  |
| --- | --- | --- | --- |
|  | Parliament Law Making | Court Law Making | Evaluation |
| Political Parties  “an organised group of people with at least roughly similar political aims and opinions, that seeks to influence public policy by getting its candidates elected to public office” | * Have significant influence * have power over legislation * are able to generate bills * Can pass acts of parliament   E.g.  1993 Native Title Act  2011 Carbon Tax | * Less influence as the only way they can influence is by bringing a case to court   E.g.  Communist Part of Australia v  Commonwealth of Australia (1951) | Has significant influence over parliament law making because of their power but lack much impact on court law making |
| Pressure groups  any organized associations that attempts to influence public policy, either to change it or maintain it. | * They have indirect impact through their ability to influence public opinion * Have a moderate impact   E.g.  The Australian Council of Trade Unions (ACTU)  The Australian Medical Association (AMA) | * Have little impact as their strategies do not work on court law making   E.g.  Rowe & Anor v Electoral Commissioner (2010) | Have a moderate impact of parliament law making but a very limited influence on court law making. |
| Individuals  Individuals within parliament may refer to independent members, who are not a part of the executive. | * Private Members Bills * Difficult to have an impact as they do not always have access the funds or support   E.g.  Commonwealth Electoral Bill (1924)  Euthanasia Laws Bill (1996)  Same Sex Marriage Bill (2017) | * Significant impact * They bring cases to court and their approach can determine what decision the courts make   E.g.  Williams 1 (2012)  Williams 2 (2014)  Mabo (1992)  Lane v Morrison (2009) | Have a limited influence on parliament law making but the most significant influence on court law making |