



# AUSTRALIAN CONSTITUTION CENTRE

## Federalism in detail

By the 1890's what we now call Australia was made up of six British colonies. They were all self-governing, with each having its own Parliament, its own Executive and its own Judiciary. In the final decade of the 19th century, the six colonies started to work on joining together. Over this period, delegates appointed and elected from the colonies created the Australian Constitution and system of government. What they designed was our unique Federation, whereby the colonies gave some of their powers to an overarching Federal Government and each of the colonies became a State. Each of the colonies gave up some of their powers to the federal government, and they gained no new powers.

The Constitution that came into effect on 1 January 1901 outlined the power sharing arrangement between the new Federal Government and the States. The two internal Territories were added later as land surrendered from the States, starting with the Northern Territory in 1908 and the ACT in 1909.

Federalism divides political power between the different parts of the Federation. In Australia, we have the 'Federal' or Commonwealth Government, and the governments of the States and Territories. Like the idea of the Separation of Powers, federalism is about sharing power between different entities. This also means limiting or diluting their power. By dividing power like this, federalism strengthens representative democracy, can protect liberty, encourage experimentation and reform and can promote local decisions on issues of local importance.

Australia's federalism is unique. One of its most important features is that the Federal Parliament only has limited powers to make laws, and the rest of the powers are left to the state parliaments. On subjects where both have power to pass laws, there is potential for inconsistency. Where there is an inconsistency, our Constitution provides that the Federal law must prevail.

Over the years, federal power has grown at the expense of the States. Why is this so? The High Court has given a broad interpretation to the law making power of the Commonwealth Parliament under Section 51 of the Constitution. The Commonwealth Parliament has greater power to raise and share revenue. One of the most important cases in relation to Federal power was decided during World War II in the so-called "Uniform Tax Case" where the High Court allowed the Federal Parliament's monopoly over income tax. In addition, the Federal Parliament has been able to use its 'external affairs' power to pass laws in new areas, like overseas war crimes, industrial relations and racial discrimination when it does not have specific powers otherwise. The growth of corporations in our society also means that the Commonwealth's power to make laws with respect to corporations can reach into areas not thought of at the time of Federation.

These days many Australians tend to think of the States as junior partners in the power sharing relationship of Federalism. Some have even gone so far as to say that we should abolish the States altogether. But there is an important constitutional principle that the Commonwealth Government cannot place special burdens on States which operate to destroy or undermine their continued independent existence or their ability to function as Governments.

Disputes will often arise in Federalism between its component parts – between the Federal Government and State Governments, between different State Governments, and between citizens and their Governments. Most of those disputes are solved through the political process, but resolving such disagreements is ultimately the job of the High Court.



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## Questions:

1. What is federalism?
2. How does the Prime Minister try to work co-operatively with the States and Territories to solve issues affecting the community? Name one big issue today?
3. How does the Constitution protect the States power?

