

Unit 7: The Australian Constitution and its three key institutions of government and how the Separation of Powers (SoP) protects democracy and the people – Years 6 and 7 - C & C Strand: Government & Democracy

Topic 6.3 & 7.1: The Australian Constitution and its three Key Institutions of Government

Parliament – the roles and powers of the Houses

The three main roles of Parliament are the passage of legislation, the scrutiny of government and the financing of government. In addition, members represent their constituencies (either electorates in the House of Representatives, or States or Territories in the Senate) by raising matters of importance concerning them in Parliament. Publicity of this kind can sometimes achieve change. Finally, the House of Representatives has a particular role in deciding who can govern.

Role of Passing Legislation

[Section 1](#) of the Commonwealth Constitution gives the Commonwealth Parliament legislative power. A bill (ie a proposed law) must ordinarily be passed by both Houses of Parliament – the House of Representatives (known as the lower House) and the Senate (known as the upper House). It must then be given assent by the Governor-General (or on rare occasions by the Queen/King) before it can become a law.

The two Houses have equal powers except for some limits on the Senate's powers in relation to bills dealing with money, which are set out in [section 53](#) of the Constitution. There is also a [mechanism](#) for dealing with deadlocks between the Houses if they do not agree upon passing a law. It involves dissolving both Houses (known as a 'double dissolution'), holding an election for both of them and later holding a 'joint sitting' of Parliament (where all Senators and Members of the House of Representatives vote together) if it is necessary to resolve the deadlock. But this is unusual. A 'double dissolution' has only occurred seven times, and a joint sitting only once. Mostly, if the two Houses cannot agree, the legislation is not passed.

Both Houses play an important role in debating bills. Bills are often referred to parliamentary committees, which can hear expert advice on problems with the bills and how to improve them. Bills may be 'amended' (ie altered) as a result of committee scrutiny or amendments, including those raised by the Opposition, Independents or minor parties.

Scrutiny of Government

Both Houses play a role in scrutinising the actions of the government. This occurs through 'Question Time', when Ministers can be asked questions about the areas of the government that they are in charge of (known as their 'portfolios'). Scrutiny also occurs through debates on 'matters of public importance' and censure motions criticising the actions of a Minister or the government as a whole. The Houses may also order ministers to produce government documents (although ministers often refuse). Where questions have been raised about the behaviour of Ministers, a parliamentary committee may inquire into that behaviour. For example, the Senate [Select Committee on Administration of Sports Grants](#) inquired into whether the Minister for Sport was biased or breached rules in handing out sports grants.

Financial control over government

Governments need money to operate, but the Constitution requires that all money they receive must go into a [special fund](#). It says that only Parliament can release money from that fund, by passing an '[appropriation](#)' bill, to give the government money to spend on particular purposes. It is Parliament that authorises imposing taxes and appropriating money, as well as most spending of public money. This means that governments must be accountable to Parliament. For example, the government can declare war, but it cannot pay for a war without the agreement of Parliament. The Parliament scrutinises government spending through 'Estimates Committees' and other committees dealing with public finance.



The House of Representatives | 26 July 2022
Source: Anthony Albanese Twitter

Representational role

The Houses set aside particular time for Members and Senators to raise matters of importance in their electorates. It may include congratulations for particular local achievements, condolences for the death of an important member of the community, complaints about the inadequacy of government facilities, infrastructure or programs in the electorate, recognition of particular groups or events, or the identification of certain unmet needs in the community. Members of the [House of Representatives](#) can raise such matters in the adjournment debate at the end of each sitting day, or in the 30 minutes before Question Time. In the Senate, in addition to the adjournment debate, there is a period between 12.45pm and 2pm on Wednesdays when a Senator can raise any matter and speak for 10 minutes.

Making and destroying governments

Under the system of responsible government, the government must hold the 'confidence' (ie the support) of the lower House. This means that the House of Representatives can unmake a government by passing a vote of no confidence in it or refusing to grant it the money it needs to govern. This triggers a convention that the government must either resign or ask the Governor-General for an election.

If the House supports someone else to form a government, then the Governor-General may choose to refuse the request for an election and appoint that other person to form a new government, but this is quite rare. An election is the more common outcome, as this lets the people decide.

If an election has been held and there is a 'hung Parliament' (ie no party or coalition has majority support in the lower House), the existing Prime Minister has the right to stay on governing until facing Parliament. If there is a vote of no confidence in the Prime Minister at that stage, then he or she will ordinarily have to resign, as a new election would be inappropriate so soon after the previous one. Someone else who has the confidence of the House will then form a government.

Powers and privileges of the Houses

[Section 49](#) of the Constitution gives both Houses of the Commonwealth Parliament the same powers, privileges and immunities as were held by the UK House of Commons at the date of federation (i.e. 1 January 1901). They include the right to [freedom of speech](#), so that Members and Senators cannot be punished in a court or elsewhere for what they say in the House.



They also include the power of a House to punish persons for contempt and the power to order people to attend, give evidence and produce documents to the House or its committees. The Houses can also suspend Members and Senators, but can no longer expel them.

Members and Senators have a limited immunity from [arrest and jury duty](#). The Houses still rely on these ancient rights, although they are now partially limited by the [Parliamentary Privileges Act 1987](#) (Cth).

[Section 50](#) of the Constitution also gives each House the power to make its own internal rules (known as 'Standing Orders' and 'Sessional Orders'). The courts avoid interfering with the internal operations of the Houses, leaving these as matters for the Houses to determine.

Limits on the legislative powers of the Australian Parliament

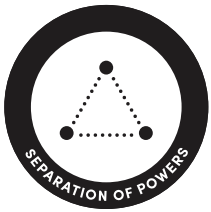
The Australian Parliament cannot make laws on anything that it wants. Because Australia has a federal system, the Constitution distributes powers between the Commonwealth and the States. It lists the subjects that the Australian Parliament can make laws about.

New Senators of the 47th Parliament on an orientation program | July 2022
Source: Australian Senate Twitter

Most of those subjects are listed in section 51 of the Constitution. This list includes things like defence, immigration, naturalization, marriage, quarantine, pensions, foreign affairs, currency, and certain types of commercial matters like interstate and overseas trade and commerce, trading and financial corporations and federal taxation.

Every law made by the Australian Parliament must fall within one of the subjects allocated to it by the Constitution. If not, the law can be struck down by a court as being invalid.





Topic 6.3 & 7.1 Lesson Four



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The Australian Parliament – the Role of Passing Legislation: How to pass a Bill

Time/Lesson	Learning Goal
<ul style="list-style-type: none">1 hour	Students will <u>understand</u> the key steps for making new laws from the introduction of the Bill to the Parliament, to the passage of the Bill by both houses and the grant of Royal Assent by the Governor-General, by using the ' Pass the Bill ' interactive.

Teaching Reference Documents:

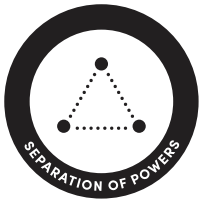
TRD 58 Parliament – the Roles and Powers of the Houses

The first step for a law is to get the relevant Minister to support it and to seek the approval of Cabinet (a group of senior Ministers). If Cabinet agrees, a bill is drafted and presented in one House (it doesn't matter which one, although bills about money matters have to start in the lower House). In each House there are three 'readings'. (They used to literally read out the bill, but these days they just lay a printed copy on the table in the middle of the House - it saves time!) The 'first reading' just introduces the bill by reading its name and literally laying it on the table. The 'second reading' is the important one. The Minister gives the 'second reading speech' which explains what is intended by the bill. Then everyone else debates it and may seek changes ('amendments') to it. Sometimes it is sent to a parliamentary committee, so that the public and experts get a say. Once it has passed the second reading, it goes to a 'third reading', which is the final vote on it. The same then happens in the other House. When it has passed both Houses it is sent to the Governor-General for royal assent. Then it becomes a law.

Teacher Instruction

Lesson outlines and guiding questions:

- Study the 'Role of Passing legislation' extract from TRD 58 Parliament – the Roles and Powers of the Houses.
- In pairs students will use the interactive 'Pass the Bill': <https://peo.gov.au/understand-our-parliament/how-parliament-works/bills-and-laws/pass-the-bill/>
- Divide the class in two and have speakers who are for a Bill for lowering the voting age to 16 and the other side are against lowering the voting age.
- After the speeches conduct a class vote on the Bill for lowering the voting age. You can ask the students that agree to say 'Aye' and then those who disagree say to 'No'. You can then say 'division required' and ask the students who agree to move to the right side of the teacher, while those who disagree move to the left. Once the final vote is tallied you can say 'the ayes have it' or 'the noes have it'.
- Ask the students to discuss how laws can impact the lives of people and why it is important that they can only be made through a rigorous public process in the Parliament. If laws were made in secret and no one could know what factors were considered or who voted for it, would that make you have less faith in the democratic system? Is it a good thing that anyone can walk into Parliament and watch laws being debated and passed, or give their views to a parliamentary committee by making a submission to it?



Topic 6.3 and 7.1: Lesson/Activities Five

Classroom Parliaments



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Time/Lesson	Learning Goal
<ul style="list-style-type: none">• 1 hour	Through role playing a classroom parliament and passing legislation, students will know who does what as well as who has what powers. Through focusing on a particular topic issue, students will begin to understand policy-making by government through the enactment of legislation.

Rationale
Students will understand... <ul style="list-style-type: none">• The workings of the House of Representatives in the Australian Parliament through proposing and passing a Bill.

Teaching Reference Document
<ul style="list-style-type: none">• TRD 58 Parliament – The Roles and Powers of the Houses

Resources
<ul style="list-style-type: none">• Internet classroom access to the Parliamentary Education Office (PEO) website: https://peo.gov.au/ OR printed templates from the site• Worksheet template "PEO" write your own Bill• Link to CEFA website: How to set up a classroom or school Parliament

Teacher Instruction

- Follow the guidelines on the PEO (Parliamentary Education Office) website for classroom parliaments.