

# Teacher Reference Document 60



AUSTRALIAN  
CONSTITUTION  
CENTRE

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

## Executive Power Overview including the position and roles of who makes up the Executive Government

### What is executive power?

Executive power is the power exercised by the 'Executive', which is often known as 'the government'. It includes the power to run government programs (such as the job-seeker program), spend public money and exercise decision-making powers (such as granting or refusing visas or deciding to close the international borders). These powers will often be given to government ministers or public servants by laws passed by the Parliament.

Some powers have also historically been held by certain officials, such as the Governor-General, on behalf of the nation. They include the power to enter into treaties and the power to dissolve Parliament for an election.

### Who makes up the Executive?

While the Parliament exercises legislative power and the courts exercise judicial power, it is less clear who exercises executive power. This is because the Executive is comprised of different layers with different functions. There is the formal layer, comprised of the Sovereign and the Governor-General. There is a leadership layer, comprised of the Prime Minister and other Ministers, who make policy decisions and give directions. Then there is the practical layer, comprised of public servants, officials and government agencies, which implement policies and government programs.



The Crown  
Source: Wiki Commons

**The Sovereign:** When the Constitution was written, Queen Victoria was the Sovereign, so the Constitution refers throughout to 'the Queen'. But it also says that this means Queen Victoria's successors as Queen or King - i.e. whoever happens to be the King or the Queen Regnant (a reigning Queen, as opposed to the wife of a King) at any particular time.

In 2022, Queen Elizabeth II, the Queen of Australia, died and King Charles III succeeded her as King of Australia. So the word 'Queen' in the Constitution now needs to be read as meaning 'King'.

On its face, the Constitution seems to give the King lots of powers – but in reality most of them are exercised by the Governor-General as the King's representative, and even the King's few remaining powers, such as appointing the Governor-General, are exercised 'on the advice' of the Prime Minister.

This means that the Prime Minister advises the King what to do in exercising his powers. While the King ultimately acts as his Prime Minister advises, he can sometimes persuade a Prime Minister to change his or her mind and give different advice.



Commonwealth Ministers, including Prime Minister Anthony Albanese, after being sworn in by the Governor-General, General the Honourable David Hurley AC DSC (Retd) | June 2022  
Source: Albanese Twitter

**The Governor-General:** The Governor-General exercises many more powers in Australia, including the power to enter into treaties and make regulations. But again, nearly all those powers are exercised 'on the advice' of the Minister responsible for the subject area.

The Governor-General will usually look very closely at that advice, and point out if there are errors in it or may raise concerns about it. However, like the King, he or she will almost always ultimately act upon ministerial advice.

There are some powers, however, known as the 'reserve powers', which may be exercised by the Governor-General without ministerial advice or against the wishes of ministers. They are the powers that the Governor-General exercises as the constitutional umpire – such as dismissing the government if it is breaching constitutional rules.

The reserve powers are exercised very rarely, but it is important that they exist. Knowing they are there is usually enough to ensure that governments obey the constitutional rules – both the ones that are written and the ones that have developed as a matter of practice over the centuries, known as conventions.

**Ministers:** Most executive power is exercised by Ministers. These are Members of Parliament who belong to the party or coalition of parties that won the election and formed the Government. They are appointed by the Governor-General. They advise the Governor-General, through a body known as the Federal Executive Council.

Ministers make their most important decisions in another body known as the Cabinet. This is a collection of the most senior Ministers who meet regularly to decide together what important decisions should be made for the running of the country.

Ministers are also heads of public service Departments, such as the Department of Education and the Department of Foreign Affairs and Trade. Ministers often instruct public servants about what the government is aiming to achieve – known as its 'policies' – and the means by which those policies should be put into practice. It is then the public servants who actually do the work to make that happen.

While Ministers have lots of powers, those powers are limited by the Constitution and the law. Ministers must obey the Constitution. This is an important part of the 'rule of law'. The Government cannot excuse itself from the application of the law.

Ministers must also obey laws passed by Parliament and laws developed by the courts (known as the 'common law'). When Ministers make decisions, they must do so fairly.

The courts have established rules about how decisions should be made. They must not be made for an improper purpose. Ministers must take into account relevant things and ignore irrelevant ones (such as their private advantage). Ministers must not act in a manner that is biased. They must not abuse their powers. If Ministers breach these rules, their decisions can be overturned by the courts and they can be required to re-make the decision fairly.

Ministers must also obey a 'Statement of Ministerial Standards'. It says that the Australian people are 'entitled to expect that, as a matter of principle, Ministers will act with due regard for integrity, fairness, accountability, responsibility, and the public interest'. The Statement also says that 'Ministers must ensure that they act with integrity – that is, through the lawful and disinterested exercise of the statutory and other powers available to their office'. The word 'disinterested' here does not mean 'bored', but rather that Ministers are not biased or influenced by any advantage that they might get from making the decision.

Ministers are 'responsible' to Parliament. This means that they are accountable to Parliament. They can be questioned in 'Question Time' each day when a House of Parliament is sitting and they can also be questioned by parliamentary committees. They must explain the actions of their Departments to the House and account for anything that went wrong under their supervision.

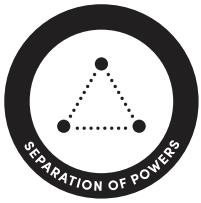
**Public servants:** Public servants are the employees of the government. Most of them are permanently employed by the 'Australian Public Service' and they work for whoever is in government. It is important that public servants are not politically biased and are appointed according to their merit (i.e. who is the best person to do the job), rather than because they support one political side or the other. This way, the Australian Public Service can build up experience and skills so that it serves the Australian people better, without having to change all its members every time the government changes.

Public servants must obey a code of conduct. While they can be instructed by Ministers, they cannot be required to disobey the law or the Constitution.

**Government agencies:** The government has also created lots of separate bodies that specialise in doing particular things or dealing with particular issues. They include the Australian Broadcasting Corporation (i.e. the ABC channels on television and radio), the Australian Human Rights Commission, the Australian Sports Commission and the Australian National University. Sometimes the government creates bodies that are supposed to behave as if they were commercial businesses, such as the NBN Co Ltd and Snowy Hydro Ltd.

There are many people and bodies that exercise executive power, but all of them should be accountable to the people and are required to act fairly in the public interest.





## Topic 6.3 and 7.1: Lesson/Activities Seven



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Introducing the Executive  
Power of Australia as described  
in Chapter II of the Australian  
Constitution

### Time/Lesson

- 1 hour

### Learning Goal

For students to understand who make up the federal Executive Government.

### Rationale

Students will understand the importance of the Executive Government and who is in it.

### Teaching Reference Document

- TRD 60: Executive Power Overview including the position and roles of who makes up the Executive Government

### Resources

- Internet classroom access to the Parliamentary Education Office (PEO) website: <https://peo.gov.au/>  
OR printed templates from the site
- Copy of the Australian Constitution or internet access to it

### Teacher Instruction

- Teacher discusses TRD 60 and summarises who makes up the Executive.
- The class discusses why the King and the Governor-General almost always act on the advice of ministers. Why do Ministers hold the real power? Is it because they are elected by the people but the King and the Governor-General are not? Compare this to the past, where Kings held all the power. Why is it different now?
- Ministers can exercise important powers, but they still have limits on those powers. They have to obey the law and make decisions fairly. Class thinks of examples where acting unfairly or unlawfully can have a big impact on individuals (eg visa cancellations, robodebt, grants scandals). Discuss the importance of the 'rule of law' and that law applies to everyone.
- Is the Prime Minister mentioned in the Constitution? Class researches the answer.
- Find out the name of the local Federal Member of Parliament for the electorate your school is in. Is your local Member also a Minister? If yes, research the portfolio.
- Show photos of the Governor-General, the Prime Minister, the Opposition Leader and some senior Ministers to the class and ask if students recognise them, can give their name and say what they do.

### Assessment

Students are tested on whether they can identify the different parts of the Executive Government (i.e. King, Governor-General, Ministers, public servants and government agencies). They are also asked to name the King, the Governor-General, the Prime Minister, the Opposition Leader and such Ministers as the teacher has selected and discussed in class. Students should be able to identify, in general terms, what the job of each person is.

## Extension Activities

Students may have an interest in an issue of national significance currently being debated in the Federal Parliament. For example, Indigenous constitutional recognition, green energy transition, cyber security or defence matters. Research the Cabinet Minister with the portfolio for leading the nation's debates and solutions for the issue selected.

- Prepare a class speech on the Minister and the issue.
- Class debates and voting on them can be set up around issues of importance to the students in your class.