

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 - The Role and Powers of the Sovereign

Australia is a constitutional monarchy, but does that make the Sovereign (i.e. the King or Queen of Australia) powerful? Can he or she decide what is in Australian laws or dismiss a government that he or she doesn't like?

### What does the Constitution say?

On its face, the Commonwealth Constitution gives lots of power to 'the Queen'. When the Constitution was written, it was referring to Queen Victoria, as well as her successors. Since King Charles III became King of Australia on 8 September 2022, we now have to read every reference to 'Queen' in the Constitution as meaning 'King'.

The Constitution gives the King important powers concerning the making of laws. [Section 1](#) says that he is a part of Parliament, along with the Senate and the House of Representatives. [Section 58](#) says that bills passed by both Houses can be 'reserved' for the King's 'pleasure' – which means that the King, rather than the Governor-General, decides whether to give assent to them and make them law. [Section 59](#) says that the King 'may disallow any law within one year from the Governor-General's assent'. So even if a bill is not reserved for his assent, and the Governor-General has given assent to it, causing it to become a law, the King can still overturn it and terminate its operation within a year. That makes it sound as if he is very powerful indeed.

The Constitution also gives the King executive power. [Section 2](#) says that the King appoints the Governor-General, as his representative, and that he or she holds office during the King's 'pleasure'.



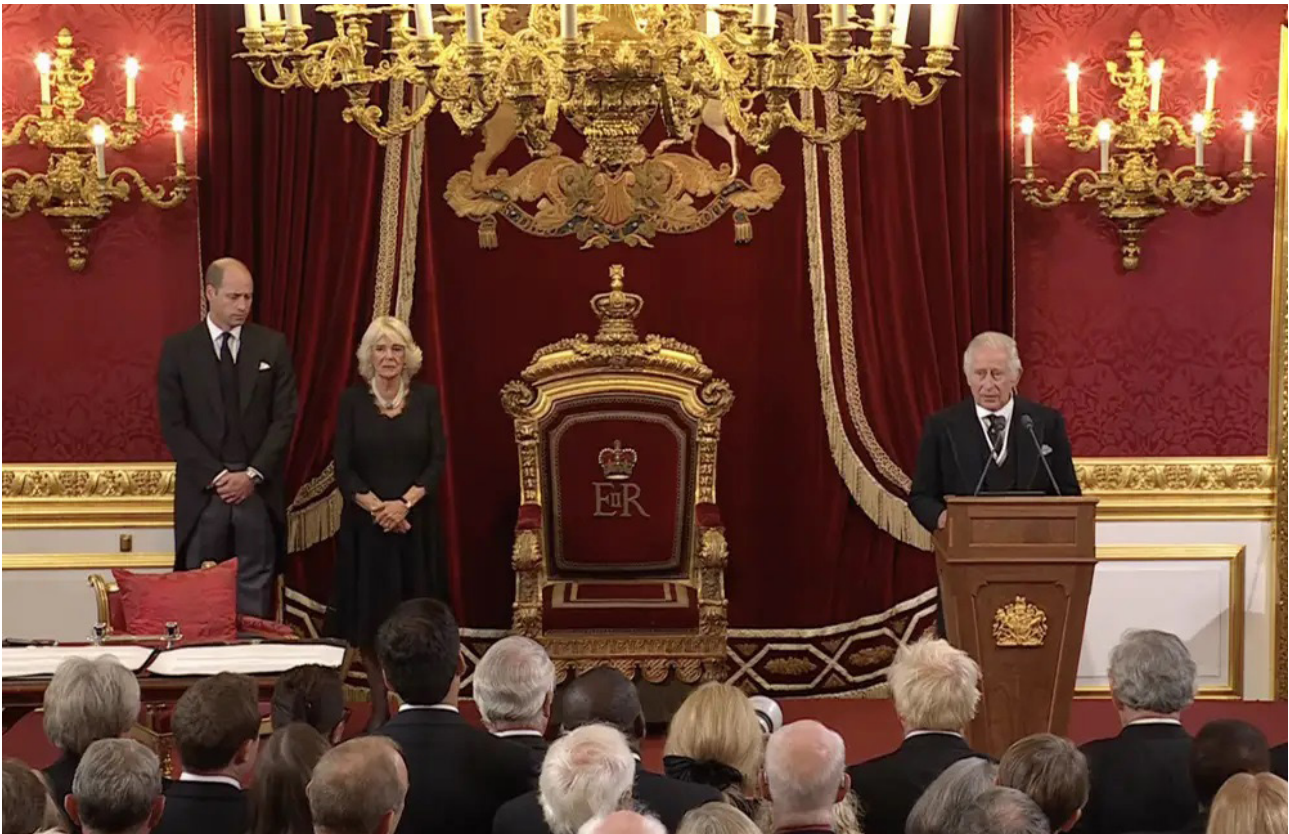
Queen Victoria /  
Source: Wiki Commons

[Section 61](#) says that the executive power of the Commonwealth is vested in (i.e. given to) the King, although it is exercisable by the Governor-General as the King's representative.

The King also has a formal role regarding the courts. [Sections 73](#) and [74](#) of the Constitution refer to appeals from State Supreme Courts and the High Court to the King in Council.

### Is the Sovereign really that powerful in Australia?

In practice, the King exercises very few powers in relation to Australia. While he is formally the third part of Parliament, his role is filled in practice by the Governor-General.



*King Charles III speaking at the Accession Council ceremony, Sep 10, 2022  
Source: The Royal Family*

It is the Governor-General who gives assent to bills passed by the Houses. In practice, bills are no longer reserved for the King's personal assent, unless they particularly relate to the King personally – such as a law that sets out what the King's royal title is in relation to Australia. No Commonwealth law has ever been disallowed by the King, and if for some reason he were to exercise this power in the future, convention requires that he only do so upon the advice of his Australian Ministers. He has no personal choice about whether to assent to a bill or disallow a law.

The King's executive power under section 61 is exercised by the Governor-General. The references to judicial appeals to the King in Council means an appeal to a court known as the Judicial Committee of the Privy Council, which formally advises the King on its judicial findings. But those appeals have now all been terminated (unless the High Court permits an appeal from itself, which it says it will never do).

## What does this leave for the Sovereign to do in relation to Australia?

The King's main power and role is to appoint (and potentially remove) the Governor-General and the State Governors as his representatives in Australia.

Even in doing this, he acts upon the advice of Australian Ministers. He does not get a free choice. The Prime Minister advises him about the Governor-General and the relevant State Premier advises him about the appointment of a State Governor (under [section 7](#) of the *Australia Acts 1986*). Whether the King might be able to refuse the advice of a Prime Minister to dismiss the Governor-General during a constitutional crisis when the Governor-General is considering dismissing the Prime Minister, remains a matter of debate.

The King still has a role in relation to honours. Historically, the Sovereign was regarded as the 'fount of all honour', meaning that all honours and titles flow from the Sovereign. In Australia, most honours are now given under the 'Order of Australia', which was formally established by Queen Elizabeth II, on the advice of her Australian Prime Minister, Gough Whitlam, in 1975. The King, as King of Australia, is now the 'sovereign head of the order', but in practice it is the Governor-General who is in charge of administering it. The King can, and sometimes does, award other honours that fall within his discretion.





The King also delegates to his representatives in Australia the power to confer the title 'honourable' on certain Members of Parliament, Ministers and judges.

*Queen Elizabeth and the Duke of Edinburgh, with the official party including Chief Justice Barwick, after the opening of the High Court in 1980.*

*Source: National Archives of Australia*

## Symbolism and Ceremony

Sir Peter Cosgrove, the former Governor-General of Australia (2014-2019), [described](#), the Prime Minister as the Head of Government, the Sovereign as the Head of State, and the Governor-General as the representative of the Sovereign who performs constitutional functions on behalf of the Sovereign, as well as the functions and powers directly conferred upon the Governor-General by the Constitution. Sections 61 and 68 of the Commonwealth Constitution make certain powers held by the Sovereign exercisable by the Governor-General as the Sovereign's representative and section 2 allows the Sovereign to assign other powers and functions to the Governor-General.

When the Commonwealth Constitution came into force in 1901, it was Queen Victoria who, as Queen of the United Kingdom and the British Empire, was Australia's head of state.

In the 1920s and 1930s, Australia became independent of the United Kingdom, and the notion of having separate Crowns was developed (known as the 'divisibility of the Crown'). Today, it is King Charles III, as 'King of Australia', who fulfils this role.

The King's formal royal title in Australia is: 'Charles the Third, by the Grace of God King of Australia and His other Realms and Territories, Head of the Commonwealth'. This title recognises that the King is also the head of the Commonwealth made up of 56 nations who attend the Commonwealth Games held every four years.

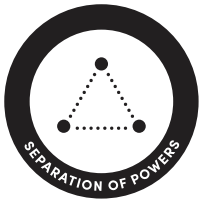
The Sovereign fills a symbolic role for Australia, offering messages of consolation and support in times of disaster. When there are major bushfires or floods, the Sovereign will send a message of sympathy and support, especially for those affected and for the emergency workers who provide aid in the time of need.

The Sovereign also visits or sends family members to support moments of celebration, such as Australia's bicentenary, the opening of the Olympics and the opening of significant buildings, such as the Sydney Opera House and the High Court of Australia.

When the Sovereign is visiting in Australia, he or she can exercise powers that have been conferred on the Governor-General by statute. This is permitted by the *Royal Powers Act 1953* (Cth).

The Sovereign also supports a number of charities in Australia, as their patron. These include the Royal Children's Hospital in Melbourne, and the Royal Humane Society of Australasia. The Sovereign also holds a number of honorary titles in the Australian Armed Forces.





## Topic 6.3 and 7.1: Lesson/Activities Eight



AUSTRALIAN  
CONSTITUTION  
CENTRE

### The role and powers of the Sovereign

#### Time/Lesson

- 1 hour

#### Learning Goal

To understand that Australia is a constitutional monarchy, which means that the Sovereign has few powers and acts on ministerial advice.

#### Rationale

Students will understand the very few powers in relation to Australia that the Sovereign exercises as well as the symbolic and ceremonial roles played by the Sovereign.

#### Teaching Reference Document

- TRD 61 – Executive Power – The Role and Powers of the Sovereign

#### Resources

- Copy of the Australian Constitution or internet access to it
- [Royal Family website](#)

#### Teacher Instruction

- Teacher discusses TRD 61 Executive Power: The Power and Role of the Sovereign:
  - What does the Constitution say?
  - Is the Sovereign really that powerful in Australia?
  - What does the Sovereign do in relation to Australia?
  - What is the symbolic and ceremonial role the Sovereign fills for Australia?
- Lead class discussion on Queen Victoria and why the Constitution of 1901 only refers to the Queen and not the King.
- Get to know today's Royal Family through the [Royal Family website](#).
- Research the 1999 republic referendum that would have replaced the Sovereign with a President. Why did it fail? Ask students to prepare a list of reasons for and against retaining the Sovereign and the system of constitutional monarchy. Is it better to have an outsider who is not political as the head of state or is it better to have an Australian who is elected by Parliament or the people to be the head of state? Is it good to share a head of state with a number of other nations, including New Zealand, Canada, the United Kingdom and Papua New Guinea, or would it be better to have a head of state who only represents Australia? Hold a class debate upon whether Australia should become a republic or remain a constitutional monarchy.

#### Extension

Students explore places, names, government departments and titles related to the Crown in Australia at the State and Commonwealth levels, such as the Crown Solicitor's Office, the Royal Prince Alfred Hospital, the Royal Society for the Prevention of Cruelty to Animals, parks and streets named after Kings and Queens. Which two States were named after a Queen?

## Assessment

- Students should be able to name the current Sovereign and the power, duties and roles of the Sovereign today.
- Assess the written reasons for and against retaining the Sovereign and the system of constitutional monarchy. This assessment could be extended so that students could design a poster for a referendum campaign for or against a republic, or present a 3 minute video advertisement on the subject.