



Teacher Reference Document 64



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 - The Role of the Public Service in Making Government Work

The one part of the Executive Government that rarely gets mentioned in textbooks, but which does almost all the work, is the public service.

What does the Constitution say about it?

Section 64 of the Constitution says that the 'Governor-General may appoint officers to administer such departments of State of the Commonwealth as the Governor-General in Council may establish'. This means, that the Governor-General, as advised by ministers in the Executive Council, can use executive power to create public service departments. Legislation is not necessary to do so.

The Governor-General was also empowered by section 67 to appoint all public servants, until Parliament was able to enact legislation that set out means for doing this. The Constitution also provided for the transfer of 'departments of the public service in each State' to the Commonwealth Government, where they dealt with matters that were placed by the Constitution under Commonwealth jurisdiction (sections 69-70). The transferred departments included posts, telegraphs and telephones and naval and military defence. The transfer included the employees and property of the departments (sections 84-85).

What is the relationship between the Public Service and the Government of the day?

In some countries, the public service changes each time the government changes, as each side appoints its own supporters to give effect to its own policies. Australia, however, followed the United Kingdom model of having a permanent, 'apolitical' (i.e. non-political, impartial) public service.

Australian Parliament House
Source: IStock





The Australian Flag
Source: iStock

Appointment to the Australian Public Service (the 'APS') was initially done by way of a competitive examination. These days, it is by merit selection. There is an independent Merit Protection Commissioner to address concerns about maintaining merit-based recruitment and promotions.

Public servants are required to comply with 'APS Values', which include giving frank and impartial advice based upon the best available evidence, behaving in a professional, objective, innovative and efficient manner, and being respectful, ethical and accountable. Public servants may be directed by Ministers in their exercise of government functions, to fulfil the Government's policies. But public servants must always obey the law and cannot be validly directed to act contrary to the law.

How is the Public Service made up?

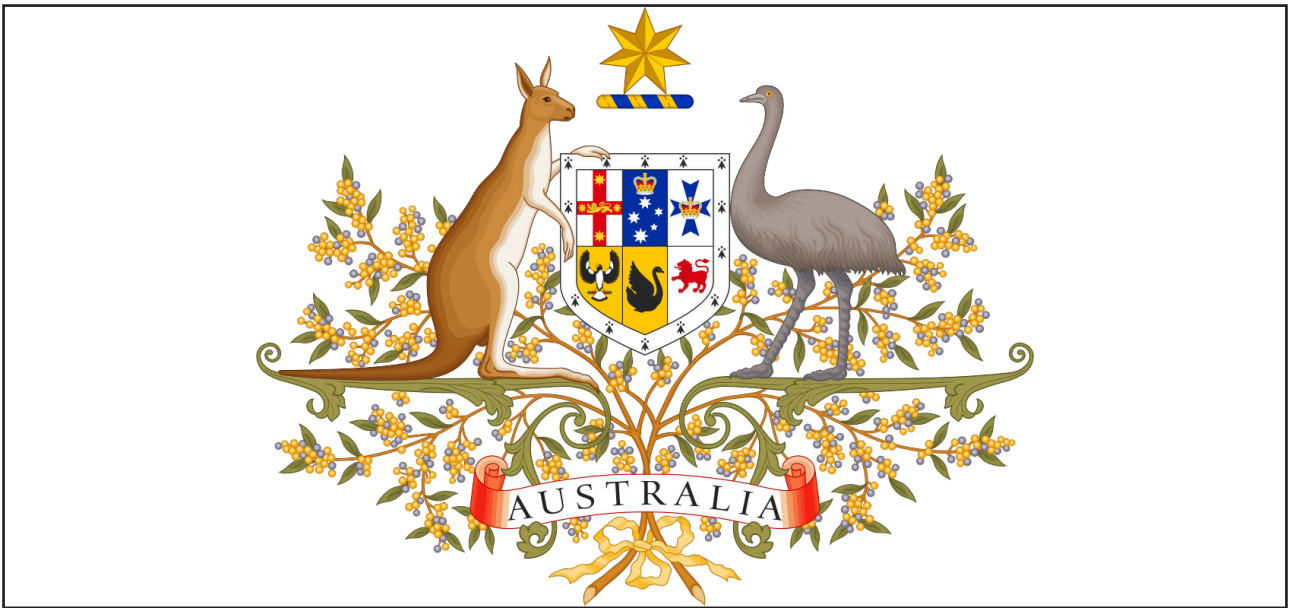
The key part of the APS is its 'departments'. At the time of federation they were: the Attorney-General's Department, the Defence Department, the External Affairs Department, the Home Affairs Department, the Trade and Customs Department and the Treasury. That number has over time expanded, but then contracted with departments being combined into super-departments. As at 2022 there were sixteen Commonwealth departments. When the first Commonwealth Public Service Act came into force on 1 January 1903, there were already 11,374 public servants. In 2019 there were approximately 147,000 members of the APS, 60% of whom were women, 22.3% of whom were born overseas and 3.5% of whom were Aboriginal or Torres Strait Islander people.

Included within the APS, in addition to departments, are various types of statutory and executive agencies. These include the Australian Human Right Commission, the Australian Maritime Museum, the Australian Tax Office, Cancer Australia, the Australian Bureau of Statistics, Screen Australia, the Bureau of Meteorology, the National Archives of Australia and the National Mental Health Commission. Together, the departments and the statutory and executive agencies are described as 'agencies' under the *Public Service Act 1999* (Cth).

Public servants must ordinarily be Australian citizens. Section 22(8) of the *Public Service Act 1999* (Cth) says that the head of an agency must not employ a person as a Commonwealth public servant who is a non-citizen, unless the agency head considers it appropriate to do so.

Not all Commonwealth employees fall within the APS. There are some separate services, such as the Australian Defence Force, the Australian Federal Police, and the Parliamentary Service at the Commonwealth level. At the State level the police force and sometimes even a 'teaching service' may be established as separate public sector entities with their own rules.

In addition, there are separate bodies that are created by statute to be operated more independently from the Executive Government, such as the Australian Broadcasting Corporation, the Australian Sports Commission and the



The Australian Coat of Arms
Source: Wiki Commons

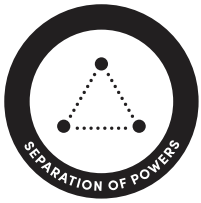
Australian National University, and there are other bodies that are created as companies to act in a commercial way, such as NBN Co Ltd and Snowy Hydro Ltd. They have a separate legal existence from the Commonwealth. For a complicated chart of the different types of Commonwealth bodies, see here.

What does the Public Service do?

The public service is the administrative or operational part of the Executive Government. It provides the administrative infrastructure for the government to operate. The functions of public servants range from administrative functions, such as the people who process pension payments and Medicare refunds, to the people who prepare policy ideas and draft bills to become laws. Public servants make recommendations to Ministers to exercise their powers in particular ways, or are themselves authorised to make decisions that affect people, such as the grant of visas or licences or various kinds of approvals.

Public servants include Australia's diplomats, who represent Australia overseas and negotiate treaties and trade deals, border officials who check the entry of people and goods into Australia, lawyers who advise the Government on its compliance with the law and court challenges, scientists and medical officers who advise the Government on how it should respond to issues from climate change to pandemics, and various law enforcement officers, such as those who prosecute criminal offences or investigate workplace safety breaches.

Public servants provide services to members of the public and oversee other services that have been contracted out to private bodies. They support Ministers by providing research and advice on developing policies and they administer the government's taxing and spending of money.



Topic 6.3 and 7.1: Lesson/Activities Eleven



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Executive Power – The Role of
the Public Service in making
Government work

Time/Lesson

- 1 hour

Learning Goal

For students to understand the importance and role of public servants.

Rationale

Students will understand the relationship between the Public Service and the Government of the day.

Teaching Reference Document

- TRD 64 Executive Power – The Role of the Public Service in making Government work

Resources

- Copy of the Australian Constitution or internet access to it
- [BTN Budget Time Video](#)

Teacher Instruction

- Teacher discusses TRD 64 Executive Power – The Role of the Public Service in making Government work:
 - What does the Constitution say about it?
 - What is the relationship between the Public Service and the Government of the day?
 - How is the Public Service made up?
 - What does the Public Service do?
- Students work in groups to research one Commonwealth Department each (eg the Department of Defence, the Department of Education, the Department of Home Affairs, the Department of Foreign Affairs and Trade and the Department of the Treasury). Students access the Department's website to identify a controversial issue that the Department is grappling with. They could look at the page which deals with media releases and speeches to get more information on that issue.
- Each group prepares a submission that the Minister can put to Cabinet explaining how the issue should be dealt with (eg action to be taken on climate change, or ensuring businesses keep private information safe from cyber-hackers, or whether Australia should buy submarines from the UK or the USA). Should Parliament pass a law on it, or should the Government spend money on something or should a new policy be developed?

