



Teacher Reference Document 65



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

Courts - Their Role and Powers

The very first institution of government established by the British in Australia was a court to hear criminal matters and a separate court to determine civil matters.

Judicial independence

Courts are bodies made up of independent judges who decide legal disputes by exercising judicial power. To ensure that judges remain independent of the Government, they are given special protection to prevent them from being pressured.

For example, section 72 of the Australian Constitution says that a judge's salary cannot be reduced while he or she continues as a judge. It also prevents a judge from being sacked by the Government. A judge can only be removed by the Governor-General after each House of Parliament approves the judge's removal 'on the ground of proved misbehaviour or incapacity'.

This means that a judge who has committed a serious criminal offence or who is no longer physically or mentally capable of fulfilling the role may be removed if both Houses agree, but the Government cannot remove a judge simply because it disagrees with his or her judgments.

At the Commonwealth level, judges used to be appointed for life, but the Constitution was changed in 1977 so that now they are appointed until they turn 70. At the State level, different States have different maximum retirement ages for judges.

What do courts do?

Courts decide disputes between two or more people or bodies (such as companies, organisations or governments) about how the law applies and whether it has been breached. Courts do not make policy decisions about what the law should be. Instead they make legal decisions about what the law is and how it applies to particular facts. A court resolves a dispute by giving an authoritative, binding and enforceable decision about how the law applies and what are the consequences, which usually involves giving some kind of remedy.

The High Court of Australia
Source: HCA





The High Court of Australia
Source: HCA

For example, if it is claimed that Miriam broke the law by stealing Narelle's car, the court would receive evidence (eg from eye-witnesses who saw what happened, CCTV cameras in the street, and finger-prints left on the car) so that it could determine the facts. It would identify the law and how it applies to those facts. It would then determine whether Miriam was guilty and if so, it would punish her by imposing a sentence of imprisonment (or some other sentence, such as a fine).

In criminal matters, some of the decision-making role is given to a jury – which is usually comprised of 12 ordinary citizens. The jury makes the decision about whether on the facts, according to the law as explained by the judge, a person is guilty 'beyond reasonable doubt'. The judge then decides what the sentence should be. The aim is to ensure that every person is treated fairly, by people independent of what occurred, who are not biased.

Courts also decide non-criminal matters, which are often described as 'civil' matters. Juries are not often used for civil matters, so ordinarily it is left to the judge to decide the facts, the law and the remedy. Civil cases include whether someone has breached a contract or whether someone's actions caused another person to be injured. The court will receive evidence to help it determine the facts, decide how the law applies to those facts, determine whether the law has been breached, and if so provide a remedy.

The remedy might be that a person is required to perform the acts that they agreed to do under the contract, or pay compensation to a person for the breach of contract or the injury that they caused. Remedies might also include an order that a person stop doing something, or that they must do something.

Sometimes a court may have to decide whether a Government's actions (eg closing a State border in a pandemic) breach the Constitution, or whether its law (eg a law banning political protests) is constitutionally valid. The court will declare whether the law or the Government's actions are valid, and Governments are required by the Constitution to obey the decision. This is known as the 'rule of law' – that everyone, including the Government, must obey the law.

Different courts

Some courts specialise in particular types of matters, such as family law or environmental matters. Most courts, however, deal with a variety of different matters, but at different levels of seriousness.

For example, criminal offences that have low punishments, such as a fine or imprisonment up to a maximum sentence of two years, can be dealt with in the local court (also known as the Magistrates Court). More serious crimes are dealt with in the District (or 'County') Court. The most serious crimes, such as murder, are dealt with in the Supreme Court of a State.



The High Court of Australia
sitting in Canberra
Source: HCA

In civil matters the distinction is usually made by looking at the amount of money involved. Small claims are dealt with in the local court (or sometimes by tribunals), but matters involving large amounts of money or very serious consequences are dealt with in the Supreme Court.

There are also differences between federal and State courts. Federal courts, such as the Federal Court of Australia, exercise powers about breaches of Commonwealth laws (eg cases about migration, bankruptcy, consumer matters and family law matters). State courts have greater powers, because they can deal both with cases involving breaches of State laws (eg most criminal law cases, personal injury cases and cases concerning land) as well as cases involving breaches of Commonwealth laws.

Why the difference? When the Constitution came into force in 1901, the States already had full court systems. There was unlikely to be enough federal cases to justify a new federal court system at that time, so the Constitution allowed State courts to be given the power to deal with federal matters. In more recent times, federal courts were created, but the Constitution does not give them the power to deal with State matters.

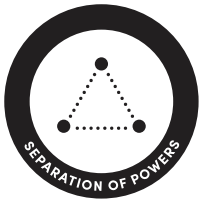
Appeals

If a party to a case thinks that the court got the answer wrong, they may appeal to a higher court. Appeals may be restricted to questions of law, rather than fact. In some cases there is no automatic right of appeal – the party must seek permission (known as 'leave') for the appeal to be heard. They do this by showing it is a really important point, or that different courts have come up with conflicting answers on the same point, or that there is serious doubt about the correctness of the decision of the lower court.

The highest court in Australia that an appeal can now reach is the High Court of Australia. (Yes, the 'High Court' is higher than the 'Supreme Court' even though their names suggest the opposite. This is because the Supreme Courts existed first in each colony, and the High Court was later placed above them once Federation occurred.)

The High Court can hear appeals from both State and federal courts, so it is the one that ultimately decides the law and what is constitutionally valid.





Topic 6.3 and 7.1: Lesson/Activities Twelve



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Courts Their Role and Powers

Time/Lesson	Learning Goal
<ul style="list-style-type: none">• 1 hour	To Introduce Courts-Their Role and Powers-how they function and the people in them.

Rationale

Students will understand...

- What a Court is and how they work.
- The different courts in Australia.
- That the courts make common law.
- Judicial independence.
- Appeals.

Teaching Reference Document

- TRD 65: Courts – Their Role and Powers

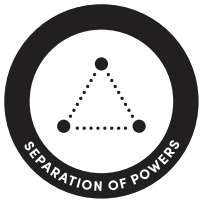
Resources

- A copy of the Australian Constitution Pocket Book or online class version
- Classroom internet access
- Movie “The Castle”
- Worksheets for Classroom Court Cases (to be developed by teacher around the story of the Court Case in the Movie: “The Castle”)

Teacher Instruction

Lesson outlines and guiding questions:

- Students explore Chapter III – The Judicature in the Australian Constitution.
- Revise Thomas Barrett – The first Court in Australia and the first man hung and other Classroom Court activities around the first Court established in Australia. (Revise TRDs and lessons activities Topic 4.2).
- Students discuss TRD 65, answer questions and describe what courts do, judicial independence, the High Court’s role and powers, different courts in Australia, and appeals.
- Tour the High Court, Canberra and Australian Constitution Centre in it, (Court Guides available) www.australianconstitutioncentre.org.au. Discover historic cases. Book a visit on the Student PACER program.
- Discover the stories of each of the Chief Justices on the High Court educational website (<https://www.hcourt.gov.au/>) Students explore the story of Chief Justice Susan Kiefel, Australia’s first female Chief Justice as well as Sir Samuel Griffith, first Chief Justice of the High Court 1903. Resources for students are available at: <https://www.hcourt.gov.au/education/student-resources/resources-for-primary-secondary-and-tertiary-students>.



Topic 6.3 and 7.1: Lesson/Activities Thirteen

Classroom Courts



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Time/Lesson	Learning Goal
<ul style="list-style-type: none">• 3 hours	To set up your own class Court and/or mock trials including role playing of the people involved in a trial. Students will discover how Australia's legal system aims to provide justice including through the rule of law, presumption of innocence, burden of proof, right to a fair trial and the legal representation of the accused. Trial by jury is also introduced.
Rationale	Success Criteria
The program aims to introduce students to the justice system by providing practical experience into the running of a court case in a true-to-life adversarial setting. Students learn advocacy, debating and problem solving skills.	Students understand each of the different roles involved in a court case.
Teaching Reference Document	
<ul style="list-style-type: none">• TRD 65: Courts – Their Role and Powers	
Resources	
Resources including Mock trial scripts:	
<i>Courts and Law Societies have developed resources to support the running of mock trials in schools. The following links provide examples. Teachers should check first for suitability and age relevance.</i>	
The NSW Law Society schools mock trials: https://www.lawsociety.com.au/For-the-Public/Mock-Trial-Competition/About-the-NSW-Mock-Trial-Competition	
The Law Society of Western Australia: Francis Burt Law Education Programme – State v Goldie Locks: https://www.lawsocietywa.asn.au/wp-content/uploads/2015/09/FBLEP-Trial-Goldilocks.pdf	
ACT Courts and Tribunal Education - The Bachelor Mock Trial Case: https://www.courts.act.gov.au/data/assets/pdf_file/0004/1912639/Activity-The-Bachelor-Mock-Trial-Theft.pdf	
Supreme Court of Victoria - Mock criminal trial: https://www.supremecourt.vic.gov.au/going-to-court/for-the-public/vce-educationprogram/video-resource-for-teachers-and-student	
(Caution to Teachers: Some students may be affected by this mock trial, which concerns an act of violence, and it may not be suitable for all students and/or year levels.)	