

Chapter 1: Comparing the USA and Australia in terms of Democracy and Accountability

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| USA: double veto of president and Congress | Obama vetoed a Bill which would allow the families of 9/11 victims to sue Saudi Arabia. This veto was overridden by $\frac{2}{3}$ of both the House and Senate. |
| USA: Impeachment | The Constitution limits grounds of impeachment to "Treason, Bribery, or other high Crimes and Misdemeanors", requires simple majority of impeachment motion in the House, and conviction by $\frac{2}{3}$ of the Senate in order to remove a president from office. President Bill Clinton was impeached by the House, but acquitted by the Senate for perjury |
| Double Dissolution Election | <p>2016 - Turnbull Government</p> <p>Following 2016 electoral reforms introducing optional preferential voting to minimise the effects of preference whispering. Turnbull hoped to obtain a friendlier crossbench in the Senate - resulted in a more hostile Senate</p> <ul style="list-style-type: none"> • 3 essential Bills (ABCC Bills, Registered Organisations Bills) rejected twice by the Senate within 2 months, triggering the double dissolution under s57 • Cosgrove under sec 5, recalled parliament on advice of Turnbull 2016 • enabled SEN to debate proposed legislation regarding the Building & Construction Commission which it had previously rejected • Joint sitting was to be called conventionally, but never occurred <p>FUN FACT: After a double dissolution, it is at the discretion of the Senate to decide which Senators will receive a full term and which a half 3-yr term - major partisan dominance. Traditionally, this is determined by who is elected first (ie. with the biggest majority) on the electoral roles of the state).</p> |
| Result of Executive Presidential System in America | May have different Congressional/Presidential partisan results eg. Republican president and Senate, but Democratic House rejected President's proposed border security policy in 2019 |
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Chapter 2: Decline of Parliament Thesis

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| Sovereign state interest | Senator Jacquie Lambie of Tasmania made a deal with the Federal Government in 2019 - that they would waive Tasmania's \$150 million public housing debt, and in exchange, Lambie would in vote in favour of the Government's \$158 billion tax cut (essential crossbencher in the Senate) |
| Popularity of a leader | Kevin '07 Scott Morrison's highly presidential-like campaign for the 2019 election |
| Mirror representation in the parliament | 28% of Australians, 7% of MHRs and 17% of Senators were born in a country other than Australia |
| Minor parties and independents | House of Representatives: 6 of 151 crossbenchers Senate: 15 crossbenchers of 76 |
| Efficiency of the parliament | Sits for approximately 160 days per year - from 1 January to 30 June 2018, 76 Bills were passed through the parliament. In 2015, emergency amendments were made within two days to the Migration Act, in order to close loopholes which would prevent arbitrary detention. |
| Gag | Abbott and Turnbull governments in 2013 gagged Building and Construction Industry Bill |
| Government shuts down PMBs, attempts by Opposition/PMBs to bring issue to light | Marriage Equality Bill introduced 2015 by Labor - shut down by Coalition, only to be re-introduced by Liberals in 2017 |
| Minority government | By 2018, the Coalition government had only 73 seats in the House - Wentworth byelection elected independent Kerryn Phelps, Julia Banks resigned from party to sit as an independent, Nationals MP Kevin Hogan moved to the crossbench. Maintained the supply confidence of the House, but enabled the passage of the Medivac Bills after Kerryn Phelps crossed the floor to vote with the Opposition to pass the Bill. |
| Minority governments are more responsive | Gillard held government with the support of 5 crossbenchers, including Greens member Adam Bandt. Made deal with Bandt to introduce a Carbon Tax in 2010. Gillard receptive of independent Andrew Wilkie's demands for restrictions on gambling in Tasmania |
| Privileges Committee | Privileges Committee sanctioned Bill Heffernan after he accused Justice Michael Kirby of transporting male prostitutes in Commonwealth cars in 2002. Heffernan was forced to publicly apologise, was removed from his position as Parliamentary Secretary to Cabinet |
| Senate rejects Bills | 2014 rejected some parts of the budget - held Abbott government accountable to their election promises, forced amendments |

Chapter 3: Roles and Powers of the Governor General

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| Double Dissolution | Cosgrove under s5, recalled parliament on advice of Turnbull 2016 Basis was double dissolution mechanism s57 |
| Royal Assent | Although in theory, GG may withhold - has never been withheld but questions was raised to Scott Morrison when Medevac Bills were passed against government vote 2019 |
| Non-ceremonial roles of the GG | David Hurley attended Garma Aboriginal Festival 2019 to call for constitutional recognition of Aboriginal people (despite PM ruling it out) - politicised GG? |

Chapter 4: Roles and Powers of the Executive

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| Minister | Marise Payne is current Minister for Foreign Affairs. |
| Power of patronage and reward for loyalty within Cabinet | Dan Tehan promoted from Minister for Veteran's Affairs to Minister for Education |
| Junior Ministers | Minister for Youth and Sport is Senator Richard Colbeck. |
| Assistant Ministers | Ben Morton is Assistant Minister to the Prime Minister and Cabinet |
| Break with Cabinet Solidarity | In 2017 Barnaby Joyce broke with cabinet solidarity openly disagreeing with Liberals for amending Racial Discrimination Act 1975 He contradicted PM Turnbull, who argued the changes to section 18C of the Racial Discrimination Act would "strengthen the protection of Australians from racial vilification" Deputy Prime Minister Barnaby Joyce, crossed the floor 28 times |
| Influence of Coalitions | In 2013 Warren Truss (DP) and Barnaby Joyce of National Party prevented Treasurer Joe Hockey (under Abbott) rejected the A\$2.8 billion takeover of GrainCorp by U.S. agribusiness Archer Daniels Midland (ADM) despite Liberals view that Australia needed to attract foreign investment. As part of key Coalition agreement signed in 2015, Turnbull handed water portfolio to Joyce, then Minister for Agriculture including water issues including the Murray-Darling Basin to Barnaby Joyce |
| Deposing of a Prime Minister by rivals within the party | Dissent from conservative factions of the Liberal Party was increasing, particularly in regards to energy pricing and Turnbull's National Energy Guarantee policy. Minister for IDutton requested a spill motion against Malcolm Turnbull August 24 2018. Turnbull refused to call the spill without first receiving a list of signatures representing the majority of his Party room, and referred Dutton to the Attorney General's office to test his eligibility to sit in Parliament. He declared that if Dutton had the numbers to carry a spill motion, he would take it as a vote of no confidence and not stand to contest the leadership. Dutton secured the numbers for a spill and Turnbull did not re-contest the leadership, opening the way for supporters Scott Morrison and Julie Bishop to stand against Dutton. |
| Cabinet Secrecy | eg. Cabinet kept the Australian navy chief's diary secret from Centre Alliance Senator Rex Patrick who was investigating the potentially corrupt handling of a multibillion-dollar arms contract in 2019. |
| Authoritative Decisions of the PM | Knights and Dames introduced by Tony Abbott in 2014 |
| Power to set the election date | May use 'sweetener' of final budget to promote policy agenda and address needs and demands of people. Final budget surplus before 2019 election helped contribute to Scott Morrison's victory. |
| Being public face of government increases PM power | After winning election, Scott Morrison's power and authority is at its peak. Ran a presidential-style campaign, won successfully as the face of his government - very difficult to challenge his authority now. Can claim a 'personal mandate' |
| 'Leaky' Cabinet | Several of Scott Morrison's backbenchers have called for new legislation to repeal planned increases in the compulsory rate of superannuation. George Christensen (Coalition MP) threatened to cross Parliament floor over Coalition's proposed superannuation changes. George Christensen has issued the warning following about a proposed \$500,000 cap on non-concessional contributions. He described the measures as a "Labor-style" policy and a "lazy government's way" of achieving budget savings. Conservative opponents to Turnbull's NEG |

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| Broken election promises, not having a personal mandate | In 2013 Abbott promised not to reduce funding for education, health & ABC. But in 2014 the Abbott Budget saw \$80billion cuts to education, new taxes in medicare. Unpopular cuts lead to loss of Prime Ministership in 2015 |
| Conscience vote | SSM 2017 |
| New, inexperienced governments | Whitlam 1972 - after 23 years in Opposition (hasty and indecisive) |
| Proportion of laws which are government policy | 95% |
| Lack of a personal mandate | The lack of a personal mandate means that a PM can be removed by a party for failing to meet its expectations eg. Malcolm Turnbull ousted by his own party after controversy relating to the National Energy Guarantee |
| Federalism limiting the power of parliament | WA Labor ignored federal Labor's emissions reduction targets in favour of the federal Liberals' targets. WA Labor claimed that this was an instance in which they respected the federal government's mandated climate policy - however, in reality, WA pipeline and mining projects would be limited by the federal ALP's 45% emissions reduction targets. |

Chapter 5: Roles and Powers of the Opposition

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| <p>Abbott Opposition successes</p> | <ul style="list-style-type: none"> ● Chronology: <ul style="list-style-type: none"> ● Labor wins 2007 ● 2010: Julia Gillard replaces Kevin Rudd in leadership spill. ● 2010 election: Gillard forms minority government with help of 4 crossbenchers. Abbott's Liberals in Opposition. ● Emissions Trading Scheme 2009 <ul style="list-style-type: none"> ● After replacing Malcolm Turnbull, Abbott changed the party's policy on Labor's Emissions Trading Scheme. ● Following the Copenhagen Climate Conference, which failed to deliver a united world plan, Labor withdrew the ETS. ● Abbott criticised this as a weak recognition of the failure of the policy, and called out Rudd's lack of conviction - damaging ● Energy Efficient Homes Package <ul style="list-style-type: none"> ● Led to death by electrocution of 4 ill-trained installers - criticised by Opposition for poor implementation of policy ● Minority government formed by Gillard <ul style="list-style-type: none"> ● Reliant on support of backbenchers ● At same time, Labor MP Craig Thomson under criminal charges for misuse of credit card ● Opposition claimed corruption of Labor Party ● Carbon Tax <ul style="list-style-type: none"> ● Gillard had promised no Carbon Tax, was forced into decision as part of agreement with the Greens ● Accused of being a 'liar', of being coerced by the minority Greens party ● Used media attention to being fear campaign - increased public opposition to Gillard government - slogan of 'Juliar' ● Kevin Rudd's leadership spill - accused of leaking confidential information for vengeance. Weakened party ● Use of popular media: <ul style="list-style-type: none"> ● Used conservative news outlet (News Corp) to portray images of Gillard as a witch ● After her father's death, said he had 'died of shame' ● Effective slogans 'stop the boats' and 'axe the tax' ● Second leadership spill 2013: Rudd replaced Gillard <ul style="list-style-type: none"> ● Further eroded public confidence - seen as the government trying to save itself and repair its policies ● Abbott's success - won landslide victory in 2013 election <ul style="list-style-type: none"> ● Won 90 seats to Labor's 55 - massive swing from 2010 election where both major parties had won 72 seats. ● Claimed 3 Prime Ministerial scalps ● Reasons for Abbott's success <ul style="list-style-type: none"> ● Effective use of media to point out government failures and embarrassments ● Constant and sustained scrutiny ● Minority government heightened accountability measures - eg. No policy mistake or let-down could go unscrutinised ● Capitalised on dissatisfaction with frequent leadership changes - characterised the Labor party as disunited and incompetent |
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| Comparative role of government and opposition in 2019 Federal Election | <ul style="list-style-type: none"> • ‘Oppositions don’t win elections, governments lose them’ (saying) <ul style="list-style-type: none"> • Has typically been true of Australian governments eg. Gillard government’s loss to Abbott in 2013 - Carbon Tax, several scandals in Ministry - capitalised on as ‘failings’ of government by Opposition • However, did not appear to be the case in 2019 election • Liberal Government had been in supposed decline <ul style="list-style-type: none"> • Polls indicated a drop in support towards the election period • The government was operating on a hung parliament - required support of independent Kerryn Phelps, who crossed the floor to vote against the government on the Medevac Bill, which passed despite the government holding confidence of the House. Was seen as emblematic of declining influence of the government and their declining credibility • Liberal members were quitting, continual leadership spills eroded confidence • Opposition had developed, intricate policy eg. caps on negative gearing, massive funding increases for hospitals (\$2.4 billion for cancer research), 50% renewables target by 2050, 1/2 new electric cars on market by 2030. Alienated many voters who were conservative, or who weren’t sure of the clarity of their policies - particularly swinging voters (too complex, perception that there was no clear funding source, fear campaigns eg. Death tax, increased taxes) • Thus, could be concluded that the Opposition lost the election based on not presenting as a viable government alternative, enabling the Liberals to form government again. |
| Private Members’ Bill | Australian Cannabis Agency Bill 2018, introduced by Greens Senator Richard di Natale. |
| Dorothy Dixers | 2018 Dutton asylum seekers - avoided question, discussed strengths of Coalition policy instead |
| Censure Motion | Former Attorney General George Brandis censured in Senate over his threats to President of the Australian Human Rights Commission, Gillian Triggs - but no formal effect. |
| No-confidence Motion | 1941, two independents crossed the floor of the hung parliament to vote against Fadden government’s budget. Opposition Leader John Curtin moved a motion that the budget be changed by one pound, independents (who had been disillusioned and betrayed by the leadership spill that saw Fadden replace Menzies) voted with the opposition. Government immediately stepped down, and Curtin became new PM. Risk again with Gillard’s minority government - constant threat of NC motion. Resulted in greater scrutiny, used to highlight flaws in the government. May also be used to delay business |
| Whistleblowers and media reports | Opposition can exploit media reports of govt wrongdoing eg. ABC Four Corners investigation into mistreatment of Aboriginal Juveniles in NT detention. Whistleblower reports/leaks - FOI Act 1982 protects reporters. Some information may be withheld under FOI if it violates Cabinet secrecy/national security - limitation of media accountability eg. Brandis refused release of parliamentary diaries - ordered by Federal Court under FOI laws in 2017 |
| Opposition using the balance of power in House | In rare case of a hung parliament, Opposition may persuade the balance of power cross benchers to support them on a motion. Despite maintaining confidence for govt, hold govt to account for particular issues, and demonstrate the weakness/fallibility of the govt eg. Medevac, Kerryn Phelps 2019. Embarrassment for govt. |
| Opposition using the balance of power in Senate | May persuade crossbench to support the Opposition to form a majority and oppose govt Bills eg. Rejection of ABCC Bills 2016 |
| Refusing pairs | In 2016 ALP refused to grant pairs. Pairing is an arrangement between two MPs of opposing parties to not vote in a particular division enabling an MP to be absent without affecting the result. Govt lost 3 procedural votes in HOR which was first time in decades. |

Chapter 6: Political Mandates

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| Commonwealth Electoral Amendment Act 2016 | Introduced optional preferential voting - 6 above the line or 12 below the line. Encourages people to vote below the line to minimise the effects of preference whispering. Downside of more exhausted votes eg exhausted votes increased from 0.1% in 2003 to 2.8% in 2016. |
| Will of the Majority Mandate | Coalition's tax cuts introduced post-2019 election. Claimed to have a mandate to introduce these tax cuts given their unexpected electoral success. Labor and minor parties relented and agreed. |
| Specific mandate | Coalition 2019 extra \$4.6 billion for Catholic and private schools |
| General Mandates | Coalition 2019 introduction of criminal sanctions for employers who seriously exploit workers |
| General mandates may justify breaking election promises | In 2013 Abbott promised not to reduce funding for education, health & ABC. But in 2014 the Abbott Budget saw \$80 billion cuts to education, new taxes in medicare. Unpopular cuts lead to loss of Prime Ministership in 2015. Part of Liberal conservative economic ideology |
| Balance of power mandate | Senator Jacquie Lambie, elected on the promise of resolving Tasmania's public housing debt issue, made a deal with the Federal Government in 2019 - that they would waive Tasmania's \$150 million public housing debt, and in exchange, Lambie would in vote in favour of the Government's \$158 billion tax cut (essential crossbencher in the Senate) |
| Preference Whispering | Motoring Enthusiasts' Party candidate Ricky Muir elected to 14.3% Senate quota with 0.5% of the first preference vote in 2016 |
| Balance of power malapportionment | Senator Brian Harradine held balance of power in the Senate between 1994-99, max poll numbers in Tasmania were 21.3%, which translated to 0.12% of the total national vote. |
| Right to Oppose: opposing minority government | Medevac Abbot 2013 came into the election promising to repeal Carbon Tax - govt had previously promised no Carbon Tax. Abbott Opposition was emboldened by broken election promises and minority government. |
| Senate blocks mandated policy | In 2017, the Senate blocked the Same Sex Marriage plebiscite promised by the Coalition at the 2016 election |
| Will of the Majority Mandate | WA Labor ignored federal Labor's emissions reduction targets in favour of the federal Liberals' targets. WA Labor claimed that this was an instance in which they respected the federal government's mandated climate policy - however, in reality, WA pipeline and mining projects would be limited by the federal ALP's 45% emissions reduction targets. |
| WorkChoices | Howard passed WorkChoices (aggressive industrial labour laws) through a friendly Senate, claiming they had been given a mandate. Rudd won a landslide victory in 2007 on a WorkChoices repeal mandate. Nelson in the Liberal Opposition accepted Rudd's repeal mandate. Abbott in Liberal Opposition accepted WorkChoices repeal mandate, but opposed Rudd's Carbon Pollution Reduction Scheme Mandate |

Chapter 7: The Judiciary

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| Australian judicial independence from Britain | Statute of Westminster 1931: prevented Westminster from amending Australian Constitution Privy Council Act 1975: ended appeals from the High Court to the Privy Council Australia Act 1986: final judicial independence from Britain - ended Supreme Court Appeals to Privy Council |
| Cross-vesting of judicial powers | Jurisdiction of Courts (Cross-Vesting) Act 1937 enables cross vesting eg. for airports → federal law, but each state must administer its own laws in regards to airports |
| Special Leave to Appeal | Empowers the High Court to determine Special Leave to Appeal under the Judiciary Act 1903 |

Chapter 8: Power to Influence Legislation

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| Individuals | Williams I and Williams II: Ronald Williams QLD father, students attended a school where the NSCP would be implemented - standing |
| Individuals and groups | Rowe v Electoral Commissioner (funded by GetUp) is a High Court of Australia case dealing with the requirement of the Australian Constitution. The High Court held that Commonwealth legislation that sought to restrict the time in which a person may seek to enrol in an election or alter their enrolment details after the writs for an election have been issued was invalid. The first plaintiff, Shannen Rowe, could have enrolled to vote once she turned 18 on 16 June 2010 but had not done so at the time the election was announced. Her enrolment form was lodged on Friday, 23 July 2010. Under the old system Ms Rowe would have been enrolled to vote. Under the 2006 amendments however she was too late and would be unable to enroll in time for the 2010 election. Ruled that the restrictions imposed by the 2006 amendments were invalid. |
| Individuals | <ul style="list-style-type: none"> • Psephologist who is the ABC's election analyst. In 2014 He wrote a submission to the Joint Standing Committee on Electoral matters (JSCEM) • Due to role of Glenn Drury the preference whisperer who was paid by micro parties on advice allowing them to "game the system" resulting in Senators such as Ricky Muir of the Aus Motoring Enthusiast Party, elected with less than 1% of the primary vote • Argued for optional preferential voting above the line • P accepted recommendations and the Electoral Amendment Act 2016 passed P. in place for the 2016 July DD general election |
| Pressure Groups | <ul style="list-style-type: none"> • The Minerals Council of Australia ran a \$20 million television and media campaign against the Resources Super Profits Tax, planned by Rudd gov for intro in 2012. • Tax was abandoned by Gillard gov and replaced with Mineral Resources Rent Tax which collected almost no tax. |
| Pressure Groups: submissions to parliament | <ul style="list-style-type: none"> • Global Human Rights Clinic, St Vincent de Paul Society and Refugee and Immigration Legal Centre Inc made submissions to Joint Committee on Human Rights (PJCHR 2013) to influence Inquiry on the Examination of the Migration package of legislation which was found incompatible with a range of Human rights. This was an example of pressure groups to influence Migration Act 1958 |
| Parties: government ideological policies | Abbott and Treasurer Joe Hockey wanted to 'end the age of entitlement' - Medicare and welfare cuts, cuts to education and health. Led to downfall both within the party and fall for support externally - 2015, Malcol Turnbull rolled back some of his more extreme policies eg ban on wind power technology - move towards centre |
| Parties: government centrist policies | After moving policies to centre (see above), Malcolm Turnbull's popularity reached over 60% in the polls. |
| Parties: minority government | 2019, Medevac Bill passed after independent member holding balance of power for minority Liberal government crossed the floor to vote with Labor. 2010: Gillard minority government forced to introduce Carbon Tax policy by demands from Greens crossbench member Adam Bandt |
| Parties: Senate pressure | Greens were able to negotiate amendments to Electoral Amendment Act 2016 due to their status as a strong minority party holding the balance of power in the Senate ALP able to work together with minor parties to reject parts of 2014 budget in Senate. |
| Parties: Challenging laws | Communist Party of Australia challenged law for its own dissolution - High Court agreed, struck down law |
| Pressure Groups: lobbying | Clubs Australia lobbied Julia Gillard in a \$3.5 million campaign to prevent introduction of tough anti-gambling laws. Gillard backed away from her promise to introduce a mandatory pre-commitment scheme for poker machines. Meant support from anti-clubs Independent Andrew Wilkie was diminished |

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| Pressure Groups: court action | Mackay Conservation Group: took Federal Government to High Court in 2015 to claim that the environment Minister Greg Hunt had unlawfully approved the Adani Carmichael coal mine without proper consideration for environmental impacts - Minister's failure to take into account the approved conservation advices for the Yakka Skink and the Ornamental Snake meant approval unlawful |
| Pressure Groups: online action | GetUp used online crowdfunding to fund their High Court challenge against Commonwealth Electoral Act 2016. Used ads, 100,000 person petition to lobby government to increase mental health funding - secured \$2.2bn for mental health in 2011 |
| Pressure Groups: challenging sitting members | 2019, Tony Abbott lost his seat of Warringah in -18.9% swing to Independent candidate Zali Steggal. Was targeted by pressure groups such as GetUp, People of Warringah, Voices of Warringah. |

Chapter 9: Federalism

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| <p>Increasing CW power: Engineers' Case 1920</p> | <ul style="list-style-type: none"> • Where a dispute arose between the Amalgamated Society of Engineers and a sawmill based in WA. The CW sought to legislate for the union under section 51(xxxv) on the basis that it was a state based business that extended beyond the state and therefore fell within the industrial relations legislation of the CW (despite being owned and based in WA). The HCA found in favour of the CW, under s75 (HC has original jurisdiction) and overturned the principle of reserved powers and established the doctrine of legalism |
| <p>Increasing CW power: Uniform Tax Case 1942</p> | <ul style="list-style-type: none"> • Before World War II both federal and state governments collected income tax. In 1942, in order to run the war effort, the federal government became the sole collector of income tax. States receive this money in the form of funding grants. Technically a state could still collect its own income tax but this would mean its people would be taxed twice and the state would forfeit its funding grants. • Four states—Western Australia, Victoria, South Australia and Queensland—challenged the legislation. The High Court ruled it was valid on the grounds that section 51 (ii) of the Constitution gives the federal Parliament power to make laws relating to taxation, even though in practice the legislation removed a state power. It also ruled that under section 96 of the Constitution, the federal government could attach conditions to funding grants, and therefore it was legal to only give compensation to states that stopped collecting income tax. • Intended as a wartime measure, the arrangement has remained in place ever since. As a result the states are now more dependent on the federal government for revenue. |
| <p>Increasing CW power: Tasmanian Dams Case 1983</p> | <ul style="list-style-type: none"> • In 1978 the state-owned Tasmanian Hydro-Electric Commission announced plans to dam the Franklin River and flood a large wilderness area in south-west Tasmania. Four years later the area was declared a World Heritage site under the World Heritage Convention, to which the federal government is a signatory (which means that Australia has agreed to the convention). • The federal Parliament then passed laws to stop clearing and excavation within the newly listed Tasmanian Wilderness World Heritage area. The Tasmanian government challenged the legislation in the High Court, arguing the federal Parliament did not have the power to stop the construction of the dam. • In 1983 the High Court ruled that, under its external affairs power, the federal Parliament could make laws relating to international treaties which Australia had signed. The external affairs power, listed in section 51 (xxix) of the Constitution, allows the federal Parliament to enter into international treaties and agreements on behalf of Australia. • Although the federal Parliament has no law-making powers over Tasmania's rivers, dams or environment, the court decided the federal legislation was valid because it allowed the government to meet its commitments under an international treaty (the World Heritage Convention). |
| <p>Increasing CW power: Ha Case 1997</p> <p>Commonwealth Financial Powers</p> | <ul style="list-style-type: none"> • Ha case (1997) concerned the High Court's interpretation of S90 of the Constitution, giving the Commonwealth exclusive power to impose duties of customs and excise. • In the 1970s, several Australian states introduced new taxes on alcohol, cigarettes and petrol as a way of bolstering declining State revenues. In 1997 a number of the wholesalers of cigarettes, including Ha, challenged these taxes in the High Court. The Court ruled that the fees charged were invalid under S90 as they were judged to be excise duties and an exclusive power of the Commonwealth. This added further to the financial weakness of the States and increased the degree of vertical fiscal imbalance between the Commonwealth and the States in the federation. The High Court's decision effectively increased the power of the Commonwealth Parliament, and had huge financial implications for the states, which collectively raised over \$5 billion a year from such taxes. In deciding that a number of state laws imposing licence fees on retailers and wholesalers of tobacco was inconsistent with the Australian Constitution, the High Court effectively deprived the states of approximately 16 per cent of the taxes that they collected. |
| <p>Increasing Commonwealth powers: WorkChoices</p> | <p>One instance in which the High Court's decision has expanded Commonwealth power and restricted state power has been in the WorkChoices Case of 2006. This case saw the Commonwealth government seek to use the exclusive corporations power (s51(xxxv) of the constitution) to take over much of the industrial relations powers of the states under the Howard Coalition government's WorkChoices legislation. While the states and unions challenged the constitutional validity of the Commonwealth laws, the High Court ruled 5:2 that the Commonwealth was acting constitutionally under the corporations power. The case set a precedent for a broad interpretation of the corporations power which has enabled the expansion of federal legislative powers over time. As Queensland Premier Peter Beattie expressed concern about, the case paved the way for Commonwealth to use the corporations power to infringe on other areas of state lawmaking powers - such as education and health.</p> |

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| Nature of s109 favours centralism | <ul style="list-style-type: none"> 2016, case of Bell Group N.V v Western Australia, High Court unanimously held that Bell Group Companies Act 2015 (WA) ("the Bell Act") was entirely invalid, as it contradicted the Commonwealth's Income Tax Assessment Act 1936 (Cth) and Taxation Administration Act 1953 (Cth) (collectively, "the Tax Acts") by allowing the state government to administer and redistribute the financial resources of the Commonwealth. |
| State powers non-justiciable (residual) and cannot be adjudicated by High Court | <ul style="list-style-type: none"> For instance, health is not specified in the constitution, making it a residual state power. Yet because this power is non-justiciable, over time the Commonwealth has been able to expand its legislative power to encompass some aspects of the health portfolio. In the case of NE v Australian Red Cross Society (1991), the Federal Court found that hospitals could come under the legislative powers of the Commonwealth under the 'corporations power' of s51(xx), as 'Accepting that [a hospital's] predominant activity was the provision of medical and surgical care to patients, they were not objectives antithetical to the notion of trade'. In this way, the non-justiciable nature of state residual powers means that Commonwealth legislative powers can be expanded to incorporate state powers. |
| Vertical Fiscal Imbalance | Commonwealth collecting 80% of revenue and performing 50% of expenditure, while the states collect 20% of revenue and perform 50% of spending |
| Spent Clause favouring drifting centralism: Braddon Blot | S87: required Commonwealth to pay states 75% of excess revenues from s90 revenue for first 10 years after federation. Now spent and no longer applicable, Commonwealth can keep s90 revenue. |
| Cole v Whitfield | **See 'Key Cases' - prevents states from making protectionist trade laws under s92 Constitution which assures free trade |
| Surplus revenue Clause 1908 | S94 required the transfer of surplus revenues to the states in a manner that 'the parliament deemed' fair. Soon after federation, the parliament decided to invest its surplus revenues into trust funds for future spending - essentially assuring that no allocation of funds would be made to states. |
| COAG | Cooperative Federalism in action - eg. Attorney General must consult with Attorney Generals from each state when making an appointment to the federal judiciary. Murray-Darling Basin Scheme - needed to create a unified set of laws for a river flowing through 4 states. Victoria refused initial conditions, led to creation of Water Act 2008 which unified plans |
| Tied Grants | To schools (\$20,000 each) for National Schools Chaplaincy Program |
| Incentive payments | Asset Recycling Initiative - encouraged the privatisation of government infrastructure and building of new infrastructure with those funds. In order to obtain grants, states had to submit infrastructure projects that would have a new positive benefits. Encouraged states to follow Commonwealth policy |
| Doctrine of Reserved Powers | Peterwald's Case 1904: applied Doctrine of Reserved Powers to define 'excise' narrowly under s90, so that a NSW tax on brewers was kept under state, not Commonwealth, control |
| Doctrine of Implied Immunities of Instrumentalities | Railway Servants' Case 1906: ruled that Commonwealth Industrial Laws (s51xxxv) couldn't apply to WA railway workers, as railways were a state instrumentality **Reversed by Engineer's Case 1920 |
| Referral of powers | Eg: Terrorism. In response to the 9/11 & Bali Bombings, all states referred a limited power to allow the enactment of the terrorism act 2002. The referral required that the act not to be amended w/out consultation with the states |

Chapter 10: Changing the Constitution

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| Referenda | <ul style="list-style-type: none"> • The 1967 referendum gave the federal government the power to make laws for Aboriginal Australians. It also repealed section 127 of the Constitution which excluded Indigenous Australians from being counted in the census • 90% of all Australians voted in favour of amending two sections of the Australian Constitution: • Section 51 (xxvi) The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to: ...The people of any race, other than the aboriginal people in any State, for whom it is necessary to make special laws. • Section 127 In reckoning the numbers of the people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives should not be counted. • the words "...other than the aboriginal people in any State..." in section 51(xxvi) and the whole of section 127 were removed, • The 1967 referendum is regarded as a milestone because it meant for the first time Indigenous Australians were acknowledged as full citizens of the nation. |
| Referral of powers | <p>Eg: Terrorism. In response to the 9/11 & Bali Bombings, all states referred a limited power to allow the enactment of the terrorism act 2002. The referral required that the act not to be amended w/out consultation with the states</p> |
| Unchallenged Legislation | <ul style="list-style-type: none"> • The Snowy Mountains Scheme was designed (1949-1974) to achieve economic and population growth and was the largest engineering program in Aus history • It was built to provide electricity for industry and to stimulate growth post ww2 by providing thousands of displaced Europeans migrants • The CW lacked any constitutional authority for scheme so passed Snowy Mountains Hydro-Electric Power Act 1949 using the defence power in sec 51(6) clearly a stretch (project not related to defence) • States that have standing in this did not exercise rights to challenge, instead passed own legislation to support scheme • The act has never been challenged so continues to operate |

Chapter 11: Accountability of the Parliament

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| Electoral Accountability in the House of Representatives | <p>Craig Thomson was a former head of the Health Services Union before entering Parliament in 2007. Following his departure from the HSU, an audit of the union's records found evidence of misuse of union funds by Mr Thompson.</p> <p>During the police investigation he was suspended from the ALP and sat as a cross-bencher. Due to this scandal where he used HSU money to pay for prostitutes he lost his seat of Dobell, NSW in 2013 election</p> |
| Auditor General, Electoral Accountability in the House of Representatives | <ul style="list-style-type: none"> • An example of Auditor General's strength is seen when Sophie Mirabella former member for Indi until she lost seat to independent was chosen to recentest seat in 2016, claimed that her electorate missed out on \$10 million for local hospital when she wasn't elected in 2013. • The Shorten Opposition requested the Auditor General to investigate scheme and reveal if their was political corruption and see if the gov. withdrew funding to 'punish' electorate • Mirabella was replaced by Independent Cathy McGowan after prioritising her defence portfolio over her electorate. After McGowan served 2 terms, she was replaced again by an Independent, Dr Helen Haines - first time in Australian electoral history that an independent has served successive terms, being replaced by another Independent |
| Electoral Accountability in the Senate | <p>Senator Brian Harradine held balance of power in the Senate between 1994-99, max poll numbers in Tasmania were 21.3%, which translated to 0.12% of the total national vote.</p> |
| Electoral Accountability in the Senate | <ul style="list-style-type: none"> • Lisa Singh was demoted down the ALP's group ticket to an unwindable sixth position for 2016 election. She mounted a below the line campaign and got a quota and seat in SEN. • She has shown that voters can exercise greater choice and reduce party control of the SEN. In terms of accountability it means that individual Senators are now be more directly vulnerable to voters' wishes |
| Marginal seat campaigns | <p>In Anne Aly's ultra-marginal seat of Cowan, WA, the PM visited 3 times on the campaign trail in 2016.</p> |
| 'Sitting member last' campaigns | <p>In the 2016 election where sitting MHR for Bass in TAS, Andrew Nikolic lost his seat by 10.6% to ALP's Ross Hart following help from GetUp! which sent 90 supporters to hand to 'how to vote cards' putting the liberal member last</p> |
| Standing Orders | <p>Can be amended by government - are less effective eg. Feb 2019, Government filibustered Question Time by extending it to avoid a vote on the National Disability Royal Commission</p> |
| Presiding Officers | <p>Speaker Browyn Bishop arguably partisan in 2013-15 > ejected approximately 400 MHRs from HoR under Standing Order 94A > only 3 were from the government party. NOT A MINISTER</p> |
| Judicial Review | <p>** see 'key cases' - Williams II, Communist Party of Australia Case</p> |

Chapter 12: Accountability of the Executive

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| Censure motions | <ul style="list-style-type: none"> • Censure of George Brandis passed the Senate in 2015 but had no formal effect as senate censures, being a uniquely Australian feature of accountability, do not carry the weight of Westminster convention and as such are only ceremonial. Eg. Censure of George Brandis in Senate had no formal effect, he was not made to stand down, was strongly defended by the government. • Senator and then-Attorney General George Brandis moved a counter-motion of censure against Labor Senator Penny Wong in 2015, after she had moved a successful censure motion against him in the Senate. Despite Brandis' motion against Wong being unsuccessful in the Senate and her motion against him passing, both were seen as attempts at political point-scoring on both sides rather than accountability measures. |
| No-confidence motions | <p>1941, two independents crossed the floor of the hung parliament to vote against Fadden government's budget. Opposition Leader John Curtin moved a motion that the budget be changed by one pound, independents (who had been disillusioned and betrayed by the leadership spill that saw Fadden replace Menzies) voted with the opposition. Government immediately stepped down, and Curtin became new PM.</p> <p>Risk again with Gillard's minority government - constant threat of NC motion. Greater scrutiny.</p> <p>Effectiveness of no confidence motions as accountability measures usually low as a result, as a result of party discipline and executive dominance of the House, alongside with the rarity of a minority government.</p> |
| Senate Estimates | <p>2019 July Estimates - review of dept of Home Affairs spending on Canstruct and Paladin companies in Nauru and Manus. Contract totals \$1.23 billion over last 2.5 years - \$1600 per asylum seeker per day. Questions raised to legitimacy of contracts given high cost and poor living conditions. Estimates expected to provide scrutiny.</p> |
| Senate Estimates - weakness | <p>Abbott asylum seeker boats 2013 - evaded Senate Estimates inquiry into the Department of Immigration and Border Force's towing of asylum seeker boats back into Indonesian waters. Claimed that revealing details of government policy relating to asylum seekers would compromise border security. Means that during Senate Estimates investigations, at government's discretion as to what material is classified, limiting scrutiny to the material that the government sees fit.</p> |
| Senate Regulations and Ordinances Committee | <ul style="list-style-type: none"> • Disallowance Alert (recommends that the Senate reject certain ordinances) • If Senate disallows - ordinance redacted eg. Migration (Fast Track Applicant) Instrument 2019 |
| Joint Standing Committee on Human Rights | <p>Counter Terrorism Legislation Amendment Bill 2019 brought into question by the committee. Seeks to amend the Crimes Act 1914 including to introduce a presumption against parole for persons charged with or convicted of a terrorism offence. Committee concerned for freedom from arbitrary detention; right to humane treatment in detention.</p> |
| Joint Standing Committee on Human Rights | <p>Weekly Scrutiny Report found to be ineffective measure of accountability, as has no formal effect in an exec-dominated house - 2011-2016 committee found 95 Bills violated HR, 69 still passed</p> |
| AAT | <ul style="list-style-type: none"> • After 11 years of fighting, a former public servant appealed to AAT in 2019, who ordered that Comcare pay worker's compensation for therapy and housework help after being injured at work. |
| AAT | <ul style="list-style-type: none"> • Can only review a decision where an act or regulation allows it to. Currently over 400 Acts or regulations which allow AAT to review an administrative issue. Restricts the ability of the AAT to review decisions to those the parliament/executive wishes it to have the power to review - ie. accountability measures at the discretion of the parliament. |
| AAT | <ul style="list-style-type: none"> • Shadow Minister Mark Dreyfus said, 'the government has a shameful record of stacking the AAT with Liberal donors, former MPs, former staffers and mates' |
| Judicial Review | <p>** See 'key cases'</p> <p>Williams I Williams II Williams tied grants New Zealand Bikies case</p> |
| Question Time | <ul style="list-style-type: none"> • Peter Dutton used Dorothy Dixter to promote Coalition government's hardline border policy |

Chapter 13: Accountability of the Governor General

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| <p>Peter Hollingworth: the GG is held to account most effectively through public pressure</p> | <ul style="list-style-type: none">• Previously Archbishop of Brisbane• Appointed GG in 2001 under Howard Government• 2003: allegations of vouchering up child sex abuse in the church during the early 1990s - denied• PM refused to withdraw his support for Hollingworth• Campaign for his resignation led by Hetty Johnston, founder of child abuse support and advocacy group Bravehearts• Confessed, excuse that he lacked experience as an archbishop to handle the matter, appeared to blame victim by saying "this was not sexual abuse" and might have been "the other way around" - he then went on to say that the young female victim might have been "a willing participant" in the affair.• Apologised for his conduct, condemned pedophile priests• Forced to step down as patron of Bernardos, Kids First Foundation, National Association for the Prevention of Abuse and Neglect• 2003: report of his handling of the allegations was tabled in parliament• 2003: allegations rose that he had raped a woman during the 1960s<ul style="list-style-type: none">• Allegations collapsed - Hollingworth denied the claims• Senior Ministers suggested he step down to uphold integrity of the office: increasing public pressure for his resignation• Issues:<ul style="list-style-type: none">• "The Governor-General always said that the dignity of the office and how it is perceived would be his main considerations in his decision, and they were" - need to uphold the dignity of the office of GG, as a representative of all Australian people (non-ceremonial role)• Demonstrates that public pressure, rather than institutional accountability measures, are the most effective in holding a GG to account.• Demonstrates the lack of concrete, institutional measures of accountability for the Governor General - a largely unchecked, appointed, undemocratic position which reflects the values of the Government of the Day and little else. Is this suitable for the highest executive office holder in Australian government?• The Australian Republican Movement said the affair proved the inappropriateness of the system that allowed the prime minister to act alone in appointing the governor-general. |
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1975 Crisis

October 1975

- October 14: Minerals and Energy Minister, Rex Connor, resigns after being shown to have misled Parliament over ongoing negotiations for overseas loans with Tirath Khemlani. He is replaced by Paul Keating.
- October 15: Every metropolitan newspaper in Australia calls on the Govt to resign. Fraser announces that the Senate will delay the two money bills until Whitlam calls an election.
- October 16: The Senate blocks the money bills, whilst the House of Representatives passes a motion of confidence in the govt.
- October 16-November 8: The Parliament debates the constitutional crisis, with the House consistently reaffirming its confidence in the govt. Both sides of politics conduct rallies around the country. Public opinion polls show a swing to the govt. The GG, Sir John Kerr, speaks with both Whitlam and Fraser on a number of occasions.

November 1975

By early November, the crisis was no nearer resolution. Rallies and campaigns for and against the actions of the Opposition were being held across Australia.

- November 03: Fraser offered to pass the Supply Bills, provided Whitlam agreed to call an election by May 1976. Whitlam rejected the offer.
- November 10: The Chief Justice of the High Court, Sir Garfield Barwick, a former Liberal Govt minister, sees the GG. Later, he gives Kerr a letter that the GG releases the next day to support his decision.

November 11, 1975

- 9.00am: Whitlam meets with Fraser and other Opposition leaders. He says that he will call a half-Senate election immediately unless the money bills are passed.
- 10.00am: Whitlam makes an appointment to see Kerr.
- 10.10am: The Labor caucus is told by Whitlam that there will be a Senate election.
- 11.45am: House of Representatives meets and debates yet another motion of confidence in the govt.
- 1.15pm: Kerr dismisses Whitlam.
- 1.30pm: Kerr commissions Fraser as PM.
- 2.00pm: The Senate passes the Supply bills.
- 2.30pm: Fraser announces to the House of Representatives that he is PM, moves that the House of Representatives adjourn, but is defeated.
- 3.03pm: Whitlam moves a motion of no-confidence in Fraser.
- 3.16pm: House of Representatives passes motion of no-confidence in Fraser. The Speaker asks for an appointment with Kerr, but is told that Kerr cannot see him until 4.45pm.
- 4.50pm: The GG's secretary, David Smith, goes to Parliament House and reads the proclamation dissolving Parliament.

Conventions broken:

- Whitlam broke with convention and refused to resign or call an election
- Casual Senate vacancies should be filled by Senators of the same party
- Whereas the Australian people had elected 29 Labor senators, the Govt was left with only 27 Senators in a 60-seat Senate.
- 'The party which held a clear majority in the House of Representatives – the people's chamber in which Govts have always been made and broken – has been bundled out of office by Vice-Regal decree' (The Age, 1975).
- Convention that GG only acts on advice of EXCO
- Westminster Convention of Responsible Govt: that Govt is drawn from the majority party in the lower house, and the PM the leader of that party, both of which enjoy tenure so long as they maintain the confidence of the House. Kerr violated convention twice:
 - Dismissing Whitlam, who had the full support of the House
 - After Fraser had been appointed as caretaker PM, and the Supply Bills passed, the House passed a no-confidence motion in Fraser, which passed by 64 to 54. Breaking with convention, Fraser did not resign.
 - However, by that afternoon, when the House requested Fraser's resignation, the parliament had already been dissolved - and the advice given to Kerr by Justice Anthony Mason was that 'Fraser had been made PM as a caretaker PM and that an election would be held within weeks, as it was, therefore that the vote of no confidence was effectively irrelevant.'
- Reserve powers should only be used in exceptional circumstances where no other options for resolution exist.
- Kerr's obligation to inform Whitlam of his intentions to dismiss him
- By calling an early double dissolution election against the PM's advice, would break with the convention of acting on the advice of the PM when issuing election writs, and by leaving the situation to reach a parliamentary solution he would violate convention that a govt should be able to ensure supply.

** Demonstrates the vulnerability of unwritten conventions of govt, which can be broken to lead to constitutional crises, validating the use of reserve powers.

ARGUMENTS IN FAVOUR

The GG did possess the constitutional reserve power to intervene: it is a reserve power of the GG to appoint/dismiss PM under s64. The GG should have allowed Whitlam to remain PM provided he call an election or pass supply:

- Whitlam's refusal to resign meant that Kerr was forced to use reserve powers, indicating that weakness of convention in Australia necessitates the emergency action of the GG and triggered the 1975 crisis.
- Justice Garfield Barwick's advice to the GG: 'a PM who cannot ensure supply to the Crown, including funds for carrying on the ordinary services of Govt, must either advise a general election (of a kind which the constitutional situation may then allow) or resign. If, being unable to secure supply, he refuses to take either course, Your Excellency has constitutional authority to withdraw his Commission as PM.'
- Whitlam refused to either call a full election or resign as PM.
- The failure of the Supply Bills to pass was resulting in a gradual govt shutdown, as the govt progressively ran out of money, given s83 requires Appropriation to be attained before spending can take place. As such, Kerr had reasonable basis to judge that the situation was a constitutional crisis which could not be resolved sufficiently quickly through political means, or a half-Senate election, by the time of which, Supply would have run out.
- Responding to Whitlam's refusal to resign or call an election, Kerr saw the situation as a constitutional deadlock.
- In order to pass supply and ensure the operation of govt, Kerr dismissed Whitlam.
- Broke with convention that PM should only be dismissed in the case of a loss of confidence by the House.
- Only alternative solutions to the deadlock would involve breaking with convention as well.
- By calling an early double dissolution election against the PM's advice, would break with the convention of acting on the advice of the PM when issuing election writs, and by leaving the situation to reach a parliamentary solution he would violate the convention that a govt should be able to ensure supply.
- Demonstrates the vulnerability of unwritten conventions
- Kerr had been put in a deadlock when Whitlam broke with convention and refused to resign or call an election. This meant that Kerr would be forced to break with convention either way, either by dismissing Whitlam or calling an election against Whitlam's advice

Whitlam demonstrated little willingness to call an election, and thus the GG should have proceeded with his dismissal

- The failure of the Supply Bills to pass was resulting in a gradual government shutdown, as the government progressively ran out of money. As such, Kerr had reasonable basis to judge that the situation was a constitutional crisis which could not be resolved sufficiently quickly through political means, or a half-Senate election, by the time of which, Supply would have run out.

ARGUMENTS AGAINST

Convention that casual Senate vacancies should be filled by Senators of the same party was broken by opportunistic Liberal premiers, who took the chance to appoint independent members to the Senate, changing its composition.

- Whereas the Australian people had elected 29 Labor senators, Lionel Murphy was appointed to the High Court (replaced by an independent upon the decision of Liberal NSW Premier, Tom Lewis) and Bert Milliner died (replaced by an independent on decision of Nationals QLD Premier Joh Bjelke-Petersen), leaving the Govt with only 27 Senators in a 60-seat Senate. Raised questions of the legitimacy of the Senate.
- PM John Howard in 2005: 'It wasn't the Constitution that caused the crisis. It was the clash of political wills'.
- The basis of the dismissal was the Senate's refusal to consider the Appropriation Bills. Meant that the Senate that blocked supply to the Whitlam govt, causing the Dismissal, was of a different composition, and a different balance of power, and thus was not directly democratically elected by the people. Thus, it could be argued that the GG's dismissal of the PM was contradictory to the principles of Responsible Govt.
- As a result of the dismissal, in 1977 Convention that casual Senate vacancies should be filled by Senators of the same party was enshrined by referendum into the Constitution

Kerr violated conventions of Responsible Govt, by sacking a PM who had the full support of the House.

- Responsible govt: that Govt is drawn from the majority party in the lower house, and the PM the leader of that party, both of which enjoy tenure so long as they maintain the confidence of the House. Convention violated by Kerr when he dismissed Whitlam, who had the full confidence of the House
- 'The party which held a clear majority in the House of Representatives – the people's chamber in which Governments have always been made and broken – has been bundled out of office by Vice-Regal decree' (The Age, 1975).
- Kerr violated convention twice - once in dismissing Whitlam, who had the full support of the House. Second time was when, after Fraser had been appointed as caretaker PM, and the Supply Bills passed, the House passed a no-confidence motion in Fraser, which passed by 64 to 54. Breaking with convention, Fraser did not resign - and Kerr, in the same logic as he dismissed Whitlam, would have been able to dismiss Fraser. However, by that afternoon, when the House requested Fraser's resignation, the parliament had already been dissolved - advice given to Kerr by Justice Anthony Mason was that 'Fraser had been made PM as a caretaker PM and that an election would be held within weeks, as it was, therefore that the vote of no confidence was effectively irrelevant.'

Under the conventions of constitutional monarchy, reserve powers should only be used in exceptional circumstances where no other options for resolution exist. However, both Whitlam and Fraser acknowledged in an interview:

Whitlam said that had the Senate continued to block supply, he would bring forward the half-Senate election

Fraser had also discussed his plans if the half-Senate election should go ahead: he would resign from his position as Opposition Leader, call a party meeting, and ultimately provide Supply

Two Liberal Senators (Jessop and Missen) said that they would have crossed the floor to vote with the Government if the crisis had dragged on any further. This would have meant that there would have been a political resolution of the crisis within the Parliament.

Chapter 14: Accountability of the Judiciary

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| Parliamentary sovereignty to clarify laws | following the establishment of native title in the Mabo Case of 1992, the parliament made a law which clarified that native title was extinguished where current freehold title exists |
| Parliamentary sovereignty to abrogate laws | the 1979 case of Trigwell v SGIC, which established that there existed no liability for the owners of straying animals, was abrogated by the Victorian Parliament's Wrongs (Animals Straying on Highways) Act which established liability for livestock owners. |
| Holding judges to account for not upholding natural justice | AUGUST 22, 2019 Federal Circuit Court judge Sandy Street has had at least 80 decisions overturned on appeal in less than five years. In more than 10 cases, he has been found to have denied litigants procedural fairness. He has also been found on numerous occasions to have failed to provide proper reasons for his decisions or to have dismissed cases without properly engaging with litigants' arguments. Yesterday, the full Federal Court found Judge Street "failed to proceed in accordance with the requirements of procedural fairness" when he dismissed a case brought by an unrepresented Iranian asylum-seeker. The man, known as CQX18, did not speak English proficiently. He had appeared via videolink from Yongah Hill Detention Centre in Western Australia, while the interpreter was based in Sydney. There was also "real doubt" about whether CQX18 had received a copy of the Home Affairs Minister's written submissions and the relevant documents before the court. The appeal judges also wished to "express (their) concern" that Judge Street had delivered his judgment "ex tempore", or on the spot, and his oral reasons were not translated "by reason of an instruction by the primary judge to the interpreter not to do so". This occurred in circumstances where there was "no apparent effort" by the judge to have his reasons produced in written form in a timely manner. Judge Street's written reasons were not published for another 75 days — 54 days after the expiry of the deadline for appeals. The full Federal Court sent the case back to the Federal Circuit Court for rehearing by a different judge. |
| Juror Bias | Juror on a murder trial in 2016 used Facebook to post 'at Perth District Court, guilty!'. Judge said that they weren't confident in her fairness, dismissed her |
| Judge conflict of interest | ** See 'key cases' - Gageler J in Unions NSW |
| Parliamentary sovereignty: checks on courts | The Ipp Report of 2002 found that Courts were awarding excessive damages for minor negligence claims. As a result, the state parliaments introduced legislation which limited the amount of damages available for awarding in negligence cases. This demonstrates to a great extent that the courts can be held to account by the parliament, which can introduce statutory legislation to limit judicial discretion |
| S72 accountability | <ul style="list-style-type: none"> Senator Lionel Murphy was appointed HCA judge by Whitlam Gov. He was accused of perverting the course of justice in 1984. A Sen committee was established and recommended he be prosecuted. Originally found guilty by NSW Supreme Court, but was reversed on appeal by NSW Court of Criminal Appeal. After this, A special Commission of Inquiry to investigate if he was fit to be a HC judge. Further investigations would of carried on but he was diagnosed with terminal cancer. Then died. |
| Parliamentary commission accountability | <ul style="list-style-type: none"> Justice Angelo Vasta of the QLD Supreme Court, was removed by the QLD P following the Fitzgerald Inquiry in Queensland. The QLD P set up a commission of inquiry led by former High Court Chief Justice, Sir Harry Gibbs to investigate. Justice Vasta was accused of wrongdoing in relation to a company his family were associated with. His wrongdoing, which did not affect his decisions in court, was found to be 'misconduct' and he was removed from office in June 1989 by a vote of QLD Parliament. He is the only Australian superior court judge to be removed from office in the 20th Century. |

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| Judge bias | <p>Chief Justice Carmody created controversy for the perceptibly political nature of his appointment. Carmody was appointed by the Newman Government of QLD, whom he was an outspoken supporter of, particularly of their strong anti-bike gang laws. Thus, when he was appointed from the role of Chief Magistrate to that of Chief Justice, such a steep and rapid appointment by the Newman Government raised questions of political bias, and sparked conversation as to whether the appointment was, in fact, a 'reward' for supporting the government's policies. This raises an issue of the executive's control of the appointment of justices in the Australian legal system under s72.</p> <p>A second reason why Justice Carmody's actions created controversy is that he was continually accused of bias throughout his tenure. Not only did Justice Carmody defend an embattled Attorney General of the Newman government, with which he was accused of being closely tied, but he also met with the founder of child protection group Bravehearts just prior to the trial of an alleged child murderer. Carmody was also revealed to have not read the previous judgements of the case. This caused accusations of bias and injustice - Justice Carmody, and all judges, are expected to uphold the principle of impartiality and independence from the trials which they participate in, and as such, Carmody's accusations of bias were controversial in that they raised questions regarding the legal legitimacy of his judgements in cases, and the legitimacy of his tenure as a strong supporter of the Newman Government.</p> |
| Bias/conflict of interest in judges | 2013 case of Unions NSW: Gageler J was raised by the counsel to have previously provided advice on the constitutional validity of one of the provisions at hand in the case. Gageler J recused himself - not because of a conflict of interest, but because a perception of bias existed now that the question had been raised. |
| Bias/conflict of interest in jurors | Juror on a murder trial in the Perth District Court in 2016 used Facebook to post 'At Perth District Court, guilty!' - judge said that he was no longer sure that she could provide an unbiased assessment, and dismissed her from the jury. |

Chapter 15: Human Rights

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| Civil Rights | Freedom of conscience, speech, press, association, religious belief |
| Political Rights | Right to vote, run for office, assemble, join political groups |
| Economic Rights | Right to shelter, to earn a living, freedom from hunger, |
| Cultural Rights | Native Title applies to First Peoples |
| Social Rights | Freedom to marry, have a family, move within and between countries |
| Legal Rights | Right to silence, presumption of innocence |
| Positive Rights | Right to education, health, equal treatment |
| Negative Rights | Right to life, liberty and the pursuit of happiness |

Chapter 16: Human Rights in Australia and the USA

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| Statutory Rights | <ul style="list-style-type: none"> • Racial Discrimination Act 1975 • Sex Discrimination Act 1984 • The Disability Discrimination Act 1992 • The Age Discrimination Act 1996 • Australian Human Rights & Equal Opportunity Commission Act 1986 - independent statutory organisation concerned with Human Rights → powers weakened by HCA in Brandy's Case |
| Constitutional Express Rights | <p>s41: ability to vote at federal elections if, at the time of federation, the person had the right to vote in state elections (transitional, spent clause)</p> <p>s51(xxxi): right to just compensation for the compulsory acquisition of property by the Commonwealth</p> <p>s80: right to jury trial for federal indictable offences</p> <p>s116: right to freedom of religion (state may not impose any religion)</p> <p>s117: freedom from discrimination</p> |
| Constitutional Implied Rights | **See 'key cases' - Lange v ABC for Freedom of Political Communication |
| Constitutional Implied Rights | **See 'key cases' - ACT v Commonwealth for Freedom of Political Speech |
| Constitutional Implied Rights | **See 'key cases' - Roach v Electoral Commissioner for Right to Vote |
| Constitutional Rights in the US | <p>Near v. Minnesota, (1931), is a landmark United States Supreme Court decision that found that prior restraints on publication violate freedom of the press as protected under the First Amendment, a principle that was applied to free speech generally in subsequent jurisprudence. The Court ruled that a Minnesota law that targeted publishers of "malicious" or "scandalous" newspapers violated the First Amendment to the United States Constitution (as applied through the Fourteenth Amendment).</p> <p>USA Mass shootings – consequence of the second amendment. Since 2014, there have been 334 mass shootings per year, on average, in the US.</p> |
| Statutory Rights in the US | The Civil Rights Act of 1964 (as amended) is a landmark piece of civil rights legislation that prohibited discrimination based on race, color, religion, sex (including pregnancy), or national origin. It ended unequal application of voter registration requirements, racial segregation in schools, at the workplace and by facilities that served the general public. |
| ACT Charter of Rights | <p>Complainants do not have to piggyback on another claim, can bring straight to courts</p> <p>ACT legislature must review all legislation for HR compatibility</p> <p>Standing Committee investigates laws</p> <p>ACT AG must issue compatibility statement for each new law passed, must justify if a law does not meet HR compliance</p> <p>Establishes ACT Human Rights Commissioner</p> <p>Courts must interpret statutes with HR in mind</p> <p>eg. Nona v R (2012)</p> <p>Nona was charged with 4 offences, warrant was issued in 1998 but was never carried out.</p> <p>Summoned for trial in 2009, case commenced in 2012. Applied for a stay of proceedings (permanent suspension of case) but was rejected - sought leave to appeal.</p> <p>Human Rights Act 2004 - right to be trialled without unreasonable delay (14 years for Nona)</p> <p>Judgement found that Nona had right to appeal but did not permanently stay proceedings</p> |
| Victorian Charter of Rights | Protects 20 basic human rights. Requires all executive agencies in Victoria to take these into account when developing laws or policy. Any law passed by the Victorian parliament is checked against the Act and a statement of compatibility is issued. Parliament can override the charter with good reason, must simply exempt the charter's clauses at the beginning of the law - retains sovereignty. |

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| <p>Vulnerability of Statutory Rights: NT Intervention</p> | <p>Northern Territory National Emergency Response. Little Children Are Sacred report found that there was a serious issue of sexual assault/domestic violence/child abuse in Indigenous communities in the NT. Howard government 2007 ordered the army to intervene in NT communities, including forced medical checks on children. To legalise the Intervention, Howard (friendly Senate) had to change the Racial Discrimination Act 1975 - otherwise intervention in Indigenous Communities would be deemed discriminatory. Demonstrates weakness of statutory rights. A 'declaration of inconsistent interpretation' issued by the Victorian Supreme Court can require a Minister to re-consider a decision, but cannot strike down a law. Must be 'piggybacked' on another charge</p> <p>eg. Castles Secretary to the Department of Justice (2010) Kimberly Castles was serving a jail sentence, wanted to continue to receive IVF as she would not be eligible once her term ended. Dept of Justice refused. Castles began Court action under s47 of the Victorian Corrections Act, which stated that prisoners have a right to reasonable medical care and treatment'. Enabled her to bring forward the Charter s13 'privacy and family' right, s8 right to equality and s22 humane treatment in detention. Court ordered a re-evaluation of the decision in regards to rights.</p> |
| <p>Problems of the Second Amendment in the US</p> | <p>Second Amendment: right to keep and bear arms for a well-regulated militia Recent events brought into light eg. El Paso shootings, Orlando Nightclub shooting D.C. v Heller 2008: 5:4 Supreme Court upheld right to own guns for personal self-defence, expanding the 2nd amendment (judicial supremacism) Argument that no longer has relevance: no threat of tyrannical government, already a strong MIC to protect themselves, weapons have evolved to highly efficient killing machines, no civil war any more. NRA uses 2nd amendment to block any laws restricting gun ownership by challenging laws in the Supreme Court eg. DC v Heller 2008</p> |
| <p>USA and International law</p> | <p>Has not ratified any agreements on human rights since 2002 USA and Somalia only countries to not have ratified Convention on the Rights of the Child.</p> |
| <p>Guantanamo Bay</p> | <p>Established by Bush outside American jurisdiction as to prevent right to appeal to American courts. Classified detainees as 'enemy combatants' to avoid Geneva convention protections on prisoners of war 2008 Bourmediene v Bush brought Guantanamo Bay into US jurisdiction, said that detainees were entitled to the protection of US courts and Constitution to challenge the lawfulness of their detention (habeus corpus)</p> <p>Waterboarding used to gain information - 'enhanced interrogation technique' rather than torture, to avoid being accused of torture</p> <p>Extraordinary rendition: transferring terrorism suspects to countries with less rigorous human rights protections for enhanced interrogation according to that country's laws. Violation of international law and a crime against humanity. Obama signed executive order to prevent extraordinary rendition to any country known to practice torture, but didn't completely ban extraordinary rendition.</p> |
| <p>Aus: resumption of innocence</p> | <p>S131 of Criminal Code Act 1995: prosecution bears the burden of proving every element of an offence beyond reasonable doubt.</p> |
| <p>Aus: right to silence</p> | <p>Sorby v Commonwealth (1983) protects privilege against self-incrimination. High Court said that A person may refuse to answer any question, or to produce any document or thing, if to do so 'may tend to bring him into the peril and possibility of being convicted as a criminal'.</p> |

Chapter 17: How the USA and Australia Achieve Democratic Principles

| Participation | |
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| AUS Compulsory voting | 91.89% of voters presented at the 2019 Federal Election |
| AUS Public funding | For parties who receive over 4% of the first preference, they are paid \$2.62 in public funds per first preference vote. Reduces reliance on political donations from individuals or groups with vested interests. Total of \$62.7 million paid to political parties by the AEC in 2016 |
| AUS Extra-parliamentary political parties | No party has more than 50,000 members, compared to historical highs of 200,000 for the Liberal Party. Extensive extra-parliamentary membership of political parties, some parties enable members to elect candidates for the electorate eg. Celia Hammond in the seat of Curtin, 2019. Few party members participate in pre-elections eg. Only 82 people voted in the pre-selection of Celia Hammond in the seat of Curtin |
| AUS Sectional Pressure Groups | Minerals Council spent almost \$16 million on advertising opposing the Minerals Resource Rent Tax and Resources Super Profits Tax in 2010 under Rudd |
| AUS Cause Pressure Groups | Mackay Conservation Group: took Federal Government to High Court in 2015 to claim that the environment Minister Greg Hunt had unlawfully approved the Adani Carmichael coal mine without proper consideration for environmental impacts - Minister's failure to take into account the approved conservation advices for the Yakka Skink and the Ornamental Snake meant approval unlawful |
| AUS Political Donations | Largely unregulated political donations eg. 2005 law was changed to enable political donations up to \$10,000 to remain undeclared - indexed for rise every years, is now \$13,800 in 2019. Had previously been \$1500 without disclosure Political donations highly influential eg. \$100,000 donation from former Labor MP Ernst Wong to NSW Labor Party: told the Independent Commission Against Corruption (ICAC) there had been no official party procedures to collect and receive \$100,000 cash that was donated at a Chinese Friends of Labor fundraiser dinner in 2015 |
| USA Primaries | in 2016, 28.5% of voters participated in the primary elections. Donald Trump demonstrates the operation of grassroots democracy - was not endorsed by own party, but rather by the voters |
| USA Citizens United: limiting checks on political donations and protecting political freedoms | Citizens United v Federal Electoral Commission 2010 abolished limits on political donations and political blackout periods prior to elections, in that they violated the First Amendment's freedom of speech. |
| USA political donations | Top 100 donors donated over \$900 million in 2016 Conservative billionaire Koch brothers donated \$900 million in 2016 Clinton 2016 received over \$961 million in donations |
| USA electoral participation - voluntary voting | was around 75-85% in the 19th Century due to the expansion of voting franchise. Reduced to 55% in 2016 election - lowest in 20 years |
| USA Minority participation in elections | 2018 midterm elections, 57.5% of whites voted, while 51.4% of blacks and 40.4% of Hispanics voted. |
| USA disenfranchisement of minorities | In North Carolina and Texas, identification law to enrol to vote changed to privilege the white population by requiring the presentation of forms of id mostly held by whites - eg. US passports, weapon ID, military ID. In contrast, forms of ID held by minorities were not allowed eg. Student ID, public assistance ID |
| USA electoral commission | Federal Electoral Commission checks on gerrymandering and public financing of elections was challenged and significantly weakened by the Citizens United case 2010 |
| Failures of electoral college | <ul style="list-style-type: none"> Electoral College 'winner takes all' system means that results are distorted, vote wastage occurs eg. Clinton received more than 3 million more votes than Trump in the 2016 election, but Trump won key states with large populations and swinging voters. |

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| Decentralisation means very little uniformity in voting laws | Ohio recently passed a law enabling them to eliminate from electoral rolls irregular voters. Sends a postcard to those who haven't voted in two years. If they return it, they stay on the rolls; if they don't, and don't vote in the next two elections, they are removed. Disenfranchises voters |
| Pressure groups | Farm lobby: secured government subsidies for corn products - succeeded in Ethanol Mandate, forcing corn-based ethanol to be added to petrol, increasing market for corn. Over-representation of rural populations thanks to Senate malapportionment for smaller rural states. |

| Representation | |
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| Powerful Senate | after ABCC Bills didn't pass the Senate, Malcolm Turnbull called DD election for hope of creating a 'friendlier' Senate after 2016 electoral reforms - instead, resulted in a more hostile Senate |
| Major party support in decline | Only 77% of people voted for a major party in 2016, as opposed to over 90% in previous years |
| Disengaged young voters | In 2016, less than 50% of voters under the age of 18 were enrolled, postal and pre-poll votes are increasing - voters not fully taking on election campaign messages. In 2019, 88.8% of young voters were enrolled. |
| Mirror representation | 29% of parliament are women. Has increased eg. In 1990, was 6.8% In 2018, 29% of Australians, 7% of MPs, and 17% of Senators were born in a country other than Australia |
| Political donations | \$100,000 donation from former Labor MP Ernst Wong to NSW Labor Party: told the Independent Commission Against Corruption (ICAC) there had been no official party procedures to collect and receive \$100,000 cash that was donated at a Chinese Friends of Labor fundraiser dinner in 2015 |
| Malapportionment | Tasmanian voters around 15 times voting power of NSW voters in the Senate |
| Decentralisation of voting laws | Some legislatures, mainly local governments, use proportional voting - eg. Cambridge, Massachusetts - is mostly rejected by court challenges by major parties Some legislatures have preferential voting eg. Maine adopted 'instant-runoff voting' in 2016 |
| Gerrymandering | 2017 - Republicans in North Carolina acquired 51% of the vote, which subsequently garnered them about 75% of the available seats in congress in the 2018 midterms. |
| Political donations | 2016, top 100 political donors gave over \$900 million |

| Rule of Law | |
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| Judicial review of the executive | ** see 'key cases' - Malaysian Solution |
| Anti-bikie laws | Infringe on freedom of organisations within the law, no retrospectivity eg. Under previous laws, gangs and bikies were deported on character grounds - eg. New Zealand-born Mehaka Te Puia of Perth had his visa cancelled in October 2015, despite never being charged with a crime. The deportation was based on "protected information" gleaned from security sources which could not be viewed by Mr Te Puia or the Federal Court when it was asked to review the decision. Took the decision to the High Court to argue that deportation and conviction on unknown grounds and evidence was unconstitutional - the court agreed. However, parliament acted quickly, amending law to ensure those who had been deported, would remain so. Bipartisan support for an amendment which says that anyone deported by the use of similar "protected information" will not be able to return to Australia. |
| Bail Laws NSW | reverse onus of proof by requiring that a person prove they should not be held in reprimand |
| Anti-terror laws | undermine onus of proof, presumption of innocence, right to silence |
| Total separation of powers | Democratic House of Representatives, Republican President. Dems unwilling to allow border wall defence initiatives of Republican president. |

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| USA PATRIOT Act | <p>passed after 9/11: Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act</p> <ul style="list-style-type: none"> • Authorises executive agencies to investigate people accused or suspected of terrorism. • Includes gag orders to prevent the accused from knowing their charges, or informing anyone else • Cannot have access to judicial review under National Security Letters - don't require reasonable suspicion 'probable cause' • Enables interception of communications without warrant • Enables delayed issue of a search warrant • Denied presumption of innocence, right to know charges, access to judiciary, thereby reducing checks on arbitrary use of power |
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| Natural Justice | |
| ADR in Australia v America | <p>Family Law Act 1975 mandates that parents disputing custody to use ADR before seeking court trial. Australian Human Rights Commission Act 1975 forces the HRC to use conciliation.</p> <p>ADR Act 1998 introduced measures to reduce cost and increase accessibility of ADR</p> |
| Trial by jury | **See 'key cases' - Alqudsi v The Queen |
| Holding judges to account for not upholding natural justice | <p>AUGUST 22, 2019</p> <p>Federal Circuit Court judge Sandy Street has had at least 80 decisions overturned on appeal in less than five years. In more than 10 cases, he has been found to have denied litigants procedural fairness. He has also been found on numerous occasions to have failed to provide proper reasons for his decisions or to have dismissed cases without properly engaging with litigants' arguments. The full Federal Court found Judge Street "failed to proceed in accordance with the requirements of procedural fairness" when he dismissed a case brought by an unrepresented Iranian asylum-seeker. The man, known as CQX18, did not speak English proficiently. He had appeared via videolink from Yongah Hill Detention Centre in Western Australia, while the interpreter was based in Sydney. There was also "real doubt" about whether CQX18 had received a copy of the Home Affairs Minister's written submissions and the relevant documents before the court. The appeal judges also wished to "express (their) concern" that Judge Street had delivered his judgment "ex tempore", or on the spot, and his oral reasons were not translated "by reason of an instruction by the primary judge to the interpreter not to do so". This occurred in circumstances where there was "no apparent effort" by the judge to have his reasons produced in written form in a timely manner. Judge Street's written reasons were not published for another 75 days — 54 days after the expiry of the deadline for appeals. The full Federal Court sent the case back to the Federal Circuit Court for rehearing by a different judge.</p> |
| High cost Aus | In NSW, the daily court rate of solicitors can be upwards of \$3,000. |
| High cost USA | Stephen Papa, a homeless Iraq War veteran, spent 22 days in jail, not for what he calls his "embarrassing behaviour" after he got drunk with friends and climbed into an abandoned building, but because at his hearing, the judge asked for a \$50 first instalment on his \$2,600 in court debt, but Papa, who was homeless and on the verge of starting a new job, had only \$25. Legal Aid services such as Legal Service Corporation exist, but are underfunded and cannot provide sufficient legal aid. |

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| Judicial Independence | |
| Tim Carmody | <p>eg. Chief Justice Tim Carmody: created controversy was for the perceptibly political nature of his appointment. Carmody was appointed by the Newman Government of QLD, whom he was an outspoken supporter of, particularly of their strong anti-bike gang laws. Thus, when he was appointed from the role of Chief Magistrate to that of Chief Justice, such a steep and rapid appointment by the Newman Government raised questions of political bias, and sparked conversation as to whether the appointment was, in fact, a 'reward' for supporting the government's policies. Was continually accused of bias throughout his tenure. Not only did Justice Carmody defend an embattled Attorney General of the Newman government, with which he was accused of being closely tied, but he also met with the founder of child protection group Bravehearts just prior to the trial of an alleged child murderer. Carmody was also revealed to have not read the previous judgements of the case. This caused accusations of bias and injustice. Carmody's accusations of bias were controversial in that they raised questions regarding the legal legitimacy of his judgements in cases, and the legitimacy of his tenure as a strong supporter of the Newman Government.</p> |
| Kavanaugh | Kavanaugh 'frenzy on the left' |
| Election of judges | <ul style="list-style-type: none"> • eg. Illinois requires judges to be elected for initial term • eg. Texas, Alabama require judges to be elected for subsequent terms • These states rank high on executions and use of the death penalty - perhaps for pressure for judges to be seen as 'tough on crime' eg. Texas 2nd, Alabama 6th |

| Key Cases | | |
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| Name: | Details: | Useful for: |
| Teoh (1995) | <p>Teoh was a Malaysian citizen who was allowed entry into Australia, where he married an Australian woman who already had 4 children. Teoh was supposed to be deported after accusations of drug charges appeared. Teoh appealed the decision - the full bench of the Federal Court found that the decision-maker's power had been improperly exercised because it had failed to make appropriate investigations into the hardship to Teoh's wife and her children were Teoh refused resident status. After appeal to the High Court, the Court upheld that the Immigration department had failed to invite Teoh to make a submission on whether a deportation order should be made, contrary to the Convention on the Rights of the Child, which provided that in any administrative decision concerning a child, the child's best interests must be a primary consideration.</p> <p>Created the legal precedent that the ratification of an international convention can be a basis for the existence of a legitimate expectation that the treaty will be implemented or followed.</p> <p>The case is notable for giving unprecedented significance to the ratification of international treaties by the executive government</p> | <p>International law compliance</p> <p>Human rights</p> <p>Judicial checks on the executive</p> |
| Brandy v Human Rights and Equal Opportunity Commission 1995 | <p>Brandy had a HREOC order made against him</p> <p>HREOC was not a court, could not enforce its decisions. However, the Act under which it was made allowed its decisions to be registered with courts, and thus legally enforceable.</p> <p>Brandy said this violated the SoP as it meant that the HREOC could effectively exercise judicial power. The High Court agreed.</p> <p>Significantly weakened the power of the HREOC to enforce its decisions.</p> | <p>Human Rights</p> <p>Judicial power</p> <p>Weakness of judiciary in Australian system</p> |
| Special Leave to Appeal | <p>Power to determine special leave to appeal is vested in the High Court by the Judiciary Act 1903. No automatic right to appeal in the High Court, will accept appeals usually if there has been a supposed miscarriage of justice, there is a new question of law which would create a new common law precedent, if there has been a conflict between the decisions of courts.</p> | |
| <p>Common Law powers of the judiciary</p> <p>Appellate powers of the High Court</p> | <ul style="list-style-type: none"> Norrie May-Welby born with male reproductive organs underwent reassignment surgery. Subsequent to this, the surgery did not clear Norrie's ambiguities and thus sought to define her gender as "non specific". Initially in 2010, The New South Wales Government Registry of Births, Deaths and Marriages recognised Norrie as being neither male nor female with a registered details certificate stating "not specified". However on 17 March of the same year the Registry revoked its decision in a formal letter of cancellation. After Norrie filed a complaint to the Australian Human Rights Commission and to the Court of Appeal, the Court of Appeal ruled in favour of Norrie. Due to this, the Registrar appealed to the High Court On 2 April 2014, the High Court ruled its decision. In an unanimous judgment, the High Court stated that the reference to "ambiguities" in section 32A of the Act showed that the Act recognised that a person's sex could be neither male or female. The Court affirmed that sex is not a binary characteristic, Broader Implication: High Court of Australia effectively exercising section 73 of the constitution whereby have role to adjudicate on matters regarding appellate jurisdiction over matters arising from state courts. Norrie is the first Australian to have been issued with a non-gender-specific identification document to replace an existing birth certificate. In 2003, Alex MacFarlane, another androgynous person, was issued with an Australian passport identifying the holder as neither male nor female but as X. Replaced man and women to 2 people in Marriage Amendment Act 2017 Tasmanian Parliament made recording gender optional in 2018 | <p>Common law case</p> <p>Appellate case</p> |

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| <p>Constitutional law powers of the High Court</p> | <ul style="list-style-type: none"> • due to section 44(i) which prohibits “anyone under any acknowledgement of allegiance, obedience, or adherence to a foreign power to be parliamentarian • A review of this whole section was instituted on 28 November 2017 and fifteen sitting politicians were ruled ineligible by the High Court Of Australia. Five parliamentarians were disqualified of their role • Only two were not ruled ineligible (Matt Cavanan and Nick Xenophon) • Broader implication seen as Australia is a diverse nation with a large immigration population (More than one quarter (28.2%) of Australia’s resident population is born overseas—a level that is considered very high compared to most other OECD countries 2018). Immigrants abide law and order and pay taxes, arguably many find section 44 narrowing representation. In addition changing referendum is proven to be incredibly hard (retirement of judges passed in 1977) further limiting representation. | <p>Constitutional case Proposed reform to the constitution</p> |
| <p>Williams I</p> | <ul style="list-style-type: none"> • Courts exercise judicial power - judiciary empowered to hold govt to account through the Rule of Law and SoP • eg. Williams v Cwth 2012 (Williams 1), High Court struck down executive funding for a program for which they did not have the executive power <ul style="list-style-type: none"> • HC granted this power to check exec prerogatives, given that the exec’s powers are set out in the Constitution in s61 • Cwth government had used executive prerogatives to fund the National Schools Chaplaincy Program. Queensland father of 6, Ronald Williams, was an outspoken advocate of secular education, and successfully challenged the constitutionality of the program in the High Court. • The High Court ruled that the funding of the program exceeded the powers of the federal executive as outlined in s61. <ul style="list-style-type: none"> • The court said that the executive did not have the power to do what the parliament could legislate to enable it to do - funding agreement was found invalid and struck down. • EVALUATION: <ul style="list-style-type: none"> • Williams 1 demonstrates that any individual with standing (eg. Ronald Williams, whose four children attended the school where funding would install a chaplain) can utilise judicial review to effectively hold the executive to account for the regulations they make outside the parliament. • Impact of case can be measured by the value of gov programs that had to be covered by new laws. They amounted between 5% and 10% of total CW expenditure (2.4% of Aus GDP) | <p>Literally everything Judicial review of executive powers</p> |
| <p>Williams II</p> | <ul style="list-style-type: none"> • Williams v Cwth 2014 (Williams 2): After the decision of the High Court struck down the executive’s funding of the NSCP, the government sought to legislate through parliament to enable the funding to proceed. • Enacted Financial Framework Legislation Amendment Act (No 3), which validated contracts and funding for the NSCP and hundreds of other Cwth funding agreements. • Ronald Williams took the Act to the High Court again • The Financial Framework Legislation Amendment Act had been made under the ‘social services’ head of power in the constitution. Williams challenged the constitutionality of the law, saying the payments did not fall under ‘benefits to students’ power of s51(xxiiiA), as the students were not the direct beneficiaries of the Cwth’s payments. • The High Court ruled that because the payments were not paid directly to students, but rather to the Scripture Union of QLD, the payments were not made under a head of power, and the law was struck down • EVALUATION <ul style="list-style-type: none"> • Williams 2 demonstrates that the extent to which judicial review is capable of holding the executive to account is limited by the relationship between the executive and the parliament, whereby the executive can utilise the parliament to avoid High Court rulings. • However, the case still exemplifies the ability of the High Court to hold the government and the parliament accountable for the constitutional validity of its laws. | <p>Ability of executive to use the parliamentary forum to subvert scrutiny of the courts</p> |

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| Tied grants after Williams | <ul style="list-style-type: none"> Judicial power is restricted to reviewing legality of statutes, the legality of executive actions under particular statutes and interpreting the Constitution and the relevant statutes - it cannot review for merit of the content of a law. <ul style="list-style-type: none"> Means that the government can in effect undertake executive action or facilitate the passage of legislation through the Parliament utilising the same principles of the law or instrument, under an alternate, legally viable pathway. In effect what was prohibited can still become an operable concept (only in a slightly different form). The sum of such an action may be that the Executive is able to circumvent the scrutiny or decision making of the judicial arm. High Court shut down both the executive's prerogative, and the parliament's legislative attempts to fund the NSCP. However, effectiveness in holding executive to account was limited <ul style="list-style-type: none"> In response, the Cwth provided tied grants to states under s96 of the constitution, at a rate of \$20,000 per school, to fund the NSCP. Tied grants under s96 are grants made to states on the premise that they will fill specific 'terms and conditions as the Cwth sees fit', thereby enabling the Cwth to coerce the states into following the federal legislative agenda. Thus, Cwth was able to subvert High Court's ruling EVALUATION <ul style="list-style-type: none"> Limited effectiveness of judicial review - enabled the parliament to pass through its policy, and while delayed the process of the program, meant that govt could largely evade accountability measures of judicial review by enacting their program | <p>Ability of the executive to subvert scrutiny of the courts</p> <p>Tied grants</p> <p>Ability of courts to review only for legality, not merit - weakness in holding government to account.</p> |
| Cole v Whitfield 1988 | Tasmanian Law limited the size of crayfish that could be sold - which meant that a Tasmanian company could not import smaller South Australian crayfish. The law was ruled unconstitutional, as it had a protectionist effect on interstate trade. | Increasing Commonwealth powers, undermining state economic freedom |
| Australian Capital Television v Commonwealth 1992 | In the case of Australian Capital Television (ACT) v Commonwealth (1992), it was found that the Political Broadcasts and Political Disclosures Act was unconstitutional in that it limited the implied freedom of political communication found in s7 and s24. The court found that these sections establish a representative democracy, to which freedom of political communication is essential in that voters must be able to hear the arguments and points of politicians and candidates in order to make a free and informed choice. Therefore, the restrictive sections Political Broadcasts and Political Disclosures Act was invalidated, for violating the implied freedom of political communication, which still exists as a precedent today, for instance in the case of Theophanous v Herald and Weekly Times Ltd (1994). | Discovering implied freedom of political communication |
| Theophanous v Herald and Weekly Times Ltd (1994) | MP Andrew Theophanous unsuccessfully sued a newspaper for defamation after it published an article questioning his capacity as an MP - court ruled that it was an exercise of free political expression | |
| Kline v Official Secretary to the GG (2013) | The High Court has dismissed an appeal against the decision of the Full Federal Court in Kline, in which the FCAFC upheld the Administrative Appeals Tribunal affirmation of an administrative decision to deny Kline access to documents held by the Official Secretary to the Governor General. Kline made an application under the Freedom of Information Act 1982 (Cth) to access documents relating to Australia's national honours system held by the Official Secretary, who manages the system. Kline had nominated a person to be appointed to the Order of Australia in 2007 and 2009, but on both occasions that person was not appointed, and in 2011 Kline sought to access documents relating to those nominations. | |
| 2017 Aubrey v the Queen | overruled 1888 precedent that a man could not be prosecuted for giving his partner HIV. Aubrey was convicted for grievous bodily harm. | Overruling precedent |
| Unions NSW 2013 | It was brought to the attention of the court by counsel that Gageler J had already provided prior advice on the constitutional validity of one of the provisions at hand in the case. Gageler recused himself from the case, as a perception of bias now existed that the question had been raised | Judge conflict of Interest Perception of bias in the judiciary |
| Koowarta 1982 | Commonwealth had ratified the CERD in the RDA 1975. QLD government prevented John Koowarta from purchasing a lease on land because he was Aboriginal. Contravened the RDA (enacted under external affairs powers s51xxix which gave effect to DERD. As a result, decision of the government was overturned, and QLD lost land management powers. | Human Rights High Court check |

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| | | executive decisions |
| Lange v ABC (1997) | HCA upheld the implied freedom of political communication found in s7 & s24 David Lange was a former Prime Minister of New Zealand. The ABC broadcast a report which had been broadcast the previous night in New Zealand on Television New Zealand's "Frontline" program. The program alleged that the New Zealand Labour Party, then in government, had come to be under the influence of large business interests. This influence arose due to those business interests making large donations to New Zealand Labour's 1987 election campaign funds. Lange alleged that the ABC had made defamatory statements to the effect that he had been corrupt while in office. A unanimous High Court decision held that the ABC program was in fact defamatory. The High Court clarified and refined the principles surrounding the relevant implied freedom - basically saying that the right to freedom of political communication is not unlimited and that the laws against defamation can be consistent with freedom of political communication. | Common law rights Constitutional implied rights Judicial power to uncover rights |
| Dietrich v The Queen (1992) | Dietrich was charged in County Court of Victoria on four charges relating to drug trafficking under the Customs Act 1901 (Cth). During the trial he had no legal representation. He had applied for assistance from the Legal Aid Commission of Victoria but they would not represent him unless he agreed to plead guilty to all charges. He then applied to the Supreme Court of Victoria for legal assistance but this request was also denied. On the basis that he did not have a right to a fair trial, majority of judges in the High Court decided that Dietrich had the right to a fair trial, and that the lack of legal representation meant that the original trial was unfair. The justices also concluded that when an accused, through no fault of their own, does not have legal representation when charged with a serious offence, a judge may order the trial be delayed (stayed) until legal representation is available. | |
| Australian Capital Television v Commonwealth (1992) | found that the Political Broadcasts and Political Disclosures Act was unconstitutional in that it limited the implied freedom of political communication found in s7 and s24. The court found that these sections establish a representative democracy, to which freedom of political communication is essential in that voters must be able to hear the arguments and points of politicians and candidates in order to make a free and informed choice. Therefore, the restrictive sections Political Broadcasts and Political Disclosures Act was invalidated, for violating the implied freedom of political communication, which still exists as a precedent today, for instance in the case of Theophanous v Herald and Weekly Times Ltd (1994). | Common law rights Constitutional implied rights Judicial power to uncover rights Right to political free speech |
| Roach v Electoral Commissioner 2007 | dealing with the validity of Commonwealth legislation that prevented prisoners from voting. The Court held that the 2006 amendments were inconsistent with the system of representative democracy established by the Constitution. The three-year criterion in the 2004 amendments. was held to be valid as it sufficiently distinguished between serious lawlessness and less serious but still reprehensible conduct. Section 7 and section 24 – upheld. | Common law rights Constitutional implied rights Judicial power to uncover rights Right to vote |
| Plaintiff M70/2011 (Malaysian Solution) (2011) | The Malaysian Solution saw Australia sending 800 asylum seekers to Malaysia for processing, and Malaysia would then send 4000 confirmed refugees to Australia. In August 2011, Immigration lawyer David Manne challenged the solution in the High Court. Manne argued that the policy was unlawful under s198a of the Migration Act, which required that a country to which Australia sends asylum seekers must be able to provide the necessary protection to them. As Malaysia was a) not a signatory to the UN Convention relating to the Status of Refugees and thus had no obligation to protect the rights of asylum seekers, and b) had a proven track record of human rights abuses towards asylum seekers, the court ruled that the Malaysian Solution was unlawful, striking down the Commonwealth policy. In this way, judicial review of administrative and executive decisions can be an effective accountability measure for the Commonwealth executive, ensuring their actions are legally permissible. | |

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| Alqudsi v The Queen | The applicant was charged on indictment with seven offences under the Crimes (Foreign Incursions and Recruitment) Act 1978. By notice of motion filed in the Supreme Court, the applicant sought an order that he be tried by a judge alone, was rejected. The majority found that that question could only be answered favourably to the applicant by overruling Brown v The Queen (1986). The majority declined to do so, holding there was no reason to doubt the correctness of Brown. Their Honours rejected the argument that s 80 could be read as subject to exception when, for example, a court assesses it is in the interests of justice that the trial on indictment of an offence against a law of the Commonwealth be by judge alone. | |
| Mabo v The Queen (1992) | The Mabo case ran for 10 years. On 3 June 1992, the High Court of Australia decided that terra nullius should not have been applied to Australia. This decision recognised that Aboriginal and Torres Strait Islander peoples have rights to the land. Led to the Australian Parliament passing the Native Title Act in 1993. Today, native title has been recognised in more than two million square kilometres of land. | |