

## CHAPTER 1: Limits to Power

### SYLLABUS: legislative, executive, and judicial powers with reference to the Australian Constitution and comparison to one non-Westminster system

#### Legislative:

- The branch of government that initiates, amends, and abolishes statute via the statutory process. May be unicameral or bicameral. Outlined in chapter 1 of the Cth. Constitution.
- Australia's bicameral Parliament consisting of House of Representatives, Senate, and Queen, as given by Chapter 1 Section 1 of the Cth. Constitution.
- **Standing orders:** The rules by which each House of Parliament operates. The Constitution gives power to each of the Houses to make their own rules. Standing Orders are enforced by the Speaker of the House and the President of the Senate. They may be suspended by a motion of the chamber. In the House of Representatives, the executive dominates the legislative and may easily suspend Standing Orders.
  - 94A - a "direction to leave the chamber" that "sanctions against disorderly behaviour".
- **Gag:** a motion passed in parliament to curtail further debate
  - 2013 Abbott govt. Debate to reinstate the ABCC was gagged -> Turnbull govt. Likewise could not pass legislation, lead to double dissolution.
- **Guillotine:** a motion passed in parliament to impose a time limit on debate
  - Road safety remuneration repeal bill 2016 -> guillotine moved by Senator Cash
- **Quorum:** minimum number of members that must be present at an assembly meeting for the proceedings of that meeting to be valid.
  - ¼ in HoR, ½ in Senate
- **Points of order:** a query in a formal debate as to whether pre-imposed procedures are being followed.
  - MP calling attention to breach of standing order, speaker then judges.
- **Pairs:** a convention by which the Opposition withdraws one of its own MPs to make up for a Government MP being unable to vote.
- **Division:** a formal vote in parliament, often requiring members move to either side of the room to place their vote.

#### Executive:

- The branch of government that carries out the law and makes policies on how it is to be implemented. In the Westminster system it is indirectly elected from the directly elected lower house. In the Washminster system it is directly chosen by the people.
- Australia's executive Cabinet, as outlined in chapter 2 of the Cth. Constitution.

#### Judicial:

- The branch of government that adjudicates disputes by interpreting the law and applying it to specific circumstances in cases heard in courts. This branch is appointed, not elected.
- Australia's High Court is created by chapter 3 of the Cth. constitution.

**CHAPTER 2: Power of the Parliament**

**SYLLABUS: Functioning of the Cth. Parliament in theory and practice with reference to sections 7, 24, 51, 53, and the Decline of Parliament Thesis.**

**Sections:**

- 7: Senate must be chosen by people
- 24: HoR must be chosen by people
- 51: Lists constitutional heads of power; Exclusive powers
- 53: Senate may not amend or block appropriations or taxations or any financial bills, but may return them to the house with the request that they be amended.

**Decline of Parliament thesis:**

- The argument that the modern parliament is unable to perform its major roles due to the rise of disciplined political parties and the dominance of the executive over the lower house, the house in which it is formed and therefore responsible to. Countered by the “Revival of Parliament” thesis.

**Arguments:**

<u>AGAINST</u>	<u>FOR</u>
“None of the theoretical functions of Parliament operate in reality”	“The Cth. parliament maintains the principles of good govt. By and large”
“Compared to Britain’s Parliament, the Cth, parliament fails to live up to historical and contemporary ideals”	“as the Cth. parliament is intrinsically unique from the British Parliament, being a Westminster hybrid, it cannot be expected to live up to all the ideals of the Westminster government.”
“Executive dominance is a limiting element of Australia’s Parliament”	“Executive dominance is unavoidable as Australia has both a powerful Senate and an Upper House derived from the Lower, 2 respectively American and British functions that operate in a unique way together.

**Functions:**

THEORY	PRACTICE
<b>REPRESENTATION</b>	
3 models in theory <ul style="list-style-type: none"> <li>- HOR: Delegate, Trustee</li> <li>- SEN: Sovereign State Interest</li> </ul> <u>Undermined:</u> partisan nature of majoritarian electoral system <ul style="list-style-type: none"> <li>- 76 Lib-Nats and 69 ALP in HoR, supposed “peoples’ house”, leaving only 5/150 seats for minority representation</li> </ul>	<u>Delegate/Trustee:</u> in delegate a member is elected by their constituents to act as a mouthpiece for them; a trustee is elected as constituents have faith in the members own beliefs and views. Opportunities to act in this way include grievance debates, maiden speeches, and raising matter of public concern. <ul style="list-style-type: none"> <li>- <b>Dr Sharman Stone</b> criticised own Liberal party in 2014 for choosing not to offer financial support to</li> </ul>

	<p>SPC Ardmona, a business from her electorate of Murray.</p> <ul style="list-style-type: none"> <li>- <b>George Christensen</b> in an episode of ABC's Q&amp;A airing in August 2018 suggested solidarity with Bob Katter as "Northern Queenslanders rather than members of political parties" (as host Tony Jones put it to him), saying "I have been out there for the North". June 2017, <u>crossed the floor</u> to support ALP bill to stop penalty rates cuts.</li> <li>- <b>Sen Fraser Anning</b>, elected August 2018, in his maiden speech called for a "final solution" on the issue of Muslim immigration, which was heavily criticised by the leader of his own One Nation party, Pauline Hanson.</li> </ul> <p><u>Partisan</u>: operates most effectively within Australia's majoritarian electoral system, in which an MP stands on a party platform and is endorsed, and elections are seen as competitions between opposing political views.</p> <p><u>Mirror</u>: demographics within the HoR should match the demographics of the population. Operates to a very limited extent; and there are few pushes for it.</p> <ul style="list-style-type: none"> <li>- <b>Women</b> make up 52% of Aus pop., only 27% of HoR pop. <b>Indigenous</b> people make up 2~3% of Aus pop., only ever have been 1.3% of HoR at one time with Ken Wyatt and Lynda Burney being the only indigenous MPs in the House in Australia's history.</li> </ul>
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**RESPONSIBILITY**

<p>Executive is drawn from and responsible to the parliament; (CMR) a government may be dismissed in a vote of no confidence or effective vote of no confidence</p> <ul style="list-style-type: none"> <li>- <b>Arthur fadden's</b> Country party govt. had a motion moved and lost the next election - motion was still unsuccessful</li> <li>- <b>Whitlam</b> govt dismissed 1975 as their budget did not pass Senate</li> </ul> <p>(IMR) ministers may be dismissed by motions of censure and must answer questions of the Parliament, without notice, without misleading the Parliament, during Question Time</p>	<p>In reality, govt will almost never lose support of the House as that is where its majority support originated, and Senate majority is irrelevant to formation of govt</p> <ul style="list-style-type: none"> <li>- <b>Whitlam</b> govt showed that even in situations as extreme as the 1975 crisis, support of HoR was maintained</li> </ul> <p>Motions in the House (IMR and CMR) almost always defeated by voting "along party lines" due to strong partisan culture. Sometimes successful in Senate, however these are only symbolic</p> <ul style="list-style-type: none"> <li>- <b>Senator George Brandis</b> had censure motion passed against him March 2015.</li> </ul> <p>Ability of executive to pass standing orders - particularly rules around QT</p>
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<ul style="list-style-type: none"> <li>- <b>Tanya Plibersek</b> in March 2018 asked PM Malcolm Turnbull if Lib-Nats Coalition agreement had been shown to GG.</li> </ul> <p>Government spending is scrutinised in passage of the annual govt. budget through both houses of parliament, and by Senate Estimates Committee.</p> <ul style="list-style-type: none"> <li>- <b>Mediscare</b> campaign by Shorten Opposition following Abbott budget's introduction of a \$7 fee for GP visits</li> </ul>	
<b>LEGISLATING</b>	
<p>Bills should be scrutinised by the statutory process, have a diverse input, and can be initiated by a member of Parliament.</p>	<p>exec dominance disallows opposition and PMBs from passing; guarantees passage of gov bills.</p> <ul style="list-style-type: none"> <li>- <b><i>Marriage Amendment (Marriage Equality) Bill 2015</i></b>, PMB sponsored by Bill Shorten and Tanya Plibersek gagged and prevented from continuing through HoR.</li> </ul> <p>Gag: prevents further debate</p> <ul style="list-style-type: none"> <li>- <b><i>Building and Construction Industry (Improving Productivity) Bill 2013</i></b>, to reinstate Howard era ABCC, was gagged and passed quickly in HoR</li> </ul> <p>Guillotine: enforces time limit on debate  Flood-gating: overwhelming amount of bills introduced at once to bypass effective scrutiny</p>
<b>DEBATING</b>	
<p>Parliament is the nation's highest forum for debate of issues; grievances, urgency motions, second Reading Debates; parliamentary privilege protects MPs from normal restrictions on speech, such as the Civil Tort of Defamation, and Privileges Committees will make judgements on whether things said by MPs are appropriate</p> <ul style="list-style-type: none"> <li>- <b>Bill Heffernan</b>, Liberal Senator, accused HC Justice Michael Kirby of using Cth. cars to solicit male prostitutes in March 2002, and lost his position as Cabinet secretary.</li> </ul>	<p>ability of the executive to gag, guillotine, and manipulate SO.s; majoritarian electoral system reduces diversity of opinions.</p> <p>Much of the valuable debating actually happens behind closed doors in Party rooms/caucus</p> <ul style="list-style-type: none"> <li>- <b>Scott Morrison's</b> eventual appointment after Malcolm Turnbull's leadership spill September 2018, where MPs Peter Dutton, Julie Bishop, Malcolm Turnbull, and Scott Morrison all competed for PM-ship and all debate was private.</li> </ul>

## CHAPTER 3: Power of the Governor General

### SYLLABUS: Roles and powers of the GG, including sections 61, 62, 63, 64, 68, 28, 57, 72, and the “1975 Crisis”.

#### Sections:

- 61: executive power of the Cth. is vested in the Queen and exercised by the GG
- 62: “there shall be a federal executive council to advise the GG”, exco appointed by GG
- 63: GG is to act on advice of exco
- 64: GG may appoint or dismiss ministers to govt. Departments, all ministers are members of exco
- 68: Command in chief of naval and military forces is vested in GG
- 28: every HOR is to last a maximum of three years but may be dissolved sooner by the GG
- 57: a bill rejected twice by the Senate may trigger a d.d. of the Parliament under the power of the GG, who may then call a joint sitting of both houses if the issue was not resolved by the d.d, in which deadlock is resolved by a majority vote.
- 72: GG may appoint HC Justices, but may only dismiss them in cases of extreme misconduct

**Circular Accountability:** PM advises Queen on who to appoint as GG under s.2, but GG may appoint or dismiss ministers under s. 64.

#### Roles of GG:

- **Constitutional:**
  - **Legislative:** outlined in chapter 1. These powers are carried out on the advice of exco. Includes the proclamation of a new parliamentary session 30 days after an election, proroguing Parliament between sessions, dissolving the HOR after an election or d.d, and granting Royal Assent (which implies the fictional power of withholding consent)
    - **Sir Peter Cosgrove** recalls Parliament under s.5 on the advice of PM Turnbull, April 2016.
  - **Executive:** outlined in chapter 2. Selects and acts on advice of exco, appoints and dismisses government ministers. Some of these are inconsistent with the idea of responsible parliamentary govt., and are therefore inactive. Eg, s.68 is inactive as Command in Chief of the armed forces actually lies with the minister for defence.
    - Commitment of **troops** to Iraq in 1991 and 2003 by minister for defence under *Defence Act 1903*.
  - **Ceremonial:** acting as head of state, receiving and entertaining prominent visitors, opening new sessions of Parliament, receiving credentials of foreign diplomats and High Commissioners.
    - GG Cosgrove attended 2016 **ANZAC** Day service in Villers-Bretonneux.
  - **Non-Ceremonial:** travelling widely to meet those from all walks of life, presenting awards at major functions.
    - Quentin Bryce, GG of 2008, accepted patronage of the **red cross**
    - **Sir Ninian Stephen**, late 70s GG, “Represent Australia itself”
- **Express Powers:** occur on advice of the PMC/EXCO. Includes appointing HC Justices and Senior Govt. officials, establishing Royal Commissions.
- **Reserve Powers:** occur without or contrary to ministerial advice. Exist as an instrument of last resort. Includes appointing PM in a hung Parliament, refusal of a d.d, dismissal of a PM that has lost the confidence of the Parliament. This is limited by Responsible Parliamentary Government.

- **1975 Crisis:** Gough Whitlam's ALP govt. Was elected in '72, which boldly carried out its election promises (universal health care, removal of conscription, free education), but soon lost popularity due to financial scandals.
- 2 ALP Senators lost their seats in the Senate, thus creating two casual Senate vacancies, and the states broke convention by appointing two non-ALP Senators; thus shifting the balance of powers in the Senate to favour Libs -> an obstructive Senate.
- 1901-1971 saw 68 govt. Bills blocked in 70 years; 1972-1975 saw 93 blocked in 3 years
- Libs blocked govt. Supply bill of govt. budget, breaking convention, and hoping to trigger a d.d from Whitlam and John Kerr
- Kerr instead used his reserve powers to dismiss Whitlam, and instead appointed Malcolm Fraser as a caregiver PM.
  - **IMPACT:** 1976 Casual Senate Vacancies amended section 15 to ensure that vacancies could only be filled by member of the same party which had vacated them
  - Raises the question of whether the Senate should be allowed to block supply; Abbott's 2014-2015 budget was forced to be amended by the Senate, on the matter of deregulation of university fees

## **CHAPTER 4: Power of the Executive**

### **SYLLABUS: Roles and powers of the prime Minister, Cabinet, and the Ministry.**

**Cabinet:** the executive committee of the PM and senior ministers. It has no Constitutional or legal authority, yet it is the most powerful institution of govt.

- **Inner ministry:** the PM & C, bound by conventions of Cabinet secrecy and Cabinet solidarity. The constitution makes no reference to the cabinet, therefore its shape and structure are determined entirely by the PM of the day. The deliberations of Cabinet may require the assistance of other bodies such as the Parliament or the GG to be put into effect.

#### **Conventions:**

- **Secrecy:** cabinet meetings must be secret so as to avoid persecution by the media, the ministers' electorates, and the Opposition. This freedom from fear allows for robust discussion, debate, and disagreement, in which various proposals and issues can be examined at length. It also allows the govt. To be seen as one body - linking it to Cabinet solidarity.
  - Example: Tony Abbott set precedent when he broke this convention by releasing the Rudd Govt.'s Cabinet discussions into the failed Home Insulation Program.
- **Solidarity:** the process of reaching one single govt. Stance on any matter, by: consensus, majority, Prime Ministerial authority, or caucus pressure. A Cabinet minister who cannot publicly support a Cabinet decision is obliged by Westminster conventions to resign from the executive. The resigning minister will be moved from the front bench to the back bench, however may still support their party and even eventually rejoin Cabinet. Significant as a cabinet with multiple views, would be chaotic and lack authority.
  - **Barnaby Joyce** left his position of Deputy Prime Minister January 22nd 2018, and now sits at the back bench
  - Barnaby Joyce publicly opposed the Abbott Govt.'s **Shenhua** coal mines proposal, in his electorate as a "minister, not a member".

**Outer ministry:** Junior and assistant ministers, who hold portfolios of less significant govt. activity.

**Westminster chain of accountability:** people elect parliament -> House of reps gives confidence to cabinet -> cabinet ministers give mandated policy direction -> departments advise ministers -> people's parliament hold cabinet accountable.

**Narrative of government:** the long-term ideological vision government hopes to achieve through policy and legislation.

**Prime Minister:** leader of the party with the most seats in the house of reps; position governed entirely by convention.

- **Sources of power:**
  - **Being the leader of the majority in the house of reps:** having control over the majority of the House of reps allows the prime minister to manipulate the passage of legislation and debate in the house.
  - **Being the chairperson of cabinet meetings:** can manipulate government priorities through the business list. ministers are limited in bringing attention to issues or proposals due to the 10 day rule.
    - **Tony Abbott** made extensive Captain calls with this power, such as the reinstatement of the titles of knights and dames, 2014.
  - **Access to information:** Receives advice from all departments and even classified material.
  - **Patronage:** promoting backbenchers to the front bench, demoting frontbenchers to the back bench, and allocation of portfolios. (back -> front means entering Cabinet)
  - **Determining the election date:** under a maximum 3 year term, an early election is almost always a strategic decision to gain political advantage, specifically re-election.
    - **2010 election** 6 months early by Julia Gillard, to affirm her own mandate in Parliament after replacing Kevin Rudd.
- **Limits on power:**
  - **lack of a personal mandate:** prime ministers are not directly elected, so their party does not always have to promote them.
    - **Rudd** replaced by Julia Gillard via caucus vote, 2013
  - **Lack of solidarity and secrecy:** Abbott government frequently had leaks about Foreign Affairs and foreign aid budget.
  - **Rivalry within Cabinet:** Gillard, Deputy PM, challenged Rudd's leadership 2010
  - **Size and nature of house majority:** Gillard's balance of powers govt. Relied on non ALP members; Turnbull elected with a majority of just one seat.

## **CHAPTER 5: The Opposition**

### **SYLLABUS: Roles and powers of the Opposition and Shadow Ministry at the Commonwealth level.**

**Opposition:** party with the second largest number of seats in the HOR. In the Westminster system, its role is to provide a viable alternative government and hold the government accountable. The opposition must be loyal to the system of government, i.e. democracy, but must be adversarial toward the executive. It is believed that an Opposition that effectively holds the government accountable is crucial to facilitating and equally effective government.

**Leader of the Opposition:** leader of the party with the second largest number of seats in the HOR. chairs party meetings, leads policy development, selects shadow ministers from HOR and Senate.

**Individual Ministerial Responsibility (IMR):** a Westminster convention of responsible parliamentary government by which a minister may be held to account by the House of Representatives. Part of the Parliament's "responsibility function".

**Collective Ministerial Responsibility (CMR):** a Westminster convention of responsible parliamentary government by which the whole executive party may be held to account by the HOR.

**Shadow ministry:** The collective of senior Ministers of the Opposition who directly oppose and scrutinise particular government ministers. The shadow minister for a certain department is referred to as the "opposition spokesperson for..." that department. The shadow ministry is also known as the opposition front bench.

### Roles of the Opposition:

- Holding the executive accountable for general conduct & competence, specific actions, or proposed legislation and policies
  - **Barnaby Joyce's affair** with a staffer raised the question by Shorten, "is the PM powerless to act against a minister who breaches the ministerial code of conduct, when that minister is a member of the Nationals party?", February 2018.
- **Methods of holding the govt. Accountable:**
  - **Question Time:** occurs between 2pm and 3pm every Parliamentary sitting day. Any private member (not a minister) may ask a question of any minister concerning their portfolio or conduct. Questions may be on notice, meaning they were posted in the Notice Paper as they require research from the minister before they can be answered, or without notice.
    - **Adam Bandt**, Greens member, asks PM Michael McCormack "Are you still a climate change denier?", question disallowed due to irrelevance to portfolio.
  - **Advantage:** theoretically, as a part of Individual Ministerial Responsibility, ministers are not allowed to mislead house in reply - hence being a part of Parliament's responsibility function.
  - **Disadvantage:** answers must simply be relevant - do not necessarily need to answer the question. Or, a government backbencher (still a private member) may ask a question of its own party's front bench. These are known as Dorothy Dixers and allow for the govt. to speak on favourable matters. In practice, QT has become a sort of political circus hyped up for the media - more and more outrageous questions are asked and responses given with the hopes of embarrassing other parties and being featured on the news.
    - **Tanya Plibersek**, deputy leader of Opposition asks if Coalition agreement has been presented to Governor-General, Turnbull begins talking about 400k jobs created in Australia by Coalition.
  - **Motions of no-confidence and censure motions:** Motions are actions that cause a vote to occur. Significant to upholding Parliament's responsibility function. Derived from the Westminster system and take precedence over all other matters until they are dealt with. Senate motions of no confidence are uniquely Australian as the Senate may contain ministers.
  - **Censure:** against a specific action of the govt. or a specific minister. If the motion is successful (which is highly unlikely, as the govt. will often hold a majority), both the PM and the leader of the Opposition will be given an opportunity to speak. They are how IMR is upheld. Almost always fails due to executive dominance.



- **Senator George Brandis** criticised Human Rights Commissioner Gillian Triggs, did not resign even after censure moved 2015.
- **No-confidence motions**: enact CMR as they are aimed at a whole government. Can take several forms: a direct vote against the government, defeat of a core govt. Bill in the house, defeat of an appropriations bill, loss of government control of the business of the house. If a general motion is initiated by the Leader of the Opposition, and passes, debate will begin (as in a motion of censure) and a second vote will be taken afterwards. If it is successful again, the govt. will either have to resign and let the house form the new executive or request that the GG dissolve the house and issue the writ for an election. If a piece of legislation that would have enacted a policy which the govt. had focused on during their campaign in the last general election, and therefore were mandated to pass, is blocked in the House, then this is therefore an effective motion of no confidence. In order to spend money, and therefore govern, the intended use of the money to be spent must be verified by an act passed in Parliament. If the government loses control over this, and hence control over the business of the house then they have, by implication, lost the confidence of the house.
  - **The Rudd govt.**'s core piece of legislation, the Carbon Pollution Reduction Scheme, was blocked by the Senate; however they were not required to resign as it passed easily through the House.
  - **the Fadden Govt** in 1941, was forced from office after the House voted to reduce its federal budget by 1 euro.
- **Quorum**: refers to the minimum number of MHRs required in the House for a vote to be taken. In the house, this is 30, one fifth of the 150. MHRs are often absent from Canberra on electorate or other business, including committee work. By convention, and agreement between parties, the quorum may be ignored, however any MHR may also bring the "state of the House" to the attention of the Speaker. Such an action requires a count of the MHRs present and, if there are less than 30, the bells are rung for 4 minutes, summoning all MHRs to Parliament until the quorum is met. If it is still not met, the session of Parliament will be adjourned. This can be used to frustrate govt.
- **Refusal to grant pairs**<sup>3</sup>: this is when the Opposition agrees to remove one of its members from the chamber and hence any votes for every member of the govt. that is absent. This maintains the balance of party power in the house. However the Opposition may refuse to do so to frustrate the govt., which will then be forced to call its MHRs back to the house so as to not miss out on votes.
  - for the **funeral** of artist Margaret Olley, 2011, minister for the arts Simon Crean and Malcolm Turnbull were planned to pair for each other and attend; but Tony Abbott decided against this and refused pairs against the Gillard govt.
- **Senate**: the senate, free of executive dominance, is one of the most effective measures of holding the govt. accountable available to the Opposition. The formation of Senate Estimate Committees create perhaps the most rigorous accountability method. These committees can interrogate ministers from the senate, representatives of house ministers, Or even members of the public service. Witnesses called before these communities must not mislead the committees, and are covered by Parliamentary privilege. The Opposition in the Senate can

force government bills to be amended or blocked them if they can convince the senate crossbench to vote alongside them.

- the ALP Shorten Opposition used the Senate in an effective way by forcing amendment to parts of the **Abbott Govt.'s first budget**, including removal of the \$7 GP co-payment.

#### - Being a Viable Alternative Government:

- To be a viable alternative government, the opposition must have its own policies, a unified vision for the narrative of government, and present as competent and ready to govern.

#### - Limiting factors:

- Impartiality of the Speaker: Speakers are chosen by the governing party and hence are rarely totally impartial. Usually, members of the governing party will not go against party leader/PM.
- Lack of resources: the executive holds control over all the resources of govt, hence it is difficult for the opposition to formulate detailed and properly priced policies.
- Executive dominance

#### - Overcoming these limitations:

- Third party research:
  - For the **Abbott govts second budget**, Shorten govt commissioned the National Centre for Social and Economic Modelling for an analysis .

## CHAPTER 6: Political Mandates

### SYLLABUS: Political mandates in theory and in practice including competing mandates

#### Will of the majority mandate

- **Specific:** particular claims to enact, re-enact, or repeal certain legislation made before an election.
  - **the Carbon and Mining Taxes** were repealed following Abbott's election in 2013.
- **General:** the promotion of a party's ideology aligned with its party platform.
  - **Abbott's first budget** saw major cuts to education and the \$7 GP co-payment, despite his promise to protect healthcare and education before the election. However, the party was able to argue that the cuts were necessary so that they could stay loyal to their economic view of "fiscal conservatism" as the "economic liberal" party. Hence, their general mandate justified acting against their specific mandate.

#### Right to oppose

- Liberal opposition to the Rudd govt following the 2007 election
  - **Nelson and Workchoices:** Rudd had the specific mandate to "Scrap Workchoices", and the legislation to remove Workchoices passed unopposed in the House and was supported by Liberals in the Senate. Nelson said that the Liberal party had "listened and learned" and that Workchoices was "dead". He also said that the Coalition would never reintroduce it.
  - **Turnbull and CPRS:** Turnbull, who replaced Nelson as Opposition leader a year after the Howard defeat, carried on respecting Rudd's mandated policy, including the Carbon Pollution Reduction Scheme (CPRS).
  - **Abbott and CPRS:** Abbott defeated Turnbull in a party leadership spill in 2010 and turned the Opposition strongly against the CPRS, using the Liberal's Senate position along with help from the Greens to block its legislation. However, he maintained that Work Choices was "dead, buried, and cremated", although this was likely due to the realisation that Australian voters did not wish to support it.

- **Abbott opposition** to the Gillard minority govt after the 2010 election. With the support of the Greens, the ALP was able to form govt. From this advantageous position, the Greens were able to pressure the govt into passing policy focused on reduced carbon emissions. The policy decided that the price of carbon would transition to a floating tax based on emissions over the next three years, which the Abbott govt forcefully argued as a tax. Prior to the election, Gillard had promised “there will be no carbon tax under a govt I lead”.
- **Shorten opposition** to the Abbott govt with 90 seats following the 2013 election.
- First budget: Abbott govt claimed a general mandate to “repair the budget”. Their first govt included significant cuts to the ABC and education, and introduced a \$7 medicare co-payment. The Shorten Opposition was able to block the Abbott budget with the crossbench in the Senate.

### Balance of power mandate

- **Arguments for:**
- Under section 7, Senators are “directly chosen” by the states, thus they have a democratic mandate.
- “Dual voters” specifically vote for different parties depending on whether they are voting for the House or the Senate, as they rely on Senators having the ability to hold the government to account. Some 15% of voters rely on the Senate’s “house of review” function in this way.
- **Arguments against:**
- Section 7 requires each original state have at least six senators, however section 24 requires the number of senators be in proportion to the population of their state. This undermines the principle of “one vote, one value” as it guarantees malapportionment for small states. Today, there are 12 Senators per each original state, and as a result, a Tasmanian voter has 12.8 times the power of a NSW voter. PM Paul Keating referred to the Senate as an “unrepresentative swill” for this reason.
  - **Senator Brian Harradine:** held the balance of power in the Senate from 1994-1999, however never polled higher than 21.3% of the Tasmanian vote - 0.12% of the overall Australian vote.
- Prior to 2016 reforms, preference deals made it possible for micro parties to win seats without a large number of people voting directly for them.
  - **Ricky Muir,** Motoring Enthusiasts Party, on 0.5% of the primary vote.

### CHAPTER 7: Power of the High Court

#### SYLLABUS: Roles and powers of the High Court of Australia, including sections 71, 72, 73, 75, and 76, with reference to at least one common law decision and at least one constitutional decision.

##### Sections:

- 71: creates HCA
- 72: Outlines appointment by Governor-General, tenure: remuneration cannot be reduced, retires at 70
- 73: Appellate jurisdiction of HCA
- 75: Original jurisdiction of HCA

**Judicial power:** the power to determine rights and duties by applying and interpreting law, usually in order to resolve a dispute; aka the power to adjudicate. A defining characteristics of judicial power is that it is final; unless it is appealed to a higher court, in which that decision is final.

- **Section 71** has three functions: creates the High Court of Australia, allows for the creation of a federal court hierarchy, and permits the cross-vesting of judicial power.
- **The federal court hierarchy:** over time the federal court hierarchy has been created, as Parliament has the power to legislate for new federal courts; separate from the state court hierarchies that pre-date

federation. This power was not used significantly until the 70s; before then, cross vesting had allowed for most federal matters to be dealt with by state & territory courts.

- **Brandy v Human Rights and Equal Opportunities Commission (1995):** HREOC made an order against Brandy. The act that created HREOC allowed for its decisions to be registered under the Federal Court - and hence, the commission could wield judicial power, despite not being a court. The HCA decided in Brandy's favour.
- **COMMON LAW:**
- **Norrie v NSW Registrar of Births, Deaths, and Marriages (2014):** November 2009, Norrie sought to be registered as of "non-specific sex" under the Births, Deaths and Marriages Registration Act 1995 (NSW), which only allows for the classifications of sex as male and female.
- Norrie appealed to NSW Administrative Appeals Tribunal, which rejected her case. She appealed the rejection to the NSW Court of Appeal, which then found in favour of Norrie.
- The NSW registrar then applied for special leave from the federal court to appeal the Court of Appeals' decision. The HCA found in favour of Norrie, that although the act does specify two sexes, it does not have to apply to everyone. This created sex as a new area of common law.
- **CONSTITUTIONAL DECISIONS:**
- Legislative power:
  - Uniform Tax Case
  - Williams 2
- Executive power:
  - Williams 1

## CHAPTER 8: Power to influence law making

### SYLLABUS: Law-making process in Parliament and the courts with reference to the influence of individuals, political parties, and pressure groups.

#### Individuals and the law:

- **Individuals Influencing Parliamentary law making:**
- **Reasons for failure:** usually are not influential as they lack resources, lack access to influential figures such as ministers, and lack organisational support.
- **Williams v Cth. of Australia (2012)**
  - Ronald Williams, father of children attending schools which would receive chaplains under the program, challenged the Constitutionality of the NSCP which the Gillard govt. had been funding without legislation. The HCA found that s.61, which creates the executive, enforces that the Cth. must legislate for programs they wish to finance. The govt was forced to amend the *Financial Management and Accountability Act 1997 (Cth.)* to include the NSCP as a "social service", under the constitutional head of power of section 51 (xxiiiA) "social services power".
  - **Williams v Cth of Australia (2014)**
  - Williams again challenged the NSCP by challenging the constitutionality of this act under the 51 (xxiiiA) social services power. The HCA agreed that the benefits of the service did not actually go to the beneficiary, and thus the amended act was struck down and the parliament found to be ultra vires.
  - **REASONS 4 SUCCESS:** Williams was highly motivated, had the locus standi of a connection to the program, and received donations from fellow parents.

- **Vickie Lee Roach:**
- In 2006, the Howard govt wished to pass the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act*, which would disallow any prisoner serving more than a three year sentence to vote, disenfranchising up to 8,000 Australians. Vickie Lee Roach, an indigenous Australian serving a 5 year sentence after crashing her car into another vehicle, severely injuring another driver, during a police pursuit. A reformed prisoner, she studied and obtained her Master's degree, yet would have been excluded from voting despite exhibiting the obvious mental capacity to make informed decisions in voting.
- With aid from the Human Rights Law Resource Centre, she was able to be a plaintiff in a HC challenge, claiming that the amendment was unconstitutional under sections 7 and 24 (directly chosen by the people).
- **Impact:** the plaintiffs also argued that Aborigines, who compose 22% of the inmate population but 1% of the Aus population, would be disproportionately disenfranchised.
- the HC struck down the amendment.
- **Antony Green:** well respected ABC psephologist/election analyst who was able to aid in Senate voting reforms in *Electoral Amendment Act 2016*.
- 2014 Joint Standing Committee on Electoral Matters was accepting public submissions for voting reforms, particularly following the election of micro parties such as the Motoring Enthusiasts Party's Ricky Muir with less than 1% of the primary vote due to under the table, party preference deals made through group ticket voting.
- Green's submission recommended the abolition of group ticket voting, allowing voters to number party preferences above the line, and introducing Optional Preferential voting below the line. These were accepted and included in the amendment.
- REASONS 4 SUCCESS: Green was widely known and his expert opinion respected, and his submission garnered public support due to his platform on ABC.
- **Independents Influencing Parl. law making:**
  - Influence is particularly strong as crossbenchers in hung parliaments and during committee and debate stages of passage of a bill.
    - **the minority Gillard govt** relied on independents such as Rob Oakeshott and Tony Windsor, who both represented regional electorates. Issues such as fast broadband and water management in the Murray Darling Basin were of high priority to them; and in exchange for their political support, the Gillard govt contributed \$1.7bil to the Murray Darling Basin Plan.
- **Minor parties influence on Parl. law making:**
  - Aligning with major parties: entering a coalition with a major party offers many opportunities to be influential; it gives access to influential decision makers, access to resources that could not be accessed alone, and security of a party's place in the Parliament.
    - **Lib-Nats:** using their close relationship with the Liberal party, the Nationals were able to block the sale of *Graincorp* to American company Archer Daniels Midland in 2014, despite the Liberal party even wishing to pass the act that would enable the sale.
    - Greens offering support to Gillard govt from 2010-2013, were able to pressure her into introducing **Carbon Tax**, even though it was one of her election promises not to do so.

- **Lyle Shelton**: a key figure in the Australian Christian Lobby, has resigned from the political pressure group to prepare for the next election for federal politics. He will run for a seat in the Senate as a member of the Australian Conservatives.
- **Pressure Groups influence on parliamentary lawmaking**
  - **Mackay Conservation Group**: represented by the Environment Defenders Office, challenged decision of Environment Minister Greg Hunt to approve the \$16 billion Adani Carmichael coal project.
  - The HCA set aside the approval when it found Hunt had failed to consider two endangered reptile species from the area, as is required by the Environment Protection and Biodiversity Conservation Act 1999.
  - Although the mine was then reapproved, the group succeeded in drawing attention to the environmental impact and delaying the approval.

## CHAPTER 9: Federalism & the Balance of Powers

### SYLLABUS: Federalism in Australia with reference to: Constitutional powers, Financial Powers, and the changing Balance of Powers in Australia's Federalism.

#### Financial Powers:

- **Section 51 (ii) Taxation Power**: very broadly allows for the raising of taxes. A concurrent power; however states are excluded from customs, bounties, & excises. Since WW2, only the Commonwealth raises an income tax, because of acts passed which prioritises that taxpayers pay Commonwealth income tax over state; and hence no state would wish to impose further income tax on their people (see Uniform Tax Case, page 18). The expansion of federal tax powers over the states' exemplifies a source of change for the federal balance of powers.
- **Section 90 customs, duties, and excise power**: excise powers refer to a tax on goods crossing state borders. Pre-colonialism, taxes were imposed on goods that were traded between colonies. This discouraged intercolonial trade and were a major impediment to the economy of Australia in the 1890s. To prevent this, the Constitution created section 90, which gave authority over excises to the federal parliament. However, this means the Commonwealth can deem almost any certain tax an "excise" and then, as it is an exclusive power, the tax can only be collected by the Commonwealth.
- **Section 96, Grants power**: the Founding Fathers foresaw that the Commonwealth would end up having surplus revenue after using all it needed for federal activities; hence section 90, a mechanism for transferring money from the Cth. to the states was created. Under section 90, the Cth. may pass laws granting money to a state/states. This grant may be untied, meaning that the state may spend the money in any way it chooses - a general purpose payment. Section 96 allows for the creation of tied payments, meaning the Cth. may place conditions for the use of the grant "as it thinks fit" - a specific purpose payment. The ability for the Cth. to attach conditions to payments allows for them to greatly manipulate the spendings of the states.
  - **NSCP**: today is funded as the Cth. gives tied grants to the states which they must use to continue the program.
- **Section 87 "Braddon Blot"**: nicknamed this by those who opposed the suggestion for this section by Edward Braddon, premier for colonial Tasmania during Constitutional Conventions of 1890s. It was intended as a method of transfer of funds to protect the states. It required the Cth. to pay 75% of surplus from "excise" revenue with a time limit of ten years; after which it would be the Cth.'s choice to

continue or discontinue to payment. The Cth. ceased payments as soon as possible, and section 87 has been a spent section since.

- Section 51 (xxix), External Affairs: Tasmanian Dams
- Section 51 (xx), corporations power: gives Cth broad powers over many corporate bodies.
  - **WorkChoices:** used corporations power as a head of power. The bill greatly expanded Cth power as 85% of Australians worked for corporations. As of May 2006, the constitutionality of using such a broad power was challenged, and the HCA found in favour of the Cth.

HCA impact: WorkChoices,

**Commonwealth Grants Commission (role and HFE):** the Cth. grants commission is a statutory authority created by a law passed in Parliament, the *Commonwealth Grants Commission Act 1973*. The commission serves the function of administering the grants from the Commonwealth to the states under section 96. The HFE, the Horizontal Fiscal Equalisation, is the goal of the CGC. It means that all Australians, whether they live in a poor or rich state, can enjoy the same standard of living. The CGC applies a formula to determine the size of a grant each state would need to provide a level of govt. to the citizens equivalent to other states. If not for the HFE goal of the CGC, states such as Tasmania and SA would have had a much lower standard of living than WA during their mining boom.

- It is independent of the govt, distributes surplus cth revenue to states, institution of federalism.

**Vertical Fiscal Imbalance:**

- Describes the disproportionate taxing powers and spending obligations between the states and the Commonwealth. It states:
  - The Cth. collects much more revenue than it needs, and the states spend much more revenue than they collect
- Cth. collects 80% of revenue and contributes to 50% of expenditure; States collect 20% of revenue and contribute to 50% of expenditure.
  - revenue/expenditure imbalance is approximately 30%, in favour of the Commonwealth. To correct this imbalance, 30% of Cth. surplus would have to be transferred to states.

**COAG:**

- **Role:** to initiate, develop, and monitor the implementation of policy that are of national significance, and require cooperation of multiple Australian governments.
- **Composition:** Commonwealth ministers, State Premiers, Chief Ministers of Territories, President of Australian Local Govts Association.
- A forum for leaders to meet and discuss how to coordinate the activities of the two levels. Many activities are financed by the Cth. and administered by the states. It is the peak “ministerial council” of federation. A regular ministerial council is one in which leaders of the same portfolio area (eg health) meet. The regular meetings of COAG can establish new intergovernmental programs and task forces. Recent agendas of these meetings have included anti-terrorist laws, the GST, and the NDIS (National Disability Insurance Scheme).
- **Coordinate federalism:** requires two weak institutions of federalism that carry out tasks independently and do not require much effort to coordinate their relatively autonomous relations.
- **Cooperative federalism:** in which the two levels of government work together to achieve outcomes. It requires two strong institutions of state and Cth. Encouraged particularly in the latter years of the Howard govt and the early years of the Rudd govts.



- **Murray Darling Basin Plan (MDBP):** The govt. wished to pass a unified set of laws to cover the river passing over the four states of NSW, QLD, Vic, and SA. This was first attempted by the Howard govt., and was later achieved by the Rudd govt. of 2007 with the passage of the *Water Act 2008*. As we know from the Tasmanian Dams case, the Cth. couldn't have legislated in this residual area of rivers and the states wouldn't have been able to create unified laws alone.
- **National ice strategy:** COAG cooperated to install 200 rehab clinics around the country.
- **Coercive federalism:** in which the central govt. Possesses and exercises significantly more power than the state governments. Cth. uses its legislative and financial powers to direct state policy in residual areas.
  - **National Competition Policy (NCP):** established during the Keating govt.; was an ambitious policy aimed at achieving wide scale economic reform across all states. Cth. set economic objectives for states and provided incentive payments when objectives were met. These objectives often involved selling state govt. owned assets to the private sector.
- **Turnbull proposition:** in April 2018, Turnbull govt proposed to COAG that the states "levy their own portion of the nation's income tax" in a "push for competitive federalism"; hence returning power over income tax to the states. Turnbull called this "the most fundamental reform to the federation in generations", showing his attempt at combatting fiscal federalism. However state and territory leaders "rejected" this proposal, as they did not wish to "routinely ask Canberra for more money on top of tied grants".

#### Impact of Financial powers:

- **Tied Grants:** a tied grant, or a Specific Purpose Payment (SPP) is a payment with conditions attached "on such terms and conditions as the Parliament sees fit", created by section 96 of the Constitution. When given such a grant, the states must use it for the purpose outlined by the Commonwealth. Due to the frequent revenue shortfalls suffered by state governments, they are often in no position to refuse grants from the Cth., even if it would undermine their residual powers. In recent times, it has been observed that it is difficult to monitor state compliance with the terms of SPPs, so the Cth. has opted to use more incentive payments instead.
  - **NSCP:** the Cth. sought to continue to NSCP after *Williams v Cth 2012/14* using SPPs. WA received \$7.41 million, and could only put it towards funding the program.
- **Incentive Payments:** when the Cth. wishes to achieve national reform, however cannot do so without compliance of the states (ie. it would have to legislate in areas of residual power), funds can be set aside for states who wish to meet the criteria for obtaining them and apply for them. Almost like a reversal of SPP; conditions must be met before money can be received.
  - **Asset Recycling Initiative:** 2014 budget encouraged privatisation of state owned businesses, such as the power grids of NSW and QLD. To qualify for grants, states has to submit infrastructure programs that demonstrated a net positive benefit, enhanced the long term productivity of the economy, and enhanced private sector involvement in funding infrastructure.

**COAG's National Reform Agenda:** a reformed model for Cth. and state financial agreements, regarding payments for the delivery of services by the states. A key feature was the Intergovernmental Agreement on Federal Financial relations which came into effect 1st of January 2009. All these new arrangements brought financial agreements under more COAG control.



- **Federal Financial Relations Act 2009:** gave the Cth. the power to give out grants to states in return for services under National SPPs and National Health Reform Funding. The act also enabled the Treasurer to decide National Partnership Payments (incentive payments). Operated with *COAG Reform Fund Act 2009*, which set aside a pool of Cth. money to be used as SPPs.

Fiscal federalism: a nickname for Australia's federalism, as Cth. financial manipulation of states and the VFI is so great. At 30%, it is the greatest in the world. Seen in:

- **Whitlam govt.:** as this was such a reform-oriented govt., many of its rapid and radical reforms had to be implemented through SPPs.
- **Keating govt.:** pushed forward the NCP using incentive payments.
- **New Tax System (Goods and Services Tax) 2009:** shows recent decrease in usage of tied grants; GST revenues have no ties, and seek to redress (but cannot correct) the VFI.

## CHAPTER 10: Constitutional Change

**SYLLABUS: Formal and informal methods of constitutional change and their impact: referenda (section 128), High Court of Australia decisions, Referral of Powers, and Unchallenged Legislation.**

### Formal Methods:

#### Referenda

- The only method of changing the wording of the Constitution. It is the only formal method as it is put to the people in a democratic vote. Section 128 contains guidance on how to carry out a referendum; it is a strict and difficult process, as the Constitution is superior law. The process was adapted from the Swiss one; with the key difference being that Australian referenda can only be initiated by Parliamentarians.
- **Process:** double majority requires a majority of voters in Australia and a majority of voters in a majority of states. This process is democratic as the people directly vote to approve change, and federal as it protects smaller states from larger ones (\* territories do not count in fed. majority).
  1. A proposal to change the Constitution must pass both houses and receive royal assent
  2. This must be put to the people in a referendum with a YES or NO vote 2-6 months after passage
  3. A double majority (federal=states & democratic=population) must be achieved
  4. Referendum receives Royal Assent.
- **Impact:** change official wording of the Constitution, involves Australians with their democracy
- **Disadvantages:** extremely difficult and expensive process; many fail due to voter apathy, resistance to change, distrust of federal politics
- **Passed referenda:**
  - **Aborigines 1967** removed section 127, stating that "Aboriginal Australians shall not be counted" in the Australian population, and amended section 51 (xxvi) which stated that it is "deemed necessary to make special laws" for Aborigines. This referendum was obviously necessary to create social justice, as seen in the 90.8% YES vote that the referendum achieved; and this could not have been brought about by any High Court case.
- **Failed referenda:**
  - **Republic 1999** sought to redefine Australia as a Constitutional monarchy. Failed as it lacked bipartisan endorsement, and generated a strong NO campaign - meaning public funds had to be made available to those against it. The main group behind the NO campaign was Australians for a Constitutional Monarchy (ACM).

### Informal

## 1. Referral of Powers

- section 51 (xxvii): “the Parliament shall ... have power to make laws for the peace, order, and good governance of the Commonwealth with regards to:” “matters referred to the Parliament of the Commonwealth by the parliament or Parliament of any State or States”. The process by which a state can give the authority over one of their concurrent or exclusive powers to the Commonwealth government. This is done by the passage of a state bill referring the power, and the passage of a commonwealth bill accepting the power.
- Impact: the process of referral of powers keeps the Constitution up-to-date and relevant without changing the wording; which can only be done through the difficult process of the referendum which has only occurred eight times in over a century. However it is somewhat minor as it can only concern the increasing of Commonwealth powers.
- Advantages: decision to refer or not refer power rests entirely with states, keeps Constitutional relevant
- Disadvantages: it is unknown whether states can regain referred powers as this issue has not arisen in the High Court before, can expand Commonwealth powers beyond intentions of the constitution, is not approved by Australian people.
  - **Family law**: 1986-1990, all states except WA referred their power over family law to the Commonwealth Parliament. This meant that national laws could be made in this area and had several effects: divorce was easier, and members of separated families could be recognised across states. S. 51 (xxi) and s. 51 (xxii) gave power to the Cth. over marriage and divorce but not de facto marriages or children of de facto marriages; and with these referrals they obtained the ability to make national laws on these.
  - **Consumer credit law**: during the Global Financial Crisis, that began July 2007, all states handed over their consumer credit regulation powers so that this financial area could be better coordinated on a national scale.
  - **Criminal law**: the majority of criminal law falls under state powers; and the Cth.’s “defence power” of s.51(vi) does not allow for legislation of national anti-terrorism laws. However with the increasing fear of terrorism in the 21st century, the Howard government successfully requested that all states refer some of their criminal law powers so that it could pass the *Security Legislation (Terrorism) Act 2002*.

## 2. Unchallenged legislation

- For a law to be Constitutional, it must reference a specific Constitutional head of power. If it does not do this, and is thus unconstitutional, then it must simply avoid being challenged. A successful yet minor way of changing the Constitution and keeping it up to date. It is technically allowing for the Parliament to act ultra vires, without being checked.
- Why it happens:
  - HCA cannot act proactively, only act ex post facto, so an issue has to arise under the act before it can be brought to court.
  - A person with locus standi/standing must challenge; meaning they must have been impacted by the law. Many who are impacted by the law benefit from it, so do not challenge it.
- **CSIRO** (Cth. Scientific and Industrial Research Organisation): this is the nation’s most significant institution for the development of technology and its application to real life issues. The *Science and Industry Research Act 1949* established it under no head of power, however had never been challenge and is still operational because it is beneficial and very few would have the standing to challenge it.

- **Snowy Mountains Scheme:** this was introduced during WW2 to boost economy and population and provided jobs for thousands of European immigrants. It would build a hydroelectric complex to provide power to a post-WW2 Australia. It was constructed from 1949-1974 and was never challenged despite the act, the *Snowy Mountains Hydro-Electric Power Act 1949* using the irrelevant “defence power” s51 (vi).

### 3. High court cases

- s.76(i) gives the High Court power to interpret the Constitution. The HCA deals with issues of interpreting the meaning of words in the Constitution; only a referendum can change the actual wording. Landmark cases are those that have significant impact on the way the Constitution operates.
- The HC has been a major source of Constitutional change since federation. There are two main areas in which it has altered the Constitution:
  1. **Federal balance of power:** any High Court decision has the potential to alter the way in which the Constitution creates the balance of the financial and legislative powers of the state and federal governments.
  2. **Discovery of implied rights:** a right is a freedom or entitlement to which a citizen has a just claim.
    - Involves reading beyond the words of the Constitution; resultant of an activist interpretation
    - a. Case comes before court: **Australian Capital Television v Commonwealth 1992**, arose because *Political Broadcasts and Political Disclosures Act 1991* limited political advertising during election campaigns
    - b. HC examines meaning of Constitution: as s.7 and s.24 require that the Senate and House be “chosen by the people”, this creates a representative democracy. It was discovered that to uphold this, freedom of political communication would be required and was thus an implied right.
    - c. HC decision: the HC was in agreement with the broadcasting companies and struck down the section in the *Political Broadcasts and Political Disclosures Act 1991* that banned political advertising.
    - d. A new implied right is created and applied in future: the Constitution now contains a new right despite no wording changing.
      - i. **Theophanous v Herald & Weekly Times:** Andrew Theophanous took the newspapers to court for defamation after they questioned his capacity as an MP; the HC ruled in favour of the papers as the article was a form of political communication.

### - Reasons for great impact:

- As the constitution creates the federal balance of powers, the HCA’s ability to interpret it also gives it the ability to alter the federal balance of power.
  - **Uniform Tax Case, 1942:** Section 51 (ii) contains the taxation power; it gives both federal and state levels of government the power to raise revenue through taxation. During world war 2, the Commonwealth passed a series of 4 Acts creating the “federal income tax” and giving it precedence over all state tax; in this was, the Commonwealth was able to obtain almost total autonomy over income tax and made the states dependent on grants that would be awarded to them consistent with the

amount of money they would have received through the collection of their own income tax. With both uniform tax cases of 1942 and 1957, the acts were upheld by the HCA, as the power was in theory still concurrent; despite the fact that in practice, the people would not tolerate both a state and federal income tax and the States would be unable to introduce it.

- **Landmark cases:**

- **Koowarta 1982:** The government of Queensland passed an Act preventing Aborigines from purchasing a lease of land in North of Queensland; this was overruled by the HCA under the Commonwealth *Racial Discrimination Act 1975*, as this Act was a part of an international convention. The Commonwealth, which had disputed the Queensland legislation, argued that its law prevailed as the external affairs power of section 51 (xxix) served as a head of power covering all instances of international treaties.

- Was a precedent for Tasmanian dams.

- **Tasmanian Dams:** Commonwealth of Australia & Anor v the State of Tasmania & Ors (1983).

- The Tasmanian government passed the *Gordon River Hydroelectric Power Development Act 1982* to begin the damming of the Franklin River to create a source of hydro-electricity to sell to the public of Tasmania. This was all within residual powers.

- Nationwide protests lead the Commonwealth to intervene in an area of residual power. The Constitution did not give the Commonwealth any power to legislate in the area of dam construction.

- The Commonwealth maintained that it had the duty to prevent damage to national heritage; the Franklin dam had been included in UNESCO's world heritage list in 1982. The Commonwealth passed the *World Heritage Properties Conservation Act 1983*. This act was said to be under the "external affairs" head of power, section 51 (xxix). It was decided that this act brought the Franklin river under Commonwealth powers as it was included in the World Heritage List and "external affairs" power of s.51 (xxix) gave the Commonwealth power over this kind of international treaty.

- This decision interpreted "external affairs" to concern any area under an international treaty.

- IMPACT: Leader of the Opposition at the time, Andrew Peacock, said this was the "end of federalism". This case enabled the continuously expanding Commonwealth powers and now gave the Commonwealth the power to legislate in areas of residual power that fell under and international treaty.

- **WorkChoices:** NSW v The Commonwealth

- NSW, WA, SA, QLD, VIC, and the Australian Workers Union all challenged the Constitutional validity the *Workplace Relations Amendment (Work Choices) Act 2005 (Cth.)*. This act would remove all pre-existing industrial law, including those passed under residual power.

- The HCA ruled in favour of the Commonwealth under the corporations power of section 51 (xx).