

iLearn Legal Studies: Unit 3 Area of Study 1 'Parliament and the citizen'

Podcast 1: Principles of the Australian parliamentary system

1. Representative government
2. Responsible government
3. The separation of power
4. The structure of the State and Commonwealth Parliaments
5. The roles played by the Crown, Upper and Lower Houses

Welcome to *iLearn* Legal Studies, a podcasting and online program designed to help you gain a better understanding of the key concepts in Legal Studies, and practise and revise your Legal Studies examination skills – anytime, anywhere.

The areas of key knowledge from Unit 3, Area of Study 1, 'Parliament and the citizen', are covered over two podcasts. If you want to read the 'podnotes' while you're listening, or if you'd like to test yourself on this Area of Study, just go to iLearn.net.au and follow the links.

This Area of Study, 'Parliament and the Citizen', it's made up of a number of key topics, and these all need to be covered in Unit 3. I'll begin in this podcast by outlining the principles of the Australian parliamentary system. Then in the second podcast I'll move onto the legislative process – all the steps that a bill has to go through, in order to get through Parliament and turn into a law. Then I'll discuss the role played by a formal law reform body – just how is it we know that a law needs to change? And also how individuals and groups can influence changes in the law. Finally, the last key topic covers the strengths and weaknesses of law-making through Parliament – what's good about the process that's in place, what's bad about it, that sort of thing.

Before we get started, I'll briefly outline what else we've got in store for you throughout this podcast. There'll be questions and answers along the way. And I'll also be giving you handy exam tips and pointers – just the things to help you get the edge. You might also be asked to jot down key dot points, or make a summary of what you've heard, so grab a pen and notebook. And a clock or a stopwatch.

So, make yourself comfortable, with no distractions. Let's have some fun as we begin with the first of our key topics: 'Principles of the Australian parliamentary system'.

Principles of the Australian parliamentary system

This is a broad topic, it covers a lot of material, so what I've done is break it down into easy-to-manage sections. I'll start by explaining the principles – or features – of representative and responsible government, and then I'll move on to the principle of separation of power. After that, we'll look together at the structure of state and

Commonwealth parliaments and finally, we'll finish up with the roles played by the Crown and the two Houses of Parliament.

First of all, let's consider the definition of 'Parliament'. What actually is it? Well, it's the supreme – or *sovereign* – law-maker. In other words, Parliament is the highest law-making authority. It has the power to make new laws. It can amend or change existing laws; it can gather up a lot of common law and put it into a single Act ('codifying'), like in criminal law; or it can combine or *consolidate* Acts or legislation – like the Road Safety Acts. And it can also repeal or abolish outdated laws – whether those outdated laws be contained in Acts, or in decisions made by courts.

All of these powers are found in the Constitution.

So, Parliament plays a very important role – it has the ultimate power and authority when it comes to making laws.

1. Representative government

Let's move now to the first principle of the Australian parliamentary system which is *representative government*. What does this mean?

As we live in a *democracy*, people over the age of 18 are given the opportunity to vote for who they want to *represent* them in Parliament, which, as we remember, is the supreme law-maker. Each Member of Parliament – especially those who make up the government – must represent the views, values, concerns and demands of the people. In a democracy like we have here in Australia, elections are held. This is the way the people appoint the political party they think should form government. If the government doesn't do what it's supposed to – effectively represent the people's wishes – or it doesn't perform to the people's satisfaction, then there's something the people can do about it. They can *dismiss* the government at the next election.

In a representative government, the people can have a lot of power over what the government does. They can put pressure on the government to change a law, so that the law says what the people think it should say. Take a moment to think about some examples. What about uniform gun laws. Or mandatory reporting of child abuse. Or how about the 40-kilometre-per-hour speed zone near your school.

Before I go on to responsible government, open your notebook and draw up a table with two columns. Put 'representative government' and 'responsible government' at the top of the columns. Under the heading for representative government, write down a couple of key points.

2. Responsible government

Now let's look at the second feature of the Australian parliamentary system which is *responsible government*.

According to the Westminster system, on which our parliamentary system is based, the principle of responsible government relies strongly on the idea of *ministerial responsibility*. Ministers are to be held responsible – or accountable – to Parliament

and the people for their actions and how they go about administering their *portfolio* (or government department). If ministers mislead Parliament, if they act improperly, or if they abuse their power, then they may be forced to resign. This happened back in 1997, when two ministers had to resign over what was known as the ‘travel rorts affair’.

As you can see, the concepts of *responsible* government and *representative* government are quite different. Take a moment to fill in the other column in your notebook.

Finish off that second column by writing down what you consider is the key benefit of responsible government. You should end up with something like ‘Responsible government ensures that MPs in power are responsible and remain accountable at all times.’

Now we’ve covered representative and responsible government, let’s consider some possible exam questions. There may be something along the lines of: ‘explain or describe what is meant by the term “responsible government” or “representative government”’. Or, there might be a question like: ‘Describe the differences between the two key features of the Australian parliamentary system.’

Here’s an exam-style question for you to answer in your notebook: ‘Outline the differences between representative and responsible government.’ This question is worth 4 marks – in an exam, expect to see 10 to 15 lines left for you to write the answer. Also, one handy tip for revision purposes only: write down the question too.

A few pointers. Before answering any exam question, always look carefully at the marking allocation. In this instance, 4 marks equals 4 points, so that means 2 points for representative government and 2 points for responsible government.

Have a go at assessing your answer. To get 2 marks for the part about representative government, you would need to include something along the lines of: 1. ‘A Member of Parliament must represent the views, values, concerns and demands of the people’ and 2. ‘If the government does not effectively represent the people’s wishes, or if it does not perform to the people’s satisfaction, the people can dismiss the government at election time.’

To get the full 2 marks for the responsible government part, you would need to mention: 1. ‘The principle of responsible government relies strongly on ministerial responsibility’ or maybe ‘Ministers are held to be responsible, or accountable, to Parliament for their portfolio or government department’ and 2. ‘If ministers act improperly or mislead Parliament, they may be forced to resign.’

If you’re happy with your answer, stay tuned for the next part of this podcast. Or, if you feel you could do with a bit more revision on this area, either listen to the podcast again, or go and have a look at your textbook, or The Leading Edge Study Guide for VCE Units 3 & 4 Legal Studies.

3. The separation of power

Now it's time to look at the third feature of the Australian parliamentary system, and this is the *principle of separation of power*. What this means is this: the Commonwealth Constitution separates powers between the three branches of government – the legislature, the executive and the judiciary.

Let's briefly have a look at each of the three branches in turn.

The *legislative* power is exercised by Parliament – it's Parliament that makes laws, by debating, considering, amending and – finally – *making* legislation by passing bills through both Houses, after which the bill becomes a law when it receives Royal Assent by the Crown.

The *executive* power is exercised by Cabinet – Cabinet's made up of Members of Parliament who've been given responsibility for a particular portfolio or government department.

The last branch is the *judicial* function, and this power is performed by the federal courts. It's the High Court that has authority to work out if a parliament has made a law outside its powers. It can also interpret the Constitution and resolve disputes involving the Commonwealth. A good example of a dispute involving the Commonwealth and a state is the *Franklin Dam* case. And if you're after a good example of a dispute between the Commonwealth and an individual, you need go no further than *Mabo*.

Before I go on, it's important to understand the *relationship* between the three branches of government (remember, that's the legislature, the executive and the judiciary). The *government* – through its ministers and through its departments – is pretty much responsible for *legislative direction*. Laws need to be made in response to government policy, community needs or international obligation, and then debated in *Parliament*. In some cases, when these laws are applied they lead to a dispute, and then it's the role of the *courts* to determine these disputes independently, without fear or favour.

So what is the separation of power all about? Why separate these three branches?

Powers are separated to ensure that power is not *centralised*, that it's not in the hands of just one person or one body – *separating* powers reduces the chances of *abuse* of powers. We've already looked at the concepts of representative and responsible government, which ensure that there are checks and balances in place, so that the government is accountable to Parliament and to the people. The separation of powers is more of the same – it allows for *stability of government*, as it's not wise to give one body all the power. Creating a separation of power means that each of these bodies can operate *independently*.

However, when you're looking at the separation of power, do remember that the lines between the three powers are often blurred. Think about the Lower House – the government in the Lower House performs both the executive function *and* the legislative function. The government through its numbers can also override or limit

any decision made by a court – we saw this happen after the *Mabo* decision, with the creation of the Native Title Tribunal.

That's about it for the principle of the separation of power. Let's have a look at a sample exam question. You might come across one which says 'the separation of power is the cornerstone of our parliamentary system. Explain.' The question is worth 2 marks. Have a go at answering this one now, in your notebook. Keep an eye on the time you take – you should only spend 4 minutes. And don't just write dot points – it's best to practise answering in full sentences, because that's what you'll have to do in the exam.

Let's look at what you needed to come up with for full marks. You need to mention and *briefly* explain the three branches of government – the legislature, the executive and the judiciary – and you need to give a reason for the separation of power – 'providing for independence', or 'allowing for a system of checks and balances between the three branches of government'. Something like that should give you the full marks.

Now we've covered three of the five features of the Australian parliamentary system. Before I go on to the fourth and fifth, I'm going to fire a quick question at you: what are the first three features of the Australian parliamentary system that I've mentioned so far? Representative government, responsible government and the separation of power.

4. The structure of the State and Commonwealth Parliaments

Now let's focus on the fourth feature, which is the *structure* of the state and Commonwealth parliaments.

Our parliamentary system is modelled on the Westminster system, and so our parliaments are *bicameral*. This means they consist of two Houses, and the Crown. There are some exceptions, though. The parliaments of Queensland, the Northern Territory and the Australian Capital Territory are *unicameral*, meaning they have only one House each.

Having the Crown as part of our parliamentary system doesn't mean we have the Queen dropping in regularly. Our Parliaments have a *representative* of the Crown – called the Governor-General in the Federal Parliament (that's Michael Jeffery at the moment), and the Governor in the state and territory parliaments (in Victoria, our Governor is David de Kretser). These people are appointed by the government of the day, and their appointment was approved by the Queen.

Let's look at the two Houses, and to simplify things, we'll just talk about the Victorian Parliament and the Commonwealth Parliament. Both have two Houses – remember, this is known as bicameral.

In the Commonwealth Parliament, the Upper House is called the Senate. In the Victorian Parliament, the Upper House is the Legislative Council.

The Senate was designed to be a ‘States’ House’, and this means it has equal representation from all states. It has 76 senators: 12 senators from each state and, since 1975, two senators from each territory. The population of the state or territory makes no difference to the number of senators – Tasmania has 12 senators, and so does New South Wales. The Upper House is also a House of Review, meaning that it reviews and checks legislation from the Lower House.

State senators serve six-year terms in the Commonwealth Parliament, and territory senators serve three-year terms. They’re elected using the proportional representation system of voting.

The Victorian Parliament has 40 representatives in its Upper House, and the state is divided into eight regions: five metropolitan and three regional. Each region elects five members of the Legislative Council, and they’re elected using the preferential system of voting.

Onto the Lower House. The Lower House of the Commonwealth Parliament is called the House of Representatives or the People’s House. In Victoria, it’s called the Legislative Assembly.

The political party that holds the majority becomes the government, and in the Commonwealth the head of government is called the Prime Minister. The House of Representatives has 150 representatives, each representing one of Australia’s 150 single-member electorates. Elections occur every three years and the system used to vote members into office is the preferential system.

The Legislative Assembly in Victoria has a similar structure to its federal counterpart. The head of government is called the Premier and each representative of the Legislative Assembly represents one of Victoria’s 88 electoral districts; each of these contains roughly an equal number of voters. Elections occur every four years and again, the preferential system is the one used.

I’ll give you a hint as to how to remember the names of the Victorian Houses of Parliament. Try using the mnemonic ‘UCLA’. U stands for Upper and C stands for Council; L stands for Lower and A stands for Assembly.

That’s a lot of information to absorb, so you may like to revise further – by listening to the podcast again or having a look at your textbook or The Leading Edge Study Guide for VCE Units 3 & 4 Legal Studies.

I’m not going to give you a question on this section. Instead, go to the online activities – there you’ll find questions that illustrate how much you’ve learned, or maybe they’ll even challenge your knowledge further.

You're almost through the principles of the Australian parliamentary system, so let's do another quick recap.

Can you remember the four principles so far? What was the first one? Representative government. What about the next one? This should be pretty easy, as representative government also goes with ... responsible government. The third one was the separation of power. Don't forget, this one covers three areas: the legislature, the executive and the judiciary. Can you remember the fourth principle? The structure of state and Commonwealth parliaments.

Maybe you'd like to take a break. It might be a good idea to clear your mind by going for a walk, or getting some other exercise. So if you want to, stop the podcast now and we will pick it up later.

5. The roles played by the Crown, Upper and Lower Houses

The fifth and last principle of the Australian parliamentary system is the roles played by the Crown and the Houses of Parliament.

Let's look at the Crown first. It is important to remember that, in theory, the Crown has a number of legislative powers. However, in practice the Crown will exercise its constitutional powers only on the advice of its government and, in particular, the Cabinet and the head of government.

The Crown performs a number of functions. First, the Governor-General is our *Head of State* and Head of our Parliamentary System.

The Crown provides *Royal Assent*, in the Queen's name, to proposed laws passed by both Houses of Parliament.

The Crown also has certain powers called *reserve*, or *discretionary* powers. These aren't actually written down anywhere, not formally, anyway. They're based on convention. An example is denying Royal Assent – theoretically, the Crown can use its reserve power to deny Royal Assent. It's never actually done it, but in theory, it could.

The Crown can summon Parliament. It can also *dissolve* Parliament, effectively dismissing the elected government, meaning an election has to take place. This has only occurred once in our history – when Governor-General John Kerr dismissed Gough Whitlam's government in 1975, an event that still leads to heated debate, even 30 years later.

Then there are the *non-legislative* functions of the Crown. For example, the Crown may grant pardons, or appoint and 'swear in' Cabinet ministers and judges, High Court Justices, for example. These are all done on the advice of the Prime Minister and Cabinet. The Governor-General also acts as the Commander-in-Chief of the Australian armed services. And the Governor-General has ceremonial duties, representing Australia as a figurehead, things like speaking at the opening of Parliament, or at the 2000 Sydney Olympics.

Let's do a quick summary and see if you can remember the functions of the Crown. If you've got the transcript in front of you, turn it over. Make sure you have something to write on.

Here's a clue. The role of the Crown can be broken down into five basic areas. See if you can name them – come up with a key word for each. Don't spend too much time, just take a minute and see how you go. Pause the podcast and jot them down.

Did you mention Head of State, Royal Assent, reserve powers, dissolve Parliament, non-legislative functions? When using the podnotes, try highlighting or underlining key terms or phrases, and that'll help you to remember.

Now let's have a look at the role played by the two Houses of Parliament.

We know that Australian parliaments are mostly bicameral, meaning two houses. Let's begin with the Upper House. Basically, it has the same functions as the Lower House except it can't introduce money bills. This is because the government is formed in the Lower House, so that's the House that has control of the national budget.

The two main functions of the Upper House – in theory – are (1) it acts as the *States' House* – it's supposed to represent the interest of each state, thus giving equal representation across Australia regardless of the size of the state, or its population. The reality, of course, is that members of the Upper House usually vote along party lines.

(2) the Upper House acts as a *House of Review* – it's supposed to review all the legislation that comes before it from the Lower House.

Let's now look at the role of the Lower House. Historically, the Lower House has always been known as the 'People's House'. The government is formed in this House.

The first function of the Lower House is to represent the interests of the people. A good example was when the Commonwealth Parliament followed the will of the Australian people and gave Indonesia financial aid after the Tsunami in 2005.

The second function of the Lower House is introducing and changing laws. The majority of laws (up to 95 per cent of them, in fact) originate with this House. The Lower House also acts as a house of debate – I'll be talking about this process later in the podcast.

Obviously, government initiatives need money to go ahead, so the third function of the Lower House is to control the budget. Setting policy or legislative directions is one thing, but there needs to be money available to pay for them.

Parliament simply doesn't have time to make all laws in all areas, so it delegates and checks legislation. This is the fourth function of the Lower House. An example? Parliament gives powers to a number of government departments and statutory authorities to make rules and regulations. Can you think of any? How about the Education Department. The Tax Department. Or Melbourne Water.

And finally, the fifth function. The Lower House is able to *investigate* issues of importance. This can be done through the committee process, or by referring matters to law reform bodies like the Victorian Law Reform Commission.

Let's spend a little more time on the Upper House and evaluate its role in Parliament. Before I start, can you remember the two main functions of the Upper House? If you said it acts as the States' House and the House of Review, then you're correct.

Here's a question for you. What do you think happens when the government controls the Upper House? You may have heard of the term 'rubber stamp'. This means that the government is able to pass legislation without any hindrance.

Is this what democracy is all about? What's the point of a House of Review if it doesn't do any reviewing? Where are the checks and balances?

However, this is what's going on right now. Since July 2005, the Coalition government has had control of the Upper House – only the second time since 1945 that a government has held the majority in both Houses of the Commonwealth Parliament. Think of the Telstra sell-off and the industrial relations changes – these may not have taken place if the government didn't have control of the Upper House.

The long and short of it is that the government is able to pass its legislative program without the effective review that the Senate would normally provide. Do you think that's right? Some people argue that the government has been elected and therefore has a mandate from the people. What do you think?

So, that's what happens when the *government* controls both Houses. But what do you think happens when the *opposition* party controls the Upper House. When this happens, the opposition can frustrate the government's ability to make laws. This is sometimes known as a *hostile house*. An example of this happened in 1975, when the Whitlam Labor government was refused its budget bills. This meant that it couldn't pay for its expenses. Imagine if you worked for the government at the time and you weren't paid your salary because it ran out of money!

Make sure you remember the terms 'rubber stamp' and 'hostile house'.

We're still evaluating the role of the Upper House in Parliament. What do you think happens when the government doesn't have the majority in the Upper House, and a minor party like the Democrats or the Greens – or independents like Brian Harradine – hold the *balance of power*? This is when minority parties hold a number of votes – 8 to 10, say – and these votes decide the final majority.

In effect, these minority parties can *force a review of proposed legislation* in the Committee Stage (I'll be talking more about this stage later). This is where the bill is referred to a Senate, Select or Standing Committee. The committee can examine the bill, take submissions, make recommendations or make or suggest amendments. The bill can even be rejected. The government is forced to negotiate with these minority parties in order to get its legislation passed. A good example to illustrate this is when

the Goods and Services Tax – the GST – was introduced. The Liberal government had to negotiate with the Democrats in the Senate, and the Democrats were able to win a number of concessions from the government, such as no GST on educational goods and fresh fish.

That's probably enough on evaluating the Upper House. In the next podcast in the series, we'll look at the legislative process of passing a bill through Parliament.

Before I sign off I'd like to do a quick recap of what you have done so far. In this podcast we looked at the principles of the Australian parliamentary system. Can you name them? We started with representative government and then moved to responsible government. We also looked at the separation of power between the executive, the legislature and the judiciary. Then we covered the structure of state and Commonwealth parliaments, and we finished with the fifth and last principle – the roles played by the Crown and the two Houses of Parliament.