

Legislation:

- **Commonwealth of Australia Constitution Act 2001 (Cth)**
- **Constitution Act 1975 (Vic)**
- **Australia Act 1986 (Cth)**
- **Judiciary Act 1903 (Cth)**

STEP 1: What is the question actually asking for?

STEP 2: Which government is the question referring to?

1. Commonwealth; or
2. State

STEP 3: Which branch of government are we dealing with?

- Tip: usually it will be legislation and so parliamentary powers.
 1. Executive: administer laws (Topic 2)
 2. Legislature/parliament: make laws (Topic 3)
 3. Judiciary: interprets law (Topic 5)

STEP 4: Sources of power/procedures- what the government can and cannot do in these circumstances.

- **Powers:**

1. CTH

a. SECTION 51 HEADS OF POWER

SECTION 51 HEADS OF POWER: 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:

- i. trade and commerce with other countries, and among the States;
- ii. taxation; but so as not to discriminate between States or parts of States;
- iii. bounties on the production or export of goods, but so that such bounties shall be uniform throughout the Commonwealth;
- iv. borrowing money on the public credit of the Commonwealth;
- v. postal, telegraphic, telephonic, and other like services;
- vi. the naval and military defence of the Commonwealth and of the several States, and the control of the forces to execute and maintain the laws of the Commonwealth;
- vii. lighthouses, lightships, beacons and buoys;
- viii. astronomical and meteorological observations;
- ix. quarantine;
- x. fisheries in Australian waters beyond territorial limits;
- xi. census and statistics;
- xii. currency, coinage, and legal tender;
- xiii. banking, other than State banking; also State banking extending beyond the limits of the State concerned, the incorporation of banks, and the issue of paper money;
- xiv. insurance, other than State insurance; also State insurance extending beyond the limits of the State concerned;
- xv. weights and measures;
- xvi. bills of exchange and promissory notes;
- xvii. bankruptcy and insolvency;
- xviii. copyrights, patents of inventions and designs, and trademarks;
- xix. naturalization and aliens;
- xx. foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth;
- xxi. marriage;
- xxii. divorce and matrimonial causes; and in relation thereto, parental rights, and the custody and guardianship of infants;
- xxiii. invalid and old-age pensions;
- xxiiiA. the provision of maternity allowances, widows' pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services (but not so as to authorize any form of civil conscription), benefits to students and family allowances;
- xxiv. the service and execution throughout the Commonwealth of the civil and criminal process and the judgments of the courts of the States;
- xxv. the recognition throughout the Commonwealth of the laws, the public Acts and records, and the judicial proceedings of the States;
- xxvi. the people of any race, ~~other than the aboriginal race in any State~~, for whom it is deemed necessary to make special laws;
- xxvii. immigration and emigration;
- xxviii. the influx of criminals;
- xxix. external affairs;
- xxx. the relations of the Commonwealth with the islands of the Pacific;
- xxxi. the acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws;
- xxxii. the control of railways with respect to transport for the naval and military purposes of the Commonwealth;
- xxxiii. the acquisition, with the consent of a State, of any railways of the State on terms arranged between the Commonwealth and the State;
- xxxiv. railway construction and extension in any State with the consent of that State;
- xxxv. conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State;
- xxxvi. matters in respect of which this Constitution makes provision until the Parliament otherwise provides;
- xxxvii. matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law;
- xxxviii. the exercise within the Commonwealth, at the request or with the concurrence of the Parliaments of all the States directly concerned, of any power which can at the establishment of this Constitution be exercised only by the Parliament of the United Kingdom or by the Federal Council of Australasia;
- xxxix. matters incidental to the execution of any power vested by this Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the Federal Judicature, or in any department or officer of the Commonwealth.

b. Legislature s1 and s51

- Senate: 'upper house' s7 and s122
 - s7
 - ♦ There are senators elected for each state
 - ♦ Senators are 'directly chosen by the people'
 - ♦ There are 6 senators for each state (note Parliament can increase/decrease no. for each state so equal representation is maintained; in 1983 increased to 12)
 - ♦ Senators are chosen for a fixed 6-year term (half the senate comes up for election every 3 years)
 - Double dissolution?: s13
 - Method of dividing senators into long/short term double dissolution?
 - Casual vacancies: s15
 - Representation of the territories in the senate: s122
 - *Western Australia v Commonwealth* (1975) (Territorial Senators Case No. 1)
 - ♦ Once time is factored in, the conflict between s7 and s122 is resolved
 - ♦ **s7 represents the composition of the senate at the commencement of federation and s122 allows for the prospective possibility of territory representation as the territories evolve**
 - ♦ HC held that s122 was not to be interpreted subject to s7 which states that the Senate "shall be composed of senators for each State, *directly chosen by the people of the State*".
 - *Queensland v Commonwealth* (Second Territory Senators Case) (1977)
 - ♦ Confirmed the first senators case
- HOR: 'lower house' s24
 - s24
 - ♦ Members are 'chosen by the people'
 - ♦ HOR must consist of as nearly as practicable twice as many members as the Senate
 - ♦ Guaranteed there are 5 members in HOR from each original state
 - ♦ Members of HOR have max term 3 years but may be dissolved earlier
 - s28: members have a maximum term of 3 years and can be dissolved sooner by GG
 - *Western Australia v Commonwealth*
 - *Queensland v Commonwealth*
- Disagreement between houses= deadlock: s57
- Parliament control over government finance
 - s51(ii) and s51(iv): provides that the Parliament may make laws with respect to taxation and 'borrowing money on the public credit of the Commonwealth'
 - s51(ii): further stipulates that a law with respect to taxation must not discriminate between states or parts of states
 - s51(xx): foreign corporations, and trading or financial corporations formed within the limits of the Cth
 - s96: financial assistance to the states (grants power T7)
- Qualifications
 - **HOR: s163** *Cth Electoral Act 1918* (Cth); requirements to be a member:
 1. Must be 18 years
 2. Must be an Australian citizen
 3. Must be an elector entitled to vote at House of Reps election; or a
 4. Qualified to become such an elector
 - **Senate:** same as HOR
 - *Sykes*: Teacher and dual citizenship case; Cleary were disqualified as he held an office of profit for the purposes, and the other two had dual citizenship s44(iv); Must have taken "all reasonable steps to divest yourself of conflicting allegiance"
 - *Sue v Hill*: Dual citizenship; was disqualified
 - *Re Wood*: Dual citizenship
 - *Re Webster*: Webster was managing director, secretary, manager and one of nine shareholders of a company that regularly sold goods to a Cth gvt; Webster not disqualified, no continuing agreement, merely series of separate agreements between the company and the department
 - *Re Day*: Proposed for Cth to lease a property owned by him; Day was disqualified from being chosen or sitting as a Senator
 - Disqualification: s44
 - i. Allegiance to a foreign power
 - ii. Attainted by treason or convicted and under sentence for an offence punishable by jail for one year or more
 - iii. Undischarged bankrupt