

AU Domestic Public Law – Four Key Principles:

1. Representative Democracy
2. Responsible Government
3. Separation of Powers
4. Federalism

State Constitution – State has plenary power to amend Consti without referendum

Convention – where you have a power, you also have the responsibility to control that power, to show restraint.

1) Representative Democracy

- a. Vs Direct Democracy in UK. People vote directly on issues and are asked directly to vote on Brexit

Source of legitimacy for both parliament and the government (assurance that the power will not be abused)

- **Exists at both Federal and State level.**
- Accountability to the people = Centrality of elections:
 - Compulsory voting (elections and referendums)
 - Senate voting: Proportional (150)
 - House of Reps voting: Preferential (76)

Laws are created by our representative government – elected by the people of the country.

Plebiscite – (like the same sex plebiscite) is non-binding vote vs referendum is a binding vote.

- Ss7 and 24 of the Constitution – directly chosen by the people.
- S44(iv) any person who hold any office of profit under the Crown can't be a senator or member of HOR. *However*, does not apply to the office of any Queen's ministers of state for the Cth.
- S 62 Federal Executive Council to advise the GG
- S 63 provisions referring to the GG in Council shall be construed as referring to the GG acting with the advice of the Federal Executive Council.
- S64 GG appoints officers for Federal Executive Council

Parliamentary Sovereignty

Parliament has the power to make or unmake any law, and no person or institution is permitted to override or set aside the law of Parliament. The human rights frameworks may be seen as a restriction on sovereignty

2) Responsible Government

Requires that the executive act in the best interests of the house and the people and thus plays a central role in Australian Constitutionalism by translating the effect of RD into effective government. It is '*the ultimate guarantee of justice and individual rights*' (Saunders).

There are two key dimensions:

1. **Accountability:** The govt is drawn from the P and relies on the continuing support of the House of Reps:
 - Ministers are accountable to the P during office, both individually and collectively, through processes such as Q time and parliamentary committees;
 - Members of govt are also held accountable by the people at elections (ss 7 and 24)
2. **Dichotomy of the Executive (Ministers and the Crown):** The principle effect of RG is that executive power is to be exercised in accordance with the will of the people. This is upheld through constitutional conventions:
 - The ministry must maintain the confidence of the lower house of reps
 - Collective (as a whole) and individual (their department) responsibility to parliament
 - All of the GG's powers are by convention executed by council of the Ministry. GG acts on the advice of the ministry by constitutional convention.
 - Courts do not enforce constitutional convention.

3) Separation of Powers

Fundamental principle that care must be taken to ensure that a situation does not arise '*where the whole power of one department is exercised by the same hands which possess the whole power of another department*' (Montesquieu).

Dixon J:

- A law confiding authority to the Executive, must be clearly defined. Can't be vague.

Legislative can give power to the executive.

VICTORIAN STEVEDORING V DIGNAN (1931)

The delegation of power to the GG was attacked as an attempt to grant the Executive a portion of the legislative power vested in the P by the C - which would be inconsistent with the separation of powers.