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MID-TERM TIPS
NO additional research and refer only to course materials. Consider focus questions, class discussion questions, and debates

1. A clear, logically structured approach to the question that is clear and straightforward in expression
2. The definition of key concepts or principles relevant to the question
3. Accuracy in the way you state relevant law and facts
4. Persuasive use of examples and supporting evidence, engaging with authorities from the readings
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7. Answer responds directly to the question

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1. INTRODUCTION AND THEMES

1.1 WHAT IS PUBLIC LAW?

Public law is the area of law concerned with the **scope, content + limits of official powers of the State** that is informed by the principle that there is no such thing as unlimited official power (French CJ)

"If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls would be necessary"; the government must be able to control the governed + control itself (James Madison)

→ Technique of governing + establish an organised political body → both of which power + manner of exercise is legitimated

→ Rules, principles, maxims, customs, usages, manners that condition, sustain + regulate the act of governing (Loughlin)

→ Private law which governs relationships between individuals or businesses; public law does it for individuals + the State

→ Through the separation of powers, rule of law (limits on power) + accountability

It is essentially about power; who holds power, what kind of power, what limits, how are they held accountable + by who

1.2 THE CONSTITUTION

Definition: A foundational document constraining a set of rules that establishes political institutions, confers powers + prescribes limits of those powers

- Establishes the basic powers + limits of a government + relationship between government and citizens
- Sets limits on the government + arms of powers

Symbolism of the Constitution

The Constitution symbolises a monarchical government where the King is represented by the Governor-General as the head of state in Australia

- No mention of Prime Minister or the Cabinet (decision-making body of executive) but representatives of the King possess powers
- Governor-General/King has little scope to act independently from the executive branch and act on advice of the Prime Minister + other ministers
- **[59]** King can disallow laws made by federal parliament – though this is regarded as OBSOLETE

Adam Tomkins

The three key functions of the Constitution are:

1. Establish inter-relationships + institutions
2. Explain place + role of people
3. Express political values to a particular society

Public law functions to regulate the government in the following ways:

1. Provides for institutions that exercise political power
2. Holds the institutions accountable

Why are Constitutions Obeyed?

A constitutional order rests heavily on legal validity + depends on whether the authority issuing the rule had legal power

granted by a legal rule to do so

- Eg. Local council inspector orders you to cut down a tree → contested by asking if the inspector had the power to issue an order → depends on terms of the order the inspector was acting upon
- If the order was valid, then the next step is to ask whether the council had the power to issue the order
- Scrutinised through the Local Government Act
- If the grant of power is still clear, then the next step would be to ask whether the Parliament had power under the Constitution to enact the provisions of the Government Act
- Question of legal validity is always a question of **power** through the chain of command that flows through successive acts of authorisation/empowerment
- Adopted concepts of federalism, separation of powers + judicial review

Enactment of the Constitution			
Constitutional Convention 1 Proposed draft	Constitutional Convention 1 Refined draft	Colonial Referendums	Draft submitted to British Parliament + passed with Royal Assent

1.2.1 Written & Unwritten Constitutions	
Australian Constitutional law is both written AND unwritten → each state also has their own written constitution with statute. Each state in Australia has a written constitution supplemented by conventions + common law.	
Written Documents	**Unwritten Documents**
Legally valid documents that must be obeyed 1. **Commonwealth of Australia Constitution Act 1900** 2. **Statute of Westminster 1931** 3. **Australia Act 1986 (Cth)**	Customs or beliefs of how government should be conducted 1. Common law 2. Unwritten conventions 3. Conventional practice

1.2.2 Elements of the Constitution	
Every system embodies BOTH but Australia strongly adheres to political at the federal level, and less at the State level	
Political Constitutionalism	**Legal Constitutionalism**
Disputes about power + matters of policy resolved by political process in Parliament	Resolution of matters by independent judges
Political constitutions that exercise political power are held accountable through political means through political institutions The government is held accountable by the Parliament through debates, answering questions, participating in investigations etc. Those performing scrutiny should have a high degree of independence from the government to be effective Government is dependent on the support of the majority (democracy) → subject to media scrutiny + opposition and thus will not generally do things they cannot get away with	Held accountable by the law + court room If one dislikes something the government is doing, they can sue the government in court or seek judicial review To be effective, there is the same criteria of seriousness in scrutiny + independence Access may be a hurdle as suing is expensive + access to courts is limited to those well-resourced No inherent discrimination in favour of majority unlike in the political model However, judges are not democratically elected nor

since they will lose power Constitution ensure government can "get away with less" This model relies on rigour/vigour of the political process The more open, transparent, participatory, representative + deliberative politics are – the better the model However, consider it is majority-based which means it does not account for minorities	representative eg. old white males

Whether the political process or courts have the final say eg. for abortion

Adam Tonkins

Example → Government to reform abortion law so that abortions can only be performed in the first trimester

- Legislature rejects the proposal + passes law which permits a woman to have an abortion at any time
- HCA then declare abortions go against the fundamental right to life and thus is unlawful
- In English law **it is the legislature (Parliament) that has the last word (Sovereignty of Parliament)**

1.2.3 Flexibility & Rigidity

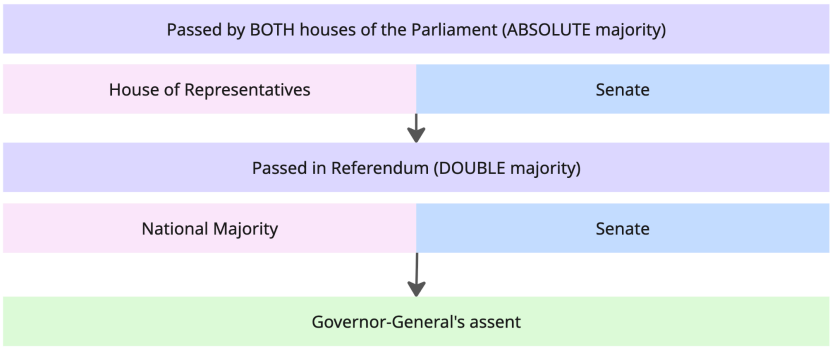
It is both flexible AND rigid, although most are part flexible → can be amended by statute

Flexible Constitutions	Rigid Constitutions
Laws that can be amended by Parliament powers with ease	Fundamental laws with a different + onerous process that requires a referendum or supermajority

1.2.4 Amending the Constitution

S 128 is the only legal method to alter the Australian Constitution

1. Passed by absolute majority in BOTH houses → if one house blocks it twice within a 3 month gap, the proposal can still proceed if the same House passes it again as the Governor-General can allow it go to referendum
2. Referendum must be held 2 to 6 months after passing Parliament where all eligible voters vote
3. To succeed, the proposal must get national majority of all voters (over 50%) AND majority of voters in a majority of states (at least 4 out of 6 states)
4. If the change affects a specific State, then that state must also approve by majority
5. After referendum passes, Governor-General gives formal assent to finalise it



- Australians have very limited constitutional awareness, with only 40% able to name both Houses of Parliament + 47% did not know Australia has a written constitution
- "Ignorance cannot provide a foundation for popular legitimacy of the Australian Constitution"

HOW TO USE FOR EXAM

While the Constitution was formally approved in referendums, its democratic legitimacy is undermined by low participation, exclusion of major groups, and the modern public's widespread ignorance, making claims of popular sovereignty tenuous.

3.3.2 Arguments For Popular Sovereignty

Helen Irving

Not Measured By Numbers

Popular legitimacy is not about numerical majorities → historical legitimacy cannot be measured solely by votes as most democratic processes are carried out by statistical minorities

- "What matters is less the statistics, and more the mechanism"

Popular Sovereignty Reflected in Public Participation

What made Federation popular was not the numbers but the participatory processes

- Public debate, petitions, press engagement, scrutiny of official processes
- These mechanisms acknowledged public influence + framed the people as agents of constitutional change
- "The people" is a shifting concept that is more a mechanism that a literal count of heads

Symbolism of Women's Participation

Although women could not vote in most colonies, their votes in SA / WA was politically meaningful

- Women's engagement encouraged activism, increased political awareness + signalled shift in political culture
- "Women were able to think of themselves, in many cases for the first time, as political"

HOW TO USE FOR EXAM

Irving argues that the legitimacy of Federation lay not in sheer voter numbers but in the **participatory mechanisms** that engaged the public—including women's emerging political voice—making the process 'popular' in spirit if not in statistics.

FOCUS QUESTIONS (3B)

What were the main reasons that the Australian colonies decided to join together in a federation?

For economic + political coordination as colonies wanted to eliminate intercolonial tariffs to create a uniform trade policy; there was also emerging Australia nationalism with shared interests in managing defence, international representation, immigration + transport

What were some of the main obstacles to federation?

Smaller states feared domination by populous states like NSW + Victoria with disagreements on how to distribute revenue from customs and taxation. There was a also a lack of public support with the first referendum failing (especially in NSW)

Trade, customs, tariffs, fear of common enemies, opposition to influx of cheap labour without strong immigration control

Different colonies → fear of loss of individual identity relative to larger states; fear of subsiding smaller states

Walker v NSW[35]

Criminal law has general application where it applies equally to Aboriginal people and customary Aboriginal criminal law is not recognised as a parallel or alternative legal system

- HCA rejected the argument that Aboriginals are exempt from Cth / State laws unless they consent
- Mabo does not support the recognition of Aboriginal criminal law → this is extinguished by UNIFORM criminal legislation
- "The proposition that those laws could not apply to particular inhabitants must be rejected" (Mason J)
- This case confirms that Indigenous sovereignty claims do not limit the legislative authority of the Commonwealth or States over Aboriginal people
- While Mabo recognised native title, Walker firmly rejected its extension to criminal law or self-governance claims

Wik Peoples v QLD

Native title is recognised and enforceable under AU law ONLY because common law accepts its consistency with legal principles → but it does NOT amount to recognition of a separate or sovereign Indigi legal system

- AU legal system does not recognise dual sovereignty or a parallel Indigi legal system; only enforceable when recognised by AU law
- Native title is legitimate within Aboriginal society independent of common law but its legal enforceability depends solely on its acceptance by AU courts
- "No dual system of law is created by Mabo" + "The source of enforceability of native title is only as an applicable law or as statute provides" (Kirby J)
- This case reinforces that native title recognition under Mabo DOES NOT equate to recognition Indigi sovereignty
- Any Indigi legal rights must be grounded in AU legal system to be enforceable

Yorta Yorta v VIC

Native title rights can only be recognised if they have been CONTINUALLY observed from a traditional legal system that has been uninterrupted since British sovereignty; if traditional law or custom ceases to be acknowledged, native title rights also cease to exist

- Upon British acquisition of sovereignty, no new Indigenous rights could be created by Aboriginal normative systems — only pre-sovereignty rights survived, and only if continuously maintained
- HCA rejected plural sovereignty: there can be no parallel legal system post-1788, and native title rights must be rooted in a normative system with continuous vitality since colonisation
- Adopted a POSITIVIST view of sovereignty
- If an Indigenous society ceased to observe and acknowledge its traditional laws, reviving those laws later does not revive native title under Australian law
- "There could thereafter be no parallel law-making system... the only rights or interests... which will be recognised... are those that find their origin in pre-sovereignty law and custom." — Gummow & Hayne JJ @ 444
- Firmly rejected claims that Indigenous legal systems could survive or evolve after colonisation outside the authority of the Crown.

[35] *Walker v New South Wales* (1994) 182 CLR 45.

- Imposes a heavy evidentiary burden on claimants to prove **continuous** observance of pre-sovereignty traditional law, making successful native title claims much harder.

Hart

Sovereignty is based on a **rule of recognition** – a social practice by officials identifying valid law rather than on coercive demand

Jonas

Strict continuity test in Yorta Yorta undermines Indigi rights + stems from a flawed legacy inherited from Mabo

Native Title Report[36]

Reaffirmed the above authors in that recognition is limited to pre-sovereignty customs where any post-sovereignty evolution risks being treated as an unrecognisable system

- Sovereignty NOT ACCEPTED by Aboriginals as they increasingly support principles of SELF-DETERMINATION

HOW TO USE FOR EXAM

The recognition of native title in Australian law is strictly limited to rights and interests derived from pre-sovereign Indigenous laws and customs, meaning that any post-sovereignty cultural evolution is legally suspect and risks exclusion—reflecting a colonial concept of sovereignty that denies the legitimacy of continuing Indigenous law-making authority.

4.1.1 Key Cases Regarding Indigenous Sovereignty

Mabo v QLD

Overview

HCA acknowledged that prior to British colonisation, Aboriginals possessed complex legal systems + enduring entitlements to land under TRADITIONAL law which must now be recognised as foundational to Australia's legal landscape → challenging doctrine of terra nullius

- Terra nullius means that there was nobody on the land before it was settled
- Recognition of native title but WITHIN Crown Sovereignty
- Native title stems from traditional law and custom but does so without challenging the Crown's absolute legal authority
- Attempts to assert sovereignty was rejected
- HCA EXPLICITLY avoided ruling on the validity of British sovereignty or recognising Indigenous sovereignty – Brennan J hinted a pre-existing systems but left the settlement doctrine intact

Recognition of Native Title

Mabo overturned the doctrine of terra nullius, acknowledging that Indigenous Australians had a pre-existing legal system + connection to land

- HCA found that the Meriam people held "possession, occupation, use and enjoyment" of the land "against the whole world" @ 76

[36] Aboriginal and Torres Strait Islander Social Justice Commissioner, Native Title Report 2002 (Human Rights and Equal Opportunity Commission, 2003)

- Established native title in AU common law for the FIRST time → leading to recognition of rights over 3.4million km of land by 2023
- "Whatever the justification advanced in earlier days for refusing to recognize the rights and interests in land of the indigenous inhabitants of settled colonies, an unjust and discriminatory doctrine of that kind can no longer be accepted." (Brennan J @ 42)

Common Law Foundation + Radical Title

Court held that the Crown acquired radical title (not beneficial ownership) upon sovereignty, meaning that EXISTING Indigenous land rights survived unless lawfully extinguished

- Restated Blackstone's principles more appropriately for AU by aligning **'settled' colony rules with 'conquered' colony rules** regarding Indigenous land rights
- Radical title is a legal concept used by the HCA to describe the kind of title that the Crown acquired; which was ultimate ownership but not automatic possession or beneficial use of all land
- The Crown did not get full ownership of all land but rather radical title where native title continued to exist
- Native title can only be lost if extinguished by clear government action like a lease or sale
- HCA held that the Crown acquired only a radical title to land which does not displace Indigenous traditional ownership, allowing native title to survive unless lawfully extinguished

Rejection of Terra Nullius

Court rejected the idea that Australia was legally or factually uninhabited where Brennan J held that treating AU as a terra nullius is a "fiction" inconsistent with historical fact and legal principle @ 36-43

- "The facts as we know them today do not fit the 'absence of law' or 'barbarian' theory underpinning the colonial reception of the common law of England" (Brennan J @ 39)
- The theory that the indigenous inhabitants of a 'settled' colony had no proprietary interest in the land thus depended on a discriminatory denigration of indigenous inhabitants, their social organization and customs." (Brennan J @ 39)

Constitutional Implications

While sovereignty remains with the Crown, Mabo recognised that Indigenous law could persist after colonisation so there are gaps in the constitutional space for Indigenous authority

- **Love v Cth** later drew on Mabo to argue that Indigenous people form part of the sovereign people of AU

Legal Evolution from Milirrpum

Earlier decision in Milirrpum accepted existence of Indigenous law but denied legal recognition under AU law

- Mabo repudiated this denial by criticising the doctrinal conclusion of that case while adopting its descriptive findings (that Indigi law existed)

Judicial Conservatism + Limits

HCA did not overturn classification of AU as a settled colony but avoided a deeper reckoning with the sovereignty doctrine

- **Confined recognition of Indigi law to "rights and interests in the land"** – Brennan J @ 57
- Not extended to broader jurisdiction or political sovereignty

Criticism

		for the State that includes that Division and at elections of Members of the House of Representatives for that Division
	(7)	A person is not entitled to enrolment if:
	(a)	Within meaning of the Migration Act, the holder of a temporary visa,
	(b)	An unlawful non-citizen under that Act
	(8)	A person is not entitled to have their name on any Roll or to vote if:
	(a)	Unsound mind, incapable of understanding nature & significance of voting
	(b)	Has been convicted of treason & not pardoned
	(8AA)	Person serving 3 years or longer imprisonment not entitled to vote
Section 94	Sets out the conditions under which an Australian elector who moves overseas can apply to remain on the electoral roll and vote as an *eligible overseas elector*, provided they intend to return within six years, with rules on application timing, extensions, and circumstances that end eligibility.	
Section 94A	This section allows a person who is no longer residing in Australia and not currently enrolled to apply for enrolment if they intend to return within six years, with enrolment linked to their last address, next of kin, birthplace, or closest connection—and if approved, they are treated as an *eligible overseas elector*.	
Section 116	Prohibits the Commonwealth from enacting laws that establish a religion, impose religious observance, or prohibit free religious exercise — and implicitly protects the right to have no religion.	
Section 245	(1)	It shall be the duty of every elector to vote at each election Penalty for electors who fail to vote & cannot give valid / sufficient reason

Judd v McKeon

Socialist's refusal to vote due to political conflict with the parties being is not, in itself, a "valid and sufficient reason" to excuse non-attendance under compulsory voting laws, though Higgins J suggested a conscientious objection on political grounds **might** be arguable.

Adelaide Company of Jehovah's Witnesses v Cth

Section 116 protects both freedom of religion and the right to have no religion, but does not invalidate general laws (like wartime regulations) that incidentally burden religious practice.

Rowe v Electoral Commissioner

Distinguished between "compulsory voting" and "compulsory attendance," noting that the system preserves voter secrecy and only compels attendance and ballot submission, not actual selection of a candidate

Holmdahl

Compulsory voting laws under s 245 of the Commonwealth Electoral Act are constitutionally valid and do not infringe implied constitutional rights; the challenge to their validity was unanimously rejected

7. IMPLIED RIGHT TO VOTE

Many think that ss 7 and 24, which require that members of Parliament be directly chosen by the people, **might support an implied right to vote.**

- Since it was held in Pearson that s 41 does not confer an express right to vote

- After all, these sections require a 'choice by 'the people, which, as s 7 makes clear, is to be made by electors 'voting' at the ballot box.
- HCA support the idea that universal adult suffrage is a constitutional requirement under those sections
- Reflects modern understanding of representative democracy, even if not explicitly stated

✦ CONSTITUTION SECTION FINDER → VOTING	
Section 7	**Requires that Senators be directly chosen by the people of the States**, supporting the principle of representative democracy.
Section 24	**Requires that Members of the House of Representatives be directly chosen by the people** forming the basis for the franchise and electoral participation.

McGinty v WA

While the Court rejected the idea that representative democracy guarantees voting equality, several judges (Toohey, Gaudron, Gummow) supported the view that ss 7 and 24 imply a **universal adult franchise**.

Langer v Cth

McHugh J accepted that universal adult suffrage is now a constitutional requirement, implied by the phrase "chosen by the people" in ss 7 and 24.

2006 INVALID AMENDMENTS

In 2006, there were amendments which added unconstitutional provisions restricting voting which were held to be invalid.

7.1 ROACH V ELECTORAL COMMISSIONER	
Facts	1 Before 2006, only prisoners serving 3 years or more were disqualified from voting 2 After the 2006 amendment, **all prisoners** regardless of sentence or offence were disqualified
Issue	Whether the blanket ban on all prisoners voting in federal elections under **s 93(8AA) of the Commonwealth Electoral Act 1918 (Cth)** was **constitutionally valid**, given the implied right to vote under **ss 7 and 24 of the Constitution**
Obiter	• 7 & 24 imply a constitutional protection of right to vote as part of representative democracy. • Parliament **can limit voting rights,** but **only for a substantial and proportionate reason** • Reasons must be consistent with maintaining representative government. • A blanket ban on all prisoners, regardless of offence seriousness or sentence length • Was too broad and disconnected from civic responsibility. • Short-term imprisonment does not always reflect serious criminality • The 2006 amendment lacked a rational connection to the purpose of disenfranchisement.
Outcome	2006 law was invalid & previous rule disqualifying prisoners serving 3 years or more was restored
Ratio	Held that **ss 7 and 24 of the Constitution imply a right to vote**, and that **any legislative restriction must be proportionate and justified by a substantial reason**, making a **blanket ban on prisoner voting unconstitutional**

7.2 ROWE V ELECTORAL COMMISSIONER	
Facts	1 2006 Amendment removed grace period for new enrolments after election writs issued 2 Also shortened the period for transfers of enrolment to just three working days 3 Before 2006, voters had 7 days after writs were issued to enrol or update enrolment 4 Rowe turned 18 three days before the writs → unable to vote in the Federal Election

	5 Challenged constitutional validity of the amendments
Issue	**Whether the 2006 amendments to the Commonwealth Electoral Act** (which shortened or removed the grace period for enrolment/transfer after election writs were issued) were invalid because they breached the implied constitutional protection of the right to vote under **ss 7 and 24** of the Constitution.
Obiter	• **Voting is constitutionally protected** by ss 7 & 24 as "directly chosen by the people." • Any law restricting that must be **proportionate** to a legitimate purpose. • **The 2006 law disproportionately restricted the right to vote** • Detriment (excluding tens of thousands of late enrolments) outweighed the benefit (minor speculative protection against fraud). • **Enrolment deadlines were procedural**, not a substantive disqualification • But their effect on voting rights was **significant**. • **No compelling evidence of electoral fraud** was presented to justify the restriction.
Minority Reasoning	• The plaintiffs weren't excluded by the law but by their own inaction. • Parliament is entitled to set administrative deadlines, and • Those who miss them are not "disqualified"—they simply failed to meet requirements. • Changes were reasonably appropriate & adapted to improve electoral roll's integrity & timeliness. • The law did not infringe the requirement of being "chosen by the people."
Outcome	Held amendments to be invalid as they disproportionately burdened the constitutional requirement for Parliament to be directly chosen by the period → excluding thousands of voters from enrolling or updating their enrolment which is not justified by speculations of electoral fraud
Ratio	**Laws that diminish the practical ability of qualified citizens to vote will be invalid if the restriction is disproportionate to a legitimate electoral purpose and inconsistent with the constitutional mandate that Parliament be directly chosen by the people.**

7.3 PERSPECTIVES OF THE IMPLIED RIGHT TO VOTE	
Graeme Orr Somewhat supportive	Described the majority's reasoning as a **"ratchet"** that **protects long-standing democratic practices** (like universal suffrage and enrolment grace periods) from being undermined, but noted it is **conservative in effect**, as it **shields existing rights without extending them** to new groups.
Anne Twomey Criticism	Criticised the decision as undermining parliamentary sovereignty, arguing it allowed legislation to effectively entrench constitutional meaning without a referendum, and supported the minority's view that voters excluded themselves by not complying with reasonable legal obligations.

8. STATE CONSTITUTIONS

Australian States each have their own Constitution Act, since originally established as British colonies; with **broad powers** that are expressly / impliedly limited by the Commonwealth Constitution [106-109]

- Unlike Commonwealth Parliament which has enumerated /specific powers, States can legislate on any subject unless constitutionally restricted
- [106-109] Preserve State constitutions but subject them to the Commonwealth Constitution
- [90, 114, 117, 92] Express limitations such as States not being able to tax Cth property or discriminate against other residents of other states
- [51(xxxi)] Implies limits on State laws in joint schemes involving property acquisition without just terms
- Early State Constitutions were neither British nor local (Twomey)
- Based on Westminster principles of representative & responsible government
- These constitutions regulate **not only Parliament** but also the **judiciary & administration of justice** in each colony

✦ CONSTITUTION SECTION FINDER → STATE CONSTITUTIONS	
Section 106	Preserves State constitutions
Section 107	Preserves State legislative powers
Section 108	Preserved State laws

Flexibility of State Constitutions

They are not rigid & are ordinary statutes that can generally be amended by regular parliamentary process. This makes them more flexible than the Commonwealth COnstitution which required a whole referendum under [128]

8.1 KEY LEGISLATION	
New South Wales Act 1823 (Imp)	First Legislative Council established; Governor had full control.
Australian Constitutions Act (No 1) 1842 (Imp)	Introduced partial elections with property qualifications.
Australian Constitutions Act (No 2) 1850 (Imp)	Allowed colonial parliaments to draft and amend their own constitutions.
Constitution Act 1855 (NSW) / (Vic)	Established responsible government and bicameral legislatures; required UK assent.
Other Colonies' Constitutions (1855–1890)	SA, Tas, Qld and WA adopted similar models with elected lower houses.
Constitution Acts Amendment Act 1899 (WA)	Consolidated constitutional provisions in WA.
Australia Acts 1986 (Cth and UK)	Removed remaining **Imperial controls** over State constitutions.

8.2 KEY CASES	
Rutledge v Victoria (2013)	s 9 of the Australia Acts removed UK restrictions on State constitutions, confirming State autonomy in amending their constitutions.
Nationwide News Pty Ltd v Wills (1992)	Federal implications like representative government limit both Commonwealth and State powers.
Kirk v Industrial Court of NSW (2010)	States cannot remove judicial review for jurisdictional error from Supreme Courts—protected by Ch III of the Constitution
North AU Aboriginal Justice Agency Ltd v NT (2015)	State laws must not impair the institutional integrity of State courts
Magennis v Commonwealth (1949)	If a State law relies on unconstitutional Commonwealth action, it too can be invalid
ICM Agriculture v Commonwealth (2009)	s 106 + covering cl 5 may prevent States from participating in joint schemes that breach s 51(xxxi) (just terms)

8.3 MAIN LIMITS ON STATE POWER		
Exclusive Commonwealth Powers	**Express Constitutional Limits**	**Implied Constitutional Limits**

States can't levy duties of excise, or legislate in some areas like currency, military eg. s 90	States can't tax Commonwealth property, can't discriminate between residents eg. 114 & 117	From judicial power in Ch III Federalism Representative government
Possible Emerging Limit: Interlocking legislative schemes involving Commonwealth and States may engage the just terms clause in s 51(xxxi), even though it only directly binds the Commonwealth.		

Dicey

Dicey argues that no Parliament can bind a future Parliament as even efforts to pass laws to bind successors often fail → even important Acts such as the Union with Scotland or Ireland could not limit future Parliaments

- Flexibility is essential to parliamentary sovereignty as the law cannot be frozen or locked forever because the future Parliament might need to change it in public interest
- The inability to bind future parliaments, imposed as a limit on the 'sovereignty' of the current parliament at any given time, is conceived of as necessary to ensure the unlimited sovereignty' of future parliaments.

8.4 THREE CONCEPTIONS OF PARLIAMENTARY SOVEREIGNTY (WINTERTON)		
Unlimited Continuing Supremacy	**Manner & Form Limitation Only**	**Full Self-Redefining Supremacy**
Parliament cannot bind its successors at all — not in what laws they make (substance) and not in how they make them (procedure).	Parliament **can change how laws are made** (i.e. impose "manner and form" requirements, such as requiring a referendum or special majority), but **cannot limit the content** of what laws a future Parliament may pass.	Parliament is so supreme that it can **even redefine itself**, by **imposing both procedural and substantive limits** on future Parliaments.
Each new Parliament has **completely unlimited power**, including to repeal or amend any previous law.	Parliament can bind **how** (procedure) but not **what** (substance) future Parliaments can legislate.	This view allows Parliament to **entrench laws**, such that future Parliaments **must** follow special procedures or **cannot legislate** on certain topics at all.
Can be argued that **procedural (manner & form) limitations do not violate parliamentary sovereignty**, because they still retain unlimited power over subject matter—it simply must follow special procedures for certain topics.		

Procedural Restrictions

- Entrenchment does not substantively restrict the content of laws, but procedurally restricts how they can be amended (e.g. by requiring a referendum or special majority).
- Trethowan (1931) established that such procedural entrenchments are valid.
- The Colonial Laws Validity Act 1865 (Imp) originally provided the authority to enforce manner and form, but this was replaced by s 6 of the Australia Act 1986 (Cth).

For a manner and form clause to be effective, it is assumed (though not clearly ruled) that it must be doubly entrenched:

- The procedure must apply to both the constitutional provision and the entrenching mechanism itself.

Alternative Procedures

State Parliaments can expand, not just restrict, lawmaking methods (e.g. deadlock-breaking mechanisms). These include: