

## **CONSTITUTIONAL LAW**

### **TOPICS:**

1. Key Concepts
2. The Executive
3. The Judiciary
4. The legislative branch I – Characterisation and corporations
5. The legislative branch II – Race and Immigration
6. The legislative branch III – Defence and External Affairs
7. The legislative branch IV – Taxes, Trade and Grants
8. The States I
9. The States II
10. Rights

### **Revision Note 1 – Key Concepts**

#### **The Australian Constitution**

- Set out in s9 of the Commonwealth of Australia Constitution Act 1900.
- This Act, and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the courts, judges, and people of every State and of every part of the Commonwealth.
- Constitutions determine the rules and principles that apply to a system of government.
- Constitutions bind government institutions. They have superiority over statutes. Judges interpret and apply constitutions.
- In 1931 Australia gained legislative independence. Australia has complete control over its own law making.

#### **The Constitution.**

This Constitution is divided as follows:—

Chapter I.	The Parliament:
Part I.	General:
Part II.	The Senate:
Part III.	The House of Representatives:
Part IV.	Both Houses of the Parliament:
Part V.	Powers of the Parliament:
Chapter II.	The Executive Government:
Chapter III.	The Judicature:
Chapter IV.	Finance and Trade:
Chapter V.	The States:
Chapter VI.	New States:
Chapter VII.	Miscellaneous:
Chapter VIII.	Alteration of the Constitution.
The Schedule.	

## **PARLIAMENT**

- The legislative power of the Commonwealth is vested in a Federal Parliament, consisting of the Queen, a Senate, and a House of Representatives.
- The Governor-General may appoint such times for holding the sessions of the Parliament as he thinks fit.
- There shall be a session of the Parliament once at least in every year.
- The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth.
- No Parliament can make a law that can bind a future Parliament.
- Federal Parliament has to prove that the constitution gives them that law.

### **Representatives and responsible government**

- Representative government = government by the people through their elected representatives.
- Responsible government = the executive arm of government is responsible to Parliament for its actions.
- The House of Representatives shall be composed of members directly chosen by the people of the Commonwealth.
- S7 Constitution: The Senate shall be composed of senators for each State, directly chosen by the people of the State, voting, until the Parliament otherwise provides, as one electorate.
- S24 Constitution: The House of Representatives shall be composed of members directly chosen by the people of the Commonwealth, and the number of such members shall be, as nearly as practicable, twice the number of the senators.
- S64 Constitution: (responsible government) – requires Ministers to be members of Parliament. The Governor-General may appoint officers to administer such departments of State of the Commonwealth as the Governor-General in Council may establish.

### **Separation of Powers**

- Powers of government divided by separation of powers – legislative, executive and judicial functions.
1. The legislative function – the making of new law, and the alteration or repeal of existing law.
  2. The executive or administrative function – general and detailed carrying on of government according to law, including the framing of policy and the choice of the manner in which the law may be made to render the policy possible.
  3. The judicial function – the interpretation of law and its application by rule or discretion to the facts of the particular case.
- Checks and balances.

- Ensures that one strand of government does not abuse its power, by infringing on another strand of government, by holding multiple powers and exceeding their authority.
- The Australian Constitution: Chapter I – Parliament, Chapter II – The Executive Government, Chapter III – The Judicature.

High Court in **R v Kirby; Ex Parte Boilermakers' Society of Australia (Boilermakers case)** --  
 - the institutions that exercise the judicial power of the Commonwealth must be kept strictly separate from other governmental institutions.

### **Federalism**

- Dividing power between a central government. Eg States. Means there should be separation of power.
- S51 Constitution: Legislative powers of the Parliament (list of powers that Parliament can legislate on).
- S52 Constitution: Exclusive powers of the Parliament.