

## Topic 1: Overview of the Constitution

### Core Values of the Constitution

#### Federalism

- Federalism is reflected in the Commonwealth 'bi-cameral' system of government, with legislative power being held by two houses of parliament, the house of representatives and the Senate.
- The distribution of legislative powers in the federal compact is in large measure described in Pt V of Ch I of the Constitution.

#### Exclusive Powers

-> Held by one level of government (Commonwealth or State) only  
-> S 52 lists the exclusive powers of the Commonwealth/Federal Parliament

#### Concurrent Powers

-> Held by both levels of government  
-> S 51  
*Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129* confirmed the legislative supremacy of the Commonwealth.

#### Enumerated Powers

-> Powers explicitly conferred on one level of government in the Constitution  
-> S 51 and s52

#### Residual Powers

-> Powers not explicitly conferred by 'left over; to one level of government  
Areas of government not listed in ss 51 & 52

### Separation of Power

|                                                        |                                                                                                                                               |                                                                                                                                                                                                                                   |
|--------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>The Legislative (Power to make and change laws)</b> | The Australian Parliament, which consists of the Monarch (represented by the Governor-General), the Senate, and the House of Representatives. | Outlined in Chapter I of the Australian Constitution.                                                                                                                                                                             |
| <b>The Executive (Government)</b>                      | The Governor-General, the Prime Minister, government ministers, and departments/agencies                                                      | Outlined in Chapter II of the Australian Constitution.<br>-> defined under s 61<br>-> Sections 62 and 63 of the Constitution that there is a 'Federal Executive Council', made up of Ministers and chosen by the Governor General |
| <b>The Judiciary</b>                                   | The Judiciary is made up of the High Court of Australia and other federal courts                                                              | Outlined in Chapter III of the Australian Constitution                                                                                                                                                                            |

## **Representative and Responsible Government:**

### Representative Government - 7 and S 24 of the Australian Constitution

**S 7** - 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.

**S 24** - 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.

### Responsible Government

Executive Ministers are held accountable for their actions via a set of conventions, which together constitute the idea of 'responsible government'

- Those who hold Ministerial positions are responsible to Parliament, for their actions
- Ministers must enjoy the 'confidence' (or support) of Parliament
  - If a minister loses the confidence of Parliament, they should resign (it is a convention)
- Parliament can question Ministers about their actions and the way in which they are managing their department.

Sections 7 and 24 of the Constitution, read in context, require the members of the Senate and the House of Representatives to be directly chosen at periodic elections by the people of the States and of the Commonwealth respectively. This requirement embraces all that is necessary to effectuate the free election of representatives at periodic elections. What is involved in the people directly choosing their representatives at periodic elections, however, can be understood only by reference to the system of representative and responsible government to which ss 7 and 24 and other sections of the Constitution give effect.

*Lange v Australian Broadcasting Corporation (1997) 189 CLR 520*

## **Parliamentary Sovereignty**

In Australia this concept is taken to mean that parliament has the right to make, amend or repeal any law—within the limits of the Constitution. Parliament cannot make a law that a future parliament cannot change, and its decisions (generally) take priority over the executive and judicial arms of government.

*The remedy for a parliamentary wrong, if one has been committed, must be sought from Parliament, and cannot be gained from the courts - Lord Wilbyforce in **British Railways Board v Pickin [1974] AC 765***

## **Rule of Law**

The rule of law is the principle that a nation should be governed by law and that all individuals, including government officials and lawmakers themselves, are subject to the law and equally accountable before it. A person cannot be punished unless a court has found a breach of the law.

## Topic 2: Constitutional Interpretation

### General principles of interpretation

- **Broad/purposive interpretation:** *Amalgamated Society of Engineers v Adelaide Steamship Co. Ltd [1920] HCA 54*
- **History as an aid (not a constraint):** Reference to constitutional convention debates helps identify contemporary meaning of language, but cannot impose unchangeable meanings; Kirby J in *Grain Pool*
- **Stare decisis limited:** High Court not strictly bound by its own prior constitutional decisions, but will not depart from them 'without very good cause' — *Alqudsi v R*
- **Text remains paramount:** Framers' intentions do not control; constitutional words are 'set free from the framers' intentions' — Kirby J in *Grain Pool*

### Key Cases

#### *Grain Pool of WA v Commonwealth (2000) 292 CLR 479*

##### Facts:

- The Commonwealth had enacted the Plant Variety Rights Act 1987 (Cth) and later the Plant Breeder's Rights Act 1994 (Cth). These Acts created exclusive rights in new plant varieties, similar to intellectual property rights.
- Grain pool argued that the Act was beyond the legislative power of the Commonwealth under s 51(xvii) of the Constitution, which allows parliament to legislate with respect to "copyrights, patents of inventions and designs and trade marks"
- Grain Pool claimed plant varieties were not covered by these categories so the Commonwealth had no power to legislate.

##### Issues (legal issue):

Whether the federal government had the power under the constitution to pass laws on patents regarding new plants

Section 51(xvii) authorises the Cth Parliament to make laws with respect to:

'Copyrights, patents of inventions and designs, and trade marks'

Does this section give the Commonwealth Parliament the authority to regulate rights over new breeds of plants?

##### Court decision:

- **The High Court upheld the validity of the Legislation**
- The Court held that s 51(xviii) should not be read narrowly by fixing its meaning to the precise forms of intellectual property known in 1900. Instead, the constitutional power extends to new forms of intellectual property that are sufficiently connected with patents, inventions, designs, and related intellectual property concepts. Plant breeders' rights fell within that constitutional power.