



Department of
Education

Year 12 ATAR Politics and Law (ATPAL)

Unit 3: Role and Powers of the Judiciary



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Year 12 Politics and Law (ATPAL) – Unit Three

Role and Powers of the Judiciary

This unit of work should be attempted over two to three weeks. The syllabus points covered are:

- Roles and powers of the High Court of Australia including ss 71, 72, 73, 75, 76 with reference to at least one common law decision and at least one constitutional decision
- Federalism in Australia with reference to
 - Change in the balance of power since federation, with reference to
 - High Court constitutional interpretation, including external affairs s51(xxix), corporations power s51(xx), and taxation powers
 - Formal and informal methods of constitutional change and their impact
 - High Court decisions
- Lawmaking process in parliament and the courts with reference to the influence of
 - Individuals
 - Political parties
 - Pressure groups
- At least one contemporary (last three years) issue relating to legal power

By the end of this unit of work you should have:

- completed a set of notes on the role and powers of the Judiciary
- revised the sections of the Constitution
- explained the links between the three arms of government in Australia
- completed a concept map on the power of the High Court
- researched the Doctrine of Precedent
- completed a retrieval chart on significant cases of the High Court
- made notes on the Federal Court of Australia
- planned and attempted practice essays on the High Court.

The unit of work is organised in a series of tasks.

Recommended text

The recommended text, which used in many schools and for this unit of work, is *Power, Accountability & Rights: WACE Politics & Law ATAR Units 3 & 4* by Stephen King. It is available from PLEAWA. If you have another text you can use it instead.

Task One

1. Define the following terms using examples:

a) Rule of Law -

b) Natural Justice -

c) Appeal -

d) Judiciary -

e) Jurisdiction -

f) Judgement -

g) Precedent -

h) Judicial Independence -

i) Common Law -

j) Appellant -

k) Respondent -

2. Differentiate between:
 a) Statute and common law -

- b) Civil and criminal law -

3. Revision – sections of the Constitution. Go to the Parliament of Australia website (<https://www.aph.gov.au/>) and open a copy of the Constitution of Australia ([https://www.aph.gov.au/About Parliament/Senate/Powers_practice_n_procedures/Constitution.aspx](https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Constitution.aspx)). Explain the sections below. These appear in Chapter III-The Judicature. Include information on their significance:

- a) s71 -

- b) s72 -

c) s73 -

d) s75 -

e) s76 -

f) s80 -

4. Use the diagrams below to explain the links between the three arms of government as they exist in Australia:

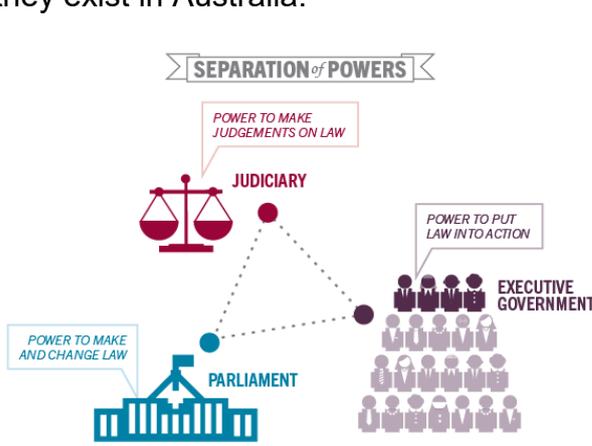


Image: [Separation of Powers, PEO](#)

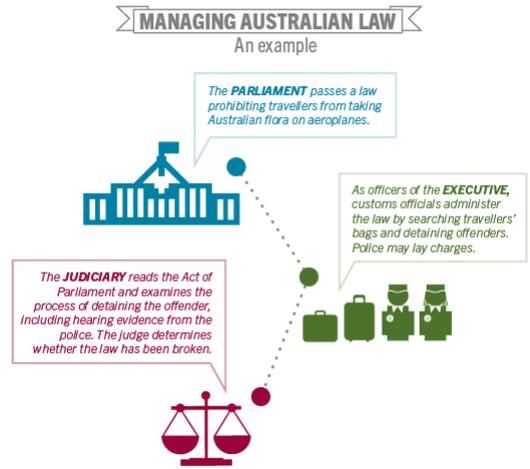


Image: [Managing Australian Law, PEO](#)

9. Examples of significant cases of the High Court.

You must be able to identify and explain cases of the High Court, their significance and impact on the political and legal system of Australia. Open the website for the High Court of Australia (<https://www.hcourt.gov.au/>) and go to the 'Judgement Summaries' under the 'Publications' tab. Use the information gathered there, along with the text book *Power, Accountability and Rights*, as well as doing a Google search to summarise important cases in the table below. Ensure that you include 'recent' (last 10 years) and 'contemporary' (last 3 years) cases as well as cases that cover a variety of topics.

Case (Year)	Summary of Case	Legal Principle/Results
Mabo ()		*Common Law
Theophanus ()		
Lange ()		
Australian Capital Television ()		

<p>Cole v Whitfield ()</p>	<p>Aka 'Tasmanian Crayfish'</p>	
<p>Dietrich ()</p>		<p>*Right to legal representation in indictable offences</p>
<p>Totani ()</p>		<p>*Separation of Powers</p>
<p>Wainohu ()</p>		
<p>Trigwell ()</p>		

Tasmanian Dams ()		
Roach ()		
Rowe ()		
Uniform Tax Case No 1 ()		*Federal Balance of Power
Uniform Tax Case No 2 ()		

Wik ()		
Williams No 1 () and Williams No 2 ()		

Task Two

1. Practice Essays

- a) “The High Court, rather than referendums, has had a greater impact on constitutional change in Australia.”
Evaluate the validity of this claim.
- b) ‘The separation of powers doctrine does not exist in the Australian political and legal system.’
Analyse the arguments in support **for** and **against** this claim.
- c) With specific reference to the main features of High Court constitutional decisions, analyse the constitutional significance of those decisions.
- d) Assess the significance and influence of judge-made law in Australia in reference to common law precedent.