

## FACT SHEET 11

# Parliament – the roles and powers of the Houses

The two main roles of Parliament are the passage of legislation and the scrutiny of government. In addition, members represent their constituencies (either electorates in the House of Representatives, or States or Territories in the Senate) by raising matters of importance concerning them in Parliament. Finally, the House of Representatives has a particular role in deciding who can govern, given that the government must hold the confidence, or enjoy the support, of this house.

## Role of Passing Legislation

Chapter 1 of the Australian Constitution gives the Commonwealth Parliament legislative power. A bill (i.e. a proposed law) must ordinarily be passed by both Houses of Parliament – the House of Representatives (known as the lower house) and the Senate (known as the upper house). It must then be given assent by the Governor-General before it can become a law.

The two houses have equal powers except for some limits on the Senate's powers in relation to bills dealing with money, which are set out in section 53 of the Constitution. There is also a mechanism for dealing with deadlocks between the houses if they do not agree upon passing a bill. It involves dissolving both houses (known as a 'double dissolution'), holding an election for both houses, and then reintroducing the bill or bills. If the two houses are still unable to come to a consensus a 'joint sitting' of Parliament, where all Senators and Members of the House of Representatives vote together, will be held to resolve the deadlock. However, this is highly unusual. A 'double dissolution' has only occurred seven times, and a joint sitting only once. Mostly, if the two houses cannot agree, the bill is not passed.

Both houses play an important role in debating bills. Bills are often referred to parliamentary committees, which can hear expert advice on problems with the bills and how to improve them.

Bills may be 'amended' (i.e. altered) as a result of committee scrutiny, including those raised by the Opposition, Independents or minor parties.

The Parliament scrutinises government spending through 'Senate Estimates', where Senators can ask Ministers and public servants about their areas of responsibility, and other committees dealing with public finance.

## Financial control over government

Governments need money to operate, but the Constitution requires that all money they receive must go into a special fund. An appropriation bill must be introduced in the House of Representatives to give the government money to spend on particular purposes. It is Parliament that authorises imposing taxes and appropriating money, as well as most spending of public money. This is an important aspect of the Parliament's control over the government.

## Representational role

The houses set aside particular time for Members and Senators to raise matters of importance in their electorates. It may include congratulations for particular local achievements, condolences for the death of an important member of the community, complaints about the inadequacy of government facilities, infrastructure or programs in the electorate, recognition of particular groups or events, or the identification of certain unmet needs in the community. Members of the House of Representatives can raise such matters in the adjournment debate at the end of each sitting day, or in the 30 minutes before Question Time. In the Senate, in addition to the adjournment debate, there is a period between 12.45pm and 2pm on Wednesdays when a Senator can raise any matter and speak for 10 minutes.



*The House of Representatives*  
Source: Wiki Commons

## Scrutiny of Government

Both Houses play a role in scrutinising the actions of the government. This occurs through 'Question Time', when Ministers can be asked questions about the areas of the government that they are in charge of or a part of (known as their 'portfolios'). Scrutiny also occurs through debates on 'matters of public importance' and censure motions criticising the actions of a Minister or the government as a whole. The houses may also order ministers to produce government documents (although ministers sometimes refuse). Where questions have been raised about the behavior of Ministers, a parliamentary committee may inquire into that behavior.

## Making governments

Under the system of responsible government, the government must hold the 'confidence' (i.e. the support) of the lower House. The House of Representatives can withdraw its confidence by passing a vote of no confidence in the government or refusing to grant it the money it needs to govern. This triggers a convention that the government must either resign or ask the Governor-General for an election.

If an election has been held and there is a 'hung Parliament' (i.e. no party or coalition has majority support in the lower House), the existing Prime Minister has the right to stay on governing until they face Parliament. If there is a vote of no confidence in the Prime Minister at that stage, then they will ordinarily have to resign, as a new election would be inappropriate so soon after the previous one. Someone else who has the confidence of the House will then form a government.

## Powers and privileges of the Houses

Section 49 of the Constitution gives both Houses of the Commonwealth Parliament the same powers, privileges and immunities as were held by the UK House of Commons at the date of federation (i.e. 1 January 1901), and are subject to change by Parliament. These include the protection of speech during parliamentary proceedings, so that Members and Senators cannot be punished in a court or elsewhere for what they say in the House.

They also include the power of a house to punish persons for contempt and the power to order people to attend, give evidence, and produce documents to the House or its committees. The houses can also suspend Members and Senators but can no longer expel them. Members and Senators have a limited immunity from arrest and jury duty.

The houses still rely on these ancient rights, although they are now partially set out in and limited by the *Parliamentary Privileges Act 1987* (Cth).

Section 50 of the Constitution also gives each House the power to make its own internal rules (known as 'Standing Orders' and 'Sessional Orders'). The courts avoid interfering with the internal operations of the houses, leaving these as matters for the Houses to determine.



The Senate  
Source: Wiki Commons

## Limits on the legislative powers of the Australian Parliament

The Australian Parliament cannot make laws on just anything. Because Australia has a federal system, the Constitution distributes powers between the Commonwealth and the States. It lists the subjects that the Australian Parliament can make laws about. The States can generally make laws on any subject matter.

Most of the subjects that the Australian Parliament can legislate on are listed in [section 51](#) of the Constitution. This list includes things like defence, immigration, naturalization, marriage, quarantine, pensions, external affairs, currency, and certain types of commercial matters like interstate and overseas trade and commerce, trading and financial corporations and federal taxation.

Every law made by the Australian Parliament must fall within one of the subjects allocated to it by the Constitution. If not, the law can be struck down by a court as being invalid.

## Mechanisms that inform and advise the Federal Parliament

Australia's system of government has many mechanisms, not necessarily constitutionally enshrined, that inform and advise the Federal Parliament on matters that might involve the scrutiny or monitoring of the Commonwealth's use of power. The Productivity Commission, the Australian Law Reform Commission, the Auditor-General and the Australian National Audit Office are examples. Another example of such monitoring work is the scrutiny of proposed laws under the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth). All of these mechanisms are intended to improve the quality of law and policy making by the Commonwealth.

The Parliament under the system of responsible and representative government is expected to listen to the views of others and use them to improve outcomes when appropriate matters are raised.



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