

FACT SHEET 15

Executive power – the powers and role of the Governor-General, from cutting ribbons to dismissing governments

Under the Constitution, the Governor-General is the representative of the Sovereign. The Governor-General in practice fulfils many of the functions of a head of state. Some of them are given directly to the Governor-General and others are exercised by the Governor-General as the Sovereign's representative. Some of the Governor-General's functions are exercised for symbolic and ceremonial purposes, while others are critical to Australia's system of government.

The Governor-General also has a particular responsibility to uphold the Constitution. When the Governor-General is given a choice as to how to act, they must still act in a way that is consistent with the Constitution.

The Governor-General's symbolic and ceremonial roles

Part of the Governor-General's role is ceremonial and symbolic. The Governor-General awards honours and bravery decorations. They represent Australia at important ceremonies, such as Anzac Day, in overseas visits, and at funerals of national and international figures. The Governor-General hosts visiting royalty and heads of state and meets with each incoming Ambassador to Australia to recognise and accept their status.

The Governor-General also plays a community engagement role. They travel to places around Australia, meeting local people and organisations, supporting charities, giving awards, opening new buildings and talking to school groups. The Governor-General is patron of many charitable organisations, including the Constitution Education Fund Australia (CEFA).



The first Governor-General of Australia, Lord Hopetoun
Source: State Library of Victoria

Commander-in-Chief

Section 68 of the Commonwealth Constitution makes the Governor-General Commander-in-Chief of the Australian Defence Force. In fulfilling this role, the Governor-General is obliged by convention, and in many cases by statute, to act upon the advice of the Executive Council and/or relevant Ministers, such as the Defence Minister, Attorney-General and the Prime Minister. .

When Sir Ninian Stephen, a former High Court judge, was Governor-General, he gave a speech in which he analysed the interpretation of section 68 of the Constitution. Sir Ninian, who had seen where military power could lead, having attended Hitler's 1938 Nuremberg rally as a tourist while a teenager and having fought for Australia during World War II, was careful in his analysis of the control of military power in Australia.

Sir Ninian considered the colourful history of the relationship between vice-regal office and the role of Commander-in-Chief throughout colonial times, and how the role had become a purely titular one. He discussed the debates over the drafting of section 68 at the 1898 Constitutional Convention.



*His Excellency General the Honourable David Hurley AC DSC (Retd)
Governor-General of the Commonwealth of Australia
Source: © Governor-General of Australia*

Alfred Deakin, in particular, wanted express words included stating that the Governor-General could only exercise the powers of Commander-in-Chief upon the advice of ministers in the Federal Executive Council.

Edmund Barton considered that the insertion of the words 'acting under the advice of the Executive Council' into section 68 to be unnecessary, as this meaning was already conveyed. Delegates at the Convention agreed that the Governor-General would have no substantive military power – it was just a matter of how this was described. Barton won the debate, so there is no express mention of the Executive Council in section 68. But it is still the case that the Governor-General must act on the advice of the Executive Council or certain ministers when exercising the powers of the Commander-in-Chief.

The Governor-General, upon the advice of Ministers, appoints the Chief of the Defence Force and other senior officers. They visit military units and present them with colours, banners and other honours. The Governor-General commemorates Australia's war dead and military action in different ceremonies throughout the year.

Constitutional role

The Governor-General presides over meetings of the Federal Executive Council. This is the formal body, comprised of the Prime Minister and Ministers appointed by the Governor-General on the advice of the Prime Minister, which advises the Governor-General to give legal effect to certain types of decisions that have either been made by Cabinet or individual Ministers. This includes making appointments of judges, making statutory instruments, making proclamations and entering into treaties.

Wherever the Constitution confers a power on the 'Governor-General in Council', this means the Governor-General acting upon the advice of the Federal Executive Council (section 63 of the Constitution). This has been extended to Commonwealth legislation by section 16A of the Acts Interpretation Act 1901 (Cth), which says that wherever the Governor-General is referred to in a Commonwealth statute, it means the Governor-General acting with the advice of the Executive Council. In practice, most Executive Council meetings are held fortnightly, and are normally held with two Ministers rostered on to represent the ministry as a whole in advising the Governor-General.



*The first Australian born Governor-General Sir Isaac Isaacs receives VIPs | Government House Yarralumla | c. 1931–36
Source: State Library of NSW*

Under the Constitution, the Governor-General has the power to summon Parliament, prorogue Parliament (i.e. suspend its operation for a period) and dissolve it ([sections 5](#) and [57](#)).

The Governor-General issues the writs for a general election of the House of Representatives (which means they orders electoral officials to start the election process – [section 32](#)). The Governor-General can also submit constitutional amendments to the people in a referendum if there is a disagreement between the Houses of Parliament when debating the amendment ([section 128](#)).

On advice, the Governor-General can appoint judges of the High Court and other federal courts ([section 72](#)) and gives Royal Assent to bills passed by Parliament, turning them into laws ([section 58](#)).

Before Parliament passes a law to ‘appropriate’ (i.e. withdraw) government funds so they can be spent, the Governor-General must give the Houses a message recommending the appropriation (which ensures that the Government retains control over the spending of public money – [section 56](#)).

Most importantly, the Governor-General appoints the Prime Minister and, on his or her advice, appoints and removes Ministers ([section 64](#)) and members of the Federal Executive Council ([section 62](#)). The Governor-General, acting on advice, can also create public service departments ([section 64](#)).

In almost all cases, the Governor-General acts upon the advice of ministers, either directly from the minister or through the Federal Executive Council.

Why not just let the ministers act directly on their own advice? Firstly, the role of the Governor-General allows for another set of eyes, from an independent person and their staff, to look over decisions and consider whether they are being made properly and within power, which can help to prevent both errors and corruption.

Secondly, while the Governor-General ultimately acts upon advice, they are entitled to query that advice, request a legal opinion about its validity, and warn the government if it appears to be behaving inappropriately. This can act as a catalyst for a government to adjust and moderate its behaviour.



Governor-General Sir Ninian Stephen begins his address at the Uluru National Park Handover/ Leaseback Ceremony | 1985
 Source: © National Library of Australia

The reserve powers of the Governor-General

In limited circumstances, the Governor-General can exercise discretion by acting without ministerial advice, or contrary to ministerial advice. This is known as exercising a 'reserve power'.

Appointing the Prime Minister: The most commonly exercised reserve power is the power to appoint a Prime Minister. This is because the outgoing Prime Minister, as they are leaving office, cannot be 'responsible' to Parliament for advice as to their successor. They may well give informal advice to the Governor-General as to who their successor should be, but this is not treated as binding advice. It is just the sort of advice that any informed person could give.

But while a Governor-General does not act upon ministerial advice in deciding who to commission as Prime Minister, the Governor-General still has very little discretion. This is because convention requires the Governor-General to appoint as Prime Minister the person who commands the confidence of the House of Representatives (i.e. the leader who

won the election or whoever has the support of a majority in the lower House). Discretion only arises if no one has majority support in the lower House – known as a 'hung Parliament'. The Governor-General will then have to consider which leader is most likely to command the confidence of the House. This could even be the leader of a minor party, if they have sufficient support from a larger party to govern.

Refusing to dissolve Parliament: The Governor-General also has a reserve power to refuse to dissolve Parliament. This might be done, for example, if an election has only recently been held and someone else could form a government that has majority support without the need for a fresh election. The vote of the people has to be respected and Parliament has to be given a chance to function.

There may also be other reasons for refusing an election. Normally, this will be something for a Prime Minister to judge, but if they have lost the confidence of the House, the Governor-General has greater discretion to reject the Prime Minister's advice.

Dismissing the Prime Minister: In extreme circumstances, the Governor-General may dismiss a Prime Minister. This could happen, for example, if a Prime Minister has lost the confidence of the lower House but seeks to continue governing without resigning or being granted an election. This would defy the principles of responsible and representative government, and the Governor-General would be entitled to dismiss the Prime Minister. The dismissal of a Prime Minister has traditionally had the effect of dismissing the entire ministry, as it was the Prime Minister who was commissioned to form the Government and who advised who the Ministers should be. Once that commission is withdrawn by the Governor-General, the Ministry must be replaced.

Another possible ground for dismissing the Government is if it is breaching the rule of law by persisting in serious unlawful or unconstitutional behaviour. For example, in a state context, in 1932 the NSW Governor (which is a role that is similar to the Governor-General at the federal level), Sir Philip Game, dismissed the Lang Labor Government. This was because it issued an instruction to public servants to behave in a way that breached an instrument made under a federal law. When the Governor asked that the instruction be withdrawn, the Premier, Jack Lang, refused. The Governor also asked for legal advice to establish that the Premier was behaving lawfully, but the Premier would not give it. The Governor concluded that this was because he knew he was acting unlawfully and could not defend his actions.

The Governor dismissed Lang and appointed the Opposition Leader to form a caretaker government that would advise an immediate election, so the voters could decide on a new government (which is essential to support the principle of representative government). The Governor was criticised by some, however, for not waiting for a court to decide that the instruction was illegal. They pointed to the separation of powers and the need for the courts, not the Governor, to decide on legality. But others noted that the courts had recently upheld the validity of the federal law, under which the instrument was made, in long running court cases. They pointed out that the illegality was plain, any litigation would take a long time, and Lang didn't even attempt to argue that his actions were legally valid. The dismissal remains controversial to this day.

Another ground for dismissal has been the failure to secure the passage of supply (i.e. the failure

to get both Houses of Parliament to pass an appropriation to allow the government to spend the money necessary to run the government).

Let's have a look at the very controversial dismissal of the Whitlam Labor Government in 1975. Whitlam was dismissed by the Governor-General, Sir John Kerr, for failing to secure the passage of supply. After a number of scandals and economic crises, the Senate, which was controlled by the Opposition, deferred voting on supply, and said it would continue to do so until Whitlam agreed to a general election. Whitlam refused to hold a general election, and told the Governor-General that the only way it could occur was if Whitlam was dismissed from office. Once supply ran out in late November, Whitlam planned to get the banks to loan public servants and others the money they needed to get by. The banks, however, thought this would be illegal and did not agree to participate in the plan.

The last day that a general election could be held before the Christmas break was 13 December. To achieve that, Kerr had to issue the election writs by 11 November. If Kerr had waited until supply had run out later in November, there would have been no possibility of holding an election until late January or early February, leaving many people in financial hardship for months.

On the morning of 11 November, the Opposition Leader, Malcolm Fraser, offered to pass supply if Whitlam agreed to hold a general election for the House of Representatives, with the half-Senate election, by June 1976. Whitlam refused the offer. Whitlam instead wanted only to hold a half-Senate election, but it was unlikely to change the composition of the Senate immediately, because most Senators would not take up their new offices until 1 July the following year (because the Senate works on fixed terms, except for Territory Senators and, at that time, replacement Senators filled casual vacancies).

The Governor-General considered that a half-Senate election would not solve the crisis and he was not prepared to let supply run out or to sanction illegal spending. So he dismissed the Whitlam Government and appointed Fraser to run a caretaker government on the condition that Fraser secure the passage of supply and then immediately recommend the dissolution of both Houses of Parliament, so that the people could decide who should govern. Fraser secured supply through the Senate, and the Houses were dissolved.



The first female Prime Minister Julia Gillard being sworn in as 27th Prime Minister of Australia by the first female Governor-General of Australia Quentin Bryce | 24 June 2010 | Government House, Canberra Source: © Governor-General of Australia

The election was held, and Labor was defeated. The dismissal of Mr Whitlam was very controversial at the time and legal scholars still debate whether the Governor-General acted appropriately.

A good ABC News overview of the Whitlam Government era and dismissal can be viewed [here](#). After a long court battle, the letters that Sir John Kerr wrote to the Palace during the constitutional crisis have been released by the National Archives and can be found [here](#).

Other possible reserve powers: There may be other cases where a reserve power may be exercised, such as dissolving the Parliament, refusing assent to a bill or to prorogue Parliament.

The Governor-General may be entitled to reject advice from a government that no longer commands the confidence of the Parliament or advice to act in a manner that is plainly unlawful or unconstitutional, because the Governor-General remains obliged to obey the law and the Constitution. But in most cases, due to the separation of powers, it will be up to the courts to decide what is unlawful or unconstitutional.



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