

## SENIOR LEGAL STUDIES, SENIOR ECONOMICS, SENIOR POLITICS AND DISCOVERING DEMOCRACY MATERIALS

### CASE STUDY: UNDERSTANDING HOW LEGISLATIVE POWER IS EXERCISED IN OUR FEDERAL DEMOCRACY

**Unit name:** Understanding how legislative power is exercised in our Federal democracy.

**Rationale/purpose:** The unit will enable students in subjects such as Legal Studies, Economics and Politics to understand:

- How and why Australia developed a federal system of government.
- The nature of legislative power sharing under our Federal Constitution.
- How and why this power sharing arrangement has changed over time and what tensions this has created between the Federal and State levels of government.
- The paradox for democracy that arises when both levels of government in our Federal system grapple with important social and technological issues -- how both levels of government may approach such issues from different perspectives, even though they essentially represent the same 'body' of voters.

The recommended methodology of the unit is aimed at fostering the processes of individual and student group work, research, critical thinking, discussion, extended written communication and debating.

#### Unit outline/overview

The unit is divided into two discrete sub-units ('Background' and 'Topical Issues') to provide teachers with as much flexibility as possible. For example, some classes will already be familiar with the content of the background sub-unit and are ready to proceed into the topical issues part of the program. For other classes the background information will be unfamiliar and therefore essential, but one or more of the practical activities built into the topical issues sub-unit could be discarded by their teacher because of time constraints.

#### Sub-units in brief:

##### 1. Background

1.1 The evolution of parliamentary sovereignty in the Australian colonies; the growth of universal suffrage; and the birth of the new nation with a federal system of government.

*Activities* -- Reading/note taking/discussion.

- Individual research.
- Create a timeline.

1.2 The division of law making powers between the Commonwealth and State governments under the Commonwealth of Australia Constitution Act 1900; and changes to this power-sharing arrangement from 1901 to the present day.

*Activities* -- Reading/note taking/discussion.

- Small group work through the jigsaw approach.

## **2. Topical Issues.**

2.1 Choosing a topical issue by preferential voting.

*Activities* – Individual research.

-- brainstorming/discussion.

-- Lobby/voting/vote collation.

2.2 Studying a topical issue.

*Activities* -- Small group and individual research (including IT research).

-- Premiers Conference or Referendum Conference.

-- Debate or essay.

2.3 A topical issue modeled.

*Activities* -- reading/discussion.

## Sub-units in detail (Knowledge; Process; Resources)

### 1. Background

Knowledge	Process	Resources
<p>Having studied this sub-unit, students will need to be familiar with the following information or have considered the following questions/issues:</p> <p>1.1            -- The historical steps taken in the development of parliamentary sovereignty amongst the Australian colonies (and subsequently the Federal and State parliaments) up to and including the Australia acts 1986.            -- The reasons behind and the major steps taken towards the Federation of the Australian colonies in 1901 (and coincidentally the development of universal suffrage in Australia during the same period).</p> <p>1.2            The theoretical division of legislative powers between the State and national/Federal governments under the Commonwealth of Australia Constitution Act 1900 (i.e. <i>specific</i> Federal powers are either <i>concurrent</i> or <i>exclusive</i>; while powers left with the States are <i>residual</i>).            -- How referendums, referrals of state power and most importantly, High Court interpretations and the 'power of the purse', together with the effect of the inconsistency provisions in section 109 of the Constitution and Australia's entry into international law making, have enabled the national Parliament to encroach upon residual state powers.</p>	<p><i>Note taking and discussion:</i> students will need to take individual notes on the development of parliamentary sovereignty in Australia; the most important historical steps taken towards Federation; the parallel development of universal suffrage in Australia; the meaning of a federal system of government; and the division of law making powers under the Constitution. Teacher led discussion should explore and test student understanding of these concepts.</p> <p><i>Timeline:</i> students should construct a timeline of one of following: the development of parliamentary sovereignty; steps towards Federation; the development of universal suffrage.</p> <p><i>Jigsaw learning:</i> once students are familiar with the theoretical division of law making powers under the Australian Constitution, they should be divided into 'home' groups of four and within each group one member has to become an 'expert' (together with equivalent members from other groups in four 'expert' groups) in of one of the four methods of expanding Commonwealth powers under the Constitution. Core questions that need to be addressed are: how does the method work? (examples if appropriate); how effective has the method been at changing the Federal/State balance of power under the Constitution? What are the advantages/disadvantages of this method for the Federal Government and for the States? What short term and long term tensions between the two levels of government in our Federal system might this method create?. On returning to their original home group of four, each expert has to brief that group on their method of changing the Constitution, to enable the home group to produce a shared summary of the methods.</p>	<p>Hirst, John (1998). <i>Discovering democracy: a guide to governments and law in Australia</i>. Curriculum Corporation: Carlton, South Victoria. pp 20 to 25, 35 to 46, 47 to 50, 79 to 83, 95 to 96.</p> <p><i>Discovering democracy: middle secondary units</i> (1998) pp 107 to 123, 171 to 202.</p> <p><i>Discovering democracy: stories of democracy CD</i>. <i>Discovering democracy: Secondary video: Getting Things Done</i>.</p> <p><a href="http://www.onedestiny.com">http://www.onedestiny.com</a>.</p> <p>Beazer, Margaret (2002) <i>Justice and Outcomes</i> (6<sup>th</sup> ed) Beazer Publishing; or other general Legal Studies text for years 11/12.</p>

## 2. Topical Issues

Knowledge	Process	Resources
<p>A topical legal issue can be defined as a legal issue that has recently captured the attention of the popular media (print, radio, TV) and/or that of the public. Topical legal issues can be perennial by nature (e.g. land rights for aboriginals, sentencing, should Australia become a republic?) Or transient (e.g. should prostitution be made legal in Tasmania? Should single women have access to the IVF programs in the various states? Should Australia go ahead with a national DNA database?). Studying our Federal democracy in the context of a topical legal issue makes the learning experience more authentic for students and enables them to recognise the tensions and paradoxes that occur between the State and Commonwealth levels of government within our Federal system. Having studied this sub-unit, students will be familiar with the following:</p> <p>2.1            -- How various systems of voting work (i.e. 'first past the post', preferential, proportional representation).</p> <p>2.2            -- What their issue is about and why it is</p>	<p><i>Preferential voting and lobbying for a topical legal issue.</i>            Students within a class will need to brainstorm possible topical legal issues. Time should be allowed for class members to lobby their classmates on particular issues (e.g. between lessons). Having researched the various systems of voting, the class chooses a topical legal issue by preferential voting to mimic a democratic voting system and to encourage ownership of the issue. The class collates votes and the winning topic is announced.</p> <p><i>Referendum Conference or Premiers Conference?</i>            The class chooses between holding a Referendum Conference or a Premiers Conference.            Premiers Conference: the Federal Government and each state and territory government will need to be represented by a team consisting of: Prime Minister (or Premier, or Chief Minister), Attorney-General, other 'relevant' Minister (depending on the issue) and government advisers. The object of the conference from the Federal Government's point of view is to control the issue at both the federal and state level of law making by providing funding to the states and/or achieve uniform legislation. From the states point of view, each team wants to promote the best interests of the state and gain maximum funding from the Federal Government for the state. Because the Federal Government controls most of the money available to fund state programs, compromises may be necessary on behalf of both levels of government! (Federal funding incentives could be symbolised by the Federal Government team rewarding each compliant state with a small box of Smarties, M&amp;M's, or jelly beans).            Referendum Conference: here the objective is for all the relevant parties (i.e. federal and state governments and other interest/institutional groups) to be represented at the conference in order to decide whether the issue should become a federal power; should there be a change made to the Constitution and if so, what should be form of the referendum question(s) put to the people under the provisions of section 128 of the Constitution?</p> <p><i>Research:</i> the various teams taking part in the Premiers Conference or Referendum Conference will need to research the issue and their arguments beforehand.            Research suggestions:            -- For schools/colleges which prescribe to the Macquarie Net site, subject specific searches of topical legal issues are highly successful.            -- The 'choice civics clicks' in the Discovering</p>	<p>Discovering democracy: middle secondary units 1998. pp 112 to 123, 127 to 129.</p> <p>Discovering democracy: Parliament at work CD.            Australian readers: discovering democracy, middle secondary collection. Curriculum Corporation: Carlton, Victoria. 1999. pp 9 to 11.</p> <p>Discovering democracy: middle secondary units 1998 page 18.</p> <p><a href="http://www.aph.gov.au/library/pubs/rp/1998-99/99rp25.htm">http://www.aph.gov.au/library/pubs/rp/1998-99/99rp25.htm</a>            (Research paper by Professor John Warhurst on the Constitutional Convention held February 1998).  <a href="http://www.curriculum.edu.au/democracy/resource/clicks/concon.htm">http://www.curriculum.edu.au/democracy/resource/clicks/concon.htm</a>            (Discovering Democracy Resource Centre - providing useful links and information on the 1998 Constitutional Convention).</p>

<p>topical.</p> <p>-- What (real or hypothetical) stance(s) the Federal government has (or is likely to) take on the issue.</p> <p>-- What (real or hypothetical) stance(s) state governments around the nation have (or may) take on the issue.</p> <p>-- How a Referendum Conference is conducted (e.g. the 1999 Referendum Conference on the question of whether Australia should become a republic). Relationship between Constitutional Convention and the Republic Referendum.</p> <p>-- The paradox for democracy that occurs when the Federal and State governments approach important social and technological issues from different perspectives.</p>	<p>Democracy Resource Centre Database (HTTP://www.curriculum.edu.au/democracy/resource/resource.htm. and then click on 'resource database' and 'choice civics clicks') are also excellent, especially those of Janet Baker and Kevin Donnelly.</p> <p>-- Finding topical legal issues in Australian and World newspapers can be done at: <a href="http://www.onlinenewspapers.com">http://www.onlinenewspapers.com</a> (pull down the Asia-Pacific menu, click on 'Australia' and then on the name of a newspaper). However, searching back issues of most newspapers via your own search terms is limited, because your search will only provide a summary of the articles, not full text, so you will need access to a library archive of that newspaper. Exceptions are 'The Age' and 'Sydney Morning Herald' newspapers, which offer a range of recent preselected issues free. In The Age, locate the 'news' section, click on 'issues', then 'any topic' and check the green column at the left of the screen. For the Sydney Morning Herald, locate the 'news' section, click on column 8, find the 'news specials' list in the right-hand column of the screen, click on 'news specials' and this takes you to an A to Z listing of all issues considered topical by the newspaper.</p> <p><i>Debate or essay:</i> having completed their research and participated in the Premiers Conference or Referendum Conference, students should be in a position to take part in the following debate or write a response to following essay topic:  <i>Debate topic</i> – “Federalism divides the nation; Australia would be better off adopting a unitary system of government”.  <i>Essay topic</i> – “That Federalism divides Australia”. Critically discuss this statement.</p> <p>For the debate, two debate teams of four students are chosen from the class (volunteers/random selection/chosen by the teacher?). Each debate team is assessed on their overall coordination in presenting their arguments (including rebuttals), while individual debaters are assessed on their presentations skills and individual research and preparation.</p> <p>While the debate teams are preparing for the classroom debate, non-debaters research and write up their essay (drawing on their experiences in the Premiers Conference or Referendum Conference). The essay is due on the day of the debate.</p>	<p>Adult Learning Australia.  DD Adult Community Education Kit.  The Government of Australia.  The Three Spheres of Government  <a href="http://www.learningcircles.org.au/circles/civics/">www.learningcircles.org.au/circles/civics/</a></p>
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**2.3 Modeling a topical legal issue.** (E.g. Topical issue: *Government approaches to the heroin epidemic in Australia*).

- Class completes background sub-unit.
  - Teacher and students brainstorm (on whiteboard) possible topical legal issues; students are encouraged to lobby fellow students prior to voting.
  - Individual research on different types of voting systems (i.e. first past the post, preferential, proportional representation).
  - Class chooses from list of brainstormed topical legal issues using a preferential voting system by secret written ballot. The issue chosen is whether or not governments in Australia (State and Federal) should support the introduction of a heroin trial and shooting galleries to control the heroin epidemic in this country.
  - The class is split into groups representing the six state governments, the two territory governments and the national/federal government. Each group consists of (at least): 1. Prime Minister/or Premier/or Chief Minister; 2. Federal/or State /or Territory Attorney-General; 3. 'Other' Minister such as Treasurer, Health Minister.
  - Each group prepares for the forthcoming Premiers Conference by researching and deciding some or all of the following issues (note: once each group has decided these issues, they have the force of a Cabinet decision, ensuring the political solidarity of that group):
    - Background information on the issue such as overdose rates, current harm minimisation and education programs, government expenditure on law enforcement, rates of incarceration for drug offences, other places where heroin trials/shooting galleries have been used such as Switzerland, Sweden and the UK; current information on the NSW shooting gallery at Kings Cross, Sydney etc.
    - Current criminal and other laws impacting on the issue within that group's jurisdiction. This could include possibilities available under the division of powers such as treaty obligations under the external affairs power in section 51(xxix) of the Australian Constitution.
    - The current stance of governments/opposition parties within that group's state, territory or nationally. Each group will need to decide whether they wish to adopt current government policy, opposition policy, or will formulate their own policies on the issue.
    - Funding that group will require to carry out its policies and what laws might be needed to enable those policies to work at a local and/or national level. Students need to understand that as the group representing the Federal Government effectively holds the 'purse strings', they can push for their own policies by withholding funds from the States/Territories, or by offering to fund alternative programs more in keeping with their own policies. (Funding incentives are represented by sweets such as Smarties, M&M's or jelly babies distributed by the Federal group)
  - The Premiers Conference is conducted as a roundtable conference, involving all parties and chaired by the Prime Minister. Groups (States and Territories) that are able to persuade the Federal group of the merits of their proposals, or reach a compromise with them, or who agree to Federal Government proposals are awarded with sweets. Unsuccessful groups leave empty-handed!
  - Following the Premiers Conference there is a teacher led 'post mortem' discussion of the process and its implications for Australia's Federal system of government.
  - Final debate and/or essay. Two debate teams of four are chosen from the class (volunteers? Random selection? Or chosen by the teacher?) to debate the topic: "Federalism divides the nation; Australia would be better off adopting a unitary system of government".
- Non-debaters have the same topic with the addition of the following phrase: 'critically discuss this statement'.
- Non-debaters research and write up their essays (drawing on their experiences in the Premiers Conference) while the debate teams prepare for the debate by continuing their research, co-ordinating the approach of their team and preparing their individual speeches (each speaker needs enough material to be able to address the audience for between two and three minutes). Essay is due on the day of the debate.

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