



Separation of powers

The ‘separation of powers’ is a key principle that ensures that no one branch of government can wield unchecked authority.

Key term

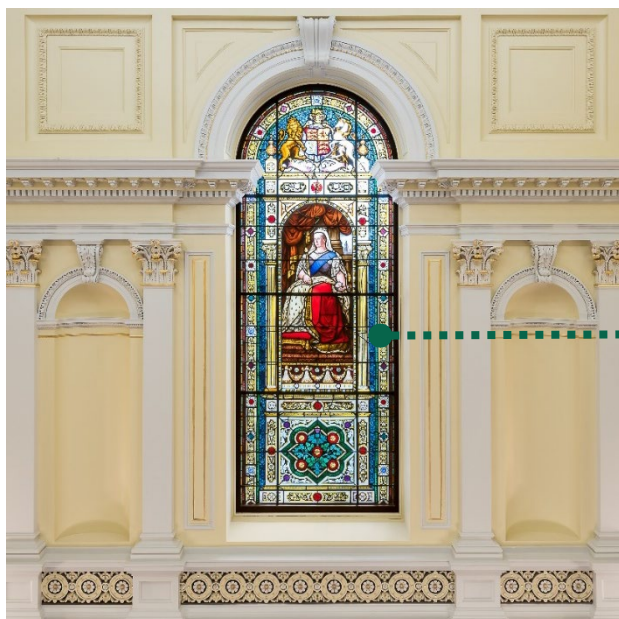
Separation of powers: A principle that divides government into three branches—legislative, executive, and judicial—to ensure checks and balances.

What is the Westminster system?

Before we explain the ‘separation of powers’ it is useful to know the system Queensland is based on as it also helps to keep decision making fair and accountable. The Westminster system is a way that some countries organise their government. **It came from the United Kingdom and is used in Australia, including all states and territories (like Queensland).**

Some key features of this system of government include that there is:

- a head of state—a King or Queen (and/or their representative),
- an elected parliament,
- a government that has the support of the majority of members in the lower house of parliament,
- an opposition,
- a head of the government and ministry, and
- an independent judiciary.



Stained glass window depicting Queen Victoria, Parliament House Brisbane. Queensland Parliament Collection, 2018.

DURATION

1 to 3 lessons

LEVEL

Year 7
Year 9
Year 10
Year 11
Year 12



SUCCESS CRITERIA

Students will be able to:

- Explain that Queensland’s system of government evolved in England and is called the Westminster system.
- Identify the three branches of government—the legislature, the executive, and the judiciary.
- Explain the separation of powers doctrine.

INQUIRY QUESTION



How do the different branches of government work together to ensure the balance of power?

Did you know?

On 6 June 1859, Queen Victoria (the subject of a stained-glass window in the central landing of Queensland Parliament House) signed the *Letters Patent*, approving Queensland to separate from New South Wales.

STUDENT ACTIVITY 1

Use the following sources to select information to complete the table below:

- Queensland Courts, *Courts*—courts.qld.gov.au/courts.
- Queensland Government, *System of Government*—qld.gov.au/about/how-government-works/system-of-government.
- Queensland Parliament, *Member List*—parliament.qld.gov.au/Members/Current-Members/Member-List.
- Queensland Parliament, *Separation of Powers*—parliament.qld.gov.au/Visit-and-learn/About-Us/Separation-of-Powers.
- Queensland Parliament, *System of Government*—parliament.qld.gov.au/Visit-and-learn/Education/Resources/2-System-of-Government.

KEY FEATURES OF THE WESTMINSTER SYSTEM IN QUEENSLAND

| Feature | Answer |
|--|-------------------------------------|
| Identify the name of our House(s) of Queensland Parliament. | |
| Identify our Head of State. | King Charles III |
| Identify the title and name of the leader of the Government and the political party they lead. | Title: Name: Political Party: |
| Identify the Leader of the Opposition and the political party they lead. | Name: Political Party: |
| Identify the Speaker. | |
| Identify the Minister for Education. Do they look after any other areas (called portfolios)? | |
| Name three courts in Queensland. | 1. Magistrates Court 2. 3. |

Take it further—

Select one feature in the table above. Create a poster, a PowerPoint slide, an infographic or even a short video that:

- shares an image or diagram of the feature,
- highlights an interesting fact about the feature, and
- explains why the feature is important to the Westminster system.

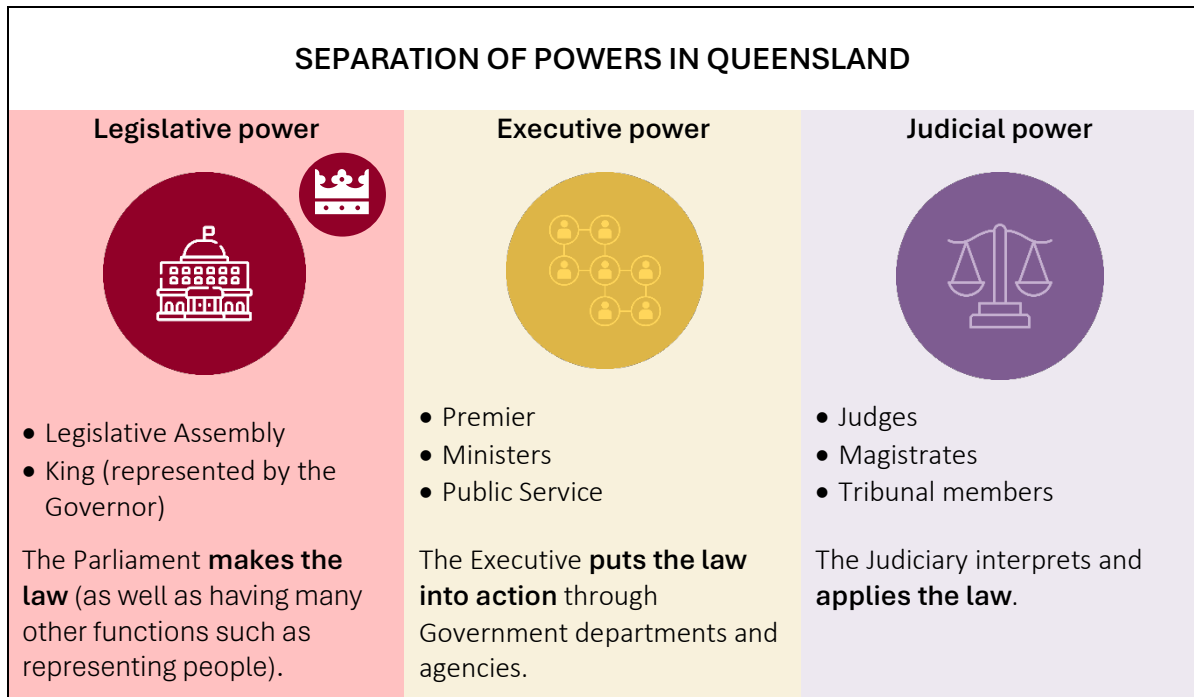
EXIT TICKET

Identify one feature of the Westminster system in Queensland.

What is the separation of powers?

One of the key features of the Westminster system is the idea that there are 3 types of power.

- The power to **make** law (called **legislative power**).
- The power to **carry out** or **enforce** the law (called **executive power**).
- The power to **apply** the law to a dispute (called **judicial power**).



In Year 11 or Year 12?

Your teacher may ask you to complete Student Activity A.

Keeping the powers separate is good. **It helps ensure power is shared in a fair, equitable and balanced way as it prevents any one group from having too much power.**

We will now use a case study to demonstrate how the separation of powers works in practice.

Case study

In 2023, a case was heard in the Queensland Court of Appeal. The case was called *Athwal v State of Queensland* [2023] QCA 156. When you want to identify a case in writing, you 'cite' it.

But how do you read a citation? ↪

| <i>Athwal</i> | v | <i>State of Queensland</i> | [2023] | QCA | 156 |
|--|--------------------------------|---|---------------------------------|---|---|
| The party taking the case to court. We call this party the Applicant. | This means 'and' (not verses). | The party defending the case in court. We call this party the Defendant. | The year the decision was made. | The name of the court. QCA means Queensland Court of Appeal). | The judgment number (this helps people find it easily). |

The facts of the case

Ms Athwal practiced Sikhism, a religion. It is very important for a person who practices this religion to wear a small ceremonial sword (called a *kirpan*) underneath their clothing. Wearing the *kirpan* has spiritual significance. It symbolises their faith and commitment to the religion.

Queensland law prohibits anyone from carrying a knife on school property for any reason, even religious ones. The law means a Sikh who wears a *kirpan* cannot be on school grounds. This means that they cannot do things like:

- attend assemblies or school activities (such as an Athletics Carnival),
- drop off and pick up their children on school grounds, or
- meet teachers in their offices or classrooms.

The law could have a significant impact on Sikhs with school-aged children or work at a school.

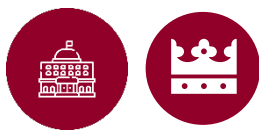
Ms Athwal decided to take the State of Queensland (the Executive) to the Queensland Court of Appeal. She argued that the law treated her differently and this was unfair.

The court needed to decide whether the Queensland law was valid (or binding).

STUDENT ACTIVITY 2

Re-read the facts of the case *Athwal v State of Queensland* [2023] QCA 156 above and answer the following questions:

1. Identify the court that heard the case.
2. Identify the religion Ms Athwal practiced.
3. Identify the item people practicing this religion wear underneath their clothing as part of their religion.
4. Describe the different ways the law may impact people with school-aged children. What can they do? What can't they do?
5. Identify the argument Ms Athwal raised in the court.



Let's start with the law: legislative power

The Legislature is the Parliament. In Queensland, our Parliament is made up of:

- the Legislative Assembly (93 Members of Parliament) and
- the King (who is represented by the Governor).

QUEENSLAND PARLIAMENT



93 Members of Parliament (MPs)



The King (represented by Governor)

One of Parliament's functions (or jobs) is to make law, although it is important to know this is one of its many roles. Parliament also represents the people, is where government is formed, passes a budget, scrutinises the government and provides a place for debate. Making law can involve:

- changing (or amending) a current law,
- creating a new law, or
- repealing (removing) a law.

One of the laws relevant to this case was the *Weapons Act 1990* (Qld). The Act was made by Queensland Parliament.

Key term

Act: A law that has been passed by the Legislative Assembly and received Royal Assent.

STUDENT ACTIVITY 3

View [our video](#) or [our factsheet](#) on how laws are made in Queensland.

Identify whether the following statements are TRUE or FALSE.

- A Bill has three readings.
- Members of Parliament debate the main ideas of a Bill during the consideration-in-detail step.
- After a Bill is passed by Parliament, the Governor gives it Royal Assent.
- Ideas for Bills can come from many sources.
- A committee writes a report for Parliament about the Bill.
- Only a minister can introduce a Bill.
- Once a Bill passes the Legislative Assembly, it needs the approval of the Legislative Council before it can become law.
- A Bill and an Act are the same thing.



In Year 11 or Year 12?

Your teacher may ask you to complete Student Activity B.



What did the Judiciary say about the law? Judicial power

The Judiciary, a group of people including judges and magistrates, are responsible for interpreting and applying the law to a particular case. This process typically involves the careful examination of the facts, legal principles, and precedents (previous decisions). This process helps them to determine the correct interpretation and application of the law.

The Queensland Court of Appeal looked at a lot of information, including the *Australian Constitution*. The *Australian Constitution* sets up the Parliament of Australia and its powers. It also states that if there's a conflict between state and federal law in some situations, the federal law is the one people must follow. This rule is found in Section 109 shown below:

Commonwealth of Australia Constitution Act 1901 (Cth)

109. Inconsistency of laws

When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.



V



= Australian law is followed

In this case, the Queensland Court of Appeal decided that a law made by the Queensland Parliament that prohibited (or stopped) Sikhs from wearing a kirpan was not valid. They found that the federal law, the *Racial Discrimination Act 1975 (Cth)*, says everyone should be treated equally, should be followed by the State of Queensland in this situation.

This meant the court agreed with the party who brought the case to court (Ms Athwal). The State of Queensland lost the case.

STUDENT ACTIVITY 4

Re-read *The Judiciary* section of text and use the information to answer the questions below.

1. Explain the term 'judicial power' in your own words.
2. Identify which people and/or bodies have judicial power.
3. Identify what the Queensland Court of Appeal decided.
4. Infer what might happen if a judge or magistrate was part of the Parliament or Executive. How might that impact their decision?
5. Evaluate (or judge) whether providing people with the opportunity to challenge a law or a government decision promotes a fair and just society. What might happen if we didn't allow people to question whether a law or decision was correct.



In Year 11 or Year 12?

Your teacher may ask you to complete Student Activity C.



What happens now? Executive power

In Queensland the Executive is made up of the Premier, Ministers and the Governor (representing the King). This group of people carry out and enforce laws that have been passed by the parliament.

For example, after the *Weapons Act 1990* (Qld) was first passed, the Minister for Education (who leads the Department of Education) ensured processes and procedures were in place to prevent or respond to a person wearing a *kirpan* from being on school grounds. Schools, just like your school, then carry out or enforce the law or the decision of the Minister.

STUDENT ACTIVITY 5

Read the speech below and answer the questions that follow.

After the court's decision the then Minister for Education said:

Obviously we do not want to see knives in our schools, there is no doubt about it, but I can understand it is for religious reasons...We may need to get some advice in relation to that, whether or not we can **stay the decision** until we work out exactly what that means for our schools, but the Court of Appeal has spoken.

Queensland, *Estimates—Education; Industrial Relations; Racing*, 3 August 2023, 24 (Grace Grace, Minister for State Development and Infrastructure, Minister for Industrial Relations and Minister for Racing).

What does 'stay the decision' mean?

A 'stay' is when someone asks a court to stop a particular decision from being followed for a period of time.



1. Identify the name of the Minister who gave the quote.
2. Infer why the Minister said, 'We may need to get some advice...'? What does this show about how the Executive makes decisions?
3. Select a part of the quote that shows that the Minister respects the decision of the Queensland Court of Appeal.



In Year 11 or Year 12?

Your teacher may ask you to complete Student Activity D.

REFLECT

- **Report:** Describe how the separation of powers doctrine works in real life using the details of the case study.
- **Relate:** Explain how this case study connects to the broader principles of the separation of powers.
- **Reason:** Based on the case study, decide whether the separation of powers appear to work effectively (or not). What factors influence its success or failure in this context?
- **Reconstruct:** Hypothesises how the separation of powers could be strengthened or adjusted.

EXIT TICKET

1. Identify the three branches of government, the L _____, the E _____ and the J _____.
2. Identify a person that is part of the:
 - a. Queensland Cabinet
 - b. Queensland Parliament
 - c. Queensland Court of Appeal
3. What is the separation of powers? Circle the correct answer:
 - a. The system where the president makes all decisions for the country.
 - b. The practice of allowing the public to vote on every government decision.
 - c. The ability of the government to control all businesses and industries.
 - d. The idea that each branch of government has its own specific duties and powers.

Additional resources and links

- ABC, [The House in Session—Episode 3 The Westminster System](#)
- Britannica Kids, [Separation of Powers](#)
- Human Rights Law Centre, [QLD Court of Appeal finds that legislation prohibiting Sikhs from wearing ceremonial knives in schools is inconsistent with the Racial Discrimination Act 1975 \(Cth\)](#)
- Queensland Parliament, [Separation of Powers](#).
- Queensland Parliament, [The Separation of Powers in Queensland](#).
- Parliamentary Education Office, [Separation of powers: Parliament, Executive and Judiciary](#)

ADDITIONAL STUDENT ACTIVITY A

Interactions between the different arms of government can be complex and overlap. Some examples include:

- The Premier, Ministers and King (represented by the Governor) are in both the Executive and Parliament.
- The King (represented by the Governor), Premier and Ministers form the Executive Council.
- The Chief Justice (the head of the Queensland courts) sometimes acts in the position of Governor in the Governor's absence.
- The Executive recommends certain appointments (such as judges).
- The Parliament is involved in the removal of a judge (this is rare and has only happened once since 1901).

1. Select one of the examples listed above.
2. Locate and select relevant legal information from primary and/or secondary sources to respond to the following questions:
 - a. Describe the selected example in detail.
 - b. Explain the functions of each arm in this context. In your response:
 - i. Determine what role(s) the involved arms of government play.
 - ii. Make connections between the arms of government.
 - iii. Locate an example of the selected examine in action.
 - c. Explain one constitutional, legal safeguard, or convention (an unwritten rule or tradition) that are designed to maintain a balance of power between the two arms.
 - d. Decide whether these safeguards are effective. Justify your decision with legal criteria.



ADDITIONAL STUDENT ACTIVITY B

Knowing where to find legislation is an important skill. To locate legislation, you can use:

- Australasian Legal Information Institute (AustLii), *Queensland Resources*—austlii.edu.au/au/qld/
- Justice and Decisions Enhanced (JADE)—jade.io/t/home
- Office of the Queensland Parliamentary Counsel, *Queensland Legislation*—legislation.qld.gov.au/
- Queensland Parliament, *Bills and legislation*—parliament.qld.gov.au/Work-of-the-Assembly/Bills-and-Legislation

One of the sections relevant to this case study is *Weapons Act 1990* (Qld) s51.

1. Locate the *Weapons Act 1990* (Qld) s51 using one of the websites below.
2. Identify and explain the sub-section(s) relevant to the case study.

3. Explain what 'reasonable excuses' are provided in the Act that allow someone to have a knife in a:
 - a. Public place.
 - b. School.
4. Compare how the law views a public place and a school, by identifying the similarities and differences. Decide whether this distinction is fair, or, if not, can it be justified?

Section 51 has been amended many times, but one of the most relevant amendments to this case study was the Weapons Amendment Bill 2011. To understand the reasons behind a bill, it is a good idea to locate the Explanatory Notes, or the speeches made in Parliament. This can be found on:

- Office of the Queensland Parliamentary Counsel, *Queensland Legislation*—legislation.qld.gov.au/ (Open the 'Legislative History' menu once you have located the relevant Act or Bill)
- Queensland Parliament, *Record of Proceedings (Hansard)*—parliament.qld.gov.au/Work-of-the-Assembly/Record-of-Proceedings
- Queensland Parliament, *Search*—parliament.qld.gov.au/Global/Search

1. Locate the Second Reading speech for Weapons Amendment Bill 2011 made by the Minister for Police, Corrective Services and Emergency Services.
2. Explain the reason why the Government amended s51 in 2011.

ADDITIONAL STUDENT ACTIVITY C



Knowing where to find case law is an important skill. Queensland case law can be found on:

- Australasian Legal Information Institute (AustLii), *Queensland Resources*—austlii.edu.au/au/qld/
- Incorporated Council of Law Reporting for the State of Queensland and the Supreme Court Library Committee, *Queensland Judgments*—queenslandjudgments.com.au
- Justice and Decisions Enhanced (JADE)—jade.io/t/home
- Supreme Court Library Queensland—sclqld.org.au

1. Locate the judgment *Athwal v State of Queensland* [2023] QCA 156.
2. Read paragraphs [39], [108], [109], [110], [115] and [116].
 - a. Explain the practical impact the law had on Sikhs, and why it was inconsistent with the *Racial Discrimination Act 1975* (Cth) s10.

ADDITIONAL STUDENT ACTIVITY D

Form a 'Cabinet' of approximately 5 people. These people will be Ministers.

As a Cabinet, brainstorm two legal alternatives and make one recommendation on how the law should be reformed in response to the Queensland Court of Appeal decision. Justify your recommendation with legal criteria.