



# LAWS807

## Constitutional Law

S1 External 2019

*Macquarie Law School*

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#### **Disclaimer**

Macquarie University has taken all reasonable measures to ensure the information in this publication is accurate and up-to-date. However, the information may change or become out-dated as a result of change in University policies, procedures or rules. The University reserves the right to make changes to any information in this publication without notice. Users of this publication are advised to check the website version of this publication [or the relevant faculty or department] before acting on any information in this publication.

## General Information

Unit convenor and teaching staff

Unit Convenor

Dr Holly Doel-Mackaway

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6 First Walk (W3A) room 625

Wednesday 2-3pm

Credit points

4

Prerequisites

LAWS803 and LAWS805

Corequisites

Co-badged status

Unit description

This unit analyses the Constitution of the Commonwealth of Australia and the New South Wales Constitution. The Commonwealth Constitution is the founding, national document that sets out the powers of the Commonwealth and its structure of government. During this course, you will consider what that means. You will consider how the constitutional texts are interpreted, analyse practices affecting the operation of government in Australia, and reflect on constitutional change. You will examine what type of legal order Australia has: the fundamental distributions of power in Australia between the states and the Commonwealth; between the legislature, executive, and judiciary; and between the government and individual citizens.

## Important Academic Dates

Information about important academic dates including deadlines for withdrawing from units are available at <https://www.mq.edu.au/study/calendar-of-dates>

## Learning Outcomes

On successful completion of this unit, you will be able to:

Analyse central constitutional law concepts, structural features, and implications arising from the constitutional text.

Identify constitutional law principles within cases.

Assess different theories of constitutional interpretation and understand their relationship to different doctrinal positions.

Evaluate what is necessary for a constitution, assessing current deficiencies and strengths in the Commonwealth Constitution.

Analyse the legal and political dimensions of contemporary constitutional law controversies.

Apply constitutional law to new fact problems.

## General Assessment Information

Unless a Special Consideration request has been submitted and approved, (a) a penalty for lateness will apply – two (2) marks out of 100 will be deducted per day for assignments submitted after the due date – and (b) no assignment will be accepted more than seven (7) days (incl. weekends) after the original submission deadline. No late submissions will be accepted for timed assessments – e.g. quizzes, online tests.

Word limits will be strictly applied and work above the word limit will not be marked.

All assessments in the unit are to be submitted electronically. Plagiarism detection software is used in this unit.

### Moderation

Detailed marking guidelines will be made available on iLearn. The convenor moderates all assessments. All fail research essays and take-home exams are double marked.

## Assessment Tasks

Name	Weighting	Hurdle	Due
<u>Tutorial Participation</u>	20%	No	On-going (weeks 3-13/OCS)
<u>Research Essay</u>	30%	No	Monday, 29 April, 10pm
<u>Take-Home Examination</u>	50%	No	Wednesday 12 June 8 pm

### Tutorial Participation

Due: **On-going (weeks 3-13/OCS)**

Weighting: **20%**

**Due:** Beginning Week 3 (internal students) / during OCS (external students)

**Weighting:** 20%

**Active participation in all seminars/OCS is compulsory** and is assessed (see rubric on iLearn page). Internal students are required to attend 10 out of 12 seminars. It is permissible to miss 2 seminars without applying for special consideration. **Do not apply for special consideration**

**unless you have already missed 2 seminars.** Only apply for special consideration if it is the third seminar that you will miss. External students must attend both days of the OCS.

Groups of students will lead an in-depth seminar discussion during weekly seminars/during the OCS. Groups will be allocated for both external and internal students in Week 2. As a group, your collaborative task will be to:

1. Lead the class in an in-depth **30-minute discussion** about the questions/hypothetical scenarios proposed in the weekly seminar questions posted on the iLearn page.
2. Ensure all members of the group bring to the class a well-developed understanding of the topic that demonstrates high-level engagement with, and understanding of, the course material for that week.
3. Ensure all members of the group take equal responsibility for leading the in-depth discussion and provide opportunities for all members of the class to engage in the discussion.
4. Lead the seminar discussion in an engaging and accessible way.
5. Be able to answer any questions that arise from the convenor and/or class members.

Groups may run the in-depth discussions in whatever way you like in order to best facilitate a productive and collaborative learning experience. You may wish to use a range of strategies to do this for example, by using short videos, photographs, case studies, holding a debate/moot court, run a live quiz, hold a Q and A session, or divide the group into small groups with individual tasks. Whatever method is used groups must focus on maximising the learning experience to the greatest degree possible and creating an environment of intellectual inquiry into the given topic.

All groups can prepare to lead the in-depth discussion under the assumption that all of the class participants have done the readings and listened to the lectures for that class. It is not the role of the groups to educate the class about the basic course material. This is assumed knowledge. Further, all groups can work on the expectation that all class members will come to the class ready to actively participate in the in-depth discussion (as all seminars/OCS are compulsory and active participation in all seminars/OCS is being assessed).

The group members and the class members share responsibility for the success of each week's in-depth discussion. The purpose of the in-depth discussion is to advance and develop the knowledge of all class members beyond the course materials.

An assessment rubric for this assessment is available on the unit's iLearn page.

**This is a timed assessment and no late submissions will be accepted. Any student who is not able to participate in this activity AND has an approved special consideration request will be set an alternative assessment in lieu of this activity.**

All internal and external students will be assessed on their participation in these seminar discussions, problem-solving, appropriate questioning, and understanding of the materials. This will require preparation before the seminar – i.e. completing the required reading and preparing

thoughts/answers to the seminar materials.

Internal students will be assessed for participation across the session. External students will be assessed during the OCS. More information on the structure of the on-campus session will be provided before the session via iLearn.

On successful completion you will be able to:

- Analyse central constitutional law concepts, structural features, and implications arising from the constitutional text.
- Identify constitutional law principles within cases.
- Assess different theories of constitutional interpretation and understand their relationship to different doctrinal positions.
- Evaluate what is necessary for a constitution, assessing current deficiencies and strengths in the Commonwealth Constitution.
- Analyse the legal and political dimensions of contemporary constitutional law controversies.
- Apply constitutional law to new fact problems.

## Research Essay

Due: **Monday, 29 April, 10pm**

Weighting: **30%**

Students will write a 2,500 word research essay on a topic that will consolidate their learning in this subject.

Essays must be submitted in a word document, and be double-line spaced text using 12 point font (use Times New Roman).

Essays are to be no longer than 2,500 words (this word count does not include the footnotes and bibliography). This is a strict requirement and **any content** (other than the footnotes and bibliography) over 2,500 words **will not be marked**. Exceeding the word limit will mean the last portion of excess words will not be marked and this could mean that all or part of the conclusion is not marked (if this occurs this will significantly and negatively impact student's marks.)

Footnotes should only be used for references, with no further discussion. **A bibliography must be provided**. Submissions must be a word document. This paper is to be submitted via the appropriate Turnitin link on the iLearn page.

The essay must comply with the *Australian Guide to Legal Citation* (4 ed). The Guide is available here: <https://law.unimelb.edu.au/mulr/aglc>

### *Late Assessment Penalty*

Unless a Special Consideration request has been submitted and approved, (a) a penalty for lateness will apply – two (2) marks out of 100 will be deducted per day for assignments submitted after the due date – and (b) no assignment will be accepted more than seven (7) days

(incl. weekends) after the original submission deadline.

Detailed instructions regarding this assessment task will be provided on the iLearn page.

On successful completion you will be able to:

- Analyse central constitutional law concepts, structural features, and implications arising from the constitutional text.
- Identify constitutional law principles within cases.
- Assess different theories of constitutional interpretation and understand their relationship to different doctrinal positions.
- Analyse the legal and political dimensions of contemporary constitutional law controversies.

## Take-Home Examination

Due: **Wednesday 12 June 8 pm**

Weighting: **50%**

A final take-home open book exam will be held on **Wednesday 12 June 2019**.

This is a take-home examination and will be completed online. It will consist of two questions:

- one hypothetical scenario, asking you to apply constitutional law to a new set of facts; and
- one general essay question asking you to develop an argument that demonstrates an in-depth understanding of constitutional law doctrine, principles and theory.

The questions are equally weighted.

The examination can cover any material in the unit, including previously assessed material.

Access to the examination paper will be available on iLearn from **12noon-8pm on Wednesday 12 June** and students must submit their answers by **8pm on Wednesday 12 June**. All work is to be submitted via the correct Turnitin link on iLearn.

This exam is designed to be completed in 3 hours. An 8-hour window to commence the exam is designed to accommodate student and work timetables. Answers to the exam questions cannot exceed 3,000 words (combined) however it is desirable to write shorter responses as this is an upper word limit. It is not necessary to write 3,000 words if students can answer the questions in less than 3,000 words.

**This is a timed assessment and no late submissions will be accepted. Any student who has an approved special consideration request will sit a supplementary examination.**

A bibliography is not required. Footnoting is not required. Rather, in the examination, students should provide references to cases and scholars in brackets in the text. For example:

- 'The High Court has held that the race power permits the Commonwealth to pass laws

for the benefit or detriment of Indigenous persons (*Kartinyeri*).'

- 'As Appleby argues, "[Quote]".' OR 'As Appleby argues, [paraphrase].' [Here, there is no need to reference the source.]

Further details and assessment guidance/marketing rubrics will be provided on iLearn.

On successful completion you will be able to:

- Analyse central constitutional law concepts, structural features, and implications arising from the constitutional text.
- Identify constitutional law principles within cases.
- Assess different theories of constitutional interpretation and understand their relationship to different doctrinal positions.
- Evaluate what is necessary for a constitution, assessing current deficiencies and strengths in the Commonwealth Constitution.
- Apply constitutional law to new fact problems.

## Delivery and Resources

Each week, one lecture or set of lectures will be pre-recorded and available to students on iLearn. A second on-site lecture will then be given on Mondays, 12-1pm. These will take place **Week 1 to Week 12**. While the on-site lecture will be recorded via Echo, Juris Doctor students are encouraged to attend in order to ask and answer questions. The schedule of topics to be covered in the lectures, and notes on required readings, will be available on iLearn. A list of topics is provided below in the Unit Schedule.

Weekly one hour tutorials begin in **Week 2 and finish in Week 13**. Required readings will be listed on the iLearn page.

External students have a compulsory two-day on-campus session (OCS). The dates are available via timetables. The two days will mirror the weekly seminars.

**The required textbook is:** George Williams, Sean Brennan and Andrew Lynch, *Blackshield and Williams Australian Constitutional Law and Theory: Commentary and Materials* (Federation Press, 7th ed, 2018). It is available from the Macquarie University Co-op Bookshop. Additional readings will be available via iLearn or else they will be linked to a publicly available source.

NOTE: A supplement to the textbook (Chapter 17) deals with *Re Gallagher*, the recent High Court decision that resulted in five federal parliamentarians losing office. The supplement also refers to another s 44 case, *Alley v Gillespie*, handed down in March 2018. The supplement is available to download free from the publisher's website [here](#).

Students require access to a computer and a secure and reliable internet provider.

## Unit Schedule

(1) Introduction



(2) Interpretation and Federal Heads of Power

- Constitutional Interpretation; *Engineers*

(3) External Affairs Power

(4) Corporations Power

(5) Federalism

- Federal Theory and Financial Relations

- State Constitutions; State and Federal Law Inconsistency

(6) Executive Power

(7) Judicial Power 1

- Separation of Powers; Chapter III; *Boilermakers* First Limb

(8) Judicial Power 2

- *Boilermakers* Second Limb; State Courts and the Incompatibility Doctrine

(9) Limits on Power 1: Express Rights and Bills of Rights

(10) Limits on Power 2: Implied Rights and Freedoms

(11) Limits on Power 3: Freedom of Interstate Trade (s 92) and Intergovernmental Immunities

(12) Constitutional Change

## Policies and Procedures

Macquarie University policies and procedures are accessible from [Policy Central](https://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/policy-central) (<https://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/policy-central>). Students should be aware of the following policies in particular with regard to Learning and Teaching:

- [Academic Appeals Policy](#)
- [Academic Integrity Policy](#)
- [Academic Progression Policy](#)
- [Assessment Policy](#)
- [Fitness to Practice Procedure](#)
- [Grade Appeal Policy](#)
- [Complaint Management Procedure for Students and Members of the Public](#)
- [Special Consideration Policy](#) (**Note:** *The Special Consideration Policy is effective from 4 December 2017 and replaces the Disruption to Studies Policy.*)

Undergraduate students seeking more policy resources can visit the [Student Policy Gateway](https://students.mq.edu.au/support/study/student-policy-gateway) (<https://students.mq.edu.au/support/study/student-policy-gateway>). It is your one-stop-shop for the key policies you need to know about throughout your undergraduate student journey.



If you would like to see all the policies relevant to Learning and Teaching visit [Policy Central](http://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/policy-central) (<http://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/policy-central>).

## Student Code of Conduct

Macquarie University students have a responsibility to be familiar with the Student Code of Conduct: <https://students.mq.edu.au/study/getting-started/student-conduct>

## Results

Results published on platform other than [eStudent](#), (eg. iLearn, Coursera etc.) or released directly by your Unit Convenor, are not confirmed as they are subject to final approval by the University. Once approved, final results will be sent to your student email address and will be made available in [eStudent](#). For more information visit [ask.mq.edu.au](http://ask.mq.edu.au) or if you are a Global MBA student contact [globalmba.support@mq.edu.au](mailto:globalmba.support@mq.edu.au)

## Moderation

Detailed marking guidelines will be made available on iLearn. The convenor moderates all assessments. All Fail research essays and take-home exams are double marked.

## Student Support

Macquarie University provides a range of support services for students. For details, visit <http://students.mq.edu.au/support/>

## Learning Skills

Learning Skills ([mq.edu.au/learningskills](http://mq.edu.au/learningskills)) provides academic writing resources and study strategies to improve your marks and take control of your study.

- [Workshops](#)
- [StudyWise](#)
- [Academic Integrity Module for Students](#)
- [Ask a Learning Adviser](#)

## Student Services and Support

Students with a disability are encouraged to contact the [Disability Service](#) who can provide appropriate help with any issues that arise during their studies.

## Student Enquiries

For all student enquiries, visit Student Connect at [ask.mq.edu.au](http://ask.mq.edu.au)

If you are a Global MBA student contact [globalmba.support@mq.edu.au](mailto:globalmba.support@mq.edu.au)

## IT Help

For help with University computer systems and technology, visit [http://www.mq.edu.au/about\\_us/offices\\_and\\_units/information\\_technology/help/](http://www.mq.edu.au/about_us/offices_and_units/information_technology/help/).

When using the University's IT, you must adhere to the [Acceptable Use of IT Resources Policy](#). The policy applies to all who connect to the MQ network including students.

## Graduate Capabilities

### PG - Capable of Professional and Personal Judgment and Initiative

Our postgraduates will demonstrate a high standard of discernment and common sense in their professional and personal judgment. They will have the ability to make informed choices and decisions that reflect both the nature of their professional work and their personal perspectives.

This graduate capability is supported by:

#### Learning outcomes

- Analyse central constitutional law concepts, structural features, and implications arising from the constitutional text.
- Analyse the legal and political dimensions of contemporary constitutional law controversies.

#### Assessment tasks

- Tutorial Participation
- Research Essay
- Take-Home Examination

### PG - Discipline Knowledge and Skills

Our postgraduates will be able to demonstrate a significantly enhanced depth and breadth of knowledge, scholarly understanding, and specific subject content knowledge in their chosen fields.

This graduate capability is supported by:

#### Learning outcomes

- Analyse central constitutional law concepts, structural features, and implications arising from the constitutional text.
- Identify constitutional law principles within cases.
- Assess different theories of constitutional interpretation and understand their relationship to different doctrinal positions.
- Evaluate what is necessary for a constitution, assessing current deficiencies and strengths in the Commonwealth Constitution.
- Analyse the legal and political dimensions of contemporary constitutional law controversies.
- Apply constitutional law to new fact problems.

## Assessment tasks

- Tutorial Participation
- Research Essay
- Take-Home Examination

## PG - Critical, Analytical and Integrative Thinking

Our postgraduates will be capable of utilising and reflecting on prior knowledge and experience, of applying higher level critical thinking skills, and of integrating and synthesising learning and knowledge from a range of sources and environments. A characteristic of this form of thinking is the generation of new, professionally oriented knowledge through personal or group-based critique of practice and theory.

This graduate capability is supported by:

## Learning outcomes

- Analyse central constitutional law concepts, structural features, and implications arising from the constitutional text.
- Identify constitutional law principles within cases.
- Assess different theories of constitutional interpretation and understand their relationship to different doctrinal positions.
- Evaluate what is necessary for a constitution, assessing current deficiencies and strengths in the Commonwealth Constitution.
- Analyse the legal and political dimensions of contemporary constitutional law controversies.
- Apply constitutional law to new fact problems.

## Assessment tasks

- Tutorial Participation
- Research Essay
- Take-Home Examination

## PG - Research and Problem Solving Capability

Our postgraduates will be capable of systematic enquiry; able to use research skills to create new knowledge that can be applied to real world issues, or contribute to a field of study or practice to enhance society. They will be capable of creative questioning, problem finding and problem solving.

This graduate capability is supported by:

## Learning outcomes

- Identify constitutional law principles within cases.
- Assess different theories of constitutional interpretation and understand their relationship to different doctrinal positions.
- Evaluate what is necessary for a constitution, assessing current deficiencies and strengths in the Commonwealth Constitution.
- Analyse the legal and political dimensions of contemporary constitutional law controversies.
- Apply constitutional law to new fact problems.

## Assessment tasks

- Tutorial Participation
- Research Essay
- Take-Home Examination

## PG - Effective Communication

Our postgraduates will be able to communicate effectively and convey their views to different social, cultural, and professional audiences. They will be able to use a variety of technologically supported media to communicate with empathy using a range of written, spoken or visual formats.

This graduate capability is supported by:

## Learning outcomes

- Analyse the legal and political dimensions of contemporary constitutional law controversies.
- Apply constitutional law to new fact problems.

## Assessment tasks

- Tutorial Participation
- Research Essay
- Take-Home Examination

## PG - Engaged and Responsible, Active and Ethical Citizens

Our postgraduates will be ethically aware and capable of confident transformative action in relation to their professional responsibilities and the wider community. They will have a sense of connectedness with others and country and have a sense of mutual obligation. They will be able to appreciate the impact of their professional roles for social justice and inclusion related to national and global issues

This graduate capability is supported by:

## Learning outcomes

- Analyse central constitutional law concepts, structural features, and implications arising from the constitutional text.
- Analyse the legal and political dimensions of contemporary constitutional law controversies.

## Assessment tasks

- Tutorial Participation
- Research Essay
- Take-Home Examination

## Changes from Previous Offering

Key changes have been made to the materials used and way in which this course will be taught. These are as follows:

1. Indigenous perspectives on constitutional law principles, theory and doctrine have been embedded throughout the course. This includes the incorporation literature from leading Indigenous constitutional law scholars and commentators.
2. Seminar / OCS participation is now assessable and includes a seminar presentation (20%).
5. The textbook has been changed. It is now: George Williams, Sean Brennan and Andrew Lynch, *Blackshield and Williams Australian Constitutional Law and Theory: Commentary and Materials* (Federation Press, 7th ed, 2018).

## Changes since First Published

Date	Description
26/02/2019	Change of exam date from 11 to 12 June due to a clash with another subject