

LAWS70447 Executive Power in Australia

Credit Points:	12.5												
Level:	7 (Graduate/Postgraduate)												
Dates & Locations:	2016, Parkville This subject commences in the following study period/s: October, Parkville - Taught on campus. This subject has a quota of 30 students. Please refer to the Melbourne Law Masters website for further information about the management of subject quotas and waitlists.												
Time Commitment:	Contact Hours: 24-26 hours Total Time Commitment: 136-150 hours The pre-teaching period commences four weeks before the subject commencement date. From this time, students are expected to access and review the Reading Guide that will be available from the LMS subject page and the subject materials provided by the subject coordinator, which will be available from Melbourne Law School. Refer to the Reading Guide for confirmation of which resources need to be read and what other preparation is required before the teaching period commences.												
Prerequisites:	<p>Melbourne Law Masters Students: None</p> <p>JD Students: Successful completion of all the below subjects:</p> <table border="1"> <thead> <tr> <th>Subject</th> <th>Study Period Commencement:</th> <th>Credit Points:</th> </tr> </thead> <tbody> <tr> <td>LAWS50024 Principles of Public Law</td> <td>Semester 1</td> <td>12.5</td> </tr> <tr> <td>LAWS50028 Constitutional Law</td> <td>Semester 2</td> <td>12.5</td> </tr> <tr> <td>LAWS50032 Administrative Law</td> <td>Semester 1</td> <td>12.5</td> </tr> </tbody> </table>	Subject	Study Period Commencement:	Credit Points:	LAWS50024 Principles of Public Law	Semester 1	12.5	LAWS50028 Constitutional Law	Semester 2	12.5	LAWS50032 Administrative Law	Semester 1	12.5
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LAWS50024 Principles of Public Law	Semester 1	12.5											
LAWS50028 Constitutional Law	Semester 2	12.5											
LAWS50032 Administrative Law	Semester 1	12.5											
Corequisites:	None												
Recommended Background Knowledge:	Applicants without legal qualifications should note that subjects are offered in the discipline of law at an advanced graduate level. While every effort will be made to meet the needs of students trained in other fields, concessions will not be made in the general level of instruction or assessment. Most subjects assume the knowledge usually acquired in a degree in law (LLB, JD or equivalent). Applicants should note that admission to some subjects in the Melbourne Law Masters will be dependent upon the individual applicant's educational background and professional experience.												
Non Allowed Subjects:	None												
Core Participation Requirements:	The Melbourne Law Masters welcomes applications from students with disabilities. The inherent academic requirements for study in the Melbourne Law Masters are: The ability to attend a minimum of 75% of classes and actively engage in the analysis and critique of complex materials and debate; The ability to read, analyse and comprehend complex written legal materials and complex interdisciplinary materials; The ability to clearly and independently communicate in writing a knowledge and application of legal principles and interdisciplinary materials and to critically evaluate these; The ability to clearly and independently communicate orally a knowledge and application of legal principles and interdisciplinary materials and critically evaluate these; The ability to work independently and as a part of a group; The ability to present orally and in writing legal analysis to a professional standard. Students who feel their disability will inhibit them from meeting these inherent academic requirements are encouraged to contact Student Equity and Disability Support.												
Coordinator:	Prof Simon Evans												
Contact:	<p>Lecturers</p> <p>Professor Simon Evans (http://www.law.unimelb.edu.au/staff/Simon%20Evans) (Coordinator)</p> <p>Mr Graeme Hill (http://www.law.unimelb.edu.au/staff/Graeme%20Hill)</p> <p>Email: law-masters@unimelb.edu.au (mailto:law-masters@unimelb.edu.au)</p>												

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Subject Overview:	<p>The powers of the executive branch of government have been debated in some of the most significant constitutional cases in Australia in recent years. Despite the High Court's decisions in the School Chaplains Cases, <i>Pape v FCT</i> and migration cases including <i>CPCF v Minister for Immigration and Border Protection</i>, the scope of these powers and the validity of many government programs and activities remain very unclear.</p> <p>This subject will explain and critically analyse the key contemporary questions relating to the powers of executive government in Australia. It will help students understand the current complexity and anticipate future developments in the High Court.</p> <p>Key questions to be addressed include: When can the Commonwealth act through the executive branch alone? When does it require legislative support for its programs? What is the effect of legislation on the inherent powers of the executive branch? When can legislation displace, override or otherwise limit executive power? When does executive power stray into powers that can be exercised only by the legislature? How do these questions play out in the context of the federal system? Can the Commonwealth "outsource" the exercise of executive power to private bodies? Are there limits on the powers of Parliament to hold the executive accountable? What does the Commonwealth become liable for harmful consequences of executive action? What light does the constitutional law of comparable jurisdictions shed on any of these questions?</p> <p>Professor Simon Evans is a constitutional law scholar at Melbourne Law School with particular expertise in the executive branch of government. Graeme Hill regularly advises the Commonwealth and state governments concerning constitutional matters and appears in the High Court in such matters, including matters related to executive power.</p> <p>Principal topics include:</p> <ul style="list-style-type: none"> # The conceptual foundations of executive power: the Crown, the nation and the people # Inherent executive power and non-statutory executive power, including the continuing relevance of "the prerogative" # The privileges and immunities of the executive government # The liability of the executive government # The effect of legislation on non-statutory executive power and on executive discretion # Responsible executive government in a contemporary federation # The executive power to conduct foreign relations and the impact of international law # Executive spending, contracts and section 96 grants: the impact of responsible government, federalism and separation of powers # The executive as law-maker and the validity of delegated legislation.
Learning Outcomes:	<p>A student who has successfully completed this subject will:</p> <ul style="list-style-type: none"> # Have an advanced and integrated understanding of the constitutional principles relating to the executive branch of government in Australia, including recent developments in this field of law and practice # Be able to critically examine, analyse, interpret and assess these principles in the constitutional and governmental contexts in which they are relevant # Be an engaged participant in debate regarding emerging and contemporary issues in the field, such as the federal limits on Commonwealth executive power, the scope of State executive power and the constitutional implications of outsourcing executive functions # Have a sophisticated appreciation of the fundamental constitutional principles – including responsible government, federalism, the separation of powers and the rule of law – relevant to developments in this area # Have an advanced understanding of the constitutional implications of contemporary modes of governance, including outsourcing, intergovernmental and international cooperation # Have the cognitive and technical skills to generate critical and creative ideas about the constitutional principles relating to the executive branch of government in Australia, and to critically evaluate existing legal theories, principles and concepts with creativity and autonomy # Have the cognitive and technical skills to independently examine, research and analyse existing and emerging legal issues about the constitutional principles relating to the executive branch of government in Australia

	<ul style="list-style-type: none"> # Have the communication skills to clearly articulate and convey complex information regarding the constitutional principles relating to the executive branch of government in Australia to relevant specialist and non-specialist audiences # Be able demonstrate autonomy, expert judgment and responsibility as a practitioner and learner in the field of the constitutional principles relating to the executive branch of government in Australia.
Assessment:	Take-home examination (5,000-6,000 words as specified in the subject reading guide) (100%) (25 - 28 November) or 10,000 word research paper (100%) (11 January 2017) on a topic approved by the subject coordinator A minimum of 75% attendance is a hurdle requirement.
Prescribed Texts:	Specialist printed materials will be made available free of charge from the Melbourne Law School prior to the pre-teaching period.
Breadth Options:	This subject is not available as a breadth subject.
Fees Information:	Subject EFTSL, Level, Discipline & Census Date, http://enrolment.unimelb.edu.au/fees
Links to further information:	www.law.unimelb.edu.au/subject/LAWS70447/2016
Related Course(s):	<ul style="list-style-type: none"> Graduate Diploma in Government Law Graduate Diploma in Legal Studies Juris Doctor Master of Laws Master of Public and International Law