

## SUMMARY

### Overlaps between the Executive and the Legislature: the Governor-General's forgotten power

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This paper examines the possibility and implication of Section 58 of the Australian Constitution. This section provides the Governor-General discretionary power when legislation passed by the both Houses of Parliament is presented for royal assent. According to this section, the Governor-General can give assent, withhold assent, or reserve it at "the Queen's pleasure". The Governor-General can return it to the parliament possibly with amendments which s/he may recommend, and with which the parliament may have to deal.

While it may well be a common practice for legislation to be given royal assent under the constitutional monarchy, Australia stands out as its constitution says nothing about cabinet's advice and/or approval. Section 58 has been seen as a mere formality; assent has always been given by convention, and the bill can be returned to the parliament for amendment if drafting errors are found. At the same time it should be noted that the Governor-General's discretionary power is referred to only in section 58.

However, the advent of a minority government in 2010 shed new light on section 58. Under a minority government, it is possible for the Opposition and cross bench members to have their bill pass through both houses of parliament and present it to the Governor-General for royal assent. If one follows the principle of responsible government, the Governor-General should seek advice from the cabinet, which in turn may ask the Governor-General not to give assent. If one follows that of representative government, the Speaker of the House of Representatives would advise the Governor-General to give assent regardless of whatever the cabinet's view would be.

Section 58 can also be read as a clear separation of power between the executive and the legislature. While this is not an issue under the parliamentary system, it may become relevant in the future if Australia chooses to become a Republic, especially one with a directly elected president.

This paper will use primary and secondary sources as well as interviews with key players such as constitutional experts and Clerks of the House of Representatives and the Senate.