*The Commonwealth of Australia v Tasmania—known informally as the Tasmanian Dams Case—is one of the most famous constitutional cases in Australian history. The High Court’s interpretation of the Australian Constitution in this case set a precedent for the Australian Parliament to make laws to fulfil Australia’s international legal obligations.*

**The following case study will analyse the case by breaking it into 4 parts:**

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| Facts A brief overview of the relevant facts that lead to the case appearing in the High Court. | Issues The key questions about the Australian Constitution the High Court had to consider. | Verdict The decision made by a majority of the High Court in order to resolve the case. | Reasoning The High Court’s explanation for why they arrived at the verdict they did. |

# The Commonwealth of Australia v Tasmania (1983)

## Facts

In 1978, the Tasmanian Government proposed to construct the Franklin Dam on the Gordon River. The dam would have flooded a large section of the Franklin River in south-west Tasmania: an area which, in 1982, was declared a World Heritage Site by the United Nations. The same year, the Tasmanian Parliament passed laws allowing the dam to proceed.

In 1983, when initial construction for the dam had already commenced, the Australian Parliament passed the *World Heritage Properties Conservation Act 1983*. The Act allowed the Australian Government to stop clearing, excavation and other activities that would damage the Tasmanian World Heritage site.

The Tasmanian Government ignored the new Australian law and refused to halt construction of the dam. The Australian Government commenced proceedings against Tasmania in the High Court.

## Issues

The High Court had to decide whether the *World Heritage Properties Conservation Act 1983* was a valid Australian law.

A central question was whether the power to make the law could be granted by section 51 (xxix) of the Constitution, which gives the Australian Parliament the power to make laws ‘with respect to … external affairs.’

According to precedent—past—cases, the scope of the ‘external affairs’ power was unclear. Did the Australian Parliament have the power to make laws to fulfil its obligations under international treaties such as the World Heritage Convention?

## Verdict

The 7 justices of the High Court split 4 to 3 to decide that the Australian Parliament did have the constitutional power to make the *World Heritage Properties Conservation Act 1983*. The law was valid and the Tasmanian Government needed to stop construction of the Franklin Dam.

## Reasoning

In their majority judgement, the Court found the Australian Parliament could create laws to meet its international treaty obligations under Section51 (xxix) of the Constitution.

The use of the term ‘external affairs’ was deliberately broad. There were few international organisations in existence when the Constitution was written in 1901. (The United Nations was not established until 1945) To participate fully in international affairs in the modern era, the Court reasoned the Australian Government needed the power to not only sign international treaties but to put their obligations under those treaties into action. *The World Heritage Properties Conservation Act 1983* was a valid law because it put into action Australia’s obligations under the World Heritage Convention.

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| The legacy of the Tasmanian Dams Case The Tasmanian Dams Case significantly impacted how law-making power is divided between the Australian Government and the state governments.  The court’s interpretation of Section51 (xxix) expanded the law-making power of the Australian Parliament. Because Australia signs international treaties concerning a range of subjects, the case meant the Australian Parliament could make laws about a range of matters that were previously considered beyond its power.  Critics of the Tasmanian Dams Case believe it disturbed the power balance in Australia by giving too much law-making power to the Australian Parliament. Others celebrate the outcome as an important step forward for environmental protection in Australia. The decision led to several new laws to protect Australia’s environmental heritage and biodiversity.  The Tasmanian Dams Case also set a precedent for how High Court judgements are communicated to the public. Because there was huge public interest in the case, the Court issued a media release summarising their judgement in language that ordinary people could understand. In it, they stressed their decision was based on the Constitution—not whether the dam was a good policy decision in their view. Today, a media release is issued after every High Court case. |