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Legal and Regulatory Impacts on the Business Life Cycle

Identify the Regulatory Bodies and Area of Laws that are involved in the Respective Stages of a Business Life Cycle. Explain and Justify Your Answers.

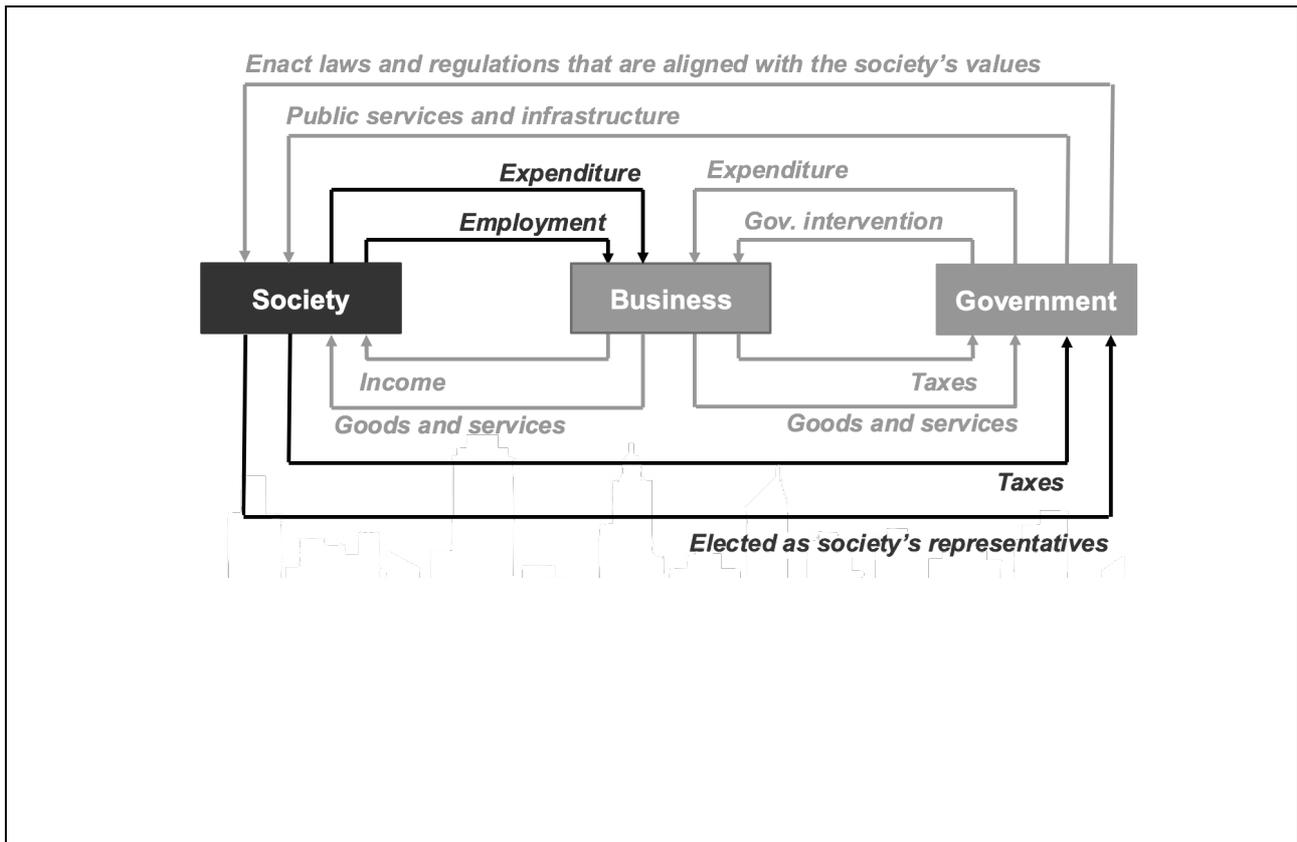
Business Idea or Innovation	IP Australia	<ul style="list-style-type: none"> Grants rights in patents, trademarks and designs (intellectual property) in Australia.
Business Registration	Australian Securities & Investments Commission (ASIC)	<ul style="list-style-type: none"> Registration and deregistration of companies / businesses. Registration of company / business name.
	Australian Taxation Office (ATO)	<ul style="list-style-type: none"> Register for an Australian Business Number (ABN). Register for GST and other tax obligations – depending on the nature of your business). Tax File Number (TFN) - an individual, company, superannuation fund, partnership, or trust.
	Australian Stock Exchange (ASX)	<ul style="list-style-type: none"> If public company, must register on the ASX so shares can be sold.
Builds / Purchases / Hires Premises or Factory	Australian Taxation Office (ATO)	<ul style="list-style-type: none"> Land used for production may be a taxable asset.
	Safe Work Australia	<ul style="list-style-type: none"> Work environment must be safe.
	Landgate	<ul style="list-style-type: none"> Land titles, land evaluation and location information.
Employs Staff	Fair Work Commission	<ul style="list-style-type: none"> Make and change awards Resolve disputes about terms of an award or enterprise agreements Review awards and minimum wage
	Fair Work Ombudsman	<ul style="list-style-type: none"> National Employment Standards and Leave Hours of work, breaks & rosters Managing performance & warnings Redundancy and Protections at work Bullying & harassment
	Australian Taxation Office (ATO)	<ul style="list-style-type: none"> TFN and taxation of individual workers.
	Work Safe	<ul style="list-style-type: none"> Occupational Health and Safety (OHS) training.

Starts Production	Clean Energy Regulator	<ul style="list-style-type: none"> • Providing information on the schemes • monitoring, facilitating and enforcing compliance with scheme
Marketing Goods	Australian Competition and Consumer Commission (ACCC) – Consumer Division.	<ul style="list-style-type: none"> • <u>General</u> and specific consumer protections.
Marketing Behavior	Australian Competition and Consumer Commission (ACCC) – Competition Division.	<ul style="list-style-type: none"> • Promotes competition and fair trading, and provide for consumer protection. <ul style="list-style-type: none"> • Price fixing, sharing markets, rigging bids, and controlling the output of goods and services • Above behavior stops competitive prices.
	Australian Securities and Investment Commission (ASIC).	<ul style="list-style-type: none"> • Shares and market misconduct - including insider trading, market manipulation, continuous disclosure and misleading statements
Sales and Purchase of Goods	Australian Competition and Consumer Commission (ACCC) – Consumer Division.	<ul style="list-style-type: none"> • General and <u>specific</u> consumer protections.
	Australian Taxation Office (ATO)	<ul style="list-style-type: none"> • GST

Business, Government and Regulation

Introduction

- 1.1 A well-functioning nation is established on three core pillars: society, government and business. The function and existence of all three pillars is interconnected. The decisions of each directly impact the others.

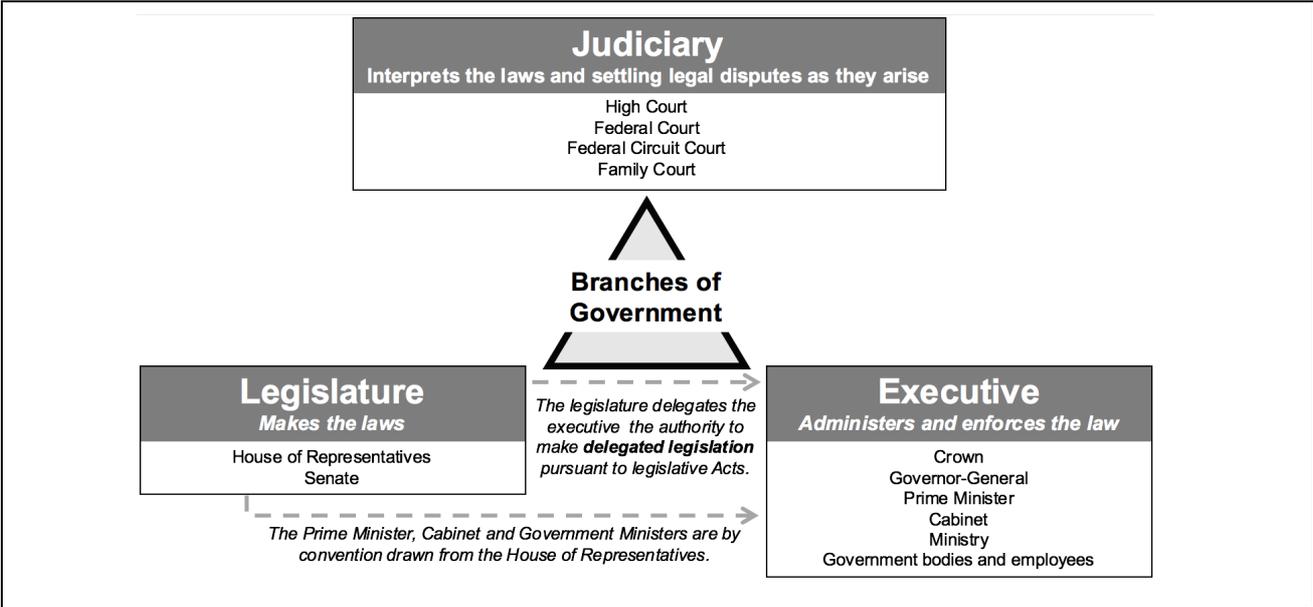


- 1.2 The government, acting on the mandate of the people that elect them, draft and enact laws that impact society as a whole. No business can function without encountering the law. Businesses have been increasingly subjected to government influence, review and control.
- 1.3 Society is also impacted by the laws that the government enacts relating to businesses. The government may enact laws that regulate the relationship between society and businesses.
- E.g. Society offers services to businesses in the form of employment in exchange for income. To protect society members as employees the government enacts laws regulating employment.

- 1.4 Theorists hypothesise about the optimal level of government intervention in business. From no government intervention to active government regulation (Australia).

The Role of Government in Society

- 1.5 The government is a federal constitutional monarchy. Four characteristics are:
- Federal: A form of government where power is divided between a central government and several state or regional governments, with no one body having all the power
 - Constitutional: The Australian Constitution is the supreme and fundamental law
 - Monarchy: as the British Monarch is the head of state.
- 1.6 At the time of federation, the six separate colonies became six states with their own parliaments and the Commonwealth Parliament as a central body. The Commonwealth of Australia Constitution Act 1900 (Imp) is the formal document by which this process was achieved. It was an act of the British Parliament and it came into force on 1 January 1901
- 1.7 The constitution is built on four legal doctrines. They are not expressly acknowledged in the constitution.
- Representative Government: refers to a government that represents the view of the majority of the people.
 - Roach v. Electoral Commissioner (2007) HCA 43
 - Responsible Government: if a government is not protecting the rights of citizens, the citizens can vote the government out of office at the next election.
 - Separation of Powers: refers to the fact that power should be distributed between three separate separate arms of government. These are legislative power, executive power and judicial power.
 - Rule of Law: legal principle that a nation is governed through the laws that no person is above.
- 1.8 Three distinct arms of government.
- Legislature: makes the laws and monitors the executive.
 - Executive: makes policy and proposes laws and implements laws passed by the legislature.
 - Judiciary: hears disputes and administers justice.
- 1.9 Whilst the constitution was based on the 'separation of powers' this is not strictly true. The Minister, Cabinet and Government Minister form the executive but also sit in the House of Representatives as part of the legislature. Furthermore, the legislature can delegate to the executive the authority to make delegated legislation pursuant to legislative Acts.



IP AUSTRALIA

Role: IP Australia administers Australia's intellectual property (IP) rights system, specifically trademarks, patents, designs and plant breeder's rights.

PATENTS

Patents Act 1990 (Cth) and Patents Regulations 1991 (Cth)

Definition: the exclusive right granted by a government to an inventor to manufacture, use, or sell an invention for a certain number of years.

Application must be made to the Patent office, and provides an exclusive right to exploit an invention for a limited period of time, in return the patentee must publish details of the patent.

Within Australia, there are three types of patents:

- Standard patent – 20 years duration (*Patents Act 1990 (Cth), s 67*);
- Innovation patent – 8 years duration (*Patents Act 1990 (Cth), s 68*); and
- Pharmaceutical patent – 25 years duration (*Patents Act 1990 (Cth), s 77 (5 years term of extension)*).

STANDARD PATENTS – more expensive and timely to acquire and REQUIRES examination

S18 (1)	<u>Standard Patents</u> (1) An invention is patentable when it: (a) is a manner of manufacture within the meaning of section 6 of the Statute of Monopolies; and (b) when compared with the prior art base as it existed before the priority date of that claim: i. is novel; and ii. involves an inventive step ; and (c) is useful; and (d) was not secretly used before patent claim
S 44	Examination is required for a standard patent application (applicant must request the examination) – examination is to be conducted within 5 years of filing the application
S 45	Once the Commissioner conducts the examination (<i>Patents Act 1990 (Cth), s 45</i>), the Commissioner can either: – accept the patent request (<i>Patents Act 1990 (Cth), s 49</i>); or – postpone acceptance of patent request (<i>Patents Act 1990 (Cth), s 49A</i>); or – Refuse patent request (<i>Patents Act 1990 (Cth), s 50</i>).

S 59	Any person may oppose the grant of a standard patent.
S 60	Where opposed, the Commission must: <ul style="list-style-type: none"> ➤ Hear and decide the case; and ➤ Decide on the balance of probabilities that the opposition's grounds exist.
S 67	Duration – 20 years

INNOVATION PATENTS – easier and cheaper to acquire

S 18 (1A)	<p><u>Innovation Patent</u></p> <p>(1A) An invention is patentable when it:</p> <ul style="list-style-type: none"> a) is a manner of manufacture within the meaning of section 6 of the Statute of Monopolies; and b) when compared with the prior art base as it existed before the priority date of that claim: <ul style="list-style-type: none"> i. is novel; and ii. involves an innovative step; and c) is useful; and d) was not secretly used before patent claim
S 45	Examination is not required for the applicant however, can request an innovation patent.
S 52	Commissioner must conduct a 'formalities' check to see what has been registered
S 101M	Anyone can oppose the grant of an innovation patent
S 60	Where opposed, the Commission must: <ul style="list-style-type: none"> ➤ Hear and decide the case; and ➤ Decide on the balance of probabilities that the revocation grounds exist
S 68	Duration – 8 years

DESIGNS

Design Act 2003 (Cth) and the Design Regulation 2004 (Cth)

- This act establishes a system for registration of new and distinctive designs for the visual presentation of commercial products.
- Section 5 – definition – “design” means the overall appearance of a product resulting from one or more visual features of the product – bbq example.
- May last for up to 10 years.

- 2 types of applications - Registration and Publication
- Registration is most common and entails registering your design with IP Australia

S 5	Defines “design” means the overall appearance of a product resulting from one or more visual features of the product – bbq example.
S 15	Registrable Designs (1) A design is registrable when there is a defined concept (different to the prior art base) and you change it to make it new and distinctive .
S 21	A person may file a design application in accordance with r 3.01
r 3.01	Outlines the minimum filing requirements
Ss39 – 49	The Registrar conducts a formalities check in accordance to the <i>Design Regulations 2004</i> (Cth)
Ss 45 and 43	<u>Registration Decisions</u> Once formalities check is conducted the Registrar can: <ul style="list-style-type: none"> ➤ Accept the design and issue a certificate of registration (s45) ➤ Refuse to register the design (s 43) Even registered you cannot enforce your right – you need to then apply to IP Australia, to have your product examined and receive a Certificate of Examination under chapter 5 of the Act (investigatory power).
S 63	Third party may apply to have another person’s design examined (for eg. If they think it is a copy of their own design).
Chapter 4	Allows for the revoking of registration if found to not be new or distinctive
S 46	(1) Terms of Registration <ul style="list-style-type: none"> (a) 5 years from the filing date of first application (b) if renewed under s 47, then 10 years from filing date (2) if design excluded from first application, then design is taken from first application disclosing the design

TRADEMARKS

The Trade Marks Act 1995 (Cth) and Trade Marks Regulations 1995 (Cth).

Definition: a symbol, word, or words legally registered or established by use as representing a company or product.

- Grants the proprietor entitlement to restrain the use of unregistered marks that are substantially identical or deceptively similar.

- However, to keep trademark it must be continuously used in a way that it becomes and remains distinctive to the proprietors business

Duration – 10 years – but can be re-registered every 10 years for a fee

S19	Applicant must register trademark with respect to at least one or more classes of goods and services listed in schedule 1 of the Regulations
S 31	Examination is required for all trademark applications before the application can be accepted to ensure there are no reasons to reject the trademark
Part 5	External parties may seek to oppose the registration or protection of a trademark
Part 9	External parties may seek to remove the trademark from the register or cease protection for non-use or on procedural grounds.

If someone keeps using your trademark – you go to court – IP Australia DOES NOT enforce the law, they administer the law.

Why Statutory regulation?

Advantages:

- Parliament - aided by advice from specialist bodies - can reach decisions on all levels.
- Balancing questions of public access with fairness to the rights-owner.
- Can provide administrative backup necessary.
- Need for appropriate regulation has meant parliament has to be involved and introduce statutory systems.

Rights in each area - although differ considerable, there are 2 points of similarity:

- Each creates a rights-owner who has rights precisely and only because the statute says so.
- Each is essentially negative in character -eg. A patent does not give the patentee the right to USE an invention but allows the right to EXCLUDE the use by others.

Administration and policy-making

- Copyright is the responsibility of the attorney general
- Patents, designs, trademarks and plant-breeders rights fall under the aegis of the Department of Industry.
 - Under which IP Australia operates and **administers** the registration for the four regimes.

- This separation means there is no single person or body responsible for policy making within the government or for providing expert advice on IP.
 - The Advisory Council on Intellectual Property (ACIP) - provides advice on patents, designs, trademarks and breeders rights.
 - No longer a permanent body with responsibility for copyright law reform (formerly the copyright law review committee).
- Formerly, the Intellectual Property and Competition Review Committee - ad hoc body to review all IP legislation (other than the plant breeders rights act) by reference to the 1995 Competition Principles Agreement between the commonwealth and the states.
 - They wanted to 'maintain incentives to innovate, while striving to strike a balance'.
 - Although making many suggestions, they didn't propose any fundamental changes to the current system.

Constitutional Power

Section 51 (xviii) - Commonwealths constitutional power in IP is primarily from s 51 (xviii) permitting it to make laws with respect to 'copyrights, patents and inventions and designs, and trademarks'

Enforcement limitations of IP Australia

- If applicant unhappy with a decision by IP Australia - they can appeal to the supreme court of that jurisdiction or the federal court.
- Enforcement nature of IP Australia – IP Australia do not penalise, if you want to stop someone from stealing your IP, you have to go to court.