

FOUNDATIONS OF AUSTRALIAN LAW NOTES

THE AUSTRALIAN CONSTITUTION:

- Founded at Federation
- Binding as it was enacted by the UK Parliament (Imperial Parliament) as a form of higher law, but now a referendum is needed to change it
- Drafted in Australia by Australians, with the final version approved by Australians via referendum

TWO TYPES OF LEGISLATION

Statutes/Acts

- Made by Parliament
- Public acts – applies to community at large
- Private acts – applies only for particular individual or groups (increasingly rare), any ambiguity construed against person in whose favour the act was made
- Code is a statute that draws together both statute and case law on a topic

Delegated/Subordinate legislation

- Made by office holders of bodies to whom Parliament has delegated law-making power through statutes
E.g. government general or government, minister, local government body
- Reduces pressure on parliamentary time
- Can be changed with relative ease (suitable for technical matters or matters of detail involved when facts of the subject of legislation likely to change rapidly)
- Different structure of making but no less important
- Consultation with Parliament required before its made (so it doesn't deal with matter more suitable to include in an Act, or authorise making of irreversible decisions affecting people)
- Most common form: regulations

LEGISLATION VS CASE LAW

Legislation

- Proactive (quicker, major law reform, can prevent problems from occurring)
- Expressed in a fixed form (one wording for a rule)
- Parliament can change rules from case laws that they find undesirable

Case Law

- Only affects future actions (must wait for dispute)
- Expressed using a variety of different formulations within same judgement
- Courts can resolve disputes about the meaning of words in legislation

PRECEDENCE RULES

- Legislation takes precedence over case law if there is inconsistency between them
- Act/Statutes takes precedence over subordinate laws on the same topic unless the Parliament specifically provides to the contrary 'as it enacted in this Act'
- Legislation by Commonwealth Parliament prevails over inconsistent legislation, on the same topic, made by State and territory Parliament.