

1. Government and Law in Australia

Types of Law

- National law: rules recognised and enforced by the authority of the state
- Natural law: rules of conduct according to our experience with the physical world (eg. Responsibility for parents to look after their children)
- Moral and religious law: obeyed due to conscience or religious community
- Custom: rules of conduct established by long usage, peer pressure, convenience

Regulation

- Restricts the use of force and forbids unauthorised violence
- Prohibit and punish undesirable behaviour
- Permit or reward desirable behaviour
- Creation of rights and duties: allows individuals to plan for the future with reasonable certainty
- Justice: ideal purpose of law is to achieve good and fair outcomes, not always the case
- Conflict between justice and predictability

Anatomy of Law

- Categories/areas of law
 - Criminal: harmful conduct
 - Civil: private legal rights and duties between individuals
 - Tort: negligence, harm wrongfully done
 - Contract: private agreements
 - Agency: use of a representative
 - Consumer protection: consumers dealing with suppliers of goods and services
 - Corporation: creation, organisation and administration of companies
 - Property: acquisition and transfer of private rights in goods and land
 - Administrative: official decision making
 - Constitutional: organisation, powers and processes of government
 - International: agreements between sovereign states
 - National: applied within the borders of a particular state
 - Jurisprudence: science or philosophy of law
 - Business: relevant to business activities
- Legal concepts: scope and nature of a category of law
 - Contract formation, agreement, intention to be bound, consideration
- Legal principles: recognise and give effect to a policy
 - Contract only made if parties intend to be legally bound
- Legal rules: requirements, mechanisms
 - Specify ways in which agreement may be reached
- Legal meanings: meaning or significance of words or phrases
- Legal authorities

Western European Legal Systems

- Roman law (civil law): from 753 BC, *Corpus Iuris Civilis* (533 AD), Rome invaded then law rediscovered in 12th century, influential to emerging states of modern Europe
- English law (common law): 12th century, introduced to England's colonies, two main sources (court cases, legislative Acts), exists alongside Indigenous custom and law in Australia

Australian Commonwealth, States and Territories

- European settlement (1788) – British established colony of New South Wales

- British initially ruled colonies directly then allowed self-governance in 1800s – must be consistent with British parliament laws
- The Commonwealth of Australia formed in 1901 – length negotiations began during 1890s between Australian colonies and Britain, Act of British parliament
- 6 states, 10 territories (ACT, NT, NI – self-governing): power to govern within its own borders
- Constitutions: change Commonwealth constitution requires consent of Australian voters (national referendum), government can change state constitutions without referendum, do not contain all rules
- Constitutional monarchy: hereditary monarch (Queen Elizabeth II), self-governing territories have administrator
- Representative democracy: governments elected periodically, make decisions on behalf of voters

Organs and Powers of Australian Governments

- The Crown: Governor-General (federal), Governor (state), give Royal assent, commission judges
- The Executive:
 - Crown
 - Chief minister: Prime Minister (federal) or Premier (state), elected by political party forming government
 - Other ministers of government: appointed by chief minister, cabinet – chief minister and senior ministers
 - Statutory bodies and offices
- Legislatures: body with authority to make law
 - Bicameral (upper and lower House) except Queensland (unicameral)
 - Commonwealth: upper House – Senate, lower House – House of Representatives
 - State parliaments: upper House – Legislative Councils, lower House – Legislative Assemblies (Houses of Assembly in SA and Tas)
 - Law made by legislators: legislation, Act, statute
 - Commonwealth legislation applies throughout Australia
 - State and federal government have concurrent power except in conflict where federal legislation prevails
 - Local governments: local laws, by-laws
- Courts:
 - High Court of Australia: 7 judges, one of which his Chief Justice
 - Court of appeal
 - Federal Court of Australia (fed), Family Court (fed), Supreme Courts (state): 1 judge for first instance, 3-5 judges (Full Court) for appeals
 - Federal Circuit Court (fed), Country/District court (state but not territories)
 - Magistrates/Local court: magistrates, Justice of the Peace

Court Process

- Important facts ascertained: reveal origins, scope and nature of dispute
- Relevant rules of law found and interpreted
- Relevant rules applied to facts to determine outcome

2. Legislation

Legislative Process

- Proposal for new legislation
 - Identifying the need for new law
 - Political processes: decision by cabinet for new proposal
 - Development of specific proposals: Bill drafted by parliamentary draftspersons
- Procedure in the House of Origin