

LAWS2057 – Welfare Law Study Guide

Comprehensive Module Notes, Legal Concepts, Problem-Solving Guidance and Revision

How to use these notes

These notes are designed to explain the key legal concepts in plain English while still using the legal terminology needed for strong law assessment writing. They are structured by Module, with legislation, key principles, policy themes, practical application and revision material. Always check the current version of legislation before relying on any specific section or rate.

Important currency note: These notes incorporate key current-law updates known as at June 2026, including the replacement of the AAT by the Administrative Review Tribunal, Family Law Act reforms commencing from May 2024, and NSW tenancy reforms ending no-grounds terminations from May 2025. For assessments, use the law and readings specified by your lecturer unless instructed to apply current law.

Table of Contents

Module 1 – The Welfare State and Access to the Law	5
Overview	5
What is the welfare state?	5
Citizenship theory.....	5
Neoliberalism and mutual obligation	6
Deserving and undeserving welfare recipients.....	6
Access to the law	6
Formal and substantive equality	7
Module 2 – The Family	7
Overview	7
Functions of the family.....	7
Legal recognition of relationships	8
De facto relationships – Family Law Act s 4AA.....	8
Family law and children	8
Best interests of the child.....	9
Child support.....	9
Spousal and de facto maintenance.....	9
Family dispute resolution	10
Module 3 – Domestic and Family Violence	10
Overview	10
Defining domestic and family violence.....	10
Types of abuse.....	10
Prevalence and risk.....	11
Coercive control	11
AVOs in NSW	11
Police and private applications.....	11
ADVOs and family law	12
Family Law Act protections	12
Victims support and non-legal services	12
Module 4 – Youth, Child Protection and Youth Justice	12
Overview	12

Who is a child or young person?	12
Children’s rights and the CRC.....	13
Child protection in NSW.....	13
Risk of significant harm – s 23	13
Mandatory reporting – s 27	13
After a report is made.....	14
Care applications and orders.....	14
Aboriginal and Torres Strait Islander children.....	14
Youth justice	14
<i>Module 5 – Income Support.....</i>	<i>15</i>
Overview.....	15
History and policy context.....	15
Sources of income support law	15
Qualification and payability	15
Basic and supplementary entitlements.....	16
Member of a couple / marriage-like relationship	16
Mutual obligations.....	16
Debts and overpayments.....	16
Challenging Centrelink decisions	17
<i>Module 6 – Housing.....</i>	<i>17</i>
Overview.....	17
Right to adequate housing	17
Homelessness and housing stress.....	17
Housing assistance	18
Hidden housing welfare.....	18
Residential Tenancies Act 2010 (NSW)	18
Key tenant protections.....	18
Current tenancy law update	19
NCAT	19
Tenancy issue spotting.....	19
<i>Revision Section – Key Concepts, HIRAC, Issue Spotting and Legislation Guide.....</i>	<i>20</i>
How to answer welfare law problem questions	20
Whole-unit themes	20

Quick issue-spotting table	20
Key legislation reference guide.....	21
Key statutory concepts to remember.....	21
Revision questions	21
Strong conclusion phrases for assessments	22
Source and currency note	22
<i>Extended Revision and Applied Problem-Solving Notes.....</i>	<i>23</i>
1. Assessment Writing Method: HIRAC in Welfare Law	23
2. Module 1 Applied Notes – Welfare State and Access to Law	23
Core analytical framework.....	23
Policy paragraph bank.....	23
3. Module 2 Applied Notes – Family	24
Family law issue order.....	24
Parenting plan vs parenting order	24
Family law sample mini-application.....	24
Family law referrals.....	24
4. Module 3 Applied Notes – Domestic and Family Violence	25
How to identify coercive control in facts	25
Domestic violence client approach	25
ADVO problem-solving checklist.....	25
Scenario mini-answers	25
5. Module 4 Applied Notes – Youth and Child Protection	26
Child protection answer structure	26
ROSH scenario table.....	26
Advice to a parent before a DCJ visit	26
Youth justice answer structure.....	27
6. Module 5 Applied Notes – Income Support.....	27
Centrelink decision checklist	27
Member of a couple application framework	27
Centrelink appeal sample paragraph	27
Income support critical analysis	28
7. Module 6 Applied Notes – Housing	28
Tenancy problem-solving structure	28
NCAT orders in plain English.....	28
Housing scenario mini-answers	29
Housing critical analysis	29
8. Welfare Law Glossary.....	29
9. Final Revision Checklist	30

Module 1 – The Welfare State and Access to the Law

Overview

Module 1 introduces the welfare state, the mixed economy of welfare, citizenship theory, neoliberalism, mutual obligation, middle-class welfare, and access to justice. It provides the conceptual foundation for the later modules on family, domestic violence, youth, income support and housing.

- The welfare state is the system by which governments redistribute resources and provide social protection through law, policy, taxation and public services.
- Welfare is not limited to Centrelink. It includes health, education, housing, legal services, public infrastructure, tax concessions and regulation.
- Access to law is part of welfare because rights are only meaningful if people can understand, assert and enforce them.
- A key theme is the difference between formal equality and substantive equality.

What is the welfare state?

The welfare state refers to the role of government in organising, funding, regulating and delivering social support. In a modern democratic society, government decisions about taxation, spending, eligibility and service delivery determine how wealth and social protection are distributed.

- Visible welfare state: direct payments and services, such as JobSeeker, Disability Support Pension, Parenting Payment, public housing and legal aid.
- Less visible welfare state: universal or broadly available services, such as Medicare, public schools, hospitals, roads and libraries.
- Hidden welfare state: tax concessions, rebates, subsidies and financial advantages delivered through the tax system, often benefiting middle and higher income groups.
- Mixed economy of welfare: welfare is provided by the family, community, private market, charities, NGOs and government.

Type of welfare	Examples	Why it matters
Visible welfare	Centrelink payments, public housing, emergency accommodation, legal aid	Usually targeted, means-tested and politically scrutinised.
Less visible welfare	Public hospitals, Medicare, public education, roads, policing, courts	Often treated as citizenship-based provision rather than “welfare”.
Hidden welfare	Negative gearing, capital gains tax discounts, private health rebates, superannuation tax concessions	Can benefit the better-off while attracting less stigma than direct welfare.

Citizenship theory

Citizenship theory asks what rights and protections people should receive simply because they are members of society. T H Marshall described citizenship as including civil, political and social rights. Welfare law is especially concerned with social rights: access to basic living standards, income, health, education, housing and legal protection.

- Civil rights include liberty, property, contract rights and access to courts.
- Political rights include voting and participation in democratic government.
- Social rights include minimum standards of welfare, income security, education, health and housing.

Critical point

Citizenship theory is powerful because it frames welfare as a right rather than charity. Its limitation is that many people in Australia, including temporary migrants, asylum seekers, non-citizens and people excluded by eligibility rules, may not receive equal access to welfare protections.

Neoliberalism and mutual obligation

Neoliberal welfare policy places greater emphasis on individual responsibility, market solutions, reduced state spending, conditional welfare and work participation. In income support, this is reflected in mutual obligation requirements and the idea that welfare recipients should demonstrate active participation in employment, training or approved activities.

- The neoliberal view tends to frame welfare dependency as a problem and employment as the preferred route to citizenship and social inclusion.
- Mutual obligation attaches conditions to welfare receipt, particularly for unemployed people and some parents or people with disability.
- Critics argue that mutual obligation can punish poverty, disability, trauma, caring responsibilities and labour market disadvantage.
- Supporters argue that it encourages participation and reduces long-term dependency.

Deserving and undeserving welfare recipients

A recurring theme across welfare law is the distinction between the “deserving” and “undeserving” poor. Historically, people unable to work because of age, disability or widowhood were often considered more deserving than able-bodied unemployed people. This idea continues to shape social attitudes and policy settings.

- Older people and people with disability are often treated as more deserving of support than unemployed people.
- Unemployed people are more likely to face surveillance, compliance requirements and stigma.
- Single parents, young people and people with complex needs may be caught between welfare support and disciplinary regulation.
- Welfare law therefore both supports and controls people.

Access to the law

Access to law means more than the formal right to go to court. It includes knowledge of rights, affordable advice, practical ability to participate, accessible processes, culturally safe services and effective remedies.

Barrier	How it affects access to justice
Cost	Legal advice, filing fees, representation and expert evidence may be unaffordable.
Delay	Slow processes can worsen homelessness, violence, debt or family conflict.
Knowledge	People may not know they have rights or how to enforce them.
Power imbalance	Government agencies, landlords, employers or perpetrators may have more resources.
Language and culture	Systems may be inaccessible for CALD communities and Aboriginal and Torres Strait Islander peoples.

Disability and trauma	Processes may not accommodate mental illness, cognitive disability, trauma or neurodivergence.
Geography	Rural, regional and remote clients may have fewer services and longer travel distances.

Formal and substantive equality

- Formal equality means treating everyone the same. It can ignore existing disadvantage.
- Substantive equality recognises that unequal circumstances may require different support to achieve fair outcomes.
- Welfare law often requires substantive equality because poverty, disability, family violence, racism and trauma affect people's ability to access systems.

Assessment Focus

Strong answers do not simply describe welfare programs. They explain what the program reveals about citizenship, deservingness, equality, market reliance, access to justice and the role of law in managing social disadvantage.

Module 2 – The Family

Overview

Module 2 examines the family as a central welfare institution. Families provide care, economic support, housing, socialisation, emotional support and cultural connection. The module also explores how law defines family, recognises relationships, regulates family breakdown and allocates responsibilities for children.

- The family is not a single fixed concept. It changes across culture, history, sexuality, kinship, household form and social practice.
- The law recognises some relationships more easily than others, which can affect access to property rights, maintenance, parenting orders, child support and welfare payments.
- Family law must balance private family autonomy with state intervention where children, violence or financial vulnerability are involved.

Functions of the family

- Physical: care, shelter, food, safety and daily support.
- Economic: sharing income, unpaid care, housing and support during hardship.
- Social: socialisation, identity, belonging and community participation.
- Emotional: attachment, love, support and resilience.
- Cultural and spiritual: kinship, language, cultural continuity, values and religion.
- Moral and developmental: shaping behaviour, responsibility and social norms.

Critical point

A narrow nuclear-family model does not capture Aboriginal and Torres Strait Islander kinship systems, blended families, chosen families, same-sex families, extended family caregiving, foster/kinship care or culturally diverse households.

Legal recognition of relationships

Relationship type	Legal significance
Marriage	Recognised under the Marriage Act 1961 (Cth). Marriage is the union of two people to the exclusion of all others, voluntarily entered into for life.
De facto relationship	Recognised under the Family Law Act 1975 (Cth) and other legislation. De facto partners may have property, maintenance and parenting-related rights.
Same-sex relationship	Recognised in marriage, de facto and parenting contexts, subject to specific parentage rules.
Kinship and extended family	Important in Aboriginal and Torres Strait Islander contexts and increasingly recognised in child protection and family violence law.
Parent-child relationship	Relevant to parental responsibility, parenting orders, child support, care and protection and welfare payments.

De facto relationships – Family Law Act s 4AA

A person is in a de facto relationship if they are not legally married to each other, are not related by family, and have a relationship as a couple living together on a genuine domestic basis. The court considers all circumstances, and no single factor is decisive.

- Duration of relationship.
- Nature and extent of common residence.
- Whether a sexual relationship exists.
- Financial dependence, interdependence or arrangements for support.
- Ownership, use and acquisition of property.
- Mutual commitment to a shared life.
- Whether the relationship is registered.
- Care and support of children.
- Reputation and public aspects of the relationship.

Family law and children

The Family Law Act uses child-focused language. Older concepts such as custody, access and guardianship have been replaced by concepts such as parental responsibility, lives with, spends time with and communicates with. The purpose is to reduce ownership language and focus on the child's best interests.

- Parental responsibility means all duties, powers, responsibilities and authority parents have in relation to children.
- A parenting order is a court order dealing with parental responsibility, who the child lives with, spends time with or communicates with, and other aspects of care.
- A parenting plan is a written, signed and dated agreement between parents. It is flexible but not enforceable in the same way as a court order.
- A consent order is an agreement approved by the court and made into enforceable orders.