

## Sources of law

---

### Primary and secondary sources of law

- The three primary sources of law include:
  - **Legislation** (statutes, acts of parliament)
  - **Delegated legislation** (rules, regulations, orders and by-laws of bodies to whom parliament has delegated authority)
  - **Court judgments**
- The most common examples of secondary sources of law include international law (especially treaties ratified by Australia), law reform commission reports and academic commentary (journal articles, books and conference papers).

### Legislation

- The 9 parliaments of Australia (the commonwealth, states and territories) each have authority to pass legislation. That authority is outlined in the Australian constitution (for federal parliament), the state constitutions (for state parliament) or self governing legislation (in the case of the territories).
- If there are inconsistencies between state and federal legislation, federal statutes will always prevail and the state law will be invalid to the extent of the inconsistency.
- Commonwealth legislative supremacy is granted by s109 of the Commonwealth Constitution. Commonwealth acts can, however, be deemed invalid where the parliament did not have the legislative power. In this case, The High Court of Australia can deem this legislation invalid.
- Legislation can be used to make new law (in an always changing society), repeal old law (to remove laws that are no longer necessary) and codify existing law (or consolidating, means to bring together similar laws from different statutes into one).
- The general rule is that legislation comes into commencement 28 days from assent.

### The Anatomy of an Act

- **Number** e.g. '*Act no. 152 of 2004*'
- **Date, title and year** of the act, including the parliament that enacted it. Date of assent is usually in square brackets [assented to on 15 December 2004]
- **Long title** - states the purpose of the act, and usually starts with 'An act to...'
- **Short title** - the citation of the act. e.g. *Surveillance Devices Act 2004*
- **Preamble** - usually explains why the parliament decided to introduce legislation on the relevant topic. It is not included in all acts.
- **Parts and divisions** - in longer acts, sections may be grouped together in logical parts. It can be divided into chapters, which have parts that may have divisions or subdivisions, which contain the sections.