

**MLL110 – Exam Notes**  
**Legal Principles and**  
**Skills**  
**(All Topics)**

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## Topic 2

### Australian Legal System

#### Separation of Powers

Legislature : Makes Law

Executive : Administers Law

Judiciary: Interprets the Law

#### Representative Government

- Members of Parliament are elected by the citizens of Australia
- Section 7 and Section 24 of the Constitution state the Senate and House of Representatives shall be composed of members of each State (chosen by the people)

#### Rule of Law

- Government must find lawful authority for every action that it takes
- The authority must be found in the common law or legislation
- If this is not found, government is prevented from taking action

#### Responsible Government

- Executive branch is accountable to the legislature
- Ministers comprising the Executive are elected representatives who are also members of Parliament and answerable to Parliament

#### Parliamentary Sovereignty

- Parliament holds the supreme law making power
- Can create new legislation, repeal legislation and delegate the authority to make legislation

## **Sources of Law**

### **Primary**

- Legislation (Delegated legislation)
- Case Law

### **Secondary**

- International Law
- Law reform commission reports
- Academic commentary

## **Legislation**

### **Authority**

- Commonwealth Constitution Act (1900) (residual, concurrent, exclusive)
- Constitution Act (Vic, 1885)

### **Legislation/Statute/Act of Parliament**

- Act

### **Delegated/Subordinate Legislation**

- Regulations
- Ordinances
- By-laws
- Rules

### **Function**

- To make new laws, Charter of Human Rights and Responsibilities (2006) (Vic)
- To repeal an old law, Summary Offences Act (1966) (Vic)
- Codify existing law, Wrongs Act (1958) (Vic)

## The Structure of an Act

1. Purpose
2. Commencement (*not all dates on Acts stipulate when the Act commenced or came into effect*)
3. Definitions
4. What is a public authority
5. Human rights in this Charter (in addition to other rights and freedom)
6. Application

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## Delegated Legislation

- Not made by the Parliament enactment process
- Methods may be proscribed by the statute which authorizes the particular form of legislation

## **Regulations**

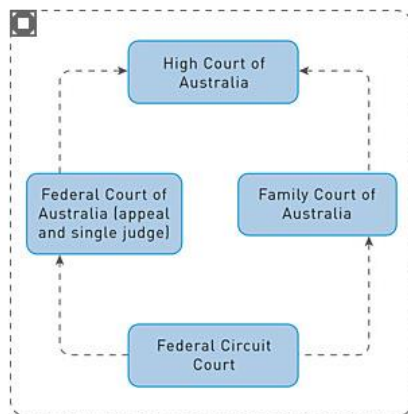
- The Government in Council may make regulations for or with respect to any matter or thing required or permitted by this Charter to be prescribed or necessary to be prescribed to give effect to this Charter (COHR, 46)
- Regulations are made by process of:
  - Signature
  - Notification
  - Tabling in Parliament

## Case Law

- Decisions about a legal issue
- Authoritative explanations of legal principles
- Cases can assist in understanding the meaning of an Act and, how the Act should be interpreted and applied

## Jurisdiction

- A court's jurisdiction is the power of a court to adjudicate on particular matters (Original, appellate, civil, criminal, state, federal)



**FIGURE 3.2** THE FEDERAL COURT HIERARCHY

## High Court of Australia

**Original Jurisdiction:** Sits as a single Justice to hear disputes about federal law.

**Appellate Jurisdiction:** Sits as a panel of three, five or seven Justices on appeals from State/Territory Supreme Courts, Federal, Family Court and any HCA Justice exercising original jurisdiction

- Highest court of appeal for decisions from State courts
- Special leave must be sought, no automatic right of appeal

## Federal Court of Australia (Established 1976)

**Original:** Single judge dealing with matters of **federal law** (i.e. consumer protection, intellectual property, bankruptcy).