



about Australia

legal system

- The Australian legal system is based on a fundamental belief in the rule of law, justice and the independence of the judiciary. All people—Australians and non-Australians alike—are treated equally before the law and safeguards exist to ensure that people are not treated arbitrarily or unfairly by governments or officials.

Principles such as procedural fairness, judicial precedent and the separation of powers are fundamental to Australia's legal system.

The common law system, as developed in the United Kingdom, forms the basis of Australian jurisprudence. It is distinct from the civil law systems that operate in Europe, South America and Japan, which are derived from Roman law. Other countries that employ variations of the common law system are the United States, Canada, New Zealand, Malaysia and India.

The chief feature of the common law system is that judges' decisions in pending cases are informed by the decisions of previously settled cases.

The Australian Constitution of 1901 established a federal system of government, under which powers are distributed between the federal government and the states.

It defined exclusive powers (investing the federal government with the exclusive power to make laws on matters such as trade and commerce, taxation, defence, external affairs, and immigration and citizenship) and concurrent powers (where both tiers of government are able to enact laws).

The states and territories have independent legislative power in all matters not specifically assigned to the federal government. Where there is any inconsistency between federal

key facts

- All people—Australians and non-Australians alike—are treated equally before the law.
- The Australian legal system is based on the concept of the rule of law.
- In all cases, defendants are considered to be innocent until proven guilty beyond all reasonable doubt.
- Laws are made by the federal and state parliaments, while an independent judiciary interprets and applies them.
- People who cannot afford legal representation may be given legal aid, subject to a means test and certain other conditions.
- Independent Australian agencies safeguard legal and administrative rights.

and state or territory laws, federal laws prevail. Federal laws apply to the whole of Australia.

In effect, Australia has nine legal systems—the eight state and territory systems and one federal system. However, it is the state and territory criminal laws that mainly affect the day-to-day lives of most Australians.

Each of the federal and state systems incorporates three separate branches of

government—legislative, executive and judicial. Parliaments make the laws, the executive government administers the laws, and the judiciary independently interprets and applies them.

The courts

The High Court of Australia interprets and applies the law of Australia, decides cases of special federal significance, including challenges to the constitutional validity of laws, and hears appeals (by special leave) from the federal, state and territory courts. The High Court has a Chief Justice and six other judges who can preside either individually or together. It is the highest court of appeal on all matters, whether decided in the federal or state jurisdictions.

The other federal courts are the Federal Court of Australia, the Family Court of Australia and the Federal Magistrates Court of Australia. Under the Constitution, state and territory courts may be invested with federal jurisdiction.

The Federal Court's jurisdiction is broad, covering almost all civil matters arising under Australian federal law and some summary criminal matters. The court also has substantial and diverse appellate jurisdiction, including over the decisions of single judges of the Federal Court and the Federal Magistrates Court (in non-family-law matters) and some decisions of the state and territory courts.

The Family Court is Australia's superior court in family law. Through its specialist judges and staff, the court helps to resolve complex family disputes. It also covers specialised areas such as cases relating to the Hague Convention on International Child Abductions (which came into force in Australia in December 1998) and

the international relocation of children by parents or guardians.

The Federal Magistrates Court was established by the federal parliament in 1999 and conducted its first sittings in July 2000. Its jurisdiction includes family law, bankruptcy, unlawful discrimination, consumer protection and trade practices, privacy, migration, copyright and industrial law. Nearly all of its jurisdiction is shared with the Family Court or the Federal Court.

Australian state and territory courts have jurisdiction in all matters brought under state or territory laws. They also handle some matters arising under federal laws, where jurisdiction has been conferred by the federal parliament. State and territory courts deal with most criminal matters, whether arising under federal, state or territory law.

Each state and territory court system operates independently. All states have supreme courts and some also have courts of criminal appeal, which are the highest appellate courts at the state level. Courts known as 'district' or 'county' courts hear the more serious cases, with a judge presiding over the court to interpret and determine the law. For more serious charges it is usual for a jury (usually of 12 people) to determine the guilt or innocence of defendants. Serious offences such as murder, rape and armed robbery are usually tried in a higher court.

Lesser offences are dealt with in lower courts, known as local or magistrates courts (or courts of petty sessions), where magistrates determine the guilt or innocence of defendants.

In all cases, defendants are considered to be innocent until proven guilty beyond all reasonable doubt. There is no death penalty in Australia.

Legal aid and representation

Australian governments recognise that access to legal representation is an important element in ensuring justice for all. They provide some legal aid for people assessed as being least able to afford to cover the costs of a court appearance.

The federal Attorney-General's Department is responsible for administering funding for the provision of legal aid services for federal law matters through legal aid commissions, administering a Community Legal Services Program and managing legal aid services for Indigenous Australians.

State and territory governments fund legal aid services for cases being tried under state and territory law. There are eight independent legal aid commissions, one in each of the states and territories, with a total budget of around \$400 million. Funding is provided by the federal government and state and territory governments. Other revenue comes from interest earnings, contributions and fees.

In 2005–06, the legal aid commissions represented around 158 000 people in courts and tribunals throughout Australia and provided advice to another 270 000 people.

The federal government funds a network of nine organisations across Australia that provide legal aid services specifically to Indigenous Australians. The Indigenous legal aid program has a total annual budget of around \$50 million.

The federal government funds a network of 31 Family Violence Prevention Legal Services across rural and remote Australia. Each organisation provides services specifically to Indigenous victims of family violence and/or sexual assault or abuse. The federal government also funds the Early Intervention and Prevention Program and

the Community Legal Education Program. Total annual funding for the three programs is approximately \$18.8 million.

Investigating complaints and reviewing administrative decisions

Specific agencies also exist to protect the legal and administrative rights of all people in Australia, including the Commonwealth Ombudsman, the Migration Review Tribunal, the Refugee Review Tribunal, the Administrative Appeals Tribunal and the Human Rights and Equal Opportunity Commission.

The position of Commonwealth Ombudsman was created in 1977 to consider and investigate complaints from people who believe they have been treated unfairly or unreasonably by a federal government department or agency. The ombudsman cannot override decisions made by agencies or issue directions to agency staff. Instead, the ombudsman resolves disputes through consultation and negotiation and, if necessary, by making formal recommendations to the most senior levels of government.

In 2006–07, the Commonwealth Ombudsman received around 33 000 approaches and complaints, resulting in over 4000 investigations. Government agency error or deficiency was found in 4 per cent of all cases.

There is also an ombudsman in Western Australia (appointed in 1971), Victoria (1972), Queensland (1974) and New South Wales (1974). The Commonwealth Ombudsman acts as the ombudsman for the Australian Capital Territory.

Two separate tribunals provide independent and final merits reviews of decisions made about visas to enter or stay in Australia.

The Migration Review Tribunal reviews decisions made about general visas (including visitor, student, partner, family, business and skilled). The Refugee Review Tribunal deals with decisions regarding protection (refugee) visas.

Administrative Appeals Tribunal

The Administrative Appeals Tribunal began operations in July 1976 and is part of the federal Attorney-General's portfolio. It is an independent body that conducts merits reviews of a wide range of administrative decisions made by other tribunals and by federal government ministers, officials and authorities. The Administrative Appeals Tribunal has jurisdiction to review decisions made under more than 400 separate Acts and legislative instruments.

Human Rights and Equal Opportunity Commission

The Human Rights and Equal Opportunity Commission was established in 1986 as an independent statutory organisation reporting to the federal parliament through the Attorney-General. Its goals are to foster understanding about, and protection of, human rights in Australia and to address human rights concerns. Its functions include resolving complaints of discrimination or breaches of human rights under federal law and holding public inquiries into human rights issues of national importance.

Law enforcement and police

The police in Australia are responsible for keeping peace and order in the community and bringing before the court people they

believe have broken the law. Although police officers may arrest people and give evidence in court, they do not decide whether or not people are guilty of crimes. This is the responsibility of the courts.

Australia has a national police force—the Australian Federal Police—that investigates offences against federal laws, including drug trafficking, illegal immigration, crimes against national security and crimes against the environment.

All states of Australia and the Northern Territory have their own police forces that deal with crimes under state or territory laws. Policing in the Australian Capital Territory is handled by the Australian Federal Police.

Australian Crime Commission

The Australian Crime Commission was established in January 2003 (replacing the National Crime Authority) as an independent statutory body to work nationally with federal, state and territory agencies, principally to counter serious and organised crime. It brings together all arms of Australian intelligence gathering and law enforcement to coordinate the fight against major crime.

International legal cooperation and treaties

Australia seeks to promote international cooperation in the legal sector. The federal government established the International Legal Services Advisory Council in 1990 to promote the globalisation of legal services. The council seeks to promote understanding of different countries' laws, legal systems and legal institutions, particularly in the areas of trade, business and international law. It also contributes to the development of legal

institutions, education and training, and legal interchanges and contacts.

Combating transnational crime and terrorism is also a high priority for Australia, and extradition and mutual assistance are key tools in that fight. International cooperation ensures that criminals cannot evade justice simply by crossing borders. Australia has formal extradition arrangements with more than 120 countries.

Australia is a party to an extensive range of treaties, which are the formal instruments of international law. Australia is currently a signatory to agreements on a wide and expanding range of matters, including with respect to postal, shipping, social security and health arrangements, defence and security, nuclear non-proliferation, the environment, civil aviation, maritime delimitation and technological exchanges, and agreements designed to establish universal standards for the treatment of civilians in times of war. Australia has been heavily involved in international measures to outlaw the use of weapons of mass destruction. Australia has also been actively engaged in work on aspects of the law of the sea and the international trading system.

Note: Unless otherwise stated, all dollar amounts are in Australian dollars.

Further information

Administrative Appeals Tribunal
www.aat.gov.au

Attorney-General's Department
www.ag.gov.au

Australian Crime Commission
www.crimecommission.gov.au

Australian Federal Police
www.afp.gov.au

Commonwealth Ombudsman
www.comb.gov.au

Federal Court of Australia
www.fedcourt.gov.au

High Court of Australia
www.hcourt.gov.au

Human Rights and Equal Opportunity Commission
www.hreoc.gov.au

National Legal Aid
www.nla.aust.net.au

Parliament of Australia
www.aph.gov.au

Treaties
www.dfat.gov.au

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