



Index and Introduction



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Unit 9: The Constitution and the Making of Law in Australia – Year 8 - C & C Strand: Laws & Citizens

Topic 8.1: The making of law in Australia

Subject: Civics & Citizenship: C&C Strand Laws & Citizens

Curriculum: Year 8 - the characteristics of laws and how laws are made in the Australian legal system through parliaments (statute law) and through the courts (common law) (AC9HC8K04)

Achievement Standard: By the end of year 8 students explain the characteristics of laws, how laws are made and the types of law in Australia.

Content Descriptor/Topic Summary: In this topic, students are introduced to different types of laws and how they are made. They learn about how Parliaments make statutes, how the Executive Government makes delegated legislation and how the courts develop the common law. Most importantly, students learn about the hierarchy between different laws (i.e. which law prevails if laws are inconsistent) and the constraints on laws that affect whether they are validly made. This is particularly important for delegated legislation which is only valid if it falls within the scope of what is authorised by a statute.

The 2020-2022 pandemic is used as a case study to discuss the use of statutes to override common law freedoms during an emergency and in particular the use of delegated legislation to give effect to emergency powers (e.g. orders to stay home, limit the number of people visiting homes, etc). This involves addressing the operation of Parliament during a pandemic and the use of parliamentary committees to scrutinise delegated legislation. It also involves reference to court challenges, such as the *Gerner* and *Palmer* challenges (developed further in unit 10, topic 8.2).

Students also consider the use of the Australian Defence Force to provide civil aid during an emergency, including the ADF's reliance upon prerogative powers (being executive powers recognised by the common law) rather than statute. They address what legal powers the ADF can exercise during an emergency.

Area/Questions and Takeaways

1. To understand the three different levels of government and the types of law they make.
2. If a statute conflicts with a common law right, which one prevails?
3. If a regulation (i.e. delegated legislation) conflicts with a statute, which one prevails?
4. How does Parliament ensure that the Executive appropriately exercises its powers to make delegated legislation?
5. On what basis might a court decide that a statute passed by Parliament is invalid?
6. Which law overrides all other laws?
7. What is a 'Henry VIII clause' and why should they only be used rarely?
8. Why do emergency laws need to give a wide range of flexibility to the Executive Government?
9. What kind of accountability measures can be placed on emergency laws so that they are not abused?
10. What is the usual role of Cabinet in the process of making statutes?
11. What is the usual role of Parliament in the process of making statutes?
12. What is the usual role of the Governor-General in the process of making statutes?



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13. What is a prerogative power?
14. Why have there been uncertainties about the power to use the Australian Defence Force to deal with pandemics and natural disasters?
15. How has the Australian Defence Force been used during natural disasters and the COVID-19 pandemic?

Prior Learning Required:

Year 7-How Australia's legal system aims to provide justice, including through the rule of law, presumption of innocence, burden of proof, right to a fair trial and the legal representation of the accused
(AC9HC7K04) Unit 8, Topic 7.2 & 9.4

Teaching Reference Documents and Activities and lessons

TRD74:The common law, statute and the hierarchy of laws

Lesson/activities One: Statutes and common law

TRD 75:Delegated legislation

TRD76:Case Study – Delegated legislation and the 2021 India travel ban

TRD77:Emergency powers and common law freedoms

TRD78: Statutes – How are they made? (including case study on the National Emergency Declaration Act 2020 (Cth))

TRD 79: Powers of the Australian Defence Force in natural disasters and pandemics

Lesson/activities Two: COVID-19 case study

Special COVID-19 Disclaimer: Learning on the topic of COVID-19 may cause sadness or distress for some students. Teachers need to account for such sensitivities. By asking students to remember how these COVID-19 laws affected their life, the unit may open up issues that are not covered in the content. Teachers may need to be prepared to handle emotional issues that students and families experienced eg compulsory face masks in schools and work, teachers sacked for not complying with vaccine mandates, families not being able to travel, visit very ill relatives or to attend funerals including across State borders or overseas.

COVID-19 resulted in unprecedented new rules, laws, and emergency powers usually only applied by governments in war times. Most students will remember for their entire life experiences of living through COVID-19. CEFA considers it essential to reference the lockdowns through the C&C Units, topics, lessons & activities and including through Case studies. Therefore CEFA has developed a resources disclaimer similar to that developed for the First Nations resources. Teachers should be sensitive and use discretion if encouraging classroom activities inquiring on the effects of lockdowns on the students, their families, and their communities.