

CONTRIBUTION TO THE "AUSTRALOPEDIA"

CONCEPT OF LAW IN AUSTRALIA

## THE AUSTRALOPEDIA

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The Hon. Justice Michael Kirby, CMG  
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Every society has rules. Otherwise disputes about conduct and property could not be peacefully resolved. Some rules are merely rules of good behaviour or good manners. Those laid down by our parents and teachers are good examples of these. But some rules are more formal. They are laid down by public authorities which have the power to give them binding force in society. Nowadays, most of these rules are made by Parliaments (including Federal, State and local government bodies). In the past, most of these rules were laid down by judges. Judges still make many rules which govern us all. The rules made by the judges are known as the "common law". Judges have been developing the common law, in England for 800 years and in Australia since the colonies were founded. A third source of law is to be found in the Ministers and public officials. They can make binding rules, usually under powers given to them by Parliament.

Most people think that the law is all about the criminal law (such as murder) or motor traffic law. These are the most obvious examples of laws in our society. They represent the subject matter of most television programs about the law. They are therefore the best known. But there are many other areas of the law. Examples of these include:

- \* Constitutional law: which lays down the basic rule about Parliament, the Ministry and the Judiciary.

- \* The law of torts: which deals with civil wrongs, such as the remedy if someone is negligent and causes you harm. These laws provide the remedies that can be pursued when, through carelessness, a person causes injury or loss.
- \* Succession law: which deals with the law governing wills for disposing of property after death and also deals with what is to happen to property when a person dies without making a will.
- \* Contract law: which governs the duties imposed when an agreement is made which one party claims has been broken.
- \* Family law: which deals with the rules governing marriage and divorce, including the distribution of property and access to the children after a marriage has broken down.

There are many other areas of the law. The ones I had mentioned are just a few. Nowadays so many Acts of Parliament are being passed that it is difficult, even for judges, to keep up to date with changes in the law. Despite this fact, everybody is presumed to know the law - all of the law. Ignorance of the law is no excuse. Perhaps in your lifetime a pocket computer will provide quick access to the latest law on any topic. Already most Acts of Parliament and many decisions of the courts are computerised. For most citizens it is necessary to consult a lawyer or other expert about problems in the law, especially if they come to court. But to give ordinary citizens some knowledge about the basic laws that govern them, courses are now being introduced in many Australian high schools. As well, legal

centres in a number of States have published Law Handbooks. These contain, in simple language, answers to the most common questions which concern ordinary citizens.

When a breach of the law has occurred, it may result in legal proceedings in the courts. Australia has a number of court systems. There are Local Courts (or Courts of Petty Sessions). These are presided over by a magistrate. They deal with 90% of criminal cases, such as motor traffic offences and small debts claims. Higher up the scale are the District or County Courts. A judge presides in these courts. Often he sits with a jury, especially in criminal trials. The jury decides, in such trials, whether the Crown (usually the police) has proved its case against the accused beyond reasonable doubt. The judge gives directions on the law and, if the accused is found guilty, the judge decides on the appropriate sentence. District and County court judges also deal with a wide range of civil cases. In each State there is also a Supreme Court. This is the highest court in the State, dealing with important criminal cases (such as murder) and big "civil" cases (such as damages claims and contract disputes). In addition there are specialist courts and tribunals who determine disputed cases about the environment, workers' compensation, administrative disputes and so on. There is also the Federal Court of Australia which is an important national court dealing with various disputes under Federal law.

Our courts sit in public. With very few exceptions, any citizen can sit in the back of the court room and watch the proceedings from start to finish. There is also a complex system

of appeals. The aim of this is to ensure that any mistakes that occur are remedied and injustice is avoided. The highest State court of appeal is known as the "Full Court" or, in New South Wales, the Court of Appeal. Above all the courts of Australia is the High Court of Australia. This court sits in Canberra. There are seven Justices. The Chief Justice of Australia is the highest judge in the land. It is necessary, in order to bring an appeal to the High Court of Australia, to have the "leave" of that Court. This procedure ensures that the highest court in our country can concentrate on cases of general importance.

Australia began its modern history as the dumping ground of convicts expelled from England. Thus, from the very start, the law and its officials have been important in Australia. There are 600 judges and magistrates and about 20,000 barristers and solicitors in Australia. Their duties include the application and administration of the laws that help to preserve peace and stability in our society, to resolve disputes where they arise and to provide justice according to law for all our people. These are high ideals. They are not always attained. Sometimes the law itself needs reform. Sometimes through ignorance or poverty people do not succeed in bringing their claims to justice. That is why law reform commissions have been established to advise Parliaments on improving the law. It is why Legal Aid Commissions have been established to help people who are not wealthy to bring their cases to court or to defend themselves. But for all the faults of the law, it is a proud

boast of Australia that it is one of the handful of countries that lives by the ideal of the Rule of Law. This means that our rights and duties are ultimately determined by legal rules and not by arbitrary decisions of tyrants or at the point of a gun.

Everybody should know more about the law, lawyers and legal institutions. Above all, the law is an interesting and worthwhile career. Lawyers have the responsibility of sorting out the problems in society and a chance to help shape the kind of community we live in.

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ON BEING TWELVE

The Hon. Justice Michael Kirby, CMG

When I was twelve I was already a bit of a swot! Not content with drawing up study time-tables for myself, I inflicted them on my brothers and sister. Now, as a judge, I impose the law on a wider circle. Perhaps I should have spent more time wandering in the Australian bush and enjoying myself.