

Student Learner Guide

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*Figure 1: Beginners Guide to Legislation (Video Tutorial)*

## The Legislative Framework (Three Sources of Law)

### Common Law

Common law forms the basis of the legal system in most English- speaking countries. It has evolved over the years as a result of judgements made in the law courts of England and for this reason it is also known as “case law”

In primitive societies, traditional customs tend to govern tribal behaviour, and set the standards for the behavioural norms of that group of people, tribe or area, which effectively becomes the ‘common law’ for those people.

Over time, as society has developed, those tribal customs have evolved and been administrated by judges in determining the outcome of legal disputes.

Therefore, common law was originally based on unwritten common or tribal customs

- it was really the common sense of the community, formulated by our ancestors.

The basis of common law, as we now know it, was established in England by King Henry II in the 12th century. He centralised administration of justice in England by sending judges on circuits throughout the country. This resulted in the gradual development of a common set of nationwide principles administered by the King’s Court.

Gradually, 3 main court systems were established:

* The Court of the Kings Bench, which heard matters in which the Crown was a party, including criminal prosecutions
* The Court of Exchequer, which originally dealt with disputes involving the revenue and exchequer
* The Court of Common Pleas, which dealt with litigation between individuals.

These different courts established a system of law that could supersede or over-ride the judgments of local courts. Also, in civil matters between individuals, common law was used to compensate those people who had had wrongful acts, known as torts, committed against them.

Common law is law created and refined by judges, who have the authority and duty to make law by creating precedent. Judges will analyse, make decisions and recommendations about the cases currently before them by referring to decisions made in previous cases. They will also consider decisions made in other “common law” countries.

Judges’ decisions then become the basis or ‘precedent’ for future cases to be heard by other judges. In future cases, a common law court looks to past precedents and decisions made by relevant courts in other jurisdictions.

If a similar case has been resolved in the past, the court is bound to follow the reasoning used in the prior decision. The strength of the similarity among the cases strengthens the reasoning.

If the court finds that the current case is fundamentally distinct from all previous cases, it will decide as a "matter of first impression". The new decision becomes the precedent and will bind future court rulings.

Decisions made in one court are binding on lower courts, but decisions made in lower courts may be overturned by higher courts (under the appeals system).

The development of commercial law emerged in the 15th and 16th centuries, followed by the principles of tort and contract law.

Until the 19th century, common law was the main source of law. Since then, statute law, made by parliament and expressed as legislation, has become the dominant source of law. In a modern society there is a greater need for government intervention in the lives of individuals, and to regulate the conduct of society in general.

Common law, because it is based upon historic court judgements, is slow to change, and has proven to be too slow to meet the needs of today’s society. Additionally, it is judge-made law, and based on previous historical events, situations or disputes,

and is difficult to translate to other or more general circumstances of modern life and commercial transactions.

Statute law is generally aimed at the future, for active intervention in our lives. Statute law can amend or repeal the common law.

Where there is conflict between common law and statute law, the common law is generally inferior, and statute law will prevail. Often statute law is open to interpretation in different ways, and in such situations, common law principles are applied, and new common law develops as courts interpret and apply statutes.

### Contract Law

Contract law encompasses any laws or regulations directed toward enforcing certain promises.

We all make contracts almost every day. Whenever we buy a coffee, do the grocery shopping, fill the car up with petrol or purchase a ticket for public transport we are entering into a contract. We are often unaware we are contracting and most contracts are made and performed without any problems arising.

However, should something go wrong e.g., one party fails to perform, or goods delivered, or services performed are defective in some way, it may become important to assess when and whether a valid contract was entered into, the nature of its terms and obligations and what, if any, remedies may be available in the event of a breach. This is how we buy and sell houses in a legally binding written contract.

In Australia, contract law is primarily governed by the 'common law', but increasingly statutes are supplementing the common law of contract - most notably in the area of consumer protection.

### Equity Law

Equity is primarily concerned with “fairness” or natural justice.

To some extent, it evolved out of church law and therefore has taken the high moral ground. It is founded on distinct principles but claiming superiority to the common law because of its inherent sanctity.

Originally administered by the Court of Chancery, it balanced administration of justice through the established courts.

Equity looks at aspects such as ‘good faith’ and ‘conscience’ and has therefore been the key source of law in determining cases based on the rights of individuals, wills and trusts, and other fields.

Equity and common law are similar in being judge-made law.

An example of how equity and common law might differ is this:

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| **Example:** Bob goes onto John’s land and chops down a tree which overhangs his fence. John takes Bob to court and the case is dealt with under common law.  However, if John had heard that Bob was planning to chop down his tree, he could apply to the court to prevent Bob from chopping down the tree. That case would be heard under the principles of equity. |

### Statute Law

Statutes are laws that have been enacted by a legislative body with the powers to create law, and are generally aimed at the future, for active intervention in our lives.

Often also known as statutory law, statute law is written law set down by a legislature. Statutes are enacted in response to a perceived need to clarify the functioning of government, improve civil order, to formalise existing law, or to ensure that a group of people act and behave in a certain way (as in the case of real estate legislation).

It may also be used to permit or restrict a company (or other groups of people) from doing something, or to obtain special treatment.

Statutes may be enacted by the national and state legislatures or by local or statutory authorities. Typically, the statutes of lower jurisdictions are subordinate to the law of higher, and the higher legislative body’s statute takes precedence.

Statute law includes both direct legislations passed by parliament (Acts) and delegated legislation such as by-laws and regulations, rules and guidelines.

If there is a conflict between the three forms of law, statute law is usually the superior over common law and equity.

When legislation is enacted and brought into effect, it is considered ‘untested’. That is, no action will have been brought to court under that law, and therefore it may be subject to different interpretations depending upon one’s viewpoint.

When this happens, the judge will look at the reasoning behind the particular law, and also apply the principles of common law when coming to a decision.

Considerations will include:

* + Has a situation like this occurred before?
  + What happened then?
  + How does it apply now?
  + What is this law trying to achieve?

Over time, the legislation is interpreted in court cases (tested) and when the legal system is reasonably assured of what the legislation means, as a result of the determination of cases, then the law is “certain” or “settled”.

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| **Example:**  The statutory definition of site value for property tax purposes rating |
| values is certain or settled law because its meaning has been explored and determined by a long line of cases. Case law on interpretation of one section of an Act may convert a couple of lines (or even words) into a detailed explanation. For example, the willing buyer / willing seller theory of market value (Spencer’s case).  The property market is a complex market that is affected by many issues, but principally supply and demand, which create the conditions under which the property will achieve market value when sold, as long as normal business considerations are made. Most people have some concept of what market value means. Expressions such as "the going price" or "market price" are common terms. The laws of property, however, require a much more concise definition especially when property is compulsorily acquired, and fair compensation must be paid.  The legal case, Spencer vs. the Commonwealth, set the precedent for the definition of market value in Australia.  Spencer owned about 6 acres of land in Fremantle, WA. The Commonwealth Govt. acquired the land to build a fort in 1905. Spencer sought justice from the High Court of Australia for "fair compensation". To determine the market value of the land, the Court had to examine the concept of a willing buyer and a willing seller on a specific date. Part of the High Court judgement, which explains this concept, was:  “…. we can conclude that market value is determined by a willing buyer and a willing seller, who are not so anxious to either buy or sell property that they overlook any normal business considerations and are aware of the land and all its circumstances which might affect its value, either [way], including its situation, character, quality, proximity to conveniences or inconveniences, its surrounding features, the … demand for land and the likelihood … of a rise or fall for what reason so ever in the amount which one would otherwise be willing to fix as the value of the property".  Market value, once stated, only refers to the specific point in time when a transaction takes place. In keeping with the forces of supply and demand, fluctuations in the market will occur and depending on the circumstances at the time, a sale price may be more or less than the notional market price.  Well promoted properties will produce more buyers and for that reason can achieve above market price. |

Legislation - Statutes - Acts of Parliament (Components of Legislation) “Legislation” refers to the Statutes or Acts of Parliament that have been made by the parliament, whether state or Commonwealth under the powers that allows them to do so.

Parliaments make legislation or authorise the making of legislation by enacting an Act. This means the Legislative Assembly passes a Bill for the Act and the Bill is given royal assent. On assent the Bill becomes an Act.

All persons are required to take note of and comply with an Act. An Act binds everyone to whom a provision in the act applies to, including people who are not Australian citizens

An Act is essentially a sequence of provisions containing statements and rules. What is achieved by the Act depends on the interpretation of the Act's provisions.

Legislation may have its effect by:

* + Directly deciding the matter or
  + Authorising someone else, that is, delegating the power to someone else, to make a law about the matter or decide the matter.

Legislation may incorporate another document by reference, whether or not the other document is itself legislation.

Legislation may empower someone or some other body to create a subset of rules or regulations that support the legislation, and form part of the law itself. This is known as delegated or subordinate legislation.

The delegated ‘instrument’ may be legislative or administrative in character. The significance depends on the particular context of what it is designed to achieve.

### Delegated / Subordinate Legislation

An Act will frequently authorise delegated or subordinate legislation and the form that the delegated legislation should take. The Act itself must delegate authority to a body or person to make the subordinate legislation.

Delegated legislation is typically in the form of regulations, rules or executive instruments, but may be known by different names in different states and territories:

The following are all forms of Delegated Legislation:

* + Regulations
  + Rules
  + Notifiable Guidelines
  + Notices
  + Orders
  + Amendments
  + By-Laws

Parliaments tend to limit their own activities to that of determining broad matters of policy, and not the specifics of how to comply with the act.

Therefore, they will ‘delegate’ the responsibility of creating and providing rules and regulations to support the statutes to an authorised body with specialist knowledge to be responsible for the implementation, administration and procedures to be followed in order to comply with the Act.

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| **Example:** In the ACT, the Territory Government has created and passed the Statute *The Agents Act 2003 (ACT)*. The body responsible for the administration and implementation of the Act is the Office of Regulatory Services, part of the ACT Department of Commerce. The Office of Regulatory Services has been delegated the authority to produce the *Agents Regulation 2003*, which determines how the Act should be implemented and administered. The Act allows for the regulations to prescribe ‘Rules of Conduct’, which form a part of the Agents Regulations. |

This system of delegating legislation to the regulatory body has certain advantages:

* + It allows detailed explanation of the requirements, which the Act may not have.
  + It may include implementation guidelines and regulation which the legislation lacks.
  + It may clarify the legislation and show how it can be complied with.
  + It may show the penalties applicable for non-compliance with provisions in the act.
  + It is easier to revise and enact than a new Act of parliament.
  + It is simpler to alter in response to market, consumer or economic factors.

One of the problems with legislation is that it is written in a style which is unfamiliar to most people and is unclear and ambiguous to them. It then leaves the legislation open to interpretation by the average person, and that may be the wrong interpretation. Subordinate legislation frequently attempts to overcome this problem.

One disadvantage of having the regulations prepared by regulatory bodies is that the quantity of delegated legislation has increased exponentially over recent years, and, as a result, there is a mass of legal rules such as regulations, by-laws, etc.

The practical task of keeping up with new regulations is a difficult one for both lawyers and citizens. In some cases, it is thought that too much law-making power has been delegated to the regulatory authorities, and that parliament has abrogated its responsibilities to the statutory authorities.

### Delegated Authorities (Regulators)

These are the bodies that supervise a particular industry or business activity and who prepare and authorise Real Estate Legislation.

* + QLD: Office of Fair Trading (Department of Employment, Economic Development and Innovation)
  + NSW: Office of Fair Trading (Department of Commerce)
  + ACT: Office of Regulatory Services (Department of Justice and Community Safety)
  + VIC: Consumer Affairs

### Acts and Subordinate Legislation in the Real Estate Industry

Below are some examples of “Principal Acts” and “Delegated / Subordinate Legislation” that governs the Real Estate Industry in Queensland:

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| **State/Territory** | **Legislation – Principal Act** | **Subordinate Legislation** |
| QLD | *Property Occupations Act 2014* | *Property Occupations Regulation 2014* |
|  | *Agents Financial Administration Act 2014* | *Agents Financial Administration Regulation 2014* |
|  | *Residential Tenancies and Rooming Accommodation Act 2008* | *Residential Tenancies and Rooming Accommodation Regulation 2009* |

Note: This is not an exhaustive list of the real estate / consumer protection legislation

### Commencement

Commencement is the time from which the law, as specified in the Act of Parliament, applies or, in other words, becomes effective. An Act or Regulation does not carry legal force until it has commenced.

Acts frequently commence on assent or proclamation (this will usually be specified in the Act itself). A proclamation is the publication of the commencement date of an Act in the Government Gazette. The date is published with the consent of the Governor- General (CTH) or the Governor (in the states).

Regulations commence on a specified date (usually specified in the Regulation itself), or else on the date of gazettal (notification in the gazette).

The Queensland parliamentary gazette can be accessed on-line via the following website:

* + QLD: https:/[/www.p](http://www.publications.qld.gov.au/group/gazettes-2019)u[blications.qld.gov.au/group/gazettes-2019](http://www.publications.qld.gov.au/group/gazettes-2019)

The same process is followed for amendments to the Act itself, but not necessarily the delegated or subordinate legislation. However, all delegated legislation will be reviewed by the parliamentary counsel.

Commencements can also be conditional e.g., a consequential amendments Act may commence upon the commencement of the primary principal Act in that area.

They may also commence after a set period of time has lapsed. Each state, territory or federal parliament have different rules for the amount of time which needs to pass before an automatic commencement of this nature. This is usually reflected in the commencement table provisions.

The Parliamentary Counsels Offices provide legislative drafting services for the state. They draft all Bills required for introduction into parliament and draft or settle a wide range of subordinate legislation, including regulations, rules, proclamations, orders and environmental planning instruments for their state or territory.

### Access to Legislation

The internet and technology have enabled fast and easy access to legislation for everyone, and every state and territory in Australia now allows unrestricted public access to its legislative database.

Legislation can be accessed through the following websites:

* + Commonwealth: [www.legislation.gov.au](http://www.legislation.gov.au/)
  + QLD: [www.legislation.qld.gov.au](http://www.legislation.qld.gov.au/)

Each website provides additional information and links to aid in the interpretation of legislation, finding legislation, explanatory notes and statements and the legislative process that applies to that state.

Given the legislation that real estate agents are bound to follow, it is recommended that agents have a hard copy of each relevant act at hand for reference at all times.

As stated previously, Acts of Parliament bind all those who are affected by them. What that means is that ignorance of the law is no excuse.

However, you may print off a copy of the act – but not know that a change has taken place – for that reason, every state allows and provides access to legislative changes, and it is possible to subscribe to changes in legislation through two different methods:

1. By subscription to the legislative website and parliamentary counsels offices. This can be done through the legislation websites (see above).
2. By subscribing to fair trading updates. Each state’s fair trading / regulatory services website has a subscribe function, where updates are pushed out to email subscribers: See the following:

* QLD: <http://www.fairtrading.qld.gov.au/newsletters.htm>

1. Another great tool to use is <https://legify.com.au/>. Legify helps you find the authoritative (or as close to authoritative as possible) version of almost 14,000 Australian Acts and regulations, instantly and direct from the legislative publishers of the Commonwealth, states and territories.

Just start typing the name of a piece of legislation that you're looking for, Legify will point you to the latest and best source.

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| **Side Note:**  Different states may name their legislation covering a topic in different ways. When searching for legislation you may need to use different key terms to find the name of the legislation which you are seeking. For example, “real estate” in Legify would fair to yield a result for QLD as the name of the legislation is Property Occupations Act 2014. Keep this in mind whenever you are searching for legislation relating to a specific topic. |

### Version Currency of Legislation

It is very important to ensure that the legislation being accessed is the most up to date version and that you are not accessing a superseded version of the legislation, otherwise you may be unintentionally breaching the legislation.

Accessing the direct source to make certain the version is current will prevent mistakes of application of superseded legislation.

### Interpreting Legislation

Many people become overwhelmed with the topic of legislation. It is after all quite a complex topic. Common problems people have when trying to interpret legislation are:

#### Broad phrases

Often when opening an Act, we are faced with long paragraphs of information which can make it difficult for people to understand the points clearly.

#### Legal jargon

The terminology used may at times not be common to that which is used in everyday language and therefore requires understanding of the way the terms need to be applied to enable someone to interpret them.

#### References to other pieces of legislation

Often when reading an Act, it refers to regulations and amendments. Therefore you need to have the ability to source additional pieces of legislation to interpret the content.

#### State and Federal

Both state and federal Acts may be applicable, and a person may not have the knowledge to source these additional resources to interpret legislation correctly.

#### Other Common Issues

* need for words to be implied
* unforeseen developments, such as changes in technology or practice

### Interpretation Acts

Each state has an Interpretation Act that defines the legislative process and prescribes the format and process of making legislation. In addition, it provides an aid to interpreting legislation.

The rules of interpretation stated in the Interpretation Act will normally apply to all other legislation.

The key issues dealt with in the Interpretation Acts include:

* How new legislation is commenced
* How existing legislation is amended or repealed, and the effect of amendment of repeals
* The meaning of common terms, such as “minister”, “department”, “document” and “prescribed”
* Rules for measuring distance, calculating time
* The rules for serving, sending and posting documents
* The procedure for delegating functions under legislation
* The use that can be made of other documents (such as official reports and parliamentary statements) in interpreting ambiguous provisions in legislation
* The procedure for making subordinate legislation and statutory instruments
* Rules regarding legislation that is published, whether in print or in electronic databases.

The following are the relevant interpretation acts:

* QLD – *Acts Interpretation Act 1954* - An Act to assist in the shortening and interpretation of Queensland Acts
* QLD – *Statutory Instruments Act 1992* - An Act relating to statutory instruments and for other purposes related to legislation

Within every Act is a purpose or range of objectives that the Act is designed to achieve. These may be very short (as in the case of most Acts in the ACT), or quite lengthy (as in Queensland Acts). Some will have both a long and short title.

The long title is intended to provide a summarised description of the purpose or scope of the Act while short title is the formal name by which a piece of primary legislation may by law be cited e.g., *Property and Stock Agent Act 2002, Property Occupations Act 2014, Estate Agent Act 1980.*

### Structure of Legislation

The Acts will also contain the following parts:

* Contents - The outline of the Act and the various sections provided in the Act
* Application - Objective of the Act can also be referred to as Objects
* Dictionary / Definitions. This may be at the beginning of the Act, or referred to in one of the first sections and listed towards the end
* Headings - The body of the legislation follows a hierarchy containing chapters, parts, division and subdivisions, clauses, subclauses, schedules and appendices
* Appendices - supplementary material often added at the end of legislation to give additional information that will help a reader understand the materials presented
* Schedules - part of a Bill or a part of an Act. Bills may have a number of schedules that appear after the main clauses in the text. They are often used to spell out in more detail how the provisions of the Bill are to work in practice. If a Bill becomes an Act of Parliament, its schedules become schedules of that Act

Acts and subordinate legislation may have schedules attached. These schedules are part of the Act, and usually serve to provide more detail in a concise format. In addition, the headings, margin notes, footnotes and endnotes are also deemed to be part of the Act.

Each state has a different format for their legislation, so it is essential that you refer to a copy of your state’s Real Estate Act in order to find your way around.

### Interrelationship between pieces of legislation

Individual pieces of legislation (say Act A) sit among many other individual pieces some of which have an effect on Act A. Generally speaking, Act A (and its subsidiary legislation) will stand alone and not have an effect on other legislation. If Act A has any effect on other legislation it will usually be stated in it or in the other legislation. The effect other legislation has on Act A may be to answer questions not answered in Act A. But the effect may be one in conflict with or inconsistent with Act A. What if Act A says, ‘do X’ and Act B says, ‘do Y’ and X conflicts with or is inconsistent with Y?

Sometimes it is hard to know if there is a conflict or inconsistency. For example, if a law imposes a speed limit of 50kph and another a limit of 70kph on the same road, it is possible to obey both. There is case law on that.

If the conflict is between Act A and a piece of subsidiary legislation, Act A usually prevails. But, of course, Act A or some other Act might say otherwise.

If the conflict is between two state Acts, those questions must be resolved by statutory interpretation. Often the more recently enacted Act prevails but beginners should be careful on this and get legal advice.

Likewise, if the conflict is between two pieces of state subsidiary legislation. If the conflict is between state legislation and the Commonwealth’s, the Commonwealth’s prevails. But, of course, a Commonwealth Act might say otherwise. The extent to which one piece of legislation prevails over another is also sometimes hard to know. Again, there is case law on that.

If two pieces of legislation seem to conflict, it is usually advisable to get legal advice on whether there is a conflict, on which prevails, and to what extent it prevails.

An individual piece of legislation (say Act A) exists alongside case law some of which is on statutory interpretation. Some case law might be about Act A itself. Which case law is relevant to a particular question of statutory interpretation will depend on the question. The meaning of legislation sometimes depends on what case law says. Readers who are not lawyers should be careful when reading case law because one case’s decision may have been overruled or modified by a later case. Therefore, a case that seems to answer a question of statutory interpretation may in fact not.

### Key principles for reading and interpreting legislation

To assist judges in interpreting statutes, there exist various aids that they may refer to. Aids to statutory interpretation are divided into internal aids and external aids. These are sometimes referred to as intrinsic aids and extrinsic aids to interpretation.

### Internal/Intrinsic Aids

Intrinsic aids are matters within an Act itself which may help make the meaning clearer. The court may consider the long title, the short title and any preamble. Other useful internal aids may include headings before a group of sections and any schedules attached to the Act. There are also often marginal notes explaining different sections; however, these are not generally regarded as giving parliament's intention as they will have been inserted after parliamentary debates and are only helpful comments put in by the printer.

The *Interpretation Act 1978* section 6 states that unless the contrary intention appears, words importing the masculine gender also include the feminine and words importing the feminine gender also include the masculine. In addition, words in the singular also include the plural and words in the plural include the singular.

Internal aids are those contained in the statute itself and consist of:

* The long title of the Act
* Explanatory notes
* Other sections of the Act
* Definition sections in the Act

### External/Extrinsic Aids

External aids do not form part of an Act, but may assist in the interpretation of that Act, and may help put an Act into context. Such material includes explanatory memoranda, reports of law reform commissions and parliamentary committees and second reading speeches, previous Acts of parliament on the same topic, earlier case law and case law from other jurisdictions, and dictionaries of the time and Hansard. These are also known as 'extrinsic aids'.

#### Explanatory Memoranda

An explanatory memorandum is an executive document issued at the same time as a Bill. Its purpose is to explain the aims and operation of the statute. In statutory interpretation, if the meaning of a provision in an Act is ambiguous or obscure, reference may be made to explanatory memoranda in order to ascertain the meaning of the provision.

#### Law Reform Commission Reports

A Law Reform Commission is an organisation with a focus on the systematic development, review and reform of the law in a particular jurisdiction. Each Australian state and territory and the Commonwealth have associated law reform agencies. As a result of commission inquiries and projects, publications are produced including background papers, issues papers, consultation papers and final reports.

#### Parliamentary Committee Reports

When a Bill is debated in parliament, it is sometimes necessary to refer the Bill to a committee, which specialises in the subject area of the Bill, for an advisory report.

#### Second Reading Speeches

This is a speech given by the relevant Minister in parliament outlining the policy underlying a proposed law (a Bill) during the second reading. Second reading speeches are included in the published parliamentary debates known as Hansard. They are particularly useful in determining the historical intent of new and amending legislation. As an aid to statutory interpretation, second reading speeches may be used to discern the underlying purpose or object of a statute.

#### Hansard

Is the official report of what was said in Parliament when the Act was debated. It permits Hansard to be used where the legislation is ambiguous or obscure or leads to an absurdity, and the material relied on comprises one or more statements by a Minister or other promoter of the Bill and such other parliamentary material as is necessary to understand the statements, and the effect and the statements that were relied on have to be clear.

* Dictionaries
* Textbooks
* Academic writings

### Language conventions and expressions

Language conventions are basically different ways the writer uses and manipulates language to encourage the audience to view something in a certain way.

In legislation the language conventions and expressions used are important to the interpretation of the information presented.

**And/or** - Used to refer to both things or either one of the two mentioned, either "and" or "or".

**Gender** - *Acts Interpretation Act 1901* has 23 Rules as to gender and number. In any Act, words importing a gender include every other gender.

**Hierarchy** - For most purposes, the higher up a court is in the hierarchy, the more authoritative its decisions. In the sense that decisions of the higher courts will bind lower courts to apply the same decided principle.

**Includes** - To contain something as a part of something else, or to make something part of something else.

**May** - Used to express possibility.

**Should** - Used to show when something is likely or expected.

**Must** - Used to show that it is necessary or very important that something is done.

### Reading Rules

#### Literal rule

Unless a definition says otherwise, the "ordinary and natural meaning" of a word or phrase should be used.

#### Mischief rule

Legislation should be interpreted in a manner consistent with its purpose: the "mischief" it is intended to remedy.

**Golden rule**

Legislation should be interpreted in a manner which avoids obvious absurdities or inconsistencies.

#### Purposive approach

Text should be interpreted in a way that is consistent with the purpose of the legislation.

#### Express mention of one thing to the exclusion of another

The legal concept is that if the legislature mentions specifically only certain items from a larger class of items, it meant to include only the items specified and to exclude those items that were omitted.

### Queensland Legislation

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| **Anti-discrimination and equal employment opportunity**  *Anti-discrimination Act 1991 (QLD)* |
| **Anti-money laundering**  *Anti-money laundering and Counter-Terrorism Financing Act 2006 (Cth)* |
| **Consumer protection, fair trading and trade practices** *Competition and Consumer Act 2010 and Regulations (Cth) Fair Trading Act 1989 (QLD)* |
| **Employment and industrial relations**  *Environmental Protection Regulation and Regulation (Cth)*  *Industrial Relations Act 2016 (QLD)* |
| **Environmental and sustainability**  *Environmental Protection Regulation 2019 (QLD)* |
| **Property management/leases and tenancy agreements**  *Residential Tenancies and Rooming Accommodation Act 2009 (QLD)*  *Residential Tenancies and Rooming Accommodation Regulation 2009 (QLD)* |
| **Property sales**  *Land Sales Act 1984 (QLD) Land Title Act 1994 (QLD)*  *Land Title Regulation 2015 (QLD) Property Occupations Act 2014 (QLD)*  *Property Occupations Regulation 2014 (QLD)*  *Property Law Act 1974 (QLD)*  *Property Law Regulation 2013 (QLD)*  *Native Title Act (Queensland) Act 1993 (QLD) Agents Financial Administration Act 2014 (QLD) Local Government Act 2009 (QLD)*  *Local Government Regulation 2012 (QLD) Crime and Corruption Act 2001 (QLD)*  *Crime and Corruption Regulation 2015 (QLD) Duties Act 2001 (QLD)*  *Duties Regulation 2013 (QLD)* |
| **Occupational health and safety**  *Work Health and Safety Act 2011 (QLD)* |
| **Privacy**  *Information Privacy Act 2009 (QLD) Information Privacy Regulation 2009 (QLD) Invasion of Privacy Act 1971 (QLD)* |
| **Planning and Zoning**  *Planning Act 2016 (QLD)*  *Planning Regulation 2017 (QLD)* |
| **Secret Commissions**  *Crime and Corruption Act 2001 (QLD)* |

Note: This is not an exhaustive list of the real estate / consumer protection legislation applicable in the states and territories mentioned above.

## Real Estate Codes of Conduct

Within the Regulations applicable for each state are Codes of Conduct, Rules of Conduct or Codes of Practice.

These represent the minimum standards that apply to workers, whether licensed or registered in the industry. Failure to adhere to the code or rules renders the individual, as well as the corporation, liable to fines and other penalties.

Extreme breaches of the Act or any other part of the Act included within the subordinate legislation (regulation, guidance notes etc), may result in the loss of a license or revocation of a registration certificate. Don’t think that it can’t happen to you – it can.

Normally, if a breach of rules is identified by the regulatory authority, it is likely to trigger an investigation into other aspects of agency operation.

There are a number of industry associations that also publish Codes of Conduct or have specific requirements that agents must follow. For instance, the Real Estate Institutes in the different states and territories may have established Codes of Conduct or other specific requirements that are a condition of membership.

Codes such as these are not legally binding, but if a member of that particular organisation is found to be in breach of their internal code, then they may be disbarred from membership. Continued membership may also be dependent on the individual member meeting their statutory obligations for the practice in their state or territory.

## Fines and Penalties

A penalty unit is a measurement used to determine the amount of a fine for an offence. The value of the unit is multiplied by the number of units set for the offence by the legislation.

The use of a penalty unit is more efficient than a monetary amount given that fine amounts are constantly changing with inflation and public policy. It avoids the time and administrative costs of amending legislation.

In Queensland, the legislation which governs how penalties and sentences are handed down, including penalty units, is the [*Penalties and Sentencing Act 1992*](https://www.legislation.qld.gov.au/view/html/inforce/current/act-1992-048). One penalty unit in Queensland, for most offences, currently corresponds to the dollar amount of $143.75. This has been the case since July 2021.

For offences against certain local laws or laws under specific legislation, such as the [*Work Health*](https://www.legislation.qld.gov.au/view/html/inforce/current/act-2011-018)[*and Safety Act 2011*](https://www.legislation.qld.gov.au/view/html/inforce/current/act-2011-018), the dollar amount for a penalty unit is slightly less. The value is increased by 3.5% each year on 1 July unless the Queensland Treasurer nominates another amount before 1 March.