

# AUSTRALIAN CONSTITUTIONAL LAW

CONCEPTS & CASES

SECOND EDITION

An understanding of the *Australian Constitution* as a framework for government in Australia is critical for any law student interested in ensuring that the rule of law is upheld. *Australian Constitutional Law: Concepts & Cases* provides an accessible and coherent introduction to Australian constitutional law, integrating theory and doctrine.

This book provides clear explanations and carefully selected case extracts that are structured conceptually, rather than chronologically, to enable students to understand both the current state of constitutional law doctrine and how to engage in constitutional reasoning. Discussion questions at the end of each chapter encourage students to consider how the law has evolved and how it can be applied to hypothetical legislation.

Now in its second edition, the text has been comprehensively updated to include commentary on significant recent High Court decisions, such as *Chetcuti v Commonwealth of Australia* (2020) 272 CLR 457, *Love v Commonwealth*; *Thoms v Commonwealth* (2020) 270 CLR 152, *Ruddick v Commonwealth* [2022] HCA 9 and *Alexander v Minister for Home Affairs* [2022] HCA 19, and a new chapter that examines the scope of the Commonwealth's power to impose taxation.

Written by leading constitutional law scholar Luke Beck, *Australian Constitutional Law* remains an invaluable resource for law students.

**Luke Beck** is Professor of Constitutional Law at Monash University. He is a leading scholar of Australian constitutional law and the leading expert on religious freedom under the *Australian Constitution*. His research has been cited by the High Court of Australia and he regularly provides expert advice to parliamentary committees. He is also a regular media commentator.

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## PREFACE

The *Australian Constitution* provides a framework for government in Australia. It establishes the Commonwealth of Australia as a federation, distributing powers and functions between the Commonwealth and the States. It enables and facilitates the exercise of all public power in Australia, and limits and constrains the exercise of that power.

There is rarely, if ever, an objectively correct interpretation of a constitutional provision. Interpretative choices are necessarily made, and they can be, and are, remade over time. It is therefore essential that students learn not only the current state of constitutional law doctrine but also how to do constitutional law and how to engage in constitutional reasoning.

Before the writing of the first edition of this book, market research undertaken by Cambridge University Press found a need in the Australian book landscape for a constitutional law book that combines the best features of a casebook and the best features of a textbook. *Australian Constitutional Law: Concepts and Cases* responds to that need, providing a clear and methodical overview of Australian constitutional law. This second edition continues that approach with revised and updated chapters and a new chapter on taxation powers.

This book was written with two related guiding principles in mind. The first guiding principle is that constitutional law topics should be structured conceptually. Each chapter, with its focussed case extracts, is structured by concepts or elements of the relevant constitutional doctrine, rather than merely being presented as a chronological sequence of cases. The principal aim is to make it easy for students to understand the state of the law, including uncertainties and debates about particular concepts. The second guiding principle is that complex ideas can and should be explained in clear language. Clear explanations enable students to understand and engage with constitutional law, including its complexity and nuance. Students are not left by themselves to derive the relevant principles from case extracts or to synthesise cases in order to put together an understanding of the current state of the law. Easy-to-follow commentary guides students through Australian constitutional law, explaining what the law is and why various interpretations have been adopted.

Studying constitutional law is essential for any student who intends to be admitted to the legal profession. Truly understanding constitutional law and how to do constitutional law is essential for any lawyer interested in ensuring that the rule of law is upheld, that abuses of power are restrained and remedied, and that the ultimate sovereignty of the Australian people is maintained. Constitutional law is essential to good government.

**Luke Beck**

Melbourne, May 2023

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- Abebe v Commonwealth* (1999) 197 CLR 510, 480–1
- Actors and Announcers Equity Association v Fontana Films Pty Ltd* (1982) 150 CLR 169, 78–9, 126–30
- AD v Commissioner of the Australian Federal Police* (2018) 97 NSWLR 588, 216–17
- Adelaide Company of Jehovah's Witnesses Inc v Commonwealth* (1943) 67 CLR 116, 311–14, 318
- Air Caledonie International v Commonwealth* (1988) 165 CLR 462, 205–6, 208–9, 213, 217–19
- Airlines of New South Wales Pty Ltd v New South Wales* (1965) 113 CLR 54, 100–1
- Airservices Australia v Canadian Airlines* (1999) 202 CLR 133, 219–20, 289, 293–6
- Al-Kateb v Godwin* (2004) 219 CLR 562, 526–7
- ALDI Foods v Transport Workers Union* [2020] FCAFC 231, 124–5
- Alexander v Minister for Home Affairs* [2022] HCA 19, 194–5, 197–8, 466–7
- Alqudsi v Commonwealth* (2015) 91 NSWLR 92, 141–2, 145–7, 162–3, 165–7
- Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* (1920) 28 CLR 129, 66–8, 131, 669–70
- AMS v AIF* (1999) 199 CLR 160, 387–8
- Ansett Transport Industries (Operations) Pty Ltd v Wardley* (1980) 142 CLR 237, 648, 651–2
- APLA Ltd v Legal Services Commissioner (NSW)* (2005) 224 CLR 322, 331, 388–90, 653–4
- Assistant Commissioner Condon v Pompano Pty Ltd* (2013) 252 CLR 38, 544–5, 559–60
- Attorney-General (Cth) v The Queen* (1957) 95 CLR 529, 495
- Attorney-General (Cth) ex rel McKinlay v Commonwealth* (1975) 135 CLR 1, 447–8
- Attorney-General (NSW) v Gatsby* (2018) 361 ALR 570, 487–8
- Attorney-General (NSW) v Marquet* (2003) 217 CLR 545, 53
- Attorney-General (NSW) v Trethowan* (1931) 44 CLR 394, 52–4
- Attorney-General (NT) v Chaffey* (2007) 231 CLR 651, 279
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- Attorney-General (Vic) ex rel Black v Commonwealth* (1981) 146 CLR 559, 69, 300–5, 307, 315, 319, 638–9
- Attorney-General (Vic) ex rel Dale v Commonwealth* (1945) 71 CLR 237, 617–20
- Attorney-General (WA) v Australian National Airlines Commission* (1976) 138 CLR 492, 101–3
- Attorney-General (WA) v Marquet* (2003) 217 CLR 545, 56–7
- Austin v Commonwealth* (2003) 215 CLR 185, 206–7, 215, 674–5, 682–4, 686–7
- Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106, 30, 323, 324, 330, 334–5
- Australian Communications and Media Authority v Today FM (Sydney) Pty Ltd* (2015) 255 CLR 352, 463–7
- Australian Communist Party v Commonwealth* (1951) 83 CLR 1, 22
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- Australian National Airways Pty Ltd v Commonwealth* (1945) 71 CLR 29, 105–6
- Australian Tape Manufacturers Association Ltd v Commonwealth* (1993) 176 CLR 480, 206, 210–11, 213

- Baker v The Queen* (2004) 223 CLR 513, 545–7  
*Barley Marketing Board (NSW) v Norman* (1990) 171 CLR 182, 373–4, 376–7  
*Barton v Commonwealth* (1974) 131 CLR 477, 583  
*Bath v Alston Holdings Pty Ltd* (1988) 165 CLR 411, 370–1, 374–5  
*Baxter v Commissioners of Taxation (NSW)* (1907) 4 CLR 1087, 668–9  
*Bayside City Council v Telstra Corporation* (2004) 216 CLR 595, 659–60  
*Behrooz v Secretary, Department of Immigration and Multicultural Affairs* (2004) 219 CLR 486, 527–8  
*Bell Group NV (in liq) v Western Australia* (2016) 260 CLR 500, 91–2, 647–8  
*Betfair Pty Ltd v Racing New South Wales (No 1)* (2008) 234 CLR 418, 380–1, 390–2  
*Betfair Pty Ltd v Racing New South Wales (No 2)* (2012) 249 CLR 217, 377–9  
*Bivens v Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 US 388 (1971), 93  
*Bourke v State Bank of New South Wales* (1990) 170 CLR 276, 79–80  
*Brandy v Human Rights and Equal Opportunity Commission* (1995) 183 CLR 245, 460–2, 469  
*British American Tobacco Australia Ltd v Western Australia* (2003) 217 CLR 30, 94  
*Brown v Tasmania* (2017) 261 CLR 328, 329–3, 338–9, 342–3, 350–2, 358  
*Building Construction Employees Federation and Builders' Labourers Federation of New South Wales v Minister for Industrial Relations* (1986) 7 NSWLR 372, 48–9  
*Burns v Corbett* (2018) 265 CLR 304, 486–8  
*Burton v Honan* (1952) 86 CLR 169, 110–11  
*Butler v Attorney-General (Vic)* (1961) 106 CLR 268, 645–6
- Cadia Holdings Pty Ltd v New South Wales* (2010) 242 CLR 195, 585–8, 611  
*Castlemaine Tooheys Ltd v South Australia* (1990) 169 CLR 436, 371–2, 380, 383–5, 391  
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*Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs* (1992) 176 CLR 1, 516–18, 524, 527, 530  
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*Church of the New Faith v Commissioner of Pay-Roll Tax (Vic)* (1983) 154 CLR 120, 299–300  
*Citta Hobart Pty Ltd v Cawthorn* [2022] HCA 16, 488–9  
*Clarke v Federal Commissioner of Taxation* (2009) 240 CLR 272, 672, 675–6, 684–5  
*Clubb v Edwards* (2019) 267 CLR 171, 87–9  
*Clyde Engineering Co Ltd v Cowburn* (1926) 37 CLR 466, 656–7  
*Clyne v East* (1967) 68 SR (NSW) 385, 511–13  
*Cole v Whitfield* (1988) 165 CLR 360, 72–3, 363–5, 367–70, 374, 383  
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*Combet v Commonwealth* (2005) 224 CLR 494, 622–5  
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*Commercial Radio Coffs Harbour v Fuller* (1986) 161 CLR 47, 652–3  
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- Commonwealth v Cigamatic Pty Ltd (in liq)* (1962) 108 CLR 372, 657–9  
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- Queensland v Commonwealth* (1977) 139 CLR 585, 405–7  
*Queensland Electricity Commission v Commonwealth* (1985) 159 CLR 192, 679–80  
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*R v Davison* (1954) 90 CLR 353, 505  
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*R v Richards; Ex parte Fitzpatrick and Browne* (1955) 92 CLR 157, 497–8  
*R v Sharkey* (1949) 79 CLR 121, 138–9  
*R v Smithers; Ex parte McMillan* (1982) 152 CLR 477, 111–12  
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