

Learner Guide

CPP41419

Certificate IV
in Real Estate
Practice

**Legal & Ethical
Practice**



CPPREP4002

Access and interpret ethical
practice in real estate

CPPREP4003

Access and interpret
legislation in real estate



Edition 1.2

First published 2020 by Eduworks Resources

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Acknowledgement of country

We acknowledge the Traditional Owners of the land where we work, study and live, and pay our respects to Elders past, present and future.

We celebrate the stories, culture and traditions of Aboriginal and Torres Strait Islander Elders of all communities who also work, study and live on this land.



About this Learner Guide

This Learner Guide covers the following units of competency:

CPPREP4002 Access and interpret ethical practice in real estate

CPPREP4003 Access and interpret legislation in real estate

Using this Learner Guide

Look for the following throughout this Learner Guide.

Activity 2A

Activity Boxes

Various Learning Activities are included throughout this Learner Guide. To ensure you get the most out of your learning, complete the activities as you progress through the guide.

QR Code #01

QR Codes

QR Codes will appear within the text or in tables as a number and underlined. You can find the QR Codes referenced at the back of this guide.



Icon Boxes

There are a series of callout icon boxes throughout including Notes, Examples, Reflect boxes and more. Make sure you look to these to bring the content to life.

Review Questions

Review Questions

At the end of each Chapter will find a series of Review Questions which will help you review your knowledge of the content of each chapter before you move onto the next.



Watch Boxes & QR Codes

QR codes and Watch boxes are used throughout to aid in your streamlined use of this Learner Guide.

To use the QR codes, download a QR reader on your smart device from the app store on your device.

Simply scan the QR code by using the camera on your device. The media will be shown on your device. If it is a Watch box it will be a video on YouTube. Other media may include a website, or PDF or so on.



Victoria



New South Wales



Australian Capital Territory



Queensland



Northern Territory



South Australia



Western Australia



Tasmania

Australian States Colour Codes

Throughout this guide you will see the Australian States referenced as part of the content. Each state has been colour coded to make it easier to distinguish. The States appear in the same order throughout.

The following are interchangeable terms depending on which state or territory you are located:

landlord	rental provider	Lessor
tenant	renter	lessee
Tenancy agreement	Rental agreement	lease

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Chapter 1

Working Within an Ethical Framework

Most of us probably feel like we know what working ethically is and probably think we would behave ethically no matter the situation. However, ethics in a professional environment presents a new set of ethical scenarios for you to consider and it is important you know where your values lie before you commence your real estate career. Adhering to ethics standards are built into the licence requirements of many states and territories for this reason. In this chapter, we look at what ethics is, what the ethical issues are in real estate and the things you need to be aware of as you become a practicing real estate agent.

By the end of this chapter, you will understand:

- ✓ what ethics really means
- ✓ what we mean when we talk about ethics in real estate
- ✓ codes of ethics in real estate
- ✓ the relevant industry Codes of Conduct
- ✓ duty of care
- ✓ consumer protection requirements
- ✓ conflicts of interest
- ✓ some common barriers to being ethical.





1.1 What is Ethics?

Ethics are the moral principles and social responsibilities that guide your business interactions.

The ethics of an organisation or a person are also guided by their values. So how do values and ethics differ? Values are the beliefs that guide behavioural rules or guidelines. So, an agency might believe in the value of paid parental leave for all – that would be an organisational value. Its behavioural guideline, or rule, would be that it grants four weeks paid paternity leave in addition to its legislative requirements on the birth of the baby regardless of the parent's sex, marital status and so on.

While ethics will often include principles that are covered by legislation, they are not limited to only legislated issues. For example, spreading unfounded rumours about the competency of a competitor may not be illegal but it would be unethical.



Note

The Australian Government holds its employees to a high ethical standard. It provides an ethics advisory service and encourages its staff to seek advice on ethical issues. You will find some of the guidance that it offers to staff at: <https://scnv.io/ySbp>



Activity 1A

Morals and Values - Reflect

Think about your own personal morals and values and how they might guide your work. Make a list of five ethical principles that you live by in your day to day life. Now, how do you think you will apply that to your work?



Watch

Watch the video below to learn more.

Click the link or scan the QR code

<https://scnv.io/rbuF>



1.2 Ethics in Real Estate

Generally, there is agreement across state and territory legislation that ethical behaviour in real estate relates mainly to the following key concepts:

- Appropriately handling conflicts of interest
- Accurately quoting the sale prices of properties
- Accurately describing the home
- Items that must be included in the authority to sell
- The default period for an authority
- Copies of documents to be provided to clients
- Advertised price of a property
- Handling of trust money
- Acting in the best interest of the client and the principal agent.
- Not disclosing confidential information you acquire while conducting estate agency business.



1.3 Codes of Ethics

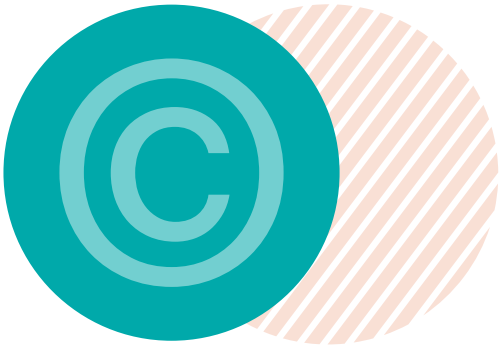
A code of ethics (sometimes called a code of conduct) is an accountability framework which provides guidance on a range of ethical issues. Its aim is to ensure compliance with legislative requirements and to promote a requirement for fair and ethical treatment of all stakeholders (including clients and suppliers). A code of ethics will usually also include a process for reporting breaches of the code.

Codes of ethics are sometimes developed by an employer organisation for its employees and are sometimes developed by industry organisations for the industry that it represents. It's not unusual for an employee to be impacted by an industry code of ethics as well as an organisation's code of ethics.

Why is a Code of Ethics Important?

A code of ethics is important for a number of reasons. It is important to:

- the industry – as in real estate, most industries recognise the importance of a code of ethics. They help ensure integrity within the industry, give the public faith in the industry, provide guidance for industry association members and assist with legislative compliance.
- organisations – most larger organisations and a growing number of smaller organisations (especially publicly funded organisations or those interacting with the government sector) have a code of ethics. A code of ethics provides consistency across the organisation, assists with legislative compliance, gives clients faith in the organisation, assists with security of data and intellectual property and provides guidance to employees.
- individuals – individuals benefit from a code of ethics as it provides clear guidelines for expected behaviour, assists with legislative compliance and compliance with organisational policy and procedures. A code of ethics can also provide clarity if you find yourself in a situation where you are unsure as to the way forward.



What does a Code of Ethics Normally Cover?

A code of ethics normally covers a range of topics which might include:

- honesty and integrity
- professionalism
- professional development
- privacy
- intellectual property
- copyright
- respect and courtesy
- diligence
- legislative compliance
- confidentiality
- anti-discrimination
- equity
- conflict of interest
- use of information gained at work
- adherence to organisational values
- use of IT systems
- security
- acceptance of gifts.

REIA Principles of Conduct

The REIA has developed a set of 'Principles of Conduct' which are underpinned by Codes of Conduct specific to each state and territory.

The purpose of these principles and codes of conduct are to ensure that REIA members work to a high level of professionalism to maintain credibility and confidence while adhering to legislative requirements.

REIA Principles of Conduct

REI members shall:

1. Hold the required professional qualifications, insurances and indemnities necessary to operate within their state or territory.
2. Have a reasonable knowledge and understanding and act in accordance with the relevant laws governing the real estate profession, including codes of conduct, these principles and the rules of professional associations.
3. Maintain and improve their knowledge, skills and qualifications over the course of their career.
4. Act in the best interests of their client and in accordance with their instructions except where it would be unreasonable or improper to do so.
5. Act ethically, fairly and honestly when dealing with all parties and not allow any person to believe that they are acting for any party other than their client.
6. Treat fellow real estate agents with respect and professional courtesy. REI members shall disclose their role to all other agents involved in a property transaction.
7. Not use or disclose any confidential information obtained while acting on behalf of their client or dealing with a customer, except for information that members are required by law to disclose.
8. Endeavour to prevent or resolve disputes with a view to minimising the number of complaints made against the real estate agent. REI members will inform all complainants of the alternate avenues of complaint open to them.
9. Disseminate relevant information received from, or required by, the REIA or REI where this will assist the ongoing development of the profession. REI members shall actively seek to continually improve the status and general operation of the real estate profession for the benefit of clients and customers.

Prepared by Real Estate Institute of Australia



Activity 1B

Code of Conduct Research

Access the REI code of conduct relevant to your state or territory and review it. How do you think the code will impact on your day-to-day work in the real estate industry?

You and a Code of Ethics

Each person has obligations in relation to a code of ethics:

- to adhere to the code
- to stay up to date with changes to the code
- to tell others about the code of ethics
- to keep the code at front of mind when implementing new work practices and projects
- to regularly review existing work practices to ensure that they are ethical
- to check with stakeholders to ensure compliance with the code
- to report breaches of the code.



Adhering to a Code of Ethics

There are a number of strategies that you can use to ensure that you are adhering to a code of ethics at work:

- Know how to access the code/codes of ethics relevant to you, make sure that you are familiar with them and stay up to date with any changes (you will find more information about staying up to date later in this resource).
- Discuss the code of ethics in meetings, performance appraisals and team briefings.
- Consider the code of ethics whenever you are planning for a new work process, project or procedure.
- Make a code-of-ethics checklist for use in new projects and processes.
- Seek feedback from your supervisor, colleagues and stakeholders.



Activity 1C

Legislation Requirements Ethical Practice Requirements - Research

Review the legislation for your state

- duty of honesty
- client's instructions
- misleading or deceptive conduct
- unconscionable conduct.





1.4 Duty of Care

The definition of duty of care is the obligation owed to someone who, where it is reasonably foreseeable, could suffer a loss or be injured as a result of lack of care.

An agency has a duty of care to act in the clients' best interest, whether they are landlords (rental providers) or vendors. As a part of the duty of care, an agency is responsible to make sure landlords (rental providers) get the best possible return on their investment and vendors get the best possible price for their property.

When a landlord (rental provider) appoints the agency as property manager, most often the agency has a responsibility to make sure the property is safely maintained and that any work done on the property organised by the agency is carried out appropriately.

Agencies have a legal duty of care to make sure purchasers do not suffer a loss as a result of their involvement with the agency when purchasing a property.

If an agency misrepresented a property and an individual purchased it on the basis of that misinformation, they could possibly suffer a loss as a result.

Negligence

In Australia, negligence of a real estate agent refers to a failure by the agent to meet the standard of care and skill expected of them in providing their services to clients. Negligence can occur when a real estate agent breaches their duty of care towards their clients or acts in a way that falls below the reasonable standards of the real estate industry.

Examples of negligence by a real estate agent in Australia may include:

Misrepresentation: Providing false or misleading information about a property, such as misrepresenting its features, condition, or value.

Failure to Disclose Material Facts: Withholding important information that could impact a client's decision-making process, such as not disclosing known property defects or legal issues.

Breach of Confidentiality: Sharing confidential information about a client or a property without proper authorization.

Inadequate Property Inspections: Failing to conduct thorough inspections of a property or not identifying and reporting significant issues that may affect the property's value or safety.

Negligent Advice: Providing advice or recommendations that are inaccurate, misleading, or do not align with professional standards.

Mishandling of Funds: Mismanaging client funds, mishandling trust accounts, or failing to properly account for financial transactions related to property sales or rentals.

Failure to Exercise Skill and Care: Not taking reasonable steps to protect the interests of clients, such as not verifying information, not performing necessary due diligence, or not following proper procedures.

Breach of Contract

A breach of contract is a breach of a legal duty, a failure on the part of a licensed agent or registered person to do something that is required in a contract.

Penalties may include:

- fine imposed
- warning given
- written undertaking that the offence/conduct will not occur again
- criminal/police action
- cancellation or suspension of licence
- legal action/claims for loss/damage from clients



1.5 Consumer Protection Requirements

The Australian Competition and Consumer Commission regulates consumer rights in Australia. Whether someone is renting, buying or selling a home, real estate agents must not mislead a consumer and must use fair contract terms in line with Commonwealth, State and Territory laws.

Real estate agents and professionals must not:

- Intentionally mislead consumers
- Lead consumers to make a wrong conclusion or impression
- Give someone a false impression
- Leave out or hide important information like a fine print disclaimer
- Make false or inaccurate claims

False and Inaccurate Claims

You must take particular care to:

- Disclose all information relevant to the price of a property – this includes making sure price buying ranges are accurate
- Advertise the selling price based on a reasonable market appraisal or the price the seller has indicated they are likely to accept
- Not make false claims about the price of the property
- Not advertise or underquote a property at a price significantly less than the estimated selling price to attract interest
- Not make false claims about the location, characteristics, or use that can be made of the land of property.

A real estate agent might make false claims about the price by:

- advertising a property as ‘passed in’ at a price higher than what was actually bid at an auction
- claiming that the vendor has already rejected offers more than the buyer is willing to pay, when no such offers have been made and/or rejected
- advertising a property at a price that is less than a previously rejected offer (unless the seller is now prepared to accept a lower offer).



Activity 1D

Liabilities

Read more about Understanding property prices and under quoting for buyers by Consumer Affairs Victoria below:

<https://scnv.io/nPQ5>



1.6 Conflicts of Interest

What is a Conflict of Interest?

A conflict of interest is a situation where a person or organisation is involved in multiple interests which may be financial, or otherwise, where serving or working for one of those interests may affect the interest of another. Conflicts can include financial, personal, business, shareholdings, or a role in a company. There are also direct conflicts of interest and indirect conflicts of interest.

Types of conflict

Direct conflict

Direct conflicts of interest involve receiving an undisclosed personal benefit directly from a transaction or process you are involved in.

For example, if you personally buy or lease a property that you hold an agency listing for without advising your client of your interest and following the required protocol.

Indirect conflict

An indirect conflict may arise if you assist someone to who you are closely related or affiliated to, on a property that your agency has a listing for without advising your client of your interest and following the required protocol.

For example, if you helped an employee, close friend or family member to buy or lease a property that you hold an agency listing for, this would be considered an indirect conflict of interest.

Real estate agents are required to declare their conflicts of interest when working in real estate however, again the states and territories differ when it comes to these requirements.

A brief overview of the requirements are below:

Victoria	The Estate Agents (Professional Conduct) Regulations 2008 state that estate agents and agents' representatives must act in the best interest of their clients, unless it would be unlawful or improper to do so. This includes not putting their interests in conflict with their clients.
New South Wales	The Property and Stock Agents Regulation 2014 states that: "An agent must not accept an appointment to act, or continue to act, as an agent if doing so would place the agent's interests in conflict with the client's interests."
Australian Capital Territory	Under the Agents Regulation Act 2003, an agent must not accept an appointment to act, or continue to act, as an agent if doing so would place the agent's interests in conflict with the client's interests.
Queensland	Under the Property Occupations Act 2014, you must make a disclosure to the seller if you have any beneficial interests in a sale. You must also disclose to a buyer if you pay any benefits to a third party. This includes fees, commissions, benefits (money or otherwise). You must use the approved forms to make these disclosures.
Northern Territory	Under the Agents Licencing Act 2017 there are restrictions on an agent when purchasing or selling a property in which the agent has interests in, and a sale by an agent who has an interest in the sale. This includes the requirement to make certain disclosures.
South Australia	Where there is a conflict of interest, also known as a beneficial interest, agents must disclose the conflict of interest to the vendor and seek approval from the Commissioner of Consumer Affairs by using an online application process.
Western Australia	Under the Real Estate and Business Agents Act 1978 (the REBA Act) and the Code of Conduct for Agents and Sales Representatives 2011 (the Code), it is a requirement for an agent to disclose any conflict of interest through a written disclosure to the client stating the nature of the conflict must gain the principal's written consent before proceeding.
Tasmania	Under the Property Agents and Land Transactions Act 2016, a real estate agent or a person employed by a real estate agent must not acquire or attempt to acquire, directly or indirectly, an interest in property that the agent is instructed to sell.

A real estate agent must not, in the course of business as a real estate agent, sell or attempt to sell, directly or indirectly, an interest in property owned by –

- (a) the real estate agent; or
- (b) a person employed by the real estate agent; or
- (c) where the real estate agent is a company, a director of the company; or
- (d) a relative of a person mentioned in paragraph (a), (b) or (c) –

unless a full disclosure of all the relevant facts is made before the sale or the attempt to sell.

Perceived Conflicts of Interest

Sometimes a conflict of interest occurs where it may reasonably be perceived or give the appearance to someone else that a conflict of interest exists or that your performance of your duties might be affected by your personal interests. In these situations, it's important that these conflicts of interest are still managed and declared, even if you don't believe that a conflict of interest exists. It is always better to be on the safe side when it comes to conflicts of interest.

1.7 Trust Accounts

There are many rules about trust accounts and trust money for real estate agent and how and when money can be deposited in and out of a trust account. This means you are managing money and assets of another person, your client, and they are entrusting you with their hard-earned money.



Must be alert to possibilities

Increased levels of intervention

Must be managed to ensure impact controlled



Fiduciary Duties

As a real estate agent, a fiduciary is a person or organisation that acts on behalf of another person or persons to manage assets.

A fiduciary might be responsible for general well-being, but often the task involves finances - managing the assets of another person, or of a group of people, for example.

1.8 Barriers to being Ethical

At times it can be tempting to be unethical. That is why there are guidelines, legislation and codes of ethics put in place to say what is and isn't deemed as suitable conduct. Some of the barriers to being ethical are:

- Self-interest – to improve personal circumstances such as earning more money
- Expediency – quick sale
- Safety in numbers – doing what you see others are doing

1.9 Ethical Decision Making

- Gather the facts – don't jump to conclusions about the facts
- Define the ethical issues
- Identify the affected parties (stakeholders)
- Identify the consequences
- Identify the obligations (principles, rights, justice)
- Consider your character and integrity
- Think about potential actions
- Decide on the proper ethical actions and be prepared to deal with opposing arguments.



Making an Ethical Decision

Ask yourself the following questions when you need to make an ethical decision:

- Does your decision conflict with any of your core ethical values?
- Think of a real estate agent you respect, your employer, or someone whose moral judgement you respect. What would they do?
- How will your decision affect others?
- Are your actions legal?
- Is your decision in line with the requirements of your licence or the REI guidelines?
- Would your decision be perceived as unethical by others, even if you do not believe it is unethical? (Remember the old saying = perception is reality)
- Would you make the same decision if it were reported on the news, or you had a set of cameras on you?
- Could you rationally and honestly defend your decision?

Chapter 1 Review Questions



Q1. Why is it important you are aware of Consumer Protection Requirements and how does this relate to ethics?

Q2. What are the ethical requirements in relation to conflicts of interest in your jurisdiction?

Q3. Why is a perceived conflict of interest just as important as a real conflict of interest?

Q4. What are some of the ways you will ensure you will stay ethical as you embark on your career in real estate?

Chapter 2

Understanding Legislation

Legislation can be overwhelming. However, by knowing a few fundamental rules to interpretation and by knowing where to look when you need advice, knowing how legislation is structured and what to do if there are conflicts between legislation, you will be set up for success since dealing with legislative frameworks is an important component of your role in real estate.

By the end of this chapter, you will understand:

- ✓ the difference between Acts and subsidiary legislation like regulations and by-laws
- ✓ how legislation is created
- ✓ what equity law is
- ✓ relationships between different pieces of legislation
- ✓ some rules on interpreting legislation
- ✓ structure of legislation
- ✓ how legislation is amended
- ✓ what contract law, common law and case law is
- ✓ what to do if there is a conflict between legislation
- ✓ how to stay up to date with legislation.





2.1 What is Legislation?

Legislation consists of laws made by Parliament. Broadly speaking, there are two kinds of legislation – Acts and subsidiary legislation.

Acts are the laws that Parliament has enacted and are sometimes referred to as Acts of Parliament. They will have the term Act in their title. Sometimes an Act will be called ‘primary legislation’ to distinguish it from subsidiary legislation, however this is less common.

Acts

An Act must be read with any subsidiary legislation using any powers from the Act about subsidiary legislation. This subsidiary legislation will fill any gaps or details that were not originally covered by the original Act. There will not always be subsidiary legislation for every Act.

Subsidiary Legislation

Subsidiary legislation does not have these words in the title. This sort of legislation has various names which may appear in its title such as:

- Regulations
- Local laws
- By-laws
- Planning schemes
- Rules

Even though some subsidiary legislation may have different names from others, it does not mean they have different effects. Subsidiary legislation is made under an Act because it is only an Act that can give a person power to make subsidiary legislation. Acts say who can make subsidiary legislation and what the subsidiary legislation can deal with.



Example

In Victoria, the Act dealing with tenancies is the Residential Tenancies Act 1997. The delegated legislation is the Residential Tenancies Regulations 2021.



2.2 How is Legislation Created?

Another name for legislation is statute and it may be referred to as statute law. A statute starts out as a bill. The procedure to get it passed as legislation is as follows:

- A bill must first be written, whether from a government department or law reform commission or a private member (Private member's bill).
- The bill must be drafted, performed by specialist lawyers in the Parliamentary counsel's office.
- House of Origin:
 - Notice of motion > First Reading > Second reading > Debate > Committee stage > Third reading.
 - If the bill passes, it moves on to the second house.
- Second House:
 - First reading > Second Reading > Committee of the whole > Third reading.
 - If the bill is passed it is returned to the house of origin, the clerk certifies the bill and gives it to the Governor for Royal assent. If amendments are made in the second house, the houses must try to reach agreement on the amendments, else it is set aside or put to referendum or may become a 'double dissolution trigger'.
 - Royal assent: Governor General gives royal assent unless the Queen is in the jurisdiction. It then becomes an Act.

2.3 Equity Law

Australia's legal system was formed based on the British legal framework. A legal system, by definition, institutions and laws used to control, regulate and organise activities of a state and its citizens (Lowe 2008, p. 2). The major principles that govern Australia's legal system include equality before law and justice. The system itself and lawmakers endeavour to achieve equal results for every person. It also focuses on ensuring the protection of all by making just and fair decisions.

In other words, the courts, government and law enforcers as well as individuals work to achieve an overall sense of justice and fairness. In Australia, equality in the legal system means treating each person the same. Everyone enjoys the same opportunity and rights, and nobody is disadvantaged. The system must not come up with a different decision because of an individual's financial status or because of a person's nationality, religion or sexuality. It means that each person has a right to access the legal system and law equally as no one is above the law no matter the position they hold in society.

2.4 Interrelationships Between Legislation

Pieces of legislation do not sit in isolation from each other. One piece of legislation sits among many other pieces of legislation.

Normally, an Act and any subsidiary legislation will sit alone and not have any effect on other legislation and if it has an effect on any other legislation it would be stated within it.

However, not every question in one piece of legislation can be answered within that one piece of legislation.

For example, if a piece of legislation talks about criminal proceedings and imprisonment, then automatically the Evidence Act 1906, the Criminal Investigation Act 2006, The Criminal Code and the Fines, Penalties and Infringement Notices Enforcement Act 1994 all have an effect and cannot be restated in the original legislation.

2.5 Interpreting Legislation

In 1901, the Commonwealth Interpretation Act was enacted to guide on interpreting Acts of Parliament and for shortening their language.

To save much of the confusion which has resulted from attempts to interpret legislation over the years, governments across Australia have introduced their own sets of interpretation rules. These are embodied in Acts by the states and territories, with each having their own Interpretation Act. These Acts are there to assist the interpretation of legislation and to apply standard rules of interpretation in some circumstances.

These Acts set out how legislation must be interpreted. It states what is and what is not part of the law.

To summarise:

- The following parts are not part of the law:
 - Table of contents
 - Headings and footnotes to individual sections, regulations, clauses, by-laws and provisions of a similar level
 - Notes at the end of reprints of legislation, including the compilation table
- The rest of the parts of legislation is part of the law unless it says otherwise, for example, in the notes.



Here are some other things that you need to be aware of when reading legislation, taken from the Interpretation Acts.

Order

The order of the items in legislation does not matter and the order of their appearance does not give any weighting. Meaning the last item is just as important as the first item.

Headings

Headings seen in legislation are not part of the law. They are meant as a pointer to help you find what you are looking for, much like the headings in this learner guide. A section's heading does not always fully cover everything that is covered in that section so do not entirely rely on the headings to guide you about what you'll find under them.

Definitions

Legislation includes a section for 'Definitions', which may also be referred to as 'Terms Used' or 'Interpretation'. You must rely on the definition of the words within the legislation for the defined words, including any other tenses of the word. For example, if the verb 'sell' is defined, the definition will also apply to the verb's tenses of 'sold' and 'sale', unless otherwise defined.

Some words or phrases are defined in the Interpretation Act 1984. If neither the legislation you are reading or the Interpretation Act defines a word or phrase, it is taken to have the same every day meaning, unless case law gives it meaning.

Gender and Plurals

Section 10 of the Interpretation Act 1984 deals with gender and number. He includes she and cat includes cats.



2.6 Structure of Legislation

Contents

Like a Table of Contents in a book, the contents page will give you an idea of how the Act is structured. It will make it easier to read and easier for you to find things. Some Acts are more structured than others. Some Acts don't have an index in the back, so the only thing to guide you is the Contents page.

Parts

Modern Acts are divided into Parts with Parts being divided into Divisions and then those being divided into Subdivisions. They are all numbered and have a short description of the subject at the heading of each. This allows sections to be grouped according to the subject, much like the chapters of a book, or the chapters in this Learner Guide.

Long Title

Only Acts have long titles, and subsidiary legislation does not. Long titles appear on the first page after the contents page. Long titles explain the purpose of the Act and begins with the word 'An Act...'. Some long titles are long and informative, and others are brief and won't tell you very much.



Example

For example, the Long Title for the Property Occupations Act 2014 (Qld) is:

An Act to provide for the regulation of the activities, licensing and conduct of property agents and resident letting agents and their employees and to protect consumers against particular undesirable practices, to amend the Body Corporate and Community Management Act 1997 and the Youth Justice Act 1992 for particular purposes, and to make minor and consequential amendments of the Acts stated in schedule 2 for particular purposes.

Short Title

The short title in an Act is likely to be section 1 in the Act. It is simply the name of the Act which includes the year in which it was enacted.

Commencement

This will be section 2 of the Act and says when the Act commences or comes into effect.



Note

It is worth noting here that the date on which legislation is enacted and the date on which legislation commences are not the same. The enactment date is the date that Parliament agrees to the legislation and agrees that it will be enacted. It is the date that the Governor gives it Royal Assent and Parliament enacts it, however the date on which it comes into effect will be set usually at a later date, which is set out in the commencement date.

Purpose

Some Acts have a section that states the purpose of the Act. This would be additional to the long title and would give a broad overview of the purpose of the Act.

Application

Some Acts have a section that states what the legislation applies to. Sometimes there is an application section in a Part or a Division of an Act. These are worth reading early when you first start reading the legislation because they affect the whole legislation or the whole Part or Division.

Schedules and Clauses

Some Acts have one or more schedules at the back which may be subdivided if needed. They may contain lists, forms or provisions that do not fit in the earlier portion of the Act. The provisions in the Schedules are usually called clauses and are usually numbered.



Sections

Each section of a piece of legislation consists of:

- A number
- A heading
- Its words

Section Layout

- A section's words may be divided into two or more subsections.
- Subsections are usually each numbered (1), (2) etc. Each subsection usually consists of one sentence. A subsection (or a section without subsections) may contain two or more paragraphs.
- Paragraphs are usually each numbered '(a), (b) ...'.
- A paragraph may contain two or more subparagraphs.
- Between the paragraphs will usually be a conjunction, such as 'and' or 'or', but not always.
- Subparagraphs are usually each numbered '(i), (ii) ...'.
- Between the subparagraphs will usually be a conjunction, such as 'and' or 'or', but not always.
- Subparagraphs are sometimes subdivided. The same goes for clauses (wherever they are used), but clauses have subclauses.
- Likewise, regulations have subregulations, rules have subrules and by-laws have sub-bylaws.
- Amended sections may contain subsections with numbers such as (2A) or (4b), paragraphs with numbers such as (bb) or (dab) and subparagraphs with numbers such as (iie) or (xb).





2.7 Legislation Amendments

There is of course always a need to make updates and changes to legislation after it has been enacted. Very little legislation is perfect and needs change over time.

To make changes to legislation, a subsidiary Amendment Act is enacted with the text amendments – that is by deleting or inserting the words that need to be changed in the original legislation. When the new piece of legislation commences, the deletions and insertions are made, and the amended version becomes the law from then on.

Whenever an amendment is made in an Act, a note is made in italics under it saying what Act amended it. What the amendment was is not explained though. The notes at the back of the amended legislation will have more details about when the amendments commenced, but to find out what amendments were made, you need to go back to the legislation that made the amendment.

2.8 Contract Law

Australian contract law concerns the legal enforcement of promises that were made as part of a bargain freely entered into, forming a legal relationship called a contract. The common law in Australia is based on the inherited English contract law, with specific statutory modifications of principles in some areas and the development of the law through the decisions of Australian courts which have diverged somewhat from the English courts especially since the 1980.



2.9 Common Law

As well as legislation, there is another set of laws, called 'common law', also known as 'case law'. Common law is the law made by courts due to the decisions that judges make every day in the cases they decide. Common law exists side by side with legislation, meaning you can rely on common law as you can rely on legislation. However, rulings in legislation, or an Act, takes priority over common law if there is a conflict.

Common law will help you interpret legislation. However, you may find that sometimes this information is limited. Because common law is the decisions made in court cases and the written decisions on how to interpret the legislation will only refer to the parts of the legislation which the case involved, there may be parts that you're looking for in the legislation missing when you do your research. However, you may find general statements on how you can interpret the legislation.



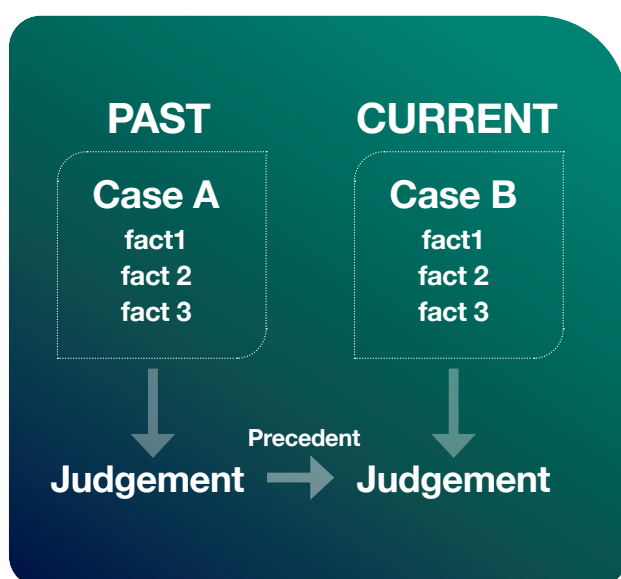
Note Finding Case Law

Case law can be found by searching Austlii:

<https://scnv.io/f0KP>



For help using the case law database, go to this help database: <https://scnv.io/9uXS>



Precedents

The 'doctrine of precedent' is the rule that a legal principle that has been established by a superior court should be followed in other similar cases by that court and other courts. The doctrine of precedent was developed to promote consistency in decision-making by judges, on the basis that like cases should be determined in a like manner. There are two kinds of precedent: binding and persuasive.

Binding Precedent

A precedent is 'binding' on a court if the precedent was made by a superior court that is higher in the hierarchy of courts. A binding precedent must be followed if the precedent is relevant and the circumstances of the cases are sufficiently similar. For example, decisions of the High Court are binding on all courts in Australia, but a decision of the Supreme Court is not binding on the High Court, and a decision of the District Court is not binding on the Supreme Court.

Persuasive Precedent

A precedent is 'persuasive' if it was established by a superior court that is not higher in the hierarchy of courts. This means that the precedent should be seriously considered, but is not required to be followed. For example, a precedent established by the Supreme Court of New South Wales is persuasive but not binding on the Supreme Court of Victoria, since these courts are not in the same hierarchy and are of equal authority. Decisions of superior overseas courts, particularly the superior courts of the United Kingdom, are persuasive precedents in Australia.

2.10 Interpretation of the Law

Now that you know all the technicalities of how legislation is laid out, its important you know a bit about how to interpret legislation. When the courts go through a process of interpreting legislation, whether it is a word, a phrase, or a whole section of legislation, the judges and magistrates use a number of devices to assist them in that interpretation.

These are the four main rules of interpreting legislation:

Literal Approach 1	<ul style="list-style-type: none"> • Relies on the plain meaning of the words used in the legislation. • Not primarily concerned with putting into effect the intention of the parliament. • Will apply the legislation according to its ordinary and natural meaning - that is - as its written.
Golden Rule 2	<ul style="list-style-type: none"> • The court would modify the meaning under the literal rule if the result would be interpreted in such a way that any manifestly absurd, or repugnant way. • When using this approach, the court would have to decide what the intention of the Parliament was at the time of enacting the legislation.
Purpose (Mischief) 3	<ul style="list-style-type: none"> • This focuses on the particular social ‘mischief’ or social condition which parliament intended to correct or regulate by passing the legislation. • When using this approach, the court considers what the intention of the legislation was in correcting the social mischief. This would clarify their intent.
The class rule 4	<ul style="list-style-type: none"> • The class rule approach is used by judges when there are general words following quite specific words in legislation. In the phrase ‘dogs, cats, pet rabbits and other animals’, for example, it is likely that other animals means other pets or domesticated animals and not giraffes or elephants. General words get their meaning from other specific words.

Extrinsic and Intrinsic Evidence

An important aspect of the various Acts is that they allow the courts to use extrinsic evidence to assist interpretation. Extrinsic evidence is information which is obtained from outside of the Act itself, as contrasted with intrinsic evidence, which is information contained within the Act. An example of intrinsic evidence is the definition section of the Act. An example of extrinsic evidence is a publication called Hansard. This publication, which does not form part of the Act itself, is a record of debates in parliament concerning that legislation.

Hansard records, together with other parliamentary documents such as reports of Special Committees and Royal Commissions, might become a useful reference source to assist interpretation whenever a court finds that to apply the ordinary meaning of words in a statute would lead to an absurdity or an ambiguity. The Interpretation Acts only allow the courts to use these parliamentary records when all else has failed, however.

2.11 Conflicts between Legislation

General rules on conflicts in legislation:

- If there is a conflict between an Act and its subsidiary, then the Act will prevail.
- If there is a conflict between two of the same state's Acts, they need to be resolved by statutory interpretation.
- If there is a conflict between a state or territory Act and a Commonwealth Act, then the Commonwealth Act prevails.
- The level to which one piece of legislation prevails over another is hard to know at times however this can often be resolved by looking at case law.
- Getting legal advice when unsure is always the safest solution, especially when starting out working with the intricacies of legislation.



Hierarchy of Legislative Provisions

Sometimes an Act may say two things that conflict with one another and so the legislation needs to advise which one takes priority.

This is often resolved by saying provision (1) is 'subject to' provision (2). In this way, you are being told that provision (2) dominates or overrules provision (1).



2.12 Legislation Relevant to Real Estate

As a professional working in real estate, it is important you are aware of the legislation that impacts your role and the role the legislation plays in your conduct, contracts, negotiations, and workplace processes.

Legislation impacts the way you need to work, the rules you need to follow, the way you communicate with clients and the processes you need to follow when conducting business. Ensure you are familiar with all legislation relating to the following.

- Privacy
- Property sales
- Property management
- Fair trading and consumer protection
- Anti-discrimination and equal opportunity
- Workplace health and safety
- Employment and industrial relations
- Planning and zoning

Below is a list of legislation that is commonly applicable to working in real estate in each jurisdiction. This list is not exhaustive, and you are encouraged to conduct your own research as to other legislation that may impact on the work you are carrying out.

State/Territory	Legislation
Commonwealth	Australian Consumer Law and Fair-Trading Act 2012 Competition and Consumer Act 2010
VIC	Equal Opportunity Act 2010 Estate Agents Act 1980 Residential Tenancies Act 1997 Retail Leases Act 2003
NSW	Environmental Planning and Assessment Act 1979 Residential Tenancies Act 2010 Property and Stock Agents Act 2002 Retail Leases Act 1994
ACT	Discrimination Act 1991 Residential Tenancies Act 1997 Civil Law (Sale of Residential Property) Act 2003
QLD	Anti-Discrimination Act 1991 Property Occupations Act 2014 Residential Tenancies and Rooming Accommodation Act 2008 Planning Act 2016
NT	Anti-Discrimination Act 1992 Residential Tenancies Act 1999 NT Planning Scheme 2020
SA	Residential Tenancies Act 1995 Planning, Development and Infrastructure Act 2016 Land Agents Act 1994 Retail and Commercial Leases Act 1995
WA	Racial Discrimination Act 1975 Residential Tenancies Act 1987 Environmental Protection Act 1986
TAS	Land Use Planning and Approvals Act 1993 Residential Tenancy Act 1997 Property Agents and Land Transactions Act 2016 Anti-Discrimination Act 1998



2.13 Staying Up to Date

Legislative changes can impact an organisation's code of ethics as well as its policy and procedures.

In industries that are fast-paced, it is important to stay abreast of changes and to reflect those changes in the code of ethics. Strategies for staying up to date include:

- subscribing to industry newsletters
- monitoring industry journals
- joining industry associations
- attending professional development
- developing checklists
- ensuring adherence with policy and procedures
- seeking expert review and advice
- including legislative requirements in sign-off processes.

Chapter 2

Review Questions



Q1. Under the Commonwealth Competition and Consumer Act 2010, there are the Competition and Consumer Regulations 2010. Which is the subsidiary legislation?

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Q2. What is Hansard?

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Q3. What is the difference between a binding precedent and a persuasive precedent?

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Q4. What are the limitations of looking for case law when you are conducting research on how decisions have been made in court cases?

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Q5. How can you find an amendment to an Act and how you work out what amendments have been made to an Act?

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