# ADMINISTRATIVE LAW

## Semester 2, 2014

# Contents:

# INTRODUCTION TO ADMINISTRATIVE LAW

# Class 1 – Introduction to Administrative Law

**Housekeeping Matters:**

- Lecturer - Greg Weeks greg.weeks@unsw.edu.au
- Wednesday 29th October = Special Revision Class with whole of cohort
- **Class Participation** – Speak up to get marks, can ask if necessary
- **Tribunal Report** – Compulsory (AAT at 55 Market Street… Observe the tribunal in action then report on it)
    - Go to the tribunal and report what is seen/observed → Simple, no research
        - Compare with previous court proceedings seen (why is it different?)
    - Avoid going to a directions hearing
    - Does not have to be like an essay
- **Research Essay** – Start thinking early (Q p. 6 of Course Outline) → Due 10/10/14
    - Have to go and find a case which considers issues of procedural fairness in a tribunal essay → Find case which helps you make the point which is made
        - Marks given for the quality of the case found
        - Can't be a case which the book deals with in detail
    - Research Diary (log of whatever research that was done) is to be kept
    - Not strict on the word limit… 'Taking the piss test' (100 words does not matter, write 2000 in the word limit)
    -
- **Exam** – 50 marks, 1 problem with 3 questions of which 2 must be answered
- Week 8 is taught in reading week
- Aronson and Groves (Additional Materials) is a valuable resource for essay

**Overview:**

- Administrative law is about the **control of government action**. It aims to safeguard the rights and interests of people and corporations in their dealings with government agencies.
- Course is not difficult if certain things are remembered
    - Australian admin law is down to the fact that we have a constitution
- NOTE: Tribunals have the same power as the executive → If minister denies a license, the tribunal member does the same as the minister (same powers!)
    - Tribunals are simply looking at the merits of the cases
    - Reasons for a tribunal member's decision can be sought under s 13 *ADJR Act* or s 28 *AAT Act* → Reasons allow for a mechanism to appeal
- MUST understand the interplay between different branches of government
    - Tribunals vs Courts + decision making of each must be recognised
        - A binding doctrine of precedent does not apply in tribunals as each case is dealt with on its subjective merits
        - There are some things that tribunals do which courts simply can't
- Procedural fairness is the highest level of fairness of which the court will intervene

**The Historical Foundations of Australian Administrative Law:**

- Dicey – Believed that administrative law had nothing to do with England (1885) as it was based on discretion
    - Discretion could not be part of administrative decision making as it is based on opinion which he believed was a potential breach of power
- Dicey's opinion has since been disregarded due to the volume of cases requiring delegates to act on behalf of the minister → Politicians and ministers cannot be expected to do all of the workload
- Discretion has now become the centrefold of admin law (eg: The minister *may*… rather than the minister *must*)
- Australia's response to admin law is different to other countries, especially the UK (due to the constitution)
    - Government promises are almost never required to be kept in Australia
        - Courts will not force a government party to do something that is in breach of the law (would however be allowed in UK)
        - Courts are not looking at fairness, tribunals look at that.

**Constitutional Principles:**

Rule of Law:

- A V Dicey stated that the rule of law entailed three elements
    - (1) No man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law
    - (2) No man is above that law
    - (3) Individual rights are protected in the constitution
- The focus of the rule of law is upon controlling the exercise of official power by the executive government… Government is not above the law but subject to it

Separation of Powers:

- The objective of the separation of powers is to place checks and balances on the exercise of governmental power
    - Legislature enacts laws; Executive applies those and the judiciary deals with any dispute that may arise
- The only thing that the judicial branch does is figure out if things are lawful

Responsible Government:

- Responsible government entails that ministers who control the executive departments of state are members of the parliament

Constitutionalism:

- Constitutionalism is a principle of limited government
    - Power exercised by the government is limited by written constitutional rules and by values/principles such as representative democracy & the rule of law

## Class 2 – Introduction & Controlling the Executive

**ACCOUNTABILITY:**

**Accountability in an Administrative State:**

- Australian's have dealings with government officials and agencies from cradle to grave as the government is relied upon to provide most public services
    - Activities have become directly or indirectly subject to government scrutiny, permit or control
- The purpose of accountability within the government State is to hold governments, public officials and agencies to account for their stewardship (Report of the Royal Commission into Commercial Activities of Government and Other Matters, 1992)
    - Accountability forms a condition of public service
    - Through accountability the public is able to expect that institutions and management are appropriately using their power and meet expectations
    - A variety of measures is necessary to secure effective public accountability
- **Accountability** = Obligations arising from the relationships of responsibility or authority which pertain between the public service and the parliament (Report of the Senate Select Committee on a Certain Maritime Incident, 2002)
    - Public servants are legally accountable for their actions to institutions other than parliament, and can be obliged to explain their behaviours to quasi-judicial bodies… However these bodies can only recommend, not punish
- **Accountability** = Process of being called 'to account' in some authority for one's actions. It can be taken to refer to the need for the executive government and administrative bodies to comply with the law and observe relevant limitations

**Political Accountability:**

- Political accountability of government chiefly occurs through the parliamentary system, in accordance with the principles of responsible government
    - Ministers are responsible for ensuring that the executive branch carries out the policies of the government → A set of moral and behavioural assumptions are established through responsible government
    - Parliamentary committees, question time, debates all ensure accountability
    - Every person who is in parliament in accountable at the ballot box
    - Ministerial accountability – A minister is responsible for everything that goes on in his/her department whether they were involved or not
        - Accountability is restricted to the political parties choices
- Issues have arose within political accountability in response to the belief that focus is placed on policy decisions rather than day-to-day decision making

**Financial Accountability:**

- Financial accountability is the verification of the official use of money drawn from the public account → Assurance of the appropriate use of public funds
- The Auditor-General is the principal financial monitor of government operations

- Makes sure that government money is being spent appropriately

**Administrative Law Accountability:**

- Administrative law accountability ensures that the rights and interests of people and corporations are safeguarded when dealing with government agencies
  - Achieved in three main ways; **(1)** Review of decision making, **(2)** Protection of information rights, **(3)** Public accountability of government processes
- An alternative perspective on administrative law is to identify the values or principle it is designed to uphold → Namely incorruptibility, accountability and fairness
  - Administrative justice, executive accountability and good administration are believed to be the 3 principles that underpin the administrative law system (Aronson, Dyer and Groves 1997)
- It must be recognised that limits are existent within admin law… Power limitations on courts as they have restricted powers when punishing
- Tribunals, the Ombudsman, Freedom of Information and Judicial review ensure that government decisions are being appropriately made

**Accountability through ethics and integrity:**

- A strong theme of rules and principles that have governed public servants has been centred on loyalty and confidentiality owed to the government of the day
- In the past 2 decades values have been spelt out more specifically in legislation and a redefinition of values has shifted focus/emphasis towards ensuring that public officials serve the public
  - Common values as per an OECD report – Impartiality, legality, integrity, transparency, efficiency, equality and justice
  - Government are required to act to a high standard of personal ethics
- Accountability through ethics and integrity is necessary as good public administration is a protection against inefficiency, poor performance, fraud, corruption, inequity and the infringement of human rights
- NOTE: The *Public Service Act 1999* (Cth) s 10 (APS Values) and s 13 (APS Code of Conduct) provide examples of core values which should be followed (p. 19 text)

**SEPARATION OF POWERS:**

McMillan, 'Re-thinking the Separation of Powers' (2010) 38 *Federal Law Review*:

- McMillan suggests that a 4th limb of the separation of powers should be introduced in order to ensure integrity within our national system
- The current legislature, executive and judiciary should be joined by a 4th 'integrity' branch that is applied to convey our expectations of government and business
  - The Auditor-General, Ombudsman, anti-corruption agencies, the media, civil society, private sector and international agencies should come together to ensure that the rule of law is upheld + provide a safeguard to the public
- The 4 strands would interrelate in order to provide a strong, connected structure

- NOTE: NSW Chief Justice Spigelman has supported the proposed changes however it is not an actual branch as per the Constitution

**Separation of Powers:**

- The objective of the separation of powers is to place checks and balances on the exercise of governmental power, while ensuring that each arm of government does the job which they are best suited to
- The separation of powers is not practised in a pure form in Australia as the system of responsible government is a fundamental breach
  - Ministers constitute both the executive and sit in parliament
- The separation of powers underscores an important difference between judicial and executive method in decision making → The judiciary usually considers the rights of individual whilst the executive considers broader policy/resource based decisions
- Australian system is thought of more of a separation of judicial power

**The Separation of Powers – Judicial Powers:**

- Federal judicial power can be conferred only upon a court mentioned in the *Constitution* s 71 (a Ch III Court) and those courts can only exercise judicial power

***R v Kirby; Ex parte Boilermakers Society of Australia* (1956) 94 CLR 254:**

- 'The powers of the federal judicature must be at once paramount and fixed'
- 'It is beyond the competence of the Parliament to invest with any part of the judicial power any body or person except a court created pursuant to s 71
  - Ch III does not allow powers which are foreign to the judicial power to be attached to the courts created by or under that chapter thus arbitral tribunals have been refuted as having judicial powers
- Only Chapter III judges/courts have judicial power and judicial power is only invested in Chapter III courts

*Defining a Ch III Court:*

- There are currently four Chapter III courts
  - **(1)** High Court, **(2)** Federal Court, **(3)** Federal Magistrates Court, **(4)** Family Court
- *Kable v Director of Public Prosecutions* (1996) 189 CLR 51 - State legislation which purports to confer upon a State Supreme Court a function which substantially impairs its institutional integrity is invalid
  - Asking a judge to add a period of time onto a jail sentence, without a further hearing of guilt, was an executive rather than judicial function which is inconsistent with the separation of powers
- *Kirk v Industrial Relations Commission* (2010) 113 ALD 1 held that state legislature cannot deprive a state Supreme Court of its capacity to review the decisions of inferior courts and tribunals on grounds of jurisdictional error

- Decision affirmed the belief that the legislature is not allowed to control the judiciary or allowed to alter the constitution of its Supreme court
- HCA held that the NSW Supreme Court (state) cannot be barred from providing certain judicial review powers as that would require a change to the Constitution

**CONTROLLING THE EXECUTIVE:**

**Political Authority vs Legal Authority:**

- Political authority does not amount to legal authority (is the innuendo of what government's state what they will do)
  - Legal authority is the boundaries of what governments are authorised to do
- Political authority is always governed by judicial review… The courts always have the ability to review a discretionary decision made by a minister

**Soft Law:**

- Soft law refers to non-legislative rules and regulation which the government or its agencies may issue… Is pervasive but lacks enforceability
  - Concerned with rules of conduct or commitments… Have no legal binding force but have some practical effect or impact on behaviour (Creyke & McMillan, 'Soft Law versus Hard Law')
  - **EG:** Codes of conduct, guidelines & other non-legislative materials
- Soft law is not binding by force of statute but failure to comply with it by individuals or corporations usually has legal ramifications.
- It is hard to draw a clear line between soft law and subordinate legislation.
  - Sometimes, soft law is reinforced by some mention in other legislation that its contravention might (but not necessarily) attract a sanction.
- The adverse consequence following breach of a soft law norm can be equally 'soft', such as recommendations of the Ombudsman and discretionary schemes for ex gratia payments (Weeks 2011 'The Use of Soft Law by Australian Public Authorities')
  - Can also lead to inflexibility of the policy or discretion (Creyke & McMillan)
- The development of soft law arose due to: **(a)** Practical advantages for government, **(b)** Philosophical changes towards professionalism, managerialism and commercialisation (Creyke & McMillan)

# CONTROLLING THE EXECUTIVE

Class 3 – Controlling the Executive:

## SOURCES OF LEGAL AUTHORITY FOR GOVERNMENT DECISION MAKING

- The foremost principle of public law is that government agencies need legal authority for any action they undertake
    - Most of the authority derives from legislation, however the executive authority of government also supplies legal authority

### The Scope of the Principle of Legality

- **Principle of legality** = In the absence of clear and unmistakeable words of legislation, the courts will not presume that legislation purported to take away fundamental rights and freedoms
    - Governments must make its desire clear and distinctively obvious in order for a fundamental right to be taken away → Ensures that potentially controversial decisions are given public attention (often will bring negative consequences… links back to accountability)
- The *Administrative Decisions (Judicial Review) Act 1977* (Cth) (ADJR Act) best enshrines the notion that government action requires valid legal authority
    - States that **(b)** Procedures must be observed, **(c)** jurisdiction must be accurate, **(d)** Decision must be pursuant to law and **(e)** must not involve an error of law
    - The chief breach of the principle of legality emerges from legislation not being correctly interpreted thus did not support the action taken in reliance on it
- The ADJR grounds do not apply to government action that does not have statutory authority to support it, but relies on the executive power of government
    - 3 broad forms of legal entities validate government behaviour → **(1)** Executive agencies, **(2)** Statutory agencies, **(3)** Government corporations
- Statutory authority is required for any government action that is coercive, punitive, intrusive or threatening
- Spigelman J developed the notion that the principle of legality is an interpretive principle incorporating a number of presumptions (set out pp. 398 text)
    - **EG:** Parliament did not intend to invade fundamental rights, freedoms and immunities, restrict access to the courts, to deny procedural fairness or give immunities to government bodies

### *Entick v Carrington* (1765) 19 St Tr 1030 Court of Common Pleas:

- Carrington had no legal authority for a search warrant to collect seditious writings from Entick. Entick sued for trespass and the court found that the state had no legal authority to issue the warrant
- Established unequivocally that government action will be unlawful unless there is legal authority to support the action

- Lord Camden CJ – Officers are as much responsible for their trespass as their superior… Government must act in accordance with the laws

***A v Hayden* (1984) 156 CLR 532:**

- A security training exercise was being participated in by the Australian Secret Intelligence Service however during this process criminal offences were committed
  - The plaintiffs sought to restrain the Commonwealth from disclosing their identity on the ground that their employment stipulated that their identity during the course of training would be kept confidential
- HCA rejected the plaintiff's claim in holding that public policy grounds restrict the government from excusing criminal behaviour in any circumstances
  - Enunciates that governments do not inherently possess power to authorise officials to act in defiance of the criminal law
- Murphy J – The executive power of the Commonwealth must be exercised in accordance with the Constitution and the laws of the Commonwealth
  - It is no defence to the commission of a criminal act or omission that it was done in obedience to the orders of a superior government
  - The government cannot exempt any one from the law
- Deane J – The criminal law of this country has no place for a general defence of superior orders of Crown or Executive fiat

***Church of Scientology Inc v Woodward* (1982) 154 CLR 25:**

- The Church of Scientology commenced action to restrain ASIO from conducting an investigation into the affairs of the church as it was contented that ASIO was acting outside its statutory base as the investigation was not a matter of security
- Held that the judiciary can examine whether administrative action undertaken by a national security agency is supported by the legislation establishing the agency
  - ASIO's powers were limited to s 17 of the *Australian Security Intelligence Organisation Act 1979 (Cth)* therefore its functions were limited to 'obtaining, correlating and evaluating intelligence relevant to security'
  - ASIO is subject to the same laws as everybody else!
- Decision confirmed the court's ability to determine issues of relevance in regards to conformity with the law → The Commonwealth and its officers are amenable to judicial process (process occurs through courts)
- Brennan J – Decisions made by government agencies must be supported by legislation, not the opinion of the law-maker

***Momcilovic v The Queen* [2011] HCA 34:**

- HCA found that s 5 of the *Drugs, Poison and Controlled Substances Acts 1981 (Vic)*, which imposes a legal burden of proof on an accused person, had not application to the offence under which Momcilovic was charged

- Principle of legality → A presumption that parliament does not intend to interfere with commo law rights and freedoms except by clear and unequivocal language for which parliament may be accountable to the electorate

***Pape v Commissioner of Taxation* (2009) 238 CLR 1:**

- s 61 is an important element of a written constitution for the government of an independent nation → Is not a 'locked display cabinet in a constitutional museum'
- The nationhood power is an element of the Commonwealth executive (rather than the legislature) power and therefore falls within s 61

**Executive Power as a Source of Legal Authority for Government Action:**

- It has long been accepted that functions which are non-coercive and facilitatory in nature, can be undertaken without statutory backing
    - The authority to do so arises from executive power (also labelled prerogative power, inherent power, common law power or the capacity of a legal person)
- Government can derive legal authority from the fact of its existence and role, not from legislation
- **Prerogative powers –** Non-statutory functions that only the Crown can exercise as a residue of English history
- **Executive powers** – Non-statutory powers that the Crown can exercise in common with other legal persons, such as the execution of contracts
    - **EG:** s 61 – Nationhood power… A sovereign nation has the power to ensure the execution and maintenance of the Constitution and its laws (such as the control of borders in the *Tampa Case* 2001 FCA)
- 'There are many activities in the ordinary course of administering affairs of government that may be carried on independently of any statutory provision expressly or impliedly authorising the particular activity' (*McDonald v Hamence*)
    - **EG:** Conducting public relations, undertaking inquiries, managing and developing property, entering into contracts, requesting extradition

***Clough v Leahy* (1904) 2 CLR 139:**

- **Facts** - A Corruption inquiry into Union Activities was argued by the union to be invalid as there was no authority to order a Royal Commission of Inquiry into whether criminal offences had been committed by the union
    - NOTE: Royal Commission of Inquiry requires legislative inquiry in order for people to be forced to participate
- **Issue** – Is the executive power limited/constrained?
- The Crown has no power to justify the publication of defamatory material merely by its authority… If it is published it is actionable and may be perhaps punishable criminally
- **Held** that the powers of the Crown are practically no greater than the powers of a private individual → Prerogative power are not greater than individual powers

    - Every man is free to do any act that does not unlawfully interfere with the liberty or reputation of his neighbour or interfere with the course of justice
- The decision points to 3 main constraints on executive power
    - **(1)** It can be overridden by, & cannot be exercised inconsistently with, statute
    - **(2)** Executive power cannot justify a governmental act that would be actionable at common law, such as defamation
    - **(3)** Executive power will not authorise government action that is coercive, punitive, intrusive or threatening
        - Exception arises from the prerogative powers which authorise coercion such as the power to declare and wage war
        - The *Tampa* case offered the possibility that arrest, detention and deportation of any person who enters Australia without a visa resulting in an inappropriate use of executive powers

## GOVERNMENT POWER: IT'S CLASSIFICATION AND THE NATURE OF DISPUTES:

### Legislative, Executive and Judicial Power:

- There is no hard and fast distinction between legislative, executive and judicial power as seen through the emergence of quasi-judicial powers
    - Is better to look at the powers in the sense of functions rather than label
- **Quasi-judicial powers** – Where a person who is not a judge in the court acts in the manner of a judge in a court. Mediation is a form of quasi-judicial decision making
    - Basis of the judge's legal power is essentially contractual - 2 parties agree that if a dispute arises a certain person will resolve the matter
    - Purpose is to extend public law into private situations
- **Legislative** – Tendency is for legislative powers to effect a wide section of individuals and/or of the individuals. Involves the making of a new rule of general application
    - Usually applies in the future and is set out in statutes, regulations or by-laws
- **Executive** – The application of a general rule to a particular case or situation
    - Decision making and policy formulation are two characteristics
- **Judicial** – Presupposes that there is an existing dispute which is resolved by a judge/ independent adjudicator

### Polycentricity:

- Polycentricity = 'Many centred' → Multiple interests are at hand and thus it is difficult for courts to deal with polycentric matters as there is numerous considerations which need to be analysed by the court
    - One decision has multiple implications on a range of stakeholders
- Justice Spigelman noted a polycentric matter where he stated a case involved 'a multiplicity of considerations, together with the broad range of interconnected, conflicting and incommensurable interests
- Polycentric decisions may be ill-suited to both the court system and the adversarial judicial review process

- Better decision making authorities = Specialist/expert tribunals or executive decision makers such as a minister

**CONSTITUTIONAL ISSUES:**

**The Separation of Powers – Legislative Power:**

- The Commonwealth Constitution embodies a tripartite separation of governmental functions and agencies in ss 1 (legislative), 61 (executive) and 71 (judicial)
- The HCA in *Victorian Stevedoring and General Contracting Co Pty Ltd v Dignan* (1931) 46 CLR 73 held that the authority of the executive to make subordinate legislation was not inconsistent with the constitutional separation of powers
    - 'A statute conferring upon the Executive a power to legislate upon some matter contained within one of the subjects of the legislative power of the Parliament does not operate to restrain the power of parliament to make such a law' → Not outside the boundaries of Federal power
- There is no constitutional barrier to the delegation of legislative authority to the executive!
    - Only constraint is that a statute enacted by the Commonwealth Parliament must answer the description of a law with respect to a topic in s 51 of the *Constitution*

**RULES, DISCRETION AND POLICY:**

**Discretion:**

- Discretion exists 'where there is power to make choices between courses of action or where, even though the end is specified, a *choice* exists as to how that end should be reached'
    - **EG:** Legislation provides that a decision maker 'may' grant a license, can impose conditions if he 'thinks fit' or take action if it is 'reasonable'
- Discretion is useful in administrative decision making due to the level of individuality and subjectivity involved in each case → Gives the decision maker flexibility
- Galligan (p. 368) stated that discretionary powers have become a notable characteristic of the modern legal system
    - An expansion in discretion over the last 2 decades can be seen in the levels of powers expressly delegated and unauthorised discretion
    - A shift away from authoritative legal standards is arising
    - The change towards greater discretion can clearly be linked to changing ideas about the nature of society, and about the proper role of the state in achieving ideals of social justice and welfare
- Discretion has long been a source of unease in public law tradition which can be linked back to Dicey's rule of law
    - Can lead to less consistency in decision making, a lack of accountability (not necessary to provide reasons) and may be open to abuse

- Rules, policies, guidelines are all measures of fettering discretion in order to promote consistency, accountability and fairness (as proposed by Davis p. 369 and Galligan p. 370) → Courts will also never regard discretion as absolute and unfettered
    - If rules/guidelines are too stringent the purpose of discretion will be eliminated
- Despite the possibility of discretion being monitored and restricted, the notion of unconfined discretion is firmly recognised in Australia
    - Emphasised by the HCA in *Coal and Allied Operations Pty Ltd v Australian Industrial Relations Commission* (2000) where it was stated that the nature of discretion is that the decision maker has some latitude
        - The correctness of a decision can only be challenged by showing error in the *process* rather than the actual decision made

**The Role of Policy in Government Administration**

- The need for certainty, predictability and consistency can best be achieved by administrative rules and policies that supplement the legislative text
    - 'A policy has virtues of flexibility which rules lack, and virtues of consistency which discretion lacks' (*R v Secretary of State for Education and Employment*)
- In an attempt to marry law and policy, there has also been a phenomenal growth in the detail of legislative and policy rules

**The Meaning of Policy:**

- Legislative acts are skeletal… Policies are designed to supplement the acts
- The essential feature of executive policy is that it is a non-statutory rule devised by the administration to provide decision-making guidance, particularly in administering legislation
- Policy may be very formal or informal
- 'Directions' are a more specific form of policy statement, usually given by one officer to another to indicate the parameters for making a particular decision
- Policy also overlaps with legislative instruments (difference comes as these must be placed on a register) and soft law

**Discretion vs Policy: A Clash of Values?**

- Mason and Wilcox (p. 673-4) believe that the judicial system should take precedence over policy as the executive (ministers and bureaucrats) without effective supervision
    - Greater concern with consequences of a decision than achieving justice
- Curtis and Woodward (p. 674-5) believe that lawyers don't understand the impact and necessity of policy to ensure the best interests of the country are focused upon
    - Proposed that policy has an important role as lawyers are unable to do everything… They must accept and appreciate the need for policy

**The Legal Status of Executive Policies**

- The interaction of policy and statutory rules is ultimately a question that turns on the interpretation of the statute and the nature of the policy under consideration
    - So much depends on a variety of circumstances → Policy interaction with the law is very flexible
- The legal relevance of policies requires a policy to be compatible with the legislation that it elucidates
- Policy guidelines enhance the consistency, predictability, fairness and democratic legitimacy of administrative decision-making
    - It must however be consistent with the statute which it is relevant to and must not preclude the decision maker from taking into account relevant considerations

**WHAT IS 'DELEGATED' OR 'SUBORDINATE' LEGISLATION?**

- Delegated legislation (or subordinate) is made by the executive rather than the legislature → Actual legislation gives the power to the executive (**eg:** Section providing that the Governor General has the power to make legislation in regards to a specific act)
- Delegated legislation is dependent for its validity on proper authorisation by an Act of parliament

**The Nature of Delegated Legislation:**

- Delegated legislation = Legislative rule made by an executive agency pursuant to an authority delegated by the legislature
    - Commonly deals with matters of detail and procedure to supplement the primary rules in an Act
- So long as the delegation from parliament is clear, the ability to delegate power to make legislation is unlimited as long as it concerns a head of power under s 51 of the *Constitution*
- The justifications for delegating a law-making function to the executive are borne largely of law-making convenience and executive expediency
    - Ease of initial making and subsequent amendment of subordinate legislation also enables flexibility and adaption where necessary
        - Allows easier amendment to industry changes
    - The use of delegated legislation also makes statutes easier to understand as they are not as cluttered and only include the necessary sections
- The Department of Prime Minister and Cabinets *Legislation Handbook* (2000) (p. 300) sets out a prescriptive list of matters that should be implemented only through acts of Parliament
    - **EG:** Appropriations of money, rules which have a significant impact on rights and liberties, provisions imposing taxes or levies