

Aboriginal customary laws and Australian contemporary laws

[Law](#), [Common Law](#)



Aboriginal customary laws, before white settlement in 1788, were considered primitive by the British, if considered at all. But Aboriginal laws and customs had lasted hundreds of years, based on traditions such as kinship ties and rituals. These laws were formed by ancestors, spirits, and Aboriginal beliefs, and were passed down the generations by word-of-mouth instead of written down. Being over 500 tribes (each with its own clans) in Australia at one point, there were many variations to their guidelines, customised to each area of the land. Although the laws varied throughout the ages, this way of life remained until white settlement. The roots of Australian laws are similar to traditional Aboriginal laws, dating back to before the Norman Conquest in 1066, where each separate village had their own laws developed to their own customs. This changed however, after a centralized legal system was established after 1066. A common law was formed, that applied to all of England. This was later combined with equity law and mercantile law, which is the basis of Australian law today, known as 'statute law'. The two forms of traditional Aboriginal law were 'sacred' and 'secular' laws. Sacred laws were entrusted to the elders, teaching Aboriginal customs, acceptable behaviour, and adequate use of the land. Secular laws focused on the responsibilities of individuals. There were also 'secret' laws and different people in the tribes knew different laws, for example, women knew laws that were unknown to men, and vice versa. Children were taught how to be proper children until they were old enough to be told their adult customs. Australian laws have two forms, public and private law. Public law is an individual versus the Australian government, for example, criminal law, constitutional law and environmental law. It involves public bodies, public matters and is the

concern of everybody in Australia. Private law involves disputes between private citizens or entities, for example, contract law, family law and probate laws. Traditional Aboriginal marriages were very different to English marriages and Australian marital laws today. Aboriginal girls were to be married when they reached puberty, and were married to much older men, who could marry (and have numerous wives) once a certain age. This meant that sex at a young age was acceptable. Australian law states that no person can legally marry until the age of 18, or have sex until the age of 16, and it is socially unacceptable for people to have numerous partners. Australian law declares under-age sex as child abuse and a criminal offence. All Aboriginals were involved in their customs and laws, with rules being imposed by the communities. Each clan was tight-knit and respected their ancestry and customs. Punishments varied, depending on the severity of the crime committed. Types of punishment included revenge, social ridicule, ostracism, insulting, spearing (aimed at the leg, but sometimes resulted in death) and death by sorcery. Relatives or ceremonial leaders enforced these, with no people outside the clan being involved. Disputes were usually settled by conciliation or mediation, but sometimes used consensus, arguments, inquests or rituals to solve the dilemma. This differs from Australian forms of punishment, which require a fair trial to be decided by a judge and jury. These are orderly procedures, which use common rules and judgments for all parties, to be able to come to a fair decision. There are numerous penalties regarding criminal offences in Australia, ranging from fines and charges, to community service and prison. Rulings are decided depending on the circumstances of the crime, and the individual case.