

# CONSTITUTIONAL LAW

## GUIDEBOOK

### WRITING A LEGAL ADVICE

#### The importance of legal advice-writing

During your time at Law School, you will have learned how to answer problem-type questions for exams and assignments. This is an important skill, because it trains you how to abstract the relevant facts from the irrelevant, identify the legal issues, state the law relevant to the issues, apply the law to the facts and then come to a conclusion on the issues.

Unfortunately for law students, clients do not want answers in the same format that one would use in answering exam questions. In learning how to write a legal advice (sometimes called an 'opinion') you will build on problem-solving skills and take them one step further, applying them in a way that will be useful during your career. This will be so irrespective of whether you enter private practice or work in a government department or the corporate sector, because if you use your law degree in any of those environments, you are likely to be asked to prepare a legal advice for your employer.

The most important feature of a legal advice which distinguishes it from other types of legal writing is that it must be presented in a specific format. The format I have chosen for the fictional advice that follows is based on that used by the Australian Government Solicitor (AGS). Law firms may have their own formats that differ from that used by AGS, but having learned how to use one format, it will be easy for you to comply with any other, because the objectives of all are the same: to present the information in a way that meets the client's needs as closely as possible.

#### The request for advice

Although you may sometimes receive an oral request for legal advice, it is most usual for such a request to be written, either in a letter or in an email. This presents the recipient with the first challenge, which is to determine what questions the client wants answered. Some clients provide clear questions, but on other occasions it is necessary to abstract from the client's letter precisely what they are asking. However, because the questions you must answer are the questions the client wants answered (rather than the ones you think they should have asked!), it may be necessary to contact the client to ascertain that your understanding of what the questions are corresponds with theirs and, if necessary, to obtain confirmation from the client that they are happy for you to include questions additional to those they asked if you think this is necessary to give full advice. This process of settling the questions is important because, as we will see, you must present the advice in a question and answer format.

The example of a request for legal advice that I have provided is relatively clear - it is apparent from the text of the client's letter what questions they want answered, but that is not always the case.

#### The format of the advice

The example of a fictional legal advice (given in response to the example of a request for advice) is laid out in a format based on that used by AGS. Although you may not yet be familiar with the specific area of law addressed by the advice (it is covered in Chapter 8 of the book), don't worry about that - the purpose of the example is to familiarise you with the way to present a legal advice.