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# AUSTRALIAN CITIZENSHIP

by

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## ABSTRACT

Australian citizenship is fundamentally a common law matter. The common law rules which define an Australian citizen and his/her citizenship rights and duties are derived from the notion of community and are hierarchically superior to the Commonwealth Constitution and any legislative enactments.

The detail of citizenship is a legislative matter; but the statutory concept of Australian citizenship, in existence since 26 January 1949, tends to be confused with the common law (constitutional) concept of Australian citizenship. The distinction is crucial.

My thesis examines the development of Australian citizenship as a matter of law, and it focuses upon major judicial decisions and legislative enactments which consider and clarify the nature of the concept.

The Constitution must be interpreted in accordance with the common law principles of Australian citizenship. The recent "freedom of political speech" High Court cases should be understood as decisions upholding principles of citizenship, not espousing a particular notion of representative government (*McGinty v Western Australia*). The common law rules of Australian citizenship are rules particular to the Australian community. Although broad principles of membership and participation are common to all communities, and cannot validly be breached in any community, the common law citizenship rules of Australia differ from those of the United States and Britain because they are a product of distinctive Australian history. A shift in the High Court's techniques of constitutional analysis in the 1990's, towards a process-based method, has facilitated recognition of both fundamental and particular citizenship rights.