



Balancing Legal Consistency with the Precedent Guidance of the High Court of Australia

Aisyah Kahar

University of Melbourne, Australia

Email: akahar@student.unimelb.edu.a

ABSTRACT

This study examines the principle of legal consistency within the Australian legal system, emphasizing the High Court of Australia's (HCA) guidance on precedent in landmark cases such as *Farah Constructions Pty Ltd v Say-Dee Pty Ltd*. The primary objective is to evaluate how adherence to precedent fosters legal uniformity, predictability, and fairness. A qualitative analysis of landmark judgments and doctrinal reviews forms the basis of this research. It explores the influence of precedent on lower courts' decision-making, particularly in cases involving jurisdictional overlaps. The findings reveal that while the doctrine of precedent ensures coherence in legal interpretations, challenges emerge when intermediate appellate courts face divergent rulings. These challenges highlight the tension between strict adherence to precedent and the need for flexibility. The study underscores the necessity for the HCA's directives to balance deference with adaptability across jurisdictions. This balance is vital for maintaining judicial consistency and reinforcing the stability and credibility of Australia's legal framework. The research concludes that the doctrine of precedent, guided by the HCA, is crucial for sustaining a coherent legal system. However, addressing the challenges of jurisdictional diversity is essential for long-term judicial effectiveness.

Keywords: Legal Consistency, Precedent, High Court of Australia, Doctrine of Precedent, Judicial Hierarchy, Australian Legal System

INTRODUCTION

Legal consistency is a cornerstone of the Australian legal system, representing the principle that similar cases should be decided similarly (Soliman Hunter, 2023). This principle is upheld through the doctrine of precedent, which ensures that courts follow decisions made in similar cases by higher courts. The doctrine of precedent, also known as *stare decisis*, is integral to the Australian common law framework, establishing a hierarchy of judicial authority where decisions of higher courts, particularly the High Court of Australia (HCA), bind lower courts and guide future interpretations.

In practice, the doctrine of precedent promotes legal consistency by creating a structured framework for decision-making across the judiciary (Tyler, 2020). However, maintaining this consistency within a dynamic legal environment presents challenges. As societal values, technologies, and legal expectations evolve, courts must navigate the tension between adhering to established precedents and adapting to contemporary needs. This balancing act often places

significant pressure on the judiciary to interpret existing laws in ways that remain relevant and equitable (Sweet & Mathews, 2019).

For instance, the HCA's landmark decision in *Kable v Director of Public Prosecutions (NSW)* [1996] HCA 24 tested the constitutional validity of legislation permitting preventive detention without criminal conviction. This judgment underscored the HCA's role in addressing new legal and societal questions while safeguarding constitutional principles (Hammond, 2021). Similarly, in *Farah Constructions v Say-Dee* (2007) 230 CLR 89, the HCA provided clarity on contractual interpretation in the construction industry, setting a binding precedent that continues to shape commercial law. These cases illustrate how higher courts must reinterpret legal principles to address emerging issues while preserving coherence in the legal system.

Critically, while the doctrine of precedent provides stability, it may also impede necessary legal evolution (Re, 2014). Courts are often constrained by existing precedents, even when these no longer align with contemporary societal values or technological advancements. The rigid application of precedent can perpetuate outdated interpretations, leading to calls for legislative intervention or judicial activism. Nevertheless, mechanisms within the common law system, such as distinguishing or overruling precedents, allow courts to adapt flexibly, albeit cautiously (Sokol, 2019).

The interplay between statutory frameworks and common law principles further highlights the adaptive nature of the Australian legal system (Hill Clarvis, Allan, & Hannah, 2014). For example, civil law principles, as codified in statutes like the Australian Consumer Law (ACL), coexist with common law doctrines. The ACL, part of the Competition and Consumer Act 2010, exemplifies how statutory law supplements and sometimes challenges the consistency achieved through precedent, reflecting a dynamic legal landscape responsive to consumer rights and fair trading practices.

Ultimately, the challenge lies in reconciling the need for stability with the imperative for progress. The HCA's judgments often serve as both arbiters of legal consistency and catalysts for legal development, influencing broader doctrinal principles while responding to the evolving demands of Australian society (Malsukhum & Malsukhum, 2021).

RESEARCH METHODS

This research is a qualitative study with a descriptive approach aimed at exploring legal principles and evaluating the consistency of precedent application within the Australian legal system. The methodology employed is designed not only to align with the requirements of doctrinal analysis but also to provide a nuanced understanding of the complexities involved in the cross-jurisdictional application of law.

The research focuses on legal decisions issued by the High Court of Australia (HCA) and was conducted over a data collection period spanning from early January to December 2024. This timeframe ensures adequate temporal representation, allowing for a thorough analysis of legal decisions and associated documents (Dalglish, Khalid, & McMahon, 2020).

The population for this study encompasses all legal decisions pertinent to the doctrine of precedent within the Australian legal system. A purposive sampling method was employed to select representative cases, focusing on key High Court decisions such as *Farah Constructions Pty Ltd v Say-Dee Pty Ltd* and *Kable v Director of Public Prosecutions (NSW)*. These cases were chosen for their critical role in shaping legal principles and their significant influence on ensuring consistency in legal application at the lower court level. Their selection reflects an effort to provide representative examples that illustrate the broader implications of precedent in the Australian legal context.

RESULTS AND DISCUSSION

Legal Consistency and Precedent in Australian Law

The doctrine of precedent establishes a hierarchy of authority within the judiciary, where decisions made in higher courts serve as binding precedents for lower courts and guide future legal interpretations (Kozel, 2017). At its core, the doctrine of precedent is based on the principle that similar cases should be decided similarly. When a court decides on a legal issue, that decision becomes a precedent that subsequent courts must follow in cases with similar facts or legal principles. This principle of *stare decisis*, or let the decision stand, ensures consistency and uniformity in the application of the law (Varsava, 2018).

Precedents can be categorized into two main types: binding precedent and persuasive precedent. Binding precedent refers to decisions made by higher courts that must be followed by lower courts within the same jurisdiction. These decisions establish legal principles that have authoritative force and serve as mandatory guidance for subsequent cases. Persuasive precedent refers to decisions from courts in different jurisdictions or lower courts within the same jurisdiction that are not binding but may be considered persuasive authority. One example of a persuasive precedent in Australia is the case of *Mabo v Queensland (No 2)* [1992] 175 CLR 1. While this case is primarily known for its landmark ruling on native title and the overturning of the legal doctrine of *terra nullius*, it also set a persuasive precedent regarding the recognition of Indigenous land rights and the application of international law principles in Australian courts. While not legally binding, persuasive precedents can influence judicial decision-making and contribute to the development of legal principles (Peczenik, 2016).

One of the primary roles of the doctrine of precedent is to ensure consistency in legal decisions. Following established precedents, courts avoid arbitrary or inconsistent rulings on similar issues. Consistency is crucial for promoting fairness and equality before the law, as it ensures that similar cases are treated alike regardless of the parties involved or the specific circumstances (Fredman, 2016). Consistency contributes to the stability and predictability of the legal system. Litigants and legal practitioners can rely on established precedents to anticipate the likely outcome of their cases, reducing uncertainty and promoting confidence in the judiciary. This stability is essential for maintaining public trust and upholding the rule of law.

Legal predictability means that individuals and organizations can foresee the legal

consequences of their actions based on established legal principles (Weber, 2020). Precedent provides a framework for predicting how courts are likely to interpret and apply the law in specific circumstances, enhancing legal certainty and reducing the risk of arbitrary decisions. Precedent contributes to fairness by ensuring equal treatment under the law. When courts follow established precedents, they apply consistent standards and principles to similar cases, regardless of the parties' backgrounds or social status (Kozel, 2014). This principle of equal treatment upholds the legal system's principles of justice and fairness.

Adherence to precedent also promotes fairness and equality before the law. The principle of *stare decisis*, or "let the decision stand," ensures that similar cases are treated alike regardless of the parties involved or the specific circumstances. This principle of equal treatment underpins the rule of law and protects against arbitrary exercises of judicial power (Radin, 2017). Courts apply consistent standards and principles to similar cases, regardless of the parties' backgrounds or social status. This consistency in legal decisions contributes to a sense of fairness and impartiality in the legal system, enhancing public confidence in the judiciary.

Adherence to precedent enhances legal certainty by providing a clear and stable framework for legal interpretations. Litigants and stakeholders can rely on established legal principles and precedents to understand their rights and obligations under the law (Pin & Genova, 2019). This legal certainty reduces the risk of uncertainty and confusion, fostering a sense of confidence in the legal system.

Adherence to precedent contributes to the credibility of the legal system. When courts consistently follow established precedents and apply legal principles impartially, they demonstrate their commitment to upholding the rule of law and delivering fair and just outcomes. This credibility is essential for maintaining public trust in the judiciary and ensuring the legitimacy of legal institutions.

The doctrine of precedent, rooted in the principle of *stare decisis*, establishes a hierarchy of authority within the judiciary, ensuring that decisions made in higher courts become binding precedents for lower courts. This principle fosters consistency and fairness in legal interpretations by treating similar cases alike, regardless of the parties involved. Precedents are categorized into binding and persuasive, with binding precedents mandating legal principles for subsequent cases. Although persuasive precedents are not binding, they can influence judicial decisions and contribute to legal development.

The High Court's guidance in Farah

The specific directive from the HCA regarding adherence to decisions in intermediate appellate courts in other jurisdictions is articulated in the case of *Farah*. This directive guides trial and intermediate appellate courts within the Australian legal system on how they should approach decisions made by intermediate appellate courts in different jurisdictions when dealing with common law matters.

The essence of this directive is captured in the statement that trial and intermediate appellate courts should not depart from decisions in intermediate appellate courts in another [Australian]

jurisdiction concerning the common law unless they are convinced that the earlier decision is plainly wrong". Unlike the doctrine of precedent, this rule requires courts to look at and follow the decisions of equivalent courts in other states. This guidance sets a standard for how lower courts should treat precedents established by intermediate appellate courts in other Australian jurisdictions, emphasizing a general presumption in favour of following such decisions unless there are compelling reasons to depart from them.

The directive places a significant emphasis on the concept of *stare decisis*. *Stare decisis* is crucial for promoting legal consistency, predictability, and fairness in the judicial system. It ensures that similar cases are decided similarly, contributing to the integrity and credibility of the legal framework. In the High Court's directive, the focus is on decisions made by intermediate appellate courts in other Australian jurisdictions. Intermediate appellate courts are those courts that hear appeals from trial courts but are below the High Court in the hierarchy of the judiciary.

In *Farah*, the principle of *stare decisis* was evident in the HCA approach to interpreting legal precedents and maintaining consistency in legal decisions. Specifically, the HCA established guidelines for intermediate appellate courts and trial judges across different Australian jurisdictions regarding the interpretation of uniform national legislation and non-statutory law. The HCA directed that intermediate appellate courts and trial judges should generally not depart from decisions made by intermediate appellate courts in other jurisdictions concerning the interpretation of uniform national legislation unless they are convinced that the interpretation is plainly wrong. This principle also extended to non-statutory law, emphasizing the importance of consistency and coherence in legal interpretations across jurisdictions within Australia.

The directive recognizes the expertise and knowledge of these intermediate appellate courts in interpreting and applying the common law within their jurisdictions. It acknowledges that these courts are well-equipped to make informed and nuanced decisions based on the legal principles and precedents relevant. However, the directive also imposes a standard for departure from decisions made by intermediate appellate courts in other jurisdictions. Lower courts are advised to depart from such decisions only if they are convinced that the earlier decision is plainly wrong. This standard sets a high threshold for departing from established precedents, emphasizing the importance of stability and consistency in legal interpretations.

The directive from the HCA reflects a balance between respecting judicial authority and expertise while also ensuring a degree of flexibility and adaptability within the legal system. Before the HCA decision in *Farah*, courts often placed significant weight on existing legal precedents, especially decisions made by higher courts. The doctrine of *stare decisis*, which translates to "let the decision stand," emphasized the binding nature of legal precedents and the importance of consistency in legal interpretations. This approach aimed to promote predictability and stability in the legal system by ensuring that similar cases were decided similarly. It recognizes that the law is not static and may evolve, but it also emphasizes the need for a principled approach to departing from established precedents. This direction contributes to the broader principles of legal certainty, uniformity, and coherence within the Australian legal system. With clear guidance

on how lower courts should approach decisions from intermediate appellate courts in other jurisdictions, the directive helps promote consistency and predictability in legal interpretations across different regions.

The directive fosters a sense of judicial comity and cooperation among courts within the Australian legal framework. It encourages lower courts to give due consideration to decisions made by their counterparts in other jurisdictions, recognizing the shared goal of upholding the rule of law and delivering fair and just outcomes. While the directive sets a general framework for adherence to decisions from intermediate appellate courts in other jurisdictions, it also acknowledges that each case may present unique circumstances that warrant a departure from precedent (Levin, 2018).

The HCA's directive, as seen in Farah, emphasizes the importance of adhering to decisions from intermediate appellate courts in other Australian jurisdictions unless they are "plainly wrong." This directive underscores the principle of *stare decisis*, ensuring legal consistency, predictability, and fairness across the judiciary. It recognizes the expertise of these courts while setting a high threshold for departing from established precedents, promoting stability and coherence in legal interpretations.

Benefits of Upholding Precedent Guidance from Farah

Maintaining legal consistency is the foundation of every strong legal system, offering various benefits that contribute to efficiency, justice, and judicial credibility. One of the primary advantages of maintaining legal consistency is the reduction of conflicting interpretations of the law. Legal consistency ensures that similar cases are decided similarly, regardless of the jurisdiction or the specific court handling the case. This uniformity in legal interpretations helps avoid contradictory rulings on the same legal issues, which can create confusion, uncertainty, and inefficiency within the legal system.

Conflicting interpretations can arise when different courts or jurisdictions apply divergent legal principles or standards to similar cases. This inconsistency undermines the predictability and reliability of the legal system, making it challenging for individuals, businesses, and legal practitioners to navigate and comply with the law. To maintain legal consistency, courts establish clear and consistent guidelines for interpreting and applying legal principles, reducing the risk of conflicting interpretations and promoting a harmonized legal framework.

Upholding precedent guidance from Farah fosters legal consistency and stability within the Australian legal system. Legal consistency ensures that similar cases are decided similarly, reducing the potential for arbitrary or conflicting rulings. This consistency provides a reliable framework for legal interpretations, allowing parties to anticipate the likely outcomes of their cases and promoting stability in legal outcomes.

Adhering to precedent guidance enhances predictability and legal certainty. Parties involved in legal disputes can rely on established precedents to understand how courts are likely to interpret and apply the law in specific circumstances. This predictability reduces uncertainty, facilitates informed decision-making, and contributes to confidence in the legal system's fairness and

reliability.

The precedent guidance from Farah promotes fairness and equality before the law. When courts follow established precedents, they apply consistent standards and principles to similar cases, regardless of the parties' backgrounds or social status. This principle of equal treatment upholds the principles of justice and fairness, ensuring that individuals and organizations receive equitable treatment under the law.

Upholding precedent guidance contributes to the efficiency and cost-effectiveness of the legal system. Established precedents provide clear guidelines for legal interpretations, reducing the need for lengthy and expensive legal battles over conflicting interpretations. Parties can rely on precedents to assess legal risks, facilitate negotiation, and promote alternative dispute resolution mechanisms, leading to more efficient case resolutions.

Following precedent guidance enhances the credibility and legitimacy of the legal system. When courts demonstrate a commitment to following established precedents and applying legal principles consistently, they earn the trust and respect of the public, legal practitioners, and other stakeholders. This credibility is essential for maintaining public trust in the judiciary and ensuring the legitimacy of legal institutions.

Adhering to precedent guidance promotes harmonization and uniformity in legal interpretations across different jurisdictions and court hierarchies. By following authoritative rulings and legal principles set by higher courts, lower courts ensure coherence and consistency in legal interpretations, bridging jurisdictional gaps and promoting a harmonized legal framework essential for a federal system like Australia.

Maintaining legal consistency is crucial for a robust legal system, offering benefits such as reducing conflicting interpretations, promoting predictability and fairness, enhancing efficiency, and bolstering the credibility of the judiciary. Upholding precedent guidance, like that from Farah, ensures that similar cases are treated alike, providing a reliable framework for legal interpretations and contributing to a harmonized legal framework across jurisdictions. This consistency fosters fairness, efficiency, and trust in the legal system, essential for upholding justice and promoting public confidence in the rule of law.

CONCLUSION

In conclusion, upholding precedent guidance from Farah offers a comprehensive array of benefits essential for maintaining a fair, efficient, credible, and harmonized legal system in Australia. Legal consistency is not merely a theoretical ideal but a practical necessity that underpins the judiciary's functioning and the rule of law. The directive from the HCA reflects a balanced approach that respects judicial authority and expertise while ensuring the legal system's adaptability to evolving circumstances. By adhering to established precedents, courts promote fairness, equality, and predictability in legal outcomes, enabling parties in legal disputes to understand their rights and obligations. This clarity facilitates informed decision-making and reduces the risk of arbitrary or inconsistent rulings, thereby enhancing public confidence in the

judiciary and the legitimacy of legal institutions.

To further improve the application of precedent, it is recommended that courts and legal practitioners actively explore the implications of technological advancements on legal consistency. For instance, leveraging artificial intelligence tools in legal research could standardize the identification and interpretation of precedents, minimizing discrepancies across cases. Additionally, studying how precedent evolves in response to emerging areas of law, such as digital privacy or cybersecurity, can offer insights into maintaining coherence in the legal system. Further research should focus on the balance between flexibility and predictability, particularly in addressing novel issues where precedents are limited or inapplicable, to ensure the continued relevance and effectiveness of judicial decision-making.

REFERENCES

- DalGLISH, S. L., Khalid, H., & McMahon, S. A. (2020). Document analysis in health policy research: the READ approach. *Health Policy and Planning*, 35(10), 1424–1431.
- Fredman, S. (2016). Substantive equality revisited. *International Journal of Constitutional Law*, 14(3), 712–738.
- Hammond, E. (2021). The Constitution's Guarantee of Legal Accountability for Jurisdictions. *Federal Law Review*, 49(4), 528–553.
- Hill Clarvis, M., Allan, A., & Hannah, D. M. (2014). Water, resilience and the law: From general concepts and governance design principles to actionable mechanisms. *Environmental Science & Policy*, 43, 98–110. Retrieved from <https://doi.org/10.1016/j.envsci.2013.10.005>
- Kozel, R. J. (2014). The scope of precedent. *Mich. L. Rev.*, 113, 179.
- Kozel, R. J. (2017). Precedent and Constitutional Structure. *Nw. UL Rev.*, 112, 789.
- Levin, R. M. (2018). Rulemaking and the guidance exemption. *Administrative Law Review*, 70(2), 263–356.
- Malsukhum, V., & Malsukhum, V. (2021). Influence of the Legal Cultures on Error of Law and Jurisdictional Error. *Legal Culture, Legality and the Determination of the Grounds of Judicial Review of Administrative Action in England and Australia*, 93–140.
- Peczenik, A. (2016). The binding force of precedent. In *Interpreting Precedents* (pp. 461–479). Routledge.
- Pin, A., & Genova, F. M. (2019). The duty to disclose adverse precedents: The spirit of the common law and its enemies. *Yale J. Int'l L.*, 44, 239.

- Radin, M. J. (2017). Reconsidering the rule of law. In *The Rule of Law and the Separation of Powers* (pp. 37–76). Routledge.
- Re, R. M. (2014). Narrowing precedent in the Supreme Court. *Colum. L. Rev.*, 114, 1861.
- Sokol, D. D. (2019). Rethinking the efficiency of the common law. *Notre Dame L. Rev.*, 95, 795.
- Soliman Hunter, T. (2023). An introduction to Australian legal culture. In *Handbook on legal cultures: a selection of the world's legal cultures* (pp. 31–74). Springer.
- Sweet, A. S., & Mathews, J. (2019). *Proportionality balancing and constitutional governance: a comparative and global approach*. Oxford University Press.
- Tyler, C. W. (2020). The adjudicative model of precedent. *The University of Chicago Law Review*, 87(6), 1551–1604.
- Varsava, N. (2018). How to realize the value of stare decisis: Options for following precedent. *Yale JL & Human.*, 30, 62.
- Weber, R. F. (2020). Will the "Legal Singularity" Hollow out Law's Normative Core? *Mich. Tech. L. Rev.*, 27, 97.

This is an open access article under the Attribution-ShareAlike 4.0 International (CC BY-SA 4.0)



Copyright holders:

Aisyah Kahar (2024)

First publication right:

Journal of Law and Regulation Governance