

Jacaranda Civics & Citizenship Alive 9 for the Australian Curriculum

Authors: Smithies et al.



First published 2017 by
John Wiley & Sons Australia, Ltd
42 McDougall Street, Milton, Qld 4064

© John Wiley & Sons Australia, Ltd 2017

The moral rights of the authors have been asserted.

ISBN: 978 0 7303 2813 1 (eBook)

Reproduction and communication for educational purposes

The Australian *Copyright Act 1968* (the Act) allows a maximum of one chapter or 10% of the words of this work, whichever is the greater, to be reproduced and/or communicated by any educational institution for its educational purposes provided that the educational institution (or the body that administers it) has given a remuneration notice to Copyright Agency Limited (CAL).

Reproduction and communication for other purposes

Except as permitted under the Act (for example, a fair dealing for the purposes of study, research, criticism or review), no part of this book may be reproduced, stored in a retrieval system, communicated or transmitted in any form or by any means without prior written permission. All inquiries should be made to the publisher.

Trademarks

Jacaranda, the JacPLUS logo, the learnON, assessON and studyON logos, Wiley and the Wiley logo, and any related trade dress are trademarks or registered trademarks of John Wiley & Sons Inc. and/or its affiliates in the United States, Australia and in other countries, and may not be used without written permission. All other trademarks are the property of their respective owners.

Cover image: © Shutterstock/Mdesignstudio

Platform powered by SnapWiz

Illustrated by diacriTech and Wiley Composition Services

Course converted by diacriTech

QA services provided by Hurix & diacriTech

Benjamin Rood is a passionate and dynamic teacher with a broad range of subject areas. He teaches Geography, History and Science at McKinnon Secondary College and has been involved in the education sector for over 10 years. Benjamin joined Jacaranda in 2013, fuelled by his interest in curriculum and resource development. A contributor across several different titles, he believes that effective educational writing needs to engage and captivate students.

Acknowledgements

The authors and publisher would like to thank the copyright holders, organisations and individuals listed in the Acknowledgements document in the Resources section for their permission to reproduce copyright material in this book.

Every effort has been made to trace the ownership of copyright material. Information that will enable the publisher to rectify any error or omission will be welcome. In such cases, please contact the Permissions Section of John Wiley & Sons Australia, Ltd.

Chapter 1: Choosing a government

Contents

- 1.1 Overview
- 1.2 Australia's political parties
- 1.3 Voting and the federal electoral process
- 1.4 Influencing your vote
- 1.5 After the election — the formation of government
- 1.6 The role of the prime minister and Cabinet
- 1.7 SkillBuilder: Creating and analysing a table
- 1.8 Review

Note to students and teachers: This PDF has been provided as an offline solution for times when you do not have internet access or are experiencing connectivity issues. It is not intended to replace your eBook and its suite of resources. While we have tried our best to replicate the online experience offline, this document may not meet Jacaranda's high standards for printed material. Please always refer to your eBook for the full and latest version of this title.

1

Choosing a government



1.1 Overview

1.1.1 Australia's system of government

In Australia we have a form of government known as a representative democracy. This means that people elect representatives to sit in the parliament to make laws on their behalf. Members of parliament are elected for a set period of time, so they have to be able to perform well enough to convince the voters to re-elect them after that period of time.

FIGURE 1 Federal Parliament House in Canberra



Our federal parliament is made up of the Governor-General, representing the Queen, and two 'houses' — the Senate (upper house) and the House of Representatives (lower house, also known as the people's house). Most members of parliament belong to an organisation known as a political party. The aim of each political party is to win a majority in the House of Representatives and form government. This means winning 76 or more of the 150 electorates (also called seats) in the lower house. Winning government enables the successful political party to run the country until the next election. The party's leader becomes the prime minister, and other senior members of the party become government ministers.

Each government minister is responsible for a government department, such as health, defence, communications, immigration, social services, the environment, education or foreign affairs. The government employees and public servants in these departments then become responsible for carrying out the policies of the government, acting on the instructions of the minister.

Whichever major party fails to win enough seats in the House of Representatives to form government becomes the Opposition. In the 2016 federal election, a coalition of the Liberal and National Parties won 76 seats and so formed government. The Labor Party won 69 seats and became the Opposition. The leader of the Opposition usually becomes prime minister if the Opposition party wins the next election.

Senior members of the Opposition become shadow ministers. For each government minister, there is a corresponding person in the Opposition who is a shadow minister. A shadow minister is expected to scrutinise the activities of the relevant minister, and will often publicly criticise that minister's performance. This is one way in which ministers and the government remain accountable to the people. Shadow ministers would expect to become ministers if the Opposition wins the next election.

on Resources



Watch this eLesson: [Federal elections](#)

Searchlight ID: [eles-2258](#)

1.2 Australia's political parties

1.2.1 Different political parties represent different views

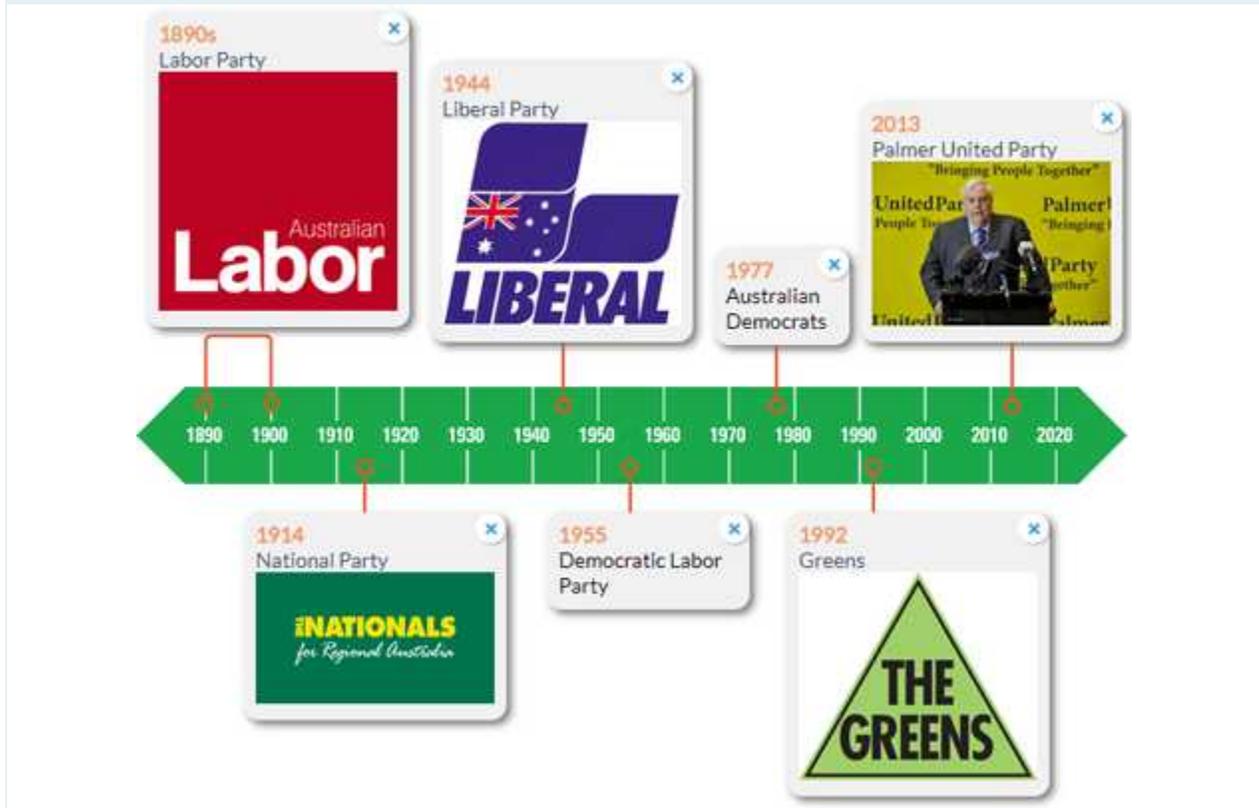
Political parties are groups of people who band together because they share the same views about issues they think are important. People join a political party because they support the party's views. The main aim of a political party is to get its candidates elected so it can control government.

Political parties in Australia range from traditional organisations to special interest groups. They work hard to promote their ideas and encourage members of the public to join them. Their main aim is to have candidates elected to parliament. In this way they can aim to have laws passed that are consistent with their beliefs and values. Follow the **Political parties** weblinks in your Resources section to learn more.

All political parties must be registered with the **Australian Electoral Commission**. There are two requirements for this registration:

1. the aims of the party must be submitted
2. the party must have at least 500 **eligible voters** unless the party already has a member in parliament at the time it is formed.

FIGURE 1 illustrates when the major political parties were formed in Australia.



on Resources

 Explore more with these weblinks: Political parties

1.2.2 Australian Labor Party

The Australian Labor Party (ALP) is the oldest political party in Australia. It was formed in the 1890s. Unemployment was then high and living conditions were harsh, so workers relied on their trade unions for support and protection. The unions felt they would be more effective if they could gain a voice in parliament. For this reason they formed their own political party to put forward their own candidates for election. This background has meant that trade unions have always had strong links with the Labor Party.



The ALP most recently held government in the federal parliament from 2007 to 2013. During that time it had two changes of leader — Kevin Rudd was initially elected prime minister only to be replaced by Julia Gillard, who in turn was replaced by Mr Rudd when he was reinstated as prime minister shortly before the September 2013 election. When the Labor government was defeated in that election, both Ms Gillard and Mr Rudd left the parliament and Bill Shorten became the Labor Party leader.

The Labor Party believes that government has a responsibility to look after the people. Its main aims are to:

- ensure wealth and power is more evenly and fairly shared in society
- make sure everyone who wants to work can find a job
- abolish poverty and improve the living standards of all Australians
- ensure that all Australians can obtain the education, housing and community services they need.

FIGURE 2 Leader of the Labor Party and the Opposition, Bill Shorten



1.2.3 The Liberal Party of Australia

The Liberal Party of Australia was founded by Robert Menzies in 1944 and first won government in the federal parliament in 1949. In a **coalition** with the National Party, the Liberal Party has been in government for 20 of the last 40 years. In the 2016 election, the Liberal–National coalition won 76 of the 150 seats in the House of Representatives and so was elected to government. The Liberal Party won the largest share of the coalition parties' seats and the leader of the Liberal Party, Malcolm Turnbull, therefore became prime minister.



The Liberal Party believes in individual freedom and free enterprise. Its main aims are to work towards:

- a lean government that minimises interference in daily life and minimises taxes
- a government that encourages private businesses and does not compete with them
- a just and humane society in which the family and the role of law and justice are maintained.

FIGURE 3 Prime minister and leader of the Liberal Party, Malcolm Turnbull



1.2.4 National Party of Australia

The Nationals were established as a federal party in 1920, originally as the Country Party. Since then, the Nationals have been able to form government on several occasions as the junior partner in coalition with the Liberal Party since 1949, and with other parties before that. When the National Party is in government with the Liberal Party, the leader of the National Party becomes deputy prime minister. This position is currently held by Barnaby Joyce. In Queensland, the Liberal Party and National Party combined to form the Liberal National Party (LNP) in 2008.



The Nationals are dedicated to representing people who live, work or operate a business in regional Australia. The Nationals fight for an equality of services, lifestyle and opportunity between the cities and the regions. Their main aims are to:

- provide strong representation of local communities
- ensure security for families through decent health, safety, social and economic welfare standards
- promote individual achievement, free choice and a fair go
- encourage investment, wealth generation and reward for private enterprise.

FIGURE 4 Deputy prime minister and leader of the National Party, Barnaby Joyce



1.2.5 Australian Greens

The Australian Greens party was formed in 1992. It grew out of the activism of environmental groups in the 1980s and based many of its principles on European Greens Parties. The party is currently led by Senator Richard Di Natale from Victoria. Its main aims are to:

- look after the environment and preserve the Earth's resources for the future
- ensure that everyone in our society is treated fairly and with respect
- create a safe, harmonious world in which force is not used to solve differences
- ensure that society is governed by the people, and not run by the wealthy and powerful.



FIGURE 5 Leader of the Greens Party, Richard Di Natale



1.2.6 Palmer United Party

The Palmer United Party (PUP) was founded in 2013 by the wealthy Queensland businessman, Clive Palmer. He had previously been a supporter of the Liberal National Party in that state. The PUP won two seats in the Senate in the 2013 election, and Clive Palmer was elected to the House of Representatives for the Queensland electorate of Fairfax. He decided not to recontest his seat of Fairfax in the 2016 election and this seat is now held by Liberal National Party member, Ted O'Brien. The party is largely centred around the political views of its leader, and supports the following:

- increased growth in the mining industry
- regional self-government; for example, through the division of Queensland into two states by establishing the new state of North Queensland
- removal of all fees for tertiary education
- a closer economic relationship with Asian countries.

1.2.7 Other small parties

A number of small parties are also represented in the federal parliament.

- Katter's Australian Party has a member, Bob Katter, in the House of Representatives although he was originally a member of the National Party. In the 2016 federal election, Katter's Australian Party won a seat in the House of Representatives. This seat was retained from the previous election.

- In 2013 Nick Xenophon, originally a member of the Liberal–National coalition, established his own party, Nick Xenophon Team, which won a seat in the House of Representatives and three Senate seats in the 2016 federal election.
- Pauline Hanson’s One Nation Party won four seats in the Senate in the 2016 election.
- The Family First Party won one Senate seat in the 2016 federal election.

FIGURE 6 Controversial politician Pauline Hanson has re-entered Australian politics after several failed attempts at winning a seat in the Senate in both the QLD state parliament and the federal parliament. Her party, Pauline Hanson’s One Nation, won four Senate seats in the 2016 federal election.



1.2.8 Independents

Members of parliament who do not belong to a political party are called independents. They sit alone in parliament and may choose to vote with one of the major parties or with minor parties, or abstain from voting. In the 2016 federal election, independent candidate Derryn Hinch won a Senate seat, as did independent Jacqui Lambie. Cathy McGowan, an independent member of the House of Representatives, retained her seat of Indi in the 2016 federal election.

It is difficult for independent members to be elected because they do not have a party structure and membership to support them. An independent senator will usually be someone who has a high profile across his or her whole state. An independent attempting to be elected to the House of Representatives needs to gain strong local community support in the electorate.

FIGURE 7 Nick Xenophon, leader of the Nick Xenophon Team party, has a high profile throughout his home state of South Australia.



1.2.9 Majority rule

Winning the vote in an electorate gives the successful candidate a seat in the House of Representatives. The party with the majority of seats in this house forms the government, and its leader becomes prime minister. As the government, the winning party has the power to make laws for governing the country. Note that all laws must be agreed to by a majority vote in both houses of parliament, not just in the lower house.

ACTIVITIES

POLITICAL PARTY RESEARCH

Select one of the political parties described in this section and use the **Political parties** weblinks in your Resources section to visit the party's website.

1. What is your selected party's vision for the future of Australia?
2. Identify and explain six key policies that your selected party believes will help achieve this vision.

on Resources



Explore more with these weblinks: Liberal Party

Explore more with these weblinks: Labor Party

Explore more with these weblinks: National Party

Explore more with these weblinks: The Greens

Explore more with these weblinks: Pauline Hanson's One Nation Party

Explore more with these weblinks: Political parties

1.3 Voting and the federal electoral process

1.3.1 The voting system

We elect representatives to state and federal parliaments, as well as to local councils, to make laws and to take other decisions on our behalf. It is important that the voting system is as fair as possible because this ensures that the composition of parliament is a true representation of the voters' wishes.

FIGURE 1 Our democratic system is based on the principle that all Australian citizens over 18 vote to elect members of parliament.



on Resources



Watch this eLesson: [What is parliament?](#)

Searchlight ID: [eles-2077](#)

1.3.2 The Australian electoral system

The Australian electoral system is based on a number of key principles. These are:

- universal suffrage and secret ballot
- compulsory voting
- fixed or maximum terms for parliament
- one vote, one value
- combinations of single member and multimember electorates
- preferential voting and proportional representation.

Universal suffrage and secret ballot

Voting in all parliamentary elections in Australia is through universal adult **suffrage** or **franchise**. This means that all Australian citizens over the age of 18 have a right to vote. There are some exceptions to this. For example, anyone serving a prison term of three years or longer cannot vote while they are in prison, but can resume the right to vote once they are released.

We have not always had universal adult franchise in Australia. In the 1850s, colonial parliaments granted the franchise to adult males over the age of 21. In 1902, the right to vote in elections for the Commonwealth Parliament was extended to women over 21. Aboriginal and Torres Strait Islander people were excluded from voting until 1962. The right to vote was lowered from the age of 21 to 18 in 1973.

Australia was one of the first places in the world to introduce a secret ballot for voting. A secret ballot allows every voter to keep their vote private, so that no-one can force them to vote for a particular candidate. Before the introduction of the secret ballot, voters had to announce who they were voting for to an official. This vote was then recorded beside their name, so everyone could see who everyone else voted for. This system often led to the intimidation and bribery of voters. Most of the Australian colonial parliaments introduced the secret ballot in the 1850s. Under this system, voters fill out their voting papers in private, fold them so no-one can see, and place them in a ballot box. Once in the box, there is no way of identifying one voting paper from another.

FIGURE 2 Australia was one of the first countries in the world to use the secret ballot.



Compulsory voting

Compulsory voting is not required by the Australian Constitution, and was only introduced in Australia in 1924. Now, voting for federal, state and territory parliaments is compulsory for all eligible citizens over the age of 18. In some states, voting is also compulsory for local council elections. Failure to vote can result in a fine if the voter does not have a reasonable excuse, such as serious illness on the day of the election. To assist those who may have difficulty voting on election day, a number of alternative methods are available:

- Early voting centres are open in all electorates, often up to three weeks before the actual election. If a voter knows that he or she will be away from their home electorate on election day, it is possible to take advantage of this method.
- Voters can apply for postal votes, which allow them to receive ballot papers before the election and to post them to the appropriate electoral office. Envelopes containing these votes are opened face down to preserve the secrecy of the vote.
- It is possible to vote interstate or overseas if you have not been able to organise early voting or postal voting before travelling.

Australian Electoral Commission and the electoral rolls

All Australian citizens are required to register to vote when they turn 18. This can be done either online or by obtaining an enrolment form from an office of the Australian Electoral Commission (AEC). The AEC is the official body responsible for the conduct of federal elections. It also maintains a record of all registered voters, known as the electoral roll. This record is updated regularly to allow for new voters to be added, changes of voter addresses to be recorded, and names to be removed when voters die. You can enrol to vote any time after turning 16, although you will not be able to vote until you have turned 18. Failure to enrol to vote can result in a fine.

FIGURE 3 All registered voters in an electorate have their names and addresses recorded in the electoral roll.



Fixed or maximum terms for parliament

The Australian Constitution requires that elections for the House of Representatives be held at least every three years. They can be held before three years have elapsed — usually because the prime minister at the time chooses to hold an early election.

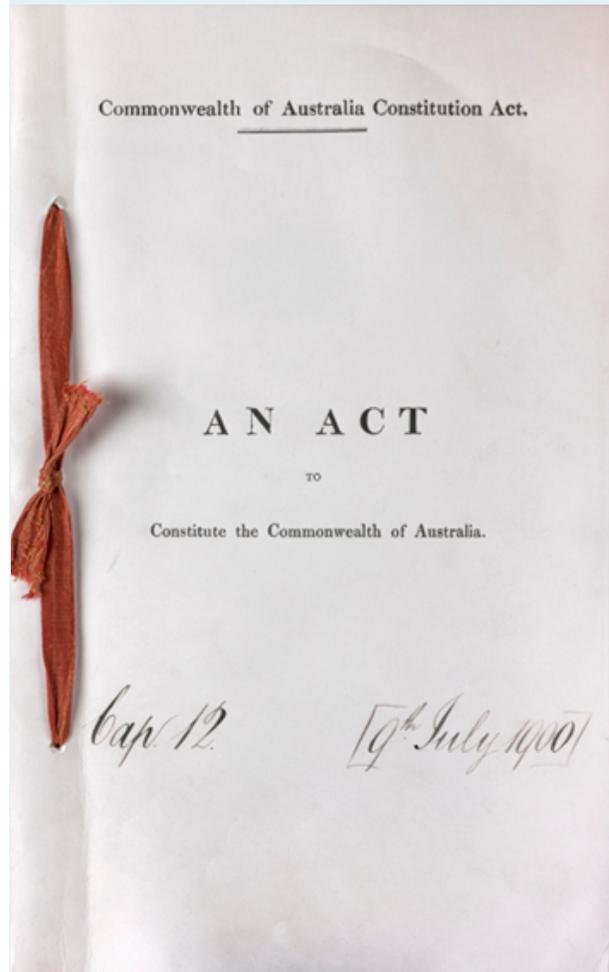
All of the states and territories are required to hold elections every four years except Queensland, which has elections every three years. Each state has its own rules for holding these elections. For example, in Victoria the state parliament has a fixed term, with an election held on the last Saturday in November every four years. In some other states, an early election is possible if a state government chooses it so.

The Senate also has elections every three years, but the rules are different from those in the House of Representatives. All senators are elected for six years, so normally only half the senators have to face election every three years. This means that the six senators from each state elected in 2007 had to face election in 2013, while those elected in 2010 had to stand for re-election in 2016. However, the calling of a double dissolution (when both houses of parliament are 'dissolved', or shut down) by the prime minister meant that all senators had to face re-election in 2016, including those elected in 2013. There are two senators from each of the two territories, but they are elected only for three-year terms. Some of the states have similar arrangements for their upper houses, with only half the members facing election at a time.

One vote, one value

Each person has only one vote for each house of parliament, so all voters are equal. However, the numbers of representatives and senators elected to parliament differs because of provisions written into the Australian Constitution at federation.

FIGURE 4 The Australian Constitution requires that elections for the House of Representatives be held at least every three years.



House of Representatives

As far as possible, all federal electorates for the House of Representatives have a similar number of voters. This is to ensure that all votes have as close as possible to equal value throughout Australia. It also means that each state has a different number of electorates, according to population. The average number of voters is around 90 000 in each electorate, with some anomalies. Because the Constitution allows for a minimum of five electorates in any state, Tasmanian electorates have about 70 000 voters each, as Tasmania has the lowest population of the states. Each of the territories is allowed to have two electorates. The population differences between the Northern Territory and the Australian Capital Territory means that each of the Northern Territory electorates has about 60 000 voters, while each of the ACT electorates has about 130 000 voters.

FIGURE 5 Population and the House of Representatives



The Senate

One of the original functions of the Senate was to protect the interests of the six states. The representatives of the smaller states were concerned that they could be out-voted in the House of Representatives by the combined members from Victoria and New South Wales. For this reason, the Senate has an equal number of members from each state. Currently this stands at twelve per state, with two from each of the two territories, making a total of seventy-six. The principle of one vote, one value does not apply to the Senate. Consequently, New South Wales with almost 7.5 million people has the same number of senators as Tasmania, which has a population of just over 500 000.

Combinations of single member and multimember electorates

The Commonwealth, state and territory parliaments use a variety of methods to determine the way in which the voters are represented. The House of Representatives has 150 members, with each member representing a single electorate or seat. [Figure 5](#) shows the number of electorates in each state and territory.

The Senate has a different form of representation. Each state and territory is a single electorate for the purpose of electing senators, so all senators effectively represent the entire state or territory rather than a smaller electorate. Each state is effectively a multimember electorate as it has 12 senators representing it at any given time.

The states and territories have a combination of single member and multimember voting systems.

- In New South Wales, Victoria, Queensland, South Australia, Western Australia and the Northern Territory, each lower house is made up of members elected from single member electorates.
- The Tasmanian and ACT lower houses elect members from multimember electorates.
- The New South Wales, Victorian, South Australian and Western Australian upper houses have multimember electorates.
- The Tasmanian upper house has 15 single member electorates.
- The two territories and Queensland have no upper house in their parliaments.

FIGURE 6 The Tasmanian lower house is the only state lower house with multimember electorates.



Preferential voting and proportional representation

The type of voting system used in Australian elections depends on whether the election involves single member electorates or multimember electorates. When an election occurs in a single member electorate, a system known as preferential voting is used. In multimember electorates, proportional representation voting is applied.

Preferential voting

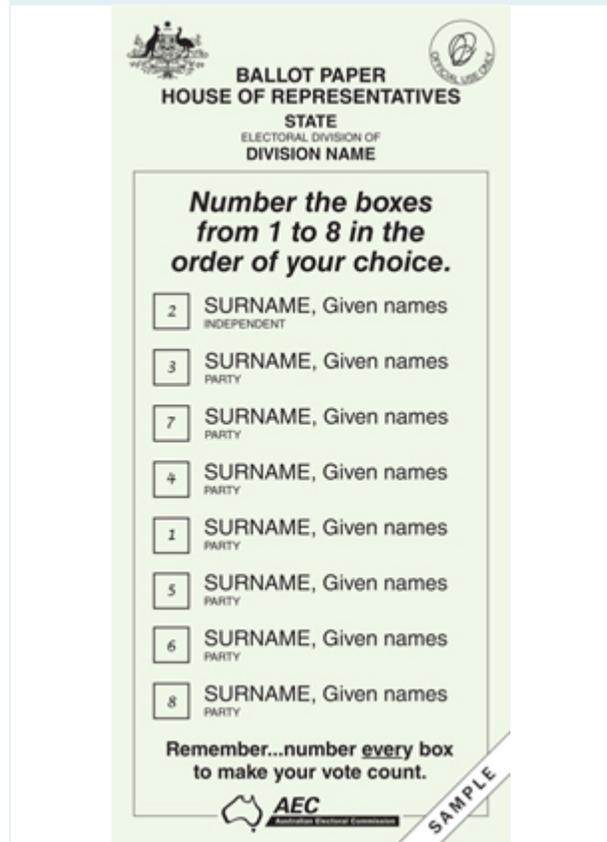
A preferential system of voting is used for members of the House of Representatives, and state houses of parliament with single member electorates. This means that voters are usually required to vote for the candidates in order of preference. The voter places the number 1 in the square next to their preferred candidate, the number 2 next to their second preference, and so on down the ballot paper. In House of Representatives elections, voters are expected to place a number in every square. In some state elections, such as for the New South Wales lower house, a system of optional preferential voting is used. In this system, the voter only has to number as many squares as he or she wishes. Placing the number 1 beside a square is all that is required to make the vote count. (Section 1.5 discusses the process for counting preferences.)

Proportional representation

Proportional representation is the system of voting used in all elections for multimember electorates in Australia. It is also used for the Senate. In most cases, voters are required to number their preferences on the ballot paper. The votes are divided up in such a way as to elect the required number of successful candidates based on the proportion of the total vote given to each party.

The counting method is quite complex, but the end result is that the members elected will usually come from a variety of different political parties, including some parties with a relatively small share of the total vote. Candidates are grouped on the ballot paper according to the party they represent. The possibility of being elected with a relatively small share of the vote has usually resulted in a large number of small parties nominating candidates for the Senate. In the 2013 federal election, there were 97 candidates on the Senate ballot paper in Victoria; in New South Wales, the ballot paper included 110 candidates. In each case only six senators were to be elected.

FIGURE 7 In House of Representatives elections, voters are required to number every square next to the candidates' names.



With the number of candidates increasing over the years, it became very difficult for voters to mark all the squares without the risk of missing a number or mistakenly using a number twice. In order to deal with this problem, a system of 'above the line voting' was introduced to Senate elections in 1984. This meant that instead of placing a number in every square, the voter simply had to place the number 1 above the group representing the political party that he or she preferred. Each political party decides how they want their preferences distributed among the other candidates, so by voting above the line, voters agreed to have their preferences allocated accordingly. Over 90 per cent of voters voted above the line in recent Senate elections under this system.

Voting rules for the Senate changed again following the 2013 election in which minor parties were able to get candidates elected to the Senate with a very small percentage of the primary vote. (The Australian Motoring Enthusiast Party candidate for example was elected to the Senate with 0.51 per cent of the primary vote in the 2013 election, but did not win a seat in the 2016 election due to the change in Senate voting rules.) This so-called gaming of the system was seen as undemocratic, and the calls for reform resulted in a new system of voting for the Senate being introduced in the July 2016 election. Voters are now given the option of numbering at least six boxes above the line for the parties of their choice, or at least 12 boxes below the line for the individual candidates of their choice. The sample Senate voting papers in figures 8 and 9 show the two different methods of voting.

FIGURE 8 Voting below the line: voters must number at least 12 Senate candidates when choosing to vote below the line.

Senate Ballot Paper
State – Election of 6 Senators

You may vote in one of two ways

Either

Above the line
By numbering at least 6 of these boxes in the order of your choice (with number 1 as your first choice).

A B C D E F G

LOGO LOGO LOGO LOGO LOGO LOGO

PARTY PARTY PARTY PARTY PARTY PARTY

Or

Below the line
By numbering at least 12 of these boxes in the order of your choice (with number 1 as your first choice).

PARTY PARTY PARTY PARTY PARTY PARTY UNGROUPED

1 SURNAME Given Names RESIDENCE

2 SURNAME Given Names RESIDENCE

3 SURNAME Given Names RESIDENCE

4 SURNAME Given Names RESIDENCE

5 SURNAME Given Names RESIDENCE

6 SURNAME Given Names RESIDENCE

7 SURNAME Given Names RESIDENCE

8 SURNAME Given Names RESIDENCE

9 SURNAME Given Names RESIDENCE

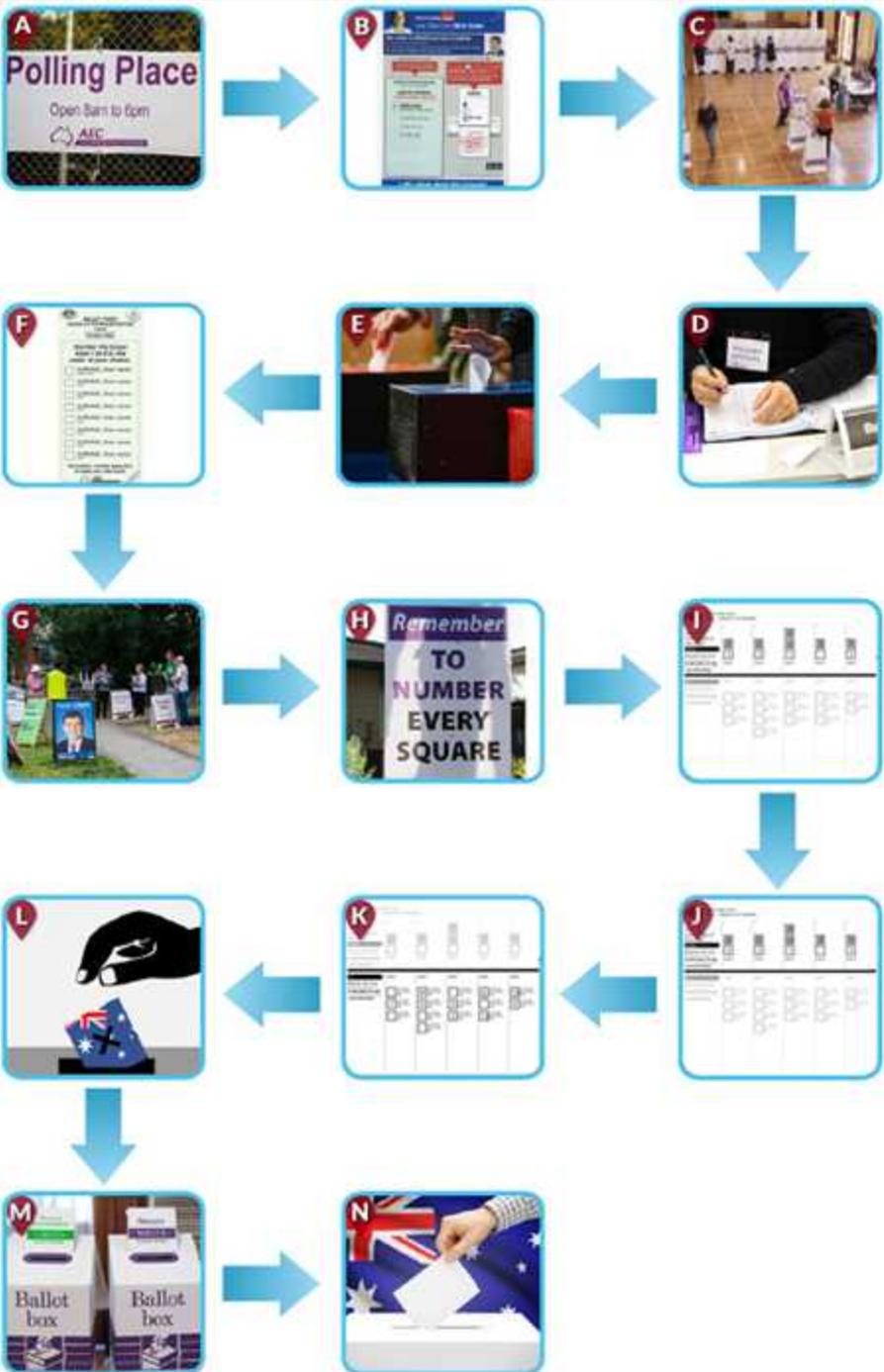
10 SURNAME Given Names RESIDENCE

11 SURNAME Given Names RESIDENCE

12 SURNAME Given Names RESIDENCE

SAMPLE

FIGURE 10 Voting in a federal election



ACTIVITIES

SHOULD VOTING BE COMPULSORY?

The Australian Constitution does not make voting compulsory, but compulsory voting was introduced by the federal parliament in 1924. Most other countries with parliamentary systems similar to Australia's have voluntary voting. These include Great Britain, New Zealand, the United States and Canada. Over the years many people in Australia have argued that it is undemocratic to force people to vote, and that Australia should switch to voluntary voting.

1. Working in groups of four or five, use the internet to research the arguments both in favour of and against compulsory voting.
2. Discuss these arguments within your group and decide where your group stands on the issue (in favour, against or undecided). Use the discussion function in the resources panel if you choose.
3. Each group should then present its findings to the rest of the class.

DISCUSS

How easy was it to come to a consensus in your group? In what ways did the different values and beliefs in the group lead to different perspectives? [Personal and Social Capability]

Resources



Watch this eLesson: [What is parliament?](#)

Searchlight ID: [eles-2077](#)

1.4 Influencing your vote

1.4.1 Political campaigns

The key aim of the major political parties is to win government. In order to achieve this, the parties devote a lot of effort and resources to convincing voters to support their candidates. In particular, the parliamentary leaders of the parties will be very visible in these campaigns.

1.4.2 Public debate

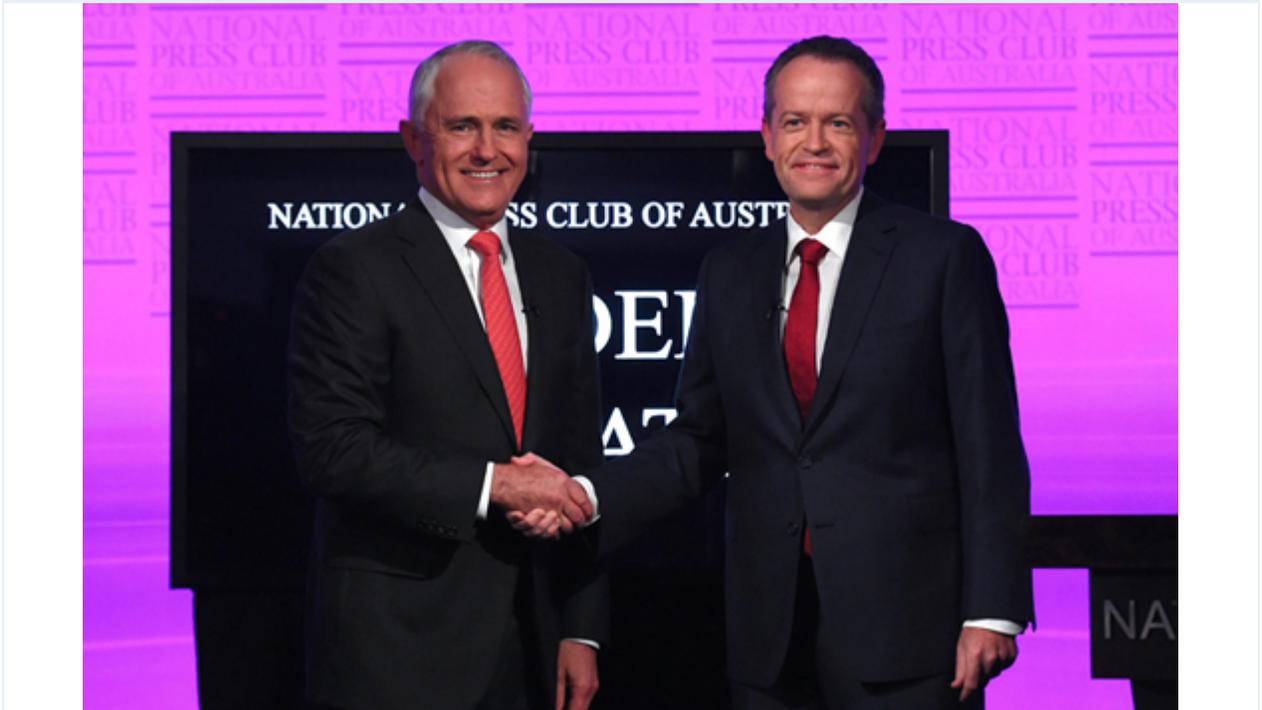
During an election campaign, representatives of the parties will often seek opportunities to debate issues with representatives of different parties. Such debates can take a number of formats.

Leaders' debates

It has become a regular part of election campaigns for the leaders of the two major parties to take part in televised debates. This means that the leader of the Liberal Party and the leader of the Labor Party will meet face-to-face for an hour in a previously agreed format. Usually each leader has the opportunity to make an opening statement for a set period of time. This is followed by questions directed to both leaders by a panel of journalists who specialise in writing about political issues. Each leader then has an opportunity to make a final statement to conclude the debate.

The 2016 federal election debate between the leaders can be viewed by following the **Leaders' debate** weblink in your Resources section.

FIGURE 1 Party leaders Malcolm Turnbull and Bill Shorten shake hands as they arrive for the leaders' debate at the National Press Club in Canberra on 29 May 2016.



Other debates

In addition to the party leaders, other representatives will often appear on TV and radio during an election campaign. Current affairs programs will invite party spokespeople on to debate issues that are within their area of responsibility. For example, the minister for health may appear representing the government while the shadow minister for health will represent the Opposition. Both will be asked questions and given the opportunity to explain their respective party's policies for improving health services. Each representative will be trying to convince the voters that they will be better off by voting for the representative's party.

Interviews and debates between politicians can be found by following the **Political interviews and debates** weblink in your Resources section.

on Resources



Explore more with these weblinks: Leaders' debate

Explore more with these weblinks: Political interviews and debates

1.4.3 Traditional media

As well as appearing on current affairs programs to answer questions and debate issues, political parties and their leaders will attempt to use the full range of the media to get their message across. This includes the traditional media outlets of television news, newspapers and radio.

Television news

During an election campaign the two leaders travel around the country, accompanied by journalists and camera crew from all the television stations. Each day they attempt to make a significant announcement or promise that they hope will be broadcast on that evening's television news. This is a recognised strategy that all parties use to ensure they receive daily media coverage.

Newspapers

Just as they make use of television, political parties and their leaders also try to have their message put before voters in daily newspapers. Political parties provide detailed documentation to journalists on every policy and promise. Whether in print or online, newspapers provide an opportunity for these policies to be published in greater detail. Newspapers often use their online editions to provide the means by which their readers can comment on stories and issues of the day. Daily online opinion polls are also a feature of newspapers and allow them to gain speedy feedback from readers on a variety of issues.

FIGURE 2 Newspapers provide an opportunity to communicate political promises and policies in greater detail.



Radio

Radio provides another opportunity for political leaders and other party representatives to present their policies to the public. Current affairs programs on ABC Radio such as *AM* and *PM* carry out regular interviews with leaders, government ministers and Opposition spokespeople. During an election campaign, large portions of these programs are given over to discussing political issues. Talkback radio programs also give political leaders a chance to engage with the public. In addition to being interviewed by the host of the radio program, politicians will often have the opportunity to respond to listeners who phone in and ask them questions.

FIGURE 3 During election campaigns, talkback radio hosts regularly interview political leaders.



1.4.4 Opinion polls

Opinion polls are surveys taken of people from all over Australia and from all walks of life. They are conducted by different polling companies. Most of these conduct their surveys by telephoning people and asking them a series of questions. While conducting their surveys, they often also ask the person being surveyed their age and level of income. This is done to help ensure that they survey a broad range of different people.

FIGURE 4 Opinion polling companies conduct surveys by phoning large numbers of people.



A small but important part of their business is to conduct surveys on people's attitudes to government policies and actions. To achieve this, they will survey people to find out whether they support or oppose a particular policy or political promise. When an election is close, they will also conduct surveys to find out who people intend voting for. It is this polling that can provide the political leaders with feedback on how well they are performing. Opinion polls also alert the leaders to issues that voters are concerned about, and in this way can influence the policies and promises the leaders make during an election campaign.

1.4.5 Advertising

All political parties put together an advertising program as part of their election campaign. Television advertising is the most common form used, but parties will also advertise on radio and in the newspapers. Most advertising has to be short, with a message that is easy to understand. Political parties make use of slogans they hope will be easy to remember. They also try to create a negative impression of their opponents. The party leaders feature heavily in these advertisements because they want voters to identify with that leader as the next prime minister.

Some samples of advertisements used in the 2016 election campaign can be found by following the **Election campaign advertising** weblink in your Resources section, which also has some commentary on the advertising campaign.

on Resources



Explore more with these weblinks: Election campaign advertising

1.4.6 Interest groups

Each party has support among a number of interest groups throughout the community. The Liberal Party has support from a number of business groups, and many of these will donate money to help cover the cost of that party's advertising. In the same way, the Greens often get support from environmental groups, who will provide time and resources to help that party's campaign. Labor has strong links with the trade union movement, so the union movement donates large amounts to that party's campaign. Unions will also often campaign directly against the Liberal Party. In the 2007 election, for example, the unions campaigned strongly against the Liberal government's WorkChoices laws on the grounds that the laws harmed ordinary workers, who were often union members.

FIGURE 5 Unions launched the 'Your rights at work' campaign in response to the Liberal government's WorkChoices laws.



DISCUSS

Interest groups should not be able to donate money to political parties in order to try and influence them or help them win power.

1. What would be the different positions that the following groups of people would have on this issue?
 - a. A Greens politician who has received a large donation from an environmental group to help her campaign
 - b. A pro-business lobby group who donates to the Liberal party
 - c. Undecided voters
2. What values and beliefs may influence their differing perspectives? [Ethical Capability, Personal and Social Capability]

1.4.7 Other political party campaign activities

Political parties have a variety of additional campaign techniques that are used in most elections. These include:

- *Letterboxing.* Parties will print and distribute advertising leaflets during an election campaign. These will usually feature a photo and information about the local candidate, as well as information about the party's policies. Local party members then volunteer to walk around the electorate delivering the leaflets to letterboxes.
- *Polling.* As well as opinion polling companies carrying out surveys of voters' opinions, political parties carry out their own opinion polls, particularly during an election campaign. They want up-to-date feedback on how well their campaign is being received by the voters, whether their policies are popular or not, and how well the leaders are performing. The political parties carry out polling almost every day during an election campaign to achieve this.
- *Doorknocking.* A traditional method of campaigning has been for a candidate to walk around the electorate, knocking on doors to talk to voters. This is less likely to occur during the official campaign, but some candidates may have spent many hours doing this between elections, particularly if they are challenging a well-known member of parliament.
- *Letters to editor and talkback calls.* During an election campaign, there is always a strong emphasis on political issues in the letters pages of the newspapers as well as on talkback radio programs. Members and supporters of political parties regularly send letters to the newspapers, and phone up talkback radio programs during this time. They usually pretend to be ordinary members of the public, and do not reveal their party membership.
- *Handing out how-to-vote cards.* On election day, political parties rely on volunteers and ordinary party members to stand outside polling places and hand out how-to-vote cards.

1.4.8 Social media

In today's world it seems that millions of people are almost constantly connected. Your ability to access websites, email and social media from almost anywhere through your smartphone means that you can express an opinion on any issue, to almost anyone, anytime, anywhere. Political parties and their leaders are very aware of the significance of social media, and have been adopting social media to appeal to the public, particularly younger voters. In recent years they have expanded their efforts on social media in a variety of ways:

- All of the major parties have Facebook pages to keep their supporters updated, and most individual members of parliament have their own Facebook pages. As well as providing information about party policies, individual members use their Facebook pages to provide updates on their activities within their electorates.
- Almost every member of parliament in Australia today has a Twitter account. One of the first to do so was the former prime minister, Kevin Rudd. At its peak his Twitter account had over 1.3 million followers. Prime Minister Malcolm Turnbull has over 640 000 Twitter followers.
- As an example of the power of social media in politics, we only have to look at the American experience. When Barack Obama was running for president of the United States in 2008, his campaign team created election advertising to be shown on YouTube. The material was watched for 14.5 million hours, all free, which is the equivalent of \$47 million worth of paid television advertising. President Obama launched his re-election campaign for 2012 on Facebook in April 2011. Voters in the United States can post comments, suggestions and ideas for the future on the president's Facebook page.

Members of parliament, supporters of particular political parties and opponents of the same political parties, as well as people campaigning for changes in the law, can all use social media to get their message across. Members of parliament and candidates for election can publicise their activities and gain immediate feedback from followers through the use of different social media platforms.

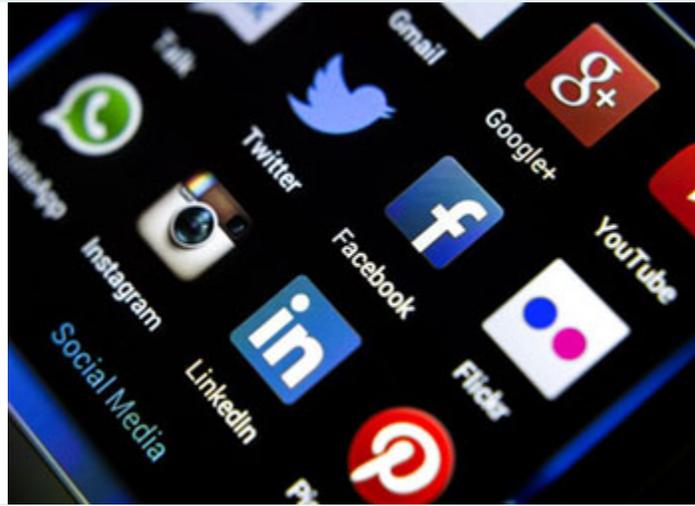
ACTIVITIES

OPINION POLLS

Imagine that opinion polls indicated that a political party's policy was unpopular with voters during an election campaign. The leader has to take action to change public opinion. What do you think might happen in the following circumstances?

1. The leader refuses to change the policy but initiates a new advertising campaign to better explain it.
2. The leader makes minor changes to the policy to make it more acceptable.
3. The leader drops the policy completely.

FIGURE 6 Everyone can use social media to get their message across.



1.5 After the election — the formation of government

1.5.1 Counting the votes

After all the polling places close at 6 pm on federal election day, counting of the votes commences immediately. The votes are counted at each polling place in an electorate and then added up for the electorate as a whole. When the votes for all electorates are eventually counted, it will be clear which candidates have won each electorate. The political party that wins at least 76 of the 150 seats in the House of Representatives will be declared the winner of the election and will form government for the next three years.

1.5.2 What's the result?

Once the doors of the polling place are locked at 6 pm, counting of the votes cast during the day commences. The count is usually carried out by the same electoral staff who have managed the election process at the polling place that day. House of Representatives votes are counted before Senate votes.

Counting the House of Representatives votes

The ballot boxes are opened and the green ballot papers are spread onto tables. The polling clerks then sort the ballots according to first-preferences votes, and count them as they go. Any **informal votes** are put to one side and not included in the count.

FIGURE 1 Polling officials empty ballot boxes in readiness to count the votes.



As well as the polling officials, each candidate is permitted to have at least one **scrutineer** present for the count. Scrutineers are usually members of the candidate's political party. They are required to fill out a form before the polling place closes, and to wear an identification badge while in the polling place. They will carefully watch the count to make sure it is conducted fairly and properly. Scrutineers have the right to challenge any aspect of the count. For example, if a vote is declared informal because there appears to be a mistake in filling it out, the scrutineer may challenge that decision if he or she believes it should be counted as a vote for his or her party's candidate.

FIGURE 2 The counting of votes is watched carefully by scrutineers representing each candidate.



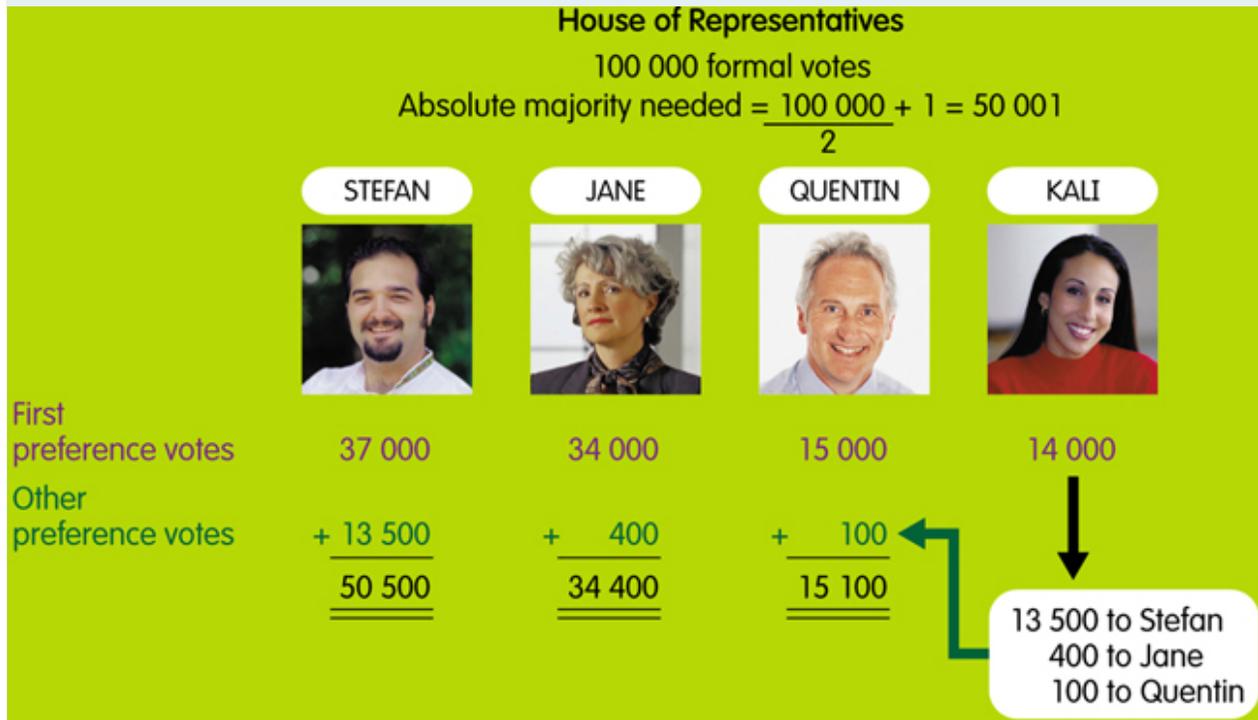
When first preferences have been counted, the results are phoned through to the divisional returning officer. This is the official in charge of the voting process for the whole electorate. The divisional returning officer then enters the results for each polling place in the electorate on the AEC's computerised election-management system. This system tallies the votes for all electorates across Australia and keeps a running total of seats won by each party. The media also has access to these results, and a number of TV channels run special election night programs in which they provide updates and commentary on the progress of the count.

FIGURE 3 Television channels present detailed coverage of vote counting on election night.



In order to be elected, a candidate has to have an absolute majority of votes. This means having 50 per cent of the votes plus one. For example, if there are 100 000 **formal votes** cast in an electorate, a candidate must have 50 001 votes to win. If one candidate has more than this number of first-preference votes, then he or she will be declared elected. If no candidate has that number of first-preference votes, then other preferences on ballot papers have to be counted. The process for doing so is illustrated in [figure 4](#).

FIGURE 4 Counting preferences in the House of Representatives seats



As you can see from the example in figure 4, none of the candidates has an absolute majority of 50 001 so preference votes have to be counted. This is done by excluding the candidate with the fewest first-preference votes. In this case, that candidate is Kali, with 14 000 votes. Her votes are counted again, according to where those voting for her allocated their second preference votes. In this case, 13 500 of those who gave Kali their first preference gave their second preference to Stefan. The other 500 of Kali's second-preference votes were split between Jane and Quentin as shown. This distribution of second-preference votes was enough to give Stefan an absolute majority. If there had been no clear winner after Kali's second-preference votes had been distributed, Quentin's votes would have been distributed in the same way — and so on until there was a clear winner.

Counting the Senate votes

The proportional representation system used in the Senate is far more complex because it has to elect six senators from each state. Each state operates as one electorate for this purpose. You will notice that candidates on the Senate ballot paper are grouped according to the parties they represent. This is based on the expectation that most voters will support a party rather than individual senators in the election. If a voter votes below the line, he or she will usually give first preference to the first candidate in a group, second preference to the second candidate listed in that group and so on to the end of that group before moving to the next group.

If a voter votes above the line for a particular party, the vote is interpreted as giving the voting preferences in exactly the same way. This means that the first candidate gets all the first-preference votes for that party, while the other candidates only get second- or third-preference votes. In a preferential system like that used in the lower house, this would be a problem because a candidate needs to have a certain number of first-preference votes to stay in the count. The Senate vote-counting system is quite different, however, so this is not an issue.

To be elected to the Senate, a candidate has to achieve a **quota** of votes. If a candidate gains more first-preference votes than is required to meet the quota, those surplus votes are distributed to the candidates who have gained second preferences in the votes for the candidate who won on first preferences. Usually that will be the candidate in the same group on the ballot paper whose name appears immediately below the candidate who won on first preferences. If the first candidate within a group gains more than two quotas worth of votes, the second person within that group will usually also be elected even though they might not have received any first-preference votes. To be elected, a candidate has to achieve a whole quota — either in first-preference votes or in the surplus passed on because of second preferences.

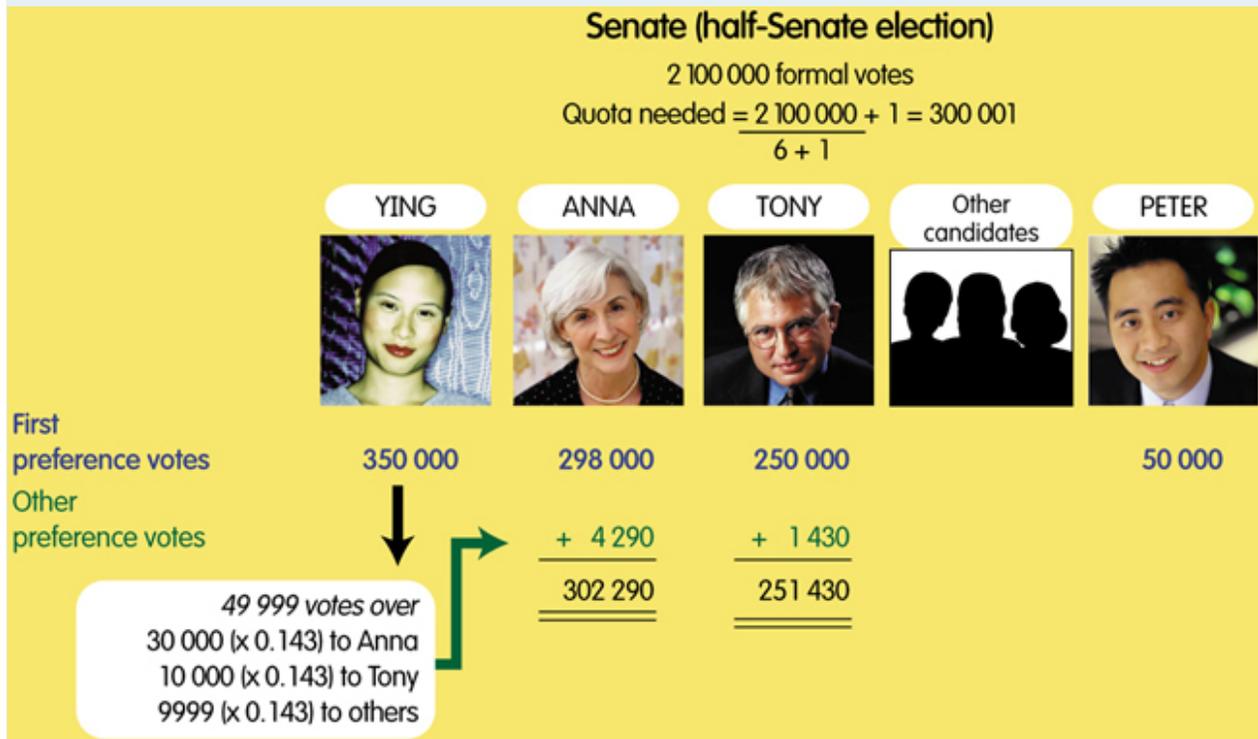
If a candidate requires a quota of 300 001 and gains 350 000 first-preference votes, he or she effectively has a second quota to pass on. Because it is not possible to guarantee that all voters will have given their second preference to the second candidate in the group, we cannot just choose any votes to pass on. Instead, we pass on a proportion of all votes — known as the transfer value — representing the ratio of surplus votes to the total number of votes received by the first candidate. This means that we divide the surplus above the quota by the total number of first-preference votes received by the first candidate.

Look at the example in [figure 5](#). A quota is calculated by dividing the number of formal votes by the number of vacancies plus one, and then adding one to the result. In Australian senate elections, this usually means dividing the number of formal votes by seven before adding one to the result. In [figure 5](#), Ying gets a quota on first-preference votes. Her surplus votes are passed on to other candidates in the order in which second preferences appear on her ballot papers. This means that all the second preferences are passed on at the transfer value. This is calculated by dividing Ying's surplus votes (49 999) by the total of her first-preference votes (350 000). This gives a transfer value of 0.143.

Once these votes are distributed, Anna has a quota and 2290 surplus votes. These will be passed on at a transfer value calculated by dividing her surplus (2290) by her original first-preference total (298 000), which would give a value of 0.008.

Once all the surplus votes have been passed on, if there are not enough candidates with full quotas to fill all the vacancies, the candidate with the fewest first preferences (Peter) is excluded. His preference votes are passed on at full value to those candidates who have not gained a quota. This process continues until the required number have quotas, and all vacancies are filled.

FIGURE 5 Counting preferences in Senate seats



In recent Senate elections in most states, it has been fairly common for the major party candidates listed first in their group to receive two quotas, with some votes left over. As a result, the first two candidates standing for the ALP and for the Liberal–National coalition tend to fill the first four vacancies. It has also been common for the Greens, as the most popular of the minor parties, to have the first candidate in their group gain one quota in their own right. This provides the fifth of the six candidates required. Consequently, there are a number of candidates who have a portion of a quota but none with a whole quota. What happens to solve this issue?

Once all quotas have been allocated, the system becomes similar to that used in the House of Representatives vote counting. The candidate with the fewest first-preference votes is excluded, and his or her second preferences allocated to those other candidates who have not already gained a quota. This often means that the sixth successful candidate may not be known for some time after the election. It often happens that an independent, or a member of a very small party, can be elected to the sixth seat in some states.

ACTIVITIES

INVESTIGATING SENATE RESULTS

Using internet resources, investigate the Senate results in your home state or territory and answer the following:

1. How many quotas did the highest placed candidate receive?
2. How many major party candidates were elected from the passing on of surplus votes above a quota?
3. Name any independents or minor party candidates elected.
4. How many first-preference votes did these independents or minor party candidates receive?
5. What was the final party-by-party breakdown of the six successful candidates?

Resources



Explore more with these weblinks: Counting votes in the House of Representatives

Explore more with these weblinks: Counting votes in the Senate

1.5.3 Forming the federal government

The party that forms the government is the one that wins a majority of seats (electorates) in the House of Representatives. In most circumstances, enough votes will have been counted for this to be known on election night. However, this is not always the case. In the 2010 federal election, neither major party had a majority of seats in the lower house. Each won 72 seats, making a total of 144 out of the 150 seats in the House of Representatives. The remaining six seats were won by independents and representatives of minor parties.

It then became necessary for the leader of the Coalition, Tony Abbott, and the leader of the Labor Party, Julia Gillard, to negotiate with these six members to convince them to support his or her particular party. The Coalition or Labor had to gain the support of at least four of the six members to have a majority of votes in the lower house and therefore form government. It took 17 days from the date of the election before the necessary four members agreed to support one of the two parties. They chose the Labor Party, which was therefore returned to power with Julia Gillard retaining her position as prime minister.

An election will result in either the re-election of the existing government for another three-year term, or the defeat of the government and the election of the Opposition to form a new government. Since the end of World War II in 1945, there have been 28 federal elections held in Australia. On 21 of these occasions, the existing government has been returned. In only seven elections has there been a change of government.

If the party in government retains power, its leader remains as prime minister and his or her government continues as before. If the government is defeated, the leader of the Opposition prepares to take over as prime minister. The outgoing prime minister will usually visit the Governor-General to resign early in the week following election day. The newly elected prime minister then visits the Governor-General to be sworn in as prime minister.

Once counting is complete for all electorates and the result is finalised, government ministers will be appointed and will in turn be sworn into office by the Governor-General. From this point the new government takes control and has three years before having to face the voters again.

Resources



Explore more with these weblinks: [Swearing-in of a new prime minister](#)

1.6 The role of the prime minister and Cabinet

1.6.1 Responsibilities and decision making of the prime minister and Cabinet

FIGURE 1 Former prime minister Tony Abbott shakes the hand of Prince Philip. One of Mr Abbott's infamous 'captain's calls' was to award the Prince what many considered to be an underserved knighthood.



In 2015, Macquarie Dictionary announced that its Word of the Year was 'captain's call'. As well as being a cricketing term, it refers to a series of ill-fated decisions made by the then prime minister, Tony Abbott. On a number of occasions, Abbott went against the wishes of his Cabinet and made his own decision — a captain's call. The reintroduction of awarding knighthoods, a failed remodelling of Medicare and a controversial paid parental leave program were all examples of such decisions. Abbott's flawed decisions contributed to his eventual downfall and replacement by Malcolm Turnbull. They are also an important example of the complexity of decision making within governments.

Policy making in Australian politics

Once the government has been elected, it is charged with the responsibility of running the country. Part of this responsibility is the development and implementation of policy — the rules and regulations which become the laws by which all Australian citizens must live. The policy making process in Australian politics is complex. All members of parliament have a role to play in this process, although some individuals hold more influence than others.

Backbenchers

The House of Representatives is colloquially divided into backbenchers and frontbenchers. Traditionally young and inexperienced members of parliament, backbenchers occupy the back seats of the House of Representatives. They are involved in parliamentary debate, can serve on parliamentary committees and can suggest amendments to bills. Backbenchers can also suggest their own bills, which may or may not have the support of their party. Known as **private members' bills**, this form of policy is rare and these bills are often unsuccessful. The Commonwealth Electoral Bill 1924 (which introduced compulsory voting to Australia) and the Euthanasia Laws Bill 1996 (which outlawed euthanasia) are two notable exceptions.

FIGURE 2 The House of Representatives. Notice the long front bench where Cabinet members usually sit. The prime minister and leader of the Opposition sit on opposite sides of the large table in the middle of the chamber.



Frontbenchers and Cabinet

Members of parliament with an allocated **portfolio** are referred to as frontbenchers — because they occupy the front rows of the House of Representatives (see [figure 3](#) for a list of the key members of Cabinet).

Frontbenchers are usually more senior party members and so they can have a significant influence on policy decisions. Frontbenchers are also members of Cabinet, a council of senior members of parliament who are specifically chosen to assist the prime minister with policy decisions and other executive functions.

Interestingly, the Cabinet is not mentioned in the Constitution and each government is free to determine its specific functions. As a result, the sitting prime minister has a significant influence on how the Cabinet works. Furthermore, the prime minister is free to shuffle the roles of Cabinet members if he or she feels such a change is necessary.

A properly functioning Cabinet should direct government policy and make decisions regarding the most important national concerns. During the private and confidential meetings of Cabinet, issues and policies are discussed and votes conducted. Once a Cabinet vote has been cast, the final verdict must be supported by all members of Cabinet, regardless of personal opinion. This is known as Cabinet solidarity.

FIGURE 3 The key Cabinet members of the Turnbull government.

Name	Portfolio
Malcolm Turnbull	Prime minister
Barnaby Joyce	Deputy prime minister and minister for agriculture and water resources 
Scott Morrison	Treasurer 

Name	Portfolio
Julie Bishop	<p data-bbox="467 310 764 342">Minister for foreign affairs</p>  A photograph showing two hands, one in a dark suit sleeve and one in a white shirt sleeve, reaching towards each other over a wooden table. On the table are two small flag stands: one with the flag of China and one with the flag of Australia. The background is a bright, blurred indoor setting.
Marise Payne	<p data-bbox="467 793 699 825">Minister for defence</p>  A close-up photograph of a young man in a dark blue naval uniform with a white cap. He is saluting with his right hand. The background features the Union Jack and the Australian flag.
Peter Dutton	<p data-bbox="467 1308 992 1339">Minister for immigration and border protection</p>  A photograph of a customs and border protection checkpoint. In the foreground, there are stanchions with a black banner that reads "AND BORDER PROTECTION" and "CUSTOMS AND BORDER PROTECTION". In the background, there are service counters with a sign that says "cut insights well within sight." and several "EFT" signs.

Name	Portfolio
Josh Frydenberg	Minister for the environment and energy 
Nigel Scullion	Minister for Indigenous affairs 

The prime minister

As alluded to earlier, the final decision-making power in Australian politics is often left with the prime minister. Although the Governor-General can also make important decisions (mainly procedural in nature), the prime minister can develop his or her own policies, often in contrast to the views expressed by the prime minister's Cabinet members. Prime ministerial policies still need to follow the same pathways as regular bills, and in this way the power of the prime minister is kept in check.

Tony Abbott under fire from Cabinet colleagues over decision to grant knighthood to Prince Philip

By political editor Chris Uhlmann

Some of Prime Minister Tony Abbott's most senior colleagues are bewildered, angered and dismayed by his decision to award an Australian knighthood to Prince Philip.

Prince Philip and former Defence Force chief Angus Houston were named Australia's newest knights today, under an honours system reinstated by Mr Abbott last year.

Cabinet ministers have told the ABC the Prime Minister did not consult any of the leadership group before announcing the move.

Mr Abbott agreed it was a 'captain's call', saying he consulted only with Governor General Sir Peter Cosgrove and Order of Australia chairman Sir Angus.

Ministers said they would have opposed the knighthood, if asked.

One described it as a 'stupid' decision that would make the Government an object of ridicule.

Another said the Prime Minister's colleagues were willing him to succeed, but he had started the year badly and had made the job of trying to lift the Coalition's electoral credibility just that much harder.

'There is an old saying that when you are in a hole you should stop digging,' one minister said.

'Well, we've just punched through the Earth's crust.'

Another Coalition MP said the move reinforced the left-wing caricature of the Prime Minister: the appointment harked to Australia's past and the opportunity of making a positive statement about the future on the national day had been squandered.

The private anger of Coalition MPs and ministers was given public voice by the conservative chief minister of the northern territory, Adam Giles.

He said that when he read reports of the Prince's knighthood this morning he wondered if he had woken on April Fools' Day.

'It's Australia Day,' he said. 'We're not a bunch of tossers, let's get it right.'

The move to award an Australian knighthood to the Queen's husband has also been criticised by republicans, with former Western Australia premier Geoff Gallop calling it a 'sad reflection' on Australia.

And it drew fire on social media from commentators including Canberra press gallery veteran Laurie Oakes, who tweeted: 'Libs must wonder who can help a PM apparently determined to be seen as a joke. #jokeknighthood'.

Answering questions about the decision at an Australia Day event in Canberra today, Mr Abbott said he was 'really pleased' the Queen had accepted his recommendations on the knighthoods and added that whilst the Duke had not called to say thank you for the honour, he did not 'expect gratitude'.

And he said social media criticism of the move was akin to 'electronic graffiti'.

'I think that in the media, you make a big mistake to pay too much attention to social media. You wouldn't report what's sprayed up on the walls of buildings and look, as I said, social media has its place, but it's anonymous,' he told reporters.

'It's often very abusive and in a sense, it has about as much authority and credibility as graffiti that happens to be put forward by means of IT.'

Mr Abbott said he stood by the decision to award the knighthood to 93-year-old Prince Philip because 'the monarchy has been an important part of Australia's life since 1788'.

'Prince Philip has been a great servant of Australia, he's been a great servant of all the countries of the Commonwealth.

'Here in this country he's the patron of hundreds of organisations. He's the inspiration and wellspring of the Duke of Edinburgh's Awards which have provided leadership training for tens if not hundreds of thousands of Australians over the years.

'I'm just really pleased that in his 90s, towards the end of a life of service and duty, we in this country are able to properly acknowledge what he's done for us.'

Asked how widely he had consulted before making the decision, Mr Abbott said: 'As you would expect, I consulted with the Chairman of the Order of Australia, and I consulted with the Governor-General. That's what you would expect.'

Asked if Prince Philip was a 'captain's pick' for the award, Mr Abbott said 'I'm not going to dispute your characterisation' before calling for questions on other topics.

Shorten says award for British royal 'a time warp'

Opposition Leader Bill Shorten, who yesterday called for a renewed debate on Australia becoming a republic, said giving a knighthood to an English royal on Australia Day was outside the mainstream of Australian thinking.

'It's a time warp where we're giving knighthoods to English royalty,' Mr Shorten told Fairfax Radio.

'On Australia Day, we're talking about Australia, Australian identity, the Government's managed to find a British royal to give a medal to, a knighthood to.'

He said that if Labor won office it would not continue the tradition of knights or dames.

'When we look at Australia in the 21st century, it's about who we're going to be as a people and I just think giving out a top award to a British royal is anachronistic.'

Prince has 'long relationship with Australia'

Earlier the head of Australians for Constitutional Monarchy, Professor David Flint, said the knighthood was an appropriate recognition for Prince Philip's 'long relationship with Australia'.

'He was a sailor in the convoys that protected Australian troops being taken to the Middle East in the Second World War,' Professor Flint said.

'He was also in the Pacific Fleet and he was actually in Tokyo Bay at the time the Japanese surrendered.

'He opened the '56 Olympics, he's got a very long relationship through the Duke of Edinburgh Awards scheme.'

But Mr Gallop said Mr Abbott's decision to start awarding Australian knighthoods had 'heavily polluted' the Australian honours system.

'As we try to reflect upon our nation ... one of Australia's highest honours goes to someone who's not part of our community,' he said.

'In effect this is the eccentricity of Tony Abbott's views on our constitution coming through.

'It certainly doesn't reflect the view of the Australian people through a meritocratic process.'

Famed for his off-the-cuff quips and gaffes, Prince Philip, who married Queen Elizabeth in 1947, is the longest serving royal consort in British history.

The Queen once described him as 'my strength and stay all these years'.

But the duke, a constant presence by his wife's side throughout her six decades on the throne, has suffered a series of health scares in recent years.

Source: ABC News, 26 January 2015.

ACTIVITIES

PRINCE PHILIP'S KNIGHTHOOD

After reading the article above about former Prime Minister Abbott's decision to award Prince Philip a knighthood, answer the following questions in small groups.

1. Why do you think Mr Abbott awarded the knighthood?
2. Do you believe this decision was justified?
3. Why did Mr Abbott's decision have such a significant impact?

1.6.2 Shaping Australian policy and law

Setting the policy agenda

Winning an election gives a government the right and responsibility to set the policy agenda for Australia. This is known as a mandate. Governments are free to decide on which areas they will focus their policy decisions. While all government responsibilities must be carefully administered and regulated, individual prime ministers and their parties may choose to focus on particular aspects. For example, former Labor prime minister Kevin Rudd oversaw reforms to schools and universities in what he referred to as the 'education revolution'. Other governments have focused on immigration and border protection, health care and changes to taxation law. Pressure groups and members of the public can also help set the policy agenda by attempting to influence their local members and other politicians. When successful, this influence can both contribute to the development of new policy and result in the amendment or even complete withdrawal of other policy decisions.

FIGURE 4 Former prime minister Kevin Rudd and his then deputy, Julia Gillard, promoting the 'education revolution'



Parliamentary debate

Although the exact function of both houses of the Australian parliament differ, their general purpose remains the same — to debate issues of national significance and the laws proposed to deal with these issues. Within the walls of parliament, our elected representatives debate the merit of proposed legislation. Members of the ruling party, the Opposition and members of minor parties all participate in these discussions. Question Time is a designated part of the parliamentary schedule during which all members of parliament (MPs) can pose questions to other members and ministers. Members of the Opposition are free to question the government but often MPs ask members of their own party questions instead. Designed to provide an opportunity for ministers to promote their opinions or policies, these questions are known as Dorothy Dixers.

Through these questions and debates, government decisions are scrutinised and the power of the ruling party is closely monitored. The role of the Opposition party, and the leader of the Opposition in particular, is crucial as this person or party has the most opportunity to ensure the accountability of the prime minister and Cabinet. This includes maintaining a close watch on the spending of public money and the administrative actions of the government.

FIGURE 5 The prime minister, Malcolm Turnbull, has to explain the policies and decisions of his government.



1.7 SkillBuilder: Creating and analysing a table

1.7.1 Tell me

What is a table?

A table is a way of displaying information, or data, in an organised way. The data (text or numbers) is arranged in columns (reading down) and rows (reading across). The table is sometimes called a grid. This is because rows and columns are separated by lines to form a grid.

Why are tables useful?

- Tables provide a lot of information in a small amount of space.
- They are a very good way of arranging data so that it can be easily understood.
- The column and row headings help tell you what the data is about.
- Graphs can be created from the data in the table.
- The information in a table can be used to help people make decisions.

1.7.2 Show me

You are given a set of figures that provide details of the number of House of Representatives seats in 1901 compared with today, and the state-by-state population for 1901 and 2011 (the latest census information available). You will be required to analyse and interpret this data, so you will need to create a table to assist you.

In 1901, the first Australian parliament had 26 members from NSW, 23 from Victoria, 9 from Queensland, 7 from South Australia, and 5 each from Western Australia and Tasmania. The population breakdown of the states in 1901 was as follows: NSW had 1.35 million people, Victoria had 1.2 million, Queensland had 498 000, South Australia had 36 000, Western Australia had 184 000 and Tasmania had 172 000. In 1901, the Northern Territory was included in South Australia, and the ACT in New South Wales.

Today, the breakdown of seats in the federal lower house is NSW 49, Victoria 37, Queensland 29, Western Australia 15, South Australia 11, Tasmania 5, and the two territories 2 each. Australian population in 2011 was: NSW had 7.21 million, Victoria had 5.53 million, Queensland had 4.47 million, Western Australia had 2.35 million, South Australia had 1.64 million, Tasmania had 511 200, Northern Territory had 231 300 and the ACT had 367 800.

This data can be summarised in a table by placing the dates, population and number of seats along the top as column headings, with the names of the states as labels for the rows. This would create something similar to [table 1](#).

TABLE 1 Comparison of population and House of Representatives seats, 1901 and 2011

	1901		2011	
	Population	Seats	Population	Seats
NSW	1 350 000	26	7 210 000	49
Victoria	1 200 000	23	5 530 000	37
Queensland	498 000	9	4 470 000	29
South Australia	363 000	7	1 640 000	11
Western Australia	184 000	5	2 350 000	15
Tasmania	172 000	5	511 200	5
Northern Territory			231 300	2
ACT			367 800	2
Total	3 767 000	75	22 310 300	150

The following questions require an analysis and interpretation of the data:

1. As the total number of seats in the lower house has doubled since 1901, why hasn't the number of seats in each state simply doubled?
2. Compare New South Wales' proportion of the total population in 1901 with that in 2011. Has the state maintained, increased or decreased its share of the seats in the House of Representatives? Give reasons for your answer.
3. Which state has experienced the greatest increase in its share of the number of seats since 1901? Why has this occurred?
4. The number of seats in Tasmania has not increased despite an increase in population. Why is this?
5. Which state has the largest average population per electorate? Which state has the smallest average population per electorate?

Once you have answered these five questions, compare your answers with those in the **Analysing and interpreting data** worksheet in your Resources section.

on Resources



Complete this digital doc: [Analysing and interpreting data](#)

Searchlight ID: [doc-14635](#)

1.7.3 Let me do it

Draw up a table using the following data:

In 2010 in the House of Representatives, Labor won 72 seats, the Liberal–National coalition won 72 seats, the Greens won one seat, a National Party member from Western Australia won one seat, and independents won four seats.

In the 2013 election, Labor won 55 seats, the Coalition won 90 seats, and the Greens retained their one seat. Two new parties, Palmer United Party and Katter’s Australian Party, each won a seat in Queensland, and two independents were also elected.

ACTIVITIES

ANALYSING YOUR DATA

1. Create a table to present the data.
2. Answer the following questions in relation to your table:
 - a. Under the principle of majority rule, what did each of the major parties have to do to try and form government in 2010?
 - b. How many seats did the Coalition gain in the 2013 election compared with the 2010 election?
 - c. How many seats did the Labor Party lose in the 2013 election?
 - d. What is the size of the majority won by the Liberal–National coalition in 2013?
 - e. If the independents and minor parties retain their seats in the 2016 election, how many seats would the Labor Party have to win from the Coalition to form government?
 - f. How many seats could the Coalition afford to lose in the 2016 election and still retain government, assuming the independents and minor parties retain their current seats?

1.8 Review

1.8.1 Summary

Australia is governed by a system of parliamentary democracy in which government is formed by members of the political party that holds the majority of seats in the House of Representatives. Senior members of that party perform the functions of government by taking roles as government ministers. Each minister assumes responsibility for a particular area of government, and is also responsible for ensuring that government policies and promises are put into action. The power of the voters to choose a government is influenced by the following factors:

- Political parties — groups of people with similar opinions and values. Parties compete with each other at election time, each hoping to win enough seats in parliament to form government.
- The Australian electoral system — based on the principles of universal adult suffrage, secret ballot, compulsory voting, regular elections, and preferential and proportional voting systems based on single member and multimember electorates.
- The media — between elections, and particularly at election time, parties and their supporters use every available form of media to attempt to influence voters to support them.
- Our systems of voting — designed to reflect the will of the voters. This happens through preferential voting, which ensures that the candidate who is preferred by the majority of voters is likely to be elected. Proportional representation is also designed to return candidates who have the greatest support from the greatest number of voters.
- The prime minister and Cabinet have an important role to play in developing policies and making decisions on behalf of Australians. Different areas are divided into portfolios which are managed by frontbenchers, who are senior members of parliament.

ACTIVITIES

SENATE VOTING

Consider the following facts in relation to a particular Senate election:

- As usual, there are six vacancies to be filled.
- The number of formal votes cast is 1.4 million.
- Each party group has four candidates.
- About 95 per cent of voters vote above the line.
- The first placed Labor candidate receives 430 000 first-preference votes.
- The first placed Liberal–National coalition candidate receives 560 000 first-preference votes.
- The first placed Greens candidate receives 220 000 first-preference votes.
- The first placed Palmer United Party candidate receives 100 000 first-preference votes.
- Nine other groups/candidates receive between 2000 and 15 000 first-preference votes each.

Answer the following:

1. Explain whether or not the Greens candidate would be elected and why.
2. Which candidate, from which party, would be the most likely to be elected to fill the sixth place?
3. Explain what might have to happen for that candidate to be successful.

Resources



Try out this interactivity: [Choosing a government crossword](#)

Searchlight ID: [int-5435](#)

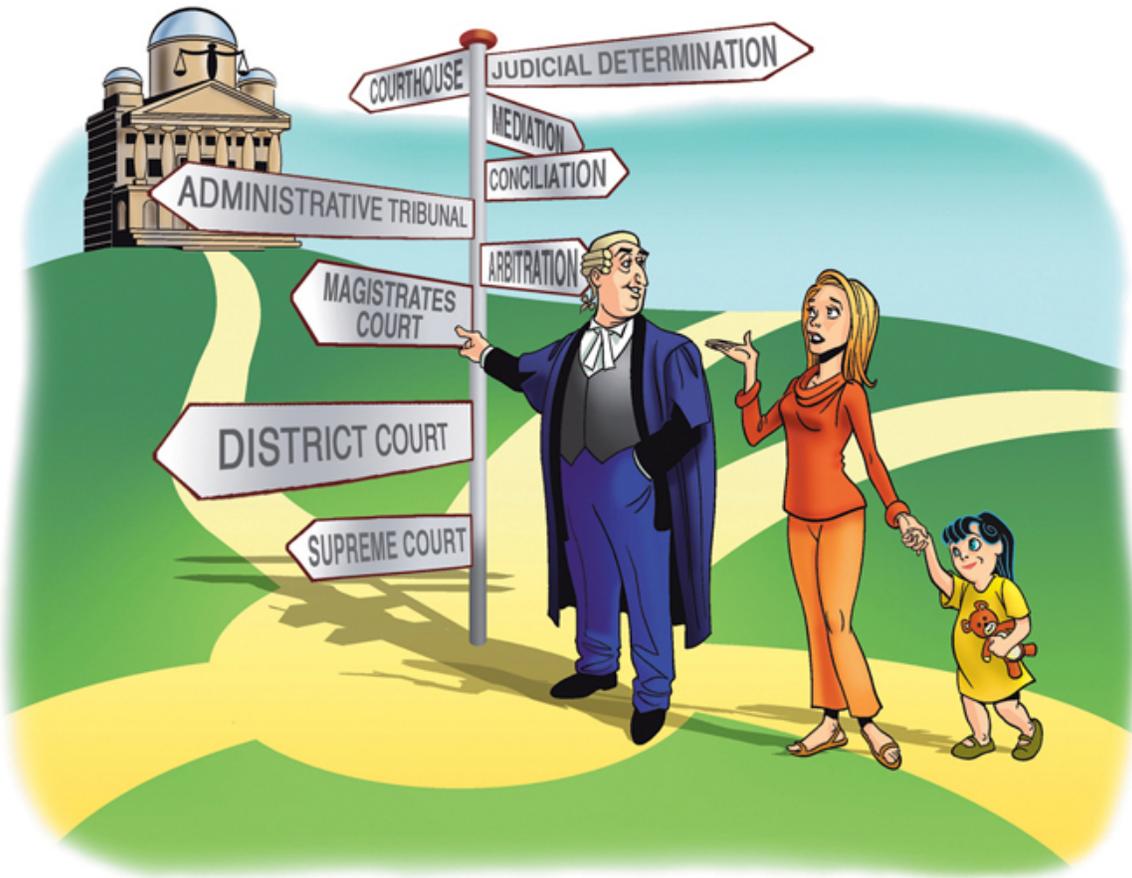
Chapter 2: Our court system

Contents

- 2.1 Overview
- 2.2 The court hierarchy
- 2.3 The roles of particular courts
- 2.4 Different courts, different jurisdictions
- 2.5 How the courts make laws
- 2.6 SkillBuilder: Problem solving and decision making
- 2.7 Review

Note to students and teachers: This PDF has been provided as an offline solution for times when you do not have internet access or are experiencing connectivity issues. It is not intended to replace your eBook and its suite of resources. While we have tried our best to replicate the online experience offline, this document may not meet Jacaranda's high standards for printed material. Please always refer to your eBook for the full and latest version of this title.

2 Our court system

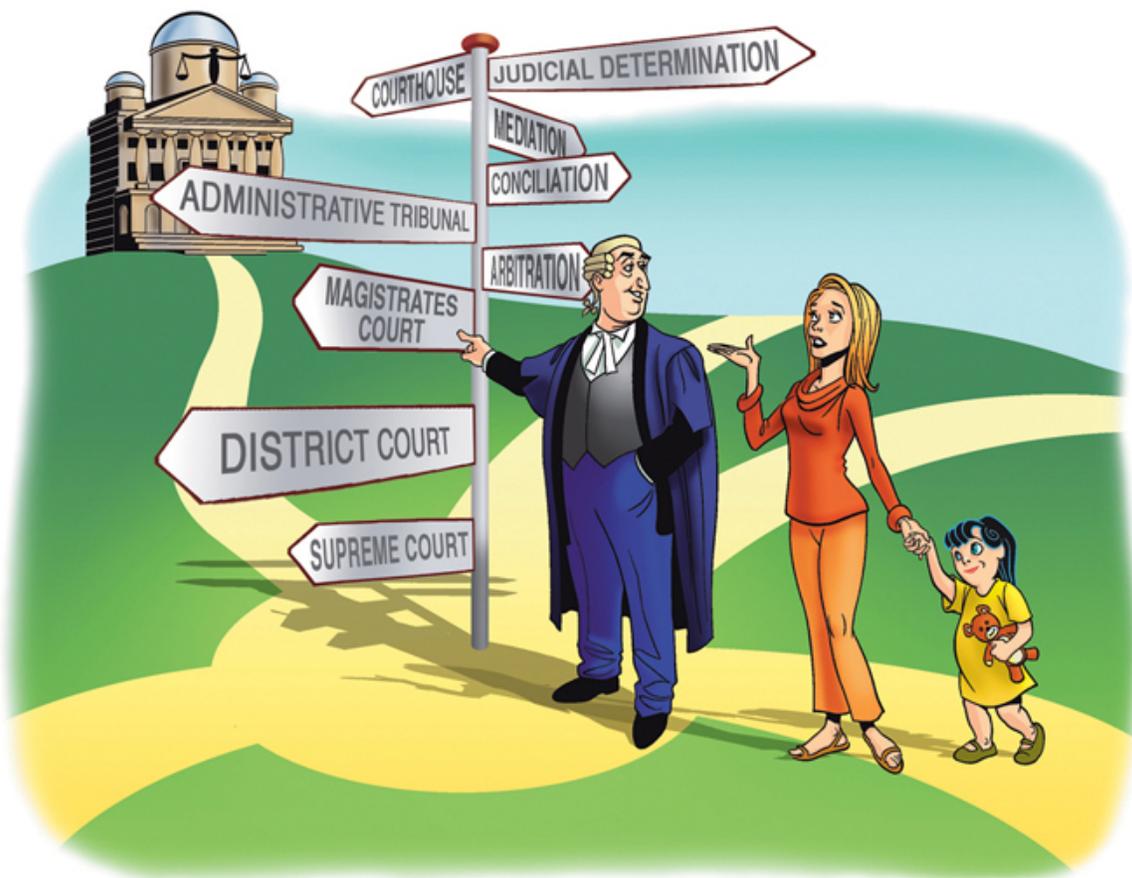


2.1 Overview

2.1.1 How does Australia's court system work?

Every day in the media we hear about people being involved in cases before the courts. The evening TV news regularly carries reports of high-profile murder cases, with stories of drama in the courtroom and damaging testimony by witnesses and the anguished relatives of victims. Courtroom dramas have been a staple of television entertainment for many years, although many of these are American in origin and so do not reflect Australian courtroom practices. How does our court system work? Why do we have so many different courts? What different purposes does this variety of courts serve?

FIGURE 1 Let's take the mystery out of the court system.



Even if we never commit an offence, we could still find ourselves coming into contact with the court system. You never know when you might witness something that might become evidence in a court case. Even witnessing a motor accident may be relevant to a legal dispute over who was to blame for any damage caused. Anyone over 18 can be called to do jury duty and, because selection is entirely random, you could find yourself in this situation as an adult. Our court system is an important element of our democratic society, and we should all have a basic understanding of how it works.

on Resources



Watch this eLesson: [Going to court](#)

Searchlight ID: [eles-2362](#)

2.2 The court hierarchy

2.2.1 Levels of courts within the legal system

Our legal system is made up of many different courts, each with different powers and responsibilities. These courts are arranged in different levels, in order of their power and importance. This arrangement is known as a hierarchy. The higher courts, which hear the most serious matters, are at the top of the hierarchy; and the lower courts, which hear less serious matters, are at the bottom of the hierarchy.

2.2.2 Criminal cases and civil cases

Criminal law protects the community from the harmful actions of others. When a person commits a crime, the state **prosecutes** that person by having them taken before a court. Our courts operate under an **adversary system**. This means that two opposing sides present their arguments to an independent umpire — a **judge** or **magistrate**. The prosecuting side (the prosecution) is required to prove the guilt of the person accused of the crime. The accused person has a right to present his or her side of the argument (known as the defence). In criminal cases a person found to be guilty will be sentenced to receive a punishment, such as imprisonment or a fine.

FIGURE 1 What happens in criminal cases

In criminal cases

...the police prosecute

...and the courts impose a penalty on a guilty party.



Civil law deals with non-criminal disputes between individuals or groups. These can arise in matters related to business dealings, or when a person is harmed by the careless actions of another. Civil cases also operate under the adversarial system, with each side presenting their arguments before an independent judge or magistrate. The person making the complaint is known as the **plaintiff** and the person accused of doing the harm is known as the **defendant**. If the plaintiff is successful, the defendant can be required to provide compensation for the harm done.

FIGURE 2 What happens in civil cases

In civil cases

...the injured person sues

...and can receive compensation.



An area of law for which a court has responsibility is known as its **jurisdiction**. In criminal cases the higher courts have jurisdiction over the most serious crimes. In civil cases the higher courts have jurisdiction over matters that will affect many people, involve complex legal issues or large sums of money. Cases heard in higher courts will be much more expensive for the community as well as those bringing the action. If an individual is unhappy with the ruling in a lower court, he or she can apply to have the case heard in a higher court. This process is referred to as 'making an appeal against a court decision'.

FIGURE 3 The higher the court in the hierarchy, the more expensive it will be to bring the case.



2.2.3 The lower courts

Each state has its lower courts, known as the Local Court in New South Wales, the Magistrates' Court in Victoria and the Magistrates Court elsewhere. These magistrates courts are at the bottom of the hierarchy. There are usually a relatively large number of these courts in each state or territory because they hear more than 90 per cent of all cases that go to court. In New South Wales the Local Courts sit in over 20 different locations in Sydney, and close to 100 locations in country and regional centres. In Victoria there are ten magistrates courts in metropolitan Melbourne, and over 40 in regional towns and cities. Other states and territories have smaller numbers, relative to their population and the area of land they cover. The Federal Circuit Court of Australia is a lower court that deals with matters relating to laws passed by the federal parliament. It sits in all capital cities, as well as some major regional centres such as Townsville and Cairns in Queensland, Newcastle in New South Wales and Launceston in Tasmania.

FIGURE 4 The historic courthouse in Bendigo is one of over 40 courthouses used for magistrates court hearings throughout rural areas of Victoria.



2.2.4 Intermediate courts

Intermediate courts are usually known as District Courts, although in Victoria the courts operating at this level are called County Courts. In most states these courts hear more serious criminal cases such as armed robbery, serious drug-related offences and serious assaults, including sexual assaults. Murder-related cases are heard in the highest state court, the Supreme Court.

In criminal cases a case will be heard by a judge and a **jury** of 12 people. The jury is required to consider all the facts presented by the prosecution and the defence, and to decide whether the accused is guilty or not guilty. The judge will help the jury if there are complex legal issues to be decided. If the jury decides that the accused is guilty, the judge will determine the appropriate punishment.

Intermediate courts usually have jurisdiction over a wide range of civil disputes, including claims made for workplace and motor vehicle injury, and disputes involving business dealings. A jury is usually not required in a civil case unless either the plaintiff or the defendant requests one. When juries are used they usually consist of between four and seven jurors, depending on the individual state requirements. In some states there is an upper limit on the amount of money involved in cases that can be heard in an intermediate court. Cases involving larger amounts than this limit need to go to the highest state court (the Supreme Court) to be heard.

Tasmania and the two mainland territories do not have an intermediate court as part of their court hierarchy.

Resources



Try out this interactivity: [A court with a judge and jury](#)

Searchlight ID: [int-5656](#)

2.2.5 Higher courts

The highest court in each state and territory is the Supreme Court. It hears the most serious criminal matters, as well as civil matters involving very large sums of money. In all states except South Australia, Supreme Courts are divided into a trial division and an appeal division. (See [section 2.3.2](#) for more detail on the role of the various state Supreme Courts.)

On a similar level to state Supreme Courts in the Australian court hierarchy are the Federal Court and the Family Court. (The role of the Family Court is discussed in [section 2.3.4](#).) The Federal Court of Australia has a largely civil jurisdiction, although it can hear criminal matters if they are part of Commonwealth law. As most criminal law is determined by state governments, most criminal cases are heard in state courts. The Federal Court can hear civil disputes involving large businesses that operate in a number of different states, disputes relating to federal consumer protection laws, disputes over customs or taxation issues, or **industrial relations** matters.

TABLE 1 Australian court hierarchies

Jurisdiction	Highest court in the hierarchy	Highest state or territory court	Intermediate state or territory court	Lowest court
Commonwealth	High Court of Australia	Federal Court Family Court		Federal Circuit Court
NSW		Supreme Court	District Court	Local Court
Victoria		Supreme Court	County Court	Magistrates' Court
Queensland		Supreme Court	District Court	Magistrates Court
South Australia		Supreme Court	District Court	Magistrates Court
Western Australia		Supreme Court	District Court	Magistrates Court
Tasmania		Supreme Court		Magistrates Court
ACT		Supreme Court		Magistrates Court
Northern Territory		Supreme Court		Magistrates Court

ACTIVITIES

INVESTIGATING A COURT CASE

Use internet resources to investigate the operation of the Federal Circuit Court and the Federal Court of Australia. For each court:

1. Identify and explain two areas of law where the court has jurisdiction.
2. Describe one recent case in each court, including:
 - Who was involved?
 - What were the main facts of the case?
 - What area of law was involved?
 - What was the result of the case?

2.2.6 High Court of Australia

The High Court of Australia is our highest court. It performs the following roles:

- It is the highest court of appeal from the state court system.
- It has the power to interpret the Australian Constitution. The court reads, interprets and applies the words of the Constitution in disputes when they arise.
- It resolves disputes between state governments, and between state governments and the Commonwealth Government.

FIGURE 5 The High Court of Australia in Canberra is at the peak of the court hierarchy.



2.3 The roles of particular courts

2.3.1 Jurisdiction

The efficiency of our legal system is helped by having different courts with different jurisdictions. This allows the judges and magistrates to specialise in particular areas of law, and to apply the law consistently across all cases. It also allows for serious matters to be given the time they need for a fair trial in the higher courts, while less serious cases can be dealt with more quickly and cheaply in lower courts. To illustrate these principles, we examine state Supreme Courts, state magistrates courts, and the federal Family Court.

2.3.2 Supreme Courts

Each of the six states and two mainland territories of Australia has a Supreme Court as its highest court. Each Supreme Court has two main types of jurisdiction: an **original jurisdiction** and an **appellate jurisdiction**. The way each Supreme Court is structured varies from state to state, but in each case the structure reflects these two roles.

Some state differences

Differences in Supreme Court structures between states can be summarised as follows:

- In Victoria, New South Wales, Queensland and Western Australia there is a clear separation between the original jurisdiction and the appellate jurisdiction. Some judges specialise in only hearing appeals, and other judges only hear original trials.
- In South Australia, Tasmania and the two mainland territories there is no such specialisation. Instead, all judges hear both original cases and appeal cases.

Original jurisdiction

The original jurisdiction of each state's Supreme Court is usually carried out by the trial division. It includes both criminal and civil law cases, and the court sits with only one judge. In criminal matters, there will also be a jury of 12 citizens who have to weigh up the facts and decide on the guilt or innocence of the accused. No jury is required if the accused pleads guilty to the charges, and the main role of the judge then is to listen to arguments from the prosecution and the defence relating to the severity of the punishment. Based on these arguments, the judge decides on the length of a prison term or other appropriate penalty.

FIGURE 1 Jury members in criminal trials have to carefully weigh up the evidence to decide whether or not the accused is guilty.



Usually the Supreme Court will deal with only the most serious crimes such as murder, attempted murder or **manslaughter**. In Tasmania and the two territories, where there is no intermediate court, the Supreme Court will also hear a broad range of criminal matters such as armed robbery, serious drug-related offences and serious assaults, including sexual assaults.

The Supreme Court in each state also hears only the most serious civil cases. This usually means cases involving disputes over very large sums of money. The actual amount will vary from state to state. For example, in New South Wales, Queensland and Western Australia all civil cases involving amounts greater than \$750 000 will generally be heard in the Supreme Court, with cases involving lesser amounts held in lower courts. Other states have different monetary levels for the civil jurisdiction of the Supreme Court, depending on how they divide up the jurisdiction with intermediate and lower courts.

FIGURE 2 Only civil disputes involving large sums of money are likely to be heard in the Supreme Court.



Appellate jurisdiction

As mentioned earlier, if either party is unhappy with a decision in a lower court, that party can make an appeal to a higher court. When there is a separation between the original and the appellate jurisdictions of the Supreme Court, these appeals are usually heard by the appeal division, or Court of Appeal. The Court of Appeal hears appeals from intermediate courts and from the trial division of the Supreme Court. When hearing an appeal the court usually sits with either three or five judges, depending on the seriousness of the case. In South Australia, Tasmania and the territories, where there is no separation between a trial division and an appeal division, appeals are heard by any three Supreme Court judges. Of course, the appeal judges must not include the judge who heard the case originally.

FIGURE 3 When the Supreme Court acts as the Court of Appeal, it usually sits with three or five judges.



2.3.3 Magistrates courts

In most states, up to 90 per cent of all cases are heard in a magistrates court (known in New South Wales as Local Courts). These courts have both criminal and civil jurisdiction.

Criminal jurisdiction

The criminal jurisdiction usually covers relatively minor offences, sometimes known as summary offences. These include driving offences; many cases of theft, such as shoplifting; assault cases where the victim has received relatively minor injuries; and public order cases, such as being drunk and disorderly in a public place.

Use the **Magistrates court procedures** weblink in your Resources section to watch a video of typical proceedings in a magistrates court.

Magistrates courts also perform some important roles in more serious criminal cases.

- Most cases heard before an intermediate court or the Supreme Court take time to prepare, and are expensive to run. Both the prosecution and the defence can take months to organise witnesses and other evidence in readiness for a fair trial. Before resources are dedicated to preparing all this material, it is useful to test whether or not the prosecution case is strong enough to be likely to convince a jury of the guilt of the accused.
- It is also important to find out in advance whether or not the accused is planning to plead guilty or not guilty.
- In our legal system an accused is presumed innocent until proven guilty. In many cases it would be inappropriate to hold an accused in custody for months awaiting a trial.

Magistrates courts carry out significant functions in relation to all these issues.

Bail and remand

When a person is charged with an offence that is serious enough to be heard by an intermediate court or the Supreme Court, a decision has to be made as to whether that person will be detained in custody or released into the community awaiting trial. Releasing an accused into the community is known as granting **bail**.

If the arresting police officers believe that releasing an accused on bail would create a danger to the community, a bail hearing will be held if the accused wishes to be released. This hearing will often be held in a magistrates court. Both sides will present their arguments to the magistrate, who will then decide whether or not to grant bail. If bail is granted, the magistrate may require that a **surety** be lodged with the court, and may also impose conditions on the accused. These can include a requirement that the accused regularly report to his or her local police station. If bail is not granted, the accused will be **remanded in custody** until the case goes to trial.

Committal hearings

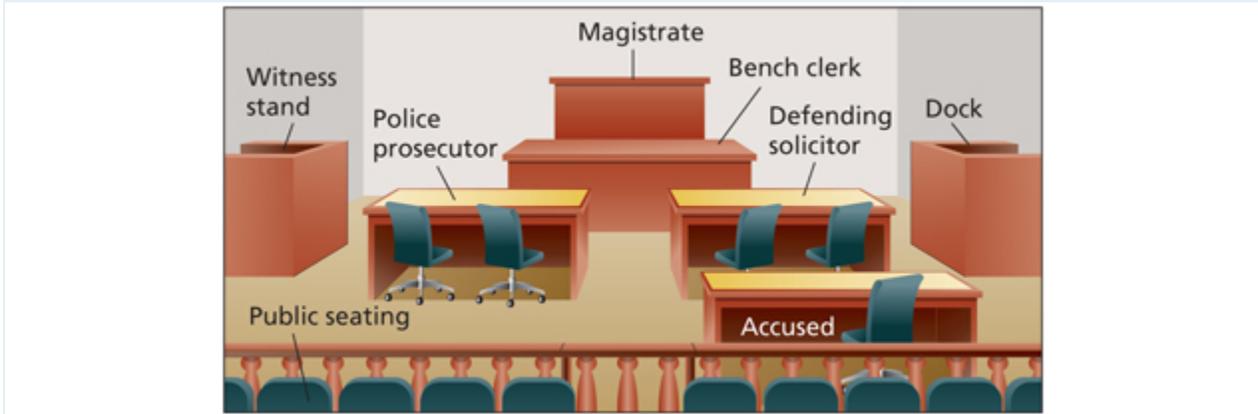
A committal hearing is a preliminary hearing held to determine whether or not the prosecution case is strong enough to justify a full jury trial in the Supreme Court or in the District or County Court. It also provides an opportunity for an accused to indicate whether he or she intends to plead guilty or not guilty. If the accused pleads guilty, he or she will be committed to stand trial in the Supreme Court or in the District or County Court.

If the accused pleads not guilty, the prosecution is required to present its evidence to a magistrate, and that evidence can be challenged by the defence. The magistrate does not have to decide whether or not the accused is guilty. Instead, the magistrate assesses whether the accused should be committed to stand trial before a judge and jury, or whether the charges should be dismissed because the evidence is insufficient for a trial. The committal hearing also gives the accused a chance to hear details of the prosecution case, possibly encouraging the accused to plead guilty to some or all of the charges. This can ultimately save time and resources when the case eventually goes to trial.

FIGURE 4 A person who is remanded in custody will be held in prison until his or her case comes to court.



FIGURE 5 Magistrates courts deal with minor offences and committal hearings.



Civil jurisdiction

Magistrates courts can hear a variety of civil matters. These are usually of a less serious nature than those matters heard by intermediate courts or the Supreme Court. The jurisdiction of the magistrates courts is limited to hearing cases where the amount of money involved does not exceed a prescribed amount, which varies by state and territory. For example, in New South Wales and Victoria these courts can only hear civil matters where there is less than \$100 000 involved. In Queensland the maximum amount is \$150 000, while in Tasmania it is \$50 000. Civil cases involving sums of money that exceed these maximums will be held in higher courts in the hierarchy such as the District or County Court, or the Supreme Court.

ACTIVITIES

CIVIL JURISDICTIONS

Use internet resources to find the civil jurisdictions of the lower, intermediate and Supreme Courts in your home state in terms of the amount of money involved in the case. Present your information in a table similar to this one:

Name of court	Maximum financial amount of civil jurisdiction



Explore more with these weblinks: Magistrates court procedures

2.3.4 Family Court of Australia

The Family Court is a federal court that handles disputes over divorce, parenting arrangements, child support, and property disputes following a relationship breakdown. This court was established in 1975 as a result of laws passed by the Commonwealth Parliament. It is on the same level in the court hierarchy as the state Supreme Courts.

The Family Court sits regularly in all capital cities, as well as major regional cities in each state. The exception is Western Australia, which has its own state-based Family Court. Relationship breakdown can be a very emotional experience for those involved, and particularly for children of the relationship. For this reason, the Family Court operates under a number of principles, including the following:

- The interests and welfare of children are always at the centre of any decisions made by the court, and they are given higher priority than the wishes or preferences of parents.
- The court is required to assume that it is in the child's best interests for both parents to have equally shared parenting responsibility for the child. This does not mean that the child must spend equal time with both parents, but there must be consultation between the parents on issues related to the child's welfare.
- The court encourages separating couples to reach agreement over as many issues as possible. This can include parenting plans and agreed division of property. Reaching agreement in this way can reduce the cost of going to court.
- If a couple is unable to reach agreement, the court will provide support and assistance in this process. The court can order the couple to attend **mediation** in an attempt to resolve some of the issues in dispute. At all stages the court attempts to solve issues without the need for an expensive court hearing.
- If the parties have reached agreement over some issues, they can apply to have this agreement approved by the court. This approval by the court is known as a **consent order**, and it means that the agreement can be legally enforced by both parties.

FIGURE 6 The Family Court encourages divorcing couples to engage in mediation in the hope of reaching agreement over as many issues as possible.



2.4 Different courts, different jurisdictions

2.4.1 Alternate methods

Going to court can be a very expensive experience, particularly if the legal matter has to be dealt with in a higher court. On many occasions, legal disputes can be solved through alternate methods. We have already seen how the Family Court makes use of mediation as a means of resolving issues before the parties attend a court hearing. There are many other ways in which the legal system makes use of special courts and tribunals, as well as specialised procedures, to deal with particular types of disputes. These can include disputes between consumers and businesses, disputes over human rights and issues of discrimination, and disputes over environmental issues.

2.4.2 Consumer law disputes

Consumers throughout Australia are protected from being exploited by unscrupulous or dishonest businesses by Australian consumer law. This law is enshrined in the *Competition and Consumer Act 2010*. It was passed by the Commonwealth Parliament and applies in all states and territories.

How does consumer law protect us?

Australian consumer law gives consumers the right to take legal action if they are the victims of certain types of behaviour by businesses selling them goods or services. In particular, consumers are protected from the following activities:

- false and misleading representations in relation to goods or services, including making claims about a product that the seller knows to be untrue
- bait advertising — when products are advertised at a certain price but only a small number are actually sold at that price — as a means of falsely luring customers to the seller's business
- businesses offering gifts or prizes to customers, and then not actually providing them
- referral selling — when a seller offers a special deal to a customer in return for that customer referring other customers to the business.

FIGURE 1 It is illegal to make claims that the seller knows to be untrue.



In addition, consumers have particular rights that are guaranteed in relation to the goods or products they buy. These include the following:

- A guarantee must be given in relation to the ownership of the goods. This means that a seller must have the legal right to sell the goods so that the buyer knows that he or she will become the legal owner once the goods have been paid for.
- Goods must be of an acceptable quality, free from defects, safe and durable.
- Goods must be fit for the purpose for which they would be expected to be used.
- Manufacturers must ensure that repairs and spare parts are available for a reasonable time after the goods are supplied.

FIGURE 2 Manufacturers must ensure that spare parts are available for a reasonable time after the goods are supplied.



What action can we take?

Enforcement of consumer rights is carried out in each state and territory by the Office of Fair Trading or the Consumer Affairs Office. If a consumer has a complaint against a supplier, the following process is generally recommended:

1. The consumer should attempt to sort out the problem directly with the seller, making it clear what the problem is and requesting that it be fixed. Receipts or other documents should be kept to support the claim.
2. If this fails, the consumer should write a formal letter of complaint to the business and keep a copy.
3. If direct contact with the business does not produce a result, the consumer can take his or her complaint to the relevant state or territory Office of Fair Trading or Consumer Affairs Office. These organisations will contact the business on the consumer's behalf and attempt to resolve the matter.
4. If the business still refuses to fix the problem, the consumer can take the matter to the state's Civil and Administrative Tribunal. Most states have these bodies, which operate like a court but are generally less formal and cheaper. A small fee usually has to be paid to lodge a claim with one of these tribunals, but there is no need to have legal representation. Tribunals will usually try to resolve the dispute through mediation, by bringing the parties together to reach agreement.
5. If the parties cannot resolve their differences, the tribunal can hold a hearing to decide the issue. This is less formal than a court hearing, but it has the power to make a decision that is legally binding on both parties.
6. If either party is dissatisfied with the decision of a tribunal, he or she can appeal to the state Supreme Court. Of course, this is much more expensive.

7. In some cases a supplier who breaches Australian consumer law may be guilty of a criminal offence, and can be prosecuted in a magistrates court. Each state's Office of Fair Trading or Consumer Affairs Office has the power to bring a criminal prosecution against a business or other supplier that has acted illegally under the provisions of the consumer law. On a number of occasions, retailers selling dangerous children's toys had the toys seized and were prosecuted. In South Australia a company claiming its plastic bags were biodegradable was fined when the bags were found to contain heavy metals.

FIGURE 3 The buyer should always attempt to sort out the problem directly with the seller before taking legal action.



2.4.3 Human rights disputes

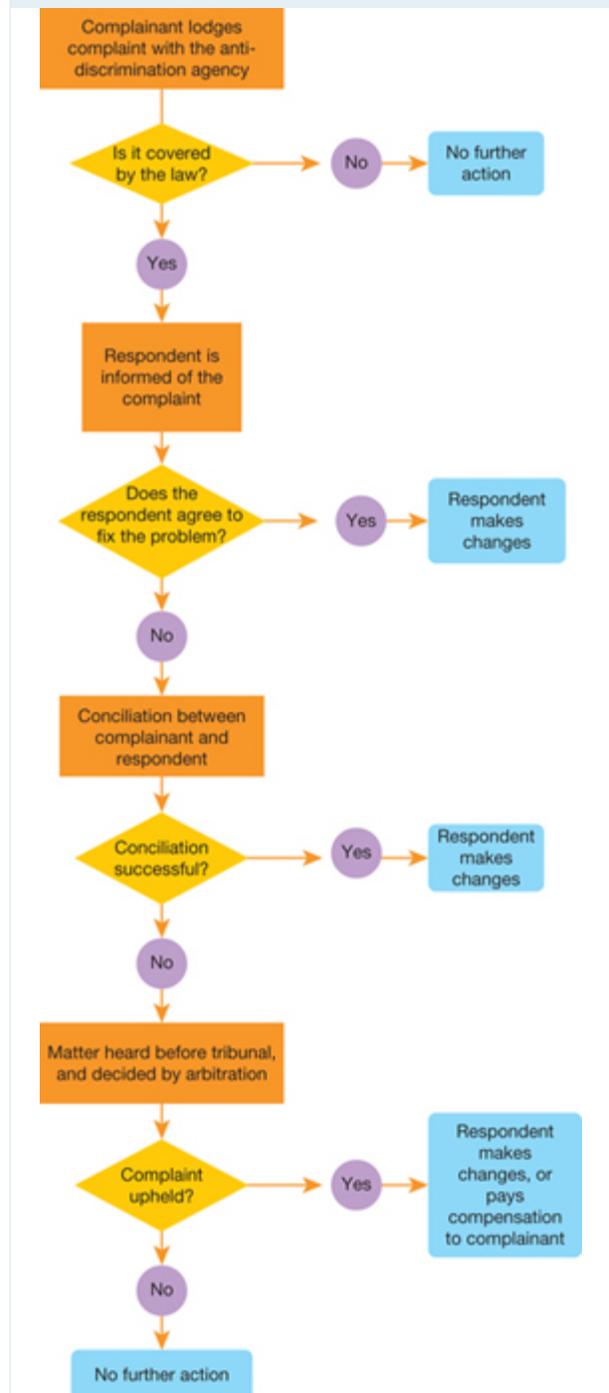
The federal and state governments in Australia have passed laws to protect our human rights. These include equal opportunity and anti-discrimination laws which make it illegal to discriminate against anyone based on characteristics such as their gender, racial or ethnic background, age, religion, marital status or sexual orientation. Each state and territory has its own anti-discrimination agency. These include organisations such as the Anti-Discrimination Board of New South Wales, the Victorian Equal Opportunity and Human Rights Commission, and the Equal Opportunity Commission of Western Australia. Each of these bodies has the dual role of educating the public about human rights and anti-discrimination issues, as well as dealing with complaints.

Dealing with complaints

Most states and territories have similar procedures for dealing with complaints of discrimination or other infringements of human rights. The following is typical of the processes followed:

1. A person who believes their rights have been infringed can lodge a complaint with their state anti-discrimination agency. This complaint must be in writing and can usually be lodged online, but it may also be necessary to provide evidence of the alleged discrimination. The person lodging the complaint is known as the complainant, and the individual or organisation complained about is known as the respondent.
2. Once a complaint has been lodged, representatives of the agency examine it to see whether it comes within the areas of discrimination covered by the relevant legislation. If it does not, they will contact the complainant to inform him or her that no further action will be taken.
3. If the agency believes that the complainant has been discriminated against, it will contact the respondent and provide a copy of the complaint. The respondent then has the opportunity to fix the problem and the issue is resolved.
4. If the respondent refuses to accept that the alleged discrimination has taken place, the anti-discrimination agency sets up a **conciliation** process. This process brings the two parties together with a conciliator in an attempt to resolve the matter. (Use the **Conciliation procedures** weblink in your Resources section to see how conciliation works in this typical Queensland example.)
5. If the matter cannot be resolved through conciliation, it may then be taken to the relevant state tribunal. This could be a broad civil and administrative tribunal such as NCAT (NSW), VCAT (Victoria), or QCAT (Queensland), or a specialised body such as the Tasmanian Anti-Discrimination Tribunal.

FIGURE 4 The dispute-resolution process in discrimination complaints or other infringements of human rights



6. Tribunals are similar to courts, but are less formal and less expensive. They have the power of **arbitration** over the dispute. This means that both sides can present their arguments to the tribunal, and the tribunal can make a legally binding order to resolve the issue.
7. If the complaint is successful, a tribunal can order the respondent to change its behaviour and refrain from continuing the discriminatory behaviour. It can also order the respondent to pay a sum of money in compensation to the complainant. If the discrimination was employment related, the tribunal can order a respondent to reinstate the complainant to a position from which he or she may have been dismissed. (Follow the **Tribunal procedures** weblink in your Resources section to watch a Queensland video explaining QCAT procedures.)

on Resources



Explore more with these weblinks: Conciliation procedures



Explore more with these weblinks: Tribunal procedures

2.4.4 Environmental law disputes

The Commonwealth, state and territory governments all have laws in place to protect the environment. These laws need to be enforced when an individual or organisation has carried out actions that could cause pollution or other damage to the environment. Action taken to enforce environmental laws will usually involve administrative action, civil action or criminal action.

Administrative action

Each state and territory government has an organisation set up to educate the public on environmental issues, to assist businesses in complying with environmental laws, and to investigate possible breaches of those laws. In all states and territories except Queensland this organisation is known as the Environment Protection Authority (EPA). In Queensland, the Department of Environment and Heritage Protection (EHP) carries out similar functions. Each organisation has the power to issue infringement notices or penalty notices to any individual, business or other organisation that it believes is doing something which could harm the environment. This type of notice usually requires the polluter to stop the action causing the pollution, and to clean up the land or waterway that has been affected. Failure to do so can then result in legal action being taken.

FIGURE 5 State environmental authorities can order businesses to stop any action that causes pollution.



Civil action

If an individual or organisation accused of causing pollution fails to take **remedial action** to fix an environmental problem, the EPA or EHP can begin legal action. In New South Wales, South Australia and Tasmania there are special courts or tribunals to deal with environmental disputes. For example, the Land and Environment Court of New South Wales is on the same level in the court hierarchy as the Supreme Court of that state. Other states deal with environmental disputes through their standard court system.

FIGURE 6 Some states have specialist courts to hear disputes over environmental issues.



Civil action against a polluter can be taken if the actions causing the pollution are a result of **negligence** or **recklessness**, rather than deliberate or intentional actions. A court can order an individual or organisation to clean up the pollution, or impose a financial penalty to pay for the appropriate authorities to carry out the clean-up. If the pollution results from the normal activities of a business, a court can stop the business from operating until it changes those activities.

Criminal action

Criminal action can be taken through the courts if there is evidence that an individual or business deliberately or intentionally caused the pollution. A successful criminal prosecution for intentionally causing environmental damage can lead to heavy fines or even imprisonment for the person responsible, whether as an individual or as a business owner.

2.5 How the courts make laws

2.5.1 Common law

We know that laws are made by parliaments at both the state and federal level, but did you know that the courts can also make laws? Australia's court system was adapted from the British legal system. One of the unique features of that system is the **common law**. The term 'common law' originally meant that the law was common to everyone. Whenever a dispute came before a court, the judge would look at the previous decisions that other judges had made in similar cases. Whenever possible, a judge would try to decide the dispute in the same way as the previous decision. If there was no previous decision, and no parliamentary law that was relevant, the judge could effectively create new law to apply to the case.

FIGURE 1 Judges can create new law if there is no existing law that applies to the case before them.



2.5.2 The doctrine of precedent

The key feature of our legal system that allows the courts to make laws is the doctrine of **precedent**. This means that when a judge is deciding a case, he or she will look at the legal principles applied in similar cases and be guided by the decision in those cases. The doctrine of precedent relies on the following set of principles:

- Cases that are similar in facts are decided in a similar manner to provide consistency within the legal system. The previous case provides a precedent for later cases.

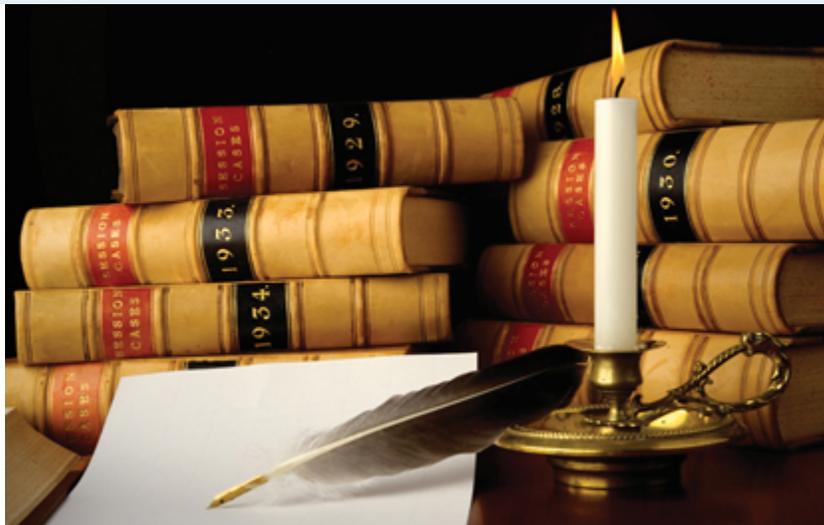
- A higher court in the hierarchy has the power to overrule a decision made in a lower court. This may happen because one of the parties to the original case has decided to appeal to the higher court.
- Details of decisions made by higher courts are written down and kept in law reports, which are readily available to all legal practitioners.
- Because parliament is the supreme law-making body, it has the power to overrule any law made by judges in the courts.
- When a new issue comes before a court, the judge has the power to create new law provided that it is not inconsistent with an existing precedent or with relevant legislation.

2.5.3 What makes a precedent?

Law reports contain details of cases that have been decided previously. Each case report contains the actual words written and spoken by the judge in delivering his or her decision. The judge will usually include a summary of the facts of the case, and the law that has been applied in reaching a decision. The outline of the law that has been applied is known as the *ratio decidendi*, which is a Latin term meaning ‘the reason for the decision’. Sometimes this will be a precedent from a previous case that the judge has found applies to the facts of the case being considered. Sometimes it will simply be the application of a relevant law passed by parliament.

On some occasions there will be no relevant precedent and no other law that applies to the facts before the judge. In these cases, the reason the judge gives for his or her decision becomes new law and creates a new precedent. It is this reason for the decision, or *ratio decidendi*, that becomes the binding precedent which must then be followed in later cases with the same or similar facts.

FIGURE 4 Law reports contain details of cases that have been decided previously.



Sometimes a judge will make other comments about the case. For example, a judge might suggest ways in which his or her decision could have been different if some of the facts had been different. These comments are known as *obiter dictum*, a Latin term that means ‘things said by the way’. Unlike the *ratio decidendi*, statements recognised as *obiter dictum* are not binding on judges in later cases. Nevertheless, if the *obiter dictum* has been delivered by a prominent judge in a higher court, judges in lower courts may gain some guidance from these statements if they can be applied to the facts before them.

on Resources



Watch this eLesson: [The ability of the courts to make law](#)

Searchlight ID: [eles-2380](#)

2.5.4 Duty of care — case studies in the application of precedent

We can illustrate how the doctrine of precedent works by examining a series of cases decided in English courts during the late nineteenth and early twentieth centuries. These cases all dealt with questions of people supplying products to other people, and the degree to which the supplier was responsible for the safety of the products supplied. Before these cases, it was generally accepted that a supplier was responsible only to the person with whom he or she had a direct contractual relationship. This meant that the seller owed a **duty of care** only to the person who actually bought the products.

George v. Skivington (1869)

In this case a husband bought some hair shampoo from a chemist, who had made the mixture himself. When he bought the shampoo, the husband made it clear that he was buying it for his wife. When she used it, the woman suffered skin irritation and hair loss, so the husband sued the chemist. Lawyers for the chemist argued that because his contractual relationship was with the husband who had bought the shampoo, and not with the wife, the chemist had no duty of care towards the wife. The judge did not accept this argument, and stated that the chemist owed a duty of care to the ultimate user of the shampoo. Because the husband made it clear that the shampoo was for his wife, the legal relationship that existed between the chemist and the husband should be extended to include the wife, and the chemist owed her a duty of care.

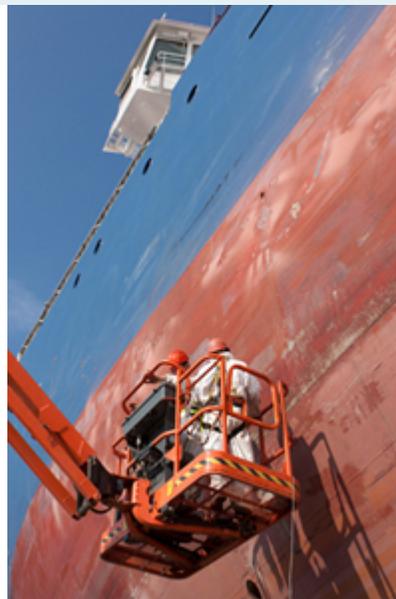
FIGURE 5 When you use shampoo today you are protected by the law — even if someone else bought the shampoo for you.



Heaven v. Pender (1883)

In this case Gray had a contract to paint a ship. The ship was moored in Pender's dock, and Pender provided a platform to be hung over the side of the ship to assist with this task. The plaintiff, Heaven, was employed by Gray to carry out the painting, but while he was doing so the ropes holding the platform broke, leading to Heaven being injured. The court found similarities with *George v. Skivington* in that while no direct contract existed between Pender and Heaven, Pender had a duty to any person who might be required to use the platform. The court held that whenever one person supplies goods or machinery to be used by another person, and there is the likelihood of injury to the person to whom the thing is supplied, there is a duty of care to use ordinary skill and care in relation to the condition or manner of supply. One judge, Brett, went further in *obiter dictum* by suggesting that:

FIGURE 6 The dock owner who supplied the platform was found to have a duty of care to the workman painting the ship.



“ whenever one person is by circumstances placed in such a position in regard to another ... that if he did not use ordinary care and skill in his own conduct with regard to those circumstances, he would cause danger or injury to the person or property of the other, a duty arises to use ordinary care and skill to avoid such danger.

Donoghue v. Stevenson (1932)

A friend bought May Donoghue a bottle of ginger beer. The drink was in an opaque bottle, so it was not possible to see the contents. Donoghue drank some of the ginger beer, but when the last of the bottle was poured into a glass, the remains of a decomposed snail came out into the glass. Donoghue suffered from illness and shock as a result of drinking the ginger beer, and sued the manufacturer of the ginger beer, Stevenson. There was no direct contractual relationship in this case because it was Donoghue's friend who had actually bought the drink, and had bought it not directly from Stevenson but from a café supplied by Stevenson. The case was eventually decided in favour of Donoghue. The leading judgement was delivered by Lord Atkin, and it is the following words within his judgement that are accepted as the *ratio decidendi* of the case and therefore constitute the precedent that has become law:

“ a manufacturer of products, which he sells in such a form as to show that he intends them to reach the ultimate consumer in the form in which they left him with no reasonable possibility of intermediate examination, and with knowledge that the absence of reasonable care in the preparation or putting up of products will result in an injury to the consumer's life or property, owes a duty to the consumer to take that reasonable care.

These words are very similar to the *obiter dictum* in *Heaven v. Pender*. Lord Atkin made it clear that he believed the comments by Brett in that case were a good basis for future law, so he adopted the same principle as his *ratio decidendi* in the case before him. This effectively created new law.

FIGURE 7 When May Donoghue found a decomposed snail in her bottle of ginger beer, she sued the manufacturer.



Grant v. Australian Knitting Mills (1936)

Dr Grant purchased a pair of underpants manufactured by Australian Knitting Mills. During the manufacturing process a chemical was left in the fabric, and Grant suffered from severe dermatitis as a result of wearing the underpants. He sued the company, and the court found in his favour. The principles of the case of *Donoghue v. Stevenson* were applied, even though the snail in the bottle case was an English case and Grant's case was heard in the Australian court hierarchy. Judges in the Australian court system felt the English precedent was a fair and just law, so it became part of Australian common law.

The law of negligence

The area of law created by the cases just discussed is known as the law of negligence. Negligence is said to occur when a person owes a duty of care to another, but does not act in such a way as to ensure the safety of that person. It is now accepted that suppliers of all goods owe a duty of care to anyone who uses those goods, whether they were the actual buyer or not.

DISCUSS

'Judges have used common law processes to bring greater fairness to the law by adapting previous decisions to suit the new facts before them.'

1. Suggest an argument to support this case and then a counterargument to represent an opposing viewpoint.
2. Which viewpoint do you support? Give reasons. [Critical and Creative Thinking Capability]

2.6 SkillBuilder: Problem solving and decision making

2.6.1 Tell me

Problem solving and decision making involve working collaboratively in groups, negotiating and using teamwork to solve an issue and develop a plan for action. In order to do this successfully, you will need to do the following:

- Listen actively to the views of every member of the group.
- Display empathy for the views of others. This means that you have an appreciation for the feelings of others and respect their right to an opinion, even if it is different from your own.
- Negotiate to resolve differences of opinion.
- Arrive at a conclusion in a democratic manner. This can mean having a vote among members of the group, or arriving at a consensus where everyone agrees to change their views slightly until reaching a conclusion that everyone agrees with.

2.6.2 Show me

So how does this work in practice? Consider this issue: As we have seen, many types of disputes are resolved without going to court. Mediation and conciliation are recommended in Family Court disputes, anti-discrimination cases and consumer law cases. Is this a fair way of dealing with legal issues? What happens if one party feels intimidated in the mediation process? Might they give away more than they had intended? On the other hand, these processes are much cheaper and can save parties thousands of dollars in legal fees.

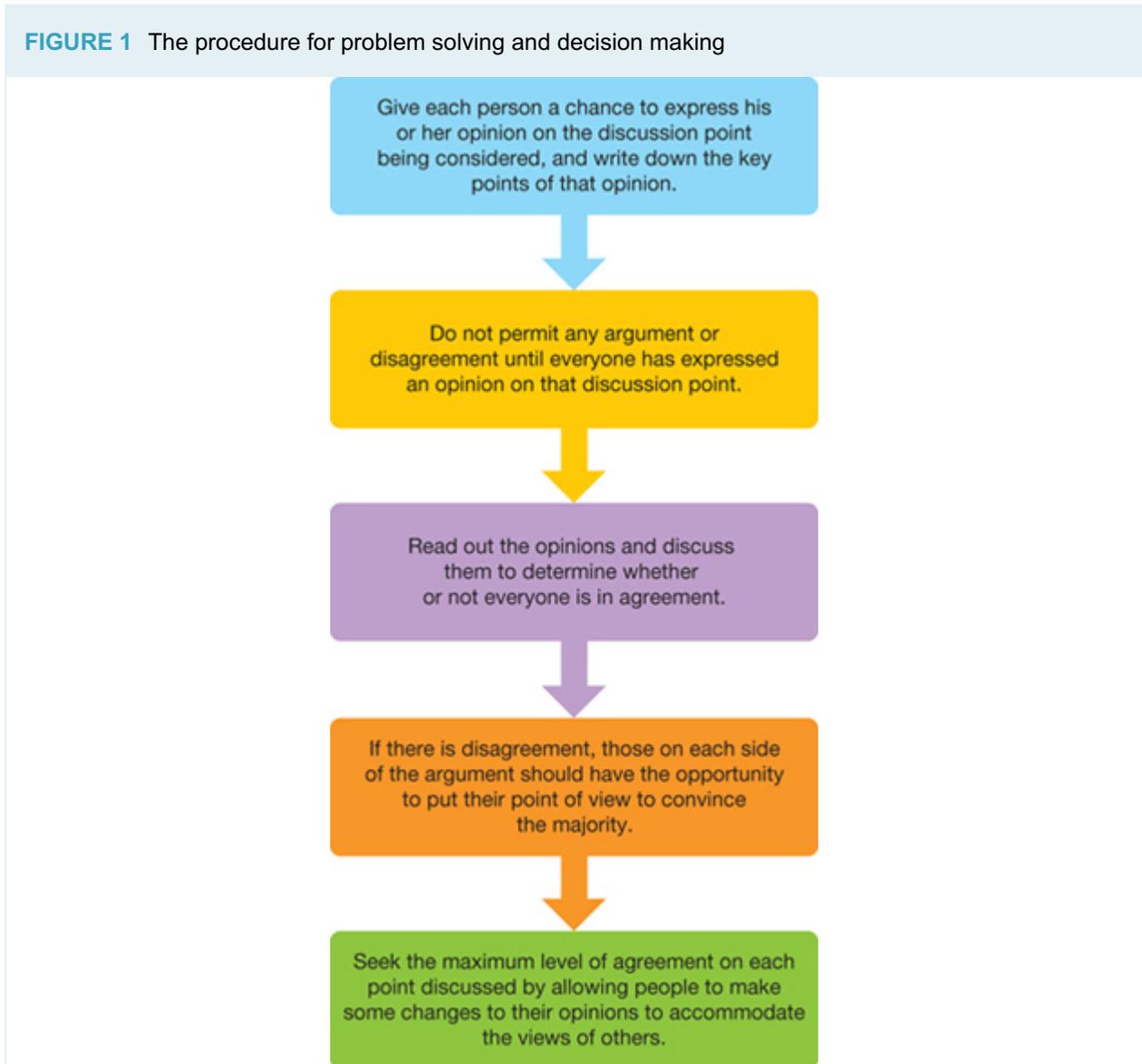
If you had to decide as a group whether or not these alternative measures are fair, or if it would be fairer to have these matters decided by an independent umpire such as a judge or magistrate, how might you reach a conclusion that was agreeable to all?

Form into discussion groups to consider the following key points:

1. What are the benefits and disadvantages of going through a process of mediation?
2. What are the benefits and disadvantages of conciliation?
3. What are the benefits and disadvantages of taking the matter to court?
4. Does the more active role of a conciliator make this process less open to manipulation by one of the parties than mediation?
5. Would it be fairer to have an independent person arbitrate on the matter?
6. Does the lower cost of the mediation or conciliation make up for the lack of an independent umpire?

These discussion points should be tackled within each group one at a time. Members of the group can take it in turns to keep notes. For each discussion point you should use the procedure illustrated in [figure 1](#).

FIGURE 1 The procedure for problem solving and decision making



DISCUSS

Reflect on your participation in the group discussion. How easy was it to come to a consensus? What role did you play in the group? How could you have made more effective contributions? In what ways could the group have improved its communication and decision making? [Personal and Social Capability]

2.6.3 Let me do it

Use the procedure in [figure 1](#) to consider the following issue: Law-making by the courts has provided the flexibility that allows new law to be made when there is no other law available to cover the issue at hand. Nevertheless, judges are not democratically elected in the way members of parliament are. Would it not be better to have all laws made by democratically elected members of parliament who are accountable to the voters?

Discussion points could include:

1. What are the advantages and disadvantages of law-making by the courts, both for individuals before the courts and for our society as a whole? (You may need to further research aspects of law-making by the courts to be able to provide useful examples. There is plenty of material available online.)
2. What are the advantages and disadvantages of law-making by parliament, particularly in a democratic society?
3. Are there changes you believe could improve the system, such as closer cooperation between parliament and the court system? How might this work?
4. If you do not see a need to change, how do you convince others to support the current system?
5. What ideas can you propose that would take advantage of the best features of law-making through the courts and law-making by a democratically elected parliament?

2.7 Review

2.7.1 Summary

The court system provides us with a means of resolving disputes, as well as a means of bringing to justice those who commit crimes against society.

- Courts have both civil and criminal jurisdiction.
- All courts fit within a court hierarchy. The lower courts deal with less serious matters, and intermediate and higher courts have jurisdiction over more serious matters.
- A court hierarchy allows for a person to appeal to a higher court if he or she is unhappy with the ruling in a lower court.
- The Supreme Court in each state has both original and appellate jurisdiction.
- Magistrates courts (called Local Courts in New South Wales) hear around 90 per cent of all cases in each state.
- As well as hearing less serious cases, magistrates courts conduct committal hearings on more serious criminal matters to test whether the prosecution has a strong case against the accused.

- Magistrates courts also make decisions in relation to the granting of bail to those accused of crimes.
- The Family Court of Australia has jurisdiction over all matters relating to divorce and relationship breakdown.
- Disputes relating to consumer law can be heard by an administrative tribunal, which will usually attempt to resolve the matter through mediation before conducting a formal hearing.
- Anti-discrimination bodies in each state assist with cases involving discrimination. They attempt to use a process of conciliation to resolve these disputes.
- State environmental protection authorities have the power to order individuals or organisations to stop polluting and to clean up, but can also initiate civil or criminal proceedings if the polluter does not comply with any orders.
- Judges will follow precedents set in previous cases, particularly those precedents set in a higher court.
- When there is no relevant legislation and no existing precedent, judges can make new law when they decide a case brought before them.

ACTIVITIES

WHICH COURT?

1. Discuss the following problems with a partner. For each problem, determine how the problem would be resolved and which courts or tribunals might be involved.
 - a. Mietta applied for an apprenticeship as a chef. At the interview she was told they were only interested in employing males. She believes this is a case of discrimination.
 - b. A chemical factory operates a waste management process that cleans and filters its waste products before discharging clean water into a local creek. The system breaks down and toxic chemical waste is discharged into the creek.
 - c. The police charged Jason with assault and theft after he bashed a boy and took his mobile phone.
 - d. Thomas bought a new folding ladder at his local hardware store. When he tried to use it to paint his lounge-room walls, the hinges snapped and the ladder collapsed, injuring Thomas and spilling paint over the floor.
 - e. Lily is allergic to peanuts. She became seriously ill after eating a health bar. The label stated that the bar did not contain peanuts. The manufacturer apologised and said it had made a mistake with the labelling.
2. Imagine you are a member of a jury. The accused has been charged with armed robbery.
 - a. What court would you be in?
 - b. How many people in total are on the jury?
 - c. Draw a floor plan of the courtroom and indicate where the following are located: the judge, the jury, the prosecutor, the counsel for the defence, the judge's associate, the tipstaff and the witness box.

on Resources



Try out this interactivity: [Our court system crossword](#)

Searchlight ID: [int-5438](#)

Chapter 3: Australia's justice system

Contents

- 3.1 Overview
- 3.2 Is everyone equal before the law?
- 3.3 What makes our courts independent?
- 3.4 Who has the right of appeal?
- 3.5 What happens when the system fails?
- 3.6 SkillBuilder: Creating and analysing a survey
- 3.7 Review

Note to students and teachers: This PDF has been provided as an offline solution for times when you do not have internet access or are experiencing connectivity issues. It is not intended to replace your eBook and its suite of resources. While we have tried our best to replicate the online experience offline, this document may not meet Jacaranda's high standards for printed material. Please always refer to your eBook for the full and latest version of this title.

3

Australia's justice system



3.1 Overview

3.1.1 The principles of a democratic society

You might recognise the statue in [figure 1](#). It is Lady Justice, a figure that is commonly associated with our legal system as well as many other legal systems around the world. A version of Lady Justice stands outside the Supreme Court of Queensland. She is armed with a sword, representing the power of reason and justice which may be wielded either for or against any party, and she holds a set of scales, which symbolise fairness and balance in judgements.

FIGURE 1 Lady Justice represents justice, an essential belief of our society.



Australia's justice system values these principles: fair treatment by the courts for everyone, independent judges who are free to make fair decisions, and the right to appeal a decision made by a court. These principles contribute to a democratic and just society.

on Resources



Watch this eLesson: [Australia's justice system](#)

Searchlight ID: [eles-2363](#)

3.2 Is everyone equal before the law?

3.2.1 Fair treatment

Equality before the law is an important and central principle of our legal system. In Australia we believe that all parties are entitled to be treated fairly by a court — regardless of whether they are a victim of crime, an offender or any other participant in the justice system. This does not mean that everyone should be treated in the same way, but that anyone who comes into contact with the courts should believe that they are being treated fairly and without **discrimination**.

3.2.2 Discrimination and the courts

Equality before the law is a basic **human right**. Article 7 of the **Universal Declaration of Human Rights** states that, 'all are equal before the law and are entitled without any discrimination to equal protection of the law.' Australia signed the International Covenant on Civil and Political Rights in 1991, which includes 'the right to equality before the law and non-discrimination.'

Australia has several laws relating to human rights, discrimination and the need to treat people fairly. Some of the laws made by the Commonwealth Parliament include the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984*, the *Disability Discrimination Act 1992*, the *Age Discrimination Act 2004*, and the *Australian Human Rights Commission Act 1986*. Various statutes across the states also define discrimination and protect human rights.

It is against the law to discriminate against someone on the basis of their gender, ethnicity, disability, sexual orientation, age, religious affiliation, socioeconomic background, size or nature of family, literacy level or any other prescribed characteristic. The law and the courts must treat everyone fairly regardless of their personal characteristics.

FIGURE 1 It is against the law to discriminate against someone on the basis of their personal characteristics, status or beliefs. This applies to the way that people are treated by the law and by the courts.



No-one in our country is exempt from our laws. This means that everyone is entitled to have a case heard by an independent and impartial court, and everyone must obey the laws of Australia.

DISCUSS

What are the challenges of equality before the law in a culturally diverse country? In what ways does our court system show that it values cultural diversity? [Intercultural Capability]

3.2.3 Equality before the law

It is very important that people who come into contact with the justice system believe they are being treated equally and fairly so that confidence in the system is maintained. Judges and courts must be aware of any personal bias or prejudice against any person from a particular background and make sure that this is nullified. This may mean that not everyone is treated in the same way. Some different approaches for dealing with an individual's specific background or circumstances can be seen in [figure 2](#).

FIGURE 2 Equality before the law



DISCUSS

Is it fair if different people receive unequal punishments for the same crime? Why/why not? Explain your reasons. [Ethical Capability]

Respect and courtesy should be shown to anyone who comes into contact with the justice system. Discriminatory attitudes have no place in a courtroom. Everyone is entitled to be treated fairly under the law in Australia so that we are all protected from injustice.

ACTIVITIES

COURTS AND EQUALITY

Working in small groups, choose one of the courts in your state or territory. Use internet resources (such as the court's website, or an annual review or strategic plan) to find out what the court has done to ensure that everyone is treated fairly. (You might need to find the goal or purpose of the court.) List some of the things you see related to equality before the law.

CASE STUDY

In jail, no fair trial

In March 2014, ABC TV's *Lateline* aired a story about a 23-year-old Aboriginal woman who spent 18 months in a Kalgoorlie jail in Western Australia.

Rosie Anne Fulton was charged with driving offences. She had crashed a stolen car in Western Australia after consuming a large amount of alcohol. Her case was heard in a Kalgoorlie court, where the magistrate declared her unfit to plead as a result of her disability. Ms Fulton was born with foetal alcohol syndrome and has the mental capacity of a small child. She was placed on a prison-based supervision order.

FIGURE 3 Rosie Anne Fulton grew up living in the riverbeds around Alice Springs.



Ms Fulton and her legal guardian, Ian McKinlay, appealed to Northern Territory authorities to house Ms Fulton in a secure care facility near the prison in Alice Springs. This would allow her to stay close to her Alice Springs family and remain in specialist accommodation, built for people with intellectual disabilities and challenging behaviours. However, the application was rejected.

'They're leaving Roseanne in prison, neglected, forgotten and ignored,' Mr McKinlay said.

Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda noted that Aboriginal and Torres Strait Islander people are over-represented in the justice system. 'It is a breach of Ms Fulton's human rights which must be urgently addressed,' he said.

Disability Discrimination Commissioner Graeme Innes agreed that it was unacceptable to put people in prison for indefinite periods when they have not been found guilty of a crime. 'Prison is simply not an alternative accommodation option for people with disabilities,' he said. 'We launched a report in February which demonstrated the lack of equal access to justice for Australians with disabilities, and this is just one example of a bigger problem.'

DISCUSS

Is there a difference between acting ethically and acting within the law? Which is more important?
[Ethical Capability]

Resources



Explore more with these weblinks: [Asylum seekers in Australia](#)

3.3 What makes our courts independent?

3.3.1 An independent judiciary

Independence of the **judiciary** is an important feature of Australia's legal system. This is the principle that our judges and courts need to be kept separate from the other two branches of Australia's government. An independent judiciary ensures that we continue to live in a democratic and just society. Judges and courts should not be subject to political influence from government, or from the political interests of any other person or organisation.

3.3.2 Separation of powers

The Australian Constitution supports the idea of the **separation of powers** to allow for three arms of government: a legislative arm, an executive arm and a judicial arm.

- *Legislative arm.* This is the parliament. Its function is to make new laws or to change or remove existing ones. Under the Constitution, parliament is the supreme law-maker. The courts are bound by legislation passed by parliament and by precedent.
- *Executive arm.* This arm of government administers the legislation passed by parliament. Executive power officially lies with the Governor-General or the Governor, who represents the Crown. It is government ministers and the public service who actually exercise this power. For example, the department of health is an Australian public service department which administers the running of Australia's health system. The head of this department reports to the minister for health.
- *Judicial arm.* This is the judiciary and the courts. They make judgements about the law, and are responsible for settling disputes and enforcing the law. The High Court of Australia is responsible for interpreting and applying the Constitution. It makes sure that the other arms of government do not act in a way that is outside the powers granted by the Constitution. The judiciary can for example declare that laws passed by parliament are unconstitutional, or require particular actions if they believe that a branch of government is not performing a constitutional duty.

The rationale behind the separation of powers is that it allows each arm of government to check and balance the powers of the others. This prevents any arm from becoming too powerful and in this way helps maintain a fair and just society.

FIGURE 1 Separation of powers



3.3.3 How do we ensure that our judiciary remains independent?

Two safeguards in the Constitution protect judicial independence: **security of tenure**, and the way in which judges are appointed.

Security of tenure

By appointing a judge for a long period of time, we expect that he or she will be free to act independently. Judges who are secure in their position are more likely to decide cases and make rulings objectively even when they know that those decisions might be politically unpopular. Judges are commonly appointed until the age of 70, unless they choose to retire earlier. This makes it less likely that governments will be able to influence the decisions of judges.

The way in which judges are appointed

Judges are appointed by the Governor-General (or Governor in each state) acting on the advice of the government. They cannot be removed from office except by the Governor-General (or Governor), following an address from both houses of parliament. Judges cannot be removed from office just because a government disagrees with their decisions in court. Because a judge cannot be easily removed by the executive or legislative arm, it is assumed that he or she can work independently and make decisions without fear of interference.

FIGURE 2 Judges are appointed for an extended period of time and in a manner which promotes their independence from the other branches of government.

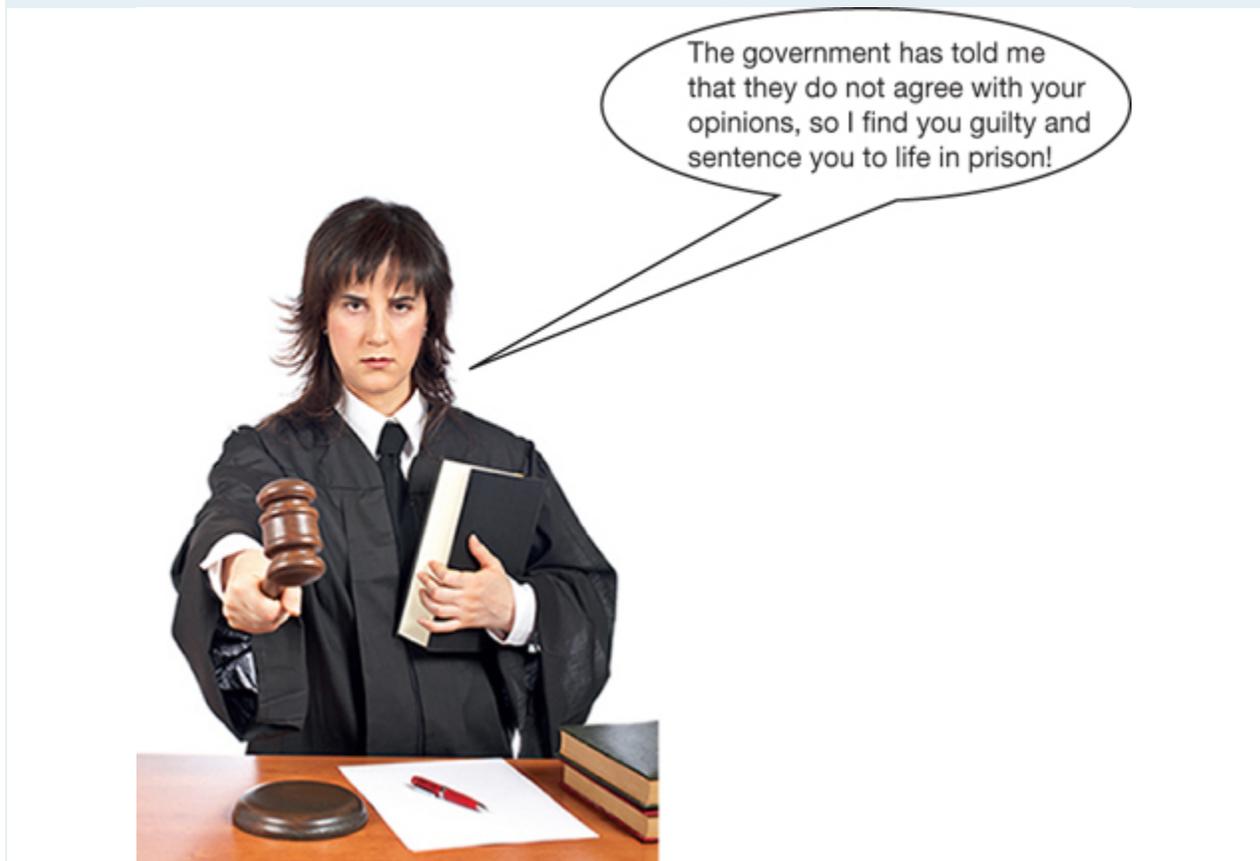


3.3.4 Do we really have an independent judiciary?

Judges and courts which only exist to do what a government wants them to do provide no guarantee of a fair and just society. Australia's judiciary is independent — to an extent. Even though judges and courts have the responsibility of interpreting the law, courts also make laws by establishing legal principles. This encroaches on the responsibility of parliament. Judges can make law through the use of common law but these law-making powers are limited.

Judges are formally appointed by the Governor-General (or Governor), who is part of the executive branch of government. Because this appointment is based on the recommendation of the government, there is a small conflict between the executive and judicial arms. However, this is considered to be a minor conflict and Australia's judiciary is generally thought to be independent. Follow the **Independent judiciary** weblink in your Resources section to read how judges strive to protect this principle.

FIGURE 3 The judiciary is considered to be independent of the government in Australia.



ACTIVITIES

JUDICIAL INDEPENDENCE OPINIONS

1.
 - a. Judges often comment on the principle of the independence of the judiciary. Using the internet or newspapers, find an article or commentary written by a judge or magistrate that refers to judicial independence. What opinion does the judge or magistrate hold?
 - b. People in the community (including members of the public, journalists and politicians) often criticise the judiciary. Using the internet or newspapers, find an article or commentary referring to judicial independence that was written by (or quotes) a member of the public, a journalist or a politician. What opinion does this person hold?
2. In 2011 the High Court declared that the Gillard government's 'Malaysian solution' was illegal, leaving the government's refugee policy in disarray. This situation demonstrates the importance of judicial independence. In this case the judiciary (the High Court) showed its independence by declaring invalid a decision made by the executive (the minister for immigration). Follow the **Malaysian solution ruling** weblink in your Resources section to access the ABC News report on the issue. Write down the reason for the High Court's decision.

Resources



Explore more with these weblinks: Independent judiciary



Explore more with these weblinks: Malaysian solution ruling

3.4 Who has the right of appeal?

3.4.1 Appeals

Any person involved in a court case who is not happy with the outcome of that case has the right to **appeal** the decision. This means they can ask a higher court to review a decision. However, there are some restrictions on who can appeal and under what conditions a person can appeal.

3.4.2 What is the right of appeal?

No legal system is perfect. When a case is heard for the first time, it is possible that a mistake can be made by the magistrate, judge or jury. As a result, the law often allows people to contest a court decision. This is known as the right of appeal. Our court hierarchy (discussed in [topic 2](#), 'Our court system') allows the decision of a lower court to be reviewed on appeal by a higher court.

All the courts have the ability to hear cases for the first time. This is called **original jurisdiction**. Some courts have the power to hear appeals from cases that were first held in lower courts. They might completely rehear a case or examine points of law. These courts are known as appeal courts. They have **appellate jurisdiction**.

An appeal court has the power to decide if the court hearing the case for the first time was correct or mistaken in its decision. The appeal court may agree with the result of the lower court's ruling. If it finds that the lower court's decision was mistaken, it will usually overturn the decision and replace it with its own.

There are several reasons why a party may appeal. These include:

- dissatisfaction with the decision of a court on the grounds of a question of fact
- disagreement with the court on a point of law
- contention over whether the remedy imposed by the lower court reflects the nature of the evidence presented at the trial.

FIGURE 1 The right to appeal is necessary because our legal system sometimes makes mistakes and someone can be wrongly sent to jail as a result.



3.4.3 Who can appeal?

The person appealing to the court is known as the **appellant** and the person defending the appeal is referred to as the respondent. Who can appeal depends on whether a case involves criminal or civil law.

In a civil case, any party can appeal a decision. Some appeals can only be heard if the court gives permission to the person wanting to appeal. This is called **leave to appeal**.

In a criminal case, only the people who are directly involved in the case can appeal — the accused and the prosecution. Members of the community do not have the right of appeal. (This includes victims.) Note that:

- The prosecution can only appeal against a sentence. It cannot appeal against a verdict of not guilty.
- A defendant can appeal against a guilty verdict and a sentence, or apply for leave to appeal against a sentence.

3.4.4 How do appeals work?

The court hierarchies in each state and territory deal with appeals differently. Consider New South Wales:

- Appeals from the Local Court are heard by the District Court.
- The Supreme Court of New South Wales has two appellate courts: the Court of Appeal and the Court of Criminal Appeal. These hear appeals from the other courts in New South Wales.

Contrast this with the situation in Victoria:

- In criminal matters, the County Court hears most appeals from the Magistrates' Court. The Court of Appeal, a division of Victoria's Supreme Court, hears and determines appeals from the County Court and the trial division of the Supreme Court.
- In civil matters, there is no right of appeal from the Magistrates' Court to the County Court. Instead, an appeal from the Magistrates' Court proceeds directly to a single judge of the Supreme Court. Appeals from the County and Supreme Courts are referred to the Court of Appeal.

Appeals from the highest appeal court in each state and territory are heard by the High Court. There is no right of appeal to the High Court. Usually the applicant must obtain special leave from the High Court in order to have the case heard. The High Court normally agrees to hear only a small proportion of the appeals brought to it. It is the final court of appeal.

FIGURE 2 The High Court is the final court of appeal in Australia.



ACTIVITIES

RIGHT OF APPEAL DEBATE

'The right of appeal is an important principle of Australia's justice system.' Do you agree or disagree with this statement? Give reasons for your answer.

3.4.5 What happens in an appeal?

An appeal will usually only hear legal argument about a specific point, and the court will only consider the evidence that was given at the original trial or sentence. If an appeal against a verdict is successful, the court will either find the appellant not guilty or will order a new trial with a different judge and jury. If an appeal against a sentence is successful, it may be reduced or changed to a different type of sentence.

FIGURE 3 Appeals can be heard before a single judge or a group of judges (usually two to five), depending on the court and the type of matter being heard. A jury is not used in an appeal.



3.4.6 Why do we have the right of appeal?

The appeal process promotes a fair society and protects us all from unjust decisions. If citizens did not have the right of appeal, there could be an increase in cases involving injustice. Parties not satisfied with the outcome of their case would have no opportunity to ask a higher authority to review a decision made by a lower court. The appeal process is therefore important for correcting any mistakes made by lower courts. This supports a democratic and just society.

FIGURE 4 A person who is considering an appeal should speak to a lawyer before proceeding.



ACTIVITIES

WRONGLY ACCUSED

Imagine you have been found guilty of a crime that you did not commit. What would happen to you if there was no right of appeal? Discuss in small groups.

3.5 What happens when the system fails?

3.5.1 Factors that can undermine the system

Our legal system is based on a number of principles which exist to make sure that anyone who makes contact with a court is treated fairly and receives justice. However, the system does not always work perfectly. Several factors can undermine the application of these principles. These include bribery, coercion of witnesses, trial by media and court delays.

3.5.2 Bribery

Bribery might occur in the justice system if someone tries to offer money, a gift or any other item of value to a judicial officer (such as a judge) or any other public official (such as a police officer) in the expectation that the person receiving the bribe will alter his or her behaviour and act in the briber's interests. A person might bribe a juror to make a certain decision, or bribe a witness to present a false testimony or withhold the truth. Note that it is illegal to give or receive a bribe.

Bribery is an offence under common law in many of the states and territories in Australia. Some states also have legislation referring to bribery. Under the Commonwealth *Criminal Code Act 1995*, the offence of bribing a public official is punishable by ten years in prison or a fine of up to \$1 million.

Bribery can undermine the principles of our system of justice. Judges who accept a bribe are no longer independent. They have agreed to alter their behaviour and act in someone else's interests. Witnesses who have been bribed may not present the truth or the full truth, which means that a fair trial will not occur. A jury that reaches a decision after receiving a bribe may reach the incorrect decision.

CASE STUDY

The bribe's in the mail

Police investigated a possible attempt to bribe judges in Victoria after several cheques were received in the mail in July 2012. The mail was addressed to judges and court officials at the Victorian Supreme Court. The cheques were discovered through the court's mail-handling security protocols. A court spokeswoman said, 'All envelopes were similar in appearance. Court staff opened one envelope, revealing a cheque made out to the addressee.' It is believed that all the suspicious envelopes opened were found to contain cheques.

FIGURE 1 Bribery can involve money, a gift or any other item of value. It undermines the principles of justice because it prevents the truth or interferes with a correct decision being made.



3.5.3 Coercion of witnesses

Coercion of witnesses is against the law. A person must not coerce or attempt to influence a witness in a court case to provide a false testimony, withhold the truth, or avoid turning up to court at all. Witnesses could be intimidated or bullied while attending court; or at their home or place of work by an offender, a family member of the accused or an accomplice of the offender who knows or discovers where the witness lives or works. A court might make an order to stop the threatening or intimidating behaviour, or to stop the person attempting the coercion from coming near the witness again. The justice system can also offer protection programs if necessary, including protecting the identity of a witness and even relocating a witness.

Coercion of witnesses is covered by different legislation in each state and by the federal *Crimes Act 1914*, where it is referred to as 'corruption of witnesses'. Depending on the state, the charge of threatening, corrupting or influencing a witness can result in sanctions including a fine, good behaviour bond, suspended sentence or prison sentence.

Influencing or coercing a witness can undermine the principles of our justice system. Evidence presented in court will become misleading and an incorrect verdict could result. An accused person who should be found guilty may instead be found not guilty. Conversely, an innocent person may be found guilty. A court trial would not hear the truth and therefore the trial would not be fair. Justice would not be served.

CASE STUDY

Please don't go to court

An 18-year-old Woollamia man was committed for sentence in the District Court in February 2014 for influencing a witness to not give evidence in court. He was also charged with perverting the course of justice. Recordings produced by the police revealed that the accused was contacted by an inmate at the South Coast Correctional Facility. The police alleged that the prisoner asked the accused to go to another man's house and tell him not to appear in court to provide evidence relating to another inmate's matter before a court. The man who was the subject of the coercion was ordered to appear in the District Court in March.

FIGURE 2 It is illegal to contact witnesses in order to influence them to change what they say in court or even to not appear in court.



3.5.4 Trial by media

The media, including television and newspapers, will cover court cases. At times, this coverage can have an impact on the accused's reputation by creating widespread opinion regarding the person's guilt or innocence before the trial has occurred or before a verdict has been delivered. This is referred to as **trial by media**. A high-publicity case, where the reporting of events can create a frenzy, can make a fair trial nearly impossible.

In Australia, strict laws regarding contempt of court restrain the media from what it can report after a person is formally arrested or charged. These laws are designed to make sure that a defendant receives a fair trial in front of a judge or jury that has not formed an opinion biased by prior media coverage.

Courts take contempt laws very seriously. This is because justice can only occur when courts are able to operate independently, unhindered by outside interference, and are free to make a fair judgement. If the media publishes information about the accused's prior convictions before the end of a trial, disobeys a court order or interviews witnesses, the judge or jury may be prejudiced against the defendant. The opportunity to have a fair trial would therefore be lost.

CASE STUDY

Trial by media

3AW radio broadcaster Derryn Hinch was found guilty of contempt of court in 2013 for breaching a suppression order made by a Victorian Supreme Court Justice. Hinch published tweets and blog entries about Melbourne woman Jill Meagher's murderer during court proceedings, referring to the accused's parole status. Melbourne newspapers then published front-page stories outlining the defendant's past, claiming that he was going to plead guilty. Hinch was ordered to pay a \$100 000 fine, but he refused to pay the fine and spent 50 days in prison instead.

FIGURE 3 Radio broadcaster, Derryn Hinch

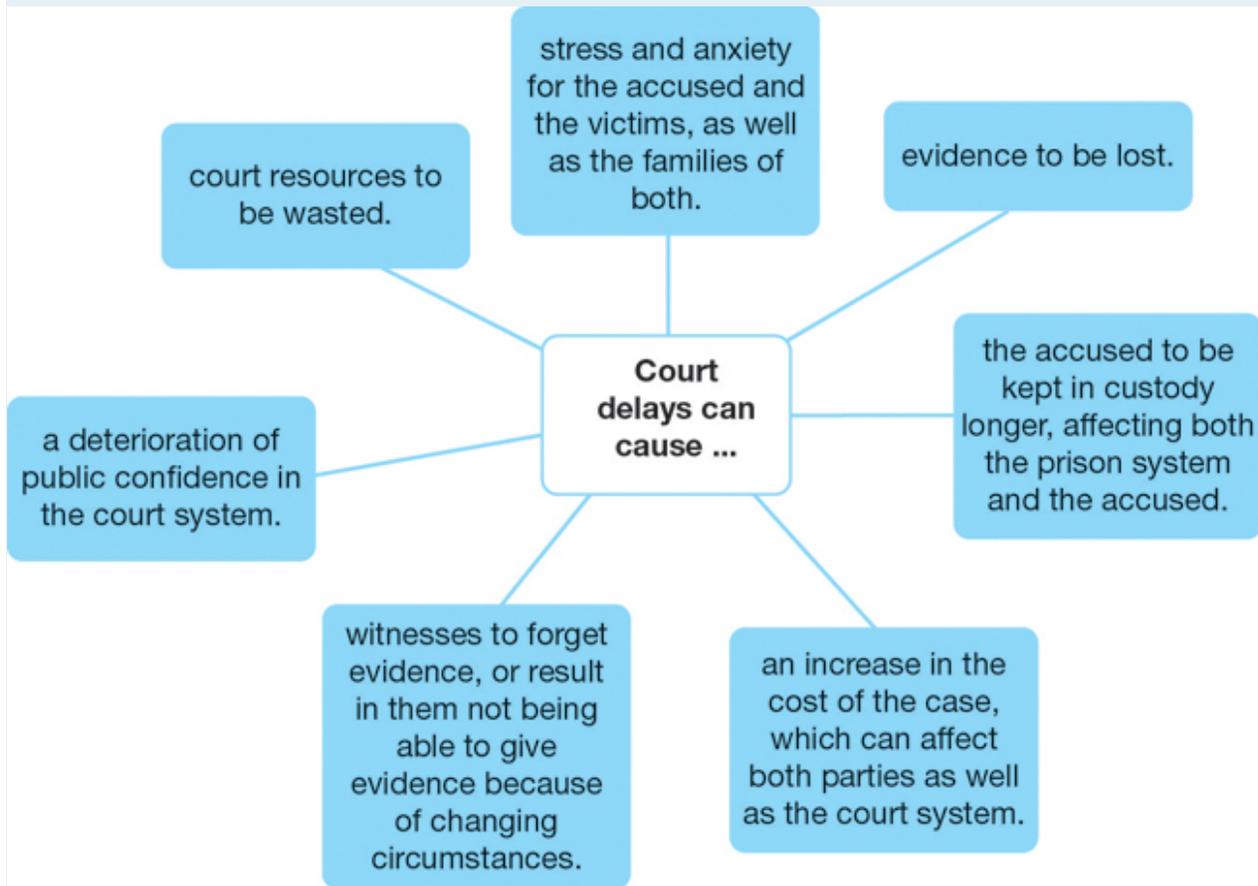


3.5.5 Court delays

There is an old saying in law: 'Justice delayed is justice denied'. It suggests that if a person is wronged in some way and a dispute needs to go to court but does not do so in a timely fashion, then there might as well have been no court case at all. Justice has not taken place. A **court delay** can undermine the application of the principles of justice. Yet there is no right in Australia, either under common law or in legislation, to have a court case conducted within a reasonable amount of time.

However, the International Covenant on Civil and Political Rights, to which Australia is a signatory, states that anyone charged with a criminal offence is entitled 'to be tried without undue delay.' Numerous reviews and inquiries into court delays have been undertaken to explore why they happen and what can be done about the problem. Some of the problems caused by court delays are illustrated in [figure 4](#).

FIGURE 4 Problems caused by court delays



Unnecessary delays can occur before the trial starts (between the date the case is committed to go to trial and the actual commencement date), or during the trial itself, making the court case drag on longer than necessary.

There are many reasons for delays that can cause a trial to last longer than necessary. These include:

- either side insufficiently or inadequately preparing its case
- lack of legal representation
- complex evidence and complex cases
- witnesses facing difficulties in getting to court
- either party using delaying tactics when in court.

Delays can also occur simply because the courts have more cases to deal with. This can happen for many reasons, including:

- a rise in the crime rate
- an increase in police numbers

- changes in population
- availability of legal aid
- changes in government policy
- changes in the law.

CASE STUDY

Can't find an interpreter when you need one

At Sydney's Central Local Court in March 2014, a man was accused of setting his former partner, a 34-year-old woman, on fire. He was charged with causing grievous bodily harm with intent to murder and breaching an apprehended violence order. Police alleged that he poured flammable liquid over the woman and then set her alight. The hearing was adjourned until later in the week because a court interpreter was not available. The man's lawyer did not apply for bail and it was formally refused.

ACTIVITIES

WHEN THE SYSTEM FAILS

1. For each situation, predict likely outcomes and what should happen, as shown in the example below.
 - a. Eve offers a judge \$250 000 to reduce the sentence for her boyfriend, who has been found guilty of manslaughter.
 - b. Sevilla tells a witness in a court case that her cousin will kill her if she turns up at the trial.
 - c. Michael is a journalist who decides that he will write a story proclaiming that Kirby is guilty the day after she has been arrested and charged by the police.
 - d. Chan is representing Hugh in his court case and decides to delay proceedings whenever he can.

Example

Vince tells a witness in a murder trial that \$100 000 will be transferred to her bank account if she changes what she will say when she is questioned in court.

Likely outcomes

- If the witness accepts the bribe, the truth of the case may never be heard.
- If the witness accepts the bribe and the bribe is discovered, she could be charged with accepting the bribe as well as lying in court (perjury).
- If the bribe is discovered, Vince could be charged with bribing a witness or influencing a witness.

What should happen

The witness should not accept the bribe. Vince should not offer to pay the witness.

2. Working in groups of three or four, plan a video presentation explaining one of the factors undermining the justice system. Your plan should make the video engaging so that it will help viewers fully understand the factor, how it undermines the justice system and what the possible solutions are. Use internet resources and be creative in how you present your plan.

3.6 SkillBuilder: Creating and analysing a survey

3.6.1 Tell me

What is a survey?

A survey is the process of collecting data for the purpose of analysing an issue. It consists of putting a set of questions to a sample group of people. For example, a political party may conduct a survey to find out whether citizens are satisfied with their policies.

Why is a survey useful in civics and citizenship?

Surveys are an efficient way of collecting information from a large number of respondents. The questions can range widely to find out people's attitudes, values, opinions and beliefs on political or legal issues.

Model

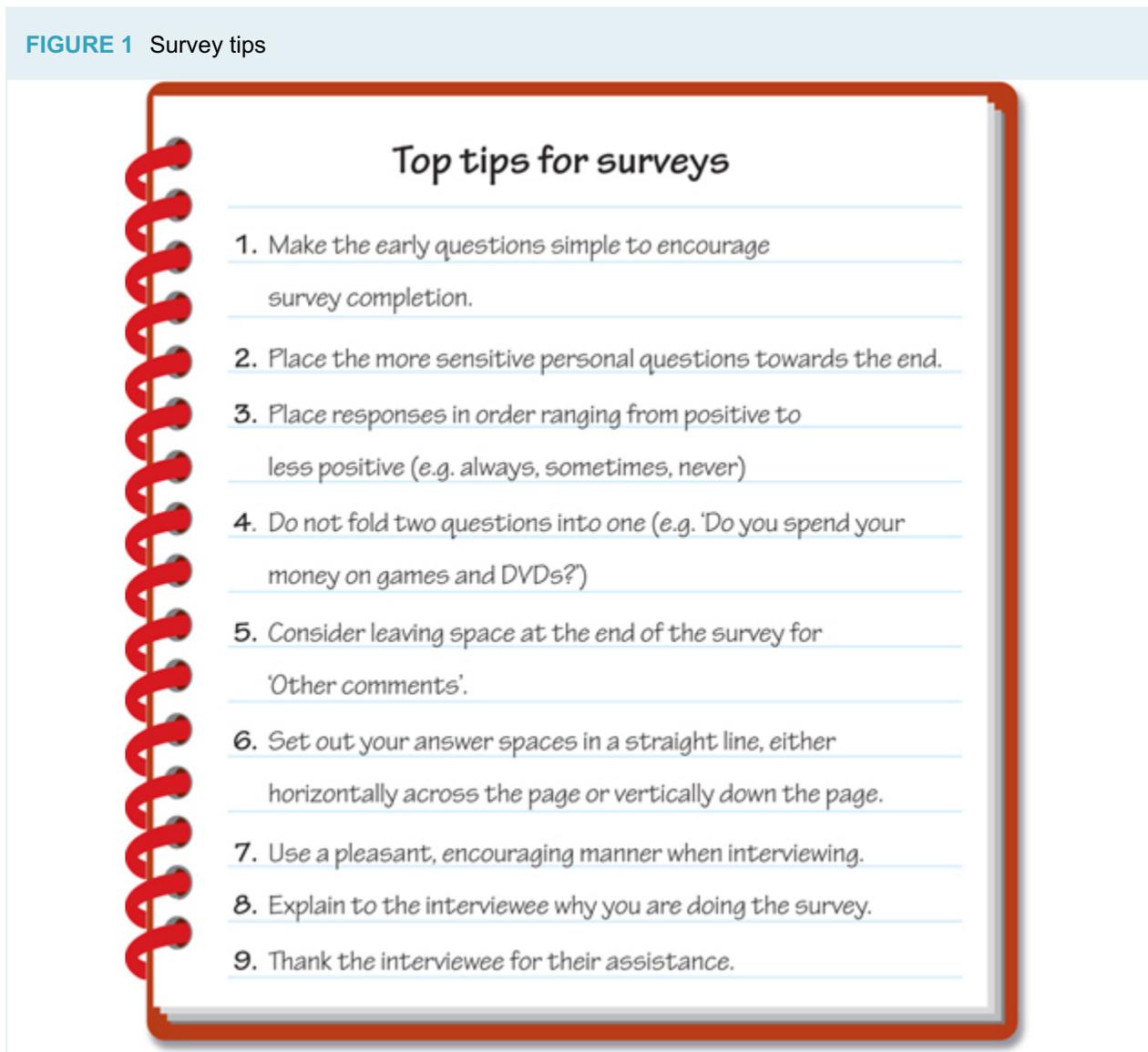
A good survey:

- has a clear written introduction to the survey
- has simple questions early on

- places more sensitive personal questions towards the end
- leaves enough room to answer all the questions
- is of reasonable length
- is clearly analysed once responses are collected
- is well presented.

Refer to [figure 1](#) for more tips on creating a good survey.

FIGURE 1 Survey tips



3.6.2 Show me

How to design a survey

You will need:

- a sheet of lined paper
- a pen
- questions that you would like to investigate.

Procedure:

STEP 1

Decide what you want to learn. You need to be very clear about your goals or your survey results will be unclear.

STEP 2

Decide whom you want to survey. Will your target group include both young people and adults, or just young people? How many people will you survey? Generally, the more people you survey the more reliable your results will be.

STEP 3

Decide what method you will use to collect the data. Consider factors such as cost, speed and whether sensitive information is involved. Survey methods include:

- personal interviews
- telephone survey
- mail survey
- email survey
- internet/intranet webpage survey.

FIGURE 2 Personal interviews may be conducted at shopping centres or outside theatres. Personal interviews usually cost more to conduct than other survey methods.



STEP 4

Design your survey. Start with a friendly introduction to encourage people to complete the survey. Work out your questions. There are two main types of survey questions:

- Closed questions ask the respondent to select an answer from a range of options.
- Open questions allow the respondent to record their thoughts about an issue. Look at the examples provided in [figure 3](#) for ideas.

Try to keep your survey short and your questions simple. Make sure the layout is attractive and easy to follow.

FIGURE 3 A sample survey form

RATING SCALE

How would you rate the performance of our courts? Please circle one response.

Excellent Good Fair Poor

AGREEMENT SCALES

How much do you agree with the following statements? Please tick one response.

	Strongly agree	Agree	Disagree	Strongly disagree
The courts treat everyone fairly.				
Australia's judges are independent.				

MULTIPLE CHOICE

Please circle one response.

Age: 12–14 15–16 17–18 over 18

Gender: Male Female

OPEN-ENDED

Why do we allow people to appeal court decisions?

STEP 5

Conduct a small trial of your survey to make sure the questions are clear and achieve your goals. Make any necessary changes.

STEP 6

Conduct your survey and collate the results. These can then be analysed for patterns or anything unusual. When you analyse the results, consider working out percentages. For example: the females aged 12–16 surveyed spend 10 per cent of their money on computer games, while the males aged 12–16 spend 25 per cent.

3.6.3 Let me do it

Developing my skills

Task

1. In a small group, design and conduct a survey. It is to be a paper-based survey carried out by personal interview. Note that paper surveys should allow enough room for interviewees to write their answers.
2. In your group, select one of the following topics for your survey:
 - equality before the law
 - independent judiciary
 - right of appeal.
3. Follow the steps outlined earlier in this SkillBuilder to prepare for and conduct your survey. Read the list of tips for survey preparation in [figure 1](#) to help ensure your survey is effective.
4. Practise your interview skills in your group. Work out how to introduce yourself to the interviewee and explain the purpose of the interview. Decide whether you will give the interviewees the survey and a pen to write down their answers, or whether you will read out the questions and record the responses yourself.

Analyse and present your survey results

1. After you have collected responses to your survey, collate the completed surveys. In your group, complete the following tasks.
 - a. Graph the responses to the closed questions.
 - b. Read through the responses to the open questions to get a feel for what people are saying.
 - c. Categorise the comments into different groups. The categories you develop are up to you. There may be some comments that do not fit a category.
 - d. Look carefully at the comments in each category. Can you see any patterns?
 - e. Compare the comments in each category to your closed questions data. Can you see any patterns here?
2. Use a software program such as PowerPoint or Keynote to prepare a slide show of your results.
3. Arrange a time with your teacher to present your slide show to your class. Give each class member a copy of your survey at the start of your presentation.

ACTIVITIES

QUESTIONS

1. How did you develop questions for your survey?
2. Was it easy to sort out the information you collected? What was easy and what was hard?
3. What did you discover about people's views on your topic?
4. Can you make any conclusions about what you discovered about your topic?

3.7 Review

3.7.1 Summary

Australia's justice system values several principles that work to protect citizens and contribute to a fair society. Equality before the law means that all parties and participants in the justice system are entitled to be treated fairly by a court, regardless of whether they are a victim of crime or an offender. Independence of the judiciary is the principle that judges and courts need to be kept separate from the other two branches of government. Right of appeal means that a person involved in a court case who is not satisfied with the court's decision can appeal — they can ask a higher court to review a decision. Some restrictions are placed on who can appeal and under what conditions a person can appeal. Our system does not always work perfectly because of factors that undermine the application of these principles.

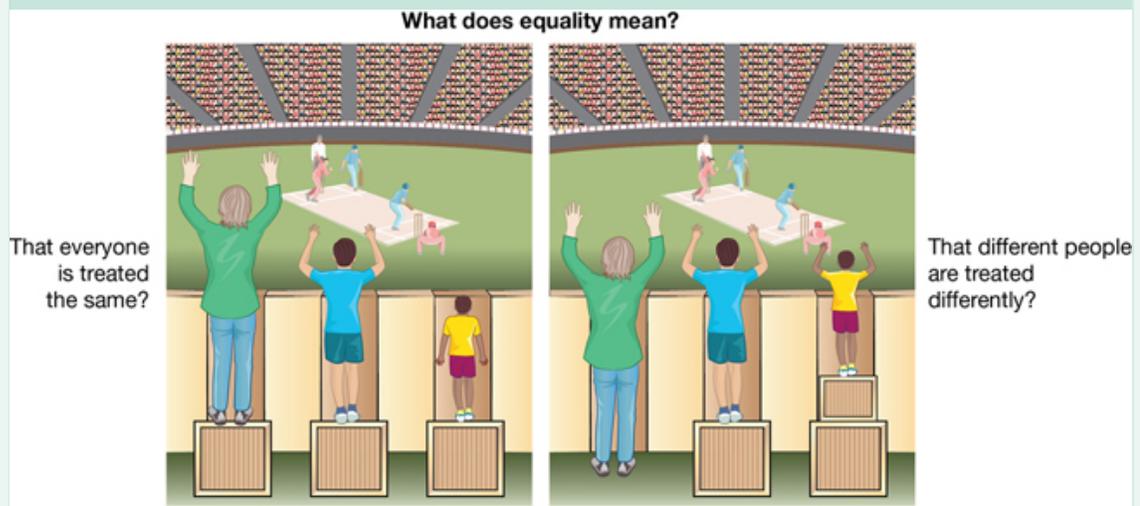
- Equality before the law means that people who come into contact with the justice system should believe that they are being treated equally and fairly.
- There are several approaches that courts can take to deal with people from different backgrounds and circumstances to ensure they are treated fairly.
- Separation of powers ensures that judges (the judicial arm) are not subject to political influence from the legislative arm or the executive arm of government.
- A party may appeal a court's decision when they are dissatisfied with the decision on the grounds of a question of fact or if they disagree with the court on a point of law.
- In a civil case, any party can appeal a decision but some appeals can only be heard if the court gives permission to the person wanting to appeal.
- In a criminal case, only the people who are directly involved in the case can appeal (the accused and the prosecution), and the prosecution can only appeal against a sentence.
- Factors undermining the application of the principles of justice include bribery, coercion of witnesses, trial by media, and court delays.

ACTIVITIES

EQUALITY

1. What is your understanding of equality?
2. Looking at figure 1, what is equality about?

FIGURE 1 Equality means that people are treated fairly.



3. Apply your understanding of equality to the law. What does equality before the law mean?
4. Read the following case study and then answer these questions:
 - a. What crime was Mr Baker originally found guilty of?
 - b. What court did the appeal go to and how many judges heard the appeal?
 - c. Why did the defence team appeal the original court's decision?
 - d. Explain why the court decided that the case would go to a retrial.
 - e. Do you think that everyone — even murderers — should have the right to appeal a decision made by a court?

David Allan Baker was found guilty of the attempted murder of his former girlfriend in June 2012. Following a trial that was as memorable for Baker's foul and hateful abuse of the judge and dismissal of two teams of lawyers as much as it was for the facts presented to the court, the court sentenced him to 15 years' imprisonment.

Mr Baker, aged in his 50s, admitted to seriously harming Margaret Revesz after he went to her Bray Park home on 2 November 2009 and stabbed her directly in the heart with a knife. Baker was about to move to Gladstone to work when the incident occurred. The Queensland Supreme Court was told that Baker plunged a knife into Ms Revesz several times after telling her that if he could not have her 'then no-one else can'.

When giving evidence to the court, Ms Revesz explained that when she was stabbed she asked Mr Baker 'Are you going to kill me?' According to Ms Revesz, his reply was 'Yes'.

The prosecution and the defence disagreed on when this conversation had occurred. The defence argued that if the exchange happened after Ms Revesz was stabbed for the final time, it could prove that it was not Baker's intention to kill her, and therefore the charge of attempted murder was not appropriate.

Nevertheless, the jury found Baker guilty and he was sentenced to jail the next day.

Mr Baker later appealed the court's decision. The Court of Appeal heard the appeal in 2014.

The appeal was made on the grounds that the trial judge had not complied with section 620 of the Queensland Criminal Code. Under this section, a judge is obliged to provide an overview of the accused person's charges and summarise evidence to the jury after both sides have presented their case. The jury then considers this information in delivering its verdict.

The lawyers for Mr Baker convinced two of the three presiding appeal justices that the 2012 trial judge had made an error when he had not clearly asked the jury to consider the brief conversation that occurred between Mr Baker and his alleged victim. They argued that the conversation could have raised doubts over whether or not he intended to kill her.

'The failure to independently identify the evidence that might be relevant to the consideration of the intent to kill as opposed to the intent to cause grievous bodily harm deprived the jury of judicial guidance upon important matters,' said David North, one of the Supreme Court appeal justices.

The omission of the conversation in the judge's final remarks to the jury 'was an oversight which occasioned a miscarriage of justice,' he said.

After the appeal was allowed, the conviction was set aside and a retrial was ordered.

on Resources



Try out this interactivity: [Australia's justice system crossword](#)

Searchlight ID: [int-5441](#)

Chapter 4: Identity, the media and the world

Contents

- 4.1 Overview
- 4.2 Identity in the media
- 4.3 Demonstrating identity and values
- 4.4 Globalisation — being a global citizen
- 4.5 Effects of globalisation on Australia
- 4.6 SkillBuilder: Debating an issue
- 4.7 Review

Note to students and teachers: This PDF has been provided as an offline solution for times when you do not have internet access or are experiencing connectivity issues. It is not intended to replace your eBook and its suite of resources. While we have tried our best to replicate the online experience offline, this document may not meet Jacaranda's high standards for printed material. Please always refer to your eBook for the full and latest version of this title.

4 Identity, the media and the world



4.1 Overview

4.1.1 Australian values and identity

Sometimes we can be defined by what we are not rather than what we are. Such is the case with being labelled 'unAustralian', a phrase that has become popular over the past few decades. Public figures are quick to describe someone as being unAustralian when they do something that goes against typical Australian culture and values. Politicians in particular use the term quite often. Controversial politician Pauline Hanson has frequently been referred to as unAustralian because her extreme views of immigration differ from popular thoughts and ideals. But what does being unAustralian actually mean?

Follow the **Being unAustralian** weblink in your Resources section for a humorous view of what it means to be Australian.

DISCUSS

What does it mean to be Australian?

To answer this question, we can pose more questions — is anything truly unAustralian?

In a land characterised by its diversity, surely such a term is incorrect and inappropriate?

With Australian values being broad and inclusive of so many aspects of other cultures, surely it is impossible for anything to be unAustralian?

With so many different groups and organisations active in Australian society, surely none of these groups can be labelled as unAustralian? Discuss in small groups.

[Critical and Creative Thinking Capability, Personal and Social Capability]

In this topic, we further investigate what it means to be Australian, especially in the context of living in a global society. We see how ideas of social groups are constructed and what impact stereotypes can have on social cohesion.

FIGURE 1 Australia is characterised by its cultural diversity.



on Resources



Explore more with these weblinks: [Being unAustralian](#)



Watch this eLesson: [Australia's role in a global community](#)

Searchlight ID: [eles-2365](#)

4.2 Identity in the media

4.2.1 Stereotypes and negative connotations

Our knowledge and opinions are shaped by what we see, what we are told and what we read. You know about Australia Day because you have seen it being celebrated, you have heard about it at school or on television, and you have read about the day's significance in newspapers and textbooks. You have used these sources to form an opinion regarding the meaning of Australia Day. As we process information, we form opinions on events, ideas and even on groups of people. In an ideal situation, these opinions are based on factual information. When this does not occur, our opinions can differ significantly from the truth and a **stereotype** may develop. In this section, we see how social groups in Australian society are represented in different media and the impacts these representations can have on society itself.

4.2.2 Typical or stereotypical?

Close your eyes and imagine a typical Australian. Think about what the person looks like, whether it is a man or woman, what clothes he or she is wearing. What did you imagine — a young man droving sheep? A farmer on a quad bike? A surfer with board in arm?

Such images are not typical. Instead, they are *stereotypical*. The difference between these two words is significant. In this context, the word 'typical' is a synonym for 'average'. Look at [table 1](#): did you picture the average Australian as a 37-year-old female sales assistant? The three stereotypes just described are not average Australians at all, and most of us are probably unlikely to see someone fitting this description walking in our neighbourhoods. Yet we automatically picture such stereotypes because they are images which we associate with being Australian. This is despite the fact that we probably know very few people who actually fit this stereotype.

So why then do our minds automatically think of a stereotype? The answer to this question can be found by looking at the way social groups are portrayed in the Australian media.

TABLE 1 Characteristics of the 'average' Australian (1911–2011)

Characteristic	1911	1961	2011
Sex	Male	Male	Female
Age	24	29	37
Country of birth	Australia	Australia	Australia
Job	Farmer	Clerk	Sales assistant

Source: ABS 4102.0 *Australian social trends* (April 2013).

4.2.3 Media and stereotypes

Stereotypes exist due to the way social groups are represented in the media. Our perceptions of these groups is heavily influenced by what we watch on television and read in newspapers and on social media. So influential are these sources of information that they can often override our existing knowledge of social groups.

Consider your grandparents as an example. If you are lucky enough to know your grandparents, then you probably see them as kind and generous people. Now consider the way elderly people are represented in Australian media. They are often shown as being forgetful, grumpy, resistant to change — and bad drivers. Though some elderly people may fit some of these descriptions, they remain largely untrue.

The reason these stereotypes are so strong is because they are **perpetuated** by various forms of media. Unfortunately, many social and ethnic groups are also inaccurately represented by Australian media. This misrepresentation can have serious social implications.

FIGURE 1 Stereotypes are prevalent in the media.



4.2.4 Impact of stereotypes

Stereotypes can have significant impacts on societies regardless of the way they are created and perpetuated. Most stereotypes have negative connotations and are based on only a small part of a social group's true identity. By accepting a stereotype, we stop ourselves from developing a true understanding of different cultures. We exaggerate cultural and religious differences and forget the similarities that we may share.

In this way, stereotypes can inhibit **cohesion** in Australian society. They can also make members of social groups feel uneasy about demonstrating their identity. Frequently, stereotyped people may not want to publically exhibit aspects of their culture for fear of ridicule or outright persecution. While this may be an extreme example, it further demonstrates the effects of stereotypes on Australian society.

FIGURE 2 Stereotypes often have negative connotations.



Social media and justice

The way in which people are represented in social media can also have serious implications for Australian society and even for our justice system. Social media sites are often flooded with photos and comments as soon as news of an event or serious incident is released. Immediately after the posts are read on these sites, people begin to form opinions about the person or people involved — opinions which they may carry with them if they happen to be chosen as part of a jury.

Such was the case with the tragic murder of Jill Meagher, a young Irish woman who had been living in Melbourne. When news of the arrest of the man accused of Meagher's murder was released, social media erupted in an outpouring of grief. Meagher's name was mentioned in over 12 million Twitter timelines; and pictures of, and comments about, her accused killer flooded social media sites. Immediately, police became wary of the potential impact of social media on the case and attempted to shut down threads, posts and sites. Their concern was that a jury would be unable to deliver a fair and untainted verdict if its members had viewed information about Meagher's accused killer. To this day, there is still a lack of formal legislation concerning this issue.

ACTIVITIES

SOCIAL MEDIA

In small groups discuss the following questions. How do social media help shape understanding of issues? Do you think it helps to break down stereotypes or create them? How can social media influence a jury's interpretation of a case?

4.3 Demonstrating identity and values

4.3.1 Positive contributions to society

There are currently more social groups, associations and organisations in Australia than ever before. Some of these groups, such as religious organisations, have been in existence for generations. Others, such as **non-government organisations (NGOs)** and charities, are more recent. Whether informal or highly structured, these groups make significant contributions to Australian communities. NGOs and community and religious groups do not simply work to serve their own interests. They frequently lead calls for change on a range of issues, and by doing so they contribute to the development of Australian culture, values and identity. Individuals are also able to contribute to civic life in many ways. From volunteering for charities to serving on local government councils, all contributions can also be seen as a representation of Australian values.

4.3.2 Serving the common good

Imagine that your friends are mucking around in class by throwing pieces of paper into the bin. One piece accidentally hits your teacher, who threatens to keep the whole class back at lunchtime unless the culprit comes forward. With none of your friends willing to take the blame, you decide to accept responsibility and thus save your class from detention. By sacrificing yourself, you have protected the freedom of others. This is an example of acting for the **common good**.

Individuals and organisations around the world frequently put their needs second in order to serve the wider community. Examples include people who volunteer their time to help NGOs and other community organisations. While the causes behind these groups may vary, their goals remain the same: to help the wider community and to serve the common good.

FIGURE 1 Volunteering to pick up litter in your local park is one way of serving the common good.



Honouring Australians

The Australian government sees its honours system as a way to 'help define, encourage and reinforce national aspirations, ideals and standards by identifying role models'. Introduced in 1975, the system honoured individuals who had contributed in a meaningful way to Australian society. Prior to this, people were recognised through the British honours system. The Order of Australia, the Australian Bravery Decorations and the National Medal were introduced at this time. Since 1975, the Australian honours system has continued to evolve, particularly in reference to the activities of the men and women who serve in the Australian armed forces. Any individual or community group can nominate a person for an honour. The majority of new honours are announced on Australia Day or the Queen's Birthday, but can occur at other times of the year. Award ceremonies are conducted by either the Governor-General or state Governors (or Administrators, as in the case of the Northern Territory). The Australian honours system has an important role in encouraging civic participation and responsibility. By honouring these individuals, the government encourages all Australians to live according to a shared set of values and responsibilities.

TABLE 1 Some of the honours currently awarded under the Australian honours system

Title of honour	Common abbreviation
Knight/Dame of the Order	AK/AD
Companion of the Order	AC
Officer of the Order	AO
Member of the Order	AM
Medal of the Order	OAM

4.3.3 Calling for change

Social groups may develop for a number of reasons. People may be united by common cultural backgrounds or religious affiliations. Other groups can form around particular values, issues and causes. These social groups differ in their background and origin, yet they are connected by the goals of the people and causes they represent. Be it small or significant, each group is calling for people to change their understanding of some issue.

Religious groups such as the Jewish Christian Muslim Association of Australia (JCMA) call for multi-faith understanding and harmony; environmental groups such as the Australian Conservation Foundation (ACF) call for the protection of Australian flora and fauna; and human rights groups such Gay and Lesbian Rights Lobby (GLRL) **advocate** for marriage equality for all Australians. By pushing for change and challenging existing ideas, community groups have a considerable effect on the composition of Australian society and identity.

FIGURE 2 Protesters at an equal marriage rights march in Melbourne



Community groups can also provide people with a greater opportunity to be heard by governments. Australia is a democratic country but it can often be difficult for a single voice to stand out. Social groups bring people with shared values and goals together. They provide them with the ability to amplify their message and increase the likelihood of being heard and causing meaningful social change. When this occurs, social groups are the ultimate example of Australia's cultural diversity in action.

ACTIVITIES

COMMUNITY GROUPS

Follow the **Community groups** weblink in your Resources section to find a community group that interests you. Answer the following questions using the information on your chosen group.

1. What is your community group and how did it form?
2. What is the main goal of your group?
3. Describe the methods your group uses in order to meet its goals.
4. Explain how your group contributes to Australian society.

Resources



Explore more with these weblinks: Community groups

4.4 Globalisation — being a global citizen

4.4.1 The global community

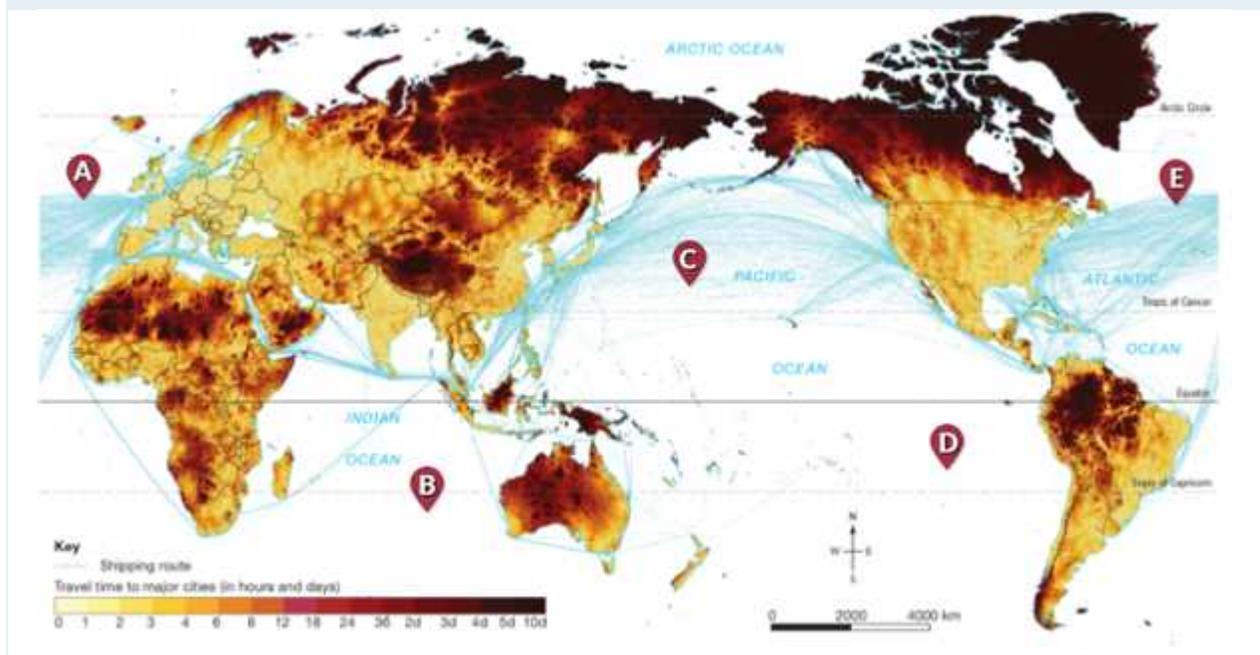
As Australian citizens, there are many duties we must undertake in order to fulfil our civic responsibilities. These duties include our legal roles and also our obligation to follow shared Australian values. As our country is part of the larger global community, we can see ourselves not simply as Australian citizens but as global citizens too. Membership of the global community brings with it further civic responsibilities. In this section we examine the concept of global connectedness and what it means to be a citizen of the global community.

4.4.2 The incredible shrinking world!

Metaphorically speaking, the world continues to become a smaller place (see figure 1). Modern technology enables us to communicate, collaborate and celebrate with people thousands of kilometres away. In 1814, it would have taken approximately 100 days to travel between Sydney and London. Two hundred years later the travel time is only 23 hours! In 1814 it would have taken over six months to have a two-way conversation (via an exchange of letters) with an overseas friend. Two hundred years later we can do this instantaneously.

Technological developments such as these have dramatically changed the world in which we live and led to increased **globalisation**. The ease of travel and accessibility of information can connect us to places and issues that have historically been far removed from our lives. In this way, technological developments have drawn us together in a global community. As global citizens we must understand and protect the rights of all members of the global community and not just those people who share our specific nationality.

FIGURE 1 Globalisation and accessibility



on Resources

 **Try out this interactivity:** [Globalisation and accessibility](#)
Searchlight ID: [int-5671](#)

4.4.3 The global citizen

It is an unfortunate truth that sometimes life can be challenging. You may have three assignments and two tests in a week, or perhaps you have just broken up with your boyfriend or girlfriend. While these challenges are indeed difficult, it is important to consider the hardships faced by people around the world. Being aware of global issues is one of the key responsibilities of a global citizen. Further responsibilities are listed in [figure 2](#).

FIGURE 2 What is a global citizen?

According to Oxfam International, a global citizen is someone who:

- is aware of the wider world and has a sense of their own role as a world citizen
- respects and values diversity
- has an understanding of how the world works economically, politically, socially, culturally, technologically and environmentally
- is outraged by social injustice
- participates in and contributes to the community at a range of levels from local to global
- is willing to act to make the world a more sustainable place
- takes responsibility for their actions.

As you can see from the list in [figure 2](#), being an active global citizen is not an easy task. There are millions of people who need the help of the global community and this number grows daily. Instead of being overwhelmed by this task, you can make a start on one of these expectations and start your journey to becoming a participant in the global community. Follow the **What is a global citizen?** weblink in your Resources section to learn more about what is expected of a global citizen.

CASE STUDY

Kony 2012

The fascinating case of Kony 2012 can be used to examine many aspects of our global citizenship topic. In March 2012, a video detailing the exploits of African war criminal Joseph Kony burst onto the public arena. The video asked global citizens to consider the hardships endured by the victims of Kony's militant group, Lord's Resistance Army (LRA). Among other human rights violations, the LRA was (and unfortunately still is) involved in the recruitment of child soldiers. The makers of the video wanted to raise awareness of the LRA activities and hoped they could bring about an end to their brutal regime. They appealed to the global community and waited for the citizens of this community to respond.

Both the appeal and response broke social media records. The original YouTube video (which you can watch by following the **Kony 2012** weblink in your Resources section) reached almost 100 million views in only six days. This equates to over 11 500 views per minute. In each of the three days after the video was released, over 1.3 million Twitter statements referenced 'Kony 2012'. These extraordinary numbers show the power of social media and highlight the speed at which ideas can now travel across the world. This example also demonstrates how easy it is to become aware of issues in the global community.

Yet awareness is not always enough. Participation in local and global projects and campaigns can help to alleviate many global problems. For example, the Live Below the Line campaign raises awareness of global poverty by challenging people to eat on \$2 a day for a week. Not only does this campaign raise awareness of the hardships faced by people in the global community, it also raises money through donations.

Resources



Explore more with these weblinks: What is a global citizen?



Explore more with these weblinks: Kony 2012



Watch this eLesson: [Living in a global world](#)

Searchlight ID: [eles-2429](#)

4.5 Effects of globalisation on Australia

4.5.1 Australia in the global community

Which do you think is more significant — the impact of Australia on the world or the impact of the world on Australia? Due to the increasing trend towards globalisation, both these relationships have become important issues. The way we answer this question depends on our perspective of Australia's role in the global community. We can use the experience of Australians living overseas to gauge our global impact. Closer to home, we can examine the ways in which other cultures continue to influence our own.

4.5.2 Impact of Australia on the world

As international travel has become faster and more affordable, the number of Australians choosing to live overseas has increased steadily. Lured by professional opportunities, many Australian **expatriates (expats)** have moved permanently to places such as the United States of America, Europe and more recently Dubai. Along with their luggage, these expats take aspects of Australian culture and identity with them on their travels. These aspects can be physical objects like a jar of Vegemite or less tangible ones like Australian values.

Such cultural elements can eventually be adopted by an expat's new home. The development of the European Australian Football League demonstrates this point. Established in the late 1980s by Australians living in England, AFL Europe is now active in 20 European nations. Though it is only a small aspect of Australian culture, the success of AFL Europe — and its counterpart in Japan (see [figure 1](#)) — shows us that it is possible for elements of one culture to be adopted by another.

FIGURE 1 Members of the Japanese Australian Rules football team



4.5.3 Impact of the world on Australia

Throughout its history, Australian culture has been heavily influenced by the outside world. Historically, the nature of these influences has reflected the foreign policy of the time. During the nineteenth century, for example, Australia's culture closely mirrored that of its colonial controller — Great Britain. This close relationship began to fade after World War II. After this event, Australia drifted away from Britain and began to develop its partnership with the United States of America. As it did so, American culture began to seep into Australian life.

More recently, Australia's foreign policy has shifted again — this time towards our neighbours in the Asian region. Australia has signed free-trade agreements with South Korea and Japan. Such agreements enable the parties involved to exchange goods without the imposition of taxes and tariffs.

All three of these examples show that global interactions can influence Australian culture and identity. Whether it is something **superficial** like popular culture or something more meaningful, other nations are responsible for many aspects of what we now call Australian life.

DISCUSS

In recent years, Australia's foreign policy has shifted focus away from its traditional Western partners in favour of closer relationships with its Asian neighbours.

Discuss this change in groups.

1. Why do you believe this change has been made?
2. Develop a list of positives and negatives of this foreign policy direction.
3. Which region do you believe should be the focus of Australian foreign policy?
4. What values and beliefs may influence the differing perspectives in your group?
5. What are the challenges and benefits of being more connected to Asia?
6. What challenges and benefits can you identify with working more closely with other cultures?

[Intercultural Capability, Personal and Social Capability]

FIGURE 2 Much of Australia's overseas trade is now conducted with countries in South-East Asia.



4.5.4 Global identity

We end our discussion of globalisation by looking at the concept of a global identity. As the phenomenon of the global community continues to rise, aspects of a nation's culture and identity have begun to cross borders. The fact that it is harder to define national identity in the modern world is evidence of this point. In an increasingly globalised world, it is likely that national identities will evolve to represent global communities.

We do not have to look any further than our own country to see what this kind of national identity looks like. For generations, Australia's national identity has been shaped by the multicultural composition of its citizens. As new ethnic groups make Australia their home, they add elements of their own identities to the melting pot that is Australian culture. In this way, an Australian identity is also a global identity.

4.6 SkillBuilder: Debating an issue

4.6.1 Tell me

What is a debate?

Debating turns arguing into a sport, complete with set positions, rules and points system. In a regular debate, two teams of three debaters argue opposing sides of an issue. This issue is presented as a statement that can be researched, analysed and then debated. For example: 'Stereotypes decrease social cohesion'. After hearing all six speakers, judges decide which side spoke the best and presented the most convincing arguments.

Why is debating useful?

Formal debating is not like a discussion you may have with your family or friends. A debate requires you to have properly investigated an issue and to have considered both sides of the statement. Not only does debating develop your communication skills, it also teaches you the importance of research and preparation. Many politicians, lawyers and business people often remark that their involvement in school debating competitions helped develop skills and confidence that they use today.

4.6.2 Show me

How to prepare for a debate

A formal debate follows a set of rules. In a debating contest (for example, in school) there are two teams of three speakers, each of whom plays a defined role. One team argues in favour of the topic (the affirmative team) and the other team argues against the topic (the negative team). You can prepare for a debate by following the steps below.

STEP 1

Form a team of three people. Find out whether your team is to debate in favour of or against the topic. As a team, examine the topic carefully and discuss what you think it is about. You may need to use a dictionary to find a definition of key words contained in the topic statement.

STEP 2

Work out what arguments support your team's case. List them in order of importance.

STEP 3

Work out what arguments do not support your team's case. This will help you to anticipate what your opponents will say.

STEP 4

Carry out research to help fully develop your arguments. As part of your research, consider interviewing other students and the adults you know to learn their attitudes to the issue.

STEP 5

- a. Divide the arguments you have collected among the members of the team.
- b. Decide which team members will be the first, second and third speakers. Agree on what each member will say.

Conduct of the debate

The members of each team take it in turn to present their arguments in three to four minutes. The affirmative team's first speaker starts the debate. The following case study illustrates how a formal debate is conducted.

CASE STUDY

Conduct of a debate

Affirmative team



The first speaker should:

- a. greet the audience
- b. state which team he or she is representing and the issue
- c. introduce the other team members, their role and the team's view
- d. argue the team's case and state how the second speaker will build on this case.

The second speaker should:

- a. explain how his or her speech will build on the affirmative team's view
- b. argue against (rebut) the first speaker from the negative team
- c. add new examples to support the affirmative team's view.

The third speaker should:

- a. argue against (rebut) the negative team's case
- b. summarise the main arguments of the debate
- c. restate the affirmative view, explaining why it is the stronger case
- d. avoid introducing new arguments.

Negative team



The first speaker should:

- a. introduce the team members, describe their role and the team's view
- b. state whether the negative team accepts the affirmative team's view of the topic

- c. argue against (rebut) the points made by the first speaker of the affirmative team
- d. state how the second negative speaker will build on the team's case.

The second speaker should:

- a. explain how his or her speech will build on the negative team's view
- b. argue against (rebut) the two previous speakers from the affirmative team
- c. add new examples to support the negative team's view.

The third speaker should:

- a. argue against (rebut) the affirmative team's case
- b. summarise the main arguments of the debate
- c. restate the negative view, explaining why it is the stronger case
- d. avoid introducing any new material.

Elements of a good debate

A good debate:

- has members from each team taking turns to present their cases
- starts with the first speakers from each team introducing their teams and their team's view
- continues with the second speakers rebutting the previous speakers and adding new examples to support their team's view
- finishes with both third speakers rebutting the other team's case, summarising the main arguments and restating their team's view
- has arguments that only take three to four minutes.

4.6.3 Let me do it

With the assistance of your teacher, your class will participate in a series of debates. The debates will involve the topics listed below.

Class debates

1. Divide your class into teams each containing three debaters. Ensure that there is an even number of teams.

2. Competing teams will then choose a topic from the list below:
 - a. There is no difference between a typical Australian and a stereotypical Australian.
 - b. There are no positive effects of stereotypes on society.
 - c. Media should be more responsible for the ways it portrays social groups.
 - d. Community and religious groups serve no purpose in society.
 - e. The world was a better place before globalisation.
 - f. As a global identity develops, national identities become less important.
3. Prepare for your debate, ensuring that each speaker's role is clearly defined as explained in this SkillBuilder.
4. Over a series of classes, conduct your debates in class with your fellow classmates filling the role of adjudicators.

4.7 Review

4.7.1 Summary

A shared national identity can play many important roles in a society. Most importantly, it can unify people behind a set of common values, beliefs and traditions. These shared ideas can motivate people to act for the good of society. The media can have a significant influence on how national identities are constructed and maintained. Often, stereotypes of national identities are more prevalent in popular culture than among the community. The way in which national identities are perceived can have consequences in the global community. For this reason, it is crucial that proper understandings of national identity are developed and maintained.

- Shared national identities can unify societies and lead to positive social change.
- The media has a significant influence on how national identities are perceived.
- The perception of national identities has impacts in the global community.

ACTIVITIES

FREE-TRADE AGREEMENTS

Follow the **Free-trade agreements** weblink in your Resources section to find a map and other information that will help you answer the following questions.

1. In your own words, explain how a free-trade agreement works.
2. Describe the general patterns shown on the map. For example, with which regions does Australia share the majority of its free-trade agreements?
3. Are there any exceptions to the pattern you identified in part(b) above? If so, suggest a reason why this exception may exist.
4. Which country shown on the map has accepted the most Australian imports?
5. Which country shown on the map has provided Australia with the most goods?
6. Which country do you believe is Australia's most important trade partner and why?
7. Besides the exchange of goods, what other benefits can a free-trade agreement have? Include references to the social consequences of these agreements.

ACTIVITIES

STEREOTYPES AND IDENTITY

Use the **What's your decision?** worksheet in your Resources section to complete a table ranking your attitudes towards certain statements about stereotypes and identity.

Resources



Explore more with these weblinks: [Free-trade agreements](#)



Complete this digital doc: [What's your decision?](#)

Searchlight ID: [doc-14952](#)



Try out this interactivity: [Identity, the media and the world crossword](#)

Searchlight ID: [int-5444](#)

GLOSSARY

Australian Electoral Commission an independent body that was set up to organise and run elections in Australia

eligible voters Australian citizens who are over 18 years old and are on the electoral roll, which is an official register of voters

coalition an alliance between two or more political parties, formed to improve their chances of winning an election and forming government

suffrage or franchise refers to the right to vote

suffrage or franchise refers to the right to vote

informal votes a ballot paper that has not been filled out correctly and therefore will not be counted

scrutineer a representative of a parliamentary candidate who attends the counting of votes to ensure the count is fair

formal votes a ballot paper that has been filled out correctly

quota in the Senate, refers to the share of votes required to be elected. It is calculated using the total number of votes cast and the number of vacancies to be filled.

private members' bills bills which are proposed by members of the House of Representatives on their own behalf rather than on behalf of the government

portfolio an area of responsibility given to a minister, such as health, education or defence

prosecutes to take legal action against a person accused of a crime

adversary system a system of trial in which the two sides argue their case and the judge or magistrate acts as an independent umpire

judge a court official who presides over cases in courts higher than a magistrates court or Local Court

magistrate a court official who hears cases in the lowest court in the legal system

plaintiff a person who commences a legal action in a civil case

defendant a person against whom a legal action has been brought

jurisdiction the power or authority of a court to hear specific types of disputes and cases

jury in criminal cases, the 12 people who are randomly selected to decide the guilt or innocence of an accused based on the evidence presented in court

industrial relations refers to the laws and processes that govern the relationships between employers and employees

original jurisdiction the power of a court to hear and decide a case for the first time

appellate jurisdiction the power to hear a case on appeal from a lower court

manslaughter the accidental or unintentional killing of one person by another person

bail an agreement to release an accused person into the community while awaiting trial

surety when bail is granted, a sum of money deposited with a court as a guarantee that an accused will abide by the conditions of bail and will appear in court when required to do so

remanded in custody to be held by the authorities until a case is heard in court

mediation a process of settling disputes in which a neutral third party (a mediator) assists the parties to reach agreement. Mediators do not offer solutions; they help the parties to reach agreement through their own suggestions.

consent order a written agreement reached by the parties to a dispute and approved by the court

conciliation a process of settling disputes in which a neutral third party (a conciliator) assists the parties to reach agreement. It differs from mediation in that the conciliator can suggest solutions to the parties.

arbitration the process of resolving a dispute by an independent third party, such as a court or tribunal, where the decision is legally binding on the parties

remedial action action taken to restore a site to its previous or natural condition, or to an equivalent condition

negligence failure to take reasonable care when a person or organisation is legally required to do so

recklessness continuing on a particular course of action despite realising that doing so might result in harm to others

common law judge-made law, or law developed by judges through the decisions in actual cases brought before the courts

precedent a legal principle that is established by a court in resolving a dispute and is expected to be followed in later cases

duty of care a responsibility to ensure the safety of any persons whom we can reasonably foresee might be affected by our actions

discrimination the treatment of an individual in an unfavourable manner based on an actual or perceived personal characteristic protected by the law

human right the basic rights that are considered to be the entitlement of all humans

Universal Declaration of Human Rights a declaration passed by the United Nations outlining the fundamental human rights of all people in the world

judiciary the collective name given to the judges who preside over law courts

separation of powers the division of government into the executive, the legislature (parliament) and the judiciary with the aim of providing a system of checks and balances that prevents the excessive concentration of power in one group

security of tenure the constitutional guarantee that a political office holder cannot be removed from office except under exceptional circumstances

appeal the request to a higher court to review a decision made by a lower court

original jurisdiction the power of a court to hear a case for the first time

appellate jurisdiction the power of a court to review a lower court's decision

appellant the person appealing a court decision

respondent the person defending an appeal

leave to appeal permission from the court to appeal a decision

Bribery the act of giving money, a gift or any other item of value to a recipient in the expectation that it will alter the recipient's behaviour

Coercion the practice of forcing someone to act in an involuntary manner by using intimidation or threats, or some other form of pressure

trial by media creating widespread opinion regarding a person's guilt or innocence before a trial has occurred or before a verdict has been delivered

court delay a setback in the legal system that prevents justice from occurring in a timely fashion

stereotype an image of a social group based on inaccurate or exaggerated interpretations of that group's cultural identity

perpetuated when something is made to continue

cohesion the action of creating unity and bringing something together

non-government organisations (NGOs) a group of people (usually volunteers) who represent shared values or social causes

common good an action that benefits all members of society

advocate to speak in favour of an ideology or cause

globalisation the process by which the world is becoming increasingly interconnected through technological developments such as faster communication and easier travel

expatriates (expats) citizens of a country who live overseas

superficial existing only on the surface and lacking depth