

Jacaranda Civics & Citizenship Alive 7 for the Australian Curriculum

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Chapter 1: The Australian Constitution

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1

The Australian Constitution



1.1 Overview

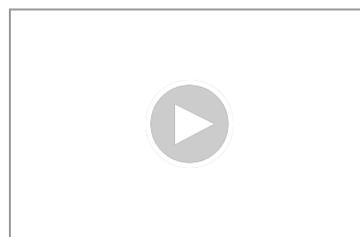
1.1.1 Rules for governing

on Resources



Watch this eLesson: [The Australian Constitution](#)

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Can you imagine playing your favourite sport without any rules? All sports have rules so that the players know what is allowed on the field of play, and what is not. Most sports also have rules for the conduct of competition between different teams, with progress ladders and rules for the conduct of finals series. All participating clubs are expected to abide by these rules. We need rules for the government of our nation just as we need rules for playing sport.

FIGURE 1 Australia's coat of arms



The way we are governed in Australia also has rules. Governments, parliaments and the law courts are all expected to follow these rules. Such rules outline the powers of those governing us, and what they are and are not permitted to do in exercising those powers. This set of rules is known as our Constitution.

FIGURE 2 Parliament house in Canberra. The powers of the federal parliament are determined by the Australian Constitution.



Learning objectives

Students will investigate:

- the key features of government under the Australian Constitution, with a focus on: the separation of powers, the roles of the Executive, the Houses of Parliament and the division of powers
- the process for constitutional change through a referendum.

1.1 EXERCISE 1

Starter questions

1. Draw up a list of three powers that you think a government should have for the benefit of the community. (For example, the government should have the power to fine people for speeding in their cars. This helps to keep all road users safe.)
2. Draw up a list of three restrictions that you think should be placed on government to protect the rights and freedoms of Australians. (For example, the government should not have the power to imprison people without a fair trial.)
3. The Australian Constitution requires elections for the parliament every three years. What do you think are the reasons for this requirement? What problems could arise if people were only required to vote every ten years?
4. Imagine you are launching a new social media platform (similar to Facebook). Brainstorm a set of rules for this platform that would allow the maximum amount of information to be shared but would still respect the individual rights and privacy of users. (You could start by identifying some of the problems with existing social media.)

1.2 Why do we have a constitution?

1.2.1 How did we get our Constitution?

During the 1890s, there was a lot of support for the idea of joining the six colonies on the Australian continent to create one united country. This united country of Australia would need a new national government, as well as retaining the existing parliaments to make laws for their respective states. Representatives of the different colonies met on several occasions to create a set of rules that would allow for a division of powers between these parliaments.

After the gold rush era of the 1850s, the population of all six Australian colonies grew rapidly. During the 1880s, the population rose from just over 2 million to around 3 million. By 1890, over 60 per cent of the population had been born locally (that is, in the Australian colonies rather than overseas). Large numbers of these people felt a greater loyalty to the colonies of their birth than to the countries of their parents' birth. It was not surprising that many saw the unification of the colonies into one country — the Commonwealth of Australia — as a desirable idea.

When a group of states decide to join together and hand over some of their powers to central government, this arrangement is known as a **federation**. In this arrangement, it is important that everyone understands which powers are retained by the states and which powers will be taken over by the central government. This was a major reason for the development of the Australian Constitution. It allowed the state parliaments to keep some law-making powers for issues that could be managed at the state level. At the same time, it gave the central parliament the power to make laws of national importance. For example, before federation, each colony had its own currency, army and navy. With federation, it made sense to have one consistent currency and a national defence force.

By 1898 the main principles of the new Constitution had been agreed to, and each of the colonies held a **referendum** to allow their citizens to vote on whether they wished to join this new federated Australia. By 1900, a majority in all six colonies had voted in favour, and the new Constitution was passed into law by the British Parliament. The newly created Commonwealth of Australia came into being on 1 January 1901. Elections for the national parliament were held in March of that year, and the newly elected parliament was opened in Melbourne's Exhibition Building on 9 May 1901. Federal Parliament then met in Victoria's Parliament House until 1927, when it was transferred to the new national capital of Canberra.

FIGURE 2 *Opening of First Federal Parliament by HRH the Duke of Cornwall & York, by Charles Nuttall, 1901*





Explore more with this weblink: Federation

1.2.2 Why have a constitution?

Not all countries in the world have a written constitution such as Australia's. The United States of America is one country that, like Australia, is a federation guided by a written constitution. However, some countries that are similar to Australia in many ways have no single constitutional document. Australia, Canada and New Zealand all recognise the British monarch as their head of state and have similar systems of government, but neither Canada nor New Zealand has a written constitution. Their rules of government are contained in a number of different pieces of **legislation**.

Advantages of having a constitution

1. A constitution provides a system of rules that government is required to follow. In Australia it means that laws have to be made by a democratically elected parliament, not by any individual.
2. A written constitution can include some rights and freedoms to be enjoyed by all citizens of the country. For example, the Australian Constitution guarantees freedom of religion.
3. In Australia, the Constitution allows for a clear distinction between the powers of the federal parliament and the powers of the state parliaments.

FIGURE 3 The Australian Constitution guarantees freedom of religion for all Australians.



Disadvantages of having a constitution

1. A written constitution can be difficult to change as society changes. Australia today is not the same as the colonies of the 1890s when the Constitution was written, and yet we are still bound by a document that is over 100 years old. Back then it was illegal for anyone to bathe on public beaches between 6 am and 8 pm. Imagine if such a law still existed today!
2. Any written document can be open to interpretation. Some words have a number of different meanings. People could argue over those meanings, making a constitution less clear than we would want.

3. Enforcing a constitution depends on the willingness of everyone to obey it. In some countries, **dictators** have seized power by force and refused to follow the constitution of that country. In 1933, for example, Adolf Hitler seized complete power in Germany. Although Germany had a constitution at the time, Hitler was able to convince the German Parliament to pass laws suspending many of the safeguards (protections) in that constitution. These suspended safeguards included rights such as free expression of opinion and freedom of the press, as well as constitutional protections that made sure executive government did not have excessive power. The new laws made it easier for Hitler to persecute his political opponents and minority groups such as the Jewish people. Once he gained complete control of Germany, he murdered more than 6 million Jewish people.

FIGURE 4 Adolf Hitler became a dictator in Germany in 1933 by suspending the protections in Germany's constitution.



1.2 EXERCISE 1

Why do we have a constitution?

1. Outline two reasons why the idea of a united Australia became popular during the 1880s and 1890s.
2. Explain the process by which the Australian Constitution came into existence.
3. In your own words, explain the meaning of the term 'federation'.
4. What is the main feature of a federation?
5. The current states of Australia were originally British colonies. Using internet or library resources, answer the following:
 - a. What is a colony?
 - b. Identify three countries other than Australia that were previously British colonies.
6. Would it be possible for a dictator to seize power in Australia? Give reasons for your answer.
7. After reading about the advantages and disadvantages of having a written constitution, do you believe that such a constitution is a positive or a negative feature of our system of government? Outline your opinion in writing, and compare it with the opinions of your classmates.

1.3 Sharing the power

1.3.1 The division of powers

One of the key reasons for having a constitution is to reinforce the rights of citizens in a **democracy** such as Australia. Our Constitution does this by ensuring that no one person or organisation within our structure of government has all the power. Instead, power is shared in a number of ways, and the Constitution reinforces this arrangement.

Most of the colonial parliaments that were to become state parliaments after federation had been in existence since the 1850s. State parliaments were accustomed to passing laws and governing their areas of Australia, and everyone expected them to continue doing this after 1901. For this reason, the Constitution supports the idea of a division of powers between the state parliaments and the federal parliament. Law-making powers are divided in such a way that national issues can be handled by the central government, while state governments can concentrate on providing essential services for their citizens.

Section 51 of the Constitution lists all the areas of government that are the responsibility of the federal parliament. These are usually referred to as the 'specific powers', and they include:

- trade and commerce with other countries
- postal and telephone services
- the defence forces
- quarantine regulations
- immigration and emigration issues
- weights and measures used in Australia
- the banking and currency systems
- relationships with other countries (through our embassies and diplomats).

FIGURE 1 The federal government controls the issuing of currency to ensure the same money is used throughout Australia.



Any area of government not included in section 51 remains the responsibility of state parliaments. Examples include:

- health and hospitals
- police and emergency services
- primary and secondary education
- transport, including public transport, road rules and road construction.

The powers that remain with state parliaments are known as the 'residual powers'.

FIGURE 2 The provision of essential services such as firefighting is the responsibility of state governments.



Although not mentioned in the Constitution, there is another level of government — local government — operating in Australia. Local government is carried out by city and municipal councils. These councils usually have responsibility for:

- parks and recreational facilities, such as swimming pools and sports grounds
- town planning
- rubbish removal
- maintenance of local streets
- libraries and kindergartens.

FIGURE 3 Public swimming pools are valuable facilities provided by local councils.



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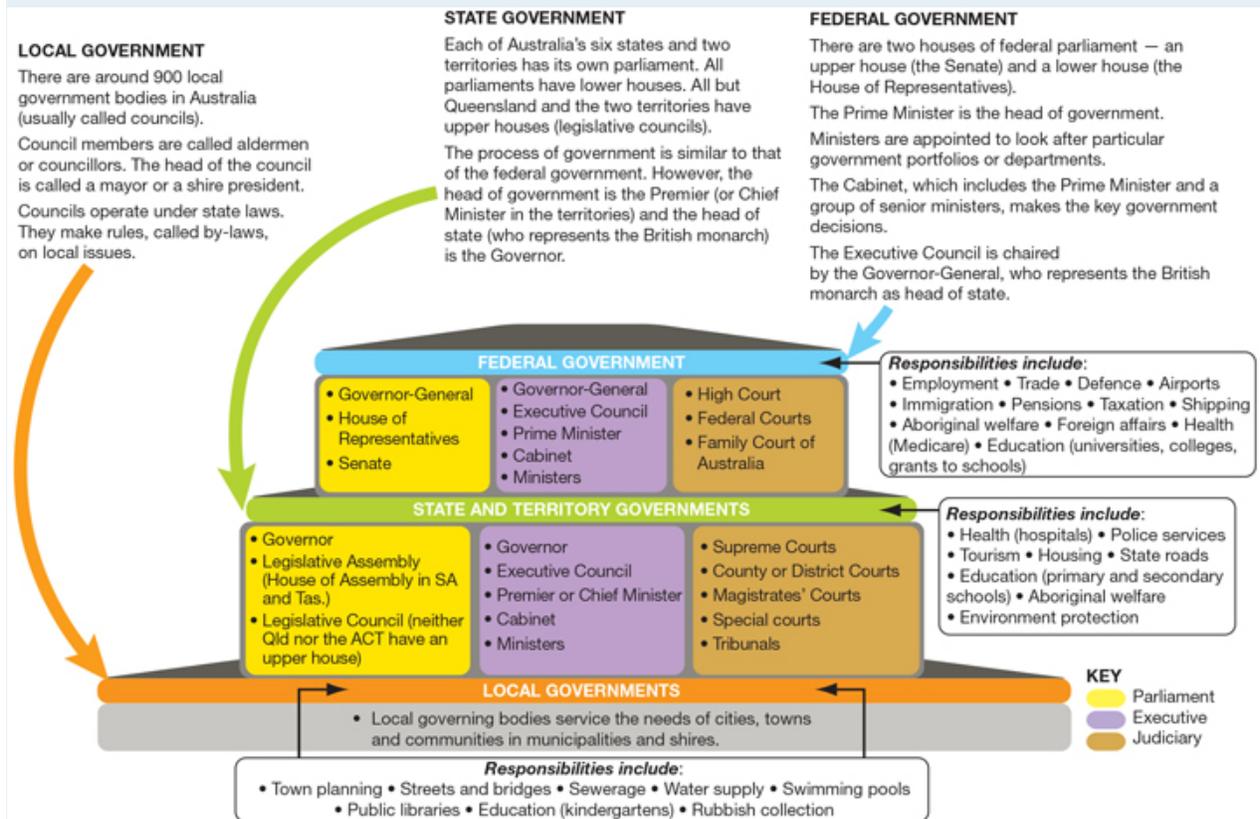
- ➡ **Try out this interactivity:** [Time out: Responsibilities](#)
Searchlight ID: [int-1207](#)

1.3.2 The separation of powers

At both the federal and state levels, the functions of government are not all concentrated in the parliament. The Australian Constitution supports the idea of the separation of powers to allow for three arms of government:

1. legislative arm
2. executive arm
3. judicial arm.

FIGURE 4 The division of powers and the separation of powers



1.3.3 The legislative arm

This is the parliament, which has the power to make new laws and to change or **repeal** existing laws. It consists of two separate 'houses' — the House of Representatives and the Senate — together with the Governor-General as the representative of the Queen. A proposed law is known as a Bill. To become law, a Bill must be debated and voted on by both houses of parliament, and then approved by the Governor-General. It then becomes known as an Act or a statute, which are the formal names of laws that have been passed by parliament.

1.3.4 The executive arm

This is the arm of government with the responsibility of putting the laws into action. Executive power officially lies with the Governor-General, but it is usually exercised by government ministers. These are members of parliament who have special responsibility for particular areas of government. For example, the minister for defence is responsible for administering all laws that relate to the defence forces; the minister for immigration is responsible for laws dealing with migrants wishing to come to Australia; and the minister for the environment is responsible for those laws that are designed to protect the environment. Public servants and other government employees are part of the executive arm of government.

FIGURE 5 When all government ministers meet together, they are known as the Cabinet. Such meetings usually take place in the Cabinet Room in Parliament House.



1.3.5 The judicial arm

This includes the **judiciary** and the courts, which are responsible for enforcing the law and settling disputes that might arise under the law. The courts can also ensure that the law is applied fairly and equally to everyone, so they are a safeguard for our rights and freedoms. The High Court of Australia has the power to interpret and enforce the Constitution. It can make sure that neither the legislative arm nor the executive arm acts in a way that is outside the constitutional powers of that arm. Once a judge has been appointed, he or she cannot be easily removed by the executive arm. This means that judges can be independent and make decisions without fear or favour.

FIGURE 6 The High Court of Australia has the power to interpret and enforce the Constitution.



Why do we have the separation of powers?

The separation of powers provides a system of checks and balances on the power of government. This works in the following ways:

- Members of parliament can make laws but have to face elections on a regular basis. If laws prove to be unpopular or unfair, the people can vote for new and different members to replace them.
- An independent judiciary has the power to ensure that parliament and the executive are acting within the limits of the Constitution. This is a way of protecting individual freedoms. The High Court can declare any law invalid if it is contrary to the Constitution.
- Government ministers have to gain the approval of a majority of both houses of parliament if they want to bring in any new laws. If they cannot convince enough members, the law will not be passed.
- Government ministers are all members of parliament, and are individually accountable (or answerable) to parliament. They are required to answer questions in parliament about actions they take as part of their executive role.

DISCUSSION

'The separation of powers exists to protect us from the abuse of power.' Discuss arguments to support this case and then counterarguments to represent opposing points of view. Which point of view do you support?

1.3 EXERCISE 1

Sharing the power

1. List three examples of the responsibilities of each of the following levels of government:
 - a. federal government
 - b. state government
 - c. local government.

2. Outline the role of each of the following arms of government, and provide an example of each:
 - a. legislative arm
 - b. executive arm
 - c. judicial arm.

3. Explain each of the following:
 - a. specific powers
 - b. residual powers.

4. What is the difference between the division of powers and the separation of powers?

5. Using internet resources, find out who currently performs the following roles in our system of government. For each one, indicate whether their role is legislative, executive or judicial:
 - a. the minister for defence
 - b. your local member of the House of Representatives
 - c. the Chief Justice of the High Court
 - d. the state minister for education.

6. The separation of powers is an important safeguard of our rights and freedoms in Australia.' Do you agree or disagree with this statement? Give reasons for your answer

1.4 How do we change the Constitution?

1.4.1 The process for changing the Constitution

When the founding fathers developed our Constitution, they wanted to make sure that it could not be changed by politicians seeking to gain more power for themselves. They also wanted to make sure that the two most populous states, New South Wales and Victoria, could not dominate government in a way that could disadvantage the smaller states. For these reasons, they made sure that it would not be easy to change the Constitution.

The process for changing the Constitution is contained in the last part of the document — chapter 8, section 128. The following steps must be observed if any change is to occur:

- Any proposed change to the Constitution must first be approved by a majority of members of both houses of the federal parliament.
- Within six months of being approved by the parliament, the proposed change must be put to the people to vote in a referendum. All registered voters are entitled to have a say.
- The referendum will usually be in the form of a question asking the voters whether or not they approve of the change. Voters write the word 'Yes' or 'No' in a box on the voting paper to signify their support or opposition to the proposed change (see figure 1).
- For the change to be approved, more than 50 per cent of all voters in Australia must vote yes to the proposal.
- In addition, there must be a majority in favour in at least four of the six states.
- If the above requirements are met, the proposal goes to the Governor-General for final approval and the change is made to the Constitution.

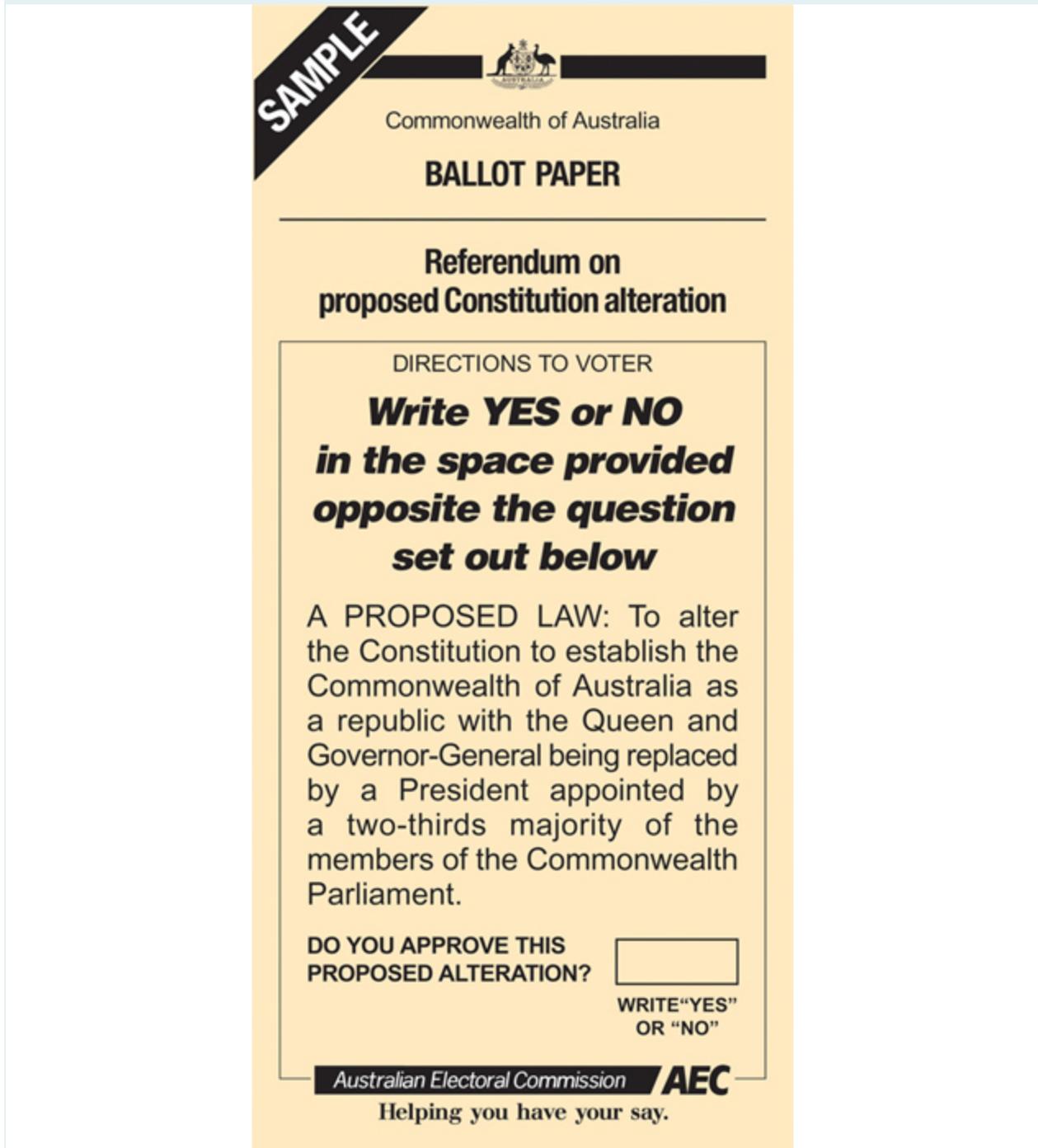
Resources



Watch this eLesson: [Referendums](#)

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FIGURE 1 A ballot paper from the referendum held in 1999



DISCUSSION

Do you think that Australia should become a republic? Would you have written 'yes' or 'no' in the 1999 referendum? Discuss as a class.

The double majority

As we can see from the previous discussion, it is not enough for a majority of all voters in Australia to approve a change to the Constitution. There must also be a majority in favour in at least four of the six states. This principle is known as the 'double majority', and is a requirement for constitutional change outlined in section 128 of the Constitution.

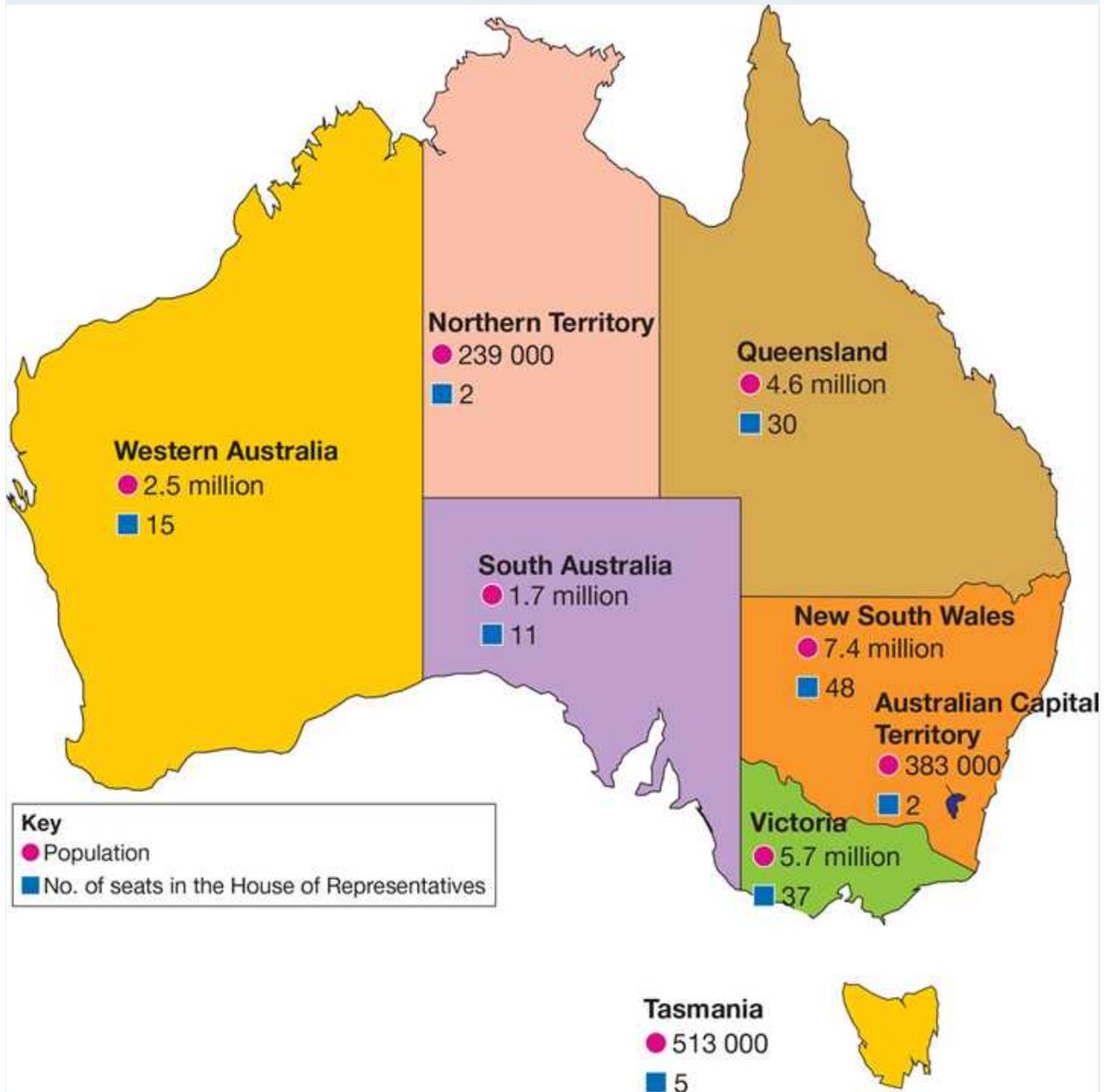
FIGURE 2 The Constitution can only be changed through a vote of the people.



The founding fathers introduced the need for a double majority because they wanted to make sure that the states with larger populations could not out-vote the states with smaller populations, and so change the Constitution to gain some advantage for their own inhabitants. Throughout most of Australia's history, New South Wales and Victoria have been the biggest states in terms of population. Today, with over 13 million people between them, they make up more than 50 per cent of our population of just over 23 million, and elect 85 of the possible 150 members of the House of Representatives (see figure 3).

Remember that the Constitution was developed by representatives of the original six colonies that were to become states within the new Commonwealth of Australia. These men knew that they were giving up some of their colonial powers to the new federal parliament. Many of those who represented the smaller states were suspicious of the motives of the larger states, and were afraid that New South Wales and Victoria might try to dominate the others. For this reason, they insisted on the inclusion of the double majority to protect the interests of the smaller states. Without this double majority, it would be possible for the voters in the two largest states to out-vote the combined voters in the other four states and two territories.

FIGURE 3 The population and the number of elected representatives of each state



1.4.2 Where do proposals for change come from?

Proposals to change the Constitution can come from several sources. For example, a number of state governments may get together and decide that a particular change would be valuable. Sometimes the federal government will hold an inquiry into a particular issue, and this may lead to recommendations for constitutional change. There have been times when community pressure has led to government recognising the need for a change. This occurred in the 1960s when many people campaigned to have the federal government gain the power to make laws for Indigenous Australians (see subtopic 1.5). Proposals for change have also come from special constitutional conventions, such as that held in 1998 to consider the issue of Australia becoming a republic (see subtopic 1.5).

FIGURE 4 In 1998, a special constitutional convention was held in the old Parliament House in Canberra to consider the issue of Australia becoming a republic.



No matter where a proposal comes from, it usually needs the support of the government of the day to have any prospect of bringing about constitutional change. This is because the proposal must have the majority support of the parliament before it can be put to a referendum. As we shall see in the next section, it has been very difficult to achieve constitutional change since federation. For this reason alone, a government will want to make sure there is strong popular support for any proposal before considering the cost and effort of holding a referendum.

1.4 EXERCISE 1

How do we change the Constitution?

1. Rewrite the following stages for constitutional change in the correct order:
 - The proposed change is put to the people to vote in a referendum.
 - The proposal goes to the Governor-General for approval.
 - The proposed change must achieve a double majority for the referendum to be successful.
 - A proposed change to the Constitution must be approved by a majority of members of both houses of the federal parliament.
 - Voters write the word 'Yes' or 'No' in a box on the voting paper to signify their support or opposition to the proposed change.
2. Identify two possible sources of proposals for changing the Constitution.
3. What is a double majority? What has to happen for a double majority to be achieved?
4. Imagine that there has been a proposal to hold a referendum to change section 128 of the Constitution so that the double majority is no longer required for constitutional change.
 - a. Outline one argument in favour of making such a change and one argument against the change.
 - b. Do you believe that this proposal would be successful at a referendum? Give reasons for your answer.

1.5 How hard is it to change the Constitution?

1.5.1 Why is it difficult to change the Constitution?

The founding fathers wanted to make sure that the Constitution could not be changed too easily. They also wanted to ensure that Australia would have a form of government that was stable and predictable. Consequently, only a small minority of proposals for change have ever succeeded through the referendum process.

There have been 44 occasions since 1901 when proposals for constitutional change were put to the voters of Australia through the referendum process, and only 8 of them were successful. Let us look at some examples.

1951 — banning the Communist Party

In the years following World War II, **communism** spread through a number of countries. In eastern Europe, countries that had been occupied by Russia at the end of the war were ruled by communist governments. China became a communist country in 1949. Australia also had an active Communist Party at the time. The Australian government, led by Prime Minister Robert Menzies, believed the Communist Party to be a threat to national security. In September 1951, the Menzies government proposed a change to the Constitution to give the government the power to ban the Communist Party in Australia.

FIGURE 1 The Communist Party was considered a threat to Australia's security.



Many people campaigned against this proposal because they believed it was against the principles of freedom of speech and freedom of association. Even people who were not Communist Party members or supporters opposed the proposal. The referendum failed to gain a majority of votes, losing by 49.4 per cent to 50.6 per cent. It did gain majority support in Queensland, Tasmania and Western Australia, but it did not have a double majority and so it failed. The Communist Party only had a relatively small number of supporters and members, and most Australians were strongly opposed to communism. Nevertheless, the failure of the referendum is a good example of the unwillingness of Australian voters to change the Constitution without strong community support for the change.

1967 — recognising Indigenous Australians

When the Constitution was drafted, the federal parliament was specifically denied the power to make laws affecting Aboriginal and Torres Strait Islander peoples. Only the states could make laws in relation to those Indigenous peoples living within their own borders. Section 127 of the Constitution specifically excluded Aboriginal peoples from being counted in the official **census**. This was seen to be discriminatory by many people, as it was effectively denying the existence of Indigenous Australians. As the rights of Indigenous peoples varied from state to state, it was felt that there needed to be a consistent national approach to ensure that they could enjoy the same rights as all Australians.

FIGURE 2 Oodgeroo Noonuccal (also known as Kath Walker) was a leading campaigner for Aboriginal rights in the 1960s.



From the early 1960s, Aboriginal leaders began campaigning strongly to remove section 127 from the Constitution, and to change the clause that prevented the federal parliament from making laws affecting Indigenous Australians. In 1967, a referendum to make these changes was put to the voters. It was strongly supported by all political parties as well as the general public. This proposal became the most successful constitutional referendum in Australia history. Over 90 per cent of voters were in favour across the country, with a majority in favour in every state. As a result of this constitutional change, the federal government has been able to pass laws such as the Racial Discrimination Act, which aims to ensure that all Australians are treated equally regardless of their racial or ethnic origins. It has also allowed the federal parliament to make laws relating to Aboriginal land rights.

1999 — becoming a republic

During the 1990s, support grew for the idea that Australia should become a republic. This would have required the removal from the Constitution of references to the British monarch, and of the Governor-General as the monarch's representative. The position of head of state would be occupied by an Australian president. There were different ideas as to how such a president might be appointed. Some believed that he or she should be directly elected by the Australian voters, while others believed the president should be appointed by the parliament.

FIGURE 3 The Australian Republican Movement and Australians for Constitutional Monarchy were active in campaigning during the 1999 republic referendum.



In 1998 a constitutional convention was held in Canberra, attended by representatives from a variety of political and community groups. The convention was given the task of coming up with a proposal to put to voters in a referendum. After much discussion, the convention proposed a model by which the president of an Australian republic would be appointed by a vote of the federal parliament. A successful presidential nominee would need to be supported by two-thirds of those members. The proposal was opposed both by people who wanted to retain the British monarch as head of state and by those who wanted a president to be directly elected by the voters. Without broad community support, the referendum did not win majority support throughout the country or gain a majority in any state.

1.5 EXERCISE 1

How hard is it to change the Constitution?

1. Why did the Menzies government wish to ban the Communist Party in Australia?
2. Which two issues were the subject of the 1967 referendum relating to Aboriginal rights?
3. What process was used to develop the model voted on in the 1999 republic referendum?
4. Using internet resources, identify three pieces of legislation that have been passed as a result of the federal parliament gaining the power to make laws for Aboriginal Australians.
5. Using the examples of the 1951 and 1999 referendums, brainstorm three reasons why it is very difficult for a constitutional referendum to be successful in Australia.
6. Despite the loss of the referendum in 1999, many people still believe that Australia should eventually become a republic. On the other hand, media coverage of the marriage of Prince William and Kate Middleton and the birth of Prince George has revived interest in the monarchy. Using the Australian Republican Movement weblink and the Australians for Constitutional Monarchy weblink in your Resources section, list three arguments in favour of Australia becoming a republic, and three arguments against. Compare your arguments with your classmates. Your teacher may be able to organise a class debate on the issue.

1.6 SkillBuilder: Questioning and research

1.6.1 Tell me

When carrying out your own research, the steps in figure 1 can provide a useful guide.

FIGURE 1 How to carry out your own research



1.6.2 Show me

Imagine you have been asked to investigate the process that led to Australian federation in 1901.

Your first step is to clearly identify the essential key question. This could be expressed as: 'What was the sequence of events that led to Australian federation in 1901?'

It is now necessary to break this down into a series of more specific questions. These could include:

1. Who or what started the process? (Was there an individual, a group of people or a significant event that began the process?)
2. How or why did each of the state governments become interested in pursuing the idea of federation?
3. What organisations were set up to promote the idea?
4. Who were the founding fathers? (What were their names? Which colonies did they represent?)
5. What processes did the founding fathers use to develop a constitution?
6. When and where did they meet to carry out these processes?
7. Where did they get their ideas from?
8. What important principles did they include in the Constitution?
9. Did they have the complete support of all colonies? Were some colonies harder to convince than others?
10. What were the final legal processes that were necessary for the Constitution to come into effect?

The next step is to locate appropriate sources. By entering the search term 'Australian federation' in your favourite search engine, you will be presented with a number of sources. A Wikipedia entry is often found at or near the top of the list of sources found, and many students will be familiar with this resource. There is no problem in using Wikipedia as one of your sources — so long as you remember that it is not always reliable, and any information gathered from Wikipedia should always be checked against another source to make sure it is accurate. To help ensure that your information is correct, it is a good idea to use at least two sources to answer each question.

Keep your questions beside you as you read each source, and note the location of material that provides answers. You can select and print some text, and then highlight those sentences or paragraphs that provide answers to your questions. Sometimes a complete answer to a question may be found in several places in a piece of text. Be sure to highlight all relevant text, and indicate with a number which question the information answers.

When you are satisfied that you have found the answers to all the questions, you need to write the answers in order, making sure to use your own words as much as possible. You can then use the answers to present your information in the required form. This may be a report to the rest of the class, an essay to be marked by your teacher, a PowerPoint or Keynote presentation, or any other format that is appropriate.

1.6.3 Let me do it

ACTIVITIES

Practise the skill

Using the process modelled in **figure 1**, devise a series of questions and carry out the research to produce a report on the following key question: 'Why was the 1967 referendum on Aboriginal rights the most successful in Australia's history?'

DISCUSSION

Did you follow the steps in the research process? Discuss how segmenting the problem assisted you in solving the problem.

1.7 Review

1.7.1 Summary

The way we are governed in Australia is determined by a set of rules. This set of rules is known as our Constitution. It outlines the powers of those governing us, and what they are and are not permitted to do in exercising those powers. Commonwealth and state parliaments are all expected to operate within the rules laid out in this Constitution. The law courts are also expected to uphold the rules contained in the Constitution, and to ensure that all individuals and organisations act within these rules.

- A constitution was necessary because Australia already consisted of six self-governing colonies. As a national parliament would be introduced to govern the new nation, it was important to have a clear statement of how power would be shared between the national parliament and the six existing parliaments.

- The Constitution provides for a division of powers between the state parliaments and the federal parliament. Law-making powers are divided in such a way that national issues can be handled by the central government, while state governments can concentrate on providing essential services for their citizens.
- Under our Constitution, we also have a separation of powers. This means that power is separated between the legislative arm of government, which makes laws; the executive arm, which implements (or carries out) the laws; and the judicial arm, which resolves disputes that may arise under those laws.
- Our Constitution can only be changed through a referendum in which a double majority vote in favour of the proposed change.
- It is relatively difficult to change our Constitution. There have been 44 occasions when constitutional change has been attempted, and only 8 of them were successful.

1.7.2 Your turn

ACTIVITIES

Australia's Constitution would never have been agreed to if it had not guaranteed a role for state governments. It was state politicians who met to develop the Constitution, believing that they would continue to have considerable powers. Over the last hundred years, many Australians have argued that we no longer need state governments. They argue that countries with much larger populations than Australia manage without two levels of parliament. They also argue that local councils could be enlarged to become elected regional authorities, so that we would have only two levels of government. Those who support retaining state governments argue that the federal parliament is too distant from ordinary people, and that state governments are best placed to deliver essential services.

Removing state parliaments would require several changes to the Constitution. Consider the following questions, and give reasons for your responses:

1. Modern communications did not exist when the Constitution was drafted, so the federal government would have seemed very distant. State governments, however, were based in every capital city and so were closer to the people. Have changes in our forms of communication made state governments unnecessary?

2. Identify three changes that would have to happen for a referendum to abolish the states to be successful.
3. Can you think of some powers that are currently held by one level of government that could be transferred to a different level of government? For example, the state governments could transfer their responsibility for health and hospitals to the federal government.

Resources



Try out this interactivity: [The Australian Constitution crossword](#)

Searchlight ID: [int-5311](#)

Chapter 2: Parliament and government

Contents

- 2.1 Overview
- 2.2 Role and structure of the Commonwealth Parliament
- 2.3 State and territory parliaments
- 2.4 Winning power
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- 2.6 SkillBuilder: Problem solving and decision making
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2

Parliament and government



2.1 Overview

2.1.1 Parliament represents citizens

on Resources



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

Searchlight ID: [eles-2077](#)



Parliament is the main law-making body in Australia. Parliaments are elected to create laws that represent the wishes and values of their citizens. We describe our system of government as a **democracy** because the people vote to decide who sits in the parliament to make our laws for us. State parliaments were mostly established in the six former colonies from the 1850s onwards, while the federal parliament came into being with federation in 1901.

Many features of our parliamentary democracy have been adapted from the British system of government, known as the **Westminster system**. As a group of former British colonies, we adopted many features of the Westminster system including having two houses of parliament at both the federal level and in most of the states.

FIGURE 1 Our parliamentary system is based on the Westminster system. Westminster is a district of London in which the British Parliament is located.



Learning objectives

Students will investigate:

- the key features of government under the Australian Constitution with a focus on: the separation of powers, the roles of the Executive, the Houses of Parliament and the division of powers.

2.1 EXERCISE 1

Starter questions

1. Have you ever taken part in an election in your class or in a sports club? What was the process used? Who voted and how was the vote conducted?
2. What are the names of the two major political parties in Australia? Make a list of what you know about each one.
3. What is the name of your local federal electorate?
4. Who is your local member of federal parliament? Which political party does he or she represent?
5. What is the name of your local state electorate?
6. Who is your local member of state parliament? Which political party does he or she represent?

2.2 Role and structure of the Commonwealth Parliament

2.2.1 The three parts of Parliament

Our Commonwealth Parliament consists of three parts:

- the lower house, known as the House of Representatives
- the upper house, known as the Senate
- the Queen, represented by the Governor-General.

Our Commonwealth Parliament is **bicameral**. The major role of this body is to make laws in those areas defined by the Constitution.

2.2.2 The House of Representatives

As the lower house in the federal parliament, the House of Representatives has the following features:

- It has 150 members, each elected for three years. Each member represents an electorate or 'seat' that covers a particular geographic area. All electorates have roughly the same number of electors, currently about 90 000 each. States with larger populations, such as New South Wales and Victoria, elect the largest number of members. States with smaller populations, such as Tasmania and South Australia, elect much smaller numbers.
- Meetings of the House of Representatives are chaired (or run) by the Speaker of the House. The Speaker is usually elected by all the members of the House. The Speaker has an important role in chairing the House, maintaining order in debates and ensuring all members observe the rules of the House, known as the 'standing orders'.
- Most legislation is introduced in the House of Representatives. For it to actually become the law of the land, a majority of the members of parliament have to vote in favour of it.
- Most members of the House of Representatives (MHRs) are members of political parties. A party is a group of people who have similar opinions and values, and who will usually all vote together for laws that reflect those views and values (see subtopic 2.4).

FIGURE 1 The House of Representatives Chamber



2.2.3 The Senate

The Senate is the upper house of the federal parliament, and has the following features:

- It acts as a house of review. This means that it can have a second look at all legislation that has passed through the House of Representatives. Senators also have to vote on any new proposals before they can become law. They can reject or change any legislation that they do not believe is appropriate.
- Apart from a brief period from 2005 to 2008, governments have not had a majority of members in the Senate since 1981. This has meant that the Senate has often sought to change or improve government legislation.
- The Senate has 76 members. Each of the six states elects twelve senators, regardless of size or population, and the Northern Territory and ACT each elect two senators. In contrast, the members of the lower house are elected on the basis of population. Because there are so many representatives from New South Wales and Victoria, they could out-vote all the other members combined. The Senate was therefore created with equal numbers from each state to act as a safeguard against this happening in the upper house.
- Meetings of the Senate are chaired by the President of the Senate. He or she has a similar role in relation to the Senate as the Speaker has in relation to the House of Representatives.

FIGURE 2 The Senate Chamber



2.2.4 The Governor-General

The third element in the Commonwealth Parliament is the Queen, represented in Australia by the Governor-General. He or she performs the following roles and functions in the parliamentary system:

- The Governor-General gives the **royal assent** to legislation that has been passed by both houses of parliament. This is the final stage that must occur before the law comes into force. Under section 58 of the Constitution, the Governor-General also has the power to withhold the royal assent and return a Bill to parliament with recommended changes.
- The Governor-General also has a number of special powers known as 'reserve powers'. These include the power to summon (calling for a new parliament to assemble after a federal election), open and dissolve (ending parliament before a federal election takes place) parliament. These powers are usually exercised on the advice of the government of the day, although the Constitution gives the Governor-General the power to ignore that advice. In 1975, the Governor-General at the time dissolved parliament and called an election, effectively dismissing an elected government.

FIGURE 3 General Peter Cosgrove was sworn in as Australia's 26th Governor-General in March 2014.



2.2 EXERCISE 1

Role and structure of the Commonwealth Parliament

1. What is a bicameral parliament?
2. In the federal parliament, what is the name of:
 - a. the upper house
 - b. the lower house?
3. What is the role of the Governor-General in passing legislation?
4. What is the difference between the way in which Members of the House of Representatives are elected and the way in which Senators are elected?
5. Outline the two main functions of the Senate.
6. Imagine that the Governor-General rejects a proposed law and sends it back to the parliament with recommended changes.
 - a. What has to happen in both houses before the Bill returns to the Governor-General?
 - b. Identify two possible consequences if either or both houses of parliament refuse to accept the Governor-General's recommended changes.

2.3 State and territory parliaments

2.3.1 Eight separate parliaments

Although considerable powers were handed over to the federal parliament at the time of federation, the newly established states retained the parliamentary structures that had been established during the colonial period. They still perform an important function in our system of government.

In addition to the federal parliament, Australia has eight state and territory parliaments. There are the original six state parliaments created at federation, plus two parliaments that have been established to make laws for the two mainland territories — the Northern Territory and the Australian Capital Territory (ACT). The two territories were governed directly by the federal parliament for most of the twentieth century, with the Northern Territory gaining its own parliament in 1974 and the ACT in 1989. The federal parliament retains the power to change or overrule any laws passed in the territory parliaments. It does not have this power over the six state parliaments.



Try out this interactivity: [FIGURE 1 Which parliament house?](#)

Searchlight ID: [int-5655](#)

2.3.2 Features of the state and territory parliaments

State and territory parliaments have many similar features, although some have unique characteristics:

- All of the state parliaments were originally established as bicameral parliaments, with an upper and a lower house. In 1922 the Queensland Parliament abolished its upper house, so it is now a **unicameral** parliament.
- In each of the bicameral parliaments, the upper house is known as the Legislative Council. In Victoria, New South Wales and Western Australia, the lower house is called the Legislative Assembly. This is also the name given to the only house in Queensland. The lower house in South Australia and Tasmania is known as the House of Assembly.
- The territory parliaments are also unicameral, with the one house in each territory known as the Legislative Assembly.
- The leader of the government in each of the states is called the premier, while the leader of the government in the two territories is called the chief minister.
- Each of the states and territories mirrors the separation of powers that applies at the federal level: legislative, executive and judiciary. Each parliament has legislative powers, allowing it to pass laws that apply within the boundaries of the state or territory. Each has an executive arm, in the form of a group of ministers with particular responsibilities for different government functions. Each also has a judiciary to enforce laws and settle disputes. The highest court in each state and territory is known as the Supreme Court.
- Each of the states has a Governor, representing the Queen. He or she has the same role within each state as the Governor-General has at the federal level.

2.3.3 Role of the state and territory governments

State and territory governments provide many of the essential services we rely on in everyday life.

Criminal law

State and territory governments have the power to make laws to prohibit most types of criminal activity. They also have the power to decide the appropriate punishments for people who break the law. Laws relating to crimes such as murder, assault and theft are all made at the state level. State governments also control the road laws, including speed limits, drivers licences, car registration and drink driving laws.

FIGURE 2 State governments make laws to prohibit criminal activity.



Transport

State and territory governments are responsible for building and maintaining most of the roads and freeways within their own borders. Sometimes they arrange for private companies to build these roads. Such companies are usually given the right to charge tolls on the roads they have built. Public transport is also a state government responsibility. In some states, the government owns and operates the public transport system. In others, all or part of the public transport system is operated by private operators. In either case, state and territory governments make the laws that govern how the system operates.

FIGURE 3 Public transport is one of the responsibilities of state governments.



Police and emergency services

Each state and territory has its own police force, fire brigade, ambulance service and other emergency services. Police from one state generally cannot enter another state to arrest someone without special permission. However, the different police and emergency services from each state and territory usually cooperate with each other. We regularly see this when there is a major bushfire in one state and firefighters from other states come in to assist.

FIGURE 4 State governments are responsible for emergency services.



Health and hospitals

Public hospitals are built and operated by state and territory governments. These days, state governments rely on money from the federal government to help fund their health systems because hospitals are extremely expensive to run.

FIGURE 5 Public hospitals are built and managed by state governments.



Education

Each state and territory has its own primary and secondary education systems. The states often have different starting ages for school students, and each state has its own type of certificate for students completing Year 12. In recent years, the state and federal governments have jointly set up a national curriculum. The aim is to make sure that each education system covers the same subject matter at each year level. This means that students will do similar classwork wherever they live, even if they move from one state to another.

FIGURE 6 Each state and territory has its own primary and secondary education systems.



2.3 EXERCISE 1

State and territory parliaments

1. What do we mean by a unicameral parliament?
2. Identify two unicameral parliaments in the Australian parliamentary system.
3. What is the title given to the Queen's representative in each of the states?
4. How does the separation of powers apply in all of the states and territories?
5. Using an example, explain how emergency services from the different states can cooperate with each other.
6. Use internet resources to answer the following:
 - a. Which states and territories commence secondary school at Year 7 and which ones do so at Year 8?
 - b. What is the minimum age at which you can get your provisional (P-plate) drivers licence in each of the states and territories?
 - c. What is the name of the Year 12 certificate in each state and territory?
 - d. What is the name of the current premier in your state government (or the chief minister if you live in one of the territories)? How long has his or her government been in power?

2.4 Winning power

2.4.1 Political parties

While members of parliament were originally intended to simply represent the people who elected them, the development of political parties has influenced the nature of our parliamentary system. Elections have become contests between the parties. Whichever party gains a majority of members in parliament wins the power to determine which laws get passed, and therefore how the lives of all of us will be affected.

Political parties are groups of people who come together because they share similar opinions and values. They generally wish to ensure that laws passed by parliament will reflect and promote their beliefs. To help achieve this, they will usually devise a set of policies and promises that they hope will appeal to the majority of voters. Their aim is to then gain a majority of members in parliament so that they can pass laws to carry out their policies.

There are four major political parties in Australia.

The Australian Labor Party

The Australian Labor Party (ALP) is the oldest party in Australia. It was formed in the 1890s by members of the **trade union** movement. Its original aim was to represent the interests of workers and trade union members in parliament at a time when most members of parliament represented wealthy business or farming interests.



The Liberal Party of Australia

The Liberal Party was formed in 1944 by Robert Menzies. It believes in individual freedom, and in supporting the growth of business as a means of increasing national wealth. Since 1949, the Liberal Party has formed a **coalition** with the National Party



The National Party of Australia

The National Party was originally founded as the Country Party in 1920. It was formed from a number of smaller parties that were designed to promote the interests of farmers and people living in regional communities (outside of the big Australian cities).



The Australian Greens

The Australian Greens was established in 1992, initially as a party to promote a greater awareness of environmental issues. It has since broadened its aims to include the promotion of human rights and greater equality in society.



2.4.2 Federal elections

The Constitution requires that a federal election must be called every three years. This means that the voters can judge whether or not their elected representatives have been doing a good job. If they are unhappy with their members of parliament, they can vote them out and replace them with different members.

The prime minister usually decides the date of the election and then asks the Governor-General to call an election on that date. During the weeks before the election, each of the political parties will try to promote their policies in the hope of convincing the majority of voters that they will do the best job in government.

Voting always occurs on a Saturday between 8 am and 6 pm. You have probably observed this process on the television and may have accompanied your parents or guardians when they have gone to vote. When voting has finished, counting the votes begins. In most cases, enough votes will have been counted within three or four hours for it to be clear which candidates have been elected.

on Resources



Watch this eLesson: [Federal elections](#)

Searchlight ID: [eles-2258](#)

2.4.3 Forming a new government

In most cases, an election will result in one of the major parties — or a coalition of two or more parties — winning a majority of seats in the House of Representatives. This party wins the right to form a government for the next three years.

- The leader of the party in government is known as the prime minister, and is seen as the leader of the country while in government.
- Leading members of the government party or parties become ministers, and take over executive responsibility for different areas of government.
- The government has the power to bring in laws aimed at keeping the promises they made before the election.
- A new government can also **repeal** laws that were introduced by a previous government. This will happen if those laws were unpopular and led to the previous government being defeated.
- The largest single party not in government becomes the Opposition, headed by the leader of the Opposition. This party will aim to question everything the government does to make sure that the government keeps all its promises. The Opposition will also aim to become the next government by winning the next election.

FIGURE 1 After the 2016 federal election, the Liberal-National coalition re-formed government, with Malcolm Turnbull as prime minister. The Labor Party remained in Opposition, with Bill Shorten as leader of the Opposition.



2.4 EXERCISE 1

Winning power

1. What is a political party?
2. How often must a federal election be held?
3. On what day, and between which hours, are elections always held in Australia?
4. After an election, how is a new government formed?
5. Who carries out the executive function of government after an election?
6. Select one of the political parties described in this section and use that party's website to answer the following:
 - a. Who is the current federal leader of the party?
 - b. Identify three key beliefs or principles of the party in question.
 - c. Explain three key policies or actions the party would wish to carry out if it were elected to government.
7. Australia is considered to be a democratic country. Describe two features of our parliamentary system that you believe contribute to this view of Australia. Can you think of any features of our system that could be considered undemocratic?

2.5 The environment — an issue for all levels of government

2.5.1 What level of responsibility?

Protection of the environment was not considered an issue for government involvement when the Constitution was drafted. Consequently, responsibility for protecting the environment was not allocated to either the federal or state levels of government. Since the 1960s, we have become more aware of the dangers of pollution, and the need for governments to step in and make laws to prevent activities that could cause environmental damage. Both state and federal governments have assumed responsibility for environmental issues in different ways.

2.5.2 State government actions

What have governments been doing to protect our environment? Since 1970, all state and territory governments have passed environmental protection laws in areas such as air and water quality, residential noise and forestry management.

Air quality

Restricting the amount of pollution released into the atmosphere is an important part of environmental law. State government environmental laws usually include restrictions on motor vehicle exhaust emissions. They also try to limit the amount of airborne pollutants released by factories and other businesses.

FIGURE 1 State governments attempt to regulate the amount of pollution that can be released into the atmosphere.



Water quality

State and territory governments are responsible for maintaining water supplies in their regions. They ensure that:

- clean, safe drinking water is delivered to homes
- rivers and other waterways are kept free from pollution
- farms have access to water for crops and for stock to drink
- sewage and storm water are disposed of without contaminating the environment.

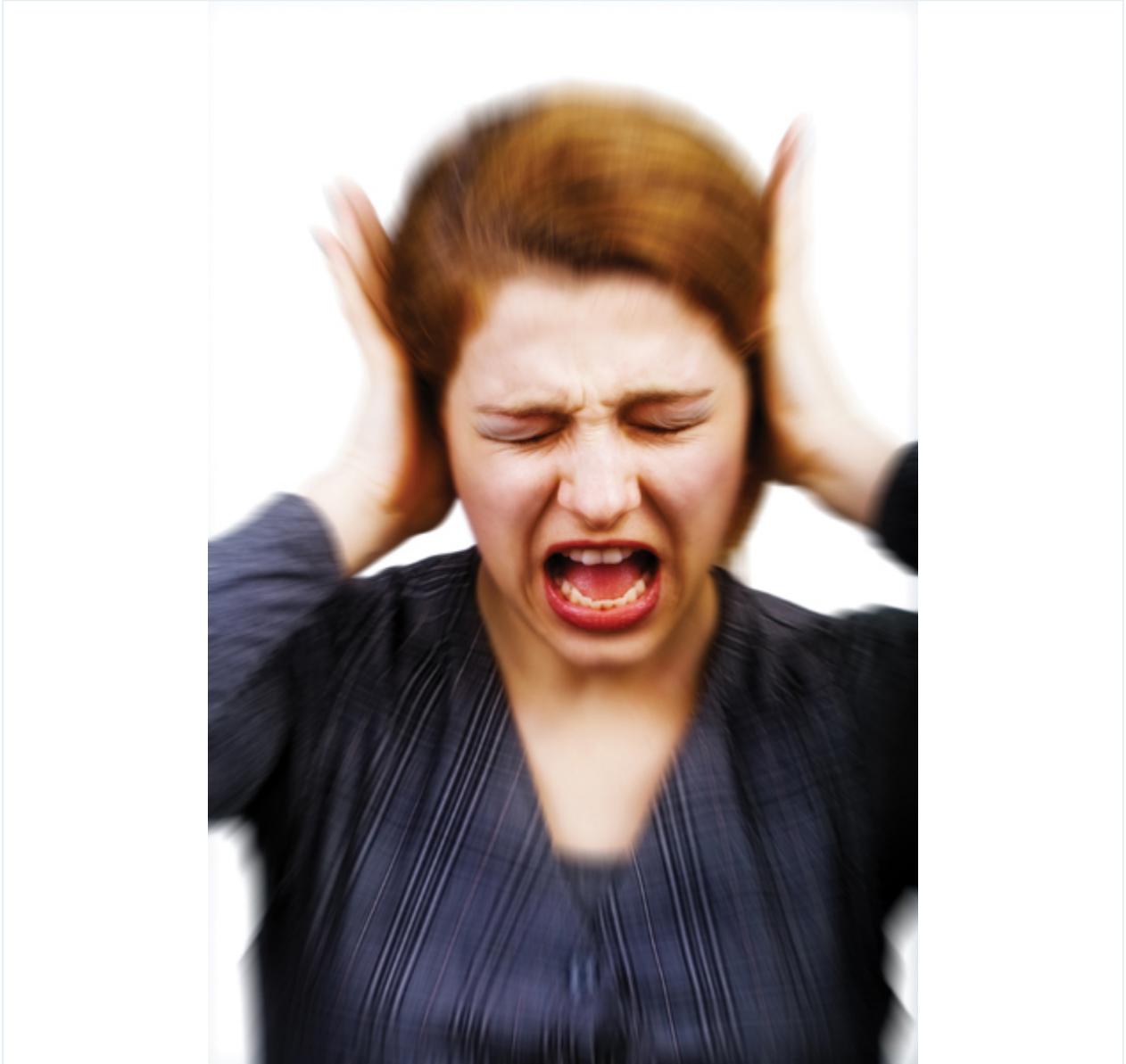
FIGURE 2 State governments make laws to keep our water supplies clean and safe.



Residential noise

Individuals and businesses are required by state laws to limit the amount of noise they make so as not to disturb their neighbours.

FIGURE 3 Residential noise comes under state environmental law.



Forestry management

State and territory governments are responsible for regulating the amount of timber that can be taken from natural forests and, in some cases, preserving certain areas as national parks.

FIGURE 4 State governments make laws to regulate the harvesting of timber from forests.



2.5.3 Federal government actions

The federal government administers the Environment Protection and Biodiversity Conservation Act. This law is designed to protect important national or world heritage sites, including areas off the coast such as the Great Barrier Reef. Any individual or business planning to do anything that will have an impact on environmentally significant sites must carry out an environmental impact assessment, and gain the approval of the federal minister for the environment.

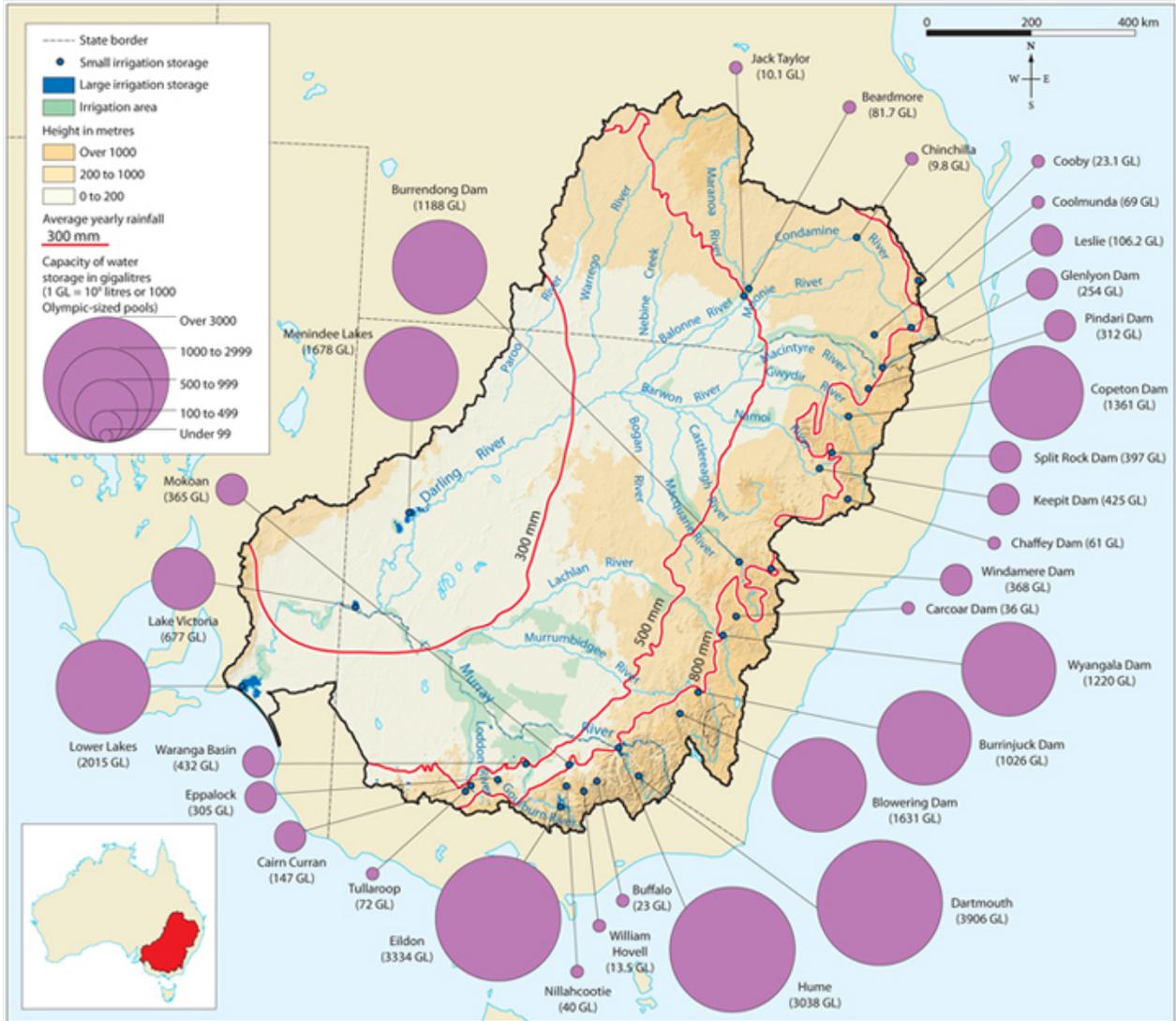
FIGURE 5 National heritage areas like the Great Barrier Reef are protected by federal environmental laws.



2.5.4 The Murray–Darling Basin: a shared responsibility

The largest river system in Australia is the Murray–Darling system. The area covered by this system is known as the Murray–Darling Basin. It includes areas of four states (Queensland, New South Wales, Victoria and South Australia) as well as the Australian Capital Territory. Since water management has been a state responsibility since federation, providing a consistent management plan for the entire basin that is fair to water users in all states has always been a problem.

FIGURE 6 The Murray–Darling Basin



The Murray–Darling Basin is a major farming area, so the water from its rivers has been used for irrigation since the nineteenth century. If each state has different rules for the use of water for irrigation, farmers in some states may take more than their fair share while others might get less than they need. The amount of water taken out of the system has also meant that parts of the river system have become environmentally degraded, reducing the quality of the water available. Most of the water in the basin is collected in Queensland, New South Wales and Victoria, but the system finally empties into the sea in South Australia. There have been times when so much water has been taken out of the system upstream that the mouth of the Murray has been closed with sandbars.

FIGURE 7 The amount of water taken from irrigation has had an impact on the environment of the Murray–Darling Basin.



In 2007, each of the state governments agreed to hand over some of their powers to the federal government as part of the process of setting up the Murray–Darling Basin Authority. This body has powers to ensure the water resources of the basin are managed in a sustainable manner. It has drawn up a plan which attempts to balance the amount of water used for irrigation with the amount needed to maintain sustainable flows of water throughout the system. The plan is an example of the federal and state governments attempting to work together.

The Murray–Darling Basin plan has been very controversial. Many farmers believe that too much water is being diverted from irrigation to maintain environmental river flows. Yet many environmental scientists believe the amount of water used for irrigation is still too high to maintain a healthy river system. Governments often have to make decisions that attempt to balance the competing interests of different groups.

on Resources



Explore more with this weblink: Murray–Darling Basin

2.5 EXERCISE 1

The environment — an issue for all levels of government

1. How do state and territory governments attempt to improve air quality?
2. Identify and list four ways in which state governments attempt to ensure the community's water needs are met.
3. What is the responsibility of state governments in relation to forests?
4. What is the major role of the federal government in environmental protection?
5. Why was it important for the federal government to become involved in the management of the Murray–Darling Basin?
6. What do you think might happen in South Australia if farmers in Queensland and New South Wales take increased amounts of water from the Murray–Darling Basin?
7. Governments often have to make decisions that attempt to balance the interests of groups of people in the community. In what ways is the Murray–Darling Basin plan an example of this?

2.6 SkillBuilder: Problem solving and decision making

2.6.1 Tell me

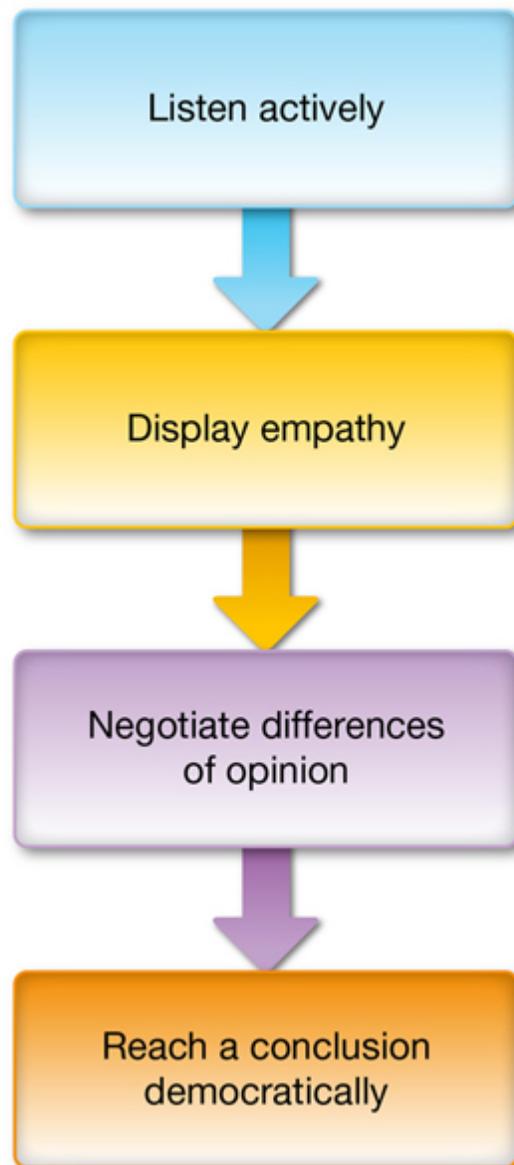
Problem solving and decision making involve working collaboratively in groups, negotiating and using teamwork to solve an issue and develop a plan for action. In order to do this successfully, you will need to do the following:

- 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.

These steps are summarised in figure 1.

FIGURE 1 The problem-solving and decision-making process



2.6.2 Show me

So how does this process work in practice? Consider this example: In Australia everyone over 18 years of age can vote, but it is the responsibility of young people to register to vote when they turn 18. It has been estimated that as many as 30 per cent of Australians aged 18 to 21 have not registered, and so are missing out on voting.

Now form into discussion groups to consider the following key points:

1. Why are so many young people not bothering to register?
2. Should we be encouraging more young people to register?
3. What are some of the ways in which we can encourage all 18-year-olds to register?
4. What plan of action could we devise to achieve greater levels of registration?

Members of the group can take it in turns to keep notes. For each discussion point, you should use the following procedure:

- Give each person a chance to express his or her opinion on the discussion point being considered. The key points of the opinion should be written down.
- Do not permit any argument or disagreement until everyone has expressed an opinion on that discussion point.
- Once everyone's opinions on the discussion point have been shared and written down, read out the opinions and discuss them to determine whether or not everyone is in agreement.
- If there is disagreement, allow those on each side of the argument the opportunity to put their point of view to convince the majority.
- Seek the maximum level of agreement on each point discussed by allowing people to make some changes to their opinions to accommodate the views of others.

In devising a plan of action for discussion point 4, all possible ways of encouraging 18-year-olds to vote should be collated into a series of steps that you believe will achieve the final result.

2.6.3 Let me do it

ACTIVITIES

Use the steps modelled in figure 1 to consider the following issue: Voting in Australia is compulsory for all those over 18 years of age, and has been since the early 1920s. It was a decision of the parliament at the time and is not written into the Constitution. In many other countries, among them the United States and Great Britain, voting is optional. In Australia, by contrast, you can be fined for not voting. Would it be fairer and more democratic for Australia to move to optional voting?

Discussion points could include:

1. What are the advantages and disadvantages of compulsory voting, both for individuals and for our society as a whole?
2. What are the advantages and disadvantages of optional voting, both for individuals and for our society as a whole?
3. If a change were to be considered, what are some of the ways you might convince others to support the change?
4. If you do not wish to change, how do you convince others to support the current system?
5. Develop a plan of action to put your ideas into practice.

DISCUSSION

Were you able to make a decision in a democratic manner in your group? Discuss if anyone accepted the responsibility of group leader and, if so, how well they supported other members of your group.

2.7 Review

2.7.1 Summary

Parliament is the main law-making body in Australia. Parliaments are elected to create laws that represent the wishes and values of citizens. Our system of government is known as a democracy because the people vote to decide who sits in the parliament. State parliaments were mostly established in the six former colonies from the 1850s, while the federal parliament came into being with federation in 1901.

Many features of our parliamentary democracy have been adapted from the British system of government, known as the Westminster system. As a group of former British colonies, we adopted many features of the Westminster system, such as having two houses of parliament at both the federal level and in most of the states.

- Our federal parliament consists of the Governor-General, the Senate and the House of Representatives. Any new laws or changes to existing laws must be voted on by a majority of members of both houses, and given the royal assent by the Governor-General.
- Each of the six states and two territories has its own parliament to make laws for its citizens on those matters over which the state or territory has constitutional power.
- Most of those elected to parliament are members of one of the political parties. These parties aim to have their members elected to parliament to form a majority so that they can pass laws to implement their policies.
- Protection of the environment is an issue that has involved all levels of government. Protection of the Murray–Darling Basin has required cooperation between the federal government and the governments of the four states concerned.

2.7.2 Your turn

ACTIVITIES

People wishing to be elected to parliament often make promises and develop policies that they hope will appeal to the majority of voters. Give detailed reasons as to why you would vote for or against someone who proposed each of the following policies:

1. lowering the voting age to 16
2. raising the licensed driving age to 21
3. introducing compulsory military service for all 18-year-olds
4. introducing tolls on all roads to help pay for improved public transport.

Resources



Try out this interactivity: [Parliament and government crossword](#)

Searchlight ID: [int-5312](#)

Chapter 3: The legal system and you

Contents

3.1 Overview

3.2 What happens in a courtroom?

3.3 The presumption of innocence

3.4 What is a fair trial?

3.5 How can Australians receive access to justice and legal representation?

3.6 SkillBuilder: Debating an issue

3.7 Review

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3

The legal system and you



3.1 Overview

3.1.1 Our legal system

on Resources



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Picture yourself standing in court, accused of a crime you did not commit, facing a trial and then being found guilty of the crime. Australia's **rule of law** and our **legal system** should protect you from this happening. But how much do you know about Australia's legal system? Would you know where to find a lawyer? Would you know what would make your trial a fair one? All Australian citizens should have the opportunity to access justice no matter who they are.

FIGURE 1 John Button was wrongfully convicted of the manslaughter of his girlfriend in 1963. Thirty-nine years later, he was acquitted (found not guilty of committing the crime) after serving his sentence in prison.



Learning objectives

Students will investigate:

- how Australia's legal system aims to provide justice, including through the use of law, presumption of innocence, burden of proof, right to a fair trial and right to legal representation.

3.1 EXERCISE 1

Starter questions

1. Figure 1 shows John Button at Fremantle Prison, where he served five years of his sentence. Why do you think he returned to the prison?
2. How would you feel if you were found guilty of a crime that you did not commit and sent to prison?
3. What would you expect to happen in a fair trial?
4. Who would help you if you had to go to court?

3.2 What happens in a courtroom?

3.2.1 Guilty or not guilty?

Courts interpret laws and settle disputes. A person who has been charged with a criminal offence may have his or her case heard by a court. It is up to the court to decide if the accused is guilty or not guilty. Let us look at what happens when a criminal matter goes to **trial** before a court.

Courts can be tense places. The decisions made in them can have an enormous impact on people's lives. Courts and the officials who work in them deal with real-life dramas. The main courtroom officials include a **magistrate** or **judge**, **jurors**, a **prosecutor** and **counsel for the defence**. Each state and territory has its own independent system of courts, with different courts at different levels. Courts are often referred to as higher or lower courts.

FIGURE 1 In the courtroom



3.2.2 Lower courts

Most people charged with a criminal offence will have their cases heard in a magistrates court (called the Local Court in New South Wales, the Magistrates' Court in Victoria and the Magistrates Court elsewhere). These lower courts are more informal than the higher courts. There is no **jury**, and magistrates do not wear a wig or a robe in court. However, people still need to address the magistrate as 'Your Honour' as they do in the higher courts.

After hearing the cases presented by both sides, the magistrate decides whether a person is guilty or not guilty. If a person is found guilty, the magistrate decides the consequence. This is known as the sentence. A magistrate will refer very serious criminal offences to a higher court.

3.2.3 Higher courts

The states and territories all have a Supreme Court, which hears the most serious criminal cases. All the states except Tasmania have a District Court, although the equivalent court in Victoria is referred to as the County Court. The District or County Court hears serious criminal matters (except for the most significant cases), including murder and treason.

At the beginning of a criminal trial in a higher court, the accused is asked, 'How do you plead?' A jury of 12 people may be selected if the response is 'Not guilty'. The jury's role is to listen to the evidence and decide whether the accused is guilty or not guilty. If the verdict is not guilty, the accused is free to leave the court. If the verdict is guilty, then the judge decides the sentence.

3.2 EXERCISE 1

What happens in a courtroom?

1. List the main courtroom officials in a serious criminal trial.
2. How are magistrates and judges addressed in court?
3. How many jurors are there for a criminal case?
4. What is the jury's responsibility in a criminal trial?
5. The system of courts for each state or territory is referred to as a hierarchy (like a ladder). Construct a diagram showing the hierarchy of courts for your state or territory. Put the highest court at the top and the lowest court at the bottom of your diagram.
6. Ask your teacher to organise a class excursion to a local court. While you are there, draw a floor plan of the court and label where all the officials are located in the room. Note their role in the court. Write down some of the facts you hear for each case.
7. In a magazine, newspaper or online, find a news article that reports on a criminal case in an Australian court. Summarise the key facts of the case, taking note of who the judge or magistrate was, what the charge was, any decision made and any other court officials mentioned.
8. In a group of three to four, develop a 30-second TV advertisement for a law firm that defends people charged with serious crimes such as murder.
9. In most states of Australia, a person can be found guilty by a jury only if 11 of the 12 jurors (a majority verdict) or all 12 jurors (a unanimous verdict) conclude that the accused is guilty. Why might this be hard to achieve?

3.3 The presumption of innocence

3.3.1 Innocent until proven guilty

If you were in trouble at school, you would hope that your teacher or principal would believe your claim that you had done nothing wrong. You would expect that you or your classmates would be treated as innocent until it could be proved that you or they had actually done the wrong thing. In the same way, most Australians expect that when they go to court they will be presumed to be innocent until proven guilty. But is this something that actually happens?

The **presumption of innocence** is a belief that we have inherited from English law. It means that all accused people who appear before a court in Australia are presumed to be innocent until the prosecution proves that they are guilty. Not only are they presumed to be innocent, but they can only be found guilty if the court is reasonably certain that the accused person committed the crime. This means that the magistrate, judge or jury must believe that the accused is guilty **beyond reasonable doubt**. The prosecution has the **burden of proof** in a criminal trial.

3.3.2 Presumption of innocence around the world

The presumption of innocence is contained in article 11 of the Universal Declaration of Human Rights, and in article 14 of the International Covenant on Civil and Political Rights (ICCPR). This means that it is seen as very important across the world. Many nations — including the United States of America, France, Italy and New Zealand — recognise this principle.

3.3.3 Presumption of innocence and bail

Observing the presumption of innocence means that if a person is charged with a criminal offence, they may be granted **bail** by a magistrate or judge. Bail is the promise that an accused person makes to appear in court at a later date. It allows the accused to go home to wait for the trial, rather than stay in custody until he or she must go to court. Sometimes bail will have conditions attached, including the payment of money, surrendering a passport, remaining at the same address or reporting to police. Bail usually applies only to serious cases.

There are cases where the court may suspect that an accused person who is charged with a serious crime might not turn up to court, or might be at risk of causing danger to the public. In this case, bail would be refused and the accused would be detained (held in custody) until the trial.

FIGURE 1 Unlike in this image, the presumption of innocence suggests that a defendant should not be handcuffed when appearing in court unless he or she presents a risk to other people.



FIGURE 2 Arguments for the presumption of innocence

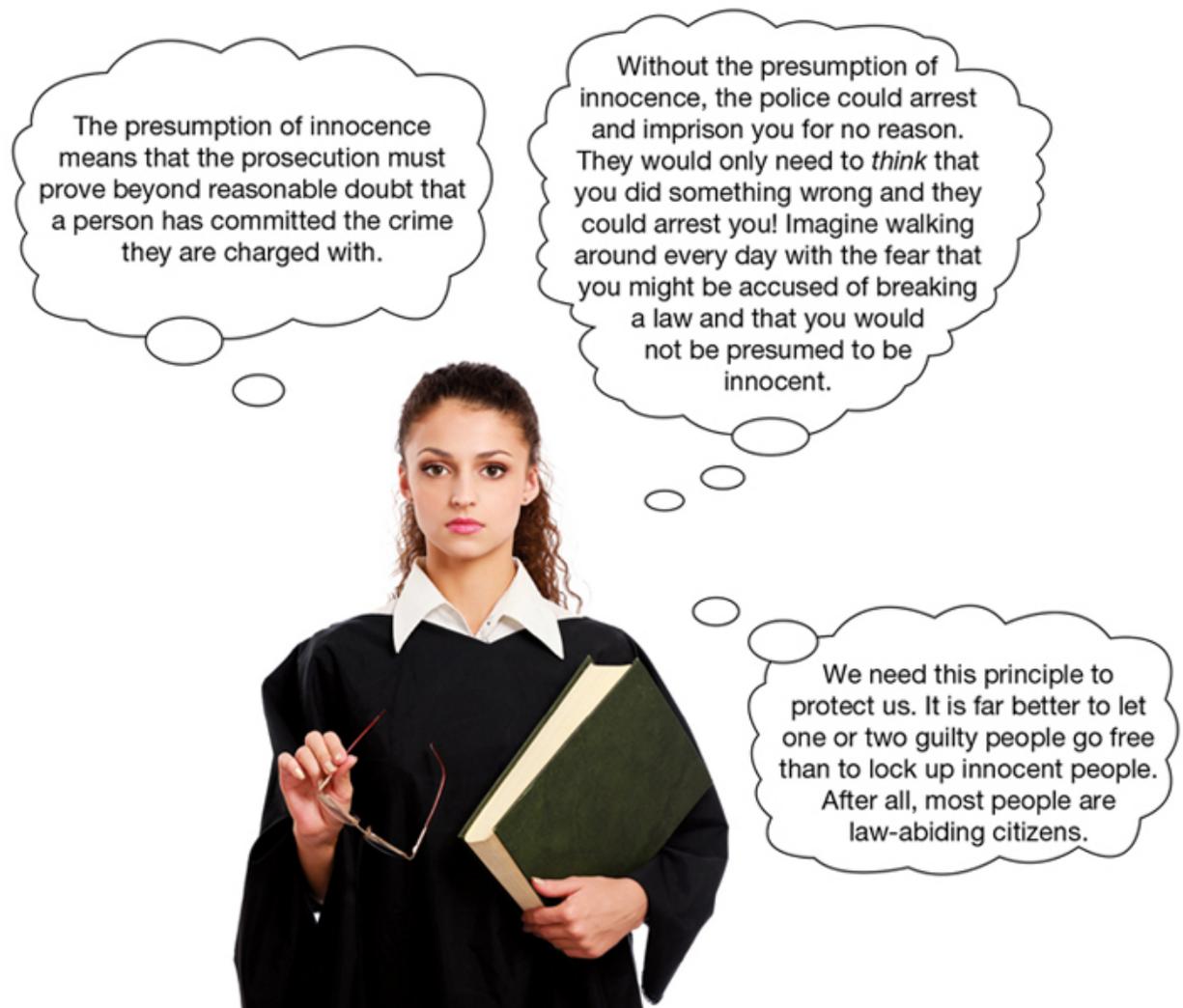


FIGURE 3 Arguments against the presumption of innocence



CASE STUDY

Presumption of innocence — on your bike

Queensland introduced new laws in 2013 to target the illegal activities of gangs, including criminal bikie gangs. The laws are commonly referred to as 'bikie laws'. A list of declared criminal organisations was prepared. New offences were created, including members of a criminal gang gathering in groups of three or more, visiting locations like clubhouses or a banned event, and recruiting for their organisations. The laws have been criticised for going against the principle of the presumption of innocence.

Steven Smith, Scott Conley, Joshua Carew, Paul Lansdowne and Dan Whale were arrested and detained in custody in December 2013, following a meeting at the Yandina Hotel. They were alleged by police to have links to the Rebels motorcycle club. Joshua's wife, Tracy Carew, said her husband had been locked up for delivering a pizza to the other men. 'These boys aren't guilty of this crime, they haven't been proven guilty. They haven't been put in front of a jury and deemed guilty yet,' she said. Mrs Carew told the media that the men were placed in solitary confinement awaiting their court hearings. Joshua Carew, and some of the other men, were released from custody under bail conditions in mid-January 2014.

FIGURE 4 Joshua Carew and some other men were arrested due to their alleged association with the Rebels motorcycle club in Queensland. They were held in custody for an extended period of time without trial.



3.3 EXERCISE 1

The presumption of innocence

1. List some countries that believe in the presumption of innocence.
2. Define the term 'beyond reasonable doubt'.
3. What is bail and when can it be granted?
4. Examine figure 1. In what way does this image undermine the principle of the presumption of innocence?
5. Read the case study in this section, 'Presumption of innocence — on your bike'. Joshua Carew was held in solitary confinement for approximately six weeks before a bail hearing in the Supreme Court. Briefly outline what this suggests about the attitude of the Queensland government towards the presumption of innocence principle.
6. The media is expected to avoid news coverage that undermines the presumption of innocence. However, there are many cases where the media has ignored this principle. Charges made against Martin Bryant in 1996 are one example. Find out more about what the media did before the Bryant case went to court.
7. What might happen if an accused person went to court and was put on trial without the presumption that they were innocent?
8. Discuss the advantages and disadvantages of the principle of presumption of innocence.

3.4 What is a fair trial?

3.4.1 Equal treatment for all

In Australia, we believe that our legal processes protect the right of every accused person to receive a fair trial — a trial held before a competent, independent and unbiased court recognised by law. You would presume that your side of the story would be listened to. You would expect that you would be provided with the opportunity to contest any charges made against you. You would think that the person listening to both sides would not favour either of those sides.

FIGURE 1 Main elements of a fair trial



3.4.2 Main elements of a fair trial

The main elements of a fair trial are summarised in figure 1. Let us now look at each element in more detail.

Preliminary examination of evidence

When a person is charged with a criminal offence, he or she will be told to attend a magistrates court. The magistrates courts hear minor offences and some serious cases. They also examine very serious cases to decide whether the accused person should be put on trial in a higher court. This is called a **committal hearing**. If the magistrate decides that there is enough evidence and the case is serious enough, the case will be heard in the District (or County) Court, or in the Supreme Court.

Committal hearings guarantee a fair trial because they allow an accused person to know the case against him or her. They also provide the opportunity for the accused person to gather evidence and to test the evidence of the prosecution.

Right to legal representation

In a fair trial, everyone has the right to **legal representation**. In certain cases, legal aid can be provided for people who cannot afford the cost of hiring a lawyer (see subtopic 3.5).

Both sides have a role

The right to a fair trial means that everyone is entitled to be treated equally by the court. Both sides have the right to present their case. The two opposing sides will gather evidence and present their case to an independent judge or magistrate. The side with the strongest argument is likely to win the trial.

Independent judge

The judge is very much like the umpire in a game of football. His or her job is to make sure that both sides follow the rules. Judges are independent, which means that they have no direct involvement in questioning witnesses or deciding how either side will present its arguments. The judge makes sure that all the rules of evidence and procedure are followed and that both sides are treated equally.

Judge and jury have no prior knowledge of the case

Neither judge nor jury should know anything about the case until the evidence and arguments are presented in court. Jurors must listen very carefully to the evidence given in a trial and make a decision based only on that evidence and the law. They are not allowed to discuss the case with anyone else, even after the trial has finished.

FIGURE 2 Any citizen who is listed on the electoral roll can be randomly summoned for jury service.



Strict procedures and rules of evidence

A fair trial will follow strict procedures. These procedures are designed to ensure that each side has an equal opportunity to present its own case as well as challenge the evidence introduced by the other side. A fair trial will also observe strict rules for the type of evidence that can be looked at in court. The procedure for a trial in a higher court with a jury is shown in figure 3.

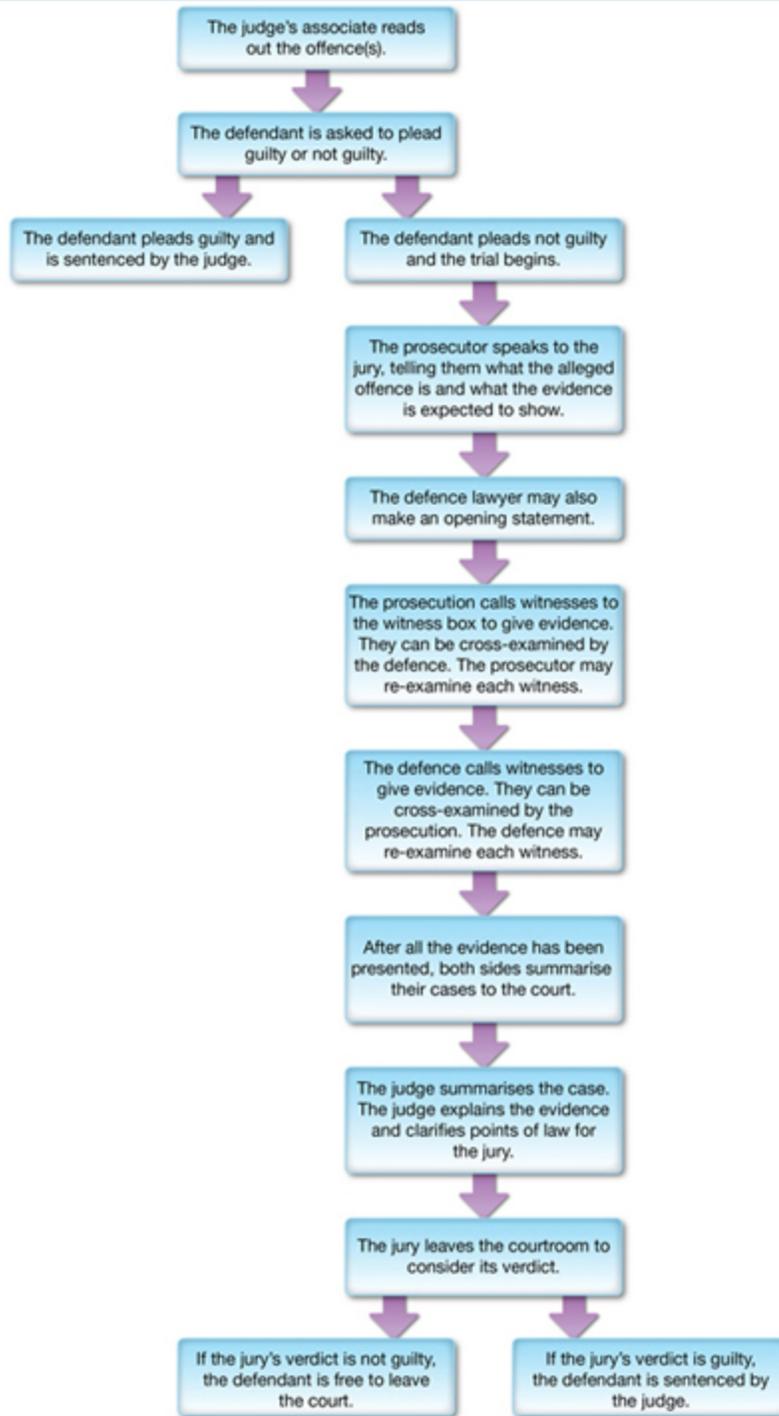
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FIGURE 3 Procedure for a trial in a higher court with a jury



Witnesses can be asked to give evidence at a criminal trial if they are the victim of the crime, if they have direct information about the crime or if they are an expert providing specialist opinion. Expert witnesses might give evidence on topics such as whether a written document matches the handwriting of the accused, or whether the accused person's actions might have been influenced by things such as mental illness or prescription drugs. Each witness must take an oath or affirmation promising to tell the truth.

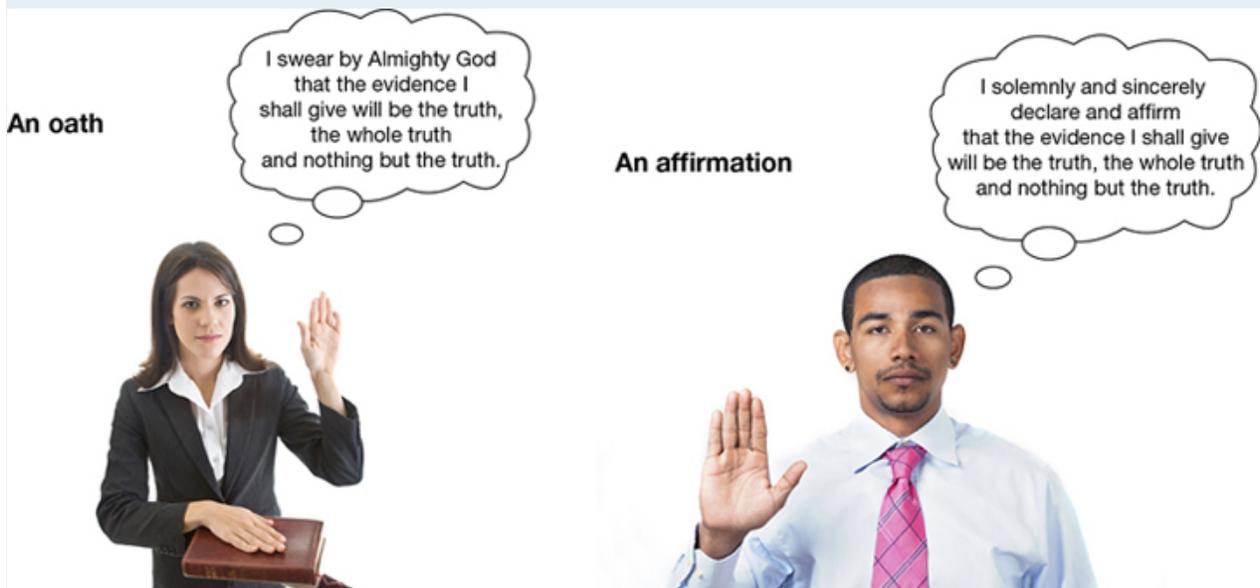
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FIGURE 4 Before witnesses in court can give their testimony, they have to take either an oath or an affirmation promising to tell the truth.



ACTIVITIES

Role play a mock trial

Role play a mock trial of a person who has been charged with robbing a bank. (Refer to the process described in figure 3 to help you.) Divide up the courtroom roles — a list of roles necessary is shown below. Allow people sufficient time to prepare their case. An example has been provided for you in the case study below. Set the classroom up like a courtroom and see if the accused receives a fair trial.

Roles in a mock trial

- Judge
- Judge's associate
- Tipstaff
- Jurors (12)
- Prosecutor
- Counsel for the defence
- Accused
- Witnesses
- Members of the public
- Members of the media
- Police officer

Sample case for a mock trial

Andrew Accused has been charged by the police with armed robbery. The police allege that on the morning of Friday, 18 February, Andrew entered the Bank Easy branch in Bondi. He approached the teller, Thuong Teller, and said to her, 'This is a stick-up. Fill this bag with money or you will get shot!' At the time, Thuong was serving Colin Customer. Bao Bankworker, another teller, and Maria Manager, the branch manager, were also in the bank at the time. Andrew was arrested by Purujit Policeman as he tripped in the doorway. Andrew claims that he was not carrying a gun and that he was only joking around with Thuong.

3.4 EXERCISE 1

What is a fair trial?

1. What is a committal hearing?
2. What is legal representation?
3. Briefly outline the following elements of a fair trial:
 - a. preliminary examination of evidence
 - b. right to legal representation
 - c. both sides have a role
 - d. independent judge
 - e. judge and jury have no prior knowledge of the case
 - f. strict procedures and rules of evidence.
4. Draw your own diagram showing the steps involved in a trial with a jury. Use an appropriate illustration for each step to show that you understand it.
5. Explain the role of a juror and a witness in a fair trial.
6. When can a judge question a witness?
7. How does a person come to be selected to serve on a jury?
8. Using internet resources, find the website of the magistrates court in your state and research the type of cases that it hears. Does your state's magistrates court have committal hearings?
9. Using internet resources, find the website of the District (or County) Court or the Supreme Court in your state and research the type of cases that it hears.
10. Roleplay a mock trial of a person who has been charged with robbing a bank. (Refer to the information in section 3.1 and the process described in figure 3 to help you.) Divide up the courtroom roles — a list of roles necessary is shown below. Allow people sufficient time to prepare their case. An example has been provided for you in the case study below. Set the classroom up like a courtroom and see if the accused receives a fair trial.
11. Complete the following table to explain how each element contributes to a fair trial. The first response has been done for you.

3.5 How can Australians receive access to justice and legal representation?

3.5.1 Difficulties in gaining access to the legal system

All Australians must have the opportunity to access **justice**. We all have the right to legal representation but, for various reasons, not all Australians can gain access to the law.

There are various reasons why people may not be able to access the legal system. Some people may have little to no understanding of the law. People with limited English may find it difficult to communicate their problem. Some people may feel intimidated by lawyers or may be unable to pay for legal representation.

Our legal system has devised ways of providing access to justice and legal representation for everyone.

FIGURE 1 Everyone has the right to legal representation under our legal system, but not everyone can afford it.



3.5.2 Legal aid

In Australia, we believe that **legal aid** is very important in providing access to justice. Without legal aid, some people would not have legal representation. They would lose their right to be treated equally by the law and therefore to receive a fair trial.

Legal aid can be provided for people who cannot afford the cost of hiring a lawyer. It is offered by several organisations including legal aid commissions, community legal centres, and Aboriginal and Torres Strait Islander legal services.

FIGURE 2 What legal aid provides



Legal aid commissions

Each state and territory has its own legal aid commission. Legal aid commissions are funded by the state and federal governments. They provide legal assistance, legal information and advice, lawyers to represent people attending court, and grants of money to help people to obtain legal representation. The services of legal aid commissions are free, unless the legal assistance required is ongoing. In this case, a small financial contribution is required.

FIGURE 3 The legal aid commissions are funded by the government and provide legal assistance, legal information and advice.



Community legal centres

Community legal centres provide free legal advice and assistance as well as related services to the public. They focus on the disadvantaged and people with special needs. The centres may receive funds from the state and federal governments and from donations, but some centres receive no or very little money and are largely or entirely staffed by volunteers. These volunteers can be lawyers or non-lawyers.

FIGURE 4 Community legal centres are funded by the state and federal governments and donations, and provide legal advice and assistance with a focus on the disadvantaged and people with special needs.



Aboriginal and Torres Strait Islander legal services

Each state and territory has an Aboriginal and Torres Strait Islander legal service, funded by the federal government. They provide legal assistance to Aboriginal and Torres Strait Islander people as well as community education in law and law reform.

3.5.3 Legal awareness

The law touches the lives of everyone, so people need to be aware of their legal rights and responsibilities. Awareness of the law can be improved through education, information and the media. Schools teach civics and citizenship so that students have some awareness of the law. Information can be found on the internet. The website of the Attorney-General's department provides information on access to justice. Advertising is used to promote understanding of new laws so that people are aware of them.

DISCUSSION

Imagine that you have been charged with a crime that you did not commit but cannot afford legal advice. How will you access justice?

Discuss what justice means to you. Using examples of how our legal system has devised ways of providing access to justice, explain how different people in our society value justice.

3.5 EXERCISE 1

How can Australians receive access to justice and legal representation?

1. What is meant by the term 'justice'?
2. What is legal aid?
3. Describe the legal assistance offered by the following:
 - a. legal aid commissions
 - b. community legal centres
 - c. Aboriginal and Torres Strait Islander legal services.

4. Recommend where the following people could get legal advice. Explain why you chose each option.
 - a. John is an elderly pensioner who has been charged with growing cannabis for commercial use.
 - b. Tahni is an Aboriginal and Torres Strait Islander who has been charged with assault.
 - c. Yousif has recently arrived in Australia from Africa, and has been charged with driving without a license.
5. How can legal awareness improve access to justice and legal representation?
6. If any of the organisations offering legal aid have an office in your area, invite a representative from the organisation to speak to your class or school about legal aid.
7. List the consequences of not providing options for everyone to access the law. Compare your list with the rest of the class.
8. Work in groups of three or four. Identify one factor that can improve access to justice and legal representation (for example, legal aid). Create a storyboard that explains this factor and outlines how it can improve access to justice and legal representation. Produce a video presentation that will engage viewers. Show the video to your class.

3.6 SkillBuilder: Debating an issue

3.6.1 Tell me

What is a debate?

A debate is a discussion about an issue. The issue is presented as a statement — for example, ‘Using a jury is the best way to make sure a trial is fair’. Participants in the debate take it in turns to put forward arguments for and against the statement.

Unlike an argument you might have at home, a debate follows strict rules of conduct.

Why is debating useful in civics and citizenship?

A debate requires the participants to carefully investigate an issue and critically analyse both sides of the question. Participating in a debate can develop research skills. It can also help individuals gain confidence in public speaking. Debating is used by people who work in law, such as lawyers, and by people involved in politics, such as members of parliament.

FIGURE 1 The skills used in debating, including researching and analysing information, are considered very useful in the legal profession.



Model

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.

3.6.2 Show me

How to conduct a debate

You will need:

- a sheet of lined paper
- a pen
- a team of three people.

Procedure:

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.

3.6.3 Let me do it

ACTIVITIES

Developing my debating skills

Work with a partner

1. Select one of the following topics:
 - a. 'Our legal system should not presume that an accused person is innocent.'
 - b. 'Judges should participate in finding evidence and questioning witnesses in criminal trials.'
 - c. 'Legal aid should be provided to all people accused of a crime.'
2. Work on your own to compile a list of as many arguments as you can for each side of the topic.
3. Convince your partner in two minutes that you support the topic.
4. Your partner has two minutes to question you about the topic.
5. Reverse the roles in steps 3 and 4 above.

Class debate

As a class, decide on the topic to be debated. Follow the steps given above to prepare for and conduct the debate.

Evaluating the debate

Use the following list to evaluate the performance of each team:

1. The team's viewpoint was clearly outlined.
2. Speakers' statements were well researched.
3. Speakers gave clear reasons to support their view.
4. Examples were used to support arguments.
5. Responses to arguments made by the other team were effectively made.
6. The concluding statements were convincing.

7. Speakers spoke loud enough to be heard.
8. Speakers made good eye contact with the audience.
9. Speakers spoke at a good pace (not too fast or too slow).
10. The overall performance of the team was effective.

Questions

1. How did you decide what your point of view would be?
2. What aspect of compiling a list of arguments did you find relatively easy and what did you find more challenging?

3.7 Review

3.7.1 Summary

Every individual has the right to access justice in Australia. Our legal system exists to make sure that any person accused of a crime receives a fair trial. The accused is presumed to be innocent by a court until the prosecution proves that he or she is guilty. Both the prosecution and defence will have the opportunity to present evidence and question witnesses before a judge who is competent, independent and unbiased. Everyone has the right to be represented by a lawyer in court, regardless of whether or not they can afford it or even understand the law.

- Presumption of innocence means that any accused person who appears before a court is presumed to be innocent until the prosecution proves that they are guilty beyond reasonable doubt.
- A fair trial occurs when evidence is examined at a committal hearing before proceeding to a trial, when both sides present their case, when the judge is independent, and when strict procedures and rules of evidence are followed.
- Ordinary citizens can play a part in a fair trial in their roles as witnesses (providing evidence to the court) and jurors (making decisions about the guilt of the accused based on the law and the evidence presented to the court).
- Legal aid can be provided to people involved in a dispute or criminal matter who would otherwise be unable to afford legal representation or access to the law.

- People can be made aware of the law through education, information and the media.

3.7.2 Your turn

ACTIVITIES

1. Read the following case study and then answer the questions.

In July 2009, Victorian Attorney-General Robert Clark launched a report by the Victorian Law Reform Commission on jury directions. The report found that the process used for judges giving instructions to juries in Victoria encouraged errors in the justice system.

A Jury Directions Advisory Group had been established earlier to explore whether change could be made to the system. The main focus was the lengthy and complicated instructions that judges give to juries.

‘Complex jury directions lead to unnecessary appeals and retrials that are a significant cause of delay in the court system, as well as unnecessary trauma and stress for victims, witnesses and others,’ Mr Clark said.

Research suggests that instructions to juries in Victoria were approximately two hours longer than in Queensland, South Australia and Western Australia. Estimates for New South Wales were reasonably similar to Victoria.

After the review, Victoria’s parliament introduced new laws which encourage shorter and simpler jury instructions that focus on the important issues that juries must focus on in a trial.

- a. Why do you think that Victoria wanted to introduce changes to its jury directions laws?
- b. Does Victoria’s Attorney-General seem to think that juries are important? What makes you believe this?
- c. In what way will shorter and simpler jury instructions affect jurors and the right to a fair trial?

2. Group work

Work in groups of three or four. Identify one factor that can improve access to justice and legal representation (for example, legal aid). Create a storyboard that explains this factor and outlines how it can improve access to justice and legal representation. Produce a video presentation that will engage viewers. Show the video to your class.

Resources



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Searchlight ID: [int-5314](#)

Chapter 4: Australian identity and diversity

Contents

- 4.1 Overview
- 4.2 Key features of Australian society
- 4.3 Australian values
- 4.4 Is there such a thing as an Australian identity?
- 4.5 SkillBuilder: Developing argument paragraphs
- 4.6 Review

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4 Australian identity and diversity



4.1 Overview

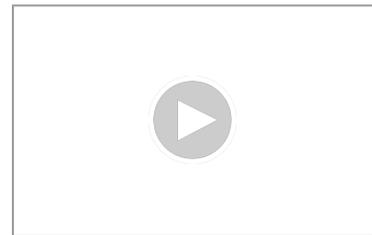
4.1.1 A culturally diverse nation

on Resources



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Searchlight ID: [eles-2079](#)



As part of the Miss Universe beauty pageant, contestants must wear their country's national dress. The Indian contestant usually wears a sari and the entrant from Japan a version of a kimono. In the 2010 Miss Universe pageant, the Australian contestant chose to wear the costume shown in figure 1, complete with Ugg boots. There are iconic pieces of Australian clothing such as the Anzac slouch hat, the jackaroo's Akubra hat or even the humble pair of thongs, yet there is no distinct Australian national dress and nor is there an Australian national food. These cultural items may appear unimportant at first, yet they represent our national identity and our shared values. As Australia is a country rich in cultural diversity, it is no surprise that finding one item to represent all of us is so difficult.

FIGURE 1 The 2010 Australian Miss Universe contestant in her 'national dress'



Learning objectives

Students will investigate:

- how Australia is a secular nation and a multi-faith society with a Christian heritage
- how values, including freedom, respect, inclusion, civility, responsibility, compassion, equality and a 'fair go', can promote cohesion within Australian society
- how groups such as religious and cultural groups express their particular identities and how this influences their perceptions of others and vice versa.

4.1 EXERCISE 1

Starter questions

1. What is national identity?
2. How can national identity change?
3. What role do values play in Australian society?
4. What values are expressed in Australian society?
5. How do you think Australian identity will change in the future?
6. Name three examples of Australian values.
7. Do you believe the costume shown in figure 1 accurately reflects Australian identity?
8. Describe a typical Australian person — draw a sketch to help your description. Consider the drawing you just made. Where do you think your ideas of Australian identity have come from?

4.2 Key features of Australian society

4.2.1 'From all the lands on Earth we come'

Modern Australian society reflects the combination of a diverse range of cultures. It recognises our country's rich history as well as the influence of new traditions and customs. Our communities are tolerant and welcoming. Cultural differences are understood and used to bring people together rather than drive them apart. The features of Australian society that enable this sense of unity will be discussed in this chapter.

Imagine your classroom is a mini version of Australian society. At least six of your classmates are likely to have been born overseas and ten people in your class will have at least one parent who was born outside Australia. This is an example of **multiculturalism**. A society in which a range of cultural and religious backgrounds exists is said to be culturally diverse or multicultural. Australia is an excellent example of a multicultural society with people from almost 200 nations represented in our country.

FIGURE 1 European immigrants arriving in Australia in 1958



FIGURE 2 Vietnamese immigrants rescued from the sea in 1989



Look around your classroom. Only those people with Indigenous and Torres Strait Islander heritage can truly call themselves Australians. All other people have, at some stage of their family's history, migrated to Australia from another country. From the first European settlers to more recent arrivals, there have been several different waves of **immigration** to Australia. Table 1 provides a brief summary of Australia's immigration history.

TABLE 1 Australia's immigration history

Period of immigration	Main countries/regions of origin	Types of migrants
European settlement (1778–1868)	Britain (England, Ireland, Scotland and Wales) and some people from other parts of the British Empire	Convicts, officials and free settlers
Gold rush (1851–1901)	Britain, Germany, France, Italy, eastern Europe, China and United States of America	Prospectors (those seeking gold) and merchants
Post–World War II (1945–1970)	Eastern Europe, Britain, Germany, France and Italy	Political refugees and skilled migrants
Modern immigration (1970–present)	China, Vietnam, South-East Asia, eastern Europe, Russia and the former Soviet Union, Southern and Central Africa, India, Afghanistan and the Middle East	Political and economic refugees and skilled migrants

With so many different cultures and traditions present, multicultural societies like Australia are often very friendly and understanding. However, there have been times in Australian history when these differences have led to conflict and division, including

- the treatment of Indigenous Australians by European settlers (1778 onwards)
- the White Australia Policy (1901–1973)
- the race riots in Cronulla, New South Wales (in 2005).

These are all examples of **cultural intolerance**. It is important for us to learn from these events and ensure that cultural differences are understood, celebrated and embraced.

4.2.2 Religion and Australian society

Throughout history, religion and governments have been closely linked. In ancient Egypt, people saw the pharaoh as both a god and a ruler. For centuries, the kings of Europe claimed they had been chosen by god to rule their lands — a concept known as ‘divine right’. Yet as society developed, people began to see problems when governments had strong ties to a particular religion. One of these problems is that other religions were often ignored and their followers felt left out of society.

A secular nation is one that separates religion and government. This means that religion is not allowed to influence the laws of a country. All citizens are considered equal, regardless of what religion they follow or whether they follow a religion at all. Secular governments can benefit religion in society because they encourage religious freedom. Without the government telling its people what religion they should follow, people are allowed to choose their own religious beliefs.

Australia is a secular nation, with secularism even written into our Constitution:

the Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion (section 116, Australian Constitution).

By using these words, the writers of the Australian Constitution allowed for all religions and cultures to safely and actively participate in Australian society. This laid the foundation for the religious freedom that we now experience.

4.2.3 Freedom of religion

Communities in which different religions coexist are said to be ‘multi-faith’. Look for different religious symbols and buildings to see if you live in a multi-faith suburb. You may see churches, mosques, synagogues or temples. You will find that there is more religious diversity now than was present in your parents’ generation. This diversity has been encouraged by Australia’s secular government and our multicultural society. Without an official Australian religion, people have been free to express their own religious traditions and customs. This freedom also includes atheists — people who do not believe in any god or religion. Table 2 shows the major religions observed by Australians in 2006 and 2011.

TABLE 2 Religious affiliation in Australia, 2006 and 2011

Religion	2006	2011
Buddhism	418 800	529 000
Christianity	12 685 900	13 150 600
Hinduism	148 100	275 500
Islam	340 400	476 300
Judaism	88 800	97 300
Other religions	109 000	168 200
No religion	3 706 500	4 796 800

Source: Data derived from ABS 1301.0 — *Yearbook Chapters, 2009–10* and 2071.0 — *Reflecting a Nation: Stories from the 2011 Census, 2012–2013*.

FIGURE 3 The holy city of Jerusalem is an example of a multi-faith society. Here, the Dome of the Rock (a sacred Muslim mosque) can be seen behind the Western Wall (one of the holiest sites in Judaism).



DISCUSSION

'Australia works well as a multicultural, multi-faith society.' Do you agree with this statement? Identify a counterargument that might be used to express a different point of view from yours. Discuss the challenges and benefits of living in a multicultural and multi-faith society.

4.2 EXERCISE 1

Key features of Australian Society

1. What concept did some European kings use to claim the throne?
2. What is the main benefit of a secular nation?
3. Describe the two photographs shown in figures 1 and 2.
4. Use the information in Table 1 to explain two ways in which Australian immigration has changed over time.
5. Use the data in table 2 to determine which religions experienced large growth between 2006 and 2011, and suggest reasons why you think these trends occurred.
6. Research your family history (parents and/or grandparents are excellent sources of information). Write a brief summary of their stories.
7. Walk around your neighbourhood and record the types of religious symbols and buildings you see. (You may like to do this part of the activity with a friend or family member.) Compare your list to the religions listed in table 2. Which religions from the table were represented in your neighbourhood and which were not?
8. One of the photographs in figures 1 and 2 shows voluntary migration (the people chose to leave their own country) and the other shows forced migration (the people were forced to leave their own country). Match the photograph with the type of migration and explain your choice.

4.3 Australian values

4.3.1 Morality tales

Were you ever told the story of the tortoise and the hare? The two animals raced each other by using different tactics. The hare sped away and then took a rest, confident that he would win. Yet the tortoise, slowly plodding along, passed the resting hare and won the race. Stories like this, and others you were probably told when you were younger, have morals — hidden messages explaining what was right and wrong. These stories describe what values are seen to be important and explain how people should live their lives. Go back and read these stories now that you are older, and those values will become apparent.

4.3.2 What are values?

Values are like a set of instructions — if you follow a particular value, it will lead to a particular outcome. So if you were to demonstrate the value of compassion, you would try to feel the emotions someone else is feeling. If you were to demonstrate the value of honesty, you would be truthful and avoid telling lies. Usually, these outcomes involve treating people in a fair and respectful manner.

4.3.3 How do values influence society?

People may place different amounts of importance on individual values. One person might think that honesty is the most important value, while someone else may think it is creativity. Differences in values can sometimes drive people apart. We see this frequently in society and on a variety of scales. Consider two politicians debating each other in parliament. They are doing so because they have different values. On the other hand, shared values can unite people. It is likely that you chose your friends because you share things in common. This may be a football team or a favourite band, but it can also be a value. In the same way that shared values can bring friends together, they can also unite entire countries.

4.3.4 What are Australian values?

FIGURE 1 All new visa applicants are required to sign the Australian Values Statement.

Australian Values Statement

You must sign this statement if you are aged 18 years or over.

I confirm that I have read, or had explained to me, information provided by the Australian Government on Australian society and values.

I understand:

- Australian society values respect for the freedom and dignity of the individual, freedom of religion, commitment to the rule of law, Parliamentary democracy, equality of men and women and a spirit of egalitarianism that embraces mutual respect, tolerance, fair play and compassion for those in need and pursuit of the public good
- Australian society values equality of opportunity for individuals, regardless of their race, religion or ethnic background
- the English language, as the national language, is an important unifying element of Australian society.

I undertake to respect these values of Australian society during my stay in Australia and to obey the laws of Australia.

I understand that, if I should seek to become an Australian citizen:

- Australian citizenship is a shared identity, a common bond which unites all Australians while respecting their diversity
- Australian citizenship involves reciprocal rights and responsibilities. The responsibilities of Australian Citizenship include obeying Australian laws, including those relating to voting at elections and serving on a jury.

If I meet the legal qualifications for becoming an Australian citizen and my application is approved I understand that I would have to pledge my loyalty to Australia and its people.

Signature of Applicant

All people who apply for an Australian **visa** are required to sign the Australian Values Statement (see figure 1). By signing this document, visa applicants commit to following the shared values of the Australian community. These values include:

- respect for individual freedom (including religious freedom)

- commitment to the rule of law, democracy, the equality of men and women and pursuit of the public good
- tolerance, fair play and compassion for those in need.

These values are linked by a common theme — **diversity**. By respecting individual freedom, we allow different groups to express their particular cultural backgrounds. By expressing the value of tolerance, we demonstrate our understanding of cultural differences. In this way, Australian values protect the multicultural composition of our society and encourage cohesion in our communities.

4.3.5 How do we express Australian values?

Australian values can be expressed in many ways. Public rallies are common in cities across Australia (see figure 2). These large-scale gatherings raise public awareness and provide people with an opportunity to show support for different causes. Some of our public holidays also represent Australian values. As well as commemorating the lives of fallen servicemen and women, Anzac Day (25 April) celebrates values such as sacrifice and perseverance. Australia Day (26 January) marks the arrival of the First Fleet on Australian shores and, for this reason, this date does not sit well with many Indigenous Australian people. Yet Australia Day has evolved to represent a celebration of diversity, with some migrants choosing this date to complete their citizenship ceremonies (see figure 3).

FIGURE 2 Examples of public protests in Australia



Every day you demonstrate Australian values at school. You demonstrate democracy when you elect representatives for your student council. You demonstrate compassion for others when you stand up for someone being bullied. Following a set of shared values is crucial for any society. Values can unite communities and show people how they should live their lives.

FIGURE 3 A citizenship ceremony. Australia Day is a popular day for migrants to formally become Australian citizens.



on Resources



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4.3 EXERCISE 1

Australian Values

1. Who is required to sign the Australian Values Statement?
2. Which public holidays represent Australian values and what values are they?
3. List and explain the three values which are most important to you.
4. Share your answer for question 3 with the person sitting next to you. Describe any similarities or differences between your answers.
5. Choose any three values from the Australian Values Statement and describe what you think these values mean. Try to use examples from your everyday life in your answers.
6. Which value would you remove from the Australian Values Statement?

4.4 Is there such a thing as an Australian identity?

4.4.1 Our differences define us

You wear a school uniform to help identify you as being part of your school. Without this uniform, there would be no way to tell to which school you belong. But what if your school was known for not having a uniform, instead allowing its students to wear their casual clothes to school? This freedom of choice and diversity of dress would then become a way in which your school could be identified. Australia society is exactly like this kind of school. Our identity is characterised by its diversity, and our differences bring us together.

4.4.2 What is national identity?

National identity is much more than a national cuisine, costume or anthem. It is a way for people to identify with others and feel a sense of community. When a country is made up of people from only one cultural group, it is easier to see examples of their national identity. Such is the case with many of the smaller eastern European nations such as Slovakia, Serbia and Croatia. However, when countries have a more multicultural population, like Australia, it can be harder to define a singular national identity.

FIGURE 1 Serbian men demonstrating traditional dress and dance



4.4.3 To integrate or to congregate?

Upon arrival in Australia, new migrants may face a range of difficulties. They need to find somewhere to live and somewhere to work, and often need to learn English as well. Migrants are also faced with a cultural challenge — they must find a balance between their existing national identities and their new Australian identity. With close to 200 nationalities already represented in Australian society, new migrants can usually find existing communities of people sharing the same background. But should they **congregate** in these communities and follow their existing traditions and customs, or should they **integrate** into multicultural communities? This question is fiercely debated by both politicians and members of the general public. Without displays of migrant culture, we would not have the diverse society we see today. However, if new migrants only associate with own communities, they will not gain exposure to Australian culture and values. Therefore, a balance between these two choices is needed to ensure the protection of traditional identities and the development of new ones.

FIGURE 2 Melbourne's Chinatown reflects the diversity of Australian society.



4.4.4 Indigenous identity

At the 1994 Commonwealth Games, Indigenous athlete Cathy Freeman controversially draped herself in both the Australian and Aboriginal flags upon winning the 200 m sprint. Freeman's celebration caused much debate because the Aboriginal flag was not considered an official flag of Australia. Freeman chose her victory as an opportunity to demonstrate and celebrate her Indigenous identity. For her, there was no difference between being Australian and being an Aboriginal person.

FIGURE 3 Cathy Freeman's controversial celebration at the 1994 Commonwealth Games



FIGURE 4 A traditional Indigenous Australian smoking ceremony



At the beginning of school assemblies around Australia, we read the ‘Welcome to country’ — an acknowledgement of the Indigenous Australian land owners. At state and federal government events, Indigenous leaders are in attendance and appropriate customs, such as smoking ceremonies, are conducted. These acts recognise Indigenous culture and foster Indigenous Australian identity. However, it is important for us to remember why we do these things. If we do not, these actions lose their meaning and become only tokens of Indigenous culture and identity. The impact of **tokenistic** cultural performances is serious. If the meaning behind these and other customs is lost, then so too is a part of Indigenous identity.

4.4 EXERCISE 1

Is there such thing as an Australian identity?

1. How is national identity important to a country?
2. Draw your idea of a typical Australian.
3. Choose two features of your drawing and explain why you included them.
4. Write a brief history of the Australian Aboriginal flag in one short paragraph. Include information such as who designed it, what it represents and any other aspects you consider interesting.
5. Why do you think Cathy Freeman's celebration at the Commonwealth Games caused such controversy?
6. In groups of two or three, create a Student Action Pledge — a list of values and subsequent actions that you believe will contribute to a fair and cohesive school environment.

4.5 SkillBuilder: Developing argument paragraphs

4.5.1 Tell me

What is an argument paragraph?

Many times in your academic career at school and beyond, you will be asked to write essays. An effective essay has several characteristics. It clearly explains the background of an issue, contains evidence and examples of the issue and, perhaps most importantly, it discusses the positives and negatives of an issue. This latter characteristic is best demonstrated through argument paragraphs.

An argument paragraph is a section of an essay that presents a point of view. Beginning with a topic sentence, the paragraph will then explain the point of view and support it with evidence. Finally, a linking sentence will draw the reader's attention back to the key questions being discussed. In this way, an argument paragraph follows the TEEL structure:

Topic sentence — describes what the argument paragraph addresses

Explanation — explains your main argument in detail

Evidence — supports your argument with at least one piece of evidence

Linking sentence — links the paragraph back to the main question

4.5.2 Show me

Imagine that, after completing this topic, you have been asked by your teacher to write an essay focusing on the following statement: 'That the Aboriginal flag should be the only national flag of Australia'. The paragraph below is an example of the kind of paragraph that you would find in this essay. The paragraph was written using the TEEL structure. The different parts of the paragraph can be colour coded to make it easier to see TEEL in action (**Topic**, **Explanation**, **Evidence**, **Link**).

National flags are the most simple and most powerful representations of a country and its people. They commonly contain symbols of culture, values and history. As Indigenous Australians are the true owners of this land, it should be their culture, their values and their history which are represented in Australia's national flag. The background of the Aboriginal flag is divided horizontally into a black half and a red half. The black section represents the Indigenous people of Australia and the red section represents the Indigenous Australian connection to the land. The middle of the flag is a yellow disc which represents the provider of life, the sun. The Aboriginal flag reflects much about the Aboriginal people, and thus Australia itself. For this reason, the Aboriginal flag should be the only national flag used in Australia.

4.5.3 Let me do it

ACTIVITIES

Use the information and tips in this SkillBuilder to practise writing your own argument paragraphs. Be sure to use the TEEL structure as it will help you logically organise your thoughts and arguments.

Here are some essay topics which you can use to form the basis of your argument topics. You will need to do some research before writing your practice paragraphs.

1. Australian identity: no such thing exists.
2. It is not important for a country to have a national identity.
3. The Aboriginal flag should be the only official flag of Australia.
4. Religion and government should remain separated.
5. It is impossible for people from different backgrounds to share common values.
6. New migrants should abandon their traditions and customs and adopt an Australian way of life.
7. New migrants should not be allowed to speak their native language after they arrive in Australia.

4.6 Review

4.6.1 Summary

Identifying and defining Australian identity is a challenging task. Our communities are characterised by their multicultural nature and, because of this, looking for a singular Australian identity can be hard. While Indigenous Australians remain strongly connected to their culture and traditions, other parts of Australian society are characterised by their cultural diversity. As a secular society, cultural and religious freedoms are fostered and encouraged in Australian communities. Based on shared values, these open and inclusive communities make it easier for migrant groups to feel at home in Australian society.

- Representations of Australian identity are diverse.
- Australia is a multicultural and secular society in which cultural differences are celebrated.
- Communities are based on shared values.

Resources



Try out this interactivity: [Australian identity and diversity crossword](#)

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4.6.2 Your turn

ACTIVITIES

The SBS website contains hundreds of stories from Australian migrants. It covers broad topics such as politics, design and transportation, and describes the role played by migrants in building our nation. Use the **Immigration nation** weblink in your Resources tab to learn more about the stories of Australian immigrants. Choose one category and watch the relevant videos, then create a table like the one below and complete each column with details from the videos.

Plus	Minus	Interesting

Resources



Explore more with this weblink: [Immigration nation](#)

GLOSSARY

Bail the promise that an accused person makes to appear in court at a later date

Beyond reasonable doubt the standard of proof required in a criminal trial where the prosecution must prove that the accused is guilty to such a high degree that a reasonable person would have little doubt that the accused committed the crime

Bicameral a parliament with two houses

Burden of proof the legal principle describing who has to prove a case in court. In a criminal trial, this burden is on the prosecution.

Census a regular survey used to determine the number of people living in Australia. It also has a variety of other statistical purposes.

Coalition an alliance between two political parties with the aim of improving their chances of winning an election

Committal hearing in very serious cases, the procedure held in a lower court to determine if there is enough evidence for the case to move to a higher court

Communism a belief system that promotes the overthrow of existing society and replacing it with one in which all property and possessions are shared equally, and resources are controlled by the government

Congregate to come together in a smaller crowd or group within a larger community

Constitution a set of rules that determines the structure of government and its law-making powers

Counsel for the defence a lawyer who represents the accused person

Cultural intolerance when individual differences are not accepted by others

Democracy a form of government in which the people determine how they will be governed

Dictators a person who has absolute power within a country, and who usually cannot be voted out of power by democratic elections. A government headed by a dictator is usually referred to as a dictatorship.

Diversity differences, usually cultural and religious, between individuals or groups of people

Federation the formation of a united country from a number of separate states or colonies, with law-making power shared between the national government and the governments of each of the states

Immigration the movement of people from one country to another, usually for political, cultural or economic reasons

Integrate to merge with a larger community

Judge a court official who hears cases in the higher courts, such as the District or County Court, or the Supreme Court

Judiciary a collective name given to the judges who preside over law courts

Jurors a group of people (the jury) who are selected to hear and assess the evidence in a court case

Jury a group of ordinary people randomly selected to hear and assess the evidence in a court case

Justice the use of laws to treat people fairly and in a way that is morally right

Legal aid the provision of legal assistance to those involved in a dispute or criminal matter who are unable to pay for legal representation

Legal representation services performed by a qualified legal practitioner, such as a lawyer, who deals with legal matters on behalf of the person who has hired the practitioner

Legal system a system for interpreting and enforcing the laws of a country

Legislation a term used to describe laws passed by parliament

Magistrate a court official who hears cases in a magistrates court

Multiculturalism describes a society in which the cultures and traditions of many different groups coexist and are encouraged

Presumption of innocence the principle that all accused people who appear before a court are presumed to be innocent until the prosecution proves that they are guilty

Prosecutor the party bringing a criminal action against the accused

Referendum a process of allowing the people to vote on an important issue

Repeal to remove a law so that it no longer applies

Royal assent the formal approval by the monarch's representative, and the final step necessary before a law comes into force

Rule of law the legal principle that all citizens are subject to the law, and equal before the law, as it is upheld by independent courts

Tokenistic describes an act that is completed only as a gesture rather than being sincerely meant

Trade union an organisation of employees formed for mutual support, and to seek improvements in pay and working conditions for its members

Trial the court process to determine whether someone committed a criminal act

Unicameral a parliament with only one house

Values principles or standards of behaviour

Visa a document that allows someone to live and work in a country for a set period of time

Westminster system the parliamentary system of Great Britain, which has been copied and adapted by many other countries including Australia. It is so-called because the British Parliament meets in a building called the Palace of Westminster.