

SACE ONE

LEGAL STUDIES

WORKBOOK
SECOND EDITION

JANE RATSCH-JENKE



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THE AUTHOR

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SACE 1 Legal Studies Workbook Structure

This workbook has been structured as a one semester teaching resource for SACE Stage 1 Legal Studies. Chapter One – Law and Communities is a compulsory focus area. An additional two option focus areas should be covered in a semester. A choice of four option topics have been provided in this book, however there are a broad range of topics which could alternatively be developed and taught.

This workbook aims to provide a variety of content and learning activities to suit a range of student learning styles which can be present in the classroom.

Each chapter is structured in a similar manner, with the use of the following icons.



View

This icon is used to highlight online clips to watch which support the content which is being covered.



Discussion

This icon includes questions in relation to the viewing icon. These may be used as discussion points or for written responses.



Collaborative Activity

This icon highlights work which can be completed by students in a group or collaboratively. Alternatively, this work can be adapted for individual activities, according to student cohort.



Research Activity

This icon refers to activities which require deeper research and responses may be of a more analytical nature.



Review Activity

This icon appears at the end of each sub-topic and includes questions for students to review and consolidate their understanding of key concepts.

At the end of each chapter the following features can be found:

- a) Chapter checklist
- b) Key words for students to complete. Words are listed in the order that they appear in the book.
- c) Revision questions
- d) Extension questions and activities.



CHAPTER ONE

LAW AND COMMUNITIES

RULES AND LAWS

In society, we have different boundaries which regulate our behaviour. These are usually enforced through rules and laws. Boundaries are necessary to help avoid conflict and create a peaceful society, also upholding the rights of individuals.

Rules are a set of principles which control our behaviour within a given organisation or activity, for example at school or at home.

Sets of rules differ from one another and have been developed according to backgrounds, values and beliefs. Rules and expectations may be informal (oral) or formal (written). Rules are developed to create safety, equity and harmony in an environment. If a rule is broken there are often consequences for this behaviour, however these consequences are not legally binding.

Unlike rules, laws are legally binding and have legal consequences. The purpose of laws are to regulate or govern a whole society (state or country), control behaviour and protect people's rights. Laws are developed according to an expected standard of behaviour of society and aim to achieve a good standard of living and harmony. Laws are communicated through legislation. Laws have been developed not only to regulate behaviour and maintain social control, but also to preserve freedoms and ensure equity in society. Additionally, laws provide guidelines for disputes to be resolved. If laws are broken there are legal consequences.

 View

For further information on Rules and Laws watch:

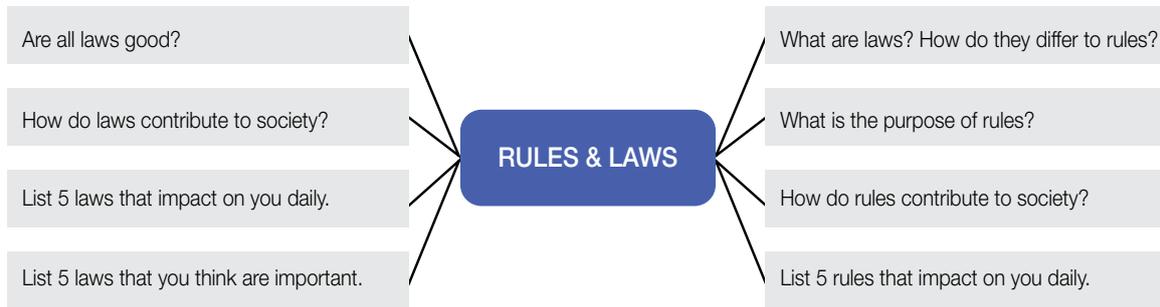
 **YouTube** 1. Youtube: Why we have rules? <https://www.youtube.com/watch?v=rhWVQQQ5hVU>

 **ClickView**
The standard in digital video learning 2. Clickview: Legal Briefs – What is Law?

 Why are laws important?
How do they protect society and uphold rights?

 Collaborative Activity

In groups use the mind map below to discuss and brainstorm concepts related to rules and laws. Then provide an analytical response to the statement “Laws are rules but not all rules are laws”. Use examples to support your point of view.



Why do we need laws?

Laws aims to reflect what majority of citizens in a society consider as an appropriate standard of behaviour. If there were no laws, then people could do anything they wished, which may result in disorder and chaos. Laws are required for a range of reasons, including;



Figure 1.1.1: Key reasons why we need laws.

Laws seek to prevent or deter people from behaving in a manner that negatively affects the quality of life for other people and infringes on their rights. In Australia, there are different reasons why we punish people who break laws. Punishment is the consequence of breaking a law. The main aims of punishment include:

- **Deterrence** – to discourage an action through the fear of consequences.
- **Retribution** – to give a punishment considered to be morally right based upon the nature of the crime.
- **Rehabilitation** – actions which improve (through skills and attitude changes) offenders in an attempt to avoid future crime.
- **Incapacitation** – protecting the community from the offender by making the offender incapable of committing further offences, usually through imprisonment or home detention.

Globally, the aims and types of punishments differ significantly, due to the values and beliefs of the society.

 View

 **YouTube** Why should we punish?
<http://www.youtube.com/watch?v=gNJ096J-ngo>

Provide 3 examples of crimes and list the appropriate punishment for these crimes in Australia. How might the punishment for the same crimes differ in other countries?



**Collaborative Activity**

In groups complete the following task:

Imagine an island with a community of about 50 men, women and children. The island is self-sufficient and does not rely on any other human contact. The community is sustainable with its own resources: fishing, hunting, growing/gathering fruit and vegetables, etc. The community operates with a bartering system. Your task is to make up 10 rules for this community in order to maintain safety and avoid conflict. You may wish to include consequences for each rule if it is not followed.

Once you have formulated and noted your 10 rules, share them with the class. Justify your reasoning for the rules you have written. Compare the similarities and differences in the rules that have been made. What does this demonstrate about the importance of rules?



1

**Research Activity**

Boundaries, laws and punishment are necessary to regulate behaviour and create safe, equal and harmonious relationships. This can be seen every day in news reports.

Select a media/news article or clip (from the past week) – about boundaries, laws and punishment.

Then create a summary including:

- An overview/summary of the issue
- How does this issue impact society?
- Research the laws that regulate the issue/behaviour.
- Suggest some methods to educate society on how the issue can be prevented.

**Review Activity**

- Define the key differences between rules and laws?

- Explain why laws are essential for the well-being of society.

- Conceptualise a world without laws; describe what might it look like? What might be some problems with this world?

- Using an example, where in history has a breakdown in laws been evident? What was the result of this?

5. Using examples, why is it necessary for different crimes to have different punishment? Could laws without consequences be successful?

6. Complete relevant key words at the end of this chapter.

Rights and Responsibilities in Australian Society

1

As Australians, we enjoy fundamental rights and freedoms which have maintained prosperity and peace in our society. Many of our rights have been incorporated into laws to guarantee that they are upheld and ensure our safety. Australians have the responsibility to act in a way that upholds these rights.

Australia's core rights include:

- A constitutional government
- Respect for the freedom and dignity of individuals
- Freedom of speech and religion
- Commitment to the rule of law
- Allegiance to Australia
- Parliamentary democracy
- Equality of opportunity for all.

The rights, privileges and freedoms of living in Australia are balanced by responsibilities. All Australians are responsible for respecting and protecting our country and ensuring that our commitment to a decent society embraces all Australians.

Australian citizens have the responsibility to:

- Uphold Australia's democratic beliefs
- Respect Australian rights
- Obey Australian laws
- Vote in elections and referendums
- Defend Australia, if required
- If summoned, fulfil jury duty.

Are the range of rights and responsibilities inclusive for all Australians? Why/Why not? Are there any additional rights and responsibilities you might add?



Australian rights and responsibilities have been influenced and shaped by our history, beliefs, values and morals. Due to this, the rights we enjoy are not universal and differ significantly globally.



Collaborative Activity

Rights and responsibilities differ globally. Select a country, research and prepare 6 key points on the similarities and differences regarding your selected country's rights and responsibilities. Share and discuss your findings with the class. Finally discuss how global harmony can occur with differing rights and responsibilities?



Country:

Similarities	Differences

Types of Rights

In Australia, there are a number of legal rights to be considered, some being: bill of rights, international human rights and common law and statutory rights.

Bill of Rights

Unlike most similar democracies, Australia does not have an explicit Bill of Rights. A Bill of Rights is a list of fundamental rights that citizens of a country have. It exists to prevent any confusion and to protect the rights of individuals.

In Australia, our rights are formally protected through laws (legislation and Acts) and international conventions. The issue of Australia adopting a Bill of Rights is one that is often debated.

 View



For further information on Australia and a Bill of Rights watch:

<https://www.youtube.com/watch?v=u-wla0-ZYAw>



Discuss the concept of a Bill of Rights.

 Research Activity

Using the link for American Bill of Rights:

<https://www.archives.gov/founding-docs/bill-of-rights/what-does-it-say>,

Familiarise yourself with it. Then, using the table below, research the arguments for and against Australia adopting a Bill of Rights.



Bill of Rights

Arguments For	Arguments Against

Summarise your own justified decision on whether or not Australia should adopt a Bill of Rights. What do you believe Australia might include if it were to adopt one?

 View



<https://www.abc.net.au/austory/no-place-like-home-the-biloela-family/13545018> (35 mins)

In groups, brainstorm or provide an analytical response to:

1. Rights: that have been a) upheld b) breached
2. Is this situation just or fair? (consider the family, community, other refugees, Australian society)
3. Who has the power and why?
4. How can situations like this change to better uphold human rights?

International Human Rights Obligations

Established in 1945, the United Nations cited its key aim is to ‘maintain international peace and security; to develop friendly relations among nations; to cooperate in solving international economic, social, cultural and humanitarian problems and in promoting respect for human rights.’ The United Nations is currently composed of 193 member states, with Australia being one of the founding members. The United Nations, outlines global expectations in regards to human rights standards. Australia upholds seven international human rights agreements which have been incorporated into domestic law, these being:

Table 1.1.1: Treaties and Domestic Law.

United Nations	Australia
International Covenant on Civil and Political Rights (ICCPR)	Australia has adopted a range of legislation in the areas of discrimination, privacy and freedom of information which include some elements of the ICCPR.
International Covenant on Economic, Social and Cultural Rights (ICESCR)	Various legislation relating issues such as: human rights, discrimination, immigration
International Convention on the Elimination of All Forms of Racial Discrimination (CERD)	Racial Discrimination Act 1975(Cth)
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	Various Acts including: Sex Discrimination Act 1984 (Cth)
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	Human Rights and Equal Opportunity Commission Act 1986 (Cth)
Convention on the Rights of the Child (CRC)	Various Acts including: Family Law Act 1975 (Cth) and Children’s Protection Act 1993 (SA)
Convention on the Rights of Persons with Disabilities (CRPD).	Disability Discrimination Act 1992

Based upon these standards set down by the United Nations, Australian Federal and State Parliaments have incorporated these principles into domestic law to ensure that these rights are protected and laws are legally binding. This is important because it upholds universal standards and strengthens global relationships and reputation.

Research Activity

For further information use the link below about Australia’s international human rights obligations.

<https://www.ag.gov.au/RightsAndProtections/HumanRights/Pages/International-Human-Rights-System.aspx>.

Then provide an analytical response to “Should Australia be a signatory to international human rights agreements?” What are the benefits and challenges of this. Use relevant cases to support your arguments.

Common Law & Statutory Rights

In Australia, citizens have their rights protected under two different areas of law, these being common law and statutory law.

- **Common law** is the law that has been developed through courts and judges making decisions in order for disputes to be resolved.
- **Statutory law** is the law that Parliament make and adopt as a new law.

The key difference between common and statute law is how the legal system creates these laws. Through the protection of statutory and common law there is significant provision for the protection of human rights.

Table 1.1.2: Common and Statute Law Comparison.

	Common Law	Statutory Law
Meaning	Law which is made by judicial decisions	Laws made by Parliament
Other names	Case Law	Legislation/Acts
Based upon	Judicial precedent	Statutes enforced by legislature



Review Activity

1. Can rights exist without responsibilities? Justify your response.

2. List 5 different factors that have influenced Australian core rights and responsibilities.

3. What is the importance of incorporating relevant human rights treaties into domestic laws?

4. Are the rights of all Australians adequately protected? Justify your response

5. Research a Federal or State law that protects the rights of Australian citizens for each method of law and outline how it protects rights.

Common Law:

Statute Law:

6. Complete relevant key words at the end of this chapter.

Historical Influences on Laws

1

Throughout history, laws have played an important part in establishing order and punishing those who do not conform to this order. More recently, laws have been instrumental in promoting equality and maintaining harmony in a democratic society.

A democratic system of government simply refers to when citizens of a country can freely elect a government that represents them. Both historically and currently in other nations, other systems of government operate, including communist government and dictatorships.

Our laws have been shaped and influenced by our backgrounds, values, and beliefs. Historically, these have been shaped through;

- **Customs** – this is an accepted way of behaving within a given context, for example, place, society, or time.
- **Codes** – a method used by some societies to set down rules on how citizens should conduct themselves.
- **Credo**s – are often based on religious or moral beliefs and are used to guide actions

These have been established over time and handed down through generations, attempting to maintain traditions whilst adapting to changing circumstances.



What is a 'code of conduct'? Provide an example of when this is used in today's society.

Like other democratic societies, past legal decisions help to shape current decisions. This is achieved through **common law** where throughout history the decisions of judges were recorded. This was so they could be referred to in future cases – known as **precedent**. This means that similar cases are treated in a similar manner (equal before the law), further upholding core Australian rights.

The foundation of the Australian legal system has been influenced by global democratic countries, namely, the United Kingdom and the United States of America.

The basis can be traced back to 1215 with the establishment of the Magna Carta. Translated as 'The Great Charter', it is one of the most famous documents in the world. Originally issued by King John of England (r. 1199–1216) as a practical solution to the political crisis he faced at this time. The Magna Carta established for the first time the principle that everybody, including the king, was subject to the law. Some of Magna Carta's core principles have been incorporated into many constitutional documents around the world.

 View



For further information on the Magna Carta, watch:

What is the Magna Carta – British Library, <https://www.youtube.com/watch?v=7xo4tUMdAMw>



What is the importance of the Magna Carta to the Australian Legal System?

Research and outline at least 5 Australian laws which have used the Magna Carta principles as its foundation.

Principles demonstrated in the Magna Carta, were further solidified through the formation, by the United Nations, of the Universal Declaration of Human Rights (1948). This document established a common standard of human rights to be universally protected.

 View



For further information on the Universal Declaration of Human Rights, watch:

The Universal Declaration of Human Rights: <https://www.youtube.com/watch?v=5RR4VXNX3jA>



Review Activity

1. Give an example of where a group of people have used customs regulate their behaviour.

2. To what extent are social and religious customs an influence on our legal system?

3. How does the past influence law in Australian society?

4. Explain the significance of the Magna Carta to democratic legal systems.

5. Discuss the role that the Universal Declaration of Human Rights (1948) has had on Australian laws.

6. Complete relevant key words at the end of this chapter.

Background to the Australian Legal System

From the mid 1800's, British Parliament permitted the six Australian colonies to establish a local system of government. Each colony was given the power to establish and develop its own set of laws and legal systems to ensure colonial harmony.

In 1901, the six Australian States joined together to establish a nation. From the mid 1800's a sense of national pride grew which helped to motivate the movement towards Federation. It was during this time that the Australian legal system was developed. The process of Federation was a complex negotiation between the colonies. These negotiations ensured that after Federation, both the new Federal parliament and the State parliaments would have specific powers or areas of decision making protected. This ensured a system would be in place so that power could not be abused. Federation presented a range of benefits and challenges.

Table 1.1.3 Federation Benefits and Challenges.

Federation	
Benefits	Challenges
Defence	Disagreements between colonies
Immigration	Colonial pride
Free trade between States	Fear of changing relationship with England
National pride	Compromise on issues such as transport

The foundation of our legal system is in the Australian Constitution (*Commonwealth of Australia Constitution Act 1900 (UK)*). This written document sets out the original laws of our nation and can only be changed through a Referendum. A referendum is simply a vote which supports changes to a constitution. It is compulsory for all Australian citizens, over 18 years of age to vote in a referendum. In order for a referendum to be passed it must achieve dual criteria – this is the support of the majority of the states with the majority of the people. If the dual criteria is not met a referendum will not be successful. In Australia's history there have been 44 referendums held with only 8 being successful. The key objectives of the Australian Constitution is to outline how the institutions of government are to operate. There are 6 foundation principles.

Research Activity

Use the following link Australian Constitution Centre: <https://www.australianconstitutioncentre.org.au/the-six-principles.html>

Research and then summarise the 6 foundation principles.



View

The Journey: How Australia Came To Be

<https://www.australianconstitutioncentre.org.au/>

Then explore your knowledge of Federation and the Constitution by exploring the Australian Constitution Centre website. Take the online quiz to confirm your understanding, using the following link: <https://www.australianconstitutioncentre.org.au/take-the-knowledge-quiz.html>

Australia's system of government was largely based on the British and American systems. This was due to Australia originally being a British colony and our relationship with America. As a result of this, a number of elements were mirrored from these systems, including;

- The parliamentary system
- An adversarial court system involving trial by jury and the principle of innocent until proven guilty.

Before 1901 the British Parliamentary model was very influential in Australian colonies. This influence can still be seen in the appearance and function of the bicameral (two chambers) system of the Australian Parliament; these being the House of Representatives and the Senate. The idea of **responsible government** – a government elected by the people and accountable to the Parliament – is a significant British component of our system. Finally, the **separation of powers**, which divides the roles and functions of the 3 institutions of government. They are Parliament, the Executive and the Judiciary.

A major influence of the American system can be seen in the overall model of Australian federation – particularly independently governed states working together under a central federal government structure. Also, the **representative** structure of the Australian Senate was heavily influenced by the American model of their Senate.



Collaborative Activity

In small groups, prepare a short presentation on one of the topics below. Consider the role or influence that your topic has had on Australia. It is recommended that your presentation has a teaching or interactive element to it. This could include a kahoot or quiz.

- British Parliament
- USA Parliament
- The Australian Constitution
- Federation – timeline and events
- Federation – influential people



Your presentation should make reference to the foundation and history of the Australian Legal System. You need to explain what it is, where it came from and the influence that it has had on the Australian legal system.

Aboriginal and Torres Strait Islander Law

Customary law relates to the processes and procedures used to regulate behaviour among Aboriginal and Torres Strait Islanders over many generations. This has been developed over time, particularly through customs and is evidenced in the Dreamtime. Its foundation is based on the connection that people have with each other and their environment.

The Aboriginal and Torres Strait Islanders developed a dynamic and effective system of law before the arrival of the British law system into Australia at the time of settlement. Disputes and law resolution were traditionally handled by the Elders of a community, rather than through a formalised British system such as the use of courts. Despite the systems of law that these people had in place, the concept of Terra Nullis was declared at British settlement. **Terra nullis** was recognized as land that nobody owned. Effectively this did not recognize the laws and traditions of the Aboriginal and Torres Strait Islanders. A result of this was that the people were expected to follow and were bound to British law.

Aboriginal and Torres Strait Islanders customary law did not play a part in the development of Australia's legal system. 1967 was significant in terms of Indigenous recognition with a Referendum being held and successfully passed. This resulted in two changes to the Australian Constitution, these being in Section 51 and Section 127.

It was not then until 1992 the historic *Mabo v Queensland No 2* (1992) case that legal recognition acknowledged Aboriginal and Torres Strait Islanders as lawmakers. This decision overturned the concept of *Terra Nullis*. This decision recognized that customary laws and traditions were acknowledged by accepting Aboriginal and Torres Strait Islanders law into the common law system.

Research Activity

1. Using the link investigate the Mabo case and its significance: <https://aiatsis.gov.au/explore/articles/mabo-case>. Outline the case details and provide a summary on the significance of this case and its outcome.
2. Research and explain:
 - a. The characteristics of Aboriginal and Torres Strait Islanders customary law.
 - b. Compare and contrast these customary laws to British influenced Australian law (you may wish to present this in a table).
 - c. Outline how customary law has been developed.
 - c. What influence it has had on the Australian legal System?
 - d. Discuss the role that Aboriginal and Torres Strait Islanders law plays in today's society.

Review Activity

1. Provide examples of how British heritage is reflected in the Australian Legal System.

2. Comment on the range of elements that have influenced the Australian Legal System. Summarise the benefits and challenges of these.

3. Suggest some reasons why Australia adopted traditions from both the British and American systems of governance.

4. With reference to the 1967 Referendum, what changes were made to Sections 51 and 127 of the Australian Constitution?

5. Complete relevant key words at the end of this chapter.

Institutions of Government

The Australian Constitution clearly communicates how the responsibility to make and manage Australian laws is distributed. Laws are influenced by institutions of government to reflect society's values. These responsibilities and primary functions have been divided and outlined in the first 3 Chapters of the Australian Constitution, these being:

- Chapter 1 - The **Legislative** (Parliament), makes the law
- Chapter 2 - The **Executive** (Government, Cabinet of Ministers), **administer and enforce** the laws
- Chapter 3 - The **Judiciary** (judges and courts), uses law to **resolve conflict**.

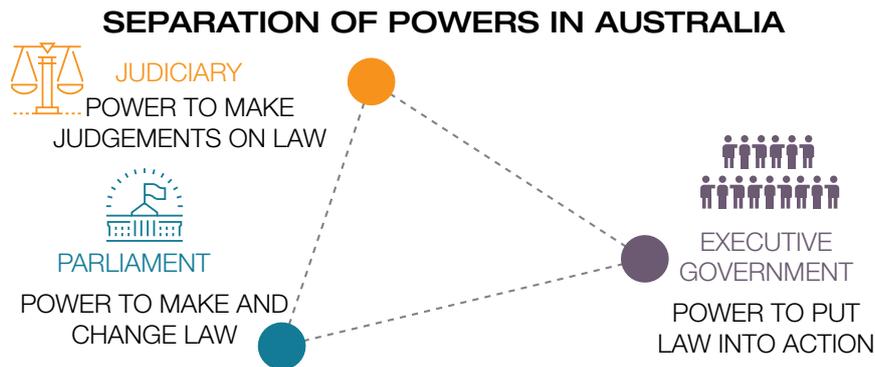


Figure 1.5.1: Separation of Powers.

This concept is known as the separation of powers. It was originally developed in 1748 by the French philosopher Charles de Montesquieu. This concept, in different formats, is used in many democratic countries. The principle of the separation of powers is that, in order to prevent oppressive government, the three powers of government should be held by separate bodies—the Legislature, Executive and the Judiciary. Its aim is to separate powers to prevent the abuse of power and ensure a fair, equitable and democratic system of governance.

Research Activity

Using the following link explore The Australian Constitution:

https://www.australianconstitutioncentre.org.au/uploads/1/2/0/0/120053113/separation_of_powers_in_detail.pdf

Summarise the key points:



Australian Constitution – Chapter 1: Legislative power:



Australian Constitution – Chapter 2: Executive power:



Australian Constitution – Chapter 3: Judicial power:

Branches of Government

The Legislature: This branch is made up of parliament (House of Representatives, the Senate and the Queen – represented by the Governor General) and has the main lawmaking power. Parliament is regarded as our main lawmaking power because it can overrule judge-made law and remove lawmaking powers from government departments.

The members of parliament are elected at regular intervals, to represent the people of society. In Australia Federal elections are held on average every 3 years. This is known as **representative government**.

Representative government means that Members of Parliament represent the values and beliefs of Australian citizens. This requires Members of Parliament to make decisions on behalf of citizens, including:

- Making laws
- Debating relevant issues
- Expenditure of public money.

The Executive: The Executive branch is made up of government departments (including the Queen – represented by the Governor General, Prime Minister and Ministers), who enforce the laws created by the Legislature branch. The Cabinet of Ministers is made up of the elected representatives who have been given an area of responsibility e.g. education or transport. As a society, we hold these people accountable for their action and the actions of their department. This is known as **responsible government**. Responsible government means that the government is directly accountable for their actions to Australian citizens.

The Judiciary: This branch is made up of the courts and judges. Their main role is to resolve disputes regarding the law. This could include how the law was made or when people break the law. They interpret statutes (laws) and apply them to each different case specifically. They can also create case law, to apply to the case in front of them.

However, Australia does not hold a true separation of powers, because some of the roles of the Legislative and Executive overlap. This overlap includes Cabinet Ministers who are involved in both the legislative and executive functions. This system is consistent at both the Federal and State levels of government. This is different to the American system of governance who hold a true separation of powers.



Review Activity

Using the following link, review your knowledge on the separation of powers. <https://peo.gov.au/teach-our-parliament/education-resources/quizzes/separation-of-powers/>

1. Explain why the separation of powers is important?

2. What problems might arise if the separation of powers was not used in Australia?

3. Define the terms:

Separation of powers _____

Representative government _____

Responsible government _____

4. Read or watch a recent media article or clip of a recent court case. You may wish to focus on a traffic infringement. Identify or highlight and explain the different institutions of government and their role in this situation.

5. Complete relevant key words at the end of this chapter.

Rule of Law

Australia's system of government is based on the rule of law. Simply, the rule of law means that everyone must obey the law, regardless of their position or power.

The Rule of Law states that:

- Laws should exist
- All people are equal before the law
- The government must follow the law
- People are held accountable for their actions.

The rule of law underpins the way Australian society is governed. It is important as it requires that our legal system provides:

- Protection to individuals and their rights
- Laws that are knowable and fit for purpose
- A framework to settle disputes
- Consistency, fairness and impartial decisions
- Just outcomes in trials.

Additionally, the rule of law supports that the lives of individuals should be free from threats of violence and oppression.



View

Consolidate your knowledge on the rule of law by watching:

<https://www.ruleoflaw.org.au/education/videos/ruleoflaw/>

While watching, complete the worksheet attached on the link

Discuss the key elements of the rule of law.

The rule of law principles can be summarised in the rule of law pyramid. It considers and upholds key legal principles and traditions.

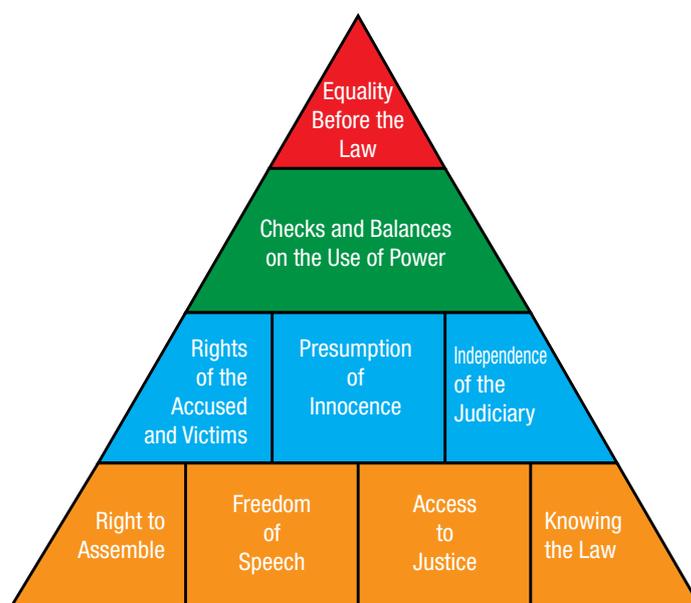


Figure 1.6.1: Rule of Law Pyramid.



Collaborative Activity

Select one element from the rule of law pyramid. Research and prepare an overview to share with the class that defines the meaning of your chosen element and summarise why it is important. You may wish to use an example from recent media to support your overview. Share and note the findings below:

Rule of Law	
Element	Summary
Equality before the law	
Checks & balances on use of power	
Rights of the accused & victims	
Presumption of innocence	
Independence of the judiciary	
Right to assemble	
Freedom of speech	
Access to justice	
Knowing the law	

The rule of law is about maintaining a free, democratic and fair society. The government upholds the rule of law through their daily work to ensure:

- Laws are clear, predictable and accessible
- Laws are publicly made and the community is able to participate in the law-making process
- Laws are publicly resolved in courts that are independent from the legislature and executive branches of government
- Dispute settlement is fair and efficient.



Review Activity

Review your learning by completing the questions below. You may wish to use <https://www.ruleoflaw.org.au/> to help you.

1. Explain the concept of the rule of law.

2. What impact does society's evolving values and beliefs have on changing our laws?

3. Using an example, how is the rule of law be evident in Australian society today?

4. What is the relationship between the rule of law and human rights?

5. Explain how the following concepts relate to the rule of law:

- Fairness: _____
- Rationality: _____
- Predictability: _____
- Consistency: _____
- Impartiality: _____

6. Complete relevant key words at the end of this chapter.

What Influences Our Laws?

In Australian society we adapt to the types of conduct which are considered as 'right' or 'wrong'. There are many different factors that can influence our conduct and most people are motivated to live harmoniously and obey the law. The legal system does, however, have a responsibility to respond to changing influences and environments to ensure laws remain relevant to the current place and time.



Figure 1.7.1: Factors that influence our laws.

In Australia the law changes and evolves on an ongoing basis. The law can be changed through the Federal and State legislatures amending and creating new laws. This legislation might reflect new social values or developments in society. For example, the emergence of internet technologies has required a new set of laws dealing with the issues regarding the internet.

In addition to factors that influence our laws, there have been some significant cases where individuals and influential pressure groups have encouraged change in Australian society and the laws. The aim of this has been to achieve justice, equity and harmony.

There have been many individuals who have intentionally sought to influence our laws, such as the Prime Minister, State Premiers and Members of Parliament. However, there many individuals who have felt the necessity to influence laws due to their life experiences or events.

Research Activity

View relevant YouTube clips and research media responses on one of the following:

- Bruce and Denise Morcombe – changing laws to improving child safety.
- Ralph and Kathy Kelly – changing laws to reduce alcohol related violence.
- Noelle Dickson – changing laws on Victoria's bail and parole laws.
- Rod Bridge – changing laws on synthetic drugs to be banned substances.

Prepare a response outlining the facts of the relevant case and how they have influenced change.

Pressure, lobby or interest groups also have an effect on the changing of the law. Lobbying is the practice of encouraging private and public issues to be presented to legislative and government bodies. The aims of lobby groups is to:

- Strengthen the representation of specific interests or minority groups.
- Encourage debate, resulting in providing citizens with alternative sources of information.
- Foster increased participation in political issues and discussions.
- Provide a mechanism for making government accountable by defending the rights and freedoms of groups.
- Raise awareness about popular demands and issues.

Factors, groups and people who influence the law are often concerned about safety, equity, harmony and justice being achieved in society and aim to uphold the rights of citizens.



View

For further information, watch “What are pressure groups?”:

YouTube <https://www.youtube.com/watch?v=MYvXm6GBNqM>

Discuss the significance of pressure groups

Complete the table below on influences that pressure groups have had

Who	How	Purpose
RSPCA	Animal Welfare Act (1985)	Protect animals



Collaborative Activity

In small groups, research and prepare a presentation which examines an individual or group who have influenced changes to a law in Australia. Your presentation may include:

- Who the person or group are,
- What changes did they make?
- How this has influenced/shaped Australian society
- How they had an impact on shaping law/s or values in either Australia or South Australia.
- Evaluate how law making may be/has been controlled by this group or individual.

In a more formal approach, the Australian Law Reform Commission (ALRC) exists to examine and recommend change. The ALRC is a permanent and independent federal **statutory body**. A statutory body exists for a specific, public purpose. The role of the ALRC is to scrutinize how areas of law might be changed or transformed to better reflect the needs of society. The focus of the ALRC is on federal laws and the processes of the legal system. It operates according to the Australian Law Reform Commission Act 1996.

The main aims of the ALRC are to:

- Simplify the law
- Improve access to justice
- Remove unnecessary laws
- Suggest more effective methods for administering the law and ensuring justice
- Ensure consistency of Federal, State and Territory laws where possible
- Observe overseas legal systems.

The recommendations that the ALRC gives to the government do not automatically become enacted as law or legislative amendments, but the ALRC has a strong historical record of having its recommendations put into practice.



View

For further information watch:

YouTube 30 Years of Law Reform – The Australian Law Reform Commission - <https://www.youtube.com/watch?v=oM4IV2dU5oA> or by investigating the website: <https://www.alrc.gov.au/about/>

What is the importance of the ALRC?



Review Activity

1. List the some of the key influences on Australian laws.

2. What role does society's changing values and beliefs impact on the changing of our laws?

3. Explain how individuals and groups influence our laws.

4. What benefits and challenges may arise for individuals or groups who influence changes to our laws?

5. Evaluate the role of the ALRC.

6. Complete relevant key words at the end of this chapter.

Change and Our Laws

It is necessary for laws to progress to reflect society's changing attitudes towards a broad range of emerging and evolving issues. Laws change to align with current trends and values with the aim of anticipating the future needs and well-being of society.



Collaborative Activity

Using the following link: <https://www.legislation.sa.gov.au/browseActs.aspx>

Click on the current year to find an example of a new or amended law in South Australia. Complete the following to share with the class:

Name of your selected Act of Parliament: _____

What is this Act of Parliament about: _____

Why might this Act or changes have been necessary? _____

Change is important for any government because, without change, they may fail to meet the evolving needs of its citizens. Citizens are accountable for electing a government, known as representative government. Often change to laws can be motivated by Australian citizens.

A key reason why laws change over time is because the values and moral beliefs of people change. The introduction of new laws can also occur when there are no established law that has been created to address a specific situation.



Research Activity

Research some laws that have been introduced as a result of our changing values and morals.

Value	Law	Reason
Social Values	Family Law Act (Cwth) 1975	Changes in attitude to marriage and children
Moral Values		
Political Values		
Economic Values		
Environmental Values		

Another reason why laws need to evolve is due to the changing expectations that we have towards our legal system. Historically, laws were expected to regulate behaviour, however, it is now a requirement that the law upholds individuals rights and protects individuals.

Change can be motivated and facilitated for a range of reasons, including:

- Technology – Due to its progressive nature, laws need to be responsive, purposeful and relevant. Changing laws due to new technologies is important for public interest, with the aim of minimising exploitation or harm.



List a law that has been made in response to technological changes:

- Changing community values/needs of citizens - Values across society change over time. In order for laws to be respected and relevant the law must uphold and reflect the values and beliefs of society in the present time. This may change over generations.



List a law that has been made in response to changing community values:

- Global Environment - Another reason why laws may need to change is due to changing community awareness in a global environment. As a national community, we are much more informed today and aware of relevant issues, such as the environment or global economy. This is due to the speed and efficiency of communication.



List a new law that has been made in response to changing global environment:



View



Carly's Law: Preventing Online Child Predators – The Feed

<https://www.youtube.com/watch?v=bwYVb3INi0k>

With reference to Carly's Law, as a class discuss the benefits and challenges of making changes to the law.



Review Activity

1. What do you believe is the most significant reason for laws to change? Justify your response.

2. To what extent is it important for Australian laws to evolve and change?

3. Suggest what might occur in society if laws did not adapt to change.

4. As our laws change, is justice more easily achieved in society?

5. Complete relevant key words at the end of this chapter.

Chapter Review

Chapter Checklist

You should now be familiar with the following concepts:

Chapter 1 – Key Concepts		
Rules & Laws	Rules, laws & punishment	<input type="checkbox"/>
Rights & Responsibilities	Rights & responsibilities Bill of rights International human rights obligations Common law and statutory rights	<input type="checkbox"/>
Historical Influences	Customs, creeds & codes Magna Carta Universal Declaration of Human Rights	<input type="checkbox"/>
Australian Legal System	Federation Influences of Britain and America Indigenous customary law	<input type="checkbox"/>
Institutes of Government	Institutions of government Separation of powers Representative government Responsible government	<input type="checkbox"/>
Rule of Law	Elements of the rule of law	<input type="checkbox"/>
Influences of our Laws	Factors influencing laws People and groups who influence laws Australian Law Reform Commission	<input type="checkbox"/>
Changing our Laws	Values/reasons for change Factors impacting change	<input type="checkbox"/>

Key Words

Laws: _____

Rules: _____

Punishment: _____

Rights: _____

Responsibilities: _____

Bill of Rights: _____

International Human Rights: _____

Common law: _____

Statutory law: _____

Magna Carta: _____

Federation: _____

Precedent: _____

Parliament: _____

Australian Constitution: _____

Institutions of Government: _____

Legislature: _____

Executive: _____

Judiciary: _____

Separation of Power: _____

Responsible government: _____

Representative government: _____

Rule of Law: _____

Extended Activity

1. Law walk - Go for a walk in your local community. Make a note of the different things which you see that are affected or impacted by the law. Consider the role of the institutions of government and their powers to make law for the community. Evaluate how laws might influence your daily life.
2. Watch '*Lord of the Flies*'. How does this film relate to rules, laws, punishments and the application of the rule of law?

Revision Questions

Complete the questions below to consolidate your learning on this topic.

1. What is a law and why do we need them?
2. Define what would happen if we didn't have any laws.
3. Which countries has Australian law originated from? Why and how?
4. Discuss the benefits and challenges of Federation.
5. Define and outline the key features of the Institutions of Government.
6. Outline how the roles of Legislature and Executive overlap.
7. Identify the key influences for how our laws can be changed.
8. What is the Australian Constitution? Outline its importance.
9. Explain the concept of the separation of powers.
10. Define the concept of representative government.
11. Explain the concept of an executive government and who it includes.
12. Explain the concept of a responsible government and describe why it is important.
13. Explain the role of the Judiciary and who it includes.
14. Why is the rule of law an essential element of the Australian Legal System?

Extension Questions

Respond to the following statements by arguing opposing views, where appropriate.

1. Collect 2 media articles about law and society. For each article summarise: what the article is about, how the law impacts on society and any recommendations that you have for improving the legal system, in this circumstance.
2. To what extent is it important for Australian laws to evolve to meet the changing needs of Australian communities?
3. Legal rights and responsibilities of children and adults should differ under the law.
4. It is a weakness that Cabinet Ministers contribute to lawmaking in Parliament and then implement laws through their departments.

CHAPTER TWO

GOVERNMENT

Structure of Australian Government

One of the key ideas of a democratic system is that behaviour is appropriate unless it has been considered unlawful by the government. Australia's legal system consists of institutions of government, that have specific powers to make laws (the legislature), enforce laws (the executive) and to adjudicate disputes (the judiciary). This structure of the institutions is prescribed in the Australian Constitution. Our democratic system is based on the rule of law. The rule of law stipulates that everyone is subject to and accountable to the law. That before the law everyone is treated equally.

Additionally, the government can be broken down into three tiers; federal, state, and local governments. The three tiers work independently, yet collaboratively to achieve consistent laws, regulations, and outcomes.

Australian Tiers of Government



Federal Government Tier: Power to make and enforce laws consistently for the whole of Australia.



State Government Tier: Power to make and enforce laws for the jurisdiction of each state (eg SA).



Local Council Tier: Power to make and enforce their own by-laws for specific region.

Figure 2.1.1: Australian Tiers of Government.

Each tier of government has similarities, as they all:

- Hold elections
- Provide public services and goods
- Make laws for its citizens
- Punish people who break the laws.

Why is it important for there to be similarities between the tiers of governments? What might be some differences?



Each tier of government has its own responsibilities, however some responsibilities are also shared between the tiers.

 [View](#)

For further information on the 3 Tiers of Government watch:
<https://www.abc.net.au/btn/classroom/levels-of-government/10524692>

 Discuss the key roles and functions of each tier of government.

Activity One

In the table below, list the responsibilities of federal, state and local governments.

Federal	State	Local	Shared responsibility

Prepare a written summary of the advantages and disadvantages of the tiers of government sharing responsibilities for different services.

Activity Two

Australia also has Territories that are not part of any state. The key difference between a state and a territory is that most territories depend upon the federal government to make and approve their laws.

List at least 6 Australian territories. Which of these territories are self-governing? Investigate the differences between states and territories and examine why territories do not have the same powers or levels of governance of states. Provide reasons why territories exist and do not become new states.

 [Review](#)

1. Evaluate the benefits and challenges for Australia having three tiers of government.

2. Complete the table below:

Which tier of government would deal with:	Federal	State	Local
Rubbish collection			
Australian defence			
Public libraries			
Immigration			
Health care			
Education			
Dogs and cats			

3. Collect 3-5 recent articles/clips from the media which include government-related services.

- a. Highlight the tier/s of the government concerned.
- b. Summarise each article including the positives and negatives of how the issue has been dealt with by the government.
- c. Suggest any improvements that could be made.

4. Complete relevant key words at the end of this chapter.

The Australian Constitution

The Australian Constitution is the foundation for the way Australia's political and legal system operates. It sets out our system of governance. The Commonwealth of Australia was established on 1 January 1901.

The Australian Constitution describes the composition, role and powers of Parliament. It sets out how the federal and state parliaments share the power to make laws and defines the rights and responsibilities of Australian citizens, such as the right to religious freedom.

The Australian Constitution had to be approved by Queen Victoria and the British Parliament. The Commonwealth of Australia Constitution Act was passed as a British Act of Parliament in 1900, coming into effect on 1 January 1901. The colonies became Australian states and the new federal Parliament of the Commonwealth of Australia was formed.

 View



For further information on The Australian Constitution watch:
<https://www.youtube.com/watch?v=wR5S2bCDSwM>



Why was it necessary for the Australian Constitution to be a written document?



Why were Constitutional Conventions important?

Features of the Australian Constitution

The Australian Constitution is a written document divided into eight chapters and 128 sections. It provides the main foundation for Australia's system of governance, but not everything could be included in one document. Specific aspects of the system were determined according to conventions and historical influences. For example, the role of the Prime Minister is not included in the Australian Constitution.

Australian Constitutional Key Features



Figure 2.2.1: Key Australian Constitutional Features.

The Australian Constitution was intentionally written to provide some flexibility and interpretation according to circumstances as society's values evolve. It also provides a mechanism for constitutional alteration, through a referendum. However, the Australian Constitution is clear about how the power or areas of decision making are divided between the Commonwealth and States. Additionally, the provisions made for the High Court of Australia through judicial review are important to not only resolving disputes but also ensuring that the government act within the limits of the Australian Constitution.

Research Activity

Research and prepare an infographic as an introduction to one of the following chapters of the Australian Constitution:

Chapter 1—The Parliament

Chapter 2—The Executive Government

Chapter 3—The Judicature

Chapter 4—Finance and Trade

Chapter 5—The States

Chapter 6—New States

Chapter 7—Miscellaneous

Chapter 8—Alteration of the Constitution

You should include:

- An overview of your chapter, including the key sections
- Why this chapter is important for the governance of Australia
- Significant points of interest.

Changing the Australian Constitution

The Australian Constitution can only be changed with the approval of the Australian people, through a referendum. Before a referendum can be conducted, any changes are first put forward and approved by the Federal Parliament. During a referendum all Australian citizens on the electoral roll vote 'yes' or 'no' to the proposed change. A referendum is only passed if it is approved by the majority of voters in a majority of states, and by a majority of voters across the nation. This is known as a double majority. Since 1901, 19 referendums have proposed 44 changes to the Australian Constitution; only eight changes have been agreed to.

View



How the Australian Referendum votes are counted - AEC – YouTube
<https://www.youtube.com/watch?v=3oCHoUUORXg>



What is the difference between a referendum and a plebiscite?

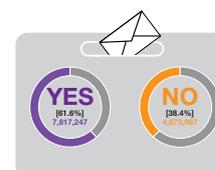


Figure 2.2.2:
2017 Plebiscite.



Collaborative Activity

In small groups research one of the 19 referendums. Consider why it was or why it was not passed and the factors that might have influenced this decision. As a class, discuss why you think Australians have agreed to so few changes to the Australian Constitution.

To find out more about referendums:

Explore the 8 changes in Get Parliament: Successful referendums
www.tinyurl.com/RefsEight

Referendum dates and results:

https://www.aec.gov.au/Elections/referendums/Referendum_Dates_and_Results.htm

Referendum Years

1906	1910
1911	1913
1919	1926
1928	1937
1944	1946
1948	1951
1967	1973
1974	1977
1984	1988
1999	



Review Activity

1. What is the Australian Constitution? When and why was it developed?

2. List what is contained in each of the 8 chapters of the Australian Constitution.

3. How can the Australian Constitution be changed? Do you think the criteria for change is too easy or too difficult to achieve?

4. Suggest some reasons how changes to the Australian Constitution can benefit society.

5. Complete relevant key words at the end of this chapter.

Elections - Federal

2

It is a compulsory right and responsibility for Australian citizens to vote in Federal and State elections. Voting is a process that is used to make a collective decision. It is through voting that representative democracy is achieved. It is these representatives of the people who are elected into Parliament (Members of Parliament) to make the laws and decisions which govern our society. It ensures that democracy can be achieved for Australian citizens by allowing them the opportunity to elect who they would like to represent them.



What are some reasons why voting in an election in Australia is compulsory?

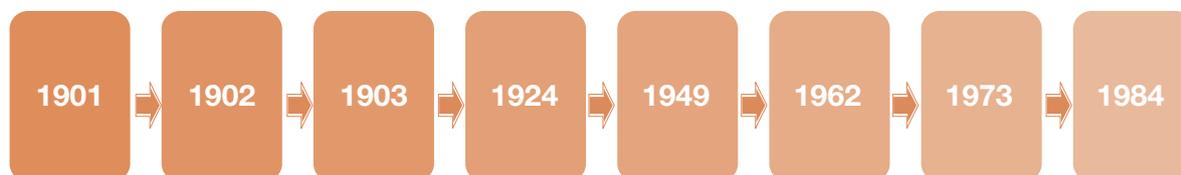
Voting rights in Australia have evolved since Federation. They were established through the enactment in 1902 of the Commonwealth Electoral Act and the Commonwealth Franchise Act. Voting is now a responsibility for all Australian citizens over the age of 18 years.

Research Activity

Create a timeline of Australia's voting developments. Why were the following dates significant? You may wish to refer to:

Civics | Voting and Elections: Electoral events timeline site(civicsandcitizenship.edu.au)

https://www.civicsandcitizenship.edu.au/cce/electoral_events_timeline_ls,9491.html



Parliament is made up of different political parties who share similar values, policies and beliefs. The purpose of an election is for Australian citizens to vote for a party that best represents their ideas. The government is formed by achieving the majority of members in the House of Representatives. The party that achieves the next 'best' result forms the opposition.

Collaborative Activity

In groups, select a different political party to research. Prepare a presentation which includes:

- Overview of the party, including key aims and objectives
- When and why was this party established
- What are some of the significant political achievements of this party
- What is the importance of political opposition?

Key political parties:

Liberal Party of Australia
Australian Greens

National Party of Australia
Centre Alliance

Australian Labour Party
One Nation

Electorate Information

Laws regarding federal elections are outlined in the Commonwealth Electoral Act. It stipulates that a federal election is to be held at least every three years, so reads Commonwealth Electoral Act 1918.

An electorate is an area where you live. They contain roughly the same number of voting citizens, regardless of the geographical sizing. Approximately 100 000 voters live in each electorate. Results determine the composition within the House of Representatives. States which have a higher voting population will have greater representation in the House of Representatives. At times, electorate boundaries must be redefined or redistributed according to population changes.

 What is the smallest geographical electorate in South Australia?

 What is the largest geographical electorate in South Australia?

 Why do council and electoral boundaries have different names?



Figure 2.3.1: South Australian Federal Electoral Boundaries.



Research Activity

With reference to the Australian Electoral Commission and www.ecsa.sa.gov.au/map, present a fact sheet on your electorate.

1. Explore the 47 South Australian electoral boundaries.
2. What are electoral boundaries and why are they necessary?
3. Which electorate do you live in? Research its:
4. Origin/history
5. Current MP and their profile.
6. How do electorates and voting relate to one another?

Election Process

The election process is made up of 2 separate procedures. Firstly, the voting process which is carried out by Australian citizens casting their vote. The second process is scrutiny or the counting. This is conducted by officials who are responsible for election conduct and stipulated in electoral law.

Figure 2.3.2: Election Stages.



A Writ is a legal term used to describe the time frame and documentation with authorises for an election to be held.

Voting Models

Preferential voting is a majority system where a candidate must achieve greater than 50 percent of the votes in the count. This is the system used for voting in the House of Representatives. The process for voting at a federal and state level are similar. A voter numbers the boxes from 1 to 8 according to their preference. The preferences are tallied for each candidate to achieve a final result. A successful member must achieve an **absolute majority**. The ballot paper is always green.



Figure 2.3.3: Preferential voting.

Proportional voting is the system of voting used in the Senate. This system requires a certain percentage of the votes or a **quota** to be obtained. Senate voting is a little more complex as a decision needs to be made by the voter if they wish to cast their vote above the line (numbering from 1-6) or below the line in order of the voter's chosen party. Proportional representation ensures that each state is equally represented in the Senate (the state's house). There is a better opportunity for minority and independent parties to be elected into the Senate. The ballot paper is always white.

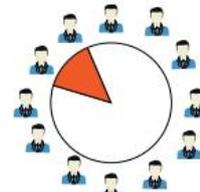


Figure 2.3.4: Proportional voting.

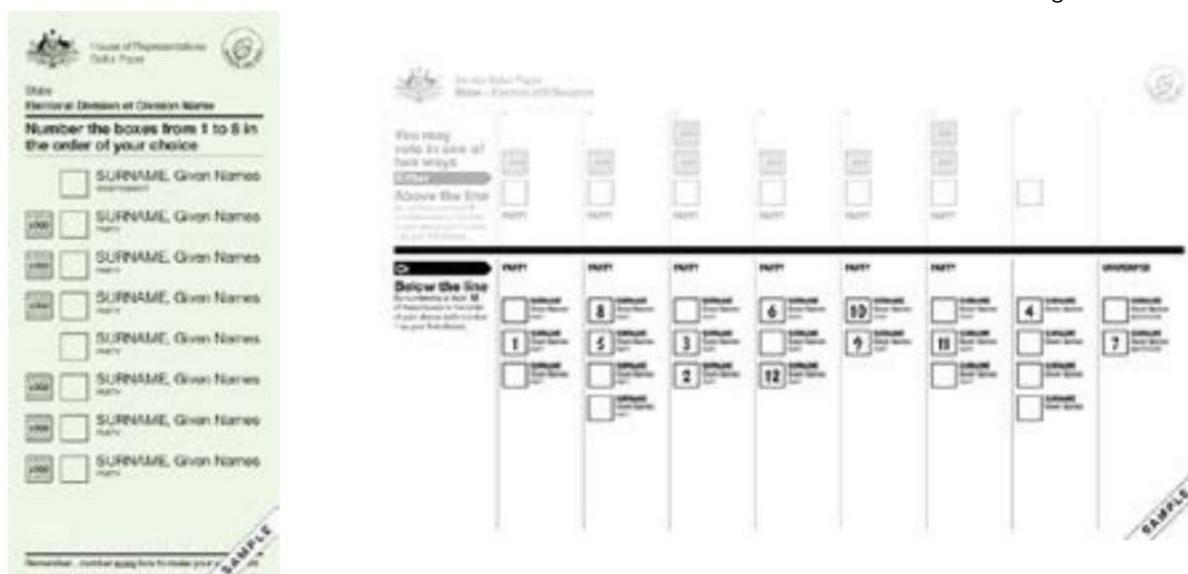


Figure 2.3.5: Federal Ballot Papers.

Parliament Composition

Parliament is a bicameral model, meaning that it is made up of 2 houses. At federal level these are the House of Representatives and the Senate. Members of parliament have the responsibility to represent Australian citizens and make laws and decisions which benefit all of Australia or individual states. They can achieve this by sitting in parliament through introducing and debating proposed laws and through seeking opinions to help people in the community. Although these two houses have similar features, there are also some distinct differences.

Federal	House of Representatives	Senate
Composition	151	12 senators from each state 2 from each territory 76 Senators in total
Voting System	Preferential voting	Proportional voting
Tenure	3 years	Half the Senate stands for election every 3 years (6 year terms)
Presiding Officer	Speaker	President

Figure 2.3.6: Composition of the Federal Houses of Parliament.

View



For further information on parliament, watch:

Inside Australia's House of Representatives: https://www.youtube.com/watch?v=nbK1_OYFkul

The House of Representatives: <https://www.youtube.com/watch?v=a0XIK1V4yK4>

The Senate: <https://www.youtube.com/watch?v=Fb0iXu5vsDE>

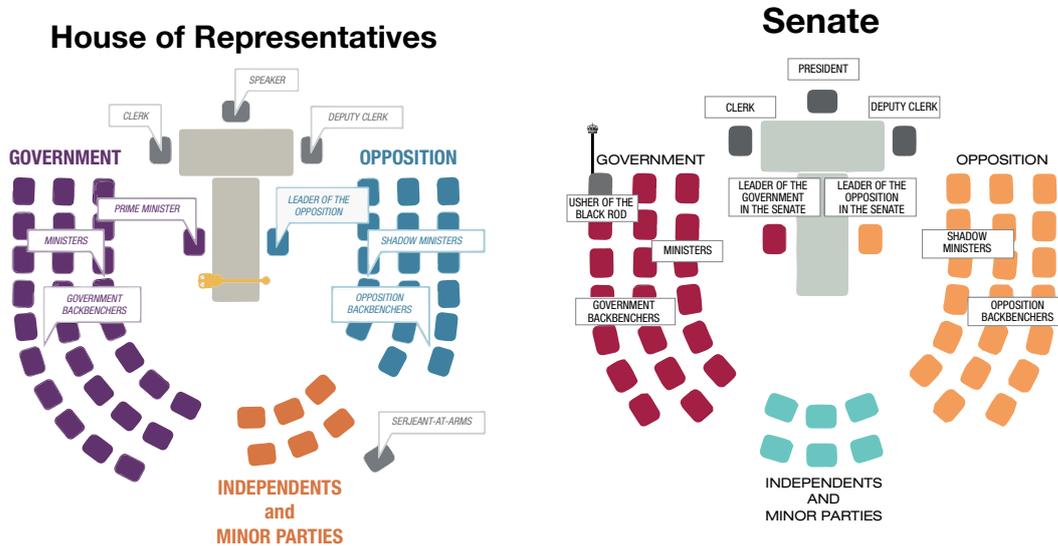


Figure 2.3.7: Federal Parliamentary Seating Plan.



List some similarities between the houses.



List some differences between the houses.

Research Activity

Research the following to complete the table below:

Question	Response
Name the Prime Minister	
What party do they represent?	
Name the leader of the opposition	
Define the term, minister.	
List 3 ministers and their area of responsibility	
What is a Shadow Minister?	
List 3 shadow ministers and their area of responsibility	
What is the purpose of a backbencher?	
Explain 2 different roles of an MP	



Review Activity

2

1. What might be some benefits and challenges of compulsory voting?

2. Why is Australia organised into electorates?

3. Why are federal elections held every three years? What might be some advantages to this time frame?

4. Women were given the right to stand for Parliament in 1902 but no women were elected until 1943. Why did it take 41 years?

5. Why might different voting models be used for the House of Representatives and the Senate?

6. Complete relevant key words at the end of this chapter.

Division of Powers

The **division of powers** is simply how legislative power is divided between the Federal and State Governments. This is outlined specifically in the Australian Constitution, predominantly in Chapter 1, Section 51. When parliament makes decisions and laws they must be mindful that they are acting **intra vires**; meaning that they are acting within constitutional boundaries. This is to ensure that laws are clear and each level of government is working within its power. If states go beyond these boundaries, they are considered to be acting **ultra vires** (outside the boundaries).

As a Federation, the Australian States and the Commonwealth have legislative power, but this power is limited to ensure and prevent an abuse of power. The sovereignty of the states was maintained through Chapter 5 of the Australian Constitution.



Federal Powers: **Exclusive** power - areas that **ONLY** the Commonwealth can create legislation on. These are listed the Australian Constitution.



Federal and State: **Concurrent** power – areas that both the Commonwealth, States and Territories can create legislation on.



State: **Residual** power – areas that the States kept at Federation. They are any powers that are not written in the Australian Constitution.



Research Activity

Using the link provided, complete the table below:

<https://peo.gov.au/understand-our-parliament/how-parliament-works/three-levels-of-government/three-levels-of-government-governing-australia/>

Power	Section of the Constitution	Area/Example of Power
Exclusive		
Concurrent		
Residual		

Prohibited Powers

Prohibited powers are those areas that have been enumerated or listed in the Australian Constitution which prohibits laws from being made. For example, the following sections prevent the Commonwealth from making laws that:

- Section 99 – Discriminate against individual states
- Section 116 – Discrimination regarding religious freedoms.



List some reasons why prohibited powers might be necessary?

Inconsistency Rule – Section 109 of the Australian Constitution

The Commonwealth and States have powers that are held concurrently. This means that as laws can be made regarding the same issues, on occasion these laws can conflict. When this occurs, the laws determined by the Commonwealth will prevail. Section 109 exists to clarify any confusion that may arise regarding the division of powers, where valid laws already exist at both a State and Federal level.

Power Shifting from the States to the Commonwealth

Section 109 – The Australian Constitution

“When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.”

During the Federation period, it was the intention of a central government with limited powers and state governments with broad powers to be established. It was important to the states that they were able to retain significant power on how they would operate. However, over time a gradual power shift has occurred, primarily through:

- State supported changes
- Commonwealth Initiatives
- High Court of Australia’s (HCA) interpretations of the Australian Constitution.



List some reasons why this shift of power has occurred.

**Collaborative Activity**

The following cases have been significant regarding power shifting:

Engineers Case – Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920)

Koowarta v Bjelke-Peterson (1982)

Tasmania Dams Case – Commonwealth v Tasmania (1983)

Mabo v Queensland (No 2) (1992)

Work Choices Case - South Australia v Commonwealth (2006)

In your group, each research one of the above cases. Provide an overview to share with your group.

Research Points	Your notes
Cite the case	
Facts of the case	
The issue and inconsistency between the Commonwealth and State	
Decision of the case	
Significance of the case	

**Review Activity**

1. Create a mind map regarding the division of powers, including; exclusive, concurrent and residual powers.

2. Evaluate the necessity for power to be divided between Commonwealth and States.

3. Provide an argument for or against the States retaining more power.

4. Explain the purpose of the Inconsistency Rule.

5. Complete relevant key words at the end of this chapter.

Separation of Powers

The Separation of Powers is a doctrine (or rule) where the 3 branches of government are split into separate, but related institutions. Australia's three institutions of government were established in Chapters 1-3 of the Australian Constitution. The Separation of Powers defines separate legal institutions to create laws, enforce laws and resolve legal disputes. The separation of powers is important to ensure that power can not be abused.

Federal institutions of Government (The separation of powers)

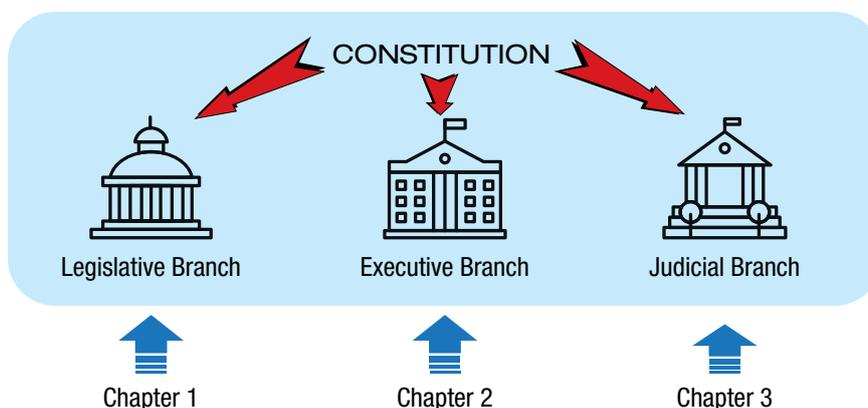


Figure 2.5.1: The Separation of Powers.



Review Activity

Review your knowledge on the separation of powers, by completing the figure below. You may wish to refer back to Chapter 1 – Institutions of Government.

	Legislature	
	Executive	
	Judiciary	



Why is it important for the powers to be separated?

Legislative Branch – Parliament

The Legislative Branch is responsible for proposing and creating laws. Australia's Parliamentary system contains the following key elements:

- The Queen, represented by the Governor-General
- House of Representatives (Lower House)
- Senate (Upper House).

All parliaments in Australia perform the following **key** functions:

1. **Democratic function:** Representing electorates to ensure that the public's needs and wants are represented.
2. **Legislative function:** To create laws that set acceptable standards of behaviour
3. **Supply function:** Provide funds to the executive arm. Parliament needs to ensure that the government is supplied with money to provide collective goods and services.
4. **Scrutinising function:** Parliament is responsible for reviewing the actions and legislation of the other two branches. They have the power to overrule regulations or case law.

Representative Government

A representative government is one that represents the public. It requires more than members of parliament being voted in by the public. To ensure that democracy can be achieved the following elements must also exist.

Rule of Law	Open Debate	Parliamentary Privilege	One Vote	Right to Protest	Regular Elections	Universal Franchise	Salaries
Equality before the law	Access for the general public to parliamentary debates	Open and uncensored discussion to allow for diverse views and opinions	Each vote is of equal value and it is done privately	Peaceful protests enable political freedom and democracy to be achieved	Elected representatives are held accountable through regular elections	All Australian citizens must vote regardless of their backgrounds and beliefs	Enables members of Parliament to be paid fairly to encourage a fair representation

Figure 2.5.2: Key Elements of a Representative Government.



Explain why it is important for these elements to exist for representative government to be achieved.



Research Activity

Research and provide a summary of the legislative branch of government. Include:

- Explain the key institutions of Australia's democratic system of government
- Examine the roles and responsibilities of Australia's legislative branch of government
- Describe the responsibilities of representatives in Australia's democracy.

Then select a Minister (or Shadow Minister) in Parliament and provide an overview:

- Who is the Federal Minister?
- How were they chosen for this position?
- What is their portfolio and what does it include? Why is this role important?
- What are their main roles and responsibilities?

Executive Branch

The executive branch is responsible for administering and enforcing the laws made by parliament. The executive manages the daily operations for our country to successfully function. The Prime Minister and the Cabinet ministers work together to make decisions about laws in Australia. The executive powers are outlined in Chapter 2 of the Australian Constitution.

Government departments are made up of people who are employed directly by the government - collectively these departments are known as the public service, this is because its key role is to serve the public.

Responsible Government

Each branch of government is responsible for each other and to each other. This is to ensure that each branch is held accountable for their actions. Responsible government has been adopted from Britain's Westminster system and has evolved through conventions. Conventions are unwritten rules or procedures that we follow.

Collaborative Activity

In groups select one of the following disasters:

Scenario 1	Scenario 2	Scenario 3
Bushfires in the Adelaide Hills	Virus	Bomb explosion
Extreme fire danger has been declared across South Australia. The weather conditions are hot and windy. Several small fires have started and have the capacity to quickly spread	An international tourist has tested positive to a contagious virus, whilst sightseeing throughout South Australia. There are fears that many people may be infected.	There has been a bomb explosion in the city center. People are frightened and panicking. There is uncertainty if more bombs will explode.

Formulate a disaster relief plan. Including:

- The type and nature of the disaster
- Services required to deal with the disaster
- How the executive government (be specific with departments) need to act to effectively manage the disaster. Consider resourcing and communication.

Then discuss and complete:

1. What is the relationship between disasters and the executive government?

2. Are there circumstances where the federal and state governments need to co-operate to deal with disasters?

3. In addition to government departments, do non-government organisations play a role in disaster management? How?

Royal Commissions

Another function of the executive government is to form royal commissions. A royal commission is a public inquiry that examines a range of issues concerning the public. A royal commission is a temporary group which is made up of members or experts who may be either involved in government or from outside of government. The main function of a royal commission is to examine a particular event/s or policy and publish a report that makes recommendations to parliament. Royal Commissions are different from other public inquiries as they are bound by the Royal Commission Act 1902. Since 1902 there have been over 136 royal commissions that have been held on a broad range of subjects

View

For further information on Royal Commissions watch:

 **YouTube** <https://www.youtube.com/watch?v=ZicuJMg6uNQ>
https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Browse_by_Topic

Provide an analytical response to the benefits and challenges of royal commissions. Use examples (listed in the site above) from recent royal commissions to support your discussion.

Judicial Branch

The Judicial Branch is responsible for resolving legal disputes and administering justice. The judicial branch is made up of a court hierarchy. Judiciaries provide a resolution to the dispute that comes before them. The judicial branch is separate from the legislature and executive branches, which is essential to upholding the rule of law. The judiciary cannot be seen to be influenced by Parliament of the Executive. However, the judiciary interprets laws made by the legislature in order to resolve disputes. This distinct separation is known as judicial independence. This independence is critical to achieving equality and justice. To effectively achieve judicial independence four elements need to be present.

Judicial Privilege	Permancy of Tenure	Appointment and Dismissal	Fixed Salaries
Allows judges to speak freely on the bench and when handing down judgements.	Once appointed, judges have permancy of tenure.	Judges are appointed to their positions by the executive branch. Judges can only be dismissed by parliament.	Salaries may not be lowered during a judge's tenure.

Figure 2.5.3: Key Elements of Judicial Independence.

Court Hierarchy

Legal disputes can be resolved by an adjudicating body, in the court hierarchy. In Australia, courts are used at both a State and Federal level. They are arranged into a hierarchy from inferior to superior. Courts are independent of the legislature and executive branches of government. Each court has its own jurisdiction, that is, the type of cases it can hear. For further information on the court hierarchy, please refer to Chapter 4.



Research Activity

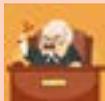
Use the following links to complete the activities below.

High Court: <https://www.hcourt.gov.au/>

Supreme Court: <https://www.courts.sa.gov.au/our-courts/>

District Court: <https://www.courts.sa.gov.au/our-courts/>

Magistrates Court: <https://www.courts.sa.gov.au/our-courts/>

 Courts and Presiding Officers			
Court	Presiding Officer Title	Role and Responsibilities – including types of cases	Number of Locations
High Court			
Supreme Court			
District Court			
Magistrates Court			

1. What is the difference between justices, judges and magistrates?
2. Provide a summary of the strengths and weaknesses of how judges are appointed to their positions?



Review Activity

2

1. With reference to each branch of government, explain the importance of the separation of powers.

2. Provide an overview of the role and functions of the:

a. Legislature

b. Executive

c. Judiciary

3. Explain the difference between representative and responsible government.

4. How well does Australian maintain democracy through a representative government?

5. Complete relevant key words at the end of this chapter.

Constitutional Monarchy

Australia is a **Constitutional Monarchy**. It combines the two systems of Monarchy and Constitutional Government. It is a system where a hereditary Monarch/Crown is the Head of State and where the Government's powers are limited by a written Constitution.

Australia is a constitutional monarchy due to its British heritage. When federation occurred, Australia adopted their own constitution based on the separate needs and input from the colonies. Based on tradition, a constitutional monarchy has provided Australia's system of governance with stability, consistency and predictability.

Officially, the British monarchy is Australia's head of state. However, as the Queen does not live in Australia her duties are carried out by a chosen representative, this being the Governor-General. The Governor-General is appointed by the Queen, on the advice of the Prime Minister for a term of five years. In Australia's system of government, this is the only duty that the Queen carries out. It is a key responsibility that the Governor-General acts in a manner consistent with Australian Constitutional law.

Queen - Head of State

Queen's representative Governor General (Federal) or Governors (State)

Prime Minister - Head of Government

Figure 2.6.1: Constitutional Monarchy.

 View



For further information on General David Hurley sworn in as Governor-General watch:

https://www.youtube.com/watch?v=_OYFAJaf0NU



Why is it important for Australia to have a Governor-General?

Role of the Governor-General

The Governor-General can exercise their power in the following ways:

Constitutional Powers

Chapter 2 of the Australian Constitution includes the power, roles and function of the Governor-General, as advised by the Federal Executive Council. (The Federal Executive Council is the legal body who is responsible for advising the Governor-General). The power given can be classified in the following way:

- Non-Reserve Powers: These are the powers (duties) that the Governor-General performs on advice from the Prime Minister.
- Reserve Powers: These are powers that the Governor-General can choose to exercise without advice from the Prime Minister as supported in Section 64 of the Australian Constitution. Australia's most famous example of this is in 1975 when the Governor-General, John Kerr dismissed the Prime Minister Gough Whitlam.

 **Research Activity**

For further information on the Governor-General visit:

<https://www.gg.gov.au/about-governor-general>

Using relevant resources, research and provide a summary of why the Governor-General, John Kerr dismissed Gough Whitlam as Prime Minister

Including:

- an overview of the events,
- how the dismissal occurred
- what happened as a result of the dismissal.

Ceremonial Powers

These responsibilities are important as they reinforce the democratic relationship between government and society. This involves activities such as attending community events, approving Australia Day awards, acting as a patron for charities and hosting foreign diplomats. The Governor-General is also the Commander-in-Chief of the Australian Defence Force.

The Republic System

Over time there has been significant debate as to whether a constitutional monarchy is still appropriate in Australia. Republicanism is the movement to change Australia’s system of government from a Constitutional Monarchy to a Republic. A republic is where the nation appoints or elects its head of state. The concept of republicanism was first promoted before Federation in 1901. In 1999 a referendum was held seeking approval for establishing Australia as a republic with the Queen and Governor-General being replaced by a President. This referendum was unsuccessful.

 **Collaborative Activity**

Activity One

Using the following sites www.republic.org.au and www.monarchist.org.au/our_monarchy Complete the table below on the features and benefits of a Constitutional Monarchy and a Republic system of government.

 System of Government 	
Constitutional Monarchy	Republic

Activity Two

Prepare a presentation (ad) or conduct a debate.



Review Activity

1. What is a Constitutional Monarchy?

2. Explain the roles of the Governor-General? Why are they important?

3. Define the different powers that a Governor-General has.

4. Do you believe that a Constitutional Monarchy is appropriate for Australia's current society? Justify your response.

5. "If Australia became a republic, who do you think should be our President?" Justify your response. Complete relevant key words at the end of this chapter.

6. Complete relevant key words at the end of this chapter.

Government and Civic Participation

2

Civic participation and engagement are critical elements of an effective democracy and representative government. In a democracy, citizens have both rights and responsibilities to participate actively in developing and maintaining an equitable and cohesive society.

Civic participation allows individuals to develop their personal skills, knowledge and beliefs whilst making a constructive contribution to their community. Civic participation can be both political (voting) and non-political (obeying laws).

Some key considerations for citizens to support civic participation are to respect the rights of others which are supported through obeying laws. Being informed and participating in democratic processes, such as voting increases public engagement.

 View



For further information on What is Civic Engagement watch:

<https://www.youtube.com/watch?v=x6bNwmrBPXI>



List some ways that individuals can engage in civic participation.

As a multi-cultural society where citizens differ in social and cultural beliefs and expectations, structures and policies must be in place to reflect the values and standards of the Australian community. Civic participation is beneficial not only to individuals but society as a whole. Communities that achieve higher levels of civic participation have an increased level of well-being and lower levels of crime. This involvement ensures that governments are more accountable and transparent in their operations.



Benefits of Civic Participation



Individuals – develop skills in:	Government
Leadership	Greater cohesion in society
Communication and public speaking	Accountability to society
Problem-solving and innovation	Supports representative government principles
Team-work	Fosters better understanding and communication for government in policymaking

**Research Activity****Activity One**

Research the concept of civic participation. Using the following link compare and contrast Australia's civic engagement with another country. What does this information demonstrate?

<http://www.oecdbetterlifeindex.org/topics/civic-engagement/>

Activity Two

Using the following link <https://dhs.sa.gov.au/services/youth> - Strong Futures: SA Youth Action Plan. Create an infographic that encourages civic participation. You may wish to include:

- What is youth civic participation and why is it important?
- What are the main priorities of the action plan?
- Outline the activities/services/facilities that it provides for young people.
- Details on how to be or get involved.

**Collaborative Activity**

Using the following site:

https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/00_-_Infosheets/Infosheet_15_-_The_work_of_a_Member_of_Parliament?

Complete the table and prepare a response to the questions below to share with your group or class.

Do parliaments represent the views of the community? How does civic participation help support the concept of a successful representative government?

Arguments For	Arguments Against

From the above points, prepare one side of the argument to use in a class debate.



Review Activity

2

1. How do civic participation and community volunteering relate to one another?

2. Explain how civic participation might be important for building strong and cohesive communities.

3. Suggest some ways that young people could be encouraged to be involved in civic participation in their local area.

4. Complete relevant key words at the end of this chapter.

Chapter Review

Chapter Checklist

You should now be familiar with the following concepts:

Chapter 2 – Key Concepts		
Structure of Australian Government	Function and Organisation	<input type="checkbox"/>
The Australian Constitution	Constitutional Features Changing the Australian Constitution	<input type="checkbox"/>
Elections	Historical perspective Political Parties Electoralates Election Processes Voting Parliamentary Composition	<input type="checkbox"/>
Division of Powers	Types of Powers Prohibited Powers Inconsistencies between States and Commonwealth Power Shifting from States to Commonwealth	<input type="checkbox"/>
Separation of Powers	Legislature Executive Judiciary Representative Government Responsible Government	<input type="checkbox"/>
Constitutional Monarchy	Features of a Constitutional Monarchy Role of the Governor-General Republic System	<input type="checkbox"/>
Civic Participation	Importance of Civic Participation	<input type="checkbox"/>

Key Words

Institutions of Government:

Legislature: _____

Executive: _____

Judiciary: _____

Rule of Law: _____

Tier of Government: _____

Australian Constitution: _____

Elections: _____

Electorate: _____

Preferential voting: _____

Proportional voting: _____

Division of powers: _____

Ultra vires: _____

Exclusive powers: _____

Concurrent powers: _____

Residual powers: _____

Prohibited powers: _____

Separation of powers: _____

Upper House: _____

Lower House: _____

Representative government: _____

Responsible government: _____

Minister: _____

Portfolio: _____

Governor-General: _____

Judicial independence: _____

High Court of Australia: _____

Supreme court: _____

District court: _____

Magistrates court: _____

Constitutional monarchy: _____

Republic: _____

Civic participation: _____

Revision Questions

1. Distinguish the difference between the House of Representatives and the Senate.
2. Define and outline the key features of the Institutions of Government.
3. Outline how the roles of the legislative and executive branches of government overlap.
4. What is the Australian Constitution and outline its importance?
5. Explain the division of powers.
6. Define, exclusive, residual and concurrent powers – give an example of each.
7. Outline the Inconsistency Rule.
8. Explain what is included in prohibited powers and why they are necessary.
9. Draw the table of houses for federal parliament
10. Outline the 4 functions of parliament.
11. Define representative government and outline the elements necessary for it to exist.
12. Explain the concept of an executive government and whom it includes.
13. Explain the concept of a responsible government and describe why it is important.
14. Compare and contrast a constitutional monarchy and a republic system.
15. Explain the role of the judiciary and whom does it include.
16. Draw and annotate the court hierarchy.
17. Why is it important for different courts to exist?

Extension Questions

1. Australia does not hold a true separation of powers. To what extent is each branch of government able to achieve its purpose?
2. To what extent are minority groups and their values represented in the Australian parliament?
3. Does the Commonwealth hold too much power? Use examples to support your response.
4. Evaluate if Australia needs 3 tiers of government.
5. Should Australia adopt a unicameral system of parliament?



Laws

Laws are essential for society to function harmoniously and protect people's rights. They provide boundaries for acceptable standards of behaviour and stipulate consequences for acting unacceptably. Laws aim to achieve harmony both now and, in the future.

Laws are recognised and enforced by society, which has law-making institutions, who set these acceptable standards of behaviour. These standards are influenced by a society's values, backgrounds and beliefs.

The different **institutions of government** make different laws according to circumstances and severity of issues. Each institution or branch of government makes laws in different ways to meet the varying needs of society. This is called the **separation of powers**.



Legislature: Parliament - the sovereign law-maker in Australia.

- Make laws, also known as Legislation, Acts or Statutes.



Executive: Cabinet Ministers and Government Departments.

- Make laws known as Delegated Legislation.



Judiciary: Judges and Courts.

- Make laws known as Case Law or Common Law.

The law-making powers of each institution are set out in the Australian Constitution.



Why do the different institutions of government all have the power to make different types of laws?

In addition to the three institutions of government, Australia is also divided into three tiers of government. These tiers of government work independently, yet collaboratively to make decisions and laws for the well-being of society. The three tiers include:

- Federal Parliament – creates laws for all of Australia
- State Parliament – create laws for their state – 1 in each State.
- Local Councils – create regulations for their geographic region. There are 68 council areas in South Australia.



View



For further information watch: 3 Levels of Government

<https://www.youtube.com/watch?v=Rf-LvHj9Zpk>



Why does Australia have 3 tiers of government?

What is each tier of government responsible for?

THREE LEVELS OF GOVERNMENT IN AUSTRALIA

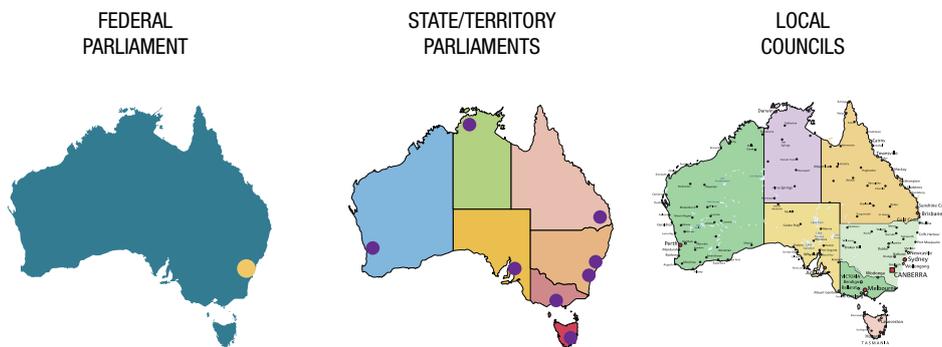


Figure 3.1.1: Australian levels of government.

Each tier of government has its responsibilities for law-making, but in some circumstances, these responsibilities are shared.



What might be a circumstance when this shared responsibility may occur? Why might this be necessary?

The areas of responsibility or powers that the Federal and State governments possess is known as the division of powers. The **division of powers** was determined at the time of the Federation in 1901, so that individual states could retain power on issues that impacted them directly. It provided the Commonwealth with power to legislate on matters that impacted on the whole of Australia. This division is clearly set out in the Australian Constitution.

Division of Powers Between the Commonwealth and States



Figure 3.1.2: Division of Powers.

If there are conflicts between the Commonwealth and the States interests or decisions, the Inconsistency Rule in Section 109 of the Australian Constitution applies. It states that when there are inconsistencies, that the Commonwealth will override the States.

Research Activity

Watch a news clip where the Commonwealth and States have disagreed about their power.

Conduct further research and prepare an analytical response to: “Why do disagreements between the Commonwealth and State occur. Summarise the disagreement. What was the outcome of the disagreement and why?” Use examples to support your discussion.

Law Classifications

When laws are made, there is consideration regarding who the laws are made for and how these laws might be regulated. Laws may be classified as either:

- **Public law:** When an issue arises between an individual and the State or between two States.
- **Private law:** When an issue arises between two individuals or an individual and a business.

Who Initiates Laws?

There are many reasons why new laws are introduced or changes to existing laws are made. Legislation is made democratically elected representatives of the people. These representatives are the members of parliament. However, there are different groups, that can influence the initiation of legislation.

1. **Political Party Policies** – Politicians are a member of a political party. Political parties that have enough members in the lower house can create laws, that reflect the party’s beliefs.
2. **Election Promises or Mandate** – these are promises made by politicians when running for election. This is done to gain the support of the public. Once an election has been won, the government has a mandate to follow through with these election promises.
3. **Parliamentary Committees** – are made up of a group of parliamentarians who undertake certain specified tasks. Their role is to investigate issues and proposed laws (bills) in detail. This enables Parliament to be well informed before making decisions.
4. **Pressure Groups** – are groups of people who have a common interest. They aim to place pressure on the government to legislate changes and raise community awareness.

View



For further information on “What are pressure groups?” watch:
<https://www.youtube.com/watch?v=MYvXm6GBNqM>



How might pressure groups influence changes to laws?

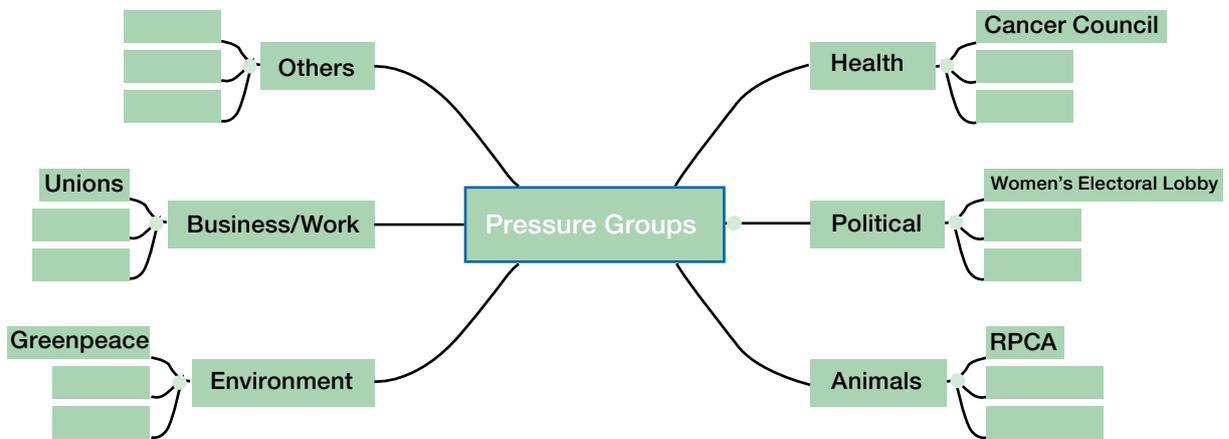
Do pressure groups contribute positively or negatively regarding changes to the law?

5. **Public Service** – Advice provided by government agencies and departments to the relevant Minister on appropriate changes to make or legislation to pass.
6. **Court Decisions** – in response to some specific court decisions, it is necessary for parliament to make or change laws.



Collaborative Activity

1. In groups complete the mind map below to discuss and brainstorm different examples of pressure groups.



2. Research a pressure group that you are interested in, from the list above.

Present a slide presentation to share with the class on:

- a. Who/What the group is? What is their main aim?
- b. Legislative changes the group has influenced
- c. Evaluate the effectiveness of this group. Why are they important?



Research Activity

Research from relevant sources to complete the table below on initiating legislation.

Method of Initiation	How does this method work?	Example of this method
Pressure Groups	Individuals with a common interest place pressure on members of parliament to legislate change	Cancer Council – Cigarette packaging
Election Promises		
Parliamentary Committees		
Political Party Policies		
Public Service		
Court Decisions		

Bills and Acts

A **bill** is a proposed law. It is presented to parliament for debate and enactment (to turn it into law).

An **act** is a bill that has been passed through both the houses (Upper and Lower) of Parliament. A bill must pass through both houses in the same form to become an act.

There are many similarities between the Commonwealth and States, however, a difference is the names used for the houses of parliament.

Federal and State Parliamentary Houses

House	Federal Parliament	South Australian
Lower	House of Representatives	Legislative Council
Upper	Senate	House of Assembly

Figure 3.3.1: House Names.

Types of Bills

Bills may be classified according to the type or its aims. Bills can be enacted which means to make a new law or amended which means to change a law.

An original bill is one that is brand new; whilst an amending bill is one where changes are proposed to an existing act. When acts are amended the name is changed to reflect this.



Provide an example of an:

Original bill: _____

Amending bill: _____

Bills can be classified into two main types, these being;

1. **Public Bills:** introduced by the government, usually by the appropriate Cabinet Minister. For example, the Minister for Transport might introduce a bill related to public transport. Public bills are usually related to issues that are of a public nature.
Public bills may be classified in 2 ways.
 - a. **Ordinary Bills:** bills that do not create a tax or authorise any spending. They can originate in either House of Parliament.
 - b. **Supply Bills:** bills that create a tax or authorise spending, also known as money bills. These must originate in the lower house and cannot be changed by the upper house.
2. **Private Members Bills:** bills introduced to parliament by a person who is an individual member of parliament. They can be introduced by anyone who is not a Cabinet Minister. Private Members bills may be related to issues that can be sensitive or controversial.



What issues may be introduced as a:

Public bill: _____

Private Members bill: _____

 View

For further information on Parliament – Making A Law, watch:

<https://peo.gov.au/understand-our-parliament/how-parliament-works/bills-and-laws/making-a-law/>



Who introduces bills into Parliament?

Why does the passage of a bill include so many stages?



Collaborative Activity

In groups, use the website: <https://legislation.sa.gov.au/browseBills.aspx>

Select and research an original bill. Complete the following, present to the class

1. What is the name of the bill?
2. Who introduced the bill (Member of Parliament)?
3. Is it a public or private members bill? Why?
4. Summarise the purpose of the bill.
5. Outline arguments for and against the bill. You may wish to find the second reading speech online or media articles relating to the bill.
6. In your opinion, is this a necessary bill? Why? Why not? What changes do you think could be made to the bill?



Review Activity

1. What is the difference between a bill and an act?

2. Discuss one group that can influence law-making. Evaluate their effectiveness as an agent of change concerning law-making.

3. Outline key differences between a public and a private members bill?

4. Why are private members bills unlikely to be successfully passed?

5. Complete relevant key words at the end of this chapter.

Law-Making Processes & Procedures

Role of the Legislative Branch

3

The legislative branch of government (parliament) is Australia's sovereign law-maker. This means that regarding law-making it holds the final power. However, the legislative branch is still accountable for the laws they make through representative and responsible government principles.

Laws or Acts of Parliament must follow a strict set of rules when being made. Unless these rules are followed, a bill is unable to be passed and made into a law. Parliament must uphold four key functions:

Function	Explanation
Democratic	This involves representing and acting on behalf of Australian citizens when making decisions and laws.
Scrutinising	This is a mechanism for accountability through a variety of parliamentary procedures, for example, question time where Members of Parliament have the opportunity to ask questions to the Ministers about activities and policies.
Supply	Approval of all government spending
Legislative	To make law on behalf of Australian citizens. Laws can only be made by federal or state parliaments through the legislative power of the Australian Constitution.

Figure 3.4.1: Functions of Parliament.

Stages of A Bill

The process of making legislation can be divided into 3 stages:

- Pre-parliamentary
- Parliamentary
- Post-parliamentary

The pre-parliamentary stage includes the introduction and drafting of a bill. This drafting is completed by the Office of Parliamentary Counsel (OPC) at the request of the government. Once Cabinet has approved the draft the responsible Minister introduces the bill to parliament.

 View



For further information on How Parliament Makes Laws watch:

<https://www.youtube.com/watch?v=pSCMpX9stW0&t=18s>



Where do the ideas for new laws come from?

Why is it important for bills to be made public? Discuss the benefits and challenges.

Due to Australia's bi-cameral model, the **parliamentary stage** can be a time-consuming process. The normal legislative process is that a bill is introduced into the lower house, debated, and passed by that house before moving to the upper house where a similar process occurs. It is possible for some bills will start in the upper house if that is where the sponsored minister sits.

The usual path of a Bill

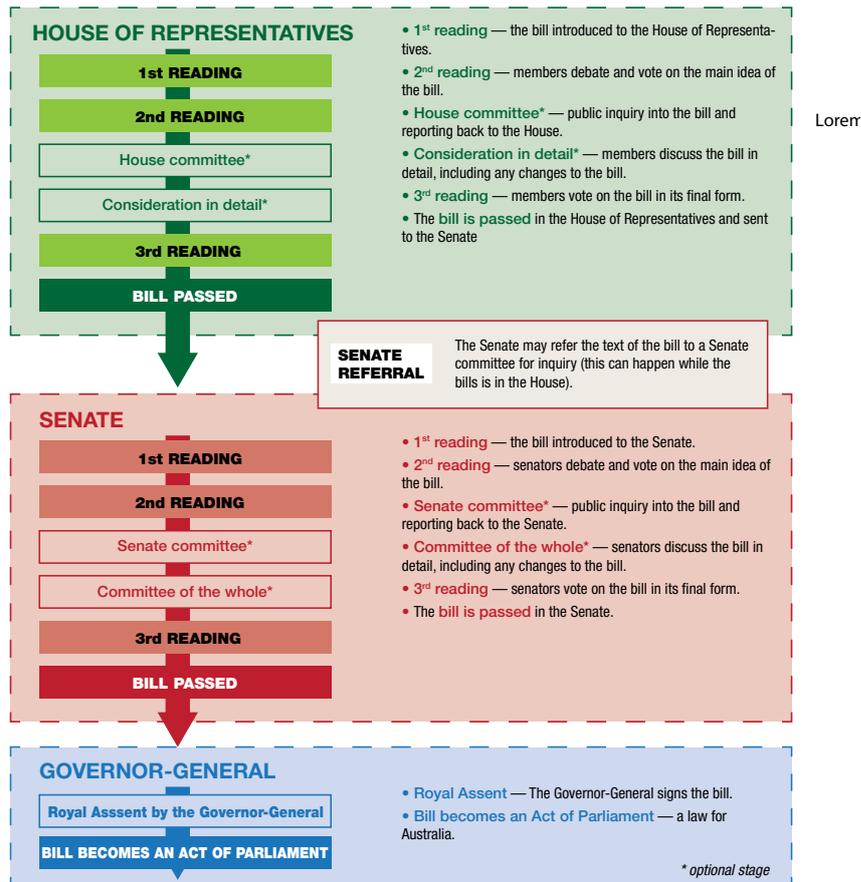


Figure 3.4.2: Law-making process.



Review Activity

Increase your understanding of the law-making process by looking at:

https://www.aph.gov.au/about_parliament/house_of_representatives/powers_practice_and_procedure/00_-_infosheets/infosheet_7_-_making_laws



Collaborative Activity

Go to South Australian Hansard, using the link provided: <http://hansardpublic.parliament.sa.gov.au/#/search/2>. Then browse bills from this year. Select a Bill topic which interests you. Discuss and answer the questions below. Prepare a summary to share with the class.

1. What is the long title of the Bill and what is its main objective?
2. Who introduced this Bill? (provide name of person, their political party and their electorate)
3. Discuss the stages which have preceded this stage and the stages which will follow.
4. Explain why this bill is being introduced/amended.

Once a bill has successfully passed through both houses of parliament, it then moves to the **post-parliamentary** stage. This includes:

1. Royal Assent: once the bill has passed both houses of parliament, the Governor-General at the Federal level or the Governor at the State level gives the bill Royal Assent, on behalf of the Queen. Once this has happened, the bill becomes an Act.
2. The Act is proclaimed in the Government Gazette and its date of commencement is published.

 View


For further information on How laws are made – Parliament watch:

<https://www.youtube.com/watch?v=NhYpkVclXbA>



Why is it necessary for laws to change over time?

What is the role of the upper house and the lower house in law making?



Research Activity

Create a campaign to influence change on a legal issue that is important to you.

- Think about issues in society that you feel strongly about. (e.g. environment, human rights, education, etc)
- Narrow your focus and choose one issue to base your campaign on. For example: Environment: This could be a local issue, such as littering in schools. Alternatively, you could choose a national issue, such as recycling or an international issue, such as climate change.
- Identify your message. Here you should cover what you think should be changed or introduced and why.
- Provide an overview, including the benefits and challenges related to law-making and your area of change

Design an infographic to either influence Parliament to make a law that supports your message or to change society's attitudes and behaviour.

Supervising Legislation

Whilst parliament has the power to make laws, they do not have unlimited power. They are restricted by the powers outlined in the Australian Constitution, as well as by the other branches of government. The other branches of government can supervise the legislation and make sure that it is appropriate and valid. Supervision can occur in the following ways:

Legislative Supervision

The legislative branch can supervise itself through:

- Scrutiny of the Bill by the Houses: Both houses of parliament need to approve a bill, therefore they both have the opportunity to examine the bill and make necessary changes.
- Question Time→: Members of parliament can use question time to hold the minister accountable for the bill.
- Sunset Clause: A provision in the law, which requires a law to be reviewed after a certain period of time.

Executive Supervision

The executive branch supervises legislation through:

- Royal Commissions: Creating Royal Commissions to investigate the efficiency and relevance of certain legislation
- Accountability: Government departments must be accountable for administering legislation.
- Ombudsman: Is the people's representative who investigates claims against officials of administrative bodies, such as government departments.

Judicial Supervision

Judicial review allows for all decisions made to be 'checked over' by a superior court if the decision is appealed. The judicial branch supervises legislation through:

- Judicial Review: Judges can be called upon to decide if parliament has acted beyond the powers given to it in the Australian Constitution.

- Statutory Interpretation: When a dispute arises, judges decide the meaning of an act to give it effect in a situation.

Judges in a superior court have the power to depart from past decisions (precedent) under certain circumstances. Define the following terms.

Reversal: _____

Overruling: _____

Distinguishing: _____

Disapproval: _____

How do these terms relate to law making?

Strengths and Weaknesses of Legislation

Strengths	Weaknesses
Made by a representative government - democratic	Not all of society (minority groups) are represented
Comprehensive law-making process	Time-consuming
Can delegate law-making power	Undemocratic when delegating responsibilities
Sets acceptable standards of behaviour for society	Inconsistencies in laws between the Commonwealth and different States



Review Activity

1. List and explain the importance of the 4 functions of parliament?

2. Discuss why the second reading stage is an important part of the law-making process.

3. Why is royal assent necessary for a bill to become an act?

4. Why is it necessary for law-making to be supervised?

5. Complete relevant key words at the end of this chapter.

Role of the Executive Branch (Delegated Legislation)

3

As already determined, the legislative branch of government is the sovereign lawmaker. However, it is impractical for the parliament to be expected to make all laws and regulations that we have in society. Due to this fact, parliament can delegate its law-making powers to the Executive branch of government. This is known as delegated legislation.



Provide some reasons why parliament does not make all laws:

Delegated legislation is not made directly by an Act of Parliament. It is made when Parliament give the power under an Enabling Act to a subordinate authority.

Enabling Acts

An Enabling Act simply delegates law-making power to a delegated authority. An Enabling Act is not required for every regulation which is made, but it gives authority to a specific group to make delegated legislation. Power is restricted in the Enabling Act for the actions that can take place or the regulations that can be made. The delegated authority can only create laws within the scope of the Enabling Act.



Delegated Legislation outnumbers Acts of Parliament by five times.

List some reasons for this.

Delegated Legislation

Delegated Legislation is made by the executive branch of government, by delegated authorities. It is known as delegated legislation because parliament 'delegates' law-making power to other authorities. Delegated legislation usually impacts on a certain group of people. The consequence for breaking delegated legislation is normally less severe, (for example a fine) than breaking acts of parliament (legislation).

Delegated Legislation can be known as:

- Regulations
- Ordinances
- By-laws.



View

For further information on the Rule of Law – Delegated Legislation watch:



YouTube <https://www.youtube.com/watch?v=YAexrReDKfI>



What are the main benefits of delegated legislation?

What are the main challenges of delegated legislation?

Range of Delegated Authorities

The power to make delegated legislation is given to a range of delegated authorities. In South Australia, they are also known as subordinate authorities.

- **Local Councils** – In South Australia, for example, local councils are given power to make by-laws via the Enabling Act called the Local Government Act (1999). This allows Local Councils to control such areas as traffic control, building standards, rubbish collection, and dog and cat regulations. Jurisdiction is limited to council areas but is subject to ministerial approval and parliamentary review.



Compare and contrast 2 local council websites. What are their main focus areas?

- **Government Departments** – Public servants are responsible for administering the regulations. For example regulations make under the South Australian Education and Children's Services Act (2019).
- **Statutory Authorities** – Is an independent government agencies; for example, Environmental Protection Authority.
- **Professional and sporting bodies** - Bodies such as SACA and the SANFL have been permitted to develop regulations for their venues.



Why might sporting bodies be given the power to make relevant regulations?



View

For examples on delegated legislation watch: 4 Corners – Whatever It Takes

<https://www.abc.net.au/4corners/whatever-it-takes/7255058>



Who are the delegated authorities in this situation?

What is their key role and why is this important to lawmaking?

Making Delegated Legislation

There are many reasons why we need delegated legislation, which include:

- Relieving parliament's workload
- Expertise in an area
- Simplicity and efficiency
- Community participation.

Delegated legislation has the same authority as laws that are made by the legislative branch.

HOW DELEGATED LAW IS MADE AND DISALLOWED IN THE AUSTRALIAN PARLIAMENT

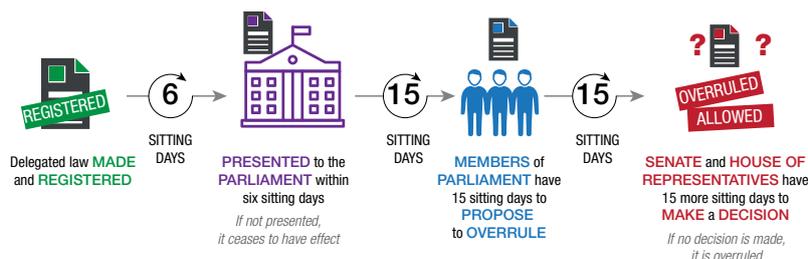


Figure 3.4.3: Delegated legislation process.



Collaborative Activity

In groups, go to the website of your local council and examine the section on by-laws. Council by-laws are local laws that have been created to deal with certain relevant issues. Select a by-law topic which interests you – some might include:

- Waste Management
- Animal/Pet Management
- Roads
- Permits.

Then create a presentation or summary outlining:

1. What this by-law is about?
2. Why do by-laws differ between council areas?
3. How does it benefit the community?
4. Your overall summary (positives and negatives) on this by-law.

Supervising Delegated Legislation

Like legislation, the creation of delegated legislation must be closely supervised. This is to ensure that the delegated authority uses its power within the Enabling Act and that the regulation is appropriate. Each branch of government can supervise delegated legislation.



Provide some reasons why the different branches of government need to supervise delegated legislation:

Legislative Supervision

Parliament passes the Enabling Act, which grants power to the delegated authority. Parliament can withdraw this power. Many parliamentary committees review regulations and suggest amendments when required.

Executive Supervision

The Cabinet must approve regulations. Committees and tribunals review regulations and listen to appeals that can lead to the altering of a regulation, to make it appropriate. The Ombudsman may reveal weaknesses in a regulation when investigating complaints against government departments.

Judicial Supervision

A judge may declare a regulation to be outside of the power of the Enabling Act. Judges interpret the meaning of regulations when resolving disputes in court.

Strengths and Weaknesses of Delegated Legislation

Strengths	Weaknesses
Specialisation – technical expertise	Undemocratic law-making
Efficiency – money and time	Some regulations are seen to be unnecessary
Emergencies – respond to	Lack of community awareness
Reduce parliamentary workload	Accessibility of information



Do you believe that the strengths outweigh the weaknesses of delegated legislation?



Review Activity

1. What is delegated legislation? Provide 3 examples.

2. Why is delegated legislation necessary?

3. Who can make delegated legislation?

4. What Act permits delegated legislation to be created? Why is this Act necessary?

5. Why do we need to have control (or supervision) of delegated legislation? How can it be controlled?

6. Complete relevant key words at the end of this chapter.

Role of the Judicial Branch

3

The main function of the judicial branch is to resolve or settle legal disputes, this may also include interpreting laws and issuing punishments. However, the legislative branch of government gives the judicial branch of government the power to make laws in certain circumstances to resolve disputes; this is known as common law or case law. Case law is law based on the decisions of judges in cases that come before them. Judges can create case law in two ways:

- **Judicial Pronouncement:** This is where no statutory law already exists. Judges refer to past cases (precedent) to create new case law to resolve a dispute.
- **Statutory Interpretation:** Case law can be created when judges give meaning to words in statutes to resolve a legal dispute.

 View



For further information on How laws are made – Courts, watch:

<https://www.youtube.com/watch?v=Vb9JjncNq3k>



What is the role of courts in making laws?

Case Law

Case law has been developed over hundreds of years. Its key focus is to make judicial decisions based upon the facts of individual cases. To provide consistency and predictability to the outcomes of cases, judges can rely on the following principles to guide them.

- **Stare Decisis**
Stare Decisis means to stand by things decided. It is important because, in Australia's system of law, the courts look at previous decisions which can influence the outcome of a case. If there was no stare decisis, every judge would be able to decide a case based on their logic, and there would be no certainty in our legal system.
- **Doctrine of Precedent**
This requires all courts to apply the decisions of previous cases in the circumstances where the facts are the same. Courts are arranged in a hierarchy and the lower courts are bound to the decisions which are made by the higher courts.

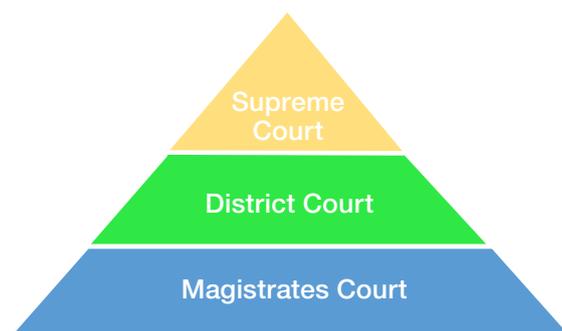


Figure 3.6.1: South Australian Court Hierarchy.

There are different types of precedents that judges may refer to when making decisions.

- **Original Precedent:** The initial decision made by a court.
- **Binding Precedent:** Decisions made in a superior court, that all inferior courts must follow.
- **Persuasive Precedent:** This is a decision that has come from courts in other hierarchies or by inferior courts, that act as guidance.

Together with statute law, case law is a primary source of law. Case law is law based on decisions of judges in cases that come before them. Judges don't often see their role as law-making, but through resolving disputes they create case law, known as precedent. A landmark case on this is *Donoghue v Stevenson* (1932).

 View



For an example of precedent watch: *Donoghue v Stevenson*:

<https://www.youtube.com/watch?v=WgEYzgrNvy0>



Summarise the significance of this case in relation to judicial law-making? How might the outcome of this case, influenced the outcome of *Grant v Australian Knitting Mills* (1936)?

Judge's Decisions

Judges are provided with some support to help them make their decisions on the outcome of a case. There are two elements of the law that are used to help the judge come to a decision. They are:

- **Ratio Decidendi** – the reason for deciding. This is the process of reasoning which leads to a judicial decision. Lower courts are bound to follow the decisions made in higher courts.
- **Obiter Dictum** – remark in passing. These are judicial observation which supports ratio decidendi.

Statutory Interpretation

Statutory interpretation is used to determine whether a law (or statute) applies to a particular circumstance.

Statutory Interpretation is important because:

- English is quite an imprecise language.
- Statutes use general terms to allow judges some flexibility in resolving disputes.
- Sometimes legislators leave the meanings of words deliberately vague to allow for judicial discretion.

In Australia, there have been many cases where decisions that have been made in court, have resulted in legislation being made by parliament. A case of significance where this occurred is the *Mabo v Queensland (No 2)* 1992. The outcome of this case led to parliament creating the Native Title Act 1993 (Cwth).

Research Activity

Watch *Mabo – The Native Title Revolution* https://www.youtube.com/watch?v=k-ker_wvmUc, Research the *Mabo v Queensland* case. Provide an analytical response on the significance of this case. With reference to this case, discuss the relationship between case law and statute law.

Supervision of Case Law

The supervision of case law is critical as it ensure that judges are kept accountable for the decisions that they make.

Legislative Supervision

Parliament can create three types of legislation to help supervise Case Law:

- Guiding Legislation: helps judges interpret statutes
- Remedial Legislation: overrides case law that may be inappropriate
- Complimentary Legislation: supports case law.

These mechanisms of supervision are important as it ensures power is applied appropriately, and that it is relevant to society.

Strengths and Weaknesses of Case Law

Strengths	Weaknesses
Consistency – the doctrine of precedent	Lack of flexibility – the inability to depart from precedent
Impartial and independent - judicial independence	Case law is only made after an event – retrospective and to resolve disputes
Flexible to respond to new issues	Undemocratic
Complimentary to statute law	Out of touch with society's standards



Review Activity

1. If the legislative branch is the sovereign law-maker, why is it necessary for the judicial branch to make laws?

2. Explain the value of precedent in making case law?

3. Provide an example of where statutory interpretation might be necessary?

4. What might happen if the lower courts were not bound to the decisions of the higher courts?

5. Complete relevant key words at the end of this chapter.

Changing Values that Impact on Law-Making

Laws are intended to protect the rights of individuals and aims to achieve harmony and safety in society both now and in the future. When different sources of law (legislation, delegated legislation, and case law) are created, they all have an impact on society.



Give some examples of how laws impact on a community.

To ensure that the needs of society are met, laws must adapt and evolve over time to reflect the changes in society. Certain areas can influence those changes; some include:

- **Technology** – impacts society and brings about the need for changes in areas such as cybercrimes, stem cell research, cloning, data privacy, and internet banking laws.
- **Social Change** – occurs over time and places pressure on lawmakers to acknowledge new circumstances, for example same-sex marriage.
- **Government Policies** – often relate to ‘law and order’ and restricting behaviours deemed threatening to society. Includes things such as gun control laws and acts of terrorism.



Collaborative Activity

Prepare a presentation on one of the areas of change listed above or negotiate your own topic.

Include:

1. How does this area impact society?
2. Ways that the community can influence change in this area?
3. Laws that have been introduced at a Federal and/or State level to promote harmony in society.
4. How do these areas of law not only impact on the domestic community, but also the global environment?



View



For an event on change and the law watch - How The Sydney Siege Unfolded

<https://www.youtube.com/watch?v=bWBXMFTYQuM>

As a result of the Lindt Café Coronial Inquest, some changes to laws were made regarding police powers, bail, and use of firearms. Provide an analytical response.

- Outline the facts of the case.
- Explain the laws that were broken.
- Investigate the changes that were made.
- Why was it necessary for changes to these laws to be made in response to this event?

**Research Activity**

For laws to be effective they need to evolve and respond to reflect what society believes is important. Using an example, explain how a change in society's current values has either led to a change in existing law or to proposing a change.

Include:

- a. Describe how the law has already changed or may change
- b. Explain the changes in society's values which have contributed to the change in the law
- c. Discuss the desired outcome as a result of this change

**Review Activity**

1. How do different events or experiences result in changes to laws?

2. Provide an example of a law which is no longer relevant due to society's changing values.

3. Evaluate the effectiveness of laws if they are changed or amended too often.

4. Complete relevant key words at the end of this chapter.

International Influences on Law-Making

3

International law is an area of law that regulates the relationship between different nations. International law aims to preserve global peace and security between nations.

International law is facilitated and regulated through the United Nations (UN). The primary objectives of the UN are to:

- Avoid the recurrence of violent conflicts;
- Affirm fundamental human rights;
- Guarantee respect for international law;
- Improve living standards across the globe.

Australia has been a member of the UN, since its establishment in 1945. Since this time Australia has actively participated and supported many of the activities and decisions which the UN has made in regards to world affairs.

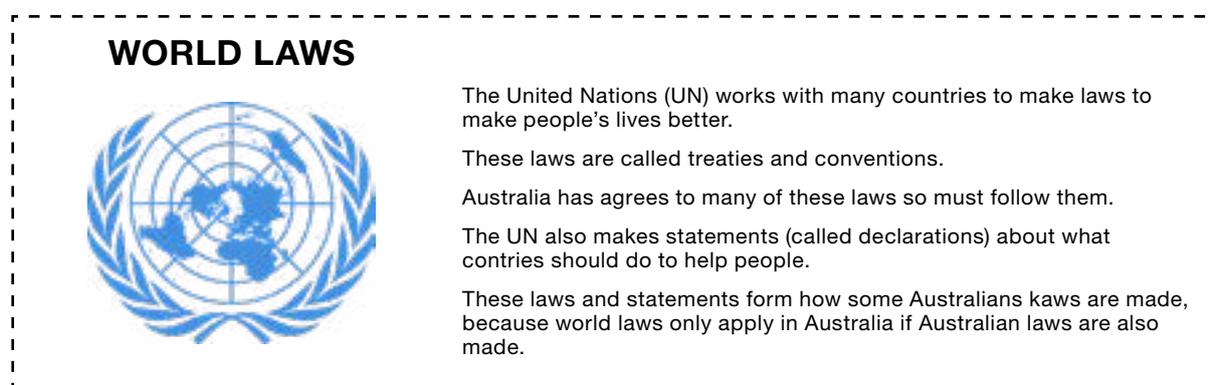


Figure 3.9.1: United Nations – World Laws.

 View



For further information on How does the UN Work, watch:

- www.youtube.com/watch?v=tlmYtJiUK00

Research the principal arms of the United Nations.

Respond to:

- What is the role of the UN? What are their key functions?
- Why was it created?
- Who runs the UN?
- What are member states? Give 5 examples.
- How does the UN work?
- What is their relationship to law-making in Australia?

Why Is International Law Important to Australia?

Some international law has been embedded in Australian law through the signing of treaties in areas such as:

- environment
- human rights
- trade
- national security.

Australian law does not recognise treaty obligations, unless the treaty is specifically incorporated into Australian law for example human rights.



Why might treaty obligations not be formally recognised until is incorporated into Australian law?

Research Activity

For further information investigate the Department of Foreign Affairs and Trade site:

<https://www.dfat.gov.au/international-relations/treaties>

Investigate and provide an analytical response discussing the relationship between treaties and Australian law. Include an overview on the benefits and challenges that international law has on Australian law. Use examples to support your discussion (consider: Commonwealth V Tasmania (1983) or Minister of State for Immigration and Ethnic Affairs v Teoh (1995)).

Research Activity

1. Define the terms:

International law

International treaties

2. Discuss why Australia should be mindful of international standards of behaviour?

3. What might happen if Australia fails to uphold its treaty obligations?

4. Summarise the advantages and disadvantages of Australia being a member of the UN.

5. Complete relevant key words at the end of this chapter.

Chapter Review

Chapter Checklist

You should now be familiar with the following concepts:

Chapter 3 – Key Concepts		
Laws	Public and Private laws Law initiation	<input type="checkbox"/>
Bills and Acts	Original and Amending bills Public and private bills	<input type="checkbox"/>
Law-making processes	Legislative branch Executive branch – Delegated legislation Judicial branch – Case law Supervision	<input type="checkbox"/>
Laws & Changing Values		<input type="checkbox"/>
International Influences on law-making	United Nations Treaties	<input type="checkbox"/>

Key Words

Laws: _____

Legislative: _____

Executive: _____

Judicial: _____

Bi-cameral: _____

Bill: _____

Act: _____

Public bill: _____

Private Members bill: _____

Pre-parliamentary: _____

Parliamentary: _____

Post-parliamentary: _____

Legislation: _____

Delegated Legislation: _____

Case Law: _____

Legislative supervision: _____

Executive supervision: _____

Judicial supervision: _____

Precedent: _____

Stare decisis: _____

Ratio decendi: _____

Obiter dictum: _____

Statutory interpretation: _____

United Nations: _____

Revision Questions

Complete the questions below to consolidate your learning on this topic.

1. Using examples, explain what is meant by the division of powers?
2. What is a public bill? Give an example.
3. What is a private members bill? Give an example.
4. List or draw the steps for the passage of a Bill
5. Explain the benefits of a bicameral system of law-making.
6. What is delegated legislation and who makes it?
7. Explain why delegated legislation is important.
8. What is case law?
9. Discuss the different ways that case law can be made and explain why this is important.
10. Briefly explain the concept of the doctrine of precedent. Why is precedent a necessary part of the judicial system.
11. Why is it necessary for case law to be supervised? What processes can parliament use to supervise case law.
12. Discuss the benefits and challenges of 1) parliament made law, 2) Delegated legislation and 3) judge made law.
13. It is necessary for laws to adapt and change? Discuss this statement using examples, cases and/or legislation to support your discussion.

Extension Questions

When responding to the following questions you should aim to provide an analytical discussion supported by evidence.

1. Research an example of a Royal Commission. Explain its main purpose including how it relates to law-making.
2. Evaluate the effectiveness of a bi-cameral system of law-making.
3. In the law-making process, explain the interrelationship between the legislative, executive and judicial branches.
4. To what extent are international treaties an important consideration for Australian law-making?
5. Delegated legislation is un-democratic therefore the executive should not be given the power to make laws on behalf of society. Evaluate this statement.
6. To what extent should judges make laws?



CHAPTER FOUR

JUSTICE AND SOCIETY

Justice

Justice is a principle that is based on fairness and equity for all people, consisting of what is lawful and just in society. It is also concerned with equitable access and the correction of what is inequitable. Philosophers such as Plato and Aristotle provided some early definition of justice, based upon rationality, equity, religion, ethics, law and fairness. Justice evolves over time according to the concepts of ethics and the laws that regulate the way people behave. However, the concept of justice can mean different things to different people.

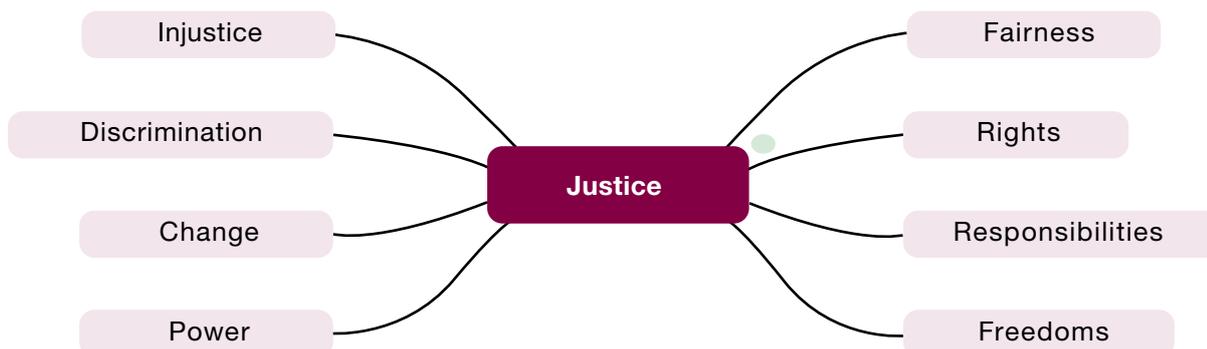
 View



Character education: Justice
<https://www.youtube.com/watch?v=TiX9kNmdiy4>

 Collaborative Activity

In groups use the mind map below, discuss and brainstorm ideas including relevant examples related to justice. How do the concepts of justice and law interact with one another?



Globally the perception or idea of justice can vary significantly. The term global justice or social justice may address the distribution of opportunities, privileges and equality between groups and countries. Justice is usually determined through the values and beliefs of a culture. In Australia, justice is determined through our legal system which is underpinned by the rule of law. Predictable and consistent justice systems are the foundations for achieving social cohesion and fairness within a society.

Research Activity

Research and prepare an analytical response to: “How and why do perceptions of justice vary globally?”. Use examples to support your discussion.

Justice may be achieved through a range of mechanisms, according to the circumstances and the nature of the inequity.

Types of Justice



Distributive Justice
How economic justice is distributed between involved parties



Procedural Justice
Determines how fairly different parties are treated



Retributive Justice
Based on the punishment in relation to the wrong-doing



Restorative Justice
Aims to restore relationships to ‘rightness’, corrective justice



Using a recent media article, apply how the different types of justice might be administered.

Distributive: _____

Procedural: _____

Retributive: _____

Restorative: _____

View



For further information on justice watch the below clip to 7:28:

<https://www.youtube.com/watch?v=hjwYcZR9flg>



How does the rule of law relate to justice?

Why are concepts such as blind justice and the presumption of innocence important elements to achieving justice?

Natural Justice

Essentially the concept of natural justice is based upon the rule against bias and the responsibility or duty to act fairly. The ideals of natural justice are interrelated with the rule of law, which assumes all people are equal and that no one is above the law. Concerning the legal system, natural justice is based upon the right to a fair hearing and that correct legal procedures will be followed.

Collaborative Activity

In addition to a legal focus, justice is also a social interest, consistently expressed through a variety of means. This has been demonstrated through the lyrics of many songs. In groups, select and listen to one of the songs below or one of your own choice. Listen to the concepts related to justice that are represented in the lyrics.

Justice and Music

- Imagine - John Lennon
- One - U2
- Dear Mr President - Pink

Then discuss why the issue of justice interrelates social, political and legal issues. Is the legal system always able to achieve just outcomes? Why/Why not?

Court Hierarchy

Communities are regulated or governed by their legal system. In Australia, this occurs through our institutions of government composed of the legislative, executive and judicial branches. For justice to be served the 3 branches must work together. Commonly, justice or outcomes to a crime is served by the judicial branch through the courts and judges. The court system is independent and separate from the other branches of government. This prevents the possibility for abuse of power. The court system is arranged into a hierarchy ranging from inferior to superior courts.

The South Australian Court Hierarchy

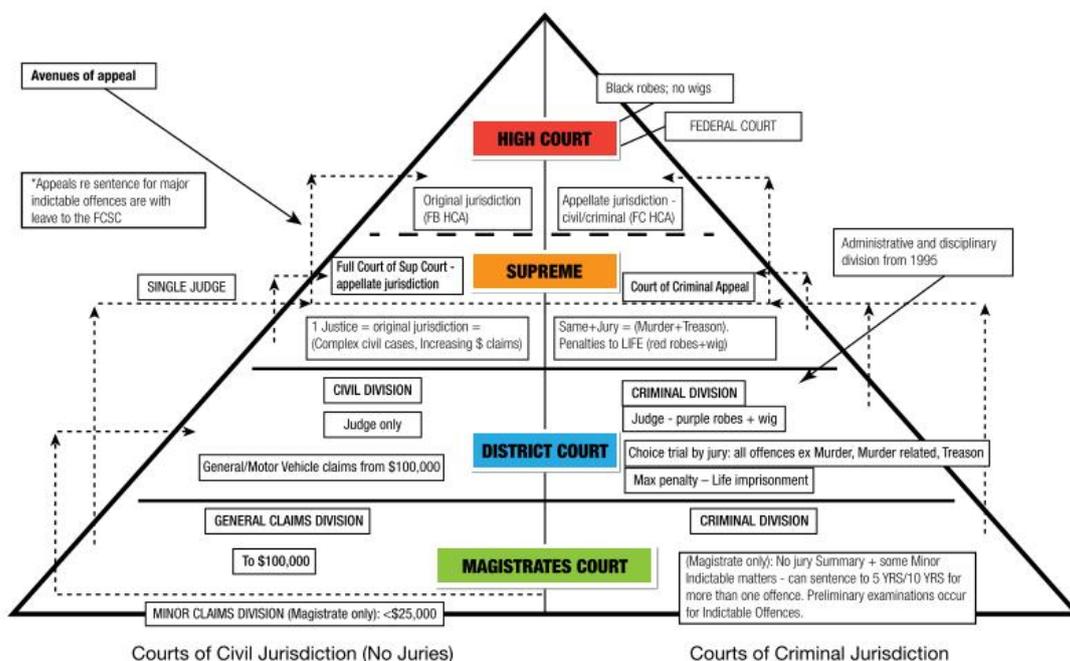


Figure 4.2.1: The South Australian Court Hierarchy.



Collaborative Activity

In groups, refer to the diagram above, select one of the courts (High, Supreme, District or Magistrates) and focus on either the civil or criminal jurisdiction.

Produce a 2-minute clip or presentation to share with the class detailing:

1. A definition of your selected court.
2. Key features and functions of your selected court.
3. A definition of your jurisdiction (criminal or civil). Provide examples of the types of cases that might be heard in your selected court, including types of punishments.
4. Why your selected court is important in serving justice.

Reasons for a Court Hierarchy

A key aim of the court hierarchy is to provide just outcomes to effectively resolve disputes. It ensures that the law will be applied consistently and the outcome will be predictable to society. A court hierarchy provides benefits to support the rights and responsibilities of society.

- **Flexibility and Choice:** According to the type of case, it may be beneficial to have a case resolved quickly in an inferior court or it may require more scrutiny in a superior court.
- **Efficiency:** Allows summary cases to be heard in inferior courts quickly and at minimal cost to the community.
- **Doctrine of Precedent:** The legal principles that are created in a superior court must be followed in an inferior court. The doctrine means that decisions of the courts are consistently and uniformly applied in lower courts, resulting in predictability.
- **Specialisation:** The judges can quickly, efficiently and justly resolve similar disputes. This has been enhanced by the creation of specialist courts, for example, the Family Court or Youth Court.
- **Judicial Review (Appellate Process):** As the outcome of a trial is dependent on one judge's application of law, the right to appeal to a higher authority must exist to ensure no error in law was made. Appealing is a feature of natural justice.



View



For further information on courts, watch Justice Journey: Overview of the Court System

https://www.youtube.com/watch?v=JkM69_G_FBQ



What types of cases might be heard in the different courts?

How many Magistrates Courts, District Courts and Supreme Courts are there in South Australia?

People in a Court Room

Courts are a formal environment that follows strict rules. The range of different people who may be found in a courtroom must respect the court's rules and procedures.



Figure 4.2.2: People in a Court Room.

Judge

The judge or magistrate is responsible for court proceedings. They are impartial and independent. The judge must provide a verdict on the case according to the facts presented before them to resolve the case, whilst upholding the rule of law principles. Post-trial a judge will also provide the necessary sentence.

The Defendant

The defendant may also be referred to as the accused. The defendant is the person who is charged with committing a criminal offence. The defendant can control their own case by collecting their own evidence, presenting their own witnesses and scrutinising the case of the prosecution. The defendant may represent themselves or engage legal support to present their case.

The Prosecuting Counsel

The prosecuting counsel may also be known as The Crown/DPP/Police Prosecutor. They act independently to present evidence to discharge the burden to prove the defendant's guilt **beyond reasonable doubt**.

Other People in the Court

There is a range of other people found in a courtroom, including:

- Court associates and clerks – reads the charges, handles documents, keeps a record of events in court and takes a verdict from a jury
- Court orderly - prepares the courtroom and provide security for the judge
- Sheriff's officers - takes control in an emergency
- Jury may also be present in the courtroom for some criminal cases
- Witness – a person who presents evidence about the crime
- There are a range of other court assistants, according to the case

 View



For further information on People in the Court, watch:

<https://www.youtube.com/watch?v=o3XLcXEP6YU>

https://www.youtube.com/watch?v=sgH1fjP29GA&list=PLTimwaHp_ewO0Vyoems_lzdwugfV-KmZC&index=6

 Why is it necessary for so many people to be present for court cases? Doesn't this make the process more costly and time-consuming?

**Collaborative Activity**

Using relevant online resources prepare and participate in a class mock trial.

**Research Activity**

Research and prepare an analytical response to “To what extent does a court hierarchy facilitate just outcomes?” Use examples to support your discussion.

**Review Activity**

1. What is justice and how does this concept relate to the legal system?

2. Explain the relationship between natural justice and the rule of law?

3. Why is it important that the Judicial branch is totally separate and independent from the Legislative and Executive branches of government?

4. In Australia, the Judicial branch is made up of a court hierarchy. Using the court link: <http://www.courts.sa.gov.au/>. Complete the table below:

Court	Title	Role & Responsibility
High Court	Justice	
Supreme Court	Justice	
District Court	Judge	
Magistrates Court	Magistrate	

5. Explain the difference between justices, judges and magistrates?

6. Complete relevant key words at the end of this chapter.

Adversary System of Trial

Within Australia’s legal system, the adversary method of trial is used. It is the court proceedings and processes used in countries that have a common law system, for example, Australian, UK and USA. The common law system refers to legal decisions that are made by the courts, which can influence future court decisions or outcomes. It is a system of trial where opposing sides are in control of their own cases and present evidence to support their case to an independent judge. This method of trial has strict rules that need to be followed and upholds the presumption of innocence for the defendant. Essentially in the adversary system, there are 2 key aspects to be determined.



Facts

- What has happened?



Law

- What has happened that is contrary to the law?

Figure 4.3.1: Adversary System Key Questions.

The adversary system contains some key elements:

- An independent and impartial judge
- Two autonomous parties
- Strict rules of evidence and procedure.

The opposing sides in the case, the prosecutor and defense can control their own cases. It is the responsibility of the prosecutor in a criminal case to prove beyond reasonable doubt that the defendant is guilty. Both the prosecution and defense have legal rights and responsibilities.

 List the rights that are afforded to the defendant.

Collaborative Activity

In groups, research one of the terms below and present an infographic on rights, which includes a clear definition of the term and its relationship to justice.

- | | | |
|-----------------------|--------------------------|-------------------------------|
| Rule of law | Presumption of innocence | Burden of proof |
| Right to a fair trial | Right to silence | Right to legal representation |
| Rights of the victim | Rights of the accused | |

Independent and Impartial Judge

The main role of the judge is to control courtroom proceedings and to ensure that correct processes are followed. They must also be independent of the other 2 branches of government and the 2 parties involved in the case. The judge’s key role is to:

- Enforce and administer the rules of the adversary system
- Apply case law/interpret statutes when required.

If the judge sits without a jury, they are also the determiner of fact, which requires them to deliver a guilty/not guilty verdict.

Two Autonomous Parties

The prosecution and defense are in control of their own cases. They investigate the facts and the relevant issues. Each party can determine the issues that are to be brought before the court to build a successful case. The rule of law, the presumption of innocent until proven guilty and the right to remain silent are key elements. The onus is on the prosecution to first prove its case which is the **burden of proof**. It must also prove guilt beyond reasonable doubt, this is known as the **standard of proof**.

Strict Rules of Evidence and Procedure

Strict rules are essential to enable both parties to have a fair and equal opportunity to present their case and defend any allegations made against them. It is critical that the judge (and/or jury) only focus on the matter before them and are not influenced or biased in their deliberation.

Evidence

Evidence must be presented to the court to assist in determining the facts of a case. Evidence can be classified as; admissible, meaning this evidence is relevant to the case and can be presented in courts or inadmissible which can not be used during a trial. Read and complete the table below on evidence.

✓	Types of Evidence		✗
Admissible	Example	Inadmissible	Example
Direct Evidence Original evidence of the event that was seen, heard, smelt or felt		Hearsay Evidence Evidence that is not direct evidence but has been relayed from one person to another	
Indirect Evidence Circumstantial evidence from which facts can be inferred		Illegally Obtained Evidence Evidence that has been collected by unlawful means	
Primary Evidence Original objects and documents from the scene		Opinion Evidence Evidence given by a person who is NOT an expert in their field	
Secondary Evidence Suggests that the existence of best evidence but it is presented because the primary evidence does not exist		Past Criminal Convictions Refers to any past convictions of the accused. They are only to be judged on the case before the court. Until they are found guilty, this information is unknown.	
Opinion Evidence Evidence that assumes what has been seen or heard. This evidence is usually given by an expert in their field			



Why is it necessary for admissible and inadmissible evidence to exist in the adversary system of trial?

4

Principles of the Adversary System of Trial

For the effective operation of the adversary system, some key principles are upheld for just outcomes to be achieved. Research and complete your own definitions of these principles below.

Principle	Definition
Rule of Law	
Natural Justice	
Independence of Judiciary	
Right to be heard	
Right of accused to know facts	
Burden of Proof	
Standard of Proof	
Ignorance is no defence	
Right to trial by jury	
Right to remain silent	

Research Activity

Research and prepare an analytical response to “How do the principles of the adversary system of trial support an individual’s rights to achieving just outcomes?”

Other System of Trial – Inquisitorial System of Trial

In addition to the adversary system of trial, the inquisitorial system of trial is an alternative system that is used in many European and Asian countries. Both systems of trial have clear strengths and weaknesses. The inquisitorial system of trial is a search for the truth using processes and procedures which differ from the adversary system of trial. Some of the key features or differences in the inquisitorial system of trial include:

- Parties are not in control of their own cases
- The judge has an active role in proceedings and is not impartial or independent
- Rules of evidence and procedure are less strict.



Collaborative Activity

In groups, research and prepare a 2-minute overview of one of the following topics. Each group should select a different topic to share with the class.

- Features of the adversary system of trial
- Advantages of the adversary system of trial
- Disadvantages of the adversary system of trial
- Features of the inquisitorial system of trial
- Advantages of the inquisitorial system of trial
- Disadvantages of the inquisitorial system of trial

While listening to presentations, complete the table on systems of trial.

		Systems of Trial					
Adversary			Inquisitorial				
Features	Strength	Weakness	Features	Strength	Weakness		



Review Activity

1. What are the main features of the adversary system of trial?

2. Outline the necessity of an independent and impartial judge.

3. Explain why it is beneficial for parties to be in control of their own cases? Are there any disadvantages to this?

4. Discuss why there are strict rules of evidence and procedure in the adversary system of trial?

5. To what extent is the adversary system of trial better than the inquisitorial system of trial?

6. Complete relevant key words at the end of this chapter.

Role of Juries

Juries are an important element of the adversary system of trial. A jury is a group of randomly selected people from the community. Their role is to determine a verdict of guilty or not guilty based on the evidence and facts presented to them in court. In South Australia juries are only used in some criminal cases.



Figure 4.4.1: Reasons for not using a jury trial.

The role of a jury is to listen to the evidence presented and determine the facts of the case. They are required to reach a verdict – either guilty or not guilty (beyond reasonable doubt) based on the admissible evidence presented to them. They are not involved in the sentencing process.



Why are juries not involved in the sentencing procedures? Should they be part of this process?

Jury Selection

Jury selection, processes and procedures are governed by the Juries Act 1927 (SA). This is enforced by the Court Sheriff.

Jury duty is a compulsory responsibility. A jury **summons** is a legal document which requires Australian citizens to appear in court to be part of a jury. Each year a list of possible jurors is generated. There are between 3000-5000 names that are selected. To determine who is to be summonsed involves the Court Sheriff receiving names from the Electoral Commission, of people aged between 18-70. These names are randomly selected from the electoral roll.

There are some circumstances where people who are summonsed to court to serve in a jury may be exempt. These circumstances are known as disqualification, ineligibility or excuses.

Disqualification - Criminal reasons	Ineligibility	Excuses
In prison	Are mentally or physically unfit	Health issues
Served more than 2 years in prison	Have a lack of knowledge of English	Pregnancy, child or aged care
Have had a driving licence suspension (of more than 6 months) in the previous 5 years	Are directly involved in the administration of the legal system, including: Members of Parliament Members of the Judiciary and spouses Justice of Peace and spouses Legal Practitioners Members of the police force and spouses	Have served on a jury in the previous 3 years
Have been imprisoned in the last 10 years		Business responsibilities or work commitments
Have been on a good behaviour bond (for 6 months or more) in the previous 5 years		Any other reason approved by the sheriff

Figure 4.4.2: Disqualification, Ineligibility and Excuses.

Once the list has been reduced, every month a randomly selected group from this list is chosen for jury trials. Individuals who are on the monthly list are then summonsed to attend court for briefing and orientation. They must be available each day of that month to attend trials. The **empanelment** process prepares individuals to sit on the jury after the selection has occurred.

When attending court, jurors are informed of the names of the lawyers, defendant, judge and witnesses. Jurors must excuse themselves if they have a conflict of interest. Each party's legal representation receives the name, address and occupation of the selected potential jurors. They may reject or challenge a potential juror for the following reasons:

- **Peremptory Challenge:** No reason needs to be given for a potential juror to be challenged. It could be based upon the appearance, age, occupation or address of the potential juror. There are three challenges of this nature available to each party.
- **Challenge for Cause:** Lawyers need to give a reason to the judge. This type of challenge is rarely allowed.



Is it a good idea for legal representation to be able to challenge the selected jurors from sitting on a case? Why/why not?

 View

For further information on juries watch and listen to:

Introduction to Jury Service: <https://www.youtube.com/watch?v=Okc8iEgfF4Y>

Listen to Legal Services Commission Jury Duty:

#LSCSA #Jury #JuryDuty #Adelaide #SA #Fiveaa #Radio #LawandOrderThursday #LegalAid



Discuss the benefits and weaknesses of the jury system.

Jury Verdicts

The jury's role is to decide the **verdict** of guilty or not guilty based upon the facts and evidence presented to them in court. According to the nature of the case, different types of verdicts can be reached:

- **Unanimous** - When all 12 Jurors agree. This is compulsory for murder cases.
- **Majority** - When 10 or 11 of the Jurors agree. This verdict will be accepted in all crimes, except for murder, but not within the first four hours of deliberation.
- **Hung Jury** - If a jury cannot reach a verdict, a new trial with a new jury occurs.
- **Alternative Verdict** - When a jury delivers a not guilty verdict for the crime, but guilty of a lesser crime
- **Perverse Verdict** - Where a jury gives a verdict contradictory to the evidence and the law. The verdict stands.



Research Activity

Research and prepare an analytical response to “To what extent are juries able to achieve just outcomes?” In your response consider community values and representation.



Review Activity

1. What is the role of the jury in a criminal trial?

2. Outline two reasons why some evidence might be inadmissible in a trial.

3. Discuss the advantages and disadvantages of the jury system.

4. Suggest an improvement that could be made to the jury system.

5. Should juries be obliged to give reasons for their verdicts?

6. Complete relevant key words at the end of this chapter.

Criminal Justice System

The criminal justice system is a key element to ensure the regulation of behaviour in society to achieve social order. It includes law enforcement, court systems, prison systems and counselling services. The criminal justice system considers the most appropriate measures for enforcing the law and providing consequences for inappropriate behaviours.

View

Using last night's news bulletin, from the stories presented identify the different types of criminal behaviours which have occurred in society.

 Compare and contrast this range of criminal behaviours.

Types of Criminal Offences

Offences can be organised into groups according to their severity. This can also determine the court in which a case can be heard. Specific offences are detailed in the Criminal Procedure Act 1921 (SA).

- Summary Offences are relatively petty offences with minor punishments. Heard in the Magistrates Court.
- Minor Indictable Offences are more serious. Heard in the Magistrates or District Court.
- Major Indictable Offences are the most serious crimes with the defendant having the right to trial by jury before either the District or Supreme Court.

Further to this, crimes can be further described according to the type of damage that they have caused

- Offences against a person are those that involve or threaten bodily harm.
- Offences against property are those that affect an individual's right to use and enjoy their property including land and possessions
- Offences against public order are those that breach what is considered to be public decency or order

Research Activity

Complete the table below on types of offences.

Type of Offence	Example of Offence	Court	Penalty	Who is the offence against?
Summary				
Minor Indictable				
Major Indictable				

Elements of a Criminal Offence

The prosecution is required to establish that the following elements are present in a criminal case, to prove that an individual has committed the offence.



Figure 4.5.1: Elements of a Criminal Offence.



Several crimes only require actus rea to have occurred. What are these crimes? Why is this the case?

Criminal Justice Proceedings

For the criminal justice process to achieve consistent, predictable and just outcomes a clear process needs to be followed.

Establishing A Crime

The first step in the process is for police to determine if an offence has been committed. They are required to investigate a situation once a report about the crime has been made. As part of this process, police are granted specific search powers as outlined in the Criminal Investigation Act 1984 (SA) in order to gain proof that a crime has been committed. Police may also exercise their search power rights if they have a reasonable belief that a crime is either being or about to be committed.

Pre-trial

The pre-trial processes are the actions and processes that take place before a trial begins. In some circumstances, the legal issue may be resolved without going to trial

- **Arrest** - occurs when a suspect is taken into custody by police. Detaining a person who has been arrested is also known as being held on remand. Police can arrest when a suspect is committing, suspected of committing, or has committed a crime. Once arrested, police can detain a suspect for up to 8 hours (or longer for offences such as terrorism). If police can establish reasonable proof or evidence that the suspect is guilty of an offence they can then be charged.



Why are there different conditions for acts such as terrorism?

- **Charged** - once charges have been laid for a crime committed, police gain additional powers which include taking personal identifying details such as photos, fingerprints, voice recordings and DNA samples. Despite charges being laid, there is still the presumption of innocent until proven guilty.
- **Bail** - is when the charged agrees to appear at all criminal justice proceedings as requested. Bail is the money paid in exchange for them being released from custody. The severity of the crime will influence the approval and conditions of bail.



List the range of bail conditions that might be imposed on an accused?



View



For further information on bail problems watch:

<https://www.youtube.com/watch?v=R6Mxmphccu4>



Identify some weaknesses in the current bail system. How might these be improved?



Collaborative Activity

Select one of the cases below which highlights issues with the bail system. Watch relevant YouTube clips and conduct research on your selected case. Provide a presentation or written summary on details of the case, the background of the accused, did the bail system provide just outcomes in protecting the rights of the accused and the victims, what might be done to improve bail conditions.

Victim	Defendant
Jill Meagher	Adrian Bayley
Masa Vukotic	Sean Price
Teresa Bradford	David Bradford
Cheyane Lubec	Chad Hogg

- **Arraignment** - This is where the defendant is informed of the charges against them. The defendant is expected to submit a plea of either guilty or not guilty of the charges.
- **Plea Bargaining** - Many criminal cases conclude at this point if the defendant pleads guilty. A plea bargain is a process where the prosecutor and defendant agree that a guilty plea is given in return for a more lenient sentence.



What is the purpose of a plea bargain?



Why have there been recent changes to sentence reduction for plea bargaining?

- **Preliminary Hearing.** If no plea bargain is received a preliminary hearing is held. This is where the Magistrate will hear the prosecution's evidence and decided if there is sufficient evidence for the case to proceed to trial.

Trial

The nature and type of crime will determine upon the place and type of trial which is conducted. The aim of a trial is for the prosecution and the defence to present all admissible evidence to the court for a verdict of guilty or not guilty to be determined. As discussed earlier in this chapter, the adversary system of trial is used in Australia.

 [View](#)

For further information on the criminal justice system watch:

Court Justice Sydney: <https://online.clickview.com.au/exchange/4558425/court-justice-sydney?sort=orderindex>

 Discuss the different elements of the criminal justice system, analysing the strengths and weaknesses.

Post-Trial

Post-trial refers to the criminal justice processes which may take place after a trial, once a guilty verdict has been determined. It is during sentencing that the defendant will hear about the punishment that they will receive for the crime that they have been found guilty of. In determining the sentence the judge will examine a range of factors such as prior convictions, victim impact statements and personal circumstances. Judges are also guided by the Sentencing Act 2017 (SA) for minimum and maximum sentences that may be imposed for different crimes. This ensures fairness, predictability and consistency within the Australia legal system.

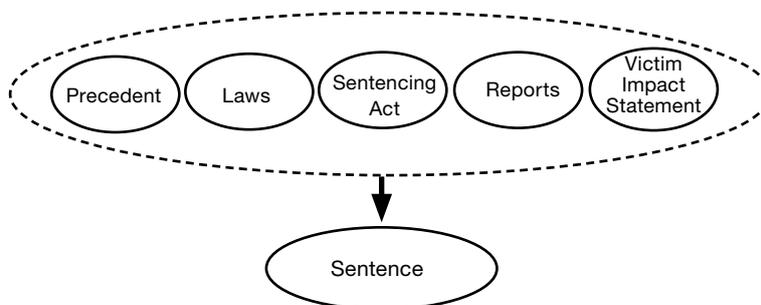


Figure 4.5.2: Sentencing Guides.

 Why are different factors considered during sentencing? What is the purpose of a minimum and maximum sentence?

The sentence is the penalty for the crime that has been committed. When sentencing the judge will also consider the aims of punishment, including; deterrence, retribution, rehabilitation and incapacitation (refer back to Ch 1). In determining a sentence judges are bound by the Criminal Law (Sentencing) Act 1988 (SA) and must follow past precedents.

**Review Activity**

Watch the 60 Minutes episode on Mason's Law -

<https://www.9now.com.au/60-minutes/2017/episode-4>.

Then apply your theory knowledge to this case to respond to the following questions.



1. Briefly outline the facts of the case, including the type of crime that has been committed.
2. Explain what might have happened during the pre-trial phase:
 - a. Police investigation
 - b. Arrest
 - c. Charge
3. Outline what may have happened at the Preliminary Hearing.
4. In what court would this case be heard? Why?
5. Explain the process of what would have occurred during the trial process?
6. What was the outcome of the sentencing? Do you consider this a just outcome?
7. What legislative changes have occurred through Mason's death? Has this been important? Why/not?

**Research Activity**

Research and prepare an analytical response to "To what extent can just outcomes be achieved in criminal trials regarding the limited participation and interaction of the judge and witnesses?"



Review Activity

4

1. Explain the legal rights and obligations that parties have in either a civil or a criminal case?

2. Explain the roles and responsibilities of the main participants in the resolution of a criminal dispute.

3. Why might an accused choose trial by judge alone?

4. Why are prior convictions usually inadmissible during the presentation of evidence in a criminal trial?

5. Complete relevant key words at the end of this chapter.

Civil Justice System

Civil law refers to the legal rights and responsibilities that people have towards one another. It affects the rights and obligations of individuals, families, businesses and small groups. It exists to assist citizens to resolve disputes that involve private matters, such as a breach of contract or a case of negligence.



View

For further information on the differences between criminal and civil matters watch:



Introduction to Law in Australia.

<https://www.youtube.com/watch?v=X4blz8BbnVk>



Discuss the key differences between criminal and civil law.

Can a case include both criminal and civil matters?

A key feature of civil law is that its main aim is to compensate the plaintiff and not to punish the defendant. Each party is still responsible for and in control of its own case. Unlike criminal cases, there is a strong focus to resolve civil disputes before they go to court. In South Australia, when taking a civil case to court, the evidence must show that all other pathways have been exhausted.



Why are civil cases encouraged to be resolved outside of court?

To ensure a predictable and consistent approach is taken in civil dispute resolution, it is necessary for case management procedures to be followed. This is to ensure a more efficient resolution to cases, keep cases from going to court, promote co-operation and save the parties time and money.

Alternative Dispute Resolution (ADR)

Alternative Dispute Resolution (ADR) involves using a variety of strategies for resolving civil cases before they go to court. The nature of the case may influence the type of ADR which is used.

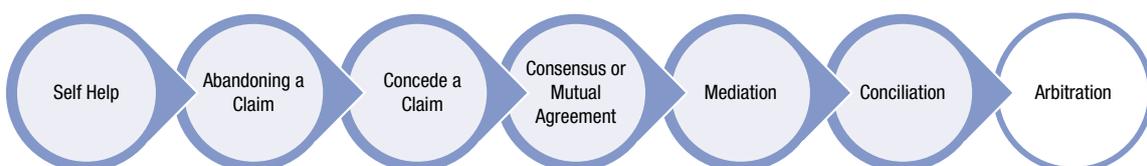


Figure 4.6.1: Methods of ADR.



Collaborative Activity

In groups, select and research one of the above methods of ADR. Prepare a fact sheet or infographic to share with the class.

Include:

- Define your method of ADR.
- What types of cases might this method be used for?
- What are the benefits and challenges of this method of ADR?

Pre-Trial

There are some circumstances when all of the ADR methods have been exhausted and a resolution to the dispute has been unachievable. This may be due to the nature of the case or attitudes of the conflicting parties. There are some pre-trial steps that must be applied before a case may proceed to court. The pre-trial process involves a detailed and lengthy paperwork process.



Figure 4.6.2: Pre-trial steps in a Civil Case.



After working through ADR, why is the formality of pre-trial necessary?

Trial

The trial stage in resolving civil disputes uses the adversary system of trial but has two main differences from criminal proceedings.

- No juries are used in South Australia.
- There is no ‘right to silence’. All parties are expected to provide full disclosure.

Parties still maintain control over their cases, which they present to an independent and impartial judge. Civil cases are cited with the plaintiff’s name first (the person who is seeking compensation) followed by the defendant’s name. The standard of proof in a civil trial is measured through the balance of probability. This means that the dispute will be decided to support the party whose claims are more likely to be true.

Post-Trial

The party who is found liable (responsible) in a civil case is accountable for the remedy, either through damages and/or an injunction. Damages are the monetary compensation which is paid for any loss, injury or damage. Injunctions are a court order for a specific action to be taken.



Provide an example of when the following might be imposed:

Damages: _____

Injunction: _____



Review Activity

A landmark civil case was the defamation claims made by Rebel Wilson against Bauer Media. This case was initially awarded the largest defamation damages payout ever ordered by an Australian court. This decision was appealed.



Using relevant youtube clips and media articles, research this case and respond to the questions below.

1. Outline the facts of the case, then define the type of civil offence that has been committed.
2. Explain if this case could have been resolved outside of court. How? Justify your response.
3. In what court/s was this case heard? Why?
4. Briefly, what would have occurred during the trial process?

5. What was the outcome of this case? Do you consider that it was a just outcome? Why was this case considered to be a 'landmark' case?



Review Activity

1. What is ADR? Why is this method of dispute resolution encouraged as opposed to going to trial?

2. Complete the table below:

Differences in Civil and Criminal Cases		
	Criminal	Civil
How is the case cited?		
Name given to the 'wrongdoer'		
The party who commence legal action		
Burden of proof		
Standard of proof		
Consequences		

3. Explain the stages in the resolution of a civil dispute.

4. Complete relevant key words at the end of this chapter.

Access to Justice

The rule of law and the human rights of all people are important to upholding democracy. A significant part of protecting these rights includes access to justice. Access to justice can mean different things to different people but can include being able to obtain the correct legal information, support and understanding.

Legal issues can complicate other social and economic challenges creating further difficulties for members of society who have problems with accessing justice. The Australian legal system aims to deliver just outcomes that should be responsive, accessible and fair. Despite Australia being a developed country that is underpinned by the rule of law, not all Australians have equal access to the justice system.



4

Reasons for Limited Access

Australians who experience difficulties accessing justice do so for many reasons, including:

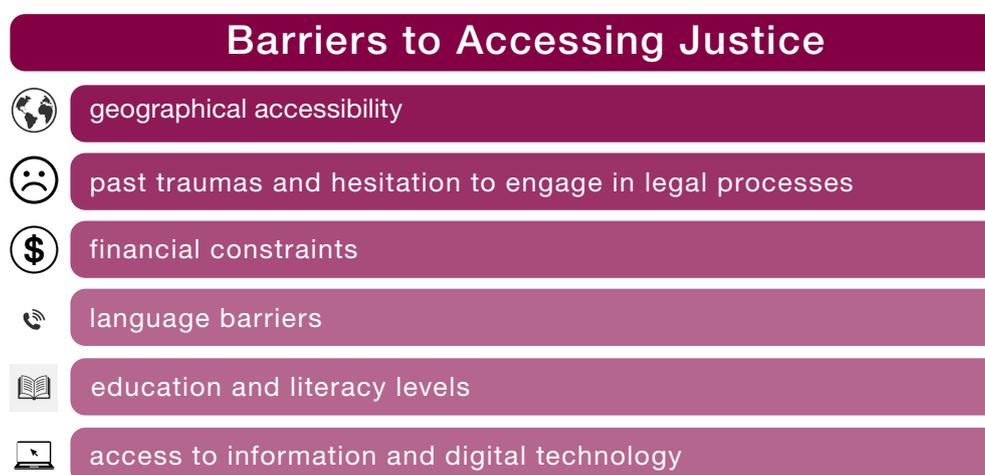


Figure 4.7.1: Barriers to accessing justice.

Research Activity

In groups brainstorm different groups in society who might have limited access to justice, then individually with reference to the following link: <https://www.lawcouncil.asn.au/justice-project/consultation-papers> select three of the groups identified. Look at the infographic for each of these groups and prepare a response outlining why this group has difficulty in accessing justice and how the Australian legal system might respond to this inequity.

Legal Services Commission

In South Australia people have the responsibility to obey the law but have the right to access and understand the law. Individuals can use the law to protect their rights. The law becomes unfair when not all people can access justice. The South Australian government recognises this through the operation of the Legal Services Commission.

This service is jointly funded by both the South Australian and the Commonwealth Governments. It was established in 1977 to increase access to legal services for those people who cannot afford to pay for private legal representation and is supported through the Legal Services Commission Act 1977. This provides the Commission with the powers and responsibilities to work towards equality before the law for all South Australians. The Legal Services Commission's services to the community focus on advice, education and legal representation.





Review Activity

1. Why is it difficult for all members of Australian society to have equal access to legal support?

2. Suggest some ideas on how access to justice can be further reformed.

3. Using the Legal Services Commission website: https://lsc.sa.gov.au/cb_pages/youtheducation.php explore the services which are offered. Examine the range of facts sheets that have been provided to support young people and the law.

4. Complete relevant key words at the end of this chapter.

Chapter Review

Chapter Checklist

You should now be familiar with the following concepts:

Chapter 4 – Key Concepts		
Justice	Justice Natural Justice	<input type="checkbox"/>
Court Hierarchy	South Australian Hierarchy People in Court	<input type="checkbox"/>
Adversary System of Trial	Features of the Adversary System Inquisitorial System	<input type="checkbox"/>
Juries	Role of juries Jury selection Verdicts	<input type="checkbox"/>
Criminal Justice System	Types of criminal offences Criminal justice proceedings - pre-trial, trial and post-trial	<input type="checkbox"/>
Civil Justice System	Alternative dispute resolution Civil justice proceedings – pre-trial, trial and post-trial	<input type="checkbox"/>
Access to Justice	Reasons for limited access to justice Legal Services Commission	<input type="checkbox"/>

Key Words

- Justice: _____
- Natural Justice: _____
- Court Hierarchy: _____
- Doctrine of Precedent: _____
- Beyond Reasonable Doubt: _____
- Adversary System of Trial: _____
- Common Law: _____
- Impartial Judge: _____
- Autonomous Parties: _____
- Burden of Proof: _____
- Standard of Proof: _____
- Prosecution: _____
- Defence: _____
- Admissible Evidence: _____
- Inadmissible Evidence: _____
- Inquisitorial System of Trial : _____
- Jury: _____
- Summons: _____

Verdict: _____

Empanelment: _____

Sentencing: _____

Plaintiff: _____

Defendant: _____

Liable: _____

Remedy: _____

Balance of Probability: _____

Legal Services Commission: _____

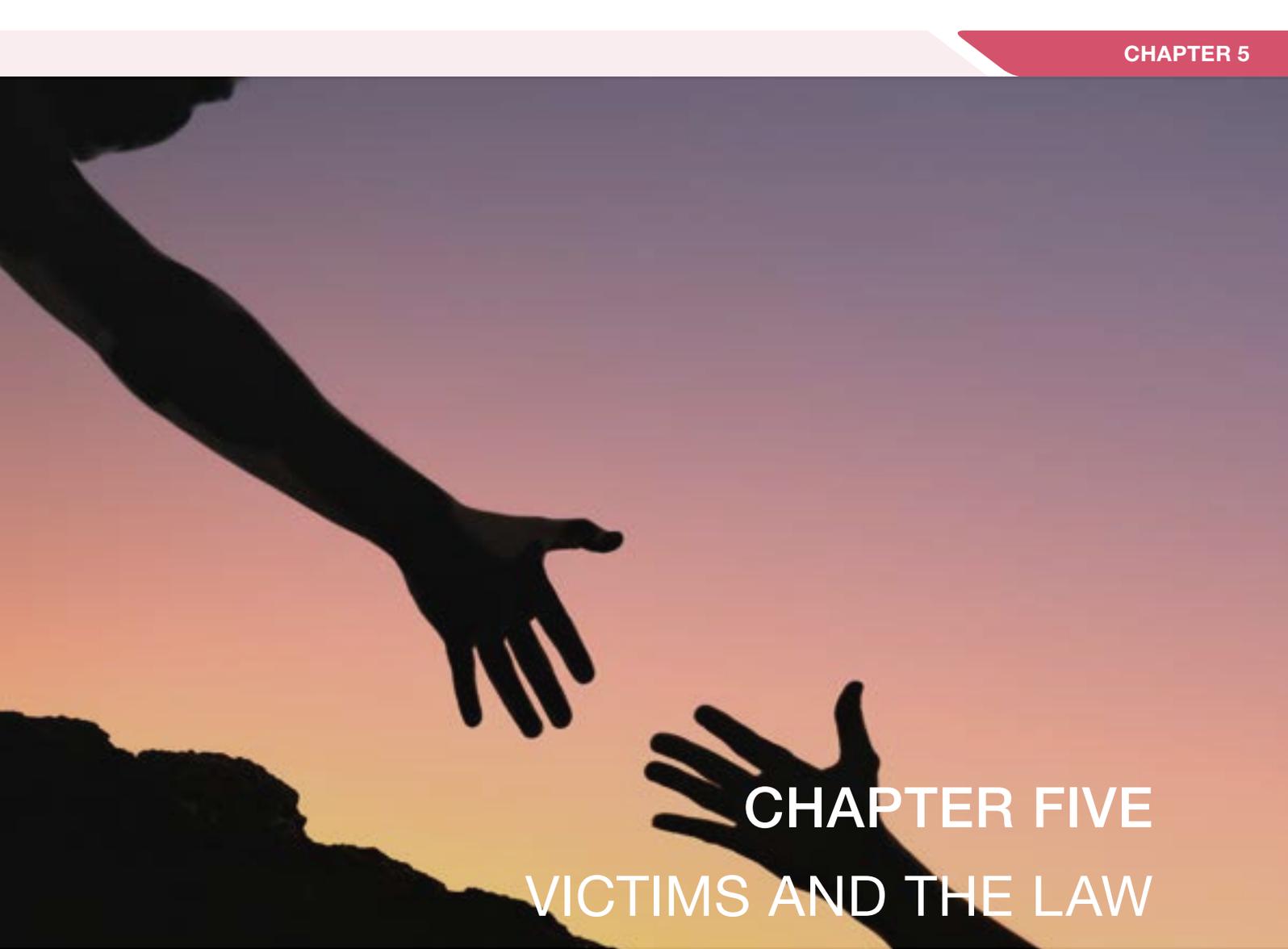
Review Questions

Complete the questions below to consolidate your learning on this topic.

1. Outline reasons for a court hierarchy.
2. People's legal rights are better protected by having a hierarchy of courts. Discuss this statement.
3. Compare the role of the judge in the adversary system of trial with the inquisitorial process.
4. Are there suitable alternative justice systems?
5. Compare and contrast the use of the inquisitorial system of trial with the adversary system of trial to resolve a criminal case.
6. Why might an accused choose trial by judge alone?
7. Evaluate the processes and procedures of the jury system.
8. Does the jury system bring about just outcomes?
9. Explain the importance of the rules of evidence?
10. Why are prior convictions usually considered to be inadmissible evidence?
11. Identify the strengths of the adversary system of trial for the a) Prosecution b) Defence
12. Identify the benefits and challenges of alternative dispute resolution?

Extension Questions

1. Collect 2 media articles on either a) a criminal case or b) a civil case. Summarise for each article: i) who was involved in the case? ii) what was the issue? iii) how was it resolved? iv) a personal response as to whether you consider justice was achieved in this situation.
2. Why have the States retained the power over their justice systems? Should it be a Federal power?
3. To what extent does the jury system ensure that a cross-section of the community is represented in order to achieve just outcomes?
4. Investigate the role of social media on the criminal justice system. To what extent might it influence decisions that are made by i) juries ii) members of society?
5. In 2016, Cy Walsh was found not guilty of the murder of his father, by reason of mental incompetence. To what extent does this defence provide for a just outcome? Refer to the Cy Walsh case in your response.
6. View: <https://www.abc.net.au/4corners/while-they-were-sleeping/5037718> Provide an analytical response on the effectiveness of the criminal justice system in this case.



CHAPTER FIVE

VICTIMS AND THE LAW

Victims and the Law

Due to society's changing values and beliefs, there has been an increasing emphasis to focus on the rights of **victims** of crime, as well as the accused. This has been reflected in initiatives to support victims of crime by the institutions of government.

Victimology is a term which is used to focus on victimization. This includes the relationships between victims and the accused as well as the relationship between victims and the criminal justice system. Additionally, it also considers the connections between victims and other social groups and institutions, such as the media, businesses, and social movements.

Victimology is, however, not limited to the study of victims of crime alone but may include other forms of human rights violations. It shifts the focus from the offender to the victim. The key aim is to enhance the rights of victims without detracting from the rights of the accused.

 View



For further information on Theories of Victimisation, watch:

<https://www.youtube.com/watch?v=TFWepF9ebvU>

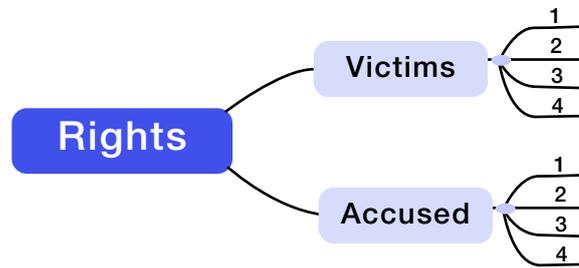
 What are the key theories of victimology?

 How do social actors relate to victimisation?



Collaborative Activity

In groups use the mind map below to discuss and brainstorm the rights of victims and the rights of the accused. Share your ideas with the class



Who Is A Victim?

The United Nations definition of a victim is:

“An individual or a collectivity of people harmed through acts or omissions that violate criminal laws ... including those proscribing abuse of power.”

United Nations 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.



View



For further information watch: Real Victims of Crime

<https://www.youtube.com/watch?v=ahSQs831yK4>



Who are victims of crime?

The Victims of Crime Act 2001 (SA) defines victims as “In relation to an offence, means a person who suffers harm as a result of the commission of the offence”. A person may be a victim regardless of the offender’s circumstances.

Victims may be grouped accordingly:

- **Primary victim** – those directly affected by a criminal offence
- **Secondary victims** – those who have some relationship with the primary victim and are emotionally and/or financially dependent on them (i.e. child, parent, spouse)
- **Tertiary victims** – people whose lifestyles have been disrupted by fear and/or people who bear the cost to society of crime.

At times, it can be difficult to know who a victim is due to the circumstances surrounding the crime. List some examples of this.



View

Watch a clip of a recent criminal case that has been on the news. From the clip provide:

- an overview of the case
- Identify the primary, secondary and tertiary victims in this case

Crimes and Victims

As there are different types of crimes, the nature of the crime can play a significant role on the victim. An individual is considered a victim of a crime if a criminal offence has been committed against them. Crimes could include the following:

- Burglary or theft
- Assault
- Domestic violence
- Property damage
- Fraud
- Homicide
- White-collar crimes.

Depending upon the nature of the crime, specialised information and support services are available.



List some services that might be available for different types or areas of crime.

Impact & Effect On Victims

Victims are individuals and may react differently, even under the same circumstances. Some effects may include:

- Physical
- Cognitive
- Social
- Emotional/Psychological
- Behavioural
- Financial/Economic.

These effects vary according to the nature of the crime and the situation of the victim. The effects of the crime can impact not only on the primary victim but can create a ripple effect throughout communities or even countries. A ripple effect refers to the outcomes and costs of a crime on an individual and the broader society.



View

Activity One



For further information on the ripple effect, watch: How The Sydney Siege Unfolded

<https://www.youtube.com/watch?v=bWBXMFTYQuM>

Regarding the Lindt Café Siege, provide a summary of the ripple effect that this crime had on a) individuals b) Sydney community c) Australian community.

Activity Two



For information on technology and victims of crime, watch: Carly Ryan

<https://www.carlyryanfoundation.com/what-we-do>

The Carly Ryan case was the first crime of its type in Australia in 2007 regarding using social media to groom and lure Carly to her death. Provide a summary on how this case led to changes to the law and b) the importance of the Carly Ryan Foundation in educating young people c) discuss the relationship between the foundation and victims of crime.

Victimless Crimes

Victimless crime is a term used to refer to behaviour that is illegal but does not violate or threaten the rights of anyone else. It can include situations where an individual acts alone as well as consensual acts in which two or more persons agree to commit a criminal offence in which no other person is involved.



List some types of crimes that you might consider to be victimless.

Many activities that were once considered crimes are no longer illegal in some countries, partially due to being considered as victimless crimes. These activities have also adapted due to societies changing values, for example, same-sex marriage.



Collaborative Activity

In groups discuss and complete the following:

1. Is society greatly impacted by victimless crimes? Explain.
2. Do victimless crimes actually exist?
3. Why are victimless crimes illegal activities?
4. Should some victimless crimes be legalized? If so, which ones and why?



Research Activity

Research the concept of victimless crime. Prepare an analytical response on victimless crimes including:

- An overview of these concepts
- Include 3 recent cases or situations that show examples of victimless crimes.
- An analytical viewpoint on the effects of victimless crimes.



Review Activity

1. With examples, define the different classifications of victims.

2. Using different crimes as an example, list some of the effects that an individual might experience as a result of being a victim of crime.

3. Discuss the short, medium, and long-term effects, that crime might have on a community.

4. Complete relevant key words at the end of this chapter.

Victims Rights and Support

Victims of crime are afforded a range of rights under the Victims of Crimes Act 2001 (SA). The Commissioner for Victims Rights was established by the South Australian Parliament in 1985 to provide understanding, empathy, and support for victims of crime. According to the Office of the Director of Public Prosecution, these rights include:

Rights	
 Victims of Crime	Accused 
Fair treatment	Equality before the law
Information about the progress of investigations	Right to know the charges laid against them
Personal safety concerns are taken into account	Right to a fair trial
To be informed about charge withdrawals and charge bargains	Presumption of innocence
To participate (usually by impact statements) in sentencing	Right to silence
Make submissions on parole.	Independence of the judiciary
Be informed about access to compensation, health and welfare services	Access to justice

Figure 5.3.1: Rights of Victims and Accused.

As supported through the adversary system of trial and the rule of law, the rights of the accused have long been upheld, arguably to the detriment of victims of crime. Crime victims may also feel revictimized through their experiences and treatment in the criminal justice system.

 View

Activity One

Australian Story – *Road to Nowhere (Part 1 and 2)*

Provide a summary of the rights of the victims and the rights of the accused, in reference to the case documented in *Road to Nowhere*.

Activity Two

Using the podcast “Australian True Crime”, refer to the episode on ‘Victorian Rape Survivors Silenced’. Consider the changes to Victorian law that does not allow survivors to use their real name or accused’s name publicly.

Should the law protect the rights of the victim over the accused? Discuss and provide arguments for or against.

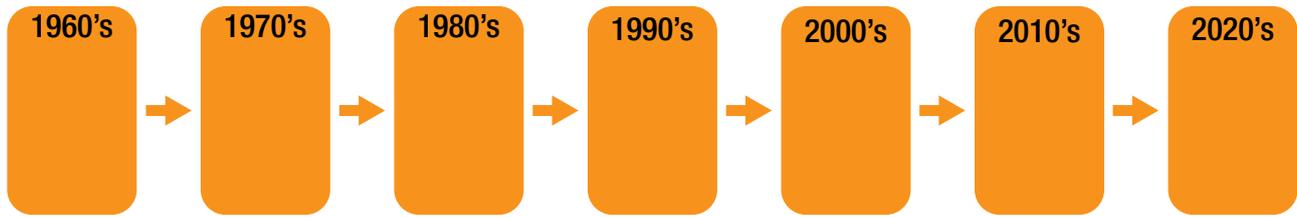
Victim Support Services

There is a range of support mechanisms that are legally available for victims of crime. These mechanisms have developed in Australia over time, including:

- Access to information
- Victim impact statements
- Counselling and other services
- Criminal injuries compensation.

**Collaborative Activity**

Research and create a timeline of how victim assistance has evolved in Australia.



Suggest some reasons why the timeline commences in the 1960s. What victim assistance was available before this time?

Access to Information

Victims of crime need to be able to access information to help support them in dealing with the crime, examining the options for taking legal actions, and achieving justice. Victims might be looking for practical support such as security advice or legal support including the progress of their case. The government of South Australia has implemented and supported a range of resources that provide victims of crime with a broad range of information.

**Research Activity**

Explore the South Australian Victims of Crime website: <http://voc.sa.gov.au/>

Provide a summary of the key areas.

Your rights

Victim Impact Statement

Getting compensation

Finding support

The crime

Police investigation

Going to court

About Us

5

Victim Impact Statements

A victim impact statement is a written, oral, or visual statement which can be used as part of the legal process. It allows victims the opportunity to describe the impact that the crime has had on their life. Many victims do not present evidence in court, so it provides an opportunity for their input. It also allows the accused to hear about the harm or injury that they have caused. It can be particularly relevant to sentencing and parole hearings. Victim impact statements allow the victims to address physical injuries, mental anguish, financial loss, or other damages. It does not address the actual offence, but how the offence has impacted or changed the victim's life.

Additionally, community impact statements may also be useful to summarise a collective statement of harm. These can be valuable in situations where whole communities might be impacted by a crime.



Provide some examples of when a community impact statement might be used?

 View



For further information on the benefits of a Victim Impact Statement watch:

<https://www.youtube.com/watch?v=fGWFfNiYDo0>



Victim Impact Statements from the New Zealand terrorist attack.

<https://youtu.be/hbmhIOP7Jws>



What is the importance of a victim impact statement?



Collaborative Activity

In groups select and read one of the cases below.

	Case Overview	As a victim
Case One	Mr Kelly was involved in a fight with several males at a home. He pleaded guilty to one charge of affray contrary to common law and one charge of criminal damage. In determining the sentence, Her Honour Judge Song considered, among other factors, Mr Kelly's co-operation with law enforcement, an early plea of guilty, remorse, and young age (19). Her Honour also had regard to the way the co-offenders were dealt with. Mr Kelly was ordered, without conviction, to pay a fine of \$700 for each charge and \$200 in compensation to a victim	You are one of the males that Mr Kelly was in a fight with. You sustained a broken leg. You required medical treatment for the healing and rehabilitation of your leg. You were unable to work for 8 weeks as a result of your injury as you are a landscape gardener.
Case Two	Ms Jones ordered drugs through a website on the dark web and had them posted to two local addresses. Australian Customs intercepted several packages containing drugs which led the Australian Federal Police to conduct an investigation. The AFP executed search warrants on the homes of Ms Jones and a co-offender. The AFP seized some items from Ms Jones home that were used in the offending. Ms Jones pleaded guilty to one charge of trafficking in a drug of dependence. She also pleaded guilty to two charges of importing a marketable quantity of a border controlled drug contrary to section 307.2(1) of the Criminal Code 1981 (Cth). Ms Jones relied on the impact of the delay by the prosecution in bringing charges and family hardship as warranting a reduced sentence. Her Honour Judge Pappas considered those matters as well as Ms Jones's role as principal in the offending. Her Honour sentenced Ms Jones to three years and three months' imprisonment with a non-parole period of one year and six months.	You could either be: a) Ms Jones's partner or b) Ms Jones's children or c) Ms Jones's neighbours
Case Three	Mr Lee, a panel beater, received a Ferrari F430 Spider Coupe at his workshop to repair a small crack in the rear bumper bar. Mr Lee drove the vehicle without the owner's permission and collided with a tree. As a result of the collision, Mr Lee and a female passenger suffered serious permanent injuries. The vehicle was damaged beyond repair. Mr Lee pleaded guilty to a charge of theft and dangerous driving causing serious injury. His Honour Judge Brown sentenced Mr Lee to serve a Community Corrections Order for a period of two years and complete 50 hours of unpaid community work.	You could either be: a) the female passenger or b) owner of the Ferrari

Using the following site, refer to the questions on page 5 to now complete your own Victim Impact Statement on your case:

<https://www.dpp.sa.gov.au/wp-content/uploads/2018/06/VIS-SUGGESTIONS.pdf>

Counselling

The Victim Support Service was established to support individuals who have been negatively impacted by criminal offences. Their key counselling focus is for rehabilitation. It aims to help victims recover from the emotional and psychological impact of the crime. Trauma-based counselling services can be offered through a range of means, including face-to-face, phone, or online support. Its main focus is to improve the well-being of individuals, to minimise the likelihood of re-traumatisation and to assist in post-traumatic growth and recovery.

The South Australian government provides free and confidential counselling for the following groups:

- Individuals who are directly affected or harmed by a crime
- Any person who is harmed as a result of witnessing a crime
- Parents/caregivers who suffer trauma as a result of a crime committed against their child.

To assess counselling support the crime needs to have been reported either through the police or a medical practitioner. It provides support for victims as they deal with the criminal justice process.

Criminal Injury Compensation

Compensation for victims of crime has been supported through government initiatives since 1969. The Criminal Injury Compensation Act 1978 (SA) was replaced by the Victims of Crime Act 2001 (SA) which supports compensation for victims of crime. The legislation provides the mechanism for people who are injured (this may be physical or psychological injury). It does not provide compensation for the loss or damage of property. It is not necessary for the accused to be convicted of the crime to apply for compensation. The Attorney-Generals Department (SA) is responsible for the operations of criminal injury compensation.

Compensation	
Reasons for:	Factors to consider:
Pain and suffering	When the offence occurred
Financial losses related capacity to earn	Severity of injury
Past, present and future treatment costs	If the victim's actions contributed to the offence or injury
	Co-operation by the victim with the police

Figure 5.3.2: Compensation Considerations.

Criminal injury compensation that is awarded to victims of crime is paid from the victims of crime fund. This fund is generated from fines and levies which are paid by the perpetrators of crime. It works on the theory that offenders should pay for the harm which they have caused.



The maximum amount of compensation a victim can claim is \$100 000, is this a fair and just amount? Why?

Current Legislation for Victims of Crime

Currently, the Victims of Crime Act 2001 (SA) is the key legislation in governing victims of crime in South Australia. It is recognised as having four main goals:

1. To give legal recognition to victims of crime and the harm they suffer from criminal offending.
2. To outline a set of principles for the treatment of victims of crime.
3. To help victims of crime in their recovery and advance their welfare.
4. Provide some monetary compensation for victims of crime.

The Victims of Crime Act 2001 (SA) gives victims certain rights when dealing with the criminal justice system. These rights are outlined in the Declaration Governing Treatment of Victims, in sections 5 to 14 of the Act.

There is some secondary legislation that might also indirectly impact a victim of crime.



Figure 5.3.3: Legislation related to Victims of Crime.

Collaborative Activity

In groups, research one of the laws listed above. Prepare a presentation or written summary to the class including:

- The aims and objectives of the legislation
- What rights are victims afforded under this legislation?
- What are the strengths and weaknesses of this Act?
- Suggestions for further improvement to this legislation to help victims of crime

Review Questions

1. Is the current legislation sufficient in protecting victims of crime?

2. Providing evidence for your response, what is more important the rights of the victims or the rights of the accused?

3. Discuss the purpose of a victim impact statement. What effect might it have on the a) accused b) court outcome.

4. Can victims of crime be adequately compensated through the current compensation methods?

5. Complete relevant key words at the end of this chapter.

Victims and the Criminal Justice System

Criminal offences are classified as crimes against the state, so the victim is often viewed as simply a witness in the system run by the state. Victims of crime do however have the chance to provide input on how the crime has impacted upon them at various stages of the proceedings.

Reporting A Crime

Some victims of crime choose not to report an incident that has been committed against them. This is particularly evident in cases of domestic abuse. Other victims rely on the criminal justice system to support them and for justice to be served.

Different factors can influence a victim to report a crime, including:

- The relationship between the victim and the accused
- The injury that was sustained as a result of the crime
- How the victims feel they will be treated and/or protected by the justice system.



List some situations or incidents where a victim of a crime may choose not to report the crime.

When a crime has been reported, the police are required to investigate the allegations. They must be able to provide enough evidence of the crime for legal proceedings to continue. Depending upon the complexity and circumstances of the incident, cases can either be dealt with in a short or much longer duration of time.

Once legal proceedings have commenced the victim has limited control over the case as the crime is considered to be against society. The control of the case is belongs to the state through the **Department of Public Prosecutions** (DPP). It is the role of the DPP to instigate the prosecution of people charged with major criminal offences.

Victims of crime are not required to pay any legal fees or costs as this is covered by the state.

Protecting Victims of Crime

In some circumstances, a victim might have concerns about their safety once legal proceedings have commenced. Victims have the legal right to have these concerns addressed at any time throughout an investigation. Once an accused has been charged with an offence, victims need to be protected against any potential retaliation.

When addressing the issue of victim safety, police and courts have some options on how to best protect a victim. This protection not only applies to victims but may also be extended to witnesses.

The police or courts can issue an **intervention order**. An intervention order was previously known as a restraining order. These orders are made to limit or prevent certain actions such as harassing, threatening or being violent towards a victim. An intervention order can also stop the accused from any communication (either directly or indirectly) with the victim. For an intervention order to be created the police or courts need to be convinced that the victim will be exposed to further danger or abuse if the intervention order was not in place.

An **interim order** is effective immediately. It may be issued when police attend a violent incident and immediate protection of the victim is necessary to ensure their safety. Although issued by the police, the accused must follow up by appearing in a Magistrates Court for the order to be confirmed, changed or revoked.

A **full intervention order** is issued if there is no urgency to obtain an order. Police collate information before submitting it to court for a permanent intervention order. The court reviews the information and conducts a hearing before deciding upon an intervention outcome. An intervention order exists until it is revoked or changed by the court. If the accused breaks a condition of the order, they may be charged with a criminal offence.

**Collaborative Activity**

In small groups research and discuss the pros and cons of intervention orders using the examples below to support your arguments.

Hannah Clarke and her children were murdered in February 2020 in Queensland, by her estranged husband. She had intervention orders in place.

<https://www.abc.net.au/news/2020-03-10/hannah-clarke-domestic-violence-law-cant-keep-women-safe/12041184?nw=0>

John Edwards killed his teenage children earlier in 2020 and then himself. There was no intervention order in place. He had been planning the attack for 2 years. Would an intervention order prevented this tragedy?

<https://www.smh.com.au/lifestyle/life-and-relationships/the-problem-with-avos-20180710-p4zqmk.html>

Charging The Accused

If there is sufficient evidence an accused will be charged with an offence. It is the responsibility of the police, based on evidence, to make charges against a person. Depending upon the type and nature of the offence, bail may be offered to the accused. The purpose of **bail** is to ensure that the accused will appear in court at the determined time and to behave appropriately whilst on bail. It is estimated that around 1/3 of people charged with a crime will re-offend whilst on bail. This has led to significant discussions regarding bail reform. Bail is decided upon by either the police or the court. Bail allows the accused to be released from custody on certain conditions. Bail is not granted in all circumstances.

Bail	
Bail Conditions	Conditions for Bail Not Being Granted
The accused attends all relevant court hearings	The severity of the offence
The accused conforms with any bail conditions set by judge such as living arrangements, following intervention orders, being supervised by a corrections officer or regularly reporting to police.	Risk of accused being a further threat to society or not following bail conditions
	The safety of victims

Figure 5.4.1: Bail Conditions.



Should bail conditions be more rigorous? Why?

If bail conditions are not met by the accused, they forfeit a sum of money. Bail conditions can be used to protect a victim. The victim has their rights protected through the Victims of Crime Act 2001(SA) and the Bail Act 1985(SA). Police are obliged to present the victim's safety fears at the bail hearing.

**Research Activity**

Research the murder case of Jill Meagher. Provide a summary on the case, including:

- Facts of the case
- How this case influenced bail conditions and discussions
- How these changes support the safety of the community.

Then provide an analytical response to: Is adequate protection provided to victims of crime?

Victims and Police

For many victims, police are the first contact with the criminal justice system. The way victims are treated can influence their perception of the investigations and the case. The Police Department in South Australia has established some specialist units such as the sexual assault unit to be able to deal with situations in an informed manner with empathetic officers and specialised services.

 Why might specialist police units be valuable in supporting victims of crime and their cases?

Despite the accused being charged, there are circumstances when the police may drop or amend the original charges. This may occur if the DPP believes that there is insufficient evidence for a conviction to occur. Evidence may also lead to a lesser charge being made.

Charge bargaining is when the defendant pleads guilty to a lesser charge than the original charge that was filed against them.

 In what circumstances might charge bargaining occur?

Plea bargaining is an agreement made between the prosecutor and the defendant, for a guilty plea to be submitted in return for a more lenient sentence. The Victims of Crime Act 2001 entitles victims to be consulted and have their views taken into consideration for plea

Offers which are made to the DPP. However, the DPP makes their independent judgment to accept or reject a plea offer.

Research Activity

Using the following link, research and write an analytical response which examines the process of plea bargaining, the rights of the accused and the rights of the victims. Plea negotiations and charge bargaining | Office of the Director of Public Prosecutions (dpp.sa.gov.au) - <https://www.dpp.sa.gov.au/court-process/plea-negotiations>

Victims and Prosecution

Some victims never see their cases result in prosecution. If the suspect enters a guilty plea it means victims don't get to go to court to tell their story. Once a guilty plea has been submitted there is no need for the trial to prove guilt beyond reasonable doubt. Once guilt has been established the court will then move on to sentencing. A guilty plea usually means that the offender will be given a reduced punishment.

 List the positive and negative impacts that legal proceedings might have on a victim.

Positive impact _____

Negative impact _____

Court Processes and Victims

Some victims of crime might find the court processes difficult and overwhelming, as the focus is on the accused. Victims may feel as though there is a lack of safe waiting areas and facilities that separate them from the accused and defence witnesses. If a not guilty plea is entered victims may resent the amount of time that they have to spend waiting to give evidence. It is also not uncommon for victims to have difficulty following the court proceedings due to insufficient information. The court process can help some victims feel as though justice has been achieved, however, the opposite may also occur where victims might feel re-victimised through the process and dissatisfied with the outcome.

Victims may also feel discouraged by the **double jeopardy** principle. Double jeopardy means that the accused should not be punished or prosecuted more than once for the same offence. Double jeopardy aims to avoid a double conviction or double punishment. However, in South Australia, changes have been made to the Criminal Procedure Act 1921(SA) to state that the double jeopardy principle no longer applies under certain circumstances for some indictable offences.

At times, victims may feel frustrated as the adversary systems of trial demonstrates and upholds the rights of the accused. The presumption of innocence for the accused is critical for a fair trial to be conducted. As outlined earlier, page 105, the accused are afforded a range of legal rights.



List the legal rights of the accused? Do you believe these rights uphold the concept of justice?



View



For further information watch: Justice system not helping victims' feelings:

<https://www.youtube.com/watch?v=4aX5ii2tA64>



Identify the problems with justice system for victims?

Suggest some ways that that improvement or reform could occur within the system.

Victims and Sentencing

If the accused is found guilty of the crime, a victim may be able to influence the punishment they receive. This may be through the information which is presented in a victim impact statement. When a criminal is found guilty, it is the responsibility of the judge to determine the sanction (punishment) they will receive. They are guided by the Criminal Law (Sentencing) Act 1988(SA). Some of the possible sanctions include:

- No Penalty (very minor crimes)
- Fine
- Community Service
- Good Behaviour Bond
- Jail Sentence.



View



For further information on Justice Journey – Sentencing, watch:

<https://www.youtube.com/watch?v=bjLu0Dza5Mg>



Why is it necessary for a range of considerations to be made regarding sentencing?

**Collaborative Activity**

Create a 2-minute video or presentation on one type of penalty to share with the class.

Include:

- A definition or explanation of the sanction
- How this sanction might fulfil the aims of punishment
- Types of offences where this sanction may be applied
- How sanctions relate to justice for the victim.

Depending on the different circumstances, the sanction may vary for the same offence. The court is guided by the Criminal Law (Sentencing) Act 1988 as well as the outcomes of previous cases. Judges are guided by minimum and maximum sentences for different crimes. In sentencing, courts are required to consider a range of aspects such as:

 Sentencing Considerations	
Circumstances of Offender	The co-operation of the Offender
Offender's Plea	Offender's Criminal History
Character, Age, Mental Condition and Financial Situation of Offender	Offender's Remorse
Rehabilitation Prospects	Impact of Offender's Family, particularly children
Injury, Loss or Damage as a result of the crime	Injury, Loss or Damage as a result of the crime
Circumstances of the Victim(s)	Protection of the Community
Appropriate Punishment	A deterrence for Offender and Others.



Why do courts need to consider the above factors before deciding upon a sentence?

**View**

Activity One: For further information watch and an episode of 'Court Justice: Sydney'.



Discuss the Criminal Justice Process. How did the episode focus on:

- the accused.
- the victim.

Activity Two: Watch a range of YouTube clips on the Port Arthur Massacre. Then respond to:

- provide an overview on the event in relation to the criminal justice process
- changes made to the Australian laws as a result of this event
- classify the victims of crime and provide discussion on the impact of this event.

Victims Register

Within the Department of Correctional Services, a **victims register** is maintained. A victim is permitted to be listed on the register if they have been subjected to a criminal offence and the accused has a conviction for the crime. There is a range of benefits for a victim to be registered, although it is not compulsory. The Correctional Services Act 1982 (SA) entitles the victim to be updated on the offender with regard to a range of issues such as:



Figure 5.5.1: Victims Register Knowledge Entitlements.

 View



For further information on Community Correction Order and Parole Conditions, watch:

<https://www.youtube.com/watch?v=gRWTK2QfnYA>

If a prisoner applies for **parole** – the victim is entitled to make a submission to the Parole Board. The Parole Board can consider the victim's statement when reaching its decision to release the offender and the conditions. The Parole Board will consider the effect that the release of the offender might have on the registered victim. The Correctional Services Act 1982 (SA), section 85D clearly outlines the range of information that is available to victims of crime.



List a positive and a negative of a victim being placed on a victims register.

Positive impact _____

Negative impact _____

 View



For further information on Justice for Victims of Crime, watch:

<https://www.youtube.com/watch?v=tMUPH0-OVGg>

Victim Compensation

A victim of a crime can be entitled to some compensation, through the following means:

1. Criminal Injury Compensation

As part of their sentence, an offender can be forced to pay money to compensate the victim for injury, loss, or damage. The amount depends on the harm done and the jurisdiction of the court. It is most often awarded for damage to property or personal possessions.

2. A Civil Claim

The victim may take civil actions, against the offender. The court can order the offender to pay for damages suffered by the victim. However, this does not usually happen, as the offenders often do not have the funds to pay for compensation.

3. Victims of Crime Levy

The Victims of Crime Act regulates a fund to provide compensation to victims when the offender cannot. This money comes from the Victims of Crime Levy. Any time a person is found guilty of an offence (which has a fine) or is found guilty in court, they are ordered to pay into the fund. This fund is available for people who have been injured as a consequence of a crime.



Provide some suggestions on improvement or reform to victim compensation.

Restorative Justice

Depending upon the nature of the crime and the outlook of the accused, there are circumstances where **restorative justice** may be used to repair the damage which has been done by the crime committed. Restorative justice is a process which concentrates on the rehabilitation of the offenders. This is achieved through measures that help reconciliation with the victims.

Within the restorative justice process, the **victim-offender mediation** programme has demonstrated a high degree of success in terms of victim satisfaction on justice being achieved and remorse and reduction in criminal behaviour by offenders.

Victim-offender mediation is facilitated by a trained mediator who supports the victim and the offender to resolve their conflict and provide a solution to achieving justice, concerning the crime committed. Victims and offenders are provided with the opportunity to express their circumstances, perceptions, and feelings about the crime, is not necessarily the case when cases are heard before a court. Participation in victim-offender mediation is a voluntary process for both parties.



List the benefits of victim-offender mediation.



View



For further information watch:

What is restorative justice <https://www.youtube.com/watch?v=ZfQhfN6PxPI>

Victims guide to restorative justice <https://www.youtube.com/watch?v=u5OhRINLQVQ>



What are the benefits and challenges of Restorative Justice?

Commissioner of Victims' Rights

The Commissioner for Victims' Rights exists to help people who have been harmed by criminal offences. This role was first established in 1985 when the South Australian Parliament passed the Declaration for Victims of Crime, governing the treatment of victims of crime. It offers them:

- Counselling support and advocacy
- Information about their rights and how to claim compensation
- Specialised support
- Court preparation programs
- Court companion
- Review court processes that impact on a victim.

The Commissioner for Victims' Rights is appointed to the position by the Governor. Their role is to be mindful of the allocation of government resources that they may be apportioned efficiently and effectively to best benefit victims. They assist victims in their dealings with the criminal justice system, including prosecution authorities, government agencies, and court proceedings.

Research Activity

Discover more about the Commissioner for Victims' of Crime at their website:

<http://voc.sa.gov.au/about-us>. Then respond to the questions below.

1. Who is the current Commissioner for Victims Rights? When did she commence in this position?
2. Who was South Australia's first Commissioner for Victims Rights? What year was this established?
3. Provide an overview of the importance of this position.

Collaborative Activity

In some cases, tragedy has led to victims of crime achieving positive outcomes. With reference to a case where this has occurred, present a summary to the class. You may wish to view the 60 Minutes episode of Courage, Strength, and Hope to support this activity. Below are some people and cases you may wish to use:

- Bruce and Denise Morcombe for improving child safety.
- Ralph and Kathy Kelly have changed laws to reduce alcohol-related violence.
- Noelle Dickson on change to Victoria's bail and parole laws.
- Oliver and Rosemarie Zammit promoting organ donation.
- Rod Bridge on synthetic drugs to be banned substances
- Rosie Batty on domestic violence.

In your presentation you could include:

1. Research and summarise the events of the case.
2. Identify the primary, secondary and tertiary victims in this case.
3. Explain the role of the institutions of government in this case. You are encouraged to address the legislature, executive and judiciary separately.
4. Do you believe that this response was/is appropriate?
5. Discuss how an individual can change and influence the legal system. What does this demonstrate about victims of crime?



Review Activity

5

1. Is the protection of victims in the criminal justice system satisfactory?

2. Summarise the role of the

a. Legislature

b. Executive and

c. Judiciary in supporting victims of crime.

3. Explain the strengths and weaknesses of victim-offender mediation. Evaluate the cases where this might have a successful outcome as opposed to the cases which require the criminal justice system to resolve an outcome.

4. Complete relevant key words at the end of this chapter.

Chapter Review

Chapter Checklist

You should now be familiar with the following concepts:

Chapter 5 – Key Concepts		
Victims and Victimology	Victims Crime and victims Impact of crime on victims Victimless crime	<input type="checkbox"/>
Victims rights and support	Rights of victims Victim support services Victim Impact Statements Relevant legislation	<input type="checkbox"/>
Victims and the Criminal Justice System	Criminal justice processes, including police, prosecution, courts. Victims and sentencing Victim compensation Restorative justice Commissioner for victims rights	<input type="checkbox"/>

Key Words

Victim: _____

Victimology: _____

Primary victim: _____

Secondary victim: _____

Tertiary victim: _____

Ripple effect: _____

Victimless crime: _____

Criminal offence: _____

Victims of Crime Act: _____

Director of Public Prosecutions: _____

Victim impact statement: _____

Criminal injury compensation: _____

Community impact statement: _____

Victim support service: _____

Intervention order: _____

Interim order: _____

Charge bargaining: _____

Plea bargaining: _____

Double jeopardy: _____

Victim register: _____

Parole: _____

Restorative justice: _____

Victim-offender mediation: _____

Commissioner for Victims Rights: _____

Revision Questions

Complete the questions below to consolidate your learning on this topic.

1. Who is a victim of crime?
2. Using examples, what are the different types of victims?
3. What is the ripple effect of crime?
4. Why are victimless crimes classified as a criminal activity?
5. Define the different types of support services available to victims of crime.
6. Explain the purpose of a victim impact statement.
7. Why might the counselling of victims of crime be paid for by the state?
8. Discuss the different methods that might be used for protecting victims of crime.
9. Why are different types of intervention orders necessary?
10. Why might victims of crime feel that the criminal justice process is unjust?
11. Outline the concept of the Victims Register. Why is it important?
12. Evaluate why the restorative justice process might achieve better outcomes in resolving crimes.

Extension Questions

Respond to the following questions.

1. Is there an imbalance between the rights of the victim and the rights of the accused?
2. Should victims play a role in the sentencing process?
3. Evaluate how the notion of justice might change over time.
4. Are the rights of victims of crime adequately protected?
5. To what extent does the degree of suffering of the victim aligns with the penalty imposed for the crime committed?
6. Write a persuasive letter to the Attorney-General in SA, about the need for victims to have a voice in the criminal justice process.

CHAPTER SIX

ASSESSMENT ADVICE

Assessment Type 1 | Analytical Response

The Task

An analytical response requires you to research, collect and analyse information, problem solve and finally evaluate your findings to draw conclusions or make justified recommendations. It requires you to demonstrate critical thinking skills and use supporting evidence for your ideas based on the task expectations.

An analytical response task can take a range of different formats and could be one of the following:

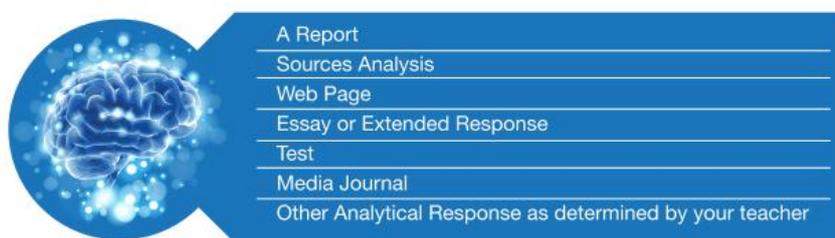


Figure 6.1.1: Range of Analytical Responses.

Some skills to consider when completing an analytical response might be working collaboratively, brainstorming, discussing, applying and evaluating. Typically, analytical responses should take into consideration the following skills:

Planning Your Analytical Response

The type of task will very much determine your planning and preparation processes. For example, if you were to complete a report, webpage, essay or media journal, you may wish to take the following approach.



Figure 6.1.2: Analytical Response Skills.

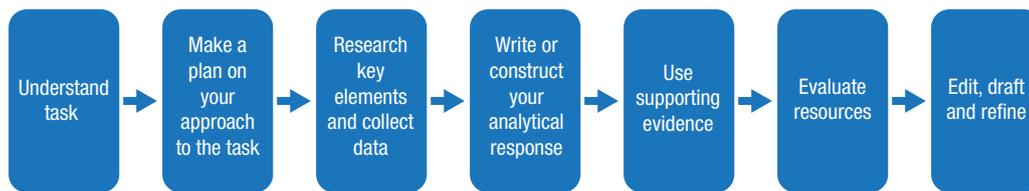


Figure 6.1.3: Analytical Response Approach.

However, if your analytical task was completed under supervision such as a test, essay or response to stimulus, your approach might be:

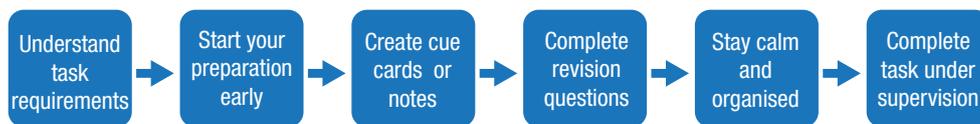


Figure 6.1.4: Analytical Response Under Supervision Approach.

Despite the task type, you are encouraged to use supporting evidence to demonstrate your ability to apply and analyse information. Supporting evidence might include relevant cases, legislation or scenarios.

Presenting Your Analytical Response

The presentation of your analytical response will be determined by the task requirements. However you are encouraged to engage in discussions and work collaboratively, if relevant to the assessment. Analytical responses should include information that is factual which is based on evidence. This should be further supported with justified conclusions or recommendations that drawn upon reliable sources.

Regardless of the task requirements, it is suggested that you present your arguments in a thoughtful and analytical manner which reflects evidence of deep and critical thinking. It is also strongly recommended that you demonstrate your depth of research and sources by referencing and providing a bibliography where appropriate.

Your analytical response may be presented in one of the following formats:

- Written format – 1200 words
- Oral presentation – 7 minutes
- Multi-modal format – equivalent of the above expectations.

The nature of the task will determine your presentation method. For example: the test requirement and expectation will be different to that of a report. The key element to remember is that your final submission should reflect your application and depth of knowledge of legal concepts.

Analytical Response Assessment Criteria

Assessment Design Criteria:

For this assessment type, you may be required to provide evidence of learning in relation to the following assessment criteria:

Does your Analytical Response demonstrate that you can:		
Understanding & Application	Understand and apply legal principles and processes Understand key legal concepts Research diversely, apply and acknowledge sources	<input type="checkbox"/>
Analysis & Evaluation	Analyse legal principles and processes Evaluate legal arguments, reaching a justified conclusion	<input type="checkbox"/>
Communication, Collaboration & Reflection	Effectively communicate legal concepts – consider terminology, collaboration and reflection	<input type="checkbox"/>

Assessment Type 2 | Inquiry

The Task

In Legal Studies it is important to be aware of current local, national and global events and the relationship that they have to the law and everyday life. Being able to identify how the law impacts upon you daily will not only help your general knowledge, but also develop your analytical skills.

The inquiry is a research task where you identify and select a current legal issue or concept. You should research, prepare findings, analyse, evaluate and make justified conclusions in regards to your legal issue. The following diagram may provide a guide for approaching this task.

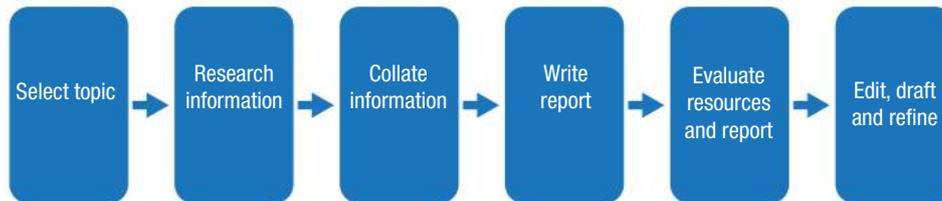


Figure 6.2.1: Inquiry Approach.

It could be valuable for you to research from **primary** and **secondary** sources of information. Integrating supporting evidence into your arguments through the use of media articles, relevant cases and legislation is also beneficial. This will help you to present a sophisticated evaluation of your legal arguments.

Selecting an Inquiry Topic

It is very important that your legal issue does not deviate into a social discussion, but clearly addresses the legal implications of your issue. You should also be mindful that your issue has the scope to present opposing and diverse opinions. In order to help you decide on a topic, think about an issue that you have a genuine interest in.



Figure 6.2.2: Inquiry Topic Ideas.

Remember, that the way you structure your topic question will determine the success of your research. Many students use the phrase “To what extent does.....” as a starting point. Phrasing your question in this manner will help guide you to examine differing points of view.

Learning Activity

6

Ensure that your topic is not too broad or lacks depth to enable you to adequately analyse the implications to fulfill the requirements of this task.

1. List possible Inquiry topics you are interested in:

2. Select one of the above ideas and frame into a question

To what extent.....

3. Research and list some of the resources that might be valuable in helping you to gain a deeper understanding of your issue, including relevant media articles

4. Complete the following table:

Identify the legal issue	
How does this issue relate to the legal system?	Legislature: Executive: Judiciary:
Who is affected by the issue? Why and how?	
Why is this issue important for Australian society?	
What are the challenges of this issue?	
Summary on your opinion of the issue	

Planning Your Inquiry

Planning your inquiry is important. Your issue should be one that you can follow over a number of weeks so that you can continue to build on your depth of knowledge. It is suggested that you develop a plan to help structure your Inquiry. You may wish to consider the following approach:

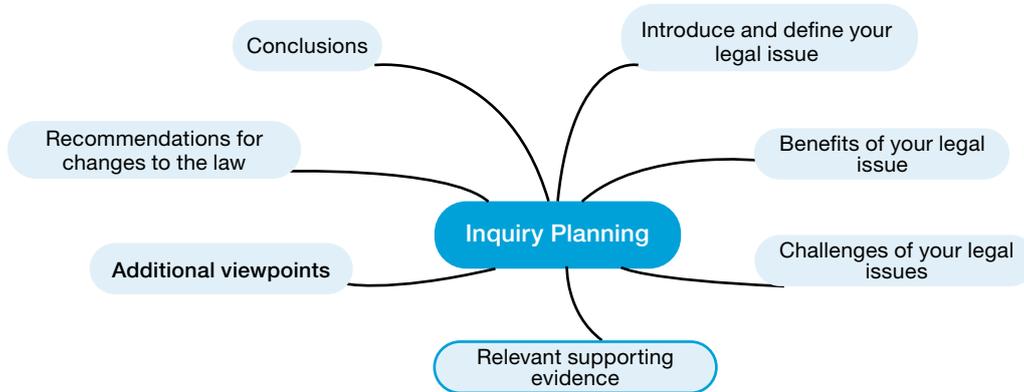


Figure 6.2.3: Inquiry Planning.

Presenting Your Inquiry

Your Inquiry may be presented in **one** of the following formats:

- Written – 1200 words
- Oral Presentation - 7 minutes
- Multi-modal format – equivalent of the above expectations

It is recommended, that regardless of the format you select, you present your arguments in a logical and sequential manner that reflects evidence of your deep thinking and research.

When presenting your work for assessment, the following approach and checklist may be helpful.

Have you included?		
Title page	Including task name, assessment type, your SACE number, word count	<input type="checkbox"/>
Introduction	An introductory statement outlining your legal issue	<input type="checkbox"/>
Body	Discussion of the legal implications including a range of diverse views and opinions	<input type="checkbox"/>
Evidence	Through the use of relevant media article, legislation and cases. It could also integrate evaluation of primary and secondary sources of information	<input type="checkbox"/>
Conclusion	Justified conclusions and recommendations	<input type="checkbox"/>
Referencing	Appropriate acknowledgment of sources	<input type="checkbox"/>
Bibliography	Primary and secondary sources	<input type="checkbox"/>

Inquiry Assessment Criteria

Assessment Design Criteria:

For this assessment type, you are required to provide evidence of learning in relation to the following:

Does your Inquiry demonstrate that you can:		
Understanding & Application	Understand legal principles and processes Understand key legal concepts Research diversely, apply and acknowledge sources	<input type="checkbox"/>
Analysis & Evaluation	Analyse legal principles and processes Evaluate legal arguments, reaching a justified conclusion	<input type="checkbox"/>
Communication, Collaboration & Reflection	Effectively communicate legal concepts – consider terminology, collaboration and reflection	<input type="checkbox"/>

Assessment Type 3 | Presentation

The Task

Your presentation is an opportunity for you to work collaboratively where you can creatively demonstrate your legal knowledge and then individually reflect on your presentation. There is flexibility in the format of your presentation, however, it must include an element of oral communication. You may wish to consider producing one of the following:



Figure 6.3.1: Presentation Ideas.

Planning Your Presentation

Working Collaboratively

Your presentation is a collaborative task, so when constructing and working in your group it might be beneficial to look at the strengths of your group to determine role allocation. Sharing your ideas and skills in a group will enhance your interpersonal skills and critical thinking – both important assessment elements.

Group Roles & Responsibilities

Working as a group and planning your presentation together is important for success in this task. It is suggested that you develop a plan, so that each group member has an allocated role to play.

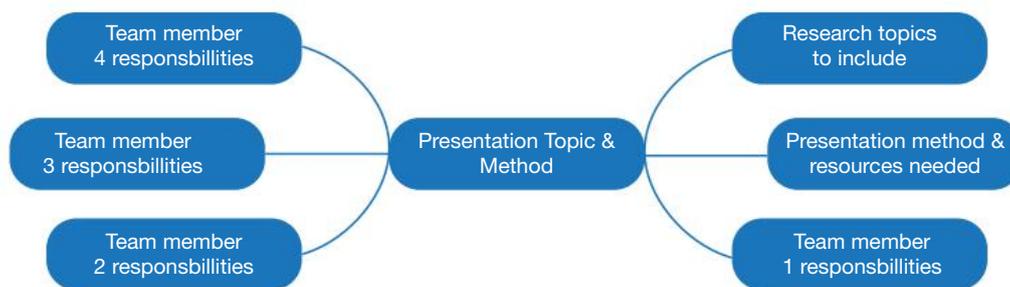


Figure 6.3.2: Presentation Topic and Method.

Presenting Your Presentation

Regardless of the format you use, it is important to understand your audience and to consider interesting content and presentation methods. Some points to consider when planning your presentation might include:



Figure 6.3.3: Presentation Tips.

Additionally, there are many online resources that you may wish to consider using to enhance your presentation.

Your presentation may take a wide variety of formats, however it must include a collaborative oral component and an individual reflection.

Collaborative Component

- Collaborative Oral Component - 7 minutes

Individual Component

- Individual Reflection – 500 words

Your reflection should be appropriately presented and could include:

- An evaluation of your role in the collaboration process and presentation
- Your development of knowledge from a legal perspective (what have you learnt?) and the personal skills you have developed by completing this task
- Benefits and challenges of this task; including:
 - a) team compromise and support
 - b) how the challenges were overcome.

Learning Activity

Try to ensure that your reflection is an indication of your experiences and enables you to adequately fulfill the requirements of this task.

1. What have you contributed to the presentation and your group? You should consider this from both a personal and legal perspective

Skills	Knowledge

2. What personal skills and legal knowledge have you developed or learnt from your group members?

3a. What were the benefits and challenges of this activity?

Benefits	Challenges

3b. How did you resolve or deal with these challenges?

When presenting your work for assessment, the following approach and checklist may be helpful:

Have you included?		
Title	Including task name, assessment type, your SACE number, word count	<input type="checkbox"/>
Part 1	Collaborative – consider including a copy or script of your presentation and visual materials	<input type="checkbox"/>
Part 2	Individual Evaluation	<input type="checkbox"/>
Bibliography	Primary and secondary sources	<input type="checkbox"/>

Presentation Assessment Criteria

Assessment Design Criteria:

For this assessment type, you are required to provide evidence of learning in relation to the following:

Does your Presentation demonstrate that you can:		
Understanding & Application	Understand legal principles and processes Understand key legal concepts Research diversely, apply and acknowledge sources	<input type="checkbox"/>
Analysis & Evaluation	Analyse legal principles and processes Evaluate legal arguments, reaching a justified conclusion	<input type="checkbox"/>
Communication, Collaboration & Reflection	Effectively communicate legal concepts – consider terminology, collaboration and reflection	<input type="checkbox"/>

SACE Legal Studies | Performance Standards

6

The performance standards describe five levels of achievement, A to E.

Each level of achievement describes the knowledge, skills, and understanding that teachers refer to in deciding how well students have demonstrated their learning on the basis of the evidence provided.

During the teaching and learning program the teacher gives students feedback on their learning, with reference to the performance standards.

At the student's completion of study of a subject, the teacher makes a decision about the quality of the student's learning by:

- referring to the performance standards
- taking into account the weighting of each assessment type
- assigning a subject grade between A and E.

Performance Standards for Stage 1 Legal Studies

	Understanding and Application	Analysis and Evaluation	Communication Collaboration and Reflection
A	<p>Astute application of concepts to demonstrate understanding</p> <p>Astute application of legal principles and processes to demonstrate understanding</p> <p>Thorough and focused research to select and appropriately acknowledge a range of relevant sources</p>	<p>Perceptive analysis of legal principles, processes and concepts or problems</p> <p>Sophisticated evaluation of legal arguments to reach a convincing conclusion and where appropriate make persuasive recommendations</p>	<p>Highly effective in the communication of concepts, legal principles and arguments</p> <p>Highly effective and consistent collaboration to achieve insightful, and effective outcomes</p> <p>Insightful and perceptive reflection on learning, and the personal and group skills required to achieve a successful collaborative outcome</p>
B	<p>Substantial application of concepts to demonstrate considerable understanding</p> <p>Substantial application of legal principles and processes to demonstrate considerable understanding</p> <p>Substantial research to select and appropriately acknowledge a range of relevant sources</p>	<p>Substantial analysis and application of legal principles, processes and concepts or problems</p> <p>Well-considered evaluation of legal arguments to reach a mostly convincing conclusion and where appropriate make appropriate recommendations</p>	<p>Effective in the communication of concepts, legal principles and arguments</p> <p>Effective and consistent collaboration to achieve effective outcomes</p> <p>Well-considered reflection, on learning, and the personal and group skills required to achieve a successful collaborative outcome</p>
C	<p>Adequate application of concepts to demonstrate generally sound understanding</p> <p>Adequate application of legal principles and processes to demonstrate generally sound understanding</p> <p>Adequate research, selection and acknowledgement of a range of relevant sources</p>	<p>Moderately considered analysis and application of legal principles, processes and concepts or problems</p> <p>Mostly sound evaluation of legal arguments to reach a conclusion and where appropriate make recommendations</p>	<p>Moderately effective in the communication of concepts, legal principles and arguments</p> <p>Moderately effective collaboration to achieve satisfactory outcomes</p> <p>Adequate reflection on learning, and the personal and group skills required to achieve a successful collaborative outcome</p>
D	<p>Some application of concepts to demonstrate partial understanding</p> <p>Some application of legal principles and processes to demonstrate partial understanding</p> <p>Basic research, selection and acknowledgement of a range of relevant sources</p>	<p>Some analysis and application of some legal principles, processes and concepts or problems</p> <p>Partial evaluation of legal arguments and where appropriate, some substantiated recommendations</p>	<p>Some communication of concepts, legal principles and arguments</p> <p>Some collaboration with other students</p> <p>Some reflection on learning, and the personal and group skills required to achieve a successful collaborative outcome</p>
E	<p>Limited application of concepts to demonstrate emerging understanding</p> <p>Limited application of legal principles and processes to demonstrate emerging understanding</p> <p>Rudimentary research, selection and acknowledgement of a range of sources</p>	<p>Limited analysis of some legal principles, processes and concepts or problems</p> <p>Limited consideration of some legal arguments with no or uninformed recommendations.</p>	<p>Limited success in the communication of concepts, legal principles and arguments</p> <p>Limited collaboration with other students</p> <p>Rudimentary reflection on learning, and the personal and group skills required to achieve a successful collaborative outcome</p>