

# Jacaranda Civics & Citizenship Alive 10 for the Australian Curriculum

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

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ISBN: 978 0 7303 2815 5 (eBook)

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# Chapter 1: Government in our region

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# 1

## Government in our region



# 1.1 Overview

## 1.1.1 Australia and democracy

Australia is an important member of the Asia region. Our system of government is very similar to those of other Asian countries such as Japan, India and Indonesia, but there are also some differences. One of the key features of the system of government in Australia is **democracy**, which means that **sovereignty** lies with the people. It is the Australian people who determine how they will be governed. Australian democracy has certain values. These include freedom of election and being elected, freedom of assembly and political participation, freedom of speech, freedom of expression, support for parliamentary democracy, freedom of religious belief, support for the rule of law and support for other basic human rights.

**FIGURE 1** Australian society and system of government value freedom of speech, freedom of election, equality, freedom of religion, parliamentary democracy and the rule of law.



In this topic we compare the values associated with the system of government in Australia with the values associated with other countries in the Asia region.

**FIGURE 2** The Prime Minister of Australia, Malcolm Turnbull and the President of Indonesia, Joko Widodo greet the crowd in Jakarta in November, 2015.



## **on** Resources



**Watch this eLesson:** [Values of governments in our region](#)

Searchlight ID: [eles-2374](#)

## 1.1.2 Diplomatic tensions: Australia and Indonesia

International relations between Australia and Indonesia soured in April 2015, when two Australian citizens convicted of drug trafficking in Indonesia were executed by firing squad. Many high profile Australians, including politicians, lobbied the Indonesian government to overturn their sentence to the lesser sentence of life imprisonment. The Indonesian President, Joko Widodo, was defiant and offended that Australia and other countries would intervene in their system of law.

**FIGURE 3** Andrew Chan and Myuran Sukumaran: Australians convicted of drug trafficking in Bali, Indonesia, and later sentenced to death by firing squad.



## DISCUSS

1. Do you think Australia had a responsibility to advocate on behalf of the Australians, Myuran Sukumaran and Andrew Chan, or should the Australian Government not intervene in legal matters involving citizens overseas? Discuss in a small group of 4–5 students.
2. International pressure was mounting for Indonesia's president to stop the imminent execution of up to 10 drug convicts, including Andrew Chan and Myuran Sukumaran, as well as nationals from other countries. Do you think Indonesia should have been sanctioned by Australia or other countries for their refusal to stop the executions? Give reasons for your response. [Intercultural capability VCICCD019, ethical capability VCECU020]

**FIGURE 4** Indonesian policemen on guard in Cilacap, Indonesia, as family members travel to Nusakambangan prison island to visit Myuran Sukumaran and Andrew Chan before their executions.



# 1.2 Key features of Australia's system of government

## 1.2.1 Australia's system of government

Before **federation**, Australia consisted of six colonies: New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia. Each colony had its own government and the power to make laws under the control of the British monarch. During the late 1880s and 1890s, there was increasing support for the idea of the six self-governing colonies joining together to become one united nation. The Commonwealth of Australia was formed on 1 January 1901. The colonies — now called states — agreed to keep some of their law-making powers and hand over others to the new Commonwealth Parliament.

**FIGURE 1** Parliament House in Canberra, the home of the Commonwealth Parliament

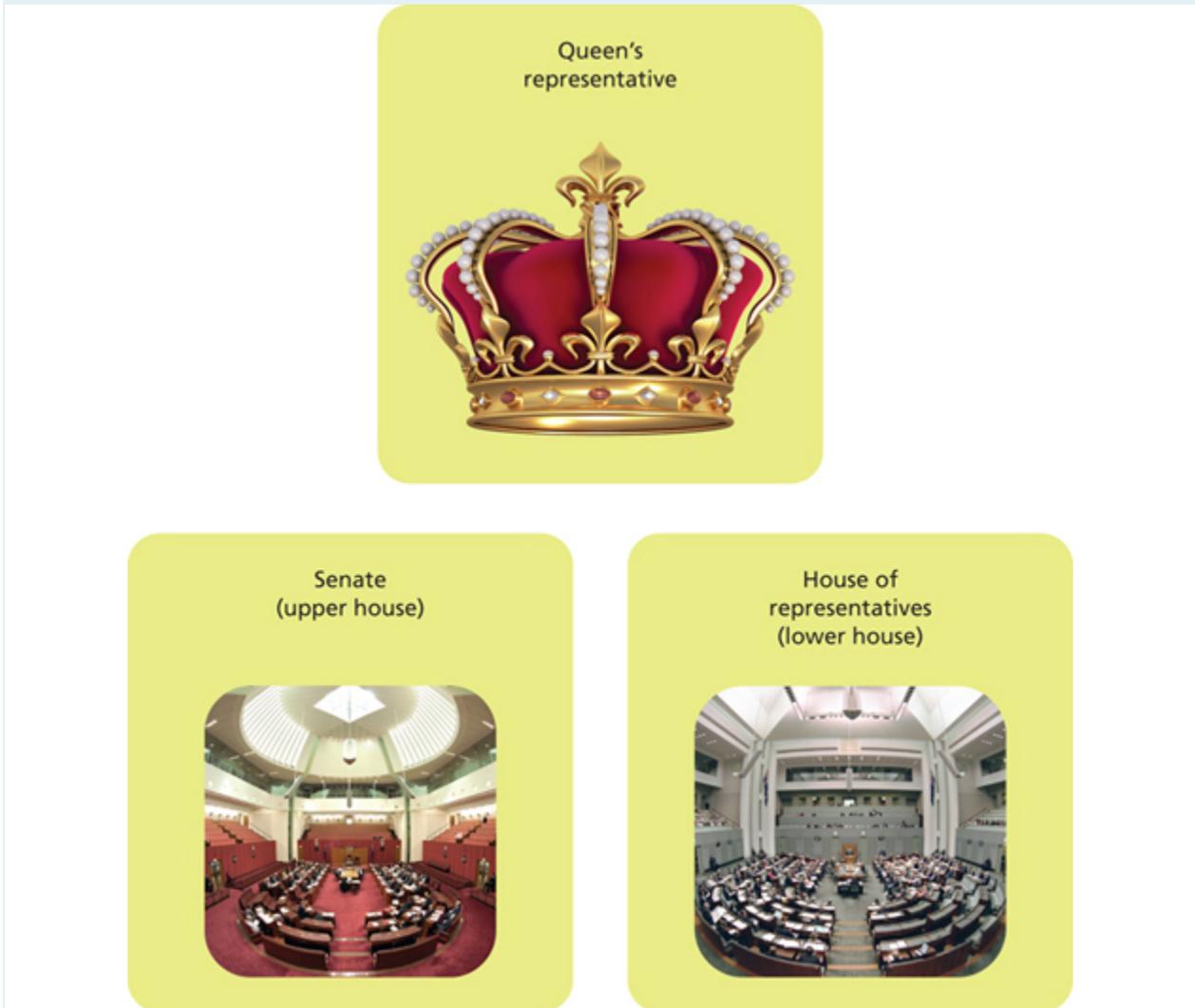


Australia's system of government is based on the idea of democracy. Australia is an independent country governed by a **constitutional monarchy**, with three levels of government — federal, state and local. The Australian **Constitution**, which came into force on 1 January 1901, defines the powers and authority of the federal and state governments. The *Commonwealth of Australia Constitution Act 1900* is an Act of British Parliament that sets out the framework for the government of Australia. The law-making powers of the Commonwealth Parliament are listed in the Australian Constitution, and there is a division of powers between the Commonwealth and the states. Some law-making powers are passed to local governments.

The political system in Australia is based on Britain's **Westminster system**. This means that the Commonwealth Parliament and all state parliaments except Queensland are **bicameral**: they each have two houses. These bicameral parliaments consist of the **Crown**, a lower house and an upper house. The parliaments of Queensland and the territories are **unicameral**. The reigning British monarch, or Crown, is the head of each parliament. (This is currently the Queen.) The Crown is represented by the Governor-General in the Commonwealth Parliament and by a governor in each state parliament. All of Australia's self-governed territories, except the Australian Capital Territory, have administrators.

The people of Australia choose the members of the lower house and the upper house. The members of the winning party or coalition in a federal election choose the Australian prime minister.

**FIGURE 2** Australia's federal parliament consists of the Crown (the Queen or the Queen's representative, the Governor-General), the upper house (the Senate), and the lower house (the House of Representatives).



## 1.2.2 Separation of powers

The governments of democracies like Australia have three arms or branches: legislative, executive and judicial. In Australia, the framework for the operation of government is the Constitution. It provides for the idea of the **separation of powers**. This allows each arm of government to check and balance the powers of the others and thereby maintain a fair and just society.

### The legislative arm

The legislative arm (or legislature) refers to parliament's function to make new laws or to change or remove existing ones. Under the Constitution, parliament is the supreme law-maker. Commonwealth Parliament consists of the House of Representatives (the lower house) and the Senate (the upper house), as well as the Crown (the Governor-General as the representative of the Queen). Any draft law is known as a Bill. To become a law, the Bill must be read, debated and voted on by both houses of parliament and then approved by the Governor-General. A law that has been passed by parliament is called legislation, a statute or an Act.

### The executive arm

The **executive** arm administers the legislation passed by parliament. Executive power officially lies with the Governor-General or the Governor, representing the Crown, but government ministers and the public service actually exercise this power. For example, the department of health is an Australian public service department that administers the running of Australia's health system. The head of this department reports to the minister for health.

### The judicial arm

The judicial arm (consisting of the **judiciary** and the courts) makes judgements about the law. It is responsible for settling disputes and enforcing the law. The High Court of Australia is responsible for interpreting and applying the Constitution. It ensures that the other arms of government do not act in a way that is outside the powers granted by the Constitution. The judiciary can for example declare that laws passed by parliament are unconstitutional, or require particular actions if they believe that a branch of government is not performing a constitutional duty.

**FIGURE 3** The division of powers and separation of powers in Australia



### 1.2.3 Elections in Australia

One of the key features of Australia's democratic system of government is that every few years Australians are given the opportunity to choose who they want to represent them in elections. This occurs at all three levels of government:

- The people of Australia vote to elect members into both houses of federal parliament.
- The people of a state or territory vote to elect members into their state or territory parliament.
- The residents or property owners in a local council area are eligible to vote for local council representatives.

Voting in Australian elections is compulsory for all citizens over 18 years of age.

### The House of Representatives

When you vote for the House of Representatives in a federal election, you are given a green ballot paper like the one shown in [figure 4](#). You must place a number in the box beside each candidate. You write the number 1 beside the name of the candidate you most prefer. This is your first-preference vote. You write the number 8 (if there are eight candidates) beside the name of the person you least prefer. For your vote to be formal you must place a number, in your preference order, in every box. The voting system for the House of Representatives in Australia is called a **preferential system**.

To win a seat in the House of Representatives, a candidate must get an **absolute majority** — half the number of **formal votes** plus one. Some candidates are lucky; they get an absolute majority with first-preference votes. When no candidate has an absolute majority of first-preference votes, voter preferences are counted.

This system is different from the **first-past-the-post** voting method used in many other countries. Also known as the simple plurality or simple majority system, the first-past-the-post method require voters to simply mark their preferred candidate. In countries that use this voting system — including Canada, Japan, India, the United Kingdom and the United States — the candidate receiving the largest number of votes (plurality) is elected to office. There is no requirement that the winner of an election should gain an absolute majority of votes. He or she must only gain a plurality.

## The Senate

When you vote for the Senate in a federal election, you are given a white ballot paper like the one shown in [figure 5](#). You can vote in one of two ways:

1. Above the line. If you elect to vote above the line, you need to number at least six boxes, from 1 to 6. In the top section of the form, above the line, you need to place a number 1 in the box above the party or group that is your first preference, a number 2 in the box above the party or group that is your second choice, and so on. If you wish, you can continue to number as many boxes above the line as you like, but must fill in at least 1 to 6.
2. Below the line. If you elect to vote below the line, you need to number at least 12 boxes, from 1 to 12. In the section below the line, you need to place a number 1 in the box beside the candidate that is your first preference, the number 2 in the box beside your second choice, and so on. You may continue to place numbers in the order of your choice, but must fill in at least 12 boxes.

To win a seat, senators have to win a set proportion (or quota) of the votes. This is why the Senate voting system in Australia is called a **proportional representation** system.

**FIGURE 4** Ballot paper for a House of Representatives seat



FIGURE 5 Part of a Senate ballot paper for Victoria

**Senate Ballot Paper**  
State – Election of 6 Senators

**You may vote in one of two ways**

**Either**

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

A	B	C	D	E	F	G
5	2	1		3	6	4
PARTY	PARTY	PARTY	PARTY	PARTY	PARTY	

**Or**

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

PARTY	UNGROUPED						
<input type="checkbox"/> SURNAME Given Names PARTY	<input type="checkbox"/> SURNAME Given Names UNGROUPED						
<input type="checkbox"/> SURNAME Given Names PARTY	<input type="checkbox"/> SURNAME Given Names UNGROUPED						
<input type="checkbox"/> SURNAME Given Names PARTY		<input type="checkbox"/> SURNAME Given Names PARTY	<input type="checkbox"/> SURNAME Given Names PARTY	<input type="checkbox"/> SURNAME Given Names UNGROUPED			
	<input type="checkbox"/> SURNAME Given Names PARTY						

**SAMPLE**

Sample ballot paper

# 1.3 Key features of Japan's system of government

## 1.3.1 Japan's system of government

The Empire of Japan was based on a military and **absolute monarchy**. This changed during the Allied occupation of the country at the end of World War II, when the Constitution of Japan was drawn up and the post-war country ceased to be an empire and became modern Japan. Enacted on 3 May 1947, Japan's Constitution is based on three principles: **sovereignty of the people**, respect for fundamental human rights and renunciation of war.

**FIGURE 1** The National Diet Building in Tokyo, the home of Japan's national parliament



Japan's system of government is based on the idea of democracy. Japan is an independent country governed by a constitutional monarchy, with a parliamentary system of government. Japan's Constitution has remained unchanged since it came into force in 1947. The emperor is the head of state but only has a symbolic role.

The political system in Japan is based on Britain's Westminster system. This system was introduced into Japan by the new Constitution, which established a bicameral parliament called the National Diet. It consists of a lower house and an upper house. The people of Japan choose the members of the Diet, and the members of the Diet elect the Japanese prime minister from among themselves.

### 1.3.2 Separation of powers

The Constitution of Japan specifies the independence of the three branches of government: legislative (the Diet), executive (the Cabinet) and judicial (the courts). These arms of government operate in a system of checks and balances.

## The legislative arm

Under Japan's Constitution, legislative power lies with the National Diet. This is Japan's national parliament. The Diet comprises the House of Representatives (the lower house) and the House of Councillors (the upper house). Any draft law is known as a Bill, and it is submitted to the Diet by the Cabinet or a law-maker. It is then considered separately in the two houses. A Bill becomes a law after both houses approve it. In any case of disagreement in vital matters, the lower house's decisions are upheld. For some legislation, the House of Representatives can overrule a House of Councillors' rejection by passing a Bill a second time.

**FIGURE 2** The National Diet of Japan consists of the House of Representatives (the lower house; top) and the House of Councillors (the upper house; bottom).



## The executive arm

Executive power lies with the Cabinet formed and led by the Japanese prime minister. The members of Cabinet are collectively responsible to the Diet in exercising this power. The prime minister and a majority of Cabinet members must be members of the Diet. They have the right as well as the obligation to attend Diet sessions. The Cabinet has the power to dissolve the House of Representatives and call for a general election. The Cabinet members are called ministers, and the departments they head are mostly called ministries (for example, the ministry of finance).

## The judicial arm

Judicial power lies with Japan's Supreme Court and the lower courts established by law, including high courts, family courts, district courts and summary courts. The Supreme Court consists of a chief justice and 14 other justices, all of whom are chosen by the Cabinet. It is responsible for interpreting and applying the Constitution of Japan. The Supreme Court can declare that laws passed by the National Diet are unconstitutional.



### Resources



**Try out this interactivity:** [The separation of powers in Japan](#)

Searchlight ID: [int-5674](#)

## 1.3.3 Elections in Japan

All Japanese citizens can vote in elections once they reach the age of 20. The National Diet consists of the House of Representatives with 480 members, and the House of Councillors with 242 members. The people directly elect the members of both houses of the National Diet. Elections for the House of Representatives are held every four years, and half the members of the House of Councillors are elected every three years. Local elections are also held every four years for elected positions in Japan's prefectures (regions), cities and villages.

**FIGURE 3** Prime Minister Yoshihiko Noda campaigning for re-election in Tokyo in 2012 (he lost)



## The House of Representatives

Of the 480 members of the House of Representatives, 300 members are in single-member constituencies (electoral districts). These members are elected using the first-past-the-post method. This means that the candidate receiving the largest number of votes in each constituency is elected to office. The other 180 members of the House of Representatives are in 11 multimember districts, referred to as electoral blocs. These blocs differ in size and contribute between 6 and 30 members. Using a proportional representation system, the bloc seats are awarded to party candidates according to a highest average method. To win a seat, parties have to win a set proportion (or quota) of the votes.

Ultimately each Japanese voter casts two ballots for the House of Representatives: one for a candidate in a local single-seat constituency, and one for a political party. The political parties all field candidates for each electoral bloc.

## The House of Councillors

Again, voters cast two ballots for the House of Councillors: one for an individual candidate in a constituency using single non-transferable votes, and one for a political party or candidate using proportional representation. Of the 242 members of the House of Councillors, 146 members are in 47 prefectural constituencies. The prefectural constituencies differ in size and return between 2 and 10 members. These members are elected by a single non-transferable vote. This means that Japanese citizens cast a ballot for an individual candidate, and the candidates with the largest number of votes in each constituency (up to the number of seats that need to be filled) are elected to office. The remaining 96 members of the House of Councillors are elected on a nationwide basis through proportional representation.

# 1.4 Key features of India's system of government

## 1.4.1 India's system of government

With a population of more than one billion people, India is the world's largest democracy. India's political system dates back to the country's independence from Britain. From 1857 to 1947, the British ruled the Indian subcontinent (a region comprising India and land that now belongs to other countries, among them Pakistan and Bangladesh). During the early twentieth century, there was increasing support for the idea of India becoming self-governed. On 15 August 1947, India ceased to be a dominion of the British Empire and became a sovereign democratic **republic**. The Republic of India, as it is officially known, is a federal union of 29 states and 7 union territories.

**FIGURE 1** Sansad Bhavan (Parliament House) in New Delhi, the home of India's national parliament



India's system of government is based on the idea of democracy. The Republic of India is an independent country with a parliamentary system of government. The Constitution of India is the longest written constitution of any of the world's sovereign countries, containing 444 articles and 12 schedules. It is also one of the most heavily amended national documents in the world — almost 100 changes have been made to the Constitution since it was first enacted in 1950. The president is the head of state, elected for a five-year term by the members of the federal and state parliaments. The president appoints the prime minister as well as the state governors.

The political system in India is based on Britain's Westminster system. The federal parliament is bicameral; it is composed of a lower house and an upper house. The states have either unicameral or bicameral parliaments. The people of India elect the members of parliament, and the members of the lower house of the Parliament of India elect the prime minister (who is usually the leader of the majority party or coalition).

## 1.4.2 Separation of powers

The Constitution of India specifies the independence of the three branches of government: legislative (the parliament), executive (the Cabinet) and judicial (the courts). These arms of government operate in a system of checks and balances.

### The legislative arm

Under the Constitution of India, parliament is the supreme lawmaker. The Parliament of India consists of the lower house or Lok Sabha (House of the People) and the upper house or Rajya Sabha (Council of States), as well as the president of India. The two houses of parliament share legislative powers. Any draft law is known as a Bill. To become a law, the Bill must be read, debated and voted on by both houses of parliament and then approved by the president. A law that has been passed by parliament is called legislation, a statute or an Act.

**FIGURE 2** Narendra Modi (seated far left, with members of his Cabinet) is sworn in as India's prime minister in May 2014.



## The executive arm

Executive power officially lies with the president but is actually exercised through the Council of Ministers of the Republic of India, consisting of a group of ministers headed by the prime minister. The prime minister is officially appointed by the president after being nominated by the majority party in the lower house. On the recommendation of the prime minister, the president then appoints ministers. These ministers collectively comprise the Council of Ministers.

## The judicial arm

Judicial power lies with India's Supreme Court, the High Courts in the states and the lower courts at the district level. The Supreme Court is responsible for interpreting and applying the Constitution of India. It ensures that the other arms of government do not act in a way that is outside the powers granted by the Constitution. The Supreme Court consists of up to 31 judges, including the Chief Justice of India. They are appointed by the president on the recommendation of the prime minister. The Supreme Court can declare that laws passed by the Parliament of India are unconstitutional.

### Resources



**Try out this interactivity:** [The separation of powers in India](#)  
Searchlight ID: [int-5675](#)

## 1.4.3 Elections in India

Officials are elected at the national, state and local levels. Because of India's large population, the organisation of any election is a massive and complicated task. More than 800 million people in India are eligible to vote, and in national elections over 900 000 polling booths must be set up for voters. National elections do not take place on a single day but run over the course of several weeks.

## The House of the People (Lok Sabha)

According to the Constitution, the maximum size of the Lok Sabha is 552 members. Of the 545 current members of the Lok Sabha, 543 are elected for five-year terms. The other two members are nominated by the president to represent the Anglo-Indian community if, in the president's opinion, that community does not have adequate representation in the house. The 545 members are elected using the first-past-the-post method.

## The Council of States (Rajya Sabha)

According to the Constitution, the maximum size of the Rajya Sabha is 250 members. Of the 245 current members of the Rajya Sabha, 233 are representatives of the states and union territories. They are elected for a six-year term using the proportional representation system, and one-third of them retires every two years. The other 12 members are nominated members. These people are chosen by the president for their special knowledge or practical experience in fields such as art, literature, science and social service.

**FIGURE 3** A cut-out of Indian politician and Chief Minister of West Bengal, Mamata Banerjee, during the 2011 election campaign in Kolkata (she is the first woman to have held this position)



# 1.5 Key features of Indonesia's system of government

## 1.5.1 Indonesia's system of government

The **Republic** of Indonesia was declared in 1945 following its independence from a long period of Dutch colonial rule and Japanese wartime occupation. The Constitution was written while Indonesia emerged from Japanese control at the end of World War II. A centralised form of government was established to unify the many ethnic, religious and cultural groups of a nation spread across nearly one thousand permanently settled islands. Since then, Indonesia's political transition to a democracy has been turbulent. The original Constitution of 1945 was replaced by the Federal Constitution of 1949 and then the Provisional Constitution of 1950. Indonesia's first election after independence was not held until 1955.

President Sukarno, Indonesia's first president, dissolved the elected parliament in 1959 and introduced a form of government called guided democracy. The 1945 Constitution of Indonesia was reintroduced. Sukarno's successor, President Suharto, was **authoritarian** and Indonesia entered a new political era, officially called the New Order. During this period, which lasted for more than 30 years, the parliament served as a mere formality for approving decisions made by the executive arm of government. The end of Suharto's presidency came about due to pressure for a less-centralised system of government. An era of reform and amendments to the Constitution followed. New election laws were introduced and, in 1999, elections were held for the first time since 1955. Significant amendments were made to the 1945 Constitution of Indonesia in the early twenty-first century, resulting in changes to all arms of government.

**FIGURE 1** Part of the DPR/MPR complex in Jakarta, the home of Indonesia's national parliament



Indonesia's system of government is based on the idea of democracy. Indonesia is a republic with sovereignty vested in the hands of its people and exercised through law. The amended 1945 Constitution of Indonesia regulates the responsibilities of state officials, and the rights and responsibilities of citizens. It also governs relations between state institutions — legislative, executive and judicial. Since 2004 Indonesia's parliament (the People's Consultative Assembly or MPR) has been bicameral, with a lower house and an upper house. The president is both the head of state and the head of government, and is chosen through direct popular election. The people of Indonesia also choose the members of the MPR.

Indonesia is divided into provinces and then regents and cities. Each province, regency and city has its own local government and legislative body. A governor heads each government at the provincial level, and a regent or mayor heads each government at the regency and city levels.

## 1.5.2 Separation of powers

The amended 1945 Constitution of Indonesia provides for the idea of the separation of powers. This allows each arm of government (legislative, executive and judicial) to check and balance the powers of the others and thereby maintain a fair and just society.

### The legislative arm

Under the amended 1945 Constitution of Indonesia, legislative power lies with parliament — the People's Consultative Assembly (Majelis Permusyawaratan Rakyat or MPR). It consists of the People's Representative Council (Dewan Perwakilan Rakyat or DPR; the lower house) and the Regional Representatives Council (Dewan Perwakilan Daerah or DPD; the upper house). The DPD was created through an amendment to the 1945 Constitution of Indonesia in 2001 but does not have the revising powers of an upper house such as Australia's Senate. It was established with the intention of increasing the role of the regions in making laws.

The DPR drafts Bills and passes laws. The DPD can draft Bills related to regional issues that will be considered by the DPR, but it does not have independent legislative authority. A Bill can only be passed if there is joint agreement on the Bill by both the DPR and the President.

**FIGURE 2** Indonesia's parliament (the People's Consultative Assembly or MPR)



## The executive arm

The 1945 Constitution invested most of Indonesia's power in the executive arm of government. This has been reduced through the amendments to the Constitution. Until 2002, the members of the MPR elected the president and vice-president every five years. From 2004, both leaders have been directly elected. New legislation limits the president to two five-year terms. The president carries out his or her tasks assisted by the vice-president and Cabinet. Cabinet ministers are appointed by the president to manage areas of government responsibility such as economic affairs, foreign affairs, defence and education. Cabinet ministers do not have to be elected members of the MPR.

## The judicial arm

In Indonesia, the Supreme Court (Mahkamah Agung) is the highest judicial institution. It forms the judicial arm of government together with the lower legal bodies. These include High Courts, located in the provinces, and District Courts. There are approximately 50 justices (including a chief justice) sitting in the Supreme Court, with more than 7000 judges employed in other courts across Indonesia. According to the original 1945 Constitution, the Supreme Court does not have the power to interpret and apply the Constitution. However, the Constitutional Court (Mahkamah Konstitusi) was established by a group of justices in 2003 with the power to review the Constitution and resolve constitutional disputes between state institutions. It can also resolve disputes over electoral results, dissolve political parties, and review and rule on cases involving charges against the president.

## on Resources



**Try out this interactivity:** [The separation of powers in Indonesia](#)

Searchlight ID: [int-5676](#)

### 1.5.3 Elections in Indonesia

All Indonesian citizens who have reached the minimum age of 17 or who are married may vote in general elections. More than 188 million people in Indonesia are eligible to vote. Presidential elections occur every five years. The Indonesian parliament (MPR) consists of two houses:

- the People's Representative Council (DPR), made up of representatives of political parties. It currently has 560 members with representatives from ten political parties. Every member comes from one of the 77 multimember electoral districts. Each electoral district is represented by three to ten seats, depending on the population of the district.
- the Regional Representatives Council (DPD), made up of representatives from each province in Indonesia. Four members are elected from each of the 34 provinces on a non-partisan basis. This means that members are not officially affiliated with any political party.

Elections for the DPR and the DPD are held simultaneously every five years.

#### The president

Indonesian citizens vote for a ticket including a president and a vice-president. Whichever pair receives the most votes (more than 50 per cent nationally, with 20 per cent from more than half the provinces) will rule over the next term. If no clear winner emerges, the two tickets that received the highest percentage of the national vote compete in a run-off election.

#### The People's Representative Council (DPR)

Members of the DPR are elected through an open-list proportional system. When voting, an Indonesian citizen receives a ballot listing the candidates from each party who are running for a seat in the voter's electoral district. The voter selects his or her preferred candidate. The process allows the voter to cast a ballot for an individual candidate or a particular party, or for both. The Election Commission then calculates a quota for each electoral district by dividing the total number of valid votes obtained by political parties that must be received to secure parliamentary representation (currently 3.5 per cent of the national vote) by the total number of seats in that electoral district. The political parties then receive a seat for each quota they meet, and are required to allocate these seats to the candidates who received the most votes. Any party that fails to obtain a 3.5 per cent share of the national vote is eliminated from the election.

Some parties will have votes left over. These remaining votes are used to distribute unallocated seats. Unallocated seats are awarded to the parties with the largest numbers of remaining votes one by one until all seats are allocated.

**FIGURE 3** A woman casts her vote during elections in Indonesia in 2014.



## The Regional Representatives Council (DPD)

The members of the DPD are elected using a much simpler system. Voters in each province select one candidate on their ballot forms. The four candidates who win the most votes in each province represent that province at the DPD.

### DISCUSS

In a small group of 3–4 students choose one of the following countries: Japan, India or Indonesia. In what ways are the values of freedom of election and support for parliamentary democracy associated with the system of government in this country? Discuss with your group and write a response.

[Intercultural capability VCICCD019]

# 1.6 SkillBuilder: Conducting an interview

## 1.6.1 Tell me

### What is an interview?

An interview is a conversation with some sort of purpose between two or more people. Questions will be asked by the interviewer/s to obtain information, facts or statements from the person/s being interviewed. Interviews can be conducted face-to-face between two people or in small groups, or by some form of communications technology such as the telephone or internet.

### Why is conducting an interview useful in this subject?

An interview is important because it allows the interviewer to gather a wide range of views and facts. Interviews can reveal information about people's values, motivations, attitudes and feelings.

**FIGURE 1** Interviewing a person allows the interviewer to gather a wide range of views and facts.



## 1.6.2 Show me

### How to complete an interview

You will need:

- a sheet of lined paper or somewhere else to record your questions and answers

- a pen
- a recording device such as a mobile phone (if necessary).

## Procedure:

### STEP 1

Establish what the goals of the interview are. What do you want to find out from the person?

### STEP 2

Work out the questions you will need to ask the person at an interview. Use the questions in the 'Developing my skills' section of this SkillBuilder as a guide. You may need to modify these questions to suit the person being interviewed and ask follow-up questions to obtain further information.

### STEP 3

Visit the person and interview them. Be polite. Do not try to interview them if they are busy. You might need to ask them if you can come back at a more convenient time. Explain why you are doing the interview and what will happen to their responses. Remember to thank the person for their time.

### STEP 4

Write a transcript of the interview using proper sentences and headings. Present the transcript so that it is easy to read.

## 1.6.3 Let me do it

### Developing my skills

Use these questions for an interview with a person with connections to a country in the Asia region:

1. What country in the Asia region do you have connections to?
2. In what country do you currently live?
3. What values do you associate with Australia's system of government?
4. What values do you associate with the country in the Asia region that you have connections to?
5. Can you see any similarities or differences between the values of Australia's system of government and those of the country in the Asia region that you have connections to?

Conduct the interview and write a transcript of it. Create a heading for the transcript, then write a short introductory paragraph preceding the transcript outlining who you interviewed, when the interview took place and what the interview was about (a summary of your main questions). Decide whether your transcript will follow a simple question-and-answer format, or be written like a narrative (a written account of the interview).

# 1.7 Review

## 1.7.1 Summary

Australia's system of government is categorised by democratic elections and the separation of powers. There are similarities and differences between Australia's system of government and the systems of government found in other countries in the Asia region, in particular Japan, India and Indonesia. The systems of government in these three countries are also categorised by democratic elections and the separation of powers.

- Australia's government is based on the idea of democracy. This means that sovereignty lies with the Australian people, and values such as freedom of election and support for parliamentary democracy are associated with our system of government.
- The governments of Japan, India and Indonesia are also based on the idea of democracy. This means that sovereignty lies with their people, and values such as freedom of election and support for parliamentary democracy are associated with their systems of government.
- Australia is a constitutional monarchy, with a Commonwealth Parliament consisting of two houses (the House of Representatives and the Senate) and the Crown (represented by the governor general).  
Go to your Resources section for  
Interactivity: Government in our region crossword
- Japan is a constitutional monarchy, with its parliament (the National Diet) consisting of the House of Representatives and the House of Councillors. The emperor plays only a symbolic role as Japan's head of state.
- India is a republic, with the Parliament of India consisting of the House of the People (Lok Sabha) and the Council of States (Rajya Sabha) as well as the president, who is India's head of state.
- Indonesia is a republic. Its parliament, the People's Consultative Assembly (Majelis Permusyawaratan Rakyat or the MPR), consists of the People's Representative Council (Dewan Perwakilan Rakyat or DPR; the lower house) and the Regional Representatives Council (Dewan Perwakilan Daerah or DPD; the upper house). The president is both the head of state and the head of government.

## ACTIVITIES

### DISCUSSION OF AUSTRALIAN VALUES [ETHICAL CAPABILITY VCECU020]

1. While unveiling a suite of counter-terrorism measures in August 2014, former Prime Minister Tony Abbott elaborated on his Team Australia comments. 'Everyone has got to put this country, its interests, its values and its people first, and you don't migrate to this country unless you want to join our team,' Mr Abbott said.

**FIGURE 1** Equality means that people are treated fairly.



- a. Mr Abbott often refers to 'Australian values'. What do you think he means by this term?
  - b. What values do you associate with the system of government in Australia?
  - c. Choosing a country in the Asia region that you have studied, what values do you associate with the system of government in that country?
  - d. How similar or different are the values associated with Australia's system of government to those of the country in the Asia region that you have studied?
2. Read the 'Australian values and principles' extract below and then complete the following:
- a. Describe Australia's parliamentary democracy.
  - b. What values are associated with Australia's parliamentary democracy?
  - c. Outline how elections work in Australia.
  - d. What values are associated with elections in Australia?

## Australian values and principles

To maintain a stable, peaceful and prosperous community, Australians of all backgrounds are expected to uphold the shared principles and values that underpin Australian society.

These values provide the basis for Australia's free and democratic society. They include:

- respect for the equal worth, dignity and freedom of the individual
- freedom of speech
- freedom of religion and secular government
- freedom of association
- support for parliamentary democracy and the rule of law
- equality under the law
- equality of men and women
- equality of opportunity
- peacefulness
- a spirit of egalitarianism that embraces tolerance, mutual respect and compassion for those in need.

While shared to some extent by many other countries, these values and principles have been adapted to Australia's unique setting, shaped and modernised through the settlement in Australia of millions of people from all over the world. Although they may be expressed differently by different people, their meaning remains the same.

**Source:** Commonwealth of Australia 2007, *Life in Australia*, p. 4.

# Chapter 2: Australia in the world

## Contents

- 2.1 Overview
- 2.2 Foreign aid from governments and NGOs
- 2.3 Australia and the UN
- 2.4 Keeping the peace
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- 2.6 Review

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# 2 Australia in the world



## 2.1 Overview

### 2.1.1 Australia's global citizenship

Governments have responsibilities to their citizens. They have a responsibility to keep their constituents safe, to provide them with essential services and to protect their human rights. In a world characterised by the ease of global communication and movement, governments have become increasingly aware of their responsibilities to the global community. Nations may demonstrate their global citizenship in different ways:

- *Providing foreign aid.* Wealthier countries acknowledge that they have responsibilities to people beyond their own borders, and demonstrate that they are good global citizens, by providing foreign aid. This consists of money, food or other resources such as medical services or engineering know-how.

- *Becoming members of formal organisations such as the United Nations (UN).* The UN has assumed responsibility for many key global issues. Conflict resolution, the development of impoverished nations and the management of refugee movement are some examples of the roles played by the UN and its members.
- *Supporting non-government organisations (NGOs).* These are heavily involved in the provision of foreign aid and can operate in locations closed to government programs.

Given Australia's standing in our region, we can make significant contributions to the global community. Both through official government programs and the work of NGOs, Australia has been an active leader in the South-East Asia region for over 60 years. In this topic, we investigate the role Australia plays in our region and in the world. We also discuss official groups such as the UN and look at some of the work carried out by NGOs.

**FIGURE 1** A tent city for refugees in Kurdistan, Iraq. Wealthier countries have a responsibility to provide assistance to the citizens of countries suffering from poverty or war.



## on Resources



**Watch this eLesson:** [What is global citizenship?](#)

Searchlight ID: [eles-2375](#)

## 2.2 Foreign aid from governments and NGOs

### 2.2.1 Helping those in need

Picture this scenario: it is lunchtime at school when you suddenly realise that you have not brought any lunch and do not have any money to buy some. Your best friend says that they'll buy you lunch from the canteen so that you don't go hungry. They tell you that they're happy to do you a favour and there is no need for repayment. The provision of foreign aid is similar to this situation. Instead of one friend buying another lunch, richer countries assist poorer countries. They may do this for **humanitarian** reasons following a natural disaster or other crisis, or for development reasons (to encourage the long-term development of the recipient country). Australia provides foreign aid through both government and non-government bodies. In this section, we discuss Australia's past, present and future contributions to foreign aid programs.

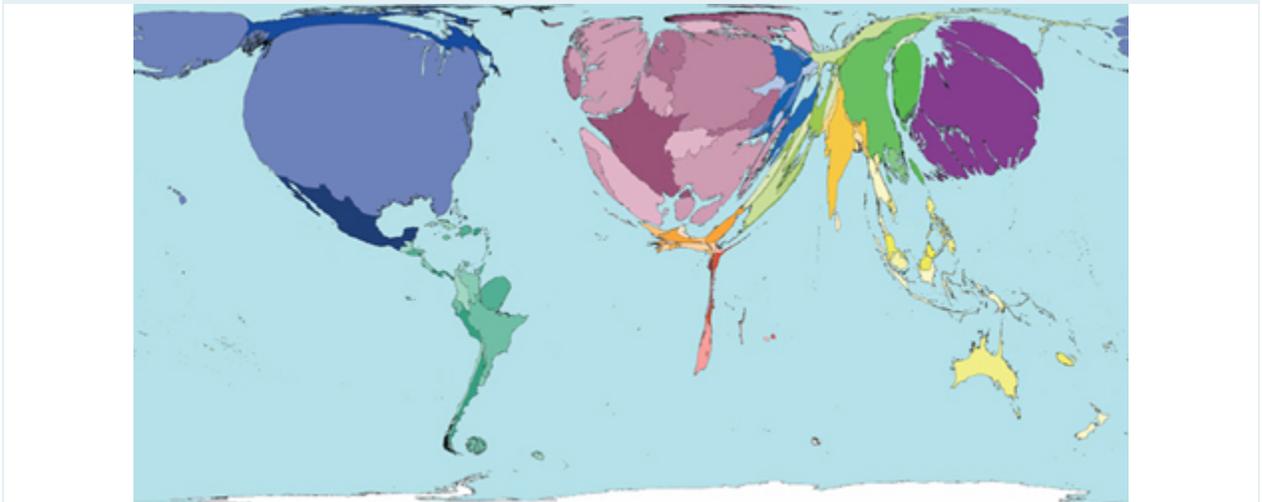
**FIGURE 1** A Nepali girl carries a bag of food given by aid workers in Baluwa Village in the Gorkha district, Nepal, following the deadly earthquakes that decimated villages and killed thousands of people in 2015.



## 2.2.2 How does foreign aid work?

A significant and unfortunate gap exists between the world's richer and poorer countries. Some countries have been blessed with an abundance of natural resources, while others are relatively barren. Some countries have been sheltered from the devastation of war, while others have been torn apart by bloodshed. As a result of these and other factors, global wealth is divided unequally. Richer countries have continued to develop steadily while poorer countries lag behind in terms of **infrastructure**, education and medical services. Foreign aid is provided with the aim of improving the living standards of people in less developed countries.

**FIGURE 2** GDP per country. Countries with a high GDP appear swollen, while countries with a low GDP are shrunken in size. *Source: Worldmapper.*



### DISCUSS

1. List the countries in this map that appear 'swollen' and those that appear 'shrunken'.
2. Explain what high GDP means and how this affects a country's economy.
3. How does low GDP affect a country's economy?
4. Choose one country in each category and explain the political and economic reasons why you think this country has either a high or low GDP. [Intercultural capability VCICCD019]

## 2.2.3 Australian governments and foreign aid

Foreign aid may be provided by governments or by independent bodies, such as NGOs. Both Australian government and non-government aid has been crucial to the development of many countries around the world, particularly those in the Asia region.

Aid can be divided into two categories:

- development aid — for long-term programs to support the general development of a country
- emergency aid — for natural disasters and other crises.

## Development aid

Development aid is focused on alleviating poverty in the long term. As members of the global community and one of the most developed countries in our region, Australia has a responsibility to provide assistance to our less fortunate neighbours. Australian governments have been involved in foreign aid programs since 1950, when development grants of \$100 000 were issued to Papua New Guinea.

Until recently, Australian foreign aid programs have been administered by AusAID (the Australia Agency for International Development). While AusAID has contributed to programs in Africa and the Middle East, Australian aid activities have centred on South-East Asia and the Pacific. The map in [figure 2](#) provides the location of current aid programs administered by the Australian government through AusAID.

Many of these programs focus on the provision of medical care, such as vaccinations. Vaccinations against common diseases can be hard to find in some countries or expensive to buy. By organising mass immunisations, the Australian government has sought to improve the health and wellbeing of disadvantaged nations. AusAID has also been involved in development programs in locations such as Vietnam, contributing funds to education and infrastructure projects.

Recent events in Australian politics have resulted in dramatic changes in the provision of foreign aid. Shortly after being elected in 2013, the Abbott government announced it would cut approximately \$650 million from Australian foreign aid programs. The structure of AusAID has also changed, and it has been renamed Australian Aid. Some important aid programs have subsequently been left unstaffed and unfunded. This decision was met with widespread criticism from within Australia as well as abroad. Although foreign aid remains a stated priority of the Abbott Government, the impact of Australian aid programs in our region will be significantly weakened. Follow the **Department of Foreign Affairs and Trade** weblink in your Resources section to learn more about the role of the Australian government in assisting the development of Vietnam.

## Emergency aid

Emergency aid is provided for humanitarian purposes in response to unexpected events such as natural disasters and other crises. Many of our neighbouring countries are located within geographically volatile areas. Countries such as Indonesia, Papua New Guinea and many Pacific Island nations often find themselves faced with the deadly consequences of natural disasters such as floods and earthquakes. Australian governments and their aid departments are well known for having swift and effective emergency aid responses. They send their staff to manage aid responses in these situations, both during the initial devastation and in the aftermath of the disaster.

In 2004, the Boxing Day tsunami ravaged much of western Indonesia as well as many countries in the surrounding area. Members of Australian aid and military departments were immediately sent to the affected areas of Indonesia to organise and staff temporary hospitals and emergency response centres. In the months after the tsunami, the Australian government pledged an aid package of \$1 billion to the Indonesian government for longer term redevelopment projects. This is a good example of how Australian governments respond to disasters through the provision of emergency aid. Follow the **Anatomy of a tsunami** weblink in your Resources section to view an interactive model of the 2004 Boxing Day tsunami.

**FIGURE 3** When natural disasters strike, governments and aid agencies spring into action to provide emergency aid.



## **on** Resources



**Try out this interactivity:** [The location of AusAID programs around the world](#)  
Searchlight ID: [int-5677](#)



**Explore more with these weblinks:** [Department of Foreign Affairs and Trade](#)



**Explore more with these weblinks:** [Anatomy of a tsunami](#)

## 2.2.4 Australian NGOs and foreign aid

A non-government organisation (NGO) is one that runs independently of any government control. Although NGOs may be partially funded by governments, they remain free to develop and implement their own policies and programs. Australia has a vast range of aid NGOs. Some of these, such as Care Australia and Oxfam Australia, are local divisions of large, **multinational** organisations. Other Australian NGOs, such as The Fred Hollows Foundation, were created locally.

Free from government and politics, NGOs often have the opportunity to reach and assist a broader range of people. For example, a government's aid priorities may be influenced by foreign policy, whereas an NGO is free to act in whatever community it sees as needing its assistance. NGOs often rely heavily on public donations to fund their operation and are staffed largely by volunteers. They also provide vital support to government aid programs and can often implement more effective programs.

**FIGURE 4** The late Dr Fred Hollows working with children in Vietnam



## 2.3 Australia and the UN

### 2.3.1 Australia's role in founding the UN

The United Nations (UN) was born out of the pain and suffering of World War II. After witnessing the horrors of war for the second time within 30 years, the nations of the world were desperate to prevent another world war. For this reason, 51 countries united in 1945 with the goals of maintaining global peace and protecting the safety and rights of global citizens. At the time the UN was formed, Australia was still relatively inexperienced in global politics. Despite this, our country was one of the founding members of the UN and heavily involved in the organisation's establishment. Australia continues to play a significant role in this important **multilateral** organisation.

**FIGURE 1** The United Nations was officially founded in 1945 with Australia as one of the original 51 member states.



Given Australia's relative inexperience in foreign policy, the significance of our involvement in the early years of the UN may appear surprising. Australia's delegation was led by Dr HV ('Doc') Evatt, who had previously held several high-profile legal and political positions in Australia. As the operational guidelines of the UN were being documented in its **Charter**, Evatt recognised a problem. The larger and more diplomatically experienced countries (such as the United States, the United Kingdom, France, the Soviet Union and China) had started to dominate discussions. Evatt worried that the interests of smaller countries with less experience in foreign policy would be overlooked.

To overcome this problem, Evatt enlisted the support of the other smaller nations and successfully lobbied for the power of the UN General Assembly (consisting of all members of the UN) to be increased. This would act as a balance to the power wielded by the larger countries who ran the Security Council (consisting of only five members of the UN).

Evatt was also a key figure in the development of the Universal Declaration of Human Rights. His leadership on this task led to Evatt being elected president of the General Assembly in 1948. To this day, no other Australian has ever held this position.

**FIGURE 2** The Universal Declaration of Human Rights was adopted by the UN in 1948.



### 2.3.2 Australia's increasing role in the UN

Since the founding of the United Nations, Australia has been a small but significant contributor to the organisation and its various programs. Involvement in peacekeeping missions, participation in policy development and donations to the UN budget are all examples of Australian contributions. As Australia's standing and influence have increased, so too has our role in the UN.

One of the most powerful and influential arms of the UN is the Security Council. It is responsible for the organisation of peacekeeping missions, the imposition of **international sanctions** and the authorisation of military action. The Security Council consists of five permanent members — the United States, the United Kingdom, France, Russia and China — and ten non-permanent members who serve two-year terms. Including our most recent term (2013–14), Australia has served as a non-permanent member of the Security Council five times in the history of the UN. Australia's membership of the UN Security Council can be seen as evidence of our increasing role in the global community. Follow the **Australia and the Security Council** weblink in your Resources section to learn more about Australia's important position on the UN Security Council.

**FIGURE 3** Bob Carr was the foreign minister when Australia won a seat on the United Nations Security Council in 2012.



## **on** Resources



Explore more with these weblinks: [Australia and the Security Council](#)

### 2.3.3 Australia's contribution to global citizenship

Australian representatives to the United Nations have used our country's increased standing to call for change regarding a number of global issues. One specific Australian focus has been gender equality and the rights of women. Australia was heavily involved in UN forums addressing these topics and continues to promote true gender equality. Whaling is another issue on which Australia has taken a stance, leading a case which successfully convinced one of the UN's highest courts, the International Court of Justice, to ban Japan from conducting its annual whale hunt.

Despite these positive actions, there are still many ways in which our country can further contribute to the global community. Recent years have seen issues such as climate change slip down our nation's list of priorities. Despite ratifying the Kyoto Protocol in 2007 and introducing a carbon tax in 2013 (and then scrapping it the following year), Australia's efforts to reduce the impact of climate change have stalled. Our treatment of refugees and asylum seekers has also received widespread criticism from the global community. These issues have been documented in the United Nations Association of Australia report card (see [figure 4](#)). Such criticisms need to be viewed constructively and used to make positive changes for Australian and global citizens alike.

**FIGURE 4** The United Nations Association of Australia report card rates Australia's performance from A to F in nine key areas, from participation in the General Assembly (A) to action on climate change (D<sup>+</sup>).



## 2.4 Keeping the peace

### 2.4.1 Role of UN peacekeepers

**FIGURE 1** UN peacekeepers provide protection to a humanitarian aid agency distributing food supplies in Haiti after the earthquake in 2010.



In many ways, the League of Nations can be seen as the first version of the UN. Formed after World War I, the League of Nations was charged with the responsibility of maintaining global peace. Its major shortcoming, however, was that it lacked mechanisms through which it could fulfil this role. After watching the failure of the League of Nations — ultimately it could not stop the outbreak of World War II — the founding members of the UN sought to avoid similar criticism. The UN discharges its responsibility of maintaining global peace through the use of peacekeepers and military observers.

Australia has been involved in UN peacekeeping missions from the first envoy sent in 1948. In this section, we examine the role of UN peacekeepers and the contribution Australians have made to these missions.

The role of United Nations peacekeepers is exactly that — to develop and maintain peaceful interactions between social, ethnic or political groups. Since 1948, the UN has deployed peacekeeping missions across the globe. The specific activities of the mission depend on the nature of the conflict. Missions may involve enforcing a **ceasefire** between previously warring parties; or peacekeepers may be asked to conduct democratic elections that would otherwise be problematic.

Peacekeepers are instructed to operate using non-violent methods wherever possible. According to the UN Charter, peacekeepers are allowed to use military force only in self-defence or if the essential goal of the mission is under threat (see [figure 2](#)). Often known as Blue Berets, due to their distinctive blue hats and helmets, UN peacekeepers can include soldiers of national armies as well as police officers and political staff. Australia has sent 65 000 personnel to various UN peacekeeping missions. Australian doctors, engineers, diplomats, and military servicemen and women have all played their part in the establishment and maintenance of peace in countries around the world. Follow the **Peace is a full-time job** weblink in your Resources section to learn more about what the UN is doing to keep the peace.

**FIGURE 2** Principles of UN peacekeeping: Non-use of force except in self-defence and defence of the mandate

A UN peacekeeping operation should only use force as a measure of last resort. It should always be calibrated in a precise, proportional and appropriate manner, within the principle of the minimum force necessary to achieve the desired effect, while sustaining consent for the mission and its mandate. The use of force by a UN peacekeeping operation always has political implications and can often give rise to unforeseen circumstances.

Judgments concerning its use need to be made at the appropriate level within a mission, based on a combination of factors including mission capability; public perceptions; humanitarian impact; force protection; safety and security of personnel; and, most importantly, the effect that such action will have on national and local consent for the mission.

**Source:** United Nations.

**on** Resources



**Explore more with these weblinks:** [Peace is a full-time job](#)

## 2.4.2 Australian peacekeeping missions

Australians have been involved in UN military observations and peacekeeping missions since 1948. Although civilian personnel have contributed to peacekeeping missions, military and police officers have traditionally played a more significant role. Australian peacekeepers have served in several key conflicts around the world including:

- Indonesian War of Independence (1947)
- prelude to the Korean War (1953)
- various conflicts in Israel and the Middle East (since 1956)
- Iran-Iraq War (1988–91)
- Rwandan Civil War (1993–96)
- East Timorese independence crisis (since 1999).

One of the best-known examples of Australian peacekeeping efforts was our involvement in the East Timor independence crisis. A small country located to Australia's north-west, East Timor has endured a volatile history. Unlike much of the area which was settled by the Dutch, East Timor was **colonised** by the Portuguese. In 1975, East Timor became an independent state, although it was soon invaded by neighbouring Indonesia in the same year. The Indonesian rule over East Timor was brutal and unjust, but Australian governments during this time were reluctant to criticise Indonesia. They feared such a move would damage political relations between the two countries.

After decades of civil unrest, two UN programs were launched to deal with the East Timor crisis. Australia had considerable involvement with both the UN mission in East Timor (UNAMET) and the International Force for East Timor (INTERFET). The former mission successfully organised and conducted a referendum which resulted in East Timorese independence. Organised and led by Australian forces under Major General Peter Cosgrove, INTERFET then helped develop more effective military and law-enforcement strategies in East Timor. The Australian contribution to East Timorese independence is an excellent example of the positive contributions Australia has made to our region.

**FIGURE 3** An Australian peacekeeper greets an East Timorese child in Dili.



## DISCUSS

Australia and other affluent countries have a responsibility to assist countries that are much less well off. What do you think are the most important global issues facing the world today: child slavery, war, child marriage, violence against women, poverty, lack of education and employment opportunities, or other? Choose the one issue that you think is the most important to address, explain why and give some suggestions as to how Australia can help. Are there any global problems that Australia should not get involved in? Why? [Intercultural capability VCICCD019, ethical capability VCECU019]

# 2.5 SkillBuilder: Civic action in the classroom

## 2.5.1 Tell me

The theme running through this topic is Australia's place in the world. More specifically, we have investigated the ways in which Australia exercises its civic responsibility on a global scale. Through government and non-government agencies, Australia is directly involved in humanitarian projects across the world. How do these agencies decide which country, which community and which project will be their focus? These decisions are not easy and require the consideration and evaluation of a range of factors. The criteria involved in making this decision may include the demand for the project, the significance of its expected outcomes, the duration of the project and of course its cost. Once an agency has made its decision, it can begin planning and then implementing the aid project.

In this SkillBuilder, your class will choose an issue relating to Australia's global civic responsibility. As a class, you will use democratic processes to reach a consensus. Once this has been achieved, you will plan for the action relating to your chosen issue.

## 2.5.2 Show me

Before your class can decide on its civic focus, you will need to consider on what basis to make your decision. Consider these examples:

- For the non-government agency Oxfam Australia, this decision is made by using its guiding principles and goals. If a prospective project meets one of Oxfam's six key goals, the project progresses to the next stage of the process. Oxfam then considers secondary criteria such as the cost of the project and the resources needed to enable its completion.
- The Direct Aid Program (DAP) is a small grant program run by the federal government. Like Oxfam, it uses a selection program based on set criteria. The most important of these criteria is the correlation between the proposed project and the goals of the DAP. Sustainable projects that do not require additional funding are also preferred by the DAP.

Both of these examples show you the importance of using agreed criteria to decide on the suitability of a project.

Once a suitable project has been chosen, the planning process can begin. For agencies such as Oxfam and DAP, this process is extensive. Developing an understanding of the problem the project seeks to address is the first step in the planning process. By understanding the problem, a clear solution is often easier to identify. Stakeholders must also be involved, ensuring that proper community consultation takes place.

You must take similar steps for your class project. You must also determine the roles to be played by members of your class in the development and implementation of your civic project.

## 2.5.3 Let me do it

### Class goals

The first step in this process is to establish a set of class goals. Your answers to these questions will help determine your goals:

- What are the global issues with which you are most concerned?
- What are the most serious threats to the global community?

Discuss these questions in a group, document the various responses and formalise these into a set of clear goals.

You can use Oxfam Australia's strategic plan to assist you. Follow the **Oxfam strategic plan** weblink in your Resources section to find out more.

### Assessment criteria

Your class now needs to design assessment criteria. As you saw from the Oxfam and DAP examples, one of these should be the correlation of the proposed project and the stated goals of your class. What other criteria will you use to make your decision? Will cost be an issue? Is the length of time you have to plan and implement your project a concern? Again, a group discussion is a simple way to develop your assessment criteria.

### The task

Working in pairs or groups of three, select a potential aid project for your class. After choosing your project, your group will need to prepare a five-minute presentation on the project and why it should be chosen as the focus of the class's civic action. Make sure that you address the key goals and assessment criteria that have just been established.

### The decision

Once all groups have presented their proposals, the class will decide which one best fits the goals and assessment criteria. The best and most democratic way to do this is to hold a secret ballot. Once the winning proposal has been identified, your class can begin the planning stage and, by doing so, actively participate in the global community.

## DISCUSS

Reflect on your participation in the group discussion on choosing a humanitarian project.

1. How easy was it to come to a consensus in your pair or small group?
2. Which humanitarian project did your group choose? Explain how you arrived at this decision.
3. Do you think you played an effective role in your group? In what way?
4. In what way could your group have improved its communication and decision making? [Personal and social capability VCPSCSO047]

### Resources



**Explore more with these weblinks:** Oxfam strategic plan

## 2.6 Review

### 2.6.1 Summary

The world's nations have experienced uneven rates of development. This has created substantial gaps between economies and given rise to numerous humanitarian issues. In an attempt to alleviate the pressures caused by this gap, foreign aid is provided by wealthier countries to those countries which are less developed. As one of the strongest economies and most developed countries in its region, Australia finds itself with tremendous responsibilities to assist its neighbours. One way that the fulfilment of these responsibilities takes place is through Australia's involvement in the United Nations. Since the founding of the UN, Australia has played a significant role in developing UN policies and participating in its programs. Non-government organisations also play a critical role in the provision of foreign aid.

- A substantial gap exists between the development of the world's nations.
- Foreign aid programs attempt to solve the problems caused by this disparity.
- Australia has a significant role to play as one of the wealthiest economies in our region.

## ACTIVITIES

### UNAA REPORT CARDS [ETHICAL CAPABILITY VCECU020]

In 2007, the United Nations Association of Australia (UNAA) began reporting on Australia's participation with the UN and its various programs. The UNAA's report cards are a self-reflection compiled by a group of academics, diplomats and high-profile NGO officials. The report cards critically assess Australia's contribution to UN programs and evaluate this contribution in light of broader UN goals and objectives.

1. Using the information in figures 1 and 2 below, provide a brief summary of the 2007 and 2013 UNAA report cards.
2. Outline the key differences between the 2007 and 2013 UNAA report cards. For example, has Australia's performance in any of the criteria changed?
3. Do you disagree with any of the UN's assessments on either report card? If so, explain your reasons.
4. Out of all the policy areas assessed, which area do you believe requires the most immediate change and why?
5. Describe the changes you would make to the policy area you've identified in question 4.

**FIGURE 1** 2007 report card on the Australian government's performance in the United Nations

Subject	Grade	Comment
UN General Assembly	B	Lacks the idealism of many members of the Australian public
Human rights	C	Failed to show any desire for improvement
Millennium development goals	C	Has done the minimum and used the term MDG when it suits

Climate change	D	Fallen far short of the expectations of the people of Australia, the business community, and the international community
Peacekeeping and peacebuilding	B	A strong supporter of UN peacekeeping and peacebuilding but tainted by its relationship with the US-led intervention in Iraq in defiance of the United Nations
Disarmament	C <sup>+</sup>	Could make a stronger contribution to disarmament by ceasing to rely on the protection of a nuclear weapons umbrella
Global movement of people	D	Continued to violate fundamental human rights in the detention and treatment of asylum seekers/unauthorised arrivals
Status of women	B <sup>-</sup>	Has taken a number of steps to address gender inequity, but further effort is needed
Sexual and reproductive health	B	Could be performing much better in its global engagement towards population health initiatives
Youth	B <sup>+</sup>	Has done well in the areas of youth employment and education, but more effort needed to improve education, employment prospects and housing situation for Indigenous youth

**Source:** United Nations Association of Australia, *Australia and the United Nations: Annual report card 2007*, p. 3.

**FIGURE 2** 2013 report card on the Australian government's performance in the United Nations

<p><b>SECURITY COUNCIL AND GENERAL ASSEMBLY</b></p>	<ul style="list-style-type: none"> <li>● It was significant, and a credit to Australia's diplomacy, that we were elected to the Security Council on the first ballot with 140 votes in October 2012.</li> <li>● Australia plays a positive and constructive role in the UN General Assembly. Of particular note is the role that Australia played with the <i>Arms Trade Treaty</i>.</li> </ul>	<p>A</p>
<p><b>HUMANITARIAN ASSISTANCE AND DEVELOPMENT AID</b></p>	<ul style="list-style-type: none"> <li>● Australia's record on overseas aid is very mixed.</li> <li>● In 2012–13 Australia's official development assistance as a percentage of Gross National Income stood at 0.37%, with Australia ranking 13th out of the 28 countries that make up the OECD Development Assistance Committee.</li> </ul>	<p>B</p>
<p><b>CLIMATE CHANGE</b></p>	<ul style="list-style-type: none"> <li>● The Australian economy's dependence on fossil fuel exploitation has grown, and is projected to grow further.</li> <li>● Australia must raise its mitigation ambition, increase its share of international climate finance and develop a transformative national energy policy that can orchestrate a shift towards a low carbon economy.</li> </ul>	<p>D<sup>+</sup></p>
<p><b>DISARMAMENT AND NON-PROLIFERATION</b></p>	<ul style="list-style-type: none"> <li>● Australia has had a mixed history with nuclear weapons and has demonstrated a lack of consistency both internationally and domestically.</li> <li>● The root of Australia's reluctance to follow through on its commitment to nuclear disarmament is undoubtedly its relationship with the United States.</li> <li>● Australia has been an important player in other areas of arms control, including in particular its efforts on this year's <i>Arms Trade Treaty</i>.</li> </ul>	<p>B</p>

<p><b>PEACEKEEPING AND PEACEBUILDING</b></p>	<ul style="list-style-type: none"> <li>• Australia’s contribution to UN peacekeeping has dwindled since the 1990s.</li> <li>• More recently, Australia has demonstrated a clear preference for deploying forces outside the UN framework.</li> <li>• Australia is the 12th largest donor to the UN’s Peacebuilding Fund and served as a member of the UN Peacebuilding Commission in 2010.</li> </ul>	<p>B</p>
<p><b>HUMAN RIGHTS</b></p>	<ul style="list-style-type: none"> <li>• Australia has been a strong advocate across a broad range of issues including promoting the unique and valuable role of national human rights institutions.</li> <li>• The treatment of refugees and asylum seekers in Australia remains one of the most significant human rights challenges.</li> <li>• The unacceptable level of disadvantage experienced by many Aboriginal and Torres Strait Islander peoples is another issue of concern.</li> </ul>	<p>B</p>
<p><b>INDIGENOUS PEOPLES</b></p>	<ul style="list-style-type: none"> <li>• A number of positive steps have been taken toward implementing the <i>United Nations Declaration on the Rights of Indigenous Peoples</i>.</li> <li>• The passing of the <i>Aboriginal and Torres Strait Islander Peoples Recognition Act 2013</i> unanimously through both houses of parliament in February 2013 indicates strong bipartisan support for constitutional recognition of Indigenous peoples.</li> </ul>	<p>C<sup>+</sup></p>
<p><b>GENDER EQUALITY</b></p>	<ul style="list-style-type: none"> <li>• Australia is an active participant in UN forums on gender equality, including the Commission on the Status of Women and the Convention on the Elimination of Discrimination Against Women Committee.</li> <li>• Gender equality is now a critical cross-cutting theme of Australia’s aid program.</li> <li>• Australia continues to face challenges in the advancement of gender equality. In particular, women still face significant challenges with respect to economic security, leadership opportunities and living free from violence.</li> </ul>	<p>B</p>

**REFUGEES AND  
ASYLUM  
SEEKERS**

- The new Pacific Solution began in August 2012. Australia has been legislatively excised from its own migration zone, so that anyone arriving by boat without a visa is liable to be sent (against their will) to Nauru or to Manus Island in Papua New Guinea.
- Australia's response to asylum seekers in the past 12 months has been marked by increasing hostility and a near-total absence of any concern by the major political parties to put the matter into perspective.

F

**Source:** United Nations Association of Australia, *Australia and the UN: Report card 2013*, p. 5.

**on** Resources



**Try out this interactivity:** [Australia in the world crossword](#)  
Searchlight ID: [int-5523](#)

# Chapter 3: Australia's High Court

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# 3

## Australia's High Court



### 3.1 Overview

#### 3.1.1 Established by the Constitution

As citizens we are all subject to the rules and laws set by society — by the organisations and groups we associate with and by the governments we elect. When governments create laws, they also create a mechanism for dealing with situations where an individual, group or organisation breaches one of these laws. The mechanism used is our system of courts.

Courts deal with different types of disputes depending upon the **jurisdiction** they are provided with by parliament. The most serious disputes are dealt with by the most experienced legal personnel in the most superior court in our legal system — the High Court of Australia. The High Court of Australia is unique. It is the only court in Australia established and specifically mentioned in our Constitution, and it is also the only court with a set number of justices who sit on the court at any one time. Follow the **High Court of Australia** weblink to watch a short documentary on the role of the High Court.

**FIGURE 1** The High Court of Australia building is located in Canberra but the justices travel to capital cities around the country settling disputes.



The *Commonwealth of Australia Constitution Act 1900* is the document that established Australia as a **federation** and also created the High Court and established its jurisdiction. Sections 71–80 deal with the establishment of the High Court and its jurisdiction. It determines that the court shall be presided over by a Chief Justice and at least two other justices, the number being determined by parliament. Justices of the High Court are appointed for a period of time that expires when they turn 70.

## on Resources



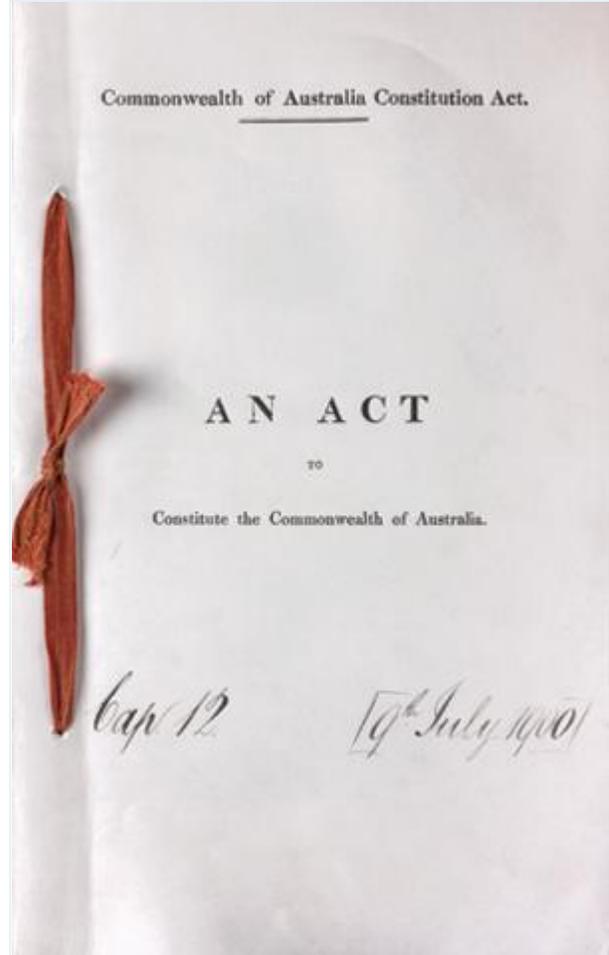
Explore more with these weblinks: [High Court of Australia](#)

## 3.2 Resolving disputes between governments — state and federal

### 3.2.1 Specific, residual and concurrent powers

When the Constitution established the Commonwealth of Australia (effective 1 January 2001), it granted the Commonwealth parliament the power to make laws in certain areas. These are known as specific powers. They are called 'specific' because they are specified in sections of the Constitution. It also allowed the colonial parliaments (known as state parliaments after federation) to retain their individual constitutions and some of their law-making powers, known as residual powers. It further provided some areas of law making where both the states and the federal parliaments could make laws, referred to as concurrent powers. Having concurrent powers made it inevitable that some conflict might develop between laws made by the Commonwealth and laws made by the states. In these circumstances it is the role of the High Court to settle such disputes.

**FIGURE 1** *The Commonwealth of Australia Constitution Act 1900* establishes the law-making powers of the federal and state parliaments.



### 3.2.2 Concurrent powers

Section 51 of our Constitution identifies 40 areas where the Commonwealth (or federal) Parliament 'shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth'. As noted earlier, these powers are referred to as specific powers. They are also referred to as 'concurrent', which means both the state and the federal parliaments are free to make laws in these areas. These 40 powers include the power to make laws in the areas of taxation, marriage, naturalisation and aliens, external affairs and acquiring property on just terms.

**FIGURE 2** The popular Australian film *The Castle* involved a family fighting a large company who wanted the government to compulsorily acquire their house so it could expand the airport. Section 51 of the Constitution was mentioned in the film.



The framers of the Constitution were aware that, by creating these concurrent powers, there was potential for conflict to arise between a law made by a state parliament and a law made by the federal parliament. To that end, the framers put in place a mechanism for resolving such a conflict — section 109.

Section 109 of the Constitution states that '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.' A problem arises when the state doesn't believe that an inconsistency exists or believes that the Commonwealth didn't have the power to create a law in this area. It is at this point that the High Court is often called upon to resolve the dispute.

The original version of the Constitution included only 39 specific powers and they were referred to as the '39 heads of power'. An additional power was added after the 1946 referendum.

### 3.2.3 Resolving conflicts between state and federal laws

The framers of the Constitution recognised that the members of the state governments would be more familiar with their own citizens and circumstances, and so the state governments were left with the power to make laws in certain areas. The framers also recognised that there were certain areas where it would be in the national interest for citizens to recognise only one law.

Discrepancies exist between states and territories in certain areas of law. For example, each state and territory has its own laws about learner drivers' permits and probationary licenses. Complete the interactivity below to discover the different laws that exist in each state and territory in relation to obtaining a learner's permit or probationary license. In which state or territory does it take the least amount of time to obtain a probationary license?

One area where laws have conflicted in recent years is marriage. In 1961 the Commonwealth Parliament passed the *Marriage Act 1961* (Cwlth). This act of parliament codified the law to explicitly state that "marriage" means the union of a man and a woman to the exclusion of all others, voluntarily entered into for life'. In 2004 the Commonwealth Parliament passed the *Marriage Amendment Act 2004* (Cwlth) that further extended the existing law to define marriage as 'a union of a man and a woman; and clarify that same-sex marriages entered into under the law of another country will not be recognised in Australia'.

In 2013 the government of the Australian Capital Territory passed a new law, the *Marriage Equality (Same Sex) Act 2013* (ACT), which allowed for same-sex marriage in the ACT. After it was proclaimed, a challenge was raised in the High Court in December 2013 in the case of *Commonwealth v. Australian Capital Territory* [2013] HCA 55.

The High Court was asked to decide whether section 51 (xxi) and section 51 (xxii), which relate to marriage and divorce, allowed the ACT government to pass a law that was contrary to the federal law identifying marriage as a union between a man and a woman. On 12 December 2013 the High Court ruled that the ACT law legalising same-sex marriage was inconsistent with the federal law passed under section 51(xxi) of the Constitution. Hence the ACT law was deemed to be invalid and has since been repealed. The High Court was able to resolve a conflict between two laws on the same topic and has therefore provided for a consistent law in this area.

## DISCUSS

The Marriage Act currently defines marriage as 'the union of a man and a woman to the exclusion of all others, voluntarily entered into for life'. There have been numerous attempts to amend the Marriage Act in order to legalise same-sex marriage, but all have been unsuccessful so far.

1. Summarise the political stance of each of Australia's two main political parties on same-sex marriage.
2. Find out what most of the Australian public thinks about same-sex marriage. Does the Marriage Act reflect the beliefs of most of the Australian people? Explain.
3. What are the main arguments put forward for and against same-sex marriage? [Ethical capability VCECU020]

**FIGURE 3** For a five-day period in 2013, same-sex couples were married in ceremonies in the ACT.



## **on** Resources



**Try out this interactivity:** [Learner permit and probationary licence laws around Australia](#)  
Searchlight ID: [int-5678](#)

### 3.2.4 Influencing state governments

The High Court not only resolves disputes over Commonwealth and state laws; it is also asked to review decisions made in state courts. As part of its jurisdiction the High Court has the ability to hear appeals from the Supreme Courts of each state and territory, and to comment on legislation passed by the states. In making its judgements the court, and the justices sitting on a particular case, will offer comments on the validity and suitability of the laws in question. The state parliaments often act on these comments.

The case of *Trigwell v. State Government Insurance Commission* (1979) is an example of such a case. A woman was driving along a road at night when she swerved to avoid a sheep that had strayed onto the road. In doing so, she crossed onto the other side of the road and hit an oncoming car. The woman was killed and the people in the other vehicle were injured. The injured parties sued the farmer for negligence, stating that the farmer was at fault for not maintaining the fence through which the sheep escaped. The High Court was unable to find the farmer liable as the court was bound by a decision made in the House of Lords in England which still applied to Australian courts. In making their decision, the justices noted that the parliaments of the various states had known of this **precedent** for some time but had not acted. Following this decision, many state governments (including Victoria) passed legislation to amend the Wrongs Act so this decision could not occur again. Farmers would henceforth be liable for their animals.

**FIGURE 4** Animals straying onto a road can cause a hazard for other road users — sometimes leading to accidents, as occurred in the Trigwell case.



## 3.3 Interpreting the Constitution

### 3.3.1 The power to interpret the Constitution

The Commonwealth of Australia Constitution was passed by the British Parliament in 1900 after ten years of negotiations and drafting by the premiers of the six colonies and a number of constitutional conventions. This process served to develop a constitution that served the interests of all the states and the citizens of Australia at that time. It also aimed to provide a framework for governing that would serve Australia into the future by including in the Constitution provisions to take future changes in society into account. Of course, the framers could not envisage all possible future changes. By establishing the High Court, they provided a means for interpreting the Constitution that allows the document to take into account future circumstances, thereby bringing the law-making powers into the twenty-first century and beyond.

**FIGURE 1** When the Constitution was drafted in the late 1890s, it could not anticipate the vast changes in society brought about by technology.



The High Court obtains its jurisdiction from sections 75 and 76 of the Constitution (see [figure 2](#)). Effectively it has the power to hear and determine 'all matters' that are listed below, such as matters arising under any treaty and matters in which the Commonwealth is a party. Since its first case in 1903, the High Court has played a significant role in interpreting the words and phrases of the Constitution to determine whether a law or a decision is valid.

**FIGURE 2** Sections 75 and 76 of the Constitution give the High Court its jurisdiction to hear cases and interpret the Constitution.

**Section 75 of the Constitution gives the High Court jurisdiction to hear cases**

In all matters:

- i. arising under any treaty
- ii. affecting consuls or other representatives of other countries
- iii. in which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party
- iv. between states, or between residents of different states, or between a state and a resident of another state
- v. in which a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth the High Court shall have original jurisdiction.

### **Section 76 of the Constitution further elaborates on the High Court's powers**

The parliament may make laws conferring original jurisdiction on the High Court in any matter:

- i. arising under this Constitution, or involving its interpretation
- ii. arising under any laws made by the parliament
- iii. of admiralty and maritime jurisdiction
- iv. relating to the same subject matter claimed under the laws of different states.

The Constitution contains clear rules about the law-making powers of both the state and Commonwealth parliaments. However, as already noted, there are still occasions when conflicts over law-making power arise between the Commonwealth and the state parliaments. What is yet to be discussed is the power of individuals to challenge whether or not a particular law made by the Commonwealth is constitutional.

When called upon to interpret the Constitution, the High Court is actually making a law — the decision made will be followed by other courts and parliaments in all future cases and legislation. This is an important function of the High Court because it provides for consistency and certainty in laws across Australia.

### **3.3.2 A case study in interpretation**

Section 51(v) of the Constitution gives the Commonwealth the power to make laws with respect to 'postal, telegraphic, telephonic, and other like services'. At the time the Constitution was written, this section related to controlling telegraph services, telephones (still in their infancy) and the issuing of stamps for letters and packages. The 1880s saw the development of the telegraph and the telephone, and so it was foreseen that technology would continue to evolve and other means of communication might develop. It is possible that this thought encouraged the framers of the Constitution to include the phrase 'other like services' in this section, indicating that they knew some form of technology would develop but were not sure what that might be. The meaning of this phrase has been tested a number of times, with the most commonly sourced case being *R v. Brislan* (1935).

## DISCUSS

When the Constitution was written, the law makers at the time could not predict the potential future changes to society that would necessitate the passing of new laws. One of the roles of the High Court is to interpret the Constitution and apply it to contemporary society.

1. Do some research to find out a recent decision made by the High Court that required a new interpretation of an old law. Briefly outline the issue and the change made to the law.
2. Can you predict any future changes to our society that might require a different application of the law?

\*Hint: see the list of High Court cases in the Activity in section 3.6.1. [Critical and creative thinking VCCCTR048]

**FIGURE 3** When wireless sets (radios) were introduced, it was necessary for people to have a licence to own and use one.



### *R v. Brislan*

In 1905 the Commonwealth Parliament passed the *Wireless Telegraphy Act (1905)*. This Act allowed the government, through the Postmaster-General, to issue licences to those who transmitted or listened to wireless broadcasts. It also allowed the government to collect fees from those who were issued with licences.

**FIGURE 4** Section 5 of the Wireless Telegraphy Act allowed the Postmaster-General to collect licence fees from those who listened to a wireless.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

1. This Act may be cited as the *Wireless Telegraphy Act 1905*.
2. In this Act,—  
“Australia” includes the territorial waters of the Commonwealth and any territory of the Commonwealth;  
“Wireless telegraphy” includes all systems of transmitting and receiving telegraphic messages by means of electricity without a continuous metallic connexion between the transmitter and the receiver.
3. This Act shall not apply to ships belonging to the King's Navy.
4. The Postmaster-General shall have the exclusive privilege of establishing, erecting, maintaining, and using stations and appliances for the purpose of—
  - a. transmitting messages by wireless telegraphy within Australia, and receiving messages so transmitted, and
  - b. transmitting messages by wireless telegraphy from Australia to any place or ship outside Australia, and
  - c. receiving in Australia messages transmitted by wireless telegraphy from any place or ship outside Australia.
5. Licences to establish, erect, maintain, or use stations and appliances for the purpose of transmitting or receiving messages by means of wireless telegraphy may be granted by the Postmaster-General for such terms and on such conditions and on payment of such fees as are prescribed.

In 1934 Dulcie Williams purchased and had installed an electric wireless receiving set. A week after installation she was visited by officers of the Postmaster-General's department and fined £1 for failure to have a licence. Williams challenged the law on the basis that the Commonwealth did not have the power under the Constitution to impose the requirement of the licence. She argued that the term 'other like services' did not cover wireless sets and licences to use such sets. The High Court decided that section 51(v) included the power to regulate radio broadcasting and so the 1905 legislation was valid law. In a majority decision, the justices found radio to be an item covered by section 51(v) and that the phrase 'other like services' should encompass developments in technology not anticipated at federation and therefore not explicitly listed in the Constitution.

Television, fax machines and the internet all developed after the *Brislan* case was heard, and at times the High Court has had to expand upon the judgement in *R v. Brislan* to determine whether these items are covered by the Constitution. The result of the judgement in the *Brislan* case is that these words in the Constitution have been interpreted and a meaning has been given to them.

### 3.3.3 A question of rights

The Constitution not only provides for our system of government and the division of law-making powers between the states and the Commonwealth; it also provides citizens of Australia with certain **rights**. These rights are referred to as express rights because they can be clearly identified in the words of the Constitution. Through its ability to interpret the Constitution, the High Court, as the guardian of the Constitution, therefore protects our rights as well. If a person or a group feels that an act of a government infringes upon their rights, they may ask the High Court to declare the action unconstitutional or the law *ultra vires*.

The High Court may also determine that other rights exist within the words of the Constitution even though those words do not expressly provide that right. The High Court can still **infer** that a right exists and that the words imply that right. There are a number of cases that involve the determination of implied rights by the High Court. All but one of these cases revolve around the implied right to freedom of political communication.

#### *Theophanous v. Herald and Weekly Times (1994)*

Dr Andrew Theophanous was a member of the Australian Labor Party (ALP) who had been elected to the House of Representatives in 1980. In 1992, while he was still a member of parliament, the *Sunday Herald Sun* published a letter written by Bruce Ruxton, the then-president of the Victorian branch of the Returned and Services League (RSL). This letter raised some concerns about the qualities of Dr Theophanous as a politician. Theophanous sued Ruxton and the Herald and Weekly Times (publishers of the *Sunday Herald Sun*) for **defamation**.

In resolving this dispute the High Court was required to look at the words of the Constitution, in particular sections 7 and 24, to determine if they allowed for freedom of political speech. The sections themselves state that members of the Senate (section 7) and the House of Representatives (section 24) are to be chosen by the people. The High Court was asked to examine if the requirement of being elected by the people gave the people the right to comment on political matters. The High Court ruled that the Constitution did protect freedom of political speech. Therefore the fact that Ruxton was expressing a view about a political matter provided him with a defence so that he could not be sued for defamation.

## 3.4 Applying international treaties

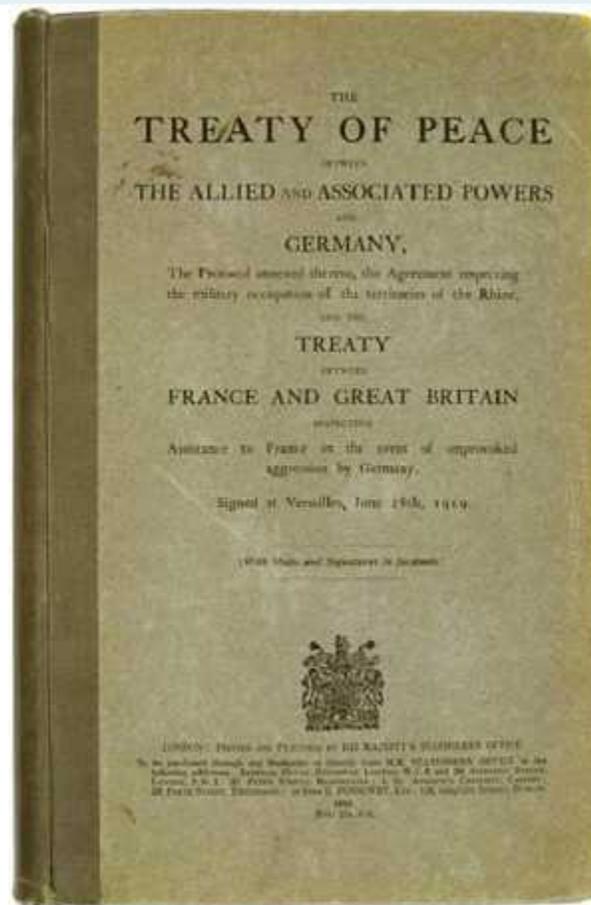
### 3.4.1 Reasons for treaties

As noted in [section 3.3.2](#), the High Court of Australia is empowered to make decisions in relation to any disputes relating to an international **treaty**. Australia is a signatory to many international treaties, and the Australian parliament may be required to pass laws that support or confirm the application of a treaty within Australia. Treaties are signed for a number of reasons:

- A peace treaty is signed to formally end a conflict or war. In 1919, six months after the end of World War I, the Treaty of Versailles was signed setting out the provisions for peace.
- Trade agreements are signed between two or more countries that agree to trade certain goods on certain conditions. It is common for these trade agreements to be 'free-trade agreements'; that is, to have no taxes or conditions imposed on them.
- International conventions are agreements drafted by the United Nations or other world bodies and signed (or ratified) by a majority of the countries of the world. The Universal Declaration of Human Rights (discussed in [topic 2](#)) is an example.

The signing of international treaties can lead to international disputes that require international courts to resolve them. International treaties can also lead to internal or domestic disputes, and the High Court will be asked to resolve these disputes.

**FIGURE 1** The Treaty of Versailles. Treaties are signed between countries to formalise agreements.



## DISCUSS

Australia has received criticism for its treatment of asylum seekers, particularly for the practice of processing asylum seekers off shore and detaining them for lengthy periods of time. What do you believe Australia's obligations towards asylum seekers are? Do you believe that the Australian Government treats asylum seekers appropriately? Give examples to support your response.

[Intercultural capability VCICCD019]

### Resources



Try out this interactivity: [International courts](#)

Searchlight ID: [int-5679](#)

## 3.4.2 The Universal Declaration of Human Rights

Following the end of World War II and the creation of the United Nations (UN) in 1945, the UN General Assembly adopted the Universal Declaration of Human Rights in 1948. Australia was one of the 48 countries to **ratify** the Declaration out of the 58 countries that made up the United Nations. Since then, nearly every country in the world has signed this document. The Declaration lists 30 rights that are afforded to all citizens of the world. These rights attempt to provide a structure and protection for the citizens of the world no matter where they live, where they travel, or what race, sex or religion they are. Despite the adoption of these rights by most countries, disputes still arise from perceived breaches of the Declaration or as a result of attempts to enforce the terms of the Declaration within a domestic environment.

In this regard Australia is no different. The High Court has been asked to rule on the application of the Declaration to events in this country that are believed to have infringed on the rights of a citizen or a group of citizens.

### *Koowarta v. Bjelke-Petersen & Ors (1982)*

In 1974 John Koowarta, an Indigenous Australian who lived in Queensland, collaborated with a group of Indigenous persons with a view to purchasing an extensive tract of land being used as a cattle station. The owner of the station agreed to the sale and had contracts drawn up. As Koowarta was using funds from the Aboriginal Land Fund Commission, the intended purchase was brought to the attention of the Queensland government. Before the sale could be completed, it was blocked by the state government.

**FIGURE 2** Indigenous Australians have had to protest to gain land rights.



Joh Bjelke-Petersen, the premier of Queensland at the time, did not approve of the sale. He did not believe that Aboriginal people should be able to acquire large areas of land, a view that was reflected in official Cabinet policy. Accordingly, he directed the Queensland minister of lands not to approve the sale. Koowarta initially made a complaint to the Human Rights and Equal Opportunity Commission on the basis that blocking the sale was discriminatory. (The Human Rights and Equal Opportunity Commission was established under the Commonwealth *Racial Discrimination Act 1975* as a result of Australia ratifying the Universal Declaration of Human Rights in 1948 and then signing the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD) on 13 October 1966.)

The commission upheld Koowarta's complaint, but the Queensland government appealed to the Supreme Court of Queensland. The argument put forward by Bjelke-Petersen, and the issue before the High Court, was that the Racial Discrimination Act was invalid because the Commonwealth did not have the power to pass such a law as it was not a concurrent or specific power — the Commonwealth had interfered in a state matter. He also argued that the constitutional provisions regarding external affairs did not apply because the Racial Discrimination Act only applied to Australians and so was not 'external' in nature. The Commonwealth Government and Koowarta argued that the external affairs provisions of section 51(xxix) meant the Commonwealth could pass laws that would give effect to Australia's international obligations as a signatory to the CERD.

The High Court agreed with Koowarta and the decision to block the land sale was deemed discriminatory. In 1988 the Queensland Supreme Court was allowed to rule on the original case and it allowed the sale to go ahead. The High Court had upheld an international treaty and its domestic application.

Watch the following video to see Aboriginal Australians demonstrating for land and other rights at the G20 summit in Brisbane in November 2014.

## on Resources



Watch this eLesson: [Aboriginal demonstration](#)

Searchlight ID: [eles-2428](#)

# 3.5 SkillBuilder: You be the judge

## 3.5.1 Tell me

The High Court of Australia is the most senior court in our legal system, and it deals with the most serious domestic and international cases. Those appointed to sit on the High Court bench are therefore our most senior and experienced barristers and solicitors.

The cases brought before the High Court often have political ramifications. When Tony Abbott was elected prime minister in 2013, border protection and stopping the influx of asylum seekers via boats were key components of his election strategy. In June and July 2014, the commitment of Tony Abbott and his government to the protection of our borders through the policy of ‘turning back the boats’ was tested in the High Court. Follow the **Asylum seekers video** and **High Court and asylum seekers** weblinks in your Resources section to watch a news report and read an article about asylum seekers and Australia.

## on Resources



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



Explore more with these weblinks: [High Court and asylum seekers](#)

## 3.5.2 Let me do it

### Allocate roles

As a class, you need to allocate roles and responsibilities to class members. To deliberate in this case, you will need students to assume the following roles:

- 7 High Court justices

- 7 judge's associates — these people assist the justices with legal research
- 2 barristers to present the case for the asylum seekers and 1 solicitor to support them
- 2 barristers to present the case for the Australian government and 1 solicitor to support them
- any student not allocated a specific role can act as an assistant or junior lawyer for the barristers.

## Prepare and argue the case

- Each of the two parties to the dispute (the asylum seeker team and the government team) must prepare a case to present to the High Court in relation to the plight of the asylum seekers referred to in the article and video.
- Working in pairs, the justices with their associates must familiarise themselves with the relevant laws so they can adjudicate on each team's case.
- Draw on your knowledge of the High Court, the Constitution and other legislation, as well as the information contained in this chapter and previous chapters. Refer to the relevant sections of the Constitution, Australian legislation and the Universal Declaration of Human Rights to provide information that will assist in the presentation or adjudication of the case.
- Finally, each team is to argue its case before the justices.

## Reach a verdict

- Those students appointed justices are to work independently of each other.
- Each justice is to write and deliver his or her verdict on the case after the evidence has been presented by both parties to the dispute.

# 3.6 Review

## 3.6.1 Summary

Wherever a large group of people live together, it is inevitable that disputes between people will arise. It is also true that wherever a large group of people live together, laws will be created to set a standard of behaviour and to protect those people. It is the role of the government to establish a system of dispute-resolution bodies to deal with conflict. In Australia the High Court is the superior court, charged with resolving the most serious disputes that arise. The High Court has been given the jurisdiction to allow it to:

- hear appeals from decisions in cases heard in state and territory Supreme Courts
- settle disputes between the states
- interpret the Constitution to determine law-making power
- interpret the Constitution to infer rights for the citizens
- resolve disputes arising from international treaties.

In doing so, the High Court guards our Constitution and our rights, and provides a check and balance on the laws made by government.

## ACTIVITIES

### HIGH COURT CASES

Work in pairs and select one of the cases below; they all relate to a High Court case.

- A. *C.A.L. No 14 Pty Limited t/as Tandara Motor Inn & Anor v. Motor Accidents Insurance Board* [2009] HCA 47
- B. *New South Wales & Ors v. Commonwealth* [2006] HCA 52
- C. *Amalgamated Society of Engineers v. Adelaide Steamship Co. Ltd* (the Engineers Case) HCA 30
- D. *South Australia v. The Commonwealth* (the First Uniform Tax Case) [1942] HCA 14
- E. *The Commonwealth of Australia v. State of Tasmania* [1983] HCA 21
- F. *State of Victoria v. The Commonwealth* (the Roads Case) [1926] HCA 48
- G. *Roach v. Electoral Commissioner* [2007] HCA 43
- H. *Australian Capital Television Pty Ltd v. Commonwealth of Australia* (1992) (the Political Advertising Case) 177 CLR 106
- I. *David Russell Lange v. Australian Broadcasting Corporation* (1997) 189 CLR 520
- J. *Mabo and Others v. Queensland (No. 2)* [1992] HCA 23
- K. *The Wik Peoples v. State of Queensland & Ors* [1996] 187 CLR 1

Research your chosen case, then prepare a report that includes the following:

1. a brief summary of the facts of the case — one student is to present one side of the case and the second student is to present the case for the other party to the dispute
2. an explanation of the area of the High Court's jurisdiction that led to the High Court hearing the selected case
3. a brief outline of the decision in the case and any residual effects of this decision on the Australian parliamentary system.

## Resources



**Try out this interactivity:** [Australia's High Court crossword](#)

Searchlight ID: [int-5526](#)

# Chapter 4: International law and us

## Contents

- 4.1 Overview
- 4.2 What is international law?
- 4.3 Key treaties affecting Australia
- 4.4 International law and Indigenous Australians
- 4.5 SkillBuilder: A treaty in the classroom
- 4.6 Review

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# 4 International law and us



## 4.1 Overview

### 4.1.1 A less than peaceful world

On 8 May 1945 the world celebrated VE (Victory in Europe) Day, when Germany surrendered to the Allies. Less than four months later the world celebrated VJ (Victory in Japan) Day, marking the end of World War II — a conflict that had lasted almost six years. No-one had expected another world war so close to the end of World War I in 1918. The world hoped that this time peace would be longer lasting and such a massive death toll would not be seen for a long time. Follow the **Conflict in Gaza** weblink in your Resources section to watch a video about the conflict in Gaza between the Palestinians and the Israelis, and its impact on the rest of the world.

In the seven decades since the end of World War II there has not been another world war, but that does not mean the world has been peaceful. Conflicts of varying size and longevity have been fought across the world almost since the end of that war. These conflicts often stem from religious, ethnic or historical disputes and sometimes cross borders. Whatever the cause, these conflicts have left us with a less than peaceful world.

**FIGURE 1** Families fleeing Mosul, Iraq, wait to be transported to a refugee camp.



While many of these conflicts are internal disputes between ethnic groups of a country or region, they can spill over into other areas and impact other nations and people, many of them innocents. Witness the internal conflict in the Ukraine in 2014 — on 18 July 2014 the world was brought into that conflict through the shooting down of Air Malaysia flight MH17, flying from Amsterdam to Kuala Lumpur.

## **on** Resources



**Explore more with these weblinks:** [Conflict in Gaza](#)



**Explore more with these weblinks:** [Australian victims of flight MH17](#)



**Try out this interactivity:** [Conflicts in the world today](#)

Searchlight ID: [int-5680](#)



**Try out this interactivity:** [Locations of conflicts around the world](#)

Searchlight ID: [int-5681](#)

# 4.2 What is international law?

## 4.2.1 Standards of acceptable behaviour

As citizens, we are members of a number of communities. We are members of our local community (the suburb we live in), the state we live in and the country we live in. As members of these communities, we are expected to abide by the laws that apply to those communities — the parking laws at our local shopping centres, the speed limits when driving on the roads and the laws governing taxation when completing our tax return for the Australian government. We are also a part of the global community. Therefore shouldn't we abide by the laws created for all of us to live in a peaceful world, devoid of international conflict? International law is concerned with setting standards of acceptable behaviour for nations and their citizens when dealing with issues that cross borders or issues of concern to society in general.

**FIGURE 1** When the rules of society are broken, it is the role of the police and other law-enforcement officials to deal with the offenders and consequences.



## 4.2.2 The United Nations

In [topic 2](#) you were introduced to the United Nations (UN), a world body that was established with the aim of promoting world peace and security and supporting economic development among all nations of the world. Its current Charter allows it to make the enforcement of international law, security, economic development, social progress, and human rights easier for all countries. Although the UN was officially founded in 1945, it had its beginnings at a meeting between the United States president and the prime minister of Great Britain in 1939 and then became more formalised in 1942 when the Declaration by United Nations was signed.

Twenty-six countries signed this Declaration, including Australia. Its purpose was to formally unite these countries against the Axis Powers (represented by Germany, Italy and Japan), whom they were fighting in World War II. It was from this document and from the subsequent revelations of the horrors of World War II — in particular the concentration camps and treatment of prisoners and civilians — that the current version of the United Nations was born. Membership of the UN has increased to 193 countries since then, with the latest member (South Sudan) joining in 2011.

The original 26 countries that signed the Declaration by United Nations did not include France — one of the first countries to be overrun by the German armies once World War II began.

**FIGURE 2** The newly formed United Nations promoted itself as a fighter for freedom.



One of the roles of the United Nations is the enforcement of international law. Let us look at how international law is made and the effect those laws have on Australia and on our lives.

## on Resources



Explore more with these weblinks: [United Nations map](#)

### 4.2.3 International law

International law consists of the rules and principles governing the relations and dealings of nations with each other, relations between states and individuals, and relations between international organisations. There are generally considered to be two types of international law:

- *public international law*, which concerns itself only with questions of rights between several nations, or between nations and the citizens or subjects of other nations
- *private international law*, which deals with controversies between private persons arising out of situations involving more than one nation.

**FIGURE 3** The United Nations is the body responsible for determining international law.



International law is developed from a number of sources but it is primarily derived from treaties and conventions between countries. A treaty is a form of contract between two parties (two countries or two international organisations from different countries). Perhaps the most famous treaty is the Treaty of Versailles, signed at the end of World War I. It details Germany's culpability for starting the war and its responsibility for making **reparations** to the countries it waged war upon. The Treaty of Versailles required Germany to pay the equivalent of US\$33 billion to the Allied countries (worth about US\$400 billion today).

Other sources of international law include the Charter of the United Nations, international customs and the general principles of law that apply in the majority of countries.

The Charter of the United Nations provides a number of chapters that allow international laws to be established:

- Chapter I sets forth the purposes of the United Nations, including the important provisions for the maintenance of international peace and security.
- Chapters III–XV, the bulk of the document, describe the organs and institutions of the UN and their respective powers.
- Chapters XVI–XVII describe arrangements for integrating the UN Charter with established international law.

The following chapters deal with the enforcement powers of UN bodies:

- Chapter VI describes the Security Council's power to investigate and mediate disputes.
- Chapter VII describes the Security Council's power to authorise economic, diplomatic, and military sanctions — as well as the use of military force — to resolve disputes.
- Chapter VIII makes it possible for regional arrangements to maintain peace and security within their own region.
- Chapters XIV–XV establish the powers of the International Court of Justice and the United Nations Secretariat respectively.

One key section of the Charter allows the creation of the International Court of Justice to hear and rule on international disputes.

The United Nations is responsible for drafting and ratifying international conventions and declarations that seek to establish guidelines for behaviour and the establishment of rights for citizens of the world. These conventions and declarations are drafted by the General Assembly of the United Nations or one of the six main committees of the UN. These committees draft resolutions, conventions and declarations which are then ratified by a vote of the General Assembly's 193 members.

#### 4.2.4 Enforcing international law

It is the role of the United Nations to both establish international laws and enforce them. The United Nations makes use of the International Court of Justice and the UN Security Council, responsible for deploying UN peacekeepers, to assist it in enforcing international law.

## The International Court of Justice

The International Court of Justice is the primary judicial branch of the United Nations. It is based in the Peace Palace in The Hague, Netherlands. Its main functions are to settle legal disputes submitted to it by states (member countries of the United Nations) and to provide advisory opinions on legal questions submitted to it by duly authorised international branches, agencies and the UN General Assembly.

**FIGURE 4** The International Court of Justice, The Hague



As at April 2014, a total of 160 cases had been brought before the International Court of Justice. Australia has been involved in five of those cases, one of which is still in progress. The cases involving Australia are:

- Nuclear Tests Case (*Australia v. France*) 1974
- Certain Phosphate Lands in Nauru (*Nauru v. Australia*) 1992
- East Timor (*Portugal v. Australia*) 1995

- Whaling in the Antarctic (*New Zealand & Australia v. Japan*) 2014
- Seizure of Certain Documents and Data (*Timor-Leste v. Australia*), in progress.

The most recent case resolved that involved Australia was a joint action brought by Australia and New Zealand accusing Japan of exceeding its limits on whaling for research purposes in the Antarctic. The International Court ruled in Australia's favour and banned Japan from whaling in the Antarctic. Follow the **Japanese whaling in Antarctica** weblink in your Resources section to read an article outlining the International Court's judgement and watch a video on this issue.

## UN peacekeepers

When disputes relating to international law or disputes between nations or ethnicities turn to conflict, the United Nations will often step in and deploy peacekeepers. Peacekeepers are military and other personnel who help countries experiencing conflict create conditions for lasting peace. Their role is to provide security as well as the political and peacebuilding support to help countries make the difficult transition from conflict to peace. Follow the **UN peacekeeping missions** weblink in your Resources section to view a map of the UN's current peacekeeping missions.

There are currently 17 UN peace operations deployed on four continents. They not only help to maintain peace and security, but also:

- facilitate the political process
- protect civilians
- assist in the disarmament, demobilisation and reintegration of former combatants
- support the organisation of elections
- protect and promote human rights
- assist in restoring the rule of law.

This is done through activities such as:

- conflict prevention and mediation
- peacemaking
- peace enforcement
- peacebuilding.

## DISCUSS

In recent years the increase in popularity of social media has enabled people to support social causes, whether local, national or global, with the click of a button. This has been described as 'clicktivism' or 'slacktivism'. What do you think these terms mean? Describe ways in which social media can both help and harm social causes and contribute both negatively and positively to global citizenship. [Intercultural capability VCICCD019, ethical capability VCECU019, critical and creative thinking VCCCTR048]

According to the Department of Foreign Affairs and Trade, Australia has participated in more than 50 UN peace and security missions involving over 65 000 personnel. There are more than 3500 Australians currently serving in missions around the world, including those in the Middle East (with UNTSO since 1953) and in Cyprus (with UNFICYP since 1964). Australia has led successful regional missions in the Solomon Islands, Timor-Leste (East Timor), and Bougainville in Papua New Guinea. As a member of the Commonwealth, we have also contributed to missions in Zimbabwe and Uganda, and to the Multinational Force and Observers in the Sinai. Australia is also contributing to international stabilisation efforts in Afghanistan. We are the largest non-NATO contributor to the International Security Assistance Force. Follow the **UN peacekeeping mission** — **video** weblink in your Resources section to watch a video of a typical UN peacekeeping mission discharging its duties.

### on Resources



**Explore more with these weblinks:** Japanese whaling in Antarctica



**Explore more with these weblinks:** UN peacekeeping missions



**Explore more with these weblinks:** UN peacekeeping mission — video

## 4.3 Key treaties affecting Australia

### 4.3.1 Australia's commitment to global citizenship

Treaties are designed to formalise agreements between countries. The Department of Foreign Affairs and Trade identifies 21 areas in which treaties can be categorised. These areas include:

- atmosphere and outer space
- criminal matters

- defence and security
- human rights
- international trade
- labour.

As a good global citizen Australia adopts these treaties in good faith, intending to abide by them and to assist in bringing countries that breach these treaties to account. This can lead to Australia passing its own laws to bring these international treaties into effect in Australia. However, adoption of these treaties can cause conflict in Australia as governments attempt to pass laws that enforce the treaties and hence dictate the direction of government policy. An example of such a scenario was Australia's signing of the World Heritage Convention in 1972. The signing of this Convention led to a High Court case, a change in government policy and an election.

### 4.3.2 *The Commonwealth v. The State of Tasmania*

In 1972 the United Nations ratified the World Heritage Convention, a document drafted by UNESCO (United Nations Educational, Scientific and Cultural Organization). This document aimed to establish a process for countries to identify significant natural or cultural sites with a view to protecting them from damage, destruction or any other form of harm. Using the terms of the Convention, which is an international treaty, the Commonwealth nominated for World Heritage listing specific areas in Tasmania that the Tasmanian government had planned to dam for the purposes of generating hydroelectricity.

The area concerned, the Franklin and Gordon rivers, contained unique flora and fauna as well as significant Indigenous artefacts that would be destroyed by the dam. To ensure their protection, the Commonwealth Parliament passed the *World Heritage Properties Conservation Act 1983*. This ensured the protection of much of the south-west wilderness regions of Tasmania.

**FIGURE 1** Protests at the Franklin River gained widespread media coverage and provoked such a public response that the Hawke government subsequently nominated the area for World Heritage listing under the terms of an international treaty.



The Tasmanian government challenged the Commonwealth law on the basis that the Commonwealth didn't have the power to make laws in this area because it was an area of law-making belonging to the states. The Commonwealth argued that a section of the Constitution gave it the power to make laws under the heading 'external affairs'. It successfully claimed that 'external affairs' allowed it to sign treaties and so by default pass domestic laws that supported those international treaties. The Commonwealth case was started by the Labor government, led by Bob Hawke. He had been elected prime minister only recently, having campaigned to 'stop the dam'.

## Further developments

In 1972 Australia signed the International Covenant on Civil and Political Rights and ratified it in 1980. This Covenant is a multilateral treaty that commits its parties to respect the civil and political rights of individuals. These include the right to life, freedom of religion, freedom of speech and freedom of assembly, as well as electoral rights and rights to due process and fair trials. Article 17 of the Covenant has been implemented by the federal *Privacy Act 1988*, and the Covenant's equality and anti-discrimination provisions are supported by the federal *Disability Discrimination Act 1992*.

One outcome of the Tasmanian Dam Case was that some laws made by the states could be declared invalid if they contradicted laws made by the Commonwealth as a result of Australia signing a treaty. The Commonwealth passed the *Human Rights (Sexual Conduct) Act 1994* with the express purpose of overturning two sections of the Tasmanian Criminal Code that outlawed certain consensual adult behaviour conducted in private.

### Resources



**Watch this eLesson:** [Tassie's Franklin River — 20 years on](#)

Searchlight ID: [eles-0636](#)

## 4.3.3 International trade

All countries trade goods and services because trading brings many benefits. These include:

- access to a wider variety of goods and services
- increased incomes as goods sold overseas bring income into the country
- higher living standards as we gain access to better quality goods and services
- falling prices from access to cheaper goods and services and increased competition between sellers
- higher employment as more goods need to be produced for export.

Consequently, many treaties signed by Australia and other countries are **trade** agreements. Such agreements establish rules and guidelines for the trade of goods and services between countries. Some trade agreements are merely contracts between countries to supply certain goods and services at certain prices. Other trade agreements are significant international agreements that affect how our government operates in the area of international trade. On 1 January 1995 the General Agreement on Tariffs and Trade (GATT) was replaced by the World Trade Organization (WTO) framework. This provided a new agreement to continue improving trade relations and reducing trade barriers between countries.

**FIGURE 2** International trade involves treaties and agreements between countries.



However, not all countries trade freely. They erect trade barriers to make it difficult for foreign products to enter the country and compete with local goods. GATT and the WTO have sought to rectify this issue by encouraging countries to move towards free trade. They have done this by advocating the signing of free-trade agreements between countries or regions, and the removal of trade barriers such as **tariffs**.

As a result of the free-trade efforts of GATT and the WTO, Australia has reduced tariffs in a number of areas including the manufacture of motor vehicles. Tariffs on imported cars have been steadily reduced over the last 25–30 years, with the last reduction occurring in 2010 when the tax on imported cars fell from 10 per cent to 5 per cent. This reduction was part of government policy established in the 1980s to reduce protection for Australian car manufacturers. The tariff reductions have resulted in lower prices for imported cars and reduced sales for Australian-made cars. The overall outcome will be the closure of local car-manufacturing plants by 2017 with the loss of thousands of jobs. While this may seem to be a negative outcome, we must remember that other countries have also reduced their tariffs, allowing our goods to better compete in those countries and creating jobs in Australia.

**FIGURE 3** Tariff reductions have resulted in cheaper imported cars but also job losses and car plant closures in Australia.



#### 4.3.4 ANZUS

Some of the most important treaties have arisen from armed conflict. (One of these was the Treaty of Versailles, discussed in [section 4.2.3](#)). During World War I Australia fought with British, New Zealand and US troops on various battlefields across Europe. When World War II commenced in the Pacific, Australia was threatened — the Japanese had bombed Darwin and sent their mini-submarines into Sydney Harbour. Our strong ties with the United States led the Americans to provide aid and support during this time, and to fight with us to push back the Japanese forces.

This conflict strengthened our ties with both the United States and New Zealand, culminating in the signing in 1951 of the ANZUS (Australia, New Zealand, United States Security) agreement. This treaty bound the three nations to cooperate on defence matters in the Pacific Ocean region. While the treaty was modified in 1984 due to New Zealand's objections to nuclear warships entering its ports, the agreement is still in effect and annual meetings are held to confirm the relationship. The treaty also allows for joint defence installations to be operated on Australian soil.

**FIGURE 4** Security treaties such as ANZUS provide Australia with military support if needed.



### 4.3.5 The International Labour Organization

Australia is a member of the International Labour Organization (ILO), an agency of the United Nations that deals with labour issues among member states. The eighty-sixth International Labour Conference in 1998 adopted the Declaration on Fundamental Principles and Rights at Work. This declaration contains four fundamental policies:

1. the right of workers to associate freely and bargain collectively
2. the end of forced and compulsory labour
3. the end of child labour
4. the end of unfair discrimination among workers.

The ILO asserts that its members have an obligation to work towards fully respecting these principles, which are embodied in relevant ILO conventions. As a signatory, Australia has adopted these policies and many of them are reflected in our labour laws.

# 4.4 International law and Indigenous Australians

## 4.4.1 Racial discrimination

As discussed in [topics 2](#) and [3](#), Australia is a signatory to the Universal Declaration of Human Rights. The Declaration establishes certain rights that all citizens in all countries are entitled to. By signing the document, a country agrees to abide by the provisions of the Declaration and not engage in any conduct that infringes upon those rights.

**FIGURE 1** When the British arrived in Australia, they considered the land to belong to no-one.



A further declaration passed by the United Nations and ratified by Australia is the International Convention on the Elimination of All Forms of Racial Discrimination. This Convention was ratified in 1965 and came into effect in 1969. It contains 25 articles (or sections) that define racial discrimination and the various types of racial discrimination that exist in the world. Article 5 includes the following:

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights ...

One impact this Convention (and this article in particular) has had on government policy can be seen in the passing of the Commonwealth *Racial Discrimination Act 1975*. The preamble and long title of the Act clearly outline the reasons for passing this legislation:

### **Long title**

An Act relating to the Elimination of Racial and other Discrimination

### **Preamble**

... it is desirable, in pursuance of all relevant powers of the Parliament, including, but not limited to, its power to make laws with respect to external affairs, with respect to the people of any race for whom it is deemed necessary to make special laws and with respect to immigration, to make the provisions contained in this Act for the prohibition of racial discrimination and certain other forms of discrimination and, in particular, to make provision for giving effect to the Convention ...

Despite these laudable aims, there have been instances where the treatment of **Indigenous** Australians has fallen short of our obligations under the Declaration and the Convention. One particular area of conflict is land rights. Having occupied the country for between 40 000 and 60 000 years before the arrival of Europeans, Indigenous peoples have a valid claim to land in many different parts of Australia. Weighed against this is the English-based legal system of land and property ownership imposed here since 1788, under which both urban and rural Australians believe they have legal title to land they occupy. Finding a legal balance between these conflicting claims, while ensuring fairness and justice, is clearly a challenge for our legal system. It was this issue that was at the heart of a long-running legal dispute over rights and Australia's obligations: the Mabo Case.

## 4.4.2 The Mabo Case

In August 1770, Captain James Cook claimed all of the east coast of what is now Australia as British territory. Under the internationally recognised law of the time, Cook could claim land on any one of the three following legal grounds:

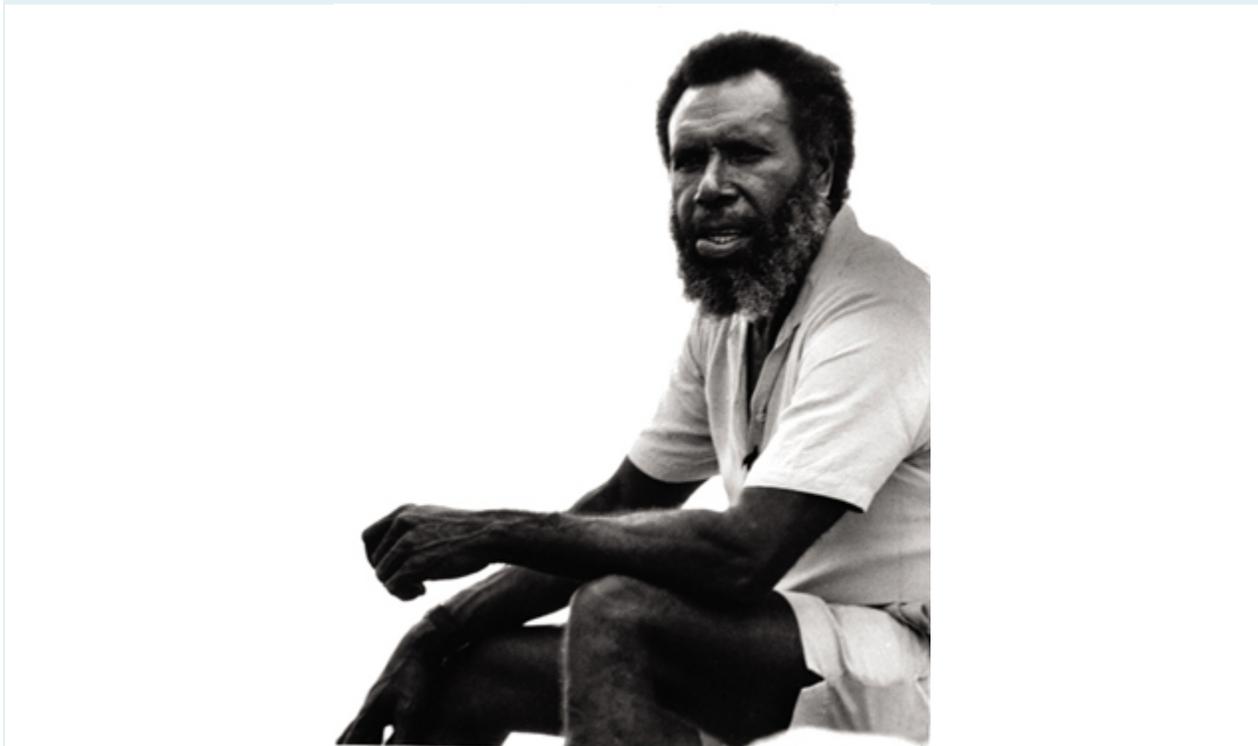
- If the land was uninhabited, any country could claim ownership and settle the land under the principle of ***terra nullius***.
- If the land was inhabited, another country could ask the leaders of the indigenous inhabitants for permission to make use of some of the land. This could involve making a land purchase or coming to some other arrangement such as a treaty, but the arrangement had to be agreeable to the indigenous population.

- A country already inhabited could be conquered through invasion and war, defeating the indigenous population in battle. International law at the time created an expectation that the conquered inhabitants still had rights that had to be respected.

Although the land was inhabited, Cook claimed it under the principle of *terra nullius*. The British did not recognise the Aboriginal peoples as having any legal title over the land because they had no written laws of **land tenure** as existed in European countries.

In 1982 Eddie Mabo, an inhabitant of Murray Island in the Torres Strait, began legal action against the State of Queensland, claiming that he and his people were the legal owners of Murray Island. Mabo was an active campaigner for Indigenous rights. He discovered that, contrary to what he had believed all his life, his people did not legally own the land they always believed was theirs. Mabo was joined in this action by a number of other Indigenous inhabitants of Murray Island. The action was brought largely as a test case. The Murray Islanders believed they owned the land because their people had occupied it for centuries, long before European settlement of Australia, but Queensland law appeared to designate the Torres Strait Islands as being under the ownership and control of the Queensland government.

**FIGURE 2** Eddie Mabo challenged the state of Queensland in the High Court, resulting in changes to the law concerning Indigenous land rights.



## The Mabo decision

The Full Bench of the High Court decided in favour of the Islander plaintiffs and declared that: 'The Murray Islanders of the Torres Strait are entitled, as against the whole world, to possession, occupation and enjoyment of the lands of the Murray Islands.'

The basis for this decision rested on the following:

- The principle of *terra nullius* had been incorrectly applied. Australia had never been an empty land, and so the British were wrong to use it as the legal basis for their occupation of the land.
- In the absence of *terra nullius*, it was appropriate to apply principles relating to native title to land occupied and used by its traditional Indigenous owners.
- Native title can be recognised and included in the Australian system of property law and common law.

The Meriam people of Murray Island could claim native title because they were able to demonstrate continuing occupation and use of their land. Their system of family ownership and land usage was significant because it could be clearly demonstrated that these had operated continuously since before white settlement. In other parts of Australia, where Aboriginal people have been dispossessed, the issue was not so clear. In his judgement, Chief Justice Brennan indicated that: 'there may be other areas of Australia where an Aboriginal people, maintaining their identity and their customs, are entitled to enjoy their native title'. Future claims by other Indigenous groups would need to demonstrate clearly that a high level of traditional occupation and land usage would be necessary to support such a claim. Individual claims would have to be decided on a case-by-case basis.

## Native title legislation

Western Australia was the first state to respond to the Mabo Case with legislation. The state parliament passed the *Land (Titles and Traditional Usages) Act 1993*. Its aim was to extinguish the common law right of native title throughout the state and replace it with a statutory right of 'traditional usage', which could itself be extinguished by the government at any time. This Act was a deliberate attempt to favour mining and pastoral companies in any dispute with Indigenous occupants over rights to the land.

Commonwealth governments had previously avoided coming into conflict with state governments over Indigenous land rights, but the Keating Labor government wished to find a way to support those rights. The risk that some other state governments might try to legislate to extinguish Indigenous land rights as Western Australia had done led the Commonwealth to propose its own legislation. The *Native Title Act 1993* (Cwlth) was passed in late December 1993 and came into force on 1 January 1994. This Act included the following principles:

- legislative recognition and protection for the previously common law concept of native title
- the extinguishment of native title rights over freehold land
- no extinguishment of native title rights by any processes other than those contained in the Act

- the rights of Indigenous people to claim native title over Crown land if they could prove a traditional and continuing attachment to that land
- procedures for claiming native title through the establishment of a Native Title Tribunal.

## *Western Australia v. Commonwealth*

In the case *Western Australia v. Commonwealth* [1995] HCA 47 the Western Australian government challenged the validity of the Native Title Act in the High Court. At the same time Indigenous groups from outback Western Australia, such as the Worora and Martu peoples, challenged the validity of that state's legislation.

The High Court heard all three cases together, and declared the Western Australian legislation invalid under section 109 of the Constitution because it was inconsistent with both the Native Title Act and the Racial Discrimination Act. This case reinforced the jurisdiction of the Commonwealth Parliament over native title matters.

By 1995, the legal principle of native title was clearly established in Australia. *Terra nullius* no longer had application in Australian law, and a process for determining Indigenous land rights claims was in operation. If a native title claim is contested by any other party, the Federal Court and the High Court have ultimate jurisdiction to determine the matter. The Native Title Tribunal was established to help determine the validity of native title claims and to provide mediation services to help resolve disputes over native title. No state could introduce laws relating to Aboriginal or Torres Strait Island land rights that were inconsistent with the Commonwealth Native Title Act.

# 4.5 SkillBuilder: A treaty in the classroom

## 4.5.1 Tell me

By now you should realise that a treaty is a document that provides rules for behaviour among nations. While some treaties are small in nature (being between only two countries), some are broader in scope and application. Consider how these broader treaties are developed and agreed upon.

This activity will require students to work in groups to draft and negotiate a treaty for the class. Students will need to consider the aims of both parties to the treaty (students and staff) and what each party may be seeking to gain from the treaty.

## 4.5.2 Let me do it

### Prepare the background to the case

Divide into groups. Allocate one group the task of representing the staff, with the other groups representing the students. Each group should choose an area or issue they would like to see discussed for inclusion in the treaty. These could include:

- the setting of homework
- the use of mobile phones and other electronic devices during class
- lateness to class
- punishments for breaches of conditions of the treaty
- assessment procedures and criteria.

Remember to consider the interests of both parties to the treaty (students and staff).

### The task

- Working in their groups, students should draft a set of conditions or articles for inclusion in a class treaty. Using a pre-established process, debate and discuss the various sections for inclusion. Each group should present its sections to the whole class for discussion and amendment.
- As each section is discussed and debated, the class should vote as a whole on whether or not to adopt the section. Those sections agreed to should be included in the treaty.
- Upon completion of the drafting stage, as a class present the treaty to your teacher. Be prepared to engage in further discussion and debate over the conditions established and agreed to by the class. As a result of this further discussion and debate, the treaty may need to go back to the class for amendment.
- When the terms of the treaty have been agreed to, arrange for the treaty to be signed by all parties. Invite your principal to be present and arrange for a member of the school magazine to record the event.
- Print the treaty and display it on the wall of the classroom.

# 4.6 Review

## 4.6.1 Summary

Rules and laws are needed whenever a large group of people live together and interact with each other. The continuing development of technology has allowed for increased communication and interaction between countries and peoples. This has necessitated the need for a global body to oversee and attempt to regulate the interactions between countries. The aim of such a global body is to minimise the incidence of conflict among peoples and nations.

Treaties play an important part in establishing rules for behaviour in a range of areas:

- economics and trade
- labour laws
- military and defence
- economic development
- human rights.

As a member of the global community, Australia has played a role in the development of these global laws, treaties and the bodies responsible for drafting and enforcing these rules. Australia was a founding member of the United Nations, a participant in United Nations peacekeeping missions, and a member of many of the bodies established under the United Nations banner.

Australia is acutely aware of its role in the international community and aims to fulfil its responsibilities to that community. Australia also recognises its obligations at home and applies the terms of international treaties and agreements at home to improve the lives of its citizens.

## ACTIVITIES

### CHILD LABOUR

This activity requires you to reflect on what child labour means and the impact it can have on an individual child, a generation and a society as a whole.

Prepare a multimedia report on child labour. In it you need to:

1. Define child labour.
2. Outline your experience of working as a child. (What jobs do you do at home? Do you get pocket money and what do you do to earn it? Do you have a part-time job? If so, what do you do, who do you work for and what are your working conditions?)
3. Explain the negative impact of child labour on children and society.
4. Discuss whether children should be allowed to work and the circumstances in which this should be allowed.
5. Present relevant statistics related to child labour.
6. Discuss the labour laws in Australia.

## Resources



**Try out this interactivity:** [International law and us crossword](#)

Searchlight ID: [int-5529](#)

# Chapter 5: Sustaining a cohesive society

## Contents

- 5.1 Overview
- 5.2 Living in a cohesive society
- 5.3 Threats to social cohesion
- 5.4 Protecting social cohesiveness
- 5.5 Resolving conflict
- 5.6 SkillBuilder: Using and referencing quotes
- 5.7 Review

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# 5

## Sustaining a cohesive society



### 5.1 Overview

#### 5.1.1 Democracy and freedom

Australian communities tend to take democracy for granted. Our right to vote, our right to protest and our right to express our individuality are all freedoms that are not universally experienced. Yet many of these freedoms are institutionalised in our community and protected by our governments. Democracy is an essential ingredient for a unified community. It allows all voices to be heard and all opinions to be considered. Democracy both promotes and protects individual expression. As a result, democratic societies are often ones which experience a high degree of social cohesion or unity. As individual rights and freedoms are protected, people are free to express themselves without fear of persecution or discrimination. In Australian society there are mechanisms which legally protect individuals from these and other threats. In this topic, we dissect the social cohesion of Australian society. We see what social cohesion looks like, what threatens our communities and what protects them.

**FIGURE 1** Democracy allows all voices to be heard and all opinions to be considered.



## on Resources



**Watch this eLesson:** [Living in a cohesive society](#)

Searchlight ID: [eles-2378](#)

# 5.2 Living in a cohesive society

## 5.2.1 The 'lucky country'

Australia is often described as 'the lucky country'. In modern Australian culture, this phrase has come to refer to our abundance of natural resources and our good weather, relatively peaceful history and tolerant society. It is interesting then that the man who coined this phrase meant it as an ironic criticism of Australian society. Author and social commentator Donald Horne believed that the positive aspects of Australian life had been gifted to us, rather than earned. Whether you agree with Horne's criticism or not, Australian society can be perceived as lucky. In many ways, our society should not function as well as it does. With so many different cultural and ethnic backgrounds, it is reasonable to assume that civil conflict would regularly occur. However, although Australian society has not been without social problems, the level of cohesion within Australia is relatively high. In this subtopic, we examine what social cohesion is and how it exists in Australia.

**FIGURE 1** Australia is in many aspects a lucky country.



## 5.2.2 What is a cohesive society?

Modern societies are both dynamic and delicate. They can expand and contract, stand together or fall apart. With nearly all Australian communities containing a complex mix of ethnic and cultural backgrounds, there exists significant potential for civil unrest. What stops this violence from occurring is a concept referred to as social cohesion. Often described as the glue which holds society together, social cohesion is defined by an OECD report as ‘a force which fights exclusion and **marginalisation**, creates a sense of belonging and promotes trust within communities.’ Social cohesion is not an official government policy and nor does it take one specific form. Instead, there are several ways in which it can be demonstrated in Australian communities.

**FIGURE 2** Most Australian communities contain a diversity of cultures.



### 5.2.3 Social cohesion in Australia

The Australia you have grown up in is a mostly tolerant and **inclusive** society. It is a society that encourages the demonstration of cultural and religious identity. As we see later in this topic, it is a society that uses legal mechanisms to protect individual freedoms and fight against all forms of discrimination. Modern Australian communities are culturally **integrated**. Although some new migrants do prefer to establish themselves in small groups, the majority of Australian communities are composed of a wide variety of ethnicities. The way in which these communities have developed and continued to exist peacefully is itself an example of social cohesion within Australia.

**FIGURE 3** The diversity of Australian communities is on display in our public spaces.



Numerous examples of social cohesion can be seen in everyday Australian life. On a walk around your neighbourhood you might see churches, mosques, synagogues or other religious buildings. There are designated areas in the supermarket for Italian, Asian and Indian food. A crowded city-bound train carries people from countless cultural backgrounds. These examples exist because our communities have developed to be inclusive and tolerant. The sense of belonging that is felt and encouraged in Australian society exists only because of the mechanisms that have been put in place to protect individual freedoms. Subsequent sections of this topic investigate from which threats our communities need protection and how social cohesion in Australian communities is protected ([subtopic 5.4](#)).

## 5.3 Threats to social cohesion

### 5.3.1 Law-breakers cause harm to members of our community

The threats that a society faces may vary in terms of significance. Some communities around the world are threatened by war and violence, others by poverty and famine. For the majority of Australians, these threats are thankfully not ones we deal with in our daily lives. The threats that Australians face are directed at our democratic freedoms and the harmony of our communities. In this subtopic, we examine the threats to social cohesion and the dangers they pose, in particular:

- organised crime
- vested interests
- corruption
- lawlessness.

#### **on** Resources



**Explore more with these weblinks:** [Australian Crime Commission](#)

### 5.3.2 Organised crime

When discussing organised crime, we must ignore stereotypes created and perpetuated by media and popular culture. While it is true that some criminal organisations have significant family connections, not all organised crime occurs in this way. According to the Australian Crime Commission, the major types of organised criminal activity can be classified into three main groups:

- criminal syndicates
- outlaw motorcycle gangs
- professional facilitators.



Although these groups operate in different ways, they can all pose threats to the social cohesion of Australian society.

## Criminal syndicates

Criminal syndicates are responsible for the majority of organised criminal activity in Australia. Ranging in size and influence, criminal syndicates are highly structured criminal enterprises. They can operate with structures and characteristics similar to those of regular businesses. Criminal syndicates usually involve large-scale criminal activity including the sale of illicit drugs and firearms, financial crimes, match fixing in sport and money laundering.

## Outlaw motorcycle gangs

In recent years, there has been a crackdown on criminal activity among the various motorcycle gangs that operate in Australia. Motorcycle gangs have existed in Australia since the 1960s. Gangs such as the Bandidos and Comancheros do include legitimate motorcycle enthusiasts. However, their membership also includes known criminals and members of criminal syndicates. Some of these gangs are not only involved in criminal activity, but also frequently engage in violent behaviour while undertaking these crimes. The potential impact of outlaw motorcycle gangs on Australian communities was deemed so significant that all states have passed legislation severely restricting gang activity.

**FIGURE 1** Recent crackdowns have severely restricted the activities of the outlaw motorcycle gangs.



## Professional facilitators

A professional facilitator is an industry professional or person with specific expertise. Such a person is employed by criminal organisations to undertake specialist criminal activity. Professional facilitators are usually involved in crimes related to finance and technology. Criminal organisations may use a facilitator because they lack the required knowledge and skills, or because they want to distance themselves from the crime being committed. Professional facilitators may engage with criminals for personal gain or they may be forced into such activity through blackmail. The use of professional facilitators is becoming increasingly prevalent in Australian organised crime.

**FIGURE 2** Professional facilitators such as IT experts are increasingly being employed by crime syndicates.



### 5.3.3 Vested interests

Vested or conflicted interests can occur in a range of professions. Teachers who are employed as tutors can have conflicted interests (but only if they are paid to tutor students they teach at school), as can a sports commentator who supports a particular team. The conflict of interest that can have the most significant impact on Australian society occurs in our political system. Before beginning their terms of office, politicians must disclose any potential conflict of interest that may interfere with their position and responsibilities. Existing investments, business relationships and personal assets are examples of potential conflicts.

Consider the example of controversial businessman and politician Clive Palmer. Elected as the member for Fairfax in the 2013 federal election, Palmer has amassed a large personal fortune due to his involvement in the mining industry. Although he has disclosed his assets to parliament, his critics claim that Palmer's opinion and eventual vote on government legislation will be influenced by his business interests. They argue that there is no more clear example of this conflicted interest than the proposed repeal of the 2011 mining tax (known as the Minerals Resource Rent Tax). Vested interests such as Palmer's can be viewed as a threat to Australian democratic processes. Instead of representing the interests of his electorate, Palmer could be accused of merely representing his own interests.

### 5.3.4 Corruption

Unlike many governments around the world, Australian politics is relatively free from corruption. Forms of political corruption may include bribery, **embezzlement** and the repression of political opponents. While these acts are not commonplace in Australian governments, they have been known to occur.

From the Rum Rebellion (1808) to the Loans Affair (1975), political corruption has at times had an impact on the proper functioning of Australian governments. The Rum Rebellion led to the only successful armed revolution against an Australian government in history of this country, while the Loans Affair contributed to the sacking of former Prime Minister Gough Whitlam. More recently, political corruption has been rife in the New South Wales parliament. Since 2009, this suspect activity has resulted (directly or indirectly) in the resignation of two New South Wales premiers. Corruption in the New South Wales parliament has also caused Australia to slip in the corruption ratings calculated by independent assessor Transparency International (see [figure 4](#)). Political corruption compromises effective government and is therefore a serious threat to democracy and social cohesion in Australia.

#### Resources



**Try out this interactivity:** [Global corruption rankings](#)  
Searchlight ID: [cpi2013-640](#)

### 5.3.5 Lawlessness

Australian society has never been truly lawless. Indeed, martial law has only been invoked once in our nation's history — immediately after the Eureka Stockade. Contemporary Australian society largely follows the rule of law, resulting in the majority of our communities remaining safe and peaceful. There have been times, however, when Australian citizens have pushed the boundaries of civil society; times when hostile groups and individuals have threatened the safety of others.

Freedom of assembly is widely enjoyed by our democratic society. Groups of people are free to congregate in support of a cause, or an ideology or event. The vast majority of protests in this country are peaceful in nature, although there have been several episodes of mob violence. The most infamous of recent episodes would have to be the 2005 Cronulla riots. Situated on the New South Wales central coast, Cronulla is (like many suburbs in Australia) characterised by its ethnic diversity. The riots were the result of simmering tension between young Lebanese and Anglo-Saxon men. The violence escalated on 11 December after an earlier altercation between the two groups at a Cronulla beach. The riot and retaliations that followed were some of the most graphic examples of violent racism seen in modern Australia. Many people were injured in the bloody violence and over 100 arrests were made during the riots and the aftermath. Follow the **2005 Cronulla riots** weblink in your Resources section to find out more about these riots in Sydney.

**FIGURE 3** A young man clashes with police during the Cronulla Riots in 2005.



Recently there has been a strong media focus on the amount of alcohol-fuelled assaults occurring on the streets of Australian cities. Although statistics show that the frequency of such assaults is decreasing, their indiscriminate and callous nature has shocked Australian communities. Assaults including so-called 'king hits', now called 'coward punches', are particularly frightening and have led to the tragic deaths of several young Australians. State governments are working to reduce the incidence of public violence both through the enforcement of harsh new penalties and through education and awareness programs aimed at young people.

## DISCUSS

In 2014, NSW and Victoria introduced mandatory minimum prison terms for so-called 'one punch deaths', or 'coward's punch manslaughter'. This was in response to a large number of incidents in those states in which someone died as a result of being 'king hit' (a punch delivered without warning) by an intoxicated person. The change to minimum terms has increased sentences for offenders, but not everyone is convinced that longer sentences for this type of crime are effective. Find out what the mandatory minimum penalties are for this crime in Victoria and NSW. Discuss the advantages and disadvantages of longer sentences for 'coward's punch manslaughter'. [Ethical capability VCECU021]

### on Resources



Explore more with these weblinks: 2005 Cronulla riots

# 5.4 Protecting social cohesiveness

## 5.4.1 Democratic freedom and rights

As we have already discussed, contemporary Australia experiences a high degree of social cohesion. Our cultural differences are celebrated and used to foster unity and tolerance. In order for Australian society to remain unified, we need to protect the very elements that contribute to this sense of social cohesion. Among the most important of these elements are the democratic freedoms and rights of Australian citizens. Australia has no **bill of rights** to officially protect democracy and social cohesion within its borders. Instead, Australian citizens rely on other safeguards and mechanisms to protect their freedoms and rights.

The adherence to a system of shared values can also help unify Australian society. In this subtopic, we explore the ways in which social cohesion and democratic rights are protected in contemporary Australia.



## 5.4.2 Wrong to have no rights?

A bill of rights is a document that lists and describes the individual rights of citizens. It is a key feature of democratic society, so it may surprise you to learn that Australia is the only Western democracy that functions without an official bill of rights. There has been significant social and political debate regarding this issue. The enforcement of an Australian bill of rights would fall to our judicial system. Opponents to such a document claim that it would reduce the rights of citizens because judges are appointed and not democratically elected. Supporters of a bill of rights argue that such a **legally binding** document would officially protect social freedoms and also enhance social cohesion by enshrining the rights of the nation for all to see.

All three attempts to pass a bill of rights through the federal parliament have failed. Instead, the rights of Australian citizens are protected through three other methods: our Constitution, legislation (laws made by government) and common law (laws made by the judicial system). Whether a bill of rights eventually becomes part of Australian society remains to be seen.

## 5.4.3 The right to protest

There have been hundreds of public protests in Australia's history. The causes behind these protests have varied in terms of their significance. The 1907 Sydney protest against bathing costume regulations pales in comparison to the so-called 'Day of Mourning' protest launched on Australia Day in 1938, the anti-war demonstrations of the early 1970s or the Sorry Day marches of 2000. Given the strong history of public protest in Australia, it is interesting to note that Australian citizens are afforded the right to protest by an international convention and not by Commonwealth legislation. There is no current federal law that protects the right of freedom of assembly for Australian citizens, nor is it mentioned in our Constitution. Instead, this right is contained within the International Covenant on Civil and Political Rights (ICCPR), a United Nations treaty which Australia has signed and ratified. Although the ICCPR is not enforceable by law in Australia, it does serve to protect the rights of Australian citizens. Regardless of the nature of the protest itself, people are free to join together to condone or condemn an issue, event or ideology. In this way, a key democratic freedom of Australian citizens is protected.

### DISCUSS

As a human being you have certain rights. What are five basic rights you believe you are entitled to? Compare your choices with those of your classmates. [Ethical capability VCECU021]

**FIGURE 1** Anti-Vietnam War protestors in Australia block a parade during the visit of former US President Lyndon Johnson in 1966.



#### 5.4.4 Anti-discrimination laws

In a culturally diverse society such as Australia, the existence of meaningful anti-discrimination laws is essential. All Australians — regardless of race, religion, gender, age or sexual persuasion — should feel safe in their own communities. Since 1975, various state and federal governments have introduced laws against the **discrimination** of people on the basis of their physical, religious or cultural characteristics. They include the following:

- *Racial Discrimination Act 1975*
- *Sex Discrimination Act 1984*
- *Australian Human Rights Commission Act 1986*
- *Disability Discrimination Act 1992*
- *Age Discrimination Act 2004.*

In conjunction with other state and territory laws, these are examples of how individual freedoms and rights are protected in Australian society. Individuals who feel they have been harassed or bullied on these grounds have the opportunity to lodge official complaints. These complaints are then investigated, and if deemed appropriate the parties may be called to attend conciliation sessions. The Australian Human Rights Commission (AHRC) is responsible for handling all such complaints and any actions arising from them. It is funded by the federal government but is run independently of any political influence. Its leadership is made up of a vast range of academic and legal professionals. The role played by the AHRC is crucial in maintaining individual rights and social cohesion in our society.

### 5.4.5 Unity through values

Social cohesion can also be protected by communities following a set of shared values. Serving as ethical guidelines and principles, values can instruct people how to act in our communities. They tell us what is right and wrong, what is acceptable and what is **taboo**. All new Australian visa applicants are required to sign the Australian Values Statement. By signing this document, visa applicants commit to adhering to and demonstrating shared values of the Australian community. These values include:

- respect for individual freedom (including religious freedom)
- commitment to the rule of law, democracy, the equality of men and women and pursuit of the public good
- tolerance, fair play and compassion for those in need.

By unifying the Australian population behind a set of shared values, individual and collective freedoms and rights are protected. The Sorry Day marches of 2000 provide a clear example of the power of shared values. Sorry Day (held annually on 26 May) was established in 1998. The day commemorates the injustices committed against Indigenous Australians throughout our nation's history. To coincide with the ten-year anniversary of the official beginning of the reconciliation process, nationwide marches were organised for the May 2000 march. More than 250 000 people participated in Sydney alone, with hundreds of thousands more joining in around Australia. The majority of these people were not Indigenous, nor had they been personally affected by the crimes committed against our first people. Instead, they simply wished to show their support for a cause in which they believed and for values which they held dear. Together with the legal mechanisms of protection discussed earlier, shared values can significantly add to the social cohesion of Australian society. The Sorry Day marches show this cohesion in action.

# 5.5 Resolving conflict

## 5.5.1 Mechanisms of dispute resolution

If a dispute is serious enough and breaks federal or state legislation, the opposing parties may eventually end up settling their differences in the court system. This is costly and time consuming for both parties. For these and other reasons, it is often easier to settle disputes outside of court. In Australia, conflict resolution is achieved through four main processes:

- negotiation
- conciliation
- mediation
- arbitration.

In this subtopic, we discover more about the mechanisms of conflict resolution in Australian society and how these processes foster social cohesion.

**FIGURE 1** It is usually cheaper and quicker to settle disputes without going to court.



There are many similarities between the strategies used to resolve disputes or conflicts in Australian society. However, there are also distinct differences because each strategy is used for a unique purpose and situation. Each strategy also has its own advantages and disadvantages.

## Negotiation

One of the purest forms of **dispute resolution**, negotiation involves the opposing parties dealing directly with each other. By resolving the conflict without the help of a third party, the process is simplified and costs are minimised. Negotiations can be completed by correspondence or through direct meetings.

The first step of this process involves the opposing parties listing their preferred outcomes. Then the actual negotiation takes place and a mutually beneficial outcome is sought. Opposing parties are allowed to employ legal representatives although this is not an official requirement. Most forms of legal dispute can be resolved through negotiation.

**FIGURE 2** Negotiation is an effective way to resolve most forms of legal dispute.



## Conciliation

Not to be confused with reconciliation, this dispute-resolution strategy involves the use of an independent third-party **conciliator**. This person is usually appointed by a formal tribunal such as the Australian Human Rights Commission and the Fair Work Commission. If the dispute involves matters requiring specific, technical knowledge of particular area, the opposing parties may request that a suitably qualified conciliator be appointed.

During a conciliation meeting, the opposing parties are allowed to express their views and discuss their perspectives on the dispute. It is the conciliator's role to facilitate this discussion, consider the opposing arguments and rule on the outcome. Similar to negotiations, legal representation is not required during conciliation although participants can request that lawyers are present at any time. Conciliations are frequently used to resolve disputes. More rigorous than a mediation and less intensive than an arbitration, conciliations provide a fair and affordable way to resolve disputes.

## Mediation

The words mediation and conciliation are often used interchangeably but the dispute-resolution processes are not identical. According to the Australian Mediation Association, mediation is about promoting understanding between opposing parties and using creative problem solving to seek a preferred outcome.

Both processes involve a third party acting to resolve the dispute. In conciliation, however, that third party is usually an expert brought in to rule on a technical dispute. Although they have the necessary legal qualifications, a mediator may lack specific technical expertise on a matter. Unlike an expert conciliator, a mediator focuses on the communication between the opposing parties rather than on the technical nature of the dispute itself.

The lack of this expert knowledge does not detract from a mediator's importance. The difference between the two roles is similar to the difference between a GP and a specialist doctor. Your GP is a qualified doctor who has treated a range of diseases and ailments. A specialist, however, has had more specific training in one particular area.

Any outcome achieved through mediation is not imposed upon the parties. Disputes may even remain unresolved if the opposing parties do not agree on the outcome of the mediation.

**FIGURE 4** A mediator focuses on the communication between the opposing parties rather than on the technical aspects of the dispute.



## Arbitration

Arbitration is used when the opposing parties require a resolution that imposes a legally binding decision. It is the most intense and therefore most expensive method of conflict resolution outside of a courtroom trial. As with mediation and conciliation, arbitration involves the use of an independent third party: the arbitrator. Either an individual arbitrator or a panel of suitably qualified individuals can be used in this process. As this process often requires technical legal knowledge and skills, opposing parties engaged in arbitration usually employ legal representation.

Arbitration is a more lengthy process than other methods of conflict resolution because the adjudicator requires time to consider the legal implications of the opposing arguments, and may also need to review evidence of a technical nature. Due to the lengthy nature of the process and the frequent use of legal representation, the cost of arbitration is significantly higher than other methods of conflict resolution. Participants in this process also need to be willing to accept the consequences of any legally binding outcome delivered by the arbitrator or panel. For these reasons, the other methods of conflict resolution described are more frequently undertaken.

# 5.6 SkillBuilder: Using and referencing quotes

## 5.6.1 Tell me

When writing an essay, assignment or report, you need to include evidence to support your arguments. If this evidence takes the form of a quote or includes the use of statistics, then you must show the reader where this information came from. This can be done through the use of a referencing system.

There are many different referencing systems used throughout the academic world. Some systems were developed at the world's leading universities and so bear their names. The Oxford and Harvard systems are examples of these, and they happen to be the two most widely used referencing systems.

- The Oxford referencing system uses numbered footnotes. A footnote lists bibliographical information at the foot (bottom) of a page, and the number corresponding to that footnote is shown at the end of the relevant section of text, usually a sentence, like this.<sup>1</sup> (This footnote does not actually reference anything but is just used as an example of what a footnote looks like.)
- The Harvard system uses in-text references in the form of parentheses or brackets containing the author's name and the year of publication, like this: (Smith, 2014).

The Harvard referencing system has its origins in the scientific field. A simple and direct system, it was later adopted by the wider academic community. Due to its simplicity and ease of use, the Harvard system has become more widely used than its Oxford counterpart. For this reason, we will focus on the use of the Harvard referencing system in this SkillBuilder. Not only will you learn how to use the Harvard system, you will also be shown how to incorporate the quotes themselves into your written work.



## 5.6.2 Show me

### In-text referencing

- If you are using paraphrased information from a source, then you need to include the author's surname and the year the source was published in parentheses at the end of a sentence (Smith, 2014).
- If you are including a direct quote, then you need to also include the page number in the reference (Smith, 2014: 12).
- If you mention the author's name in the middle of the sentence, then you need to include the year of publication directly after this, again in parentheses. For example, you may write: Author John Smith (2014) explains the correct use of the Harvard referencing system.

Now that you know how to reference another author's work, we will turn our attention to the incorporation of quotes into your written work.

### Incorporating quotes

There are four techniques for incorporating quoted material into your work, and you should choose the one that works best for a particular quote:

1. *Direct quote*. You can simply use what the author has written: Smith (2014: 12) claims that 'the Harvard system is far better than its Oxford counterpart.'
2. *Edited quote*. You can edit what the author has written. In this example, the three dots represent an omission and the square brackets represent an addition. These changes are usually made to make the quote fit the grammar of the sentence: Smith (2014: 12) claims that '... Harvard is [a] far better [system] than its Oxford counterpart.'
3. *Substantial quote*. If you are using a substantial quote (three lines or more), you need to include it as a separate paragraph. To differentiate the quote from the regular text, this paragraph is usually indented and written with a slightly smaller font or different line spacing:  
If the dispute involves matters requiring specific, technical knowledge of particular area, the opposing parties may request that a suitably qualified conciliator be appointed. During a conciliation meeting, the opposing parties are allowed to express their views and discuss their perspectives on the dispute (Richardson, Smithies and Rood, 2014).
4. *Paraphrase quote*. You can paraphrase the quotation instead of quoting it directly. With this method, you need to ensure that you have not plagiarised the author. The meaning of the quotation should be retained without using the author's exact words.

### 5.6.3 Let me do it

The time has now come for you to practise incorporating quotes using the Harvard referencing system.

1. Choose three separate sources (try to use different kinds of sources).
2. For each source, incorporate a quote using the four techniques shown above (direct quote, edited quote, substantial quote and paraphrased quote).

## 5.7 Review

### 5.7.1 Summary

The vast majority of Australian communities enjoy a level of social cohesion not seen in many countries around the world. Individuals and groups are free to demonstrate their cultural and religious traditions, creating communities rich with diversity. However, there are threats to the tranquillity and cohesion of Australian society. Criminal activity, political corruption and lawlessness threaten our communities and can impinge on our democratic rights and freedoms. Aware of these threats, state and federal governments have developed and implemented strategies to protect social cohesion within Australia. These methods serve to protect the freedoms and rights of groups and individuals. They also have the common goal of maintaining and protecting social cohesion in Australian communities.

- For the most part, Australian communities experience an extremely high level of social cohesion.

- Several threats to the freedom and rights of Australians exist within our communities, and at times in our governments as well.
- A wide range of mechanisms have been developed to protect our communities, our freedoms and our rights.

## ACTIVITIES

### THREATS TO SOCIAL COHESION [PERSONAL AND SOCIAL CAPABILITY VCPSCO050]

The threats that pose the greatest danger to social cohesion in Australia society are described in subtopic 5.3. For this task, you will need to evaluate these threats and the impact they can have on Australian communities, and on the freedoms and rights of the Australian people.

1. Rank the threats described in subtopic 5.3 in terms of their potential impact on social cohesion in Australia. Use a table like the example shown below to assist the ranking process.

Threat	Potential impacts	Rank
Organised crime		
Vested interests		
Corruption		
Lawlessness		

2. Once you have completed the ranking table, justify (in appropriate detail) your top and bottom rank.
3. Do you believe there are appropriate strategies in Australia to deal with the threats to social cohesion? If not, what else could be done?

## Resources



**Try out this interactivity:** [Sustaining a cohesive society crossword](#)  
Searchlight ID: [int-5532](#)

# GLOSSARY

**absolute majority** half the number of votes received in an election plus one

**absolute monarchy** a form of government where the monarch (a king, queen or emperor) wields unrestricted political power over his or her sovereign state and its people

**authoritarian** a form of government characterised by absolute or blind obedience to the state, an authority figure or a group

**bicameral** a parliament consisting of two legislative houses, or chambers

**bill of rights** a formal declaration of the rights of members of a country or area

**ceasefire** a temporary or permanent suspension of fighting

**charter** an official document describing the goals and principles of an organisation

**colonised** describes a country or region whose government has been replaced by one from another country

**conciliator** a person who acts as an independent third party between two disputing parties

**constitution** a set of fundamental principles according to which a nation or state is governed

**constitutional monarchy** a type of government based on a constitution with a queen or king as its head of state

**Crown** the Queen's authority in the Australian parliament, represented by the Governor-General at the federal level and a governor at the state level

**defamation** a civil wrong involving a written or verbal communication that lowers a person's reputation in the community

**democracy** a system of government in which the people elect representatives

**discrimination** the unfair, biased or prejudicial treatment of a person based on a personal characteristic such as race, gender, religion, ability or age

**dispute resolution** a process involving a group of strategies to settle legal issues outside of court

**embezzlement** the theft or misuse of funds belonging to your employer or organisation

**executive** another name for the government

**federation** the process through which the six separate Australian colonies joined to establish a federal parliament and the state parliaments

**first-past-the-post** a voting system where a candidate wins by receiving more votes than any other candidate

**formal vote** a ballot paper that has been filled out correctly

**formal votes** Ballot papers that have been filled out correctly

**humanitarian** concerned with the welfare of a social group

**inclusive** behaviours or policies that include all members of a society

**indigenous** refers to people who are the original native inhabitants of a region or country

**infer** to form a conclusion based on evidence

**infrastructure** the physical and organisational structures and facilities (such as roads and buildings) of a location

**integrated** describes communities that consist of different cultural groups living in unity

**international sanctions** actions or penalties — usually economic but also diplomatic or military — imposed on a country by a group of other countries

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

**jurisdiction** the power of a court to hear matters. Jurisdiction can be limited by type of case or amount of money involved.

**land tenure** a system by which particular individuals or groups are given a legally recognised right to occupy a defined area of land

**legally binding** an agreement that is enforceable by law

**marginalisation** a social process by which groups or individuals are pushed to the fringes of society

**multilateral** describes a policy or program that involves three or more countries or parties

**multinational** describes an organisation operating in several countries

**precedent** a law made by a superior court that must be applied by lower courts in future cases with the same or similar facts

**preferential system** a system in which voters are required to number all candidates on the ballot paper in order of preference. If no candidate wins more than 50 per cent of the vote, the preferences are distributed until one candidate has a majority of votes.

**proportional representation** a system where candidates are elected according to the proportion (or quota) of the vote achieved by their party

**ratify** the process by which the government of a country accepts a treaty or convention and agrees to be bound by it

**reparations** payment of money or materials by a nation defeated in war

**republic** a form of government where supreme power is held by the people and their elected representatives rather than by a monarch

**rights** those things that a person is entitled to by virtue of being a member of society

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

**sovereignty** the supreme and absolute power of a state (a place where people live which has borders and its own government). It includes the power to self-govern (including making, executing and applying laws), impose and collect taxes, make war and peace, and form treaties or engage in commerce with foreign nations.

**sovereignty of the people** the principle that a government's authority resides with its people through their elected representatives

**taboo** a topic or issue that is not usually spoken about in a society

**tariffs** taxes imposed on imported goods and services to raise their price and make them less competitive against domestic goods and services

**terra nullius** a legal principle signifying that an area of land belongs to no-one

**trade** transfer of ownership of goods from one person or entity to another in exchange for money or a product/service

**treaty** an agreement between two or more sovereign states (countries) to undertake a particular course of action. It usually involves matters such as human rights, the environment or trade.

**ultra vires** acting beyond the power of the law maker. It usually refers to situations where parliaments pass a law that is outside their area of authority.

**unicameral** a parliament consisting of one legislative house, or chamber

**Westminster system** the democratic parliamentary system based on the British system of parliament