





JACARANDA  
CIVICS AND  
CITIZENSHIP ALIVE 9  
AUSTRALIAN CURRICULUM | THIRD EDITION



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CATHY BEDSON

MATTHEW RICHARDSON

BENJAMIN ROOD

CONTRIBUTING AUTHOR

Leon Furze

REVIEWED BY

Courtney Rubie, Wiradjuri woman

Rachel Wallis, Wiradjuri woman



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The Publisher acknowledges ongoing discussions related to gender-based population data. At the time of publishing, there was insufficient data available to allow for the meaningful analysis of trends and patterns to broaden our discussion of demographics beyond male and female gender identification.

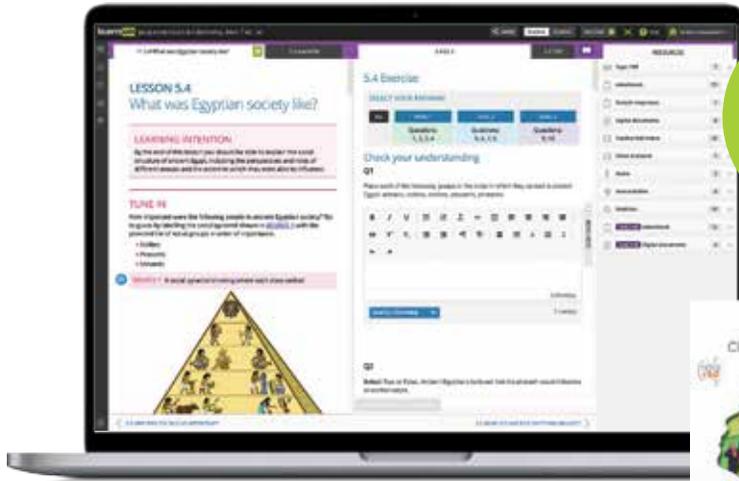
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# About this resource



## NEW FOR

AUSTRALIAN CURRICULUM V9.0



JACARANDA

## CIVICS AND CITIZENSHIP ALIVE 9 AUSTRALIAN CURRICULUM THIRD EDITION

### Developed by teachers for students

Tried, tested and trusted. Every lesson in the new *Jacaranda Civics and Citizenship Alive* series has been carefully designed to support teachers and help students evoke curiosity through inquiry-based learning while developing key skills.

Because both *what* and *how* students learn matter



#### Learning is personal

Whether students need a challenge or a helping hand, you'll find what you need to create engaging lessons.

Whether in class or at home, students can access carefully scaffolded lessons with in-depth skills development while engaging with multi-modal content designed to spark curiosity. Automatically marked, differentiated question sets are all supported by detailed sample responses — so students can get unstuck and progress!



#### Learning is effortful

Learning happens when students push themselves. With learnON, Australia's most powerful online learning platform, students can challenge themselves, build confidence and ultimately achieve success.



#### Learning is rewarding

Through real-time results data, students can track and monitor their own progress and easily identify areas of strength and weakness.

And for teachers, Learning Analytics provide valuable insights to support student growth and drive informed intervention strategies.

# Learn online with Australia's most

Everything you need  
for each of your lessons  
in one simple view

- Trusted, curriculum-aligned content
- Engaging, rich multimedia
- All the teaching-support resources you need
- Deep insights into progress
- Immediate feedback for students
- Create custom assignments in just a few clicks.

Practical teaching advice and ideas for each lesson provided in teachON

Teaching videos explain key ideas and analyse sources

Reading content and rich media including embedded videos, interactivities and audio files.

learnON Jacaranda Civics & Citizenship Alive 7 AC 3e

5.4 What was Egyptian society like? 5.4 teachON

## LESSON 5.4

### What was Egyptian society like?

**LEARNING INTENTION**

By the end of this lesson you should be able to explain the social structure of ancient Egypt, including the perspectives and roles of different groups and the extent to which they were able to influence.

**TUNE IN**

How important were the following people in ancient Egyptian society? Try to guess by labelling the social pyramid shown in [SOURCE 1](#) with the provided list of social groups in order of importance.

- Scribes
- Peasants
- Servants

**SOURCE 1** A social pyramid showing where each class ranked

5.3 WHY WAS THE NILE SO IMPORTANT?

# powerful learning tool, learnON

The screenshot shows the learnON interface with several callout boxes pointing to specific features:

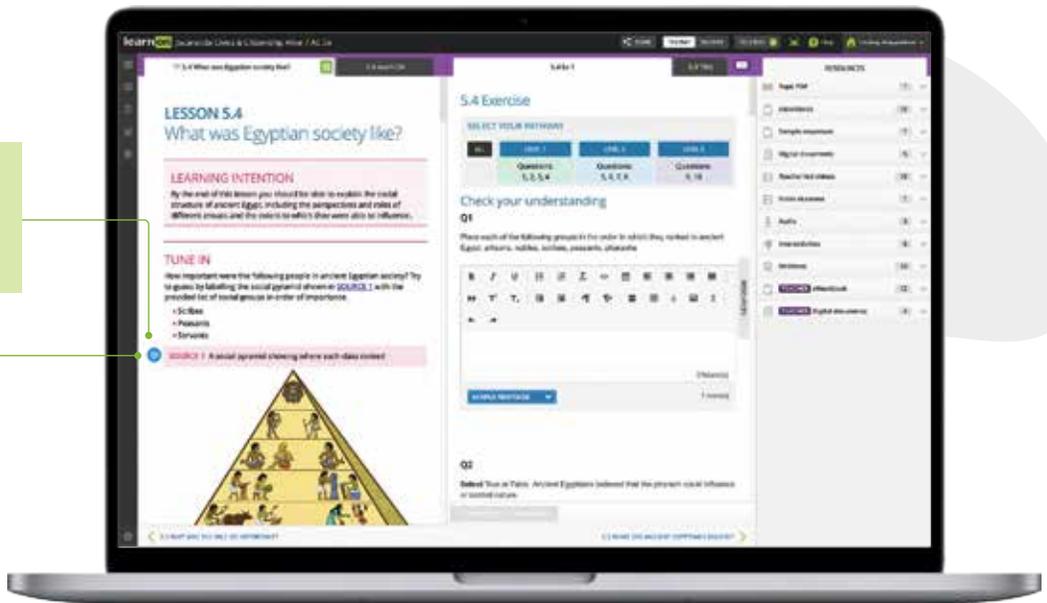
- Differentiated question sets:** Points to the 'LEVEL 1', 'LEVEL 2', and 'LEVEL 3' tabs under 'QUESTIONS'.
- Teacher and student views:** Points to the 'Teacher' and 'Student' buttons in the top navigation bar.
- Textbook questions:** Points to the '5.4 Ex 1' and '5.4 TBQ' tabs.
- eWorkbook:** Points to the 'eWorkbook' resource in the 'RESOURCES' list.
- Answers and sample responses:** Points to the 'Sample responses' resource in the 'RESOURCES' list.
- Digital documents:** Points to the 'Digital documents' resource in the 'RESOURCES' list.
- Video eLessons:** Points to the 'Video eLessons' resource in the 'RESOURCES' list.
- Interactivities:** Points to the 'Interactivities' resource in the 'RESOURCES' list.
- Extra teaching-support resources:** Points to the 'TEACHER eWorkbook' and 'TEACHER Digital documents' resources in the 'RESOURCES' list.
- Interactive questions with immediate feedback:** Points to the question area showing '0 Word(s)' and '1 mark(s)'.

# Get the most from your online resources

Online, these new editions are the complete package

Trusted Jacaranda theory, plus tools to support teaching and make learning more engaging, personalised and visible.

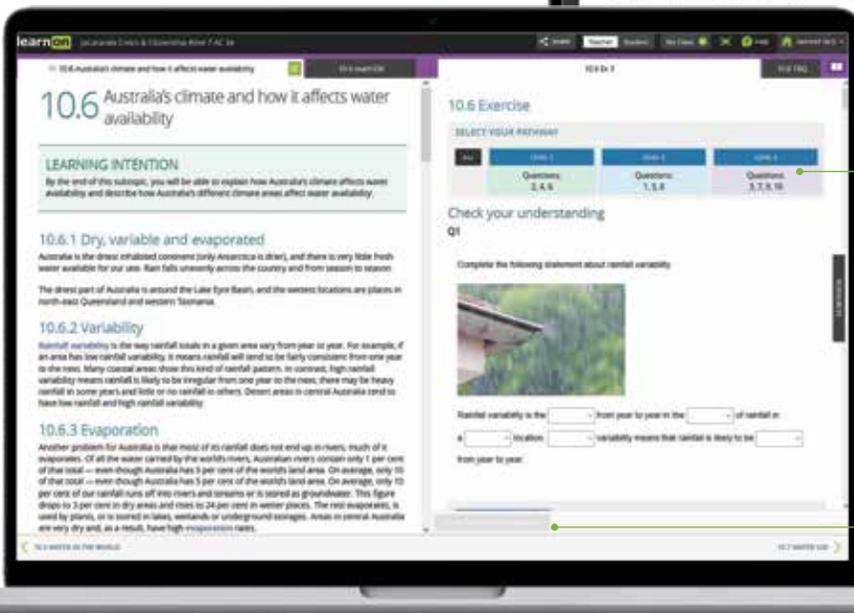
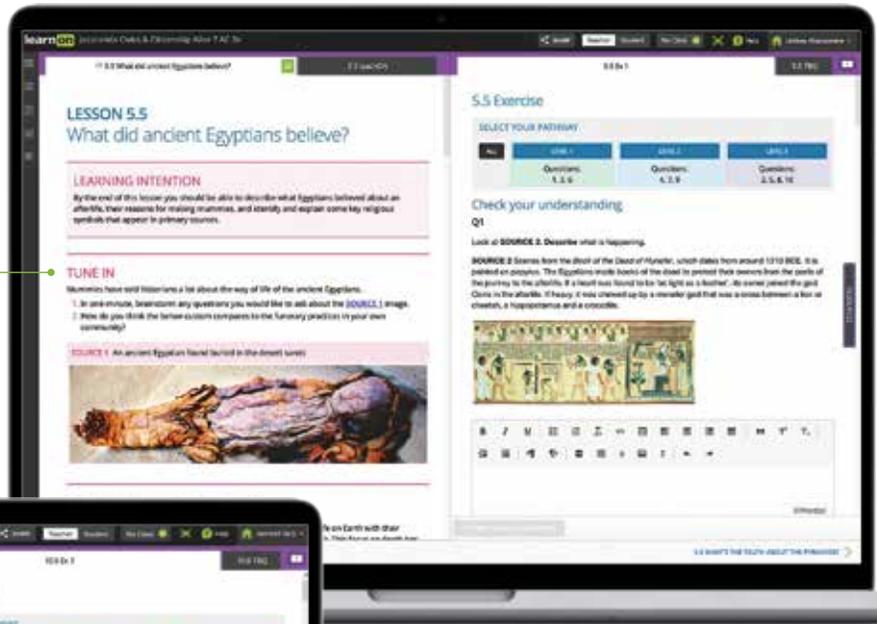
Embedded interactivities and videos enable students to explore concepts and learn deeply by 'doing'.



New teaching videos are designed to help students learn concepts by having a 'teacher at home', and are flexible enough to be used for pre-and post-learning, flipped classrooms, class discussions, remediation and more.

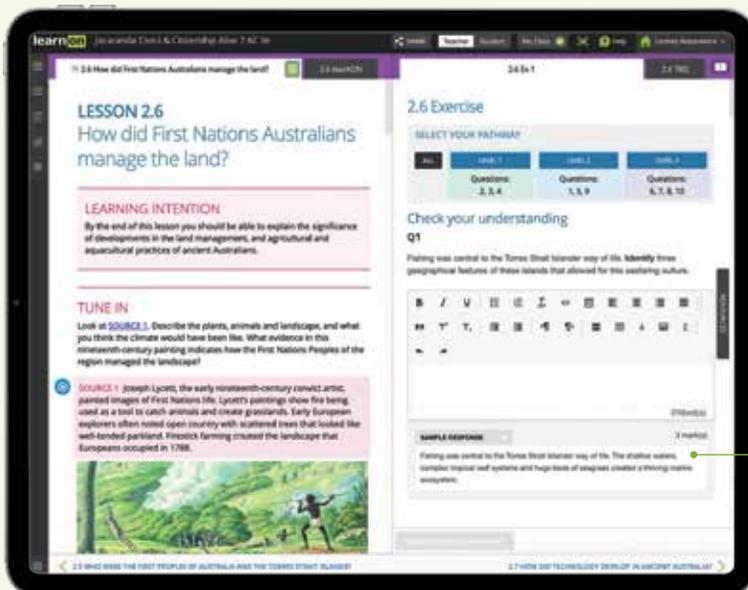
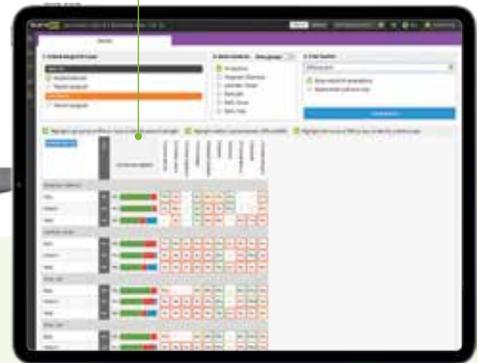


Brand new! Tune in activities to spark interest and kick off every lesson with discussion and source analysis



Three differentiated question sets, with immediate feedback in every lesson, enable students to challenge themselves at their own level.

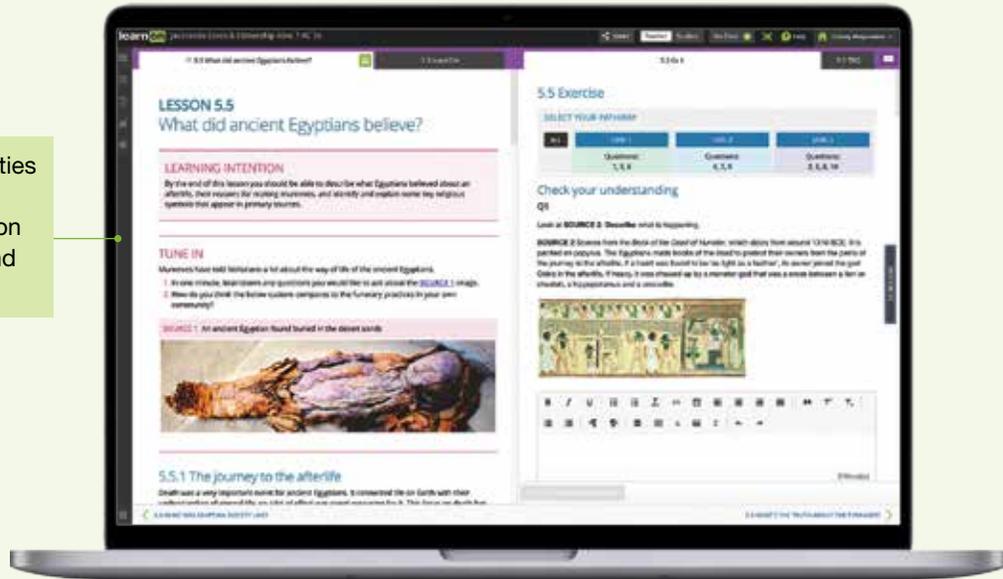
Instant reports give students visibility into progress and performance.



Every question has immediate, feedback to help students overcome misconceptions as they occur and get unstuck as they study independently – in class and at home.

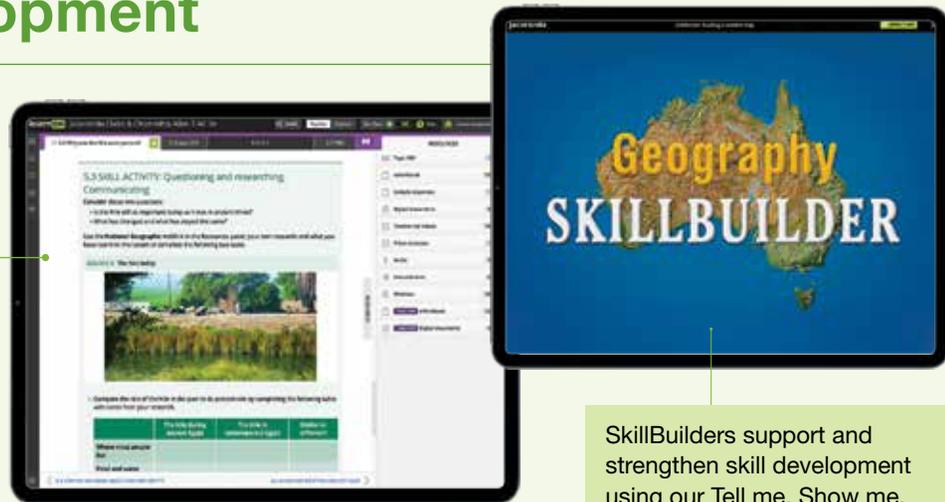
# TUNE IN lesson starters

New Tune In activities spark interest and kick off every lesson with discussion and source analysis.



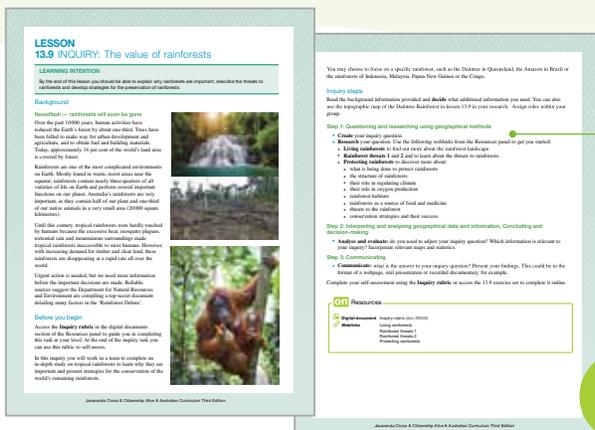
# Skill development

New skill activities provide opportunities to develop and build crucial Civics and Citizenship skills using research, collaboration and analysis.



SkillBuilders support and strengthen skill development using our Tell me, Show me, Let me do it approach.

# Inquiry projects



New Inquiry lessons use project-based learning and a clear skill structure for a deep dive into every topic while practising the curriculum-specific skills.

# A wealth of teacher resources

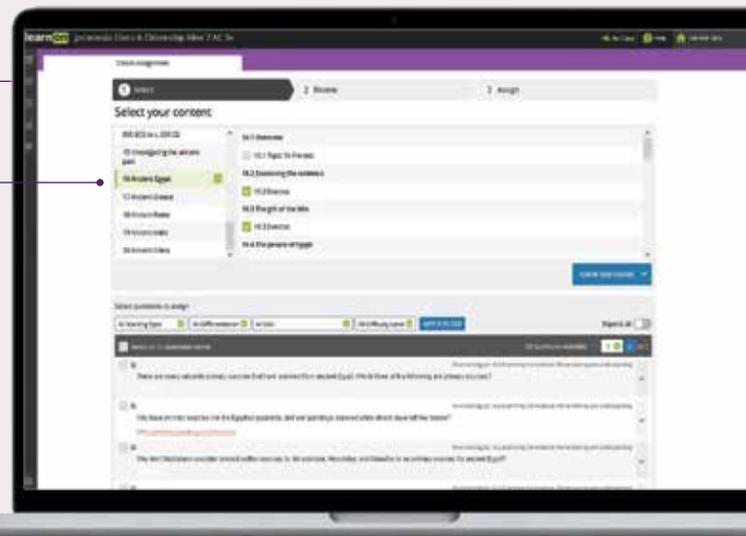


## Enhanced teaching-support resources for every lesson, including:

- work programs and curriculum grids
- practical teaching advice
- three levels of differentiated teaching programs
- quarantined topic tests (with solutions)

## Customise and assign

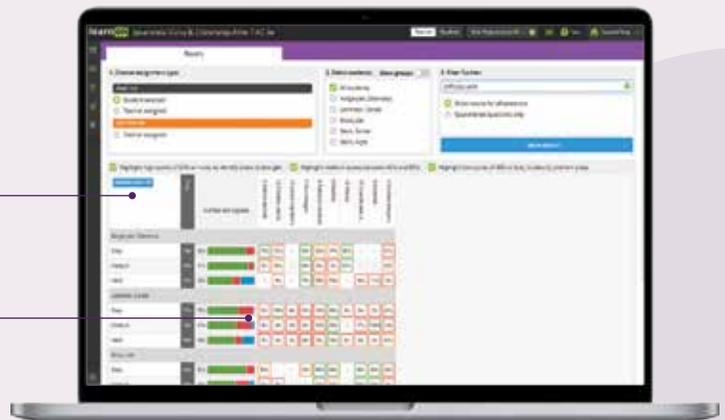
An inbuilt testmaker enables you to create custom assignments and tests from the complete bank of thousands of questions for immediate, spaced and mixed practice.



## Reports and results

Data analytics and instant reports provide data-driven insights into progress and performance within each lesson and across the entire course.

Show students (and their parents or carers) their own assessment data in fine detail. You can filter their results to identify areas of strength and weakness.



# Acknowledgements

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# Understanding cognitive verbs

## Cognitive verbs in the Australian Curriculum

The Australian Curriculum aims to develop students' disciplinary knowledge, skills, understanding and general capabilities across the curriculum. Students are also expected to progressively develop their thinking skills.

In the Australian Curriculum, cognitive verbs are used as signposts for this depth of thinking. Cognitive verbs signify different types of thinking and are already used in the classroom by many teachers and students.

Questions within Jacaranda resources use these cognitive verbs to support students in cognitive verb 'thinking'. The following list describes the cognitive verbs that are frequently used in Years 9 and 10.

Cognitive verb	Description
analyse	considering something in detail, finding meaning or relationships and identifying patterns. In an analysis you may reorganise ideas and find similarities and differences.
apply	using knowledge and understanding in order to solve a problem or complete an activity; activities and problems may be familiar or unfamiliar; applying knowledge and understanding can require recalling previous experiences.
compare	recognising how things are similar and dissimilar. Concepts or items are generally grouped before a comparison is made.
decide	selecting from available options. This may involve considering criteria on which to base your selection.
describe	giving an account of a situation, event, pattern or process. A description may require a sequence or order.
develop	bringing something to a more advanced state. Processing and understanding are required to develop an idea or opinion. Developing an idea or opinion may also involve considering feedback or the collective thoughts of a group.
evaluate	making a judgement using a set of criteria. This may include considering strengths and limitations of something in order to make a judgement on a preferred option.
examine	considering the information given and recognising key features. This might require making a decision, which involves gathering more information.
explain	making an idea, concept or relationship between two things clear by giving in-depth information. Explanations may include details of who, what, when, where, why and how in a step-by-step format.
identify	recognising and showing particular features of something. This might also include showing what or who something or someone is.
interpret	gaining meaning from text, graphs, data or other visuals. An interpretation includes stating what something might mean and drawing a conclusion.
select	choosing the most suitable option from a number of alternatives. This might require some consideration of context.
investigate	planning, collecting and interpreting data and information, and drawing conclusions.
synthesise	combining elements (information, ideas and components) into a connected or coherent whole.

**Source:** Adapted from the QCAA Cognitive Verbs.

# 1 Civics and Citizenship concepts and skills

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1.10 SkillBuilder: Creating and analysing a table .....	<b>online only</b>
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# LESSON

## 1.1 Overview

Hey students! Bring these pages to life online



Watch videos



Engage with interactivities



Answer questions and check results

Find all this and MORE in jacPLUS



### 1.1.1 Introduction

As a student of Civics and Citizenship, you are developing the knowledge and skills you and your society will need now and into the future. In your study of Civics and Citizenship, you will cover topics around Australia's democratic systems of government and the justice system. Studying Civics and Citizenship may be necessary for your chosen career, or it may help indirectly by giving you broader knowledge and skills, especially in the understanding of government and legal systems.

**FIGURE 1** Australians have a responsibility to participate in their political system; understanding how to find reliable information is an important part of fulfilling this responsibility.



### Resources



**eWorkbook** Customisable worksheets for this topic (ewbk-11579)



**Video eLesson** Civics and Citizenship concepts and skills (eles-6127)

# LESSON

## 1.2 Concepts in Civics and Citizenship

### LEARNING INTENTION

By the end of this lesson you should be able to explain why it is important to study Civics and Citizenship, and to define the key concepts in this subject area.

### 1.2.1 Why we study Civics and Citizenship

Australia is a relatively safe society by global standards. We have laws enforced by police that apply to the whole community; public facilities are maintained by local councils and state governments; and many essential services are provided by government. Most of these factors are dependent on having a stable and secure government and parliamentary representatives, who are accountable to the people who elect them.

Government decisions and laws passed by parliament affect many areas of your life. The political ideologies that influence government policies will continue to affect you, and the society in which you live, into the future. You have a responsibility to care about these various ideas and to engage with the society that your vote will help shape in the future.

### 1.2.2 What are the main concepts in Civics and Citizenship?

#### Active citizenship

People enjoy certain rights and freedoms from living in a democratic society. This includes the right to vote, freedom of speech and the right to practise their religion. However, with rights come responsibilities, such as informed voting, undertaking jury duty and advocating for our democratic values. Active citizens are informed and participate in civic and political processes at local, state, national, regional and global levels.

#### Democracy

Democracy is a political system where power rests with the people. Rules govern the electoral process that is used to choose our government and the way our government operates. Regular elections that are free and fair enable us to replace our political leaders if we believe they are no longer meeting our needs.

**FIGURE 1** Winston Churchill was the British prime minister from 1940–45 and from 1951–55.

*'Many forms of Government have been tried, and will be tried in this world of sin and woe. No one pretends that democracy is perfect or all-wise. Indeed it has been said that democracy is the worst form of Government except for all those other forms that have been tried from time to time...'*  
— Winston S. Churchill, 11 November 1947

Winston Churchill (British prime minister during World War II) said that democracy is basically the best form of government. However, there are many forms of democracy, so which form was Churchill referring to? Democratic systems are appealing for a number of reasons, including having organisations that support and protect people, and having systems that uphold human rights. Some people are critical of Churchill and don't agree with his political views. The freedom for people to disagree with, and even criticise, Churchill is another key aspect of a democratic society — freedom of political expression.



## Global citizenship

Australia is a part of a global community; our civic participation is not confined to within our national borders. On the world stage, we have an obligation to ensure that we advocate for the rights and freedoms of individuals regardless of where they live. Australia enters into agreements to ensure that our own citizens enjoy those same rights and freedoms.

## Legal systems

The presumption of innocence, the rule of law and the right to a fair trial underpin our legal system. The notion of justice means that people will be treated fairly in the eyes of the law, with equal access to what they need when they use the legal system. It does not mean that everyone who commits a crime will be punished in the same way, but rather that the punishment will be fair.

## Identity and diversity

Australia is a culturally diverse society and our sense of belonging is a blend of our differences and shared experiences. Distinct communities are evident among First Nations Australians and those who have migrated to Australia in search of a new life. People are free to express their differences and culture. Shared experiences such as Anzac Day, Reconciliation Week and Mabo Day unite us and help to define our sense of community and belonging.

**FIGURE 2** Traditional media, such as newspapers and television news, have long covered protests. Now, however, protesters have immediate access to a worldwide audience and can use this to influence the perspectives of others. To what extent are you influenced by what you read on social media about issues? Do you know the process behind what you see in your newsfeed?



## 1.2.3 Your focus in Year 9

This year in Civics and Citizenship, you will mainly be learning about the design of our political and legal system. In particular, you will learn about:

1. the role of political parties and independent representatives in Australia's system of **government**, including the formation of governments
2. how citizens' choices are shaped at election time (for example, public debate, **media**, **opinion polls**, advertising, interest groups, **political party** campaigns)
3. how social media is used to influence people's understanding of issues
4. the key features of Australia's court system and the role of a particular court (for example, a Supreme Court, a Magistrates Court, the Family Court of Australia) and the types of cases different courts hear
5. how courts apply and interpret the law, resolve disputes and make law through judgements (for example, the role of precedents)
6. the key principles of Australia's justice system, including equality before the law, independent judiciary and right of appeal
7. the factors that can undermine the application of the principles of justice (for example, bribery, coercion of witnesses, trial by media, court delays).

## 1.2.4 Where can Civics and Citizenship skills lead?

Careers that draw on Civics and Citizenship skills are many and varied. For some careers, these skills are essential, with further education and experience helping to develop these skills for work. These types of roles include:

- lawyer
- Member of Parliament
- ministerial adviser
- public servant
- police officer
- marketing roles
- lobby groups roles
- public relations roles
- local government staff
- Electoral Commission staff
- human rights worker
- foreign diplomat.

Civics and Citizenship skills are also *transferable* skills that are helpful in a variety of workplaces and industries, in addition to industry-specialist skills. This includes roles in:

- management
- project management (architects, engineers, project managers)
- journalism
- dramatic arts
- the military
- security services
- intelligence services
- import/export businesses
- emergency services
- disaster management
- environmental management.

**government** a body of people who have the authority to control or govern a community, state or country

**media** the forms of communication between a source and receivers including TV, radio, print media, digital and the internet as well as forms of social media. The term usually refers to mass media and the ability of media to inform and influence people.

**opinion polls** an assessment of public opinion by questioning a representative sample, especially as the basis for forecasting the results of voting

**political party** an organisation that represents a group of people with similar political philosophies or ideas. The aim of a political party is to get its members elected to parliament so that it can hold political power and their ideas can influence the way Australia is governed.

**FIGURE 3** The concepts and skills you study in Civics and Citizenship are transferable to many different careers.



# LESSON

## 1.3 Skills in Civics and Citizenship

### LEARNING INTENTION

By the end of this lesson you should be able to name the key Civics and Citizenship skills and explain why they are important.

### 1.3.1 What skills will you build this year?

This year, you will continue to build your ability to use the four broad categories of skills in Civics and Citizenship. In particular, you will be expected to examine sources of information with a more critical eye. The following summaries are to remind you of these four key skills.

#### Questioning and researching

You will develop and refine questions to investigate Australia's political and legal systems, and contemporary civics issues facing Australia today. You will use these questions as the basis of your research into contemporary Australian society and its capacity to foster fairness, diversity and inclusiveness for different groups, such as First Nations Australians and refugees. These questions will help you locate, select and compare information, data and ideas from a range of appropriate sources.

In Year 9, you will look at more resources from political parties and court decisions. Additionally, you will look at various types of social media to examine how different groups of people try to persuade Australians how to vote.

#### Analysis, evaluation and interpretation

Analysis involves interpreting information to identify the main features or ideas, then examining the information closely to determine how the parts relate to the whole.

This year you will consider the different parts of our society and how they affect each other. The skills you develop will help you determine what kinds of information you can rely on to be accurate and identify where bias might exist. You will refine your skills at finding current data and looking at data in different formats, such as graphs, tables, media reports, charts of election results or opinion polls.

As part of your evaluation, you will draw evidence-based conclusions and consider different perspectives and interpretations of data.

#### Civic participation and decision-making

Participating in the civic process involves identifying and evaluating the methods and strategies related to making decisions about the ways in which an active and informed citizen can participate within society.

In Year 9, this may involve developing an action plan to address a contemporary civics issue or being involved in a campaign to raise awareness about an injustice. You might examine an existing strategy or plan that has been adopted by the government and advocate for change in a responsible manner.

#### Communicating

An important skill you will develop is presenting and communicating ideas, perspectives and arguments based on evidence and research on contemporary civics and citizenship issues. Your explanations will be clearly expressed and consider not only the issue, but also the outcome of civic action, participation and engagement.

## 1.3.2 SkillBuilders in the topic

In addition to these broad skills, there is a range of essential practical skills that you will learn, practise and develop as you study Civics and Citizenship. The SkillBuilder lessons will tell you about the skill, show you the skill and let you apply the skill to the topics covered.

The SkillBuilders you will use in Year 9 are as follows:

- Using Cornell Notetaking
- Using and referencing quotes
- Analysing bias
- Creating political advertisements
- Structuring an essay
- Conducting and analysing a survey
- Creating and analysing a table.

## LESSON

### 1.4 SkillBuilder: Using Cornell Notetaking

online only

#### How is Cornell Notetaking useful when researching?

When you are asked to 'do research' you need to investigate a particular topic or event. To do this well, it is important to have a system to record your research. Cornell Notetaking is a system for taking notes. Cornell Notetaking helps you remember the material that has been covered in class and to revise material you have learnt previously.

**Select your learnON format to access:**

- an overview of the skill and its application (Tell me)
- a step-by-step process to explain the skill (Show me)
- an activity for you to practise the skill (Let me do it).

## LESSON

### 1.5 SkillBuilder: Using and referencing quotes

online only

#### How do you accurately and appropriately cite sources?

Using and referencing quotes accurately are important questioning and researching skills. These skills are also important for communicating your ideas effectively. 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.

**Select your learnON format to access:**

- an overview of the skill and its application (Tell me)
- a step-by-step process to explain the skill (Show me)
- an activity for you to practise the skill (Let me do it).

# LESSON

## 1.6 SkillBuilder: Analysing bias

online only

### What is bias?

When gathering and using information in Civics and Citizenship, it is vital to ensure that it is from a reliable source. This means you need to identify and analyse intentional and unintentional bias in sources. Bias is the influence of a person's views and opinions on the way they present information. Bias is revealed through careful examination of the language that the author uses, as well as the data that they present to support their views.

**Select your learnON format to access:**

- an overview of the skill and its application (Tell me)
- a step-by-step process to explain the skill (Show me)
- an activity for you to practise the skill (Let me do it).

# LESSON

## 1.7 SkillBuilder: Creating political advertisements

online only

### What makes a successful political advertisement?

Political advertisements play a key role in persuading voters during elections and shaping public opinion between elections. The purpose of this SkillBuilder is to help you understand the decision-making process behind creating these ads. This knowledge will also help you to analyse advertisements by enabling you to identify and analyse bias and consider the ways that political advertising influences the Australian political agenda.

**Select your learnON format to access:**

- an overview of the skill and its application (Tell me)
- a step-by-step process to explain the skill (Show me)
- an activity for you to practise the skill (Let me do it).

# LESSON

## 1.8 SkillBuilder: Structuring an essay

online only

### How do you structure a good essay?

Essay writing is an important communication skill in Civics and Citizenship. You will learn how to explain information in detail and present evidence that supports your ideas in an objective way. You will also learn to argue your point of view.

**Select your learnON format to access:**

- an overview of the skill and its application (Tell me)
- a step-by-step process to explain the skill (Show me)
- an activity for you to practise the skill (Let me do it).

## LESSON

### 1.9 SkillBuilder: Conducting and analysing a survey

online only

#### How do you construct a survey and do basic analysis?

Collecting information through a survey is part of the questioning and researching skill. A survey is the process of collecting data for the purpose of analysing an issue. It consists of putting a set of questions to a sample group of people.

**Select your learnON format to access:**

- an overview of the skill and its application (Tell me)
- a step-by-step process to explain the skill (Show me)
- an activity for you to practise the skill (Let me do it).

## LESSON

### 1.10 SkillBuilder: Creating and analysing a table

online only

#### How do you use tables of data?

A table is a way of displaying information, or data, in an organised way. One aspect of close analysis is to be able to transform data sets into a new form, so that you can accurately assess the information the data shows. This allows you to interpret information to identify the main features or ideas, then determine how the parts relate to the whole. This skill will help refine your skills analysing different types of data, such as graphs, tables and charts of election results or opinion poll results.

**Select your learnON format to access:**

- an overview of the skill and its application (Tell me)
- a step-by-step process to explain the skill (Show me)
- an activity for you to practise the skill (Let me do it).

# LESSON

## 1.11 Review

Hey students! Now that it's time to revise this topic, go online to:



Review your results



Watch teacher-led videos



Practise questions with immediate feedback

Find all this and MORE in jacPLUS



### 1.11.1 Key knowledge summary

Use this dot point summary to review the content covered in this topic.

#### 1.2 Concepts in Civics and Citizenship

- Studying civics and citizenship is important because it means you can play an active, informed role in society.
- Key concepts you will study this year are:
  - active citizenship
  - democracy
  - global citizenship
  - legal systems
  - identity and diversity.
- Civics and Citizenship skills are transferable skills that help in a variety of jobs and workplaces.

#### 1.3 Skills in Civics and Citizenship

- Questioning and researching
- Analysis, evaluation and interpretation
- Civic participation and decision-making
- Communicating

### 1.11.2 Key terms

**government** a body of people who have the authority to control or govern a community, state or country

**media** the forms of communication between a source and receivers including TV, radio, print media, digital and the internet as well as forms of social media. The term usually refers to mass media and the ability of media to inform and influence people.

**opinion polls** an assessment of public opinion by questioning a representative sample, especially as the basis for forecasting the results of voting

**political party** an organisation that represents a group of people with similar political philosophies or ideas. The aim of a political party is to get its members elected to parliament so that it can hold political power and their ideas can influence the way Australia is governed.

#### on Resources



**eWorkbook** Customisable worksheets for this topic (ewbk-11579)  
Reflection (ewbk-11581)

Hey teachers! Create custom assignments for this topic



Create and assign unique tests and exams



Access quarantined tests and assessments



Track your students' results

Find all this and MORE in jacPLUS



# LESSON

## 1.4 SkillBuilder: Using Cornell Notetaking

### LEARNING INTENTION

By the end of this lesson you should be able to create accurate and detailed notes by using the Cornell Notetaking system.

### 1.4.1 Notetaking in Civics and Citizenship

You might have learned the basics of the Cornell Notetaking system in previous years. This lesson will help you refine your process. At Year 9 level, it is a good habit to use this skill to take notes in class and revise.

### 1.4.2 Tell me

Cornell Notetaking is a system for taking notes. You may have learnt to use it when you are researching, but you can also use this system during class, organising these notes, and reviewing them later on. The purpose of Cornell Notetaking is to help you remember the material that has been covered in class, and to revise material you have learnt previously.

### DID YOU KNOW?

Cornell Notetaking was developed at Cornell University by Professor Walter Pauk in the 1940s. Pauk's note-taking method provides a structure that means the notes can also be used for revision or research purposes. He devised an approach to notetaking called the 'five Rs' — record, reduce, recite, reflect, review.

#### FIGURE 1 The five Rs of notetaking

**Record:** During the lecture, write all meaningful information legibly.

**Reduce:** After the lecture, write a summary of the ideas and facts using key words as cue words.

**Recite:** To study properly, you must recite all the information in your own words without looking at your notes or the text.

**Reflect:** Think about your own opinions and ideas. Raise questions and record original ideas.

**Review:** Before reading or studying new material, take ten minutes to quickly review your older notes. Skim over the main ideas and details.

— Pauk, W. (1989). *How to Study in College* (4th Ed.). Boston, MA: Houghton Mifflin.

#### FIGURE 2 Cornell University is located in Ithaca, New York.



Do you remember what you had for breakfast on Monday five weeks ago? It is unlikely that you would unless there was a specific reason to, such as it being your birthday, or burning the toast and setting smoke alarms off!

Our brain usually remembers information if it is significant for some reason (that's why significant events are described as memorable), or if the brain has gone over the information multiple times. It is difficult to quote lines from a movie if you have only seen it once. But if you see the same movie multiple times, and tell friends about your favourite part, and repeat quotes from the movie, then you will probably remember the most quotable lines!

Taking notes is similar, in that we need to *use* and go over information for our brain to *retain* the information. In this way, the information can be 'transferred' from the short-term to long-term memory. Taking notes by hand helps you retain information, whether you are listening to a teacher, watching a documentary, reading a textbook, or doing research on a website.



# LESSON

## 1.5 SkillBuilder: Using and referencing quotes

### LEARNING INTENTION

At the end of this lesson you should be able to accurately and appropriately cite the sources you have used in your research.

### 1.5.1 Using and referencing quotes in Civics and Citizenship

Using and referencing quotes accurately are important questioning and researching skills but this is also important for communicating your ideas effectively. At a Year 9 level, you should be able to use appropriate ethical protocols, including specific formats for acknowledging other people's information, and understand that these formats can vary between subjects and organisations. The referencing system you see in one source might not be the same as the next.

### 1.5.2 Tell me

#### Why is it important to reference quotes?

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 Harvard and Oxford systems are examples of these, and they happen to be the two most widely used referencing systems.

- 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 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> (Note: This footnote does not actually reference anything but is just used as an example of what a footnote number looks like.)

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.

The HASS skills topics of this series teach you how to use the Harvard system to create lists of references for your research. In this lesson you will learn the next part of the system: how to incorporate quotes into your written work.

**FIGURE 1** Correct referencing is an important part of the research and writing process.



## 1.5.3 Show me

### Step 1

There are three techniques for incorporating other people's ideas and information into your work, and you should choose the one that works best for a particular piece of information and the way you are communicating your ideas. News articles may rely more on direct quotes, an essay may include more paraphrased ideas.

**TABLE 1** Examples of quoting and paraphrasing

	Definition	Example	Ethical protocols
<b>Direct quote</b>	An exact copy of the words and structure of the author shown in quotation marks	'The Harvard system is far better than its Oxford counterpart' (Smith, 2020: 12).	<ul style="list-style-type: none"><li>• Always ensure you quote exactly – word-for-word.</li></ul>
<b>Edited quote</b>	A slightly edited version of what the author has written, either taking words out or adding them in	Smith (2014: 12) claims that '... Harvard is [a] far better [system] than its Oxford counterpart'.	<ul style="list-style-type: none"><li>• Use only to make the quote fit the grammar of a sentence.</li><li>• Ensure that the original idea or message of the author is reflected in your quote: twisting their words to change the meaning is unethical.</li><li>• Always show where you have made edits. Three dots show you have taken words out. Square brackets show you have added words.</li></ul>
<b>Paraphrased information</b>	An idea that has been rewritten with completely new words and structure	It has been suggested that Oxford referencing is inferior to the Harvard style (Smith, 2014: 12).	<ul style="list-style-type: none"><li>• Do not use their words or structure.</li><li>• The meaning of the information must be the same.</li></ul>

### DOES IT COUNT IF I REPLACE A FEW WORDS WITH THE THESAURUS?

Using someone else's words and writing structure but swapping in a few synonyms here and there is still plagiarising even though the text is not exactly the same. You are using another writer's basic structure and most of their words without acknowledging it. Many teachers and publications use software or web services to detect this kind of plagiarism. Do the right thing: use and cite your sources appropriately.



### Step 2

Each of the different types of reference requires different types of in-text referencing. Understanding the different types and the rules for citation will help you to include the information correctly.

**TABLE 2** Methods of in-text referencing for each type of quote

Type of citation	How to reference it	Example
Paraphrase (simple)	<ul style="list-style-type: none"> <li>• Include the author's surname and the year the source text was published in parentheses at the end of a sentence.</li> </ul>	The information was easy to find; social media sites were publishing it (Smith, 2019).
Paraphrase (using the author's name in your sentence)	<ul style="list-style-type: none"> <li>• Include the year of publication in parenthesis directly after your rewriting of the information.</li> </ul>	The information was easy to find; as Smith (2019) demonstrated, many social media sites were publishing it.
Direct quotes (fewer than three lines of your writing)	<ul style="list-style-type: none"> <li>• Add the author's surname and the year the source was published in parentheses at the end of a sentence and the page number of the reference.</li> <li>• Write the whole quote in quotation marks.</li> </ul>	'Social media sites published this information' (Smith, 2019: 12).
Direct quotes (more than three lines of your writing)	<ul style="list-style-type: none"> <li>• Add the author's surname and the year the source was published in parentheses at the end of a sentence and page number of the reference.</li> <li>• Include substantial quotes as a separate paragraph. To differentiate the quote from the regular text, this paragraph is usually indented from the left and right and written with a slightly smaller font or different line spacing</li> </ul>	The information that influenced voters was easy to find. Social media sites published this information widely in a number of countries. The source of the original posts, however, were impossible for us to trace. (Smith, 2019: 12).
Using the author's name in your sentence	<ul style="list-style-type: none"> <li>• Include the year of publication directly after this, again in parentheses.</li> </ul>	The information was easy to find, as Smith (2019) demonstrated, many social media sites were publishing it.

### 1.5.4 Let me do it

Complete the following activity to practise this skill.

#### 1.5 ACTIVITY

Practise your skill using quotes by completing the following task or completing a step-by-step **Worksheet** from your Resources panel.

- Choose three separate sources of information about an issue in federal politics this week. (Try to use different kinds of sources.)
- Write your own point of view about this issue, incorporating four references to your sources — one using each of the techniques shown above (direct quote, edited quote, substantial quote and paraphrased quote).

# LESSON

## 1.6 SkillBuilder: Analysing bias

### LEARNING INTENTION

By the end of this lesson you should be able to identify and analyse intentional and unintentional bias in sources.

### 1.6.1 Analysing information for bias in Civics and Citizenship

When gathering and using information in Civics and Citizenship, it is vital to ensure that it is a reliable source. That is, students should analyse sources of information very carefully to identify the type of information it is and to ensure that the information is valid and credible. A variety of sources can be used, including those based on a person's opinion, but they should be identified. This is because information could be biased which will have an impact on how it is presented.

### 1.6.2 Tell me

**Bias** is the influence of a person's views and opinions on the way they present information. It may be done on purpose if the author is trying to persuade the reader, but it could also be unintentional (sometimes called 'unconscious bias'). This occurs when an author presents information that is not objective or that favours some ideas or groups over others but they are not aware that they are doing so.

Bias can be very subtle, and it is not always dangerous or necessarily bad, but it is important to be able to identify when this happens so you are aware of potential inaccuracies or distortions in the information. At its most serious, it could have consequences in the application of the law and the potential to undermine justice. Bias is revealed through careful examination of the language that the author uses as well as the data that they present to support their views.

**FIGURE 1** Bias can compromise the fairness of the judicial system.



### 1.6.3 Show me how to do it

#### Step 1

Look for bias that is revealed in the language choices. Is the information presented in an objective or subjective way?

- **Objective information** is data or information presented without emotive words or opinion.
- **Subjective information** is presented based on opinion or bias.

For example, describing a car accident as a 'traffic collision' is objective but describing it as 'a horror smash' is subjective. This is because it is a very emotive phrase and designed to elicit a reaction from the reader.

When analysing bias, start by examining the language that is used. This will give a clue about how the author wants the reader to think or feel about the issue based on their information. Look for words that have particular negative or positive **connotations**. For example, is it designed to make the reader feel angry, sad or victimised, or to take a certain viewpoint?

Consider how replacing objective language with subjective language can introduce strong bias.

**bias** the influence of a person's views and opinions on the way they present information

**objective information** factual information that has not been influenced by the opinion and/or emotions of the writer

**subjective information** information that has been influenced by the opinion and/or emotions of the writer, and does not necessarily reflect facts or logical conclusions

**connotations** other suggested associations or implied meanings

**TABLE 1** Comparing objective with subjective language

Objective	Subjective — viewpoint favouring victim	Subjective — viewpoint favouring accused
The homeowner woke at 2:00 am and heard breaking window glass at the rear of the property.	The brave victims were woken in the middle of the night by the terrifying sounds of smashing glass inside their home.	The naïve targets were fast asleep through the entire, seamless operation — until the window was broken.

## DISCUSS

What types of media outlets that you know of are more likely to use strong subjective language in their reporting? As a class, examine how the same event or issue in the media is explained and discussed using different language in print, on TV, in online news sites and on social media.

## Step 2

Look for bias that is reflected in the way that data that has been shown, or sets of data that have been included or excluded.

Consider **FIGURE 2**, a release from the Australian Bureau of Statistics from 6 February 2020.

The information was published by the Australian Bureau of Statistics (ABS), who are releasing information to the public based on state police-force records. The report does not include any biased or emotive language as the ABS is an **apolitical** organisation.

**apolitical** not favouring one political party or group over another, not interested in politics

**FIGURE 2** Extracts (1 and 2) from the ABS Recorded Crime — Offenders, 2018–19 report

### EXTRACT 1

#### Homicide and related offences increase to an eight-year high

Offenders with a homicide related principal offence increased to 752 in 2018–19. This was the highest number of offenders recorded in Australia for this offence in eight years and resulted in an offender rate of 3.4 offenders per 100 000 persons. This offender rate has ranged between 3.1 and 3.6 offenders per 100 000 persons over the same eight-year period. Between 2017–18 and 2018–19:

- Murder increased by 87 offenders (37%)
- Attempted murder increased by 19 offenders (14%)

This page last updated 6 February 2020.

**Source:** <https://www.abs.gov.au/ausstats/abs@.nsf/mf/4519.0> (Australian Bureau of Statistics), accessed 22 June 2020.

### EXTRACT 2

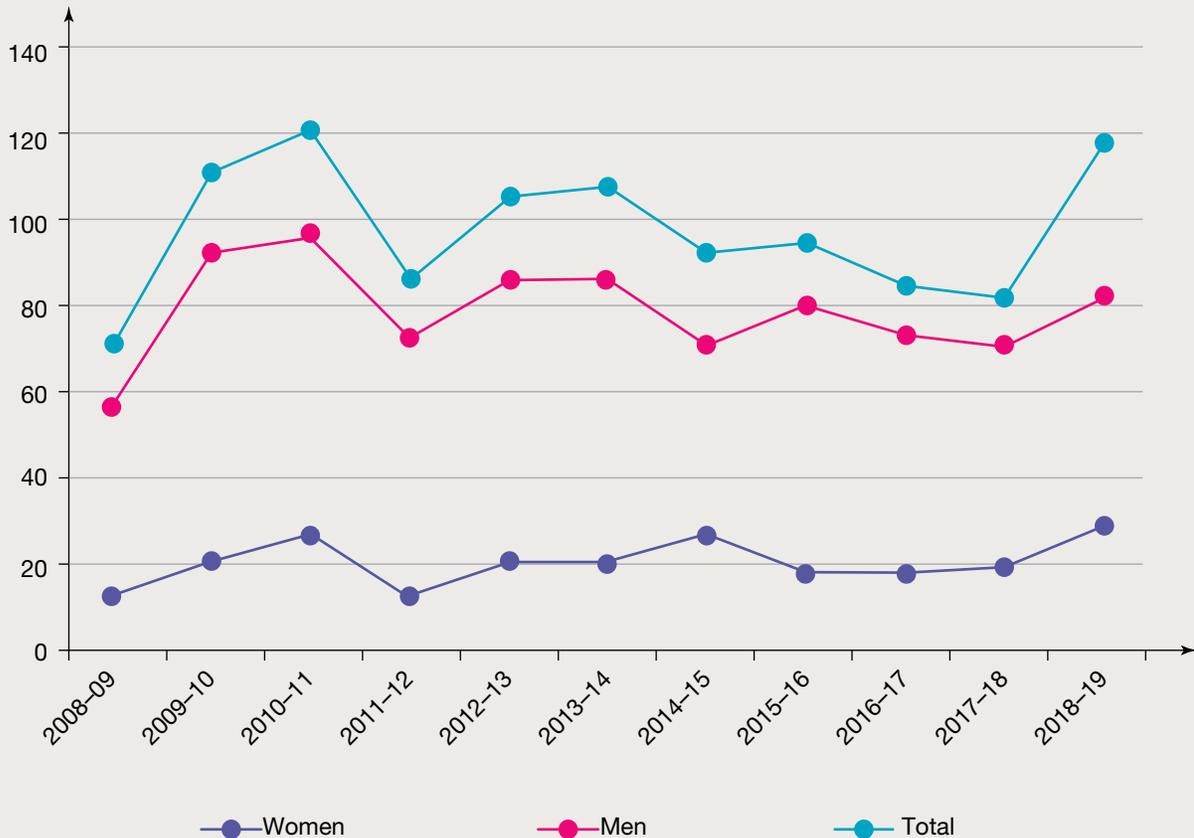
#### Representations of Western Australian homicide offender data: numbers of offenders (table)

Offenders, Principal offence (homicide) WA, 2008–19											
	2008–09	2009–10	2010–11	2011–12	2012–13	2013–14	2014–15	2015–16	2016–17	2017–18	2018–19
Women	11	19	25	11	19	18	25	16	16	17	26
Men	56	93	96	72	86	87	70	80	73	70	82
Total	70	111	121	86	105	108	92	95	84	81	118

**Source:** ABS, 4519.0 — Recorded Crime — Offenders, 2018–19, Offenders, states and territories (accessed 20 June 2020).

## Representations of Western Australian homicide offender data: numbers of offenders (graph)

Offenders, Principal offence (homicide) WA, 2008–2019



Source: ABS, 4519.0 — Recorded Crime — Offenders, 2018–19, Offenders, states and territories, (accessed 20 June 2020).

To look for potential bias embedded in a source or areas where the data could potentially be misunderstood:

- Examine the language for emotive words, or language that favours one thing over another; for example, in **FIGURE 2** consider the words ‘Murder increased by 87 offenders’. Offenders is an objective way of describing the people who have been convicted of murder. Had this sentence, instead, been worded ‘The senseless taking of life increased with 87 new murderers’, the language would be far more subjective.
- Look at the data, parameters and sample sizes carefully, and determine what each figure represents exactly — for example, what is the difference between the offender rate and the number of offenders?
- Look for trends and patterns that might change the way the data is interpreted. Are there seasonal or longer-term trends that need to be considered? Is ten years long enough to be able to identify an upward or downward trend?
- Consider who produced the data. Is the organisation or person who collected or collated the data reputable? In this case, the ABS is highly reputable, but organisations that use statistics to support their arguments do not always do so ethically.
- Consider the intention, purpose and context of the data. Does the person or organisation who is presenting the data have anything to gain from presenting the information? Is the data presented exact and supported with references or is it vague and unreferenced? In this case, the ABS has nothing to gain. The data is well referenced and exact, with notes to explain any important information people need to understand the data, the scope of how it was collected and its limitations. Step 3, is to consider these additional notes.
- Consider the way the data is presented. Does the table of data give a different impression to the graph? Does one look more alarming? Does one make differences between the data sets seem more obvious? The data presented in the table and graph in **FIGURE 3, EXTRACT 2** are exactly the same, but the visuals of the graph makes the differences between levels of offending between genders much more obvious at a glance.

## DISCUSS

How is it possible that there was an eight-year record high of homicide-related principal offences, but the offender rate wasn't the highest in the last eight years? Investigate what these terms mean. What factors might affect the offender *rate*, apart from the number of homicides?

### Step 3

Look closely at the data and how it is presented.

- Is the data set complete?
- Has everything been included?
- Is it reliable?
- Is it from an appropriate time period?

In some circumstances, data may be used to purposely mislead. Information or statistics may have been compiled using studies that have been discredited or from research that was flawed or outdated. Alternatively, people may present only some of a data set to make the results seem more (or less) significant.

This may be to present one viewpoint only, rather than a broad discussion of all points of view. Presenting one view only is not a problem as such, but it is essential to recognise you have only part of the possible information or data set and seek alternative sources of information.

When you see a data set in a source, always examine it carefully. For example, consider the following.

- What was the sample size of the data?
- Do the figures presented show the whole picture or have parts been left out?
- Is the data recent or might there be a newer study?

Look closely at the following data about police proceedings (when police take action against alleged offenders; for example, court action, penalty notices and cautions) that were reported by the ABS. Look for missing information, which might suggest that the data does not include all of the possible samples or sets. This could affect the overall picture that the data presents significantly. Reliable sources will include notes to explain the limits of their data to help prevent people misinterpreting the information, which will be indicated with superscript numbers or symbols (superscript is a smaller font that sits above the normal line of text, like the superscript 1 in the following example). This set of data includes 6160 words of explanatory notes.

**FIGURE 3** Extracts from the ABS Recorded Crime – Offenders, 2018–19 report

#### EXTRACT 1

##### Police proceedings

The number of police proceedings decreased across nearly all the published states and territories<sup>1</sup>, with the exception of Queensland which increased by 1%. The total number of police proceedings recorded in 2018–19 were:

- 230 482 in New South Wales
- 163 362 in Queensland
- 114 515 in Victoria
- 63 855 in South Australia
- 17 453 in the Northern Territory
- 15 044 in Tasmania
- 3 221 in the Australian Capital Territory

The most common principal offences proceeded against by police were:

- Acts intended to cause injury in New South Wales (16%), Victoria (19%) and the Australian Capital Territory (23%)
- Illicit drug offences in Queensland (25%) and South Australia (33%)
- Public order offences in Tasmania (22%) and the Northern Territory (42%)

<sup>1</sup> Data relating to police proceedings for Western Australia are not included in this publication, see explanatory notes for further information.

## EXTRACT 2

### Explanatory notes (Proceedings in Western Australia)

*Western Australia* Data about police proceedings are unable to be successfully matched between the two separate crime recording systems used by Western Australia Police. Therefore data relating to police proceedings for Western Australia are not included in this publication. This affects Tables 16 and 17 and precludes the production of national data about police proceedings or the number of times an offender was proceeded against by police.

**Source:** <https://www.abs.gov.au/ausstats/abs@.nsf/mf/4519.0> (Australian Bureau of Statistics), accessed 22 June 2020.

## DISCUSS

When you first read **FIGURE 3** Extract 1, did you notice that Western Australia was missing? Would you have noticed if it was another state or a territory? Discuss as a class why it is important to know whether the data you are considering represents all of the possible samples, areas or variables that make up the whole data set.

If you were a news website editor trying to blow these statistics out of proportion for a sensational headline, what would you focus on? Share your headline ideas with the class, and discuss how to analyse the claim alongside the data to explain how the information is being misrepresented. Discuss the importance of being able to fact-check the media in Australia.

## on Resources

 **Weblink** ABS Recorded Crime — Offenders, 2018–19 (data set 4519.0)

## 1.6.4 Let me do it

Complete the following activities to practise this skill.

### 1.6 ACTIVITIES

Practise your skill analysing bias by completing the following tasks. To do this you can complete a step-by-step **Worksheet** from your Resources panel.

1. Rewrite the ABS summary in **FIGURE 2** to:
  - make the reader angry about homicide levels
  - convince the reader that violent crime in Australia has increased and make them fearful.
2. Explain how you adapted the information to make it biased.
3. Find a graph, chart or table that is being used to support a news story online. (Search for heated political issues.) Analyse whether the data supports the claims being made in the article. If so, explain why. If not, identify what extra information you might need to be able to judge whether the data is being used to present a biased perspective.
4. Access the latest ABS crime data.
  - a. Choose a data set and create a table to communicate that information (either on paper or digitally).
  - b. Translate your table into a graph. Choose a scale and type of graph that emphasises one element (a trend or an anomaly).
  - c. Write a paragraph to explain your choices and what you hoped to emphasise.

# LESSON

## 1.7 SkillBuilder: Creating political advertisements

### LEARNING INTENTION

By the end of this lesson you should be able to create an advertisement to promote a political message.

### 1.7.1 Creating political advertising

How information is presented depends very much on the type of information being conveyed, the audience and the method being used. A detailed analysis is often presented as a report or an essay, which is likely to be read by a small group of interested people. Short messages intended to grab the attention of a large audience are more likely to be presented in the media as an advertisement. TV, print media or pop-up ads on internet sites are attention grabbing and have a very wide reach. This kind of advertising plays a key role in persuading voters during elections, and shaping public opinions between elections.

### 1.7.2 Tell me

An advertisement is designed to convince individuals or groups of people to take particular action. Most advertising we see is aimed at encouraging us to buy particular products, but advertising can also be used to encourage people to take action on a political issue.

A good advertisement:

- is designed to attract attention
- uses basic but bright colours and simple images
- provides key information in bold print
- uses recognisable symbols and logos
- provides clear, direct reasons for action
- uses simple language.

The purpose of this lesson is to help you understand the decision-making process behind creating these ads. This knowledge helps you to analyse advertisements, too — especially when you are identifying and analysing bias and considering the ways political advertising influences the Australian political agenda.

### 1.7.3 Show me

#### Step 1

Identify your central message and mood, your audience and where your ad will be placed.

The type or form of advertisement used will depend on the information that is being presented. For example, when you are asked to prepare a public service announcement, what this means is that the message must be easy to understand and give a high level of information but be concise. The information needs to be short and to the point without any ambiguities (confusion).

The ACTU ‘Change the Rules’ campaign aimed to improve pay and conditions for workers through, specifically:

- a fair minimum wage
- the protection of penalty rates
- pay rises that reflect the cost of living
- equal pay for equal work
- better job security.

**FIGURE 1** is a poster that was used to encourage workers and others to join the ACTU's 'Change the rules' campaign.

**FIGURE 1** An advertisement to encourage people to support the ACTU 'Change the Rules' campaign



Note the use of the following features to create a mood and convey the message.

### Mood

The **mood** is very sombre, with dark colours in the background and an atmosphere of unhappiness. The mood of an advertisement can be serious and sombre, or very positive, depending on the nature of the message. For example, the mood is created in **FIGURE 1** with the mother attempting to comfort her child. Both are clearly very unhappy and appear as victims. The mood of people in a poster or advertisement helps to make the people who see it feel the same way.

### Message

In **FIGURE 1**, the clear message is that this family is suffering because of poverty, resulting from low wages. It is important to use the image to relate to the campaign message.

- The white text in the middle stands out and conveys a simple message.
- The slogan 'Change the rules' reinforces the ACTU campaign message. Simple slogans can be very powerful campaign tools.
- The organisation behind the campaign, the trade union movement, is clearly identified at the bottom.

### Audience

Showing a mother and her child at home is an image that is intended to grab the attention of the target audience of this ad. The purpose was to encourage workers who feel they deserve better pay or who are struggling to provide for their families, so showing a similarly struggling family appeals to this audience.

## Step 2

When constructing an advertisement, it is important to identify the form that it will take as this will affect the way the information is presented. Therefore, you need to choose whether the advertisement will be a print advertisement (for example, newspaper, magazine or billboard), a TV advertisement, appear online (for example, on a website or as a social media paid post or pop-up), or on radio or another form of media.

**mood** the emotional temperature or feelings reflected in an image or writing

### Step 3

Draft the advertisement and ask for some feedback about your messaging. Can someone who has never seen your advertisement identify its three core elements?

- Can they describe the mood accurately?
- Can they explain simply what the ad is encouraging people to do (or not do)?
- Can they identify the target audience accurately?

If your reviewer cannot identify any of these elements, tell them what you were intending to show and ask what they suggest you change to make your ad clearer.

### Step 4

Complete the final copy, considering the feedback you received.

## 1.7.4 Let me do it

Complete the following activity to practise this skill.

### 1.7 ACTIVITY

Practise your skill of constructing an advertisement by producing a print or online advertisement for a new political party.

To do this, complete a step-by-step **Worksheet** from your Resources panel.

# LESSON

## 1.8 SkillBuilder: Structuring an essay

### LEARNING INTENTION

By the end of this lesson you will be able to identify, explain and create the parts of a well-structured essay.

### 1.8.1 Extended writing in Civics and Citizenship

Essay writing is an important communication skill in Civics and Citizenship. You will learn how to explain information in detail and present evidence that supports your ideas in an objective way, and to argue your point of view. Being able to write an essay is a crucial skill to practise and develop over time. This lesson focuses on structuring your essays.

### 1.8.2 Tell me

An effective essay has three parts — an introduction (outline of the essay), body (paragraphs that explain the points in detail) and conclusion (summary of the essay) — all of which link together to present the information to the reader.

Overall, an essay should clearly explain the background of an issue, contain evidence and examples and, perhaps most importantly, discuss the positives and negatives of an issue. Even though this is about explaining your ideas and thoughts on the topic, essays are not a ‘free form’ type of writing. Like many tasks you are asked to do at school, there are specific conventions (rules or standards to follow) when it comes to structuring an essay.

### 1.8.3 Show me

Before you plan your structure, you need to plan your main points and collect your evidence. Use this lesson when you have completed your research into an essay topic.

#### Step 1

#### What is an introduction?

An introduction is a paragraph that outlines the direction of the essay. It usually includes:

- reference to the question or topic
- two or three key definitions
- an outline of the evidence used to support the points.

It may also include a thesis statement. This is a sentence which addresses the question and makes the general direction of the essay clear. How you write your thesis statement will depend on what the verb in your question is asking you to do. For example:

Question: ‘Political parties are essential in the Australian political system.’ *Discuss* this statement.

Thesis: The statement ‘Political parties are essential in the Australian political system’ is valid to a high degree.

**OR**

Thesis: Political parties are essential in the Australian political system and have a high level of influence.

The rest of the introduction should outline (give a very brief summary of) the evidence and examples used to support the thesis. It should also follow a full paragraph structure.

## ARE THE VERBS IN THE TOPIC IMPORTANT?

For this question, you are being asked to *discuss*. This verb means you need to explain any issues and provide points for and/or against the statement. The verbs in essay questions are important parts of the task: they tell you what kind of approach you need to take. With an essay that asks you to discuss, think carefully as you plan your essay: are there points for and against? When you are asked to discuss, showing that you understand both sides of an issue often leads to a more in-depth and thoughtful response than simply arguing for one side. If you are asked to argue for or against a specific topic, you will need to plan a completely different essay. Some of the evidence might be the same, but the structure and focus will be very different.

### Step 2

#### What is an argument paragraph?

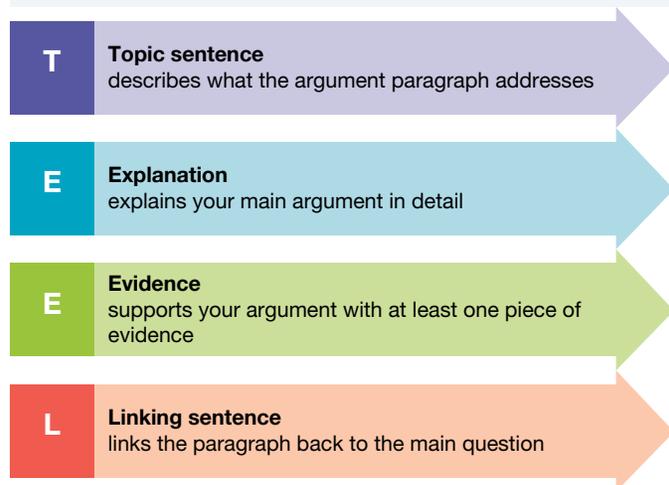
You will have developed your ability to write and link argument paragraphs in years 7 and 8. This is the section of an essay that presents a point of view or explains a specific idea. Beginning with a topic sentence, the paragraph will then explain the idea and support it with evidence. Finally, a linking sentence will draw the reader's attention back to the key questions being discussed. You will remember this as the TEEL structure.

Imagine your teacher asks you to write an essay focusing on the following statement: *Discuss the process for forming government in Australia.*

The following paragraph is an example of the kind of paragraph that you would find in this essay. The paragraph was written using the TEEL structure. The different parts of the paragraph can be colour coded to make it easier to see TEEL in action.

There are many steps in the process needed for forming government in Australia, whether it be at State or Commonwealth level. Because Australia is a democracy, the first step in the process is for an election to be called. An election is where the people come together to freely choose their representatives in parliament. For the Federal Parliament, according to the Constitution, an election must be held every three years or sooner and is called by the Governor-General. In reality, it is the Prime Minister who calls the election and the Governor-General issues the writs and prorogues parliament. It then goes into 'care-taker mode' which means that the Government and Ministry are not able to make any major decisions unless it is an emergency. This is the first of many steps in the process for forming government in Australia.

FIGURE 1 TEEL paragraph structure



### Step 3

#### What is a conclusion?

A conclusion is a paragraph which summarises the essay. It is sometimes described as a re-working of the introduction but with slightly different language so it 'finishes' the argument by highlighting the key point: your central opinion or main idea. It might sound obvious, but your conclusion should, essentially, answer the question you have been given.

## DON'T I HAVE TO COME UP WITH SOMETHING NEW?

One of the stages at which students get 'stuck' with an essay is trying to find new and interesting ways to write their main contention (thesis statement) that is different from the wording of the topic. While you do need to show that you can use a variety of language and demonstrate that you understand the words used in the topic, some students take this a little too far, and lose the clear connection between the topic and their thesis. When you're more advanced and accomplished in your essay writing, you will find varying your language *and* making the connection to the topic clear easier; however, until then, don't be afraid of using the words of the topic in your conclusion to make it 100 per cent clear how your ideas relate to the topic. For example, for this topic:

*Discuss the process for forming government in Australia.*

Your conclusion might begin:

The process for forming government in Australia involves many steps, both at the federal and state level.

It isn't inventive, but it is *very* clear.

**FIGURE 2** Focus on clarity before creativity in your conclusion



### 1.8.4 Let me do it

Complete the following activity to practise this skill.

#### 1.8 ACTIVITY

Use the information and tips in this lesson to practise writing your introduction, argument paragraphs and conclusion for one of the following essay topics. Be sure to use the TEEL structure because it will help you logically organise your thoughts and arguments.

- 'Political parties are essential in the Australian political system.' Discuss this statement.
- Discuss the process for forming government in Australia.

You will need to do some research before writing your practice paragraphs. When you have finished your essay, use highlighters or coloured pencils to identify each of the sections of your essay. Check that you have all of the required elements.

# LESSON

## 1.9 SkillBuilder: Conducting and analysing a survey

### LEARNING INTENTION

By the end of this lesson you should be able to construct a survey to collect data on a specific topic, and complete some basic analysis of your data.

### 1.9.1 Using surveys

In Year 9, you will extend the ways you research by collecting your own data to support your ideas and views.

### 1.9.2 Tell me

#### What is a survey?

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

#### How is a survey useful?

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

A good survey:

- has a clear written introduction
- has simple questions early on
- places more sensitive personal questions towards the end
- leaves enough room for all the questions to be answered
- is of reasonable length
- is well presented
- is clearly analysed once responses are collected.

**FIGURE 2** outlines more tips on creating a good survey.

### 1.9.3 Show me

#### Step 1

Decide what you want to learn. You need to clearly decide the goals of your survey beforehand, otherwise your survey results will be unclear. Frame your goal in a single sentence; for example,

**FIGURE 1** Creating your own survey as research gives you access to data that is local and targeted.



**FIGURE 2** Survey tips



I want to know who people in my community are planning to vote for and why, or I want to know how much people in my school know about the court system in Western Australia.

## Step 2

Decide who you want to survey. Will your target group include both young people and adults, or just young people? How many people will you survey? Generally, the more people you survey, the more reliable your results will be, but that doesn't mean you have to survey a wide range of people. You might choose to survey a lot of people from the one narrow group; for example, students in Year 9 at your school. There may not be many students, but if you receive responses from everyone you still have the data you need.

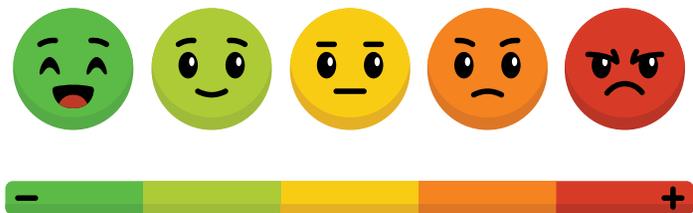
## Step 3

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

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

Online formats such as Survey Monkey and Google Forms are a useful method of conducting surveys online.

**FIGURE 3** You may have seen surveys in stores or facilities asking customers to rate their experience. Surveys using emojis or symbols can be a good way to encourage people to respond: tapping a picture can seem a lot easier than thinking about number ratings or finding the words to answer questions



## Step 4

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

- Closed questions ask the respondent to select an answer from a range of options.
- Open questions allow the respondent to record their thoughts about an issue.

Closed questions that ask respondents to rate something against a scale should have an even number of options for such a scale. This is because people often go for the easy option and pick the middle number. An even number of possible ratings (for example, 1–6, instead of 1–5) means that respondents can't just pick the middle 'neutral' number. **FIGURE 4** shows you some of the different types of questions you could use in your surveys.

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

## Step 5

Conduct a small trial of your survey to make sure the questions are clear and achieve your goals. Make any necessary changes to your questions, and keep testing them until your answers are well understood.



## 1.9.4 Let me do it

Complete the following activity to practise this skill.

### 1.9 ACTIVITY

In a small group, design and conduct a survey. It is to be a paper-based survey carried out by personal interview. Note that paper surveys should allow enough room for interviewees to write their answers. (If it is difficult to meet together, you can plan the survey via video chat, and create a simple online survey.)

In your group, select one of the following topics for your survey or create your own:

1. Concerns for Australians now and for the next five years
2. Satisfaction with the performance of the Commonwealth Parliament
3. Satisfaction with the performance of the Western Australian State Parliament.

You can also complete a step-by-step **Worksheet** from your Resources panel to help you with this task.

# LESSON

## 1.10 SkillBuilder: Creating and analysing a table

### LEARNING INTENTION

By the end of this lesson you should be able to construct a table of data about a specific topic, and complete some basic analysis of your data.

### 1.10.1 Using tables of data

One aspect of close analysis is to be able to transform data sets into a new form, so that you can accurately assess the information the data shows. This allows you to interpret information to identify the main features or ideas, then examine the information closely to determine how the parts relate to the whole. The skills you develop will help you to determine what kinds of information you can rely on to be accurate, how to determine if information is current, and how to spot bias in information that is presented as being factual. You will also refine your skills analysing different types of data, such as graphs, tables and charts of election results or opinion poll results.

### 1.10.2 Tell me

#### What is a table?

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

#### How are tables useful?

Tables are useful in the following ways.

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

### 1.10.3 Show me

#### Step 1

The first step is to examine your data to see how it can be best represented.

- How many different categories are there?
- What headings has it already been collected under?
- What parts of the data do you want to stand out?

For example, imagine that you are given a set of figures that provide details of the number of House of Representatives seats in 1901 compared with 2018, and the state-by-state population for 1901 and 2018. You are required to analyse and interpret this data, so creating a table will make this a lot easier.

**Your data set:** In 1901, the first Australian parliament had 26 members from New South Wales, 23 from Victoria, 9 from Queensland, 7 from South Australia, and 5 each from Western Australia and Tasmania. The population breakdown of the states in 1901 was as follows: New South Wales 1.35 million people, Victoria 1.2 million, Queensland 498 000, South Australia 363 000, Western Australia 184 000 and Tasmania 172 000. In 1901, the Northern Territory population was included in South Australia, and the ACT in New South Wales.

In 2018, the breakdown of seats in the federal lower house was New South Wales 47, Victoria 38, Queensland 30, Western Australia 16, South Australia 10, Tasmania 5, the ACT 3, and the Northern Territory 2. Australian population in 2018 was: New South Wales 7.89 million, Victoria 6.27 million, Queensland 4.97 million, Western Australia 2.67 million, South Australia 1.72 million, Tasmania 521 000, Northern Territory 245 800 and the ACT 406 700.

## Step 2

To make the purpose and message of the data clear, consider your variables and what needs to stand out. In the data we have been given about parliamentary seats, there are several variables to consider:

- states (six), territories (two)
- populations (two sets: 1901 and 2018)
- seats (two sets: 1901 and 2018).

To interpret this data and compare the two different sets of seats, we will probably also want to include totals for the populations and numbers of seats.

The left column of a table is usually where the main items or focus sets are listed. In this case, we are interested in change over time for states and territories and for Australia as a whole, so the names of the states, territories and label for the totals will be placed in the left column.

We can also easily divide the data into two main times: 1901 and 2018 (with population and seats for each) so the top row (called the header row), will be divided into two (showing the years), and then include a second header row underneath dividing the years into two for the seats and the population. This gives us our table grid.

This data can be best displayed in a table by placing the dates, population and number of seats along the top as column headings, with the names of the states as labels for the rows (see **FIGURE 1**).

**FIGURE 1** Key features of a table

Include a number and heading to explain what your table shows.

Table 1: Comparison of population and House of Representatives seats, 1901 and 2018

State or territory	1901		2018	
	Population	Seats	Population	Seats
New South Wales	1 350 000	26	7 890 000	47
Victoria	1 200 000	23	6 270 000	38
Queensland	498 000	9	4 970 000	30
South Australia	363 000	7	1 720 000	10
Western Australia	184 000	5	2 670 000	16
Tasmania	172 000	5	521 000	5
ACT	Not Applicable	Not Applicable	406 700	3
Northern Territory	Not Applicable	Not Applicable	245 800	2
<b>Total</b>	<b>3 767 000</b>	<b>75</b>	<b>24 693 500</b>	<b>151</b>

Order your items in a logical way – in this case, from largest to smallest.

Merge cells in your header row to create a heading for more than one column below.

Explain any gaps in your data set.

Separate total figure with a bold line.

Include any notes required for people to understand your data.

Include the source of your data in a source line.

**Source:** Parliament of Australia, [https://www.aph.gov.au/About\\_Parliament/House\\_of\\_Representatives/Powers\\_practice\\_and\\_procedure/Practice7/HTML/Chapter3/Number\\_of\\_Members](https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/Practice7/HTML/Chapter3/Number_of_Members). accessed 2 February 2020

**Note:** 2018 figures represent total number of seats to be contested from 2017 onwards

## Step 3

You can now use the table to analyse and interpret the data.

1. **What similarities or differences can you see? Suggest potential causes or reasons why these similarities and differences occurred.** As the total number of seats in the lower house has doubled since 1901, why hasn't the number of seats in each state simply doubled?

Analysis: *The number of seats has not doubled for each state because the states have grown at different rates. The population of Australia is more than six times larger than it was in 1901, but the parliament is not six times larger. The number of seats per state is proportionate to the population of the state.*

2. **Compare the data for each main variable (the states and territories). Look for trends.** Compare the New South Wales proportion of the total population in 1901 with that in 2018. Has the state maintained, increased or decreased its share of the seats in the House of Representatives? Explain what you observe about whether there is change or stability.

Analysis: *New South Wales had a little more than a third of Australia's population in 1901 and just over a third of the seats. Today New South Wales has just under a third of Australia's population with just under a third of the seats, so it has maintained a proportion appropriate to its population.*

3. **Look for high and low points.** Which state has experienced the greatest increase in its share of the number of seats since 1901? Why has this occurred? Which state has the largest average population per electorate? Which state has the smallest average population per electorate?

Analysis: *Queensland has experienced the greatest increase in its share of seats because of the rate at which its population has grown since 1901. Western Australia has an average population of 166 875 per electorate (2 670 000 divided by 16), while Tasmania has an average population of 104 200 per electorate (521 000 divided by 5).*

4. **Look for anomalies (data that doesn't fit the trend).** The number of seats in Tasmania has not increased despite an increase in population. Why is this?

Analysis: *The Constitution dictates that no state can have fewer than five seats in the House of Representatives, so Tasmania had more than its proportional 'fair share' in 1901. Tasmania's population has not grown enough to justify any additional seats.*

## 1.10.4 Let me do it

Complete the following activities to practise your skills.

### 1.10 ACTIVITIES

1. Examine the following data for the Legislative Assembly in the 2013 and 2017 Western Australian State Elections and answer the questions that follow:

	Liberals	Nationals	WA Labor	Total
2013 state election	31	7	21	59
2017 state election	13	5	41	59

- a. How many seats were needed to form government in Western Australia in 2013 and 2017?
  - b. How many seats did the Liberal Party win at the 2013 State Election? What was the difference between the 2017 Election?
  - c. How many seats did WA Labor win at the 2013 State Election? What was the difference between the 2017 Election?
  - d. Explain the position of the Nationals at both elections.
  - e. Do some research and outline three reasons for the changes between the two elections.
  - f. Do you think this table would be more or less effective if the political parties were listed in the left column, and the elections in the header row? Give reasons for your decision.
  - g. What common features are missing from this table?
2. Draw a table using the following data:  
In 2016 in the House of Representatives, Labor won 69 seats, the Liberal–National coalition won 76 seats, the Greens won one seat, the Nick Xenophon Team (now Centre Alliance) won one seat, Katter's Australian Party won one seat, and independents won two seats.  
In the 2019 Federal Election, the Coalition won 77 seats in the House of Representatives, Labor won 68 seats, the Greens, Katter's Australia Party, Centre Alliance and an independent all won 1 seat.
  3. Practise your analysing skills by using your table to answer the following questions.
    - a. Under the principle of majority rule, what was the actual majority of the Coalition over all other parties?
    - b. What is the size of the majority won by the Liberal–National coalition in 2016?
    - c. Describe the changes in the numbers of seats each party achieved at the 2019 election.

- d. By the time of the 2019 election, the Coalition was a minority government, with 74 seats to Labor's 69, and 7 cross-benchers. Assuming the cross-benchers retained their seats, how many seats would the Coalition have had to win from Labor to form government in their own right?
- e. Who won the 2019 election? Did they win a majority in their own right, or have they had to rely on cross-bench members?
- f. Describe the level of power or influence that the minor parties may have after the 2019 election.

You can also complete a step-by-step **Worksheet** from your Resources panel to help you with this task.

## Key terms

**apolitical** not favouring one political party or group over another, not interested in politics

**bias** the influence of a person's views and opinions on the way they present information

**connotations** other suggested associations or implied meanings

**mood** the emotional temperature or feelings reflected in an image or writing

**objective information** factual information that has not been influenced by the opinion and/or emotions of the writer

**subjective information** information that has been influenced by the opinion and/or emotions of the writer, and does not necessarily reflect facts or logical conclusions

# 2 Constitutional change and the legislative process

## LESSON SEQUENCE

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# LESSON

## 2.1 Overview

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**What role does the Australian Constitution play in the operation of Australia's political and legal systems?  
How do the state and federal governments work together?**

### 2.1.1 Introduction

The Australian Constitution is a supreme law, meaning it can overrule other laws. Prior to 1901 all the states of Australia were separate and under British colonial rule. On 1 January 1901, the states united as a federation, becoming the nation of Australia as we know it today. The Constitution established the form of government and set out the relationship between the states, the nation and the Commonwealth.

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



### on Resources



**eWorkbook**

Customisable worksheets for this topic (ewbk-10667)



**Video eLesson**

Constitutional change and the legislative process (eles-6128)

# LESSON

## 2.2 How can the Constitution be changed?

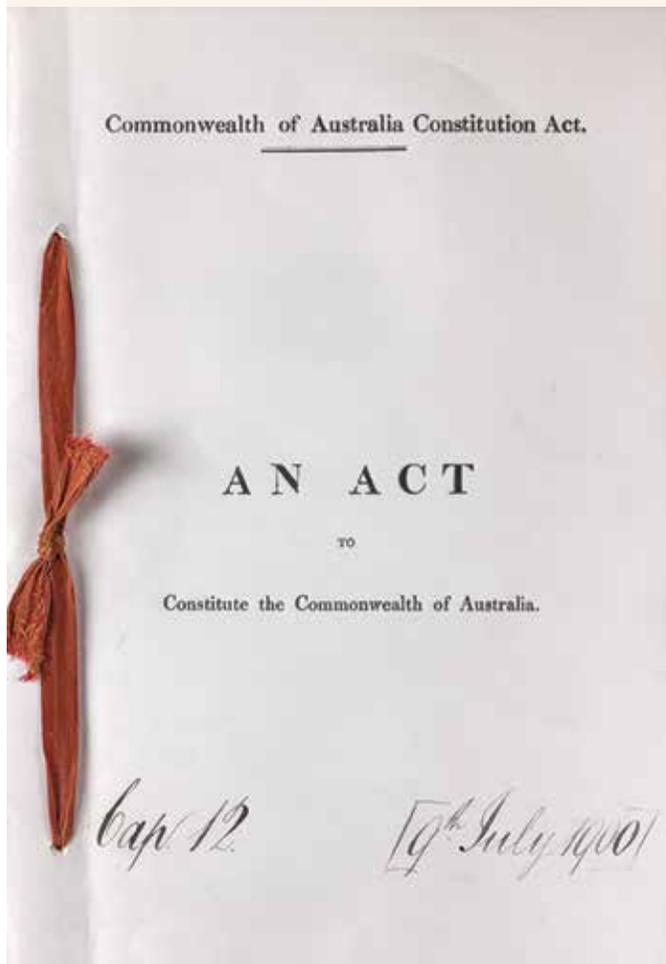
### LEARNING INTENTION

By the end of this lesson you should be able to explain why the Australian Constitution needs to be interpreted and describe how changes can be made by referendum.

### TUNE IN

The Constitution is a supreme law which can overrule all other laws. Because the Commonwealth Parliament gains its authority from the Constitution, it cannot be changed by Parliament alone.

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



**Source:** Her Majesty's Stationary Office, *Commonwealth of Australia Constitution Act, 1900: Original Public Record Copy, 1900*, Official Gifts Collection, Parliament House Art Collection, Department of Parliamentary Services, Canberra, ACT.

1. Where do you think the Constitution came from and why? Brainstorm how it might create a nation.
2. Think about what might be included in the Constitution. Add your ideas to your brainstorm.
3. What Australian laws are you aware of? Add them to your brainstorm.

## 2.2.1 Interpreting 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, such as changes in technology (see **FIGURE 2**).

**FIGURE 2** When the Constitution was drafted in the late 1890s, its creators could not anticipate the changes brought about by technology.



By establishing the High Court, they provided a means for interpreting the Constitution that takes into account changing circumstances, thereby bringing the law-making powers into the twenty-first century and beyond.

The High Court obtains its jurisdiction from sections 75 and 76 of the Constitution (see **FIGURE 3**). 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.

aud-0551

**FIGURE 3** Section 75 and 76 of the Constitution gives the High Court 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

## 2.2.2 Referendums

Unlike ordinary laws, which can be passed and amended by Parliament, changes to the Constitution must be proposed before getting the approval of Australian citizens. First, a member of parliament or a senator makes the proposal. If the bill passes an **absolute majority** it goes to a referendum. During the referendum the proposal must be agreed to by the majority of voters nationwide, and by the majority of voters in at least four states.

## 2.2.3 What are the advantages and disadvantages of a constitution that can only be changed by referendum?

### 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 involved the determination of implied rights by the High Court. All but one of these cases revolved 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 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.

**FIGURE 4** The Australian High Court



**absolute majority** half the number of votes in the House of Representatives or Senate, plus one

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

**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.

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

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

## 2.2.4 Case study: The 1967 referendum and constitutional recognition of First Nations Australians

*First Nations Australian readers are advised that this section may contain images of and references to people who have died.*

In 1967 a referendum was called to change two sections of the Constitution in relation to First Nations Australians. In the original Constitution from 1901, there were only two mentions of the First Peoples of Australia. The first in section 51 granted the ability to make laws to ‘people of any race, other than the Aboriginal race in any state, for whom it was deemed necessary to make special laws’. The second, in section 127, forbade including First Nations Australians in census counts.

These two inclusions meant that First Nations Australians were not counted as Australian citizens, and that the states could make laws which applied to them and not other people.

Civil rights movements in the 1950s and 60s and increasing numbers of protest events eventually led to the call for a referendum. On 27 May 1967, 90.77 per cent of Australians voted ‘Yes’ to changing the Constitution to ensure that First Nations Australians would be counted, and that the Commonwealth could make laws which applied the same to them as other citizens.

### Constitutional recognition of First Nations Australians

While the 1967 referendum removed parts of the Constitution which discriminated against First Nations Australians, there is still ongoing work to build recognition of the First Peoples of Australia *into* the Constitution. Constitutional recognition of First Nations Australians would mean acknowledgement of their special and important place in Australian history and culture. It would also help to ensure they are protected from discrimination, including by the government.

The Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples began in 2018 and presented a report including two main recommendations: a process of co-design with First Nations Australians followed by legislative and constitutional options to establish a constant First Nations Voice in government.

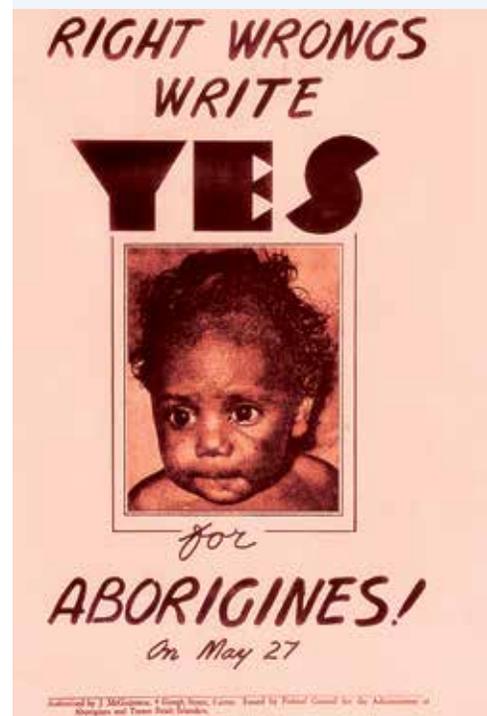
## 2.2.5 The role of the Australian Electoral Commission (AEC)

The AEC has a number of responsibilities which apply to voters. These include:

- maintaining the electoral roll, with a current list of voters
- creating the boundaries for electorates
- registering political parties
- collecting and publishing information such as donations, benefits, and funds received by political parties.

The AEC is governed by the Commissioner and engages with various committees to ensure that the voting process in Australia is fair and legal. While the AEC has no direct involvement with referendums or changing the Constitution, it is responsible for providing the information to voters, for example by printing materials and sending them to every elector.

FIGURE 5 A poster for the ‘yes’ vote



## on Resources

-  **Interactivity** Population and the House of Representatives (int-9088)
-  **Weblinks**
  - High Court current cases
  - High Courts cases
  - Top 10 most influential cases

### SkillBuilders to support skill development

- 1.4 SkillBuilder: Using Cornell Notetaking

## 2.2 SKILL ACTIVITY: Analysis, evaluation and interpretation

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 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.  
You may wish to use the weblinks in the Resources tab for your research.  
Present your information as a slideshow of three slides containing the following information:  
Slide 1: An **explanation** of the old law and the problem  
Slide 2: A **discussion** of the proposed changes and the change made by the High Court  
Slide 3: A brief reflection on why the change was made and whether it was a satisfactory outcome.
2. Can you **predict** any future changes to our society that might require a different application of the law? Think about current issues in society which spark debate in the media.

## 2.2 Exercise

learnon

### 2.2 Exercise

#### Learning pathways

■ **LEVEL 1**  
1, 2, 5, 8

■ **LEVEL 2**  
3, 7

■ **LEVEL 3**  
4, 6, 9, 10

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### Check your understanding

1. **Explain** why an Australian constitution was needed.
  - A. To enable Australia to have a bill of rights
  - B. To establish the system of government and laws for the new country of Australia formed at Federation
  - C. To record what the prime minister and Cabinet are meant to do on behalf of the Australian people
  - D. All of the above
2. **Explain** why the High Court was needed.
  - A. Due to increased crime rates and more courts needed to hear cases
  - B. To rule on disputes involving the states and the federal government
  - C. To rule on cases between Australia and New Zealand
  - D. To rule on cases that arise in Canberra, Australia's capital city
3. **Select** the sections of the Constitution which give the High Court the power to interpret the Constitution.
  - A. 66 and 67
  - B. 71 and 72
  - C. 74 and 75
  - D. 75 and 76
4. **Outline** why the Australian Constitution needs to be interpreted on occasion.

## Apply your understanding

### Communicating

5. What is the role of the AEC?
6. **Define** the impact that an interpretation of the Constitution has.
7. **Define** what is meant by an 'implied right'?

### Analysis, evaluation and interpretation

8. Most laws are made by Parliament, whose members are elected by the people of Australia. **Discuss** whether you think judges in the High Court should be allowed to make laws through their decisions.
9. **Examine** section 2.2.4 on the 1967 referendum. Do you believe that the referendum solved issues of race and inequality, or is more needed? **Explain** your answer.
10. Do you believe that a document as important as the Constitution should include vague terms such as 'other like services'? **Justify** your answer.

# LESSON

## 2.3 What is the federal government responsible for?

### LEARNING INTENTION

By the end of this lesson you should be able to explain the responsibilities of the federal government in policy decisions and law.

### TUNE IN

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

1. Who do you think occupies the long benches at the centre of the semicircle?
2. Who do you think occupies the other seats in the semicircle? Why?
3. Check your answers against the House of Representatives seating plan weblink in your Resources panel.
4. How accurate were you? What other important seats exist in the chamber?

**FIGURE 1** The House of Representatives



### 2.3.1 Policy making in Australian politics

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

## Backbenchers

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

## Frontbenchers and Cabinet

Members of parliament with an allocated **portfolio** are referred to as frontbenchers — because they occupy the front rows of the House of Representatives. Frontbenchers are usually more senior party members and so they can have a significant influence on policy decisions. Frontbenchers are also members of Cabinet, a council of senior members of parliament who are specifically chosen to assist the prime minister with policy decisions and other executive functions. Interestingly, the Cabinet is not mentioned in the Constitution and each government is free to determine its specific functions. As a result, the sitting prime minister has a significant influence on how the Cabinet works. Furthermore, the prime minister is free to shuffle the roles of Cabinet members if they feel such a change is necessary.

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

## The prime minister

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

## 2.3.2 Shaping Australian policy and law

### Setting the policy agenda

Winning an election gives a government the right and responsibility to set the policy agenda for Australia. This is known as a mandate. Governments are free to decide on which areas they will focus their policy decisions. While all government responsibilities must be carefully administered and regulated, individual prime ministers and their parties may choose to focus on particular aspects. Pressure groups and members of the public can also help set the policy agenda by attempting to influence their local members and other politicians. When successful, this influence can both contribute to the development of new policy and result in the amendment or even complete withdrawal of other policy decisions.

**FIGURE 2** The Cabinet meets in Parliament House in the Cabinet Room and consists of the Prime Minister and approximately 19 ministers.



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

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

## Education funding — an example of government policy development

One method of developing government policy is to set up a review of existing practices, invite submissions from interested parties and the general public, and then have the review panel make recommendations to assist in the development of policy. Although the provision of education has been a state government responsibility since Federation, the Commonwealth government has provided additional funding to both government and non-government schools since the 1960s. Different funding models have been attempted over the years, with advocates for government schools, independent schools and Catholic schools all arguing for increased funding for their particular sectors.

Different federal governments have used various models, based on different policy approaches. By the time of the election of the Rudd Labor government in 2007, no real evaluation of funding models had occurred since the 1970s, so the government set up a panel in 2010 to review the issue and make recommendations about educational funding and other educational policy issues.

The review panel was chaired by businessman David Gonski. It received over 7000 submissions, consulted with over 70 education groups, and visited 39 different schools across all states. The panel completed its report late in 2011, and the government announced its policy response in early 2012. The key theme of the Gonski report was the need to allocate school funding on the basis of need, and the government set up a funding model which it believed would achieve this aim. The issue then became one of providing enough money to meet the needs.

With the election of the Coalition government in 2013, the incoming government committed to the principles of the Gonski review, but issues arose in relation to the proportion of funds provided by the federal and state governments. By 2017, it was clear that the original aims of the Gonski review were not being met, so Gonski was commissioned to conduct a second review to provide advice to government on changes to education funding policy. This report was presented in 2018 and has provided the basis for education funding policy by both the Coalition and Labor, although there has been disagreement over the detailed implementation of the recommendations of the review.

Although political considerations have influenced the actions taken by different political parties, the use of an independent review to help develop government policy remains a useful approach for governments to adopt. It allows for input from a wide variety of different groups and individuals from across society, and so can provide government with ideas that reflect community wishes.

## Parliamentary debate

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

**FIGURE 3** Funding for all schools is a shared responsibility of state and federal governments.



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

## on Resources

 **Weblink** House of Representatives seating plan

### 2.3 SKILL ACTIVITY: Civic participation and decision-making

Read the section on education funding in 2.3.2. **Consider** which type of school you attend (e.g. state, independent, Catholic etc.)

- Select** a sector to focus on. You may choose later to argue for or against increased funding in your sector, as long as you are able to support your argument with valid points.
- Write a set of three interview questions to ask three or more teachers or school leaders at your school. Example questions include:
  - Do you think that your chosen sector should receive more or less funding?
  - Do you believe that your chosen sector receives enough funding? Why or why not?
  - What is funding used for in your chosen sector?
  - Which sectors would benefit from more funding?
- Write a table of arguments for and against increased funding in the sector of your choice.
- Choose a side, either for or against. Write a short speech (less than three minutes or 500 words) or prepare a slideshow presentation of no more than five slides, explaining your arguments.

## 2.3 Exercise

learnon

### 2.3 Exercise

#### Learning pathways

##### ■ LEVEL 1

1, 2, 3

##### ■ LEVEL 2

4, 5, 6

##### ■ LEVEL 3

7, 8, 9, 10

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### Check your understanding

- Select** three roles or responsibilities of parliamentary backbenchers from the list below.
  - They are involved in parliamentary debate.
  - They can serve on parliamentary committees.
  - They are responsible for an allocated portfolio.
  - They can suggest amendments to bills and even suggest their own bills.
- The final decision-making power in Australian politics is often left with the \_\_\_\_\_.  
**Select** the correct option: **Cabinet** / **governor-general** / **prime minister** / **senior Cabinet minister**
- During the private and confidential meetings of Cabinet, issues and policies are discussed and votes conducted. Once a Cabinet vote has been cast, who needs to support the final verdict? **Select** the best answer from the list below.
  - Cabinet consensus
  - A vote of confidence
  - Cabinet solidarity
  - A 'captain's call'
- Young or inexperienced members of parliament occupy the back seats of the House of Representatives and the more senior party members occupy the front seats of the House of Representatives. **Explain** why.
- Define** the role of Question Time in the federal parliament.

## Apply your understanding

### Analysis, evaluation and interpretation

6. Do you believe that the Cabinet has any real power in the decision-making process in Australian politics? **Justify** your response.
7. Should the power of the prime minister be restricted? **Describe** the positive and negative implications of the prime minister having a large amount of individual power.

### Communicating

8. **Identify** two sources of influence in the development of government policies.
9. **Determine** the advantages of setting up a review panel to provide recommendations in relation to policy development.
10. **Define** the term 'parliamentary scrutiny' and **explain** why is it a significant part of our political system.

# LESSON

## 2.4 How are conflicts between federal and state government responsibilities resolved?

By the end of this lesson you should be able to describe the kinds of conflicts which may occur between federal and state governments, and explain how the High Court aids in resolving conflicts.

### TUNE IN

Australia consists of six state and two mainland territory parliaments, which each make laws for their state or territory. Disputes between the states are resolved in the High Court.

**FIGURE 1** Each parliament is located in Australia's eight capital cities.



1. Discuss what kinds of things might states disagree on and why.
2. Brainstorm some things you believe make your state or territory unique.

## 2.4.1 Specific, residual and concurrent powers

A system of courts is needed to help maintain social cohesion. In Australia we have courts at a state level, but we also have a federal court system. At the top of this federal court system is the High Court of Australia. Located in Canberra, the court is presided over by seven High Court justices, who are appointed by the governor-general on the advice of the federal government. Justices are appointed for a period that expires when they turn 70; they cannot be removed from office except on the grounds of proven misbehaviour or incapacity.

**FIGURE 2** The High Court of Australia is located in Canberra.



When the Constitution established the Commonwealth of Australia (effective 1 January 1901), 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 likely that some conflict would 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.

## 2.4.2 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.

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.

**FIGURE 3** The Australian film *The Castle* involved a family fighting the compulsory acquisition of their house. Section 51 of the Constitution was mentioned in the film.



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tlvd-10709

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.

### 2.4.3 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 licences. Study **FIGURE 4** to discover the different laws that exist in each state and territory in relation to obtaining a learner’s permit or probationary licence. In which state or territory does it take the least amount of time to obtain a probationary licence?

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)

**FIGURE 4** Learner permit and probationary licence laws around Australia

#### **B Northern Territory**

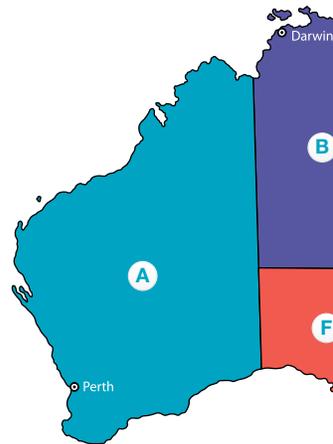
A learner’s permit can be obtained at the age of 16 after passing a road rules test and an eyesight test. Learner drivers are allowed to drive at a maximum speed of 80 kilometres per hour, and can apply for their probationary licence after holding a learner’s permit for at least 6 months.

#### **C Queensland**

A learner’s permit can be obtained after passing a written rules test and at least 100 hours of driving, including 10 hours of night driving, and have held their learner’s permit for at least 6 months before applying for their probationary licence.

#### **A Western Australia**

A learner’s permit can be obtained at the age of 16 after passing a theory test and an eyesight test. The learner must have at least 50 hours of driving practice and hold their learner’s permit for their probationary licence.



#### **F South Australia**

A learner’s permit can be obtained at age 16 after completing a theory test. Learner drivers can drive at the normal speed limit and must complete at least 75 hours of driving practice. A learner driver must hold a learner’s permit for 12 months before applying for their probationary licence.

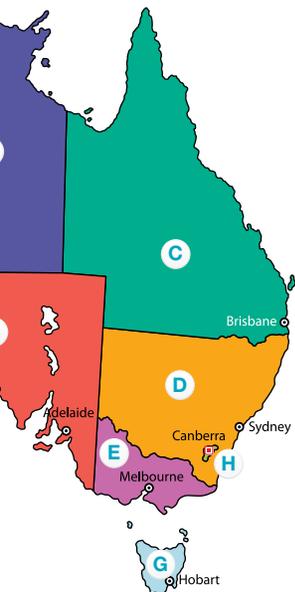
#### **G Tasmania**

A learner’s permit can be obtained after passing a written rules test and a driver knowledge test. Learner drivers must drive at a lower speed than is posted on the road, a maximum of 90 kilometres per hour. After 3 months on a learner’s permit, a learner driver sits a probationary licence test. After a further 9 months of driving experience the learner driver can apply for their probationary licence.

**FIGURE 5** Australians took to the streets in large numbers to show their support for legalising same-sex marriage.



ained at the age of 16 after  
st. A driver must complete at  
uding 10 hours of night driving,  
ermit for at least 12 months  
tionary licence.



ined at age 16 after passing a  
drivers are required to drive at  
when speed limits are over  
months of holding an L1  
iving assessment to get an L2  
ns and at least 50 hours of  
can apply for their

#### D New South Wales

A learner's permit can be obtained at the age of 16 after completing a computerised road rules test and eyesight test. Learner drivers need to do 120 hours of driving, including 20 hours of night driving, and can drive at a maximum speed of 90 kilometres per hour. Learner drivers can apply for their probationary licence after holding a learner's permit for 12 months and completing their required driving hours.

#### H Australian Capital Territory

A learner's permit can be obtained at the age of 15 years and 9 months after completing a road safety program called 'Road Ready' and passing a computerised road rules test. In order to apply for a probationary licence, a driver must be at least 17 and have held a learner's permit for at least 6 months.

#### E Victoria

A learner's permit can be obtained at age 16 after passing a computerised knowledge test and an eyesight test. Learner drivers can drive at the normal speed limit and must complete at least 120 hours of driving practice. A learner driver must have had a learner's permit for 2 years before applying for their probationary licence.

support for a change in the law. The Australian Marriage Law Postal Survey took place between September and November 2017, and was conducted by the Australian Bureau of Statistics through a postal survey rather than ballot boxes at polling booths. Over 79 per cent of eligible voters returned the postal survey form (participation was not compulsory as it normally is in Australian elections). Nearly 62 per cent of voters supported a change in the law, so the federal government then passed a law legalising same-sex marriage, which came into effect in December 2017.

## 2.4.4 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.

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) of the Constitution, 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(xxii) of the Constitution. Hence, the ACT law was deemed to be invalid, and it was subsequently 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.

After this High Court decision, debate continued in Australia. The growing level of support for same-sex marriage resulted in a postal survey, aimed at gauging the level of

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 that 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 passed legislation to amend the Wrongs Act so this decision could not occur again. Farmers would henceforth be liable for their animals escaping and causing harm or damage.

**FIGURE 6** Animals straying onto a road can cause a hazard for other road users — sometimes leading to accidents, as occurred in the Trigwell case.



**precedent** an action or decision on which later actions or decisions might be based; a law made by a superior court that must be applied by lower courts in future cases with the same or similar facts

## 2.4 SKILL ACTIVITY: Communicating

The same-sex marriage debate is considered to be finished because the law has now been changed. Society has evolved sufficiently to accept same-sex marriage. The challenge for society is to remedy the next ‘big’ social issue.

In small groups, **discuss** and **identify** what you **consider** to be the next big social issue. **Research** what the issue is about and what the pros and cons are of changing the law in this area.

Prepare your response in one of the following formats:

1. A slideshow of no more than six slides **explaining** the issue, who is involved, the two sides of the argument, and your groups position and suggestions
2. A speech of no longer than three minutes (roughly 400–500 words) **explaining** the issue and your arguments
3. A video (including a video recording of a slideshow or speech, or any other form of video) lasting no longer than three minutes **explaining** the issue and your arguments
4. A poster which has a mix of text and images that **explains** the issue and the pros and cons of changing the law in this area.

Some possibilities for the issue might be:

- legalising some or all drugs
- voluntary euthanasia
- constitutional representation for First Nations Australians
- the regulation of cryptocurrency and blockchain technology
- diversity, equity and inclusion in businesses
- religious conflicts with LGBTIQ+ people.

## 2.4 Exercise

## Learning pathways

## ■ LEVEL 1

1, 2, 3, 4

## ■ LEVEL 2

5, 6, 7

## ■ LEVEL 3

8

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## Check your understanding

- Determine** which sections of the Constitution establish the High Court of Australia and its jurisdiction.
  - Sections 41–50
  - Sections 51–60
  - Sections 61–70
  - Sections 71–80
- Determine** whether the following statements are true or false.
  - The Chief Justice and at least three other justices preside over the High Court at any one time.
  - Justices of the High Court of Australia can be removed from office at any time if they do not meet the standards expected of them.
  - The Commonwealth Parliament has the power to make laws in 40 specific areas.
- At what age do High Court justices retire?
  - 60
  - 70
  - 75
  - 80
- Determine** where the High Court is located.
  - Adelaide
  - Canberra
  - Sydney
  - Melbourne
- Explain** the difference between specific, residual and concurrent powers.

## Apply your understanding

## Analysis, evaluation and interpretation

- Explain** why concurrent powers could lead to conflict.
- Analyse** why it is better in some instances for Australia to have one law for the whole country on a given issue.
- Identify** why the High Court is the appropriate venue to resolve disputes between two or more states.

# LESSON

## 2.5 INQUIRY: COVID-19 policy — state or federal responsibility?

### LEARNING INTENTION

By the end of this lesson you should have a comprehensive understanding of the varying state and federal responsibilities that related to managing the COVID-19 epidemic and why there are differences in the states, territories and federal government.

Over time, different regulations and rules in relation to the COVID-19 pandemic came into play nationally and in the states and territories. Refer to the two figures below or find two of your own.

### Before you begin

Access the **Inquiry rubric** in the digital documents section of the Resources panel to guide you in completing this task at your level. At the end of the inquiry task you can use this rubric to self-assess.

### Inquiry steps

In this inquiry you will investigate the various state and federal responsibilities of managing the COVID-19 pandemic, which began in 2019. To do this you'll need to follow the steps and instructions outlined below.

#### Step 1: Questioning and researching

Write your inquiry question. What do you already know about policies, rules and laws during the COVID-19 pandemic? What would you like to know more about? What information about the COVID rules and regulations can you find online? Look for both national and state policies. Use the weblinks in the Resources tab as a starting point.

#### Step 2: Analysis, evaluation and interpretation

Analyse the arguments put forward by the different states and territories for the variations in their own policies and regulations. Use the model of a poster analysis to guide you.

#### Step 3: Civic participation and decision-making

Compare the similarities and differences between the states, territories and federal government. What is the same, what is different? Most importantly, why are there differences?

#### Step 4: Communicating

What is the answer to the inquiry question? Present your findings in a format of your choosing. Support your answer with examples from your research, analysis and evaluation.

Complete your self-assessment using the **Inquiry rubric** document or access the 2.5 exercise set to complete it online.

**FIGURE 1** The coronavirus vaccine comes in different forms, but some form of vaccination has been a requirement for entry into certain venues and employment in some areas.



### Resources

-  **Digital document** Inquiry rubric (doc-39801)
-  **Weblinks**
  - Australian government latest information
  - States of Australia information
  - State and territory COVID information
  - COVID and workplaces

# LESSON

## 2.6 Review

Hey students! Now that it's time to revise this topic, go online to:



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### 2.6.1 Key knowledge summary

Use this dot point summary to review the content covered in this topic.

#### 2.2 How can the Constitution be changed?

- The Australian Constitution is a supreme law that came into effect on 1 January 1901.
- The Australian Constitution can be changed by referendum.
- In 1967, changes were made to the Constitution to remove bias against First Nations Australians.
- More changes are needed to achieve racial equality for First Nations Australians.

#### 2.3 What is the federal government responsible for?

- The prime minister and Cabinet have an important role to play in developing policies and making decisions on behalf of Australians. Different areas are divided into portfolios, which are managed by frontbenchers (senior members of parliament).
- Backbenchers also have a role to play in policy development as they will often be approached directly by voters with concerns on particular issues.
- Governments often set up inquiries and policy reviews to examine areas of interest or concern, in order to gain public feedback on an issue, and to receive recommendations for future action.

#### 2.4 How are conflicts between federal and state government responsibilities resolved?

- One role of the government is to establish a system of dispute resolution bodies to deal with conflict.
- In Australia the High Court is the highest court, charged with resolving the most serious disputes that arise.

#### 2.5 INQUIRY: COVID-19 policy – state or federal responsibility?

- What are the various state and federal responsibilities of managing the pandemic?
- What are the similarities and differences between the states, territories and federal government?
- Why are there differences?

### 2.6.2 Key terms

**absolute majority** half the number of votes in the House of Representatives or Senate, plus one

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

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

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

**precedent** an action or decision on which later actions or decisions might be based; a law made by a superior court that must be applied by lower courts in future cases with the same or similar facts

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

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

**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.

## 2.6.3 Reflection

Complete the following to reflect on your learning.

Revisit the inquiry questions posed in the Overview:

**Does the Australian legal system deliver justice?**

**What are the influences in the operation of the Australian legal system that work in support of the achievement of justice for citizens?**

1. Now that you have completed this topic, what is your view on the questions? Discuss with a partner. Has your learning in this topic changed your view? If so, how?
2. Write a paragraph in response to the inquiry questions, outlining your views.

### Resources



**eWorkbooks** Customisable worksheets for this topic (ewbk-10667)  
Reflection (ewbk-10668)  
Crossword (ewbk-10669)



**Interactivity** Constitutional change and the legislative process crossword (int-9090)

## 2.6 Review exercise

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### Multiple choice

1. Australia's Constitution established Australia as a
  - A. federation.
  - B. Commonwealth.
  - C. republic.
  - D. constitutional democracy.
2. Law-making powers not listed in the Constitution are known as
  - A. exclusive powers.
  - B. inclusive powers.
  - C. specific powers.
  - D. residual powers.
3. The Constitution established how many heads of power?
  - A. 41
  - B. 40
  - C. 39
  - D. 36

4. If Commonwealth and state laws conflict, the section of the Constitution that resolves this conflict is
  - A. section 109.
  - B. section 128.
  - C. section 75.
  - D. section 24.
5. The High Court gets its jurisdiction to hear cases from
  - A. section 109.
  - B. section 128
  - C. section 75
  - D. section 24.
6. A law made by a superior court is called
  - A. a statute.
  - B. legislation.
  - C. a precedent.
  - D. a by-law.
7. When both state and federal parliaments are free to make laws in the same area, the right to do so is known as
  - A. *ultra vires*.
  - B. a concurrent power.
  - C. a referendum.
  - D. an exclusive power.
8. Who has the jurisdiction to interpret the Australian Constitution?
  - A. Commonwealth Parliament
  - B. Governor-General
  - C. Senate
  - D. High Court
9. Which actions does The High Court of Australia have the power to do?
  - A. Resolve a conflict between two laws.
  - B. Hear appeals from the Supreme Court.
  - C. Review decisions made in state courts.
  - D. All of the above.
10. Separation of powers divides government into three branches. These are the:
  - A. legislative, executive and judicial functions of government.
  - B. lower house, upper house and the governor-general.
  - C. local, state and federal levels of government.
  - D. Magistrates Courts, District Courts and Supreme Courts.

## Short answer

### Analysis, evaluation and interpretation

11. **Explain** one reason why Australian politics parties might form a coalition.
12. The Constitution cannot be changed by the government. **Outline** the advantages and disadvantages of this.
13. **Describe** why it is important that referendums need a majority vote to be passed.
14. The decision of the High Court is final in disagreements between the states. **Determine** if you think this is a fair way of resolving disagreements between the states.
15. **Decide** if you believe that the states and territories should have the power to make their own rules and regulations during a crisis, such as the COVID-19 pandemic.

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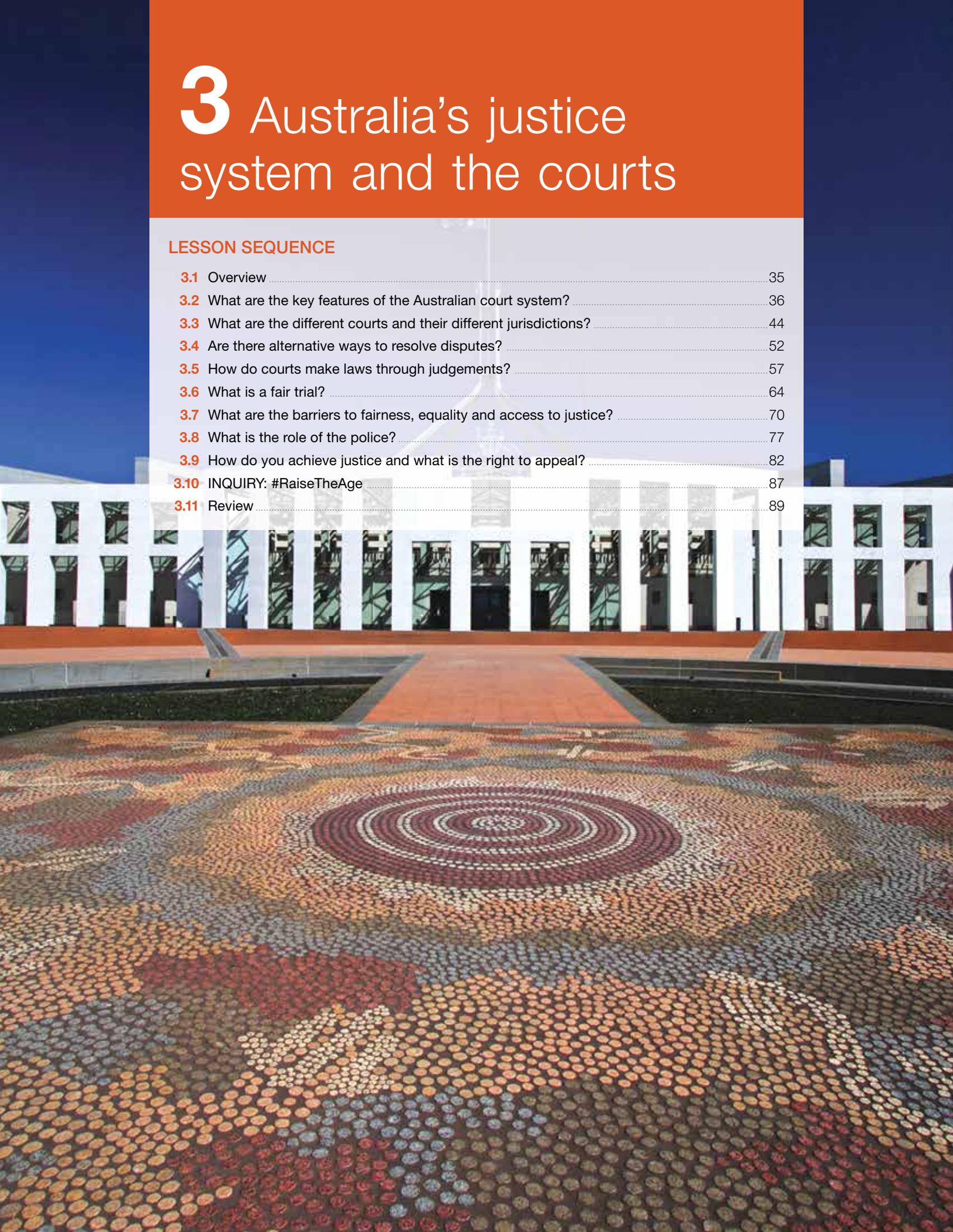
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# 3 Australia's justice system and the courts

## LESSON SEQUENCE

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# LESSON

## 3.1 Overview

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Does the Australian legal system deliver justice?

What are the influences in the operation of the Australian legal system that work in support of the achievement of justice for citizens?

### 3.1.1 How does Australia's justice system work?

The statue pictured in **FIGURE 1** represents the idea of justice, and is often associated with our justice system. Lady Justice holds a sword in one hand to represent the power of reason and justice. It is a double-edged sword, meaning that at any time it might be wielded for or against a party.

In her other hand, she holds a set of scales that symbolise fairness, equity and balance in judgements and weigh up the needs and interests of individuals and society. She is sometimes shown wearing a blindfold or with her eyes closed to suggest the principle that justice should be 'blind'. However, in essence it symbolises that Justice is impartial; wealth, status and emotion are not considered in reaching decisions.

Every day in the media we hear about people being involved in cases before the courts. Courtroom dramas and 'true crime' podcasts and series are also popular, although few of these are Australian, so they don't accurately reflect what happens in our legal system.

Even if we never commit an offence or become involved in a legal dispute ourselves, we could still find ourselves in contact with the court system, as a witness, to do jury duty, or even just attending court to support someone we know. Our justice system and the courts are important elements of our democratic society, and it is important that we all have a basic understanding of how they work.

**FIGURE 1** The figure of Justice holds a sword and scales.



#### **on** Resources



**eWorkbook**

Customisable worksheets for this topic (ewbk-10671)



**Video eLesson**

Going to court (eles-2362)

# LESSON

## 3.2 What are the key features of the Australian court system?

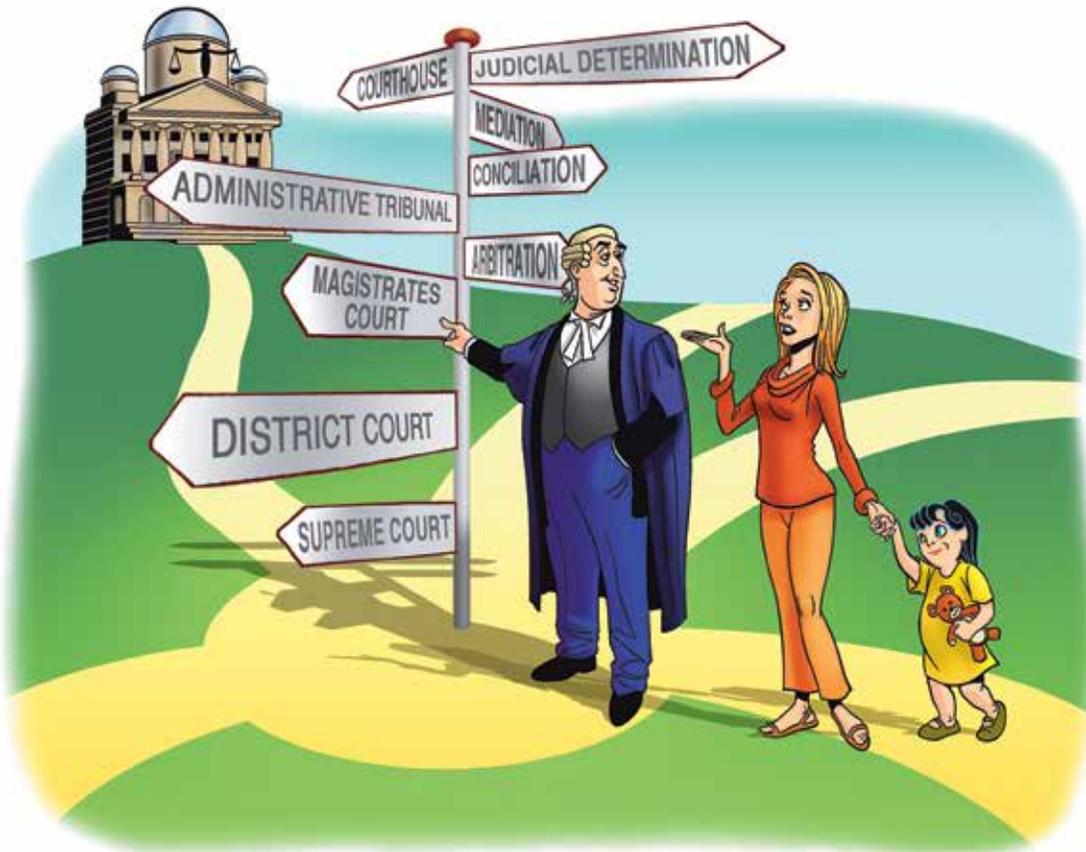
### LEARNING INTENTION

By the end of this lesson you should be able to explain the difference between civil and criminal cases and identify the courts in the Australian court hierarchy and their role.

### TUNE IN

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

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



1. Brainstorm a list of reasons for having different levels of courts rather than allowing all courts to hear any cases?
2. Make a list of courts that you think are found within our court hierarchy.
3. Which court do you think would hear the following?
  - a. Murder cases
  - b. Road traffic offences
4. Discuss your answers to these questions with a partner.

## 3.2.1 Criminal cases and civil cases

### Criminal law

Criminal law protects the community from the harmful actions of others. When a person commits a crime, the state **prosecutes** that person by having them taken before a court. Our courts operate under an **adversarial system**. This means that two opposing sides present their arguments to an independent umpire — a **judge** or **magistrate**.

The prosecuting side (the prosecution) is required to prove the guilt of the person accused of the crime. The accused person has a right to present his or her side of the argument (known as the defence). In criminal cases, a person found to be guilty will be sentenced to receive a punishment, such as imprisonment or a fine (see **FIGURE 2**).

**FIGURE 2** The process of criminal justice



### Civil law

Civil law deals with non-criminal disputes between individuals or groups. These can arise in matters related to business dealings, or when a person is harmed by the careless actions of another. Civil cases also operate under the adversarial system, with each side presenting their arguments before an independent judge or magistrate. The person making the complaint is known as the **plaintiff** and the person accused of doing the harm is known as the **defendant**. If the plaintiff is successful, the defendant can be required to provide compensation for the harm done (see **FIGURE 3**).

An area of law for which a court has responsibility is known as its **jurisdiction**. In criminal cases the higher courts have jurisdiction over the most serious crimes. In civil cases the higher courts have jurisdiction over matters that will affect many people, involve complex legal issues or large sums of money.

Cases heard in higher courts will be much more expensive for the community as well as for those bringing the action. If an individual is unhappy with the ruling in a lower court, he or she can apply to have the case heard in a higher court. This process is referred to as ‘making an appeal against a court decision’.

**prosecute** to take legal action against a person accused of a crime  
**adversarial system** a system of trial in which the two sides argue their case and the judge or magistrate acts as an independent umpire

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

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

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

**defendant** a person against whom a legal action has been brought

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

**FIGURE 3** The process of civil law



### 3.2.2 The lower courts

The lowest level court in most court hierarchies is the Magistrates Court, refer to **TABLE 1**. It hears both criminal and civil cases.

All adult criminal cases (people 18 and over charged with criminal offences) are brought before the Magistrates Court first. Criminal cases fall into three general categories:

- Simple or **summary offences** (such as disorderly conduct) are heard by a magistrate.
- **Indictable offences** or crimes (such as criminal damage, serious assault or robbery) are heard initially by a magistrate, but are then passed on to be heard in the District or Supreme Court.
- **Indictable offences triable summarily** can, on the decision of the magistrate, either be heard by the magistrate, or sent to a higher court.

A relatively large number of these courts are across each state and territory because they hear more than 90 per cent of cases that go to court.

**summary offences** simple or less serious offences that are heard by a magistrate

**indictable offences** offences that are generally more serious in nature, which are heard initially by a magistrate but then passed on to a higher court

**indictable offences triable summarily** offences for which a magistrate can decide whether they hear the case, or send it to a higher court

tlvd-10710

**TABLE 1** Australian court hierarchies

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

The Magistrates Court also has special courts for hearing drug-related charges and family violence offences. The aim of separating out these kinds of crimes is to focus on providing treatment to people who have broken the law because of substance abuse problems and protecting families from violent behaviour. Most jurisdictions also include a Koori Court to help bridge the gap between Australia's common law system and First Nations customary law.

### 3.2.3 Intermediate courts

Intermediate courts (see **TABLE 1**) operate in some jurisdictions. Australian intermediary courts are generally known as District Courts, except in Victoria where the court operating at this level is called the County Court. They hear serious criminal cases such as armed robbery, serious drug-related offences and serious assaults, including sexual assaults. Murder-related cases are heard in the highest state court, the Supreme Court.

In criminal cases, District Court cases are heard by a judge and a **jury** of 12 people. The jury's role is to consider the facts presented by the prosecution and the defence and decide whether the **accused** is guilty or not guilty. The judge will help the jury if there are complex legal issues to be decided. If the jury decides that the accused is guilty, the judge determines the appropriate punishment. Some appeals from criminal cases heard by the Magistrates Court are also heard in the District Court.

Intermediate courts usually have jurisdiction over a wide range of civil disputes, including claims made for workplace and motor vehicle injury, and disputes involving business dealings.

A jury is usually not required in a civil case unless either the plaintiff or the defendant requests one. When juries are used they usually consist of between four and seven jurors, depending on the individual state requirements.

In some states there is an upper limit on the amount of money involved in cases that can be heard in an intermediate court. Cases involving larger amounts than this limit need to go to the highest state court (the Supreme Court) to be heard. Tasmania, the Northern Territory and the ACT do not have an intermediate court as part of their court hierarchy.

### 3.2.4 Higher courts

The highest court in each state and territory is the Supreme Court. In all states except South Australia, Supreme Courts are divided into a trial division and an appeal division. The most serious criminal matters, such as murder and treason, are heard before a judge and jury of 12.

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

**accused** the person charged with or on trial for a crime

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



The most serious crimes are heard in the Trial Division — for example, murder and armed robbery — as well as civil matters involving large amounts of money or complex legal issues.

The Court of Appeal hears appeals from the lower courts in the hierarchy and (with a panel of judges) appeals against decisions made by only one judge in the Supreme Court.

**FIGURE 5** The Queen Elizabeth II Courts of Law at the Supreme Court of Queensland, located in the Brisbane CBD



## The High Court of Australia

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

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

**FIGURE 6** The High Court of Australia in Canberra is the highest court in the court hierarchy; the Mabo Land Rights case was heard here.



**FIGURE 7** Key players in a typical court hearing



- A** The judge's associate is a trained lawyer who manages much of the paperwork.
- B** Anyone whose name is on the electoral roll can be called as a juror. In a criminal case, the jury consists of 12 people. The jury must decide beyond reasonable doubt whether a person is guilty. All the jurors have to agree.
- C** The prosecutor has to convince the jury that the accused person is guilty. This is done by asking questions of witnesses to draw out relevant information.
- D** The judge is addressed as 'Your Honour'. The judge listens to arguments presented by the prosecutor and the counsel for the defence, and is not allowed to ask a witness questions (except to clarify a point). The judge has to make sure jury members understand the proceedings and evidence presented. If a jury announces a guilty verdict, the judge decides the sentence.
- E** The counsel for the defence represents the accused. If the accused pleads guilty, the counsel for the defence presents arguments to try to lessen the punishment. If the client pleads not guilty, defence counsel must convince the judge or jury that the client is innocent.
- F** The court orderly helps the judge keep order in the court.
- G** Witness box, from which people give evidence
- H** Members of the public, who listen to and observe the court proceedings
- I** A prison officer from the prison where the accused has been held
- J** The accused
- K** Members of the media, who observe proceedings so they can report what happens

## 3.2.5 Other courts — state and federal

### Coroner's Court

Every state and territory in Australia has its own Coroner's Court. The Coroner will investigate 'reportable' deaths, this means the death was unexpected, unnatural or violent. This court will also investigate fires that result in loss of life or significant damage to property.

The Coroner will identify the deceased and their cause of death. They can also make recommendations related to public health and safety and the administration of justice. For example, following a number of drowning deaths in backyard swimming pools the Coroner recommended mandatory pool fences.

**FIGURE 8** The Forensic Medicine & Coroner's Court Complex in Sydney, NSW



### Family Court of Australia

The Family Court of Australia is a federal court, not a state court. It handles disputes over divorce, parenting arrangements, child support, and property disputes following a relationship breakdown.

### Federal Court of Australia

As most criminal law is determined by state governments, most criminal cases are heard in state courts, but if someone is accused of breaking a federal criminal law, such as smuggling illegal substances or objects into Australia from overseas, they would be tried in the Federal Court. Novak Djokovic's case challenging his ban on playing in the Australian Open in 2022 due to not being vaccinated against COVID-19 was heard in the Federal Court.

The Federal Court can also hear civil disputes involving large businesses that operate in a number of different states, disputes relating to federal consumer protection laws, disputes over customs or taxation issues, or **industrial relations** matters.

**FIGURE 9** The Roma Mitchell Commonwealth Law Courts in Adelaide houses the Federal, Family and Federal Magistrates courts, as well as the visiting High Court.



The Federal Circuit Court is the relevant lower court in the same hierarchy as the Federal Court. Many family law issues from states other than Western Australia are resolved by the Federal Court Circuit (approximately 80 per cent).

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

### **on** Resources

 **Interactivity** In the courtroom (int-5656)

### 3.2 SKILL ACTIVITY: Questioning and researching, Communicating

The Department of Justice recently conducted a survey to gauge people's understanding of the Australian court system. They have found that there is a large section of the population that have very little knowledge of how our courts operate.

Your group has been commissioned by the Department of Justice to **create** a visual representation of the Australian court system using digital technology. The format is up to you.

You must include:

- The jurisdiction of each court and its place in the court hierarchy.
- An example of a case that has been heard in each court.

## 3.2 Exercise

learnon

### 3.2 Exercise

#### Learning pathways

■ LEVEL 1  
1, 3, 6

■ LEVEL 2  
2, 4, 7, 8

■ LEVEL 3  
5, 9, 10

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### Check your understanding

1. Draw a line to **match** the words below to their definitions.

Plaintiff

Defendant

Prosecute

Adversarial system

Jurisdiction

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

A person who commences a legal action in a civil case

A person against whom a legal action has been brought

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

To take legal action against a person accused of a crime

2. What is court hierarchy?
- A. The arrangement of courts in different levels, in order of their power and importance
  - B. The arrangement of courts according to their size
  - C. A legal structure where parties present their cases to a judge
  - D. A legal official who presents cases on behalf of the crown
3. **Identify** the role of the Coroner's Court.
- A. Investigate reportable deaths
  - B. Investigate fires
  - C. Make recommendations related to public health and safety
  - D. All of the above

4. **Identify** the three main functions of the High Court of Australia.
  - A. It is the highest court of appeal.
  - B. It deals with minor offences and committal hearings.
  - C. It interprets the Australian Constitution.
  - D. It is the second highest court of appeal.
  - E. It resolves disputes between state governments, and between state governments and the Commonwealth Government.
5. **Outline** the difference between civil law and criminal law.

### Apply your understanding

#### Analysis, evaluation and interpretation

6. Do the following cases involve criminal or civil law? **Explain** your answers.
  - a. You are disturbed by neighbours loudly renovating their property at 2 a.m.
  - b. Your aunty is convicted of driving with a blood alcohol content of 0.09.
  - c. Your smartphone is stolen by an attacker armed with a baseball bat.
  - d. Your strict-vegetarian friend finds a half-eaten prawn in a salad sandwich, which was labelled as vegan, bought from a café and realises that she has just eaten the other half.
  - e. Your leg has to be set in a plaster cast when you slip on some detergent that has been spilled on the supermarket floor.
7. Do you think that a court hierarchy is necessary? **Explain** your answer.

#### Communicating

8. In which courts and in which types of cases is a jury required? **Justify** your answer.
9. If a person was accused of smuggling guns and ammunition into Australia, in breach of Commonwealth law, which court would hear this criminal case? **Justify** your answer.
10. In 1983 a dispute occurred between the federal government and the Tasmanian state government over the building of a dam on the Franklin River in south-west Tasmania. Which court would have heard this case? **Justify** your answer.

## LESSON

### 3.3 What are the different courts and their different jurisdictions?

#### LEARNING INTENTION

By the end of this lesson you should be able to distinguish between the original and appellate jurisdiction of the courts, and, using examples, explain the roles of the different courts in Australia.

#### TUNE IN

Did you know that Courts are arranged in a hierarchy? This promotes efficiency in our legal system as different courts will hear different cases. More serious matters will be heard in the higher courts and less serious cases will be dealt with more quickly and efficiently in the lower courts.

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

1. Name the courts in your state or territory court hierarchy.
2. Brainstorm a list of things you might have to pay for when going to court.
3. Explain why it is more expensive to resolve a case in the higher courts.

**FIGURE 1** The higher the court in the hierarchy, the more expensive it will be to bring the case.



### 3.3.1 Different courts, different jurisdictions

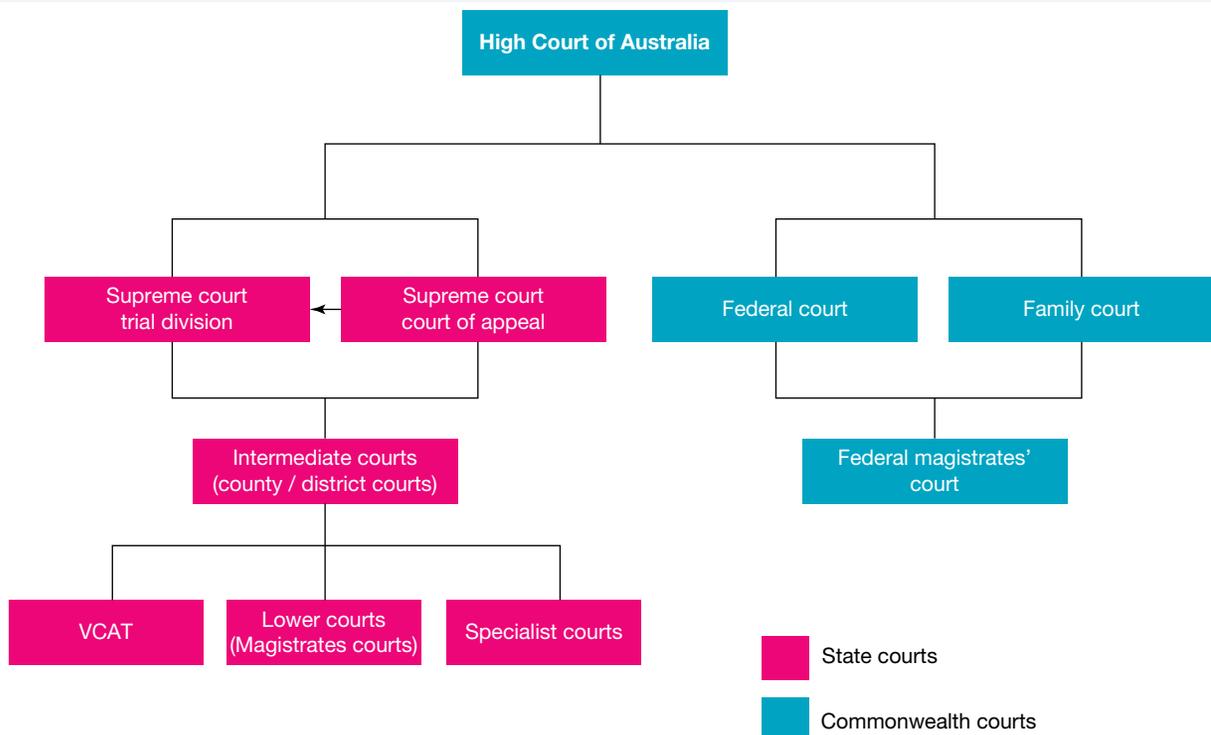
A court hierarchy ensures there will be consistency across all cases and allows:

- Judges and courts to specialise and develop expertise by hearing specific types of cases.
- Cases to be distributed according to their complexity and seriousness. Cases can be allocated according to the expertise of the judge.
- Individuals to have the opportunity to appeal a decision in a lower court and have it reviewed by a judge in a higher court.

It allows more serious cases matters to be given the time they need to ensure a fair trial in higher courts, while less serious cases are dealt with more quickly and cheaply in lower court. To illustrate these principles, we will examine the Supreme Court, Magistrates Court and Family Court of Australia.

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**FIGURE 2** Australian court hierarchy



### 3.3.2 Supreme Courts

Each of the six states and two mainland territories of Australia has a Supreme Court as its highest court. Each Supreme Court has two main types of jurisdiction: an **original jurisdiction** and an **appellate jurisdiction**.

**original jurisdiction** the power of a court to hear and decide a case for the first time  
**appellate jurisdiction** the power of a court to review a lower court's decision

#### Some state differences

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

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

## Original jurisdiction

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

**FIGURE 3** Jury members in criminal trials have to carefully weigh up the evidence to decide whether or not the accused is guilty.



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

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

The Supreme Court in each state also hears only the most complex civil cases. This usually means cases involving disputes over very large sums of money. The actual amount will vary from state to state and is often determined by the complexity of the legal issues involved.

## Appellate jurisdiction

If either party is unhappy with a decision in a lower court, that party can make an appeal to a higher court. When there is a separation between the original and the appellate jurisdictions of the Supreme Court, these appeals are usually heard by the appeal division, or Court of Appeal. The Court of Appeal hears appeals from intermediate courts, from the trial division of the Supreme Court and on points of law from the Magistrates Court. When hearing an appeal, the court usually sits with either three or five judges (see **FIGURE 4**), depending on the seriousness of the case. In South Australia, Tasmania, the Northern Territory and ACT, where no separation exists between the trial division and appeal division, appeals are heard by any three Supreme Court judges. Of course, the appeal judges must not include the judge who heard the case originally and no jury will be present.

**FIGURE 4** When the Supreme Court acts as the Court of Appeal, it usually sits with three or five judges.



### The Court of Appeal

If either party is unhappy with a decision in a lower court, that party can make an appeal to a higher court, where the trial is heard by a single judge only. The Court of Appeal also hears appeals against sentencing; for example, if someone believes that the term of imprisonment handed down was unjust. The Court of Appeal hears appeals from intermediate courts, various tribunals and from the trial division of the Supreme Court. When hearing an appeal, the court usually sits with three judges, but may also only sit with one or two. This depends on the seriousness of the case.

### 3.3.3 The Magistrates Court

In most states, up to 90 per cent of all cases are heard in the Magistrates Court (known as Local Courts in NSW). These courts have both criminal and civil jurisdiction.

#### Criminal jurisdiction

The criminal jurisdiction of the Magistrates Court usually covers relatively minor offences, sometimes known as simple or summary offences. These include driving offences; many cases of theft, such as shoplifting; assault cases where the victim has received relatively minor injuries; and public order cases, such as being drunk and disorderly in a public place. The Magistrates Court carries out significant functions in relation to all these issues.

**FIGURE 5** A person who is remanded in custody will be held in prison until their case is heard in court. Time spent on remand will be considered if the accused is found guilty and sent to prison.



## Bail and remand

When a person is charged with an offence that is serious enough to be heard by an intermediate court or the Supreme Court, a decision has to be made to either detain the accused in custody or release them into the community to await trial. Releasing an accused into the community is known as granting **bail**.

If the arresting police officers believe that the accused presents a danger to the community but the accused wishes to be released, a bail hearing will be held. This hearing will often be held in a Magistrates Court. Both sides will present their arguments to the magistrate, who will then decide whether to grant bail. If bail is granted, the magistrate may require that a **surety** be lodged with the court, and may also impose conditions on the accused. These can include a requirement that the accused regularly report to their local police station. If bail is not granted, the accused will be **remanded in custody** until the case goes to trial (see **FIGURE 5**).

In our legal system an accused is presumed innocent until proven guilty. In many cases it would be inappropriate to hold an accused in custody for months awaiting a trial.

**bail** an agreement to release an accused person into the community while awaiting trial  
**surety** when bail is granted, a sum of money deposited with a court as a guarantee that an accused will abide by the conditions of bail and will appear in court when required to do so  
**remanded in custody** to be held by the authorities until a case is heard in court

## Committal hearings

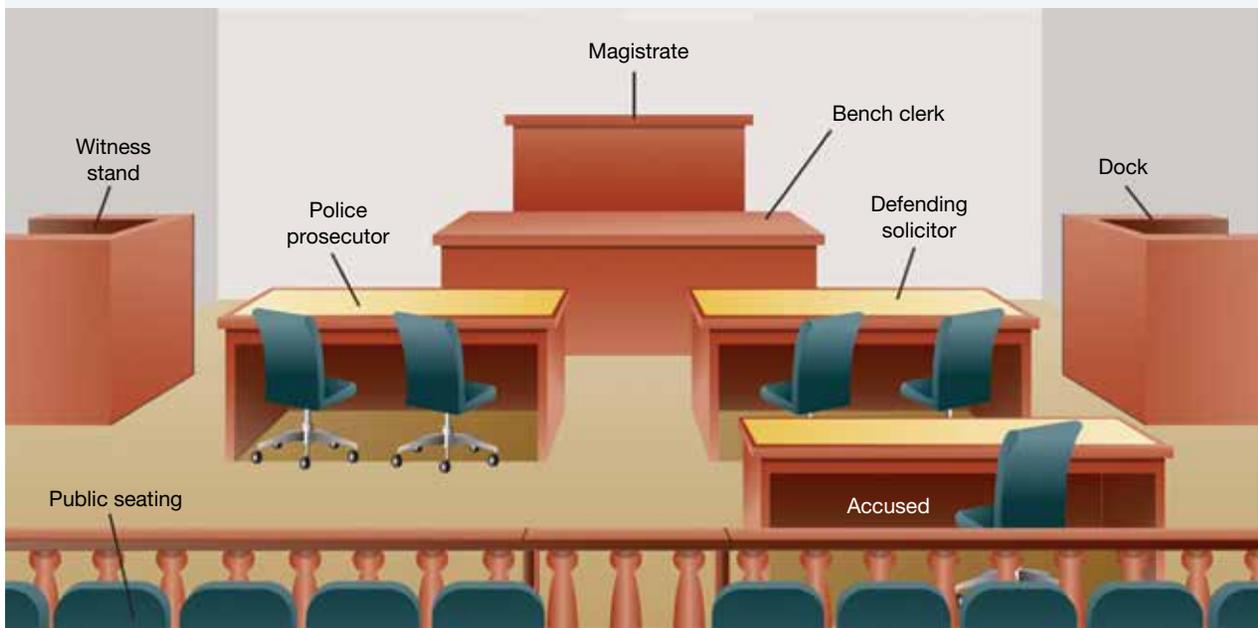
A committal hearing is a preliminary hearing held to determine whether or not the prosecution case is strong enough to justify a full jury trial in the Supreme Court or in the District Court or County Court. It also provides an opportunity for an accused to indicate whether he or she intends to plead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

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



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**FIGURE 6** Typical layout of a Magistrates Court, where minor offences and committal hearings are dealt with



## Civil jurisdiction

A variety of civil matters can be heard in the Magistrates Court. These are usually of a less serious nature than those matters heard by intermediate courts or the Supreme Court. The jurisdiction of the Magistrates Court is limited to hearing cases where the amount of money involved does not exceed a prescribed amount. This amount and the different types of cases heard in Magistrates Courts varies from state to state.

For example:

- In New South Wales and Victoria disputes where less than \$100 000 involved.
- In Queensland the maximum amount is \$150 000.
- In Tasmania the limit is \$50 000.

Cases exceeding these limits will be heard in either the District or County Court or the Supreme Court.

### 3.3.4 Family Court of Australia

The Family Court of Australia is a federal court that handles disputes over divorce, parenting arrangements, child support, and property disputes following a relationship breakdown.

The Family Court sits regularly in most capital cities, as well as major regional cities, with the exception of Western Australia, which has its own state-based Family Court. While the Family Court of Western Australia has jurisdiction to hear cases regarding both state and federal family law, the Family Court of Australia hears appeals from the Family Court of Western Australia.

The Family Court of Australia was established in 1975 as a result of laws passed by the Commonwealth Parliament. It is on the same level in the court hierarchy as the Supreme Court.



**FIGURE 7** The Family Court encourages divorcing couples to engage in mediation in the hope of reaching agreement over as many issues as possible.

Relationship breakdown can be a very emotional experience for those involved, and particularly for children of the relationship. For this reason, the Family Court operates under a number of principles, aimed at avoiding an expensive court case, including the following:

- The interests and welfare of children are always at the centre of any decisions made by the court, and they are given higher priority than the wishes or preferences of parents.
- The court encourages separating couples to reach agreement over as many issues as possible, such as parenting plans and property division.
- The court can order the couple to attend **mediation** in an attempt to resolve some of the issues in dispute.
- If the parties have reached agreement over some issues, they can apply to have this agreement approved by the court. This approval by the court is known as a **consent order**, and it means that the agreement can be legally enforced by both parties.

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

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

## on Resources

-  **Weblinks** Queensland Courts  
 Court Services Victoria  
 Courts Tasmania  
 NSW Courts and Tribunals  
 Western Australia Court and Tribunal Services  
 Courts SA  
 Northern Territory Local Court  
 ACT courts

### 3.3 SKILL ACTIVITY: Analysis, evaluation and interpretation

**Conduct research** to find two newspaper articles, one that deals with an aspect of criminal law and one dealing with an aspect of civil law. Use your articles to complete a table like the one below.

	Criminal case	Civil case
Title of article and URL		
Which court will hear this case? <b>Justify</b> your answer.		
<b>Identify</b> any key terminology in the article.		
Will a jury be present? <b>Justify</b> your answer.		
What was the outcome of the case? Do you think this outcome was fair? Give reasons for your answer.		
If the outcome has not been specified, indicate what you think the outcome should be. Give reasons for your answer.		

## 3.3 Exercise

learnon

### 3.3 Exercise

#### Learning pathways

■ LEVEL 1

1, 3, 6

■ LEVEL 2

2, 4, 5, 7

■ LEVEL 3

8, 9, 10

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### Check your understanding

1. Complete the following sentences.

\_\_\_\_\_ is the jurisdiction where the case is first heard.

\_\_\_\_\_ is the jurisdiction where an appeal is heard.

2. **Identify** the purpose of a bail hearing?

- A. To determine a time and date for an accused person's trial
- B. To determine whether the accused is liable or not liable in a case of civil law
- C. To determine whether the accused is guilty or not guilty in a case of criminal law
- D. To determine whether the accused should be allowed to return to the community before their trial

**3. Match** the words below to their definitions.

An agreement to release an accused person into the community while awaiting trial		a. Surety
To be held by the authorities until a case is heard in court		b. Committal hearing
When bail is granted, the sum of money deposited with a court as a guarantee that the accused will abide by the conditions of bail and will appear in court when required to do so		c. Consent order
A preliminary hearing held to determine whether or not the prosecution case is strong enough to justify a full jury trial in the supreme court or in the district or country court		d. Mediation
A process of settling disputes in which a neutral third party (a mediator) assist the parties to reach agreement. mediators do not offer solutions; they help the parties to reach agreement through their own suggestions.		e. Remand
A written agreement reached by the parties to a dispute and approved by the court		f. Bail

**4. Define** mediation.

**5. Explain** what a consent order is.

### Apply your understanding

#### Communicating

- 6. Explain** why the Family Court encourages parties before it to reach agreement on as many issues as possible.
- 7.** In which court are these likely to be heard? Choose from the following list: High Court, Supreme Court, District / County Court, Magistrates Court, Family Court of Australia.
  - a. A murder trial
  - b. An appeal from the Supreme Court
  - c. A minor traffic offence
  - d. A dispute over the division of property in a divorce
  - e. Serious assault
  - f. The preliminary hearing of a rape case
  - g. A civil dispute between business partners involving \$100 million
  - h. A case dealing with an aspect of the Australian Constitution
- 8. Explain** the purpose of committal hearings in a Magistrates Court.
- 9. Explain** how committal hearings contribute to the fairness and efficiency of our court system.
- 10. Explain** why the Supreme Court is most likely to hear civil cases involving complex legal issues.

# LESSON

## 3.4 Are there alternative ways to resolve disputes?

### LEARNING INTENTION

By the end of this lesson you should be able to explain why tribunals are needed and how they promote justice.

### TUNE IN

Going to court can be very expensive, especially if the matter must be dealt with in a higher court. Everyday people purchase goods only to find that they are faulty or do not meet their expectations.

**FIGURE 1** Broken down again



1. What message do you think is being conveyed in **FIGURE 1**?
2. Apart from going to court, how do you think the person in the car can solve his problem?

### 3.4.1 Resolving disputes without courts

On many occasions, legal disputes can be solved using alternative methods. The Family Court uses mediation, whereas **complaints bodies**, such as Consumer Affairs Victoria and the Equal Opportunity Commission use **conciliation** as an alternative to formal court action. There are many ways in which the legal system can make use of special courts and tribunals to deal with civil disputes. These include disputes between consumers and businesses, and disputes and issues related to human rights.

### 3.4.2 Consumer law disputes

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

**complaints body** a formal body where people can lodge complaints and seek advice about their rights and the process they should undertake to resolve their dispute. In some instances, the body provides a no cost conciliation service. Examples of complaints bodies include the Equal Opportunity Commissioner, Ombudsman, and Consumer Protection Agencies (which differ from state to state).

**conciliation** a process of settling disputes in which a neutral third party (a conciliator) assists the parties to reach agreement. Conciliators can offer suggestions and alternative solutions to assist the parties in reaching an agreement.

## How does consumer law protect us?

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

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

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

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

## What action can we take?

Enforcement of consumer rights is carried out in each state or territory by the Office of Fair Trading or the Consumer Affairs Office. If a consumer has a complaint against a supplier, the process shown in **FIGURE 4** is generally recommended.

In some cases, a supplier who breaches Australian consumer law may be guilty of a criminal offence and can be prosecuted in the courts. Consumer Protection Agencies have the power to prosecute a business or other supplier who has acted illegally under the provisions of consumer law. On a number of occasions, retailers selling dangerous children's toys had the toys seized and were prosecuted. The court that hears the case will be determined by how serious the breach of consumer laws is. The following examples are from the Magistrates Court.

- A retailer in New South Wales was fined for selling non-compliant children's toys.
- In South Australia a company who claimed its plastic bags were biodegradable was fined when the bags were found to contain heavy metals.

**FIGURE 2** It is illegal to make claims that the seller knows to be untrue.



**FIGURE 3** Manufacturers must ensure that spare parts are available for a reasonable time after the goods are supplied.



**FIGURE 4** The typical process for raising consumer complaints



More serious cases will be heard in the Supreme Court or Federal Court. This includes where a business has used deceptive, misleading practices or conduct that is considered **unconscionable**. The following is an example from the Federal Court:

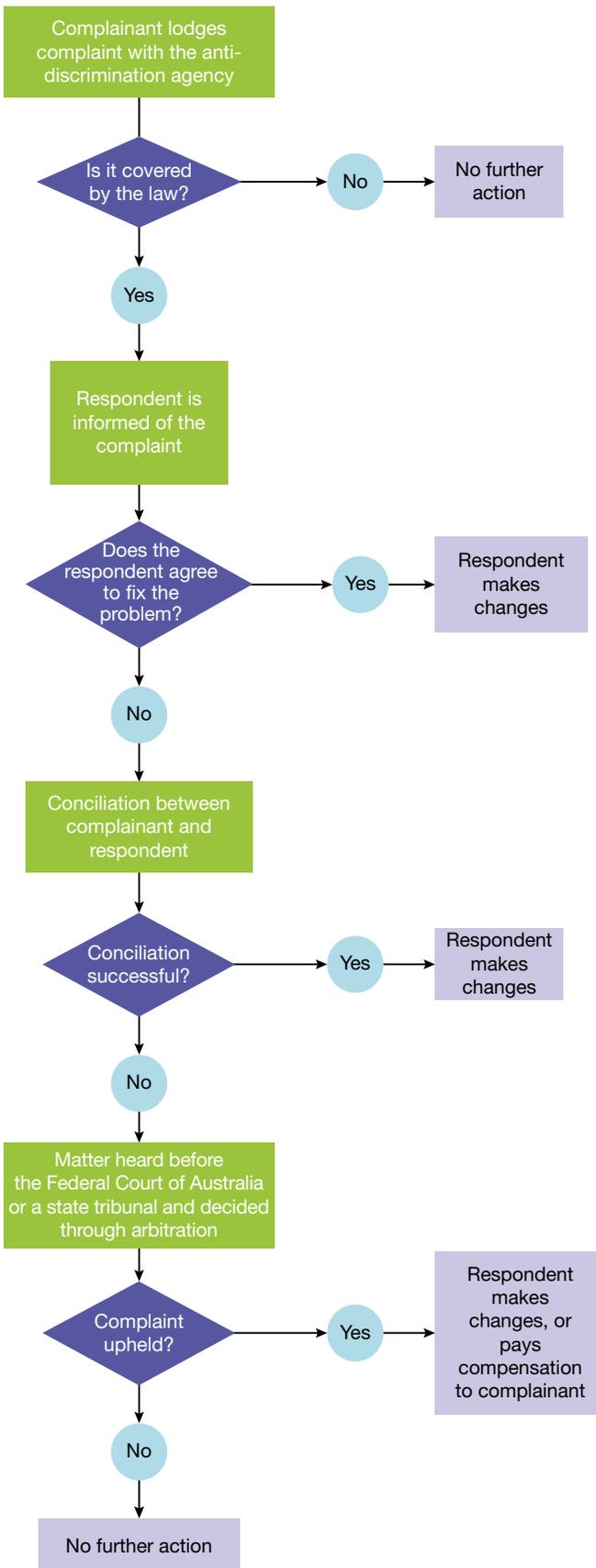
- A large company was fined \$50 million dollars for providing contracts for the supply of a service the consumer could not afford or did not understand.

**unconscionable** conduct that is considered so harsh or unreasonable that it is considered 'not in good conscience'. Such conduct may involve taking advantage of someone, who is at a disadvantage.

### 3.4.3 Human rights disputes

The federal and state governments in Australia have passed laws to protect our human rights. These include equal opportunity and anti-discrimination laws which make it illegal to discriminate against anyone based on characteristics such as their gender, racial or ethnic background, age, religion, marital status or sexual orientation. Each state and territory has its own anti-discrimination agency. At the federal level, this body is the Australian Human Rights Commission. This body has several roles, including educating the public about human rights and anti-discrimination issues, dealing with complaints and advising the government on international compliance issues arising out of treaties.

**FIGURE 5** The dispute-resolution process in discrimination complaints or other infringements of human rights



## Dealing with complaints

A standard procedure is in place for dealing with complaints of discrimination or other infringements of human rights. **FIGURE 5** and the following text outlines the process in Australia.

1. A person who believes their rights have been infringed can lodge a complaint with the Australian Human Rights Commissioner within 12 months of the incident occurring. This complaint must be in writing and signed by the person making the complaint. Forms are available online, but it may also be necessary to provide evidence of the alleged discrimination. The person lodging the complaint is known as the **complainant**, and the individual or organisation complained about is known as the **respondent**.
2. Once a complaint has been lodged, it is examined to see whether it comes within the areas of discrimination covered by the relevant legislation. If it does not, the complainant will be informed that no further action will be taken.
3. If it is believed that the complainant has grounds for a case, the complaint will be investigated by a Conciliation Officer. The respondent will be contacted and provided with a copy of the complaint. The respondent then has the opportunity to fix the problem and the issue is resolved.
4. If the respondent refuses to accept that the alleged discrimination has taken place, the Commission sets up a conciliation process. This process brings the two parties together with the conciliator in an attempt to resolve the matter.
5. If the matter cannot be resolved through conciliation, you can apply to have the matter heard in the Federal Court of Australia or in a state tribunal.

**complainant** a person lodging a complaint about another person or organisation  
**respondent** the person defending an appeal

6. When using **arbitration** the Federal Court will operate in a similar manner to a court, however the process is less formal and less expensive. This means that both sides can present their arguments to the Federal Court and it can make a legally binding order to resolve the issue.
7. If the complaint is successful, the Federal Court can order the respondent to refrain from continuing the discriminatory behaviour. It can also order the respondent to pay a sum of money in compensation to the complainant. If the discrimination was employment related, the tribunal can order a respondent to reinstate the complainant to a position from which he or she was dismissed.  
A complainant can also request for their complaint to proceed to the Federal Court withdraw their complaint.

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

### 3.4 SKILL ACTIVITY: Analysis, evaluation and interpretation, Communicating

**Conduct research to investigate** one of the following in your state:

- The Equal Opportunity Commission
- Consumer Protection Agency
- Environment Protection Body.

Record the following information:

- a. What is the name of the organisation?
- b. What are its three most important aims or goals?
- c. What is the structure of the organisation?
- d. **State** two examples of how the organisation attempts to educate the community.
- e. Find two examples / cases related to this organisation at work:
  - i. What was the issue?
  - ii. What was the outcome?
  - iii. In your opinion, was the outcome fair? **Justify** your answer.

## 3.4 Exercise

learn on

### 3.4 Exercise

#### Learning pathways

■ LEVEL 1  
1, 4, 7

■ LEVEL 2  
2, 3, 6, 8

■ LEVEL 3  
5, 9, 10

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### Check your understanding

1. What are two examples of behaviour that is illegal under Australian consumer law? **Select** all possible answers from the options below.
  - A. False and misleading advertising
  - B. Businesses polluting the environment
  - C. Businesses that discriminate against anyone based on characteristics such as their gender, racial or ethnic background, age, religion, marital status or sexual orientation
  - D. Businesses offering prizes or gifts to customers only to then not provide them
2. Rearrange these steps — in the order that is most appropriate — to resolve the issue if you buy a new phone but it does not work. Number the steps from 1–4 (1 being the first step).
  - \_\_\_\_\_ Take the matter to a tribunal
  - \_\_\_\_\_ Raise the issue with the business that sold you the phone
  - \_\_\_\_\_ Contact a Consumer Protection Agency for assistance in resolving the dispute
  - \_\_\_\_\_ Check your rights on the consumer protection website
3. \_\_\_\_\_ is the term given to treating a person unfavourably on the basis of a particular characteristic, such as gender, racial or ethnic background, age, religion, marital status or sexual orientation.

4. **Match** the following terms with their definition. Select from these terms: mediation, unconscionable, conciliation, arbitration
  - a. A process of settling disputes in which a neutral third party assists the parties to reach decision by offering suggestions and solutions.
  - b. The process of resolving a dispute using an independent third party in a tribunal who makes a binding decision on behalf of the parties.
  - c. A process of settling disputes in which a neutral third party assists parties to reach a decision, without offering any suggestions or solutions.
  - d. Conduct that is considered harsh or unreasonable. It may involve taking unfair advantage of someone.
5. \_\_\_\_\_ usually occurs at a tribunal level. Here, parties present their cases to a panel (usually comprised of people with knowledge of the disputed topic), which then deliberates on a decision.

### Apply your understanding

#### Communicating

6. **Distinguish** between the terms complainant and respondent.
7. **Distinguish** between a tribunal and a complaints body.
8. In what circumstances could a person or organisation have criminal action brought against them for breaching consumer law?
9. **Name** two organisations that protect consumers through consumer laws and how they provide this protection.
10. **Identify** the area of law that deals with discrimination and **outline** the process a person would follow if they thought they were a victim of discrimination.

## LESSON

### 3.5 How do courts make laws through judgements?

#### LEARNING INTENTION

By the end of this lesson you should be able to explain how judges develop the law by interpreting statutes and creating precedent, and use case study material to provide examples of law-making by the courts.

#### TUNE IN

In the case of Cohen and Sellar, the plaintiff had given the defendant an engagement ring as a symbol of their engagement. Prior to the marriage taking place, the defendant broke off the engagement; sparking an argument over who owned the ring. Could the defendant keep the ring, or did she have to return it to the plaintiff?

You be the judge:

1. a. In your view, does the defendant have to return the ring to the plaintiff? Justify your point of view.
  - b. Would your answer be different if the plaintiff broke off the engagement? Explain.
2. What do you think should happen to any other gifts exchanged by the couple? Give reasons for your answer.
3. Share your thoughts with other members of your class.

**FIGURE 1** Who owns the ring?



### 3.5.1 Common law

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

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

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

### 3.5.2 The doctrine of precedent

A key feature of our legal system is the doctrine of **precedent**, which allows courts to make laws. This means that when deciding cases judges will be guided by the legal principles applied in similar cases. The operation of precedent depends on the existence of a court hierarchy.

The doctrine of precedent has several key principles:

- Cases with similar facts are decided in a similar way to provide consistency in the legal system.
- Decisions made in higher courts are written down in law reports, which are available to all legal practitioners and judges.
- Lower courts must follow the decisions of higher courts in the same hierarchy when a similar case comes before them.
- A higher court has the power to change a decision made in a lower court. This may happen when a case is appealed or in a later case where a judge decides the previous decision needs to change.
- Supremacy of parliament allows parliament to pass laws that cancel precedents so that they will not apply in the future.
- When new issues come before a court, a judge has the power to create a new law provided it is not inconsistent with an existing precedent or legislation.

#### Trigwell's case

The Trigwell family suffered serious injury after a collision with another vehicle on a narrow country road at night. The accident occurred after the other car had swerved to miss sheep that were on the road after escaping through broken fences on a farm adjacent to the road. The other driver died and the Trigwell's sued the farmer for causing the accident.

The High Court relied on an old common law precedent dating back to a time before the advent of cars and ruled that the farmer was not liable for the damage caused by his roaming livestock.

The Victorian Parliament disagreed and passed the *Wrongs (Animals Straying on Highways) Act 1984*. This Act abolished the precedent set in the High Court by stating that farmers would be held responsible for injury caused if their animals strayed onto the road.

**FIGURE 2** Parliament can change or cancel precedents, so they no longer apply in the future.

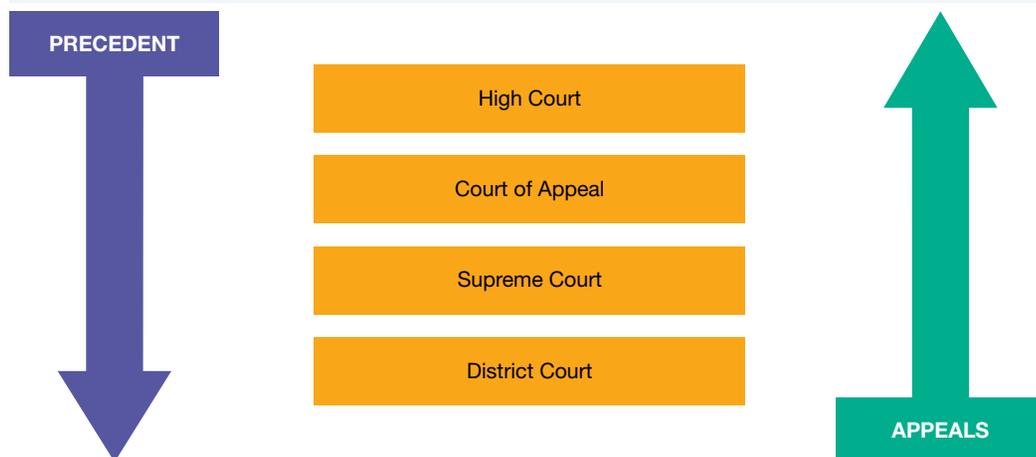


**FIGURE 3** If no relevant law exists, judges can create a new legal rule to settle a dispute.



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**FIGURE 4** The court hierarchy allows for appeals to be taken to higher courts, and precedent to be followed by lower courts.



### 3.5.3 What makes a precedent?

Law reports contain details of cases that have been decided previously. Each case report includes a summary of the facts of the case, and the law that has been applied by the judge in reaching a decision. The outline of the law that has been applied is known as the *ratio decidendi*, which is a Latin term meaning ‘the

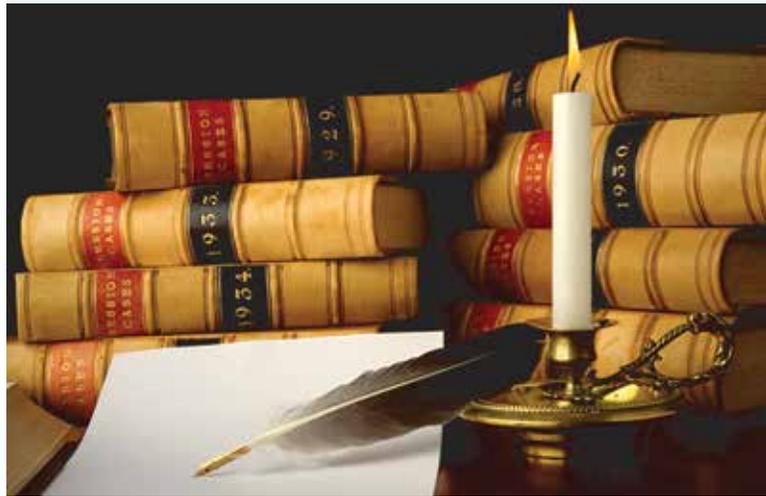
*ratio decidendi* a Latin term meaning ‘the reason for the decision’

reason for the decision'. This might be a precedent from a previous case or the judge's interpretation or interpretation of a law passed by parliament.

When there is no relevant precedent or other law that applies to the facts of the case, the *ratio decidendi*, as stated by the judge, creates a new precedent.

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

**FIGURE 5** Previous court decisions are documented in law reports.



## on Resources

 **Video eLesson** The ability of the courts to make law (eles-2380)

### 3.5.4 Duty of care — case studies in the application of precedent

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

**FIGURE 6** When you use shampoo you are protected by the law — even if someone else bought the shampoo for you.



#### *George v. Skivington (1869)*

Mr George bought hair shampoo from a chemist (Mr Skivington), who had made the mixture himself. He made it clear that he was purchasing the product for his wife. Mrs George suffered skin irritation and hair loss as a direct result of using the shampoo. Mr George sued the chemist, claiming he had been negligent in manufacturing the shampoo.

***obiter dictum/obiter dicta*** a Latin term that means 'things said by the way'; the plural form is *obiter dicta*

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

Lawyers for the chemist argued there was no contractual relationship with Mrs George as she did not purchase the product; therefore, the chemist did not owe her a duty of care. The judge did not agree and stated that the *chemist owed a duty of care to the ultimate user of the shampoo*. Mr Skivington knew the product had been negligently made and would be used by someone other than the purchaser. In these circumstances the legal relationship between Mr George and the chemist extended to his wife and a duty of care was owed.

### *Heaven v. Pender (1883)*

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

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

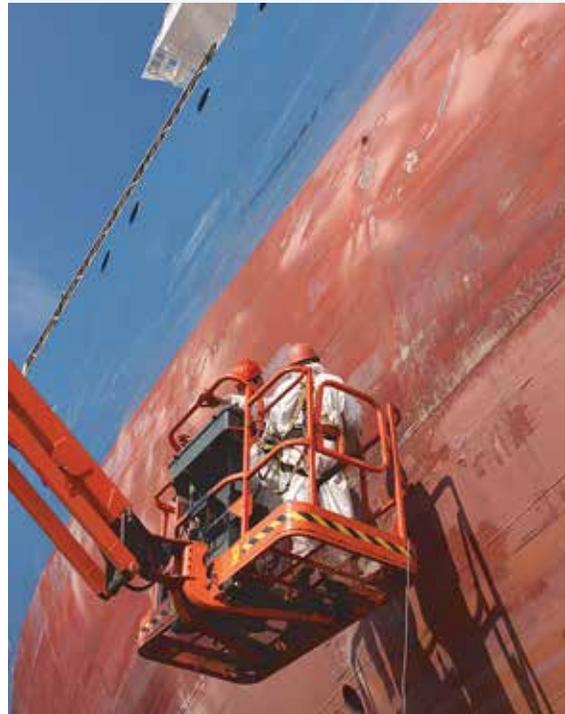
### *Donoghue v. Stevenson (1932)*

A friend bought May Donoghue a bottle of ginger beer. The drink was in an opaque bottle, so it was not possible to see the contents. Donoghue drank some of the ginger beer, but when the last of the bottle was poured into a glass, the remains of a decomposed snail came out into the glass. Donoghue suffered from illness and shock as a result of drinking the ginger beer, and sued the manufacturer of the ginger beer, Stevenson. There was no direct contractual relationship in this case because it was Donoghue's friend who had actually bought the drink, and had bought it not directly from Stevenson but from a café supplied by Stevenson. The case was eventually decided in favour of Donoghue.

The leading judgement was delivered by Lord Atkin, and it is the following words within his judgement that are accepted as the *ratio decidendi* of the case and therefore constitute the precedent that has become law:

a manufacturer of products, which he sells in such a form as to show that he intends them to reach the ultimate consumer in the form in which they left him with no reasonable possibility of intermediate

**FIGURE 7** The dock owner who supplied the platform was found to have a duty of care to the workman painting the ship.



**FIGURE 8** When May Donoghue found a decomposed snail in her bottle of ginger beer, she sued the manufacturer.



examination, and with knowledge that the absence of reasonable care in the preparation or putting up of products will result in an injury to the consumer's life or property, owes a duty to the consumer to take that reasonable care.

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

### *Grant v. Australian Knitting Mills (1936)*

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

### The law of negligence

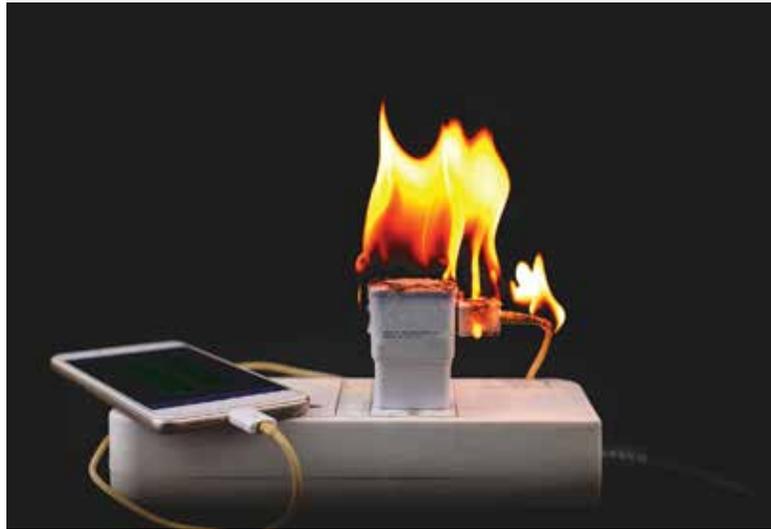
The area of law created by the cases just discussed is known as the law of negligence. Negligence is said to occur when a person owes a duty of care to another, but does not act in such a way as to ensure the safety of that person. It is now accepted that suppliers of all goods owe a duty of care to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

### *Deing v. Tarola (1993)*

One example of a precedent being created by the interpretation of an existing law is known as the studded belt case. In this case, a young man who was wearing a studded leather belt to hold up his trousers was charged with possessing a regulated weapon and found guilty in the Magistrates Court in Victoria. He subsequently successfully appealed this verdict in the Supreme Court of Victoria.

In making his decision, the Supreme Court Justice had to interpret the intention of the Victorian Control of Weapons Act. He considered definitions of a weapon, and whether any reasonable person would consider that the wearing of a studded belt would constitute possession of a weapon. He deemed that the young man had a lawful excuse for possessing the belt (it was holding up his trousers), and that he had no intention of using it as a weapon. The precedent clarified the Control of Weapons Act, by stating that a studded belt is not, in and of itself, a weapon but may become one if there was intent for it to be used in this way. In this case, the Justice deemed there was no such intent, and therefore the young man was not guilty of an offence.

**FIGURE 9** Suppliers of goods have a duty of care to ensure their goods are safe to use.



**FIGURE 10** Is a studded belt a weapon? According to precedent set by the Supreme Court, only if there is intent for it to be used in this way.



### 3.5 SKILL ACTIVITY: Evaluating, concluding and decision-making, Communicating

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

- Propose** an argument to support this statement and a counterargument to represent an opposing point of view. Use the cases in this lesson to illustrate your arguments.
- Which viewpoint do you support? **Justify** your answer.
- Get together with other like-minded classmates and collate your opinions.
- Hold a class **debate** and have your teacher determine the winner.

## 3.5 Exercise

learnon

### 3.5 Exercise

#### Learning pathways

##### LEVEL 1

1, 2, 3, 7

##### LEVEL 2

4, 6, 8

##### LEVEL 3

5, 9, 10

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### Check your understanding

- What is common law?
  - Laws that are common to everyone.
  - A legal principle that is established by a court in resolving a dispute and is expected to be followed in later cases.
  - Laws made by judges through decisions in courts
  - All of the above.
- Which of the following is a key principle of the doctrine of precedent?
  - Previous cases provide precedent for future cases.
  - As parliament is the highest law-making body, it has the power to overrule judgements made in the court system.
  - There must be consistency of precedent within the hierarchy of courts.
  - All of the above.
- Complete the following sentences: \_\_\_\_\_ is a responsibility to ensure the safety of any persons whom we can reasonably foresee might be affected by our actions. \_\_\_\_\_ refers to failure to take reasonable care when a person or organisation is legally required to do so.  
Answer options: negligence / duty of care

#### Questioning and researching

- Clarify** why law reports are important in helping judges make and apply common law.

### Apply your understanding

#### Communicating

- Explain** why the court hierarchy is important in the operation of the doctrine of precedent.

#### Civic participation and decision-making

- Before 1869 in English common law, a legal duty of care was only owed between people who had a direct contractual relationship. **Analyse** the decision in *George v. Skivington* that changed this law.
- How do you think a judge might decide the following cases? **Justify** your answer.
  - A woman buys a new car from a dealer. While preparing the car, a mechanic accidentally damages the brakes and the buyer has an accident. She sues the manufacturer and the dealer.
  - A man has a lot to drink at a club. When he goes to leave, the club manager offers to order the man a taxi but he refuses it. While walking home the man staggers onto the road and is injured when a car hits him. He sues the club for negligence.
  - A couple buy a house but discover that it is riddled with termites and will need to be demolished. They sue the previous owner, who claims she knew nothing about the termites.

8. **Clarify** the difference between the *ratio decidendi* and *obiter dictum*.
9. **Discuss** why the case of *Heaven v. Pender* is a good example of the doctrine of precedent.
10. In *Donoghue v. Stevenson* the judge used *obiter dictum* from a previous case to create a new *ratio decidendi*, and therefore a new principle under common law. **Elaborate** on how this was possible under the principles of the doctrine of precedent.

## LESSON

### 3.6 What is a fair trial?

#### LEARNING INTENTION

By the end of this lesson you should be able to define the principle of 'equality before the law' and explain how it is practised in Australia's justice system.

#### TUNE IN

The right to a fair trial is a fundamental human right. It is a guarantee of the rule of law and an essential element of a just society.

1. Why do we have a trial for people accused of crimes, rather than simply sending them to jail?
2. Brainstorm a list of elements that you think are essential for a fair trial.
3. Rule up a table in your workbook.

In the first column, brainstorm a list of rights that you think everyone should have.

In the second column, place a tick next to the rights you think you have.

In the third column, indicate whether this right should apply to an accused person or victims. An example has been provided for you:

Rights people should have	Rights I have	Rights of victim / accused
The right to silence	✓	accused

4. As a class, try to reach a consensus as to the three most important rights for victims and the three most important rights for a person accused of a crime.

**FIGURE 1** Everyone should have the right to a fair trial.



#### 3.6.1 A fair trial is a balancing act

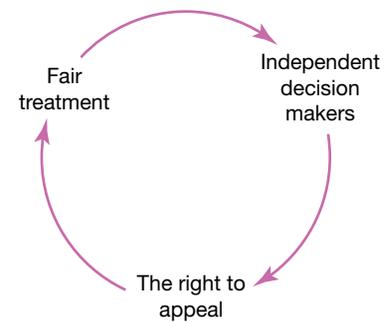
Australia is the only western country that does not have a Bill of Rights. All other nations with a similar political and legal system have enacted a Charter or Bill of Rights that clearly sets out the rights of citizens.

Both victims and accused persons have rights within the criminal justice system. In each state and territory, some of these rights are enshrined in legislation; others have been developed and refined through the courts as common law. Whatever the source of these rights, the justice system strives to strike a balance to ensure the rights of both an accused person and the victims of crime and their respective families are respected.

In Australia all persons charged with a criminal offence have the right to a fair trial. This means the case will be heard before an impartial court or tribunal. An individual should have knowledge of the case against them and the opportunity to challenge the evidence in an open and public forum. The right to appeal is a further guarantee that the trial was fair and recognises that in some circumstances it may be necessary to review the case to ensure there has not been a miscarriage of justice.

A victim is a person who has suffered some form of injury, harm or loss because of a crime being committed. The law recognises that depending on the circumstances of the offence, victims may have suffered significant trauma and that this may be compounded by a public trial. Rights of victims include being kept informed about the proceedings, giving evidence as a vulnerable witness, and being informed of the likely release date of the accused.

**FIGURE 2** Australia's justice system is based on several principles



## 3.6.2 How do we ensure the accused has a fair trial?

### An independent judge and jury

Neither the judge nor the jury should have any knowledge about the case, including victims and witnesses, until the evidence is presented in court. In a modern society it is inevitable that information relating to a criminal case will have been reported in the media. However, in the interests of fairness the jury is asked to put aside anything they have heard prior to the trial and not to follow the case in the media. Jurors are not permitted to carry out their own research. Their decision at the end of the trial must be based on the evidence presented in court.

**FIGURE 3** The judge is the decider of the law, and the jury is the decider of the facts.



The judge is responsible for ensuring that the rules of evidence and procedure are followed and that both sides are treated equitably and fairly.

Before the trial begins, the judge will inform the jurors of the name of the accused and victim, potential witnesses, and the type of offence. Jurors must disclose any conflicts of interests at this stage so that they are not selected to hear the case.

At the end of the trial the judge will explain the relevant law to the jury. The jury must decide which facts and evidence they believe and if the prosecution has proven its case beyond reasonable doubt by applying the law as explained by the judge to the facts of the case.

### Right to legal representation

Legal representation is a vital element of a fair trial. The rules of evidence and procedure that exist in our courts are complex. An accused without legal representation is at a disadvantage and will not be able to

present their case to the judge and jury in the best light. The need for legal representation was upheld by the High Court in the case of *Dietrich v the Queen* 1992 (see **FIGURE 4**). There is some legal assistance available to people who cannot afford to pay for legal representation (see lesson 3.8).

### Preliminary examination of evidence

In lesson 3.3 you learnt that a preliminary hearing called a committal hearing is held in the Magistrates Court when a person has been charged with a serious offence. The prosecution will present the evidence that forms the basis of the charges. If the Magistrate decides there is enough evidence and the case is serious enough, the case will be scheduled for a trial in the County or Supreme Court.

Committal hearings ensure a fair trial because they allow the accused to know the case against them. This enables them to be fully prepared when their case is heard in a higher court. Committal hearings have the added benefit of filtering out cases so the courts are not clogged with cases that have little chance of success.

### Strict rules of evidence and procedure

A fair trial will follow strict rules of evidence and procedure. These rules provide a level playing field and provide each side with an opportunity to present their case and challenge the evidence of the opposing case.

Common procedures include the prosecution presenting their evidence first as they have the burden of proof and witnesses swearing an oath or affirmation (see **FIGURE 5**).

There are also rules about the evidence that witnesses can give; for example:

- A witness can only give evidence about matters about which they have first-hand knowledge. They cannot repeat things they have heard from a third-party source. This is referred to as hearsay evidence; this is fair as the accuracy of the evidence cannot be tested in court.
- Prior criminal history is not admissible until after the jury has delivered its verdict. This promotes fairness as the case must be decided on the facts presented in this case and having knowledge about prior behaviour might influence the jury.

**FIGURE 4** Dietrich was charged and convicted of drug importation in the County Court. He had been unable to find legal representation and Legal Aid would only fund his case if he plead guilty. On appeal the High Court ruled that due to the seriousness of the offence he had been denied a fair trial. The County Court should have adjourned the case until such time as he could find legal representation.



**FIGURE 5** Witnesses who give evidence in court are asked to swear an oath or make an affirmation that the evidence they give will be the truth.



## Innocent until proven guilty and the right to silence

A key principle of our legal system is that a person is presumed to be innocent until proven guilty and as far as possible should be treated as innocent. It is up to the prosecution to prove the accused is guilty beyond reasonable doubt; the accused does not need to prove they are innocent. This principle is further upheld by the right to silence, which protects the accused from incriminating themselves. An accused does not have to give evidence in court and a jury should not make any assumptions about the accused because they invoke their right to silence.

## Public hearing

Unless there is a good reason, an accused will have his case heard at a public hearing. Members of the community and the press can attend these hearings. Information about a trial will be freely available and reported in the media. This promotes fairness as it removes any notion of bias and ensures the rules of both evidence and procedure are followed.

There are some exceptions to an open hearing. In some instances, the public gallery and press gallery may be cleared to protect the identity of a witness or where the nature of the evidence is sensitive. This might be due to the age of the witness, the circumstances of the offence or in the interests of national security. Cases involving juvenile offenders are also closed to the public to protect young offenders.

### 3.6.3 The rights of victims

Victims have rights when giving evidence. The law recognises that being the victim of a crime can have a significant impact on both victims and witnesses and they are therefore vulnerable. To lessen the impact of having to give evidence in court, witnesses who are vulnerable can have special arrangements made when they are giving evidence (see **FIGURE 6**).

The decision as to whether a victim should be classed as vulnerable depends on several factors, such as age (under 18), cognitive ability, the nature of the offence and their relationship with the accused.

This promotes fairness, equality and access to the legal system for victims as they are treated with sensitivity and are better able to feel confident and present their evidence to the court. Without such provisions, victims might feel intimidated by the courtroom and having to face the perpetrator of the offence. In such cases, if the victim is not able to give evidence the case might not proceed.

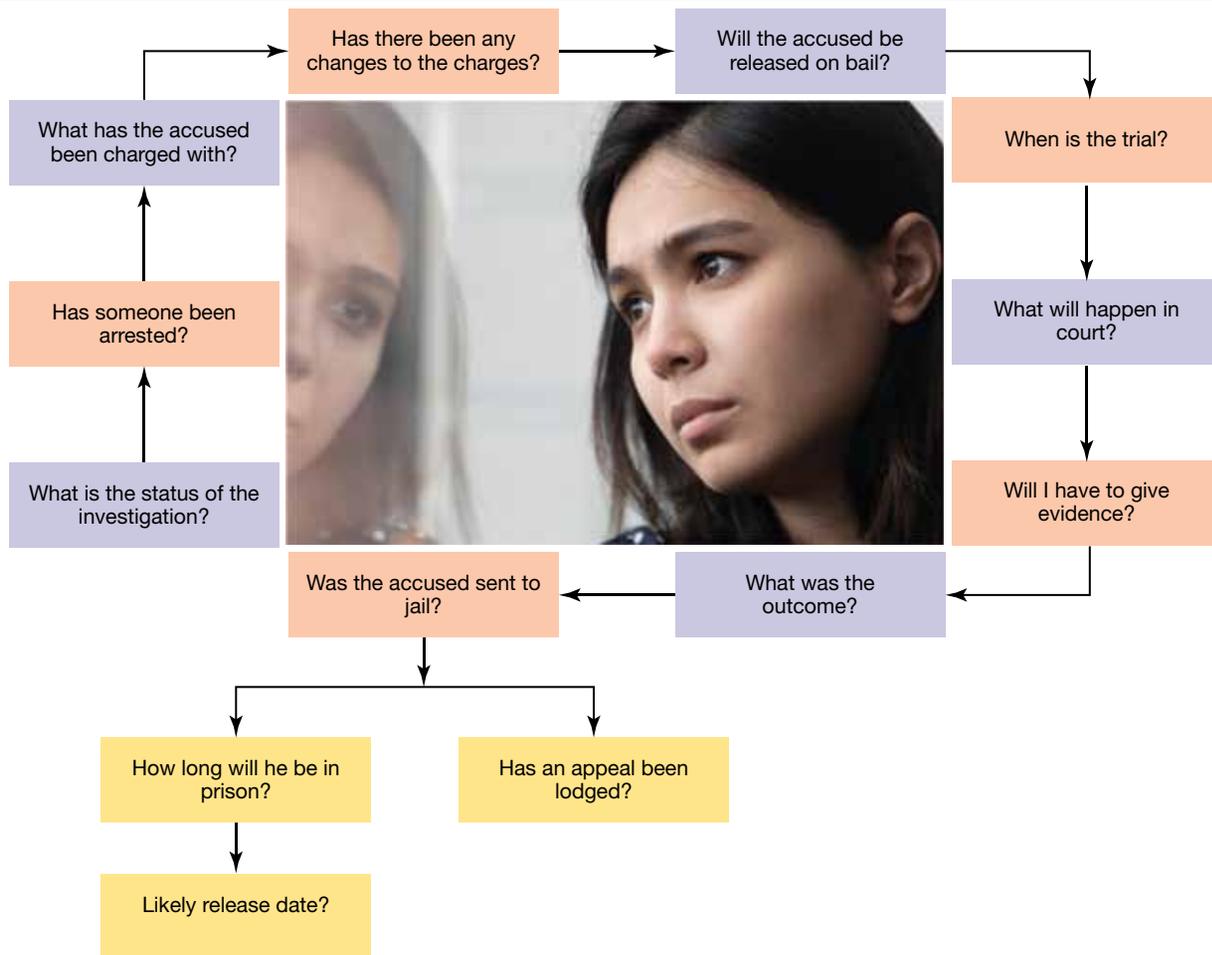
## The right to be informed about the proceedings

We have already seen that an accused has the right to know what evidence the prosecution is relying on prior to a case going to court and has rights at every stage in the legal process. Victims also have the right to information about the progress of the case in which they are involved, see **FIGURE 7**.

**FIGURE 6** Vulnerable witnesses can have support when they give evidence. This might mean the court is closed to the public, or the witness is behind a screen or gives evidence remotely. In some courts, support dogs are available to sit with a victim while they give their evidence. The jury will not be aware that the dog is there.



**FIGURE 7** Victims will have different questions depending on what stage a case is at. They are entitled to have these questions answered.



### SkillBuilders to support skill development

- 1.10 SkillBuilder: Creating and analysing a table

### 3.6 SKILL ACTIVITY: Questioning and researching, Communicating

Three principles of justice underpin our legal system:

- Fairness
- Equality
- Access

A fair trial is fundamental to ensuring these principles are upheld.

Use the internet and the information in this lesson to **construct** a series of tables that show the strengths and weaknesses of our legal system in providing a fair trial. You might like to find out more about the role of key personnel in the legal system or the rules of evidence and procedure. For each area you include in your table provide two or three dot points. See the example below.

Support for the victim (explain what is involved or provide some dot points)	
<ul style="list-style-type: none"> <li>• Give evidence remotely</li> </ul>	
<b>Strengths</b>	<b>Weaknesses</b>

Once you have constructed your tables, write a report outlining your findings.

## 3.6 Exercise

### 3.6 Exercise

#### Learning pathways

■ LEVEL 1

1, 2, 4, 5

■ LEVEL 2

3, 6, 7

■ LEVEL 3

8, 9, 10

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#### Check your understanding

1. When a person is charged with a serious indictable offence a preliminary hearing will be held. This is hearing is called:  
A. an orientation hearing.  
B. an evidentiary hearing.  
C. a committal hearing.  
D. a plea hearing.
2. Which of the following types of evidence would not be allowed in court?  
A. Evidence collected at the crime scene  
B. Hearsay evidence  
C. First-hand evidence  
D. All the above
3. When a person lodges an appeal, where will the case will be heard?  
A. In a higher court  
B. In the same court without a jury  
C. By a jury  
D. By an expert in analysing evidence
4. In a criminal trial, the accused will present their evidence first. True or false?

#### Questioning and researching

5. Which of the following would not be considered an aspect of a fair trial?  
A. An independent judge  
B. A public hearing  
C. Internet research by one of the jurors  
D. Legal representation

#### Apply your understanding

##### Communicating

6. **Distinguish** between the role of the judge and the jury.
7. **Explain** why we should allow an individual to appeal his or her case.
8. **Explain** how a committal hearing helps to ensure a fair trial.

##### Analysis, evaluation and interpretation

9. James, the accused, decided not to give evidence during his trial and instead elected to remain silent. In the jury room, one of the jurors has suggested that he must be guilty and have something to hide by remaining silent. Another juror has said this is not the case. The rest of the jury does not know who to believe. Solve this problem for the jury.
10. Emily, aged 15, is the victim of domestic violence. The judge has ordered that the public gallery is cleared, and the media be excluded while she is giving evidence. **Evaluate** this decision in the context of a fair trial.

# LESSON

## 3.7 What are the barriers to fairness, equality and access to justice?

### LEARNING INTENTION

By the end of this lesson you should be able to explain the potential ways that the judicial system can fail to achieve fairness, equality and access for all and the potential consequences of this.

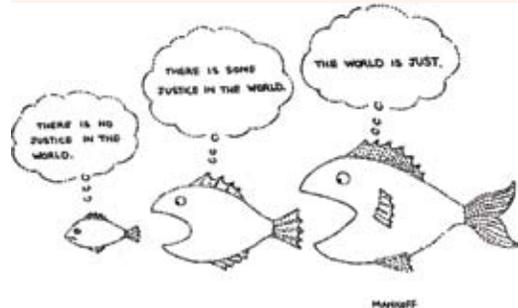
### TUNE IN

While a fair trial is a key element of a just society, individuals sometimes must overcome barriers in order to access a fair trial.

In the **FIGURE 1** cartoon everyone is being treated the same.

1. Which fish is disadvantaged by the test?
2. Which fish has an advantage?
3. In your opinion, is this fair? Give reasons for your answer.
4. What does this tell you about the legal system?
5. Predict which aspects of the legal system may promote disadvantage.

**FIGURE 1** Justice relies on people having what they need to access the legal system.



### 3.7.1 Factors that can undermine the system

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

**FIGURE 2** Bribery undermines the principles of justice because it prevents the truth or interferes with a correct decision being made.



### 3.7.2 Bribery

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

Bribery is an offence under common law in many of the states and territories in Australia. Some states also have legislation referring to bribery. Under the Commonwealth *Criminal Code Act 1995*, the offence of bribing a public official is punishable by ten years in prison or a fine of \$2.22 million, or both, for an individual. A corporation can be fined \$22 million, or three times the value of the benefit its management hoped to gain from the bribe, or 10 per cent of its annual revenue for the 12-month period before the bribe was attempted.

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

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

### CASE STUDY: THE BRIBE'S IN THE MAIL

Police investigated a possible attempt to bribe judges in Victoria after several cheques were received in the mail in July 2012. The mail was addressed to judges and court officials at the Victorian Supreme Court. The cheques were discovered through the court's mail-handling security protocols.

A court spokeswoman said, 'All envelopes were similar in appearance. Court staff opened one envelope, revealing a cheque made out to the addressee.' It is believed that all the suspicious envelopes opened were found to contain cheques.

### 3.7.3 Coercion of witnesses

**Coercion** of witnesses is against the law. A person must not coerce or attempt to influence a witness in a court case to provide a false testimony, withhold the truth, or avoid turning up to court at all. Witnesses could be intimidated or bullied while attending court, at their home or place of work by an offender, a family member of the offender or an accomplice of the offender who knows or discovers where the witness lives or works.

A court might make an order to stop the threatening or intimidating behaviour, or to stop the person attempting the coercion from coming near the witness again. The justice system can also offer protection programs if necessary, including protecting the identity of a witness and even relocating a witness.

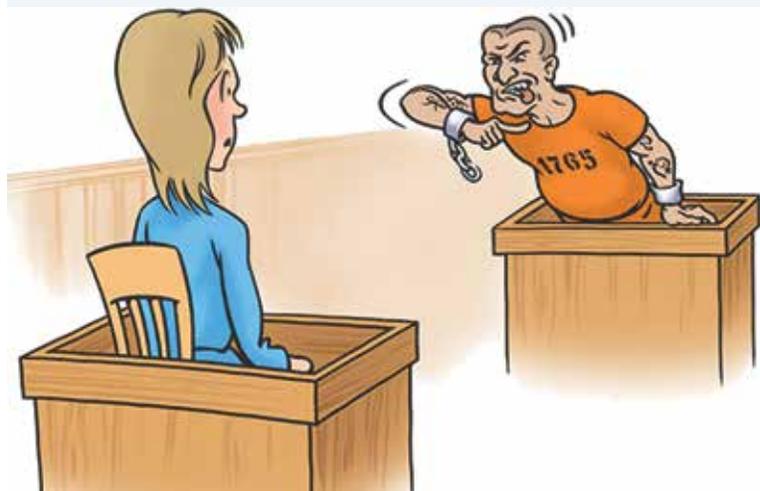
**coercion** the practice of forcing someone to act in an involuntary manner by using intimidation or threats, or some other form of pressure

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

Influencing or coercing a witness undermines the principles of our justice system. Evidence presented in court will become misleading and an incorrect verdict could result. An accused person who should be found guilty may instead be found not guilty.

Conversely, an innocent person may be found guilty. A court trial would not hear the truth and therefore the trial would not be fair. Justice would not be served.

**FIGURE 3** Threatening or intimidating behaviour towards a witness is illegal.



## CASE STUDY: PLEASE DON'T GO TO COURT

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

**FIGURE 4** It is illegal to contact witnesses to influence them to change what they say in court or to not appear in court.



### 3.7.4 Trial by media

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

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

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

**FIGURE 5** Trial by media can seriously impact an accused's chances of receiving a fair trial.



**perverting the course of justice** any act that is aimed at preventing justice being served on an individual such as lying to police  
**trial by media** creating widespread opinion regarding a person's guilt or innocence before a trial has occurred or before a verdict has been delivered

## CASE STUDY: TRIAL BY MEDIA

3AW radio broadcaster Derryn Hinch was found guilty of contempt of court in 2013 for breaching a suppression order made by a Victorian Supreme Court Justice. This was his third conviction for this kind of offense.

Hinch published tweets and blog entries about Melbourne woman Jill Meagher's murderer during court proceedings, referring to the accused's parole status. Melbourne newspapers then published front-page stories outlining the accused's past, claiming that he was going to plead guilty. Hinch was ordered to pay a \$100 000 fine, but he refused to pay and spent 50 days in prison instead.

In 2015, he registered Derryn Hinch's Justice Party, and was a federal Senator for Victoria from 2016 until 2019.

**FIGURE 6** Derryn Hinch



### 3.7.5 Court delays

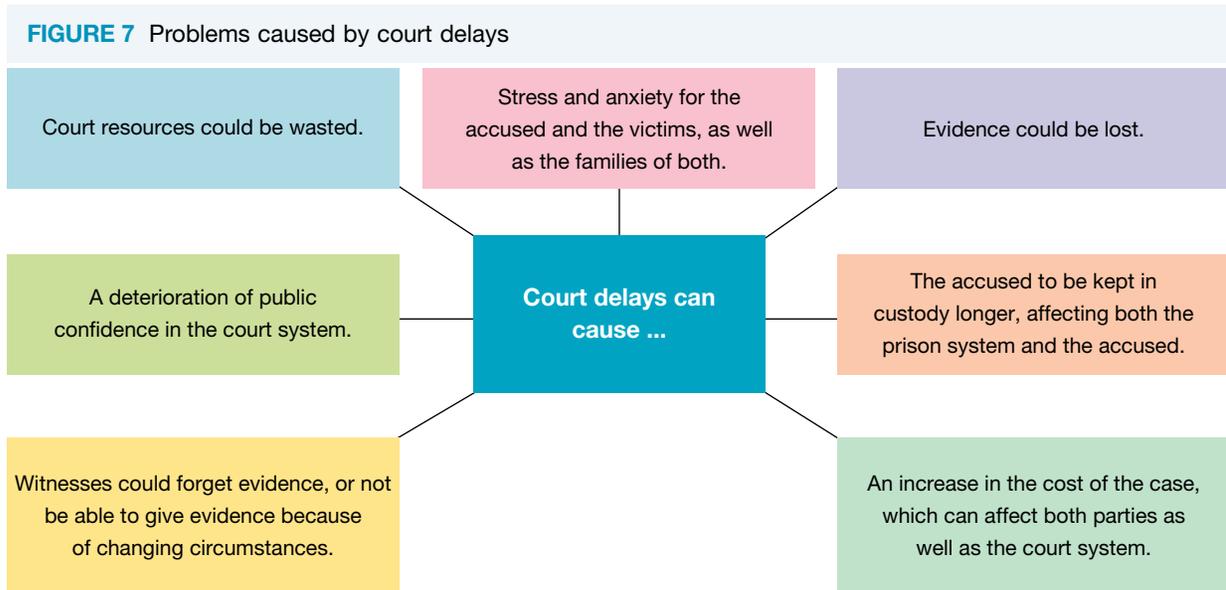
There is an old saying in law: ‘Justice delayed is justice denied.’ It suggests that if a person is wronged in some way and a dispute needs to go to court but does not do so in a timely fashion, then there might as well have been no court case at all; justice has not taken place. A **court delay** can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

However, the International Covenant on Civil and Political Rights, to which Australia is a signatory, states that anyone charged with a criminal offence is entitled ‘to be tried without undue delay’. Numerous reviews and inquiries into court delays have been undertaken to explore why they happen and what can be done about the problem. Some of the problems caused by court delays are illustrated in **FIGURE 7**.

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



tlvd-10714



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

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

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

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

- a rise in the crime rate
- an increase in police numbers
- changes in population
- availability of legal aid
- changes in government policy
- changes in the law.

In 2020 and 2021, delays were caused due to COVID-19 restrictions and lockdowns which meant that the courts could not hear any cases.

## CASE STUDY: CAN'T FIND AN INTERPRETER WHEN YOU NEED ONE

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

### 3.7.6 Financial and cultural constraints

Many people are disadvantaged when they come before the court due to a lack of money or because they do not understand the legal system.

#### Financial problems

The costs of going to court can very quickly add up. Government funded assistance through Legal Aid is limited to people who qualify for some form of income support or welfare payment. It is means tested, which means that anything you own will be considered before you qualify for legal representation in court. Rising costs have seen an increase in the number of people representing themselves in court.

Some assistance is available to assist parties faced with representing themselves in court. Free advice is available on the Legal Aid website and each of the courts publishes information on a variety of topics, including court etiquette, what to expect when you go to court. The Magistrates Court also has a volunteer service that offers support and a duty lawyer is generally available to provide legal advice. Increasingly, judges and magistrates are assisting parties to navigate court procedures and with understanding legal jargon.

**FIGURE 8** The cost of going to court can be very high.



#### Cultural issues

Cultural differences can make it difficult for individuals to engage with the legal system. This might be because they are new migrants, refugees and asylum seekers or First Nations Australians. Cultural problems can arise from a:

- lack of understanding of English
- lack of knowledge of the legal system and their rights
- mistrust of the legal system
- failure of the legal system to recognise and cater for cultural differences.

### 3.7 SKILL ACTIVITY: Questioning and researching, Communicating

Did you know that First Nations Australians are over-represented in the criminal justice system?

First Nations Australians statistics:

- 2% of the population (over 18)
- 27% of the prisoner population (over 18)
- Teenagers are 27% more likely to be sent to prisons
- Represent 6% of the population aged between 10 and 17
- Represent 50% of the population in youth detention centres aged between 10 and 17
- Women are thirty times more likely to be sent to prison.

In 2002 the Koori Court was introduced to provide culturally appropriate justice for First Nations Australians. The program has continued to grow and expand since that time.

Task:

- Investigate** why First Nation Australians are over-represented in the criminal justice system. Consider some of the following:
  - Unemployment
  - Education
  - Welfare dependency
  - Social factors including drugs, mental health issues, environment
  - Other factors
- Investigate** the Koori Court.
  - a. Why was the Koori Court introduced?
  - b. Who can go to the Koori Court?
  - c. How is it different to other courts?
  - d. What impact has this court had on offenders?
  - e. Why has this court been so successful?
- Create** a presentation that explains:
  - a. Why First Nations Australians are disadvantaged in the criminal justice system.
  - b. How the Koori Court has attempted to address these issues.
  - c. Finish your presentation with a comment that reflects your opinion of the Koori Court and what else you think might be done to ensure justice is served.

## 3.7 Exercise

learnon

### 3.7 Exercise

#### Learning pathways

■ LEVEL 1

1, 6, 7

■ LEVEL 2

2, 3, 4, 10

■ LEVEL 3

5, 8, 9

These questions are even better in jacPLUS!

- Receive immediate feedback
- Access sample responses
- Track results and progress



Find all this and MORE in jacPLUS

### Check your understanding

- Complete the following to describe the factors that can undermine the principles of justice.
  - a. \_\_\_\_\_ is when someone tries to offer an item of value to a judicial officer or any other public official in the expectation that the person receiving the bribe will act in the briber's interests.
  - b. \_\_\_\_\_ is when outlets such as the television and newspapers spread information about a case that may create an opinion about a defendant's guilt or innocence before the trial has concluded.
  - c. \_\_\_\_\_ mean that a trial doesn't take place soon after the crime is committed. These can be due to things like lack of preparation or representation or a busy case load.
  - d. \_\_\_\_\_ is when someone tries to threaten or intimidate another person into providing false testimony, avoiding court or withholding the truth.
- What action can judges sometimes take to avoid trial by media?
  - A. Enforcing contempt of court laws
  - B. Opening up the court to all media
  - C. Using interpreters
  - D. Ignoring the media coverage
- Who might be disadvantaged by delays in court proceedings?
  - A. The accused
  - B. A witness
  - C. Victims
  - D. All of the above
- Outline** one example of the way in which bribery can undermine the legal system.
- Explain** how the legal system attempted to deal with the possibility of coercion of witnesses.

## Apply your understanding

### Analysis, evaluation and interpretation

6. What do you believe would be the most appropriate strategy to prevent possible bribery or coercion of witnesses?
7. Choose one of the case studies in this lesson and write a letter to an editor of a newspaper expressing your opinion on the issue in the case study. Clearly **identify** the issue and **explain** its key features. **Outline** what you think should be done to solve the problem.
8. Several years ago, a judge dismissed a jury part-way through a criminal trial and ordered a fresh trial, because one of the jurors had attempted an internet search of newspaper articles relating to the crime. What problem with the system was the judge attempting to overcome?

### Communicating

9. 'Justice delayed is justice denied.' **Interpret** the meaning of this statement.
10. Copy and complete the following table to predict some of the likely outcomes of the situations shown. **Propose** what should happen. (The first situation has been completed for you.)

Situation	Likely outcomes	What should happen
Vince tells a witness in a murder trial that \$100 000 will be transferred to her bank account if she changes what she will say when she is questioned in court.	<ul style="list-style-type: none"> <li>• If the witness accepts the bribe, the truth may never be heard.</li> <li>• If the witness accepts the bribe and the bribe is discovered, she could be charged with accepting the bribe as well as lying in court (perjury).</li> <li>• If the bribe is discovered, Vince could be charged with bribing a witness or influencing a witness.</li> </ul>	<ul style="list-style-type: none"> <li>• The witness should not accept the bribe.</li> <li>• Vince should not make the offer to pay the witness.</li> </ul>
Eve offers a judge \$250 000 to reduce the sentence for her boyfriend, who has been found guilty of manslaughter.		
Sevilla tells a witness in a court case that her cousin will kill her if she turns up at the trial.		
Michael is a journalist who writes a story proclaiming that Kirby is guilty the day after she has been arrested and charged by the police.		
Chan is representing Hugh in his court case and decides to delay proceedings to the extent possible.		

# LESSON

## 3.8 What is the role of the police?

*First Nations Australian readers are advised that this topic may contain photos of or references to people who have died.*

**LEARNING INTENTION**

By the end of this lesson you should be able to explain the role of police, both state and federal, and make links between the role of police in enabling access and equality of treatment under the rule of law.

**TUNE IN**

Did you know that we have both a federal and a state police force? It is all linked to the division of power under the Australian Constitution.



1. Why do you think we need both federal and state police?
2. Rule up two columns: one for state police and one for federal police. Brainstorm a list of roles for each police force.

State police	Federal police

3. In what ways are state and federal police similar and how do they differ?

### 3.8.1 The role of police

The role of the police is to both serve and protect the community. This is achieved by upholding the law so that individuals feel safe and public order and peace is preserved. In performing this role, the police will investigate crime, protect the public, detect and apprehend offenders, as well as help community members who are victims of crime, or in times of an emergency and ensure safety at public events.

**FIGURE 2** People come into contact with the police when they are enforcing the law. Do you think this woman is a victim, witness or suspect?



Police provide the community with access to the law. People are able to contact the police to clarify legal issues and to ask for assistance when they need it.

### 3.8.2 The police, equality, and the rule of law

The rule of law has its origins in the Magna Carta and is one of the cornerstones of a democratic society. It means that no one is above the law — individuals, groups and government are bound by the law and must obey it; regardless of status or position. The rule of law, therefore, places limits on the power of government and protects citizens.

#### The rule of law in action

Police investigations following the release of images on social media have led to parliamentarians being issued with fines for not obeying the law, as shown in **FIGURES 3 and 4**. The amount of the fines issued were the same as those that apply to the rest of the community.

**FIGURE 3** In 2017, Australian Prime Minister Malcolm Turnbull was fined \$250 for failure to wear a lifejacket. Mr Turnbull was moving a dinghy 20 m in waters near his home. Under New South Wales maritime law, a lifejacket must always be worn when manoeuvring this type of vessel.



**FIGURE 4** Breaches of the COVID-19 mandate requiring the wearing of face masks have led to parliamentarians being issued with fines. In 2021, Victorian Premier Daniel Andrews (on left) was fined \$400 for not wearing a mask on consecutive days as he walked through a public car park. In 2022, the leader of the Victorian Opposition leader Matthew Guy and five other coalition MPs were each fined \$100 for failure to wear a mask inside parliament house.



### 3.8.3 Different jurisdictions and working cooperatively

Each state and territory has its own police force to enforce laws within its borders. These laws are different from state to state, as we have seen through the COVID-19 pandemic with border restrictions, lockdowns and mask rules. The Commonwealth government also has a police force to deal with breaches of Federal law; this is the Australian Federal Police.

Remember, under the Australian Constitution power is divided between the states and the Commonwealth. The states are responsible for laws that have an impact on the people within their state and where uniformity is not essential, whereas the Commonwealth is responsible for laws that need to be uniform across the country, such as immigrations and customs, see **FIGURES 5** and **6**.

Although federal and state police forces are independent of each other, there are occasions when they work cooperatively to ensure public health and safety, see **FIGURE 7**.

**FIGURE 5** The state police enforce road laws such as speed limits because this area of law-making belongs to the state government.



**FIGURE 6** The Australian Federal Police enforce the laws relating to Australia’s external borders. It is important for the same laws relating to immigration and customs apply across the country.



**FIGURE 7** In 2017 following a joint investigation by Victoria police, the Australian Federal Police, and other federal agencies, five people were arrested and 300 kilograms of pure pseudoephedrine, which is used in the manufacture of ice, was seized. It is estimated that the street value of the drugs seized was more than \$200 million.



### 3.8 SKILL ACTIVITY: Questioning and researching, Communicating

1. **Investigate** the role of either the police in your state or territory or the Australian Federal Police in more detail.
  - a. Which police force have you chosen?
  - b. What areas of criminal law are dealt with by this police force?
  - c. What rules do the police need to follow when enforcing the law? Consider the following:
    - The need for police
    - The different areas of policing
    - Rights of the accused
    - Ethical standards
    - Complaints against the police
    - A case study of the police at work. You might use one of the examples in this lesson or find a different example in the media.
2. Write a report based on your research that **explains** how the police ensure fairness, equality and access in the way they enforce criminal law. Remember to include your case study in your report.

## 3.8 Exercise

### 3.8 Exercise

#### Learning pathways

■ LEVEL 1

1, 2, 3

■ LEVEL 2

4, 6, 8, 9

■ LEVEL 3

5, 7, 10

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#### Check your understanding

1. **Identify** which of the following is not a role of the police.
  - A. Maintain public order
  - B. Investigate crime
  - C. Arrest victims
  - D. Gather evidence
2. **Identify** which of the following is not an element of the rule of law.
  - A. The laws apply equally
  - B. Some people can avoid the law because of their status or positions
  - C. Places restrictions on the power of government
  - D. Is a cornerstone of a democratic society
3. Which of the following criminal matters would be dealt with by state police?
  - A. Offences under the Customs Act
  - B. Random drug and alcohol testing
  - C. Taxation fraud
  - D. People entering Australian illegally
4. For each of the following offences, classify them as falling under the jurisdiction of either the state or federal police.
  - a. The residents of a house have complained about the noise from a party at 2 a.m.
  - b. Threats have been intercepted about a proposed terror attack on parliament house in Canberra.
  - c. A house has burnt down in suspicious circumstances.
  - d. Customs officers have found drugs in a package that has arrived from overseas.
  - e. As a result of a serious road accident a passenger in one of the vehicles has been critically injured.

#### Apply your understanding

##### Communicating

5. **Explain** why we have both state police and federal police.
6. The police patrol community events to help ensure public safety. **Predict** how a police presence at a public event might promote safety.

##### Analysis, evaluation and interpretation

7. **Explain** what is meant by 'the rule of law'.
8. **Evaluate** what aspect of our legal system is illustrated by Members of Parliament receiving fines for breaches of mask rules.

##### Civic participation and decision-making

9. **Discuss** how the police increase access to the law for members of the community.
10. Who is responsible for enforcing laws related to Australia's internal borders, such as border closures? **Justify** your answer.

# LESSON

## 3.9 How do you achieve justice and what is the right to appeal?

*First Nations Australian readers are advised that this topic may contain photos of or references to people who have died.*

### LEARNING INTENTION

By the end of this lesson you should be able to explain the importance of civil remedies and legal appeals in the Australian legal system and the process for appealing court decisions.

### TUNE IN

After a car accident the court may order the party at fault to pay the costs of repairing the other party's car and any medical bills related to personal injury.

1. Describe what you can see in **FIGURE 1**.
2. Who do you think is at fault in this accident? Justify your opinion.
3. Assume this case proceeded to court and a ruling was made. Brainstorm a list of ideas about what either party might do if they were not happy with the outcome.

**FIGURE 1** A car accident



### 3.9.1 What happens at the end of a court case?

At the end of a criminal case, if the accused is found guilty, he will be given a sanction. In a civil case, if the court agrees that the rights of the plaintiff have been infringed, they may be awarded a civil remedy. This means the defendant will have to do something to correct the infringement.

Common sanctions include imprisonment, fines and loss of licence. In a civil case the defendant may have to pay damages. This is a sum of money paid by the defendant to the plaintiff to correct the wrong.

In 2021, Nyamal man, Terence Flowers won a defamation case against the Channel Seven Network.

During its coverage of the abduction of Cleo Smith, Mr Flowers had been wrongly identified by the network as her abductor. He filed a claim for the emotional distress, threats and abuse he had endured because of these reports. Mr Flowers uses his mother's maiden name on social media and the Seven Network had mistaken him for Terence Kelly who was subsequently charged with Cleo's abduction.

Mr Flowers filed his defamation lawsuit in the Western Australian Supreme Court; however, following a public apology by Channel Seven the case was settled out of court for an undisclosed amount of damages.

**FIGURE 2** First Nations Australian Terence Flowers was incorrectly named in a series of news reports by the Seven Network.



### 3.9.2 The principle of the appeals process

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

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

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

### 3.9.3 What is the right of appeal?

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

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

**FIGURE 3** First Nations Australian Gene Gibson has had his 2014 conviction for the murder of Josh Warneke quashed by the Western Australian Court of Appeal. Mr Gibson, a man with a cognitive impairment, plead guilty to the manslaughter of Josh Warneke after the charge was downgraded from murder. The Court heard that Mr Gibson did not understand court processes and had limited understanding of the English language and speaks Pintupi, a First Nations Australian dialect. His own lawyer had encouraged the guilty plea and while an interpreter was provided, he could not comprehend any of the instructions.



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

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

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

### 3.9.4 Who can appeal?

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

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

In a criminal case, only the people who are directly involved in the case can appeal — the accused and the prosecution. Leave to appeal must be granted by the appeals court. Members of the community do not have the right of appeal (this includes victims). Note that:

- the prosecution can only appeal against a sentence; it cannot appeal against a verdict of not guilty
- the accused can appeal against a guilty verdict and a sentence, or apply for leave to appeal against a sentence.

**appellant** the person appealing a court decision  
**respondent** the person defending an appeal  
**leave to appeal** permission from the court to appeal a decision

### 3.9.5 How do appeals work?

The court hierarchies in each state and territory deal with appeals differently.

Consider Queensland:

- Appeals from the Magistrates Court are heard by the District Court.
- The Court of Appeal hears appeals from cases that originally appeared in either the District or Supreme Court.

Contrast this with the situation in Victoria:

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

**FIGURE 4** The High Court is the final court of appeal in Australia.



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

### 3.9.6 The appeals process

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

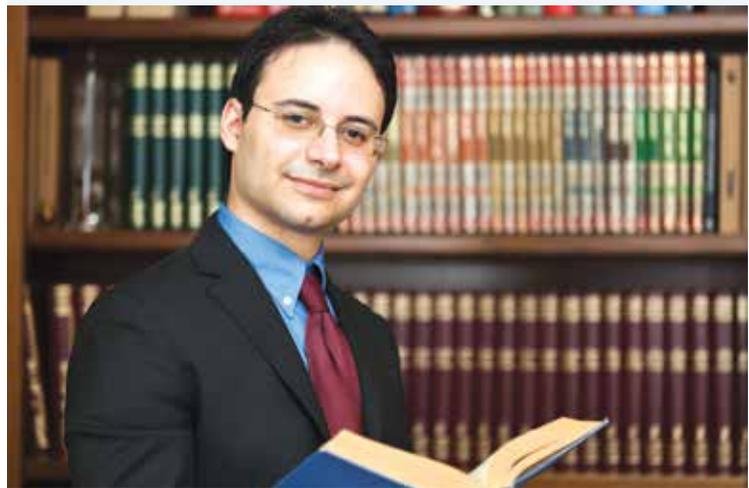
### 3.9.7 Why do we have the right to appeal?

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

**FIGURE 5** Appeals can be heard before a single judge or a group of judges (usually two to five), depending on the court and the type of matter being heard.



**FIGURE 6** A person who is considering an appeal should speak to a lawyer before proceeding.



#### 3.9 SKILL ACTIVITY: Questioning and researching, Communicating

Find the website for the Court of Appeal in your state or territory.

1. **Research** the process for appealing a court's decision to this court, the grounds for an appeal and the possible outcomes of an appeal. Present your findings in the form of a diagram.
2. Find an example of a case that has been heard on appeal. **Summarise** the case and the result of the appeal.

## 3.9 Exercise

## Learning pathways

## ■ LEVEL 1

1, 2, 6

## ■ LEVEL 2

3, 4, 7, 8

## ■ LEVEL 3

5, 9, 10

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- Access sample responses
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## Check your understanding

- What is the right of appeal?
  - The right of a person or party to contest a verdict if they are unhappy with the outcome of the case.
  - The right of the court to overrule a person or party who is unhappy with the outcome of a particular case.
  - The right of a judge to contest a verdict.
  - The right for a lower court to hear an appeal that was first heard in a higher court.
- Identify** the reasons a party might appeal a court's decision? **Select** all possible answers.
  - They are happy with the outcome of the case.
  - They are not happy with the outcome based on the facts or evidence presented.
  - They are not happy with the decision based on the point of law.
  - They are indifferent to the outcome.
- Identify** who can appeal a decision and under what circumstances.
  - Any party under any circumstances has the right to appeal a decision.
  - In a civil case, any party can appeal a decision. In a criminal case, only the accused or the prosecution can appeal the outcome of the case.
  - In a criminal case, any party can appeal a decision. In a civil case, only the accused or the prosecution can appeal the outcome of the case.
  - In a criminal case, anyone can appeal a decision.
- Identify** the false statement about what happens in an appeal.
  - Appeals will only hear legal arguments about specific points in the case.
  - Appeals will consider new evidence concerning the case.
  - If an appeal against a verdict is successful, the court will either award a not guilty verdict or ask for a new trial with a different judge and jury.
  - If an appeal against a sentence is successful, the sentence may be reduced or modified.
- Which one of the following statements concerning the process for appealing a court's decision is false?
  - The individual court hierarchies of each state and territory handle appeals in different ways.
  - Some states have specific courts that only hear appeals.
  - Appeals generally move from higher courts to lower courts.
  - In all states, the highest court of appeal is the High Court.

## Apply your understanding

## Communicating

- Select** two statements that **illustrate** the difference between original and appellate jurisdiction.
  - Original jurisdiction is the jurisdiction where the case is first heard. The appellate jurisdiction is the jurisdiction where an appeal is heard.
  - Original jurisdiction is the jurisdiction where an appeal is heard. The appellate jurisdiction is the jurisdiction where the case is first heard.
  - A Magistrates Court could be the original jurisdiction and the Supreme Court the appellate jurisdiction.
  - A Supreme Court could be the original jurisdiction and the Magistrates Court the appellate jurisdiction.

## Analysis, evaluation and interpretation

- Although the High Court is the highest court of appeal in Australia, relatively few appeal cases are heard by this court. **Identify** and **explain** one reason why this is the case.

#### Civic participation and decision-making

8. Critics of the appeal process say that it allows a guilty person to keep on appealing and avoiding responsibility for their actions. **Discuss**, giving reasons as to why you agree or disagree with this view.
9. Imagine you have been found guilty of a crime that you did not commit. **Explain** what would happen to you if there was no right of appeal.

#### Communicating

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

## LESSON

### 3.10 INQUIRY: #RaiseTheAge

#### LEARNING INTENTION

By the end of this lesson you should be able to explain what is meant by the age of criminal responsibility and present arguments for and against raising the age.

#### Background

In this inquiry you will investigate the minimum age of criminal responsibility in Australia and the campaign to raise this age.

**FIGURE 1** The minimum age of criminal responsibility varies around the world.



## Before you begin

Access the **Inquiry rubric** in the digital documents section of the Resources panel to guide you in completing this task at your level. At the end of the inquiry task you can use this rubric to self-assess.

## Inquiry steps

### Step 1: Questioning and researching

Look at the title for our inquiry. Go to the **Minimum age of criminal responsibility** weblink in the Resources panel and look at each region to learn the different ages of criminal responsibility around the world.

What do you already know about this topic?

What would you like to know?

Now **select** one of your questions as your inquiry question.

### Step 2: Analysis, evaluation and interpretation

Make notes under your inquiry questions, and use the weblinks in the Resources panel to get you started.

### Step 3: Civic participation and decision-making

**Identify** a strategy that an individual could use to influence a change in the law.

**Develop** a point of view supported by evidence and arguments.

### Step 4: Communicating

**Select** a format to **present** your point of view. For example, this could be a short video, a mock TV interview or a PowerPoint presentation.

#### Discuss the following:

- What is meant by the term minimum age of criminal responsibility and what is this age in Australia?
- How does this age compare with other places in the world?
- What are the arguments for and against raising the minimum age of criminal responsibility?

Complete your self-assessment using the **Inquiry rubric** or access the 3.10 exercise set to complete it online.

## Resources

 **Digital document** Inquiry rubric (doc-39801)

 **Weblinks**

- Minimum age of criminal responsibility
- Raise the age
- Amnesty International: raise the age
- Australia moves towards raising age of criminal responsibility
- Should the age of criminal responsibility in Australia be raised?
- Doctors join call to raise age of criminal responsibility

# LESSON

## 3.11 Review

Hey students! Now that it's time to revise this topic, go online to:



Review your results



Watch teacher-led videos



Practise questions with immediate feedback

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### 3.11.1 Key knowledge summary

Use this dot point summary to review the content covered in this topic.

#### 3.2 What are the key features of the Australian court system?

- Courts have both civil and criminal jurisdiction.
- All courts fit within a court hierarchy. The lower courts deal with less serious matters, and intermediate and higher courts have jurisdiction over more serious matters.
- A court hierarchy allows for a person to appeal to a higher court if he or she is unhappy with the ruling in a lower court.

#### 3.3 What are the different courts and their different jurisdictions?

- The Supreme Court has both general/original and appellate jurisdiction.
- Magistrates Courts are located in metropolitan areas and in regional cities and towns; they hear around 90 per cent of all cases.
- In addition to hearing less serious cases, Magistrates Courts conduct committal hearings on more serious criminal matters to test whether the prosecution has a strong case against the accused.
- Magistrates Courts make decisions in relation to the granting of bail to those accused of crimes.
- The Family Court of Australia has jurisdiction over all matters relating to divorce and relationship breakdown.

#### 3.4 Are there alternative ways to resolve disputes?

- Disputes relating to consumer law can be heard by the state's Office of Fair Trading or Consumer Affairs, which will usually attempt to resolve the matter through mediation before conducting a formal hearing.
- Each state and territory has its own anti-discrimination agency. At the federal level, this body is the Australian Human Rights Commission. The Commission attempts to use a process of conciliation to resolve these disputes.
- Government environmental agencies have the power to order individuals or organisations to stop polluting and to clean up, but can also initiate civil or criminal proceedings if the polluter does not comply with the orders.

#### 3.5 How do courts make laws through judgements?

- Judges will follow precedents set in previous cases, particularly those precedents set in a higher court.
- When there is no relevant legislation and no existing precedent, judges can make new law when they decide a case brought before them.
- Once new common law has been developed within a court hierarchy, judges in future cases will tend to follow the precedent that has been set.

#### 3.6 What is a fair trial?

- A fair trial occurs when evidence is examined at a committal hearing before proceeding to a trial, when both sides present their case, when the judge is independent, and when strict procedures and rules of evidence are followed.
- Ordinary citizens can play a part in a fair trial in their roles as witnesses (providing evidence to the court) and jurors (making decisions about the guilt of the accused based on the law and the evidence presented to the court).

- An accused person is presumed innocent until proven guilty in a court of law. This is safeguarded through the right to silence and open and public hearings.
- Victims have rights during a criminal proceeding, such as the right to give evidence as a vulnerable witness.

### 3.7 What are the barriers to fairness, equality and access to justice?

- Several factors can undermine the principles of justice, such as bribery, coercion of witnesses, trial by media, court delays, and financial and cultural constraints.
- Interfering with the operation of the justice system by bribing witnesses, coercing witnesses or publishing information that might interfere with due process is a criminal offence.
- Some groups in the community suffer from cultural disadvantage, this includes First Nations Australians and migrants.
- Very few people qualify for government funded legal assistance in court; this makes it difficult for people to enforce their rights and could result in debt or a miscarriage of justice.

### 3.8 What is the role of the police?

- The role of the police is to serve and protect the community by upholding the law. They make the community feel safe and maintain peace and order.
- The rule of law ensures that people are treated equally regardless of status or their position in society. It is a very old principle dating back to the Magna Carta.
- Due to the division of power under the Constitution we have state police and federal police. Each is independent of the other; however, when the need arises, they can work cooperatively.

### 3.9 How do you achieve justice and what is the right of appeal?

- A party may appeal a court's decision when they are dissatisfied with the decision on the grounds of a question of fact, or if they disagree with the court on a point of law.
- Appeals can only be heard if the court gives permission to the person wanting to appeal.
- The right to appeal is a key element in the Australian justice system. It ensures that people who have wrongly been convicted can have the decision overturned.

### 3.10 INQUIRY: #RaiseTheAge

- The age of criminal responsibility varies around the world and campaigns aim to raise the minimum age.

## 3.11.2 Key terms

**accused** the person charged with or on trial for a crime

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

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

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

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

**appellant** the person appealing a court decision

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

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

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

**complainant** a person lodging a complaint about another person or organisation

**conciliation** a process of settling disputes in which a neutral third party (a conciliator) assists the parties to reach agreement. Conciliators can offer suggestions and alternative solutions to assist the parties in reaching an agreement.

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

**complaints body** a formal body where people can lodge complaints and seek advice about their rights and the process they should undertake to resolve their dispute. In some instances, the body provides a no cost conciliation service. Examples of complaints bodies include the Equal Opportunity Commissioner, Ombudsman, and Consumer Protection Agencies (which differ from state to state).

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

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

**defendant** a person against whom a legal action has been brought

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

**either way offences** offences for which a magistrate can decide whether they hear the case, or send it to a higher court

**indictable offences** offences that are generally more serious in nature, which are heard initially by a magistrate but then passed on to a higher court

**indictable offences triable summarily** offences for which a magistrate can decide whether they hear the case, or send it to a higher court

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

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

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

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

**leave to appeal** permission from the court to appeal a decision

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

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

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

**obiter dictum/obiter dicta** a Latin term that means ‘things said by the way’; the plural form is *obiter dicta*

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

**perverting the course of justice** any act that is aimed at preventing justice being served on an individual such as lying to police

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

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

**prosecute** to take legal action against a person accused of a crime

**ratio decidendi** a Latin term meaning ‘the reason for the decision’

**respondent** the person defending an appeal

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

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

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

**summary offences** simple or less serious offences that are heard by a magistrate

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

**unconscionable** conduct that is considered so harsh or unreasonable that it is considered ‘not in good conscience’. Such conduct may involve taking advantage of someone, who is at a disadvantage.

### 3.11.3 Reflection

Complete the following to reflect on your learning.

Revisit the inquiry questions posed in the Overview:

**Does the Australian legal system deliver justice?**

**What are the influences in the operation of the Australian legal system that work in support of the achievement of justice for citizens?**

1. Now that you have completed this topic, what is your view on the questions? Discuss with a partner. Has your learning in this topic changed your view? If so, how?
2. Write a paragraph in response to the inquiry questions, outlining your views.

## on Resources

-  **eWorkbook** Customisable worksheets for this topic (ewbk-10671)  
Reflection (ewbk-10672)  
Crossword (ewbk-10673)
-  **Interactivity** Australia's justice system and the courts crossword (int-8246)

### 3.11 Review exercise

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### Multiple choice

- What is a person defending an appeal known as?
  - The defendant
  - The appellant
  - The plaintiff
  - The respondent
- A committal hearing is a useful procedure in a criminal case because
  - it allows the accused to be remanded in custody.
  - it provides the accused with details of the prosecution case.
  - it is cheaper than hearing the case in the Supreme Court.
  - it provides useful information for the jury in the lower court.
- Mediation is different from conciliation because
  - a conciliator can suggest solutions to the parties.
  - a mediator can suggest solutions to the parties.
  - a conciliator can provide arbitration for the dispute.
  - a mediator can provide arbitration for the dispute.
- Identify which of the following would not be considered a vulnerable witness.
  - A victim who is aged under the age of 18.
  - A victim who has a cognitive impairment.
  - A person who has committed a criminal offence.
  - The victim of a violent crime.
- The *ratio decidendi* is important in the decision made by a judge because
  - it sums up the facts of the case.
  - it will be based on the *obiter dicta* of a different case.
  - it represents the laws made by parliament on the issue.
  - it provides the legal rule that becomes a precedent in future cases.
- \_\_\_\_\_ is the practice of forcing someone to act in an involuntary manner by using intimidation or threats, or some other form of pressure.
  - Coercion
  - Fraud
  - Bribery
  - Contempt

7. The court hierarchy makes the court system more efficient because
  - A. it allows for criminal cases only to be heard in lower and intermediate courts.
  - B. it allows for more cases to be heard in higher courts.
  - C. it allows for civil and criminal matters to be heard in different courts in the hierarchy.
  - D. it allows for less serious matters to be heard in lower courts.
8. Law reports are important for lawyers and judges because
  - A. they provide details of laws passed by parliament that are relevant to cases before the courts.
  - B. they provide details of the precedents handed down by parliament.
  - C. they contain details of the decisions made in previous cases.
  - D. they allow judges to follow decisions made in lower courts.
9. The doctrine of precedent means that judges
  - A. overrule laws made by parliament.
  - B. apply existing legal principles in deciding similar cases.
  - C. can never have their rulings overturned.
  - D. are bound by the decisions of lower courts.
10. Define the term 'jurisdiction'.
  - A. The power of a court to hear appeals
  - B. Another name for a person who sits on a jury
  - C. The power or authority of a court to hear specific types of disputes and cases
  - D. Another name for the judge

## Short answer

### Analysis, evaluation and interpretation

11. Imagine your friend is charged with a crime and awaiting trial. They tell you that they intend to call one of your other friends who is likely to be called as a witness, to ask them not to say anything. Should your friend do this? **Explain** why/why not.
12. Imagine you are a member of a jury. The accused has been charged with armed robbery. **Identify** which court you would be in and how many people in total would be on the jury.

### Communicating

13. **Explain** the term 'trial by media' and give one hypothetical (made up) example of when this could prevent justice from being achieved.
14. **Outline** two reasons Australia needs both state and federal courts. Make up an example of a case that demonstrates each reason.
15. **Discuss** why the rule of law is considered an important part of the Australian justice system.

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# 4 Global citizenship

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# LESSON

## 4.1 Overview

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What does it mean to be a member of the global community?

### 4.1.1 Introduction

*‘The world doesn’t care about what you know, the world only cares about what you do with what you know.’ — Dr Tony Wagner*

Read this quote and then read it again. This quote from world renowned educational expert, Dr Tony Wagner, forms the basis of this topic. Most of you will spend at least 13 years in a formal school environment absorbing knowledge and learning skills. You will learn how to calculate the area of an irregularly shaped triangle and you will learn how to construct a well-balanced argumentative essay; you will learn how to correctly follow a recipe and you will learn the differences between cell walls and cell membranes.

But, it is incredibly important for you to use what you have learned and do what you can to make a positive impact on the world. This will look different for each individual.

To be an active member of a global community, you should find a way to use your own unique set of skills and knowledge to make a difference. In this topic, you will investigate what it means to be an active member of the global community. The issue of climate change activism will be used as a thematic case study of this topic. By focusing on this one issue, you will be able to closely investigate what it means to be an active citizen in the globalised world.

**FIGURE 1** When individuals come together, they have the power to make a positive impact.



### on Resources



**eWorkbook**

Customisable worksheets for this topic (ewbk-10676)



**Video eLesson**

Australia’s role in a global community (eles-2365)

# LESSON

## 4.2 What does it mean to be a global citizen?

### LEARNING INTENTION

By the end of this lesson you should understand the process of globalisation and what it means to be a global citizen.

### TUNE IN

Rapid advancements in transport and information communication technology has made it easier for products, information and people to travel around the world.

Think about the last product you bought online. Maybe it was an item of clothing or a piece of technology.

**FIGURE 1** Autonomous robots are now successfully making deliveries in different parts of the world.



1. In what country was the product made?
2. In which countries did the components come from?
3. How long from the time of purchase did it take for the product to get to you?

## 4.2.1 Globalisation

The process of globalisation has arguably been the most dominant process in contemporary global history. Globalisation has shaped, and continues to shape, the modern world, influencing how we learn, work, look, travel and communicate.

From a cultural perspective, globalisation refers to the increased interconnectedness of the global community. Rapid advancements in transport and information communication technology have made it easier for products, information and people to travel around the world. Globalisation allows you to lay in bed scrolling through your social media accounts, find a new t-shirt you like, purchase that t-shirt using your phone and then receive that t-shirt (which was made in Brazil, designed in America and printed in China) delivered to your front door within three days! Globalisation has also turned global issues into issues felt on national and local scales.

**FIGURE 2** Volunteers helping in the aftermath of the Beirut explosion



In 2020, a massive explosion occurred at the Port of Beirut, in the capital city of Lebanon. Caused by explosives stored improperly in a warehouse, the event killed at least 218 people, injured thousands more and left approximately 300 000 people temporarily homeless. Shortly after news of the explosion broke, hundreds of people began uploading videos of the explosion and its impacts in real time through social media accounts.

Through these platforms, what began as a local and national issue soon took on global significance. Many countries quickly offered financial and logistical support and expressed solidarity through symbolic methods such as flying flags at half-mast and dimming lights on famous landmarks. This is just one example of how quickly the scale of an issue can change due to the influence of globalisation.

## 4.2.2 What are global issues and why should we care?

In an interconnected world, one could argue that all issues are global issues. While this statement oversimplifies the concept of global issues, it does hold some degree of truth. A **global issue** is one that has impacts across the world and on a variety of different scales. Global issues can impact the economy, the environment or social and political systems. We need to care about global issues because even something that doesn't appear to impact our lives in Australia can often do just that. For example, Australia imports almost all of the petrol that we use. If a conflict occurs in the Middle East — one of the world's key oil producing regions — then the consequences of this conflict will be seen at petrol stations around Australia with prices rapidly increasing. The same situation would occur if a natural disaster hit the citrus orchards of California, which provide Australia with the majority of its oranges. The massive disruption caused by COVID-19 to global product supply chains is one further example of how global issues can be felt on a local or even individual scale. Often the solutions to global issues need to be met with coordinated action on global, national and local levels. It is here that our key focus of **climate change** can be used as an ideal example.

Climate change is a truly global issue and one which requires immediate action from all the world's governments. We can see the impacts of climate change across the globe — from shrinking ice-caps in the Arctic Circle, to the increased frequency and severity of floods and bushfires in our own backyard. So the question then becomes, which impacts do we, as Australians, focus on more — the global impacts of climate change or the local impacts? The answer to this question can be found when we consider the characteristics of a global citizen.

## 4.2.3 Characteristics of a global citizen

Broadly speaking, global citizenship is the idea that we have responsibilities to more than just our countries of origin. As global citizens, we need to see the world without political borders and understand that as humans, we all share the same rights and the same hopes. According to Oxfam International,

*'A global citizen is someone who is aware of and understands the wider world – and their place in it. They take an active role in their community and work with others to make our planet more peaceful, sustainable and fairer'.*

This Oxfam definition goes further, stating that by being active global citizens, young people should:

- Build their own understanding of world events.
- Think about their values and what's important to them.
- Take learning into the real world.
- Challenge ignorance and intolerance.
- Get involved in their local, national and global communities.
- Develop an argument and voice their opinions.
- See that they have power to act and influence the world around them.

You can evaluate your own level of global citizenship by using the points above as a checklist. Are you already a global citizen? And if not, what do you need to do to become an active member of the global community? We can also use the Oxfam definition and checklist to answer our initial question about climate change — as

**FIGURE 3** Extreme weather events, such as bushfires, have increased in frequency around the world because of climate change.



**global issue** an issue that has impacts across the world and on a variety of different scales  
**climate change** long-term changes in the previously observed climate and weather patterns

Australians, should we care more about the global, national or local impacts of climate change? While you may have your own opinion, the answer is that we need to give all the impacts of climate change equal attention. However, as you will learn later in this topic, the answers to global problems often begin with local solutions.

## on Resources

 **Weblink** The impact of COVID-19 on global supply chains

### 4.2 SKILL ACTIVITY: Civic participation and decision-making

Oxfam has decided their definition of a global citizen needs to be updated and your class has been chosen for this task! You will need to work collaboratively to **create** the definition and a list of responsibilities which every global citizen should uphold.

You want to work in groups first and then reconvene as a class to **discuss** your ideas. You may also want to **select** a leadership panel to help you decide on a final outcome.

## 4.2 Exercise

learnon

### 4.2 Exercise

#### Learning pathways

##### ■ LEVEL 1

2, 3, 6

##### ■ LEVEL 2

1, 4, 7

##### ■ LEVEL 3

5, 8

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### Check your understanding

1. Globalisation refers to the increased \_\_\_\_\_ of the global community.
  - A. size
  - B. wealth
  - C. interconnectedness
  - D. diversity
2. Online international shopping is an example of globalisation. True or false?
3. Which of the following is the best definition of a 'global issue'?
  - A. An issue that has impacts across the world and on a variety of different scales.
  - B. An issue that is caused by everyone in the world.
  - C. An issue that impacts everyone in the world in the same way.
  - D. An issue that impacts everyone in the world at the same time.
4. How can global issues be solved?
  - A. By action on a global scale.
  - B. By action on global and national scales.
  - C. By action on global, national and local scales.
  - D. They can't be solved.

### Apply your understanding

#### Analysis, evaluation and interpretation

5. **Identify** three characteristics of globalisation.
6. All issues are global issues. **Discuss** to what extent do you agree with this statement.
7. **Decide** if you see yourself as a global citizen. If you do, provide examples of when you have acted as a global citizen. If you do not, provide examples of how you *could* act as a global citizen.
8. Do you believe Australians should care more about national issues or global issues? **Justify** your response.

# LESSON

## 4.3 How can global citizens make a difference?

### LEARNING INTENTION

By the end of this lesson you should understand how individuals and communities can contribute to civic life in a globalised world.

### TUNE IN

Activism has the power to achieve change. The topics and issues that inspire people to take action are very varied such as climate change, animal rights, women's rights etc.

**FIGURE 1** What would your placard say?



1. What aspects of your life are most important to you?
2. What are some of the issues that you would actively protest?
3. What would the blank space on this placard say?

### 4.3.1 Why making a difference matters

A cohesive society requires citizens to embody a country's values and fulfil their responsibilities as active members of that society. As well as fulfilling their official responsibilities, members of a community can also foster social cohesion by being active participants in civic life. A community can only function effectively when its members are all working towards making that community function effectively. Such participation can be simple and involve seemingly inconsequential activities, such as being courteous and polite members of society. Stopping in the street to help someone who has dropped a bag, or pulling over to help someone fix a flat tire, are both examples of positively contributing to civic life, albeit on an individual scale. In contrast, tackling the varied and serious implications of climate change can, at times, seem like an impossible task. In this lesson you will investigate the active global citizens, social movements and independent organisations which are making positive contributions to solving the problems presented by climate change.

## 4.3.2 Social movements

Collective activism from social movements has led to some significant moments in Australian history. Social movements were behind the Eureka Stockade, they helped save the Franklin River in Tasmania, they gave voice to the anti-Vietnam War protests, led to First Nations Australian land rights and brought about marriage equality. A social movement is an organised effort of a group of people to achieve a particular goal. Usually this goal is centred around social justice, politics or environmentalism. Social movements can be incredibly powerful as they make individuals feel more capable of creating meaningful change to civic life. Social movements are particularly active in the area of environmentalism and climate change. One social movement is a group known as Extinction Rebellion.

### Extinction Rebellion

Extinction Rebellion (commonly abbreviated to XR) is a global environmental social movement which began in the United Kingdom in 2018. XR believes in using **civil disobedience** to convince governments to act on issues relating to climate change, loss of biodiversity and other social and environmental issues. The ultimate aim of XR is to force governments to immediately declare a climate emergency and take immediate action. XR does not have a formal leadership structure and instead claims to be a ‘movement that is participatory, decentralised, and inclusive’. While the goals of XR are admirable, the tactics used by the movement have stirred controversy. XR uses mass demonstrations designed to cause disruptions to normal civic life. For example, in November 2018, five of the major bridges in London were blockaded by XR activists. The group makes no attempt to hide the fact that it wants to shock people and institutions into action. From XR’s perspective, the inconveniences caused by their actions are irrelevant when compared to the potential consequences the world is facing.

### 4.3.3 Change makers

Those who have worked in the environmental movement have dealt with one phrase more than any other: ‘But what difference can I make, I’m just one person’. This is a common response when people are pushed to take action on climate change.

When presented with issues on such a large scale, it is understandable that individuals often feel helpless, overwhelmed and unsure that their actions alone will bring about change. However, it is individual change that is seen as the first step to positive climate action. Indian man, Jadav Payeng, is one famous example of the difference

**FIGURE 2** Extinction Rebellion protest



**FIGURE 3** Jadav Payeng exemplifies the difference one person can make



**civil disobedience** the refusal to comply with particular laws or instructions, usually in the form of a peaceful protest

one individual can make. Payeng, also known as the ‘Forest Man of India’, lives in the delicate wetland environment of Majuli. When Payeng noticed widespread ecological damage to this environment, he decided to take action by planting individual trees to replace those lost to erosion and deforestation. Over the next 30 years, Payeng returned to the area each day, planting a new tree each time. The end result of Payeng’s efforts were incredible, with his daily planting ritual returning the environment to its former glory. Examples like Yadav Payeng are not uncommon, yet perhaps the best example of an individual change maker in recent years is Swedish climate activist, Greta Thunberg.

## The Greta Effect

One day in 2018, a teenage Swedish girl decided to take action. Frustrated with her government’s lack of recognition and action on climate change, Greta Thunberg ditched school to begin her ‘Kölstrejk för Klimatet’ (School Strike for Climate). Every day, Thunberg returned to her spot outside the Swedish parliament with her sign and a stack of flyers which explained her frustration and her demands. Through various social media platforms, Thunberg’s protests quickly gained the attention of like-minded young people who began staging their own protests. Soon, more than 20 000 students from across the world had joined the protest movement. Thunberg’s profile continued to grow and just a year after she staged her first protest, Thunberg was invited to speak at the UN Climate Action Summit in New York. It was here that Thunberg gave her famous ‘How dare you?’ address, which started with these words:

*‘This is all wrong. I shouldn’t be up here. I should be back in school on the other side of the ocean. Yet you all come to us young people for hope. How dare you!’*

Go to the weblink **Greta Thunberg speech** in your Resources panel to watch a video of the full speech. Thunberg’s honest and candid manner of expression, her obvious passion and commitment has resonated with youth across the world. She has inspired young people to take action against climate change in what is referred to as ‘The Greta Effect’. When criticised by world leaders such as Donald Trump and Vladimir Putin, Thunberg has responded with humour and wit, further endearing her to her supporters. Yet most importantly, Thunberg has shown the youth of the world that one person can truly make a difference to civic life.

**FIGURE 4** Greta Thunberg at one of her first protests outside Swedish parliament



**FIGURE 5** Thunberg in front of a crowd of approximately 10000 climate protesters



### **on** Resources

 **Weblink** Greta Thunberg speech

### 4.3.4 The role of NGOs

Non-government organisations (NGOs) are another important group who work towards goals based on the common good. NGOs are unique and operate differently from other similar groups such as charities or not-for-profit organisations.

Australian NGOs must be accredited by the Department of Foreign Affairs and Trade to receive government grants and support. The majority of Australian NGOs are classified as operational NGOs. This means that they actively plan and implement projects on a local, national or global scale.

The Australian Conservation Foundation (ACF) is an

example of an NGO and is one which is heavily involved in promoting action on climate change. The ACF has a long history in Australian environmentalism and has had many successes since its inception in 1965. Among many other achievements, the ACF was responsible for ending commercial whaling in Australia, preventing mining in Antarctica and contributing to the Stop Adani Mine campaign.

The ACF has also been prominent in promoting action on climate change and encouraging people to switch to renewable energy sources. Although the ACF has held several protests and rallies, its methods focus on providing individuals and communities with practical solutions to environmental problems. Although these methods differ significantly from groups like Extinction Rebellion, they still have the same goal — to combat the effects of climate change and help individuals contribute to civic life.

**FIGURE 6** The Australian Conservation Foundation successfully put an end to commercial whaling in Australia.



#### 4.3 SKILL ACTIVITY: Questioning and researching

##### Research an NGO or INGO

For this activity, you will need to use your research skills to **investigate** an NGO or INGO. After you choose your organisation, it is important to set some research questions. Below are some questions which you may want to use:

- What is the mission/goals for your NGO or INGO?
- In what field do they operate (i.e. climate change, medical aid, reducing poverty)?
- What strategies do they use to achieve their mission/goals?
- What challenges do they experience?
- Have they been successful in fulfilling their mission/goals?

## 4.3 Exercise

## Learning pathways

## ■ LEVEL 1

3, 4

## ■ LEVEL 2

1, 2, 5, 7

## ■ LEVEL 3

6, 8

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## Check your understanding

- Which of the following is the best definition of a social movement?
  - An organised effort of a group of people to achieve a particular goal.
  - An organised effort by an individual to achieve a particular goal.
  - An organised effort by a company to achieve a particular goal.
  - An organised effort by a government to achieve a particular goal.
- Detail** one example of a social movement.
- What protest strategy is frequently used by the group Extinction Rebellion?
  - Grassroots campaigns
  - Door-knocking
  - Peaceful protests
  - Civil disobedience
- Why did Greta Thunberg begin her School Strike for Climate?
  - She was frustrated with her parent's attitude to climate change.
  - She was frustrated with her school's attitude to climate change.
  - She was frustrated with the government's attitude to climate change.
  - She was frustrated with her friend's attitude to climate change.
- Why does an NGO differ from a not-for-profit?
  - There is no difference
  - An NGO operates on an international scale.
  - An NGO is officially recognised by the Australian government.
  - An NGO does not receive any external funding.

## Apply your understanding

## Analysis, evaluation and interpretation

- Of the protest methods mentioned in this lesson, which do you believe is the most effective in influencing meaningful change? Provide examples to **justify** your response.
- A friend of yours believes that individual action has no impact on global issues like climate change. **Describe** how would you convince them otherwise.
- 'NGOs should not exist and their actions should be handled by the government'. Do you agree with this statement? **Explain** your response in detail.

# LESSON

## 4.4 How do forms of media influence identity and global citizenship?

### LEARNING INTENTION

By the end of this lesson you should be able to investigate the role the media plays in shaping national identity and shaping global citizenship.

### TUNE IN

Consider how you use social media in your life to answer these questions.

**FIGURE 1** Social media plays a large role in our society. The presence of these apps and platforms is increasing each year.



1. How many hours a day do you spend on social media?
2. Which social media platforms do you use the most?
3. What uses do you have for social media platforms?
4. What role does social media play in your life? Do you believe it tends to be more positive or negative?

### 4.4.1 How do we get our information?

The rapid development of technology, especially information communication technology and social media platforms, has also had a significant impact on Australian society. Many of these impacts have been positive and have provided a voice to marginalised groups of society and raised awareness of social, political and environmental issues. However, disinformation also now plagues these same platforms and poses a significant threat to social cohesion.

The way in which people access news and information about current affairs has also changed in recent years. Traditional forms of news such as newspapers, television and radio have been abandoned in favour of social media platforms. According to a University of Canberra study, 45 per cent of respondents stated that a

**FIGURE 2** Australians, young and old, are increasingly using social media to access information about the world around them.



mobile phone was their main device for accessing news. This is not simply a phenomenon of youth. Although 54 per cent of Generation Z (people born between 1997–2012) said that social media was their main source of news, the proportion of people aged 75 and over who use social media in the same way also tripled since 2019. This data shows that Australians, young and old, are increasingly using social media to access information about the world around them. As the information shared on these platforms is not always verified and accurate, it is possible for misinformation to influence perceptions of issues, events and cultural groups.

#### 4.4.2 Information or disinformation

You have probably heard the phrase ‘fake news’ hundreds of times in your life, especially if you remember the reign of American President Donald Trump. Yet what might surprise you is that the concept of disinformation and ‘fake news’ has been around since the Ancient Greeks and Romans. Leaders from this time would often ask their artists and bards to represent their triumphs in ways that hid elements of the truth. Throughout history, there have been countless examples of hoaxes, propaganda and deliberate false reporting. So why is disinformation such a problem in our society?

To answer this question, you must first consider how easy it is for information to be shared around the world. Information can be instantly shared via email, instant messaging services and, of course, social media. It is possible for any article, comment or photo to reach millions of people within a matter of minutes. This almost instantaneous transmission of information can be hugely beneficial. For example, Facebook introduced its Safety Check function in 2014 to allow users to mark themselves as safe if impacted by natural disasters or other catastrophes. Most social media platforms also allow users to flag information which they believe is false, misleading, abusive or threatening. This is a useful addition to social media platforms and reflects the increasing public concern about disinformation. The previously mentioned University of Canberra study found that two-thirds of Australians are concerned about false or misleading information online. Respondents were then asked which topics about which they had seen false information. COVID-19 was ranked first on this list, followed by general political information with climate change in third place.

When false information is spread in this way it is possible for people to believe concepts, ideas and stereotypes which are simply not true. We saw this occur through the COVID-19 pandemic and we see disinformation regarding climate change spread on social media platforms

**FIGURE 3** Why is disinformation such a problem in our society?



**FIGURE 4** Donald Trump disputed the result of the 2020 US presidential election, which led to X (formerly known as Twitter) flagging it for being potentially misleading.



as well. The devastating 2019–2020 Australian bushfires can be used as an example of this phenomenon. During this disastrous period, approximately 33.8 million hectares of land was burnt, nearly 6000 buildings were destroyed, at least 34 people died and over \$100 billion of damage was caused. The unusual severity of this fire season was caused by a number of factors including the increasing effects of climate change. However, suggestions of **arson** as a major cause of the fires was heavily promoted by social media platforms, particularly X, with the hashtag #arsonemergency. Through a subsequent investigation by Queensland University of Technology social media expert Dr Timothy Graham, of the 1340 tweets using this hashtag, many appeared to be part of a ‘disinformation campaign’. Some of these tweets were even retweeted by then-President Donald Trump! The goal of this campaign was to make arsonists appear to be the main cause of the fires instead of scientific factors such as climate change.

The way to combat disinformation is to encourage people to access information from a wide variety of verified sources. You will learn more about this strategy in the Skill activity for this lesson.

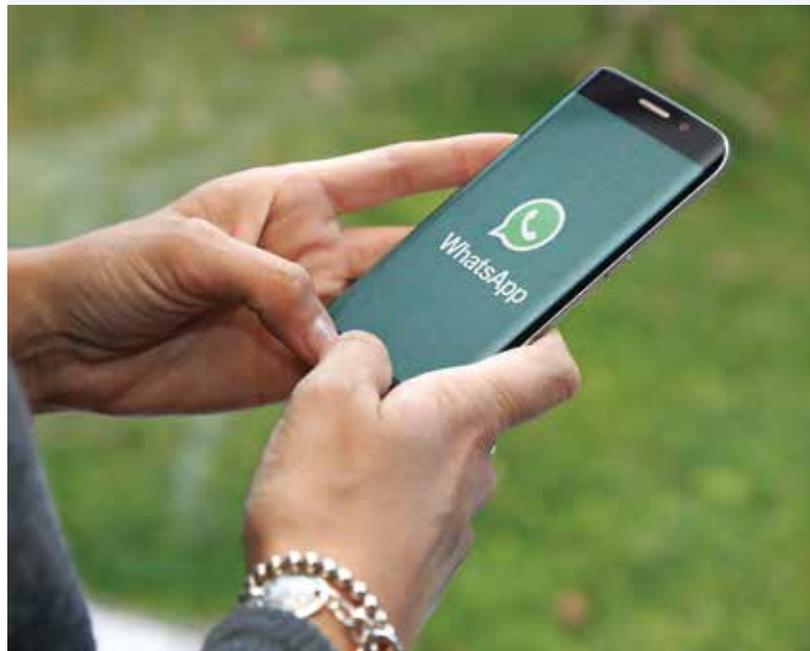
### 4.4.3 How can digital technologies connect global citizens?

Digital technologies, especially those which facilitate communication, are essential tools in the globalised world. The ease at which we can communicate with people on the other side of the world is truly remarkable and is something which you probably take for granted. Your generation has never known a world without the Internet or without mobile phones. As such, it might be difficult for you to imagine the impact which these technologies have had on the world.

Before email became one of the world’s most popular methods of communication, people had to rely on posting letters or using telegrams to send written text. A letter would usually take between one to two weeks to reach its recipient if sent overseas. When compared to the almost instantaneous speed of emails, you can clearly see how these two methods differ. As popular as emails have become, they have been easily surpassed by SMS and instant messaging platforms. It is estimated that the WhatsApp platform alone delivers 100 billion messages per day!

Emails and instant messaging services are not the only digital technologies which impact globalisation. The COVID-19 pandemic saw a rapid increase in the use of peer-to-peer video platforms which facilitate remote learning and people working from home. Beyond these technologies, there are also many other digital technologies which not only facilitate globalisation but also allow people to make meaningful contributions to civic life. One such platform is the **microfinancing** website, Kiva. Established in 2005, Kiva enables people to lend money to entrepreneurs and small business owners in low-income countries. Lenders can

**FIGURE 5** WhatsApp has become one of the world’s leading instant messaging platforms.



**arson** the criminal act of deliberately setting fire to property  
**microfinancing** a banking or loan service which provides financial support to people who may otherwise be unable to secure financial support for themselves

int-9094  view potential projections on Kiva's website which also facilitates the loan transaction. The recipient of the loan must pay the lender back when their business begins to make enough money. Most lenders use their returned money to finance other projections. Since its creation, Kiva lenders have sent over \$1.7 billion to people in 76 countries. Other microfinancing platforms function in a similar way including a branch of Oxfam known as the Grameen Foundation. This organisation focuses on combating the regional challenges presented by climate change. Organisations like Kiva provide an excellent example of how digital technologies can be used to contribute to civic life, not just in your own country but across the entire world.

#### 4.4.4 Communicating and campaigning on social media

With each new social media platform comes a new opportunity for voices to be heard and issues to be spread throughout the community. While some use social media to post photos of holidays, dogs and burgers, other social media users recognise the power of these platforms to influence cultural trends and increase understanding of issues, concepts and events. TikTok is one platform which has seen incredible success in promoting climate change activism. TikTok is one of the fastest growing social media platforms and is particularly popular with young people. The secret to TikTok success lies within two unique features for the platform. First, TikTok has a unique **algorithm** which carefully selects videos for you to watch based on your previous views, likes and comments. Second, TikTok videos are usually 10–20 seconds long, which is an ideal length to communicate brief but effective content. Due to these features, as well as the platform's extreme popularity, it has become the perfect breeding ground for social justice and climate change activists. One famous case of TikTok activism occurred in June 2020 when a group of creators encouraged their followers to buy tickets to a Donald Trump rally and then not attend. In a matter of minutes, TikTok users had requested over 1 million tickets yet on the day of the rally, only 7000 people attended. TikTok users have popularised climate change activism by encouraging:

- sustainable living
- climate awareness and education
- practical actions such as promoting recycling, clean-up days and vegetarianism.

The reach of this platform is truly incredible, with popular TikTok videos viewed between 4–6 million times. With a reach as large as this, it is clear the positive impact social media platforms can have in influencing attitudes and behaviours. As with all social platforms, the spread of disinformation remains a key concern and one which threatens the effectiveness of social media activism.

**FIGURE 6** The process of a Kiva loan



**algorithm** a series of instructions and processes which tell a computer how to intelligently interpret or sort information according to a set of rules

## 4.4 SKILL ACTIVITY: Questioning and researching

You have learned throughout this topic that misinformation can have an extremely serious impact on society. However, you have also learned that it can be challenging to tell whether the information you are reading is accurate or misleading. The following steps can be used to help you verify online information. Once you have read these steps, choose two sources of online information and apply the process to test the validity of the information you have found.

- Who is the author and what are their credentials (experience, job, etc.)?
- Who is the intended audience of the information?
- What is the author's purpose? Is it to educate or to provide an opinion?
- Who published the information? Was it an individual or a company?
- Was the information balanced or did it only show one side of the issue? Can you detect any bias in the information?

You should be aware of features that may indicate that an online source is unreliable. These features include:

- Paid advertisements or pop-ups on the website.
- Look for the website suffix (the letters at the end of a URL):
  - .com (Commercial) A company owns this website
  - .org (Not-for-profit) Consider the background and agenda of the organisation
  - .edu (Educational) From a school, university or educational institution
  - .gov (Government) Sites related to government departments
- Watch for 'red flags' such as spelling and grammatical mistakes, inconsistent font and formatting issues.

## 4.4 Exercise

learnon

### 4.4 Exercise

#### Learning pathways

##### LEVEL 1

2

##### LEVEL 2

1, 3, 5

##### LEVEL 3

4, 6, 7, 8

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### Check your understanding

1. **Identify** one benefit and one negative consequence of social media use.
2. Traditional forms of news such as newspapers, television and radio have been abandoned in favour of \_\_\_\_\_.
  - A. people ignoring the news altogether
  - B. people doing their own research
  - C. people using social media platforms
  - D. All of the above
3.
  - a. **State** the main factor that leads to disinformation being shared on social media platforms.
  - b. **Identify** what can happen when disinformation is spread.
4. Why are social media platforms such a successful method of communication?
  - A. The format is short and effective.
  - B. Extremely high user numbers.
  - C. The popularity of hashtags and trends.
  - D. All of the above.

### Apply your understanding

#### Analysis, evaluation and interpretation

5. Overall, does social media have a mostly positive or negative impact on society? **Examine** evidence for both sides of this debate.

6. **Propose** how you think the problem of disinformation on social media could be solved.
7. Using Kiva as inspiration, **create** a similar style of platform which aims to use digital technology to help people in low-income countries.
8. News platforms should have a stronger role in the provision of factual information. Do you believe this strategy would work in the modern world? **Justify** your response.

## LESSON

### 4.5 INQUIRY: Are Australians active global citizens?

#### LEARNING INTENTION

By the end of this lesson you should be able to evaluate the contributions of Australian citizens to the global community.

#### Before you begin

Access the **Inquiry rubric** in the digital documents section of the Resources panel to guide you in completing this task at your level. At the end of the inquiry task, you can use this rubric to self-assess.

#### Inquiry steps

In this inquiry you will use the knowledge and skills gained in this topic to answer one fundamental question — Are Australians active global citizens? To answer this question, you'll need to follow the steps and instructions outlined below.

**FIGURE 1** Are Australians active global citizens?



#### Step 1: Questioning and researching

To begin with, write a list of the issues and responsibilities that you think Australians have in the global community. What kind of things *should* the government and individuals be doing now in order to be active members of the global community? You may wish to do a brainstorm or a mind-map to help you organise your thoughts.

#### Step 2: Analysis, evaluation and interpretation

Now that you have a list of the things that Australian governments and individuals *should* be doing, you now need to **investigate** what they *are* doing. As well as your own research, you can use these weblinks to assist your investigation. Make sure that you take notes as you **research**. You may wish to use a table like the one shown below to help you organise your research.

Organisation / Personal	What are they doing to promote global citizenship?	In which field are they active?	What are their goals?

### Step 3: Civic participation and decision-making

So far you have thought about what we should be doing and investigated what we are doing to be active global citizens. Now comes the time for you to make a judgement. Do you believe that what Australian governments and individuals are doing to assist the global community is enough? Use the evidence which you have collected to support your opinions.

### Step 4: Communicating

*What is the answer to your inquiry question?* **Communicate** your research and/or result of your action in a format of your choice. This could be as a student-led whole class discussion, debate, mock TV interview or Tiktok video, for example. It's up to you: get creative!

Complete your self-assessment using the **Inquiry rubric** document or access the 4.5 exercise set to complete it online.

## Resources



**Digital document** Inquiry rubric (doc-39801)



**Weblinks**

Department of Foreign Affairs and Trade, United Nations  
 List of Australian accredited non-government organisations  
 World Vision  
 These talented young Aussies are changing the world

# LESSON

## 4.6 Review

Hey students! Now that it's time to revise this topic, go online to:



Review your results



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### 4.6.1 Key knowledge summary

Use this dot point summary to review the content covered in this topic.

#### 4.2 What does it mean to be a global citizen?

- Globalisation has shaped, and continues to shape, the modern world, influencing how we learn, work, look, travel and communicate.
- A global issue is one that has impacts across the world and on a variety of different scales. Global issues can impact the economy, the environment or social and political systems.
- Often the solutions to global issues need to be met with coordinated action on global, national and local levels.
- As global citizens, we need to see the world without political borders and understand that as humans, we all share the same rights and the same hopes.

#### 4.3 How can global citizens make a difference?

- A cohesive society requires citizens to embody a country's values and fulfil their responsibilities as active members of that society.
- Social movements can be incredibly powerful as they make individuals feel more capable of creating meaningful change to civic life.
- The majority of Australian NGOs are classified as operational NGOs. This means that they actively plan and implement projects on a local, national or global scale.

#### 4.4 How do forms of media influence identity and global citizenship?

- The rapid development of technology, especially information communication technology and social media platforms, has provided a voice to marginalised groups in society and raised awareness of social, political and environmental issues.
- The way in which people access news and information about current affairs has also changed in recent years. Traditional forms of news such as newspapers, television and radio have been abandoned in favour of social media platforms.
- It is possible for misinformation to influence perceptions of issues, events and cultural groups.
- Organisations like Kiva provide an excellent example of how digital technologies can be used to contribute to civic life, not just in your own country but across the entire world.

#### 4.5 INQUIRY: Are Australians active global citizens?

- Australian governments demonstrate their role in the global community by responding to foreign disasters, conflicts and events.
- Individuals contribute to the global community through smaller scale methods including donations to NGOs and participation in activities organised by various social movements.

## 4.6.2 Key terms

**algorithm** a series of instructions and processes which tell a computer how to intelligently interpret or sort information according to a set of rules

**arson** the criminal act of deliberately setting fire to property

**climate change** long-term changes in the previously observed climate and weather patterns

**civil disobedience** the refusal to comply with particular laws or instructions, usually in the form of a peaceful protest

**global issue** an issue that has impacts across the world and on a variety of different scales

**microfinancing** a banking or loan service which provides financial support to people who may otherwise be unable to secure financial support for themselves

## 4.6.3 Reflection

Complete the following to reflect on your learning.

Revisit the inquiry question posed in the Overview:

### What does it mean to be a member of the global community?

1. Now that you have completed this topic, what is your view on the question? Discuss with a partner. Has your learning in this topic changed your view? If so, how?
2. Write a paragraph in response to the inquiry question, outlining your views.

## Resources



**eWorkbooks** Customisable worksheets for this topic (ewbk-10676)  
Reflection (ewbk-10677)  
Crossword (ewbk-10678)



**Interactivity** Global citizenship crossword (int-9095)

## 4.6 Review exercise

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### Multiple choice

1. What has driven the process of globalisation?
  - A. War and conflict
  - B. Unequal distribution of resources
  - C. Information communication technology and transport
  - D. Political change
2. What areas can be impacted by global issues?
  - A. Economic, environmental and political
  - B. Economic, political and social
  - C. Economic, environmental and social
  - D. Economic, environmental, social and political
3. What is someone who is aware of and understands the wider world?
  - A. A world citizen
  - B. A citizen of the world
  - C. A global citizen
  - D. A responsible citizen
4. The answers to global problems often begin with \_\_\_\_\_.
  - A. local solutions
  - B. local problems
  - C. local solutions and individual solutions
  - D. local solutions to global problems
5. What kind of movements are organised by a group of people with a shared goal?
  - A. Environmental movements
  - B. Social movements
  - C. Economic movements
  - D. Protest movements
6. Which of the following provides the best definition for civil disobedience?
  - A. Refusal to comply with certain laws, usually in the form of a peaceful protest.
  - B. Refusal to comply with certain laws, usually in the form of a violent protest.
  - C. Refusal to comply with certain laws, usually without any protest.
  - D. Refusal to comply with certain laws, usually in the form of armed conflict.
7. What often cause some people to not take action on climate change and other global issues?
  - A. They don't care about these issues.
  - B. They feel anxious about these issues.
  - C. They feel like these issues are too big for them to possibly make a difference.
  - D. They don't know how to make a difference.
8. What is 'The Greta Effect'?
  - A. Young people being inspired by the activism of Greta Thunberg
  - B. Governments being threatened by the activism of Greta Thunberg
  - C. Fossil fuel companies being threatened by the activism of Greta Thunberg
  - D. Parents being threatened by the activism of Greta Thunberg

9. How do most people currently access news information?
- A. Television and radio news
  - B. Print newspapers
  - C. Online newspapers
  - D. Social media
10. What is one strategy which can be used to combat disinformation?
- A. Always verify your sources
  - B. Collect information from multiple sources
  - C. Check information for valid references
  - D. All of the above

## Short answer

### Analysis, evaluation and interpretation

11. The following quote was used to begin this topic. Do you believe this quote is accurate? **Justify** your response.

*'The world doesn't care about what you know, the world only cares about what you do with what you know'.*

12. If the tactics used by Extinction Rebellion are so controversial, **explain** why they are still used.
13. The phrase 'think global, act local' is often used in relation to global issues and citizenship. **Explain** what you think is meant by this phrase.
14. 'There is simply too much misinformation on social media and the sharing of any information on these platforms should immediately be banned'. **Discuss** to what extent you agree with this statement.

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# GLOSSARY

---

- absolute majority** half the number of votes in the House of Representatives or Senate, plus one
- accused** the person charged with or on trial for a crime
- adversarial system** a system of trial in which the two sides argue their case and the judge or magistrate acts as an independent umpire
- algorithm** a series of instructions and processes which tell a computer how to intelligently interpret or sort information according to a set of rules
- appeal** the request to a higher court to review a decision made by a lower court
- appellant** the person appealing a court decision
- appellate jurisdiction** the power of a court to review a lower court's decision
- arbitration** the process of resolving a dispute by an independent third party, such as a court or tribunal, where the decision is legally binding on the parties
- arson** the criminal act of deliberately setting fire to property
- bail** an agreement to release an accused person into the community while awaiting trial
- bribery** the act of giving money, a gift or any other item of value to a recipient in the expectation that it will alter the recipient's behaviour
- civil disobedience** the refusal to comply with particular laws or instructions, usually in the form of a peaceful protest
- climate change** long-term changes in the previously observed climate and weather patterns
- coercion** the practice of forcing someone to act in an involuntary manner by using intimidation or threats, or some other form of pressure
- common law** judge-made law, or law developed by judges through the decisions in actual cases brought before the courts
- complainant** a person lodging a complaint about another person or organisation
- complaints body** a formal body where people can lodge complaints and seek advice about their rights and the process they should undertake to resolve their dispute. In some instances, the body provides a no cost conciliation service. Examples of complaints bodies include the Equal Opportunity Commissioner, Ombudsman, and Consumer Protection Agencies (which differ from state to state).
- conciliation** a process of settling disputes in which a neutral third party (a conciliator) assists the parties to reach agreement. Conciliators can offer suggestions and alternative solutions to assist the parties in reaching an agreement.
- consent order** a written agreement reached by the parties to a dispute and approved by the court
- court delay** a setback in the legal system that prevents justice from occurring in a timely fashion
- defamation** a civil wrong involving a written or verbal communication that lowers a person's reputation in the community
- defendant** a person against whom a legal action has been brought
- duty of care** a responsibility to ensure the safety of any persons whom we can reasonably foresee might be affected by our actions
- either way offences** offences for which a magistrate can decide whether they hear the case, or send it to a higher court
- global issue** an issue that has impacts across the world and on a variety of different scales
- government** a body of people who have the authority to control or govern a community, state or country
- indictable offences** offences that are generally more serious in nature, which are heard initially by a magistrate but then passed on to a higher court

**indictable offences triable summarily** offences for which a magistrate can decide whether they hear the case, or send it to a higher court

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

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

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

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

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

**leave to appeal** permission from the court to appeal a decision

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

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

**media** the forms of communication between a source and receivers including TV, radio, print media, digital and the internet as well as forms of social media. The term usually refers to mass media and the ability of media to inform and influence people.

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

**microfinancing** a banking or loan service which provides financial support to people who may otherwise be unable to secure financial support for themselves

**obiter dictum/obiter dicta** a Latin term that means ‘things said by the way’; the plural form is *obiter dicta*

**opinion polls** an assessment of public opinion by questioning a representative sample, especially as the basis for forecasting the results of voting

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

**perverting the course of justice** any act that is aimed at preventing justice being served on an individual such as lying to police

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

**political party** an organisation that represents a group of people with similar political philosophies or ideas. The aim of a political party is to get its members elected to parliament so that it can hold political power and their ideas can influence the way Australia is governed.

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

**precedent** an action or decision on which later actions or decisions might be based; a legal principle that is established by a court in resolving a dispute and is expected to be followed in later cases; a law made by a superior court that must be applied by lower courts in future cases with the same or similar facts

**private members’ bills** bills that are proposed by members of the House of Representatives on their own behalf rather than on behalf of the government

**prosecute** to take legal action against a person accused of a crime

**ratio decidendi** a Latin term meaning ‘the reason for the decision’

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

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

**respondent** the person defending an appeal

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

**summary offences** simple or less serious offences that are heard by a magistrate

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

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

***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.

**unconscionable** conduct that is considered so harsh or unreasonable that it is considered 'not in good conscience'. Such conduct may involve taking advantage of someone, who is at a disadvantage.

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