

4 Law, society and political involvement

4.1 Overview

Numerous **videos** and **interactivities** are available just where you need them, at the point of learning, in your digital formats, learnON and eBookPLUS at www.jacplus.com.au.

4.1.1 Introduction

You have probably never committed a serious crime. Hopefully, you are not planning a robbery or an assault. Most likely you are not wanted by the police and have not been required to attend a court hearing. Like the vast majority of Australians, you are a law-abiding citizen.

This chapter will help you to see how laws are connected to every aspect of your life, as they give you rights as well as responsibilities. Laws dictate things such as the need to wear a helmet when riding a bike, the age you can leave school, the movies you are permitted to watch and when you can sign a contract.

However, as you turn 18 you will also be able to vote, and you will be part of deciding who will be in charge of our country. Understanding how laws are made, how a government is formed and how you can make your voice heard in the political arena will help you when you get to this new aspect of your life.



CONTENT FOCUS

On completion of this topic, you will have:

- developed an understanding of how laws affect individuals and groups and regulate society, and how individuals and groups participate in the democratic process
- examined various legal and political systems
- learnt how strategies are used to resolve contentious legal and political issues.

-  **Video eLesson** Law, society and political involvement (eles-3509)
-  **Digital documents** Key terms glossary (doc-32667)
Worksheet 4.1 Start up! (doc-32700)
-  **eWorkbook** Customisable worksheets for this topic (ewbk-0861)

4.2 Reasons for laws

Without a set of rules in a society, there would be chaos. Rules usually exist to create and maintain a sense of order. However, rules must work, or they are useless. Every country has its own laws; legal rules that can be enforced by a court of law. These laws vary according to the beliefs, attitudes and culture of a country. Most laws in Australia are made by the federal and state parliaments. In fact, making laws is their main job.

4.2.1 Rules and laws

You decide to go to a music festival or a football match. You may not be aware that there are laws in place to control the behaviour of the crowd. Crowd surfing, for example, is forbidden at most concerts. Similarly, Cricket Australia has banned the Mexican wave at some of its events in order to stop unruly fans from throwing potentially dangerous objects such as ice and drink containers in the air. Many argued the wave had become part of a culture of anti-social and occasionally violent behaviour. Others, however, believed it was a restriction on their freedom to participate in one of the great contemporary spectator traditions of cricket. Whatever your view, it seems that most of what we do is regulated by some type of law.

You have to obey rules at school, within your family and on the sporting field. These rules are non-legal rules and are imposed by schools, families, sporting associations or clubs. They apply only to people directly involved and may not attract serious penalties if broken.

Society also has a set of rules called **laws**, which everyone in the community is expected to obey. For example, motorists have to obey traffic laws. There are also laws to stop people under a certain age from entering premises where alcohol is served. The difference between a rule and a law is that the police and the **courts** can enforce laws. Laws, therefore, are legal rules that carry more serious penalties and you may end up having to go to court if you break a law.

4.2.2 Reasons for laws in society

Imagine what could happen if there were no laws and people could do whatever they liked. Confusion and chaos would occur. In extreme cases of conflict, a state of **anarchy** would develop. The person with the most strength would start to dominate, and the weak and helpless would suffer. However, when people obey the law, a sense of order is created, resulting in a society where people can live peacefully.

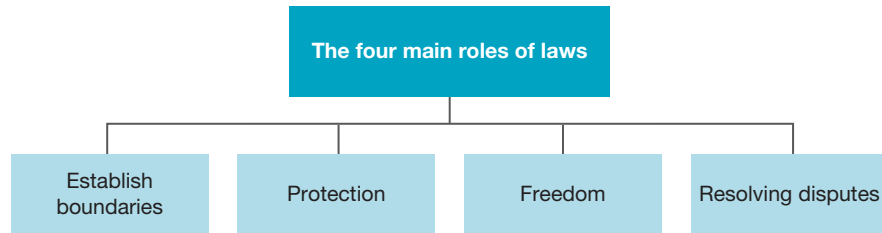
In Australia, laws are part of every aspect of our lives.



Without laws, society would be in a state of anarchy.



The law has four main roles:



1. *Establish boundaries* of acceptable behaviour and determine which actions will not be tolerated. For example, drink-driving laws reflect society's attitude that placing other road users at risk through intoxication is unacceptable.
2. *Protection* from the actions of others as well as our own behaviour. It does this by telling society what people *cannot* do. For example, we cannot commit assault, murder or robbery. We cannot drive while drunk or ride a bike without a helmet. In this role, the law restricts our individual freedom but provides safety for all individuals in society.
3. *Freedom* to do many things by telling society what people *can* do. For example, the law allows us to own and operate a business, drive a car, get married or divorced, or leave school.
4. *Resolving disputes* in order to stop people taking the law into their own hands. The legal system provides a police force (or service), court system and correctional centres (jails and juvenile detention centres) to enforce and administer the law.

The police force, like the courts and correctional centres, is part of our legal system.



If society has too many laws, people's freedoms are severely restricted. However, a society that does not have enough laws turns to chaos, and people become very unhappy. So it is important for society to achieve a balance between too many and too few laws.



Resources



Weblink Youth Law Australia

4.2 Activity: Research and communication

1. Obtain a copy of your school rules. In small groups, answer the following questions:
 - (a) Do you think your school rules are laws? Why?
 - (b) Who makes these rules?
 - (c) What happens if someone breaks the rules?
 - (d) Are there too many or too few rules? Why?
 - (e) What rules would you like to get rid of? Why?
 - (f) What rules should be introduced? Why?
2. Are there situations in which breaking a law could be acceptable? For example, what do you think about a group of environmental activists who break the law when protesting against tree clearing? With this in mind, debate the following topic: 'It is acceptable to break the law sometimes'.
3. Use the internet to find out the age at which a person in Australia can legally:
 - (a) drive a car on a public road
 - (b) drink in licensed premises
 - (c) get married
 - (d) buy cigarettes
 - (e) sign a contract
 - (f) vote in an election.

4.2 Exercise: Knowledge and understanding

To answer questions online and to receive **immediate feedback** and **sample responses** for every question go to your learnON title at www.jacplus.com.au.

1. What are laws?
2. How are laws of the land different from school or sport rules?
3. What can happen to a person who breaks the law?
4. What is meant by the term 'anarchy'?
5. Why does society need laws?
6. List the law's four main roles.
7. Provide three examples of things the law says you:
 - (a) cannot do, and
 - (b) can do.
8. Imagine you have been elected Prime Minister of Australia. What three laws would you introduce to make sure people live in harmony? Explain why you would choose these particular laws.
9. Write a short story or create a cartoon about life in a city with no traffic laws.

Fully worked solutions and sample responses are available in your digital formats.

4.3 Values, morals and ethics

4.3.1 Rules of morality and ethics

We develop a sense of what is right and wrong from the moral and ethical values of our society. For example, murder is considered a serious crime because our society believes human life is precious and should be protected. Usually society's moral and ethical values reflect the beliefs, attitudes and values of religious institutions.

4.3.2 Different country, different values, different laws

Our laws in Australia are sometimes very different to those of other countries. For example, in Australia it is compulsory to wear a bicycle helmet in all states and territories; Australia also has strict anti-smoking legislation, including plain packaging of cigarettes. Few other nations around the world have similar laws to these.

Some nations have laws that Australians find very peculiar. For example, in Singapore importing chewing gum can be punished with a \$100 000 fine or two years imprisonment. Also in Singapore, failing to flush a public toilet can bring about a \$150 fine!

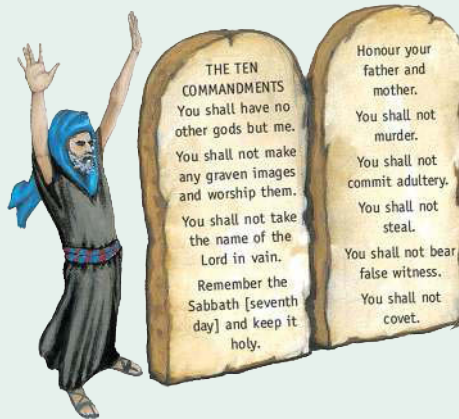
Different laws

Before the arrival of Europeans in 1788, law in Australia existed as traditional Aboriginal law, passed on by word of mouth. This oral law was very important and helped maintain a stable society.

The First Fleet brought the English legal system to Australia. The British did not recognise any pre-existing Aboriginal law. Aboriginal people were expected to obey English laws, which created many misunderstandings and problems for everyone.



Christians adopted the Ten Commandments, a set of laws written down by the Hebrew lawgiver Moses in the thirteenth century BC.



Muslims adopted the Five Pillars of Islam based on the teachings of the prophet Mohammed during the seventh century BC.



King Hammurabi, who lived in Babylon (now in modern-day Iraq) around 2000 BC, was one of the earliest rulers to have a written legal code. He ordered stone pillars, two metres high, on which he wrote 280 laws for his people to obey. Some of these laws include:

Law 161	If a man accuses another, but cannot offer proof, then he shall die.
Law 162	If a man assists a slave to escape, then he shall die.
Law 163	If a son strikes his father, then he shall lose his fingers.
Law 164	If a woman has not been a careful wife and belittles her husband, then she shall be thrown in the river.



4.3 Activity: Research and communication

1. A society's legal system and its religions are often interlinked; the values found in its religious teachings are often replicated in the legal system. For instance, it is illegal to kill a person in Australia. The Old Testament says 'you shall not murder'. This means that both our legal system and the teachings of Christianity value human life. Research the beliefs of another religion such as Hinduism, Islam, Sikhism, Buddhism or Judaism and identify at least three similarities (or differences) in relation to the values represented in Australia's legal system. Present your ideas in a PowerPoint presentation and share them with your class.

4.3 Exercise: Knowledge and understanding

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1. Examine the drawings showing the Christian and Muslim sets of rules.
 - (a) Identify and list any of these laws you think might be found in Australia today.
 - (b) List any laws that they have in common.
2. List three new laws that you would like the government to introduce in order to deal with:
 - (a) under-age binge drinking
 - (b) violent computer games.
3. Using examples, explain why it is difficult to create a set of laws to reflect everyone's values.
4. What impact did the introduction of British law have upon traditional Aboriginal law?
5. Having read some of the laws of Hammurabi (in the feature box) what do you imagine Babylonian society was like?

6. Outline what you believe to be the most ethical way to behave in the following situation. A friend gives you the answers to the next Commerce test. He took them from the teacher's desk. Would you accept such information? Why?

Fully worked solutions and sample responses are available in your digital formats.

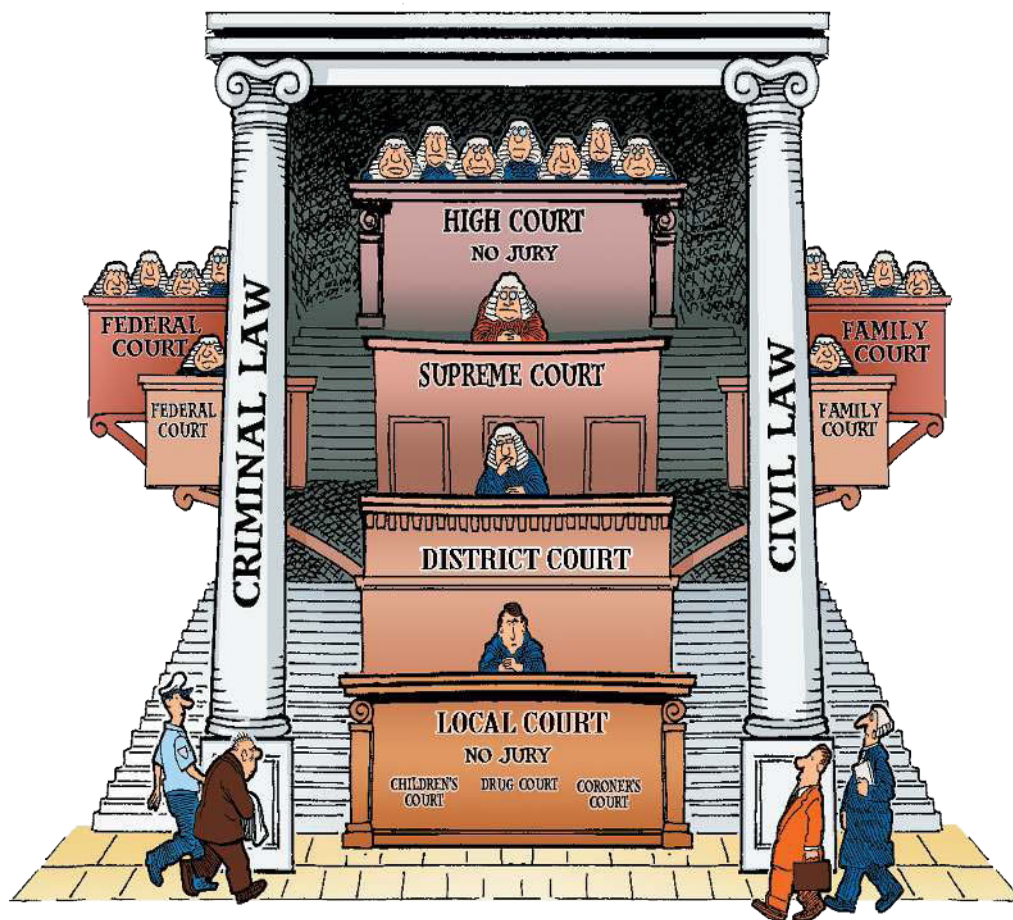
4.4 Australia's court system

4.4.1 Court hierarchy

If you break a minor rule during a lesson, your teacher will decide your 'guilt' and 'punishment'. For a more serious classroom offence, either your Year coordinator or the deputy principal will deal with the matter. For very serious offences, you will be sent to the principal. The court system operates under a similar **hierarchy**, which also relates to the seriousness of the offence. The higher courts, which hear the most serious matters, are at the top of the hierarchy, and the lower courts, which hear less serious matters, are at the bottom of the hierarchy. Each court deals, therefore, with specific legal matters over which it has authority or jurisdiction. Consequently, each court becomes 'expert' in dealing with a particular area of law.

In criminal cases, the higher courts deal with the most serious crimes. In civil cases, the higher courts hear cases that will affect many people or involve large sums of money. If an individual is unhappy with the ruling of a lower court, they can **appeal** the decision and have their case reviewed in a higher court. A serious issue facing our society is the cost of a **trial**, which becomes more expensive if the trial is held in a court that is higher up the hierarchy.

The Australian court hierarchy — the court system filters cases according to their seriousness.



4.4.2 The Local Court (bottom tier)

The Local Court is at the bottom of the hierarchy. There are over 160 Local Courts in New South Wales. All criminal cases and more than 90 per cent of civil cases begin in the Local Court. In the Local Court there is no **jury**. Instead, it is a **magistrate** who hears the cases, decides the verdict and sets any punishment. A magistrate can imprison an offender for up to two years per offence, or a maximum of five years. Magistrates are qualified legal practitioners who have many years experience in dealing with legal matters.

The Local Court deals with minor civil disputes; for instance, where people **sue** other people for damage to property or for injury claims of up to \$100 000. This court also hears summary offences (minor criminal matters) such as stealing, drink-driving, assault, possession of drugs and indecent language.

A magistrate also presides over **committal hearings** dealing with **indictable offences** (major criminal matters) such as armed robbery, manslaughter and homicide to decide if there is enough evidence for the case to go to trial in a higher court. A magistrate also:

- hears **bail** applications
- issues arrest warrants and search warrants
- hears applications for Apprehended Violence Orders (AVOs).

Two other specialist courts on the same bottom level of the court hierarchy as the Local Court are the Children's Court and the Coroner's Court.

Inside a Local Court



4.4.3 The District Court (third tier)

The District Court is the 'middle court' in the state legal system. They are located in Sydney and in larger regional centres. In the District Court of NSW, cases are heard by **judges**. District Court deals with more serious civil cases for claims over \$100 000 up to \$750 000 and all motor vehicle accident cases. Its criminal jurisdiction deals with serious criminal matters such as armed robbery and manslaughter. In some cases a jury will decide whether the accused is guilty or not. If the accused is found guilty, the judge will decide on an appropriate sentence. The District Court also hears appeals from the Local Court.

4.4.4 The Supreme Court (second tier)

The Supreme Court is the highest in NSW and deals with the most serious criminal cases such as murder, treason and serious sexual assault. As well, the most serious civil cases involving more than \$750 000 are heard in this court. The Supreme Court is located in Sydney and headed by the Chief Justice. However, the judges of the Supreme Court (and of the District Court) hold sessions of their courts in major regional centres. This is known as 'going on circuit'. The Supreme Court also deals with

A District Court



appeals from the two lower courts. The judgements of the Supreme Court are binding (compulsory) on all lower courts. The Supreme Court can impose a wide range of sentences.

This man is suspected of murder. He will most likely be refused bail before he appears in the Supreme Court.



The Supreme Court of NSW



4.4.5 The High Court of Australia (top tier)

Located in Canberra, the High Court deals with appeals from the state or territory Supreme Courts.

It also hears cases concerning the interpretation of the constitution; that is the laws of which Australia is governed by. It reads, interprets and applies the Constitution and, in reaching verdicts, it creates laws that then affect the powers of parliaments. The High Court, through its interpretation of the Constitution, has shifted the balance of power away from the states and towards the Commonwealth.

Because it is the highest court in Australia, its decisions are final. The High Court is a federal court, which means that any decision it makes applies to the whole country. The High Court consists of seven judges: the Chief Justice and six Justices. The most important cases are normally determined by a full bench comprising all seven Justices, while other cases are dealt with by at least two justices. No jury is used in the High Court.

The High Court of Australia, Canberra



4.4.6 Specialised Court

Children's Court

The Children's Court deals with cases involving the care and protection of children and young people. It also deals with criminal cases concerning children and young people who committed offences when under the age of 18. This court is closed to the public and the media. The Children's Court has much the same personnel as the Local Court, but personnel in this court are specifically trained to deal with young people.

The Children's Court, Parramatta



Coroner's Court

The Coroner's Court is a special Local Court that investigates deaths by unnatural causes in order to determine the identity of the deceased and the date, place, circumstances and medical cause of death. Coroners in NSW investigate approximately 6000 reportable deaths each year. Coroners also investigate the cause and origin of fires or explosions.

Family Court of Australia

The Family Court is a specialised court that assists Australians to resolve more complex family law matters such as divorce, parenting disputes and the division of property when couples separate. In Australia, the only grounds needed for divorce is that the marriage has irretrievably broken down. This is demonstrated by the couple being separated for over 12 months.

The Drug Court of NSW

This court tries to provide long-term solutions for offenders who have been caught up in the cycle of drug use and crime by encouraging the person to become free of his or her substance abuse, gain employment and reduce the need to commit crimes to support the drug habit.

In order to be referred to this court the offender has to be eligible to the Drug Court Program. The first stage involves assessment and detoxification; during this time a personalised plan is made to cater for the individual's needs to help ensure a successful completion of the program.

The offender has to take regular drug tests and make regular visits to the courts to report on their progress. Offenders will often get applause or cheering when they report that they have gone for a day, week or month without using drugs or engaging in criminal activity.

CASE STUDY

Court etiquette

All parties who attend court are expected to follow court etiquette and behave in an appropriate manner.

Rules of court etiquette must be followed when court is sitting, such as:

- standing when the magistrate or judge enters the courtroom
- bowing or nodding to the magistrate or judge when entering or leaving the courtroom
- referring to the magistrate or judge as 'Your Honour'
- silence and no movement when the oath is being administered
- dressing appropriately. Thongs and singlets are not permitted
- no unnecessary talking, eating, drinking or reading in the courtroom
- no weapons in court
- no using cameras, mobile phones or recording devices in the courtroom
- all hats should be removed before entering the courtroom

on Resources



Digital documents Worksheet 4.2 Caught and court (doc-32701)
Worksheet 4.3 Think Pair Share on child crime (doc-32702)



Weblinks Lawlink
High Court of Australia
NSW Local Court

4.4 Activity: Research and communication

1. Imagine you are a magistrate hearing a case against a person accused of assault. What evidence would you require in order to reach a decision? To help you answer this question, collect some newspaper articles dealing with similar cases.
2. Use the **NSW Local Court** weblink in the Resources tab to find out about the role of the local court. Present a two-minute oral presentation on one area of interest.
3. Use the **High Court of Australia** weblink to name the seven justices currently on the High Court. Which one is the chief justice?

4.4 Exercise: Knowledge and understanding

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1. On a triangle divided into four equally spaced horizontal sections, name the four different levels of courts. Start with the lowest court at the bottom.
2. Why do we have different types of courts?
3. Which court can hear appeals from Supreme Court cases?
4. What is the maximum sentence that a Local Court in NSW can impose?
5. Explain the difference between a *judge* and a *magistrate*.

6. Complete the following table to show the differences between the District Court and the Supreme Court.

	District Court	Supreme Court
Location		
Civil case claim amounts	\$	\$
Types of criminal cases		
Appeals to		

7. (a) What is the role of the High Court of Australia?
(b) Explain the role of the Family Court.
8. Do you think that a court hierarchy is necessary? Why?
9. In what type of cases might a person seek an appeal?
10. In which court are the following likely to be heard?
 - (a) A murder trial
 - (b) An appeal from the NSW Supreme Court
 - (c) A hearing for a minor traffic offence
 - (d) An investigation into a suspicious death
 - (e) An armed robbery trial
 - (f) A 14-year-old boy charged with assault
 - (g) A civil dispute between business partners involving \$100 million
 - (h) A case dealing with an aspect of the Australian Constitution
 - (i) A dispute between a couple regarding who keeps the car when they are divorced
 - (j) A case involving a crime committed to support a drug habit. The accused has pleaded guilty and is wanting help with his or her addiction.
11. What is court etiquette? Outline three rules associated with court etiquette, and describe the consequences of not following these rules.
12. Use the **Lawlink** weblink in the Resources tab to examine some recent decisions of the Supreme Court. Why do you think the decisions are made public?

Fully worked solutions and sample responses are available in your digital formats.

4.5 The role of court personnel

4.5.1 Magistrate as umpire

After being arrested, you may end up in court if the police feel they have a strong case against you. If you plead not guilty, a trial will be conducted. It will take place in a courtroom. In Australia, the method of trial used is called the **adversarial system**. This means two opposing sides will present their arguments to an independent umpire; a judge or a magistrate.

Courts can be very tense places. The decisions made in them can have an enormous impact on people's lives. Courts and the officials who work in them deal with real-life dramas. While each courtroom official has a specific role to play, they are all attempting to achieve the same objective: justice. The main roles include magistrate, judge, juror, prosecutor, and counsel for the defence.

A magistrate is in charge of the lowest court, where the atmosphere is much more informal. He or she does not wear a wig or a robe, and is a qualified legal practitioner. People address a magistrate as 'Your Honour'.

After hearing the cases presented by both sides, the magistrate decides whether a person is guilty or innocent. If people are found guilty, the magistrate decides the punishment or (in civil cases) how much money to award as damages. A magistrate will refer very serious criminal offences to a higher court.

Judge as umpire — who's who in a judge's court (criminal trial)



- 1 The judge's associate is a trained lawyer who manages much of the paperwork.
- 2 Members of the public, who listen to and observe the court proceedings
- 3 Members of the media, who observe proceedings so they can report what happens
- 4 Sheriff's Officers serve summonses and provide security for the court.
- 5 The accused
- 6 Anyone whose name is on the electoral roll can be called as a juror. In a criminal case, the jury consists of 12 people. In a civil matter, only six people decide how much money should be paid for damages. In a civil trial, the jury must decide on the **balance of probabilities** whether the defendant is liable, and in a criminal trial on whether the accused is innocent or guilty **beyond reasonable doubt**.
- 7 A prison officer from the prison where the accused has been held
- 8 In criminal cases, the counsel for the defence represents the accused, the **defendant**. If the accused pleads guilty, the counsel for the defence presents arguments to try to lessen the punishment. If the accused pleads not guilty, defence counsel must convince the judge or jury that their client is innocent. In a civil case, the counsel for the defence attempts to convince a judge (and occasionally a jury) that no wrong has been committed. If successful, the accused does not have to pay damages.
- 9 In criminal cases, the **prosecutor** has to convince the jury that a person is guilty. This is done by asking questions of witnesses to draw out relevant information. In civil cases, a barrister will act on behalf of the **plaintiff**. Their role is to present reasons why their client should receive compensation.
- 10 Witness box, from which people give evidence
- 11 The tipstaff helps the judge keep order in the court.
- 12 The judge is addressed as 'Your Honour'. He or she 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). When there is a jury, 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 or punishment.

on Resources

-  **Digital documents** Worksheet 4.4 Who's who in court — criminal court (doc-32703)
Worksheet 4.5 Five Ws (and one H) (doc-32704)

4.5 Exercise: Knowledge and understanding

To answer questions online and to receive **immediate feedback** and **sample responses** for every question go to your learnON title at www.jacplus.com.au.

1. List the main courtroom officials.
2. How many jurors are there for a civil case and how many for a criminal case?
3. Outline the role of the counsel for the defence.
4. When can a judge question a witness?
5. What is the jury's responsibility in a criminal trial?
6. What is the difference between the:
 - (a) defendant and plaintiff
 - (b) prosecutor and counsel for the defence?
7. Finish the following sentence:
The adversarial system is a bit like a game of tug-of-war because _____.

Fully worked solutions and sample responses are available in your digital formats.

4.6 The role and selection of juries

4.6.1 Role of the jury

Although juries are used in less than 5 per cent of all legal cases, they are often what people find most intriguing about the law. Being on a jury is the one opportunity for the average person to play an integral part in the operation of the legal system.

CASE STUDY

Interview with a juror

Interviewer: How did you find out that you had jury duty?

Alex: I got a letter from court officer, Sheriff Arujave, informing me that I had been randomly selected for jury duty.

Interviewer: Were you excited about being selected for jury duty?

Alex: While the idea of being responsible for making a decision about someone's guilt or innocence may be a bit exciting, I have found that it is harder than I imagined it would be. It is not easy to make a group of 12 people agree on a verdict, because we all have different opinions! It is very time consuming and has taken longer than I thought.

Interviewer: What happens if you can't make a decision?

Alex: We are close to having a hung jury; meaning that we are unlikely to get to a decision that all people are happy with. If we don't make up our minds soon the judge will order a new trial.

A juror



A jury is made up of ordinary people whose main role is to be independent and decide on the facts of the case. Jurors must decide what they believe actually happened according to the evidence they have heard. In a civil trial they must decide on the *balance of probabilities* whether the defendant is liable, and in a criminal trial on whether the accused is innocent or guilty *beyond reasonable doubt*. To do this effectively, jurors must be able to:

- listen to all the facts of the evidence, and remember and understand them
- decide what they believe actually happened according to the evidence they have heard
- put aside their own prejudices or bias
- be fair and impartial

- understand points of law the judge explains
- deliver a verdict on the guilt or innocence of the accused in a criminal trial, or decide if a party is liable in a civil trial.

COMFACT

Some people can be exempt from jury duty because of their occupation. These include practising doctors, dentists, clergy and emergency workers.

Other reasons that you could apply to be excused from jury duty are financial hardship, personal opinions or knowledge of the case, family issues, or physical or mental disabilities.

Having a criminal record could also make you ineligible for jury duty.

CASE STUDY

A little snooze

One man used his jury duty as an opportunity to catch up on some extra Zs.

The assault trial of two bouncers was aborted on the second day, after the judge noticed that the man had been dozing off. Before discharging the jury, His Honour stated, 'One of your number has not been paying attention ... we are concerned the juror may not be able to give a proper verdict.'

A similar incident occurred in the NSW Supreme Court, where a juror in a murder trial was discharged after he continued to fall asleep in the jury box. The frustrated judge told the man to pack up and go home after he turned up late to court, following days of sleeping on the job. This might have been a way to get out of jury duty, but it was also an enormous waste of court time and resources.

Source: <https://downingcentrecourt.com.au/blog/jurors-behaving-badly-in-downing-centre-court/>



4.6.2 Empanelling a jury

Once the jury panel is in the courtroom, empanelment, which is the process of selecting a jury, begins. Potential jurors must walk past the accused and his or her counsel, as well as the prosecution. This is so counsel can look at them and decide whether they are the type of people they want on the jury. They have from the time each juror stands until he or she reaches the jury box to make a challenge.

4.6.3 Arguments for and against the jury system

Some people say that juries are the best and most accepted method to use in a trial. Others argue that they are outdated and prejudiced, and should be replaced with either trial by judge alone or professional, specialist jurors.

A jury being sworn in



Arguments for the jury system	Arguments against the jury system
1. A jury is a cross-section of society and therefore reflects society's values and attitudes.	1. Because some people are exempt from serving, the jury is not a true cross-section of society.
2. There is widespread acceptance of the jury system.	2. Ordinary people may not understand complex legal technicalities.
3. The final decision is made by more than one person.	3. Juries do not have to give reasons for their decisions.
4. Juries are independent and impartial decision makers who are not controlled by the government.	4. Juries can be persuaded by the skills of clever lawyers.
5. Ordinary citizens are given the opportunity to play an active role in the administration of justice.	5. It is difficult for people to remain completely impartial, especially if they are influenced by the media coverage of the trial.
6. It provides an opportunity for the community to understand the final decision.	6. It costs a lot of money to operate and the jury selection process can be time consuming.
7. It reduces the possibility of bribery or corruption which might occur if only one person is to decide the outcome of the case.	7. Jurors could be biased and may be influenced by their own personal prejudices.

4.6 Activity: Research and communication

- Under the American legal system, juries are allowed to publicly discuss the reasons for their decision after a case has finished. Should this be allowed under the Australian legal system? In small groups, discuss.
- In some nations, trials are televised. Investigate the advantages and disadvantages of this using the internet.

4.6 Exercise: Knowledge and understanding

To answer questions online and to receive **immediate feedback** and **sample responses** for every question go to your learnON title at www.jacplus.com.au.

- What is the role of the jury?
- Distinguish between the standard of proof required for a civil trial and a criminal trial.
- In a criminal matter, what do the jurors decide?
- In a civil case, what are juries mainly concerned with?
- Who may be called upon to do jury duty? What exemptions are there to this?
- Explain the difference between a *majority verdict* and a *unanimous verdict*.
- What is a hung jury and what effect does it have on a trial?
- From the list in section 4.6.3, select the most important advantage and disadvantage of the jury system. Give reasons for your selection.
- Why does a criminal trial require a higher standard of proof than for a civil trial?
- Read the case study 'A little snooze'. What is your opinion about the jurors who were sleeping in the court instead of listening to evidence?

Fully worked solutions and sample responses are available in your digital formats.

4.7 How laws are made: common law

4.7.1 The beginnings of common law

There are two ways of making laws. Laws that are written down beforehand are called **statute law**, or Acts of Parliament. Laws can also be developed piece by piece by judges, as they come across new problems in the cases they hear. These laws are referred to as **common** (judge-made or case) **law**. In Australia, the law is a combination of both common and statute law.

The justice system in England and Australia is based on common law. When Henry II became King of England in 1154, in medieval times, people were tried at a number of different courts. Most had to prove their innocence through trial by ordeal or trial by combat. Henry II decided his people should all have the opportunity for royal justice (that is, the justice of the king's court). Though the other courts continued, the king's court began travelling around, hearing cases. Judges started keeping records of their decisions, referring back to them when hearing similar cases.

Trial by ordeal



4.7.2 Common law

Common law today continues to mean the decisions given by judges. It may occur because a judge has to decide on a case where there is no existing law that regulates it. Consequently, it is up to the judge to make a decision. A record of these decisions will be placed in books called *Law Reports* so that they can be referred to when needed. These decisions are known as legal **precedents**.

Judges do not deliberately attempt to change or make a law but this may happen as they try to resolve the dispute before them.

4.7.3 Precedent

If your uncle gave your eldest sister a new phone for her eighteenth birthday, you might expect to receive a phone for your eighteenth birthday, or at least a present of equivalent value. This is because your uncle set a precedent and you expect to be treated the same. Precedent works the same way in law.

Traditionally, judges will give similar decisions in cases that are alike. This is known as the act of precedent. Precedent helps the legal system achieve fairness and justice as similar cases are dealt with in the same way.

If there is no existing relevant law, judges can create a new rule to settle a dispute.



4.7.4 Statutory interpretation

Courts also make laws when they interpret (decide on the meaning of) words in a law made by Parliament. Laws made by Parliament often use complicated language. This language is used in an attempt to fully explain what the law means, and to try to cover all the possible situations to which the law is relevant.

Although only Parliament can change the wording of a law, when a court interprets a word, this new meaning applies as law from then on. The principle of precedent applies to interpretation as well. Therefore, once a judge decides on the meaning of a word or phrase, that meaning becomes law and must be followed by other judges in lower courts.

Judges use a variety of methods to help them interpret the meaning of words in statutes.



CASE STUDY

Dr Grant's itchy underpants

In 1936, Dr Grant of Adelaide purchased a pair of knitted underpants from a retailer.

The underwear was contaminated with a chemical residue and after wearing them Dr Grant developed dermatitis, a skin irritation, which caused him great discomfort and pain.

At that time, there was no law stating that a manufacturer must produce a good suitable for the purpose for which it is being sold. Dr Grant sued the manufacturer of the underwear, Australian Knitting Mills, for compensation for suffering, relying on a decision made in a previous case in a higher court. This case, *Donoghue v. Stevenson* (1932), involved a woman who, after drinking some cordial from an opaque green bottle, noticed the rotting remains of a decomposed snail at the bottom. She became violently ill and successfully sued the drink manufacturer for injuries. Where, after all, was the rest of the snail?

She was the first person in our legal system to successfully use the duty of care principle for an action of negligence.



Resources



Digital document Worksheet 4.6 Learning legal terminology (doc-32839)

4.7 Activity: Research and communication

1. Conduct a class discussion, the topic being: 'Courts should determine all cases on their merit and should not have to follow precedent'. Compile a list of the main points on the board.

4.7 Exercise: Knowledge and understanding

To answer questions online and to receive **immediate feedback** and **sample responses** for every question go to your learnON title at www.jacplus.com.au.

1. What is the difference between *statute law* and *common law*?
2. How did common law begin?
3. What is the purpose of the *Law Reports*?
4. What is meant by the term 'precedent'? How does precedent help the legal system achieve fairness and justice?
5. Explain how courts use statutory interpretation to create new laws.
6. Provide two examples of precedents that are used in your classroom or family. What is the advantage of having such precedents?
7. In small groups, read the information about Dr Grant and then answer the following questions:
 - (a) Which case was used as a precedent?
 - (b) Explain how precedent assisted Dr Grant in winning his case.
 - (c) Why might the court in Dr Grant's case be bound by the decision of the *Donoghue v. Stevenson* case? After all, they were about different things — snails and underpants.

Fully worked solutions and sample responses are available in your digital formats.

4.8 How laws are made: statute law

4.8.1 The beginnings of parliament

Our parliamentary system of government originated in England. In 1215, King John was forced by his barons to sign a document called the Magna Carta. He promised to call up all his lords by name (to discuss important matters) and to have ordinary people elected to similar meetings in certain communities. His actions gave rise in time to what are known today in England as the House of Lords and the House of Commons.

These meetings of lords and commoners were first referred to as 'parliaments' in 1236 (from the French word *parler*, meaning 'to speak'). They were usually held to discuss the king's need for extra taxes. At this stage, the king always had the final say.

By around 1350, parliaments were divided into two groups. The lords met in a separate place (or 'house') to the elected community members. In 1407, Henry IV decided that the community members (House of Commons) had to approve requests for grants of money before these requests were considered by the lords (House of Lords). By the fifteenth century, formal requests of the House of Commons, known as bills, were part of the law-making process.

A twentieth-century illustration showing King John reluctantly signing the Magna Carta



4.8.2 Statute law

In Australia, the laws created by parliament have the highest status and must be obeyed by all people. Parliament makes most of the laws. We have one parliament at the federal level that makes laws on issues that affect the whole country. This is the Federal or Commonwealth Parliament situated in Canberra. Each state and territory has its own parliament. The New South Wales Parliament, situated in Macquarie Street, Sydney, makes laws that are applicable to New South Wales only. The State Parliament delegates some of its law-making power to local councils, which look after areas in which people live. Once each law has been passed, it is binding on all courts and judges. Most laws in Australia are made this way.

Parliament is often referred to as the supreme law-making authority because it can virtually make laws on whatever it likes, change laws when it wants to and pass an Act to overcome the effects of precedent. Statute law will always succeed over common law and no court has the power to change it. The only exception is the High Court, which has the power to overturn a law, but only if it is unconstitutional.

COMFACT

Laws made by parliament are also called Acts, statutes and legislation.

Parliaments can make new laws and change existing ones.

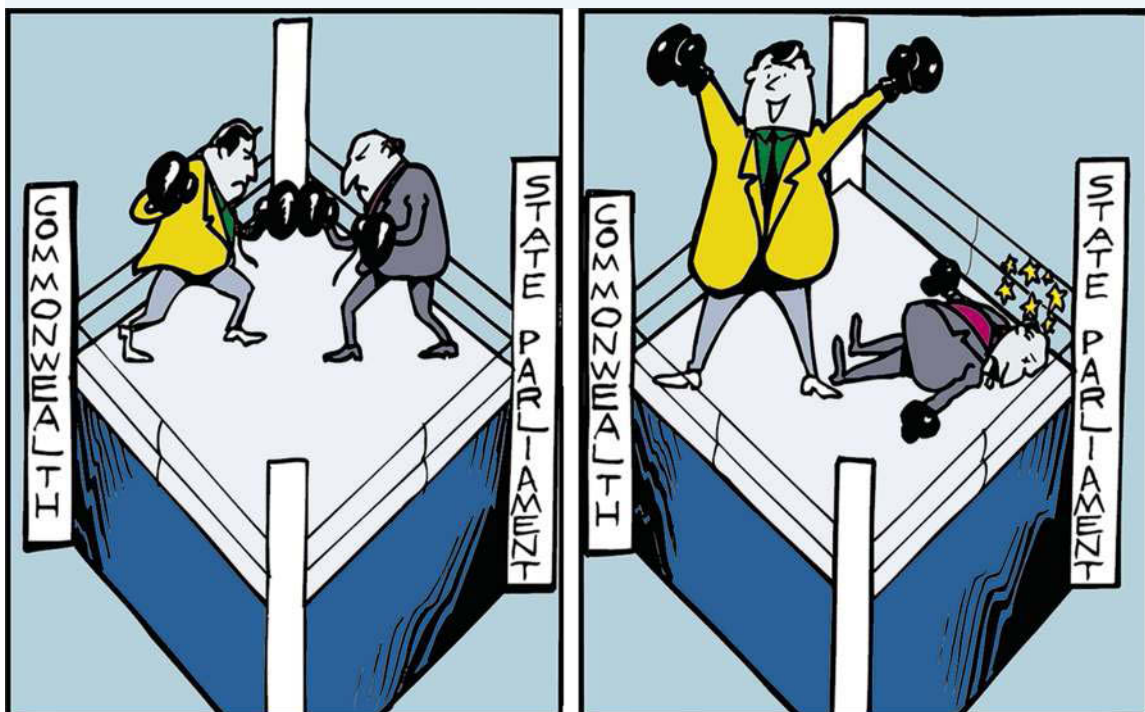


4.8.3 Federal and state constitutions

Each parliament has a **constitution**, which is a document that outlines the powers of the parliament and any restrictions to its law-making authority. The constitution, therefore, is essentially the rulebook for how a parliament is to operate and a country be governed. The Australian Constitution limits the powers of the Federal Parliament. State Parliament is restricted by the state's Constitution and, to some extent, the Australian Constitution as well.

The state governments retain the power to make laws *unless* the Constitution hands this power to the Australian government. There are sometimes disagreements between the Australian and state governments over who has the power to make laws on certain issues. For example, should areas of World Heritage be under state or federal control? When such disagreements occur, the matter is decided by the High Court. The Australian Constitution (Section 109) outlines that if there are any inconsistencies between Commonwealth and state legislation then the Commonwealth laws will apply.

If there are inconsistencies between Commonwealth and state law, Commonwealth law will apply.



4.8 Activity: Research and communication

1. Find an example of a constitution that affects you. It might be the constitution of your SRC, School Council or a sporting team. Use a word-processing application to present some of the important sections of the document. Be sure to include:
 - (a) the name of the group represented by the constitution
 - (b) any specific rules
 - (c) the procedures involved in altering the constitution
 - (d) any powers conferred to others.
2. Find a news article that reports on a new law being made by parliament. Underline the key words and write a brief summary of this report and present it to the class.
3. Use the **Constitution** weblink in the Resources tab to see the Australian Constitution. What do sections 28, 68 and 96 of the Constitution refer to?

4.8 Exercise: Knowledge and understanding

To answer questions online and to receive **immediate feedback** and **sample responses** for every question go to your learnON title at www.jacplus.com.au.

1. Draw a timeline and record the significant events in the early beginnings of parliament.
2. Where does the word 'parliament' come from? Why is it appropriate?
3. List the three levels of government that have law-making powers.
4. Why is parliament often referred to as the supreme law-making authority?
5. Who may overrule a statute law? What is the only reason this may occur?
6. What is the purpose of a constitution?
7. Which court has the power to settle disagreements concerning constitutional issues?
8. Why do you think Section 109 was written into the Australian Constitution?

Fully worked solutions and sample responses are available in your digital formats.

4.9 How a bill becomes a law

4.9.1 Making laws

There are very definite procedures for how laws are made or changed. Before any proposed laws can become Acts of Parliament, they have to be debated and passed by parliament, and then approved by the Executive Council, the head of state and selected government ministers. During the debate, the government explains why the law is needed and why it will be good for Australia. The Opposition tries to argue why this is not the case. Let's see, step by step, how all of this happens in Federal Parliament.

STEP 1

A proposed new law, or changed law, is discussed in **Cabinet**. Often, people in Australia put pressure on the government to change something. A decision is then made on what to do.

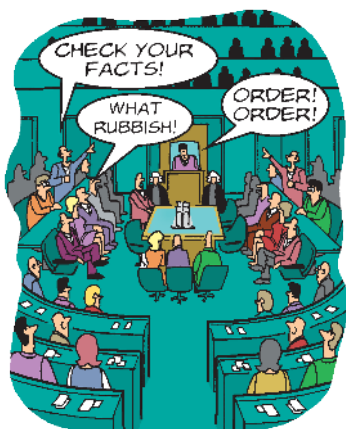


STEP 2

If the government decides to proceed, government lawyers are asked to draft a bill. A bill is basically a 'first draft' of an Act of Parliament.

STEP 3

Copies of the bill are given to all members of the House of Representatives. The members read the material in their own time. This is known as the 'first reading'.



STEP 4

The bill goes through a 'second reading'. During this stage, the responsible minister (for example, the Minister for Immigration if the bill is to do with migrants) describes the main purpose and likely benefits of the bill. Speakers from the Government and Opposition say what they think about it. Debates may take weeks. Then there is a vote. If the majority vote in favour, the bill moves to the next stage.

STEP 5

The bill is debated again, this time bit by bit. This stage is known as the committee stage, as the debate occurs in parliamentary committees. Changes to the bill may be made.

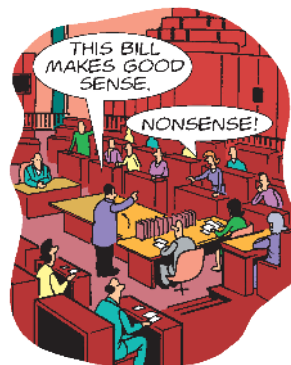
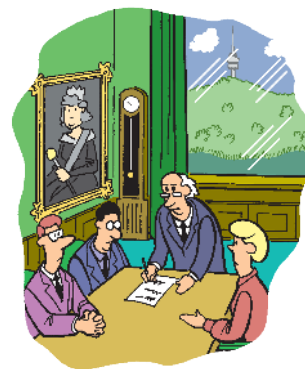


STEP 6

The bill, including any changes made during step 5, goes through a 'third reading' in the house. A vote is taken. If the majority vote for it, the bill is passed through to the Senate.

STEP 7

Similar processes to those outlined in steps 3 to 6 occur in the Senate. If the Senate decides to change something, the bill is referred back to the House of Representatives for another debate and vote. Sometimes the Senate may refuse to approve a bill. If it is a money supply bill, the Governor-General calls a **double dissolution** of parliament (as the government cannot govern without money). If the Senate votes to approve the bill, it is sent to the Governor-General for royal assent.



STEP 8

The Governor-General meets with a select number of government ministers in a meeting of the Executive Council. If he or she approves and signs the bill, it becomes an Act of Parliament. It is now legally binding for all Australians.

on Resources



Weblinks Role-plays

Australian Parliament videos

4.9 Activity: Research and communication

1. Use the internet to find the difference between a bicameral and a unicameral parliament.
2. Use the **Role-plays** weblink in the Resources tab to select one or more of the role-plays and act them out.

4.9 Exercise: Knowledge and understanding

To answer questions online and to receive **immediate feedback** and **sample responses** for every question go to your learnON title at www.jacplus.com.au.

1. Explain the difference between a bill and an Act.
2. Explain the 'readings' a bill has to go through before it becomes an Act of Parliament.
3. Who is the last person to sign a bill so that it can become an Act of Parliament? Who is this person at the moment?
4. What is meant by the term 'double dissolution'?
5. Explain some possible advantages of an Act having to pass two houses of parliament and not one.
6. Why do you think it is so important for a bill to be debated so often?
7. Would you say the process by which laws are made in Australia is fair? Does it give full opportunity for the people, through their elected representatives, to have their say? Justify your answer.

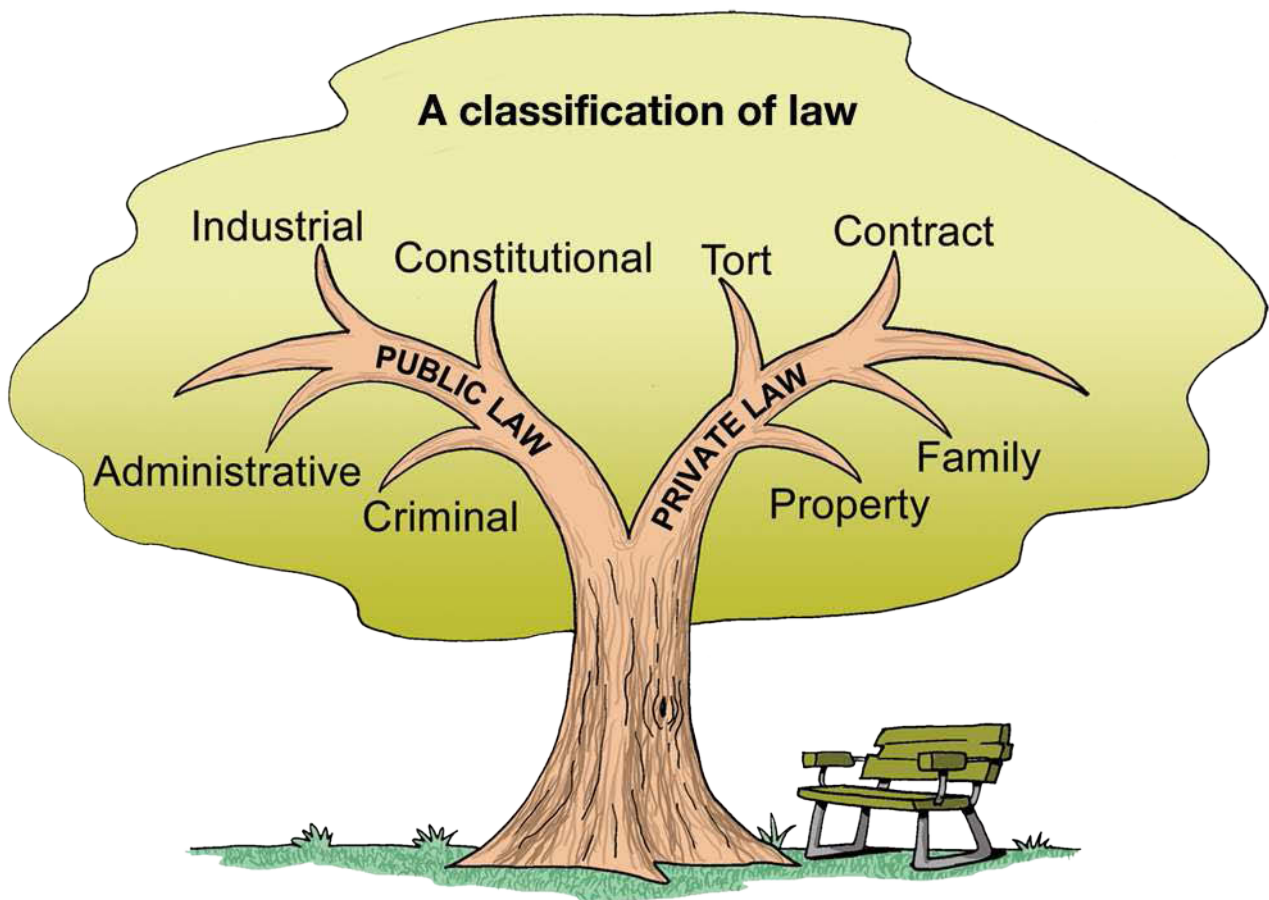
Fully worked solutions and sample responses are available in your digital formats.

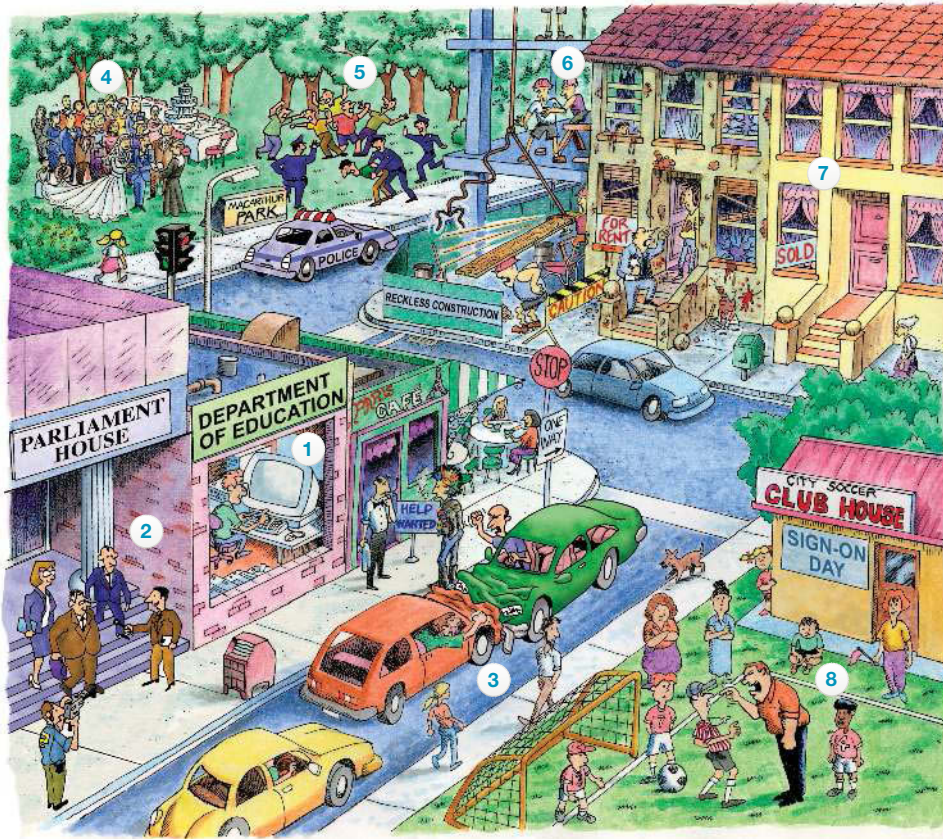
4.10 Types of law

4.10.1 The two branches of the law

There are two main ways of classifying the law: private and public law. **Private law** deals with how individuals interact with other individuals as well as the rights and duties people have towards each other. **Public law** is concerned with regulating people's behaviour within society as a whole and protects the freedom of individuals. It also deals with the conduct society expects from its government (the state). Private and public law have a number of branches.

The two branches of the law





1 Administrative law

Administrative law deals with the decisions and powers of these government departments. This law allows courts to review and change the decisions of government if necessary.

2 Constitutional law

This set of laws deals with the rules by which a country is governed. It is concerned with the powers and authority of parliament; the rights of each citizen; the powers between the federal and state governments.

3 Contract law

This set of laws is concerned with legal agreements between two or more people. If one party fails to carry out his or her side of the agreement, that person can be sued for breach of contract.

4 Family law

This law regulates family relationships. It sets out rules about the process of getting married; who can get married; de facto relationships; divorce; custody and other aspects involving family members.

5 Criminal law

Criminal laws are needed to keep the community safe from harm, to provide for an orderly society and to provide a way of dealing with a crime when it occurs. Offenders will be punished if they choose to put people and property at risk.

6 Industrial law

This law is concerned with the rights and obligations of employers and employees. Much of the law deals with the legal way of resolving industrial disputes, workers' compensation, occupational health and safety, and discrimination in the workforce.

7 Property law

This law recognises two broad types of property: real property (land and buildings) and personal property (goods and services we purchase). Specifically, property law provides regulations about the sale, leasing and hiring of property.

8 Tort law

The law of **tort** deals with situations when one person infringes the rights of another, resulting in distress or injury; for example, the mental distress caused by being bullied. The person injured may claim financial compensation from the other party for any loss suffered.



4.10 Activity: Research and communication

1. (a) Using the internet or other methods, collect and paste into your notebook three stories that deal with one of the branches of law that interest you.
- (b) Select one article and prepare a dot point summary of the content.
- (c) Outline what most interested you in this particular article.

4.10 Exercise: Knowledge and understanding

To answer questions online and to receive **immediate feedback** and **sample responses** for every question go to your learnON title at www.jacplus.com.au.

1. Outline the difference between *private* and *public* law.
2. What is meant by the term 'tort'?
3. Which branch of the law mainly applies in each of the following situations?
 - (a) Manuela purchases a diary from a newsagent.
 - (b) Two armed robbers hold up a bank.
 - (c) Shanii and Angelo announce their engagement.
 - (d) Mr Preston disagrees with the decision made by his local government planning department and wants it changed.
 - (e) The Concerned Action Group wants the federal government to take control of the state national park in their area.
 - (f) Joe Zappadi tells his eight employees who are on strike that he will not agree to their demands.
 - (g) Kristin Wroe, a real-estate agent, sells a factory to Letitia Chung.
 - (h) Moshe reverses his car and accidentally scrapes the door of the parked car next to him.
4. Why do you think the law has been divided into different branches?
5. Joanne is fed up with the loud music coming from her neighbour's house. Do you think she should have the right to:
 - (a) make a complaint or
 - (b) sue?
 Give reasons for your answer.

Fully worked solutions and sample responses are available in your digital formats.

4.11 Civil law

4.11.1 Protecting our individual rights

Civil law, is part of private law, deals with non-criminal matters. It allows an individual to bring actions against other members of the public for a civil wrong done to them. It plays an important role in the creation and protection of our individual rights.

The two main areas of civil law are the law of tort and contract law. The law of tort includes:

- negligence — where a person fails to take reasonable care and, as a result, injures another person
- defamation — where a person injures another person's reputation
- nuisance — where a person causes unreasonable interference with another person's right to quiet enjoyment of their property
- trespass — where a person interferes with another person, or that person's property rights.

Civil law gives the person whose rights have been infringed (the plaintiff) the ability to initiate action to sue the wrongdoer (the defendant). Where a civil wrong is successfully proven in court, the wronged party will seek money as compensation.

In civil cases ...



the injured person sues ...



and can receive compensation.



Sometimes the judge decides that the plaintiff is in the wrong and can order him or her to pay the defendant's costs. Alternatively, the judge can look at contributory factors in the case. For example, it might be determined that the plaintiff was held partly responsible, say 40 per cent, and the defendant 60 per cent responsible for the injury that has occurred. In such a situation the damages are reduced accordingly. In civil cases juries are optional, but if one is used, it is their role to determine both the outcome and the amount of damages. Not all civil cases end up in court. Often the parties reach an out-of-court settlement.

Following are some Australian civil law cases.

CASE STUDY

Defamation

In September 2017, Australian actress Rebel Wilson was awarded A\$4.5 million in damages, after a court found that Bauer Media had defamed her in some magazine articles that were published in 'Woman's Day' and 'The Australian Women's Weekly'. Wilson claimed that the stories, which accused her of lying about her age, name and other personal details, were inaccurate, damaged her reputation and caused her to lose acting roles. Bauer Media won during an appeal and Ms Wilson was forced to repay A\$4.1 million, as the compensatory damages were reassessed to A\$600 000.



CASE STUDY

Sexual harassment

Between 2008 and 2010, Kate Mathews was subjected to repeated sexual harassment while working for Winslow Constructions. Her supervisors laughed at and ignored her complaints. As a result of her treatment, Ms Mathews now suffers from several chronic psychiatric illnesses, including post-traumatic stress disorder, bipolar disorder, anxiety and depression. In 2015 she was awarded \$1.3 million in personal injury damages by the Victorian Supreme Court.



CASE STUDY

Negligence

Tony Caccavielo, a grape grower, was awarded \$7 million for damages after a cloud of chemicals (all deadly to grapes) blew across his vineyard from a neighbour's property. The money was to enable the land to be rehabilitated and the vineyard to be re-established. It also represented compensation for the loss of grape sales as the new vines were growing.



CASE STUDY

Workplace injury

Nicole Harris, a 34-year-old part-time Coles worker, was awarded over \$1 million in damages as a result of injuries she suffered after falling from a safety step while straightening stock on shelves at a supermarket. The injuries were to her hip, knee, ankle and shoulder. As a result of the injuries, she uses a walking stick, is unable to drive, cannot sit or stand for extended periods and is unable to perform some simple household tasks.

Justice Linda Ashford stated she felt there had not been sufficient training, supervision or monitoring of staff using the safety step.



CASE STUDY

Sporting injury

Not all negligence cases are successful in their action, particularly when a person voluntarily agrees to take part in a contact sport knowing that it has obvious risks. There is, for example, a real risk of being bumped and injured while playing football. Two rugby players, Luke Hyde and Peter Worsley, suffered spinal injuries in separate rugby union games. On appeal from the NSW Supreme Court, the High Court found that the two players knew about and understood the dangers of playing rugby and by agreeing to play had consented to the risks. Therefore, they could not recover any damages.



4.11 Activity: Research and communication

1. In small groups, discuss whether you agree or disagree with the decisions in the five case studies of civil law. Give reasons for your answer.

4.11 Exercise: Knowledge and understanding

To answer questions online and to receive **immediate feedback** and **sample responses** for every question go to your learnON title at www.jacplus.com.au.

1. What is the purpose of civil law?
2. What are the two main areas of civil law?



3. List the four most common torts.
4. Explain the difference between *plaintiff* and *defendant*.
5. Ben is awarded \$200 000 in compensation. However, the court decided that he contributed to his injuries 25 per cent. How much will Ben receive in his final payout?
6. Indicate whether the following statements are TRUE or FALSE:
 - (a) The term 'defendant' refers to the person who is claiming his or her civil rights have been breached.
 - (b) The most common remedy in a negligence case is an award of damages.
 - (c) Often, the parties in civil cases reach an out-of-court settlement.
7. Why do you think the most common remedy in civil cases is an award of damages?
8. Give an example of where one person might infringe the rights of another:
 - (a) on the roads
 - (b) in a theatre review
 - (c) as a neighbour and
 - (d) in a restaurant.
9. Rearrange the following steps (a to d) in a logical order:
 - (a) plaintiff suffered damage
 - (b) duty of care owed
 - (c) compensation awarded
 - (d) failed in duty of care.

Fully worked solutions and sample responses are available in your digital formats.

4.12 Criminal law

4.12.1 Crime

In simple terms, a crime involves behaviour that is considered by the state to be unacceptable, deserving of prosecution, conviction and punishment. From ten years of age, a person can be prosecuted for committing an offence. This is considered the 'age of criminal responsibility' when the offender knows the difference between right and wrong.



Serious crimes, such as armed robbery, homicide, child abuse, murder and sexual assault, are called indictable offences. These offences are heard in the District and Supreme Courts. For these offences, the guilt of the defendant is determined by a judge and jury.

Less serious crimes, such as minor assaults, petty theft, vandalism and traffic infringements, are called summary offences. They are dealt with relatively quickly and cheaply by a magistrate in a Local Court.

The purpose of criminal law, which is part of public law, is to protect individuals from others doing the wrong thing; to make the community feel safe from harm. If, for example, a person went around killing other people or stealing their property, and was not punished, people would live in fear.

Under our system of criminal law, if a person commits a crime, the police force and the judiciary are the way in which the state (society) deals with criminal behaviour. During the court case the accused will have the opportunity to tell their side of the story. If they are found guilty, they will be punished with either a fine, court order/or imprisonment.

Following are some Australian criminal law cases.

CASE STUDY

Murder

Ian Turnbull, 81 years old, was sentenced to 35 years imprisonment for murdering NSW environment officer Glen Turner at Croppa Creek near Moree in 2014. Turnbull had been facing prosecution for illegal land clearing. Supreme Court Judge Peter Johnson stated that this was a de facto life sentence (a sentence term that exceeds the defendant's life expectancy) due to Turnbull's age.

The court had heard that Turnbull had admitted to taking his rifle and firing several shots at Mr Turner over a 20-minute period.



CASE STUDY

Arson, murder and manslaughter

Adeel Khan was found to have deliberately set fire to his shop in Rozelle in an attempt to claim \$225 000 in insurance. He took 10 plastic containers of petrol and placed fuel soaked cloth between them and then set fire to them. The resulting explosions and fire killed three people and injured several others who lived in neighbouring apartments.

Khan was convicted of one count of murder, two counts of manslaughter, causing grievous bodily harm, wounding and destroying a building for financial gain. In total he was sentenced to a maximum of 40 years in prison. He is not eligible for **parole** until 2044.

In her sentencing remarks, Supreme Court Justice Elizabeth Fullerton stated, 'I am satisfied beyond reasonable doubt that the offender's motivation in planning for and deliberately setting and igniting the fire was personal financial gain'.



CASE STUDY

Fraud

Bryan Pereira was an executive for the Australian ASX-listed company Coca Cola Amatil. He was sentenced to six years imprisonment with a **non-parole** period of four years after pleading guilty to a number of fraud charges. The charges related to using his corporate credit card for overseas trips, and for purchasing jewellery, gifts and accommodation. He also received a Mercedes-Benz valued at \$180 000 and over \$1.5 million in bribes.

When sentencing Pereira, NSW District Court judge Mark Williams stated that his crimes were an abuse of trust and motivated by greed. He also stated that because Pereira had pleaded guilty, he had reduced his intended 10-year sentence by 40 per cent.



CASE STUDY

Embezzlement

Caroline Portolesi, aged 38, was the Maroubra branch manager of the NSW Department of Family and Community Services (FACS). As part of her role, she needed to organise and pay for services such as cleaning and home care for people with disabilities. In February 2016, she was sentenced to 19 months home detention after pleading guilty to obtaining financial advantage by deception. Portolesi used a stolen identity to set up a fraudulent business, Esay Cleaning Services. She then used that business to invoice FACS for work that was never performed. The amount embezzled was nearly \$180 000, with the money used to fund a severe gambling addiction. In deciding on home detention and not a prison sentence, Magistrate Lisa Stapleton accepted submissions relating to Portolesi's gambling addictions and complex mental health issues.



CASE STUDY

Assault causing death

Hugh Garth was convicted of unlawful assault causing death. District Court judge Antony Townsend sentenced him to 10 years imprisonment with a non-parole period of eight years. The court heard that while at a 21st birthday party, an intoxicated Garth punched Raynor Manalad, causing him to fall to the ground unconscious. Manalad, a 21-year-old nurse, died the next day in Westmead hospital after suffering extensive bleeding on the brain. When sentencing Garth the Judge said there was a need to 'deter others being violent after drinking to excess'. Pictured is Manalad's mother, speaking after Garth is jailed for at least eight years.



on Resources

-  **Digital documents** Worksheet 4.8 Analysing graphs and statistics on crimes (doc-32706)
Worksheet 4.9 Lawyer chat (doc-32707)

4.12 Activity: Research and communication

1. (a) With reference to the five cases studies provided in this subtopic, complete the following table.

Offender's name	Offences convicted	Court involved	Sentence imposed	Your opinion of the sentence
Ian Turnbull	Murder	Supreme		
Adeel Khan				

- (b) In small groups, discuss the opinions expressed in your tables.

4.12 Exercise: Knowledge and understanding

To answer questions online and to receive **immediate feedback** and **sample responses** for every question go to your learnON title at www.jacplus.com.au.

1. Are the following statements TRUE or FALSE?
 - (a) A crime is defined as an offence against the police.
 - (b) The community expects to be kept safe from harm.
 - (c) Crimes do not affect the wider community, only the victim.
 - (d) The community expects offenders who break the law to be punished.
 - (e) Criminal laws reflect the values and morals of the community.
2. At what age can a person be charged with a criminal offence? Why is this age called the 'age of criminal responsibility'?
3. Explain the difference between *indictable offences* and *summary offences*. Provide three examples of each.
4. What is the purpose of criminal law?
5. Rearrange the following steps in a logical order.
 - (a) police investigate crime
 - (b) court imposes a penalty
 - (c) police prosecute
 - (d) criminal offence committed
6. How should society deal with children under ten years of age who:
 - (a) commit vandalism, or
 - (b) badly injure other children?

Fully worked solutions and sample responses are available in your digital formats.

4.13 Customary law

4.13.1 What is customary law?

Every country has different laws because each society has different beliefs, values and cultures, and the law has to reflect this. Even within Australia, we have different laws made by different communities. Our current laws are based on British laws brought out by the first settlers from Britain. However, laws already existed in Australia prior to this, developed by First Nations Australians and suited to their cultures.

Before the arrival of Europeans in 1788, law in Australia existed as laws passed on by word of mouth. This oral law was very important and helped maintain a stable society. It was a legal system based on customs and rituals, and varied between the approximately 600 different First Nations groups living in Australia.

Incorrectly, the early European colonists thought that Aboriginal society had no law because there were no written rules, parliaments, courts, police and prisons. However, Aboriginal peoples lived according to a complex set of customary laws that outlined the correct or appropriate way of living. A group of Elders who knew the customs administered this law and could punish offenders. When a law was broken, the person who had committed the offence (the accused) would meet in public with the person who had been affected by the conduct (the victim). Members of the community would witness the meeting. Once a penalty was decided, the community would carry out the punishment. Punishments ranged from being banished from the group to death.

Aboriginal customary law is largely expressed through the obligation of kinship.



There is no single system of Aboriginal and Torres Strait Islander law. Whilst the separate language groups developed their own laws, there were also common aspects among groups.

Aboriginal law was, and is, based on **kinship**, which links closely to traditions and customs and outlines the correct way of living in everyday situations such as marriage, education, trade and the sharing of food. Kinship is a complex system of values and culture, inextricably linked to the Land and people. The British colonists did not understand the system of kinship, which made it difficult for English law and Aboriginal law to coexist.

With the arrival of Captain Cook at Botany Bay in 1770, who took possession of ‘The Great Southern Continent’ for England, Aboriginal law was displaced and English law established. The clash between two different legal systems has caused much conflict over the years.

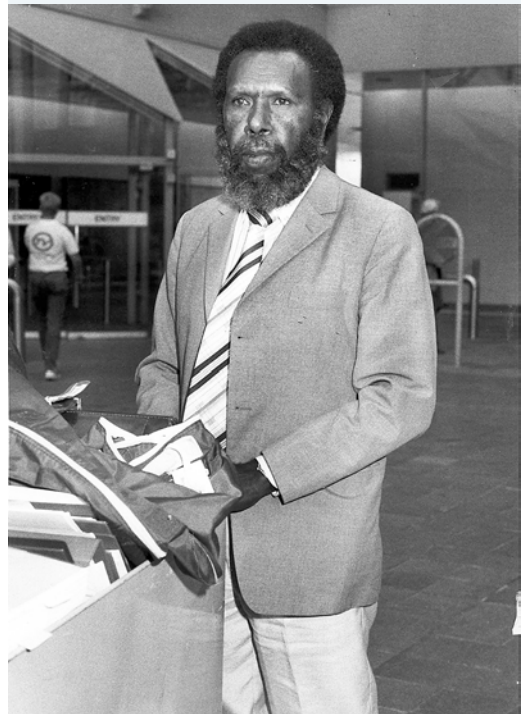
4.13.2 Recognition of Indigenous Law

Native Title Act

A growing awareness and recognition of customary law has developed with time. Of most importance is, perhaps, the acknowledgement that Captain Cook and the British were incorrect in claiming Australia as *terra nullius* even though it was already inhabited. At the time, the British did not recognise the Aboriginal peoples as having any legal title over the land because they had no written laws of land tenure, as existed in European countries. However, in 1982, this notion was challenged by Eddie Mabo, a Meriam man of Murray Island in the Torres Strait.

Mabo began legal action against the State of Queensland, claiming that he and his people were the legal owners of Murray Island. Mabo was joined in this action by a number of other Meriam inhabitants of Murray Island. The High Court decided in favour of the Islander plaintiffs and declared that: ‘The Murray Islanders of the Torres Strait are entitled, as against the whole world, to possession, occupation and enjoyment of the lands of the Murray Islands.’ The Meriam people of Murray Island were able to claim native title because they were able to demonstrate ongoing occupation and use of their land. Their system of family ownership and land usage was significant because it could be clearly demonstrated that these had operated continuously since before white settlement. The Native Title Act (1993) was the first piece of Australian legislation that recognised customary law.

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



Circle sentencing

The integration of customary law in Australia’s legal system has been a hot debating topic for many decades. However, views have changed and there is a growing awareness and advocacy for the importance to First Nations Australians to have a legal system that reflects their culture. For instance, circle sentencing was introduced in NSW in 2002.

Circle sentencing was introduced to remove the barriers that existed between the Aboriginal peoples and the legal system by making the place of sentencing inclusive of cultural differences. Instead of having a magistrate hand down the sentence, circle sentencing involves getting all relevant parties together. The defendant and the victim, legal representatives, Elders from the communities and other parties that may have been affected by the crime gather to talk about what has happened and what the appropriate

punishment would be. All participants are able to have a say in the sentencing and the magistrate provides sentencing alternatives. In this way, customary law is linked to Australia's legal system, as the sentence given will still fit the Australian sentencing policies. As such, circle sentencing shows that customary law is still relevant and that it can co-exist with existing laws.

4.13 Activity: Research and communication

1. Research traditional Aboriginal laws. Explain three of these laws that are different from British Australian laws.
2. In small groups, prepare a list of the rules that you think would have been necessary in the penal colony at Sydney Cove to preserve law and order. Keep in mind that there was no regular contact with England, food was in short supply and convicts outnumbered soldiers and free settlers. Compare your list with other members of the class.
3. Set up a class debate to consider the following topic: 'Aboriginal peoples should be able to live under their customary laws if they so wish'.

4.13 Exercise: Knowledge and understanding

To answer questions online and to receive **immediate feedback** and **sample responses** for every question go to your learnON title at www.jacplus.com.au.

1. Where do Australia's laws come from?
2. Why did the British colonists not understand the Aboriginal system of law?
3. Customary law had no written record.
 - (a) How did First Nations people know what their laws were?
 - (b) How was a 'trial' of an accused person conducted?
 - (c) What types of punishment were used?
4. What is meant by the term kinship?
5. What was the outcome of Eddie Mabo's court case?
6. What impact did Captain Cook's arrival have upon customary law?
7. What is circle sentencing? How do you think circle sentencing might help First Nations Australians to access the law?

Fully worked solutions and sample responses are available in your digital formats.

4.14 Domestic versus international law

4.14.1 Laws regulating Australia and its citizens

Domestic laws relate to being a law-abiding citizen of one's country. As citizens, we are members of a number of communities. We are members of our local community, the state we live in and the country we live in. As members of these communities, we are expected to abide by the laws that apply to those communities — the parking laws at our local shopping centres, the speed limits when driving on the roads and the laws governing taxation when completing our tax return for the Australian government. If you break a domestic law you will be dealt with by the country's legal system.

4.14.2 International law and The United Nations

International law is concerned with setting standards of acceptable behaviour for nations and their citizens when dealing with issues that cross borders, or issues of concern to society in general, as a way to foster good relationships and avoid conflict. International law is mainly developed from treaties and conventions between countries. A treaty is a form of contract between two parties (two countries or two international organisations from different countries). The Charter of the United Nations is perhaps the most famous international law.

The United Nations is responsible for both establishing international laws as well as enforcing them. The United Nations makes use of the International Court of Justice and the UN Security Council, responsible

for deploying UN peacekeepers, to assist it in enforcing international law. When disputes relating to international law or disputes between nations or ethnicities turn to conflict, the United Nations will often step in and deploy peacekeepers. Peacekeepers are military and other personnel who help countries experiencing conflict create conditions for lasting peace. Their role is to provide security as well as the political and peace-building support to help countries make the difficult transition from conflict to peace.

The United Nations has headquarters in a lot of different places and is the body responsible for determining international law.



on Resources

 **Digital document** Worksheet 4.10 The trial of Slobodan Milosevic (doc-32840)

4.14 Activity: Research and communication

1. Research the trial of Slobodan Milosevic on war crimes charges. Write a short report on this case that would be suitable for a newspaper front page.

4.14 Exercise: Knowledge and understanding

To answer questions online and to receive **immediate feedback** and **sample responses** for every question go to your learnON title at www.jacplus.com.au.

1. Explain the meaning of 'domestic law'.
2. Who is one of the main legal enforcers of international law?
3. What is the purpose of international laws?
4. In your own words, outline an argument for why the formation of the United Nations is good for relationships between countries.

Fully worked solutions and sample responses are available in your digital formats.

4.15 Accessing the law

4.15.1 Barriers to accessing the law

One of the main functions of the legal system is to safeguard people's rights. The legal system can perform this protective role only if people have equal access to the law. **Access** means equal opportunity for all people to make use of the legal system. If some people are unable to access the law, then they are **discriminated** against and consequently denied justice.

The effectiveness of our legal system is judged on whether or not members can access it. Ideally, everyone should have equal access. However, ask the following people how effective the legal system is and you might not get a glowing review: the young rape victim who is reluctant to come forward; the parents whose daughter is murdered and go through a long trial only to find the judge has misdirected the jury; the mentally ill defendant whose illness is not given due consideration in our justice system. In reality there are a number of factors that create barriers to accessing the law.

Some of the barriers to justice



Cost

Not everyone can afford legal advice and representation. Obtaining legal advice can be very expensive. Fees charged by lawyers and barristers are very high. If a legal case is prolonged or is subject to appeal, the legal costs can very quickly mount up. Often, legal aid can be difficult to obtain. This may deter people from exercising their legal rights to solve their problems.

Time

The prospect of a lengthy trial is another barrier to equal access to the law. The saying 'justice delayed is justice denied' means that if a trial drags on for a long period then people are not treated fairly. For example, a woman who sued a tobacco company for compensation for the terminal cancer she argued was caused by cigarette smoking died before the lengthy case was settled. The case had dragged on through the court system for nine years!

While some delays are inevitable, particularly in terms of police investigation of crime scenes and the gathering of forensic material, cases should be settled promptly once all the evidence is assembled.

A lawyer waits for a case to be called.



Distance

There are a range of places you need to go to in order to access the law, including offices of lawyers, police stations and court houses. Living in remote places may mean that you will have to travel long distances on multiple occasions, if you need to see a lawyer or visit a police station or court house. This could be both time consuming, costly and very difficult to arrange, especially if you don't have a driver's licence or access to public transport.

Procedures

When confronted with a legal issue, you face a number of problems. Firstly, because of your limited knowledge of the law, you may not even be aware that you have certain rights or responsibilities. Your access may be restricted because of your ignorance of the law. If you have to go to court, the procedures can be intimidating and confusing.

People can also be denied access to the law because they perceive that the legal system is insensitive to their needs. This is most often seen in sexual offence cases.

Language

If English is not your first language, it may be difficult to understand the legal terminology and procedures. Without the assistance of an interpreter, you may not understand what is going on during a court hearing. Even finding help from a lawyer or translating legal documents may pose a problem. Not being able to communicate your needs can limit your access to the law.

COMFACT

A case highlighting the problem of communication and understanding involved an Aboriginal boy who spoke only Luritje and could not understand English. The lawyer struggled with the absurdity of processing people through a system that has little meaning for them. Since the boy did not understand community service, he was unfairly jailed instead.

CASE STUDY

Not equal access for everyone

Those who are unemployed, uneducated, have drug or alcohol problems, have a mental illness or are Indigenous Australians are often at increased risk in our community. If a crime occurs, these people will almost certainly experience difficulty using the legal system. Imprisonment rates for Indigenous Australians are 12 times that of non-Indigenous rates, 28 per cent of prisoners have a mental illness, 60 per cent of prisoners have drug or alcohol problems and two-thirds of prisoners are unemployed before entering prison.

These statistics have implications for our legal system, because these disadvantaged groups are unlikely to be able to afford good legal representation and they may find it difficult to communicate effectively with their legal counsel and the court.



4.15 Exercise: Knowledge and understanding

To answer questions online and to receive **immediate feedback** and **sample responses** for every question go to your learnON title at www.jacplus.com.au.

1. What is meant by the terms:
 - (a) access
 - (b) discriminate?

2. List the five barriers that people face in accessing the law.
3. Explain in your own words the expression 'justice delayed is justice denied'.
4. Why is it important for people to have equal access to the law?
5. Identify those groups that may experience difficulties in achieving equal access to the law.
6. Refer to the **Comfact** box about the Aboriginal boy. Do you think the outcome of his case was unjust? Give reasons for your answer.
7. How does the present legal system unintentionally discriminate against some people?

Fully worked solutions and sample responses are available in your digital formats.

4.16 SkillBuilder: Debating an issue

4.16.1 Tell me

What is a debate?

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

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

Why is debating useful in civics and citizenship?

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

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



Model

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

CASE STUDY

Conduct of a debate

Affirmative team

The first speaker should:

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

The second speaker should:

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

The third speaker should:

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

Negative team

The first speaker should:

- introduce the team members, describe their role and the team's view
- state whether the negative team accepts the affirmative team's view of the topic
- argue against (rebut) the points made by the first speaker of the affirmative team
- state how the second negative speaker will build on the team's case.

The second speaker should:

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

The third speaker should:

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

Elements of a good debate

A good debate:

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



4.16.2 Show me

How to conduct a debate

You will need:

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

Procedure:

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

Step 1

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

Step 2

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

Step 3

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

Step 4

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

Step 5

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

4.16.3 Let me do it

4.16 Activities

Work with a partner

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

Class debate

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

Evaluating the debate

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

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

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

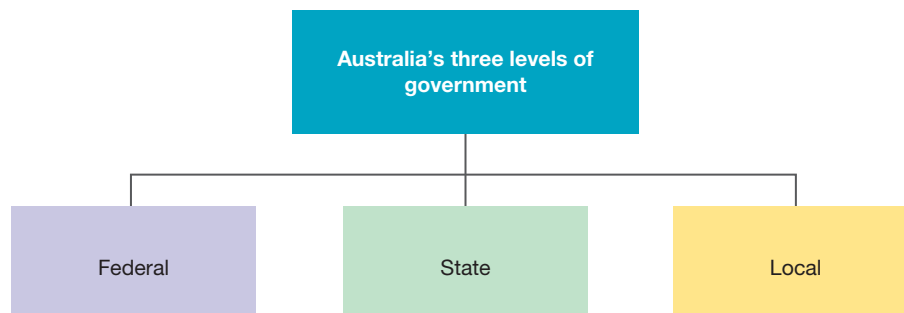
4.16 EXERCISE

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

4.17 The three levels of government

4.17.1 Structure of Australia's government

On 1 January 1901, the Commonwealth of Australia was formed. Before this, Australia consisted of six colonies, under the control of the British monarch. Each had its own form of government and set of laws. The colonies — now called states — agreed to join together to become one nation in a process called **Federation**. The British monarch (queen or king) was still the head of state, but Australia became an independent country governed by a **constitutional monarchy** with three levels of government — federal (or central), state and local.



Australia's three levels of government each:

- have their own power to make decisions
- have their own separate responsibilities
- are elected by the people.

Australia's constitution outlines the powers of the **Federal Parliament**, and some powers of state parliaments. (States also have their own constitutions.) In 1919, the New South Wales government passed the Local Government Act. This contains all the rules that local governments must follow.

Governments make important decisions such as which groups in society will receive money or other types of support. They also provide for our collective wants. While each level of government specialises in its area of control, there is some degree of overlap. This is necessary to meet the needs of all Australian citizens.

COMFACT

To change the Constitution, a **referendum** must be held. Proposed changes are accepted only if supported by a majority of voters in a majority of states (that is, at least four states).

4.17.2 Federal government

In Australia there are two houses of Federal Parliament; an upper house (the **Senate**) and a lower house (the **House of Representatives**). The prime minister is the head of government and other ministers are appointed to look after particular government **portfolios**. The Cabinet, which includes the prime minister and senior ministers, makes the key government decisions. The Governor-General represents the British monarch as head of state and usually acts on the advice given to by the prime minister and other ministers.

The federal government controls those things which affect us all, regardless of where in Australia we live. The money the government need to spend on the areas they are in charge of is mainly raised from taxation of people and businesses.

Federal Government responsibilities include:

- Air travel
- Currency
- Defence
- Foreign Affairs
- Immigration
- Medicare
- Pensions
- Postal services
- Social Security
- Taxation
- Telecommunications and broadcasting
- Trade and commerce

Defence – the armed forces – a major federal government responsibility



However, because the federal government support the states by giving them funding, it is also involved in issues relating to education, environment, health and Aboriginal welfare.

4.17.3 State government

NSW has its own parliament consisting of two houses — an upper house (the Legislative Council) and a lower house (the Legislative Assembly). The process of government is similar to that of the federal government. The head of the government is the Premier and the head of state is the Governor. The state government obtains most of its income from federal government grants, and property and payroll taxes. The state government controls those things which affect citizens within their individual state and that is not already a responsibility of the federal government. However, sometimes responsibilities overlap.

The state government can legislate over any areas that are not explicitly mentioned in the constitution.

State government responsibilities include:

- Aboriginal welfare
- Agriculture and fishing
- Community services
- Consumer affairs
- Education
- Emergency services
- Environment protection
- Health
- Industrial relations
- Law and order
- Public transport
- Roads and railways
- Sport and recreation

Health – a major state government responsibility



4.17.4 Local government

There are about 550 local government areas (LGA) in Australia, often referred to as councils or shires. The state decides the geographical area of the local governments; Sydney, for example is divided into about

35 LGAs. On the other hand, in rural and remote areas of NSW several towns could be combined into one shire and have one shire council established in the largest town within the LGA. The head of the LGA is called a mayor.

The LGAs operate under state government legislation and can only make rules, called by-laws, on local issues. They are responsible for the needs of the citizens in a particular area and they obtain most of its income from land rates.

Responsibilities include:

- Dog/cat registration
- Libraries
- Parks
- Rubbish collection
- Sewerage
- Streets and bridges
- Swimming pools
- Town planning

It can be confusing to identify the government responsible for the services we interact with on a day to day basis, mainly because they are often interrelated. For instance, if you were driving down the street to the local shopping centre and you were delayed by roadworks, it would be the local government responsible for the repairs as they are in charge of local roads. However, if you were stopped by the police for a breathalyser test it would be the state government's responsibility as they are in charge of traffic laws and the police. The federal government could also be seen to be part of this as they would have provided the state government with funding for Law Enforcement as well as the roads (infrastructure).

Parks and sports ovals – a major local government responsibility



on Resources

 **Digital document** Worksheet 4.11 Expressing opinion in the political arena (doc-32841)

4.17 Activity: Research and communication

1. Look at the areas of responsibility of each level of government. Decide one thing you would like your political representatives at each of the three levels to do to improve the way Australia is governed. Compose three emails, one to each representative, setting out your request and explaining why you think it is important.

4.17 Exercise: Knowledge and understanding

To answer questions online and to receive **immediate feedback** and **sample responses** for every question go to your learnON title at www.jacplus.com.au.

1. What happened in Australia at Federation?
2. Name the three levels of government in Australia.
3. What is the purpose of a referendum? What conditions must an Australian federal referendum meet to be successful?
4. Which level of government is involved in the following situations?
 - (a) You travel to school by rail.
 - (b) Your car is stolen so you use your mobile to phone the police.
 - (c) You write a letter thanking the staff for repairing the swings in the park.
 - (d) You email your income tax return to your accountant.
 - (e) You need a passport to travel overseas.
5. Explain why we have three levels of government.
6. Why do you think the federal government is responsible for defence and immigration?

Fully worked solutions and sample responses are available in your digital formats.

4.18 Why do laws change?

4.18.1 Laws reflect changes in society

The law is a set of dynamic legal rules. This means that new laws develop and old ones are scrapped due to changes in social values, technology and political circumstances. For example, homosexuality was once a criminal offence and opening retail stores on a Sunday was illegal.

Changing political circumstances can bring about radical changes to the law. The terrorist attacks on the World Trade Center and the Pentagon in the United States of America on 11 September 2001 sparked major changes to Australia's security laws.

Often, citizens will pressure the government to amend an existing law or introduce a new one. If the government is convinced of the citizens' argument, it will do this.

4.18.2 The Eureka Stockade and democratic rights

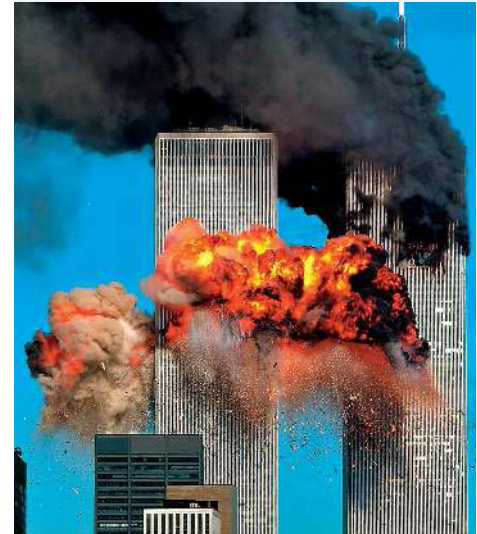
Throughout Australia's history, people have applied pressure, through a variety of methods, to change laws. This is one of the best things about living in a democracy: individuals, either alone or as members of an organised group, have the right to pressure for change.

During the 1840s, only males who were 21 years old and over, and who owned or rented property, were allowed to vote in the elections in the Australian colonies. Therefore, many people were prohibited from voting. The system of government was far from democratic. However, over time, as more people arrived and settled here they campaigned for change.

The pressure for change finally came to a head at dawn on 3 December 1854 at the Eureka Stockade, situated on the Ballarat goldfields. Led by Peter Lalor, the actions of the diggers (miners) at the Eureka Stockade were one of Australia's earliest instances of a group of people joining together to apply pressure on the authorities to change the law.

The Eureka battle and the political reforms demanded by the miners eventually led to the principle of *one person one vote*, voting by secret ballot and voting rights for all men aged 21 and over.

The Australian government passed strict anti-terrorism laws in response to the rise of terrorism.



A twenty-first century illustration showing soldiers charging the Stockade



COMFACT

The Eureka or 'Southern Cross' flag, flown at the Eureka Stockade, has been used by many groups as a symbol of their protest against authority.

4.18.3 The vote for women

During the 1880s, the vote for women became a basic demand in Australia. Thousands of women and many men participated in rallies, demonstrations and political campaigns in an attempt to change the law in order to provide equality of voting. Women's suffrage — the right to vote — was actively pursued and, in 1884 the first women's suffrage organisation was formed in Victoria. These suffragists, who were the people who supported the vote for women, claimed the right to vote was a matter of justice and equality.

Eventually, in 1894, after a long and hard struggle, a new law was passed which gave women 21 years old and over the right to vote in South Australia. Other colonies followed but it was not until 1902 that women in New South Wales gained the right to vote.

Photograph of prominent Victorian suffragette Vida Goldstein (1869–1949)



4.18.4 Cybercrime laws

In recent years, cybercrime and terrorism have become constant threats. With most Australian homes being linked to the internet, there are more opportunities for cybercriminals and terrorists to steal identities, money and confidential information from unsuspecting individuals. In response to growing community concern about this type of criminal behaviour, the federal government developed a new set of laws to fight internet offences such as computer hacking, child pornography, terrorism and copyright infringement. The legislation requires internet service providers (ISPs) to collect and retain emails, text messages and other internet traffic data. This information is to be made available to police in Australia as well as foreign law enforcement and intelligence agencies such as the FBI or CIA.

Australia must modernise its laws and stay up to date with evolving cyber technology, while at the same time not excessively restricting civil liberties or invading individuals' privacy.

Technology advances at a rapid pace and laws need to be introduced to protect individuals.



on Resources

 Weblink Eureka

4.18 Activity: Research and communication

1. Design a poster that could have been used in the 1890s to support equal voting rights for women. Create a slogan and symbol that represent your cause. Display your posters in the classroom.
2. In small groups, use the library and the internet to research the following aspects of the Eureka Stockade battle. Use the **Eureka** weblink in the Resources tab to find the answers.
 - (a) Do you think it was appropriate that the miners used civil disobedience to achieve their objectives? Why?
 - (b) Present some arguments to (i) justify, and (ii) refute, the actions taken by the miners at the Eureka Stockade.
 - (c) Do you regard the Eureka Stockade as the beginnings of democracy, a short-lived glorious rebellion or a futile bloody massacre? Give reasons for your answer.

4.18 Exercise: Knowledge and understanding

To answer questions online and to receive **immediate feedback** and **sample responses** for every question go to your learnON title at www.jacplus.com.au.

1. What is one basic right of all people who live in a democracy?
2. (a) List the changes to the law that the diggers of the Eureka Stockade gained.
(b) The official government flag at the time was the Union Jack. To fly any other flag was an act of defiance. What did the Southern Cross flag represent to the diggers?
3. What new law did the suffragists want introduced?
4. What motivated the Australian government to introduce the cybercrime legislation?
5. Do you support or reject the cybercrime legislation? Why? Share your answer with the rest of the class.
6. In small groups, imagine you were living in the 1890s. Brainstorm the arguments you would present to:
 - (a) support the suffragists
 - (b) oppose the suffragists.Select a spokesperson to present your arguments to the rest of the class.
7. When technological advances are thought to pose a threat, people expect laws to be introduced to control them. A recent example of this is data retention laws. Why do you think it is difficult for law-makers to deal with technological change?

Fully worked solutions and sample responses are available in your digital formats.

4.19 Political action

4.19.1 Issues that concern the community

Being a politically active citizen means being informed about social, political and economic issues, as well as being actively involved in the political process. A politically active citizen will be aware of what is happening on the wider stage as well as in the local community.

There is a wide range of issues that concern people. For example, you might want stricter laws dealing with environmental protection. Other people may want more money to be spent on schools or the local library, while others are concerned about human rights issues in Australia and overseas. Everyone has their own interests and causes which they regard as important.

4.19.2 How to take action on political issues — active citizenship

‘It’s no use complaining. No-one ever listens.’ ‘What’s the use of writing? Politicians never answer letters.’ ‘Voting is a waste of time. No matter who you vote for, a politician always gets elected.’ ‘Signing a petition is futile. It will not make any difference.’ Have you ever heard these comments? Unfortunately, many people are apathetic and use these excuses for not becoming involved in political issues. However, the actions of individuals can make a difference.

In a democratic country like Australia, everyone has the right to influence government decisions. Even though you cannot vote until you are 18, there are other ways of being politically active.

COMFACT

Which is more powerful, drops of water or a piece of granite? Ultimately, the water droplets are because they will wear away the granite. This analogy can be applied to political actions. A single letter or email to a politician may not make any difference. However, lots of letters or emails will eventually have an impact.

Some major issues that concern community members



Keeping informed

One of the best things you can do as an active citizen is to make sure you are aware of what is going on. This means reading newspapers, listening to podcasts, browsing social media, watching and listening to the news and current affairs programs on television and radio, reading politically related blogs and taking an interest in your community.

If you are unhappy with something, you can make your concerns known. You can write letters or emails to newspapers or to politicians or make submissions to government bodies. You might choose to **lobby** particular politicians; that is, meet with them and try to influence them. You can organise or become involved in public protest meetings or demonstrations. You can also add your name and address to a petition indicating support (or otherwise) for some government action. You can use the media, especially talkback radio, letters to the editor, blogs and social media as a way of publicising a cause. You might even decide to join a political party and try to get your ideas accepted as party policy.

Lobby groups often hold rallies to publicise their causes.



COMFACT

Combining both petitions and cyber activism, change.org is a website where concerned people can add an issue, present their views and share the digital petition. Once shared, if others also hold the same views on the issue, they can digitally sign the petition to show their support.

Cyber activism

Politically active citizens and advocacy groups use online petitions such as change.org, social media such as Facebook, Twitter and YouTube to reach, organise and mobilise their supporters to influence government decisions. For example, GetUp!, an independent, grass-roots community advocacy organisation which gives everyday Australians opportunities to get involved in social and political issues, has approximately 1 000 000 online members. GetUp! uses social media to organise members, publicise its campaigns and lobby politicians.

GetUp! is an independent movement to build a progressive Australia and bring participation back into our democracy.



4.19.3 Youth advisory councils

One way of becoming an active citizen at the grassroots level is to join your local youth advisory council (YAC). Set up by local councils, YACs consist of student representatives, aged between 12 and 17, from secondary schools in the local council areas. The main function of YACs is to provide a special forum where young people can discuss a wide variety of views and ideas concerning local youth issues and projects. They offer advice and information to their local council in order to help the community and council understand and support the needs of young people.

YAC: an outstanding example of how young people can demonstrate citizenship at work.



Resources



Digital document Worksheet 4.12 Pressure/lobby groups (doc-32708)

4.19 Activity: Research and communication

1. Discuss the advantages of each of the following methods of political action. Which method do you think would be the most effective? Why?
 - (a) Individual action
 - (b) Political parties
 - (c) Lobby groups
 - (d) Media
 - (e) Social media
2. Write and perform a podcast or vlog, aimed at high school students, which explains why it is important to be an active citizen.
3. In small groups, select a current issue that concerns the community. Research and report on the methods of political action taken by individuals and/or groups involved with the issue.

4.19 Exercise: Knowledge and understanding

To answer questions online and to receive **immediate feedback** and **sample responses** for every question go to your learnON title at www.jacplus.com.au.

1. What is a politically active citizen?
2. Explain why Youth Advisory Councils are such a good example of politically active citizenship.
3. Imagine that you are a member of the youth advisory council in your local area. With two or three others, decide what you could do with \$20 000 in a way that would best help young people. Decide how much you will spend on each activity and what your priorities are. You may wish to prepare this as a PowerPoint presentation.
4. What arguments would you use to convince someone who is apathetic about becoming an active citizen?
5. (a) How is a school's Student Representative Council an example of a lobby group?
(b) Write down three things you could do to be a more 'active citizen' within your school community. Explain why these would help your school to be a better place.

Fully worked solutions and sample responses are available in your digital formats.

4.20 Referendums

4.20.1 The process for changing the Constitution

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

Chapter VIII section 128 of the Constitution describes the process on how it can be changed. The following steps must be observed if any change is to occur:

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

A ballot paper from the referendum held in 1999

SAMPLE

Commonwealth of Australia

BALLOT PAPER

Referendum on proposed Constitution alteration

DIRECTIONS TO VOTER

Write YES or NO in the space provided opposite the question set out below

A PROPOSED LAW: To alter the Constitution to establish the Commonwealth of Australia as a republic with the Queen and Governor-General being replaced by a President appointed by a two-thirds majority of the members of the Commonwealth Parliament.

DO YOU APPROVE THIS PROPOSED ALTERATION?

WRITE "YES" OR "NO"

Australian Electoral Commission **AEC**

Helping you have your say.

on Resources

 **Video eLesson** Referendums (eles-2288)

DISCUSSION

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

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

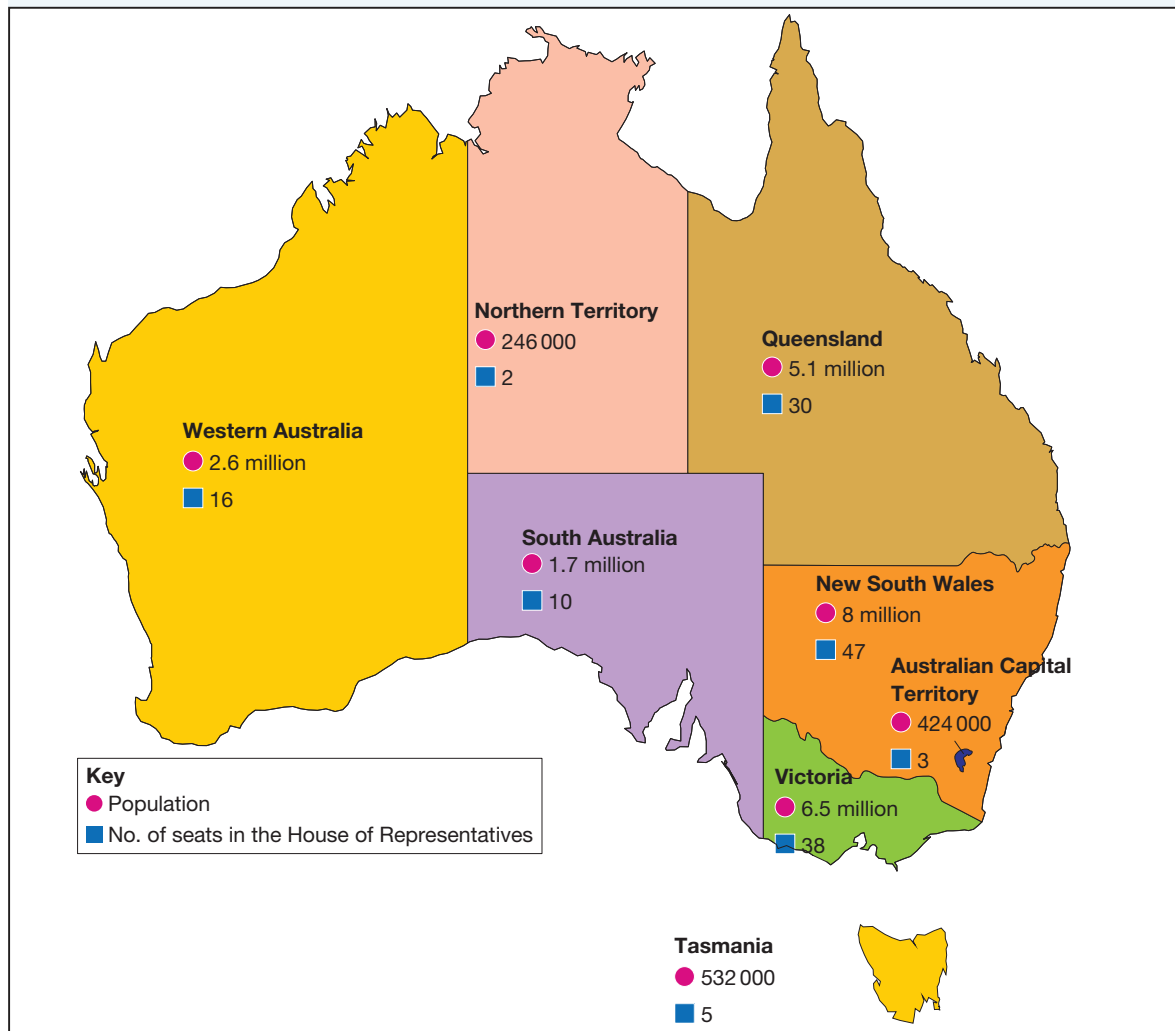


4.20.2 The double majority

The requirement of having a majority of votes as well as a majority in at least four out of six states is known as the 'double majority'.

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

The population and the number of elected representatives of each state



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

4.20.3 Where do proposals for change come from?

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

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

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



4.20 Exercise: Knowledge and understanding

To answer questions online and to receive **immediate feedback** and **sample responses** for every question go to your learnON title at www.jacplus.com.au.

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

Fully worked solutions and sample responses are available in your digital formats.

4.21 Participating in the democratic process

4.21.1 Democracy at work

Imagine a group of eleven friends where four members want to see a movie, two prefer to go ice-skating and five want to go to a restaurant. To solve this dilemma, the group will probably discuss the benefits of the three activities in an attempt to influence each other's decision. At the conclusion of the discussion, a vote will be taken and whatever activity the majority vote for will be the one the group agrees to. This group has undertaken a process called *democratic decision-making*, which is similar to how the Australian system of government operates.

A majority vote will determine what activity the group undertakes.



4.21.2 The origins of democracy

The main feature of a **democracy** is that all people have equal rights and privileges. It also means that, in the end, power rests with the people. If people do not like what the government of the day is doing, they can vote to have it removed.

The democratic system of government originated in ancient Greece during the fifth century BC. It is based on the two Greek words *demos*, meaning people, and *kratia*, meaning power or rule. Democracy in ancient Greece was called direct democracy because citizens would hold public mass meetings to discuss issues that affected them. The citizens (adult males born in Athens to free parents) then voted and the idea that gained the majority of votes would win.

4.21.3 Australia's representative democracy

Representative democracy was designed to give all citizens a say in the decisions that would affect the majority of people. Therefore, when Australians talk about their democratic rights they mean that citizens are given power to decide who will represent their views through electing members of parliament. In a representative democracy, the citizens have the ultimate power because they elect representatives to act on their behalf.

4.21.4 Australia's political system

Our political system is based on the Westminster system used in Britain. The basic principles of our political system are that:

- the head of state and the head of the government must be two different people (for example, the Queen and the Prime Minister)
- there are two houses of parliament (bicameral); a lower house and an upper house
- there are three different sections of government; the parliament (legislature) to make the laws, the executive to administer the laws and carry out the business of government, and the judiciary (courts) to enforce the law
- these three sections of government must be kept separate (a principle called the 'separation of powers').

Everyone must vote in state and federal elections, including these lifesavers from Bondi Surf Club.

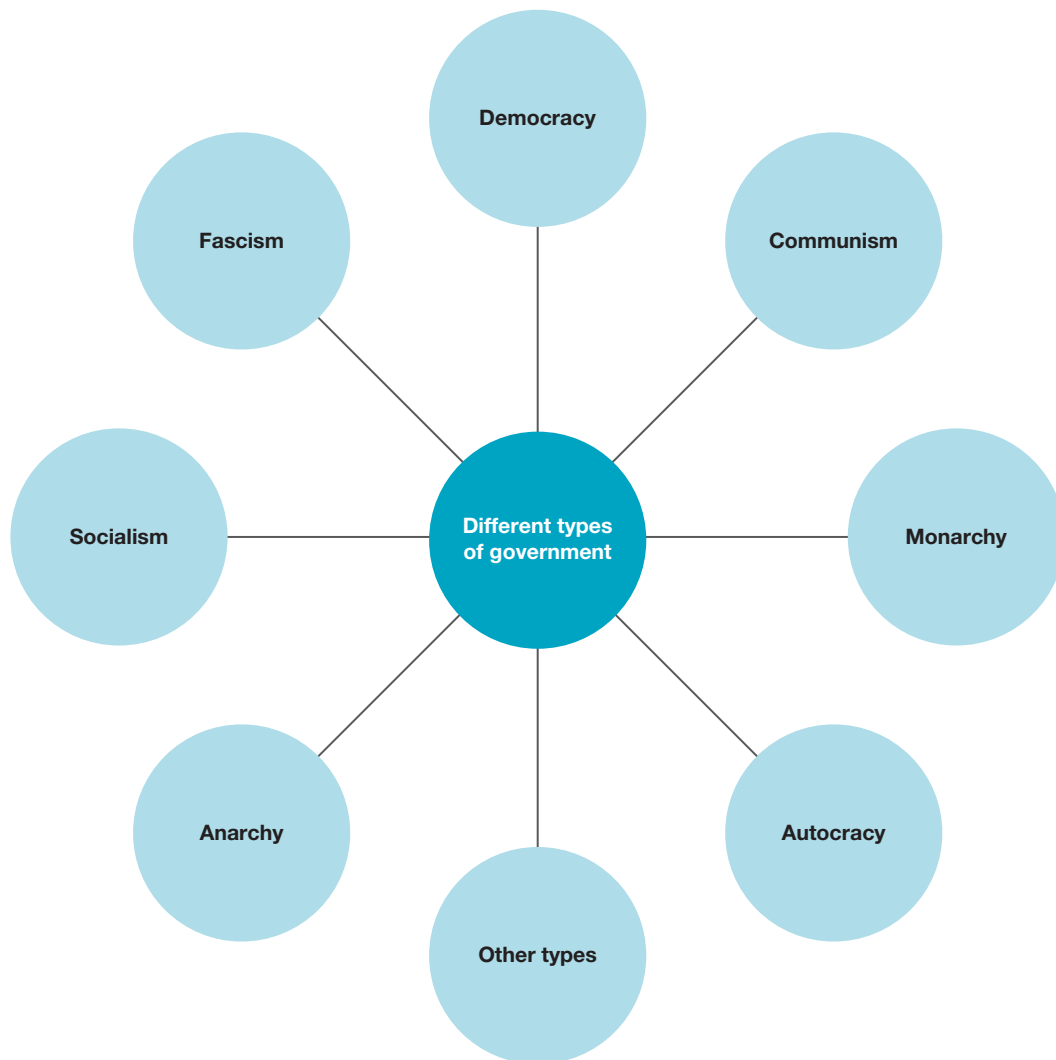


4.21.5 Different types of government

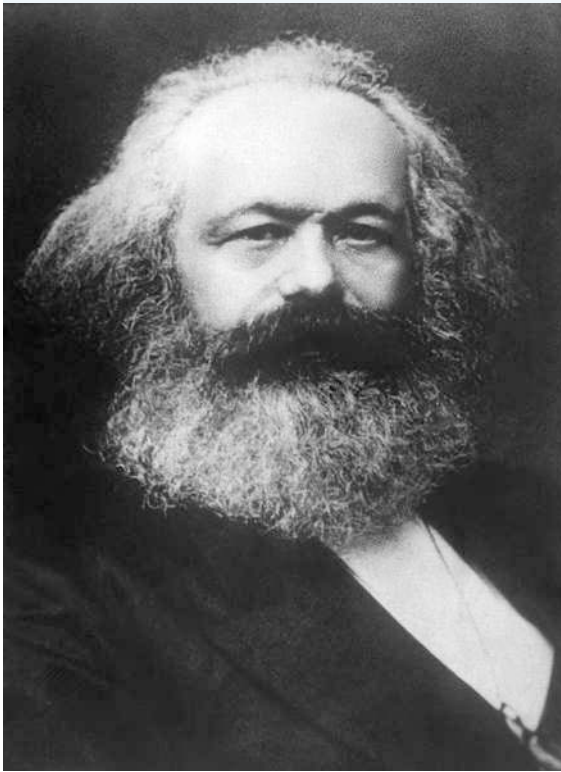
A democracy is only one type of government. Others include:

1. **Communism.** This system of government is based on the theories of Karl Marx and Friedrich Engels. In this system there is no private ownership. Everything, apart from some personal items, is owned by the government (state) which supplies all the needs and wants of the citizens. Since the early 1990s, former communist countries in the USSR and eastern Europe have dramatically changed. China is also transforming its communist system of government.
2. **Monarchy.** A true monarchy is a system of government where the monarch (such as a king or queen) has total supreme power, such as in Oman and Kuwait. A constitutional monarchy occurs where the powers of the monarch have been limited by a series of laws. A republic is a democratic form of government that has a president.

3. *Autocracy*. Autocracy is opposite in meaning to democracy and occurs when one person or group, often an authoritarian military dictatorship, holds all the power. These are oppressive and secretive regimes, such as in Burma (formerly Myanmar).
4. *Anarchy*. Anarchy occurs when the system of government has broken down and there are no laws or the laws are no longer being enforced. During a civil war a state of anarchy usually exists, such as in Syria.
5. *Socialism*. In this system of government the ownership of all the main economic resources are in the hands of the community. Socialist governments have a high priority for social welfare, and equality of income and wealth.
6. *Fascism*. Adolf Hitler adopted this approach. Fascism is based on strong centralised power permitting no opposition or criticism. The political party in power controls all the affairs of the nation and emphasises aggressive nationalism and anticommunist ideas.



Karl Marx (1818–1883). His thoughts have shaped the governments of many countries.



In 1990, the Burmese military regime overturned an election result that saw about 80 per cent of votes go to the opposition party led by the charismatic Aung San Suu Kyi. She was held under house arrest for 15 years until mid-2012 when some democratic reforms were introduced.



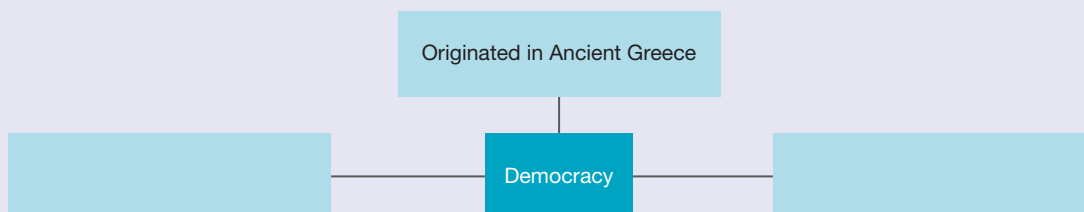
4.21 Activity: Research and communication

1. In small groups, discuss what you think are the most important features of Australia's political system. Present your group's ideas to the class.
2. In pairs, research a country that is presently attempting to introduce a more democratic process of government.
 - (a) What difficulties are being experienced in attempting to introduce the democratic process?
 - (b) Outline any forms of assistance being given by other democratic countries or the United Nations.

4.21 Exercise: Knowledge and understanding

To answer questions online and to receive **immediate feedback** and **sample responses** for every question go to your learnON title at www.jacplus.com.au.

1. Explain why Australia is a constitutional monarchy.
2. Add extra elements to the mind map started below to summarise the main features of a democracy.



3. Explain the difference between the parliament, the executive and the judiciary. Suggest why it might be important in a democracy to keep these functions separate.
4. What is the difference between 'democracy' and 'autocracy'?
5. The following jumbled words are four different types of government. Unscramble each and then write a sentence that explains the main characteristics of this form of government.
 - (a) MSSAIOLCI
 - (b) MOUMNIMSC
 - (c) HCMRONAY
 - (d) AACYRNH
6. Explain the meaning of the following statements:
 - (a) 'Democracy operates best when the people have the ultimate power.'
 - (b) 'Power without control is the enemy of freedom.'

Fully worked solutions and sample responses are available in your digital formats.

4.22 Voting in the democratic process

4.22.1 The right to vote

All Australian citizens over 18 must be enrolled to vote. They are also obliged to keep their enrolment up to date with their current residential address.

Australian citizens denied the right to vote include the mentally unsound, anyone convicted of treason and prisoners serving a sentence over three years.

4.22.2 Methods of voting

First past the post

This is the simplest form of voting. People vote for the person they wish to elect by placing the number 1 next to that person's name on their **ballot paper**. The person with the most votes wins. It is a very simple system of voting. However, it can result in a winner who is supported by a minority of the population.

Preferential

In Australia, we have a **preferential system** of voting. This means that voters decide not only the candidate they want the most, but also the order in which they prefer the other candidates (in case their favourite does not win).

House of Representatives

When you vote in a House of Representatives election, you are given a green ballot paper. You must place a number in the box beside each candidate's name. Write the number 1 beside the candidate you most prefer. (This is your first-preference vote.) Write the number 9 (if there are nine candidates) beside the candidate you least prefer. For your vote to be formal, you must place a number, in your preference order, in every box.

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

Preferential voting system for the House of Representatives

House of Representatives
100 000 formal votes
Absolute majority needed = $\frac{100\,000}{2} + 1 = 50\,001$

	STEFAN	JANE	QUENTIN	KALI
First preference votes	37 000	34 000	15 000	14 000
Other preference votes	+ 13 500	+ 400	+ 100	
Total	50 500	34 400	15 100	

13 500 to Stefan
400 to Jane
100 to Quentin

Note that no candidate has an absolute majority.

Kali has the fewest first-preference votes. Her votes are given to other candidates in the order in which voters stated their second preferences. Stefan benefits most. This gives him an absolute majority.

If there was no clear winner after Kali's votes were distributed, Quentin's votes would be distributed in the same way — and so on until there was a winner.

Proportional representation/optional preferential

When you vote for a senator, you will be given a white ballot paper. You can vote in two ways:

- If you vote above the line, you need to number at least six boxes from 1 to 6 in your order of preference.
- If you vote below the line, you need to number at least 12 boxes from 1 to 12 in your order of preference.

To win a seat, senators have to win a set proportion, or **quota**, of the votes. This is why the Senate voting system is called optional preferential proportional representation, often referred to as simply **proportional representation**.

A sample Senate ballot paper

Senate Ballot Paper
State – Election of 6 Senators

You may vote in one of two ways:

Either:

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

Or:

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

	A	B	C	D	E	F	G
Above the line	1	2	3	4	5	6	7
Below the line	1	2	3	4	5	6	7

Below the line, the boxes are labeled with the names of the parties: MIST PARTY, RAIN PARTY, FOG/SUN PARTY, HUMID PARTY, BREEZE PARTY, CLOUD PARTY, and UNGROUPED.

SAMPLE

4.22 Activity: Research and communication

1. Conduct a class vote on what could best be done to improve your school. Use the counting method for deciding seats in the House of Representatives. Count the votes, including preferences, to decide who wins. Share responsibilities for this activity among the class. Here's what to do.
 - (a) First select five people to present their policy. All should have quite different viewpoints. Make the presentations interesting and persuasive.
 - (b) Prepare enough ballot papers for the whole class, making them like the sample shown for the House of Representatives. Include the names of all speakers. Decide the order of names on the ballot paper by putting speakers' names on pieces of paper, and drawing them, in turn, out of a container.
 - (c) Listen as a class to each presentation. Decide how you will vote, ensuring your vote is formal. Make sure you vote in secret. Place ballot papers in a collection box.

- (d) Nominate class members to conduct the counting and be scrutineers. Decide, first, what is the absolute majority a candidate must achieve. Place papers in piles according to first-preference votes; that is, candidates marked with number 1.
- (e) Did anyone get an absolute majority? If not, start distributing preferences. Use the information in this subtopic to help you to do this.

4.22 Exercise: Knowledge and understanding

To answer questions online and to receive **immediate feedback** and **sample responses** for every question go to your learnON title at www.jacplus.com.au.

1. Who has the right to vote in Australia?
2. What types of voting systems are used in Australia?
3. How does a candidate win in an election for the House of Representatives?
4. How is the election to the senate different from the House of Representatives?

Fully worked solutions and sample responses are available in your digital formats.

4.23 Rights and responsibilities in the democratic process

4.23.1 Role and strategies of pressure groups

A pressure group is formed when people join together over concern for a common issue in an attempt to influence government decisions. The pressure applied to politicians and other decision makers comes from the group's members, as well as from any publicity generated.

There are many types of pressure groups. Some key ones are the Australian Council of Trade Unions (ACTU), Australian Industry Group (AIG), Australian Council of Social Services (ACOSS) and Australian Conservation Foundation (ACF). Their ability to influence government decision making depends on the size of their membership and the strategies they adopt.

COMFACT

From January 2018, due to the passing of the Marriage Equality bill, same sex couples can now get married. This was achieved because the Australian people voted Yes in a postal survey. The commitment from groups such as The Australian Marriage Equality and New South Wales Gay and Lesbian Rights Lobby played a big role in making this happen. Spreading the word about *why* something needs to change is instrumental when it comes to making a change.

Pressure groups may use a number of strategies (tactics) to publicise their cause and influence government decisions. These include:

- protest marches, demonstrations and rallies
- letters and email-writing campaigns and petitions
- staged media events and publicity campaigns
- meetings with politicians (lobbying)
- making recommendations to the government
- using social media to establish online communities
- standing for election to parliament.

A demonstration is a common strategy to pressure decision makers.



4.23.2 Rights and responsibilities of individuals and groups in the democratic process

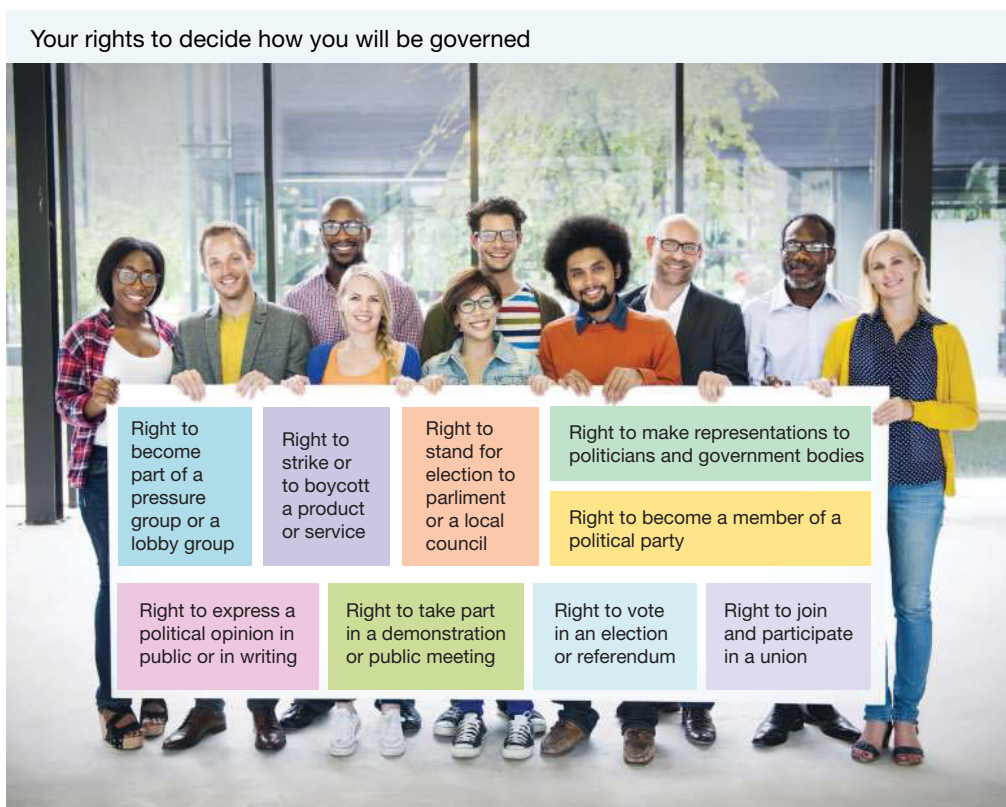
A citizen is someone who lives as part of a community. As Australian citizens, we have numerous specific rights and responsibilities. Some rights we tend to take for granted, such as the freedom to choose the type of government we would like. Some responsibilities, like voting, may be seen as 'just things you have to do'. An active citizen not only knows his or her rights and responsibilities — and how important they are — but also looks for opportunities to be involved.

As Australian citizens, we have the right to expect our government to protect us and to help improve the quality of our lives. In a democracy, we also have the right to a number of personal freedoms. As active citizens, we have an obligation to contribute to the community by taking part in the political and legal processes in this country. Active citizens play a vital role in improving the way we are governed.

Your rights

As an Australian citizen, you enjoy a number of basic rights, such as freedom of speech and freedom of religion. You can leave the country whenever you wish (provided you have a passport) and can apply when you are older to work in the armed services, the police force or the public service. You also have the right to trial by jury and to be protected from discrimination.

Another very important right you possess is the right to decide how you want to be governed. Some of the ways this right is exercised are shown in the diagram below.



Your responsibilities

Two of your responsibilities as an Australian citizen over the age of 18 are to register yourself on the electoral roll, and to vote in federal, state and local elections. An active citizen will always ensure that his or her vote counts; that it is a formal vote, and carefully considered.

You are also obliged to pay your taxes, obey the laws of the land and serve as part of a jury if asked. In times of war, you may be asked to defend your country.



- | | |
|---|---|
| 1 Traffic lights are needed | 7 Local parks are becoming rubbish dumps |
| 2 Unemployment levels are high | 8 Rubbish is not always being collected |
| 3 Water supply main has broken | 9 Numbers of young people are at risk of breaking the law |
| 4 Local streets are developing potholes | 10 The buildings around the local swimming pool need painting |
| 5 Government housing estates are run down | |
| 6 Native species live near busy roads | |

on Resources

 **Digital document** Worksheet 4.13 My rights and responsibilities in Australia (doc-32842)

4.23 Activity: Research and communication

1. Create an infographic that illustrates the rights and responsibilities of individuals in the democratic process.
2. Write a story of what it would be like to live in a country where your rights are denied. You may wish to present the story with text and graphics.
3. 'Young people have too many rights and forget their responsibilities'. Discuss this topic.
4. Study the illustration above in section 4.23.2, taking note of the annotations. Work in small groups to devise an **action plan** about how best you could show your citizenship in helping to improve the situation. Think about what you can do personally or as a member of a pressure group. Draw up your plan of action, which lists, in detail, the steps your group proposes to take.
5. What do you think would happen to a democracy like Australia if its people did not meet their obligations as citizens? Discuss your ideas in small groups and then present them to the class.

4.23 Exercise: Knowledge and understanding

To answer questions online and to receive **immediate feedback** and **sample responses** for every question go to your learnON title at www.jacplus.com.au.

1. What is the main purpose of pressure groups?
2. List some of the pressure groups with which you are familiar.
3. List three rights and three responsibilities you have as a citizen.
4. Which strategy used by pressure groups do you think is the most effective? Why?
5. Explain the difference between a right and a responsibility.
6. Which (i) right and (ii) responsibility do you consider to be the most important? Give reasons for your answers.
7. List the responsibilities you have as a member of your class.

Fully worked solutions and sample responses are available in your digital formats.

4.24 Role and function of political parties

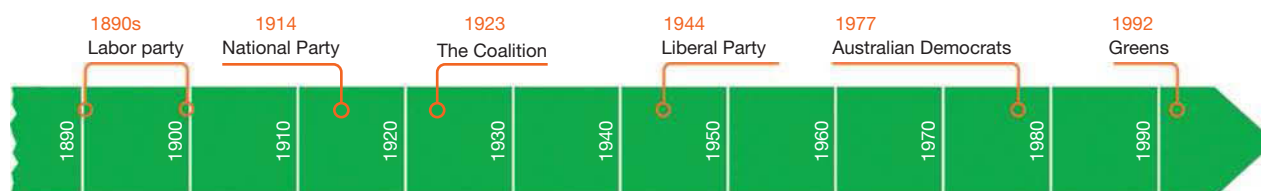
4.24.1 Providing options for Australian voters

Political parties are groups of people who band together because they share the same views about issues they think are important. Their main aim is to get candidates elected to Parliament so as to influence the decisions of government.

All political parties must be registered with the Australian Electoral Commission. There are two requirements for this registration. First, the aims of the party must be submitted. Second, the party must have at least 500 eligible voters, unless the party already has a member in parliament.

Not all candidates belong to a political party. Some may be independents.

Timeline showing formation of major Australian political parties



4.24.2 Australian Labor Party

The Australian Labor Party (ALP), the oldest political party in Australia, was formed in the 1890s. Unemployment was then high and living conditions were harsh, so workers banded together. They wanted to try to change things by having a say in government. This background has meant that trade unions have always had strong links with the Labor Party.

The ALP's policies promote social justice, compassion and a fair go for all. Its main aims are to:

- ensure wealth and power are more evenly and fairly shared in society
- provide jobs for everyone who wants to work
- abolish poverty and improve the living standards of all Australians
- ensure that all Australians can obtain the education, housing and community services they need.

In 2010, Labor Party leader Julia Gillard became the first female prime minister of Australia.



4.24.3 The Liberal Party of Australia

The Liberal Party of Australia was founded by Robert Menzies in 1944. When in office, the Liberal Party usually forms a **coalition** with the National Party.

Liberal policies are based on the absolute rights and freedom of all people. The party believes in incentive, individual freedom and free enterprise. Its main aims are:

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



4.24.4 National Party of Australia

The National Party was founded in 1914, originally as the Country Party. It mainly represents people living in rural and regional Australia. The Nationals fight for an equality of services, lifestyle and opportunity between the cities and the regions. Its main aims are to:

- provide strong local community representation
- ensure decent health, safety, social and economic welfare
- promote individual achievement, free choice, a fair go and reward for private enterprise.



4.24.5 Australian Greens

Formed in 1992, the Australian Greens (The Greens) is a progressive, national party founded on four main principles: ecological sustainability, social and economic justice, peace and nonviolence, and grassroots democracy. The Greens have frequently held the **balance of power** in the Senate. Its main aims are to:

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



4.24.6 Independents

Members of parliament who do not belong to a political party are called **independents**. Their position can be very powerful if the government does not have a majority in parliament. It relies on these independents to support the Bills going through the parliament. The government often has to make compromises and deals with these independents to guarantee that government legislation passes.

COMFACT

The Nick Xenophon Team (NXT) was established on 1 July 2013. Its aim was to bring up issues in parliament that were specific to South Australia. The party won three seats in the Senate in the 2016 federal election.

In April 2018, NXT applied to change its name to Centre Alliance.

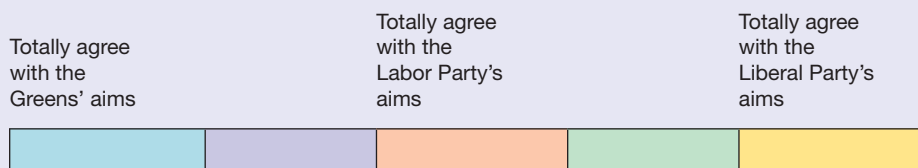
4.24 Activity: Research and communication

1. In small groups, discuss what your group's aims would be for Australia if you were a political party. Decide why these aims are important. Think of a name for your party and a logo.

4.24 Exercise: Knowledge and understanding

To answer questions online and to receive **immediate feedback** and **sample responses** for every question go to your learnON title at www.jacplus.com.au.

1. What is a political party?
2. What is required for a party to be registered with the Australian Electoral Commission?
3. What does 'forming a coalition' mean? Give an example.
4. Why do you think the Liberal Party forms a coalition with the Nationals and not the Labor Party or the Greens?
5. Which political party generally represents the interests of people in rural and regional Australia?
6. Explain why a party or an individual who holds the balance of power is so powerful.
7. Copy the following scale into your notebook. Place a cross where you feel your political beliefs lie with regard to the three main political parties. Write a paragraph outlining your reasons for the location of the cross on the scale.



8. The following table sets out the number of House of Representatives seats that might be won at three elections in the future. Assume the Liberal–National coalition is disbanded before Election C. Assume also that none of the other parties formed coalitions.

Election	Liberal Party	Labor Party	National Party	Other parties
Election A	48	66	23	13
Election B	32	69	29	20
Election C	39	77	20	14

- (a) Why did the Labor Party, which won the most seats, not win Election A?
- (b) How many seats did the Liberal–National coalition lose in Election B?
- (c) Who won Election C? Why?

Fully worked solutions and sample responses are available in your digital formats.

4.25 The inner workings of Australia's government

4.25.1 Forming the federal government

Winning the vote in a lower house electorate gives the successful candidate a seat in the House of Representatives. Government is formed in Australia on the principle of parliamentary majority in this house. This means that the party with the majority of seats in the House of Representatives forms the government, and its leader becomes prime minister. In government, the winning party has the power to make laws for governing the country.

An election will result in either the re-election of the existing government for another three-year term, or the defeat of the government and the election of the Opposition to form a new government. If the party in

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

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

The major party that fails to win enough seats in the House of Representatives to form government becomes the Opposition. Senior members of the Opposition become shadow ministers. For each government minister, there is a corresponding person in the Opposition who is a shadow minister. A shadow minister is expected to scrutinise the activities of the relevant minister, and will often publicly criticise that minister's performance. This is one way in which ministers and the government remain accountable to the people. If the Opposition then wins the next election, usually shadow ministers become ministers and the Opposition leader becomes prime minister.

Hung parliament

When the two major parties have the same number of seats in the House of Representatives following an election, there is said to be a '**hung parliament**'. This means that neither side is in a position to form government on its own. Minor party representatives or independents will decide to support one side or the other, and this will lead to that party forming government.



Minority government

It can sometimes occur that a government has fewer seats than the Opposition but is able to govern because it has the support of enough crossbenchers to win important votes in the House of Representatives. In this case it is said to be a **minority government**. In order to remain in power, a minority government has to be able to gather enough votes to support its spending decisions, and to retain the 'confidence' of the House.

4.25.2 Policy making in Australian politics

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

Backbenchers

The House of Representatives is colloquially divided into backbenchers and frontbenchers. Traditionally 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. Backbencher's bills, sometimes referred to as **private member's bills**, are seldom successful. Some exceptions include:

1. The Commonwealth Electoral Bill 1924 which made voting compulsory in Australia
2. The Euthanasia Laws Bill 1996 which made it illegal for states to make laws allowing euthanasia
3. The Reproductive Healthcare Reform Bill 2019, which decriminalised abortions by removing it from the Crimes Act 1900.



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

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

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.



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.

4.25.3 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.

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.

Parliamentary debate

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

Through these questions and debates, government decisions are scrutinised and the power of the ruling party is closely monitored. The role of the Opposition party, and 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.

4.25 Activity: Research and communication

1. Using internet resources, investigate the most recent Senate Federal election results and answer the following:
 - (a) How many quotas did the highest placed candidate receive?
 - (b) How many major party candidates were elected from the passing on of surplus votes above a quota?
 - (c) Name any independents or minor party candidates elected.
 - (d) How many first-preference votes did these independents or minor party candidates receive?
 - (e) What was the final party-by-party breakdown of the six successful candidates?

4.25 Exercise: Knowledge and understanding

To answer questions online and to receive **immediate feedback** and **sample responses** for every question go to your learnON title at www.jacplus.com.au.

1. What is required to achieve an absolute majority of votes?
2. Outline how each of the following roles is determined following a federal election.
 - (a) Government
 - (b) Opposition
 - (c) Prime minister
 - (d) Leader of the Opposition
 - (e) Ministers
 - (f) Shadow ministers
3. What is the difference between a hung parliament and minority government?
4. Why are preferences important in counting House of Representatives votes?
5. Why are votes above a quota passed on at a transfer value?
6. Explain the method for calculating the transfer value of Senate votes.
7. Who would win the seat in the following scenario?
First preference votes were recorded for a House of Representatives seat at an election:

Candidate	Votes
Ahmed	32 000
Michael	21 000
Jan	29 000
Tran	8 000

- Voters who gave first preferences to Jan gave 18 000 second preferences to Ahmed and 11 000 second preferences to Michael.
 - Voters who gave first preferences to Michael gave 8000 second preferences to Ahmed and 13 000 second preferences to Jan.
 - Voters who gave first preferences to Tran gave 3000 second preferences to Ahmed and 5000 second preferences to Jan.
8. Do you believe that the Cabinet has any real power in the decision-making process in Australian politics? Justify your response.
 9. Should the power of the prime minister be restricted? What are the positive and negative implications of the prime minister having a large amount of individual power?
 10. Identify two sources of influence in the development of government policies.
 11. What are the advantages of setting up a review panel to provide recommendations in relation to policy development?

Fully worked solutions and sample responses are available in your digital formats.

4.26 Separation of powers

4.26.1 The separation of powers

The Australian continent had been colonised by the British, and the vast majority of white settlers were of British origin, so the founding fathers looked to the British Westminster system of government as a model for the new Australian Commonwealth government. The Westminster system had a long history, dating back to the Middle Ages, and had a number of safeguards designed to protect its citizens. One such safeguard was known as the ‘**separation of powers**’. Under the separation of powers, government functions are shared across three ‘arms’ of government: the legislative, the executive and the judicial. It means that the power to make laws (legislative) is separate from the power to put those laws into action (executive), and that both of these arms are separate from the power to enforce the law and settle legal disputes (judicial). It means that we have a court system that is presided over by independent judges who are sworn to uphold principles of justice and fairness. The concept of the separation of powers can be traced back to the signing of the Magna Carta in England in 1215.

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



The separation of powers in the Australian Constitution

The Australian Constitution supports the idea of the separation of powers to allow for three arms of government:

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

4.26.2 The legislative arm

The legislative arm is the parliament. It has the power to make new laws and to change or repeal existing laws. It consists of two separate ‘houses’; the House of Representatives and the Senate, together with the

Governor-General as the representative of the monarch. A proposed law is known as a Bill. To become law, a Bill must be debated and voted on by both houses of parliament, and then approved by the Governor-General. It then becomes known as an Act or a statute, which are the formal names of laws that have been passed by parliament.

4.26.3 The executive arm

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

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



4.26.4 The judicial arm

The judicial arm includes the **judiciary** and the courts, which are responsible for enforcing the law and settling disputes that might arise under the law. The courts can also ensure that the law is applied fairly and equally to everyone, so they are a safeguard for our rights and freedoms. Once a judge has been appointed, he or she cannot be easily removed by the executive arm. This means that judges can be independent and make decisions without fear or favour.

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



Why do we have the separation of powers?

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

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

DISCUSS

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

4.26.5 The division of powers

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

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

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



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



Public swimming pools are valuable facilities provided by local councils.



Resources

 **Digital document** Worksheet 4.14 Separation of powers (doc-32843)

 **Interactivity** Time out: Responsibilities (int-1207)

The division of powers and the separation of powers

LOCAL GOVERNMENT

There are around 900 local government bodies in Australia (usually called councils).

Council members are called aldermen or councillors. The head of the council is called a mayor or a shire president.

Councils operate under state laws. They make rules, called by-laws, on local issues.

STATE GOVERNMENT

Each of Australia's six states and two territories has its own parliament. All parliaments have lower houses. All but Queensland and the two territories have upper houses (legislative councils).

The process of government is similar to that of the federal government. However, the head of government is the Premier (or Chief Minister in the territories) and the head of state (who represents the British monarch) is the Governor.

FEDERAL GOVERNMENT

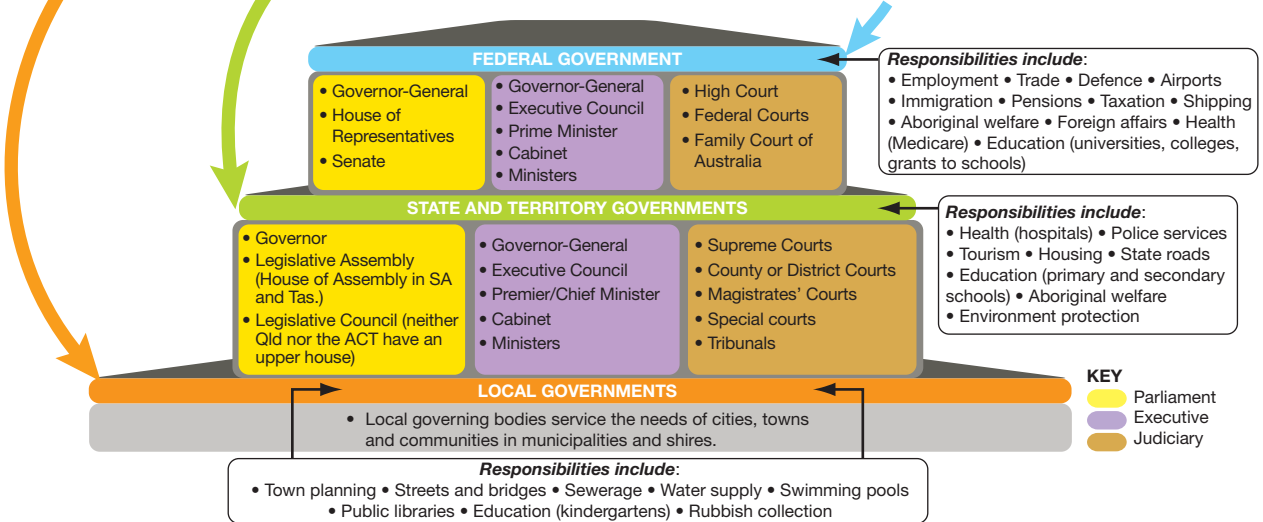
There are two houses of federal parliament — an upper house (the Senate) and a lower house (the House of Representatives).

The Prime Minister is the head of government.

Ministers are appointed to look after particular government portfolios or departments.

The Cabinet, which includes the Prime Minister and a group of senior ministers, makes the key government decisions.

The Executive Council is chaired by the Governor-General, who represents the British monarch as head of state.



4.26 Activity: Research and communication

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

4.26 Exercise: Knowledge and understanding

To answer questions online and to receive **immediate feedback** and **sample responses** for every question go to your learnON title at www.jacplus.com.au.

- Outline the role of each of the following arms of government, and provide an example of each:
 - legislative arm
 - executive arm
 - judicial arm.
- List three examples of the responsibilities of each of the following levels of government:
 - federal government
 - state government
 - local government.
- What is the difference between the division of powers and the separation of powers?
- Outline the role of the Governor-General.

5. For each of the following, indicate whether the role is legislative, executive or judicial:
 - (a) members of parliament
 - (b) government minister
 - (c) High Court judge
 - (d) the Cabinet.
6. 'The separation of powers is an important safeguard of our rights and freedoms in Australia.' Do you agree or disagree with this statement? Give reasons for your answer.

Fully worked solutions and sample responses are available in your digital formats.

4.27 SkillBuilder: Problem solving and decision making

4.27.1 Tell me

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

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

The problem-solving and decision-making process

Listen actively

Display empathy

Negotiate differences of opinion

Reach a consensus democratically

4.27.2 Show me

Making decisions collaboratively is very difficult. In groups of 4–5 debate one or more of the following topics:

- a. Soft drinks should only be sold with a warning label due to their high sugar content.
- b. The voting age should be lowered to 16 years.
- c. The school hours should be amended to cater for a three-day weekend.
- d. Optional topic agreed upon with your teacher.



In your groups begin by doing the following:

1. Without disclosing who is 'for' and who is 'against' the topic, make a list of questions that would make it easier to make an informed opinion.
2. Research the questions individually or in pairs.
3. Share information gathered to the group as a whole.

Each person writes down their opinion, making sure to use arguments gained from the research. Members of the group can take it in turns to keep notes. For each discussion point, you should use the following procedure:

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

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



4.27.3 Let me do it

Complete the following activities to practise this skill.

4.27 Activities

To answer questions online and to receive **immediate feedback** and **sample responses** for every question go to your learnON title at www.jacplus.com.au.

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

Discussion points could include:

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

Fully worked solutions and sample responses are available in your digital formats.

4.28 Thinking Big research project: Making laws

4.28.1 Scenario

You are a Member of Parliament. The local council responsible for much of your electorate has recently opened a new sporting ground in the area. Although it should have been a positive addition to your electorate, the new sporting ground has brought with it a range of new issues. The biggest issue is the significant increase of alcohol-related offences by young people under the age of 25. These offences are being highlighted in the local media. Unfortunately the number of offences has risen so much that, now, the details are being used by the country's media networks as the best example of the urgent need to increase the legal age of drinking from 18 to 21.

4.28.2 Task

To satisfy your constituents and your political party, you must take action. You will need to develop a policy for your political party on the issue of 'Increasing the legal drinking age from 18 to 21'. You might not agree that the drinking age should be increased to 21, but your party needs to be seen to be making positive change. So if you don't support this suggestion, you must introduce a different party policy that will target binge drinking among some of Australia's youth. As a Member of Parliament you must provide a report to your party detailing why the current drinking laws need to change.

You will also need to make sure that a new or amended law is passed. This means you will be required to describe the process that will have to be followed to secure the passage of this law through parliament.

You are provided with a newspaper article published on the issue, an excerpt from a radio talkback show and letters from two of your constituents who are passionate about different sides of this argument.



4.28.3 Process

1. Form a group with other members of your class. Open up your ProjectsPLUS application for this topic, located in the Resources tab. View the Project Brief and then click the 'Start new project' button and set up your project group. Save your settings and the project will be launched.
2. Navigate to the Media Centre and read the newspaper article and letters from your constituents, and then listen to the talkback radio segment.
3. You now need to complete research on the topic of 'Increasing the legal age of drinking from 18 to 21', and enter your findings as articles in the Research Forum under each of the following pre-loaded topics:
 - i. Medical reasons for increasing the age of drinking
 - ii. Social consequences of alcohol abuse
 - iii. Financial repercussions of alcohol abuse
 - iv. Political reasoning

The information that you gather will be used to help you complete the 'Party Policy' template. View and comment on other group members' articles, and rate the information they have entered. You may also like to add additional topics to the Research Forum.



4. When your research is completed, print your Research Report and then navigate to your Media Centre and select 'Templates'. Open the 'Party Policy' template to use as a guide to complete this section. Use your Research Report to help you discuss why the current law regarding the drinking age needs to change.
5. Decide on a policy for your party e.g. 'Increasing the legal drinking age from 18 to 21'. If you don't think the drinking age should be increased to 21, introduce a different party policy that will target binge drinking among Australia's youth.
6. Next, write a 3–5 minute speech based on your research. Your audience will be the political party that you represent. In the speech, you will need to describe and justify your new policy (i.e. provide arguments in favour of it). Once your group has written the speech, select one group member to present the speech to the rest of the class.
7. Create a poster describing the process that will have to be followed in order to make your policy into law. Use a flow chart to illustrate this process.
8. On the last page of your 'Party Policy' document, a properly referenced Bibliography needs to be completed. An example is provided.
9. Print your 'Party Policy' document and each student's Research Report, and submit them to your teacher along with your poster.



Resources



ProjectsPLUS Making laws (pro-0133)

4.29 Review

4.29.1 Summary

Having explored this topic, you can now:

- identify that we have laws to create a society in which people can live peacefully and know what can be done freely and what is prohibited
- explain the difference between rules and laws and how they operate in different environments
- describe how a nation's laws will reflect the moral and ethical values of that society and how, over time, these values may change and, therefore, so will the nation's laws
- explain how the court system consists of a Local Court, District Court, Supreme Court and a High Court, and that this is a hierarchical system; generally, the more serious the offence, the higher the court in which it is heard
- understand that if you do not like the decision of a lower court, you may appeal to a higher court to have it changed, and that a number of specialised courts also exist
- identify that Australia uses the adversarial system as our method of trial
- identify and describe the functions of the numerous specialised personnel associated with the adversarial system, including the judge, magistrate, accused, sheriff's officers, prosecutor, plaintiff, defendant, witnesses, tipstaff and jurors
- explain the jury empanelling process and the role of the jury in the legal process
- differentiate between public law (concerned with regulating people's behaviour and protecting the freedom of individuals) and private law (which deals with how individuals interact with other individuals)
- explain the differences between civil law (which is part of private law and deals with non-criminal matters such as trespass, defamation and negligence), criminal law (part of public law and focused on protecting individuals from others doing the wrong thing) and common law (also known as judge-made law)
- outline the changes in perception of customary law and its ability to co-exist with Australia's legal system

- make connections between domestic laws and international law, and the role the United Nations has in terms of enforcing international law
- understand the legal system can perform its protective role only if people have equal access to the law
- suggest barriers to equal access to the law; such as costs, time, distance, language and procedural complexities, and the changes that are being implemented to overcome these barriers
- describe the difference between federal, state and local levels of government, and explain the roles and responsibilities of each government
- explain how laws are linked to changes in our society and how laws are amended to reflect current trends
- explore ways you can make a difference by taking political action through lobbying, cyber activism or being an active citizen
- explain how the media, lobby groups and political parties can work towards solving issues in our society
- explain the process of a referendum
- outline what democracy is and how it functions in our society and distinguish between different forms of governments
- explain the process of voting in Australia and differentiate between different voting methods
- identify similarities and differences between political parties
- describe the roles and functions of political parties
- explain how pressure groups work towards influencing the government
- outline how the federal government is formed and describe the role the prime minister and Cabinet have in developing policies and making decisions on behalf of Australians
- explain the division of power between the legislative, executive and judiciary.

4.29.2 Key terms glossary

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

access equal opportunity for all people to make use of the legal system

adversarial system system in which two opposing parties present their arguments to a magistrate or judge

anarchy disorder or confusion due to the absence of government or laws

appeal an application for a legal decision to be reviewed in a higher court

bail to release an accused person who is awaiting trial

balance of power the power an individual or party has by holding the casting vote

balance of probabilities the standard of proof in civil trials

ballot paper a piece of paper on which a voter records her or his vote

beyond reasonable doubt the standard of proof required in a criminal trial

Cabinet the group of select government ministers that meets regularly to decide major issues of government

coalition a government that becomes possible because two or more parties agree to work together and hence gain the majority of votes

committal hearing a hearing in a Local Court to decide whether there is enough evidence to put a person on trial for an indictable (serious) offence

common law system of law based on the previous decisions of judges, or precedents

constitution a document that outlines the powers of the parliament

constitutional monarchy a form of government in which a non-elected monarch acts as the head of state. There are usually constitutional limits on their power

court a place where people can resolve disputes relating to law

defendant the party in a criminal or civil trial against whom an action has been brought

democracy a system of government where political power lies with the people

discriminate to treat somebody differently or less favourably because of her or his personal characteristics such as gender, ethnicity or religion

Dorothy Dixer a rehearsed question asked of a government Minister by a backbencher of their own political party

double dissolution a decision made by the head of state to dissolve both houses of parliament

Federation the colonies (now states) agreed to join together to form Australia

Federal Parliament the House of Representatives and the Senate
formal vote a vote that has been correctly marked on a ballot paper in accordance with the rules
hierarchy a grading system based on order of importance
House of Representatives the lower house of Federal Parliament, sometimes called the people's house
hung parliament a situation where no political party has a majority of elected members in parliament
independent a candidate or member of parliament who is not a member of a political party
indictable offence a serious criminal offence
judge a court official who has the power to make decisions on matters brought before a court of law
judiciary the system of courts that interprets and applies the law in a country
jury a group of people (either 12 or six) selected to hear the evidence in a court case
kinship traditional rules that outline the correct way of living in community with one another
laws a set of legal rules
lobby to attempt to enlist popular and political support for some particular cause
lore the customs and stories that came from the Dreaming and continue to govern all aspects of traditional life
magistrate a court official who hears cases in the lowest court of law
minority government a political party does not have a majority of overall seats in the parliament but they have still formed a government
non-parole a set period of time a prisoner must serve before they can be released on the promise of good behaviour
parole to release a prisoner on the promise of good behaviour
plaintiff the party that commences a civil action
portfolio an area of government responsibility, such as health or defence
precedent a previous legal decision that serves as a rule or pattern in future cases
preferences order in which voters list candidates at an election, after they have made their first choice
preferential system a counting system that is designed to allow the majority of Australians to have their say in an election by stating the order in which they prefer candidates
private law deals with disputes between private citizens
private member's bill a bill that is introduced by backbenchers as opposed to coming from the government
proportional representation when each senator must win a set proportion of votes, or quota, to win a Senate seat
prosecutor the party bringing a criminal action against the accused; usually the state
public law deals with disputes that affect the community
quota the number of votes that a Senate candidate must get to win a Senate seat
referendum a vote where the entire electorate is invited to vote on a particular proposal
Senate the upper house of the Federal Parliament, sometimes called the State's House
separation of powers the functions of government are spread across the legislative, executive and the judiciary.
statute law laws made by parliaments
sue to bring a civil action against another person for causing damage or injury
tort a civil wrong
trial a process to determine whether someone committed a criminal act or caused another person



Resources



Digital documents Key terms glossary (doc-32667)

Match-up (doc-32753)

Crossword (doc-32787)

Wordsearch (doc-32798)



Interactivities

Wordsearch (int-7901)

Crossword (int-7884)

4.29 Activities

To answer questions online and to receive **immediate feedback** and **sample responses** for every question, go to your learnON title at www.jacplus.com.au.

4.29 Exercise 1: Glossary quiz

4.29 Exercise 2: Multiple choice quiz

1. Which court hears cases concerning interpretations of the Australian Constitution?
 - A. Local Court
 - B. District Court
 - C. Supreme Court
 - D. High Court
2. What type of law is based on the previous decisions of judges?
 - A. Common law
 - B. Statute law
 - C. Legislation
 - D. Summary offence
3. What is the name given to a legal decision that sets a pattern for future similar cases?
 - A. Jurisdiction
 - B. Precedent
 - C. Statute
 - D. Amnesty
4. Which political party is the oldest party in Australia?
 - A. National Party
 - B. Labor Party
 - C. Liberal Party
 - D. Democrats
5. How many jurors are required for a criminal case?
 - A. 10
 - B. 8
 - C. 6
 - D. 12
6. What is the upper house in the Federal Parliament called?
 - A. House of Representatives
 - B. Senate
 - C. Legislative council
 - D. Parliament
7. What is the name of a law that has been passed by Parliament?
 - A. Tort
 - B. Precedent
 - C. Statute
 - D. Common law
8. Jason's lawyers have appealed the decision handed down in the District Court. Which court would hear his appeal?
 - A. Local Court
 - B. District Court
 - C. Supreme Court
 - D. Federal Court
9. Which of the following alternatives list two factors that can create barriers to accessing the law?
 - A. Cost of obtaining legal advice and lengthy trials
 - B. Cost of obtaining legal advice and magistrates
 - C. Understanding legal terminology and precedents
 - D. Lengthy trials and precedents

10. Which of the following statements is correct concerning the District Court?
- A. A magistrate hears the cases.
 - B. It deals with the most serious criminal cases, such as murder.
 - C. It hears appeals from the Local Court.
 - D. It is the highest court in Australia.
11. Don is running as a Liberal candidate in the Senate at the next federal election. What is the voting system used in the Senate?
- A. First past the post
 - B. Preferential
 - C. Proportional representation
 - D. Absolute majority
12. Ray believes he has been unfairly dismissed from his job as a TV presenter. He wishes to sue the station for a breach of contract. Which area of law would deal with this situation?
- A. Criminal law
 - B. Civil law
 - C. Public law
 - D. Tort law
13. Which of the following is **FALSE** regarding the state government?
- A. The head of the government is the Premier.
 - B. The head of state is the Governor.
 - C. There are six parliaments in Australia.
 - D. The process of government is similar to that of the federal government.
14. Which of the following are examples of pressure groups?
- A. Trade unions
 - B. Welfare organisations
 - C. Business associations
 - D. All of the above
15. Which of the following is an advantage of the jury system?
- A. Juries do not have to give reasons for their decisions
 - B. The final decision is made by more than one person
 - C. Ordinary people may not understand complex legal technicalities
 - D. Juries can be persuaded by the skills of clever lawyers
16. Which of the following best describes a jury?
- A. Hears the evidence presented in a trial and delivers a verdict based on this evidence
 - B. Determines whether someone has committed an illegal act
 - C. Presides over lengthy trials and ensures that the correct legal process is followed
 - D. Imposes the sentencing
17. Which of the following statements is **FALSE**?
- A. A bill is the first draft of an Act of Parliament.
 - B. Most laws in Australia are made by federal and state parliaments.
 - C. Australia has a legal system that began in the United States of America.
 - D. 90% of all civil cases begin in the Local Court.
18. Which of the following statements concerning political involvement is **FALSE**?
- A. Australian citizens 18 years of age and over must vote in federal, state and local elections.
 - B. Voting is an important part of Australia's democratic system.
 - C. The interests of society rely heavily on the many decisions taken by governments.
 - D. The prime minister must be a member of the Senate.
19. Which of the following statements is **FALSE**?
- A. Trespass is part of public law.
 - B. Negligence is part of private law.
 - C. Tort is part of criminal law.
 - D. Constitutional law is part of public law.
20. Which of the following alternatives display examples of indictable offences?
- A. Homicide, child abuse, vandalism
 - B. Stealing, vandalism, rape
 - C. Manslaughter, summary offences, child abuse
 - D. Murder, child abuse, armed robbery

21. Which of the following statements is **TRUE**?
- A. The Governor-General meets with a select number of government ministers after the second reading to decide whether the bill will become an Act of Parliament.
 - B. During the second reading the responsible minister describes the main purpose and likely benefits of the bill.
 - C. The committee stage is another word for the second reading stage.
 - D. A bill is a legally binding law.
22. Which of the following statements concerning the federal government is **FALSE**?
- A. Ministers are appointed to look after particular government portfolios.
 - B. The Governor-General represents the British monarch as head of state.
 - C. There are two houses of Federal Parliament — an upper house (the House of Representatives) and a lower house (the Senate).
 - D. The prime minister is the head of the government.

4.29 Exercise 3: Knowledge and understanding

1. Match the following definitions to the words shown in bold, below.

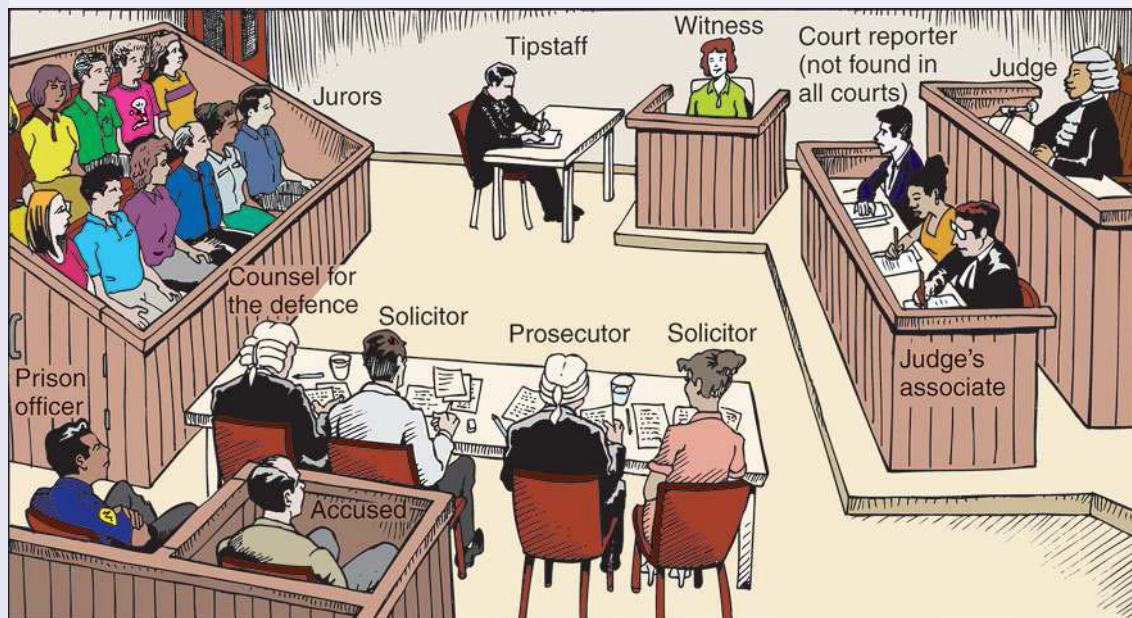
bail	appeal	plaintiff	committal hearing	beyond reasonable doubt
trial	judge	anarchy	sue	magistrate

- (a) The party that commences a civil action
 - (b) A process to determine whether someone committed a criminal act or caused another person a loss
 - (c) An application for a legal decision to be reviewed in a higher court
 - (d) To bring a civil action against another person for causing damage or injury
 - (e) Disorder or confusion due to the absence of government or laws
 - (f) The standard of proof required in a criminal trial
 - (g) A court official who hears cases in the lowest court of law
 - (h) To release an accused person who is awaiting trial. Another person usually guarantees to pay a large sum of money if the accused does not later appear in court on a certain date.
 - (i) A court official who has the power to make decisions on matters brought before a court of law
 - (j) A hearing in a Local Court to decide whether there is enough evidence to put a person on trial for an indictable (serious) offence
2. Which sort of society would you prefer to live in — one with too many laws, or one with too few? Explain.
3. List the basic rules that apply within your home. How are these rules different from laws?
4. What is the role of the court?
5. Explain why a court hierarchy is necessary for the system of appeals to operate.
6. What is the difference between:
- (a) criminal and civil law
 - (b) indictable offences and summary offences
 - (c) common law and statute law?
7. Provide examples of two laws that reflect the values of our society.
8. Explain how laws can be changed.
9. Identify those groups in society that may have trouble achieving equal access to the law.
10. 'Whenever the legal system discriminates against people it has failed in its main duty.' Discuss.
11. There are many different punishments that can be used, depending upon the severity of the crime, the circumstances and the age of the offender. One punishment used in the Australian Capital Territory was called 'shaming'. It involved a 12-year-old charged with shoplifting being forced to wear a T-shirt with the message 'I am a thief' on it. Do you think this is an appropriate method of punishment? Why?
12. Describe the difference between the three levels of government.
13. What is a referendum?
14. What does it mean to be an active citizen?



15. Examine the following illustration of a criminal proceeding. Outline the role of each person named.

Who's who in this courtroom scene?



4.29 Exercise 4: Challenge your understanding

1. List five rights you have that relate to your ability to decide how you will be governed.
2. Explain two ways individuals and groups can influence government decisions.
3. What is the difference between the 'first past the post' and 'preferential' voting systems?
4. How is a monarchy different from a constitutional monarchy?
5. Why do you think the attitude towards customary law has changed over time?
6. Assess how the separation of powers ensure that our democracy is run smoothly and justly?

Fully worked solutions and sample responses are available in your digital formats.

on Resources

Digital documents Worksheet 4.15 Wrap up! (doc-32809)

Glossary quiz (doc-32765)

Multiple choice quiz (doc-32776)

eWorkbook

Customisable worksheets for this topic (ewbk-0861)

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