

The law and you



In a representative democracy the law reflects the values of the community. Laws set the boundaries of expected conduct within the community by establishing the rights and responsibilities of individuals within the community. The government establishes the ways in which these laws can be enforced. The government is responsible for setting up a system of courts and tribunals to hear disputes when people believe that the laws have been broken.

It is also responsible for the operation of bodies—such as the police—which help to enforce the laws and protect the community from those who break them.

All aspects of the law and you are discussed in this chapter.



Learning activities

- 1 Working in groups, prepare a chart similar to the one below.

Demand that you behave in a certain way	Place restrictions on your behaviour	Prohibit certain conduct

- a List examples of rules and laws which require you to behave in a certain way, place restrictions on your behaviour or prohibit certain types of conduct.
- b What different types of punishments are used to enforce the different types of rules and laws listed in your chart?
- c Is there a difference between the way in which rules are enforced and the way in which laws are enforced? Explain.
- 2 A school is a community. Within your school there are rules. Obtain a copy of the school rules and answer the following questions.
- a Carefully read through the school rules. What do you think are the 10 most important rules in your school? Suggest why these rules may be needed.
- b How are the rules enforced?
- c How do you think that the rules in your school are made? Design a flow chart to illustrate the process used in your school to make the school rules.
- d Do you agree with all the rules? Select a school rule that you would want to change.
- i Explain why you want to change the rule.
- ii What action could you take to bring about change in the school rule?
- 3 What do you think are the main differences between a rule and a law?
- 4 Why do you think we need laws?
- 5 You are the crew of spaceship *Zeppelin*. A comet has struck Earth and your spaceship is the only ship to safely escape Earth's orbit before Earth explodes. Your mission is to find an inhabitable planet and establish a colony. Form in to small groups of four or five. Each group should draw up a list of rules that it thinks the group needs to follow. When writing your rules consider the following:
- a Are the rules clear and well defined?
- b Do your rules establish the rights and responsibilities of crew members?
- c How are your rules to be enforced?
- d Have you set up a process for making or changing the rules? Is this process democratic?
- e Do your rules provide a way for complaints to be heard and determined?

Types of laws

There are two main types of law: criminal law and civil law.



Criminal law

Criminal law: regulates behaviour between an individual and the community

Summary offences: minor offences heard by a magistrate

Indictable offences: serious offences that are heard before a judge and jury

Defendant: a person charged with a criminal offence in a court

Accused: the term used to refer to a defendant in the County or Supreme Court

For some offences, such as traffic offences, it is not necessary to prove *mens rea*.

Criminal law is concerned with cases in which a person has committed an offence against the wellbeing of the community. It includes offences against:

- ▶ the state, such as treason or sabotage
- ▶ a person, such as murder or assault
- ▶ property, such as theft or damage
- ▶ public order, such as traffic offences and abusive language.

Criminal offences are classified according to the seriousness of the offence. Less serious offences are referred to as **summary offences**. They include offences relating to public order, speeding offences and jaywalking. The more serious offences are referred to as **indictable offences**. These are the more serious crimes that are heard before a judge and jury. Indictable offences include theft and homicide.

A person being prosecuted for a criminal offence in court is known as the **defendant** or **accused**. People accused of committing a crime are considered to be innocent until proven guilty. This means that it is up to the prosecution to prove that the accused is guilty. To prove that a person is guilty the prosecution must prove two elements:

- ▶ *mens rea*—that the accused acted with a guilty mind or intention
- ▶ *actus reus*—that the accused committed the guilty act.

Civil law

Civil law: regulates behaviour between one individual and another individual

Civil law is concerned with cases in which there is a dispute between two private individuals. (For the purpose of the law, a corporation or a company is considered to be an individual.) The courts hear civil cases in order to determine the rights of individuals and to settle the dispute. Examples of civil cases include:

- ▶ ownership of property
- ▶ contracts or other legally binding agreements
- ▶ divorce.

[11.4] Laws in the community



An important area of civil law is known as torts. *Tort* is a French word meaning 'wrong'. A tort is a wrongful act committed by one individual against another individual. Examples of torts include:

- ▶ negligence—failing to take adequate care so that your acts or omissions do not adversely affect another person
- ▶ nuisance—causing an obstruction, inconvenience or damage to property
- ▶ defamation—harming a person's reputation
- ▶ trespass—entering another person's property without permission, handling another person's possessions without permission, threatening to attack or harm a person (this is also known as a civil law assault).



Learning activities

- 1 Working in small groups, think about the things that you did on the weekend. Consider all the different laws relating to this situation. Draw up a chart similar to the one below and classify these laws as either criminal or civil.

Criminal offences	Civil laws

- 2 Read the section describing criminal law. Prepare a list of words that are used when describing criminal offences. What other terms do you associate with criminal law?
- 3 Read the section describing civil law. Prepare a list of words that are used when describing civil matters. Are there any other terms that you associate with civil law?
- 4 Prepare a folio of newspaper articles describing legal situations and cases. For each article you collect:
 - a identify the source of the article
 - b give the date of the article
 - c name the people involved in the case
 - d describe the key facts in the case
 - e classify the case or situation as relating to either criminal or civil law.

How law is made

Acts: laws made by parliament

Statutes: laws made by parliament

Common law: laws developed by the courts

There are two main sources of law:

- ▶ parliament—democratically elected and representative bodies that make laws in the form of **acts** or **statutes**
- ▶ **common law**—laws that come from decisions made by judges in courts.

Parliament

Parliament provides a forum for debate about the decisions that need to be made for the wider community. The Commonwealth parliament makes decisions for Australia as a whole. The Victorian parliament makes decisions for the state of Victoria. The range of issues that the Commonwealth parliament can make decisions on are set out in the Australian Constitution.

Most changes to the law are proposed by the Government as a result of decisions made in Cabinet. Other influences that may result in a proposed change include approaches to members of parliament, reports of committees or the public service,

For more information about the role of the Commonwealth and Victorian parliaments see chapter 10.

Legislative process: the process used by parliament to make laws

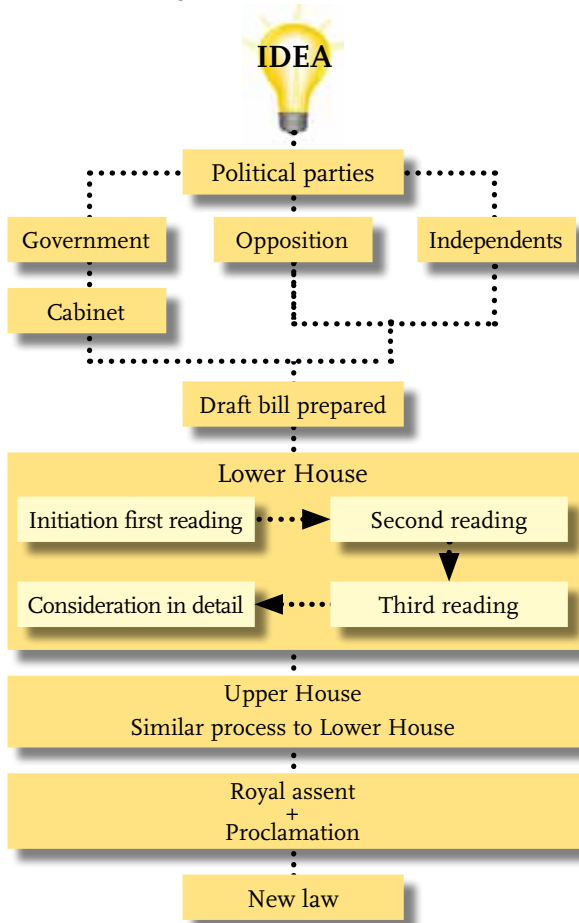
Bill: a proposed law to be considered by parliament

and pressure from outside sources such as the Opposition or another political party, pressure groups, the media, or trade unions and other organisations.

The procedure used by parliament to make a law is known as the **legislative process**. A proposed law is called a **Bill**. A Bill may be introduced by a member into either house of parliament.

In most instances a minister introduces a Bill into the lower House. A proposed Bill must be passed by both houses of parliament and approved by the Crown (the Governor-General or Governor) to become law. It is then known as an act or statute.

[11.5] How parliament makes laws



The lower House

- ▶ **Initiation:** the proposed change is written up as a Bill by the parliamentary draftsman. The Bill's full title must be given to the house the day before it is to be introduced.
- ▶ **First reading:** during the first reading the clerk reads out the title of the Bill. The member introducing the Bill will move that the Bill be read a second time. Copies of the Bill are distributed to all members.
- ▶ **Second reading:** during the second reading the member introducing the Bill will outline the key features of the Bill and the reason why the Bill is needed. After the member's second reading speech, debate will usually be deferred to allow members time to consider their response. When the debate resumes, members will debate the purpose of the Bill. Members of the opposing parties will indicate their support or disapproval of the Bill.
- ▶ **Consideration in detail:** during this stage the Bill is looked at clause by clause. Amendments or changes may be recommended. At the completion of this stage any changes that have been discussed will be reported back to the house. The House will be asked to adopt the report. In the upper House this stage may also be called the Committee of the Whole.
- ▶ **Third reading:** at this stage there may be some further debate about proposed amendments. The title of the Bill will be read and a vote will be taken. If the Bill is passed by a majority, it will progress to the upper House.

The upper House

The Bill goes through the same stages in this second house. If the Bill is amended, it must be returned to the first house, where the amendments must be approved before the Bill can become law.

Royal assent

The Bill is presented to the Governor or governor-general for royal assent. The Bill then becomes an act of parliament. It is proclaimed law when the proclamation is published in the *Government Gazette*.



Learning activities

- 1 Describe the process used by parliament to make laws.
- 2 Identify three recent changes (or proposed changes) to the law that are currently being discussed in the media. Suggest reasons why these changes may be needed.
- 3 Explain how the legislative process allows a fully informed debate to take place about the need for a change in the law.
- 4 Explain why laws need to change and the process used by parliament to change them.
- 5 **a** Think about the types of rules that you need for your class to work well. You should think about:
 - i** the rights of all individuals in the class
 - ii** the responsibilities of all individuals within the class
 - iii** what the consequences would be if the rules are broken.
- b** Prepare a class Bill. Use [11.6] as a model for writing your Bill. In your Bill you may want to look at the rights and responsibilities of members of the class such as respect for others, homework and lateness to class.

Remember that your teacher is also a member of the class.

[11.6] Class Rules Bill

A Bill Class Rules 2012

To establish the rights and responsibilities in _____ class to provide an effective and inclusive learning environment in which all students achieve their personal best.

Be it enacted as follows

- 1
- 2
- 3

- c** Using the stages of the legislative process as a guide, conduct your own legislative process to pass your Bill.

Common law

Australia inherited the system of common law from England. This law originally developed from customs and has evolved over centuries. If judges make a decision on an issue not covered by legislation, their decision is recorded. Other judges, hearing similar cases, refer back to this decision to decide what the law should be.

This process of judges referring back to past decisions to decide what the law should be is known as **precedent**. This system is also sometimes referred to as case law or judge-made law because judges decide what the law should be by referring to past cases.

When a court creates a new precedent or interprets an existing precedent to apply to a new situation it is adding to the body of law known as common law. However, judges are not free to interpret the common law whenever they feel a change is needed.

Precedent: a principle developed by the courts, which provides a guide in similar cases

They can only interpret the common law when:

- ▶ a case comes before them in court
- ▶ there is no existing statute, or parliament made law, that applies
- ▶ they are not bound to follow an existing principle of common law.

Courts cannot interpret the law in a way that contradicts the laws made by parliament. Parliament, as the elected body that represents the people, has the final say on what the law should be.



CASE STUDY

The Case of *Donoghue v Stevenson* established the principles of negligence in 1932.

The case of the snail in the ginger beer bottle

A boy and a girl were out on a date. The boy bought the girl a 'Scottish Floater'. A Scottish Floater is made of ice cream and ginger beer. The ginger beer was sold in bottles made of dark glass. The shop assistant opened the bottle and poured out half the ginger beer for the girl. Later the girl poured out the rest. When she poured out the rest she discovered the decomposed remains of a snail. When she saw this she became very ill. She sued the manufacturer of the ginger beer.

This was the first case in which a consumer successfully sued a manufacturer for not taking reasonable care in manufacturing products. The girl argued that the manufacturer had presented the ginger beer in bottles that were not see-through and that the manufacturer knew that the consumer would be drinking the product without the opportunity to inspect the contents. She argued that the manufacturer therefore had a duty of care and that not exercising that duty was negligence.

The court agreed and said that manufacturers owed a duty of care. The court said 'You must take reasonable care to avoid acts of omission which you can reasonably foresee would be likely to injure your neighbour'. Your neighbour is any person who you can reasonably foresee may be effected by your actions. This common law principle forms the basis of the tort of negligence.



Learning activities

- 1 What does the term judge-made law mean?
- 2 When will judges use precedent to determine what the law should be?
- 3 Is the use of precedent a democratic form of law making? Suggest reasons why the courts may need to use precedent.
- 4 The recognition of Aboriginal land rights in Australian law is an example of the relationship between statute law made by parliament and common law developed through the courts. Carefully read the following case study and answer the questions after it on page 267.

Case study—Do Indigenous people have land rights?

On 22 August 1770, at Possession Island (off Cape York Peninsula), James Cook claimed possession of the east coast of Australia for the British. Australia was seen as a *terra nullius*—a land that belonged to no one. The rights of the Indigenous peoples to ownership of the land were not recognised. Europeans



settlers who seized land from Aboriginal groups gave little consideration to the rights of the original inhabitants. Some Aboriginal groups resisted and a number of massacres took place.

In the 1960s Aboriginal people began to look to the law for ways of reclaiming their land.

[11.7] Indigenous land rights—the struggle

1963	Bark petition sent to the federal government by the Yirrkala people
1965	Freedom Ride protest against discrimination
1966	Aboriginal stockmen strike for return of traditional lands at Wave Hill Station
1967	Citizenship referendum recognises Indigenous people as citizens
1971	Yirrkala people lose case against Nabalco mining bauxite on traditional land
1971	Tent embassy set up outside Commonwealth parliament
1973–74	Woodward Aboriginal Land Rights Commission recommends that Aboriginal people have the right to traditional lands
1975	Gurindji people given leasehold to 1250 square miles of land
1976	Commonwealth parliament passes Aboriginal Land Rights (Northern Territory) Bill
1982	Demonstrations on land rights are held at Brisbane Commonwealth Games
1983	Uluru National Park handed over to the traditional owners
1983	Indigenous Australians own 500 000 km ² of land throughout Australia
1991	The Council for Aboriginal Reconciliation was set up
1992	Mabo case extinguishes terra nullius principle
1993	<i>Native Title Act</i> passed
1995	Indigenous Land Corporation established
1996	Wik case
1998	<i>Native Title Amendment Act</i>

[11.8] Eddie Mabo



Terra nullius: a land that belongs to no one

Since 1992 Australian law has recognised native title. Native title is not the same thing as land rights. Native title recognises rights and interests in land according to traditional law and customs. It does not replace someone else's rights to use the land. It does not apply where the land is privately owned.

In 1982, Eddie Mabo (and four other Torres Strait Islander people) went to the High Court of Australia. Mabo claimed that he owned his family's land on Mer Island, in Torres Strait. It had been Mabo land for many generations and everyone else in the Island group recognised his traditional rights to it. He claimed that Mer Island had been continuously inhabited and exclusively possessed by them. He acknowledged that the Crown had exercised sovereignty when it annexed the islands, but claimed that his land rights had not been validly extinguished. The High Court decided in favour of Eddie Mabo in June 1992. But Eddie Mabo never heard the ruling. He died in January 1992.

Mabo Case 1992

In the Mabo case the High Court of Australia changed the legal argument that Australia was a **terra nullius** at the time of British colonisation. In overturning this common law principle, the High Court said that the common law of Australia does recognise Indigenous land ownership had existed before 1788.

The Mabo decision recognised that Indigenous peoples continued to possess and enjoy their traditional lands. The High Court said that native title—or ownership by the Indigenous people—existed where the people could prove a continuing traditional connection to the land and where governments had not



extinguished that connection. Rights were extinguished where private ownership had been granted to another person.

Native Title Act 1993

The government responded to the Mabo decision by passing the *Native Title Act 1993*. The Act was passed to clarify the law about native title. The Act established a National Native Title tribunal. It set out a process for hearing native title claims.

Wik case

In 1996 the High Court heard a case concerning the Wik people. The Wik people claimed native title rights to use land covered by pastoral leases in far north Queensland. A pastoral lease is when the government leases land to farmers or other businesses. In this case the government has leased land to farmers to graze cattle. The High Court decided that native title rights and the rights of leaseholders should coexist. Where there is a conflict the rights of the leaseholder prevailed. This meant that Indigenous peoples could go onto leasehold land to hunt and fish according to traditional and customary practice.

Changes in the Native Title Act

The Government amended the *Native Title Act* in 1998. These changes either extinguished or limited native title on some pastoral leases and areas of government-owned land in towns and cities. It also changed native title rights over waterways and airspace. The Act provided that people could negotiate agreements about rights to land.

In 2009 the Native Title Act was again amended. These changes gave the Federal Court a central role in managing all native title claims. The Federal Court can settle native title claims using mediation. Alternatively, the Federal Court can send a claim to the National Native Title Tribunal.

- a What does *terra nullius* mean?
 - b What actions had been taken by Indigenous people to influence a change in government policy about Indigenous land rights?
 - c Who was Eddie Mabo?
 - d What was the Mabo case about?
 - e What is native title?
 - f Why was the Native Title Act passed?
 - g Which individuals and groups in the community do you think may be affected by the Wik decision? How did the Government respond to this decision?
- 5 Find out more about the recognition of Indigenous rights. Working either individually or in groups, select one of the following research topics.
- Aboriginal deaths in custody
 - Indigenous rights
 - Stolen generations
 - Recognition of Customary law
- 6 Prepare a class presentation that:
- a outlines the issue
 - b identifies significant individuals or groups who have expressed views about the issue
 - c explains the action taken by the Government in relation to the issue
 - d recommends possible changes to address the issues discussed.



7 Each of the following people has made a significant contribution towards the recognition of Indigenous people and their rights.

a Working in groups, use the internet or library resources to find out more about the people listed below. As part of your research you should address the following questions:

- i Who are they?
- ii What did they do?
- iii Why do you think they are considered a leader?

Neville Bonner

Pat Dodson

Galarrwuy Yunupingu

Lois O'Donoghue

Eva Fesl

Pat O'Shane

Noel Pearson

Gatjil Djerrkura

Sir Douglas Nicholls

Michael Long

Cathy Freeman

Yothu Yindi

Aden Ridgeway

b Thinking about the research you have completed, prepare a paragraph starting with each of the following sentences:

- The most important work towards reconciliation and the recognition of Indigenous rights is ...
- To achieve equality Indigenous people need the Government to ...
- To achieve equality Indigenous people need the community to ...
- The most significant leader for Indigenous people is ... because ...

Share your responses with the class.

► Influencing change

Individuals and groups may influence change in a variety of ways. Freedom of speech is a basic right of all individuals in a representative democracy. Everyone has the right to present an argument for some change to be made.

There are many ways in which individuals may influence the decisions made by the parliaments and local governments. These actions include:

- approaching government officials or members of parliament
- writing a letter to a member of parliament or to the media
- preparing submissions
- signing a petition to parliament
- holding meetings
- voting in elections
- standing for election to parliament
- joining a political party
- joining a pressure group
- demonstrations.

Action for change

Any citizen may approach their local council member or member of parliament to express their concerns about the need for action. This approach may take the form of personal contact,



a letter, email or phone call. Some people will contact newspapers with their concerns. They might even appear on TV or be heard on radio.

Any individual trying to influence change can write submissions to various organisations. Formal bodies are set up by governments and parliaments in order to review the need for changes in the law. These include law reform commissions, royal commissions, boards of inquiry and parliamentary committees. Before a new inquiry begins, an announcement will often be placed in newspapers. It will explain the purpose of the inquiry and invite any interested people to make submissions.

In reality, an individual acting alone in writing a submission is likely to have little influence because they may not be representative of the community.

Letter to the editor

I AM concerned about the reports of the arrest of protestors. The Government recently said that anti-terrorism laws would have no impact on freedom of speech. But the Government is using these laws to gag debate. I recognise the need for anti-terrorism laws, but has this gone too far?

A. T. Vist, Victoria



Learning activities

- 1 Collect examples of letters to editors from a range of newspapers. These may include local, regional and national newspapers.
 - a Identify the source of each letter collected.
 - b Briefly explain the issues discussed.
 - c Which letter do you consider to be the most effective? Why?
- 2 Think about a local issue that concerns you. Gather more information on the issue. Write a letter to the editor of a newspaper expressing your view and the action that you think needs to be taken.

Petitions

Petition: a formal request for parliament to take action

Hansard: a written record of everything said during a sitting of parliament

For more information about petitions see www.aph.gov.au, click on the link to 'Education' and then 'Infosheets'.

Part of each day that parliament sits is set aside for hearing **petitions**. The right to petition parliament is considered a basic right of all citizens in a democracy.

Individuals can send a petition to their representatives in parliament. The petition must be signed by the individual(s) sending the petition and by the member of parliament. Petitions are read out in parliament by the clerk, and then tabled and reprinted in **Hansard**.



[11.9] Bendigo petition

Voting at an election

Electoral mandate: the support of a majority of electors for the government to implement policies by passing legislation

When a political party presents a range of policies as part of its election campaign, it is presenting the voters with a number of promises. These are promises of action that will be taken if the party is successful in gaining a majority of votes. Voters can reasonably expect that these promises will be implemented if the party wins government. Parliaments and governments are intended to be representative of the will of the majority of voters. This is known as an **electoral mandate** to take action.

If the people are dissatisfied with the action of a government, they can express their dissatisfaction at the next election by voting against that government. If this happens, the government will lose power and be replaced by another political party.

Standing for election

An individual who wants to influence change may stand for election to parliament. They can be either an independent or a representative of a political party.



CASE STUDY

[11.10] Greg Hunt



Greg Hunt Member for Flinders speaks about why he stood for election

Q: What did you do before becoming an MP?

Before becoming the federal member for Flinders in 2001, I worked as a lawyer and an associate to the Chief Justice of the Federal Court before spending time as an intern with the United Nations Centre for Human Rights in Geneva. I later worked as an adviser to the then minister for foreign affairs, Alexander Downer; I was chief Australian electoral observer in Cambodia and spent three years with international management consultant firm, McKinsey and Co.

Q: What aroused your political consciousness?

Growing up in a political family (my father was a Victorian government minister) gave me a strong sense of the importance of serving my local community when I grew up.

Q: Why did you take the next step of seeking election as a Member of Parliament?

Politics provides a wonderful opportunity to serve the community. It puts you in a position to help solve problems at an individual and local level while also contributing solutions to the larger social, economic and environmental issues that we face as a nation. It demands a fair amount of ingenuity and flexibility and I enjoy the challenge immensely.

Q: Who has been or is your political inspiration and why?

Nelson Mandela's example of courage, dignity, forgiveness and steadfast commitment to the ideals of freedom and equality mark him as an inspiration to all people. Likewise, Winston Churchill's bravery, determination and ability to inspire others to hope and courage through his skills as an orator mark him as one of the western world's greatest leaders. I am also an admirer of Theodore Roosevelt who, 100 years ago, convened the world's first major environment conference and who believed that the conservation and sustainable use of natural resources was one of the most important and fundamental tasks facing society.



Q: When you leave politics, what legacy would you like to leave for future Australians?

I would like to leave Australia with a better-protected environment, healthy rivers and long-term water security. In my electorate, I would be happy if I could achieve the permanent closure of the Gunnamatta sewage outfall and the creation of the National Centre for Coasts and Climate at Point Nepean.

Q: What appeals to you about our democratic system?

It gives everyone a say in how our country is governed and provides for the peaceful transfer of power, according to the will of the people. Democracy is based on the notions of equality and freedom, two principles that are absolutely fundamental to my political beliefs.

Q: What don't you like about our democracy and how would you improve the system?

While I acknowledge that our democratic system is not perfect, I believe it is by far the best, most sophisticated and fairest form of government the world has yet seen. Saying that, I think there is scope for greater cooperation between the different political parties.

Q: What can be done to encourage young people to be more politically active and democratically minded?

Young people could be engaged through media, such as Facebook and Twitter, on issues that matter to them—such as the environment, public transport, street violence and education. Politicians could also be more accessible to young people by making time to visit schools, universities and TAFE colleges to answer student questions and speak about the importance of democracy. The more our young people are encouraged to think about democratic ideals and their relationship to everyday life in Australia, the more likely they will be to become politically active.

Q: What do you believe are the attributes of political leadership?

A good political leader needs the ability to balance many things—competing interests, the social, economic and environmental needs of the nation, Australia's relationship with other countries, the democratic ideals of equality and freedom and much more—when making decisions. In addition, a political leader needs to be able to communicate clearly as well as engage and inspire others with hope and confidence. Compassion, flexibility, persistence and a solid ethical base are also essential.



Learning activity

Carefully read Greg Hunt's comments and answer the following questions:

- 1 What factors or events influenced Greg Hunt to stand for election to parliament? What other reasons do you think may influence individuals to stand for election to parliament?
- 2 What does Greg Hunt see as a significant feature of a democracy? Do you agree? Justify your view.
- 3 What does Greg Hunt see as the characteristics of a political leader?
- 4 Greg Hunt identifies three people who have inspired him. Find out more about one of these people. Identify the characteristics that make them a leader.
- 5 Who do you think are the important leaders in your community?

Joining a political party

An individual does not have to stand for election to influence the decisions made by political parties. They can join a political party. Joining a political party gives the individual two ways of influencing change by:

- ▮ influencing the types of policies that are developed by the political party
- ▮ becoming involved in the process used to select candidates to represent the party at the next election.



CASE STUDY

[11.11] Kate Ellis,
Labor MP for
Adelaide



The Hon Kate Ellis MP

Labor MP for Adelaide, Minister for Childhood Education, Child Care and Youth and Minister for Sport

In 2004 Kate Ellis became the youngest woman elected to the House of Representatives. Before entering parliament, she worked for the South Australian Deputy Premier and Treasurer, Kevin Foley.

Following the Labor Party election victory in 2007, Ellis was appointed the Minister for Youth and Sport. In June 2008, she was given extra ministerial responsibilities as Minister for Early Childhood Education, Childcare and Youth. In this re-established youth portfolio, she is aiming to forge a new direction in youth policy.

Ellis says she is committed to providing a genuine voice for young people and recognises the important contribution they make in the life of the country. One initiative is the National Strategy for Young Australians, which recognises that today's young Australians face new and unique challenges and different social and family patterns, rapidly changing technology, an evolving labour market and climate change.

Ellis launched the Government's blueprint for the future of Australian sport along with an independent expert panel to examine better ways to operate, promote and manage sport in Australia. She appears to be passionate about the power sport has to strengthen communities, tackle obesity and define our national identity.

[11.12] These quotes are taken from Kate Ellis's first speech in parliament on 18 November 2004.

'What set me on my journey and what brings me here today is the feeling that this [Coalition] government is taking something more valuable than I am willing to give.'

'I have no intention of claiming to be the voice of youth. Instead, I intend to represent all those within the seat of Adelaide, regardless of their age, their race, their gender or their wealth.'

'If we fail to address this serious issue, the death of the Murray [River] will be both environmentally and economically disastrous.'

'I am here today because I believe in the political process. I believe that politics and the parliamentary process have the power to change people's lives for the better. However, in order for this to be true we must respect and maintain the integrity of our political system. Many have noted the level of cynicism towards politics within the Australian community ... The Australian people deserve to have faith in us.'

'My only hope is that one day I will be old and idealistic and be able to look back on my time in this place and think that ... I managed to make a contribution that went some way towards seeing a long-term vision for our nation become closer to a reality.'





Learning activity

Read the information on Kate Ellis, visit www.kateellis.com.au and then answer these questions.

- 1 What was Kate Ellis's role before entering parliament?
- 2 Suggest why Kate Ellis decided to become a MP.
- 3 Kate Ellis says that 'politics and the parliamentary process have the power to change people's lives for the better'.
 - What are some of the ways in which individuals can engage in civic and political activities?
 - Survey your class. Identify the different ways in which students in your class participate in their community.
 - List the different opportunities for civic engagement in your community.
 - Do you agree that Australians deserve to have faith in their politicians? Justify your answer.
- 4 As the youngest woman elected to the House of Representatives, some people thought her role would be to speak for people aged under 30. How does Ellis see her role?
- 5 In her first speech in the House of Representatives, Ellis summed up the issues that she believed were important ones facing Australia. Work in groups and complete the following:
 - List the issues identified.
 - What issues would you add to the list?
 - Rank the issues in order of importance. List the most important first and the least important last.
 - Select one of the issues you have listed. Using the internet, find out more about the views of the main political parties on this issue. Lead a class discussion on the issue, or design a poster to illustrate these views.

Groups pressing for change

Pressure group: a group, often in politics or business, which attempts to protect or advance its own interests

Generally, a person acting alone has limited power to bring about change. Change is more likely to occur when a number of individuals act together. When a group of like-minded individuals join together to form an interest group or **pressure group** they are more likely to influence change.

Pressure groups are different from political parties because members of a pressure group have no intention of taking on a role in government. A pressure group is content to achieve its specific aims. It does not want to form a government and implement general policies.

Some achievements that have been made possible with the aid of pressure groups:

- a the right of women to vote
- the removal of Aboriginal people from the *Flora and Fauna Act*
- the withdrawal of Australian troops from Vietnam
- National Sorry Day
- the protection of the Daintree rainforest and the Franklin River in Tasmania.

Pressure groups can influence change in the same ways as individuals, but they are likely to be more successful because they represent more than one person. The Australian Conservation Foundation is an example of a pressure group.

Pressure groups may **lobby** to influence government policy. Some influential groups in the community have permanent bodies established to work with governments on policies that affect their interests. For instance, the Victorian Farmers Federation is an influential group in the community. Some commercial



Lobby: to try to influence a member of parliament in favour of some special interest

The term 'to lobby' comes from the practice, in earlier years, of people with petitions waiting in the parliamentary entrance hall (the lobby) to speak to members of parliament in an attempt to influence them.

interests such as large companies also put pressure on governments. These groups may also retain professional lobbyists. Trade unions act as professional lobbyists when they react to proposed legislation and policies, and lobby to initiate change.

Trade unions

Unions are organisations set up by employees to represent the interests of workers. They do this by assisting them to gain better pay, improved living standards, safe working environments and employment security. The main purpose of a union is to maintain and advance the wage rates and working conditions of members. Unions defend and promote a fair and safe working environment. Unions act as a pressure group to influence government policies on issues that affect their members.



Learning activities

- 1 What is the difference between an interest or pressure group and a political party?
- 2 Suggest reasons why taking action as a group may be more effective than taking action as an individual.
- 3 Working in groups, select one pressure group to research. (You may choose a pressure group currently featured in the media or one of those listed below.) Using the internet, find out more about the role and function of the pressure group chosen, and identify issues relating to it. Prepare a presentation for the class on your chosen pressure group.
 - Australian Chamber of Commerce and Industry
 - National Farmers Federation
 - Greenpeace
 - Tenants Union of Victoria
 - Wilderness Society
 - Australian Union of Students
 - RACV
 - Evatt Foundation
 - Australian Law Council
 - Australian Medical Association
 - Australian Industry Group
 - Federation of Ethnic Communities' Councils of Australia (FECCA)
 - Taxpayers Australia
 - Animal Liberation—Victoria
 - Friends of the ABC
 - Right to Life
- 4 What is a trade union?



- 5 Using the ACTU's homepage at www.actu.asn.au, answer the following questions:
- When was the ACTU established?
 - Who does the ACTU represent?
 - What does the ACTU see as its major achievements?
 - Find out more about a campaign currently being conducted by the ACTU to influence change.
 - Prepare a one-page fact sheet summarising the issue.
 - What action has the ACTU taken to influence a change?

Demonstrations



A demonstration is a public display of support for, or opposition to, a particular change in government policy or the law. Typically, it will involve some form of public meeting. The right to peaceful assembly is assumed to be a right within any democracy. This right is recognised by international agreements to which Australia has consented.

However, the right to lawful assembly is not absolute. There are some limitations. For instance, the right to peaceful assembly is limited to assemblies that do not involve violence. There is no right to hold a violent demonstration. In addition, violent demonstrations rarely gain popular support.

Demonstrations held in public areas may often require permits or notification. They may require permission from local councils or other authorities. In practice, permission to hold a demonstration is rarely refused.

Demonstrations often involve carrying banners or placards, or distributing leaflets or using loudspeakers. They are also subject to various restrictions. Authorities in some areas may prohibit the distribution of leaflets. Banners and placards cannot be so large as to obstruct traffic, and the language used on them cannot be offensive or slanderous.

Civil disobedience

In demonstrating a view on an issue, some groups may deliberately break the law. This is sometimes done in order to bring attention to their cause. When there is a large group of people dissatisfied with an issue, **civil disobedience** can become so disruptive that the Government is forced to respond. However, groups pursuing such an action take a risk. If the community perceives their actions as being violent, threatening or unacceptable, they may lose support for their cause. Furthermore, if their actions are unlawful they may end up in court facing criminal charges.

Civil disobedience:
action taken that is against the law in order to bring attention to an issue



Learning activities

- List the different actions that individuals or groups may take to influence government decisions or to bring about a change in the law.
 - Which actions do you think would be most effective? Review the list that you have compiled. Rank the actions listed from the most effective action to the least effective action.
 - Explain why you think some actions are more effective than others.



- 2 Suggest reasons why politicians are more likely to respond to action taken by groups than to action taken by individuals.
- 3 Collect newspaper articles that discuss action taken by individuals and groups to bring about a change, either through your local government or the Victorian parliament.
 - a For each article:
 - i name the source
 - ii briefly describe the issues
 - iii identify the action taken by the individual or group to increase awareness of the issue
 - iv analyse the effectiveness of the action.
 - b Using your articles, discuss:
 - i the type of action that citizens can take to bring about a change
 - ii how effective you think each action would be in influencing a change.
- 4 Read the following case study and answer the questions below.

Case study – Eureka: from protest to rebellion

The Eureka Stockade in 1854 is seen as a key turning point in Australian history. The rebellion was the result of tensions that had built up between miners and the government. Miners were required to buy licences to dig for gold. The licences were required whether they found gold or not. The miners who had not found gold lived in impoverished conditions and were frustrated by the costs of the mining licences.

Leading up to the Eureka Stockade there had been a number of actions taken to influence a change in government policies. Miners had burnt their licences. Meetings had been held to protest their cause. A petition, signed by more than 5000 Victorian gold miners in the Ballarat district, was presented to governor La Trobe in 1853. In November 1854 a group known as the Ballarat Reform League met. They wrote the Ballarat Reform League Charter that presented the miners' grievances. This document called for equal rights and representation for the miners.

Although the miners lost the battle at Eureka Stockade their actions did result in change. The miners' demands included the abolition of the License and Gold Commission and the vote for all males.

In 1854 the law was changed to allow miners to buy a licence for one pound and immediately be eligible for voting. Miners were also given eight representatives in the Legislative Council.

[11.13] The Eureka flag



Given to H. E. by Mr Black at the interview on 27 November 1854

At a Meeting held on Bakery Hill in the presence of about ten thousand men on Saturday November 11th, 1854 the following were adopted as the principles and objects of the 'Ballarat Reform League'.

That it is the inalienable right of every citizen to have a voice in making the laws he is called upon to obey—that taxation without representation is tyranny.

That, being as the people have been hitherto, unrepresented in the Legislative Council of the Colony of Victoria, they have been tyrannised over, and it becomes their duty as well as interest to resist, and if necessary to remove the irresponsible power which so tyrannises over them.

That this Colony has hitherto been governed by paid Officials, upon the false assumption that law is greater than justice because, forsooth, it was made by them and their friends, and admirably suits their selfish ends and narrow-minded views. It is the object of the 'League' to place the power in the hands of responsible representatives of the people to frame wholesome laws and carry on an honest Government.



- a What changes in the law did the miners want?
- b Explain why they wanted these changes.
- c What does the slogan 'taxation without representation is tyranny' mean? Do you agree?
- d Who did the Ballarat Reform League see as the 'responsible representatives of the people'?
- e Some organisations still fly the Eureka flag today. What do you think that the flag might symbolise?
- f The rebellion at Eureka Stockade resulted in some changes in the law.
 - i Prepare a chart similar to the one below to summarise the arguments for and against the use of civil disobedience to bring about a change.

Arguments in favour	Arguments against

- ii Is civil disobedience and violence a legitimate form of protest? Present a written statement of your view.
- 5 Think of an issue that you are concerned about. The issue may be a local issue or an issue currently being discussed by the Victorian or Commonwealth parliament. Draw up an action plan similar to the one below. Remember to include plenty of space for your answers.
- a Briefly outline the issue.
 - b Which level of government—local, state or Commonwealth—has the power to make a decision about the issue?
 - c Who are the 'stakeholders'? Stakeholders are the individuals, groups or organisations in the community that may be affected by the issue. List the stakeholders in the first column.
 - d What are the views of the stakeholders? List their views in the second column.
 - e What action would you take to bring this issue to the attention of the government or members of parliament? Critically evaluate the advantages and disadvantages of each action that you list.
 - f What action should you take? Justify your decision.

Issue action plan

Issue:

Level of government responsible:

Stakeholders	What are their views?

My view:

Possible action:

Action	Advantages	Disadvantages

Proposed action:

Political action and the media

The media is often used to influence political debate. Members of political parties use it to get their message across to the public. Individuals or groups use the media to express their concern about action that has been taken and to bring attention to the need for change.

There are many ways in which individuals and groups can use the media to get their message across. These include:

- ▶ interviews—a spokesperson for a pressure group may be interviewed by a reporter, or their actions may be reported as part of the regular news service
- ▶ media campaigns—a well-organised group may have the necessary finances to pay for a media campaign; this may include advertisements in newspapers and magazines
- ▶ staging events—these are then reported in the media; in reporting the event, the media is forced to explain the reasons for it (demonstrations and protest marches are examples of events that are staged to raise attention to an issue and gain media coverage).



Learning activities

- 1 How do you think the media can influence a political decision?
- 2 Newspapers provide information on current events and issues in the community in a number of different ways. To analyse the views in the community about a particular issue, it may be necessary to follow the newspaper coverage over a number of days. Issues can be traced through news stories, editorials, letters to the editor, cartoons and feature articles. News stories will often create two different types of responses, reflecting:
 - the views of the newspaper—found in the editorial, the cartoons and feature articles
 - the views of the readers—found in the letters to the editor.
 - a Working in groups, select an issue that is currently being discussed in the media. Collect examples of the different ways in which newspapers comment on the issue. Prepare an 'issues folio'. Your folio should include: examples of news stories, editorials, letters to the editor, cartoons and feature articles on your issue. For each example that you have collected comment on how it has influenced your view on the issue.
 - b Draw up a chart similar to the one below. Identify the individuals, groups and organisations involved in the issue. Note the views they present and any actions that they have taken to influence a change.

Individuals, groups or organisation	Views expressed	Actions taken

- c Which group do you think has been most effective in presenting its view? Why?
 - d What do you consider to be the two most important arguments raised about this issue? Justify your decision.
- 3 Compare how television, newspapers and the internet report issues. If you were to gain support for a cause, which form of media would you use? Why?

▶ Enforcing the law

There is a range of institutions and processes that individual citizens can use to enforce their legal rights. Often when we think about enforcing the law we think about the criminal law. The police have the power to investigate criminal offences and the courts have the power to hear cases where the criminal law has been broken. Individuals may also take court action where they believe that their individual rights, under civil law, have been violated. In these cases the courts act to resolve disputes between individuals.

The processes and procedures for enforcing the law reflect the basic principles of democracy. These include the fundamental principles of justice and equality, the presumption of innocence and the entitlement to a fair trial.

Symbols of justice

[11.14] Image of justice from the Victorian County Court



At the entrance to the County Court stands the female figure representing justice. The female figure of justice dates back to the images of Themis and Justitia in ancient Greek and Roman mythology. Themis represents clear-sightedness and was the Greek Goddess of Justice and Law. Justitia (Justice) comes from Roman mythology. She was one of the four Virtues. The other Virtues were Prudence, Fortitude and Temperance.

Traditionally images of justice included scales to represent impartiality and a sword to symbolise power. Justice is also depicted with a blindfold. Some people have suggested that the blindfold indicates that justice is blind. Others see the blindfold as a symbol of the courts' tolerance or ignorance of abuse of the law. It is generally accepted as a symbol of impartiality.



Learning activities

- 1 The female figure of justice is used to symbolise the values that we believe are embodied by the term 'justice'.
 - a Prepare a table similar to the one below. Suggest what each of the traditional symbols tells us about the meaning of justice.

Symbol	What does it tell us about the meaning of justice?
Scales of justice	
Justice holds a sword	
Justice is blindfolded	
Justice as female	

- b The County Court features three images of justice: the Lady of Justice, Ngaarn-Gi-Land/Law and Quality of Mercy. Go to the County Court website at www.countycourt.vic.gov.au. Go to 'About the Court'. Go to 'Building'. Go to 'Artwork in the County Court building'. Research these images.
 - i What other symbols of our justice system are included in these depictions? How do these symbols add to your understanding of justice?
 - ii How do you think the interpretations of justice in the Lady of Justice and Ngaarn-Gi-Land/Law differ? Why?
 - iii Why do you think both are seen as important statements about how we interpret justice in our community?
 - 2 How would you define the term justice? Draw a concept map to identify those features you consider to be important in a 'justice' system.
 - 3 What does the term 'equality' mean?
 - 4 Does equality and fairness mean that all individuals must be treated in an identical manner? Explain.



- 5 The presumption of innocence means that we are all considered to be innocent until proven guilty. How does this presumption contribute to justice?
- 6 What do you think are the essential features of a fair trial?

The role of the police

Police are not law makers. They are traditionally seen as the law enforcers. It is the police who are expected to ensure that all members of the community obey the law. The laws that the police enforce are mainly criminal laws. These laws are made by parliament to protect the rights of the community and to protect the rights of individuals within the community.

The police may become aware that the criminal law has been broken in two ways. First, a police officer may observe an offender in action. When the police observe a crime being committed, they may arrest the offender on the spot. Second, a member of the public may report an offence to the police. After conducting an investigation, the police may apprehend a suspect. When they have sufficient evidence, the police will arrest a suspect.

However, the police perform a more complex role in the community than just enforcing the law. They also help to prevent crime. They do this by acting as a deterrent. When police are seen conducting their duties in the community and catching offenders, people who might be thinking of committing a crime may change their mind.

The police help to preserve the peace. By carrying out this role, the police ensure that all people are able to exercise their individual rights and freedoms. Preserving public order often involves police in crowd-control operations—at the football, public gatherings and demonstrations.

Key duties of the police

The key duties of the police are to:

- ▶ protect life and property
- ▶ preserve the peace
- ▶ prevent offences
- ▶ detect and apprehend offenders
- ▶ help those in need of assistance.

The police protect the community in ways other than by fighting crime. They are an important part of the emergency services. The police are often the first people on the scene of a motor vehicle accident, and therefore responsible for organising further assistance. The police protect life by attending accidents and fires, and participating in search-and-rescue operations.

Special branches deal with issues ranging from family violence, child abuse or neglect, drug offences, organised crime and major fraud.

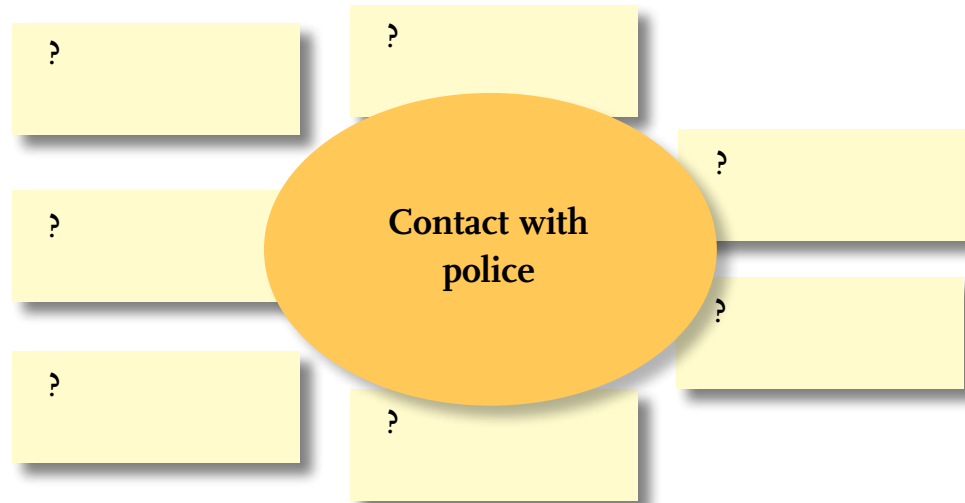




Learning activities

This diagram can be drawn using the drawing toolbar in Microsoft Word.

- Working in groups, draw a diagram similar to the one below. Think about the different ways in which you may come into contact with the police. Illustrate these ways on your diagram.



- Use the Victoria Police homepage at www.police.vic.gov.au to complete the following exercise. Go to 'About Victoria Police'. Go to 'Structure'. Find out more about the special branches of the police force and the work they do in the community. Present a summary of your research in a poster.
- Create a chart similar to the following. Work in groups to complete the chart.

	What we expect of the police	What the police expect of the community
To enforce the laws		
To protect the community		
To prevent crime		
To keep the peace		

Police investigations and rights

To find out more about your rights see www.legalaid.vic.gov.au.

Although the police have wide powers to investigate crime, individuals also have rights. [11.15] summarises the rights of individuals.

[11.15] Rights of the individual and police powers

Giving your name and address

Generally the police can require that you give them your name and address if they believe that:

- you have broken the law
- you are about to break the law
- you are able to assist them in the investigation of a serious offence.

You must give your name and address when:

- driving a motor car, motor bike, boat or push bike
- on a tram, train or bus, or on property owned by a public transport authority
- on licensed premises
- applying for bail so that you can be released from police custody.

Note that it is an offence to give false details to a police officer.

Going to the police station	In most instances you are under no obligation to go to a police station to answer questions unless you are under arrest. If you have been arrested, then police will take you to the police station.
Answering questions	<p>You have the right to remain silent or say 'no comment' when questioned by the police. Before questioning you, the police must allow you to:</p> <ul style="list-style-type: none"> • call a friend or relative, and talk to them in private if you are under 17 • call a lawyer and talk to them in private. <p>If you are under 17, the police must arrange for an independent person to be present during the interview. The police are required to record (on tape or video) interviews relating to serious charges. You should be given a copy of this tape.</p>
Fingerprints	<p>Police can use reasonable force to obtain fingerprints from a person over the age of 15 if they suspect that the person has committed an indictable or serious offence. Before taking fingerprints, the police must tell the person:</p> <ul style="list-style-type: none"> • the purpose of taking the fingerprints • the offence they suspect has been committed • that the prints can be used as evidence • that they can use reasonable force to obtain the fingerprints • that if no charges are laid, or the person is found not guilty of the alleged offence, the prints will be destroyed. <p>If the person is 15 or 16 years old, a parent or guardian must be present. If the person is aged 10 to 14 years, then consent is required from either a parent or from the Children's Court before the procedure can be carried out.</p>
Body samples	<p>Forensic procedures can be conducted on a young person aged between 10 and 18 years with the permission of the Children's Court. This court will only order the procedure if the person has been charged with:</p> <ul style="list-style-type: none"> • murder or manslaughter • a sexual offence • robbery or armed robbery • culpable driving causing death • recklessly, intentionally or negligently causing injury.
Searches	<p>Police may search your person at any time in a public place if they believe you are carrying a weapon, or if you are under 18 and they suspect that you have inhaled a volatile substance (chroming). Police require a search warrant if they want to search your home. To obtain a search warrant, the police need to prove that there is good reason for the search. For example, the police would have to prove that there are reasonable grounds for believing stolen property or illegal drugs are in the house.</p>

Custody: legal authority to control, detain or care for a person

Bail: to allow a person charged with a criminal offence to be released from police custody until the trial starts

A suspect who is held in **custody** and deprived of liberty still has some basic rights. One of these rights is that the suspect is considered to be innocent until proven guilty. This means that even though they are suspected of committing a crime, they are considered to be innocent until they are found guilty by a court. This is why most alleged offenders are released on **bail** until the time of their trial.

The arresting officers must inform the person detained of the reasons for the arrest. The alleged offender should be given access to legal assistance at this time and, if needed, to an interpreter.

An important protection offered to suspects is the common law right to remain silent. The right to remain silent permits a person not to answer questions. The fact that an alleged offender refuses to answer questions cannot be used as evidence at the trial.



Learning activities

- 1 Select three rights of an individual in relation to the powers of the police. How do these rights recognise the basic principle that we are all innocent until proven guilty?
- 2 Complete one of the following activities:
 - a Design a poster or prepare a pamphlet discussing the rights and responsibilities of the individual in relation to the police.
 - b Prepare a web page explaining the rights and responsibilities of the individual in relation to the police. It should contain at least two hyperlinks to other relevant sources.

The role of the courts

The courts perform two essential functions in the community:

- they deal with wrongdoers
- they provide a means of resolving disputes between individuals.

The decisions made by the courts are final.

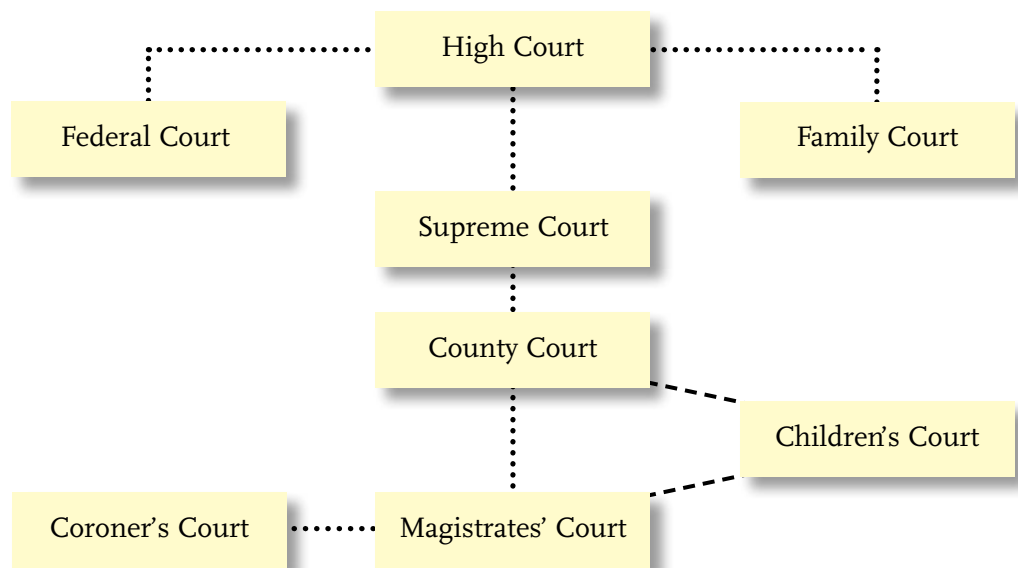
The system of courts is organised as a **hierarchy**. A hierarchy means a ranking in order. Courts within each state are ranked according to the types of cases they hear and determine. Some courts operate at a federal level. These courts hear cases throughout Australia. Some courts operate at a state level. These courts only hear matters relating to a particular state.

The power of a court to hear and determine a case is known as the court's **jurisdiction**. Courts can have an original jurisdiction. This means that the court has the power to hear and determine a case that has not been heard in another court. Some courts also have an appellate jurisdiction. This means that they have the power to review the decision made in a case by another court.

Hierarchy: a ranking in order

Jurisdiction: the right, power or authority to administer justice by hearing and determining disputes

[11.16] The court hierarchy



Federal courts

High Court

The High Court consists of seven judges. A panel of three to five judges hears most cases, but all seven judges will preside over the most important cases. The cases are determined by a majority decision. The High Court may hear appeals from the state Supreme Courts. Appeals to the High Court will only be permitted if the matter concerns an important legal or constitutional issue. The High Court is the only court that has the power to hear cases involving the interpretation of the Commonwealth Constitution.

For the High Court see www.highcourt.gov.au.

Other federal courts

The Federal Court and the Family Court are specialist federal courts. The Federal Court was established in 1976. It deals mainly with matters relating to trade practices. It also has the power to hear some appeals from state and territory Supreme Courts.

For the Federal Court see www.federalcourt.gov.au and for the Family Court see www.familycourt.gov.au.

The Family Court was established by the *Family Law Act 1975* to deal with disputes relating to the breakdown of marriage. The court has adopted special procedures to deal with these sensitive cases.

State courts

Supreme Court

The Supreme Court hears the most serious criminal cases such as murder and civil actions for unlimited amounts. It also hears appeals from lower courts. An appeal may be heard by a single judge, or by a panel of judges, depending on the nature of the appeal.

For the Supreme Court see www.supremecourt.vic.gov.au.

County Court

The County Court hears the more serious criminal matters, but not the most serious offences such as murder. These are heard in the Supreme Court. The County Court also hears appeals against conviction or sentence in criminal matters that were heard in the Magistrates' Court. Finally, it hears civil cases involving unlimited amounts of money.

The County Court is presided over by a judge. Juries may also be used. A jury in a criminal case has to decide the guilt or innocence of the defendant. In civil matters, a jury will be used if one of the parties requests it. In a civil matter, the jury must decide who is liable and/or the level of damages to be awarded.

For the County Court see www.countycourt.vic.gov.au.

[11.17] The High Court



[11.18] The Supreme Court of Victoria



Committal hearing: a hearing to determine if there is sufficient evidence to obtain a conviction in a higher court

For the Magistrates' Court see www.magistratescourt.vic.gov.au.

The Magistrates' Court

The Magistrates' Court hears relatively minor cases. In criminal matters, this court deals with minor or summary offences. It may also hold **committal hearings** where a person is charged with a more serious offence. A committal hearing is conducted to determine if there is enough evidence to obtain a conviction in a higher court.

The types of civil cases heard by the Magistrates' Court are determined by the amount of money in question. The court will hear civil matters to a maximum of \$100 000. Note that juries are not used in the Magistrates' Court.

[11.19] The Magistrates' Court



Learning activities

- 1 Prepare a chart to summarise the different types of cases heard in Australian courts. Create a table similar to the following.

Level in the court hierarchy	Name of court(s)	Type of cases heard	Appeals

- 2 Visit your local Magistrates' Court and observe it in action.
 - a Sketch the floor plan of the courtroom. What roles do the various people in the courtroom play? Label where each participant sits.
 - b Copy the following observation record into your workbook and complete the details while you are observing the court.

Name of defendant	Criminal charge or civil matter	Summary of facts of the case	Outcome

- c Complete a report that answers the following questions.
 - i What was the most common criminal offence heard by the court?
 - ii Were most of the offenders male or female?
 - iii What sort of outcomes were reached in the cases you observed?
 - iv Were most of the defendants represented by lawyers?
 - v What was the role of the magistrate?



- vi What physical facilities does the courtroom have? Was the courtroom comfortable? Was it easy to hear the evidence?
 - vii What was your overall impression of the atmosphere in the courtroom?
 - viii Did you agree with the outcomes in the cases that you observed? Explain.
- 3 Collect newspaper articles discussing cases in three of the courts in the court hierarchy. For each article discuss:
- a the facts of the case
 - b if it is a criminal or civil case
 - c the jurisdiction of the court involved
 - d the outcome of the case.

State courts with special functions

Coroner's Court

For the Coroner's Court
see www.coronerscourt.vic.gov.au.

The Coroner's Court is responsible for determining the cause of violent or unexplained deaths, as well as investigating the cause of fires.

Children's Court

The Children's Court is a special court that has been established to deal with matters relating to young persons. The Children's Court is divided into two divisions—a criminal division and a family division.

The criminal division of the Children's Court hears cases where the defendant is aged between 10 and 18 years old when they committed the crime and under the age of 19 on the date of the trial. Young offenders charged with murder will be tried in the Supreme Court due to the serious nature of the alleged offence.

The family division of the Children's Court hears cases about children under the age of 17 years who are in need of care and protection. These are known as protection applications. A protection application can be made by a police officer or a community welfare worker who believes that the young person is at risk through:

- being ill-treated or in danger
- being exposed to psychological or sexual abuse
- being abandoned
- having no one to look after them.

For the Children's Court
see www.childrenscourt.vic.gov.au.

These cases differ from criminal cases. No one is on trial. No one is found guilty or innocent. The court hears evidence relating to the welfare of the young person and makes a decision about what is in the best interests of that person.

When are you old enough to commit a crime?

If a person is aged 18 or older when they committed the crime, the law assumes that the person knew what they were doing at the time of the offence. However, the law treats people under the age of 18 (juveniles) in a special way.

- Young people under 10 cannot commit an offence because they are believed to be too young to know the difference between right and wrong.
- Young people between 10 and 14 can be found guilty of committing an offence, if it can be established that they knew what they were doing was wrong.
- Young people between 15 and 18 are treated as being capable of committing a criminal offence; however, they are not punished in the same way as adults.





Learning activities

- 1 Suggest reasons why a separate court has been established to hear cases concerned with young people.
- 2 What is the difference between the criminal division and the family division of the Children's Court?
- 3 Look at the crime statistics in [11.20] and answer the questions that follow.

[11.20] Alleged juvenile and adult offenders processed by offence, 2007–08 and 2008–09

	Juveniles (<18)			Adults			Total persons			
	No. 2007/08	No. 2008/09	% Change from 2007/08	No. 2007/08	No. 2008/09	% Change from 2007/08	No. 2007/08	No. 2008/09	% Change from 2007/08	
Crime against the person	Homicide	9	17	88.9	190	168	-11.6	199	189	-5.0
	Rape	85	76	-10.6	691	676	-2.2	781	760	-2.7
	Sex (non rape)	450	422	-6.2	2561	2301	-10.2	3040	2744	-9.7
	Robbery	1 226	1 204	-1.8	1 317	1 416	7.5	2 555	2 627	2.8
	Assault	4 851	4 671	-3.7	21 222	23 265	9.6	26 216	28 101	7.2
	Abduction / Kidnap	26	39	50.0	277	314	13.4	305	355	16.4
	Sub-total	6 647	6 429	-3.3	26 258	28 140	7.2	33 096	34 776	5.1
Crime against property	Arson	349	441	26.4	384	453	18.0	736	899	22.1
	Property damage	5 524	5 839	5.7	8 076	8 610	6.6	13 671	14 532	6.3
	Burglary (aggravated)	203	181	-10.8	994	1 109	11.6	1 198	1 294	8.0
	Burglary (residential)	1 454	1 749	20.3	3 917	3 759	-4.0	5 379	5 529	2.8
	Burglary (other)	1 929	1 945	0.8	4 227	3 826	-9.5	6 174	5 795	-6.1
	Deception	485	506	4.3	9 883	9 897	0.1	10 414	10 477	0.6
	Handle stolen goods	626	707	12.9	4 634	4 733	2.1	5 279	5 466	3.5
	Theft from motor vehicle	1 764	1 905	8.0	4 419	4 198	-5.0	6 193	6 131	-1.0
	Theft (shopsteal)	5 153	5 818	12.9	10 054	12 259	21.9	15 322	18 197	18.8
	Theft of motor vehicle	2 218	2 230	0.5	3 009	3 092	2.8	5 240	5 337	1.9
	Theft of bicycle	313	232	-25.9	232	292	25.9	549	526	-4.2
	Theft (other)	2 014	1 994	-1.0	7 851	8 029	2.3	9 911	10 109	2.0
	Sub-total	22 032	23 547	6.9	57 680	60 257	4.5	80 066	84 292	5.3



	Juveniles (<18)			Adults			Total persons			
	No. 2007/08	No. 2008/09	% Change from 2007/08	No. 2007/08	No. 2008/09	% Change from 2007/08	No. 2007/08	No. 2008/09	% Change from 2007/08	
Drug offences	Drug (cult. manuf. traff.)	81	90	11.1	3936	4006	1.8	4033	4110	1.9
	Drug (possess use)	574	608	5.9	9513	9836	3.4	10127	10493	3.6
	Sub-total	655	698	6.6	13449	13842	2.9	14160	14603	3.1
Other crime	Going equipped to steal	76	93	22.4	367	397	8.2	445	492	10.6
	Justice procedures	973	1057	8.6	11719	13207	12.7	12738	14320	12.4
	Regulated public order	863	1202	39.3	613	659	7.5	1483	1872	26.2
	Weapons / Explosives	927	904	-2.5	5581	5690	2.0	6529	6620	1.4
	Harassment	78	78	0.0	1303	1231	-5.5	1387	1319	-4.9
	Behaviour in public	476	599	25.8	2697	5521	104.7	3188	6194	94.3
	Other	1224	1317	7.6	2737	3345	22.2	3984	4693	17.8
	Sub-total	4617	5250	13.7	25017	30050	20.1	29754	35510	19.3
	TOTAL	33951	35924	5.8	122404	132289	8.1	157076	169181	7.7

Source: Victoria Police Crime Statistics

- Table [11.20] presents four categories of crime. Using these categories, prepare a diagram to illustrate the different types of criminal offences.
- The category 'Other crime' refers to a range of offences. Suggest the types of offences that may be referred to as 'justice procedures' or 'behaviour in public'.
- Complete this chart in your workbook:

	Juveniles	Adults
Five most common offences (list in order)		
What are the five least common offences?		
For which offence has there been the greatest decrease between 2007–08 and 2008–09?		
For which offence has there been the greatest increase between 2007–08 and 2008–09?		

- Using the chart you have completed, write a report on the difference between crimes committed by juveniles and crimes committed by adults. Suggest reasons for any differences that you observe.
- What do you think should be the main concern of the Children's Court when considering a sanction for a young offender?
 - In choosing a sanction, the court will weigh the circumstances of the offence and the background of the offender against the need to:



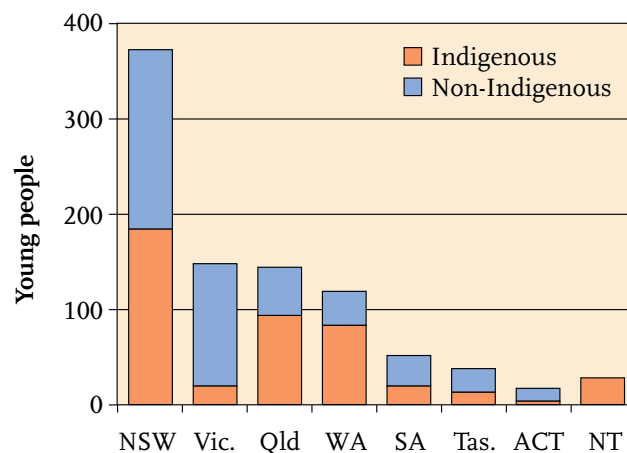
- punish
- deter both the offender and others
- rehabilitate
- protect the community.

Consider how each of the sanctions available to the Children's Court would meet these aims.

Dismissal	The case against the child is proven but the magistrate decides not to impose a sanction. No conviction is recorded.
Supervised adjournment	The question of sanctioning is delayed for up to four months. Provided the person has been of good behaviour during that time, no sanction will be given. Certain conditions may be imposed.
An undertaking	The person agrees to be of good behaviour for up to 12 months. Certain conditions may be imposed. No conviction is recorded.
A bond	A sum of money (the bond) is lodged with the court. No conviction is recorded provided that no other offences are committed.
A fine	A maximum of \$500 for one offence or \$1000 for two or more offences. The magistrate may decide to record a conviction.
Compensation	The court orders the offender to repay the victim for the damage done.
Probation	The offender is released into the community for up to 18 months and is required to work closely with a probationary officer during this time. The magistrate may decide to record a conviction.
A youth supervision order	Similar to probation except that the probation officer is more intensely involved in the offender's life. This may include a requirement for community work. A conviction is recorded.
A youth attendance order	If the offender is 15 to 17 years old, they may receive a youth attendance order rather than imprisonment. Youth attendance orders require the young person to complete project work for a maximum of 10 hours a week for up to one year and to do community work. A conviction is recorded.
Detention	If the offender is under 15, they will be detained in a youth residential centre. Those aged 15 to 18 are sentenced to a youth training centre for up to three years. A conviction is recorded.

- 6 [11.21] shows the number of Indigenous versus non-Indigenous youth in detention by state, 2006–07

[11.21] The number of Indigenous versus non-Indigenous youth in detention by state, 2006–07



- a Suggest reasons for the overrepresentation of young Indigenous people in the rates of detention.
 - b The Children's Court has introduced the Children's Koori Court to provide an informal atmosphere and allow greater participation by the Koori community in the court processes. Using the Children's Court web page at www.childrenscourt.vic.gov.au, find out more about the operation of the Children's Koori Court. Present a report that explains:
 - i the aims of the Koori Court system
 - ii how the Koori Court operates
 - iii why we need a Koori Court for young people
 - iv what a Koori Justice Panel does.
 - c How do you think that Koori Courts provide for equality and justice?
- 7 Working in pairs, find out more about the legal rights of young people. Using the Victorian Legal Aid website at www.legalaid.vic.gov.au find out the laws relating to young people at school, when you become independent and in forming relationships. Design a game to assist your fellow students to learn more about their legal rights. For example:
- a Snakes and Ladders game, where the players ascend the ladders for knowing the law and descend the snakes when they show ignorance of the law
 - a team competition based on the Trivial Pursuit format.

In the courtroom

Adversary trial: a trial before an impartial judge in which each party is responsible for the preparation and presentation of their case

Court cases are conducted according to the **adversary trial** system. Under this system, the parties to a case are responsible for preparing and presenting their case to the court. Usually they will employ a legal representative to act for them. Each party will put their case before the court by presenting witnesses and other evidence to support their case. Each party has the right to question witnesses and the evidence presented against them.

In an adversary trial the judge or magistrate acts as an impartial umpire. They do not present an argument for or against one side but are responsible for deciding the admissibility of evidence and questions of law. In cases where there is no jury, the judge or magistrate will also be responsible for making a decision in favour of one of the parties. In a criminal case this means deciding if the defendant is guilty or not guilty. In a civil case it means deciding which party is liable.

The adversary trial relies on evidence being given orally by witnesses in an open court. The case is conducted by strict rules of evidence and procedure. These rules ensure that only reliable evidence is presented in court and the cases are conducted in an orderly and fair manner.

Features of an adversary trial

- An impartial judge
- Parties prepare and present their case
- Lawyers may present a case for the parties
- Strict rules of evidence and procedure
- The party bringing the case to court must prove the case.

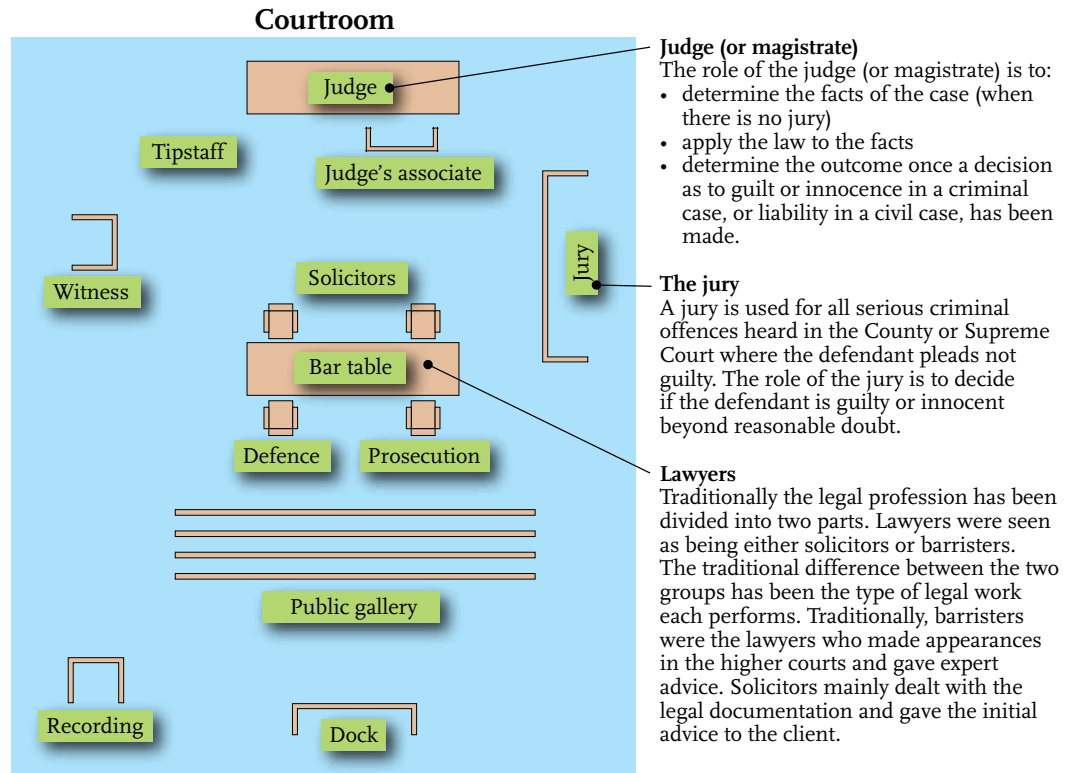
People in the court

An individual may become involved in the legal system by:

- being the victim of a crime
- suffering damage and seeking compensation under civil law

- ▮ being a defendant in a criminal or civil claim.
Alternatively, a person could become involved in the legal system by:
- ▮ being a judge, magistrate or lawyer
- ▮ serving as a jury member.

[11.22] The courtroom



Juries are not used in all civil cases. In Victoria, a jury consisting of six people can be requested by the parties in a civil case. Juries in civil cases make decisions based on the balance of probabilities—what is most likely to have taken place—and in some instances, they may also be asked to determine the level of compensation.

The jury

The jury system is based on a person's right to be tried by fellow members of the community. This is referred to as 'the right to trial by one's peers'. There are a number of reasons why this right is seen as being so important. The use of the jury system gives the community a say in the decisions made by the courts and ensures that community values are represented in the courts. The community, through the members of the jury, also sees how the courts are working. This is seen as a safeguard against the possible abuse of power by the courts.

Jury duty

Jury members are selected at random from the electoral roll. Jury service is considered to be one of the duties of a citizen and is compulsory. Any person eligible to vote in state elections may be called for jury service. Penalties may be imposed for refusing to do jury service. However, some people may not be required to complete jury service.

These people fall into one of three categories:

- ▶ disqualified—people who are not permitted to do jury service for a particular reason, such as having been convicted of a crime
- ▶ ineligible—this includes court officers, lawyers and police officers
- ▶ excused for a good reason—people who may be excused from duty.

To be a member of a jury, a person must be able to speak English. When a jury is required, names are drawn at random from the electoral roll to form the jury list. A number of people on the jury list will be sent a summons. This is a court order. The summons will set out the address of the court and the time and date that the person is expected to appear at the court for jury service.

Jurors will be called to form a jury pool. It is from this pool that jurors are selected to form jury panels that will hear court cases. (Generally, several cases will be heard at a court building.) Jurors usually do not know which case they will be hearing when they are called for jury service.

In criminal cases, the defendant is permitted to challenge potential jury members. These challenges may be with cause or without cause. A challenge without cause is when either the prosecution or the defence makes a challenge without giving any reason. Challenges without cause are limited. Both the defendant and the prosecution have the right to challenge an unlimited number of potential juries with cause, provided the judge thinks that the cause is reasonable.



Learning activities

- 1 Suggest how each of the following features of an adversary trial provide for a fair trial:
 - a An impartial judge
 - b Parties prepare and present their case
 - c Lawyers may present a case for the parties
 - d Strict rules of evidence and procedure
 - e The party bringing the case to court must prove the case
 - f That criminal cases must be proven 'beyond reasonable doubt'.
- 2 Carefully read the article 'The role of jurors' and answer the questions that follow.

The role of jurors

THE demanding process of selecting a jury is designed to ensure fairness to the accused. It starts with people being summoned to a jury pool in a court as a result of being selected randomly from the electoral roll.

They assemble in a courtroom, in this case the Supreme Court. When the judge enters, the jurors are ordered by the tipstaff to stand. The judge nods and takes his seat behind a huge bench, while the accused sits silently at the back of the room.

The judge says: 'Ladies and gentlemen, you have been summoned

as jurors to hear the trial of . . .' The judge then explains the charges.

The judge asks if any of the jury panel know the accused. If anyone does, that person will immediately be excused from jury duty.

The judge tells the jury pool that if anyone suffers personal or physical hardship by sitting on a long trial, they can apply to be excused. The excuses accepted are: child-care, study, medical conditions, pre-booked holidays, work demands including running a one-person business and working on contract.

The judge's associate, seated in front of the judge, calls out the names of the people who answer 'present' or 'excused'.

The judge explains the role of jurors: 'The judge decides the ques-

tions of law and procedure, the jury decides the facts. Each juror must take an oath or affirm to give a true verdict according to the evidence. And after hearing all the evidence, the jury decides whether the accused has been proved, beyond reasonable doubt, guilty of the charges.'

The jurors walk into the jury box, pick up Bibles in their right hands, and swear to give a true verdict according to the evidence. A minority elects to affirm, rather than swear on the Bible.

The charge is read to the accused who is asked to give a plea. 'Not guilty, Your Honour.'

The defence solicitor helps his client select the jury.

The judge's associate randomly draws the names of the jurors.



The first is a middle-aged storeman who walks slowly past the dock and into the jury box. Next, is a retired gentleman who is 'challenged'. The tipstaff tells him to return to his seat. A local council worker and an engineer are empanelled. A female TAB worker, who stares at the accused, is challenged. The Crown prosecutor challenges an unkempt labourer.

The accused accepts a train driver, a dentist, an economist, an accountant, a parking inspector, a housewife, a librarian, a female pensioner and a mature student.

The judge instructs the jury to choose a foreman or woman. The jurors retire to the jurors' room. Several minutes later they return to the court to advise of their decision. The

judge tells them not to discuss the case with anyone except fellow jurors. He warns them about publicity.

'The media has an appropriate function to inform the public, but what you may hear, see or read is not relevant for you,' he says. 'Your decision rests solely on the evidence heard in court.'

- a What information are possible members of the jury given before being selected as members of the jury panel?
 - b According to the judge, what is the role of the judge when a case is heard by judge and jury? What is the role of the jury?
 - c What reasons does the judge accept for people to be excused from jury service?
 - d Why do you think that the defendant and the Crown prosecutor have a right to challenge a possible member of the jury?
 - e What factors do you think a defendant would take into account in deciding whether to challenge a potential member of the jury?
 - f The judge warns members of the jury about talking to people outside the courtroom. Suggest reasons why the judge would give this advice.
 - g What effect do you think media reports of a case might have on the jury?
- 3 Suggest reasons for the use of juries in our courts. How do you think that a jury provides for a fair trial?
 - 4 List possible arguments for and against the use of juries.
 - 5 'Participation on juries should be more strongly promoted as a basic right and obligation of democratic citizenship.' Do you agree? Explain.

Criminal cases

Prosecution: the person responsible for presenting a case that an alleged offender has committed an offence

Defendant: a person against whom either a criminal or civil matter is taken to court

Within an adversary trial the onus to prove a case is always on the party bringing the case to court. In a criminal case this means that the **prosecution** must prove the case. The prosecution must prove the **defendant** is guilty 'beyond reasonable doubt'.

If the defendant has been charged with a summary (minor) offence, their case will be heard in the Magistrates' Court. The court will hear the charge and the defendant will be asked if they plead guilty or not guilty.



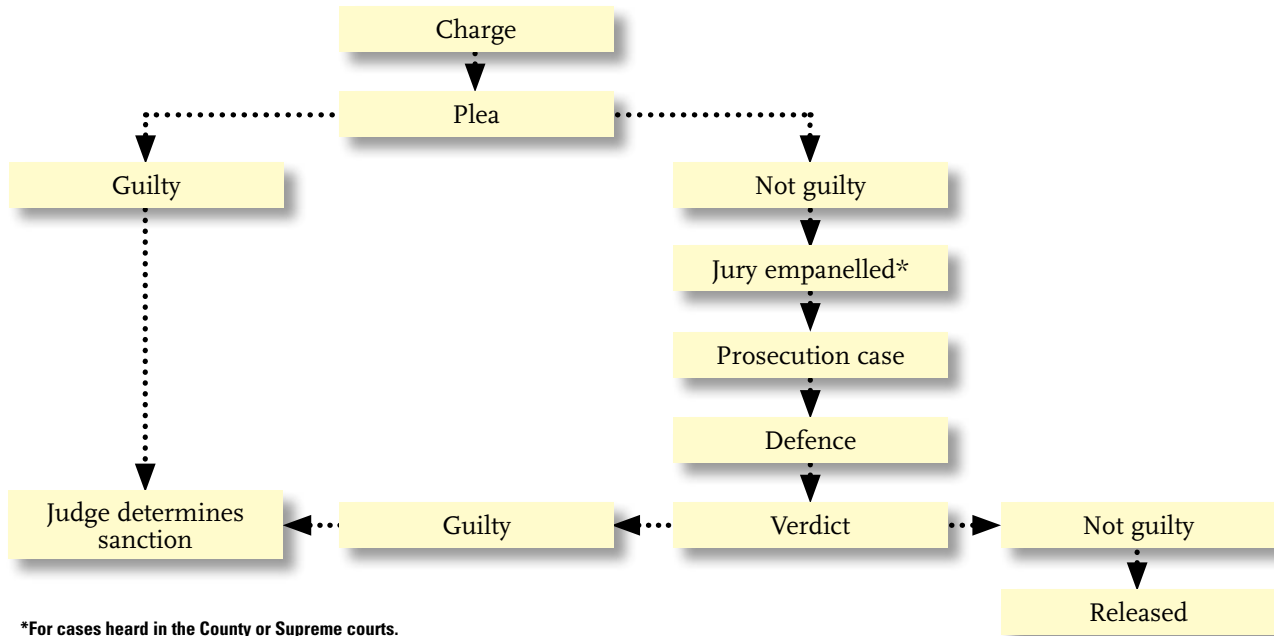
Oath: a formal pledge to tell the truth, appealing to God as a witness

Affirmation: a declaration that is accepted in place of an oath

If they plead guilty, the magistrate will impose an appropriate sanction. If they plead not guilty, witnesses will be called. Each witness is sworn in—by **oath** or **affirmation**—and questioned. After hearing the evidence and witnesses by both the prosecution and the defence, the magistrate must reach a decision.

If the accused pleads not guilty in the higher court, the case will be heard by a judge and jury. If the accused pleads guilty, a jury is not needed. The role of the jury in the case is to determine if the accused is guilty or not guilty. If the accused admits guilt, a jury is not required. Both the prosecution and the defence will present their case. If the accused is found guilty, the judge will determine the appropriate sanction.

[11.23] Hearing a criminal case



Civil cases

Plaintiff: a person bringing a civil action to court

Writ: a court order informing a person that there is a claim against them

Pleadings: the exchange of information leading up to the hearing of a civil matter in court

Remedy: the outcome of a civil case aimed at restoring the injured party to its original position

A civil case starts when the **plaintiff** issues a **writ**. This is a legal document ordering the defendant to appear at court on a set date to answer a claim against them. If the defendant intends to argue the case, they lodge a document called an appearance with the court. This indicates that they will be contesting the case.

The parties exchange details about the case in a process known as **pleadings**. During this process, the parties clarify the issues. They may even negotiate a settlement to the case. This means that they reach an agreement that puts an end to the claim without the need to go to court.

If the parties cannot resolve the issue, the case proceeds to court. In court, each party is required to present witnesses and evidence to support their claim. The court will decide—on the balance of probabilities—which party is liable for the claim. The court will also determine an appropriate **remedy** to the problem. Often the remedy is monetary compensation for the damage suffered.

Is it fair?

The features of the adversary trial aim to provide for a fair and unbiased trial. But how fair is it? The adversary trial provides that each party prepares and presents their case before an impartial judge or magistrate. The parties may be represented by a lawyer.

However, in most cases, there is no absolute right to legal representation. The individual parties must pay for their own lawyers and legal representation can be expensive. In civil cases this may mean that many people cannot afford to go to court to enforce their rights. In a criminal case the consequences may be more serious. Without legal representation they may not be able to present a defence and risk possible imprisonment.

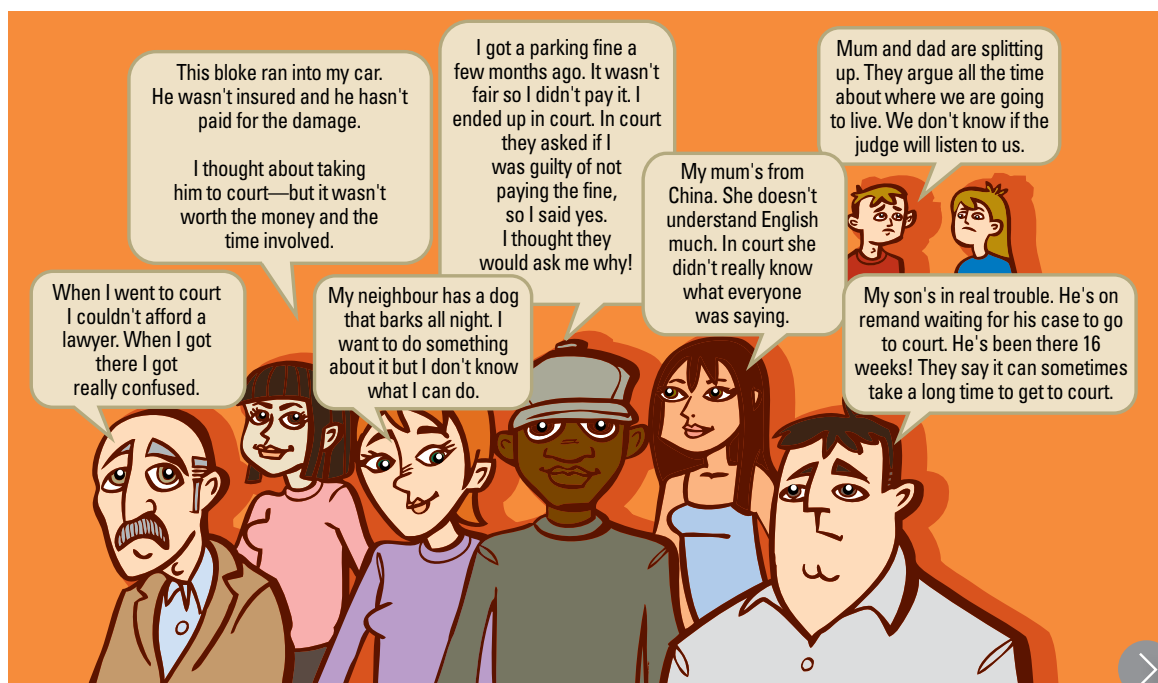
The cost of legal representation in court is not the only problem. To exercise your rights you need to know what your rights are. There are many groups in the community who may not know their rights, may not know how to find out about their rights or have an adequate understanding of English to exercise their rights.

Learning activities

- Describe the role of the following people in the hearing of a criminal case:
 - judge
 - jury
 - prosecution
 - defendant
 - defence
 - victim
 - barrister.
- How does the hearing of a civil matter differ to the hearing of a criminal case?
- Criminal cases must be proven beyond reasonable doubt. What do you think would be a 'reasonable doubt'? How does 'beyond reasonable doubt' differ to 'on the balance of probabilities'?
- Each of the people in [11.24] is commenting on their experience with the legal system. Carefully read their comments. Draw up a table similar to the one below. Working in small groups, discuss the problems each character experienced. Record your responses in the table.

Person	Difficulties experience	Is it fair?

[11.24] Different people perceive the legal system in different ways



- a In the first column, identify the problems that each person may have experienced in exercising their rights.
 - b In the second column, suggest reasons why each person may feel that the system is not fair.
 - c Suggest ways in which each of these problems may be overcome.
- 5
- a Why is it important for people to have legal representation when they go to court?
 - b In what other situations do you think people may need to go to a lawyer?
- 6 Using the Victoria Legal Aid website at www.legalaid.vic.gov.au find out about the legal advice and assistance available in the community. Prepare a magazine feature article to inform people about how to get help. In your article you should:
- a identify the problems that people may experience in gaining access to the law
 - b explain the role of Victoria Legal Aid
 - c describe the tests used by Victoria Legal Aid to decide if a person is entitled to legal aid
 - d outline the types of legal advice on the website
 - e list other websites that may provide legal advice.

Remember that the websites you identify should look at the law in Victoria.

► Other ways of resolving disputes

Many different types of disputes may occur daily in a community. Not all these disputes result in court action. You may have a dispute at home or at school. Usually disputes such as these can be resolved without the need to go to court. Minor disputes can be resolved, quickly and efficiently, through cooperation.

There are a number of bodies in the community—other than courts—that have been set up to help people resolve disputes. However, anyone who wants to resolve a dispute without going to court must know where to go for help. For example, disputes between a landlord and a tenant can be resolved by seeking the assistance of the real estate agency, a tenant's union, a citizen's advice body or the Victorian Civil and Administrative Tribunal. There are a wide variety of community organisations that can provide assistance and advice to help resolve minor disputes.

Mediation: where an impartial third party assists the parties in dispute to identify issues and reach an agreement

Conciliation: where an impartial third person assists the parties to identify the issues and suggest possible solutions to help the parties reach an agreement

Arbitration: where an impartial third party discusses the issues, suggests ways to resolve the dispute and, if the parties cannot agree, makes a decision

Alternative methods of dispute resolution (ADR)

Alternative methods of dispute resolution are referred to as ADR. These methods are used in dispute settlement centres and tribunals. The main forms of ADR are **mediation**, **conciliation** and **arbitration**.

Mediation can be used to resolve minor disputes. Mediation involves a neutral third party known as a mediator. The mediator helps the parties to discuss their problem and identify the issues. However, the mediator does not make a decision. They help the parties to identify ways to solve their dispute. The parties make the final decision. The aim of mediation is for the parties to reach a mutually acceptable agreement about how to put an end to their dispute.

Conciliation is a process in which a third person discusses the issues with both parties. The third person attempts to get the two parties to agree to a solution to the problem. Although the third person can suggest ways to resolve the dispute, they cannot force the parties to reach agreement.

Arbitration is a dispute resolution method in which the third person acts like an independent umpire. The third person discusses the issues with the parties and attempts to reach a solution with which the parties agree. If there is no agreement, they will reach a decision that is binding on the parties.



Learning activities

- 1 Working in groups, discuss some disputes that you have recently been involved in. You may want to discuss a dispute at home or at school.
 - a Identify the methods that were used to resolve the dispute.
 - b Suggest situations in which each of the alternative dispute resolution methods discussed above would be useful.
- 2 Using the Department of Justice website at www.justice.vic.gov.au, go to 'Business Units', find out more about the Dispute Settlement Centre. Prepare a poster to illustrate the types of disputes they deal with and how they settle disputes.

Tribunals

Tribunal: a body set up as an alternative to a court to settle disputes

State and federal governments have established special bodies known as **tribunals**. These tribunals deal with specific legal problems, such as disputes between consumers and traders or disputes between tenants and landlords.

Tribunals are generally less formal than courts. Tribunals do not have strict rules of evidence and parties to a dispute may not need to have a lawyer. Tribunals usually attempt to resolve disputes by using a combination of mediation, conciliation and arbitration.

Victorian Civil and Administrative Tribunal (VCAT)

You can find out more about VCAT at www.vcat.vic.gov.au.

The Victorian Civil and Administrative Tribunal (VCAT) deals with a range of disputes. It consists of three divisions—civil, administrative and human rights. Each division has lists which specialise in particular types of cases. The civil that division hears:

- ▶ disputes about domestic building contracts
- ▶ small civil claims
- ▶ residential tenancies disputes
- ▶ credit matters
- ▶ retail tenancies disputes.

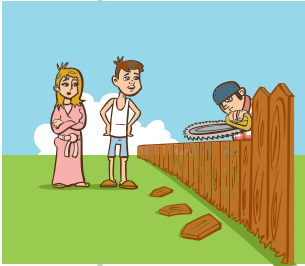
The administrative division hears disputes between people and the government about matters such as land valuation, licences to carry on business, planning and state taxation. The human rights division hears matters relating to discrimination.



Applying your understanding

Resolving disputes

- 1 Working in groups, consider the disputes in each of the following cases and select one case to discuss.



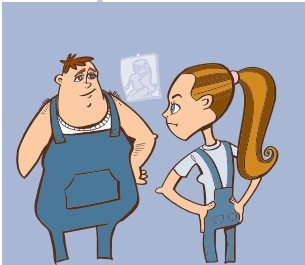
Case 1

Joe and Annika have lived in their home for more than 10 years. During this time they have been on good terms with their neighbours, Julie and Damien. The fence between the two houses is in poor repair. They all decide to have the fence repaired. Joe and Annika agreed the fence could be replaced and that they will pay half the costs if the new fence is the same height. Julie and Damien arranged for a fencer to replace the fence. The Saturday after the new fence had been installed, Joe and Annika woke up to the sound of a chainsaw. When they looked out their window, they see the fencer cutting one metre from the height of the new fence. When they go out to speak to the fencer, he explained that he has been instructed to reduce the height of the fence by Julie and Damien. Joe and Annika were furious. They refuse to pay half the cost of the new fence, complaining that it was not what they had agreed.



Case 2

Lisa has two children. She applied to rent a house that was advertised in a local newspaper. The owner of the house told Lisa he could not rent the house to her. He explained that he had rented houses to mothers on the supporting parents' benefit in the past and that it had always been a disaster.



Case 3

Mary is an apprentice motor mechanic. Three months ago she complained to her boss about some of the pictures in the lunchroom. The pictures feature naked women. These made her feel uncomfortable eating in the lunchroom when the men looked at and commented on the pictures. The boss said that the men were entitled to decorate the lunchroom and if she wanted to work in a 'man's job' she would have to learn how to deal with it.



Case 4

Peter has purchased a diamond stud earring for \$35 during a sale. After it had been worn a few times, he noticed the clasp that keeps the earring in place was wearing and appeared to be coming apart. He returned the earring to the store. The store manager said that because it was a sale item, they did not have to repair or replace it.

- a What steps could each party in the case you have selected take to resolve the dispute?
 - b Prepare a role-play to demonstrate how each dispute can be resolved by using either conciliation or arbitration.
- 2 Choose a different case from activity 1 and find out how you could resolve the dispute.
- a What methods for resolving the dispute would you use?
 - b What action would you take?
 - c How much would it cost?



Know your rights

- 3** One reason people end up in disputes is because they do not understand their rights and responsibilities. If the legal system is to function effectively, people must know how to resolve disputes. Working as a class, plan a 'Know your rights' booklet or web page. The booklet or web page should explain the basic laws that affect young people. Your booklet should also explain how disputes relating to these issues can be resolved.
- a** Working in groups, find out more about the law. Each group should select one of the following areas of law:
- driving offences
 - consumers and the law
 - employment
 - police powers
 - family law
 - neighbourhood disputes
- b** Write one chapter of your class booklet or build one screen of your web page. Your chapter or screen should:
- i** outline the rights and responsibilities
 - ii** describe the relevant law
 - iii** discuss the relevant courts and/or tribunal
 - iv** identify possible sources of legal advice or assistance
 - v** include a glossary of terms.

Remember that your booklet or web page is designed for young people and aims to help them become aware of their rights. Present your work in a format you think will be easy for young people to use. Each group should present their completed chapter or web page to the class.