



JUSTICE &

OUTCOMES

LEGAL STUDIES FOR VCE

UNITS 3 & 4

YEAR 12

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USING JUSTICE & OUTCOMES

Legal Studies for VCE Units 3 & 4

Justice & Outcomes Legal Studies for VCE Units 3 & 4 (14th edition) has been fully revised and updated to meet the requirements of the VCE Legal Studies Study Design 2018–2022. It offers complete support for teachers and students completing Units 3 & 4 of VCE Legal Studies.

Key features of the Student book

Legal toolkit

The legal toolkit at the front of the book is a stand-alone reference section for students that includes:

- tips for success on SACs and the end-of-year examination
- advice on mastering legal citation
- information about careers in the law

Tip 2 – Understand task words

In the assessment tasks you are asked to complete throughout the year, it's likely that questions and tasks will include a 'task word'. In Legal Studies, task words are words that tell you how to demonstrate the knowledge you have learned.

Task words range in level of difficulty. Some (such as identify or define) are simple to understand and will take practice to master. Others (such as evaluate or justify) are more challenging to understand and will take practice to master. Source 3 lists a range of common task words and their definitions. It also provides example questions so you can see each task word in context.

All of these questions have come from exam papers for past Study Designs, so they may or may not reflect key questions and key skills that are not in the current Study Design. You should check with your teacher about this knowledge and key skills that are not in the current Study Design.

TASK WORD	DEFINITION	EXAMPLE QUESTION FROM PAST EXAMS
Advise	To offer suggestions about the best course of action or make recommendations	Question 1 (2001) James and his friends were celebrating James' 30th birthday at a local restaurant. At the end of the night, James decided that he may have had too much to drink and called a taxi. On the way out, James slipped on some warm carpet and fell on his face, causing him a serious injury. After consulting his lawyer, James decided to sue the restaurant for compensation. Advise James on the best of the two pre-trial procedures which his lawyer might use in this case.
Analyse	To examine a complete feature, issue or concept by breaking it down into smaller parts and showing how they relate to one another	Question 12 (2013) Identify one successful referendum and one High Court case, and analyse the impact of referendums and the High Court's powers regarding the Commonwealth Constitution on the division of law-making powers.
Comment on	To express an opinion or reaction (in order to demonstrate your understanding of it)	Question 5 (2009) Five trial judges are designed to speed up the resolution of civil disputes. Comment on this statement. In your answer, describe one civil pre-trial procedure.
Compare	To explain how concepts, definitions or features are similar and different by identifying the qualities or features they have in common as well as those they don't	Question 1 (2018) Jane and David have been involved in an ongoing dispute. They have been agreed to use either mediation or arbitration as a dispute resolution method. Compare mediation and arbitration as methods of dispute resolution.
Examine	To consider in detail and establish the key facts and important claims related to a topic or issue	Question 1 (2003) The doctrine of precedent allows for both consistency and flexibility. Critically examine these two strengths of the doctrine of precedent.
Define	To state (or describe) the exact nature, features, or qualities of a term, feature or concept	Question 1 (2015) A plaintiff is seeking an injunction and damages of \$1 million in the Supreme Court of Victoria. Define the term 'injunction'.
Describe	To give a detailed account of a system, process or feature	Question 4 (2016) Describe one reason why a law may need to change.

From: CIVCAA Legal Studies Exams, 2016
Source 2: Common VCE Legal Studies task words, definitions and examples.

1.4 MASTERING LEGAL CITATION

As you work your way through the VCE Legal Studies course, you will be learning about many different laws and legal cases. To be able to recognise laws and legal cases, and to reference them in your notes and assessment tasks, you should master the basics of legal citation.

What is legal citation?

Legal citation is the system used to refer to legal documents and sources such as cases and Acts of parliament. It is a consistent and accurate way. The most commonly cited legal documents are:

- Acts of parliament (also known as statutes and legislation)
- Legal cases (also known as court decisions)

The following information will help you in reading and understanding legal citation. It will also help you cite legal documents correctly in your coursework and assessment tasks.

Citing Acts of parliament

Acts of parliament (often called just 'Acts') are laws made by the various parliaments in Australia (i.e. state and territory parliaments and the Commonwealth Parliament) and in other countries around the world.

Acts of parliament generally feature the following pieces of information in this order:

- The name of the Act or statute – This is the title that has been given to the statute. It is always written in full.
- The year that it was made by parliament – This is also written in full.
- The parliament that passed it – This will be either a state or territory parliament, or the Commonwealth Parliament. The name of the parliament is never written in full; instead, abbreviations for each parliament are used (e.g. Vic or Cth).

Example 1 – an Act made by the Victorian Parliament

This Act (i.e. the *Crimes Act*) was made in 1958 by the Victorian Parliament.

Crimes Act 1958 (Vic)

Example 2 – an Act made by the Commonwealth Parliament

This Act (i.e. the *Competition and Consumer Act*) was made in 2010 by the Commonwealth Parliament.

Competition and Consumer Act 2010 (Cth)

Source 1: Legal citation is a system designed to help people cite (i.e. refer to) specific laws and legal cases in a consistent and accurate way.

Source 4: It is important to keep an eye on the clock during exams.

Check your book gives for these additional resources and more:

- Student book questions XX (Title TRC)
- Worksheet XX (Title TRC)
- Weblink XX (Title TRC)
- Assess quiz XX (Title TRC)

UNIT 3 RIGHTS AND JUSTICE

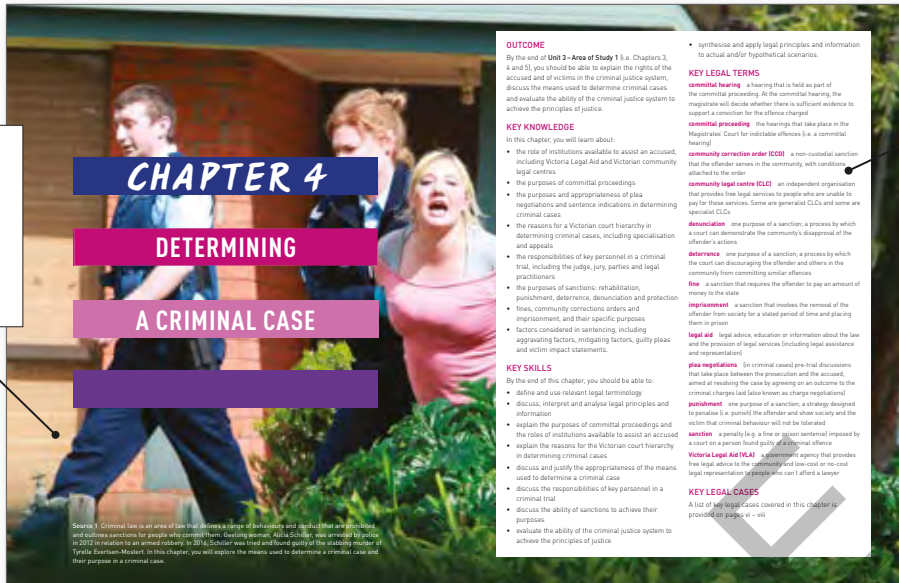
CHAPTER 1 LEGAL TOOLKIT

- an overview of the structure of the VCE Legal Studies course
- a range of helpful study tips.

Chapter openers

Each chapter begins with a chapter opener that includes:

an engaging and relevant image that links to core content in the chapter



- a summary of outcomes, key knowledge and key skills dot points from the VCE Legal Studies Study Design 2018–2022
- a list of key legal terms that appear in the chapter (with supporting definitions).

Clear topic-based approach

Content is sequenced in structured topics that are aligned to the Study Design. Each topic contains the following elements:

Study tip

Targeted study tips are provided in the margin where relevant. These are designed to explicitly help students to achieve better results on school-based and external assessment tasks.

Extract

Extracts from relevant legislation, acts, reports, speeches and websites support learning

4.9 TYPES OF SANCTIONS – FINES

The sanctions available to courts are set out in the *Summary Act 1958 (Vic)*. The Act provides a hierarchy of sanctions. The most severe sanction, and last sanction of 'last resort', is imprisonment.

SANCTION	DESCRIPTION
Imprisonment with conviction	Record a conviction and order that the offender serve time in a prison (cell).
Court secure treatment order with conviction	Record a conviction and order that the offender be detained and treated in a health facility (such as a hospital).
Drug treatment order with conviction	Record a conviction and order that the offender undertake a judicially supervised drug or alcohol treatment program. Only available from the Drug Court in the Magistrates' Court if a person pleads guilty and the Drug Court is satisfied that the offender is dependent on drugs or alcohol.
Youth justice centre order with conviction	In the case of an offender aged 15 or older, record a conviction and order that the young offender be detained in a youth justice centre.
Youth residential care order with conviction	With or without recording a conviction, make a community correction order in respect of the offender. The order will be made with certain conditions attached to it.
Community correction order with or without conviction	With or without recording a conviction, make a community correction order in respect of the offender. The order will be made with certain conditions attached to it.
Fine with or without conviction	With or without recording a conviction, order the offender to pay a fine, which is a sum of money payable to the court.
Adjournment with or without conviction	Record a conviction and order the release of the offender with conditions attached, without recording a conviction, order the release of the offender on the adjournment of the hearing, with conditions attached.
Discharge with conviction	Record a conviction and order the discharge of the offender.
Dismissal without conviction	Without recording a conviction, order the dismissal of the charge for the offence.

Source 1 The hierarchy of sanctions set out in the *Summary Act 1958 (Vic)*.

Fines

A fine is a sanction that can be imposed by the court. It is a sum of money ordered to be paid by the offender to the state of Victoria. A fine can be imposed as the only sanction, or it can be imposed with any other sanction.

The amount of the fine will depend on the maximum penalty that may be imposed for a certain offence, which is normally prescribed in the statute setting out the offence. An example is provided in the extract the *Adoption of Offences relating to bomb houses*. There is similar federal legislation which also makes bomb houses illegal.

Study tip

In this chapter the term 'civil action' is generally used to describe proceedings, but you must be careful with both terms. Representative proceedings may be commenced in either court.

Benefits of representative proceedings

There has been a significant increase in the number of representative proceedings in recent years. In Victoria, civil actions (representative proceedings) are seen to have a number of benefits:

- the group members can share the cost
- it is a more efficient way of the court dealing with a number of claims, saving court time and the time of court personnel
- people can pursue civil actions that they might not be able to afford in an individual case, and stop times then access to the courts to resolve their disputes
- in certain circumstances, a *litigant in person* is a third party that agrees to pay the legal costs associated with the action (they may be prepared to fund the class action on behalf of the people who have suffered loss). They do this in return for a percentage of any settlement or damages awarded, thus increasing the ability of the group members to pursue a claim even when they don't have the funds themselves.

A recent example of a Victorian class action was in relation to *Bonson soy milk* (see below).

However, there has been recent pressure for the class action regime to be reformed, as they are seen to be a risk to businesses, and the costs involved in a class action can be significant. At times, a significant percentage of any damages awarded or settlement amount will be paid out in legal fees and expenses before the group members receive any funds.

Another example of a Victorian class action is *Dumville v Spiral Foods Pty Ltd* (2015) VSC 190.

Case study

Fire at recycling plant results in class action

On 13 July 2017, a fire broke out at Costello Recycling Plant in Melbourne's north. The fire burned for several days, resulting in toxic smoke and ash over the city. A number of nearby residents had to seek medical treatment and sleep elsewhere.

Following the fire, it was reported that over 70 residents and business owners had joined a class action, alleging that the operators of the recycling plant had acted negligently.

LEGAL CASE

Bonson class action settles

Downie v Spiral Foods Pty Ltd (2015) VSC 190 (17 May 2015)

A class action was commenced in the Supreme Court of Victoria against the Victorian-based distributor of Bonson, Spiral Foods Pty Ltd and two other defendants.

A recall of the Bonson soy milk occurred before Christmas in 2009 after it was

Source 3 Eric Downie, the lead plaintiff in that class action related to soy milk.

LEGAL CASE

Company found guilty and fined

DPP v Bilic Homes Pty Ltd (2016) VCC 810 (14 June 2016)

In March 2016, Bilic Homes, a registered company, was engaged to build two units on a site in Brighton East. Construction began in early May 2016.

On 22 June 2016, a freestanding brick wall collapsed at the building site. Sadly, injured Michael Klantz, a carpenter who was contracted to work on-site. Bilic Homes entered an early plea of guilty.

The Court accepted that general deterrence was an important sentencing consideration. In sentencing, the judge referred to a previous judgment which stated that sentences in such cases of *law of the land* importance of the workplace safety and that there was a need to send a message to employers that failure to address safety risks will attract significant punishment. The company was convicted and fined \$250,000.

Source 2 In 2016, a brick wall collapsed during strong winds, killing Michael Klantz.

Case study

Recent examples and scenarios show how key legal concepts are applied in real life situations.

Legal case

Relevant legal cases with accompanying legal citation provide real-world examples of the law in action.

Key terms

Key legal terms are clearly identified in text the first time they appear in each chapter. Definitions are provided in the margin to support student understanding. All key terms also appear in the glossary at the end of the book.

Did you know?

Interesting, quirky or fun facts about the law are provided to engage students and bring content to life.

Example

Hypothetical situations that raise legal points for discussion are provided to stimulate discussion and illustrate how laws work in different contexts.

Links to supporting digital resources on obook assess

Links to a range of supporting digital resources appear at the end of every topic. These include links to videos, worksheets, interactive quizzes, revision notes and weblinks.

Unit review

Unit assessment tasks appear at the end of Unit 3 and Unit 4. These cover the key knowledge dot points for the whole Area of Study and are structured in line with a range of suggested assessment tasks covered in the *VCE Legal Studies Study Design*.

Going further

Additional background information and opportunities for extension are clearly identified in text and support students who want to gain a richer understanding of the subject matter.

In the news

Relevant and recent media articles are provided to show real-world applications of concepts being studied.

Chapter and unit reviews

Each chapter and unit wraps up with opportunities for review and revisions.

Chapter review

A chapter review appears at the end of every chapter and includes a chapter summary, revision questions and a practice assessment task.

Key features of digital support

Justice & Outcomes Legal Studies for VCE Units 3 & 4 is supported by a range of engaging and relevant digital resources provided via **obook assess**.

obook assess

Students receive:

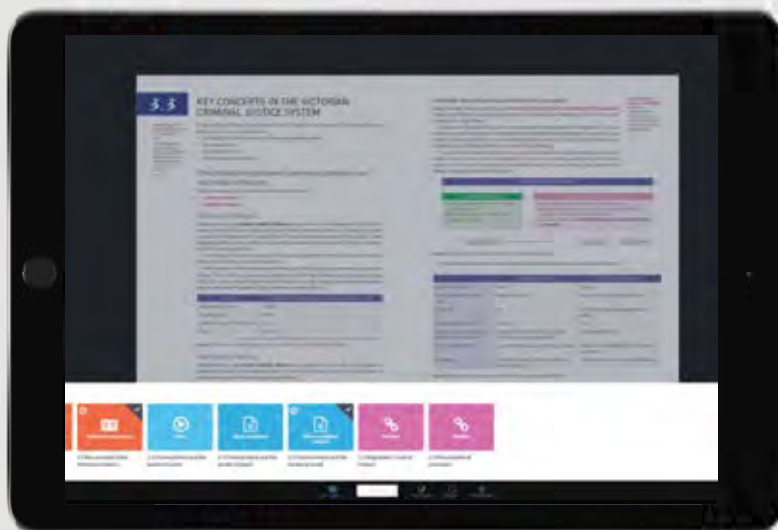
- a complete digital version of the Student book with notetaking and bookmarking functionality
- case study videos (with supporting worksheets) from some of Australia's finest news and current affairs outlets (including ABC and SBS)
- targeted instructional videos by some of Victoria's most experienced Legal Studies teachers, designed to help students prepare for exams and assessment tasks
- a range of engaging worksheets for every chapter, designed to consolidate and extend understanding on key points from the study design
- additional case studies and examples for extension
- access to interactive auto-correcting multiple-choice quizzes.



TEACHER obook assess

Teachers receive:

- access to all student resources
- detailed course planners, teaching programs and lesson plans
- answers to every question in the Student book
- chapter summary PowerPoint presentations ideal for whole-class revision
- practice exams and SACs with answers.





CHAPTER 3

INTRODUCTION

TO THE VICTORIAN

CRIMINAL JUSTICE SYSTEM

Source 1 The Victorian criminal justice system is made up of a complex set of processes and institutions (such as the courts and the police) that investigate and determine the outcomes of criminal cases. In 2014, the Victorian criminal justice system ruled that Harley Hicks (shown here) should be sentenced to life in prison with a non-parole period of 32 years for the murder of Zayden Veal-Whitting, a 10-month-old boy.

OUTCOME

By the end of **Unit 3 – Area of Study 1** (i.e. Chapters 3, 4 and 5), you should be able to explain the rights of the accused and of victims in the criminal justice system, discuss the means used to determine criminal cases and evaluate the ability of the criminal justice system to achieve the principles of justice.

KEY KNOWLEDGE

In the chapter, you will learn about:

- the principles of justice: fairness, equality and access
- key concepts in the Victorian criminal justice system, including:
 - the distinction between summary offences and indictable offences
 - the burden of proof
 - the standard of proof
 - the presumption of innocence
- the rights of an accused, including the right to be tried without unreasonable delay, the right to a fair hearing, and the right to trial by jury
- the rights of victims, including the right to give evidence as a vulnerable witness, the right to be informed about the proceedings, and the right to be informed of the likely release date of the accused.

KEY SKILLS

By the end of this chapter, you should be able to:

- define and use legal terminology
- discuss, interpret and analyse legal principles and information
- explain the rights of an accused and of victims in the criminal justice system
- synthesise and apply legal principles and information to actual and/or hypothetical scenarios.

KEY LEGAL TERMS

access one of the principles of justice; access means that all people should be able to understand their legal rights and pursue their case

accused a person charged with a criminal offence

balance of probabilities the standard of proof in civil disputes. This requires the plaintiff to establish that it is more probable (i.e. likely) than not that his or her side of the story is right

beyond reasonable doubt the standard of proof in criminal cases. This requires the prosecution to prove there is no reasonable doubt that the accused committed the offence

burden of proof the obligation (i.e. responsibility) of a party to prove a case. The burden of proof usually rests with the party who initiates the action (i.e. the plaintiff in a civil dispute and the prosecution in a criminal case)

Director of Public Prosecutions (DPP) the independent officer responsible for commencing, preparing and conducting prosecutions of indictable offences on behalf of the Crown

equality one of the principles of justice; equality means people should be equal before the law and have the same opportunity to present their case as anyone else, without advantage or disadvantage

fairness one of the principles of justice; fairness means having fair processes and a fair hearing (e.g. the parties in a legal case should have an opportunity to know the facts of the case and have the opportunity to present their side of events; and the pre-hearing and hearing (or trial) processes should be fair and impartial)

Human Rights Charter the *Charter of Human Rights and Responsibilities Act 2006* (Vic). Its main purpose is to protect and promote human rights

indictable offence a serious offence generally heard before a judge and a jury in the County Court or Supreme Court of Victoria

jury an independent group of people chosen at random to decide on the evidence in a legal case and reach a decision (i.e. verdict)

Office of Public Prosecutions (OPP) the Victorian public prosecutions office which prepares and conducts criminal proceedings on behalf of the DPP

presumption of innocence the right of a person accused of a crime to be presumed not guilty unless proven otherwise

prosecutor the Crown in its role of bringing a criminal case to court (also called 'the prosecution')

sanction a penalty (e.g. a fine or prison sentence) imposed by a court on a person guilty of a criminal offence

standard of proof the degree or extent to which a case must be proved in court

summary offence a minor offence generally heard in the Magistrates' Court

victim a person who has suffered directly or indirectly as a result of a crime

Victims' Charter a charter (i.e. the *Victims' Charter Act 2006* (Vic)) that recognises the impact of crime on victims and provides guidelines for the provision of information to victims

KEY LEGAL CASES

A list of key legal cases covered in this chapter is provided on pages vi–viii.

3.1

INTRODUCTION TO THE CRIMINAL JUSTICE SYSTEM

criminal justice system

a set of processes and institutions used to investigate and determine criminal cases

accused

a person charged with a criminal offence

sanction

a penalty (e.g. a fine or prison sentence) imposed by a court on a person guilty of a criminal offence

The **criminal justice system** is a set of processes and institutions used to investigate and determine the outcomes of criminal cases. It involves the police, courts, pre-trial procedures and sentencing. Two of the key purposes of the criminal justice system are to:

- decide whether an **accused** is guilty of an offence
- impose a **sanction** in cases where an accused has been found guilty (or pleaded guilty).

When an individual is convicted and sentenced for committing a crime, a fair process must be followed to ensure justice is achieved.

As shown in Source 1, some of the key stages in a criminal case include:

- investigation of a crime (police investigations)
- charging the accused
- pre-trial procedures (e.g. the parties having to attend hearings before a magistrate or judge)
- determining guilt in a court hearing (i.e. the jury or magistrate has considered all the evidence and decided the accused is guilty beyond reasonable doubt)
- sentencing (i.e. deciding the appropriate penalty)
- managing post-sentencing processes (e.g. the imprisonment of an offender).



Source 1 An overview of some of the key stages in a criminal case. Over the course of Unit 3 – Area of Study 1, you will primarily be learning about the three key stages shown in pink above.

Australian

Constitution, the

a set of rules and principles that guide the way Australia is governed. The Australian Constitution was passed by the British Parliament and its formal title is *Commonwealth of Australia Constitution Act 1900* (UK)

Study tip

At this stage, you only need to understand that each state has law-making powers in relation to crime. You will learn more about law-making powers in Unit 4, Area of Study 1. It's a good idea to come back and review this chapter when you start Unit 4.

Australia's justice system

There is no single, unified criminal justice system in Australia. This is due to the fact that under the **Australian Constitution**, the Commonwealth Parliament does not have power to make laws about crime in general. Instead, the states have power to maintain public order and protect citizens. As a result, each state and territory in Australia has its own laws that establish:

- what is considered a crime
- the ways of determining criminal cases
- the maximum penalty that could be imposed for each specific crime.

Each state and territory also has its own police force, courts and prison system.

Criminal cases in Victoria

In Victoria, the courts that hear and determine criminal cases are:

- the Magistrates' Court
- the County Court
- the Supreme Court.

The Children's Court also hears criminal cases in Victoria, where a child (between the ages of 10 and 17) has been accused of committing a crime.

Although the administration of criminal justice is a power held by the state, the Commonwealth Parliament has the power to pass criminal laws if it relates to its constitutional powers in some way (e.g.

avoiding customs duties, as customs is a Commonwealth power). Commonwealth offences (i.e. offences that break a law passed by the Commonwealth Parliament) have expanded over time and there is now a great deal of overlap. Some crimes, such as drug dealing, could be prosecuted by either Commonwealth or state police.

Many of the Commonwealth offences are contained in the Commonwealth Criminal Code, a statute passed by the Commonwealth Parliament. The Code includes offences such as:

- assisting enemies at war with Australia (a form of **treason**)
- advocating (i.e. promoting or supporting) terrorism
- causing harm to a Commonwealth public official.

These types of offences have the potential to affect the whole of Australia, not just a particular state or territory.

treason

the crime of betraying one's country, especially by attempting to overthrow the government



Source 2 In Australia, drug dealing is a crime that can be prosecuted by either Commonwealth or state police.

Parties to a criminal case

A criminal case involves two parties:

- the state (i.e. the government, represented by a **prosecutor** (also called the 'prosecution') on behalf of the people and with the authority of the Crown)
- the accused (i.e. the person or institution that is alleged to have committed a crime).

The victim is not a party to a criminal case and does not bring the court action. In serious criminal cases the prosecution takes the case to court on behalf of the victim and society.

The state

In Victoria, the **Office of Public Prosecutions (OPP)** works with the **Director of Public Prosecutions (DPP)** and the Crown Prosecutors to prosecute serious crime on behalf of Victorians in the County Court or Supreme Court of Victoria. In less serious cases, Victoria Police officers will ordinarily prosecute a case in the Magistrates' Court. Other organisations such as local councils, VicRoads and WorkSafe Victoria also have power to prosecute less serious offences.

prosecutor

the Crown in its role of bringing a criminal case to court (also called 'the prosecution')

Office of Public Prosecutions (OPP)

the Victorian public prosecutions office which prepares and conducts criminal proceedings on behalf of the DPP

Director of Public Prosecutions (DPP)

the independent officer responsible for commencing, preparing and conducting prosecutions of indictable offences on behalf of the Crown

The accused

As you have learned, the person charged with a crime is known as the accused. There can be multiple accused persons in a criminal case, depending on the crime that is alleged to have been committed. Companies can also be charged with offences such as taxation fraud, offences relating to workplace health and safety and environmental offences. The below case is an example of a company charged with an offence relating to workplace health and safety.

LEGAL

CASE

Company sentenced in relation to workplace injury

DPP v ABD Group Pty Ltd [2016] VCC 1450 (29 September 2016)

On 27 April 2016, a jury found ABD Group Pty Ltd guilty of one charge in relation to a failure to ensure its workplace was safe and free from risk to health. The charge related to an incident that occurred on 9 May 2011 at a workplace where ABD Group Pty Ltd was completing carpentry works. One of its workers slipped on sawdust and fell 2.8 metres to the concrete floor below. He suffered internal bruising, his right arm was in a sling for two days and he was off work for two weeks.

On 29 September 2016 ABD Group Pty Ltd was convicted and Judge Mason of the County Court of Victoria handed down the sentence, a fine of \$80 000.



Source 3 In 2016, ABD Group Pty Ltd was found guilty by a jury verdict of one charge in relation to a failure to ensure its workplace was safe and without risk to health. The charge related to an incident that occurred on 9 May 2011 at a workplace at which ABD Group Pty Ltd was completing carpentry works. One of its workers was injured as a result of slipping on sawdust and falling 2.8 metres to the concrete floor.

→ GOING FURTHER

Private prosecutions

In Victoria, private individuals are able to commence and conduct a private prosecution. This means that it is possible for a victim themselves, or another person, to prosecute a case (including where the DPP has decided to discontinue a case). These sorts of prosecutions are rare, mainly because of the expense involved in prosecuting a case and the resources required to do so.



Source 4 Companies can be charged with taxation fraud in the criminal justice system.

3.1

CHECK YOUR LEARNING

Define and explain

- 1 Explain what is meant by the term the 'criminal justice system'.
- 2 Is there one single unified criminal justice system in Australia? Explain.
- 3 Identify four persons or organisations that are able to prosecute a case in court.

Synthesise and apply

- 4 Read the legal case *DPP v ABD Group Pty Ltd*.
 - a Who were the parties in this case?
 - b Describe the nature of the offence said to have been committed.
 - c Did ABD Group Pty Ltd plead guilty? Justify your answer.
- 5 Visit the Australasian Legal Information Institute (AustLII) website (provided on your obook assess) and locate the page which contains this year's County Court judgments.
 - a Find a recent criminal judgment in which a sentence was handed down.
 - b Provide a summary of the parties to the case, the charges alleged against the accused, and the sentence.
 - c Now write some questions for another student in your class to answer based on your summary of the judgment.



Check your obook assess for these additional resources and more:

» Student book questions

3.1 Check your learning

» Video tutorial

Introduction to Chapter 3

» Worksheet

Types of offences

» Weblink

Australasian Legal Information Institute (AustLII)

Did you know?

Court buildings in many countries show images of Lady Justice (see Source 1). In most of them she is wearing a blindfold, to show that 'justice is blind' (not biased by who she sees before her). Sometimes she holds the sword of justice. Her Roman name is Justitia but she was originally the Greek goddess Themis (meaning 'order')

fairness

one of the principles of justice; fairness means having fair processes and a fair hearing (e.g. the parties in a legal case should have an opportunity to know the facts of the case and have the opportunity to present their side of events; and the pre-hearing and hearing (or trial) processes should be fair and impartial)

equality

one of the principles of justice; equality means people should be equal before the law and have the same opportunity to present their case as anyone else, without advantage or disadvantage

access

one of the principles of justice; access means that all people should be able to understand their legal rights and pursue their case

Justice is a word you often hear when people talk about the law – particularly when it comes to verdicts in criminal cases.

Every day, newspaper articles, news reports, websites, and radio commentators talk about the outcome of certain criminal cases being 'just', while others are seen as 'unjust'. There is even a common saying that 'justice delayed is justice denied'.

So, while most people would agree that the criminal justice system should achieve justice, what does 'justice' actually mean?

Defining justice

Justice is difficult to define as it means different things to different people. As a result, there is no single, universally accepted definition of the word. One dictionary definition is 'the quality of being fair and reasonable', but views on what is considered fair or reasonable in a particular case can vary widely between individuals depending on their cultures, political and religious beliefs, community views, personal experiences and personal values. For example, a victim in a criminal case may view a maximum sentence of ten years as being just, while the family and friends of the accused may see the same sentence as unjust.

When considering whether justice has been achieved in a particular case, it is helpful to consider the following three principles of justice:

- **fairness**
- **equality**
- **access.**

The three principles can be used as a way to determine whether the criminal justice system as a whole is achieving its purpose.

In this Area of Study, you will be required to consider whether the criminal justice system upholds the principles of justice, so you should continually revisit these principles when examining aspects of the system.



Source 1 'Lady Justice' (also known as Justitia) above the entrance to the County Court of Victoria. She is holding the scales of justice in her hand. These scales symbolise the impartial weighing of arguments and evidence for or against a case tried in court.

Fairness

Fairness is the first principle of justice. A dictionary definition is 'impartial and just treatment or behaviour without favouritism or discrimination'. However, like justice, fairness can mean different things depending on a person's values and perspectives.

Fairness does not necessarily mean that everyone gets the same thing. It is often the case in society that to treat someone fairly, you have to treat them differently (as shown in Source 2).

In the criminal justice system, fairness means fair processes and a fair hearing. People should be able to:

- have their case heard in an impartial and objective manner and without fear or favour
- understand court processes
- have the opportunity to present their defence
- have the opportunity to rebut (disprove) the prosecution case.

For example, accused persons should know what documents and evidence will be used against them, so they have an opportunity to consider the strength of the prosecution's case. They should also have an opportunity to challenge the evidence, and have their case heard and determined by people who are unbiased, and are perceived to be unbiased.

If laws are properly and fairly applied, and there is procedural fairness in each criminal case, then the **rule of law** will be upheld. Fairness does not necessarily mean the same outcome or the same sentence in a criminal case for every single crime of the same nature – rather, as stated above, fairness may require people to be treated differently to ensure a fair outcome.

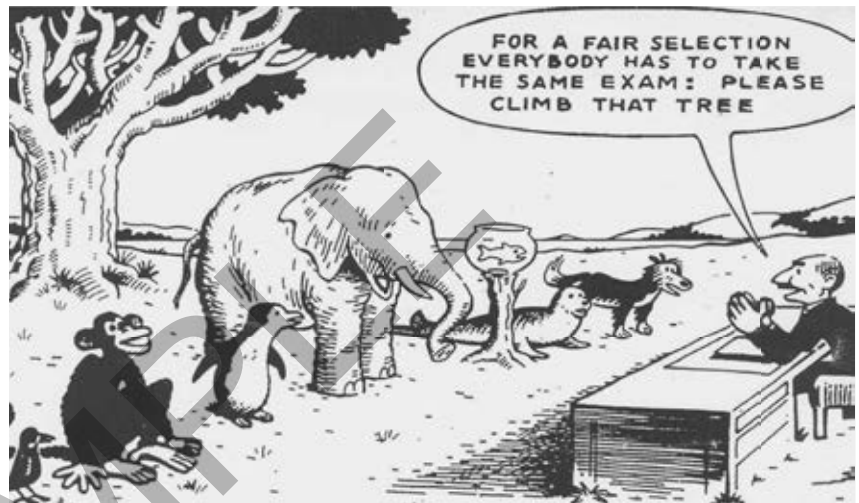
The principle of fairness applies not just to the final hearing or trial, but to the whole of a criminal case.

In Chapters 4 and 5, you will consider whether the criminal justice system achieves fairness. Some of the aspects of the criminal justice system that relate to fairness include:

- the time it takes for a criminal case to be heard and completed, and whether any delays have occurred
- the availability of legal representation for an accused and for victims
- the opportunity for the accused to present their case and know the evidence that will be brought against them, and the opportunity to **appeal** (review) a decision made
- whether the accused and victims can understand legal processes and terminology, and have adequate assistance where necessary
- whether laws and court rules have been properly applied
- whether people have been treated impartially and without fear or favour (including victims).

Study tip

The principles of 'fairness', 'equality' and 'access' are central to the criminal justice system in Victoria. Make sure you not only understand each of these principles, but also how features of the criminal justice system achieve, or do not achieve, each of them.



Source 2 Some people might argue that it is fair for each of the animals shown above to take the same exam – because they are all being treated equally – but do you think the outcome of this 'exam' will be fair?

rule of law

the principle that everyone in society is bound by law and must obey the law and that laws should be fair and clear (so people are willing and able to obey them)

appeal

an application to have a higher court review a ruling (i.e. decision) made by a lower court

The right to a fair trial

Jago v District Court of NSW (1989) 168 CLR 23

In *Jago v District Court of NSW*, Jago had been charged on 30 counts of fraud, alleged to have occurred between April 1976 and January 1979. The matter was not listed for a final hearing until 1987. The case went to the High Court on appeal, because Jago argued that the charges should be stayed permanently because of the delay in the time it took for the case to go to trial.

The High Court dismissed the appeal, but discussed at length the right of an accused to a fair trial. Importantly, the Court held that the right to a fair trial is not limited to just the trial itself. Chief Justice Mason said:

[The right to a fair trial] is one of several [rights] entrenched in our legal system in the interests of seeking to ensure that innocent people are not convicted of criminal offences ... there is no reason why the right should not extend to the whole course of the criminal process ...



Source 3 A fair trial can help avoid an incorrect guilty verdict.

Equality

Equality is the second principle of justice. One dictionary definition of equality is ‘the state of being equal, especially in status, rights or opportunities’.

In society, equality means that everyone should be treated equally regardless of their different personal characteristics or beliefs (such as age, gender, religion, ethnicity, cultural background, disability or sexuality).



Source 4 In society, equality means that all persons should be treated equally regardless of their different personal characteristics or beliefs (such as age, gender, religion, ethnicity, cultural background, disability or sexuality).

In the criminal justice system, equality means that all people should be treated equally before the law, with an equal opportunity to present their case. This means that no person or group should be treated advantageously, or disadvantageously, because of a personal attribute or characteristic. The processes should be free from bias or prejudice, and the persons who make the decision should be impartial. Equal application of the law, and equality in processes, uphold the rule of law.

The *Charter of Human Rights and Responsibilities Act 2006* (Vic) is a Victorian statute aimed at protecting and promoting human rights. It states that every Victorian is equal before the law and is entitled to the law's protection without discrimination.

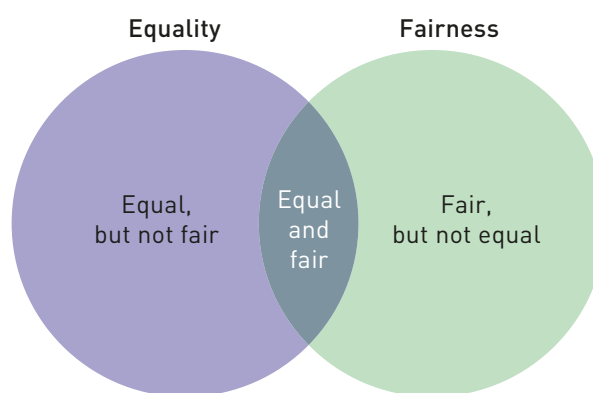
While the principles of equality and fairness share some similarities, they are quite different concepts, as seen in Source 5.

In Chapters 4 and 5, you will learn more about the ways in which the criminal justice system tries to achieve equality. Some of the aspects of the criminal justice system that relate to equality include:

- the use of a judge and jury when deciding criminal cases
- the way differences are treated (e.g. cultural differences, socio-economic differences and religious differences)
- whether the system disadvantages certain groups in society (e.g. vulnerable witnesses, people with mental health issues or people who are unable to understand English)
- the availability of legal representation for persons of a low socio-economic background
- the biases that may be inherent when certain groups of the community are confronted by the criminal justice system
- the extent to which laws apply equally to everyone.



Source 6 A court with unbiased and impartial judges is one of the ways in which the criminal justice system in Australia seeks to achieve equality.



Source 5 Equality and fairness can be difficult principles to separate. This diagram is designed to help you do this.

Study tip

In your notes, create a page for each principle of justice. Here's how:

- Add the headings 'fairness', 'equality' and 'access' at the end of your notes (leaving a separate page or two for each).
- When you learn about something that upholds one of these principles, make a note of it on the relevant page.
- Do the same thing when you come across something that opposes these principles – in the text, in a case, or anywhere else.

Access

Access is the third principle of justice. In simple terms, access is the ability to approach or make use of something. It is generally accepted that members of society should be able to access education, health, food and shelter. People should also be able to access justice.

Access to the criminal justice system means that all people should be able to understand their legal rights and pursue their case. This includes more than being able to access the institutions that hear criminal cases (i.e. the courts). It also means being able to approach bodies and institutions that provide legal advice, education, information and assistance, and receive from them information about criminal cases, processes and outcomes.

Access to the criminal justice system does not necessarily mean that the person seeking access will get the outcome they want, but it does mean parties should have the opportunity to make use of the processes and institutions within the criminal justice system, and that these are not beyond their reach. For example, individuals who cannot afford the cost of engaging legal representation and advice should have access to free legal aid or assistance. The following scenario about Sally provides an example of the way the criminal justice system can sometimes be inaccessible to some Victorians.



Source 7 Access to the criminal justice system means all people should be able to approach legal bodies and institutions for help.

EXAMPLE

Sally's inability to access the legal system

Sally has a hearing disability, intellectual impairment and a mental illness, and lives in public housing in rural Victoria. She has recently fled her previous housing because of a physically abusive relationship with her ex-partner. She has approached several lawyers to help her, but she is unable to afford their fees.

Sally's impairment, health and her socio-economic status have made it difficult for her to access the justice system. She has limited understanding and knowledge of the rights that are available to her and does not have the money to pay for a lawyer herself. When she has gone to the police station for help and has tried to describe what has happened, she has not been able to communicate the abuse she has suffered.

The right to access the criminal justice system not only applies to accused persons, but also to victims, their families, and the general public.

You will explore in Chapters 4 and 5 how and whether the criminal justice system achieves access to justice. Some of the aspects of the criminal justice system that relate to access include:

- the availability of a range of means used to finalise criminal cases, such as plea negotiations and sentence indications
- the availability of legal advice and assistance to an accused and victims who may not be able to afford legal representation
- the costs and delays associated with defending a criminal case or accessing information about legal rights
- the extent to which members of the community understand legal rights and processes
- the availability of the courts and legal processes
- the formalities associated with a hearing or trial.



Source 8 Access in the criminal justice system can relate to the costs associated with defending a criminal case or accessing information about legal rights.

3.2

CHECK YOUR LEARNING

Define and explain

- 1 Identify the three principles of justice and provide a brief description of each.
- 2 Is fairness limited to a fair trial? Explain your answer.
- 3 Describe what is meant by access to the criminal justice system.

Synthesise and apply

- 4 Identify three different people who have an interest in the sentence passed on a person found guilty of an offence. How might each of them define a 'fair' sentence?
- 5 Imagine you are a teacher in a classroom. Describe a situation where you might be seen to be treating students equally, but not fairly.
- 6 Read the example 'Sally's inability to access the criminal justice system'. Explain how each of the three principles of justice may not be achieved in this case, and what could be done to make sure they are achieved.

Analyse and evaluate

- 7 Look back at Source 2. With a partner, discuss whether the cartoon depicts fairness or a lack of fairness. Discuss possible alternative 'exams' for the animals that might achieve fairness.
- 8 Access former Chief Justice Marilyn Warren's speech called 'What is justice?' A link is provided on your [obook assess](#). Your teacher will divide up the paragraphs between you to summarise. Once you have done so, come together as a class and discuss the following questions:
 - a Is there a single definition of justice? If not, why not?
 - b Whose interpretation of justice is most important in the legal system?
 - c What conclusions can you draw from this speech about the meaning of justice?



Check your [obook assess](#) for these additional resources and more:

» **Student book questions**

3.2 Check your learning

» **Weblink**

Rule of Law Institute of Australia

» **Weblink**

What is justice?

KEY CONCEPTS IN THE VICTORIAN CRIMINAL JUSTICE SYSTEM

In this topic you will learn about a number of key concepts in the Victorian criminal justice system. These concepts include:

- the distinction between summary offences and indictable offences
- the burden of proof
- the standard of proof
- the presumption of innocence.

The distinction between summary offences and indictable offences

There are two types of criminal offences:

- **summary offences**
- **indictable offences.**

summary offence

a minor offence generally heard in the Magistrates' Court

indictable offence

a serious offence generally heard before a judge and a jury in the County Court or Supreme Court of Victoria

Study tip

The VCE Legal Studies Study Design requires you to know how to distinguish between summary offences and indictable offences. That means you should be able to point out the differences between the two. In your answers, use words such as 'whereas', 'on the other hand' or 'in contrast' when pointing out their differences.

Summary offences

Summary offences are **minor criminal offences** that are generally heard in the Magistrates' Court. The final hearing at which both parties will put their cases before a magistrate is known as a hearing (as opposed to a trial in the County Court or Supreme Court). They are considered to be less serious types of crime, and include offences such as drink driving, disorderly conduct and minor assaults. There is no right to a jury trial for summary offences.

Some summary offences are contained in the *Summary Offences Act 1966* (Vic), but many are listed in various other Victorian statutes and regulations.

Most crimes that are committed in Victoria are summary offences. The number of criminal cases finalised in each of the main Victorian courts for the financial year 2014–15 is set out in Source 1 below. As shown, the vast majority of criminal cases heard each year in Victoria—around 90 per cent—are heard in the Magistrates' Court, which hears summary offences.

COURT	NUMBER OF CRIMINAL CASES FINALISED IN 2014–2015
Magistrates' Court	275 552
County Court	2236
Supreme Court (Trial Division)	86
Total	277 874

Source: Annual Reports of the Magistrates' Court, County Court and Supreme Court, 2014–15.

Source 1 Number of criminal cases finalised in 2014–15 in the main Victorian courts

Indictable offences

Indictable offences are **serious criminal offences** that are heard by a judge (and a jury if the accused pleads not guilty) in the County Court or Supreme Court of Victoria. Final hearings are known as trials. Examples of indictable offences include homicide offences and drug trafficking.

As a general rule, offences in the *Crimes Act 1958* (Vic) are indictable offences unless the offence is stated in the Act to be a summary offence.

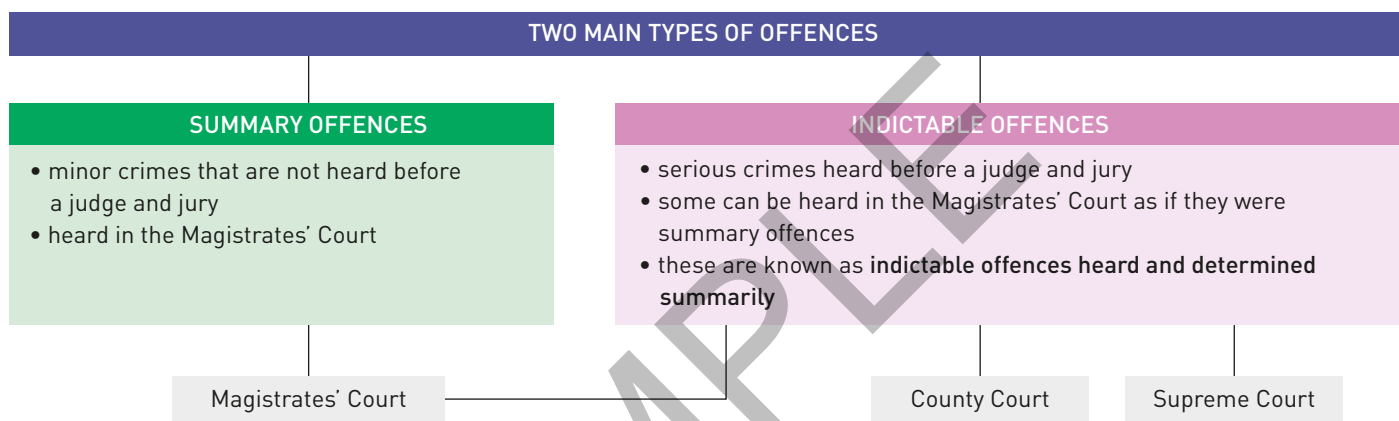
Indictable offences heard and determined summarily

Some indictable offences are known as **indictable offences heard and determined summarily**. These are indictable (i.e. serious) offences, but they can be heard in the Magistrates' Court as if they were summary (i.e. minor) offences (but only if the accused agrees).

A number of indictable offences can be heard and determined summarily. For example, the *Criminal Procedure Act 2009* (Vic) states that indictable offences punishable by imprisonment of 10 years or less can be heard summarily. In addition, Schedule 2 of the Act lists a range of offences in more than 30 different statutes that can be tried summarily.

The accused will usually choose to have an offence heard summarily, mainly because it is quicker and cheaper to have a case heard in the Magistrates' Court, and the maximum penalty that can be handed down is far less than if it were heard as an indictable offence. The court, however, must agree that the offence is appropriate to be heard summarily.

indictable offence heard and determined summarily
a serious offence which can be heard and determined as a minor offence if the accused agrees



Source 2 Two main types of offences: summary offences and indictable offences

The main differences between summary offences and indictable offences are set out in Source 3 below.

	SUMMARY OFFENCES	INDICTABLE OFFENCES
Nature of offence	Minor criminal offences	Serious criminal offences
Courts that will generally hear the case	Magistrates' Court	County Court or Supreme Court
Jury trial	No	Yes (if the accused has pleaded not guilty)
Name of final hearing	Hearing	Trial
Main statute(s) in which the offences are contained	<i>Summary Offences Act</i> and other statutes and regulations	<i>Crimes Act</i>
How it can be heard	Can only be heard as a summary offence	Some indictable offences can be heard summarily
Examples	Disorderly conduct, drinking offences, minor assaults	Rape, homicide offences, fraud, drug trafficking

Source 3 Key differences between summary offences and indictable offences

The burden of proof

burden of proof

the obligation (i.e. responsibility) of a party to prove a case. The burden of proof usually rests with the party who initiates the action (i.e. the plaintiff in a civil dispute and the prosecution in a criminal case)

The **burden of proof** refers to the responsibility of a party to prove the facts of the case. The burden of proof lies with the person or party who is bringing the case. In a criminal case, this is the prosecution (i.e. the prosecution has to prove that the accused is guilty).

One of the justifications for this is that if the prosecution is accusing a person of having committed a crime, then the responsibility should be on the prosecution to establish the facts.

In a few cases the burden of proof can be reversed (e.g. if the accused is pleading a defence such as self-defence).

Drug cases are another example. Section 5 of the *Drugs, Poisons and Controlled Substances Act 1981* (Vic) states that a person is presumed to possess a substance if:

- the substance is on their property (owned, rented, used or occupied) and
- the person cannot satisfy the court to the contrary.

In this case the onus (responsibility) will be on the accused to prove the drug was not in their possession.

The standard of proof

standard of proof

the degree or extent to which a case must be proved in court

beyond reasonable doubt

the standard of proof in criminal cases. This requires the prosecution to prove there is no reasonable doubt that the accused committed the offence

balance of probabilities

the standard of proof in civil disputes. This requires the plaintiff to establish that it is more probable (i.e. likely) than not that his or her side of the story is right

presumption of innocence

the right of a person accused of a crime to be presumed not guilty unless proven otherwise

common law

law made by judges through decisions made in cases; also known as case law or judge-made law (as opposed to statute law)

bail

the release of an accused person from custody on condition that they will attend a court hearing to answer the charges.

The **standard of proof** refers to the strength of evidence needed to prove the case. In a criminal case, the prosecution must prove the case **beyond reasonable doubt**. Proving someone guilty beyond reasonable doubt does not mean that no doubt at all exists as to the accused's guilt. It only means that no **reasonable** doubt is possible from the evidence presented. The judge or members of the jury may still be able to think of fanciful, imaginary or unreasonable doubts (i.e. doubts that aren't realistic or based on the evidence), but these do not count. To prove guilt in a criminal case all that matters is that no other logical or reasonable conclusion can be reached (based on the facts) except that the accused is guilty.

In a criminal case involving indictable offences, the case is heard in the County or Supreme Court and a jury will decide on guilt (Chapter 4 has more information about juries). In a criminal case involving summary offences, the case is heard in the Magistrates' Court and a magistrate (not a jury) will decide on guilt. If the burden of proof is on the accused (for example, the accused is relying on a certain defence), then the standard of proof is on the **balance of probabilities**, but this is an exception.

The presumption of innocence

Every person accused of a crime is presumed to be innocent until they have gone before a court and have been found guilty. The **presumption of innocence** is one of the key principles of the rule of law, and is one of the most important concepts on which the criminal justice system is based. It is a guarantee by the state to its citizens that if they are accused of a crime they will be treated, as far as possible, as innocent (not guilty) until the charge has been proved beyond reasonable doubt.

The presumption of innocence is a very old **common law** right. It is now also guaranteed by the *Charter of Human Rights and Responsibilities Act*.

One of the critical ways in which the presumption of innocence is maintained is by imposing a high standard on the prosecution to prove its case (beyond reasonable doubt), and also imposing the burden of proof on the prosecution. That is, the prosecution has to prove that the accused is guilty. Accused persons do *not* have to prove they are innocent.

The presumption of innocence is also upheld through the system of **bail**. The rule of law requires there to be a balance between the presumption of innocence and the protection of society. Unless there are good reasons why a person should be deprived of their liberty (i.e. be held in custody), they are entitled to receive bail while they wait for their hearing in court.

Bail laws have recently come under scrutiny following an incident in Bourke Street, Melbourne in January 2017 when six people were killed and others were injured. The person accused of having committed the crimes was on bail at the time.

Victoria bail law set to change after Bourke Street Mall attack

Australian Associated Press, 22 January 2017

IN
THE
NEWS



Source 4 Mourners leave flowers and gifts at the scene of the Bourke Street Mall deaths in 2017.

Victorian bail laws are set to change after the Bourke Street Mall tragedy, in which a man allegedly drove through a crowd just days after being bailed on an assault charge.

The accused was bailed against the wishes of Victoria Police five days before Friday's attack.

Victorian Premier Daniel Andrews admitted he was frustrated with the bail system.

'It's my job, though, to take that frustration and that anger and the deep sadness that I feel, and that every Victorian feels, and to make sure that's put into reform and change,' Mr Andrews told reporters on Sunday.

He foreshadowed changes to the bail system, in which Victoria uses volunteer bail judges for out-of-hours decisions.

'We do have a number of unique features of our system, but ... we have to have a close look at these arrangements,' Mr Andrews said.

If changes need to be made then they should be, and be in no doubt they will be.'

Chief Commissioner Graham Ashton said he could not speak freely about bail, but it would be covered in a coronial review.

'We've expressed frustration over the course of the journey about bail issues. We haven't made a secret of that,' he told reporters.

Opposition Leader Matthew Guy said the whole bail system needed reform.

'The bail system in this state is broken and it needs to be fundamentally reformed,' Mr Guy told reporters.

He said Victoria would likely need to build new facilities to hold more people on remand if bail changes went ahead.

A number of other features of the criminal justice system uphold the presumption of innocence. For example:

- an accused has the right to silence, which means they do not need to answer any questions, and do not need to give evidence in court. A person's silence is not to be taken as a sign of guilt
- police must reasonably believe a person has committed a crime before they can arrest that person
- for indictable offences, the prosecution must prove there is enough evidence to support a conviction before they can take a case to trial (you will explore this more in Chapter 4)
- generally, a person's prior convictions cannot be revealed until sentencing (i.e. after they have been found guilty). This is to avoid the jury leaping to the conclusion that the person must be guilty because of their past record
- an offender has the right to appeal a wrongful conviction (e.g. where the judge applied the wrong law).

3.3

CHECK YOUR LEARNING

Define and explain

- 1 Outline two differences between summary offences and indictable offences.
- 2 Who has the burden of proof in a criminal case? What is the reason for this?
- 3 Define the term 'the presumption of innocence', and explain three ways it is upheld in a criminal case.

Synthesise and apply

- 4 Two co-accused have been charged with the murder of a young girl. A great deal of forensic evidence has been put to the jury during the trial. Evidence showed:
 - the fingerprints of both co-accused were found on the murder weapon
 - the blood of the girl was found in one of the co-accused's cars
 - neither of the accused had an alibi (i.e. proof they were somewhere else at the time).

- a Imagine you are a member of the jury for this trial. Write down as many 'fanciful, imaginary or unreasonable' doubts as you can.
- b Describe why each of the doubts you have listed might be considered fanciful, imaginary or unreasonable.
- c Now try to think of two or three reasonable doubts you may have based on the evidence provided.

Analyse and evaluate

- 5 In the 1760s, William Blackstone, an English judge, stated that 'it is better that ten guilty persons escape than that one innocent suffer'. Do you agree with this statement? Give reasons for your answer.
- 6 Bail seeks to balance the presumption of innocence and the protection of the community.
 - a Find one article or commentary that argues that the bail system achieves this goal and one article or commentary that argues it does not.
 - b What arguments are put forward in each article to support the writer's view?
 - c What is your view? Be prepared to discuss your view with your classmates.



Check your **obook** **assess** for these additional resources and more:

» **Student book questions**
3.3 Check your learning

» **Video**
Criminal intent and the burden of proof

» **Video worksheet**
Criminal intent and the burden of proof

» **Weblink**
Magistrates' Court of Victoria

THE RIGHTS OF AN ACCUSED

The protection and promotion of human rights is an important part of the Australian legal system. A number of human rights are available to all Australians. These include:

- a right to freedom of political expression
- freedom of movement within Australia
- the right for an individual to enjoy their own cultural and religious practices.

Human rights in Australia also include rights available to people accused of crimes. One of these rights is the right to be presumed innocent until proven guilty. In this topic we will examine a number of others rights available to people accused of crimes.

Charter of Human Rights and Responsibilities

In Victoria a number of rights are protected by the *Charter of Human Rights and Responsibilities Act*, otherwise known as the **Human Rights Charter** (or the Victorian Charter of Human Rights). The main purpose of the Human Rights Charter is to **protect and promote human rights**. It is designed to ensure that any statute passed by the Victorian Parliament is compatible (i.e. does not interfere) with the human rights set out in the Charter.

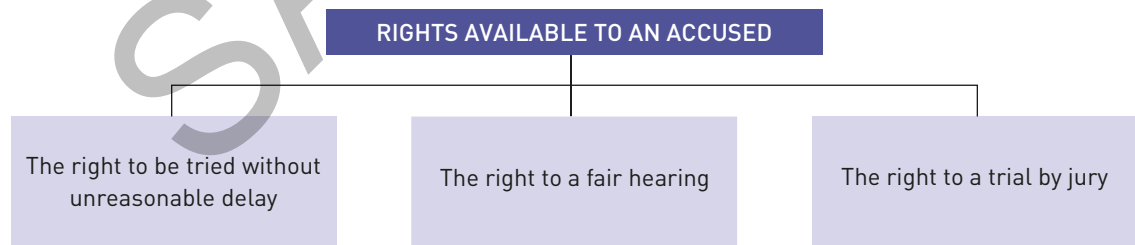
The rights protected by the Human Rights Charter are based on those contained in the *International Covenant on Civil and Political Rights* 1966. This is an **international treaty** to which Australia is a signatory. Many of the rights in the Human Rights Charter mirror those in the Covenant, but a number have been modified slightly to suit Australia's existing laws.

Sections 23 to 27 of the Human Rights Charter contain rights that are available to an accused in criminal proceedings. They are only available to human beings, not to companies.

In addition to the rights contained in the Human Rights Charter, a number of rights contained in other statutes are available to an accused. Three of the rights available to an accused are shown in Source 1.

Human Rights Charter
the *Charter of Human Rights and Responsibilities Act 2006* (Vic). Its main purpose is to protect and promote human rights

international treaty
a legally binding agreement between countries or intergovernmental organisations which is in written form and is governed by international law



Source 1 Three rights available to an accused in a criminal case

Study tip

In the end-of-year examination, you may be expected to explain the three rights shown in Source 1.

You should become familiar with, and be able to explain, each of these rights, including the main source of those rights.

The right to be tried without unreasonable delay

The Human Rights Charter states that a person charged with a criminal offence is entitled without discrimination to a guarantee that he or she will be tried without unreasonable delay.

This means that an accused is entitled to have his or her charges **heard in a timely manner**, and that **delays should only occur if they are considered reasonable**. This right is 'without discrimination'. Every accused is entitled to this right regardless of their prior history or personal attributes such as age, breastfeeding, disability, gender identity, marital status or pregnancy.

The right recognises that there may be a delay in the case, but that delay must not be unreasonable. The term 'unreasonable delay' is not defined, but the reasonableness of any delay will depend on factors such as the complexity of the case and the legal issues involved.

Did you know?

So far, Victoria is the only state in Australia to have adopted a formal charter of human rights (in 2006). However, in 2004 the Australian Capital Territory passed a statute to protect many of the same rights contained in the Victorian Charter of Human Rights.



Source 2 The Human Rights Charter states that an accused is entitled to have his or her charges heard in a timely manner, and that delay should only occur if it is considered to be reasonable.

Study tip

You do not need to know the section numbers for the rights given under the Charter, but they are provided so you can locate and read the sections for your own learning.

This right is supported by Section 21(5) of the Human Rights Charter, which states that a person who is arrested or detained on a criminal charge has the right to be brought to trial without unreasonable delay. This is because, under the Charter, people have a basic right to liberty and security, and accused persons are presumed innocent until proven guilty. So people should not be held for an unreasonable amount of time while they are awaiting trial.

The Human Rights Charter also states that an accused child must be brought to trial as quickly as possible. A child is defined as a person under 18 years of age. Having a trial 'as quickly as possible' for an accused child, rather than a trial 'without unreasonable delay', which places a greater burden on the prosecution, is justified because of the impact that a trial may have on a child.

EXTRACT

Charter of Human Rights and Responsibilities Act 2006 (Vic)

21 Right to liberty and security of person

(5) A person who is arrested or detained on a criminal charge

(b) has the right to be brought to trial without unreasonable delay;

25 Rights in criminal proceedings

(2) A person charged with a criminal offence is entitled without discrimination to the following minimum guarantees:

(c) to be tried without unreasonable delay;

One of the cases that has considered the right to be tried without unreasonable delay was *Gray v DPP* [2008] VSC 4 (16 January 2008), in which Kelly Gray was charged with a number of indictable offences arising out of an incident which occurred in November 2007. Gray applied for bail, and pointed to the delay that he was likely to experience before the trial was to occur as a reason to be granted bail. Justice Bongiorno of the Supreme Court of Victoria noted that the Human Rights Charter guarantees a timely trial, and the inability of the Crown to provide that trial had an effect on the question of bail. He found that the only remedy that the Supreme Court could provide an accused in this situation, where the Crown had failed to guarantee a timely trial, was to release him on bail.



Source 3 The Human Rights Law Centre is an independent, not-for-profit, non-government organisation that aims to protect and promote human rights in Australia.

The right to a fair hearing

The Human Rights Charter entitles a person charged with a criminal offence to **have the charge decided by a competent, independent and impartial court after a fair and public hearing.**

There are two parts to this right:

- 1 A competent, independent and impartial court must decide the proceeding or charge. That means, for example, that every person has the right to have their case heard by a qualified and experienced judge or magistrate in an unbiased and objective manner.
- 2 A hearing must be fair, and public. Most court hearings are open to the public. This ensures that the trial and trial processes are transparent and not hidden in secrecy. If criminal cases were conducted in secret and confidentially, there would be no way for the public to know whether laws are applied properly and processes are fair. An open courtroom allows for public and media scrutiny of processes.



Source 4 The right to a fair hearing means that individuals have the right to have their case heard by a qualified and experienced judge, and that the hearing be fair and public.

In some circumstances a court may exclude members of media organisations or the general public from all or part of a hearing. For example, the Magistrates' Court has the power to make an order that proceedings are closed to the public if they will cause undue distress or embarrassment to a victim in a sexual offence case.

EXTRACT

Charter of Human Rights and Responsibilities Act 2006 (Vic)

24 Fair hearing

- (1) A person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.
- (2) Despite subsection (1), a court or tribunal may exclude members of media organisations or other persons or the general public from all or part of a hearing if permitted to do so by a law other than this Charter.
- (3) All judgments or decisions made by a court or tribunal in a criminal or civil proceeding must be made public unless the best interests of a child otherwise requires or a law other than this Charter otherwise permits.

Before the introduction of the Human Rights Charter, the courts recognised that a person is entitled to a fair trial. One important case discussing this right was the High Court case of *Dietrich v The Queen* (1992) 177 CLR 292.

LEGAL

CASE

High Court orders retrial

Dietrich v The Queen (1992) 177 CLR 292

Olaf Dietrich was arrested after arriving from Thailand and charged with drug trafficking offences. He applied for legal aid, but was unsuccessful in obtaining representation for his trial. His trial in the County Court lasted approximately 40 days, after which the jury found him guilty. He appealed his conviction, but was refused leave. He appealed again to the High Court. The sole ground of the appeal was that the trial miscarried because he was not provided with legal representation.

The High Court agreed with Dietrich. They found that the trial judge should have delayed the trial until arrangements could be made for him to obtain legal representation, and because that did not happen, he was deprived of his right to a fair trial. The case is important because it establishes that the lack of legal representation when defending an indictable offence may result in an unfair trial.



Source 5 In the case of *Dietrich v The Queen*, Olaf Dietrich successfully appealed his conviction to the High Court on the grounds that he was not provided with legal representation and therefore did not receive a fair trial.

The right to trial by jury

The jury system provides for a trial by others in the community. This right dates back to well before the Magna Carta in England, established in 1215, which said that no free man shall be imprisoned except by lawful judgment of his peers. The jury system provides the opportunity for community participation in the legal process, and for the law to be applied according to community standards.

Did you know?

The Magna Carta is a document agreed to by the King of England in June 1215. It contains several rights still considered important today. It also upholds the fundamental principle that no one is above the law. No one knows how many copies were distributed, but four copies still survive, all of which are in the United Kingdom.



Source 6 Section 80 of the Australian Constitution states that any person who is charged with a Commonwealth indictable offence is entitled to a trial by jury.

The right to trial by jury is not protected by the Human Rights Charter, but rather protected in part by the Australian Constitution, and in part by statute law in Victoria.

Section 80 of the Australian Constitution states that any person who is charged with a Commonwealth indictable offence is entitled to a trial by jury. However, section 80 of the Australian Constitution provides only a limited right to trial by jury, because most indictable offences are crimes under state law, and this section only applies to Commonwealth offences. In addition, the Commonwealth Parliament can determine by statute which offences are 'indictable'.

EXTRACT

Commonwealth of Australia Constitution Act 1900 (UK)

80 Trial by jury

The trial on indictment of any offence against any law of the Commonwealth shall be by jury, and every such trial shall be held in the State where the offence was committed, and if the offence was not committed within any State the trial shall be held at such place or places as the Parliament prescribes.

For Victorian indictable offences, the *Criminal Procedure Act* requires a jury to be empanelled where the accused had pleaded not guilty to the indictable offence. There is no right to a jury trial for summary offences. If a jury trial is required (i.e. an accused has pleaded not guilty to an indictable offence), then the *Juries Act 2000* (Vic) will govern the composition and responsibilities of the jury.

A criminal jury is made up of 12 jurors. The jury will hear the case and will need to reach a verdict on whether the accused is guilty or not guilty. The jurors must make a decision beyond reasonable doubt.

You will learn more about criminal jury trials in Chapter 4.

RIGHT	DESCRIPTION	MAIN SOURCE OF RIGHT
Right to be tried without unreasonable delay	An accused is entitled to have his or her charges heard in a timely manner. Any delay should be reasonable.	Sections 21 and 25(2)(c) of the Human Rights Charter
Right to a fair hearing	A person charged is entitled to have that charge decided by a competent, independent and impartial court, and the hearing must be both fair and public.	Section 24(1) of the Human Rights Charter
Right to trial by jury	A person charged with an indictable offence is entitled to be tried by his or her peers.	Section 80 of the Australian Constitution and Victorian statute law (including the <i>Criminal Procedure Act</i>)

Source 7 A summary of three rights of an accused

→ GOING FURTHER

A number of other rights protected by the Human Rights Charter are available to an accused. They include:

- 1 the right to be informed promptly and in detail of the nature of the charges and the reason for bringing the charges, in a language or type of communication that the accused speaks or understands [Section 25(2a)]
- 2 the right to have adequate time and facilities to prepare a defence and to communicate with a lawyer or advisor of the accused's choice [Section 25(2b)]
- 3 the right to examine witnesses against the accused, or have them examined [Section 25(2g)]
- 4 the right to have the free assistance of an interpreter, if the accused cannot understand or speak English [Section 25(2i)]
- 5 the right not to be tried or punished more than once for the same offence [Section 26].

The last right listed above is also known as the 'double jeopardy rule'. It means that a person who has already been found not guilty cannot be tried again. However, laws were passed in Victoria in 2011, which created exceptions to this rule where there is fresh and compelling evidence, or where the trial has been found to have been tainted.

Define and explain

- 1 What are human rights?
- 2 Identify the main source of law protecting human rights in Victoria. What international treaty are these rights based on?
- 3 **a** Describe three rights that are available to an accused in a criminal proceeding.
b Explain any exemptions or exceptions for each right.
- 4 How does a right to a trial by jury for an indictable offence uphold equality?
- 5 What is meant by the term 'unreasonable delay', and what delays may be considered 'reasonable'?

Synthesise and apply

- 6 Your friend has been charged with drink driving, and believes she is entitled to a jury trial under the Australian Constitution. Is she correct? Justify your answer.
- 7 In *Gray v DPP*, how did Justice Bongiorno attempt to remedy the fact that there may not be a timely trial?
- 8 Look back at the legal case *Dietrich v The Queen* and complete the following tasks:
 - a** As a class, write down all the questions that you have about this case on separate sticky notes (or small pieces of paper). For example:
 - 'Was there a retrial?'
 - 'Where is he now?'
 - 'Why should an accused be entitled to legal representation?'
 - b** When the whole class has finished, use a wall or the whiteboard in your classroom to put up all of your questions. If any questions are similar (or exactly the same), group those together.

- c** Once you are done, choose the top five questions that people most want to know the answers to.
- d** Form five groups. Your teacher will assign you one of the questions. Spend 10 minutes researching and discussing the answer.
- e** Share the results of your research with the other groups in your class.

Analyse and evaluate

- 9 Conduct a debate or engage in a class discussion about one of the following two statements. When conducting the debate or discussion, ensure there is reference made to the principles of justice.
 - a** All criminal trials and hearings should be determined by a jury.
 - b** All people should have legal representation in criminal trials and hearings, regardless of the seriousness of the offence.
- 10 You have met several people who do not believe that an accused should have any rights. They refer to a number of criminals who have recently been convicted for violent crimes. Create a list of three arguments that you might use to convince those people that rights are necessary for everyone.
- 11 'There should be a mandatory time by which cases should be determined, and if that time passes, the charges should not be able to proceed'. To what extent do you agree with this statement? Give reasons.

**Check your ebook assess for these additional resources and more:**» **Student book questions**

3.4 Check your learning

» **Going further**

The right to silence

» **Weblink**

Victoria's Charter of Human Rights and Responsibilities

THE RIGHTS OF VICTIMS

victim

a person who has suffered directly or indirectly as a result of a crime

Victims' Charter

a charter (i.e. the *Victims' Charter Act 2006* (Vic)) that recognises the impact of crime on victims and provides guidelines for the provision of information to victims

Study tip

In the end-of-year examination, you may be asked about the rights of victims listed in Source 1. You should be able to say where the rights come from as well as explain what they are.

Although the **victim** is not a party in a criminal case, there has been widespread recognition that not only should there be rights for an accused, but victims of crime and their rights should also be recognised in a criminal case.

Victims' Charter

The rights of victims are recognised by a number of statutes in Victoria, including the *Victims' Charter Act 2006* (Vic), known as the **Victims' Charter**. Some of the objectives of the Victims' Charter are to recognise the impact of crime on victims, to recognise that victims should be offered certain information during the investigation and prosecution process, and to help reduce the likelihood of secondary victimisation that may be experienced by the victim as a result of their interaction with the criminal justice system.

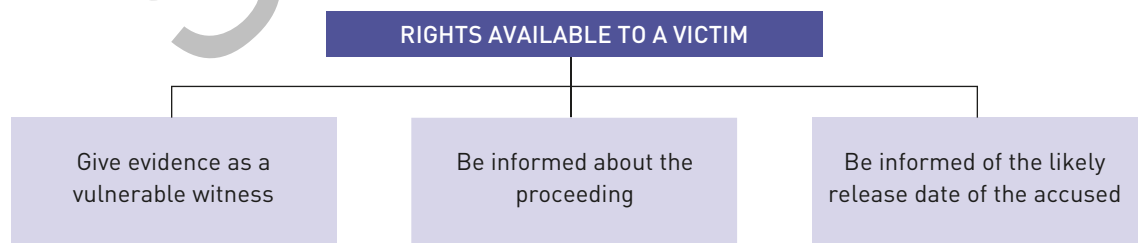
The Victims' Charter defines 'victim' broadly. Depending on the crime, a victim can include:

- a person who has suffered injury as a direct result of a criminal offence (often called the 'primary victim')
- a family member of a person who has died as a direct result of a criminal offence
- a family member of a person who is under 18 years of age or is incapable of managing his or her own affairs because of mental impairment, and that person has suffered injury as a direct result of a criminal offence
- a child under the age of 16 years who has been groomed for sexual conduct, as well as that child's family.

The Victims' Charter sets down principles such as respectful treatment of victims, respect for victims' privacy, and ensuring victims are given information about any criminal case brought to court. However, a breach of those rights does not entitle the victim to take civil action to enforce them.

In addition to the principles contained in the Victims' Charter, a number of other statutes provide some protections for victims, and can be considered to be rights available to victims.

Three of the rights given to victims are listed in Source 1. These will be discussed in more depth in this topic.



Source 1 Three rights available to a victim in a criminal case

vulnerable witness

a person who is required to give evidence in a criminal case and is considered to be impressionable or at risk. This might be a child, a person who has a cognitive impairment, or the alleged victim of a sexual offence

The right to give evidence as a vulnerable witness

In some criminal cases, a victim may be a witness in the criminal case. If so, they will have to give evidence in support of the prosecution's case against the accused.

A number of sections in the *Criminal Procedure Act* aim to protect **vulnerable witnesses**. Why are some witnesses considered vulnerable? The laws recognise that giving evidence in a formal courtroom

in particularly sensitive cases (e.g. cases involving a sexual offence) may make the victim uncomfortable, therefore possibly jeopardising the evidence that they give and adding to the trauma they may have already suffered. These people are particularly vulnerable, impressionable or at risk, and the laws provide some protections to them for when they give evidence.

The protections available under the *Criminal Procedure Act* can be broken down into the following:

- alternative arrangements that can be made for a witness to give evidence in particular cases (e.g. sexual offence cases)
- a declaration that a person is a **protected witness**
- special arrangements that can be made for witnesses under the age of 18 years or with a cognitive impairment.

Further, the *Evidence Act 2008* (Vic) gives the court the power to disallow improper questions put to certain witnesses.

Alternative arrangements

The court can direct alternative arrangements to be made for a witness to give evidence in criminal proceedings for:

- a sexual offence
- a family violence offence
- an offence for obscene, indecent, threatening language or behaviour in public
- an offence for sexual exposure in a public place.

Types of alternative arrangements include:

- the witness may give evidence from a place other than the courtroom by means of closed-circuit television (or other like facilities)
- screens may be used to remove the accused from the direct line of vision of the witness
- a support person may be chosen by the witness to be there while giving evidence
- only certain persons may be allowed in court when the witness is giving evidence
- legal practitioners may be required not to be formally dressed in robes, or may be required to be seated while asking the witness questions.

If the witness is the **complainant**, many of the above protections are automatically available, unless he or she does not want them.

The purpose of these arrangements is to ensure that the witness is protected from unnecessary contact with the accused, and is not placed in a position where they are scared or give unreliable evidence because of the trauma they suffer in doing so. This is particularly so in cases involving charges for sexual offences and family violence, where the trauma and injuries sustained may be significant.



Source 2 A witness may give evidence from a place other than the courtroom by means of closed-circuit television.

Did you know?

Victoria now has a Victims of Crime Commissioner. This role has been created to improve services and systems across Victoria so that they are better able to meet the needs of people who have been the victims of crime. A link to the Victims of Crime Commissioner website is provided on your [obook assess](#).

protected witness

a person who is to give evidence in a sexual offence or family violence offence case and is either the complainant, a family member of the complainant or the accused, or any other witness the court declares to be a protected witness

complainant

a person against whom an offence is alleged to have been committed (a person who has complained to the police)

Protected witnesses

The court is able to declare at any time that a witness is a protected witness in criminal proceedings for:

- a sexual offence
- a family violence offence.

A protected witness may be the complainant, a family member of the complainant, a family member of the accused, or any other witness the court declares to be a protected witness.

Once the declaration is made, the protected witness must not be cross-examined by the accused (which involves questioning the witness about his or her story). Instead, the **cross-examination** must be conducted by the accused's legal representative. If the accused does not have any legal representation (i.e. he or she is self-represented), the court must order **Victoria Legal Aid (VLA)** to provide legal representation for the accused for the purposes of cross-examination.

These measures ensure that the protected witness does not have any direct communication with the accused in court. It avoids the situation where the accused can cross-examine their victim about the evidence they have given.

Special arrangements for persons under the age of 18 years or with a cognitive impairment

Special protections are also available to witnesses under the age of 18 years, or with a **cognitive impairment**, in criminal proceedings for:

- a sexual offence
- an indictable offence involving assault on, or injury or threat of injury to a person
- offences involving minor assaults where those assaults relate to one of the above two offences.

These witnesses will be allowed to give their **examination-in-chief** by way of audio or audio-visual recording. That recording may then be provided to the accused, who will have a reasonable opportunity to hear it or view it.

Additional protections are available to a complainant in a proceeding for a sexual offence, where the complainant is under 18 years of age or has a cognitive impairment. The protections include being able to give evidence at a special hearing conducted in a way that:

- the accused is not in the same room as the complainant for the special hearing
- the accused is not entitled to see and hear the complainant while the complainant is giving evidence
- no unauthorised person is to be present in the courtroom while evidence is being given
- the evidence must be given on closed-circuit television
- the complainant is not to be questioned unless the court gives leave (that is, the court must make an order saying that this is allowed).

These protections recognise that children and persons with a cognitive impairment are particularly vulnerable, and as much protection should be afforded to them as possible while they are giving evidence. The protections aim to reduce the exposure of vulnerable witnesses to the accused, to the formality of the courtroom, and to any fear they may feel as a result of giving evidence about a crime they have been affected by.

Legislation was passed in 2017 which will mean that these special arrangements can also be available in cases involving family violence offences.

cross-examination

the questioning of a witness called by the other side in a legal case

Victoria Legal Aid (VLA)

a government agency that provides free legal advice to the community and low-cost or no-cost legal representation to people who can't afford a lawyer

cognitive impairment

an issue with brain functioning that can affect thinking, memory, understanding or communication (for example, an acquired brain injury or dementia)

examination-in-chief

the questioning of one's own witness in court in order to prove one's own case and disprove the opponent's case

Did you know?

In South Australia, special arrangements for giving evidence are available to a wider group of people than in Victoria. Protected witnesses include victims of serious offences against the person, and witnesses who have been threatened.

Improper questions

In addition to the above protections, the *Evidence Act* gives the power to the court when a vulnerable witness is being cross-examined to disallow improper questions. Improper questions include questions that are confusing, harassing, intimidating, offensive or humiliating. This power is available to the court in any type of cases (not just cases involving sexual offences). Further, a vulnerable witness includes any person under the age of 18 years, a person with a cognitive impairment or intellectual disability, or a witness whom the court considers vulnerable.

A summary of the protections that may be available to vulnerable witnesses is set out in Source 3 below.

TYPES OF OFFENCES	AVAILABLE TO	PROTECTIONS AVAILABLE
<ul style="list-style-type: none"> Sexual offences Family violence offences Offences for obscene, indecent, threatening language or behaviour in public Offences for sexual exposure in a public place 	<ul style="list-style-type: none"> All witnesses, if the court makes an order The protections are automatically available to the complainant, unless he or she does not want them 	<p>Alternative arrangements to give evidence, such as:</p> <ul style="list-style-type: none"> by way of closed-circuit television using screens allowing a support person to be beside the witness only allowing certain persons to be present when evidence is given removing formalities applicable to legal practitioners.
<ul style="list-style-type: none"> Sexual offences Family violence offences 	<ul style="list-style-type: none"> All witnesses if the court so declares 	<p>Declaration that a person is a protected witness, and therefore the accused cannot cross-examine him or her.</p>
<ul style="list-style-type: none"> Sexual offences Indictable offence involving assault on or injury or threat of injury to a person Offences involving minor assaults 	<ul style="list-style-type: none"> Witnesses under the age of 18 years Witnesses with a cognitive impairment 	<p>Witnesses are able to give their examination-in-chief by way of audio or audio-visual recording.</p>
<ul style="list-style-type: none"> Sexual offences 	<ul style="list-style-type: none"> Complainants under the age of 18 years Complainants with a cognitive impairment 	<p>Witnesses are able to give their evidence at a special hearing, which means that:</p> <ul style="list-style-type: none"> the accused is not in the same room as the witness the accused is not entitled to see or hear the witness no unauthorised person is to be present the witness is not to be cross-examined or re-examined unless the court grants leave.
<ul style="list-style-type: none"> All offences 	<ul style="list-style-type: none"> A person under the age of 18 years A person who has a cognitive impairment or intellectual disability A person the court considers to be vulnerable 	<p>Court can allow improper questions being put to a vulnerable witness in cross-examination.</p>

Source 3 A summary of protections available to vulnerable witnesses

The right to be informed about the proceedings

The Victims' Charter recognises that persons adversely affected by crime are **entitled to certain information about the proceeding and about the criminal justice system**.

The Victims' Charter requires investigatory agencies, prosecuting agencies and victims' services agencies (which includes police officers, the DPP, and the Victims of Crime Commissioner) to provide clear, timely and consistent information about support services, possible compensation entitlements, and the legal assistance available to persons adversely affected by crime.

In addition, the Victims' Charter requires an investigatory agency (a body which conducts a criminal investigation, such as the Victoria Police) to inform a victim, at reasonable intervals, about the progress of an investigation into a criminal offence. The information does not need to be given if it may jeopardise the investigation, or if the victim chooses not to receive that information.

Once a prosecution has commenced, the Victims' Charter requires the prosecution to give a victim the following information:

- details of the offences charged against the person
- if no offence is charged, the reason why
- how the victim can find out the date, time and place of the hearing of the charges
- the outcome of the criminal proceeding, including any sentence imposed
- details of any appeal.

The victim must also be told that they are entitled to attend any court hearings.

These requirements recognise that victims may wish to be kept informed about a criminal case that has affected them. Often they will want to know what offences the accused has been charged with, the verdict, and the sanction imposed, as they want to see justice done.

IN THE NEWS

Vic victims' families denied compensation

Aneeka Simonis, *news.com.au*, 14 February 2017

Victoria's government is blocking the release of crucial documents families of murder victims need for compensation claims, their lawyer says.

Ten families are chasing the state government for compensation after their loved ones were murdered or sexually assaulted by offenders who were on parole.

Shine Lawyers' Paula Shelton says parolees' criminal and treatment histories are not being released to families, stalling the claim process.

'We can't get to a point of settlement until we access those documents,' Ms Shelton told AAP on Tuesday.

She said Adult Parole Board and Department of Justice documents are being refused on privacy grounds.

'Some of these families have suffered significant psychological injuries as a result of these crimes. Some have never gone back to work,' Ms Shelton said.

The families include those of murder victims Sarah Cafferkey, Dermot O'Toole, Raechel Betts, Joanne Wicking, Evan Rudd, Douglas Phillips, Elsa Janet Corp, and Sharon Denise Siermans.



Source 4 Mr Greg Davies is Victoria's first Victims of Crime Commissioner.

Ms Shelton says the group are considering legal action.

Victims of Crime Commissioner Greg Davies told 3AW the system needs to be reviewed because it puts violent criminals' rights to privacy above victims' rights.

'I don't think victims should have to try take the government to court to get some sort of reparation, financial or otherwise,' he told 3AW.

'The system needs to be made better. People are dying because it's not good enough.'

Premier Daniel Andrews would not say why the documents were being withheld.

He said he was limited in what he could say because the matters are still before the courts.

'Our thoughts are always with them [the victims' families] and the pain they must endure each and every day,' he told reporters.

The right to be informed of the likely release date of the accused

A person who is a victim of a **criminal act of violence** may apply to be included on the **Victims Register**. The criminal acts of violence are identified in Source 5.

Rape and other sexual offences	Aggravated burglary	Kidnapping
Stalking	Child stealing	Offences involving assault or injury punishable by imprisonment
Culpable driving causing death	Dangerous driving causing death or serious injury	Failing to stop after a motor vehicle accident causing death or serious injury

Source 5 Criminal acts of violence

A person who is registered on the Victims Register may receive certain information about an offender who has been imprisoned, including their likely date of release, and (if applicable) their release on **parole**. The information must be provided at least 14 days before the release of the prisoner.

The offender's release date is likely to be of interest to a victim who has suffered violence from that person.

Other rights may be available to a victim on the Victims Register, including the right to know the length of sentence, the right to be told if the offender escapes from prison, and the right to make a submission if the imprisoned offender may be released on parole.

Victims Register

a register (i.e. database) maintained by the state of Victoria set up to provide the victims of violent crimes with relevant information about adult prisoners while they are in prison (e.g. the prisoner's earliest possible release date)

parole

the supervised and conditional release of a prisoner after the minimum period of imprisonment has been served



Source 6

Christopher Austin, a registered sex offender, escaped from a Melbourne residential treatment facility in November 2016. Victims on the Victims Register would have been entitled to know about this. He was soon captured.

RIGHT	DESCRIPTION	SOURCE OF RIGHT
Right to give evidence as a vulnerable witness	Certain victims who are witnesses may be entitled to be considered vulnerable and therefore able to give evidence by alternative means.	Various provisions of the <i>Criminal Procedure Act</i> and the <i>Evidence Act</i>
Right to be informed about the proceedings	Victims are entitled to be informed at reasonable intervals about the progress of an investigation into a criminal case (unless they do not want that information, or that information may jeopardise the investigation). Once a prosecution has commenced, victims should be informed about the charges, hearing dates and times, outcomes, sentences and details of any appeal.	Sections 7, 8 and 9 of the Victims' Charter
Right to be informed of the likely release date of the accused	If a person is a victim of a criminal act of violence and are on the Victims Register, they may receive information about the likely release date of the imprisoned offender.	Section 17 of the Victims' Charter

Source 7 A summary of three rights of victims

→ GOING FURTHER

A number of other rights are protected by the Victims' Charter and available to victims. They include:

- 1 the right to be informed of the outcome of any application for bail by the accused, and the conditions of any bail that are intended to protect the victim or his or her family members (Section 10[1])
 - 2 the right to have exposure to the accused minimised, including contact with defence witnesses and family members and supporters of the accused (Section 12[a])
 - 3 the right to make a **victim impact statement** (Section 13)
 - 4 the right to have personal information kept private (Section 14).
- You will find further details about victim impact statements in Chapter 4.

victim impact statement

a statement filed with the court by a victim, and considered by the court when sentencing. It contains particulars of any injury, loss or damage suffered by the victim as a result of the offence

Define and explain

- 1 Explain what is meant by the Victims' Charter, and who is a victim under that charter.
- 2 Is a victim entitled to receive information about the likely release date of a prisoner? Explain your answer.
- 3 Will a victim always be entitled to information about an investigation? Justify your answer.

Synthesise and apply

- 4 Create a poster or visual diagram which shows the various protections that may be available to a witness giving evidence in a sexual offence case. The poster should show whether each protection is available to all witnesses, to a complainant, or to persons with a particular vulnerability.
- 5 For each of the scenarios below, state whether each of the witnesses is entitled to the protections they seek.
 - a Darryl saw Alice disturbing a place of religious worship, which is a summary offence. Darryl has been called as a witness and he wants to give evidence by way of closed-circuit television.
 - b Amanda is a witness for the prosecution in a proceeding where Samantha has been charged with singing an obscene song (the offence of using obscene, indecent, threatening language or behaviour). Amanda wants to be declared a protected witness, and she wants her mother by her side while she is giving evidence.
 - c Anita has been charged with rape. The complainant is 15 years of age and wants a special hearing at which to give evidence. The complainant also does not want the accused to cross-examine her.

- d Anis witnessed a murder, for which Andrew has been charged. Anis does not want any legal practitioners formally robed while he is giving evidence.
 - e Harriet is the complainant in a family violence case. She agrees to be in the courtroom when she gives evidence, but she doesn't want to see the accused when she does so.
- 6 Read the article 'Vic victims' families denied compensation'.
 - a Who are the victims in this case?
 - b What are they seeking?
 - c What are the injuries they are alleged to have suffered?
 - d What is Greg Davies' view?
 - e Describe some reasons why you think the documents sought might be withheld (you might wish to undertake some further research about this case).

Analyse and evaluate

- 7 A breach of the Victims' Charter does not entitle the victim to take civil action to enforce those rights. Do you think it should? Discuss with another person in your class.
- 8 Discuss the extent to which Victoria's laws protect potentially vulnerable witnesses when they give evidence. In your answer, consider whether there are any other types of witnesses who may be vulnerable, but do not have any of those rights available to them.

**Check your obook assess for these additional resources and more:**» **Student book questions**

3.5 Check your learning

» **Going further**Victims of Crime
Assistance Tribunal» **Weblink**Victims of Crime
Commissioner

CHAPTER SUMMARY

- > **The distinction between summary offences and indictable offences**
 - Summary offences – minor criminal offences heard before a magistrate in the Magistrates' Court. There is no jury.
 - Indictable offences – serious criminal offences heard before a judge (and a jury if the accused pleads not guilty) in the County Court or Supreme Court.
 - Some indictable offences can be heard in the Magistrates' Court as if they were summary offences.
- > **The burden of proof**
 - The burden of proof refers to the party that has to establish the facts of the case.
 - In a criminal case, the burden of proof lies with the prosecution.
 - The burden of proof can be reversed in some circumstances.
- > **The standard of proof**
 - The standard of proof refers to the strength of evidence needed to prove the case.
 - In a criminal case the prosecution must prove the case beyond reasonable doubt.
 - The standard of proof applicable to an accused is on the balance of probabilities.
- > **The presumption of innocence**
 - A guarantee that an accused will be assumed to be innocent until the charge has been proved beyond reasonable doubt.
- > **The rights of an accused**
 - The right to be tried without unreasonable delay.
 - The right to a fair hearing.
 - The right to trial by jury.
- > **The rights of victims**
 - The right to give evidence as a vulnerable witness.
 - The right to be informed about the proceedings.
 - The right to be informed of the likely release date of the accused.

REVISION QUESTIONS

- 1 Define the terms 'burden of proof' and 'standard of proof'. (2 marks)
- 2 Distinguish between an indictable offence and a summary offence. (3 marks)
- 3 Describe two principles of justice. (4 marks)
- 4 Explain the circumstances in which a victim may be entitled to know about the release date of an imprisoned offender. (4 marks)
- 5 Micah is the complainant in a criminal proceeding related to a charge for a sexual offence. He is nervous about giving evidence. Explain two possible protections that may be available to Micah when giving evidence. (4 marks)
- 6 To what extent is there a right to a trial by jury in Victoria? Justify your answer. (5 marks)
- 7 Give two reasons why an accused is entitled to certain rights in a criminal case. In your answer, provide one example of a right available to an accused. (5 marks)
- 8 Identify one right available to an accused and one right available to a victim in a criminal proceeding. In your answer, explain how these rights uphold one or more of the principles of justice. (6 marks)



Check your **obook assess** for these additional resources and more:

- » **Student book questions**
Ch 3 Review
- » **Revision notes**
Ch 3
- » **assess quiz**
Ch 3
Test your skills with an auto-correcting multiple-choice quiz
- » **Video tutorial**
How to tackle scenario-based questions

PRACTICE ASSESSMENT TASK

Students should read the information at the beginning of the chapter relating to the learning outcome, key knowledge and key skills before attempting this assessment task.

SIMON'S TRIAL

Judith, 23, is the victim of a sexual offence. After a lengthy investigation, Victoria Police has charged Simon, 25, with four counts of sexual assault. Simon is Judith's ex-boyfriend, and has pleaded not guilty to all four counts.

The DPP has three witnesses in its case against Simon: Judith, Judith's friend, Andrew, who was at the premises at the time at which Judith alleges the sexual assault occurred, and Judith's mother, Sally, who was the first person to see Judith when she got home. Sally helped Judith get to the local hospital.

Judith was not given any information by the police during the investigation, nor were Sally or Andrew. She is confused about much of the legal terminology, and she is not able to afford legal representation to help her understand what is happening. However, all three witnesses have been provided with significant information about Simon's upcoming trial, including

the date and time, and Judith has found staff members at the OPP to be very helpful. Judith is nervous about giving evidence, and is not sure what her rights are when it comes to the way she is to give that evidence. She does not want to see Simon during the trial, or have any direct communication with him. Sally is happy to be in the courtroom while giving her evidence, and she doesn't mind if she sees Simon when doing so, but she is nervous about all the formalities that come with a trial. Andrew wants to have his evidence recorded so that he doesn't have to attend.

Simon is represented by a well-known criminal lawyer in Melbourne, and is aware of his rights to have a fair trial. He has significant funds to defend himself. He wants a closed trial, as he does not want his name smeared any further, and he wants the trial, which will be in the County Court, heard quickly. He is already frustrated by all the delays that have occurred.

Practice assessment task questions

- 1 Identify in the above case study the complainant, the prosecution, the accused and the primary victim.
(2 marks)
- 2 Has Simon been charged with summary offences or indictable offences? Justify your answer.
(2 marks)
- 3 Identify the party that has the burden of proof in this case, and the extent to which that party needs to prove the case.
(2 marks)
- 4 Simon believes he is entitled to a right to trial by jury because of the Australian Constitution. Is this true? Justify your answer.
(2 marks)
- 5 Will Andrew be able to give his evidence by way of a recording? Give reasons for your answer.
(3 marks)
- 6 Simon wants a quick trial which is closed to the public. Explain the extent to which he will be entitled to both those rights under the Human Rights Charter.
(4 marks)
- 7 Explain whether there are rights available to Sally and Judith to give evidence in a way that alleviates their concerns.
(4 marks)
- 8 Discuss the extent to which you believe that justice has so far been achieved in this case, having regard to the access that Judith and Simon have to the criminal justice system.
(6 marks)

Total: 25 marks

SAMPLE

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