

Civics and Citizenship Level 10

Chapter 2 — Laws and citizens

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Australia's courts at work: jurisdictions, trials, and the rights of accused people and victims

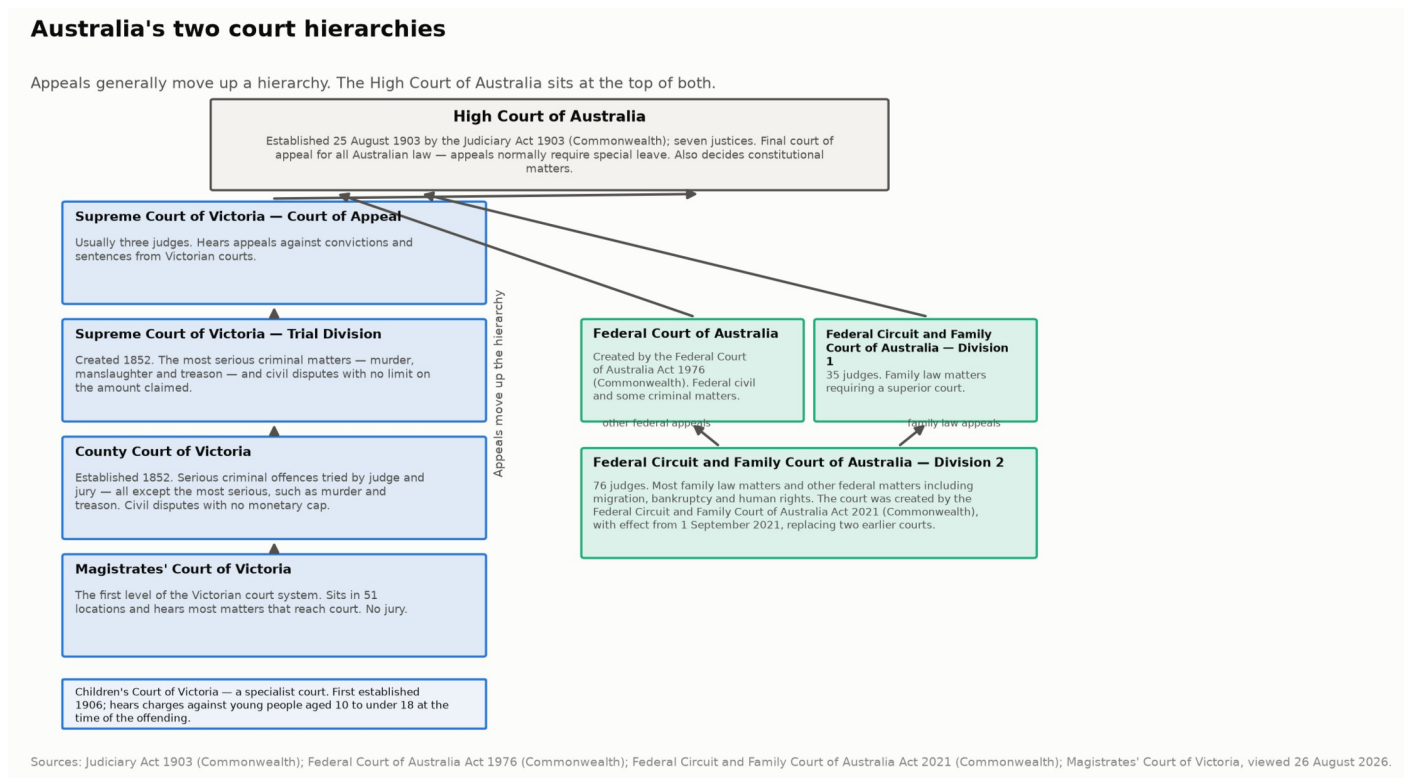
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Theory

In Levels 7–8 you met the Australian legal system from the outside: the rule of law, the court hierarchy in outline, what a fair hearing looks like. This section goes inside the machine. It asks three questions. *Which court hears what?* (Parts 1–4.) *What actually happens in a trial, and how do courts make and develop law?* (Parts 5–7.) *Whose rights does the process protect — and how are those rights balanced?* (Part 8.) One word to define before we start: a court's or tribunal's **jurisdiction** is the kinds of matters it has the power to decide. Jurisdiction is the thread running through the whole section.

Part 1 — Two hierarchies, one apex. Australia's courts are organised into hierarchies — rankings from lowest to highest — one for the Commonwealth and one for each state and territory. Figure 1 shows the Victorian hierarchy and the federal hierarchy side by side.



A diagram of Australia's two court hierarchies with the High Court of Australia at the top of both: on the left, Victoria's hierarchy from the Magistrates' Court and the Children's Court at the base, through the County Court, up to the Supreme Court's Trial Division and Court of Appeal; on the right, the federal hierarchy from the Federal Circuit and Family Court of Australia Division 2, through Division 1 and the Federal Court of Australia; arrows show appeals moving up

At the top of both hierarchies sits the **High Court of Australia**, established on 25 August 1903 by the *Judiciary Act 1903* (Commonwealth) and made up of seven justices, including the Chief Justice. The High Court is the final court of appeal for all Australian law: an appeal from any Australian court ends there, and only if the High Court grants **special leave** — permission to appeal, given only where the case raises a point of real importance. The High Court also decides cases about the Constitution itself.

Victoria's hierarchy, from the base: the **Magistrates' Court of Victoria** is the first level — it sits in 51 locations, hears most matters that reach a court, and has no jury (a magistrate hears the evidence and decides); it runs under the *Magistrates' Court Act 1989* (Vic) (Magistrates' Court of Victoria, viewed 26 August 2026). The **County Court of Victoria**, established in 1852, hears serious criminal trials before a judge and jury — all except the most serious, such as murder and treason — and civil disputes with no money cap. At the top is the **Supreme Court of Victoria**, also created in 1852: its **Trial Division** hears the most serious criminal matters and the largest civil disputes, and its **Court of Appeal** (usually three judges) hears appeals from the courts below it. Alongside the hierarchy, the **Children's Court of Victoria** is a specialist court, first established in 1906, that hears charges against young people aged 10 to under 18 at the time of the offending.

The federal hierarchy below the High Court has two courts created by the Commonwealth Parliament: the **Federal Court of Australia**, created by the *Federal Court of Australia Act 1976* (Commonwealth), which hears most civil disputes governed by federal law and some federal criminal matters; and the **Federal Circuit and Family Court of Australia**, created by the *Federal Circuit and Family Court of Australia Act 2021* (Commonwealth) with effect from 1 September 2021, which has two divisions — Division 1 (a superior court for family law) and Division 2 (most family law matters, plus migration, bankruptcy and human rights matters). Appeals from Division 2 go to Division 1 in family law and to the Federal Court in other federal matters; everything can end at the High Court.

Why rank courts at all? Three reasons: **appeals** (a hierarchy gives every losing party a higher court that can check the decision and correct mistakes), **specialisation** (decision-makers build experience in the work in front of them), and **workload** (most cases are heard quickly and locally at the base, leaving the higher courts free for the most serious and difficult matters).

Part 2 — Who hears what. Jurisdiction is not abstract: each court's place in the hierarchy matches the kinds of matters it hears. Figure 2 sets out the split in Victoria.

Which court hears what in Victoria?

Each court's jurisdiction — the kinds of matters it is empowered to decide.

Court	Criminal matters	Civil matters
Magistrates' Court of Victoria	Summary offences (less serious matters heard without a jury) and committal hearings for serious offences — checking whether there is enough evidence for a trial in a higher court.	Civil disputes up to the value of \$100,000: debts, claims for damages and other money disputes.
County Court of Victoria	Serious criminal offences — all except the most serious, such as murder and treason. Heard by judge and jury.	Civil disputes with no monetary cap.
Supreme Court of Victoria — Trial Division	The most serious offences: murder, manslaughter and treason.	Civil disputes with no limit on the amount claimed; also hears appeals on questions of law from VCAT.
Supreme Court of Victoria — Court of Appeal	Appeals against conviction and sentence from the Trial Division and the County Court.	Appeals from civil decisions of the Trial Division and the County Court.
High Court of Australia	Final appeals in criminal matters (by special leave).	Final appeals in civil matters (by special leave); constitutional matters; original jurisdiction under sections 75–76 of the Constitution.

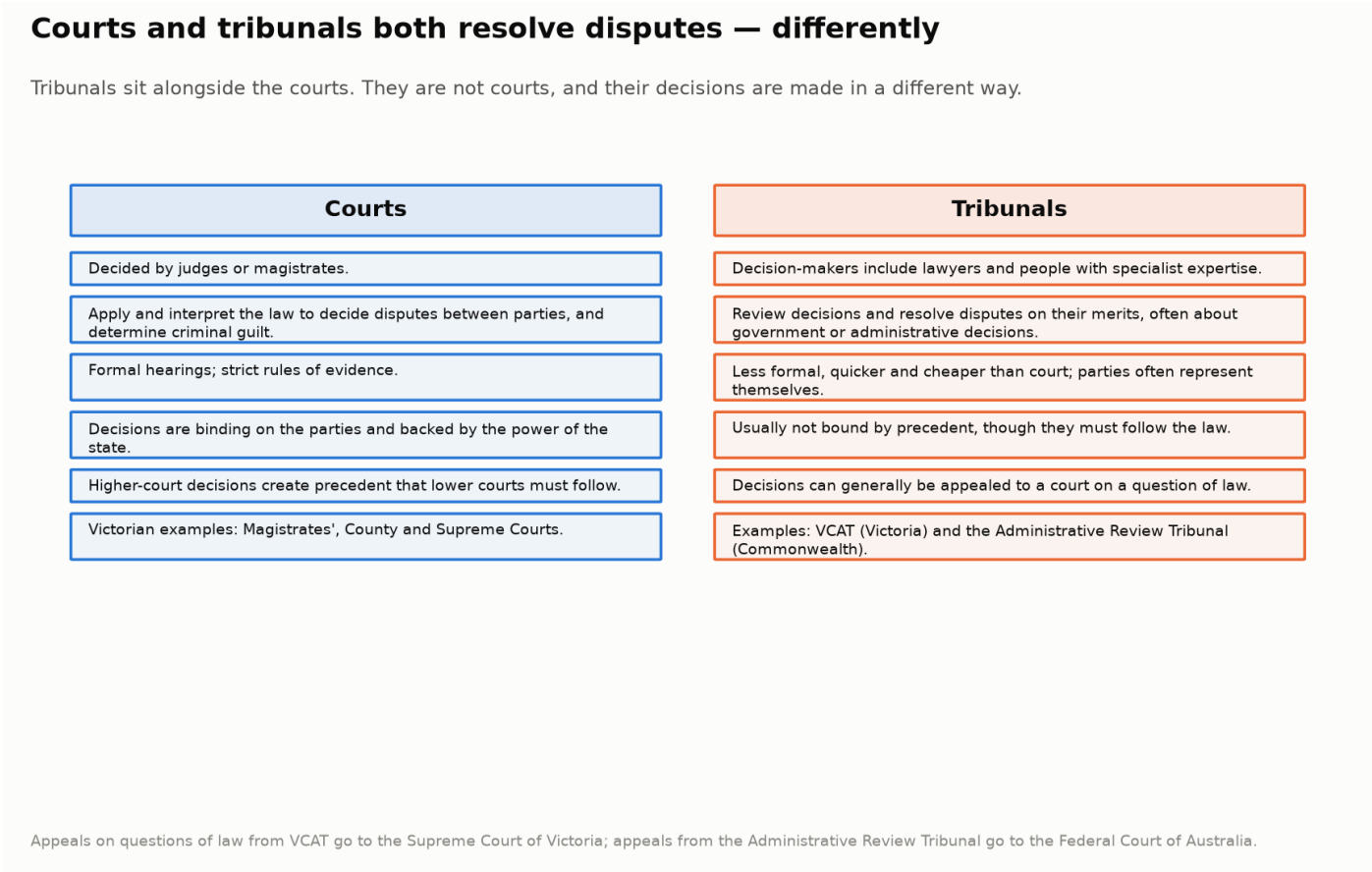
The Children's Court of Victoria and other specialist courts deal with particular kinds of matters — for example, charges against young people.

Sources: Magistrates' Court of Victoria, viewed 26 August 2026; County Court of Victoria; Supreme Court of Victoria; Judiciary Act 1903 (Commonwealth).

A table showing, for each Victorian court and the High Court of Australia, the criminal matters and the civil matters it hears: the Magistrates' Court hears summary offences and committal hearings plus civil disputes up to \$100,000; the County Court hears serious criminal offences by judge and jury plus civil disputes with no cap; the Supreme Court's Trial Division hears murder, manslaughter and treason plus the largest civil disputes and appeals on questions of law from VCAT; the Court of Appeal hears appeals against conviction, sentence and civil decisions; the High Court hears final appeals by special leave

Two kinds of jurisdiction appear in that table. A court’s **original jurisdiction** is its power to hear a matter first, before any other court has looked at it — the Trial Division hearing a murder trial is exercising original jurisdiction. A court’s **jurisdiction to hear appeals** is its power to review a decision already made below it — the Court of Appeal reviewing that murder conviction is exercising that. Follow one path up Figure 2: a murder trial starts in the Trial Division (original jurisdiction), an appeal against conviction goes to the Court of Appeal, and a further appeal — only with special leave — goes to the High Court. Each step up is a check on the step below.

Part 3 — Courts and tribunals. Not every legal dispute goes to a court. Figure 3 compares courts with **tribunals** — bodies set up by parliament to resolve certain disputes and to review government decisions.

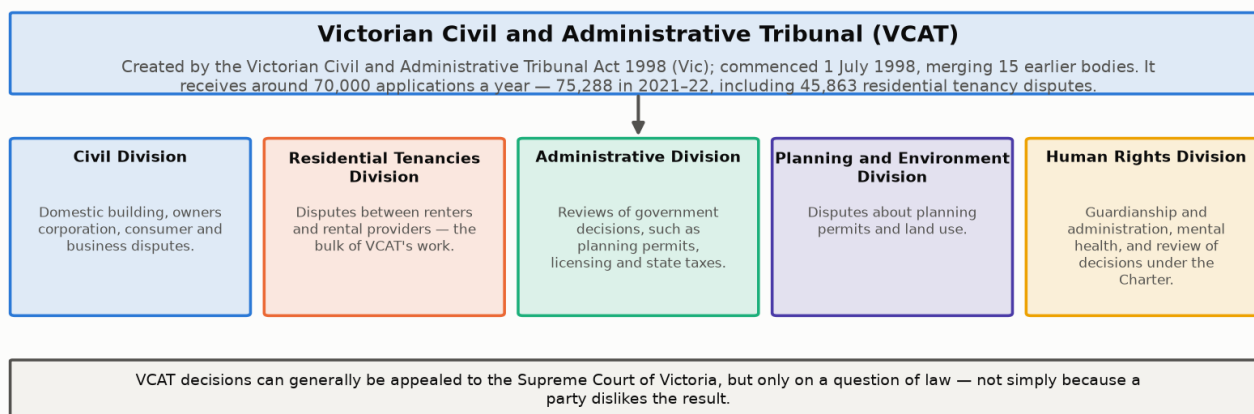


A two-column comparison of courts and tribunals: courts are run by judges or magistrates, follow formal rules of evidence and procedure, and can hear criminal and civil matters; tribunals are run by members who are experts in their area, are less formal and usually cheaper, and mostly review government decisions and resolve disputes in specialist areas

Victoria’s tribunal is the **Victorian Civil and Administrative Tribunal (VCAT)**, created by the *Victorian Civil and Administrative Tribunal Act 1998* (Vic), which commenced on 1 July 1998 and brought fifteen earlier bodies into one. Figure 4 shows its five divisions.

Inside VCAT — Victoria's biggest dispute resolver

The Victorian Civil and Administrative Tribunal decides matters under more than 200 Acts.



Sources: Victorian Civil and Administrative Tribunal Act 1998 (Vic); VCAT Annual Report 2021–22; VCAT, viewed 26 August 2026.

A diagram of VCAT's structure: a header box naming the Victorian Civil and Administrative Tribunal, created by the Victorian Civil and Administrative Tribunal Act 1998 (Vic), commenced 1 July 1998; five division boxes — Administrative, Civil, Human Rights, Planning and Environment, and Residential Tenancies — each with examples of the disputes it hears; and a note that appeals on questions of law from VCAT go to the Supreme Court of Victoria

VCAT is where most Victorians meet the justice system: in 2021–22 it received 75,288 applications, of which 45,863 were residential tenancy disputes (VCAT annual report, viewed 26 August 2026). A landlord and a tenant arguing over a bond will usually end up in VCAT's Residential Tenancies Division, not in a court — the process is less formal, usually cheaper, and often runs without lawyers. VCAT's decisions can be appealed to the Supreme Court of Victoria on a question of law.

At the federal level, the **Administrative Appeals Tribunal (AAT)** reviewed Commonwealth government decisions from 1 July 1976 until it ceased on 14 October 2024, when it was replaced by the **Administrative Review Tribunal (ART)** under the *Administrative Review Tribunal Act 2024* (Commonwealth). The change followed the Robodebt Royal Commission, whose report (7 July 2023) found that the AAT had failed people affected by the unlawful robodebt scheme and recommended a new federal tribunal — a recent, real example of a tribunal being rebuilt after it lost public confidence.

Part 4 — Two kinds of law: civil and criminal. The same courts do two different jobs. **Criminal law** deals with conduct the state says is an offence against the community; **civil law** deals with disputes between people or organisations. Figure 5 compares them.

Civil and criminal law — the same courts, two different jobs

One dispute can give rise to both: for example, an assault can lead to criminal charges and a civil claim for damages.

	Civil law	Criminal law
Who brings the case	A person or organisation (the plaintiff) sues another (the defendant).	The state: police prosecutors or the Office of Public Prosecutions, on behalf of the community.
Purpose	To resolve the dispute and put the wronged party right, usually by ordering compensation.	To find out whether the accused is guilty, and if so to punish, deter and rehabilitate.
Standard of proof	Balance of probabilities — more probable than not.	Beyond reasonable doubt.
Possible outcome	Damages (money), an order to do or stop doing something, or the claim is dismissed.	Guilty — sentence follows (prison, community orders, fines, good behaviour bonds); or not guilty — acquittal.
Real cases studied here	Grant v Australian Knitting Mills (1935); Rogers v Whitaker (1992).	He Kaw Teh v The Queen (1985); Pell v The Queen (2020).

The standard of proof is the level of certainty the decision-maker must reach before finding for one side.

A table comparing civil law and criminal law across five rows — who brings the case, purpose, standard of proof, possible outcome, and real cases studied in this section: civil cases are brought by a plaintiff against a defendant, aim to put the wronged party right, are proved on the balance of probabilities, and end in damages or orders; criminal cases are brought by the state against an accused, aim to find guilt and punish, are proved beyond reasonable doubt, and end in a sentence or an acquittal

Learn the parties' names: in a civil case the person bringing the claim is the **plaintiff** and the person answering it is the **defendant**; in a criminal case the side bringing the charge is the **prosecution** and the person charged is **the accused**. And learn the two **standards of proof** — the level of certainty the decision-maker must reach: a civil claim is proved on the **balance of probabilities** (more probable than not), while a criminal charge must be proved **beyond reasonable doubt**. The criminal standard is higher because the stakes are higher: a wrong civil decision costs a party money; a wrong criminal decision costs a person their liberty and their good name. One event can produce both kinds of case: an assault can lead to criminal charges and, separately, to a civil claim for damages.

Part 5 — How a criminal trial operates. Figure 6 follows a serious criminal case in Victoria from the police investigation to the appeal.

How a serious criminal case moves through Victoria's courts

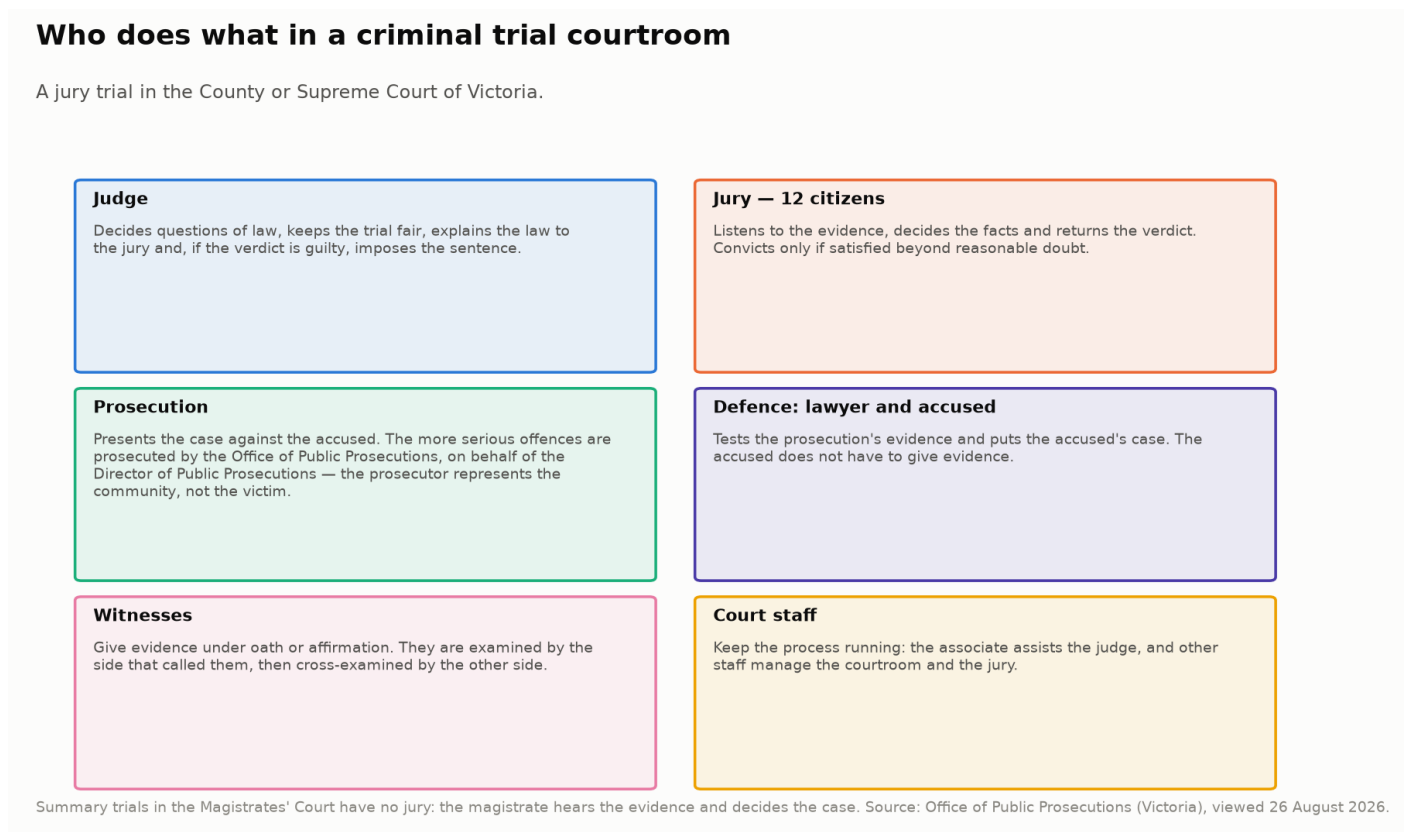
Based on the process described by the Office of Public Prosecutions (Victoria).



Source: Office of Public Prosecutions (Victoria), the court process, viewed 26 August 2026. Summary offences are heard and decided by a magistrate in the Magistrates' Court without this full path.

A flow chart in eight steps of how a serious criminal case moves through Victoria's courts: investigation and charges by Victoria Police; the committal stage in the Magistrates' Court testing whether there is enough evidence for trial; the charge read and a plea entered in the County or Supreme Court; the trial before a judge and a jury of twelve with witnesses examined, cross-examined and re-examined; closing addresses and the judge's charge; jury deliberation and verdict beyond reasonable doubt, with a re-trial possible if the jury cannot agree; plea hearing and sentencing, where victims may make a victim impact statement; and appeals to the Court of Appeal, with the DPP able to appeal a sentence it considers far too low but never a not-guilty verdict

Figure 7 shows who does what in the courtroom during that trial.



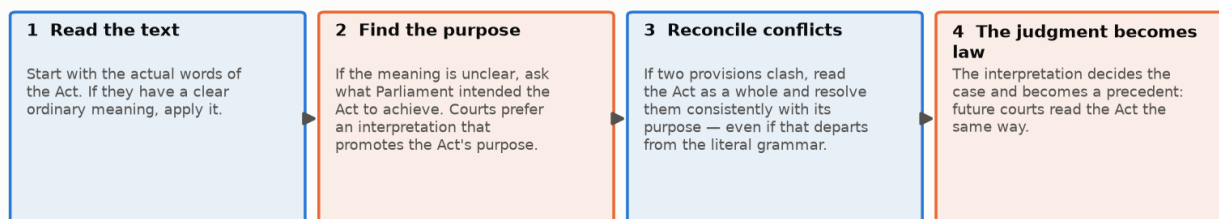
A diagram of six roles in a criminal trial courtroom: the judge decides questions of law, keeps the trial fair and explains the law to the jury; the jury of twelve citizens decides the facts and returns the verdict beyond reasonable doubt; the prosecution presents the case against the accused on behalf of the community; the defence lawyer and accused test the prosecution's evidence and put the accused's case; witnesses give evidence under oath or affirmation and are cross-examined; and court staff keep the process running

Four features of the trial deserve attention. First, **the jury**: twelve citizens, drawn at random from the electoral roll, decide the facts and return the verdict. The *Juries Act 2000* (Vic) allows a majority verdict of 11 of 12 after the jury has deliberated for a period the court thinks reasonable having regard to the nature and complexity of the trial — but for murder and treason the verdict must be unanimous (section 46). Second, **the burden and standard of proof**: the prosecution carries the burden, and the accused does not have to prove anything; the jury may convict only if satisfied beyond reasonable doubt. Third, **the verdict's consequences**: not guilty means an **acquittal**, and an acquittal is final — the prosecution cannot appeal it, however much it dislikes the verdict; if the jury cannot agree it is discharged and a re-trial may follow. Fourth, **the victim's place**: if there is a guilty verdict, the court holds a plea hearing before sentencing, and victims may make a **victim impact statement** (Part 8). Sentences are set within maximum penalties fixed by Parliament — sentencing is the point where the community, through Parliament and the courts, says how serious an offence is.

Part 6 — How judgements develop law I: interpreting statutes. Parliament writes the statutes, but words run out: facts arise that no drafter foresaw, and provisions clash. When that happens, courts must work out what the Act means — **statutory interpretation** — and the interpretation a court adopts becomes part of the law. Figure 8 sets out the method.

How courts interpret statutes

Statutory interpretation: working out what an Act means when its words are unclear or they conflict.



Project Blue Sky v Australian Broadcasting Authority (1998): the High Court read two clashing requirements in a broadcasting Act together by asking which interpretation best served the Act's purpose — and held that a content standard conflicting with Australia's treaty obligations had been unlawfully made.

Courts interpret statutes; they cannot rewrite them. If Parliament dislikes an interpretation, it can amend the Act.

Case: *Project Blue Sky v Australian Broadcasting Authority* [1998] HCA 28; (1998) 194 CLR 355 (28 April 1998).

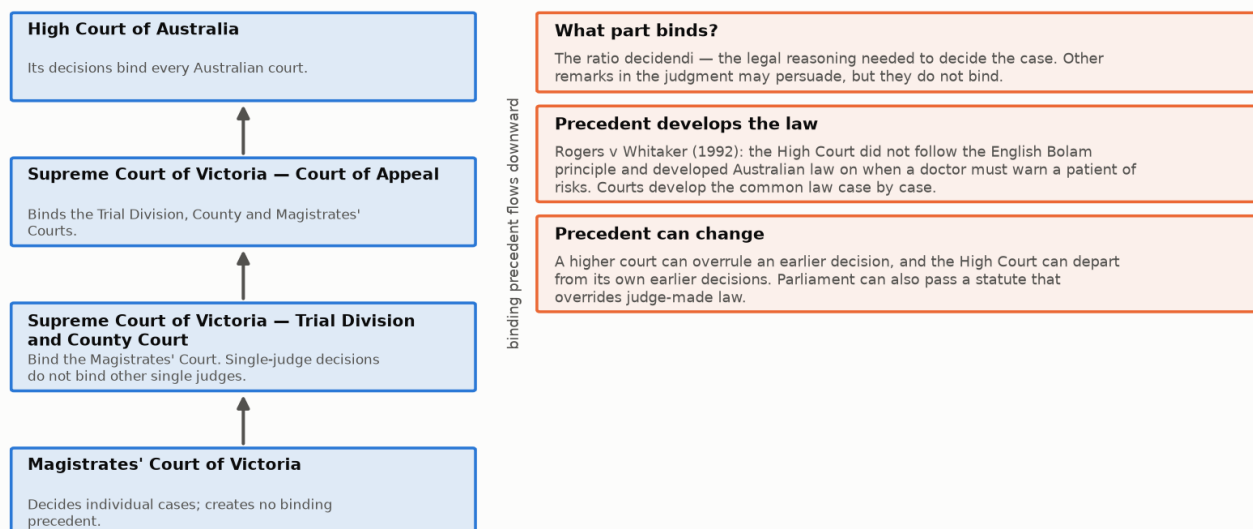
*A four-step diagram of how courts interpret statutes: read the text and apply its clear ordinary meaning; if unclear, find the purpose Parliament intended and prefer the interpretation that promotes it; if two provisions clash, read the Act as a whole and reconcile them consistently with its purpose; and the judgement then becomes a precedent that future courts follow — with a note box on *Project Blue Sky v Australian Broadcasting Authority* (1998), where the High Court reconciled clashing provisions by asking which interpretation best served the Act's purpose, and a note that courts interpret statutes but cannot rewrite them: if Parliament dislikes an interpretation it can amend the Act*

A sample criminal case shows the method protecting the accused. In *He Kaw Teh v The Queen* (1985), the accused was convicted of importing heroin after a bag was found on him at the airport; he said he did not know it was there, and the Act creating the offence said nothing about knowledge. The High Court held that, unless Parliament clearly says otherwise, the prosecution must prove that the accused knew what they were doing — a silent statute is read as requiring a guilty mind ((1985) 157 CLR 523). The court read the Act's purpose and its serious consequences (up to life imprisonment) as demanding that reading. Every future court reads similar offences the same way: the interpretation became law.

Part 7 — How judgements develop law II: precedent. The second way judgements make law is **precedent**: the rule that a court's legal reasoning binds courts below it in the hierarchy, so like cases are decided alike. The binding part of a judgement is its **legal reason** — the reason the court gives for its decision, as opposed to its comments by the way. Figure 9 shows the rule running down the hierarchy.

Precedent: higher courts bind lower courts

A court must follow the binding part of earlier decisions made by courts above it in the same hierarchy.



Case: Rogers v Whitaker [1992] HCA 58; (1992) 175 CLR 479 (19 November 1992).

A diagram of the precedent rule: the hierarchy of courts on the left, from the High Court of Australia at the top through the Supreme Courts' courts of appeal and trial divisions down to the County and Magistrates' Courts, and three idea boxes on the right — a higher court's legal reason binds the courts below it; like cases must be decided alike so the law is predictable and equal; and the High Court, as the final court, may depart from its own earlier decisions where they are wrong, developing the law

A sample civil case shows precedent developing the law. In *Rogers v Whitaker* (1992), a patient who had been warned of no risk before an eye operation lost her sight and sued her doctor ((1992) 175 CLR 479). The High Court held that a doctor must warn a patient of a **material risk** — a risk a reasonable person in the patient's position would think significant — and refused to follow an older English line of cases that had left the question to medical opinion alone. The decision both applied precedent (the neighbour principle from *Donoghue v Stevenson*, the 1932 English case behind *Grant v Australian Knitting Mills*, studied in Worked Example 1) and developed it: as the final court, the High Court may depart from an earlier line of cases when it is wrong. Until appeals to London were abolished in stages, ending in 1986, some Australian cases could go on to the Privy Council in England; since then the High Court has been the final court of appeal for all Australian law, and the development of Australian common law has been entirely Australian.

Part 8 — Accused people's rights and victims' rights. A criminal trial is a collision of interests: the state wants to convict the guilty, the accused wants every protection against a wrongful conviction, and victims want respect, information and a voice. The law gives each side rights, and where those rights pull against each other, the balance is a live public debate. Because the two sets of rights are contested terms, this section defines them before using them.

Defining our terms. The *rights of the accused* are used here in the sense set out in sections 24–26 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) — the Victorian Charter — and the *rights of victims* in the sense set out in the *Victims' Charter Act 2006* (Vic). Both terms name legal entitlements created by statute, not moral claims; other, wider senses exist and are not interchangeable with these. Where the two sets of rights pull against each other — for example, a victim's wish for a voice against the accused's right to a fair hearing — where the balance should sit is a **contested question** on which reasonable people disagree. This section teaches the rights as the law currently sets them out, and gives each side of the balance its strongest form (see Q10).

Figure 10 selects the accused's rights from the Charter.

Rights of the accused — a selection from the Victorian Charter

Charter of Human Rights and Responsibilities Act 2006 (Vic), sections 24–26.

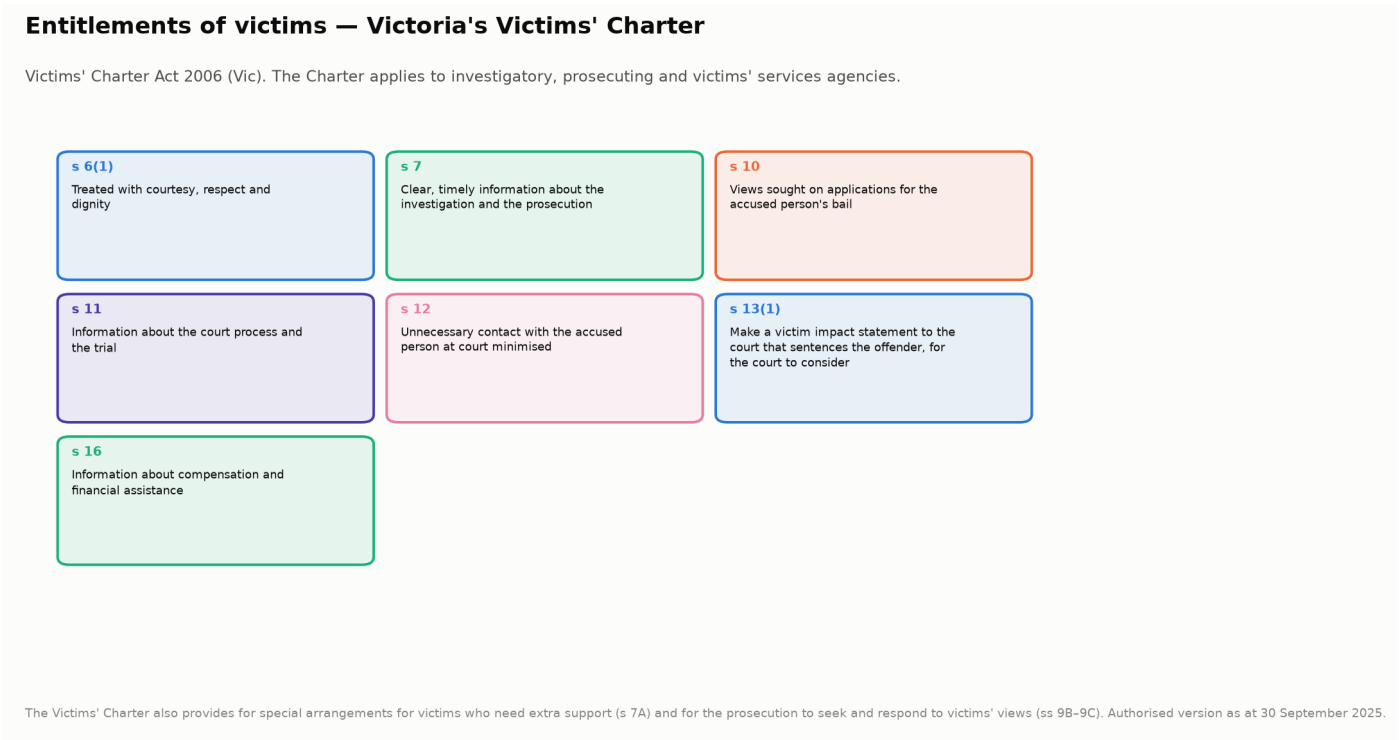
s 24(1) A fair and public hearing before a competent, independent and impartial court or tribunal	s 25(1) Presumed innocent until proved guilty according to law	s 25(2)(a) Told promptly and in detail about the nature and reason for the charge
s 25(2)(b) Enough time and facilities to prepare a defence and to communicate with a lawyer or advisor	s 25(2)(c) Tried without unreasonable delay	s 25(2)(d)–(f) Defend in person or with legal help; told about legal aid; legal aid provided when the interests of justice require it
s 25(2)(g) Examine the witnesses giving evidence against them	s 25(2)(i) A free interpreter if they cannot understand or speak English	s 25(2)(k) Not forced to testify against themselves or to confess guilt
s 25(4) Have a conviction and sentence reviewed by a higher court	s 26 Not tried or punished more than once for the same offence	

Section 25(2) lists eleven minimum guarantees in total; the cards above group them for readability. Authorised version of the Act incorporating amendments as at 1 June 2022.

Eleven cards selecting the rights of the accused from the Victorian Charter, sections 24 to 26: a fair and public hearing before a competent, independent and impartial court; presumed innocent until proved guilty; told promptly and in detail about the charge; enough time and facilities to prepare a defence; tried without unreasonable delay; defend in person or with legal help, with legal aid where the interests of justice require it; examine the witnesses against them; a free interpreter if needed; not forced to testify against themselves; have a conviction and sentence reviewed by a higher court; and not be tried or punished more than once for the same offence

Notice what these rights do: they do not protect the guilty from the law — they protect *everyone* from being convicted except according to law. The presumption of innocence puts the burden of proof on the state, which has the power to investigate, charge and punish; the fair-hearing right puts the decision in a court that is independent and impartial; the appeal right means a mistake is correctable. They apply to every accused person regardless of the charge, which is exactly the point: a right that only protected the sympathetic would not protect anyone for long.

Figure 11 sets out the victims’ entitlements from the Victims’ Charter.



Seven cards setting out entitlements of victims under the Victims’ Charter Act 2006 (Vic): treated with courtesy, respect and dignity; clear, timely information about the investigation and the prosecution; views sought on applications for the accused person’s bail; information about the court process and the trial; unnecessary contact with the accused person at court minimised; make a victim impact statement to the court that sentences the offender, for the court to consider; and information about compensation and financial assistance

These entitlements bind the agencies they name — police, prosecutors and victims’ services — and they bite at real moments in the trial path of Part 5: the prosecution seeks victims’ views when the accused applies for bail, and at the plea hearing a victim may make a victim impact statement, which the court may consider in fixing the sentence.

The two sets of rights meet, and sometimes collide, in the one courtroom. The Victims’ Charter itself shows the balance: a victim impact statement may be considered “unless the court orders otherwise” — the court holds the power to exclude it, because the accused’s right to a fair hearing (Charter section 24) must be protected in the same proceeding. That is not a flaw in the system; it is the system working as designed. Parliament sets the balance in the statutes it enacts, the courts apply it case by case, and the public debate about where the balance *should* sit is a proper part of a democratic society — the balance can be, and has been, adjusted by Parliament over time. Sources A and B at the end of this section set out the statutory text itself.

Worked examples

Example 1 — A civil dispute goes all the way: Grant v Australian Knitting Mills (scaffolded)

In 1931, Dr Grant, an Adelaide doctor, bought woollen underwear made by Australian Knitting Mills. Wearing it gave him a severe skin condition caused by a chemical left in the garment by the manufacturer. He sued the manufacturer and the retailer for damages.

Working	Comment
1. Grant brought a civil claim: he alleged the manufacturer’s carelessness caused his injury, and he sought compensation.	A civil case is plaintiff against defendant, aiming to put the wronged party right (Figure 5). The standard of proof is the balance of probabilities.
2. The trial was heard by a judge of the Supreme Court of South Australia, which found for Grant.	State supreme courts hear large civil claims in their original jurisdiction. Civil trials are decided by a judge, not a jury.
3. The manufacturer appealed to the High Court of Australia, which in 1933, by a majority, overturned the	Hierarchies exist so decisions can be checked. A majority decision means the judges disagreed — the

Working	Comment
decision in Grant's favour.	hierarchy's job is to resolve that disagreement with one binding result.
4. Grant appealed to the Privy Council in London — at that time the final court of appeal for Australian cases — which in 1936 restored the finding in Grant's favour, applying the neighbour principle from <i>Donoghue v Stevenson</i> (1932).	Precedent (Part 7): a principle settled by a higher court — a manufacturer owes care to the end consumer — applied to a new case. In 1936 the final word still sat in London; that path ended by 1986.
5. Grant received damages for his injury.	The civil law's purpose achieved: the wronged party is compensated by the party at fault.
(Source: <i>Grant v Australian Knitting Mills</i> [1933] HCA 35; (1933) 50 CLR 387; <i>Australian Knitting Mills v Grant</i> [1936] AC 85 (Privy Council).)	

Example 2 — A criminal case climbs the hierarchy: *Pell v The Queen* (scaffolded)

This example studies the case only for the path it took through the hierarchy — not the facts, which are not the point here. In 2018 a jury in the County Court of Victoria convicted a man of serious criminal offences.

Working	Comment
1. The trial ran before a judge and a jury of twelve in the County Court; the jury returned guilty verdicts.	Serious criminal trials are decided by jury, on the standard of beyond reasonable doubt (Figures 6 and 7).
2. The accused appealed to the Court of Appeal of the Supreme Court of Victoria, which in 2019, by two judges to one, dismissed the appeal (<i>Pell v The Queen</i> [2019] VSCA 186).	The first appeal is an exercise of the Charter right to have a conviction reviewed by a higher court (section 25(4)). A divided court shows the check is a real contest, not a formality.
3. The High Court granted special leave. In April 2020 all seven justices agreed the evidence could not support guilt beyond reasonable doubt, allowed the appeal and entered verdicts of not guilty (<i>Pell v The Queen</i> [2020] HCA 12).	The High Court is the final court of appeal for all Australian law (Part 1). Its review asked whether a reasonable jury, on the evidence, could be satisfied beyond reasonable doubt.
4. The acquittals were final. The prosecution had no right to appeal them, and the man could not be re-tried for the same offences.	An acquittal is final (Part 5): the state cannot re-run a case it lost, and no one is tried twice for the same offence (Charter section 26). The rights of the accused protect whoever stands accused.

(Source: *Pell v The Queen* [2019] VSCA 186; *Pell v The Queen* [2020] HCA 12.)

Practice questions

Scaffolded

Q1. Using Figure 1: (a) name the court that hears a murder trial at first hearing in Victoria; (b) name the court that hears an appeal from the County Court against a conviction; (c) name the court at the top of both hierarchies.

Q2. Using Figure 2, say which court or tribunal is the most likely first stop for each matter: (a) a dispute over a \$8,000 unpaid debt; (b) a dispute between a landlord and a tenant over a bond; (c) a charge of theft to be heard without a jury.

Q3. Using Figure 3: give two differences between a court and a tribunal.

Q4. Using Figure 5, classify each case as civil or criminal, name the parties, and give the standard of proof: (a) a person sues a driver for the cost of repairing their car after a crash; (b) the state prosecutes a person for stealing the same car.

Q5. Using Figures 6 and 7 and the *Juries Act 2000* (Vic): (a) how many citizens sit on a criminal trial jury? (b) after long deliberation in a theft trial, can the court accept a verdict of 11 to 1? (c) would your answer change if the trial were for murder?

Q6. Using Figures 10 and 11, say whether each right belongs to the accused or to victims: (a) the presumption of innocence; (b) the right to make a victim impact statement; (c) the right to be told, promptly and in detail, the nature and reason for the charge; (d) the right to information about the investigation and the prosecution.

Un scaffolded

Q7. Explain, in two or three sentences, the difference between original jurisdiction and jurisdiction to hear appeals, using one named court exercising each kind.

Q8. The prosecution carries the burden of proof in a criminal case, and the standard is beyond reasonable doubt. Explain why the law places the burden and the high standard on the state rather than on the accused. Your answer must refer to at least one right in Figure 10.

Q9. In *He Kaw Teh*, the statute creating the offence said nothing about knowledge. Explain, in your own words, what the High Court read into the Act and why that reading is an example of statutory interpretation developing the law (Figure 8).

Q10. Victim advocates argue that trials should give victims a greater voice — for example, a wider right to be heard at sentencing. Civil liberties advocates argue that the accused's protections — for example, the right to a fair hearing and to examine witnesses — must not be narrowed. (a) Give the strongest case you can for the victim advocates' side. (b) Give the strongest case you can for the civil liberties side. (c) Which balance do you find stronger, and why? Marks are given for the reasoning, not for the side you take.

Source task — reading Sources A and B

Source A is an extract of the Victorian Charter's rights in criminal proceedings; Source B is an extract of the Victims' Charter. Read both, then answer the questions.

Source A — rights in criminal proceedings

Charter of Human Rights and Responsibilities Act 2006 (Vic)

Extracts of sections 24(1), 25(1) and 25(4)

Section 24(1) — fair hearing

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.

Section 25(1) — presumption of innocence

A person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

Section 25(4) — right to appeal

Any person convicted of a criminal offence has the right to have the conviction and any sentence imposed in respect of it reviewed by a higher court in accordance with law.

Source: Charter of Human Rights and Responsibilities Act 2006 (Vic), ss 24(1), 25(1), 25(4), authorised version incorporating amendments as at 1 June 2022.

Source A: a document-style figure setting out verbatim extracts of sections 24(1), 25(1) and 25(4) of the Charter of Human Rights and Responsibilities Act 2006 (Vic) — the right to a fair and public hearing before a competent, independent and impartial court, the presumption of innocence, and the right to have a conviction and sentence reviewed by a higher court

Source B — entitlements of victims

Victims' Charter Act 2006 (Vic)

Extracts of sections 6(1) and 13(1)

Section 6(1) — treatment of persons adversely affected by crime

All persons adversely affected by crime are to be treated with courtesy, respect and dignity by investigatory agencies, prosecuting agencies and victims' services agencies.

Section 13(1) — victim impact statements

A victim of a criminal offence may make a victim impact statement to the court sentencing the person found guilty of the offence, and unless the court orders otherwise, that statement may be considered by the court in determining the sentence of the offender.

Source: Victims' Charter Act 2006 (Vic), ss 6(1), 13(1), authorised version as at 30 September 2025.

Source B: a document-style figure setting out verbatim extracts of sections 6(1) and 13(1) of the Victims' Charter Act 2006 (Vic) — the right of persons adversely affected by crime to be treated with courtesy, respect and dignity, and the right of a victim to make a victim impact statement to the sentencing court

- S1.** According to Source A: (a) name two rights given to a person charged with a criminal offence; (b) which words in section 24(1) guarantee that the decision-maker is not on anyone's side?
- S2.** Source B's section 13(1) lets a victim make a victim impact statement "unless the court orders otherwise". Explain, using one right from Source A, why Parliament gave the court that power to exclude a statement.
- S3.** Using both sources: give one way each source's rights are put into practice during the trial path of Figure 6.

Answers

Q1. (a) The Supreme Court of Victoria — Trial Division. (b) The Supreme Court of Victoria — Court of Appeal. (c) The High Court of Australia. **Q2.** (a) The Magistrates' Court of Victoria (civil disputes up to \$100,000). (b) VCAT — Residential Tenancies Division. (c) The Magistrates' Court of Victoria (summary offences are heard without a jury). **Q3.** Any two of: courts are run by judges or magistrates, tribunals by members who are experts in their area; courts follow formal rules of evidence and procedure, tribunals are less formal; tribunals are usually cheaper and often run without lawyers; tribunals mostly review government decisions and handle specialist areas, while courts hear criminal and civil matters generally. **Q4.** (a) Civil: plaintiff against defendant; balance of probabilities. (b) Criminal: prosecution against the accused; beyond reasonable doubt. **Q5.** (a) Twelve. (b) Yes — for offences other than murder and treason, the court may accept a majority verdict of 11 of 12 after the jury has deliberated for a period the court thinks reasonable (section 46). (c) Yes — in a murder trial the verdict must be unanimous (section 46(4)). **Q6.** (a) The accused. (b) Victims. (c) The accused. (d) Victims. **Q7.** See full solution. **Q8.** See full solution. **Q9.** See full solution. **Q10.** See full solution. **S1.** (a) Any two of: fair and public hearing; presumed innocent until proved guilty; conviction and sentence reviewed by a higher court. (b) “independent and impartial”. **S2.** See full solution. **S3.** See full solution.

Full solutions

Q7. Step 1 — Original jurisdiction is the power to hear a matter first: the County Court of Victoria exercising original jurisdiction hears a serious criminal trial. Step 2 — Jurisdiction to hear appeals is the power to review a decision made below: the Court of Appeal of the Supreme Court of Victoria reviewing that conviction is exercising its jurisdiction to hear appeals. Step 3 — The difference is therefore first hearing versus review: original jurisdiction creates the decision; appeal jurisdiction checks it.

Q8. Step 1 — The state has the power to investigate, charge, prosecute and punish; the accused is one person facing that whole machinery. Step 2 — The presumption of innocence (Figure 10, section 25(1)) answers that imbalance by making the state do the proving: the accused does not have to prove anything. Step 3 — The high standard — beyond reasonable doubt — is the same protection in action: because a wrongful conviction costs liberty and good name, the law makes the state reach near certainty before it may punish. Placing the burden on the accused would reverse the protection and make the state's power unchecked.

Q9. Step 1 — What the Court read in: unless Parliament clearly says otherwise, the prosecution must prove the accused knew what they were doing — a silent statute is read as requiring a guilty mind. Step 2 — Why that is interpretation, not invention: the court looked at the Act's purpose and at the seriousness of the penalty, and chose the reading that best fit the law as a whole (Figure 8, steps 2 and 3). Step 3 — Why it developed the law: the reading became a precedent, so every future court reads similar silent offences the same way — the statute's text did not change, but the law did.

Q10. Step 1 — Strongest case for the victim advocates: victims are the people most harmed by the offence, yet the trial is run as state against accused, and victims can be left uninformed and unheard; a greater voice — information, dignity, a real say at sentencing — recognises the harm done to them and their standing in the process. Step 2 — Strongest case for the civil liberties side: the trial's job is to find out, fairly, whether the state has proved its case; every added voice is a pressure on that fairness, and the accused's protections exist precisely because the state is powerful and a wrongful conviction is a grave wrong; narrowing them to widen another right trades one protection for another and risks the innocent paying. Step 3 — Your choice earns marks for reasons, not for the side: a strong answer names what it weighs most heavily — the victim's standing in the process, or the integrity of the fact-finding — and explains why that weight is right, while showing it understood the other side at full strength.

S2. Step 1 — Pick a right from Source A: the accused's right to a fair hearing before an independent and impartial court (section 24(1)). Step 2 — A victim impact statement is evidence placed before the court at sentencing; if a particular statement would prejudice the fairness of the proceeding — for example by putting inadmissible material before the court — the fair-hearing right is engaged. Step 3 — So Parliament gave the court the power to order otherwise: the court holds the balance between the victim's entitlement to a voice and the accused's right to a fair proceeding, case by case. That is the contested balance of Part 8 operating in one small phrase.

S3. Step 1 — Source A in practice: the presumption of innocence (section 25(1)) operates at step 6 of Figure 6 — the jury may convict only if the prosecution has proved guilt beyond reasonable doubt; equally, the fair-hearing right operates at every step, from the charge being read (step 3) to the appeal (step 8). Step 2 — Source B in practice: the entitlement to be treated with courtesy, respect and dignity (section 6(1)) binds the police and prosecutors across steps 1–2; the victim impact statement (section 13(1)) operates at step 7, the plea hearing before sentencing. Step 3 — Together the two sources show the trial protecting both sides at once — the state must prove its case fairly, and the victim is entitled to respect and a voice within that fair process.

How parliaments and the High Court protect rights

Curriculum — VC2HC10K06 - .E01 - .E02 - .E03

Theory

Defining our terms. The curriculum names *rights*, *express rights*, *implied rights* and *effectiveness* but does not define them. This section therefore treats them as follows. A **right** is a claim the law recognises and protects — something that governments and other people must respect. **Express rights** are rights written directly into the text of the Constitution. **Implied rights** are protections the High Court finds by reading the Constitution’s words and structure as a whole, even though they are not written in it. **Effectiveness** means how well something actually does its job in practice — so evaluating effectiveness weighs strengths against limits and reaches a judgement with reasons. Two more working terms: a **statute** is a law made by a parliament (also called an Act), and a right is **entrenched** when it is strongly protected against change, so that only a special process such as a referendum can remove it.

Part 1 — Three shields, not one bill of rights

Many countries have a single document called a bill of rights. Australia does not. Instead, rights are protected by three overlapping shields: the Australian Constitution, the common law, and statutes made by parliaments (Figure 1).

How rights are protected in Australia — three shields

Australia has no single bill of rights. Protection comes from three places.

	The Australian Constitution	Common law	Statute law — Acts of parliaments
What is it?	Australia's highest law, in force since 1 January 1901.	Law built up from judges' decisions in real cases over centuries.	Laws made by the federal and state/territory parliaments.
Which rights, and how?	A handful of rights written into the text (express rights), plus rights the High Court has found implied in its words and structure.	Long-standing rights such as the presumption of innocence and the right to a fair trial.	Anti-discrimination laws, human rights charters, and laws that grant rights, such as electoral laws.
Who keeps watch?	The High Court decides whether laws stay within the Constitution.	The courts develop and apply it case by case.	Parliaments, commissions and the courts all play a role.
How can it change?	Only a referendum (s 128) can change it.	A parliament can override it, but only with clear words in a statute.	A parliament can amend or repeal a statute by passing a new one.

Express rights are rights written directly into the text of the Constitution; implied rights are found by the High Court by interpreting that text.

Figure 1 — the three shields.

Notice the division of labour. The Constitution sets limits that parliaments cannot cross. The common law carries old, judge-made rights such as the presumption of innocence (the rule that a person charged with an offence is treated as innocent until a court finds otherwise). Statutes can add new rights — anti-discrimination laws and human rights charters are statutes. Each shield has a body that keeps watch over it, and each changes in a different way. That last point matters a lot: a statute right can be amended or repealed by a later parliament, while a constitutional right can only be changed by a referendum under s 128 of the Constitution.

Part 2 — Express rights

The Constitution contains a small set of express rights (Figure 2).

Express rights in the Australian Constitution

Rights written directly into the text of the Constitution.

Section	What it protects	Keep in mind
s 41	The right to vote in federal elections for people who already had the vote in a state in 1901.	Read narrowly today; most voting rights now come from statutes.
s 51(xxxi)	Where the Commonwealth takes property, it must do so on just terms — that is, on fair terms.	Limits the Commonwealth's power to acquire property.
s 80	Trial by jury for serious criminal offences against Commonwealth law.	The Commonwealth chooses which offences are tried this way.
s 92	Trade between the states must be free.	Often raised in cases about movement of goods across state borders.
s 116	The Commonwealth cannot establish a religion, force religious observance, or stop the free practice of religion.	Limits the Commonwealth only, not the states.
s 117	A state cannot treat a person worse just because they live in another state.	Protects residents of one state against another.

Express rights are specially protected: only a referendum under s 128 of the Constitution can change them, and few proposals succeed.

Figure 2 — the express rights.

Because they are written into the Constitution, these rights are entrenched: only a referendum under s 128 can remove them, and a referendum only passes with a double majority — a majority of voters across Australia plus a majority of states. That makes express rights very strong, and it also explains why there are so few of them. The High Court has declined to read new rights into this list, so most rights in Australia come from the other two shields.

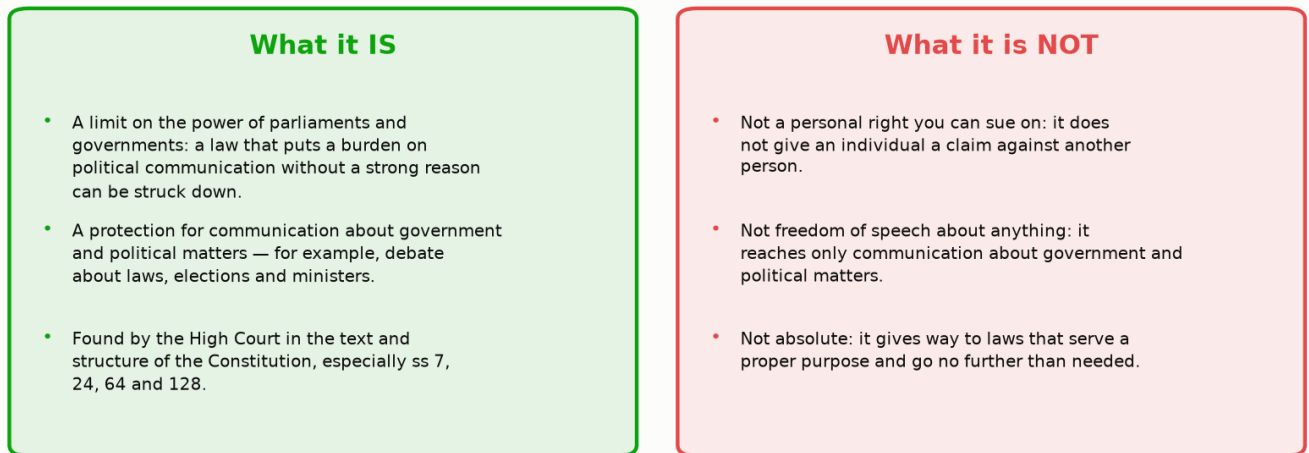
Part 3 — Implied rights: the freedom of political communication

Although the Constitution has few express rights, its words and structure carry at least one protection. Sections 7 and 24 require parliaments to be “directly chosen by the people”. In *Lange v Australian Broadcasting Corporation* (1997), the High Court reasoned that people cannot truly choose their representatives unless they can freely discuss government and political matters. The Court therefore found an **implied freedom of political communication** in the Constitution.

Figure 3 is careful about what this freedom is — and what it is not.

The implied freedom of political communication

Set out by the High Court in *Lange v Australian Broadcasting Corporation* (1997).

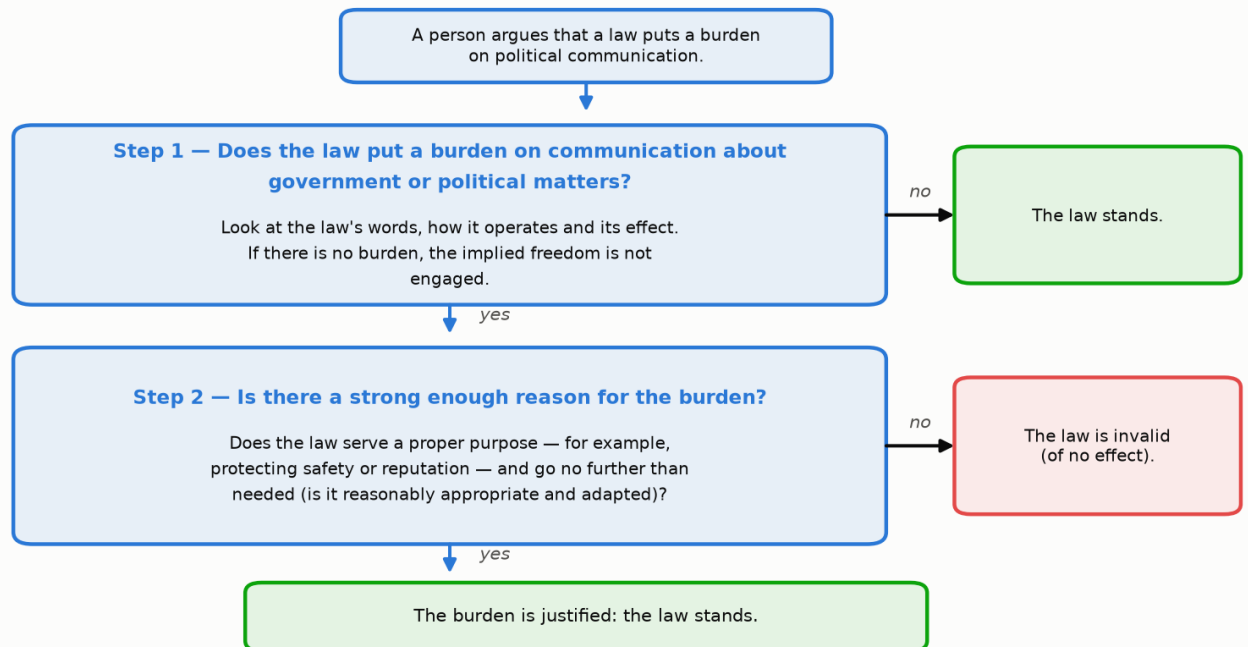


Source: *Lange v Australian Broadcasting Corporation* [1997] HCA 25; (1997) 189 CLR 520.

Figure 3 — the implied freedom: what it is and what it is not.

Figure 4 shows the two-step test the Court uses when a law is challenged for putting a burden on the freedom.

The Lange test — how the High Court tests a law against the implied freedom



The test comes from *Lange v Australian Broadcasting Corporation* [1997] HCA 25 and has been applied in later cases such as *Brown v Tasmania* [2017] HCA 43.

Figure 4 — the Lange test.

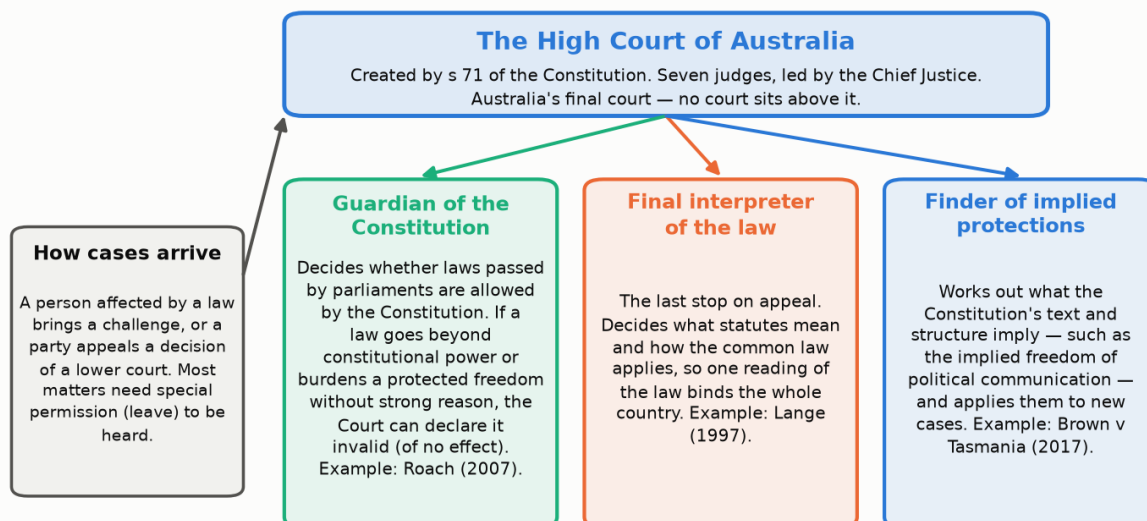
In *Lange* itself the test was applied to the law of defamation — the law that protects reputation. The Court adjusted that law a little but held it largely valid: protecting reputation is a proper purpose, so the burden was justified. The

implied freedom is not a free-for-all. It only strikes down laws that burden political communication without a strong enough reason.

Part 4 — The High Court's role in protecting rights

Section 71 of the Constitution creates the High Court of Australia. Seven judges, including the Chief Justice, sit on the Court, and it is Australia's final court — no court sits above it. Figure 5 summarises the rights-protecting roles the Court plays, and how cases reach it.

The High Court of Australia: its rights-protecting roles



The Court interprets and applies the law; it does not make policy. If it strikes a law down, parliament may respond with a new, valid law.

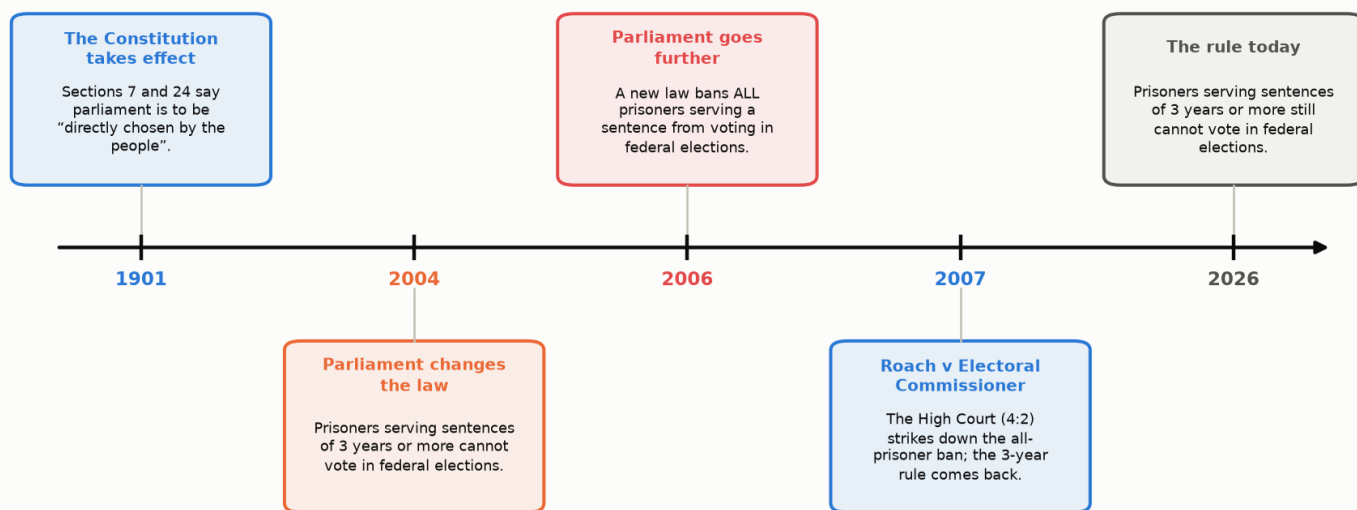
Figure 5 — the High Court's rights-protecting roles.

The Court's role is to interpret and apply the law, not to make policy. Three recent Australian examples show the role in action:

- **Roach v Electoral Commissioner (2007)** — the Court struck down a 2006 law that banned all prisoners serving a sentence from voting in federal elections, because it broke the promise in ss 7 and 24 that parliament be "directly chosen by the people". The story is told in Figure 6, and Worked example 1 walks through the case step by step.
- **Brown v Tasmania (2017)** — the Court struck down key parts of a Tasmanian law about protest near forestry operations, because the burden they put on political communication went further than needed. The implied freedom was applied to a new kind of law, twenty years after *Lange*.
- **Murphy v Electoral Commissioner (2016)** — the Court **upheld** a law that closed the electoral roll early for an election. The role of the Court is not to always strike laws down: it tests laws against the Constitution, and laws that pass the test stand.

Prisoner voting and the Constitution: the road to Roach (2007)

Events shown in order, evenly spaced (not to a year scale).



Note: Vicki Lee Roach was serving a six-year sentence in Victoria, so she still could not vote after her win — but the law reverted to the 3-year rule for everyone else.

Source: Roach v Electoral Commissioner [2007] HCA 43; Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006 (Cth).

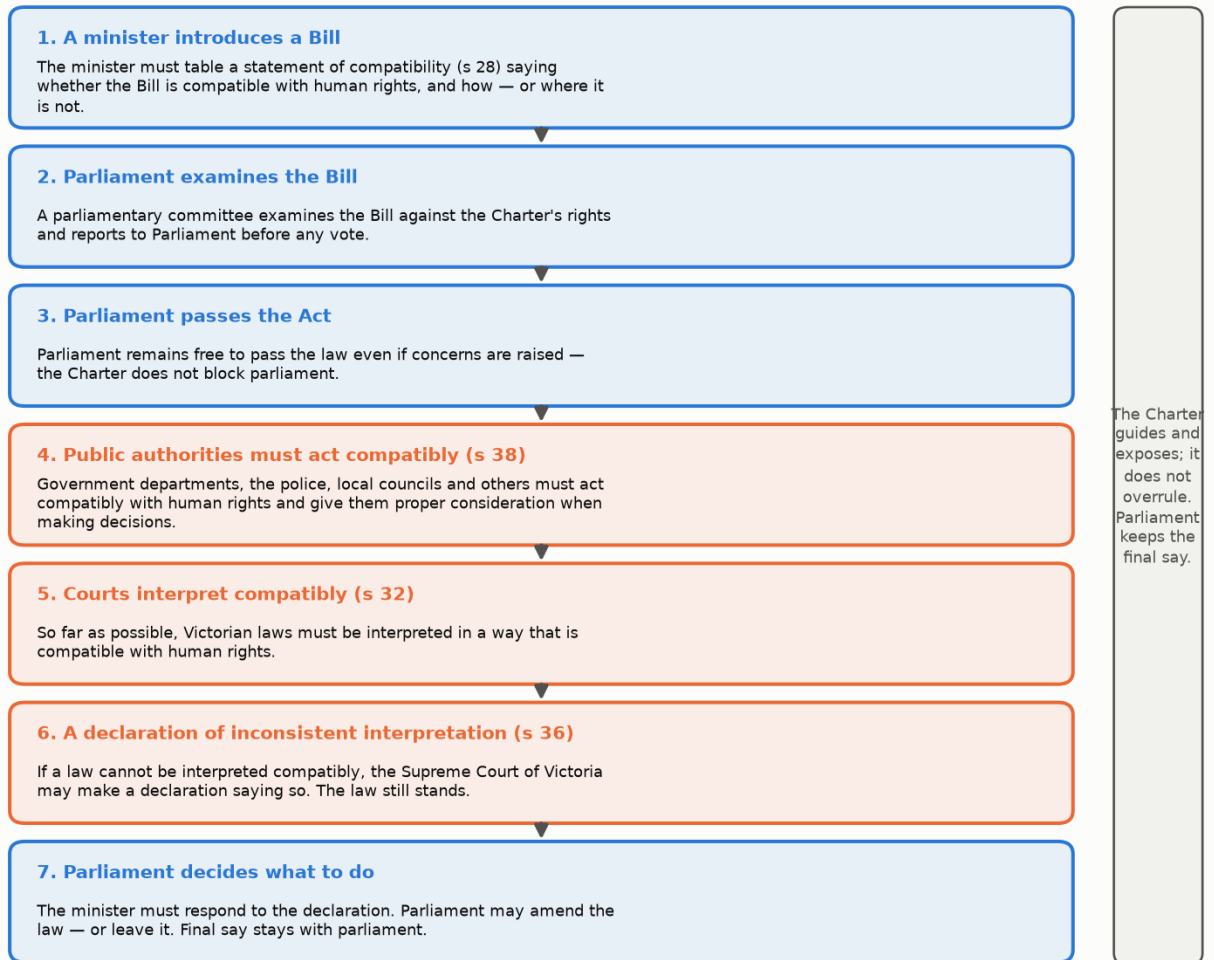
Figure 6 — prisoner voting and the Constitution: the road to Roach.

Part 5 — Parliaments as protectors: the Victorian Charter

Parliaments are not only the bodies that rights protect people against. Parliaments also **grant** rights by statute. The clearest example for Victorians is the *Charter of Human Rights and Responsibilities Act 2006* (Vic), in full effect since 1 January 2008. The Charter builds rights-checking into the whole life of a law (Figure 7).

How the Victorian Charter of Human Rights and Responsibilities works

Charter of Human Rights and Responsibilities Act 2006 (Vic) — in full effect since 1 January 2008.



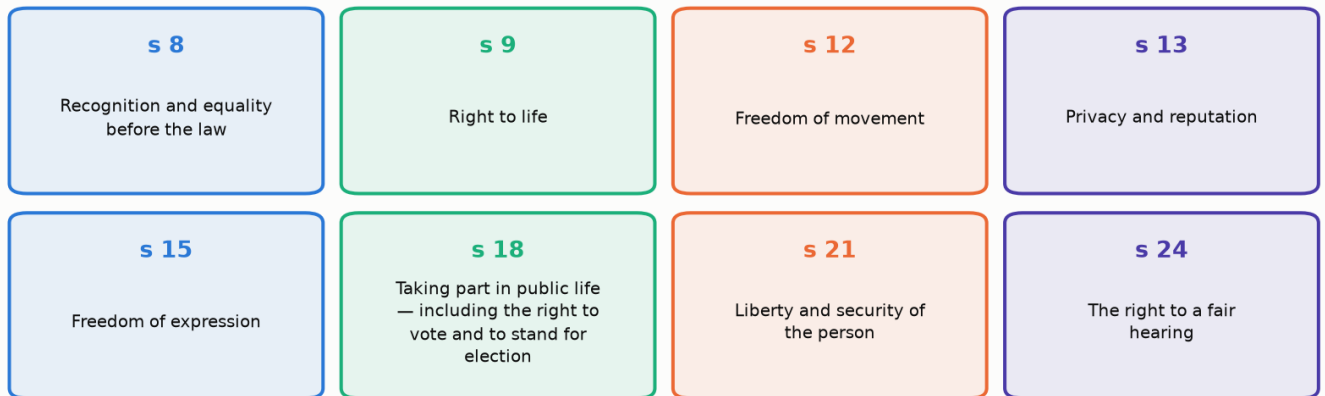
A person cannot be awarded damages for a breach of Charter rights alone; the Charter applies to Victorian laws and Victorian public authorities.

Figure 7 — how the Victorian Charter works.

The rights the Charter protects include the selection shown in Figure 8. In this context, **compatible** means consistent with these rights — a law or decision is compatible when it does not breach them, or breaches them only as far as can be reasonably justified.

Some of the rights in the Victorian Charter

A selection from Part 2 of the Charter of Human Rights and Responsibilities Act 2006 (Vic).



Every Charter right can be limited where a reasonable limit is justified by law. The Charter's full list of rights is set out in Part 2 of the Act.

Figure 8 — some of the rights in the Victorian Charter.

The Charter's design is often called a **dialogue model**: courts, parliament and public authorities (government departments, the police, local councils and others) are in a conversation about rights, but parliament keeps the final say. A declaration of inconsistent interpretation does **not** invalidate a law — it shines a light on it and leaves the response to parliament. A person also cannot be awarded damages for a breach of Charter rights alone. The Commonwealth has a parallel, lighter scheme: the *Human Rights (Parliamentary Scrutiny) Act 2011* (Commonwealth), which requires statements of compatibility for new federal Bills and sends them to a parliamentary committee for examination.

Part 6 — Anti-discrimination laws

Another kind of statute protects rights in everyday life. Anti-discrimination laws make it unlawful to treat people unfairly on set grounds — in Victoria these grounds are called **attributes** — in areas of public life such as work, education and services. Figure 9 sets out the main Commonwealth Acts, Victoria's *Equal Opportunity Act 2010*, and where complaints start.

Anti-discrimination laws in Australia

Laws that make it unlawful to treat people unfairly on particular grounds, in areas such as work, education and services.

The law	Where it applies	What it covers
Racial Discrimination Act 1975	Commonwealth	Race, colour, descent, national or ethnic origin
Sex Discrimination Act 1984	Commonwealth	Sex, marital or relationship status, pregnancy, sexual orientation, gender identity
Disability Discrimination Act 1992	Commonwealth	Disability
Age Discrimination Act 2004	Commonwealth	Age
Equal Opportunity Act 2010	Victoria	18 attributes, including age, disability, race, sex, sexual orientation, gender identity, religious belief or activity

Where complaints start

Complaints under the four Commonwealth Acts go to the Australian Human Rights Commission. If not resolved there, they can go to a federal court.

Complaints under the Equal Opportunity Act 2010 (Vic) go to the Victorian Equal Opportunity and Human Rights Commission. If not resolved, the Victorian tribunal VCAT can decide them.

Most complaints are first worked through in a guided meeting (conciliation), not in court.

These Acts make discrimination unlawful in set areas of public life; they also give people somewhere to go when it happens.

Figure 9 — anti-discrimination laws in Australia.

Two process words matter here. **Conciliation** is a guided meeting in which a neutral person helps the two sides reach an agreed outcome — most complaints are resolved this way, without a court. A **tribunal** is a decision-making body that is like a court but less formal; in Victoria, VCAT (the Victorian Civil and Administrative Tribunal) can decide complaints that conciliation does not resolve.

Part 7 — Evaluating effectiveness

To evaluate protection (the skill in .E03) is to weigh strengths against limits and reach a judgement with reasons — not to list both and stop. Figure 10 lines the five protectors up for that weighing.

Evaluating rights protection in Australia: strengths and limits

Effectiveness here means: how well does each protector actually achieve its purpose in practice?

The protector	Strengths	Limits
Express rights (the Constitution)	Strongly protected — only a referendum can remove them; the High Court enforces them against parliament.	Few in number; frozen in 1900 wording; changing them needs a double majority, which rarely succeeds.
Implied rights (High Court interpretation)	Can grow as society changes; the Court applied them as recently as 2017 (<i>Brown v Tasmania</i>).	Not written down — they depend on the Court's reading; parliaments can often re-draft a law to achieve the same goal.
Common law	Long-established rights such as the presumption of innocence, built up case by case.	Parliament can override them with clear words in a statute; courts are slow to extend them.
Victorian Charter	Rights are checked before laws are made; public authorities must consider rights; courts read laws compatibly where possible.	Cannot strike down a law; no damages for a breach alone; applies only to Victorian laws and authorities; parliament keeps the final say.
Anti-discrimination laws	Reach everyday life — work, school, services; give people a complaints path that usually starts free and informal.	Someone must make a complaint for the law to act; the process can be slow; exceptions and special cases exist.

An evaluation weighs strengths against limits and reaches a judgement with reasons — it does not just list both.

Figure 10 — evaluating rights protection in Australia.

Reasonable people weigh these differently, and two well-made positions sit on the table:

- **The mix works.** Protection comes from several overlapping shields, so a gap in one is partly covered by the others; courts and parliaments check each other; and ordinary politics can add new rights quickly, as the anti-discrimination Acts show. On this view, a bill of rights is not needed, and keeping the final say with parliament keeps rights-choices democratic.
- **The mix leaves gaps.** Most rights sit in statutes that a parliament can amend or repeal; Australia has no national bill of rights, so protection differs from state to state; the Charter cannot strike a law down; and express rights are too few to cover much of modern life. On this view, rights are only as safe as today's parliament chooses to make them.

Both positions are defensible. In your responses to this section, marks are awarded for the quality of your weighing — the strengths and limits you bring to bear and how you balance them — not for the conclusion you reach.

Worked examples

Example 1 — *Roach v Electoral Commissioner (2007)* (scaffolded)

Vicki Lee Roach was serving a six-year sentence in Victoria. In 2006 the Commonwealth Parliament had passed the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* (Commonwealth), which banned **all** prisoners serving a sentence from voting in federal elections. Before 2006, the rule (from a 2004 Act) banned only prisoners serving sentences of 3 years or more. Roach challenged the 2006 ban.

Working	Comment
1. The 2006 Act bans every prisoner serving a sentence from voting in federal elections.	First, read the law being challenged exactly as it is written.
2. Sections 7 and 24 of the Constitution say the two houses of parliament must be “directly chosen by the people”.	Find the constitutional words. They give voting in federal elections a constitutional footing — parliament cannot simply take it away.

Working	Comment
3. Do the words require literally everyone to vote? No: some limits can be consistent with representative government. The pre-2006 3-year rule was left in place.	The constitutional standard is not “no limits ever”. It is “limits that fit with a parliament chosen by the people”.
4. Does the all-prisoner ban fit that standard? The majority (4 judges to 2) said no: it cut off a whole group, regardless of how serious the offence was, so it was not consistent with “directly chosen by the people”.	Apply the standard to the law. This is the interpretive work of the High Court (.E01).
5. Outcome: the 2006 ban was invalid — of no effect — and the 3-year rule came back. Roach herself, serving six years, still could not vote.	A win for the constitutional principle, not for Roach personally. The Court struck down the ban; it did not order that she vote.

Source: *Roach v Electoral Commissioner* [2007] HCA 43; (2007) 233 CLR 162; *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* (Commonwealth).

Example 2 — Using the Victorian Charter on a complaint (scaffolded)

A Victorian local council makes a rule banning **all** public meetings in its parks on weekends, saying it wants the parks quiet. A residents’ group that wants to hold a weekend meeting about a planning decision complains, citing the Charter.

Working	Comment
1. Is the council bound by the Charter? Yes — a local council is a public authority, and s 38 requires public authorities to act compatibly with human rights and give them proper consideration.	Step one is always: does the Charter apply to this body at all?
2. Which right is engaged? Section 15, freedom of expression — a meeting about a planning decision is communication about a government matter.	Pick the right from the Charter’s list (Figure 8) and say why it fits.
3. Is the limit reasonable? Charter rights may be limited, but only by reasonable limits that can be justified. A total weekend ban on all public meetings may go further than needed — a permit system would be a lighter option.	This is the weighing step: purpose, then whether the limit goes further than needed.
4. What can a court do? Under s 32 it must read the local law compatibly with the Charter where possible — for example, reading the ban as subject to a permit process. If that is not possible, the Supreme Court of Victoria may make a declaration of inconsistent interpretation (s 36).	Interpret first; declare only if interpretation fails. Either way, the law still stands.
5. Who has the final say? The council and, above it, parliament. And no damages are awarded for a breach of Charter rights alone — the group’s prize is a changed rule, not money.	The Charter guides and exposes; it does not overrule (Figure 7, side note).

Source: *Charter of Human Rights and Responsibilities Act 2006* (Vic) ss 7(2), 15, 32, 36, 38.

Practice questions

Scaffolded

Q1 (Figure 1). A Victorian statute clashes with a Charter right, and a Commonwealth statute clashes with an express right in the Constitution. For each clash, name the shield involved and the body that keeps watch over it. (2 marks)

Q2 (Figure 2). Match each scenario to the express right it most directly raises (s 41 / s 51(xxxi) / s 80 / s 92 / s 116 / s 117): (a) a Commonwealth law takes a farmer’s land for a rail link without paying fair terms; (b) a state law charges a

tax on goods crossing the state border; (c) a Commonwealth law declares one religion to be the official religion of Australia. (3 marks)

Q3 (Figures 3–4). A Commonwealth law bans the publication of all letters to newspapers during an election period. Apply step 1 of the Lange test to this law, then give one reason it might also fail step 2. (2 marks)

Q4 (Figures 5–6). In *Roach*, which of the High Court’s three roles in Figure 5 was the Court playing, and what were the constitutional words the majority relied on? (2 marks)

Q5 (Figures 7–8). A new Victorian Bill would allow police to enter any home without a warrant. (a) From Figure 8, name the Charter right most obviously engaged. (b) Name two steps in Figure 7 that must happen **before** the Bill becomes law. (3 marks)

Q6 (Figure 9). A worker in Victoria says she was refused a job because of her age. Name the Act that applies to her complaint and the body it starts with. (2 marks)

Un scaffolded

Q7. “The implied freedom of political communication is not really a right.” Discuss this claim, using Figure 3 to support your reasoning. (3 marks)

Q8. Some people argue: “Rights should be protected only by parliaments; judges, who are not elected, should not be able to strike down laws.” Others disagree. Present the strongest case you can for **each** view, then state the factor or factors that would decide the question for you. Marks are awarded for the strength of your reasoning, not for the view you reach. (4 marks)

Q9. Evaluate how well the Victorian Charter of Human Rights and Responsibilities works as a protector of rights, using Figure 10. Your evaluation must weigh at least two strengths against two limits and reach a judgement with reasons. (4 marks)

Q10. In *Roach* (2007) the High Court struck a law down; in *Murphy v Electoral Commissioner* (2016) it upheld a law that closed the electoral roll early before an election. What do the two cases **together** show about the High Court’s role in protecting rights? (3 marks)

Source A — the words the Roach case turned on

Australian Constitution (in force 1 January 1901)

Extracts of sections 7 and 24

Section 7

The Senate shall be composed of senators for each State directly chosen by the people of the State, voting until the Parliament otherwise provides as one electorate.

Section 24

The House of Representatives shall be composed of members directly chosen by the people of the Commonwealth, but the number of such members shall be, as nearly as practicable, twice the number of the senators.

Both sections carry the same promise: parliament must be

“directly chosen by the people”.

Source: Commonwealth of Australia Constitution Act 1900 (Imp.), ss 7 and 24.

Source A — the words the Roach case turned on. Source: Commonwealth of Australia Constitution Act 1900 (Imp.), ss 7 and 24.

S1. Identify the exact words that appear in both sections of Source A. (1 mark)

S2. In your own words, explain what those words required of any federal law about prisoner voting, as the High Court read them in *Roach*. (2 marks)

S3. A classmate says: “Source A proves the Constitution protects a right to vote for every citizen, including every prisoner.” Weigh this reading against what the High Court actually decided in *Roach*. (3 marks)

Answers

Q1. Victorian clash: the statute shield (Victorian Charter) — kept watch over by Victorian courts and parliament (the Charter dialogue). Commonwealth clash: the Constitution shield — kept watch over by the High Court. **Q2.** (a) s 51(xxxi). (b) s 92. (c) s 116. **Q3.** Step 1: the law plainly puts a burden on communication about political matters (an election). Step 2 fail reason: a total ban on all letters goes further than needed — narrower rules (for example, about false statements) could serve the same purpose. **Q4.** Guardian of the Constitution; the words “directly chosen by the people” in ss 7 and 24. **Q5.** (a) s 13 (privacy) — s 21 (liberty and security) also acceptable. (b) Any two of: the minister’s statement of compatibility (step 1); parliamentary committee examination (step 2); the vote in parliament (step 3). **Q6.** *Equal Opportunity Act 2010* (Vic); the Victorian Equal Opportunity and Human Rights Commission (VEOHRC). **Q7–Q10.** See full solutions.

Full solutions

Q7. *Step 1 — the claim’s strength.* A personal right is something an individual can sue on against another person; the implied freedom is not that. It is a limit on legislative and executive power: it operates on laws, not on private disputes. In that strict sense the claim is correct. *Step 2 — the claim’s weakness.* Calling it “not a right” can hide what it does: it protects a zone of political communication that every Australian can rely on against a law that burdens it without strong reason, as the protesters in *Brown* (2017) did. *Step 3 — judgement.* It is best described as a constitutional protection that functions like a right against the state, without being a personal right against other people.

Q8. *Step 1 — steelman the parliament-only view.* Parliaments are elected and answerable at the next election; rights-choices (for example, how to balance protest against safety) are value-choices that a democracy should resolve through debate and voting; the Charter model shows rights can be protected while keeping the final say with the people’s representatives. *Step 2 — steelman the opposing view.* Parliaments can act quickly in fear or anger, and the people they affect may be precisely those with the least influence on them (Roach’s prisoners are the clearest example — a parliament removed a vote from people who could not vote against it); an independent court applying entrenched words protects the ground rules of democracy itself. *Step 3 — your deciding factors.* Any factor is acceptable if reasoned: for example, trust in electoral accountability versus concern for minorities, or the difference between ordinary policy and the rules of the political game itself.

Q9. *Step 1 — strengths.* Rights are checked **before** laws are made (statements of compatibility, committee scrutiny); public authorities must consider rights in daily decisions (s 38); courts read laws compatibly (s 32). *Step 2 — limits.* The Charter cannot strike a law down (s 36 declarations leave the law standing); no damages for a breach alone; it applies only to Victorian laws and authorities. *Step 3 — judgement.* Any reasoned weighing is acceptable — for example, “the Charter is effective at prevention and exposure but weak at remedy, so its effectiveness depends on whether parliament and the public act on the exposure it creates”.

Q10. *Step 1 — Roach alone* might suggest the Court always sides with rights against parliament; *Murphy* corrects that reading: the Court tested the roll-closure law against the same constitutional standard and found it passed. *Step 2 — together* the cases show the Court’s role is interpretive, not political: it asks whether a law is consistent with the Constitution’s requirements (here, a parliament “directly chosen by the people”), and the answer can be yes or no. *Step 3 — the pair* also shows the role’s limit: where a law fails, parliament may still respond with a new, valid law — the dialogue continues.

S1. “directly chosen by the people”. **S2.** Any federal law about who may vote had to be consistent with a parliament chosen by the people: some limits could be allowed (the 3-year rule survived), but a limit had to be reasonably justified, and a blanket ban on all prisoners was not. **S3.** *Step 1 — what supports the reading.* The words are broad and unconditional, and the majority in *Roach* said they give voting a constitutional footing. *Step 2 — what the reading misses.* The Court did **not** find an absolute right to vote: it upheld the 3-year rule in the same case, so prisoners serving 3 years or more lawfully cannot vote. *Step 3 — weighing.* Source A protects the **system** of a parliament chosen by the people; it limits how far parliament can cut the vote back, rather than granting every citizen an absolute personal right to vote.

International obligations and how they reach Australian law and policy

In March 2014 the United Nations' principal court ruled on a case Australia had brought against Japan about whaling in the Southern Ocean — and ordered Japan to revoke the permits for its whaling program. On the other side of the world, whenever a person who has fled persecution asks Australia for protection, the legal test applied to their claim repeats words first written into a treaty agreed at a conference in Geneva in 1951. Two very different stories, one idea: Australia has agreed to rules with other countries, and those rules reach into Australian lawmaking and government policy.

This section looks at how that works. You will learn what Australia's international legal **obligations** are, why a treaty does not change Australian law until Parliament passes legislation to bring it in, and what three international courts can do to — and for — Australia. Then you will trace one international law, the Refugee Convention, into lawmaking at both federal and state level, and weigh the issues that arise when these obligations meet hard choices.

Key terms used in this section: **international law** (the rules countries accept as binding in their dealings with one another) · **treaty** (a written agreement between countries, binding under international law; treaties are also called conventions, covenants or protocols) · **ratify** (to formally agree to be bound by a treaty) · **obligation** (something the law requires — here, what Australia must do, or must not do, under international law).

Curriculum link: VC2HC10K07.E01 · VC2HC10K07.E02

Part 1 — What are Australia's international legal obligations? (VC2HC10K07)

International law is the set of rules that countries accept as binding in their dealings with one another. Most of it comes from **treaties** — written agreements between countries that are binding under international law. Australia has accepted hundreds of treaty obligations, on topics from postal services to the laws of war. Six that matter for this section are listed below.

A smaller part of international law is **customary international law**: rules followed by states so widely, and out of such a settled sense of legal duty, that they bind all states even without a written agreement. This section concentrates on treaties, because they are where Australia's clearest obligations are found.

Contested term — obligation. In this section, *obligation* is used in its legal sense: something Australia is bound to do, or not do, under international law because it ratified a treaty or because the rule is part of customary international law. This is the sense used in the United Nations' own treaty materials (treaties.un.org). Other senses exist — a felt duty of conscience, which no legal body can enforce — and the senses are not interchangeable. When people argue about whether Australia is “meeting its obligations”, the first question to ask is always: in which sense?

How does Australia take on a treaty obligation? You met the pathway in Section 1D: the government negotiates the text, a minister signs it, and the executive then **ratifies** — formally agrees to be bound. Treaty-making is a power of the executive under section 61 of the Australian Constitution. Since 1996, treaty action is also tabled in the Commonwealth Parliament with a National Interest Analysis and examined by the Joint Standing Committee on Treaties (JSCOT) before the final step.

Six treaty obligations Australia accepted

Treaty	Adopted	Australia bound	What it asks of Australia
United Nations Charter	1945	1945 — founding member	Keep the peace, settle disputes peacefully, work together on human rights.
Convention relating to the Status of Refugees (and 1967 Protocol)	1951	22 January 1954 (Protocol 1973)	Protect people who meet the refugee definition; do not send them back to persecution (Article 33).
International Covenant on Civil and Political Rights	1966	13 August 1980	Respect civil and political rights — free speech, a fair trial, freedom of religion.
United Nations Convention on the Law of the Sea	1982	5 October 1994	Follow the rules for sea zones, navigation and the resources of the sea.
Convention on the Rights of the Child	1989	17 December 1990	Treat the best interests of the child as a primary consideration.
Rome Statute of the International Criminal Court	1998	28 June 2002	Cooperate with the ICC; punish genocide, crimes against humanity and war crimes.

Ratification binds Australia under international law — but per Part 2, a treaty changes Australian law only when Parliament enacts it.

Prepared by ClassBasics from the United Nations Treaty Collection (treaties.un.org) and the DFAT Australian Treaties Database (treaties.dfat.gov.au), retrieved 26 August 2026.

Table listing six major treaties Australia has accepted: the United Nations Charter of 1945, the Refugee Convention of 1951 with Australia bound from 22 January 1954, the International Covenant on Civil and Political Rights of 1966 with Australia bound from 13 August 1980, the United Nations Convention on the Law of the Sea of 1982 with Australia bound from 5 October 1994, the Convention on the Rights of the Child of 1989 with Australia bound from 17 December 1990, and the Rome Statute of the International Criminal Court of 1998 with Australia bound from 28 June 2002, each with a short description of what it requires.

Notice the spread: peace and security, refugees, human rights, the oceans, children, and the punishment of the worst crimes. Each of these is an area where Australia has said, in writing, that its freedom of action is limited by rules it shares with other countries.

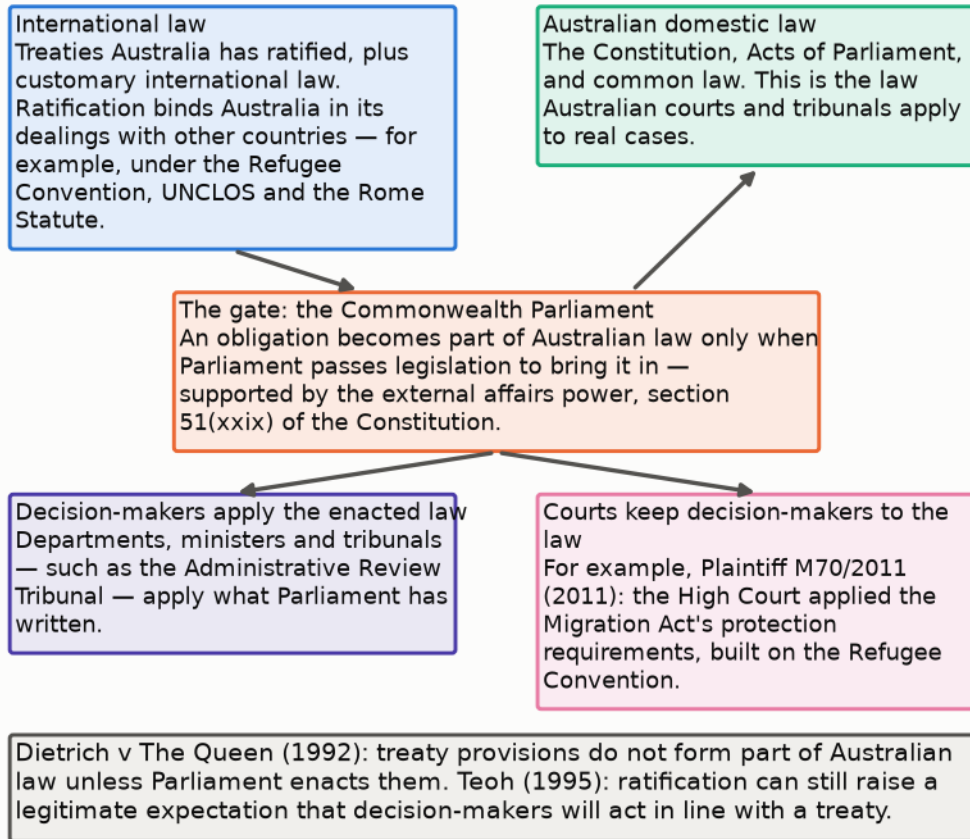
Part 2 — The gate: how an international obligation becomes Australian law (VC2HC10K07)

A treaty binds Australia under international law once it is ratified. It does **not**, by itself, change Australian law at home. Australia treats international law and Australian domestic law as two separate systems, and the Commonwealth Parliament is the gate between them: an obligation becomes part of Australian law only when Parliament passes legislation that brings it in.

The High Court has stated the rule plainly. In *Dietrich v The Queen* (1992) the Court said that the provisions of a treaty “do not form part of Australian law” unless Parliament has enacted them. One consequence: a person cannot win a case in an Australian court by claiming only that the government breached a treaty. The court needs a right that Australian law itself provides.

There is a smaller doorway. In *Minister for Immigration and Ethnic Affairs v Teoh* (1995) the High Court held that when Australia ratifies a treaty, people may legitimately expect that government decision-makers will act in line with it — unless legislation or a clear government statement says otherwise. An expectation is not a right, but it can matter when a decision is reviewed.

Two systems of law, one gate



Prepared by ClassBasics from Dietrich v The Queen (1992) 177 CLR 292 and Minister for Immigration and Ethnic Affairs v Teoh (1995) 183 CLR 273 (austlii.edu.au), retrieved 26 August 2026.

Diagram showing two separate systems of law — international law and Australian domestic law — with the Commonwealth Parliament as the gate between them: ratifying a treaty binds Australia internationally, but the obligation enters Australian law only when Parliament passes legislation, after which decision-makers and courts apply it.

The Constitution hands Parliament the key to that gate. Section 51(xxix) gives the Commonwealth Parliament power over “external affairs”, and the High Court has held that this includes power to pass laws that carry out Australia’s treaties.

Case card — the Tasmanian Dam case (1983)

Commonwealth v Tasmania (1983) 158 CLR 1

The dispute	Tasmania wanted to build a dam on the Franklin River. The Commonwealth passed a law to stop it, relying on a World Heritage treaty and the external affairs power.
The legal question	Did section 51(xxix) of the Constitution — the external affairs power — let the Commonwealth make a law carrying out a treaty, even on a matter inside a state?
The decision	Yes — by four judges to three. The Commonwealth law was valid.
The effect	The Commonwealth can legislate to implement treaties even on matters inside a state. Where a valid Commonwealth law conflicts with a state law, section 109 lets the Commonwealth law prevail.

Prepared by ClassBasics from Commonwealth v Tasmania (1983) 158 CLR 1 (austlii.edu.au) and the Australian Constitution, ss 51(xxix) and 109, retrieved 26 August 2026.

Case card for Commonwealth v Tasmania (1983), the Tasmanian Dam case: the dispute over a proposed dam on the Franklin River, the legal question whether the external affairs power in section 51(xxix) of the Constitution let the Commonwealth stop it using a treaty, the High Court's answer by four judges to three, and the effect — the Commonwealth can legislate to implement treaties even on matters inside a state.

In *Commonwealth v Tasmania* (1983) — the **Tasmanian Dam case** — Tasmania wanted to build a dam on the Franklin River, and the Commonwealth passed a law to stop it, relying on a World Heritage treaty and the external affairs power. By four judges to three, the High Court held the Commonwealth law was valid: the external affairs power does cover implementing a treaty, even where the subject matter sits inside a state. Where a valid Commonwealth law conflicts with a state law, section 109 of the Constitution provides that the Commonwealth law prevails. The case matters here because it is the constitutional engine behind treaty-implementing laws.

Parliament also checks new laws against human rights obligations. Under the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), every new bill must be presented with a **statement of compatibility** assessing it against seven core United Nations human rights treaties, and a parliamentary committee — the Parliamentary Joint Committee on Human Rights — examines bills and reports to Parliament. This is one of the quiet ways international obligations shape lawmaking: before a law is even passed, it is measured against what Australia has promised.

Part 3 — How international courts reach Australia (VC2HC10K07.E01)

Three international courts matter most for Australia. Each influences Australia in a different way — and Australia appears before each of them, sometimes as the country bringing a case and sometimes as the country answering one.

The International Court of Justice (ICJ). The principal court of the United Nations, sitting at The Hague in the Netherlands, hears legal disputes between states — countries, not individuals. Its 15 judges include Australia's Hilary Charlesworth, a member of the Court since 2021. In 1975 Australia accepted the ICJ's **compulsory jurisdiction**: it agreed in advance that the Court can hear and decide certain disputes with other states that have made the same acceptance. Three cases show the range:

- ***Certain Phosphate Lands in Nauru (Nauru v Australia)*.** Nauru sued Australia over the damage left by phosphate mining during the years Australia governed the island on the international community's behalf.

Before a final judgment, the countries settled in 1993: Australia agreed to pay A\$107 million towards rehabilitating the mined-out land. Australia here was the country being sued.

- **East Timor (Portugal v Australia, 1995).** Portugal sued Australia over a treaty Australia had made with Indonesia about the sea area between Indonesia-occupied East Timor and Australia. The ICJ refused to hear the case: deciding it would first have required ruling on the lawfulness of Indonesia's conduct, and Indonesia had not consented to the Court's jurisdiction. Consent is a real limit on the ICJ's reach.
- **Whaling in the Antarctic (Australia v Japan: New Zealand intervening, 2014).** Australia brought Japan to the ICJ over Japan's program of killing whales in the Southern Ocean. The case card below sets out what happened.

The International Criminal Court (ICC). Where the ICJ hears disputes between countries, the ICC — also at The Hague — tries **individuals** accused of the most serious crimes: genocide, crimes against humanity and war crimes. The ICC acts as a backstop: under its founding treaty, the **Rome Statute**, it steps in only when the country whose own courts would normally deal with the matter is unable or unwilling to genuinely do so. Australia ratified the Rome Statute on 28 June 2002 and passed the *International Criminal Court Act 2002* (Cth) so that Australia can cooperate with the Court. Australia also wrote the crimes into domestic law: Division 268 of the *Criminal Code Act 1995* (Cth) makes genocide, crimes against humanity and war crimes offences under Australian law, so they can be prosecuted at home.

The International Tribunal for the Law of the Sea (ITLOS). A tribunal of 21 judges in Hamburg, Germany, created by the United Nations Convention on the Law of the Sea (UNCLOS) to decide disputes about the law of the sea. Australia has appeared on both sides of the bench:

- In 1999, Australia and New Zealand took Japan to ITLOS over Japan's experimental catch of southern bluefin tuna. The tribunal ordered provisional measures — interim steps to protect the fish stock while the dispute was being resolved — including limits on the experimental catch.
- In 2002, in the **Volga case**, Russia took Australia to ITLOS after Australian officers detained the Russian-flagged fishing vessel *Volga* for illegal fishing in waters near Heard Island. ITLOS ordered Australia to release the vessel on the posting of security — and Australia complied. A country can be ordered around by this tribunal too.

Three international courts compared

Court	What it decides	Who can appear	Where	Australia's link
International Court of Justice (ICJ)	Legal disputes between countries, and advisory opinions.	States only.	The Hague, Netherlands	Compulsory jurisdiction 1975. Cases: Nauru (1993), East Timor (1995), Whaling (2014).
International Criminal Court (ICC)	Genocide, crimes against humanity, war crimes — a backstop where national courts cannot or will not act.	Individuals, brought by the prosecutor.	The Hague, Netherlands	Rome Statute ratified 28 June 2002; ICC Act 2002 (Cth); crimes in Code Div 268.
International Tribunal for the Law of the Sea (ITLOS)	Disputes about the law of the sea under UNCLOS.	States bound by UNCLOS.	Hamburg, Germany	Bound by UNCLOS since 1994. Cases: Bluefin Tuna (1999); the Volga (2002).

No international court has a police force behind it. Influence rests on the willingness of states to comply — see Part 3's thinking point and Part 5.

Prepared by ClassBasics from icj-cij.org, icc-cpi.int and itlos.org, retrieved 26 August 2026.

Comparison table of the three international courts: the International Court of Justice, the International Criminal Court and the International Tribunal for the Law of the Sea, showing what each decides, who can appear before it, where it sits, and Australia's connection to it.

Case card — Whaling in the Antarctic (2014)

Whaling in the Antarctic (Australia v Japan: New Zealand intervening), ICJ, 31 March 2014

Who	Australia brought the case against Japan in 2010; New Zealand intervened.
Under which treaty	The International Convention for the Regulation of Whaling. Its Article VIII allows killing whales under special permit only 'for purposes of scientific research'.
The question	Was Japan's Southern Ocean program, JARPA II, genuine scientific research — or commercial whaling in another form?
The ruling	By 12 votes to 3, the ICJ held the JARPA II permits were not for purposes of scientific research. It ordered Japan to revoke the permits and not to grant further permits under that program.
The outcome	Japan revoked the permits and ended JARPA II.
Since then	The whaling debate has continued — Japan resumed limited whaling under a later program and left the International Whaling Commission in 2019 — but the Court's orders on JARPA II were complied with.

Prepared by ClassBasics from the International Court of Justice, Whaling in the Antarctic, Judgment of 31 March 2014 (icj-cij.org), retrieved 26 August 2026.

Case card for Whaling in the Antarctic (Australia v Japan: New Zealand intervening): who brought the case and under which treaty, the legal question, the International Court of Justice ruling of 31 March 2014 by 12 votes to 3 that Japan's special permits were not for purposes of scientific research, the order to revoke the permits, and the outcome — Japan revoked the permits, with a note that the whaling debate has continued since.

Thinking point — why comply? International courts have no police force and no jail. So why do countries obey them? The strongest case for compliance is self-interest: a rules-based order protects a middle-sized trading country like Australia far better than a world where the strong simply take what they want, and a judgment Australia ignores today is a judgment another country will ignore against Australia tomorrow. The strongest case for doubt is just as real: enforcement depends on willingness, so the system can fail when a powerful state simply refuses, and small countries cannot make great powers obey. Both points are true at once. Courts are strong where countries have reasons to comply and weak where they do not. Keep that tension in mind — Part 5 returns to it.

Part 4 — One international law at work: the Refugee Convention in Australian lawmaking (VC2HC10K07.E02)

For the second half of this section, the curriculum asks you to **judge how one international law has shaped lawmaking**, at either a state/territory or a federal level. The example used here is the *Convention relating to the Status of Refugees*, because few international laws reach as far into Australian law and government policy.

In the aftermath of the Second World War, millions of people were displaced across Europe and Asia. In 1951 a United Nations conference in Geneva adopted the Refugee Convention to settle who must be protected and how. Australia was one of the earliest countries to accept it — it has been bound since 22 January 1954 — and in 1973 it accepted the 1967 Protocol, which removed the Convention's original limits of time and place.

Stipulated term — refugee. In everyday speech *refugee* is used loosely for anyone forced to leave home. In law the word has a **stipulated** definition — one fixed by an official text, which may differ from everyday use. In this section the definition is the one in Article 1A(2) of the Refugee Convention, as amended by the 1967 Protocol, and every question here is answerable on that definition alone. A person is

a refugee if, owing to a **well-founded fear of persecution**, they are outside the country of their nationality (or, if they have no nationality, the country where they last usually lived) and are unable, or owing to that fear unwilling, to return. The feared persecution must be for at least one of five reasons: **race, religion, nationality, membership of a particular social group, or political opinion**. Someone fleeing drought or an earthquake may desperately need help — but on this definition they are not a refugee, though other laws and policies may protect them. The definition is set out in the treaty text itself and by UNHCR, the United Nations refugee agency.

The refugee definition — three building blocks

1 Outside their country
The person is outside the country of their nationality — or, if they have no nationality, the country where they last usually lived.

2 Well-founded fear
They fear persecution, and the fear is well-founded — there is a real basis for it.

3 One of five grounds
The feared persecution is for at least one of: race, religion, nationality, membership of a particular social group, or political opinion.

All three blocks must be met — Article 1A(2), Convention relating to the Status of Refugees (1951), as amended by the 1967 Protocol. The definition is also set out by UNHCR, the United Nations refugee agency.

Fleeing drought or an earthquake alone does not meet this definition — though other laws and policies may protect the person. The definition is stipulated by the treaty text, and this section uses it alone.

Prepared by ClassBasics from the Convention relating to the Status of Refugees (1951), Article 1A(2), and the 1967 Protocol (treaties.un.org; unhcr.org), retrieved 26 August 2026.

Model of the legal definition of a refugee from Article 1A(2) of the Refugee Convention: three building blocks — the person is outside their country of nationality or the country where they last usually lived; they have a well-founded fear of persecution; and the feared persecution is for at least one of five grounds: race, religion, nationality, membership of a particular social group, or political opinion — with a note that all three blocks must be met.

The Convention's second core rule is Article 33 — the duty of **non-refoulement** (a term taken from French and used across international law). It is the duty not to expel or return a refugee to any place where their life or freedom would be threatened for one of the five reasons. Read the exact words in the source inquiry at the end of this section.

So how has this one international law shaped Australian lawmaking? Trace the pathway below.

The Refugee Convention in Australian lawmaking

1 The treaty rules

Article 1A(2) defines a refugee. Article 33 forbids expelling or returning a refugee to persecution — the duty of non-refoulement.



2 Australia accepts them

Australia has been bound by the Convention since 22 January 1954 and by the 1967 Protocol since 1973. Ratification binds Australia internationally — the Part 2 gate still applies at home.



3 Parliament writes them in

Migration Act 1958 (Cth): section 5H carries the refugee definition; section 36 builds Australia's protection obligations into the test for a protection visa. Complementary protection was added to section 36 in 2012.



4 Decision-makers apply them

Departmental officers assess each claim against the definition. Refusals can be reviewed by the Administrative Review Tribunal (which replaced the Administrative Appeals Tribunal on 14 October 2024) and by the courts — for example, Plaintiff M70/2011 (2011).



5 The result

Who receives a protection visa — and who does not. Policy, like the Refugee and Humanitarian Program, is built and debated inside these obligations.

Prepared by ClassBasics from the Convention relating to the Status of Refugees (1951) and the 1967 Protocol, the Migration Act 1958 (Cth) ss 5H and 36 (legislation.gov.au), and Plaintiff M70/2011 v Minister for Immigration and Citizenship (2011) 245 CLR 61 (austlii.edu.au), retrieved 26 August 2026.

Flow chart showing how the Refugee Convention reaches Australian lawmaking: the Convention's refugee definition in Article 1A(2) and the non-refoulement duty in Article 33; Australia bound since 1954 and the 1967 Protocol since 1973; Parliament writing the definition into section 5H of the Migration Act 1958 (Cth) and protection obligations into section 36; decision-makers assessing claims with review by the Administrative Review Tribunal and the courts; and the result — who receives a protection visa and who does not.

- **The definition enters the statute book.** Section 5H of the *Migration Act 1958* (Cth) writes the Convention's refugee definition into Australian law, and section 36 makes Australia's protection obligations a criterion for a protection visa. Parliament did not have to do this — it chose to. Having done it, Parliament made the treaty's words the words that Australian decision-makers must apply.
- **Decision-makers apply it.** Departmental officers assess each claim against the definition. A refusal can be reviewed by the Administrative Review Tribunal, which replaced the Administrative Appeals Tribunal on 14 October 2024, and beyond that by the courts. In *Plaintiff M70/2011 v Minister for Immigration and Citizenship* (2011) the High Court struck down a government arrangement to send asylum seekers to Malaysia for processing, because Malaysia — which is not bound by the Refugee Convention — did not meet the protections the Act required. The Court applied Parliament's words rather than the treaty itself; but Parliament's words were built on the treaty.
- **The obligation grows through amendment.** In 2012 Parliament added **complementary protection** to section 36: protection for a person who is not a refugee under the definition but who faces a real risk of significant harm. That change gave domestic effect to Australia's other non-return obligations under human

rights treaties. International obligation, statutory change, new decision-making criteria — the cycle in a single example.

- **Policy is framed around it.** The size of Australia’s Refugee and Humanitarian Program, the way claims are processed, and border measures are all built, funded and argued about within the frame of these obligations.

Three laws, three levels of lawmaking

International law	Australian law it has shaped	Level	What it shows
Refugee Convention (1951; 1967 Protocol)	Migration Act 1958 (Cth): s 5H carries the definition; s 36 builds protection into the visa test; complementary protection added 2012.	Commonwealth	A treaty definition becomes the statutory test officials apply.
Convention on the Rights of the Child (1989)	Children, Youth and Families Act 2005 (Vic): s 10 makes the child's best interests paramount in decisions under the Act.	State (Victoria)	An obligation carried through state lawmaking.
UN Convention on the Law of the Sea (1982)	Seas and Submerged Lands Act 1973 (Cth): territorial sea sovereignty; the 200 nautical mile exclusive economic zone proclaimed 1994.	Commonwealth	The legal framework for Australia's sea zones.

One obligation can reach more than one level: Commonwealth where the Constitution gives power, states in areas left to them.

Prepared by ClassBasics from the Migration Act 1958 (Cth), the Children, Youth and Families Act 2005 (Vic), and the Seas and Submerged Lands Act 1973 (Cth) — legislation.gov.au and legislation.vic.gov.au — retrieved 26 August 2026.

Table comparing three international laws and the Australian lawmaking each has shaped: the Refugee Convention shaping sections 5H and 36 of the Migration Act 1958 (Cth) at federal level; the Convention on the Rights of the Child shaping the best interests principle in section 10 of the Children, Youth and Families Act 2005 (Vic) at state level; and the United Nations Convention on the Law of the Sea underpinning Australia’s 200 nautical mile exclusive economic zone proclaimed in 1994 under the Seas and Submerged Lands Act 1973 (Cth) at federal level.

The Refugee Convention is not the only example — the table above shows two more. The *Convention on the Rights of the Child*, which Australia accepted in 1990, tracks through to state lawmaking: in Victoria, section 10 of the *Children, Youth and Families Act 2005* (Vic) makes the best interests of the child the paramount consideration in decisions about children under that Act, mirroring the Convention’s requirement that the child’s best interests be a primary consideration. And UNCLOS, which Australia accepted in 1994, provides the legal framework for Australia’s sea zones, including the 200 nautical mile exclusive economic zone proclaimed in 1994 under the *Seas and Submerged Lands Act 1973* (Cth).

Now the evaluation the curriculum asks for. The Convention’s influence is **strong but channelled**. It fixes the meaning of “refugee”, sets the criteria for protection, and forbids refoulement — and Parliament chose to write those rules directly into the *Migration Act*. But the Convention does not tell Australia how to assess claims, how quickly to decide them, how many people to resettle each year, or where processing happens. Parliament has amended the machinery many times while keeping the core definition. Influence, then, is direct where Parliament has written the obligation in, and indirect where policy is only framed around it. That distinction — direct effect through legislation versus influence on policy choices — is the heart of evaluating how international obligations shape lawmaking.

Part 5 — Issues: where obligations meet hard choices (VC2HC10K07)

The content description for this section ends by pointing to the problems that arise when these obligations are applied. Applying an obligation is rarely just a matter of reading the words aloud. Four issues recur.

1. Sovereignty and the final say. The deepest argument about international obligations is about **sovereignty**.

Contested term — sovereignty. *Sovereignty* is a contested term: different writers use it to mean different things, and the meaning chosen changes the conclusion reached. In this section it is used in one stated frame: the lawful authority of the Australian people and their parliaments to make their own laws without direction from other countries or international bodies. (Section 1A of this book uses a related but distinct sense — popular sovereignty, the idea that government’s authority comes from the people. In international law, sovereignty often means the legal equality of states, as in Article 2(1) of the UN Charter.) When you hear the word in a debate, ask first: whose definition, in which frame?

Sovereignty and the final say

Strongest case: keep the obligations Australia accepted

- The rules were freely accepted by Australia's own executive — keeping them is what makes Australia's word worth trusting in the next negotiation.
- A rules-based order protects a middle-sized trading country far better than rule by the strong.
- Any obligation can be left through the same formal steps that accepted it — being bound is not the same as being trapped.

Strongest case: Parliament keeps the final say

- Treaties are negotiated by the executive, not written by Parliament.
- International bodies are not elected by Australians.
- Conditions change; a rule agreed in 1951 cannot foresee everything.
- On this view, obligations should bind at home only where Parliament has enacted them — the Part 2 gate.

Both sides appeal to self-government, read two ways. The Australian system already splits the work: the executive binds Australia internationally, Parliament gates domestic effect, and the courts interpret. The live question is where the balance should sit — not whether the machinery exists.

Prepared by ClassBasics as a balanced summary of public argument for classroom discussion, 26 August 2026.

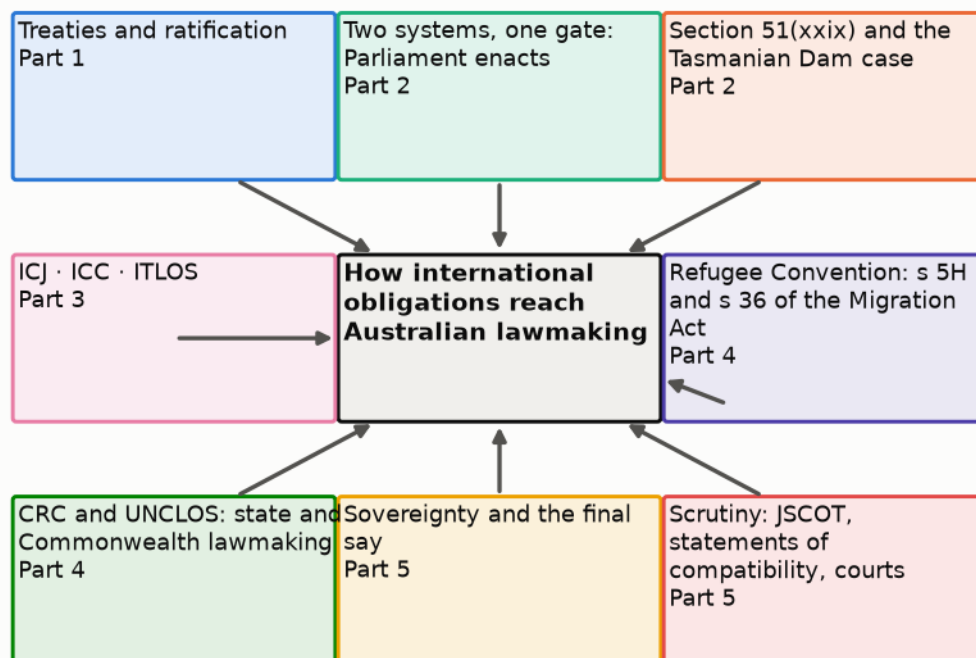
Two-column table setting out, side by side, the strongest case that Australia’s accepted treaty obligations should always be kept, and the strongest case that the elected Parliament should keep the final say, with a closing note that both sides appeal to self-government read two different ways.

2. Who decides what the obligation means? Courts and tribunals interpret obligations when a case comes before them — but governments also interpret them when designing policy. Take Article 33’s non-refoulement duty. Successive Australian governments have maintained that measures such as turning back boats carrying asylum seekers at sea are consistent with Australia’s obligations. Critics — including UNHCR, refugee legal services and international law academics — argue that turning back boats risks returning people to persecution, which is exactly what Article 33 forbids. Both sides argue from the same words; they disagree about what those words require at sea. That is not a fault to fix but a dispute about what the words mean — and Sections 4B and 4E of this book ask you to weigh the evidence on each side yourself.

3. Federalism. The Commonwealth signs treaties, but the laws needed to carry them out often belong to the states — child protection is state law, for instance. If a state’s laws fall short of an obligation the Commonwealth accepted, the Commonwealth cannot always force a fix: the external affairs power is available, but using it against a state is politically heavy. The CRC example in Part 4 shows the obligation being carried through state law instead.

4. Accountability between elections. The executive can bind Australia to a treaty without a parliamentary vote. The counterweights are the ones you have met: JSCOT scrutiny before ratification, statements of compatibility and the Parliamentary Joint Committee on Human Rights during lawmaking, the Administrative Review Tribunal and the courts after decisions are made — and, at every point, citizens, media and interest groups. Chapters 4 and 5 of this book put those tools in your hands.

Key terms of this section



Prepared by ClassBasics from the content of this section, 26 August 2026.

Word web linking the key terms of this section around the centre idea of how international obligations reach Australian lawmaking: treaties and ratification; the Parliament as gate with section 51(xxix) and the Tasmanian Dam case; the three international courts; the Refugee Convention's definition and the non-refoulement duty; the sovereignty debate; and the scrutiny tools of JSCOT, statements of compatibility and the courts.

Worked examples

Worked example 1 — Tracing one obligation into Australian law (scaffolded)

Task: Trace the Refugee Convention's definition of a refugee from Geneva into Australian lawmaking. For each step, say what happens and why it matters.

Working	Comment
1. The treaty rule. Article 1A(2) of the Refugee Convention (1951) defines a refugee as a person outside their country with a well-founded fear of persecution for one of five reasons.	The obligation starts life as words agreed between countries — international law, not yet Australian law.
2. Australia accepts it. Australia has been bound by the Convention since 22 January 1954, and by the 1967 Protocol since 1973.	Ratification binds Australia under international law — but per Part 2, the treaty alone changes nothing at home. Parliament is the gate.
3. Parliament writes it in. Section 5H of the <i>Migration Act 1958</i> (Cth) reproduces the definition; section 36 makes protection obligations a criterion for a protection	This is the moment the obligation becomes Australian law. It happened because Parliament chose to enact it.

Working	Comment
visa.	
4. Decision-makers apply it. Departmental officers assess claims against the definition; the Administrative Review Tribunal and the courts review decisions.	The treaty's words now decide real cases — such as <i>Plaintiff M70/2011</i> , where the High Court applied the Act's protection requirements.
5. The obligation grows. In 2012 Parliament added complementary protection to section 36, extending protection beyond the Convention definition.	Lawmaking keeps responding to the obligations Australia carries — the pathway is not a one-off event.

Conclusion: The Convention's influence is direct — its definition is the statutory test — but it is channelled through Parliament, which chose the wording, can amend it, and has amended the machinery around it many times.

Worked example 2 — Evaluating the influence of an international court (scaffolded)

Task: *Whaling in the Antarctic* (Australia v Japan: New Zealand intervening, 2014). Evaluate the influence of the International Court of Justice on Australia — and on Japan — using this case.

Working	Comment
Who, and under what law? Australia brought the case against Japan in 2010 under the International Convention for the Regulation of Whaling, which permits killing whales under special permits only “for purposes of scientific research”.	Australia used the Court as the peaceful path for a dispute diplomacy had failed to settle — influence begins with having somewhere to go.
The question. Was Japan's Southern Ocean program, JARPA II, genuine scientific research, or commercial whaling in another form?	The Court had to give legal meaning to treaty words the parties read differently — the same interpretive task Part 5 described for domestic law.
The ruling. On 31 March 2014, by 12 votes to 3, the ICJ held the JARPA II permits were not for purposes of scientific research, ordered Japan to revoke them, and not to grant further permits under that program.	A binding judgment against a sovereign state, made without any police force behind it.
The outcome. Japan revoked the permits and ended JARPA II. The whaling debate has continued — Japan later resumed limited whaling under a different program and left the International Whaling Commission in 2019 — but the Court's specific orders were complied with.	Influence is real but bounded: the Court resolved the legal question and was obeyed on that question; it did not end the underlying dispute forever.

Conclusion: The case shows two kinds of influence. For Australia, the ICJ was a tool — a way to enforce a shared rule peacefully. For Japan, it was a constraint accepted and obeyed. The limit is equally instructive: compliance depends on the will of states, which is why Part 3's thinking point matters.

Practice questions

Scaffolded

Q1. Match each dispute or decision to the treaty it most directly engages. *Word bank:* United Nations Charter · Refugee Convention · International Covenant on Civil and Political Rights · United Nations Convention on the Law of the Sea · Convention on the Rights of the Child · Rome Statute of the International Criminal Court.

- Two countries argue over fishing rights in waters off their coasts.
- An official must decide whether a person fleeing persecution is owed protection.
- A person is accused of directing war crimes and faces prosecution.
- A Victorian decision-maker must treat a child's best interests as the paramount consideration.
- A court considers whether a new law limits freedom of expression.
- The Security Council debates authorising force in response to an attack.

Q2. The steps below are out of order. Rewrite them in the correct order for how a treaty obligation reaches Australian law, using Part 2 and Section 1D. *Steps:* Parliament passes implementing legislation · the government negotiates the text · the executive ratifies the treaty · a minister signs the treaty · the treaty and a National Interest Analysis are tabled in Parliament and examined by JSCOT · decision-makers apply the new law.

Q3. Mark each statement true or false. Where it is false, correct it using the rule from Part 2.

- a. Once Australia ratifies a treaty, the treaty automatically becomes part of Australian law.
- b. The Commonwealth can rely on the external affairs power in section 51(xxix) of the Constitution to pass laws implementing a treaty.
- c. Ratifying a treaty gives every person in Australia a legal right they can enforce directly in court.
- d. If a valid Commonwealth law implementing a treaty conflicts with a state law, the state law prevails.

Q4. For each scenario, name the Convention ground the feared persecution engages, or state that it engages none of the five grounds. *Word bank:* race · religion · nationality · membership of a particular social group · political opinion · none of the five grounds.

- a. A journalist fears imprisonment for publishing articles criticising the government.
- b. A family is targeted and threatened because of their ethnic background.
- c. A farmer's crops have failed in a long drought and there is no food or work left.
- d. A person is threatened with violence after converting to a different religion.

Q5. Match each description to the correct international court or tribunal. *Word bank:* International Court of Justice · International Criminal Court · International Tribunal for the Law of the Sea.

- a. Hears legal disputes between states only; Australia accepted its compulsory jurisdiction in 1975.
- b. Tries individuals for genocide, crimes against humanity and war crimes.
- c. Decided the *Volga* case about a detained fishing vessel.
- d. Ordered provisional measures in the southern bluefin tuna dispute in 1999.
- e. Ruled on 31 March 2014 that Japan's JARPA II permits were not for purposes of scientific research.
- f. Australia wrote its crimes into Division 268 of the *Criminal Code Act 1995* (Cth).

Q6. Use the table in Part 4 (the three-levels figure) to answer:

- a. Name the Victorian Act that makes a child's best interests the paramount consideration in decisions about children under that Act.
- b. Is this an example of state lawmaking or Commonwealth lawmaking?
- c. Why is child protection law made by the Victorian Parliament rather than the Commonwealth Parliament?
- d. What does this example show about how a single international obligation can reach Australian lawmaking at more than one level?

Unscaffolded

Q7. Explain, using one Commonwealth example and one Victorian example from this section, how Australia's international legal obligations can shape lawmaking at different levels of government.

Q8. "International courts have no police, yet their decisions matter." Evaluate this claim using two cases from Part 3. In your answer, identify one way the decisions had real effect and one limit on that effect.

Q9. Present the strongest case you can that Australia should treat its accepted treaty obligations as binding even when they are inconvenient for the government of the day — and then the strongest case that the elected Parliament should keep the final say. Finish by stating which consideration you judge weightier, and why. Marks are awarded on the quality of your reasoning, not the conclusion you reach.

Q10. Using Source A and Part 5, set out what would count as evidence that Australia is upholding its non-refoulement obligation, and what would count as evidence that it is not. Explain why reasonable observers can look at the same facts and reach different conclusions. (Sections 4B and 4E return to this evaluation with sources.)

Source inquiry — reading Article 33 of the Refugee Convention (Knowledge)

Read the source, then answer the questions.

Source A — Article 33(1), Refugee Convention

"No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

Convention relating to the Status of Refugees (1951), Article 33(1) — United Nations Treaty Collection, treaties.un.org.

Prepared by ClassBasics from the Convention relating to the Status of Refugees (1951), Article 33(1), retrieved 26 August 2026.

Source card quoting Article 33(1) of the Convention relating to the Status of Refugees (1951) verbatim: *No Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion, with attribution to the treaty text.*

Source A — “No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” — *Convention relating to the Status of Refugees* (1951), Article 33(1).

- In your own words, state what Article 33(1) forbids a country from doing.
 - The protection applies where life or freedom “would be threatened on account of” one of the five grounds. Why do those five grounds matter to a decision-maker applying section 5H of the *Migration Act 1958* (Cth)?
 - The article says “in any manner whatsoever”. What do those three words add? Could a country argue that turning a boat back at sea is not “expel or return” because the people on it never set foot in the country? What does this disagreement show about applying treaty words at a border?
 - Who decides what Article 33 requires in a contested case — the government, the courts, or both? Use the pathway in Part 4 to support your answer.
-

Answers

Q1. a. United Nations Convention on the Law of the Sea · b. Refugee Convention · c. Rome Statute of the International Criminal Court · d. Convention on the Rights of the Child · e. International Covenant on Civil and Political Rights · f. United Nations Charter. **Q2.** The government negotiates the text → a minister signs the treaty → the treaty and a National Interest Analysis are tabled in Parliament and examined by JSCOT → the executive ratifies the treaty → Parliament passes implementing legislation → decision-makers apply the new law. **Q3.** a. False — the treaty binds Australia internationally, but it becomes Australian law only when Parliament passes legislation (*Dietrich v The Queen*, 1992). b. True — *Commonwealth v Tasmania* (1983) confirms this. c. False — at most, ratification can create a legitimate expectation that decision-makers will act in line with the treaty (*Teoh*, 1995); it does not by itself create enforceable rights. d. False — under section 109 of the Constitution, the Commonwealth law prevails. **Q4.** a. political opinion · b. race · c. none of the five grounds · d. religion. **Q5.** a. International Court of Justice · b. International Criminal Court · c. International Tribunal for the Law of the Sea · d. International Tribunal for the Law of the Sea · e. International Court of Justice · f. International Criminal Court. **Q6.** a. *Children, Youth and Families Act 2005* (Vic), section 10. b. State lawmaking. c. Child protection is an area of lawmaking the Constitution leaves to the states; the Commonwealth legislates where the Constitution gives it power. d. One obligation can be carried into law by whichever level of government holds the power over the subject: the Commonwealth for some areas, the states for others. **Q7–Q10 and Source inquiry:** see the sample responses below.

Sample responses

Q7. At Commonwealth level, the Refugee Convention shaped the *Migration Act 1958* (Cth): section 5H writes the Convention's refugee definition into Australian law and section 36 builds protection obligations into the criteria for a protection visa, so the treaty's words decide real claims. At state level, the Convention on the Rights of the Child tracks through to Victorian lawmaking: section 10 of the *Children, Youth and Families Act 2005* (Vic) makes a child's best interests the paramount consideration in decisions under that Act, reflecting the Convention's requirement that the child's best interests be a primary consideration. Together the examples show that obligations shape lawmaking wherever the relevant lawmaking power sits — Commonwealth or state.

Q8. The claim is largely sound, but with a real limit. Real effect: in *Whaling in the Antarctic* (2014) the ICJ held that Japan's JARPA II permits were not for purposes of scientific research and ordered them revoked — and Japan revoked them, ending the program, even though no police force compelled it. In the *Volga* case (2002), ITLOS ordered Australia to release a detained fishing vessel on security, and Australia complied: the decision constrained a powerful state's own enforcement action. The limit: none of this is automatic. The ICJ refused to hear the *East Timor* case (1995) because Indonesia had not consented, and compliance with any judgment ultimately depends on the willingness of states. So the decisions matter where states have reasons to comply; where they do not, enforcement is weak.

Q9. Sample shape only — your conclusion may differ, and marks go to the reasoning. *Strongest case for always keeping them:* Australia's obligations are ones it freely accepted through its own executive, and keeping them is what makes Australia's word worth anything in the next negotiation; a rules-based order protects a middle-sized trading country far better than rule by the strong; and any obligation can be left through the same formal processes that accepted it, so being bound is not the same as being trapped. *Strongest case for Parliament's final say:* treaties are negotiated by the executive, not drafted by Parliament, and international bodies are not elected by Australians; conditions change, and rules agreed in 1951 cannot foresee everything; on this view, obligations should bind domestically only where Parliament has written them into Australian law — which is exactly the gate Part 2 describes. *Weighing:* a strong response picks the consideration that does the most work — for instance, that the gate already reconciles the two positions, because nothing binds domestically until Parliament enacts it — and defends that choice against the other side's best point.

Q10. Evidence of upholding would include: claims being assessed against the section 5H definition with reasons; refusals being reviewable by the Administrative Review Tribunal and the courts; and no person being removed to a place where the five-ground threat exists. Evidence against would include: measures that risk returning people to persecution without any assessment of their claim — the critics’ argument about turning boats back at sea, described in Part 5. Reasonable observers differ because the words of Article 33 must be applied to facts the treaty never describes — interception at sea — and because “upholding” itself is contested: does it mean the letter of the text as the government reads it, or the protection the text was designed to give, as critics read it? Both readings argue from the same words. Sections 4B and 4E ask you to test these readings against sources.

Source inquiry. a. It forbids a country that has accepted the Convention from expelling or sending back a refugee to any place where the person’s life or freedom would be threatened for one of the five Convention reasons. b. Because section 5H of the *Migration Act* builds the five grounds into Australia’s own refugee definition, a decision-maker cannot grant protection on the definition unless the feared persecution is *for* one of those reasons — the grounds set the boundary of who qualifies. c. They make the duty cover every method of return, not just formal deportation. A country might argue that turning a boat around at sea is not “expel or return” because no one entered its territory; critics answer that the result — people sent back to danger — is exactly what the article targets. The disagreement shows that treaty words have edges, and applying them at a border turns on interpretation of what “return” means in practice. d. Both. The government interprets and applies Article 33 through the *Migration Act* — departmental decisions, and policy such as border measures. But under the Part 4 pathway, those decisions can be reviewed by the Administrative Review Tribunal and the courts, which give the words their authoritative legal meaning in contested cases — as the High Court did in *Plaintiff M70/2011*.

Sources for this section (retrieved 26 August 2026)

- *Convention relating to the Status of Refugees* (1951), Article 1A(2) and Article 33; *Protocol relating to the Status of Refugees* (1967) — United Nations Treaty Collection, treaties.un.org; UNHCR, [unhcr.org](https://www.unhcr.org/).
- *Migration Act 1958* (Cth), sections 5H and 36; *International Criminal Court Act 2002* (Cth); *Criminal Code Act 1995* (Cth), Division 268; *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth); *Seas and Submerged Lands Act 1973* (Cth); *Administrative Review Tribunal Act 2024* (Cth) — [legislation.gov.au](https://www.legislation.gov.au/).
- *Children, Youth and Families Act 2005* (Vic), section 10 — [legislation.vic.gov.au](https://www.legislation.vic.gov.au/).
- *Dietrich v The Queen* (1992) 177 CLR 292; *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273; *Commonwealth v Tasmania* (1983) 158 CLR 1; *Plaintiff M70/2011 v Minister for Immigration and Citizenship* (2011) 245 CLR 61 — [austlii.edu.au](https://www.austlii.edu.au/).
- *Whaling in the Antarctic (Australia v Japan: New Zealand intervening)*, Judgment of 31 March 2014; *Certain Phosphate Lands in Nauru (Nauru v Australia)*, settlement 1993; *East Timor (Portugal v Australia)*, Judgment of 30 June 1995 — International Court of Justice, [icj-cij.org](https://www.icj-cij.org/).
- *Southern Bluefin Tuna Cases (Australia v Japan; New Zealand v Japan)*, Provisional Measures, Order of 27 August 1999; *The “Volga” Case (Russian Federation v Australia)*, Judgment of 23 December 2002 — International Tribunal for the Law of the Sea, [itlos.org](https://www.itlos.org/).
- *Rome Statute of the International Criminal Court* (1998) — [icc-cpi.int](https://www.icc-cpi.int/).
- *United Nations Convention on the Law of the Sea* (1982) — [un.org](https://www.un.org/).
- Australian Treaties Database, Department of Foreign Affairs and Trade — ratification dates for the treaties listed in Part 1 — [treaties.dfat.gov.au](https://www.treaties.dfat.gov.au/).
- Joint Standing Committee on Treaties; Parliamentary Joint Committee on Human Rights — [aph.gov.au](https://www.aph.gov.au/).

Justice in Australia’s legal system, and in one other Asia-Pacific system

Curriculum focus

This section is written to Victorian Curriculum 2.0 Civics and Citizenship, Levels 9 and 10, content description VC2HC10K08.

It draws on three elaborations:

- VC2HC10K08.E01
 - VC2HC10K08.E02
 - VC2HC10K08.E03
-

Teaching sequence

1. What does it mean for a legal system to “provide justice”?

The curriculum asks you to judge how far Australia’s legal systems **provide justice** — but it does not define the word *justice*. So, before you can judge anything, you must state what you mean by the term. In this section, we treat *justice* in a fixed sense: **a legal system provides justice when it protects people’s rights, treats them without bias, applies the same rules to everyone, and makes it possible for everyone to use the law.** Every question in this section can be answered on that definition alone. If you meet a different definition of justice somewhere else, note it — the two definitions may lead to different conclusions, and that difference is worth examining, not hiding.

Notice what kind of term *justice* is. It is not a measurable term like length or mass. It is a **contested** term: reasonable people offer competing definitions, and which definition you choose can change your conclusion. Naming that fact is the first step of honest civic reasoning.

Australia’s legal systems are the institutions and processes that make, apply and enforce the law: parliaments that make laws, police that investigate, courts that hear cases, and the rules that bind them all. Section 2A of this book sets out the court system in detail; here we stand back and **evaluate** the whole system against the principles of justice.

2. The three principles of justice — fairness, equality, access

Australian legal education and the Victorian Curriculum group justice into three connected principles: **fairness, equality and access**. Each is itself a contested term, so each is defined at first use below.

The three principles of justice

How each is defined in this section, and how each protects citizens

FAIRNESS	EQUALITY	ACCESS
What it means Processes are free from bias. Decisions rest on evidence and law, and people are treated according to their circumstances. How it protects citizens - Independent courts - judges cannot be removed over a decision - Open hearings that the public can watch - Presumed innocent until proved guilty (Victorian Charter, s 25) - Appeals let a higher court check for errors	What it means All people have the same standing before the law. The law applies to everyone in the same way, whatever their wealth, job or background. How it protects citizens - Equal protection of the law (Victorian Charter, s 8) - No one is above the law - not even ministers or police - Anti-discrimination laws guard against unfair treatment - Courts adjust processes so people get a truly equal chance	What it means People can understand their legal rights and actually use the courts and legal processes - not just in theory. How it protects citizens - Victoria Legal Aid funds advice and lawyers for people who cannot pay - Duty lawyers give free help at court - Interpreters help people who need them - Courts sit in many locations, with some hearings online

Each principle also builds a fair society: fair processes earn trust, equal rules stop wealth or power buying better treatment, and access makes rights real.

Section 2D · VC2HC10K08.E01

The three principles of justice — fairness, equality, access — with what each means and how each protects citizens

Fairness means that legal processes are free from bias, that decisions are based on evidence and law rather than on who a person is, and that people are treated according to their circumstances. Fairness protects citizens through:

- **Independent courts.** Judges are appointed until a fixed retiring age and cannot be removed just because the government dislikes a decision. This lets courts decide cases without political pressure.
- **Open hearings.** Courts normally sit in public, so the community can see how decisions are made.
- **The presumption of innocence.** A person charged with a crime is presumed innocent until proved guilty according to law. In Victoria this right is written into the Charter of Human Rights and Responsibilities Act 2006 (Vic), section 25.
- **The right to a fair hearing,** protected by section 24 of the same Charter.
- **Appeals.** A person who believes a court made an error can ask a higher court to review the decision.

Fairness contributes to a fair society because people are more likely to accept a decision they disagree with if the process that produced it was free from bias.

Equality means that all people have the same standing before the law: the law applies to everyone in the same way, regardless of their wealth, job, background, beliefs or status. Equality protects citizens through:

- **Equal protection of the law.** Section 8 of the Victorian Charter protects the right to recognition and equality before the law.
- **No one is above the law.** Politicians, police officers, judges and wealthy people can all be charged, tried and punished under the same laws as everyone else.
- **Anti-discrimination laws.** Victorian and Commonwealth laws make it unlawful to treat people worse because of attributes such as sex, race, age or disability.

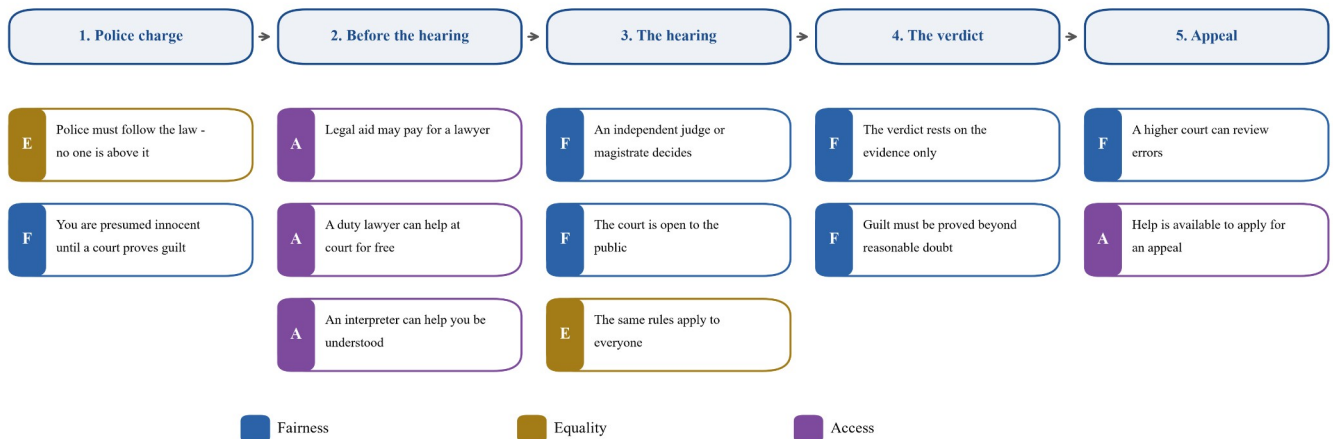
Equality does not mean that every process must look identical. Sometimes a court changes how it works so that different people get a genuinely equal chance — for example, providing an interpreter, or running a hearing in a way a young person can understand. Taking people's different circumstances into account is often what makes the result equal. Equality contributes to a fair society because it stops power or wealth from buying better treatment.

Access means that people can actually understand their legal rights and make use of courts and legal processes — not just in theory, but in practice. Access protects citizens through:

- **Legal aid.** Victoria Legal Aid, governed by the Legal Aid Act 1978 (Vic), provides information, legal advice and representation in criminal, civil, family and youth matters for people who cannot afford a lawyer.
- **Duty lawyers and community legal centres**, which give free help at courts and in local communities.
- **Interpreters**, so people who do not speak English as a first language can understand the proceedings and be understood.
- **Courts in many locations** and, increasingly, online hearings, so distance does not lock people out.

Justice protections at each stage of a criminal matter in Victoria

Each card is tagged with the principle it mainly serves: F = fairness, E = equality, A = access



Section 2D · VC2HC10K08.E01

How fairness, equality and access operate at each stage of a criminal matter in Victoria

Access contributes to a fair society because a right you cannot afford to use, or cannot understand, is not much of a right at all. Access is also the principle most often under strain: lawyers cost money, cases can take a long time, and legal language is hard to understand. In 1992 the High Court of Australia faced this problem directly in *Dietrich v The Queen* [1992] HCA 57; (1992) 177 CLR 292. Mr Dietrich was charged with serious drug offences and could not afford a lawyer. The High Court held that where a person is charged with a serious offence and cannot get legal help through no fault of their own, the court should normally delay the trial until representation is available, because a trial without it may be unfair. The Court did not create a direct right to a government-paid lawyer — but the decision put strong pressure on governments to fund legal aid for serious cases. It is a clear example of the courts identifying a gap in access and acting on it.

3. Two families of legal systems: common law and codified law

Legal systems around the world are grouped into families. The two most important for this comparison are the **common law** family and the **codified** family (often called the civil law family). These are subject terms, defined here:

- **Common law** is a legal system in which law comes from two sources: statutes (laws made by parliament) and the recorded decisions of judges. Under the **doctrine of precedent**, a court must follow the legal rulings of a higher court in the same system when the facts are similar. Australia and New Zealand both inherited common law from Britain.
- A **codified** system gathers its main rules into written **codes** — large, organised statute books made by the legislature. Judges apply the code to the case in front of them. Earlier decisions may guide a judge, but they do not bind lower courts in the same rigid way as precedent does. Thailand and Vietnam both run codified systems.

Common law and codified legal systems compared

COMMON LAW	CODIFIED LAW (civil law family)
Australia · New Zealand	Thailand · Vietnam
Main source of law Statutes made by parliament, plus judge-made precedent	Codes and statutes made by the legislature
Role of judges Interpret statutes and develop the law through their decisions	Apply the code to the case in front of them
Earlier court decisions Lower courts must follow higher courts in the same system - the doctrine of precedent	Guide judges, but rarely bind them in the same rigid way
Court procedure Adversarial: two sides present the case to an independent judge or jury	More inquisitorial features: judges may question witnesses and test the facts themselves
Examples Australia, New Zealand	Thailand, Vietnam

In a codified system the rules often sit in one published code; in a common law system they are spread across statutes and recorded cases.
Section 2D · VC2HC10K08.E03

Common law and codified legal systems compared: sources of law, the role of judges, and the force of earlier decisions

The differences matter for citizens:

Feature	Common law (Australia, New Zealand)	Codified law (Thailand, Vietnam)
Main source of law	Statutes plus judge-made precedent	Codes and statutes made by the legislature
Role of judges	Interpret statutes; develop law through decisions; bound by precedent above them	Apply the code text to the case; earlier decisions guide but rarely bind
Court procedure	Adversarial: two opposing sides present evidence and argument to an independent judge or jury	More inquisitorial features: judges may take an active part in questioning witnesses and finding the facts
Finding the law	You must read statutes and relevant cases	You can often find the rule in one published code

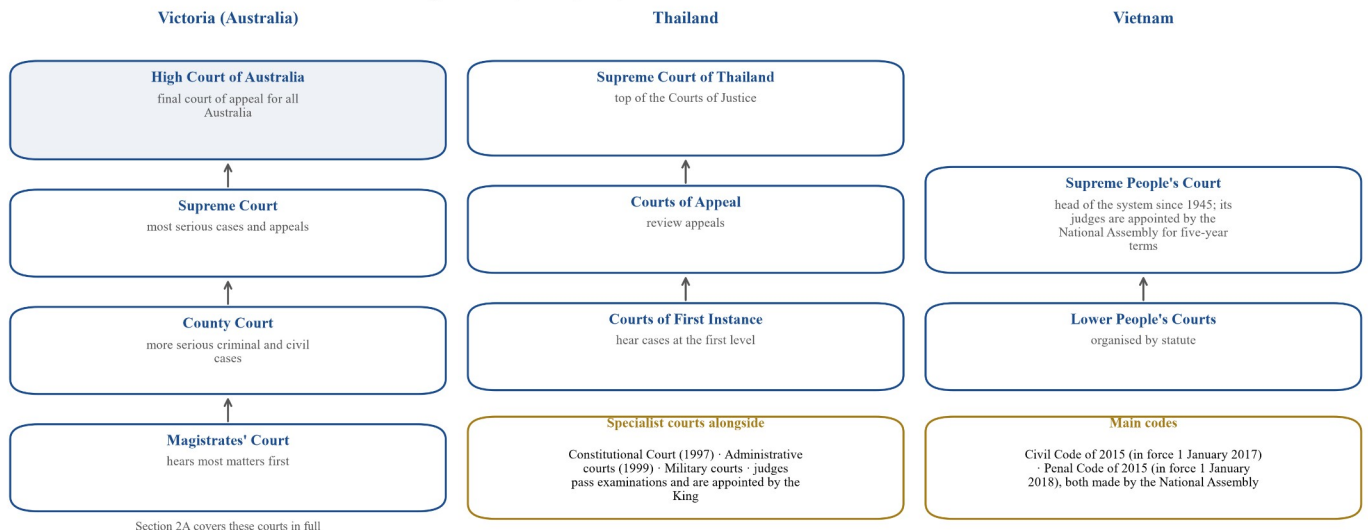
A codified system can make the law easier to look up, because the rules sit in one published text. A common law system lets judges adapt the law case by case as new situations appear — but it means finding the law takes more work, because the rules are spread across statutes and hundreds of years of recorded decisions. Neither family is automatically “more just”: justice depends on how each system is run in practice.

4. Court structures compared: Victoria, Thailand and Vietnam

Every system arranges its courts in a **hierarchy** — a ranked order, with lower courts at the base and a final court at the top. Hierarchies support justice because they give losers at one level somewhere to appeal, and they organise which court hears which matters. Section 2A covers the Australian hierarchies in full; the comparison below summarises them.

Court structures compared: Victoria, Thailand and Vietnam

Appeals move up the tiers; each system also sets out which court hears which matters first



How judges are chosen also differs: Australian judges are appointed after long legal careers; Thai judges pass examinations; Vietnam's top judges need the legislature's approval.

Section 2D · VC2HC10K08.E03

The court hierarchies of Victoria, Thailand and Vietnam compared, showing tiers and specialist courts

- **Victoria (Australia):** the Magistrates' Court hears most matters first; the County Court hears more serious criminal and civil cases; the Supreme Court hears the most serious cases and appeals. The High Court of Australia sits at the top of the whole country's system.
- **Thailand:** the Courts of Justice have three levels — courts of first instance, courts of appeal, and the Supreme Court of Thailand. Separate specialist courts sit alongside: the Constitutional Court (first set up in 1997) decides constitutional questions, administrative courts (created by a 1999 act) decide disputes between people and government agencies, and military courts deal with some military matters. Thai judges must pass judicial examinations and are formally appointed by the King.
- **Vietnam:** the People's Courts are headed by the Supreme People's Court, established on 13 September 1945. Its judges are appointed by the National Assembly on the nomination of the President, for five-year terms. Vietnam's main codes — the Civil Code of 2015 (in force from 1 January 2017) and the Penal Code of 2015 (in force from 1 January 2018) — are made by the National Assembly.

Notice the appointment contrast: Australian judges are chosen after long legal careers and appointed by the Governor-General or state Governor on the advice of government; Thai judges pass examinations; Vietnam's most senior judges need the approval of the legislature. How judges are chosen affects **fairness**: it shapes how independent courts can be from the government of the day.

5. The death penalty across the Asia-Pacific region

A clear point of comparison between legal systems is whether they use the **death penalty** — the execution of a person as punishment for a crime, ordered by a court.

The death penalty across selected Asia-Pacific countries

Statutes as at 2025, using Amnesty International's categories

Abolished for all crimes

Australia	Last execution 1967 · federal law 1973 · last state 1985 · reintroduction banned 2010
New Zealand	Abolished for all crimes in 1989 (last execution 1957)
Philippines	Abolished in 2006
Papua New Guinea	Abolished in 2022

Abolished in practice

South Korea	Keeps the law but has executed no one since 1997
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Retained

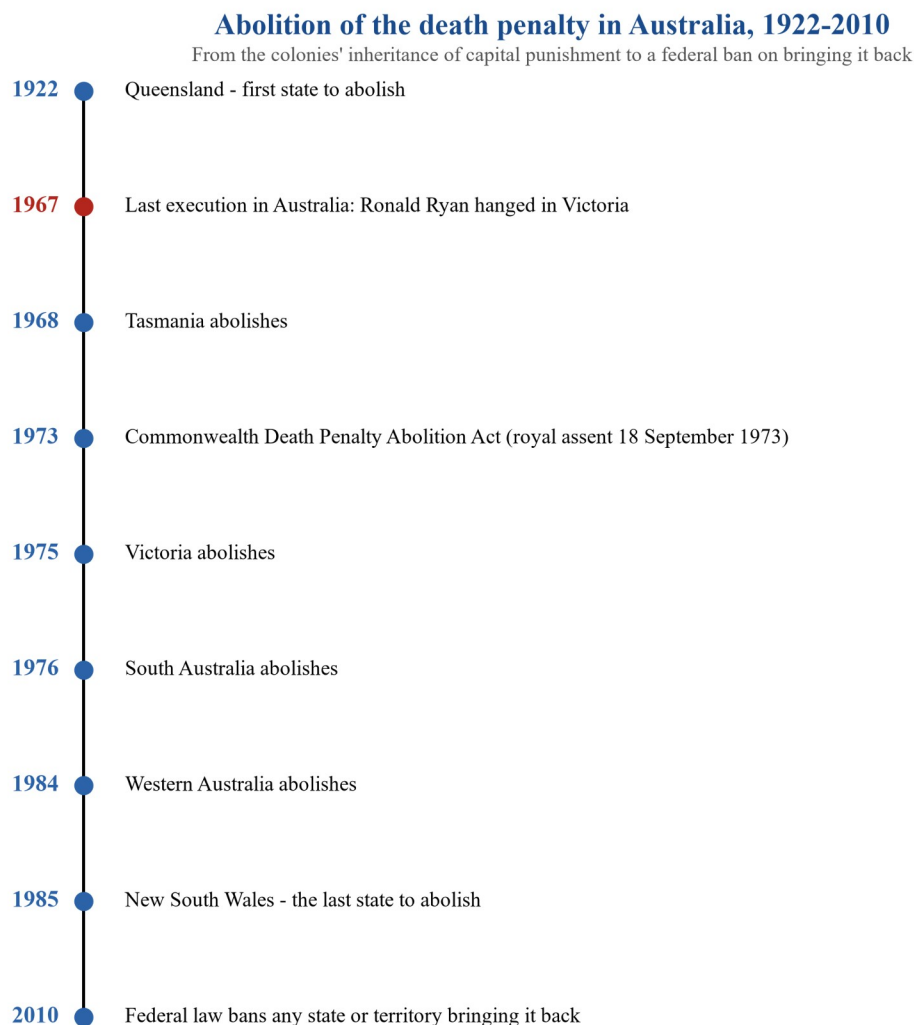
Malaysia	Retains the death penalty
Singapore	Retains the death penalty
Indonesia	Retains the death penalty
Thailand	35 offences · last execution 18 June 2018 · 510 on death row (March 2018)
Vietnam	10 offences after the change of 25 June 2025 · executions by lethal injection
Japan	Retains the death penalty
China	Retains the death penalty

■ Abolished for all crimes
 ■ Abolished in practice
 ■ Retained

Note: 'abolished in practice' means the law still allows the penalty but no executions have been carried out for many years.

The status of the death penalty across selected Asia-Pacific countries: abolished, abolished in practice, or retained

Australia has no death penalty. The last execution in Australia was carried out in Victoria on 3 February 1967, when Ronald Ryan was hanged at Pentridge Prison for the murder of a prison officer. The states and territories abolished capital punishment one by one — Queensland first, in 1922, then Tasmania in 1968, Victoria in 1975, South Australia in 1976, Western Australia in 1984, and New South Wales in 1985, the last state to do so. The Commonwealth abolished the death penalty for its own offences with the Death Penalty Abolition Act 1973, which received royal assent on 18 September 1973. In March 2010 the federal parliament passed laws designed to prevent any state or territory from bringing the death penalty back.



Section 2D · VC2HC10K08.E02

Timeline of the abolition of the death penalty in Australia, 1922 to 2010

Across the Asia-Pacific region today, the picture is mixed:

- **Abolished for all crimes:** New Zealand abolished the death penalty for all crimes with the Abolition of the Death Penalty Act 1989 (its last execution was in 1957). The Philippines abolished it in 2006, and Papua New Guinea in 2022.
- **Abolished in practice:** some countries keep the death penalty in law but have not carried out an execution for many years; South Korea has executed no one since 1997.
- **Retained:** Thailand retains the death penalty for 35 offences, including murder, treason and drug trafficking; its most recent execution, by lethal injection, took place on 18 June 2018 — the first in nine years. Vietnam retained the death penalty for ten offences after changes made on 25 June 2025, having already reduced the number of capital offences in its Penal Code of 2015; executions are carried out by lethal injection. China, Japan, Singapore, Indonesia and Malaysia also retain the death penalty.

Source: country statuses compiled from Amnesty International's abolition/retention categories and national legislation (Death Penalty Abolition Act 1973 (Cth); Abolition of the Death Penalty Act 1989 (NZ)), retrieved 26 August 2026.

Australia's governments have also opposed the death penalty beyond their own borders. In 2015, two Australian citizens — Andrew Chan and Myuran Sukumaran — were executed in Indonesia after drug convictions, despite direct appeals from the Australian Government for their lives to be spared. The Indonesian Government maintained that it had the right to enforce its own laws. The case shows two legal systems reaching opposite answers on the same question, and how one country can try to influence — but not control — another's justice decisions.

6. The debate over the death penalty: two positions at full strength

The death penalty is a live debate in the Asia-Pacific region. A fair study of it requires each position at full strength — the strongest form its own supporters would recognise — before you form your own view.

The case made by supporters of retention. Supporters argue, first, that the death penalty **deters** serious crime: that people are less likely to commit murder or large-scale drug trafficking if the worst penalty is possible. “Deterrence” here is used in a testable sense — the claim is that the penalty causes crime rates to be lower than they would otherwise be. Second, they argue that some crimes are so terrible that death is the only punishment that truly fits — that justice for victims and their families demands it. Third, they argue that execution guarantees the offender can never harm anyone again, and some argue it costs less than keeping someone in prison for life.

The case made by supporters of abolition. Opponents answer each point. On deterrence, they point out that crime rates in countries that abolished the death penalty — including Australia and New Zealand — did not rise as a result, which counts against the deterrence claim. On fit, they argue that a just state must not kill its own people: the right to life is the most basic right of all, and a legal system that takes life copies the very act it punishes. On safety, they argue that life imprisonment achieves the same protection without crossing that line. And they add a point of their own: justice systems are run by humans and can make mistakes, and an execution can never be undone. If even one innocent person is executed, the injustice cannot be repaired. They also point to **access**: in systems where the penalty applies, it tends to fall hardest on people who cannot afford strong legal representation.

Each side can test the other with evidence: deterrence is a factual claim that data can support or fail to support; the right-to-life point and the point that an execution cannot be undone are value claims that citizens must weigh for themselves. This book takes no side. Your task is to know both positions at full strength and to reason between them.

7. Putting it together: evaluating “the extent to which”

The content description asks how far Australia’s legal systems actually deliver justice. “Extent” questions always want a measured judgement — how far something is true, and where it falls short — not a simple yes or no. A strong response:

1. states the criteria (here: fairness, equality, access);
2. gives evidence of how the Australian systems meet each criterion;
3. gives evidence of where they fall short;
4. compares with at least one other Asia-Pacific legal system;

5. reaches a judgement that allows both strengths and limits.

A justice scorecard: Australia and Thailand compared

One student's evaluation - test it: where would you change a rating, and why?

	Australia	Thailand
Fairness	Independent courts · open hearings · presumption of innocence (Charter s 25) · appeal rights · Dietrich v The Queen (1992) shows courts protecting fair trials STRONG	Tiered courts and appeal rights · specialist Constitutional and administrative courts · but the death penalty and military courts raise questions MODERATE
Equality	Charter s 8 protects equality before the law · no one is above the law · anti-discrimination laws STRONG	The codes apply to all people · judges are chosen by central examinations rather than by wealth or family MODERATE
Access	Victoria Legal Aid, duty lawyers and interpreters help · but cost, delay and hard legal language still limit access MODERATE	Published codes make the law easier to find · cost and language barriers still limit access MODERATE

Ratings are judgements, not facts - each rests on the evidence in its cell. Swap a rating only by swapping the evidence.

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A justice scorecard comparing Australia and Thailand across fairness, equality and access

Consider the scorecard above. It is one possible evaluation — not the evaluation. You are invited to test it: where would you change a rating, and what evidence would you give?

Australia's strengths are strongest on fairness and equality: independent courts, the presumption of innocence, appeal rights, equal application of the law, and the abolition of the death penalty, which removes the state's power to take life as punishment. **Australia's limits** cluster around access: legal representation is expensive even with legal aid, cases can move slowly, and legal language is hard for many people to follow.

Thailand's codified system makes the law easier to find in one published text, and its specialist courts give citizens dedicated places to challenge government action — both real supports for access. But Thailand retains the death penalty for 35 offences, which abolitionists argue breaks the right to life and risks irreparable error, and the 2018 resumption of executions drew criticism from human rights bodies around the world. Vietnam has narrowed the death penalty twice — most recently on 25 June 2025 — and bars it for young offenders, pregnant women and several other groups, which shows movement; it retains the penalty even so.

A defensible judgement, then, is that Australia's legal systems provide justice to a high degree on fairness and equality, provide it to a lesser degree on access, and compare favourably on the right-to-life question with systems in the region that retain the penalty — while still having clear, named limits of their own. The worked examples below show how such a judgement is built.

Worked examples

Example 1 — scaffolded

Question. A student says: “My uncle lost his job and was charged with stealing from his employer. He can't afford a lawyer. Doesn't that mean the legal system isn't fair to people without money?” Use the principles of justice to explain how the Victorian legal system responds to this situation, and where its limits lie.

Step	Reasoning	Comment
1. Name the principle most at risk.	The situation is mainly about access : can your uncle actually use the legal	Identify before you explain.

Step	Reasoning	Comment
	system if he cannot pay? Fairness and equality are also engaged, because an unrepresented person is at a disadvantage.	
2. State the protections that apply.	He is presumed innocent until proved guilty (Charter of Human Rights and Responsibilities Act 2006 (Vic), section 25). He can apply to Victoria Legal Aid for a lawyer, and free duty lawyers operate at courts. Interpreters and plain-language help support understanding.	Use real, named institutions.
3. Explain how each protects him.	Legal aid reduces the cost barrier (access); the presumption of innocence means the court judges the evidence, not his poverty (fairness); the same theft law applies to rich and poor alike (equality).	Tie each mechanism to a principle.
4. Acknowledge the limits honestly.	Legal aid is means-tested: he must meet income and other tests, and not everyone qualifies. Hearings can be delayed. If he does not qualify, he must represent himself, and <i>Dietrich v The Queen</i> (1992) shows the courts recognise this can threaten a fair trial in serious matters.	A full-mark answer weighs both sides.
5. Reach a measured judgement.	The system provides real protections for a person without money, so it is not “unfair” by design — but access remains the weakest of the three principles in practice, because free help is limited and the law is hard to use alone.	Judgement, not slogan.

Example 2 — model extended response

Question. Evaluate how far Australia’s legal system delivers justice, comparing it with Thailand’s legal system. Use the principles of justice in your answer.

Model response. Australia’s legal system provides justice to a high degree on fairness and equality, and to a lesser degree on access; compared with Thailand, Australia also provides stronger protection of the right to life. On **fairness**, Australia’s courts are independent, hearings are open, the accused is presumed innocent under section 25 of the Victorian Charter of Human Rights and Responsibilities, and appeals let higher courts correct errors — the decision in *Dietrich v The Queen* (1992) shows the courts acting to protect fair trials when legal help is missing. Thailand’s Courts of Justice also sit in tiers with appeal rights, and its specialist Constitutional and administrative courts give people dedicated ways to challenge government action, which is a genuine fairness strength. On **equality**, both systems apply their laws to all people within them, and Thailand’s codified law has one clear advantage: its main rules are gathered into published codes, such as the Penal Code, which makes the law easier for citizens to find. On **access**, Australia funds legal aid through bodies such as Victoria Legal Aid, but cost and delay still limit access; Thailand’s codified codes help access to information, while language and cost barriers affect both countries. The biggest difference is the **death penalty**: Thailand retains it for 35 offences and resumed executions on 18 June 2018, while Australia abolished it everywhere by 1985 and passed federal laws in 2010 to prevent its return. Because the death

penalty cannot be undone if a mistake is made, abolitionists argue that this difference goes to the heart of justice itself. On balance, Australia's system provides justice to a greater extent overall, but its record on access — cost, delay, and the complexity of legal language — shows that even a strong system has limits that citizens have good reason to monitor.

Anatomy of an 'extent to which' response

Four parts, each doing its own job

THESIS - state a measured claim

Australia provides justice to a high degree on fairness and equality, and to a lesser degree on access.

EVIDENCE - back the claim with named laws, courts and cases

The presumption of innocence (Charter s 25), appeal rights, Dietrich v The Queen (1992), Victoria Legal Aid.

COMPARE AND COUNTERPOINT - bring in the other system and the other side

Thailand's published codes help people find the law, and its specialist courts are a fairness strength; but Thailand retains the death penalty for 35 offences.

JUDGEMENT - close with a view that keeps both strengths and limits

On balance, Australia's system provides justice to a greater extent overall, though cost and delay still limit access.

Every part earns marks; a bare yes-or-no answer does not.

Model text adapted from Worked Example 2, Section 2D

An annotated model paragraph for an "extent to which" evaluation, showing thesis, evidence, counterpoint and judgement

Practice questions

Scaffolded

Q1. Copy and complete the table. For each principle of justice, write its meaning in your own words and one real Victorian or Australian mechanism that protects it.

Principle	Meaning (your own words)	One mechanism that protects it
Fairness		
Equality		
Access		

Q2. Each scenario below engages mainly one principle of justice. Name the principle and give one reason.

- (a) A court provides an interpreter for a witness who does not speak English.
- (b) A minister is charged with fraud and faces the same court process as any other citizen.
- (c) A judge decides a case using only the evidence presented, ignoring a media campaign about the accused.

Q3. Put these events in order (1–6), then answer the question.

- New South Wales abolishes the death penalty for all crimes.
- Ronald Ryan, the last person executed in Australia, is hanged in Victoria.
- The Commonwealth passes the Death Penalty Abolition Act.
- Queensland becomes the first state to abolish the death penalty for ordinary crimes.
- Federal parliament passes laws to stop any state or territory reintroducing the death penalty.
- Victoria abolishes the death penalty.

Which event shows that the **Commonwealth**, not just the states, was involved in abolition?

Q4. Copy and complete the comparison table, then write one sentence on what the difference in the first row means for a citizen looking for the law.

Feature	Common law (Australia)	Codified law (Thailand)
Main source of law		
Do earlier court decisions bind lower courts?		
One court feature		

Q5. About *Dietrich v The Queen* (1992):

- What problem did Mr Dietrich face?
- What did the High Court decide courts should normally do in such a situation?
- Which principle of justice is the case mainly about — fairness, equality or access? Give one reason for your choice.

Q6. Complete this evaluation starter about the death penalty in the Asia-Pacific region, then add one more sentence of your own:

“The death penalty is retained in several Asia-Pacific legal systems, such as Supporters argue Opponents answer In my view the stronger argument is ... because”

Un scaffolded

Q7. Explain how each of the three principles of justice — fairness, equality, access — works to protect Australian citizens, and how each contributes to a fair society. In your answer, name at least one real institution or law for each principle.

Q8. Compare the common law system of Australia with the codified system of Vietnam. Identify two key differences between the systems and explain what each difference means in practice for a person dealing with the law.

Q9. “The death penalty has no place in a just legal system.” Evaluate this claim. Present the strongest form of the case for keeping the death penalty and the strongest form of the case for abolishing it, then give a reasoned judgement of your own. (Note: marks are awarded for the quality of your reasoning — terms defined, assumptions made visible, evidence used, limits acknowledged — not for which side you reach.)

Q10. Evaluate how far Australia’s legal systems provide **access** to justice. Give two strengths and two limits, each supported by a real example, and reach a judgement.

Source inquiry task

Read the two sources, then answer the questions.

Source A — extract from the Death Penalty Abolition Act 1973 (Commonwealth)

The long title of the Act is “An Act to abolish Capital Punishment”. The Act, which received royal assent on 18 September 1973, removed the death penalty for offences under Commonwealth law and the law of the territories. Section 4 states:

A person is not liable to the punishment of death for any offence.

Source B — a fact card: executions resume in Thailand

On 18 June 2018, Thailand carried out its first execution in nine years, putting a 26-year-old man to death by lethal injection for a robbery in which a person was killed. Thai authorities stated that the death penalty was needed to protect the safety of the community and deter serious crime. Amnesty International, which opposes the death penalty in all cases, condemned the execution. As at March 2018, 510 people were on death row in Thailand.

Sources: Death Penalty Abolition Act 1973 (Cth), Act No. 100 of 1973; Thai execution reported by Amnesty International and international press, 18 June 2018; death-row figure as at March 2018. Retrieved 26 August 2026.

Questions.

- (a) According to Source A, what is the legal effect of the Act? (2 marks)
 - (b) Source A is not just a rule; it rests on an assumption about punishment and the state. State one assumption that Source A appears to rest on. (2 marks)
 - (c) According to Source B, what reason did Thai authorities give for the execution? What kind of claim is this — a value claim, or a factual claim that could be tested with evidence? (3 marks)
 - (d) The deterrence claim is testable. Describe one kind of evidence that could test whether the death penalty deters serious crime, and one reason that testing it is difficult. (4 marks)
 - (e) Weigh the two sources: which presents the stronger case, and why? In your answer, say what the other source gets right as well. Marks are awarded for the reasoning steps you show — assumptions surfaced, evidence used, limits acknowledged — not for the conclusion you reach. (6 marks)
-

Answers

Q1. Sample completion: Fairness — processes free from bias, decisions based on evidence; protected by independent courts, open hearings, appeal rights, the presumption of innocence (Charter of Human Rights and Responsibilities Act 2006 (Vic), s 25). Equality — the law applies to everyone the same way regardless of wealth or status; protected by s 8 of the Victorian Charter and anti-discrimination laws. Access — people can understand and use the law in practice; protected by Victoria Legal Aid (Legal Aid Act 1978 (Vic)), duty lawyers, interpreters.

Q2. (a) Access (and fairness): the interpreter removes a language barrier so the witness can actually take part. (b) Equality: status does not shield a person from the law. (c) Fairness: the decision rests on evidence, not outside pressure.

Q3. Order: Queensland (1, 1922); Ronald Ryan executed (2, 1967); Commonwealth Act (3, 1973); Victoria abolishes (4, 1975); NSW abolishes for all crimes (5, 1985); federal reintroduction ban (6, 2010). The event showing Commonwealth involvement is the passing of the Death Penalty Abolition Act 1973.

Q4. Main source of law: statutes plus judge-made precedent (Australia); codes and statutes made by the legislature (Thailand). Earlier decisions: bind lower courts through the doctrine of precedent (Australia); guide but rarely bind (Thailand). One court feature: adversarial hearings with independent judges (Australia); specialist Constitutional and administrative courts (Thailand). Sample sentence: a citizen in Thailand can often find the rule in one published code, while an Australian must read both the statute and the cases that interpret it.

Q5. (a) Charged with serious offences and unable to afford legal representation through no fault of his own. (b) The High Court held that courts should normally grant an adjournment or stay until representation is available, since an unrepresented trial in a serious matter may be unfair. (c) Mainly access (with fairness): the case is about whether a person can actually get the legal help needed for a fair trial. Credit access or fairness with a sound reason.

Q6. Sample: “The death penalty is retained in several Asia-Pacific legal systems, such as Thailand, Vietnam, Singapore and Japan. Supporters argue it deters serious crime and delivers fitting punishment. Opponents answer that it violates the right to life, cannot be undone if a mistake is made, and that abolition has not raised crime rates in countries like Australia. In my view the stronger argument is ... because” Award marks for named systems, both positions at strength, and a reasoned personal judgement.

Q7. Award: a clear meaning for each principle; a named institution or law for each (e.g. independent courts and Charter s 25 for fairness; Charter s 8 and anti-discrimination laws for equality; Victoria Legal Aid and interpreters for access); an explicit link from each to how it protects citizens and contributes to a fair society.

Q8. Award two correct differences with consequences. Sample differences: (1) sources of law — Australia’s law is statutes plus binding precedent; Vietnam’s rules sit in codes made by the National Assembly (Civil Code of 2015, Penal Code of 2015), so a Vietnamese citizen can often locate the rule in one text; (2) procedure — Australia’s adversarial hearings put the case in the hands of the two sides before an independent judge or jury, while Vietnam’s more inquisitorial procedure gives judges an active role in questioning; consequence: the experience of being heard, and who tests the evidence, differs between the systems.

Q9. Award the reasoning steps, whichever conclusion is reached: the retentionist position at strength (deterrence as a testable claim; fitting punishment; permanent protection of the community); the abolitionist position at strength (right to life; irreversibility of error; abolition not followed by rising crime in Australia and New Zealand; access concerns about who bears the penalty); assumptions surfaced (e.g. deterrence assumes people weigh consequences); a judgement that follows from the student’s defined terms and evidence.

Q10. Award two supported strengths (Victoria Legal Aid; duty lawyers/community legal centres; interpreters; courts in many locations and online hearings) and two supported limits (cost of private representation; delays; complexity of legal language; means tests limiting who qualifies for aid); a judgement that measures the limits against the strengths.

Source inquiry. (a) No person can be lawfully put to death as punishment for an offence under Commonwealth and territory law. (b) Sample assumptions: the state should not take life as punishment; or: punishment can be just without death; or: the risk of executing an innocent person is too great. Any one, clearly stated. (c) Authorities said the execution was needed to protect community safety and deter serious crime; the deterrence part is a factual claim that evidence could test (the safety part also rests on it). (d) Sample evidence: comparing serious-crime rates before and

after abolition, or between similar countries with and without the penalty. Difficulty: crime rates are affected by many other factors — policing, poverty, drug markets — so isolating the effect of the penalty is hard. (e) Full marks require: a stated choice with reasons; fair treatment of what the other source gets right (e.g. Source B raises a genuine community-safety concern; Source A states a clear, checkable legal protection); acknowledgment of limits (e.g. Source A does not itself prove crime will not rise; Source B's deterrence claim is not backed by data in the card). Reasoning marks, not conclusion marks.