

Civics and Citizenship Level 9

Chapter 2 — Laws and citizens

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Australia's court system: jurisdictions, the operation of courts and tribunals, and trials

In Levels 7–8 you met the idea that parliaments make laws and courts apply them; this section goes inside the courts themselves to see who does what, and why. This section describes the law in general terms for classroom study; it is not legal advice.

Curriculum — VC2HC10K05

- VC2HC10K05.E01
- VC2HC10K05.E02 (*in part — the example named in this elaboration is not studied in this book; see the scope note below*)
- VC2HC10K05.E03
- VC2HC10K05.E04

A note on this book's scope: the example named in elaboration .E02 is not studied in this book. Everything else in .E02 — how Victoria's and Australia's courts are organised, what each court has power to hear, and where each sits in the hierarchy — is covered in Parts 2 and 3 below.

Theory

Part 1 — What courts and tribunals are for

When people or the state disagree about the law, something has to settle the disagreement peacefully. That is the job of courts and tribunals. A **court** applies the law to (i) hear criminal cases brought by the state against a person, and (ii) resolve civil disputes between people or organisations. A **tribunal** is a similar body that resolves certain disputes — often between a citizen and the government, or about tenancy, consumer or planning matters — in a less formal way than a court. Tribunals are not courts: they are set up by their own Acts of Parliament, and their decisions can usually be reviewed by a court on questions of law.

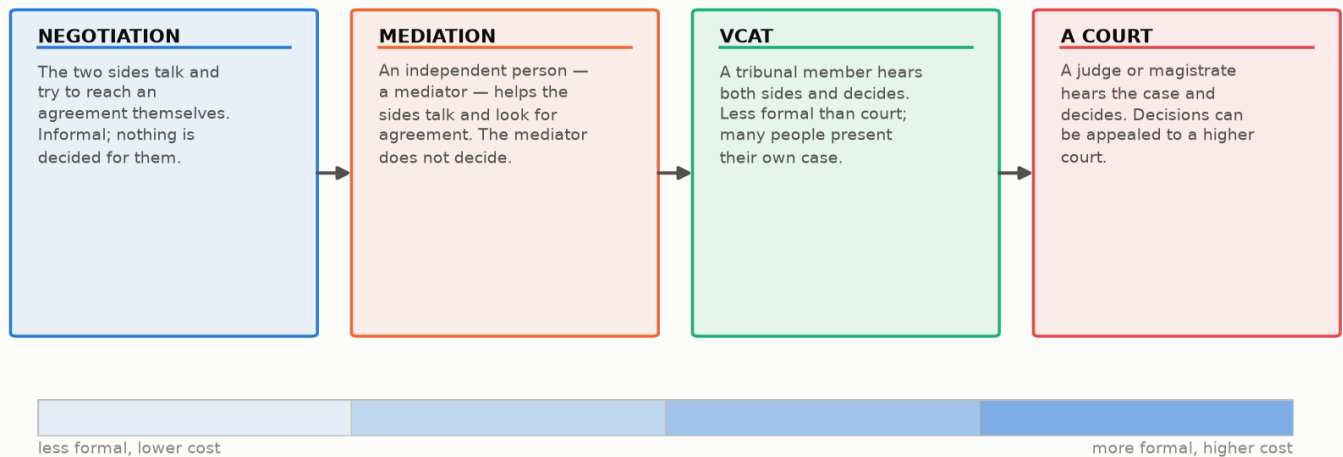
Key term — jurisdiction: the kinds of cases a court or tribunal has the power to hear, and the things it can order. Each court's jurisdiction is fixed by an Act of Parliament, so the first question in any case is always: *which body has the power to hear this?*

Key term — hierarchy: the ordered ladder of courts, from the busiest first level up to the top. The hierarchy matters for two reasons: more serious matters start higher up, and a decision can usually be **appealed** (asked to be reviewed) by the court above.

Most disputes never reach a courtroom at all. The diagram below shows the usual order of paths for a civil dispute: the two sides first try to agree, then may use a helper, then a tribunal, and only then a court.

Paths to resolving a civil dispute

Many disputes never need a courtroom



Many civil disputes settle before they reach a tribunal or a court. Mediation services and VCAT both sit in Victoria's dispute resolution system.

Figure 1 — Four panels in a row joined by arrows: Negotiation (the two sides talk and try to agree themselves), Mediation (an independent mediator helps the sides look for agreement but does not decide), VCAT (a tribunal member hears both sides and decides, less formally than a court), and A Court (a judge or magistrate decides and decisions can be appealed). A shading strip below runs from 'less formal, lower cost' to 'more formal, higher cost'.

Part 2 — The Victorian court system

Victoria's courts form a three-step hierarchy, with two specialist courts and one tribunal alongside it.

Victoria's court hierarchy

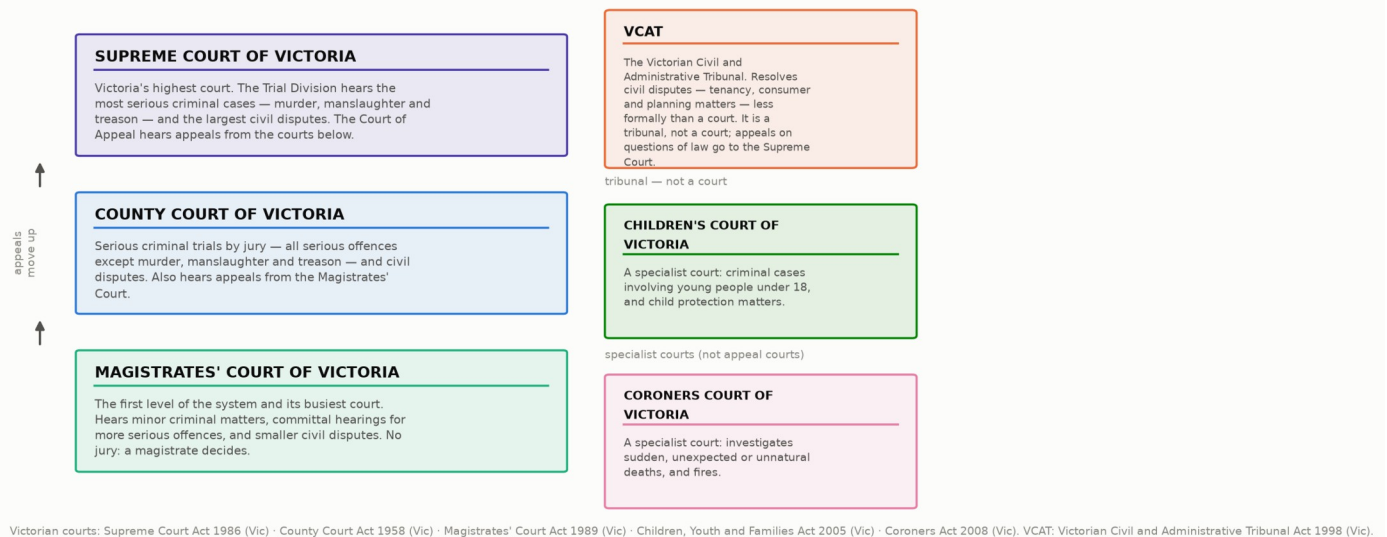


Figure 2 — Diagram of Victoria's court hierarchy. Left ladder, bottom to top: Magistrates' Court of Victoria (first level; minor criminal matters, committal hearings, smaller civil disputes; no jury), County Court of Victoria (serious criminal trials by jury except murder, manslaughter and treason; civil disputes; appeals from the Magistrates' Court), Supreme Court of Victoria (most serious criminal cases and largest civil disputes; Court of Appeal hears appeals). Arrows show appeals moving up. Right column: VCAT, labelled 'tribunal — not a court', and the specialist Children's Court and Coroners Court, labelled 'specialist courts (not appeal courts)'. Footer lists the Acts that set up each body.

Read the diagram from the bottom. The **Magistrates' Court** is the front door of the system: it hears minor criminal matters and smaller civil disputes, and it holds **committal hearings** — a check on whether there is enough evidence for a serious case to go to trial in a higher court. A magistrate decides these cases alone; there is no jury at this level. The **County Court** hears serious criminal trials before a jury and larger civil disputes. The **Supreme Court** sits at the top: its Trial Division hears the most serious criminal cases — murder, manslaughter and treason — and the largest civil disputes, and its **Court of Appeal** hears appeals from the courts below. Alongside the ladder sit the specialist **Children's Court** (criminal cases involving people under 18, and child protection matters) and the **Coroners Court** (which investigates sudden, unexpected or unnatural deaths and fires), and **VCAT**, the tribunal that resolves many everyday civil disputes.

Key term — adversarial system: Australia's courts run on an adversarial model: the two sides put their own case and test the other side's case by questioning, while the judge stays impartial and decides the law. This contrasts with inquisitorial systems used in some other countries, where the court itself leads the investigation. (The label 'adversarial' describes how the system works; it is not a claim that it is the only fair design — see the source task for a debate about one of its features.)

Part 3 — The federal courts, and the High Court above them all

Australia also has federal courts, created under the Constitution for matters arising under Commonwealth law.

Australia's federal courts

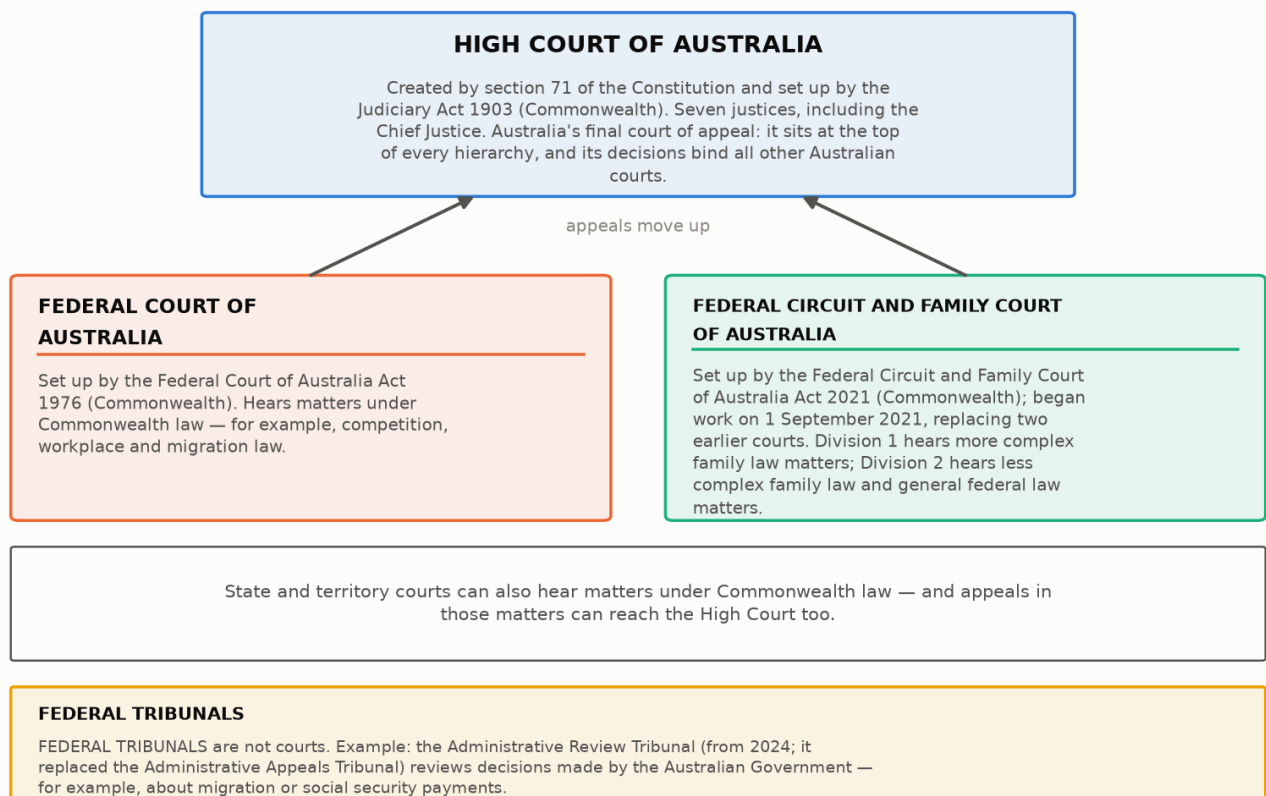


Figure 3 — Diagram of Australia's federal courts. At the top, the High Court of Australia: created by section 71 of the Constitution and set up by the Judiciary Act 1903 (Commonwealth); seven justices; Australia's final court of appeal, binding all other Australian courts. Below it, two courts with appeal arrows pointing up: the Federal Court of Australia (Commonwealth law matters such as competition, workplace and migration law) and the Federal Circuit and Family Court of Australia (Division 1 for more complex family law matters; Division 2 for less complex family law and general federal law matters). A wide panel notes that state and territory courts can also hear Commonwealth law matters, with appeals reaching the High Court. A bottom panel notes that federal tribunals are not courts, giving the example of the Administrative Review Tribunal (from 2024), which reviews Australian Government decisions such as migration or social security decisions.

The **High Court of Australia** is the keystone of the whole system. Section 71 of the Australian Constitution creates it, and the *Judiciary Act 1903* (Commonwealth) set it up. It has seven judges, called justices, including the Chief Justice.

The High Court has two great jobs: it hears cases at first instance under the Constitution, and it is **Australia's final court of appeal** — appeals from every state and territory hierarchy, and from the federal courts, end there. Since the *Australia Acts 1986*, no Australian case can be appealed to the Privy Council in London; the High Court's word is final. Because it sits above every hierarchy, one High Court decision sets the law for the whole country.

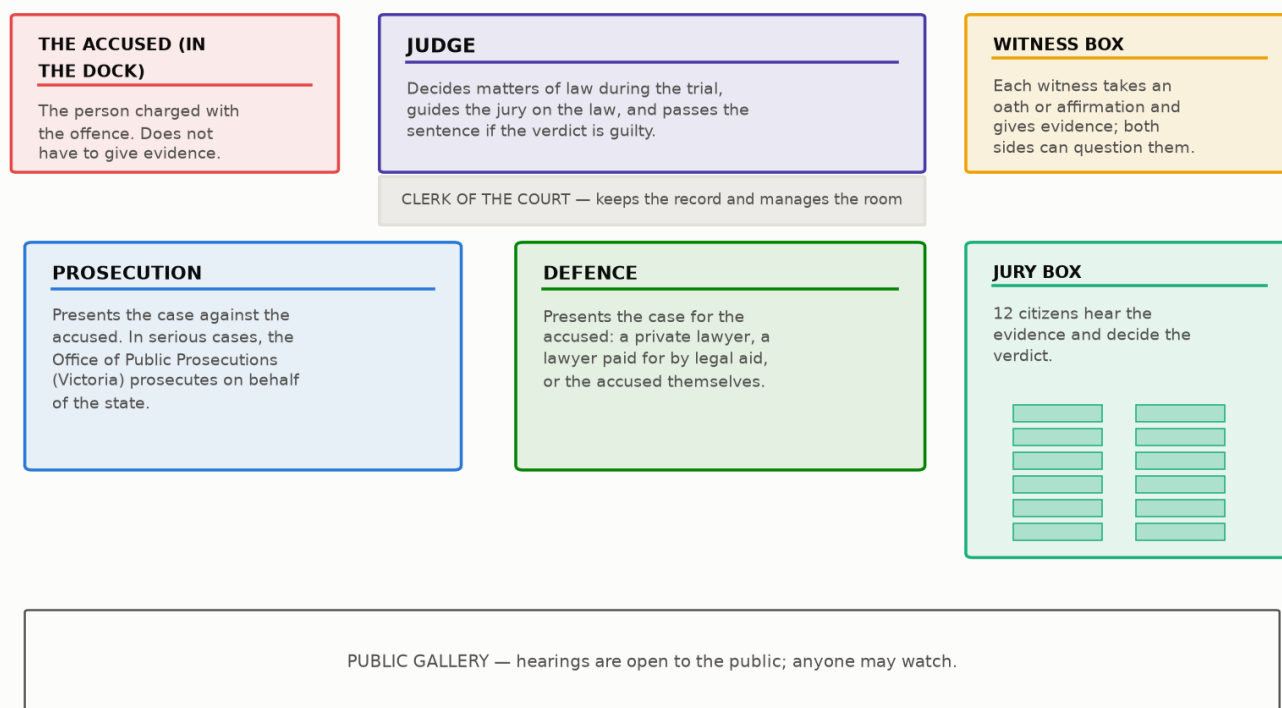
Below the High Court sit the **Federal Court of Australia** (set up by the *Federal Court of Australia Act 1976* (Commonwealth)) and the **Federal Circuit and Family Court of Australia** (set up by the *Federal Circuit and Family Court of Australia Act 2021* (Commonwealth), which began work on 1 September 2021, replacing two earlier courts). State courts also hear many matters under Commonwealth law — for example, a Victorian court can hear a Commonwealth criminal offence — and appeals in those matters travel up to the High Court too. Federal **tribunals** sit alongside the courts but are not courts: the **Administrative Review Tribunal**, set up by the *Administrative Review Tribunal Act 2024* (Commonwealth), reviews decisions made by the Australian Government, such as migration and social security decisions.

Part 4 — Inside a trial: who does what

A courtroom is a machine with a job for every person in it. The diagram below shows a criminal trial with a jury in the County or Supreme Court.

A criminal courtroom in Victoria — who sits where

Real rooms vary; this plan shows each role's usual place.



In this diagram the judge sits in the County Court or the Supreme Court. In the Magistrates' Court, a magistrate decides the case alone.

Figure 4 — Floor plan of a Victorian criminal courtroom. At the top: the accused in the dock (the person charged; does not have to give evidence), the judge (decides matters of law, guides the jury, passes sentence if the verdict is guilty), and the witness box (each witness takes an oath or affirmation and gives evidence; both sides can question them). Below the judge, the clerk of the court keeps the record. Middle row: the prosecution (presents the case against the accused; in serious cases the Office of Public Prosecutions (Victoria) prosecutes on behalf of the state), the defence (a private lawyer, a legal aid lawyer, or the accused themselves), and the jury box with twelve seats (twelve citizens hear the evidence and decide the verdict). At the bottom, the public gallery: hearings are open to the public. Footer notes that in the Magistrates' Court a magistrate decides the case alone.

The **judge** (or, in the Magistrates' Court, the **magistrate**) is the referee on the law: they decide what evidence the jury may hear, explain the law to the jury at the end, and, if the verdict is guilty, choose the sentence. The **jury** — 12 ordinary citizens under the *Juries Act 2000* (Vic) in Victoria — is the referee on the facts: they hear the evidence and decide the verdict. The **prosecution** presents the case against the accused; for serious crimes in Victoria this is done

by the Office of Public Prosecutions on behalf of the state, which is why criminal case names read *R v Accused* (R = Rex, the Latin for king, standing for the Crown). The **defence** answers the case. Witnesses give evidence from the witness box after taking an **oath** or **affirmation** to tell the truth, and each side may question the other side's witnesses. The **clerk** keeps the record, and the **public gallery** is there because of a basic rule of the system: justice should be done in the open, where anyone can watch.

Part 5 — Two kinds of law: criminal and civil

Almost everything courts do falls into one of two streams. **Criminal law** is about wrongs against the community: the state prosecutes a person for breaking a criminal law, and the point is to punish offending and protect the community. **Civil law** is about disputes between people or organisations — a broken contract, a harm caused carelessly — and the point is to resolve the dispute and put right the harm, usually with compensation (also called **damages**) or an order such as an **injunction** (a court order to do something, or to stop doing something).

Criminal and civil law compared

FEATURE	CRIMINAL LAW	CIVIL LAW
Who brings the case	The prosecution, on behalf of the state — case names read R v the accused (R = Rex, the King).	A person or organisation with a claim, bringing the case against another person or organisation.
What it is for	To punish offending and protect the community.	To resolve the dispute and put right the harm done.
Standard of proof	Beyond reasonable doubt (Figure 6).	On the balance of probabilities (Figure 6).
If the case is made out	Conviction and a sentence: a fine, a community-based order, or imprisonment.	Orders: compensation (damages), or an order to do or stop doing something.
Real cases in this section	He Kaw Teh v The Queen (1985) — Worked Example 1.	Donoghue v Stevenson (1932); Grant v Australian Knitting Mills Limited (1936) — Worked Example 2.

One event can lead to both kinds of case: the same act can be a crime (the state prosecutes) and a civil wrong (the harmed person claims compensation).

Figure 5 — Comparison table of criminal and civil law. Who brings the case: criminal — the prosecution on behalf of the state, case names read R v the accused; civil — a person or organisation with a claim. What it is for: criminal — to punish offending and protect the community; civil — to resolve the dispute and put right the harm. Standard of proof: criminal — beyond reasonable doubt; civil — on the balance of probabilities. If the case is made out: criminal — conviction and a sentence (fine, community-based order, or imprisonment); civil — orders such as compensation or an order to do or stop doing something. Real cases: He Kaw Teh v The Queen (1985) and Donoghue v Stevenson (1932) / Grant v Australian Knitting Mills Limited (1936). Footer: one event can lead to both kinds of case.

The two streams ask for different levels of certainty, called the **standard of proof**. Because a criminal conviction can take away a person's liberty, the prosecution must prove guilt **beyond reasonable doubt**: after weighing the evidence, the jury must be sure. A civil case only needs to be proved **on the balance of probabilities**: the decision-maker must find the claim more likely true than not.

Two standards of proof

How sure the decision-maker must be before a case succeeds

BEYOND REASONABLE DOUBT

Criminal cases

After weighing all the evidence, the jury (or magistrate) must be sure of guilt. If a reasonable doubt remains, the verdict is not guilty.

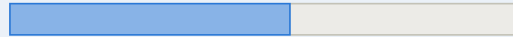


how sure the decision-maker must be

ON THE BALANCE OF PROBABILITIES

Civil cases

The decision-maker must find the claim more likely true than not — the more-probable-than-not test.



how sure the decision-maker must be

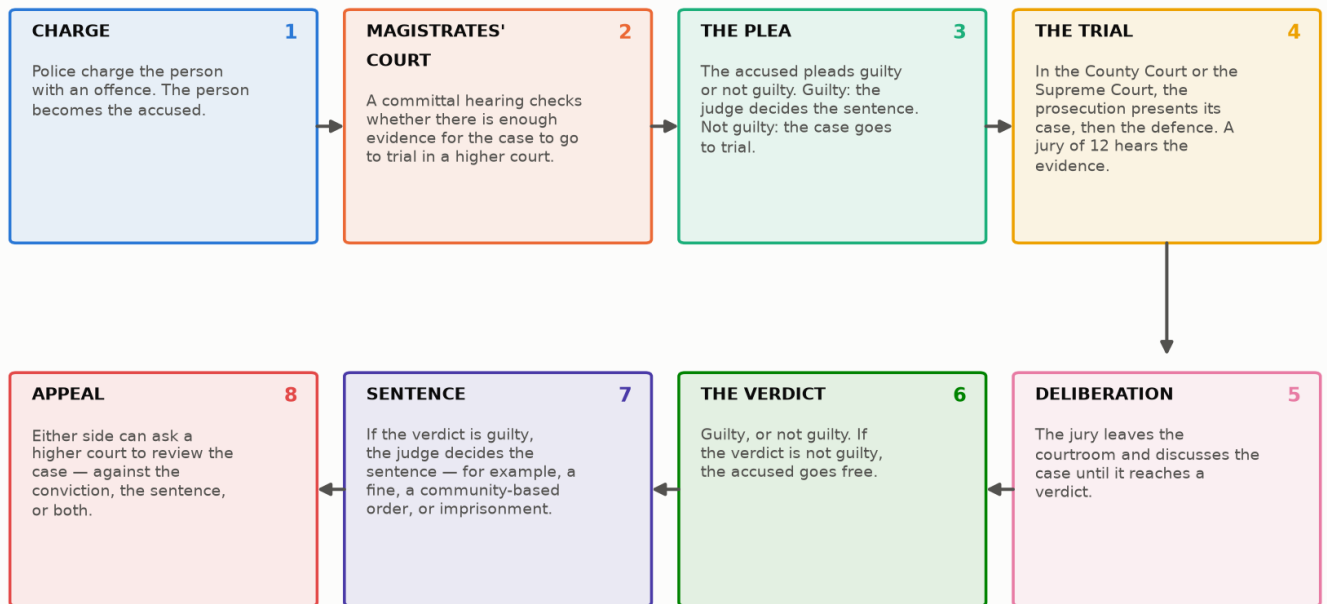
The criminal standard is higher because so much is at stake: liberty, and a criminal record. No percentages are fixed by law — the bar is a picture of the idea, not a number.

Figure 6 — Two side-by-side cards. Left, in red: ‘Beyond reasonable doubt — criminal cases: after weighing all the evidence, the jury (or magistrate) must be sure of guilt; if a reasonable doubt remains, the verdict is not guilty’, with a near-full certainty bar. Right, in blue: ‘On the balance of probabilities — civil cases: the decision-maker must find the claim more likely true than not’, with a just-over-half certainty bar. Footer: the criminal standard is higher because so much is at stake; no percentages are fixed by law — the bar is a picture of the idea, not a number.

Part 6 — The path of a criminal case, and the rights in it

A serious criminal case in Victoria moves through a fixed sequence of stages, each with its own job.

The path of a serious criminal case in Victoria



Summary (minor) offences stay in the Magistrates' Court: a magistrate hears and decides them — no committal and no jury.

*Figure 7 — Eight-step snake flow of a serious criminal case in Victoria: 1 Charge (police charge the person, who becomes the accused); 2 Magistrates' Court (a committal hearing checks whether there is enough evidence for trial in a higher court); 3 The plea (guilty or not guilty; guilty means the judge decides the sentence, not guilty means trial); 4 The trial (County or Supreme Court; prosecution presents its case, then the defence; a jury of 12 hears the evidence); 5 Deliberation (the jury discusses the case until it reaches a verdict); 6 The verdict (guilty or not guilty; not guilty means the accused goes free); 7 Sentence (if guilty, the judge decides — for example a fine, a community-based order, or imprisonment); 8 Appeal (either side can ask a higher court to review the conviction, the sentence, or both).
Footer: summary (minor) offences stay in the Magistrates' Court with no committal and no jury.*

At sentencing, the judge weighs several purposes — punishment, protecting the community, **deterrence** (discouraging the offender and others from offending), and **rehabilitation** (helping the offender turn their life around). People disagree about which purpose should weigh most; that disagreement is part of civic life, and one branch of it is tested in Question 8.

A criminal case is a fight between the state and the accused, but it carries rights for both the accused and victims of crime.

Rights of accused people, and rights of victims



A victim is not a party to a criminal case — the prosecution brings the case on behalf of the state. Section 2B looks further at how rights like these are protected in Victoria.

Figure 8 — Two panels. Left, 'The rights of the accused': presumed innocent until the prosecution proves guilt; a fair and public hearing before an independent court; the right to a lawyer; the right to silence — no one has to give evidence against themselves; trial by jury for serious Commonwealth offences (Australian Constitution, section 80 — see Source A); the right to appeal against a conviction or a sentence. Right, 'The rights of victims': to be treated with respect by police, prosecutors and courts (Victims' Charter Act 2006 (Vic)); to be kept informed about the investigation and the trial (Victims' Charter Act 2006 (Vic)); to make a victim impact statement to the court at sentencing (Sentencing Act 1991 (Vic)); special arrangements for giving evidence are available for vulnerable witnesses. Footer: a victim is not a party to a criminal case — the prosecution brings the case on behalf of the state.

The jury right for serious Commonwealth offences sits in the Constitution itself. Read it in Source A below; the source task at the end of this section asks you to work with it.

Source A — Section 80 of the Australian Constitution

“

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

In short words: when the Commonwealth prosecutes a serious offence and the case goes to trial, the trial must be before a jury — citizens who decide the verdict.

Australian Constitution, section 80 (in force from 1 January 1901).

Figure 9 — Source A — Section 80 of the Australian Constitution: the section's exact words are quoted inside the figure, with a plain-words gloss below reading that when the Commonwealth prosecutes a serious offence and the case goes to trial, the trial must be before a jury — citizens who decide the verdict. Footer: Australian Constitution, section 80 (in force from 1 January 1901).

Part 7 — How judgements develop law

Parliament makes statutes, but statutes are only words on a page until a court applies them to real facts. Two ideas explain how judgements build law.

Statutory interpretation is the work of deciding what a statute's words mean in a real case. Words are never perfect: sooner or later a case arrives that Parliament did not picture, and the court has to decide whether the words cover it. In doing so, the court fixes the working meaning of the law — until Parliament amends the statute or a higher court reads it differently.

Precedent (the doctrine of precedent) is the rule that a court must follow the decisions of the courts above it in its hierarchy. A decision of a higher court is **binding** on the courts below; decisions of courts at the same level or in another hierarchy may be **persuasive** — worth following, but not required. Because of this, one careful judgement at the top can settle the meaning of a law for every court under it. And where a statute and the common law (the law made by judgements) disagree, the statute prevails, because Parliament is supreme within its powers.

How judgements develop law — the doctrine of precedent

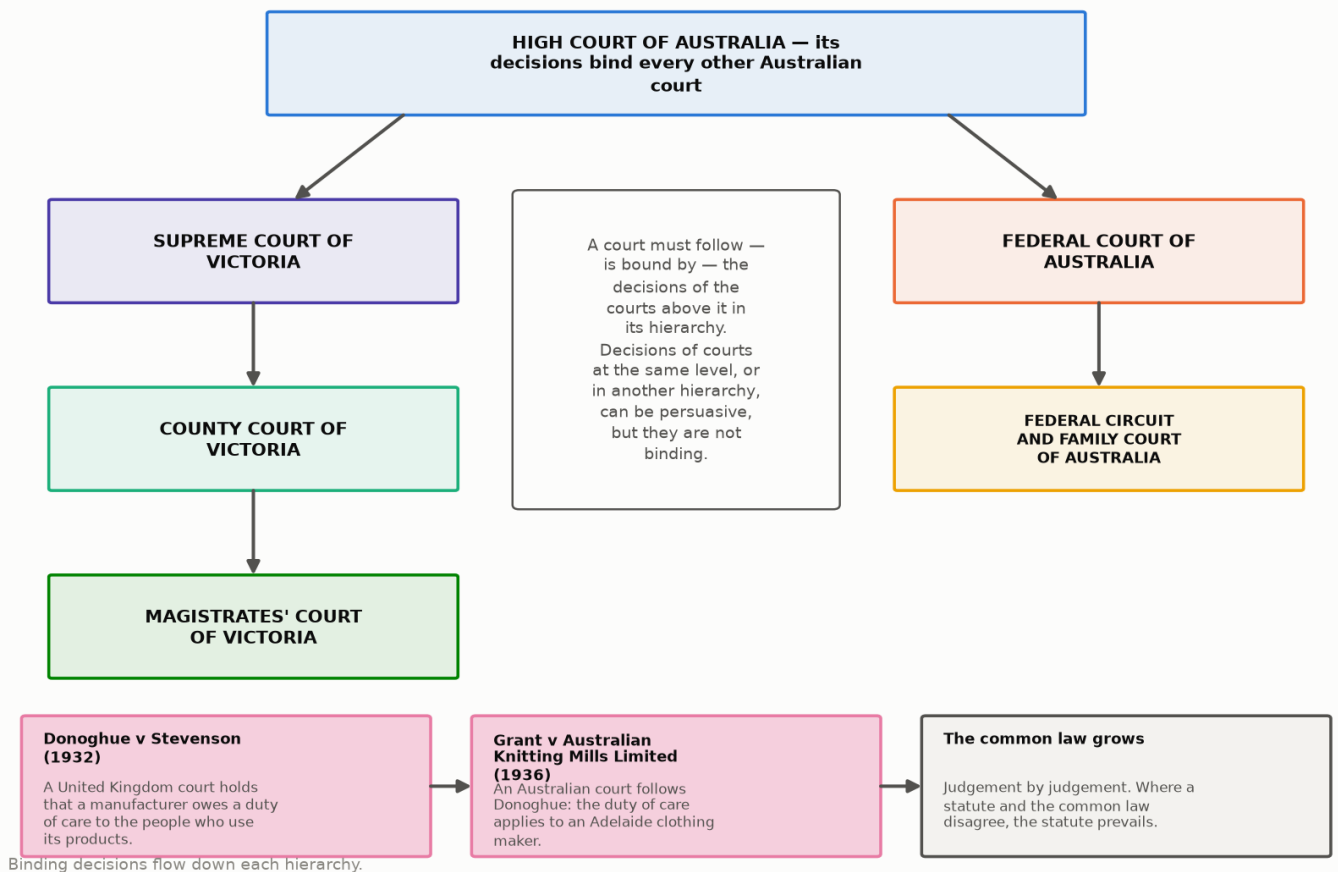


Figure 10 — Diagram of precedent. Two hierarchies under the High Court of Australia (whose decisions bind every other Australian court): on the left, Supreme Court of Victoria, then County Court of Victoria, then Magistrates' Court of Victoria; on the right, Federal Court of Australia, then Federal Circuit and Family Court of Australia; arrows point down each hierarchy. A central note: a court must follow — is bound by — the decisions of the courts above it in its hierarchy; decisions of courts at the same level or in another hierarchy can be persuasive but are not binding. Along the bottom, a case chain: Donoghue v Stevenson (1932), a United Kingdom court holds that a manufacturer owes a duty of care to the people who use its products; arrow to Grant v Australian Knitting Mills Limited (1936), an Australian court follows Donoghue and applies the duty to an Adelaide clothing maker; arrow to 'The common law grows — judgement by judgement; where a statute and the common law disagree, the statute prevails.' Footer: binding decisions flow down each hierarchy.

Statutory interpretation and precedent often work together: a high court interprets a statute's words in one case, and every court below then applies that meaning as binding precedent. Worked Example 1 shows exactly this in a criminal case, and Worked Example 2 shows precedent crossing the world in a civil case.

Worked examples

Worked example 1 — a criminal case and statutory interpretation: *He Kaw Teh v The Queen* (1985) 157 CLR 523

The case in one breath: customs officers found drugs hidden in the false bottom of a bag carried off a plane at Melbourne airport. He Kaw Teh was charged under the *Customs Act 1901* (Commonwealth) with possessing a prohibited import, and said he had no idea the drugs were in the bag. The High Court had to decide whether the prosecution needed to prove he **knew**.

Working

1. What kind of case is this? The state (through prosecutors) charges a person with an offence against a

Comment

Criminal. The case name reads *He Kaw Teh v The Queen*: the Crown as the prosecuting side, as in all

Working	Comment
Commonwealth Act.	criminal case names.
2. What is the legal question? The <i>Customs Act 1901</i> (Commonwealth) said the import was banned, but did not say whether a person must know they are carrying it.	A statute's silence is exactly where statutory interpretation begins: what did Parliament mean?
3. The High Court's method: read the words in context, and apply a long-standing rule of the common law — unless Parliament clearly says otherwise, courts read criminal offences as requiring the prosecution to prove the accused knew the facts that made the act an offence.	This rule protects the idea that people should not be convicted for things they had no way of knowing.
4. Apply it: the Act did not clearly say knowledge was unnecessary, so knowledge had to be proved. The prosecution could not prove He Kaw Teh knew, so his conviction was set aside.	The court did not change the Act's words — it fixed their meaning. That meaning has bound Australian courts since 1985.

Takeaway: a judgement about what a statute means **is** new law in the practical sense — every later court must apply the same meaning.

Worked example 2 — a civil case and a precedent that crossed the world: *Donoghue v Stevenson* (1932) and *Grant v Australian Knitting Mills Limited* (1936)

The first case: in Scotland in 1928, a friend bought May Donoghue a bottle of ginger beer. Poured out, it held the remains of a snail, and she fell ill. She had no contract with the maker (she had not bought the drink), so she sued the manufacturer, Stevenson, in **civil** law, claiming compensation for the harm. In 1932 the House of Lords — then the top appeal court for the United Kingdom — held that a manufacturer owes a **duty of care** to the people who will use its products: the famous 'neighbour principle', that you must take care to avoid harming the people you ought to have in mind when you act.

The second case: in Adelaide, Dr Grant bought woollen underclothes that still held a harmful chemical from the making, and he developed a skin illness called dermatitis. He sued the maker. The courts, on appeal to the Privy Council in London in 1936 (then still the top appeal court above Australia's High Court), applied *Donoghue v Stevenson*: the manufacturer owed Grant the same duty of care, and had broken it.

Working	Comment
1. Kind of law: a person who suffered harm sues the maker for compensation.	Civil: one party claims against another to put right harm; the standard of proof is the balance of probabilities.
2. The rule the first case made: a manufacturer owes a duty of care to the user of its product.	Judge-made law (common law): no statute said this before 1932.
3. The second case follows the first, even though the first was a United Kingdom decision and the facts differ (ginger beer vs underclothes).	That is precedent at work: like cases decided alike. By 1936 Australian courts treated Donoghue as the law to follow; today such rules bind through the hierarchy shown in Figure 10.
4. If Parliament later disagrees with a judge-made rule, it can pass a statute to change it — and the statute prevails.	Precedent fills the gaps; Parliament holds the final pen.

Takeaway: civil courts resolve private disputes **and**, judgement by judgement, build the common law that the next dispute is decided with.

Practice questions

Scaffolded

Q1. For each matter in the table, write (i) criminal or civil, and (ii) the court or tribunal from Figures 2 and 3 that would most likely hear it **first**, using each body's jurisdiction.

Matter	(i) Kind	(ii) First body
(a) A person is charged with armed robbery.		
(b) A tenant and a landlord disagree about a rental bond.		
(c) A person challenges a decision made by an Australian Government officer about their visa.		
(d) A person is charged with murder.		

Scaffold: ask — is the state prosecuting a wrong against the community (criminal), or is one side claiming against another (civil)? Then match the seriousness or subject to a box in Figure 2 or Figure 3.

Q2. Copy the table and complete it from Figure 5 without looking at the figure, then check yourself.

	Criminal	Civil
Who brings the case		
Standard of proof		
If the case is made out		

Q3. Name the role in Figure 4 that matches each description: (a) decides what evidence the jury may hear; (b) decides the verdict; (c) presents the case on behalf of the state; (d) takes an oath or affirmation and answers questions; (e) keeps the record of the case; (f) sits in the dock.

Q4. The eight stages in Figure 7 are listed below out of order. Rewrite them in the correct order. Deliberation · Charge · Sentence · The plea · The trial · Appeal · Committal hearing in the Magistrates' Court · The verdict

Q5. (a) Which standard of proof applies to a criminal trial, and which to a civil case? (b) In one sentence each, say why the criminal standard is the higher of the two.

Q6. Using Figure 10, say whether each court must follow the decisions of the named court (binding), or may treat them as persuasive only: (a) the County Court of Victoria following a Supreme Court of Victoria decision; (b) the Magistrates' Court of Victoria following a Federal Court of Australia decision; (c) every Australian court following a High Court of Australia decision.

Unscaffolded

Q7. A local law says 'no vehicles in the park'. A person is charged after riding an electric scooter through the park, and argues a scooter is not a 'vehicle'. Explain, in a short paragraph, (a) what the magistrate must do with the words of the law, and (b) how this case shows the way court judgements develop law even though Parliament has not changed a word of the statute.

Q8. Some people argue that victims of crime should have a greater say in sentencing — for example, that their impact statements should weigh more heavily. Others disagree. (a) Put the strongest case **for** giving victims a greater say. (b) Put the strongest case **against**. (c) Say which case you judge stronger, and why. Marks are for the quality of your reasoning on both sides, not for which side you pick.

Q9. In a criminal trial with a jury, explain why the judge decides matters of law while the jury decides the verdict, and say what this split has to do with keeping the system fair.

Q10. Choose **one** case from this section (*He Kaw Teh*, *Cheatle v The Queen* from the source task, or *Commonwealth v Tasmania* (1983), the Tasmanian Dam case, in which the High Court had to interpret the words of the Constitution and of a Commonwealth Act). Explain how that judgement changed the working meaning of a law without Parliament changing the statute's text.

Source task — Source A: section 80 of the Australian Constitution

Read Source A (the figure in Part 6) and answer S1–S3.

Background for S2: in *Cheatle v The Queen* (1993) 178 CLR 514, the High Court held that the words 'trial ... by jury' in section 80 mean a jury of the kind understood when the Constitution was written — including that the jury's verdict must be **unanimous**. A Commonwealth law that allowed majority verdicts for Commonwealth offences was therefore invalid.

S1. In your own words, state the guarantee section 80 gives for serious Commonwealth offences, and name who decides the verdict in such a trial.

S2. (a) What did the High Court add to the bare words of section 80 in *Cheatle*? (b) Is this an example of statutory interpretation, of precedent, or of both? Justify your classification in two or three sentences.

S3. Serious criminal trials in the higher courts use juries, but most criminal matters in Victoria are heard by a magistrate alone in the Magistrates' Court. (a) Put the strongest case **for** keeping jury trials for serious offences. (b) Put the strongest case **for** judge-alone trials instead. (c) Which case do you judge stronger? Marks are for reasoning, not side.

Answers

Q1. (a) Criminal; County Court (a serious criminal offence tried by jury, and not murder, manslaughter or treason). (b) Civil; VCAT (tenancy disputes are its kind of matter). (c) Review of a Commonwealth decision; Administrative Review Tribunal (a tribunal, not a court; appeals from it can reach the Federal Court and High Court). (d) Criminal; Supreme Court (murder is heard at the top level).

Q2. Criminal: the prosecution on behalf of the state; beyond reasonable doubt; conviction and a sentence (fine, community-based order, or imprisonment). Civil: a person or organisation with a claim; on the balance of probabilities; orders such as compensation (damages) or an order to do or stop doing something.

Q3. (a) The judge. (b) The jury. (c) The prosecution. (d) A witness. (e) The clerk of the court. (f) The accused.

Q4. Charge → committal hearing in the Magistrates' Court → the plea → the trial → deliberation → the verdict → sentence → appeal.

Q5. (a) Criminal: beyond reasonable doubt. Civil: on the balance of probabilities. (b) A criminal conviction can take away liberty and leaves a criminal record, so the system demands near certainty; a civil order usually deals with money or conduct between the two sides, so 'more likely than not' is fair between them.

Q6. (a) Binding — the Supreme Court sits above the County Court in Victoria's hierarchy. (b) Persuasive only — the Federal Court is in a different hierarchy, above neither Victorian court. (c) Binding — the High Court sits at the top of every Australian hierarchy.

Q7. Points to hit: the magistrate must decide what 'vehicle' means as used in the law — reading the ordinary meaning of the word, the purpose of the law (for example, safety and quiet in the park), and the facts (a motorised scooter); whichever meaning the magistrate fixes becomes the working meaning of the law for later cases, and if an appeal court reviews it, that meaning binds lower courts — law developed by judgement, not by Parliament.

Q8. Answers vary. A strong 'for': victims suffer the harm the sentence responds to; hearing them gives the process legitimacy and gives the court fuller information (the *Victims' Charter Act 2006* (Vic) and *Sentencing Act 1991* (Vic) already move this way), and giving that harm real weight gives victims dignity. A strong 'against': a crime is prosecuted as a wrong against the whole community, not just one person; sentencing must stay impartial and consistent, and like cases should be sentenced alike, so giving one victim's voice extra weight can make sentences turn on who the victim is rather than what the offender did. (c) is marked on reasoning.

Q9. Points to hit: the judge's training suits questions of law (what evidence may be heard, what the offence requires), while 12 ordinary citizens deciding the facts keeps the state's power to convict shared with the community; the split also protects impartiality — neither referee can do both jobs, and the accused is judged by peers on the facts while a neutral expert guards the law.

Q10. *He Kaw Teh*: the statute's words were untouched, but the High Court fixed their meaning — criminal offences under the Act require proof of knowledge — and that meaning has bound courts since. *Cheatle*: 'trial by jury' was read to include a unanimous verdict, invalidating a Commonwealth law that allowed majority verdicts. *Commonwealth v Tasmania*: the High Court's reading of the Constitution's words (including the external affairs power) and of the Commonwealth Act decided whether the Act validly stopped the dam — interpretation settled a national question.

S1. When the Commonwealth prosecutes a serious offence and the case goes to trial, the trial must be before a jury, held in the State where the offence was committed; the jury (citizens) decides the verdict.

S2. (a) The Court read 'by jury' as carrying the historic content of the institution — including that the verdict must be unanimous — so a law permitting majority verdicts for Commonwealth offences was invalid. (b) Both: interpretation, because the Court fixed the meaning of the Constitution's words; precedent, because that meaning now binds every Australian court.

S3. Answers vary. A strong case for juries: 12 citizens test the state's case and bring community judgement and openness to the most serious trials. A strong case for judge-alone: a trained judge may weigh complex evidence more reliably and give written reasons, and juries add cost and delay. (c) is marked on reasoning.

Fully-worked solutions

Q1 (model working). Step 1 — kind of law: (a) and (d) are charges brought by the state for wrongs against the community → criminal; (b) is one private side claiming against another → civil; (c) is a citizen seeking review of a government decision → not a court matter at first instance but a tribunal review. Step 2 — first body: (a) armed robbery is a serious criminal offence but not murder, manslaughter or treason → County Court; (b) tenancy is a core VCAT matter → VCAT; (c) review of an Australian Government decision → Administrative Review Tribunal; (d) murder sits at the top of the state hierarchy → Supreme Court Trial Division.

Q4 (model working). A serious case begins with a **charge**; the Magistrates' Court holds a **committal hearing** to check the evidence; the accused enters **the plea**; if not guilty, **the trial** runs in the County or Supreme Court; the jury's **deliberation** ends in **the verdict**; if guilty, the judge passes **sentence**; and either side may **appeal** to a higher court.

Q7 (model paragraph). The statute says 'no vehicles', but Parliament did not say whether an electric scooter counts. The magistrate's job is statutory interpretation: read the word's ordinary meaning, ask what purpose the law serves (say, keeping the park safe and quiet), and decide whether a motorised scooter falls within that purpose. Whichever answer is reached fixes the working meaning of 'vehicle' for this law. If the case is appealed, a higher court's reading binds the courts below it under the doctrine of precedent. Parliament has not changed a word, yet the law's meaning has grown — that is how judgements develop law.

Q8 (model structure). *For*: victims bear the harm; the *Sentencing Act 1991* (Vic) already lets them tell the court how the crime affected them, and treating that harm as central gives victims dignity and gives judges fuller facts; a process that ignores victims loses public trust. *Against*: the prosecution represents the whole community, not one person; sentencing must be consistent and impartial, so like offenders receive like sentences; if one victim's voice weighs extra, outcomes may turn on the victim's eloquence rather than the offender's conduct, and victims may seek harsher punishment than the case warrants. *Weighing*: marks go to a (c) that names the clash — dignity and information for victims vs consistency and impartiality — and reasons to a view.

S2 (model working). The bare words of section 80 say that a serious Commonwealth trial shall be by jury. *Cheatle* asked what 'jury' means: the High Court answered with the institution's essential features at 1901, including unanimity of verdict. That is statutory (constitutional) interpretation — fixing the meaning of text. And because the High Court sits at the top of every hierarchy, the reading is binding precedent nationwide: a later Commonwealth law attempting majority verdicts would fail unless the Constitution itself were changed.

Sources (as at 26 August 2026)

Statutes: *Australian Constitution* (in force from 1 January 1901), ss 71, 80; *Judiciary Act 1903* (Commonwealth); *Federal Court of Australia Act 1976* (Commonwealth); *Federal Circuit and Family Court of Australia Act 2021* (Commonwealth); *Administrative Review Tribunal Act 2024* (Commonwealth); *Customs Act 1901* (Commonwealth); *Supreme Court Act 1986* (Vic); *County Court Act 1958* (Vic); *Magistrates' Court Act 1989* (Vic); *Children, Youth and Families Act 2005* (Vic); *Coroners Act 2008* (Vic); *Victorian Civil and Administrative Tribunal Act 1998* (Vic); *Juries Act 2000* (Vic); *Victims' Charter Act 2006* (Vic); *Sentencing Act 1991* (Vic).

Cases: *He Kaw Teh v The Queen* (1985) 157 CLR 523; *Donoghue v Stevenson* [1932] AC 562; *Grant v Australian Knitting Mills Limited* [1936] AC 85 (Privy Council, on appeal from the High Court of Australia); *Cheatle v The Queen* (1993) 178 CLR 514; *Commonwealth v Tasmania* (1983) 158 CLR 1 (the Tasmanian Dam case).

All institutions, laws and cases above are real and named; descriptions are simplified for Year 9 study and current to 26 August 2026. This section is classroom material, not legal advice.

How rights are protected: parliaments and the High Court

Australia has no single, complete list of protected rights in one document. Instead, Australians' rights come from three places: the **Constitution**, the **common law** (law built up over time by judges deciding cases), and **statute law** (laws made by parliaments). This section looks at the two institutions that do most of the protecting: parliaments, which make and check the laws, and the High Court of Australia, which interprets the Constitution and can hold a law **invalid** (that is, of no legal force) when it goes against what the Constitution allows.

Definition — rights. In this section, *rights* means the basic freedoms and protections that belong to every person, in the sense set out in the *Universal Declaration of Human Rights* (United Nations General Assembly, 1948) — for example, the right to life, freedom of expression and the right to a fair hearing. Other definitions exist; this one is used here so every question in the section has a clear meaning.

Theory

A. Three pathways of protection

A right is only as strong as what backs it up. In Australia, rights are backed in three ways.

1. **The Constitution.** A small number of rights are written directly into the Constitution (**express rights**), and the High Court has found a few more by reading the Constitution as a whole (**implied rights**). These are hard to change, because changing the Constitution requires a successful referendum (a national vote in which a majority of voters in a majority of states must agree).
2. **The common law.** Judges develop the common law case by case. Through it, courts protect ideas such as a fair trial and personal liberty, and they read statutes narrowly when a statute might cut across a basic right.
3. **Statute law.** Federal, state and territory parliaments pass Acts that create and protect rights — most importantly, anti-discrimination laws and, in Victoria, the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

Each pathway has a different guardian. Statute law and the Constitution are made and changed by **parliaments** (though the Constitution can only be changed by the people in a referendum); the common law is developed by **courts**, with the High Court at the top. The rest of this section follows each guardian's role.

Three pathways of rights protection in Australia

Every right is only as strong as what backs it up.



The three pathways work together — no single one covers every right, which is why both parliaments and the High Court matter.

A labelled diagram showing the three pathways through which rights are protected in Australia: the Constitution, the common law and statute law, with the guardian of each pathway

B. Parliaments: making laws that protect rights

Australia's federal Parliament and its eight state and territory parliaments protect rights in four main ways.

1. **By passing rights-protecting Acts.** (In law names, (Cth) marks a federal law and (Vic) marks a Victorian law.) The clearest examples are the federal anti-discrimination laws — the *Racial Discrimination Act 1975* (Cth), the *Sex Discrimination Act 1984* (Cth), the *Disability Discrimination Act 1992* (Cth) and the *Age Discrimination Act 2004* (Cth) — and the state and territory human rights Acts, including Victoria's Charter of 2006. These Acts set out what is unlawful and give people somewhere to complain.
2. **By checking Bills before they become law.** At the federal level, the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) requires every new Bill to come with a **statement of compatibility** — a written statement saying whether the Bill is compatible with Australia's human rights duties, and how. A parliamentary committee, the **Parliamentary Joint Committee on Human Rights**, examines Bills and reports to Parliament. Victoria's Charter does the same kind of job at state level (Part E below).
3. **By changing or repealing laws that harm rights.** If a law is found to work unjustly, or the community's views change, parliament can amend it or repeal it (cancel it). For example, parliaments have removed past laws that discriminated on the basis of race or sex.
4. **By holding the government to account.** Ministers must answer questions in parliament, parliamentary committees investigate problems, and elections let citizens remove a government that abuses its power.

There is also a limit to this pathway: a parliament can pass laws that *restrict* rights as well as protect them, and an ordinary Act is **not entrenched** — a later parliament can change it with an ordinary vote. That is why the other two pathways matter.

C. The High Court: interpreting and applying the law

The High Court of Australia was created by section 71 of the Constitution. It has seven judges, and it is the highest court in Australia: in most matters, decisions of other courts can be appealed all the way up to it. The Court has three jobs that matter for rights.

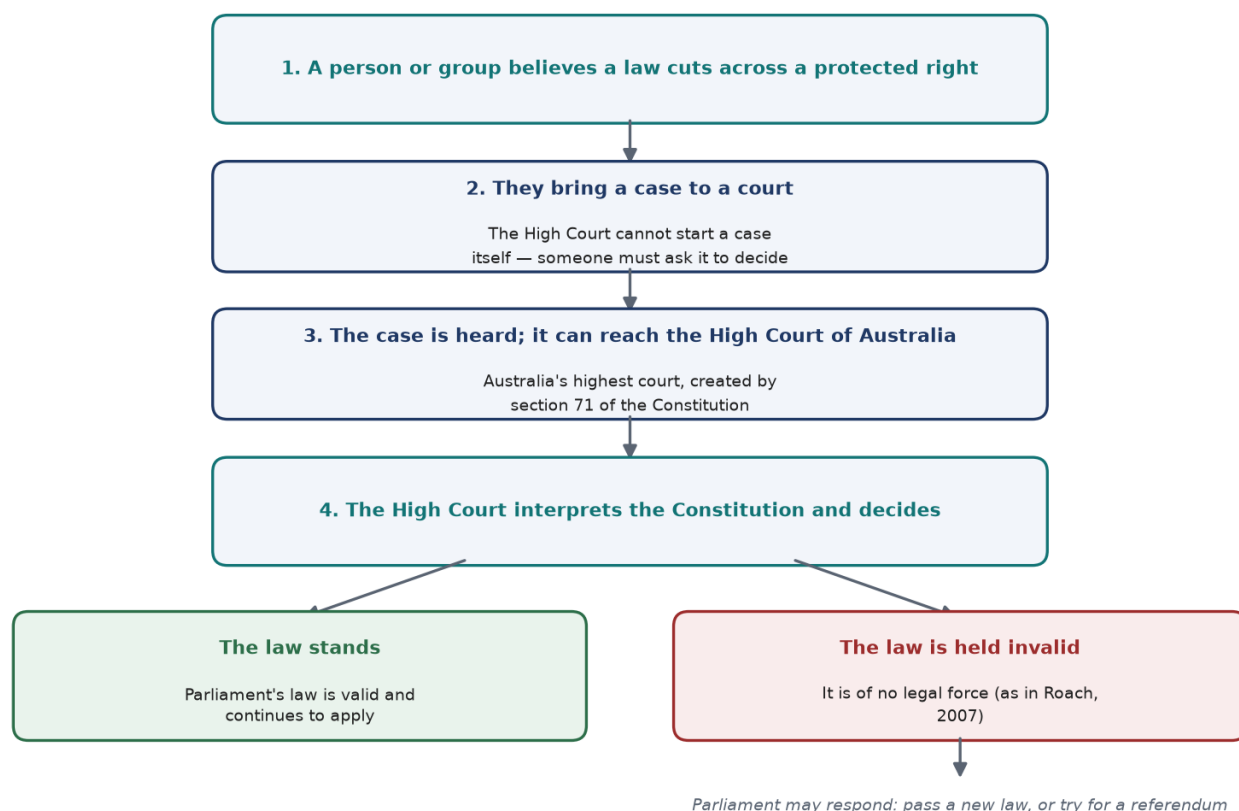
1. **It interprets the Constitution.** When there is a dispute about what the Constitution means, the High Court decides. This includes deciding whether the Commonwealth has power to make a particular law.
2. **It reviews laws.** If a person or a group argues that a federal, state or territory law goes beyond the power the Constitution gives, or cuts across a right the Constitution protects, the High Court can examine the law and hold it **invalid** — of no legal force. This checking power is sometimes called **judicial review** (the review, by judges, of whether a law or government action is allowed by the Constitution and other law).
3. **It develops the common law.** As the country's top court, the High Court shapes the common law for all Australian courts to follow.

Three contemporary cases show the Court at work:

- ***Roach v Electoral Commissioner (2007)*** — the Court struck down a federal law that banned *all* prisoners from voting, finding an implied right to vote in the Constitution (Worked Example 1).
- ***Lange v Australian Broadcasting Corporation (ABC) (1997)*** — the Court confirmed an implied freedom of political communication, and held that defamation law (the law about damage to a person's reputation) must fit with the Constitution (Worked Example 2).
- ***NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs (2023)*** — the Court held that a stateless man could not be kept in immigration detention when there was no real prospect of him being sent anywhere, because his detention could no longer serve the purpose of removal and had become punishment without trial. The decision, made unanimously on 8 November 2023, changed the Court's own position from an earlier case in 2004 and led to the release of around 140 people in the same situation. The man's name is not public; the case is known by the letters NZYQ.

These cases show two things. First, the Court protects rights by saying where the legal limit of a law is. Second, the Court can only act when someone brings a case before it — it cannot start a review on its own.

How a rights case moves through the courts



A flow diagram showing the path of a rights case: a person believes a law cuts across their rights, the matter is heard by courts, the High Court interprets the Constitution, and the law either stands or is held invalid

D. Express and implied rights in the Constitution

The Constitution protects some rights directly. The **express rights** are written in its text:

Section of the Constitution	Express right
Section 41	The right to vote in federal elections for people entitled to vote in state elections
Section 51(xxxi)	The Commonwealth may take property only on fair terms
Section 80	Trial by jury for serious federal offences
Section 92	Trade between the states must be free
Section 116	Freedom of religion — the Commonwealth may not make a law that sets up a religion or stops people practising their religion
Section 117	A state may not treat a person worse because they live in a different state

Because these rights are in the text of the Constitution, a parliament cannot simply repeal them; removing one would take a successful referendum.

The **implied rights** are not written down. The High Court has found them by asking what the Constitution's text and structure require. Both come from the system of **representative government** the Constitution sets up (a system in which the people elect the parliament that makes the laws). In *Lange* (1997), the Court found that such a system cannot work unless people are free to speak about government and politics, so the Constitution protects an **implied freedom of political communication**. In *Roach* (2007), the Court found that because the Constitution says members of parliament must be "directly chosen by the people", the people must have a right to vote — an **implied right to vote**.

One important comparison: unlike the United States, Canada and New Zealand, Australia has no national bill of rights — no single Act or constitutional chapter that lists and protects a full set of rights. Rights here come from the three pathways in Part A, which is why the work of parliaments and the High Court matters so much.

Express rights and implied rights in the Constitution

Express rights — written in the text	Implied rights — found by the High Court
• Section 41 — right to vote in federal elections • Section 51(xxxi) — property taken on fair terms • Section 80 — jury trial for serious federal offences • Section 92 — free trade between the states • Section 116 — freedom of religion • Section 117 — no unfair treatment of people from another state	• Implied freedom of political communication Lange v ABC (1997): elected government cannot work unless people can speak freely about politics • Implied right to vote Roach v Electoral Commissioner (2007): parliament must be "directly chosen by the people", so the people must be able to vote • Not written down — read out of the text and structure of the Constitution
Removing one would take a successful referendum	Both flow from representative government: the people elect the parliament

Express and implied rights both bind every Australian parliament, and the High Court guards both.

A table comparing express rights and implied rights: where each is found, how each is protected, and the cases that show them

E. Statute law at work: the Victorian Charter

The *Charter of Human Rights and Responsibilities Act 2006* (Vic) is Victoria’s human rights law. It was passed by the Victorian Parliament in 2006 and came into full effect on 1 January 2008. It protects **20 rights**, including the right to life, freedom of movement, freedom of expression, freedom of thought and religion, the right to privacy, the right to liberty, and the right to a fair hearing.

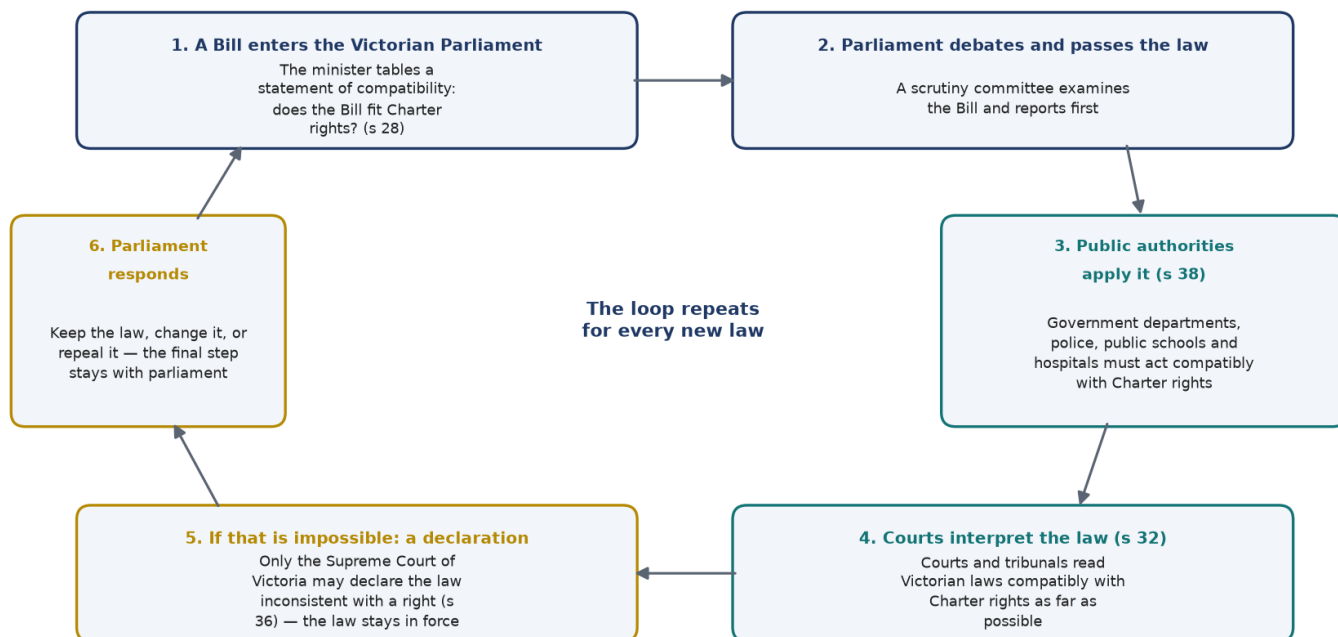
The Charter is an example of the **dialogue model** — a design in which the parliament, the courts and government bodies each have a role, and none of them alone has the final say. The loop works like this:

1. **Before a law is passed:** the minister who introduces a Bill must table a **statement of compatibility** explaining whether the Bill fits with Charter rights (section 28). A parliamentary committee examines the Bill and reports.
2. **When a law is interpreted:** Victorian courts and tribunals must read Victorian laws, as far as possible, in a way that is compatible with Charter rights (section 32).
3. **If a law cannot be read compatibly:** only the Supreme Court of Victoria may make a **declaration of inconsistent interpretation** (section 36). The declaration does *not* cancel the law — it formally tells Parliament that the law conflicts with a Charter right, and Parliament then decides what to do.
4. **Every day: public authorities** — government departments, the police, public schools and hospitals, and others acting for the government — must act in a way that is compatible with Charter rights (section 38).

The Charter also says rights are not absolute: section 7 allows rights to be limited where the limit is reasonable and can be justified in a free and democratic society.

How the Victorian Charter of Human Rights and Responsibilities works

A dialogue model: parliament, courts and public authorities each play a part — none has the whole story.



The Charter protects 20 rights and has been in full effect since 1 January 2008. Section 7 allows reasonable, justified limits on rights.

A labelled diagram of the Victorian Charter's dialogue model: a Bill enters parliament with a statement of compatibility, parliament passes the law, public authorities apply it, courts interpret it, the Supreme Court may declare an inconsistency, and parliament responds

F. Anti-discrimination laws

Anti-discrimination laws are Acts that make it unlawful to treat a person unfairly because of a protected attribute — a personal characteristic such as race, sex, age or disability. (The attributes each Act protects are set out in that Act.) They protect rights in daily life: at work, in schools, in shops and in services. Australia's main federal anti-discrimination laws, and Victoria's, are listed below.

Law	What it protects against
<i>Racial Discrimination Act 1975</i> (Cth)	Unfair treatment because of race, colour or national or ethnic origin
<i>Sex Discrimination Act 1984</i> (Cth)	Unfair treatment because of sex, gender, pregnancy or marital status
<i>Disability Discrimination Act 1992</i> (Cth)	Unfair treatment because of disability
<i>Age Discrimination Act 2004</i> (Cth)	Unfair treatment because of age
<i>Equal Opportunity Act 2010</i> (Vic)	Unfair treatment because of attributes including age, disability, race, religion, sex and sexual orientation, in areas of public life in Victoria

A person who believes they have been discriminated against can complain to the Australian Human Rights Commission (for the federal laws) or to the Victorian Equal Opportunity and Human Rights Commission (for the Victorian laws). The commissions try to resolve the complaint; if that fails, the matter can go to a court or tribunal. Two further notes: Australia's Capital Territory and Queensland have also passed their own human rights Acts (2004 and 2019), and, like the Charter, none of these Acts lets a court cancel a law — they all leave the final step with parliament.

Australia's main anti-discrimination laws

The law	What it protects against
Racial Discrimination Act 1975 (Cth)	Unfair treatment because of race, colour or national or ethnic origin
Sex Discrimination Act 1984 (Cth)	Unfair treatment because of sex, gender, pregnancy or marital status
Disability Discrimination Act 1992 (Cth)	Unfair treatment because of disability
Age Discrimination Act 2004 (Cth)	Unfair treatment because of age
Equal Opportunity Act 2010 (Vic)	Unfair treatment because of attributes including age, disability, race, religion, sex and sexual orientation, in areas of public life in Victoria

Complaints under the federal laws go to the Australian Human Rights Commission; complaints under the Equal Opportunity Act 2010 (Vic) go to the Victorian Equal Opportunity and Human Rights Commission. If a complaint is not resolved, the matter can go to a court or tribunal.

A table listing Australia's main federal and Victorian anti-discrimination laws, their years, and the attributes they protect

G. How well does all this work? Evaluating effectiveness

“Effective” can mean different things to different people, so this section sets out its frame first: a way of protecting rights is judged **effective** here to the extent that it (1) stops rights being cut across in the first place, (2) gives a person a way to respond and be heard if a right is cut across, (3) is durable — not easily removed by one quick decision — and (4) is usable by ordinary people, not just experts. Other frames exist; the questions in this section are answerable on this one.

Parliaments — strengths. Parliaments are elected, so rights protections reflect the community's values; scrutiny of Bills means rights problems can be fixed *before* a law is passed; and parliaments can act quickly across many areas of life, passing anti-discrimination laws that cover work, school, housing and services all at once.

Parliaments — limits. A parliament can also pass laws that limit rights, especially when one party holds a strong majority; ordinary Acts are not entrenched, so a later parliament can repeal a protection straight away; and rights can lose out when a government argues that security or another goal matters more.

The High Court — strengths. The Court is independent of the government and of elections, so it can protect the rights of an unpopular person or a small minority; constitutional protections are durable, because changing them needs a referendum; and its decisions apply to everyone, setting clear limits that all parliaments must respect.

The High Court — limits. The Court cannot start a case — someone must bring one, and court cases are slow and costly; the express rights in the Constitution are few; and the Court cannot protect rights that the Constitution does not give it, so many rights in Australia depend on ordinary Acts that a parliament can change.

How well do the protectors work? Strengths and limits

Parliaments	The High Court
Strengths - Elected — protections reflect community values - Bills are scrutinised before they pass, so problems can be fixed early - Can act broadly and quickly: anti-discrimination laws cover work, school, housing and services	Strengths - Independent of elections — can protect minorities and unpopular people - Constitutional protections are durable: changing them needs a referendum - Decisions apply to everyone and set clear limits for all parliaments
Limits - Can also pass laws that limit rights, especially with a strong majority - Ordinary Acts are not entrenched — a later parliament can repeal them - Rights can lose out when a government argues another goal matters more	Limits - Cannot start a case — someone must bring one, and cases are slow and costly - The express rights in the Constitution are few - Many rights depend on ordinary Acts that parliament can change

This section's tests: does the protection (1) prevent harm to rights, (2) give a way to respond, (3) last, and (4) work for ordinary people?

A two-column chart comparing strengths and limits — parliaments and the High Court as protectors of rights

Two perspectives on the final word. Whether Australia's mix of protections is good enough is a live civic debate, and both sides have a strong case.

- Perspective 1 — parliament should have the final word.** Elected parliaments speak for the people, and rights are best protected by open debate, scrutiny of Bills and regular elections. Judges are not elected and are not answerable to voters, so giving them power to cancel laws hands big social decisions to a small group. On this view, Victoria's dialogue model is a strength: courts flag problems, but the people's representatives decide.
- Perspective 2 — courts need stronger power to protect rights.** A majority in parliament can vote away the rights of a minority, and history shows parliaments sometimes do. An independent court can stand between a popular government and an unpopular person. On this view, the lack of a national bill of rights is a weakness: too many Australian rights sit in ordinary Acts that a parliament can repeal at any time.

The evidence in this section supports parts of both views: parliaments have built most of Australia's rights protections (the anti-discrimination laws, the Charter), and the High Court has stepped in where a law went too far (*Roach*, *NZYQ*). How much weight you give each perspective depends on which of the four tests in this part you think matters most — and that is a judgement for you to make, with reasons.

Worked examples

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

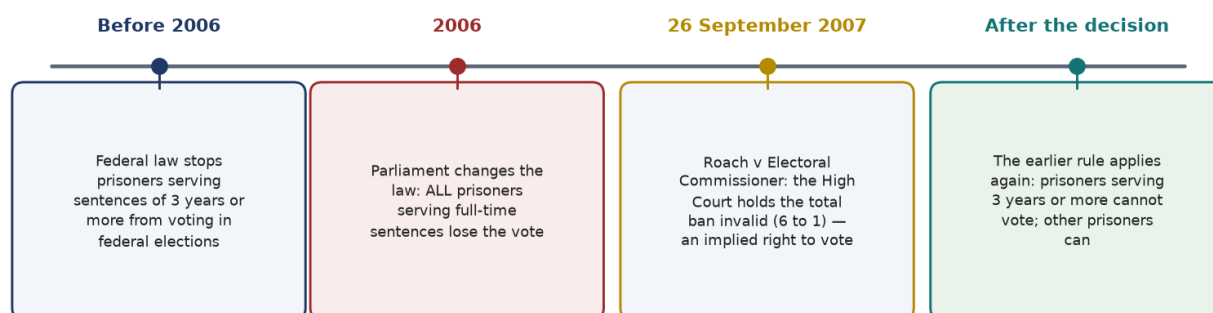
Use the five-step case method to analyse how the High Court protected a right in this case.

The facts. Vicki Lee Roach was a prisoner serving sentences totalling more than three years. Federal law at the time stopped prisoners serving sentences of three years or more from voting in federal elections. In 2006, Parliament changed the *Commonwealth Electoral Act 1918* (Cth) to ban *all* prisoners serving full-time sentences from voting. Roach challenged the ban in the High Court.

Step	What we ask	The answer in <i>Roach</i>
1	Which right is at stake?	The right to vote in federal elections.
2	Which law cuts across it?	The 2006 change banning <i>all</i> prisoners serving full-time sentences from voting.
3	What is the constitutional basis?	Sections 7 and 24 require members of parliament to be “directly chosen by the people”.
4	What did the Court decide?	By a majority of 6 to 1, on 26 September 2007, the Court held the total ban invalid. The earlier three-year rule was still allowed.
5	Why does it matter?	The Court found an implied right to vote : parliament may stop people convicted of serious crimes from voting, but it cannot remove the vote from every prisoner. Roach herself, serving more than three years, still could not vote — the right was protected for others by her case.

The method in one line: find the right, find the law, find the constitutional basis, state the decision, then say what the case now stands for.

Timeline: prisoner voting and *Roach v Electoral Commissioner* (2007)



Vicki Lee Roach herself was serving more than three years, so she still could not vote — but her case protected the vote for other prisoners.

A timeline of the Roach case: the three-year voting rule, the 2006 total ban, the High Court’s decision on 26 September 2007, and what applied afterwards

Example 2 — scaffolded: analysing *Lange v Australian Broadcasting Corporation* (1997)

Apply the same five-step method to an implied freedom case.

The facts. David Lange, an earlier Prime Minister of New Zealand, sued the ABC for defamation over a television report he said damaged his reputation. The ABC argued it should be free to report on political matters. The case reached the High Court, which had to decide how far Australia’s defamation law could go without damaging the Constitution’s system of elected government.

Step	What we ask	The answer in <i>Lange</i>
1	Which right or freedom is at stake?	Freedom to communicate about

Step	What we ask	The answer in <i>Lange</i>
2	Which law is tested against it?	government and politics. The common law of defamation, which lets a person sue over damage to reputation.
3	What is the constitutional basis?	The system of representative government in the Constitution (sections 7, 24 and others) needs free political communication to work.
4	What did the Court decide?	Unanimously, on 11 June 1997, the Court held that the Constitution protects an implied freedom of political communication . It is not a personal right anyone can sue on; it is a limit on what laws and government actions can do. Defamation law had to be read to fit that limit.
5	Why does it matter?	The freedom covers communication about government and politics at all levels — federal, state, territory and local. Parliaments and courts must keep laws about speech, protests and media within that limit.

Notice the difference from Example 1. In *Roach* the Court held a law invalid. In *Lange* the Court did not cancel a law; it shaped how the common law of defamation must operate. The High Court protects rights both ways — by striking down laws and by developing the common law.

Practice questions

Scaffolded

Q1. Name the three pathways through which rights are protected in Australia (Part A).

Q2. List three express rights from the Constitution and give the section number for each (use the table in Part D).

Q3. In *Roach v Electoral Commissioner* (2007): **(a)** what did the 2006 change to the law do? **(b)** what did the High Court decide about it? **(c)** what rule applied after the decision? (Hint: use the timeline figure and Worked Example 1.)

Q4. Explain the difference between an express right and an implied right. Give one example of each. (Hint: Part D defines both.)

Q5. Sort these four features of the Victorian Charter into the right step of the dialogue model (Part E): *the Supreme Court makes a declaration of inconsistent interpretation*; *a minister tables a statement of compatibility*; *a court reads a law compatibly with Charter rights*; *a public authority acts compatibly with Charter rights*.

Q6. Give one strength and one limit of each pathway: **(a)** protection by parliaments, and **(b)** protection by the High Court (Part G).

Unscaffolded

Q7. “Parliaments do more to protect Australians’ rights than the High Court does.” Explain how parliaments protect rights, using at least two named laws from this section. Then give one reason someone might disagree with the statement.

Q8. Compare the protection given by an express right in the Constitution with the protection given by the Victorian Charter. In your answer, explain what can and cannot cancel each one, and what happens when a law conflicts with each.

Q9. Choose one of the four tests of effectiveness from Part G (prevention, a way to respond, durability, usability). Using evidence from at least two institutions in this section, judge which pathway of protection performs best on your chosen test. Give reasons.

Q10. The two perspectives in Part G disagree about who should have the final word on rights: parliament or the courts. Set out each position in its strongest form, then state which you find more convincing and why. Use at least one case from this section as evidence.

Source-based inquiry

Source: an extract from section 15 of the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*.

15 Freedom of expression

(1) Every person has the right to hold an opinion without interference.

(2) Every person has the right to freedom of expression which includes the right to seek, receive and impart information and ideas of all kinds, whether within or outside Victoria, whether— (a) orally; or (b) in writing; or (c) in print; or (d) by way of art; or (e) in any other medium chosen by him or her.

(3) The right to freedom of expression carries with it special duties and responsibilities and may be subject to lawful restrictions reasonably necessary— (a) to respect the rights and reputations of other persons; or (b) for the protection of national security, public order, public health or public morality.

Source: Charter of Human Rights and Responsibilities Act 2006 (Vic), s 15, as published on the Victorian legislation website, retrieved 26 August 2026.

S1. Identify the right protected in subsection (2), and list the five ways the source says a person may express themselves.

S2. According to subsection (3), in what two situations may the right be limited? Why do you think the source says the right “carries with it special duties and responsibilities”?

S3. This source is a statute made by the Victorian Parliament. Compare the protection in this source with the implied freedom of political communication from *Lange v ABC* (1997): who made each protection, and which of the two is harder to remove? Explain why.

S4. Evaluate this source as evidence of how Victoria protects rights. In your answer, consider its origin (who made it and what sort of document it is), its purpose, and one limit of using the text of a law alone to judge how well a right is protected in practice.

S5. A Victorian council proposes a rule banning all protests in the city centre on weekends. Using section 15 and section 7 of the Charter (which allows reasonable, justified limits), argue both sides: one side that the rule breaches the Charter right, and one side that the rule could be a justified limit.

Answers

Q1. The Constitution (express and implied rights), the common law, and statute law (Acts made by federal, state and territory parliaments).

Q2. Any three of: the right to vote (section 41); property taken by the Commonwealth only on fair terms (section 51(xxxi)); trial by jury for serious federal offences (section 80); free trade between the states (section 92); freedom of religion (section 116); no unfair treatment by a state against people who live in another state (section 117).

Q3. (a) It banned all prisoners serving full-time sentences from voting in federal elections. (b) The Court held the total ban invalid, because it cut across the implied right to vote. (c) The earlier rule applied again: prisoners serving sentences of three years or more could not vote; other prisoners could.

Q4. An express right is written in the text of the Constitution (for example, freedom of religion in section 116). An implied right is not written down; the High Court finds it in the structure and ideas of the Constitution (for example, the implied right to vote found in *Roach*, or the implied freedom of political communication found in *Lange*).

Q5. Before a law is passed: a minister tables a statement of compatibility. When a law is interpreted: a court reads a law compatibly with Charter rights. If a law cannot be read compatibly: the Supreme Court makes a declaration of inconsistent interpretation. Every day: a public authority acts compatibly with Charter rights.

Q6. (a) Parliaments — strength: they can pass broad protections (such as anti-discrimination laws) that cover daily life; limit: they can also pass laws that restrict rights, and a later parliament can repeal an ordinary Act. (b) The High Court — strength: it is independent and can protect minorities against popular laws; limit: it can only act when a case is brought to it, and cases are slow and costly.

Model responses

Q7 (model). Parliaments protect rights by passing Acts that set out what is lawful and give people somewhere to complain. The *Racial Discrimination Act 1975* (Cth) makes unfair treatment because of race unlawful, and the *Charter of Human Rights and Responsibilities Act 2006* (Vic) protects 20 rights and requires Victorian public authorities to act compatibly with them. Parliaments also check Bills before they pass, through statements of compatibility and scrutiny committees, so rights problems can be fixed early. Someone might disagree with the statement because parliaments can also limit rights: in *Roach*, it was a federal law — made by parliament — that banned all prisoners from voting, and it took the High Court to hold the ban invalid.

Q8 (model). An express right, such as freedom of religion in section 116, sits in the Constitution. No parliament can cancel it with an ordinary law; only the people can change the Constitution, through a referendum. If a law conflicts with an express right, the High Court can hold the law invalid, as it did in *Roach* with the total prisoner voting ban. The Victorian Charter is different. It is an ordinary Act of the Victorian Parliament, so a later Victorian parliament could amend or repeal it with a normal vote. When a Victorian law conflicts with a Charter right, the courts must first read the law compatibly with the right if possible; if that is impossible, only the Supreme Court may make a declaration of inconsistent interpretation, and the law stays in force until Parliament chooses to change it. So express rights are harder to remove and come with a stronger court power; Charter rights are easier for parliament to change and leave the final step with parliament.

Q9 (model). On the test of durability — not being easily removed — constitutional protection performs best. An express or implied right can only be removed by changing the Constitution, which needs a referendum: a majority of voters nationwide and a majority of states. That is a high bar, which is why Australia's express rights have stood for more than a century. Parliament-made protections score lower on this test: the Victorian Charter and the anti-discrimination Acts are ordinary Acts, and a later parliament can repeal them with a simple majority. The case history also shows the difference: in *NZYQ* (2023), the High Court held that the Commonwealth's power to detain had a limit that parliament could not cross, while in 2006 parliament had been able to strip all prisoners of the vote with one amendment — until the Court stepped in. If durability is what matters most, the High Court's constitutional protection is strongest; a critic could answer that on a different test — such as usability by ordinary people — the anti-discrimination Acts score far better than a constitutional case.

Q10 (model). Perspective 1 says parliament should have the final word because it is elected: rights protections should reflect what the community values, and unelected judges should not cancel laws that voters’ representatives passed. This view points to the dialogue model, where courts flag problems but parliament decides. Perspective 2 says the courts need the stronger power because a majority can vote away a minority’s rights, and independent judges can protect people who are unpopular. This view points to *Roach*, where an elected parliament removed a basic right from prisoners and only the Court restored the limit. The stronger position is Perspective 2, because the cases in this section show parliaments limiting rights as often as protecting them: the 2006 ban in *Roach* and the detention scheme in *NZYQ* were both made by parliament, and both needed the Court to draw the line. A student who argues for Perspective 1 with the same care — for example, that the Court’s power is limited to the few rights the Constitution names, while parliaments built the protections Australians actually use daily — can also be fully convincing. What matters is reasoning from defined terms and evidence, not which side is chosen.

S4 (model). The source is the text of a Victorian statute, made by the elected Victorian Parliament, so it is a strong source for what Victoria promises on paper: it is the law itself, not a comment about the law. Its purpose is to state the right to freedom of expression and to set its limits. One limit of using the text alone is that a law’s words do not show how the right works in practice — whether people know about it, whether complaints are resolved in a fair way, or whether public authorities follow it. To judge effectiveness, the text would need to be weighed against evidence of how it is applied.

Source notes

Every real institution, law and case in this section is named and checkable. Facts beyond the curriculum’s own referents are listed here with sources; all retrieved 26 August 2026.

- *Roach v Electoral Commissioner* [2007] HCA 43; (2007) 233 CLR 162 — High Court of Australia, judgment 26 September 2007 (hcourt.gov.au). The challenged provision was s 93(8AA) of the *Commonwealth Electoral Act 1918* (Cth), as changed by the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* (Cth).
- *Lange v Australian Broadcasting Corporation* [1997] HCA 25; (1997) 189 CLR 520 — High Court of Australia, judgment 11 June 1997 (hcourt.gov.au).
- *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] HCA 37 — High Court of Australia, judgment 8 November 2023 (hcourt.gov.au); background and the figure of around 140 affected detainees from the Parliamentary Library, “High Court rules indefinite immigration detention unlawful” (FlagPost, Parliament of Australia, November 2023, aph.gov.au).
- *Charter of Human Rights and Responsibilities Act 2006* (Vic) — passed 2006, in full effect from 1 January 2008; 20 rights in Part 2; ss 7, 28, 32, 36, 38 as described (legislation.vic.gov.au).
- *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) — in force from 4 January 2012; establishes the Parliamentary Joint Committee on Human Rights and the statement-of-compatibility requirement (legislation.gov.au).
- Anti-discrimination laws as named, with their Commonwealth and Victorian statute books (legislation.gov.au; legislation.vic.gov.au). The Australian Capital Territory’s *Human Rights Act 2004* (ACT) and Queensland’s *Human Rights Act 2019* (Qld) are the other state and territory human rights Acts.
- Express rights: *Commonwealth of Australia Constitution Act 1900* (UK), ss 41, 51(xxxi), 80, 92, 116, 117. The High Court is created by s 71 of the Constitution; its size of seven judges is set by the *High Court of Australia Act 1979* (Cth), s 6 (legislation.gov.au). The point that Australia has no national bill of rights is made by the Australian Human Rights Commission in its public material on human rights protections (humanrights.gov.au).
- The definition of rights in the opening box follows the *Universal Declaration of Human Rights*, United Nations General Assembly, 1948.

Curriculum links

Owns: VC2HC10K06.

Draws on: VC2HC10K06.E01 (Parts C, E and both worked examples); VC2HC10K06.E02 (Parts D, Example 1 and Example 2; taught through *Roach v Electoral Commissioner* (2007) and *Lange v ABC* (1997) per TOC decision

D3, the third named case being excluded from this book); VC2HC10K06 .E03 (Parts E, F and G, and the source-based inquiry).

Australia's international legal obligations and how they shape law and policy

Section 2C · Chapter 2 — Laws and citizens

Curriculum focus. Content description **VC2HC10K07** (one clause of this content description is recorded as excluded in this book's front matter — see the note at the front of the book). Draws on the elaborations:

- **VC2HC10K07.E01**
- **VC2HC10K07.E02** (a fourth instrument VCAA lists in this elaboration is recorded as excluded — see the front of the book)

Key words you will meet are defined where they first appear: *treaty*, *ratify*, *obligation*, *refugee*, *asylum seeker*, *non-refoulement*, *external affairs power* and *territorial sea*.

Theory

Part 1 — What an international legal obligation is. When Australia signs up to an agreement with other countries, that agreement becomes one of its **international legal obligations** — things it has promised, in law, to do or not do. Most of these agreements are written and are called a **treaty** (a binding written agreement between countries under international law). A treaty agreed by many countries is often called a **convention**. A country becomes bound when it **ratifies** the treaty — that is, when it formally confirms that it agrees to be bound by it.

From agreement to Australian law: the five treaty steps

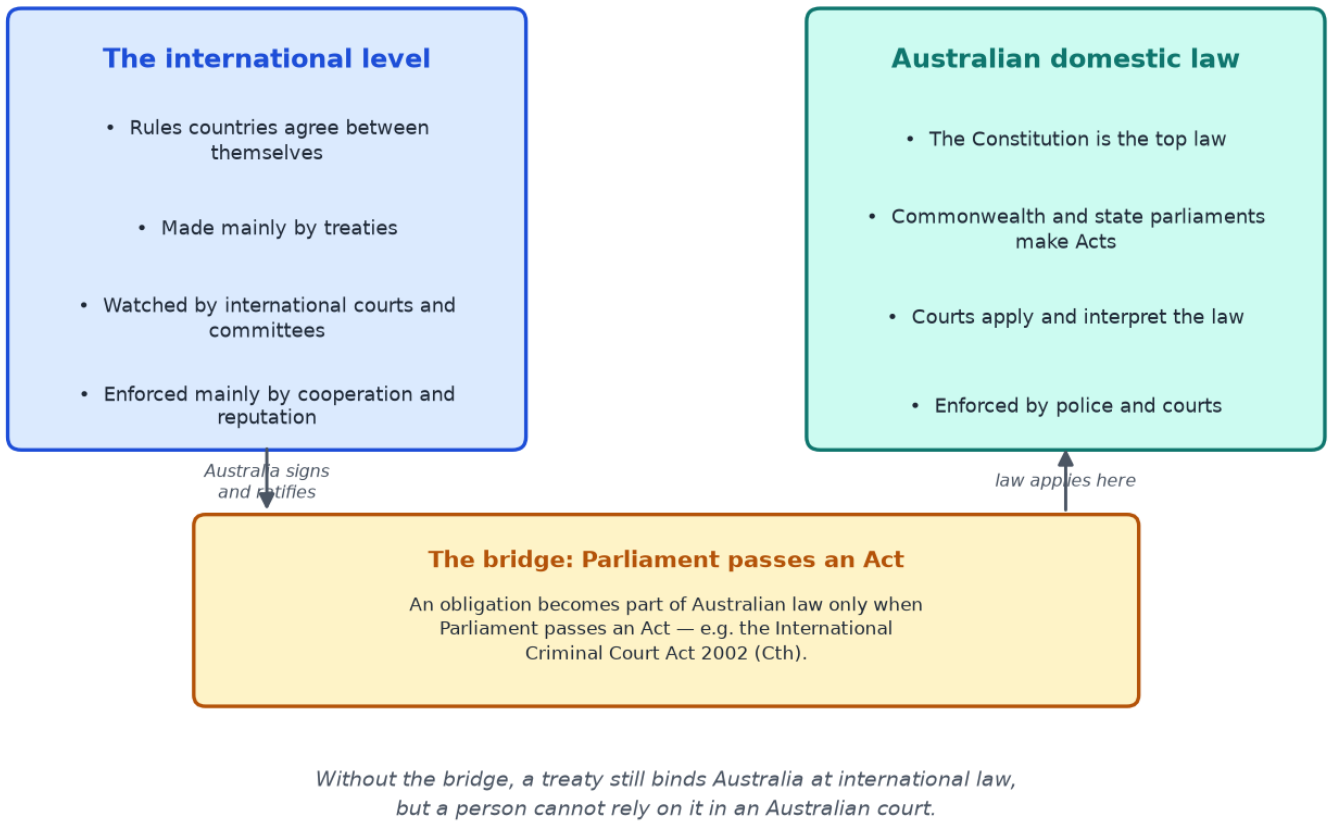


Flow diagram showing the five steps from negotiating a treaty to its place in Australian law

Read the five steps in the diagram before you go on. Notice who does what: the **executive government** (the ministers and their departments, acting under section 61 of the Constitution) negotiates, signs and ratifies. There is no automatic vote in Parliament at step 3. Parliament only enters at step 5, by making or changing an Act.

Part 2 — Two systems and a bridge. This is the idea the whole section rests on. International law and Australian law are **two systems**. A treaty binds Australia on the international level as soon as it is ratified. But it is not part of Australian law until Parliament passes an Act — a rule lawyers describe by saying Australia has a **two-step (or dualist) system**: step one binds the country at international law; step two brings the obligation into Australian law.

Two systems, one bridge



Labelled diagram showing the international level and Australian domestic law as two systems, joined by the bridge of an Act of Parliament

The Constitution gives the Commonwealth Parliament a special power for step two: **section 51(xxix)**, the **external affairs power** — the power to make laws about matters external to Australia, which includes carrying out Australia's treaty obligations. You will see this power do real work in Part 6 and Worked example 2.

Part 3 — The obligations this section follows. Four treaties carry most of the story. Each is a curriculum referent, and each one shaped an Australian law.

Four key instruments and the Australian laws they shaped

Instrument (adopted)	Australia's commitment	What it requires	Main Australian laws giving it effect
UN Convention relating to the Status of Refugees (1951) and its 1967 Protocol	Ratified 22 January 1954; acceded to the Protocol 13 December 1973	Defines who is a refugee; forbids sending a refugee back to danger (Article 33)	Migration Act 1958 (Cth)
UN Convention on the Rights of the Child (1989)	Ratified 17 December 1990	A child's best interests must be a primary consideration (Article 3); rights to protection, education and a voice	Family Law Act 1975 (Cth), changed by the Family Law Reform Act 1995 (Cth)
UN Convention on the Law of the Sea (1982)	Ratified 5 October 1994	Sets sea zones (territorial sea; exclusive economic zone) and rules for ocean resources and the marine environment	Seas and Submerged Lands Act 1973 (Cth); sea boundary treaties, e.g. with Timor-Leste (2018)
Rome Statute of the International Criminal Court (1998)	Ratified 1 September 2002	Establishes the ICC; parties must cooperate with it	International Criminal Court Act 2002 (Cth)

Table of four key international treaties, Australia's commitment to each, and the Australian laws that give them effect

The Refugee Convention also gives this section two key words. A **refugee** is a person outside their own country who cannot return because of a well-founded fear of being persecuted for their race, religion, nationality, membership of a particular social group, or political opinion — that is the Convention's own definition (Article 1). An **asylum seeker** is a person who has asked for that protection but whose claim has not yet been finally decided (the term used by the UN Refugee Agency, UNHCR). The Convention's core promise is **non-refoulement** (Article 33): the duty not to send a refugee back to a place where their life or freedom would be threatened. You will read Article 33 itself in the source inquiry at the end of this section.

Part 4 — International courts and their influence on Australia (VC2HC10K07.E01). Treaties are watched over by international courts. Three matter for Australia.

Three international courts and Australia

Court (and seat)	What it decides	Who appears	Australia's connection
International Criminal Court (ICC) — The Hague	The most serious international crimes: genocide (acts intended to destroy a national, ethnic, racial or religious group), crimes against humanity, war crimes and the crime of aggression	Individuals, not countries	Australia ratified the Rome Statute on 1 September 2002 and passed the International Criminal Court Act 2002 (Cth) so Australian authorities can cooperate with the court
International Court of Justice (ICJ) — The Hague	Legal disputes between countries; it can also give advisory opinions	Countries only	Australia has appeared in cases, including Certain Phosphate Lands in Nauru (Nauru v Australia, 1992) and East Timor (Portugal v Australia, 1995)
International Tribunal for the Law of the Sea (ITLOS) — Hamburg, Germany	Disputes about the UN Convention on the Law of the Sea	Countries and some international organisations	In the Southern Bluefin Tuna cases (Australia v Japan, 1999) the tribunal ordered measures to protect a badly depleted tuna stock

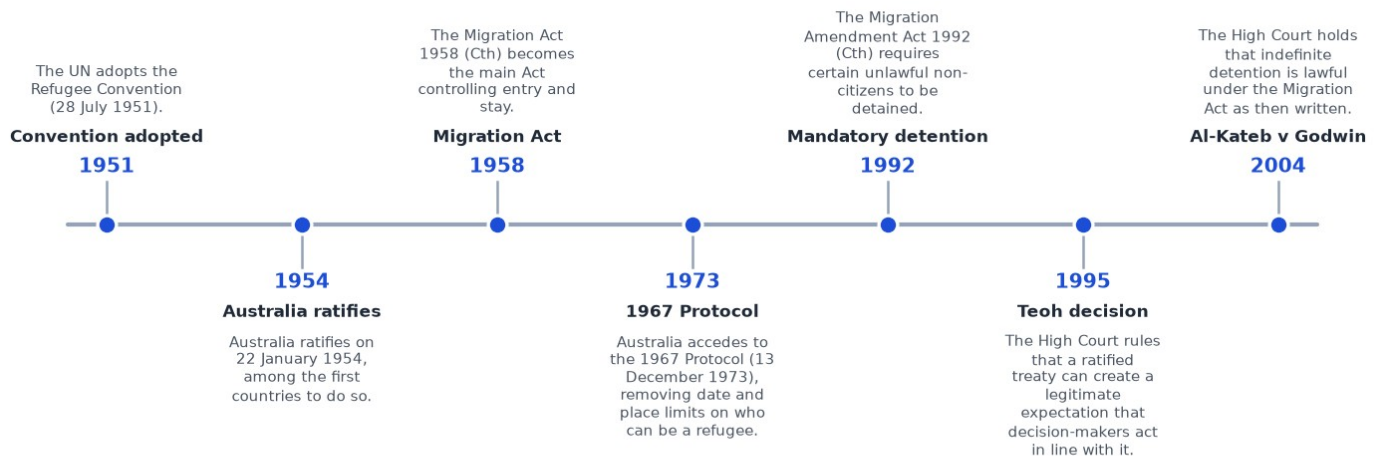
Table of the three international courts, what each decides, who appears before it, and Australia's connection to it

Look again at the ICC row. When Australia ratified the Rome Statute in 2002, the Parliament passed the *International Criminal Court Act 2002* (Cth) — “(Cth)” is short for Commonwealth, showing that it is a federal Act. That Act put

the Statute’s crimes into Australian law and lets Australian police and courts cooperate with the ICC — arresting a suspect, for example, and handing them to the court. It is the cleanest possible example of an international court shaping Australian lawmaking: without the court and the treaty, that Act would not exist in its present form.

Part 5 — One international law shaping lawmaking in depth (VC2HC10K07.E02). Follow the Refugee Convention through Australian law on the timeline, then read on.

The Refugee Convention and Australian law: 1951-2004



Each step after 1954 is a choice Australian institutions made about how to apply the obligation at home.

Timeline from 1951 to 2004 showing the Refugee Convention’s path through Australian law, from adoption to Australia being bound, the Migration Act, the 1967 Protocol, mandatory detention, Teoh and Al-Kateb

The timeline shows the two-step system at work, and also the **problems that arise when these obligations are applied in practice**. Since 1992, the *Migration Act 1958* (Cth), as amended, has required certain unlawful non-citizens — people in Australia without a valid visa — to be held in detention, and successive governments of different political colours have kept and used these powers, including to process some asylum seekers outside Australia. This is a politically live question, and the book does not take a side. The two positions in their strongest forms are:

- **For the detention and offshore arrangements:** a country has the right to decide who enters and stays; orderly processing protects the system for genuine refugees; and stopping boat journeys saves lives at sea and takes money from people smugglers.
- **Against the arrangements:** holding people, including children, for long periods without a court order harms them and runs against the spirit of non-refoulement and of other rights treaties Australia has signed; and a wealthy country can meet its obligations by processing claims in its own community at less cost.

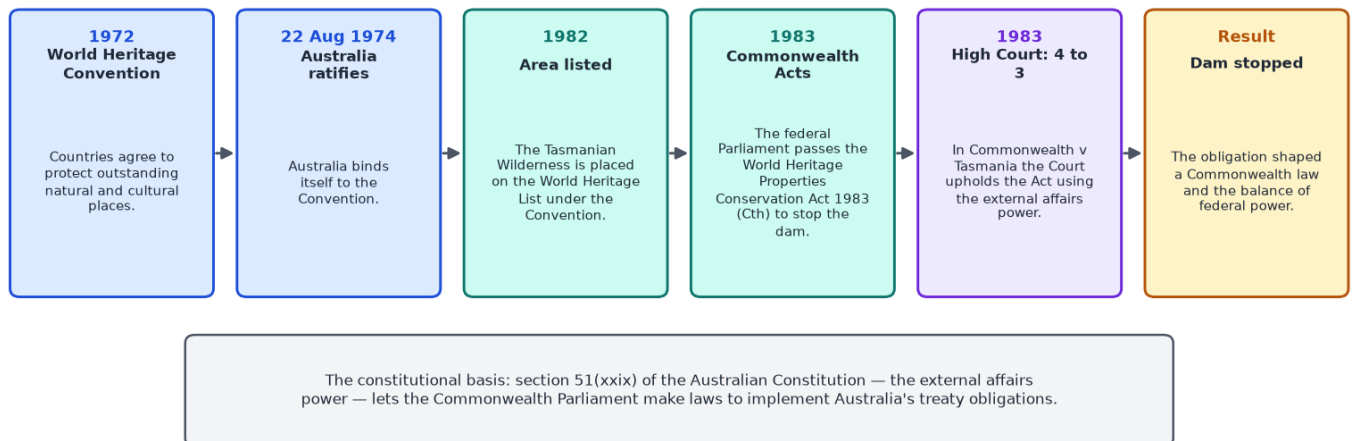
Both views appeal to the same obligation — protecting refugees — and disagree about how to meet it. That is the shape of most of the debate in this area, and both views are answerable with evidence (for example, about cost, about harm, about arrivals before and after a policy change).

Part 6 — The same pattern twice more. The Convention on the Rights of the Child reached Australian law through the *Family Law Reform Act 1995* (Cth), which rebuilt family law around the idea that a child’s best interests are the paramount — that is, the most important — consideration (Article 3 of the Convention asks for a child’s best interests to be a primary consideration; the Australian Act went further). The Convention also mattered without an Act: in *Minister for Immigration and Ethnic Affairs v Teoh* (1995) the High Court held that ratifying a treaty can create a legitimate expectation — a reasonable expectation courts treat as part of fair decision-making — that a government decision-maker will act in line with it. Later High Court decisions have narrowed that principle, which is itself one of the application issues in Part 8.

The Convention on the Law of the Sea shapes law and policy in a different way: it sets the sea zones every coastal country uses. The **territorial sea** is the belt of sea up to 12 nautical miles from the coast, where a country’s law applies almost as on land; the **exclusive economic zone** runs to 200 nautical miles, where a country has special rights over fishing, mining and energy. Australia’s *Seas and Submerged Lands Act 1973* (Cth) and its sea boundary treaties follow the Convention’s map. The Convention even resolved a long-running dispute: after Timor-Leste started compulsory conciliation under the Convention — the first time that process had been used — Australia and Timor-Leste signed a treaty fixing their maritime boundary in the Timor Sea on 6 March 2018 (in force 30 August 2019).

Part 7 — The Tasmanian Dam Case: obligations and the federal balance. The external affairs power is not only about *what* law is made. It is also about *who* makes it.

The Tasmanian Dam Case: how a treaty obligation changed Australian law



Chain diagram of the Tasmanian Dam Case: the World Heritage Convention of 1972, Australia binding itself to it in 1974, the 1982 listing, the 1983 Commonwealth Act, the High Court’s 4 to 3 decision, and the dam stopped

In *Commonwealth v Tasmania* (1983) — the Tasmanian Dam Case — the High Court held, by four judges to three, that the external affairs power supported a Commonwealth law stopping a hydro-electric dam in the Tasmanian Wilderness, because the law carried out Australia’s obligation under the World Heritage Convention. Building dams was ordinarily a state matter. The treaty obligation therefore moved lawmaking power toward the Commonwealth. (See 1A on the federal system, and 2B on the High Court’s role.)

Part 8 — The issues related to applying these obligations. Pull the threads together.

Issues in applying Australia's international legal obligations

Issue	What it means	Why it is debated
The two-step gap	Australia can be bound by a treaty at international law, yet the treaty creates no rights in Australian courts until Parliament passes a law.	People affected by a decision may not be able to rely on the obligation directly at home.
Enforcement	International courts have no police and no prisons; they rely on countries cooperating with them.	Powerful countries can resist rulings more easily than smaller ones, so the law may apply unevenly.
The federal balance	The external affairs power (s 51(xxix)) lets the Commonwealth implement treaties even in areas usually left to the states — confirmed in the <i>Tasmanian Dam Case</i> (1983).	Some see this as necessary to meet obligations; others see it as power moving to Canberra.
Democratic scrutiny	The executive government ratifies treaties. Parliament votes on the implementing laws, and the Joint Standing Committee on Treaties (since 1996) inquires into treaties before Australia binds itself.	Debate over how much power should sit with international bodies that no Australian elects.

Table of four recurring issues in applying Australia's international legal obligations: the two-step gap, enforcement, the federal balance, and democratic scrutiny

The last row deserves a paragraph, because it is where citizens enter. Since 1996, before Australia binds itself to most treaties, the treaty is tabled in Parliament and examined by the **Joint Standing Committee on Treaties**, a committee of federal MPs and senators, which takes public submissions and reports before the executive government decides to ratify. That process was created as a direct answer to the criticism that treaty-making was too hidden from Parliament and the public. The fair-minded versions of the wider debate are:

- **For a larger role for international obligations:** shared rules solve shared problems — refugees, the oceans, the worst crimes — that no country can solve alone; treaties lock in rights against a careless future government; and small countries gain when disputes are settled by law rather than by power.
- **For a smaller role:** no Australian elects an international committee, so the elected Parliament should keep the final say about Australian law; a country that signs treaties quickly may find its choices narrowed for decades; and obligations apply unevenly when powerful countries can resist rulings that smaller countries cannot.

You will evaluate these positions yourself in the source inquiry. Marking in this section rewards the quality of your reasoning — terms defined, evidence dated, both sides stated in their strongest form — not the conclusion you reach.

Worked examples

Example 1 — scaffolded

Trace how the 1951 Refugee Convention shaped Australian law, using the two-step system.

Working	Comment
28 July 1951: the UN adopts the Convention.	A treaty is agreed at the international level. No country is bound yet.
22 January 1954: Australia ratifies.	Step one of the two-step system: Australia is now bound at international law.
<i>Migration Act 1958</i> (Cth), amended over time, controls entry and stay.	Step two: Parliament chooses how the obligation sits in Australian law.
<i>Migration Amendment Act 1992</i> (Cth) adds mandatory	Parliament also chooses where to push against the

Working	Comment
detention.	obligation's edge — the application issues begin here.
<i>Al-Kateb v Godwin</i> (2004): the High Court holds the Act, as then written, allows indefinite detention.	Courts apply the Act Parliament wrote, not the treaty — the two-step gap in action.

Example 2 — scaffolded

Explain how the Tasmanian Dam Case shows an obligation changing *who* makes law in Australia.

Working	Comment
22 August 1974: Australia ratifies the World Heritage Convention.	The international obligation exists.
1982: the Tasmanian Wilderness is listed under the Convention.	The obligation now covers a specific place Tasmania wanted to develop.
1983: the Commonwealth passes the <i>World Heritage Properties Conservation Act</i> , relying on section 51(xxix).	The executive's obligation becomes the Parliament's law.
<i>Commonwealth v Tasmania</i> (1983): the High Court upholds the Act, 4 to 3.	The external affairs power is confirmed as a way to carry treaties into Australian law.
Result: the dam is stopped, in an area ordinarily a state matter.	An obligation shifted part of the federal balance toward the Commonwealth.

Practice questions

Scaffolded

Q1. In your own words, define: (a) treaty; (b) ratify; (c) non-refoulement.

Q2. The five steps below are out of order. Rewrite them in the correct order from the diagram in Part 1: Australia is bound at international law; Parliament passes an Act; the executive government ratifies; ministers and diplomats negotiate; Australia signs.

Q3. Using the diagram in Part 2: (a) name the body that carries out steps 1–3 and the body that carries out step 5; (b) explain in one sentence why the bridge exists in Australia's system.

Q4. From the table in Part 4, write one sentence for each court saying what kind of dispute it decides and who appears before it.

Q5. Using the table in Part 3, match each treaty to the Australian law that gives it effect: (a) Rome Statute; (b) Refugee Convention; (c) Convention on the Rights of the Child; (d) Convention on the Law of the Sea. Options: *Migration Act 1958* (Cth); *International Criminal Court Act 2002* (Cth); *Family Law Reform Act 1995* (Cth); *Seas and Submerged Lands Act 1973* (Cth).

Q6. Choose one issue from the table in Part 8 and explain it to a classmate in two sentences, using one dated example from this section.

Unscaffolded

Q7. Write a paragraph tracing the Refugee Convention through Australian law. Use at least three dated events from the timeline in Part 5, and say where the application issues enter the story.

Q8. Why could the Commonwealth stop a Tasmanian dam in 1983 when building dams was ordinarily a state matter? Answer using the external affairs power and the facts of *Commonwealth v Tasmania*.

Q9. “A treaty is only paper in Australia until Parliament acts.” Discuss this claim using two examples from this section: one where Parliament did act, and one where a treaty mattered without a full Act.

Q10. Compare how law is enforced in an Australian court and in an international court. In your comparison, say which of the four issues in Part 8 your comparison shows, and why.

Source inquiry

Read the source. The extract below is Article 33(1) of the 1951 Refugee Convention, the promise of non-refoulement, in the treaty's own words.

Source extract

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.

Article 33(1), Convention relating to the Status of Refugees, opened for signature 28 July 1951 (entered into force 22 April 1954).

Source extract of Article 33(1) of the 1951 Refugee Convention: no contracting state shall expel or return a refugee to the frontiers of territories where their life or freedom would be threatened

“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.”

- a.** Restate the obligation in one sentence of your own.
 - b.** Name the Australian Act through which refugee protection mainly sits in Australian law, and say which body passed it.
 - c.** The timeline in Part 5 shows Australia choosing, at several points, how to apply this obligation. Pick one of those choices (for example, mandatory detention from 1992). State the strongest argument for it and the strongest argument against it, each in the form its own supporters would recognise.
 - d.** Evaluate: to what extent is Australia upholding this obligation well? Support your view with at least two dated facts from this section, and name one piece of evidence that does not support your view. (You are marked on reasoning, not conclusion.)
-

Answers

Q1. (a) A treaty is a binding written agreement between countries under international law. (b) To ratify is for a country to formally confirm that it agrees to be bound by a treaty. (c) Non-refoulement is the duty not to send a refugee back to a place where their life or freedom would be threatened. **Q2.** Negotiate; sign; ratify; bound at international law; Parliament passes an Act. **Q3.** (a) Steps 1–3: the executive government. Step 5: the Parliament. (b) Because in Australia’s two-step system a treaty is not part of Australian law until Parliament makes it so. **Q4.** ICC: individuals charged with the most serious international crimes. ICJ: legal disputes between countries. ITLOS: disputes about the Convention on the Law of the Sea. **Q5.** (a) *International Criminal Court Act 2002* (Cth). (b) *Migration Act 1958* (Cth). (c) *Family Law Reform Act 1995* (Cth). (d) *Seas and Submerged Lands Act 1973* (Cth). **Q6.** Any issue, clearly explained with a dated example — e.g. the two-step gap, shown by *Al-Kateb v Godwin* (2004), where the High Court applied the Act as written even though the result sat hard against the treaty’s spirit. **Q7.** Look for: Australia being bound (22 January 1954) at international law; the *Migration Act 1958* (Cth) as the Parliament’s step; the 1992 amendments or *Al-Kateb* (2004) as the point where application issues enter. **Q8.** Look for: Australia’s obligation under the World Heritage Convention; the *World Heritage Properties Conservation Act 1983* (Cth); the external affairs power, section 51(xxix); *Commonwealth v Tasmania* (1983), 4 to 3, upholding the law. **Q9.** Accept any two sound examples — e.g. the Rome Statute and the *International Criminal Court Act 2002* (Cth) for “Parliament acted”; *Teoh* (1995), where ratifying alone created a legitimate expectation in fair decision-making, for “mattered without a full Act”. **Q10.** Australian courts: binding decisions, police and prisons to enforce them. International courts: binding between the parties, but enforced mainly by cooperation and reputation — showing the enforcement issue in the Part 8 table.

Source inquiry guide. (a) Any faithful restatement: Australia promises never to send a refugee back to danger. (b) The *Migration Act 1958* (Cth), passed by the Commonwealth Parliament. (c) Award marks for each side stated in its strongest form — e.g. for mandatory detention: border control and saving lives at sea; against: harm to detainees, including children, and tension with non-refoulement. (d) Award marks for: terms defined, at least two dated facts used, one piece of counter-evidence named, and a stated conclusion. Two students reaching opposite conclusions can both score full marks.

Sources

Real-world facts in this section, with retrieval date 26 August 2026:

- UN Treaty Collection — *Convention relating to the Status of Refugees* (adopted 28 July 1951, in force 22 April 1954; Australia ratified 22 January 1954) and *Protocol relating to the Status of Refugees* (Australia joined the Protocol 13 December 1973); *Convention on the Rights of the Child* (Australia ratified 17 December 1990); *United Nations Convention on the Law of the Sea* (Australia ratified 5 October 1994).
- UNESCO World Heritage Centre — Australia ratified the World Heritage Convention on 22 August 1974; the Tasmanian Wilderness was listed in 1982.
- High Court of Australia — *Commonwealth v Tasmania* (1983) 158 CLR 1 (the Tasmanian Dam Case, 4 to 3); *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273; *Al-Kateb v Godwin* (2004) 219 CLR 562.
- International Court of Justice — *Certain Phosphate Lands in Nauru (Nauru v Australia, 1992)*; *East Timor (Portugal v Australia, 1995)*.
- International Tribunal for the Law of the Sea — *Southern Bluefin Tuna (New Zealand v Japan; Australia v Japan)*, Provisional Measures, Order of 27 August 1999.
- Federal Register of Legislation — *Migration Act 1958* (Cth); *Migration Amendment Act 1992* (Cth); *Family Law Reform Act 1995* (Cth); *Seas and Submerged Lands Act 1973* (Cth); *International Criminal Court Act 2002* (Cth).
- DFAT Australian Treaties Database / UN — *Treaty between Australia and the Democratic Republic of Timor-Leste Establishing their Maritime Boundaries in the Timor Sea*, signed 6 March 2018, in force 30 August 2019.
- Parliament of Australia — the Joint Standing Committee on Treaties, established 1996 as part of the treaty-making reforms.

(See also 1D on the Australian Government’s roles in the Asia-Pacific and the world, 2B on the High Court and rights, and 2A on how Australian courts sit in hierarchies.)

How well Australia’s legal systems deliver justice — an Asia-Pacific comparison

Victorian Curriculum 2.0 · Civics and Citizenship · Levels 9 and 10 · Knowledge and Understanding
— Laws and citizens

VC2HC10K08

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

Theory

The question this section answers. “To what extent” asks *how much* — not yes or no. A good extent answer takes a position on a scale, gives evidence on both sides, compares, and ends with a judged conclusion. This section builds the answer in order: first the measuring stick (the three principles of justice), then the facts (the death penalty across the region), then the comparison (how Australia’s common law system differs from a codified civil law system), and finally how to judge the extent.

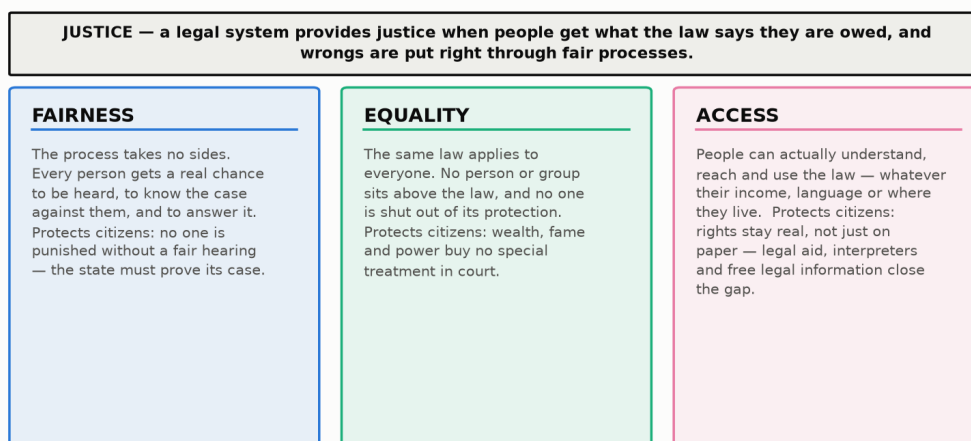
The comparison partner here is **Vietnam**. The curriculum also names Thailand; the same ideas apply to it.

Part 1 — The three principles of justice (.E01)

A *legal system* is the set of laws, courts and processes that deal with disputes and crimes in a country. In Australia, this system is meant to deliver **justice** — right and fair treatment through the law. The curriculum names three principles of justice: these are **fairness, equality and access**.

Contested terms — read before going on. The Victorian Curriculum names fairness, equality and access as the key principles of justice, but it does not define them. These are **contested terms**: reasonable people define them differently, and the definition chosen can change the conclusion reached. This section therefore gives each principle a working definition (Figure 1) and uses only those definitions throughout. Every question in this section can be answered from them alone. Other definitions exist; they are not interchangeable with these.

Three principles of justice



The Victorian Curriculum names fairness, equality and access as the key principles of justice. Each is a contested term: this section uses the definitions above, and every question is answerable on them alone.

Three cards showing the three justice principles — fairness, equality and access — each with a working definition and one line on how it protects citizens

Figure 1. The three principles of justice used in this section, with working definitions.

- **Fairness** protects citizens because no one can be punished without a proper hearing. A person charged with something must be told the case against them and given a real chance to answer it, and the decision-maker must not favour one side.
- **Equality** protects citizens because the same rules apply to everyone. A minister and a 15-year-old answer to the same charge under the same law, and no group is shut out from the law's protection.
- **Access** protects citizens because rights on paper are not enough. People must be able to reach the system — to understand their rights, get help with costs and language, and have their matter heard without unreasonable delay.

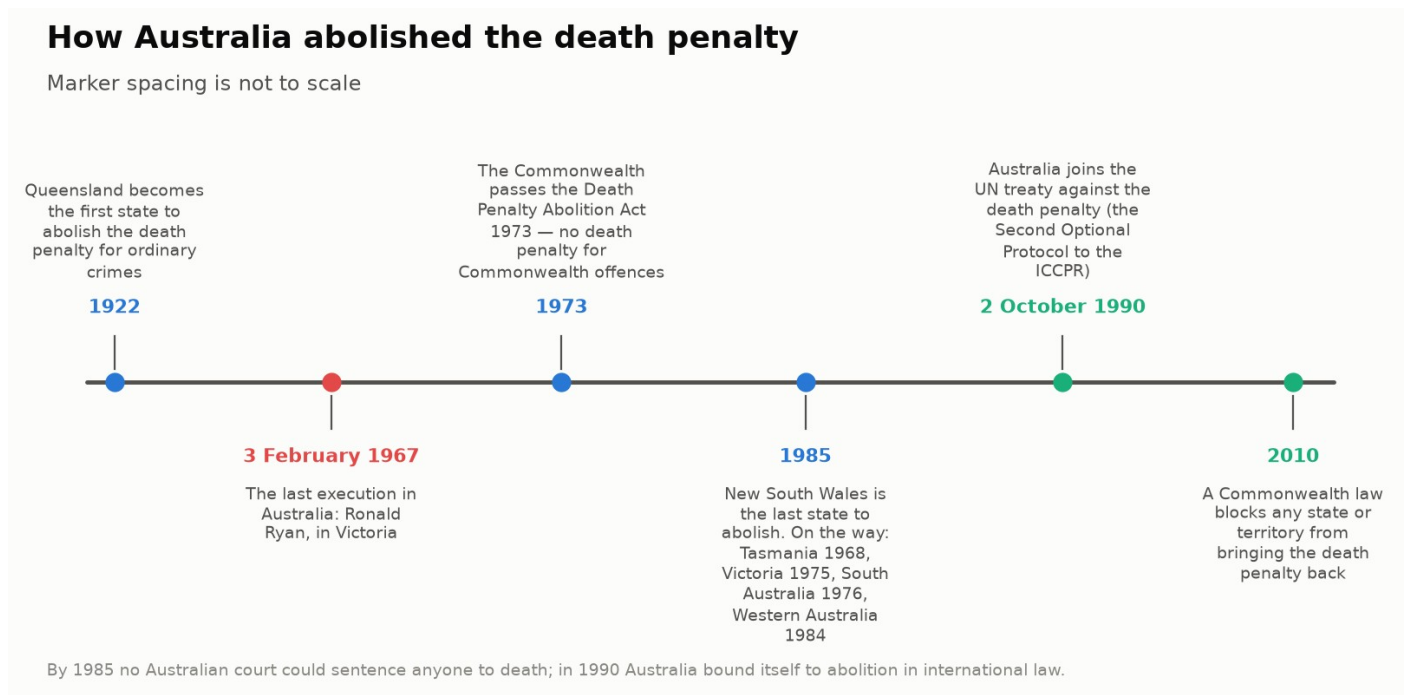
Two features of Australia's legal system do much of the protecting (you met both ideas in earlier levels):

- **Independent courts.** Judges decide cases on the law and the evidence, not on what the government of the day wants. If a government breaks the law, a court can say so.
- **The presumption of innocence.** A person charged with a crime is treated as innocent until a court finds them guilty. The state must prove its case; the accused does not have to prove their innocence.

Part 2 — The death penalty across the Asia-Pacific (.E02)

The **death penalty** is when a court orders that a person be put to death as punishment for a crime. It is the clearest test of whether a legal system provides justice, because it is final: if a court later finds the person was innocent, an execution cannot be undone.

Australia's path, in order:



Timeline of the abolition of the death penalty in Australia from 1922 to 2010, marking the last execution in 1967, the federal law of 1973, the last state abolition in 1985, the United Nations treaty of 1990 and the 2010 law against reintroduction

Figure 2. Australia removed the death penalty step by step. The last execution was on 3 February 1967 (Ronald Ryan, Victoria). The federal parliament abolished it for federal crimes in 1973, the last state abolished it in 1985, Australia joined the United Nations treaty against the death penalty on 2 October 1990, and a 2010 federal law blocks reintroduction.

In other parts of the Asia-Pacific region, the picture differs (Figure 3):

The death penalty across selected Asia-Pacific legal systems

Country	Status	Notes
Australia	Abolished	Last execution 3 February 1967; every state and territory had abolished it by 1985
New Zealand	Abolished	Last execution 1957; abolished for all crimes 1989
Cambodia	Abolished	Abolished 1989
Philippines	Abolished	Abolished 2006
South Korea	Abolished in practice	No executions since December 1997
Thailand	Retains	Last executions June 2018 — the first in nine years
Vietnam	Retains	Keeps the death penalty; in 2025 it removed it for eight crimes, replacing it with life in prison from July
Indonesia	Retains	Executes by firing squad; two Australian citizens were executed in April 2015
Singapore	Retains	Executions continue, including for drug crimes
Japan	Retains	Executions by hanging
China	Retains	Carries out more executions than any other country; the numbers are a state secret

Statuses follow Amnesty International's categories (viewed 26 August 2026). Worldwide, 113 countries have abolished the death penalty for all crimes; more than two-thirds of countries are abolitionist in law or practice.

Table of eleven Asia-Pacific countries showing whether each has abolished the death penalty, abolished it in practice, or retains it, with notes for each country

Figure 3. Death-penalty status across selected Asia-Pacific countries, using Amnesty International's categories.

Three categories to use when reading the table:

- **Abolished** — the death penalty has been removed from the law.
- **Abolished in practice** — the law still allows it, but the country has carried out no executions for many years.
- **Retains** — people are still sentenced to death, and executions may take place.

A contested issue — both sides at their strongest. Whether the death penalty is ever right is genuinely debated, and this workbook does not define one correct view.

The strongest case for keeping it: some crimes, such as deliberate murder, are so serious that only the death of the offender matches the harm done to the victim and their family; and fear of the punishment may stop other people from committing such crimes.

The strongest case for removing it: the punishment is final, so if the court gets it wrong there is no fix; there is no clear evidence that the death penalty stops crime better than a life sentence; and it hands the state the power to kill its own people — a power that can be misused.

Notice which side you favour. Marks in this workbook are awarded for the quality of the reasoning and the use of evidence, not for which side you land on.

Australia's position is a matter of record: it has abolished the death penalty at home and argues against it abroad. In April 2015, two Australian citizens (Andrew Chan and Myuran Sukumaran) were executed in Indonesia for drug crimes; the Australian Government had argued against the executions and recalled its ambassador in protest.

Part 3 — Two legal traditions (.E03)

Australia and New Zealand use **common law**: law built from judges' decisions in real cases as well as from laws made by parliament. A key mechanism is **precedent** — a decision of a higher court binds lower courts in similar later cases, so the law grows case by case and stays predictable.

Thailand and Vietnam use **codified civil law**: the main body of law sits in written codes — organised collections of rules passed by the country’s parliament. Judges apply the code to the case; they do not make law from their decisions. Vietnam’s current criminal code is the 2015 Penal Code (in force from 2018); Thailand’s criminal code dates from 1956.

Two legal traditions in the Asia-Pacific region

Question	Common law — Australia and New Zealand	Codified civil law — Thailand and Vietnam
Where are the laws found?	In Acts of parliament plus judge-made law (case law), built up case by case	Mainly in written codes — organised books of law passed by the legislature
Who grows the law?	Parliaments pass statutes; courts develop the law through their decisions in cases	The legislature writes and updates the codes; the courts apply them
Do past cases bind?	Yes — precedent: decisions of higher courts bind lower courts in later cases	The code text binds; earlier decisions can guide, but the code is the authority
How does a trial run?	Adversarial: two sides present their case before a neutral judge (and, in serious criminal trials, a jury)	Inquisitorial: the court leads the search for the facts; no jury
Named examples	Australia, New Zealand	Thailand (criminal code of 1956), Vietnam (2015 Penal Code, in force 2018)

The Victorian Curriculum names these pairings. Within each system, practice can vary between courts.

Comparison table of common law and codified civil law across five rows — where law comes from, the role of judges, the role of past cases, examples of countries, and who decides guilt

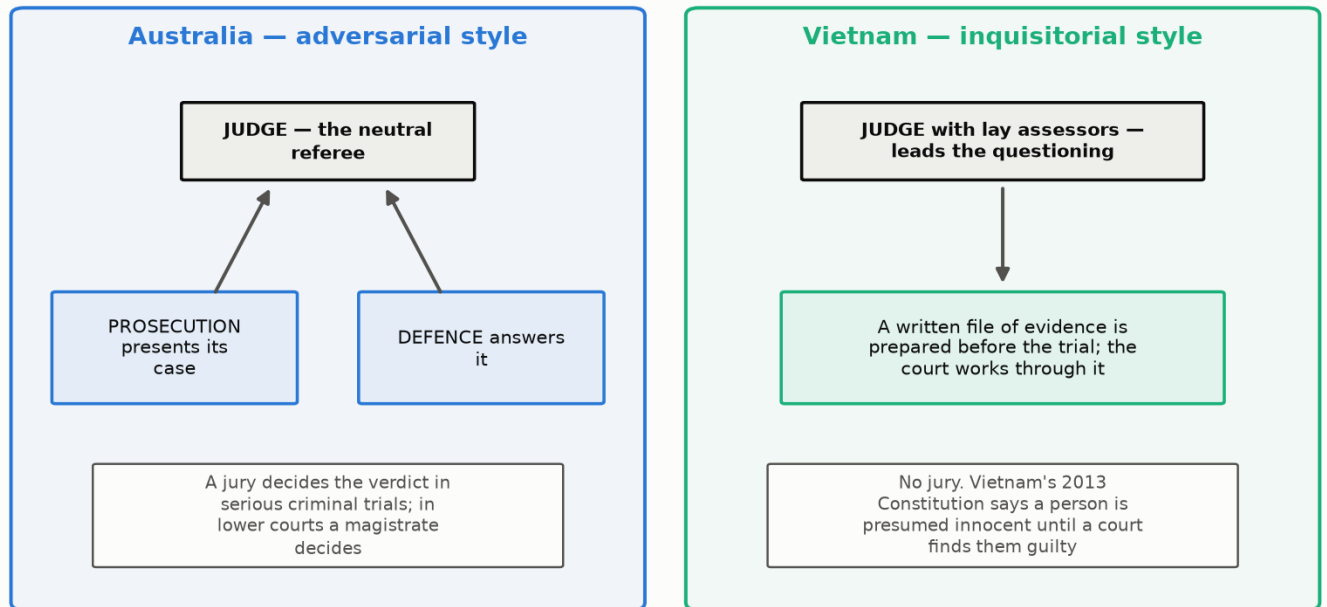
Figure 4. Key differences between the common law systems of Australia and New Zealand and the codified civil law systems of Thailand and Vietnam.

Part 4 — Courtrooms work differently

The two traditions produce different trial styles.

Two ways to run a trial

Simplified general patterns — real trials vary by court and case



Both systems aim to find the facts — they divide the work differently: the sides argue, or the court leads.

Two panels contrasting an adversarial trial in Australia with an inquisitorial trial in Vietnam, showing the role of the judge, the two sides, and who decides the outcome

Figure 5. Adversarial and inquisitorial trial styles.

- In an **adversarial** trial (Australia), two sides — the **prosecution** (arguing the accused is guilty) and the **defence** (arguing for the accused) — present their cases to a neutral judge, who acts like a referee and makes sure the rules are followed. In serious criminal trials, a **jury** of ordinary citizens decides guilty or not guilty.
- In an **inquisitorial** trial (Vietnam), the judge takes an active part in finding the facts: questioning witnesses and working through the written file of evidence. There is no jury; the judge decides together with two **lay assessors** — ordinary citizens who sit on serious cases.

The key point for comparison is that trial style is not the same thing as the principles of justice. Vietnam's 2013 Constitution includes a presumption of innocence. Both systems claim to protect the accused; the methods differ. (The figure simplifies real systems so they fit one page — actual courtrooms vary.)

Part 5 — Judging “to what extent”

Now put the parts together. The extent scale in Figure 6 is the measuring stick, and the three principles are the checks. An extent judgement needs a stated position, evidence for it, counter-evidence (evidence against it), the comparison with the other system, and a judged conclusion.

Judging “to what extent” a legal system provides justice



FAIRNESS check

Are hearings open, neutral and two-sided? Is anyone punished without a real hearing?

EQUALITY check

Does the law catch the powerful as well as the weak? Is any group treated worse?

ACCESS check

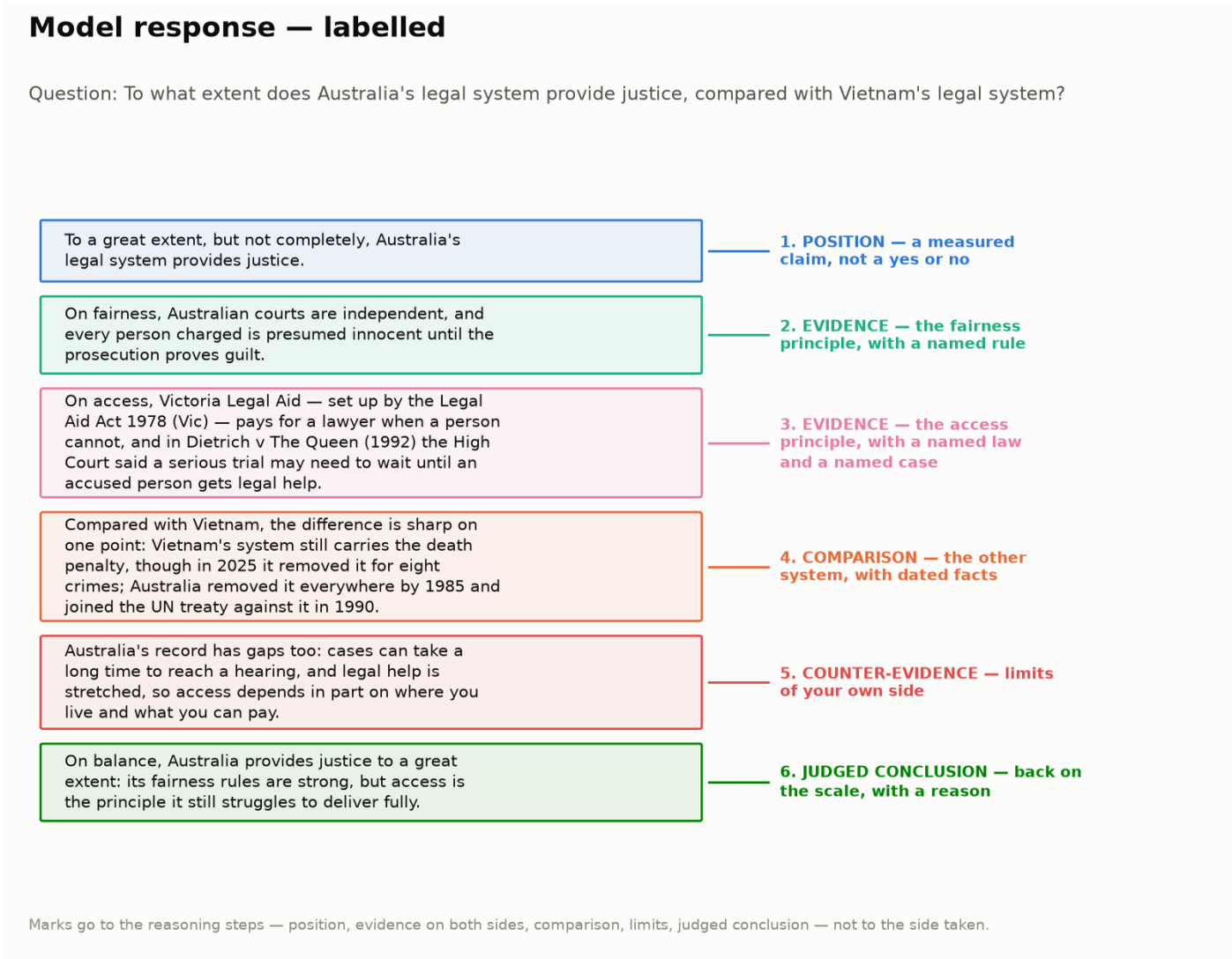
Can people actually reach the courts and get legal help — whatever they earn?

Collect evidence on each principle — for and against — then place the system on the scale and say why.

A scale of five judgements from provides justice fully to does not provide justice, with fairness, equality and access check cards beneath it

Figure 6. The extent scale and the three checks used to place a legal system on it.

Worked example 2 walks through building a complete response; Figure 7 shows the finished model.



Six labelled boxes showing the parts of a model response: position, evidence for fairness, evidence for access, comparison with Vietnam, counter-evidence, and judged conclusion

Figure 7. A model response to “To what extent does Australia’s legal system provide justice compared with Vietnam’s?”

Worked examples

Worked example 1 — applying the principles to a real case (scaffolded)

Case source: *Dietrich v The Queen* (1992) 177 CLR 292, High Court of Australia. Olaf Dietrich was charged with serious drug importation offences. He asked Victoria Legal Aid for a lawyer, was refused, and stood trial with no lawyer. He was found guilty, and appealed to the High Court.

Question: Explain how *Dietrich v The Queen* tests the principles of fairness and access.

Working	Comment
1. Identify the issue: Dietrich faced a serious charge, could not pay for a lawyer, and legal help was refused. He stood trial alone.	The principles are tested when the system’s protections risk becoming words on paper only.
2. Apply fairness: a fair hearing needs each side to be able to put its case. Facing a serious charge alone, with no legal training, leaves one side much weaker.	Fairness means both sides are heard and the decision-maker is neutral.

Working	Comment
3. Apply access: access means legal help is actually within reach, not just available in theory.	A system that has legal aid on paper but not for this person fails the access test.
4. The High Court's decision: where a person faces a serious charge and, through no fault of their own, cannot get a lawyer, the trial should be paused until representation is available. Dietrich's conviction was set aside and a new trial was ordered.	The decision does not create an absolute right to a free lawyer in every case; it protects the hearing in serious matters.
5. Conclude: the case shows fairness and access working — when the protections failed at trial, the system corrected itself on appeal.	Courts being able to fix a breach of the principles is itself a feature of a just system.

Sources: *Dietrich v The Queen* (1992) 177 CLR 292 (High Court of Australia); *Legal Aid Act 1978 (Vic)* establishes *Victoria Legal Aid*.

Worked example 2 — building a compared extent judgement (scaffolded)

Question: To what extent does Australia's legal system provide justice compared with Vietnam's?

Step	What to do	Comment
1. Position	State a point on the scale. Example: "Australia's legal system provides justice to a large extent; Vietnam's provides it to a moderate extent."	An extent answer always commits to a position up front.
2. Evidence — fairness	Independent judges; presumption of innocence; a real hearing for the accused.	Use the checks from Figure 6, one at a time.
3. Evidence — access	Legal aid (Victoria Legal Aid, established by the Legal Aid Act 1978 (Vic)); <i>Dietrich</i> requires help in serious cases.	Access evidence is about reach, not just existence.
4. Comparison	Vietnam removed the death penalty for eight crimes in 2025 (replaced by life in prison from July 2025) but retains it for others; Australia abolished it completely (by 1985, with a treaty commitment from 2 October 1990).	Pick one concrete difference; the death penalty is the clearest.
5. Counter-evidence	Australia: long delays in courts and stretched legal aid mean access is not the same for everyone. Vietnam: reforms such as the presumption of innocence in the 2013 Constitution move it toward the same protections.	A strong answer gives evidence against its own position.
6. Judged conclusion	Restate the judgement with reasons: "On fairness and access Australia does better; Vietnam is narrowing the gap; overall, Australia to a large extent, Vietnam to a moderate extent."	The conclusion follows from the weighed evidence, not from opinion.

The finished response is shown in Figure 7.

Practice questions

Scaffolded

1. Define the three justice principles — fairness, equality and access — in your own words. Then match each situation to the principle most at risk:
 - (a) A person cannot understand the charge against them because it is written only in legal language and no free help is offered.
 - (b) A minister tells a judge what decision to reach in a case involving a friend of the government.
 - (c) People who can pay for lawyers get hearings within weeks, while similar matters from others wait months.
 - (d) A person is punished without being allowed to answer the case against them.
2. Using Figure 2: (a) In what year was the last execution in Australia, and in which state? (b) In what year did the federal parliament abolish the death penalty for federal crimes? (c) In what year did the last state abolish it?
3. Using Figure 3: (a) Name two countries that retain the death penalty. (b) Name two that have abolished it. (c) Which country in the table has abolished it in practice, and what does that category mean?
4. Using Figure 4: (a) Which tradition treats judges' decisions in past cases as binding law? (b) Which tradition keeps the law mainly in written codes? (c) Name one country from each tradition.
5. Using Figure 5: (a) In an Australian serious criminal trial, who decides guilty or not guilty? (b) Who leads the questioning in a Vietnamese-style trial? (c) Name one protection both trial styles claim to give.
6. For each item below, state which check from Figure 6 (fairness, equality or access) it tests, and why:
 - (a) A court provides an interpreter for a witness who does not speak English.
 - (b) The same law is applied to a politician and to a school student.
 - (c) The judge has no connection to either side and decides on the evidence alone.

Unscaffolded

7. Using Figure 1 and one Australian institution or law named in this section, explain how one principle of justice protects citizens. Write two to three sentences.
 8. The death penalty is a contested issue. (a) Give the strongest case for keeping it. (b) Give the strongest case for removing it. (c) Say which case you find stronger, and why. Marks are awarded for the quality of the reasoning and the use of evidence, not for which side you take.
 9. A student claims: "Australia and Vietnam both promise a presumption of innocence, so their legal systems provide justice to the same extent." Identify one assumption in the claim, one piece of evidence that supports it and one that challenges it, and reach a judged conclusion.
 10. Using the scale in Figure 6 and evidence from this section, place Australia's legal system and Vietnam's legal system on the scale. Explain each placement with at least one piece of evidence.
-

Source task

Source A — the treaty Australia joined in 1990

Source A — Article 1 of a UN treaty against the death penalty

“

1. No one within the jurisdiction of a State Party to the present Protocol shall be executed. 2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.

In plain words: countries that join this treaty agree that no one under their law will be executed, and they must make that promise work in their own laws.
Australia joined on 2 October 1990.

Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (United Nations, adopted 1989).

Extract of Article 1 of the Second Optional Protocol to the International Covenant on Civil and Political Rights, with a plain-words gloss, noting that Australia joined on 2 October 1990

Figure 8. Source A: Article 1 of the Second Optional Protocol to the International Covenant on Civil and Political Rights, which commits countries to abolish the death penalty. Australia joined on 2 October 1990. (United Nations, adopted 1989.)

S1. (a) According to Source A, what must countries that join this treaty do? (b) In what year did Australia join?

S2. Source A says each country that joins “shall take all necessary measures” to abolish the death penalty. Connect this duty to one Australian law shown in Figure 2.

S3. Is the duty in Source A best seen as protecting fairness, equality or access — or more than one? Justify your answer using the working definitions in Figure 1. Marks are awarded for reasoning.

Answers

1. Fairness: processes without favour, with both sides heard; equality: the same rules apply to everyone; access: people can actually reach and use the legal system. (a) access (b) fairness (c) equality (it also touches access) (d) fairness.
2.
 - (a) 1967, Victoria (b) 1973 (c) 1985 (New South Wales).
3.
 - (a) Any two of: Thailand, Vietnam, Indonesia, Singapore, Japan, China. (b) Any two of: Australia, New Zealand, Cambodia, the Philippines. (c) South Korea; the law still allows the death penalty, but no executions have taken place since December 1997.
4.
 - (a) Common law (b) codified civil law (c) Example: Australia (common law); Vietnam (civil law).
5.
 - (a) The jury (b) the judge, with two lay assessors (c) the presumption of innocence.
6.
 - (a) access — language help makes the system reachable (b) equality — the same rule applies to everyone (c) fairness — the decision-maker is neutral.
7. See full solutions.
8. See full solutions. Marks are awarded for reasoning, not for the side taken.
9. See full solutions.
10. See full solutions.

S1. (a) Abolish the death penalty and not bring it back (b) 1990 (2 October 1990). S2. Example: the federal Death Penalty Abolition Act 1973 removed the death penalty for federal crimes, and the 2010 federal law blocks reintroduction. S3. Open — the reasoning must connect to the working definitions in Figure 1.

Full solutions

Q7. Model answer: “Access protects citizens because rights on paper are not enough — people must be able to reach the system. Victoria Legal Aid, established by the Legal Aid Act 1978 (Vic), pays for lawyers for people who cannot afford one in serious matters, so a person without money can still put their side of the case.” Marking guide: principle named and defined (1 mark); named institution used correctly (1 mark); explanation links the institution to protecting citizens (1 mark).

Q8. Model reasoning: (a) Strongest case for keeping: some crimes, such as deliberate murder, are so serious that only the death of the offender matches the harm done; and fear of the punishment may stop others from committing such crimes. (b) Strongest case for removing: an execution is final, so if the court gets it wrong there is no fix; there is no clear evidence that the death penalty stops crime better than a life sentence; and it hands the state the power to kill its own people. (c) The student’s own view with a reason. Example: “The case for removal is stronger, because the finality of a mistaken execution outweighs evidence about stopping crime that is not clear.” Marking guide: each strong-form case engages with the strongest version of the other position (1 mark each); judgement stated (1 mark); reason uses evidence or a principle from the section (1 mark). Marks are awarded for reasoning, not for the conclusion reached.

Q9. Assumption: that a promise written in law is the same as protection in practice. Evidence supporting the claim: both systems commit to a presumption of innocence (Vietnam’s 2013 Constitution; Australian law), so on paper the protection is shared. Evidence challenging it: the trial methods differ (adversarial with a jury versus a judge-led inquisitorial style), Vietnam retains the death penalty while Australia has abolished it completely, and access to legal help differs. Judged conclusion: the shared promise supports some agreement, but the methods and the outcomes differ, so the two systems do not provide justice to the same extent. Marking guide: assumption 1 mark; supporting evidence 1 mark; challenging evidence 1 mark; judged conclusion 1 mark.

Q10. Model: Australia — “provides justice to a large extent”: independent judges, presumption of innocence, legal aid, appeal courts that fix errors (*Dietrich*), and full abolition of the death penalty. Vietnam — “provides justice to a moderate extent”: the presumption of innocence is in the 2013 Constitution, and the 2025 reforms removed the death penalty for eight crimes, but it is retained for others, and the trial method gives the judge an investigating role with no jury. Marking guide: placement on the scale 1 mark each; supporting evidence 1 mark each; reasoned comparison 1 mark.

S2 (worked). Source A requires Australia to take all measures necessary to abolish the death penalty. Figure 2 shows how: the federal parliament passed the Death Penalty Abolition Act 1973 for federal crimes, every state had abolished it by 1985, and the 2010 federal law blocks reintroduction. That chain of laws is the “necessary measures” in action.

S3 (worked). A strong answer argues more than one: the duty protects equality (no one can be executed, whatever their crime or who they are) and fairness (because an execution is final, a mistaken conviction can never be put right); access is not directly engaged. Any position is acceptable if it connects to the working definitions in Figure 1. Marking guide: principle(s) chosen 1 mark; link to the working definitions 1 mark; quality of reasoning 1 mark.

All real-world material in this section is real, named and dated: Dietrich v The Queen (1992) 177 CLR 292 (High Court of Australia); Legal Aid Act 1978 (Vic); Death Penalty Abolition Act 1973 (Commonwealth); Crimes Legislation Amendment (Torture Prohibition and Death Penalty Abolition) Act 2010 (Commonwealth); last execution in Australia, Ronald Ryan, 3 February 1967 (Victoria); state abolitions — Queensland 1922, Tasmania 1968, Victoria 1975, South Australia 1976, Western Australia 1984, New South Wales 1985; New Zealand, last execution 1957, abolished for all crimes 1989; Cambodia, abolition 1989; the Philippines, abolition 2006; South Korea, no executions since December 1997; Thailand, last executions June 2018; Vietnam, 2015 Penal Code (in force 2018) and removal of the death penalty for eight crimes in 2025 (Amnesty International country page); Thailand, criminal code of 1956; executions of Andrew Chan and Myuran Sukumaran in Indonesia, April 2015; Second Optional Protocol to the International Covenant on Civil and Political Rights (United Nations, adopted 1989; Australia joined 2 October 1990, United Nations Treaty Collection); Amnesty International, death-penalty global status pages (113 countries have abolished the death penalty, more than two-thirds of the world). Retrieved 26 August 2026.