Chapter 3: Australia’s justice system

Contents

3.1 Is everyone equal before the law?
3.2 What makes our courts independent?
3.3 Who has the right of appeal?
3.4 What happens when the system fails?
SkillBuilder: Creating and analysing a survey
Review and reflect

Note to students and teachers: This PDF has been provided as an offline solution for times when you do not have internet access or are experiencing connectivity issues. It is not intended to replace your eBook and its suite of resources. While we have tried our best to replicate the online experience offline, this document may not meet Jacaranda's high standards for printed material. Please always refer to your eBook for the full and latest version of this title.
Chapter 3: Australia’s justice system

Overview

You might recognise the statue in figure 1. It is Lady Justice, a figure that is commonly associated with our legal system as well as many other legal systems around the world. A version of Lady Justice stands outside the Supreme Court of Queensland. She is armed with a sword, representing the power of reason and justice which may be wielded either for or against any party, and she holds a set of scales, which symbolise fairness and balance in judgements.

Australia’s justice system values these principles: fair treatment by the courts for everyone, independent judges who are free to make fair decisions, and the right to appeal a decision made by a court. These principles contribute to a democratic and just society.

FIGURE 1 Lady Justice represents justice, an essential belief of our society.
STARTER QUESTIONS

1. Looking at the picture of Lady Justice in figure 1, do you think that courts use scales to balance the merits of each problem that comes before them? Do courts use a sword to make a just and reasonable decision for either side?

2. What does justice mean to you? Define it and list some factors that should be present for justice to occur.

3. Why do we need justice?

4. Imagine that you have been accused of something you did not do. What would you expect to happen for justice to occur?

3.1 Is everyone equal before the law?

Equality before the law is an important and central principle of our legal system. In Australia we believe that all parties are entitled to be treated fairly by a court — regardless of whether they are a victim of crime, an offender or any other participant in the justice system. This does not mean that everyone should be treated in the same way, but that anyone who comes into contact with the courts should believe that they are being treated fairly and without discrimination.

Discrimination and the courts

Equality before the law is a basic human right. Article 7 of the Universal Declaration of Human Rights states that, ‘all are equal before the law and are entitled without any discrimination to equal protection of the law.’ Australia signed the International Covenant on Civil and Political Rights in 1991, which includes ‘the right to equality before the law and non-discrimination.’


It is against the law to discriminate against someone on the basis of their gender, ethnicity, disability, sexual orientation, age, religious affiliation, socioeconomic background, size or nature of family, literacy level or any other prescribed characteristic. The law and the courts must treat everyone fairly regardless of their personal characteristics.
It is against the law to discriminate against someone on the basis of their personal characteristics, status or beliefs. This applies to the way that people are treated by the law and by the courts.

No-one in our country is exempt from our laws. This means that everyone is entitled to have a case heard by an independent and impartial court, and everyone must obey the laws of Australia.

**Equality before the law**

It is very important that people who come into contact with the justice system believe they are being treated equally and fairly so that confidence in the system is maintained. Judges and courts must be aware of any personal bias or prejudice against any person from a particular background and make sure that this is nullified. This may mean that not everyone is treated in the same way. Some different approaches for dealing with an individual's specific background or circumstances can be seen in figure 2.
Respect and courtesy should be shown to anyone who comes into contact with the justice system. Discriminatory attitudes have no place in a courtroom. Everyone is entitled to be treated fairly under the law in Australia so that we are all protected from injustice.

CASE STUDY

In jail, no fair trial

In March 2014, ABC TV's *Lateline* aired a story about a 23-year-old Aboriginal woman who spent 18 months in a Kalgoorlie jail in Western Australia.

Rosie Anne Fulton was charged with driving offences. She had crashed a stolen car in Western Australia after consuming a large amount of alcohol. Her case was heard in a Kalgoorlie court, where the magistrate declared her unfit to plead as a result of her disability. Ms Fulton was born with foetal alcohol syndrome and has the mental capacity of a small child. She was placed on a prison-based supervision order.
Ms Fulton and her legal guardian, Ian McKinlay, appealed to Northern Territory authorities to house Ms Fulton in a secure care facility near the prison in Alice Springs. This would allow her to stay close to her Alice Springs family and remain in specialist accommodation, built for people with intellectual disabilities and challenging behaviours. However, the application was rejected.

‘They’re leaving Roseanne in prison, neglected, forgotten and ignored,’ Mr McKinlay said.

Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda noted that Aboriginal and Torres Strait Islander people are over-represented in the justice system. ‘It is a breach of Ms Fulton’s human rights which must be urgently addressed,’ he said.

Disability Discrimination Commissioner Graeme Innes agreed that it was unacceptable to put people in prison for indefinite periods when they have not been found guilty of a crime. ‘Prison is simply not an alternative accommodation option for people with disabilities,’ he said. ‘We launched a report in February which demonstrated the lack of equal access to justice for Australians with disabilities, and this is just one example of a bigger problem.’

**ACTIVITIES**

**REMEMBER**

1. Identify the ways in which it is against the law to discriminate against someone.

2. List two approaches that the justice system could take to treat participants equally and fairly.
3. Outline what is meant by the principle of equality before the law.

4. Read the case study ‘In jail, no fair trial’ in this section. In what ways has the justice system discriminated against Rosie Anne Fulton?

5. Choose one of the courts in your state or territory. Use internet resources (such as the court’s website, or an annual review or strategic plan) to find out what the court has done to ensure that everyone is treated fairly. (You might need to find the goal or purpose of the court.) Write down some of the things you see related to equality before the law.

6. Use internet resources (including brochures or videos) to identify the services offered by the courts, or offered to those attending court, that ensure everyone is treated fairly. (Look for support and assistance or legal help.) List three of the services you discover.

7. Describe what could happen if the courts did not treat everyone fairly.

8. Do you think that everyone who comes into contact with our courts is equal before the law? Justify your answer and compare it to the opinions of other students in your class.

9. Debate the topic: ‘Everyone is equal before the law.’

3.2 What makes our courts independent?

Independence of the judiciary is an important feature of Australia’s legal system. This is the principle that our judges and courts need to be kept separate from the other two branches of Australia’s government. An independent judiciary ensures that we continue to live in a democratic and just society. Judges and courts should not be subject to political influence from government, or from the political interests of any other person or organisation.

Separation of powers

The Australian Constitution supports the idea of the separation of powers to allow for three arms of government: a legislative arm, an executive arm and a judicial arm.

- Legislative arm. This is the parliament. Its function is to make new laws or to change or remove existing ones. Under the Constitution, parliament is the supreme law-maker. The courts are bound by legislation passed by parliament and by precedent.
• **Executive arm.** This arm of government administers the legislation passed by parliament. Executive power officially lies with the Governor-General or the Governor, who represents the Crown. It is government ministers and the public service who actually exercise this power. For example, the department of health is an Australian public service department which administers the running of Australia’s health system. The head of this department reports to the minister for health.

• **Judicial arm.** This is the judiciary and the courts. They make judgements about the law, and are responsible for settling disputes and enforcing the law. The High Court of Australia is responsible for interpreting and applying the Constitution. It makes sure that the other arms of government do not act in a way that is outside the powers granted by the Constitution. The judiciary can for example declare that laws passed by parliament are unconstitutional, or require particular actions if they believe that a branch of government is not performing a constitutional duty.

The rationale behind the separation of powers is that it allows each arm of government to check and balance the powers of the others. This prevents any arm from becoming too powerful and in this way helps maintain a fair and just society.

![The separation of powers](image)

**FIGURE 1** The separation of powers

**How do we ensure that our judiciary remains independent?**

Two safeguards in the Constitution protect judicial independence: security of tenure, and the way in which judges are appointed.

**Security of tenure**

By appointing a judge for a long period of time, we expect that he or she will be free to act independently. Judges who are secure in their position are more likely to decide cases and make rulings objectively even when they know that those decisions might be politically unpopular. Judges are commonly appointed until the age of 70, unless they choose to retire earlier. This makes it less likely that governments will be able to influence the decisions of judges.

**The way in which judges are appointed**

Judges are appointed by the Governor-General (or Governor in each state) acting on the advice of the government. They cannot be removed from office except by the Governor-General (or Governor), following an address from both houses of parliament. Judges cannot be removed from
office just because a government disagrees with their decisions in court. Because a judge cannot
be easily removed by the executive or legislative arm, it is assumed that he or she can work
independently and make decisions without fear of interference.

FIGURE 2 Judges are appointed for an extended period of time and in a manner which
promotes their independence from the other branches of government.

Do we really have an independent judiciary?

Judges and courts which only exist to do what a government wants them to do provide no
guarantee of a fair and just society. Australia’s judiciary is independent — to an extent. Even
though judges and courts have the responsibility of interpreting the law, courts also make laws by
establishing legal principles. This encroaches on the responsibility of parliament. Judges can make
law through the use of common law but these law-making powers are limited.

Judges are formally appointed by the Governor-General (or Governor), who is part of the executive
branch of government. Because this appointment is based on the recommendation of the
government, there is a small conflict between the executive and judicial arms. However, this is
considered to be a minor conflict and Australia’s judiciary is generally thought to be independent.
As seen in the case study ‘The importance of judicial independence’, judges strive to protect this
principle.
FIGURE 3  The judiciary is considered to be independent of the government in Australia.

CASE STUDY

The importance of judicial independence

The legislature enacts the law, the executive implements it and the judiciary independently interprets and applies it; that is, impartially, honestly and justly, without interference.

No branch of government can rightly impede or impair the actions of the other. Put more simply, all three arms must keep their hands to themselves and off each other.

Together the judicial independence principle and the separation of powers doctrine ensure that, in the discharge of their adjudicative powers and responsibilities, judges are not pressured or improperly influenced by anyone else either from outside or inside the court, including me, to reach a result other than one based on merit alone. Good judges faithfully adhere to this golden rule.

However, the separation of powers doctrine is a two-way street. In return for the unfettered independence to make decisions, judges must not meddle in the administration of enacted laws by the executive and departments of state.

Source: The Hon. Tim Carmody, QC (Queensland’s Chief Magistrate). Extract from ‘Opinion: Separation of powers and judicial independence are cornerstones of a free society and must be preserved’, Courier-Mail, 30 January 2014.
ACTIVITIES

REMEMBER
1. Define judiciary.
2. What is the role of the judiciary?

EXPLAIN
3. Outline what security of tenure is and why it is significant in guarding judicial independence.
4. Explain how the way in which judges are appointed protects their independence.
5. Read the case study ‘The importance of judicial independence’. Why does Chief Magistrate Tim Carmody think that judicial independence is important?
6. Look at figure 3. What the judge is saying conflicts with the principle of judicial independence. Explain why this is the case.

DISCOVER
7. Judges often comment on the principle of the independence of the judiciary. Using the internet or newspapers, find an article or commentary written by a judge or magistrate that refers to judicial independence. What opinion does the judge or magistrate hold?
8. People in the community (including members of the public, journalists and politicians) often criticise the judiciary. Using the internet or newspapers, find an article or commentary referring to judicial independence that was written by (or quotes) a member of the public, a journalist or a politician. What opinion does this person hold?

9. In 2011 the High Court declared that the Gillard government’s ‘Malaysian solution’ was illegal, leaving the government’s refugee policy in disarray. This situation demonstrates the importance of judicial independence. In this case the judiciary (the High Court) showed its independence by declaring invalid a decision made by the executive (the minister for immigration). Follow the Malaysian solution ruling weblink in your Resources section to access the ABC News report on the issue. Write down the reason for the High Court’s decision.

PREDICT

10. Outline all the possible consequences if Australia’s courts lost their independence.

THINK

11. Why is our judiciary independent?

3.3 Who has the right of appeal?

Any person involved in a court case who is not happy with the outcome of that case has the right to appeal the decision. This means they can ask a higher court to review a decision. However, there are some restrictions on who can appeal and under what conditions a person can appeal.

What is the right of appeal?

No legal system is perfect. When a case is heard for the first time, it is possible that a mistake can be made by the magistrate, judge or jury. As a result, the law often allows people to contest a court decision. This is known as the right of appeal. Our court hierarchy (discussed in chapter 2, ‘Our court system’) allows the decision of a lower court to be reviewed on appeal by a higher court.

All the courts have the ability to hear cases for the first time. This is called original jurisdiction. Some courts have the power to hear appeals from cases that were first held in lower courts. They might completely rehear a case or examine points of law. These courts are known as appeal courts. They have appellate jurisdiction.

An appeal court has the power to decide if the court hearing the case for the first time was correct or mistaken in its decision. The appeal court may agree with the result of the lower court’s ruling. If it finds that the lower court’s decision was mistaken, it will usually overturn the decision and replace it with its own.

There are several reasons why a party may appeal. These include:
• dissatisfaction with the decision of a court on the grounds of a question of fact
• disagreement with the court on a point of law
• contention over whether the remedy imposed by the lower court reflects the nature of the evidence presented at the trial.

The right to appeal is necessary because our legal system sometimes makes mistakes and someone can be wrongly sent to jail as a result.

Who can appeal?

The person appealing to the court is known as the appellant and the person defending the appeal is referred to as the respondent. Who can appeal depends on whether a case involves criminal or civil law.

In a civil case, any party can appeal a decision. Some appeals can only be heard if the court gives permission to the person wanting to appeal. This is called leave to appeal.

In a criminal case, only the people who are directly involved in the case can appeal — the accused and the prosecution. Members of the community do not have the right of appeal. (This includes victims.) Note that:

• The prosecution can only appeal against a sentence. It cannot appeal against a verdict of not guilty.
• A defendant can appeal against a guilty verdict and a sentence, or apply for leave to appeal against a sentence.

How do appeals work?

The court hierarchies in each state and territory deal with appeals differently. Consider New South Wales:

• Appeals from the Local Court are heard by the District Court.
• The Supreme Court of New South Wales has two appellate courts: the Court of Appeal and the Court of Criminal Appeal. These hear appeals from the other courts in New South Wales.

Contrast this with the situation in Victoria:

• In criminal matters, the County Court hears most appeals from the Magistrates’ Court. The Court of Appeal, a division of Victoria’s Supreme Court, hears and determines appeals from the County Court and the trial division of the Supreme Court.

• In civil matters, there is no right of appeal from the Magistrates’ Court to the County Court. Instead, an appeal from the Magistrates’ Court proceeds directly to a single judge of the Supreme Court. Appeals from the County and Supreme Courts are referred to the Court of Appeal.

Appeals from the highest appeal court in each state and territory are heard by the High Court. There is no right of appeal to the High Court. Usually the applicant must obtain special leave from the High Court in order to have the case heard. The High Court normally agrees to hear only a small proportion of the appeals brought to it. It is the final court of appeal.

![The High Court](image)

FIGURE 2 The High Court is the final court of appeal in Australia.

What happens in an appeal?

An appeal will usually only hear legal argument about a specific point, and the court will only consider the evidence that was given at the original trial or sentence. If an appeal against a verdict is successful, the court will either find the appellant not guilty or will order a new trial with a different judge and jury. If an appeal against a sentence is successful, it may be reduced or changed to a different type of sentence.
FIGURE 3 Appeals can be heard before a single judge or a group of judges (usually two to five), depending on the court and the type of matter being heard. A jury is not used in an appeal.

Why do we have the right of appeal?

The appeal process promotes a fair society and protects us all from unjust decisions. If citizens did not have the right of appeal, there could be an increase in cases involving injustice. Parties not satisfied with the outcome of their case would have no opportunity to ask a higher authority to review a decision made by a lower court. The appeal process is therefore important for correcting any mistakes made by lower courts. This supports a democratic and just society.

FIGURE 4 A person who is considering an appeal should speak to a lawyer before proceeding.
ACTIVITIES

REMEMBER
1. What is the right of appeal?
2. Why might a party appeal a court’s decision?
3. Who can appeal a decision and under what circumstances?

EXPLAIN
5. Describe the difference between original and appellate jurisdiction.
6. Explain the process for appealing a court’s decision.

DISCOVER
7. Using the internet or newspapers, look up a case that has gone to appeal. Summarise in writing what the appeal was about and what result was achieved.
8. Find the website of a court in your state or territory’s court hierarchy. Research the process for appealing a court’s decision. Present this process in the form of a diagram.

THINK
9. ‘The right of appeal is an important principle of Australia’s justice system.’ Do you agree or disagree with this statement? Give reasons for your answer.

PREDICT
10. Imagine you have been found guilty of a crime that you did not commit. What would happen to you if there was no right of appeal?

What happens when the system fails?

Our legal system is based on a number of principles which exist to make sure that anyone who makes contact with a court is treated fairly and receives justice. However, the system does not always work perfectly. Several factors can undermine the application of these principles. These include bribery, coercion of witnesses, trial by media and court delays.

Bribery

Bribery might occur in the justice system if someone tries to offer money, a gift or any other item of value to a judicial officer (such as a judge) or any other public official (such as a police officer) in the expectation that the person receiving the bribe will alter his or her behaviour and act in the briber’s
interests. A person might bribe a juror to make a certain decision, or bribe a witness to present a false testimony or withhold the truth. Note that it is illegal to give or receive a bribe.

Bribery is an offence under common law in many of the states and territories in Australia. Some states also have legislation referring to bribery. Under the Commonwealth *Criminal Code Act 1995*, the offence of bribing a public official is punishable by ten years in prison or a fine of up to $1 million.

Bribery can undermine the principles of our system of justice. Judges who accept a bribe are no longer independent. They have agreed to alter their behaviour and act in someone else’s interests. Witnesses who have been bribed may not present the truth or the full truth, which means that a fair trial will not occur. A jury that reaches a decision after receiving a bribe may reach the incorrect decision.

---

**CASE STUDY**

**The bribe’s in the mail**

Police investigated a possible attempt to bribe judges in Victoria after several cheques were received in the mail in July 2012. The mail was addressed to judges and court officials at the Victorian Supreme Court. The cheques were discovered through the court’s mail-handling security protocols. A court spokeswoman said, ‘All envelopes were similar in appearance. Court staff opened one envelope, revealing a cheque made out to the addressee.’ It is believed that all the suspicious envelopes opened were found to contain cheques.

**FIGURE 1** Bribery can involve money, a gift or any other item of value. It undermines the principles of justice because it prevents the truth or interferes with a correct decision being made.
Coercion of witnesses

Coercion of witnesses is against the law. A person must not coerce or attempt to influence a witness in a court case to provide a false testimony, withhold the truth, or avoid turning up to court at all. Witnesses could be intimidated or bullied while attending court; or at their home or place of work by an offender, a family member of the accused or an accomplice of the offender who knows or discovers where the witness lives or works. A court might make an order to stop the threatening or intimidating behaviour, or to stop the person attempting the coercion from coming near the witness again. The justice system can also offer protection programs if necessary, including protecting the identity of a witness and even relocating a witness.

Coercion of witnesses is covered by different legislation in each state and by the federal Crimes Act 1914, where it is referred to as ‘corruption of witnesses’. Depending on the state, the charge of threatening, corrupting or influencing a witness can result in sanctions including a fine, good behaviour bond, suspended sentence or prison sentence.

Influencing or coercing a witness can undermine the principles of our justice system. Evidence presented in court will become misleading and an incorrect verdict could result. An accused person who should be found guilty may instead be found not guilty. Conversely, an innocent person may be found guilty. A court trial would not hear the truth and therefore the trial would not be fair. Justice would not be served.

CASE STUDY

Please don’t go to court

An 18-year-old Woollamia man was committed for sentence in the District Court in February 2014 for influencing a witness to not give evidence in court. He was also charged with perverting the course of justice. Recordings produced by the police revealed that the accused was contacted by an inmate at the South Coast Correctional Facility. The police alleged that the prisoner asked the accused to go to another man’s house and tell him not to appear in court to provide evidence relating to another inmate’s matter before a court. The man who was the subject of the coercion was ordered to appear in the District Court in March.
FIGURE 2  It is illegal to contact witnesses in order to influence them to change what they say in court or even to not appear in court.

**Trial by media**

The media, including television and newspapers, will cover court cases. At times, this coverage can impact on the accused's reputation by creating widespread opinion regarding the person’s guilt or innocence before the trial has occurred or before a verdict has been delivered. This is referred to as *trial by media*. A high-publicity case, where the reporting of events can create a frenzy, can make a fair trial nearly impossible.

In Australia strict laws regarding contempt of court restrain the media from what it can report after a person is formally arrested or charged. These laws are designed to make sure that a defendant receives a fair trial in front of a judge or jury that has not formed an opinion biased by prior media coverage.

Courts take contempt laws very seriously. This is because justice can only occur when courts are able to operate independently, unhindered by outside interference, and are free to make a fair judgement. If the media publishes information about the accused’s prior convictions before the end of a trial, disobeys a court order or interviews witnesses, the judge or jury may be prejudiced against the defendant. The opportunity to have a fair trial would therefore be lost.

**CASE STUDY**

**Trial by media**

3AW radio broadcaster Derryn Hinch was found guilty of contempt of court in 2013 for breaching a suppression order made by a Victorian Supreme Court Justice. Hinch published tweets and blog entries about Melbourne woman Jill Meagher’s murderer during court proceedings, referring to the accused’s parole status. Melbourne newspapers then published front-page stories outlining the defendant’s past, claiming that he was going to
plead guilty. Hinch was ordered to pay a $100,000 fine, but he refused to pay the fine and spent 50 days in prison instead.

FIGURE 3 Radio broadcaster, Derryn Hinch

Court delays

There is an old saying in law: ‘Justice delayed is justice denied’. It suggests that if a person is wronged in some way and a dispute needs to go to court but does not do so in a timely fashion, then there might as well have been no court case at all. Justice has not taken place. A court delay can undermine the application of the principles of justice. Yet there is no right in Australia, either under common law or in legislation, to have a court case conducted within a reasonable amount of time.

However, the International Covenant on Civil and Political Rights, to which Australia is a signatory, states that anyone charged with a criminal offence is entitled ‘to be tried without undue delay.’ Numerous reviews and inquiries into court delays have been undertaken to explore why they happen and what can be done about the problem. Some of the problems caused by court delays are illustrated in figure 4.
FIGURE 4 Problems caused by court delays

Unnecessary delays can occur before the trial starts (between the date the case is committed to go to trial and the actual commencement date), or during the trial itself, making the court case drag on longer than necessary.

There are many reasons for delays that can cause a trial to last longer than necessary. These include:

- either side insufficiently or inadequately preparing its case
- lack of legal representation
- complex evidence and complex cases
- witnesses facing difficulties in getting to court
- either party using delaying tactics when in court.

Delays can also occur simply because the courts have more cases to deal with. This can happen for many reasons, including:

- a rise in the crime rate
- an increase in police numbers
- changes in population
- availability of legal aid
- changes in government policy
changes in the law.

CASE STUDY

Can't find an interpreter when you need one

At Sydney’s Central Local Court in March 2014, a man was accused of setting his former partner, a 34-year-old woman, on fire. He was charged with causing grievous bodily harm with intent to murder and breaching an apprehended violence order. Police alleged that he poured flammable liquid over the woman and then set her alight. The hearing was adjourned until later in the week because a court interpreter was not available. The man’s lawyer did not apply for bail and it was formally refused.

ACTIVITIES

REMEMBER

1. Identify the factors in the following diagrams that can undermine the principles of justice.

   a.
2. For each factor you identified in question 1, briefly outline how it undermines the justice system.

EXPLAIN

3. Construct a concept map or diagram that explains the impact that bribery, coercion of witnesses, trial by media, and court delays have on the justice system.

4. Choose one of the case studies in this section and write a letter to an editor of a newspaper expressing your opinion on the issue in the case study. Clearly identify the issue and explain its key features. Outline what you think should be done to solve the problem.

DISCOVER

5. Using the internet, newspapers or magazines, find pictures related to one factor that undermines the justice system. Attach the pictures to a page in your notes. Label each picture with one effect the factor has on justice and what can be done to lesson that effect.

6. Using the internet or newspapers, find a case involving bribery, coercion of witnesses, trial by media or a court delay. Write down the main facts of the case.

PREDICT

7. Copy and complete the following table to predict some of the likely outcomes of the situations shown. Suggest what should happen. (The first situation has been completed for you.)

<table>
<thead>
<tr>
<th>Situation</th>
<th>Likely outcomes</th>
<th>What should happen</th>
</tr>
</thead>
</table>
| Vince tells a witness in a murder trial that $100 000 will be transferred to her bank account if she changes what she will say when she is questioned in court. | • If the witness accepts the bribe, the truth of the case may never be heard.  
• If the witness accepts the bribe and the bribe is discovered, she could be charged with accepting the bribe as well as lying in court (perjury).  
• If the bribe is discovered, Vince could be charged with | • The witness should not accept the bribe.  
• Vince should not make the offer to pay |
<table>
<thead>
<tr>
<th>Situation</th>
<th>Likely outcomes</th>
<th>What should happen</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eve offers a judge $250 000 to reduce the sentence for her boyfriend, who has been found guilty of manslaughter.</td>
<td>bribing a witness or influencing a witness.</td>
<td>the witness.</td>
</tr>
<tr>
<td>Sevilla tells a witness in a court case that her cousin will kill her if she turns up at the trial.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Michael is a journalist who decides that he will write a story proclaiming that Kirby is guilty the day after she has been arrested and charged by the police.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chan is representing Hugh in his court case and decides to delay proceedings whenever he can.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**THINK**

8. Working in groups of three or four, plan a video presentation explaining one of the factors undermining the justice system. Your plan should make the video engaging so that it will help viewers fully understand the factor, how it undermines the justice system and what the possible solutions are. Use internet resources and be creative in how you present your plan.

**SkillBuilder: Creating and analysing a survey**

**Tell me**

**What is a survey?**

A survey is the process of collecting data for the purpose of analysing an issue. It consists of putting a set of questions to a sample group of people. For example, a political party may conduct a survey to find out whether citizens are satisfied with their policies.
Why is a survey useful in civics and citizenship?

Surveys are an efficient way of collecting information from a large number of respondents. The questions can range widely to find out people’s attitudes, values, opinions and beliefs on political or legal issues.

Model

A good survey:

• has a clear written introduction to the survey
• has simple questions early on
• places more sensitive personal questions towards the end
• leaves enough room to answer all the questions
• is of reasonable length
• is clearly analysed once responses are collected
• is well presented.

Refer to figure 1 for more tips on creating a good survey.
Top tips for surveys

1. Make the early questions simple to encourage survey completion.
2. Place the more sensitive personal questions towards the end.
3. Place responses in order ranging from positive to less positive (e.g. always, sometimes, never).
4. Do not fold two questions into one (e.g. ‘Do you spend your money on games and DVDs?’)
5. Consider leaving space at the end of the survey for ‘Other comments’.
6. Set out your answer spaces in a straight line, either horizontally across the page or vertically down the page.
7. Use a pleasant, encouraging manner when interviewing.
8. Explain to the interviewee why you are doing the survey.
9. Thank the interviewee for their assistance.

Show me

How to design a survey

You will need:

- a sheet of lined paper
- a pen
- questions that you would like to investigate.

Procedure:

STEP 1
Decide what you want to learn. You need to be very clear about your goals or your survey results will be unclear.

STEP 2

Decide whom you want to survey. Will your target group include both young people and adults, or just young people? How many people will you survey? Generally, the more people you survey the more reliable your results will be.

STEP 3

Decide what method you will use to collect the data. Consider factors such as cost, speed and whether sensitive information is involved. Survey methods include:

- personal interviews
- telephone survey
- mail survey
- email survey
- internet/intranet webpage survey.

![Personal interviews may be conducted at shopping centres or outside theatres. Personal interviews usually cost more to conduct than other survey methods.](image)

STEP 4

Design your survey. Start with a friendly introduction to encourage people to complete the survey. Work out your questions. There are two main types of survey questions:

- Closed questions ask the respondent to select an answer from a range of options.
- Open questions allow the respondent to record their thoughts about an issue. Look at the examples provided in figure 3 for ideas.
Try to keep your survey short and your questions simple. Make sure the layout is attractive and easy to follow.

**RATING SCALE**

How would you rate the performance of our courts? Please circle one response.

Excellent  Good  Fair  Poor

**AGREEMENT SCALES**

How much do you agree with the following statements? Please tick one response.

<table>
<thead>
<tr>
<th>Strongly agree</th>
<th>Agree</th>
<th>Disagree</th>
<th>Strongly disagree</th>
</tr>
</thead>
<tbody>
<tr>
<td>The courts treat everyone fairly.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Australia’s judges are independent.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**MULTIPLE CHOICE**

Please circle one response.

Age:  12–14  15–16  17–18  over 18

Gender:  Male  Female

**OPEN-ENDED**

Why do we allow people to appeal court decisions?

---

**FIGURE 3**  A sample survey form

**STEP 5**

Conduct a small trial of your survey to make sure the questions are clear and achieve your goals. Make any necessary changes.

**STEP 6**

Conduct your survey and collate the results. These can then be analysed for patterns or anything unusual. When you analyse the results, consider working out percentages. For example: the females aged 12–16 surveyed spend 10 per cent of their money on computer games, while the males aged 12–16 spend 25 per cent.
Let me do it

Developing my skills

Task

1. In a small group, design and conduct a survey. It is to be a paper-based survey carried out by personal interview. Note that paper surveys should allow enough room for interviewees to write their answers.

2. In your group, select one of the following topics for your survey:
   - equality before the law
   - independent judiciary
   - right of appeal.

3. Follow the steps outlined earlier in this SkillBuilder to prepare for and conduct your survey. Read the list of tips for survey preparation in figure 1 to help ensure your survey is effective.

4. Practise your interview skills in your group. Work out how to introduce yourself to the interviewee and explain the purpose of the interview. Decide whether you will give the interviewees the survey and a pen to write down their answers, or whether you will read out the questions and record the responses yourself.

Analyse and present your survey results

1. After you have collected responses to your survey, collate the completed surveys. In your group, complete the following tasks.
   a. Graph the responses to the closed questions.
   b. Read through the responses to the open questions to get a feel for what people are saying.
   c. Categorise the comments into different groups. The categories you develop are up to you. There may be some comments that do not fit a category.
   d. Look carefully at the comments in each category. Can you see any patterns?
   e. Compare the comments in each category to your closed questions data. Can you see any patterns here?

2. Use a software program such as PowerPoint or Keynote to prepare a slide show of your results.

3. Arrange a time with your teacher to present your slide show to your class. Give each class member a copy of your survey at the start of your presentation.

Questions

1. How did you develop questions for your survey?
2. Was it easy to sort out the information you collected? What was easy and what was hard?

3. What did you discover about people’s views on your topic?

4. Can you make any conclusions about what you discovered about your topic?

Checklist

I have:

• written a clear introduction to the survey
• included simple questions early on
• placed more sensitive personal questions towards the end
• left enough room to answer all the questions
• produced a survey of reasonable length
• clearly analysed the survey
• presented the survey well.

Skills questions

1. Choose the correct answer. A survey is used to:

   A. make a decision about the best way to administer justice.
   B. find out people’s attitudes, values, opinions and beliefs on political or legal issues.
   C. show us how the legal system works.
   D. find out why the justice system fails.

2. Choose the correct answer. After collecting responses to a survey:

   A. the opinions you disagree with are crossed out.
   B. the correct answers are displayed for the final presentation.
   C. the surveys need to be collated and analysed.
   D. random responses are selected and presented as evidence of everyone’s view.

3. What is a survey?

4. Why is creating and analysing a survey useful?

Review and reflect

Review

Australia’s justice system values several principles that work to protect citizens and contribute to a fair society. Equality before the law means that all parties and participants in the justice system are
entitled to be treated fairly by a court, regardless of whether they are a victim of crime or an offender. Independence of the judiciary is the principle that judges and courts need to be kept separate from the other two branches of government. Right of appeal means that a person involved in a court case who is not satisfied with the court’s decision can appeal — they can ask a higher court to review a decision. Some restrictions are placed on who can appeal and under what conditions a person can appeal. Our system does not always work perfectly because of factors that undermine the application of these principles.

- Equality before the law means that people who come into contact with the justice system should believe that they are being treated equally and fairly.

- There are several approaches that courts can take to deal with people from different backgrounds and circumstances to ensure they are treated fairly.

- Separation of powers ensures that judges (the judicial arm) are not subject to political influence from the legislative arm or the executive arm of government.

- A party may appeal a court’s decision when they are dissatisfied with the decision on the grounds of a question of fact or if they disagree with the court on a point of law.

- In a civil case, any party can appeal a decision but some appeals can only be heard if the court gives permission to the person wanting to appeal.

- In a criminal case, only the people who are directly involved in the case can appeal (the accused and the prosecution), and the prosecution can only appeal against a sentence.

- Factors undermining the application of the principles of justice include bribery, coercion of witnesses, trial by media, and court delays.

Reflect

1. What is your understanding of equality?

2. Looking at figure 1, what is equality about?
3. Apply your understanding of equality to the law. What does equality before the law mean?

4. Read the following case study and then answer these questions:
   a. What crime was Mr Baker originally found guilty of?
   b. What court did the appeal go to and how many judges heard the appeal?
   c. Why did the defence team appeal the original court’s decision?
   d. Explain why the court decided that the case would go to a retrial.
   e. Do you think that everyone — even murderers — should have the right to appeal a decision made by a court?

David Allan Baker was found guilty of the attempted murder of his former girlfriend in June 2012. Following a trial that was as memorable for Baker’s foul and hateful abuse of the judge and dismissal of two teams of lawyers as much as it was for the facts presented to the court, the court sentenced him to 15 years’ imprisonment.

Mr Baker, aged in his 50s, admitted to seriously harming Margaret Revesz after he went to her Bray Park home on 2 November 2009 and stabbed her directly in the heart with a knife. Baker was about to move to Gladstone to work when the incident occurred. The Queensland Supreme Court was told that Baker plunged a knife into Ms Revesz several times after telling her that if he could not have her ‘then no-one else can’.

When giving evidence to the court, Ms Revesz explained that when she was stabbed she asked Mr Baker ‘Are you going to kill me?’ According to Ms Revesz, his reply was ‘Yes’.

The prosecution and the defence disagreed on when this conversation had occurred. The defence argued that if the exchange happened after Ms Revesz was stabbed for the final time,
it could prove that it was not Baker’s intention to kill her, and therefore the charge of attempted murder was not appropriate.

Nevertheless, the jury found Baker guilty and he was sentenced to jail the next day.

Mr Baker later appealed the court’s decision. The Court of Appeal heard the appeal in 2014.

The appeal was made on the grounds that the trial judge had not complied with section 620 of the Queensland Criminal Code. Under this section, a judge is obliged to provide an overview of the accused person’s charges and summarise evidence to the jury after both sides have presented their case. The jury then considers this information in delivering its verdict.

The lawyers for Mr Baker convinced two of the three presiding appeal justices that the 2012 trial judge had made an error when he had not clearly asked the jury to consider the brief conversation that occurred between Mr Baker and his alleged victim. They argued that the conversation could have raised doubts over whether or not he intended to kill her.

‘The failure to independently identify the evidence that might be relevant to the consideration of the intent to kill as opposed to the intent to cause grievous bodily harm deprived the jury of judicial guidance upon important matters,’ said David North, one of the Supreme Court appeal justices.

The omission of the conversation in the judge’s final remarks to the jury ‘was an oversight which occasioned a miscarriage of justice,’ he said.

After the appeal was allowed, the conviction was set aside and a retrial was ordered.