

18 The legal system and you

18.1 Overview

TO COME

18.1.1 Our legal system

Picture yourself standing in court, accused of a crime you did not commit, facing a trial and then being found guilty of the crime. Australia's **rule of law** and our **legal system** should protect you from this happening. But how much do you know about Australia's legal system? Would you know where to find a lawyer? Would you know what would make your trial fair? All Australian citizens should have the opportunity to access justice no matter who they are.

John Button was wrongfully convicted of the manslaughter of his girlfriend in 1963. Thirty-nine years later, he was acquitted (found not guilty of committing the crime) after serving his sentence in prison.

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on Resources

 **Video eLesson** The court journey (electronic) (electronic)

LEARNING SEQUENCE

- 18.1 Overview
- 18.2 How a court works
- 18.3 The presumption of innocence
- 18.4 A fair trial
- 18.5 Access to justice and legal representation
- 18.6 **SkillBuilder:** Debating an issue 
- 18.7 **Thinking Big research project** 
- 18.8 Review 

To access a pre-test and starter questions and receive immediate, **corrective feedback** and **sample responses** to every question, select your learnON format at www.jacplus.com.au.

18.2 How a court works

18.2.1 Guilty or not guilty?

Courts interpret laws and settle disputes. A person who has been charged with a criminal offence may have his or her case heard by a court. It is up to the court to decide if the accused is guilty or not guilty. Let us look at what happens when a criminal matter goes to **trial** before a court.

Courts can be tense places. The decisions made in court can have an enormous impact on people's lives. Courts and the officials who work in them deal with real-life dramas. The main courtroom officials include a **magistrate** or **judge**, **jurors**, a **prosecutor** and **counsel for the defence**. Victoria has an independent system of courts, with different courts at different levels. Courts are often referred to as higher or lower courts.

18.2.2 Lower courts

Most people charged with a criminal offence will have their cases heard in the Magistrates' Court. Lower courts such as the Magistrates' Court are more informal than the higher courts. There is no **jury**, and magistrates do not wear a wig or a robe in court. However, people still need to address the magistrate as 'Your Honour' as they do in the higher courts.

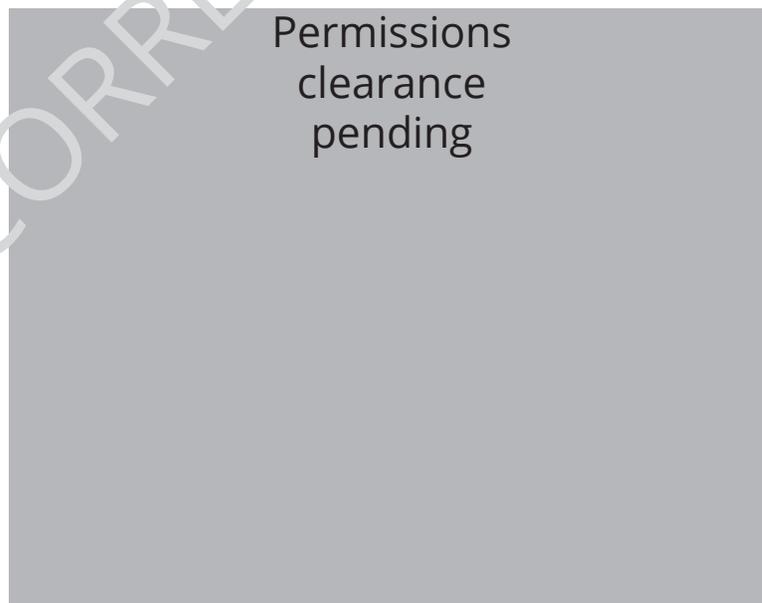
After hearing the cases presented by both sides, the magistrate decides whether a person is guilty or not guilty. If a person is found guilty, the magistrate decides the consequence. This is known as the sentence. A magistrate will refer very serious criminal offences to a higher court.

18.2.3 Higher courts

Victoria has a Supreme Court, which hears the most serious criminal cases. These very serious criminal cases include murder and treason. Below this court is the County Court. The County Court hears serious criminal matters including armed robbery, drug trafficking and serious assault.

At the beginning of a criminal trial in a higher court, the accused is asked, 'How do you plead?' A jury of 12 people may be selected to hear the trial if the accused responds with 'Not guilty'. The jury's role is to listen to the evidence and decide whether the accused is guilty or not guilty. If the verdict is not guilty, the accused is free to leave the court. If the verdict is guilty, then the judge decides the sentence.

FIGURE 1 Inside a serious criminal trial



18.2 ACTIVITIES

1. Ask your teacher to organise a class excursion to a local court. While you are there, draw a floor plan of the court and label where all the officials are located in the room. Note their role in the court. Write down some of the facts you hear for each case. **Describing and explaining**
2. Find a news article that reports on a criminal case in a Victorian court. Summarise the key facts of the case, taking note of who the judge or magistrate was, what the charge was, any decision made and any other court officials mentioned. **Describing and explaining**
3. In groups of three or four, develop a 30-second TV advertisement for a law firm that defends people charged with serious crimes such as murder. **Reasoning, creating, proposing**

18.2 EXERCISES

Civics and citizenship skills key: **CS1** Remembering and understanding **CS2** Describing and explaining **CS3** Examining, analysing, interpreting **CS4** Questioning and evaluating **CS5** Reasoning, creating, proposing **CS6** Communicating, reflecting

18.2 Exercise 1: Check your understanding

1. **CS1** List the main courtroom officials in a serious criminal trial.
2. **CS1** Explain the role of each of the following courtroom officials.
 - Magistrate
 - Judge
 - Juror
 - Prosecutor
 - Counsel for the defence
3. **CS1** How are magistrates and judges addressed in court?
4. **CS1** How many jurors are there for a criminal case?
5. **CS2** What is the jury's responsibility in a criminal trial?

18.2 Exercise 2: Apply your understanding

1. **CS3** The system of courts is referred to as a hierarchy (like a ladder). Construct a diagram showing the hierarchy of courts for Victoria. Put the highest court at the top and the lowest court at the bottom of your diagram.
2. **CS5** In Victoria, a person can be found guilty by a jury only if 11 of the 12 jurors (a majority verdict) or all 12 jurors (a unanimous verdict) conclude that the accused is guilty. Why might this be hard to achieve?
3. <New question, leave one line>

Try these questions in learnON for instant, corrective feedback. Go to www.jacplus.com.au.

18.3 The presumption of innocence

18.3.1 Innocent until proven guilty

If you were in trouble at school for something you hadn't done, you would hope that your teacher or principal would believe your claim that you had done nothing wrong. You would expect that you deemed innocent unless it was proved that you had done the wrong thing. In the same way, most Australians expect that when they go to court, they will be presumed to be innocent until proven guilty. But is this something that actually happens?

The **presumption of innocence** is a belief that we have inherited from English law. It means that all accused people who appear before a court in Victoria are presumed to be innocent until the prosecution proves that they are guilty. Not only are they presumed to be innocent, but they can only be found guilty if the court is reasonably certain that the accused person committed the crime. This means that the magistrate, judge or jury must believe that the accused is guilty **beyond reasonable doubt**. The prosecution has the **burden of proof** in a criminal trial.

18.3.2 Presumption of innocence around the world

The presumption of innocence is contained in article 11 of the Universal Declaration of Human Rights, and in article 14 of the International Covenant on Civil and Political Rights (ICCPR). This means that it is seen as very important across the world. Many nations — including the United States of America, France, Italy and New Zealand — recognise this principle. In Victoria, the presumption of innocence is protected by the Charter of Rights and Responsibilities.

18.3.3 Presumption of innocence and bail

Observing the presumption of innocence means that if a person is charged with a criminal offence, they may be granted **bail** by a magistrate or judge. Bail is the promise that an accused person makes to appear in court at a later date. It allows the accused to go home to wait for the trial, rather than stay in custody until he or she must go to court. Sometimes bail will have conditions attached, including the payment of money, surrendering a passport, remaining at the same address or reporting to police. Bail usually applies only to serious cases.

There are cases where the court may suspect that an accused person who is charged with a serious crime might not turn up to court, or might be at risk of causing danger to the public. In this case, bail is refused and the accused is detained (held in custody) until the trial.

FIGURE 1 Unlike in this image, the presumption of innocence suggests that a defendant should not be handcuffed when appearing in court unless he or she presents a risk to other people.

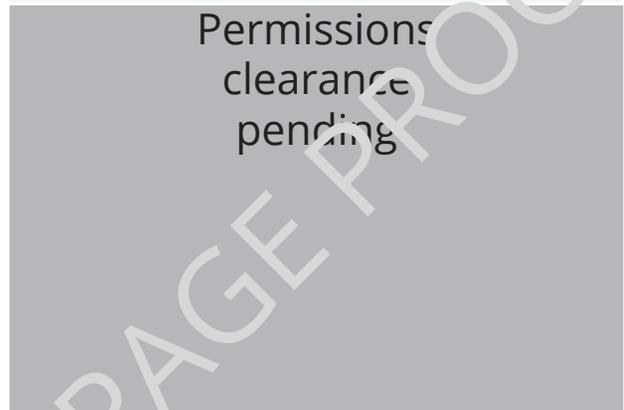


FIGURE 2 Arguments for the presumption of innocence

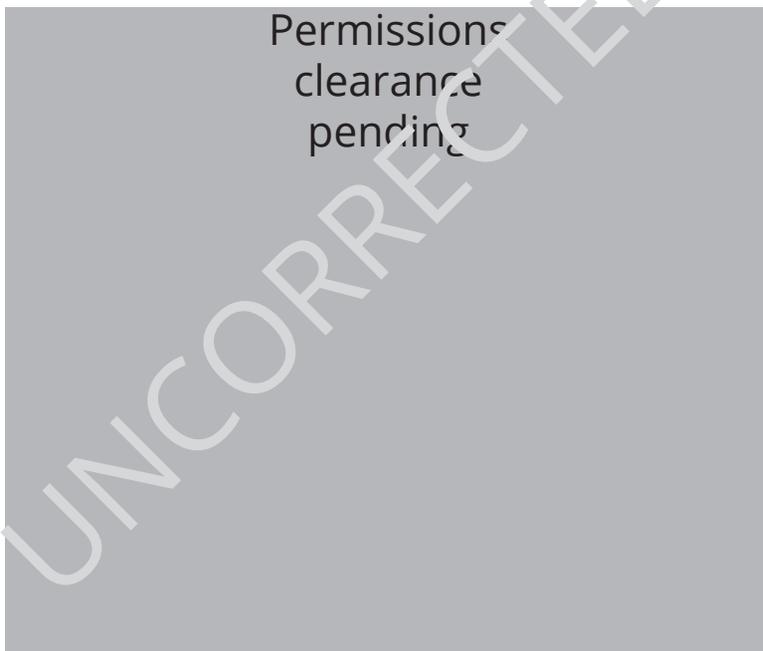
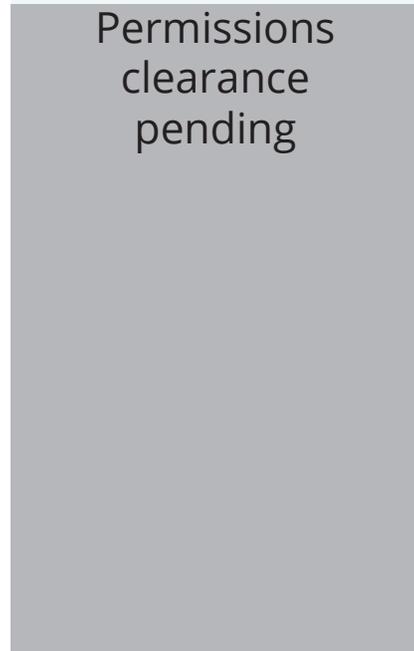


FIGURE 3 Arguments against the presumption of innocence



CASE STUDY

Presumption of innocence — on your bike

Queensland introduced new laws in 2013 to target the illegal activities of gangs, including criminal motorcycle (bikie) gangs. The laws are commonly referred to as 'bikie laws'. The government prepared a list of declared criminal organisations and created new offences for them. These included bans on members of a criminal gang gathering in groups of three or more, visiting locations like clubhouses or a gang events, and recruiting for their organisations. The laws have been criticised for going against the principle of the presumption of innocence.

Steven Smith, Scott Conley, Joshua Carew, Paul Lansdowne and Dan Whale were arrested and detained in custody in December 2013, following a meeting at the

Yandina Hotel. They were alleged by police to have links to the Rebels motorcycle club. Joshua's wife, Tracy Carew, said her husband had been locked up for delivering a pizza to the other men. 'These boys aren't guilty of this crime, they haven't been proven guilty. They haven't been put in front of a jury and deemed guilty yet,' she said. Mrs Carew told the media that the men were placed in solitary confinement awaiting their court hearings. Joshua Carew, and some of the other men, were released from custody under bail conditions in mid-January 2014.

FIGURE 4 Joshua Carew and some other men were arrested due to their alleged association with the Rebels motorcycle club in Queensland. They were held in custody for an extended period of time without trial.

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18.3 ACTIVITY

The media is expected to avoid news coverage that undermines the presumption of innocence. However, there are many cases where the media has ignored this principle. Charges made against Martin Bryant in 1996 are one example. Find out more about what the media did before the Bryant case went to court.

Questioning and evaluating

18.3 EXERCISES

Civics and citizenship skills key: **CS1** Remembering and understanding **CS2** Describing and explaining **CS3** Examining, analysing, interpreting **CS4** Questioning and evaluating **CS5** Reasoning, creating, proposing **CS6** Communicating, reflecting

18.3 Exercise 1: Check your understanding

1. **CS1** List some countries that believe in the presumption of innocence.
2. **CS1** Define the term 'beyond reasonable doubt'.
3. **CS2** What is bail and when can it be granted?
4. **CS2** Under what circumstance would bail be refused?
5. **CS2** What is the *burden of proof* and who has it in a criminal trial?

18.3 Exercise 2: Apply your understanding

1. **CS3** Examine **FIGURE 1**. In what way does this image undermine the principle of the presumption of innocence?
2. **CS4** Read the case study in this subtopic, 'Presumption of innocence — on your bike'. Joshua Carew was held in solitary confinement for approximately six weeks before a bail hearing in the Supreme Court. Briefly outline what this suggests about the attitude of the Queensland government towards the presumption of innocence principle.

3. **CS5** What might happen if an accused person went to court and was put on trial without the presumption that they were innocent?
4. **CS3** Discuss the advantages and disadvantages of the principle of presumption of innocence.

Try these questions in learnON for instant, corrective feedback. Go to www.jacplus.com.au.

18.4 A fair trial

18.4.1 Equal treatment for all

In Victoria, we believe that our legal processes protect the right of every accused person to receive a fair trial — a trial held before a competent, independent and unbiased court recognised by the law. If you were accused of a crime, you would expect that you would be provided with the opportunity to contest any charges made against you. You would presume that your side of the story would be listened to. You would think that the person listening to both sides would not favour either of those sides.

18.4.2 Main elements of a fair trial

The main elements of a fair trial are summarised in **FIGURE 1**. Let us now look at each element in more detail.

Preliminary examination of evidence

When a person is charged with a criminal offence, he or she will be told to attend a Magistrates' court. The Magistrates' court hear minor offences and some serious cases. They also examine very serious cases to decide whether the accused person should be put on trial in a higher court. This is called a **committal hearing**. If the magistrate decides that there is enough evidence and the case is serious enough, the case will be heard in the County Court, or in the Supreme Court.

Committal hearings guarantee a fair trial because they allow an accused person to know the case against him or her. They also provide the opportunity for the accused person to gather evidence and to test the evidence of the prosecution.

Right to legal representation

In a fair trial, everyone has the right to **legal representation**. In certain cases, legal aid can be provided for people who cannot afford the cost of hiring a lawyer (see subtopic 18.5).

Both sides have a role

The right to a fair trial means that everyone is entitled to be treated equally by the court. Both sides have the right to present their case. The two opposing sides will gather evidence and present their case to an independent judge or magistrate. The side with the strongest argument is likely to win the trial.

Independent judge

The judge is very much like the umpire in a game of football. His or her job is to make sure that both sides follow the rules. Judges are independent, which means that they have no direct involvement in questioning witnesses or deciding how either side will present its arguments. The judge makes sure that all the rules of evidence and procedure are followed and that both sides are treated equally.

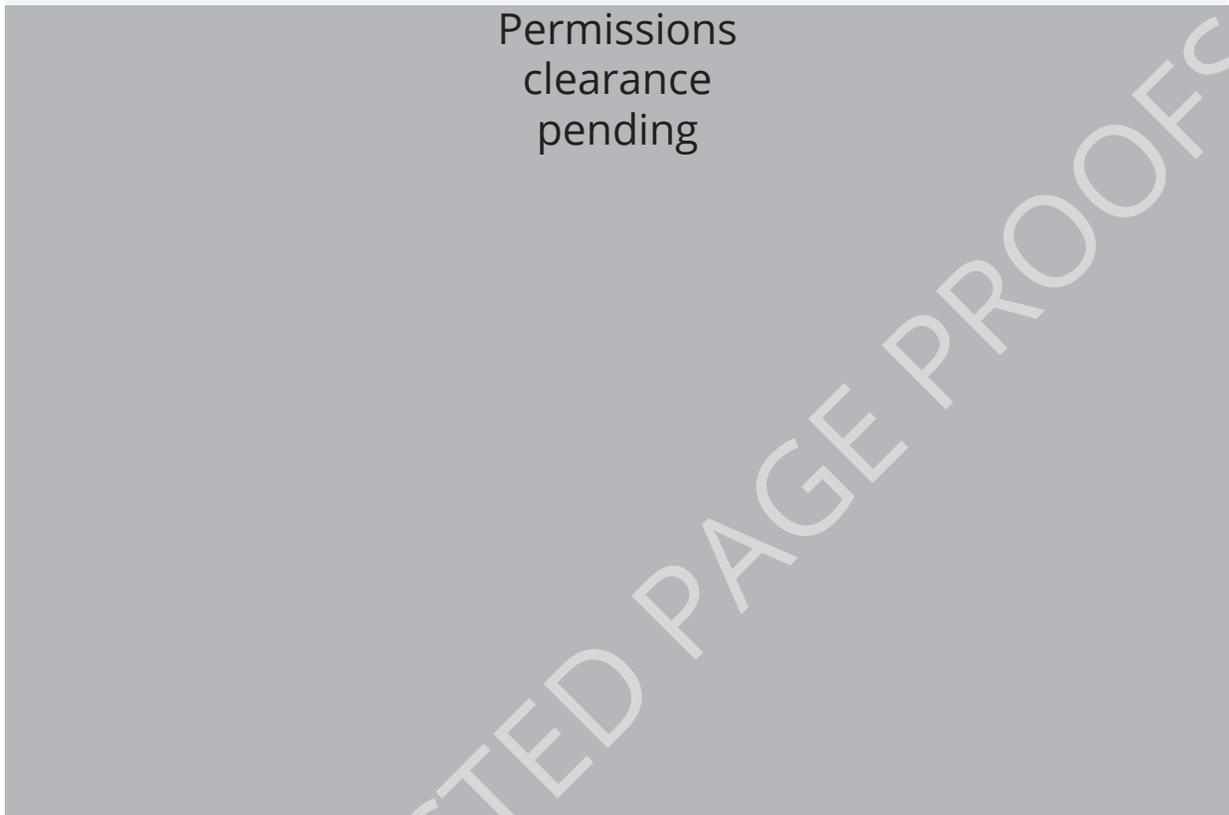
FIGURE 1 Main elements of a fair trial

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Judge and jury have no prior knowledge of the case

Neither judge nor jury should know anything about the case until the evidence and arguments are presented in court. Jurors must listen very carefully to the evidence given in a trial and make a decision based only on that evidence and the law. They are not allowed to discuss the case with anyone else, even after the trial has finished.

FIGURE 2 Any citizen who is listed on the electoral roll can be randomly summoned for jury service.



Strict procedures and rules of evidence

A fair trial will follow strict procedures. These procedures are designed to ensure that each side has an equal opportunity to present its own case as well as challenge the evidence introduced by the other side. A fair trial will also observe strict rules for the type of evidence that can be looked at in court. The procedure for a trial in a higher court with a jury is shown in **FIGURE 3**.

Witnesses can be asked to give evidence at a criminal trial if they are the victim of the crime, if they have direct information about the crime or if they are an expert providing specialist opinion. Expert witnesses might give evidence on topics such as whether a written document matches the handwriting of the accused, or whether the accused person's actions might have been influenced by things such as mental illness or prescription drugs. Each witness must promise to tell the truth.

FIGURE 3 Procedure for a trial in a higher court with a jury

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FIGURE 4 Before witnesses in court can give their testimony, they have to take either an oath or an affirmation promising to tell the truth.

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on Resources

-  **Interactivity** The courtroom (int-1206)
-  **Interactivity** Criminal trials (int-5313)

18.4 ACTIVITIES

1. Role play a mock trial of a person who has been charged with robbing a bank. (Refer to the process described in **FIGURE 3** to help you.) Divide up the courtroom roles — a list of roles necessary is shown below. Allow people sufficient time to prepare their case. An example has been provided for you in the case study below. Set the classroom up like a courtroom and see if the accused receives a fair trial.

Roles in a mock trial

- Judge
- Judge's associate
- Tipstaff
- Jurors (12)
- Prosecutor
- Counsel for the defence
- Accused
- Witnesses
- Members of the public
- Members of the media
- Police officer

Sample case for a mock trial

Andrew, Accused has been charged by the police with armed robbery. The police allege that on the morning of Friday, 15 February, Andrew entered the Bank Easy branch in Ballarat. He approached the teller, Thuong Teller, and said to her, 'This is a stick-up. Fill this bag with money or you will get shot!' At the time, Thuong was serving Colin Customer. Bao Bankworker, another teller, and Maria Manager, the branch manager, were also in the bank at the time. Andrew was arrested by Purujit Policeman as he tripped in the doorway. Andrew claims that he was not carrying a gun and that he was only joking around with Thuong.

Communicating, reflecting

2. Using internet resources, find the website of the magistrates' court in your state and research the type of cases that it hears. Does the Victorian magistrates court have committal hearings?

Questioning and evaluating

18.4 EXERCISES

Civics and citizenship skills key: **CS1** Remembering and understanding **CS2** Describing and explaining **CS3** Examining, analysing, interpreting **CS4** Questioning and evaluating **CS5** Reasoning, creating, proposing **CS6** Communicating, reflecting

18.4 Exercise 1: Check your understanding

1. **CS1** What is a committal hearing?
2. **CS1** What is legal representation?
3. **CS2** Briefly outline the following elements of a fair trial:
 - (a) preliminary examination of evidence
 - (b) right to legal representation
 - (c) both sides have a role
 - (d) independent judge
 - (e) judge and jury have no prior knowledge of the case
 - (f) strict procedures and rules of evidence.
4. **CS2** Explain the role of a juror and a witness in a fair trial.
5. **CS2** When can a judge question a witness?

18.4 Exercise 2: Apply your understanding

1. **CS2** How does a person come to be selected to serve on a jury?
2. **CS2** Draw your own diagram showing the steps involved in a trial with a jury. Use an appropriate illustration for each step to show that you understand it.
3. **CS1** List the types of cases that the County Court and Supreme Court in Victoria hear.

Try these questions in learnON for instant, corrective feedback. Go to www.jacplus.com.au.

18.5 Access to justice and legal representation

18.5.1 Difficulties in gaining access to the legal system

All Australians must have the opportunity to access **justice**. We all have the right to legal representation but, for various reasons, not all Australians can gain access to the law.

There are various reasons why people may not be able to access the legal system. Some people may have little to no understanding of the law. People with limited English may find it difficult to communicate their problem. Some people may feel intimidated by lawyers or may be unable to pay for legal representation.

Our legal system has devised ways of providing access to justice and legal representation for everyone.

FIGURE 1 Everyone has the right to legal representation under our legal system, but not everyone can afford it.

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18.5.2 Legal aid

In Australia, we believe that **legal aid** is important in providing access to justice. Without legal aid, some people would not have legal representation. They would lose their right to be treated equally by the law and therefore to receive a fair trial.

Legal aid is provided for people who cannot afford to hire a lawyer. It is offered by several organisations including legal aid commissions, community legal centres, and Aboriginal and Torres Strait Islander legal services.

FIGURE 2 What legal aid provides



Legal aid commissions

Each state and territory has its own legal aid commission. Legal aid commissions are funded by the state and federal governments. Victoria Legal Aid provides legal assistance, legal information and advice, lawyers to represent people attending court, and grants of money to help people to obtain legal representation in Victoria. Its services are free, unless the legal assistance required is ongoing. In this case, a small financial contribution is required.

Community legal centres

Community legal centres provide free legal advice and assistance as well as related services to the public. They focus on the disadvantaged and people with special needs. The centres may receive funds from the state and federal governments and from donations, but some centres receive no or very little money and are largely or entirely staffed by volunteers. These volunteers can be lawyers or non-lawyers.

Aboriginal and Torres Strait Islander legal services

Each state and territory has an Aboriginal and Torres Strait Islander legal service, funded by the federal government. They provide legal assistance to Aboriginal and Torres Strait Islander people as well as community education in law and law reform. In Victoria, the Victorian Aboriginal Legal Service relies on federal grants and donations from the public. It was established to provide free legal advice, information, and representation to Aboriginal and Torres Strait Islander people in Victoria.

FIGURE 3 The legal aid commissions are funded by the government and provide legal assistance, legal information and advice.

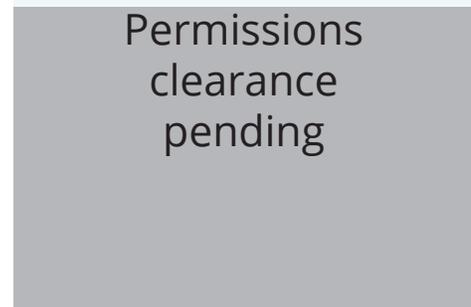


FIGURE 4 Community legal centres are funded by state and federal governments and by donations from the public. These centres provide legal advice and assistance and focus on helping the disadvantaged and people with special needs.



18.5.3 Legal awareness

The law touches the lives of everyone, so people need to be aware of their legal rights and responsibilities. Awareness of the law can be improved through education, information and the media. Schools teach civics and citizenship so that students have some awareness of the law. Information can be found on the internet. The website of the Attorney-General's department provides information on access to justice. Advertising is used to promote understanding of new laws so that people are aware of them.

DISCUSS

Imagine that you have been charged with a crime that you did not commit but cannot afford legal advice. How will you access justice?

Discuss what justice means to you. Using examples of how our legal system has devised ways of providing access to justice, explain how different people in our society value justice.

18.5 ACTIVITY

Work in groups of three or four. Identify one factor that can improve access to justice and legal representation (for example, legal aid). Create a storyboard that explains this factor and outlines how it can improve access to justice and legal representation. Produce a video presentation that will engage viewers. Show the video to your class.

Reasoning, creating, proposing

18.5 EXERCISES

Civics and citizenship skills key: **CS1** Remembering and understanding **CS2** Describing and explaining **CS3** Examining, analysing, interpreting **CS4** Questioning and evaluating **CS5** Reasoning, creating, proposing **CS6** Communicating, reflecting

18.5 Exercise 1: Check your understanding

- CS1** What is meant by the term 'justice'?
- CS1** What is legal aid?
- CS2** Describe the legal assistance offered by the following:
 - legal aid commissions
 - community legal centres
 - Aboriginal and Torres Strait Islander legal services.
- CS4** How can legal awareness improve access to justice and legal representation?
- <new question- leave one line>

18.5 Exercise 2: Apply your understanding

- CS5** Recommend where the following people could get legal advice. Explain why you chose each option.
 - John is an elderly pensioner who has been charged with growing cannabis for commercial use.
 - Tahni is an Aboriginal and Torres Strait Islander who has been charged with assault.
 - Yousif has recently arrived in Australia from Africa, and has been charged with driving without a license.
- CS3** List the consequences of not providing options for everyone to access the law.
- <New question, leave one line>

Try these questions in learnON for instant, corrective feedback. Go to www.jacplus.com.au.

18.6 SkillBuilder: Debating an issue

online only

What is a debate?

A debate is a discussion about an issue. The issue is presented as a statement — for example, 'Using a jury is the best way to make sure a trial is fair'. Participants in the debate take it in turns to put forward arguments for and against the statement.

Go to your learnON title to access:

- an explanation of the skill (Tell me)
- a step-by-step process to develop the skill, with an example (Show me)
- an activity to allow you to practise the skill (Let me do it)
- questions to consolidate your understanding of the skill.

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18.7 Thinking Big research project: <PROJECT TITLE TO COME>

online only

SCENARIO

content to come

Select your learnON format to access:

- the full project scenario
- details of the project task
- resources to guide your project work
- an assessment rubric.

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Resources



projectsPLUS Thinking Big research project: <project title to come> (pro-xxxx)

18.8 Review

online only

18.1.1 Key knowledge summary

Use this dot-point summary to review the content covered in this topic.

18.8.2 Reflection

Reflect on your learning using the activities and resources provided.

 **Interactivity** The legal system and you crossword (int-5314)

 **Worksheet** 18.x Reflection (doc-xxxx)
18.x Crossword (doc-xxxx)

KEY TERMS

bail the promise that an accused person makes to appear in court at a later date

beyond reasonable doubt the standard of proof required in a criminal trial where the prosecution must prove that the accused is guilty to such a high degree that a reasonable person would have little doubt that the accused committed the crime

burden of proof the legal principle describing who has to prove a case in court. In a criminal trial, this burden is on the prosecution.

committal hearing in very serious cases, the procedure held in a lower court to determine if there is enough evidence for the case to move to a higher court

counsel for the defence a lawyer who represents the accused person

judge a court official who hears cases in the higher courts, such as the District or County Court, or the Supreme Court

jurors a group of people (the jury) who are selected to hear and assess the evidence in a court case

jury a group of ordinary people randomly selected to hear and assess the evidence in a court case

justice the use of laws to treat people fairly and in a way that is morally right

legal aid the provision of legal assistance to those involved in a dispute or criminal matter who are unable to pay for legal representation

legal representation services performed by a qualified legal practitioner, such as a lawyer, who deals with legal matters on behalf of the person who has hired the practitioner.

legal system a system for interpreting and enforcing the laws of a country

magistrate a court official who hears cases in a magistrates court

magistrates men elected by the citizens to run Rome for a year

presumption of innocence the principle that all accused people who appear before a court are presumed to be innocent until the prosecution proves that they are guilty

rule of law the legal principle that all citizens are subject to the law, and equal before the law, as it is upheld by independent courts

trial the court process to determine whether someone committed a criminal act