

17.7 Principles of Australia's legal system

There are several key ideas, or principles, that guide Australia's legal system. They focus on our responsibility as individuals to obey the law, as well as our right to fair treatment within the legal system.

The key principles of Australia's legal system are in place to ensure justice is served.

The rule of law

We don't just make up the rules as we go along; the legal system creates and enforces the laws that determine our rights and responsibilities. This is known as the rule of law.

Laws are the rules we must follow within a society. They are designed to protect our way of life by defining our rights and responsibilities. For example, we have the right to live and work in a safe environment, free from discrimination. This means that we also have the responsibility not to harm or discriminate against others.

The rule of law can be broken down into the following ideas:

- Power is distributed across the three branches of government (known as the separation of powers).
- Laws are made by the legislature and enforced by the judiciary.
- Judges must make decisions independently, without being told what to do.
- Laws are applied to everyone equally, without discrimination or special privileges.
- Everyone should know about the law, so that everyone can obey the law.
- We cannot be punished for an act that does not break any laws.
- We cannot be punished for an act that was committed before a law was created to make it illegal.



Source 1 Trials take place in courtrooms in one of Australia's many courts.

17B What are the key principles of Australia's legal system?



Source 2 Lawyers such as barristers are highly skilled professionals who use their knowledge of the law to represent people in court.

The right to a fair trial

The right to a fair trial is a crucial part of justice in Australia. An adversarial system has been adopted in Australia's legal system as a way to provide a fair trial. This means if you are arrested and later charged for breaking the law, you can plead not guilty and have the right to appear in court to face trial. Under the adversarial system, two opposing sides, the defence and the prosecution, present their argument to either a judge or magistrate (depending on which court the trial is conducted in).

The right to a fair trial means that the person's race, sex, characteristics or any other factors not related to the crime should not affect the outcome of the trial. It is also important that the person accused of the crime and the person doing the accusing are treated equally and have the same opportunity to present their arguments in court.

Another cornerstone of a fair trial is the appointment of impartial, independent and unbiased judges. That means, for example, that those involved in the trial cannot be friends or family members of the accused or the victim, or have any other personal

connections that could affect their judgement. In a fair judicial system the court is also separate from the government and without political bias.

In Australia you, as a member of the public, can visit any court and observe the proceedings, except under special circumstances. Allowing the public to visit courts and observe trials helps ensure transparency.

The right to legal representation

Australia's legal system is complicated. It is made up of many laws and rules that determine how these laws are to be applied in certain situations. Most members of the public have limited knowledge of the law and need help from professionals to understand legal processes. That is why every Australian who is accused of having committed a crime has the right to a legal professional, such as a lawyer, to represent them in court. We will learn more about legal representation on page 447. In addition to a legal representative, a person with hearing disabilities, or who do not speak English, also has the right to access translation services or interpreters.

keyconcept: Justice

Getting a sentence reviewed

People who are not satisfied with the outcome of their case have the right to appeal and have their case reviewed in a higher court, as long as there are reasonable grounds. There can be many reasons for an appeal to be granted. For example, new evidence might have surfaced that has the potential to free, or reduce the sentence of, the accused. Appeals can also be granted if there is reason to believe that the trial was not conducted in a fair manner. For example, if it is found that the jury was biased, influenced by

threats or bribed, the accused would have the right to have their case heard again. If a case is reviewed in a higher court, this court will either reverse or confirm the existing sentence.

One of the dangers of appealing a sentence is that a judge in a higher court might find that the original sentence was not enough. Instead of having a sentence reduced, a person might end up in a worse position than when they began their appeal.

For more information about the key concept of justice, refer to page 414 of 'The civics and citizenship toolkit'.

Presumption of innocence and burden of proof

The idea that someone is innocent until proven guilty is an important part of any legal system. It means that a person who is accused of a crime is not required to prove their innocence. Instead, the prosecutor must prove that the person is guilty of the crime, beyond reasonable doubt. This means that the burden of proof is on the prosecutor, as they are the one required to prove or disprove a disputed fact in court.

Burden of proof is the phrase used in the legal system to indicate who has the responsibility of proving a fact in court. In criminal cases (such as murder, robbery or assault cases) the prosecutor must prove that the person accused of a crime is guilty. In civil cases (such as disputes between people) it is up to the complainant (the person making the complaint) to prove that they are right.

In order to uphold the presumption of innocence, it is important that the jury and others involved in a court case are not influenced by what they read or watch in the media (see Source 4). That is why authorities like the police do not make statements about whether or not they think the accused person is guilty. They are not allowed to influence or bias a jury's opinions based on anything else other than the facts of the case.



Source 3 One of the key cornerstones of our legal system is that people are presumed innocent until proven guilty. This is primarily because we do not want to convict and potentially imprison innocent people.

Presumption of innocence in court is considered a human right around the world and is used as a guiding principle in most democracies. The most basic reason behind this principle is that it is better to free someone who is guilty than to convict someone who is innocent.

17B What are the key principles of Australia's legal system?



Source 4 Media representations can affect the public's perceptions of a person accused of a crime.

Trial by media

In order to uphold the idea of presumption of innocence when a case gets to court, it is important that the person accused has not already been judged in the eyes of the public, by what they have read in the newspaper or watched on TV.

'Trial by media' has been a potential threat to fair trials since the birth of the newspaper. That is why most media organisations have ethical codes in place to stop them from, for example, publishing personal information about a suspect before he or she is convicted. However, social media makes it increasingly hard to control the information that is made public before trials.

Check your learning 17.4

Remember and understand

- 1 How does the rule of law protect our way of life?
- 2 What is meant by the right to a fair trial?
- 3 Why might someone need legal representation if they are legally allowed to represent themselves in court?
- 4 Why do you think that the burden of proof is on the prosecutor and not the defendant?

Apply and analyse

- 5 Look at the photograph of the barristers in Source 1.
 - a Why do you think they might be wearing that type of clothing?

- b Search the Internet to find out why some barristers wear wigs. Why do you think they don't wear wigs anymore in Western Australia?

Evaluate and create

- 6 Have you ever felt like you were being judged unfairly? Has someone accused you of doing something wrong even though they had no proof? Write a diary entry explaining the situation and how that made you feel. In your diary entry, reflect on the importance of following principles such as the right to a fair trial and the burden of proof.