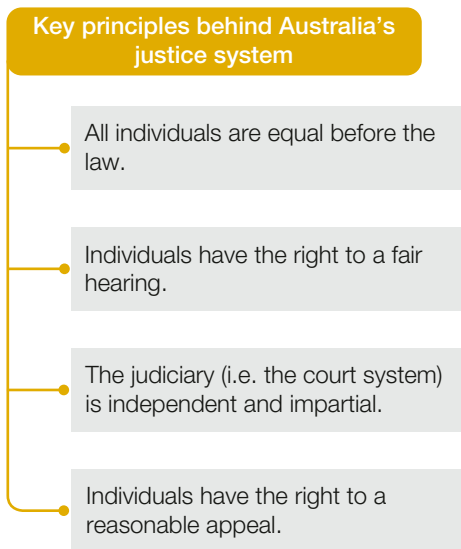


# 16.3 Australia's legal system

Australia's legal system is made up of a range of courts and tribunals, laws, procedures and legal personnel. This includes judges, **magistrates**, legal representatives or lawyers, the police force and people working in the prison system.

## The principles of our legal system

Our legal system is also built on a number of key principles, or beliefs, that are designed to help protect the rights of all Australian citizens. For example, two main principles that underpin our legal system are the belief that all people should be treated equally under the law and that our courts and judges must be independent and impartial. These two principles aim to ensure that all people who come before the courts receive a fair and unbiased hearing or **trial**. Another key principle that strengthens our legal system is that individuals have a reasonable right to appeal decisions handed down by judges.



Source 1 Key principles of Australia's legal system

## Equality before the law

One main principle that underpins the Australian legal system is that all people must be treated equally before the law. This means that all individuals regardless of their race, ethnic background, sex, income level

or mental capacity should be treated equally when dealing with the legal system. This includes being treated equally by the police, court personnel and other legal authorities. We should also all have an equal opportunity to access or use the court system to resolve our disputes.

## How is equality before the law achieved?

Various processes and procedures exist within our legal system to help make sure that all people who have dealings with the police, courts and other legal authorities, are treated equally regardless of their personal circumstances or background. For example, a range of laws aim to ensure people are treated equally and fairly when being questioned by the police, including an individual having the right to remain silent and not answer questions (other than giving their name and address); the right to be warned prior to questioning that 'anything they do or say may be used against them in a court of law'; the right to an interpreter if they do not understand English very well; and, for people aged under 18, the right to have a parent, guardian or independent adult present when being questioned.



Source 2 Lady Justice wears a blindfold to symbolise the legal system is objective and impartial.

Similarly, when being investigated by the police, all people have rights that must be observed including, under certain circumstances, the right to refuse to give forensic samples (such as hair or saliva samples) or participate in identification parades. All people charged with a serious crime (such as serious assault, selling illegal drugs and murder) also have the right to a **presumption of innocence**, meaning they must be treated as innocent until proven **guilty**, from the moment they are charged with a crime to their court hearing or trial. This includes having the right to be free to return home and live within the community (referred to as being granted **bail**) prior to their court appearance unless there is a genuine reason to deny this freedom. This refusal to grant bail could be that the court believes the **accused** person is a potential threat to the community and may harm other people if granted their freedom.

### Who might be disadvantaged by our legal system?

Unfortunately, some groups within Australian society, including Indigenous Australians, people from culturally and linguistically diverse communities – such as migrants, **refugees** and **asylum seekers** – and people

with mental health issues or intellectual disabilities, often experience difficulty when dealing with our legal system. Cultural differences and language or communication barriers can make it difficult for people within these groups to understand how our legal system operates and to interact or talk with legal authorities such as the police and court personnel. People with low incomes also often cannot afford to have a legal representative or lawyer to help them understand our legal system and prepare and present their case to the court.

Given that there are groups within our community that are at a disadvantage when dealing with our legal system, it is important that support services are provided to assist these groups and cater for their specific needs. One organisation that provides such support is Legal Aid Western Australia – a government-funded but independent body that provides free or low-cost legal advice and lawyers to the most disadvantaged people throughout Western Australia. These people may need assistance with a range of legal issues including crime-related, family, social security, immigration and **discrimination** matters. Unfortunately, however, this assistance is severely limited due to inadequate government funding.



**Source 3** Asylum seekers, refugees and migrants can be at a disadvantage when dealing with our legal system and often need legal support and assistance.

## casestudy

### Do people with disabilities need more of a 'fair go'?

In 2014, a report by the Disability Discrimination Commissioner found that the Australian legal system does not provide adequate support services for people with disabilities who come into contact with the criminal legal system – for example, those who might be victims of crime, witnesses or offenders. As such, these people have a greater chance ending up in prison. Disturbingly, people with disabilities are also more likely than the general population to be victims of violence.

In order to improve this problem, the report recommended a range of reforms, including increasing the amount of assistance available for people with disabilities and their carers – such as early intervention services – and providing training for police and lawyers so they are better able to assist these people.



**Source 4** Ms Julia Haraksin won a legal action against a tour bus company that denied her service because it could not accommodate wheelchairs.

### An independent and unbiased judiciary

The Australian legal system is based on the key principle that our court system (known as the **judiciary**) is independent and impartial. Being independent means that the courts are separate from the elected parliament and government, and the judges and magistrates are therefore free to make decisions without these bodies trying to influence them. Having an independent judiciary is an important feature of our legal system, as it means that no one, even the government, is above the law. It also prevents the government from influencing court decisions and enables the courts to check that the Commonwealth, state and territory parliaments do not misuse or make any laws beyond their power.

Having an impartial judge sitting or presiding over a court case helps make sure that all trials that take place throughout Australia are conducted in a fair and unbiased manner. For example, the judge can ensure that both parties involved in a court case are treated consistently and have an equal opportunity to present their case to the court. This includes having an equal opportunity to present evidence and question witnesses. Judges remain independent and unbiased throughout the entire court case and do not assist either party with the preparation and presentation of their case. This is so that neither party has an unfair advantage over the other.



**Source 5** Judges must remain independent and impartial in order to ensure a fair hearing or trial.

The judge also makes sure that both parties have an equal opportunity to present their case by ensuring each follows the strict rules of evidence and procedures when presenting their case to the court. For example, parties can only present relevant and reliable evidence to the court, so the **verdict** is based on appropriate and accurate information. This means that parties cannot present hearsay or 'secondhand' evidence that may be untrustworthy to the court. Similarly, the past criminal record of the accused is usually not to be raised as evidence because it could potentially bias a verdict.

The independence of our judiciary is also maintained by having our courts open to the people. Generally, all court cases are open to the public and the media so the proceedings are transparent or can be viewed by all.

## The right to appeal

In an attempt for cases to be resolved in a fair and unbiased manner, the Australian court system allows people who are dissatisfied with the outcome of their case to appeal or have their case reviewed by a higher court – providing **reasonable grounds** for appeal exist. For example, a person who has been found guilty of a crime may be able to lodge an appeal against the guilty verdict or the severity of the sentence if they can provide reasonable grounds. Similarly, a party may appeal if they can show that their trial may have been unfair – for example, the judge did not ensure that the strict rules of evidence or procedure were followed.



**Source 6** Courts are open to the public and media to make sure proceedings can be viewed by all.

## Check your learning 16.3

### Remember and understand

- 1 Explain two procedures that help ensure court cases are resolved in a fair and unbiased manner.
- 2 Suggest two rights of individuals that mean they are treated fairly by the police.
- 3 Describe how the Australian legal system maintains an independent judiciary or court system.
- 4 Name two aspects a judge should demonstrate to help ensure a fair and unbiased trial.
- 5 Explain how the use of legal representatives or lawyers can ensure a fair trial.

### Apply and analyse

- 6 Explain two features of the Australian legal system that aim to see that all people are treated equally before the law.
- 7 Explain two ways in which the Australian legal system fails to treat all people equally.
- 8 Discuss whether or not a person who is charged with a serious crime – such as attempted murder or serious assault – should be able to refuse to answer police questions, other than providing their name and address.

- 9 Discuss whether a person who is on trial for a serious crime – such as rape or dangerous driving causing death – should have any of their previous crimes read out to the court prior to the verdict being given.
- 10 Examine Source 3. How has our legal system failed to support asylum seekers, refugees and migrants? Identify two other groups in Australian society who might be disadvantaged by our legal system.

### Evaluate and create

- 11 Visit the Australian Human Rights Commission website via the link in your obook. Locate the section of the website relating to 'disability rights'. Research the ways in which people with disabilities are not being treated equally before the law. Suggest two changes that could be made to improve this situation.
- 12 Visit the Legal Aid Western Australia website via the link in your obook and prepare a brochure that outlines some of the main services and assistance offered by this organisation.