

Principles of justice

The key principles of Australia's justice system include equality before the law, an independent judiciary and the right of appeal.

Access to justice

Australia's courts have established many principles in order to maintain a court system that ensures fairness and protection for all participants. Our legal system exists to assist our society to function effectively and harmoniously, and it is therefore



Source 2.3.1 It is important that legal representation can be accessed by all. For example, Legal Aid WA has lawyers working as part of the Youth Law Team in the Criminal Law division. These lawyers specialise in providing legal assistance to young people.



Source 2.3.2 The scales held by this statue of Lady Justice, the Roman goddess of Justice, symbolise the importance of equality and balance in the justice system.

important that all members of society have trust in the system and an understanding that they can rely on it if and when necessary.

Equal access to justice

Being able to access our legal system is one of the most important foundations of achieving justice. It is our government's responsibility to ensure that our courts are properly funded in order to operate effectively. The court hierarchy that exists in both state and federal courts means that each court has expertise in certain areas and can focus only on cases that are relevant and appropriate to it.

It is the job of the police to inform people of their rights when the need arises (such as when they have been arrested for a crime) and many organisations exist that can provide information to any citizen requiring it, explaining legal processes and procedures and what people can do if they require assistance.

As part of our adversary system of law, parties in court are able to choose legal representation in order to assist them in presenting their case; however, not everyone who comes before the court is able to afford independent lawyers. Organisations such as Legal Aid provide free legal advice and information, in addition to lower-cost and, where relevant, free (or pro bono) legal representation, so that everyone is able to have representation in court. For people with mental health issues, there is a Mental Health Legal Service, which offers the same services.

Equality before the law

Another basic human right in our justice system is the right to be equal before the law. This means that every individual, regardless of such factors as gender, religion, race or age, is looked upon equally before the law and that the same laws of justice are applied to all. Additionally, everyone has a right to be provided safety by the law and protection from discrimination. Everyone appearing in court charged with an offence is therefore presumed innocent until proved otherwise.

All people who work in our judicial system must take an oath to 'administer the law without fear, favour, affection or ill will'. They need to have an understanding of different cultures, values and backgrounds and to

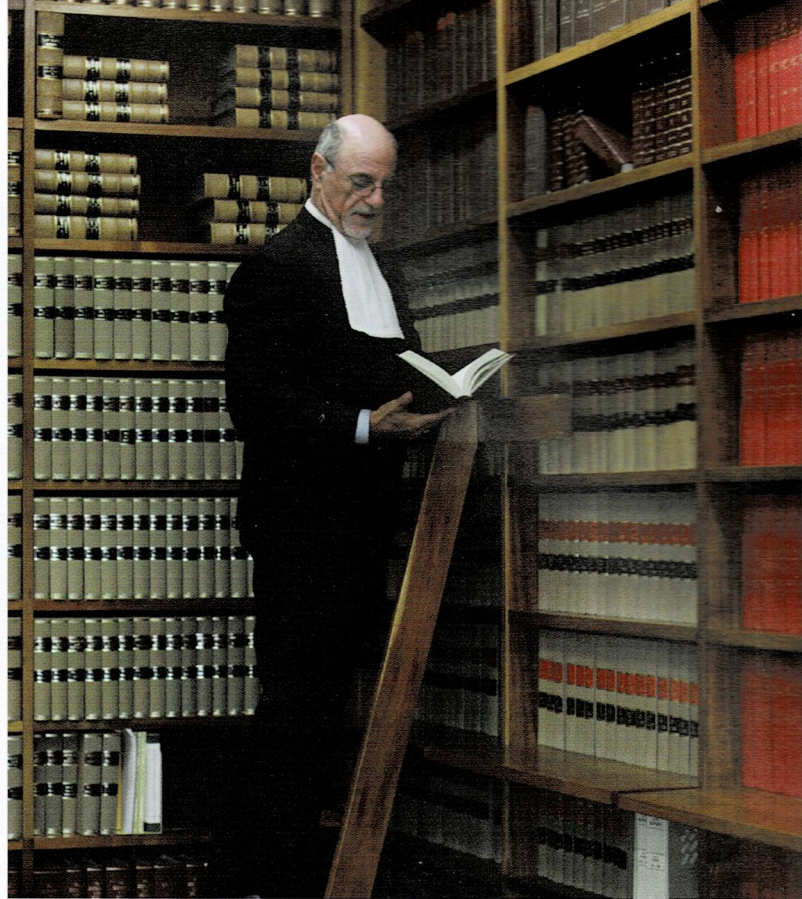
adapt or modify legal processes (such as the giving of evidence) to allow for these differences.

This right to equality before the law extends beyond our own legal system. The Universal Declaration of Human Rights (which is a global document) states that 'All are equal before the law and are entitled without any discrimination to equal protection of the law'.

Independent judiciary

Our judiciary has the ultimate responsibility of helping to maintain law and order and protect our rights and freedoms. In order to receive fair, impartial (or neutral) and consistent or reliable delivery of justice, the judiciary (which includes courts, judges, magistrates and adjudicators) must be independent.

This independence is maintained through the separation of powers set out by the Constitution. The judiciary is given the power to 'manage' the law, and this is separate from the Parliament's power to create the laws. The Constitution states that the Federal Parliament does not have judicial power, meaning that it is not allowed to decide or have influence on the results of cases.



Source 2.3.3 New South Wales Supreme Court Judge, Justice George Palmer, with some of the legal resources in his library



Source 2.3.4 An open courtroom during a civil trial



Source 2.3.5 Northern Territory traditional landowners arrive at the High Court for an appeal made against an earlier court decision on fishing rights.

The independence of the judiciary is further maintained by the fact that, once judges are appointed to their role (by the government), they hold that position until they reach retirement age (unless there is evidence of misconduct or incapacity, such as illness, on their part). They are also appointed based on their skill and expertise, and not on their political preferences. Once appointed to a judicial position, judges must not participate in any aspect of political life.

ROLE OF JUDICIARY IN MAINTAINING JUSTICE

Members of our judiciary need to act without any favouritism or bias towards any of the parties in the courtroom. It is critical that they perform their role in a balanced and neutral manner. Furthermore, a member of the judiciary may not be a part of a case if they personally know any of the parties involved; and if a party feels that they have been discriminated against in court by the judiciary, they have the right to appeal. If a judge thinks they might have a bias in a case, or if someone else—for example, the defence team—feels that they have, the judge can recuse (excuse) him- or herself from presiding over the case (in other words, step down) or be asked to do so.

Most court cases in Australia feature open courts, meaning that members of the public are able to come and watch the legal proceedings. This is another way to ensure that the judiciary is conducting fair trials, free from influence or prejudice. It makes the judiciary answerable to the public for their actions.

Right of appeal

Another aspect of our legal system that helps to maintain our principles of justice is a person's right to appeal against the court's decision in a case. This can occur in both criminal and civil cases. The structure of the court hierarchy means that, if an individual is not satisfied with the result of their case, in certain circumstances they are able to appeal to a higher court in the hierarchy. They may then have their case heard again and the original judgement may be overturned or changed.

In criminal cases, appeals may be made against the conviction or against the sentence (punishment) given, and both the accused and the prosecution can appeal. There have been cases where the prosecution has appealed against what they consider an unfairly light sentence. In civil cases, the plaintiff and the defendant have the right to appeal, either against the amount of damages given, or on a point of law (the way the law is interpreted and applied) that occurred during the trial.

This ability to appeal means that individuals are assured that the court system will treat them fairly, address their concerns and provide the appropriate outcome.

Principles of justice in criminal trials

There are certain principles of justice that aim to protect human rights when individuals are faced with criminal proceedings. Criminal cases can often be very complex and of a very serious nature, so these principles aim to ensure that the accused in a criminal justice case is safeguarded against any possible abuse of their rights.

PRESUMPTION OF INNOCENCE

Even when an individual is charged with a crime, no matter how severe the crime is, they are considered innocent until proven guilty and should be treated that way. Although they present their case in court, the accused does not need to prove their innocence. It is the role of the prosecution to prove they are guilty. This is called the **burden of proof**. The prosecution must provide enough evidence at trial to demonstrate that the accused is guilty of the crime beyond a **reasonable doubt**. This means that the judge or jury must be convinced, as far as logically possible, that the accused committed the crime. If they have any uncertainty about it, then they cannot come to the conclusion that the accused is guilty and their verdict must be 'not guilty'.

OTHER RIGHTS IN CRIMINAL CASES

Some of the other rights possessed by individuals in criminal cases that help to maintain the principles of justice are:

- to have a lawyer present before facing any questioning
- to remain silent, both during questioning by police and during the trial, if they believe answering any questions might incriminate them in some way
- to have their case come before a court without unreasonable delay
- for their legal representatives to be able to cross-examine the witnesses provided by the prosecution
- not to be tried again for the same or a similar crime if they have already been convicted or found not guilty.
- not to be charged for the same crime again if they have already been convicted or found not guilty.

ACTIVITIES

Remembering and understanding

- 1 Name three principles of justice that are applied in Australia.
- 2 Estimate the importance of the Australian legal system.
- 3 Illustrate one way in which equal access to justice is achieved in Australia.
- 4 Rewrite what is meant by the idea of equality before the law.
- 5 Summarise the methods used to ensure that the judiciary remains independent.

Applying and analysing

- 6 Find some examples of cases that have recently been appealed in Western Australia. Identify the basis on which the appeals were made.

Evaluating and creating

- 7 Evaluate a recent High Court appeal. What decision was made in this case, and how does this case demonstrate the effectiveness of the court hierarchy?