

# CHAPTER 2

## The principles of justice during a criminal case

### LESSONS

- 2A** The principles of justice during a criminal case
- 2B** Victoria Legal Aid and Community Legal Centres
- 2C** Plea negotiations
- 2D** The Victorian court hierarchy and criminal cases
- 2E** Judges, magistrates, and juries in a criminal trial
- 2F** The parties in a criminal trial
- 2G** Legal practitioners in a criminal case
- 2H** The impact of costs and time – criminal cases
- 2I** The impact of cultural differences – criminal cases

### KEY KNOWLEDGE

The principles of justice during a criminal case

- the principles of justice: fairness, equality and access
- the role of Victoria Legal Aid and Victorian community legal centres in assisting an accused and victims of crime
- the purposes and appropriateness of plea negotiations
- the reasons for the Victorian court hierarchy in determining criminal cases, including specialisation and appeals
- the roles of key personnel in a criminal case, including the judge or magistrate, the jury, and the parties
- the need for legal practitioners in a criminal case
- the impact of costs, time and cultural differences on the achievement of the principles of justice

# 2A The principles of justice during a criminal case



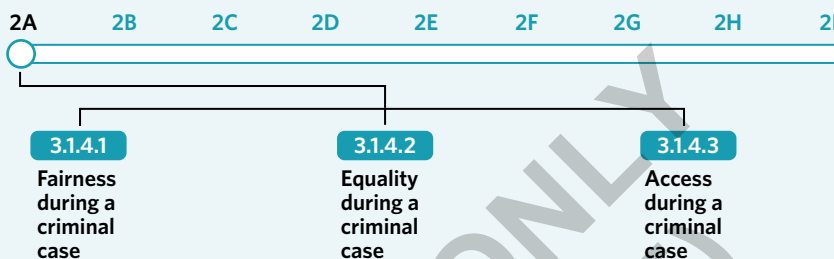
Image: Kaspars Grinvalds/Shutterstock.com

*'What is justice? For different people at different times it means different things.'*—  
Former Chief Justice of the Supreme Court of  
Victoria, the Honourable Marilyn Warren AC

There is no universal definition of 'justice' or conversely 'injustice'. Therefore, a 'just' outcome for one person may be different to that of another.

## STUDY DESIGN DOT POINT

- the principles of justice: fairness, equality and access



## Lesson introduction

The principles of justice underpin Victoria's criminal justice system and assist in determining whether justice has been achieved in particular cases. The principles aim to ensure the justice system remains accessible for all individuals, everyone is treated equally, and a fair trial occurs. There are various legal processes and procedures that exist in the criminal justice system to uphold the principles of fairness, equality, and access.

## Fairness during a criminal case 3.1.4.1

The principle of **fairness** is essential in the criminal justice system as each accused person is entitled to receive just processes and an impartial hearing, and those affected by crime are also entitled to participate in the system and have assurance that justice is achieved. In Victoria's criminal justice system, this is achieved through a variety of legal principles and procedures.

### KEY TERM

**Fairness** the principle that all people can participate in the justice system and its processes should be impartial and open.

### USEFUL TIP

In your responses to exam and SAC questions, avoid using the word 'fair' to define 'fairness'. Instead, try using words such as 'impartial' or 'just', and when explaining how an element of the justice system can uphold the principle of fairness, refer to other words from the definition, such as 'participation' and 'open processes'.

**Table 1** Legal principles and procedures that uphold the principle of fairness

Legal principle or procedure	How it contributes to the achievement of fairness
<b>The presumption of innocence</b>	This guarantees that a person accused of a crime does not have to prove their innocence, but rather, the prosecution has to prove the accused is guilty beyond reasonable doubt.
<b>The burden of proof lies with the prosecution</b>	Given the prosecution is pursuing the case against the accused, the onus is on them to prove the facts and claims against the accused. It is not the responsibility of the accused to prove their own innocence, as this would be unfair.
<b>The standard of proof in criminal cases</b>	The standard of proof is high in criminal cases as the prosecution must prove the accused is guilty beyond reasonable doubt. This ensures an accused is only found guilty when the magistrate, judge, or jury does not have any reasonable doubt that the accused committed the crime.

Continues →

Table 1 Continued

Legal principle or procedure	How it contributes to the achievement of fairness
Most hearings are open to the public	The public nature of criminal trials ensures the presentation of facts is open and accessible to all members of the community. This provides transparency and accountability for the legal decisions made in the court system.
A right to seek legal representation	As the law is highly complex, all accused persons have a right to seek and utilise legal representation to present their case in the best light possible. However, this usually comes with a financial burden.
An accused person has the opportunity to present their case	An accused person has the right to defend a criminal charge by disproving the prosecution's case, as well as the opportunity to present their own evidence and witnesses if they choose.
Resolution of cases with minimal delay	The criminal justice system strives to minimise delays to reduce stress and anxiety for victims and their families, witnesses, and accused persons awaiting trial. As delays may impact the reliability of evidence, due to lost or forgotten facts, minimising delays ensures a just outcome to the case.
An independent decision-maker	A judge, magistrate, and jury must be impartial and unbiased, basing their decisions solely on the facts of the case.
The characteristics of an offender and the circumstances surrounding the crime are considered when sentencing	When determining an appropriate sentence for the offender, the court must consider certain factors. For example: <ul style="list-style-type: none"> <li>a young, first-time offender who has shown remorse should be treated differently to a middle-aged criminal with a number of past convictions.</li> <li>the degree to which a victim was impacted by a crime will be taken into consideration during sentencing, as the more severe the impact of the crime was, the higher the sentence received by the guilty should be.</li> </ul>
Prejudicial and irrelevant evidence is not admissible in court	<b>Prejudicial evidence</b> , such as an accused's prior convictions, is not <b>admissible</b> in court as this may result in the magistrate, judge, or jury delivering a guilty verdict based on irrelevant factors rather than the facts of the case.
Victims of some serious crimes have a right to give evidence using alternative arrangements	Flexibility in the way in which victims can give evidence ensures they can more easily participate in the criminal justice system to be heard and validated in the process.
A right to be informed about proceedings, and in some cases, about the likely release date of the offender	A right to information reflects the concept of open processes, a key aspect of fairness.
Any victim of crime can make a Victim Impact Statement (VIS), which can be considered by a judge when sentencing an offender	A VIS is a way for a victim to communicate the adverse effects that a crime has had on them. By allowing victims the opportunity to communicate this, it ensures their views are heard and considered when sentencing, enabling better victim participation in the justice system.

**LEGAL VOCABULARY**

**Admissible** evidence that abides by the rules of procedure that can be presented to the court.

**Prejudicial evidence** evidence that unfairly influences the delivery of a verdict that is not based purely on the facts of the case.

**LESSON LINKS**

You learnt about the presumption of innocence, the burden of proof, and the standard of proof in **1A Key principles of the criminal justice system**.

You learnt about the rights of an accused in **1B Rights of an accused**.

You learnt about the rights of a victim in **1C Rights of victims**.

You will learn more about Victim Impact Statements in **3C Factors considered in sentencing**.

## LEGAL CASE



Image: Gorodenkoff/Shutterstock.com

**Figure 1** The right to legal representation contributes to the achievement of fairness

### *Dietrich v R* (1992) 67 ALJR 1

#### Facts

Dietrich was arrested for allegedly importing 70 grams of heroin into Australia after his trip to Thailand. He faced four charges related to drug trafficking and pleaded not guilty to each charge. Dietrich could not afford legal representation and applied for legal assistance from the Legal Aid Commission of Victoria which refused to represent him unless he agreed to plead guilty to all charges. Consequently, he represented himself at trial and emphasised many times to the court that he was facing difficulties in presenting his defence. He was eventually found guilty in the County Court. Dietrich first appealed to the Supreme Court, which refused to hear his appeal, and later to the High Court.

#### Legal issues

In the High Court, Dietrich argued that his trial in the County Court was unfair as he had not been provided with legal representation.

#### Decision

The High Court decided that where a very poor accused is charged with a serious criminal offence and is unrepresented, the trial judge should adjourn the trial, allowing the accused the opportunity to seek legal representation. However, there is no requirement that the court provide legal representation to an accused. Therefore, the High Court quashed the conviction against Dietrich and ordered a new trial.

#### Significance

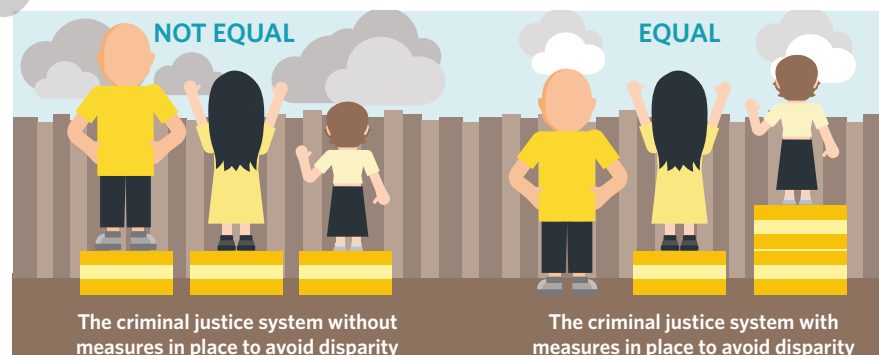
The decision made by the High Court, often referred to as the 'Dietrich principle', is widely applied by the Australian Courts. This ensures an accused can request to adjourn the trial and obtain legal representation so they can present their case in the best light possible, promoting a fair trial. However, if Dietrich continued to refuse the help of the Legal Aid Commission by not pleading guilty, he may have had to face the trial without representation.

## Equality during a criminal case 3.1.4.2

The principle of **equality** ensures all people are treated the same in the criminal justice system unless doing so creates disparity or disadvantage, in which case measures or mechanisms should be in place to avoid this. While equality is often associated with equal treatment for all people, it is more accurately described as promoting an equal result for everyone involved in the criminal justice system. Therefore, achieving equality may involve treating individuals differently through the use of equitable policies, such as the arrangement of an interpreter for an accused who does not speak English. The ability to use an interpreter or translator is not a right afforded to all accused people, however, this mechanism reduces the likelihood of the accused being disadvantaged before the law due to not understanding court processes and procedures.

#### KEY TERM

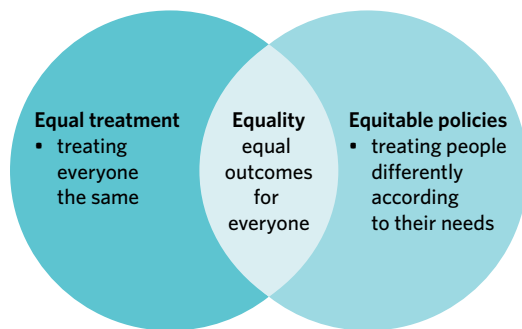
**Equality** the principle that all people engaging with the justice system and its processes should be treated in the same way. If the same treatment creates disparity or disadvantage, adequate measures should be implemented to allow all to engage with the justice system without disparity or disadvantage.



**Figure 2** The principle of equality

The approach of the criminal justice system emphasises the importance of focusing on equal results rather than equal treatment. In order to prevent discrimination against individuals who may be disadvantaged, it is essential to establish mechanisms that acknowledge and accommodate the inherent differences among people. These mechanisms aim to ensure that the law treats all individuals fairly, regardless of their personal circumstances or disadvantages.





**Figure 3** Understanding the relationship between equal treatment and equitable policies

The principle of fairness is closely linked to equality, as fairness is achieved when individuals are granted access to resources that enable equal outcomes. Consequently, access plays a vital role in ensuring equal results, which in turn promotes fairness. It is essential to recognise the intrinsic interconnectedness between the principles of justice in Victoria's criminal justice system, equality is achieved through a variety of legal principles and procedures.

**Table 2** Legal principles and procedures that uphold the principle of equality

Legal principle or procedure	How it contributes to the achievement of equality
<b>The right for all accused to be treated the same</b>	Each accused person must be treated the same before the law, regardless of personal characteristics such as age, gender, wealth, language background, ethnicity, or religion.
<b>The availability of interpreters</b>	Court processes can be confusing for an accused, particularly if English is not their first language. Therefore, each court in the Victorian court hierarchy can arrange an interpreter in particular circumstances. This reduces the likelihood of an accused being disadvantaged before the law due to not understanding court processes and procedures.
<b>The right for all victims of crime to remain informed about proceedings and contribute to the sentencing process</b>	All victims of crime are informed about criminal proceedings against the accused and provided with the opportunity to be involved in court proceedings, such as by providing a Victim Impact Statement, regardless of personal characteristics.
<b>Consistent application of the law</b>	The law is applied in the same manner in all cases, regardless of personal characteristics.
<b>The rule of law</b>	All members of the community are subject to, and must obey the same standards of behaviour set by criminal law. For example, those in more powerful positions in society, such as members of parliament, police officers, and the very wealthy, are not entitled to preferential treatment by the courts as a victim of crime or an accused person.
<b>An independent decision-maker</b>	A judge, magistrate, and jury must remain impartial and unbiased, basing their decisions solely on the facts of the case and not the characteristics of the victim or the accused.
<b>A right to seek legal representation</b>	As the law is highly complex, all accused persons have a right to utilise legal representation. Where an accused person cannot afford legal representation, they may be eligible for free or low cost representation through Victoria Legal Aid or community legal centres (CLCs). This is an example of how a measure can be put in place to avoid disadvantage, and therefore contribute to equality.



**Figure 4** The three principles of justice are all interrelated

#### LESSON LINK

You learnt about the relationship between the three principles of justice in **Introduction to Legal Studies**.

#### USEFUL TIP

In your responses, avoid using the word 'equal' to define 'equality'. Instead, try using words such as 'the same' or 'equivalent'. You should also be able to explain how measures to eliminate disparity or disadvantage can contribute to equality.

#### LESSON LINKS

You will learn more about victim impact statements in **3C Factors considered in sentencing**.

You will learn more about Victoria Legal Aid and community legal centres in **2B Victoria Legal Aid and community legal centres**.



### KEY TERM

**Access** the principle that all people should be able to engage with the justice system and its processes on an informed basis.

### LESSON LINKS

You will learn more about the role of judges in **2E Judges, magistrates, and juries in a criminal trial**.

You will learn more about Victoria Legal Aid and community legal centres in **2B Victoria Legal Aid and community legal centres**.

You will learn more about the Victorian court hierarchy in **2D The Victorian court hierarchy and criminal cases**.

## Access during a criminal case 3.1.4.3

The principle of **access** ensures all people can engage with the processes of the justice system with few barriers. This principle is essential in the criminal justice system as it promotes an accused's ability to understand their legal rights and the various processes involved in their case. In Victoria's criminal justice system, access is achieved through a variety of legal principles and procedures.

**Table 3** Legal principles and procedures that uphold the principle of access

Legal principle or procedure	How it contributes to the achievement of access
<b>The availability of free legal information for all</b>	Victoria Legal Aid and community legal centres provide free legal information for all, enabling all people to engage with the justice system on an informed basis.
<b>Resolution of cases with minimal delay</b>	Minimising delays reduces stress and anxiety for victims and their families, witnesses, and accused persons awaiting trial. As delays may impact the reliability of evidence, due to lost or forgotten facts, minimising delays ensures a just resolution of the case.
<b>The right for victims of crime to remain informed about proceedings and to contribute to the sentencing process</b>	All victims of crime are able to engage with the justice system as they are provided with the opportunity to be involved in court proceedings, such as by providing a victim impact statement.
<b>The availability of legal aid</b>	Institutions, such as Victoria Legal Aid and community legal centres, provide free legal assistance to those in the community who need it most. This enables these individuals to better understand legal processes and procedures and in turn, engage with the justice system on an informed basis.
<b>Most hearings are open to the public</b>	The public nature of criminal trials ensures the presentation of facts is accessible to all members of the community. This also allows all to engage in the justice system and observe the process of justice.
<b>The availability of interpreters</b>	Court processes can be confusing for an accused, particularly if English is not their first language. Therefore, each court in the Victorian court hierarchy can arrange an interpreter in particular circumstances.
<b>The right to a trial by jury for all serious criminal offences</b>	The right to a jury trial allows the community to engage with the justice system by determining whether an accused charged with a serious criminal offence is guilty or not.

## REAL WORLD EXAMPLE

**Translated victim impact statement devastates courtroom**

In May 2023, a university lecturer, Adam Brown, was sentenced to a 24-year term of imprisonment with a non-parole period of 17 years after stabbing his wife to death in their Melbourne home the year prior during an altercation between the couple. At the trial, the Supreme Court of Victoria heard statements from the family of the victim, Chen Cheng. Ms Cheng's mum recounted her daughter as being the 'diamond and hope' of their family, describing the loss of her child as being 'like a spear piercing through [her] heart'. Considering Cheng and her family were from China, this victim impact statement was translated using the free translation services arranged by the court. The use of translator services to articulate the heartbreak and anguish Chen Cheng's death had caused to those closest to her was able to compel the court to sanction Brown to the harsh, 24-year prison sentence. Translators therefore helped Cheng's family to access justice for her.

*Adapted from 'Deakin lecturer Adam Brown fatally stabbed wife Chen Cheng after childcare dispute, court told' (Silva, 2023)*



Image: Salivanchuk SemenShutterstock.com

**Figure 5** A university lecturer was sentenced to imprisonment for the murder of his wife after a translated victim impact statement shared the devastation caused by the victim's death

## Lesson summary

Overall, the principles of justice are an essential aspect of the Victorian criminal justice system:

- Fairness requires processes to be impartial and open, therefore enabling a just outcome to a criminal case.
- Equality requires all individuals engaging with the justice system to be treated the same, regardless of personal characteristics such as gender or religion. However, if the same treatment creates disparity or disadvantage, adequate measures must be taken to prevent this.
- Access requires all individuals to be able to engage with the justice system with as few barriers as possible.

There is a range of legal processes and procedures, within the Victorian criminal justice system, that are designed to uphold these principles. All three principles are purposefully related, and when they work in harmony, act to deliver just outcomes for all who interact with the criminal justice system.

## 2A Questions

### Check your understanding

#### Question 1

The three principles of justice are:

- fairness, equality, and access.
- participation, access, and fairness.

#### Question 2

Which of the following does **not** promote the achievement of fairness in the criminal justice system?

- An accused person has a right to seek legal representation.
- An accused person is presumed guilty until they prove their innocence.
- The characteristics of an offender and the circumstances surrounding the crime are considered when sentencing.

**Question 3**

Fill in the blank with **one** of the following terms:

fairness

equality

The principle of   is upheld when all people are able to engage with the justice system without disparity or disadvantage.

**Question 4**

Which of the following promotes the achievement of equality in the criminal justice system?

**(Select all that apply)**

- A. The judge and jury must not discriminate against either the prosecution or accused based on their personal characteristics, such as race, gender, or ethnicity.
- B. An accused is able to contribute to the sentencing process by providing a victim impact statement.
- C. An accused is provided with an interpreter by the court if they are unable to speak or understand English.
- D. A police officer charged with a crime is not entitled to preferential treatment by the courts.
- E. The judge presiding over a case is allowed to have a bias towards the accused.

**Question 5**

By understanding their legal rights and the processes involved in their case, an accused likely has greater access to the justice system.

- A. True
- B. False

**Question 6**

Which of the following promotes the achievement of access in the criminal justice system?

**(Select all that apply)**

- A. Institutions, such as Victoria Legal Aid (VLA) and community legal centres (CLCs), provide free legal assistance to those who need it most.
- B. The public nature of criminal trials ensures the presentation of facts is accessible to all members of the community.
- C. As the law is highly complex, all accused persons have a right to seek legal representation to better understand court processes and procedures.
- D. The courts have no obligation to provide legal representation to a self-represented accused.

**Question 7**

Fairness and equality are inherently linked as fairness is achieved when individuals are granted access to resources that enable them to attain equal outcomes.

- A. True
- B. False

## Preparing for exams

### Standard exam-style

**Question 8**

(3 MARKS)

Birrani was charged with manslaughter. He speaks very little English and is not familiar with the Victorian criminal justice system. As he cannot afford legal representation, he applied for legal aid, but his application was rejected. As a result, he is planning to plead not guilty and is representing himself at trial.

Referring to the source material, explain why Birrani's decision to represent himself may not achieve equality or fairness.

*Adapted from VCAA 2022 exam Section B Q2b*



**Question 9**

(4 MARKS)

Theo is a recent victim of armed robbery. Throughout the trial, he was not informed of the proceedings and his case experienced significant delays due to the court's large backlog of cases, consequently causing feelings of stress and anxiousness for Theo.

Describe **two** reasons why Theo's trial may not achieve access.

*Adapted from VCAA 2022 exam Section B Q2b*

**Extended response**

Use your answer from question 10 to support your response to question 11.

**Question 10**

Which of the following statements are limitations of the Victorian criminal justice system in achieving the principles of justice? **(Select all that apply)**

- A. An accused may not be able to afford legal representation, consequently impacting their ability to present their case in the best possible light.
- B. The presumption of innocence means the prosecution must prove the accused is guilty, rather than the accused having to prove their innocence, as the prosecution is the one initiating the claim against the accused.
- C. The judge and jury must remain independent and impartial, treating both the prosecution and accused the same.
- D. All accused persons have the right to seek legal representation to better understand court processes and procedures given the complexity of the law.
- E. The judge and jury may have an unconscious bias against either the prosecution or the accused, potentially leading to an unjust outcome.

**Question 11**

(6 MARKS)

Axel has pleaded not guilty to three charges related to the possession of drugs and is due for trial in the Victorian County Court. Axel cannot afford legal representation and is representing himself. He is concerned the prosecutor's experience and friendliness with the judge may negatively impact his case. In addition, Axel does not know how to properly present his evidence and is worried he might say something that incriminates himself.

Discuss **two** of the principles of justice in relation to Axel's criminal case.

*Adapted from VCAA 2019 exam Section B Q2e*

**Linking to previous learning****Question 12**

(3 MARKS)

Dewei is a victim of assault. However, he is unsure of his rights within the Victorian criminal justice system.

- a. Identify **one** right of victims in the Victorian criminal justice system.

1 MARK

*Adapted from VCAA 2018 exam Section A Q4a*

- b. Outline how the right identified in **part a.** aims to uphold the principle of access.

2 MARKS

*Adapted from VCAA 2018 exam Section A Q4b*

**Question 13**

(3 MARKS)

Describe the relationship between the burden of proof and the principle of fairness.

*Adapted from VCAA 2018 Sample exam Section B Q2a*

# 2B Victoria Legal Aid and community legal centres

## STUDY DESIGN DOT POINT

- the role of Victoria Legal Aid and Victorian community legal centres in assisting an accused and victims of crime

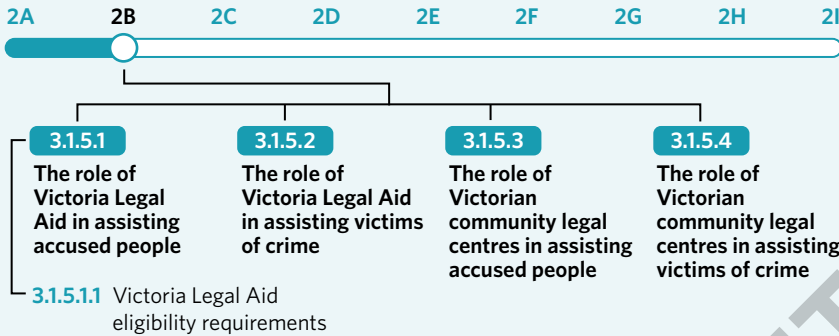


Image: Tiko Aramyan/Shutterstock.com

Just as a boxer requires boxing gloves to protect them during a fight, accused people and victims must be armed with legal knowledge before a legal battle. Victoria Legal Aid and community legal centres aim to equip accused people and victims with the appropriate legal knowledge and advice to ensure they have the best chance of succeeding at trial.

## Lesson introduction

For accused people and victims of crime, the Victorian justice system can appear rather complex. The hierarchy of courts, plea negotiations, and the burden and standard of proof are difficult concepts for the average person to understand. Government-funded institutions, such as Victoria Legal Aid (VLA) and Victorian community legal centres (CLCs), assist accused persons in understanding their legal rights, striving to create equal access to the law, regardless of personal circumstances.

## The role of Victoria Legal Aid in assisting accused people 3.1.5.1

**Victoria Legal Aid (VLA)** aims to provide free or low-cost legal services to those in the community who need it most. It is a government-funded body that provides legal information, advice and representation to Victorians. VLA commonly provides services in relation to criminal law and family law matters, and provides referrals to other services that can provide assistance if the matter is not within its main areas of concern. The main objectives of VLA are to:

- provide legal aid in the most effective, economic, and efficient manner
- manage resources to make legal aid available at a reasonable cost to the community and on an equitable basis throughout the state
- provide to the community improved access to justice and legal remedies
- pursue innovative means of providing legal aid directed at minimising the need for individual legal services in the community
- ensure the coordination of the provision of legal aid so that it responds to the legal and related needs of the community
- ensure the coordination of the provision of legal assistance information so that information responds to the legal and related needs of the community, including by being, accessible, current, high-quality and of sufficient breadth.

VLA provides legal services for both victims and accused individuals. Table 1 outlines the assistance VLA can provide to accused persons based on their eligibility and subjective circumstances. While legal information is free and available to everyone, legal advice and representation is provided to those who satisfy set criteria.

## LESSON LINK

You will learn more about the court hierarchy in **2D The Victorian court hierarchy and criminal cases**.

You will learn more about plea negotiations in **2C Plea negotiations**.

You learnt about the burden and standard of proof, summary offences, and indictable offences in **1A Key principles of the criminal justice system**.

## KEY TERM





### Victoria Legal Aid (VLA)

a government-funded agency that provides free legal information, advice, and free or low-cost legal representation.

## LEGAL VOCABULARY

**Grant for legal assistance** a sum of money given to an accused person to pay for their legal representation.

**Table 1** The role of Victoria Legal Aid in assisting accused persons

Role	Explanation	Eligibility requirements
<b>Provide free legal information</b> 	General legal information is readily available on the VLA website, in brochures, and over the phone. These resources aim to educate the community on legal matters, criminal law procedures, and provide general legal support. Resources are also available in many different languages.	Free and accessible to everyone.
<b>Provide free legal advice</b> 	VLA offers advice regarding court procedures and proceedings that will apply to a specific case. Advice can be provided over the phone, in person, or over video call.	Legal advice tailored to a particular matter is only provided to eligible accused persons, generally based on their income. VLA prioritises more vulnerable groups, for example: <ul style="list-style-type: none"> <li>• children</li> <li>• First Nations peoples</li> <li>• those with a disability</li> <li>• those who cannot speak English.</li> </ul>
<b>Provide duty lawyer services</b> 	<p><b>Duty lawyers</b> are lawyers who are present in the Magistrates' Court and the Childrens Court on a particular day and can provide information and case-specific advice for hearings occurring on the same day. Duty lawyer assistance can extend to representation in court depending on the accuseds' circumstances.</p> <p>Duty lawyers are not available for indictable offences or committal proceedings.</p>	<p>Duty lawyer services are free for:</p> <ul style="list-style-type: none"> <li>• child protection</li> <li>• youth crime</li> <li>• adult summary crime</li> <li>• intervention orders</li> <li>• family matters</li> <li>• some civil matters, such as Mental Health Tribunal hearings</li> </ul> <p>For adult criminal offences, accused individuals not in custody must also satisfy the <b>income test</b>.</p>
<b>Provide grants of legal assistance</b> 	In some circumstances, VLA can provide a grant of legal assistance to an accused who cannot afford legal representation. Legal assistance can be provided by a VLA lawyer or an external lawyer may be organised by VLA. The lawyer can assist the accused with the preparation of the case, and any relevant documents, as well as representing the accused in court.	<p>The accused must satisfy the <b>means test</b> to be eligible for a grant of legal assistance.</p> <p>VLA may also consider how likely the case is to succeed and if the case will benefit the community.</p>

**WANT TO KNOW MORE?**

VLA also coordinates a 'Help Before Court' program which can assist accused individuals prepare for their case by providing them with legal advice from a lawyer if their court date is at least two weeks away. You can find out more about this program, the assistance provided and the eligibility criteria by searching 'Help Before Court' and clicking on the 'Help before court - for criminal charges' webpage by Victoria Legal Aid.

**LEGAL VOCABULARY**

**Duty lawyers** lawyers employed by Victoria Legal Aid who assist people in court on the day of their hearing.

**Income test** an assessment conducted by Victoria Legal Aid to determine whether an accused person is eligible for a duty lawyer. The test requires an accused person to prove their income is limited or that their primary source of income is welfare provided by the government.

**Means test** an assessment conducted by Victoria Legal Aid to determine whether an accused person is eligible for a grant of legal assistance. The test takes into account an accused person's income, assets, and expenses.

**LEGAL CASE****Victoria Police v Lewis (2021) VMC 13****Facts**

Amanda Lewis was charged with two counts of possessing an unregistered, Category E longarm. However, the gun in Lewis' possession was not inherently lethal and shot potatoes and lemons as opposed to bullets. The device has been nicknamed 'veggie canon', 'spud gun', and 'lemon bazookas'.

**Legal issue**

The issue in this case was whether the 'veggie canon' could be defined as a Category A firearm. She was represented by Victoria Legal Aid at the trial in the Magistrates' Court of Victoria. Lewis' defence lawyer argued that the gun in her possession did not come under the definition of a 'firearm' under Section 3 of the *Firearms Act 1996* (Cth). The Legal Aid defence lawyer raised points of law and past legal decisions that Lewis could not have done without legal training and expertise.

**Decision**

The Legal Aid lawyer's case was successful and the Magistrate agreed 'the device [did] not fit the definition of a firearm by virtue of the argument that it [did] not store or produce gases for the purposes of discharging a missile'.

**Significance**

The Victoria Legal Aid lawyer was able to defend Lewis' innocence. Without the assistance of VLA, Lewis may not have been successful in defending herself in court and the decision may have been different.

**LEGISLATION**

*Firearms Act 1996* (Cth)



Image: urbanbuzz/Shutterstock.com

**Figure 1** Amanda Lewis' 'veggie canon' dodged a firearms charge

## Victoria Legal Aid eligibility requirements 3.1.5.1.1

VLA has strict eligibility requirements to ensure those who need legal assistance the most, receive it. As VLA is government-funded, it must carefully allocate its limited funds. The eligibility criteria assists VLA to allocate resources to those with the greatest need.

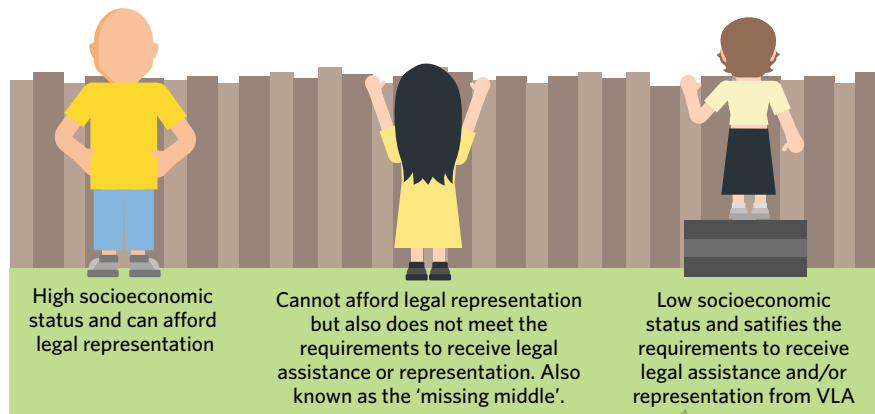
**Income test – Duty lawyers**

- In order to qualify for duty lawyer assistance, an accused must satisfy the requirements of the income test.
- The income test requires the accused to demonstrate that their income is limited or their main source of income is welfare payments from the government.

**Means test – Grants of legal assistance**

- In order to qualify for a grant of legal assistance, an accused must satisfy the requirements of the means test.
- The means test involves VLA considering an accused's income, assets, and expenses and determining whether the applicant meets the required thresholds
- If an accused satisfies the requirements of the means test and is given a grant of legal assistance, they may still be required to pay some costs. Otherwise known as a contribution, the amount a successful applicant must pay for legal assistance is dependent on their income and assets.
- When reviewing an application for a grant of legal assistance, VLA will also consider how likely it is the case will be successful and the overall benefits to the wider community.





**Figure 2** The eligibility criteria for VLA can result in a 'missing middle'

### HYPOTHETICAL SCENARIO



**Figure 3** VLA is able to provide tailored assistance to those who satisfy set criteria

#### Salmon sabotage!

A wild brawl has taken place on the set of reality TV show 'Crazy cooks in the kitchen'. In a semi-final showdown, contestants Manuel and Paul are tasked with creating a complex confit salmon dish. Yet, a physical altercation breaks out between the two after Manuel alleges that Paul sent a member of his team to steal Manuel's salmon and swap it with a charred, burnt piece of salmon. Enraged by such damning allegations, Paul physically attacked Manuel and has been charged with common assault. Paul will face the Magistrates' Court in a few weeks time. Paul has never engaged with the criminal justice system and claims he cannot afford legal advice or legal representation.

Given that common assault is a summary offence and the case will be heard in the Magistrates' Court, Paul may be eligible for VLA duty lawyer assistance. If Paul wishes to obtain tailored legal advice or duty lawyer assistance he will need to satisfy the income test, meaning he must prove his income is limited or that his main source of income is government welfare payments. Alternatively, he is also able to access free VLA legal information which is available to everybody. Therefore, VLA enhances community access to legal support and resources, however, the extent to which personalised assistance can be delivered is dependent on individual circumstances and certain criteria.

## The role of Victoria Legal Aid in assisting victims of crime 3.1.5.2

### LEGAL VOCABULARY

#### Office of Public Prosecutions (OPP)

the public body responsible for initiating, preparing, and conducting legal proceedings for serious criminal matters in Victoria, on behalf of the Victorian community.

### LEGISLATION

*Victims' Charter Act 2006 (Vic)*

### LESSON LINK





You learnt about the *Victims' Charter Act 2006 (Vic)* in **1C The rights of victims**.

One of VLA's services is to help victims of crime access justice through their support services and legal advice. It understands the legal process can be overwhelming and intimidating for victims, so it offers a range of resources to help individuals navigate the legal system and seek the justice they deserve. Whether it's providing advice on a victim's rights, assisting with legal proceedings, or helping them access support services, Victoria Legal Aid is committed to ensuring victims of crime have access to the legal support they need. Victims are not considered a party in a criminal case, as the **Office of Public Prosecutions (OPP)** prosecutes the accused on their behalf. Therefore, VLA provides victims with an avenue of support through the legal proceedings and ensures they are treated with courtesy, dignity, and respect. VLA pledges to abide by the *Victims' Charter Act 2006 (Vic)* and provides a summary of the key takeaways of the Charter.

### WANT TO KNOW MORE?

The Office of Public Prosecutions has resources for victims that inform them about what to expect before entering the courtroom. You can find out more and watch the videos to see inside the courtroom by searching 'Office of Public Prosecutions Victoria, Going to Court' on the internet and clicking the link by Office of Public Prosecutions.

**Table 2** The role of Victoria Legal Aid in assisting victims of crime

Role	Explanation	Eligibility requirements
<b>Provide legal information</b> 	VLA provides information on its website and through its Victims Legal Service. It also provides links to external resources such as child witness services, Victims of Crime Assistance Tribunal, and the OPP website, that assist victims of specific crimes or in certain circumstances.	All victims can access these resources.
<b>Provide a Victims Legal Service</b> 	The Victims Legal Service Helpline is a specialist advice phone line that provides legal information and advice, particularly regarding the financial impact of a crime. This service is a partnership with VLA, CLCs, and Aboriginal legal services.	All individuals affected by a crime can access the service to obtain legal guidance or advice regarding the process of applying for financial aid from the Victims of Crime Assistance Tribunal or filing for restitution and compensation from the perpetrator of the crime.
<b>Provide duty lawyer services</b> 	Duty lawyers are present in the Magistrates' Court to assist victims with information, legal advice, and representation to victims of crime in relation to intervention orders.	All victims are entitled to information from duty lawyers, but advice and in-court advocacy is prioritised based on certain criteria, whereby children and adults with disability have higher priority.
<b>Provide grants of legal assistance</b> 	Victims can apply for grants of legal assistance in relation to intervention orders.	There are strict eligibility requirements in relation to grants, whereby VLA will consider many factors, such as the merits of the matter and the means of the recipient.

**WANT TO KNOW MORE?**

Victoria Legal Aid provides resources for victims on their website. You can find out more about these resources by searching up 'Victoria Legal Aid, Other support for victims of crime' and clicking the link by Victoria Legal Aid.

**Evaluating Victoria Legal Aid's ability to achieve the principles of justice****STRENGTHS**

- The provision of duty lawyers in the courts provides advice and assistance to various accused persons, ensuring a fair hearing for these individuals.
- The VLA is guided by the Victims Charter to uplift victims and ensure their rights set out in the Charter are protected. The Charter is legally binding which ensures VLA treats all victims fairly.

**LIMITATIONS**

- VLA's limited budget means it is only able to provide legal advice and representation to a small number of accused persons. Many accused persons charged with criminal offences do not meet VLA's eligibility criteria but cannot afford a private lawyer. As a result, VLA is limited in its ability to ensure all individuals can understand the case against them, participate in the criminal proceedings, and adequately present their case





### STRENGTHS

- VLA's eligibility criteria ensures legal support is provided to those in most need, regardless of their race, gender, or sexuality. VLA ensures those who are disadvantaged are prioritised in receiving legal aid, thus promoting equality.
- Victims are able to find out more information about their rights and access resources by calling VLA. This service promotes equality as VLA has staff that speak many languages, and the body organises a free interpreter if no one is able to speak the victim's language. This ensures that victims are able to obtain information regardless of their language preferences and abilities.
- VLA provides video resources in Auslan for those who are d/Deaf or hard of hearing. This allows people who are d/Deaf or find it hard to hear or speak on the phone, to access legal information and support.

### LIMITATIONS

- The strict eligibility criteria for legal assistance means many accused individuals are unable to access support from VLA and remain unrepresented. VLA is therefore unable to ensure equality across different socioeconomic groups.



### STRENGTHS

- VLA's services can be accessed in person, over the phone, and online, allowing for multiple avenues of access to legal support.
- Duty lawyers and grants of legal assistance increase an accused individuals access to the justice system and criminal proceedings, ensuring they can participate in the processes in an informed manner.
- Victims are supported through various services offered by VLA, such as Victims Legal Service and VLA's commitment to upholding the Victim's Charter, enabling victims to adequately participate in legal proceedings and receive just outcomes.

### LIMITATIONS

- The means and income tests prevent many Victorians from accessing many services of VLA, such as tailored advice and legal representation, hindering access to justice.
- VLA does not provide advice about all types of matters, therefore, limiting accessibility to justice for parties involved in these legal matters.
- VLA information about the criminal justice system is readily available online. However, this may be inaccessible for those with low incomes, the homeless, or the elderly who may not have access to internet-connected devices or the knowledge to navigate such technologies to access the legal information.

## The role of Victorian community legal centres in assisting accused people 3.1.5.3

### KEY TERM

**Community legal centres (CLCs)** not-for-profit community organisations that provide free legal information, advice, education, and casework services.

### USEFUL TIP

In your responses to SAC questions or on the VCAA end-of-year exam, you should write the terms 'Victoria Legal Aid (VLA)' and 'community legal centres (CLCs)' in full the first time you refer to them. After the first use of these terms, you can refer to them by their acronyms, VLA or CLC.

**Community legal centres (CLCs)** are independent, not-for profit organisations that aim to offer high quality, free, and accessible legal support and education to members of the community, particularly those facing hardships. CLCs are funded by VLA, state and federal governments, and private donations. Often VLA and CLCs work together to achieve the shared goal of providing equitable access to legal information, resources, and support services. CLCs can be found in many suburbs across Melbourne and in some larger rural centres.

There are two types of CLCs:

1. Generalist CLCs that can assist individuals in a particular geographical area and can provide legal services for a broad range of legal matters.
2. Specialist CLCs that can provide legal services regarding a specific area of law or for a particular group of people. For example, the CLC may focus on youth law and providing legal support to young people, or specialise in consumer law and dealing with such matters.

As well as assisting people who come to them for help, community legal centres deliver legal education in plain language to schools, community groups, and other organisations. They create, update, and distribute various types of fact sheets, guides, and handbooks that provide easily understandable legal information to the public.

### DEEP DIVE

#### Tailored legal support

The Victorian Aboriginal Legal Service (VALS) in Preston provides free legal advice, support, and in some cases, legal representation in court to help prepare a defence case for accused First Nations people across Victoria. VALS specialises in family, civil, and criminal law, whilst also advocating for law reform regarding the rights of people in custody and improved policing and correction accountability.

Alternatively, First Step Legal (FSL) is a hub that offers addiction, mental health, and legal services to support more than 1,800 people each year. The organisation understands that vulnerable clients often face multiple legal problems simultaneously. Hence, FSL's legal team possesses a diverse skill set that enables it to assist clients with various legal matters, such as criminal law, family violence, and tenancy issues. This approach provides holistic legal support that aims to mitigate client risk factors. To qualify for ongoing legal support and representation, FLS requires clients to commit to addressing the root causes of their offending, which often involves treatment for mental health, addiction, or violent behaviour.

*Adapted from 'Our Areas of Practice' (VALS, n.d.) and 'Legal Services' (FSL, n.d.)*




### WANT TO KNOW MORE?

Both generalist and specialist CLCs can be found in a number of locations across Victoria. You can find out where different CLCs are located and the legal services they provide by searching 'CLC locations' and clicking on the 'Find a Community Legal Centre' webpage by the Federation of Community Legal Centres.

### USEFUL TIP

In your responses to SAC questions or on the VCAA end-of-year exam, you should write the terms 'Victoria Legal Aid (VLA)' and 'community legal centres (CLCs)' in full the first time you refer to them in a particular question. After the first use of these terms, you can refer to them by their acronyms, VLA or CLC within the same question.

**Table 3** The role of community legal centres in assisting accused persons

Role	Explanation	Eligibility requirements
<b>Provide legal information</b> 	General legal information can be provided in person and online. Moreover, specialist CLCs can provide detailed information about their primary area of expertise, or tailored towards the type of person they specialise in assisting.	Available to everyone.
<b>Provide basic legal advice and assistance</b> 	CLCs provide basic information online and in person. They may also assist individuals with completing various forms and filing relevant applications. Some CLCs also provide advice over the phone or in person with no appointment required.	Most CLCs will provide basic advice to anyone who attends a clinic, but cannot take on casework unless strict eligibility criteria are met. Some centres will cater for particular types of people in speciality clinics.
<b>Provide legal representation</b> 	CLCs will rarely provide representation on urgent matters. Some CLCs are able to provide legal aid to clients where Victoria Legal Aid has provided a grant for legal assistance.	Each CLC will have its own eligibility requirements. However, in determining whether an accused is eligible for legal representation, they often consider: <ul style="list-style-type: none"> <li>• the type of legal matter</li> <li>• if the CLC specialises in those types of matters</li> <li>• if the accused is eligible for VLA.</li> </ul>







**CONTENT WARNING** This lesson mentions content that is sensitive in nature that relates to family violence and sexual assault.

## The role of Victorian community legal centres in assisting victims of crime 3.1.5.4

Community legal centres (CLCs) aim to provide support and assistance to victims of crime as they navigate legal proceedings. CLCs can offer a range of support services to victims of crime, including legal advice, assistance with filing complaints or applications, and referrals to other support services, such as counselling or victim advocacy. They can also provide information about the legal process and help victims understand their rights and responsibilities. Some CLCs provide family violence duty lawyer services for victims of family violence.

**Table 4** The role of community legal centres in assisting victims of crime

Role	Explanation	Eligibility requirements
<b>Provide legal information</b> 	General legal information can be provided in person and online. Moreover, specialist CLCs can provide detailed information about their primary area of expertise, or tailored towards the type of person they specialise in assisting.	Available to everyone.
<b>Provide basic legal advice and assistance</b> 	CLCs provide basic information online and in person. They may also assist individuals with making applications and filing relevant documentation. Some also provide advice over the phone or in person with no appointment required.	Most CLCs will provide basic advice to anyone who attends a clinic, but cannot take on casework unless strict eligibility criteria are met. Some centres will only cater for particular types of people in speciality clinics.
<b>Provide duty lawyer services</b> 	Duty lawyers are present in some courts to assist victims with intervention order hearings.	All victims are eligible, but prioritised base on need.
<b>Provide legal representation</b> 	Some CLCs have resources to provide ongoing assistance and representation to victims of crime, usually in relation to family violence or other intervention orders.	Each CLC has different eligibility requirements and some only assist particular types of victims, such as the Women's Legal Service Victoria and the Victorian Aboriginal Legal Service.

### Examples of community legal centres assisting victims of crime

There are variations in the level of assistance that CLCs can provide to victims, with some CLCs specialising in helping particular types of people, or in particular areas of law. These are just some of the examples of CLCs in Victoria who provide assistance to victims of crime.

Community Legal Centre	Type of assistance	Eligibility requirements
Victims Legal Service	The Victims Legal Service Helpline is an initiative created by VLA in partnership with CLCs and Aboriginal legal services. It is a specialist advice phone line that provides legal information and advice to victims, including helping victims make an application for financial assistance with the Victims of Crime Assistance Tribunal Helpline. Staff are also able to contact other agencies on a victims' behalf if they believe they will better assist the victim. This service is a partnership with CLCs and Aboriginal legal services.	All victims of a crime can access the helpline, which is available every weekday during business hours.
Djirra	At Djirra, the sharing and celebration of culture is coupled with practical support for all Aboriginal women, especially those currently experiencing, or those who have previously experienced, family violence. They provide information to clients on how to protect themselves and their children from family violence. Referrals to other services, support for housing, health, finances, and employment, and specialised services, such as counselling and assistance with drug and alcohol issues, are also available to promote future safety.	Djirra provides assistance to First Nations women and focuses on family violence cases.
Disability Discrimination Legal Service	Disability Discrimination Legal Service (DDLS) offers free legal services in multiple areas, including information, referrals, advice, casework assistance, community legal education, policy, and law reform. The service also caters to female identifying individuals regarding workplace sexual harassment. DDLS provides clients with an information pack on its services.	DDLS provides assistance to those who are Victorian residents with a disability, their advocate, associate, parent, or representative bodies, and to those who have experienced discrimination based on their disability.
Women's Legal Service Victoria	Women's Legal Service provides legal advice to female victims of crime and promotes women's rights.	Women's Legal Service prioritises support for people who are experiencing family violence and face other barriers to justice. This may include: <ul style="list-style-type: none"> <li>• having no or limited access to money</li> <li>• having limited access to other legal support</li> <li>• not having a home</li> <li>• being Aboriginal and Torres Strait Islander</li> <li>• not speaking English or having English as a second language</li> <li>• being on a temporary visa or not having a visa</li> <li>• living with disability</li> <li>• caring for children with disabilities (Women's Legal Service Victoria, n.d.).</li> </ul>

## REAL WORLD EXAMPLE



**Figure 4** Youthlaw focuses on assisting young people to navigate the legal system

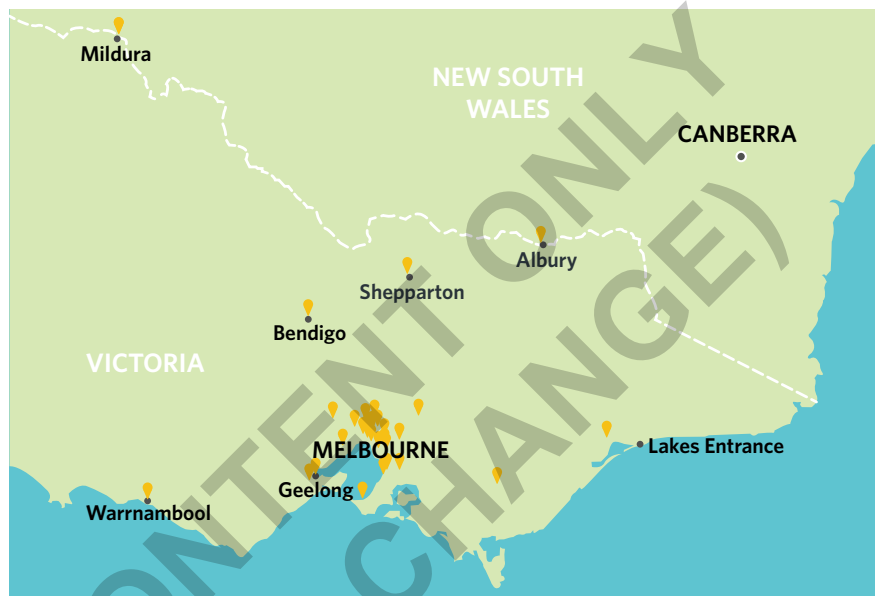
### Youthlaw community legal centres supporting victims under 25

Youthlaw assists victims under 25 with navigating the legal system. It assists with making intervention order applications or representing young people in court. It has fact sheets available online with advice for victims about Victim Impact Statements, claiming compensation, and victim rights. Youthlaw understands that young people who are victims of crime may also be dealing with other complex issues, such as mental health problems, homelessness, or substance abuse. Therefore, it works in collaboration with other community services to provide a holistic approach to supporting young victims.

*Adapted from 'Victims of Crime' (Youthlaw, 2018)*

### LESSON LINK

You will learn more about Victim Impact Statements in **3C Factors considered in sentencing**.



**Figure 5** A map showing the location of community legal centres in Victoria

### USEFUL TIP

An important key skill in Area of Study 2 of Unit 3 VCE Legal Studies is 'evaluate the ability of the criminal justice system to achieve the principles of justice during a criminal trial.' These tables below showing strengths and limitations in relation to each principle can help you to evaluate how VLA and CLCs uphold the principles of justice.

## Evaluating community legal centres' ability to achieve the principles of justice



### STRENGTHS

- CLCs provide high quality, free legal support and education to members of the community. This enables individuals to adequately participate in legal proceedings and present their cases in the best light, encouraging just and fair outcomes.
- Victims of crime are able to receive legal support from professionals, thus easing the emotional stress of the trial. This can allow victims to better participate in court proceedings and provide accurate statements to the court promoting a just and fair outcome.
- In some circumstances CLCs can provide legal representation to accused individuals. This promotes fairness as the accused is provided with necessary assistance to navigate the complex criminal justice system and adequately present their case.

### LIMITATIONS

- CLCs often cannot provide legal representation in court. This means many accused individuals without the financial means to gain legal representation must self-represent, unless they are eligible for assistance from VLA. Thus, this may impact the achievement of a fair trial if an individual cannot adequately participate in the legal proceeding.

**STRENGTHS**

- CLCs often provide an interpreter service to ensure those from non-English speaking backgrounds can access legal assistance, promoting equality in the justice system.
- CLCs can provide specific advice to victims and cater to their individual circumstances, ensuring all people, regardless of race, gender, or disability, receive appropriate legal information. For example, the Disability Discrimination Legal Service provides specialised services to those with a disability, ensuring the disabled are uplifted in the justice system and receive tailored services, promoting equality.

**LIMITATIONS**

- The eligibility requirements for a duty lawyer or legal representation from a CLC are rigid, meaning very few individuals can gain access to free legal representation. Whilst these requirements prioritise those most in need, others who are in the middle ground, whose circumstances are not considered dire enough to warrant help, are unable to receive legal assistance. This limits equality as these individuals are not uplifted to receive the same treatment as those who can afford representation in the justice system.
- The lack of funding received by CLCs impedes their ability to take on many new cases. Therefore, many victims suffer without representation, as help may be unavailable when required due to the limited capacity of CLCs.
- The majority of CLCs in Victoria are located in metropolitan Melbourne with few centres in rural Victoria. This limits the ability of accused persons and victims living in rural areas to acquire free legal services. This restricts the achievement of equality as rural areas may not have access to services to the same degree as those in metropolitan regions.

**STRENGTHS**

- CLCs provide free legal advice and information, enhancing access to and understanding of the legal system for all individuals in the community.
- Specialist CLCs can provide tailored advice about specific areas of law increasing access to personalised assistance for certain legal matters.
- CLCs are located across Victoria and in some regional areas, with some providing legal assistance over the phone, promoting access to legal information and advice.
- Victims are able to receive free legal support from CLCs that is specific to their case, promoting access to justice.

**LIMITATIONS**

- As CLCs usually provide assistance for relatively minor criminal matters, they do not promote access to resources for those charged with very serious criminal matters.
- There are not as many CLCs located in rural parts of Victoria, limiting access to legal assistance for those in remote areas.

**REAL WORLD EXAMPLE****Community legal centres crisis**

Community legal centres play a crucial role in providing free legal advice and representation to vulnerable individuals and marginalised communities. However, a growing demand for their services, coupled with limited resources, has resulted in CLCs being unable to accommodate for the demand and only able to assist clients with 'exceptional circumstances'. As Natalie Morale, director of strategy, engagement and projects at Inner Melbourne Community Legal, states 'we're already prioritising the neediest of the needy and now we're not even able to really support them properly'.

There are various factors contributing to the crisis, such as cuts in government funding and an increase in complex legal cases. As a result, community legal centres are compelled to prioritise cases based on severity or urgency, leaving many individuals without the support they desperately need. Furthermore, the emotional toll and distress of legal proceedings is compounded as services are denied and individuals are left to navigate the legal system alone.

*Adapted from 'Saying no has an enormous impact': overwhelmed community legal centres forced to turn away clients' (Bucci, 2022)*



Image: Ellen Smith/The Guardian

**Figure 6** Community legal centres are being forced to reject clients seeking legal assistance



# Lesson summary

**Table 5** Victoria Legal Aid and community legal centres summary

	Victoria Legal Aid	Community legal centres
<b>Purpose</b>	VLA is a government funded body that provides free legal information to the public and no cost or low-cost legal services to eligible individuals.	CLCs are independent organisations that aim to enhance access to justice for members of the community by providing free general and specialist legal services.
<b>Funding</b>	VLA is funded by the state and federal governments.	CLCs are funded by Victoria Legal Aid, state and federal governments, and private donations.
<b>Eligibility requirements</b>	Strict eligibility requirements must be satisfied to receive a duty lawyer or a grant of legal assistance. This includes the means test and the income test.	Each CLC will have different eligibility requirements depending on its resources and areas of expertise.
<b>Role in assisting accused people</b>	VLA can provide: <ul style="list-style-type: none"> <li>• legal information</li> <li>• legal advice</li> <li>• duty lawyers</li> <li>• grants of legal assistance</li> </ul>	CLCs can provide: <ul style="list-style-type: none"> <li>• legal information,</li> <li>• basic legal advice and assistance</li> <li>• legal representation</li> </ul>
<b>Role in assisting victims of crime</b>	VLA can provide: <ul style="list-style-type: none"> <li>• legal information</li> <li>• legal advice through the Victims Legal Service</li> <li>• duty lawyers</li> <li>• grants of legal assistance</li> </ul>	CLCs can provide: <ul style="list-style-type: none"> <li>• legal information,</li> <li>• legal advice</li> <li>• duty lawyers</li> <li>• legal representation.</li> </ul>

## 2B Questions

### Check your understanding

**Question 1**

The main purpose of VLA and CLCs is to provide low-cost or no-cost legal assistance to those most vulnerable.

- A. True
- B. False

**Question 2**

Which of the following is not a service VLA provides for accused people?

- A. Duty lawyers
- B. Free legal advice over the phone
- C. Counselling services
- D. Grants of legal assistance

**Question 3**

Which of the following resources may be provided to victims by CLCs? **(Select all that apply)**

- A. Free legal advice over the phone
- B. Legal education
- C. Duty lawyers
- D. Grants of legal assistance

**Question 4**

Tick the box to indicate whether the characteristics are **strengths** or **limitations** of CLCs.

Characteristics	Strengths	Limitations
I. CLC services are free	<input type="checkbox"/>	<input type="checkbox"/>
II. There is a lack of funding	<input type="checkbox"/>	<input type="checkbox"/>
III. The majority of CLCs are located in metropolitan Melbourne with fewer centres in rural Victoria	<input type="checkbox"/>	<input type="checkbox"/>
IV. CLCs can provide interpreter services to ensure those with diverse language backgrounds can access legal assistance	<input type="checkbox"/>	<input type="checkbox"/>

**Question 5**

Fill in the blanks with **one** of the following terms:

means

income

The [ ] test requires an accused to demonstrate that their income is limited or their main source of income is welfare payments from the government in order to receive duty lawyer assistance. On the other hand, the [ ] test considers an accused's income, assets, and expenses to determine whether they are eligible for a grant of legal assistance.

**Question 6**

Victoria Legal Aid contributes to the achievement of equality as: **(Select all that apply)**

- A. the provision of legal support is not determined based on one's race, gender, or sexuality.
- B. disadvantaged accused people are prioritised in receiving free or low-cost legal assistance.
- C. legal advice and representation can only be provided to those who satisfy the requirements of the means and income test.

**Question 7**

Community legal centres are limited in their ability to achieve access as:

- A. they provide free legal advice and information.
- B. there are fewer locations in regional Victoria compared to metropolitan areas.
- C. specialist CLCs can provide tailored advice about specific areas of law increasing access to personalised assistance for certain legal matters.

**Preparing for exams****Standard exam-style****Question 8**

(3 MARKS)

Explain **one** role of Victoria Legal Aid in assisting an accused person.

*Adapted from VCAA 2021 exam Section A 3a*

**Question 9**

(5 MARKS)

- a. Outline the main purpose of community legal centres.
- b. Explain the role of community legal centres (CLCs) in upholding the principle of fairness when assisting accused people.

2 MARKS

3 MARKS

*Adapted from VCAA 2022 exam Section B Q2a***Question 10**

(3 MARKS)

Charles, a 23-year-old paraplegic has used a wheelchair for over 5 years and was recently assaulted by a group of men during his commute to work. They pushed him off the train and onto the platform, causing him to fall out of his wheelchair. After seeking legal support, Charles learnt about specialised assistance for disability discrimination crimes.

Explain the role of community legal centres (CLCs) in providing support to Charles.

**Question 11**

(3 MARKS)

Kai has just moved to Australia and has no knowledge of the legal system. English is also their second language. They received a speeding fine, but as they could not afford to pay it, the matter has escalated and now Kai must face the Magistrates' Court.

Advise Kai as to whether Victoria Legal Aid or a community legal centre would be more appropriate to Kai in this situation.

*Adapted from VCAA Sample exam Section A Q5***Extended response**

Use your answer to question 12 to support your response to question 13.

**Question 12**

Tick the box to indicate whether each of the following statements are **strengths** or **limitations** of Victorian Legal Aid (VLA) and community legal centres (CLC) in upholding the principle of access.

Statement	Strengths	Limitations
I. VLA's services can be accessed in person, over the phone, and online, allowing for multiple avenues of access to legal support. Likewise, CLCs are across metropolitan Melbourne and in some regional areas, with some providing legal assistance over the phone, therefore promoting access to legal information and advice for members of the community.	<input type="checkbox"/>	<input type="checkbox"/>
II. VLA Duty lawyers and grants of legal assistance increase eligible accused individuals' access to the justice system and criminal proceedings, ensuring they can participate in the processes in an informed manner. Additionally, CLCs can provide legal representation for accused individuals, and duty lawyers for victims in limited circumstances.	<input type="checkbox"/>	<input type="checkbox"/>
III. CLCs usually provide assistance for relatively minor criminal matters, and therefore do not promote access to resources for those charged with very serious criminal matters. Likewise, VLA duty lawyers and grants of legal assistance can only be provided if the accused satisfies the income and means test, respectively, and duty lawyers are only available in the Magistrates' Court and not for indictable offences.	<input type="checkbox"/>	<input type="checkbox"/>
IV. Lack of funding for both VLA and CLCs can limit access to legal services due to the lack of resources and support available. The demand for legal services is greatly disproportionate to the assistance available, hence more individuals may be left uninformed and unable to adequately engage with the criminal justice system and achieve justice.	<input type="checkbox"/>	<input type="checkbox"/>

**Question 13**

(8 MARKS)

Discuss the ability of Victoria Legal Aid and community legal centres to uphold the principle of access.

**Linking to previous learning****Question 14**

(4 MARKS)

Sonia was the victim of a sexual assault offence and the trial for her accused perpetrator is set to take place next month. Sonia has never engaged with the criminal justice system and is seeking to find out more about her rights as a victim

Explain how a community legal centre could assist Sonia in understanding her rights as a victim.

SAMPLE CONTENT ONLY  
(SUBJECT TO CHANGE)

# 2C Plea negotiations

## STUDY DESIGN DOT POINT

- the purposes and appropriateness of plea negotiations

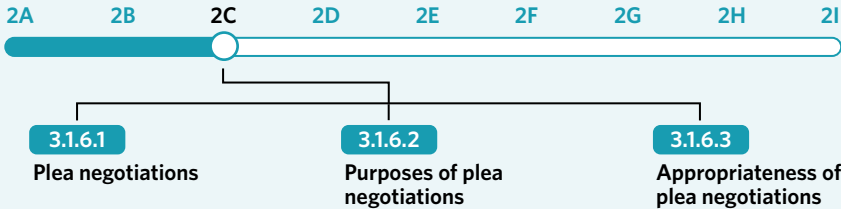


Image: Dmitrii Ivanov/Shutterstock.com

You are the owner of a restaurant and unfortunately added toxic mushrooms to the risotto you were serving, unaware of their toxicity. Five people die as a result of the toxins. You are given an offer: either risk your chances to plead your innocence, but if you fail, suffer through 20 years of prison, or admit your guilt and only face 10 years in prison instead. Which would you choose?

## Lesson introduction

In the criminal justice system, it is a common practice that the accused and prosecution enter into plea negotiations to resolve a criminal dispute without having a trial or hearing. These negotiations may result in the accused pleading guilty, therefore, aiding in securing a guilty plea for the prosecution, whilst also saving time, costs, and resources for both the parties and the courts.

## Plea negotiations 3.1.6.1

Where an accused is willing to plead guilty, they may enter into **plea negotiations** with the prosecution which may result in a reduction of charges, or a lesser charge altogether. An accused may plead guilty to an offence if doing so is beneficial to them. For example, an accused may plead guilty to an offence in exchange for:

- the withdrawal of some other charges. For example, an accused person charged with two charges may plead guilty to one charge on the condition that the other charge will be dropped.
- a reduction in the severity of the charge. For example, an accused person charged with murder may agree to plead guilty in order to receive a lesser charge, such as manslaughter.
- the accused pleading guilty on a mutually agreed set of facts regarding the offence. For example, an agreement is reached regarding the extent of the crime, saving time in the investigation for the prosecution while also reducing the punishment for the offender.

Plea negotiations may be initiated by the prosecution or accused and can occur at any stage before, or during the trial. If an accused pleads guilty to lesser charges during this process, the charges must still reflect the severity of the criminal conduct of the accused. Therefore, the court will be notified of the charges the accused has pleaded guilty to and will determine an appropriate **sanction** to impose. However, if a plea negotiation is unsuccessful and does not result in an agreement, any information raised throughout the negotiations cannot be used against the accused if the case proceeds to trial.

### KEY TERM

**Plea negotiations** discussions between the prosecution and the accused, aimed at encouraging the accused to plead guilty to a lesser charge, or fewer charges altogether in exchange for the prosecution requesting a lesser sentence.

### LEGAL VOCABULARY

**Sanction** a penalty imposed by the court on an offender when they plead guilty or are found guilty of a crime.

### LESSON LINKS

You will learn more about the role of the parties in **2F The parties in a criminal trial**.

You will learn more about sanctions in **3A Purposes of sanctions** and **3B Types of sanctions**.



**LEGAL VOCABULARY**

**Admissible evidence** evidence that abides by the rules of procedure that is allowed to be presented to the court.

## Purposes of plea negotiations 3.1.6.2

Plea negotiations serve a wide range of purposes in the determination of criminal cases and can be beneficial to all parties involved in the proceedings.

**Table 1** Purposes of plea negotiations

Purpose of plea negotiations	Explanation
To result in an early determination of a case	Plea negotiations enable criminal matters to be resolved without a trial, which is generally in the best interests of both parties. It also reduces the courts' workloads, minimising delays for matters that do go to trial.
To avoid the stress and trauma associated with a trial	Where plea negotiations result in the accused pleading guilty, it reduces the stress and trauma associated with a criminal trial for the victims, their families, and witnesses.
To avoid the costs associated with a trial	Where plea negotiations result in the accused pleading guilty, this results in a prompt resolution of a trial. As a result, the offender may avoid the costs associated with a trial, such as legal representation fees.
To secure a conviction	In cases where witnesses may be reluctant to give evidence, or if the prosecution does not have strong <b>admissible evidence</b> , a successful plea negotiation will ensure there is a conviction.
To allow the offender to receive a reduction on their sentence	Plea negotiations may allow the offender to plead guilty to a less severe charge, or lesser charges. This may lead to a reduced sentence compared to if the case were to proceed to trial.

**REAL WORLD EXAMPLE**

Image: Emre Ucarer/Shutterstock.com

**Figure 1** Successful plea negotiations result in Pipecon Pty Ltd agreeing to plead guilty to one charge in return for a reduction in the number of charges

### Plea negotiations result in an admission of guilt for victims' families

Pipecon Pty Ltd is a construction company located in Ballarat, Victoria. In 2018, two of Pipecon's workers, Jack Brownlee and Charlie Howkins, were killed after a trench collapsed on top of them. Pipecon was charged with two occupational health and safety offences for failing to provide a safe workplace and failing to provide supervision to ensure a safe workplace. Initially, Pipecon pleaded not guilty. However, following various court delays, Pipecon entered into plea negotiations with the prosecution. Pipecon agreed to plead guilty to one charge of failing to provide supervision to ensure a safe workplace, and in return, the prosecution dropped the other charge. According to Ballarat Trades and Labour Council secretary, Brett Edgington, who worked closely with the men's families, it was a 'very profound moment' for the families to hear Pipecon 'get up and admit guilt'. In this case, the plea negotiations were beneficial to Pipecon, as well as to the families of the victims who tragically passed away.

*Adapted from 'Pipecon pleads guilty to charge over trench collapse that killed Jack Brownlee, Charlie Howkins' (King, C, 2021)*

## Appropriateness of plea negotiations 3.1.6.3

While there are benefits to plea negotiations, there are also various considerations that must be taken into account to determine whether a plea negotiation is appropriate in a particular case. As a general rule, the prosecution must ensure that their offer to the accused is proportionate to the public interest and accurately reflects the accused's wrongdoing.

**USEFUL TIP**

It is important to remember that the appropriateness of a plea negotiation will be determined by the nature of a specific case. In assessments, students may be required to discuss whether or not a plea negotiation is appropriate in relation to a case study. Therefore, a high-scoring response to this type of question will explain how these factors influence the appropriateness of a plea negotiation in relation to the specific facts of the scenario, as opposed to simply listing general factors which determine the appropriateness of plea negotiations.

**Table 2** The appropriateness of plea negotiations

Circumstances when plea negotiations are appropriate	Circumstances when plea negotiations are not appropriate
<ul style="list-style-type: none"><li>• The accused is willing to plead guilty.</li><li>• The accused or prosecution wishes to avoid the costs and time associated with a criminal trial.</li><li>• The accused is representing themselves and is unable to present their case in the best possible light.</li><li>• Victims and witnesses are reluctant to give evidence, or giving evidence will be particularly traumatic for the victim or witnesses.</li><li>• The prosecution believes some witnesses may not be believable when giving evidence before a jury, reducing the likelihood of a conviction being secured.</li><li>• The prosecution is concerned that vital evidence proving an accused person's guilt may be inadmissible at trial, reducing the likelihood of a conviction being secured.</li><li>• Victimless crimes, such as drug offences or fraud, where a victim's views do not need to be taken into account at sentencing.</li></ul>	<ul style="list-style-type: none"><li>• The accused is not prepared to plead guilty to any charges.</li><li>• The alleged offending is serious to the point that a conviction for lesser charges is not in the public interest and the perception the accused 'got off lightly' will be too great.</li><li>• The victim or their family opposes such an agreement. The prosecution will consider this in deciding whether to negotiate a plea. Although, it is ultimately up to only the prosecution to decide whether to enter such an agreement.</li></ul>

**HYPOTHETICAL SCENARIO**

**Finding common ground**

Emiko was arrested and charged with numerous offences, including armed robbery. She is concerned because she cannot afford legal representation, and is worried about being sent to prison. Emiko has been cooperative with the police since her arrest. Ada was a witness in the case against Emiko and was concerned about giving evidence as she was distressed about the armed robbery.

As Ada was the only witness in the case against Emiko, but was reluctant to give evidence, the prosecution entered into plea negotiations with Emiko. After plea negotiations with the prosecution, Emiko agreed to plead guilty to armed robbery, and in return, the prosecution dropped the other charges that Emiko was facing.

As a result of the plea negotiation, Ada was able to avoid providing evidence at trial and Emiko avoided representing herself at trial. However, the prosecution ensured that their offer to Emiko was proportionate to the public interest and accurately reflected her wrongdoing.



Image: sutadimages/Shutterstock.com

**Figure 2** Plea negotiations allow Emiko and the prosecution to avoid a full criminal trial

**Evaluating plea negotiations' ability to achieve the principles of justice**

**STRENGTHS**

- Plea negotiations may result in the accused pleading guilty to a charge that adequately reflects the crime, leading to a just outcome to the case.
- Plea negotiations secure a conviction in cases where witnesses may be reluctant to give evidence, or if evidence may not be admissible in court, providing an alternative avenue for securing a conviction, without the need for the matter to proceed to trial.

**LIMITATIONS**

- Where plea negotiations result in the accused pleading guilty to a charge that does not adequately reflect the crime, this may result in the community feeling that an accused has been 'let off'. This could lead to the impression that the outcome was unfair.
- Plea negotiations may be seen as undermining the achievement of fairness as they are conducted in private, unlike a public hearing which is an element of a fair trial.
- If the victim or their family opposes the idea of a plea negotiation, but the prosecution continues to enter into an agreement with the accused, this may lead to the victim or their family viewing the outcome as unjust.



**STRENGTHS**

- Personal characteristics, such as the accused's gender and income, are not relevant during plea negotiations, ensuring they are treated equally.
- Both the accused and prosecution can request a plea negotiation, promoting equality.

**LIMITATIONS**

- Plea negotiations are not available to all accused persons as it will only be possible if the prosecution agrees to one. Therefore, there is not always an equal opportunity for all accused to enter into a plea negotiation.

**STRENGTHS**

- Plea negotiations save court time and resources by allowing for cases to be resolved before going to trial. This minimises delays and frees up court resources to make the legal system more accessible for cases that do need to go to trial.

**LIMITATIONS**

- Where plea negotiations result in the accused pleading guilty to a charge that does not adequately reflect the crime, this prevents the victims and their families from accessing justice.
- Access to plea negotiations may be limited for some accused persons as the prosecution has to agree to one.
- Plea negotiations are conducted in private, meaning victims, their families, and society cannot engage in this process, reducing the achievement of access.

**USEFUL TIP**

An important key skill in Area of Study 2 of Unit 3 VCE Legal Studies is 'evaluate the ability of the criminal justice system to achieve the principles of justice during a criminal trial.' These tables showing strengths and limitations in relation to each principle can help you to evaluate how plea negotiations can uphold the principles of justice.

## Lesson summary

- Plea negotiations are beneficial for both the prosecution and the accused, and can occur at any stage before, or during the trial.
- They can result in a prompt resolution to a criminal case without the need to go to trial as an accused may plead guilty to fewer charges, a lesser charge, or a mutually agreed set of facts.
- They can ensure that victims and their families as well as witnesses can access justice without having to go through the stress and trauma involved in a criminal trial.

## 2C Questions

### Check your understanding

**Question 1**

Plea negotiations can only be initiated by the prosecution.

- A. True
- B. False

**Question 2**

Which of the following is an agreement that cannot be reached during a plea negotiation?

- A. An agreement on the likely sentence the accused is to receive if they plead guilty.
- B. The withdrawal of some other charges.
- C. A reduction in the severity of the charge.
- D. The accused pleading guilty to an agreed set of facts.

**Question 3**

Which of the following statements are correct in relation to the purpose of plea negotiations? **(Select all that apply)**

- A. Plea negotiations avoid the stress and trauma associated with a trial for not only the victim and their family but also the accused.
- B. Plea negotiations result in an early determination of a case as it enables criminal matters to be resolved without the need for a trial.
- C. Plea negotiations allow the prosecution to guarantee that the accused receives the maximum penalty possible for the charge(s) the accused is faced with.
- D. Plea negotiations secure a conviction for the prosecution, particularly in cases where witnesses may be reluctant to give evidence, or if some evidence may not be admissible in court.

**Question 4**

In which of the following scenarios would plea negotiations be appropriate? **(Select all that apply)**

- A. The accused is facing multiple charges but is not prepared to plead guilty to any of the charges.
- B. The prosecution believes some witnesses may not be comprehensible and convincing when giving evidence before a jury.
- C. The alleged offence(s) are of such high severity that a conviction for lesser charges is not in the public interest.
- D. The prosecution fears vital evidence proving an accused person's guilt may be inadmissible at trial.

**Question 5**

Fill in the blank with **one** of the following terms:

equality

fairness

If a plea negotiation results in the accused pleading guilty to a charge that does not adequately reflect the crime,

this prevents the achievement of [ ].

**Question 6**

Plea negotiations are appropriate and can be used in all circumstances.

- A. True
- B. False

## Preparing for exams

### Standard exam-style

**Question 7**

(2 MARKS)

Identify **two** participants in the plea negotiation process.

*VCAA 2021 exam Section A Q1a*

**Question 8**

(4 MARKS)

Under what circumstances might plea negotiations be appropriate in determining a criminal case? Explain your response.

*Adapted from VCAA 2021 exam Section A Q1b*

**Question 9**

(4 MARKS)

Lottie has been charged with culpable driving after being in a car accident that caused the death of Nico. The prosecution knows Nico's family are devastated and wants to see Lottie punished severely. The backlog of cases in the County Court means the trial will be more than 14 months away, and Lottie wants the case to be resolved quickly.

Outline **one** reason why a plea negotiation would be appropriate in determining Lottie's case and outline **one** reason why it would not.

*Adapted from VCAA 2018 Sample exam Section B Q2c*

## Extended response

Use your answer to question 10 to support your response to question 11.

Use the following information to answer questions 10 and 11.

Tabitha has been charged with stalking and causing serious injury intentionally after allegedly following her ex-boyfriend Joe for weeks. After seeing him with his new girlfriend Aria, Tabitha repeatedly punched and kicked him. Tabitha has pleaded not guilty but is worried about the outcome of the trial as she cannot afford legal representation and is unsure how to present her case properly. In addition, Aria has expressed to the prosecution that she does not want to relive the traumatic experience by presenting evidence at trial. However, Joe's parents wish to see justice served at trial.

### Question 10

Which of the following statements suggests that plea negotiations are appropriate in this case?

(Select all that apply)

- A. Aria does not want to relive the traumatic experience and is therefore reluctant to give evidence at trial.
- B. Joe's parents wish to see justice served at trial.
- C. Tabitha has to represent herself as she cannot afford legal representation but may not present her case properly.
- D. The prosecution may be able to secure a conviction to ensure justice is achieved for Joe, his parents, and Aria.
- E. Tabitha has entered into a plea of not guilty despite having the chance to plead guilty.

### Question 11

(5 MARKS)

Discuss the appropriateness of plea negotiations in this case.

*Adapted from VCAA 2018 exam Section B Q1c*

## Linking to previous learning

Use your answer to question 12 to support your response to question 13.

### Question 12

Tick the box to indicate whether the following statements are **strengths** or **limitations** of plea negotiations in achieving the principles of fairness and access? (Select all that apply)

Statement	Strengths	Limitations
I. Plea negotiations save court time and resources by allowing for cases to be resolved before going to trial, minimising delays and freeing up court resources.	<input type="checkbox"/>	<input type="checkbox"/>
II. Plea negotiations secure a conviction in cases where witnesses may be reluctant to give evidence, or if some evidence may not be admissible in court.	<input type="checkbox"/>	<input type="checkbox"/>
III. Where plea negotiations result in the accused pleading guilty to a charge that does not adequately reflect the crime, this prevents the victims and their families from accessing justice.	<input type="checkbox"/>	<input type="checkbox"/>
IV. Plea negotiations may be seen as undermining the achievement of fairness as they are conducted in private.	<input type="checkbox"/>	<input type="checkbox"/>

### Question 13

(6 MARKS)

Discuss the extent to which plea negotiations help the justice system achieve the principles of fairness and access.

*Adapted from VCAA 2018 Sample exam Section A Q8*



# 2D The Victorian court hierarchy and criminal cases

## STUDY DESIGN DOT POINT

- the reasons for the Victorian court hierarchy in determining criminal cases, including specialisation and appeals

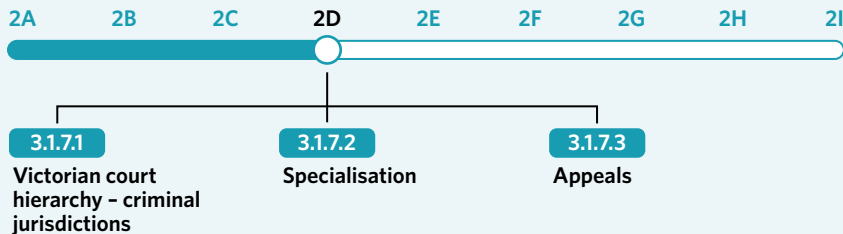


Image: Fer Gregory/Shutterstock.com

In a quaint country town, a gruesome double murder shocks the community. Yet, as the rumour mill begins to churn with whispers of 'whodunit' and speculations about suspicious figures, one question is on everyone's minds...which court will hear and determine this case once the alleged killer is caught?

## Lesson introduction

In Victoria, the courts are arranged in a hierarchy and each court has the power to hear and determine different types of criminal cases. Additionally, some courts in the Victorian court hierarchy have the power to hear and review criminal cases on appeal from lower courts. Therefore, the existence of a court hierarchy ensures Victoria has an efficient and cohesive court system that can facilitate the delivery of justice for the entire community.

## The Victorian court hierarchy - criminal jurisdictions 3.1.7.1

The Victorian **court hierarchy** is composed of five courts, with the lowest court being the Magistrates' Court and the highest Victorian court being the Supreme Court – Court of Appeal. While these are the main courts, there are also subdivisions of the Magistrates' Court, like the Koori Court. The highest court in Australia is known as the High Court, which deals with federal and constitutional matters. Each of the Victorian courts has its own **jurisdiction**, which refers to the power and legal authority of a court to hear a case. The **original jurisdiction** of a court refers to its ability to hear a case for the first time. For lower courts in the hierarchy, like the Magistrates' Court, its original jurisdiction is limited to determining minor criminal offences, like petty theft, while the original jurisdiction of higher courts, like the County Court, allows it to determine more serious offences, like culpable driving.

Additionally, certain courts have **appellate jurisdiction**, which permits them to hear and review a case after the original trial through an appeal. If a party is unsatisfied with the outcome of their case, they may apply for **leave to appeal** and have the decision of the case reviewed by a higher court. It is important to note that the reasons for and jurisdictions of the Victorian court hierarchy differ between criminal and civil law.

### KEY TERM

**Court hierarchy** the arrangement of courts in order of superiority.

### LEGAL VOCABULARY

**Jurisdiction** the legal authority of a court to hear and determine a legal case.

**Original jurisdiction** the legal authority of a court to hear a case for the first time.

**Appellate jurisdiction** the legal authority of a court to hear a case on appeal.

**Leave to appeal** formal permission to appeal the outcome of a case to a higher court.

LESSON LINKS

You will learn more about the Victorian court hierarchy and civil cases in **5C The Victorian court hierarchy and civil disputes**.

You learnt about summary and indictable offences in **1A Key principles of the criminal justice system**.

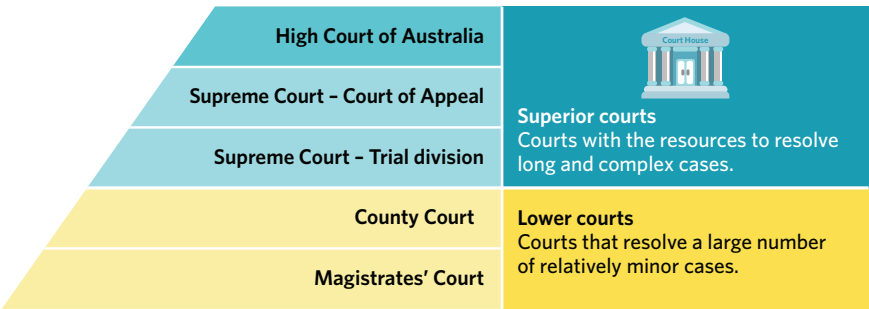


Figure 1 The Victorian court hierarchy

WANT TO KNOW MORE?

You can find out more about the caseload and types of offences heard in each court by searching 'Courts and VCAT caseload data' and clicking the 'Court Services Victoria' webpage.

Table 1 The original and appellate criminal jurisdiction of Victorian Courts

Court	Original criminal jurisdiction	Appellate criminal jurisdiction
<b>Magistrates' Court</b>	<ul style="list-style-type: none"><li>• Summary offences</li><li>• Indictable offences heard summarily</li><li>• Applications for warrants</li><li>• Bail hearings</li></ul>	No appellate jurisdiction
<b>County Court</b>	<p>Trials for most indictable offences, such as:</p> <ul style="list-style-type: none"><li>• rape</li><li>• armed robbery</li><li>• serious drug offences.</li></ul>	<p>Appeals from the Magistrates' Court in cases where the:</p> <ul style="list-style-type: none"><li>• offender is appealing against the conviction</li><li>• offender or the prosecution is appealing the sanction imposed</li></ul>
<b>Supreme Court – Trial Division</b>	<p>Unlimited criminal jurisdiction, but in practice conducts trials only for the most serious indictable offences, such as:</p> <ul style="list-style-type: none"><li>• murder and manslaughter</li><li>• terrorism offences.</li></ul>	<p>Appeals from the Magistrates' Court based on questions of law</p>
<b>Supreme Court – Court of Appeal</b> (Often referred to as the Court of Appeal)	No original jurisdiction	<p>Generally, three justices will preside over an appeal case. All appeals for crimes originally heard by a judge and jury in the County Court or Supreme Court – Trial Division can be heard in the Court of Appeal.</p> <p>This includes appeals against the sanction imposed, questions of law, and appeals against a conviction.</p>

KEY TERM

**Specialisation** a court's ability to develop expertise in a particular area of criminal law as a result of the court hierarchy.

LEGAL VOCABULARY

**Jury empanelment** the process of selecting the jurors for a trial. Potential jurors can be dismissed, disqualified, or exempt from jury duty for a range of reasons.

Specialisation 3.1.7.2

Courts are able to develop expertise in different areas of law as the court hierarchy facilitates **specialisation** through the different levels in the court structure. The Victorian court hierarchy allows each court to become familiar with hearing certain types of criminal cases and the laws and procedures relevant to these cases. As a result of specialisation, criminal cases are resolved in a more efficient manner. For example:

- the Supreme Court – Trial Division has experienced justices with expertise in laws for the most serious indictable offences, like murder, and are knowledgeable about the process of **jury empanelment**.

- the County Court judges specialise in hearing and determining indictable offences, such as drug trafficking, and are also familiar with the processes of empanelling and managing a jury.
- the magistrates in the Magistrates' Court are specialised in dealing with minor criminal offences, like driving offences, and can efficiently hear and determine a larger volume of minor cases.

The court hierarchy facilitates specialisation by defining the jurisdiction of each court and setting out the criminal matters that are regularly heard and determined in each court.

### HYPOTHETICAL SCENARIO

#### Terrorism heard in the Trial Division

Toby has been charged with two terrorism offences and will have his case heard in the Supreme Court – Trial Division. This is because Supreme Court justices have greater knowledge and expertise to deal with terrorist-related offences, compared to judges in the lower courts who do not have as much experience to hear such matters.

### USEFUL TIP

When discussing specialisation as a reason for the Victorian court hierarchy and criminal cases, it is beneficial to provide an example to support your answer. For example, you can elaborate on how the judges in the Supreme Court – Trial Division specialise in hearing serious indictable offences, like murder, to further demonstrate your understanding of the concept.

## Appeals 3.1.7.3

If a party is unsatisfied with the outcome of a case, they may **appeal** the final decision and have it reviewed by a higher court. Typically, the party seeking an appeal, known as the appellant, needs to prove they have valid grounds to appeal and be granted leave to appeal. Therefore, an appeal is not an automatic right. The court hierarchy is necessary for the process of appeals as it allows decisions of lower courts to be reviewed by higher courts, which would not be possible if the courts were not ranked based on superiority.

### KEY TERM

**Appeal** a legal process that a dissatisfied party may pursue to have the court's decision reviewed by a higher court.

**Table 2** Possible grounds for an appeal

Grounds	Explanation
<b>Appealing the sanction imposed</b>	The prosecution may argue that the sanction imposed does not adequately reflect the severity of the crime committed, while the offender may appeal the sanction for being excessive.
<b>Appealing on a question of law</b>	The dissatisfied party may argue that the legal principles or legislation have been incorrectly applied or interpreted.
<b>Appealing the conviction</b>	The party may appeal the jury or judicial officer's verdict.

### LEGAL CASE

#### *Lanciana v The King* [2023] VSCA 78

##### Facts

In 1994, an elaborate Armaguard van heist occurred in Richmond, in a scheme that involved fake roadwork sites, construction workers, and customised keys. Decades later, in 2016, the offender who organised the heist was finally arrested and charged with armed robbery, false imprisonment, and seven counts of money laundering. In 2021, the offender was found guilty in a trial by jury and sentenced to 14 years in prison. His legal counsel sought to appeal his case on the grounds of 'a substantial miscarriage of justice' due to directions given to the jury during the trial. The leave to appeal was granted.

##### Legal issue

The Supreme Court – Court of Appeal needed to determine whether 'a substantial miscarriage of justice' had occurred due to the judge's directions to the jury in the original trial.

##### Decision

The Court of Appeal rejected the appeal to overturn the conviction on such grounds, finding that the judge's directions given to the jury did not compromise the original verdict.

Continues →

### LESSON LINK

You learnt about the Office of Public Prosecutions in **2B Victoria Legal Aid and community legal centres**.

**LEGAL CASE*****Lanciana v The King* [2023] VSCA 78 – Continued****Significance**

This case demonstrates that even when an accused has valid grounds for an appeal and leave to appeal, the reversal of the original conviction is not guaranteed.

**Evaluating the Victorian court hierarchy's ability to achieve the principles of justice****STRENGTHS**

- The existence of a court hierarchy promotes fairness in the criminal justice system through specialisation. As individual courts are able to develop their expertise in dealing with particular crimes and areas of law, cases are presided over by skilled and knowledgeable judges who are able to ensure open and impartial processes and thus a just outcome.

**LIMITATIONS**

- Some offenders may not be able to appeal the outcome of a case in a higher court if they cannot afford the fees associated with an appeal. This limits the ability of an offender to have any errors in the outcome resolved, meaning in such cases, the court hierarchy may not deliver a fair outcome for all.

**STRENGTHS**

- The court hierarchy facilitates the ability to appeal decisions, and all parties have the right to appeal the outcome of a case, regardless of race, sex or gender, given their appeal is on valid grounds and the judicial officer presiding over the case has given the party leave to appeal.

**LIMITATIONS**

- Due to the costs associated with an appeal, appeals are not equally accessible to all parties. As a government department, the Office of Public Prosecutions has the necessary resources to fund an appeal, compared to accused individuals, who may not have the resources to do so. Thus, some parties may face disadvantage in being unable to appeal against a wrongful outcome due to their socioeconomic status.

**STRENGTHS**

- The court hierarchy promotes access to justice by enabling the appeals process to occur, which facilitates the review of judicial decisions. This better enables accused persons to engage with the justice system and its processes.
- Access to the court system is increased due to the specialisation of the courts, as it allows criminal cases to be resolved in a more efficient manner due to the knowledge and expertise of judges within a court. Therefore, delays are minimised and more people can access the criminal justice system in a more timely manner.

**LIMITATIONS**

- Grounds for appeal must exist and leave to appeal may be necessary. This may render some cases ineligible for a review by a higher court, meaning access to appeals can be limited.
- The cost of engaging legal representation for the appeals process can be inaccessible to those who do not have the financial means. This limits an accused's ability to engage with the criminal justice system and its processes.

**USEFUL TIP**

An important key skill in Area of Study 2 of Unit 3 VCE Legal Studies is to 'evaluate the ability of the criminal justice system to achieve the principles of justice during a criminal trial.' These tables showing strengths and limitations in relation to each principle can help you develop this skill in evaluating the ability of the Victorian court hierarchy to achieve the principles of justice.

**Lesson summary**

The organisation of the Victorian courts in a hierarchical manner facilitates the swift and effective delivery of justice for the entire community.

- The Victorian courts are organised from least to most superior: Magistrates' Court, County Court, Supreme Court – Trial Division, Supreme Court – Court of Appeal, and the High Court.
- Each court has different original and/or appellate jurisdiction.
- Two reasons for the Victorian court hierarchy in criminal law are specialisation and appeals.

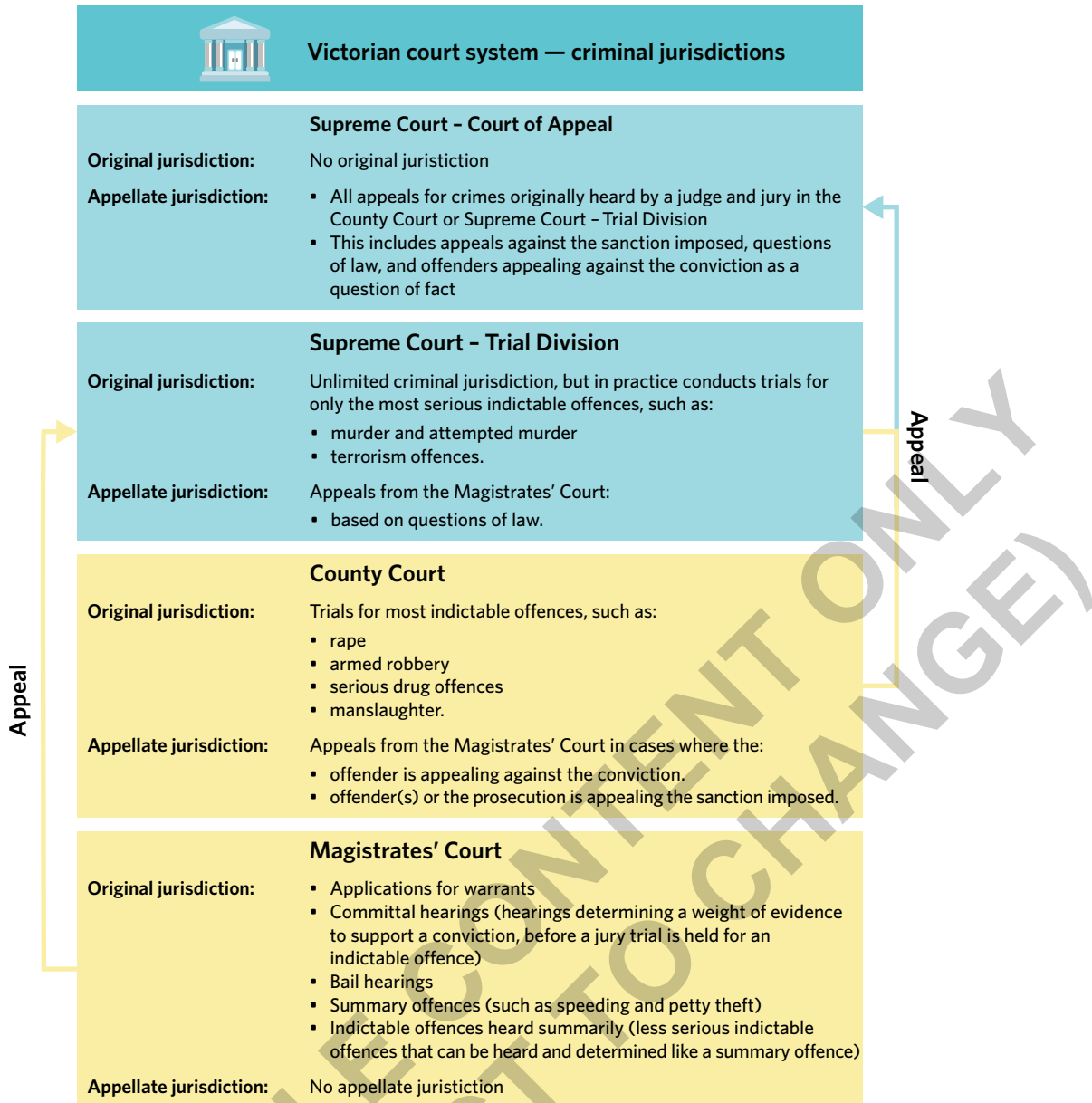


Figure 2 Summary of the Victorian court hierarchy and criminal cases

## 2D Questions

### Check your understanding

#### Question 1

The Victorian court hierarchy is:

- the arrangement of the courts based on superiority.
- a room where judges make court decisions.
- the ordering of judges from most to least knowledgeable.

#### Question 2

All courts have appellate jurisdiction.

- True
- False



**Question 3**

Mindy has failed to pay a parking fine after multiple warnings and now must attend a court hearing. Her case will most likely be heard in the:

- A. Supreme Court – Trial Division.
- B. Magistrates' Court.
- C. County Court.

**Question 4**

Fill in the blanks with the following terms:

cases

court

expertise

Specialisation refers to a court's ability to develop [ ] in a particular area of criminal law, and in dealing with specific criminal [ ] as a result of the [ ] hierarchy.

**Question 5**

Which of the following can be grounds for an appeal? (Select all that apply)

- A. The party is not happy with the result.
- B. The party is appealing on a question of law.
- C. The party is appealing the conviction.
- D. The party disliked the judge who presided over the case.
- E. The party is seeking a review of the sanction imposed.

**Question 6**

Which of the following statements is correct about the jurisdiction of the Court of Appeal?

- A. The Court of Appeal has original jurisdiction to hear matters relating to terrorism and national defence.
- B. The Court of Appeal has original jurisdiction to hear matters relating to cyberbullying.
- C. The Court of Appeal has no original jurisdiction.

**Question 7**

The Magistrates' Court can hear murder cases with the permission of the Supreme Court.

- A. True
- B. False

**Question 8**

An appeal is an automatic right for all accused persons.

- A. True
- B. False

**Question 9**

The Victorian court hierarchy:

- A. allows courts to specialise in particular areas of criminal law and enables appeals to take place.
- B. only allows for criminal cases to be heard in the High Court.

**Preparing for exams****Standard exam-style****Question 10**

(2 MARKS)

Outline **one** reason for the Victorian court hierarchy.

*Adapted from VCAA 2016 exam Q1b*

**Question 11**

(3 MARKS)

With reference to an example, explain how specialisation is facilitated by the Victorian court hierarchy.

**Question 12**

(5 MARKS)

Kaya has been sentenced to five years in prison after being found guilty by the County Court of armed robbery. She wishes to appeal the case.

- a. Outline the grounds on which Kaya could appeal her case. 2 MARKS
- b. Identify which court would hear the appeal and explain its appellate jurisdiction for criminal offences. 3 MARKS

*Adapted from VCAA 2017 exam Q1b*

**Question 13**

(4 MARKS)

'Appeals should not be permitted and a judge's decision should remain final under all circumstances.'

Do you agree with this statement? Referring to **one** principle of justice, justify your response.

**Extended response**

Use your answers to question 14 to support your response to question 15.

**Question 14**

Which of the statements are false regarding the court hierarchy? **(Select all that apply)**

- A. Each Victorian court has a different original and appellate jurisdiction.
- B. The court hierarchy ensures judges who are nicer preside over indictable offences.
- C. The appeals process is reliant on the courts being ranked from least to most superior, and if a party is unsatisfied with the outcome of a case, they have the right to apply for leave to appeal and have the final decision reviewed by a superior court.
- D. Each court specialises in dealing with specific matters, which means the judges of the respective courts are experienced and skilled in dealing with particular areas of criminal law and the relevant court procedures.
- E. The court hierarchy ensures only certain people are allowed access to certain courts based on their sex, race, and ethnicity.

**Question 15**

(5 MARKS)

'The Victorian Court system would be more effective if there was only one level of courts and the courts were not ordered from most to least superior.'

Do you agree with this statement? Justify your answer.

*Adapted from VCAA 2013 exam Q11*

**Linking to previous learning****Question 16**

(3 MARKS)

Explain how **one** right of the accused is promoted through the Victorian court hierarchy.

# 2E Judges, magistrates, and juries in a criminal trial

## STUDY DESIGN DOT POINT

- the roles of key personnel in a criminal case, including the judge or magistrate, the jury, and the parties

2A 2B 2C 2D 2E 2F 2G 2H 2I

### 3.1.8.1

#### The role of the judge or magistrate in a criminal case

##### 3.1.8.1.1 The difference between the judge and the magistrate

### 3.1.8.2

#### The role of the jury in a criminal case



Image: Gorodenkoff/Shutterstock.com

Just as every actor has their own role in a movie or stage show, there are many roles in a courtroom, each carrying different responsibilities. In a criminal courtroom, it is important that each individual upholds their duties and follows the correct court processes and procedures to ensure the achievement of justice.

## Lesson introduction

The roles of the judge, magistrate, and the jury in a criminal trial are integral to ensuring criminal trials operate efficiently and justly. While the judges and magistrates are key figures equipped with legal knowledge to manage a trial and ensure the relevant procedures are followed, jurors can represent the interests and values of the wider community in the determination of criminal cases.

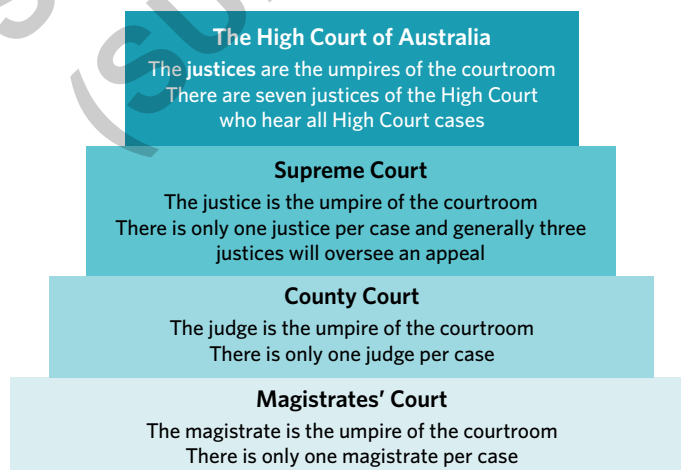


**Figure 1** The judge plays an important role in criminal cases

## The role of the judge or magistrate in a criminal case 3.1.8.1

The **judge** or **magistrate** are often referred to as the umpire of the courtroom as they must oversee all personnel and court proceedings, whilst ensuring court rules and procedures are upheld. Judges are not required to determine the guilt of the accused, as this is the role of the jury, however, they do need to ensure the trial proceeds fairly and impartially. In the Magistrates' Court, where there is no jury, the magistrate will decide the verdict. The judge must treat each party equally, remain impartial, and have no connections to either party.

The titles of judicial officers vary depending on the court they are in, however, they share the primary role of administering justice.



**Figure 2** The composition of judges in the court hierarchy

## KEY TERMS

**Judge** an independent authority who presides over a trial, ensuring procedural fairness by overseeing all personnel and evidence.

**Magistrate** an independent authority who presides over hearings in the Magistrates' Court for less serious matters such as summary offences, committal proceedings and some civil disputes.

## LEGAL VOCABULARY

**Justice** a judge in a high court in the hierarchy, such as in the Supreme Court of Victoria or the High Court of Australia.

## LESSON LINK

You learnt about the court hierarchy in **2D The Victorian court hierarchy and criminal cases**.

**Table 1** The role of the judge in a criminal case

Role of the judge or magistrate	Explanation
<b>Manage the trial or hearing</b>	<p>A judge or magistrate will ensure that the proceedings of the trial or hearing remains on time and that there is an effective use of resources. This can involve judges using their powers to control the delivery of evidence and determine whether the evidence should be presented in oral or written format.</p> <p>A judge can improve the efficiency of a trial by:</p> <ul style="list-style-type: none"><li>• ensuring correct procedures are followed</li><li>• monitoring and adjusting the processes of a trial as appropriate</li><li>• limiting the number of witnesses or topics for which they may be questioned on</li><li>• limiting examination-in-chief and cross-examination time</li></ul>
<b>Apply the rules of evidence and procedures</b>	<p>Judges are required to make rulings relating to evidence and procedure, such as:</p> <ul style="list-style-type: none"><li>• ensuring only <b>admissible evidence</b> is presented in court.</li><li>• ensuring witnesses are examined and cross-examined lawfully.</li><li>• giving directions on how evidence is to be presented and what documents the jury is permitted to see.</li><li>• providing clarity on the rules of evidence and procedure.</li></ul>
<b>Direct the jury (judges only)</b>	<p>The <i>Jury Directions Act 2015</i> (Vic) informs the <b>directions</b> the judge gives the jury. It outlines what points of law the judge must explain to the jury to ensure a fair trial. For example, in most criminal cases, the judge will explain:</p> <ul style="list-style-type: none"><li>• the burden of proof</li><li>• the standard of proof</li><li>• the key elements of the relevant offence(s)</li><li>• the law that applies to the facts</li><li>• the evidence presented by both parties.</li></ul>
<b>Remain unbiased</b>	<p>A judge or magistrate must remain impartial throughout the trial process.</p>
<b>Determine the guilt of an accused (magistrate only)</b>	<p>Whilst determining guilt is the role of a jury in the County and Supreme Courts of Victoria, in the Magistrates' Court, this responsibility falls on the magistrate, who will listen to the evidence and decide the verdict.</p>
<b>Impose an appropriate sanction</b>	<p>A judge or magistrate is responsible for imposing a sanction if an accused is found guilty.</p> <p>The <i>Crimes Act 1958</i> (Vic) informs the type of sanction a judge or magistrate will impose on an offender who has been found guilty by the jury. The Act outlines the maximum sentence for different crimes to ensure there is fairness and consistency between judges' decisions.</p> <p>The judge or magistrate will also consider victim impact statements and statements from the parties when deciding the severity of the sanction.</p>

**LEGAL VOCABULARY**

**Admissible evidence** evidence that abides by the rules of procedure that is allowed to be presented to the court.

**Directions** orders given by a judge to parties about the way proceedings are to be conducted.

**LEGISLATION**

*Jury Directions Act 2015* (Vic)

**LEGISLATION**

*Crimes Act 1958* (Vic)

**LESSON LINKS**

You learnt about the burden of proof and the standard of proof in **1A Key principles of the criminal justice system**.

You will learn more about victim impact statements in **3C Factors considered in sentencing**.

## REAL WORLD EXAMPLE

**From school dropout to judicial powerhouse**

After dropping out of school at 15, the Honourable Susan Mary Kiefel was appointed Chief Justice of the High Court of Australia on 30 January 2017. Justice Kiefel studied law at night while working full-time, and her determination and hard work have earned her Australia's highest judicial office.

'Prior to her appointment, Justice Kiefel was already a trailblazer for women in the legal profession. She was the first female QC appointed in Queensland in 1987', said Law Council President, Stuart Clark AM.

In her speech at the Australian Academy of Law and Charles Darwin University, Kiefel commented on judicial independence and impartiality:

*'If the public are to have confidence in the judiciary and the courts they must see the courts as free from influence and pressure. They must believe that they can rely upon the courts fairly and impartially to hear and determine their cases'.*

*Adapted from 'Chief Justice appointment, a landmark in Australian history' (The Law Society of Western Australia, 2017)*



Image: ChameleonsEye/Shutterstock.com

**Figure 3** The High Court of Australia, where the seven Justices sit, is led by Chief Justice Kiefel AC

## Evaluating a judge's ability to achieve the principles of justice in a criminal trial

### STRENGTHS

- An independent judge ensures the trial and court procedures are conducted fairly, without bias, and according to the rules of evidence.
- Judges give directions to the jury and must explain the key legal concepts of a criminal trial to ensure jurors remain impartial and informed in their decision-making.

### LIMITATIONS

- Judges can only explain court procedures and legal terminology to the parties and cannot provide additional legal advice or information to a self-represented party. This can increase the likelihood of an unfair trial for self-represented individuals due to the complexities and formalities of a criminal trial.
- Judges are appointed by the government and may be more sympathetic to a particular political ideology. This can potentially compromise their impartiality and lead to unfair verdicts.



### STRENGTHS

- Judges ensure rules of evidence and procedure apply equally to both parties and are consistent across all criminal trials.

### LIMITATIONS

- While judges are impartial judicial officers, they are still subject to personal bias and therefore, may subconsciously discriminate against certain parties, hindering equality.



### STRENGTHS

- Judges will apply court rules that protect victims, providing access for vulnerable witnesses to safely give evidence. Some of these protections are contained in the *Jury Directions Act 2015* (Vic).
- Judges explain points of law to the jury members, allowing jurors to better understand and participate in the trial.

### LIMITATIONS

- Judges rely on the parties to present all relevant evidence during a trial. If an accused person has no access to legal representation, this may prevent all relevant facts being presented to the court, as judges cannot actively seek out evidence they may need to deliver a verdict or ensure the jury knows all the facts, prohibiting the carriage of justice.





**LESSON LINK**

You learnt about the ability to give evidence as a vulnerable witness in **1B The rights of an accused**.

**DEEP DIVE**

**CONTENT WARNING** This section depicts content that is sensitive in nature that relates to sexual assault.

**Jury Directions Act and the battle for consent**

The *Jury Directions Act 2015* (Vic) aims to ensure the protection of sexual assault victims. For example, the prosecution can request that the judge direct the jury on issues such as consent.

The *Crimes Act 1958* (Vic) defines consent as 'free agreement' and outlines the circumstances in which a person does not consent:




- (a) the person submits to the act because of force or the fear of force, whether to that person or someone else;
- (b) the person submits to the act because of the fear of harm of any type, whether to that person or someone else or an animal;
- (c) the person submits to the act because the person is unlawfully detained;
- (d) the person is asleep or unconscious;
- (e) the person is so affected by alcohol or another drug as to be incapable of consenting to the act;
- (f) the person is so affected by alcohol or another drug as to be incapable of withdrawing consent to the act.

Section 46(4)(b) of the *Jury Directions Act 2015* (Vic) states that if one of these circumstances is proven beyond reasonable doubt, the judge must direct the jury that the victim did not consent.

## The difference between the judge and the magistrate 3.1.8.1.1

In Victoria, judges and magistrates are both judicial officers, but they serve different functions and have different levels of authority within the court system.

**Table 2** The differences between judges and magistrates

	Judge	Magistrate
<b>Court</b> 	Judges are appointed to the higher courts of Victoria, such as the Supreme Court and the County Court.	Magistrates preside over the lower courts in Victoria, such as the Magistrates' Court and the Children's Court.
<b>Types of offences</b> 	Judges hear and determine indictable offences, such as homicide and sexual assault offences.	Magistrates hear and determine summary offences, such as traffic offences and minor criminal offences.  Magistrates also have the authority to conduct preliminary hearings in criminal cases and make decisions about bail applications, sentencing, and warrant applications.
<b>Sentencing</b> 	Judges have more discretion than magistrates when it comes to the length of sentences and the types of sanctions imposed. This is because judges are appointed to the higher courts based on their expertise and are expected to exercise their judgement and discretion in accordance with the law and legal precedent.	Magistrates are bound by precedent as they are the lowest court and have minimal discretion when it comes to sentencing. They are bound by precedent and must follow the previous decisions of all higher courts.

**Continues →**

**LESSON LINKS**


You learnt about summary and indictable offences in **1A Key principles of the criminal justice system**.

You will learn more about precedent in **8B The doctrine of precedent**.

**WANT TO KNOW MORE?**

Magistrates also determine cases in other courts such as the Children's Court. You can find out more about the difference between the judge and the magistrate by searching 'Victorian Government Solicitor's Office - An introduction to the Victorian courts' and clicking the relevant link.

Table 2 Continued

	Judge	Magistrate
<b>Jury directions</b> 	Judges must follow the <i>Jury Directions Act 2015</i> to ensure the jury understands the law and evidence presented. The judge does not decide the verdict when there is a jury.	Juries are not used in Magistrates' Court hearings, thus the Magistrate does not need to abide by the <i>Jury Directions Act 2015</i> . Therefore, the magistrate determines the guilt of the offender and their sentence.

## The role of the jury in a criminal trial 3.1.8.2

A **jury** is a group of randomly selected people from the **electoral roll** who are required to deliver a **verdict** in a trial, based on evidence presented to them in court. In criminal trials, a jury is composed of 12 jurors, with the aim of representing a cross section of the community. Juries are only used in cases where the accused has been charged with an indictable offence and has pleaded not guilty. Therefore, a jury is not used for summary offences as these are resolved in the Magistrates' Court by a magistrate alone. Before the trial begins the judge will inform the jury of their obligation to deliver a verdict solely on evidence presented in court.

This means that jurors cannot:

- conduct personal research
- discuss the trial with anybody else, including family and friends, except for fellow jurors when inside the jury room
- view extraneous information about the case in the news, in the media, or on social media
- have relations with either party.

Similarly, the jury is empaneled in a specific way to ensure it is impartial. This includes excluding people, such as:

- those who have committed an indictable offence
- lawyers
- police officers
- judicial officers.

### KEY TERM

**Jury** a group of randomly selected people who are required to deliver a verdict in a trial based on the evidence presented to them in court.

### LEGAL VOCABULARY

**Electoral roll** the list of names of all Australians who are enrolled to vote. In order to enrol to vote, an individual must be an Australian citizen and over 18 years old.

**Verdict** the decision made by the jury regarding the guilt or liability of a party.

**Jury empanelment** the process of selecting the jurors for a trial. Potential jurors can be dismissed, disqualified, or exempt from jury duty for a range of reasons.

Table 3 The role of the jury in a criminal trial

Role of the jury	Explanation
<b>Remain objective</b>	Throughout a criminal trial, and when deciding the guilt of the accused, the jury must remain independent and unbiased toward both parties. Potential jurors who believe they cannot remain impartial, due to prior connections with the parties or factors like their occupation, are excused during <b>jury empanelment</b> .
<b>Listen to the evidence, judge's directions, and submissions made by legal representatives</b>	The jury must listen to all evidence presented at trial to ensure the verdict is based on all relevant evidence and the facts of the case. Therefore, jurors must be alert, take notes, and keep track of information throughout the trial. This involves listening to any directions given by the judge and explanations of key legal concepts.
<b>Determine the verdict</b>	Once all the evidence has been presented to the jury, it must determine the guilt or innocence of the accused. If deciding a guilty verdict, this must be determined beyond reasonable doubt. Jurors must base this verdict solely on the evidence presented during the trial, disregarding any personal or external opinions.  Generally, a unanimous verdict must be delivered, meaning that all 12 jurors believe the accused is guilty or not guilty. However, in some cases, a majority verdict of 11 out of 12 jurors, who believe the accused is guilty, beyond reasonable doubt, will be accepted by the court.



**Figure 4** The jury plays a vital role in ensuring justice is achieved in criminal trials

## REAL WORLD EXAMPLE



Image: pablofdezr/Shutterstock.com

**Figure 5** Four jurors in the UK used a Ouija Board to decide the verdict of a trial

### Playing with spirits: How a ouija board landed four jurors in legal trouble

In a 1994 English murder case, the UK Supreme Court ordered a new trial after four jurors used a ouija board during deliberations. They made their own ouija board using paper and a glass with the intention to summon the spirit of the dead victims. They asked the so-called 'spirit' questions such as 'who killed you?'. Shortly after, the accused was convicted and sentenced to imprisonment for murder.

One month later, the UK Supreme Court was alerted to the issue and ordered a new trial to take place. The use of the ouija board acted as extraneous information and could have skewed the opinions of the four jurors. Jurors must make their decision based on the facts and evidence presented in court.

*Adapted from "Who killed you?" The ouija board and other controversial times juries were discharged for misconduct' (Orr, 2022)*

## Evaluating a jury's ability to achieve the principles of justice in a criminal trial



### STRENGTHS

- Trial by peers protects democracy, ensuring verdicts reflect society's values. This promotes a fair trial as the views of the community are accounted for, whilst providing citizens with an insight into the legal system.
- Jurors cannot seek additional information about the case beyond the courtroom. Their decisions must only be informed by the evidence and facts submitted in the courtroom, and they are instructed to disregard any external knowledge about the case. This promotes a fair outcome.

### LIMITATIONS

- Legal cases are complex and technical, making it difficult for ordinary individuals to fully understand the legal terminology and procedures. This creates the risk of an unfair verdict, and there is no guarantee that jurors have accurately understood the facts of the case as they do not need to provide a reason for their verdict. This can lead to an unfair trial for both the accused and the victim(s).
- Juries are used in a very small proportion of criminal cases and therefore, can only promote fairness in relatively few cases.
- While jurors are instructed to remain impartial, they receive little training to do so and can rely on prejudice or bias to inform their decisions.



### STRENGTHS

- All accused persons charged with indictable offences are entitled to a trial by jury, regardless of their wealth, race, or education promoting equality.
- A cross-section of the community is used as a decision-maker, so the accused should feel their case has been decided by their independent equals. This also helps to disperse any potential bias held by a single decision-maker, as the decision is made by a group.

### LIMITATIONS

- Some individuals are ineligible or disqualified from jury service. Consequently, some accused persons may feel the jury is not a true cross-section of the community and are therefore, not being judged equally.
- Jury trials are not available for summary offences, meaning access to a jury trial is not equal across the types of offences.



### STRENGTHS

- The presence of a jury ensures less legal jargon and more plain English is used to ensure the jury has a clear understanding of the court's procedures and the responsibilities of jurors. This can also ensure the accused, if self-represented, understands the case and trial process, promoting access to justice.

### LIMITATIONS

- Very few matters are tried by jury, as most criminal offences are summary offences, resolved in the Magistrates' Court. As such, relatively few accused persons can access a jury trial.
- The use of juries can create delays. The jury must be empanelled, evidence and legal terminology must be explained, and deliberations have to occur. In the instance of a **hung jury** or mistrial due to juror misconduct, a retrial is required. Delays can limit a party's access and contribute to a backlog of court cases. This impacts access to justice for all individuals engaging with the criminal justice system.

## Lesson summary

The judge, magistrate, and jury play critical roles in ensuring the appropriate legal processes and procedures are followed to uphold the principles of justice.

The general role of the judge and magistrate is to:

- act as an impartial umpire
- ensure rules of evidence and procedure are followed
- decide the sentence of a guilty offender
- ensure a fair trial.

The judge has the additional role of directing the jury in criminal trials, and ensuring they understand points of law and evidence.

The magistrate does not have to direct the jury, as there is no jury in the Magistrates' Court, but has the additional role of deciding the verdict.

The role of the jury is to:

- represent the interests of the broader community
- listen carefully to the court proceedings
- decide the offender's guilt beyond reasonable doubt.

### LEGAL VOCABULARY

**Hung jury** when a jury cannot reach a unanimous verdict, in which the entire jury panel agrees on the defendant's guilt, or majority verdict, in which all but one or two jurors agree on the defendant's liability.

### USEFUL TIP

It is a common misconception to believe the jury is responsible for determining an appropriate sanction for the accused in a criminal case. Remember, a jury is not responsible for determining an appropriate sanction, and is only needed to determine the guilt of the accused beyond reasonable doubt. The judge will always decide on the sanction imposed on a guilty offender.

## 2E Questions

### Check your understanding

#### Question 1

Which of the following most accurately describes a judge?

- A. An impartial adjudicator in charge of deciding the verdict and overseeing all personnel.
- B. A person in charge of directing the jury as per the *Jury Direction Act 2023*.
- C. The 'umpire' of a courtroom overseeing all personnel, and evidence, whilst upholding rules and procedure.

#### Question 2

The jury decides the verdict and the sentence of the offender.

- A. True
- B. False

#### Question 3

Which of the following are key responsibilities of the magistrate during a criminal trial?

(Select all that apply)

- A. Advise the jury on the applicability of relevant law to the facts of the case before them.
- B. Ensure courtroom processes and procedures are followed by all individuals present during the trial.
- C. Question witnesses to draw out the evidence relevant to the offence being prosecuted.
- D. Act as an independent 'umpire' who oversees and adjudicates proceedings without bias, allegiances, or preconceived notions.

**Question 4**

Which jurors are most likely the reason a mistrial would be ordered?

Name of juror	Descriptor
Aixin	Did not disclose that she is related to the victim.
Bellamy	Made a pact with three other jurors that they would all vote the same.
Cora	Spoke privately with the defendant.
Dion	Is the same age as the accused.
Ethan	Did not tell the judge that he went to school with the accused.
Fatima	Took one criminology class in University 20 years prior.

- A. Aixin.  
 B. Aixin, Cora, and Ethan.  
 C. Aixin, Bellamy, Cora, and Ethan.  
 D. Fatima and Aixin.

**Question 5**

The judge is able to assist the jury with understanding areas of law and deciding on a verdict.

- A. True  
 B. False

**Question 6**

The jury is able to conduct external research to ensure they fully understand the case.

- A. True  
 B. False

**Question 7**

Fill in the blanks with **one** of the following terms:

fairness	equality	access
----------	----------	--------

Judges and magistrates rely on the parties to present all relevant evidence during a trial. If an accused person has no legal representation, this may prevent the principle of [ ] from being achieved.

**Question 8**

Fill in the blanks with **one** of the following terms:

fairness	equality	access
----------	----------	--------

Trial by peers protects democracy, ensuring decisions are based on the facts and reflect community values. This promotes [ ] and allows citizens an insight to the legal system.

**Preparing for exams****Standard exam-style****Question 9**

(3 MARKS)

Explain **one** role of a jury in a criminal trial.

*Adapted from VCAA 2018 section A Q1*

**Question 10**

(3 MARKS)

Aayush is set to face trial in the County Court after pleading not guilty to aggravated burglary. He intends to represent himself despite not having any prior legal knowledge or experience.

Outline the role of the judge in Aayush's trial.

*Adapted from VCAA 2022 Section A Q1*

**Question 11**

(4 MARKS)

Distinguish between the role of a judge and a magistrate.

**Extended response**

Use your answer to question 12 to support your response to question 13.

**Question 12**

Which of the statements below are roles of the judge that promote the achievement of fairness?

(Select all that apply)

- A. Judges cannot assist accused persons without legal representation by explaining any lawful defences, or advising them how to prepare and present their case.
- B. An independent judge ensures the trial is conducted without bias and according to the rules of evidence.
- C. Giving directions to the jury ensures they understand the basic elements of a criminal trial.
- D. Judges are impartial judicial officers but are still subject to personal bias and may unconsciously discriminate against certain parties.

**Question 13**

(5 MARKS)

Evaluate how the role of the judge in a criminal trial contributes to the achievement of the principle of fairness.

Use your answer to question 14 to support your response to question 15.

**Question 14**

Tick the box to indicate whether each of the following statements are **strengths** or **limitations** of judges and juries in a criminal trial?

Statement	Strength	Limitation
I. Juries are comprised of a cross-section of the community that represents a diverse range of views. The use of juries helps ensure the legal system is accountable to the people.	<input type="checkbox"/>	<input type="checkbox"/>
II. Judges have extensive legal expertise and training, which allows them to interpret complex legal concepts and apply them correctly to a criminal trial.	<input type="checkbox"/>	<input type="checkbox"/>
III. Jury members are ordinary and randomly selected individuals, so are not equipped with legal reasoning skills and their verdict may be incorrectly informed or lack consideration of key legal principles	<input type="checkbox"/>	<input type="checkbox"/>
IV. Jurors are likely to be influenced by personal prejudices and emotions, increasing the risk of an unfair verdict that is based on their biases as opposed to the facts of the case.	<input type="checkbox"/>	<input type="checkbox"/>
V. Judges are familiar with legal precedents and the principles of legal reasoning, which allows them to make justified rulings that ensure a fair trial.	<input type="checkbox"/>	<input type="checkbox"/>
VI. Judges have experience in setting aside their personal beliefs so as to remaining impartial and unbiased in their rulings	<input type="checkbox"/>	<input type="checkbox"/>
VII. Judges are government-appointed officials and may be subject to political pressure or biases.	<input type="checkbox"/>	<input type="checkbox"/>

**Question 15**

(6 MARKS)

'Juries should not decide the verdict. A judge has more legal expertise, and should decide the guilt of an offender'.

To what extent do you agree with this statement? Justify your response.



## Linking to previous learning

## Question 16

(3 MARKS)

**JURY DIRECTIONS ACT 2015 - SECT 64**

How explanation may be given

S. 64(1) amended by No. 38/2022 s. 58(2).

(1) In explaining the phrase 'proof beyond reasonable doubt' under section 63, the trial judge may—

- (a) refer to—
  - (i) the presumption of innocence; and
  - (ii) the prosecution's obligation to prove that the accused is guilty; or
- (b) indicate that it is not enough for the prosecution to persuade the jury that the accused is probably guilty or very likely to be guilty; or
- (c) indicate that—
  - (i) it is almost impossible to prove anything with absolute certainty when reconstructing past events; and
  - (ii) the prosecution does not have to do so; or
- (d) indicate that the jury cannot be satisfied that the accused is guilty if the jury has a reasonable doubt about whether the accused is guilty; or
- (e) indicate that a reasonable doubt is not an imaginary or fanciful doubt or an unrealistic possibility.

Explain how the *Jury Directions Act 2015* (Vic) ensures the jury understands the concept of the standard of proof.

# 2F The parties in a criminal trial

## STUDY DESIGN DOT POINT

- the roles of key personnel in a criminal case, including the judge or magistrate, the jury, and the parties

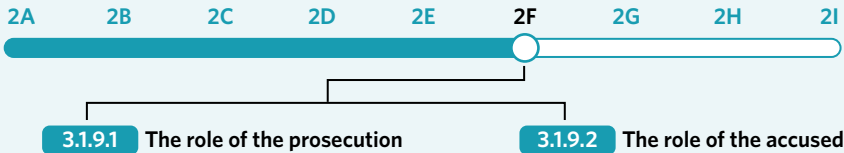


Image: Gorodenkoff/Shutterstock.com

A criminal trial is like a game of tug of war, with the prosecution and defence teams pulling on opposite ends of the rope. Each team is determined to win, using all their strength and strategy to convince the magistrate or jury of their story. It is a battle of wits and evidence, and the team that pulls the most convincingly towards their side will come out on top.

## Lesson introduction

Each party in a criminal trial has an important role to play in the conduct of the hearing. As the prosecution brings a criminal case to court on behalf of the Commonwealth or the state, their primary focus is to achieve a guilty verdict. Alternatively, the accused is the party charged with a criminal offence and they may try to cast doubt in the minds of the jurors to prevent a guilty verdict being delivered.

## The role of the prosecution 3.1.9.1

Throughout a criminal trial, the **prosecution** is required to convince the jury that the accused is guilty beyond reasonable doubt. To do this, the prosecution must present all relevant evidence to support their case. Therefore, the prosecution has various roles when presenting their case.

**Table 1** The role of the prosecution in a criminal trial

Role of the prosecution	Explanation
<b>Give an opening and closing address</b>	<p>At the start of the trial, the prosecution is required to give a statement outlining the charges the accused is facing, alongside the evidence they intend to rely on at trial.</p> <p>At the conclusion of the trial, the prosecution is required to give a statement summarising their arguments and outlining why the accused is guilty beyond reasonable doubt.</p>
<b>Determine which witnesses are called to give evidence during the trial</b>	<p>The prosecution must call all relevant witnesses, rather than those who tend to support a guilty verdict, to allow the full truth to emerge. For example, the prosecution cannot decide against calling a witness to a crime because their evidence may lead a jury to have doubts about the accused person's guilt.</p>
<b>Present evidence at trial</b>	<p>As the prosecution has the burden of proof, they must present evidence to prove the accused is guilty beyond reasonable doubt.</p>

Continues →

## KEY TERM

**Prosecution** the party that acts on behalf of the Commonwealth or the state and who brings a criminal case to court.

LEGAL VOCABULARY

**Examination-in-chief** the questioning of a witness in court by the party who called that witness to give evidence in support of the case being made.

**Cross-examination** the interrogation in court of the opposing party's witness who has already testified, in order to check or discredit the witness's evidence.

LESSON LINKS

You learnt about the role of the judge and jury in a criminal trial in **2E Judges, magistrates, and juries in a criminal trial**.

You will learn more about legal practitioners in **2G Legal practitioners in a criminal case**.

Table 1 Continued

Role of the prosecution	Explanation
<b>Communicate with victims of crime and other witnesses, about the trial process</b>	Before a witness is required to give evidence at trial, it is the role of the prosecution to explain the procedural rules of the court. For example, the prosecution should communicate the process of <b>examination-in-chief</b> and <b>cross-examination</b> .
<b>Make submissions to the court in relation to sentencing</b>	If an accused person is found guilty, the prosecution will make submissions to the court about the appropriate sanction to impose.

USEFUL TIP

You may have noticed that in case names, the prosecution is represented in different ways. In the end-of-year exam, you should be able to identify whether a case is a criminal case or a civil case. Examples of different ways criminal cases are presented include:

- *Chamberlain v The Queen* – In this case, the prosecution is referred to as 'The Queen' as the prosecution was representing the Queen in the right of the Commonwealth. Since her passing, all new cases of this kind now use 'The King'.
- *The Crown* – In this case, the prosecution is referred to as 'The Crown' as the prosecution is representing the King in the rights of the Commonwealth.
- *R v Bayda* – In this case, the prosecution is referred to as 'R' which is an abbreviation of 'Rex' or 'Regina', meaning 'King' or 'Queen'.
- *DPP v Smith* – In this case, the prosecution is referred to as the 'Director of Public Prosecutions', which is the office responsible for the prosecution of criminal offenders.

LEGAL CASE



**Figure 1** The judge interrupted the defence counsel for not properly presenting their opening statement

*Duong v R* [2017] VSCA 78

**Facts**

Duong was found guilty, in the County Court, of attempting to possess a commercial quantity of cocaine and appealed against the conviction to the Court of Appeal. In the opening address to the jury of the original trial, the judge interrupted the defence counsel on a number of occasions for making points that should be addressed in closing statements. The defence asked the judge to discharge the jury on the basis that the judge's interruptions 'infected' the jury against him, which the judge refused to do. Duong was convicted and later appealed, arguing the judge made an error in not discharging the jury.

**Legal issue**

The issue within this case was whether there was prejudice against the accused caused by the jury not being discharged.

**Decision**

The court affirmed that the points being made by the defence counsel in the opening statement were more appropriate for closing addresses and therefore, the judge was entitled to interrupt the defence counsel's opening address.

**Significance**

This case outlines the importance of the prosecution and defence engaging in, and not straying from their specific roles, particularly in providing opening and closing addresses.

## The role of the accused 3.1.9.2

In a criminal trial, the **accused** does not have to present any evidence and instead, may elect to exercise their right to silence. However, the accused may wish to place doubt in the jurors' minds in an attempt to prevent the prosecution from meeting the threshold of beyond reasonable doubt. To do this, the accused may disprove and deny the prosecution's arguments and evidence, or present evidence of their own that contradicts the prosecution's case. Therefore, the accused has a number of roles when presenting their case.

**Table 2** The role of the accused in a criminal trial

Role of the accused	Explanation
<b>Enter into a plea of 'guilty' or 'not guilty'</b>	The accused must either plead guilty or not guilty to the charge(s) against them. If the accused pleads guilty, the matter will proceed to a sentencing hearing. During this process, the prosecutor will read out a summary of the alleged facts, and the prior convictions of the accused, if any. Following this, the accused is provided with the opportunity to say anything, including an expression of disagreement with the facts presented by the prosecution. Finally, the judge or magistrate will announce an appropriate sentence for the offender.  However, if an accused pleads not guilty, the matter will proceed to trial.
<b>Present evidence and decide which witnesses to call</b>	Whilst the accused is not required to present evidence, as they do not have the burden of proof, the accused may choose to do so. This can assist in disproving the prosecution's case by providing evidence, or questioning witnesses, that contradict the prosecution's argument.
<b>Decide which lawful defence(s) they wish to put to the court</b>	Where an accused raises a specific defence, such as self-defence, the burden to prove this defence falls upon the accused.
<b>Be present at all court proceedings related to their case</b>	In most criminal cases, the accused is required to be present in court throughout the criminal trial. However, when an accused is being tried for offences that can be heard in their absence, including some summary offences, they may not be required to attend.

### DEEP DIVE

#### Lawful offences

An accused may defend a criminal charge by relying on a lawful defence, such as self-defence. The *Crimes Act 1958* (Vic) outlines the requirements for an accused relying on self-defence, including the fact that they have the burden of proving that they acted in self-defence. Section 322K of the Act states:

- (1) A person is not guilty of an offence if the person carries out the conduct constituting the offence in self-defence.
- (2) A person carries out conduct in self-defence if—
  - (a) the person believes that the conduct is necessary in self-defence; and
  - (b) the conduct is a reasonable response in the circumstances as the person perceives them.
- (3) This section only applies in the case of murder if the person believes that the conduct is necessary to defend the person or another person from the infliction of death or really serious injury.

Therefore, if the elements of this defence are proven, the accused will be found not guilty of the offence.

### KEY TERM

**Accused** the party who is charged with a criminal offence.

### LESSON LINK

You learnt about an accused's right to silence in **1B The rights of an accused**.

### LEGISLATION

*Crimes Act 1958* (Vic)

## Evaluating the parties' ability to achieve the principles of justice



### STRENGTHS

- Both the prosecution and the accused are given the opportunity to present their case to the court, ensuring fair processes.
- There is no requirement for the accused to present evidence to prove their case. This ensures fairness as it is not their role to prove their innocence, but rather, the prosecution's role to prove their guilt.

### LIMITATIONS

- Self-represented parties may struggle to understand how to present legal arguments and evidence in the best light, which may lead to an incorrect and unfair case outcome.
- If an accused does not present any evidence and remains silent, this may be viewed as an admission of guilt, which may lead to an unfair case outcome.



### STRENGTHS

- Both the prosecution and the accused are given the same opportunity to present their case to the court.

### LIMITATIONS

- Self-represented parties may be at a disadvantage if they do not understand court processes and are unable to present all relevant evidence to prove their case. This creates inequality between the prosecution and the defence.



### STRENGTHS

- The courts provide some general guidance regarding court procedures to parties who are representing themselves, therefore promoting access to justice.

### LIMITATIONS

- Self-represented parties may struggle to understand how to present legal arguments and evidence in the best light, limiting access to justice.
- An accused may plead guilty on the basis that they do not understand their rights and do not think they will present their case in the best light possible, reducing access to justice.

## Lesson summary

- The parties in a criminal trial each have their own roles that align with their overall objective.
- The prosecution is required to present all relevant evidence to prove the accused is guilty beyond reasonable doubt.
- The accused does not have to present any evidence, but may do so to try and plant doubt in the minds of the jurors to ensure a not guilty verdict.
- However, both parties must complete their roles in a way that aligns with the rules and procedures of the court to ensure the principles of justice are upheld.

## 2F Questions

### Check your understanding

#### Question 1

The parties involved in a criminal trial include the prosecution and the accused.

- True
- False

**Question 2**

Which of the following statements is incorrect in relation to the parties in a criminal trial?

- A. The prosecution must call all relevant witnesses to assist the emergence of the full truth, and not just those witnesses that will help secure a guilty verdict 'at all costs'.
- B. Only the prosecution is permitted to call witnesses that present evidence to the court.
- C. The accused is responsible for deciding how to plead.
- D. The prosecution will present the relevant legal principles of the offence being tried to the court.

**Question 3**

Which of the following are the roles of the accused in a criminal trial?

(Select all that apply)

- A. To prove their innocence beyond reasonable doubt.
- B. To enter a plea of 'guilty' or 'not guilty'.
- C. To decide which lawful defence(s) they wish to present in court.
- D. To talk to witnesses and bribe them not to give evidence at trial.

**Question 4**

Fill in the blank with **one** of the following terms:

examination-in-chief

cross-examination

Where a witness is questioned by the party who called them to give evidence, this is referred to

as  .

**Question 5**

Which of the following are the roles of the prosecution in a criminal trial?

(Select all that apply)

- A. To give an opening and closing address.
- B. To communicate with victims of crime and other witnesses, about the trial process.
- C. To present evidence at trial.
- D. To speak to jurors independently outside of the courtroom to convince them the accused is guilty.

**Question 6**

Tick the box to indicate whether the following statements are **strengths**, and which are **limitations** of the role of the parties in achieving the principles of justice?

Statement	Strengths	Limitations
I. Both the prosecution and the accused are given an equal opportunity to present their case to the court.	<input type="checkbox"/>	<input type="checkbox"/>
II. Self-represented parties may struggle to understand how to present legal arguments and evidence in the best possible light, which may lead to an incorrect outcome in the case.	<input type="checkbox"/>	<input type="checkbox"/>
III. The courts provide some guidance of a general kind to parties who are representing themselves, regarding court procedures.	<input type="checkbox"/>	<input type="checkbox"/>
IV. Self-represented parties may be at a disadvantage to the prosecution if they do not understand court processes and are unable to present all relevant evidence to prove their case.	<input type="checkbox"/>	<input type="checkbox"/>



**Question 7**

The prosecution's primary focus is to achieve a guilty verdict, whereas, the accused's aim is to cast doubt in the minds of the jurors to ensure a verdict of not guilty is delivered.

- A. True
- B. False

**Preparing for exams****Standard exam-style****Question 8**

(2 MARKS)

Outline **one** role of the prosecution and the accused in a criminal trial.

*Adapted from VCAA 2018 exam Section A Q1*

**Question 9**

(3 MARKS)

Aki has been charged with manslaughter. He has pleaded not guilty and has a witness who he wants to call to support his case.

Explain the role of Aki in his criminal trial.

**Question 10**

(4 MARKS)

Explain how the role of the parties in a criminal trial could achieve the principle of fairness.

**Extended response**

Use your answer to question 11 to support your response to question 12.

Use the following information to answer Questions 11 and 12.

Callum has been charged with culpable driving after being involved in a collision with Lorenzo. Callum is sure he did not cause the collision and believes he has a witness to illustrate this. However, he cannot afford legal representation and is unsure about legal processes and procedures, particularly in relation to the best way to question his witness.

**Question 11**

Which of the following statements are correct in relation to the role of parties if Callum's case goes to trial?

**(Select all that apply)**

- A. The prosecution has the role of calling witnesses to give evidence during Callum's trial. This may include calling witnesses to prove that Callum caused the collision with Lorenzo.
- B. Callum has to present evidence and call upon the witness that shows he did not cause the collision with Lorenzo, to prove his innocence.
- C. As the prosecution must call all relevant witnesses to assist the emergence of the full truth, they will be required to call the witness that alleges Callum caused the collision with Lorenzo.
- D. As Callum is representing himself, as he cannot afford legal representation, he may not question the witness properly, which may end up damaging his case.

**Question 12**

(6 MARKS)

Assuming Callum's case goes to trial, discuss the roles of both parties involved in this case.

*Adapted from VCAA 2020 exam Section B Q1c*

## Linking to previous learning

Use your answer to question 13 to support your response to question 14.

### Question 13

Tick the box to indicate whether the following statements are **strengths** or **limitations** of the role of the parties and the judge in achieving the principle of equality during a criminal trial?

Statement	Strengths	Limitations
I. While judges are impartial judicial officers, they are still subject to personal bias and therefore may unconsciously discriminate against certain parties.	<input type="checkbox"/>	<input type="checkbox"/>
II. Both the prosecution and accused have an equal opportunity to present their case, as both parties can present evidence and call upon witnesses.	<input type="checkbox"/>	<input type="checkbox"/>
III. A self-represented accused may be disadvantaged if they do not understand court processes and are unable to present all relevant evidence to prove their case.	<input type="checkbox"/>	<input type="checkbox"/>
IV. Judges have a role in ensuring rules of evidence and procedure apply equally to both parties during a criminal trial.	<input type="checkbox"/>	<input type="checkbox"/>

### Question 14

(5 MARKS)

Discuss the extent to which the role of the parties and the judge in a criminal trial upholds the principle of equality.

# 2G Legal practitioners in a criminal case

## STUDY DESIGN DOT POINT

- the need for legal practitioners in a criminal case

2A 2B 2C 2D 2E 2F 2G 2H 2I

3.1.10.1

The need for solicitors in a criminal case

3.1.10.2

The need for barristers in a criminal case



Image: engel.ac/Shutterstock.com

Legal practitioners in a criminal case are like skilled architects constructing a tower of justice. The defence attorney, a masterful designer, builds walls of protection for the accused, crafting a sturdy defence strategy. The prosecutor, an artful engineer, constructs a bridge of evidence, connecting guilt to the accused.

## Lesson introduction

Lawyers, also referred to as legal representatives or legal practitioners, play an important role in criminal trials as they prepare cases and bring them to court on behalf of the parties. All legal practitioners have a duty to act with courtesy and not mislead the court. Legal representatives for the prosecution must call all relevant witnesses to assist the court in uncovering the full truth of a criminal matter, rather than only presenting evidence to secure a guilty verdict. Alternatively, legal practitioners for the accused will aim to cast doubt on the prosecution's argument. During a trial, parties are assisted by solicitors and barristers, which are both types of legal practitioners.

## The need for solicitors in a criminal case 3.1.10.1

In most cases, accused individuals seek the guidance of a **solicitor** as their initial step. Solicitors are **legal practitioners** who primarily focus on assisting clients with various day-to-day legal matters and concerns. They bear the responsibility of fulfilling numerous legal obligations and duties, including offering clients advice and strategies to address a wide range of legal issues. The main difference between **barristers** and solicitors is that solicitors advise clients on a broad range of legal issues, outside of the courtroom, whilst the barrister presents arguments in court.

**Table 1** The role of solicitors in a criminal case

Role	Explanation
<b>Drafting court documents and letters for clients</b>	Solicitors prepare various documents and perform a number of actions on behalf of their clients, including drafting emails, making phone calls, and managing files. They frequently communicate with their clients to gather necessary information, provide legal advice, and ensure all relevant documentation is properly organised. Additionally, solicitors maintain client files by ensuring important details and records are securely managed and readily accessible for the duration of the legal proceedings.

Continues →

## KEY TERMS

**Solicitor** a lawyer that prepares legal documentation, communicates with the other party, researches the relevant laws, and helps the barrister form arguments.

**Legal practitioner** a lawyer with an Australian legal practising certificate.

**Barrister** a lawyer that is responsible for representing a party in a trial by making legal arguments, questioning witnesses, and summarising the case to the judge and/or jury.

Table 1 Continued

Role	Explanation
<b>Researching the law and preparing evidence</b>	Solicitors play a crucial role in their clients' cases by researching and analysing points of law. They gather relevant information, conduct interviews with witnesses, review documents, and scrutinise previous legal decisions. Armed with a comprehensive understanding of the situation, solicitors build a strong case that aims to bolster the position of their client for effective presentation in the courtroom by a barrister.
<b>Advising and instructing barristers on behalf of their client</b>	Once solicitors have prepared the case, they collaborate with barristers, who are specialised courtroom advocates, to ensure the seamless presentation of the evidence and arguments in court. Barristers, equipped with the solicitors' preparation, skillfully deliver these materials, making compelling and persuasive presentations to judges and juries.

**WANT TO KNOW MORE?**

You can find out more about solicitors and who can practise as a solicitor by searching 'Victorian legal services - practising law' and clicking on the relevant link.

**DEEP DIVE**

**Solicitors in the courtroom**

Although solicitors have the legal authority to represent their clients in court, it is common practice for them to engage barristers to handle courtroom appearances and seek guidance on legal proceedings. Traditionally, solicitors primarily appear in court for preliminary and interim hearings, while leaving the formal argument stage to barristers. However, there are solicitors, especially those specialising in specific legal areas, who choose to personally appear on behalf of their clients instead of engaging a barrister.

The Law Society of NSW provides solicitors with a card stating their entitlement to practice as both barristers and solicitors in NSW. This means that solicitors have the legal ability to assume all the responsibilities in court that are typically attributed to barristers if they determine it to be in the best interest of their clients.



**Figure 1** Solicitors usually have a primary role outside the courtroom but, in some cases, may appear in court

*Adapted from 'Barrister vs Solicitor: Their Different Roles in Your Legal Matter' (Owen Hodge Lawyers, n.d.)*

## The need for barristers in a criminal case 3.1.10.2

Barristers primarily serve as legal representatives for clients to present arguments and evidence before a judges and juries. Unlike solicitors, barristers generally operate as independent practitioners and receive instructions from the solicitor managing the case, regarding their courtroom actions. Their professional focus is predominantly centred around courtroom proceedings, rather than the day-to-day legal matters of their clients.

**Table 2** The role of barristers in a criminal case

Role	Explanation
<b>Opening and closing addresses</b>	<p>The barrister will outline their party's case at the beginning and end of the trial, including:</p> <ul style="list-style-type: none"> <li>a summary of the evidence they will present or have presented</li> <li>the facts they want the court to accept as true based on this evidence.</li> </ul> <p>The prosecution's barrister will summarise legal arguments about why the accused is guilty beyond reasonable doubt, while an accused person's barrister will summarise legal arguments for why the accused is not guilty. They will raise lawful defences and/or challenge whether the prosecution has proven the accused person is guilty beyond reasonable doubt.</p>
<b>Presenting evidence and defences</b>	<p>The barrister will call witnesses for examination in front of the judge and jury throughout the trial. This involves asking questions of the witnesses they call, with witnesses' responses informing the court of the facts of the case. This is called <b>examination-in-chief</b>. The role of the barristers for the prosecution is to present evidence to prove the accused is guilty beyond reasonable doubt. On the other hand, the barrister for the accused may try to disprove the prosecution's evidence and/or present their own evidence. Further, the accused's barrister will conduct the <b>cross-examination</b> of witnesses called by the prosecution to test the accuracy and reliability of the evidence they present in court. Barristers for the prosecution will also have the opportunity to cross-examine witnesses for the defence.</p>
<b>Making evidence submissions</b>	<p>The prosecution and accused person's barristers will make submissions to the judge as to whether certain evidence should or should not be put before the jury.</p>
<b>Making sentencing submissions</b>	<p>If an accused person is convicted, both barristers will make submissions about the appropriate sanction.</p> <p>The prosecuting barrister will request a particular sanction should be imposed with accompanying reasons.</p> <p>The accused person's legal representative will argue for a more lenient sentence.</p>

**LESSON LINK**

You learnt about the standard of proof in **1A Key principles of the criminal justice system**.

**LEGAL VOCABULARY**

**Examination-in-chief** the questioning of a witness in court by the party who called that witness to give evidence in support of the case being made.

**Cross-examination** the interrogation in court of the opposing party's witness who has already testified, in order to check or discredit the witness's evidence.

**REAL WORLD EXAMPLE****Lawyer X: Nicola Gobbo's double life**

Nicola Gobbo, a barrister turned police informant in Victoria, raised serious questions about the ethics and integrity of the legal profession, as well as the conduct of Victoria Police. Gobbo, who had previously represented clients charged with serious crimes, had a duty to maintain client confidentiality and act in their best interests. However, she breached this duty in 2020 by providing information to the police, effectively compromising the rights of her own clients.

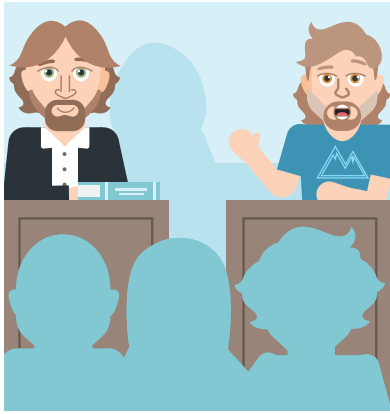
This case raises broader concerns about the delicate balance between justice and the role of legal practitioners. Lawyers are expected to advocate for their clients, safeguard their rights, and maintain the integrity of the legal system whether they believe their client is guilty or not. Gobbo's actions challenged these principles, undermining trust in the legal profession and compromising the fairness of the criminal justice system. Gobbo has been in hiding since 2018.

*Adapted from 'Lawyer X: how Victoria police got it 'profoundly wrong' with informant Nicola Gobbo' (Wahlquist, 2020)*



**Figure 2** Police informant and lawyer, Nicola Gobbo, was condemned for breaching her clients' trust

## HYPOTHETICAL SCENARIO



**Figure 3** The disadvantages of self-representing in court highlights the need for legal practitioners

### The uneven scales of justice: How legal representation makes a difference in an accused's fate

Jordan and Dimitri find themselves accused of a serious crime. Jordan has a defence team, while Dimitri has decided to represent himself.

Jordan's defence team works tirelessly to protect the rights of their client and advocate for Jordan's innocence. The solicitor gathers evidence, interviews witnesses, and uncovers relevant legal precedents. The barrister, an expert in courtroom advocacy, crafts compelling arguments, skillfully cross-examines witnesses, and challenges the prosecution's case. The combined effort of the legal practitioners results in a robust defence strategy aimed at securing Jordan's acquittal.

In contrast, Dimitri faces an uphill battle. Representing himself, he struggles to navigate complex legal procedures, interpret laws, and understand rules of evidence and procedure. Dimitri's lack of legal knowledge and experience puts him at a disadvantage, and he struggles to counter the prosecution's arguments.

This highlights the vital role of legal practitioners for an accused person. A defence team's expertise, knowledge of the law, and courtroom experience provide invaluable benefits.

## Evaluating legal practitioner's ability to achieve the principles of justice



### STRENGTHS

- The use of legal practitioners can increase an accused person's chance of securing a not guilty verdict, as their case is presented in the best light by an expert, promoting fairness.
- The duty of the prosecution's legal representatives to present all relevant evidence and legal principles to the court helps ensure the whole truth emerges and the correct outcome occurs, promoting fairness.

### LIMITATIONS

- Legal practitioners for the accused are expensive and they may only be able to hire either a barrister or a solicitor. As a result, this may lead to an unfair outcome where the Office of Public Prosecution has a team of expert legal practitioners.



### STRENGTHS

- Legal practitioners for the accused ensure equal legal representation for both the prosecution, which will likely have a team of expert legal practitioners, and the accused.
- VLA's strict eligibility requirements ensure that those who are disadvantaged are prioritised to receive legal representation. This upholds equality as VLA takes action to minimise disadvantage and ensure individuals, regardless of characteristics such as their income or race, can receive legal representation in court.

### LIMITATIONS

- Legal practitioners for the accused are expensive and they may only be able to hire either a barrister or solicitor. This may lead to unequal legal representation where the Office of Public Prosecution has a team of expert legal practitioners.
- VLA's strict eligibility requirements mean that not everyone can receive free legal representation even if a party cannot afford to pay the high cost of legal representation themselves.



### STRENGTHS

- Legal practitioners help parties to prepare and present their case, increasing access to justice.
- VLA provides access to legal representation for some accused persons.

### LIMITATIONS

- The costs of legal practitioners for an accused are high, meaning access to legal representation is less accessible.
- VLA's strict eligibility requirements mean that not everyone can receive free legal representation, limiting access to legal practitioners.



## Lesson summary

- Legal practitioners are often needed for a criminal trial as lawyers represent the prosecution and the accused amidst the intricacies of the criminal justice system.
- Their presence facilitates the presentation of evidence, upholds the principles of justice in the courtroom and ensures an accused individual receives proper representation.

**Table 3** The roles of legal practitioners in a criminal case

Solicitors	Barristers
<p>Solicitors are the lawyers who prepare legal documentation, communicate with the other party, research the relevant laws, and assist barristers in forming arguments.</p> <p>Their roles include:</p> <ul style="list-style-type: none"> <li>• drafting court documents and letters for clients</li> <li>• researching the law and preparing evidence</li> <li>• advising and instructing barristers on behalf of their clients.</li> </ul>	<p>Barristers are the lawyers who are responsible for representing a party in a trial by making legal arguments, questioning witnesses, and summarising the prosecution or accused person's case to the judge and jury.</p> <p>Their roles include:</p> <ul style="list-style-type: none"> <li>• opening and closing addresses</li> <li>• presenting evidence</li> <li>• making evidence submissions</li> <li>• making sentencing submissions.</li> </ul>

## 2G Questions

### Check your understanding

#### Question 1

Which of the following is incorrect regarding the role of legal practitioners in a criminal trial?

- Legal practitioners question witnesses to provide evidence to the court.
- Prosecution and defence barristers have a duty not to mislead the court.
- Legal practitioners determine which evidence is not admissible and will not be presented to the jury.
- Legal practitioners for both parties summarise their case at the start and end of a trial.

#### Question 2

Solicitors and barristers always work for opposing parties and argue against each other.

- True
- False

#### Question 3

The role of a solicitor is to: **(Select all that apply)**

- prepare documents.
- give the opening and closing addresses.
- conduct legal research.
- cross-examine witnesses.

**Question 4**

Fill in the blank with **one** of the following terms:

outside of court

in the courtroom

A barrister is a legal practitioner that is responsible for representing a party [ ] .

**Question 5**

Tick the box to indicate which of the following statements refer to **solicitors**, and which refer to **barristers**?

Statements	Solicitors	Barristers
I. Presents arguments in court to the judge and the jury.	<input type="checkbox"/>	<input type="checkbox"/>
II. Communicates with the client and organises documents before the trial.	<input type="checkbox"/>	<input type="checkbox"/>
III. Researches relevant laws and previous court decisions.	<input type="checkbox"/>	<input type="checkbox"/>
IV. Gives the opening and closing statements in court.	<input type="checkbox"/>	<input type="checkbox"/>

**Question 6**

Fill in the blank with **one** of the following terms:

fair

equal

Legal practitioners for the accused ensure [ ] legal representation for both the prosecution, which will likely have a team of expert legal practitioners, and the accused.

**Question 7**

Parties are able to successfully represent themselves in most cases, and legal practitioners are only necessary in particularly serious or complex cases.

- A. True
- B. False

**Preparing for exams****Standard exam-style****Question 8**

(2 MARKS)

Outline the need for legal practitioners.

**Question 9**

(2 MARKS)

Describe **one** reason why an accused individual may seek legal representation.

**Question 10**

(3 MARKS)

Cindy has been charged with arson after accidentally starting a fire in her friend's home. She needs to defend her innocence in court and is considering whether or not she should seek assistance from a legal practitioner.

Describe **one** responsibility of a legal practitioner for Cindy if her case goes to trial.

*Adapted from VCAA 2018 exam Section A Q5b*

## Extended response

Use your answer to question 11 to support your response to question 12.

### Question 11

Tick the box to indicate which of the following statements demonstrate how fairness is **achieved**, and which demonstrate how fairness is **not achieved**?

Statements	Achieved	Not Achieved
I. Legal practitioners ensure their client's case is presented in the best possible light.	<input type="checkbox"/>	<input type="checkbox"/>
II. The OPP will make a strong case for the victim, so if the accused has a less experienced lawyer it is unfair.	<input type="checkbox"/>	<input type="checkbox"/>
III. Legal practitioners ensure that all relevant evidence is presented to ensure the whole truth emerges.	<input type="checkbox"/>	<input type="checkbox"/>
IV. Legal practitioners for the accused are expensive and they may only be able to hire either a barrister or a solicitor.	<input type="checkbox"/>	<input type="checkbox"/>

### Question 12

(6 MARKS)

Discuss the extent to which fairness can be achieved if an accused does not have legal representation.

## Linking to previous learning

### Question 13

(3 MARKS)

Distinguish between the role of legal practitioners and the role of a judge in criminal proceedings.

# 2H The impact of costs and time – criminal cases

## STUDY DESIGN DOT POINT

- the impact of costs, time and cultural differences on the achievement of the principles of justice

2A 2B 2C 2D 2E 2F 2G 2H 2I

### 3.1.11.1

#### The impact of costs in a criminal case

### 3.1.11.2

#### The impact of time in a criminal case



Image: Wasan Tita/Shutterstock.com

*'What is justice? For different people at different times it means different things. However, for the most part in criminal law, accessing justice usually means money.'*

— Hon. Marilyn Warren AC (Former Chief Justice of the Supreme Court of Victoria)

For many people, accessing justice in the criminal justice system requires money in order to afford the various expenses associated with defending a criminal accusation.

## Lesson introduction

In the criminal justice system, high costs and lengthy delays are common. The court system often does not account for those of lower socioeconomic status, as there are a number of different expenses involved for an accused when defending their innocence. Individuals lacking the financial means to afford strong legal representation and other expenses are therefore often disadvantaged before the law. The frequent delays in the criminal justice system further disadvantage parties in a criminal trial, impeding the achievement of the principles of justice.

## The impact of costs in a criminal case 3.1.11.1

When facing a criminal charge, an accused person will often face high costs to defend their innocence. As the **Office of Public Prosecution (OPP)** is the prosecutor for indictable offences, and Victoria Police is the prosecutor for summary offences, victims of crime usually do not incur significant costs from a criminal trial. However, victims may incur costs if they initially seek legal advice or have to take time off work to participate in the trial or recover from the crime.

### LEGAL VOCABULARY

**Office of Public Prosecution (OPP)**  
the public body responsible for initiating, preparing, and conducting legal proceedings for serious criminal matters in Victoria, on behalf of the Victorian community.

### LESSON LINK

You learnt about solicitors and barristers in **2G Legal practitioners in a criminal case**.

You learnt about plea negotiations in **2C Plea negotiations**.

WANT TO KNOW MORE?

Do you know that a partner at a law firm may charge \$800 per hour for their work? You can find out more about the hourly rate charged by different solicitors and barristers by searching 'Solicitor and barrister prices' and clicking the 'Lawyers and Legal Services Australia' webpage.

Table 1 Types of legal costs for an accused during a criminal case

Type of legal cost	Explanation
<b>Solicitors' fees</b>	A solicitor is often required for the preparation of the accused person's defence. During this preparation phase, a solicitor will: <ul style="list-style-type: none"><li>review the prosecution's evidence.</li><li>plan which witnesses will be called if the matter goes to trial.</li><li>meet with witnesses before a trial.</li></ul>
<b>Barristers' fees</b>	Many criminal charges are resolved prior to a trial being conducted, for example, when an accused enters a guilty plea. However, when an accused pleads not guilty to the charges against them, the case must go to trial. Therefore, an accused will often require a barrister to present legal arguments and examine witnesses. Hiring a barrister is expensive.
<b>Witness fees</b>	If expert witnesses are required to give evidence, they often charge fees to do so. For example, if the prosecution uses a forensic scientist to explain forensic evidence, the accused may require an expert witness to challenge this presented evidence.
<b>Appealing to a higher court</b>	An offender seeking to appeal against a verdict, sentence, or sanction will need to pay: <ul style="list-style-type: none"><li>the filing fee in the relevant appeal court, which is the cost paid by the party initiating court proceedings.</li><li>a solicitor to prepare written documentation for the appeal.</li><li>a barrister to present legal arguments to the judges in the appeal court.</li></ul>
<b>Orders to pay a sum of money to the victim</b>	When an offender is sentenced, the court may make an order requiring the offender to pay a sum of money to the victim, as compensation for the injury caused and/or the property stolen, damaged, or lost.  Either the prosecution or the victims can apply for these orders.

LESSON LINK

You learnt about VLA in **2B Victoria Legal Aid and community legal centres**.

LEGAL VOCABULARY

**Appeal Costs Board** the body that may partially compensate the accused if they suffer loss from legal costs associated with judicial error or circumstances that the accused was not responsible for.

An accused can recover costs in certain circumstances including when they:

- are acquitted of a crime.
- successfully appeal against a conviction.

If an accused is acquitted of a crime, they may ask the court to award costs in their favour if they are found 'not guilty'. The court may order the prosecution to meet the acquitted person's costs. If such an award is made, it may only cover some of the individual's legal costs. If Victoria Legal Aid (VLA) has represented the accused person, the funds will flow back to VLA to be reused on another client.

If the accused successfully appeals against their sentence, they can often apply to the **Appeal Costs Board** for an 'appeals costs certificate' to recover some of the costs associated with the appeal process back from the state. If VLA represents an offender in such an appeal, the money recovered flows back to VLA, not to the person they represented.

**REAL WORLD EXAMPLE**

**CONTENT WARNING** This section depicts content that is sensitive in nature that relates to violence and death.

**The cost of a failed criminal trial**

In 2013, Parwinder Kaur was seen by neighbours running from her home covered in flames. Ms Kaur passed away just a day later due to significant burns. In 2015, the Sydney coroner recommended that Mr Kulwinder Singh be prosecuted for her murder. Mr Singh, the husband of Ms Kaur, was in their home with Kaur at the time of the fatal event, and was therefore accused of pouring petrol on her and setting her alight. After two trials, in 2021 the jury found Mr Singh to be not guilty.

The Supreme Court Judge found there was 'physical evidence [that] overwhelmingly pointed to Ms Kaur being the one who poured the [petrol] on herself and ignited it' (Adams, 2021). As a result, the judge suggested it was unreasonable for the prosecution, New South Wales state, to commence proceedings against Mr Singh for the alleged murder.

An estimated \$1 million may have to be paid by the state to cover the legal fees Singh amassed over the course of the two murder trials he faced in both 2019 and 2021. These fees included solicitor and barrister fees. The million-dollar cost of this murder trial demonstrates the large expense incurred by accused persons during criminal cases.

*Adapted from 'NSW government ordered to pay legal fees for man accused of setting wife on fire' (Harris, 2023)*



**Figure 1** The NSW government may face up to \$1 million in legal expenses to cover the costs incurred by an accused, after he was found not guilty of murder

A victim typically incurs no costs during a criminal case as the victim's costs are usually covered by the OPP. There are systems in place to ensure a victim does not have to pay for advice before a trial. The Victims Assistance Program, for example, provides support workers or advice for victims to help them:

- understand the court process
- prepare to go to court
- write a Victim Impact Statement.

However, a victim may incur costs when attempting to gain compensation from the offender as they may need to hire their own lawyers to seek such compensation. This is because the OPP works on behalf of the state, not the victim, to ensure offenders are found guilty, and does not function as a lawyer to achieve financial compensation for victims. Hiring their own lawyer can be a significant cost for victims. However, institutions such as the Victims of Crime Assistance Tribunal (VOCAT) can provide financial assistance to eligible victims, easing this burden for some victims.

**DEEP DIVE****VLA: Cost ceilings**

Although VLA provides resources to accused people of lower socioeconomic status with the aim of making legal representation more accessible, the money they can spend on an accused is limited.

If a person receives a grant of legal assistance from VLA, this person may still need to pay a portion of their legal costs based on their accessible income. For example, if a trial for an accused costs VLA more than \$6,559 due to legal representation and court expenses, a person who has \$500 of accessible income per week may be required to also pay as much as \$10,900 in legal expenses. Therefore, for accused people involved in expensive cases, as many criminal cases for serious, indictable offences are, the financial assistance an accused can gain is limited to some degree.

*Adapted from 'Contributions Policy' (Victoria Legal Aid, 2023)*

**LESSON LINKS**

You learnt about the jury in a criminal trial in **2E Judges, magistrates, and juries in a criminal trial**.

You learnt about a Victim Impact Statement in **1C Rights of victims**.

**USEFUL TIP**

The study design dot point for this lesson reads: 'the impacts of costs, time and cultural differences on the achievement of the principles of justice' which is similar to another study design dot point that you will learn about in Chapter 5. Lesson 5K is based on the study design dot point: 'the impact of costs and time on the ability of the civil justice system to achieve the principles of justice during a civil dispute'.

The questions asked on the VCAA end-of-year exam about these topics might be similar, so you need to look out for key terms, such as 'criminal' and 'civil', or key aspects of a scenario, to ascertain whether to answer the question referring to the impacts discussed in this lesson, or the impacts discussed in 5K. Limit your discussions to the area of law, either criminal or civil, that the question is specifically asking you about as you will not receive full marks if you talk about aspects of the civil justice system in a question about criminal law, for example.





### STRENGTHS

- Independent judges ensure the rules of evidence and procedure are followed, promoting fairness, as even if an accused was unable to afford representation, the rules of evidence in a criminal case would still be followed.
- Juries are used as independent decision-makers in serious cases. For Commonwealth indictable offences, it is a right for an accused to receive a trial by jury, therefore the Commonwealth bears the expense of the jury, ensuring impartial processes.
- Though VLA's resources are limited, it does provide legal representation to accused persons, charged with serious offences, who have a very low socioeconomic status. Therefore, this promotes fairness by ensuring disadvantaged individuals have representation and can participate in the justice system.

### LIMITATIONS

- If an accused person cannot afford legal representation, they may have to represent themselves. This may jeopardise fairness if the accused cannot present their case in the best light possible.
- Unbalanced legal representation may lead to an unfair outcome, as the accused may be unable to prepare and present a case that is equally convincing as that of the prosecution.
- The quality of the presentation of the case, usually correlated with the price of representation, may influence the outcome, not solely the facts and the law. This is unfair to the unrepresented or poorly represented party.
- Many individuals lose their employment and income if imprisoned and therefore, cannot pay compensation or restitution orders to victims, which may be seen as unfair to victims.
- An accused person may plead guilty to a criminal offence, even though they know they are not, just because they are unable to afford the expense associated with defending a criminal case in the courts. This demonstrates the criminal justice system and its processes are not always open and fair for all accused persons.



### STRENGTHS

- Judges in the County Court and the Supreme Court have the power to order VLA to provide a lawyer to those who cannot afford legal representation, to ensure they receive some representation. This promotes equality by providing additional resources to those who need it to allow them to engage in the justice system without disparity or disadvantage.
- Victims are represented by the OPP, which is free of charge, and ensures all victims receive equal representation, regardless of their individual characteristics, for the purpose of protecting the community at large.

### LIMITATIONS

- If aggrieved parties cannot initiate an appeal due to the associated costs, equality before the law is not achieved as all people cannot engage with the justice system equally.
- When a party cannot afford legal representation or does not qualify for grants to representation offered by VLA, they are at risk of not being treated equally before the law.
- If an accused is self-represented, they may be on unequal footing in court with the skilled prosecution and may not possess the same ability to present their case. This may lead to unequal and unjust outcomes.

## Evaluating costs in a criminal case's ability to achieve the principles of justice – Continued



### STRENGTHS

- VLA may provide duty lawyers or grants to assist disadvantaged accused persons facing criminal charges, better enabling them to engage with the justice system.
- If interpreters are needed in the courts, the prosecution organises and pays for this. Therefore, costs are avoided by the accused person and they are able to understand the trial process to the same degree as the prosecution. This promotes access as non-English speakers can still understand the court proceedings at no expense.

### LIMITATIONS

- The high costs associated with an appeal, due to the filing fees and legal representation expenses, can discourage individuals from appealing a verdict, meaning such a review is inaccessible.
- Those who cannot afford legal representation may have difficulty understanding criminal proceedings in court and their legal rights during a trial, undermining access to justice as they cannot properly engage with the criminal justice system on an informed basis.
- The funding that VLA provides to accused persons is limited, therefore some individuals may be outside the low-income requirement to receive grants but may still be unable to afford legal representation themselves, preventing them from accessing legal representation.

## The impact of time in a criminal case 3.1.11.2

The criminal justice system in Australia often encounters significant delays. The lengthy delays of certain criminal cases can have an impact on a victim, a victim's family, and the accused. Sources of delays in the criminal justice system include:

- court backlogs, as the caseload of the Victorian courts continuously grows.
- the time taken for appeal judgments and sentences to be delivered, creating a delay in the final resolution of a case.
- trial procedures, as legal practitioners' oral arguments and the question-answer process for evidence take significant time to be presented.
- the collection of evidence to put together a convincing case.
- judges giving directions to juries, ordered under the *Jury Directions Act 2015* (Vic) at the start and end of a trial for an indictable offence.
- a hung jury, in which no verdict is delivered.
- mistrials as they result in retrials being conducted, adding to delay in the resolution of criminal matters.
- jury empanelment.

There are many negative implications that delays in a criminal trial can impart on those in the criminal justice system.

### LEGAL VOCABULARY

**Remand** the period when an accused is in custody awaiting trial.





### LEGISLATION

*Jury Directions Act 2015* (Vic)

### LESSON LINK

You learnt about jury empanelment in **2E Judges, magistrates, and juries in a criminal trial**.

**Table 2** The impacts of delays on members of a criminal trial

Victim	Witness	Accused	Community
			
<p>The longer the case is delayed, the longer the suffering of the victim and their family. In this period of limbo, there is no closure and no certainty that justice will be served.</p> <p>Criminal trials often rely on oral evidence, however, the memories of witnesses may fade over time. This limits the accuracy and reliability of witness statements, so an accused may be wrongly declared innocent or found guilty based on false evidence.</p>	<p>Giving evidence in a criminal trial can be extremely stressful for witnesses and, as such, delays when awaiting this process can add to a witness' stress.</p>	<p>Awaiting a trial with an outcome unresolved is stressful for an accused person and their family.</p> <p>Criminal trials often rely on oral evidence, however, the memories of witnesses may fade over time, limiting the accuracy and reliability of their statements. Therefore, an accused may be wrongly found guilty on the basis of false evidence.</p>	<p>The community remains at risk if those charged with violent offences remain in the community prior to a trial, in the instance where an accused is not placed in <b>remand</b>.</p>

**DEEP DIVE**

**Courts drowning in cases**

In the 2021-2022 financial year, 83,000 criminal cases were waiting to be heard by Magistrates across Victoria (Productivity Commission, 2023). As a result, the Victorian Government added one additional magistrate to the Victorian Magistrates' Court in the 2022-2023 budget. The Premier of Victoria also announced in 2022 that \$300 million had been allocated to improving the court systems in the 2022-2023 Victorian Budget. Of this, \$41 million was allocated to helping 'clear case backlogs' (Andrews, 2022). Recent statistics demonstrate many criminal cases have taken more than 12 months to be heard, a backlog which was primarily created by the pandemic as during Victoria's lockdown, jury trials were suspended for months.

*Adapted from 'Victorian courts plagued by delays as tens of thousands of criminal cases wait to be heard' (Rollason, 2023) and 'Report on Government Services 2023' (Productivity Commission, 2023)*

**LESSON LINK**

You learnt about the Victorian court hierarchy in **2D The Victorian court hierarchy and criminal cases**.

**Evaluating time in a criminal case's ability to achieve the principles of justice**



**STRENGTHS**

- The Victorian court hierarchy is structured in a way where lower courts, like the Magistrates' Court, are designed to hear high quantities of less serious matters that take less time to be decided. Contrastingly, more superior courts, such as the Supreme Court of Victoria, focus on more serious cases and therefore, hear fewer. This can increase fairness, as victims can achieve justice in a reasonable time, considering delays can be partially counteracted by this set-up of the court system.
- Plea negotiations encourage an early resolution of many criminal matters, as a verdict is determined without a trial, promoting fairness, as delays are avoided. Thus, justice can be attained in a reasonable amount of time.

**LIMITATIONS**

- Delays compound the suffering of victims and accused persons as they have to wait to gain closure and justice, often increasing stress and anxiety. Delays are usually due to factors beyond the control of the victim, which is unfair for such parties.
- If delays cause evidence to be lost or made unreliable due to the passage of time and memories fading, this may lead to incorrect and unjust outcomes, which is unfair.

## Evaluating time in a criminal case's ability to achieve the principles of justice – Continued



### STRENGTHS

- Plea negotiations may be used to ensure a resolution is reached in a timely manner, as a successful plea negotiation can allow court proceedings to be avoided. Most accused persons have the ability to enter into plea negotiations, promoting equality, as the opportunity to negotiate a plea deal is available to accused persons regardless of their personal characteristics.

### LIMITATIONS

- When an accused is on remand, delays can cause further disadvantages as they will have to continue paying legal costs and suffering loneliness and isolation from detention.
- Delays can be particularly distressing for victims and accused individuals with mental health issues or disabilities, limiting equality.
- Delays in a case could mean that elderly victims never achieve justice, limiting the achievement of equality as these individuals are disadvantaged due to their age.



### STRENGTHS

- Relatively few matters are resolved by jury trial, so the delays associated with juries are limited to a small number of criminal cases. This increases access as non-jury trials are often quicker, freeing up the legal system and allowing other victims to access justice.
- Each court in the hierarchy specialises in certain cases and matters, therefore delays can be reduced. This increases access as judges in each of the courts are experienced in certain matters and can thus resolve cases efficiently. This allows cases to be processed faster so more cases can be processed each year.

### LIMITATIONS

- Knowing about the delays in the justice system may prevent victims from initially making complaints to the police, preventing these people from engaging in the justice system and limiting access to justice.
- The longer a criminal trial goes for, the greater the costs in terms of paying for legal representation, therefore delays drive up costs for accused persons, making access to justice less affordable.
- The increase in delays in the justice system, as a result of the pandemic, increased the difficulty of accessing a trial, with many criminal cases put on hold for up to 12 months. This limits access to justice in a timely manner.

## Lesson summary

Costs may impact the achievement of the principles of justice in a criminal case as:

- accused persons usually have to pay significant amounts to defend their innocence in a criminal case, due to legal representation and court fees.
- victims may want to seek legal advice before launching a criminal charge against an offender, which may cost money.
- Victoria Legal Aid (VLA) can only assist accused persons and victims in specific situations where a person is of very low socioeconomic status.

Delays may impact the achievement of the principles of justice in a criminal case as:

- the stress of victims, accused persons, and witnesses may increase when awaiting the verdict of a criminal case.
- witnesses may forget details of the criminal offence, due to periods of delays, resulting in their evidence being unreliable, therefore negatively affecting either party, and ultimately leading to a miscarriage of justice.
- the community's safety may be jeopardised during the period of delay if the accused is not on remand.

## 2H Questions

### Check your understanding

#### Question 1

Criminal cases are not burdened by costs or delays.

- A. True
- B. False

#### Question 2

Which of the following is not a cost that may be incurred by an accused in a criminal case?

- A. Barrister fees
- B. Court filing fees
- C. Arrest warrant fees
- D. Solicitor fees

#### Question 3

Fill in the blank with **one** of the following terms:

witness

victim

An offender may incur costs when ordered to pay the [ ] a sum of money due to the injury caused or the loss they incurred from the property being damaged, stolen, or lost.

#### Question 4

The high costs associated with lodging an appeal, due to filing fees and legal representation, may discourage individuals from appealing a criminal conviction. This limits the principle of:

- A. access.
- B. fairness.
- C. equality.

#### Question 5

Fill in the blanks with the following terms:

access

fairness

Knowing about delays in the justice system may prevent victims from reporting a suspected crime to police as they may feel it's pointless to do so, limiting [ ]. Delays may also cause some witnesses to produce unreliable or false evidence as their memory fades over time and they can no longer recall the exact events. This limits [ ] as witnesses may be unable to provide impartial and truthful information.

**Question 6**

A victim may be negatively affected by delays in a criminal case because: **(Select all that apply)**

- A. the longer the case is delayed, the longer the victim is in a period of limbo where justice is uncertain, which can be stressful.
- B. if the accused is not on remand, they may still be present in the community, potentially inducing fear in victims if the accused committed a violent offence.
- C. awaiting trial can be stressful for a victim, as the prospect of them being imprisoned lingers until the trial occurs.
- D. delays may cause witnesses to forget key information or for their memory to distort the reality of the facts, and therefore an accused may be found 'not guilty' on the basis of incorrect information.

**Question 7**

Which of the following statements are sources of delays in the criminal justice system? **(Select all that apply)**

- A. Court backlogs.
- B. Waiting to try alternative methods of dispute resolution, such as mediation, to see if this can resolve the case before it enters the courts.
- C. Collecting evidence to put together a convincing case.
- D. Judges giving directions.

**Question 8**

Due to the costs of engaging in a criminal case, and the delays that the Victorian court system is currently facing, the principles of justice cannot be achieved to any degree.

- A. True
- B. False

## Preparing for exams

### Standard exam-style

**Question 9**

(2 MARKS)

Outline **one** impact of costs during a criminal trial.

**Question 10**

(2 MARKS)

Describe **one** impact of time during a criminal trial limiting the achievement of the principle of access.

**Question 11**

(3 MARKS)

Previn, after much deliberation, chooses to report the aggravated assault and robbery he endured at the hands of a known community member on Main Street. However, he is informed that his attacker's trial date will not be for another 18 months. He feels anxious about shopping in his own community until some course of action is taken, for fear of a second incident. The key eyewitnesses of the crime are two elderly people who are concerned about appearing in court and whose memories of the event are deteriorating.

Explain the impact of time on the principle of fairness in Previn's case.



## Extended response

Use your answer to question 12 to support your response to question 13.

Use the following information to answer questions 12 and 13.

Assume in 2045, the most common type of crime in Australia is cybercrime, a summary offence that involves a person hacking, spamming, or stealing online data from a victim. In Victoria, 70% of the criminal cases heard by the Magistrates' Court are cybercrime cases. All these cases typically require witnesses to provide oral evidence about the cybercrimes. Therefore, the Magistrates' Court has an extreme backlog of cybercrime cases, with many taking more than 12 months to be processed. Currently, the Victorian Magistrates' Court hears all cybercrime cases. However, the Victorian Parliament has proposed creating an additional court that would have jurisdiction to make decisions solely on cybercrime cases, called the Cyber Court.

## Question 12

Which of the following statements are correct about the impact of cybercrimes on achieving the principle of access in relation to time? **(Select all that apply)**

- A. Access to justice is currently impeded by the 12 months of delays that exist due to cybercrimes because accused persons require representation for longer periods of time, which is costly and may not be accessible by accused persons of a lower socio-economic status.
- B. Victims' access to justice is limited by the current system as they may see lengthy delays regarding cybercrime and decide against reporting cybercrimes, limiting their access to obtaining justice.
- C. The development of the Cyber Court would allow all victims and accused people to access justice, regardless of their financial means.
- D. Cybercrime cases typically require oral evidence from witnesses, however, delays may cause witnesses' evidence to weaken over time, limiting both the accused person and the victim's access to a fair trial.

## Question 13

(5 MARKS)

Analyse the impact of cybercrimes on the principle of access in relation to time. In your response, consider how the Cyber Court could enhance the ability of the criminal justice system to achieve the principle of access.

*Adapted from VCAA 2022 exam Section B Q2d*

Use your answer to question 14 to support your response to question 15.

## Question 14

Tick the box to indicate whether the following statements are **strengths** or **limitations** of the impact of costs on the ability of the criminal justice system to achieve fairness.

Statement	Strengths	Limitations
I. VLA can provide duty lawyers or grants to accused persons with limited financial means, promoting fairness by ensuring these individuals still have representation in a criminal case.	<input type="checkbox"/>	<input type="checkbox"/>
II. The costs of a criminal case may mean that if an accused person is of lower socioeconomic status, they may not be able to afford representation, leading to an unfair trial.	<input type="checkbox"/>	<input type="checkbox"/>
III. Juries are independent decision-makers who may be used in serious criminal cases. The costs of a jury are borne by the Commonwealth for Commonwealth indictable offences, promoting a fair trial by jury for all persons accused of such offences.	<input type="checkbox"/>	<input type="checkbox"/>
IV. Due to the cost of a criminal case, an accused person may plead guilty to a criminal offence just because they are unable to afford to pursue a criminal case in the courts.	<input type="checkbox"/>	<input type="checkbox"/>
V. If the accused can only afford a relatively cheap and inexperienced lawyer, the facts of the case may not be presented in the best light for the accused, which is unfair to the poorly represented party.	<input type="checkbox"/>	<input type="checkbox"/>

**Question 15**

(6 MARKS)

Discuss **one** factor that could affect the ability of the criminal justice system to achieve fairness.

*Adapted from VCAA 2021 exam Section A Q3c*

**Linking to previous learning****Question 16**

(2 MARKS)

Describe how plea negotiations can impact time during a criminal case.

**Question 17**

(3 MARKS)

Explain the role of Victoria Legal Aid (VLA) in relation to costs during a criminal case.

SAMPLE CONTENT ONLY  
(SUBJECT TO CHANGE)

# 21 The impact of cultural differences – criminal cases

## STUDY DESIGN DOT POINT

- the impact of costs, time and cultural differences on the achievement of the principles of justice

2A 2B 2C 2D 2E 2F 2G 2H 2I

### 3.1.12.1

#### The impact of cultural differences in criminal cases



*'It has been important to understand that there might be cultural reasons that things can't be discussed in court.'*—Julie Wager, Chief Judge of the Western Australian District Court

Individuals that come from a different cultural background in Australia may experience language barriers, intergenerational trauma, and difficulty in understanding the Australian legal system. All of these factors can impact the ability of the criminal justice system in delivering justice to these individuals.

## Lesson introduction

All victims and accused are likely to be burdened by the costs and time associated with criminal cases, as legal expenses and court delays affect most people in the criminal justice system. However, depending on the cultural background of an individual, whether that be Caucasian, Asian, non-English speaking, or Aboriginal or Torres Strait Islander, their access to or experiences within the criminal justice system may differ significantly. Language barriers, cultural misunderstandings, and the construction of the Victorian justice system, designed using Western practices and ideas, can often impede the achievement of justice for victims or accused persons of different cultural backgrounds.

**CONTENT WARNING** Aboriginal and Torres Strait Islander readers should be aware that some material in this lesson may be culturally sensitive. Examples of this include references to people who have passed, inappropriate language terms or distressing events.

## The impact of cultural differences in criminal cases 3.1.12.1

A number of different groups within society may have difficulty engaging with the criminal justice system due to their cultural background. Asylum seekers and refugees, migrants, and First Nations Australians are some key groups often impacted by cultural differences when involved in a criminal case due to various factors.

**Table 1** The impact of cultural differences in a criminal case on asylum seekers/refugees/recent migrants

Cultural difference	Impact of cultural difference in a criminal case
<b>Lacking knowledge about Victoria's legal system</b>	<ul style="list-style-type: none"><li>• If a refugee or migrant is a victim of crime, they may be unaware of their rights as a victim in Australia due to unfamiliarity with the Australian legal system.</li><li>• As an accused, a person born outside of Australia may not know they are entitled to seek legal representation when defending a charge in the courts or may be unaware of how to access legal information, advice, and potentially representation through Victoria Legal Aid or community legal centres.</li><li>• If self-representing, individuals may not know about their entitlement to, or maybe unsure how to, present evidence in their own defence.</li></ul>
<b>Limited English communication skills</b>	<ul style="list-style-type: none"><li>• If an accused or victim speaks limited English, they may find it difficult to give evidence at trial, especially if an accused is self-representing. This may result in the court misunderstanding the circumstances relating to an offence, given the reliance on oral evidence in Victorian courts, causing incorrect, and thus unfair, outcomes.</li><li>• If self-representing, the accused may have difficulty questioning evidence presented by the prosecution's witnesses or may experience difficulty when researching and preparing lawful defences to a charge.</li><li>• Certain legal resources may not be properly translated, or translated at all, into the language which a non-English speaking person is most proficient in, therefore preventing them from being able to access certain resources.</li></ul>
<b>Having ingrained mistrust for police and courts due to past experiences</b>	<ul style="list-style-type: none"><li>• Migrants, refugees, or asylum seekers may have an inherent mistrust towards authorities, whether that be due to past experiences with corrupt powers in their home country, or due to experiences in detention since arriving in Australia. Consequently, these individuals may be unwilling to report crimes to the police due to a lack of trust, making them unable to seek justice for themselves.</li><li>• As a witness, victim, or accused, they also may be unwilling to speak truthfully to the police or the courts, instead giving incomplete or inaccurate responses to questioning.</li><li>• This may also prevent a person accused of a crime from engaging with the prosecution and negotiating a guilty plea via the process of plea negotiations as they may fear the authorities they would have to talk to during this process.</li></ul>
<b>Fearing cultural repercussions of pursuing legal action</b>	<ul style="list-style-type: none"><li>• A study found that one in three women from migrant backgrounds have experienced domestic or family violence, but many do not pursue legal action to achieve justice for themselves due to the cultural shame they would feel for dividing their family (Monash University, 2021).</li></ul>

**LEGAL CASE**

***DPP v Natale (Ruling)* [2018] VSC 339**

**Facts**

Mr Natale, an Italian migrant with a limited ability to speak English, was accused of various offences including incitement to murder and threatening to kill after it was alleged he offered \$4,000 to a friend in return for killing a member of his wife's family. In a recorded police interview, Mr Natale mainly used 'yes' and 'no' responses and demonstrated a lack of understanding during questioning, indicated by his body language.

**Legal issue**

Mr Natale's defence argued the evidence collected during the interviews should not be considered as admissible evidence under the *Evidence Act 2008* (Vic), which outlines that evidence can be inadmissible if, in the circumstances, it would be unfair to use. The judge had to determine whether this evidence would be submitted to the court.

**Decision**

Justice Bell determined that Mr Natale had insufficient knowledge of English to be able to understand the questioning, communicate his answers, or understand his rights in the Australian legal system, such as his right to remain silent. He, therefore, concluded it would be unfair to admit the evidence.

**Significance**

The case demonstrates some of the protections that the court has in place to ensure non-English speakers are not significantly impacted by language barriers when engaging with the criminal justice system.

**LEGISLATION**

*Evidence Act 2008* (Vic)

**LESSON LINK**

You learnt about Victoria Legal Aid and community legal centres in **2B Victoria Legal Aid and community legal centres**.

**Table 2** The impact of cultural differences in a criminal case for First Nations peoples

Cultural difference	Impact of cultural difference in a criminal case
<b>Aboriginal and/or Torres Strait Islander people are over-represented in the criminal justice system and within prison systems around Australia</b>	<ul style="list-style-type: none"> <li>Figures from 2020 indicate that the Aboriginal imprisonment rate in NSW is nearly 10 times the rate of the non-Aboriginal imprisonment rate (Australian Bureau of Statistics, 2020).</li> <li>A report by the United Nations Association of Australia in 2021 found that the rate at which First Nations peoples are incarcerated continues to increase each year. In 2020, First Nations peoples made up just 3% of the Australian population yet 29% of the adult prison population.</li> <li>The Sentencing Advisory Council found that the Aboriginal and Torres Strait Islander imprisonment rates almost doubled between 2011 and 2021 in Victoria.</li> <li>Due to the alarming rates of incarceration, this may cause First Nations individuals to fear that they are more likely to be convicted on the basis of their race, regardless of the actual evidence against them.</li> </ul>
<b>A history of dispossession and social exclusion by governments has led many First Nations individuals to lose trust in the criminal justice system</b>	<ul style="list-style-type: none"> <li>In 2020, a Gunditjmara, Dja Dja Wurrung, Wiradjuri, and Yorta Yorta woman passed away in a Victorian, maximum-security prison after being arrested on suspicion of shoplifting. Despite calling for help several times as she was experiencing significant vomiting and cramps, she received no help from prison staff, dying in custody.</li> <li>Cases like the above may prevent Aboriginal or Torres Strait Islander victims from seeking justice, fearing ingrained racial prejudices and systematic discrimination will prevent them from attaining justice even if they pursue it.</li> </ul>
<b>Body language practices differ in Aboriginal and Torres Strait Islander cultures, compared to dominant Western cultural practices in Australian society</b>	<ul style="list-style-type: none"> <li>Some First Nations Australians may avoid eye contact and remain silent more often than non-indigenous Australians as it can be considered respectful, by some communities, to do so. A lack of eye contact or silence can be misunderstood as dishonesty and evasiveness by those working within the justice system who do not understand this cultural practice.</li> </ul>
<b>Cultural practices make it inappropriate for persons of Aboriginal or Torres Strait Islander heritage to discuss certain subject matter when giving evidence or being questioned</b>	<ul style="list-style-type: none"> <li>Within certain First Nations communities, it is considered disrespectful to talk about certain topics. For example, in certain communities, seeing images of, hearing about, and listening to, the names of deceased persons can cause sadness, distress, and offence. As a result, the accused or the victim may find it uncomfortable or culturally-insensitive to present evidence or witness the presentation of evidence in a courtroom.</li> <li>Furthermore, direct questioning is generally considered rude in some Aboriginal cultures. Therefore, when being questioned by the police as an accused, or questioned by lawyers as a witness, First Nations individuals may feel what they refer to as being 'shamed'. This means they feel embarrassed, intimidated, or uncomfortable. Without knowing this, the police or a jury may misinterpret what is happening as an indication of guilt or evasiveness on behalf of the individual.</li> </ul>
<b>Intergenerational child removals, and present traumas, may act as barriers preventing Indigenous Australians from reporting criminal acts perpetrated against them, particularly family violence</b>	<ul style="list-style-type: none"> <li>First Nations women, in particular, may fear reporting violence as this could result in the removal of their children by authorities.</li> </ul>
<b>Aboriginal identification</b>	<ul style="list-style-type: none"> <li>Aboriginality is not defined by skin colour. In fact, there is much diversity in relation to the First Nations peoples of Australia. Racial prejudices against First Nations peoples by the justice system exist regardless of the darkness of a person's skin colour.</li> <li>Racial prejudices resulting in Australian police brutality are still prevalent in Australian society.</li> <li>For example, in 2015, a 26-year-old Dunghutti man, David Dungay Jr, died in a Sydney jail after being dragged by prison officers to a different cell. Although multiple factors compounded his death, the coroner found the conduct of authorities was 'limited by systemic inefficiencies'. He called out 12 times that he couldn't breathe before losing consciousness. The National Justice Project called for justice and accountability for the 'needless' death.</li> </ul>

Continues →

Table 2 Continued

Cultural difference	Impact of cultural difference in a criminal case
Language barriers due to the difference between pronunciation and grammar in Torres Strait Islander languages or Australian Aboriginal English (the name given to the complex English spoken by around 80% of Aboriginal and Torres Strait Islander peoples across Australia (Parlington and Galloway, 2007))	<ul style="list-style-type: none"> <li>Among First Nations peoples, proficiency in speaking Standard English differs significantly across the country.</li> <li>Certain English words may have different meanings, creating miscommunications and misinterpretations when First Nations individuals are being questioned or presenting evidence as a victim or accused. For example: <ul style="list-style-type: none"> <li>'home' could mean a person's place of residence, their language group, or nation area.</li> <li>'blood' could mean bodily fluid or family, said in the context of 'he is my blood', for example.</li> </ul> </li> <li>This can negatively impact the degree of understanding the jury or legal practitioners have of the statements given by the accused.</li> </ul>
Geographical barriers	<ul style="list-style-type: none"> <li>Many Aboriginal and Torres Strait Islander people live in extremely remote areas, therefore affecting their ability to access the courts and legal facilities. In rural areas, there are typically low numbers of legal practitioners doing legal aid work, for example, therefore accessing justice can be limited due to these barriers.</li> </ul>

## DEEP DIVE

**Aboriginal communication**

According to the Chief Executive of the Kimberley Interpreting Service (KIS), a Western Australian Aboriginal interpreting service, certain English words may be misinterpreted by Aboriginal people.

The following are examples of Aboriginal communications that have altered the meaning of English words:

- 'Deadly' can mean that something is good or excellent, instead of meaning 'going to kill' as it would in English.
- 'Auntie' or 'Uncle' is often used to address an older person, even when there is no familial relation to the individual.
- 'I'm gunna flog you if you don't' would typically be perceived as a threat in a plain English context, however, this is an example of hyperbolic humour in Aboriginal communication used when trying to convince someone to do something.

*Adapted from 'Koorified Aboriginal Communication and Well-being' (Adams, 2014) and 'WA Chief Justice Wayne Martin fears language barriers putting innocent people behind bars' (Bembridge, 2015)*

## DEEP DIVE

**Royal Commission delivers a damning report**

The Royal Commission into Aboriginal Deaths in Custody (RCIADIC), released in 1991, reported on Aboriginal deaths in custody after investigating 99 deaths. The Commission found that Aboriginal people were far more likely to be in prison than non-Aboriginal people, however, the death rates between Indigenous and non-Indigenous prisoners did not differ. The report also determined that the deaths were caused due to a number of factors, including police and prisons failing their duty of care.

The final report delivered 339 recommendations regarding Aboriginal people in custody. These included recommending that imprisonment should be a last resort for sentencing, greater medical assistance should be provided if the condition of detainees deteriorates, and greater collaboration with Indigenous communities should be prioritised. Underlying issues propelling the high incarceration rates among First Nations peoples were all considered, including social factors, such as housing, education, and alcoholism, as well as cultural and legal factors.

A 2018 review by Deloitte found that, since the RCIADIC, 78% of the recommendations made have been fully or mostly implemented, 16% have been partially implemented, and 6% were not implemented. The review also found that since the RCIADIC Final Report was released, the Aboriginal and Torres Strait Islander incarceration rate has doubled.

Continues →



## DEEP DIVE

**Royal Commission delivers a damning report - Continued**

Therefore, although the RCIADIC was such a large-scale look into the impacts cultural differences have on criminal justice, recommendations still have not been properly implemented, and inequality remains significant in Australia's criminal justice system.

*Adapted from 'The 25th Anniversary of the Royal Commission into Aboriginal Deaths in Custody' (Houghton, 2016) and 'Indigenous deaths in custody: key recommendations still not fully implemented' (Allam and Wahlquist, 2018)*

## DEEP DIVE

**The Koori Court in Victoria**

Image used with permission from YardFurniture.com.au

**Figure 1** The Koori Court is a mechanism of the Victorian justice system that aims to promote equality for First Nations peoples

In 2002, the Magistrates' Court introduced a specialist division called the Koori Court. This has since been expanded into the Children's Court and County Court.

The Koori Court divisions of the Magistrates' Court and the County Court provide a culturally-relevant sentencing method for First Nations peoples accused of a crime under Victorian legislation or common law who plead guilty to a criminal offence and consent to the matter being referred to the Koori Court. Certain offences, such as sexual offences, contraventions of family violence intervention orders, or violations of a personal safety intervention order, for example, cannot be dealt with in the Koori Court.

The Koori Court has several features that can benefit First Nations peoples, including:

- only dealing with the sentencing of First Nations offenders, and not having any role in determining the verdict of the case.
- using a less formal process, in which respected community leaders from the Indigenous community are present.
- involving discussions between the offender and a Respected Elder about the impact of their crime upon the victim and their family, the offender and their family, and the broader Indigenous community they are part of.

Once discussions with First Nations Elders or Respected Persons have occurred, the magistrate or judge imposes a sanction. These are no more or less severe than the sanctions given using traditional sentencing methods. However, the process of discussing the sentencing in these circumstances gives it more authenticity and meaning for the accused person and for that reason has been found to reduce reoffending.

The reason for using the Koori court is to provide culturally-relevant justice with a focus on rehabilitation rather than punishment. The Koori Court process has been shown to be effective at reducing reoffending. It is an example of the criminal justice system being modified to reflect the differences between Indigenous and non-Indigenous Australians.

*Adapted from 'Koori Court' (Magistrates' Court of Victoria, 2022)*

**USEFUL TIP**

An important key skill in Area of Study 2 of Unit 3 VCE Legal Studies is to 'evaluate the ability of the criminal justice system to achieve the principles of justice during a criminal trial.' These tables, which show strengths and limitations of the criminal justice system in being able to uphold each principle, can help you to evaluate the impact of cultural differences on the principles of justice.

## Evaluating the impact of cultural differences on the ability of the criminal justice system to achieve the principles of justice

**STRENGTHS**

- The prosecution must ensure all relevant facts and legal principles are presented to the court. This helps promote fairness since when there are open and impartial processes, the whole truth can emerge, thus overcoming some of the difficulties that can be caused by cultural differences.
- The presumption of innocence and the high standard of proof required for a criminal conviction aims to protect those who have difficulty presenting their evidence or defence, as they do not need to prove their innocence.
- *The Evidence Act 2008 (Vic)* establishes the circumstances where evidence cannot be admitted to the courts due to the accused or victim's accounts being unreliable as a result of language barriers.

**LIMITATIONS**

- Witnesses, victims, and accused persons from minority cultural backgrounds may face difficulties when presenting evidence. This may result in the court misinterpreting the facts in a criminal case, leading to incorrect or unjust verdicts.
- Those for whom English is not their first language, such as refugees and recent migrants, may have difficulty giving oral evidence due to language barriers, meaning courts may misunderstand the facts in particular cases, leading to unjust or incorrect outcomes.

**STRENGTHS**

- Victoria Legal Aid provides legal representation to all accused persons, including Indigenous and migrant accused persons, as long as these individuals meet specific criteria.
- Interpreters are available for all accused persons, and the onus to pay and arrange for an interpreter is on the courts, as opposed to the accused. This allows all non-English speakers to understand court proceedings better without having to pay significant expenses.
- The Koori Court is an option for First Nations peoples if they plead guilty, as it can provide culturally-relevant sentencing practices that are used when determining the sentence of an offender. Therefore, this can increase equality as sentencing processes are more tailored to Aboriginal and Torres Strait Islander practices.

**LIMITATIONS**

- Due to cultural or language differences, some First Nations peoples or recent migrants from non-English speaking backgrounds may be less able to present evidence as victims or accused persons, undermining equality.
- The high incarceration rates among First Nations peoples point towards inherent prejudices within the Australian criminal justice system. Therefore, equality is limited as these biases among members of the justice system may lead to Aboriginal and/or Torres Strait Islander people being prescribed harsher penalties on the basis of their race.
- Aboriginal and/or Torres Strait Islander peoples typically live in more rural areas of Australia and, therefore, their access to legal representation is more limited due to geographical barriers. Unless adequate measures are implemented to remove this disparity, equality will not be achieved, as an accused person of Aboriginal or Torres Strait Islander descent may have reduced access to legal advice and resources.

**STRENGTHS**

- Victorian Aboriginal Legal Service is a community legal centre that better enables First Nations people to engage with the justice system, by provides advice and assistance tailored to the needs of Indigenous Victorians. Their legal services are available across rural regions in Victoria, allowing access to justice for Aboriginal peoples in remote areas as well as metropolitan Melbourne.
- The use of the Koori Court aims to provide more First Nations offenders with access to culturally-relevant sentencing that more effectively acts to reduce reoffending.

**LIMITATIONS**

- If refugees or other migrants do not trust police, due to past, adverse experiences with police in their home countries, they may be reluctant to report crimes, undermining access to justice for victims.
- Migrants and refugees may be unfamiliar with the Victorian legal system and less aware of their legal rights as a victim or accused person, therefore limiting access.
- Cultural differences may result in some migrants never accessing the justice system. For example, in some cultures, female compliance is taught, therefore, women may not ever report abuse as they believe they should just accept it.
- Some migrants may be on a temporary Australian visa, relying on marriage to attain permanent citizenship. Therefore, these migrants may not report offences, fearing their visa may be taken away if they do.



## Lesson summary

Asylum seekers, refugees, migrants, and First Nations Australians are some of the key groups impacted by cultural differences when involved in a criminal case due to various factors that can limit the principles of justice, including:

- language barriers
- racial prejudices of police and other people with authority
- cultural misunderstandings or practices
- intergenerational trauma.

However, certain mechanisms, such as the Koori Courts and interpreters, are in place with an aim to ensure individuals with cultural differences from Caucasian, English-speaking Australians can still access justice.

## 21 Questions

### Check your understanding

**Question 1**

The cultural background of an individual involved in a criminal case will have no impact on the achievement of the principles of justice.

- A. True
- B. False

**Question 2**

Which of the following statements are correct about cultural differences in a criminal case?

**(Select all that apply)**

- A. Some Aboriginal people may have difficulty with the question-and-answer format of evidence presentation in Victorian courts.
- B. First Nations peoples have experienced a history of racial discrimination and social exclusion by governments, leading many of them to now fear members of the criminal justice system, such as police and judges.
- C. Indigenous Australians are overrepresented in the criminal justice system.
- D. The Koori Court sentencing method results in sanctions that are less severe than those imposed in the mainstream sentencing process.

**Question 3**

The principle of access may not be achieved for refugees and migrants due to:

- A. the possibility of being unfamiliar with the Victorian legal system thus making them less aware of their legal rights as a victim or an accused.
- B. Victoria Legal Aid providing legal representation for all accused people, including migrants, as long as these individuals meet Victoria Legal Aid's criteria.

**Question 4**

Tick the box to indicate whether each of the following statements relate to how cultural differences may limit the achievement of the principle of **fairness** or **equality**.

Statements	Fairness	Equality
I. Individuals from a non-English speaking background may be less able to present evidence, therefore preventing them from being treated the same as English speakers.	<input type="checkbox"/>	<input type="checkbox"/>
II. The high incarceration rates of First Nations peoples point towards inherent prejudices existing within the Australian criminal justice system. Biases among members of the justice system may lead to Aboriginal and/or Torres Strait Islander people being prescribed harsher penalties on the basis of their race.	<input type="checkbox"/>	<input type="checkbox"/>
III. For some Aboriginal and Torres Strait Islanders, cultural practices, such as avoiding eye contact, may be misunderstood. As a result, authorities could view this as an indication of guilt or evasiveness, leading to an accused unjustly being convicted.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
IV. Language barriers may cause the courts to misunderstand or accept incorrect evidence, leading to an unjust outcome.	<input type="checkbox"/>	<input type="checkbox"/>

**Question 5**

Which of the following statements are correct about processes in the Victorian criminal justice system that aim to uphold the principles of justice despite cultural differences? **(Select all that apply)**

- A. The presumption of innocence and high standard of proof protect accused persons, as they do not need to present any evidence to prove their innocence. Thus, if an accused fears they will be unable to convincingly present evidence, they are under no obligation to do so.
- B. VLA provides legal representation to all accused persons regardless of their cultural backgrounds, as long as they meet the requirements.
- C. Interpreter services are available in all courtrooms, however, the accused must pay for such services.
- D. The Koori Court allows offenders that identify as First Nations peoples to access culturally-relevant sentencing that is more effective in reducing reoffending.

**Question 6**

The principle of access may be limited if refugee or asylum seeker victims of crime do not report crimes to the police due to traumatic experiences with authorities. The principle of equality is limited as certain non-English speakers, for example, may be unaware of available resources, like VLA, and therefore do not make use of these resources. Finally, fairness may be limited if false confessions are made due to language misunderstandings.

- A. True
- B. False

**Preparing for exams****Standard exam-style****Question 7**

(2 MARKS)

Outline **one** way cultural differences limit the principle of equality from being achieved in a criminal case.

**Question 8**

(3 MARKS)

Explain **one** way in which cultural differences impact the principle of access in a criminal case.

**Question 9**

(4 MARKS)

The Victorian courts, such as the Magistrates' Court, pay for interpreter services when they are required for an accused person charged with an offence. Ahmed, a migrant from Saudi Arabia, was recently accused of theft after stealing from his local supermarket. He speaks Arabic but very little English.

How do the interpreter services of the Victorian courts enhance the ability of the criminal justice system to achieve fairness for Ahmed and others like him? Justify your response.

*Adapted from VCAA 2022 exam Section B Q1c*

**Extended response**

Use your answer to question 10 to support your response to question 11.

**Question 10**

Tick the box to indicate whether the following statements are **strengths** or **limitations** of the Victorian criminal justice system in achieving equality.

Statements	Strengths	Limitations
I. Individuals from migrant or refugee backgrounds may be unable to speak English proficiently, therefore limiting their ability to present evidence as either an accused person or as a victim.	<input type="checkbox"/>	<input type="checkbox"/>
II. Interpreters are available to all accused persons in the courts, and the courts are required to pay for such services instead of the accused.	<input type="checkbox"/>	<input type="checkbox"/>
III. Migrants and refugees may be unaware of the resources available to them, such as Victoria Legal Aid (VLA).	<input type="checkbox"/>	<input type="checkbox"/>
IV. VLA provides legal representation to all accused persons, including Aboriginal and/or Torres Strait Islanders and migrant accused persons, and promotes their resources online in multiple languages.	<input type="checkbox"/>	<input type="checkbox"/>

**Question 11**

(6 MARKS)

Discuss **one** cultural factor that could affect the ability of the Victorian criminal justice system to achieve equality.

*Adapted from VCAA 2021 exam Section A Q3c*

Use your answer to question 12 to support your response to question 13.

Use the following information to answer questions 12 and 13.

In Victoria, the Koori Court is a division of the Magistrates' Court and the County Court that provides culturally-relevant sentencing methods to First Nations peoples who have committed a crime in Victoria, plead guilty to certain criminal matters, and consent to the matter being sentenced in the Koori Court. It does not provide less or more severe sentences than those applied for non-First Nations offenders and has no role in determining the guilt of an offender. The process of receiving a sentence in the Koori Court involves discussions with community Elders or Respected Persons to gauge what sentence would be appropriate for the offender. It is proven to be effective in decreasing rates of recidivism. However, it has faced challenges as a lack of community awareness of the Court has acted as a barrier to the participation of Community Elders.

**Question 12**

Tick the box to indicate whether the following are **strengths** or **limitations** of the Koori Court in relation to access.

Statements	Strengths	Limitations
I. The Koori Court allows culturally-relevant sentencing practices to be used when determining the appropriate sentence of an offender.	<input type="checkbox"/>	<input type="checkbox"/>
II. The Koori Court is proven to be an effective mechanism in reducing rates of recidivism. Therefore, this could result in First Nations incarceration rates declining in the future.	<input type="checkbox"/>	<input type="checkbox"/>
III. The Koori Court involves community Elders and Respected Persons having open discussions with offenders. Therefore, language barriers are reduced as these discussions can occur using Aboriginal English.	<input type="checkbox"/>	<input type="checkbox"/>
IV. Community Elders and Respected Persons, who are required for the Court to function, may be unaware of the Court and their ability to participate.	<input type="checkbox"/>	<input type="checkbox"/>

**Question 13**

(5 MARKS)

Analyse the impact of the Koori Court in relation to cultural differences. In your response, consider how the Koori Court can enhance the ability of the Victorian criminal justice system to achieve the principle of equality.

*Adapted from VCAA 2022 exam Section B Q2d*

**Linking to previous learning****Question 14**

(4 MARKS)

Arjun has been accused of causing Freya serious injury intentionally after he allegedly shoved her on the bus trying to get a seat, causing her to trip and fall. Arjun migrated to Australia five years ago and speaks minimal English. He has also been struggling financially after moving, as he sends the majority of the money he earns in Australia back to his family in India. Arjun will need to defend himself in court in a month's time.

Describe the impact that costs and cultural differences may have on Arjun's criminal case.



# ANSWERS

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Image: chrupka/Shutterstock.com

## 2A The principles of justice during a criminal case

### Check your understanding

1. A. **Explanation:** The justice system must be accessible to all individuals, everyone must be treated the same, and a fair trial should occur.
2. B. **Explanation:** The presumption of innocence requires each accused to be presumed not guilty unless proven otherwise by the prosecution.
3. The principle of **equality** is upheld when all people are able to engage with the justice system without disparity or disadvantage.
4. A; C; D. **Explanation:** The principle of equality requires all people engaging with the justice system to be treated the same, although, if the same treatment results in disadvantage, an accused may be treated differently to ensure equal outcomes for all individuals.
5. A. True. **Explanation:** An accused that understands their rights and legal processes may be able to engage more comprehensively with the justice system, improving their access.
6. A; B; C. **Explanation:** Criminal processes and procedures that increase engagement with the justice system help achieve the principle of access.
7. A. True. **Explanation:** Equality can be attained by treating people differently to ensure an equal result, which achieves fairness by promoting a just outcome for an accused.

### Preparing for exams

#### Standard exam-style

8. [Fairness is the principle that all people can participate in the justice system and its processes should be impartial and open.<sup>1</sup>] [Birrani's decision to represent himself can limit the achievement of fairness as he may be unable to present his case in the best possible light.<sup>2</sup>] [As Birrani speaks very little English and is not familiar with the justice system, this may lead to an unjust outcome in his case, limiting the achievement of fairness.<sup>3</sup>]

✓ ✗ I have defined fairness as a principle of justice.<sup>1</sup>

✓ ✗ I have provided one reason why fairness may not be achieved in this case.<sup>2</sup>

✓ ✗ I have provided an example from the scenario and linked it to fairness as a principle of justice.<sup>3</sup>

#### Other acceptable answers include:

- Equality

9. [One reason why Theo's trial may not achieve access is that the trial was delayed significantly, causing Theo to feel stressed and anxious.<sup>1</sup>] [This limits the achievement of access as the case is not being heard in a timely manner, reducing Theo's ability to engage with the justice system as an alleged victim of crime.<sup>2</sup>] [Furthermore, another reason why Theo's case may not achieve access is that he was not informed of the proceedings related to the trial.<sup>3</sup>] [This limits the achievement of access as Theo has a right to be involved in court proceedings as a victim of crime. Therefore, by not being informed about proceedings, he is unable to adequately engage in the justice system.<sup>4</sup>]

✓ ✗ I have provided one reason why Theo's trial may not achieve the principle of access.<sup>1</sup>

✓ ✗ I have provided information about my chosen reason.<sup>2</sup>

✓ ✗ I have provided a second reason why Theo's trial may not achieve the principle of access.<sup>3</sup>

✓ ✗ I have provided information about my chosen reason.<sup>4</sup>

✓ ✗ I have used signposting in my response, such as 'One reason' and 'another reason'.

✓ ✗ I have used connecting words, such as 'Furthermore'.

### Extended response

10. A; E

11. [The principles of fairness and equality may be achieved in Axel's case, subject to certain limitations.<sup>1</sup>]

[One way fairness can be achieved in Axel's case is that, as an accused, he will be presumed innocent until proven guilty. This means the prosecution will attempt to prove his guilt, as they initiated the case against Axel, ensuring a just outcome is achieved.<sup>2</sup>] [However, fairness can be limited by Axel's self-representation as he may be unable to present his case in the best possible light.<sup>3</sup>] [Axel does not know how to properly present his evidence and is worried he might say something that incriminates himself. His lack of legal presentation experience, when compared to the skill of the prosecution, could jeopardise the achievement of a just outcome.<sup>4</sup>]

[On the other hand, one way equality may be achieved is that the judge and jury in Axel's case must be independent and unbiased, basing their decisions solely on the facts of the case and not the characteristics of the prosecution or the accused.<sup>5</sup>] [Although, despite this, equality may not be achieved if the judge has an unconscious bias in favour of the prosecutor, given they appear to be friends. If this is the case, the achievement of equality may be jeopardised as Axel and the prosecutor are unlikely to be treated in the same way.<sup>6</sup>]

[Overall, the requirement of the presumption of innocence and an independent judge and jury assist in upholding the principles of fairness and equality. However, as Axel is representing himself and the judge appears to be friendly with the prosecutor, the achievement of fairness and equality may be limited in this case.<sup>7</sup>]

✓ ✗ I have provided an introduction to my response.<sup>1</sup>

✓ ✗ I have provided one way the principle of fairness may be achieved in Axel's criminal case.<sup>2</sup>

✓ ✗ I have provided one way the principle of fairness may be limited in Axel's criminal case.<sup>3</sup>

✓ ✗ I have provided an example from the scenario and linked it to the achievement of fairness.<sup>4</sup>

✓ ✗ I have provided one way the the principle of equality may be achieved in Axel's criminal case.<sup>5</sup>

✓ ✗ I have provided one way the the principle of equality may be limited in Axel's criminal case.<sup>6</sup>

✓ ✗ I have provided a conclusion to my response that links back to the question.<sup>7</sup>

- 
- ☒ ☐ I have linked my answer to the scenario where appropriate.
- 
- ☒ ☐ I have used paragraphs to organise my response
- 
- ☒ ☐ I have used signposting in my response, such as 'One way'.
- 
- ☒ ☐ I have used connecting words, such as 'However' and 'On the other hand'.
- 

### Linking to previous learning

12. a. [One right of victims, such as Dewei, is the right to be informed about the proceedings.<sup>1</sup>]

☒ ☐ I have identified one right of victims in the Victorian criminal justice system.<sup>1</sup>

---

☒ ☐ I have used signposting in my response, such as 'One right'.

---

- b. [The right to be informed about the proceedings ensures victims of crime, such as Dewei, are able to engage with the justice system as they are provided with information about the case in which they are involved, achieving access to justice.<sup>1</sup>] [Another way access is upheld by this right is that it ensures the police and prosecutors minimise suffering experienced by victims, such as Dewei, by keeping victims informed, promoting access.<sup>2</sup>]

☒ ☐ I have provided one strength of a victim's right to be informed about the proceedings in upholding the principle of access.<sup>1</sup>

---

☒ ☐ I have provided a second strength of a victim's right to be informed about the proceedings in upholding the principle of access.<sup>2</sup>

---

☒ ☐ I have used signposting in my response, such as 'Another way'.

---

13. [The burden of proof is the responsibility of a party to prove the facts of a case. In a criminal case, the burden of proof rests with the prosecution.<sup>1</sup>] [The principle of fairness is upheld by the burden of proof as the prosecution is pursuing the case against the accused, and therefore, the onus is on them to prove the facts and claims against the accused.<sup>2</sup>] [It is not the responsibility of the accused to prove their own innocence, as this would be unfair.<sup>3</sup>]

☒ ☐ I have defined the burden of proof.<sup>1</sup>

---

☒ ☐ I have provided one way in which the burden of proof upholds the principle of fairness.<sup>2</sup>

---

☒ ☐ I have provided information about the relationship between the burden of proof and the principle of fairness.<sup>3</sup>

---

## 2B Victoria Legal Aid and community legal centres

### Check your understanding

1. A. True. **Explanation:** Both VLA and CLCs have the shared goal of providing affordable legal advice for accused people and victims of crime.
2. C. **Explanation:** Counselling services are not provided by VLA as they focus on legal information, advice, and support.
3. A; B; C. **Explanation:** Grants of legal assistance are provided by VLA.
4. Strengths: I; IV  
Limitations: II; III
5. The **income** test requires an accused to demonstrate that their income is limited or their main source of income is welfare payments from the government in order to receive duty lawyer assistance. On the other hand, the **means** test considers an accused's income, assets, and expenses to determine whether they are eligible for a grant of legal assistance
6. A; C. **Explanation:** VLA is only able to provide tailored legal advice and representation to those who are eligible and satisfy the requirements of the income and means test. Therefore, VLA services are not equally accessible to all individuals of the community.
7. B. **Explanation:** CLCs are less accessible to those who live in remote areas as there are fewer regional CLC locations, therefore limiting access to legal resources and support for those within those communities.

### Preparing for exams

#### Standard exam-style

8. [One role of Victoria Legal Aid (VLA) in assisting an accused person is providing free information.<sup>1</sup>] [General information about the law and legal matters is readily available on the website, in brochures, and over the phone.<sup>2</sup>] [These resources are free, available in different languages and accessible to everyone. They aim to educate accused individuals and the community about legal matters, criminal law procedures, and provide general legal support.<sup>3</sup>]
- ✓ ✗ I have identified one role of Victoria Legal Aid in assisting an accused person.<sup>1</sup>
- ✓ ✗ I have provided information about my chosen role of Victoria Legal Aid.<sup>2</sup>
- ✓ ✗ I have provided further information about my chosen role of Victoria Legal Aid.<sup>3</sup>
- ✓ ✗ I have used signposting in my response, such as 'One role'.
9. a. [Community legal centres (CLCs) are independent organisations that aim to enhance access to justice for members of the community by providing free general and specialist legal services.<sup>1</sup>] [CLCs enhance individuals' access to the justice system by allowing them to engage with legal matters in an informed manner and with the relevant legal support.<sup>2</sup>]

✓ ✗ I have provided information about the main purpose of community legal centres.<sup>1</sup>

✓ ✗ I have provided further information about the purpose of community legal centres.<sup>2</sup>

- b. [Community legal centres (CLCs) uphold the principle of fairness is by providing high quality, free legal support and education to members of the community.<sup>1</sup>] [This enables accused individuals to adequately participate in legal proceedings, understand the case against them and present their cases in the best light, hence encouraging just outcomes.<sup>2</sup>] [Moreover, CLCs can provide legal representation in limited circumstances, further assisting accused individuals in achieving fair outcomes by assisting them to navigate the complex criminal justice system.<sup>3</sup>]

✓ ✗ I have provided one way community legal centres uphold the principle of fairness.<sup>1</sup>

✓ ✗ I have provided information about my chosen way.<sup>2</sup>

✓ ✗ I have provided a second way community legal centres uphold the principle of fairness.<sup>3</sup>

10. [One role of community legal centres (CLCs) is to help victims, such as Charles, navigate the legal process by providing free legal information.<sup>1</sup>] [General legal information can be provided in person and online, while specialist CLCs can ensure relevant resources and legal support are available for specific legal matters, such as discriminatory crimes.<sup>2</sup>] [Therefore, a disability-focused CLC could provide relevant legal support and assistance to Charles, enabling him to receive justice for his attack.<sup>3</sup>]

✓ ✗ I have identified one role of community legal centres in assisting Charles.<sup>1</sup>

✓ ✗ I have provided information about the role of community legal centres.<sup>2</sup>

✓ ✗ I have provided an example from the scenario and linked it to the role of community legal centres.<sup>3</sup>

✓ ✗ I have used signposting in my response, such as 'One role'.

11. [Victoria Legal Aid (VLA) would be more appropriate for Kai as they are set to appear in the Magistrates' Court and may need tailored advice to assist them resolve the matter.<sup>1</sup>] [Unlike CLCs, VLA has duty lawyers available in the Magistrates' Court to assist people charged with summary offences, and can provide advice and representation to accused individuals on the day of their hearing.<sup>2</sup>] [Given Kai's matter is a summary offence, if they satisfy the requirements of the income test, they may be eligible for duty lawyer assistance which would be beneficial given they do not have knowledge of the criminal justice system and English in their second language.<sup>3</sup>]

✓ ✗ I have identified that VLA would be more appropriate in Kai's scenario.<sup>1</sup>

✓ ✗ I have provided information about the role of VLA in assisting accused individuals.<sup>2</sup>

✓ ✗ I have provided examples from the scenario and linked it to the theory.<sup>3</sup>

## Extended response

12. Strengths: I; II; IV  
Limitations: III; V; VI

13. [Victoria Legal Aid (VLA) and community legal centres (CLCs) can uphold the principle of access to a moderate extent. However, they are limited in their ability to do so due to available resources and funding.<sup>1</sup>]

[Firstly, VLA's legal services can be accessed in multiple ways. For example, it offers assistance in person, over the phone, and online, meaning that individuals are provided with multiple avenues through which they can access legal support.<sup>2</sup>] [Similarly, CLCs are located across metropolitan Melbourne and in some regional areas, with some providing legal assistance over the phone, therefore promoting access to legal information and advice for members of the community.<sup>3</sup>]

[Moreover, access to legal representation and the ability to engage with the legal system is facilitated by VLA and CLCs. VLA provides duty lawyers and grants of legal assistance to eligible clients hence increasing eligible accused individuals' access to the criminal justice system, ensuring they can participate in the processes in an informed manner.<sup>4</sup>] [CLCs can also provide legal representation for accused individuals, and duty lawyers for victims, in some circumstances, hence enhancing access to legal representation for those in disadvantageous circumstances.<sup>5</sup>]

[However, though VLA and CLCs can both provide legal representation and tailored advice to varying degrees, this support is not widely available.<sup>6</sup>] [CLCs usually provide assistance for relatively minor criminal matters, and therefore do not promote access to resources for those charged with very serious criminal matters. Moreover, CLC representation for accused individuals is very limited and difficult to acquire, for example, it can only be provided to an accused if they have a grant of legal assistance which is also hard to obtain.<sup>7</sup>] [Likewise, VLA duty lawyers and grants of legal assistance can only be provided if the accused satisfies the income and means test, respectively, and duty lawyers are only available in the Magistrates' Court and not for indictable offences.<sup>8</sup>]

[Finally, both VLA and CLCs are limited in their abilities to facilitate access to the legal resources and support due to a lack of funding.<sup>9</sup>]

[The demand for legal services is greatly disproportionate to the assistance available. Therefore, more individuals may be left uninformed and unable to adequately engage with the criminal justice system and achieve justice.<sup>10</sup>]

[In conclusion, while VLA and CLCs can promote access to legal services and support to the community in many different ways, their ability to do so is limited by available resources and financial restrictions.<sup>11</sup>]

✓ ✗ I have provided an introduction to summarise my answer.<sup>1</sup>

✓ ✗ I have provided information about one way VLA upholds the principle of access.<sup>2</sup>

✓ ✗ I have provided information about one way CLCs uphold the principle of access.<sup>3</sup>

✓ ✗ I have provided information about a second way VLA upholds the principle of access.<sup>4</sup>

✓ ✗ I have provided information about a second way CLCs uphold the principle of access.<sup>5</sup>

✓ ✗ I have provided one way VLA and CLCs are limited in their ability to uphold the principle of access.<sup>6</sup>

✓ ✗ I have provided information about my chosen way and linked it to CLCs.<sup>7</sup>

✓ ✗ I have provided information about my chosen way and linked it to VLA.<sup>8</sup>

✓ ✗ I have provided a second one way VLA and CLCs are limited in their ability to uphold the principle of access.<sup>9</sup>

✓ ✗ I have provided information about my chosen way.<sup>10</sup>

✓ ✗ I have provided a conclusion to my response that links back to the question.<sup>11</sup>

✓ ✗ I have used paragraphs to organise my response.

✓ ✗ I have used signposting in my response, such as 'Firstly', 'Finally' and 'In conclusion'.

✓ ✗ I have used connecting words, such as 'therefore' and 'Moreover'.

✓ ✗ I have used comparison words, such as 'similarly' and 'likewise'.

## Linking to previous learning

14. [Community legal centres (CLCs) could help Sonia understand her rights as a victim by providing her with information about trial and her rights when giving evidence.<sup>1</sup>] [Given that Sonia was a victim of a sexual assault offence, she has the right to give evidence using alternative arrangements.<sup>2</sup>] [Therefore, CLCs can assist her in understanding the different ways she could give evidence, such as via CCTV, which may ease her stress and enable her to adequately participate in the proceeding and achieve a fair outcome.]

✓ ✗ I have provided one way CLCs could assist Sonia in understanding her rights as a victim.<sup>1</sup>

✓ ✗ I have provided information about the rights of the victim and linked it to the scenario.<sup>2</sup>

✓ ✗ I have provided information about CLCs and their ability to assist Sonia as a victim.<sup>3</sup>

## 2C Plea negotiations

### Check your understanding

- B. False. **Explanation:** Plea negotiations may be initiated by either the prosecution or the accused.
- A. **Explanation:** It is the role of the court to impose an appropriate sentence upon the accused. Plea negotiations merely result in the parties agreeing to the charges to which the accused will plead guilty, not the sentence.
- A; B; D. **Explanation:** Plea negotiations secure a conviction by ensuring the accused pleads guilty to a charge(s), avoiding the costs, time, and stress associated with a full criminal trial. However, a penalty is not decided at this time.
- B; D. **Explanation:** Plea negotiations may be appropriate in circumstances where the prosecution is unsure if they can secure a verdict of guilty at trial.
- If a plea negotiation results in the accused pleading guilty to a charge that does not adequately reflect the crime, this prevents the achievement of **fairness**.
- B. False. **Explanation:** There are circumstances where plea negotiations are not appropriate, such as if the accused is not willing to plead guilty to the charge(s) against them.

### Preparing for exams

#### Extended response

- [One participant in the plea negotiation process is the accused.<sup>1</sup>]  
[Another participant is the prosecution.<sup>2</sup>]  
☒ ☐ I have identified one participant in the plea negotiation process.<sup>1</sup>  
☒ ☐ I have identified a second participant in the plea negotiation process.<sup>2</sup>
- [Plea negotiations may be appropriate in cases where victims and witnesses are reluctant to give evidence, or where giving evidence will be particularly traumatic for the victim or witnesses.<sup>1</sup>]  
[In these circumstances, the prosecution may decide to enter into plea negotiations with the accused to avoid going to trial altogether so victims and witnesses do not have to present their evidence in court.<sup>2</sup>]  
[Plea negotiations may also be appropriate where the accused or prosecution wishes to avoid the costs and time associated with a criminal trial.<sup>3</sup>]  
[In these circumstances, either party may enter into plea negotiations to ensure a prompt resolution of the case without the need for a full criminal trial.<sup>4</sup>]  
☒ ☐ I have identified one reason why plea negotiations may be appropriate in determining a criminal case.<sup>1</sup>  
☒ ☐ I have provided further information about my chosen reason.<sup>2</sup>  
☒ ☐ I have provided a second reason why plea negotiations may be appropriate in determining a criminal case.<sup>3</sup>  
☒ ☐ I have provided further information about my chosen reason.<sup>4</sup>

- [One reason why a plea negotiation would be appropriate is it will result in an early determination of the case by avoiding the trial which is more than 14 months away.<sup>1</sup>]  
[This is appropriate as Lottie wants the case to be resolved quickly and by engaging in plea negotiations, if successful, the trial process in the court will be avoided therefore the matter can be resolved far quicker, avoiding the delays which would be imposed by the court.<sup>2</sup>]  
[However, one reason why a plea negotiation may not be appropriate is Nico's family want to see Lottie punished severely.<sup>3</sup>]  
[Plea negotiations may result in Lottie pleading guilty to a lesser charge than culpable driving and therefore, this may lead to Nico's family perceiving that Lottie has been 'let off' too easily.<sup>4</sup>]

- ☒ ☐ I have provided one reason why a plea negotiation would be appropriate and linked it to the scenario.<sup>1</sup>
- ☒ ☐ I have provided further information about my chosen reason.<sup>2</sup>
- ☒ ☐ I have provided one reason why a plea negotiation would not be appropriate and linked it to the scenario.<sup>3</sup>
- ☒ ☐ I have provided further information about my chosen reason.<sup>4</sup>
- ☒ ☐ I have used signposting in my response, such as 'One reason'.

- A; C; D

- [Plea negotiations may be appropriate in Tabitha's case as she will avoid having to represent herself during her criminal trial, particularly because she is unsure how to present her case properly.<sup>1</sup>]  
[Therefore, plea negotiations will result in a plea of guilt in return for a concession from the prosecution, such as pleading guilty to a lesser charge, which may result in a reduced sentence.<sup>2</sup>]  
[Additionally, plea negotiations may also be appropriate for the prosecution in securing a conviction. This is because Aria is reluctant to give evidence at trial as she does not want to relive the traumatic experience by presenting evidence, which may reduce the likelihood of a conviction being secured.<sup>3</sup>]  
[However, as Joe's parents wish to see justice served at trial, plea negotiations may not be appropriate as this will result in the prosecution providing a concession to Tabitha in return for a plea of guilty.<sup>4</sup>]  
[This may result in Joe's parents feeling as though Tabitha 'got off lightly' due to the seriousness of the offence as Tabitha repeatedly punched and kicked Joe.<sup>5</sup>]  
[Overall, despite the potential perception that Tabitha has been let off, plea negotiations are appropriate in securing a conviction and avoiding a full criminal trial.<sup>6</sup>]

- ☒ ☐ I have provided one reason why plea negotiations are appropriate and linked it to the scenario.<sup>1</sup>
- ☒ ☐ I have provided further information about my chosen reason.<sup>2</sup>
- ☒ ☐ I have provided a second reason why plea negotiations are appropriate and linked it to the scenario.<sup>3</sup>
- ☒ ☐ I have provided one reason why plea negotiations are not appropriate and linked it to the scenario.<sup>4</sup>
- ☒ ☐ I have provided further information about my chosen reason.<sup>5</sup>



- 
- ☒ ☐ I have provided a conclusion to my response that links back to the question.<sup>6</sup>
- 
- ☒ ☐ I have used paragraphs to organise my response.
- 
- ☒ ☐ I have used connecting words, such as 'Additionally' and 'However'.
- 

### Linking to previous learning

12. Strengths: I; II  
Limitations: III; IV

13. [Plea negotiations achieve fairness and access to a large extent by securing a conviction in cases where the evidence may not be strong enough, as well as by avoiding the costs and time associated with trial.<sup>1</sup>]

[Firstly, one way plea negotiations achieve fairness is because they may result in the accused pleading guilty to a charge that adequately reflects the crime, leading to a just outcome to the case.<sup>2</sup>] [However, where plea negotiations result in the accused pleading guilty to a charge that does not adequately reflect the crime, this may result in the community feeling that an accused has been 'let off'. This could lead to the impression that the outcome was unfair, limiting the achievement of fairness.<sup>3</sup>] [Another way that fairness may be achieved is in cases where witnesses are reluctant to give evidence, or if some evidence may not be admissible in court, plea negotiations, when successful, secure a conviction, providing an alternative avenue for securing a conviction, without the need for the matter to proceed to trial.<sup>4</sup>]

[Furthermore, plea negotiations achieve the principle of access as they save court time and resources by allowing for cases to be resolved before going to trial. This minimises delays and frees up court resources to make the legal system more accessible for cases that do go to trial.<sup>5</sup>] [However, plea negotiations are conducted in private, meaning victims, their families, and society cannot engage in this process, reducing the achievement of access.<sup>6</sup>] [Access may also be limited for some accused persons as the prosecution has to agree to one.<sup>7</sup>]

- 
- ☒ ☐ I have provided an introduction to summarise the extent to which I agree or disagree with the statement, and why.<sup>1</sup>
- 
- ☒ ☐ I have provided one strength of plea negotiations upholding the principle of fairness.<sup>2</sup>
- 
- ☒ ☐ I have provided one limitation of plea negotiations upholding the principle of fairness.<sup>3</sup>
- 
- ☒ ☐ I have provided a second strength of plea negotiations upholding the principle of fairness.<sup>4</sup>
- 
- ☒ ☐ I have provided one strength of plea negotiations upholding the principle of access.<sup>5</sup>
- 
- ☒ ☐ I have provided one limitation of plea negotiations upholding the principle of access.<sup>6</sup>
- 
- ☒ ☐ I have provided a second limitation of plea negotiations upholding the principle of access.<sup>7</sup>
- 
- ☒ ☐ I have used signposting in my response, such as 'one way' and 'Another way'.
- 
- ☒ ☐ I have used connecting words, such as 'However' and 'Furthermore'.
-

## 2D The Victorian court hierarchy and criminal cases

### Check your understanding

- A. **Explanation:** The courts are ordered from least to most superior.
- B. False. **Explanation:** The Magistrates' Court does not have appellate jurisdiction.
- B. **Explanation:** Parking fines are summary offences and are heard in the Magistrates' Court.
- Specialisation refers to a court's ability to develop **expertise** in a particular area of criminal law, and in dealing with specific criminal **cases** as a result of the **court** hierarchy.
- B; C; E. **Explanation:** Parties can only appeal a case on valid grounds, such as appealing on a question of law, appealing the conviction or appealing the sanction imposed.
- C. **Explanation:** The Court of Appeal only has the legal authority to hear cases on appeal.
- B. False. **Explanation:** Courts can only hear cases explicitly within their jurisdiction.
- B. False. **Explanation:** It is not guaranteed that a party can appeal a case as they may need leave to appeal.
- A. **Explanation:** The Victorian court hierarchy facilitates specialisation and the process of appeals in criminal cases.

### Preparing for exams

#### Standard exam-style

- [One reason for the Victorian court hierarchy is appeals. This means that, if a party is dissatisfied with the outcome of a case, they can seek to have the decision reviewed by a higher court.<sup>1</sup>] [Therefore, the court hierarchy allows more superior courts to review the decisions of lower courts, however, a party may need leave to appeal as it is not an automatic right.<sup>2</sup>]
 

☒ ☐ I have identified one reason for the Victorian court hierarchy.<sup>1</sup>

☒ ☐ I have provided further information about my chosen reason.<sup>2</sup>
- [Specialisation is facilitated by the Victorian court hierarchy as it allows each court to develop expertise in a particular area of criminal law.<sup>1</sup>] [This means the court hierarchy allows each court to become familiar with hearing certain types of criminal cases, and the laws and procedures, relevant to these cases.<sup>2</sup>] [For example, the Supreme Court - Trial Division specialises in hearing murder cases.<sup>3</sup>]
 

☒ ☐ I have stated how specialisation is facilitated by the Victorian court hierarchy.<sup>1</sup>

☒ ☐ I have provided information about how specialisation is facilitated by the Victorian Court Hierarchy.<sup>2</sup>

☒ ☐ I have provided an example of specialisation to support my answer.<sup>3</sup>

- a. [In order to appeal her case, Kaya must have valid legal grounds. This could include appealing her conviction and guilty verdict, appealing her five year imprisonment sentence or appealing on a question of law.<sup>1</sup>] [If Kaya determines she has valid grounds for an appeal, she may also need leave to appeal, which is permission from the Court of Appeal to appeal a case.<sup>2</sup>]
 

☒ ☐ I have identified the three grounds for an appeal.<sup>1</sup>

☒ ☐ I have provided information about the appeals process.<sup>2</sup>

☒ ☐ I have linked my answer to the scenario where appropriate.
- b. [Given that armed robbery is an indictable offence heard in the County Court, the appeal would be heard in the Court of Appeal.<sup>1</sup>] [The Court of Appeal's appellate jurisdiction includes the hearing and determination of all appeals for crimes originally heard by a judge and jury in the County Court or Supreme Court - Trial Division.<sup>2</sup>] [Appeals heard by the Court of Appeal can be based on any valid grounds, including appeals against the sanction imposed, on questions of law, or the appeal of a conviction.<sup>3</sup>]
 

☒ ☐ I have identified that the appeal would be heard in the Court of Appeal.<sup>1</sup>

☒ ☐ I have defined the appellate jurisdiction of the Court of Appeal.<sup>2</sup>

☒ ☐ I have provided information about the appellate jurisdiction of the Court of Appeal.<sup>3</sup>
- [No, I do not agree with this statement. Appeals uphold the principle of access and ensure all individuals are afforded access to a fair trial in circumstances where the original ruling may have been unjust.<sup>1</sup>] [If a party is dissatisfied with the outcome of a case, they have the right to apply for leave to appeal a case and, if successful, have a higher court review the decision of the lower court.<sup>2</sup>] [If all rulings were final and there were no opportunities to appeal, the criminal justice system would be ineffective as any mistakes or inconsistencies in the original ruling could not be rectified by a superior court.<sup>3</sup>] [Therefore, appeals enhance a party's access to bodies that can deliver justice and a fair outcome when engaging with the criminal justice system.<sup>4</sup>]
 

☒ ☐ I have stated whether I agree or disagree with the statement and provided an introduction to my response.<sup>1</sup>

☒ ☐ I have outlined the process of appeals.<sup>2</sup>

☒ ☐ I have provided one way appeals uphold my chosen principle of justice.<sup>3</sup>

☒ ☐ I have provided information about my chosen way appeals uphold the principle of justice.<sup>4</sup>

☒ ☐ I have used connecting words, such as 'Therefore'.

## Extended response

14. B; E

15. [I do not agree with this statement as the efficiency and effectiveness of the Victorian courts are dependent on its hierarchical structure.<sup>1</sup>]

[Firstly, the court hierarchy facilitates specialisation and expertise.<sup>2</sup>]

[This means that, as a result of the ordering of the courts, judges of the respective courts are experienced and skilled in dealing with particular areas of criminal law and the relevant court procedures.<sup>3</sup>]

[If there was only one level of courts, it would be difficult to determine which court should hear particular matters as the judges would not be specialised in any specific areas of law. Resultantly, this could lead to delays and inconsistencies in court rulings.<sup>4</sup>]

[Moreover, the appeals process is reliant on the courts being ranked from least to most superior.<sup>5</sup>][If a party is unsatisfied with the outcome of a case, they have the right to apply for leave to appeal and have the final decision reviewed by a superior court, as a result of the court hierarchy.<sup>6</sup>][Therefore, if the court hierarchy did not exist, there would be no opportunity for potential errors to be reconsidered by a higher court and more experienced judge.<sup>7</sup>]

[Hence, it is imperative that the Victorian courts are hierarchically ordered to ensure the functional and smooth delivery of justice.<sup>8</sup>]

✓ ✗ I have stated whether I agree or disagree with the statement and provided a summary of the reason for my answer.<sup>1</sup>

✓ ✗ I have provided a topic sentence to introduce the main idea of the paragraph.<sup>2</sup>

✓ ✗ I have provided one reason why the court hierarchy should or should not exist.<sup>3</sup>

✓ ✗ I have provided one consequence of not having a court hierarchy.<sup>4</sup>

✓ ✗ I have provided a topic sentence to introduce the main idea of the paragraph.<sup>5</sup>

✓ ✗ I have provided a second reason why the court hierarchy should or should not exist.<sup>6</sup>

✓ ✗ I have provided a second consequence of not having a court hierarchy.<sup>7</sup>

✓ ✗ I have provided a conclusion to my response that links back to the question.<sup>8</sup>

✓ ✗ I have used paragraphs to organise my response.

✓ ✗ I have used signposting in my response such as 'Firstly'.

✓ ✗ I have used connecting words, such as 'Moreover' and 'Hence'.

## Linking to previous learning

16. [The Victorian court hierarchy promotes accused individuals' right to be tried without unreasonable delay.<sup>1</sup>][As the court hierarchy facilitates specialisation, each court has expertise in dealing with certain types of criminal matters and proceedings.<sup>2</sup>][This means knowledgeable judges are familiar with hearing and determining specific cases, reducing the likelihood of delays as judges would be familiar with the effective case management of the types of matters they preside over.<sup>3</sup>]

✓ ✗ I have identified one way in which the Victorian court hierarchy promotes one right of an accused individual.<sup>1</sup>

✓ ✗ I have provided information about the court hierarchy.<sup>2</sup>

✓ ✗ I have outlined the relationship between the court hierarchy and one right of an accused individual.<sup>3</sup>

## 2E Judges, magistrates, and juries in a criminal trial

### Check your understanding

1. C. **Explanation:** In VCE Legal studies, phrasing and details are very important to obtain full marks. So while the other answers have partially correct elements, they are not entirely accurate or acceptable.
2. B. False. **Explanation:** The jury only decides the verdict. It is the role of the judge to hand down a sentence.
3. B; D. **Explanation:** There is no jury in the Magistrates' Court, thus magistrates never direct a jury. Further, questioning witnesses is a role of the prosecution and defence lawyers, not the magistrate.
4. C. **Explanation:** Jurors are not allowed to have relations with the parties. Therefore, Axin, Cora, and Ethan have committed juror misconduct that could lead to a mistrial. Bellamy's pact with the other jurors is also considered juror misconduct, and a mistrial would be ordered in this case.
5. B. False. **Explanation:** Though the judge may clarify and assist the jury in understanding different areas of law, the judge cannot assist the jury in determining a verdict.
6. B. False. **Explanation:** The jury cannot conduct external research and must make their decision based on the evidence presented in court alone.
7. Judges and magistrates rely on the parties to present all relevant evidence during a trial. If an accused person has no legal representation, this may prevent the principle of **fairness** from being achieved.
8. Trial by peers protects democracy, ensuring decisions are based on the facts and reflect community values. This promotes **access** and allows citizens an insight to the legal system.

### Preparing for exams

#### Standard exam-style

9. [One role of the jury is to carefully consider the evidence presented and weigh it against the legal standards communicated in the judge's instructions.<sup>1</sup>] [The jury must make their verdict based solely on the evidence presented in court and not on any outside information or biases.<sup>2</sup>] [This ensures the accused person is given a fair and impartial trial, where justice is served.<sup>3</sup>]  
☒ ☐ I have identified one role of the jury in a criminal trial.<sup>1</sup>  
☒ ☐ I have provided information about my chosen role of the jury in a criminal trial.<sup>2</sup>  
☒ ☐ I have provided further information about my chosen role of the jury in a criminal trial.<sup>3</sup>  
☒ ☐ I have used signposting in my response, such as 'One role'.
10. [In Aayush's trial, the judge is responsible for managing courtroom proceedings and ensuring the trial is conducted in a fair and efficient manner.<sup>1</sup>] [This involves making decisions on what evidence can be presented, and what is relevant and admissible.<sup>2</sup>] [The judge will ensure that both the prosecution and defence have an equal opportunity to present their case, Aayush is given a fair trial, and justice is served.<sup>3</sup>]

☒ ☐ I have provided one aspect of the role of the judge in a criminal trial.<sup>1</sup>

☒ ☐ I have provided a second aspect of the role of the judge in a criminal trial.<sup>2</sup>

☒ ☐ I have provided a third aspect of the role of the judge in a criminal trial.<sup>3</sup>

☒ ☐ I have linked my answer to the scenario where appropriate.

11. [A judge is the umpire of a courtroom who oversees all personnel, and evidence, whilst upholding rules and procedure.<sup>1</sup>] [A magistrate performs the same roles as a judge, but only in the Magistrates' Court.<sup>2</sup>] [One key difference between a magistrate and a judge is that magistrates hear and determine summary offences, such as traffic offences. Contrary to this, judges deal with more serious criminal offences, such as homicide, as they have the expertise to do so and reside in more superior courts.<sup>3</sup>]

☒ ☐ I have outlined the role of the judge in a criminal trial.<sup>1</sup>

☒ ☐ I have outlined the role of the magistrate in a criminal trial.<sup>2</sup>

☒ ☐ I have provided one key difference between judges and magistrates in a criminal trial.<sup>3</sup>

☒ ☐ I have used signposting in my response, such as 'One key difference'.

☒ ☐ I have used comparison words, such as 'Contrary to this', when distinguishing.

### Extended response

12. B; C

13. [The role of the judge in a criminal trial is crucial to achieving the principle of fairness. However, there are limitations that hinder fairness from being achieved in all cases.<sup>1</sup>]

[One way a judge promotes the achievement of fairness is by informing the jury on the laws relevant to the case and providing guidance on the facts and evidence that must be considered in their deliberations. This promotes fairness as the jury is well-informed and capable of reaching a just and fair verdict.<sup>2</sup>] [Judges also uphold fairness by acting impartially towards both parties and conducting the trial in a manner that is in accordance with the rules of evidence and procedure.<sup>3</sup>]

[However, there are limitations in the judges' ability to promote fairness in a criminal trial. Inherently, each person holds subconscious biases and this may be reflected in a judge's rulings, impacting the achievement of a fair trial.<sup>4</sup>] [Another way the achievement of fairness is limited by the judge is that they depend on the parties to present all the evidence and present their case in the best light. If an accused is self-represented and is unable to adequately present their case, the judge is unable to provide them with legal advice or assistance beyond explaining basic legal procedures. This limits a judges' ability to ensure a fair trial and facilitate the administration of justice.<sup>5</sup>]

[Overall, the judge's impartiality, and legal expertise are essential in ensuring that justice is served in the criminal justice system. However, it is also important to recognise and address the limitations in the judge's ability to promote fairness.<sup>6</sup>]

- ✓ ✗ I have provided an introductory sentence to summarise my answer to the question.<sup>1</sup>
- ✓ ✗ I have outlined one way a judge promotes the achievement of fairness in a criminal trial.<sup>2</sup>
- ✓ ✗ I have outlined a second way a judge promotes the achievement of fairness in a criminal trial.<sup>3</sup>
- ✓ ✗ I have outlined one way a judge limits the achievement of fairness in a criminal trial.<sup>4</sup>
- ✓ ✗ I have outlined a second way a judge limits the achievement of fairness in a criminal trial.<sup>5</sup>
- ✓ ✗ I have provided a conclusion to my response that links back to the question.<sup>6</sup>
- ✓ ✗ I have used paragraphs and topic sentences to organise my response.
- ✓ ✗ I have used signposting in my response, such as 'One way' and 'Another way'.
- ✓ ✗ I have used connecting words, such as 'However' and 'Overall'.

14. Strengths: I; II; V; VI  
Limitations: III; IV; VII

15. [I agree with this statement to a moderate extent, because even though judge's have more experience and expertise than juries, juries may be less subject to political bias and they represent a cross-section of the community.<sup>1</sup>]
- [Firstly, judges have extensive legal expertise and training, allowing them to interpret complex legal concepts and apply them correctly to a criminal trial.<sup>2</sup>] [They are also familiar with legal precedents and the principles of legal reasoning, which allows them to make justified rulings that ensure a fair trial.<sup>3</sup>] [However, as ordinary and randomly selected individuals, jurors may not be equipped with these skills and their verdict may be incorrectly informed or lack consideration of key legal principles.<sup>4</sup>]
- [Moreover, judges have experience in setting aside their personal beliefs so as to remain impartial and unbiased in their rulings.<sup>5</sup>]
- [Jurors, on the other hand, are more likely to be influenced by personal prejudices and emotions, increasing the risk of an unfair verdict that is based on their biases as opposed to the facts of the case.<sup>6</sup>]
- [However, there are also arguments against judges deciding verdicts.<sup>7</sup>] [One of the main criticisms is that judges are government-appointed officials and may be subject to political pressure or biases. This can potentially compromise their impartiality and lead to unfair or unjust verdicts.<sup>8</sup>]
- [Another limitation of judges deciding verdicts is that it limits the participation of ordinary citizens in the legal process.<sup>9</sup>] [Juries are comprised of a cross-section of the community that represents a diverse range of views. The use of juries helps ensure the legal system is accountable to the people.<sup>10</sup>]
- [In conclusion, while judges may have more legal expertise and experience in remaining impartial in their decisions, the use of juries to determine verdicts is a valuable means of public participation in the criminal legal system.<sup>11</sup>]

- ✓ ✗ I have provided an introduction to summarise the extent to which I agree or disagree with the statement, and why.<sup>1</sup>

- ✓ ✗ I have provided one strength of judges deciding the verdict in criminal cases.<sup>2</sup>
- ✓ ✗ I have provided further information about the first strength of judges deciding the verdict in criminal cases.<sup>3</sup>
- ✓ ✗ I have provided one limitation of juries deciding the verdict in criminal cases, and linked it to the first strength of judges deciding the verdict.<sup>4</sup>
- ✓ ✗ I have provided a second strength of judges deciding the verdict in criminal cases.<sup>5</sup>
- ✓ ✗ I have provided a second limitation of juries deciding the verdict in criminal cases, and linked it to the second strength of judges deciding the verdict.<sup>6</sup>
- ✓ ✗ I have provided a topic sentence to introduce the main idea of my paragraph.<sup>7</sup>
- ✓ ✗ I have provided one limitation of judges deciding the verdict in criminal cases.<sup>8</sup>
- ✓ ✗ I have provided a second limitation of judges deciding the verdict in criminal cases.<sup>9</sup>
- ✓ ✗ I have provided one strength of juries deciding the verdict in criminal cases, and linked it to the second limitation of judges deciding the verdict.<sup>10</sup>
- ✓ ✗ I have provided a statement summarising the discussion and restating the extent to which I agree.<sup>11</sup>
- ✓ ✗ I have used paragraphs to organise my response.
- ✓ ✗ I have used signposting in my response, such as 'Firstly' and 'Another limitation'.
- ✓ ✗ I have used connecting words, such as 'Moreover' and 'However'.

### Linking to previous learning

16. [The *Jury Directions Act 2015* (Vic) is designed to ensure that juries understand the concept of the standard of proof, which is 'proof beyond reasonable doubt.' This standard requires the prosecution to prove its case to a high level of certainty, which is intended to protect the rights of the accused and prevent wrongful convictions.<sup>1</sup>]
- [Section 63 of the Act provides that the trial judge must explain the meaning of the phrase 'proof beyond reasonable doubt' to the jury. Section 64 then sets out several ways in which the judge may explain this concept, ensuring the jury clearly understands the standard of proof.<sup>2</sup>] [The judge may explain that reasonable doubt is not an imaginary or fanciful doubt or an unrealistic possibility, but rather a doubt that a reasonable person might have, based on the evidence presented in court.<sup>3</sup>]
- ✓ ✗ I have identified one way the *Jury Directions Act 2015* (Vic) ensures the jury understands the concept of the standard of proof.<sup>1</sup>
  - ✓ ✗ I have provided information about my chosen reason.<sup>2</sup>
  - ✓ ✗ I have provided an example from the Act and linked it to the theory.<sup>3</sup>
  - ✓ ✗ I have linked my answer to the stimulus material where appropriate.

## 2F The parties in a criminal trial

### Check your understanding

- A. True. **Explanation:** The prosecution is the party that brings the criminal case to court, while the accused is the party who is charged with a criminal offence.
- B. **Explanation:** Whilst the accused is not required to do so, they are able to call witnesses to present evidence at trial.
- B; C. **Explanation:** It is the role of the accused to determine whether they wish to plead guilty or not guilty and determine which, if any, lawful defences they wish to raise.
- Where a witness is questioned by the party who called them to give evidence, this is referred to as **examination-in-chief**.
- A; B; C. **Explanation:** The prosecution is not allowed to speak to members of the jury outside of presenting evidence to them in the courtroom.
- Strengths: I; III  
Limitations: II; IV
- A. True. **Explanation:** The role of the prosecution is to convince the jury the accused is guilty beyond reasonable doubt. Alternatively, the accused must only try to place doubt in the jurors' minds, rather than prove their innocence beyond reasonable doubt.

### Preparing for exams

#### Standard exam-style

- [One role of the prosecution is to present evidence at trial to convince the jury that the accused is guilty beyond reasonable doubt.<sup>1</sup>] [One role of the accused is to enter into a plea of 'guilty' or 'not guilty' to the charges against them.<sup>2</sup>]  
☒ ☐ I have provided one role of the prosecution in a criminal trial.<sup>1</sup>  
☒ ☐ I have provided one role of the accused in a criminal trial.<sup>2</sup>  
☒ ☐ I have used signposting in my response, such as 'One role'.
- [One role of Aki in his criminal trial is to present evidence and decide which witnesses to call, such as the witness Aki believes will support his case.<sup>1</sup>] [Whilst Aki, as the accused, is not required to present evidence as he does not have the burden of proof, he may choose to do so, such as by calling on a witness.<sup>2</sup>] [This will assist in disproving the prosecution's case by providing evidence or questioning witnesses that contradict the prosecution's argument.<sup>3</sup>]  
☒ ☐ I have provided one role of Aki in his criminal trial.<sup>1</sup>  
☒ ☐ I have provided an example relevant to the scenario and linked it to the role of the accused.<sup>2</sup>  
☒ ☐ I have provided further information about my chosen role of the accused.<sup>3</sup>  
☒ ☐ I have used signposting in my response, such as 'One role'.

- [One role of the prosecution is to present evidence at trial to convince the jury the accused is guilty beyond reasonable doubt.<sup>1</sup>] [This role achieves the principle of fairness as it means the accused is not required to prove their innocence beyond reasonable doubt, as they are not the party bringing the charge.<sup>2</sup>] [Furthermore, one role of the accused is to decide whether to have legal representation to assist the presentation of their case in the best possible light.<sup>3</sup>] [This achieves the principle of fairness as the law is highly complex and therefore, the decision to use legal representation can ensure a just outcome to the case.<sup>4</sup>]  
☒ ☐ I have provided one role of the prosecution in a criminal trial.<sup>1</sup>  
☒ ☐ I have provided one way my chosen role achieves the principle of fairness.<sup>2</sup>  
☒ ☐ I have provided one role of the accused in a criminal trial.<sup>3</sup>  
☒ ☐ I have provided one way my chosen role achieves the principle of fairness.<sup>4</sup>  
☒ ☐ I have used signposting in my response, such as 'One role'.  
☒ ☐ I have used connecting words, such as 'Furthermore'.

### Extended response

- A; C; D
- [The prosecution and accused have a broad range of roles in presenting and proving a criminal trial.<sup>1</sup>]  
 [One role of the prosecution is to determine which witnesses to call for evidence during Callum's trial. This may include calling witnesses to prove that Callum caused the collision with Lorenzo.<sup>2</sup>] [However, the prosecution must call all relevant witnesses to assist in the emergence of the full truth, and not just witnesses that will help secure a guilty verdict at all costs.<sup>3</sup>] [Therefore, if there is a witness that claims Callum did not cause the collision with Lorenzo, the prosecution must call this witness even though their evidence may lead a jury to have doubts about the guilt of the accused.<sup>4</sup>]  
 [Furthermore, one role of Callum as the accused is to present evidence and call upon any witnesses that help create reasonable doubt as to his guilt in the jurors' minds. As Callum believes he has a witness to support his innocence in the collision with Lorenzo, he may choose to question this witness to disprove the prosecution case.<sup>5</sup>] [However, as Callum is representing himself, as he cannot afford legal representation, he may not question the witness properly, which may end up damaging his case.<sup>6</sup>] [This is because Calum is unsure about legal processes and procedures, particularly in relation to the best way to question his witness.<sup>7</sup>]  
☒ ☐ I have provided an introduction to my response.<sup>1</sup>  
☒ ☐ I have provided one role of the prosecution in a criminal case.<sup>2</sup>  
☒ ☐ I have provided one limitation of my chosen role of the prosecution in a criminal case.<sup>3</sup>  
☒ ☐ I have provided an example relevant to the scenario and linked it to the role of the prosecution in a criminal case.<sup>4</sup>  
☒ ☐ I have provided one role of the accused in a criminal case.<sup>5</sup>



- 
- ✓ ✗ I have provided one limitation of my chosen role of the accused in a criminal case.<sup>6</sup>
- 
- ✓ ✗ I have provided an example relevant to the scenario and linked it to the role of the accused in a criminal case.<sup>7</sup>
- 
- ✓ ✗ I have used paragraphs and topic sentences to organise my response.
- 
- ✓ ✗ I have used signposting in my response, such as 'One role'.
- 
- ✓ ✗ I have used connecting words, such as 'Therefore' and 'Furthermore'.
- 

### Linking to previous learning

13. Strengths: II; IV

Limitations: I; III

14. [The role of the parties and the judge in a criminal trial upholds the principle of equality to a large extent, subject to some limitations.<sup>1</sup>]

[Firstly, both the prosecution and accused have an equal opportunity to present their case, as both parties can present evidence and call upon witnesses.<sup>2</sup>][However, a self-represented accused may be at a disadvantage to the prosecution as a result of not understanding court processes and being unable to present all relevant evidence to prove their case, therefore limiting equality.<sup>3</sup>]

[Alternatively, judges have a role in ensuring rules of evidence and procedure apply equally to both parties during a criminal trial, achieving the principle of equality as neither party is disadvantaged.<sup>4</sup>]

[However, while judges are impartial judicial officers, they are still subject to personal bias and therefore, may unconsciously discriminate against certain parties, hindering equality.<sup>5</sup>]

- 
- ✓ ✗ I have provided an introduction to summarise the extent to which the role of the parties and the judge in a criminal trial upholds the principle of equality.<sup>1</sup>
- 
- ✓ ✗ I have provided one strength of the role of the parties in upholding the principle of equality.<sup>2</sup>
- 
- ✓ ✗ I have provided one limitation of the role of the parties in upholding the principle of equality.<sup>3</sup>
- 
- ✓ ✗ I have provided one strength of the role of the judge in upholding the principle of equality.<sup>4</sup>
- 
- ✓ ✗ I have provided one limitation of the role of the judge in upholding the principle of equality.<sup>5</sup>
- 
- ✓ ✗ I have used paragraphs to organise my response.
- 
- ✓ ✗ I have used connecting words, such as 'Firstly' and 'However'.
-



## 2G Legal practitioners in a criminal case

### Check your understanding

1. C. **Explanation:** The judge decides on the admissibility of the evidence presented in court.
2. B. False. **Explanation:** One accused person can be represented by both a solicitor and a barrister. Solicitors and barristers work together for their client, whether they are the prosecution or the accused.
3. A; C. **Explanation:** Part of the role of a solicitor is to prepare documents and research important laws and past cases. Traditionally, the barrister will give the opening and closing addresses and cross-examine witnesses.
4. A barrister is a legal practitioner that is responsible for representing a party **in the courtroom**.
5. Solicitors: II; III  
Barristers: I; IV
6. Legal practitioners for the accused ensure **equal** legal representation for both the prosecution, which will likely have a team of expert legal practitioners, and the accused.
7. B. False. **Explanation:** In a criminal case, there is a significant need for legal practitioners in order for accused people to receive a fair trial. Parties who represent themselves are often disadvantaged due to their lack of legal knowledge.

### Preparing for exams

#### Standard exam-style

8. [One reason legal practitioners may be needed is to make relevant submissions to the court on behalf of their client. These may be in relation to sentencing or evidence.<sup>1</sup>] [Another reason why legal practitioners are needed in a criminal case is to present their clients' case in the best possible light, by making arguments based on points of law and legal research.<sup>2</sup>]  
☒ ☐ I have provided one reason why legal practitioners are needed in a criminal case.<sup>1</sup>  
☒ ☐ I have provided a second reason why legal practitioners are needed in a criminal case.<sup>2</sup>  
☒ ☐ I have used signposting in my response, such as 'One reason' and 'Another role'.
9. [One reason an accused person may seek assistance from a legal practitioner is due to a lack of expertise. Usually, the everyday person does not have the legal knowledge to defend their case in court.<sup>1</sup>] [Solicitors and barristers will gather evidence, research laws, craft arguments, and question witnesses on behalf of their client, removing any pressures associated with presenting one's own arguments of defence in court.<sup>2</sup>]  
☒ ☐ I have provided one reason why an accused person may seek legal representation in a criminal trial.<sup>1</sup>  
☒ ☐ I have provided further information about my chosen reason.<sup>2</sup>

☒ ☐ I have used signposting in my response, such as 'One reason'.

10. [One role of legal practitioners in Cindy's case, if it were to go to trial, would be to conduct legal research.<sup>1</sup>] [In order to form the best argument in court, solicitors research the law and previous court decisions in order to inform their arguments.<sup>2</sup>] [This research is then presented in court by a barrister, who will make arguments that are validated by past court decisions or statute laws in relation to arson cases.<sup>3</sup>]

☒ ☐ I have provided one role of legal practitioners in Cindy's case.<sup>1</sup>

☒ ☐ I have provided further information about my chosen role.<sup>2</sup>

☒ ☐ I have provided examples from the scenario and linked them to the theory.<sup>3</sup>

☒ ☐ I have used signposting in my response, such as 'One role'.

### Extended response

11. Achieved: I; III  
Not achieved: II; IV.
12. [Fairness is often achieved to a minimal extent when the accused does not have legal representation, as legal practitioners help an accused to present their case in the best possible light.<sup>1</sup>]  
 [The use of legal practitioners can increase an accused person's chance of success, as their case is presented in its best light by an expert.<sup>2</sup>] [Legal practitioners are better able to test the accuracy of the prosecution's evidence, promoting fairness.<sup>3</sup>]  
 [Another way legal practitioners achieve fairness is because they have a duty to present all relevant evidence and legal principles to the court, not solely those that portray the accused in a poor light. Therefore, in the case that the prosecution is the only party with legal representation, the whole truth may still emerge, promoting fairness.<sup>4</sup>]  
 [Though, if the accused does not have legal representation they may not receive a fair trial. This is because a self-represented person may not be able to present defences or points of law to the extent a legal practitioner could, hindering their ability to maintain their innocence and prove they are not guilty, if necessary.<sup>5</sup>]  
 [However, where both parties do have legal representation this can still be unfair. If representation for the accused is unequal, such as if they have hired inexperienced legal practitioners, this may lead to an unfair outcome, as the accused cannot prepare and present a case of equal quality to that of the prosecution, which will be presented by the expert legal practitioners of the OPP.<sup>6</sup>]  
 [If an accused person does not have legal representation, they are less likely to receive a fair trial. Legal practitioners aim to ensure their client's case is presented in the best possible light with legal expertise to validate their arguments.<sup>7</sup>]

☒ ☐ I have provided an introduction to summarise the extent to which I agree or disagree with the statement, and why.<sup>1</sup>

☒ ☐ I have outlined one way in which legal representation contributes to the achievement of fairness.<sup>2</sup>

☒ ☐ I have outlined a second way in which legal representation contributes to the achievement of fairness.<sup>3</sup>

- 
- ✓ ✗ I have outlined a third way in which legal representation contributes to the achievement of fairness.<sup>4</sup>
- 
- ✓ ✗ I have outlined one limitation of legal representation contributing to the achievement of fairness.<sup>6</sup>
- 
- ✓ ✗ I have provided a conclusion to my response that links back to the question.<sup>7</sup>
- 
- ✓ ✗ I have used paragraphs to organise my response.
- 
- ✓ ✗ I have used signposting in my response, such as 'Another way'.
- 
- ✓ ✗ I have used connecting words, such as 'Though' and 'However'.
- 

### Linking to previous learning

13. [The role of the legal practitioners is to represent their client to the best of their ability which, in criminal proceedings, involves the prosecuting barrister representing the interests of the State and the defence team representing the interests of the accused.<sup>1</sup>] [On the other hand, the judge is not affiliated with either party and instead acts as an impartial umpire who ensures that all key personnel, as well as any other individuals present in the court, conform to courtroom rules and procedures.<sup>2</sup>] [Another difference between the role of a legal practitioner and a judge in criminal proceedings is that legal practitioners are responsible for questioning witnesses during a trial to draw out evidence, unlike a judge who is not involved in this process, apart from ensuring witnesses comply with the rules of evidence and procedure and clarifying witnesses' answers if they are unclear.<sup>3</sup>]
- 
- ✓ ✗ I have described the role of legal practitioners in a criminal case.<sup>1</sup>
- 
- ✓ ✗ I have described the role of the judge in a criminal case.<sup>2</sup>
- 
- ✓ ✗ I have provided a key difference between the role of legal practitioners and the role of the judge in a criminal case.<sup>3</sup>
- 
- ✓ ✗ I have used signposting in my response, such as 'One difference'.
- 
- ✓ ✗ I have used comparison words, such as 'On the other hand' and 'unlike', when distinguishing.
-

## 2H The impact of costs and time – criminal case

### Check your understanding

- B. False. **Explanation:** Criminal cases can be impacted by costs and delays, just as civil cases are.
- C. **Explanation:** Barrister fees, solicitor fees, and court filing fees are all likely to be incurred by an accused when trying to assert their innocence in a criminal case. However, an accused does not have to pay any arrest warrant fee.
- An offender may incur costs when ordered to pay the **victim** a sum of money due to the injury caused or the loss they incurred from the property being damaged, stolen, or lost.
- A. **Explanation:** An accused person who is found guilty in a lower court may not want to appeal this decision in a higher court, even if they believe they are innocent, on the basis that appealing the decision will cause them to incur significant costs, therefore limiting access to justice.
- Knowing about delays in the justice system may prevent victims from reporting a suspected crime to police as they may feel it's pointless to do so, limiting **access**. Delays may also cause some witnesses to produce unreliable or false evidence as their memory fades over time and they can no longer recall the exact events. This limits **fairness** as witnesses may be unable to provide impartial and truthful information.
- A; B; D. **Explanation:** A victim of crime may be adversely impacted by delays in the criminal justice system, as such delays could result in witnesses forgetting key details of the events, stress accumulating in the victim, and a victim remaining fearful if the accused is not on remand.
- A; C; D. **Explanation:** Alternative methods of dispute resolution are used in civil disputes where defendants and plaintiffs can discuss their issues. This would not occur in criminal cases and is thus, not a source of delay.
- B. False. **Explanation:** Although the impacts of time and costs are significant, the principles of justice are still achieved through some mechanisms of the criminal justice system, such as Victoria Legal Aid and the court hierarchy.

### Preparing for exams

#### Standard exam-style

- [One impact that costs have on a criminal trial is that they may cause an accused person to avoid appealing a decision made in a lower court, due to the costs associated with filing fees and legal representation for an appeal.<sup>1</sup>] [As a result, accused people of a lower socioeconomic status may accept a guilty verdict delivered by the court, even if they are innocent, as the expense of fighting to prove their innocence is high.<sup>2</sup>]  
☒ ☐ I have identified one impact of costs during a criminal trial.<sup>1</sup>  
☒ ☐ I have provided information about my chosen impact.<sup>2</sup>  
☒ ☐ I have used signposting in my response, such as 'One impact'.  
☒ ☐ I have used connecting words, such as 'As a result'.

- [Delays in the criminal justice system, particularly in the Magistrates' Court, may cause a victim to avoid seeking justice and reporting a crime.<sup>1</sup>] [Therefore, the principle of access is limited as victims may not attempt to access justice due to being, aware that it can take months or even years for the accused to be held accountable by the courts.<sup>2</sup>]  
☒ ☐ I have provided one impact of time in a criminal trial.<sup>1</sup>  
☒ ☐ I have provided information on how my chosen impact limits the achievement of the principle of access.<sup>2</sup>  
☒ ☐ I have used connecting words, such as 'Therefore'.

- [One impact that time may have on the principle of fairness is that, if delays occur, Pevin's trial may not be fair as key eyewitnesses, the two elderly people, may forget the events they saw transpire.<sup>1</sup>] [The trial of Pevin's attacker is set to occur in 18 months, meaning it is likely that the witnesses may forget certain events by the time they are called to the witness stand, or they may have passed away.<sup>2</sup>] [This limits the principle of fairness as it could result in false or unreliable statements being taken as evidence, impacting the fairness of the decided verdict. For example, the judge may be unable to determine whether Pevin was attacked beyond reasonable doubt if witnesses cannot remember the exact facts of what they saw, causing the attacker to be declared not guilty despite their crimes.<sup>3</sup>]  
☒ ☐ I have identified one impact of time on the achievement of fairness.<sup>1</sup>  
☒ ☐ I have provided examples from the scenario and linked them to time and the achievement of fairness.<sup>2</sup>  
☒ ☐ I have provided further information about my chosen impact on time and the achievement of fairness.<sup>3</sup>  
☒ ☐ I have used signposting in my response, such as 'One impact'.

### Extended response

- A; B; D
- [Currently, the number of cybercrime cases that need to be resolved in the Magistrates' Court is placing a great burden on this court, indicated by the 12-month delay it is now facing due to a backlog of cases. This is limiting access. However, the presence of the Cyber Court could counteract this issue.<sup>1</sup>]  
 [Firstly, the principle of access is currently impeded by the frequency of cybercrime hearings in Victoria. The 12 months of delays that exist due to cybercrimes have negative impacts on accused persons, such as causing stress for the accused when awaiting trial. Accused persons are forced to retain legal representation for an extended period of time as a result of these delays, limiting access to justice due to the cost, which may be inaccessible for accused persons of a lower socioeconomic status.<sup>2</sup>]  
 [Secondly, a victim's access to justice may also be limited by the current system. This is because they may see the lengthy delays regarding cybercrime and therefore, decide against reporting the crimes they have suffered. Therefore, this limits their access to obtaining justice for the damages the cybercrime inflicted.<sup>3</sup>]

[Thirdly, it is said that cybercrime cases typically require oral evidence from witnesses, however, delays may cause witnesses' evidence to distort overtime, limiting both the accused person and the victim's access to a fair trial.<sup>4</sup>]

[Finally, the introduction of the Cyber Court would reduce some of the delays experienced by the Magistrates' Court as the burden of cybercrimes would be removed from the court. Therefore, access to justice would be improved for victims of other summary offences and accused persons.<sup>5</sup>]

✓ ✗ I have provided an introduction to my response.<sup>1</sup>

✓ ✗ I have provided one impact of cybercrimes on the achievement of access.<sup>2</sup>

✓ ✗ I have provided a second impact of cybercrimes on the achievement of access.<sup>3</sup>

✓ ✗ I have provided a third impact of cybercrimes on the achievement of access.<sup>4</sup>

✓ ✗ I have provided a fourth impact of cybercrimes on the achievement of access.<sup>5</sup>

✓ ✗ I have used signposting in my response, such as 'Firstly' and 'Secondly'.

✓ ✗ I have used connecting words, such as 'Therefore'.

14. Strengths: I; III  
Limitations: II; IV; V

15. [One factor that could affect the ability of the criminal justice system to achieve fairness is the costs involved in a criminal case.<sup>1</sup>]  
[One way the principle of fairness is limited in criminal cases as a result of costs is that if an accused person is of lower socioeconomic status, they may not be able to afford representation, leading to an unfair trial.<sup>2</sup>][There are significant expenses which accompany a criminal case for an accused person, including solicitor and barrister fees for these individuals to prepare the case, review the evidence, and represent the accused in the courtrooms, as well as witness fees.<sup>3</sup>][Furthermore, another way the principle of fairness is limited is that, even if an accused does pay for legal representation, the quality of legal representation will likely depend on how much the accused is willing, or able, to pay. Therefore, if the accused can only afford a relatively cheap and inexperienced lawyer, the facts of the case may not be presented in the best light for the accused, which is unfair on the poorly represented party.<sup>4</sup>][Additionally, the principle of fairness is undermined by the cost of a criminal case, as an accused person may plead guilty to a criminal offence just because they are unable to afford the costs associated with defending a criminal case in the courts.<sup>5</sup>]  
[Despite the ways in which the costs of a criminal case can limit the principle of fairness, there are mechanisms in place to ensure a fair trial can still be received by an accused. Firstly, VLA can provide duty lawyers or grant accused persons of low socioeconomic status, promoting fairness by ensuring these individuals still have representation in a criminal case.<sup>6</sup>][Secondly, juries are independent decision-makers who may be used in serious criminal cases. For Commonwealth indictable offences, all accused persons have the right to trial by jury, and the cost of this is borne by the Commonwealth, therefore an accused person can have a trial by jury regardless of their financial situation, promoting fairness.<sup>7</sup>]

✓ ✗ I have provided an introduction to my response.<sup>1</sup>

✓ ✗ I have provided one way costs could limit the ability of the criminal justice system to achieve fairness.<sup>2</sup>

✓ ✗ I have provided further information about my chosen way costs could limit the ability of the criminal justice system to achieve fairness.<sup>3</sup>

✓ ✗ I have provided a second way costs could limit the ability of the criminal justice system to achieve fairness.<sup>4</sup>

✓ ✗ I have provided a third way costs could limit the ability of the criminal justice system to achieve fairness.<sup>5</sup>

✓ ✗ I have provided one way costs could strengthen the ability of the criminal justice system to achieve fairness.<sup>6</sup>

✓ ✗ I have provided a second way costs could strengthen the ability of the criminal justice system to achieve fairness.<sup>7</sup>

✓ ✗ I have used signposting in my response, such as 'One way' and 'another way'.

✓ ✗ I have used connecting words, such as 'Furthermore' and 'Additionally'.

### Linking to previous learning

16. [Plea negotiations, which are discussions between the prosecution and the accused, in which the accused agrees to plead guilty to a lesser charge, or fewer charges altogether, may be able to reduce the negative impact of time on a criminal case.<sup>1</sup>][By having an accused plead guilty to a charge, the trial aspect of a criminal case does not have to occur, meaning that the time-consuming elements of a trial, such as jury empanelment, judges directions, and hung jury deliberations, can be avoided.<sup>2</sup>]

✓ ✗ I have provided one way plea negotiation impacts time during a criminal case.<sup>1</sup>

✓ ✗ I have provided information about my chosen way.<sup>2</sup>

17. [One role of Victoria Legal Aid (VLA) in relation to costs in a criminal case is that they may be able to provide an accused person with a duty lawyer or a grant if they meet certain requirements, allowing the accused to gain legal representation without incurring significant costs.<sup>1</sup>][Attaining legal representation and having the representation complete all the relevant work for a trial, such as getting a solicitor to prepare for the trial, reviewing the prosecution's evidence, and plan which witnesses will be called if the matter goes to trial, will be a significant expense for the accused.<sup>2</sup>][Therefore, if an accused can satisfy the relevant means test and income test conducted by the VLA, they may qualify for a grant for legal assistance which will mean some or all of their legal expenses will be covered.<sup>3</sup>]

✓ ✗ I have provided one role of Victorian Legal Aid in relation to costs in a criminal case.<sup>1</sup>

✓ ✗ I have provided information about my chosen role.<sup>2</sup>

✓ ✗ I have provided further information about my chosen role.<sup>3</sup>

## 21 The impact of cultural differences – criminal cases

### Check your understanding

- B. False. **Explanation:** Cultural differences can have an impact on the ability of the criminal justice system to achieve the principles of justice.
- A; B; C. **Explanation:** First Nations individuals may experience differences in the criminal justice system due to racial prejudices, overrepresentation in the criminal justice system, and cultural differences. The sentencing in the Koori Court is no less or more severe.
- A. **Explanation:** If a person is unaware of their rights or the systems in place to protect their rights, access can be limited as a migrant or refugee may be unable to understand their rights and pursue justice.
- Fairness: III; IV  
Equality: I; II
- A; B; D. **Explanation:** The accused does not have to pay for interpreter services. Rather, the court is responsible for organising and paying for this.
- A. True. **Explanation:** All three of the principles of justice are limited to some extent for individuals interacting with the criminal justice system who are culturally or linguistically diverse.

### Preparing for exams

#### Standard exam-style

- [One way cultural differences can limit the principle of equality in a criminal case is that individuals from a non-English speaking background may be less able to present evidence as either a victim or an accused person.<sup>1</sup>] [As a result, this undermines the opportunity for all individuals to be seen equally before the eyes of the law and, consequently, individuals may be more likely to be convicted of a crime or unable to seek justice if they cannot present their case to the same extent as the other party.<sup>2</sup>]  
☒ ☐ I have provided one way cultural differences can limit the principle of equality from being achieved in a criminal case.<sup>1</sup>  
☒ ☐ I have provided information about my chosen limitation.<sup>2</sup>  
☒ ☐ I have used signposting in my response, such as 'One way'.  
☒ ☐ I have used connecting words, such as 'As a result'.
- [One way in which cultural differences impact the principle of access in a criminal case is through migrants or refugees who are unfamiliar with the legal system, their rights, and the services available to them as either victims or an accused.<sup>1</sup>] [Victoria Legal Aid, for example, may help an accused person of a low socioeconomic status defend themselves in a criminal case. However, if individuals from culturally diverse backgrounds are unaware these services exist they may not utilise them.<sup>2</sup>] [This limits access to justice as cultural differences may, therefore, cause an accused to be unable to access a just outcome.<sup>3</sup>]  
☒ ☐ I have provided one way in which cultural differences impact the principle of access in a criminal case.<sup>1</sup>

- 
- ☒ ☐ I have provided information about my chosen impact on the principle of access.<sup>2</sup>
- 
- ☒ ☐ I have provided further information about my chosen impact on the principle of access.<sup>3</sup>
- 
- ☒ ☐ I have used signposting in my response, such as 'One way'.
- 
9. [Firstly, the interpreter services of the Victorian courts can enhance the ability of the criminal justice system to achieve fairness by ensuring non-English speaking accused persons do not misunderstand the meaning of the questions being asked to them by police or courts.<sup>1</sup>] [Considering Ahmed has limited English-speaking skills, as he mainly speaks Arabic, he may misunderstand the questions being asked by police if asked without an interpreter.<sup>2</sup>] [This may lead to an unfair outcome, as he could then answer the questions incorrectly or unintentionally provide false testimonies.<sup>3</sup>] [Furthermore, an interpreter may be useful to interpret Ahmed's answers to certain questions so that there is a low possibility that Ahmed will accidentally self-incriminate and enter a guilty plea without understanding the nature of the situation.<sup>4</sup>]  
☒ ☐ I have provided one way the interpreter services of the Victorian courts could enhance the ability of the criminal justice system to achieve fairness.<sup>1</sup>
- 
- ☒ ☐ I have provided examples from the scenario and linked them to interpreting services and the achievement of fairness.<sup>2</sup>
- 
- ☒ ☐ I have provided information about my chosen way the interpreter services of the Victorian courts could enhance the ability of the criminal justice system to achieve fairness.<sup>3</sup>
- 
- ☒ ☐ I have provided a second way the interpreter services of the Victorian courts could enhance the ability of the criminal justice system to achieve fairness.<sup>4</sup>
- 
- ☒ ☐ I have used connecting words, such as 'Firstly' and 'Furthermore'.

### Extended response

- Strengths: II; IV  
Limitations: I; III
- [Cultural differences are one factor that may impact the ability of the criminal justice system to achieve the principle of equality, and can disproportionately affect culturally diverse populations when engaging with the criminal justice system.<sup>1</sup>]  
 [Firstly, individuals from migrant or refugee backgrounds may be unable to speak English proficiently, therefore limiting their ability to answer questions at the stand as either an accused person or a victim.<sup>2</sup>] [This can limit equality as it undermines all people being seen equally in the criminal justice system, since those who cannot present their evidence strongly, due to language barriers, may be more likely to be wrongly convicted.<sup>3</sup>] [Secondly, equality is further limited due to the high incarceration rates among First Nations peoples, which point towards the existence of inherent prejudices within the Australian criminal justice system.<sup>4</sup>] [Therefore, structural and systemic racism alongside biases among members of the justice system may lead to Aboriginal and/or Torres Strait Islander people being issued harsher penalties or being found guilty falsely on the basis of their race.<sup>5</sup>]



[However, certain mechanisms in Australia aim to uphold equality and counterbalance the impact of cultural difference.<sup>6</sup>] [For example, Victoria Legal Aid (VLA) can provide legal representation to accused persons when they meet certain eligibility criteria, including First Nations and migrant accused persons, and promotes its resources online in multiple languages, thus ensuring this factor's impact on equality is not as significant.<sup>7</sup>] [Furthermore, interpreters are available to all accused persons in the courts, and the courts are required to pay for such services instead of an accused, thus promoting equality.<sup>8</sup>]

[Overall, although cultural differences may limit equality, mechanisms are in place to continue to uplift individuals in the criminal justice system.<sup>9</sup>]

- ✓ ✗ I have provided an introduction to my response.<sup>1</sup>
- ✓ ✗ I have provided one way equality is limited in the Victorian criminal justice system due to cultural differences.<sup>2</sup>
- ✓ ✗ I have provided information about my chosen way.<sup>3</sup>
- ✓ ✗ I have provided a second way equality is limited in the Victorian criminal justice system due to cultural differences.<sup>4</sup>
- ✓ ✗ I have provided information about my chosen way.<sup>5</sup>
- ✓ ✗ I have provided a topic sentence to introduce the main idea of my paragraph.<sup>6</sup>
- ✓ ✗ I have provided one way equality is upheld in the Victorian criminal justice system due to cultural differences.<sup>7</sup>
- ✓ ✗ I have provided a second way equality is upheld in the Victorian criminal justice system due to cultural differences.<sup>8</sup>
- ✓ ✗ I have provided a conclusion to my response that links back to the question.<sup>9</sup>
- ✓ ✗ I have used paragraphs to organise my response.
- ✓ ✗ I have used signposting in my response, such as 'Firstly' and 'Secondly'.
- ✓ ✗ I have used connecting words, such as 'Therefore' and 'However'.

12. Strengths: I; II; III  
Limitations: IV

13. [Firstly, the use of the Koori Courts can increase equality in the Victorian criminal justice system as it allows culturally-relevant sentencing practices to be used when determining the appropriate sentence for an offender, therefore uplifting First Nations peoples to achieve equality before the law.<sup>1</sup>] [Furthermore, the Koori Court has proven to be an effective mechanism in reducing rates of recidivism. Therefore, equality can be improved as the over-incarceration of First Nations peoples may decline.<sup>2</sup>] [A third way the Koori Court can improve equality is that it involves Community Elders or Respected Persons having open discussions with offenders. Therefore, language barriers are reduced as these discussions can occur using Aboriginal English, promoting equality as the motives and remorse of the offender will likely be better understood and reflect more adequate sentencing.<sup>3</sup>]

[However, Community Elders and Respected Persons, which are required for the Court to function, may be unaware of the Court and their ability to participate. This limits the Court's effectiveness as the participation of these individuals is essential and the court would not have continued success if the number of Elders and Respected Persons available is insufficient.<sup>4</sup>]

[Ultimately, the Koori Court is an effective mechanism in promoting equality in the Victorian criminal justice system, despite certain limitations.<sup>5</sup>]

- ✓ ✗ I have provided one way the Koori Court can enhance the ability of the Victorian criminal justice system to achieve the principle of equality.<sup>1</sup>
- ✓ ✗ I have provided a second way the Koori Court can enhance the ability of the Victorian criminal justice system to achieve the principle of equality.<sup>2</sup>
- ✓ ✗ I have provided a third way the Koori Court can enhance the ability of the Victorian criminal justice system to achieve the principle of equality.<sup>3</sup>
- ✓ ✗ I have provided one way the Koori Court can limit the ability of the Victorian criminal justice system to achieve the principle of equality.<sup>4</sup>
- ✓ ✗ I have provided a conclusion to my response that links back to the question.<sup>5</sup>
- ✓ ✗ I have used paragraphs in my response.
- ✓ ✗ I have used signposting in my response, such as 'Firstly' and 'A third way'.
- ✓ ✗ I have used connecting words, such as 'Furthermore' and 'Therefore'.

### Linking to previous learning

14. [Considering Arjun's financial struggles, the costs associated with defending himself in this criminal case may impact Arjun significantly, limiting his access to justice.<sup>1</sup>] [This is because the expense of legal fees, including paying a barrister and/or solicitor, is high. Therefore, due to these costs, Arjun may choose to self-represent, which could limit his ability to defend himself successfully and ensure he is not falsely found guilty if he did not commit a crime, given his minimal English.<sup>2</sup>] [Secondly, as a migrant, cultural differences may also have an impact on Arjun when trying to defend himself.<sup>3</sup>] [His limited ability to speak English could cause him to be unable to understand Australian court procedures or be able to articulate his evidence at trial.<sup>4</sup>]

- ✓ ✗ I have identified one impact costs may have on Arjun's criminal case.<sup>1</sup>
- ✓ ✗ I have provided information about costs in a criminal case.<sup>2</sup>
- ✓ ✗ I have identified one impact cultural differences may have on Arjun's criminal case.<sup>3</sup>
- ✓ ✗ I have provided information about cultural differences in a criminal case.<sup>4</sup>
- ✓ ✗ I have linked my answer to the scenario where appropriate.