

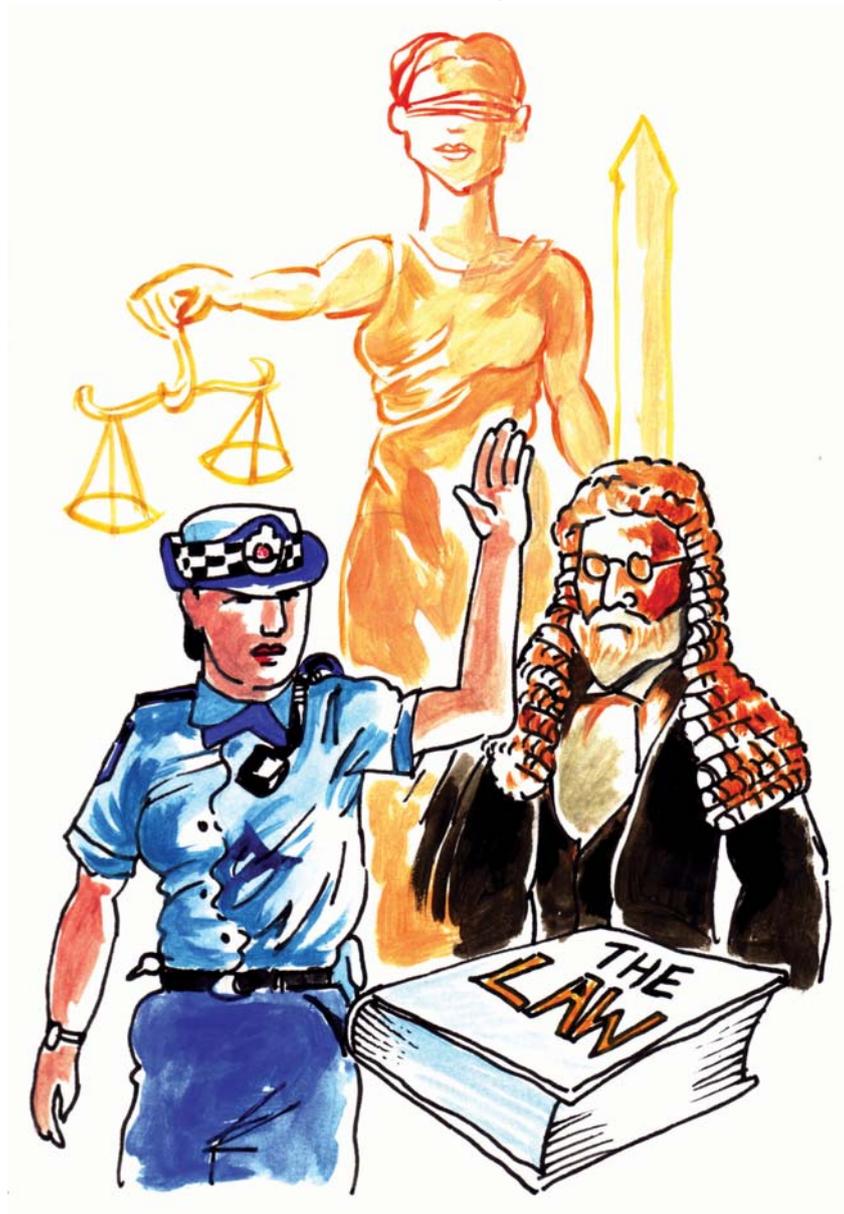
# Law in action

## Focus statement

In this chapter we examine the rights and responsibilities of individuals in a range of situations in which they may come in contact with the law. Special attention is given to the legal rights of young people and the way in which the law seeks to protect young people.

### In this chapter you will learn about:

- the nature of legal capacity
- contact with the criminal law
- the elements that must be proven for a person to be convicted of a crime
- punishment for crime
- contact with the civil law, in particular contracts and negligence
- legal rights and responsibilities
- protection provided by the law
- resolving disputes
- current issues relating to the law.



# 12.1 Contact with the law

## Getting technical

**actus reus** This means 'guilty act'. It is the legal principle that in criminal matters the prosecution must prove that the accused committed the crime voluntarily.

**age of majority** Eighteen years of age. This is the age when a person is considered an adult.

**assault** Intentionally causing harm to someone or threatening to cause harm to someone.

**burden of proof** The legal principle that the prosecution must prove that the accused is guilty of the crime.

**contract** An agreement between two or more parties that is legally enforceable.

**discretionary power** The power to exercise personal professional judgment in making a decision. The police have such a power when they issue a warning instead of charging a person with an offence.

**guarantor** A person who promises to pay back a debt for another person if that person defaults on a loan.

**judge** A highly trained legal professional who presides over District, Supreme and High Courts. The judge's role is to advise the jury and pass the sentence.

**jury** A group of people chosen randomly from the community to determine the guilt or non-guilt of the accused in serious criminal law matters.

**legal capacity** The legal rights and responsibilities associated with a person's age.

**liability** A legal duty to do something or to refrain from doing something.

**mens rea** This means 'guilty mind'. It is the legal principle that in criminal matters the prosecution must prove that the accused committed the crime with intention, recklessness or negligence.

**negligence** A lack of 'duty of care'.

**public behaviour laws** Laws that regulate how we behave in public places.

**strict liability** A legal concept whereby the prosecution must only prove *actus reus* and not *mens rea*; that is, there is no need to prove intention, recklessness or negligence. It is used for traffic offences, fare evasion, the sale of alcohol to someone under 18 and a number of other social and economic offences.

**warning** A verbal or written notice issued by the police to a person who admits to committing a minor offence. The notice is a formal caution to the offender not to commit the offence again. The warning is usually recorded, and if the offence is committed again the offender is charged.

**witness** A person who testifies or gives evidence in a court of law.

## What is legal capacity?

As we become older, society grants us more and more legal rights. Once we reach the age of 18 we are considered old enough to have all the legal rights of an adult. While age brings rights, it also brings responsibilities, including legal responsibilities. The legal rights and responsibilities that come with the age of a person are known as the person's **legal capacity**.



**Figure 12.1a** As we reach 18 our legal rights and responsibilities become greater.

Eighteen is often seen as a critical age in Australia because it is the age at which the law recognises that a person is an adult. This is known as the **age of majority**. At this age all the legal rights associated with adulthood, such as the right to vote, are granted. These rights bring many legal responsibilities. For example, people aged 18 or older are legally responsible for all their actions, and should they commit a criminal offence, they will be tried in an adult court. If convicted, they will be sent to an adult prison. While 18 years of age is seen as the most important age, many other legal rights and responsibilities come at an earlier age.

## At what age can I...?

- *Be convicted of a criminal offence*—After the age of 10 a person can be charged with a criminal offence. However, between 10 and 14 a child has only limited legal responsibility and the prosecution must first prove that the child knew the actions were wrong.
- *Receive a criminal record*—A criminal record is a file of all criminal offences a person has committed. A person under 16 years of age will not receive a criminal record, except for very serious crimes, such as murder or sexual assault. All offences committed after a person turns 16 years of age are recorded.
- *Leave home*—In New South Wales there is no set age for leaving home. However, the law recognises the legal guardianship of parents and guardians until a child is 18. Generally, children can leave home at 16 as long as they have a safe place to live and are able to support themselves.
- *Stop going to school*—The law requires every child in New South Wales between the ages of six and 15 to attend school. The Education Minister can grant a special exemption to the law for certain reasons, such as the child having a job. This is rarely granted to children under the age of 14 years and six months.
- *Get a job*—It is illegal to employ a person full time under the age of 15.
- *Vote*—In federal, state and local elections a person must be 18 to vote.
- *Sue or be sued*—A person under the age of 18 cannot sue another person unless an adult agrees to guarantee the costs of the case should the child be unsuccessful. A person under 16 years of age can only be sued if the case is also brought against the person's parent or guardian.
- *Drive*—A learner's permit for a car can be obtained at 16 years and for a motorcycle 16 years and nine months.
- *Get married*—Eighteen is considered the marriageable age in Australia. If both partners are younger than 18 (but older than 16 years of age) a marriage can take place with the permission of the parents or guardians of both partners and a special court order.
- *Drink alcohol*—It is an offence for a person under the age of 18 to buy or consume alcohol and to drink alcohol in a public place.
- *Consent to medical treatment*—At 14 years or older, children can give their own consent for medical treatment, including abortion, without their parents' or guardians' permission.
- *Have sex*—At the age of 16 a young person can legally have sex with a person of the opposite or same sex. This age is known as the *age of consent*.

## The law and young people

In recent years there has been greater recognition by the courts and parliaments of the need to protect the rights of young people. As we discussed in Chapter 3 and earlier, young people have special rights in criminal law matters. There are also special programs to help young criminals change their behaviour.

Family law is another area of law that has become more concerned with the needs of children. The Commonwealth *Family Law Reform Act 1995* requires that Family Court **judges** take into account the best interests of children when making their decisions. For example, when parents divorce, the court considers what is best for the child when deciding with which parent the child should live. When reaching their decision, judges consider the wishes of the child and who can best care and provide for the child. In most cases, the court will order that both parents must share the responsibilities of raising the child.

The law places certain restrictions on the type of activities young people can do. For example, a person under the age of 18 is not allowed to enter areas of a club or hotel where there is gambling (including poker machines). Laws such as these are known as **public behaviour laws**. Young people may also be asked for identification to prove that they are at least 18 before being sold alcohol or allowed to enter hotels or casinos.



Figure 12.1b There are many different laws affecting young people.

## Comprehending the text

- 1 In your own words, explain what the term *legal capacity* means.
- 2 What does the term *age of majority* mean?
- 3 Copy the following table into your notebook and then complete it.

Activity	Age restrictions
Be convicted of a criminal offence	
Receive a criminal record	
Leave home	
Vote	
Sue	
Drive a car	
Get married	
Drink alcohol	

- 4 Explain how family law has become more sensitive towards the needs of children.

## Activities

- 1 As a class, discuss whether young people aged over 15 but under 18 should be allowed to vote. Consider the advantages and disadvantages of this proposition. Write an exposition arguing either in favour of or against the proposition.
- 2 Divide the class into small groups. Your group has been selected to advise the NSW Law Reform Commission on how the law should be changed in relation to young people. Prepare a short oral presentation on what areas of the law you would change to benefit young people. Explain why the change is needed.

## Contact with the criminal law

In New South Wales, only those aged 10 years and older can be charged with a criminal offence. If the accused is under 18 years, the case is heard in the Children's Court.

A number of important measures have been put in place to protect the legal rights of children in criminal law cases. These were discussed in Chapter 3 (see the box 'Under 18? What are your rights in criminal law?', page 67).

## Shoplifting: what should you know?

Shoplifting is perhaps one of the most common crimes committed by young people. Some people don't consider it a crime at all. However, it is a significant offence that is dealt with by the *Crimes Act 1900* (NSW) and costs the community and the retailing industry billions of dollars each year.



**Figure 12.1c** Shoplifting costs the community billions of dollars each year.

Many young people claim to be 'victims' when store security officers accuse them of stealing. So what are your rights? If there is a reasonable suspicion that you have stolen from a shop, the store employees can detain you until police arrive.

You cannot, however, be searched by store employees, nor can violence be used against you. You have the right to take legal action against a store that breaches these rights. Once the police arrive they may lawfully conduct a search.

If you are found to have stolen something, the police may use their **discretionary power** to issue a **warning**. However, where the items are valuable or if this is a second offence, it is likely you will be charged with stealing. The maximum penalty that can be issued for stealing is up to two years in prison and/or a very large fine.

## Children as witnesses

Whether children should be allowed to appear as **witnesses** in court has been debated in the law for many years. As far back as 1779, in the case *1 Leach 1799*; 168 ER 262, the court was asked to decide whether a child's evidence should be accepted. This case established the precedent that a child could give evidence, but the judge must be satisfied that the child understands the difference between right and wrong and the importance of telling the truth.

More recently, in the famous case *R v. Brown* [1977] Qd R 220, the judge allowed children to give evidence even though it had not been established that they had understood the difference between right and wrong. The decision of the judge was shown to be wrong by a higher court when Brown, the accused, appealed.

## Proving a crime was committed

When a person is charged with a criminal offence it is the responsibility of the prosecution to prove to the court that the accused person is guilty. This is known as the **burden of proof**. In order to prove a person's guilt the prosecution must show the court that the accused had:

- ***mens rea***—This means that the accused had a guilty mind. It must be proven that the accused committed the illegal act (or omission) with intent, recklessness or negligence.
- ***actus reus***—This means 'guilty act'. The prosecution must show that the accused was the person who committed the crime.

For example, if you hit another person with a cricket bat then there is *actus reus* for **assault**. However, the prosecution would have to show that you had intended to hurt the person. If you were playing a game of cricket and accidentally hit someone then there is no *mens rea*.

It is possible for a person to have *mens rea* but not *actus reus*. In such a situation, the crime is known as conspiracy.

## Punishment for crime

Most people tend to think of prison as the punishment offenders receive for committing criminal offences. However, only a small number of people found guilty of a crime go to prison. Instead, many other punishments are used (see Figure 12.1d), with prison tending to be used for repeat offenders and those who have committed very serious crimes.

### Don't lock the door!

The law recognises that children are especially vulnerable and need special protection. For this reason there are many laws designed to specifically ensure the safety and wellbeing of children. In recent years there has been a problem with parents locking their children inside cars while they leave to go shopping, for example.

The case *R v. Jie Hua Yu* (2000; unreported) related to such an incident. In this case, Mrs Yu had left her one-year-old son locked in her car in the car park of a Sydney hotel. While she was away, doctors estimated the temperature inside the car reached 65 °C and Mrs Yu's son later died in hospital.

Mrs Yu was charged with manslaughter, which is a serious criminal offence where a person's negligence causes someone's death. A **jury** took less than one hour to find Mrs Yu guilty of the crime.

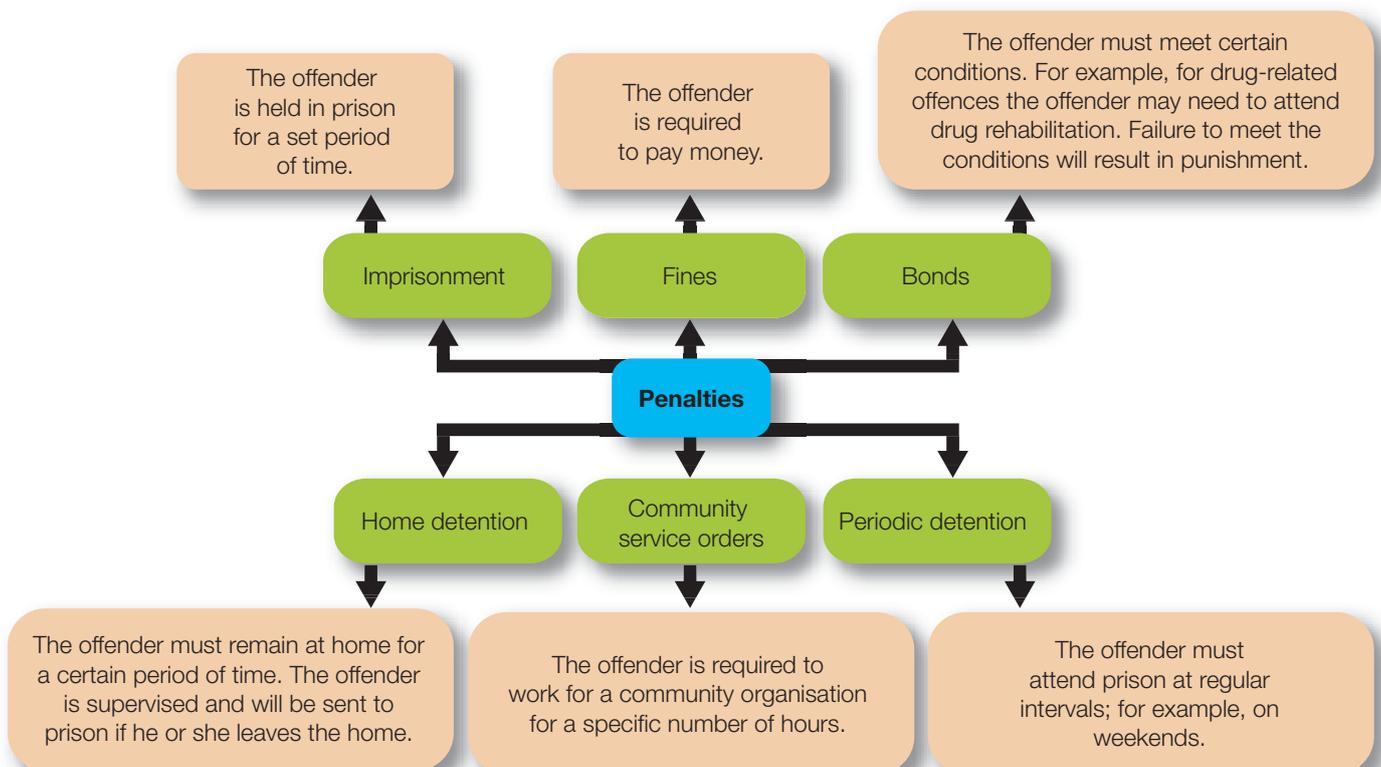


Figure 12.1d Types of punishment used in Australia.

## Twenty first century Australia: Are we becoming a convict colony again?

This is the question many people are beginning to ask as the number of prisoners in Australian prisons continues to climb. The latest statistics, collected by the Australian Bureau of Statistics, show that 23 555 people were imprisoned in 2003. The figure in 1993 was 15 868 people. At the same time the Australian adult population grew by no more than 15%.

In this same period there were some other notable changes amongst the prison population. The number of female prisoners increased by 110% and the proportion of indigenous population increased from 15% to more than 20% of the overall prison population.

Also of concern was the number of people being held in remand (i.e. people held in custody before being tried in court). This number has increased to around 20% of the prison population. A significant proportion of these people will be found not guilty and released; thus they will spend time in prison for offences they did not commit.

In October 2002, the NSW Bureau of Crime Statistics and Research released a report suggesting that all prison sentences of six months or less be abolished and instead a range of other punishments be introduced. For example, fines, community service orders and home detention could be used more frequently.

These alternatives to prison are far cheaper and in many cases, such as community service orders, result in work being done for the local community free of charge.

Home detention, where offenders are required to wear an electronic bracelet, costs only \$60 a week per detainee. The offender must remain at home. If they do not ring a Corrective Services officer when the bracelet is activated, an alarm is sounded. To deactivate the alarm, the offender places a part of the bracelet into a special machine, which is in their home. If the offender does not ring the officer or deactivate the alarm, action is taken.

Using alternatives to prison for short sentences would result in savings of more than \$60 million a year in New South Wales alone. This money could then be spent in other areas. This figure does not take into account the additional money saved from not having to build more prisons.

Most governments seem reluctant to increase the use of alternative punishments. Many politicians think that the public want to see more offenders imprisoned for longer periods of time. There is a widely held view that sending people to prison reduces crime.

In New South Wales, more than 70 per cent of prisoners have been to prison before. Therefore, we should question whether prison actually deters crime.



**Figure 12.1e** The average cost of keeping a person in prison for one year is more than \$50 000.



**Figure 12.1f** Some experts think short prison sentences should be abolished.

## Comprehending the text

- 1 What is the legal age at which a child can be charged with a criminal offence?
- 2 Explain how the Children's Court differs from other courts.
- 3 Outline the rights of a person who has been accused of shoplifting.
- 4 Why are there laws designed to specifically ensure the safety and wellbeing of children?
- 5 Explain why it can be difficult for a court to accept the evidence of a child who is a witness in a criminal case.
- 6 Describe the burden of proof that the prosecution is required to prove in a criminal case.

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### The NSW Drug Court

The NSW Drug Court was established in 1999 to deal with offenders who were committing non-violent crimes in order to obtain money for drugs. The court has proven to be quite successful in helping drug-addicted offenders stay out of prison and treat their addictions.

### Activity

Visit the NSW Drug Court website <[www.lawlink.nsw.gov.au/drugcrt](http://www.lawlink.nsw.gov.au/drugcrt)> and use the site to write an extended response on the following topic: Describe the way the drug court operates, what its aims are and which offenders are able to use it. How effective has the court been in achieving its aims?

## Activities

- 1 Hold a class debate on the topic: Children who commit adult crimes, such as murder, should be tried as adults.
- 2 Read the box 'Prison, prisons and more prisons!'.
  - a Describe the trend in the number of prisoners in Australia.
  - b Outline the criticisms being made of the views of some Australian politicians regarding crime.
  - c What strategies are being suggested instead of prison? What are their advantages?
  - d With a partner, select one of the alternatives to prison mentioned in the box and undertake research to find out more about it. Explain how it works and what its advantages and disadvantages are. Report your findings to the class as an oral presentation.

## Contact with the civil law

Civil laws regulate the behaviour of people towards each other. Remember that in civil law there is neither criminal activity nor any police involvement. However, civil and criminal legal action can be taken in relation to a single incident. The box 'Civil and criminal liability' gives an example.



Figure 12.1g Drivers have a duty of care to other drivers and pedestrians.

### Civil and criminal liability

Stephen and Karen are involved in a car accident. Stephen ran a red light and then smashed into the side of Karen's car. This caused considerable damage to Karen's car and resulted in Karen requiring hospital treatment.

Stephen, like any other driver on the road, is required to exercise a duty of care towards other motorists. By not stopping at the red light he failed to exercise this duty. For this reason, Karen is able to take a civil law action against Stephen, suing him for the cost of repairs and her medical treatment.

In addition, Stephen is criminally liable for his actions. The *Motor Traffic Act 1909* (NSW), a statute law, requires drivers to stop at red lights. Therefore, Stephen will also be charged by the police for the same incident.

In a traffic offence, the principle of **strict liability** is used. This means that the police only need to prove *actus reus* and not *mens rea*.

## Contracts and other financial commitments

A **contract** is an agreement between parties that is legally binding. Those who sign a contract must do whatever they agreed to do in the document.

The law does not place a minimum age on entering into a contract. However, the law does expect that contracts will not attempt to exploit young people. If they do, a court can declare them void (that is, no longer legally binding).

While the law attempts to protect the rights of young people, it also requires them to take responsibility for their financial actions. If a person does not fulfil the contractual agreement then, regardless of the person's age, he or she can be held accountable by the other signatories of the contract. For example, the person could be taken to court and required to meet the obligations specified in the contract. Therefore, it is very important to know exactly what you are signing when entering into a contract. Many young people have been caught out by mobile phone contracts because they did not read the fine print of the contract.

When we sign a contract we become a *party to the contract*. This means we are now liable for the contract; that is, we are legally required to do what the contract states. For example, Anton buys a new mobile phone and signs a contract with a telephone company. Anton and the company are now signatories to the contract. The contract requires Anton to pay a monthly rate of \$21 plus calls. By signing, Anton is required (liable) to pay the \$21 plus the cost of any calls he makes. These requirements are known as the *terms* of the contract. In this contract, the terms would also include details of the phone service to which Anton is entitled.



**Figure 12.1h** Signing a contract to use a service (for example, a mobile phone) means we are liable for the terms of the contract.

Before a contract becomes legally binding, a number of important steps must be taken. These are known as the *elements of the contract*, and are as follows:

- *the offer*—This is simply one party offering something to the other party.
- *the acceptance*—This is the acceptance of the offer that has been made. During this stage there would be some negotiation between the parties.
- *the consideration*—This is a legal principle that states that a contract should benefit all the parties involved. For example, if a contract is signed to buy a car then it is expected that the purchaser will receive the car (the purchaser's benefit) while the seller will receive money from the purchaser (the seller's benefit).

If these three steps have not been followed, then the contract will not be legally binding and the parties will not have to fulfil the terms of the contract.

Many businesses are reluctant to lend money to young people because they have few assets that can be used as security. Consequently, when attempting to obtain credit, the purchaser may need a **guarantor**. This is a person who guarantees to repay the loan, should the borrower be unable to.

## Negligence

The civil law requires all of us to ensure that our actions do not cause harm to other people or their property. This is known as exercising a *duty of care*. When people or organisations fail to exercise this duty then they are said to be negligent.

### Timber!

Lucinda wants to cut down a tree in her front yard but she doesn't want to pay to have a tree surgeon do the job, so she hires a chainsaw to do the job herself. Lucinda has no training in tree removal, but as the tree is quite small she is not worried. She plans for the tree to fall onto her lawn, but instead it falls the other way and onto her neighbour's car. Lucinda has failed to ensure her actions don't cause harm to others and, therefore, is now liable for the damage caused to her neighbour's car.

In the case described in the box 'Timber!', Lucinda's **negligence** would result in her being sued by her neighbour (or her neighbour's insurance company) to pay for the cost of repairing the car. In some cases of negligence (sometimes referred to as *tortious liability*) the compensation can be substantial. For example, in 2002 a man successfully sued a coastal council for \$5 million after he jumped into the sea from a cliff and was paralysed.

While the court found that the man was partly to blame, it also found that the council should have erected warning signs that the water was shallow. The council's failure to erect warning signs meant it had a tortious liability.

### What's happened to my house?

In 1979, Mr Bryan built a house that was not correctly constructed as the foundations were inadequate. In 1986, Mrs Maloney bought the house and it soon became apparent that the house had serious structural problems. Mrs Maloney sued Mr Bryan, in the case *Bryan v. Maloney* (1995) 69 ALJR 375.

The court ruled that Mr Bryan had been negligent in the way he built the house. Even though Mrs Maloney had not signed a contract with Mr Bryan to build the house, she was entitled to have the cost of repairing the house paid for by Mr Bryan.

### Slippery when wet

Ms Zaluzna visited her local Safeway supermarket on a rainy day. As she walked down the aisle she slipped on the wet tiles. Ms Zaluzna sued the supermarket, saying that the staff should have regularly checked to ensure the floors were safe. Initially, the court ruled in favour of the supermarket. However, in the appeal case, *Australian Safeway Stores v. Zaluzna* (1986) 162 CLR 479, the Supreme Court ruled that the supermarket was negligent as it owed a duty of care to its customers.

When there has been a case of negligence the most common remedy for the victim of the negligence is to sue the negligent party. When a party wants to sue another for negligence, the law requires the accusing party to prove two key factors:

- *that the accusing party was owed a duty of care by the negligent party*—In the case described in the box 'Slippery when wet', Ms Zaluzna showed that the supermarket should have ensured the floors were not wet. The supermarket's failure to exercise its duty of care resulted in her injuries.
- *that the negligence has resulted in the accused party suffering an actual injury or hardship*—In the case of Mrs Maloney (see the box 'What's happened to my house?'), the builder's negligence resulted in her house needing expensive repairs. If Mrs Maloney had had to pay for the repairs she would have suffered a hardship.

## Comprehending the text

- 1 Explain how an incident could result in both criminal and civil legal action being taken.
- 2 What is a contract?
- 3 Can a company hold a young person who has signed a valid contract liable for his or her part of the contract? Explain your response.
- 4 Explain what being 'party to a contract' means.
- 5 Outline the three steps that must be taken before a contract can be considered legally binding.
- 6 **a** What is a guarantor?  
**b** Why is a guarantor sometimes needed?
- 7 Explain what negligence is.

## Activities

- 1 Conduct a class role-play in which two people enter into a contract to buy a new car. Consider the elements of the contract that would need to be met for it to become legally binding. Also consider the types of negotiation that would occur between the seller and buyer of the car.
- 2 Richard hires Louise to install an above-ground pool while he is on holiday. When Richard returns home from his holiday he finds that his backyard and adjoining family room are flooded and that water has damaged part of his carpet. The pool is empty of water, but Louise claims that this is because Richard did not operate the pool pump correctly. What would Richard have to prove in order to receive compensation?
- 3 Hold a class discussion about whether companies and other organisations should be held accountable for their actions. Consider the case outlined in the box 'Slippery when wet'. Was it fair that the company had to pay compensation or should individuals be expected to show greater care?
- 4 Collect a media file of recent cases involving negligence. Select two cases and write a short report outlining the following for each case:
  - a the nature of the negligence
  - b whether you consider it to be negligence
  - c how you would deal with the matter if you were the judge hearing the case.

# 12.2 Rights and responsibilities

## Getting technical

**defence lawyer** The lawyer whose role is to assist an accused win a case.

**defendant** The party accused of wrongdoing.

**maintenance** Payments made by a parent who does not have full custody of his or her child. These payments are made to the parent who is responsible for the care of the child and are to be used for providing for the child.

**plaintiff** In a civil law case, the party who has accused another party of wrongdoing.

**presumption of innocence** The belief that a party accused of a crime is innocent unless it is proven that the party has committed the crime.

**prosecutor** A lawyer or police officer whose role is to convince the court that the accused has committed the crime with which he or she has been charged.

Australians are entitled to many rights that are protected by our legal system. In many countries the rights of citizens are outlined in a constitution or a bill of rights (see the box 'The US Bill of Rights', page 68). The Australian Constitution, however, contains few references to rights. Most of our rights have been developed either through statute law or common law.

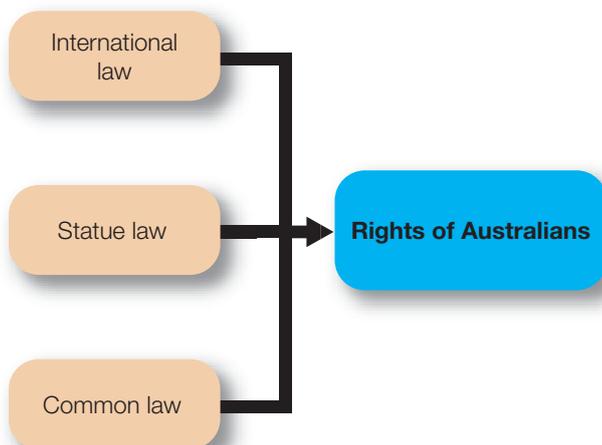


Figure 12.2a The sources of the rights of Australians.

## Commercial rights

Australian citizens have various rights as consumers. In addition to these rights, we also have certain responsibilities as consumers. For example, when we enter into an agreement to purchase a product or service, we have the right to expect that we will receive what we paid for. However, we also have the responsibility to pay the agreed price for the product or service.

### A cheap car? I don't think so

The Australian Competition and Consumer Commission (ACCC) is a government authority whose role is to protect consumers from businesses that breach their responsibilities towards consumers. The ACCC sometimes takes businesses to court. Let's look at the example of the 1998 case *ACCC v. Nissan Motor Company (Australia) Pty* [1998] ATPR 41-660; FCA 1048. Nissan had made claims in television advertisements in South Australia that its new Nissan Patrol cost \$39 990 with free airconditioning and some other extras. The advertisement claimed that this price represented a saving of \$6290.

This claim was misleading, however, as \$39 990 was the standard price of the vehicle and the total cost of the extras came to \$2195 not \$6290. The ACCC launched a case, claiming that Nissan was attempting to mislead consumers about the size of the saving.

The judge ruled that Nissan had breached the rights of consumers and it was ordered to pay a \$130 000 fine.

## Rights and responsibilities in the family

Families are complex and there is no such thing as a 'typical family' in Australia. Many different types of families are recognised under Australian family law. Table 12.2a describes the different family structures in Australia.



Figure 12.2b Most family units in Australia are nuclear families. However, other types of families are becoming more common.

The Australian census defines a family as being two or more people living in the same household who have a relationship to each other.

**Table 12.2a** Family types recognised in Australia

Family type	Description
Nuclear family	A man and woman who are married and living with their child(ren)
Single-parent family	One parent living with his or her child(ren)
Extended family	Parents and their child(ren) plus other relatives, such as grandparents or an aunt and uncle, living in the one household
Blended family	A couple living with their own child(ren) from previous relationships
Married couple	A man and woman who are married but have no children
De facto couple	A man and woman who have lived together for more than six months and share a relationship but are not married. The couple may or may not have children
Same-sex couple	A homosexual couple who live together and may or may not have children. Under NSW law these couples are considered as de facto couples

While all the family units seen in Table 12.2a are considered to be families, each family type is treated differently under the law. Married families are covered by federal law—the *Family Law Act 1975* (Cwlth). De facto relationships are dealt with by state laws—the *Property (Relationships) Act 1984* (NSW). While there are important differences between these two laws, fundamentally both types of families have very similar rights and responsibilities. Included in these responsibilities is the expectation that, if there are children in the family, both parents will be involved in raising the children.

The recognition of same-sex relationships has been slow to develop in Australia. In fact, until the 1980s it was considered a criminal offence to engage in homosexual sex. Today, however, there are several state and federal laws that protect the rights of homosexual people. Since 1999, homosexual couples in New South Wales have had similar rights to other de facto couples.

## Domestic violence

Each member of a family has the right to live free of violence or the fear of violence. Unfortunately, in as many as 30 per cent of Australian families violence of some sort exists.

Violence within the family is known as *domestic violence*. In the past, the law did very little to protect family members against domestic violence. However, there are now numerous statute laws that prohibit domestic violence and give police considerable power for dealing with it when it has occurred.

When police are called to a domestic violence incident they must automatically seize any firearms, regardless of whether the person has a licence allowing him or her to possess a firearm. The police must also report the matter to a magistrate, who can issue an *apprehended violence order* (AVO). An AVO is a special court order that prohibits a domestic violence offender from going near his or her victim. If the offender approaches the victim, the police can arrest the offender. These measures have helped to increase the number of violent family members being charged and convicted of harming other members of their family.

## Parents and their children

Regardless of the type of family they live in, the law places special responsibilities on parents. It requires them to exercise care and responsibility over their children, and parents can be held responsible for the actions of their children. The law also requires that parents ensure their children are educated, receive proper medical care and live in an environment that will not cause the children physical or emotional harm.

When parents fail to fulfil these responsibilities the law will step in to protect the children. The *Children and Young Persons (Care and Protection) Act 1998* (NSW) entitles the police or authorised officers of the Department of Community Services (DoCS) to remove children from their home and place them into care when they are subject to, or are at risk of being subject to:

- neglect; for example, being left to care for themselves for long periods of time or not being adequately fed or housed
- emotional, physical or sexual abuse.

A child can also be placed into care when the child's relationship with the parents has broken down and cannot be repaired.

The law recognises that parents need special rights in order to effectively care for their children. These rights include the right to make choices about the education and medical care their children receive and the right to discipline their children. The discipline must not be excessive, however, otherwise the parents may be charged with assault.

### Little Mary and Jodie

A famous case, involving conjoined twins (Siamese twins), occurred in Britain in 2002. The twins were born very weak and one of the babies, Mary, could not survive on her own. Unfortunately, the heart of her twin sister, Jodie, was being placed under enormous strain because it was pumping blood through the bodies of both babies. Doctors wanted to separate the twins. This would ensure the survival of Jodie but would result in the death of Mary.

The twin's parents could not bring themselves to agree to the surgery. Doctors asked the courts to order the operation. When the judge made his decision, he recognised the rights of parents to make decisions relating to the medical care of their children. However, he also stated that parents must act in the best interests of their children and in this case the best interests of the children would be for the operation to go ahead. The judge ordered the doctors to operate on the twins. Jodie survived the operation. Her sister died during the operation.

### Divorce

The number of marriages ending in divorce in Australia continues to grow, and the law has had to respond to this increase. The enactment of the Commonwealth *Family Law Act* in 1975 made it much easier to obtain a divorce. This Act also established the Family Court of Australia. This is a special court that deals with the issues associated with the breakdown of marriages.

One of the most important rights of family members during a divorce is the distribution of property and the payment of **maintenance**. When a couple intend to divorce they can either agree how their property will be distributed or, if this is not possible, they can ask the court to do this for them. The court will consider the contribution each partner has made, the current and future needs of each partner and the children if there are any.

If a divorcing couple have children, the courts can be asked to decide with which parent the children should live. These decisions are known as *parenting orders*. Children now have a much greater say in this process. Courts have adopted an 'in the best interests of the child' approach to parenting orders. This means that the courts consider factors such as where the children will be educated, where their friends and grandparents live, what the children want, and which parent can best provide financially and emotionally for the children. It is now common for the court to order that the children spend time with both parents.

## Rights and responsibilities in the workplace

During the twentieth century, governments realised that the law had an important role in the workplace, and various workplace laws were enacted. The role of such laws is to ensure that the rights and responsibilities of employers and their employees are protected.

Employers have many responsibilities towards their employees. These responsibilities exist to ensure that the rights of employees are maintained at all times.

In 2006 the Federal Government introduced new workplace laws, known as WorkChoices. These laws changed some of the rights and responsibilities of employees and employers. The legal rights of employees in New South Wales are outlined in Figure 12.2d. One of the most important rights the law gives an employee is the right to a safe workplace. Australian employees are fortunate that there is considerable statute and common law to protect them from illness and injury. In New South Wales, a special government agency, WorkCover, ensures that employers provide safe working conditions for employees.



**Figure 12.2c** Employees have a right to be safe while at work.

While employees have rights to ensure that their employers treat them fairly, they must also accept certain responsibilities (see Figure 12.2e). Failure to abide by these responsibilities can result in an employee being dismissed. For example, an employee who refuses to follow the reasonable instructions of a superior is likely to be dismissed. For more information see Chapter 4, page 98.

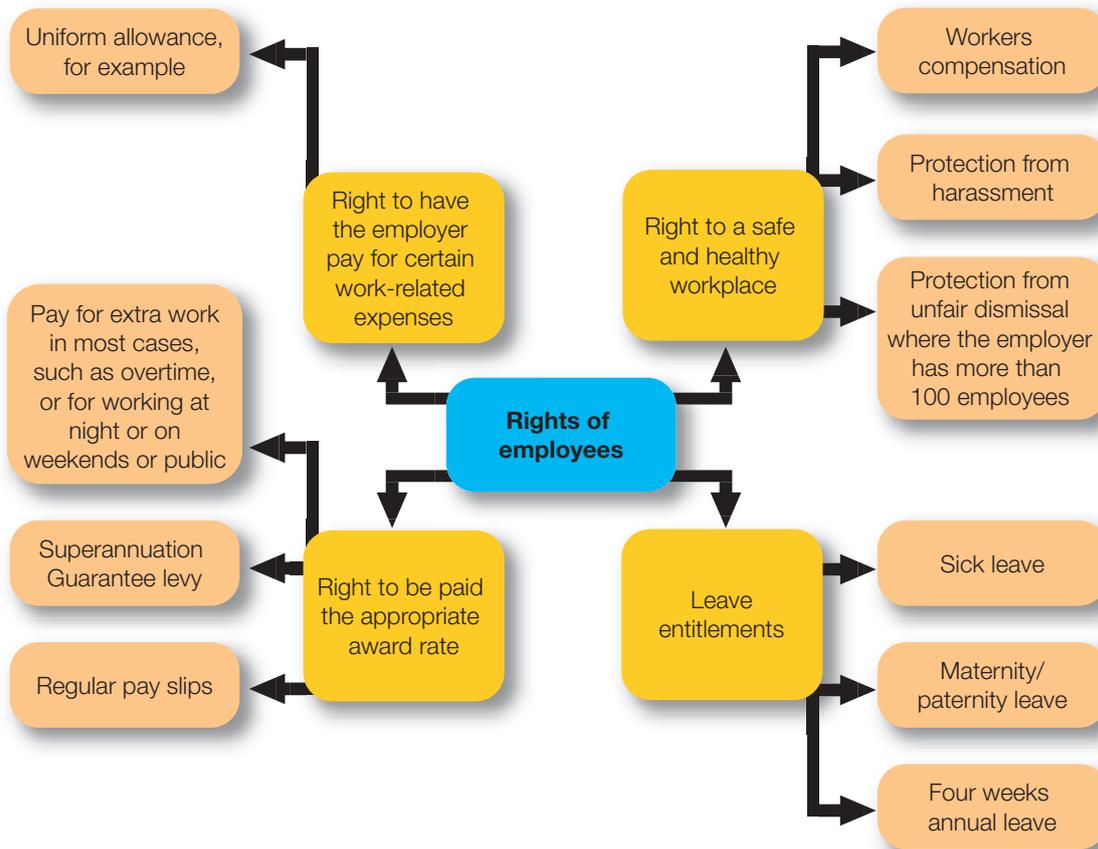


Figure 12.2d Some of the legal rights of employees.

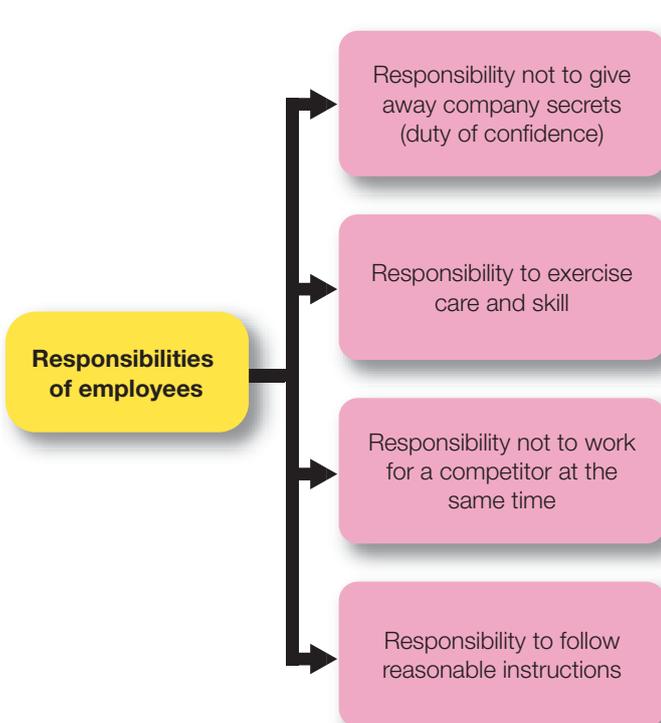


Figure 12.2e Some of the legal responsibilities of employees.

## Info.com.tech

### WorkCover

Access the WorkCover website

<[www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)> to find out more about:

- the role of WorkCover in ensuring the rights of workers are maintained
- workers compensation insurance
- injury management
- occupational health and safety.

### Activity

Using the WorkCover website, write an explanation outlining what workers compensation insurance is and the responsibilities employers have in relation to occupational health and safety.

## Where are my goggles?

In the famous case *Paris v. Stepney Borough Council* [1951] AC 367, the rights of workers to a safe workplace were highlighted. Mr Paris, a council worker, was blind in one eye. While Mr Paris was using a hammer to remove a bolt, a small piece of metal flew off into his good eye.

Mr Paris's employer, Stepney Borough Council, had not provided him with goggles as this was not part of its policy. Mr Paris took his employer to court. He said that because he was blind in one eye the council had a special responsibility to protect his good eye.

The court agreed with Mr Paris. It stated that although the chance of injury was very small, the council had a special responsibility to ensure that the workplace was as safe as possible. The council was required to pay compensation to Mr Paris.

## Legal responsibilities of individuals

While the law gives members of society many rights, it also requires members of society to accept certain responsibilities. These responsibilities are often referred to as legal duties. Some of these responsibilities stem from society's religious, ethical and moral standards.

When there is agreement by most members of society that a particular responsibility is important, laws may be passed making it a legal responsibility. These responsibilities are then enforced by the police and the courts.

Like the rights Australians have, our legal responsibilities are the result of common and statute laws. When a judge recognises that members of society need to act in a certain way, a common law responsibility is created. The most famous example of this is the duty of care (see page 248).

Some areas of common law that set out the legal responsibilities of Australians are:

- *defamation law*—a responsibility not to make defamatory statements; that is, statements that are untrue and might cause damage to another person's reputation
- *contract law*—a responsibility to honour the conditions of any contracts we enter into (see page 248)
- *tort law*—a responsibility to ensure our actions are not harmful to others (see page 69).

Some responsibilities are considered to be so important that parliaments pass laws to ensure all members of society follow these responsibilities. These responsibilities are known as statutory responsibilities.

Statutory responsibilities are found in all areas of our lives. An example is the requirement for parents to send their children to school. This is a requirement of the *Education Reform Act 1990* (NSW). The *Protection of the Environment Operations Amendment (Littering) Act 2000* (NSW) places a responsibility on people not to litter. Failure to fulfil this responsibility can result in fines being issued.



**Figure 12.2f** In New South Wales we have a statutory responsibility not to litter. This legal responsibility is found in the *Protection of the Environment Operations Amendment (Littering) Act 2000* (NSW).

## You can't dump that!

In 2001 the case *EPA v Waight [No 3]* (15 June 2001) was heard in the NSW Land and Environment Court. The Environmental Protection Authority (EPA) had inspected a property owned by Mr Waight in north-west Sydney. During the inspection it was discovered that Mr Waight had illegally dumped more than 70 000 tonnes of rubbish at the property. Concrete, tyres, builder's waste and even domestic rubbish were found to be polluting a nearby creek that formed part of the habitat of the endangered red-crowned toadlet.

The rubbish was causing considerable environmental damage. Chemicals were entering the waterways as well as contaminating the soil. Increased nutrients caused by so much waste had contributed to an increase in weed growth in nearby bushland.

The court found that Mr Waight had a legal responsibility to dispose of the waste correctly and that his actions were illegal as they harmed the environment. He was fined \$180 000 and ordered to remove all the waste—more than 7000 truckloads! In addition, Mr Waight was required to replant native vegetation and maintain it for 20 years.

## Comprehending the text

- 1 Outline some of the rights and responsibilities of consumers.
- 2 In the case *ACCC v. Nissan Motor Company (Australia) Pty*, why was Nissan fined?
- 3 What is a nuclear family?
- 4 Outline the rights and responsibilities of parents in relation to their children.
- 5 Explain what an apprehended violence order is.
- 6 Describe the rights of family members during divorce proceedings.
- 7 Outline the responsibilities of employers in relation to their employees.
- 8 Briefly describe the responsibilities employees have towards their employers.
- 9 What is WorkCover?
- 10 Describe three common law responsibilities of individuals.

## Info.com.tech

### Using the Internet to investigate your legal rights and responsibilities

Access the Lawstuff website <[www.lawstuff.org.au](http://www.lawstuff.org.au)>. At this site you can find out about your rights in relation to:

- getting your driver's licence and buying a car
- buying a mobile phone
- school—discipline, bullying and harassment
- the workplace—bullying, harassment, injuries, discrimination and unfair dismissal.

### Activity

Using the Lawstuff website, find out the age at which you can exercise various legal rights or assume various responsibilities. At which age can you:

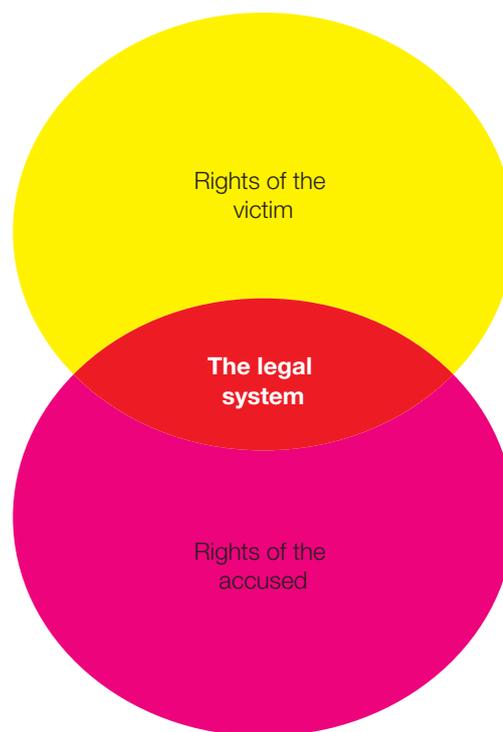
- |   |   |
|---|---|
| <b>a</b> legally call yourself an adult | <b>i</b> work late at night                 |
| <b>b</b> vote                           | <b>j</b> get a driver's licence             |
| <b>c</b> leave school                   | <b>k</b> be interviewed by the police       |
| <b>d</b> leave home                     | <b>l</b> drink alcohol                      |
| <b>e</b> change your name               | <b>m</b> be convicted of a criminal offence |
| <b>f</b> get a full-time job            | <b>n</b> get a tattoo                       |
| <b>g</b> rent a flat or house           | <b>o</b> have sex                           |
| <b>h</b> get married                    | <b>p</b> buy cigarettes?                    |

## Activities

- 1 Assume the role of an adviser in the Family Court. Prepare a brochure outlining the rights and responsibilities of family members. Your brochure should be concise and easy to read and not contain too much legal jargon.
- 2 Write a report explaining the rights and responsibilities of workers.

## Rights and responsibilities of court participants

The media often presents stories about criminals being given light sentences, prisons being like holiday camps, and the rights of victims being abused while offenders' rights are maintained. How accurate are such stories? The law must achieve a fine balance between maintaining the rights of victims and the community while at the same time protecting the legal and fundamental human rights of those people accused of committing crimes. A legal system that did not ensure that accused people were treated fairly would not be a just system.



**Figure 12.2g** The law is a balance between the rights of the victim and the rights of the accused.

The law exists to protect the rights of the innocent and to ensure that people are not convicted unless they are guilty. For this reason, every person who is accused of a crime is considered to be innocent unless it can be proven that he or she is guilty of the crime. This is known as the **presumption of innocence**. It is for this reason that the **prosecutor** must convince the court that the accused person committed the crime, rather than the **defence lawyer** having to convince the court that the accused is innocent.

To ensure that innocent people are not convicted of a crime they did not commit, accused persons have several rights, including:

- the right to remain silent
- the right to not be detained unless they have been formally arrested
- the right to have their interviews with police recorded
- the right to not have their past convictions mentioned during their trial. This is to ensure that the jury or judge is not influenced by the past actions of the accused.

The law must also protect the rights of the victim. In recent years there has been a greater focus on these rights. A victim's rights include:

- the right to have the police investigate any allegations the victim makes
- the right to protection from the accused person
- the right to be made aware of the progress of the case
- the right to make a victim impact statement.

A *victim impact statement* is a relatively new legal concept. Once a person has been found guilty of a crime, the victim, or the victim's family, has the right to make a statement to the court before the judge or magistrate passes sentence. These statements provide an opportunity for victims to express how the crime has affected their lives. It is regarded as an important right for victims as it enables them to have a greater role in the legal process.

Witnesses who give evidence in legal cases are entitled to several important rights as well. The most important is the right to give their evidence free from fear or revenge. Witnesses have the right to protection should giving evidence place them or their family in danger. In return, witnesses have the responsibility to ensure that their evidence is true and unbiased. Failure to do so is a criminal offence, and is known as 'perverting the course of justice'.

In civil matters, the **defendant** and the **plaintiff** have similar rights and responsibilities to the victim and the accused in criminal matters. Both must ensure that they present evidence that is accurate and true, and each has the right to cross-examine the witnesses called by the other side.

## Info.com.tech

### Victims of Crime website

The NSW Government has established several services to help victims of crime recover from their injuries, trauma and financial loss. The Attorney-General's Department has a dedicated website for victims of crime  [<www.lawlink.nsw.gov.au/vs/VOClink.nsf/pages/index>](http://www.lawlink.nsw.gov.au/vs/VOClink.nsf/pages/index).

### Activities

Access the website given above.

- 1 Outline the types of services available to older people who are victims of crime.
- 2 What are the rights of victims of road trauma?
- 3 Describe the rights of victims who are in fear of their safety.
- 4 Outline the assistance available to victims of domestic violence.

## Protection provided by the law

The main function of the law is to protect the rights of members of society. Some of our rights are said to be universal. This means that every person is entitled to them. These rights are often referred to as *fundamental human rights*; that is, they are inalienable (cannot be denied). An example is the right to live free of religious persecution.

The primary role of the United Nations is to promote the fundamental human rights of all the world's people. This responsibility is contained in Article 1 of the UN's Charter, which is the document that established the United Nations. While governments are not, under international law, permitted to deny people their fundamental rights, some governments refuse to extend these rights to some or all of their people.

Other rights are known as *international legal rights*. These are the rights that citizens receive as a result of international laws being passed. These rights are often created through international agreements (or treaties) between nations. For example, the right of women to be treated equally was established by the Covenant on the Elimination of all Forms of Discrimination against Women (1979). Governments are not obliged to sign a treaty. If a government does not sign the treaty then its citizens are not protected by it.

## Convention on the Rights of the Child

In 1989 the Convention on the Rights of the Child was signed. It was the first international treaty written specifically to protect the rights of children. The convention, for example, holds that all children should be free from discrimination and exploitation.



**Figure 12.2h** The Convention on the Rights of the Child was the first international document that specifically protected the rights of children.

In 2002 the convention was extended to protect children from being forced into military service and prostitution. Nearly every country has signed this convention. The only exceptions are Somalia and the United States. The USA has refused to sign as it would mean that the execution of children would be outlawed. Some states of the USA still execute people as young as 16.

Australia has agreed to the conditions of the convention and many laws have been made to ensure that the principles of the convention are adhered to. By doing this, the rights of Australian children are protected both by Australian law and international law.

## Comprehending the text

- 1 Outline the rights and responsibilities of witnesses in legal cases.
- 2 Outline the rights and responsibilities of victims in criminal matters.
- 3 What is a victim impact statement?
- 4 Explain the difference between fundamental rights and international legal rights.
- 5 a What is the Convention on the Rights of the Child?  
b Outline its main aims.

## Info.com.tech

### Universal Declaration of Human Rights

The Universal Declaration of Human Rights was signed in 1948. It outlines what are considered to be the rights that all humans are entitled to regardless of where they live or their ethnicity, religion or sexuality. The declaration can be viewed in full at the United Nations website <[www.un.org/overview/rights.html](http://www.un.org/overview/rights.html)>.

### Activities

Visit the United Nations site given above and read through the 30 articles of the Universal Declaration of Human Rights.

- 1 Which article do you consider to be the most important? Why?
- 2 What rights do you think need to be added to the declaration? Why?
- 3 Are there any rights you would remove from the declaration? Why?
- 4 From your reading of the declaration, do you think there are any aspects of Australian law or society that break the declaration? Share your ideas with the rest of the class.

## Activities

- 1 Hold a class discussion on whether people accused of crime have too many or too few rights.
- 2 Making reference to specific cases, explain how the law attempts to protect the rights of individuals and society as a whole.
- 3 Some international legal experts argue that international treaties are not effective because countries can choose whether or not they sign them. Others say that not all treaties suit all countries and so it is correct that signing treaties is voluntary. As a class, discuss the advantages and disadvantages of making international treaties mandatory.
- 4 Assuming the role of the defence lawyer, write an email to a client whose son has been arrested. In your email, outline the rights your client's son is entitled to.

# 12.3 Resolving disputes

## Getting technical

**conciliation** The use of a neutral third party (conciliator) to help parties in dispute resolve a problem. If the disputing parties are unable to reach an agreement the conciliator makes a decision.

**mediation** The use of a neutral third party (mediator) to help resolve a legal dispute between two parties.

Australian law makes available a range of options for helping people resolve legal disputes. The resolutions available will differ depending on whether the dispute is a criminal matter or a civil matter.

## The police

The police play a crucial role in resolving disputes, such as domestic disputes and conflict between neighbours. Often this role requires the police to protect people and property and to assist people reach agreement. For example, the police will often respond to a person's complaint about a neighbour's loud music. While this is not a criminal matter, by dealing with the issue the police can prevent the problem from worsening.

## Courts

The courts provide a major role in resolving disputes. However, they should be viewed as a last resort in dispute resolution as they are expensive and cases often take a long time to come to a conclusion. The Local, District and Supreme Courts all have a part to play in dealing with disputes involving civil law. This is outlined in greater detail in Chapter 3 (pages 61-64).

## Community conferencing

Community conferencing was formally introduced in New South Wales in 1998 in response to criticism that the legal system was not effective for young people. (Community conferencing is usually referred to as youth justice conferencing in New South Wales, as it is mostly used for child offenders.) A pilot program was established in Wagga Wagga in 1991. In 1995 the program was expanded to six locations and, finally, in 1997 the *Young Offenders Act 1997* (NSW) was passed.

This Act established the conferencing program throughout the state. It also gave the police powers to issue warnings to young people rather than charging them with a criminal offence.

Community conferencing can be used for a person aged between 10 and 17 who commits a criminal offence, including assault, robbery, break and enter, property damage and disorderly conduct. Importantly, it is only an option when the person has confessed to the crime. It cannot be used for serious crimes, such as murder or sexual assault, or serious driving offences.

The victim, the offender, the families involved and friends of the offender and victim are invited to attend the conference. Police, the offender's lawyer and professionals, such as social workers and community leaders (for instance, Aboriginal elders or church leaders), can also attend. The victim has the right to refuse to participate in the conference and can also veto (stop) the outcome of the conference if he or she disagrees with it.

A community conferencing session has several aims:

- to encourage discussion between the young person who has committed the crime and the victim of the crime
- to show the offender that the crime has harmed other people
- to find a way to help compensate the victim for the harm caused by the offender
- to provide support to the young offender with the aim of preventing the person from reoffending and becoming a hardened criminal
- to come to an agreement about a punishment that is appropriate to the crime. For example, a young person charged with graffiti offences may agree to clean graffiti from public areas for a number of hours.



**Figure 12.3a** An aim of community conferencing is to try to make young offenders aware of the harm their crimes have caused.

In 1999 the NSW Bureau of Crime Statistics and Research conducted research into the effectiveness of the program. Its research showed that 90 per cent of the victims and offenders thought the conferencing process was successful. More than 90 per cent of the victims stated that the conferencing gave them an opportunity to express their feelings about the incident and that they greatly valued this.

## Mediation and conciliation

**Mediation** is one of the most popular ways of resolving relatively minor legal disputes. It involves using a neutral third party, known as the mediator, to help those in dispute talk through their concerns. Mediators do not make a decision as a judge would. Instead, they use their mediation skills to encourage both sides to openly discuss what they want and what they are willing to concede (give up). The ultimate aim of mediation is for the people in dispute to reach an agreement that is acceptable to everyone.

**Conciliation** is similar to mediation in that it aims to resolve disputes by having all sides talk through their concerns, guided by a neutral third party (conciliator). Unlike mediation, if the parties in the dispute cannot reach an agreement the conciliator can make a ruling.

One of the main advantages of mediation and conciliation is that they do not aim to produce winners and losers in the way that a court does.

Instead, successful mediation and conciliation results in both parties reaching a compromise that means they both win. In most cases, lawyers are not part of the process. This helps to reduce costs and make the process less intimidating.

The results of mediation and conciliation are not legally binding. This means that if participants do not do as they said they would they are not breaking the law. Despite this, in most cases the agreements are honoured. Participants in mediation and conciliation can still access the court system if they are not satisfied with the outcome.

### Community Justice Centres

Community Justice Centres have been established in New South Wales to help people who have an ongoing relationship with each other, such as family members or neighbours, resolve their disputes.

The centres use mediation to resolve disputes. After one of those involved in the dispute approaches the centre, the others are invited to meet for mediation. The centres do not have the power to force a person to come to mediation.

In most cases two mediators are involved. They are selected on the basis of their expertise in the area under dispute. These mediators encourage the parties to reach a compromise. If this is not possible, the mediators may make a recommendation on how to best resolve the dispute. However, these are recommendations only and are not legally binding.



**Figure 12.3b** The aim of mediation and conciliation is for the people in dispute to talk through their problems and reach an agreement.

## Tribunals

Due to the expense of the court system, a range of alternatives to the courts is now available. Tribunals are one of these alternatives. They provide a cheap and quick way to resolve legal disputes. There are a considerable number of tribunals, dealing with a range of legal areas. For example, the Fair Trading Tribunal deals with consumer law, while the Administrative Appeals Tribunal deals with disputes between individuals and federal government departments.

Tribunals differ from courts in a number of important ways, including the following:

- Tribunals usually hear matters on specific areas of law.
- Legal representation is usually prohibited or restricted. This keeps costs to a minimum.
- Tribunals are less formal than courts.
- Tribunals do not have the same evidence rules as courts. This allows them to take into account factors that courts would not.

In comparison with courts, tribunals are more concerned with ensuring that fairness is achieved. Courts must ensure that legal rules are followed and that their decisions are legally correct. Sometimes this can mean that a decision is legally right but may not be fair. Tribunals are less restricted by legal rules, meaning that decisions can be based on ensuring a fair outcome. Tribunal decisions are legally binding.



**Figure 12.3c** Tribunals such as the Administrative Appeals Tribunals are cheaper and less complex than courts.



**Figure 12.3d** Tribunals are more informal than courts.

## Comprehending the text

- 1 What is the role of the police in dispute resolution?
- 2 Explain why courts should always be a last option in resolving legal disputes.
- 3 **a** Outline the purposes of community conferencing.  
**b** For what type of offences is conferencing used?
- 4 Distinguish between mediation and conciliation.
- 5 Explain why mediation is considered effective.
- 6 Describe the role of Community Justice Centres.
- 7 Explain how tribunals differ from courts.

## Info.com.tech

### Community Justice Centres

The Community Justice Centres website [www.lawlink.nsw.gov.au/cjc.nsf/pages/mediateindex](http://www.lawlink.nsw.gov.au/cjc.nsf/pages/mediateindex) gives greater detail on some of the alternatives to using the courts to resolve legal disputes in New South Wales.

## Activities

- 1 Conduct a mediation role-play involving a dispute between two neighbours. The dispute concerns a dead branch that has knocked over part of a fence. The neighbour from whose tree the branch came claims the fence was rotten and needed replacing and wants the other neighbour to pay half. The other neighbour claims the fence was fine and refuses to pay any of the cost of the new fence.
- 2 Write an extended response on the following topic: Assess the advantages and disadvantages of the various methods for resolving disputes used in New South Wales.

# 12.4 Current issues relating to the law

Laws are often seen as reflections of the societies that make them. Therefore, in a diverse society such as Australia there is going to be debate about the nature and appropriateness of our laws. In recent years we have seen debate on a range of legal issues, such as:

- mandatory sentencing
- abortion
- euthanasia
- the legalisation of some drugs
- anti-terror laws
- whether sentencing by some judges is harsh enough.

In this part of the course you are required to undertake research into an issue currently facing the legal system in Australia. To undertake this research you should adopt a research action plan, using the steps outlined below:

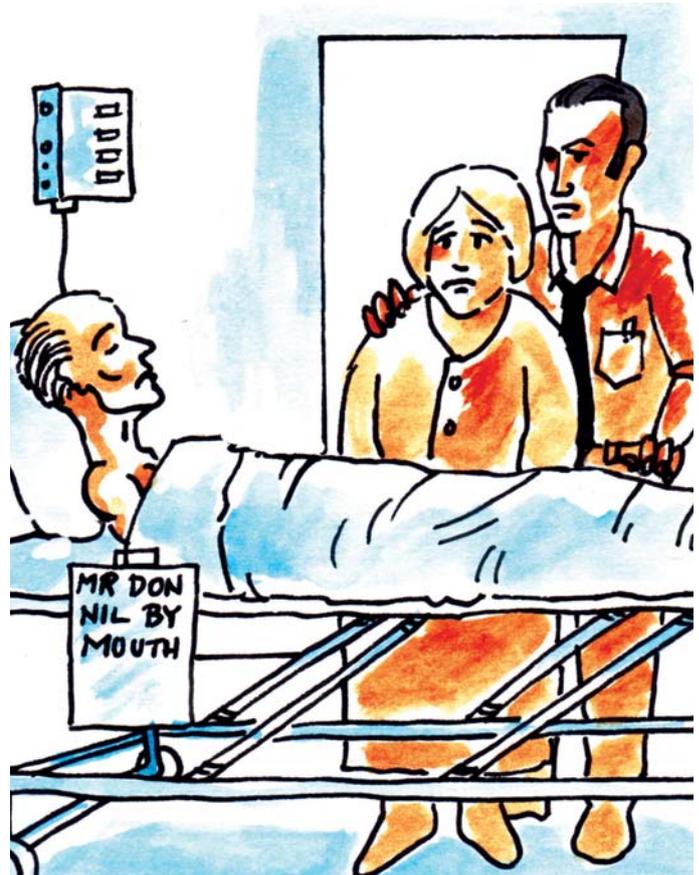
- 1 Select a topic. Identify a legal issue that is of importance at the present time. Careful examination of the print and electronic media will give you ideas. It would be useful to collect a media file.
- 2 Identify the stakeholders in this issue; that is, determine who has something to gain or lose from the issue and who has opinions on the topic.
- 3 Consider what the experts have to say on the issue, and whether their view is biased in any way. Another country may have faced the same legal issue. Consider how the issue has been resolved in other countries.
- 4 Come to a conclusion. Establish your view on the issue, based on the research you have done.
- 5 Prepare your answer using a report format. Discuss the legal issue and its relevance to the community.

## Info.com.tech

### Conducting online research into legal issues

There are many useful and reliable websites that can assist you in researching legal issues. Two of the most useful are:

- <[www.austlii.edu.au](http://www.austlii.edu.au)>—This site from the Australasian Legal Information Institute contains references to recent cases and legal issues.
- <[www.lawlink.nsw.gov.au](http://www.lawlink.nsw.gov.au)>—This site from the NSW Attorney-General's Department provides links to many different legal institutions, including the Legal Aid Commission and the Law Reform Commission.



**Figure 12.4a** A current issue of debate in Australia is whether euthanasia should be legal in some circumstances.

# Chapter review

## Activity 1: short-answer responses

Write a short response to each of the following:

- 1 Explain the concept of legal capacity.
- 2 Describe the rights and responsibilities of young people when charged with a criminal offence.
- 3 What is mediation? Outline its usefulness in legal matters.
- 4 Outline the meaning of negligence.
- 5 Explain how the law deals with people found to be negligent. Use cases to support your explanation.
- 6 Explain the concept of community conferencing.

## Activity 2: extended responses

- 1 Write an explanation of the way that rights are protected in Australia.
- 2 Write a discussion on whether Australia should be sending more people to prison or whether alternatives to prison should be investigated.

## Activity 3: people in the law

Copy the following table into your notebook. Then complete it using the job titles listed below:

- witness
- plaintiff
- police officer
- defence lawyer
- jury member
- prosecutor.

Job description	Job title
Determines whether the accused party is guilty or not guilty in an indictable criminal case	
Protects the community and investigates crimes	
Presents evidence to the court	
Represents the community in a criminal case and attempts to convince the court of the accused party's guilt	
Makes a complaint in a civil law case	
Attempts to convince the court that the accused party is not guilty	

## Activity 4: true or false

Select 'true' or 'false' for each of the following statements.

- 1 In Australia the 'age of majority' is 18.
- 2 In a criminal case the accused must prove their innocence.
- 3 A contract is a legally binding agreement between two or more parties.
- 4 In a civil law case the plaintiff is the accused person.
- 5 The main concern of tribunals is fairness rather than legal correctness.

## Activity 5: researching areas of the law that affect young people

With a partner, select one area of the law that affects young people. For example, you could consider a legal right (such as the legal age of drinking) or a crime that is largely committed by young people (such as shoplifting). Conduct research into the issue using the Internet, library resources and newspaper databases. Prepare a report that includes:

- a an outline of the area of the law
- b an explanation of why it has an impact on young people
- c an evaluation of whether this area of the law is fair to young people.

## Activity 6: mindmap

Construct a mindmap about people's rights and responsibilities in the family, at the workplace, during court cases and as individuals.