
HSC LEGAL STUDIES Notes

1 | Consumers

Glossary of terms

Term	Definition
Caveat Emptor	A Latin term meaning 'let the buyer beware: it implies that consumers should use their own care and knowledge to protect themselves and against exploitation.
Laissez-faire	An economic system in which the state refrains from interfering with the markets and regulation or other means.
Remedy	A means by which redress or reparation is provided for the breach of a legal right.
Advertising	Any action designed to draw the attention of consumers to the availability of goods and services in the marketplace.
Offer	A firm proposal to form a binding contract, made with a willingness to be bound by its terms.
Invitation to treat	An initial invitation to others to make an offer.
Acceptance	The unconditional consent to all the terms of the offer.
Duress	Coercion or pressure used by one party to influence the other party.
Condition (of a contract)	A term of fundamental and essential importance; if a condition is breached by a party, the other party is entitled to terminate the contract and sue for damages.

Warranty	A minor term of a contract; breaching a warranty entitles the aggrieved party to sue for damages but not to end the contract.
Acceptable quality	An implied guarantee in the Australian Consumer Law that goods sold are fit for purpose, acceptable in appearance, free from defects, safe and durable.
Australian Consumer Law	Federal legislative provisions contained in Schedule 2 of the <i>Competition and Consumer Act 2010 (Cth)</i> formerly known as the <i>Trade Practices Act 1974 (Cth)</i> .
Fit for purpose	An implied term in the Australian Consumer Law guarantees that the goods sold will do what they were designed to do.
Unconscionable conduct	One party's exploitation of the vulnerability of another party to a contract; the victim may have been impaired by some external factor such as age, disability or lack of education or may have been deceived or threatened by the stronger party.
Rescind	To revoke, retract or cancel.
Negligence	A breach of duty of reasonable care owed by one party to another, and damage to the plaintiff resulting from this breach.
Bait advertising	Advertising goods and services for sale at a specified price with the knowledge that the company will not be able to offer them at that price for a reasonable period.
Alternative dispute resolution	Methods other than formula court proceedings for settling disputes, including arbitration, notation, mediation and conciliation.
Procedural fairness	The body of rules that ensure that decision-markets act fairly, in good faith and without bias when resolving disputes.
Product Warranty	A manufacturer's promise or assurance that it will repair or replace or otherwise compensate for defective goods; breach of warranty entitled the aggrieved party to sue for damages but not to end the contract.
Monopoly	Exclusive control of a market by one company, which generally results in increased prices because there are no alternative suppliers.
Cartel	A group of companies that work together to control prices and markets; their behaviour is unlawful if it is found to be anti-competitive.
Litigation	Civil legal proceedings in which disputing parties seek a binding remedy from a court.

Injunctions	A court order directing someone to do something or prohibiting someone from doing something.
Mediation	A form of alternative dispute resolution in which the disputing parties use the services of a conciliator, who takes a more active role than in mediation, advising the parties, and suggesting alternatives in encouraging the parties to reach an agreement, the conciliation does not make the decision for them.
Conciliation	A form of alternative dispute resolution in which a neutral third party assisted the disputing parties in reaching an agreement.

Themes and challenges

1.	The role of the law in encouraging cooperation and resolving conflict in regard to consumers
2.	Issues of compliance and non-compliance
3.	Laws relating to consumers as a reflection of changing values and ethical standards
4.	The role of law reform in recognising the rights of consumers
5.	The effectiveness of legal and non-legal responses in achieving justice for consumers

Nature of consumer law

Introduction

Developing need for consumer protection	<ul style="list-style-type: none"> Prior to the development of consumer law interactions between sellers and buyers were bound by the notion of caveat emperor Consumer markets operated under laissez-faire economies with minimal intervention from governments in regulating interactions Concerns regarding the power imbalances between consumers and sellers were recognised by governments and led to government intervention in the consumer market Consumer law has since been developed to prevent the exploitation of
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	consumers
Definition of consumers	<ul style="list-style-type: none"> • The Competition and Consumer Act (2010) defines a consumer as: a <i>person who acquires goods or services that are priced less than \$40,000</i> <ul style="list-style-type: none"> ◦ Also includes people who purchase goods and services over \$40,000 for household consumption • Consumers under ACL are entitled to: <ul style="list-style-type: none"> ◦ Goods/services that are utilitarian ◦ Goods/services of acceptable standard and quality ◦ Goods/services that are as advertised ◦ Fair treatment from sellers
Objectives of consumer law	<ul style="list-style-type: none"> • Educating the public to make them aware of their rights <ul style="list-style-type: none"> ◦ Educated consumers can protect themselves from exploitation • Articulating and mandating standards for the quality of goods and services <ul style="list-style-type: none"> ◦ This promotes transparency and accountability in the manufacturing and service sectors • Providing remedies for consumers • Implementing weights and measures laws that provide consumers with reliable benchmarks of quality • Ensuring that various occupations are licensed • Protecting consumers in a time of global advertising, mass marketing and e-commerce where there has been a marked reduction in personal interaction between buyers and sellers • Regulating contractual relationships between sellers and buyers <ul style="list-style-type: none"> ◦ Especially 'unfair' contract terms • Guarding against unsafe and defective products • Helping vulnerable and disadvantaged consumers
Contracts	
A voluntary agreement made between two or more parties that is recognised by the courts as legally binding	
Written contracts	<ul style="list-style-type: none"> • Many consumer contracts are in writing, including those of large volumes of money • Written contracts are characterised by: <ul style="list-style-type: none"> ◦ A clear identification of the parties to the contract ◦ Contractual terms that are in writing for all to see ◦ An outline of the terms of the contract ◦ The parties' signatures

	<ul style="list-style-type: none"> ○ The assumption that all the terms have been read and agreed to ● Parties opt for written contracts as to avoid the need to prove: <ul style="list-style-type: none"> ○ That the contract exists ○ The purposes of the terms of agreement ○ Limiting obligations to what has been agreed to already on paper
Oral contracts	<ul style="list-style-type: none"> ● Many contracts are oral <ul style="list-style-type: none"> ○ Consumers enter into an oral contract when purchasing fast food, for instance ● The only form of writing is often in the form of a receipt ● Oral agreements are difficult to prove or remember precisely <ul style="list-style-type: none"> ○ They are consequently open to misinterpretation ● Courts will examine the conduct of each party leading up to the negotiation of the contract in resolving contractual disputes ● Oral agreements can be supported in court by information about the a party's: <ul style="list-style-type: none"> ○ Behaviour both before and after the agreement ○ Specific actions ○ Past dealings
Elements of a contract	<ul style="list-style-type: none"> ● Contracts are essential to the functioning of modern economies ● The following elements must be present: <ul style="list-style-type: none"> ○ The intention of both parties to create legal relations ○ An offer by one party ○ The unconditional acceptance of that offer by the other party ○ Consideration from the offeree ○ Legal capacity of both parties
Expressed and implied terms	<ul style="list-style-type: none"> ● Expressed term: a contractual term that has been specifically stated and agreed to by both parties at the time the contract is made, either in writing or orally ● Implied term: a contractual term that is not included in the formal agreement <ul style="list-style-type: none"> ○ Can be implied by custom or law, or because of the presumed intentions of both parties ○ An example includes the guarantee of acceptable quality for the sale of goods under ACL that isn't specifically stated in the contract
Exclusion clauses	<ul style="list-style-type: none"> ● Also known as a disclaimer ● Incorporated into contracts to attempt to limit a party's liability for conduct that may breach the conditions of the contract ● Example: an airline ticket that guarantees a flight, but not necessarily

	the stipulated date
Conditions of an enforceable contract	<ul style="list-style-type: none"> • Parties must have the capacity to enter the contract <ul style="list-style-type: none"> ◦ Ability to enter into a contract voluntarily ◦ Contracts entered by people who aren't capable of understanding the terms or implications of it aren't enforceable • Free and voluntary consent to a contract <ul style="list-style-type: none"> ◦ No misinterpretations, deception, or duress involved ◦ No unconscionable conduct <ul style="list-style-type: none"> ■ Exploitation of one's vulnerabilities (e.g lack of understanding of the English language)
Statutory protections	<ul style="list-style-type: none"> • The ACL established uniform consumer laws in all states and territories • Introduced protections for consumers engaged in contracts • The most significant of these laws are <ul style="list-style-type: none"> ◦ <i>Competition and Consumer Act 2010 (Cth)</i> ◦ <i>Fair Trading Act 1987 (NSW)</i>

Role of negligence in protection

Role of negligence	<ul style="list-style-type: none"> • Refers to a breach of duty of reasonable care owed by one party to another, and damage to the plaintiff resulting from this breach • Where goods cause injury, loss, damage or death the consumer is entitled to seek litigation • Statutory protections ensure goods are abide by safety regulations whilst offering remedies to aggrieved consumers • Suppliers have a duty to warn consumers of products that are considered to pose a danger to consumers • They are required to recall the product under the <i>Competition and Consumer Act 2010 (Cth)</i> • Manufacturers are required to test goods and include warnings or instructions on products that may pose a risk to anyone • Example: product testing on pharmaceuticals and food
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Regulation of marketing & advertising

Statutory controls on advertising	<p>Australian Consumer Law</p> <p>Introduced new protections for consumers against:</p> <ul style="list-style-type: none"> • False or misleading representations <ul style="list-style-type: none"> ◦ False claims about the quality of value of a product
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	<ul style="list-style-type: none"> ○ False claims about the origin of a product ○ False claims about endorsements ● Deceptive or misleading conduct <ul style="list-style-type: none"> ○ <i>ACCC v Jetstar Airways 2019</i> ○ Includes exaggerated statements, failure to disclose all relevant information ○ Does not include <i>puffery</i> ○ <i>ACCC v Qantas 2023</i> ○ <i>Includes false and misleading advertisements for non-existent tickets.</i> ● Unconscionable conduct ● Bait advertising <ul style="list-style-type: none"> ○ Advertising goods or services for sale at a specified price with the knowledge that the company will be able to offer that price for a reasonable period ○ <u>The Checkout investigation on Aldi special buys (school shoes)</u> <ul style="list-style-type: none"> ■ <i>In-depth case study below</i> ● Unsolicited and unordered goods <ul style="list-style-type: none"> ○ Goods/services charged without express agreement from the buyer ● Coercion
Non-statutory controls on advertising	<p>AANA <i>Australian Association of National Advertisers</i></p> <hr/> <ul style="list-style-type: none"> ● The AANA includes two tribunals set up to resolve complaints under the AANA Codes. These are Ad Standards (which resolves consumer complaints) and the Ad Standards Industry Jury (which resolves competitor complaints).
Occupational licensing	
Occupational licensing	<p>Regulation of professions and occupations may include:</p> <ul style="list-style-type: none"> ● Registration: listing practitioners on an official register to identify them and to ensure that they comply with legal requirements ● Certification: recognises those who have obtained the qualifications necessary for practising a profession ● Licensing: identifies those who have fulfilled criteria related to education, experience or compliance with ethics. Generally requires a regulatory body to administer.

Consumer redress and remedies

Awareness & self-help

Self-help	<ul style="list-style-type: none">• Sellers can be reached in person, by telephone or by letter to address concerns or to dispute grievances.• Open to aggrieved consumers who feel that they've been treated unfairly or in an unfavourable manner• Consumers can seek self-help if goods aren't as described, are of an unacceptable quality, aren't durable (planned obsolescence)• Awareness is raised by media and organisations<ul style="list-style-type: none">◦ A Current Affair, NSW Legal Aid• Redress can be obtained by complaining to the manufacturer• Useful mechanism as it is resource effective and avoids costs associated with litigation• Under ACL consumers are entitled to seek redress in the form of a repair, replacement, or compensation.
Awareness	<ul style="list-style-type: none">• Recall Australia and the ACCC Shopper apps heighten awareness of entitlements and statutory protections granted under ACL, in addition to methods of seeking redress• Supplements self-help as it conforms consumers of methods of self-help

The media

Introduction	<ul style="list-style-type: none">• Scrutinises and holds sellers to account in where they may contravene ACL by aggrieving consumers• Garners a high volume of viewership propelling contraventions of the ACL into the public spotlight• The media can also heighten consumer awareness of unsafe products or dishonest sales techniques.• Although the media sometimes sensationalises issues, this can be beneficial if it results in inferior products being taken off the market.
A Current Affair	<ul style="list-style-type: none">• Mediaweek reported that ACA received over 500,000 viewers per night
CHOICE	<ul style="list-style-type: none">• Independent organisation that advises consumers on goods

	<ul style="list-style-type: none"> • Conducts tests in regards to the quality of goods and services in addition to potential malpractice • Plays an instrumental role in raising awareness
The Checkout	<ul style="list-style-type: none"> • A media organisation under the ABC informing consumers of their rights and entitlements granted under ACL • Raises awareness of remedies to resolve disputes • Scrutinises infractions upon the ACL and holds businesses to account <div> <p>Case study: ALDI Special Buys (Bait advertising)</p> <p>A 2018 article by Tony Ibrahim accused Aldi of bait advertising through their Special Buys campaign, advertising school shoes despite only selling 1 of each size and style at a number of stores investigated. Aldi allegedly gave inadequate notice of low stock.</p> </div>
Government organisations	
NSW Fair Trading	<ul style="list-style-type: none"> • Aims to maximise trader's compliance with regulatory requirements • Safeguards consumer rights by investigating alleged breaches of legislation • To minimise any direct financial or material harm or detriment to a consumer from a business that fails to comply with the law. • Manages consumer laws and advises sellers and businesses of their legal and ethical obligations • Sets rules for daily transactions between consumers and businesses • E.g Fair Trading can assist with choosing tradespeople for house construction

ACCC	<p>Australian Competition and Consumer Commission</p> <ul style="list-style-type: none"> • The primary body tasked with enforcing the ACL across Australia. • Where a corporation has made a false or misleading representation in advertising, the ACCC has the power to seek litigation with penalties up to an amount that is the greater of A\$10 million, three times the value of the benefit received or 10% of annual turnover in the preceding 12 months • Ineffective in resolving <i>individual</i> disputes • ACCC can seek other orders such as injunctions, declarations, orders for corrective notices, orders for compliance programmes and compensatory orders. <p>As an alternative to court proceedings, the ACCC may impose administrative remedies, which can include either or both:</p> <ul style="list-style-type: none"> • Infringement notices imposing fines of up to A\$12,600 per infraction • Court enforceable undertakings <ul style="list-style-type: none"> ○ Commitment not to engage in similar conduct in the future ○ Ongoing monitoring for the duration of the undertaking <div data-bbox="308 938 1505 1301"> <p>Case study: ACCC v Jetstar Airways 2019</p> <p>The ACCC sought litigation against Jetstar Airways for misleading and deceptive conduct after falsely advertising that lower fares were not entitled to the statutory protections granted by ACL, being advertised as non-refundable. Jetstar had sought to compel consumers to purchase high cost fares. Jetstar was found guilty by the Federal Court of Australia and were ordered to amend their misconduct. Ordered to pay \$2 million in fines</p> </div>
Courts & tribunals	
NCAT	<ul style="list-style-type: none"> • A form of alternative dispute resolution mitigates costly, inefficient processes associated with seeking litigation through courts • The relatively low cost of the proceedings: costs are generally quite modest when compared to matters dealt with by the courts. • Legal representation NOT required: except in exceptional circumstances, the parties are not legally represented. It is up to the parties to discuss grievances. • Time efficient: The matter should be resolved quite quickly. It is not unusual for court cases to take a number of years to be resolved. Matters in NCAT are usually completed within a number of months.

	<ul style="list-style-type: none"> ● Ease of application: Applications for tribunal hearings can be lodged online and an automatic hearing notice will inform the consumer of the hearing date, time and venue. <p>Disciplinary actions include:</p> <ul style="list-style-type: none"> ● A formal caution or reprimand ● One or more conditions on the licence, certificate or authority; ● A monetary penalty ● Suspending the authority for a period of time ● Immediately cancelling or revoking authority ● Disqualifying a licence holder from holding and/or obtaining an authority in the future. <div data-bbox="308 768 1505 1216"> <p>Case study: Jordan v Samsung Pty Ltd 2015 [NSWCAT]</p> <ul style="list-style-type: none"> ● The Jordan family sought a remedy after their Samsung washing machine caught fire and destroyed 80% of their belongings <ul style="list-style-type: none"> ○ Goods were unsafe and not fit for purpose ● The family sought self-help and were offered a \$30,000 settlement, which the Jordan family found that this sum didn't adequately compensate them for their losses ● The Jordan family pleaded their case with NCAT and were awarded \$36,000 in damages </div>
Courts	<ul style="list-style-type: none"> ● Damages: monetary compensation awarded by the court paid by defendants to someone who proves that loss was suffered as a result of the defendant's actions ● Rescission (modification of contract): courts will restore both parties to pre-existing contractual conditions ● Special order: for the rectification of the wrong (the repair of defective goods) ● Injunction: order forbidding or commanding an act ● Effectiveness of legal responses: <ul style="list-style-type: none"> ○ Potentially costly ○ Time-consuming <div data-bbox="308 1809 1505 2000"> <p>Case study: ACCC v Qantas (2023) [Federal Court]</p> <ul style="list-style-type: none"> ● Qantas was accused by the ACCC of selling tickets for more than 8000 flights that had already been cancelled </div>

	<ul style="list-style-type: none"> ○ Many tickets were sold up to 47 days after the cancellation ● Qantas failed to provide sufficient notice to ticket holders that their flights had been cancelled
	Case study: ACCC v Jetstar Airways 2019
	<p>The ACCC sought litigation against Jetstar Airways for misleading and deceptive conduct after falsely advertising that lower fares were not entitled to the statutory protections granted by ACL, being advertised as non-refundable. Jetstar has sought to compel consumers to purchase high cost fares. Jetstar was found guilty by the Federal Court of Australia and were ordered to amend their misconduct.</p>

Contemporary issues	
Credit	
Introduction	<ul style="list-style-type: none"> ● In today's society, many individuals are unable to purchase goods and services at the time they wish. To secure the purchases people will borrow the required amount from a third party. <ul style="list-style-type: none"> ○ This borrowing is known as acquiring credit ● The party who provides the amount will charge the borrower a fee for the amount <ul style="list-style-type: none"> ○ This is known as interest ● There is a potential problem for consumers of credit is that the consumer may not be able to repay within the interest free period and there be vulnerable to high interest rate amounts. ● Some issues faced include: <ul style="list-style-type: none"> ○ Unfair contracts ○ Inadequate complaints handling procedures ○ Delays in handling complaints ● Credit card providers have been scrutinised by the media for overly high
Legal responses	National Consumer Credit Protection Act 2009 (Cth) (NCCP)

- A meeting of the Council of Australian Governments in 2008 sparked amendments to ACL which **transferred credit regulation powers from the states to the Commonwealth**
 - Lead to amendments in the ***Australian Securities and Investment Commission Act 2001 (Cth)*** and to the ***National Consumer Credit Protection Act 2009 (Cth)***
- Australia now has standardised protections for consumers against malpractice by credit providers
 - Consistent across all jurisdictions in Australia
 - Replaced state-based consumer credit codes
- Benefits of these amendments include:
 - This has enhanced consumer protections and made it more consistent
 - Consumers and industry benefit from a **robust licensing regime** that excludes incompetent and unscrupulous credit providers
 - The credit market has greater integrity as they are held to greater account; enabling consumers to have more confidence
 - Rigorous entry conditions must be met before an Australian credit licence is granted
- **Administered by ASIC**
 - *ASIC: Australian Securities & Investments Commission*

National Credit Code

- A schedule of the **NCCP Act 2009 (Cth)**
- Requires credit information to be provided in a format that is **clear and understandable**
- Credit providers are **required** to:
 - **Inform** consumers of their **rights and obligations** in any credit arrangement
 - Provide a written contract that **discloses all relevant information** about the arrangement
- Credit providers are also barred from entering into contractual agreements through **unconscionable means**
 - Courts possess the authority to order **amendments** or to **rescind** such contractual arrangements
- Benefits of nationalised consumer credit code include:
 - Credit obligations and liabilities are **transparent** to all parties
 - **Clearly spelt-out** obligations increase consumer confidence
 - **Non-compliance** can result in civil penalties of up to \$500,000 or criminal charges

	<ul style="list-style-type: none"> ○ Provides business owners with a codified guide to setting out a contract ○ Credit agreements between businesses and consumers must be in a form of a written contract 	
	ASIC	
	<ul style="list-style-type: none"> ● An independent statutory body that regulates the NCCP ● Ensures financial markets are fair and transparent for investor, creditors and consumers ● The primary roles of ASIC include: <ul style="list-style-type: none"> ○ Investigation ○ Enforcing the NCCP ○ Commencing class actions on behalf of consumers ● ASIC has the power to revoke the licence of a credit provider if it engages in dishonest, unconscionable or deceptive conduct ● Enforcement powers are ineffective as less than one-fifth of outcomes are prosecuted 	
	Media article <i>Jessica Ivirne, The Sydney Morning Herald, 2018</i>	
Non-legal responses	<ul style="list-style-type: none"> ● ASIC had agreed with banks to return money obtained through misconduct to aggrieved investors/consumers without further penalty ● Banking Royal Commission exposed that less than a fifth of all enforcement outcomes involved potential incarceration ● Concerns raised as ASIC sought action against offenders through administrative rather than legal means 	
	Organisations	
	<ul style="list-style-type: none"> ● Mitigates the costs of seeking legal action ● Protected under statute and the NCCP 	
	NSW Fair Trading	<ul style="list-style-type: none"> ● Provides free advice regarding the National Credit Code <ul style="list-style-type: none"> ○ Can be reached via phone, in-person or online ● Can provide advice in areas such as loan repayments, default notices and car repossession

	Australian Financial Complaints Authority	<ul style="list-style-type: none"> • Provides free mediation services specially for credit disputes between consumers and lenders • Helps to resolve disputes • Addresses complaints about financial services
	Redfern Legal Centre (NGO)	<ul style="list-style-type: none"> • Offers free legal advice, referral and case work • Supports disadvantaged people and groups in neighbouring LGAs • Acts as an independent, non-profit community legal centre • Can be reached via phone or in-person • Provides advice about credit and debit
	ASIC	<ul style="list-style-type: none"> • Advising consumers: information regarding using credit and managing debt is outlined on ASIC's MoneySmart website • Provides individual with information on using credit wisely and the best course of action to take of one experiences difficulties • Helps consumers to seek redress by informing consumers of their options
Banking Royal Commission	<ul style="list-style-type: none"> • Despite regulations on credit, fears arose that regulations on the financial industry were insufficient and weren't applied adequately • A 'culture of greed' was found in financial institutions in Australia • Tasked with inquiring into and reporting on misconduct in the banking, superannuation and financial services history • Included 76 recommendations to overhaul the banking sector • A lack of legal intervention by regulators such as ASIC despite of growing concerns highlights the inadequacy of legal measures through their inaction <ul style="list-style-type: none"> ◦ ASIC had failed to act on financial institutions despite clear evidence surfacing of misconduct 	
Responsiveness of the legal system	Irresponsible lending	
	<ul style="list-style-type: none"> • Payday loans have become increasingly common as they offer high interest rates and exploit the lack of consumer awareness and financial literacy regarding credit • ASIC reported that 2 out of 3 payday loan providers breach laws on responsible lending • Despite legal protections for consumers in regards to payday loans 	

	<p>being strengthened in 2013, providers have not complied with such reforms</p> <div data-bbox="363 336 1505 1043"> <p>Case study: ASIC v Cash Converters (2015)</p> <ul style="list-style-type: none"> • Provide cash to consumers on low incomes • Charged establishment fees of 633% despite an initial 48% cap • Following an ASIC investigation uncovering infringements upon statutory protections (NCCP), they were ordered to pay a remedy of over \$1 million • An additional \$10 million were refunded to aggrieved consumers who had paid the high interest rate payments • A class action introduced by 50,000 consumers investigated the exuberant interest rates <ul style="list-style-type: none"> ◦ Cash converters complied and settled with a court remedy of \$23 million ◦ The final remedy was impeded due to high costs of class actions and lack of consumer awareness, with each consumer receiving an average payment of only \$555.55 </div>
<h2>Product certification</h2>	
Introduction	<ul style="list-style-type: none"> • Regulated under the Competition and Consumer Act 2010 (Cth) • Ensures goods and services comply with safety standards regarding quality and performance and also attempt to minimise any harm done <ul style="list-style-type: none"> ◦ Products must be fit for purpose. • Under the ACL, businesses are obliged to recall products and notify the ACCC if a product is unsafe and of unacceptable quality <ul style="list-style-type: none"> ◦ Allows the ACCC to seek action and achieve justice for consumers • Some businesses fail to comply with the ACL and are complacent, knowingly selling defective or unsafe products
Legal responses	Product safety
	<ul style="list-style-type: none"> • Under ACL, suppliers and manufacturers are obliged to ensure that goods sold are safe, which is achieved by: <ul style="list-style-type: none"> ◦ Providing clear instructions for use and warnings for potential misuse ◦ Keeping to industry and mandatory standards

	<ul style="list-style-type: none"> ○ Incorporating safety into product design ○ Actively enhancing the safety of their products ○ Taking action when safety concerns arise ● Legal mechanisms such as the ACL protect consumers through mandatory safety standards and information standards, which include: <ul style="list-style-type: none"> ○ Banning of unsafe goods ○ Compulsory product recalls ○ Warning notices ● The ACCC has an educational role and provides information and advice to consumers and supplier about statutory requirements ● Mandatory product standards include safety standards and information standards must be satisfied by suppliers in order to be sold in Australia by receiving certification <ul style="list-style-type: none"> ○ Safety standards: legal requirements relating to safety, labelling and design requirements ○ Information standards: information which must be granted to consumers when they purchase goods, such as labels indicating risks
	Product certification
	<ul style="list-style-type: none"> ● Products often undergo stringent certification processes in order to be certified as safe <ul style="list-style-type: none"> ○ The greater the risk of injury, the the more demanding certification process will be ● Consumer goods, domestic or imported, must meet safety benchmarks prior to being sold ● Certification marks on goods provide consumers with reassurance that the products they're purchasing are fit for purpose and safe <ul style="list-style-type: none"> ○ Certification marks include the 'CE' mark used by the European Union to indicate a product can be legally sold in the EU
	Product recalls
	<ul style="list-style-type: none"> ● A lack of safety standards may pose a risk to the community due to the circulation of unsafe products ● Australian Consumer Survey 2016 found that the most common type of consumer problem was related to defective, non-utilitarian and unsafe products ● The ACCC and NSW Fair Trading have enforcement powers if businesses fail to comply with safety standards <ul style="list-style-type: none"> ○ Also guarantees the implied right that consumers are entitled to a refund is a product is unsafe

	<ul style="list-style-type: none"> • The process of recalling a product can be slow and time-consuming <div data-bbox="363 293 1503 365"> Case study: Takata airbag recalls </div> <ul style="list-style-type: none"> • Takata airbags were scrutinised following the production of faulty airbags in millions of cars <ul style="list-style-type: none"> ◦ Attributed to the deaths of 23 people • The ACCC ordered car manufacturers to replace Takata airbags • An initial lack of compliance as 2.3 million cars still contained faulty Takata airbags <ul style="list-style-type: none"> ◦ A CHOICE investigation revealed that recall efforts stalled, with some manufacturers as little as 11% of affected cars ◦ This necessitated the introduction of a mandatory recall <div data-bbox="363 846 1503 913"> NCAT - <i>NSW Civil and Administrative Tribunal</i> </div> <ul style="list-style-type: none"> • Mitigates costs of court proceedings • Resource efficient <div data-bbox="363 1061 1503 1133"> Case study: Jordan v Samsung Pty Ltd 2015 (NCAT) </div> <ul style="list-style-type: none"> • The Jordan family sought a remedy after their Samsung washing machine caught fire and destroyed 80% of their belongings <ul style="list-style-type: none"> ◦ Goods were unsafe and not fit for purpose • The family sought self-help and were offered a \$30,000 settlement, which the Jordan family found that this sum didn't adequately compensate them for their losses • The Jordan family pleaded their case with NCAT and were awarded \$36,000 in damages
Non-legal responses	<ul style="list-style-type: none"> • The media play an integral role that highlights and publicises unsafe products <ul style="list-style-type: none"> ◦ Propels safety concerns into the public spotlight and informs consumers of potential risks posed to them ◦ Consumers can keep up to date with product safety information through Product Safety Australia and through reports published by CHOICE • 'Naming and shaming' practices through the NSW Food Authority publicly disclose a list of businesses that have breached safety regulations

	<ul style="list-style-type: none"> ○ Effective mechanism in holding businesses to account and encouraging compliance ○ Another example of this is ANCAP car safety ratings
Effectiveness	<ul style="list-style-type: none"> ● Suppliers are ultimately responsible to ensure mandatory safety standards, issue warning notices, recall goods and not to breach any bans, in addition to keeping consumers informed ● Aggrieved consumers can seek litigation and compensation, however such processes are costly and time-consuming ● Action can be taken by the ACCC where they seek civil remedies for consumers such as damages <ul style="list-style-type: none"> ○ Depends on the awareness of consumers, who need to exercise caution and be aware of unsafe products
Marketing innovations	
Introduction	<ul style="list-style-type: none"> ● Marketing is the process by which procedures of goods entice consumers to purchase their goods ● Marketing has become more sophisticated over time particularly with respect to e-commerce ● E-commerce is a recent phenomenon, there are few laws and regulations to address issues related to e-commerce <ul style="list-style-type: none"> ○ Issues include pop ups & cookies ● Governments have been slow to respond to issues related to market innovations in the area of e-commerce <ul style="list-style-type: none"> ○ However, progress is being made in this area
Legislation	<ul style="list-style-type: none"> ● Marketing innovation can be utilised for deceptive purposes <ul style="list-style-type: none"> ○ Fraudulent offers from overseas & pyramid schemes have become an increasingly prevalent issue ● Scammers can also send mass emails or automated phone calls to a wide range people, and may engage in phishing <ul style="list-style-type: none"> ○ Phishing: stealing credit card numbers, user IDs, passwords) ● The Spam Act 2003 (Cth) protect consumers against the use of address-harvesting softwares to build distribution lists of recipients <ul style="list-style-type: none"> ○ As such, the ACCC and NSW Fair Trading regularly scan technological platforms for illegal offers designed to exploit consumers ● The Competition and Consumer Act 2010 (Cth) and Fair Trading Act 1987 (NSW) address deceptive marketing and advertising ● The ACL's key provisions prohibit practices such as:

	<ul style="list-style-type: none"> ○ Bait advertising ○ Pyramid selling ○ Referral selling ○ Coercion ○ Sending unsolicited goods with a demand for payment ○ Making false or misleading representations
Non-legal responses	Scamwatch
	<ul style="list-style-type: none"> ● Operated by the ACCC ● Provides consumers with information and small businesses regarding the recognition, avoidance and reporting of scams ● Intercepts scams and publicises scam alerts, increasing public awareness ● Collects reports from consumers who suspect that they've encountered a scam <ul style="list-style-type: none"> ○ Reports are used by law enforcement agencies to disrupt scam operations
	ACMA: <i>Australian Communications and Media Authority</i>
	<ul style="list-style-type: none"> ● A government agency responsible for regulating telecommunications, radio broadcasting and the internet ● Provides information and advice to help consumers to be more aware of their rights, and to protect themselves against parties that are engaging in deceptive advertising or marketing ● Consumers can lodge complaints to the AMCA regarding deceptive marketing and advertising practices ● Enforces legislation such as the Spam Act 2003 (Cth) ● The ACMA can respond to infringements upon statute by: <ul style="list-style-type: none"> ○ Providing advice on how to comply (informal warning) ○ Issue an infringement notice ○ Seek litigation in the Federal Court
	The media
	<ul style="list-style-type: none"> ● Reports on questionable marketing activity through print and electronic media ● Provides consumers with greater awareness of the nature and prevalence of scams
	Case study: ALDI Special Buys (Bait advertising)

	A 2018 article by Tony Ibrahim accused Aldi of bait advertising through their Special Buys campaign, advertising school shoes despite only selling 1 of each size and style at a number of stores investigated. Aldi allegedly gave inadequate notice of low stock.	
Responsiveness of the legal system	<ul style="list-style-type: none">• Very effectively in addressing <i>domestic</i> marketing issues<ul style="list-style-type: none">◦ Australian consumers have high levels of protection due to the nature of the legal system• Emerging threats posed by marketing innovations largely stem from overseas marketing• Advances in electronic marketing make it easier for fraudulent markets to communicate with their victims and transfer money across borders due to the transactional nature of scams	
Effectiveness of legal and non-legal responses		
	Factors ensuring effectiveness	Factors impeding effectiveness
	<ul style="list-style-type: none">• Direct commerce and product placement are regulated by several laws• ACMA is willing to seek litigation against non-compliance with laws regulating direct commerce and product placement	<ul style="list-style-type: none">• Consumers need to be aware of the protections offered by statute and be willing to lodge complaints• Enforcement of product placement disclosure laws relies on compliance as it is a covert and insidious form of advertising, consumers may not be aware it is occurring
Technology		
Introduction	<ul style="list-style-type: none">• The rapid development of new technology has lead to a plethora of new challenges for the legal system<ul style="list-style-type: none">◦ The use of new technology is constantly changing, posing problems for existing laws• The law has largely struggled to keep pace with new technologies adopted by sellers• Technology has become more prevalent as e-commerce continues to grow, with various services over the internet now available such as:<ul style="list-style-type: none">◦ Telemarketing	

	<ul style="list-style-type: none"> ○ Online marketing ○ Online ordering ○ Online reservations ● Services available on the internet operate under fewer regulations as existing laws haven't adapted to new technologies
Legal responses	<ul style="list-style-type: none"> ● The use of technology poses challenges for Australian law as the internet has no international jurisdiction ● Effective legal responses in Australia include: <ul style="list-style-type: none"> ○ Assets of foreign marketers can be frozen if the Australian legal system has information on the location of the assets ○ Arrest warrants can be issued in Australia, and extradition treaties with foreign countries enable for justice to be achieved ○ Government monitors are able to intercept fraudulent telemarketing sites and remove them from the internet ● Consumers making domestic online purchases may also be victims of unscrupulous behaviour. Issues that arise in online transactions (domestically or internationally) include: <ul style="list-style-type: none"> ○ The need to ensure fair dealings between suppliers and consumers regarding the terms and conditions of a sales contract ○ Consumers who have low-incomes or have low technological literacy are prone to exploitation and unconscionable conduct ○ Information gathered from consumers can be used inappropriately by suppliers for consumer profiling ○ Biometric data collected for consumer identification purposes is not transmitted digitally to other organisations without the person's consent ● The Competition and Consumer Act 2010 (Cth) and Telecommunications Act 1997 (Cth) enables the ACCC to enforce prohibitions statutory protections and regulations within the Acts <div data-bbox="363 1570 1505 2027"> <p>Case study: use of biometric technology (Kmart, Bunnings)</p> <ul style="list-style-type: none"> ● Human Rights Commission in Australia has fought against the implementation of facial recognition cameras without further regulation as such data may be used for secondary purposes ● Lack of transparency over how data is used has raised concerns due to obscure indications of technologies in place in retail stores ● No legislation exists that explicitly addresses facial recognition but some protections are offered by the Privacy Act 1998 (Cth) such as the handling of information </div>

Non-legal responses	<ul style="list-style-type: none"> Non-legal responses have a role in ensuring technology isn't misused and to promote consumer awareness and self-protection. These include: <ul style="list-style-type: none"> ACMA: responsible for the regulation of broadcasting, radio and television communications and the internet Scamwatch: <i>refer to marketing innovations notes</i> ASIC: oversees the regulatory issues posed by developments in electronic communications & are responsible for approving codes of practice in the financial services industry
Responsiveness of the legal system	<ul style="list-style-type: none"> The Competition and Consumer Act 2010 (Cth) and Telecommunications Act 1997 (Cth) allow the ACCC to enforce statutory protections and to monitor compliance Legal mechanisms afford consumers with some protections against the misuse of technology, provided e-marketers are within Australian borders On the other hand, legal mechanisms are ineffective in addressing foreign marketers that leave Australians more prone to exploitation Cross-border marketing raises jurisdictional challenges, with future consumer remedies dependent on future multilateral international treaties and extradition deals <div> <p>Case study: ACCC v Google Inc. (2013)</p> <ul style="list-style-type: none"> Google was alleged to have engaged in misleading and deceptive conduct due to a program which displayed an advertiser's web address as a sponsored link when a competitor was searched on Google Found not to be in breach of the Trade Practices Act 1974 (Cth) Google claimed it was merely a conduit for the advertiser, however the Federal Court found Google had engaged in misconduct and did not act as a conduit for the advertisement An appeal to the High Court cleared Google of any misconduct </div>

2 | World Order

Themes and challenges

1.	The role of the law in encouraging cooperation and resolving conflict in regard to world order
2.	Issues of compliance and non-compliance
3.	The impact of changing values and ethical standards on world order
4.	The role of law reform in promoting and maintaining world order
5.	The effectiveness of legal and non-legal responses in promoting and maintaining world order

Nature of world order

Definition	<p>A system of global relationships and frameworks that aim to maintain and promote international peace and stability</p> <ul style="list-style-type: none">• Between nations or non-state actors<ul style="list-style-type: none">◦ Countries◦ United Nations• Legal, political and economic frameworks<ul style="list-style-type: none">◦ Treaties◦ Agreements◦ Organisations• Aim: prevent war, maintaining peace
The need for world order	<ul style="list-style-type: none">• An absence of world order would engender anarchy• More powerful countries could prey on the less powerful• Human rights abuses would be unregulated• Without world order, the interconnections in the world would be marred<ul style="list-style-type: none">◦ Systems of tourism, economies, world politics and trade would be adversely affected

Development of world order over time

Treaty of Westphalia

- Origins for both can be traced back to the *Peace of Westphalia* (1600s)
- 109 European powers created a series of peace treaties
- Ended the 30 Years War between the Roman Empire
- A **multilateral** agreement that established **state sovereignty** by recognising the independence of other states and the need to not meddle in the affairs of others

State sovereignty

- **Definition:** the authority of a state to govern itself
 - To apply laws, to collect taxes, and to enter treaties with other nations
- **Article 2 of the UN Charter**
- Free from interference from other states
- Each nation has the right to make its own domestic laws
- States reserve the right to refuse to abide by treaties and international documents, potentially detrimental towards world order
- Nations often discard international law as they believe it is in their national interest to act otherwise
 - Australia and asylum seekers

Multilateralism

Definition

- Mutually beneficial cooperation between states designed to further interests or to protect from threats

League of Nations

- World War 1 and the emergence of the League of Nations is a prime example of multilateralism, which shows how states have exercised their sovereignty.
- The League of Nations was established on the principles of collective security.
- The League of Nations was successful in the late 1920s, however was strained by legal flaws **characterised by its inaction**, dissipating by 1939.

Treaties

- The Treaty of Versailles was established following World War 1 in 1919 which heavily restricted Germany's armed forces, casting a significant strain on Germany which had led to World War 2.

- The *Atlantic Charter 1941* paved the way for the establishment of the United Nations
- The United Nations Charter (1945) was signed by 50 countries which cemented the UN as a legal entity, and a multilateral body.

Types of conflict

Interstate

Conflict between nations

Conventional warfare	<ul style="list-style-type: none"> • The utilisation of mobilised military forces. Those involved wear distinctive uniforms that clearly signify their allegiance. • (e.g World Wars, Korean War, Vietnam War)
Nuclear warfare	<ul style="list-style-type: none"> • Involves the use of atomic or hydrogen bombs. • Poses an imminent threat to humanity and the mere use of hundreds out of the thousands that exist could potentially lead to the annihilation of humanity. • A major step in resolving this was the Limited Nuclear Test Ban Treaty of 1963, in which the USSR and the US vowed to end atmospheric nuclear weapons tests. <ul style="list-style-type: none"> ◦ Russia has since withdrawn from this treaty • Today, 9 countries are in possession of nuclear weapons including China, the UK, India, US and North Korea. • Approximately 14000 nuclear weapons are in existence.
Cyber warfare	<ul style="list-style-type: none"> • Designed to send harmful data packets towards systems that act as the arteries to essential services <ul style="list-style-type: none"> ◦ Healthcare, electricity, finance, education and defence. • These acts can be perpetrated by terrorists or criminals. Numerous countries, namely China and Russia, are capable of wreaking havoc onto the key systems of western countries, including Australia. • It is often difficult to trace the origin of attacks. • (e.g Cyber attacks against Optus and Medibank 2022)
Cold War	<ul style="list-style-type: none"> • Refers to a period of increased tensions between the United States and the USSR during the 20th century • Both parties threatened to mobilise their respective armies and nuclear weapons.

	<ul style="list-style-type: none"> • This led to many states supported by one of the two opposing parties to wage war against each other to curb the influence of one another. • (e.g Korean War, Vietnam War)
Intrastate Conflict within states	
	<ul style="list-style-type: none"> • The UN Charter placed less emphasis on intrastate conflict as opposed to interstate conflict with fewer provisions. • The UN is challenged by its inability to respond to intrastate conflict, undermined by state sovereignty • One key response the UN has devised to promote stability in affected regions is peacekeeping, where UN-employed forces are deployed into conflict-stricken states, often using force to sustain peace.
Civil War	<ul style="list-style-type: none"> • Conflict between several parties confined to a particular state. • Key examples include the American Civil War, Korean War, and Vietnam War. • The most contemporary example is the Syrian Civil War in 2011. • International Law is often ineffective due to geopolitical rivalries and instability.
Guerilla War	<ul style="list-style-type: none"> • Involves the use of unorthodox tactics in warfare. This generally involves harassing the enemy, and retreating repetitively until the enemy is worn down. • A prime example of the use of Guerilla Warfare is the Viet Cong during the Vietnam War, who utilised such tactics against US Forces who had access to more technologically advanced weapons.
Wars waged against citizens by governments	<ul style="list-style-type: none"> • Examples of this include authoritarian regimes oppressing alleged political dissidents by force, state sponsored terrorism, or genocides. • These are often classified as war crimes and crimes against humanity • (e.g The Holocaust)
Communal violence	<ul style="list-style-type: none"> • Violence that occurs within communities that don't necessarily involve government parties. • This is often the result of tensions aroused between ethnic groups, religious groups, often due to territorial grievances. • Many of these conflicts spill into neighbouring regions threatening regional security and stability. • The UN often encounters significant hardships in responding to these issues as intervention can be seen as threats to national sovereignty.

- (e.g Rwandan Genocide)

Sources of conflict

Access to resources

Energy resources

- Plays a significant role on today's energy dependent world
- Includes oil, gas, iron, ore, coal and other minerals
- Resources are scarce and not distributed equally
- International cooperation is often required in order to secure an adequate amount of energy resources
 - The US, for example, consumes more energy than it can produce
- **Examples:** Gulf War

Land-related resources

- Invasion and colonisation to attain land to satisfy own interests
- The amount of power a country has correlates with the land they possess
- Particular crops and water supplies dependent on climate conditions are not accessible by all countries, hence the need for imports and international
- **Examples:** South China Sea tensions, Falkland Islands War

Other reasons

Ideological disputes

- Disagreement of ideologies or ideas
- **Example:** US and USSR between capitalism and communism

Religious disputes

- Extreme fundamentalism resulting in violence
- **Example:** ISIS clashing with Western culture

Intolerance

- Against particular ethnicities, religions, minority groups or races
- **Example:** Rwandan Genocide (Hutu vs Tutsi ethnic groups)

Dominance

- Traditional warring attitudes dominating a nation
- **Example:** Russian invasions of Ukraine (2022 and 2014)

Responses to world order

State sovereignty

Introduction

- Right a nation state has to make their own decisions free from the interference of others
- **Enshrined under article 2 of the UN Charter**
- States aren't obliged to sign treaties or adhere to international courts
- Acts as the most significant strain on maintaining world order

Non compliance

Non-proliferation of Nuclear Weapons Treaty 1968

- Used to monitor and limit nuclear weapons use
- Numerous states (India, Pakistan, North Korea, Israel) exercised state sovereignty to continue to ramp up their nuclear weapons arsenal as they refused to sign the treaty

International Law

- State sovereignty can be overcome when the international community feels mass atrocities are occurring
- The UN is often unable to intervene in mass atrocities
- **R2P** (Responsibility to protect): UN bears responsibility to protect against mass atrocities and reserves the right to intervene
 - Balanced against state sovereignty

Nation state

- Main component of the world order system
- Nations exercise their sovereignty to determine if they cooperate in the international law system
- Influential vehicle for change through their ability to influence other parties
- **Example:** US and UK Clear Air Acts spread worldwide, acting as a catalyst for international environmental law

United Nations

Introduction	<ul style="list-style-type: none"> ● Single most important and powerful body in the world for creation, development and maintenance of world order through international law ● The UN holds responsibility for safeguarding world order ● The UN Charter acts the constitution of the UN ● There are currently 193 member states
Goals of the UN	<ul style="list-style-type: none"> ● Maintain international peace and security ● Develop friendly relations among nations ● To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character ● Promoting respect for human rights
Main bodies of the UN	<ul style="list-style-type: none"> ● UN General Assembly ● UN Security Council ● UN Secretariat ● Economic & Social Council ● International Court of Justice
UN Security Council & Humanitarian intervention	<ul style="list-style-type: none"> ● Maintains international peace and security ● The UN will intervene if there is consensus between the UN Security Council to intervene in matters where human rights have been grievously violated. ● Authorises sanctions, peacekeeping, binding resolutions, and military actions ● The effectiveness of the UN Security Council to adequately provide humanitarian assistance and intervention is hindered by the vested interests of its members ● Peacekeeping requires a successful vote in the UN General Assembly, whereas peace operations require a successful vote in the UN Security Council. <ul style="list-style-type: none"> ○ Peacekeeping operations include Rwanda ● It is unlikely for the UN Security Council to enact humanitarian intervention as members of the UN Security Council reserve the right to veto <ul style="list-style-type: none"> ○ Prevents resolutions from being passed, a major barrier ● Many have suggested that the UN Security Council be reformed as the permanent members don't reflect the power realities of today ● UN Security Council members are permanent, and include China, Russia, United Kingdom, United States, and France (all of whom are victors of WW2). This is in addition to 10 countries that are elected by the General Assembly to serve 2-year terms ● Effectiveness is plagued by its inherent flaws (veto powers)

	Examples of ineffectiveness <ul style="list-style-type: none"> ● Example: China used it's right to veto to block resolutions that would impose sanctions on Myanmar's Junta by the UN through it's R2P principle as it didn't align with China's interests due to their ties with Myanmar's military ● Example: During the Syrian Civil War, Russia exercised its right to veto to block resolutions that would permit humanitarian intervention in Syria to ease the crisis.
UN General Assembly	<ul style="list-style-type: none"> ● All 193 members are represented by one representative each ● Multilateral platform with one representative from each member state ● Oversees the budget of the UN, receives reports, and makes recommendations ● Resolutions are less powerful than that of the Security Council ● Requires a majority of the vote from member states to pass resolutions ● Example: The UNGA in 2023 condemned Russia's invasion of Ukraine and passed a resolution calling for Russia's withdrawal ● Example: passing of the Non-Proliferation Treaty in 1968
International instruments	
Bilateral	Treaty between two states <ul style="list-style-type: none"> ● Treaty of Westphalia
Multilateral	Treaty between multiple states <ul style="list-style-type: none"> ● UN Charter 1945 <ul style="list-style-type: none"> ○ Successful in upholding peace and security - 69 peacekeeping operations have been initiated ● UDHR <ul style="list-style-type: none"> ○ Seen as a major step forward ○ Despite, this violations are still rife in the present but to a lesser extent ● Non-Proliferation 1968 <ul style="list-style-type: none"> ○ Disincentivised the development of nuclear weapons ○ There are numerous countries with nuclear weapons capabilities ○ Currently 9 countries possess nuclear weapons, which hasn't changed since 25 years ago ○ Progress has stalled as relations between the United States and Russia continues to deteriorate ● Geneva Conventions 1949 <ul style="list-style-type: none"> ○ Ratified by every state

- The most universally accepted instrument of international law

Courts & tribunals

International Court of Justice

- Deals with disputes between sovereign states
- Oversought by 15 judges, elected by the UN
- Questions before the court are decided by a majority, judges don't reserve the right to veto
- Not bound by precedent from previous rulings, though they may be referred to
- Lacks a legal mechanism to enforce its rulings
 - e.g Australia's dispute with Japan over whaling (2014), US v Nicaragua (1980)
- **Non-compliance** undermines its effectiveness as most countries opt to not abide by ICJ rulings
- Also offers non-binding advisory opinions to matters of international law submitted by the UN General Assembly

Case study: Nicaragua v US (1980s)

Nicaragua brought the US before the ICJ which alleged that the US had breached international law by supplying rebel groups with weapons who sought to overthrow Nicaragua's government. Whilst effective in holding the US to account by ruling in favour of Nicaragua and demanding reparations from the US which were found to be in breach of International Law, the US exercised state sovereignty and refused to abide by the ICJ's ruling. Unable to enforce its ruling, justice wasn't attained, showcasing the ineffectiveness of the ICJ and the role of state sovereignty.

International Criminal Court

- Tries cases where mass atrocities have been observed (war crimes, genocide)
- **Only prosecuted 2 people in its history**
- Independent from the UN Security Council, who don't reserve the right to veto the referral of a case to the International Criminal Court
- **Limitation:** struggles to track individuals down and bring them to court, hence its low number of convictions
 - **Example: Omar Al-Bashir**, President of Sudan, who had an arrest warrant issued by the ICC who was **never trialled** as a result of **non-compliance** by the Sudanese government

	<ul style="list-style-type: none"> • 123 UN member states have signed ratified the Rome Statute <ul style="list-style-type: none"> ◦ This has raised concern that the reach and mandate of the International Criminal Court may be strained by these limitations, as non-members of the Rome Statute will encounter hardships in obtaining justice • Referrals can come from parties of the Rome Statute, the UN Security Council, or the International Criminal Court prosecutor • The ICC lacks enforcement powers, and as such faces numerous challenges in issuing arrest warrants for those found of committing crimes against humanity
Ad-hoc tribunals	<ul style="list-style-type: none"> • Established by the UN Security Council to address specific issues • Two main tribunals in history • International Criminal Tribunal for Rwanda sought to hold those who had breached international law to account • Genocide, crimes against humanity, war crimes, Crimes of aggression
Intergovernmental organisations	
NATO	<ul style="list-style-type: none"> • Military relationship between North America and Western Europe • Collective defence agreements, where countries are obliged to assist with each other in events of aggression
	Case study: intervention in Yugoslavia (1990s)
	<ul style="list-style-type: none"> • NATO intervened following a series of atrocities and war crimes, primarily ethnic cleansing in warring states • NATO utilised military action and was highly successful in fostering peace by ending the war • Legally contested over it's breach of state sovereignty
ASEAN	<ul style="list-style-type: none"> • Association of Southeast Asian Nations • Established to promote political stability in the region and to bolster economic prosperity
Non-government organisations	

<p>NGO's are independent non-profit organisations that advocate, analyse and report on issues concerning human rights around the world. NGO's have a limited influence on world order as they lack the resources government bodies have.</p> <ul style="list-style-type: none"> Numerous NGOs work to provide humanitarian aid and assistance to those affected by or displaced as a result of conflict. 	
International Crisis Group	<ul style="list-style-type: none"> Established on the basis that the international community had failed to adequately respond to genocides that occurred during the late 20th century, including in Rwanda. Monitors conflicts and potential conflicts Information source, reporting, analysing, early warnings, strategic plans
Human Rights Watch	<ul style="list-style-type: none"> Actively advocates for matters concerning human rights by holding governments to account and championing international humanitarian law. Conducts research documenting breaches of human rights to enable accountability to take place, bringing many matters to the public spotlight. Raises awareness within the international community and increases pressure on governments by lobbying them. The effectiveness is bound by the willingness of those held to account to address issues raised by the HRW, hindering their ability to drive change. As the HRW is highly dependent on funding the HRW often lacks the sufficient resources to effectively hold the government accountable and thus this strains their ability to promote World Order.
	<p>Case study: report into NATO's air raids in Libya</p>
	<p>2022: the HRW publicly published a report detailing the alleged killing of 72 civilians by NATO's air forces in Libya, holding NATO to account by raising concerns over their refusal to acknowledge these claims despite overwhelming evidence gathered by the HRW. 7 of the 8 sites the HRW studied were void of anything to suggest they were a military target.</p>
International Committee of the Red Cross	<ul style="list-style-type: none"> A non-profit humanitarian organisation that actively works to cater to the needs of those adversely affected by political instability or human rights abuses. Works globally and was established upon the principles of the Geneva Conventions Independent from governments, relying heavily on donations. Consequently, this means that the ICRC lacks the resources to take

	<p>affirmative action to prevent or intervene in humanitarian crises that may pose a threat to world order</p> <ul style="list-style-type: none"> • The ICRC also has an advisory department that ensures that governments and other organisations are informed of their obligations under international law, namely the Geneva Conventions • The ICRC also provides education programs that promote understanding of international humanitarian law • <u>Instrumental role in the development of the Geneva Conventions</u> • The ICRC is highly effective in upholding international humanitarian law. <div data-bbox="320 638 1505 712"> <p>Case study: Ukraine humanitarian aid</p> </div> <div data-bbox="320 712 1505 913"> <p>The ICRC has facilitated the delivery of critical humanitarian aid to civilians in Ukraine who have been displaced or struggle to obtain basic needs such as food, and shelter that are enshrined in the UDHR. Civilians were provided with food, hygiene, and blankets.</p> </div>
<h2>Australian government</h2>	
<p>Domestic legislation</p>	<ul style="list-style-type: none"> • External affairs power: the constitution enables for Australia to ratify and protect international treaties <ul style="list-style-type: none"> ◦ International Criminal Court Act 2002 (Cth) ◦ Anti-discrimination acts • International laws are not automatically incorporated into domestic legislation, they must be ratified on a case by case basis by the government <ul style="list-style-type: none"> ◦ This is unlike numerous other countries that have automatic incorporation of international law • States cannot ratify international treaties <div data-bbox="320 1615 1505 1688"> <p>Case study: Tasmania Dams Case</p> </div> <div data-bbox="320 1688 1505 1977"> <ul style="list-style-type: none"> • Tasmanian Government v. The Commonwealth • Tasmania sought to construct a dam in a World Heritage listed area • Violation of environmental convention preserving cultural and natural heritage • Federal government intervened under external affairs power and thwarted the construction of the dam </div>

Role in world governance	<p>Peacekeeping</p> <ul style="list-style-type: none"> • Over 65,000 Australian personnel have partaken in over 50 peacekeeping operations, across 25 different conflicts. • Military observation, monitoring ceasefires, clearing landmines, humanitarian aid • \$5.03 billion a year • Australia is merely a regional power, and is limited on their influence <div data-bbox="320 551 1501 831"> <p>Case study: East Timor Conflict, late 1990s</p> <ul style="list-style-type: none"> • Australia heavily involved following political instability as East Timor was embroiled by intrastate conflict • International Force for East Timor established • Hundreds of millions in aid given </div>
<h2>Negotiations, persuasion and use of force</h2>	
Negotiations	<ul style="list-style-type: none"> • Diplomats and government representatives work together to attempt to resolve conflicts peacefully through dialogue • UN and IGOs act as forums • Can occur on a bilateral or multilateral scale • Limitation: no obligations exist that oblige states to negotiate or to make amends
Persuasion	<ul style="list-style-type: none"> • Varying levels of severity <ul style="list-style-type: none"> ◦ Less serious pressuring calls (lobbying) • More serious sanctions <ul style="list-style-type: none"> ◦ Sanctions: penalty for not complying or breaking a rule • NGO and others bring matters of concern into the public spotlight as to pressure governments • Example: In 2008, China blocked resolutions for action in Sudan, sparking outrage and resulting in a campaign labelling the Beijing Olympics as the <i>Genocide Olympics</i>, to which China submitted to pressures
Use of force	<ul style="list-style-type: none"> • When other mechanisms are exhausted, this is resorted to • UN Charter outlines the use of force as a last resort <ul style="list-style-type: none"> ◦ Simultaneously states that the use of force is appropriate in the case of self-defence • UN Security Council controls the UN's use of force

- **Example:** US War on Terror and invasion of Afghanistan, legality of these actions were questioned

Teacher example:

Evaluate the effectiveness of non-legal measures in impacting the World Order.

There are some non-legal measures that have impacted on the World Order with some effectiveness. Some of these non-legal measures include international instruments. One such instrument is the United Nations Charter (UNC). The UNC was developed after WWII in response to the atrocities that occurred during the conflict.

The United Nations (UN) has been somewhat effective in impacting the World Order. There are numerous articles in the UN Charter that outline the principles that intend to establish how countries should interact with each other. For instance, article 1 of the UNC states...

An example of how this article has been somewhat effective can be seen in action by the UN in implementing peacekeeping operations seen in Rwanda...

Contemporary issues

Responsibility to Protect

Development of R2P

- Concept was proposed as a result of the atrocities of and **failings of the UN** Rwandan Genocide
- The UN had in ineffective response to the Rwandan Genocide
 - Prior to escalating tensions, peacekeepers deployed were not authorised to use force
 - This paralysed peacekeeping forces, unable to take action when tensions rapidly soured
 - 10 peacekeepers had been killed as the UN hadn't authorised the use of force
 - The UN had to balance state sovereignty and international law
 - Peacekeepers arrived at the conclusion of the genocide

Steps of R2P include:

1. States have the first responsibility to protect their own

	<ol style="list-style-type: none"> If the state cannot assist - the international community has the responsibility to assist (diplomacy, mediation, security) If state manifestly fails to protect - international community has responsibility to intervene with force (requires Security Council authorisation)
Non-legal responses	<ul style="list-style-type: none"> International Commission on Intervention and State Sovereignty releases R2P report <ul style="list-style-type: none"> Recommended the principles that underpin R2P R2P is not a form of international law and never legally enshrined
Legal responses	<div> <div>Case study: 2011 Libya Crisis</div> <ul style="list-style-type: none"> Anti-government protests lead to extreme violence from the government, launching airstrikes against civilians Gaddafi, in an attempt to quell dissidents, ordered troops to fire on civilians Violation of R2P evoked a response from the UNSC The UN Security Council imposed sanctions on the Libyan leader and referred him to the ICC Further violations of the R2P lead to the UN establishing a no-fly zone above Libya and intervention from NATO forces Cited as a successful application of R2P </div> <div> <div>Case study: Syrian Conflict (ongoing)</div> <ul style="list-style-type: none"> Anti-government protests lead to extreme violence from the government, leading to suppression The Russian government actively supports the Syrian government whilst the US, UK and France support opposition forces <ul style="list-style-type: none"> This led to conflict within the Security Council, leading to inaction </div>
Threatening situations & global cooperation	
Threatening situations	Threat of Nuclear War <ul style="list-style-type: none"> Nuclear weapons only used twice in history (US bombings of Hiroshima and Nagasaki)

	<ul style="list-style-type: none"> • Tensions peaked during the Cold War during the arms race and rapid advancement of nuclear weaponry <ul style="list-style-type: none"> ◦ Raised alarming concerns over the annihilation of the human race • Treaties signed between Russia and the US alleviated nuclear tensions and thwarted a nuclear war • Non-proliferation Treaty 1968 <ul style="list-style-type: none"> ◦ Not ratified or signed by a number of parties such as North Korea ◦ Successful in limiting possession of nuclear weapons to 5 countries (the current Security Council members) ◦ Non-compliance has posed a threat with India, Pakistan and North Korea developing and testing nuclear weapons
Global cooperation	<p>East Timor Independence Movement</p> <ul style="list-style-type: none"> • Colonised by Portugal, who left in the 1970's • Indonesia seizes control over East Timor and enforces a strict regime, suppression by force of dissenting civilians • UN resolutions proposed independence referendum and paved the way for East Timor's independence • Following the referendum, the ill-equipped UN personnel were overwhelmed by Indonesia's violent response • UN passed a resolution to establish the International Force for East Timor headed by Australia, leading to Indonesia withdrawing from East Timor • The media raised awareness of the violence, in particular of atrocities committed by Indonesia • Political pressure persuaded Indonesia to withdraw, with the UN Secretary General playing an instrumental role in facilitating dialogue and condemning Indonesia's actions • The Australian Government also played a pivotal role in providing humanitarian and fiscal aid
Conduct of hostilities	
International Humanitarian Law	<ul style="list-style-type: none"> • IHL refers to the body of treaties and humanitarian principles that regulates the conduct of armed conflict and seeks to limit its effects • Generally unenforceable • Establishes guidelines in war <ul style="list-style-type: none"> ◦ Protection of civilians and unarmed individuals including prisoners of war ◦ Restrictions on types of weaponry • Lead to the establishment of the ICRC

	<ul style="list-style-type: none"> ○ Promotes International Humanitarian Law ○ Lead to the Geneva Convention
Legal responses	<p>Geneva Conventions</p> <ol style="list-style-type: none"> 1. Protection of wounded and sick soldiers and medical personnel on land 2. Protected soldiers at sea 3. Protection for the treatment of prisoners of war 4. Protection for civilians in war zones 5. Protection of victims and civilians of international conflicts 6. Protection of victims and civilians of intrastate conflict 7. Culturally appropriate red cross symbols <p>International Committee of the Red Cross</p> <ul style="list-style-type: none"> ● Granted legal protection and force under the Geneva Conventions
Non-legal responses	<p>International Committee of the Red Cross</p> <ul style="list-style-type: none"> ● Educates and guides victims, workers, journalists, soldiers and peacekeepers on their obligations under the IHL ● Evaluates prison camps and the conditions of POWs to ensure there is compliance with the Geneva Conventions ● Fundraising to provide aid to areas of conflict ● Facilitates the exchange of information between all parties of conflict
Issues	<p>Terrorism</p> <ul style="list-style-type: none"> ● Loopholes formed as IHL caters to conventional warfare ● Geneva Conventions aren't as applicable to forms of modern warfare such as terrorism as it only addresses conventional armed conflict <div> <p>Case study: US treatment of POWs in the Iraq War</p> <p>During the Iraq War, the US subject POWs to degrading treatment and torture which, despite being breaches of the Geneva Convention, no litigation was sought as the US argued that the POWs were terrorists and couldn't be classed as prisoners of war</p> </div>

3 | Crime

Themes and challenges

1.	The role of discretion in the criminal justice system
2.	Issues of compliance and non-compliance in regard to criminal law
3.	The extent to which law reflects moral and ethical standards
4.	The role of law reform in the criminal justice system
5.	The extent to which the law balances the rights of victims, offenders and society
6.	The effectiveness of legal and non-legal measures in achieving justice

Nature of Crime

Elements of a crime

Actus Reus <i>Guilty act</i>	Mens Rea <i>Guilty mind</i>
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<ul style="list-style-type: none"> • <i>Did they do it?</i> • Easier to ascertain than mens rea • Evidence used include physical evidence, witness testimonies, and forensics 	<ul style="list-style-type: none"> • Motive and intent of the accused • Needs to be proven that the accused meant to do it and a reasonable person would have been aware of the circumstances • Strict liability offences make the court process more efficient by streamlining it
<div>Causation</div> <ul style="list-style-type: none"> • <i>Was the crime a direct consequence of their actions?</i> • <i>Coincidence or unrelated consequence?</i> • Link between the action and the consequences • E.g murder without knowledge of one's health conditions (murder downgraded to manslaughter) • Direct link needed from action to result 	<div>Strict liability offences</div> <ul style="list-style-type: none"> • Occasions where mens rea does not need to be proven • Examples include summary offences as there are a greater volume of them, and with a driver's licence as there is assumed knowledge

Categories of crime	
<div>Summary offences</div> <hr/> <i>Light offences</i>	<ul style="list-style-type: none"> • Begins in a local court, presided by a magistrate • No committal hearing involved • Magistrate determines guilt & penalty <p>Examples</p> <ul style="list-style-type: none"> • Speeding • Loitering • Shoplifting
<div>Indictable offences</div> <hr/> <i>Major offences</i>	<ul style="list-style-type: none"> • Begins in a local court after a formal written charge, presided by a magistrate • Committal hearing involved • Magistrate determines if evidence is sufficient to proceed cases to the district court <p>Examples</p> <ul style="list-style-type: none"> • Assault • Robbery

	<ul style="list-style-type: none"> • Arson • Terrorism
Specific categories	
Crimes against the person	<p>Crimes involving physical injury to the victim</p> <hr/> <ul style="list-style-type: none"> • Homicide • Assault • Sexual offences
Crimes against the Sovereign	<p>Crime which undermine the governance of a nation</p> <hr/> <ul style="list-style-type: none"> • Treason <ul style="list-style-type: none"> ◦ Terrorism ◦ State secrets • Sedition <ul style="list-style-type: none"> ◦ Inciting hatred against the country
Economic offences	<p>Crimes involving the illegal obtainment of money or objects of material value</p> <hr/> <ul style="list-style-type: none"> • Crimes against property <ul style="list-style-type: none"> ◦ Theft • White collar crimes <ul style="list-style-type: none"> ◦ Fraud • Computer crimes <ul style="list-style-type: none"> ◦ Identity theft
Drug crimes	<p>Crimes which involve the obtainment, sale or traffic of illicit drugs.</p> <hr/> <ul style="list-style-type: none"> • Trafficking drugs • Using drugs • Selling drugs
Driving offences	<p>Crimes involving motor vehicles which breach traffic laws</p> <hr/> <ul style="list-style-type: none"> • Speeding • Drunk driving • Majority are strict liability offences
Public order offences	<p>Crimes which disrupt the normal order of society</p> <hr/> <ul style="list-style-type: none"> • Public intoxication

	<ul style="list-style-type: none"> • Prostitution
Preliminary offences	<p>Crimes that occur in the lead-up to criminals committing another type of offence.</p> <hr/> <ul style="list-style-type: none"> • Attempting to commit a crime • Conspiracy <ul style="list-style-type: none"> ◦ Planning to commit a crime

Parties to a crime	
Party	Role
1st Principal	Was present and committed the crime
2nd Principal	Was present and assisted the 1st principal
Accessory before the fact	Helped the principal prior to the crime
Accessory after the fact	Helped the principal after the crime

Factors affecting criminal behaviour	
Psychological factors	<ul style="list-style-type: none"> • Often relevant to the commission of an offence, with many forms of mental illness affecting a person's behaviour • The accused state of mind will be raised by the prosecution or defence during a criminal trial • Psychological factors can affect the sentencing
Social factors	<ul style="list-style-type: none"> • May include family or personal relationships • Social groups that people associate themselves with will influence a person's attitudes and views of acceptable behaviour <ul style="list-style-type: none"> ◦ A person brought up in an abusive home may have experience trauma and this may affect future decisions
Self-interest	<ul style="list-style-type: none"> • Will usually play some role in the committing of a crime for personal gain <ul style="list-style-type: none"> ◦ Drugs, property & embezzlement

	<ul style="list-style-type: none"> • White collar crimes are a good example of criminal activity being driven by greed and self-interest rather than underlying factors. • Examples: Melissa Caddick case (pyramid scheme)
Economic factors	<ul style="list-style-type: none"> • People from disadvantaged backgrounds are more likely to commit crimes e.g • Statistics released by the AIC show that 33% of male and 50% of female offenders receive a welfare or government payment as their main source of income • Poor education and a lack of skills will often be linked to economic factors, with such criminals often habitually unemployed or unskilled
Political factors	<ul style="list-style-type: none"> • Offences against the sovereign/state are likely to have some political influence, However, some public order offences such as riots or violent protests, may also have political aspects, especially in situations where public political protests become intense. • Terrorism related offences are the most radical political offence

Crime prevention

Social prevention	Tactics that aim to address the underlying reasons that people commit crimes <ul style="list-style-type: none"> • Youth clubs • Education programs
Situational prevention	Physically preventing crimes (the most common form) <ul style="list-style-type: none"> • Security guards • CCTV cameras • Electronic tags

Criminal investigation process

Introduction to the criminal investigation process

Reporting crime	Crimes have to be found or reported before they can be investigated
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	<ul style="list-style-type: none"> • A witness informs the police about the crime • The crime can be reported by the victim themselves • People often don't report crimes due to an array of factors such as: <ul style="list-style-type: none"> ◦ Knowing the offender ◦ Fear ◦ Shame (e.g domestic violence)
Investigating crime	<p>Police investigate crimes by gathering evidence to strengthen the case against the accused</p> <hr/> <p>Ways to gather evidence include:</p> <ul style="list-style-type: none"> • Physical evidence <ul style="list-style-type: none"> ◦ Weapon • Oral evidence <ul style="list-style-type: none"> ◦ Witness testimony • Technological evidence <ul style="list-style-type: none"> ◦ DNA, CCTV <div> Role of technology: refer to Kathleen Folbigg case </div>
Arrest	<p>In order to detain a suspect, police must first arrest them</p> <hr/> <ul style="list-style-type: none"> • One can be arrested without being charged with an offence • A reasonable suspicion is required before arresting a suspect
Detention	<p>When you arrest someone, they are detained for questioning</p> <hr/> <ul style="list-style-type: none"> • When one is detained, the police seek to gather more information about a crime • Only those accused of driving offences are legally required to answer questions
Interrogation	<p>Questioning while they are under arrest to gain oral evidence</p> <hr/> <ul style="list-style-type: none"> • Police must have a reasonable suspicion before they can arrest/detain a suspect
Rights of suspects	<p>There are laws in place to protect the rights of suspects while under arrest</p> <hr/> <ul style="list-style-type: none"> • Right to silence <ul style="list-style-type: none"> ◦ Silence is a plausible reason to assume guilt under the <i>Evidence Amendment (Evidence of Silence) Act 2015 (NSW)</i>

	<ul style="list-style-type: none"> • Right to call a lawyer • Right to be told the reason for arrest • Maximum detention period of 6 hours (this is extended to 12 hours with a warrant)
Charge	<p>Charging a suspect means they will face trial for the crime they have been accused of.</p> <hr/> <ul style="list-style-type: none"> • The defendant is given a summon, a legal document informing when their court appearance will be

Police powers & responsibilities

bagel task 3

Law Enforcement (Powers and Responsibilities) Act 2002 (NSW) or LEPR

Agencies

Law enforcement agencies are important to **ensure** that **investigations of crimes** are conducted appropriately and not burdened upon **members of the public**

Police	<ul style="list-style-type: none"> • Primary law enforcement & investigative body • Operates on a state & federal level
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Powers

Arrest	<p>The process of police officially detaining someone prior to charge</p> <hr/> <ul style="list-style-type: none"> • Police may use reasonable force to make an arrest <p>An arrest can only be made on the following grounds:</p> <ol style="list-style-type: none"> 1. There is a reasonable suspicion of the crime 2. Witnessed the crime 3. Have an arrest warrant (<i>refer below</i>)
Warrants	<p>A legal document issued by the courts authorising police to do something</p> <hr/> <ul style="list-style-type: none"> • This includes entering a home and arrest

Stops, search & seize	<p>Police are legally allowed to stop search and seize items off a person over 18 with reasonable suspicion</p> <hr/> <ul style="list-style-type: none"> • Police must reasonably suspect that one possess drugs or weapons • Police cannot search a house without a warrant and reasonable suspicion
Detainment	Police may detain someone after arrest for up to 6 hours, or 12 with a warrant
Emergency powers	<p>In emergency situations, police have extra powers to control the situation</p> <hr/> <ul style="list-style-type: none"> • E.g Lindt Cafe Siege 2014 (Authorised usage of firearms)
Warnings, cautions & fines	<ul style="list-style-type: none"> • Mostly for minor offences (driving offences, jaywalking)
Criticisms of powers	
<p>Police powers are in place to protect us, however misuse of power has led to criticism of their use</p> <ul style="list-style-type: none"> • Whilst not overbearing, police powers under LEPRA are prone to abuse or poor judgement hindering the criminal investigation process. 	
Use of force during arrests	Pros
	<ul style="list-style-type: none"> • Police can defend themselves during arrests in dangerous situations • Ensures offenders can be brought into police custody
	Cons
	<ul style="list-style-type: none"> • Police may use excessive force during arrests relative to the situation • NSW Ombudsman: police tasers were found to have been inappropriately used 1 in 7 times <p><u>2013 Roberto Curti Taser Inquiry</u></p> <ul style="list-style-type: none"> • Curti had stolen biscuits in the CBD • Use of force was excessive and unwarranted • Police failed to exercise reasonable judgement and resorted to unjust means to control the matter • Tasered 14 times, succumbing to injuries hours later • Classed as an armed robbery despite an absence of weapons
Searches	Pros

	<ul style="list-style-type: none"> Police may catch criminals in the act or find evidence of a crime
	Cons
	<ul style="list-style-type: none"> Makes suspects prone to infringements upon their personal privacy <p><u>UNSW 2019: Rethinking Strip Searches by NSW Police</u></p> <ul style="list-style-type: none"> What constitutes as reasonable grounds to conduct a search under LEPPRA isn't clearly defined; leading to abuses and poor exercises of judgement Strip searches often aren't conducted as a result of present threats posed Only 30% of searches resulted in criminal charges Strip searches increased 20 fold in 2018 compared to 2006 LEPPRA was found to lack clarity on when strip searches are permissible, leading to abuses or poor exercise of judgement when interpreting LEPPRA Recommends reform in clearly defining a strip search Legislation in other states provide clear protections <p>Drug Supply Prohibition Order Pilot Scheme Act 2020</p> <ul style="list-style-type: none"> Concerns raised by the Law Society of NSW over the infringements upon the rule of law posed Potentially undermines the rule of law; as the principle of innocent until proven guilty is breached Police do not require a warrant to enter the home of convicted drug traffickers Hinders the rehabilitation process LEPPRA grants police powers to search provided they are within reasonable premises Prone to poor use of discretion infringing on the privacy of suspects
Detainment	Pros
	<ul style="list-style-type: none"> Police can protect the public from suspected criminals
	Cons
	<ul style="list-style-type: none"> Infringes upon basic human rights such as freedom of movement A balance must be maintained between the rights of suspects and public safety

Bail & remand

	<ul style="list-style-type: none"> • Bail hearings occur after charge and determine whether an offender will be set free before trial • Courts determine if the suspect is a threat to the community
Bail	<ul style="list-style-type: none"> • Bail is granted if someone is released from custody until trial • Conditions of bail are based upon the presumption of innocence • Alternative definition: the conditional release of a person until trial • Bail Act 1978 (NSW) <ul style="list-style-type: none"> ◦ Fails to balance the rights of suspects and safety of society ◦ The bail act has been labelled as ineffective ◦ 85 amendments (Example: Man Haron Monis) ◦ The most recent amendment was in 2014 <ul style="list-style-type: none"> ■ The accused is tested on whether or not they pose an unreasonable threat to society as opposed to guidelines <div data-bbox="260 840 1501 913"> Case study: Man Haron Monis (<i>Lindt Cafe Siege perpetrator</i>) </div> <div data-bbox="260 913 1501 1160"> <ul style="list-style-type: none"> • Granted bail despite 43 counts of sexual assault and being an accessory to murder • Monis was under bail conditions when he perpetrated the Lindt Cafe Siege • Lead to the Bail Amendment Act 2014 which replaced the notion of bail reflecting the presumption of innocence with an 'unacceptable risk test' </div>
Remand	<ul style="list-style-type: none"> • Someone is kept in custody until the trial date <div data-bbox="260 1361 1501 1435"> Case study: Danny Zayat </div> <div data-bbox="260 1435 1501 1727"> <ul style="list-style-type: none"> • Denied bail after allegedly murdering his partner in Liverpool (2023) • He had been charged for 18 domestic violence offences <ul style="list-style-type: none"> ◦ Included stalking, intimidation, choking, and breaching domestic violence orders • 2023 ABC article: <i>fears the accused could interfere with witnesses if granted bail</i> </div>

Criminal trial process

Court jurisdiction

The Court Hierarchy

In descending order:

1. High Court of Australia
2. Superior Courts
3. Intermediate Courts
4. Lower Courts

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- Organised by this hierarchy in accordance with the **appellate system**
 - If a defendant seeks an appeal, it will be reviewed in a higher court

Original jurisdiction

Case is heard for the first time

-
- The High Court has original jurisdiction over constitutional matters

Appellate jurisdiction

The ability for a court to review matters on appeal from lower courts

-
- All courts have appellate jurisdiction with the exception of local courts
 - The District Court can hear appeals from the local court

Lower courts

Local Court

- **Original jurisdiction:** summary offences and civil matters up to \$100,000
- **Preliminary** and **bail** hearings: determines if indictable cases have enough evidence to proceed to a higher court
- Presided by a magistrate (no Jury)

Coroner's Court

- **Original jurisdiction**
- Investigates the **cause** and **manner** of a person's death
- Investigates **unexplained fires** and **explosions**
- Presided by a **coroner** (a specialised judge)

Children's Court
<ul style="list-style-type: none"> • Original jurisdiction • Offenders under 18 years old (also under 21's if they were charged before 18) • Presided by a Magistrate (no Jury) • Closed court: no media or public can view cases
Land and Environment Court
<ul style="list-style-type: none"> • Original jurisdiction • Administrative matters relating to the environment <ul style="list-style-type: none"> ◦ <i>E.g zoning, polluting</i>
Intermediate Courts
District Court
<ul style="list-style-type: none"> • Appellate jurisdiction: from Lower Courts • Original jurisdiction: hears most indictable offences (with the exceptions of murder and treason) and civil matters up to \$750,000 • Cases are heard by a Judge and Jury
Superior Courts
Supreme Court
<ul style="list-style-type: none"> • Appellate Jurisdiction: hears appeals from Lower and Intermediate Courts • Cases are heard by a Judge and Jury • Original Jurisdiction: civil matters over \$750,000, and the most serious indictable offences (murder, treason)
Court of Criminal Appeal
<ul style="list-style-type: none"> • Appellate Jurisdiction: hears from the Lower, Intermediate and Supreme Courts • Cases are heard by 3 judges (potentially up to 5 in more serious matters) • Matters are decided by a majority verdict
High Court
High Court of Australia
<ul style="list-style-type: none"> • Appellate Jurisdiction: ultimate for all criminal and civil matters • Leave is required to have an appeal heard in the High Court: this is a difficult process • Original Jurisdiction: constitutional matters

Case

The High Court of Australia found that the ACT Government's same sex marriage laws were unconstitutional

Burden & standard of proof

Burden of proof

Onus on the party to prove their guilt or innocence on a trial

Underlying concept of innocent until proven guilty (presumption of innocence)

Criminal cases	The prosecution has the burden of proof
Civil cases	The plaintiff has the burden of proof

Standard of proof

Level of proof the Prosecution has to meet in order for the conviction to be successful

Criminal cases	Beyond reasonable doubt
Civil cases	The balance of probabilities

Complete & partial defences

An excuse to a crime

Outlined in the **Crimes Act 1900 (NSW)**

Complete defences

Leads to
acquittal

1. Mental illness
2. Involuntary behaviour or automatism
3. Misadventure
4. Self-defence or necessity
5. Duress

	6. Consent
	<div>Case study: R v Brown (2009) [NSWSC]</div> <p>Acquitted by the Supreme Court after the jury found her not guilty of murder after fatally shooting someone who attempted to rob her after the robbery had already ended. Court ruled that Brown's behaviour was as a result of automatism</p>
Partial/ incomplete defences <hr/> Leads to a reduced sentence	<ol style="list-style-type: none"> 1. Provocation 2. Substantial impairment of responsibility <div>Case study: R v Singh (2012) [NSWSC]</div> <p>Murder reduced to manslaughter after Singh successfully claimed that he was provoked by his wife cheating on him</p> <ul style="list-style-type: none"> • NSW is the only jurisdiction which accepts provocation as a defence <p>Wife killer sentence prompts call for law change - ABC News</p>

Adversarial & inquisitorial system	
Adversarial system	<p>The organisation of a trial such that two opposing sides take turns presenting their case before an unbiased judge and jury.</p> <hr/> <ul style="list-style-type: none"> • Inherited from the British • Equal opportunities are given to both sides <div> <div>Positives</div> <ul style="list-style-type: none"> • Parties have the opportunity to make their case without interruption • Lower risk of judge bias • Juries are diverse cross section of society <div>Negatives</div> </div>

	<ul style="list-style-type: none"> • Unrepresented parties may not adequately understand proceedings • Juries may not understand legal intricacies and make misinformed decisions
Inquisitorial system	<p>The organisation of a trial such that the Judge may intervene in the trial, present evidence or provide advice, before reaching a verdict.</p> <hr/> <ul style="list-style-type: none"> • Judge plays a more active role (determining facts, questioning witnesses) • Used in royal commissions in Australia <div>Positives</div> <ul style="list-style-type: none"> • Judges are better trained to ensure trials run smoothly • No juries (less risk of misinformed decisions) <div>Negatives</div> <ul style="list-style-type: none"> • Judges play a more active role, which means parties get less of a chance to have their say • Higher risk of judge bias • No juries (more power to the judge)

Personnel	
Magistrate	<ul style="list-style-type: none"> • Similar to a judge • Presides over local court matters • Applies the law
Judge	<ul style="list-style-type: none"> • Presides over intermediate and superior court matters with a jury • Gives instructions to the jury • Hand down sentences and applies the law • Note: judges are not responsible for deciding the facts of the case. This is the role of the jury. <ul style="list-style-type: none"> ◦ The jury determines the verdict, whereas the judge determines the sentence
Police Prosecutor	<ul style="list-style-type: none"> • A police officer trained to prosecute individuals for summary offences • Usually only take cases in the Local and Children's Court

Public Prosecutor (DPP)	<ul style="list-style-type: none"> • Independent body that prosecutes individuals on behalf of the government • Represents the victim • Has discretion on whether to prosecute a case - based on the merit of a case
Public Defender	<ul style="list-style-type: none"> • Independent barrister or solicitor who works with legal aid to represent the accused in criminal trials • Ensures access to justice for offenders

Legal representation

Rights to legal representation	<ul style="list-style-type: none"> • Having a lawyer to argue your case • Not a guaranteed right (not granted automatically) <hr/> <p>Dietrich v The Queen (1992)</p> <ul style="list-style-type: none"> • Smuggled heroin into Australia, before claiming police had planted it • Initially found guilty without representation • High Court determined that the verdict was unfair and ordered a retrial • Set a precedent where all individuals are entitled to legal representation (basis for Legal Aid NSW)
Who provides legal representation	<p>Legal Aid</p> <ul style="list-style-type: none"> • Supplies legal representation to the accused (public defenders) • Government organisation • Limited resources • Legal Aid determines whose entitled to legal representation, looking at financial factors, the merit of the case, and if Legal Aid covers the area of the law

Pleas & charge negotiation

Pleas

A formal statement by an accused as to whether they are guilty or not

Guilty	Matter goes straight to sentencing
Not guilty	Matter goes to trial after a bail hearing

Case study: R v Loveridge [NSWSC]	
<ul style="list-style-type: none"> Offered a guilty plea for manslaughter and four counts of assault if the charge of murder was revoked Lead to a 25% sentence reduction 	

Charge negotiation	
Negotiating to drop charges in exchange for a guilty plea to less severe charges (and penalties)	
Pros	<ul style="list-style-type: none"> Resource efficient: trials are skipped and the matter goes straight to sentencing. This also reduces costs. Increases convictions: it is easier to prove lesser offences and mediates the risk of failing to prove a more serious charge, leading to acquittal (injustice)
Cons	<ul style="list-style-type: none"> Injustice: justice is not truly served if the offender only serves a lesser sentence Duress: offenders may plead guilty to a crime they didn't commit

Juries	
<ul style="list-style-type: none"> A panel made up of 12 individuals from a cross-section of society to reflect the diversity of society; the jury should ideally be from a variety of backgrounds Used to hear most indictable offences where a plea of 'not guilty' is entered, and may be used in either the District or Supreme Court Defence and prosecution determines if individuals are suitable for jury determined on potential bias among other factors (the juror would be prejudiced) Potentially biased jurors can be removed 	
Role	
<ul style="list-style-type: none"> Listening and deciding the facts of the case 	

- To reach a **verdict** on the guilt or innocence of the defendant based on the evidence presented to them at trial.
- A **majority** is required

Issues

External information

- R v Young: the Jurors used an Ouiji board (literally) as a means to contact the victim and inquired whether or not they were murdered.

Case study: Skaf gang rape trials

- Following the sentence of Bilal Skaf and his brother, The Court of Criminal Appeal found that there had been an instance of **jury misconduct** in the initial trial, ruling the initial trial as a **mistrial**
- Two jurors had visited the scene of the crime in order to conduct their own investigations
- This resulted in a **retrial**
- Lead to the **Jury Amendment Act 2004 (NSW)**, forbidding jurors from making inquiries about their cases

Evidence in trials

Witnesses

- An individual who saw it, knows about, or was in some way connected to the crime
- One party will have the opportunity to question the witness, followed by the other side cross-examining them

Expert witnesses

- An independent expert who testifies about a particular aspect of the case (e.g forensic expert)
- Independent and specialises within their respective field
- More credible witnesses

Teacher example

Assess the effectiveness of the criminal trial process as a means of achieving justice

Topics that can be discussed:

- Use of evidence
- Jurors
- Legal aid
- Court jurisdiction
- Original vs appellate jurisdiction
- Partial and complete defences
- Adversarial system

What to assess:

- Extent to which the law balance the rights of victims, offenders and society
- Role of discretion
- Reflection of societal values
- Law reform

Response

It is imperative that the criminal trial process serves as an effective way to achieve justice in order to safeguard the rights of individuals and to cater to the interests and values of society. Numerous components of the criminal trial process have shown how such processes have been moderately effective as a means of achieving justice, and have adequately upheld the rights of individuals to some extent. A key component of the criminal trial process is the allocation of a jury. A jury consists of citizens chosen at random from the electoral roll that are called to observe trials in order to reach a decision that'll aid the judge's verdict. The use of a jury allows for the outcome of a trial to reflect the values of wider society. Despite this, juries are prone to external influences that may potentially result in biased outcomes that undermine the criminal trial process.

Sentencing and punishment

Statutory & Judicial Guidelines

- Simply, the factors that influence a judge's decision
- Guidelines that limit judicial discretion to ensure all offenders are treated equally
- Judicial discretion: the judge's will

- **Definition:** regulations which limit judicial discretion and impose boundaries on sentences.
 - Must be considered by judges in **all** cases

Mandatory sentencing: one punch laws

- Judicial discretion **cannot be exercised**
- Concerns raised as mandatory sentencing infringes articles of the ICCPR
- **Applies to one punch laws**, murdering police officers
- Fails to account for mitigating and aggravating factors, causing an injustice
- Caters to community interests whilst creating an injustice for offenders

Statutory guidelines

- Decisions bound by guidelines under the Crimes (Sentencing Procedure) Act 2013
- Statutes which impose **maximum and minimum sentences**
- Are **binding** (must be followed)
- **Maximum and minimum sentences:** laws stating the longest and shortest period of punishment an offender must receive
- **Example:** Armed Robbery
 - Minimum sentence of 7 years
 - Maximum sentence of 25 years
- Within statutory maximums and minimums, judges use discretion to determine the sentence
 - Determined by **aggravating and mitigating factors**

Case: Thomas Kelly

- **Poor use of discretion:** sentenced to 4 years, 7 years maximum initially
- Kelly was killed in a one-hit punch in Kings Cross, the offender received a light sentence which was heavily scrutinised by the victim's family and the media as the failure of the courts to deliver justice
- Loveridge **plea bargained**, pleading guilty to manslaughter rather than murder
- Failed to balance the rights of victims and society
- **Led to the 2014 'King Hit' Reform**
 - **Updated statutory guidelines** of 8 years jail time minimum
 - Introduced mandatory sentencing

Media article:

Four years for a life: Kelly family's outrage

2013, SMH

Judicial guidelines

- Guidelines regarding the use of precedence
 - Set by judges in the Court of Criminal Appeal
- The usage of common law to determine sentencing
 - Similar crimes should incur similar sentences

Case: **Matthew Milat & R v O'Grady**

R v O'Grady

- O'Grady, 16 years old, murdered a 15 year old
- Sentenced to **15 years incarceration**

Matthew Milat

- Murdered a childhood friend with an axe in Belanglo State Forest
- 17 years old at the time and with no prior record
- Despite similarities with **O'Grady** (age and degree of violence), Milat was sentenced to **43 years** due to a lack of remorse
 - Went against all previous cases/precedents
 - Judicial guidelines weren't factored in

Purposes of punishment

Remember the acronym: **RRID**

R ehabilitation

R etribution

I ncapacitation

D eterrence

Rehabilitation

- Preventing recidivism
- Reintegration into society
- Includes community services and mandatory counselling
- Primary consideration for young offenders

Deterrence

- Discourages others from doing something
- **Specific deterrence:** punishment against an individual offender
- **General deterrence:** making an example of an offender

Retribution

- Giving the offender a harsh punishment (proportionate to their offence) to discipline them
- Prevents victims of taking the law into their own hands
- Principle of 'an eye for an eye'
- Balances the rights of victims

Incapacitation

- Physically restraining the offender and preventing them from committing further crimes
- Protection of society from criminal behaviour
- Example: **Matthew Milat**, given a non-parole period of 30 years minimum due to a lack of remorse nor motive

Factors influencing sentencing decisions

- Factors influencing sentencing decision
- Determines the types and length of sentences handed down
- Outlined under the **Crimes (Sentencing Procedure) Act 1999 (NSW)**

Mitigating factors	<p>Factors which decrease the offender's culpability for the crime</p> <ul style="list-style-type: none"> • Results in a more lenient prison sentence <hr/> <ul style="list-style-type: none"> • Good prospects of rehabilitation • Youth/inexperience • Early guilty plea • Assisting Police • No prior convictions • Remorse/good character • Mental state <ul style="list-style-type: none"> ◦ Does not include intoxication
Aggravating factors	<p>Factors which increase the offender's culpability for the crime</p> <ul style="list-style-type: none"> • Results in a harsher prison sentence <hr/> <ul style="list-style-type: none"> • Use of a weapon • Prior criminal record • Vulnerable victim • Criminal affiliations • Violence • Abuse of position of trust
	<p>Case study: McCartney v R [2009] NSWCCA</p> <ul style="list-style-type: none"> • Appellant was a 22 year old male who sexually assaulted the victim whilst they were asleep • Aggravating and mitigating factors were considered in the trial <ul style="list-style-type: none"> ◦ Aggravating factors: nature and seriousness of the offence, impact on the victim ◦ Mitigating factors: youth, no prior record, good character • Appeal was dismissed by the Court of Criminal Appeal, finding the previous judgement to have adequately accounted for sentencing factors • 6 years sentence
	<p>Case study: R v Loveridge [NSWSC]</p> <ul style="list-style-type: none"> • Mitigating factors considered include: prospects of rehabilitation, remorse and disadvantaged background • Aggravating factors considered include: unprovoked nature of attacks and drunken conduct

- Originally sentenced to **7 years and 5 months**

Role of the victim in sentencing

Impact on the victim

Impacts from the crime, the aftermath and the trial process are considered such as:

- Emotional impacts
 - PTSD
 - Emotionally traumatising impacts of the trial process
- Physical impacts
- Economic impacts
 - Stolen property

-
- Victims have a **limited** role in sentencing

Victim impact statements

Written statements (photos, documents or witnesses) given to the judge in **sentencing**, which outline **the impacts of the crime upon the victim**

- Criteria on who is eligible to submit a statement and the rules of evidence is outlined under **Crimes (Sentencing Procedure) Act 1999 (NSW)**
-
- An opportunity for victims to provide their perspectives to the court
 - Plays an **instrumental** role in providing **evidence** of the immediate effects of the crime, which can be taken into account as an **aggravating factor**
 - Victims can be biased - their statement must be balanced with other mitigating factors and details of the crime
 - Gives victims a **medium** to tell their story and feel heard

Legislative reform

- Victims often feel left out of the sentencing process
- The law has been **reformed** on a number of occasions to address a perceived lack of accountability for the **impacts of crime on victims in the sentencing process**
- Victim impact statements, despite providing a voice for victims, are only taken into account on discretionary grounds
- NSW Sentencing Council (2017) recognised:
 - The lack of voice for victims
 - Difficulties associated with submitting and proving a Victim Impact Statement
- The Crimes Legislation Amendment (Victims) Act 2018 (NSW) was

	introduced which broadens the definition of a victim and made victim impact statements more accessible
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Types of penalties

In ascending order from the least to most harsh penalties:

Conditional release orders	Convictions that won't appear on a criminal record that are bounded by bonds <hr/> <ul style="list-style-type: none">• Judges have discretion to not give offenders a sentence or record<ul style="list-style-type: none">◦ Generally for first time offenders◦ Summary or minor offences with mitigating factors
Caution	The offender is given no punishment however the offence is marked on their criminal record <hr/> <ul style="list-style-type: none">• No actual punishment
Fine	Payment of a sum of money <hr/> <ul style="list-style-type: none">• Generally for driving offences• Will still appear on a criminal record• Calculated by penalty units, at \$110 each
Criminal infringement notice	On-the-spot fines with no criminal record <hr/> <ul style="list-style-type: none">• Used to alleviate pressure upon resources used by police and courts• Would be used for offences such as offensive language and minor stealing
Bond	The offender is released into society with conditions upon their freedom <hr/> <ul style="list-style-type: none">• Conditions must be met by the offender as to avoid further punishment<ul style="list-style-type: none">◦ May includes mandatory counselling• Can last for up to 5 years
Suspended sentence	A bond, wherein if the offender breaks the bond they are imprisoned for the duration of the bond
Probation	Similar to a bond, requiring the offender to attend weekly probation meetings daily or weekly <hr/>

	<ul style="list-style-type: none"> • Probation officer ensures the offender is working towards reintegration into society free from crime • Missing a probation meeting results in re-sentencing
Community corrections order	<p>An order requiring an offender to undertake a certain number of hours of community service</p> <hr/> <ul style="list-style-type: none"> • Picking up rubbish
Home detention	<p>Where the offender is unable to leave their house legally</p> <hr/> <ul style="list-style-type: none"> • Their movements are tracked using an ankle monitor • Reserved for non-violent offenders
Intensive correction order	<p>The offender is under strict supervision by Corrective Services NSW whilst undertaking community service and rehabilitation programs</p> <hr/> <ul style="list-style-type: none"> • Also electronically monitor • Prioritises rehabilitation as offenders remain in contact with their community, family and employment
Forfeiture of assets	<p>The offender is forced to give up any valuables or money obtained illegally</p> <hr/> <ul style="list-style-type: none"> • Generally coupled with another punishment, such as imprisonment
Diversionary programs	<p>Alternative punishments for special offenders such as children or indigenous individuals</p> <hr/> <ul style="list-style-type: none"> • Aims to reduce recidivism and promote rehabilitation • Alleviates pressure on correctional facilities • Includes mandatory drug programs or education programs
Imprisonment	<p>Placing the offender in prison for a length of time.</p> <hr/> <ul style="list-style-type: none"> • Ideally used as a last resort due to its infringements upon the rights of offenders • Non-parole period: the period where the offender cannot be released • R v Loveridge (2014): an appeal by the prosecution lead to Loveridge serving 14 years with 10 years non-parole, instead of a max of 7 years • Ivan Milat: served 148 years non-parole <div> <p>Media article</p> <hr/> </div>

	<p>‘Ruining lives without improving safety’: (Former NSW AG) <i>Michaela Whitbourn, The Sydney Morning Herald, 2019</i></p>
	<ul style="list-style-type: none"> • The prison population reached a record high of over 13000 in 2018 despite rates of serious crime declining • Recidivism has consistently remained at 50%, demonstrating the detrimental impacts of high incarceration in impeding rehabilitation • Cites the need for social crime prevention instead of incarceration • Social programs trialled in Bourke (NSW) lead to a 23% drop in domestic violence • <i>‘The assumption that punitive policies reduces crime remains widespread in politics’</i>

Alternative methods of sentencing

Alternatives to traditional methods of sentencing for individuals found guilty during trials of sentencing hearings

- The law recognises that young offenders and indigenous groups are prone to being adversely affected by the legal system
- **Remember:** the aim of the justice system is to ensure justice for victims, offenders and society
- Alternative sentencing ensures fair and equal outcomes

Circle sentencing

Alternative sentencing method for **Indigenous offenders** which involves a **combination of normal and customary law** used to decide on a fair sentence

- Involves a police prosecutor, magistrate, indigenous elders and the victim
- Utilises methods that align with traditional indigenous customs as to determine punishments for offenders
- Indigenous people are 10x more likely to be imprisoned, hence circle sentencing addresses this as traditional methods conflicts with customary law
- Forces the offender to be accountable for their actions
- Ensures are fair sentence
- BOCSAR data found that circle sentencing reduced recidivism rates

Restorative justice

A meeting involving the **victim, offender** and **magistrate** in which they **discuss the crime** and the **offender makes amends** to the victim

	<ul style="list-style-type: none"> • Generally used for young offenders • Victim and offender try to reach a compromise • Circle sentencing & youth justice conferences are also forms of restorative justice • Effective as a deterrent as it forces the offender to be accountable for their actions
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Appeals

Where the **prosecution or defence** argue that the sentence/conviction was wrong and the case is reheard in a higher court with **appellate jurisdiction**

- Occurs after the sentence has been handed down
- Appeals can either extend or shorten a sentence
- A local court appeal will be heard in the district court, and so forth

Types of appeals

Convictions	<ul style="list-style-type: none"> • More difficult to appeal as new evidence is required or a major issue needs to have been identified
Sentence	<ul style="list-style-type: none"> • The prosecution and defence are limited in the reasons they are able to appeal their case • Appeals will review: <ul style="list-style-type: none"> ○ Whether the sentence was appropriate ○ If the court had the authority to impose the sentence <ul style="list-style-type: none"> ■ E.g local courts cannot give prison sentences over 2 years ○ If there was an error of fact or law <ul style="list-style-type: none"> ■ E.g falsified or incorrect evidence/testimonies • Appeal courts can overturn decisions of trial courts

Cases

Thomas Kelly Case	<ul style="list-style-type: none"> • Kieran Loveridge initially sentenced to 5 years in prison, sparking outrage • 2014 appeals by the prosecution lengthened the sentence to 14 years, 10 without parole • More detail here
Kathleen Folbigg Case	<ul style="list-style-type: none"> • Originally served a life sentence for murdering her 4 infant children

	<ul style="list-style-type: none"> • New evidence surfaced suggesting her innocence and she was pardoned following several unsuccessful appeals • New evidence arose as a result of advancements in technology
Skaf Gang Rape Case	<ul style="list-style-type: none"> • A 2004 appeal found that the sentence was too harsh and there were errors in law during the sentencing process (jury misconduct) • Successfully reduced his sentence by nearly half from 55 to 28 years • More detail here

Post-sentencing considerations

- Occurs after the sentence has already been handed down
- **Balancing rights of victims, offenders and society**
 - Extra precautions to keep society safe from particularly heinous offences
 - Offenders rights are protected through protective custody and appeals

Security classification	<p>Determines what prisons an offender goes to</p> <hr/> <ul style="list-style-type: none"> • Minimum security: for minor crimes • Medium security: for more serious & violent crimes • Maximum security: for the most dangerous offenders <ul style="list-style-type: none"> ◦ E.g Ivan Milat & Matthew Milat
Protective custody	<p>Offenders are given extra protection from other inmates while incarcerated</p> <hr/> <ul style="list-style-type: none"> • For offenders that have: <ul style="list-style-type: none"> ◦ Former positions as police or judges ◦ Committed offences against children • Bilal Skaf: protected due to his sexual offences against minors
Parole	<p>The conditional release of an offender before the end of their sentence but after the end of their non-parole period</p> <hr/> <ul style="list-style-type: none"> • Still required to regularly report to a parole officer, without being required to be incarcerated • Aims to reduce recidivism • Works as an incentive for good behaviour while in prison
Preventative detention	<p>Detaining a potential offender before they commit the offence</p> <hr/> <ul style="list-style-type: none"> • Usually on terrorism charges

	<ul style="list-style-type: none"> Police can imprison people as to prevent them from committing crimes
Continued detention	<p>Adding additional time onto an offender's sentence for the protection of society or offender</p> <hr/> <ul style="list-style-type: none"> Includes serious sex offenders who are likely to commit more offences and thus pose a danger to society
Sex Offenders Registry	<p>Offenders convicted of sex offences are required to update police on their personal details for 8 years after their conviction</p> <hr/> <ul style="list-style-type: none"> Name, address and employment must be given to police Controversial as it can be seen as an infringement upon privacy but it is in the interests of public safety
Deportation	<p>Sending offenders who are non-citizens back to their home country after imprisonment</p> <hr/> <ul style="list-style-type: none"> Receives a sentence of more than 1 year in jail Dual citizens can have their citizenship revoked (Case: ISIS brides)

Young offenders

Key legislation: Young Offenders Act 1997 (NSW)

- Resulted from a decade of trials and reform of the Juvenile Justice System
- Changed the way police and the justice system dealt with young offenders.
- Steers young offenders away from traditional court systems**

What it achieves

- Police accountability:** police must justify any cautions or warnings given
- Responsibility:** holds young offenders responsible for their actions while addressing the rights of the victim
- Efficiency:** reduced time and costs involved in the court system, declogging it
- Rehabilitation:** facilitates rehabilitation has opposed to punishment by avoiding incarceration
- Provides the option of **warnings, cautions and YJC's**

Ages of criminal responsibility

- Looks at how an offenders age affects treatment in the legal system
- **Doli incapax** recognises that children aren't fully developed and aren't capable of understanding the implications of their actions
 - Lack of mens rea - incapable of crime
- Notion of **doli incapax is internationally recognised** under UN Convention on the Rights of the Child (**CROC**)

Age	Responsibility
0 - 9 years old	Cannot be charged with a criminal offence. Not assumed to be mature enough to commit criminal offences
10-13 years old	Rebuttable presumption of doli incapax. Presumed not capable of committing an offence, but prosecution may show the child knew that what they did was 'seriously wrong' and not just 'naughty'
14-15 years old	Criminally responsible for any offence committed, but no conviction can be recorded unless it is a serious offence.
16-17 years old	Criminally responsible for any offence committed and a conviction may be recorded, but the case will still be heard in the Children's Court
18 years or older	Full adult criminal responsibility, with the case to be heard in adult courts. If the offence was committed before the accused's 18th birthday, it can still be heard in Children's Court until the accused turns 21.

Case: R v LMW (1999)

Case: R v LMW (1999)

- 6 year old Corey Davis was pushed into the Georges River by LMW, causing Corey Davis to drown
 - LMW was aware that Corey Davis was unable to swim
 - DPP brought a charge of manslaughter against LMW
- The magistrate initially dismissed the case due to his age, however the DPP appealed the decision and took the case to the Supreme Court
- LMW was charged with **manslaughter**, at the age of 10, where doli incapax was rebuttable
 - Youngest person in Australian history to be charged with manslaughter
- The Supreme Court **acquitted** LMW, showing an **application of doli incapax**
- It was ruled that LMW had no intention or understanding of wrongdoing, showing doli incapax being applied

Rights of children when questioned or arrested

- Governed under LEPRA and the **Young Offenders Act 1997 (NSW)**
- Aligns with the **United Nations Convention on the Rights of the Child (CROC)**
- **A young offender cannot go to a police station without arrest**

Questioning

- Police have the power to approach young people and ask them questions at any time
- Most police powers that apply to adults equally apply to children
 - E.g power to ask a person to move on

Identification

- Police have a right to ask a person to identify themselves
- **Legally required** if:
 - Reasonable suspicions that one can assist in investigating an indictable offence
 - A number of traffic offences
 - A person is suspected of committing an offence on a train
- For young offenders, they are required to provide their details if carrying or consuming alcohol without adult supervision or excuse

Right to silence

- The police may ask a person questions at any time, however they bear a **right to silence** in most cases
 - Still upheld if taken to a police station or under arrest
- Children must be informed of their right to silence

Support of responsible adult

- Parent or guardian must be contacted upon child reaching a police station
- Any information a young person gives is inadmissible in court proceedings unless there is a responsible adult (other than a police officer) present

Searches

- Governed under LEPRA
- Police **can never strip search children under 10**
 - Strip searches on children over 10 **require an adult present**
 - If the person is 14 and over they must agree who the adult is
- Police may only conduct strip searches in **serious and urgent circumstances**
- Strip searches at **music festivals** have raised controversy in recent years as a majority of these were conducted on young people without reasonable grounds for suspicion of drugs

	<p>Media article Police face watchdog hearing over strip-search of 16-year-old girl <i>Angus Thompson, The Sydney Morning Herald, 2019</i></p> <ul style="list-style-type: none"> • Police unlawfully strip searched a 16 year old girl at <i>Splendour in the Grass</i> • No seriousness or urgency warranted the search which found no illegal possessions • Over 300 children were strip-searched between 2016 and 2018
Arrest and interrogation	
<ul style="list-style-type: none"> • Governed under LEPR • The conditions a young person may be lawfully arrested are consistent with those of adults • Reasonable force may be used in arresting a young person <ul style="list-style-type: none"> ◦ Excessive force, intimidation and assault aren't permitted 	
Support person and legal advice	<ul style="list-style-type: none"> • Young offender's parent or guardian must be contacted upon child reaching a police station <ul style="list-style-type: none"> ◦ Resulted from ALRC recommendations in <i>Seen and Heard</i> ◦ Does not occur if the carer or guardian poses a threat to the child's safety • Young people must have a support person such as a parent, guardian, or solicitor at an interview <ul style="list-style-type: none"> ◦ For children over 14, they must agree on who the support person is • Legal representation is not required for children <ul style="list-style-type: none"> ◦ This is despite <i>Seen and Heard</i> recommendations • Children must be informed they can access legal aid
Caution of rights	<ul style="list-style-type: none"> • Children reserve the right to silence during questioning • Caution of rights must be read to children before they are interrogated
Detention & identification	<ul style="list-style-type: none"> • Under 18's can only be detained for a maximum of 4 hours, or 8 hours if a warrant for extension has been granted <ul style="list-style-type: none"> ◦ This is despite the <i>Seen and Heard</i> recommendation of 2 hours nationally
Forensic procedures, photos & searches	<ul style="list-style-type: none"> • Under 14's cannot have photographs or fingerprints taken without a court order from the Children's Court • Those aged 14 and over may have fingerprints and photographs taken if it is for the purpose of identifying them

- DNA samples cannot be taken of children under 18 without a court order

The Children's Court

A specialised court for crimes involving children under 18

- **Young Offenders Act 1997 (NSW)** diverted children away from the traditional court system following years of reform
- Reflects the principles of **CROC**
- Children can be tried in a regular court for serious indictable offences
- **Emphasis on rehabilitation** to promote better prospects for adulthood

Procedures & operations

- Closed to the public
 - Young offender's names cannot be published and the media aren't permitted
 - No juries are present
 - Enables young offenders to reintegrate into society after court
 - Children may otherwise be adversely affected by negative attention in open courts
- Involves specialised individuals, magistrates, police officers and social workers
- Informal discussions allows magistrates to ensure the child understand proceedings & outcomes
- Social and mental health backgrounds are considered by the Children's Court Clinic
 - Complicated background reports on family, social, health & behavioural history

Case: James Bulger Murder (UK)

- The two offenders were tried in an adult court due to the severity of their actions, making them publicly known reducing chances of reintegration into society
- The offenders were eventually released from prison under new identities

Criticisms

- Concerns have been raised, with many believing the Children's Court has inadequately ensuring rehabilitation

Media

	<p>Kids Doing Time <i>Four Corners, 2009</i></p>
	<ul style="list-style-type: none"> • Nearly 70% recidivism rate for young offenders • Significantly higher number of incarcerations in NSW compared to Victoria, nearly thrice as much
	<p>Report Seen and Heard <i>ALRC, 1997</i></p> <ul style="list-style-type: none"> • Conducted by the Australian Law Reform Commission (ALRC) • Examined the relationship between young offenders and the criminal process. • It facilitated the standardisation of the minimum age of criminal responsibility (implemented in all jurisdictions by 2000) • Found incarceration and remand were resorted too often for young offenders • Standardising national standards was also achieved by this report through legislation in arrest, bail, sentencing and detention • Nearly 80% of children surveyed stated that the police rarely treated young individuals with a sufficient degree of respect, which does not necessarily indicate inadequate policing

Penalties for children	
<ul style="list-style-type: none"> • Sentences for children generally cannot be higher than those of adults for the same crime as to place emphasis on rehabilitation • Children have the greatest prospects of rehabilitation 	
<i>In ascending order from the least to most harsh penalties:</i>	
Bond	<p>A court can place a child on a bond, probation or suspended control order</p> <hr/> <ul style="list-style-type: none"> • Courts trust young offenders to behave or comply with specific conditions for up to 2 years • Children can be resentenced with harsher penalties if their conditions aren't met

Youth Justice Conference	<ul style="list-style-type: none"> • Court orders youth to confront victim in a facilitated conference • More detail here
Fine	<ul style="list-style-type: none"> • Fines can only be up to \$1100 • The child's age and ability to repay are taken into consideration before fines are issued
Community service	<ul style="list-style-type: none"> • Up to 100 hours for under 16's and 250 hours for over 16's
Control order	<ul style="list-style-type: none"> • Similar to imprisonment • Cannot be longer than 2 years

Sentencing Considerations

- Children **under 16** cannot have a criminal record attached to them
 - Exceptions for grave adult behaviour (serious indictable offences)
 - What constitutes as such is determined on a case by case basis
- Judge utilises discretion under judicial guidelines on whether to record an offence for offenders over 16
- Enables children to be rehabilitated into adulthood

Case: R v GDP (1991)

- GDP at 14 committed serious damage to property, damage was in excess of \$500k+
- GDP was **initially** sentenced to a **12 month custodial sentence**, appealing to the Court of Criminal Appeal
- The appeal found the case to be excessive, placing an emphasis on rehabilitation
- The **Court of Criminal Appeal reversed their initial decision** with a **12 month probation order**, recognising variations in sentencing procedures between adults and children

Alternatives to court

(for young offenders)

- **Young Offenders Act 1997 (NSW)** introduced diversionary measures of young offenders as alternatives to the traditional criminal processes
 - Also introduced the three-tiered system
- **Doesn't apply to serious indictable offences**

The three-tiered system (ascending order in severity)	
Warning	<ul style="list-style-type: none"> • Informal but recorded warning for summary offence • Police use discretion on whether or not children are charged for summary offences • Includes loitering, fare evasion and swearing
Caution	<ul style="list-style-type: none"> • Applies to more serious offences than warnings • An interview with parent/guardians are overlooked by a police officer • Discussions of the offence take place (what happened, why, it's impact, consequences of reoffending and how to avoid crime) • Remains on criminal record and can be taken into consideration in future offences
Youth Justice Conferences	<ul style="list-style-type: none"> • Implemented under the Young Offenders Act 1997 (NSW) • Places emphasis on restorative justice and rehabilitation • Brings offenders, families and victims together who must agree on a suitable outcome that can range from an apology, reimbursement or community service • The offender accepts responsibility for the offence • Allows the victim to say how they've been affected by the crime • More about rehabilitation and 'restorative justice' as opposed to punishing young offenders • A convener is employed to oversee the conference • Most cost effective • 88% of victims recommended YJC to other victims • Criticism: Don Weatherburn (BOCSAR) "<i>YJC's don't address the underlying causes of juvenile offending</i>" <p><i>Effectiveness</i></p> <ul style="list-style-type: none"> • Rate of detention for young offenders has decreased by over 50% since 1981

International Crime

Crimes against the international community	
<ul style="list-style-type: none"> • Punishable crimes with international origins or consequences 	

- Crimes that are universally condemned on an international scale
- These crimes are prosecuted under international law

Three main types:

- Genocide
- War crimes
- Crimes against humanity

International responses

Treaties

Provides avenues to hold people accountable for crimes against the international community and outlaw crimes against the international community

- Genocide Convention 1948
- **Geneva Conventions 1949**
 - Rules of war
 - Involves a series of conventions that have been ratified in order to set guidelines for warfare
 - Prohibits murder, mutilation, torture, the taking of hostages, unfair trial and cruel, humiliating and degrading treatment.
 - Protection of wounded soldiers
- **Rome Statute 2002**
 - Set up the International Criminal Court
- Extradition treaties
 - Bilateral agreements between 2 countries to return offenders to the origin country of their crimes
 - **Case:** Murder of Toyah Cordingley: accused extradited to Australia from India to face trial and accountability for their actions

Courts

- Prior to the ICC, only ad hoc tribunals prosecuted international crimes
 - Ad hoc tribunals are temporary courts established to prosecute individuals for specific crimes (International tribunal for the Rwandan genocide)

International Criminal Court

- Established under the Rome Statute (2002) where signatory countries can prosecute war criminals
- Only 2 convictions since establishment
- **Example: Thomas Lubanga**, a Congolese warlord who had committed a series of war crimes involving the recruitment of child soldiers, sexual assault, and rape

	<ul style="list-style-type: none"> ○ He was indicted of his recruitment of child soldiers under 15 ● Jacqui Lambie ADF war crimes referral to ICC <ul style="list-style-type: none"> ○ The Age media report: case may never be heard in the ICC (Criticisms that the ICC is too fixated on African cases)
Domestic responses	
Rome Statute ratification	<ul style="list-style-type: none"> ● Australia has ratified the Rome Statute through domestic legislation ● International Criminal Court Act 2002 (Cth) <ul style="list-style-type: none"> ○ Enables Australians to be tried for war crimes at the ICC
Extradition treaties	Cases <ul style="list-style-type: none"> ● Toyah Cordingley Case ● Neil Prakash: extradited to Australia from Turkey under terrorism charges
AFP	<ul style="list-style-type: none"> ● Deals with transnational crime in Australia but also assists regionally and worldwide <ul style="list-style-type: none"> ○ Example: 2002 Bali bombings

Transnational crime	
<ul style="list-style-type: none"> ● Crimes that occur across international boundaries ● Common examples include: <ul style="list-style-type: none"> ○ Drug trafficking ○ Human trafficking ○ International fraud ○ Illegal arms trading ● Requires cooperation between domestic and international communities <p>Example: Julian Assange</p> <ul style="list-style-type: none"> ● Leaked confidential and incriminating information about the US military's actions ● Summoned for sexual assault offences by Sweden ● Sought asylum in the Ecuadorian embassy in London ● Currently held in a UK prison after leaving the Ecuadorian embassy and is awaiting extradition to the US 	
International responses	
Committees	<ul style="list-style-type: none"> ● UN Convention Against Transnational Organised Crime ● UN Office of Drugs and Crime

	<ul style="list-style-type: none"> ● INTERPOL <ul style="list-style-type: none"> ○ 190 member nations contribute to domestic enforcement of transnational crimes ○ Operation Cathedral: 100 arrests of child sex offenders
Extradition	<ul style="list-style-type: none"> ● Julian Assange case: Sweden, under their extradition treaty with the UK can request extradition of Assange to Sweden for the crimes he had committed in Sweden <ul style="list-style-type: none"> ○ Note: Ecuador and Sweden don't have an extradition treaty (embassies are seen as foreign land)
Domestic responses	
Legislation	<ul style="list-style-type: none"> ● Ratification of UN Conventions through the Criminal Code Act 1995 (Cth)
Organisations	<ul style="list-style-type: none"> ● Australian Federal Police <ul style="list-style-type: none"> ○ Investigates and enforces transnational crimes committed overseas and in Australia ○ Engagement in Operation Cathedral (mentioned earlier)
Case Study: Terrorism	
<ul style="list-style-type: none"> ● Incites fear and terror designed to coerce governments in order to promote their ideologies or demands ● Recent cases: Christchurch Mosque Shootings, 2015 Parramatta Shooting, Lindt Cafe Siege 2014 ● Raises questions in regards to effective and ineffective international crime prevention measures ● Numerous UN frameworks have been established to counter the growing threat posed by terrorism ● Outlawed under the Criminal Code Act 1995 (Cth) ● New anti-terrorism legislation & various amendments <ul style="list-style-type: none"> ○ Includes the power to strip Australians of their citizenship provided they have associations with terrorist organisations <ul style="list-style-type: none"> ■ Example: ISIS brides returning to Australia revoked of their citizenship due to their associations ○ Powers under Operation Fortitude granted to the Australian Border Force to conduct visa checks at any given moment have raised concerns over their encroachment upon civil liberties 	

4 | Human Rights

Human Rights in the HSC	
Multiple Choice	At least 5 questions
Short answer	15/30 marks

Themes and challenges

1.	The changing understanding of the relationship between state sovereignty and human rights
2.	Issues of compliance and non-compliance in relation to human rights
3.	The development of human rights as a reflection of changing values and ethical standards
4.	The role of law reform in protecting human rights
5.	The effectiveness of legal and non-legal measures in protecting human rights.

Nature & development of human rights

Introduction to human rights

Inherent rights that recognise the inherent value of each person unconditionally.

- These rights differ from basic domestic legal rights because they are:
 - Universal
 - Rights belong to everyone
 - Inalienable

- Rights cannot be taken away
- Inherent
 - Rights are permanent and essential
- Indivisible
 - Rights can't be split up - all rights belong to everyone
- Key documents include
 - Universal Declaration of Human Rights (**UDHR**), 1948
 - International Covenant on Economic, Social and Cultural Rights (**ICESCR**) 1966
 - International Covenant on Civil and Political Rights (**ICCPR**) 1966
- **Australia does not have a bill of rights**
- In Australia human rights are protected through statute laws. Examples include:
 - Anti-Discrimination Act 1977
- Human rights generally **aren't enforceable**

A	Abolition of slavery
T	Trade unionism
S	Suffrage
P	Peace rights
E	Environmental rights
E	Education rights
D	(self) Determination

Types of rights

Cultural rights	<ul style="list-style-type: none"> ● Freedom of religion
Social rights	<ul style="list-style-type: none"> ● Right to be treated without discrimination
Civil rights	<ul style="list-style-type: none"> ● Freedom of speech ● Freedom of movement
Political rights	<ul style="list-style-type: none"> ● Ability to partake in democratic processes
Economic rights	<ul style="list-style-type: none"> ● Ability to join a trade union ● Earning an income

Key terms

Natural law	Laws derived from nature as opposed to the rules of society <ul style="list-style-type: none"> For instance, murder is universally accepted to be a moral infraction
Positivism	Approaches that rely solely on pragmatic measures.
Slavery	The ownership of another human being, against the strain of human rights.
Universal suffrage	The unconditional right for all individuals to participate in elections.
Trade union	Organisations that actively lobby for rights of labourers.
Labour rights	Rights labourers are entitled to.
Universal education	The unconditional right for all individuals to be granted the opportunity for an education.
Self determination	Autonomy for one/something to have control over themselves
Right to peace	Refers to the right of all humans to peace.

Key moments in the development of human rights

- Religion brought early ideas of ethics and morals
- Development of democracy
- Magna Carta
- US Bill of Rights 1788
- Various different campaigns
 - Abolition of slavery
 - Trade unionism
- World War 2:** pivotal moment in international human rights
 - Series of atrocities that constituted violations of human rights globally fostered the incorporation of human rights into legislation
 - Lead to the development of the UN
 - Writing of the **UDHR**

Abolition of Slavery

- Transatlantic Slave Trade: 17th to 19th centuries
 - The trading of African people by Europeans who transported them as slaves from Africa to the Americas
- Abolitionist movements begin in the 18th century

<ul style="list-style-type: none"> • Illegal slavery continues despite all countries abolishing slavery • Rights of slaves recognised in article 4 of the UDHR 	
Development of abolitionism	
Prior to abolition	<ul style="list-style-type: none"> • Commonly practised human rights abuse • Stems from ancient times until the 18th century • Used globally
First acts	<ul style="list-style-type: none"> • As early as the 12th century, though with negligible impact • Slavery favoured by colonialism
English abolition	<p>Abolitionism</p> <ul style="list-style-type: none"> • Abolitionism began in 18th century England after recognising the violations of the rights of slaves and the degrading treatment they were subject to • Somerset Case <ul style="list-style-type: none"> • In 1772, it was ruled that slavery was unlawful in English common law • Only outlawed slavery in England, and not in the British Empire <p>William Wilberforce</p> <ul style="list-style-type: none"> • The primary force behind the abolition of slavery in England <p>Slavery Abolition Act 1833</p> <ul style="list-style-type: none"> • Wilberforce successfully lobbied for the act, passing in 1833
American abolition	<p>Americas</p> <ul style="list-style-type: none"> • Numerous countries abolished slavery during independence from Spain <p>Civil War</p> <ul style="list-style-type: none"> • Sparked by divided opinions of slavery <ul style="list-style-type: none"> ◦ The North favoured abolitionism, whilst the South were opposed to it • Abolished following the end of the Civil War <p>Amendments</p> <ul style="list-style-type: none"> • The 13th Amendment to the US constitution led to the abolishment of slavery in the US
Post World War 2	<p>UDHR</p> <ul style="list-style-type: none"> • The UDHR developed by the UN following World War 2 affirms the rights of slaves <p>Mauritania</p> <ul style="list-style-type: none"> • The final country to abolish slavery in 1981
Today	<ul style="list-style-type: none"> • Still an estimated 27 million slaves worldwide • Issues still persist in Australia

Trade unionism and labour rights

- Enshrined in articles 23 and 24 of the UDHR
- **International Covenant on Economic, Social and Cultural Rights (1966)**
 - The binding international treaty creating obligations on states to respect the economic, social and cultural rights of individuals

International Labour Organisation

- An international agency of the UN, created with the aim of improving conditions for workers around the world
- Upheld and sort to implement labour rights on a global scale
- Advocates for fair labour conditions and wages
- Laid the foundations for a series of rights workers and entitled to:
 - Awards
 - Work health and safety
 - Social justice
- Former after World War 2
- 187 member states
- Recognised as a global authority on labour

Industrial Revolution

- The rapid development of industry in the 18th and 19th centuries, characterised by changes in manufacturing, agriculture and transport
- In the UK this lead to the **Trade Unions Act** which legalised trade unions
- **Trade unions** first emerged during the Industrial Revolution in response to the unsafe working conditions in addition to the low wages workers were subject to
 - Defined as: an organisation of workers created to preserve and further their rights and interests

Trade unions

- ACTU, RTBU
 - Trade unions have played an **integral role** in securing rights for workers
- Contributions**
- Eliminating discrimination
 - Equitable pay
 - Minimum wages
 - Long service leave
 - Workers compensation
 - Regulated work hours
 - Maternity & parental leave
 - WHS

Universal suffrage

- Suffrage was historically **restricted to those with status**
 - In the United Kingdom, only men who owned property were granted the right to vote
 - This was extended to all men, before allowing women to vote
- **New Zealand** was the first country to grant universal suffrage, with women being given suffrage in **1893**
- First state to enact universal suffrage was **South Australia**
- ATSI individuals obtained suffrage in **1962**
 - **Commonwealth Electoral Act (1962)**
- Women who campaigned for the right to vote are known as **suffragettes**
- Protected under the **Anti-Discrimination Act 1977 (NSW)**

Definitions

Suffrage	The legal right to vote in a democratic election
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Universal suffrage	The right of all citizens to vote in political elections, regardless of their background
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Universal education

- **Definition:** free and compulsory education for all children
- The push for universal education did not begin until the 19th century

Beginning

Illiteracy	<ul style="list-style-type: none">• Education became more prevalent during the industrial revolution<ul style="list-style-type: none">◦ Associated with wealth, power, trades or religions
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The Church	<ul style="list-style-type: none">• The Church played a pivotal role in early education• The Church provided religious education for the congregation• Churches in England and Scotland provided free education on certain days of the week
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Reforms

Government	<ul style="list-style-type: none">• The government gradually became involved• Governments funded church and public schools
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Australia	<ul style="list-style-type: none"> • The government seized control over schools operated by the Church (with the exception of Catholic schools) • Public Instruction Act 1880 (NSW) <ul style="list-style-type: none"> ◦ Made primary education free, compulsory, and secular • Australia mandates education from the ages of 6-15 <ul style="list-style-type: none"> ◦ Variations: in NSW, it is required until the age of 17 • Modern literacy rate is at 99% with 75% finishing secondary school
International	
UDHR	<ul style="list-style-type: none"> • Universal education considered among the most important to bolster a country's development • Enshrined in article 26 of the UDHR <ul style="list-style-type: none"> ◦ Free compulsory primary education

Self-determination	
Introduction	<ul style="list-style-type: none"> • Definition: the right of people to determine how they will be governed, or their political status based on territory or national grouping <ul style="list-style-type: none"> ◦ Nations/peoples have the right to freely make decisions about their own nation and political status without interference from others • It is a collective right: a right that is exercised by a group <ul style="list-style-type: none"> ◦ A right belonging to a group or a people
History of self-determination	
Colonisation	<ul style="list-style-type: none"> • Process where a nation enters another and seizes control <ul style="list-style-type: none"> ◦ Australia become a colony following British settlement in the late 18th century • Direct opposite of self-determination <ul style="list-style-type: none"> ◦ A group's ability to determine how they are governed is diminished resulting from interference by colonial powers • Prevalent from the 15th century until WW2
American Independence	<ul style="list-style-type: none"> • The independence of the United States from Great Britain, in which it was a colony of, was achieved <ul style="list-style-type: none"> ◦ Signed the Declaration of Independence • The United States had revolted against Great Britain's overbearing grip in areas such as taxation

	<ul style="list-style-type: none"> ● Marked a significant cornerstone in the development of self-determination <ul style="list-style-type: none"> ○ Caused a domino effect, with other colonies declaring independence
Documents	
UN Charter	<ul style="list-style-type: none"> ● Paradigm shift on attitudes towards war following WW2 lead to the creation of the UN Charter ● The idea of self-determination was developed <ul style="list-style-type: none"> ○ The notion of nations not arbitrarily infringing upon the rights of others ● Enshrined in article 1.2 of the UN Charter <ul style="list-style-type: none"> ○ <i>'Respect for the principle of equal rights & self-determination of peoples'</i>
ICESCR & ICCPR	<ul style="list-style-type: none"> ● Drafted in 1962 ● Enshrined in article 1 of both: <ul style="list-style-type: none"> ○ <i>'All people have the right to self-determination. By virtue of that right they freely determine their political status & freely pursue their economic, social & cultural development.'</i>
In practice	
Reaching independence	<ul style="list-style-type: none"> ● In the 1960s the UN established the <i>International Trusteeship Council</i> <ul style="list-style-type: none"> ○ Provided assistance to countries pursuing independence ○ Aimed to reverse the ongoing trend of colonisation ● Over 50 territories achieved independence following the 1960s ● Independence movements often result in violent conflicts
Australia	<p>Indigenous self-determination</p> <ul style="list-style-type: none"> ● Key examples of this include the Mabo and Wik decisions <ul style="list-style-type: none"> ○ Eddie Mabo's case in the High Court of Australia led to the overturning of <i>terra nullius</i> ○ Native Title Act 1993 ○ Wik Decision 1992 ● Granted land rights for Indigenous Australians <hr/> <p>East Timor independence</p> <ul style="list-style-type: none"> ● Formerly a Portuguese colony ● Australia played a key role in maintaining stability in East Timor during this period ● Following the end of Portuguese occupation, East Timor faced decades of unrest

- Achieved independence following a referendum in the early 2000's facilitated by the UN with assistance from the Australian Government

Environment rights

Introduction	<ul style="list-style-type: none"> • Right for humans to have a healthy, safe and adequate environment • Yet to be fully developed; environmental rights have only been recognised in recent decades • Involves protecting and preserving the environment • These are not individual or collective • They relate to many existing agreed rights <ul style="list-style-type: none"> ◦ Right to life: involves clean air/water - the right to life is irrelevant if that life is dangerous or toxic • One of the primary barriers to achieving environmental rights are insufficient commitments to protect the environment due to conflicting economic interests
Treaties	<ul style="list-style-type: none"> • There has been no universal recognition of environmental rights but there have been a number of treaties that aim to address such issues • 1972 Stockholm Declaration was unveiled after the UN hosted the first international environmental conference <ul style="list-style-type: none"> ◦ Began international recognition of environmental rights ◦ Agreed on 26 principles concerning the environment and development • Other treaties include: <ul style="list-style-type: none"> ◦ Montreal Protocol; for the depletion of the ozone layer ◦ UN Framework on Climate Change ◦ Kyoto Protocol; for greenhouse gas emissions
International organisations	<ul style="list-style-type: none"> • Organisations have been established to uphold and implement these treaties • The UN Environment Program <ul style="list-style-type: none"> ◦ Primary UN organisation for environmental protection ◦ Coordinates environmental activity internationally • Other organisations include: <ul style="list-style-type: none"> ◦ UN Development Program ◦ Intergovernmental Panel on Climate Change
Australia	<ul style="list-style-type: none"> • Legislation frameworks and organisations protect the Australian environment

	<ul style="list-style-type: none"> • Key measures include: <ul style="list-style-type: none"> ◦ Environment Protection & Biodiversity Conservation Act 1999 ◦ Department of the Environment
COP21	<ul style="list-style-type: none"> • Annual conference that serves as a forum for advocacy and discussion for environmental issues • 2016 Paris Agreement: all countries agreed to limit temperature rises to below 2 degrees celsius <ul style="list-style-type: none"> ◦ Limitations: countries are often hesitant to enact regulations and legislation to shift away from fossil fuels due to the potential political and economic ramifications

Peace Rights	
<p>Definition: the right to live free from conflict, war or any form of repression</p> <ul style="list-style-type: none"> • The right of citizens to their government to do all in its power to maintain peace and work towards the elimination of war 	
Development of peace rights	
League of Nations	<ul style="list-style-type: none"> • Formed by the victors of WW1 • First international organisation for world peace • Beginning of the notion of peace needing to be maintained <ul style="list-style-type: none"> ◦ This is as opposed to resolving disputes through means of conflict • Unsuccessful
UN Charter	<ul style="list-style-type: none"> • Article 1: <i>The purpose of the UN is to maintain international peace & security</i> • Article 39: <i>The UN has the power to take action to maintain or restore peace</i> • Written in 1945 • The charter acts as the guidelines of the UN • A significant degree of power is consolidated within the UN to uphold peace
DROPP	<ul style="list-style-type: none"> • Declaration on the Right of Peoples to Peace (1984) <ul style="list-style-type: none"> ◦ Adopted by the UN General Assembly • Prior to DROPP, the need for world peace was recognised, but the right to peace wasn't granted

	<ul style="list-style-type: none"> Declared that promoting and implementing the right to peace is a fundamental obligation of states and that government policies should be directed towards peace initiative <i>All peoples of our planet have a sacred right to peace</i>
Geneva Convention	<ul style="list-style-type: none"> Established laws of war Defines the conduct and responsibilities of warring states in terms of treatment of non-combatants and civilians in wartime For instance, not firing on individuals with white flags or vehicles carrying a red cross
Problems	
Legal loopholes	<ul style="list-style-type: none"> Article 51: states have the right to self-defence <ul style="list-style-type: none"> The notion of state sovereignty Special powers to enforce peace can be abused UN Security Council members <ul style="list-style-type: none"> US war on Iraq (2003): justified by UN resolutions
Non compliance	<ul style="list-style-type: none"> Countries are granted the right to self-determination, and aren't obliged to follow international laws


See version history at 15/08/2023 @ ~2pm for the practice questions that were here

Formal statements on human rights	
International Bill of Rights	
UDHR	<ul style="list-style-type: none"> Inspired more than 200 international instruments Cornerstone in the development of human rights List 30 rights <ul style="list-style-type: none"> Includes the right to life, liberty, security, thought, religion, education and equality Labelled as 'soft law' <ul style="list-style-type: none"> Non-binding but influential Non-enforceable Prone to non-compliance Part of international customary law <ul style="list-style-type: none"> Actions and concepts that have developed over time to the extent that they are accepted by the international community and have become law

	<ul style="list-style-type: none"> • The <i>Genocide Convention</i> was adopted in 1948 and was enforced in 1951 <ul style="list-style-type: none"> ◦ Secured universal condemnation of suicide ◦ Failed to motivate politicians and diplomats to take concrete measures to prevent future acts of genocide ◦ Not enforceable until the founding of the ICC (2002)
ICCPR & ICESCR	<ul style="list-style-type: none"> • Both adopted in 1966 <ul style="list-style-type: none"> ◦ Countries that haven't signed neither covenants include Myanmar, Malaysia, Singapore and Saudi Arabia • Enforceable and binding as signatories must report to the respective committees on their human rights commitments <ul style="list-style-type: none"> ◦ However, violations aren't punishable by law and hence there is a lack of accountability <ul style="list-style-type: none"> ■ E.g Australia's treatment of asylum seekers • Their contribution to the development of human rights is constrained by state sovereignty <hr/> <p>International Covenant on Economic, Social and Cultural Rights (ICESCR)</p> <ul style="list-style-type: none"> • Initially supported by communist powers <ul style="list-style-type: none"> ◦ Hasn't been ratified by the US, among others • Creates an obligation on states towards granting economic, social and cultural rights to individuals • Includes labour rights <ul style="list-style-type: none"> ◦ Right to fair wages ◦ Right to labour rights participation ◦ Right to adequate standard of living ◦ Right to free primary education <hr/> <p>International Covenant on Civil and Political Rights (ICCPR)</p> <ul style="list-style-type: none"> • Initially supported by western powers <ul style="list-style-type: none"> ◦ Hasn't been ratified by China, among others • Creates an obligation on states to uphold the civil and political rights of individuals, including: <ul style="list-style-type: none"> ◦ Equality between men and women ◦ Freedom of movement ◦ Right to a fair trial with an impartial and competent judge ◦ Right to the presumption of innocence ◦ Freedom of thought, conscience, speech, religion and assembly ◦ Right to vote ◦ Freedom from slavery and torture • Torture and slavery outlawed

	<ul style="list-style-type: none"> Contains monitoring and periodic reporting arrangements for member states <ul style="list-style-type: none"> Overseen by the UN Human Rights committee <ul style="list-style-type: none"> Countries must report on their compliance every 4 years
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Promoting & enforcing human rights

 Promoting & Enforcing Human Rights.pdf

International community	
State sovereignty	
Statehood	<ul style="list-style-type: none"> There are currently 193 recognised UN members, though there are 195 states in the world In order to achieve statehood, states must satisfy the following criteria under the <i>Montevideo Convention on the Rights and Duties of States (1933)</i>: <ul style="list-style-type: none"> A permanent population A defined territory Government Capacity to enter into international relations Numerous issues arise as there is no clear definition of statehood that binds the international community <ul style="list-style-type: none"> Being part of the UN is generally the clearest sign of statehood Unclear definitions of statehood has negative implications on human rights protections <div> <div>Case study: Taiwan</div> <div> <p>Taiwan has ratified a number of international covenants, including the ICESCR and ICCPR, but as they aren't a member of the UN its citizens cannot access the international human rights framework.</p> <ul style="list-style-type: none"> Taiwan does not reserve the right to lodge complaints to the UN Human Rights Committee <ul style="list-style-type: none"> Other countries cannot refer to the committee about Taiwan either </div> </div>

Sovereignty	<ul style="list-style-type: none"> Refers to the ultimate law-making power of a state <ul style="list-style-type: none"> Its independence and freedom from external influences in its affairs Under article 2 of the UN Charter, states are entitled to exercise sovereignty States often cite infringements of their state sovereignty as justification for non-compliance with international law and human rights standards Countries can extinguish human rights without any international interference using state sovereignty International treaties are consensual and do not infringe upon state sovereignty 						
Roles							
Role of legal bodies							
United Nations	<ul style="list-style-type: none"> A forum for discussing and voting on international issues Can make binding resolutions through the UN Security Council <ul style="list-style-type: none"> Mutual consensus' are difficult to reach due to the conflicting interests of the 5 permanent members Sustainable development goals outlined a number of development targets the UN sought to achieve by 2030 <ul style="list-style-type: none"> Have guided an array of global efforts to eliminate disparities in development in order to ensure equitable access to human rights R2P doctrine adopted in 2005 as a UN resolution and reaffirms the obligation of countries to protect their citizens from international crimes (refer here for more detail) <ul style="list-style-type: none"> Prevents atrocities from occurring If countries fail to safeguard the rights of their own citizens, other states reserve the right to intervene Example: Central African Republic genocide in 2013 against Christians, which resulted in French intervention <table border="1"> <tr> <th colspan="2">Principal organs of the UN</th></tr> <tr> <td>General Assembly</td><td>A forum for discussing and voting on international issues</td></tr> <tr> <td>Security Council</td><td>Makes binding resolutions on international peace and security</td></tr> </table>	Principal organs of the UN		General Assembly	A forum for discussing and voting on international issues	Security Council	Makes binding resolutions on international peace and security
Principal organs of the UN							
General Assembly	A forum for discussing and voting on international issues						
Security Council	Makes binding resolutions on international peace and security						

		<ul style="list-style-type: none"> Includes sending troops to Korea in 1950
	Economic & Social Council	Discusses economic and social issues <ul style="list-style-type: none"> Works with the World Bank and IMF to give developmental loans to developing countries
	International Court of Justice	Some useless dogshit (refer to world order note)
	UN Secretariat	Deals with administrative matters <ul style="list-style-type: none"> Has sub-bodies that enforce UN Resolutions such as the <i>UN Dispute Tribunal</i>
	Office of the Human Rights Commissioner	Hears and investigates smaller disputes
UN Human Rights Council & Committee	<ul style="list-style-type: none"> Makes recommendations to states on improving human rights Complaints procedure for individuals to raise issues to the council's attention Compulsory periodic reviews of the human rights situations in all 193 member states An Advisory Committee to provide expertise and advice and recommends issues for the council to consider Formerly known as the UN Human Rights Committee 	
	Case study: Toonen v Australia (UN Human Rights Committee) 1994	
	<ul style="list-style-type: none"> Landmark case as it upheld homosexual rights globally Homosexuality was criminalised in Tasmania (being the only Australian state to retain such laws) at the time, as such laws were inherited from the UK This was found to be in violation of the <i>ICCPR (1966)</i>, as such laws were in breach of privacy rights Led to the enactment of the <i>Human Rights (Sexual Conduct) Act 1994 (Cth)</i> which legalised consensual sexual activity between adults throughout Australia, overriding Tasmanian law 	
	Case study: A v Australia 1993	

	<ul style="list-style-type: none"> • The UNHRC had found Australia to be in breach of the ICCPR by detaining asylum seekers for prolonged periods of time without providing them with the opportunity to seek legal representation in order to test the legality of their detention • UNHRC found Australia guilty of arbitrarily detaining 'A' • The Australian government rejected the finding and refused to offer compensation
IGO's	<ul style="list-style-type: none"> • Organisation of countries who cooperate for mutual benefit • Works to improve their international standing by improving free trade and human rights protections • Prominent examples include: <ul style="list-style-type: none"> ◦ European Union ◦ African Union ◦ Commonwealth of Nations ◦ INTERPOL • The EU, for example, has a human rights court
Courts & tribunals	<ul style="list-style-type: none"> • International judicial organs dealing with disputes between nations or international crimes <hr/> <p>International Court of Justice</p> <ul style="list-style-type: none"> • Can hear and judge disputes between states and issue advisory opinions on matters of international law • Requires the consent of state parties to hear matters, enabling for non-compliance • Doesn't hear cases brought by individual people or private organisations • Example: Australia v Japan whaling dispute <ul style="list-style-type: none"> ◦ Unenforceable, as Japan continued their whaling practices despite of the ICJ's ruling in favour of Australia <hr/> <p>International Criminal Court</p> <ul style="list-style-type: none"> • Established in 2002 under the Rome Statute to prosecute international crimes • Doesn't explicitly protect human rights • Thomas Lubango case <ul style="list-style-type: none"> ◦ Took 5 years to prosecute ◦ Jailed for 14 years • High enforceability • Expensive and time consuming

	<ul style="list-style-type: none"> Costs \$100m annually to run
Role of non-legal bodies	
NGOs	<ul style="list-style-type: none"> Operate like charities, helping groups and individuals free from government bureaucracy Primarily play a role in humanitarian aid or lobbying Ensures greater compliance by investigating, researching and documenting cases of human rights abuses Holds governments to account, however doesn't possess the power to enforce resolutions Prominent examples include: <ul style="list-style-type: none"> ICRC Human Rights Watch Amnesty International <div> Case study: International Committee of the Red Cross (ICRC) <ul style="list-style-type: none"> Missions revolve around International Humanitarian Law Protects the life and dignity of international and other armed conflicts Has observer status at the UN <i>See more in World Order notes</i> </div>
The media	<ul style="list-style-type: none"> Plays a crucial role in naming and shaming governments and individuals by investigating, reporting and exposing instances of human rights abuses The right to free and impartial media and people's right to information is recognised as playing a critical role in safeguarding human rights Generally only applies to the countries with media freedoms Freedom of the press is limited in numerous countries, limiting government accountability Example: Reporters without Borders media freedom index <div> Case study: ACT Legalisation of Gay Marriage <ul style="list-style-type: none"> In 2013, the ACT attempted to legalise gay marriage as a result of lobbying and pressure amounting from the media </div>

Australian domestic law

Introduction

- Sources of human rights include international treaties, the constitution, common law, statute law, the Commonwealth and states
- Australia adopted the **dualist** system
 - **Treaties are only enforced if they are ratified**
 - Under the monist system, the signing of a treaty automatically ratifies it
- Ratified treaties are enforceable by the High Court of Australia
 - Example: **Convention on the Rights of the Child 1990 (CROC)**
 - Incorporated in the Family Law Act 1975 (Cth)
- Australia has **ratified 347** treaties since 1945
 - **Signatory** to the *Convention Relating to the Status of Refugees* however still having **mandatory detention**
 - 2014: Government attempted to amend the **Racial Discrimination Act 1975 (Cth)** to legalise the humiliation of individuals on the basis of their race, violating rights to freedom from discrimination

Legal mechanisms

Constitution

- The Australian constitution sets out the system through which human rights are recognised
 - The **separation of powers** and the **division of powers**
- **Essential mechanism** in upholding the rule of law
- Ensures that rights and liberties are **protected from potential abuses of power** that could come with a **politicised judiciary**
- Any legislation that infringes upon the constitution can be rescinded
- Grants the Commonwealth the authority to legislate on external affairs such as signing international treaties
 - Ratification has increased exponentially since federation, covering a broader range of areas of law

Separation of powers

Legislature

Elected lawmakers in parliament

Judiciary

The courts that interpret and apply the law

Executive

Government, including ministers and agencies

	Division of powers	
	Federal	The Commonwealth Government
	State	New South Wales etc.
	Local	City of Sydney etc.
Express & implied rights	Express	
	Rights that are included (written) in a document <ul style="list-style-type: none"> • Right to vote • Right to a fair trial • Freedom of religion 	
	Implied	
	Rights that can be implied through the text, structure of purpose of a document <ul style="list-style-type: none"> • The High Court has found that certain rights must have been intended in order for the Constitution to function effectively 	
Statute & common law	Statute law <ul style="list-style-type: none"> • Statute law is a powerful tool in human rights protection and many laws have been wide-reaching <ul style="list-style-type: none"> ◦ These rights are not fixed and can be rescinded by later Acts of parliament • Examples include: <ul style="list-style-type: none"> ◦ Anti-Discrimination Act 1977 (NSW) ◦ International Criminal Court Act 2002 (Cth) ◦ Sex Discrimination Act 1984 (Cth) ◦ Marriage Amendment Act 2017 (Cth) 	
	Common law <ul style="list-style-type: none"> • Law made by judgements of the courts and the use of precedence • The common law does not offer absolute protection of human rights as common law isn't fixed <ul style="list-style-type: none"> ◦ Rights in the common law can be rescinded by any Act of parliament ◦ Any legislation that conflicts with common law will override common law • Cannot be relied upon to develop new rights, as these rights can only be defined on a case-by-case basis. • Courts can enforce rights but have limited power to introduce new rights 	

	<ul style="list-style-type: none"> Examples include Mabo v Queensland (1991), which introduced the right to Native Title
Role of domestic organisations	
High Court of Australia	<ul style="list-style-type: none"> Can overturn legislation incompatible with constitutional rights <ul style="list-style-type: none"> Example: Toonen v Australia, overturning Tasmanian legislation against same-sex marriage Can develop new rights through common law <ul style="list-style-type: none"> Example: Mabo decision in the High Court of Australia, overturning terra nullius Can integrate international law in its decisions <ul style="list-style-type: none"> The HCA can be influenced by international resolutions or treaties which Australia has ratified
Australian Human Rights Commission (AHRC)	<ul style="list-style-type: none"> The most significant human rights body in Australia A tribunal which investigates and hears disputes regarding human rights <ul style="list-style-type: none"> Independent national body investigating issues Releases report that highlight human rights issues Makes recommendations to the government on how to improve issues Responds to violations of human rights legislations such as the <i>Sex Discrimination Act 1984 (Cth)</i> and the <i>Racial Discrimination Act 1975 (Cth)</i> Receives and investigates complaints into breaches of human rights Promotes public awareness about human rights Conduct public inquiries into human rights issues and produce recommendations
NGOs	<ul style="list-style-type: none"> NSW Council of Civil Liberties <ul style="list-style-type: none"> Monitors and fights against infringements of rights and liberties and abuse of power by governments and agencies. Prepares submissions to the government, engages in regular public debates and hosts events Civil Liberties Australia <ul style="list-style-type: none"> Advocates for people's rights and civil liberties on a national level Monitors police and security forces, in addition to inaction by politicians and bureaucrats and proposed legislations to enhance human rights protections Australian Council of Social Service <ul style="list-style-type: none"> Supports those adversely impacted by poverty, disadvantage and inequality Leads and supports initiatives within community services and the welfare sector

	<ul style="list-style-type: none"> ○ Lobbies the government in order to influence federal policies and laws ● Asylum Seeker Resource Centre <ul style="list-style-type: none"> ○ Provides both Legal and economic assistance to Asylum Seekers. ○ Provides educational pathways to asylum seeker students looking for an education in Australia. ○ Prevents human rights abuses against Asylum Seekers. 				
A Charter of Rights					
Introduction	<ul style="list-style-type: none"> ● A list of legally enforced rights within a country <ul style="list-style-type: none"> ○ Australia is the only western democracy without a bill of rights ● Bills of Rights aim to restrict the power of future parliaments to infringe upon human rights ● In Australia, the ACT and Victoria enacted human rights charters in line with the UN International Bills of Rights ● In 2008, an inquiry was established to determine the need for a Charter of Rights in Australia ● 90% of Australians are in favour of a Charter of Rights 				
Arguments	<table> <tr> <td>For</td><td> <ul style="list-style-type: none"> ● Remedies the shortcomings of existing human rights protections ● Protecting marginalised and disadvantaged individuals ● Improving the quality and accountability of government ● Supports a culture of regard for human rights ● Bringing Australia in line with other democracies </td></tr> <tr> <td>Against</td><td> <ul style="list-style-type: none"> ● The current adequacy of existing human rights protections ● Transfers legislative power to unelected judges ● Better human rights protections aren't guaranteed </td></tr> </table>	For	<ul style="list-style-type: none"> ● Remedies the shortcomings of existing human rights protections ● Protecting marginalised and disadvantaged individuals ● Improving the quality and accountability of government ● Supports a culture of regard for human rights ● Bringing Australia in line with other democracies 	Against	<ul style="list-style-type: none"> ● The current adequacy of existing human rights protections ● Transfers legislative power to unelected judges ● Better human rights protections aren't guaranteed
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Contemporary issue: human trafficking

Introduction

Contemporary slavery	<ul style="list-style-type: none"> ● Contemporary slavery: a form of forced or bonded labour, with or without pay, under threat of violence ● Forced labour: work performed under the threat of penalty of arm and which the person has not voluntarily submitted to ● Debt bondage: where a person is forced to repay a loan with forced labour instead of money ● Sexual slavery: repeated violation or sexual abuse or forcing a victim to provide sexual services <table border="1" data-bbox="335 593 1519 900"> <tr> <td colspan="2">Key distinction: Human trafficking vs people smuggling</td></tr> <tr> <td>Human trafficking</td><td>Involuntary violations of human rights involving the illegal movement of people across international borders</td></tr> <tr> <td>People smuggling</td><td>People voluntarily pay a fee for the smuggler's service</td></tr> </table>	Key distinction: Human trafficking vs people smuggling		Human trafficking	Involuntary violations of human rights involving the illegal movement of people across international borders	People smuggling	People voluntarily pay a fee for the smuggler's service
Key distinction: Human trafficking vs people smuggling							
Human trafficking	Involuntary violations of human rights involving the illegal movement of people across international borders						
People smuggling	People voluntarily pay a fee for the smuggler's service						
Extent of human trafficking	<ul style="list-style-type: none"> ● 40 million people are victims of modern slavery ● Women and girls account for 71% of modern slavery victims ● 21 million people are in forced labour (ILO) ● 50% of all forced labour victims are bound by debt bondage ● Australian government estimates between 700,000 and 4 million people are trafficked internationally annually ● \$150 billion (USD) in profits every year, making it second to Drug Trafficking <table border="1" data-bbox="335 1361 1519 1809"> <tr> <td colspan="2"> Media article One in 200 people is a slave. Why? <i>The Guardian, 2019</i> [Link] </td></tr> <tr> <td colspan="2"> <ul style="list-style-type: none"> ● The number of slaves has increased from 13 million in the 15th and 19th centuries to 40 million in the modern era, 3x more than the transatlantic slave trade ● Children make up for 25% for all slaves worldwide ● North Korea has the highest number of slaves, at 104.6 per 1000 people </td></tr> </table>	Media article One in 200 people is a slave. Why? <i>The Guardian, 2019</i> [Link]		<ul style="list-style-type: none"> ● The number of slaves has increased from 13 million in the 15th and 19th centuries to 40 million in the modern era, 3x more than the transatlantic slave trade ● Children make up for 25% for all slaves worldwide ● North Korea has the highest number of slaves, at 104.6 per 1000 people 			
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Responses to human trafficking

International responses

United Nations

Conventions & treaties

- The Slavery Convention of 1926 and the supplementary **Convention on the Abolition of Slavery 1956** clarified and expanded the definition of slavery
- Article 4 of the UDHR prohibits all forms of slavery
- The treaties provided for official abolishment of slavery but didn't address issues of illicit slavery and human trafficking
- **UN Global Report on Trafficking** found that sexual exploitation is the most documented form of trafficking as it is more the most frequently reported by country (instances of forced marriage or forced labour are less documented)

Alliance 8.7

- Aims to utilise the Sustainable Development Goals (specifically **target 8.7**) which strives to eradicate forced labour and modern slavery

The Protocol (2002)

- In 2000, the UN General Assembly adopted **The Protocol to Prevent, Suppress and Punish Human Trafficking in Persons Especially Women and Children**
- Was the first **legally binding** instrument with an **agreed definition** of human trafficking
- Provided an umbrella of overall protection, with a regime for protection, prosecution and prevention
- Was designed for member states to enact the most appropriate domestic laws
- Improved global awareness, more uniform national laws, cross-border cooperation, investigation and prosecution

Domestic responses

Introduction

- Australia has **dedicated more than \$60 million** to the problem of human trafficking since 2003 and launched a renewed campaign in 2008
- The strategy addresses all areas, from recruitment to reintegration, but particularly placing emphasis on prevention, investigation, prosecution, victim support and regional cooperation
- Australia has made a number of successful prosecutions of human traffickers

	<ul style="list-style-type: none"> ● Australia ratified <i>The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children</i> (2000) <div> <p>Case study: federal government's crackdown on criminals exploiting Australia's visa system (Operation Inglenook)</p> <p>Government launches crackdown on 'criminals' exploiting visa system - ABC News</p> </div> <ul style="list-style-type: none"> ● Aims to increase compliance and accountability ● Crackdown on migration agents engaging in unscrupulous conduct, exploiting Australia's immigration system that enabled for human trafficking to take place ● Commitment of \$50 million to establish a task force tasked with countering abuses of immigration programs and to assist victims ● Targets migration agents by introducing background and compliance checks ● Introduces harsher penalties
Legislation	<ul style="list-style-type: none"> ● Modern Slavery Act 2018 (Cth) <ul style="list-style-type: none"> ○ Requires certain corporations to report on slavery within their supply chains to the government on a yearly basis ○ Large corporations must provide a report on how they are addressing human trafficking and the preventative measures taken ○ Promotes proactive action against modern slavery by requiring corporations to comprehensively analyse human trafficking ○ Shortcomings: non-compliance isn't penalised and there is a lack of incentive for corporations to amend their practices ○ Human Rights Watch lobbied the government to penalise companies that failed to address human trafficking adequately ○ ABC: Fails to address modern slavery occurring in smaller businesses sponsoring trafficked migrants
Non-legal responses	
Non-legal responses	<ul style="list-style-type: none"> ● The UN established a Global Initiative to Fight Human Trafficking <ul style="list-style-type: none"> ○ Mobilises non-actors on human trafficking ○ Increasing awareness ○ Assisting NGOs in anti-trafficking campaigns ○ Reduce the demand for exploitation and ensure support for victim for exploitation and ensure support for victims who have escaped

	<ul style="list-style-type: none"> • NGOs such as Anti-Slavery International • Films, books and documentaries
Effectiveness	
Primary issues	<ul style="list-style-type: none"> • Limited resources of effectiveness of developing states to combat human trafficking • Socio-political and economic factors that encourage exploitation and inhibit action against it • It is improbable that there will be changes to the economic drivers of labour mobility and migration. • Heightened awareness and monitoring of vulnerabilities, including hotspots, will help to prevent and reduce trafficking in persons within Australia and the wider region. <div> <p>Media article: <i>Hidden in Plain Sight</i> ABC, 2021</p> <ul style="list-style-type: none"> • Human trafficking is rife in Australia and often goes undetected • Only 1 in 5 victims of modern slavery are detected in Australia (Anti-Slavery Australia) • 15,000 Australians are victims of modern slavery (USYD) • International students and migrants who migrate to Australia through various legal loopholes are most prone to being victims of modern slavery <ul style="list-style-type: none"> ○ Cases often go undetected due to the fear of deportation ○ Victims are subject to wage theft and underpayment ○ A large portion of victims were unaware of their rights </div>
Case studies	
<div> <p>Case study: ABF phone examination leads to the rescue of five children</p> </div>	

- The Australian Border Force intercepted an Australian national at Sydney Airport whose phone was examined, returning from Thailand
- Their phone contained a multitude of child abuse material, triggering an investigation in the Philippines, in which the parents of the children depicted were convicted of human rights abuses
- This led to the rescue of 5 children who were taken from the custody of their parents after the Australian Federal Police cooperated with local law enforcement in the Philippines

Case study: R v Tang (2009)

- Wei Tang was a Melbourne brothel owner who had trafficked 5 women from Thailand to work under illegal conditions of slavery and debt bondage
 - The victims had limited English and were forced to endure long hours
 - **Each woman was required to pay a debt of \$45,000** and the repayments for this formed a number of slave trading charges
 - Convicted in 2006 of five counts of intentional possession of a slave and was sentenced to **10 years imprisonment**
 - The conviction was overturned on the basis that the judge had misinterpreted the word 'slavery'
 - The prosecution appealed the case to the **High Court**, in which a 6-1 majority upheld the original conviction.
-

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