



Western Australia's Court System  
Student Resource Book  
Court Services Division, Department of Justice



October 2001

# STUDENT RESOURCE BOOK

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## **About this Booklet**

The aim of the booklet is to provide you with an overview of the court system and how the courts relate to the law.

### **To students**

This booklet can be used during your visit to the Francis Burt Law Centre and the courts. It will also be a useful resource when you return to school.

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## Section 1: About the law

This section provides information about:

- why laws are made;
- who makes laws;
- how laws are made;
- types of law.

### Why are laws made?

If people live together in a community, it is necessary to regulate behaviour, settle disputes and ensure that all members of society are accountable for their actions. That is why laws are made. Laws are a common set of rules and some of the main areas which laws control are:

- protection for personal safety;
- protection for property;
- access to information;
- regulation of business affairs.

### Natural justice

Everybody has a right to a fair hearing. That is what is implied by the term 'natural justice'. People should be brought to trial as soon as the Courts can accommodate them and must be told what the case is against them. They must also have the opportunity to be heard. In both criminal and civil proceedings there may be delay. In most cases delay is caused by the non-availability of witnesses.

An impartial body or person should hear evidence so there is no bias or disadvantage. People whose first language is not English, or whose knowledge of English is lacking will have access to an interpreter provided by the Court to ensure proper understanding.

The Court system is in place to conduct hearings. Each side is given an opportunity to be heard and explain their view of what happened. Magistrates or Justices of the Peace, Judges or Judges and juries hear the evidence impartially and make a judgement.

### Who makes laws?

The term "law(s)" is a general reference to the body of enacted or customary rules recognised by a community as binding.

Law making is in the hands of two groups:

- The Parliament.
- Judges.

Laws made by parliament are called **statutes** or **legislation** or an **Act of Parliament** and in this booklet are used synonymously. Interpretations of the law by Judges is called **precedent** or **common law**.

The Australian and State Constitutions outline the powers that are available to parliamentary law makers. In Australia both the Federal Parliament and State Parliament can make statutes.

The term “separation of powers” means that the judiciary is separate from, and not influenced by, the legislative or executive areas of Government. High importance is placed on separation of powers to ensure there is impartiality and a fair trial.

### **Federal Laws**

Laws made by the Federal Parliament are for issues that affect the entire country, such as taxation, immigration, health and social welfare - see also: [www.aph.gov.au/parl.htm](http://www.aph.gov.au/parl.htm)

### **State laws**

State Parliaments are responsible for laws governing a particular State. State laws cannot override federal laws - see also: [www.parliament.wa.gov.au](http://www.parliament.wa.gov.au)

Examples of State law include, road rules, building safety requirements, and school leaving age.

## **How are laws made?**

### **Legislation**

The legislature or parliament is the body that makes statutes. Statutes are written laws made by an Act of Parliament.

The Western Australian State Parliament comprises two houses of parliament: the Legislative Council (Upper House) and the Legislative Assembly (Lower House). Legislation is generally introduced into the Lower House as a bill. It is debated and, if passed, it goes to the Upper House for review. If passed, it goes to the Governor to receive royal assent before it is proclaimed by publication in the Government Gazette. Once proclaimed, the legislation becomes law.

Statutes provide the basic structure of a law but cannot take into account all the details of day-to-day management of it. Parliament gives limited power to authorities to make regulations, rules or by-laws. Examples of authorities that have this power include the Water Corporation, Western Power and local councils. For example, the Water Corporation can make regulations about when you may use sprinklers in summer. Local Councils can make by-laws about the height of buildings in a certain location.

### **Common law**

Common law is law made by Judges. Judges of superior Courts (Supreme Court, Federal Court, Family Court and High Court) make law by interpreting statutes and developing legal principles. Common law is just as important as statute law.

The law of negligence can demonstrate an example of the development of common law. Twenty years ago local authorities were not required by law to place warning signs in public areas of hazard such as shallow waters. Since that time there has been a series of legal actions involving members of the public who have been injured at such places. Local authorities are now expected to place warning signs at any public place where it is reasonably foreseeable members of the public could become injured.

**Doctrine of precedent**

It is important that the law is consistent. For that reason, common law is based on the doctrine of precedent. That is, Judges make decisions based on earlier similar cases. This interpretation of the law will remain valid unless it is overruled by a higher Court or by an Act of parliament.

**Types of law**

There are many types of law, but one way to classify them is according to the type of legal action required. Legal action can be categorised into criminal law and civil law.

**Criminal law**

Offences such as burglary, assault, serious drug offences and murder are dealt with under criminal law. Such crimes are considered to be offences against the community as a whole. They are termed "indictable" offences and are heard by a judge and jury. In these cases the "State", through the Office of the Director of Public Prosecutions, prosecutes the case against the defendant.

Simple offences such as possession of small quantities of drugs and drink driving, are heard summarily, that is, the matter is relatively simple and straightforward and able to be dealt with by a Magistrate.

In all criminal cases the onus of proof is on the prosecutor and the case must be proven 'beyond reasonable doubt'.

**Civil law**

Civil law is concerned with the rights of the individual. A wronged party, called the plaintiff or applicant, seeks action against another, the defendant or respondent, who caused hardship or inconvenience. It is not a concern for the community as a whole. For example, a civil case may be a dispute about trespass, or it may involve non-payment for goods and services received.

Civil cases consist of two (or more) sides in opposition, using their own legal representatives to present the case to the court. This is referred to as an adversarial system. In a civil case, the onus of proof required of the plaintiff is 'on the balance of probabilities' - a less difficult task than in criminal law.

**Summary**

Laws are made to regulate and protect society. Parliament enacts statutes and Judges create common law. Criminal law concerns offences considered a threat to the community and are brought to Court by the State. Civil cases deal with the rights of the individual and are brought to Court by the wronged party.

## Section 2: Courts

This section provides information about:

- the need for the Court system;
- types of Courts;
- why have a Court hierarchy;
- Rules of Court/Legal Rules;
- Jurisdiction;
- Location of Courts in WA
- Tribunals.

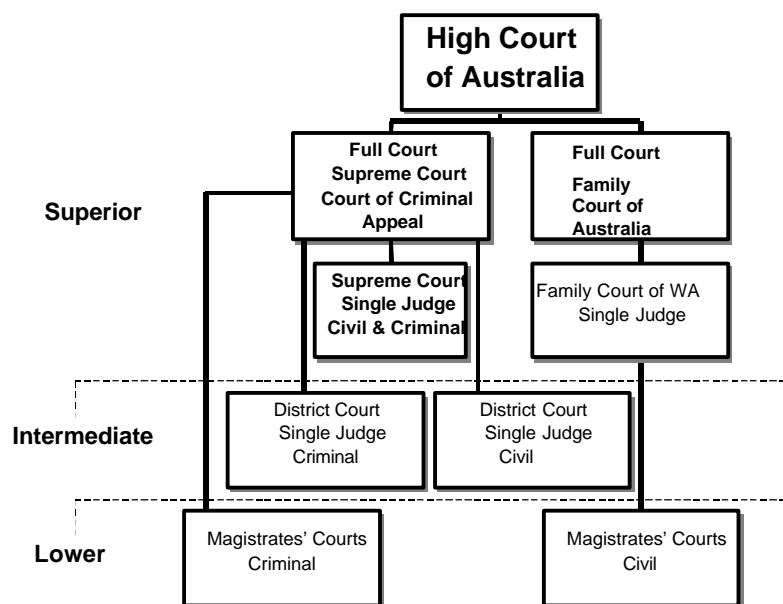
### Why do we need a Court system?

Every society has a set of rules or laws that regulate conduct. Likewise they have a process for upholding the laws, settling disputes and administering justice. In small communities in the past, this process may have been resolved by a meeting of village elders for instance. In effect this was a type of Court or tribunal. As law has become more and more complex and communities have grown, so has the Court system.

Australia has an elaborate Court system that aims to serve the diverse and complex interests of law and justice in our community. Statutes detail what can be heard in each Court. This is known as the Court's **jurisdiction**.

### Types of Courts

Each State has its own system of Courts. While there are many similarities, the systems differ in some details. There are three levels of Court in Western Australia. These are known as the lower, intermediate and superior levels. Each Court has its own jurisdiction. A basic hierarchical structure of Western Australian Courts is shown here.



The hierarchy of Courts

**Note:** The Federal Court of Australia also has jurisdiction in Western Australia in relation to laws of the Federal Parliament.

### **Why have a Court hierarchy?**

A hierarchy of Courts allows cases to be tried more effectively and efficiently and provides the opportunity for the hearing of appeals against decisions of lower courts and tribunals.

#### **Administrative convenience**

It makes sense to deal with conflicts according to their severity. Minor disputes are dealt with in lower Courts where there is greater flexibility to deal quickly and cost effectively with the issues.

#### **The doctrine of precedent**

Inferior Courts must abide by the precedents established by superior Courts. This allows for certainty in decisions and thus saves time. A legal principle wrongly applied in an inferior Court, however, may be overruled on appeal in a superior Court.

#### **Specialisation**

Different Courts operate in different ways. Each Court has its own area of specialisation and can deal most efficiently with disputes of a certain kind.

#### **Right of appeal**

A hierarchy of Courts allows people to appeal to a higher Court if they receive an unfavourable decision as a result of errors of law or denial of natural justice.

### **Rules of Court/Legal Rules**

Over time, Rules have been made regulating the practice and procedure of courts. These Rules are usually in written form and are called the Rules of Court and/or Practice Directions.

In relation to civil jurisdiction, the Supreme Court, Family Court, District Court and Local Court each have their own Rules of Court.

Criminal procedure is regulated by Criminal Practice Rules and Directions.

A number of statutes control the types of matters that can be brought before a given Court. For example, the Justices Act, Police Act, Misuse of Drugs Act and Criminal Code regulate what can be brought before the Court of Petty Sessions, the Supreme Court and the District Court. They also indicate the penalties that can be imposed.

### **Jurisdiction**

Each Court has a specific jurisdiction that determines the types of cases it can hear. Broadly, the jurisdictions are criminal, civil and appellate

(appeal). An appeal is a hearing that provides the opportunity to review a case and may result in overturning a previous decision. Appeals can be made against the severity of the sentence in a criminal matter or against the conviction itself. Differences between the various jurisdictions are quite complicated. A basic outline of the various jurisdictions follows:

**Court of Petty Sessions - criminal**

Adults aged 18 years or over who are charged with a criminal offence generally go to the Court of Petty Sessions for their first appearance. Although not all charges can be heard and determined there, the Court of Petty Sessions determines the bulk of criminal matters. More serious criminal charges must go to the District or Supreme Courts.

A Magistrate or two Justices of the Peace preside over a Court of Petty Sessions.

**Local Court - civil**

The Local Court hears civil claims including damages or compensation up to \$25 000.

If the value of the action is less than \$6,000 in Residential Tenancy disputes between a property owner and a tenant and \$3 000 in claims for debts, it is dealt with in the Small Disputes Division of the Local Court. This saves time and cost. The Clerk of the Court may hear residential tenancy matters in certain circumstances. Legal representation in the Small Disputes Division is only allowed with the permission of the Court.

A Magistrate presides in the Local Court.

**Children's Court**

This Court has a criminal and a civil jurisdiction: the criminal jurisdiction is for offenders who are under 18 years at the time of the offence.

The civil jurisdiction deals with child protection applications.

A Magistrate or two Children's Court Members (who are like Justices of the Peace) hears less serious cases.

A Judge hears the more serious cases.

**Coroner's Court**

This is a special Court that inquires into unnatural or sudden deaths, or any death which is shown as a reportable death under the *Coroner's Act 1996*.

A Magistrate presides and is referred to as the “Coroner”.

**Warden's Court**

The Warden's Court deals with disputes over and applications for mining leases.

A Magistrate presides in the capacity of Mining Warden.

**Compensation Court**

The Compensation Court is constituted under the *Land Administration Act 1997* and deals with claims for compensation following the compulsory acquisition of land, or damage caused by entry on or occupation of land or the removal of material from land which is not subsequently taken.

A Magistrate of the Local Court or a Judge of the District Court or the Supreme Court, determined by the amount of the claim, presides as president, in conjunction with two assessors.

**District Court - criminal, civil, appellate**

Criminal indictable offences except those that carry a penalty of life imprisonment.

A Judge and jury preside, however an accused may elect to be tried by a Judge alone with consent of the Crown.

Civil cases with claims up to \$250 000.

All personal injury claims are heard in the District Court.

A Judge presides.

Appeals - hears appeals from civil cases from the Local Court, District Court Registrars and from specified tribunals.

A Judge presides.

**Drug Courts**

Western Australia has specialist pilot drug courts in the Perth Children's Court, the Perth Court of Petty Sessions and the District Court at Perth. Many crimes against people and

property are committed by people with substance abuse problems. Drug Courts can help break the cycle of substance abuse and offending by nominating a treatment program - and making the treatment part of the court process.

These specialist courts are for offenders who plead guilty, acknowledge their substance abuse – and will commit to treatment and rehabilitation. However, the court will use its discretion, considering factors like the nature of the offence and the offender’s suitability for bail – and may refuse access to the court for any offender.

A drug-dependent offender accepted by the drug court will be placed on a treatment program. The offender’s participation in the treatment program will be supervised by a judicial officer from the court, and his or her commitment to the program will be carefully monitored. Final sentencing will take into account performance in treatment.

If an offender doesn’t follow through on the agreed treatment and monitoring requirements, they will be sentenced in the normal manner. All sentencing options will apply, including imprisonment.

A Magistrate presides.

#### **Liquor Licensing Court**

Jurisdiction of the court provides for:  
applications to review decisions of the Director of Liquor Licensing;  
references from the Director of Liquor Licensing; and  
Disciplinary complaints against licensees (of licenced premises).

A Judge presides.

#### **Industrial Court**

This Court deals with industrial disputes between employers and employees and the interpretation and application of awards.

A Commissioner presides.

Magistrates preside over complaints for breaches of awards and similar matters.

#### **Family Court**

The Family Court of WA is vested with State and Federal jurisdiction in matters of family law and deals with divorce;

property of a marriage; residence, contact and associated children's matters; maintenance. It also deals with adoption.

A Counselling Service assists in resolving the personal issues faced by people using the services of the Court.

A Judge or Magistrate presides.

### **Supreme Court - criminal, civil, appellate**

This is the highest State Court in Western Australia.

**Criminal** - serious cases such as wilful murder and armed robbery.

A Judge and jury preside, however an accused person may elect to be tried by a judge alone, with the consent of the Crown.

**Civil** - Cases dealt with include those under Corporations Law and complex claims involving fraud or breach of contract where claims exceed \$250,000.

All matters to do with the interpretation of wills and all inheritance matters.

A Judge presides

Appellate - Appeals may be made to:

**Single Judge** – hears appeals from decisions made in e.g. Courts of Petty Sessions and Applications for leave to appeal.

**Court of Criminal Appeal** - hears appeals on criminal matters from the District Court and Supreme Court.

Three Judges normally preside (dependent upon the nature of the appeal).

**Industrial Appeal Court** - hears appeals from the Industrial Court presided over by a Magistrate.

Three Judges Preside.

**Full Court of the Supreme Court** - hears appeals on civil matters from the Supreme Court and the District Court.

Three Judges preside.

**Federal Court**

The Federal Court sits in each State, the Australian Capital Territory and the Northern Territory.

Some of the matters it deals with relate to bankruptcy, industrial relations, corporations and taxation law. Appeals may also be heard against decisions of a Supreme Court judge on matters which involve federal law. The Full Court of the Federal Court hears appeals against decisions made by a single judge in the Federal Court.

**High Court**

The High Court serves the Commonwealth and has jurisdiction over all matters. It deals mainly with constitutional issues and disputes between the States. It is the highest Court in Australia and can deal with appeals from the Federal Court and the Supreme Courts of the States and Territories.

Between five and seven justices of the High Court preside depending on the nature of the trial.

**Locations of Courts**

**Courts of Petty Sessions**

Perth, Midland, Fremantle, Armadale, Joondalup, Rockingham, Mandurah.  
Several larger country centres, and numerous smaller country centres.

**Local Court**

Perth, Midland, Fremantle, Armadale, Joondalup, Rockingham, Mandurah and in 21 country centres.

**Children's Court**

Perth, Midland, Fremantle, Armadale, Joondalup, Rockingham, Mandurah and several larger country centres and numerous smaller country centres.

**Coroner's Court**

Perth. Coronial hearings are also undertaken in country areas, usually by the local Magistrate sitting as a Coroner.

**Warden's Court**

Perth and mining towns as needed.

**District Court**

Perth and Joondalup, with Judges making circuits to 11 country centres.

Industrial Court	Perth, with Commissioners also making some country circuits.
Family Court	Perth, with Judges and Registrar/Magistrates also making country circuits.
Supreme Court	Perth with Judges making circuits to 11 country centres.
High Court	Canberra, with the Judges sometimes sitting in State capital cities.

### **Boards and Tribunals**

In addition to the Courts, there are various boards and tribunals that have a role in settling legal disputes in a faster, less formal manner and in performing other statutory functions. Tribunals are presided over by a legal practitioner, of at least seven years experience and practice, or a retired judge. A Tribunal may also be comprised of one or more non-legal members who have particular expertise in the area that is the subject of the dispute. The presiding officer may be known as a President, Referee, Chairperson, or Assessor.

The parties in a dispute do not always require legal representation however in complex matters it may prove beneficial. The cost of settling a dispute in a tribunal is, in most cases, less than in a Court. Tribunals provide for easier access to justice. Tribunals also reduce the pressure on the Courts.

Pre-hearing conferences and mediations are commonly used in an attempt to settle matters before a full tribunal hearing is conducted. In some instances tribunals determine matters from written evidence while others are the subject of both written and oral evidence from parties and witnesses who are under oath. Some tribunal proceedings are recorded in transcript form, and others are not.

Generally decisions made in a tribunal are final and usually not subject to appeal unless there is a point of law under dispute or an allegation of denial of natural justice.

Boards and Tribunals include the following:

Equal Opportunity Tribunal	Conducts hearings and makes determinations regarding discrimination on the basis of gender, race, age, religion and so on.
Commercial Tribunal	Determines disputes that may arise under a variety of Acts, and includes disputes

	between landlords and tenants of retail shops and between credit providers and consumers.
Strata Titles Referee	Resolves disputes that arise in relation to strata schemes.
Retirement Villages Disputes Tribunal	Resolves disputes that arise between residents and/or administrators of retirement villages.
Small Claims Tribunal	Resolves disputes between consumers and traders about the sale, supply or hire of goods and services and private insurance matters to the value of \$6000. It hears only consumer's' complaints, not those from traders'.
Criminal Injuries Compensation Assessor	Settles eligibility and amounts of compensation for victims of crime. More detailed information can be found under section 9 - Services to Victims.
Parole Board	This is an independent board governed by the provisions of the <i>Sentence Administration Act 1995</i> . Except for prisoners with "automatic" parole and certain classes of indefinite sentences the Board decides whether or not to release a prisoner on parole and sets conditions.
Mentally Impaired Defendants Review Board	The board is established under <i>The Criminal Law (Mentally Impaired Defendants) Act 1996</i> . It reports and makes recommendations to the Minister on matters relating to people who are either unfit to stand trial or are acquitted on account of unsoundness of mind and who are detained under custody orders issued under the Act.
Supervised Release Review Board	The board is established under the <i>Young Offenders Act 1994</i> to determine the suitability of young offenders serving a term of detention to be released on a Supervised Release Order. It also determines conditions of release and looks into any breaches of conditions.
Guardianship and	The board conducts hearings and

Administration Board.

determines whether substitute decision-makers are appointed for people who are unable to make reasoned decisions for themselves and also reviews such appointments. It is an independent statutory body established under the *Guardianship and Administration Act 1990*.

### **Summary**

Courts are part of the system that enforces law and safeguards justice. Western Australia has a hierarchy of Courts that deal with both criminal and civil matters. Legal rules regulate how trials are conducted in each Court and each Court has its own jurisdiction. The hierarchy assists in processing cases efficiently according to type and severity, and provides a system of appeal.

Tribunals provide an alternative forum for settling disputes, which is faster, less formal and less expensive. You will note in a latter part of this booklet that court proceedings are not the only manner in which to resolve disputes.

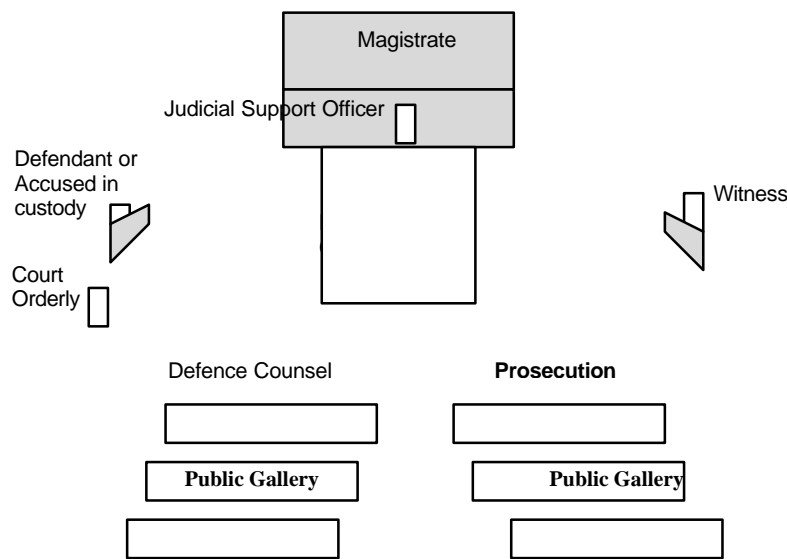
## Section 3: Court focus

This section provides information about:

- courtroom layout;
- parties involved in a case;
- legal and court personnel;
- court etiquette and attire.

### Courtroom layout

The diagram below is based on a typical Courts of Petty Sessions. Not all Courtrooms are laid out in the same way.



**Typical Magistrate's Courtroom**

### Parties involved in a case

The following parties participate in a case in a Court of Petty Sessions:

Defence counsel	A lawyer employed by the defendant/s to represent them in Court.
Defendant	The person charged with committing an offence.
Judicial Support Officer	Assistant to the Magistrate, who administers oaths to witnesses, looks after the exhibits and maintains Court recording equipment.
Magistrate	Presides over the Court, listens to evidence and makes a decision according to the applicable law.
Orderly	Calls matters to be heard before the Court, escorts witnesses to the witness box and passes documents between case participants.

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Prosecutor	Usually a specially trained police officer, a lawyer or representative for those bringing the prosecution.
Witness	A person called to give evidence on behalf of the prosecution or the defence.

### **Legal and Court personnel**

Apart from the participants mentioned earlier, there are a number of other legal personnel who participate in the judicial system.

Judge	The judicial officer who presides over the District Court is called a Judge. In the Supreme and Family Courts, the judicial officer is called a Justice. Judges play a very important role in the judicial process. They hear evidence, ensure that the parties to the matter comply with the rules of evidence and procedure. If a case is not tried before a jury, the Judge decides the outcome and imposes a penalty.
Jury	The jury in a criminal trial is a panel of 12 ordinary people who are representative of the community. In some civil cases the parties can request a trial by jury which is comprised of six ordinary people. It is the duty of each juror to carefully listen to the evidence and for the jury as a whole to determine whether the accused is guilty or not guilty.
Barrister	A barrister, who may also be referred to as counsel, is a lawyer who specialises in presenting legal matters and in arguing cases in Court.
Solicitor	A solicitor is a lawyer with general experience who is usually responsible for criminal or civil matters in the earlier stages of the judicial process and before the matter goes to trial. A solicitor is primarily responsible for preparing a matter for Court, whereas a barrister usually argues the matter in Court.
Queen's Counsel	Queen's Counsels (QC's) are senior barristers who have been appointed to this position of distinction on the recommendation of the Chief Justice to the Governor in Council. QCs usually do not appear in Court unless accompanied by a junior barrister. QC's are often called upon to provide legal opinions, particularly in complex legal matters.
Registrar	Registrars sit in some jurisdictions and have varying judicial powers which often involve determining

procedural matters prior to trial. Generally they manage the business of the Supreme Court, District Court, Family Court and Federal Court of Australia. They also have limited jurisdiction to perform judicial functions.

Bailiff	The bailiff is an officer of the Court who serves summonses and warrants and enforces orders of the Courts.
Sheriff	The sheriff is responsible for the welfare, care, control, supervision and protection of jurors during and after trial; keeping order in the court; and service and execution of court documents.
Clerk of Arraignment (Criminal law)	The Clerk of Arraignment, who is also referred to as the Judge's Associate, acts as the administrator in Court on behalf of the Judge. The Clerk of Arraignment ensures the Court runs smoothly, records decisions given and issues relevant forms. The Clerk of Arraignment is also responsible for reading the formal charge to the accused and the empanelling of the jury.
Judges' Orderly	The personal attendant to the Judge. Is responsible for making announcements in Court in relation to commencement, adjournment and conclusion.

### **Courtroom attire and etiquette**

The Australian Courts inherit a great deal of formality and tradition from the Courts of the past, particularly British Courts. The legal system itself consists of a hierarchy and within a given Court, the officials have clear roles and rank.

Judges and Magistrates are the most important people in a Courtroom. Where they sit and how they dress indicates their authority.

#### **Attire**

Magistrates in the Courts of Petty Sessions and the Local Court may wear black gowns, but no wigs.

In the superior Courts, in criminal proceedings, the Judges and barristers wear wigs and gowns. The Judge's associate also wears a gown. Barristers wear short wigs, black gowns and white jabot which is a type of tie or bib. Wigs (and in the Family Court of WA, gowns) are not worn in civil proceedings.

For civil cases, Judges wear black gowns. For criminal cases, in the Supreme Court their gown is scarlet with silver/grey and black trim and in the District Court, purple with black trim.

**Why do Judges wear robes and wigs?**

There are three primary reasons:

- it is traditional;
- it symbolically demonstrates the impartiality of the Judge;
- it acts to disguise the appearance of the Judge.

**Etiquette**

Courts are formal places that require respectful and orderly behaviour so cases can be heard properly.

**Respect for the Magistrate or Judge**

Respect is shown to the Judge or Magistrate within the Court in several ways. When he or she enters the Courtroom, everybody must stand up and bow. They may sit once the Judge or Magistrate is seated.

When people enter or leave the Court while the Judge or Magistrate is sitting, they are expected to bow to the Magistrate or Judge. This recognises the Judge or Magistrate is exercising the Sovereign's authority.

When talking to a Magistrate, the correct term of address is your Worship, Sir or Madam. A Judge is addressed as your Honour, Sir or Madam. If the name of the person is known, the address can be Magistrate ....., Judge ..... (District Court), or Justice ..... (Supreme Court, Family Court and High Court).

**Appropriate behaviour**

Talking, smoking, eating and chewing are not permitted in the Courtroom. Mobile phones and watches with alarms must be turned off. Video and other cameras, tape recorders, two-way radios or other electronic devices are not allowed without permission from the Magistrate or Judge. In most cases taking notes during the proceedings is not permitted without leave (ie: permission) of the Court.

## Section 4: Pre-trial and Court proceedings

This section provides information about:

- pre-trial proceedings in criminal law;
- court proceedings in criminal law;
- pre-trial proceedings in civil law;
- court proceedings in civil law;
- family law;
- evidence;
- court reporting.

### CRIMINAL LAW IN WESTERN AUSTRALIA

The criminal law in Western Australia has a statutory basis. This means that crimes are written down and defined in legislation. In Western Australia, the main piece of legislation is the Criminal Code. The Criminal Code is reviewed and amended by Parliament from time to time.

In the Criminal Code, there are two types of criminal offences;

1. summary, or simple offences;
2. indictable offences.

Summary offences are always tried before a Magistrate in the Courts of Petty Sessions and indictable offences are tried before a judge and jury in the District Court or the Supreme Court. It is important to note that some indictable offences can be dealt with summarily in the Courts of Petty Sessions at the election (ie: request) of the accused person. The Criminal Code outlines these particular offences.

### What happens prior to a criminal court case?

Before a criminal matter comes to the Court, the suspect is either:

1. arrested by the Police; or
2. served with a summons requiring attendance at the Courts of Petty Sessions on a particular date to answer the charge as outlined.

### Basic arrest procedure

An arrested person must accompany the Police Officer to the Police Station. Before the charge is formally laid, the arrested person is interviewed about the allegations in relation to the matter. The Police must caution the arrested person by saying “you are not obliged to say anything unless you wish to do so, but whatever you say may be given in evidence”. An interview of a person under the age of 18 years can only proceed in the presence of an independent witness.

Where the equipment is available, the interview is recorded on a video tape and if the matter proceeds to trial, the video tape is often admitted as evidence.

The arrested person is then told the nature of the charge and is held in custody while the Police obtain fingerprints, photographs and complete other administrative duties.

The arrested person has no automatic right to a telephone call. However, police procedures state that if the arrested person makes such a request, a telephone call must be granted.

The arrested person has a right to independent legal advice.

### **Bail**

Once the charge has been laid, the accused person can be released from custody on bail. Bail conditions vary according to the seriousness of the charge. An accused person will be released on bail based on a personal undertaking of a monetary amount and, in many cases, a surety's guarantee is also required.

If the accused person fails to attend Court when required, a breach of bail results and the amount of money recorded on the bail papers must be forfeited to the Court by both the accused and the surety. The Magistrate may also issue a warrant for arrest if the accused person fails to appear at Court on the required date.

Other bail conditions can include a direction not to contact the person who made the original complaint or a condition to report to a Police Station once or twice a week.

The *Bail Act 1982* provides that action will be taken against the accused person, and any surety, for the recovery of the monies forfeited to the Court as a result of a breach of bail.

If the charge is very serious, bail may be denied and the accused person must remain in custody until the next Court appearance. At the next appearance, the issue of bail will be raised for further consideration. People who are remanded in custody are not kept in gaol but stay in a special place called a remand facility.

### **Summons**

Following the making of a complaint, and where the person is not arrested and taken in to custody, a Summons is prepared by the Police, signed by a Justice of the Peace or a Clerk of Petty Sessions and delivered to an accused person. The Summons outlines the charge and the date on which the accused person must appear before the Court. The Magistrate may issue a warrant for arrest if the accused person fails to appear at Court on the date stipulated in the summons.

## **Courts of Petty Sessions**

All accused persons make their first appearance in a Court of Petty Sessions. Depending on the seriousness of the offence and what is permissible under the Criminal Code, the matter is channelled to the most appropriate Court (see Chapter Two).

A Court of Petty Sessions is presided over by a Stipendiary Magistrate or by two Justices of the Peace. There is no jury in this Court.

Where reference is made in the following material dealing with the disposition of summary offences, reference to a Magistrate may also mean two Justices of the Peace.

### **Summary Offence**

At the first appearance, the accused person is called by the Court Orderly to appear before the Court and the charge is read aloud. The Prosecutor may be a specially trained Police Officer, or a lawyer from the office of the Director of Public Prosecutions, who represents the Crown. Once the charge is read, the accused person may enter a plea of guilty or not guilty. Sometimes, the accused person will not enter a plea and will be granted an adjournment to seek legal advice.

If a guilty plea is entered, the Prosecutor proceeds to read the facts of the case. This is a statement of facts relating to the charges against the accused person. The Prosecutor will inform the Magistrate of any previous criminal convictions recorded against the accused and may present a victim impact statement.

After the facts have been read, the accused person or Defence Counsel for the accused may enter a “plea in mitigation”. This is an opportunity for the accused person to tell the Magistrate about any personal circumstances that may affect sentencing. Such factors may include the accused person’s age, upbringing, position in society, employment history, remorse and any apologies for the criminal behaviour. The Magistrate then decides on the most appropriate penalty.

If a not guilty plea is entered, the Magistrate will adjourn the case to a future trial date. The accused person is remanded on bail or in custody until the trial.

### **Trial Procedure in the Courts of Petty Sessions**

Following the reading of the charge(s) in Court and the accused person pleading not guilty, the Prosecutor gives a short opening statement outlining the allegations against the accused and perhaps a short summary of the evidence that will be called in support of the prosecution case.

The Prosecutor then calls the first witness to give evidence. The questioning by the Prosecutor is called the examination-in-chief. The Defence Counsel may then examine the witness and ask questions that test the truth and accuracy of the evidence given. This is appropriately called the cross-examination. Finally, the Prosecutor has the opportunity to re-examine the witness to resolve any issues that arose in cross-examination.

The Prosecutor calls each prosecution witness and the above procedure occurs on each occasion.

Once the Prosecution case is closed, the Defence counsel has the opportunity of calling evidence. The Defence Counsel calls the Defence witnesses and they are examined, cross-examined and re-examined in a similar way as the Prosecution witnesses.

Once the Defence case is closed, both Prosecution and Defence address the Magistrate. Defence Counsel is first to address the Magistrate if evidence has been given by the defence and they submit why the accused person should be acquitted (ie: found not guilty). The Prosecutor follows and submits why the accused person should be found guilty.

The Magistrate considers all the evidence and delivers a decision. This may be done at the time or reserved until a later date.

### **Indictable Offence**

Most indictable offences, as defined in the Criminal Code, are tried before a Judge and jury. All offences punishable by life imprisonment are tried in the Supreme Court. Other indictable offences including grievous bodily harm, unlawful wounding, and indecent assault are tried in the District Court. The pre-trial criminal procedure for the District and Supreme Court is similar.

The first appearance of the accused person is in the Courts of Petty Sessions where the indictable charge is read but no plea is taken. The charge is adjourned to another date. The Prosecution must provide to the accused person a statement of material facts and a copy of any statement made by the accused person to the Police.

At the next Court appearance, again before a Magistrate, the accused person has the opportunity to plead. If a plea of guilty is entered, then the person is committed to the District Court or the Supreme Court for sentencing. In the District Court this is called the Fast Track committal procedure. It is designed to bypass lengthy criminal procedure and enable criminal matters to be completed without delay.

If the accused person pleads not guilty the matter is adjourned to an election date. At an election date, the defendant must choose whether or not to have a preliminary hearing. A preliminary hearing is not a trial. It

is an inquiry by the Court to determine whether enough evidence exists to put the accused person on trial.

If the accused person elects a preliminary hearing, the inquiry is conducted in the Courts of Petty Sessions. Otherwise, the accused person is committed to the District Court or the Supreme Court for trial.

### **The Indictment**

Before the first appearance of the accused in the District Court or the Supreme Court, the Prosecution prepares and files an indictment. The indictment is the formal written charge against the accused person.

The Office of the Director of Public Prosecutions (DPP) is responsible for the prosecution of criminal matters in the Superior Courts. The Prosecutor is not a Police Officer but a qualified legal practitioner employed by the Crown or engaged to represent the Crown.

In both the District Court and the Supreme Court the accused person is required to plea to the charge on the indictment. If the plea is one of guilty, the Prosecutor reads the facts of the case, the defence counsel presents a plea in mitigation and the Judge determines the penalty.

If the plea is not guilty, the accused person is remanded on bail or in custody to a Status Conference. At the Status Conference, trial dates are determined.

### **The Trial**

The same procedure for criminal trials occurs in both the District and Supreme Court.

The accused person is identified, the indictment read and a plea of not guilty is entered. This process is called the arraignment.

The jury is then empanelled (see Section 5). The jury panel sit at the back of the Court and the Clerk of Arraignment draws names from a box. A total of 12 people sit on the jury. It is the duty of each juror to listen carefully to the evidence to determine whether the accused person is guilty or not guilty. It is often said that the members of the jury are the 'triers of fact'.

The Prosecutor opens the Crown case and tells the jury about the allegations against the accused and about the evidence that will be called to support the Crown case. A brief summary of the law is also given.

The Prosecutor calls the first witness who is examined, cross-examined and re-examined, in a similar manner to that described for the Court of Petty Sessions. The same procedure occurs for all prosecution witnesses.

At the end of the Prosecution case, the Judge asks the accused person whether he or she intends to give evidence. If the accused person chooses to give evidence, the Defence witnesses are examined in a similar way to the prosecution witnesses.

After all the evidence has been given, Counsel for the Prosecution and Defence have the opportunity to sum up the case for the jury. This is called the closing address. The Defence Counsel speaks first and explains why the accused person should be found not guilty. The Prosecutor then addresses the jury and explains why the accused person should be convicted.

The Prosecutor's closing address is followed by the Judge's charge to the jury. The duty of the Judge is to ensure that the accused person has a fair and just trial according to law. In charging the jury, the Judge must instruct the jury as to the applicable law and may make comment on the evidence where required. After the charge to the jury, the jury retire to consider the verdict.

The jury considers its verdict and that verdict must be unanimous. After certain periods if this has not been achieved, a Judge may ask for a majority verdict. If the jury finds the accused person guilty, both the Prosecutor and the Defence Counsel make submissions on penalty. The Judge determines the most appropriate sentence and imposes it accordingly. This may be done at the time or reserved until a later date. If a verdict of not guilty is returned, the accused person is discharged.

## **CIVIL LAW IN WESTERN AUSTRALIA**

Civil law concerns the rights of one individual against another. It is very different to criminal law under the Criminal Code. In criminal law, an accused person is said to commit a crime against everybody living in Western Australia and the Police initiate court proceedings on behalf of the State.

In civil law, the party claiming to have suffered a wrongdoing commences the court action. This party is called the plaintiff. The alleged wrongdoer is called the defendant. The plaintiff seeks a remedy from the Court for any loss said to be caused by the alleged wrongdoing. Civil law involves disputes between the plaintiff and the defendant.

Most civil disputes are resolved before the matter goes to trial. The pre-trial procedures encourage meaningful negotiation and settlement of the matter between the parties.

There are many types of civil action in Western Australia. These include contract, personal injury, debt recovery and workers' compensation. Civil

cases are heard in the Local Court before a Magistrate, or in the District Court or Supreme Court before a Judge (or in cases dealing with libel, slander or breach of promise, at the election of the parties, a Judge and jury). The type of action and the amount of money claimed determines the Court in which the plaintiff must start the action (see Chapter Two).

In recent years the Courts have recognised that in order to improve access to justice, each court has a “positive duty to manage its litigation so that proceedings are conducted efficiently. In the majority of civil courts a new system of positive caseload management has been introduced which allows the court to intervene into the progress of a matter. Caseload management has brought about substantial benefits for the courts, the legal profession and litigants alike. Despite the demands of caseload management there has been recognition by the practicing legal profession of the benefits of the new system for the litigating public.

Although each Court has a slightly different method of operation, the basic pre-trial procedure in civil law is the same.

### **Pleadings**

The purpose of pleadings is to define the dispute between the parties. The pleadings inform each party of the issues in dispute and outline the money claimed or relief sought by the Plaintiff. The pleadings also provide the Court with a summary of the nature of the claim and of the defence.

The Plaintiff issues a Writ of Summons endorsed with the cause of action against the Defendant. The cause of action must show that the Plaintiff has a legal right to bring a civil action against the Defendant. The plaintiff must also provide the defendant with a Statement of Claim. This document sets out the facts of the elements making up the cause of action.

The Writ of Summons is served on the Defendant. If the Defendant does not enter an Appearance within a specified time, the plaintiff can ask the Court to make a judgement in the plaintiff’s favour.

If the Defendant enters an Appearance, the Defendant must formally object to the Plaintiff’s Statement of Claim. The document in response to the Statement of Claim is called a Defence.

### **Pre-trial Procedures**

Once the pleadings are closed and the issues in dispute are narrowed and defined, both parties further prepare their case. This can be achieved by requesting the other party to answer written questions under oath and by examining the documentary evidence in support of both the Plaintiff and Defendant’s case.

Once these pre-trial procedures have been completed, both parties are required by the Court to attend a conference. In the Local Court and the District Court this is a pre-trial conference. In the Supreme Court such a conference is called a mediation conference. The conference is very informal and encourages the settlement of the matter wherever possible. If it is obvious that the parties will not agree and that settlement will not occur, the matter is listed for trial. Most civil matters settle at the pre-trial conference stage.

## **Trial**

Civil trials are heard before a Magistrate in the Local Court or a Judge alone in the District Court or Supreme Court (see note under the Civil Law in Western Australia heading regarding civil juries).

An important difference between the civil and criminal trial is the standard of proof. In a criminal trial, the Crown case must be proved beyond reasonable doubt. In a civil trial, the plaintiff's case must be proved on the balance of probabilities. This is a much lesser standard of proof.

The procedure in a civil trial is very similar to a criminal trial. Of course there is no indictment or charge to be read and the trial simply begins with Counsel for the Plaintiff presenting the Plaintiff's case. Witnesses are called. They are examined, cross-examined and re-examined. Counsel for the Defendant may then call evidence to support the Defence case. Finally, Counsel for the Plaintiff and for the Defendant have the opportunity to sum up their respective arguments in an address to the Judge or Magistrate. The Judge or Magistrate then decides whether the Plaintiff's case has been established on the balance of probabilities.

## **FAMILY LAW**

Family law matters dealt with in the Family Court are civil proceedings. Like other civil proceedings, most matters are settled before the matter goes to trial through the use of alternative dispute resolution methods such as conciliation and pre-trial conferences.

There are many different types of proceedings that can be dealt with by the Family Court. These include divorce, contact and residence for children, settlements relating to property of a marriage, some maintenance matters and many others. For more information on the role, applications, services and operation of the Court visit the web site at:  
[www.familycourt.gov.au](http://www.familycourt.gov.au)

## **EVIDENCE**

Evidence is anything that helps prove the facts of the case at trial (both civil and criminal). It must be relevant to the case or it will be termed

inadmissible. Inadmissible evidence cannot be used at trial. Evidence may be oral, documentary or real.

### **Oral Evidence**

This is anything said by witnesses in Court under oath or affirmation. Witnesses can only give evidence of what they themselves have seen or heard, or what they themselves have said. Hearsay evidence, that is a statement made out of Court by someone other than the witness, is not allowed.

Witnesses can be ordinary people or expert witnesses such as doctors, psychiatrists or engineers.

### **Documentary Evidence**

This includes all written or printed documents. The original is required in most cases. If this is not available then, with the Court's permission, copies can be used as secondary evidence.

### **Real Evidence**

Real evidence consists of any object that can be brought into the courtroom to be viewed by the Magistrate or Judge and jury. These objects are called **exhibits**. For example, in a murder trial, the Prosecution could tender the alleged murder weapon in evidence. The weapon could then be handled and inspected by the witness, the Judge and the jury.

### **Court Reporting**

All proceedings before a Magistrate, Registrar or a Judge are normally recorded on tape so that there is a permanent record of what is said in the courtroom. These tapes are kept in storage for future reference, although the time they are retained varies for each jurisdiction. In criminal trials in the Supreme and District Courts, the contents of the tape recordings are typed (transcribed) daily and the transcript is made available to Counsel and the Judge.

In the District Court and the Supreme Court, the people responsible for the recording are called monitors. The people who type from the audio tapes are called court transcribers.

## Summary

Prior to a criminal trial, the suspect is arrested and taken into lawful custody. If the offence is not serious, the accused person is granted bail and must appear in the Court of Petty Sessions on a given date. Another means of bringing a person to Court to face criminal charges is to issue and serve a Summons.

At the first appearance in Court, the accused person enters a plea of guilty or not guilty. If the offence is a summary offence it is dealt with in the Court of Petty Sessions before a Magistrate. If the offence is indictable, it is heard before a Judge and jury in either the District Court or the Supreme Court.

In civil matters, the plaintiff initiates the legal action by issuing a Writ of Summons. The plaintiff must also serve a Statement of Claim on the Defendant. This document informs the Defendant of the case alleged against him or her. The defendant responds to these allegations with a Defence. The court documents exchanged between the Plaintiff and the Defendant are called the Pleadings.

Civil pre-trial procedures in the Local Court, the District Court and the Supreme Court encourage the parties to settle the matter without the need to go to trial. Most matters settle at the pre-trial conference stage. Very few civil matters go on to trial.

Evidence is used in both criminal and civil trials to prove the case against the Defendant. In criminal law the case must be proved beyond reasonable doubt. In civil law the Plaintiff's case must be established on the balance of probabilities. Evidence can be oral, documentary or real.

Court proceedings are normally recorded on tape so that there is a record of what was said in the Courtroom.

## Section 5: Witnesses and Jurors

This section provides information about:

- being a witness;
- how juries are selected;
- the roles and responsibilities of jurors.

### Being a witness

Witnesses play an important part in the justice system. In a criminal case their evidence helps to determine whether the person charged is guilty or not guilty. In civil cases, they assist by providing information which settles a dispute.

### On arrival at Court

When witnesses arrive at Court, they should advise the Court officer who will ask them to wait in the public waiting area. Alternatively, they may sit in the public gallery until their case is called. In most circumstances however, the Court will request that all witnesses leave the Courtroom until they are called to give evidence. Witnesses who are concerned about contact with the defendant can advise a Court official and may be able to wait in a separate area.

### In Court

Everyone who enters and leaves the Court, including the witness, is expected to bow to the Magistrate or Judge. When called to give evidence, the witness is guided to the witness box by the Orderly and asked to take an oath or affirmation to promise to tell the truth. The witness is then allowed to sit.

The Prosecution (or Plaintiff) and Defence lawyers will then ask questions. When all questioning is complete the witness is asked by the Judge or Magistrate to stand down from the witness box. The witness may either leave the Courtroom or sit in the public gallery to listen to the rest of the case.

### Assistance for witnesses

Child Minding	Child minding facilities are available for the children of persons who are required to attend Court. Arrangements should be made through the Court prior to the date of the hearing.
Interpreter Services	Witnesses who need an interpreter can contact the Court before the trial. The Court will arrange an accredited interpreter.
Victim Support Service	Victims of crime can obtain information and receive counselling from this service.

Closed-circuit television	In the Perth Children's Court, District Court and Supreme Court and a number of Magistrates' Courts it is possible for vulnerable witnesses, such as young children to give their evidence from outside the Courtroom via closed-circuit television. This technology is being progressively extended throughout the State. In courtrooms where this technology is not yet available, arrangements exist for the placing of movable screens to shield the witness from the view of the accused.
Expenses	Crown witnesses in a criminal trial are often able to claim expenses associated with their appearance in Court from the State (e.g. travel expenses, loss of wages). Expert witnesses usually charge for their services on an hourly basis. Witnesses in civil trials are able to claim expenses from the party who required them to appear in Court.
Video Conferencing	Legislation has been enacted to allow evidence to be given to a court via video conference facilities. This enables people to present their evidence without actually being at the court. This has significant benefits if they would otherwise have to travel long distances to attend the court or if they are a protected or vulnerable witness. It can also be of benefit in allowing a person in custody to appear before the court without having to leave the prison.

## **Jurors**

The jury system is a fundamental part of our judicial system. Everyone charged with an indictable offence has the right to be tried by a Judge and jury. Juries are occasionally used in some civil cases. The jury system is coordinated throughout the State by the Sheriff of Western Australia.

### **What is a jury?**

A jury is a panel of people aged between 18 and 70 who have been selected to listen to evidence presented to a Court and decide whether the accused in a criminal case is guilty or not guilty.

In a criminal case a jury of 12 decide a verdict that is 'beyond reasonable doubt'.

In a civil case a jury of six decide on the 'balance of probabilities'.

### **How are juries selected?**

Jurors are randomly selected by computer from the WA Electoral Commission rolls. The Sheriff summons approximately 700 people every week for jury service in the Perth metropolitan area.

In country locations, a similar process occurs but on a smaller scale.

Jury summonses are usually served approximately 4-6 weeks prior to the attendance date.

On the date of attendance, jurors are again randomly selected by computer, and a panel of approximately 30 people are sent to each trial for the selection process. This involves drawing the names from the ballot box until the twelve jurors are selected.

During the process of selection, the prosecution lawyer or the defence lawyer may challenge the selection. They are not required to provide any reasons for doing so.

If the trial is scheduled as a long trial, up to a further six reserve jurors may be chosen. However reserve jurors are not part of the deliberation process and will be discharged at that time.

Those jurors who are summoned for jury service who are not selected, will be excused for further attendance or will be advised when they should reappear.

#### **Who is ineligible or excused?**

Jury service is considered to be part of our duty as citizens. There must be good reasons to be excused. Some people, however, are either exempt or ineligible.

For example:

- people who are ill, or mentally or physically unfit;
- people who do not understand the English language;
- people who have been sent to prison for two or more years and have not been pardoned;
- people who have been in prison, on parole, on probation or in juvenile detention within the past five years;
- people in certain occupations, such as health and emergency services (listed on the back of the jury summons);
- people who are (or have been in the last five years) officials in the justice system;
- people who can prove undue hardship to themselves or to another person;
- people who have served recently as a juror.

An employer may be held in contempt of Court if they prevent one of their employees from attending jury service, or they threaten an employee with dismissal.

**Role of a Juror**

Once the jury is selected the members are sworn in. This means that they promise to listen well and reach a true verdict. During the trial, the jurors:

- listen to the evidence;
- decide questions of fact;
- can seek clarification from the Judge on procedure or legal issues;
- deliberate;
- deliver their verdict.

In a criminal trial the jury's verdict must be unanimous unless directed by the Judge. This means that all 12 jurors must agree on the verdict.

Jurors are not allowed to discuss the case with anybody other than the other members of the jury and should only do so where nobody else can hear them.

**Jury confidentiality provisions of the *Juries Act 1957*, make it illegal to discuss or publish information relating to a jury's deliberations.**

**Payment**

Attendance fees and public transport fees are paid at the completion of jury service. People employed in the public sector are not paid attendance fees, but receive their normal pay from their employer. People who suffer loss of income as a result of jury service may submit a claim to the Sheriff's Office. Employers may seek reimbursement of wages paid to staff on jury duty.

**Reference**

Further information on juries may be obtained from the Department of Justice's website "Being a Juror"– [www.justice.wa.gov.au](http://www.justice.wa.gov.au)

**Summary**

Witnesses are important to the Courts because they provide evidence to prove the facts of the case. Evidence is given orally in the courtroom or, in the case of vulnerable witnesses, can be given via closed-circuit television. Witnesses with special needs may request assistance from an interpreter, or the Victim Support Service.

Jurors are selected at random from a jury roll that is made up from the State electoral roll. A jury of 12 sits in criminal cases. They listen to the evidence and return a verdict of guilty or not guilty.

Certain people are ineligible or may be excused from jury service. People who are eligible may not necessarily sit on a jury because each side in a case has the right to challenge who sits on a particular jury.

## Section 6: Sentencing options

This section provides information about:

- criminal penalties;
- civil remedies.

### Criminal penalties

Following a guilty plea by the defendant or a verdict of guilty, the Judge or Magistrate passes sentence. The type of sentence depends on the severity of the offence and the past record of the offender. Repeat offenders tend to be dealt with more severely than first offenders.

Punishments are set down in statutes such as the Criminal Code. There is a maximum punishment for each offence so the presiding judicial officer has some flexibility in determining an appropriate sentence. The sentencing options are outlined in the *Sentencing Act 1995*.

The Judge or Magistrate may decide to impose a penalty such as:

Home Detention	The offender remains at home except for authorised activities such as work, community work or medical treatment. They may not have visitors other than those authorised.
Conditional Release Order (CRO)	The offender is not imprisoned but remains in the community on their undertaking that they will not re-offend during a specific period of time. A Court may order a CRO where there are reasonable grounds for expecting that the offender will not re-offend during the term of the CRO. If the defendant re-offends within the time stipulated in the CRO, then the defendant may be brought back before the Court to be re-sentenced on the initial charge.
Community Based Order (CBO)	The offender is not imprisoned but is subject to supervision in the community. A Community Based Corrections (CBC) officer conducts the supervision. The offender must comply with any supervision or community service requirement ordered by the Court.
Intensive Supervision Order (ISO)	The offender is not imprisoned but is subject to strict supervision. The offender must report to a CBC officer within 72 hours of being released by the Court and cannot change address or job without the permission of the CBC officer. Sometimes there is a curfew. The supervision of the offender is very strict to

ensure that there is no re-offending. The offender may also have to do unpaid community work or undergo therapy or counselling.

If an offender who has been given a CBO or ISO commits another offence when the CBO or ISO is in force, the offender will be sentenced again for the original offence, often by a term of imprisonment.

#### Suspended Imprisonment

A Court may order that a sentence of imprisonment be suspended for up to 24 months. This means that imprisonment is imposed but not served provided that the offender does not commit any offences during the period of the suspended sentence.

#### Imprisonment

The offender is sentenced to serve a term of imprisonment in gaol, or for those under 18 years of age, a juvenile detention facility.

#### Parole

An offender may or may not be eligible for parole. This is decided by the judicial officer at the time of sentencing. Parole means that an offender may be released from gaol before the entire term of imprisonment is served. The Parole Board may allow parole if the prisoner has demonstrated good behaviour while in gaol.

#### Work Release Order

This option is available for most prisoners of 17 years of age and over who have already served 12 months imprisonment and are within six months of release or parole eligibility. They must do 12 to 18 hours of community work, or if they have a job, six hours a week. The Parole Board grants a Work Release Order.

#### Reparation Order

The Court in addition to a Sentencing Order can make a Reparation Order. It is not part of the sentence imposed on the offender. A Reparation Order is either compensatory or restitutionary.

Compensation Order means the offender must pay an amount of money set by the Court to the victim as compensation for loss and damage suffered by the victim personally or to

property as a result of the offence. If the amount set by the court is not paid by a set date the offender may be liable to a term of imprisonment for failure to make the payment.

Restitution Order relates to property. If the Court is satisfied that the offender is in possession of property belonging to the victim, the Court will order the return of the property to the victim.

Fine	The court imposes a monetary penalty.
Suspension/cancellation of licence	The person is disqualified/suspended from driving for a specified time. A disqualification order can also apply to firearms and passports.

### **Civil law remedies**

In civil law, if the Plaintiff is successful and proves the case on the balance of probabilities, the Court will make a judgment in the Plaintiff's favour. The remedy often sought by the Plaintiff is a monetary award known as damages.

In most cases the successful Plaintiff will be awarded an amount that covers any loss suffered due to the Defendant's wrongdoing. This award may cover loss that is specifically proven by receipts or otherwise. These are called special damages and include hospital and medical expenses.

Other damages, called general damages, awarded to a Plaintiff include an amount to cover pain and suffering by the Plaintiff or may be for loss of enjoyment of life. Sometimes the amount awarded as damages is calculated on the loss to a Plaintiff because a Defendant broke a promise, contract or agreement. The calculation of the loss to the Plaintiff depends on the facts of each case.

Examples of non-monetary remedies include:

Injunction	An order granted by the Court to stop either the Plaintiff or Defendant acting in a particular way.
Rescission	An order to rescind a contract means that both the Plaintiff and Defendant are returned to the position they were in before the contract was made. The contract is no longer in existence.
Specific performance	An order is made to force the defendant to carry out the terms of an agreement or contract.

If the defendant in a civil action does not pay damages, then the plaintiff may enforce the judgment. The Plaintiff may issue a warrant that allows the Court (bailiff) to seize the Defendant's possessions and sell them to gain money to pay the plaintiff. If this is not possible, then a summons can be issued to bring the defendant to Court to assess his or her financial position and means to pay the debt. If he or she is able to pay, either in one lump sum or by instalments, then failure to do so can result in imprisonment. The plaintiff may be able to initiate bankruptcy proceedings against the defendant in some circumstances.

If the defendant has failed to act on an injunction, a rescission or an order for specific performance, then imprisonment may follow.

### **Summary**

Parliament, on behalf of the people, makes the laws and sets the sentencing options.

## Section 7: Alternatives to Court

Court action can be very expensive and is not always the best way to settle an issue.

### Criminal law

In criminal law it is appropriate to consider adult charges separately from juvenile cases. The juvenile justice system has Juvenile Justice Teams, which offer an alternative to Court to young people who admit to wrongdoing and who are prepared to make amends. This system is dealt with in more detail in the section on juvenile justice.

### Abandonment

In some special instances, an adult criminal case may be abandoned by the prosecuting body, rather than be taken to Court, for the reasons outlined in the Statement of Prosecution Policy and Guidelines of the Director of Public Prosecutions. These include:

- no reasonable prospects of conviction;
- not in the public interest to proceed;
- age of complaint.

### Civil law

In civil law there are several ways to avoid a trial.

### Discontinuance

The plaintiff may discontinue a civil case if:

- the damage is negligible or slight;
- the cost of the trial outweighs the likely compensation;
- the trial will take too long;
- it is inconvenient to have a trial;
- the defendant is unable to pay.

### Mediation

The dispute is heard by an independent third party to assist the parties to come to an agreement through discussion. The mediators suggestions are not binding, but agreements reached can be submitted to the court for approval and/or orders to make it enforceable.

### Negotiation

Negotiation is a process of discussion between the two parties, which allows each side to hear the other's point of view and attempt to come to a mutually acceptable solution which may require some concessions from each party.

### Arbitration

Arbitration involves a hearing by an independent third party who has the power to make a binding decision. Usually the arbitrator is a specialist in the subject under dispute. An arbitrated decision can be appealed.

**Conceding the claim**

The defendant may decide the plaintiff has enough evidence to win the case, so instead of being subject to the trouble and expense of going Court, may decide to make an offer. This offer may be less than the original claim and the plaintiff will have to weigh that against the probability of being awarded the full amount in Court and of paying Court costs.

**Summary**

Not all criminal or civil cases go to Court. Adult criminal cases may be discontinued for a range of reasons. Civil suits may be discontinued or be handled by mediation, negotiation, arbitration or by conceding the claim.

## Section 8: Juvenile justice

This section provides information about:

- who is considered a juvenile;
- pre-trial for juveniles;
- Juvenile Justice Teams;
- the Children's Court;
- Aboriginal Family Supervision Program;
- Mentor Program.

### Who is considered a juvenile?

A person who is under 18 years is considered a juvenile or a minor. Because of their age, juveniles are considered not to have the full responsibility of an adult.

If a child between 10 and 14 years is accused of an offence, it is up to the prosecution to prove that the child understood that his or her action was wrong. It is presumed that people 18 years or over know when they commit a crime.

Police have the right to take a juvenile home if it is considered the juvenile is in moral danger. For example, a 13-year-old who is on the streets late at night may be taken home.

The Children's Court deals with juvenile offenders.

### Pre-trial for juveniles

A juvenile questioned by the police is required by law to give their name and address. The police have the choice to caution a juvenile rather than make a charge as would happen with an adult.

Pre-trial procedures for juveniles are basically the same as for adults:

- arrest;
- detention;
- lawful custody;
- questioning;
- bail or remand.

The main difference is that once a juvenile is charged, the police must inform a parent or guardian as soon as practicable and there must be another person present when the juvenile is questioned. This may be a parent, lawyer or another person (preferably an adult) of the minor's choice.

For bail to be given, a responsible adult must sign the bail undertaking (an exception is made for some 17-year-olds) and supervise the young person, to discourage further offences before the Court hearing. If bail cannot be arranged, the juvenile will be held in remand in a facility such as Rangeview Remand Centre.

Another difference to adult offenders is the chance to work with a Juvenile Justice Team.

### **Juvenile Justice Teams**

Rather than appear in Court, juveniles who have committed minor offences, or who are in the early stages of offending, have the opportunity to take part in a Juvenile Justice Team. Teams consist of the offender, the victim, police, juvenile justice staff, parents or guardians and others as required.

The team system makes sure that offenders are dealt with and take responsibility for their actions. It encourages young people to face up to problems and divert them from the Courts. To take part, offenders must agree they have done something wrong and be prepared to make amends.

The team talks about the offence and works out a contract based on input from the offender, parents or guardians, and the victim. In addition to police and juvenile justice staff, other appropriate community people can be involved. If completion of the contract is successful, the offence will not result in a criminal record.

If the team can't agree, the offender may be sent to the Children's Court.

### **Proceedings in the Children's Court**

The Children's Court deals with criminal offences by juveniles between the ages of 10 and 17 years at the time of the offence and makes decisions about children 'in need of care and protection'.

The Court is usually presided over by a Judge, or a Magistrate or two Children's Court Members who are like Justices of the Peace. An orderly, clerk, the prosecution, the child and his or her lawyer attend the Court. Parents and a juvenile justice officer may be present. Although the media may attend, they may not in any way identify the accused or any child involved in the proceedings unless authorised by the Court.

The Court proceedings for juveniles are similar to those for adults. The Magistrate will read the charge and ask the juvenile first whether he or she understands the charge and then whether the plea is 'guilty' or 'not guilty'. The juvenile's lawyer will often speak for the accused.

### **Court Procedure**

The normal order of proceedings where an accused person pleads not guilty is shown below:

- summons;
- arraigns;
- opening;
- witness called;
- examination in chief;

- cross examination;
- re-examination;
- exhibits;
- closing address;
- defendant's case;
- summing up.

### **Sentencing Procedure**

If the accused is found guilty, then there are several options for sentencing juveniles. From least severe to most severe they are:

- no punishment and no conditions;
- no punishment with conditions;
- good behaviour bond;
- financial penalty;
- youth community based order;
- intensive youth supervision order;
- conditional release order;
- custody.

Children's Court Members have very limited powers and cannot order detention or imprisonment. A Magistrate can sentence a child to a maximum of three months imprisonment and a maximum of six months in a detention centre, but a Judge can pass a sentence of up to 20 years.

### **Aboriginal Family Supervision Program**

This is a pilot program designed to help young Aboriginal offenders aged 16 to 21 years complete Court orders with the support of their families. It involves Aboriginal people helping other members of the Aboriginal community so that young people can get back on the right track.

Aboriginal mentors, people who provide a positive role model, are used to help youths and their families. They can be recommended by the juvenile justice officer (case officer). The use of a mentor is discussed with the family and the youth, and a person acceptable to everyone is sought. This may be a family member.

Mentors help the whole family as well as the offender. They may visit weekly or more often. Mentors can help with study, recreation activities, dealing with government and other organisations, and problem solving. Mentors make reports regularly on the youth's progress.

### **Mentor Program**

A mentor is a specially trained man or woman who acts as a positive role model and provides support and guidance to young offenders coming out of detention. The use of a mentor is discussed with the youth and the family and, if everyone agrees, a juvenile justice officer makes an application.

The mentor, who is somebody compatible with the youth and the family, usually starts on a contract of between one and three months. This is reviewed monthly and can be extended.

### **Summary**

Juveniles are people who are under 18 years of age. They are not considered to have the full legal responsibility of an adult, however, as juveniles approach 18 years they are considered to know what constitutes criminal behaviour and may be dealt with more severely.

Juveniles can be arrested, detained, taken into custody questioned and placed on bail or in remand. However, a responsible adult must be advised as soon as practicable of an arrest and must be present during questioning.

Juvenile Justice Teams exist to provide an alternative to juveniles appearing in Court. They aim to develop a sense of responsibility in the offender, who is required to make amends for the offence.

Juveniles whose offence is too serious or who will not participate in Juvenile Justice Teams will appear in the Children's Court. The case will be heard as in an adult Court and a range of sentencing options are available if the juvenile is found guilty.

## Section 9: Services for victims

This section provides information about:

- the Victim Support Service;
- Court support;
- Victim Impact Statements;
- the Child Witness Service;
- Criminal Injuries Compensation.

Victims of crime may suffer both practical and emotional impact from crimes they experience. Loss or damage to property and physical injury are compounded by the difficulties which result from reinstating property, healing injuries and going to Court. Some victims are surprised by the extent of the emotional impact of a crime.

The Western Australian justice system provides assistance to victims of crime through the Victim Support Service, Assessor Criminal Injuries Compensation and the Child Witness Service.

### Victim Support Service

The Victim Support Service (VSS) is available throughout the State as a free and confidential service provided to victims who need support following the commission of a criminal offence. The police make most referrals, although any person in Western Australia can contact the Service. Referrals are usually for victims (or surviving family members) of the more serious crimes including homicide, manslaughter, armed robbery and serious assaults. Victims referred to the service are usually contacted within 24 to 72 hours of the referral.

The Victim Support Service offers:

- counselling;
- information about what is happening with the police investigation;
- information about the criminal justice system;
- companionship in Court;
- help in preparing Victim Impact Statements;
- information about applying for Criminal Injuries Compensation.

### Counselling

On average victims are seen two to three times for a trauma debriefing and follow-up support. In homicide cases, the VSS often has a long-term involvement with the surviving family members. If ongoing counselling is required in other cases, people are often referred to a suitable agency.

### Court support

A group of volunteers trained by the Victim Support Service assists victims throughout the Court process. They can:

- meet with victims before the trial to help them understand how the Courts and legal system work;

- provide a tour of the Court beforehand so people know where to go on the day of the Court case;
- show the facilities for witnesses and victims, such as distressed witness rooms, special care rooms and victim support rooms;
- be with people in Court while they wait to give evidence and stay for a time after the trial;
- give information about other services;
- refer people to the counsellors at the Victim Support Service;
- help with Victim Impact Statements;
- provide information about claiming witness fees and about Criminal Injuries Compensation;
- arrange an interpreter if necessary.

### **Victim Impact Statements**

The purpose of the Victim Impact Statement is to advise the Judge or Magistrate of the impact of the crime on the victim. The State prosecutes on the victim's behalf, so the Victim Impact Statement is the only way that the effect of the crime on the victim can be expressed in Court.

There is no requirement to make a Victim Impact Statement, but a formal expression of the impact is important for many people.

The statement is only used if there is a guilty plea or verdict and is taken into account when the offender is sentenced. Three copies go to the Court and are given to:

- the Magistrate or Judge;
- the prosecutor;
- the defendant's lawyer.

The offender, and the sometimes the public, can be made aware of what is in the statement if:

- the prosecutor reads parts or all of it to the Court;
- the offender's lawyer shows it to the offender;
- the Judge or Magistrate refers to parts of it.

Victims can seek assistance with their Victim Impact Statement from anybody, providing it is written in the victim's own words. The Victim Support Service is also able to help.

### **Child Witness Service**

This is a free service, which provides emotional and practical support for children 18 years and under who have to give evidence in Court. The children are often victims or witnesses to abuse, or have knowledge of other occurrences, which necessitates giving evidence.

As well as providing emotional and practical preparation and support to child witnesses, the service can:

- assist with a Victim Impact Statement, even if the child is not required to give evidence;

- work with the police and Prosecutor to keep the child and family informed about the trial's progress;
- be available for consultation in regard to children in country areas.

While the Child Witness Service does not provide a therapeutic service, such referrals can be made if necessary. Nor does it discuss the child's evidence.

It is important for referrals to the Child Witness Service to happen as soon as possible after charges have been laid. Contact can be made by the child's caregivers or by an agency. Parents are welcome to discuss their children's needs. The service stays in contact with the child and caregiver until the Court case is finished.

### **Victim Offender Mediation**

The Victim – Offender Mediation Unit of the Department of Justice will undertake mediation between the parties after conviction but prior to sentencing. The purpose of the mediation is to assist people to settle their differences in the presence of a neutral third party. The matters that may be resolved include:

- reparation or making good damaged property;
- community service;
- an apology.

The matters agreed to will usually become part of the conditions of a Court order.

### **Criminal Injuries Compensation**

The Government of Western Australia has made provision for victims of crime to be compensated for injuries. Assessments are made in accordance with the *Criminal Injuries Compensation Acts 1982 or 1985*, the choice of which is determined by the date of the offence.

A claim for compensation can be made for an incident reported to the police whether or not a person has been identified, charged or convicted of the crime. A person is eligible for compensation if they:

- are the victim of an offence and are injured as a result; or
- are a close relative of a person killed as a result of an offence.

The Criminal Injuries compensation act is designed to provide compensation if the person suffers bodily harm, mental or nervous shock, or pregnancy, resulting from an offence. Compensation is available for:

- pain and suffering
- loss of enjoyment of life
- loss of income
- medical expenses you have paid; and
- other incidental expenses, eg. Travel and loss arising from damage to clothing.

In case of death, a close relative can apply for funeral expenses and loss of support.

The amount of compensation that can be claimed will depend on the extent of the injuries and the losses suffered. The maximum award is \$15,000 for offences which occurred between 1 January 1983 and 31 December 1985. The maximum award is \$20,000 for offences which occurred between 1 January 1986 and 30 June 1991. The maximum award is \$50,000 for offences occurring after 1 July 1991.

There is a three year period from the date of the offence to lodge an application. An application should be made when the person has reached the maximum stage of recovery from the injuries. It will also be necessary to provide medical reports and other documents in support of the application. If the claim is more than three years old, the person may still apply, but will need to seek an extension of time and give reasons for the delay.

For compensation of injuries prior to 1 January 1983, application must be made to the court where the prosecution of the offence took place.

An application may be submitted by the person or they can engage a solicitor to act on their behalf. If a solicitor is engaged the assessor can not allow the legal costs incurred.

There is no fee for lodging an application.

In the majority of cases, applications are dealt with by an assessor from the information provided in the application. The assessor may require the person for compensation to attend a hearing, that will be conducted in private and as informally as possible, and they will be notified in advance whether or not the person who committed the offence will be present at the hearing. The offender will be notified by letter that an application for compensation has been lodged and may make written comments to the Assessor's Office.

Applications are kept confidential, however copies of decisions made by the assessor are available to the news media. In special cases the assessor can order the names of people awarded compensation are not made public. In awards involving sexual offences, this is always done.

The Crown can take action to recover the money from the offender. You will not be involved in these proceedings.

If the person seeking compensation disagrees with the assessors decision, an appeal can be lodged within 21 days of the decision in the District Court.

**Summary**

The Victim Support Service aims to address the needs of people who have suffered harm from crime, and to help them through the Court process. Adult victims of serious crimes are eligible for counselling via the Victim Support Service. Volunteers trained by the VSS provide information and support during Court appearances and help with Victim Impact Statements.

Children and their caregivers can gain assistance from the Child Witness Service, chiefly practical and emotional support for the trial and assistance with Victim Impact Statements.

Criminal injuries compensation is available to a person who suffer injuries as a result of an offence against them, or if they are a close relative of a person who is killed as a result of an offence.

## Section 10: Activities

This part of the booklet provides a range of questions and activities based on information contained within Sections 1 to 9. The questions provide a catalyst for student activities and further research. Answers are not provided, but basic responses to most of the questions are contained within the booklet.

Activities are arranged according to the Sections.

### Section 1: About the law

Explain in simple terms why we have laws in Australia. In your answer you should address the following points:

- the benefits to Australian society in having laws;
- the consequences to society of not having laws.

Describe the process of making laws through State Parliament.

What are the differences (if any) between the process you have just described and the process of making laws through Federal Parliament?

List the three (3) arms of government in Australia.

Give examples of three (3) functions associated with each of the arms of government you have listed above.

What do you understand by the phrase “separation of powers”? You should make particular reference to the role of the judiciary in your answer.

Give an example of the judiciary exercising its independence.

### Section 2: Courts

Discuss the similarities and differences between laws made by the Parliament and the Courts. Also list some of the advantages and disadvantages of each.

What is a court hierarchy and what are the reasons for the hierarchy?

Why do we need courts with a special jurisdiction? Explain the types of matters heard within each jurisdiction.

Discuss the difference between civil and criminal matters.

Why is it necessary for the judiciary to be seen as impartial?

Provide a brief description of the functions of each court and tribunal in Western Australia. Who is the presiding officer (eg: Judge) in each?

Outline any significant differences in procedure between the respective courts or tribunals you have identified.

### Section 3: Court focus

Draw a diagram of the floor plan of a Magistrates' Court of Petty Sessions.

Indicate the positions in the court of the following people:

- (a) Magistrate;
- (b) Defence Counsel;
- (c) Defendant or Accused;
- (d) Prosecuting Counsel;
- (e) Orderly;
- (f) Judicial Support Officer;
- (g) Witnesses;
- (h) Public.

What are the differences in layout between the plan you just drew and that of a civil court (eg: District Court)?

Imagine that you have been requested to observe a case in court and write a newspaper report on the proceedings. Describe how you would go about doing this, including how you would behave within the court environment.

What is the role of the Sheriff's Officer in a District Court criminal trial?

### Section 4: Pre-trial and Court proceedings

Discuss the principle behind an accused person being granted bail in a criminal matter.

Explain the difference between the standard and burden of proof in a criminal and civil matter. Why is the standard of proof higher in a criminal matter?

Discuss the difference between simple and indictable offences.

### Section 5: Witnesses and jurors

Explain the purposes of the jury system. Why is it so fundamental to our legal system?

List the court jurisdictions that use juries.

Why are juries used in the jurisdictions listed?

Discuss what is meant by a majority verdict.

### **Section 6: Sentencing options**

What are some of the remedies available to a litigant in a civil matter?

How does home detention work? What are its advantages and disadvantages?

### **Section 7: Alternatives to Court**

Outline the various methods of settling disputes.

Explain the differences between adversarial and mediation systems of dispute resolution, and give an example of a situation where each would be used.

Discuss whether the use of courts should be encouraged and discuss alternative means of determining matters in dispute.

### **Section 8: Juvenile justice**

In a legal sense at what age is a child regarded as being an adult?

What are the minimum particulars required by law that a juvenile must provide when being questioned by police?

What is the maximum sentence a Children's Court Magistrate can impose?

Discuss what you think the advantages/disadvantages of having a mentor would be?

### **Section 9: Services for victims**

What is a Victim Impact Statement?

Where can victims obtain assistance to prepare a Statement?

What services are available to a child who has to give evidence in Court?

**Extra activities for those of you who have completed the above**

Listed below are a number of Acts.

1. *Justices Act 1902*
2. *Evidence Act 1906*
3. *Bail Act 1982*
4. *Local Courts Act 1904*
5. *Residential Tenancies Act 1987*
6. *Firearms Act 1973*
7. *Road Traffic Act 1974*
8. *Family Court (of Western Australia) Act 1997*
9. *Children's Court of Western Australia Act 1988*
10. *District Court Act 1970*
11. *Young Offenders Act 1994*
12. *Sentencing Act 1995*
13. *Fines, Penalties (Infringement Notices) Enforcement Act 1994*

*Note:* These Acts can be found on the Internet at:  
[www.slp.wa.gov.au/statutes/swans.nsf](http://www.slp.wa.gov.au/statutes/swans.nsf)

From the list select five Acts to research and discuss what each Act selected is about.

Follow the “paper trail” for each and provide the following:

1. The listing of the Act from the Index of the appropriate Volume of Acts in Force
2. Proof that the Act has been proclaimed
3. A copy of the cover page of the Act
4. A copy of the extract from the Government Gazette to prove which parts of the Act came into force on which dates
5. Proof that Regulations exist in relation to the Act
6. Example of a definition of a “key item” from the Act
7. Describe the process that you went through to find the information you needed

Research and select 10 common legal terms. Identify where you found them and in what context.

Re-write the legal terms you have selected in your own words.

## Glossary

Act (of Parliament)	a decree passed by a legislative body.
Adversarial	a system in civil law where two sides argue their case
Affidavit	a written statement of facts made under oath or affirmation which may be used as evidence
Affirmation	a declaration that the evidence to be given in court is the truth - made instead of taking a religious oath
Arbitration	dispute resolution before an arbitrator who makes a legally binding settlement between two parties, based on their evidence. The arbitrator is usually a person with technical expertise in the subject of the dispute
Arraignment	being called by name by the clerk of courts, having the charge read and pleading either 'guilty' or 'not guilty'
Bail	a written promise (undertaking) that the defendant will appear in Court on the date required.
Barrister	a lawyer who argues cases in court
Bill	a draft of a proposed statute presented to parliament but not yet passed and made law
By-law	a subsidiary law that is made by an authority and has legal effect only within the boundaries of that authority's jurisdiction
Civil law	law concerned with matters between citizens in which the wronged party seeks action against another who caused hardship or inconvenience
Common law	law made through judgements made in court
Compensation	Paying money for the damage or hurt done
Constitution	a document stating the principles which underlie the way a nation or state is governed
Coroner	a judicial officer who inquires into all unnatural deaths or where the cause of death is not known

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	and a doctor is unable to issue a death certificate
Criminal law	law dealing with offences such as burglary, assault, drug offences and murder and which are considered to be offences against the community as a whole
Cross-examination	the interrogation in court of one party's witness by the opposing party
Custody	confinement in a police station lockup or prison
Defamation	injury to another's reputation by making false statements
Defendant	a person charged with an offence or about whom a civil complaint has been laid
Examination-in-chief	the questioning of a witness in court by the party who called him/her to give evidence, in order to put his/her evidence before the court
Indictable offence	a more serious crime, triable by a jury. Some indictable offences can be dealt with summarily (i.e: without a jury) at the election of the accused
Intensive youth supervision order	a sentence for juveniles which can be made with or without detention and may involve going to a rehabilitation centre or course, doing supervised unpaid community work, reporting in to the Juvenile Justice Division officer
Interlocutory application	a minor hearing in civil law, made in front of a judge, magistrate or registrar, which is usually brought by a party to compel compliance with a specific request, such as discovery of documents
Judge	the judicial officer who decides outcomes of cases in the intermediate and superior courts
Judiciary	the system of courts of justice and the personnel, such as judges, who are involved in making judgements
Jurisdiction	the extent of authority to make judgements and administer justice

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Legislation	the process of making or enacting a law in written form; or the collective body of enacted laws.
Litigant	one of the persons involved in a court civil action
Litigation	a law suit
Magistrate	a judicial official who makes judgements in the Local Court and the Court of Petty Sessions
Mediation	a system using a neutral person to help two parties in a dispute to come to an agreement or settlement without going to court
Negotiation	a form of dispute resolution where an independent person assists settlement through discussion aimed at reaching a compromise solution
Oath	a sworn acknowledgment to speak the truth in giving evidence to the court
Order	a command or direction by a Court
Personal undertaking (Bail)	an amount of money fixed by the Court that the defendant promises to pay to the Crown should he/she fail to appear at Court on the required date
Plaintiff	a person who sues another for hardship or financial loss
Precedence	a prior decision which serves as an example or justification for later decisions
Preside	to occupy the position of authority or control and to hear and determine the matter brought before the court
Queen's Counsel	a senior barrister who has been appointed to this position of distinction on the recommendation of the Chief Justice to the Governor in Council
Re-examination	the examination of a witness for a second time by the party calling him/her, following the opposing party's cross-examination of that witness

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Remand	being detained in custody while awaiting trial or further proceedings
Restitution	putting back or repairing something
Separation of powers	having the judiciary separate from and not influenced by the parliament or the executive arm of the government
Summary/Simple Offence	a minor criminal offence triable before a Magistrate without a jury.
Solicitor	a lawyer who mainly advises clients, prepares cases and briefs barristers
Statute	a written law of a legislative body, eg: an Act of Parliament
Summons	a document requiring a person to appear in court on a charge. It states the charge and the date and place of the court appearance
Surety (Bail)	guarantor – a third party required to promise to pay to the Crown an amount fixed by the Court if the defendant fails to appear in Court on the required date
Witness	a person who gives evidence in court
Youth Community Based Order	a sentence for juveniles which may involve going to a rehabilitation centre or course, or doing supervised unpaid community work