

# comview | 18

## CONFERENCE & EXPO

### ME09 | Legal Studies

## Case studies, reforms and contemporary examples across Units 1 and 2

Time: 3.05 pm to 4.00pm  
 Date: Monday 26 November  
 Presented by  
 Jim Ouliaris  
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Introduction including <ul style="list-style-type: none"> <li>Learning Intentions / Course Requirements at a Glance / 2019 Calendar</li> </ul>	5 Min
Moral Dilemma – An issue of Life or Death <ul style="list-style-type: none"> <li>A snapshot</li> <li>Discussion Points for and against</li> <li>The facts of the case</li> <li>The role of statute law &amp; common law in developing the elements &amp; defences</li> <li>Other People's Views Activities</li> </ul>	5 Min
Right Case Study - 'Forced to walk the gauntlet': High Court threat to safe access zones <ul style="list-style-type: none"> <li>Skinny Notes Article</li> <li>Structured Questions and Judgement</li> </ul>	5 Min
Legal Foundations / Rights Case Study - Victorian judge bans niqab in court's public gallery <ul style="list-style-type: none"> <li>Skinny Notes Article</li> <li>Activities for Unit 1 - Guilt and Liability - Area of Study 1: Legal foundations</li> <li>Activities for Unit 2 - Sanctions, Remedies and Rights - Area of Study 3: Rights</li> <li>Other People's Views Activities</li> </ul>	5 Min
Civil Case Study - Aussie star Shane Jacobson sued by former manager <ul style="list-style-type: none"> <li>Skinny Notes Article</li> <li>Contract Law Notes for Unit 1 - Guilt and Liability - Area of Study 3: Civil liability</li> <li>Contract Law Notes for Unit 2 - Sanctions, Remedies and Rights - Area of Study 2: Remedies</li> </ul>	5 Min
Case Studies for Discussion <ul style="list-style-type: none"> <li>Skinny Notes Activity - Deporting foreign criminals brings big savings to taxpayers</li> <li>Skinny Notes Activity - Teens charged with more than 100 offences over Melbourne crime spree</li> <li>Skinny Notes - \$25 million in assets confiscated in crackdown on wealthy criminals</li> <li>Skinny Notes - Victoria Supreme Court rules farting not workplace bullying</li> </ul>	5 Min
Changes and Reforms <ul style="list-style-type: none"> <li>Linked to Unit 1 &amp; 2 Areas of Studies</li> </ul>	

COMVIEW KEY PARTNER



COMVIEW SPONSOR





<p>Legal Studies Stems Starters</p>	<p>Teacher Clarity (effect size 0.75) It is important for the teacher to communicate the intentions of the lessons and the notions of what success means for these intentions (success criteria). Linked to Direct Instruction (Effect Size = 0.59) Direct Instruction underlines the power of stating the learning intentions and success criteria, and then engaging students in working towards these.</p>	<p>Learning Intentions Linked to HITS</p>
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Use the following stem starters –

- ‘We are learning this to understand...’ or ‘In this lesson we will learn about...’

Unit 1	Unit 2
<p><b>Area of Study 1: Legal foundations</b></p> <ul style="list-style-type: none"> <li>• the role of individuals, laws &amp; the legal system in achieving social cohesion and protecting the rights of the individual</li> <li>• the principles of justice: fairness, equality and access</li> <li>• characteristics of an effective law, such as reflects society’s values, enforceable, known, clear &amp; understood, &amp; stable</li> <li>• sources of law, such as common law and statute law</li> <li>• an overview of the relationship between parliament and the courts</li> <li>• types of law, such as criminal law and civil law</li> <li>• the distinction and relationship between criminal law and civil law</li> <li>• an overview of, and reasons for, the Victorian court hierarchy</li> </ul> <p><b>Area of Study 2: The presumption of innocence</b></p> <ul style="list-style-type: none"> <li>• the purposes of criminal law</li> <li>• the presumption of innocence</li> <li>• key concepts of criminal law, including the elements of a crime (actus reus &amp; mens rea), strict liability, the age of criminal responsibility, the burden and standard of proof</li> <li>• types of crimes, such as crimes against the person and crimes against property</li> <li>• the distinction between summary offences &amp; indictable offences</li> <li>• possible participants in a crime, including principal offenders &amp; accessories</li> <li>• two criminal offences for each offence: <ul style="list-style-type: none"> <li>○ the elements of the offence</li> <li>○ possible defences</li> <li>○ the role of statute &amp; common law in developing the elements of the offence &amp; the defences</li> <li>○ trends &amp; statistics in relation to the offence in Victoria &amp; in one other jurisdiction</li> <li>○ the possible impact of the offence on individuals &amp; society</li> </ul> </li> </ul> <p><b>Area of Study 3: Civil liability</b></p> <ul style="list-style-type: none"> <li>• the purposes and types of civil law</li> <li>• key concepts of civil law, including breach, causation, loss, limitation of actions, the burden &amp; standard of proof</li> <li>• possible plaintiffs and defendants to a civil dispute</li> <li>• two areas of civil law and for each area of law: <ul style="list-style-type: none"> <li>○ the rights protected by the law</li> <li>○ the elements required to establish liability</li> <li>○ the limitations of actions</li> <li>○ possible defences</li> <li>○ the role of statute law and common law in developing the elements and defences</li> <li>○ the impact of the breach on an aggrieved party</li> </ul> </li> </ul>	<p><b>Area of Study 1: Sanctions</b></p> <ul style="list-style-type: none"> <li>• the principles of justice: fairness, equality &amp; access</li> <li>• institutions which enforce criminal law, such as the police &amp; delegated bodies</li> <li>• the balance between institutional powers and individual rights</li> <li>• an overview of the role and criminal jurisdictions of the Victorian courts</li> <li>• the role of the jury in a criminal trial</li> <li>• the purposes of sanctions: punishment, deterrence, denunciation, protection and rehabilitation</li> <li>• types of sanctions, such as fines, community correction orders &amp; imprisonment</li> <li>• factors considered by judges in sentencing</li> <li>• Aspects of sentencing practices in Victoria and in one other jurisdiction</li> <li>• alternative approaches to sentencing, such as the use of the Drug Court, the Koori Courts and diversion programs</li> <li>• two recent criminal cases and for each case: <ul style="list-style-type: none"> <li>○ an overview of the charges and the central facts of the case</li> <li>○ courts that may be or were involved</li> <li>○ sanctions that could be or were imposed and their appropriateness</li> <li>○ factors that may be or were taken into consideration in sentencing</li> <li>○ possible avenues of appeal</li> <li>○ the extent to which the principles of justice were or could be achieved.</li> </ul> </li> </ul> <p><b>Area of Study 2: Remedies</b></p> <ul style="list-style-type: none"> <li>• the principles of justice: fairness, equality &amp; access</li> <li>• methods used to resolve a civil dispute such as mediation, conciliation and arbitration</li> <li>• institutions that resolve civil disputes, such as tribunals, ombudsmen and complaints bodies</li> <li>• an overview of the role and civil jurisdictions of the Victorian courts</li> <li>• the role of the jury in a civil trial</li> <li>• the purposes of remedies</li> <li>• types of remedies, such as damages &amp; injunctions</li> <li>• two recent civil cases and for each case: <ul style="list-style-type: none"> <li>○ an overview of the claim &amp; the central facts of the case</li> <li>○ dispute resolution bodies that may be or were involved</li> <li>○ methods of dispute resolution and their appropriateness</li> <li>○ remedies that were or could be awarded and their appropriateness</li> <li>○ possible avenues of appeal</li> <li>○ the extent to which the principles of justice were or could be achieved</li> </ul> </li> </ul> <p><b>Area of Study 3: Rights</b></p> <ul style="list-style-type: none"> <li>• an overview of the way in which Australia protects rights, such as through the Australian Constitution, the Victorian Charter of Human Rights and Responsibilities, statute law and common law</li> <li>• the influence of international declarations and treaties on the protection of rights in Australia</li> <li>• the approach adopted by one other country in protecting rights,</li> <li>• possible reforms to the protection of rights in Australia</li> <li>• one case that has impacted on the protection of rights in Australia including: <ul style="list-style-type: none"> <li>○ the role of the individual in taking a case to court</li> <li>○ the facts and issues central to the case, including the rights in question</li> <li>○ the laws that applied to the case</li> <li>○ the outcome of the case and its impact on the rights of individuals and the legal system</li> <li>○ possible conflicting attitudes in relation to the case</li> </ul> </li> </ul>

For a detailed outline of the of the [Legal Study Design](#) and Previous exams and answers refer to the Victorian Curriculum and Assessment Authority website – [www.vcaa.vic.edu.au](http://www.vcaa.vic.edu.au)

# The Legal Maze E9

## What will be covered in Unit 1 Legal Studies?

### Course Requirements at a Glance

To assist with organization and planning so students can create study notes prior to each assessment.

<b>Unit 1 – Guilt and liability</b>	<b>52 (72)</b>
<b>Area of Study 1: Legal foundations</b>	<b>15 (+5)</b>
Outcome 1 – On completion of this unit the student should be able to describe the main sources and types of law, and assess the effectiveness of laws.	
• the role of individuals, laws & the legal system in achieving social cohesion and protecting the rights of the individual	
• the principles of justice: fairness, equality and access	
• characteristics of an effective law, such as reflects society’s values, enforceable, known, clear & understood, & stable	
• sources of law, such as common law and statute law	
• an overview of the relationship between parliament and the courts	
• types of law, such as criminal law and civil law	
• the distinction and relationship between criminal law and civil law	
• an overview of, and reasons for, the Victorian court hierarchy	
<b>Catch up lessons for assessment and explicit teaching and learning skills</b>	
<b>Area of Study 2: The presumption of innocence</b>	<b>19 (+5)</b>
Outcome 2 – On completion of this unit the student should be able to explain the purposes and key concepts of criminal law, and use legal reasoning to argue the criminal culpability of an accused based on actual and/or hypothetical scenarios.	
• the purposes of criminal law	
• the presumption of innocence	
• key concepts of criminal law, including:	
– the elements of a crime ( <i>actus reus &amp; mens rea</i> )	
– strict liability	
– the age of criminal responsibility	
– the burden and standard of proof	
• types of crimes, such as crimes against the person and crimes against property	
• the distinction between summary offences & indictable offences	
• possible participants in a crime, including principal offenders & accessories	
• two criminal offences for each offence:	
– the elements of the offence	
– possible defences	
– the role of statute law & common law in developing the elements of the offence & the defences	
– trends & statistics in relation to the offence in Victoria & in one other jurisdiction	
– the possible impact of the offence on individuals & society	
<b>Catch up lessons for assessment and explicit teaching and learning skills</b>	
<b>Area of Study 3: Civil liability</b>	<b>18 (+10)</b>
Outcome 3 – On completion of this unit the student should be able to explain the purpose and key concepts of civil law, and apply legal reasoning to determine the liability of a party in civil law based on actual and/or hypothetical scenarios.	
• the purposes and types of civil law	
• key concepts of civil law, including:	
– breach	
– causation	
– loss	
– limitation of actions	
– the burden and standard of proof	
• possible plaintiffs and defendants to a civil dispute	
• two areas of civil law and for each area of law:	
– the rights protected by the law	
– the elements required to establish liability	
– the limitations of actions	
– possible defences	
– the role of statute law and common law in developing the elements and defences	
– the impact of the breach on an aggrieved party	
<b>Catch up lessons for assessment and explicit teaching and learning skills</b>	

<b>Unit 2 – Sanctions, remedies &amp; rights</b>	<b>62 (82)</b>
<b>Area of Study 1: Sanctions</b> Outcome 1 – On completion of this unit the student should be able to explain key concepts in the determination of a criminal case, and discuss the capacity of sanctions and sentencing approaches to achieve the principles of justice	<b>24 (+5)</b>
<ul style="list-style-type: none"> <li>• the principles of justice: fairness, equality &amp; access</li> <li>• institutions which enforce criminal law, such as the police and delegated bodies</li> <li>• the balance between institutional powers and individual rights</li> <li>• an overview of the role and criminal jurisdictions of the Victorian courts</li> <li>• the role of the jury in a criminal trial</li> <li>• the purposes of sanctions: punishment, deterrence, denunciation, protection and rehabilitation</li> <li>• types of sanctions, such as fines, community correction orders &amp; imprisonment</li> <li>• factors considered by judges in sentencing</li> </ul>	1 1 2 2 1 1 3 1
Aspects of sentencing practices in Victoria and in one other jurisdiction	3
<ul style="list-style-type: none"> <li>• alternative approaches to sentencing, such as the use of the Drug Court, the Koori Courts and diversion programs</li> <li>• two recent criminal cases and for each case:               <ul style="list-style-type: none"> <li>– an overview of the charges and the central facts of the case</li> <li>– courts that may be or were involved</li> <li>– sanctions that could be or were imposed and their appropriateness</li> <li>– factors that may be or were taken into consideration in sentencing</li> <li>– possible avenues of appeal</li> <li>– the extent to which the principles of justice were or could be achieved</li> </ul> </li> </ul>	3 1 + 1 case 1 + 1 case 1 + 1 case 1 + 1 case 1 + 1 case 1 + 1 case
<b>Catch up lessons for assessment and explicit teaching and learning skills</b>	<b>5</b>
<b>Area of Study 2: Remedies</b> Outcome 2 – On completion of this unit the student should be able to explain key concepts in the resolution of a civil dispute, and discuss the ability of remedies to achieve the principles of justice.	<b>24 (+5)</b>
<ul style="list-style-type: none"> <li>• the principles of justice: fairness, equality &amp; access</li> <li>• methods used to resolve a civil dispute such as mediation, conciliation and arbitration</li> <li>• institutions that resolve civil disputes, such as tribunals, ombudsmen and complaints bodies</li> <li>• an overview of the role and civil jurisdictions of the Victorian courts</li> <li>• the role of the jury in a civil trial</li> <li>• the purposes of remedies</li> <li>• types of remedies, such as damages &amp; injunctions</li> <li>• two recent civil cases and for each case:               <ul style="list-style-type: none"> <li>– an overview of the claim &amp; the central facts of the case</li> <li>– dispute resolution bodies that may be or were involved</li> <li>– methods of dispute resolution and their appropriateness</li> <li>– remedies that were or could be awarded and their appropriateness</li> <li>– possible avenues of appeal</li> <li>– the extent to which the principles of justice were or could be achieved</li> </ul> </li> </ul>	1 3 3 1 1 1 2 1 + 1 case 1 + 1 case 1 + 1 case 1 + 1 case 1 + 1 case 1 + 1 case
<b>Catch up lessons for assessment and explicit teaching and learning skills</b>	<b>5</b>
<b>Area of Study 3: Rights</b> Outcome 3 – On completion of this unit the student should be able to evaluate the way in which Australia protects rights, and compare this approach with that of another country and discuss the impact of an Australian case on the rights of individuals and the legal system.	<b>14 (+10)</b>
<ul style="list-style-type: none"> <li>• an overview of the way in which Australia protects rights, such as through the Australian Constitution, the Victorian Charter of Human Rights and Responsibilities, statute law and common law</li> <li>• the influence of international declarations and treaties on the protection of rights in Australia</li> <li>• the approach adopted by one other country in protecting rights,</li> <li>• possible reforms to the protection of rights in Australia</li> <li>• one case that has impacted on the protection of rights in Australia including:               <ul style="list-style-type: none"> <li>– the role of the individual in taking a case to court</li> <li>– the facts and issues central to the case, including the rights in question</li> <li>– the laws that applied to the case</li> <li>– the outcome of the case and its impact on the rights of individuals and the legal system</li> <li>– possible conflicting attitudes in relation to the case</li> </ul> </li> </ul>	4 2 2 1 1 case 1 case 1 case 1 case 1 case
<b>Catch up lessons for assessment and explicit teaching and learning skills</b>	<b>10</b>

Week	Lessons	Topics – Unit 1 – Guilt & liability	Assessment
Term 1: 30 January to 31 March	1	1 <b>Area of Study 1: Legal foundations – Outcome 1</b> The role of individuals, laws & the legal system in achieving social cohesion and protecting the rights of individuals	Review Holiday Homework
	2	4 the principles of justice, including: fairness, equality & access / Characteristics of an effective law / Sources of law, including common law & statute law	
	3	5 Overview of the relationship between parliament and the courts / Types of law, such as criminal law & civil law / Distinction and relationship between criminal law and civil law	
	4	4 Overview of and reasons for, the Victorian court hierarchy	
	5	5 <b>Area of Study 2: The presumption of innocence – Outcome 2</b> Purposes of criminal law / the presumption of innocence / Key concepts of criminal law including the elements of a crime (actus reus and mens rea), strict liability, the age of criminal responsibility, the burden of proof, the standard of proof	
	6	4 Continued key concepts of criminal law / The distinction between summary offences and indictable offences	
	7	5 Possible participants in a crime, including principal offenders and accessories / Begin two criminal offences.... Types of crimes such as crimes against the person and crimes against property	
	8	4 Continuation of two criminal offences and in relation to each offence: the elements of the offence, possible defences, the role of statute law and common law in developing the elements of the offence and the defences / trends and statistics in relation to the offence in Victoria and in one other jurisdiction / the possible impact of the offence on individuals and society	
	9	5 Continuation of two criminal offences	
	10	4 <b>Catch up lessons for assessment &amp; explicit teaching &amp; learning skill</b>	
<b>01 April to 17 April</b>			
Term 2: 18 April to 30 June	1	4 <b>Area of Study 3: Civil liability – Outcome 3</b> Purposes and types of civil law / Key concepts of civil law, including: breach, causation, loss, limitation of actions	
	2	5 Continuation of key concepts: the burden of proof, the standard of proof / Possible plaintiffs and defendants to a civil dispute /	
	3	4 Two areas of civil law: the rights protected by the law, the elements required to establish liability, the limitations of actions, possible defences, the role of statute law and common law in developing the elements and defences and the impact of the breach on the parties.	
	4	5 Continuation of two areas of civil law	
	5	5 Continuation of two areas of civil law	
	6	5 <b>Catch up lessons for assessment &amp; explicit teaching &amp; learning skills</b>	
	7	5 Unit 1 Summaries and revision for the Legal Exams	
	8	2 Unit 1 Summaries and revision for the Legal Exams / EXAMS Begin	
	9	0 (83) EXAMS and GAT	
	10	4 <b>Unit 2 – Sanctions, remedies and rights – Area of Study 1 – Sanctions – Outcome 1</b> – the principles of justice, including: fairness, equality and access / institutions that enforce criminal law, such as the police and delegated bodies / <u>the balance between institutional powers and individual rights</u>	
	11	5 An overview of the role and criminal jurisdictions of the Victorian courts / the role of the jury in a criminal trial / the purposes of sanctions: punishment, deterrence, denunciation, protection and rehabilitation / types of sanctions, such as fines, community correction orders and imprisonment	

Week	Lessons	Topics –Unit 2 – Sanctions, remedies and rights	Assessment
Term 2	10	4 <b>Area or Study 1 Sanctions – Outcome 1</b> The principles of justice, including: fairness, equality and access / institutions that enforce criminal law, such as the police and delegated bodies / the balance between institutional powers and individual rights	
	11	5 An overview of the role & criminal jurisdictions of the Victorian courts / the role of the jury in a criminal trial / the purposes of sanctions: punishment, deterrence, denunciation, protection & rehabilitation / types of sanctions, such as fines, community correction orders & imprisonment	
Term 3: 17 July to 22 September	1	5 Continued types of sanctions, including fines, community correction orders and imprisonment / factors considered by judges in sentencing / aspects of sentencing practices in Victoria and in one other jurisdiction	
	2	4 Alternative approaches to sentencing, such as the use of the Drug Court, the Koori Courts & diversion programs / Two recent criminal cases & for each case: an overview of the charges and the central facts of the case, courts that may be or were involved, sanctions that could be or were imposed & their appropriateness, factors that may be or were taken into consideration in sentencing, the extent to which the principles of justice were / could be achieved	
	3	5 Continuation of two recent criminal cases	
	4	4 Continuation of two recent criminal cases & <b>Catch up lessons</b>	
	5	5 <b>Area or Study 2: Remedies – Outcome 2</b> the principles of justice, including: fairness, equality and access / methods used to resolve a civil dispute such as mediation, conciliation and arbitration (discuss key concepts in relation to the resolution of a civil dispute)	
	6	4 Institutions which resolve civil disputes, such as tribunals, ombudsmen and complaints bodies / an overview of the role and civil jurisdictions of the Victorian courts / the role of the jury in a civil trial	
	7	5 The purposes of remedies / types of remedies, such as damages and injunctions / Begin two recent civil cases covering an overview of the claim and the central facts of the case, dispute resolution bodies that may be or were involved, methods of dispute resolution and their appropriateness, remedies that were or could be awarded and their appropriateness, possible avenues of appeal and the extent to which the principles of justice were or could be achieved.	
	8	4 Continuation of two recent civil cases	
	9	5 Continuation of two recent civil cases	
	10	4 <b>Catch up lessons for assessment and explicit teaching and learning skills</b>	
Term 4: 9 October to 22 December	1	5 <b>Area of Study 3: Rights – Outcome 3</b> An overview of the way in which Australia protects rights, such as through the Australian Constitution, the VCHRR, statute and common law	
	2	4 The influence of international declarations and treaties on the protection of rights in Australia / the approach adopted by one other country in protecting rights / possible reforms to the protection of rights in Australia	
	3	5 One case that has impacted on the protection of rights in Australia: the role of the individual in taking a case to court/ the facts and issues central to the case, including the rights in question / the laws that applied to the case / the outcome of the case and its impact on the rights of individuals and the legal system / possible conflicting attitudes in relation to the case.	
	4	4 Cont'd of one case that has impacted on the protection of rights in Australia <b>Catch up lessons for assessment and explicit teaching and learning skills</b>	
	5	5 Unit 2 Summaries and revision for the Legal Exams	
	6	5 Unit 2 Summaries and revision for the Legal Exams / EXAMS Begin	
	7	0 (84) EXAMS	
	8	<b>Pre-VCE / Head Start / Start Up</b>	
	9		
	10		
	11		



# Case studies, reforms and contemporary examples across Units 1 and 2

## Moral Dilemma – An issue of Life or Death

Should a doctor (or a hospital) have the power to administer blood products, without consent, to save the life of a pregnant patient or prevent serious injury during child birth?

The dilemma for the court is summarised as follows”

Should the Court only be concerned with the interests and well-being of D1 or must it also be concerned with the interests and well-being of her unborn baby, or of the baby when born?

<p>Mercy Hospitals Victoria LTD vs. D1 (17 year old pregnant girl) and D2 (the girls' mother)</p> <ul style="list-style-type: none"><li>• Supreme Court of Victoria</li><li>• Judge: Macaulay J</li><li>• Melbourne</li><li>• Date of hearing: 29 &amp; 31 august 2018</li><li>• Date of judgment: 31 august 2018</li><li>• Case citation: Mercy Hospitals Victoria v D1 &amp; Anor [2018] VSC 519 (31 August 2018)</li><li>• Counsel for the Plaintiff - Ms S Keeling</li><li>• Counsel for the First Defendant - Mr R Ajzensztat</li></ul> <p><a href="https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC/2018/519.html">https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC/2018/519.html</a></p> <p>Pseudonym order and interim suppression order made to protect the identities of the defendants from being made public. There was a real and substantial risk of prejudice to the proper administration of justice.</p> <p style="text-align: right;"><i>Open Courts Act 2013, s 20.</i></p> <p>Urgent court order was also made so that the child defendant could proceed through a litigation guardian and be directly represented by counsel and instructing solicitor.</p> <p style="text-align: right;"><i>Supreme Court (General Civil Procedure) Rules 2015, r 2.04.</i></p>	<p><b>A snapshot of the case</b></p> <p>The Supreme Court had to consider whether an order sought by the hospital authorising doctors to administer blood products should be made to save her life or prevent serious injury during child birth in opposition to the wishes of the Jehovah's Witness child and her mother. The Court used the principle of <i>parens patriae</i>, a doctrine that grants the Crown inherent power and authority to protect persons who are legally unable to act on their own behalf.</p> <p><b>Glossary</b></p> <p><i>Parens Patriae</i> - A Latin term meaning 'Parent of the country' A doctrine that grants the inherent power and authority of the state (Crown) to protect persons who are legally unable to act on their own behalf. The <i>parens patriae</i> doctrine has its roots in English Common Law.</p>
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## Discussion Points

Arguments – For	Arguments – Against
<ul style="list-style-type: none"> <li>• As a minor she is in a vulnerable situation and the court needs to act in the best interests of child</li>   <li>• Section 24 of the <b>Human Tissue Act 1982 (Vic)</b> allows for the administration of blood transfusions in emergency situations. It applies where, in the opinion of a registered medical practitioner, the blood transfusion is a reasonable and proper treatment and without it the child is likely to die. A second concurring medical opinion must also be obtained.</li>   <li>• D1 could not be deemed as a mature minor due to the observations of the following reports:               <ol style="list-style-type: none"> <li>a) The psychiatrists report also stated that D1's understanding of the nature and consequence of her refusal of blood transfusion in a life-threatening situation, including the consequences for herself, her family and her child is limited. The psychiatrists report was not completely satisfied that [D1] has thought the issues through or has a grasp of the consequences.</li> <li>b) The psychologists report stated in summary, although he understood D1 had been clear about her wishes, he was not certain she had been able to explore and completely understand the full implications and complexity of the impact upon her, and upon her about-to-be born baby and her family, of such a grave decision to refuse human blood products should they be absolutely medically necessary. For that reason he felt unable to witness D1's medical care plan.</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>• D1 opposes the administration of a blood transfusion or blood products based on her desire to adhere to the religious principles of her faith which, she says, should be respected as an assertion of her personal autonomy. She stated this clearly in her maternity support group.</li> <li>• The <b>Medical Treatment Planning and Decisions Act</b> came into force on 12 March 2018. One of its main purposes was to provide for a person to execute an advanced care directive that gives binding instructions or expresses the person's preferences and values in relation to the person's future medical treatment.</li>   <li>• Several statements made by D1 and D2 in the courts record:               <ol style="list-style-type: none"> <li>a) she believed D1 would suffer psychological harm by being forced to have a blood transfusion;</li> <li>b) being forced to have a blood transfusion would be like having violence done to her, or being raped;</li> <li>c) she is not convinced there may not be side-effects from a blood transfusion;</li> <li>d) she wants to do the right thing by Jehovah;</li> <li>e) she, D2, has herself had 9 children – including one by caesarean section – without a blood transfusion.</li> </ol> </li>   <li>• A psychologists report noted her belief about death that she believed that if she was to die she would have a new life in paradise, that she wanted to make Jehovah happy and that she would rather die than have a blood transfusion. When asked about the potential impact on her baby if there were serious complications during labour, she said that she had not thought about it. Then she said, "if the baby has to die, she has to die".</li> </ul>

## The facts of the case

The defendant (D1) is a 17 year old woman who is 38 weeks pregnant. She consented to induction of labour to take place very shortly at a hospital operated by the plaintiff, Mercy Hospitals Victoria Ltd (**the hospital**). She has also consented that, if necessary, a caesarean section be performed to deliver her baby. She is of very small stature, it is her first baby and the baby is quite large so the risk of requiring a caesarean section delivery and of associated postpartum haemorrhage is a significant one.

D1 is an adherent of the Jehovah's Witness faith. The hospital sought her consent to the administration of blood or blood products during or after delivery, if necessary to prevent serious injury or save her life. Because such administration is contrary to her faith as a Jehovah's Witness, D1 has refused such consent. Being less than 18 years of age, D1 is a minor under law. D1's mother, the second defendant (D2), is also an adherent of the Jehovah's Witness faith. She has informed the hospital that, if asked, she would not provide consent to the administration of blood or blood products to D1.

D1 was born overseas on 2001. She turned 17 less than a week ago. She arrived in Australia in 2009 as an eight-year-old with her family as refugees. Her parents have since separated and she lives with her mother, D2, and her six siblings. D1 informed the hospital that her pregnancy was a planned pregnancy with her former partner with whom she has had no contact for the past two months.

At 12 weeks of pregnancy, in early March 2018, she booked the birthing of her baby with the hospital. At that time she weighed only 44 kg, with a height of 150 cm. According to Dr van Dam she is "a very small built girl". Throughout her pregnancy, D1 had been receiving some support from a refugee support agency and from the student well-being staff at her school. She was continuing with her studies and, apparently, was focused on her exams until they were completed in mid-June 2018. It was reported on 2 July 2018 that D1 had passed her year 10.

Discussions occurred between the hospital and D1 when she was 36 and 37 weeks pregnant, with her mother and a person from D1's Jehovah's Witness and an elder (presumably of D1's church), together with an interpreter for D2 to review the issue of the use of blood based products.

The hospital has brought an urgent application to this Court for a declaration as follows: that the [hospital] is authorised to administer to [D1] blood and/or blood products as considered reasonably necessary by her treating medical practitioners to save her life or to prevent serious injury during the course of induction of labour, labour, caesarean section and related procedures and the postnatal period in regard to her pregnancy.


The application is brought in reliance upon the Court's *parens patriae* jurisdiction, a jurisdiction ultimately derived from the Royal prerogative. In relation to children, it is directed to the protection of children who are not legally competent to look after themselves.

## The role of statute law and common law in developing the elements and defences

Cases cited by <i>Mercy Hospitals Victoria v D1 &amp; Anor</i> [2018] VSC 519	Legislation cited by <i>Mercy Hospitals Victoria v D1 &amp; Anor</i> [2018] VSC 519
<ul style="list-style-type: none"> <li>• <i>A &amp; B v Children’s Court of Victoria</i> [2012] VSC 589</li> <li>• <i>Butler v Attorney-General (Vic)</i> 106 CLR 268</li> <li>• <i>Carseldine v Director of Department of Children's Services</i> 133 CLR 345</li> <li>• <i>Coco v R</i> 179 CLR 427</li> <li>• <i>Collins v Smith (Human Rights)</i> <b>256 IR 52</b></li> <li>• <i>Department of Health and Community Services v JWB and SMB (Marion's Case)</i> 175 CLR 218</li> <li>• <i>Director General, Department of Family and Community Services; Re Vernon</i> [2011] NSWSC 1222</li> <li>• <i>Director-General, Department of Community Services; Re Thomas</i> 41 Fam LR 220</li> <li>• <i>DoCS v Y</i> [1999] NSWSC 644</li> <li>• <i>Johnson v Director-General of Social Welfare (Vic)</i> 135 CLR 92</li> <li>• <i>Kiefel v State of Victoria</i> [2014] FCA 604</li> <li>• <i>PJB v Melbourne Health</i> 39 VR 373</li> <li>• <i>Re Alexis</i> [2011] NSWSC 1545</li> <li>• <i>Re Application of Shephard</i> [1983] 1 NSWLR 96</li> <li>• <i>Re Beth (No 3)</i> [2014] VSC 121 - 3 citations</li> <li>• <i>Saraswati v R</i> 172 CLR 1</li> <li>• <i>Secretary, Department of Human Services v Sanding</i> 36 VR 221</li> <li>• <i>Shergold v Tanner</i> 209 CLR 126</li> <li>• <i>Victorian Toll &amp; Anor v Taha and Anor; State of Victoria v Brookes &amp; Anor</i> <b>49 VR 1</b></li> <li>• <i>ZD v Secretary to the Department of Health and Human Services</i> [2017] VSC 806 - 1 citation</li> </ul>	<ul style="list-style-type: none"> <li>• Adoption Act 1984 (Vic)</li> <li>• Charter of Human Rights and Responsibilities Act 2006 (Vic)</li> <li>• Child Wellbeing and Safety Act 2005 (Vic)</li> <li>• Children, Youth and Families Act 2005 (Vic)</li> <li>• Commission for Children and Young People Act 2012 (Vic)</li> <li>• Constitution Act 1975 (Vic)</li> <li>• Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic)</li> <li>• Disability Act 2006 (Vic)</li> <li>• Human Tissue Act 1982 (Vic)</li> <li>• Guardianship and Administration Act 1986 (Vic)</li> <li>• Medical Treatment Planning and Decisions Act [2018]</li> <li>• Public Administration Act 2004 (Vic)</li> <li>• Supreme Court Act 1986 (Vic)</li> </ul>

# Activity – OPV

## Moral Dilemma – An issue of Life or Death

<p><b>Other Peoples View</b></p> <p><b>TOOL ICON &amp; EXPLANATION</b> The curved arrow looks through their eyes of another person.</p>  <p><b>EXPLANATION OF TOOL</b> The O.P.V. helps us look at other people's viewpoints. It is an exploration tool.</p> <p><b>INFORMATION ABOUT THE TOOL</b> The O.P.V. tool directs attention to the views of specific people, not just other views in general. The O.P.V. requires "stepping into the shoes" of the other people involved.</p> <p><b>STEPS</b> Using the O.P.V. involves two steps: 1. List the people involved. 2. Then find out their views.</p> <p>Scan widely. Include both those directly and indirectly involved. To find out others' views, imagine what they think, do a KVI or an A.P.C. to list the possible views, ask the people to express their views</p> <p><b>GRAPHIC ORGANISER</b> This graphic identifies who's involved and what is there role...</p>	<p>In groups identify the <b>Position / Beliefs / Values</b> of the following groups when considering the moral dilemma of...</p> <p><b>What are the key values involved for each group? What do they believe?</b></p> <div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <p><b>Groups representing D1 (her wishes)</b></p> </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <p><b>Groups representing the Jehovah Witness Church</b></p> </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <p><b>Groups representing Civil Liberties Victoria</b></p> </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <p><b>Groups representing the Medical Association</b></p> </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <p><b>Groups representing the Mercy Hospital</b></p> </div> <div style="border: 1px solid black; padding: 5px;"> <p><b>Groups representing the Community</b></p> </div> <div style="border: 1px solid black; padding: 10px; margin-top: 20px;"> <p style="text-align: center;"><b>Should a doctor (or a hospital) have the power to administer blood products, without consent, to save the life of a pregnant patient or prevent serious injury during child birth?</b></p> </div>
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**VOTE: Should a doctor (or a hospital) have the power to administer blood products, without consent, to save the life of a pregnant patient or prevent serious injury during child birth?**

**Total number of students \_\_\_\_\_ Vote for YES = \_\_\_\_\_ Vote for NO = \_\_\_\_\_**

# Case studies, reforms and contemporary examples across Units 1 and 2



Kathleen Clubb leaves court in 2017

## 'Forced to walk the gauntlet': High Court threat to safe access zones

Written by Aisha Dow,  
, from the 'The Age on the 6<sup>th</sup> of October 2018

<https://www.theage.com.au/national/victoria/forced-to-walk-the-gauntlet-high-court-threat-to-safe-access-zones-20181005-p507za.html>

Read through the following case study and use the right hand side to annotate for the following matters:

1. The role of the individual in taking a case to court
2. The facts and issues central to the case including the rights in question
3. The laws that applied to the case
4. The [outcome] of the case and its impact on the rights of individuals and the legal system
5. The possible conflicting attitudes in relation to the case.

The following newspaper article was written by Aisha Dow, from the 'The Age on the 6th of October 2018, titled 'Forced to walk the gauntlet': High Court threat to safe access zones'

Abortion clinic staff fear going back to the “dark ages” as anti-abortionists challenge in the High Court the Victorian and Tasmanian laws that banished religious protesters from outside their workplaces. Kathleen Clubb, a mother of thirteen who was the first person to be convicted under those laws, is asking the High Court to consider if the legislation infringes on political free speech.

For decades, self-described “sidewalk counsellors” were a fixture outside centres across the state, until they were finally exiled in 2016 with the introduction of “safe access zone” laws that obliged protesters to stay at least 150 metres away.

After Ms Clubb was arrested by police in 2016 when she was caught approaching a couple outside the East Melbourne Fertility Control Clinic, she reportedly said: “I don’t intend to leave. I believe I have the right to offer my help to women.”

Ms Clubb is challenging her conviction and \$5000 fine in a case that will be heard on Tuesday by the full bench of the High Court. They will also consider the case of another anti-abortionist, John Graham Preston, who breached similar Tasmania laws.

The case has alarmed staff at abortion clinics, who say they used to be too afraid of the protesters to leave their office without a security guard.

"I shudder to think what it would be like if we returned to the dark ages and women were forced to walk the gauntlet simply to see their doctor," said senior associate Katie Robertson from Maurice Blackburn, which is representing the Fertility Control Clinic pro-bono.

Susie Allanson worked at the East Melbourne clinic as a clinical psychologist for more than 25 years and often feared she would be hurt by one of the anti-abortionists, who would arrive by 7.45am each morning.

She was working at the clinic in 2001 when a radical recluse came to the centre armed with a modified high-powered rifle and other weapons, ready to massacre dozens of patients and staff. He murdered security guard Steven Rogers, before being disarmed by the boyfriend of a pregnant woman.

Dr Allanson said the safe access zones had been an overnight success. "Instantly, women were no longer being harassed and intimidated on the public footpath." This week's case is likely to centre on the issue of whether preventing protesters approaching women within the safe zone is a breach of the implied freedom of political communication. Ms Clubb and her legal team were contacted for comment and declined.

In her submission to the High Court, she argued that abortion was inherently political and that political communication about abortions was most effective at the place at which abortions are provided, where they can reach clinic users and their medical staff.

"Australian history is replete with examples of political communication which were effective because they were conducted in a place where the issue was present and viscerally felt," it said. The 1998 Australian waterfront dispute, Eureka Stockade and the Freedom Ride of 1965 are listed examples.

In an interview with NewsCorp in June, Ms Clubb denied distressing women with graphic images of abortions on signs, saying that she only prays and distributes pamphlets. She said at the time she was fighting for the right to speak on her beliefs, even though they were unpopular.

"But the point is, if parliament can ban this kind of protest, what other kind of protests can they ban?" she told NewsCorp. "I am fighting for all Australians."

But Ms Clubb faces a formidable opposition, with the case attracting not only the attention of the Victorian Attorney-General Martin Pakula, but governments across the nation, who have made submissions through lawyers in defence of the Victorian and Tasmanian laws. The Attorney-General will argue that if there is any impact on the implied freedom of political communication, it is insubstantial. "While it may be accepted that some individuals might be engaging in political communication, in other cases the aim is to deter women from having an abortion, often through imposing guilt and shame," the submission said.

## Unit 2 - Sanctions, Remedies and Rights - Area of Study 3: Rights

### Structured Questions and Judgement

Complete the following questions on one case that has impacted on the protection of rights in Australia:

1. Describe the ways in which Australian law protects freedom of speech through the Australian Constitution, the Victorian Charter of Human Rights and Responsibilities, statute law and common law.
2. Outline the role of Kathleen Clubb in taking a case to the High Court.
3. Identify the main facts and issues central to this case, including the right in question.
4. Research and describe the law that applies to this case on the Freedom of Political Speech.
5. Using a 'T' Table identify the possible conflicting attitudes in relation to the case.
6. The outcome of the case is unknown at this point in time. Using what you know about the law and the facts of this case write up a judgment and justify your decision in terms of the rights of the individuals involved and the legal system. Your judgment should include the following:
  - a) The main facts and issues central to this case, including the right in question.
  - b) The role of Kathleen Clubb in taking a case to the High Court.
  - c) A description of how Australian law protects freedom of speech through the Australian Constitution, the Victorian Charter of Human Rights and Responsibilities, statute law and common law.
  - d) Whether the Freedom of Political Speech case applies in this case - why or why not?



Related matter:

[H2/2018](#) - Preston v. Avery & Anor

Case Information

**Catchwords**

Constitutional law – Implied freedom of political communication – *Public Health and Wellbeing Act 2008* (Vic) s 185D – Where s 185D prohibits engaging in “prohibited behaviour” within “safe access zone” – Where “prohibited behaviour” defined to include “communicating by any means in relation to abortions in a manner that is able to be seen or heard by a person accessing, or attempting to access, or leaving premises at which abortions are provided and is reasonably likely to cause distress or anxiety” – Where appellant convicted of charge under s 185D in Magistrates’ Court – Whether 185D impermissibly burdens implied freedom of political communication.

Documents\*

- 23/03/2018 [Hearing](#) (Single Justice, Melbourne V/link Adelaide and Hobart)
- 03/04/2018 Cause removed
- 04/04/2018 Notice of constitutional matter (Ms Clubb)
- 11/05/2018 [Written submissions](#) (Attorney-General for the State of Victoria)
- 11/05/2018 [Chronology](#) (Attorney-General for the State of Victoria)
- 18/05/2018 [Written submissions](#) (Ms Edwards)
- 18/05/2018 [Chronology](#) (Ms Edwards)
- 25/05/2018 [Written submissions](#) (Attorney-General of the Commonwealth intervening)
- 25/05/2018 [Written submissions](#) (Attorney-General for the State of New South Wales intervening)
- 25/05/2018 [Written submissions](#) (Attorney-General of the State of Queensland intervening)
- 25/05/2018 [Written submissions](#) (Attorney-General for the State of Western Australia intervening)
- 25/05/2018 [Written submissions](#) (Attorney-General for the State of South Australia intervening)
- 25/05/2018 [Written submissions](#) (Human Rights Law Centre seeking leave to appear as *amicus curiae*)
- 25/05/2018 [Written submissions](#) (Castan Centre for Human Rights Law seeking leave to appear as *amicus curiae*)
- 25/05/2018 [Written submissions](#) (Fertility Control Clinic seeking leave to intervene or appear as *amicus curiae*)
- 08/06/2018 [Written submissions](#) (Ms Clubb)
- 22/06/2018 [Reply](#) (Attorney-General for the State of Victoria)
- 22/06/2018 [Reply](#) (Ms Edwards)
- 28/08/2018 [Order](#) granting leave to appear as *amicus curiae* limited to the written submissions
- 31/08/2018 [Written submissions](#) (Access Zone Action Group seeking leave to appear as *amicus curiae*)
- 12/09/2018 [Hearing](#) (Single Justice, Canberra)
- 08/10/2018 [Supplementary written submissions](#) (Ms Clubb)
- 09/10/2018 [Hearing](#) (Full Court, Canberra) ([Audio-visual recording](#))
- 09/10/2018 [Outline of oral argument](#) (Ms Clubb)
- 09/10/2018 [Outline of oral argument](#) (Ms Edwards)
- 09/10/2018 [Outline of oral argument](#) (Attorney-General for the State of Victoria)
- 10/10/2018 [Hearing](#) (Full Court, Canberra) ([Audio-visual recording](#))
- 10/10/2018 [Outline of oral argument](#) (Attorney-General of the Commonwealth intervening)
- 11/10/2018 [Hearing](#) (Full Court, Canberra) ([Audio-visual recording](#))
- 11/10/2018 [Outline of oral argument](#) (Attorney-General of the State of Queensland intervening)
- 11/10/2018 [Outline of oral argument](#) (Attorney-General for the State of South Australia intervening)
- 11/10/2018 [Outline of oral argument](#) (Attorney-General for the State of Western Australia intervening)
- 11/10/2018 [Outline of oral argument](#) (Attorney-General for the State of New South Wales intervening)

More in this category: [« Case A17/2012 Case M48/2012 »](#)

# Case studies, reforms and contemporary examples across Units 1 and 2

## Case Study - Legal Foundations / Rights

Unit 1 - Guilt and Liability - AoS 1: Legal foundations	Unit 2 - Sanctions, Remedies and Rights - AoS 3: Rights
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### Victorian judge bans niqab in court's public gallery

<https://www.theguardian.com/australia-news/2018/jul/18/victorian-judge-bans-niqab-in-courts-public-gallery>



Pauline Hanson's burqa stunt could change Australian Senate's dress code



Woman cannot give evidence in a niqab, Australian court rules

The following article was written by Calla Wahlquist on the 18th of July 2018 for the online news service 'The Guardian', titled 'Victorian judge bans niqab in court's public gallery'.

Read through the following case study and use the right hand side to annotate each paragraph.

A Victorian judge has banned a woman whose husband is facing terrorism charges from wearing a niqab in court, saying it posed a potential security risk. The woman applied through her husband's lawyers to wear the face veil, which she said was "a fundamental way in which she observes her faith", while sitting in the public gallery to support him through the six-week trial.

he said she had been permitted to wear the niqab during a committal hearing in the Magistrate's Court and was willing to show her face to security guards manning the metal detector and weapons check at the court entrance to verify her identity. But the Supreme Court judge Christopher Beale said the risk of a mistrial or other incident caused by "misbehaving" in the public gallery would be heightened if a person could not be instantly identified because their face was covered, and ruled that the risk outweighed the infringement upon the woman's right to freedom of religious expression.

"Deterrence, identification and proof are all served by a requirement that spectators in the public gallery have their faces uncovered," he said in a decision handed down on Monday. Beale said lawyers for the accused had indicated there were other women who would also wear niqabs in court if permission were

granted, which would further confuse identity issues because “such dress tends to be very similar”.

Lawyers for the woman argued that she did not pose a security risk and would abide by all court orders, but Beale said the stress felt by people accused of serious crimes was often shared by family members and that “as a consequence of that stress, incidents happen from time to time in court”. “Australia is obviously a multicultural society and I agree that religious dress should be accommodated as much as possible, but the right of religious freedom and the right to participate in public life are not absolutes,” Beale said in his decision.

He said the Victorian charter of human rights recognised that rights “may be subject to limitations which can be ‘demonstrably justified in a free and democratic society based on human dignity, equality and freedom’”. Lawyers for the woman said there was an implied right of wear a veil when not giving evidence, citing a number of cases in Commonwealth countries.

Those cases generally concerned whether a person was able to wear religious facial coverings while giving evidence and did not contest a person’s right to wear religious attire when not on the stand. Among them is a ruling by the New South Wales court of appeal concerning a civil damages trial against NSW police, which upheld the trial judge’s ruling that the complainant could not wear her niqab while giving evidence.

“A requirement that spectators have their faces uncovered is not to force anyone to act immodestly,” Beale said. “First, the exposure of one’s face in a courtroom cannot reasonably be viewed as an immodest act: subjective views to the contrary cannot rule the day, or the management of a courtroom. “Second, if someone feels strongly that it would be improper for them to uncover their face in court, they can choose not to attend.” He said the trial could be livestreamed to another room in the court building to allow the woman to follow it if she chose not to remove her veil.

The Victorian equal opportunity and human rights commissioner, Kristen Hilton, said religious and cultural rights were protected under Victorian law, and that those rights also applied in a courtroom. “Victorian law is clear that when courts are acting in an administrative way – such as making decisions about procedure in the courtroom – they must consider and act compatibly with human rights,” Hilton said.

“The law allows for restrictions on human rights, such as restricting a person’s right to observe their religion or culture through what they wear, but limits are only justified where there is clear evidence the limit is reasonable.”

## Activities for Unit 1 - Guilt and Liability - Area of Study 1: Legal foundations

Complete the following activities related to the above article:

1. Summarise the facts and issues central to the case, including the rights in question.

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2. How does banning the niqab achieve social cohesion and protect the rights of individuals & the legal system?

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3. Illustrate how the characteristics of an effective law apply in this case. Look for evidence of the values this law reflects, its enforceability, how it is known, clarity of purpose & stability

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## Activities for Unit 2 - Sanctions, Remedies and Rights - Area of Study 3: Rights

Complete the following activities related to the above article:

1. State the main facts and issues central to the case, including the rights in question.

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2. Identify the role of the individual in taking challenging this ban in court.

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3. Identify and briefly explain the laws that apply to this case.

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4. Discuss the outcome of the case and its impact on the rights of individuals and the legal system. Use the principles of justice as a guide.

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5. Using a 'T' Table identify the conflicting attitudes to the case.

Arguments for banning the niqab	Arguments against banning the niqab

6. To what extent does the Victorian Charter of Human Rights and Responsibilities protect religious and cultural rights?

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Work complete by student	Well Above the Standard	Above the Standard	At the standard	Below the Standard	Well below the Standard
Comments					



# Activity – OPV

## Banning the niqab in court

<p><b>Other Peoples View</b></p> <p><b>TOOL ICON &amp; EXPLANATION</b> The curved arrow looks through their eyes of another person.</p>  <p><b>EXPLANATION OF TOOL</b> The O.P.V. helps us look at other people's viewpoints. It is an exploration tool.</p> <p><b>INFORMATION ABOUT THE TOOL</b> The O.P.V. tool directs attention to the views of specific people, not just other views in general. The O.P.V. requires "stepping into the shoes" of the other people involved.</p> <p><b>STEPS</b> Using the O.P.V. involves two steps: 1. List the people involved. 2. Then find out their views.</p> <p>Scan widely. Include both those directly and indirectly involved. To find out others' views, imagine what they think, do a KVI or an A.P.C. to list the possible views, ask the people to express their views</p> <p><b>GRAPHIC ORGANISER</b> This graphic identifies who's involved and what is there role...</p>	<p>In groups identify the <b>Position / Beliefs / Values</b> of the following groups when considering the following rights issue...</p> <p><b>What are the key values involved for each group? What do they believe?</b></p> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">Groups representing the Community</div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">Groups representing the Muslim Council of Australia</div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">Groups representing Civil Liberties Victoria</div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">Groups representing the Lawyers</div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">Groups representing the Defendant?</div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">Groups representing the Prosecution?</div> <div style="border: 1px solid black; padding: 10px; margin-top: 10px;"> <p style="text-align: center;"><b>Should a Victorian judge ban the wearing of the niqab in court's public gallery?</b></p> </div>
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**VOTE: Should a Victorian judge ban the wearing of the niqab in court's public gallery?**

**Total number of students \_\_\_\_\_ Vote for YES = \_\_\_\_\_ Vote for NO = \_\_\_\_\_**

# Case studies, reforms and contemporary examples across Units 1 and 2



In character as 'Kenny'

## Aussie star Shane Jacobson sued by former manager

Written by Peter Mickelborough, from the 'Herald Sun' on the 9<sup>th</sup> of August 2018

<https://www.heraldsun.com.au/news/victoria/aussie-star-shane-jacobson-sued-for-1m-by-former-manager/news-story/fdb7e1a9e8d961f5e0ec2c18fbecc1e9>



Shane Jacobson hosts *Little Big Shots*.

Read through the following case study and use the right hand side to annotate for the following matters:

1. Evidence of the type/s of civil law
2. Look for evidence of:
  - o The breach – what caused the issue
  - o The causation – the cause and effect
  - o The loss suffered – e.g. money
  - o Any limitation of actions – e.g. timeframe
  - o The burden & standard of proof rest
3. Who is the plaintiff and the defendant
4. What rights are protected by this case
5. Look for evidence of:
  - o The principles of justice: fairness, equality & access
  - o Methods or institutions to settle this dispute
  - o The remedies sought

The following newspaper article was written by Peter Mickelborough in the 'Herald Sun' on the 9<sup>th</sup> of August 2018, titled 'Aussie star Shane Jacobson sued by former manager'.

AN ugly legal stoush between Shane Jacobson and his manager kicked off because she couldn't bring a friend to the *Kenny* star's wedding.

Deb Fryers is suing her one-time client and close friend for a 15 to 20 per cent cut of the \$1 million her legal team argues he earned from his work on stage and screen as well as appearances and ad campaigns.

*The Little Big Shots* host said he had been completely "sideswiped" by the falling out with Ms Fryers and her subsequent action against him. Jacobson said he had paid Ms Fryers every cent she was owed and trusted that would ultimately be shown when he had his day in court.

He said it had been humiliating to have his earnings discussed publicly, but added that the incomes detailed were based on documents submitted by Ms Fryers and were not an accurate reflection of his actual income. "It was like I woke up to find my dirty underpants strewn all over the front lawn," he said. "It's been awful. Deb was like a sister to me. She was part of the family. It's been terribly disappointing."

Ms Fryers declined to comment on the matter but posted on social media that she thought her former client was an extraordinary talent and that it had been an "honour and a privilege to manage him." Jacobson said the relationship with his manager of 12 years soured when he wouldn't let her bring a friend to his February wedding to long-time partner Felicity Hunter.

Jacobson said he felt “abandoned” when the single Ms Fryers then decided not to attend the intimate garden ceremony. “It did cast dark clouds over what should’ve been a sunny week for us,” he said.

“But the sun came out beautifully on the day. Fliss and I had the day that we wanted with our closest friends and family around us. Ultimately you have to remember to look around at who is standing there behind you rather than worry about who is running away screaming.”

Adding to his hurt, Jacobson said Ms Fryers was using glowing statements of thanks he had once made about her in his 2013 autobiography in her claim. Jacobson said: “Yes I said those things and I meant them at the time. Sadly, things change. I never could have seen this coming.

“I think I will be classifying this episode under drama rather than comedy.” Jacobson split with his personal manager, publicist and “wingman” Deb Fryers in February after a partnership that stretched back to his breakthrough film, *Kenny*. In a writ filed in the County Court Ms Fryers claims she is entitled to commissions of between 15 and 20 per cent for Jacobsen’s star roles in *Little Big Shots*, *The Real Full Monty* and *The Rocky Horror Show* along with ads and other appearances.

According to the writ, Jacobson first asked Ms Fryer to be his manager in 2006 but a formal job description was not put in writing until April, 2014. Ms Fryer claims their relationship ended on February 13 this year. Ms Fryer alleges Jacobson has since failed to account for commissions totaling more than \$250,000 on income received after the split or pending on projects.

Unit 1: Guilt and Liability	Unit 2: Sanctions, Remedies and Rights
<p><b>Area of Study 3: Civil Liability</b></p> <ul style="list-style-type: none"> <li>• the purposes and types of civil law</li> <li>• key concepts of civil law, including breach, causation, loss, limitation of actions, the burden &amp; standard of proof</li> <li>• possible plaintiffs and defendants to a civil dispute</li> <li>• two areas of civil law and for each area of law:               <ul style="list-style-type: none"> <li>○ the rights protected by the law</li> <li>○ the elements required to establish liability</li> <li>○ the limitations of actions</li> <li>○ possible defences</li> <li>○ the role of statute law and common law in developing the elements and defences</li> <li>○ the impact of the breach on an aggrieved party</li> </ul> </li> </ul>	<p><b>Area of Study 2: Remedies</b></p> <ul style="list-style-type: none"> <li>• the principles of justice: fairness, equality &amp; access</li> <li>• methods used to resolve a civil dispute such as mediation, conciliation and arbitration</li> <li>• institutions that resolve civil disputes, such as tribunals, ombudsmen and complaints bodies</li> <li>• an overview of the role and civil jurisdictions of the Victorian courts</li> <li>• the role of the jury in a civil trial</li> <li>• the purposes of remedies</li> <li>• types of remedies, such as damages &amp; injunctions</li> <li>• two recent civil cases and for each case:               <ul style="list-style-type: none"> <li>○ an overview of the claim &amp; the central facts of the case</li> <li>○ dispute resolution bodies that may be or were involved</li> <li>○ methods of dispute resolution and their appropriateness</li> <li>○ remedies that were or could be awarded and their appropriateness</li> <li>○ possible avenues of appeal</li> <li>○ the extent to which the principles of justice were or could be achieved</li> </ul> </li> </ul>

## Unit 1 - Guilt and Liability - Area of Study 3: Civil liability

- the purposes and types of civil law
  - Contract Law
    - A contract is a legally binding agreement between two parties. A contract is valid and enforceable if the agreement contains sufficient evidence of the elements. An agreement that lacks one or more of these elements is not a valid contract.
    - The notion of breach of a contract:
      1. Failing to carry out what was agreed
      2. Unwilling to perform the contract;
    - A contract may be concluded in the following ways:
      1. performance;
      2. agreement between the parties;
      3. termination by frustration;
      4. breach of contract.
    - Issue: Must contracts be in writing?
      1. No; not all contracts need to be in writing. In some cases, statute law requires contracts to be in writing (e.g. contracts to buy and sell land, to buy a car, and door-to-door sales contracts). However, it is always useful to write down the terms agreed by the parties so later on there is less potential for dispute about what was agreed. A written contract can be drawn up by listing all the terms agreed by the parties and getting each party to sign and date the document.
  - key concepts of civil law, including breach, causation, loss, limitation of actions, the burden & standard of proof
    - breach
      - The notion of breach of a contract:
        1. Failing to carry out what was agreed
        2. Unwilling to perform the contract;
    - Causation
      - A connection between the defendant actions and the plaintiffs losses
      - A contract may be concluded in the following ways:
        1. performance;
        2. agreement between the parties;
        3. termination by frustration;
        4. breach of contract.
    - Loss
      - What harm has taken place?
      - 5 to 20 per cent cut of the \$1 million
    - Limitation of actions
      - Legal requirements
        1. Statutory limitations – Breach of Contract – up to 6 years
      - Legal costs to recover 5 to 20 per cent cut of the \$1 million
      - Defendants financial position
    - Burden & standard of proof
      - The burden rests on the plaintiff
      - The standard is on the balance of probabilities

- possible plaintiffs and defendants to a civil dispute
  - Actor - Shane Jacobson (aka 'Kenny') vs Manager - Deb Fryers
- two areas of civil law and for each area of law:
  - the rights protected by the law
    - The right to fulfil the terms of the agreement, that is to be paid the commission as agreed
    - The notion of breach of a contract:
      1. Failing to carry out what was agreed
      2. Unwilling to perform the contract;
  - the elements required to establish liability
    - Application of the following elements:
      1. an offer and an acceptance;
      2. an intention create a legally binding agreement between the parties
      3. Consideration or something of value
      4. Legal **capacity** to enter into contracts; Not all people free or able to enter into a valid contract such as people with a mental impairment, minors, bankrupts, companies or prisoners
      5. Genuine mutual **consent** of the parties
      6. Legality of the agreement.
  - the limitations of actions
    - Issue of discussion will be 'Legal costs to recover 5 to 20 per cent cut of the \$1 million' vs. the 'defendants financial position'
      7. Legal requirements do not seem relevant - Statutory limitations – Breach of Contract – up to 6 years
  - possible defences
    - The law provides for a number of defenses for breach of contract:
      1. Unconscionability - grossly unfair
      2. Mistake - Mutual or Unilateral
      3. Fraud - Misrepresentation
      4. Undue influence or duress.
  - the role of statute law and common law in developing the elements and defences
    - Statute Law
      1. Civil Procedure Act 2010 Vic
      2. Time limits to sue - Limitation of Actions Act 1959 Vic
      3. Types of Damages - Wrongs Act 1958 Vic
    - Common Law -
      1. The overarching purpose is the foundational principle of the Civil Procedure Act 2010. It is, in relation to civil proceedings, to facilitate the just, efficient, timely and cost-effective resolution of the real issues in dispute (s7(1)). As the Court of Appeal explained in *Mandie v Memart Nominees Pty Ltd* [2016] VSCA 4 at [42]:
      2. The CP Act has changed the litigation landscape. One of the main purposes of that legislation is to reform practice and procedure in civil proceedings, including by reforming the law relating to summary judgment. More than ever, the focus is now pointedly on efficiency and cost-effectiveness, albeit that they are not the only, nor the predominant, considerations.
      3. In furthering the overarching purpose, courts must remain alert to the fundamental requirement that trials be conducted fairly and in accordance

with principles of procedural fairness (Hodgson v Amcor Ltd; Amcor Ltd v Barnes (No 3) [2011] VSC 272 at [28]; Dura (Aust) Pty Ltd v Hue Boutique Living Pty Ltd (No 2) [2011] VSC 518 at [29]; see also Charter of Human Rights and Responsibilities Act 2006 s24(1), referred to in Hodgson v Amcor; Amcor Ltd v Barnes (No 3) [2011] VSC 272 at [29]).

- the impact of the breach on an aggrieved party
  - Impact
    1. Obligations by law or by the terms of the agreement
    2. Financial issue between the two parties
    3. Cost of running a legal case vs. amount recoverable
    4. Social & emotional.

## Unit 2 - Sanctions, Remedies and Rights - Area of Study 2: Remedies

- the principles of justice: fairness, equality & access
  - Apply the principles of justice to this case
    1. How does fairness apply?
    2. How does equality apply?
    3. How does access apply?
- methods used to resolve a civil dispute such as mediation, conciliation and arbitration
  - How would actor Shane Jacobson and ex manager, Deb Fryers resolve their dispute prior to going to court?
    1. Self help
    2. Seek Legal Advice and possibly individual initiated mediation (if so how)
      - a. Conciliation or arbitration will not apply in this case. Why?
    3. Court ordered mediation (if so how)
    4. Judicial determination
- institutions that resolve civil disputes, such as tribunals, ombudsmen and complaints bodies
  - Not applicable for this case
- an overview of the role and civil jurisdictions of the Victorian courts
  - How would actor Shane Jacobson and ex manager, Deb Fryers resolve their dispute prior to going to court?
    1. Self help
    2. Seek Legal Advice and possibly individual initiated mediation (if so how)
      - a. Conciliation or arbitration will not apply in this case. Why?
    3. Court ordered mediation (if so how)
    4. Judicial determination
- the role of the jury in a civil trial
- the purposes of remedies
- types of remedies, such as damages & injunctions
  - There are three main remedies for breach of contract that you can obtain from a court:
    1. Damages: A breach of contract – whether it is a breach of a condition, or an intermediate term, or a warranty – entitles the wronged party to damages, regardless of whether or not the breach has caused loss. If no loss can be proven, the wronged party is still entitled to “nominal damages” (recent case law suggests that this is approximately \$100).

2. Specific performance: A wronged party can seek orders from a court compelling the party who breached the contract to perform the contract. For example, if A is in breach of a contract by failing to attend settlement to transfer land to B, B can seek a court order forcing A to attend settlement and transfer the land to B.
  3. Termination: A breach may entitle the wronged party to terminate the contract in the following circumstances:
    - a. where the contract provides a right to terminate in the case of such a breach;
    - b. where the breach constitutes “repudiation”, which is when a party shows an intention to no longer be bound by the contract, or to only perform it in a matter that is substantially inconsistent with their obligations;
    - c. where a party breaches a condition and fails to perform an obligation that is considered an essential term of the contract;
    - d. where a party breaches an intermediate term and fails to perform an obligation that causes substantial loss of benefit to the wronged party.
- two recent civil cases and for each case:
    - an overview of the claim & the central facts of the case
    - dispute resolution bodies that may be or were involved
    - methods of dispute resolution and their appropriateness
    - remedies that were or could be awarded and their appropriateness
    - possible avenues of appeal
    - the extent to which the principles of justice were or could be achieved



# Case studies, reforms and contemporary examples across Units 1 and 2



Dustin Martin spoke to his deported father Shane on radio after winning the AFL Grand Final with Richmond

## Deporting foreign criminals brings big savings to taxpayers

Written by Keith Moor for the Herald Sun on the 17<sup>th</sup> of July 2018

<https://www.heraldsun.com.au/news/law-order/deporting-foreign-criminals-brings-big-savings-to-taxpayers/news-story/6289b5ac884d9db1a909c2272bc67e3b>



Rebels motorcycle club member Alex 'AJ' Graham was stripped of his Australian visa



Minister for Home Affairs Peter Dutton.



Former Rebels Motorcycle club national president Alex Vella was stripped of his Australian visa

Read through the following case study and use the right hand side to annotate for the following matters:

- |  |  |
|--|--|
| <ol style="list-style-type: none"> <li>1. Evidence of the role of individuals, laws &amp; the legal system in achieving social cohesion and protecting the rights of the individual or the community.</li> <li>2. Evidence of the sources and types of law involved, such as common law, statute law, criminal law and civil law.</li> <li>3. Look for evidence of the principles of justice: fairness, equality and access</li> </ol> | <ol style="list-style-type: none"> <li>4. Look for evidence of the characteristics of an effective law:             <ul style="list-style-type: none"> <li>o Identify society's values</li> <li>o Was the law enforceable</li> <li>o Is the law known</li> <li>o Is it clear &amp; understood</li> <li>o Is it stable</li> </ul> </li> </ol> |
|--|--|

The following newspaper article was written by Keith Moor for the Herald Sun on the 17<sup>th</sup> of July 2018, titled 'Deporting foreign criminals brings big savings to taxpayers'.

HUNDREDS of millions of taxpayer dollars have been saved by kicking thousands of foreign-born criminals out of Australia. Figures released to the *Herald Sun* reveal a continuing blitz on such offenders by Home Affairs Minister Peter Dutton has already resulted in almost 3700 violent thugs, sex perverts and drug traffickers being stripped of their visas.

Australian Institute of Criminology researchers recently forensically examined the circumstances of 184 of them and found cancelling just those few visas saved more than \$100 million. It was too big a task for the AIC to study the thousands of visa cancelling cases to work out the total saving to Australian taxpayers — but it runs into hundreds of millions of dollars.

Changes made in December 2014 allow Mr Dutton or his delegate to cancel or refuse the visa of a person on the grounds they don't meet the character requirements set out in the Migration Act. Being a member or former member of an organisation reasonably suspected of being involved in crime — such as any bikie or ex-bikie — is now sufficient for Mr Dutton to cancel that person's visa.

The *Herald Sun* can reveal that as of June 30 this year that character test power has been used against 3687 foreign-born criminals. Mr Dutton on Tuesday said bikie gang members were the biggest importers and distributors of drugs in Australia.

“Right across our country we've been working with the state policing agencies to identify the top criminal targets — including outlaw motorcycle gang members who are peddling ice to our young people in rural communities and regional communities — and we are cancelling those visas and deporting those people,” he told the *Herald Sun*.

“I've cancelled more visas of non-citizens who have committed crimes against Australian citizens in the last 12 months than Labor did in six years and that means that communities right across this country are safer.”

Of the 3687 criminals stripped of their Australian visas since December 2014, 1219 of them were convicted of assaults, grievous bodily harm, domestic violence and other violent crimes; 633 were drug traffickers and dealers; there were 151 rapists; 98 killers and 1586 people convicted of theft, robbery, white collar and other crimes. The AIC recently examined the cases of 139 bikies and 45 other foreign-born organised crime offenders who were ordered out of Australia during the past four years.

Its report, which has been seen by the *Herald Sun*, revealed: CANCELLING and refusing the visas of the 184 organised crime offenders saved an estimated \$116 million. BIKIES commit more crimes and more serious crimes than other organised crime offenders.

BY the age of 60, the average bikie in Australia will have spent almost seven years in jail at a cost to taxpayers of more than \$800,000 for each of them. CRIMES committed by bikies cost the community an average of \$526,462 per bikie compared with the average cost of just under \$320,000 for other organised crime offenders.

BIKIES are significantly more likely to have committed violent offences than other organised crime figures. CANCELLING a bikie's visa at age 20 would save the Australian taxpayer an average of \$1.3 million per offender. Notorious

bikies who have been stripped of their Australian visas after failing the character test include former Rebels national president Alex Vella, Aaron “AJ” Graham and Danny Mousley.

The Australian Criminal Intelligence Commission asked the AIC to calculate the taxpayer savings associated with cancelling or refusing the visas of bikies and other organised crime members — and to establish the extent and type of offending by bikies compared with other organised criminals.

To enable it to do so the ACIC gave the AIC access to its extensive databases and the conclusions reached in the AIC report were based on a sample of 6154 offenders responsible for 97, 706 offences committed by 611 bikies and 5543 other organised crime figures. The AIC report said the \$116 million taxpayers saved as a result of the 184 visa cancellations it studied is a very conservative figure as it doesn't include the cost of police investigating the crimes or the cost of processing the offenders through the courts.

“Offending by Outlaw Motorcycle Group members starts serious and stays serious, while the seriousness of offending by other organised crime offenders increases over time,” it said. “Cancelling the visas of these individuals prevents them from committing further offences in Australia, which, besides the obvious benefits to community safety, may also generate significant savings to the Australian taxpayer.”

Of the 3687 foreign-born criminals stripped of their visas since December 2014, 1299 of them were from New South Wales, 1009 were from Queensland, 627 were from Victoria and 543 were from Western Australia.

Of the 184 cases examined by the AIC, 52 were from NSW, 42 from WA, 28 from Queensland and 24 from Victoria

### Area of Study 1: Legal foundations

- the role of individuals, laws & the legal system in achieving social cohesion and protecting the rights of the individual
- the principles of justice: fairness, equality and access
- characteristics of an effective law, such as reflects society's values, enforceable, known, clear & understood, & stable
- sources of law, such as common law and statute law
- an overview of the relationship between parliament and the courts
- types of law, such as criminal law and civil law
- the distinction and relationship between criminal law and civil law
- an overview of, and reasons for, the Victorian court hierarchy

# Teens charged with more than 100 offences over Melbourne crime spree

Written by Melissa Cunningham for 'The Age' on the 8<sup>th</sup> of November 2018  
<https://www.theage.com.au/national/victoria/teens-charged-with-more-than-100-offences-over-melbourne-crime-sprees-20181108-p50eo1.html>

Read through the following case study and use the right hand side to annotate for the following matters:

1. Evidence of the purpose/s of criminal law
2. Look for evidence of:
  - o the elements of a crime (actus reus & mens rea), strict liability,
  - o the age of criminal responsibility,
  - o the burden and standard of proof
3. The type of crime such as summary offence or indictable offence
4. Identify the participants in a crime, including principal offenders & accessories
5. Trends & statistics in relation to the offence in Victoria
6. Look for evidence of the principles of justice: fairness, equality & access
7. Look for evidence of the impact of the crime on the individuals & the community.

The following newspaper article was written by Melissa Cunningham for 'The Age' on the 8th of November 2018, titled 'Teens charged with more than 100 offences over Melbourne crime spree'.

Five teenagers from Melbourne's north are facing more than 100 charges between them over a spate of house burglaries and car thefts. Police arrested seven male teens following overnight raids in Meadow Heights, Campbellfield, Roxburgh Park and Dallas.

Two 17-year-old boys from Meadow Heights and Dallas were charged with 46 offences each, including burglaries and vehicle thefts.

A 15-year-old boy, also from Meadow Heights, was charged with 12 offences, including two counts of burglary and three counts of vehicle theft.

The three teens were remanded to appear at a children's court on Thursday. Police also seized seven vehicles, jewellery, tools, an imitation fire arm, stolen registration plates and cannabis.

Meanwhile, a 19-year-old from Roxburgh Park was charged with five offences, including burglaries and vehicle thefts, and bailed to appear at Broadmeadows Magistrates Court on February 20.

An 18-year-old from Campbellfield was charged with three offences, including possessing counterfeit money and careless driving, and bailed to appear at Broadmeadows Magistrates Court on February 18. An 18-year-old from Roxburgh Park was charged with possessing cannabis and given a caution, while a 16-year-old, also from Roxburgh Park, was released pending summons.

Police are yet to reveal which suburbs the alleged crimes involving the seven teens relate to. However, the raids came after a string of violent burglaries and assaults across Melbourne in recent weeks. Up to six males smashed their way into a house in Brunswick West wielding knives and hammers on October 30.

Two victims inside the house were forced to hand over money and jewellery, before the offenders fled with the stolen items and a black Jeep Cherokee, police said. A day later, residents in Melbourne's southern suburbs were also assaulted, egged and threatened during a 10-hour crime spree that spanned six suburbs on Halloween night. Last Thursday, police said a group of youths also engaged in "vicious, unprovoked, ugly" assaults outside St Kilda's popular Donovans restaurant.

The large group of youths, believed to be as many as 15, were seen roaming St Kilda's foreshore on Thursday night before they set upon a young chef and another man. The

most recent incidents have shined a light on crime in the lead-up to the November 24 election.

After the St Kilda incident, Victorian Police Minister Lisa Neville vowed that offenders would be "identified by police, arrested and held accountable for their actions." Opposition Leader Matthew Guy also weighed into the crime debate on Friday, saying that first-time carjackers and home invaders would be fitted with GPS tracking anklets while on parole if the coalition wins the Victorian election.

The devices would be fitted to offenders for a minimum two years if they had been convicted of those crimes, but avoided a custodial sentence, he said. In 2017, Victoria saw a drop in aggravated burglaries per 100,000 people, falling from 67 in 2016 to 59. But while the rate has decreased, 2017 was still the second-worst year in the past decade for aggravated break-ins.

The Melbourne local government areas with the highest rate of residential aggravated burglaries in 2017 were Port Phillip (112 offences per 100,000 people), Yarra (100), Melbourne (86), Maribyrnong (80) and Greater Dandenong (77).

### Unit 1 – Guilt and Liability – Area of Study 2: The presumption of innocence

- the purposes of criminal law
- the presumption of innocence
- key concepts of criminal law, including the elements of a crime (actus reus & mens rea), strict liability, the age of criminal responsibility, the burden and standard of proof
- types of crimes, such as crimes against the person and crimes against property
- the distinction between summary offences & indictable offences
- possible participants in a crime, including principal offenders & accessories
- two criminal offences for each offence:
  - the elements of the offence
  - possible defences
  - the role of statute & common law in developing the elements of the offence & the defences
  - trends & statistics in relation to the offence in Victoria & in one other jurisdiction
  - the possible impact of the offence on individuals & society

### Unit 2 – Sanctions, Remedies and Rights – Area of Study 1: Sanctions

- the principles of justice: fairness, equality & access
- institutions which enforce criminal law, such as the police & delegated bodies
- the balance between institutional powers and individual rights
- an overview of the role and criminal jurisdictions of the Victorian courts
- the role of the jury in a criminal trial
- the purposes of sanctions: punishment, deterrence, denunciation, protection and rehabilitation
- types of sanctions, such as fines, community correction orders & imprisonment
- factors considered by judges in sentencing
- **Aspects of sentencing practices in Victoria and in one other jurisdiction**
- alternative approaches to sentencing, such as the use of the Drug Court, the Koori Courts and diversion programs
- two recent criminal cases and for each case:
  - an overview of the charges and the central facts of the case
  - courts that may be or were involved
  - sanctions that could be or were imposed and their appropriateness
  - factors that may be or were taken into consideration in sentencing
  - possible avenues of appeal
  - the extent to which the principles of justice were or could be achieved.

## \$25 million in assets confiscated in crackdown on wealthy criminals

The following article was written by Tom Minear, for the Sunday Herald Sun on the 29 of September 2018

<https://www.heraldsun.com.au/news/law-order/25-million-in-assets-confiscated-in-crackdown-on-wealthy-criminals/news-story/d0fc97bef1e611555d1364e5431c87c8>

Read through the following case study and use the right hand side to annotate for the following matters:

1. Outline the purposes of the confiscation of assets legislation. How is this money used and how appropriate do you think this is? Justify your answer. (4 Marks)
2. Describe the types of crimes or offences that confiscation of assets legislation is primarily used for. (2 Marks)
3. What is meant by an automatic forfeiture order? (1 Mark)
4. Illustrate how the characteristics of an effective law apply to the confiscation of assets legislation. (5 Marks)
5. The Confiscation Act 1997 is a law made by the Victorian Parliament. Using a diagram outline the relationship between parliament, subordinate authorities (Asset Confiscation Operations Unit) & the courts in relation to the confiscation of assets. (4 Marks)
6. Identify two reasons why property seized from crime is sold at public auction by Asset Confiscation Operations. (4 Marks)
7. Compare the trends & statistics in relation to confiscation of assets in Victoria with one other jurisdiction. Identify the similarities and differences. (e-learning research) (6 Marks)
8. To what extent do the confiscation of assets legislation demonstrate the principles of justice: fairness, equality and access? In your answer describe the possible impact of the offence on individuals & society. (9 Marks)

AUTHORITIES seized a massive \$70,000 a day in cash, property, cars and other assets from criminals last year. The Sunday Herald Sun can reveal \$25 million in assets was forfeited overall, the second-highest amount in a decade. The crackdown helped deliver \$2.4 million in compensation payments to victims of crime. New figures show the state government's asset confiscation operations unit succeeded in seizing assets in about 2500 cases in the past financial year.

In the most lucrative case, a whopping \$3.8 million in cash was taken from a serious drug offender. Attorney-General Martin Pakula said the government had passed laws making it easier for Victoria Police and the courts to "shut down the activities and operations of criminal organisations". "We've strengthened our laws to make them some of Australia's most comprehensive confiscation laws to disrupt and deter serious and organised crime,".

The \$25 million total was up from \$18 million worth of assets confiscated in 2017, and was well above all other years except for 2016, when authorities confiscated property and cash valued at \$32.8 million.

Authorities succeeded in two "unexplained wealth" forfeiture cases, where criminals were unable to explain how they had acquired money or property lawfully.

That resulted in \$4.9 million being confiscated — including \$2.9 million in cash. Almost 20 bank accounts were forfeited with a total value of \$350,000, and \$12.1 million in cash was seized overall. Police also auctioned 103 vehicles, making \$164,000, with only five vehicles selling for more than \$10,000. Police seized weapons, drugs and cash in a western suburbs raid this week.

The asset confiscation operations unit's annual report showed the state's courts made 2306 forfeiture orders following convictions, leading to the seizure of \$4.8 million in property and assets. Another 49 automatic forfeiture orders were issued against people convicted of serious drug and dishonesty offences, delivering an extra \$6.9 million to the state's coffers.

The courts also issued 122 penalty orders against criminals, which required them to pay a combined total of \$2.8 million, which covered the amount they were deemed to have benefited from their criminal activities. More than \$170 million in assets, cash and property have been confiscated by Victorian authorities over the past decade.



# Victoria Supreme Court rules farting not workplace bullying

The following article was written by David Marin-Guzman for the Australian Financial Review on the 9th of April 2018

<https://www.afr.com/news/policy/industrial-relations/victoria-supreme-court-rules-farting-not-workplace-bullying-20180409-h0yit9>

Read through the following case study and use the right hand side to annotate for the following matters:

1. Provide an overview of the claim & the central facts of the case. (4 Marks)
2. Describe the dispute resolution bodies that may be or were involved. (3 Marks)
3. Evaluate the dispute resolution body that was involved and discuss its appropriateness in settling this case. (6 Marks)
4. Outline the remedies that were sought in this case and discuss their appropriateness. (5 Marks)
5. To what extent were the principles of justice achieved by the Victorian Supreme Court throwing out an almost \$2 million negligence case against a construction company? In your answer outline the possible avenues of appeal for the plaintiff, and analyse the cost associated with this trial. (7 Marks)

The Victorian Supreme Court has thrown out an almost \$2 million negligence case against a construction company, rejecting claims a manager farting at a subordinate amounted to workplace bullying.

Justice Rita Zammit rejected allegations by retrenched contract administrator David Hingst from Melbourne firm Construction Engineering Australia that his supervisor repeatedly abused him, resulting in depression, anxiety and physical injuries equating to \$1.8 million in damages.

Among the series of claims, the administrator alleged his supervisor would regularly "lift his bum and fart" on him or at him and that the behaviour progressed to the point where he would do it every day. Mr Hingst said Mr Short's behaviour was insulting and humiliating and that he had responded by buying a can of deodorant and spraying it over Mr Short. On one occasion, he refused to step into a lift with Mr Short and, when asked why, called him "Mr Stinky".

During the 18-day trial involving more than a dozen witnesses, the supervisor denied regularly passing wind in the communal office. He said he could not recall thrusting his backside at Mr Hingst and pretending to fart, although he conceded he could not rule it out either.

"I may have done it once or twice, maybe. But I can't recall." One former employee said he witnessed Mr Short fart when he walked over to the printer but argued it was typical office "mucking around".

He said Mr Hingst may have been offended because he was of German descent, "whereas us Australians are sort of brought up you sort of accept it or think oh it's just – that's what happens". Justice Zammit said the evidence suggested Mr Short's flatulence was "an offence that has its origins in cultural difference – rather than the sort of fear, distress, humiliation or victimisation that one would ordinarily expect in a bullying scenario".

The judge rejected claims about the frequency of the supervisor's flatulence or that it was targeted at Mr Hingst. She said even if the claims were true, it would not necessarily amount to bullying. "It is difficult to see how Mr Short's conduct could have intimidated or caused distress to the [administrator]," the judge said.

"[Mr Hingst] was able to spray Mr Short with deodorant and give him the nickname 'Mr Stinky'. Indeed, on [his] own evidence, had he not lost his job and been abused over the telephone, the flatulence would 'never have been a big



issue'." On allegations Mr Short yelled at Mr Hingst several times over the phone that he had "f---ed up" and was "not worth [his salary]", the judge found no supportive evidence for the claim.

She concluded no Construction Engineering Australia staff had bullied or harassed Mr Hingst and noted evidence that domestic stress and dismissal probably led to Mr Hingst's psychiatric injuries. "It is in a sense tragic that the plaintiff's redundancy appears to lie at the heart of his problems. "It seems, regrettably, to have generated a misplaced sense of unfairness at the loss of his job."

Unit 1: Guilt and Liability	Unit 2: Sanctions, Remedies and Rights
<p><b>Area of Study 3: Civil Liability</b></p> <ul style="list-style-type: none"> <li>• the purposes and types of civil law</li> <li>• key concepts of civil law, including breach, causation, loss, limitation of actions, the burden &amp; standard of proof</li> <li>• possible plaintiffs and defendants to a civil dispute</li> <li>• two areas of civil law and for each area of law:               <ul style="list-style-type: none"> <li>○ the rights protected by the law</li> <li>○ the elements required to establish liability</li> <li>○ the limitations of actions</li> <li>○ possible defences</li> <li>○ the role of statute law and common law in developing the elements and defences</li> <li>○ the impact of the breach on an aggrieved party</li> </ul> </li> </ul>	<p><b>Area of Study 2: Remedies</b></p> <ul style="list-style-type: none"> <li>• the principles of justice: fairness, equality &amp; access</li> <li>• methods used to resolve a civil dispute such as mediation, conciliation and arbitration</li> <li>• institutions that resolve civil disputes, such as tribunals, ombudsmen and complaints bodies</li> <li>• an overview of the role and civil jurisdictions of the Victorian courts</li> <li>• the role of the jury in a civil trial</li> <li>• the purposes of remedies</li> <li>• types of remedies, such as damages &amp; injunctions</li> <li>• two recent civil cases and for each case:               <ul style="list-style-type: none"> <li>○ an overview of the claim &amp; the central facts of the case</li> <li>○ dispute resolution bodies that may be or were involved</li> <li>○ methods of dispute resolution and their appropriateness</li> <li>○ remedies that were or could be awarded and their appropriateness</li> <li>○ possible avenues of appeal</li> <li>○ the extent to which the principles of justice were or could be achieved</li> </ul> </li> </ul>

<p style="text-align: center;"><b>Case studies, reforms and contemporary examples across Units 1 and 2</b></p> <p style="text-align: center;"><b>Changes or Reforms</b></p>	Legal Studies Course - Unit 1 & 2					
	Unit 1 - AoS1 - Legal Foundations	Unit 1 - AoS2 - Presumption of Innocence	Unit 1 - AoS3 Liability	Unit 2 - AoS1 - Sanctions	Unit 2 - AoS2 - Remedies	Unit 2 - AoS3 - Rights
Privacy Changes - Privacy Amendment (Notifiable Data Breaches) Act 2017	✓					
Legal Grants to Support Vulnerable Victorians	✓	✓		✓		
New Funding Grants for Legal Assistance Services	✓	✓		✓		
Victorian Law Reform Commission to review and report on the Victorian committal system & contempt of court laws	✓	✓		✓		
New laws to protect emergency workers	✓	✓		✓		
Improving Justice Outcomes for Aboriginal People	✓	✓		✓		✓
Reforms to Streamline and Modernise Appeals	✓	✓		✓		
Strengthening Laws to Disrupt Criminal Gangs	✓	✓		✓		
New Counter-Terrorism Laws to Keep the Community Safe	✓	✓		✓		
<b>Stronger, safer, fairer: investing in Victoria's justice system</b>	✓	✓		✓		
New Laws for Better Access to Civil Justice	✓		✓		✓	
New penalties for drivers caught speeding 25kmh-35kmh over the limit	✓	✓		✓		
Government announces proposed changes to the Family Law System to introduce a new court known as the Federal Circuit and Family Court of Australia (FCFCA)	✓		✓		✓	
Review of the Residential Tenancies Act & New rental laws pass Victorian parliament, strengthening tenants' rights	✓		✓		✓	

## Privacy Changes - Privacy Amendment (Notifiable Data Breaches) Act 2017

<https://home.kpmg.com/au/en/home/insights/2017/05/privacy-act-changes-australian-organisations.html>

Data breach notification will become mandatory as of February 2018 for all Australian entities required to comply with the Privacy Act 1988. When Federal Parliament passed the Privacy Amendment (Notifiable Data Breaches) Act 2017 last year, it started a process that means from February 22, 2018, all entities covered by the Australian Privacy Principles will have clear obligations to report eligible data breaches within 30 days. If an eligible data breach is confirmed, entities must provide a statement to each of the individuals whose data was breached or who are at risk, and notify the Office of the Australian Information Commissioner (OAIC).

## Legal Grants to Support Vulnerable Victorians

<https://www.premier.vic.gov.au/category/ministers/attorney-general/>

The Attorney-General announced \$4.55 million in grants. Women and children escaping family violence and Victorians with mental illness are among those who will benefit from the funding boost for organisations providing legal assistance and programs. During the past 10 years, the Victorian Legal Services Board grant program has awarded more than \$39 million in grants to improve the administration of laws, increase access to justice, improve legal services and inform and educate the community about legal issues.

Under the program, 18 organisations will share in the 2018 funding allocation to provide support to deal with a wide range of community legal issues including family violence, women's prison programs, and legal education in ethnically diverse communities.

A key project funded under this year's grant program is Anglicare Victoria's *Clean Slates: A health justice partnership between Gippsland Community Legal Service and Community Mental Health Service* – which will provide more accessible and timely access to legal services for people with mental health problems in the Latrobe region.

## New Funding Grants for Legal Assistance Services

<https://www.premier.vic.gov.au/new-funding-grants-for-legal-assistance-services/>

The Government has announced \$2 million to support community legal centres across the state to help disadvantaged Victorians.

The grants will support the extension of existing integrated partnerships, or the delivery of integrated services between legal centres and other service providers. Integrated services give vulnerable members of the community better access to legal and social services.

The grants will be administered by the Federation of Community Legal Centres, with applications assessed by an independent evaluation panel set up by the organisation.

Integrated services such as the Health Justice Partnerships work by placing lawyers at health services to help vulnerable clients experiencing legal difficulties.

## Victorian Law Reform Commission to review and report on the Victorian committal system

<https://www.premier.vic.gov.au/major-review-of-victorias-committal-system/>

In Victoria, committal proceedings are held before a magistrate to determine whether, in the case of more serious criminal offences, there is sufficient evidence to support a conviction.

In recent years, a number of legislative and procedural reforms have sought to improve the committal process. In addition, the Government has consulted on an early case management model and has received a proposal for reform from the Director of Public Prosecutions.

Under the terms of reference, the Commission will consider best practices for supporting victims and examine:

- whether Victoria should maintain, abolish, replace or reform the current committal system
- opportunities for reform that enable early identification of cases that can be determined summarily, encourage appropriate early guilty pleas, facilitate efficient use of court time and encourage parties' proper preparation for trial
- ways of improving early disclosure processes in criminal prosecutions brought in the indictable stream
- if, when and in what circumstances witnesses should be examined prior to trial, including consideration of ways to minimise the need for victims and other vulnerable witnesses to give evidence multiple times
- whether a magistrate should determine if there is sufficient evidence to commit an accused to stand trial and, if so, what test to apply, having regard to the Director of Public Prosecutions' power to directly indict, and
- the impacts of any recommended changes on the all parts of the criminal justice system, and what will be needed to ensure the successful implementation and operation of those changes, including resource implications.

The Commission will consult widely in undertaking its review, including with courts, government stakeholders, the legal profession and victims' groups. The review will report back to government in March 2020. A copy of the full terms of reference is available at [lawreform.vic.gov.au](http://lawreform.vic.gov.au)

VLRC to review and report on the Victorian committal system. The terms of reference include whether Victoria should maintain, abolish, replace or reform the current committal system

## Victorian Law Reform Commission to review and report on contempt of court laws

<https://www.premier.vic.gov.au/major-review-of-contempt-of-court-laws/>

Victorian Law Reform Commission to review contempt of court laws and consider whether they need to be modernised to enhance public confidence in the justice system and allow for clearer enforcement. The Commission's review responds to recommendations made by former Supreme Court Judge Frank Vincent following his review of the *Open Courts Act 2013*.

Under the terms of reference, the Commission will examine:

- contempt in the face of the court, such as disrupting or obstructing court proceedings
- sub judice contempt, such as publishing information that could interfere with a court proceeding or a person's right to a fair trial
- juror contempt, such as a juror acting improperly by conducting an unauthorised internet search while participating in a trial
- contempt by breach of court order, such as publishing information that breaches a suppression order
- contempt by scandalising the court, such as an ongoing interference of justice by publishing information casting doubt on the integrity and impartiality of a judicial officer.

The Commission will also examine the *Judicial Proceedings Reports Act 1958*, which restricts reports on certain judicial proceedings, and consider whether it should be reformed to better align with the Open Courts Act.

The Commission will also assess whether existing penalties for breaching publication restrictions are adequate, and whether the level of fault required to prove these offences is appropriate.

Relevant defences and the process for enforcing penalties will be reviewed.

Consideration will be given to whether temporary restrictions on publication should be introduced to better protect victims at the time that alleged perpetrators are charged with sexual or family violence related offences, drawing on a key recommendation of the Open Courts Act Review.

The Commission will make recommendations about existing suppression orders made before the introduction of the Open Courts Act. The review is expected to be completed by the end of 2019.

A copy of the full terms of reference is available at [lawreform.vic.gov.au](http://lawreform.vic.gov.au)

## New laws to protect emergency workers

<https://www.premier.vic.gov.au/new-laws-pass-parliament-to-protect-emergency-workers/>

The Government has passed new laws that crack down on people who attack and injure emergency workers on duty by making sure they are given a custodial sentence, as well as further limiting the use of community correction orders.

The *Justice Legislation Miscellaneous Amendment Bill 2018* has passed Parliament and makes injuring an emergency worker – including police, paramedics, doctors and nurses delivering or supporting emergency care, firefighters and prison officers – a category 1 offence under the *Sentencing Act 1991*.

Under these new laws, courts will have to impose a custodial sentence and will not be able to sentence offenders to a community correction order or other non-custodial outcome, even after determining that special reasons apply and that the statutory minimum sentence should not be imposed.

As a result of the Government's engagement with emergency worker unions, the new laws also provide a very narrow exception for cases involving offenders with a mental or cognitive impairment.

The new laws also significantly restrict the special reasons that courts can consider – in order not to impose a statutory minimum or a custodial sentence for a category 2 offence – by:

- making it clear that offenders cannot rely on impaired mental functioning where it was caused solely by self-induced intoxication, by drugs or alcohol
- changing the way existing law applies to young offenders, with people aged 18 to 20 years at the time of their offence no longer able to rely upon their immaturity as a special reason
- ensuring that if impaired mental functioning is relied upon because it will make imprisonment more risky or burdensome, this must be materially and substantially greater than usual
- narrowing the existing special reason of 'substantial and compelling circumstances'.

The Director of Public Prosecutions has also been given new powers to appeal any decision which involved a finding of 'special reasons' if she considers the finding resulted in an inadequate sentence.

## Improving Justice Outcomes for Aboriginal People

<https://www.premier.vic.gov.au/category/ministers/attorney-general/>

The Victorian Government is strengthening self-determination and reducing the over-representation of Aboriginal people in Victoria's justice system as part of a major boost under *Burra Lotjpa Dunguludja*, the fourth phase of the Victorian Aboriginal Justice Agreement.

The Government is investing \$40.3 million as part of a five-year agreement.

The Agreement is a partnership between the Government and the Aboriginal community that was developed in response to the Royal Commission into Aboriginal Deaths in Custody.

The Agreement focuses on four key areas including: strong and safe Aboriginal families and communities, fewer Aboriginal people in the criminal justice system, a more effective justice system with greater Aboriginal involvement and increased self-determination for Aboriginal people in the justice sector.

Funding to implement the Agreement includes:

- \$15 million for a range of community-led self-determination initiatives, including the expansion of Aboriginal Community Justice Panels across the state
- \$12.3 million to expand Koori Courts in the County, Magistrates' and Children's Courts and to strengthen the Koori Victims of Crime Assistance Tribunal list
- \$10.8 million for a number of Aboriginal youth justice initiatives, including boosting the Aboriginal Liaison Officer Program and establishing the Elders In-reach program in youth justice custody centres
- \$2.2 million to expand the Statewide Indigenous Arts in Prisons and Community Program.

In addition to this major investment, a further \$600,000 is being provided to begin developing a new non-custodial facility to help Aboriginal women get back on track.

*Burra Lotjpa Dunguludja* means 'senior leaders talking strong' in Yorta Yorta language and it reflects the enduring dialogue between government and Aboriginal leaders to improve the justice system for Aboriginal people.

## Reforms to Streamline and Modernise Appeals

The Victorian Government is modernising Victoria's appeals system, reducing the burden on victims and witnesses and making appeal processes more efficient.

The *Justice Legislation Amendment (Unlawful Association and Criminal Appeals) Bill 2018* will abolish 'de novo' appeals of criminal cases to the County Court.

Currently, when a person is found guilty by the Magistrates' or Children's court and appeals their conviction, the County Court must hear all evidence again and reach a new decision. Essentially, appeals are a new – or *de novo* – hearing.

The current system places a considerable burden on victims and witnesses, who are required to give their evidence again during appeal proceedings. The system also consumes large amounts of County Court time and resources.

The reforms will see conviction appeals decided on transcripts of evidence from the original trial, with further evidence received only if the County Court considers it to be in the interests of justice. An accused will no longer be able to change their plea on appeal without leave under the new laws.

Sentence appeals will also be determined on evidence and materials before the original court, and may only be allowed if the County Court considers there is a compelling reason to impose a different sentence. The Magistrate's reasons for the original sentence must be taken into account when considering the appeal.

Additional evidence, material or information relating to matters that occurred after sentencing may also be considered.

*De novo* appeals against final orders made by the Family Division of the Children's Court will similarly be abolished under the reforms.

## Strengthening Laws to Disrupt Criminal Gangs

<https://www.premier.vic.gov.au/strengthening-laws-to-disrupt-criminal-gangs/>

The Victorian Government is giving police the powers they need to disrupt serious and organised crime in Victoria through new laws introduced into Parliament today, delivering on commitments under the Community Safety Statement 2018/19.

The *Justice Legislation Amendment (Unlawful Association and Criminal Appeals) Bill 2018* will amend and clarify laws designed to prevent the formation of criminal networks, by prohibiting those convicted of serious offences from associating with others.

These laws were developed in consultation with Victoria Police, and are designed to help police prevent serious offending by outlaw motorcycle gangs, organised crime families and small numbers of violent young people.

The minimum age of a person that may be subject to a notice not to associate with a convicted offender will be reduced from 18 to 14 years, regardless of whether the person receiving the notice has a criminal conviction. This will assist police to prevent vulnerable young people becoming involved in serious and organised crime.

Officers at or above the rank of Sergeant will be able to issue notices, ensuring the powers are accessible to officers closer to the frontline of day-to-day policing. Previously only officers at the rank of Senior Sergeant or above were able to issue notices.

This Bill also contains protections for vulnerable people, including children. If the offender is a child, he or she can only be the subject of a notice if convicted of one of a limited list of serious youth offences.

Notices issued against children, Aboriginal people, or those with a cognitive, physical or mental health impairment will expire after 12 months – rather than the usual three years – and must be approved by a more senior police officer.

Under the reforms, the conviction of an offender named in an Unlawful Association Notice must not have been more than ten years ago, ensuring the scheme only applies to those recently involved with crime. Exceptions to this rule will apply for serious and sexual offences, which can always form the basis of a notice.

The Independent Broad-Based Anti-Corruption Commission will also be given a new oversight role, reviewing notices and monitoring the operation of the scheme. This includes consulting with the Commissioner for Children and Young People, and the Commissioner for Aboriginal Children and Young People.

## New Counter-Terrorism Laws to Keep the Community Safe

<https://www.premier.vic.gov.au/new-counter-terrorism-laws-to-keep-the-community-safe/>

Victoria's counter-terrorism laws have been overhauled to better protect Victorians from terror attacks.

The Justice Legislation Amendment (Terrorism) Bill 2018 allows for preventative detention of terror suspects by police for up to four days, creates a presumption against bail and parole for those who pose a terrorism risk, and clarifies police powers to use lethal force.

The new laws implement key recommendations made by the Expert Panel on Terrorism and Violent Extremism Prevention and Response Powers, led by former Chief Commissioner of Police Ken Lay and former Supreme Court of Appeal Justice, the Honourable David Harper.

Under the reforms, police will be able to detain terror suspects without a court order or a warrant for up to four days. Children aged 14 or above may also be detained for up to 36 hours.

Previously a terrorist act had to be imminent for preventative detention to occur. This Bill allows for detention to occur if a terrorist act is capable of being carried out and could occur within 14 days. Police will also be able to question people subject to preventative detention.

There will be presumptions against bail and parole for people who pose a terrorism risk – not just those who have been convicted of terrorism offences. Only a court will be able to consider bail for those posing a terrorism risk.

The new laws will also streamline the authorisation of special police powers, and create new powers to take control of premises. Special powers include the right to search people and vehicles, enter and search premises, cordon off areas and request proof of identity.

The changes to special police powers will also see Protective Service Officers (PSOs) able to work alongside police officers and to keep the community safe in the event of a terrorist incident.

The reforms will also clarify Victoria Police's powers to use lethal force in response to a life-threatening act where it may be the last opportunity to safely and effectively intervene.

Information sharing will be improved in the adult and youth justice systems for counter-terrorism purposes.

The Bill contains numerous safeguards, including oversight of the use of special police powers and preventative police detention by the independent Victorian Inspectorate, and additional protections for children who are preventatively detained.

## Stronger, safer, fairer: investing in Victoria's justice system

<https://www.premier.vic.gov.au/stronger-safer-fairer-investing-in-victorias-justice-system/>

More judges and magistrates will be recruited and there will be more support for victims of crime. The Victorian Government will invest \$257.4 million to recruit new judges and magistrates, better support victims of crime, implement counter-terrorism reforms and upgrade courts across Victoria.

The Budget provides \$128.9 million to increase our courts' capacity, including a new Supreme Court judge, two new County Court judges and 18 new magistrates. These new resources will reduce delays that can increase trauma for victims and their families.

Fifteen magistrates will go to the Magistrates' Court to meet growing demand, and three magistrates will establish the new Bail and Remand Court in the Melbourne Magistrates' Court.

The new Bail and Remand Court began operations this week and will hear bail applications after hours and on weekends, in line with recommendations from the Coghlan Bail Review.

To support the operation of the specialist Court and the new magistrates, Victoria Legal Aid will receive \$37.3 million over four years to deliver more legal services, including duty lawyers and grants of legal aid.

The Budget also provides \$21.8 million for the Office of Public Prosecutions, to recruit more prosecutors and support the prosecution of the most serious crimes.

This includes strengthened legislation, a presumption against bail and parole for certain offenders, and expanding the Preventative Detention Order scheme to continue detaining and monitoring serious perpetrators. It also includes support for Corrections and other staff to better identify and manage the risks of violent extremism.

The Budget also provides:



- \$7.2 million for the Victims Assistance Program to provide enhanced support to victims including through case management and recovery support, the Victims of Crime Helpline and support workers
- \$2.9 million to extend the intermediary scheme, which involves communication specialists helping children and vulnerable people provide evidence to police and in court
- \$5.4 million for the Office of the Public Advocate to provide additional guardianship and investigation services for people with disability. The Independent Third Person program will also be expanded to provide more support for people with disability in police interviews
- \$5 million to support the work of the Victorian Institute of Forensic Medicine
- \$20 million will be delivered for the next stages of acquiring land for the Werribee and Bendigo law court developments. \$5 million will support safety and security upgrades for the Echuca Law Courts
- Court Services Victoria will also receive \$3 million to plan for the state's future court infrastructure needs

## New Laws for Better Access to Justice

<https://www.premier.vic.gov.au/new-laws-for-better-access-to-justice/>

The Victorian Government introduced new laws to strengthen Victoria's legal assistance sector, improve access to legal information and make it easier and faster to resolve civil disputes.

The Justice Legislation Amendment (Access to Justice) Bill 2018 implements 16 recommendations from the Government's 2015 *Access to Justice Review* and builds on the \$34.7 million provided in response to the Review.

Victoria Legal Aid will have a new role coordinating Victoria's legal assistance sector, working with government, community legal centers and private lawyers to coordinate the delivery of legal assistance services across the state.

The Victoria Law Foundation will have a new role as a research centre on legal need, access to justice and civil justice, to help inform future changes to the legal system.

Courts will have clearer powers to make 'protective costs orders' to cap the legal costs of disadvantaged Victorians in legal proceedings which raise public interest issues.

Proceedings at VCAT will be simpler and faster by allowing electronic service of documents, and making it easier to access mediation services, enforce VCAT orders, and seek written reasons from VCAT.

The Access to Justice Review was commissioned by the Labor Government in 2015 and undertaken by the Department of Justice and Regulation, with the assistance of Crown Counsel, Melinda Richards SC, and the former Chair of the Queensland Legal Aid Commission, Rachel Hunter.

Following reforms to the Commonwealth *Marriage Act 1961*, the Bill will also ensure that Victorian law is consistent with the *Sex Discrimination Act 1984* by removing the requirement for a person who wants to change the sex recorded on their birth certificate to be unmarried.

By removing the requirement for a person to be unmarried, the Bill ensures that a person does not need to divorce their spouse in order to have a birth certificate that reflects their sex.

## Tough new penalties for drivers caught speeding 25kmh-35kmh over the limit

<https://www.heraldsun.com.au/news/victoria/tough-new-penalties-for-drivers-caught-speeding-25kmh35kmh-over-the-limit/news-story/892afd6210d548ae5a7a0719e8290d41?login=1>

LEADFOOT motorists face being taken off the road for longer, with tough new penalties for top-end speeding offences coming into effect today.

Drivers caught speeding between 25kmh and 35kmh over the limit will now have their licence immediately suspended for three months.

The offence previously attracted a one-month ban.

A three-month suspension now also applies to anyone who exceeds the speed limit by 20-25kmh in a 110kmh zone.

Speeding motorists could face a three-month suspension of their licence.

VicRoads director of road access and user vehicle access, Roger Chao, said research had shown licence suspensions were crucial to stopping high-range speeding.



A new maximum penalty of \$38,000, or two years' jail, will also apply for driving while disqualified regardless of whether it is a first offence.  
Police want to stop speeding motorists putting lives at risk.

## Government announces proposed changes to the Family Law System to introduce a new court known as the Federal Circuit and Family Court of Australia (FCFCA)

Last year, Federal Attorney-General George Brandis announced that the family law system, which has not been overhauled since the Family Court was established in 1976, would be subject to a wide-ranging review. Concerns about the current family law system include the length of time it takes for a matter to be finalised, the cost of running family law proceedings and how the system deals with victims of family violence and with children. In May 2018, the government announced that legislation would be brought forward to amalgamate the Federal Circuit Court and the Family Court into a single jurisdiction.

### What do the changes mean?

On 1 January 2019, the Federal Circuit and Family Court of Australia (FCFCA) will be established. This means that the Federal Circuit Court and the Family Court that currently operate separately, will be combined into a single court. A Family Law Appeal Division will also be established in the Federal Court of Australia.

Under the new system, there will be a single entry-point for all family law matters. This is a change from the current system, under which applications can be filed either in the Federal Circuit Court or the Family Court. The FCFCA court will prioritise urgent and high-risk cases and matters will be appointed to the judge and division with the most relevant expertise. This means that parties will know what to expect in terms of costs and length of time likely to be taken for their matter to be finalised.

The establishment of the FCFCA will mean that the majority of the appellate jurisdiction of the Family Court will be removed. The FCFCA will hear appeals from State and Territory courts of summary jurisdiction, while other appeals will be heard by the Federal Court. The rights of appeal in family law matters will be unchanged under the new system.

If the legislation passes, the changes will take effect on 1 January 2019.

### Why is the family law system being changed?

The Attorney-General's department claims the changes will help to address problems with the current family law system, including delays, inconsistencies, confusion and unnecessary costs. The new court is aimed to be more accessible, efficient and consistent and to allow families to resolve their disputes more quickly and cheaply.

The family law system has not been reviewed since the Family Court was established in 1976. It is commonly criticised as being outdated and impractical and for having failed to keep up with developments in the way relationships and families operate. It currently takes an average time of nearly a year and a half for a matter to reach trial, meaning that significant changes can occur in the lives of children and parents while the proceedings are on foot. The slow processes mean that children involved in parenting matters must live without certainty about their future care arrangements for significant periods.

Under the current system, the Federal Circuit Court and Family Court operate parallel, with different procedural rules, different forms and different filing fees. A lot of people involved in family law proceedings represent themselves and having to navigate the parallel court systems without a lawyer can be confusing. It is common for applicants to file applications in the Family Court when the more appropriate jurisdiction to hear it is the Federal Circuit Court, as the relationship between the courts is often not understood.

## Review of the Residential Tenancies Act

Our current rental laws are 20 years old and the needs of renters and landlords have changed dramatically. As a part of its plan for fairer, safer housing, the Victorian Government undertook a comprehensive review of the Residential Tenancies Act 1997 to ensure that it meets the needs of the current and future rental market. From mid-2015 to early 2017, the review examined issues including security of tenure, dispute resolution and the regulation of property conditions.

The central theme of security of tenure, which provided the impetus for the review, informed a range of reform proposals. These included a requirement that landlords have clear reasons for ending tenancies, protections against termination when tenants seek to enforce their rights, and more flexibility for tenants to end a tenancy early when they receive a notice to vacate. The review also canvassed options for requiring landlords who intend to sell their property to disclose this before entering into a tenancy agreement.

The Residential Tenancies Amendment Bill 2018 was passed in September 2018 and included more than 130 reforms that aim to increase protections for renters, while ensuring rental housing providers can still effectively manage their properties.

## **New rental laws pass Victorian parliament, strengthening tenants' rights**

**VICTORIAN tenants will officially be able to make minor modifications to their rental homes and own pets without landlord consent after a suite of new laws passed parliament late last night.**

<https://www.news.com.au/finance/real-estate/melbourne-vic/new-rental-laws-pass-victorian-parliament-strengthening-tenants-rights/news-story/164012c73122065d353885daed660999>

VICTORIAN tenants will officially be able to make minor modifications to their rental homes and own pets without landlord consent after new laws passed parliament late last night. The reforms — which also include the introduction of “basic standards” and limit rent rises to once a year — mark “the biggest reforms to renting in Victoria’s history”, according to the state government.

They passed the upper house 21-17, with no amendments, after hours of debate. Parliamentary transcripts suggest they won’t come into effect until July 1, 2020, to allow up to 18 months for “consultation with stakeholders”.

The changes would “strengthen renters’ rights, better protect vulnerable tenants and enable people to turn the house they rent into a home”, with a quarter of Victorians now tenants as it becomes harder to break into the housing market, the government said in a statement this morning.

Among the changes are a provision ensuring rentals meet “basic standards” by having functioning stoves, heating, deadlocks and safety measures for gas, electricity and smoke alarms.

Bidding for rental homes will be banned, no-reason evictions scrapped, rent increases limited to once a year from the previous six months, and bonds capped at four weeks’ rent.

Tenants will also be able to apply for the release of the bond without written consent from the landlord, who’ll have 14 days to dispute the repayment before it happens automatically.

Renters won’t need their landlord’s permission to perform minor modifications, such as nailing hooks on walls and anchoring furniture to prevent it from falling. And landlords will only be able to refuse their tenants keeping pets by order of the Victorian Civil and Administrative Tribunal.

Consumer Affairs minister Marlene Kairouz said the new laws were “about ensuring everyone who rents has a safe and secure home to call their own”.

The new laws also cover rights of entry and photography when a rental is listed for sale, goods left by renters at the end of a tenancy, and providing compensation to people whose caravan and residential parks close.