

Attributes of a fair trial—TEACHER NOTES

Level year: Year 11 or Year 12

Worksheet number: 1.3.0

Curriculum context	Related worksheets
Legal Studies 2019 (General Senior Syllabus): <ul style="list-style-type: none">• Unit 1: Beyond reasonable doubt, Topic 3: <i>Criminal trial process</i>• Unit 4: Human rights in legal contexts, Topic 3: <i>Human rights in Australian contexts</i>	Worksheet: 1.1.1

The right to a fair trial is a key feature of our legal system. There are many attributes that assist to ensure a trial is fair.

Learning objectives

Learners will:

- explain the attributes of a fair trial
- explain and analyse the rights Australian's have in criminal and civil contexts, including the role of express and implied rights in ensuring equality under the law.

Focus question

- What is a fair trial?

Key concepts

- Australian Law Reform Commission
- Common law
- Due process
- Human rights
- Judicial independence
- Natural justice
- Open justice
- Precedent
- Procedural fairness
- Trial

Further information

- Australian Human Rights Commission, *Fair trial and fair hearing rights*—humanrights.gov.au/fair-trial-and-fair-hearing-rights
- Commonwealth Attorney-General's Department, *Fair trial and fair hearing rights*—ag.gov.au/RightsAndProtections/HumanRights/Human-rights-scrutiny/PublicSectorGuidanceSheets/Pages/Fairtrialandfairhearingrights.aspx
- Australian Law Reform Commission, *Traditional rights and freedoms – encroachments by Commonwealth laws*—alrc.gov.au/publications/8-fair-trial-0
- British Library, *Magna Carta*—bl.uk/magna-carta

The attributes of a fair trial—STUDENT TEXT

What are the attributes of a fair trial?

In *McKinney v The Queen* (1991) 171 CLR 465 the High Court of Australia held ‘the central thesis of the administration of criminal justice is the entitlement of an accused person to a fair trial according to law.’

The right to a fair trial is an important concept in our legal system. It is a human right that is recognised in a number of international instruments, including the *Universal Declaration of Human Rights* (Article 10) and *International Covenant on Civil and Political Rights* (Article 14). This right is not expressly protected (although it is implied in many ways) in the *Commonwealth of Australia Constitution Act 1901* (Cth). The right to a fair trial is found in the common law.

The Australian Law Reform Commission (ALRC) *Traditional Rights and Freedoms – Encroachments by Commonwealth Laws Report* (2015, p. 220) stated that this right is ‘...designed to protect innocent people from being convicted of crimes’. It acts as a safeguard to ensure only those who are found guilty are sentenced and punished. While this legal concept has existed for some time, the attributes of a fair trial have changed with society’s values and beliefs.

Many attributes assist to keep a trial fair, including the principles of natural justice, due process, open justice, an independent judiciary and procedural fairness.

Judicial independence is a key principle of our legal system. While the parliament and executive make and administer the law, the courts are entrusted to interpret and apply it to a legal dispute. Their independence is protected in a number of ways. Judicial officers are not subject to a direction by the parliament or the executive. This is important, as the government instigates and defends many cases. Judicial officers also cannot be removed from office prior to the statutory retirement age of 70, except in cases of proven misconduct. These protections support judicial officers to make decisions without fear or favour.

The principle of **natural justice** requires that courts and tribunals be free from actual or apparent bias. The separation of powers, an independent judiciary (discussed above) and hearing matters in open court are just some ways our legal system is protected against the potential abuse of power. It also requires that they comply with the principles of **procedural fairness**, by allowing any party whose rights or interests may be affected to have a reasonable opportunity to be heard.

To learn more about the right to a fair trial, read this [lecture](#) by the Hon Justice Atkinson AO.

Learning activities

Where you see this symbol , answers can be found within Supreme Court Library Queensland's exhibition *Without fear or favour: exploring Queensland's legal system*. The exhibition is in the Sir Harry Gibbs Legal Heritage Centre, ground floor, Queen Elizabeth II Courts of Law, Brisbane or online at: legalheritage.sclqld.org.au/exhibitions/WFOE



1. Define the following key terms:

Judicial independence :

Natural justice :

Procedural fairness :

2. Explain the purpose of the Australian Law Reform Commission.
3. The *Magna Carta* has influenced our political and legal systems. Describe how this document influenced the right to a fair trial.
4. Identify what section(s) in the *Commonwealth of Australia Constitution Act 1901* (Cth) imply the right to a fair trial.
5. International instruments such as the *Universal Declaration of Human Rights* or *International Covenant of Civil and Political Rights* cannot override Australia's sovereignty. Hypothesize what might occur if statute law removed the right to fair trial in Australia.
6. There are many attributes of a fair trial. Identify other attributes not mentioned in the text that you think assist to make a trial fair. 
7. The Australian Capital Territory, Victoria and Queensland are the only three Australian jurisdictions to have human rights legislation. Locate the charter in each jurisdiction. Compare and contrast the provisions in each charter with the attributes you identified in question 5.