



Premium HSC Notes (Legal Studies) by AGCoaching

The Nature of Crime

Meaning of Crime	<ul style="list-style-type: none"> Crime - Any act or omission causing harm to society at large and is punishable by state (either civil or criminal law) All offences set out in the Criminal Code Act 1900
The Elements of Crime	<ul style="list-style-type: none"> Actus reus - refers to the 'guilty act' of committing the crime (must be proven, derived from 'act') <ul style="list-style-type: none"> Criminal Intent - murder Recklessness - voluntary manslaughter (involved and partial notion) Negligence - involuntary manslaughter (involved and no notion) Mens rea - refers to the 'guilty mind' and intention of the act (must be proven, derived from 'mental') Defined in 'Traditional Rights and Freedoms - Encroachments by Commonwealth Laws' (IP 46). Unless otherwise (strict liability), both must proven to incriminate
Strict Liability Offences	<ul style="list-style-type: none"> Cases whereby prosecution mustn't prove mens rea (the guilty mind) to incriminate individuals. Etc. speeding, drink driving, no seatbelt, spray paint on train) Defined in Criminal Code Act 1995: Division 6 'Strict Liability'
Causation	<ul style="list-style-type: none"> Causal link between offender's actions and outcome of offence R v Munter (2009) demonstrates when action of offence leads to the outcome, old man died from heart attack following assault by Munter
Categories of Crime	<ul style="list-style-type: none"> Offences against the person (harm against person) <ul style="list-style-type: none"> Homicide - unlawful killing of another person <ul style="list-style-type: none"> Murder - deliberate killing Manslaughter - less intentional murder (intent = voluntary), (recklessness and negligence = involuntary). Evident in R v Nam (2006) where charged with manslaughter for self-defence homicide Infanticide - death of baby under 12



	<p>months at hand of mother</p> <ul style="list-style-type: none"> ○ Assault - causing physical harm, common assault is threat of this, indecent assault is indecency upon presence of others. Evident in R v Munter (2009) where Munter assaulted old man who later died. ○ Sexual Assault → where individual forced into sexual acts ● Offences against the sovereign (political offences against state/government) <ul style="list-style-type: none"> ○ Treason - attempt to levy war against state ○ Sedition - promoting discontent against government leader ● Economic offences (result in person losing property or sum of money) <ul style="list-style-type: none"> ○ Crimes against property - causing damage or loss of property <ul style="list-style-type: none"> ■ Larceny - taking without consent ■ Robbery - taking property forcefully ■ Break and enter - breaking and entering with intention of committing offence ○ White-Collar crime - non-violent crime in office environment <ul style="list-style-type: none"> ■ Embezzlement - stealing money over time through business ■ Tax Evasion - illegal avoidance of imposed taxes ■ Insider Trading - illicit use of contained information to trade on share market illegally. Evident in R v Rivkin (2003) where Rivkin received 9 months imprisonment and \$30,000 fine for insider trading ■ Computer Offences - crimes committed through use of computer ■ Hacking - illicit breach of data through computer device ○ Fraud - dishonest conduct carried out for personal gain ● Public order offences (offences disturbing public order through threatening safety of others) <ul style="list-style-type: none"> ○ Affray - threatening or using violence causing others fear safety ○ Riot - affray (threatening/using violence causing fear of safety) for 12+ people ● Drug offences (offences involving usage, possession or cultivation of drugs) <ul style="list-style-type: none"> ○ Possession - holding drugs
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	<ul style="list-style-type: none"> ○ Cultivation - creating drugs ○ Trafficking - exporting or importing drugs. Evident in AFP v Antonio di Pietro, Pino Varallo & Frank Molluso (2008) where Defendants were each charged with trafficking a commercial quantity of MDMA drugs. ● Driving offences (offences involving breach of driving laws) <ul style="list-style-type: none"> ○ Speeding - going over speed limit and endangering nearby drivers and society ○ Drink Driving - driving whilst above alcohol limit (0.05 for adults, 0 for P & L platers) ● Preliminary offences (offences preceding commission of crime, left uncompleted) <ul style="list-style-type: none"> ○ Attempt - when principle of crime attempted though failed for a reason ○ Conspiracy - planning a crime with 2 or more people ● Regulatory offences (breaking offences set in delegated legislation)
Summary and Indictable Offences	<ul style="list-style-type: none"> ● Summary offences - less severe and smaller consequences, heard by magistrate in local court without jury; maximum imprisonment less than 2 years ● Indictable offences - more serious and larger consequences, heard by judge and jury in district court; maximum imprisonment above 2 years. Evident in R v Bilal Skaf (2000) and R v Mohammed Skaf (2000) where two individuals charged with indictable offences of gang rape for 35 year sentence reduced to 25 years
Parties to a Crime	<ul style="list-style-type: none"> ● Principal in first degree - individual who commits the offence, directly responsible (pointed weapon and took money). Evident in R v Loveridge (2013) which saw Loveridge kill someone in one-punch, was principal in first degree manslaughter. ● Principal in second degree - individual also present and assists during offence (lookout at door) ● Accessory before the fact - individual who assisted in preparation of crime (gets floorplans) ● Accessory after the fact - individual assisting after act committed (gets rid of evidence)
Factors affecting criminal behaviour	<ul style="list-style-type: none"> ● Psychological - mental state affects commission through mental illnesses and overall state of mind (relevant in sentencing; etc. autism mitigating factor) ● Social - social groups individual associates themselves influence their attitudes of acceptable behaviour (etc.



	<p>abusive households sprout abusive individuals). Evident in R v Loveridge (2013) which saw Loveridge kill someone in one-punch, sparked one-punch reforms, criminal behaviour fuelled largely by experience in abusive household.</p> <ul style="list-style-type: none"> • Economic - monetary position of individual which drives result to crime as means for money (etc. poor education and income encourages robberies to survive) • Political - crimes driven by political reasons causing offences against sovereign (etc. riots against labor party) • Self-Interest - what individual driven by to commit act; tends to be white-collar influenced by greed and personal gain (etc. Embezzlement) • Genetic - based on physical appearance individuals more likely to commit crime
Crime Prevention: Situational and Social	<ul style="list-style-type: none"> • Situational - aims to make committing crime harder through range of strategies (etc. firewalls, cameras, electronic tags in clothing store) • Social - aims to get to root cause and prevent crime from being considered or thought of occurring (etc. police seminars in school, youth programs for troubled children). Evident in Youth on Track Program by NSW Government; program for people between 10-17 years, aiming to reduce the seriousness and rates of offences in young people.

The Criminal Investigation Process

Police powers	<ul style="list-style-type: none"> • Powers used to enforce criminal law, ensure adhered to (executive arm) • Police investigate, arrest, interrogate and gather evidence to present in court on behalf state for judgement to be made • Police granted special powers under Law Enforcement (Powers and Responsibilities) Act 2002 (NSW) to: <ul style="list-style-type: none"> ○ Arrest and interrogate to make charges ○ Search and seizure to gain evidence <ul style="list-style-type: none"> ■ Ineffective in 'NSW police strip searches up nearly 50% in four years, new data reveals' (24/12/2018, TG) as police find nothing in 64% of strip searches in children, leaving them traumatised upon poor police judgement ○ Reasonable force to carry out duty
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	<ul style="list-style-type: none"> ■ Effective in 'Man arrested after Sydney sword stand-off' (23/03/2014, SMH) as police tasered man with samurai sword to protect community from violence <ul style="list-style-type: none"> ○ Technology to assist investigations through DNA for instance ○ Make recommendations on bail
Reporting Crime	<ul style="list-style-type: none"> ● Crime reports affected by number of reasons: <ul style="list-style-type: none"> ○ Reluctance to become involved ○ Fear of consequences by offender ○ Time to prosecute - Crime Stoppers Australia has been criticised for its poor responsiveness to crime due to overload in reporting ○ Inability to report crime ○ Nature of crime ○ Dispute being already settled
Investigating Crime	<ul style="list-style-type: none"> ● Gathering evidence - according to Law Enforcement (Powers and Responsibilities) Act 2002 (NSW), officers must have reasonable suspicion to search individuals. Evident in Darby v DPP (2004) where police dog sniffed drugs out of suspicious male, providing reasonable ground to search male <ul style="list-style-type: none"> ○ In situ - 'in the place' ○ Inadmissible - cannot be considered ○ Charge - formal accusation against person ○ All evident must lawfully obtained under Evidence Act 1995 (NSW). Examples include Fingerprints and DNA (with warrants) ● Search and seizure - two special powers given to police to assist in investigating crime. According to Law Enforcement (Powers and Responsibilities) Act 2002 (NSW), police given powers to 'search people and seize' in certain circumstances as: <ul style="list-style-type: none"> ○ Can violate rights, embarrassing, confronting and traumatic. Ineffective in 'NSW police strip searches up nearly 50% in four years, new data reveals' (24/12/2018, TG) as police find nothing in 64% of strip searches in children, leaving them traumatised upon poor police judgement ○ Only search 'based on reasonable grounds' ○ Procedures must preserve privacy, dignity and inform reason for search ○ Typically court warrants needed to search and seize ● Use of technology - technology (fingerprints, DNA)



	<p>utilised by police to gather evidence and prove charges. However, doubt can cause inadmissability in court. Effective in R v Gittany (2014) where murderer of Lisa Hannum successfully prosecuted after collecting text messages, CCTV footage and eyewitness statements through technology under the Evidence Act 1995 (NSW)</p> <ul style="list-style-type: none"> ○ DNA evidence (genetic material used to link suspect with crime or clear them) important to finding dependable forensic evidence, although proves presence not actus reus ○ Consent must granted from suspect/victim to use, or warrant from courts through reasonable force ● Use of warrants - legal document issued by magistrate or judge and authorises police officer to perform particular act (arrest, conduct search, seize property) <ul style="list-style-type: none"> ○ Law Enforcement (Powers and Responsibilities) Act 2002 (NSW) provides key circumstances where search warrant can be used, if procedures not followed, validity may jeopardised
Arrest and charge, summons, warrants	<ul style="list-style-type: none"> ● Police can only arrest person if: <ul style="list-style-type: none"> ○ Possess warrant (order by judicial officer granting powers to arrest or investigate) ○ Catch them committing the offence ○ Believe on reasonable grounds that individual will commit (reasonable suspicion) ● Police must tell person under arrest, alongside reasoning, can use reasonable force (as long as justified against suspect) ● Summon - legal document stating when person must appear in court (and charge if accused does not appear). Legally issued through and under Justices Act 1902 (NSW). Doesn't appear: <ul style="list-style-type: none"> ○ Judge enters default judgement of guilty ○ Individual may arrested or charged with contempt of court ○ Subpoena - legal document issued by court to attend to give evidence or produce specific documents
Bail or remand	<ul style="list-style-type: none"> ● Bail - temporary release of accused person awaiting trial, sometimes on particular conditions. Occurs when charged, either on bail or remand (Terrorism is exception → detained for 14 days) <ul style="list-style-type: none"> ○ Bail refused if unacceptable risk. If serious, when charged issued summon to appear in court, may detained and bail hearing set



	<ul style="list-style-type: none"> ○ Court attendance notice - legal document stating when and where must appear court and charges they must answer ○ Previously, Bail Act 1978 (NSW) ineffective as failed to manage risk on community of perpetrators being on bail, → reformed into Bail Act 2013 (NSW) to reduce likelihood of bail being granted to protect community (reduced by 11% since) → ineffective as Lindt cafe siege ● Bail hearing - determines if accused remains in custody till trial <ul style="list-style-type: none"> ○ When charged and given bail, accused leaves fingerprints and photo. In bail hearing, if available, provides sum of money to ensure attendance of court and released with conditions (ankle monitor). <ul style="list-style-type: none"> ■ Surety - when another person agrees to provide financial guarantee that accused will return to court in exchange for bail ■ Bail difficult as individual can be dangerous for society, though rights can't be taken away from alleged offender ■ Time served in remand contributes to sentence ● Remand - period spent in custody awaiting trial (charged and not given bail, accused detained on remand till trial)
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Criminal Trial Process

Court jurisdiction	<ul style="list-style-type: none"> ● Factors that determine which court has proper jurisdiction to hear case include whether criminal or civil matter, is heard for first time (appellate or original jurisdiction), age of accused, seriousness of offence and type of hearing ● State Lower Court Jurisdiction <ul style="list-style-type: none"> ○ Local Court (all minor offences, driving offences) <ul style="list-style-type: none"> ■ Original jurisdiction ■ Magistrate alone hears and deals with summary offences ■ Hears committal hearings ○ Coroners Court (suspicious deaths, fires, explosions) <ul style="list-style-type: none"> ■ Original jurisdiction ■ Magistrate alone hears indictable offences ■ Hears Coroner's inquest
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	<ul style="list-style-type: none"> ○ Children's Court <ul style="list-style-type: none"> ■ Deals with all matters involving care and protection of young people ■ Magistrate alone in a closed court ○ Land and Environment Court <ul style="list-style-type: none"> ■ Original jurisdiction <ul style="list-style-type: none"> ● Magistrate alone hears summary offences regarding the land and environment ● Specialised court ● State Intermediate Court Jurisdiction <ul style="list-style-type: none"> ○ District Court (drug offences, property offences, offences against the person) <ul style="list-style-type: none"> ■ Original and appellate jurisdiction ■ Judge and jury hear indictable offences ● State Superior Court Jurisdiction <ul style="list-style-type: none"> ○ Supreme Court (murder and attempted murder) <ul style="list-style-type: none"> ■ Original Jurisdiction ■ Judge and Jury hear indictable offences ○ Criminal Court of Appeal <ul style="list-style-type: none"> ■ Appellate Jurisdiction ■ Judge alone hear indictable offences ● Federal Lower Courts Jurisdiction <ul style="list-style-type: none"> ○ Federal Magistrates Court of Australia (human rights, migration, privacy) <ul style="list-style-type: none"> ■ Original Jurisdiction ■ Judge ● Federal Specialist Courts Jurisdiction <ul style="list-style-type: none"> ○ Family Court <ul style="list-style-type: none"> ■ Original Jurisdiction ■ Judge alone hears cases like divorce and adoption ■ Hoffman v Hoffman (2014) is example of case heard in Family Court (dispute over 50-50 split of \$10 million between husband wife) ● <i>Federal Superior Courts</i> <ul style="list-style-type: none"> ○ Federal Court of Australia <ul style="list-style-type: none"> ■ Original and Appellate Jurisdiction ■ Judge alone hears cases like Terrorism ○ High Court <ul style="list-style-type: none"> ■ Original and Appellate ■ Multiple Judges no jury ■ Hear Constitutional and indictable offences
The adversary system	<ul style="list-style-type: none"> ● System of two opposite parties fighting case against each other. Associated with common law. Evident in R v



	<p>Gittany (2014) where murder case saw two sides arguing</p> <ul style="list-style-type: none"> ○ Judge and jury hear evidence ○ Judge impartial referee ○ Jury makes conviction ○ Differences to inquisitorial are that adversarial has jury and judge is non-active rather than researcher ● Goals <ul style="list-style-type: none"> ○ Ensures procedural fairness ○ Balances rights of individuals ● Limits <ul style="list-style-type: none"> ○ Controversial (plea bargaining is factor) ○ Could miscarriage justice ● Countries using include AU, USA, UK, CAN
Legal Personnel	<ul style="list-style-type: none"> ● Magistrate - preside over local court, hear summary proceedings, make determinations based on the basis of evidence presented ● Judge – preside over intermediate and superior courts, maintain courtroom order, hand down rulings and sentences. Evident in R v Gittany (2014) where murder case saw two sides arguing whilst judge-only to avoid jury-bias. ● Police prosecutor – Intensive and exhaustive investigation, gather evidence, testimony in trial, police with specialised legal training ● Director of public prosecutions – conduct committal hearings for indictable offences, prosecutes of behalf of NSW gov Barristers/solicitors- give advice, prepare brief, represent in court ● Public defenders- barristers for legal aid
Plea, charge negotiation	<ul style="list-style-type: none"> ● Plea - formal statement of guilty or not guilty entered by accused ● Plea Bargaining <ul style="list-style-type: none"> ○ Negotiation between defence and prosecution about charges against accused ○ Certain charges may withdrawn if defence pleads guilty or lesser sentence ● Plea of Guilty <ul style="list-style-type: none"> ○ Mitigating factor, earlier is offered means greater benefits. Section 22 of Crimes (Sentencing and Procedure) Act 1999 allows 'sentencing discount for the utilitarian value of a guilty plea'. Evident in R v Nam (2006) where Nam after killing extortionist gang members as self defence pleaded guilty through charge negotiation,



	<p>granted 'discount of the order of 17%'.</p> <ul style="list-style-type: none"> ○ Encouraged by prosecution ○ Effective in resource efficiency (as lesser sentence)
Legal representation, including legal aid	<ul style="list-style-type: none"> • Legal aid - ensures less advantaged have fair trial and improves access to justice. Addresses inequalities of access in ALS through legal representation in court hearings. Evident in Dietrich v The Queen (1992) which set precedent to delay trials until equitable access to legal representation in Australia. • Primary Source <ul style="list-style-type: none"> ○ Legal Aid Commission of NSW which provides legal practitioners • To receive legal aid, person must pass : <ul style="list-style-type: none"> ○ A means test showing their income less than a specified amount. ○ A merit test showing they have good chance of winning case. In criminal cases, this only applied in criminal appeals and supreme court bail applications ○ A jurisdiction test which grants legal aid for certain types of legal matters. • If legal aid unavailable, ALS becomes avenue only available to those with considerable economic power, thus vital way to give people access to ALS. • However, in June 1998, Senate Legal and • Constitutional References Committee found that many people who don't pass means test still have difficulty paying legal assistance as high costs - ineffective law in terms of providing the right for all individuals to have a fair trial.
Burden and standard of proof	<ul style="list-style-type: none"> • Criminal - Beyond reasonable doubt, burden on the prosecution (etc. R v Tard) where Tard is offender/defendant. Evident in R v Gittany (2014) where murder case saw two sides arguing to prove Gittany as murderer. • Civil - Balance of probabilities, burden on the plaintiff (etc. Ajay v Khushi) where Ajay plaintiff and Khushi offender/defendant
Use of evidence, including witnesses	<ul style="list-style-type: none"> • Witnesses may called to give statement to police, must 'sworn in' to court before testifying, may be examined and cross-examined • Judge may warn jury of evidence that may be false if not previously stated. Evident in R v Nam (2006) in murder case, where prosecution saw inconsistent evidence from



	gang members, thus warned juries of validity.
Defences to criminal charges	<ul style="list-style-type: none"> • Complete Defence <ul style="list-style-type: none"> ◦ Justify actions, if proven may drop charges or acquittal ◦ Mental illness/insanity, involuntary behaviour, mistake, self-defence/necessity, duress, consent ◦ Mistake, accident, or error ◦ Duress ◦ Necessity or self defence ◦ Mental illness or insanity • Partial Defence <ul style="list-style-type: none"> ◦ Only for murder to go to manslaughter ◦ Claim there was mitigating circumstance which may reduce sentencing ◦ Provocation, diminished responsibility/substantial impairment, responsibility. Evident in R v Nam (2006) in murder case, where proven Nam was provoked to murder, did out of self-defence, various mitigating, thus manslaughter. ◦ Drugs or alcohol not reason for partial defence as not mitigating factor
The role of juries, including verdicts	<ul style="list-style-type: none"> • Juries - body of people sworn to judge case verdict, must be just, fair, unbiased, and open-minded • Peremptory challenge – when legal team rejects juror without needing to provide specific reason • Challenge for cause – when legal team rejects a juror because believe juror will prejudiced • Jury duty eligible when 18+, difficult to gain exemption, but jurors get paid <ul style="list-style-type: none"> ◦ Exempted if pregnant or care for children full-time ◦ Failure to attend cause \$1100 fine from Justice Office of the Sheriff ◦ Too many people can avoid due to exemptions • Jury unable to reach verdict means case dismissed, retrial ordered, causes increased time and costs, can cause extended period of custody even if offender could be acquitted. Evident in R v Rogerson (2016) and R v McNamara (2016) where Jurors dismissed after 2 days due to potential prejudice, demonstrates time and resource inefficiencies as it costs \$92 million/yearly to fund juries • Previously, majority verdicts were referred to as everybody agreeing to stage considered beyond reasonable doubt, which is 100% - Juries Act 1977 (NSW). Now it is 11 jurors if 12, or 10 jurors if 11.



Sentencing and Punishment

<p>Statutory and judicial guidelines</p>	<ul style="list-style-type: none"> • Crimes (Sentencing Procedure) Act 1999 (NSW) is primary source of sentencing law in NSW, setting out types of sentences, purposes and guidelines to consider <ul style="list-style-type: none"> ◦ Maximum penalty - maximum sentence available to court to impose, usually decided by parliament • Magistrate uses judicial discretion to determine appropriate sentence, must consider aggravating and mitigating factors • Guideline judgement - judgement issued by court on application of Attorney-General, setting out guidelines for particular offence <ul style="list-style-type: none"> ◦ Persuasive precedent - consider but not forced ◦ Binding precedent - must follow similar precedent ◦ Crimes (Sentencing Procedure) Act 1999 (NSW) allows NSW Attorney-General to apply court for guideline judgement on sentencing for particular offences - such judgements issued by judges after hearing arguments from DPP and Senior Public Defendant • Judicial guidelines - set by NSW Court of Criminal Appeal to assist judges when applying discretion • Mandatory sentencing - removal of judicial discretion by legislation, setting minimum or maximum sentence for particular offence or type of offender • 2014, NSW introduced 8 year minimum sentence for convicted one-punch offenders
<p>The purposes of punishment</p>	<ul style="list-style-type: none"> • Deterrence – discourages or intends to discourage someone from doing something <ul style="list-style-type: none"> ◦ Specific deterrence – punishment against individual offender aiming to deter from committing crime in future by showing ‘crime does not pay’ ◦ General deterrence – punishment attempting to make example of offender to send message to community that law serious about punishing people certain offence • Retribution – punishment considered morally right/deserved because of nature of crime. Assumes some good outcomes for inflicting hardship on offender of the crime. ‘Revenge’ on behalf of victims in impartial manner through courts. <ul style="list-style-type: none"> ◦ Ensuring offender adequately punished for offence depending on severity



	<ul style="list-style-type: none"> ○ Making offender accountable for actions and denouncing their conduct. Evident in R v Nam (2006) where despite manslaughter charge as provoked, Nam sentenced 4.5 years imprisonment to gain justice for deceased Pestano ○ Recognising harm to victim and community ● Rehabilitation – aims to discourage future offences by offender through altering views or helping. Encourages offenders to eliminate the factors contributing to conduct, fostering renunciation of crime by offender. <ul style="list-style-type: none"> ○ Focus on recidivism by helping criminals not to return to same patterns of behaviour that led to their offence ● Incapacitation – making offender incapable of committing further offences by restricting freedom <ul style="list-style-type: none"> ○ Aim to restrict freedom accordingly to reduce likelihood of offender recommitting similar offence ○ Severe penalty difficult to determine as must consider whether offender likely to reoffend ○ Etc. community work, licence cancellation
Factors affecting a sentencing decision	<ul style="list-style-type: none"> ● Objective factors – relate to circumstances of crime (offence) ● Subjective factor – relate to circumstances of offender (offender) ● Aggravating factors – circumstances making offence serious, increases sentence ● Mitigating factors – circumstances making offence less severe, reduces sentence ● Etc. McCartney vs The Queen (2012) (Male sexually assaulted drunk, sleeping woman; nature of crime and seriousness (aggravating); young age, no criminal history, strong character, pleaded guilty (mitigating) → reduced sentence by 16.6% → not altered when appealed ● Etc. R v Nam (2006) where Nam killed extortionist gang members as aggravated to protect family and days of menacing, threatening and abusive actions like fires and thrown rocks; mitigating self-defence, provocation, guilty plea, first-time offence → reduced sentence to 4.5 years instead of potential 25 years, plea reduced
The role of the victim in sentencing	<ul style="list-style-type: none"> ● Victim Rights and Support Act 2013 (NSW) allows victims give victim impact statements to portray impact crime had on them <ul style="list-style-type: none"> ○ Only for serious offences and is voluntary ○ Statements include personal harm, physical &



	<p>psychological harm, social harm</p> <ul style="list-style-type: none"> ○ Confessing can confronting ○ R v Nam (2006) where Nam killed extortionist gang members saw family give victim impact statements of death to portray impact
Appeals	<ul style="list-style-type: none"> ● Appeals can heard if not agree with sentence ● Appellant - maker of appeal ● Appeal against conviction - appeal where appellant (defendant) argues didn't commit offence found guilty of. If successful → acquitted, if denied/unsuccessful → guilty ● Sentence appeal - appeal where appellant argues against severity of sentence. If successful → sentence goes downwards, if denied/unsuccessful → sentence remains same (any appeals have risk sentence increasing too). Evident in R v Loveridge (2014) where Loveridge sentenced for non-parole period 5 years plus sentence for one-punch death crime, yet appeal resulted in doubled NPP to 10 years
Types of penalties	<ul style="list-style-type: none"> ● Caution - formal warning without charge issued by police for less serious offences ● Criminal infringement notice – notice issued by police outside court alleging criminal infringement and requiring payment of fine ● Conviction/no conviction recorded – judicial officer has option to, convict/record or not, to prevent criminal obligation ● Forfeiture of assets – obtained property or money through criminal activities recovered by court known as proceeds of crime through Criminal Assets Recovery Act 1990 (NSW). Loss of rights to property or assets as a penalty for wrongdoing. ● Bond – compulsory condition imposed for time period which offender must comply with such as good behaviour, counselling, drug/alcohol rehab. ● Probation – type of good behaviour bond where offender released on condition of good behaviour (though placed under form of supervision such as daily reporting to probation office) ● Imprisonment – most severe sentence that removes accused liberty and from community. Typically sent to correctional centre (known as prison institution where offenders held in custody for period of imprisonment). <ul style="list-style-type: none"> ○ S12 Crimes (Sentencing Procedure) Act 1999 allows sentences of imprisonment be suspended less than 2 years,



	<ul style="list-style-type: none"> ○ R v Bui (2008) saw effective penalty communicated as offender Bui given a suspended sentence as had 4 young children care for, however, reintroduction of suspended sentences resulted exponential prison populations rise 15% as often used, more financial pressure on ALS ● Home detention – imprisonment sentence where offender confined to home under certain conditions of monitoring (etc. Andrew Tate after trafficking accusations and jail time on house arrest) ● Parole (not a sentence) – releasing prisoner before expiry of imprisonment term, temporarily or permanently on promise of good behaviour. ● Diversionary program – alternative to traditional court system as focus on therapeutic justice and rehab of offenders.
Alternative methods of sentencing	<ul style="list-style-type: none"> ● Circle Sentencing (alternative sentencing method for ATSI offenders, available in 12 NSW Local Courts) <ul style="list-style-type: none"> ○ For ATSI people, based on customary law ○ For repeat offenders and serious crimes ○ BOCSAR states recidivism rate (15 months after circle sentencing has the same rate as court sentences) ● Restorative Justice (bring offender and victim together so offender has opportunity to take responsibility and victim can voice impact) <ul style="list-style-type: none"> ○ Confronting and voluntary ○ Ask questions (victims) and apologise (offender) ○ BOCSAR states 15-20% reduction of reoffending
Post-sentencing considerations	<ul style="list-style-type: none"> ● Security classifications (maximum, medium, minimum) <ul style="list-style-type: none"> ○ Offenders sent to different facilities depending on crime seriousness, behaviour in sentences, rehabilitation possibilities ○ If extremely high, such as terrorist, may go supermax prison ○ If high and serious, may go correctional centre (medium-to-high prison) like Silverwater Correctional Centre ● Protective custody <ul style="list-style-type: none"> ○ Offenders vulnerable to attack from other prisoners (due to crime or status) are isolated in prison → require protective custody (depends on crime type, who they are) ○ Etc. DPP v Pell (2019) George Pell committed sex-offences in 2019 so needed protection in



	<p>prison</p> <ul style="list-style-type: none"> • Parole - conditional release of prisoner after completion of minimum term of sentence if good behaviour and on certain terms • Preventative and continued detention - offenders who are imprisoned to prevent them from committing crime. Those whose history indicates have entrenched criminal behaviour for committing further future harm may be committed for continued, longer sentence (etc. terrorists) • Sexual Offenders Registration - serious sex offenders' names placed on register with access by police, under Child Protection (Offenders Registration) Act 2000 (NSW) • Deportation - non-citizens serving upcoming sentence 12 months or more and Australian resident under 10 years automatically fail character test in Migration Act 1958 (Cth) → deported
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Young Offenders

Age of criminal responsibility	<ul style="list-style-type: none"> • NSW Youth Justice in Young People in Custody Health Survey suggested crime in children happen due to: <ul style="list-style-type: none"> ○ Poor parental supervision ○ Drug and alcohol abuse ○ Neglect and abuse ○ Homelessness ○ Negative peer associations ○ Poor personal and social skills or difficulties in school and employment • Two approaches: <ul style="list-style-type: none"> ○ Welfare Model – assumes causes relate to several factors such as social and psychological, want to protect young people from causes of crime through support and rehabilitation ○ Justice Model – traditional and assumes 'tough-on crime' approach should be taken with 'zero tolerance' towards offenders of any age, emphasising punishment and deterrence over rehabilitation • Principle of doli incapax exists, where depending on age kids are held responsible to different degrees, assumes child between 10-13 cannot be found guilty for crime. <ul style="list-style-type: none"> ○ 0-9 → cannot be charged with offence as under 10 insufficiently mature to commit offences
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	<ul style="list-style-type: none"> ○ 10-14 → rebuttable presumption of doli incapax (assumed not guilty, but prosecution can prove capacity with sufficient evidence). R v LMW (1999) reflects this as 10-year-old kid accidentally threw friend into river despite knowing cannot swim, as 10 was found not guilty. ○ Under 16 → criminally responsible for any offence but no conviction can be recorded unless serious offence
The rights of children when questioned or arrested	<ul style="list-style-type: none"> ● Children and young people rights covered in Law Enforcement (Powers and Responsibilities) Act 2002 (NSW) ● Police stop and search <ul style="list-style-type: none"> ○ Police at times where reasonable suspicion can search you ○ You can ask officer name and station ○ Can be arrested if assaulted and resist ○ Ineffective in 'NSW police strip searches up nearly 50% in four years, new data reveals' (24/12/2018, TG) as police find nothing in 64% of strip searches in children, leaving them traumatised upon poor police judgement ● Right to silence <ul style="list-style-type: none"> ○ Do not have to answer police questions ○ You don't have to provide name and address ○ Anything recorded can be used ● Presenting ID <ul style="list-style-type: none"> ○ Must be present when asked ○ A support person ○ Under 18 must have person of support adult ● The Legal Hotline <ul style="list-style-type: none"> ○ Lawyer availability free at hotline ○ Take opportunity to talk with lawyer ○ Warnings only 3 occasions ● S8 of Children's (Criminal Proceedings) Act 1987 creates presumption that children shouldn't be arrested or detained unless offence was serious/violent or there is danger of further offences ● Young people given special protection by law, so inconsistent to treat as harshly as adults. They more likely to be intimidated and less likely to understand. They have higher chance of resuming life and becoming productive citizens, hence more likely for rehabilitation
Children's court - procedures and operation	<ul style="list-style-type: none"> ● Children's Court of NSW is specialist court established in 1987 under Children's Court Act 1987 <ul style="list-style-type: none"> ○ Jurisdiction outlined in S28 of Children (Criminal



	<p>Proceedings) Act 1987, stating court authorised to hear offences involving under 18s with respect to summary matters, committals, and indictable offences that can tried summarily.</p> <ul style="list-style-type: none"> ○ Allows person under 21 who committed offence when under 18 have their matters heard here ○ Court deals with matters of care and protection of children and young people referred to by DOCS. A magistrate presides, but no jury. Court cannot hear serious indictable offences committed by children, they can however, hear committal proceedings of any indictable, even serious ones, where accused is child. ○ Court proceedings same as normal except with a focus on supporting the child. ○ Children's Court Clinic – arm of Children's court whose main function to make clinical assessments of children and submit reports to court. Magistrate/judge in children's case can order for expert assessments of child in particular case - a clinician assesses child then writes report to court to help make decision in best interests of child. ○ BOSCAR Stats <ul style="list-style-type: none"> ■ Boys 14x likely than girls to be in Children's Court ■ 13x more likely for 15–17-year-olds to be there than 10–14-year-olds ■ ATSI children approximately 26x more likely than non-ATSI children ■ Detention was only penalty for 1% of cases
Penalties for children	<ul style="list-style-type: none"> ● S6 of Children (Criminal Proceedings) Act 1987 states: <ul style="list-style-type: none"> ○ A child's penalty shall not be higher than an adult for the same offence ○ Reintegration into community should assisted, along with family and communal ties ○ Effect of victim should considered ○ Desirable for child's education not be impeded as well as for them live at home ● Penalties for children include: <ul style="list-style-type: none"> ○ Dismissal – dismissal of charge without punishment, though caution may issued ○ Conviction – court can decide whether to record a conviction, but can't recorded for under 16s ○ Adjournment – can be adjourned or deferred for



	<p>up to 12 months to assess rehabilitation prospects and reconsider later</p> <ul style="list-style-type: none"> ○ Bond – can released on good behaviour bond for up to 2 years ○ Youth justice – can released if comply to youth justice conferencing outcome plan ○ Fine – a fine of up to 10 penalty units can imposed, but child's age and ability taken into account ○ Probation – bond with probation order can imposed for up to 2 years, overseen by Juvenile Justice officer ○ Community Service Order – serve community for set hours ○ Control order – most severe penalty, similar to adult sentence of imprisonment (going to jail) except detention in Juvenile Justice Centre and max time for child sentencing here is two years, often last resort <ul style="list-style-type: none"> ● Juvenile Justice Centres <ul style="list-style-type: none"> ○ Managed by Juvenile Justice, part of Department of Human Services and overseen by Children (Detention Centres) Act 1987 (NSW) ○ While purpose to rehabilitate and reintegrate young offenders, mostly negative effects of incarcerating these children. <ul style="list-style-type: none"> ■ Etc. Don Dale detention centre and findings of abuse and torture in 'Australia's Shame' by Four Corners 2016 ○ When control orders used, court must give clear reasons why cannot impose any other penalty. Courts must also announce a non-parole period for any control order longer than 7 months although young offenders can still released before the end of their non-parole period
Alternatives to court	<ul style="list-style-type: none"> ● Alternatives listed in Young Offenders Act 1997 (NSW) <ul style="list-style-type: none"> ○ The Youth Drug and Alcohol Court <ul style="list-style-type: none"> ■ Children's (Criminal Proceedings) Act 1987 NSW similar to drug court and designed for young offenders. Offenders participate in intensive rehabilitation before sentenced. Successful completion means lighter sentence, this court mainly for summary offences. ● Young offenders have a three-tiered system for court alternatives



	<ul style="list-style-type: none"> ○ Warnings – Notice given to young offender (for first minor offence) that recorded by police but with no conditions, offender must told of nature, purpose, and effect of the warning ○ Cautions – Formal, recorded alternative to prosecution where young offender admits to offence and consents to receiving formal police caution; can later taken into account in Children's Court, but not adult court. Record of caution kept and seen by Children's Court if further offence committed. Max of 3 times cautioned. ○ Youth Justice Conferences – Conferences held to reach agreement, involving victim, child (and parent/guardian) and mediator. People at conference collectively agree on suitable outcome for crime that can include apology, reasonable reparation to victim and steps to link young offender back to community. YJC help offenders take steps towards directly repairing harm caused to victims. BOCSAR states 15-20% reduction of reoffending <ul style="list-style-type: none"> ■ A conference may held if ■ Offence covered by Young Offenders Act 1997 (NSW) ■ Young offender admitted to the offence and agreed to participate ■ Warning/caution inappropriate because of the seriousness of the offence ■ The Court or Officer of Director of Public Prosecutions decides if appropriate
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International Crime

Categories of international crime	<ul style="list-style-type: none"> ● Crimes against International Community <ul style="list-style-type: none"> ○ So bad everyone affected ○ Serious crimes of concerning international community as whole, recognised as requiring punishment ○ Genocide - deliberate killing of large number of peoples from particular nation or ethnic group with aim of destroying particular group. <ul style="list-style-type: none"> ■ Etc. Rwanda Genocide 1994 discussed in 'Rwanda genocide: 100 days of slaughter' (BBC, 2019) ○ Crimes against Humanity
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	<ul style="list-style-type: none"> ○ War Crimes - deliberate causes of human suffering on a large scale (etc. mass murder) ● Transnational Crime <ul style="list-style-type: none"> ○ Crimes happening in multiple jurisdictions either in origin or effect ○ Human Trafficking - unlawful act of transporting/coercing people across international borders to benefit from service <ul style="list-style-type: none"> ■ Etc. 'Trafficking in women: where have we come...' (AHRC, 15/07/2002) exposes issue's significance ○ Drug Trafficking - unlawful transportation of illicit drugs across international borders
Dealing with international crime	<ul style="list-style-type: none"> ● Domestic against International Community <ul style="list-style-type: none"> ○ Rome Statute - signed in 1998 and came into force in 2002, resulted in War Crimes Act 1945 (Cth) and Geneva Conventions Act 1957 (Cth). Introduced Australia to ICC to deal with crimes against international community by individuals. ● Domestic against Transnational Crime <ul style="list-style-type: none"> ○ AFP established under Australian Federal Police Act 1979 (Cth) to uphold Commonwealth criminal law. Role grown significantly to prevent crime through building, monitoring and peacekeeping training for law enforcement, alongside operations for child protection, counter-terrorism and stopping human trafficking. ○ Australian Border Force is national agency looking after security and integrity of Australian borders. Agency works closely with governments and international agencies to prevent illegal transfer of goods. ● International against International Community <ul style="list-style-type: none"> ○ ICJ established under United Nations to deal with crimes committed by groups and nations. Deals with issues that are members of UN and key chamber of UN as whole ○ ICC established as permanent court in 2002 through Rome Statute, deals with crimes against international community ○ Ad Hoc tribunals similar to ICC deal with crimes against international community. Etc. International Criminal Tribunal for Rwanda saw 800,000 die in genocide thus made in 1994 to punish offenders ○ Extradition Treaties are legal surrender of suspects convicted of crime by one jurisdiction to



	<p>another to face charges, ensures prosecution of offenders.</p> <ul style="list-style-type: none">• International against Transnational Crime<ul style="list-style-type: none">◦ ICC established as permanent court in 2002 through Rome Statute, deals with crimes committed by individuals. Is international treaty of ICC in 1998, wasn't implemented till 2002 when 60 nations incorporated treaty.◦ United Nations Convention against Transnational Organized Crime (2000) is convention fighting trafficking crimes, adopted in 2000 to prevent traffickers, smugglers and illicit manufacturing through Criminal Code Amendment (Trafficking in Persons Offences) Act 2005, BOCSAR states reduced trafficking by 17% in following 2 decades◦ INTERPOL is world's largest international police organisation, has 188 member countries and created in 1923 to prevent and combat crime. Can investigate, detect and eradicate crime, etc. Eurasia international counterfeiting and terrorism program.• Limited due to:<ul style="list-style-type: none">◦ State Sovereignty - allows nations to govern themselves and laws so mustn't incorporate legislature or aren't binded by◦ Financial costs - AFP requires large funding to pay for training, resources and overall efficiency which can limit the extent of their power and effectiveness◦ Political Status - states undergoing political issues and high levels of corruption can hinder the implementation of appropriate measures and increase the costs and resources required to be implemented
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The Nature and Development of Human Rights

<p>The Definition of Human Rights</p>	<ul style="list-style-type: none"> Human Rights – basic rights and freedoms belonging to every person in world from birth till death. Recognised in Universal Declaration of Human Rights (1948). Are: <ul style="list-style-type: none"> Universal – applying to all people at all times regardless of circumstance. Equally regardless culture, gender, status, age (any aspect that distinguishes people) Inalienable – cannot be removed, given up, traded or sold. Nations can legislate rights against rights and punish expression, but cannot taken away even if tried give up Inherent – intrinsic to humanity, cannot separated from experience of being human. Doesn't matter if disability or restriction, every human has entitlement. Indivisible – all rights equally important, none better than others. All people entitled to full expression, not just some of each. Interdependent – employment of rights depends on other rights. To express rights, others must freely expressed.
<p>Developing Recognition of Human Rights</p>	<ul style="list-style-type: none"> The Abolition of Slavery <ul style="list-style-type: none"> Slavery - practice of forced labour and restricted liberty Transatlantic slave (Africans transported across world) trade sprung anti-slavery movement for abolitionism in 18th century First recognition in Slave Trade Act 1807 (UK) which abolitionised slave trade The US Amendment to the 13th Constitution of USA 1787 followed in 1865 Article 4 UDHR 1948 'Right to freedom from slavery' recognised Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999 followed Modern Slavery Act 2018 (Cth) contemporised these Trade Unionism and Labour rights <ul style="list-style-type: none"> Trade Unions - organisations of employees formed to obtain improvements in labour conditions



	<ul style="list-style-type: none"> ○ Industrial revolution sprung major developments in trade unions and labour rights ○ First recognition in Trade Union Act 1871 (UK) which legalised trade unions ○ Evolved to A23 UDHR 1948 'Right to form and join trade unions' ○ International Labour Organisation in 1919 contributed to improve worker conditions ○ Fair Work Act 2009 (Cth) contemporised these ● Universal Suffrage <ul style="list-style-type: none"> ○ Suffrage - the right to vote ○ Initially, lower-class men, women and indigenous peoples saw difficulty in voting, though industrial, suffragette and civil rights movements saw suffrage granted to all classes ○ After all men could vote, Commonwealth Franchise Act 1902 granted women voting rights ○ Evolved in A21 UDHR 1948 'Right to take part in the government of his country' saw international recognition for suffrage ○ Resultantly, Commonwealth Electoral Act 1962 granted indigenous voting rights ● Universal Education <ul style="list-style-type: none"> ○ Universal Education - free and compulsory education for all children ○ Initially, education was only granted to aristocracies, those of higher social status ○ First recognition in Public Instruction Act 1880 (NSW) where compulsory for aged children 7-14 to attend school ○ Evolved to A26 UDHR 1948 'right to education' ○ Contemporised in Education Act 1990 (NSW) ● Self-Determination <ul style="list-style-type: none"> ○ Self-Determination - collective right for people to govern themselves independently without interference of external parties ○ Grew significantly upon recognition of ATSI land rights ○ Initially, Article 1 of ICCPR 1966 and ICESCR 1996 recognised 'right to self-determination'
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	<ul style="list-style-type: none"> ○ Developed in Mabo v Queensland (1992) which first recognised native title of ATSI peoples ○ Formalised in Native Title Act 1993 (Cth) ● Environmental Rights <ul style="list-style-type: none"> ○ Right to protect environment and for future generations enjoy same quality level of enjoyment that predecessors did ○ Grown significantly upon rise of climate change, environmental degradation, and activists, not in UDHR 1948 ○ First recognition in Environmental Protection Act 1977 which facilitated environmental policy creation ○ Evolved in UN Convention on Climate Change 1992 to reduce greenhouse gas emissions ○ Further, Environment Protection and Biodiversity Act 1999 aimed to protect fauna and flora ● Peace Rights <ul style="list-style-type: none"> ○ Right to live in peaceful environment and citizens expect government to do all in power to maintain peace towards elimination of war ○ Fundamental obligation following WW1 and WW2 alongside potential impacts of nuclear weapons ○ Key reason for formation of United Nations 1945 ○ A20 UDHR 1948 'Right to freedom and peaceful assembly' ○ Division 1 Criminal Code Act 1995
Formal Statements of Human Rights	<ul style="list-style-type: none"> ● Universal Declaration of Human Rights <ul style="list-style-type: none"> ○ Created 1948 post WW1 and WW2 to identify basic human rights that must be protected ○ Created by UN General Assembly, 30 articles converting rights such as: <ul style="list-style-type: none"> ■ Article 3 - Right to life ■ Article 4 - Right to freedom from slavery ■ Article 20 - Right to peaceful assembly ■ Article 21 - Right to take part in government ■ Article 23 - Right to join trade unions ■ Article 26 - Right to education ○ Adopted as declaration rather than treaty, acts as non-binding soft law, most important HR



	<p>document</p> <ul style="list-style-type: none"> • International Covenant on Civil and Political Rights <ul style="list-style-type: none"> ○ Created 1966, signed depending on Cold War stance by nations, part of Twin Covenants ○ Creates obligation on states to respect civil and political rights of individuals such as: <ul style="list-style-type: none"> ■ Article 2 & 3 - Equality between men and women ■ Article 6 - Right to life ■ Article 8 - Right to freedom from slavery ■ Article 18, 19, 27 - Right to freedom of thought, conscience, speech (respectively) ○ Overseen by UN HR Committee, not signed by all nations such as Malaysia and Singapore • International Covenant on Economic, Social and Cultural Rights <ul style="list-style-type: none"> ○ Created 1966, signed depending on Cold War stance by nations, part of Twin Covenants ○ Creates obligation on states to respect economic, social and cultural of individuals such as: <ul style="list-style-type: none"> ■ Article 6 - Right to work ■ Article 8 - Right to form and join trade unions ■ Article 11 - Right to adequate living standards ○ Overseen by UN HR Committee, not signed by all nations such as Malaysia and Saudi Arabia
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Promoting and Enforcing Human Rights

State Sovereignty	<ul style="list-style-type: none"> • State Sovereignty - the ability for nations to govern themselves without interference of another nation state <ul style="list-style-type: none"> ○ Central to international law and capacity of world to enforce states' compliance with recognised HR ○ Can shield nation from influence, but hinder implementation of relevant HR protections <ul style="list-style-type: none"> ■ Etc. United Nations Convention against Transnational Organized Crime (2000) protected A4 'Right to freedom from slavery' ■ R v Wei Tang (2008) reflects effective protection by prosecuting Tang who enslaved 5 women
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	<ul style="list-style-type: none"> ■ However, nations like Iran not obliged to ratify; according to '2022 Human Trafficking Report: Iran' resulted in a Tier 3 response violating 5.2% of nation due to prostitution, forced marriage, slavery acts ○ Protected under Charter of UN 1945 stating all states fundamentally equal, cannot intervene
The role of:	<ul style="list-style-type: none"> ● The United Nations <ul style="list-style-type: none"> ○ Key international organisation committed to maintaining world peace and forming relations between states ○ Consists of 193 member states with substantial power, almost every sovereign state in world ○ Allows world to develop international measures that protect HR through 5 principle organs: <ul style="list-style-type: none"> ■ UN General Assembly - consists of representatives from all member states that vote. Discussions, deliberations, declarations and recommendations towards HR occur. Includes UN Development program which creates and recognises HR, and UN Human Rights Council, forum responsible for overseeing and making recommendations on HR in all member states. Created United Nations Convention against Transnational Organized Crime (2000) ■ UN Security Council – organ charged with preserving international peace and security. Administers power through legally binding resolutions and can authorise military operations. Has 5 permanent members with VETO powers and 10-non permanent with two-year terms. Council has power to intervene in most serious HR abuses by states. ■ Economic and Social Council – body with 54 rotating members meeting annually to promote international economic and social cooperation and development. ■ UN Secretariat – main administrative body of UN with 44,000+ staff working worldwide. Provides various information, studies, tasks and facilities needed by UN. Apart is Office of UN Higher Commissioner for Human Rights, working to promote and protect human rights in UDHR by advancing universal ratification and implementation of UDHR. ■ International Court of Justice - primary judicial organ of UN. Has jurisdiction under Charter of the United Nations (1945) to settle international



	<p>disputes submitted by member states. Cases rarely relate to issues of human rights. Aus vs Japan (2013) whaling dispute key example.</p> <ul style="list-style-type: none"> • Intergovernmental Organisations <ul style="list-style-type: none"> ○ IGOs - international institutions made of member states created by agreements between states for various purposes ○ Today, around 300 exist, most famous IGO is United Nations created by the Charter of the United Nations (1945) <ul style="list-style-type: none"> ■ World Trade Organisation, International Monetary Fund and INTERPOL are other examples ○ Number of IGOs have promotion of HR as part of goals and can exert influence. For instance: <ul style="list-style-type: none"> ■ Commonwealth of Nations – made of 54 members like UK and Australia to promote democracy, rule of law, HR, individual liberty. Can suspend nations violating HR through abuses, etc. Zimbabwe due to military coups. ■ African Union – established in 2002, includes all African States. Members expected to adhere to democratic principles and sound economic practice, aim to bring security and peace in Africa and promote HR. Monitored by African Commission on Human and People's Rights. ■ Organisation of American States – includes all states of America that oversee regional HR. 2019, resolution was passed which condemned HR violations • Courts, Tribunals and Independent Statutory Authorities <ul style="list-style-type: none"> ○ International Court of Justice (Court) <ul style="list-style-type: none"> ■ Organ of UN hearing disputes between nation states. Issues advisory opinions on matters of international law. Heard few cases, issued important judgements. Etc. Aus vs Japan (2013) whaling dispute, AU took JAP to ICJ for violating international whaling laws, ruled that not for 'scientific research', thus ordered stop. JAP resumed in 2015, suggests poor enforceability due to state sovereignty. ○ International Criminal Court (Court) <ul style="list-style-type: none"> ■ Established in 2002 through Rome Statute to prosecute individual offenders violating international law and causing HR violations. Preceded by various tribunals (ad hoc) for purpose of dealing with events involving serious international. Prosecutes individuals rather than
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	<p>states, effective as rids of state sovereignty as defence. Etc. Prosecutor vs Al Bashir (2009) where Al Bashir sentenced for crimes against humanity and genocide</p> <ul style="list-style-type: none"> ○ Ad Hoc Tribunals (Tribunal) <ul style="list-style-type: none"> ■ Temporary or permanent international criminal courts specifically convened for the purpose of deciding cases and prosecuting offenders arising under international criminal law. Etc. International Criminal Tribunal for Rwanda made 1994 to prosecute offenders of Rwanda genocide causing 800,000 deaths to protect ICCPR Article 6' Right to life' ○ Independent Statutory Authorities <ul style="list-style-type: none"> ■ Independent corporations that protect and deal with human rights related issues. Australian Human Rights Commission is key ISA promoting HR through awareness programs, preparation and release of reports concerning HR. ● Non-Government Organisations <ul style="list-style-type: none"> ○ Organisations independent of governments, able to generate awareness and assist HR violated victims through investigating, research, documenting and publicising cases of HR violations for government and media. Can victim support, apply pressure, spark change. Etc. ZOE Foundation is key NGO protecting Article 4 'Right to freedom from slavery' to protect victims of HR through generating support, finance and assisting governments in remedying issues. Key in promoting human rights through applying pressure to law-making bodies. ● The Media <ul style="list-style-type: none"> ○ Bodies able to generate awareness on issues through forms of mass communication. Effectively 'name and shaming' governments and HR violators by investigating, reporting and exposing instances of HR abuses. Etc. 'Trafficking in women: where have we come...' (AHRC, 15/07/2002) exposes human trafficking issue, sparked United Nations Convention against Transnational Organized Crime (2000) which protected A4 'Right to freedom from slavery'
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<p>Incorporation of human rights into domestic law</p>	<ul style="list-style-type: none"> • In Australia, no Charter of Human Rights, recognition of HR scattered in various sources; international treaties, Australian Constitution, common law and statute law of Commonwealth, state and territories.. • When international treaties agreed to, principles sign, meaning nation acts in spirit of treaty, but not legally binded until ratification occurs. Countries with monist systems see ratification automatically become law as if act of parliament etc. France. • Australia is dualist system, signing doesn't make enforceable as rights and obligations of treaty need incorporated in some way to make effective. • Etc. Australia ratified ICC Rome Statute in 2002; the Commonwealth Parliament passed International Criminal Court Act 2002 (Cth) to enact provisions.
<p>The role of:</p>	<ul style="list-style-type: none"> • The Constitution (division and separation of powers) - Australia's founding document, key source of law nationally recognised. Lays system of AU Government which HR recognised through SOP and DOP: <ul style="list-style-type: none"> ◦ Separation of Powers - prevents one person in power/dictatorships through dividing powers). Important to protecting HR through separating branches of state, ensuring coherence and accountability, prevent power abuse. Protected by Chapters 1-3 of Australian Constitution. <ul style="list-style-type: none"> ■ Legislature – elected-law makers in parliament ■ Executive – governments, including ministers, agencies and police ■ Judiciary – courts that interpret and apply law ◦ Division of Powers - division of powers between federal and state governments. Under S51 of Australian Constitution, ensures governments not too centralised to prevent anarchies ◦ Express and implied rights (in constitution as no charter of rights) <ul style="list-style-type: none"> ■ Right to freedom of religion ■ Right to vote ■ Right to trial by jury ■ Right to property ■ Right to anti-discrimination • Statute Law - law created by parliament <ul style="list-style-type: none"> ◦ Upholds HR through laying out rights, but can be removed. Prosecute HR violations, outline rules to enforce compliance and protect HR. ◦ Etc. Anti-Discrimination Act 1977 (NSW) and Criminal Code Amendment (Slavery and Sexual Servitude) Act 2005 protect A4 UDHR 1948 'right to freedom from slavery'



	<ul style="list-style-type: none"> • Common law - law made by judgements of courts and judicial decisions. Doesn't offer absolute protection of HR as can be overridden by acts, restricts enforceability. Create precedent. Mabo v Queensland 1992 key example as led to Native Title Act 1993 which recognises land rights. • Courts and Tribunals <ul style="list-style-type: none"> ◦ Australian Human Rights Commission - most significant HR body is AHRC which independent national body under Australian Human Rights Commission Act 1986 (Cth) to deal violations of the Racial Discrimination Act and Sex Discrimination Act <ul style="list-style-type: none"> ■ Receive and investigate complaints to discrimination and breaches of HR ■ Promote public awareness about HR and provide legal advice ■ Conduct public inquiries to HR issues and produce recommendations ■ Give advice and make submissions to parliament and governments to make law ■ Can investigate, conciliate and resolve complaints ◦ Royal commissioners <ul style="list-style-type: none"> ■ Can independently investigate complex issues, Royal Commission into Institutional Responses to Child Sexual Abuse 2013-2017 investigated scale of institutional abuse and failures to address by allowing survivors to speak directly to 1 of 6 commissioners about experiences. ◦ High Court of Australia <ul style="list-style-type: none"> ■ Makes HR important through precedent setting power on courts and lawmaking ■ Etc. Mabo v Queensland 1992 recognised indigenous people's right to traditional land as 'native title' ■ Most important protector of HR as can interpret laws and make binding decisions • Non-Government Organisations <ul style="list-style-type: none"> ◦ Independent organisations researching and reporting on HR issues, making submissions, supporting victims, protect individual rights, shape public and political opinion, expose violations by government and individuals. Etc. Anti Slavery Australia, Zoe Foundation • Media <ul style="list-style-type: none"> ◦ Apply pressure to law-making bodies, generate awareness, promote HR ◦ Etc. 'Trafficking in women: where have we come...'
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	<p>(AHRC, 15/07/2002) exposes human trafficking issue, sparked United Nations Convention against Transnational Organized Crime (2000) which protected A4 'Right to freedom from slavery'</p> <ul style="list-style-type: none"> • A Charter of Rights (arguments for and against) <ul style="list-style-type: none"> ○ Document detailing rights that according to individuals within nation ○ Can be statute (parliamentary which adaptable to changing values) or constitutional (requires referendums to change) ○ Arguments For: <ul style="list-style-type: none"> ■ Brings AU in line with other democracies etc. NZ, USA ■ Collective source of HR ■ Increased accessibility and recognition ■ High community support etc. AHRC 80% complaints about COR ○ Arguments Against: <ul style="list-style-type: none"> ■ Violate parliamentary sovereignty as judges excess interpretation power ■ May undermine/devalue certain rights through prioritisation and diminish ■ Costly litigation as major economic cost ■ No actual requirement etc. AHRC states framework 'adequate' enough
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Contemporary Issue

Human Trafficking and Slavery	<ul style="list-style-type: none"> • Overview <ul style="list-style-type: none"> ○ Slavery - practice of forced labour and restricted liberty, including debt bondage, sexual servitude and human trafficking ○ The Global Report on Trafficking in Persons 40 million people affected worldwide ○ International Labour Organisation states 57.6% of forced labour victims are women • International Responses <ul style="list-style-type: none"> ○ International Conventions <ul style="list-style-type: none"> ■ United Nations Convention against Transnational Organized Crime (2000) protects individuals from human trafficking <ul style="list-style-type: none"> • Upholds Article 4 UDHR 1948 'Right to freedom from slavery' • Introduced Protocol to Prevent, Suppress and Punish Trafficking in
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	<p>Persons Especially Women and Children (2000)</p> <ul style="list-style-type: none"> • 'Inconvenient truth on organised crime' (SMH, 13/05/2022) states responses can limited due to state sovereignty <ul style="list-style-type: none"> ○ NGOs <ul style="list-style-type: none"> ■ Amnesty International generates awareness alongside 10 million supporters to protect against HR violations and support victims, played significant role to sparking UNTOC • Domestic Responses <ul style="list-style-type: none"> ○ Domestic Legislation <ul style="list-style-type: none"> ■ 'Trafficking in women: where have we come...' (AHRC, 15/07/2002) exposes human trafficking issue ■ Applied pressure to Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999 as failed to prosecute all forms of trafficking to reform and introduce Criminal Code Amendment (Slavery and Sexual Servitude) Act 2005 to criminalise human trafficking and extend extent of forms, etc. debt bondage and sexual servitude ■ AIC Statistical Bulletin 126, between 2004-2017, trafficking detection increased by 5.4% ■ The Trafficking in Humans Person Report states Australia is Tier 1 country ○ Government Plans <ul style="list-style-type: none"> ■ National Action Plan to Combat Human Trafficking 2015-19 provides prevention, detection, prosecution and support method to combat trafficking, invested over \$200 million to combat human trafficking, alongside support to NGOs ○ NGOs <ul style="list-style-type: none"> ■ ZOE Foundation promotes A4 UDHR 'right to freedom from slavery' as reached over 120,000 victims to support, generated awareness through reach to over 1 million people annually ○ Media <ul style="list-style-type: none"> ■ 'Inconvenient truth on organised crime' (SMH, 13/05/2022) states responses can limited due to state sovereignty ■ 'Trafficking in women: where have we come...' (AHRC, 15/07/2002) exposes human trafficking
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Black: Information
Yellow: Legislation
Aqua: International Instruments



Brown: Cases
Blue: Media
Red: Stats/Reports/Other

	<p>issue</p> <ul style="list-style-type: none">■ Resulted in Criminal Code Amendment (Slavery and Sexual Servitude) Act 2005■ Caused IC Statistical Bulletin 126, between 2004-2017, trafficking detection increased by 5.4%, greater response
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The Nature of Family Law

<p>The concept of family law</p>	<ul style="list-style-type: none"> • Article 23 ICCPR 'family is the natural and fundamental group unit of society and is entitled to protection by society and the state' • Family Law Act 1975 (Cth) 'natural and fundamental group unit of society especially in reaction to the upbringing of children'
<p>Legal requirements of marriage</p>	<ul style="list-style-type: none"> • Hyde vs Hyde + Woodmansee 1866 (Common Law) 1866 pre-Australia. 4 legal requirements of marriage: <ul style="list-style-type: none"> ◦ Between man and woman ◦ Entered into voluntarily ◦ Exclusion of all others ◦ For life • Matrimonial Causes Act (1959) established 14 avenues for dissolution of marriage, including: <ul style="list-style-type: none"> ◦ Adultery ◦ Cruelty ◦ Desertion ◦ Insanity ◦ Although one party must be at fault • Marriage Act 1961 (Cth) (Statute Law) formalised H v H + W 1866: <ul style="list-style-type: none"> ◦ Cannot be blood relation ◦ 18 years old, 16 w/ parental permission ◦ 1 month notice to registry of birth death marriages • Family Law Act (1975) created two outcomes: <ul style="list-style-type: none"> ◦ Created family court, a specialised court for mediation, arbitration, reconciliation ◦ Removed requirement of fault from dissolution of marriage, replacing it with phrase 'irretrievable breakdown of marriage' ◦ 12 months of separation (prove through Facebook status, address change, new partner) required ◦ Society places value on institution of marriage because worth-while • De Facto Relationships Act 1984 (NSW) legally recognised defecto relationships, 'bona fide domestic relationships' providing some legal protections in instance of death or relationship breakdowns i.e. financial distribution <ul style="list-style-type: none"> ◦ If breakdown, had to show proof etc. living together in genuine domestic relationship for more than 8 months



	<ul style="list-style-type: none"> ○ Needed to be between man and woman ● Hope + Brown vs NIB (1995) recognised as a family, as a same sex couple for purposes of healthcare à given family coverage ● De Facto Relationships Act 1984 amended to Property (Relationships) Act (1984) in 1999 removed requirement of man and woman from definition of de facto relationship ● 'Australians say 'yes' to marriage equality' (16/11/2017, HRW) has high community support in recognition for gay marriage <ul style="list-style-type: none"> ○ 'Margin of 61.6% to 38.4% in support for gay marriage' ● Marriage Amendment (Definition + Religious Freedom) Act 2017 removed requirement of man and woman in Australia for legal marriage in recognition of same-sex individuals ● Family Law Amendment (De Facto Financial Methods + Other Measures) Act 2008 aligned rights of de facto relationships to those of traditional marriage
Alternative family relationships (SDPIS)	<ul style="list-style-type: none"> ● 'Australians say 'yes' to marriage equality' (16/11/2017, HRW) has high community support in recognition for gay marriage <ul style="list-style-type: none"> ○ 'Margin of 61.6% to 38.4% in support for gay marriage' ● Marriage Amendment (Definition + Religious Freedom) Act 2017 removed requirement of man and woman in Australia for legal marriage in recognition of same-sex individuals ● Davies v Sparkes (1990) established de facto relationships through common law ● Property (Relationships) Act 1984 (NSW) defines and recognised de facto as <ul style="list-style-type: none"> ○ Lasted two or more years or has children involved ○ Showed commitment ○ Existed in NSW for 1/3 of time couple spent together ○ Prompted by Davies v Sparkes (1990) ● Khan v Khan 1963 illegalised polygamous marriages in Australia
Legal rights and obligations of parents and children (EDMS)	<ul style="list-style-type: none"> ● United Nations Conventions on the Rights of the Child (1989) has 54 articles declaring under 18 must be protected from violence, discrimination, exploitation, neglect, act in best interests of child <ul style="list-style-type: none"> ○ Ratified in 1990, hence range of responses



	<p>occurred</p> <ul style="list-style-type: none"> • Children and Young Persons (Care and Protection) Act 1998 (NSW) parents don't provide requirements to child face prosecution as neglect <ul style="list-style-type: none"> ◦ States child is under 16 and young person 16-17 • Education Act 1990 (NSW) ensures children are given right to education in Article 26 UDHR • Crimes Amendment (Child Protection - Physical Mistreatment) Act 2001 (NSW) states excessive force leaving bruises, marks, injury over 'short-period' is unreasonable • Minors (Property and Contracts) Act 1970 (NSW) is first formalised consensual doctrine for children • Supreme Court overrule family in 2015 after refused blood transfusion during transplant due to beliefs, hence ordered to take place as 'significantly improve the quality of the boy's life' • Family Law Act 1975 (Cth) ensures best interest of children is key factor in court decision-making <ul style="list-style-type: none"> ◦ Maintain a meaningful relationship with parents ◦ Protection from harm, neglect and abuse ◦ Proper parental care ◦ Right to enjoy culture ◦ Right to spend time and communicate with parents ◦ Right to know and be cared ◦ Parents share duties
Adoption	<ul style="list-style-type: none"> • Adoption Act 2000 (NSW) ensures most appropriate parents found for child and adult needs are secondary • Adoption Amendment (Same Sex Couples) Act 2010 (NSW) lists all possible prospective parents: <ul style="list-style-type: none"> ◦ Married couples or long-term de facto relationships ◦ Individuals not in relationships ◦ Individuals over 21 but under 51 of age ◦ At least 18+ than child for male parents, and 16 for female • Child Protection Legislation Amendment Act 2014 (NSW) passed legislation to approximately 18,000 children being 'foster cared' • 'Adoption rate declined 63% past 25 years' (30/08/2022, AIHW) other reasons such as contraception, less children to adopt, etc



Responses to Problems in Family Relationships

<p>Divorce</p>	<ul style="list-style-type: none"> • Matrimonial Causes Act 1959 pre-1975 allowed divorce through ground of 'fault' under adultery, cruelty, insanity, desertion • Family Law Act 1975 (Cth) allowed 'legal dissolution of marriage' through 'irretrievable breakdown of marriage' <ul style="list-style-type: none"> ◦ Removed inefficiencies of Matrimonial Causes Act ◦ Removed requirement of 'fault' in divorce ◦ Created family court for mediation, arbitration, reconciliation ◦ A side effect, encouraged divorce as become easier to dissolve (divorce peaked at 4.6 per 1000 in 1976) ◦ Requires 12 months of proven separation for divorce, need to attend counselling before divorce is granted less than 2 years • Family Law Amendment (Shared Parental Responsibility) Act 2006 (Cth) introduced compulsory mediation before parties seek divorce <ul style="list-style-type: none"> ◦ Combated the divorce rises by compulsorily encouraging requiring mediation before seeking divorce orders ◦ Reduced divorce rate to 2 in 2017 • ABS 2017 states 30% marriages end in divorce with 97,000 annual divorces, 95% of separation cases resolved through family courts • BOCSAR '40% parents resolve their disputes before having to file court a application' • Lewis v Wackett (2010) established precedent that protecting child from harm overrides any presumption of equal parenting • Uysal v Mardine (2014) upheld the right of the child to be protected from harm, enabling mother to take her child overseas to protect it from her abusive husband
<p>Legal consequences of separation</p>	<ul style="list-style-type: none"> • Family Law Act 1975's family court issues decree nisi (signal for termination of marriage) to begin divorce, after 1 month become decree absolute (final decree of dissolution), by which divorce order issued and 12 months to resolve division issues. • Family Law Reform Act 1995 (Cth) introduced parenting plans (written agreements by parents)



	<p>instead of 'custody', where 'residence' used, improved children welfare in separation issues</p> <ul style="list-style-type: none"> • Family Law Amendment (Shared Parental Responsibility) Act 2006 (Cth) introduced compulsory mediation between parents to encourage resolution <ul style="list-style-type: none"> ○ Removes presumption of ESPR if parent believed engaged in abuse ○ Creates parenting plans through it's '65 Relationship Centres' and encourages resolutions ○ Parental orders can be issued ○ Allows family court to protect child rather than meaningful relationship with parent ○ 5% made parenting orders in 2019, which suggests its partially effective • Family Court <ul style="list-style-type: none"> ○ Interprets other acts to prioritise children in cases ○ Developed 'Magellan Program' to protect abused children through determining parenting orders to welfare children
Property	<ul style="list-style-type: none"> • Family Law Act 1975 (Cth) includes bank accounts, houses, companies and shares as property. Allows agreements for division to applied to court, where consent order legally binding if fair. <ul style="list-style-type: none"> ○ Property allocation depends on financial and non-financial contribution, ability of parties to maintain living standards, age and income of parties ○ Disputed divisions can be heard in family courts, where judges can determine the fair allocation of assets ○ Section 19 allows 'Prenuptial Agreements' to protect the property rights of individual's, removing the combative nature of divorce • Hoffman v Hoffman (2014) saw judge reject Mr Hoffman's claim of 70% of \$10 million assets, ruling 50-50 split as Mrs Hoffman's homemaker contribution was not 'menial' whilst Mr Hoffman's claim of 'special contributions' related to entrepreneurial skills failed to sway judge
Dealing with domestic violence	<ul style="list-style-type: none"> • United Nations Conventions on the Rights of the Child (1989) has 54 articles declaring under 18 must protected from violence, discrimination, exploitation, neglect, act in best interests of child



	<ul style="list-style-type: none"> ○ Ratified in 1990, hence range of responses occurred ○ 'No child shall be subjected to violence and it is the responsibility of the state to protect the child...' ● ABS states since 1996, one woman killed weekly across nation <ul style="list-style-type: none"> ○ Women 4x likely to be assaulted by known person ○ 73% experience repeat attacks ○ In 2019, 30,000+ domestic-related assaults in NSW, 52.4%+ domestic assaults ○ 38% all homicide victims domestic-related incidents ● Crimes (Domestic and Personal Violence) Act 2007 (NSW) defines domestic violence 'personal violence against someone whom offender has/had domestic relationship' including physical violence, economic abuse, sexual assault, social isolation <ul style="list-style-type: none"> ○ Act allows victims and police to apply for ADVO ● Services Devices Amendment (Police Body-Worn Video) Act 2014 (NSW) allows police to film incidents of reported domestic violence as evidence to support conviction <ul style="list-style-type: none"> ○ 'Huge increase in domestic violence cases reported', (19/03/2015, SMH) 'Cases increased by 70% since 2010' ● Section 37 Crimes Act 1900 (NSW) amended in 2018 to add harsher penalties for perpetrators of choking, strangling and suffocating, with 2-year sentences to 5-years <ul style="list-style-type: none"> ○ 'NSW domestic violence court cases hit with months of delays' (31/12/2022, DTD) as since 2018 'domestic assaults have risen by 19 per cent in regional areas' from 12,800 in 2018 to 14,200 in 2022, suggesting ineffective deterrence measure ● Family Courts Violence Review: A Report, by Professor Richard Chrisholm (2009) was one of two major reviews conducted ● Domestic Violence: Issues and Policy Changes, Parliament of Australia (2015) was one of two major reviews conducted ● Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011 (Cth) broadened definition of domestic violence to 'controlling or coercive behaviours'
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	<ul style="list-style-type: none"> ○ 2011, Rosie Batty's 10-year-old son beaten to death by father at cricket training, even when given on restraining order ● 'Luke Batty: killed by a father no one truly knew' (2/11/2014, TG) <ul style="list-style-type: none"> ○ 2014, Rosie Batty's 10-year-old son beaten to death by father at cricket training, even when given on restraining order ● Children and Young Persons (Care and Protection) Act 1998 (NSW) covers abuse and neglect <ul style="list-style-type: none"> ○ Section 227 prohibits physical, sexual, emotionally or psychologically harmful acts ○ ADVO applications can be made by police, individuals and children. Effective legal measures as quick, inexpensive, accessible, used in % cases according to Prof Donald Weatherburn, prevent domestic violence ● August 2019, Fourth Action Plan of the National Plan to Reduce Violence against Women and their Children 2010-2022 made 5 priorities to reduce domestic violence, sets unacceptable acts to protect women ● NSW Domestic and Family Violence Prevention and Early Intervention Strategy 2017-2021 launched to help governments and NGOs design prevention and intervention strategies, allocated \$25 million to 'Rent Choice Start Safely' program to support victims of domestic violence to reside in safer areas ● National Domestic Violence Order Scheme allows interstate information transferrals, with over \$350 million since 2017 to combat domestic violence ● Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011 redefined domestic violence and placed more weight on child safety, no 'shared parental responsibility', but instead ensure 'child protected from harm' (more safety rather than family) ● White Ribbon Australia and National Council of Women of Australia were significant NGOs in applying pressure for the 2006 and 2007 amendment due to the counselling, education, skills and support they provided to women and their children experiencing domestic abuse ● Family Law Amendment (Shared Parental Responsibility) Act 2006 (Cth) ensured children
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	<p>experiencing abuse are prioritised through 'best-interests' of child, either 'primary' or 'additional'</p> <ul style="list-style-type: none"> ○ Primary - benefit the child of having positive and meaningful relationships with parents, need to protect them ○ Additional - child's wishes, nature of relationship between child and parent, ability to care for child ○ Removed notion of 'substantial and significant time' which each parent to protect time <ul style="list-style-type: none"> ● 'Media can play their part to protect and care for children' (2019, NAPCAN) with over 20,000 children protected in 2019 through media coverage alone ● NAPCAN states media have 'increased detection by 43% between 2015-2019'
Roles of various responses	<ul style="list-style-type: none"> ● Family Court is specialised court hearing matters relating to separation, divorce and marriage disputes <ul style="list-style-type: none"> ○ Jurisdiction within matters of Family Law Act (property, financial and parenting arrangements) ● Federal Circuit Court of Australia is similar to Family Court, made to reduce load of cases on Federal and Family court, hearing matters relating to divorce, though not adoption, nullity or validity of marriage <ul style="list-style-type: none"> ○ Dealt with over 105,000 family law proceedings each year ○ Hears 80% of divorce hearings ● Children's Court hears cases regarding care and protection of children under Children and Young Persons (Care and Protection) Act 1998 (NSW) <ul style="list-style-type: none"> ○ Keeps children safe from harm, 'very high probable' standard of proof to establish child's need for care ○ Brought by Family and Community Services ● Salvation Army, Anglican Church, Relationships Australia and the Smith Family are NGOs working to support families and individuals who struggle. <ul style="list-style-type: none"> ○ Provide relationship advice, mentoring support for new parents, emotional support to children and conflict resolution ● 'Keep Them Safe Initiative' saw NSW Government commit \$750 million to expand role of NGOs <ul style="list-style-type: none"> ○ Higher provisions of services in dual-cooperative strategy



	<ul style="list-style-type: none"> ○ BRANADOS Australia is another example of charity supporting children through adoption services, out-of-home care and child education ● Sydney Morning Herald, NGOs and TheGuardian are media sources that generate awareness on issues to spark change, apply pressure, generate support <ul style="list-style-type: none"> ○ 'Huge increase in domestic violence cases reported', (19/03/2015, SMH) 'Cases increased by 70% since 2010' ○ 'Adoption rate declined 63% past 25 years' (30/08/2022, AIHW) other reasons such as contraception, less children to adopt, etc
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Contemporary Issues Concerning Family Law

Recognition of same-sex relationships	<ul style="list-style-type: none"> ● Hyde vs Hyde + Woodmansee 1866 (Common Law) 1866 pre-Australia. 4 legal requirements of marriage: <ul style="list-style-type: none"> ○ Between man and woman ○ Entered into voluntarily ○ Exclusion of all others ○ For life ● De Facto Relationships Act 1984 (NSW) legally recognised defecto relationships, 'bona fide domestic relationships' providing some legal protections in instance of death or relationship breakdowns i.e. financial distribution <ul style="list-style-type: none"> ○ If breakdown, had to show proof etc. living together in genuine domestic relationship for more than 8 months ○ Needed to be between man and woman ● Hope + Brown vs NIB (1995) recognised as a family, as a same sex couple for purposes of healthcare à given family coverage ● De Facto Relationships Act 1984 amended to Property (Relationships) Act (1984) in 1999, removed requirement of man and woman from definition of de facto relationship ● Family Law Amendment (De Facto Financial Methods + Other Measures) Act 2008 aligned rights of de facto relationships to those of traditional marriages ● 'Australia is so far behind the times on same-sex marriage' (31/05/2015, TC) expressed opinions in
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	<p>parliament for a change in community values that same-sex marriage should be recognised</p> <ul style="list-style-type: none"> ○ 'Our laws should be a mirror reflecting... our free, inclusive society' said Bill Shorten ● 'Australians say 'yes' to marriage equality' (16/11/2017, HRW) has high community support in recognition for gay marriage <ul style="list-style-type: none"> ○ 'Margin of 61.6% to 38.4% in support for gay marriage' ● Marriage Amendment (Definition + Religious Freedom) Act 2017 removed requirement of man and woman in Australia for legal marriage in recognition of same-sex individuals
<p>The changing nature of parental responsibility</p>	<ul style="list-style-type: none"> ● Family Law Act 1975 (Cth) states 'parents have joint responsibility for the child' with shared parental responsibility applying equally to children born nuptial and ex-nuptially ● ABS says 60%+ parenting plans and orders, children spend with mother due to male violence ● Family Law Amendment (Shared Parental Responsibility) Act 2006 (Cth) ensured children are prioritised through 'best-interests' of child, either 'primary' or 'additional' <ul style="list-style-type: none"> ○ Primary - benefit the child of having positive and meaningful relationships with parents, need to protect them ○ Additional - child's wishes, nature of relationship between child and parent, ability to care for child ○ Removed notion of 'substantial and significant time' which each parent to protect child ● Time for Action: The National Council's Plan to Reduce Violence against Women and Their Children 2009-2021 identified issues in framework, prompting the: ● Family Law Amendment (Family Violence and Other Measures) Act 2011 (Cth) to consider evidence and findings made in domestic violence order proceedings to protect all parties and make the best decision <ul style="list-style-type: none"> ○ Became priority to protect children from harm rather than ensure meaningful relationship with parent ● Relationship Australia help separating parents negotiate their own parenting agreements and assist by providing range of information and referrals



	<ul style="list-style-type: none"> • White Ribbon Australia and National Council of Women of Australia were significant NGOs in applying pressure for the 2006 amendment due to the counselling, education, skills and support they provided to women and their children experiencing domestic abuse • Dads in Distress Support Services and The Lone Fathers Association are NGOs providing support for men going through divorce, separation or relationship breakdown • Interrelate is a support program aiming to build meaningful relationships between parents and their children
Surrogacy and birth technologies	<ul style="list-style-type: none"> • Status of Children Act 1996 (NSW) states children born through alternative methods have the same legal status as those conceived naturally <ul style="list-style-type: none"> ◦ Created automatic 'presumption of paternity' ◦ Gave protection to donors 'when a woman becomes pregnant by using a donor sperm from someone other than her husband, then that man is presumed not to be the father of the child born' ◦ In majority cases however, child's legal parents were seen as those who gave birth to them • B v J (1996) demonstrates this as father refused to pay maintenance over claim child is not his and sperm donor's name appeared on birth certificate, where court rejected this argument under 'presumption of paternity'. <ul style="list-style-type: none"> ◦ Sperm donor automatically not father, and he who is the relationship is automatically presumed the father for equal and just outcomes ◦ Allows blood tests to be used to find identity of father in paternity disputes • Surrogacy Act 2010 (NSW) makes possible to transfer parentage of child from birth parent to prospective parent in surrogacy contract <ul style="list-style-type: none"> ◦ Initially, only birth mother was considered parent even if used donor sperm, ova or embryo for pregnancy, and males were given a bit of leeway, hence this was abolished ◦ Introduced parenting orders for legal parentage transfers, with orders having to be applied 1-6 months after child birth ◦ Ensured recognition under property, relationship registers and other entitlements



	<ul style="list-style-type: none"> ○ Ensures understanding of psychological, social and legal complexities of arrangement and impact on child ○ Removed the legal issues relating to not recognising as legal parents, enrolment in school difficulties, government benefit exclusions ○ Avoids commissioning parents having to go through formal adoption processes ○ Parentage orders must be made in best interests of children ○ Under act, commercial surrogacy remains illegal even when carried out overseas ○ As side effect caused international surrogacy arrangements to go from 423 in 2008 to 978 in 2012 ○ Makes NSW response good, but it is not equally used on a federal level ● Australian Citizen Act 2007 does not define 'parent', meaning a child born in India which allows commercial surrogacy, could be granted Australian citizenship by descent even though child's intending parents may not be considered child's legal parents <ul style="list-style-type: none"> ○ International surrogacy arrangements increased from 423 in 2008 to 978 in 2012, due to this flaw ○ Growing risk of 'child trafficking' in guise of 'surrogacy' ● Assisted Reproductive Technology Act 2007 (NSW) commenced in 2019, regulating ethical and social aspects of assisted reproductive technology, preventing commercialism of human reproduction. ● Australian Christian Lobby expressed opinions in 2009 towards surrogacy saying it 'would pave the way for two men or two women to order a baby that they not even genetically connected to' which ensures legislature is strong enough to prevent this ● Surrogacy Australia is non-for-profit NGO educating and supporting individuals involved in surrogacy arrangements, effective in generating awareness, expressing public opinion and supporting individuals ● 'The truth about surrogacy in Australia' (23/12/2022, 9News) states the financial difficulties of obtaining surrogacy, though points more so the extreme inconsistencies of the ALS as there are no laws in Northern Territory, while all other states have restrictions, though NSW does not (etc. Western Australia allows surrogacy for heterosexual couples or
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	women, while other states do not), subsequently 'there are only 100 surrogacies in Australia per year'
Care and protection of children	<ul style="list-style-type: none"> • United Nations Conventions on the Rights of the Child (1989) has 54 articles declaring under 18 must protected from violence, discrimination, exploitation, neglect, act in best interests of child <ul style="list-style-type: none"> ◦ Ratified in 1990, hence range of responses occurred • Child Protection Legislation Amendment Act 2014 (NSW) focuses on safety and wellbeing of child by providing them a secure environment free from four types of harm, namely emotional abuse, neglect, physical and sexual abuse. It also amended the Children and Young Persons (Care and Protection) Act 1998, Adoption Act 2000 (NSW) and Child Protection (Working with Children) Act 2012 (NSW) to improve legislature <ul style="list-style-type: none"> ◦ Through 'permanent placement principles' new law allows authorities to seize children once born, if proven mother has had history of drug or alcohol abuse during pregnancy ◦ Improved early intervention services ◦ Introduced parental capacity orders ◦ Allows adopted children to maintain connection with biological parents ◦ "At risk of harm' reports to FACS increased steadily' says Ombudmsan ◦ AIHW states between 2012-2017, notifications rose by 39%, from 272,980 to 379,459 to ensure responsiveness and accessibility • NSW Family and Community Services is able to provide foster care children <ul style="list-style-type: none"> ◦ Child Protection Helpline was setup by FACS to help to enable easy access to report any child at risk of harm, by which reports subsequently increased by 1.3% through this ◦ Through concurrence with Child Protection Legislation Amendment Act 2014 (NSW), "At risk of harm' reports to FACS increased steadily' says Ombudmsan, whilst AIHW states between 2012-2017, notifications rose by 39%, from 272,980 to 379,459 due to responsiveness and accessibility ◦ 'Working with Children Check system' only states those with certificates can come in contact with children, with no history of abuse, inappropriate behaviour and ensures all



	<p>workers are safe and valid</p> <ul style="list-style-type: none"> ○ Child Protection Report by AIHW states 57,861 children supported through child protection services in 2014 increased to 159,000 in 2019, demonstrating effectiveness of ALS (for FACS and NGOs) ● National Framework for Protecting Australia's Children 2009-2020 came into place in 2009, identifying various outcomes <ul style="list-style-type: none"> ○ Children live in safe and supportive families and community ○ Adequate support to promote safety and early intervention ○ Risk factors addressed ○ Children receive support and care for safety and wellbeing ○ Indigenous children supported and safe in families and communities ○ Child-sexual abuse and exploitation is prevented and survivors receive support ○ 'Baby P death: 'They rubbed chocolate on his face to hide the bruises' (11/11/2008, TG) drew significant awareness towards the poor risk assessments within the ALS's child protection, applying pressure to become more considerate towards risks involved, prompting 'risk factors addressed' as an outcome of National Framework for Protection Australia's Children 2009-2020 ● Children and Young Persons (Care and Protection) Act 1998 (NSW) parents don't provide requirements to child face prosecution as neglect <ul style="list-style-type: none"> ○ States child is under 16 and young person 16-17 ○ Allows families to work alongside FACS with biological parent to 'foster' care and protect children for equal and just outcomes ○ Focuses on safeguarding health and wellbeing of children through protections from violence and mandatory reporting to FACS ● Family Law Amendment (Shared Parental Responsibility) Act 2006 (Cth) ensures children have meaningful relationship with both parents, requiring court to consider child's best interests rather than parental interests ● Family Law Act 1975 (Cth) defines 'family violence' as any 'action or threat of violence by one family member against another...'
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	<ul style="list-style-type: none"> • Child Abuse Prevention Service alleviates child abuse by educating community • Salvation Army has supported significantly and provided education services to vulnerable children in need, alongside emergency housing and youth support programs • Child Protection and Family Crisis Service and Kids Helpline provide 24-hour telephone counselling and help to vulnerable children aged between 5-25 • Child Protection Report by AIHW states 57,861 children supported through child protection services in 2014 increased to 159,000 in 2019, demonstrating effectiveness of ALS (for FACS and NGOs) • 'Australia's 'care and protection' programs for children are in crisis' (20/03/2019) states a portion of 25,000 homeless children and young people died due to neglect, hence work is required in this area • Sydney Morning Herald and Australian Human Rights Commission create articles that spark change and draw support from NGOs and ALS <ul style="list-style-type: none"> ○ Phillippa McDonald from ABC 'ABC takes the treatment and dignity of children and young people so seriously it's enshrined in our editorial policies' ○ NAPCAN 'media can play their part to protect and care for children' with over 20,000 children protected in 2019 through media coverage alone ○ NAPCAN states media have 'increased detection by 43% between 2015-2019' ○ 'Huge increase in domestic violence cases reported', (19/03/2015, SMH) 'Cases increased by 70% since 2010' ○ 'Baby P death: 'They rubbed chocolate on his face to hide the bruises'' (11/11/2008, TG) drew significant awareness towards the poor risk assessments within the ALS's child protection, applying pressure to become more considerate towards risks involved, prompting 'risk factors addressed' as an outcome of National Framework for Protection Australia's Children 2009-2020
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The Nature of Workplace Law

<p>The changing nature of workplace law over time</p>	<ul style="list-style-type: none"> • Workplace law - regulates relationship between employees and employers, ensures worker rights protected • Employment - contractual relationship between employer and employee, involving work performed for monetary payments and other benefits • Independent contractor – individual paid for work done by another without a contractual agreement of employment between them • Industrial Revolution saw rapid development of trade unions to protect rights of workers: <ul style="list-style-type: none"> ◦ Initially, trade unions illegal as considered 'sedition' under Combination Act 1799 ◦ Later legalised through the Reform Act 1832 by British Parliament ◦ Number of Factory Acts 1833 made to regulate conditions of workers to preserve rights of 9 year olds involved in child labour ◦ Conciliation and Arbitration Act 1904 – Australia industrial relations begins ◦ First minimum wage set 1908 by Commonwealth Court of Conciliation and Arbitration ◦ Equal pay decision for men and women made (1972) by Commonwealth Court of Conciliation and Arbitration ◦ After rapid development, Work Choice Legislation 2005 ensured greater role for individual contracts between employers and employees ◦ Workplace Relationships Amendment (Work Choices) Act 2005 – new workplace relations system, improved employment levels and national economic performance ◦ Fair Work Act 2009 – replaced Workplace Relations Act 1966 (Cth) to introduced NES, Fair Work Australia, good faith bargaining and workplace ombudsman ◦ Fair Work Amendment (Family and Domestic Violence Leave) Act 2018 ◦ Coronavirus Economic Response Package (JobKeeper Payments) Amendment Act 2020 ◦ Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021 defined sexual harassment, introduced orders to prevent,
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	clarified reasons for dismissal, included miscarriage in compassionate leave
Contracts	<ul style="list-style-type: none"> • Of service - when individual employed for a fixed term under authority of employer with contractual agreement to conduct certain tasks <ul style="list-style-type: none"> ○ For work specified by and under direction of employer ○ Provides specific rights and imposes duties on both parties e.g. teacher employed indefinitely on annual wage to perform tasks required by employer ○ Fixed term or ongoing ○ Usually written agreements (easier to enforce) but can oral ○ Employer vicariously liable ○ Entitlements like sick leave, holidays leave, minimum conditions ○ Protected against unfair dismissal • For service - when independent contractors agree to work for fee, but worker not employed by another party <ul style="list-style-type: none"> ○ Individual agree to conduct task for another person for price, etc. plumber fixes dishwasher ○ Duration of contract is time period agreed for completion of tasks, once finished, no legal relationship between client and contractor ○ Contracts can written on oral ○ Contractor held liable for damage caused during work • Express and implied rights <ul style="list-style-type: none"> ○ Implied terms - promises binding on parties to contract, even though never discussed. Include work provisions, wage payments, vicarious liability for worker actions, according to Australian Human Rights Commission. • Expressed terms – terms usually spoken or written into contract. Include sick leave, holiday leave, workers compensation, superannuation and pay rate
Awards and agreements	<ul style="list-style-type: none"> • Industrial Awards – standard set of wages and working conditions for employees in particular industry/occupation, or those employed by particular employers • AIRC created federal awards covering wide range of standards: <ul style="list-style-type: none"> ○ Minimum terms and conditions must included in contract ○ Used to be over 3000 individual awards, now



	<p>there 122</p> <ul style="list-style-type: none"> • Workplace Relations Act 1996 (Cth) simplified and streamlined awards. Contained list of 20 'allowable award matters'; any terms or conditions not amongst allowable, not enforced <ul style="list-style-type: none"> ◦ Australian Workplace Agreement (AWA) created under act where individual workplace agreement between employer and employee in AWA overrides and replaces any award in collective agreement • Workplace Relations Act 1996 (Cth) amended in 2006 to 'WorkChoices' <ul style="list-style-type: none"> ◦ Introduced 5 minimum statutory entitlements, both collective agreements and AWAs had pass test to ensure employees no worse off under agreement than relevant award • Fair Work Act 2009 (Cth) is basis for creation of modern awards, replaced WorkChoices. <ul style="list-style-type: none"> ◦ Determined tribunal/commission as FWC can make, vary and revoke awards ◦ Must reviewed every 4 years ◦ Lists 3 types of enterprise agreements: <ul style="list-style-type: none"> ■ Single-enterprise agreement – made between single employer and employees ■ Multi-enterprise agreement – made between 2+ employers and employees ■ Greenfields agreement – enterprise agreement between new enterprise of employer and prospective employees ◦ Replaced 'no-disadvantage test' with 'better off overall test' (BOOT) in assessing enterprise agreements ◦ Abolished individual agreements, existing individual and collective workplace agreements replaced by enterprise agreements • Award - force of law that must complied and enforced • Agreements – where various individuals accept set standard of procedures for certain task • Enterprise agreements – legally binding agreements between employees of corporation, non-profit organisation or government body and employers, setting terms and conditions of employment relationship • Enterprise bargaining – negotiation of agreement about wages and working conditions by employer and employee, or by trade union representing them introduced in 1961 <ul style="list-style-type: none"> ◦ Allowed flexible work conditions which tailored to particular enterprises, whilst awards cover whole
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	<p>industry</p> <ul style="list-style-type: none"> Must contain expiry date, dispute settlement procedures, allowance for individual flexibility arrangements, requirement for parties to enter into consultation about changes to workplace Originally, early 1990s law provided enterprise agreement couldn't less advantageous to employees working under relevant award.
Statutory Conditions	<ul style="list-style-type: none"> State and Federal governments legislated to enforce minimum terms in employment contract including hours of work, holiday provisions, leave entitlements and OHS standards. Past decade has seen political movement to reduce role governments in relationships. 10 National Employment Standards: <ul style="list-style-type: none"> Maximal weekly hours Annual leave Long service leave Notice of termination Employers must ensure workers' compensation which compulsory insurance to compensate employees injured at work Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 amended Fair Work Act 2009 (Cth) <ul style="list-style-type: none"> Employers who don't meet record keeping or payslip obligations can't reasonable excuse will need disprove wage claims made in course Reverse onus of proof indicates seriousness of workplace and dedication of government cracking down Strengthened powers to collect evidence in investigations New penalties for giving false or misleading evidence, or hindering investigations Franchisors held responsible if franchisees or subsidiaries don't follow workplace laws and knew about it Tension of interest between success of small businesses and need oblige ethical workplace conditions Sparked by 'The Price of Convenience' documentary (29th August 2015) Upholds A23 ICESCR 'right to fair work conditions' Fair Work Commission Annual Report 2018-2019 states workplace dispute rates declined 17% between 2017-2018



Regulation of the Workplace

<p>Industrial relations - the state and federal framework</p>	<ul style="list-style-type: none"> ● S5 of Constitution Act 1902 (NSW) gives NSW Parliament power make laws for 'peace, welfare and good government' of state, thus Government has power pass legislation that aims improve welfare of employees and employers ● Industrial relations – term referring to relationship between employers, employees, government and trade unions ● Fair Work Act 2009 (Cth) created Fair Work Australia (national tribunal replacing AIRC which renamed FWC) <ul style="list-style-type: none"> ○ Created Fair Work Ombudsman, independent statutory body investigating complaints and ensures compliance with Commonwealth legislation. Provides information regarding pay, leave and other entitlements ○ When employers and employees in dispute, may engage in industrial action. Employers may lock employees until agree to certain terms, 'stand down' employees (suspend from workplace without pay), or employees can 'strike' (organised withdrawal of labour), or form 'picket line' (striking union members forming boundary outside place of employment, which ask others not cross) ○ Disputes must resolved through awards or agreements of relevant act to dispute
<p>Negotiations between employers and employees</p>	<ul style="list-style-type: none"> ● 'Workplace bargaining' - negotiation between employees and employers about work conditions ● Single enterprise agreement – between a single employer and employees ● Multi enterprise agreement – between 2+ employers and employees ● Enterprise agreement – agreement in workplace between 1+ national system employers ● Greenfields agreement – enterprise agreement made relating to new enterprise of employer or employers before employees employed ● Fair Work Act 2009 (Cth) allows workplace bargaining



	<ul style="list-style-type: none"> ○ Employees finding issue can negotiate with employer from position of strength, therefore better able achieve desired results ○ Individual employee hired, employer presents contract of employment to signed by both parties, specifying working hours, pay rates, leave entitlements ○ Employer should tell employee which award/agreement will working under, but not all employees covered by modern awards
Dispute resolution mechanisms	<ul style="list-style-type: none"> ● Industrial disputes sprout from issues relating to work conditions, pay entitlements and discrimination ● Under Fair Work Act 2009 (Cth) and Industrial Relations Act 1996 (NSW), all awards and agreements must contain dispute resolution procedures <ul style="list-style-type: none"> ○ Processes aim help disputing parties come peaceful and mutually beneficial agreements through consent or agreement, not arbitration ○ Conciliation and mediation favoured over arbitration as Arbitration: <ul style="list-style-type: none"> ■ Costly ■ Time-consuming ■ Confronting between employee and employer ○ Mediation: <ul style="list-style-type: none"> ■ Calmer ■ Suggest solutions ■ Discussion ■ Involves party to resolve dispute ○ Parties in workplace dispute less inclined to honour an agreement when feel has imposed by outside third party ● Mediation - third party listens to parties in dispute and helps them reach agreement ● Conciliation - third party listens to two parties and makes suggestions in effort to bring parties to agreement ● Arbitration - occurs when third party listens parties in dispute and makes decision on merits of case
The roles of	<ul style="list-style-type: none"> ● Courts and tribunals <ul style="list-style-type: none"> ○ Fair Work Commission is federal industrial relations tribunal. Can resolve disputes like those arising in course of enterprise bargaining and industrial action; can adjudicate matters of breaching law



	<ul style="list-style-type: none"> ○ Federal Court and Federal Circuit Court hear disputes through Fair Work Division of Federal Magistrates Court (now called the Federal Circuit Court) under the Fair Work Act 2009 (Cth) ○ Effective in Mayer v Australia Nuclear Science and Technology Organisation (2003) where complainant wanted work part-time after returning from maternity leave as had to take care of child. However, dismissed as told position only available as full-time position. Company's refusal considered sexual discrimination on basis that women's maternity. Court/tribunal resolved this dispute and allowed her to work part-time. ○ Effective in age discrimination case Fair Work Ombudsman v Thera Vanish Investment Pty Ltd (2014) where worker terminated from employment because turned 65 successfully sued his employer ● Government Organisations <ul style="list-style-type: none"> ○ NSW Industrial Relations Commission hears disputes. Can review awards and enterprise agreements, revise awards to comply with legislation that has enacted, and register and regulate employer associations and employee organisations, including proceedings for enforcement of rules and challenges to validity of rules ○ Fair Work Commission oversees federal industrial relations system, varies awards, makes minimum wage orders, review and approve enterprise agreements, provide assistance to its judicial functions ○ Fair Work Ombudsman states functions of FWO to promote 'harmonious, productive and cooperative workplace relations' and ensure compliance with Fair Work Act 2009 (Cth) ● Trade unions <ul style="list-style-type: none"> ○ Employee organisations represent employees to allow rights be gained. This largely through Australian Council of Trade Unions is national peak body for all Australian unions. ACTU represents Australian labour organisations
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	<p>internationally, advocating and articulating positions on workplace rights</p> <ul style="list-style-type: none"> ● Employer associations <ul style="list-style-type: none"> ○ Employer associations composed of employers can protect workplace rights. Include Australian Chamber of Commerce and Industry. ● Non-government organisations <ul style="list-style-type: none"> ○ Australian Human Rights Commission is key independent statutory organisation established in 1986 to act as human rights 'watchdog'. Administers federal anti-discrimination statutes. ● The Media <ul style="list-style-type: none"> ○ Media able to generate awareness on certain workplace rights violations, such as 'Price of Convenience' by ABC which raised awareness on wage discrimination, resulting Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 which increased penalties of breaching workplace laws and granted higher power to fair work ombudsman
Remuneration	<ul style="list-style-type: none"> ● Remuneration - means employee's salary package (pay, superannuation, share offers, educational expenses, car and rental assistance) <ul style="list-style-type: none"> ○ Packages must suffice NES as minimum award rates of pay and entitlements. May include 'incentive package' based on employee's performance. ○ Employers bundle variety of services and benefits part of salary package to attract and retain staff ○ Means employee receives benefit as part of salary, rather than higher salary on which income tax would be applied (essentially, get more money still get taxed) ○ Financial advantage for employees is although may sacrifice part salary, often more than made up by tax benefit ● Superannuation Guarantee Scheme <ul style="list-style-type: none"> ○ SGS established early 1990s under Superannuation Guarantee (Administration) Act 1992 (Cth) to ensure employees have adequate funds for support upon retirement



	<ul style="list-style-type: none"> ○ Scheme relies on employers contributing sums equivalent to percentage of employee's salary to fund where money preserved until employee retires and reaches 'preservation age' (typically 65) ○ Employee makes personal contributions to fund, can accessed before retirement but subject to tax
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Contemporary Issues Concerning the Workplace

Discrimination	<ul style="list-style-type: none"> ● Equality implies all people treated equally before law, within law focuses on equal opportunity ● Basic workers' right articulated by International Labour Organisation in 1919 (ILO's Constitution intends eliminate all 'injustice, hardship and privation to large numbers of people') ● Discrimination – unfavourable treatment of person/group relative to way others treated <ul style="list-style-type: none"> ○ Can direct (practice/policy treating person/group less favourably than another) ○ Can indirect (practice appearing fair because treats everyone same but adversely affects people with certain characteristic as not equity-based) ● Legal Responses <ul style="list-style-type: none"> ○ Anti-Discrimination Act 1977 (NSW) prohibited discrimination on grounds of race, gender and marital status (over years, additional grounds added, modified act) <ul style="list-style-type: none"> ■ Act adapted to CCV but NSW IRC argues these need extended as addressing removal of age barriers ■ Whilst illegal to sexually harass volunteer during voluntary work, volunteers not enjoy same protection under act as not considered 'paid employee', which must be reviewed ■ Difficulty in ensuring compliance by employers as poor enforcement provision in workplace. When found out however, punishments effective (reputational damage, fines, etc.) ○ Racism - person cannot treated differently because of membership of particular
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	<p>race/cultural group</p> <ul style="list-style-type: none"> ■ Prohibited under Anti-Discrimination Act 1977 (NSW) and Racial Discrimination Act 1975 (Cth) ■ Further measure through International Convention on the Elimination of All Forms of Racial Discrimination (1965) <p>○ Sexism - person cannot be treated differently because woman/man, discrimination includes sexual harassment and discrimination due to pregnancy. Discrimination on Basis of Sexual Orientation.</p> <ul style="list-style-type: none"> ■ AHRC telephone survey 'Working without Fear' 2012 found 25% working women and 16% men claim sexually harassed past 5 years ■ Illegal under Sex Discrimination Act 1984 (Cth) and Anti-Discrimination Act 1977 (NSW) ■ Illegal to treat someone less favourably because gay, lesbian or bisexual. ■ Anti-Discrimination Act 1977 (NSW) makes illegal to discriminate against someone who has a relative or associate who is gay, lesbian or bisexual ■ Convention on the Elimination of All Forms of Discrimination against Women (1979) ■ Sex and Age Discrimination Legislation Amendment Act (2011) was made to strengthen existing laws regarding sexual harassment in workplace, including use of new technologies in harassing individuals ■ Effective in Mayer v Australia Nuclear Science and Technology Organisation (2003) where complainant wanted to work part-time after returning from maternity leave as had to take care of child. However, dismissed as told position only available as full-time position. Company's refusal considered sexual discrimination on basis of women's maternity. Court/tribunal resolved this dispute and allowed her to work part-time. <p>○ Disability Discrimination - illegal to discriminate</p>
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	<p>against someone on grounds of disability (including intellectual, physical, sensory, psychiatric and learning disabilities)</p> <ul style="list-style-type: none"> ■ Illegal under Disability Discrimination Act 1992 (Cth) and Anti-Discrimination Act 1977 (NSW) ■ Acts also prohibits discrimination against someone if have HIV/AIDS or associated with other <p>○ Age Discrimination - illegal to discriminate on basis of age</p> <ul style="list-style-type: none"> ■ Illegal under Age Discrimination Act 2004 (Cth) and Anti-Discrimination Act 1977 (NSW) ■ Legislation makes illegal to force employee to retire because of age ■ Specific types of employment excluded due to nature of employment; for example, judges and aircraft pilots ■ Effective in age discrimination case Fair Work Ombudsman v Thera Vanish Investment Pty Ltd (2014) where worker terminated from employment because turned 65 successfully sued his employer <p>○ Equal Employment Opportunity - EEO legislation listed in former Part 9A of Anti-Discrimination Act 1977 (NSW) and Equal Opportunity for Women in the Workplace Act 1999 (Cth)</p> <ul style="list-style-type: none"> ■ P9A repealed by Government Sector Employment Act 2013 (NSW) ■ EOWW replaced to Workplace Gender Equality Act 2012 (Cth) includes all employees in workplace, act focuses on equal remuneration for women and men, aims improve women's ability to participate in workplace ■ Act recognises caring responsibility of men and women central to gender equality in workplace <p>○ Equal Pay for Equal Work</p> <ul style="list-style-type: none"> ■ Equal Pay for Equal Work Case (1969) and Equal Pay for Work of Equal Value Case (1972) established principles with respect to women wages <ul style="list-style-type: none"> ● 1st women doing same work as men required same pay
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	<ul style="list-style-type: none"> • 2nd held different jobs of same worth warrant same minimum wage <ul style="list-style-type: none"> ■ Made for E&J payment and rights ■ Still significant disparities, average women's weekly earning remains far less than men, 2013, gap was 17.1%, men earning avg \$262 more than women ■ In 2018, Australia's Gender Pay Gap Statistics Report stated worsened, with men earning \$495 more than women, remaining significant issue ■ In Equal Remuneration Case (2012), found that worst gap in Financial and Insurance Services Industry where the gap is 26.9% ■ Issue as reduces long-term quality of life, affects superannuation which crucial in women retirement • Non-Legal Responses <ul style="list-style-type: none"> ○ NSW Council of Social Services and Federation of Ethnic Communities' Councils of Australia are bodies that put focus on issues concerning discrimination through research, support and generating awareness ○ Workplace Gender Equality Agency continues lobby for pay equity through publications and nominated 'Equal Pay Day' ○ Amnesty International regularly campaign for recognition of human rights and removal of discriminatory practices
Safety	<ul style="list-style-type: none"> • Safe workplaces - environments with safe equipment, work systems and appropriate training. If disputes, courts decide what constitutes 'safe'. • Safe Work Australia states: <ul style="list-style-type: none"> ○ 2012-2018, 1370 people died at work, between 2014-15 nearly 107355 workers seriously injured, in 2016 this was 531800 workers injured ○ Since 2001, incidence rate of serious injuries per-1000-employees steadily decreased from 16.3 in 2000-2001 to 9.3 in 2016-2017 ○ Cost of workplace injuries, disease and death in 2012-2013 was \$61.8 billion or 4.1% of Australia's GDP



	<ul style="list-style-type: none"> ○ Issue of growing concern is workers' compensation claims regarding stress and mental health. Safe Work Australia's Work-related Mental Disorders Profile 2015 report, 6% all workers' compensation claims were work-related mental disorders ○ 7820 Australians compensated for work-related mental condition ○ \$480 million total paid in compensation ○ \$23600 typical compensation payment per claim ○ 14.8 weeks is typical time off work ● Legal Responses <ul style="list-style-type: none"> ○ Various responses under common law as employers have implied duty of care to employees to safeguard health and safety. An employer is liable if negligent, this is if fail to: <ul style="list-style-type: none"> ■ Employ competent staff and provide proper supervision (including maintaining skill levels of employees) ■ Provide safe working environment and equipment ■ Provide safe means of access to workplace ■ Ensure safe system of conducting work ■ Principles formed through Authority of these Wilsons & Clyde Coal Co v English (1938) ■ To prove negligence, plaintiff (injured party) must prove: <ul style="list-style-type: none"> ● Relationship existed between parties (employer owed employee duty of care) ● There was breach of duty of care in employer not providing safe working environment (etc. employer failed to install safeguard on machine) ● Plaintiff suffered damage subsequent to breach (worker was injured) ■ Employers' duty of care includes duty not to expose employees to unreasonable hazards like toxic chemicals. ■ In certain instances, workers may find difficult to establish owed a duty of care. In such cases, court needs to look at
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	<p>other aspects of the parties' relationship.</p> <ul style="list-style-type: none"> ○ Statutory duties of employers <ul style="list-style-type: none"> ■ In NSW, principal act governing workplace safety was Occupational Health and Safety Act 2000 (NSW); was replaced by Work Health and Safety Act 2011 (Cth). Outlines general requirement that must met in places of NSW work, covering employees, contractors and self-employed people. ■ Health Practitioner Regulation National Law (NSW) specifically protects those involved in healthcare industries. Legislature includes statutes governing workers' compensation and injury management (programs that employers may be required to institute cover treatment and return to work) ○ Statutes providing compensation to be paid by employer for worker's injury or death include: <ul style="list-style-type: none"> ■ Workers Compensation Act 1987 (NSW) ■ Workplace Injury Management and Workers Compensation Act 1998 (NSW) ○ Non-compliance by employers are subject to large fines. ○ Workers Compensation Act 1987 (NSW), has WorkCover scheme of workplace injury insurance. <ul style="list-style-type: none"> ■ WorkCover premiums paid by employer to cover costs of compensation to employee if hurt because of job. WorkCover NSW is statutory body administering scheme, also investigating and monitoring WHAS issues. ■ Under Workplace Injury Management and Workers Compensation Act 1998 (NSW), WorkCover oversees development of injury management programs. All employers required to take out WorkCover policy if annual payroll \$7500+. Employers must assist injured employee to manage injury and support injured employee when return work.
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	<ul style="list-style-type: none"> ○ Development of statutory duties <ul style="list-style-type: none"> ■ Workplace safety NSW originally covered by individual acts that applied to specific industries such as: <ul style="list-style-type: none"> ● Employers Liability Act 1897 (NSW) – gave ‘workmen’ injured in specific work situations right to sue employer for damages ● Factories and Shops Act 1912 (NSW) – required employers to follow specific work procedures or risk criminal penalties ○ Commission of Inquiry into Work Health and Safety, ‘Williams Report’, pointed out that WHAS legislation inadequate as didn’t do enough to prevent workplace accidents. Report recommended new legislation must include specific duties and rights for employers and employee, whilst stating that there must be greater cooperation in industry workplaces between employers and employees, causing NSW Parliament pass Occupational Health and Safety Act 1983 (NSW) (now repealed), codifying much of law that had evolved through courts. Later reforms to act resulted in the Occupational Health and Safety Act 2000 (NSW) (repealed). ○ The Occupational Health and Safety Act 2000 (NSW) (repealed) introduced employees’ obligations to take reasonable care of health and safety of people at workplace and broadened employers’ duty of care to those who are not employees. ○ Work Health and Safety Act 2011 (Cth) created nationally consistent framework to ensure health and safety of workers and workplaces <ul style="list-style-type: none"> ■ P5 makes mandatory for individuals and employers to consult with another ■ Helping facilitate process, workers may elect health and safety representative or create committee ■ Role of committee or representative to consult with employer about health and safety risks, participate in decisions about appropriate measures to taken ■ Failure to consult result \$20000 in fines/individual or \$100000/corporate
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	<ul style="list-style-type: none"> ■ Committee can investigate matters concerning health and safety in workplace, use an entry permit holder as legal authority to enter workplace to investigate contravention of act ■ Permit holders can issue improvement notices, if individual issued notice fails to comply within specified period, may incur fine of \$50,000 or \$250,000. Inspectors for WorkCover NSW can visit workplaces and authorised to investigate wide range of safety related activities. ■ Sets out wide variety of penalties including corporate and individual fines, terms of imprisonment and 'adverse publicity order' that requires offender to 'publicise, in the way specified in the order, the offence, its consequences, the penalty imposed and any other related matter' ■ Imposes heavy penalties for non-compliance of orders, gives regulator sweeping powers to investigate possible breaches under act ● Non-Legal Responses <ul style="list-style-type: none"> ○ ACTU play major role in lobbying governments to strengthen workers' rights to safe workplace <ul style="list-style-type: none"> ■ National WHAS campaign 'Speak Up' educates employees about health and safety issues to better inform workers rights, role of union in representing and role of WHAS representatives and to encourage workers to voice concerns about HAS issues in workplace ○ Safe Work Australia is independent statutory body established in 2009 to improve WHAS workers' compensation throughout Australia <ul style="list-style-type: none"> ■ Advises government of WHAS issues ■ Drafted Model Work Health and Safety Act as attempt to 'harmonise' WHAS legislation in Australia ■ To date, not all states and territories have enacted Act and WHAS legislature remains within federal and state jurisdictions ■ Focusing on educating employees and employers on workplace safety,
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	<p>self-regulation and accepting culture of responsibility is significant achievement of WHAS Act</p> <ul style="list-style-type: none">● Issues<ul style="list-style-type: none">○ Very few prosecutions for safety breaches resulting in maximum penalty of \$600000 or \$3 million being imposed on individuals.○ Inconsistency amongst federal legislature with, states such as QLD and ACT introducing industrial manslaughter laws to use against grossly negligent employers, NSW yet to follow● Responses<ul style="list-style-type: none">○ Due to increasing number of asbestos victims, court claims and growing public pressure, ALS introduced Jamies Hardie (Civil Penalty and Compensation Release) Act 2005 (NSW) which required Hardie to establish compensation fund that would provide monetary compensation for future asbestos victims.<ul style="list-style-type: none">■ Act attempted protect victims rights to compensation by creating \$4.5 billion fund. Included provisions to stop Hardie from restructuring operations to distance itself from manufacturing and mining divisions, thereby avoid liability for sickness of previous employees.■ However, act ineffective in protecting victims' rights as Hardie was moved to parent company to The Netherlands, separating itself from Australian subsidiaries and obligation to establish compensation fund.■ Further, the reactive nature of Asbestos injuries limited the effectiveness of money as compensating measure for cancer-causing substance.■ Thus, Asbestos Injury Compensation Fund (ACIF) was established in 2007 to ensure compensation is provided, where James Hardie has contributed \$1.055 billion to ACIF. Current compensation claims now exceed \$2 billion, although ACIF has been unable to adequately compensate asbestos victims.
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Black: Information
Yellow: Legislation
Aqua: International Instruments



Brown: Cases
Blue: Media
Red: Stats/Reports/Other

Termination of Employment	<ul style="list-style-type: none">• Cannot unfairly dismiss individuals on the basis of their pregnancy<ul style="list-style-type: none">○ Prevented under P 2 & 3 Fair Work Act 2009 (Cwlth) which punishes unfair dismissals of employees<ul style="list-style-type: none">■ Created Fair Work Ombudsman○ Fair Work Ombudsman vs Wongtas Pty Ltd (2012)○ 'Company fined for dismissing pregnant worker' (SMH, 2/02/2012)○ A23 ICESCR 'Right to fair work conditions'
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