

LAW-MAKING



There is growing pressure on the Commonwealth Government to change the *Marriage Act 1961 (Cwlth)* to give lawful recognition to same-sex marriage. Those who favour a change to the law argue that the law should not discriminate on the ground of sexual orientation. Same-sex marriage is a big issue for law-makers. Protesters try to influence the law by making their message known to the law-makers — the parliamentarians we voted for to represent our views. Chapters 1 to 4 focus on parliament as the major law-maker and the role the courts play in the law-making process. At the end of this unit it is hoped that you will be able to evaluate the effectiveness of these law-making bodies and how they make law to reflect a changing society.

Parliament and the citizen

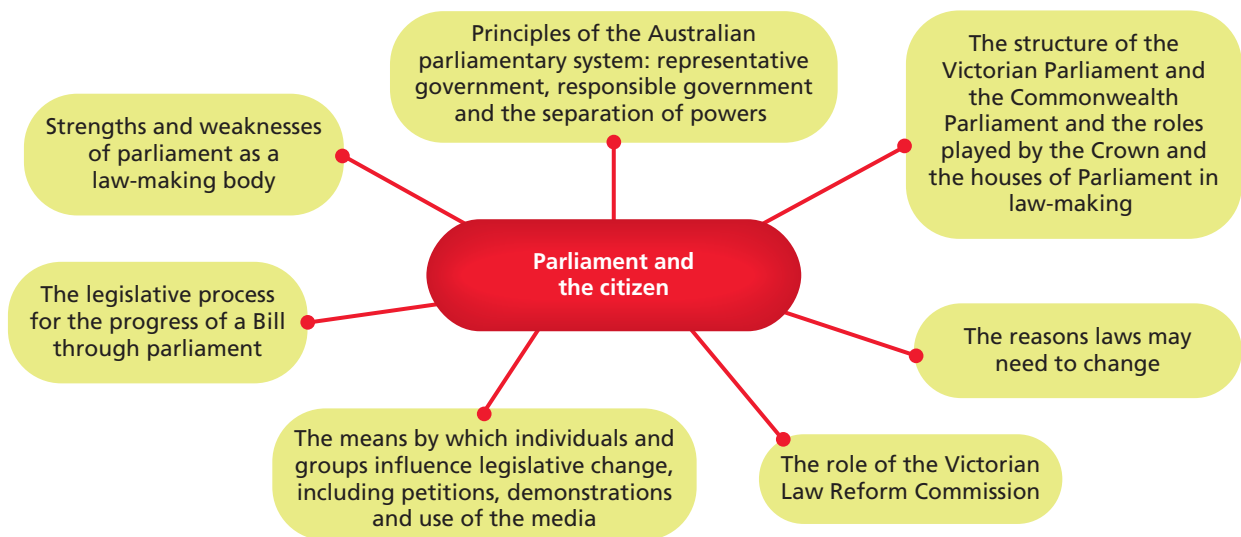
WHY IT IS IMPORTANT

Parliament is the primary law-making body of the land. In a democratic society, parliament is elected to create laws that reflect the values and expectations of the people. It must also be able to respond effectively to changing circumstances, both global and local, and to change laws as the need arises. As citizens in this society, we have the ultimate power to influence the work of parliament, and a strong understanding of its structure and operation will improve our ability to perform this role.

WHAT YOU WILL LEARN

Use each of the points below from the Legal Studies study design as a heading in your summary notes.

KEY KNOWLEDGE



KEY SKILLS

These are the skills you need to demonstrate:

- define legal terminology and use it appropriately
- discuss, interpret and analyse legal information and data
- explain the principles and structures of the Australian parliamentary system
- use contemporary examples to explain the influences on legislative change
- evaluate the effectiveness of methods used by individuals and groups to influence change in the law
- critically evaluate the law-making processes of parliament.

Can you demonstrate these skills?



Occupy Melbourne

On 15 October 2011, a group of protesters moved into Melbourne's City Square in Swanston Street. This action was part of a worldwide movement, which began in New York City in September 2011, to occupy important areas of major cities. Participants in the Occupy movement have been protesting about inequality in society. Their belief is that our democratic institutions increasingly represent the interests of the wealthy while ignoring the needs of the majority.

Throughout our history, protest movements have been an important means by which ordinary people can highlight issues and concerns, raise public awareness and ultimately hope to influence decisions made in parliament. While protest movements have had varying levels of success, participation in such activities is recognised as an essential way in which the ordinary citizen can influence the laws that govern us.



1.1

Introduction to our parliamentary system



KEY CONCEPT Parliament is a law-making body, or legislature. Our national parliament is called the Commonwealth Parliament or federal parliament. Australia's parliamentary system is based on the Westminster system of government in Britain.



DID YOU KNOW?

The word parliament comes from the French word *parlement*. *Parler* means to speak and *parlement* is a discussion.

The **Westminster system** of government is the parliamentary system of Great Britain, which has been copied and adapted by other countries around the world. It is so-called because the British Parliament meets in a building known as the Palace of Westminster.

A **bicameral** parliament is one that has two houses, traditionally known as an upper house and a lower house.

A **constitutional monarchy** is a form of government in which the monarch's powers are limited and the main law-making power resides with a parliament or similar democratically elected body.



DID YOU KNOW?

When the early parliaments met, the barons would meet in the royal Council Chamber, which was decorated in the royal colour of red. The commoners would meet out in the fields, under the trees, as no chamber was provided for them. The tradition remains, with the upper houses of our state and Commonwealth parliaments decorated in red, and lower houses decorated in green.

Background to the parliamentary system

Australia's parliamentary system has been inherited from the **Westminster system** of government in Britain. Like most European countries, England in the Middle Ages was a monarchy, with the king having absolute power, supported by the wealthy landowners, or barons. These barons usually formed a council that would advise and help the king in his rule. This gathering became known as the parliament. As the barons refused to meet in the same place as the common people, two separate groups or houses of parliament evolved. These became known as the upper house or House of Lords and the lower house or House of Commons. This was the origin of the principle of **bicameral** parliaments that has spread to most countries that have adopted the Westminster system of government.



Our parliamentary system is based on the Westminster system. Westminster is where the Houses of Parliament in England are located.

Throughout the centuries, monarchs relied increasingly on parliament, particularly in raising taxes for them. In the seventeenth century, conflict between the king and parliament over their respective powers led to Britain becoming a **constitutional monarchy**, with parliament having supreme law-making power and the monarch having a relatively minor role in the law-making process.

Colonial Australia

When the British established the colony of New South Wales, all laws made by the British parliament automatically applied in the colony, although early governors had very wide powers and could exercise discretion when applying those laws. As more convicts gained their freedom there was pressure for some form of representative government. In the 1850s the British parliament passed laws to divide New South Wales, leading to the creation of separate governments in Victoria, Tasmania and South Australia. Each colony had its own governor and two houses of parliament.

Federation

By the 1880s more than three-quarters of the inhabitants of the colonies were born in the colonies, and a distinct national identity began to develop. The 1880s and 1890s saw

strong moves towards unifying the colonies into one country, with constitutional conventions meeting to develop a **constitution** for the new country. It was decided to opt for a **federation** model — the colonies becoming states within the new country of Australia, retaining their separate state parliaments, but passing some law-making powers to the Commonwealth Parliament.

In 1900 the British Parliament passed the *Commonwealth of Australia Constitution Act 1900* (UK), which established the system of government in Australia — two houses of parliament and a Governor-General to represent the British monarch. This structure reflected the British structure, with some differences. The lower house is known as the House of Representatives, and the upper house is known as the Senate. Unlike the House of Lords, the Senate is an elected body.

The Commonwealth of Australia came into existence on 1 January 1901 and elections for the first parliament were held in March of that year. The Commonwealth Parliament was opened on 9 May 1901 in the Royal Exhibition Building in Melbourne.



Opening of First Federal Parliament by HRH the Duke of Cornwall & York, by Charles Nuttall, 1901

A **constitution** is a set of rules that determines the structure of government and the law-making powers within a sovereign state.

Federation refers to the formation of a political union with a central government from a number of separate states or colonies, with control of its own internal affairs.

Parliament is a law-making body or legislature elected by the people.

A **unicameral** parliament consists of only one house.

The **Senate** is the upper house of the federal parliament, consisting of 76 senators — twelve from each of the six states, two from the Northern Territory and two from the Australian Capital Territory. The Senate's intended functions are to represent the interests of the states and to review laws passed in the House of Representatives. The Senate has powers almost identical to those of the House of Representatives except for restrictions in dealing with taxation and appropriation Bills.

The **House of Representatives** is the lower house of the federal parliament, with approximately twice as many members as the Senate. Its members represent electorates, which are geographical units with approximately equal numbers of electors. Most Bills originate in this house. By convention, the prime minister must be a member of this house.

The Australian parliamentary system today

Australia has a total of nine parliaments or legislatures. These include the Commonwealth **Parliament** (or federal parliament), six state parliaments and two territory legislatures. The Commonwealth and all states except Queensland have bicameral parliaments. Queensland, the Australian Capital Territory and the Northern Territory all have **unicameral** parliaments, each consisting only of one house, known in each case as the Legislative Assembly.

Our structure of government can be classified in a number of different ways:

- We are a *representative democracy* because we elect members of parliament to make laws on our behalf.
- We are a *constitutional monarchy* because we have a monarch (currently Queen Elizabeth II) as our head of state, with powers limited by a Constitution.
- We are a *federation* because our country arose as a result of the combination of previously autonomous colonies.

Under s. 1 of the Australian Constitution, legislative (or law-making) power is vested in a parliament, consisting of the Queen, a **Senate** and a **House of Representatives**.

TEST your understanding

- 1 On what system is our system of government in Australia based?
- 2 Another name for a parliament is a _____ because parliament is the primary law-making body.
- 3 Parliaments that have two houses are said to be _____. The Commonwealth Parliament has the _____, which is the upper

house, and the _____, which is the lower house.

- 4 Explain what is meant by the term *constitutional monarchy*.

APPLY your understanding

- 5 Australia adopted a federal parliamentary model. What does this mean?
- 6 Why do we have representative democracy in Australia?



1.2 The structure and role of the Commonwealth Parliament



KEY CONCEPT The major role of parliament is to make laws. The commonwealth and state parliaments (with the exception of Queensland) have two houses of parliament, known as an upper house and a lower house. The Governor-General and the states' governors, as representatives of the Queen, are also part of the structure of parliament.

study on

Summary

Unit 3:
Law-making

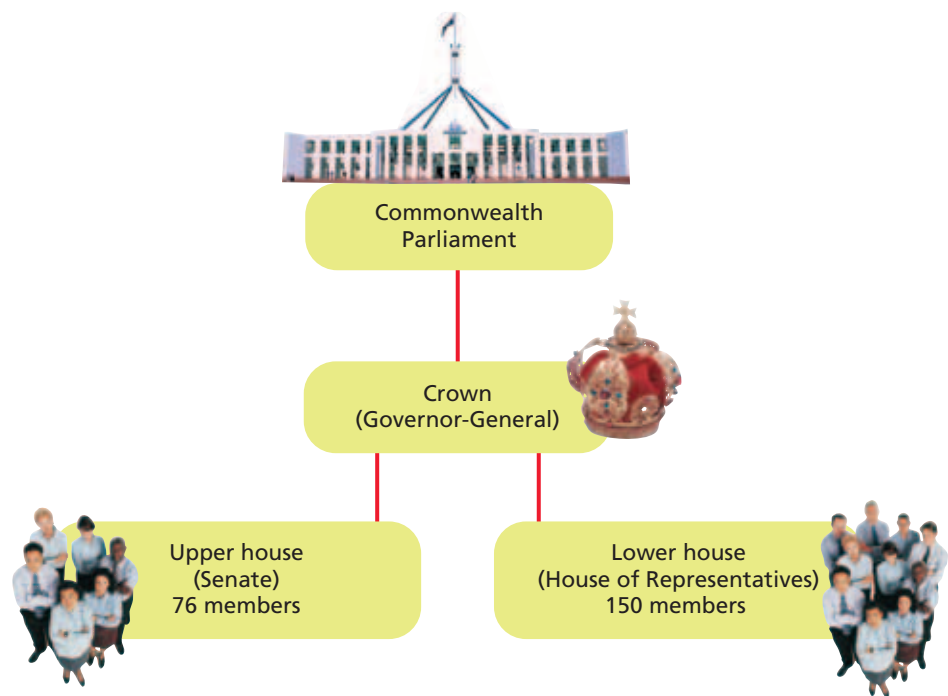
Area of study 1:
Parliament and the citizen

Topic 2:
The structure of
parliament in Australia



Think of Commonwealth Parliament as being made up of three elements — the upper and lower houses of parliament, and the Crown. Australia is both a constitutional monarchy and parliamentary democracy, as both houses of parliament are elected by the people of Australia.

The Commonwealth Parliament consists of the Queen (represented by the Governor-General), the Senate and the House of Representatives.



This section examines the structure and role of the Commonwealth Parliament. Having this foundation knowledge makes it easier for you to understand the principles of the Australian parliamentary system discussed on pages 13–16. Let us first examine the role and structure of the House of Representatives in more detail.

The House of Representatives

The House of Representatives is the lower house in the Commonwealth Parliament and is sometimes referred to as the *people's house*. It has the following structure and roles:

- It has 150 members, each elected for three years. Each member represents an electorate (or *seat*) that covers a specific geographic area. All electorates have roughly the same number of electors. This means that electorates with a high population density are smaller in area, while those with a low population density are larger in area. The more populous states such as New South Wales and Victoria elect the largest number of members, while states with smaller populations such as Tasmania and South Australia elect much smaller numbers. The Northern Territory and the Australian Capital Territory each elect two members to the House of Representatives.

- Members of the House of Representatives are elected by a system of preferential voting. Under this system voters are required to number all candidates on the ballot paper in order of preference. If no candidate wins more than 50 per cent of the vote, the preferences expressed on the ballot papers of the lower polling candidates are distributed until one candidate has a majority of votes.
- Government is formed by the political party or **coalition** of parties that wins a majority of seats in the House of Representatives. In practice this means winning 76 or more seats at an election. The largest political party not in government forms the Opposition. The Opposition is effectively the alternative government, so it will usually attempt to hold the government accountable for its decisions.
- The parliamentary leader of the party that wins government becomes the prime minister. The office of prime minister is not mentioned in the Constitution, but is a convention inherited from the British parliamentary system. The prime minister is the head of the Commonwealth Government, and will always be a member of the House of Representatives.
- While members of the House of Representatives are elected for a maximum of three years, the government has the power to advise the **Governor-General** to call an election at any time before the three years has elapsed. In recent years governments have used this power to try to gain political advantage over the Opposition.
- Other leading members of the **Commonwealth Government** become ministers. Each minister is responsible for a specific government department (such as the Department of Defence or the Department of Foreign Affairs and Trade). Ministers can come from either the House of Representatives or the Senate. Ministers are responsible for introducing legislation that is relevant to their area of responsibility.
- Government ministers acting together form a **cabinet**, which is the body charged with ensuring the implementation of the government's program.
- Most legislation originates in the House of Representatives, although if the relevant minister is a Senator, he or she will introduce legislation in the Senate.
- Legislation that requires the government to appropriate money can only be introduced in the House of Representatives. This includes legislation introducing or changing taxes.
- Although members of the House of Representatives (MHRs) are supposed to represent the views of those in their electorate, in reality most members vote according to what their party decides. This is described as *voting along party lines*. If a member decides to vote against his or her party's position on a piece of legislation, this is known as *crossing the floor*.
- Meetings of the House of Representatives are chaired by the Speaker of the House. The Speaker is usually elected by the all members of the House, although there is usually only one candidate — the nominee of the majority party that forms government. The Speaker has an important role in chairing the House, maintaining order in debates and ensuring all members observe the rules of the House, known as the *standing orders*. The Speaker is also officially in charge of Parliament House, in consultation with the President of the Senate.

The Senate

The Senate is the upper house of the Commonwealth Parliament. Its structure and roles are as follows:

- The Senate has 76 members, elected on a state basis. The Constitution requires that there be, as close as is practicable, twice as many MHRs (Members of the

A **coalition** is a group of two or more political parties.

The **Governor-General** is the Queen's representative at the federal level.

The **Commonwealth Government** is the political party or coalition of parties that has won a majority of the seats in the House of Representatives.

The **cabinet** is the body of people with responsibility for the implementation of government policies, and includes the prime minister and senior ministers.

study on

Unit:	3
AOS:	1
Topic:	2
Concept:	3



Do more
Interactivity
on the roles of
the houses of
parliament

1.2 The structure and role of the Commonwealth Parliament

House of Representatives) as there are Senators. Each of the six states returns twelve senators, irrespective of size or population. The Northern Territory and ACT each elect two senators. For the purpose of electing senators, each state or territory operates as one electorate. Senators from the states are each elected for six years, although Senate elections occur every three years, usually at the same time as House of Representatives elections. At each election, only one half of the senators from each state will have to stand for re-election; the other half will stand for re-election at the following election. The four senators from the territories are elected for a maximum of three years, and so stand for re-election at the same time as the MHRs do.

- Senators are elected by a system of proportional representation. Under this system, voters are required to indicate their preferences for all candidates. Senators are effectively elected according to the proportion of the vote achieved by their party, with each candidate required to achieve a quota of votes to be elected. Because of the proportional nature of the distribution of votes, it has been possible for minor political parties such as the Democratic Labor Party, The Australian Democrats and the Australian Greens to gain representation in the Senate during the last 60 years.
- The Senate was originally established to safeguard the interests of the smaller states in the establishment of the Australian federation. The members of the lower house are elected on the basis of population, and because there are so many representatives from New South Wales and Victoria, they could out-vote all other members combined. The Senate was created with equal numbers from each state to act as a safeguard against this happening. Although most senators vote along party lines, there have been occasions in recent years when independent senators have been able to negotiate benefits for their state in return for promising to support government legislation.
- The Senate also has a role as a house of review. This is a traditional role inherited from the House of Lords in Britain. It comes from a time in the past when there was concern that the popularly elected people's house might wish to introduce legislation that was too radical, or may upset the existing social order. A house of review could reject or amend such legislation to ensure this did not occur. Part of the reason for having only half the senators facing election each three years was to ensure that the Senate always contained experienced legislators who could carry out this review process most effectively. In practice, most senators usually vote along party lines so their role as reviewers of legislation is limited. However, apart from the period from 2005 to 2008, no government has had a majority in the Senate since 1981, so the passage of legislation through the Senate has generally not been guaranteed. This has enabled the Senate to more effectively act as a house of review.
- If the Senate twice refuses to pass legislation that has come from the House of Representatives, there is said to be a deadlock between the two houses of parliament. In this situation, s. 57 of the Constitution allows the Governor-General to dissolve both houses of parliament, and call an election. This is known as a **double dissolution**, and is the only time when all senators must face the electors at one time. After a double dissolution, if the government is successful in winning the election, it can present the previously failed legislation once more. If the Senate still refuses to pass it, the Governor-General may convene a joint sitting of both houses in an attempt to have the legislation passed. A joint sitting has occurred only once in Australian parliamentary history, in 1974.
- Meetings of the Senate are chaired by the President of the Senate. He or she has a similar role in relation to the Senate as the Speaker has in relation to the House of Representatives.



DID YOU KNOW?

For most of the last 30 years governments have had to rely on the support of minor parties such as the Australian Democrats or the Greens to have legislation passed. These parties are said to have held the *balance of power* because if they choose to vote with the government, legislation will be passed, but if they vote with the Opposition, it will be defeated.

A **double dissolution** occurs when both houses of the Commonwealth Parliament are dissolved and all members are required to face an election, unlike a scheduled election when only half the senators are up for re-election.

The Crown



The twenty-fifth Governor-General of Australia, Ms Quentin Bryce, meets with the Queen. The Governor-General is the Queen's representative in Australia.

The monarch is represented as the third element in the Commonwealth Parliament by the Governor-General (also referred to as the Crown). The Crown performs the following roles and functions in relation to law-making within the parliamentary system:

- The Governor-General gives the **royal assent** to legislation that has been passed by both houses of parliament. This is the final stage that must occur before the law is proclaimed and comes into force (see page 37). Under s. 58 of the Constitution, the Governor-General also has the power to withhold the royal assent, and return a Bill to parliament with recommended amendments. Because there is an expectation that the Governor-General will act on the advice of ministers, this has rarely occurred.
- The Governor-General also has a number of reserve powers. These include the power to summon, open and dissolve parliament, as well as to **prorogue** a current session of parliament. These powers are usually exercised on the advice of ministers, particularly that of the prime minister, although the exact limits of the reserve powers remain undefined by the Constitution. (See page 12 for the role of the Crown as an element of the executive arm of government.)

The **royal assent** is the formal signing of a Bill by the monarch's representative to indicate approval of the Bill, and is the final step necessary before a Bill becomes law.

To **prorogue** the parliament is to bring a parliamentary session to an end, without dissolving parliament or calling an election. It terminates all business currently before both houses until the next scheduled session.

TEST your understanding

- 1 Explain the difference between parliament, government and cabinet.
- 2 List and explain the respective roles of the House of Representatives and the Senate.
- 3 Explain the terms 'house of review' and 'states' house'.
- 4 What type of Bills cannot be introduced in the Senate?
- 5 What is the royal assent? Why is it important?

APPLY your understanding

- 6 To what extent does the Senate actually operate as a states' house and/or a house of review?

- 7 Use the **Parliament of Australia** weblink in your eBookPLUS to research the composition of our current Commonwealth Parliament.

- (a) Who is our Governor-General?
- (b) Which political party has formed the government?
- (c) What is the current breakdown of parties in the Senate?
- (d) Use your answers to the above questions to explain which parties control the Commonwealth Parliament.

eBookplus



1.3 Structure and role of the Victorian Parliament



KEY CONCEPT The Victorian Parliament is empowered to make laws that are enforceable within the boundaries of the state. It has a bicameral structure, with the role of the Crown exercised by the state governor. It is subject to the rules contained within the Victorian Constitution, and operates with a system of fixed terms between elections.



The Victorian Parliament House

A **referendum** is the process through which changes can be made to the Commonwealth Constitution. Electors vote for or against a particular change. For the change to take effect, it must be supported by a majority of voters and a majority of states.

In Victoria, government is formed in the lower house of parliament, known as the Legislative Assembly.



Historical background

In 1850 the British Parliament passed the *Australian Constitutions Act 1850* which allowed for the formation of a separate colony of Victoria on 1 July 1851. Initially Victoria had its own Lieutenant-Governor and a partly appointed, partly elected Legislative Council. This Council had the task of developing a constitution for the colony, and of organising the construction of Parliament House in Spring Street in Melbourne. The proposed Constitution was approved by the British Parliament in 1855, and came into force with the election of the first bicameral Victorian Parliament in 1856.

Changing the Victorian Constitution

From 1855 until 1975, the Victorian Constitution was an Act of the British Parliament, but in 1975, the Victorian Parliament adopted the Constitution as an Act of the Victorian Parliament. In 2003, the *Constitution (Parliamentary Reform) Act 2003* changed the structure of the state parliament, as well as the means by which the Constitution can be changed.

While it is possible for the parliament to amend many parts of the Constitution by a simple majority vote in both houses of the state parliament, some sections of the constitution were entrenched after the changes of 2003. This means those sections can only be changed by very specific actions. Following are examples:

- The 2003 constitutional amendments established a set number of members in each house, with 40 members in the upper house, and 88 in the lower house.

These numbers can only be changed by a **referendum** of all eligible voters.

- The same changes removed the power of the upper house to block supply; that is, to refuse to pass Bills allowing government access to money raised through taxation. This power could only be restored to the upper house through a referendum.
- Eligibility of citizens to vote in state elections can be changed only through a *special majority*, which is a majority of three-fifths of members in each house. This means that 24 out of 40 members must vote in favour in the upper house, and 53 out of 88 in the lower house.

The Victorian Parliament

The Victorian Parliament has legislative power vested in the Crown, an upper house known as the Legislative Council, and a lower house known as the Legislative Assembly. Elections for the two houses of the Victorian Parliament are held every four years, on the last Saturday in November. Unlike the Commonwealth Parliament, the state parliament has fixed terms, so the government cannot call an early election as a means of gaining political advantage. An early election can occur only if:

- (a) a vote of no confidence in the government is passed in the Legislative Assembly; or
- (b) there is a deadlock between the two houses over the passage of a Bill.

The Legislative Assembly

As is the case with the House of Representatives in the Commonwealth Parliament, the Legislative Assembly in Victoria is the people's house. It has the following structure and roles.

- The 88 members of the Legislative Assembly are elected from 88 electoral divisions by preferential voting. These electoral divisions each have roughly the same number of electors.
- The party or coalition of parties that wins a majority in the Legislative Assembly forms the government. In practice this means winning 45 out of the 88 seats.
- The parliamentary leader of the party that wins government becomes premier, with other leading members of the government becoming ministers, each responsible for an area of government activity. Ministers can come from either the Legislative Assembly or the Legislative Council.
- Government ministers acting together form the state cabinet.
- Most legislation originates in the Legislative Assembly, as most senior ministers are members of the lower house.
- The presiding officer in the Legislative Assembly is the Speaker, as is the case in the Commonwealth lower house.


The Legislative Council

The Victorian upper house is a house of review, and has the following structure and roles:

- The Legislative Council has 40 members. These are elected through a process of proportional representation, with five members elected from each of eight electoral regions. Five of these regions are in metropolitan Melbourne, with the other three representing country areas.
- As is the case in the Commonwealth Senate, proportional representation means minor parties have been able to gain representation in the Legislative Council.
- The Legislative Council cannot refuse to pass money or budget Bills that have been successfully passed in the Legislative Assembly. This contrasts with the upper house in the Commonwealth Parliament, which retains that power.
- The Legislative Council has the ability to reject other Bills that come before it, as well as to delay the passage of a Bill, or return it to the lower house with suggested amendments.
- The capacity of the Legislative Council to operate as a genuine house of review is largely dependent on whether or not the government holds a majority in that house. There is likely to be greater scrutiny of government legislation when the government does not hold a majority in the upper house.
- The presiding officer in the upper house is known as the President of the Legislative Council.

1.3 Structure and role of the Victorian parliament

study on

Unit:	3	 Practice VCE exam questions
AOS:	1	
Topic:	2	

The Crown

In Victoria the Crown is represented by the state governor. The governor performs the following roles and functions in relation to law-making within the parliamentary system:

- The governor gives the royal assent to legislation that has been passed by both houses of parliament. State governors do not have the power to withhold the royal assent, as this power was removed under s. 9 of the *Australia Act 1986* (Cth).
- The governor has the power to dissolve parliament and call an election before the required four year period has expired if a successful vote of no-confidence in the government is passed in the Legislative Assembly. If the two houses are deadlocked over legislation, the governor may also call an early election. In all circumstances, the governor is expected to rely on the advice of ministers, in particular that of the Premier.

TABLE 1.1 Comparison of state and Commonwealth parliaments


	Federal Parliament	State Parliament
Name of the upper house	Senate	Legislative Council
Term of office for upper house members	Six years	Four years
Number of upper house members	76	40
Method of election of upper house members	Proportional representation	Proportional representation
Name of lower house	House of Representatives	Legislative Assembly
Term of office for lower house members	Three years	Four years
Number of lower house members	150	88
Method of election of lower house members	Preferential voting	Preferential voting
Government formed in	House of Representatives	Legislative Assembly
Queen's representative	Governor-General	Governor
Frequency of elections	Maximum three years between elections	Fixed terms of four years
Title of leader of the government	Prime Minister	Premier



TEST your understanding

- 1 What is the name of the upper house in the Victorian Parliament, how many members does it have, and what is the process for their election?
- 2 What is the name of the lower house in the Victorian Parliament, how many members does it have, and what is the process for their election?
- 3 List and explain the respective roles of the two houses of the Victorian Parliament.
- 4 What is an important limitation on the powers of the Victorian upper house that does not apply in the Commonwealth upper house?
- 5 Explain the significance of the length of parliamentary terms in Victoria, when compared with the Commonwealth Parliament.
- 6 Why can the governor of Victoria no longer withhold royal assent to a Bill?

APPLY your understanding

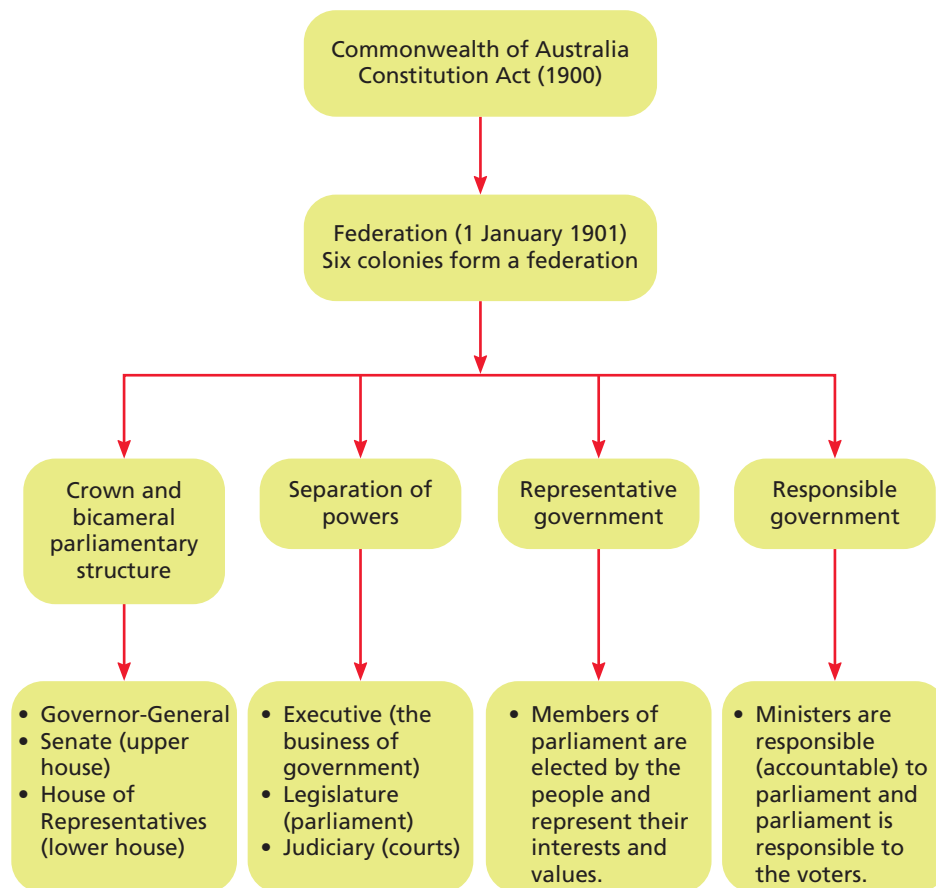
- 7 Identify and explain three similarities and three differences between the operation and role of the Commonwealth Parliament and that of the Victorian Parliament.
- 8 Use the **Parliament of Victoria**  weblink in your eBookPLUS to research the composition of our current state parliament:
 - (a) Who is the current state governor?
 - (b) Which political party has formed the government?
 - (c) What is the current breakdown of parties in the Legislative Council?
 - (d) Use your answers to the above questions to explain which parties control the Victorian Parliament.

1.4 Principles of the Australian parliamentary system



KEY CONCEPT Australia is a parliamentary democracy. This means that we elect members of parliament to represent our interests, and to reflect our views in the laws they make. We expect members of parliament to be accountable to us, and that their re-election will depend on how well they perform. The separation of powers within our system also ensures that no arm of government can be too powerful or abuse the powers granted to it.

All Australian parliaments inherited a number of basic principles of parliamentary democracy, including representative government, responsible government and the separation of powers.



Representative government

As a parliamentary democracy, a fundamental basis for our system is that of representative government. This is based on the following principles:

- Members of parliament are elected to represent the interests of the voters and should only expect to retain their seat in Parliament while they continue to demonstrate that they are representing the interests of voters.
- Most members belong to a political party, and stand for election based on a platform of policies developed by that party.
- In addition to voting for individuals who stand for election, voters will also be influenced by the policies of the party to which that person belongs.

study on

Summary

Unit 3:
Law-making

Area of study 1:
Parliament and the citizen

Topic 1:
Principles of the parliamentary system



This figure summarises the principles behind the Australian parliamentary system.

study on

Unit: 3

AOS: 1

Topic: 1

Concept: 2




See more
PowerPoint on representative government



1.4 Principles of the Australian parliamentary system

A **minister** is a member of parliament who has responsibility for a particular area of government activity, known as a portfolio.

study on

Unit:	3	 See more PowerPoint on responsible government
AOS:	1	
Topic:	1	
Concept:	3	




- The political party that wins the majority of seats in the lower house forms a government, which is then empowered to enact the platform it placed before the electors.
- Leading members of the government become **ministers**, each taking responsibility for a particular area of government activity, such as health, education or defence.
- A government must ultimately represent the interests of the majority of the voters, or it will soon be voted out of office.

Responsible government

Another fundamental basis for our parliamentary system of government is that of responsible government. In this context, the term responsible means accountable and refers to the fact that in whatever role a member of parliament might find themselves, they have to be able to openly and publicly account for their actions. The concept of responsible government is based on the following principles:

- All members of parliament are directly responsible to those who elected them. They are expected to be able to report back to voters, and to keep them informed openly and honestly.
- Ministers are members of parliament and so are responsible to the parliament as a whole. They can be questioned by other members (the daily *question time*) and are expected to keep the rest of parliament informed of government activity in their portfolio.
- A minister who is found to have deliberately misled parliament, or not upheld the highest possible standards as a minister, is expected to resign from that ministerial position.
- Ministers are also responsible for the actions of their departments. This means that they are expected to take responsibility for the actions of public servants and others working within those departments, and are accountable for errors that may occur within their department.
- Because they are responsible to parliament, and the parliament is responsible to the voters, ministers are ultimately responsible to those same voters for their actions, and the actions of the government departments under their control.

study on

Unit:	3	 See more PowerPoint on the separation of powers
AOS:	1	
Topic:	1	
Concept:	3	

The **doctrine of separation of powers** refers to the separation of the executive, legislature and judiciary.

The separation of powers

Another of the basic principles underpinning our system is the doctrine of separation of powers. Under this doctrine, government operates through three arms, as follows:

1. The *legislative arm*, which is the parliament that makes the laws
2. The *executive arm*, which includes the representative of the monarch and the government ministers with responsibility for implementing and administering the laws passed by parliament. Administration of legislation occurs through the work of people such as public servants and the police, both of which are an extension of the executive arm of government.
3. The *judicial arm*, which includes the courts and judiciary, which have responsibility for enforcing the law and settling disputes that might arise under the law.

Under the **doctrine of separation of powers**, each of these arms of government should be kept separate and the powers of each arm exercised by a different group of people. This separation is considered necessary for the following reasons:

- (a) It provides a system of checks and balances on the power of government. No one arm of government can control all three functions, so abuses of power are less likely.
- (b) Individual freedoms are protected by ensuring that an independent judiciary has the power to ensure that parliament and the executive are acting within the limits of the Constitution.

When thinking of the doctrine of the separation of powers, a useful analogy is to think of a tree with three branches. If one branch was to grow out of control, the tree may fall over. The separation of powers operates in the following ways:

- Under s. 61 of the Constitution, executive power is vested in the Queen, and exercised by the Governor-General. Section 62 of the Constitution provides for an Executive Council, theoretically consisting of all ministers of the government, to advise the Governor-General. In practice, the operation of the Executive Council is only a formality, and it exists only to provide official approval for cabinet decisions, as the Governor-General is required to accept the advice of ministers. A meeting of the Executive Council can consist of as few as three members, the Governor-General and two ministers, and the place of the Governor-General at such meetings can be taken by the Vice-President of the Executive Council, who is usually a senior minister. Decisions made by the Executive Council, such as the making of regulations and appointments of judges to the High Court, are known as the decisions of the Governor-General in Council.
- Each state also has an Executive Council that operates in a similar manner to the federal body. In reality executive councils are little more than a rubber stamp for the decisions of the cabinet in each state.
- While executive power is exercised by the cabinet as the leading group in the government of the day, responsibility to parliament can limit the powers of the executive. The government has to gain parliamentary approval for any new laws it wishes to have passed. Unless it can command a majority of votes by members of both houses, it cannot have any law enacted.
- Ministers are individually responsible to parliament, and are required to answer questions about actions they take as part of their executive role.
- The representative of the monarch, as part of the executive arm, is required to give royal assent to legislation before it becomes law. Under s. 58 of the Constitution, the Governor-General has the power to withhold assent and return a proposed law to the parliament with suggested amendments. While the power to withhold the royal assent is no longer held by state governors, no legislation can come into effect until this formality has been completed.
- Under s. 5 of the Constitution, the Governor-General technically has the power to determine when parliament sits, dissolve parliament and call an election, and prorogue parliament. These powers are known as the reserve powers and although they will normally be exercised on the advice of ministers, particularly the advice of the prime minister, the Governor-General can exercise these powers against such advice. This occurred in 1975 when Governor-General John Kerr dismissed the elected government led by Gough Whitlam. He then appointed Opposition leader Malcolm Fraser as caretaker prime minister, and accepted Fraser's advice that a double dissolution election be called.
- In the case of a parliamentary deadlock following an election, the Governor-General or a state governor can have a decisive role in resolving the issue, as the following case study demonstrates.



Josef Stalin wielded absolute power without checks from a legislature, executive or judiciary. This led to the deaths of millions of people as a direct result of this absence of legal and social structures. Even in the twenty-first century, people such as Robert Mugabe (Zimbabwe) and Kim Jung-Il (North Korea) have exercised similar control over people in their country.

Tasmanian governor resolves deadlock

A deadlocked lower house was the result in the Tasmanian state election of March 2010, with the Liberal Party holding ten seats, the outgoing Labor government holding ten seats, and the Greens holding five seats in the 25-seat House of Assembly. Although the Liberals and Labor had the same number of seats, the Liberal Party had won 39 per cent of the popular vote, while the Labor Party had won 37 per cent of the popular vote. Labor Premier David Bartlett had promised before the election that in the event of a tie in the number of seats he would advise the

1.4 Principles of the Australian parliamentary system



DID YOU KNOW?

In the federal election of August 2010, each major political party gained 72 seats in the 150-member lower house, leaving six seats in the hands of independent members and representatives of minor parties. It took over two weeks of negotiations before Julia Gillard, as leader of the Labor Party, was able to approach the Governor-General with an undertaking that she could command a majority of votes in parliament, and thus form a government.


governor to commission a government of the party with the highest popular vote. Consequently Bartlett advised the governor, Peter Underwood, that his government would resign and that the governor should summon Liberal leader Will Hodgman to form a new government. After speaking to both Bartlett and Hodgman, the governor decided to commission Bartlett to form a government, despite the advice he had received from both political leaders. In his reasons for this decision, Underwood indicated that Bartlett had no constitutional right to promise to hand power over to Hodgman and the Liberal Party, and that he, the governor, was acting in the interests of stable government. Until this time neither party had been prepared to negotiate with the Greens for their support, but after being commissioned to form a government, Bartlett entered into such an agreement, providing for an effective majority on the floor of the lower house.

- The courts can act as a check on parliament, and can declare legislation invalid if it is contrary to the Constitution, or if correct parliamentary procedures have not been followed.
- The courts can also operate as a check on the executive functions of government, as expressed through the operation of the police and other employees of the state. In October 2011 a judge disallowed evidence in a criminal trial because search warrants used to gain that evidence had not been sworn by police officers (for further detail see the case study in chapter 8 on page 293).

In reality, while the judiciary maintains a high level of independence from both of the other two arms of government, in Australia the legislative and executive arms are closely intertwined.

- While the Governor-General holds an important role as part of the executive, he or she is also a key part of the legislative process, as the royal assent is the final step in the process by which a law comes into force.
- Under s. 64 of the Constitution, ministers must be members of parliament, so they will have both a legislative role as a parliamentarian, as well as an executive role as a minister.
- Many laws passed by parliament give ministers the power to make regulations in relation to the administration of those laws. The formulation of these regulations is part of the executive function of government; however, all regulations must be tabled in parliament, which holds the ultimate power to accept or reject these regulations.

study on

Unit:	3	 Practice VCE exam questions
AOS:	1	
Topic:	1	

TEST your understanding

- 1 In your own words explain the key principles of representative government.
- 2 How do the principles of responsible government serve to ensure that government is accountable to the electors for its actions?
- 3 Explain the government structure that supports the doctrine of the separation of powers.
- 4 What are the key advantages of the separation of powers?

APPLY your understanding

- 5 Identify and explain **four** examples of the operation of the separation of powers that illustrate the checks and balances that ensure that abuses of power are less likely to occur.
- 6 With reference to information contained in this chapter, explain why the following actions may be illegal.
 - (a) The Premier of Victoria seeks the assistance of the Chief Justice of the Supreme Court in having a particular judge hear a criminal trial over anti-terrorism laws.
 - (b) A High Court judge asks the Governor-General for an opinion on evidence being given in a case involving the Constitution.
 - (c) The Governor-General suggests to the Prime Minister that a judge of the High Court should be removed for making decisions that are unfavourable to a particular interest group.
- 7 The Australian system of government does not completely demonstrate the principles of the separation of powers. Explain why this is the case.

1.5 The reasons laws may need to change



KEY CONCEPT If laws are working well, then we do not tend to notice them. We usually take good law-making for granted. However, when laws fail, the consequences can be disastrous and the law needs to change.

There are many reasons why laws need to change. Let us first look at how changing society values necessitate a need for the law to change.

Values change

Changing attitudes to morality have been responsible for many changes to laws regulating society.

Following are some examples.

In the latter part of the nineteenth century, legislation banned bathing in public between the hours of 6 am and 8 pm. State governments and local councils lifted the bans by the early twentieth century, but bathers had to wear neck-to-knee costumes in the water. The arrival of the bikini after World War II ignited a series of local council bans on beaches all around Australia. Of course, today, the wearing of skimpy bathing costumes barely raises a comment.

Until the 1960s, a couple living together in a sexual relationship while not married was considered to be 'living in sin' and socially unacceptable. A single woman who became pregnant was usually encouraged to offer her child for adoption, as there was a stigma attached to the children of single mothers. Since the passing of the *Family Law Act 1975* (Cth), successive amendments to this Act have meant that today, in most situations, couples living in de facto relationships, and their children, have been treated by the law in the same way as married couples. In Victoria, the *Relationships Act 2008* has given de facto couples the opportunity to register their relationship with the Registrar of Births, Deaths and Marriages, which effectively gives their relationship the same status as a legal marriage for most practical purposes. Both heterosexual and same-sex couples can register their relationship.

The law relating to abortion is another example of the need to change laws because of changing values. Procuring or performing an abortion was a criminal offence in all Australian states, and doctors performing abortions were routinely prosecuted. In 1969, in the case of *R. v. Davidson* [1969] VR 667, Justice Menhennit of the Victorian Supreme Court held that an abortion could be lawful if there were reasonable grounds to believe that the woman's mental or physical health was endangered by the pregnancy. This meant there was now a legal basis for abortions to be performed lawfully within Victoria, even though the relevant legislation had not changed. Pressure for legislative change to clarify the situation eventually led to the enactment of the *Abortion Law Reform Act 2008* (Vic.). This Act now allows for abortions up to 24 weeks into pregnancy, without the express permission of doctors.

Economic circumstances

Governments have regularly had to respond to changes in economic circumstances to ensure continuing economic growth and prosperity. Workplace laws have had to respond to changes in the nature of work, the relationship between employers and employees, and the need for businesses to become more competitive internationally. For most of the twentieth century, wages and working conditions were decided by



This scene of an Australian beach in 1912 is radically different to the scene at beaches today. The law has had to keep pace with changing moral and social attitudes in the community.

study on

Summary

Unit 3:
Law-making

Area of study 1:
Parliament and the citizen

Topic 3:
Initiating change in the law

1.5 The reasons laws may need to change



DID YOU KNOW?

The outbreak of the H1N1 (Swine Flu) virus in 2009 saw state and Commonwealth parliaments creating laws rapidly to move the Australian public into different control and containment phases in an attempt to contain the virus. More than 170 people died of the virus across Australia in 2009. The parliament, with its ready access to experts, is best placed to make laws quickly. The government also suspended the swine flu vaccination program in 2010 when children became ill after receiving the injection.

central tribunals, which received submissions from representatives of unions and employers before making a decision that would apply to all workplaces in an industry. In recent times this process has been recognised as inefficient, and not in the best interests of either employers or employees. Governments have legislated to establish enterprise bargaining, so that wages and working conditions can be negotiated within individual businesses. *The Fair Work Act 2009* (Cth) is the most recent attempt by government to match workplace laws with changing economic circumstances.

Government inquiries and research have at various times recommended changes in the structure of the taxation system to meet changes in the economy. The need for a broad-based consumption tax in Australia was recognised in the 1980s, but was not enacted until the introduction of the goods and services tax (GST) in 2000. More recently, research undertaken in 2008 by the then Rudd government led to the introduction of the minerals resource rent tax, which is designed to provide government with an increased share of the profits being made during Australia's mining boom.

Governments have had to respond to economic threats such as excessive inflation, or the risk of economic recession, by enacting laws to deal with such threats. In 2009, the Rudd government reacted to the global financial crisis by making changes to banking and finance laws to ensure that institutions are more open and accountable to government agencies and the general public.

Technological advances

New technology is being developed at a rapid rate and has the potential to change our lives in many ways. Our law-makers struggle to keep pace with these significant changes and the impact new technology has on our society. Because we cannot predict the effects of technological change, governments often respond slowly, long after a need has been identified. Recent legislation to restrict the use of mobile phones by the drivers of cars is an example of a government response to changing technology and the increased road toll.

The growth in electronic communications has created many issues requiring legislative responses. The use of the internet, the growth in the use of mobile phones, including those with cameras, and the proliferation of online social networking have all required legislative responses in recent years. Laws to combat the transmission of child pornography over the internet, the use of the internet for identity theft, and the use of mobile phone cameras to infringe a person's right to privacy have all led to the enactment of new legislation. The recent phenomenon of sexting — sending sexually explicit images electronically — has resulted in teenagers being prosecuted for child pornography offences, and placed on the Sex Offenders Register. Governments have had to respond by reviewing existing laws to determine whether or not they are appropriate to deal with this issue.

Political circumstances

Since the terrorist attacks in the United States on September 11 2001, the Commonwealth government has passed more than 40 new counter-terrorism laws. This legislative activity has resulted in the creation of many new criminal offences; new powers for police and government security agencies to question and detain people, sometimes without charge; and powers for the government to ban organisations believed to have links with terrorists. While increased security at airports and shipping terminals has been deemed necessary to protect the travelling public, many have argued that the new laws have created restrictions in civil rights and basic freedoms.



Issues related to technological developments in communications, information technology and medical science challenge law-makers. Many laws relating to privacy have been made as a result of the onset of technology.

Increased community awareness and information

Our community is much more informed and aware today than in previous generations. The impact of the internet and a broader range of media has meant that we have much more information at our fingertips than at any time in human history. We use our knowledge to put more pressure on law-makers, particularly in relation to the protection of our rights.

Equal opportunity and anti-discrimination legislation has been continually enacted and updated since the 1970s. The *Equal Opportunity Act 2010* (Vic.) is the latest update at state level, while Commonwealth legislation covers many similar areas, including:

- *Racial Discrimination Act 1975*
- *Sex Discrimination Act 1984*
- *Human Rights and Equal Opportunity Commission Act 1986*
- *Disability Discrimination Act 1992*
- *Equal Opportunity for Women in the Workplace Act 1999*
- *Age Discrimination Act 2004*.

We are more aware today of environmental issues than in the past. For most of the first half of the twentieth century we allowed our industries to pollute rivers, seas and the atmosphere, and accepted this as an inevitable part of progress and economic growth. The *Environment Protection Act 1970* (Vic.) was the second such Act passed by any parliament anywhere in the world. Since 1970 the Act has been amended many times to accommodate community concerns about new environmental issues as they have arisen. At the Commonwealth level, the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) was subject to a government review in 2008–09, with the government announcing a number of reforms to improve the law in August 2011. Global warming and the possible effects of climate change led to the Commonwealth Parliament passing the *Clean Energy Act 2011*, which sets up a carbon pricing mechanism and the basis for emissions trading.

Significant incidents

Sometimes a significant event occurs that gains so much public exposure for an issue that the parliament has to act to try and prevent similar incidents occurring in future. Often this may involve a death that may be seen to have been preventable if the law had been different.

In 2006, Brodie Panlock, a 19-year-old waitress at a Hawthorn café, committed suicide by jumping from a multi-storey car park. An inquest held in late 2007 to early 2008 found that Brodie had been constantly bullied and harassed by three of her fellow employees, and that her employer had known of the bullying, but turned a blind eye to it. In February 2010, the employer and the three men who had bullied Brodie were fined \$335 000 under provisions of the *Occupational Health and Safety Act 2004* (Vic.). There was no provision for the perpetrators to be given a custodial sentence, so the state government set out to change the law to increase penalties for bullying in the workplace and other forms of bullying, including cyber-bullying. On 7 June 2011, the *Crimes Amendment (Bullying) Act 2011* (Vic.) came into force, allowing workplace bullies to be prosecuted through the criminal law rather than occupational health and safety laws, and allowing for prison sentences of up to ten years for those found guilty.

In August 2011 a four-year-old girl was mauled to death by a bull terrier cross that had run into her home in St Albans, Victoria. Within two weeks the state parliament had passed the *Domestic Animals Amendment (Restricted Breeds) Act 2011* (Vic.),



Following a fatal attack on a four-year-old girl, laws in Victoria controlling the ownership of dangerous dogs were changed by parliament within two weeks.

1.5 The reasons laws may need to change

which obliged the owners of dangerous breeds of dog to register their dogs with local councils, and gave councils the power to destroy unregistered dogs of those breeds.

Updating the legal system

Governments regularly look for ways to improve the operation of the legal system. Generally these seek to address problems such as excessive costs and delays involved in getting matters heard before the courts, but cultural and social issues can lead to changes to the operation of the legal system. These have included:

- The development of legal aid since the 1960s, and the operation of community legal aid centres throughout Victoria. Both state and Commonwealth governments provide funding for legal aid services.
- The establishment of specialist courts to deal with specific social issues and the recognised needs of particular groups in society. The adult and children's Koori courts in different parts of Victoria, the Drug Court in Dandenong, and the Family Violence Court in Heidelberg and Ballarat are all examples of specialist courts.
- The provision of alternative means of solving disputes to avoid the high costs of court action. The Dispute Settlement Centre of Victoria provides assistance to individuals and organisations to help them resolve disputes without resort to expensive court action, while the Neighbourhood Justice Centre in Collingwood deals with a number of legal issues, including both criminal matters and civil disputes.

(See chapter 11 for more details of recent changes to the legal system.)



TEST your understanding

- 1 In your own words, identify and explain **four** reasons why laws may need to change.
- 2 Outline one example of legislative change that has occurred for each of the four reasons discussed in question 1.

APPLY your understanding

- 3 Explain why the law has changed or is about to change in each of the following situations:
 - (a) The Victorian Parliament provides police with the power to stop and search ordinary citizens for weapons in designated problem zones.
 - (b) The *Terrorism (Community Protection) (Amendment) Act 2006* (Vic.) provides that a person can be taken into custody and detained for up to 14 days if it is felt that this will prevent an imminent terrorist attack from occurring, or it will preserve evidence relating to a recent terrorist attack.
 - (c) There has been a spate of vicious attacks by pitbull terriers across Melbourne.
 - (d) In rural areas, salinity problems have affected the landscape due to excessive clearing of native vegetation.
 - (e) The Victorian Parliament has considered imposing 2 am curfews on all licensed venues in an attempt to reduce the amount of violence in the Melbourne CBD.
- 4 Over the period of one week, collect five articles from newspapers that discuss changes to the law or suggested changes to the law. For each article, explain the area of law being addressed and give reasons why you think the change in law is necessary.
- 5 Why is it so important that the law keeps pace with international events? What might occur if our parliaments were not responsive?
- 6 'Parliament is well placed to address concerns as they arise. The community relies on our law-makers to act quickly to ensure social cohesion.' Discuss this statement in relation to the following:
 - (a) anti-terrorism laws
 - (b) environment protection laws relating to the dumping of hazardous waste such as toxic chemicals into rivers and streams
 - (c) laws relating to underage purchasing and consumption of alcohol.
- 7 There has been considerable debate on the issue of **same-sex marriage** in Australia. Use the same sex marriage weblink to find out more about this issue and then answer the following questions.
 - (a) What is the actual law that many consider needs to be changed in relation to this issue?
 - (b) To what extent do you believe this is an issue of changing social values?
 - (c) What are the key arguments presented by each side in this debate?

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1.6 The role of the Victorian Law Reform Commission



KEY CONCEPT The Victorian Parliament relies on formal law reform bodies such as the Victorian Law Reform Commission (VLRC) to recommend changes to legislation. The VLRC is an independent, government-funded organisation that develops, monitors and coordinates law reform in Victoria.

The Victorian Law Reform Commission's (VLRC) major responsibility is to research issues that have been referred to it by the Victorian Attorney-General. The VLRC also has the power to recommend minor changes to the law without receiving a reference from government. It is important to note that the VLRC operates independently of government. This independence is necessary because, on occasion, the VLRC may be required to review the activities of government and, when it prepares its report, may be critical of the way that government has managed its law reform agenda.

VLRC personnel

The VLRC has a full-time chairperson and five part-time commissioners, and is able to appoint full-time commissioners to work on particular projects. Part-time commissioners can include Supreme Court Justices, County Court judges, magistrates, legal academics, and other people who have had leadership roles in community organisations with interest or expertise in law reform issues. Full-time commissioners are usually appointed on the basis of their expertise in an area of law under investigation. The VLRC also employs the policy and research officers who work on the various projects undertaken by the Commission.

The powers of the VLRC

The Commission's powers are set out in the *Victorian Law Reform Commission Act 2000* (Vic.) Under this legislation, the role of the VLRC is to:

1. make law reform recommendations on matters referred to it by the Attorney-General
2. make recommendations on minor legal issues of general community concern
3. suggest to the Attorney-General that he or she refer a law reform issue to the Commission
4. educate the community on areas of law relevant to the Commission's work
5. monitor and coordinate law reform activity in Victoria.

The law reform process

The VLRC generally uses the following process, although some changes can occur, depending on the amount of time allowed to complete the project and the nature of the reference.

Let's now consider each stage of the law reform process in more detail.

1. Identifying a problem

The process commences when a problem with a current law is identified. This may occur because:

- of changes in social values
- the existing law is too complex
- a court case has identified an area of law in which there may be confusion
- the current situation leads to unnecessary discrimination
- a particular law is not functioning well in practice.



DID YOU KNOW?

The VLRC has a charter to consult with the community and to advise the Attorney-General on how to improve and update Victorian laws. One of its most significant reports involved the eventual abolition of provocation as a defence under the criminal law of Victoria. The defence of provocation had once allowed for a reduced sentence in circumstances where a person had killed his or her spouse in a fit of rage.

study on

Unit:	3
AOS:	1
Topic:	3
Concept:	2



Do more
Interactivity on the Victorian Law Reform Commission



1.6 The role of the Victorian Law Reform Commission



The VLRC process for considering law reform issues

The problem will usually have been brought to the attention of government by groups or individuals.

2. Attorney-General's reference

The minister in charge of legal matters in the state cabinet, the Attorney-General, provides the commission with a reference. This is in the form of a letter, outlining the issue and providing terms of reference and a date by which a report is expected.

3. Initial research and consultation

Commission staff undertake research into the current state of the law in the area specified. As well as examining current Victorian law, the Commission can also examine corresponding law in other states and even other countries. It will look at any recent attempts made at reform in other jurisdictions, and study the results of recent cases in the area of law under investigation.

Commission staff will also conduct interviews and consultation with groups and individuals who may be affected by the law. The aim is to get as broad a picture as possible of the current situation to identify all the issues that may need consideration.

4. Committee of experts

Opinions may also be sought from experts with a high level of experience and knowledge in the relevant area of law. These experts may be asked to participate in a committee of experts to provide ongoing advice on the issue. These need not be legal specialists, but may have other expertise. For example, when examining the issue of the law relating to abortion, the Commission gathered together a committee of medical specialists to advise it.

5. Publication of a consultation paper

A paper outlining all the issues that have been identified by researchers is published and circulated widely. This may also include a number of options for reform. Individuals and groups known to have an interest in the particular area of law are invited to make submissions in response to the issues raised in the consultation paper. In addition, the Commission attempts to publicise their work as widely as possible so that any interested group or individual can contribute with a submission.

6. Consideration of submissions

Researchers work through submissions received in response to the consultation paper. This will sometimes result in the need for additional research, as issues can

arise from submissions that may not have previously been considered. Commission members seek to ensure they are familiar with all the issues before engaging in broader community consultation.

7. Community consultation

Commission researchers now conduct extensive consultation with those who may be affected by the law. Relevant organisations, experts in the field, and people who work in the community with a stake in the outcome may all be consulted. The Commission may also convene community forums to hear the views of ordinary citizens or community groups. Any disadvantaged groups who may be affected, and their representatives, will also be consulted. The Commission aims to get as broad a cross-section of views as possible, particularly if a major issue of broad community interest is under consideration.

8. Final report

The results of all the research and consultation are combined into a final report, along with a number of recommendations for change. These recommendations could include changes or amendments to existing legislation, the introduction of new legislation, improved educational and community awareness campaigns, or the establishment of new organisations to facilitate change in the necessary areas. The final report is presented to the Attorney-General to be considered by the government of the day.

9. Tabling of the report

The report is required to be tabled in parliament within 14 parliamentary sitting days of its presentation to the Attorney-General. This is the official release of the report to the public and the media, and frequently leads to news stories and opinion pieces in the press and on television current affairs programs. The government will often listen for supportive or negative commentary and responses before making final decisions about the implementation of the report.

10. Government response

The government must now make decisions in response to the VLRC report. This usually occurs as part of the cabinet process. Cabinet may decide to accept all of the report and act on its recommendations, or act on only some of the recommendations. Some recommendations may require legislation, some may simply require a change in government procedures or operations. Cabinet usually charges the Attorney-General and other relevant ministers with the task of preparing any necessary legislation or administrative procedures.

11. Legislation

New legislation, or amendments to existing legislation, necessary to bring recommendations into force go before parliament. If the government does not have a majority in both houses of parliament it may have to consider amendments from the upper house before legislation can be enacted.

Community law reform projects

The VLRC is able to take on law reform projects in response to direct submissions from the public. These are usually minor reforms that do not require the large-scale deployment of Commission resources to research and produce recommendations. Any individual or group may make a suggestion or submission for a project that could provide community benefit, although the VLRC can usually only tackle one or two such projects at any time. On completion, the Commission usually makes

1.6 The role of the Victorian Law Reform Commission

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eLesson:

VLRC's review of family violence laws.

Commissioner Judith Pierce is interviewed about the VLRC review into domestic violence.

Searchlight ID: eles-0635



The VLRC has reviewed the procedures used in applying for child protection orders in the Children's Court.

recommendations to the Attorney-General in relation to the area of law dealt with in the project, and it then becomes a matter for government to consider.

An example of a community law reform project was a report released in June 2011, entitled *Supporting young people in police interviews*.

In 2008, a number of community organisations suggested a community law reform project to review the role of independent persons in police interviews with young people. These organisations believed that the rights of young people in custody are not adequately supported during police interviews. They felt that the role and responsibilities of parents or independent support persons in police interviews with young people should be clarified.

The VLRC's recommendations included:

- the establishment of a statewide pool of trained 'support persons' who can be present at interviews with young people in custody when a parent or carer cannot attend
- clarification of the role of a support person, including the ability to inform young people about their legal rights and supporting them in exercising those rights.

Dealing with child protection issues

In 2009, the Victorian Attorney-General asked the VLRC to review procedures in the Children's Court in child protection cases. It had been found that these cases were subject to a high level of disputation, and it was felt that a more collaborative approach might better serve the interests of children involved in such cases. The reference to the VLRC asked it to develop options that could reduce the level of disputation.

The Commission had to strike a balance between the need for the state to move quickly to protect children from harm, while ensuring fairness in terms of the need to intervene in a family by removing a child into care. The Children's Court has had to deal with more than 3000 applications for such interventions each year. Most of the Children's Court procedures in protection cases are similar to criminal law procedures, which lead automatically to an adversarial approach, although the Commission found that 97 per cent of child protection applications are actually resolved by agreement. This suggests that maintaining the current Children's Court procedures did not reflect reality.

In carrying out its research, the VLRC held 28 formal consultations with interested groups and individuals, released an information paper in February 2010, and received 51 submissions. It presented its final report in October 2010, providing the Attorney-General with five different options for reform. Each of these options has drawn on an increased use of mediation and other methods of dispute resolution, as well as methods tried elsewhere, such as family group conferences. One specific change proposed was the creation of an independent statutory body to represent the interests of children at all stages of the child protection process.



TEST your understanding

- 1 Explain the function of the VLRC in promoting changes in the law in Victoria.
- 2 Describe the main powers of the VLRC.
- 3 What are the two ways by which the VLRC can commence an investigation into an area of the law?

APPLY your understanding

- 4 Do you believe that VLRC recommendations for changes in the law are likely to reflect prevailing

community attitudes and values? Support your response with examples from the processes used by the Commission.

- 5 Use the **Law reform** weblink in your eBookPLUS to describe **one** project that the VLRC has undertaken and explain whether or not its recommendations were accepted by the parliament.

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1.7 Means by which individuals and groups influence legislative change



KEY CONCEPT One of the key elements of a democracy is that individuals and groups have the right to have their say. Taking part in demonstrations, signing petitions, approaching members of parliament directly and joining groups and associations that are fighting for change can make an impact and lead to change in the law.

The means of influencing legislative change are usually classified as either formal or informal. Formal methods include the activities of the VLRC, the reports and recommendations of inquiries such as a **royal commission** and the findings of parliamentary committees. Informal methods are usually those in which individuals or groups in the community attempt to influence members of parliament to consider a change in the law. These can include activities such as the presentation of petitions, participation in demonstrations, defiance of the law and lobbying. Let's look at these methods first.

Individuals, either alone or as members of an organised group, have the right to pressure for change. This is one of the key elements of our democratic society. For example, the action of the diggers (miners) at the Eureka Stockade in 1854 is one of Australia's earliest instances of a group of people using civil disobedience to apply pressure on the authorities to change the law.

A **royal commission** is a public judicial inquiry into an important issue, with powers to make recommendations to government.

On 3 December 1854, miners fought a fierce but short battle. They wanted parliamentary representation, increased voting rights for diggers and the abolition of the hated licence fee.



Presentation of petitions

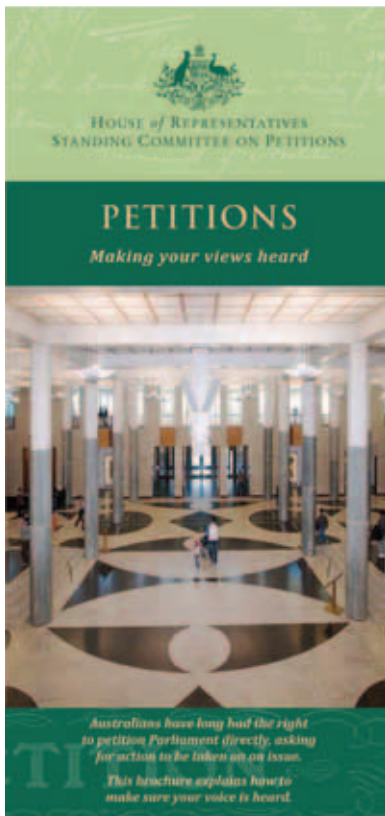
Presenting a petition is the most direct way of bringing an issue to the attention of elected representatives. Petitions can be addressed to either house of parliament, both state and federal. All citizens have the right to petition parliament. The basic requirements of a petition are:

- It must address a matter that is within the legislative jurisdiction of the parliament concerned. Petitioners need to be aware of the different areas of law that come within the powers of federal and state parliaments, to ensure they address a petition to the appropriate parliament.
- In most cases it is expected that the petition be presented to only one house in the appropriate parliament, not to both. Most petitions are presented in the lower house because that is where government is formed.

DID YOU KNOW?

Even in ancient Greece, the right to protest was acknowledged as being essential to a democracy. Playwrights such as Aristophanes mocked political leaders for their vanity, and scholars identified that the future of nations depended upon people being informed and able to mobilise themselves for rebellion.

1.7 Means by which individuals and groups influence legislative change



A petition can be presented to parliament calling for legislative action. Both houses of the Commonwealth Parliament have specific processes that must be followed.



DID YOU KNOW?

Two of the most famous petitions presented to parliament were prepared in 1963 by the Yolngu people of Yirrkala in the Northern Territory, raising issues relating to their dispossession from their traditional lands. These petitions were on pieces of bark, with traditional designs painted around the outside, and typed petitions glued in the centre. These are now on display at Parliament House in Canberra.

- The petition must have a principal petitioner; that is, the main person organising the petition and taking responsibility for ensuring it actually gets to parliament. This person's name and contact details appear at the beginning of the petition.
- The petition must contain a formal address. This is usually in the form of 'The Speaker and the Members of the House of Representatives', or similar for other houses or state parliaments.
- It should indicate who the petition is from. This is usually a group of 'concerned citizens' and may include their location if that is relevant. The location may be the electorate in which they live, or suburb, or state, depending on where signatures have been collected.
- The petition must state the reasons the petition has been prepared. These are the issues or problems that have been identified by the petitioners.
- It must also contain the request for action desired by the petitioners. This is the action the petitioners want parliament to take to solve the problems or issues.
- The petition must be written in moderate language that is not abusive or offensive.
- The main body of the petition is divided into three columns, to include the name, address and signature of each petitioner. Each petitioner should be numbered.
- The request for action should be repeated at the top of every page, and every name and address should be handwritten by each petitioner. Photocopied names and signatures are not accepted.
- Letters or other documents should not be attached.
- If the petition is to be presented to the Victorian state parliament, it must be presented by a member of that parliament, so the petitioners should send it to the member they wish to present it. This will usually be their local member.

What happens to petitions?

The Commonwealth House of Representatives has a Petitions Committee that deals with all petitions to be presented to the House. Petitions are usually sent to that committee, which adheres to the following procedure:

- The chairperson of the Petitions Committee usually presents petitions to parliament on the Monday of each sitting week.
- The details of the petition, including the reasons for the petition, the request for action and the number of signatures, are officially recorded in parliamentary records.
- Details of petitions are published on the Petitions Committee's website.
- The issues raised will usually be brought to the attention of the relevant minister, who is expected to arrange a response from his department.
- After the minister has responded, the committee considers the response, arranges for the response to be tabled in the House and forwards the response to the principal petitioner.
- Details of all petitions and ministerial responses are published on the Committee's website.

Petitions seem to be effective in promoting community support for an issue, but whether or not the views of the people are heard in parliament is another matter. One of the main criticisms of petitions is that once they are lodged, nothing is heard back from parliament.

Lobbying

Lobbying is a process of approaching a member of parliament to argue a case for change. Many organisations seek meetings with their local member or with a minister to present a case for changes in the law. In recent years, lobbying has become a professional activity, with businesses set up to carry out lobbying for a fee. In order to regulate the lobbying industry, the Commonwealth Government has established a code of conduct for lobbyists, and a register of lobbying businesses

and their clients. Close to 300 lobbying businesses are registered, employing over 600 lobbyists. Many of these are former politicians, or former government officials, who know the workings of government, and have personal contact with many current members of parliament. Close to 2000 organisations are registered as clients of these lobbyists, including businesses such as the major banks, and major manufacturing and mining companies; sporting bodies such as the Australian Football League; educational organisations such as universities; and community organisations as diverse as the Salvation Army and the Wilderness Society. All are prepared to pay a fee to have a lobbyist present their views to parliamentarians.

Pressure groups

Pressure groups represent people in society with particular points of view to promote. They provide a ready-made forum for the assembling of opinion and are, perhaps, the most influential means of changing the law. Since the 1990s, it has been widely accepted by political parties that the Green movement has a significant influence in determining the outcome of elections. Beginning with the Franklin Dam blockade in 1982, groups such as the Wilderness Society and the Australian Conservation Foundation have established a firm financial base from upon which they can influence governments in terms of protecting the environment. The construction of the South Gippsland desalination plant by the Brumby Government in 2009 also caused great controversy. The media regularly covered protests by conservation groups on Kilcunda Beach, where locals sought to highlight the potential damage to the environment of this desalination project.

Demonstrations

A demonstration is a public protest, in which people take to the streets to protest against the actions of government, or to raise awareness of an issue of concern. The success of a demonstration depends on the number of participants and the degree to which they capture public support. Most demonstrations in Melbourne involve a march through the city streets, often finishing outside Parliament House in Spring Street, although demonstrators often use a variety of methods to get their message across.

Over the years, many causes have led to a variety of different types of demonstration, not always involving street marches.

- In the late 1960s, demonstrations against Australia's involvement in the Vietnam War were relatively small, often with only a few hundred protesters. They were largely dismissed by government as the views of a small minority. As more people became aware of the issues, the size of the demonstrations grew, culminating in the first moratorium march in May 1970, when over 100 000 demonstrators marched through Melbourne. Within 18 months, Australian troops had been withdrawn from Vietnam.
- In late 1982, protests were growing against the construction of a dam in south-west Tasmania that would have flooded the Franklin River. At that time a federal by-election was held for the federal electorate of Flinders in Victoria. Voters were encouraged to write the words 'No Dams' on their ballot papers and around 42 per cent of voters did so. This action is credited with encouraging both major parties to promise to intervene in the Franklin Dam issue during the federal election that was held in March 1983.
- In 2007, the Victorian state government introduced new liquor licensing laws, which required all live music venues to have increased security. For many smaller

study on

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See more
PowerPoint
on informal
pressures for
change



A demonstration is a regular way of different groups making their views known to government and urging a change in the law.

1.7 Means by which individuals and groups influence legislative change

venues, the additional cost made the provision of live music too expensive and they began closing down their live music activities. When one of the most popular venues, the Tote Hotel in Collingwood, was facing closure in early 2010, between 20 000 and 50 000 demonstrators protested in the streets of Melbourne. This led to a relaxation of some of these laws, with small music venues having greater flexibility to organise their own security.

Defiance of the law

Another quite public means of promoting change is by deliberately breaking the law, with the result that police may arrest the individuals concerned. These individuals then use the criminal law processes as a means of drawing attention to their demands for reform.

- In a celebrated example from the 1980s, Frank Penhalluriack, the proprietor of Penhalluriack's Building & Garden Supplies, consistently broke laws that prohibited Sunday trading in Melbourne with the exception of designated tourist areas. His hardware store in Hawthorn Road, Caulfield, became a frequent centre of media and police activity on Sundays as Penhalluriack was charged for selling goods illegally. His chief complaint was that if his shop was located on the opposite side of the road, which was designated as a tourist precinct, he could operate on Sundays quite legally. After a decade of prosecutions and penalties, the Victorian Parliament eventually changed the law in 1987.
- In the late 1960s, one of the main grievances in relation to Australia's participation in the Vietnam War was the use of conscription to increase the number of troops that could be sent overseas. Many of those conscripted chose to defy the law by burning their conscription documents and refusing to be inducted into the army. The court cases and imprisonment of many of these young men helped to turn public opinion against the war.
- In 1982, as protests grew against the Franklin Dam, the Tasmanian Government passed laws making much of the area around the construction site private property and enforcing special bail conditions for anyone caught trespassing. Protesters attempted to set up a blockade to prevent earth-moving equipment from being used in the dam site. Over 1200 people were arrested for trespassing, and more than 500 were imprisoned for refusing to abide by bail conditions and returning to the site. The construction of the dam was eventually stopped with the passing of the *World Heritage Properties Conservation Act 1983* (Cth).



TEST your understanding

- 1 Distinguish between formal and informal methods of changing the law.
- 2 What changes to the law did the diggers of the Eureka Stockade seek?
- 3 Explain the process for presenting a petition to parliament.
- 4 In what ways does the parliament provide feedback to petitioners?
- 5 Give examples to explain how the lobbying of parliamentarians has become a highly professional activity.

APPLY your understanding

- 6 Collect a portfolio of five newspaper articles dealing with changes to the law. You may search

the newspapers or undertake an internet search (try typing in the words, 'Pressure to change law in Victoria').

- (a) Provide a summary of one of the articles.
- (b) How does this article demonstrate the role played by an individual or group in bringing about change to the law?

- 7 Find an example of pressure-group advertising. Explain how pressure groups attempt to change the law.
- 8 'Although formal processes for law change are effective, it can be years before change occurs. In contrast, informal means of calling for law reform are more immediate and ultimately more efficient.' Comment on this statement, referring to cases in the media that have arisen during the past 12 months.

1.8 Use of the media and legislative change



KEY CONCEPT In today's connected world, access to the media provides one of the strongest means of building up an impetus for legislative change. Groups or individuals who are able to make use of the media can improve their chances of success, and when a media organisation decides to support a particular campaign, it can have a huge impact on the momentum for change.

The media are very influential and play a crucial role in forming and reflecting public opinion. Most demonstrations and instances of civil disobedience are carried out in the hope of achieving media coverage for an issue or campaign. Media campaigns have traditionally used newspapers, radio and television, but the internet and social media are increasingly significant as means of promoting ideas for changes in the law.

Newspapers

Every day newspapers publish letters to the editor in which individuals express their opinions on a wide range of issues. In many cases, the issues of concern to readers require changes to the law and large numbers of such letters can reflect significant public opinion. Daily editorials are also used to raise matters requiring legislative change. Newspapers often conduct campaigns on issues they believe require more attention from government. Newspapers also operate online editions and provide the means by which their readers can comment on stories and issues of the day. Daily online opinion polls are also a feature of newspapers and allow them to gain speedy feedback from readers on a variety of issues. The state government has controversially made use of this facility in relation to sentencing of criminals in the courts.

State government surveys *Herald Sun* readers on sentencing

In July and August 2011, the Baillieu government conducted a survey through the *Herald Sun* newspaper, asking readers for their views on sentencing for a variety of criminal offences. Readers were given 17 hypothetical cases of offences and asked to give their opinion on what the sentence should be for each offence. Offences included that of a man killing a close friend in a minor disagreement, a drug addict using a steak knife to rob someone to buy drugs and a drink driver killing someone after speeding through a stop sign. Over 18 500 people completed the survey and the government released the results in December 2011. Attorney-General Robert Clark said the results would be used to assist the government in changing the law to increase minimum sentences that could be imposed by judges. Legal experts criticised the survey and the government response, expressing concern that the public did not always know the details of cases before the courts, and could too easily believe sentences were too lenient.

Radio

Talkback radio programs provide an opportunity for members of the public to air their views about possible changes in the law. Some talkback hosts have large audiences, allowing them to exert a great deal of influence over public opinion. A number of these radio hosts have been described as 'shock jocks' and have variously been accused of holding extreme views, cutting off callers who disagree with them and accepting cash to provide favourable comments about particular businesses, without disclosing this as paid advertising. Nevertheless, radio remains an influential medium and can provide opportunities for the public to raise important issues.

Television

Television current affairs programs can also be very influential in leading to changes in the law. Many people with serious complaints about the activities of rogue businesses have used an interview on *A Current Affair* or *Today Tonight* to bring these activities to the attention of government authorities. The ABC's *Four Corners* program has been very influential in raising important legal issues over many years. A report on corruption in the Queensland police force aired in 1987 led to the establishment of a major inquiry that set up a permanent Criminal Justice Commission. A number of senior police and government ministers were prosecuted as a result of the inquiry. More recently, another *Four Corners* report has led to changes in animal welfare laws.

Cruelty in live animal exports



Cruelty in the live animal export trade was revealed by the *Four Corners* program, leading to changes in the regulation of the trade.

In May 2011, the ABC's *Four Corners* program showed footage of cattle exported from Australia being subjected to cruel treatment in Indonesian abattoirs. Much of the footage shown on the program was filmed by Animals Australia members, with a view to bringing the treatment of these animals to the attention of the television audience. A public outcry led to government action to suspend live cattle exports to Indonesia. Two private members' Bills were introduced into the House of Representatives with the aim of

ending the live animal export trade. Both were defeated in the House. In October 2011, the Commonwealth Government introduced a new regulatory framework designed to improve the treatment of animals exported to other countries for slaughter and the trade with Indonesia resumed. Despite this, many animal welfare organisations do not believe the new regulations go far enough and continue to campaign for an end to live animal exports.



DID YOU KNOW?

When Barack Obama was running for President of the United States in 2008, his campaign team created election advertising to be shown on YouTube. The material was watched for 14.5 million hours, all for free, the equivalent of \$47 million worth of paid television advertising. President Obama launched his re-election campaign for 2012 on Facebook in April 2011. Voters in the US can post comments, suggestions and ideas for the future on the President's Facebook page.

The internet and social networking

In many ways, the internet and the development of portable devices such as smartphones have revolutionised communications in the twenty-first century. New platforms provide the means for community and other groups to communicate their ideas and proposals for change.

- Online organisations such as GetUp have campaigned on issues such as migration laws, Australia's involvement in the Iraq war, the Murray Darling Basin environment and coal seam gas mining. GetUp uses its website as a means by which its members and followers can express their opinions and call for changes in the law.
- Social networking media such as Facebook and Twitter have been used by political activists to conduct campaigns for change. The Occupy Melbourne movement set up a Facebook page in 2011 to allow its members and supporters to promote their views on the need for change in society. Movements for social and political change in various parts of the world have used Twitter as a means of keeping followers updated, enabling them to bring large numbers of people to demonstrations and other protest activities.
- The Wikileaks website has been used to release previously secret government files, raising people's awareness of government activities, and highlighting areas that could become a focus for calls for changes in the law.

The effectiveness of methods used to influence change in the law

Many individuals and groups use a variety of methods to influence change. You would be sadly disappointed if the only method used to affect change was a petition. If, however, you sought media attention through talking on radio or television, taking out a full page advertisement in a newspaper and holding a protest rally, you might be more successful in galvanising opinion and, perhaps, support from politicians. Table 1.2 analyses the likely effectiveness of the methods used to influence legislative change.

study on


Unit:	3	 Practice VCE exam questions
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TABLE 1.2 Effectiveness of methods use to influence change to the law

Method	Effectiveness of methods used to influence change to the law
Petition	Petitions alone are unlikely to influence legislative change, but they can be successful in drawing parliament's attention to an issue. Petitions can gain support as they are a peaceful means of effecting change and any citizen can organise a petition. Petitions that gain more signatures are more likely to effect change.
Demonstrations	Demonstrations can be effective if they attract media attention, thus highlighting the issue and increasing the chances of parliamentarians listening to the views of their constituents, particularly if the cause gains public support. In early 2012 Victorian nurses staged a number of rallies and many patients publicly joined in. If demonstrations become violent, however, they may be less effective in impacting legislative change because they are less likely to involve community support.
Lobbying	Employing the services of an expert to lobby for a cause may be effective given that many lobbyists are former politicians, or former government officials, who know the workings of government and have personal contact with many current members of parliament. The downside of using an organisation to lobby for your cause is that a fee may be charged for this service.
Defiance of the law	Disobeying the law can be effective if it raises media awareness of the issue, particularly if civil disobedience highlights that the law is in fact out of date and needs to be changed. Frank Penhalluriack gained support and had an impact on changing trading hours in Melbourne. Breaking the law to highlight a cause, however, can lead to prosecution and may only result in turning public opinion against a cause.
Use of the media	Using the media is a powerful method of effecting change because it increases public awareness of an issue. If politicians see there is public support for an issue they will begin to listen. The issue of same sex marriages is a good example where politicians are beginning to listen to the views of constituents. Use of the media may, however, hinder a cause if media coverage fails to highlight the real broader issues of change being sought.

TEST your understanding

- Describe three ways in which individuals and groups can make use of media such as newspapers, radio and television to influence legislative change.
- What advantages do the internet and social networking have over traditional media in promoting ideas for changes in the law?

APPLY your understanding

- Investigate changes that have been made to the sentencing laws since the *Herald Sun* survey of 2011. Compare these changes with the results of the survey (available online) and comment on how influential the survey was in determining the changes that were made to the legislation.
- Identify a recent issue raised in a television current affairs program. Did the airing of the issue lead to changes in the law? How influential was the program in bringing about that change?
- Use the **GetUp** weblink in your eBookPLUS to investigate campaigns recently conducted by this organisation.
 - Identify **three** issues that are currently the focus of GetUp campaigns.
 - Outline an issue GetUp has recently promoted that has led to some change in the law.

eBook plus

SKILL DRILL

KEY SKILL TO ACQUIRE:

- evaluate the effectiveness of methods used by individuals and groups to influence change in the law.

SKILL DEFINITION

Evaluate means to make a judgement based on criteria, and supported by evidence and examples.

In evaluating the effectiveness of methods used to influence change in the law, it is important to be able to call on examples of the different methods, both successful and unsuccessful. Consider the following case studies.

Mining tax proceeds



The mining industry conducted a strong campaign against the original resources super profits tax in 2010.

eBookplus

Use the **anti-mining tax campaign** weblink in your eBookplus to see the campaign played out in the media against the mining tax.

In April 2008, the newly elected Rudd government conducted the Australia 2020 Summit, a meeting of 1000 people called together to propose ideas for the future of the country. One significant issue discussed was that of the structure of the taxation system. As a result of the discussions, a comprehensive review of the tax system was set up, under the leadership of the Secretary of the Treasury, Dr Ken Henry. In December 2009 the review panel presented its report to the government, which examined its contents before publicly responding in early 2010. At this time the government decided to adopt one of the review's recommendations, a resources super profits tax. This tax was to be levied on mining companies and used to reduce the company tax rate, and pay for a number of other government programs. The tax was strongly opposed by large mining companies, which conducted a strong advertising

campaign in all the media, claiming the tax would destroy the mining industry and slow Australia's economic growth. For a while, public opinion was strongly against the tax and this unpopularity may have contributed to the replacement of Kevin Rudd with Julia Gillard as prime minister in June 2010. The new prime minister negotiated a new version of the tax with some of the larger mining companies, resulting in its change to the minerals resource rent tax. The tax passed through the House of Representatives in late 2011 and through the Senate in 2012. This tax had the support of some larger mining companies, although some have continued to oppose the tax. Opposition Leader Tony Abbott maintained that if his party won government at the next election, they would repeal the tax.



QUESTIONS

- 1 Was the original recommendation for a resources super profits tax a result of formal or informal means of achieving legislative change?
- 2 How effective was the original recommendation as a means of changing the law? Give reasons for your answer.
- 3 What methods did opponents of the tax use to present their opposition to its introduction?
- 4 How effective was their campaign? Explain your answer.
- 5 Consider all the parties in this process, and evaluate the effectiveness of the methods used by each of the following groups and individuals in achieving legislative change:
 - (a) The Henry tax review
 - (b) The large mining companies that negotiated changes with the Gillard government
 - (c) The government, as led by both Kevin Rudd and Julia Gillard
 - (d) Those mining companies that continued to oppose the tax
 - (e) The federal opposition.

Carbon tax enacted

Since the 1980s there has been growing concern in response to the scientific evidence of global warming occurring as a result of human activities, such as the burning of fossil fuels. At an international conference in Rio de Janeiro, Brazil in 1992, governments around the world committed to taking action to reduce carbon emissions over time. During the early years of this century, public opinion in Australia became increasingly more supportive of government taking action to address the issue of climate change. At the 2007 federal election, both sides of politics promised to introduce an emissions trading scheme as a means of ultimately reducing Australia's carbon emissions.

The newly elected Rudd government set about developing such a scheme and introduced legislation in 2009. Because the government did not have a majority in the Senate, it had to negotiate some changes to the legislation with then opposition leader Malcolm Turnbull, and a compromise bill was introduced in November 2009. Soon after, Malcolm Turnbull was replaced as Opposition leader by Tony Abbott, who refused to agree to the passage of the Bill through the upper house. The legislation was put on hold.

No action had been taken by the time of the August 2010 federal election, when a hung parliament resulted. As part of the negotiations that occurred in the formation of a minority government, Prime Minister Julia Gillard agreed to a request from some of the cross-bench members of parliament that a carbon tax be introduced during the coming parliament, as a means of dealing with the climate change issue. Prior to the election the Prime Minister had promised that her government would not introduce a carbon tax, so she was attacked as having broken an election promise. Legislation was negotiated with the cross-bench members of the House of Representatives, and with the Greens, who now held the balance of power in the Senate. The *Clean Energy Act 2011* became law after passing the Senate in November 2011, with the tax taking effect in July 2012.



Many people came out to support a carbon tax. This rally was held in Brisbane on World Environment Day.

QUESTIONS

- 1 Did the initial impetus for government action in Australia on climate change come from formal or informal means?
- 2 How effective was this pressure for legislative change by 2007? Give reasons for your answer.
- 3 Why was the Opposition an effective influence on the legislative changes proposed in 2009?
- 4 What methods were used by the cross-bench MPs (members of parliament) and the Greens to bring about legislative change in relation to the issue of climate change in 2010 and 2011?
- 5 Consider all the parties in this process, and evaluate the effectiveness of the methods used by each of the following groups and individuals in achieving legislative change:
 - (a) Public opinion on the issue of climate change prior to the 2007 election
 - (b) The federal Opposition, as led by both Malcolm Turnbull and Tony Abbott
 - (c) The government, as led by both Kevin Rudd and Julia Gillard
 - (d) The cross-bench MPs in the House of Representatives
 - (e) The Greens and other groups campaigning on environmental issues.



1.9 The legislative process for the progress of a Bill through parliament



KEY CONCEPT The passage of a Bill through parliament is often fiery, with politicians' tempers running hot and interested parties in the public gallery also having their say. When the Abortion Law Reform Bill eventually passed the Legislative Council in 2009, shouts erupted from the public gallery, and people were evicted from the chamber by security guards.



DID YOU KNOW?

The Senate conducted one of the longest debates in history over the wording of one section of the *Family Law Act 1975* (Cwlth). The words 'irretrievable breakdown of marriage', which describe the grounds for a divorce, were debated by senators for over 40 hours.

A **Bill** is a proposed law or change to an existing law to be debated by parliament.

The law-making process commences with an idea for a piece of legislation that is deemed necessary. This idea often comes from government, usually from its Cabinet, but it can also come from outside sources such as pressure groups and lobbyists. It is estimated that about half of the total sitting time of the house is taken up considering Bills. Bills range from matters of an administrative nature to those that have significant social, economic and industrial impact. From 2009 to 2011, an average of 159 Bills were passed in Federal Parliament and became Acts.

Types of Bills

A **Bill** is a proposal for a new law or a change to an existing law. Parliament relies on set procedures to make or change laws. Before any Bills can become Acts of parliament, they have to be debated and passed by both houses, and then approved by the Crown. This is known as the legislative process. The main types of Bill are:

- government Bills, which are proposed by the ministers. These Bills are guaranteed passage through the lower house where the government has a majority of members.
- private members' Bills, which do not have the support of the government and are usually introduced by Opposition members or government backbenchers. These Bills often fail because they do not reflect the policies of the government and will be voted down in the lower house.
- money or appropriation Bills, which involve government spending or raising taxes. These Bills cannot originate in the Senate. The Senate may not amend Bills that impose taxation and other kinds of appropriation Bills that will increase 'proposed change or burden on the people', but it can ask the House of Representatives to make amendments to these types of Bills.

Before the Bill comes to parliament

Having made the decision to bring new legislation before parliament, the minister responsible or private member has to have the Bill drafted. This task is carried out by the Office of the Parliamentary Counsel, a parliamentary office which includes a staff of around 35 professional drafters.

- One or more of these drafters will be briefed by the relevant government department, or by the private member and his or her staff, and given details of the requirements to be included in the Bill.
- Drafters are usually experts at transforming broad policy directions into appropriate language, ensuring all necessary legal and constitutional requirements are adhered to.
- A draft Bill is sent to the minister's or private member's office for consideration. If it needs changes, it will be returned with comments, or a further briefing may occur.
- Once a satisfactory Bill has been produced, if it is a government Bill it will be printed and presented to cabinet, where it may be referred to the cabinet's Legislation Committee.
- If there is a Labor Party government, the Bill may also be presented to **caucus** for discussion.

The **caucus** is the total membership of all Labor members in the parliament, both senators and members of the House of Representatives.

Where do ideas come from?

- Political parties
- Parliamentary committees
- Government departments
- Organisations
- Media
- Pressure groups
- Public opinion
- Court decisions
- Formal law reform bodies

The development of policy

- Government policy developed by the responsible minister
- Cabinet develops the general details of the Bill and refers expert reports to the parliamentary counsel for drafting
- Opposition member may prepare a private member's Bill

What problems exist in drafting legislation?

- Difficult to foresee future events
- Meaning of words might change over time
- The Bill might relate to complex areas with technical language
- New law might be in conflict with existing statutes
- Difficult to accommodate the opinions of all people in controversial areas

The Bill enters the house of origin (usually the lower house)

- Notice of intention
- First reading
- Second reading: debate commences after the minister's speech
- Consideration in detail: the Bill is debated, clause by clause
- Adoption of the report by the committee
- Third reading

House of review

- The Bill now proceeds to the other house where it is examined. If changes are made the Bill returns to the house of origin.
- Bills may be examined by a designated committee

Royal assent

When both houses have read the Bill three times and agree on its contents, royal assent is given by the Queen's representative at a meeting of the Executive Council.

Proclamation

- The Bill becomes an Act of parliament and is effective on the date specified in the *Government Gazette*.
- The government undertakes programs to educate the public on the new law.

study on

Unit: 3

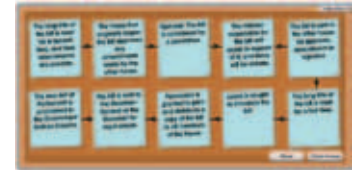
AOS: 1

Topic: 4

Concept: 1



Do more
Interactivity on the stages of a Bill through parliament



The process by which a Bill passes through parliament

Progress through parliament

Once the Bill has been drafted to the satisfaction of the minister and cabinet, it commences on its path towards becoming law.

Notice of intention and first reading

Scheduling of the introduction of legislation is carried out in consultation with the manager of government business in the house, who is a minister with responsibility for scheduling government legislation during a parliamentary session. He or she will usually work closely with the Speaker and the Clerk of the House, and will allocate time for private Bills as requested. Once scheduled the following steps occur.

- The minister or private member gives notice of intention to introduce the Bill.
- The first reading occurs, in which the title of the Bill is read out and copies of the Bill are circulated to members, along with an explanatory memorandum, summarising the Bill's content and purpose.
- No discussion of the Bill takes place at this time. The minister may move immediately to the second reading, or this may be adjourned to a later date.

Second reading

This is the first occasion when the Bill is debated.

- The minister moves that the Bill be read a second time and proceeds to present the second reading speech. This speech allows the minister to outline details of the Bill, its purpose and what the government hopes to achieve with its passing.
- On completion of the minister's second reading speech, debate may continue, or may be adjourned to a later date.
- When debate resumes, the **shadow minister** will present the Opposition's response to the Bill. If the Opposition has decided to oppose the Bill, the shadow minister will outline the reasons for this. Not all Bills are opposed, and sometimes the Opposition may only want minor changes to the Bill. These may be outlined at this stage.
- Second reading debate continues, with speakers for and against the Bill taking turns in presenting their views to the house. The content of these speeches is reproduced in Hansard, which is a record of the debates and proceedings in parliament.
- At the conclusion of the debate, the motion will be put and, if carried, the Bill moves to the next stage.

A **shadow minister** is a member of the Opposition's leadership group who has responsibility for the policy area of a particular minister. He or she would be likely to become minister if the Opposition won government.

Consideration in detail

The Speaker vacates the chair and leaves the chamber for this stage, with the chair taken by the Deputy Speaker, who is also Chair of Committees.

- The Bill is debated clause by clause. This stage is known as *consideration in detail*. The corresponding stage in the upper house is known as *committee of the whole*.
- Amendments can be moved and debated at this stage, and voted on. Successful amendments will be incorporated into the Bill, often replacing some of the original wording.
- During this stage, the Bill may be referred to a smaller committee. The House will have a number of standing committees, many of which have a specific role in relation to an area of government policy. Sometimes it is deemed appropriate for such a committee to examine the Bill before proceeding further.
- At the conclusion of consideration in detail, the Speaker resumes the chair and the Chair of Committees reports on the progress made. The House then votes to accept this report before moving to the next stage.

Third reading

The minister moves that the Bill (as amended) be read a third time.


- Usually there is no debate during the third reading, unless the Bill has been substantially amended, in which case the minister may wish to make additional comments related to the purpose of the Bill.
- A vote at the completion of the third reading signals that the Bill has completed its passage of the lower house.

The upper house

The Bill follows the same stages in the upper house as it has in the lower house.

- The federal government has rarely held a majority in the Senate over the last 3 years, so amendments are most likely to occur in the Senate.
- Bills that require detailed analysis are referred to the Selection of Bills Committee of the Senate, which reports back with any recommendations for action on the Bill.
- If the Bill is successfully amended in the upper house, it must be returned to the lower house for those amendments to be approved.
- If the lower house does not agree with amendments made in the upper house, the Bill may be returned with a request that the Bill be passed without those amendments.
- If the upper house does not agree to this request, the Bill may be laid aside.
- Once the Bill as agreed to by both houses has been passed it moves to the next stage.

study on

Unit:	3	 Practice VCE exam questions
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Royal assent and proclamation

Having passed both houses successfully, the final stages allow the Bill to become law.

- The Governor-General (or governor at state level) provides the royal assent. This is the final stage at which the Bill becomes an Act.
- Once it has become law, the Act is proclaimed in the *Government Gazette*. This usually in the form of a statement by the Governor-General indicating that the Bill has been signed into law. It also announces a commencement date for the Act, or if the Act comes into force immediately.

TEST your understanding

1 Define the following terms:

- Bill
- second reading speech
- consideration in detail stage
- royal assent
- proclamation.

2 Prepare an overview or summary of this section, referring to the stages as listed below. Write a brief statement under each heading.

- The progress of a Bill through parliament
- Parliament has to follow certain steps before a Bill becomes an Act.
- The following procedures ensure that proposed laws can be debated and amended if necessary:
 - second reading
 - consideration in detail stage

- adoption of the report by the committee
- royal assent
- proclamation.

3 Use the following terms in a sentence to explain their meaning:

- motion
- amendment
- Act
- Hansard.

APPLY your understanding

- 4 Why do you think it is important for a Bill to be debated so often?
- 5 Would you say the process by which laws are made in Australia reflects the principles of representative government and responsible government? Explain, with references to examples in the recent media.

1.10 Strengths and weaknesses of parliament as a law-making body



KEY CONCEPT Although the parliament has some significant strengths in law-making it does not always get it right.

study on

Summary

Unit 3:
Law-making

Area of study 1:
Parliament and the citizen

Topic 5:
Effectiveness of
parliament as a
law-maker

Strengths of parliament as a law-maker

Parliament is the supreme law-maker and has, at its disposal, a variety of mechanisms that allow it to represent the interests of the people. Let us look at the strengths of parliament as a law-maker.

Access to expert opinion

Parliament conducts investigations into matters of concern. Gathering data from a wide variety of sources allows parliament to make informed decisions on policy issues when drafting Bills. For example, the Road Safety Committee of the Victorian Parliament undertook a major study of random drug testing of motorists. After much debate and community consultation, the legislation enabling Victoria Police to test drivers for the recent consumption of THC (the active component in cannabis) and methamphetamines (speed) was passed in December 2003.

Consultation with the public

Through the establishment of committees and public inquiries, parliament allows the community to be actively involved with regard to proposals for law reform. In this way, it provides a forum for debate. Formal law reform bodies, such as the Victorian Law Reform Commission, issue discussion papers that outline possible avenues for change. The public is given the opportunity to submit written and oral statements in an attempt to influence law reform. This is one of the key elements of our democratic system of government.

Legislating on an entire topic

Parliament has the power to legislate on an entire topic. This provides certainty in the law with a comprehensive declaration of rights and responsibilities on a particular issue. For example, the Commonwealth Parliament introduced a far-reaching piece of legislation on 1 January 1976 to regulate issues of marriage, dissolution of marriage, custody, property, maintenance and access to children. Known as the *Family Law Act 1975* (Cwlth), this statute has had a profound impact on Australian society.

In late 2009, the Australian Crime Commission revealed that organised crime syndicates had infiltrated the nation's wharves and airports and were exploiting security weaknesses. The Commonwealth moved quickly to review the security card system in an attempt to address growing concerns over terrorism and organised crime.



Law made by parliament is responsive and flexible

Society is experiencing rapid change in many areas. Parliament can act quickly when necessary to introduce laws in response to these changes. For example, when H1N1 (swine flu) spread across the world in 2009, the Commonwealth reacted swiftly by tightening Australia's quarantine laws and reporting procedures.

Looking to the future

Parliament has the power to make law *in futuro* (to cover future circumstances). This reinforces confidence in the legal system in that the community can be informed of forthcoming legislation. Parliament also may undertake public education programs before the law comes into effect, especially in regard to areas involving police powers and road laws. When parliament introduces new laws affecting motorists, bodies such as the Transport Accident Commission conduct detailed public awareness campaigns.



Climate change has produced significant issues for governments around the world. As an essential part of election campaign promises, political leaders make campaign promises about environmental protection.

Weaknesses of parliament as a law-maker

Although parliament is a powerful law-maker, it is inhibited by some weaknesses which we now explore.



Although the Victorian Government's own expert committee recommended in favour of the decriminalisation of street prostitution in 2004, the Premier dropped the plans when local residents in St Kilda pledged to campaign against the local member at the forthcoming state election. The local member at risk was then Deputy Premier, John Thwaites. The law was never introduced.

study on

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See more

PowerPoint on parliament as a representative body



study on

Unit: 3

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Practice
VCE exam
questions

Fear of voter backlash

Politicians are conscious of public opinion. Therefore, controversial issues are sometimes not handled by parliament because political parties fear losing voter support.

Bicameral structure of parliament

Where the government does not control the upper house, Opposition parties can frustrate the legislative program purely for political purposes. Changing statute law can be very time-consuming, and much needed law reform can be delayed because opponents of the government wish to indulge in 'point scoring' rather than an objective analysis of the issues. On the other hand, if the government controls the upper house, it might act only as a 'rubber stamp' and not vigorously review government Bills.

Parliament is not always sitting

The number of sitting days for parliaments is relatively few and, therefore, law reform may be delayed. This problem is partly addressed because the parliament has created subordinate authorities that have the authority to create law in narrowly defined areas. These bodies, which include government department, local councils and statutory authorities, create law on an ongoing basis on behalf of the parliament.

Difficulties in drafting legislation

When parliament is drafting and debating legislation relating to a highly technical area, the words contained in the Bill may not be fully defined. This may lead to confusion in the community and lengthy court cases where the exact intention of parliament must be later determined by a judge or magistrate.

Inconsistencies in statute laws between states

State parliaments in Australia each have control over key areas such as criminal law and road rules. In some instances, state parliaments create laws that are inconsistent across the nation, and this means that the rights of people vary depending on the state in which the person lives. For example, the age at which a person can obtain a driver's licence varies from state to state. Also, peer passenger restrictions for P-plate drivers vary across Australia. For people conducting business on a nationwide basis, these state-by-state differences can present major problems.

DID YOU KNOW?



The total number of sitting days for the House of Representatives in 2008 was 69 days and the Senate sat for 52 days. Australian politicians sit fewer days than UK or US politicians. In the United Kingdom, the House of Commons sat 149 days and the House of Lords sat for 148 days in 2008. In the United States of America, the House of Representatives sat for 118 days and the Senate sat for 184 days in 2008.



TEST your understanding

- 1 Define the term *in futuro*. In what ways could the requirement that parliament make laws *in futuro* create problems in the law-making process?
- 2 Give **three** examples of law-making where you believe that the parliament has acted appropriately to enhance representative democracy.
- 3 Suggest **two** reasons why inconsistencies could arise between acts of parliament.

APPLY your understanding

- 4 'Parliament has an important role to play in creating laws that provide social harmony. However, even though parliament can access detailed research, it sometimes fails to act where there is a need for law reform.' Discuss this statement with reference to the strengths and weaknesses of parliament as a law-maker. Refer to case studies drawn from current media reports concerning debates over public policy and the passage of Bills through the parliament.

EXTEND AND APPLY YOUR KNOWLEDGE:

Law-making by parliament

Northern Territory National Emergency Response Act 2007 (Cwlth)

The Northern Territory National Emergency Response Act, introduced by the Howard Government and supported largely by the Rudd and Gillard Governments involved major changes to welfare provision, law enforcement and land tenure of Aboriginal Australians in the Northern Territory. This law was made by the Commonwealth according to its constitutional powers to make law for the territories.



DID YOU KNOW?

The Commonwealth Parliament has the power to make any law for the territories. This power exists under s. 122 of the Constitution.



Aboriginal Australians have occupied the land for over 40 000 years. While many gains have been made in health and education and in the sporting arena over the past 30 years, more work needs to be done to ensure that young Aboriginal Australians share the same rights and opportunities as non-indigenous people.

The reason the law had to change

In August 2006, the Northern Territory Government commissioned a Board of Inquiry into the issue of sexual abuse of Aboriginal children. In June 2007, the Board of Inquiry released its report, *Little Children are Sacred*, concluding that sexual abuse of children in Aboriginal communities had reached crisis levels, and that urgent changes to the law were needed to deal with the problem. The *Northern Territory National Emergency Response Act 2007* was the legislative response of the Commonwealth government. It became known as the Northern Territory intervention.

Purpose of the legislation

The main purposes of the legislation include the following:

- additional police deployed to affected communities
- new restrictions on alcohol and kava
- pornography filters on publicly funded computers
- Commonwealth funding for provision of community services
- removal of customary law and cultural practice considerations from bail applications and sentencing within criminal proceedings
- quarantining of a proportion of welfare benefits to all recipients in some communities
- quarantining of all benefits of those who neglect their children
- create leases to the Commonwealth for a period of five years to enable it to acquire rights, titles and interests in town camps
- provide for closer management by the Commonwealth of community stores
- to modify or suspend the operation of the Racial Discrimination Act in some areas.

Attitudes of individuals and groups

At the time, the intervention was criticised, with some believing it was simply a publicity seeking stunt by the government in the lead up to the 2007 election. It was also criticised by the Northern Territory government and the Human Rights and Equal Opportunity Commission, particularly in relation to the suspension of the Racial Discrimination Act.

The response in Aboriginal communities was mixed, with some community leaders welcoming changes that reduced violence in communities and provided incentives for children to attend school. Others were critical of the fact that there had been no consultation with Aboriginal people, particularly with leaders and elders in communities. Some claimed that it reminded them of the days many had spent on missions, when all decisions were made for them by white bureaucrats.

Recent developments

The intervention remained in place after the change of government at the 2007 election, but has been the subject of further reports and legislation:

- In 2009, a United Nations report criticised the intervention, particularly the suspension of the Racial Discrimination Act. The report found a need to develop new initiatives to conform to international standards requiring respect for cultural integrity.
- In 2010, Indigenous Affairs Minister, Jenny Macklin, ended the suspension of the Racial Discrimination Act, restoring rights under that Act.
- In February 2011, a group of respected Aboriginal elders produced a document protesting against the continuation of the intervention. The document stated, 'As people in our own land we are shocked by the failure of democratic processes, of the failure to consult with us and of the total disregard for us as human beings.' The statement was endorsed by former Prime Minister Malcolm Fraser, rights advocate Patrick Dodson, lawyer Larissa Behrendt and former Family Court Chief Justice Alastair Nicholson.
- As part of the intervention, many Aboriginal people were issued with a basics card, with half of their income available only through the card and only to be spent on food. A report on the use of the card in 2011 found that 85 per cent of women said they had not changed their shopping habits because of the card, and 74 per cent said it did not make it any easier to look after their family.
- *Intervention creep* is a term used to describe Aboriginal people fleeing from communities covered by the intervention into larger cities like Alice Springs and Darwin, increasing the number of homeless people sleeping rough in those cities.



QUESTIONS

- 1 Give **two** reasons why the Commonwealth Parliament introduced the Northern Territory National Emergency Response Act.
- 2 Under what authority did the Commonwealth Parliament create this law?
- 3 Outline the controversy arising from this law regarding the Racial Discrimination Act.
- 4 Explain **two** methods that have been used to influence the development of law in this area.
- 5 Do you agree that sometimes it is useful for Australia to have a body such as the United Nations criticise our laws and policies?
- 6 To what extent does this case highlight the strengths of the Commonwealth Parliament as a law-maker?

CHAPTER 1 REVIEW

Assessment task — Outcome 1

On completion of this unit the student should be able to explain the structure and role of parliament, including its processes and effectiveness as a law-making body, describe why legal change is needed, and the means by which such change can be influenced.

Please note: Outcome 1 contributes 25 marks out of the 100 marks allocated to school-assessed coursework for Unit 3.

Practise your key skills

Use this assessment task to practise the following skills:

- define key legal terminology and use it appropriately
- discuss, interpret and analyse legal information and data
- explain the principles and structures of the Australian parliamentary system
- use contemporary examples to explain the influences on legislative change
- evaluate the effectiveness of methods used by individuals and groups to influence change in the law
- critically evaluate the law-making processes of parliament.

Structured questions

Question 1

Individuals, either alone or as the member of an organised group, have the right to pressure for changes. This is one of the key elements of our democratic society.

Describe **one** method that individuals or groups have used to bring about changes to the law and explain whether they were successful. (4 marks)

Question 2

In what ways is parliament both representative and responsible? (4 marks)

Question 3

One of the key reasons for changing the law is to keep pace with scientific research. Although parliament can act quickly to change the law, it relies on formal law reform bodies such as the Victorian Law Reform Commission to make recommendations about the precise content of draft Bills.

- Describe the role of the Victorian Law Reform Commission.
- Analyse whether formal law reform bodies such as the VLRC are an effective means of influencing reform. (2 + 3 = 5 marks)

Question 4

The law is a set of dynamic legal rules. This means that new laws develop and old ones are scrapped as society changes or its values change.


Outline **three** reasons why laws need to change and support each reason with a contemporary example. (6 marks)

Question 5

Discuss the strengths and weaknesses of law-making by the parliament. (6 marks)
(Total 25 marks)

Tips for responding to structured questions

Use the following checklist to make sure you write the best responses to the questions that you possibly can.

Performance area	Yes	No
<p>Define key legal terminology and use it appropriately.</p> <p>You should at least define the following terms in your short-answer responses: Representative and responsible government and parliament.</p>		
<p>Discuss, interpret and analyse legal information and data.</p> <p>Question 3 asks you to analyse whether or not law reform bodies such as the VLRC are effective in influencing reform. In your answer you should at least mention that the VLRC plays a role in drawing together opinions of interested parties so that parliament has access to all points of view when considering prospective legislation. Do a bit of extra research for this question and have a look at the VLRC's latest annual report. The annual report provides a summary of achievements that you could use to help support your answer.</p> <p>Use the VLRC annual report weblink in your eBookPLUS to access the latest VLRC annual report.</p> 		
<p>Explain the principles and structures of the Australian parliamentary system.</p> <p>Question 2 specifically asks you to explain how parliament is representative and responsible. When talking about how parliament is representative, you must explain how each house is elected to represent the people and state view. When talking about responsible government you should explain the notion of accountability and give some examples of how checks are placed on the government of the day to avoid abuse of power.</p>		
<p>Use contemporary examples to explain the influences on legislative change.</p> <p>Question 4 is asking you to provide some real life examples of why laws have changed. To find some contemporary examples, consider doing an internet search on the following terms: change in Victorian law, law reform, technology and the law.</p>		
<p>Evaluate the capacity of individuals and groups to influence change in the law.</p> <p>Question 1 asks you to pick one method individuals or groups have used to bring about change in the law and whether or not they were successful. You can use some examples from this text or you might use more contemporary examples by doing an internet search. Consider entering the following search terms into a search engine such as Google: protest, demonstration, pressure group, lobbyist. When you read the search results you may be able to find a current example of action that has been taken to influence change in the law. It may not be possible for you to accurately assess whether or not the individual or group was successful in achieving change but you will at least be able to say whether or not they were successful in raising awareness of an issue.</p>		
<p>Critically evaluate the law-making processes of parliament.</p> <p>Question 5 asks you to provide a discussion of the strengths and weaknesses of parliament as a law-maker. A discussion is an exchange of views so you will need to provide both strengths and weaknesses of parliament as a law-maker.</p>		
<p>Your responses are easy to read because:</p> <ul style="list-style-type: none"> • Spelling is correct. • Correct punctuation is used. • Correct grammar is used. • Paragraphs are used instead of point form. <p><i>Tip: as a general rule a new paragraph should be used for each new point made. Introduce your POINT, then EXPLAIN, then give an EXAMPLE if appropriate.</i></p>		

Chapter summary

The Australian commonwealth and state parliaments are based on a model inherited from Britain.

- **Parliament's primary role**
 - Parliament is a legislature or law-making body.
- **Structure of parliament**
 - Our parliamentary system is bicameral, meaning that it has two houses.
 - Australia has adopted a federal system where the power to govern is divided between the state and federal parliaments.
 - Australia's political system is called a constitutional monarchy because the monarch (the Governor-General being the Queen's representative) is the head of state.
- **The House of Representatives**
 - The House of Representatives is the lower house of the Commonwealth Parliament and is designed to represent the interests of the people. There are 150 members in this house who are elected for three years.
- **The Senate**
 - The Senate is the upper house of the Commonwealth Parliament. It comprises 76 members — 12 from each state and two from each territory. Senators are elected for a term of six years.
 - The Senate is a house of review because legislation is initiated mostly in the House of Representatives and then sent to the Senate for reviewing. The Senate is also known as the states' house because there must be an equal number of senators from each state.
- **The Victorian Parliament**
 - The Legislative Assembly is the lower house of the Victorian Parliament and comprises 88 members, who are elected for four-year terms.
 - The Legislative Council is the upper house of the Victorian Parliament. It comprises 40 members who are each elected for a four-year term. It is known as a house of review as it reviews proposed laws from the lower house of parliament.
 - Legislation passed by both houses of the Victorian Parliament will then be given to the governor of Victoria to formally approve (give royal assent).
- **Representative government**
 - Representative government is based on a democratic system where those elected to parliament are expected to create laws that reflect the values and expectations of the people.
- **Responsible government**
 - Responsible government means that the Crown and its ministers are both responsible and accountable to the parliament and, ultimately, the voters.
- **The separation of powers**
 - The powers of government in a parliamentary democracy are separated between the legislature (parliament), the executive (the government) and the judiciary (the courts). This is called the separation of powers.
- **Reasons why laws change**
 - Laws need to be changed for the following reasons: a shift in values, changes in economic policy, technological advances, changing political circumstance, a more informed community and enhancing the legal system.



The structure and role of the Commonwealth Parliament



Structure and role of the Victorian Parliament



Principles of the Australian parliamentary system: representative government, responsible government and the separation of powers



The reasons why laws may need to change

The role of the Victorian Law Reform Commission

The means by which individuals and groups influence legislative change, including petitions, demonstrations and use of the media

Use contemporary examples to explain the influences on legislative change.

Evaluate the effectiveness of methods used by individuals and groups to influence change in the law.

The legislative process for the progress of a Bill through parliament

Strengths and weaknesses of parliament as a law-making body

- Critically evaluate the law-making processes of parliament.

- **The role of the VLRC**
 - The role of the VLRC is to make law reform recommendations on matters referred to it by the Attorney-General; make recommendations on minor legal issues of general community concern; suggest to the Attorney-General that he or she refer a law reform issue to the commission; educate the community on areas of law relevant to the commission's work; and monitor and coordinate law reform activity in Victoria.
- **Means by which individuals and groups can influence change**
 - Individuals and groups can influence change in the law by signing petitions to parliament, lobbying for change, joining pressure groups, demonstrating, or defying the law.
 - Individuals and groups can influence change in the law by making use of the media, including newspapers, radio, television, the internet, and social media such as Facebook and Twitter.
 - Use of the media is a powerful means of effecting legislative change. The exposure of cruelty to animals exported live from Australia has led to changes in animal welfare laws.
 - Demonstrations can be effective in bringing about legislative change. The Vietnam demonstrations were instrumental in withdrawing troops from Vietnam. More recently and at a local level, demonstrations against new liquor licensing laws were changed to ensure small music vendors continued to operate (some music venues were at risk of closure due to having to conform to strict security requirements that imposed additional costs).
 - The method used to influence change in the law will most likely be effective if it gains media attention. This is because the cause of the individual or group can be quickly communicated to millions of people. Public opinion is what many politicians should listen to, particularly if they wish to be re-elected (see table 1.1 for further summary).
- **The legislative process of a Bill through parliament**
 - Before any proposed laws (Bills) can become Acts of parliament, they have to go through the legislative process — that is, they have to be debated and passed by parliament, and then approved by the Crown.
 - A Bill passes through three readings in the lower house before being sent to the upper house.
- **Parliament's strengths**
 - The strengths of parliamentary law-making include access to expert opinion, consultation with the public, ability to legislate on an entire topic, responsiveness and flexibility, and power to make law *in futuro*.
- **Parliament's weaknesses**
 - The weaknesses of parliamentary law-making include fear of voter backlash, bicameral structure of parliament, parliament is not always sitting, difficulties in drafting legislation, and inconsistencies in statute laws.

Examination questions

Now that you have completed your revision it is time to test your own knowledge.

Question 1

Joe is on holiday and visits Parliament House in Canberra. He has a number of questions about our law-making processes.

- What role does the Governor-General play in the law-making process of Commonwealth Parliament?

- b Joe heard a debate about a proposed law. Provide one reason why a law may need to change. Give an example to help illustrate your answer.
- c Where Joe comes from, no one is allowed to 'have their say'. Explain to Joe one way in which individuals or groups can influence change in the law. (1 + 2 + 2 = 5 marks)

Question 2

Parliament can make laws that reflect community views and change law whenever the need arises. Critically examine these two law-making strengths. (1 mark)

Question 3

Outline **one** role of the upper house of Commonwealth Parliament. (1 mark)

Question 4

One democratic principle is the notion of responsible government. Explain what is meant by responsible government. (2 marks)

Question 5

Explain what is meant by the separation of powers principle. (2 marks)

Question 6

Laws sometimes change. Discuss one reason why laws may need to change. (1 mark)

Question 7

Identify and critically evaluate one strength and one weakness of parliament as a law-making body. (6 marks)

(Total 18 marks)



Examination technique tip

Test yourself before the exams! Use past examination questions and do not refer to your notes when providing answers. This will reveal what you do not know so you can fill in any gaps in your knowledge before the real examination.

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