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LEGAL STUDIES FOR VCE

JUSTICE & OUTCOMES

SAMPLE CHAPTER

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15TH EDITION

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CONTENTS

CHAPTER 15

LAW REFORM

OUTCOME

By the end of **Unit 4 – Area of Study 2** (i.e. Chapters 13, 14 and 15), you should be able to discuss the factors that affect the ability of parliament and courts to make law, evaluate the ability of these lawmakers to respond to the need for law reform, and analyse how individuals, the media and law-reform bodies can influence a change in the law.

KEY KNOWLEDGE

In the chapter, you will learn about:

- reasons for law reform
- the ability and means by which individuals can influence law reform, including through petitions, demonstrations and the use of the courts
- the role of the media, including social media, in law reform
- the role of the Victorian Law Reform Commission and its ability to influence law reform
- one recent example of the Victorian Law Reform Commission recommending law reform
- the role of one parliamentary committee or one Royal Commission, and its ability to influence law reform
- one recent example of a recommendation for law reform by one parliamentary committee or one Royal Commission
- the ability of parliament and the courts to respond to the need for law reform.

KEY SKILLS

By the end of this chapter, you should be able to:

- define and use legal terminology
- discuss, interpret and analyse legal principles and information
- explain the reasons for law reform, using examples
- analyse the influence of the media, including social media, in law reform, using examples
- discuss the means by which individuals can influence law reform, using examples
- evaluate the ability of law reform bodies to influence a change in the law, using recent examples
- evaluate the ability of parliament and the courts to respond to the need for law reform
- synthesise and apply legal principles to actual scenarios.

KEY LEGAL TERMS

committee system a system used by federal and state parliaments in Australia that involves the use of separate working parties (i.e. committees) to investigate a wide range of legal, social and political issues and report back to the parliament about the need for law reform

demonstration a group of people who gather to protest (i.e. express their common concern or dissatisfaction with) an existing law as a means of influencing law reform

Hansard the official transcript (i.e. written record) of what is said in parliament. Hansard is named after T.C. Hansard (1776–1833), who printed the first parliamentary transcript.

law reform bodies organisations established by the state and Commonwealth parliaments to investigate the need for change in the law and make recommendations for reform

parliamentary committee a small group of members of parliament who consider and report on a single subject in one or both houses. Committee members can come from any party.

petition a formal, written request to the parliament to take some action or implement law reform

royal commission the highest form of inquiry into matters of public concern and importance. Royal commissions are formal public inquiries conducted by a body formed to support the work of a person (or persons) (being the commissioner(s)) given wide powers by the government to investigate and report on an important matter of public concern.

terms of reference instructions given to a formal body (e.g. a law reform body or royal commission) to investigate an important matter. Terms of reference set out the precise scope and purpose of the inquiry and the date by which the final report must be completed.

Victorian Law Reform Commission (VLRC) Victoria's leading independent law reform organisation. The VLRC reviews, researches and makes recommendations to the state parliament about possible changes to Victoria's laws.

KEY LEGAL CASES

A list of key legal cases covered in this chapter is provided on pages vi–vii.

Source 1 Law reform is the process of constantly updating and changing the law so that it remains relevant and effective. One way people can influence parliament to change the law is by participating in demonstrations. In 2019, approximately 100 000 people attended a demonstration in the Melbourne CBD as a part of the global movement known as 'School Strike 4 Climate.' In this chapter, you will explore the effectiveness of demonstrations, petitions and the use of the courts in achieving law reform.

15.1 REASONS FOR LAW REFORM

laws
legal rules made by a legal authority that are enforceable by the police and other agencies

social cohesion
a term used to describe the willingness of members of a society to cooperate with each other in order to survive and prosper

The main aim of **laws** is to protect our society and keep it functioning. Laws also aim to protect individual rights and stop behaviour that will affect the peace and good order of society. A society in which people respect and obey the law will be more peaceful and have greater **social cohesion** than a lawless society where everyone does what they like.

Laws therefore provide guidelines of acceptable behaviour to prevent or minimise conflict within society. Given that conflict will inevitably arise, laws must also provide ways to resolve disputes.

To be effective, laws need to be:

- known by the community
- easily understood
- able to be changed
- acceptable to individuals within society and society as a whole
- enforceable.

These are characteristics of effective laws. If a law is missing one or more of these characteristics, it may not be as effective as possible.

law reform
the process of constantly updating and changing the law so it remains relevant and effective

The process of changing the law is referred to as **law reform**. Law reform must continually take place to ensure our laws remain relevant and effective.

There are many reasons why law reform is necessary. These include:

- changes in beliefs, values and attitudes
- changes in social, economic and political conditions
- advances in technology
- greater need for protection of the community.

These are described in further detail below.

Study tip

The *VCE Legal Studies Study Design* expects you to know examples of the reasons for law reform. You should create a folder and start collecting examples of law reforms. For each example you should:

- explain the actual change in the law
- outline the reasons for the law reform
- examine the pros and cons of the law reform.

You should also keep a list of proposed changes in the law. As you collect your examples of changes or proposed changes in the law, you should file them under headings relevant to Unit 4.

Changes in beliefs, values and attitudes

In any society, beliefs, values and attitudes change over time. If the law is to remain relevant and acceptable to the majority of people, it must keep up with – and reflect – these changes. On the other hand, rapid changes to the law, which impose change before the community is ready to accept it, may be met with resistance. While most people in our community are generally law-abiding citizens, they will be reluctant to believe in – and obey – laws that do not reflect their basic beliefs and standards.

Sometimes community values change as knowledge increases and society becomes more educated and aware. For example, community views on banning cannabis have changed over time as the benefits of using small amounts of marijuana to relieve severe pain have become more widely known. As a result, Victorian laws have been changed to allow for the use of medical cannabis to treat certain types of severe illnesses, such as multiple sclerosis and epilepsy.

Likewise, as society has become more aware of the health risks associated with smoking, our attitudes towards smoking and the tobacco industry have changed. A range of anti-smoking laws have been introduced throughout Australia. In 2007 Victoria's law was first changed to prohibit smoking in enclosed public places (such as restaurants and office buildings). Since this time a range of other law reforms have been introduced to regulate and discourage smoking, including laws banning smoking within the grounds and four metres from the entrance of all schools, childcare centres, hospitals, courts and police stations. New laws also regulate the sale, promotion and use of e-cigarettes and products. The cost to individuals to achieve these laws is a loss of personal freedom to smoke anywhere they choose. However, the restrictions were implemented for the greater good of the whole community. At first many people, including smokers, complained, but over time people have adjusted to the new laws. In this way changes in the law can encourage further changes in community values.

Society's increasing awareness of animal welfare issues has resulted in Australian laws being changed to help prevent animal cruelty. An example of this is outlined in the scenario below.

Positive attitude change towards animal welfare

ACTUAL SCENARIO

In recent decades public awareness of animal welfare issues in Australia has increased dramatically and people have become more concerned with protecting the rights of animals. As a result of these changing attitudes, our laws have also changed in an attempt to reduce cruelty to animals and offer them legal protection. Since 2010 a number of laws have been changed or introduced in Victoria to help prevent cruelty to dogs and cats. For example, in 2018 after the Victorian Parliament passed the *Domestic Animals Amendment (Puppy Farm and Pet Shops) Act 2017* (Vic), it became illegal to sell dogs and cats in pet shops unless the pets are obtained from rescue shelters or pounds (i.e. local council facilities that hold stray or surrendered pets). Similarly, since July 2019 any person wishing to sell or give away dogs and cats in Victoria, including breeders, is required to enrol on the Pet Exchange Register. This allows local councils to monitor sellers, and members of the public to check that they are obtaining their pet from a registered and legitimate seller.

Source 1 Many of the changes to the law in relation to animal welfare followed the introduction of 'Oscar's Law'. When rescued, Oscar weighed only 1.6 kilograms. After being treated by a vet and adopted by a loving carer, he became the poster boy for a campaign called 'Oscar's Law' to abolish 'puppy factories' where puppies are mass-produced, often in poor and overcrowded conditions, so they can be sold at a profit.

In the past the right to equal treatment before the law has not extended to LGBTIQA+ people. This is gradually changing as both state and federal parliaments introduce legislation to support equality and legally recognise the rights of LGBTIQA+ people.

The following scenario highlights some of the law reforms made to ensure LGBTIQA+ people are treated equally before the law.

Equality for LGBTIQA+ people

ACTUAL SCENARIO

Over the years society has become more aware of the difficulties faced by members of our community who are lesbian, gay, bisexual, transgender, intersex, queer and asexual (i.e. LGBTIQA+ people) as a result of inequalities in the law, and the need for the greater recognition and acceptance of LGBTIQA+ people. As a result the state and Commonwealth Parliaments have introduced law reform to ensure all people, regardless of their sexuality, are treated equally by the law. For example, in December 2017 after many unsuccessful

attempts to change the marriage laws which had previously banned same-sex marriage, the Commonwealth Parliament passed the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* (Cth) to allow marriage equality throughout Australia.

The Victorian Parliament has also introduced and amended a number of laws over the past decade to improve equality for LGBTIQA+ people. For example, in 2015 the Parliament passed the *Adoption Amendment (Adoption by Same-Sex Couples) Act 2015* (Vic) to allow LGBTIQA+ couples to apply to lawfully adopt children in Victoria. This amendment was made, in part, to reflect changing community views and increasing acceptance that a person's sexual orientation or gender identity does not affect their ability to be a loving and caring parent.

In 2019 the Victorian Parliament also passed the *Births, Deaths and Marriages Registration Amendment Act 2019* (Vic) to allow transgender Victorians (people who self-identify as a different gender to their gender at birth) to be able to choose their gender (i.e. as being male, female or non-specific) on their birth certificates without having to undertake gender reassignment surgery (also known as a 'sex change'). Despite being opposed by the opposition (the Liberal Party), the Bill, initiated by the Andrews Labor Government, successfully passed both houses.

Source 2 Members of Parliament Warren Entsch and Linda Burney, who were from opposite sides of politics, embrace after the 2017 vote in favour of marriage equality.

To achieve such changes in the law, LGBTIQA+ groups and the many people who support equality in the law have continually campaigned to maintain pressure on the government and increase community awareness and support for legislative change.

On the other hand, for some members of society the law is changing faster than they are comfortable with, moving ahead of social acceptance. These people may be strongly religious or socially conservative (such as the anti-abortion protesters discussed in Topic 14.3). For example, Israel Folau, the former Australian Rugby League player and fundamentalist Christian, and Margaret Court, Australian tennis champion and founder of the Victory Life Centre, publicly expressed their disapproval of the marriage equality legislation.

Changes in social, economic and political conditions

Law reform is a process that never ends. Our laws need to be continually reformed to make sure they remain relevant and keep up with changes that occur as a result of changing social, economic, and political circumstances. Each of these is discussed below.

Changing social conditions

As Australia's population grows and changes, some laws need to change to ensure we can all live together peacefully and maintain our basic standard of living. Expected changes to our social structure over the next 30 years include that our population will be over 40 million by 2055 and that the average life expectancy of a baby born during that year will be 95 years. This has implications for law reform in many areas including health care, taxation, welfare payments (including the aged pensions) and the environment. An increasing population can lead to increased crime and the need for improved law enforcement infrastructure or agencies (including the police, courts and prisons) and more effective procedures within those agencies.

Some examples of other social changes that have prompted law reform include:

- increases in reported domestic violence
- binge drinking
- gang-related crime
- online gambling
- the obesity epidemic.

Should Australia have a 'sugar tax'?

ACTUAL

SCENARIO

Statistics from the Australian Bureau of Statistics indicate that approximately two-thirds of Australian adults and one-quarter of Australian children (aged between 5 and 17 years) are categorised as being overweight or obese (meaning, for an adult, they have a Body Mass Index of 30 or above).

Obesity can have an economic impact on the wider community. For example, some economic costs associated with high obesity rates include increasing demand for medical and hospital services, rising costs of healthcare and lower worker productivity.

For these reasons and others, the Australian government is under pressure to introduce legislation to combat obesity. For example, various interested individuals and health organisations and professionals believe the federal parliament should introduce legislation to ban the advertising of 'junk' food (i.e. food that is high in fat and sugar and has little nutritional value), particularly advertising that is directed at young people or appears on television, billboards, public transport or at government events. There is also a push to introduce a tax on sugary drinks, such as non-diet soft drinks, energy drinks and sport drinks, as well as sugary foods. The purpose of such a tax is to increase the price of these items to discourage their consumption.

More than 30 countries (including the United Kingdom, France, South Africa and Portugal) have implemented legislation to impose a 'sugar tax', but the Australian Government has so far resisted following their lead. Research indicates that the sugar tax has been successful in reducing the consumption of sugary drinks and other products.

While there are health benefits associated with introducing a sugar tax, politicians would inevitably face great pressure not to do so from businesses within the fast food and packaged food industry. Critics of the sugar tax also suggest they impose a greater tax burden on low income earners compared to high income earners. Others oppose the tax on the basis that the government should not be able to have so much control over the personal choices made by individuals.

Source 3 The imposition of legislation to impose a tax on sugary drinks could help lower obesity in Australia.

Source 4 Following a rapid increase in the popularity of gift cards, the consumer laws relating to their use have been revised.

Changing economic conditions

Australia's economy is continually changing. In particular, technology and globalisation create issues that need to be addressed by the law. Governments need to monitor and change the laws that regulate the buying, selling and production of goods and services across different areas of the economy such as banking and finance, mining, manufacturing and agriculture.

Changes in the workforce (such as increasing part-time and casual employment) and in consumer trends (such as an increase in online shopping) have necessitated changes in industrial relations law (i.e. the law regulating wages and workplace conditions), consumer protection and banking law (laws to enable the enforcement of consumer guarantees and credit card laws) and international trading law (laws that regulate importing and exporting). For example, in 2018, following the rapid increase in the purchase of gift cards, the *Treasury Laws Amendment (Gift Cards) Act 2018* (Cth) was passed by the Commonwealth Parliament to improve Australia's consumer laws. Under the Act, gift cards and vouchers purchased after 1 November 2019 must be valid for a minimum of three years and the expiry date must be clearly shown on the card.

Changing political conditions

Changing domestic circumstances (within Australia) as well as international circumstances or global events often influence law reform. One example is increasing global violence and the threat of terrorist attacks. Another is international conflict: local wars cause a rise in the level of global refugees. The federal government monitors both so it can alter our anti-terrorism and migration laws if necessary. The recent trend has been to make these laws stricter as highlighted in the following scenario.

ACTUAL SCENARIO

Frequently updated and strengthened counterterrorist laws in Australia

In 2019 the Commonwealth Parliament passed the *Counter Terrorism Legislation Amendment (2019 Measures No. 1) Act 2019* (Cth) to make it more difficult for individuals who are charged with terrorist-related offences (such as suspected terrorists and those suspected of supporting terrorist organisations) and have previous convictions for terrorist offences to be granted bail. The law also makes it more difficult for those who have been convicted of terrorist offences to be released on parole.

In simple terms, the law ensures that individuals who have been charged with terrorist offences and have previous convictions for terrorist offences will not have the presumption of being granted bail. In addition, individuals who have been convicted of terrorism offences will also not be able to presume that they will be released on parole after they have completed serving their sentence. The courts may issue an order (called a 'continuing detention order') for the offender to be held in custody for a longer period of time.

Over recent years the federal government has continually updated and strengthened counterterrorism laws in an attempt prevent terrorist attacks within Australia and provide for the safety of the community. While such laws are necessary, it can also be argued that they may impede one of the basic principles of our criminal justice system: the right to a presumption of innocence.

Advances in technology

Technology is constantly improving and opening up possibilities that have not previously been imagined. As it improves, our laws need to be altered and updated. Some laws will control and regulate new inventions and opportunities. Others will reduce the likelihood of people being harmed or exploited. For example, the increasing range and use of mobile devices and equipment (such as laptops, smartphones, smart watches and drones) have created new problems that the law needs to address. These include cyber-bullying, cyber-stalking, identity theft, online scams, invasion of privacy and noise pollution caused by remotely piloted aircraft.

Technology also makes it easier to pass on private information, creating a need to protect the privacy of financial and medical records. Law reform has occurred at both state and Commonwealth levels.

Scientific and medical advancements also create the need for law reform. For example, the Human Genome Project, completed in 2003, dramatically increased genetic knowledge. Whole new areas of research opened up, but they created new areas of uncertainty in the law. Who owns our genes? Who can share our genetic information? Can genes be patented (a monopoly given to an inventor)?

Gene patenting has a bearing on the detection and treatment of a vast range of illnesses and medical conditions and must be adequately regulated. Genetic testing companies must also be regulated to ensure an individual's genetic information remains private and not sold to third parties such as prospective employers and health insurance companies. Patent law is a Commonwealth area of responsibility. An example of genetic testing resulting in a need for law reform is explored in the scenario on the next page.

Source 5 Recent advances in drone technology, together with the widespread availability of drones, have created a host of new challenges for lawmakers to deal with.

ACTUAL SCENARIO

Ownership of breast cancer gene codes

D'Arcy v Myriad Genetics Inc (2015) 325 ALR 100

In 2015 the High Court of Australia ruled in favour of Ms Yvonne D'Arcy, a 69-year-old grandmother and breast cancer survivor who had taken legal action against US biotechnology company Myriad Genetics. Myriad claimed it could take out a patent to own the BRCA1 gene mutation that increases a woman's risk of developing ovarian and breast cancer.

Source 6 Yvonne D'Arcy took legal action against Myriad Genetics over ownership of the BRCA1 gene mutation.

By contrast, D'Arcy argued that even though the company had undertaken research to locate and identify the BRCA1 mutation, it could not *own* it, because the genetic material already existed in nature. The information it contained could only be discovered; it was not a newly invented way of manufacturing a product (to get a patent you need more than a discovery or an idea). In simple terms, the High Court agreed with D'Arcy and ruled that Myriad Genetics could not patent and own the BRCA1 gene.

Allowing a company to own a gene could potentially limit the ability of an individual to use their genetic information without the company's permission.

Greater need for protection of the community

Law reform must continually occur to make sure individuals and different groups within our community are protected and feel safe. One of the major roles of the law is to protect individuals from harm. 'Harm' can include physical harm (such as broken bones from violent assault), emotional harm (such as the destruction of self-esteem and depression that can come from bullying, sexual harassment or neglect) or economic harm or financial damage (such as exploitation through unfair workplace and trading practices).

Some people within our community also have specific needs and rights that must be protected, especially if they are unable to protect themselves (for example, children, powerless workers, consumers, people with disabilities and those who may suffer discrimination on the basis of their race, religion, gender or sexuality). Even animals and the environment need protection. Laws are therefore needed to make unlawful those actions that may harm individual members of the community, specific groups within our community, and the community as a whole. As new situations arise, new laws are required. For example, as you have seen in Chapters 13 and 14, increased penalties for stockpiling dangerous waste, the introduction of 'safe access zones' outside facilities that provide for the termination of pregnancies, and the introduction of laws requiring judges to impose a term of imprisonment on offenders found guilty of injuring an emergency worker are just a few examples of laws introduced by the Victorian Parliament to offer greater protection to members of the community.

Source 7 Some people within our community have specific needs and rights that must be protected, especially if they are unable to protect themselves.

15.1 CHECK YOUR LEARNING

Define and explain

1 **a** Why is it necessary for a society's legal system to reflect the values of that society?
  b Using two current examples, explain how changes in beliefs, values and attitudes over time can influence the need for law reform.
2 Why have advances in technology brought about the need to change the law? Provide a recent example of a law that has changed to accommodate changes in technology.
3 Explain one other reason why laws need to change. Provide an example of a recent change in the law to support your explanation.

Synthesise and apply

4 Read the scenarios 'Positive attitude change towards animal welfare' and 'Equality for LGBTIQA+ people'.
  a Describe one legislative change that has been made by the Victorian or Australian Parliament to:
    i protect the rights of animals; and
    ii improve equality in the law for LGBTIQA+ people.
  b Between 2010 and 2017, four bills were introduced into the Commonwealth Parliament in an attempt to change the law to allow marriage equality throughout Australia, but each was defeated. Suggest reasons why it took so many years for the Parliament to pass marriage equality laws.
  c **i** Suggest one reason why Victoria's birth registration laws were changed in 2019.
    ii Explain how the Victorian Parliament was able to pass the *Births, Deaths and Marriages Registration Amendment Act (2019)* despite the Opposition opposing the bill.
5 Read the scenario 'Frequently updated and strengthened counterterrorist laws in Australia'.
  a Describe one change to the law made under the *Counter Terrorism Legislation Amendment Act (2019)*.
  b Do you think this reform will be effective in making the Australian community safer? Justify your response.
  c Explain one way in which this legislation might impede upon the right of an accused person to the presumption of innocence and explain whether you believe this impediment is justified.
6 Suggest two other reforms you believe would provide greater protection to our community and make society safer. Give reasons for your suggestions and suggest any problems associated with your ideas.

Analyse and evaluate

7 Read the actual scenario 'Should Australia have a 'sugar tax'?' and discuss in a small group whether you think the Commonwealth Parliament should impose a tax on sugary drinks and/or other high-sugar and low-nutrient products.
8 Should the government introduce law reform with the aim of encouraging a change in community views? Discuss.

Check your obook assess for these additional resources and more:

- Student book questions: 15.1 Check your learning
- Video tutorial: Introduction to Chapter 15
- Worksheet: Reasons for law reform
- Weblink: Oscar's law

15.2 INDIVIDUALS INFLUENCING LAW REFORM THROUGH PETITIONS

People in our community can influence a change in the law in a number of ways. One of the common ways individuals can try to raise awareness of the need for law reform and influence change is by preparing a **petition** to be presented directly to the parliament. In fact, petitions are the only way an individual can directly put their concerns or complaints before the parliament.

petition
a formal, written request to the parliament to take some action or implement law reform

Petitions

A petition is a request to the parliament to take action on a matter. For example, a petition might request the parliament to introduce a new law, amend an existing law or take a particular course of action on a policy matter or complaint. A petition may be either on paper or online.

For a petition to be accepted for consideration by the parliament it must be prepared in a particular format. This format may vary depending on whether the petition is being presented to one of the state parliaments or the Commonwealth Parliament and the house in which it is to be presented.

In general, however, a petition must:

- be addressed to the house in which it is being presented
- contain a clear statement of the request for action or terms of the petition (such as a statement outlining the desired change in the law)
- contain the name, address and signature of at least one individual who supports the need for action
- be legible and not contain any offensive or disrespectful language
- be an original document; that is, a photocopy of a petition will not be accepted. In the case where a petition has been posted or 'signed' online, a certified print-out of the petition, containing the name and email address of the signatories, may be accepted. Alternatively, the parliament will provide a direct link on their website for the creation and submission of an online petition.

Did you know?

A famous petition to the Commonwealth Parliament was presented on paper surrounded by bark paintings. It was submitted on behalf of the Yolngu people of Yirrkala, NT. Their traditional land was under threat from mining. The Parliament responded by setting up a select committee to investigate.

In general, petitions must also be presented to the parliament by a member of the parliament. This means that once the person who has created the petition believes that it has a sufficient number of signatures, they need to forward it to a local member of parliament to table (or present) at the next sitting of parliament.

The effectiveness of a petition depends on a number of factors including, most obviously, the number of people who show their support by signing the petition. A petition with a large number of signatures will appear more representative of the community and indicate a high level of community support for the requested action. This is important because members of parliament, in accordance with the principle of **representative government**, will be more likely to make laws that reflect the views and values of the majority of people rather than a few individuals.

representative government
a political system in which the people elect members of parliament to make laws on their behalf

Each year the state and Commonwealth parliaments receive hundreds of petitions. The petitions may be in relation to an issue of general community interest (such as preventing logging of certain forests, banning live animal exports or banning the release of helium balloons) or an issue relevant to a small group of people (such as the need for a supervised school crossing in a local area). The parliaments may even be presented with several petitions on the same subject.

The scenario on the next page provides an example of a petition presented to the Commonwealth House of Representatives demanding immediate action on climate change.

ACTUAL SCENARIO

Petition demands action on climate change

In October 2019 Ms Zali Steggall, an independent member of parliament, tabled the largest-ever petition presented to the Commonwealth Parliament in the House of Representatives. The online petition, which contained 404 538 signatures, demanded that the House of Representatives declare a climate emergency in Australia and introduce legislation to immediately and directly reduce the causes of human-made climate change.

The petition was created by Noah Bell, a 23-year-old Australian citizen, who was greatly concerned about the lack of action being taken by the Australian Government to reduce the causes of climate change. The reasoning for his petition, as stated on the petition, was that the 'overwhelming majority of climate scientists around the world have concluded that the climate is changing at unprecedented rates due to anthropogenic (human-made causes) and ... as a result we must act now to minimise both human and environmental destruction'.

Remarkably, the online petition gained more than 404 000 signatures in a four-week period. After the petition was tabled in the Parliament, the Minister for Energy and Emissions Reduction took the opportunity to respond to the position by outlining the federal government's plan to reduce emissions and greenhouse gases by 2030 while ensuring a strong economy.

Are petitions effective?

While petitions are a relatively simple and inexpensive way for people to influence a change in the law, once they are tabled in parliament there is no guarantee that parliament will introduce the desired change. If there is no other pressure, petitions can fail to gain attention. The impact of the petition can also depend on the passion and profile of the member of parliament who presents it.

A summary of some of the strengths and weaknesses associated with using a petition to influence law reform is set out in Source 1.

STRENGTHS	WEAKNESSES
Petitions are a relatively simple, easy and inexpensive way for people to show their desire for a change in the law.	Some people are reluctant to place their name, address or email address on a petition.
Online petitions are particularly easy to set up and enable access for members of the public to submit and sign petitions online, and to track their progress.	Some people may sign a paper petition more than once, which compromises the integrity of the petition.
In an attempt to make laws that reflect the views of the majority of the community, members of parliament are more likely to consider a petition for law reform that has many signatures demonstrating strong support within the community.	The influence of the petition may depend upon who tables it and their influence within the parliament, and valuable requests for law reform may be overlooked if there is no other source of community pressure beyond the petition.
The act of creating a petition and gathering signatures can generate public awareness of an issue and support for the desired legislative change.	Parliaments receive hundreds of petitions each year and there is no guarantee or compulsion for the suggested law reform to be adopted.
Once a petition has been given to a member of parliament they must present the petition in parliament. Even if it is not initially successful in generating law reform, the tabling of the petition can help gain the attention of other members of parliament and the media, which can then generate further community support.	Hundreds of petitions are tabled in parliament each year, and many do not gain public and media attention after being tabled. Opposing petitions (putting opposite points of view) can also lower the impact of a petition.

Source 1 The strengths and weaknesses of petitions in influencing law reform

1 YOU CREATE A PETITION	Briefly describe your issue	Request an action from the House	Provide your details
2 WE CHECK YOUR PETITION	Form (does it have everything it needs?)	Content (is it an issue (for the House?)	Language (must be moderate)
3 YOUR PETITION GOES ONLINE	People sign your petition	You promote your petition	More people sign your petition
4 YOUR PETITION IS PRESENTED	Your petition is presented in the House	Your petition may be referred to a Minister	The Minister should respond within 90 days

Source 2 The Australian parliament provides guidelines to the general public on how to create and submit a petition.

15.2 CHECK YOUR LEARNING

Define and explain

1 What is a petition?

2 Where does a petition get tabled, and how?

Synthesise and apply

3 Briefly explain how to submit an online petition in the House of Representatives. For information, go to the Parliament of Australia website on your obook assess. Select Petitions from the Parliamentary Business menu. Under the heading 'House of Representatives' select 'Sign an e-petition' and then select 'How do I sign an e-petition?'

4 Read the scenario 'Petition demands action on climate change' and describe the purpose of Mr Bell's petition. Discuss the likelihood of Mr Bell's petition being acted upon by the parliament.

5 Investigate two other petitions on the internet. You could go to the Parliament of Australia or Parliament of Victoria websites. A link is provided on your obook assess. At the Parliament of Victoria website, select Hansard from the main menu. Select Quick Search and type in 'petitions'. State the name and purpose of each of your selected petitions and explain what you think the government's response to each petition should be.

Analyse and evaluate

6 Evaluate two strengths of using a petition to influence a change in the law. Provide one example to support your response.

Check your obook assess for these additional resources and more:

- **Student book questions** 15.2 Check your learning
- **Sample** Petition
- **Weblink** Parliament of Australia – Petitions
- **Weblink** Parliament of Victoria – Petitions
- **Weblink** The Conversation: Not another online petition! But here's why you should think before deleting it.

15.3 INDIVIDUALS INFLUENCING LAW REFORM THROUGH DEMONSTRATIONS

One of the common ways individuals in our community can influence a change in the law is by organising or participating in a public **demonstration**.

demonstration a gathering of a group of people to protest or express their common concern or dissatisfaction with an existing law as a means of influencing law reform

pressure group a group of people who have a common interest in trying to influence changes in the law

Demonstrations

Demonstrations (also referred to as protests or rallies) occur when a group of people gather together to express their common concern or dissatisfaction with an existing law. It can be an effective way for individuals and **pressure groups** to influence law reform by alerting the government to the need for a change in the law. They can also raise awareness of the need for legislative change within the community, which generates further support for the change. To be effective, however, demonstrations need to attract large numbers of people and positive media coverage, as members of parliament are more likely to implement law reform that has significant support. They are also more likely to associate themselves with positive campaigns that may increase their popularity with voters, rather than ones that cause conflict, public inconvenience or violence.

Demonstrations can take different forms, but they all aim to bring an issue to the attention of the community and the lawmakers with the objective of influencing a change in the law. One example includes the growing number of people who demonstrate on 26 January, the day designated as Australia Day.

ACTUAL SCENARIO

Australia Day or Invasion Day?

On 26 January each year, demonstrations take place across Australia to protest the Australia Day celebrations held on the anniversary of the arrival of the British, and the colonisation of Australia. For many Australians, particularly many Indigenous Australians, holding a celebration of Australia on this date is considered inappropriate and even offensive, because it commemorates a day of sorrow when Aboriginal Australians lost their independence and sovereign right to control their land, culture and families. Australia Day is therefore often referred to as 'Invasion Day'.

Each year demonstrations take place to raise community awareness of the suffering of Indigenous Australians since colonisation, and to increase support for changing the celebration of Australia to a more appropriate and inclusive date. The demonstrations also seek to influence law reform in relation to Indigenous Australians, such as creating a treaty which governs the relationship with Indigenous Australians.

Source 1 While many Australians celebrate Australia Day on 26 January each year, more and more people are now beginning to call it 'Invasion Day' because it commemorates the arrival of European settlers and the loss of rights and freedoms for Indigenous Australians. Each year tens of thousands of people gather in Melbourne's CBD for an 'Invasion Day' rally.

Over recent years many people have joined demonstrations to draw attention to their desire for the parliament to introduce legislation to prevent animal cruelty, including banning live animal exports from Australia. On occasions these demonstrations have caused public inconvenience and created controversy.

ACTUAL SCENARIO

Animal activists shut down Melbourne CBD during peak hour

In 2019 animal-rights activists, including concerned individuals and members of organised pressure groups (such as Vegan Rising and Justice for Captives), undertook a number of protests and demonstrations throughout Australia in an attempt to draw attention to animal cruelty. The activists hoped that these demonstrations would place pressure on the federal and state parliaments to pass legislation to stop animal abuse (including a ban on live animal exports from Australia), and legislation to stop manufacturers and distributors from intentionally using deceptive marketing labels and images on animal products.

At one demonstration in the Melbourne CBD, approximately 150 activists disrupted peak hour traffic by blocking one of the city's busiest road intersections outside Flinders Street Station. Approximately 39 protestors were arrested for obstructing a roadway and resisting and obstructing police. Protestors chained themselves to the entrance of the Melbourne Aquarium to highlight the cruelty associated with keeping animals (including marine life) in captivity for the purposes of entertainment and generating profit.

Source 2 Animal activists demonstrate in Melbourne to raise to pressure the government to introduce law reform to stop cruelty to animals. This protest did not lead to arrests for traffic obstruction.

At other demonstrations held throughout Australia activists entered farms and businesses involved in the production of animal products (without the permission of the owners) to photograph and record livestock farm practices. While this action may have generated community awareness, many members of the community viewed the activists' unauthorised entry into private property as an invasion of the property owners' rights. The action prompted Prime Minister Scott Morrison to call the activists 'green-collared criminals' and encouraged the Commonwealth Parliament to pass the Criminal Code Amendment (Agricultural Protection) Bill 2019 (Cth) to make it an offence for an individual to publish or distribute material that encourages another person to trespass or commit property offences, such as theft and the destruction of property, on agricultural (or farm) land.

Are demonstrations effective?

Demonstrations have the potential to generate community interest in, and awareness of, issues and the need for law change, particularly if they attract large numbers. People who have not been educated about the issue or are unaware of it may start to think about and form their own view, which can further influence others, or change the way they vote in an election. However, if the demonstrations become violent, cause inconvenience to the public or involve a breach of the law, support for the suggested law reform may decrease.

The strengths and weaknesses associated with demonstrations as a means of influencing law reform are set out in Source 3 on the next page.

STRENGTHS	WEAKNESSES
Demonstrations that attract large numbers of participants can attract free positive media attention. Members of parliament are more likely to consider law reform that has strong support within the community.	Demonstrations can be less effective and even decrease support for a law change if they cause public inconvenience, become violent or lead to breaches of the law. Also, any negative media attention may decrease the credibility of a demonstration and the likelihood of members of parliament supporting the cause.
Demonstrations can gain the support of members of parliament who want to 'adopt a cause' – particularly one that might improve their public profile or image.	Demonstrations can be difficult and time-consuming to organise and attendance can be affected by factors like the location and weather.
Demonstrations can raise social awareness, making members of the public think about the issue for the first time. This can bring change over time.	Demonstrations are often single events that may not generate ongoing support for the desired law reform.
An effective demonstration will focus on something that can be directly changed.	A demonstration about something that cannot be changed by the Australian parliament will be less effective (e.g. demonstrating against a trade deal between the United States of America and China). However, they may still attract attention (even wide global attention) and may have a longer-term influence.

Source 3 The strengths and weaknesses of the use of demonstrations to influence law reform

15.3 CHECK YOUR LEARNING

Define and explain

1 Using an example, define the term 'demonstration'.

Synthesise and apply

2 Read the scenario 'Animal activists shut down Melbourne CBD during peak hour'.
- **a** Outline the purpose of the demonstrations held by the animal activists throughout Australia in 2019.
- **b** What action did the federal government take in response to the animal activist demonstrations?
- **c** Describe two possible benefits associated with the animal activist demonstrations with respect to influencing a change in the law.
- **d** Discuss two factors which may have detracted from the effectiveness of the animal activist demonstrations.

3 Conduct online research into two recent demonstrations that have taken place in Melbourne.
- **a** Describe the approximate size of the demonstration, its location and any other relevant information.
- **b** Outline the main purpose of the demonstration and discuss the extent to which you believe the demonstration was effective in achieving its purpose.

Analyse and evaluate

4 To what extent do you think a demonstration is likely to be a successful method of influencing law reform? Discuss.

Check your obook assess for these additional resources and more:

- **Student book questions** 15.3 Check your learning
- **Video tutorial** How and when should acronyms be used in answers?
- **Weblink** The Conversation: Why vegan activists should switch gears

15.4 INDIVIDUALS INFLUENCING LAW REFORM THROUGH THE COURTS

People in our community can influence a change in the law in many ways. A common way that individuals can try and raise awareness of the need for law reform is by challenging the law in the courts.

The use of the courts

Individuals can be instrumental in bringing about a change in the law by taking a matter to court. In taking the case to court, they will usually be trying to prove their own claim rather than trying to change the law, but if an unclear point of law is clarified or established in the process, then their case has played a part in changing the law.

If the parliament has passed a law that is unclear or unfair, the legislation can be challenged through the court system in the hope that a judge will interpret and clarify the meaning of the law in their favour. However, with the exception of **High Court** rulings in constitutional disputes, parliament can always pass legislation to override a court decision.

High Court
the ultimate court of appeal in Australia and the court with the authority to hear and determine disputes arising under the Australian Constitution

The role of the courts in influencing a change in the law can also be limited in other ways. First, the courts can only decide a point of law or case (and in doing so change the law) when resolving a dispute that has been brought before them. This is reliant on people being prepared to challenge an existing law in the courts. People can be deterred or put off from taking a case to court by the high costs involved (such as the cost of engaging legal representatives and court fees), the amount of time the case may take to resolve and the uncertainty of the outcome. A party must also have legal standing to be able to initiate a court action.

Second, the courts can only rule on the issues directly involved in the case before them.

The case of *NSW Registrar of Births, Deaths and Marriages v Norrie* (2014) 250 CLR 490 is an example of an individual trying to influence change by challenging a law in the courts.

ACTUAL SCENARIO

Gender recognition

NSW Registrar of Births, Deaths and Marriages v Norrie (2014) 250 CLR 490

Norrie, an individual who does not identify as being either male or female, undertook court action against the decision of the New South Wales Registry of Births, Deaths and Marriages to not allow Norrie to register as being of 'non-specific' sex. The Registry claimed that in accordance with the *Births, Deaths and Marriages Registration Act 1995* (NSW) they only had the power to change a person's sex from male to female or vice versa.

The case was ultimately resolved by the High Court in *NSW Registrar of Births, Deaths and Marriages v Norrie*, which ruled that the Registry did have the power to record Norrie's sex in a gender-neutral way.

Following this case, the Victorian Government introduced the Births, Deaths and Marriages Registration Amendment Bill 2016 (Vic) in an attempt to change the law to allow people who do not identify as being either male or female, to change their sex on their birth certificate without having to undergo medical surgery to affirm their sex and be unmarried.

While the proposed law change had the support of various organisations including the Australian Human Rights Commission, it did not gain a majority of votes in the upper house and was defeated. In her parliamentary speech opposing the bill, member of parliament Dr Carling-Jenkins commented that if the bill were adopted it would 'cause a dangerous shift from treating a person's sex as a question of verifiable fact to treating sex as a question of personal belief'.

Senator Janet Rice expressed public support for the bill by sharing her personal story. Rice's spouse, renowned Nobel Prize-winning climate scientist Dr Penny Whetton (who has now passed away), transitioned from male to female 14 years into their 30-year marriage. At the time of her transition, Dr Whetton was not able to change the gender on her Victorian birth certificate from male to female while she remained married to Senator Rice. Despite being granted an Australian passport that identified her as female, Victorian law did not allow her to change her birth certificate.

As you have seen in earlier in this chapter, in 2019 the Victorian Parliament did change the law to allow transgender Victorians to be able to choose their gender (i.e. as being male, female or non-specific) on their birth certificates without having to undertake gender reassignment surgery. Sadly, Dr Whetton – a role model and highly respected champion of LGBTIQA+ rights – died within months of this legislation being passed.

Source 1 Norrie, who does not identify as either male or female, tested the law in court.

Source 2 Senator Janet Rice and her spouse, the late Dr Penny Whetton, faced legal difficulties after Dr Whetton transitioned from male to female during their marriage.

As we saw in Chapters 11 and 14, individuals may also challenge existing legislation in the courts in the hope that a judge might rule the legislation has been made ***ultra vires*** or beyond the power of the parliament and declared invalid. Similarly, an individual may challenge existing state legislation on the basis that it conflicts with federal legislation and, in accordance with Section 109 of the Australian Constitution, should be declared unconstitutional and invalid.

ultra vires
a Latin term meaning 'beyond the powers'; a law made beyond (i.e. outside) the powers of the parliament

The case of *Masson v Parsons* [2019] HCA 21 (19 June 2019) is an example of the High Court resolving a dispute by interpreting the meaning of state and federal legislation to determine the meaning of a 'parent'. In making its decision the Court declared the relevant state legislation to be invalid.

ACTUAL SCENARIO

Sperm donation case sets precedent in High Court

Masson v Parsons [2019] HCA 21 (19 June 2019)

In the case of *Masson v Parsons*, a man (referred to by the pseudonym Robert Masson) who agreed to be a sperm donor for his female friend (referred to by the pseudonym Susan Parsons) and her wife in the belief that he would be involved in the child's life undertook court action in an attempt to be legally recognised as the father of the child. The case went all the way to the High Court, where Mr Masson was successful in having his parental rights recognised.

Mr Masson and Ms Parsons had been friends for many years when, in 2006, Mr Masson agreed to donate his sperm to Ms Parsons so that she could have a child. Mr Masson believed he would be involved, as the biological father, in the care and support of their child. Once the child was born, she lived with Ms Parsons and her partner. Mr Masson, who was named as the child's father on her birth certificate, maintained a strong relationship with her and financially contributed to her care.

In 2014 Ms Parsons and her partner decided to move to New Zealand to fulfil a long-held desire. Ms Parsons was originally from New Zealand. By then the couple had also had another child, using a different sperm donor. In 2015 Mr Masson commenced legal proceedings in the Family Court to stop the couple from moving to New Zealand so his child would remain in Australia. A key issue for the Court to determine was whether Mr Masson was legally considered the child's parent and, as such, had any parental authority to prevent the relocation of the child.

The Family Court found in favour of Mr Masson, but the decision was reversed on appeal when the justices of the Full Court of the Family Court ruled, in a majority verdict, to apply state legislation (the *NSW Status of Children Act 1996* (NSW)) which clearly stated that a man who donated sperm to a woman who was not his wife was not considered the father of the resulting child.

Dissatisfied with this verdict, Mr Masson lodged a successful appeal to the High Court which resulted in him being recognised as a legal parent. The High Court ruled that the NSW state legislation was inconsistent with the *Family Law Act 1975* (Cth), which had been interpreted by the judge in the original Family Court trial as including a broader definition of a 'parent'. In accordance with Section 109 of the Australian Constitution, the Commonwealth law prevailed.

The High Court's ruling set a precedent that a sperm donor who has been actively involved in his child's life may be recognised as a parent and have parental rights, including the right to have his child remain living in Australia despite the mother's wish to relocate overseas. It has been reported that Ms Parsons and her partner have incurred in excess of $800 000 in legal costs.

Is using the courts effective?

While challenging the law in the courts can lead to a change in the law, it can be an expensive and time-consuming way for an individual to influence law reform and there is no certainty in the outcome of any case. The strengths and weaknesses associated with challenging a law in the courts to influence law reform are set out in Source 4 below and on the next page.

STRENGTHS	WEAKNESSES
Challenging an existing law (either common law or statute law) in a superior court can clarify a vague or unclear law. For example, courts can expand or limit the meaning of legislation through statutory interpretation.	Courts are limited in their ability to change the law because they can only do so when a case is brought before them and only in relation to the issues in the case. This relies on individuals being willing to pursue a court challenge – which requires them to have legal standing and be willing to pursue costly, time-consuming and stressful cases, with no guarantee of success.
Even if a court challenge is unsuccessful it may gain significant media coverage which may generate community interest in the decision and the possible need to change a law.	As above, individuals can be reluctant to challenge existing laws through the courts because it can be expensive and time-consuming, and a successful outcome cannot be guaranteed.
Judges are politically independent and determine cases based on the merits rather than electoral consequences (i.e. gaining voter support).	With the exception of High Court disputes involving the interpretation of the Constitution, a judge-made law can be abrogated (cancelled) by parliament.
Judges can rule that legislation made outside the power of the parliament is invalid.	Judges must wait for a party to challenge the authority of parliament to legislate before they can make a ruling and declare legislation invalid.
Judges' decisions and comments made in court can encourage parliament to change the law.	Judges are unelected and their decision and comments may not necessarily represent the views and values of the community.

Source 4 The strengths and weaknesses of using the courts to influence law reform

15.4 CHECK YOUR LEARNING

Define and explain

1 Explain how an individual can influence law reform through the courts.
2 Provide two examples of individuals seeking to reform the law by using the courts.

Synthesise and apply

3 Read the scenario 'Gender recognition' and explain why Norrie challenged the law through the courts.
4 Read the actual case 'Sperm donation case sets precedent in High Court'.
   a Outline why Mr Masson initiated legal action against Ms Parsons.
   b Mr Masson could not have pursued court action without legal standing. What is legal standing and why is a plaintiff required to have legal standing to undertake a court action?
   c What was the original ruling of the Family Court?
   d State why the original ruling of the Family Court was reversed on appeal by the Full Court of the Family Court.
   e Use your knowledge from Chapter 14 to explain whether the High Court reversed or overruled the decision of the Full Court of the Family Court.
   f With reference to Section 109 of the Australian Constitution, explain why the High Court found in Mr Masson's favour.
   g Given the basic facts of this case, explain whether or not you agree with the High Court's ultimate decision.
   h To what extent is the decision of the High Court in this case a final statement in law?

Analyse and evaluate

5 Using one example to support your response, discuss the effectiveness of challenging a law in the courts to bring about a change in the law.

Check your obook assess for these additional resources and more:

- Student book questions: 15.4 Check your learning
- Worksheet: The use of courts
- Weblink: Climate case: The student v the minister

15.5 THE ROLE OF THE MEDIA IN LAW REFORM

traditional media conventional ways of communicating information to the mainstream public, such as newspapers and magazines, television and radio, that were used before the internet

social media websites and applications (e.g. Facebook, Twitter, Instagram and Snapchat) that enable individuals, groups and organisations to make connections and create their own content in real time

The media, both **traditional media** and **social media**, have an important role to play in influencing changes in the law. Since 2006 when Facebook went global and Twitter was launched, the rapid growth in use of social media in Australia has allowed individuals, pressure groups, businesses and organisations to generate massive interest in, and awareness of, legal, social and political issues on a local, domestic and global scale. For example, because approximately 60 per cent of the Australian population actively use Facebook and approximately 15 million Australians visit YouTube per month, individuals, groups and organisations can almost instantaneously communicate information (with little restriction or censorship) to potentially millions of people.

How the media can influence law reform

Individuals, groups and organisations (including members of parliament and political parties) can use both traditional and social media to generate community interest in, awareness of and support for a desired law change. This is important, because law reform campaigns that attract maximum community interest and support are the most likely to attract the attention of members of parliament who are in a position to directly influence a change in the law. There are, however, limitations associated with the use of traditional and social media to influence law reform.

BENEFITS OF USING SOCIAL MEDIA TO INFLUENCE LAW REFORM	LIMITATIONS OF USING SOCIAL MEDIA TO INFLUENCE LAW REFORM
Social media users can create interest in, and raise awareness of, legal issues on a massive scale.	People who place information, opinions, images and videos on social media do not generally follow codes of ethics that are subscribed to by many reputable traditional media organisations and journalists. This means much information on social media may not be accurate, authenticated or impartial.
The use of social media and mobile devices allows people to capture and broadcast images and videos and live stream events to generate great interest in and awareness of legal and political issues, and the need for law reform. For example, footage of crime, cruelty to live export animals and conditions in detention centres for asylum seekers have all been placed on social media to gain support for law reform in these areas.	Social media platforms are highly visual and can include graphic images and live streams that portray complex legal issues in a simplistic way and may evoke emotional responses based on limited facts and knowledge. This means individuals may make decisions about law reform without having even a basic understanding of the issue involved.
Social media connects people around the world and can be used by global reform movements to create local branches to influence law reform on global issues (such as addressing climate change and the global refugee crisis) at a domestic level. For example, Extinction Rebellion Australia is a branch of the global Extinction Rebellion movement that uses non-violent civil disobedience to force governments to act on climate change.	Excessive exposure to graphic or vivid images may cause people to feel overwhelmed and become desensitised to social, political and legal injustices.
Social media can give individuals, groups and organisations direct access to political parties and local members of parliament to gain insight into their views on legal issues and receive up-to-date information, which can in turn increase accountability for political entities' actions.	Owners of social media platforms have struggled to stop the spread of harmful or inaccurate stories in the past, given how fast they can be shared. For example, following the tragic shooting in Christchurch at two mosques, which was live-streamed by the shooter, Facebook removed 1.5 million copies of videos of the attack during the first 24 hours after the shooting.
Lawmakers themselves, particularly parliamentarians and government departments and bodies, can monitor social (and traditional) media coverage, including remarks in online comment forums, to gauge or measure public opinion and public responses to recent events and proposed law reform.	

Source 1 The benefits and limitations of using social media to influence law reform

Over the years a number of television programs, radio broadcasts, podcasts and movies have been created to generate interest in legal and political issues. The following actual scenario is an example of media being used to generate support for changing the laws relating to asylum seekers and animal cruelty.

ACTUAL SCENARIO

Documentary films aim to influence change

Over recent years several documentary films have been made with the aim of raising community awareness of injustices and influencing a change in the law. In 2016 Australian film-maker Eva Orner produced a film called *Chasing Asylum* to show and raise awareness of the sad and distressing plight of people who had been forced to leave their home countries (due to war and fear for their lives) and were seeking asylum in Australia. The film was marketed as 'The film the Australian Government doesn't want you to see' and contained footage, secretly recorded, of the poor conditions in the Australian detention centres at Nauru and Manus Island. It was made by Ms Orner to raise community awareness of treatment of asylum seekers and place pressure on the Australian Government to change the laws relating to the detainment and treatment of asylum seekers in Australia.

The film generated great interest in traditional and social media. Clips were circulated on social media platforms such as YouTube and Facebook and discussed on television and radio programs, including the ABC's *Q&A* and Radio National programs and Network 10's *The Project*. A Facebook page, Twitter account and website (www.chasingasylum.com.au) were also created to encourage people to take action to influence a change in asylum seeker laws, including by signing an online petition and writing to their local member of parliament.

Source 2 *Chasing Asylum* was made to increase community awareness and support for law reform so that people seeking asylum in Australia are always treated with dignity and humanity.

Similarly, in 2018 the Australian documentary film *Dominion* was released to raise community awareness of animal abuse in Australia. The film, classified for viewing by a mature audience aged 15 years and over due to its strong content, contains confronting images and footage of the animal cruelty which takes place during the production of food, clothing and entertainment in Australia.

The filmmakers hoped the documentary would raise awareness of the abuse and exploitation of animals in Australia to change consumer practices and encourage members of the community to support law reform to stop animal cruelty. The film's website provides a range of information on animal cruelty in Australia and promotes the activist group Dominion Movement. After the April 2019 animal activist demonstrations throughout Australia (see page 478) the documentary was viewed 55000 times in a 48-hour period.

There are benefits and limitations to using traditional media to influence law reform. Some of these are outlined below in Source 3.

BENEFITS OF USING TRADITIONAL MEDIA TO INFLUENCE LAW REFORM	LIMITATIONS OF USING TRADITIONAL MEDIA TO INFLUENCE LAW REFORM
Traditional media can influence law reform through its ability to examine, discuss and inform people about legal issues and possible changes to the law. Newspapers, television and radio are still a major source of news within our community, and are accessed by millions of readers, viewers and listeners each week. They can shape the views and attitudes of their audience depending on the manner in which they present a legal or political issue or argument.	Traditional forms of media may not always present information in an unbiased and independent manner in preference to reflecting the vested political interests of their owners. Television and radio producers and newspaper editors can manipulate content in an attempt to alter the community's perception of and discredit a particular individual or pressure group if the owners of their media organisation do not support their views. For example, producers can edit footage of a largely peaceful demonstration and choose to broadcast one brief moment of conflict between a few protesters and police in an attempt to alter the viewer's perceptions. Likewise, more broadcasting time can be given during radio and television interviews to individuals, pressure groups and parliamentarians who support the views held by the owners of media organisations. In Australia the ABC and the two biggest and most influential media organisations, News Limited and Fairfax (which account for approximately 85 per cent of all newspaper sales in Australia), are often criticised for showing political bias as summarised in Source 4 on the next page.
Television programs such as *Sunrise*, *Today*, *The Project*, *The Drum*, *7.30*, *Foreign Correspondent*, *Q&A*, and *A Current Affair* often contain segments about the need for law reform and possible changes to the law. They also provide a forum for political parties and parliamentarians to outline their policy stance on law reform, explain their actions and be held accountable for their views on law reform.	
Some television programs investigate problems in our community to inform the public of injustices and the need for changes in the law. These programs, such as the ABC's *Four Corners* or the Nine Network's *60 Minutes*, can influence public opinion and assist governments to decide whether there is sufficient community support for a change in the law.	

Source 3 The benefits and limitations of using traditional media to influence law reform.

Over the years, a number of Australian television programs have been created to investigate and report on problems in our community. These programs, such as the ABC's *Four Corners* or the Nine Network's *60 Minutes*, can influence public opinion and assist governments to decide whether or not there is sufficient community support for a change in the law.

MEDIA ORGANISATION	PUBLICATIONS/PROGRAMS	PERCEIVED POLITICAL BIAS
News Limited	*The Australian* *Daily Telegraph* (Sydney) *Herald Sun* (Melbourne) *The Bolt Report*	• generally recognised for supporting the Liberal–National Coalition
Fairfax Media	*The Age* *Sydney Morning Herald*	• generally recognised as being left-wing and pro-Labor
ABC	*ABC News* *Insiders* *Q&A*	• often viewed as being pro-Labor and the Australian Greens

Source 4 Perceived biases of some traditional media organisations

Did you know?

Traditional media is still influential. In 2020 more than 50 per cent of Australians still relied on traditional media to gain information. For example, more than 4.3 million Victorians read content from the *Herald Sun* newspaper, in print and online, every month and more than 4.1 million read content from *The Age*.

TV program highlights the need for legislative reform

ACTUAL SCENARIO

In September 2018 Prime Minister Scott Morrison announced that the Federal Government would set up a special inquiry (referred to as a Royal Commission) to investigate the quality of services provided in aged care facilities and the extent to which these services meet the needs of the elderly people, and some younger people with disabilities, who live in these facilities. After conducting investigations, the inquiry was asked to make recommendations about ways to improve the aged care services and implement legal changes to ensure the aged care services are safe and of a high quality.

Interestingly, the announcement of the Royal Commission into Aged Care Quality and Safety was made one day before the ABC broadcast the first of a two-part *Four Corners* program (titled 'Who Cares?') which highlighted the poor, and at times neglectful and abusive, treatment of elderly people in some aged care facilities.

The first instalment of the program, which was viewed by an estimated 755000 people throughout Australia, contained footage from hidden cameras, and stories of neglect, poor quality food, inadequate personal care and intense loneliness from personal carers who worked in aged care facilities, families of residents and health care professionals.

The program highlighted a range of problems facing the aged care industry and created much discussion and interest in the Royal Commission.

Source 5 Cota Victoria, an organisation which represents the interests of people aged over 50 years, encouraged elderly Victorians to make submissions to the Royal Commission into Aged Care Quality and Safety.

15.5 CHECK YOUR LEARNING

Define and explain

1 Define the terms traditional media and social media.

2 Explain how social media can be used to influence a change in the law. Provide two examples to support your response.

3 Explain three ways the traditional media can be used to influence the government to initiate a change in the law. Provide examples to support each of the three ways.

Synthesise and apply

4 Select one law reform that you believe the Victorian or Federal Government should introduce.
   - **a** Describe the law reform and give reasons why you think it should be introduced.
   - **b** Outline possible objections to the proposed law reform.
   - **c** Imagine you had to design a campaign to increase community awareness, and support for the proposed law reform. What would you do? What methods would you use to influence a change in the law?
   - **d** Write an email to the editor of a daily Victorian newspaper to convince other readers to support the proposed law reform. Your email cannot be more than 300 words.

5 Talkback radio programs are a popular forum for discussion about legal issues and law reform. Using the internet, find one Melbourne talkback radio program. Describe two recent or possible changes to the law that have been discussed on the program you select.

6 Prepare a list of the strengths and weaknesses associated with using the traditional media to gain support for their law reform.

Analyse and evaluate

7 Select one political party that exists in Australia, or one parliamentarian, and investigate how they use the media to win electoral support or support for their party's suggested law reforms. A list of registered political parties is available on the Australian Electoral Commission website. A link is provided on your obook assess.

8 Discuss the ability of the Australian media to influence public views and attitudes towards law reform. Provide two recent examples to support your view.

9 Select one current law reform issue and follow its progress. What methods are those who are agitating for change using to gain support? How often is the proposed law reform being mentioned in both the traditional and social media? Is media coverage positive or negative?

You may wish to examine proposed law reform relating to criminal offences, procedures or sanctions; global warming; euthanasia; safe injecting rooms; illicit drugs; the provision of aged care services or asylum seekers.

Check your obook assess for these additional resources and more:

- **Student book questions** 15.5 Check your learning
- **Weblink** Chasing Asylum trailer

15.6 THE VICTORIAN LAW REFORM COMMISSION

Members of parliament often lack the time and resources to undertake a thorough investigation of an issue. In situations like this, parliaments may prefer to pass the investigation of the need for law reform to an independent **law reform body** that can conduct its own investigations and make recommendations for changes to the law.

Formal law reform bodies are organisations established by the state and Commonwealth governments to inform them of changes in society that may require a change in the law. They aim to give impartial advice and make recommendations that are practical and able to be implemented. Parliament is not bound to follow the recommendations from formal law reform bodies, although the government is often influenced by the reports of these committees when considering changes in the law.

The **Victorian Law Reform Commission (VLRC)** is Victoria's leading independent law reform organisation, which reviews, researches and makes recommendations to the Parliament of Victoria about possible changes to Victoria's laws.

Victorian Law Reform Commission (VLRC)
Victoria's leading independent law reform organisation. The VLRC reviews, researches and makes recommendations to the state parliament about possible changes to Victoria's laws.

Victorian Law Reform Commission

Source 1
The Victorian Law Reform Commission is an organisation that reviews and researches possible changes in Victorian laws.

statute
a law made by parliament; a bill which has passed through parliament and has received royal assent (also known as legislation or an Act of Parliament)

The role of the VLRC

The Victorian Parliament established the VLRC in 2001 by passing the *Victorian Law Reform Commission Act 2000* (Vic). The VLRC was therefore created by **statute** and obtains its powers and functions through that statute.

The VLRC aims to assist the Victorian Government in continuing to provide a fair, inclusive and accessible legal system by investigating the need for change in Victorian laws and providing the government impartial advice and recommendations for change.

While the VLRC was created and is funded by the Victorian Government, it is an independent organisation that is not involved in the political process or influenced by the policies of the government or political parties.

In general terms, the VLRC monitors and coordinates law reform activity in Victoria and investigates and advises the Victorian Government on ways to update and improve Victorian law. When conducting its investigations, the VLRC engages in community-wide consultation and debate to ensure its recommendations for changes to the law meet the needs and desires of the Victorian community. For example, the VLRC will respond to issues and concerns raised by individuals and pressure groups, and consider newly emerging rights and responsibilities.

Section 5 of the *Victorian Law Reform Commission Act* sets out the specific roles of the VLRC:

- **inquiry** – To examine and report on any proposal or matter referred to it by the Victorian Attorney-General and make recommendations to the Attorney-General for law reform. This includes conducting research, consulting with the community and reporting on law reform projects.
- **investigation** – To investigate any relatively minor legal issues that the VLRC believes is of general concern within the community and report back to the Attorney-General with suggestions for law reform. This means that in addition to its main role of examining legal issues and matters referred by the Attorney-General, the VLRC can also examine minor issues without a reference, provided the review will not consume too many of its resources.
- **monitoring** – To monitor and coordinate law reform activity in Victoria, including making suggestions to the Attorney-General that he or she refers a legal issue or matter relating to law reform to it for investigation. In other words, after consultation with various groups and other law-reform bodies, the VLRC may suggest to the Attorney-General new references relating to areas where law reform would be desirable.

Study tip

The VLRC website provides information on all their law reform projects. It also has an excellent student resource section containing a booklet that examines the VLRC's role and the way it works, case studies and a poster. A link to the website is provided on your obook assess.

- **education** – To undertake educational programs and inform the community on any area of the law relevant to its investigations or references. This means the VLRC has a responsibility to deliver programs to help inform the community about its work. One way the VLRC achieves this is by visiting schools throughout Victoria to talk to students about its role and past and current projects. It also provides a vast range of information about its investigations and references on its website.

Processes used by the VLRC

In assessing the need for change in the law, the VLRC consults with expert bodies in the area under review, and also with the general community. After receiving a reference, the general process that the VLRC follows is that it:

- undertakes initial research and consultation with experts in the law under review and identifies the most important issues
- publishes an issues or discussion paper (called a consultation paper) which explains the key issues in the area under review and poses questions about what aspects of the law should be changed and how for community consideration
- holds consultations and discussions with, and invites submissions (which can be made in writing, online or by speaking to a Commission staff member) from, parties who are affected by the area under review and members of the Victorian community. Members of the community may include interested individuals, pressure groups, organisations and, in particular, people from marginalised groups such as those from non-English-speaking backgrounds, people with disabilities, Indigenous people and people living in remote communities
- asks experts to research areas requiring further information and, when desired, publishes these findings in an **occasional paper**
- publishes a report with recommendations for changes in the law – either a final report or an interim report if further comment from the community is desired
- presents the final report to the Attorney-General, who will then table it in the Victorian Parliament. The parliament may decide to implement some or all of the VLRC's recommendations by incorporating them into a bill, but it is not bound to do so.

Recent VLRC projects

Since its creation in 2001 the VLRC has conducted numerous investigations and made hundreds of recommendations to help ensure Victoria's laws remain relevant and fair. In its first 20 years of operation the VLRC completed 31 references from the Victorian Attorney-General to investigate major areas of law reform and undertook another eight minor community law reform projects with the government adopting all or some of the VLRC's recommendations in approximately 70 per cent of cases. The VLRC website contains information on each of these completed and current projects.

Some recently completed projects include an examination of:

- the *Victims of Crime Assistance Act 1996* (Vic)
- neighbourhood tree disputes
- contempt of court, *Judicial Proceedings Reports Act 1958* and enforcement processes
- committal and pre-trial procedures in indictable criminal matters.

One of the VLRC's most recent reports was its investigation into committal and pre-trial procedures in indictable criminal matters.

Investigating Victoria's committal system

ACTUAL SCENARIO

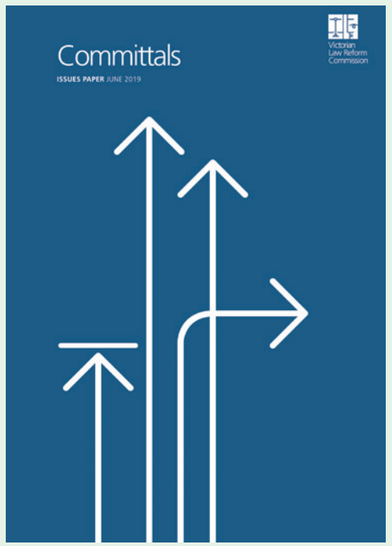
In March 2020 the VLRC completed an inquiry into Victoria's **committal system**, which forms part of Victoria's pre-trial criminal procedures for an indictable offence (see Chapter 4 for more details). The VLRC undertook the inquiry after receiving a reference from the Attorney-General, asking the VLRC to make recommendations regarding whether the committal system in place at the time needed to be abolished, replaced or reformed, to ensure its processes best supported victims and witnesses and procedural fairness for the accused.

Some of the areas the VLRC examined during its inquiry included whether reforms could be made to:

- enable earlier identification of less serious indictable cases that can be determined summarily (i.e. in the Magistrates' Court)
- encourage appropriate early guilty pleas
- improve the processes used to encourage early **disclosure** of information or material to the parties (such as examining ways to improve disclosure between the investigating bodies (e.g. police) and the Director of Public Prosecutions, and between the prosecution and accused)
- encourage the parties to undertake appropriate preparation for their trial
- minimise the trauma to victims and witnesses associated with the committal system, including minimising the need for witnesses to give their evidence multiple times and offering the best possible support for victims
- ensure the rights of the accused to a fair trial are upheld
- ensure more efficient use of the court's time.

During the inquiry into committals, the VLRC received numerous submissions from members of the community, including from academics, lawyers, legal and civil liberties organisations (including Victoria Legal Aid, the Law Institute of Victoria and Liberty Victoria), Victoria Police, the Magistrates' Court of Victoria, and the Director of Public Prosecutions. Views expressed within these submissions ranged from recommending reforms to the existing committal system right through to recommending the complete abolishment of committal proceedings on the basis that they unnecessarily increase the costs for the accused and the criminal justice system, delay the process of finalising prosecutions, and add to the stress placed on victims and witnesses.

After all investigations were completed the VLRC prepared a final report (tabled in the Victorian Parliament in April 2020) which included recommendations for law reform to improve the committal system. The details of these recommendations will be included in the final published version of this chapter.



Source 2 The VLRC Committals Issues paper detailed recommendations for law reform to improve the committal system.

committal system (or committal proceedings) the processes involved in transferring an indictable offence from the Magistrates' Court, where the charges are first filed, to trial in a higher court (i.e. the County or Supreme Court)

disclosure the process of providing information and material (e.g. witness statements, police records of interview and forensic evidence) to the relevant parties involved in a criminal case. For example, the transfer of the 'brief of evidence' relied upon by the prosecution between prosecution, accused and magistrate.

Study tip

The *VCE Legal Studies Study Design* states that you should know recent examples of law reform bodies recommending legislation change from the last four years. You should review the VCAA advice (available on their website) about the use of recent recommendations.

As well as examining areas of law reform referred to it by the Attorney-General, the VLRC is also able to investigate, report and make recommendations to the Attorney-General on any minor matters or areas of law reform of concern to the general Victorian community. Such investigations are called community law reform projects.

The VLRC has the authority to undertake community law reform projects without a reference from the Attorney-General, as long as the investigation will not consume too many of its resources. In addition, any member of the public can suggest a community law reform project for the VLRC to undertake. The majority of community law reform projects are undertaken in response to suggestions from members of the community.

A recent community law reform project on neighbourhood tree disputes is described below.

ACTUAL SCENARIO

Community law reform project: Neighbourhood Tree Disputes

In November 2019 the VLRC completed a community law reform project, Neighbourhood Tree Disputes, in response to community concern. It undertook the project after being advised about the large number of tree disputes being resolved by the Dispute Settlement Centre of Victoria (DSCV) and the need to make it easier for neighbours to resolve such disputes.

Some of the matters the VLRC examined during its inquiry included disputes about branches hanging over boundary fences, tree roots destroying neighbouring properties, the cutting or removal of trees without neighbours' consent and trees increasing bushfire risk.

After receiving 38 submissions from members of the community (including individual homeowners, arborists who are qualified in tree trimming and removal, local councils, academics and lawyers, and legal bodies such as Victorian Legal Aid), the VLRC made 63 recommendations for law reform.

Source 3 Disputes over trees are one of the most common types of neighbourhood disputes.

One of the most important recommendations was that the Victorian Parliament should introduce a new Neighbourhood Tree Disputes Act, to be managed by the Victorian Civil and Administrative Tribunal (VCAT), outlining when neighbours are able to take their dispute to VCAT for resolution and the type of remedies available. The benefit of having tree disputes seen by VCAT is that VCAT can resolve disputes in an informal, cost-effective and timely manner compared to the courts, by encouraging disputes to be resolved by the parties themselves (such as through mediation) rather than a third party. However, in cases where the parties cannot reach a mutually acceptable resolution, the dispute can be resolved at a VCAT hearing where a member can make and impose a legally binding decision.

The ability of the VLRC to influence law reform

The VLRC has an important role in reviewing Victorian law. It makes sure the Victorian Parliament is provided with independent advice and recommendations for law change. However, it has limited scope to investigate major issues other than those referred by the Attorney-General. The Victorian Parliament is not required to introduce any of its final recommendations.

The strengths and weaknesses of the ability of the VLRC to influence law reform are set out in Source 4.

STRENGTHS OF THE VLRC	WEAKNESSES OF THE VLRC
As the government asks the VLRC to investigate the need for law change in specific areas, the government should be more likely to act on the VLRC's report and recommendations.	The VLRC can only investigate issues referred to it by the government (i.e. the Attorney-General) or minor community law reform issues that will not consume too many resources. Inquiries are also limited to the terms of the reference, meaning the VLRC can only investigate and make recommendations for law reform on areas included in the reference even if it considers there are other areas of reform required in that particular matter.
The VLRC can measure community views on areas of investigation by holding consultations and receiving public submissions, and then reflect them in its recommendations. This should increase the likelihood of the government implementing its recommendations, because, to maintain and increase voter support, governments generally implement law reforms that reflect the views of the people.	There is no obligation on the part of the parliament to support or introduce law reform to adopt any of the recommendations made by the VLRC. Also, while the government may support the VLRC's recommendations, it may need the support of the crossbench to pass law reform through the parliament, particularly if the upper house is hostile.
The VLRC is independent of the parliament and political parties so it remains objective and unbiased in making its recommendations. It can also investigate an area comprehensively so the government can initiate new legislation that covers a whole issue.	The VLRC's investigations can be time-consuming and costly. For example, inquires may take 12–24 months.
The VLRC has the power to make recommendations on relatively minor legal issues without any reference from the Attorney-General, which can lead to important law reform. For example, a review in 2001 on bail resulted in changes to the *Bail Act 1977* (Vic).	The VLRC is limited by its resources, and therefore can only undertake investigations into minor legal issues if it does not require a significant deployment of those resources.
Statistics suggest that the VLRC can be highly influential on the Victorian Parliament. All or some of its recommendations are adopted in approximately 70 per cent of cases.	

Source 4 The strengths and weaknesses of the VLRC to influence law reform

15.6 CHECK YOUR LEARNING

Define and explain

1 When and how was the VLRC established?

2 Describe the role of the VLRC.

Synthesise and apply

3 Read the scenario 'Community law reform project: Neighbourhood Tree Disputes'.
   - **a** Explain why the VLRC was able to investigate changes to the way the Victorian legal system deals with tree disputes between neighbours when the matter was not referred by the Attorney-General.
   - **b** Describe two examples of neighbourhood tree disputes that the VLRC examined during their investigations.
   - **c** Explain the main recommendation for law reform made by the VLRC.

4 Go to the VLRC website. A link is provided on your obook assess. View or download a copy of the VLRC's Committal Report (available under the 'All completed projects' menu).
   - **a** Briefly explain the main areas the VLRC was required to examine during their investigations into Victoria's committal system.
   - **b** How long did the VLRC take to complete its investigation into Victoria's committal system?
   - **c** State how many written submissions the VLRC received during their investigations and identify the names of five individuals or organisations that made submissions.
   - **d** Explain two other ways the VLRC gained input from members of the community about their views on changing the laws relating to Victoria's committal system.
   - **e** Describe three of the main recommendations made by the VLRC.
   - **f** Do you support or oppose allowing a magistrate to determine whether there is sufficient evidence to commit an accused to stand trial? Give reasons for your response.

5 Visit the VLRC website. A link is provided on your obook assess. Click on the 'All Projects' menu. Complete the following tasks:
   - **a** Investigate one current project being undertaken by the VLRC and prepare a summary that:
     - identifies the name of, and date the Commission received, the reference
     - outlines the areas or matters under review
     - identifies and describes the stage which the Commission is currently working on in terms of the progress of the reference.
   - **b** Investigate and prepare a summary of one recently completed project. Your summary should include identifying details (names, dates, three recommendations made, names of three interested parties, three recommendations adopted by the government, whether you agree with the recommendations and changes).

Analyse and evaluate

6 Using one recent example, evaluate the VLRC in light of its ability to influence parliament to change the law.

7 'The Commission aims to make a significant contribution to maintaining and further developing a just, inclusive and accessible legal system for all Victorians.' VLRC Annual Report 2018–2019.
Discuss the extent to which you believe the VLRC achieves its aims as outlined in the statement above.

Check your obook assess for these additional resources and more:

- **Student book questions** 15.6 Check your learning
- **Sample** Submission to a VLRC
- **Weblink** Victorian Law Reform Commission

15.7 PARLIAMENTARY COMMITTEES

As we have learnt, Australia's parliamentary system is based on various principles, and works in a way to ensure our federal and state parliaments can effectively perform their main role – i.e. to make and change the law.

For example, our parliamentary system is based on the principle of representative government, which ensures that our members of parliaments make laws on behalf of the voters and which reflect the prevailing views and values of the majority of society (or they risk not being re-elected).

Likewise, having a bicameral system of parliament ensures that any proposed changes to the law (i.e. bills) are thoroughly discussed and debated by both houses of parliament before becoming law.

Another important feature of the Australian parliamentary system is that it includes a **committee system**, meaning the federal and state parliaments have an extensive range of committees that can investigate a wide range of legal, social and political issues and concerns and report back to the parliament about the need for law reform.

committee system
a system used by federal and state parliaments in Australia that uses separate working parties (i.e. committees) to investigate a wide range of legal, social and political issues and report back to the parliament about the need for law reform

parliamentary committee
a small group of members of parliament who consider and report on a single subject in one or both houses. Committee members can come from any party.

The committee system

A **parliamentary committee** is a specific group of government and non-government members of parliament who are given the responsibility of investigating a specific issue, policy or proposed law (bill) and reporting their findings and recommendations for law reform back to the entire parliament. They are often established so an issue of state, national or community interest can be examined more efficiently (i.e. more quickly, more economically and in greater detail) than it could be if all members of parliament were involved in the investigation.

The committee system is an important feature of our parliamentary system because it allows members of parliament to examine and evaluate the need for law reform. It also provides a way for members of the community to give input into the issues being investigated and have their views considered in the parliamentary decision-making process. Unlike law reform bodies, the committee is made up of members of parliament.

When a parliamentary committee investigates a specific issue or matter, one of its main roles is to consult with and consider the views of the community, including interested individuals and experts, pressure groups, business groups and organisations and government departments.

Another benefit of parliamentary committees is that their final reports enable the parliament to be more informed before making important decisions like determining whether to support a bill. Parliamentary committees can also be established to provide a check on the government's activities because they have the power to call individuals, experts and people who work in government departments to give evidence and answer questions in relation to the specific area under investigation.

Source 1 In 2017 the Victorian Government rejected a recommendation made by a parliamentary committee to lower the driving age from 18 to 17 years, in line with all other states and territories in Australia.

Study tip

The *VCE Legal Studies Study Design* requires you to know **either** one parliamentary committee, **or** one royal commission, and **one** recent example of either one or the other. Remember that 'recent' means 'within the last four years.' In this topic you will look at parliamentary committees, and in the next topic you will look at royal commissions, but you can only be assessed on one.

Study tip

The *VCE Legal Studies Study Design* requires you to be able to evaluate the ability of the law reform bodies to influence a change in the law, using recent examples.

There are many different types of parliamentary committees throughout the federal and state parliaments. For example, committees can consist of members from both houses of parliament or just one house, and may be an ongoing committee, or a temporary one to investigate one specific issue. Committees may also vary in size, though Victorian parliamentary committees usually consist of six to ten members of parliament plus a number of parliamentary employees, called a secretariat, who provide administrative support and help run hearings. At federal level, committees generally range from seven to 32 members and, like at state level, is considered one of the duties of an elected member of parliament.

Processes used by parliamentary committees

While there are different types of parliamentary committees, with each performing specific tasks and functions, most committees have similar processes and procedures. In general, parliamentary committees follow the following processes.

- **Terms of reference** are given when parliament decides to have a committee investigate a particular issue or matter. The committee receives terms of reference which specify the precise purpose of the inquiry, the specific issues that must be investigated and the date by which the final report must be completed.
- **The media publicises the committee's investigations and seeks input**, once the terms of reference are established, via written submissions, from interested individuals, experts, groups and organisations within the community. This includes advertising in traditional media such as newspapers, and using the internet and social media.
- **Formal public (or on occasion private) hearings** will usually be held by committees. The committee will invite a range of people (experts in the matter under review and representatives from different interested groups) to provide their input and give **evidence** relating to the matter under investigation and answer specific questions from committee members. Most committees have the power to call or require certain individuals and experts, like people who work in government departments, to give evidence, answer specific questions and explain their actions. If a person who is called to give evidence to a committee refuses to attend or answer specific questions, he or she can receive a formal reprimand or be prosecuted and receive a **fine** or term of imprisonment.
- **The committee will prepare a written report** once all of the submissions have been received and considered, and all hearings have concluded. The report will contain recommendations for law reform or actions and will be presented to the parliament for consideration. Generally all written submissions and hearings are published in **Hansard** and made public on the parliament's website.

terms of reference
instructions given to a formal body (e.g. a law reform body or royal commission) to investigate an important matter. Terms of reference set out the precise scope and purpose of the inquiry and the date by which the final report must be completed.

evidence
information used to support the facts in a legal case

fine
a sanction that requires the offender to pay an amount of money to the state

Hansard
the official transcript (i.e. written record) of what is said in parliament. Hansard is named after T.C. Hansard (1776–1833), who printed the first parliamentary transcript

Specific committees and recent examples

The four main types of parliamentary committees in both the Victorian and Commonwealth parliaments are:

- standing committees
- select committees
- joint investigatory committees
- domestic committees.

The main types of parliamentary committees are described in Source 2.

TYPES OF PARLIAMENTARY COMMITTEES	DEFINITION
Standing committees	Parliamentary committees appointed for the life of a parliament (then usually re-established in successive parliaments) to investigate a range of specific issues and provide an ongoing check on government activities. They are ongoing, not temporary, committees. Standing committees can be set up solely within each house, or they can be joint committees with members from both houses. For example, the Victorian Standing Committee on Legal and Social Issues is an ongoing Victorian parliamentary committee that inquires into and reports on any proposal or matter concerned with community services, education, gaming, health, and law and justice.
Select committees	Parliamentary committees appointed to investigate a specific issue as the need arises. Once the inquiry is completed the committee ceases to exist. Select committees are made up of members from only one house of parliament.
Joint investigatory committees	Parliamentary committees appointed each parliamentary term to examine a range of different issues or matters. They are, as the name suggests, made up of members of parliament from both houses. In Victoria a number of joint investigatory committees are appointed under the *Parliamentary Committees Act 1968* (Vic). Joint committees are usually longstanding committees (i.e. standing committees) that investigate issues on behalf of parliament. They can also be select committees to investigate a particular issue. Examples of joint investigatory committees of the Victorian Parliament include the: • Scrutiny of Acts and Regulations Committee • Law Reform, Road and Community Safety Committee • Environment, Natural Resources and Regional Development Committee.
Domestic committees	Parliamentary committees appointed to specifically examine issues and matters that relate to the internal operations and practices of parliament, including administrative and procedural matters. They are made up of members of one house. For example, the Legislative Assembly has a Privileges Committee that meets when required to investigate complaints relating to breaches of parliamentary privilege in the lower house of the Victorian Parliament.

Source 2 The main types of parliamentary committees

One example of a joint investigatory committee is the Scrutiny of Acts and Regulations Committee. An example of an investigation conducted by this committee is provided below.

Study tip

The *VCE Legal Studies Study Design* requires you to know **one recent** example of a recommendation for law reform by one parliamentary committee **or** one Royal Commission. While the term 'recent' means a recommendation that has occurred within the last four years, you may examine recommendation proposed more than four years ago if there has been recent discussion about it in the media.

Victorian parliamentary inquiries into safe injection clinics

ACTUAL SCENARIO

In Victoria the Scrutiny of Acts and Regulations Committee considers all bills introduced into the Legislative Council or the Legislative Assembly. It then reports to the Victorian Parliament on whether the bill impacts on certain rights and freedoms, including whether it directly or indirectly:

- trespasses unduly on rights or freedoms
- makes rights, freedoms or obligations dependent on insufficiently defined administrative powers or on non-reviewable administrative decisions
- unduly requires or authorises acts or practices that may have an adverse effect on personal privacy within the meaning of the *Privacy and Data Protection Act 2014* (Vic) or the privacy of health information within the meaning of the *Health Records Act*
- inappropriately delegates legislative power
- insufficiently subjects the exercise of legislative power to parliamentary scrutiny
- is incompatible with the human rights set out in the *Charter of Human Rights and Responsibilities Act*.

In February 2017 the Scrutiny of Acts and Regulations Committee was required to undertake an inquiry into the Drugs, Poisons and Controlled Substances Amendment (Pilot Medically Supervised Injecting Centre) Bill 2017 (Vic). The Bill, which was introduced into the Legislative Council as a private members' bill by the leader of the Reason Party (formerly called the Australian Sex Party), Fiona Patten, proposed changing the law to allow a medically supervised drug injecting centre to be opened in North Richmond, an inner-city suburb of Melbourne, on a trial basis for 18 months. The aim of the controversial bill was to provide a safe injecting room for heroin addicts in an attempt to control drug use and save lives.

The role of the Scrutiny of Acts and Regulations Committee was to investigate specific areas of the Bill to ensure it did not unduly trespass on rights and freedoms, and was compatible with the human rights set out in the Charter of Human Rights and Responsibilities. For example, the Committee investigated whether the provision that children be excluded from the part of the injection centre where drugs would be administered or dispensed was compatible with the right of children to protection that is in his or her best interests.

The Bill was also referred to the Legal and Social Issues Committee for review. The role of this Committee was to gather and consider information both in support and against the establishment of the trial supervised injecting room and recommend whether or not the Bill should be supported.

Source 3 Local residents and traders protest against the safe injecting room in Richmond, Victoria.

As part of its investigations the Committee gathered submissions from 49 interested individuals and organisations, both in favour and against the Bill, including submissions from local residents, local traders (such as the Victoria Street (Richmond) Business Association), community health services (such as the Victorian Alcohol and Drug Association), faith-based organisations (such as the Salvation Army and the Australian Christian Lobby) and Victoria Police.

After an extensive review the Legal and Social Issues Committee released its comprehensive report which recommended that the trial supervised injection room be established in North Richmond. The Bill was ultimately passed by parliament in October 2017 and Victoria's first medically supervised injecting room was opened in North Richmond, for a two-year trial, in June 2018.

The supervised injecting room continues to cause debate within the community, with media reports suggesting some local residents are concerned there has been an increase the concentration of drug dealers and drug related arrests in the Richmond area since its opening. A group of local traders also organised a demonstration in November 2019 to place pressure on the government to relocate the supervised injection room to a more appropriate area.

By contrast, the Victorian Government claims the facility has saved lives by promoting safe disposal of used needles and encouraging people who attend the facility to seek support for addiction. Within the first 12 months of operation the supervised injection room had been used by 2200 people and managed over 1200 drug overdoses.

The Commonwealth Parliament also has an extensive committee system which provides the opportunity for members of parliament to investigate the need for law reform and allows individuals and organisations to provide their input and have their views considered in the law-making process. An example of a federal parliamentary committee, the Senate Standing Committee on Community Affairs, is provided in the following scenario.

ACTUAL SCENARIO

New bill proposes drug testing for those on unemployment benefits, Senate Committee investigates

In 2019 the Senate Standing Committees on Community Affairs was asked by the Senate to conduct an inquiry into the Social Services Legislation Amendment (Drug Testing Trial) Bill 2019, which requires people who receive unemployment benefits (such as the Newstart and Youth Allowances) to undergo drug testing in order to receive the payment.

More specifically, the Bill sets up a two-year trial in three areas. In these areas 5000 new applicants for unemployment benefits will be required to submit a drug test to a Centrelink office before receiving unemployment benefits. The test is designed to detect a range of drugs, including cannabis, cocaine, heroin and methamphetamine (or 'ice'). People who refuse to undergo the drug test will have their welfare payment postponed for four weeks before they can re-apply. Those who submit a positive drug test while receiving unemployment benefits will be required to undergo further random drug tests and ultimately may be required to undergo drug treatment in order to receive payment.

The role of the Senate Standing Committees on Community Affairs was to investigate the drug testing trial, as proposed in the bill, and recommend to the house whether it should accept the bill. During the month-long investigation, the Committee conducted one public hearing and received written submissions, both in support of and against the bill, from over 50 interested parties including doctors, academics, local councils, human rights organisations, and drug, alcohol and community welfare organisations.

Source 4 Various parliamentary committees have examined the proposal to introduce a drug test for recipients of unemployment benefits.

The Committee also received two dissenting reports (one from the Labor Party Senators and one from the Greens Senators) stating their opposition to the Bill on the grounds that evidence received from medical experts, drug and alcohol treatment agencies, social and health policy experts, and community services organisations suggested the Bill 'did not have an evidence base and would be ineffective and counterproductive'.

While most people who made submissions acknowledged the benefit of providing medical assistance and/or community support to people with drug abuse issues, many were not convinced that denying unemployment benefits would help people overcome their drug abuse issues. Others expressed concern that drug use is not a common reason why many people are unemployed and could therefore increase the negative stigma associated with being unemployed. The denial of benefits could also increase poverty and crime in the trial areas.

After examining each of the main issues and concerns the Committee prepared its final report and recommended to the Senate that the Bill be passed.

The ability of parliamentary committees to influence law reform

Although parliamentary committees have some limitations, they have an important role in investigating specific issues, policies and legal matters, reviewing existing law and reporting their findings and recommendations for law reform to the parliament.

The strengths and weaknesses of parliamentary committees to influence law reform are summarised in Source 5.

STRENGTHS OF PARLIAMENTARY COMMITTEES	WEAKNESSES OF PARLIAMENTARY COMMITTEES
Committees can investigate a wide range of legal, social and political issues and concerns and report back to the parliament about the need for law reform.	Due to limited resources (e.g. funding and time constraints on members of parliament) a committee cannot be formed to examine all worthy issues and concerns.
Committees play a vital role in ensuring that bills do not breach or impose on basic rights and freedoms and making sure the government is provided with independent advice and recommendations for law change.	Members of the governing party may dominate the composition and findings of a committee or use them as a distraction or way of avoiding other controversial legislation or parliamentary issues.
Parliamentary committees have the power to request that specific individuals and representatives of organisations appear at hearings to give evidence and answer questions, which enables them to gain extensive and valuable information for their consideration.	Committees are restricted to examining matters and issues within the scope of the terms of reference.
Committees can examine issues more efficiently (i.e. more quickly, economically and in greater detail) than having the entire parliament involved in the investigation.	Committee investigations can be time-consuming and costly.
Committees allow members of parliament to be involved in investigations and gain knowledge, expertise and understanding in the area of suggested law reform.	The large number of committees and the time commitment involved may deter some members of parliament from sitting on committees.
Committees provide a way for members of the community to give input into the issues being investigated and have their views considered in the parliamentary decision-making process.	Members of the public may not be aware that a committee inquiry into a specific matter is being undertaken and calls for public submissions have been made.
The final reports prepared by committees enable the parliament to be more informed before deciding whether to support a bill.	There is no obligation on parliament to support or introduce law reforms suggested by a committee, although this may be more likely given that committees consist of members of parliament.

Source 5 The strengths and weaknesses of parliamentary committees in influencing law reform

15.7 CHECK YOUR LEARNING

Define and explain

1 What are parliamentary committees?
2 Distinguish between standing and select parliament committees.
3 Describe three benefits of parliamentary committees.
4 Provide one similarity and one difference between the VLRC and a parliamentary committee.

Synthesise and apply

5 Explain what is meant by the statement 'Parliamentary committees help support a democratic parliamentary system'.
6 Prepare a flow chart that describes the basic process followed by a parliamentary committee when undertaking a specific inquiry.
7 Read the scenario 'Victorian parliamentary inquiries into safe injection clinics'.
   a Describe the role of the Victorian Scrutiny of Acts and Regulations Committee in relation to the passing of the Drugs, Poisons and Controlled Substances Amendment (Pilot Medically Supervised Injecting Centre) Bill 2017 (Vic).
   b Describe the role of the Legal and Social Issues Committee in relation to the passing of the Drugs, Poisons and Controlled Substances Amendment (Pilot Medically Supervised Injecting Centre) Bill 2017 (Vic) and discuss two strengths associated with having the Bill investigated by this Committee.
   c If you were a member of the Victorian Parliament would you support the establishment of more medically supervised injection rooms throughout Victoria? Give reasons for your response.

Analyse and evaluate

8 Conduct research into one other current Victorian state or Commonwealth parliamentary committee.
   a Describe the role of the committee and discuss the ability of this committee to influence a change in the law.
   b Briefly describe one inquiry the committee has recently undertaken.
   c Explain at least one recommendation for law reform made by the parliamentary committee.
   d In your view, is this committee more or less effective in making this recommendation than the VLRC? Justify your response.

Check your obook assess for these additional resources and more:

- Student book questions: 15.7 Check your learning
- Weblink: Victorian Parliament – Committees
- Weblink: Commonwealth Parliament – Committees

15.8 ROYAL COMMISSIONS

royal commission
the highest form of inquiry into matters of public concern and importance. Royal commissions are formal public inquiries conducted by a body formed to support the work of a person (or persons) (being the commissioner(s)) given wide powers by the government to investigate and report on an important matter of public concern

governor
the Queen's representative at the state level

Governor-General
the Queen's representative at the Commonwealth level

Royal commissions are major public inquiries established by the government to investigate something of public importance or concern in Australia, on any topic.

These Commissions are called 'royal' commissions because they are created by Australia's head of state (i.e. the Queen) through her representatives. They are one of the oldest forms of inquiry. The inquiry is given terms of reference and asked to report on its findings and make recommendations.

Royal commissions are given special investigatory powers, including the power to **summon** (or compel) people to attend hearings, give evidence under oath, and be subject to cross-examination.

Establishment of royal commissions

Royal commissions can be established at both the state and Commonwealth level.

The power to establish a royal commission is provided by statute. At the Commonwealth level, the power to issue a royal commission is given to the Governor-General through the *Royal Commissions Act 1902* (Cth). At the Victorian level, the power to establish a royal commission is given to the **governor** under the *Inquiries Act 2014* (Vic).

Royal commissions are therefore set up by the executive branch of government (i.e. the **Governor-General** (at federal level] or the Governor (at state level] on behalf of the Queen). However, the Queen's representative acts on the advice of the government ministers. Therefore, in reality, it is the government that initiates a royal commission in response to a major issue of public interest or concern.

For example, in 2019 the Governor-General, the Honourable David Hurley, established the Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability on the advice of the Federal Government to investigate and expose the violence, abuse, neglect and exploitation suffered by people with disability and recommend law reform to ensure this ill-treatment stops and people with disability are protected.

In addition to advising the Governor-General or governor on the establishment of a royal commission, the government also provides funding for royal commissions and determines their terms of reference and length.

Source 1 Greens Senator Jordon Steele-John, who has fought for the rights of people with disability for many years, strongly supported the need for a Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

Study tip

The Australian Parliament website contains a full list of all of the royal commissions that have taken place at the federal level. A link is provided on your obook assess.

Issuing a royal commission

As a royal commission is a temporary form of inquiry, and can be expensive, they are established on an ad-hoc basis and look into matters of significant importance, and often matters surrounded by controversy.

The Queen's representative must first issue a letters patent**.** The letters patent will specify the person or persons who are appointed to constitute the royal commission, as well as which of those persons (if there is more than one) will chair the royal commission. The letters patent must also specify a time by which the royal commission is to report on its inquiry and the terms of reference.

The chairperson of the royal commission will then engage people to assist the royal commission.

Processes used by royal commissions

Once a royal commission has been established and the letters patent has been issued, the commission conducts an extensive investigation of the matter of public interest or concern by undertaking a range of tasks, such as those listed below.

- **Consultation, research and background papers** may be prepared to provide information to interested parties and the community and form the basis for discussion and submissions. A consultation (or issues) paper outlines the matter or concern being investigated by the royal commission, poses questions relating to possible reforms that could be implemented to address the areas of concern and seeks and provides guidance for individuals and organisations that wish to make a written submission. For example, the Commonwealth Royal Commission into Aged Care Quality and Safety (established in October 2018) prepared a consultation paper to explain the concerns being examined by the royal commission. It encouraged written submissions from any individual or organisation that could provide information about the quality and safety of services provided by aged care facilities in Australia or suggestions on how such services might be improved. It also prepared several research papers outlining findings and recommendations from previous investigations and reviews of the aged care system.
- **Consultation sessions** may be conducted to gain input, views and opinions from a range of individuals and organisations that have an interest in the area being investigated. For example, the Victorian Royal Commission into Family Violence (completed in March 2016) held 44 group consultation sessions attended by over 850 people. These included victims, perpetrators, prisoners, community and religious leaders, and representatives of disadvantaged groups such as Indigenous Australian women and children, women with disabilities and people from the LGBTIQA+ community.
- **Public hearings** may be held or the commission may sit in private to gain evidence relevant to the terms of reference. Royal commissions have extensive powers, to seize and gain evidence at their hearings. For example, they can summons or compel people to attend, give evidence under oath or affirmation and be subject to cross-examination. The Royal Commission into Institutional Responses to Child Sexual Abuse (completed in December 2017) held a number of formal public hearings to examine evidence about how different institutions (such as the Catholic Church, Scouts Australia, the YMCA, and the Salvation Army) responded to allegations of specific cases of child sex abuse within their organisations.

Once an investigation is complete and evidence and submissions have been considered, the royal commission will prepare a report on their findings and make recommendations on ways to address the matter under investigation. This might include recommendation for changes in government policy, administrative systems and changes in the law and legal system. The royal commission also has the power to recommend that an individual be prosecuted for unlawful conduct, although the Director of Public Prosecutions (DPP) is not required to act on these recommendations. The DPP may not do so in cases where, for example, an individual has been forced to give self-incriminating evidence in a manner that would not be admissible in a traditional court.

Did you know?

Australia's first ever royal commission was held in 1902, just one year after the Federation of Australia. It was held in response to a public outcry after 17 Australian soldiers died returning home from the Boer War in South Africa and its purpose was to investigate transport arrangements.

By 2020 there had been 135 Commonwealth Royal Commissions in Australia on a range of issues from Aboriginal deaths in police custody and drug trafficking to nuclear testing and secret intelligence services.

Did you know?

The *Royal Commission Act* was amended in 2013 to enable the Royal Commission into Institutional Responses to Child Sexual Abuse to hold private sessions. These types of sessions were unique to this particular royal commission so that commissioners could hear from survivors in private.

Examples of royal commissions

Over the years, there have been more than 135 royal commissions at the Commonwealth level on a range of issues of significant public interest or concern. Not including recent ones, some examples of Commonwealth royal commissions over the years include the following:

- Aboriginal Deaths in Custody (1987–91)
- Institutional Responses to Child Sexual Abuse (2016–17)
- Royal Commission into the Protection and Detention of Children in the Northern Territory (2016–17)
- Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (2017–19)

Not including more recent ones, some of the Victorian royal commissions over the years have included inquiries into:

- the collapse of the West Gate Bridge (1971–72)
- the Esso Longford Gas Plant accident (1998–99)
- the 'Black Saturday' Bushfires (2009–10), in which more than 100 people lost their lives and thousands of properties were destroyed in February 2009
- family violence (2015–16).

Recent royal commissions

Recent royal commissions include:

- the Commonwealth Royal Commission into Aged Care Quality and Safety (2018–20)
- the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2019–22)
- the Victorian Royal Commission into the Management of Police Informants (2018–20)
- the Victorian Royal Commission into Victoria's Mental Health System (2019–20).

Source 2 The public hearing into the nature, cause and impact of child sexual abuse was one of many public hearings held during the Commonwealth Royal Commission into Institutional Responses to Child Sexual Abuse. Evidence is being given at this hearing for the commission to consider when writing their report and recommendations.

ACTUAL SCENARIO

Royal Commission into the Management of Police Informants

Why was the Royal Commission called?

In December 2018 the then-Victorian Governor, Her Excellency the Honourable Linda Dessau, established the Royal Commission into the Management of Police Informants on the advice of the Victorian Government.

While the Royal Commission had specific terms of reference, it was established to generally investigate and report on the recruitment and management of **police informants** (also referred to as 'human sources') who are subject to legal obligations of confidentiality or privilege by Victoria Police.

police informant a person who secretly gives information to police about criminal offending, including information about the people involved in criminal activity, which may be used during the investigation and prosecution of a crime.

To understand why the Royal Commission was established, it is important to appreciate that legal practitioners have a *legal obligation of confidentiality and privilege* to their clients. This means that lawyers are not permitted to disclose or reveal information given to them by their client during discussions about their case, without the client's permission. This obligation of confidentiality and privilege is an essential feature of the criminal justice system because it ensures that the accused is able to speak openly with their lawyer, to gain assistance and advice, without fearing any information or evidence they provide will be used against them.

The Royal Commission was called after it became apparent in a High Court ruling that criminal defence barrister Ms Nicola Gobbo was used as a police informant for Victoria Police between January 1995 and January 2009. Ms Gobbo (referred to as 'Lawyer X' in the media, 'EF' in court cases and 'informant 3838' by Victoria police) represented a number of convicted criminals but was used as a police informant. This means Ms Gobbo secretly provided information about some of her clients, without their knowledge or permission, to Victoria Police, which was used to assist in the investigation and prosecution of cases.

As a result, the outcomes of several criminal cases during the designated period were most likely affected. For example, the information gained by Victoria Police possibly led to some offenders being found guilty on the basis of inadmissible evidence. Depending on the information gathered by the Royal Commission, some of these offenders would have grounds to appeal their conviction or sentence. This could lead to convictions being overturned and convicted offenders being released from prison with the added possibility of seeking compensation for a wrongful conviction. Such action would affect victims of crime and witnesses and lead to decreasing public confidence in the criminal justice system.

More specifically, the Royal Commission into the Management of Police Informants was set up to investigate and report on:

- the number of times and extent to which the conduct of criminal defence barrister Nicola Gobbo, in becoming a police informant for Victoria Police between January 1995 and January 2009, affected the outcome of criminal cases during that period
- the conduct of current and former police in disclosing their use of Ms Gobbo as a police informant
- effectiveness of the processes in place at Victoria Police governing how people who are subject to legal obligations of confidentiality or privilege (such as lawyers who become police informants) are recruited and managed
- whether the police should recruit and use people who are subject to legal privilege during investigations of criminal cases and if so, how the use of these people might be best managed.

The Royal Commission was also required to make recommendations for changes that could be implemented by Victoria Police and the Government to address any problems related to the use and management of people who are subject to legal obligations of confidentiality or privilege (such as lawyers who become police informants).

Who 'managed' the Royal Commission?

Upon the announcement of the Royal Commission, former Queensland Supreme Court of Appeal Justice Margaret McMurdo was appointed as Chair of the Commission and former

member of the Victorian Police and South Australian police commissioner, Malcolm Hyde, was appointed as a Commissioner to oversee the Royal Commission. Interestingly, however, Mr Hyde resigned from his position as commissioner within months of being appointed to ensure the independence and impartiality of the Royal Commission after it became known that Ms Gobbo was registered with Victoria Police in 1995, 10 years earlier than originally understood when the terms of reference were established, and at a time when Mr Hyde was working at Victoria Police.

How did the Royal Commission gather information?

With a budget of $28 million, the Royal Commission was given 18 months to investigations and prepare its final report, which was completed in July 2020. During this time the Commission called for submissions from interested parties by placing advertisements in major newspapers and prisons and via its website and other types of media.

Within six months of the Commission being established it received submissions from over 130 individuals and organisations (including members of Victoria Police, legal practitioners and government authorities). One problem facing the Commission was the delay in receiving the thousands of documents requested by the Commission from Victoria Police. When apologising for the delay Victoria Police commented it was required to sort through millions of emails and documents to gain the requested information.

In addition to accepting written submissions the Commission conducted weeks of public hearings, which were streamed live on its website, and approached over 130 individuals and organisation with relevant knowledge and experience dealing with management of police informants and the broader criminal justice system. For example, the Commission gained information from various Australian and international law enforcement agencies, police integrity and corruption authorities and bodies that oversee the regulation of legal practitioners.

Source 3 Faruk Orman, after having his murder conviction overturned and being released from prison based on information gained by the Royal Commission into the Management of Police Informants

What did the Royal Commission discover?

After months of investigations the Royal Commission discovered many faults in Victoria Police's police informant processes and the criminal justice system. Former and current Victoria Police commissioners were exposed as authorising the recruitment of Nicola Gobbo, despite knowing information provided by her would be in breach of her legal obligations of confidentiality and privilege. These breaches could lead to criminal charges being laid.

The information obtained by the Royal Commission also, most significantly, led to the review of over 20 cases in which convictions may have been obtained as a result of Ms Gobbo's role as a police informant. In fact, within six months of the Royal Commission being established, Faruk Orman, who was found guilty of murder and sentenced to 20 years' imprisonment with a minimum of 14 years, became the first person to have his conviction overturned by the Victorian Supreme Court of Appeal on the basis that the evidence presented at his trial was 'tainted' evidence due to Ms Gobbo, his defence lawyer, being a police informant (see Chapter 3 for more details).

The ability of royal commissions to influence law reform

As the highest form of inquiry into matters of public concern and importance, royal commissions can (while having limitations) be an effective way to influence law reform. Royal commissions usually generate significant public interest which places pressure on governments to respond to the findings and recommendations of royal commissions. The strengths and weaknesses of a royal commission as a way to influence law reform are examined in Source 4.

STRENGTHS OF ROYAL COMMISSIONS	WEAKNESSES OF ROYAL COMMISSIONS
Governments can use the findings and recommendations of royal commissions to justify the need to make changes in the law and government policy.	Royal commissions may lose credibility in situations where the government of the day, which determines the terms of reference, chooses not to include any areas that might be potentially politically damaging for them (i.e. may lead to a loss of voter support) or call the royal commission on a matter to win voter support.
Royal commissions can be important in raising community awareness and interest in a particular area of community concern. They can encourage individuals and groups to not only make submissions to the royal commission, but also undertake their own initiatives (including undertaking petitions and demonstrations and using the media) to influence a change in the law.	The extent to which a royal commission can influence law reform is mixed, and depends on matters such as the subject matter and whether there is bipartisan support for the reform.
Because the government asks royal commissions to investigate something important, the government may be more likely to act on the royal commission's report and recommendations.	Royal commissions can be used as a tool against political opponents. They can also be used to avoid getting on with difficult legislation.
Royal commissions can measure community views on areas of investigation by holding consultations and receiving public submissions.	There is no obligation on the part of the parliament to support or introduce law reform to adopt any of the recommendations made by royal commissions.
Royal commissions can investigate an area comprehensively so the government can initiate a new law that covers the area inquired about.	Royal commission investigations can be time-consuming and costly. They take, on average, two to four years to complete, and are famously expensive (one of the more expensive ones cost $60 million).
Royal commissions have the power to call anyone to appear before them to give evidence.	Royal commissions may lose credibility if too many witnesses are summoned to give evidence against their will and forced to answer questions that would not be permitted in a traditional courtroom. If the public loses confidence in the methods used by a royal commission to gain evidence and information, they may be less willing to support any recommendations made for changes to the law.
Royal commissions are independent of parliament, and more likely to remain objective and unbiased in making their recommendations.	The ability of the royal commission to influence law reform depends on the timing of its reporting and its terms of references. For example, if they are to report immediately after an election, its influence might be diminished.

Source 4 The strengths and weaknesses of royal commissions in influencing law reform

Source 5 There have been more than 135 royal commissions at the Commonwealth level.

15.8 CHECK YOUR LEARNING

Define and explain

1 What is a royal commission?

2 Explain why royal commissions are considered the most serious and important types of inquiry into matters of public interest or concern.

3 Describe two differences between a royal commission and a parliamentary committee.

Synthesise and apply

4 Prepare a chart that describes the main processes followed by a royal commission.

5 Read the scenario 'Royal Commission into the Management of Police Informants'.

b What is a police informant and what is the principle of 'legal obligation of confidentiality and privilege'?

c Briefly describe why the Victorian Government established a Royal Commission into the Management of Police Informants.

d Outline two ways the Royal Commission into the Management of Police Informants gained information from interested parties and the broader community.

e With reference to the Royal Commission into the Management of Police Informants, evaluate two strengths of royal commissions as a means of influencing law reform.

Analyse and evaluate

6 Go to the websites of the Victorian or Commonwealth Parliaments and conduct some research on one recent royal commission. Links are provided on your obook assess. Once you have found the royal commission page on your selected website, complete the following tasks:

a Select and investigate one royal commission that has been undertaken within the last four years and prepare a summary that:

- states the name and length of the royal commission and outlines the areas or matters of public interest that are under review
- identifies five individuals or organisations that made written submissions to the commission and five individuals or organisations that gave evidence at public hearings
- provides three recommendations for law reform suggested by the royal commission. Explain whether or not you agree with each recommendation.

7 Using one recent example, evaluate the ability of royal commissions to influence a change in the law.

Check your obook assess for these additional resources and more:

- **Student book questions** 15.8 Check your learning
- **Video tutorial** How to find recent examples online
- **Weblink** Victorian Parliament – Inquiries and Royal Commissions
- **Weblink** Commonwealth Parliament – Royal Commissions and Commissions of Inquiry

15.9 THE ABILITY OF PARLIAMENT AND THE COURTS TO RESPOND TO THE NEED FOR LAW REFORM

Despite having some limitations, both parliament and the courts have the ability to respond to the need for law reform. They also complement one another in their ability to change the law to meet the changing demands and needs of the community.

Study tip

Make sure you are able to evaluate the ability of both parliament and courts to respond to the need for law reform, which includes considering its strengths and weaknesses. The use of recent examples can help demonstrate strengths and weaknesses.

Source 1 The Australian Parliament and the High Court of Australia. They have complementary roles in law reform.

The ability of the parliament to respond to the need for law reform

There are many factors which influence the ability of the parliament and the courts to respond to law reform. For example, the ability of the Parliament to respond to the need for law reform can depend upon a number of factors including:

- the constitutional power of the parliament
- the level of community support for the proposed change in the law
- the ability of the parliament to assess the need and level of community support for law reform and measure the level of community
- the composition of the house of parliament
- financial constraints.

The constitutional power of the parliament

Parliament is the supreme law-making body, able to make new laws and change any existing laws within its constitutional power or authority. Parliament can therefore change the law in response to changing needs and demands. For example, it ensures that the law is kept up to date with and reflects changes in community views and values and ever-changing domestic, international, economic and political circumstances.

As supreme law-making bodies, both state and Commonwealth parliaments have the power to make and change any law within their own jurisdiction or area of law-making power. This notion that parliament is a supreme law-making body is also sometimes referred to as **parliamentary sovereignty**, and means that the parliaments have overriding authority when exercising the law-making powers given to them. Parliaments are not bound by previous Acts of Parliament and, providing they have the constitutional power, can change or amend existing legislation whenever the need arises.

parliamentary sovereignty the overriding power or authority of the parliament to make, change or repeal any law within its constitutional law-making power.

As you examined in Chapter 10, the areas in which the Commonwealth Parliament can make law are outlined in the Australian Constitution. If an area is not stated in the Constitution as belonging to the Commonwealth, it belongs solely to the state parliaments. In a circumstance where a parliament passes legislation to make or change an existing law in an area outside their constitutional law-making powers (referred to as being made *ultra vires*), the validity of the legislation may be challenged in the courts and declare invalid.

Furthermore, while courts can change the meaning of law made by the parliament, when required to interpret the meaning of legislation in order to resolve a case before them, the state and Commonwealth parliaments have the power to **abrogate** (or cancel) law made by courts (except for decisions made by the High Court in relation to constitutional matters). Parliaments can also pass legislation to reinforce (**codify**) court-made law.

abrogate
to cancel or abolish a court-made law by passing an Act of Parliament

codify (codification)
to collect all law on one topic together into a single code or statute

The level of community support for the proposed change in the law

The state and Commonwealth parliaments are elected by the people to make laws on their behalf. As such, the parliaments have an ability and responsibility to change the law so that it reflects the changing views, values and needs of the people. However, members of parliament may be reluctant to respond to demands to change the law in situations where there are conflicting community views on proposed law reform and they fear losing voter support. For example, parliaments can be slow or reluctant to introduce controversial laws, such as allowing people the right to make end-of-life decisions (euthanasia) or establishing medically supervised injection rooms to address problems caused by drug abuse, due to members fearing they may lose electoral support.

Members of parliament can even be reluctant to vote in favour of law reform in situations where opinion polls suggest the reform has the support of the majority of the community because they fear they may lose the electoral support of a vocal minority or powerful organisation. Members of parliament can also be subject to internal political pressure and unwilling to vote against their party's policy stance on a particular issue.

Similarly, because elections are held every three (federal) or four (state) years, members of parliament can be reluctant to support changes in the law in situations where the benefits of the law reform will not be seen by the voters for many years. For example, the benefits of changing the law to encourage more environmentally sustainable forms of energy or mineral exploration may take many years to be quantified and evident to voters, which may not necessarily help members of parliament win or retain their seats at a forthcoming election.

ACTUAL SCENARIO

Should the parliament ban gambling advertising?

Gambling is a problem in Australia. According to statistics released by the Queensland Government Statistician's Office in December 2019, more than $24 billion is spent on gambling in Australia each year. This includes approximately $12.5 billion spent on electronic gaming machines (also referred to as poker machines or 'pokies'), $5 billion spent at casinos, $3.5 billion on race betting and $1.2 billion on sports betting.

Evidence also suggests that, despite laws banning teenagers from gambling until 18 years of age, approximately 50 per cent of all young people have undertaken some form of gambling by the time they are 15 years old. This increases to approximately 75 per cent by the time young people are aged 19.

While many people undertake gambling as a form of entertainment, gambling is addictive and for those people who develop an addiction gambling can result in loss of income and savings, breakdowns in personal relationships, mental health issues, job loss and crime. For these reasons and more, many individuals, anti-gambling organisations, and community welfare groups including the chief advocate for the Alliance of Gambling Reform, Reverend Tim Costello, believe the Australia should have more laws restricting gambling. For example, Reverend Costello has called for the federal government to introduce law reform to ban all advertising of gambling in Australia. It is, however, highly unlikely that such legislation will be introduced for many reasons including the power of business involved in the gambling industry (for example, major supermarket chains Woolworths and Coles are the largest owners of electronic gambling machines in Australia), the amount of revenue governments gain from gambling taxes, and perhaps disinterest for such law reform from within the broader community.

While the federal government has introduced some laws to restrict the advertising of gambling, such as banning advertising on streaming services during the live coverage of sport (between 5 am and 8.30 pm) and banning advertising for betting products on television programs directed at children (i.e. rated 'G' or lower) at various times throughout the day, anti-gambling advocates claim that much more law reform needs to take place at both state and federal level.

Source 2 Anti-gambling campaigners believe parliaments should pass more legislation to restrict the advertising of gambling products and services in Australia.

The ability of the parliament to assess the need and level of community support for law reform and measure the level of community

Another reason why parliament is effectively able to respond to the need for law reform is because it is able to thoroughly investigate the need for a change in the law, and measure public support for any proposed change. It can also investigate and change whole areas of law.

For example, both the state and Commonwealth parliaments have the ability to initiate royal commissions and have an extensive committee system that allows for parliamentary committees to be set up to investigate issues and areas of potential law reform. These investigatory bodies are also able to obtain community input on the need for law reform through a variety of measures including public hearings, consultation meetings and written submissions in response to discussion or issues papers. Furthermore, as committees are usually made up of members of the government, opposition and the crossbench, their findings usually have bipartisan support (i.e. support of both major parties).

One problem with parliamentary inquiries and royal commissions, however, is that their investigations can be very time-consuming (for example, may take years) and parliament is not compelled to adopt any of their recommendations.

Parliaments also have the ability to obtain recommendations from independent law reform bodies (like the VLRC) to investigate, report and make recommendations for changes to the law and has the ability to listen to and be influenced by people who elected it, to determine whether or not law reform is necessary. For example, individuals and pressure groups can use petitions, demonstrations and commentary in traditional and social media to influence the parliament to implement a change in the law.

subordinate authorities secondary bodies that have been given the power by parliament to make rules and regulations by parliament

secondary legislation rules and regulations made by secondary authorities (e.g. local councils, government departments and statutory authorities) which are given the power to do so by the parliament. Also referred to as delegated legislation.

hostile upper house a situation in which the government does not hold a majority of seats in the upper house and relies on the support of the opposition or crossbench to have their bills passed

Parliaments can respond to the need for law reform relatively quickly, especially compared to the courts. There is no need to wait for a conflict to arise or an issue to be brought before them before initiating a change in the law, and they can change the law in anticipation of future needs. Parliaments can also delegate law-making powers to **subordinate authorities** (such as local councils, government departments, statutory authorities such as Australia Post and the Australian Broadcasting Corporation Board) to make rules and regulations on their behalf – referred to as **secondary legislation** (or delegated legislation).

Other than local councils, however, subordinate authorities are not elected bodies and as such may not have the desire to listen to the views of their community and implement law reforms that reflect the community needs as elected members of parliament do. Furthermore, subordinate authorities may not feel the compulsion to consult with members of their communities about the need to change the law or discuss and debate proposed changes to rules and regulations.

Finally, another factor that might limit the ability of a parliament to assess, and therefore respond to, the need for law reform is that the need for change itself can occur so rapidly that it can be difficult for the government of the day to keep pace. For example, scientific, technological and medical advancements take place at such a rapid pace that governments cannot investigate the need for change in the law and gather community opinions quickly enough to keep up with the change.

Subordinate authorities, such as local councils, are often more accessible to the general public than parliament and are more able to accurately measure the need for law reform in local communities and on confined issues. They may also have more localised and specialised expertise in specific areas and can more effectively make and change the laws in their particular field.

Source 3 A wide range of subordinate authorities make delegated legislation on behalf of parliament.

The composition of the house of parliament

minority government a government that does not have a majority in the lower house and relies on the support of members of the crossbench to get bills passed

As mentioned in Chapter 13, the composition of the houses of parliament can also affect the ability of the parliament to respond to the need for law reform. For example, it can be difficult for the government of the day to implement law reform as promised during their election campaign if they do not have a majority of support in the upper house of parliament (i.e. if the **upper house** is **hostile**) because the opposition and crossbench has the power to block their proposed law changes or force amendments to original proposals. Similarly, a **minority government** (a government without a majority in the lower house) may also have difficulty implementing their law reform agenda and be forced to amend their policies in an attempt to gain the vital support of independent members and minor parties.

The process of changing a law through parliament is very time-consuming because a proposal for change must pass through several stages of discussion and debate in both houses of parliament and parliamentary sitting days are limited. For example, in 2017 the House of Representatives and the Senate generally only sat for 64 and 56 days respectively.

The following scenario explores some of the difficulties a minority government may face in implementing their law reform agenda.

The Gillard Government (2010–2013)

ACTUAL

SCENARIO

After the federal election in 2010, and for the first time for 70 years, neither major political party won a clear majority in the House of Representatives and was able to form government in their own right. In fact, both the Australian Labor Party (ALP) and the Liberal–National Coalition won 72 of the 150 seats, with the remaining six seats held by four independent members of parliament, one member of the Australian Greens and a Western Australian National party member (who generally supports the Liberal–National Coalition). The ALP was able to form a minority government with the promised support of the one member of the Australian Greens and three of the four independent members – which gave the ALP 76 votes in the 150-seat lower house – enabling them to get their policy agenda and bills passed through the lower house.

The minority ALP government, however, faced many problems during its three-year term including the fact that it was forced on various occasions to change its policies and election promises to maintain the support of the lower house crossbench and also have their bills passed by a hostile Senate. This made it difficult, on occasion, for the government to fully respond as it might have desired to address the need for law reform. Most famously, the Gillard Government was forced to break its election promise not to introduce a carbon tax, although other major reforms such as the introduction of plain packaging for cigarettes and paid parental leave were successfully introduced during the government's term in office.

Source 4 Australia's first female prime minister, Julia Gillard, was the leader of a federal minority government between 2010 and 2013.

Financial constraints

The ability of parliament to respond to the need for law reform may also be diminished by financial or budget restrictions. For example, implementing law reform to improve the conditions in youth and asylum seeker detention centres or provide more support for people affected by or at risk of family violence can be very costly and, as with all spending, involve an opportunity cost (i.e. spending money in one area surrenders the ability to spend it in another area).

The government may also be reluctant to support a change in the law that might lead to a decrease in government revenue. For example, implementing laws to limit gambling may lead to a loss of government income earned from gambling taxes. Likewise, lowering the rate of the goods and services tax (currently set at 10 per cent) or increasing the range of items that are exempt from GST (such as removing the GST from 'essential items' like toilet paper and breastfeeding pumps) will reduce government income.

A summary of the factors that can affect the ability of parliament to respond to the need for law reform are set out in Source 5 on the next page.

FACTORS THAT ASSIST PARLIAMENT	FACTORS THAT LIMIT PARLIAMENT
Parliament is an elected supreme law-making body with the power to make and change any law within their constitutional power.	Any law made outside the parliament's constitutional law-making power may be challenged in and declared invalid by the courts.
Parliament has the power to abrogate (cancel) law made by courts (except for decisions made by the High Court in relation to constitutional matters). It can also pass legislation to codify court-made law.	Parliaments may abrogate an independent and valid common law to gain political advantage and voter popularity.
Parliament can make and change laws as the need arises to ensure the law reflects the changing needs, views and values of society.	Members of parliament may be reluctant to legislate in areas where there are conflicting community views, or the benefits will not be seen for many years, through fear of losing voter support.
Parliament can assess the need and community support for law reform by establishing parliamentary committees and royal commissions to investigate the need to change the law. It can also use independent organisations like the VLRC to investigate the need for law reform.	Investigating the need for law reform can be costly and time-consuming.
Parliament can respond quickly to the need for law reform compared to the courts because they do not have to wait for a conflict to arise or an issue to be brought before them before initiating law reform. Parliament can change the law in anticipation of future needs.	The composition of the houses of parliament can limit the ability of the government to implement law reform. For example, legislative reform can be obstructed if the government does not have a majority in the upper house or a minority government does not have the support of the crossbench. The parliamentary process to change the law can be very time-consuming (given a proposal for change must pass through several stages of discussion and debate in both houses of parliament and parliamentary sitting days are limited).
	The ability of parliament to respond to the need for law reform may also be diminished by financial or budget restrictions.

Source 5 Factors that affect the ability of the parliament to respond to the need for law reform

The ability of the courts to respond to the need for law reform

While their role in law-making is somewhat limited (in comparison to parliament), courts can still play an important role in influencing changes in the law. The ability of the court to respond to the need for law reform depends upon a number of factors including the:

- jurisdiction and law-making authority of the courts
- independence of the courts
- willingness of the courts to adopt an activist approach.

The jurisdiction and law-making authority of the courts

While the main role of the courts is to apply existing law and resolve disputes, courts do have the ability to respond to the need for law reform, by creating law where none exists and through statutory interpretation. For example, when the courts are called to resolve a dispute in a case in which no law exists, depending on the superiority of the court, a **precedent** may be set and law created. Similarly, as seen in Chapter 14, courts can expand or limit the meaning of the law when required to interpret legislation in order to resolve the case before them.

precedent
a legal case (or ruling) that establishes a principle or rule (i.e. a court decision that is followed by lower courts in the same hierarchy in cases where the material facts are similar)

The courts can respond to the need for law reform by declaring legislation invalid if it has been made *ultra vires*, or beyond the law-making powers of the parliament. However, the courts must wait for the relevant legislation to be challenged in the courts.

For example, in resolving a constitutional dispute, the High Court could determine that the Commonwealth Parliament has legislated outside its specific law-making powers and declare such legislation invalid. It can similarly declare government policy to be unconstitutional if it is inconsistent with existing legislation. This occurred in the case known as the *Malaysian Solution* case where the High Court ruled that an executive (government) decision to send asylum seekers to Malaysia was invalid because it was inconsistent with the *Migration Act*.

The courts are, however, limited in their ability to respond to the need for law reform because they can only change the law when a case is brought before them and in relation to the issues involved in that case. This is reliant on individuals and organisations being willing to undertake costly, time-consuming and often stressful court action and pursue the appeals process with no guarantee of a successful outcome.

An unsuccessful court challenge may, however, gain significant media coverage and help increase awareness of the possible need to change a law.

Similarly, a court ruling which generates controversy within the community, or highlights a problem that requires parliament's intervention, may influence a change in the law. This occurred in a case that involved what ultimately became known as 'Brodie's Law'.

ACTUAL SCENARIO

Brodie's Law

In 2011 the *Crimes Amendment (Bullying) Act 2011* (Vic) was passed by the Victorian Parliament in response to a court case. The Act became known as 'Brodie's Law' after the young waitress who tragically ended her life after being subjected to 'persistent and vicious' workplace bullying at Cafe Vamp in Hawthorn, Victoria.

Brodie's parents commenced a campaign to influence a change in the law after the five defendants in this case pleaded guilty to workplace offences under the *Occupational Health and Safety Act 2004* (Vic) and were fined a total of $335 000 rather than going to prison. The perceived leniency of the sentence caused great concern within the community and ultimately the Victorian Parliament responded by changing the *Crimes Act* to allow a maximum of 10 years' imprisonment for bullying.

Source 6 Damian and Rae Panlock on the steps of parliament after the passing of Brodie's Law. Courts may highlight problems that inspire parliament to change the law.

Study tip

When answering a question make sure you address the task words. For example, when you are asked to evaluate a strength, principle or concept you are required to provide more than an explanation. An evaluation requires a consideration of both strengths and weaknesses. You should also provide a concluding and meaningful statement or judgment about the overall benefit or worth of what is being evaluated.

Courts are also restricted in their ability to respond to the need for law reform because, with the exception of High Court rulings in constitutional disputes, parliament can always pass legislation to abrogate (cancel) a court decision which creates a new law. Furthermore, judges in superior courts may be reluctant to change the law (by overruling and reversing existing precedents or broadly interpreting legislation), preferring to leave the law-making to parliament. For example, as mentioned in Chapter 14, in the *Trigwell* case (*State Government Insurance Commission v Trigwell* (1978) 142 CLR 617) the High Court preferred not to overrule an earlier precedent set by the Supreme Court of Appeal to make landowners responsible for their livestock (animals) that stray onto highways causing road accidents, stating the law should be changed by the parliament.

The independence of the courts

Courts can also effectively respond to the need for law reform because judges are politically independent lawmakers and can make decisions to without fear of losing voter support. In contrast to members of parliament, judges are not elected and do not have to be concerned about making decisions that may not be politically popular. This means that judges may be more willing to make a 'controversial' ruling that changes the law than members of parliament who may fear electoral backlash (the loss of voter support). For example, the High Court's decision in the *Mabo* case (*Mabo v Queensland (No 2)* (1992) 175 CLR 1) recognising limited land rights for Indigenous Australians established a new area of law that had not previously been addressed by the federal parliament.

However, judges still need to wait for a case to come before them to be able to make a ruling. Even if a case is brought before them, judges are restrained by considering the legal issues in dispute.

The willingness of the courts to adopt an activist approach

The ability of the courts to respond to the need for law reform also depends on the willingness of judges to adopt a more activist rather than conservative approach when interpreting the law. For example, as in Chapter 14, judges who adopt an activist approach are more willing to consider a range of social and political factors, such as the views and values of the community and the need to protect the rights of the people, when interpreting Acts of Parliament and making decisions. In contrast, judges who adopt a more conservative approach generally show restraint or caution when making decisions and rulings that could lead to significant changes in the law.

A summary of the factors that can affect the ability of courts to respond to the need for law reform are set out in Source 7 below.

FACTORS THAT ASSIST THE COURTS	FACTORS THAT LIMIT THE COURTS
Courts can respond to the need for law reform by making law in situations where none exists and giving meaning to unclear legislation so it can be applied to resolve the case at hand.	Judges in superior courts may be reluctant to change the law (by overruling and reversing existing precedents or broadly interpreting legislation), preferring to leave the law-making to parliament.
Decisions and comments made by judges can indirectly influence the parliament to changing the law (e.g. *Mabo* case) by enshrining court decisions.	Judges in superior courts can only make law (including interpret legislation) when a case is brought before them and in relation to the issues involved in that case. This is reliant on parties being willing and financially able to pursue a case.
Judges are politically independent and can make decisions to create and change the law without fearing the loss of voter support.	Judges are not elected by the people and may make decisions that do not reflect the views and values of the community.
Judges can declare legislation invalid if it was made *ultra vires*.	Judges must wait for a case to be challenged in the courts before making a decision as to whether legislation has been made *ultra vires*.
Courts can make a ruling that highlights a problem and in turn raise community awareness for the need for law change.	Parliament may abrogate (or cancel) common law (other than cases involving the interpretation of the Constitution).
Judges who adopt an activist approach are often willing to consider a range of social and political factors, such as the views and values of the community and the need to protect the rights of the people, when interpreting Acts of Parliament and making decisions.	Judges may adopt a more conservative approach and show restraint or caution when making decisions and rulings that could lead to significant changes in the law.

Source 7 Factors assisting and limiting the ability of the courts to respond to the need for law reform

15.9 CHECK YOUR LEARNING

Define and explain

1 Explain how being an elected and representative body can assist the ability of the parliament to respond to the need for law reform.
2 Explain how the composition of parliament can limit its ability to respond to the need for law reform.
3 Describe three ways the courts can respond to the need for law reform.
4 Explain two limitations on the ability of the courts to respond to the community's need and desire for law change.

Synthesise and apply

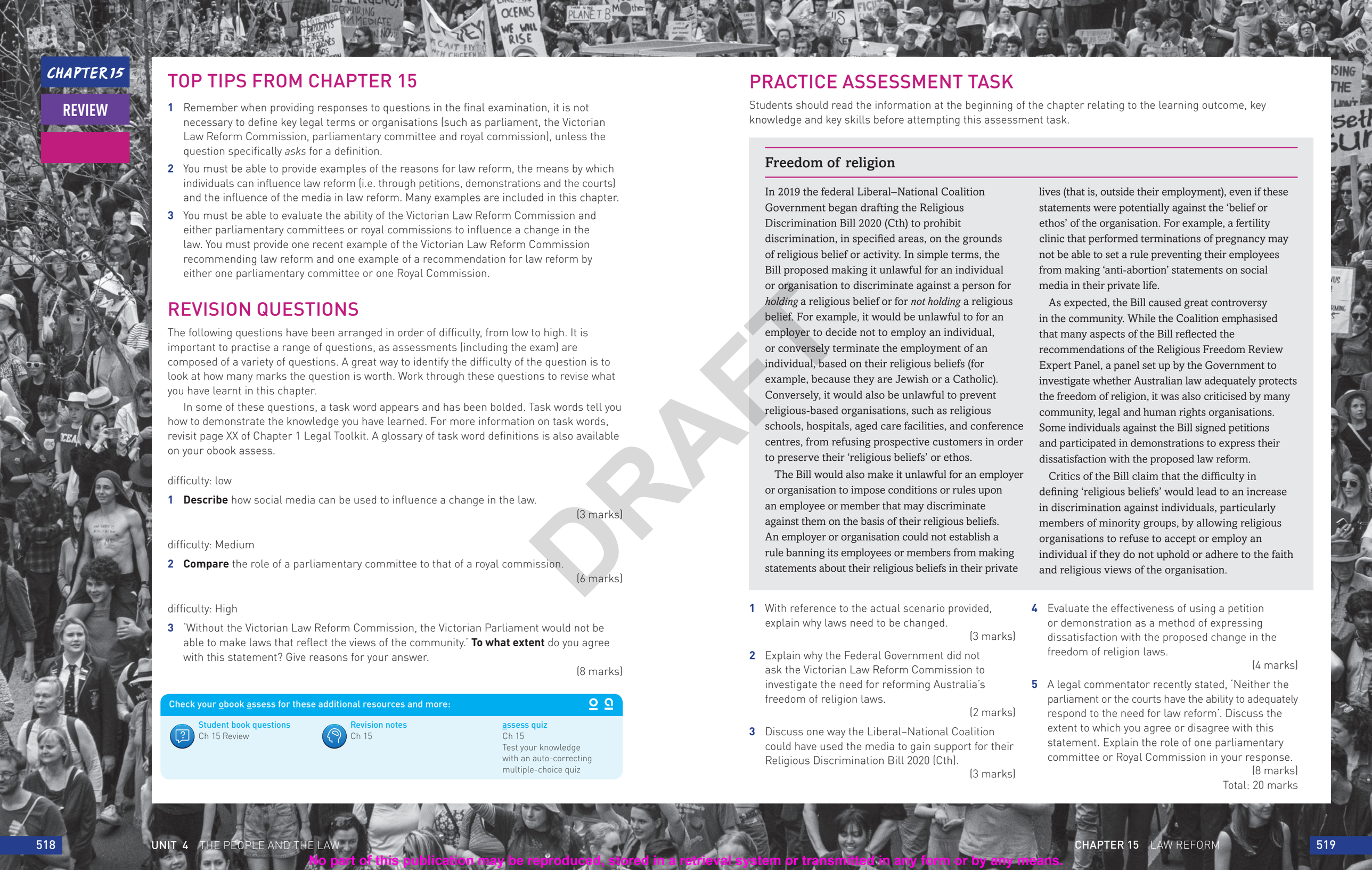
5 In what ways does parliament have access to expert information and public opinion? How can this assist in the law-making process?
6 Read the actual scenario 'Should the parliament ban gambling advertising?'.
   a Suggest reasons why some anti-gambling campaigners want the federal parliament to pass legislation to ban advertising in gambling in Australia.
   b Suggest reasons why the federal parliament may be reluctant to pass legislation to ban gambling advertising in Australia.
   c Do you think the federal parliament should pass more laws to restrict gambling in Australia? Justify your view.
7 Prepare a table that summarises the main ways in which both the parliament and the courts can respond to the need for law reform and their limitations.

Analyse and evaluate

8 Discuss how delegating its law-making powers can enable parliament to more effectively respond to the need for law reform.
9 Evaluate the extent to which parliament is able to respond to the need to change the law. Use two examples to illustrate your response.
10 To what extent are judges able to respond to the community's desire for law reform? Discuss.

Check your obook assess for these additional resources and more:

- Student book questions: 15.9 Check your learning
- Video tutorial: Developing good exam technique
- Weblink: Malaysia Solution
- Weblink: Brodie's Law



CHAPTER 15

REVIEW

TOP TIPS FROM CHAPTER 15

1 Remember when providing responses to questions in the final examination, it is not necessary to define key legal terms or organisations (such as parliament, the Victorian Law Reform Commission, parliamentary committee and royal commission), unless the question specifically *asks* for a definition.

2 You must be able to provide examples of the reasons for law reform, the means by which individuals can influence law reform (i.e. through petitions, demonstrations and the courts) and the influence of the media in law reform. Many examples are included in this chapter.

3 You must be able to evaluate the ability of the Victorian Law Reform Commission and either parliamentary committees or royal commissions to influence a change in the law. You must provide one recent example of the Victorian Law Reform Commission recommending law reform and one example of a recommendation for law reform by either one parliamentary committee or one Royal Commission.

REVISION QUESTIONS

The following questions have been arranged in order of difficulty, from low to high. It is important to practise a range of questions, as assessments (including the exam) are composed of a variety of questions. A great way to identify the difficulty of the question is to look at how many marks the question is worth. Work through these questions to revise what you have learnt in this chapter.

In some of these questions, a task word appears and has been bolded. Task words tell you how to demonstrate the knowledge you have learned. For more information on task words, revisit page XX of Chapter 1 Legal Toolkit. A glossary of task word definitions is also available on your obook assess.

difficulty: low

1 **Describe** how social media can be used to influence a change in the law.

(3 marks)

difficulty: Medium

2 **Compare** the role of a parliamentary committee to that of a royal commission.

(6 marks)

difficulty: High

3 'Without the Victorian Law Reform Commission, the Victorian Parliament would not be able to make laws that reflect the views of the community.' **To what extent** do you agree with this statement? Give reasons for your answer.

(8 marks)

Check your obook assess for these additional resources and more:

- **Student book questions** — Ch 15 Review
- **Revision notes** — Ch 15
- **assess quiz** — Ch 15 — Test your knowledge with an auto-correcting multiple-choice quiz

PRACTICE ASSESSMENT TASK

Students should read the information at the beginning of the chapter relating to the learning outcome, key knowledge and key skills before attempting this assessment task.

Freedom of religion

In 2019 the federal Liberal–National Coalition Government began drafting the Religious Discrimination Bill 2020 (Cth) to prohibit discrimination, in specified areas, on the grounds of religious belief or activity. In simple terms, the Bill proposed making it unlawful for an individual or organisation to discriminate against a person for *holding* a religious belief or for *not holding* a religious belief. For example, it would be unlawful to for an employer to decide not to employ an individual, or conversely terminate the employment of an individual, based on their religious beliefs (for example, because they are Jewish or a Catholic). Conversely, it would also be unlawful to prevent religious-based organisations, such as religious schools, hospitals, aged care facilities, and conference centres, from refusing prospective customers in order to preserve their 'religious beliefs' or ethos.

The Bill would also make it unlawful for an employer or organisation to impose conditions or rules upon an employee or member that may discriminate against them on the basis of their religious beliefs. An employer or organisation could not establish a rule banning its employees or members from making statements about their religious beliefs in their private lives (that is, outside their employment), even if these statements were potentially against the 'belief or ethos' of the organisation. For example, a fertility clinic that performed terminations of pregnancy may not be able to set a rule preventing their employees from making 'anti-abortion' statements on social media in their private life.

As expected, the Bill caused great controversy in the community. While the Coalition emphasised that many aspects of the Bill reflected the recommendations of the Religious Freedom Review Expert Panel, a panel set up by the Government to investigate whether Australian law adequately protects the freedom of religion, it was also criticised by many community, legal and human rights organisations. Some individuals against the Bill signed petitions and participated in demonstrations to express their dissatisfaction with the proposed law reform.

Critics of the Bill claim that the difficulty in defining 'religious beliefs' would lead to an increase in discrimination against individuals, particularly members of minority groups, by allowing religious organisations to refuse to accept or employ an individual if they do not uphold or adhere to the faith and religious views of the organisation.

1 With reference to the actual scenario provided, explain why laws need to be changed.

(3 marks)

2 Explain why the Federal Government did not ask the Victorian Law Reform Commission to investigate the need for reforming Australia's freedom of religion laws.

(2 marks)

3 Discuss one way the Liberal–National Coalition could have used the media to gain support for their Religious Discrimination Bill 2020 (Cth).

(3 marks)

4 Evaluate the effectiveness of using a petition or demonstration as a method of expressing dissatisfaction with the proposed change in the freedom of religion laws.

(4 marks)

5 A legal commentator recently stated, 'Neither the parliament or the courts have the ability to adequately respond to the need for law reform'. Discuss the extent to which you agree or disagree with this statement. Explain the role of one parliamentary committee or Royal Commission in your response.

(8 marks)

Total: 20 marks

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