UNIT 4 – AOS 1 & 2 LEGAL STUDIES
SUMMARY NOTES FOR THE VCAA EXAMS

WRITTEN BY A STUDENT WHO OBTAINED A NEAR PERFECT STUDY SCORE

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UNIT 4: AREA OF STUDY 1

1. ROLES OF CROWN AND HOUSES OF PARLIAMENT (CTH/STATE) IN LAW-MAKING

ROLES OF THE CROWN

- Providing royal assent
    - Involves the Queen's representative signing the bill on the Queen's behalf, signifying her approval. This is required for any bill to become law.
- Acting as the head of the executive government
    - The Crown will exercise the executive power of government by performing a number of roles on the advice of the prime minister or premier of the day and the executive council (comprised of the leader of government, the Queens' representatives, plus all ministers and parliamentary secretaries).
    - Such roles may include appointing judges to courts, and designating sitting times and dates for parliament.
- Exercising reserve powers
    - As per the Constitution, the executive (Governor-General, due to Constitution protecting federal positions) has a number of reserve powers — the power to dissolve the House of Representatives, the power to dissolve parliament on the occasion of a deadlock, the power to withhold assent to bills and the power to appoint ministers.

ROLE OF THE LOWER HOUSE

- Initiating most new bills
    - The Government is responsible for developing the major policy direction for a state or country, and therefore for making almost all new law. The prime minister and most Government ministers will sit in the lower house, making this house the most appropriate to introduce new laws.
    - At both the federal and state levels, approximately 10% of bills are initiated in the lower house.
- Forming the government
    - The political party or coalition of parties with the support of the majority of seats in the lower house forms the Government. The governing party is then responsible for determining the main policy direction for the state or country.
- Acting as the 'people's house'
    - The lower houses of parliaments are often called the 'people's houses' because they are usually the most democratically elected — due to the premise of of 'one vote one value' — thus their role is to reflect the views of the people (of each electorate).

- Upper houses often have a different voting system that doesn't give every vote the same weight and where representing the people in the electorate isn't the primary concern.

ROLE OF THE UPPER HOUSE

- Acting as a house of review
  - Since most bills are initiated in the lower house, the upper house spends more time debating, researching and amending these bills.
  - Because the upper house is usually not controlled by the government (this has only occurred 3 times in Commonwealth Parliament), it can be a powerful check on government power, and can be significant hurdle in the way of poorly-poorly-considered or unfair legislation being created — particularly if minor parties or independents hold the deciding votes.
- Representing regional interests
  - Electing equal numbers of members from geographical regions also allows regional interests to be more effectively represented, because representation is not dominated on the basis of population. This allows smaller states to protect themselves against the power of the more populous states.
  - The upper house are elected using proportional voting systems, which allow a number of people to be elected from the same region or state — this proportional voting system means that each candidate needs relatively fewer votes to win one of the seats, and they do not need to be the most popular candidate in the region — allowing them to campaign without the need to gain the support of the majority or for a party platform.

2. DIVISION OF CONSTITUTIONAL LAW-MAKING POWERS

SPECIFIC POWERS (NOT IN STUDY DESIGN)

- Specific powers are all the law-making powers given to the Commonwealth Parliament in the Australian Constitution. Most of these are listed in s51. It is the umbrella category under which both exclusive powers and concurrent powers exist.

EXCLUSIVE POWERS

- Specific law-making powers allotted solely to the Commonwealth — the states cannot make laws in these areas. Exclusive powers may be made exclusive by the wording of the section itself, or may be constructed by the reading of two or more sections together, or may be interpreted by the High Court to be exclusive.
- Examples of exclusive powers are customs, defense and currency (coining money).

CONCURRENT POWERS

- Specific law-making powers shared by the Commonwealth and the States. These are matters upon which state and Commonwealth can both make law, because they were granted to the Commonwealth at the time of federation, but were not taken from the states.

- Examples of concurrent powers are marriage, trade and taxation.

RESIDUAL POWERS

- Law-making powers which only the states can legislate upon. These are law-making powers which were kept solely with the states at federation — and are not listed in the Constitution or given to the Commonwealth.

- Examples of residual powers include primary and secondary education and public transport.

3. THE SIGNIFICANCE OF S109 OF THE CONSTITUTION

SECTION 109 OF THE AUSTRALIAN CONSTITUTION

- Known as the 'inconsistency rule', s109 can be applied in situations where the Commonwealth and one or more states have used their concurrent powers to enact legislation that is in conflict on the same topic. If there is an inconsistency between a Commonwealth and state law, the Commonwealth law must prevail according to this section.

- The sections of the state law that are in conflict with the federal law will be considered invalid to the extent of the conflict.

THE SIGNIFICANCE OF S109

- When state parliaments are making laws in areas of concurrent power, they will recognise that their powers are constrained where the Commonwealth has already made law. This section is also significant in that it provides a common approach for all conflicts of this type to be handled by the High Court.

- Nonetheless, if the Commonwealth law is abrogated or changed, the State law will continue to be in effect. Also, the law needs to be challenged in the High Court before it is declared to be invalid/inconsistent.

CROOME V. TASMANIA (1997) HCA: THE OPERATION OF S109 AND A CHANGE IN THE CONSTITUTIONAL DIVISION OF LAW-MAKING POWERS

- In 1995, Rodney Croome, a gay activist, lodged a claim with the High Court, asking it to declare parts of section 122/123 of the *Tasmanian Criminal Code* invalid — due to it stating that it was a crime to partake in *"unnatural sexual intercourse"* (gay sex). This was stated to be inconsistent with with section 4 of the *Commonwealth Human Rights (Sexual Conduct) Act 1994* (Cth.) which stated that sexual conduct involving only consenting adults acting in private is not to be subject to any "arbitrary interference with privacy" within the meaning of the International Covenant on Civil and Political Rights (ICCPR) (which was within its purview due to the external affairs power).

- The High Court agreed that there was an inconsistency and therefore applied s109 invalidate s122 and s123 of the Code.
- The significance is that the residual power of discrimination regarding sexual activities based on sexuality became concurrent, and the powers of the Commonwealth increased at the expense of the States.

4. MEANS BY WHICH THE CONSTITUTION ACTS AS A CHECK ON PARLIAMENT IN LAW-MAKING

4.1 THE BICAMERAL STRUCTURE OF THE COMMONWEALTH PARLIAMENT

STRENGTHS

- The role of the upper house in scrutinising legislation can limit the impact the Government-dominated lower house can have, but also through an extra layer scrutiny and inquiry performed by the upper house, law-making abilities are enhanced
- A deadlock between the houses (hostile Senate, for example) can check or limit the powers of government and by extension, the legislative powers of parliament
- If there is a slim majority (e.g. hung parliament and minority government) in the lower house then considerable debate can occur for a bill to pass.
    - In the case of the 2010 Gillard minority government, the Labor Party had to constantly negotiate their bills with the Greens to receive a majority vote in the lower house.

WEAKNESSES

- If the government holds a majority in the Senate then essentially no scrutiny occurs and the government has totalitarian power to pass any bill.
- Politically antagonistic parties which control the balance of power or have a majority in the upper house can block bills for ‘political point-scoring’, which is very counter-productive as it stagnates parliament and does not represent the wants of the people.
    - In the case of the 1972 Whitlam government, a conservative upper house alliance devoted purely to bringing down Whitlam’s agenda rejected 93 pieces of government legislation — more than had been rejected in the history of the Senate since federation.
- If there is a hostile senate wherein the governing party must consistently negotiate with minor parties and independents, many sitting days are wasted on meeting the needs of the minority, rather than the majority (which contravenes the doctrine of representative government).

4.2 THE SEPARATION OF POWERS

SEPARATION OF POWERS

- A constitutionally established doctrine (at the federal level) which ensures that the legislative, executive and judicial powers of our legal system remain separate. This ensures that no one branch has the totalitarian power to make, interpret or apply the law.

- The executive powers are established in s61 of the Constitution. They are stated to be rest with the Queen, exercisable by the Queen's representative on her behalf. In practice, this power rests with the cabinet and government departments. Such powers include the power to administer the law and to manage the business of government.

- The legislative powers are established in s1 of the Constitution. This is the power to make laws, vested in the Commonwealth Parliament.

- The judicial powers are established in s71 of the Constitution, to be vested predominantly in the High Court of Australia or any other courts which the parliament allocates federal jurisdiction to.

STRENGTHS

- Allows for the scrutiny of the executive by the legislature.

  - Not only is this done through the law-making process (and bill debate processes), but also question time, where members of the government and ministers can be questioned by other parliamentary members (particularly opposition) regarding issues such as flaws in government spending policy. As such, parliament as a whole has the ability to ensure the effective operation of the executive in their bill proposals and administration.

  - Includes how Sussan Ley was questioned by ALP during question time about why she purchased an investment property on the Gold Coast on what was almost an expense of $4000 to the taxpayer due to travel incurrences.

- The independence of the judiciary means that the High Court can determine whether or not the parliaments are acting outside their parliamentary allotted law-making powers, according to s76.

- The separation of powers is a constitutionally enshrined doctrine, meaning that all three branches must technically remain separate, and that this doctrine can only be modified by referenda

WEAKNESSES

- In some cases, such as a rubber-stamping Senate or an antagonistic hostile Senate, the ability of parliament to scrutinise the operation of the executive is abused and therefore compromised.

- By the nature of the doctrine courts are implicitly asked to not second guess the decisions of parliament, only being allowed to declare laws *ultra vires* rather than ruling on their efficacy.

- The Constitution only enshrines the separation of powers at a federal level — therefore a separation at the state level is less binding, even though there is some legislation to support it.

4.3 THE EXPRESS PROTECTION OF RIGHTS

EXPRESS RIGHTS

- Rights that are explicitly stated in the Australian Constitution. Express rights are entrenched, meaning they can only be changed at a referendum — by comparison, statutory rights can be abolished relatively easily by parliament.

- The Australian Constitution contains five express rights. An example is the right to trial by jury for indictable Commonwealth offences (s80), supported by *Brown v. The Queen* (1986).

    - This is restricted, in some ways — one has to plead not guilty to have a jury trial. Also, sometimes the prosecution may argue that some offences (such as terrorism offences) are summary to avoid a jury trial.

STRENGTHS

- Express rights are entrenched in the Constitution, and cannot be changed without a referendum. This includes the fact that rights cannot be legislated away by any of the parliaments.

- Express rights are a direct imposition on all the parliaments — they restrict parliaments from making law in a certain area, thus acting as an inherent check.

    - For example, s116 disallows parliament from establishing a state religion.

- Express rights are fully enforceable in that one can challenge a violation of a express right by any of the parliaments to the High Court, which then has the ability to nullify any legislation it believes is inappropriate.

WEAKNESSES

- Because express rights are enshrined in the wording of the Constitution, and a successful referendum is so rare, it is unlikely that these rights will keep up with the changing needs of society due to their rigidity.

- Some of the express rights are limited in scope. Not only are most of the express rights practical rights and not human rights, such as freedom of association/speech, but some do not encapsulate state laws. For example, s80 only guarantees the right to a trial by jury for Commonwealth indictable offences, meaning that a state could legislate away the right to trial by jury for state indictable offences, which are the majority of criminal offences committed.

- The nature of a court action, especially one where one has been adversely affected and must take the claim to the High Court, requires a great deal of cost and time resources, which are very out of reach for the layperson.

4.4 THE ROLE OF THE HIGH COURT IN INTERPRETING THE CONSTITUTION

THE ROLES OF THE HIGH COURT WITH REGARD TO THE CONSTITUTION

- The High Court is established under s71, and is given power under s76 to hear disputes arising under the Constitution or its interpretation. Its roles are:
- To act as a guardian of the constitution, keeping it up to date with modern values.
- To act as a check against any abuse of power. If the High Court declares legislation invalid, the Commonwealth Parliament's options are either to amend the legislation to remove unconstitutional provisions from it, or to attempt to change the Constitution by means of a referendum.
- To give meaning to words, thereby creating implied rights or to shift the division of law-making powers, amongst other things.

STRENGTHS

- According to the separation of powers, the High Court remains independent of parliamentary influence, meaning that they make decisions and interpretations based on the letter of the law, rather than political pressures.
- Constitutional interpretation gives the document a degree of flexibility that it would never typically have. The document is short and finite, and cannot possibly expressly encapsulate all important rights. Likewise, it is unfeasible to have a referendum every time a right needs to be changed.
    - Through interpretation, however, the High Court can create implied rights. This was seen in *Australian Capital Television Pty Ltd v. The Commonwealth* (1992) HCA, where the court interpreted s7 and s24 to include a principle of representative government — that both houses "shall be composed of members directly chosen by the people", and therefore that individuals must be able to communicate freely about political issues in order to be fully informed about their vote during an election.
- Constitutional interpretations cannot be overridden by parliament and are fully binding on all the courts

WEAKNESSES

- Since judges from courts are not elected, rights protection through constitutional interpretation can be considered to be undemocratic.
- The HCA can only interpret law if a case is brought before them.
- The HCA can only interpret and change the meaning of words or phrases, rather than explicitly change the wording of any sections

4.5 THE REQUIREMENT FOR A DOUBLE MAJORITY IN A REFERENDUM

REFERENDA

- A referendum is a compulsory ‘yes or no’ vote on a proposed change to the wording of the Constitution, including everyone on the federal electoral role — the process of this is outlined in s128.
- Part of this process requires a ‘double majority’ of votes — a majority of voters nationwide in favour, and also a majority of voters in a majority of states (at least four). Only 8 out of 44 referenda have succeeded since federation — of these, only two have had a direct impact on the division of law-making powers.

STRENGTHS

- Places a very heavy obstruction on Commonwealth Parliament from arbitrarily exercising its power and giving itself greater law-making powers in the Constitution, or to remove law-making restrictions.
- Ultimately ensures that people, rather than parliament, are given the final say on what changes ought to be made to the wording of the Constitution — and the double majority barrier enhances this due to the level to which parliament must convince the people of their proposed change.
- The second part of the double majority requirement allows smaller states equal voting power, meaning that a constitutional change should not give preference to one state over another.
    - In the 1977 referendum on simultaneous elections, while there was a 62% majority nationwide, only a majority vote was casted in three of the six states — thus the change did not pass

WEAKNESSES

- The overly harsh restriction of a double majority can make constitutional reform, even when it is legitimately needed, difficult. Thus the constitution and its rights protections mechanisms are unlikely to keep up with a changing society.

- A double majority seems undemocratic due to the fact that some states such as Tasmania which are approximately ten times smaller than larger ones get a similar voting power for a proposal.

- In the cases where the constitutional division of law-making powers is changed, the people cannot specifically change how the Commonwealth exercises their power — merely what powers they have.

    - For example, the powers given to the Commonwealth in the 1967 referendum have been used in some ways which are harmful to Indigenous Australians, while many people at the time voted in favour of the change to increase Indigenous rights and recognition.

5. THE SIGNIFICANCE OF A HIGH COURT CASE INTERPRETING S7 & S24 OF THE CONSTITUTION

ROACH V. ELECTORAL COMMISSIONER (2007) HCA: INTERPRETING S7 AND S24 OF THE CONSTITUTION

- Vickie Lee Roach, who was serving a six-year term of imprisonment for five offences, challenged the constitutional validity of a 2006 Act (Cth) which extended this ban so that no sentenced prisoners could vote. At the time, this meant that around 22,000 prisoners would be disenfranchised from voting.

- The High Court held that, by virtue of s7 and s24 of the Australian Constitution, which required that parliament be chosen ‘directly by the people’, Commonwealth Parliament was acting *ultra vires* when creating the 2006 legislation.

- While the court did not establish a ‘blanket right to vote’, it highlighted that unreasonable restrictions on the ability of the people to choose the members of parliament, and that ultimately there is a structural protection in the Constitution holding representative government in place for all Australians — which requires that constituents must be given the right to choose their members of parliament.

6. THE SIGNIFICANCE OF A REFERENDUM IN CHANGING THE CONSTITUTION

1967 'ABORIGINAL AFFAIRS' REFERENDUM

- By far the most popular and accepted change made by the Australian people was about the rights of Indigenous Australians in 1967.
- Until 1967, the Constitution specifically denied the Commonwealth the power to legislate for Indigenous people in the states or to count them in the national population (not census).
    - Therefore, in 1967 a proposal was put to the people which would include the modification of s51(xxvi) which removed the law-making restriction on the Commonwealth and removal of s127, the population restriction.
- Across the whole of Australia, 90.77% of voters were in favour of the change, with all six states having a majority vote. This referendum recorded the highest 'yes' vote to date.
- The referendum changed the division of law-making powers by removing a restriction of the Commonwealth's law-making powers — it changed the ability to make laws with regard to Indigenous Peoples from a state-only to a concurrent power, subsequently increasing the Commonwealth's power.
- This eventually led to the passing of the *Native Title Act* 1993 (Cth), which allowed Indigenous people to claim land rights, codifying the *Mabo* decision. This referendum also led the way for changes in the way Indigenous people were treated, and the financial assistance they could receive from the Commonwealth — as population data is often used to determine where spending is needed and plan where to distribute the nation's resources.

7. THE SIGNIFICANCE OF ONE HIGH COURT CASE WHICH HAS HAD AN IMPACT ON THE DIVISION OF CONSTITUTIONAL LAW-MAKING POWERS

Refer to *Croome* case.

8. THE IMPACT OF INTERNATIONAL DECLARATIONS AND TREATIES ON THE INTERPRETATION OF THE EXTERNAL AFFAIRS POWER

COMMONWEALTH V. TASMANIA (1983) HCA (TASMANIAN DAM CASE): THE 'EXTERNAL AFFAIRS' POWER

- In this case, the High Court was called upon to interpret the words 'external affairs' in s51(xxix) of the Constitution. The Tasmanian Government intended to dam the Franklin River to create a source of hydroelectricity for the state's power needs (thus falling under the residual power of utilities), and passed state legislation for such construction (1982).
- However, the area covered by the proposed dam was placed on the World Heritage List by UNESCO in 1982, which falls under an international treaty to which Australia is a signatory.
    - The Commonwealth also ratified this treaty by passing the *World Heritage Properties Conservation Act* 1983 (Cth.), which provided formal protection of this area, and subsequently prohibited the construction of the dam.
- The High Court interpreted the external affairs power to mean all aspects of Australia's relationships with other countries — including international treaties and declarations.
- Because the Franklin River area was protected under Commonwealth legislation which ratified an international treaty, the court applied s109 to resolve an inconsistency between Commonwealth legislation which prohibited construction, and a state act which endorsed construction, thus prohibiting the construction of the dam.
- Through the High Court's interpretation of s51(xxix) of the Constitution, the Commonwealth Parliament was, and now is more confidently able to move into a residual law-making power, making it concurrent — this increased the law-making power of the Commonwealth at some expense of the states.
    - This could also lead to the Commonwealth Parliament assuming power over other issues involving international treaties, such as human rights, which comes under the United Nations UDHR, for example, so as long as they can show 'international concern'. Thus, the scope and meaning of the 'external affairs' power can be affected greatly by what international instruments, such as declarations or treaties, to which Australia is a signatory to.

INTRODUCTION TO PARLIAMENT (12.1)	
What is parliament?	Parliament is a formal assembly of elected representatives, which gathers to make laws for the people.
What are three roles of the lower house?	To initiate and make laws. To provide representative government. To provide responsible government .
What is representative government?	Representative government is a system of government wherein the people choose elected representatives (chosen at regular elections) to parliament to make laws on their behalf. Because people essentially delegate the task of government to their MPs, if parliamentarians do not make laws that reflect the views and values of the people, or fail to address the needs of the community, they will potentially jeopardise their chances of re-election The principle of representative government is established in the Constitution, which requires the members of the Senate and the House of Representatives to be chosen directly by the people (s7 and s24).
What is responsible government?	The principle of responsible government requires that a democratically elected parliament be held accountable and answerable to the people and the parliament for its actions. For example, the Senate is able to scrutinise Bills before they are passed as law -- they can assure that the government is being accountable to the people. According to ministerial accountability, a minister can be called upon (e.g. in question time) to explain in parliament his or her actions and those of the department and agencies under his or her control. If they lose the confidence of the people (by not acting responsibly or with integrity), they must resign.
What are three roles of the upper house?	Act as a house of review Represent the states Initiate bills (albeit rarely)
What are three roles of the crown in law-making?	To exercise reserve powers To grant royal assentBe the head of and form part of the Executive Council

THE ROLE OF THE HOUSES OF PARLIAMENT (13.2)

What are four factors which have the ability to affect the law-making of parliament?	The role of the houses of parliament The representative nature of parliament Political pressures Restrictions on the law-making powers of parliament
What is a majority government?	A majority government is when the government holds a majority of seats in the lower house. In this case, it will mostly be able to succeed in passing a bill through the lower house, and let it progress to the upper house. This allows the government to fulfil its election promises and general regime for law reform. Private member bills are bills proposed by a non-government member — they are not part of the government's legislative program and are therefore extremely unlikely to receive a majority vote when being passed in the lower house. However, while these bills may be doomed to fail, passing it allows the issue to receive social and media attention.
What is a hung parliament?	A hung parliament is a situation wherein neither major political party holds a majority of seats in the lower house after an election. In situations such as this, major political parties must rely on the support of minor political parties and independents to form a minority government (a government that does not hold a majority of seats in the lower house). One problem with a minority government is that bills constantly need to be 'watered down' to satisfy the conditions of the minor parties and independents to receive majority approval. However, even without having a majority of seats in the lower house, minority governments have proven to be effective in passing law reform. Between 2010 and 2012, the Gillard minority government managed to get 432 passed by the Commonwealth Parliament.
What is a rubber-stamping Senate?	A rubber-stamping Senate is an upper house wherein the government holds majority (i.e. the government holds majority in both houses). This has proven to be particularly problematic as the Senate is no longer able to act as a check on the law-making powers of the government and the lower house in general. Since most members of parliament will vote along party lines (in fact the ALP 'pledge' compels them to do so), the lower house can initiate bills and pass them, and the upper house will approve them, meaning that they could pass completely inappropriate or radical legislation without the possibility of legal redress. In 2006, the Howard rubber-stamping Senate passed legislation which disenfranchised approximately 22,000 voters. Accordingly, this legislation was considered unconstitutional in the 2007 *Roach* High Court case.

What is a hostile Senate?	If a government does not hold a majority of seats in the upper house, this situation is referred to as a 'hostile upper house'. At the federal level, the Senate is often hostile. It is called this because the upper house will be able to reject the government's bills, or negotiate significant amendments to them. While this may mean more debate and greater scrutiny of government bills, it also means that an antagonistic opposition (which is merely voting along their party lines), can obstruct or severely restrict the law-making process. For example, the 1972 Whitlam government was faced with a hostile Senate which rejected 93 pieces of Whitlam legislation, simply because they disapproved his political agenda. This was more pieces of rejected legislation than ever since federation.
What does the balance of power mean?	A problem associated with having a hostile upper house is that it can allow a small group of independents or members of a micro/minor party to hold a disproportionately high level of power compared to their voter base. Minor parties are political parties do not have elected representatives to win government, but are able to place pressure on the government to address specific issues and to target specific areas of law reform. Similarly, minor parties are a very small political party. The balance of power in a hostile Senate is essentially that if no major party holds a majority of seats in the lower house, the cross-benchers or minor parties may be able to vote in a bloc to reject government bills so they cannot pass. Another problem associated with minor parties and independents holding the balance of power is that they may not necessarily represent the views and values of the majority of the community because they often focus on a relatively narrow range of policy issues — senators Jacque Lambie and Pauline Hanson have attracted criticism for such actions.
List three strengths and three weaknesses of the law-making process.	The second house acts as a house of review Debate takes part in both houses Parliament can make law *in futuro* However, the law-making process is long Parliament only sits for a limited number of days each year. In 2016, the Senate and House of Representatives only sat for 42 and 51 days respectively The parliament can only pass laws which are presented to it (which are mostly laws made by the government)
What is the committee system?	Both the upper and lower houses have an extensive committee system. This allows member of the houses to examine and evaluate the need for law reform, and provides a way for members of the community to have input on the issues being investigated.

THE REPRESENTATIVE NATURE OF PARLIAMENT (12.3)

How does the parliament need to satisfy the needs of the majority?	The representative nature of parliament and the nature of elections means that in an attempt to be re-elected, members of parliament may introduce and support laws that are popular with voters, rather than passing more controversial laws that may be necessary, but unpopular with voters. Examples of legislation that pleases the voters (generally) would be tax cuts right before an election, or introducing harsher penalties for crime. What the layperson fails to understand, possibly due to the misrepresentation of the nature of our justice system by the media, is that while punishment is an important facet of sentencing, harsher sentences generally do little to reduce crime and do not address the underlying reasons for crime. Further, parliamentarians may be reluctant to introduce law reform when there is a majority approval, because of the possibility of losing a vocal minority who do not support a particular change in the law.
How do regular elections contribute to the doctrine of representative government?	To achieve representative government, regular elections must be held so the people can vote for politicians to represent them in parliament. Further, elections should be regular enough so that if a government or a particular MP is not sufficiently representing the wants of the majority of the people, it is likely that they will be voted out in the forthcoming election. In Australia, is it compulsory to vote. Because of this, individuals who are not interested may cast an ill-informed vote (donkey vote). However, because everyone has to vote, this ensures that the composition of parliament truly reflects the majority view of the community, as opposed to merely those who bother to vote. Because of the mere three year federal election period, parliamentarians are unlikely to introduce legislation which has ramifications which can only be seen in the far future (because voters would be unlikely to appreciate its value). This why four year terms might encourage governments to be more willing to introduce law reforms that have a longer term benefit.

POLITICAL PRESSURES (12.4)

What are domestic political pressures?	Domestic pressure groups are groups of individuals (such as business organisations, minority vocal groups, church groups, financial donations from all of the above), particularly those which have significant financial power or the ability to influence community perceptions, that place pressure on politicians and political parties to implement certain areas of law reform and to supply certain policies which is in their best interest. An example is Oscar's Law.

What are internal political pressures?	While at most times, members of a political party will vote as a bloc (voting along party lines), individuals members sometimes disagree with their own party's political standpoint on any given issue, yet may still feel compelled to voting along party lines and not according to their own conscience. However, sometimes an MP may 'cross the floor', temporarily supporting the opposing party's view (assuming the political party does not allow a conscience vote — where an MP votes according to their own moral views and values). When there is a minority government, the government will be subject to even more political pressure — they will need to work to satisfy the wants of independents and minor parties to gain a majority vote on their bill proposals. The same could be said for a hostile upper house.
What are international political pressures?	In addition to political pressure groups domestically, politicians and governments can be influenced by political pressure from international forces. Such pressure might come from inter-governmental organisations such as the United Nations, or international human rights organisations such as Amnesty International. For example, in 2017, there was a plan to place a ban on homeless people sleeping in the Melbourne city area. However, a United Nations report criticised this proposal on the grounds that it violated human rights. Later in 2017, it was reported that the plan was abandoned after advice had been received that the ban could impinge upon human rights.

RESTRICTIONS ON LAW-MAKING POWERS (12.5)

What jurisdictional limitations exist on the law-making powers of the Commonwealth?	Residual powers cannot be legislated on by the Commonwealth. The Commonwealth can make a 'tied grant' with the states — funding given to a state government on the condition that they will spend the money in the manner specified by the Commonwealth (allowing them to influence the residual law-making). Similarly, the states cannot make legislation in areas of exclusive power.
What are specific prohibitions?	The Australian Constitution explicitly banns parliaments from making laws in certain areas. For example, pursuant to s116 of the Constitution, Commonwealth parliament cannot, amongst other things, establish a state religion or a religious service. S128 bans all parliaments form explicitly changing the words of the Constitution.

THE DOCTRINE OF PRECEDENT (13.1)

What are five key features of the doctrine of precedent?	The principle of *stare decisis*, *ratio decidendi*, binding precedents, persuasive precedents and *obiter dicta*.
What is the principle of *stare decisis* (and what does it mean)?	*Stare decisis* is a Latin term meaning 'let the decision stand', a basic principle underlying the doctrine of precedent requiring that judges, where appropriate, should stand by decisions made by superior courts in the hierarchy.
What is the principle of *ratio decidendi*?	*Ratio decidendi* is a Latin phrase meaning 'the reason for the decision' — it is the binding part of a judgement (a statement by the judge at the end of a case that outlines the decision and the legal reasoning behind that decision). It is important to note that the *ratio decidendi* is not the decision or the remedy rewarded itself. In the case where a decision is not unanimous, the *ratio decidendi* has to be found by looking at the judgements of the prevailing majority. When extracting the *ratio decidendi* from a judgement, only the material facts (the key facts or details in a legal case that were critical to the decision) are relevant and will be considered. Other facts that are vital should not be included. Ultimately, it is the *ratio decidendi* and the material facts of a case that are to be considered in case in the future.
What is binding precedent?	Binding precedent is the legal reasoning for a decision of a higher court that must be followed by a lower court in the same jurisdiction (hierarchy) in cases where the material facts are similar. This is to say that if a judge is bound by a decision, they must follow it regardless of if they approve or disapprove of the previous decision.
What is persuasive precedent?	Persuasive precedents are precedents that are not considered binding by a court, but can still be used to partially influence a judge's decision. Perhaps, the persuasive precedent includes a legal principle that is highly relevant to the case in hand, and can be partially applied. Persuasive precedents, for example, can originate from courts in another hierarchy (e.g. another state, country), precedents set by lower courts, precedents set by courts with the same standing in the hierarchy, or *obiter dicta*.

Give an example of one case in which a persuasive precedent was used.	One example of when a persuasive precedent was used was the case of *Grant v Australian Knitting Mills* (1936) HCA, wherein the court applied *Donoghue v Stevenson* (1932) HL as persuasive. The plaintiff Grant had purchased underwear which contained dermatitis, and the court found that the manufacturer had acted negligently in not removing this harmful chemical from the product. Ultimately, the court chose to follow the decision made in the UK court, utilising the law of negligence which had been established in *Donoghue v Stevenson*, albeit in a different jurisdiction, to state that the defendant owed a duty of care to Grant. Henceforth, the law of negligence was also established in Australia.
Give an example wherein the *ratio decidendi* of a precedent has established a principle of law.	*Donoghue v Stevenson* (1932) HL, also known as the *snail in the bottle* case, saw the plaintiff, who had fell very ill upon drinking a bottle of ginger beer (one that was dark and opaque) at a cafe which her friend had purchased for her, which turned out to contain a decomposed snail in it. Donoghue then sued the manufacturer of the ginger beer for negligence, stating that the manufacturer owed a duty of care to the ultimate consumer of their goods. Ultimately, the British House of Lords found in favour of Donoghue, stating that where there is no interference or inspection possible, the manufacturer owes a duty of care to the final consumer, and therefore established the law of negligence through this *ratio decidendi*. It also established the neighbour principle (that one must assume care to avoid acts or omissions that could be reasonably foreseen to injure one's 'neighbour').
What are *obiter dicta*?	*Obiter dictum* is a Latin term meaning 'said by the way'. *Obiter dicta* are statements which may not necessarily contribute to the *ratio decidendi* in the case at hand, but may still be a matter of considered opinion, and can therefore be used as persuasive precedent in future cases. This is usually something the judge considers or ponders upon when making their decision, but did not consider it reason for their decision.

DEVELOPING AND AVOIDING PRECEDENT (13.2)

What are the four ways of avoiding a precedent?	A precedent can be avoided (where it is otherwise binding) through distinguishing, reversing, overruling or disapproving (although disapproving does not allow a lower court to avoid a precedent *per se*).
What does it mean to distinguish a precedent?	Distinguishing a precedent is a process by which a court can avoid following a binding precedent by identifying a sufficiently large difference between the material facts of the case at hand and the case where the precedent was set. This is because one of the fundamental principles of a precedent being binding is that the material facts of the two cases must be the same.
Give an example of a case where the judge distinguished a precedent.	In *Davies v Waldron* (1989), the accused was charged with being intoxicated at the wheel of a car, and had attempted to start the engine. The counsel for the accused argued that the court should apply the *Gillard v Wenborn* precedent (1988), which would have otherwise been binding. However, the presiding judge distinguished the facts of the two cases on the basis that the previous precedent considered one who was asleep behind the wheel, albeit with the engine on (for heater) — but this accused was at no risk of driving. The accused in the 1989 case, however, was found attempting to start the car, and therefore at risk of driving. Hence, the previous precedent was not considered binding in this case.
What does it mean to reverse a precedent?	Reversing a precedent occurs when a superior court rules differently to a same case on appeal, thereby overriding the original precedent in the lower court and creating a new one.
What does it mean to overrule a precedent?	Overruling a precedent is when a superior court decides not to follow the precedent that has been created in an earlier and different case by a lower court (or a court of the same standing). It can do so because it is not bound by precedents of a lower court. By overruling a precedent, the superior court will deem the previous precedent (from the lower court) inapplicable, and the new decision will stand as precedent.

Give an example of a case where the court overruled another precedent.	In *AON Risk Services Aust Ltd* v *ANU* (2009) HCA, the High Court overruled its own decision in *Queensland* v *JL Holdings Pty Ltd* (1997) HCA. The AON case concerned ANU making a series of insurance claims following bushfires which damaged university buildings in 2003. On the day of the trial, however, ANU applied to significantly change its statement of claim as new information came to light. AON appealed the court's decision to approve this change, arguing that it placed them at an unfair disadvantage. Ultimately, the High Court agreed with AON's argument, and overruled its previous decision in the 1997 case, which had established the precedent that substantial amendments to a party's case could be made during a trial. Note that the 1997 precedent is persuasive, but it was still overruled by the HCA's new decision.
What does it mean to disapprove a precedent?	Disapproving a precedent is when a court expresses its dissatisfaction of an existing precedent but is still bound to follow it. What disapproving a precedent allows for is it may signal a party to appeal their case to a higher court, considering that the precedent is outdated or in need of reconsideration, or may signal to parliament that the common law is in need of change. Sometimes, a case need not be non-binding for it to be disapproved by a court — the High Court, for example, has disapproved precedents that are persuasive, and have instead deferred to the supremacy of parliament, as opposed to overruling their own decision.
What is one case in which a precedent has been disapproved?	In *State Insurance Commission* v *Trigwell* (1979) HCA, the court dealt with a case wherein the plaintiffs Mr and Mrs Trigwell, who had been involved in a car collision where another vehicle collided with theirs after hitting two sheep, sued the other driver and the owner of the sheep (who they argued were liable, as they were negligent for not maintaining responsibility for the broken fence that the sheep penetrated through onto the highway). The High Court, upon hearing this case on appeal from the Supreme Court (which ended up deciding the same thing, claiming that the driver was liable, but not the farmer), decided to follow an old common law precedent (*Searle* v *Wallbank,* 1947) inherited from Britain which stated that a landowner did not owe a duty of care for their stock straying from their land onto the highway, meanwhile suggesting that there was reason to believe that circumstances had change and that this principle was outdated. Ultimately, Justice Mason stated that *"such law-making should be left to parliament*".

	Accordingly, Victorian Parliament decided to act on the advice of the High Court and passed the *Wrongs (Animals Straying on Highways) Act* 1984, abolishing the common law immunity, and made land owners liable for damage negligently caused by their animals straying onto highways.
How does common law expand, as a result of the doctrine of precedent?	Most often, when resolving a case brought before them, the courts will be required to consider and apply the precedents set in previous cases. However, precedents set by courts are never a final statement of the law — common law relies on judges constantly refining and clarifying areas of precedent — allowing common law to gradually develop and change over time. One such example is the law of negligence, which has been developed purely over time through common law.
STATUTORY INTERPRETATION (13.4)	
What is statutory interpretation?	In addition to establishing precedents, judges can make law when called upon to interpret the meaning of a Statute in order to resolve a case. Such a situation might arise when there is a dispute over the meaning of words in a document. The court, by interpreting the meaning of certain words or phrases in legislation, will provide it with more meaning, thereby either expanding or narrowing the meaning of the legislation. In doing so, statutory interpretation establishes a legal principle (precedent) that must be followed by inferior courts in the future. This is to say, that once a statute has been interpreted, this new interpretation forms part of the law — but it does not change the actual wording of the Act.
What are four reasons for statutory interpretation?	Problems that might occur during the drafting process of a Bill, such as not taking into account future circumstances. Problems that might occur when the court is attempting to apply an Act of Parliament to resolve a case, such as that most legislation is drafted in general terms, the changing nature of words, or that the meaning of certain words might be ambiguous.
What are parliamentary counsel?	Parliamentary counsel are lawyers who are tasked with writing up legislation on the instructions and advice of members of parliament. They are assigned a difficult task, as while at times, they will need to write legislation broadly to cover a range of future circumstances, at others, they must be specific in order to remove ambiguity in order that the meaning of the legislation not be misconstrued.

How might parliamentary counsel not take into account future circumstances when constructing a bill ?	Legislators are usually unable to accurately predict changes and developments in tehcnology, which may alter the applicability of words in a statute. Some areas of technology may not be covered at all. Such was seen in the *Brislan* case, where the High Court was called upon to interpret the meaning of *'telegraphic and telephonic'* (s51v) and if this encompassed wireless radios (which did not exist at the time of the writing of the Constitution).
How is legislation drafted in general terms?	Generally speaking, parliamentary counsel will draft legislation in general terms so that it can cover a wide range of future circumstances. However, sometimes the terms used are so broad (maybe even overly broad) that they need to be interpreted so that they can be applied to specific circumstances. For example, the case of *Deing* v *Tarola* (1993) VSC required the court to decide whether wearing a studded belt was an offence, under the *Control of Weapons Act 1990* (Vic.) which only banned the carrying of a regulated weapon (see below).
Describe the case of *Deing* v *Tarola* (1993).	The accused Chanta Deing was apprehended by police at a McDonald's wearing a black leather belt with silver studs, and was charged under s6 of the *Control of Weapons Act 1990* (Vic.), which stated that "*a person must not carry … a regulated weapon*". Additionally, s5 of the *Control of Weapons Regulations 1990* (Vic.) provided a long list of weapons that were included under the term 'regulated'. This list included any article fitted with raised pointed studs which is designed to be worn as an article of clothing. As such, the court had to interpreted the meaning of 'regulated weapon' in the Control of Weapons Act to determine whether or not a studded belt was a regulated weapon. While the Magistrates' Court decided it was, Deing appealed to the Supreme Court, deciding that it was not a regulated weapon — looking at the literal meaning of the word 'weapon' through extrinsic materials such as the Oxford Dictionary and Halsbury's Laws of England, in addition to previous precedent. Ultimately, the Supreme Court found that a regulated weapon should be defined as *"anything that is not in common use for any other purpose but that of a weapon*". The statutory interpretation in this case therefore restricted the meaning of the phrase 'regulated weapon' to those things likely top be used for an offensive or aggressive purpose only, setting a precedent. Furthermore, the Executive Council (of Victoria), when making the *Control of Weapons Regulations)*, was found to be acting ultra vires according to the authority vested to it by the *Control of Weapons Act,* and therefore the section of the regulation which criminalised studded belts was invalid.

How might the meaning of words within legislation be ambiguous?	Because legislation is drafted quite broadly, some of the wording can be ambiguous. It is therefore the role of the court to interpret and clarify the meaning of the words so that they can clarify the intention of the statute. For example, in the case of *Davies* v *Waldron* (1989), the court was asked to interpret the meaning of the words 'start to drive' found in the *Road Safety Act 1986* (Vic.). The court found that because the accused attempted to start to drive the car, and was intoxicated, he must be found guilty of drink driving.
How might the meaning of words change over time?	The meaning and application of certain word can change over time as society changes. As such, judges need to interpret words in such a way that reflects their current meaning, and the values they are associated with, while keeping in mind the intentions of the legislators. For instance, the Family Court clarified in the 'Kevin and Jennifer' case that the definition of a 'man' includes a person born female who as undergone sex reassignment surgery.
Describe the *Kevin and Jennifer* case.	When Kevin (born female, but during 1995-1997 commenced hormone treatment and full gender reassignment surgery to align his body towards that of a male) and Jennifer appeared before the Family Court in 1999, the validity of their marriage was challenged by the Attorney-General, who stated that Kevin was not a man for the purposes of the *Marriage Act 1961* (Cth.) Therefore, the court was called upon to interpret the meaning of the word 'man' (amongst others). It ultimately found that a man, within the meaning of the Marriage Act, should be a man at the time of the marriage, not at birth.
What are three effects of statutory interpretation?	On the minute level, the decision reached is binding on the parties of the case itself (assuming one of the parties does not lodge an appeal and overturn the decision). Furthermore, the interpretation of statues means that precedents are set for future cases to follow (in most cases, where the precedent is set by superior courts). The reason for the decision of the interpretation will be recorded and will be binding on future cases (in inferior courts), until the point where this precedent is extended, overruled, reversed or even abrogated by parliament. The meaning of the law can be restricted or expanded. For example, if a court interprets the meaning of a word/phrase narrowly, this would reduce the scope of meaning. The decision in the *Tasmanian Dams* case extended the interpretation and meaning of the phrase 'external affairs' to include areas covered by international treaties, allowing the Commonwealth to legislate in any area covered by an international treaty.

DOCTRINE OF PRECEDENT (13.5)	
What are five factors that affect the ability of the courts to make law?	The doctrine of precedent, judicial activism, judicial conservatism, the costs and time of bring a case to court, and the requirement for standing.
What troubles may arise in identifying relevant precedents?	While parties and judges can typically rely on precedents for guidance, it can be difficult to locate precedents for any given case, especially because in particular areas of law, the huge volume of cases makes the process of finding a precedent that helps one's case is both timely and costly. This is further exacerbated by the fact that judgements are written in highly technical legal jargon and that multiple legal principles are combined in some judgements, so it is quite difficult to navigate and decipher.
How might binding precedents seem to be unjust?	When a lower court is bound by a decision of a superior court, this might lead to an unjust outcome, seeing as they may be 'forced' to follow an outdated precedent. In some cases, where the party cannot afford to pursue an appeal in a court which is not bound by the precedent. This issue, nonetheless, is slightly ameliorated by the fact that lower courts can express their disapproval of a binding precedent which might encourage a dissatisfied party to pursue an appeal to a higher court (or for parliament to abrogate the common law precedent).
How can the doctrine of precedent seem to be flexible?	A strength of the doctrine of precedent is that it is flexible — courts, at times, can reverse, overrule or avoiding following a binding precedent. However, judges of superior courts are often reluctant to overrule previous precedents. For example, in the *Trigwell* case, despite acknowledging the outdated nature of the British *Searle* v *Wallbank* (1949) precedent, deferred to the supremacy of parliament and did not overrule another decision. Similarly, judges consider the decisions of courts of the same standing to be strongly persuasive, and tend not to stray away from them. Also, the doctrine of precedent can limit the ability of the courts to make law as the court must wait until a case is before them until they can establish or develop precedent. This means the courts are reliant on parties being aware of their right to pursue their matter in the courts, being willing to do so, having the time and money (usually appeals are involved), and having standing. Finally, judges are restricted to making comments on issue that arise in the case before them. Any comment made arbitrarily on an irrelevant legal principle is considered *obiter dicta*, and not binding.
How does judges making law *ex post facto* limit the effectiveness of the courts to make law?	The courts can only make law when a dispute is brought before them, therefore meaning that courts can only make law 'retrospectively' (*ex post facto*, in comparison to parliament, which can make laws *in futuro*).

How can parliament override judge-made law?	While judgements can make through the establishment of precedent (except for the High Court, which, when deciding on constitutional matters, is free from parliamentary abrogation). Parliament has the ability to override common law.
In summary, what are five advantages of the role of courts in law-making (the doctrine of precedent)?	The principle of *stare decisis* ensures consistency in decisions, saving resources as judges do not need to 're-decide' cases which regard similar legal principles. *Stare decisis* gives parties involved in a case certainty of outcome, allowing them to settle out of court. Common law is flexible in that judges can overrule, reverse and at times avoid precedent. Statutory interpretation allows judges to clarify the intentions of parliamentary counsel when drafting legislation. Judges are impartial decision makers who are not meant to have political bias or should not feel compelled to satisfy any voters when coming to their decision.
In summary, what are the five disadvantages of the role of courts in law-making (the doctrine of precedent)?	Given the large volume of precedents that exist in some areas of law, and the variety of different elements of law in any given judgement, the process of identifying relevant precedent is both timely and costly. Lower courts are legally compelled to follow the precedent of higher courts if the material facts of the cases are similar, even though they might consider it inappropriate or outdated. Even though common law is flexible, judges are typically conservative and reluctant to overrule earlier established precedents (especially those from the courts of the same standing). Judges can only clarify legislation or establish precedent after a dispute has arisen (and a dispute pertinent to a certain area of law), meaning that they can only create law 'retrospectively'. Parliaments have the ability to override judge-made law (except for precedent created in the High Court regarding constitutional matters). This restricts the ability of judges to create and develop law. Furthermore, even though judges have the ability to interpret the definition of words within a statute, they are not able to modify the explicit wording of legislation (unlike parliament).

JUDICIAL CONSERVATISM (13.6)	
What is judicial conservatism?	Judicial conservatism is an expression used when judges adopt a narrow interpretation of the law when interpreting Acts of Parliament and deciding cases in general. In doing so, they will avoid major or controversial changes in the law and not be influenced by their own political beliefs or the views of the community. This influences the ability of courts to make law — because conservative judges will interpret statutes in such a way that does not stray far beyond the established law.
What is an argument for judges being conservative, and not creative?	Many believe that parliament, being the supreme law-making body, consisting of members who are elected by the people to make laws on their behalf, should have more authority for implementing major law reform than judges, who are not elected by the people. As such, they believe that it is the court's role to interpret the law, and not rewrite it. They prefer parliament to investigate and make contentious law reform. They have special bodies to perform these roles, such as parliamentary committees and the VLRC. The courts, on the other hand, are not able to thoroughly investigate the views of the public and are limited to resources such as extrinsic and intrinsic materials.
Give two strengths and weaknesses of judicial conservatism.	Judicial conservatism helps maintain stability in the law. It can lessen the possibility of appeals on a question of law. Courts, by deferring to parliament, allow it to make more significant and controversial changes in the law, given that it has the ability to investigate the need for such changes much more so than courts. However, judicial conservatism restricts the ability of the courts to make some changes in the law. Also, judicial conservatism can discourage judges from considering a range of social and political factors when applying legislation and establishing precedent, which might have been the intention of the creators of the law.

JUDICIAL ACTIVISM (13.7)	
What is judicial activism?	Judicial activism refers to the willingness of judges to consider a range of social and political factors, their own opinions on public matters, amongst other facts (other than the law itself) when interpreting the law and making decisions. Those who disapprove of judges taking a more active role have defined judicial activism as a judge acting outside of the constitutional and legislative power vested in them, as they are interpreting the law in such a way that expands beyond parliament's original intention, in an attempt to influence change in the law. For example, at the time of the *Mabo* decision, some critics viewed it as a very clear example of improper judicial activism — they said that the High Court was exercising excessive judicial creativity by establishing a law based on the political and social desire to establish Aboriginal land rights. Some even said that this reduced the objectivity of the court.
Provide two strengths and two weaknesses of judicial activism/creativity.	It allows judges to broadly interpret statutes in a way that recognises the rights of the people. It allows judges to consider a range of social and political factors and community views when making a decision. It allows judges to be more creative when making decisions and making significant legal changes. It also puts to use their significant legal training and expertise. However, it can lead to more appeals on a question of law. It can also lead to courts making more radical changes in the law that do not reflect the community values or are beyond the community's level of comfort.

COST AND TIME IN BRING A CASE TO COURT (13.8)	
How might the cost of legal representation affect a party?	Given that most courts in Australia are adversarial in nature, for a party to have the best chance of winning a case they generally need to engage legal representation to ensure their case is prepared and presented in the best manner possible. Lawyers, for example, need to conduct research into the case, including researching precedents (both binding and persuasive), analyse evidence and documents, interview and prepare witnesses, and present legal arguments and documents to the court in accordance with the strict rules of evidence and procedure. The Attorney-General's Department estimated that the average legal costs and disbursements for a party in the Federal Court in 2009 was $111,000 for one trial. Therefore, not only is a party that does not have representation put at a marked disadvantage against one who can afford reasonable legal representation, but many will be discouraged to pursue a civil claim for this reason. Also, this dissuades many from making frivolous or trivial claims. The high cost of legal representation also encourages many to pursue ADR.
Relatively speaking, what is the time involved with resolving a court dispute?	Unlike parliament, which has to undergo the lengthy processes of drafting, debating and passing a bill, the courts can resolve disputes relatively quickly, therefore making law relatively quickly (at times). However, judges in appeal courts, which is where most precedents are formed/changed, can take up to months to create new law. Courts also have to undergo lengthy pre-trial procedures and at times, unreasonable delays. That being said, where there is a pressing need at a high level of community importance, judges have discretionary power to both pass injunctions in a relatively small time frame and also hear and make rulings very quickly. Such was seen in the *Commonwealth v Australian Capital Territory* (2013) HCA case, where the High Court acted within five days to nullify territorial legislation which legalised same-sex marriage.

THE REQUIREMENT OF STANDING (13.9)	
What is standing?	The party initiating a court claim must be directly affected by the matter in question — they must have standing, or *locus standi* (standing in a case). The party initiating must be able to show that they have 'special interest' — that they are affected by the issue more than any member of the general public — and that if they were to win the claim, that they would gain a quantifiable advantage.
What are two strengths and two weaknesses of the requirement of standing?	The requirement of standing ensures that it is only the adversely affected and those who are genuinely involved in an issue that are able to initiate a claim, rather than those with frivolous intentions. It also encourages those who are not directly affected to attempt to influence law reform through other avenues of redress, such as demonstrations or petitions. However, it means that those who have the common good at heart when pursuing a civil claim are not permitted to do so through the courts (e.g. when rights are infringed). It also means that those who have the financial and intellectual resources to pursue a claim may not be able to do so, and that maybe, those who do have the resources are not able to, meaning that some issues are barely able to be challenged in the courts.

THE RELATIONSHIP BETWEEN COURTS AND PARLIAMENT (13.10)

What are the five main features of the relationship between courts and parliament in law-making?	The courts and the parliament have a complementary role in law-making. The five main features of their relationship are the supremacy of parliament, the ability of the courts to influence parliament, the interpretation of statutes by the courts, the abrogation of common law and the codification of common law.
How is parliament the supreme law-maker?	Parliament is the supreme law-making body with the ability to change and make any law, so as long as it is acting within its constitutional powers. Parliament has the power to confirm or cancel any common law decision, except for those regarding constitutional matters in the High Court. Furthermore, parliament establishes the courts. Both the *Supreme Court Act 1986* and the *Magistrates' Court Act 1989* are acts of Victorian parliament which establish the respective courts, and their jurisdictions. Accordingly, they have the power, at any time, to change the jurisdictions of any of the courts, therefore restricting their law-making power. Parliament can also pass Acts which compel the courts to decide certain cases in certain manners, such as mandatory minimum sentences. However, in accordance with the separation of powers, parliament must legislate in such a way that retains the role of the courts to decide if parliament acts beyond its law-making authority.
How are the courts able to indirectly influence the parliaments?	As part of their *obiter dicta*, the courts can inspire law reform -- for example, a lower court may disapprove of a common law precedent which they have no power to change. Parliament may then act on this by abrogating the common law. Additionally, even superior courts can refuse to change a common law precedent, deferring to the supremacy of parliament, but making a note in the *obiter dicta* that the common law precedent should be changed. A court's decision that is perhaps unjust may also inspire investigation and subsequent reform from parliament -- an example is the lenient sentences that were handed down by courts for 'one punch' killings, which parliament responded to by imposing mandatory sentences for such offences. The courts can also directly influence law reform from the parliaments, if parliament chooses to abrogate parts of a common law precedent.
What is secondary legislation?	Secondary (or delegated) legislation are rules and regulations made by secondary authorities, such as local councils, government departments and statutory authorities which have the power to do so because of an enabling Act passed by parliament.

How does statutory interpretation impact upon parliament?	When called upon to resolve a legal dispute, the courts must, at times, interpret the meaning of words in parliamentary statutes in order to clarify the intentions of the law-makers, amongst many other reasons. Courts may also need to clarify the meaning of words within secondary legislation. Not only are courts able to narrow or broaden the meaning of statute law, with the superior courts of record when doing so, establishing precedent to be followed in the future, but the High Court, through constitutional interpretation, is even able to shift the division of law-making powers of Commonwealth and State parliaments.
What is codification of common law?	Codification is when parliament makes laws to affirm previous decisions within common law — it has the power to do so, as it is the supreme law-maker.
Describe the *Mabo* (No. 2) case.	The 1992 decision of *Mabo v Queensland (No. 2)* (1992) saw the High Court uphold that the common law of Australia recognised the right of Indigenous Australians to make claims over their traditional land and be granted native title to it. The test case began in 1982, initiated by five members of the Miriam tribe, taking the court 10 years to reach a decision. The judgement overturned an old 17th century common law principle that Australia was *terra nullius*, or 'empty land' prior to British colonisation. The decision was an example of judicial activism, as it broadly interpreted the law to protect the rights of the Meriam (and all Aboriginals) and boldly overruled the principle of *terra nullius*, which had existed since colonisation. The precedent, amongst other things, stated that native title existed for those Indigenous Australians who continued to maintain their connection (i.e. traditional language, social norms) with the land throughout the European settlement, and that this native title was not extinguished by parliament. Commonwealth Parliament codified the principle of native title through the passing of the *Native Title Act 1993* (Cth.)
What is abrogation of common law?	Parliament has the power to pass legislation which overrides common law decisions, with the exception of High Court decisions on constitutional matters. They may do so because the courts have interpreted a statute in a way that clashed with the intentions of parliament, or if a court has created precedent which is inappropriate at the current time.

REASONS FOR LAW REFORM (14.1)	
What are the five characteristics of an effective law?	To be effective, laws need to be known by the community, easily understood, be able to be changed, enforceable and acceptable to individuals and society as a whole.
Why are four reasons for law reform?	Four reasons for law reform are changes in beliefs, views and attitudes; change in social conditions/climate; greater need for protection of the community and advances in technology.
Why is law reform required because of change in beliefs?	In any society, beliefs, values and attitudes towards specific regimes will inevitably change. It makes sense that the law, as such, should adapt to account for such changes. Societal values change, at times, because people in society become more and more educated. This can be seen with the issue of the legalisation of medicinal cannabis. Marijuana was previously considered merely as a narcotic drug — but it is in recent years that the small consumption of it has various medicinal uses (such as to relieve severe pain).
What is Oscar's Law?	Oscar's Law is a non-profit domestic pressure group (organisation) dedicated to abolishing puppy farms. This is an example of when public awareness of certain issues can spark law reform. In recent times, public awareness on animal welfare issues has increased greatly, and people have subsequently become more concerned with protecting the rights of animals. Oscar's Law has attempted to influence change in the law to regulate the activities of 'puppy factories' — businesses that mass produce puppies, for economic gain. As a result, since 2010, the government has examined altering existing animal protection laws to regulate the breeding and sale of dogs and cats in pet shops, in order to prevent animal cruelty against dogs and cats, although change has been slow. Oscar's Law, since it was introduced, has received overwhelming support. Its Facebook page has received 176,000 likes. Further, a *change.org* e-petition which Oscar's Law proposed to shut down a puppy farm received approximately 111,000 signatures.
Why is law reform required because of change in social climates?	As Australia's population size and demographic changes, it is essential that our laws change to help maintain social cohesion. For example, Australia's population is estimated to reach approximately 40 million people by 2055, and the average life expectancy of a baby born then will be approximately be mid-nineties. With this, requires significant changes to laws which regard our social structure, such as welfare payments, the environment and healthcare. An increasing population also means increased crime, and therefore the need for increased law enforcement resources to handle such crime.

Why is law reform needed because of technological advancements?	Technology is improving and developing at an astronomical rate in our modern society. As it improves, laws will need to be created and modified to account for such changes. Technology can often create new problems, such as new forms of crime. Such might include cyber-bullying, cyber-stalking, identity theft, online scams and invasion of privacy. As a result of technology, various areas of law have even expanded, such as gene patenting and intellectual property law.
Why is law reform needed because of greater need of protection of the community?	One of the main roles of the law is protect individuals of the community from harm, whether this be physical, emotional or economic damage. As such, the law constantly needs to change to ensure that these criteria are met. Some individuals in society need specific requirements for their safety to be met, especially minorities such as powerless workers and the disabled, who may not be able to protect themselves. Additionally, as new situations arise, new laws should be create to account for these. For example, in 2016, the Victorian Parliament introduced legislation regarding home invasion and carjacking laws. Law reform is also needed to meet the needs of sentencing. If sentences are too lenient, offenders will commit crimes without taking serious consideration of the consequences. Similarly, if penalties are too harsh, people will feel resentment towards the justice system and there may be unrest in society.

PETITIONS (14.2)	
What are petitions?	Petitions are a formal written request to the government to take some course of action or implement a specific area of law reform. It usually has a collection of signatures on it, which have been gathered from supporters, but even one individual can petition the parliament (there is no minimum amount of signatures required). However, a petition will appear more representative of the community if it has more signatures. Once an organiser feels that they have gained a significant enough amount of signatures, they can forward the petition to a local member of parliament, who will then present it at the next parliamentary sitting. Petitions are the only way in which an individual can present their concerns 'directly' before parliament.
What are the two types of petitions?	Paper petitions are the traditional form of petitions, collected in person and signed with physical signatures. Some houses of parliament, such as the Legislative Assembly of Victoria can only accept paper petitions. On the other hand, e-petitions, or digital petitions, have become a popular way for individuals to express their desire for law reform, through websites such as *GetUp!* or *change.org*. The Commonwealth Parliament and some state parliaments are beginning to accept this method submitting petitions. The House of Representatives, in 2016, for example, started to accept e-petitions. The Senate, on the other hand, makes no distinction between paper and digital petitions. The House of Representatives, for example, has a Standing Committee on Petitions, to receive and process all petitions to the House, ensuring that they also meet all the requirements of a petition (such as containing an explicit request for parliament to take action).
Provide three strengths of petitions as a method of influencing law reform.	Petitions are a relatively simple and cost-effective (particularly e-petitions) mechanism through which individuals can voice their desire for change to parliament — they are, in fact, the only way that individuals can communicate their interest directly with each of the houses. Petitions provide an objective measure of the support of a proposal. In accordance with the principle of representative government, MPs should be more inclined to take to heart proposals that have more support. Most petitions, even if they do not attract a huge amount of signatures, will be presented before the relevant house of parliament. Therefore, it will attract media and social attention, increasing public awareness of potentially growing issues.

Provide three weaknesses of petitions as a method of influencing law reform.	Petitions are reliant on one individual having the passion and time to initiate a petition, which is even more so the case with paper petitions, where an initiator has to go door-to-door often times to receive hundreds or thousands of signatures. They are, additionally, reliant on attracting major public approval. Without a lot of approval, a petition is unlikely to receive support from a house of parliament. Some people are also reticent to put their name, address or other personal information on a petition, meaning that petitions may not truly reflect community views. Parliaments receive hundreds of petitions each year and there is no guarantee that they will have the resources to consider or pass all the recommended reforms from the public.
DEMONSTRATIONS (14.3)	
What are demonstrations?	Demonstrations are a method of influencing law reform whereby there will be a public gathering of a group of people to express their dissatisfaction for an existing law (or absence of thereof). Demonstrations can take many different forms, but generally, they all aim to bring an issue to the attention of the public, and by extension, the attention of the law-makers who have the power to instigate law reform in the relevant area. For example, in 2011, over 5000 people rallied in front of State Parliament for the abolishment of puppy farms (advocating Oscar's Law).
Provide three strengths of demonstrations as a method of influencing law reform.	Demonstrations provide an objective representation of how much public approval an idea has. Therefore, parliament, in accordance with the principle of representative government, should adopt proposals that receive significant public support. Demonstrations are often supported by parliamentarians who want to 'adopt a cause' — those who will support a cause to further their public image and chances of re-election. Demonstrations are very public scenes and can often raise public awareness of an issue — at times, much more so than petitions.
Provide three weaknesses of demonstrations as a method of influencing law reform.	Demonstrations have the ability, much more so than petitions and other forms, to incite violence and to lead to other breaches of the law. With negative images associated with any particular demonstration, it may receive censure from parliament and other members of the public. Demonstrations may be difficult to attend, being particularly variable on factors such as geographical access and weather. Demonstrations are single events that, if they do not occur repeatedly, may not necessarily generate ongoing support for such law reform.

LAW REFORM THROUGH THE COURTS (14.4)	
How can the courts be used as a medium of law reform?	Individuals can be instrumental in bringing about law reform through the courts — although while pursuing their claim, they may not be interested in changing the law, if, during their decision, an unclear point of law is clarified, or a new point of law is established, then they have contributed to legal reform. Individuals may also challenge an existing law, claiming that parliament (or a statutory body such as delegated authorities) was acting *ultra vires* while creating the legislation. Individuals may also challenge legislation that breach human rights (or other rights, such as constitutional rights).
What are three strengths of influencing law reform through the courts?	Challenging an existing law, particularly one that is unclear or vague, can allow the courts to clarify the intentions of the legislators. Even if a court challenge is unsuccessful, the case might attract media and social attention, therefore increasing public awareness of the issue, leading to others taking action by other means. Judges are independent of parliament and (should be) free of political biases, meaning that they are impartial and just decision-makers.
What are three weaknesses of influencing law reform through the courts?	Courts are limited to influencing law reform only when one who has a claim with standing, comes before the courts, meaning that individuals who have genuine interest in the case without standing, can still not influence change. Even individuals who have standing may still be reticent to pursue civil action (and therefore influence law reform) because claims, especially in higher courts, are very costly and time-consuming. With the exception of the High Court on constitutional disputes, parliament can always abrogate common law decisions.

THE ROLE OF MEDIA IN LAW REFORM (14.5)

What is social media?	Social media encapsulates a range of digital tools, applications and websites used to share information in real time between large groups of people, including Facebook, Twitter and Instagram.
How can media influence law reform?	Media, whether it be social media or traditional media, can be used to generate community interest or awareness in a particular issue. Campaigns through such mediums might attract the attention of members of parliament who are in a position to change the law directly.
How can social media influence law reform?	Given the astronomical user-base of social media, it has the ability to create interest in, and raise awareness of some issues, making them contentious. Videos such as animal abuse in puppy factories or cruelty to live export animals, or videos of crime (especially with the advent of live-streaming) may become particularly contentious and instigate law reform. People can share their views and opinions through social media platforms, sites and blogs, allowing individuals to communicate their opinions much faster than they could do so in person (transcending geographical restrictions). In 2017, Facebook announced that it had approximately 2 billion users monthly worldwide. Therefore, social media can allow pressure groups to access an audience internationally, such as Amnesty International. People can also contact their MP or a political party through their social media pages, informing them of their views and opinions.
What is traditional media?	Traditional media refers to conventional ways of communicating information to the mainstream public, being newspapers and magazines, television and radio, that were relied upon before the internet. Approximately 52% of Australians still rely on traditional media.
How is traditional media able to influence change in the law?	Television programs such as *Sunrise, Q&A* and *A Current Affair* often have the ability to inform its audience about the need for law reform and pressing issues in the community. Such shows often have segments about the need for law reform, and possible changes to the law. Such shows may also publicise public opinion (e.g. emails, social media). Many television programs investigate problems and injustices in our community and therefore whether or not law reform is needed in particular areas. Such programs include *Four Corners* and *60 Minutes*.

What are three strengths of influencing law reform through the media?	Newspapers, television and social media platforms have the ability to foster public attraction towards a particular issue, and therefore attract the attention of the relevant minister of parliament. Most parliamentarians and political parties also have social media accounts, meaning that the public is able to engage almost directly with them. Some television shows, such as *Four Corners* or *60 Minutes* will sometimes conduct their own private investigations into the need for law reform, meaning that they can potentially find ways (other than through parliamentary law reform bodies) to improve the law.
What are three weaknesses of the influencing law reform through the courts?	An issue with traditional media, and more recently, social media, is that it can portray overly complex legal issues in a rather simplistic manner. Thus arises the danger of individuals making hasty decisions about complex issues based on misconstrued representations of the facts, especially with colourful and graphic images on social media which might evoke emotional responses. Likewise, posts on social media often do not take serious regard for code of ethics, as traditional media does — therefore, such posts may be inaccurate or unauthenticated. Over-exposure to graphic and vivid images may even cause some individuals to form extreme and inappropriate hatred towards some policy makers, desensitising them from reality. Traditional media is also often reprimanded for having political biases. For example, producers might edit a peaceful demonstration (for the most part) to include only a small clip of conflict between individuals to alter their presentation of the event. The ABC, which owns publication programs such as *ABC News, Lateline* and *Q&A*, has been perceived to be pro-Labor and the Australian Greens. In fact, *News Limited* and *Fairfax Media*, which combine to account for 85% of all newspaper sales in Australia, have been said to have political biases. This decreases the independence of such organisations and gives the owners of such organisations the ability to disproportionately control and influence community values and desires for law reform.

THE VICTORIAN LAW REFORM COMMISSION (14.6)

What is the VLRC?	The VLRC is Victoria's leading independent law reform organisation. The VLRC reviews, researches and makes recommendations to Victorian Parliament about possible changes (improvements) to Victoria's laws. When conducting its investigations, the VLRC engages in a community-wide consultation and debate, to ensure recommendations to the parliament reflect the needs and values of the Victorian people. For example, the VLRC will respond to issues raised by pressure groups. While the VLRC was established by Victorian Parliament in 2001 (by the *Victorian Law Reform Commission Act 2000* (Vic.), which defines its powers and functions), it is an independent organisation that operates free of political pressures and biases.
What are the four roles of the VLRC?	Inquiry: to examine and report on any proposal referred to it by the Victorian Attorney-General (through a terms of reference), and to make recommendations to it about law reform. This includes conducting research, consulting with the community, and commenting on law reform projects. Investigation: in addition to its main role of examining areas of law reform referred to by the Attorney-General, the VLRC can examine minor issues (which it believes is of pressing importance to the community) without a reference, provided it will not confirm too many of its resources. Monitor: to monitor and coordinate law reform activity within Victoria — meaning that the VLRC can refer new areas where law reform would be desirable to the Attorney-General, upon consultation with various law reform bodies in Victoria. Education: to undertake educational programs and inform the community on any area of law relevant to its investigations or references — helping inform the community about its work.

What is the full process used by the VLRC to recommend law reform?	The commission receives a terms of reference or begins a community law reform project (based on a proposal from the community) Staff (appointed by the Commission) begin to research and consult An expert panel is formed (specialists in the area) Consultation paper (sets out the background and the main issues in question) and questions are published and submissions are called for (questions about how and whether the law should be changed) Consultations with affected parties and the community (from a wide range of Victorians, pressure groups, interested individuals and also disadvantaged and marginalised groups) Submissions are received and considered (can be online or in paper form) The commission writes a report (make recommendations to reform the law and/or to make changes to procedures, and the report has reasoning behind all of this). The report is delivered to the Victorian Attorney-General The report is tabled in parliament, then published (the AG will table the report in parliament) The government decides on its response (may decide to pass new laws, or change procedures) Parliament decides on legislation (assuming parliament decides to adopt the changes).
Describe the report the VLRC published on law reform regarding medicinal cannabis.	At the end of 2014 the Attorney-General gave a reference to the VLRC to examine whether the law should be changed to allow the use of medicinal cannabis in exceptional circumstances (e.g. for the treatment of severe pain from severe diseases such as cancer). While undertaking the project, the VLRC held nine community-based consultations and received 99 submissions from a variety of sources such as interested individuals, doctors and specialists and health organisations (e.g. Cancer Council Australia), and other organisations such as Victoria Police. After the VLRC's final report was tabled by the Attorney-General, 40 out of the 42 recommendations were accepted by the Victorian Parliament, by means of significant changes in the law. For example, in 2016, the *Access to Medicinal Cannabis Bill 2015* (Vic.) allowed for the lawful cultivation and manufacture of medicinal cannabis and allowed some individuals to purchase and consume it in exceptional circumstances.

Provide five strengths of the VLRC.	While Victorian Parliament does not have the resources to investigate the need for law reform deeply, it can defer such roles to the VLRC. Because it is the government which 'asks' the VLRC for help regarding the investigation and inquiry of law reform, they will be more likely to act on the advice of the VLRC — with some or all of its recommendations adopted in approximately 70% of cases. The VLRC has the ability to engage community and expert opinion when investigating the need for law reform. The VLRC is able to investigate law reform and publish reports in such a way that it can reform whole areas of law — such as the legalisation of medicinal cannabis. The VLRC has the power to make investigations on minor issues without the need of terms of reference, which can lead to impotent law reform — such as bail reforms in 2001. The VLRC is independent of parliament, thus being free of political pressure and bias and only having the best interests of the community at heart when considering law reform and bettering legislation.
Provide five weaknesses of the VLRC.	The VLRC is restricted to investigating issues only included in the terms of reference from the Attorney-General (unless it is a minor inquiry). The VLRC law reform process is lengthy and costly. The Medicinal Cannabis investigation took almost two years to complete and required multiple grants, including $444,000 from Victorian Parliament. The fact that parliament is not bound to adopt any of the recommendations from the VLRC means that an investigation could result in a huge waste of time and money. The VLRC is limited in its ability to reform the law as it relies heavily on grants from parliament and organisations in the relevant fields. Since the VLRC is restricted by a terms of reference, they are not only limited in the areas of law they can investigate, but even the issues within the area of law they are investigating (e.g. if there are other areas of reform required in that section of law).

ROYAL COMMISSIONS (14.8)	
What are royal commissions?	Royal commissions are the highest form of public inquiry into matters of public concern or interest. They are ad-hoc formal inquiries conducted by a body of people formed to support the commissioner(s), who is given wide power by the government to investigate and report on the matter of public concern or importance.
Who establishes royal commissions?	Royal commissions can be established at both the Commonwealth at state level, and this power is established by statute. At both levels, the Queen's representative (and therefore the executive) is vested with the power to establish a royal commission. However, because they are acting largely on the advice of government ministers, the power to initiate a royal commission, in practice, rests with the government.
How is a royal commission started (or 'issued')?	The Queen's representative must first issue a 'letters patent' which specifies the persons who will constitute the royal commission and the commissioner who will chair the royal commission. The patent must also specify a date by which the commission is required to report on its inquiry and terms of reference. The chairperson of the royal commission will then engage others for assistance with the royal commission.
What is the process of conducting a royal commission?	Prepare an issue paper: this outlines the matter or concern being investigated by the royal commission, poses questions relating to possible reforms that may be submitted to parliament regarding the relevant area of law, and seeks to provide guidance to individuals or organisations who wish to provide written submissions to the commission. Conduct consultation sessions: this will gain input, views and opinions form members of the public, such as those who may have a particular interest in the area of discussion. Hold public hearings or sit in private (e.g. 2013 Child Sexual Abuse) to gain information: royal commissions have extensive powers to gain or seize evidence during their hearings — they can issue a summons or compel people to attend and give evidence under oath or affirmation and be subject to cross-examination regarding the matters in question. Once an investigation has been complete and evidence and submissions have been considered, the royal commission will prepare a report on their findings and submit their recommendations in this form to parliament. Such changes might include changes in government policy, administrative systems, the law and the legal system. Royal commissions also have the ability to recommend to the DPP that one should be prosecuted for a particular crime (on the evidence they have gathered), but they are not bound by this recommendation.

Describe the royal commission into family violence.	In 2015, the Victorian Governor established the Royal Commission into Family Violence. A former Supreme Court Justice was appointed, along with two deputy commissioners, to oversee the commission. While the commission had terms of reference, in general, it was required to investigate and make recommendations on how best to improve government policy, administrative procedures and state law in the area of family violence, amongst other things, to reduce and eliminate family violence in Victoria. The royal commission undertook 12 months of investigation, taking into account approximately 1000 submissions from a range of individuals and organisations such as Victoria Police and Lifeline Australia — the issues paper explained the concerns being examined by the commission, and encouraged any individual/organisation affected by family violence or has ideas that might assist with the work of the royal commission to come forth. The commission also held 44 group consultation sessions attended by over 850 people (also hearing evidence from 200 family violence stakeholders). These included perpetrators, victims, prisoners, amongst others. The commission provided its final report in 2016. The report contained 227 recommendations aimed at improving the ways our government and institutions, such as Victoria Police and corrections services, respond to family violence. Such recommendations included introducing family violence training for all key workforces like schools. In 2017, the Victorian Government announced that it would spend an unprecedented $1.9 billion on implementing all 227 of the recommendations.
Give five strengths of royal commissions.	While parliament does not have the resources to research and investigate law reform in and of itself, it can defer such roles (albeit ad-hoc) to royal commissions. Additionally, because it is the government that assigns the royal commissions with the role of investigating law reform, they are more likely to act on the recommendations. Royal commissions can gauge both community and specialist opinion on a particular area. Royal commissions have the ability to issue a summons and compel a witness to testify before the commission. Royal commissions are independent of political pressures. Royal commissions have the ability to reform whole areas of law.

Give five weaknesses of royal commissions.	Since royal commissions are initiated by the government (or on the advice of it), it can be used as a political tool used to further one's political image. One might manipulate the terms of reference to gain voter support, for example. There is no obligation for parliament to adopt the recommendations presented in a royal commission report. Royal commissions can be extremely costly — not only the cost of undertaking the inquiry, but the cost to implement such reform. However, many might consider that the cost of the problem (such as family violence, which was estimated in the 2015 inquiry to cost $5.3 billion each year) might outweigh the cost of undertaking such an inquiry. Even if recommendations are accepted by parliament, the extent to which they can influence law reform is limited — if there is no bipartisan support for a particular subject, parliament cannot pass new legislation. The royal commission is restricted in its investigation, to subject matter contained only in its terms of reference.

THE ABILITY OF PARLIAMENT AND THE COURTS TO RESPOND TO THE NEED FOR LAW REFORM (14.9)

Provide five strengths of parliament and its ability to respond to law reform.	Parliament is elected by the people, meaning that it has a responsibility to represent the views and values of the majority of the people, in accordance with the principle of representative government. Parliament is also the supreme law-making body within its jurisdiction, retaining 'sovereignty', meaning that is has the absolute power to abrogate or codify any common law decision (except those regarding the Constitution). Ultimately, this ensures that laws are in fact consistent with the majority views of the public. Furthermore, unlike the courts, parliament has the ability to direct certain bodies to investigate the need for law reform. Investigatory bodies such as the VLRC and inquiry processes such as royal commissions, unlike parliament, which does not have the resources to do so, can directly gauge and take heed of community opinion. Parliament can also respond *in futuro* to the need for law reform, unlike the courts, which have to wait until an individual with sufficient financial, intellectual and time resources comes before the courts with standing. Parliament is able to make laws with the future in mind as far as possible, making laws prospectively — 'crystal ball gazing'. As such, parliament can change law as the need for change arises. Parliament has the ability to defer some of its law-making powers to subordinate authorities, who will then create delegated legislation on their behalf.

Provide five weaknesses of parliament and its ability to respond to law reform.	Members of parliament may be reluctant to suggest or introduce legislation where there are conflicting community opinions on the subject matter (or where the benefits of legislation are unlikely to be seen in the near future, and may hence abuse their ability to pass legislation to up their chances of re-election), as this may jeopardise their chances of re-election. For example, MPs have been reluctant to suggest chances to euthanasia legislation, given that they will either be censured by a vocal minority (and may then lose their electoral support) or might be criticised for defying their party's stance. While parliament is able to abrogate most laws, its law-making powers are restricted in some ways by the Constitution. The High Court has, in the past, additionally developed restrictions and changes in the law-making powers of respective parliaments. Parliaments are also only permitted to create laws within their own jurisdiction. Creating or passing legislation and investigating the need for law reform is not only very time consuming (exacerbated by the fact the parliament does not sit often), but is also costly. Parliaments, while being able to create laws prospectively, are often not able to do so accurately. It is virtually impossible to see accurately into the needs of future times. Despite being able to create laws *in futuro*, parliament still had to rely on the courts in the *Brislan* case to include wireless radio sets under 'telegraphic and telephonic services' in the Constitution. Subordinate authorities are not elected, meaning that the legislation they make and pass need not represent the views of the majority. Parliament does, however, have the ability to rebuke and scrutinise all their activities.
Provide five strengths of courts and its ability to respond to law reform.	Courts can respond to disputes very quickly — much more so than parliament, which needs to undergo the lengthy law-making process. Judges can use statutory interpretation to change the meaning of existing law and to apply it to community values. Judges can make decisions independent of the fear of losing voter support. Judges may therefore be more willing than parliament to make controversial decisions (such as the *Mabo* decision) than members of parliament who may fear voter backlash. Courts can establish and develop areas of law — such the law of negligence, which has been developed almost entirely through common law. Due to the supremacy of parliament, however, the courts may choose to act conservatively. The courts have the ability to declare laws made outside of parliament's legal authority *ultra vires*, therefore invalidating them. The courts could, for example, rule that the Commonwealth has acted outside of its specific law-making powers.