OUTCOME

On completion of this unit you should be able to explain the need for effective laws, and describe the main sources and types of law in society.

Key knowledge

This chapter is designed to help you to understand the key knowledge of:

- the difference between legal and non-legal rules
- the need for laws
- characteristics of an effective law
- the distinction between criminal and civil law
- an overview of the role and characteristics of parliament and subordinate authorities in law-making.
KEY LEGAL TERMINOLOGY

bicameral Two houses of parliament — at a federal level, the House of Representatives and the Senate; in Victoria, the Legislative Assembly and the Legislative Council.
bill A proposed law.
concurrent powers Law-making powers that are shared by the Commonwealth Parliament and the state parliaments. Under section 109 of the Constitution, if there is a conflict then Commonwealth law prevails.
delegated legislation Laws made by subordinate authorities.
enabling act An act giving subordinate authorities the power to make laws.
exclusive powers Law-making powers of the Commonwealth Parliament that can only be exercised by the Commonwealth.
executive council A body made up of the governor-general (governor at a state level) and senior ministers. Its task is to pass delegated legislation in areas where an enabling act has given power to the executive council to make regulations.

law A legal rule.
residual powers Law-making powers left with the states at the time of federation.
statute An act of parliament.
sue Start civil proceedings against another person.

The differences between legal and non-legal rules

In any society, primitive or complex, it is necessary to have rules that govern family, social, political and economic life to provide some form of social order.

Rules tell us what we can and cannot do or what we can expect in dealing with others. Imagine playing in a tennis game or tournament without rules. Would you know what to do or expect? Would you be treated without discrimination? What might happen if you argued with your opponent during the game? Rules help to resolve the conflicts that are inevitable when people live or interact in groups.

Throughout our lives we are bound by rules. Some of these are legal rules (for example, traffic laws) and some are non-legal rules (for example, school rules and rules of games).

Legal rules (also known as laws) differ from non-legal rules in that they are made by a law-making body, such as parliament, and they are enforceable by the courts. Non-legal rules are made by private individuals or groups in society, such as parents and schools, and are not enforceable by the courts.

Rules tell us what we can and cannot do

<table>
<thead>
<tr>
<th>non-legal rules</th>
<th>made by private individuals or groups, e.g. parents, schools</th>
<th>cannot be enforced through the courts</th>
</tr>
</thead>
<tbody>
<tr>
<td>legal rules</td>
<td>made by law-making bodies with the force of law, e.g. parliament, local councils</td>
<td>can be enforced through the courts</td>
</tr>
</tbody>
</table>
All rules tell us what we can do and what we cannot do, but the consequences may be different. A legal rule is enforceable through the courts, whereas a non-legal rule is enforceable by the people who make the rule. If you break a school rule, you will be punished by the school. If you steal something from a shop you can be punished through the courts, because stealing is breaking a legal rule.

**LEARNING ACTIVITY 1.1**

**Legal and non-legal rules**

1. Look at the photograph of studying in a library above
   a. Make a list of all the rules you can think of in your school library.
   b. Are these rules legal or non-legal rules?
   c. Who will enforce the rules if they are broken?
   d. What is the likely consequence of any of the rules being broken?
2. Look at the photograph of the two bike riders on page 5.
   a. What law is being broken in this situation?
   b. Is this a legal or non-legal rule?
   c. Who do you think would be responsible for making this rule?
   d. What is the likely consequence of breaking this rule?
3. Read ‘Joe’s story’ and answer the questions.
Breaking a law — wearing a bike helmet is compulsory under the law in Victoria.

JOE’S STORY

Joe, a footballer aged 19, lives in Kew with his parents. He works during the day as a bank teller. His hours of work are 9.00 a.m. to 5.00 p.m., with one hour for lunch. The manager of his branch is very particular about punctuality. Joe plays football on Saturday afternoons for Hawthorn and is an up-and-coming star. He has an arrangement with his parents that he pays $60.00 per week for board. He has to vacuum the whole house once a week and do his own washing.

Joe’s parents, Noel and Megan, have lived in Kew for many years. Recently they have been greatly disturbed by Stephen and Heather and their daughter Gail, who have moved in next door. They enjoy very loud music until late at night. The loud noise was seriously affecting Noel and Megan’s ability to sleep at night. They had tried to discuss the matter with Stephen and Heather but had no success.

During the discussion they noticed that Heather was very nervous and appeared very badly bruised. They had heard serious arguments on numerous occasions and were concerned that Stephen was hitting Heather. Stephen had a violent temper. Gail, who was 14 years old, was often in trouble for coming home later than the expected time of 10.00 p.m.

On the first Saturday in May, Joe set off for the football ground. He was running late but he was careful not to exceed the speed limit of 50 kilometres per hour in a built-up area. He took the short cut around the back of the football ground, which meant he had to turn into a ‘no entry’ lane. The football club had been trying to change the ‘no entry’ status of the lane. The football club had gathered 4000 names on a petition.
When Joe finally arrived at the ground he felt agitated, but once the whistle blew, he quickly got into the game.

Gail and her mother and father went to the football ground to watch the game. During the first half, Gail said she was hungry and went in search of something to eat. She had forgotten to bring any money so, when no-one was looking, she took two Mars bars from the front of the counter. When she went back to her parents she told them that she had bought the Mars bars.

During the second half of the game, Joe was penalised for having his hands on a player’s back when going for a mark. The match continued without incident until towards the end of the game when Joe was reported for tripping the same player, who later tried to kick him. The two players then started to wrestle with each other, but were separated by the umpire. During the game, Joe kicked four goals, but the last one was not allowed because another player had touched it on the line.

When Stephen, Heather and Gail returned to their car, they found that two of their hub caps had been taken. Stephen was very upset.

a Make a list of the legal rules and the non-legal rules mentioned in Joe’s story.
b Explain what the likely consequence of breaking each rule would be and why you think it is a legal or non-legal rule.
c Choose one legal rule and explain why you think it would have general acceptance in the community.
d Identify two examples of the law protecting the rights of members of the community.

The need for laws

Every society has both legal and non-legal rules to regulate behaviour. The main aim of the law is to protect our society and keep it functioning. The law aims to protect individual rights and stop behaviour that will ultimately affect the peace and good order of society.

Without laws our society would be in chaos. Laws are needed to provide guidelines of acceptable behaviour and prevent conflict.

In all societies conflicts are inevitable. The law must therefore outline how disputes will be resolved. In Australia and many other countries, people are able to take their disputes to court and argue their cases before an impartial person in the hope of resolving any disputes that arise in a peaceful way. The penalties or compensation awarded in these cases serve as a deterrent. They help to prevent future conflict, as people are aware of the consequences that will apply if they engage in unacceptable behaviour.

LEARNING ACTIVITY 1.2
The need for laws

1 Explain why we need laws. Refer to the photo of traffic chaos in India on the next page to illustrate your answer.

2 Do the quick quiz. Your teacher may ask you to compare your results with classmates.
   Read the following statements and then decide whether you agree or disagree with each one.
a. If there were no rules in our society, then society would still function as it does now.  AGREE/DISAGREE

b. If there were no rules in society, then most people would live without fear or threat to their personal safety.  AGREE/DISAGREE

c. If there were no rules in society, then most people’s possessions would be safe.  AGREE/DISAGREE

d. If there were no rules in society, then most people would behave as they do now.  AGREE/DISAGREE

e. If there were no rules in society, then people would still be able to sort out their conflicts.  AGREE/DISAGREE

f. The human race is basically ‘good’ by nature, so there is no need for rules in our society.  AGREE/DISAGREE

g. If there were no rules in society, then humans would use their animal instincts to survive.  AGREE/DISAGREE

h. If there were no rules in society, then I could do whatever I wanted.  AGREE/DISAGREE

i. If there were no rules in society, then I would be fearful most of the time.  AGREE/DISAGREE

j. If there were no rules in society, then there would be no way I would go to school or do any work.  AGREE/DISAGREE

k. If there were no rules in society, then we would live in chaos.  AGREE/DISAGREE
3 Working in groups, decide what you and your friends would do if there were no rules at your school. Read the situation given below and answer the questions. Brainstorm your ideas and write a paragraph describing:

a how you would react to and survive in this environment
b how other people might behave
c how new leader/s would be selected, if any.

No rules

You are at school and an enormous explosion destroys the science wing. This explosion has a weird after-effect. A blanket of fumes and clouds covers the school and all people over 20 years of age suddenly die. When the fumes clear, you find that the explosion somehow created an immovable dome around the school and the surrounding two square kilometres. You (and others) are trapped inside. You quickly realise that there is no-one of authority inside the dome to enforce the school rules. The resources within the dome are limited to whatever shelter, food and equipment was available in the school and the surrounding two square kilometres before the explosion occurred. The dome is impenetrable and yet it can regenerate a viable atmosphere.

4 Working in groups, draft a set of guidelines for acceptable behaviour expected at a school social, then answer the following questions.

a Why might these guidelines be needed?
b How will the guidelines be enforced?

Characteristics of an effective law

For society to function properly, laws must be effective. Criminal law must be able to protect individuals in society and punish those people who offend against society. To be effective, laws must meet the following criteria.

• known to the public — For a law to be enforceable, the public must know about it. If people do not know about a new law, they will not be able to follow it. It is the responsibility of individuals to find out what the law is on a particular matter, but the law-makers also need to keep the public informed of any new laws that are passed. For example, there are road signs to tell us what the road laws are.

        Major changes in the law are usually reported in the media, and many are debated in the media before the change takes place. An example of this is the law allowing a registered medical practitioner to perform an abortion on a woman who is not more than 24 weeks pregnant. This change in the law was comprehensively debated in the media before the change in the law took place. This debate both informs the law-makers of public opinion about a proposed change in the law, and informs the public of a change in the law that is about to take place.

• acceptable to the community — If a law is not in line with community values, then people may be inclined to disregard the law. For example, prior to the law allowing 24-hour shopping seven days a week in Victoria, many stores opened illegally because consumers and store owners wanted extended shopping hours even though the law prohibited it. People had decided that restricted shopping hours were no longer acceptable to them. On the other hand, people accept the law that makes wearing seatbelts compulsory because they can see the value of wearing seatbelts.
• **able to be enforced** — An effective law must be enforceable. That is, if people break the law, they must be able to be caught and brought to justice. If this does not happen, people may be less inclined to follow the law. In an effort to reduce the road toll, police have rigorously enforced road traffic laws in Victoria. Traffic enforcement strategies such as random breath testing and drug testing, the use of speed and red-light cameras and heavy penalties for infringements deter most drivers from breaking the law.

• **stable** — In order to be effective, it is also necessary that the law, in general, remains stable. If the law were changing constantly, no-one would be certain what the law was and there would be chaos.

• **able to be changed** — Because values in the community change over time, and there are advances in new technology, there is a constant need to change the law. For example, the widespread use of computers has required new laws relating to the use of computers to steal another person’s identity for illegal gain.

---

### Characteristics of an effective law

<table>
<thead>
<tr>
<th>known to the public</th>
<th>acceptable to the community</th>
<th>stable</th>
</tr>
</thead>
<tbody>
<tr>
<td>road signs tell us what speed we can drive at</td>
<td>drivers accept the compulsory seatbelts law</td>
<td>it has always been against the law to steal</td>
</tr>
</tbody>
</table>

- **able to be enforced** — the police are able to enforce speed laws
- **able to be changed** — new laws have been needed to combat identity theft
**LEARNING ACTIVITY 1.3**

The characteristics of an effective law

1. Why do you think a new law needs to be acceptable to the community? Explain giving an example of a law that is acceptable to the community.
2. Why is it necessary for a law to be stable, but able to be changed?
3. How do people find out what the law is?
4. Why do laws need to be enforceable?
5. The law has recently been changed to make it unlawful to smoke in a car when one of the passengers is less than 18 years old. Do you think this law will be easy to enforce? Discuss.
6. Do you think a law that made it compulsory to wear helmets while driving a car would be an effective law? Discuss, considering the characteristics of an effective law.
7. **Investigation**
   Investigate the Victorian Parliament website to find a law that has been passed this year. Go to the website at http://www.parliament.vic.gov.au/ ‘legislation and bills’. Go to the ‘Victorian Statute Book’ and choose the current year or the previous year. Open up an act of parliament and go to the purpose of the act. Choose one that could have some relevance to you or others you know, such as the *Transport Legislation Amendment (Hoon Boating and Other Amendments) Act 2009*.
   Prepare a report or PowerPoint presentation on how you perceive the effectiveness of this law.
8. **Research — fact or fiction?**
   Look at the Victorian ‘laws’ in the box below. Circle whether or not you believe this is in fact a law or whether it is fiction. Once you have done this, do some basic research on the web to determine whether it is in fact a law. Discuss this with your class.
   a. It is illegal to eat cats and dogs. **FACT/FICTION**
   b. It is illegal to sing an obscene song, tune or ballad within earshot of someone. **FACT/FICTION**
   c. If you meet up with a pirate, it is illegal to trade with them. **FACT/FICTION**
   d. If you fly kites or play a game in public which annoys another person, you could be fined. **FACT/FICTION**
   e. It’s an offence to drive a dog or goat harnessed or attached to a vehicle in a public place. **FACT/FICTION**
   f. When walking on a footpath, you must walk on the left side. **FACT/FICTION**
   g. It is illegal to tape songs from the radio. **FACT/FICTION**

**Different types of laws**

There are many different laws in Australia. Classifying or grouping these laws into categories makes it easier to find the law related to a particular topic and to understand any changes to the law.

Laws can be classified according to the types of actions that have taken place and the outcome required when a law has been broken. For example:

- **criminal law**
- **civil law**

Laws can also be classified according to the source of the law. For example:
• laws made by parliament — acts of parliament
• laws made by subordinate authorities — bodies given the right to make laws by parliament such as local councils
• laws made by courts — the reasons for decisions reached in court when hearing a dispute that are followed in the future.

Distinction between criminal law and civil law

Civil law protects individual rights (for example, family law, property law, tort law, contract law) whereas criminal law protects the entire community by keeping the peace (for example, murder, theft, assault).

Criminal law

Criminal law relates to acts or omissions against society. When a criminal law is broken, the police (on behalf of the community) take the offender to court. The main aims of criminal law are to apprehend, prosecute and punish people who have broken the law and to deter others from breaking the law. The punishment could be minor, such as a small fine, or could be more serious, such as imprisonment.

The prosecution of a person who is thought to have broken the law is generally carried out by the state on behalf of society.

**Examples of criminal law**

- crimes against person — assault, rape, manslaughter, murder
- crimes against property — theft, vandalism, robbery, fraud
- crimes against morality — prostitution, illegal use of drugs
- crimes against the legal system — perjury, contempt of court
- crimes against the state — treason.

**Words commonly used in criminal cases**

- prosecution, the Crown, the state (the party bringing the case on behalf of the state)
- accused, the offender (the person who has been charged with an offence)
- suspect (the person who is suspected of a crime)
- guilty/not guilty
- charge
- sentence
- conviction.

**SCHOOLGIRL WINS LANDMARK ASSAULT CASE**

A 17-year-old schoolboy from a rural high school was charged with assault and recklessly causing injury. The victim was a 13-year-old schoolgirl from the same school. She alleged that she was subjected daily to physical bullying and verbal taunts for over six months. The victim stated that the harassment, which was witnessed by fellow students, caused her to become fearful of walking around the school.

The Mildura Magistrates’ Court found the boy guilty of the charge of recklessly causing injury. He was convicted and fined $200. The assault charge was withdrawn.
Civil law

A civil action is a dispute between two parties. The parties to a dispute can be private individuals, companies or governments. In a civil case, the person whose rights have been infringed sues the other person for the damage done and asks the court to order the defendant to rectify the situation or pay compensation. For example, individuals can sue the state government because of negligence by a government instrumentality towards the individuals, or a local government authority could sue an individual for rates owed to it.

The main aim of civil law is to return the person whose rights have been infringed back to their original position. This is done through civil remedies. The most common civil remedy is compensation for loss or damages.

**CASE STUDY**

**SHOPKEEPER SUED**

The case between Brightland Shop Pty Ltd (defendant) and Jim Jones (plaintiff) was heard in the Magistrates’ Court. While shopping, Jones slipped and fell on some oil spilt in Brightland Shop. He broke his leg and was off work for six weeks.

He sued Brightland Shop for negligence. He maintained that the oil should have been cleaned up as soon as it was spilt. If this had been done he would not have slipped. He claimed compensation for his pain and suffering and for his loss of earnings.

Criminal or civil

When deciding if a case is civil or criminal, you should look at the consequences and the intention of the case. Does the case seek to punish the offender? Does the case seek a civil remedy such as compensation (damages) or an injunction? (An injunction is a court order either restraining someone from doing something or compelling someone to do something.)

The words used in a case can help you when deciding if a matter or issue relates to civil or criminal law.

Some incidents can result in both civil and criminal cases. A person can be found guilty of a crime and punished under criminal law. The same person can then be ordered to pay compensation to their victim in a separate civil action. For example, assault can result in a criminal action, which would seek to punish the offenders, and a civil action, where the person assaulted would be seeking a civil remedy (compensation) for trespass to the person.
In some criminal cases, an offender can be ordered to pay compensation to a victim as a form of punishment.

**LEARNING ACTIVITY 1.4**

**Distinction between criminal and civil law**

1. What is the main difference between criminal and civil cases?
2. Look back at the case study ‘Schoolgirl wins landmark assault case’. Is this a criminal or a civil case? Pick out the elements that tell you what sort of case it is.
3. Look at the case study ‘Shopkeeper sued’. Is this a criminal or a civil case? Pick out the elements that tell you what sort of case it is.
4. Read the case studies ‘Shoplifter in court’ and ‘Compensation paid for capsicum spray damage’. Decide which case study refers to a criminal case and which case study refers to a civil case. Give reasons for your decision. Make a list of the words that indicate whether the case is criminal or civil for each case.

**SHOPLIFTER IN COURT**

A 19-year-old shoplifter pleaded guilty in the Melbourne Magistrates’ Court to 372 offences involving goods worth more than $11 700.

The prosecutor, Senior Constable Beard, said that the offender committed the offences over nine months. He said that she went into stores and placed items into a bag without paying for them. She would then go to the appropriate counter and ask to return the goods, giving false reasons. She would either get a cash refund, or goods in exchange.

She was caught leaving a store with goods she had not paid for. She was also identified from an address she had left for a refund cheque to be sent.

The charges included 132 counts of theft from department stores, 115 counts of obtaining property by deception and six counts of possessing an article with the intention to steal.

The deputy chief magistrate, Mr Bryan Clothier, remanded her in custody for sentencing.

**COMPENSATION PAID FOR CAPSICUM SPRAY DAMAGE**

The Victorian Government was ordered to pay Jason Bannerman $42 635 in compensation for inappropriate use of a capsicum spray. Bannerman sued the Victorian Government following an altercation in Shepparton, when a police officer sprayed Bannerman in the face causing an eye injury. The court found that the police officer acted contrary to police guidelines. Bannerman could not see out of his eye for a month and was off work for five weeks.

Bannerman was awarded damages for the pain and suffering and loss of income.
5. Write a mock case study scenario of a situation that can be either a criminal case or a civil dispute. Make sure you use the appropriate terminology. Exchange your scenario with another member of the class and decide whether the scenario you have been given is criminal or civil.

6. Collect at least four articles on criminal or civil law from the newspapers or online. For each article, explain the circumstances of the case mentioned and explain why you think the article refers to civil or criminal law.

7. Develop a mind map about the law. In your mind map, make connections like the branches of a tree or a spider’s web, all stemming from the word law.

An example of the beginning of a mind map to be completed by students — your mind map does not need to follow this pattern

HINT

In VCE Legal Studies you are expected to be able to refer to recent cases and changes in the law. You should start a file of articles referring to criminal or civil cases or changes in the law which you can use as examples in answers to questions.

History of our political and legal structures

Australia’s political and legal structures have been influenced by its historical links to the British Empire. Prior to the twentieth century the Commonwealth of Australia did not exist. Instead, there were six separate British colonies in Australia, each with a parliament able to make law. By the late 1800s, many colonists felt it was time to unite as one nation to strengthen Australia’s defence and to simplify immigration, rail transport, tariffs and trade issues.

After a series of constitutional conventions (meetings), the founding fathers (the people responsible for initiating the federal system) proposed that the colonies become a federation of states within the Commonwealth of Australia.

The Commonwealth of Australia Constitution Act (UK) was passed in 1900. This document established the Commonwealth Parliament as a central law-making body. It lists the law-making powers of ‘national’ interest, which the colonies agreed to give to a Commonwealth Parliament, such as coining money and imposing taxes. The colonies, now known as states of Australia, retained the right to make law in all other areas in their own right or in a shared capacity. The states and Commonwealth share the power to make laws on taxation, but other areas such as education are a state power.

Australia’s system of government is a constitutional monarchy where the Commonwealth Parliament and the state parliaments operate within the rules established in their constitutions. A constitution is a legal document that outlines the basic rules of government and the law-making powers of the elected parliament (also known as the legislature).
The Queen of England (Queen Elizabeth II) is Australia’s head of state. The Queen acts as a figurehead and her role is mainly ceremonial. She is represented by the governor-general at a federal level and the governor at a state level.

Sources of law

There are nine parliaments in Australia. Each parliament is a supreme law-making body within its areas of power (jurisdiction).

- **Commonwealth Parliament**
  - Also known as the federal parliament, it has jurisdiction over specific areas outlined in the Commonwealth of Australia Constitution Act 1900 (UK) that relate to the whole of Australia, including defence, currency, immigration, postal services and telecommunication.

- **Six state parliaments**
  - They make law in all areas except those deemed exclusive to the Commonwealth Parliament. The laws made by a state parliament apply within the boundaries of that state, for example, schools, crime, forestry.

- **Two territory parliaments**
  - They have state-like law-making powers. The Commonwealth Parliament gave the Northern Territory and the Australian Capital Territory the right to self-government in 1978 and 1988 respectively.

In addition to the eight parliaments listed in the diagram, we also have a federal parliament.

In Australia the Commonwealth Parliament has exclusive power to make law in certain areas and it also shares some law-making powers with the state parliaments. In shared areas, the Commonwealth Parliament’s law will override state law if there is a clash. Laws made by parliament are called acts of parliament and are known as legislation or statute law.

The state parliaments also have their own law-making powers and the Commonwealth Parliament is prohibited from making laws in these areas.

Parliaments do not have enough time to make laws on every issue that requires regulation. Australian parliaments can, therefore, pass an act of parliament giving permission to other bodies to make minor laws on parliament’s behalf. These bodies are known as subordinate authorities and laws made through subordinate authorities are known as delegated legislation. This includes laws made by local councils, which are usually referred to as local laws.

Did you know?

Australia is the only nation to govern an entire continent and its outlying islands. The mainland is the largest island and the world’s smallest, flattest continent.
Courts can sometimes make laws when they make a legal ruling in a case. This ruling often clarifies existing law and is known as a precedent. Precedents establish principles of law and are followed in the future by courts and individuals and form part of the law. Laws made through the courts are known as common law, judge-made law or case law. Parliament can pass legislation to override a precedent.

Three levels of law-making bodies

Australia has three levels of law-making bodies. The Commonwealth Government is responsible for deciding which proposed laws should be put before the Commonwealth Parliament, although any MP can initiate a private member’s bill. The Commonwealth Parliament (also known as the federal parliament) is elected to pass laws on issues of national interest. State and territory parliaments are responsible for deciding which laws should be presented to the state and territory parliaments. Each state parliament has also established a number of local district bodies to address minor issues in different areas within the state. These are shire or municipal councils, referred to as local councils.

Did you know?
The original Victorian Constitution was granted royal assent in 1855 and the Victorian Parliament was established in 1856. The Victorian Constitution is a legal document that provides the framework within which parliamentary democracy and responsible government operates in Victoria.

Commonwealth Parliament
State and territory parliaments
Local councils

Three levels of government — law-making bodies in Australia

LEARNING ACTIVITY 1.5
Sources of law

1 What were the founding fathers responsible for?
2 Investigation
   Using the Internet or a reference book, find out the names of three of the founding fathers.
3 What is a constitution?
4 Why is Australia known as a constitutional monarchy?
5 Explain the significance of the Commonwealth of Australia Constitution Act 1900 (UK).
6 Why do you think there are nine parliaments in Australia?
7 What is a law made by parliament called?
8 Why do parliaments delegate some of their law-making powers?
9 What is common law?
10 Read the extract from the Tobacco Amendment (Protection of Children) Act 2009 (Vic.) and answer the questions.
   a What is occurring in society that makes this law necessary?
b How is this change in the law trying to solve the problem?
c Which body passed this law?
d Is this law statute law or common law? Explain.

**TOBACCO AMENDMENT (PROTECTION OF CHILDREN) ACT 2009**

No. 49 of 2009  
Assented to 18 August 2009

The Parliament of Victoria enacts:

**PART 1 — PRELIMINARY**

1 **Purpose**  
The purpose of this Act is to amend the **Tobacco Act 1987** —

(a) to provide that only retailers that are on airport duty free shops or that have been certified as specialist tobacconists may display tobacco advertising  
(b) to ban the sale of tobacco products from temporary outlets  
(c) to ban smoking in cars in which a person under the age of 18 years is present

Source: Tobacco Amendment (Protection of Children) Act 2009 (Vic.)

11 Read the following information about the law relating to graffiti prevention and answer the following questions.

a Briefly explain the law relating to graffiti prevention.
b Whose rights are protected under these laws?
c Who will enforce these laws?
d Do you think these laws reflect social values? Explain.

**Graffiti prevention**

In an attempt to take destructive and commonly used spray paint implements out of the wrong hands, the Victorian Parliament has passed laws that make it unlawful to possess a graffiti implement with the intention of using it to mark illegal or offensive graffiti.

It is illegal to sell spray paint to a person who is under 18 unless the paint is needed for employment, or to advertise spray paint in a publication or on the Internet in a way that could promote or incite the creation of graffiti.

Convicted graffiti vandals can be fined over $26 000 or be imprisoned for up to two years.

The new laws aim to make it easier for police to apprehend and prosecute graffiti vandals. Previously it was difficult to charge graffiti vandals unless they were caught in the act.

12 Identify the three levels of law-making bodies in Australia.
The role and characteristics of parliament

Australia’s parliamentary system (at the state and federal levels) is modelled on the British Westminster system. This system relies on the government of the day having the support of the majority of the members of the lower house of parliament in order to govern. The government is responsible to the parliament.

The role of parliament is to pass laws for the good government of the country or state.

Most Australian parliaments are bicameral with two separate houses or chambers. The exceptions are the Queensland Parliament and the parliaments of the territories, which only have one house. The upper house in the Queensland Parliament was abolished in 1922.
Parliament consists of the Queen, an upper house and a lower house. In Australia, the Queen is represented by the governor-general at a federal level and the governor at a state level.

Table 1.1 THE STRUCTURE OF PARLIAMENT

<table>
<thead>
<tr>
<th>Commonwealth Parliament</th>
<th>Victorian Parliament</th>
</tr>
</thead>
<tbody>
<tr>
<td>Queen’s representative</td>
<td>governor-general</td>
</tr>
<tr>
<td>Upper house</td>
<td>Senate</td>
</tr>
<tr>
<td>Lower house</td>
<td>House of Representatives</td>
</tr>
</tbody>
</table>

Houses of parliament consist of elected members or representatives known as parliamentarians. Parliamentarians hold seats in one of the houses and are elected by the people in a particular geographical area (electorate) as their local member of parliament.

Most parliamentarians belong to a political party. Political parties are made up of people who have a common belief in values, ideas, future directions and political objectives. Those parliamentarians who do not belong to a political party are known as independents.

At an election, each political party tries to get as many of its members as possible elected to parliament. Sometimes political parties form a coalition and contest an election together. In Australia, the Liberal Party and the National Party often agree on policies and form a coalition at a federal level.

The political party (or coalition) with the majority of members elected to seats in the lower house wins the election and forms government. The government consists of the members of the political party that has the majority of members in the lower house. The government decides what laws should be put to the parliament, but does not pass laws. The government is responsible to the parliament as all new laws need to be passed by parliament to be valid and enforceable.

The next largest political party forms the opposition. The opposition questions the government about policy matters.

The prime minister is the leader of the Commonwealth Parliament. The premier is the leader of the state government. The leader of the government chooses ministers who are responsible for different areas of government such as education. The cabinet is made up of the prime minister (or the premier at a state level) and senior ministers and decides what proposed laws should be put to parliament.

All parliamentarians are responsible to the people through regular elections. Parliamentarians may be cautious when deciding which laws to support as they depend on the votes of the people in their electorate for re-election.

Prime Minister Julia Gillard
Learning activity 1.6
The role and characteristics of parliament

1. What does the Westminster system rely on?
2. What is a bicameral system of parliament?
3. Are all parliaments in Australia bicameral? Explain.
4. What is the difference between parliament and government?
5. What does the cabinet do?
6. Who makes up this body?
7. What is the role of the governor-general?
8. Internet investigation
   a. List the major political parties in Australia.
   b. Which political party is in government and which political party is in opposition at a federal level and in Victoria?
   c. What is the name of the prime minister?
   d. What is the name of the premier of Victoria?
   e. What is the name of the governor-general?
   f. What is the name of the governor?

Commonwealth Parliament

The structure of the Commonwealth Parliament is the Queen’s representative (the governor-general) and two houses, the lower house being the House of Representatives and the upper house being the Senate. The Commonwealth Parliament has been given power to make laws under the Commonwealth of Australia Constitution Act 1900 (UK), referred to as the Constitution. This is an act that was passed in the United Kingdom. It establishes the Commonwealth Parliament and sets out the law-making powers of the Commonwealth Parliament.

Did you know?
A minister’s area of responsibility is known as a portfolio.
House of Representatives

The role of the House of Representatives is to represent the people, introduce and pass proposed laws (bills) and form the government. The government consists of all the elected members of the political party that has the majority of members in the lower house (the House of Representatives). The House of Representatives will also review bills passed by the Senate.

All the members of the House of Representatives, including the government members, opposition members and any independents that may hold a seat, are elected for a period of about three years, although elections may be held sooner at the discretion of the prime minister.

At the federal level each state is divided into geographical areas known as electoral divisions. Each division has approximately the same number of electors. The voters in each division elect their representative, who takes a seat in the House of Representatives. There are 150 members of the House of Representatives.

The number of divisions in each Australian state depends on its population. This means that the greater the population the more representation a state will have in the House of Representatives. One proviso is that no Australian state will have less than five representatives in the House of Representatives.

Some electorates are much larger in geographical size because they are more sparsely populated. The largest federal electorate in area is Kalgoorlie in Western Australia.
Did you know?
Kalgoorlie in Western Australia is the world’s largest political electorate, covering a mammoth 2,295,354 square kilometres. This is bigger than France, Spain, Germany and Sweden added together. It has 81,267 voters.
The Senate

The founding fathers were concerned about the possibility of the more-populated states having too much say in the running of the country. It was therefore decided that the states would be equally represented in the Senate to avoid this domination by some states.

The Senate consists of 76 senators. Each state elects 12 senators and each territory elects two. All senators are elected for six years. A half Senate election is held every three years where only half the senators stand for election. After the election, those senators who are newly elected will serve a six-year term while those who did not go to the polls will face an election in three years time.

The Senate was seen by the founding fathers to have two roles: house of review and states’ house. It is the role of the Senate to introduce and pass proposed laws (bills) and review bills passed by the House of Representatives. It is referred to as a house of review because most bills are introduced into the lower house and reviewed in the upper house. It is seen as a states’ house because each state has equal representation. It is sometimes referred to as the red house because of the red decorations.

As senators are likely to vote on party lines (according to the demands of their party), the Senate’s role as house of review and states’ house is diminished.

LEARNING ACTIVITY 1.7
Commonwealth Parliament

1. How many seats are there in the House of Representatives?
2. How long do members of the House of Representatives hold their seat for?
3. How often are elections held for the Senate? What is the term of a Senator?
4. Which house of parliament is usually known as the ‘house of review’ at a federal level?
5. Is the title of house of review appropriate? Discuss.
6. Internet investigation
   Visit the Australian Electoral Commission site. Use the Electorates search section on this website to find:
   a. the name of the electorate for your local area in the House of Representatives
   b. the name of the person who has been elected to represent your electorate.
7. Internet investigation
   Visit the Commonwealth Parliament site. Use the Who’s Who section on this website to find:
   a. the political party of your representative in the House of Representatives
   b. the names of at least two senators from Victoria
   c. the names of the ministers who hold the following portfolios in federal cabinet:
      • health and aged care
      • foreign affairs
      • treasury
      • defence.

Victorian Parliament

The structure of the Victorian Parliament is the Queen’s representative (the governor) and two houses, the lower house being the Legislative Assembly and the upper house being the Legislative Council.
The Legislative Assembly is always decorated in green and the Legislative Council is always decorated in red. This tradition is inherited from Great Britain where the House of Commons is always decorated in green and the House of Lords is always decorated in red.

Victorian Parliament — examples of areas of law-making

- schools
- roads
- forestry
- motor registration
- local government

Legislative Assembly

The role of the Legislative Assembly is to introduce and pass bills and to form government. The government consists of the members of the political party that has the majority of members in the lower house (the Legislative Assembly). The Legislative Assembly can also review bills passed by the Legislative Council.

Each member of the Legislative Assembly (MLA) represents one electoral district and holds a seat in parliament for a fixed term of **four years**. An election is held on the last Saturday in November, which is four years after the previous election. There are 88 members of the Legislative Assembly.
Each electoral district has approximately the same population (around 37,000 electors). Because the geographical size of electorates varies according to the density of the population, city electorates tend to be smaller in area than the country electorates.

All the members of the party in government sit at one side of the house with the premier as leader of the government. The opposition (the other major party that did not receive enough votes to gain government) sits on the other side of the house with the leader of the opposition. The speaker of the house is the member of parliament whose job it is to preside over the house and make sure that the other members of the house follow the rules.

**Legislative Council**

There are 40 members elected to the Legislative Council at each election. The role of the Legislative Council is to introduce bills and review bills passed by the Legislative Assembly. Bills passed by the Legislative Assembly can be rejected or amended by the Legislative Council.

Members of the Legislative Council hold their seats for four years. For upper house elections, the state of Victoria is divided into eight large regions. Five representatives are elected from each region, that is 40 members in total. Within each region there are 11 electoral districts and over 400,000 voters.
LEARNING ACTIVITY 1.8
Victorian Parliament

1. How long is the term of a member of the Legislative Assembly?
2. How long is the term of a member of the Legislative Council?
3. Why is the Legislative Assembly decorated in green and the Legislative Council decorated in red?

4. Internet investigation
   Visit the Victorian Electoral Commission website and browse the State Government Elections section to find:
   a. the lower house district for your school location
   b. the upper house region for your school location.

5. Internet investigation
   Visit the Victorian Parliament website and browse the Members of Parliament section to find:
   a. the representative and their party for your school's lower house district
   b. the representatives and their political parties for your school's upper house region
   c. the names of the ministers who hold the following portfolios in the Victorian Government:
      • multicultural affairs
      • local government
      • attorney-general (legal system)
      • education
      • police and emergency services
      • public transport.


Influencing changes in the law

Parliaments are elected by the people and should therefore make laws that reflect the needs of the people. The law must change when the need arises.

The need for a change in the law is usually highlighted when a problem in society becomes apparent and a change in the law is the best way of dealing with it. For example, after severe water shortages, the Victorian Parliament passed laws to introduce permanent water restrictions to encourage the public to save water.

Parliament may become aware of the need for a change in the law in a variety of ways. For example, a pressure group, such as the Victorian Gay and Lesbian Rights Lobby, could try to pressure the government to initiate a change in the law to overcome an injustice that has become apparent, such as gay people being discriminated against.

For people to succeed in influencing a change in the law, it is important that the media backs the suggested change, because media coverage means that more and more people become aware of the need for the change.

Individuals or groups can:

• contact the media by:
  - writing a letter or email to a newspaper
  - going on a talk-back show

• take part in an online action campaign

• be involved in demonstrations

• organise a petition to parliament with as many signatures as possible.
Law-making through parliament

The government decides what changes in the law to initiate. Parliament makes the laws. If the government of the day decides to initiate a change in the law, a bill (proposed law) is drawn up and presented to parliament.

Before a bill can become law it must pass through both houses of parliament, that is receive a majority vote from the members of each house. Most bills are introduced into the lower house first. Bills (other than bills raising taxes or allocating funds) can, however, be introduced into the upper house and then proceed to the lower house.

<table>
<thead>
<tr>
<th><strong>Stages of bill through parliament</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>introduction and first reading — the bill is introduced to the house</td>
</tr>
<tr>
<td>second reading — when the purpose of the bill is explained and it is debated and voted on. In Victoria the bill is considered with respect to its compatibility with the Victorian Charter of Rights and Responsibilities</td>
</tr>
<tr>
<td>committee stage/consideration in detail — the bill is considered in detail</td>
</tr>
<tr>
<td>adoption of the committee report</td>
</tr>
<tr>
<td>third reading</td>
</tr>
<tr>
<td>bill passes first house</td>
</tr>
<tr>
<td>same procedure in the second house</td>
</tr>
<tr>
<td>bill passes second house</td>
</tr>
<tr>
<td>royal assent — the governor-general (federal) or the governor (state) signs the bill before it becomes law</td>
</tr>
<tr>
<td>proclamation — the act comes into operation</td>
</tr>
<tr>
<td>the bill becomes law</td>
</tr>
</tbody>
</table>
LEARNING ACTIVITY 1.9  
Process of changing the law through parliament

1. What usually occurs before a change in the law is likely to take place?
2. Choose two methods of influencing changes in the law by parliament. Find an example of each kind. How successful do you think this method of trying to influence a change in the law might be?
3. What is a bill?
4. What is royal assent? When does a bill gain royal assent?
5. When does an act come into operation?
6. Read the newspaper article ‘Kids could be charged over sexting on mobiles’ and answer the questions.
   a. Identify whether the new bill is proposed by the Commonwealth Government or the Victorian Government. Explain the reason for your answer.
   b. Why do you think this proposed new law is necessary? Do you agree with the proposal? Discuss.
   c. What might be the consequences of someone being charged under this bill?
   d. Explain the process of the passage of a bill through parliament.

EXTRACT

TEENS WHO ENGAGE IN ‘SEXTING’ COULD FACE JAIL

Most teens have sent naked image of themselves. They could be charged under new child porn laws.

Bill set to increase the penalty to 15 years in jail.

Teenagers who send sexually explicit images of themselves or others could face tough new penalties under laws designed to punish child sex offenders.

Home Affairs Minister Brendan O’Connor wants adult child sex predators to spend more time behind bars but has not ruled out applying tougher penalties to youth who engage in ‘sexting’ — using the internet or mobile phones to send nude or sexual photographs.

Amendments to the Crimes Legislation Amendment (Sexual Offences Against Children) Bill, which will be scrutinised by a Senate committee inquiry today, increases from 10 to 15 years’ jail the penalty for the offence of sending child pornography.

A recent survey in an Australian teen magazine revealed 40 per cent of readers had been asked to send a naked or semi-naked image of themselves over the internet.

It has sparked the Australian Privacy Foundation to lobby Mr O’Connor to rule out charging youth for sexting, and not follow US moves, where prosecutors want to charge a teenager with child pornography offences for appearing topless in a text message.

‘Several problems emerge from lumping sexting teens into the same category as depraved criminals who inflict harm on minors,’ the foundation said in a submission to the inquiry.

‘The most obvious (being) teenagers engaged in sexting are not knowingly harming minors in the same way that traditional child pornographers do.’

Mr O’Connor said Australia’s laws were intended to protect children and target adult offenders.

‘They are not designed to deal with interactions between young people, such as sexting,’ Mr O’Connor said. Instances of young people sending sexually explicit images of themselves and of other young people may in some cases be malicious or exploitative.’

The types of images that fall within the definition of child pornography include those where a person under 18 is in a sexual pose or sexual activity, or ‘that have as their dominant characteristic the depiction of a sexual organ of a person under 18 and which reasonable persons would regard as being … offensive’.

Source: Renee Viellaris, The Courier-Mail, 9 March 2010
Law-making by subordinate authorities

The Commonwealth Parliament and state and territory parliaments do not have the time or expertise to pass all the laws necessary for the running of the country. They therefore give some of their law-making power to subordinate authorities, also known as subordinate bodies or delegated bodies. These authorities are experts in their field and are more accessible to members of the public. They are subordinate to the parliament that gave them the law-making power.

Parliament passes an enabling act giving the subordinate authority power to make laws. The parliament can take away this authority by repealing the enabling act. The subordinate authority cannot make laws outside the guidelines set out in the enabling act. If it does the laws made will be declared void (ultra vires).

The rules and regulations made by subordinate authorities are checked by the parliament that gave them the law-making power. Laws made by subordinate authorities are called subordinate legislation or delegated legislation. The subordinate legislation made by local councils is referred to as local laws.

Other than local councils, subordinate authorities are not elected, but their activities are supervised by parliament to ensure that they do not go outside the power given. Laws made by local councils do not go through the same parliamentary checking process as other subordinate legislation.

Subordinate authorities can be:

- statutory authorities
- government departments
- executive council
- local councils.

Statutory authorities

Statutory authorities are bodies that are created by an act of parliament, for example, the Environment Protection Authority, which deals with waste disposal and environmental issues, gains its power from the Environment Protection Act 1970 (Vic.).
Government departments

The government decides on the general policies to be administered by government departments such as the Department of Human Services. Some of the responsibilities of this department include aged care services, child protection services, dental health services, disability services, drug services, infectious diseases services and psychiatric services. Many regulations made by government departments need the approval of the executive council.

Executive council

At a state level, the executive council is made up of the state governor and relevant ministers and is known as the governor-in-council. At a federal level, the executive council is made up of the governor-general and relevant ministers and is known as the governor-general-in-council. Many acts of parliament give the executive council the power to make regulations. The executive council makes many regulations on behalf of statutory authorities and government departments.

The Graffiti Prevention Act 2007 (Vic.) creates graffiti-related offences and provides search and seizure powers for members of the police force.

Under this act the executive council (governor-in-council) can make regulations in relation to implements used in creating graffiti and the manner in which searches and seizures can be conducted. These regulations will be created by the appropriate government department and given approval by the executive council.

Local councils

Local councils make local laws for their local area, for example, laws that relate to garbage collection and local swimming pools. Each local area has different needs and local councils are more aware of the needs of the people in their local area. Local councils are also known as shire councils or municipal councils.

The Victorian Parliament, under the Local Government Act 1989 (Vic.), gives 79 different local councils in Victoria the power to make laws.
Local council responsibilities include libraries, swimming pools and recreational facilities at local parks.
LEARNING ACTIVITY 1.10
Law-making by subordinate authorities

1. What is an enabling act?
2. Why do you think parliaments delegate some of their law-making powers to subordinate authorities?
3. What types of laws do local councils make?
4. What is Australia Post? How did it gain its right to make laws?

5. Investigation
You have been asked to provide some information about the local council in the area where you live.
   a. What is the name of your local council? Check out the Department of Planning and Community Development website – look up local government.
   b. What is your local municipality like?
   c. What are some of the services offered by your local council?

6. Debate the question ‘Who really has power in our society?’ In your debate consider the power of:
   - parliament, which makes laws that are enforceable through the courts
   - members of the public who vote at elections and people who take action to influence parliament to change the law
   - subordinate authorities that are delegated power by parliament to make law
   - the police who enforce the law
   - the courts that apply the law to cases.
Make a list of the main points brought out during the debate.

7. Investigation of subordinate authority
Investigate online a subordinate authority, other than a local council, and prepare a report on the role and activities of the subordinate authority investigated. Examples of subordinate authorities include the Environment Protection Authority, Dairy Food Safety Victoria, and the Victorian Curriculum and Assessment Authority.

PRACTICE EXAM QUESTIONS

1. What are the essential differences between legal and non-legal rules? Explain why we need laws. (4 marks)
2. Indicate the essential differences between criminal and civil law. Give an example of each type of law. (5 marks)
3. Explain the characteristics of an effective law. (6 marks)
4. Explain the characteristics of the Commonwealth Parliament. In your explanation include:
   a. the structure of the Commonwealth Parliament
   b. the role of the Commonwealth Parliament
   c. the terms of office for the members of each house.
   (4 marks)
5. Why do parliaments delegate their law-making powers to subordinate authorities? Describe two types of subordinate authorities. (6 marks)
OUTCOME 1

On completion of this unit you should be able to explain the need for effective laws and describe the main sources and types of law in society.

Area of study 1

Key knowledge
- the difference between legal and non-legal rules
- the need for laws
- characteristics of an effective law
- the distinction between criminal and civil law
- an overview of the role and characteristics of parliament and subordinate authorities in law-making

Key skills
- define key legal terminology and use it appropriately
- classify rules as either legal or non-legal
- consider the effectiveness of selected laws
- identify legal problems that might be addressed by criminal or civil law
- describe the role of parliament and subordinate authorities in law-making

ASSESSMENT TASK CASE STUDIES

Changes in the law

1. Read the ‘Identity crime’ case study on the next page and answer the questions.
   a. Why was this new law needed? What problem was the law attempting to overcome? (4 marks)
   b. What has the Victorian Parliament done to try to overcome the problem? (1 mark)
   c. Do you think this change in the law is an effective law? Explain. In your explanation refer to the characteristics of an effective law. (10 marks)

Identity crime

Computers have made it easier to steal a person’s identity. Following a report by the Australian Bureau of Statistics (ABS), the Victorian Government announced tough laws to tackle identity crime. A report on fraud by the ABS found that nearly half a million Australians were victims of identity crime in 2007; 141,300 of those were Victorians.

In response to this report, the Victorian Parliament passed the Crimes Amendment (Identity Crime) Act 2009 (Vic.), which created a number of identity crime offences, including using or supplying identity information, possessing identity information that is not your own and possessing equipment for making identity documents.

Under this act, a victim of identity crime could apply to court for a certificate showing their identity had been stolen if the offender had been charged. This certificate could help victims rebuild their identity and credibility with banks and credit unions.
2. Read the case study ‘Solarium use’ and answer the questions.
   a. Which groups tried to influence a change in the law? (1 mark)
   b. How did these groups try to influence a change in the law? (1 mark)
   c. Explain why you think these groups think the change in the law is necessary. (2 marks)
   d. Why might some people see the change in the law as unnecessary or not the right thing to do? (1 mark)
   e. What was the response to these suggested changes in the law? (1 mark)
   f. How effective do you think these changes in the law will be? (4 marks)

(Total 25 marks)

Solarium use

Victoria has become the first state to crack down on the use of solariums. Results of an Australian study showed an alarming link between solarium use and melanoma risk (skin cancer). Saffron Styles had a melanoma removed from her leg following more than 10 years of irregular solarium use.

Under new regulations, Radiation (Tanning Units Amendment) Interim Regulations 2007 made under the Radiation Act 2005 (Vic.), it will be necessary for solarium operators to:

- display mandatory health warnings
- ensure nobody under 16 is permitted to use a sun tanning unit
- ensure that 16- to 17-year-olds only use a sun tanning unit with parental consent
- ensure supervision of all solariums
- undertake mandatory skin type assessments for suitability of solarium use.

Penalties include $991 080 for companies conducting a solarium without a management licence, $132 000 for a person who uses a radiation source such as a tanning unit not in accordance with the regulations and $660 720 for a company that holds a management licence that operates contrary to regulated conditions of use.

The Cancer Council lobbied the Department of Human Services for this change in the law. In 2007 the Cancer Council surveyed 150 Victorian women aged 18–39 and found that 25 per cent of those surveyed failed to recognise that solarium use increased the risk of skin cancer. Professor David Hill, from the Cancer Council, said there had been a 500 per cent increase in the number of solariums in Melbourne in the past 10 years. An average sunbed blasts out five times more UV radiation than the midday sun.

Clare Oliver was diagnosed with melanoma in 2004. Although the original melanoma was removed, the cancer returned and she died in September 2007. She said she was not aware of the dangers of excessive tanning and was shocked when she found out about her cancer. She campaigned very strongly about the dangers of using solariums. After her death a Clare Oliver Melanoma Fund was created for research into melanoma. Ms Oliver’s doctor, associate professor Grant McArthur, said Ms Oliver had used her illness to educate others about the dangers of solariums.

Kylie Strong, the head of the Cancer Council’s Sunsmart program, was reported in The Age newspaper in February 2008 as saying she was shocked that Victorian women were still ignorant about the dangers of solariums, despite the campaigning of cancer sufferer Clare Oliver.

Patrick Holly, of the Australian Solarium Association, said sunbed usage had dropped since Clare Oliver’s death, but he believed there was still a market for solariums in the years ahead. ‘Since the new regulations people will know that solariums will be more stringent in their duty of care’, he said.

These issues were reported on 60 Minutes, in the Liz Hayes story ‘Dying for a tan’ on 2 September 2007.
ASSESSMENT TASK REPORT (WRITTEN, ORAL OR MULTIMEDIA)

The Victorian Parliament

Arrange a visit to the Victorian Parliament or organise a member of parliament to attend class to speak to you about the role of parliament. Write a report about:

• the shape and appearance of both chambers of the house
• the colour of both chambers
• the need for laws
• the role of parliament
• how laws are made
• the need for parliament.

Your report can be written, oral or in multimedia.

(20 marks)