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Legal Studies Update

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Unit 3, Area of Study 1

Parliament and the citizen

2013 FEDERAL ELECTION

On 30 January 2013 in her address to the National Press Club, Prime Minister Gillard announced the date of the next federal election: Saturday 14 September 2013. This is unusual, because the announcement came almost nine months before the election date – usually governments will delay the announcement of the date until approximately one month beforehand, to cut down on the amount of time the opposition will have to campaign and keep them on the back foot. No government has ever called an election before with this much lead-up.

Gillard explained the early announcement by saying she wanted to avoid a year of speculation, distraction and uncertainty, and independent MP Rob Oakeshott released a statement agreeing that the early announcement was in fulfilment of a promise made to him and his fellow independents. Even though it may not have been the intention, there are concerns that this will create the longest ever election campaign, and Shadow Treasurer Joe Hockey called it "trickery". It will, however, put pressure on the opposition to detail its own policies and costings much earlier than would have been the case otherwise.

Concerns have also been raised over the fact that the election is scheduled for Yom Kippur, the Day of Atonement, which is the holiest day in the Jewish calendar. Victorian Labor backbencher Michael Danby has announced that he will not be taking part in election day because he will be observing the special Sabbath, and has criticised the date for a lack of sensitivity. The Director of the Executive Council of Australian Jewry, Peter Wertheim, has said, however, that "it is not a major issue for us", as all elections are held on Saturdays – the Jewish Sabbath – and thus many Jewish voters already use postal votes and early voting arrangements anyway. Extra attention to postal and pre-voting arrangements in this election would, however, ensure that no voter is disenfranchised as a result of the timing.

Parliament will be dissolved on 12 August 2013 to allow for a clear month of campaigning before the vote.

- **Elections are at the heart of the principle of representative government.**
- **The effect of party politics on the role of parliament is one of the factors frequently evaluated.**

THE CRAIG THOMSON AFFAIR

Craig Thomson is a member of parliament sitting in the House of Representatives, and originally he was a member of the Labor Party. In April 2012, however, he was asked by Prime Minister Gillard to stand down from the Party and sit as an independent – a crossbencher – in the lower house, because he was under police investigation for fraud stemming from the time between 2002 and 2007, before he entered parliament, when he was national secretary of the Health Services Union. It is alleged that he misused a Health Services Union credit card to pay for prostitutes, air travel and entertainment, and to make cash withdrawals of more than $100,000.

In October 2012 police searched Thomson's home and electoral office, and on 31 January 2013 Thomson was arrested and charged with 149 counts of fraud; they were not detailed in court due to a printing error, but his lawyer described them as "trivial". If he is convicted, he could face up to five years in jail: this would disqualify him from standing for office again, as anyone convicted of an offence that carries a penalty of more than one year in jail is ineligible to sit in parliament. Thomson was granted bail on the day of his arrest, and told reporters outside the courthouse that he had been given legal advice not to comment even though, he said, "every fibre of my being is screaming out at how wrong this is". Thomson has also previously suggested that he has enemies in the union who resisted his push for increased transparency.

If Thomson is convicted before the federal election there may have to be a by-election to replace him in his electorate. At the very least, this alleged criminal activity and scandal means there is virtually no chance he will be selected as the Labor candidate for the seat. In the meantime, Thomson is continuing to vote with the Labor Party in the lower house, as is former parliamentary speaker Peter Slipper. Because of this, the deputy leader of the opposition

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in the Senate, George Brandis, has said that the government "relies on the presumption of innocence for its very existence."

- **The interplay between the executive branch (including the Government and the police), the legislative branch (including the opposition and the independent MPs), and the judicial branch (including the courts that will try Thomson and Slipper) illustrates the importance of the separation of powers.**
- **The comment made by Brandis illustrates the role of the lower house as the seat of government.**

ABBOTT'S POTENTIAL CABINET

If the Liberal Party wins the upcoming federal election with Tony Abbott as its leader, Abbott will have the power to choose which members of parliament to have as his ministers, and thus which members to have in cabinet and the federal executive council. One of the first tasks of any new prime minister is to select from the members of his or her party which MPs deserve portfolios, and what those portfolios should be. Members who receive portfolios become ministers, and are then called 'frontbenchers'. Members of government who do not receive portfolios are called 'backbenchers'.

Currently Abbott, as leader of the opposition, has what is called a 'shadow ministry'. This means that for every minister the Gillard Government has, the Liberal Party has its own MP 'shadowing' them and hopefully suggesting an alternative policy.

At his address to the National Press Club on 31 January 2013, Abbott was asked whether his entire shadow ministry would be given portfolios if he won government, or whether he would take a fresh look at the people he had chosen and reallocate jobs. Abbott replied that, "I think all of them can expect to go into government in their current positions." He presumably said this to encourage their loyalty, but surprise has been expressed nonetheless – usually an opposition leader will only guarantee ongoing jobs to a small number of 'top' people, and will instead review and improve their ministerial line-up if and when they win the election. At the moment there are arguably a number of talented MPs without shadow portfolios, and some commentators such as the political editor of The Age, Michelle Grattan, have said that Abbott at the moment "does not have the best available team in the right jobs".

Abbott and the Liberal Party still have to win the election for this to be an issue for him or them, but – if that eventuates – he may either squander the opportunity to reorganise his ministry to be most effective, or else be criticised for going back on his promise if he chooses to do that anyway.

- **Abbott's comments reflect the formation of the executive government within the separation of powers.**
- **They also illustrate the role of the lower house as the seat of government, as this will only be an issue if the Liberal Party wins the support of the lower house at the next election.**

WHITEHAVEN COAL HOAX

On 7 January 2013 an environmental activist named Jonathan Moylan created fake media releases stating that ANZ had withdrawn its financial support from the Maules Creek coalmining project run by Whitehaven Coal and sent them to media outlets. These releases were supported by a likewise fake ANZ website and dummy email inbox, and by Moylan pretending to be a company spokesman when contacted by the media. Because ANZ was the primary financial backer of the mine, Whitehaven Coal stock took a temporary nosedive until the public discovered the hoax, and Moylan immediately faced charges of fraud and investigation by ASIC (Australian Securities & Investments Commission).

In an interview with the Newcastle Herald on Wednesday 9 January 2013 Moylan said that the purpose of his action was to force ANZ to publicly declare themselves as the financial backers of the mining project. He was asked whether he was concerned about the impact of the hoax on the investors, but he replied, "Our primary concern is the impact of this mine of the environment at the end of the day. A lot of people were taken in by it, but when you compare the cost of that to the health of our forests and farmlands, it justifies it." Greens leader Christine Milne also came out in support of the action, saying that it was "part of a long and proud history of civil disobedience, potentially breaking the law, to highlight something wrong".

Moylan now faces the possibility of 10 years in jail and fines of up to $495,000 if charged and found guilty. In the meantime, his actions have raised debate in a number of different areas: in addition to discussion regarding the environmental impact of coal and the funding provided by ANZ, community debate has focused on how appropriate it is to break the law in pursuit of a cause we see as being more important. The counter-argument to this criticism is that many groups believe traditional methods of campaigning are inadequate, especially when facing potential consequences as serious as global warming.

- **The methods used by Moylan illustrate the use of the media as one means to influence parliament to change the law, and also a specific type of protest or demonstration.**
- **The concern over environmental degradation and climate change illustrates one reason why laws might need to change.**
- **The statements made in support by the Greens members illustrate not only the role of party policy in law-making and politics, but also the representative function of members of parliament – the Greens members are representing the views of their supporters.**

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PETROL SNIFFING

Some communities across Australia have been negatively affected by members of the public being addicted to petrol sniffing. In order to combat this harm, Senator Rachel Siewert of the Greens introduced the Low Aromatic Fuel Bill on 27 November 2012 – it promotes the supply of low aromatic fuel in communities where petrol sniffing is a concern, and restricts the sale of other fuels such as unleaded petrol in these same areas. It was passed by the Senate, so will go before the House of Representatives to be considered in the new year.

- **Concern over the safety and health of the community is one reason why laws sometimes need to change: protection of the community.**

NEWSTART CONCERNS

On 29 November 2012 the Education, Employment and Workplace Relations References Committee tabled its report on the adequacy of Newstart unemployment payments in the Senate. The report recommended a range of actions to help people return to work and make the Newstart benefits more effective – a minority in the committee, made up of two Government senators and one Greens senator, recommended increasing the amount of the allowance, explaining that people could not effectively get back into the job market if they did not have enough money for basic living expenses. The Committee as a whole told the Senate that the Newstart Allowance was not enough to live on, but the majority recommendation was not to raise it.

Four weeks before the Senate committee returned with its report, on 1 November, the House of Representatives defeated a motion to increase the Newstart benefit by $50 per week. The proposal was made by the Deputy Leader of the Greens, Adam Bandt, who suggested that the $1.2 billion cost of funding the increase could be met by abolishing the subsidies to the fossil fuel industry and taxing the mining industry. Bandt had the support of independents Rob Oakeshott, Bob Katter and Andrew Wilkie for his motion, but the combined forces of the Government and opposition defeated it. The Greens support increasing unemployment benefits, with Greens senator Rachel Siewert criticising the current policy on the basis that it "remains committed to the Newstart myth – that low levels of income support encourage people into work – despite the fact that such a stance has been criticised by a range of business groups, unions and the community sector."

- **The work of the committee illustrates the research resources that parliament has access to when investigating the need for change in the law.**
- **The proposal by non-Government member Bandt illustrates the role of parliament in debating proposals and community concerns in an effort to be a representative and democratic body.**

PARLIAMENTARY BUSINESS

The end-of-year report on parliamentary business produced by the Parliamentary Education Office recorded the number of petitions having been tabled in the 43rd federal parliament, from the August 2010 election to 29 November 2012, as 460 in total – 358 in the lower house, and a lesser 102 in the upper house. The total number of signatures on these petitions was 1,153,834 people. In addition to this, the current parliament has heard 5465 questions without notice, with 3349 of these occurring in the Senate even though Question Time lasts for only 60 minutes in the Senate instead of 90 minutes in the House of Representatives.

- **The statistics on petitions illustrates their role as a way of influencing parliament to change the law.**
- **The larger number of petitions tabled in the lower house illustrates its role as the "People's House".**
- **The statistics on questions without notice illustrates parliament's role in the chain of accountability that is responsible government.**

GAMBLING REFORMS

The National Gambling Reform Bill 2012 received royal assent on 12 December 2012, and will come into effect in 2013. The law implements a nationwide scheme for gaming – 'pokie' – machines, requiring machines to display warnings about the dangers of gambling; limiting ATMs in gaming locations (except for casinos) to withdrawals of $250 maximum; creating an 'Australian Gambling Research Centre' within the Australian Institute of Family Studies; and establishing a system of precommitment, meaning that gamblers are able to decide before they start how much they are willing to risk – and once they reach that limit they are unable to use any more machines within their state or territory until their chosen limit period has expired.

These changes have been made to curb addiction and minimise the problems associated with it. As Jenny Macklin, the Minister for Families, Community Services and Indigenous Affairs said in her second reading speech on 1 November 2012, three-quarters of problem gamblers play pokie machines, and the average loss on pokies of problem gamblers is $21,000 per year. People with gambling problems are six times more likely than average to get divorced; four times more likely to suffer from alcohol abuse; and evidence suggests that they are more likely to suffer mental and physical health problems and find it difficult to hold down a job.

The Bill underwent a great deal of scrutiny, research and revision before it was finally passed by parliament. It was watered down by the Government from what was originally planned, it was amended twice in the lower house (once by the Government and once by independent Tony Windsor) and four times in the upper house (once by the Greens and three times by independent Nick Xenophon), and it spent weeks altogether in the lower house Joint Select Committee on Gambling Reform and the Senate Community Affairs Legislation Committee. In its final version it is being criticised for not going far enough, for taking too long to be implemented (smaller venues have until 2020 to secure precommitment

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machines, for example), and for being too easy to circumvent – the precommitment is voluntary, for instance, and in trials only 13% of Queensland gamers and less than 1% of South Australian gamers chose to precommit.

- **The introduction of poker machine regulation illustrates one reason why laws may need to change: protection of the community.**
- **The amendments made to the Bill show the role of parliament in debating and improving the bill during its passage through the houses.**
- **The investigation by the parliamentary committees illustrates the resources that parliament has access to when researching possible reform.**
- **The investigation by parliamentary committees also illustrates the committee stage (otherwise called the 'committee of the whole' in the lower house) as one of the steps in the passage of a bill through parliament.**
- **The 'watering down' of the Bill demonstrates some of the ways in parliament is not always able to respond to the needs of the community.**

PRESERVING JUDICIAL INDEPENDENCE

The Victorian Attorney-General Robert Clark gave the second reading speech for the Courts Legislation Amendment (Reserve Judicial Officers) Bill 2012 in the Legislative Assembly on 13 December 2012. The Bill is intended to replace a 2005 act that allowed the government to appoint barristers, solicitors and legal academics as short-term 'acting' judges and magistrates – which are essentially temporary or contract positions – to cope with periods of high demand in the courts.

This, however, had the potential to undermine the independence of the judiciary, because of the perception that the acting judges could deliver decisions favourable to the government in order to secure their own re-appointment. The 2005 legislation was criticised for this, and the Supreme Court refused to accept acting judges appointed in this way.

This new bill was developed in consultation with the judiciary, and allows only retired judges or magistrates to be appointed as 'reserve' judicial officers, with a fixed term of five years – or until they reach 75 years of age, if that is sooner. These reserve judges can only be appointed to the court in which they presided prior to their retirement, and can only be removed from office during their 5-year tenure by parliament; this method of removal is the same, in essence, as for a permanent judge or magistrate.

Early in 2013 the bill is expected to pass the Legislative Assembly and move to the Legislative Council.

- **The concerns regarding judicial independence illustrate the importance of the separation of powers.**
- **The second reading speech by the minister illustrates one of the stages in the passage of a bill through parliament.**

MOTORCYCLE SAFETY

On 12 December 2012 the Victorian Parliament's Road Safety Committee tabled its report into motorcycle safety in the Legislative Assembly. On 10 February 2011 the Committee received its terms of reference – a request from the parliament to investigate the issue – and while the original reporting date was set as 30 June 2012, it was extended by six months. The final public hearing was held on Friday 31 August 2012, after which the Committee finalised its 64 recommendations.

During investigation, the Committee received 76 written submissions from individuals and organisations including government agencies, motorcycle groups and health professionals such as doctors, and considered evidence from over 100 witnesses from across Victoria. The Committee also met with international motorcycle safety experts and held public meetings for broad input.

Some of the final recommendations include implementing a star safety rating for motorcycle clothing such as boots, gloves, jackets, pants and armour; including an on-road training component for learner riders and an on-road testing component for probationary riders; and improving, through VicRoads, concrete and steel roadside barriers and rails by using technology such as cushion products for posts.

It is hoped that the Parliament will implement these recommendations to improve the safety of motorcycle riders in Victoria.

- **The investigation by the parliamentary committee illustrates the resources that parliament has access to when researching possible reform.**
- **The recommendations made by the committee illustrate one of the reasons why law may need to change: protection of the community.**

Unit 3, Area of Study 2

The Constitution and the protection of rights

BILL TO RECOGNISE INDIGENOUS AUSTRALIANS

The Aboriginal and Torres Strait Islander People Recognition Bill 2012 was introduced into the House of Representatives on 28 November 2012. If passed, the Bill will commit the government to a referendum on whether to include recognition of Aborigines and Torres Strait Islanders as "the first peoples of our nation" explicitly in the Constitution. It is hoped that this referendum would be an important step in acknowledging the place of indigenous people in the history of Australia, and further uniting the country.

- **The bill's proposal to include a reference to indigenous people in the Constitution illustrates the referendum process that is necessary to change the wording of the Constitution.**

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Unit 4, Area of Study 1

Dispute resolution methods

COUNTY COURT REGIONAL LOCATIONS

In 2012 the Government commenced building works on what the County Court's annual report calls the "sad state of the court facilities" in Shepparton and Wangaratta. There was concern that if this was not undertaken soon, the Court might not be able to continue delivering services in these towns. Once these works are complete the next priority is Bendigo. The County Court Annual Report for 2011/12 stated its intention to keep bringing Bendigo matters to Melbourne in an effort to deal with the backlog.

- **The concerns over the state of the regional courts illustrates the importance of access to courts as a primary avenue for dispute resolution.**

ELECTRONIC FILING

The Magistrate's Court and the Supreme Court already have versions of electronic document filing systems, but the County Court announced that during 2012 it had been working with its IT provider to design its own – it is set to be trialled in the Latrobe Valley, and hopefully rolled out to the rest of the regional 'circuit' courts by the end of 2013.

The filing system is called 'iManage', and it is hoped that it will decrease the time and cost of maintaining and searching court documents, as well as increase the availability of case information to parties. The planned second stage of the system is to increase its functionality to allow parties to use it to file documents electronically as well.

- **The development of electronic filing illustrates the importance of achieving both access and timeliness in the provision of court services.**
- **The existence and availability of electronic filing systems demonstrates one of the features of court resolution that can be compared with VCAT.**

COURT FEES

Each court publishes a schedule of fees that serves as the baseline for what clients should be charged, or have passed on to them by their legal representatives. New schedules for fees for each of the courts came into effect late in 2012. For the first day of a jury in a civil case, for instance, the scheduled charge is $680.40; for days two through six it is $488.40 per day; and for every day from day seven onwards it is $969.60 per day. Another example is that in the Supreme Court the scheduled courtroom fee for setting down the first day of hearing is $1108.90; the fee for using the court on days two through four is $576.40 per day; and this rises again to $962.30 for days five through nine and to $1607.60 for each day after that.

- **The schedule of costs provides data for discussing the cost of courtroom resolution, and issues relating to community access to courts.**

Unit 4, Area of Study 2

Court processes & procedures

CIVIL PROCEDURE REFORMS

The Civil Procedure Amendment Bill 2012 was given royal assent on 30 October 2012. It amends the 2010 Civil Procedure Act by introducing more specific powers for courts to make orders regarding costs and the use of expert witnesses. Under the new law, judges and magistrates can now direct a lawyer to make a full costs disclosure to their client regarding their actual costs to that point and also their estimated future costs. This should better enable parties to decide in a more informed way what they can afford to do regarding their case and whether settlement should be considered.

The amendment also gives clear statutory authority to the courts to control and manage expert evidence. The Act states that the court can limit expert evidence to specified issues, direct two or more expert witnesses to hold a conference, or even order experts to prepare a joint report. Some provisions of the Act came into effect on 24 December 2012, and it will be fully implemented by 31 March 2013.

It is hoped that clarifying judicial powers in this way will allow courts to more readily manage cases and take proactive steps to promote the just, efficient, timely and cost-effective resolution of the real issues in dispute in civil proceedings – and not allow matters to be unnecessarily delayed or protracted.

- **The powers of case management given to the court demonstrate reforms made to the legal system to improve its effectiveness and the ability of the community to use it.**
- **The focus of the reforms illustrates how timeliness is one aim of an effective legal system.**
- **Royal assent being given to the bill illustrates one of the stages in the passage of a bill through parliament.**

SANCTION REFORM

One sanction available to courts when sentencing offenders is community-based work as part of a Community Corrections Order (a 'CCO', introduced on 16 January 2012 to replace other sanctions such as community-based orders and intensive correction orders). Community-based work is one of the conditions that can be attached to a CCO, and it involves the offender performing a set number of unpaid hours of community work. Community corrections programmes include activities such as charitable work, counseling, working at hospitals or educational institutions, undertaking educational or personal development programmes, and receiving treatment for dependency and addiction issues.

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On 13 December 2012 the Minister for Corrections, Andrew McIntosh, gave the second reading speech in the Legislative Assembly for the Corrections Amendment Bill 2012. This bill plans to tweak some of the ways in which community-based work is conducted under the CCOs, such as allowing for the drug and alcohol testing of community-based offenders – currently offenders are prohibited from being under the influence of drugs or alcohol when attending community corrections centres or community work sites, but this ability to test them will strengthen that prohibition and make it more enforceable. The bill also provides for the searching of offenders at community work sites, if it is suspected that they have alcohol, drugs or weapons in their possession.

It is anticipated that this bill will pass the lower house, and be presented to the upper house in the new year.

- **The operation of CCOs illustrates one of the sanction options available to courts at the conclusion of a criminal trial.**
- **The second reading speech by the minister illustrates one of the stages in the passage of a bill through parliament.**

COUNTY COURT INITIAL DIRECTIONS HEARING PROJECT

In its Annual Report 2011/12, tabled in the Victorian Parliament on 13 December 2012, the County Court announced the planned commencement of a 24 Hour Initial Directions Hearings Pilot on Monday 21 January 2013. When an accused is committed to stand trial in the County Court, their case will be listed for an initial directions hearing in the Court at 9am the following day. Not all cases will be eligible for this but, for those that are, the hearings should immediately reduce delay by 10-12 weeks.

Holding the initial directions hearing so soon after the committal will hopefully take advantage of the fact that counsel coming out of the committal are briefed on the case and familiar with all the details of it, so will be in the best position right then and there to give a realistic assessment of whether and when a matter should go to trial. If a matter is considered a definite candidate for a full trial, counsel should ideally be able to assist the judge to set realistic estimates of expected trial length and the issues that will actually be in dispute.

- **The County Court initiative shows one example of a recent reform made to the legal system to improve its effective operation.**
- **The reform also demonstrates the importance of timeliness, as one feature of an effective legal system.**

JURY DIRECTIONS

On 13 December 2012 the Victorian Attorney-General, Robert Clark, gave the second reading speech in favour of the Jury Directions Bill 2012. The Bill has the aim of simplifying and clarifying what directions judges should give juries and how they should be given.

Jury directions are the instructions a trial judge gives to the jury at the conclusion of trial, to help them decide whether the accused is guilty or not guilty. These directions usually include information such as the meaning of the relevant statutory and common law defences that are available to the defendant and the ones which they have argued before the court, a clarification of the key issues in disagreement between the parties, and the verdicts that are open to the jury – but there is no clear law on jury directions in Victoria, and judges are expected to work out what directions to give by referring to a range of precedents and statutes. Judges therefore frequently have to, or do, include other content such as a summary of all the evidence presented, cautions regarding ways in which to use some evidence and ways in which it should not be used. Sometimes, judges will even articulate arguments that could have been made by counsel but were not.

As a result, jury directions take longer in Victoria than in any other state – double the WA average, for instance – and they are longer than in New Zealand, Scotland and the US as well. Judges also end up giving jurors a much wider array of highly detailed and quite complicated directions and legal options.

As the Attorney-General said in this speech, jurors are less likely to listen to directions that are too long or complex, or where the relevance is unclear. This means they are also less likely to understand what directions they are being given, and therefore less likely to apply them to the case. The rules regarding directions can also be too complex for judges to feel confident on, with many being unsure of what they must include and what they are not allowed to say. In 2010 alone, this confusion led to 14 of the 18 criminal retrials in Victoria being needed because of errors in the jury directions. It is vital that judges know what directions to give, and that jurors understand these directions and are able to follow them when reaching a verdict. Currently, however, it seems that jury directions have lost touch with what the community needs.

The Victorian Law Reform Commission ('VLRC') investigated the issue in 2008 and 2009, and published its final report on 29 July 2009. The Department of Justice then established its own jury directions advisory group, which considered both the VLRC's recommendations and those put forward by the Department. The advisory group published its own 'Simplification of Jury Directions Project' report on 3 October 2012, which formed the basis of the bill introduced into parliament by the Attorney-General.

The Bill proposes a range of changes and clarifications. One significant change is the removal of the 'Pemble obligation'. In the 1971 case of Pemble v R, the High Court held that, when summing up, judges needed to direct the jury about possible defences and alternative verdicts (such as a voluntary manslaughter verdict at the end of a murder trial) even if the defence team did not raise them during the trial. To a small extent, the judge was required to argue the defence's case during the summing up, or at the very least to add significant options to the jury's understanding of the case – but right at the end of trial, after the jury felt that they understood everything! The Bill abolishes the Pemble obligation.

The Bill also requires counsel to discuss the case with the judge prior to the summing up, to collectively identify the issues really in dispute between the parties, the directions that need to be given to the jury and the best content of those directions. In his second reading speech on the bill, the Attorney-General justified this by saying that the parties know their own cases better than anyone

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else, and that a record of this discussion could assist appeals. If one of the parties requests a direction be given to the jury that the judge does not want to give, the judge must provide a reason why they will not give it. If the accused is not represented, however, the judge must give any directions that would reasonably be requested if a representative were present. The judge can then give the summation to the jury in a more useful form than is currently done. A summary of the evidence that has been led during the trial no longer needs to be provided, and the judge will be encouraged to use written materials to support their oral explanation. Traditionally, the judge would give a mini-lecture on the law in the area, but then leave the jury to apply that law to the facts of the case and the arguments made by counsel, whereas if the Bill passes they will be encouraged to use 'integrated directions' where the judge matches the relevant law to the facts of the case as argued by the parties for the jury, and presents them with a list of questions they must answer – their answers to these questions should then help them determine a verdict. This is the way in which directions are given to juries in New Zealand, for example.

The final significant change proposed in the Bill is allowing judges, for the first time in Victoria, to answer juror questions on what the term 'beyond reasonable doubt' means. Current common law prevents judges from giving any explanation other than that it is a "common English expression that means what it conveys" – which isn't likely to be particularly helpful for a confused juror who asked the question precisely because they weren't sure what meaning it conveyed – even though research from New Zealand, Queensland and New South Wales shows that a significant number of jurors have difficulty with the concept or apply too low or too high a standard when interpreting it. The Bill stipulates that the judge may answer the question, and provides some guidance on what they might say: for example, that thinking of an "unrealistic possibility" does not constitute reasonable doubt.

- **The actions of the jury in listening to directions and reaching a verdict illustrate the role of a jury in civil and criminal trials.**
- **The action of summing up and giving directions illustrates the role of the judge in jury trials.**
- **The reference to appeals illustrates the ability of parties to have elements of their case reviewed by a higher court.**
- **The discussion of 'beyond reasonable doubt' is in reference to the standard of proof that exists in a criminal trial.**
- **The introduction of the bill represents a number of possible future changes that could be made to the jury system to improve its effective operation. If the bill passes they will then represent recent changes that have been made.**
- **The second reading speech by the minister illustrates one of the stages in the passage of a bill through parliament.**

REVIEW QUESTIONS

1. **Explain the principle of representative government, and how the coming federal election illustrates this principle.**
2. **Outline why it is such a concern that the election is being held on Yom Kippur, when over 100,000 Jewish citizens may find it difficult to cast their vote? Connect your explanation to one of the principles of the Australian parliamentary system.**
3. **Explain how the Craig Thomson scandal illustrates each of the three branches of the separation of powers, and why it is important that they be kept as independent of each other as possible.**
4. **Explain the role of the lower house of parliament as the 'seat of government'. In what way does the lower hosue have the power to determine government?**
5. **Outline the way in which the Gillard Government currently holds executive power, given that Labor does not have a majority of seats in the lower house, and comment on what Brandis meant when he said that the Government was relying on the presumption of innocence for its very existence.**
6. **Explain how Gillard's action regarding Craig Thomson in April 2012 illustrates the principle of responsible government.**
7. **With reference to Abbott's potential cabinet, explain how it is that the people have a say in the legislature but not directly in the executive.**
8. **Using Jonathan Moylan's hoax as an example, explain the use of the media as one method of influencing parliament to change the law.**
9. **Using Jonathan Moylan's justification for his hoax as an example, explain environmental changes as one reason why laws may need to change.**
10. **Using the Low Aromatic Fuel Bill, the motorcycle safety recommendations or the poker machine reforms as a contemporary example, explain protection of the community as one reason why laws may need to change.**
11. **With reference to the work of the Education, Employment and Workplace Relations Committee in investigating the adequacy and effectiveness of the Newstart unemployment scheme, outline some of the ways in which parliament has the ability to research reform before changes are implemented.**
12. **Explain how the Newstart proposal made by Adam Bandt illustrates the role of parliament as a representative body.**
13. **Describe petitions as one informal method individuals and groups in the community could use to influence parliament to change the law.**
14. **Comment on the number of petitions tabled in the lower house in the 43rd parliament versus the number tabled in the upper house. Can you suggest a reason for this difference?**
15. **Using the statistics on the number of questions without notice tabled in the 43rd parliament, explain how Question Time is an important part of the principle of responsible government.**
16. **The gambling reforms were amended a number of times in their passage through parliament. During which stages can a bill be amended?**
17. **Explain the committee stage as one step in the passage of a bill through parliament.**
18. **Comment on the way in which the committee stage and parliamentary debate and amendments can both improve a bill, and possibly detract from its effectiveness.**
19. **Why were there concerns that the 'acting' magistrates might pose a threat to the principle of judicial independence?**
20. **Using either the Courts Legislation Amendment Bill or the Jury Directions Bill as an example, explain the second reading as one of the stages in the passage of a bill through parliament.**

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21. **What is the one way in which the wording of the Constitution can be changed?**
22. **If the Aboriginal and Torres Strait Islander People Recognition Bill is successful in its passage through parliament, outline what else will need to happen before the change it proposes can be made.**
23. **Define 'access' as one of the features of an effective legal system.**
24. **In addition to physical access, which is what is trying to be better achieved through the upgrading of the Shepparton and Wangaratta regional courts, what other factors might influence effective access?**
25. **Explain 'timeliness' as one feature of an effective legal system, and suggest how the development of electronic filing systems might help the courts to achieve this aim.**
26. **Explain how the case management reforms in civil cases may potentially improve the effective operation of the legal system.**
27. **Using the Civil Procedure Amendment Bill to illustrate your answer, explain royal assent as one role played by the Crown in the Australian parliamentary system.**
28. **Outline a 'Community Corrections Order' as one option available to a judge at the end of a criminal trial, in terms of the sanction they give the offender as a consequence for their crime.**
29. **Summarise the facts of the 24 Hour Initial Directions Hearings reform that the County Court plans to implement in 2013.**
30. **Explain how the current state of jury directions might impair the ability of the jury to fulfil its role, and possibly make the jury system less effective.**

APPLICATION EXERCISE

The final dot-point on the Legal Studies Study Design, at the end of Unit 4 Outcome 2, requires that students know "recent changes and recommendations for change in the legal system designed to enhance its effective operation".

This can be a difficult topic for a number of reasons:

1. It is the final topic studied before the final examination, so students can sometimes feel overwhelmed by having to learn new content.

2. It is one of the few topics in the course that must be updated each year, as the word "recent" means changes that have been implemented generally in the last five years.

3. The word "recommended" also requires the content to be updated, as 'recommended changes' from previous years may have ceased to be relevant or may even have been subsequently implemented!

The CPAP Updates can therefore be used to prepare in advance for this final dot-point, so that it has already been mostly completed by the time students finish the rest of the course and reach it.

Step One

Draw up a table, preferably in a Word document. It should have five columns.

Step Two

Label each of the columns as follows:

a. Name of the change.
b. Description of the change.
c. Problem it is or was intended to address.
d. How it could or did improve the legal system.
e. Whether it is recommended or recent – and the date it was recommended or implemented.

If an existing recommended change is implemented, the content can be kept and the information in Column E simply updated to reflect that.

Step Three

Go through the current update, taking notes on any recommended or recent change that looks appropriate.

Step Four

Do the same for the three updates yet-to-come in 2013! Recent or recommended changes you see or read about during the year can also be detailed in the same place.

Appropriate changes in the current Update include:

- The Courts Legislation Amendment (Reserve Judicial Officers) Bill 2012.
- The County Court electronic filing system, 'iManage'.
- The Civil Procedure Amendment Bill 2012.
- The County Court 24 Hour Initial Directions Hearings Pilot.
- The Jury Directions Bill 2012.

Keeping a record like this will take a lot of the pressure off in the final topic of the course: the content will already be done!

MEMORABLE QUOTES

"Living well below the poverty line on $35 a day does not act as an incentive to find work; it only creates yet another barrier."
Greens senator Rachel Siewert, 20 August 2012, regarding the current policy on keeping unemployment benefits too low for the average person to live on.

"The Australian Constitution is the foundation document for our laws and our government, but it is silent on the special place of Aboriginal and Torres Strait Islander peoples— the first Australians."
Minister for Families, Community Services and Indigenous Affairs, the Hon Jenny Macklin, 28 November 2012

"This may be the first step to a paperless court."
County Court Annual Report 2011/12, regarding the commencement of the electronic file management system.

"His comments will dismay many in his party, not just ambitious up-and-comers wanting jobs for themselves but those looking to promote good administration in government."
Michelle Grattan, political editor of The Age in the Sydney Morning Herald 1 February 2013, regarding Abbott's commitment to keep the same ministry if he wins the federal election.

"Directions have been described as inordinately long, in a sorry state, over-intellectualised, complex, voluminous, uncertain and excessive."
Victorian Attorney-General Robert Clark, in his second reading speech on the Jury Directions Bill 2012 in the Legislative Assembly on 13 December 2012

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