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**Legal Studies  
Teach Yourself Series**

**Topic 4: Strengths and Weaknesses of our Law-makers**

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# Strengths & Weaknesses of our Law-makers

We have already established that laws are needed to

1. Establish a code of acceptable behaviour
2. Protect society and its citizens from harm
3. Provide a mechanism in place to deal with those who break these laws.
4. Establish courts and tribunals to deal with criminal and civil disputes.
5. Determine the penalties or sanctions to be imposed upon those found guilty of committing a crime.
6. Reflect our changing views and values.
7. Keep pace with technology.
8. Allow society to continue to function.

## Initial terminology

### As it appears in Units 1, 3 & 4

Laws in our society are made by:

- Parliament
- Courts
- Subordinate authorities

These law-making bodies interact with each other to provide the laws necessary to fulfill the needs identified above. However, each law-maker has a number of strengths and weaknesses that impact upon the effectiveness of our legal system.

It is important to understand the strengths and weaknesses of each law-making body as well as the relationship between these law-makers.

# Strengths of Parliament as a Law-maker

## As it appears in Units 1, 3 & 4

Parliament is referred to as the supreme law-making body. It is responsible for the majority of our laws and in particular the laws that govern all of Australia (laws made by Federal Parliament) and the laws that govern Victoria (laws made by the Victorian Parliament).

The strengths of Parliament are:

1. Parliament has a process specifically designed for law-making. The process of creating a law through Parliament (discussed in TYS2) allows for a full scrutiny of all proposed laws. The Second Reading debate and the debate during the Committee Stage in both the lower house and the upper house of parliament allows all aspects of a proposed law to be fully debated by all members of Parliament. These debates should work to ensure the law is written in the best possible manner, covering all required aspects of the area being legislated and that it meets the requirements of an effective law.
2. Parliament's law-making process provides for a comprehensive review of the law. This obviously involves the proposed laws being fully debated but it also refers to the fact that Parliament doesn't have a time limit placed on law-making. Parliament can defer debates to allow for further investigation and can also refer areas of law to the Victorian Law Reform Commission or the Australian Law Reform Commission. The Law Reform Commissions undertake investigations into areas of law, consulting with experts and the public, to ensure that areas of law under investigation are reviewed fully before a recommendation is forwarded to Parliament.
3. Parliament is an elected body and should represent the views and values of society. Laws made by Parliament should therefore reflect the views and values of the majority of society.
4. Parliament is able to make laws on a whole area. The 1975 Family Law Act 1975 (Cth) provided comprehensive laws relating to marriage, divorce, custody, access and maintenance. All aspects of marriage were dealt with in one Act of Parliament.
5. Parliament can make laws to meet particular circumstances. Where necessary Parliament can legislate in a particular area to deal with a particular issue. The Community Protection Act 1990 (Vic) is an example. This legislation gave the [Victorian Supreme Court](#) the power to hold convicted persons in "preventative detention" for twelve months if the court was convinced by evidence before them that the convicted person was still a risk to the community and likely to commit further offences if released from prison. This law was passed in reference to Garry David, a convicted criminal who made serious threats to the public that he would carry out if released. The Supreme Court repeatedly applied the legislation to continue his confinement.
6. Parliament is able to delegate some of its law-making powers to subordinate authorities, such as local councils and statutory authorities. Parliament does this because it believes these smaller, specialised bodies have more expertise in their specific area and are therefore able to make better laws.
7. Parliament is able to make laws for the future. Acting *in futuro* allows Parliament to create laws now to deal with future circumstances. This allows for the public to be aware of the proposed law and can allow Parliament to conduct public awareness programs so all affected persons can be educated with respect to the proposed law.

**Review Questions**

1. Identify two stages during the law-making process of Parliament where debates occur.

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2. Explain what is meant by the term ‘in futuro’.

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3. Explain how the law-making process of Parliament is a strength of Parliament as a law-maker.

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## Solutions to Review Questions

### 1. Second Reading stage and Committee Stage

2. In futuro refers to law-making for the future. Parliament is able to make laws to deal with future circumstances.
3. The law-making process of Parliament allows for a full debate of all aspects of the law. This should allow for a better law that is more reflective of society's views and values.
4. A hostile upper house is where the government does not control the upper house and proposed laws can be stalled by opposition parties, making law-making difficult.
5. Debates can be lengthy as opposition parties may try to stall legislation as a means of gaining publicity for their views or to score points in the media up to an election.
6. Abortion is a controversial issue and therefore any law on this topic would have led to community debate. It took 40 years before Parliament decided society had changed enough to accept a change in the law.
7. This question requires students to discuss the positives and negatives of courts as law makers. A general statement is required and at least three strengths of courts should be discussed.

Law making is not the intended purpose of a court, their main role is to apply the law and settle disputes. Sometimes in the process of settling a dispute a new law can be created.

Strengths that can be discussed include:

- Consistency
- Fairness
- Courts fill in the gaps left by parliament
- Flexible
- Can change law quickly
- Judges are free from political influence.

8. In answering this question students will need to mention that court-made law is flexible and there is scope for movement.

Students will also need to state that, although Judges need to follow decisions of higher courts in the same hierarchy when a case comes before them, they have various options at their disposal which prevents the law from becoming too rigid.

There are several mechanisms that Judges can use:

- Overrule
- Reverse
- Distinguish