Ability of Parliament and Courts to respond to need for law reform

As parliament is elected by the people, it has the responsibility to represent the views of the majority. It is also the supreme law-making body within its jurisdiction. It can abrogate or codify any common law precedent and can amend any act which it has made or create any new act within its constitutional power.

Parliament can create bodies to investigate the need for law reform. The Victorian Law Reform Commission is one such body. Parliament may also establish committees of its own members to investigate the need for law reform.

Delegated legislation may be made by subordinate bodies (such as local councils) to which the parliament has delegated its law-making powers. Except for local councils, subordinate bodies are not elected and may not make laws which represent the views of the majority, but parliament can over-ride laws with which it disagrees.

Unlike courts which can only act “after the event”, parliament may enact legislation to encompass future events.

One of the factors limiting a parliament in responding to the need for law reform is reluctance to legislate where there are conflicting opinions in the community. For example, Victorian and Western Australian parliaments have legalised voluntary assisted dying (euthanasia). Such legislation was introduced in Queensland in May 2021 but has not yet been passed into law. Similar bills have been passed in Tasmania and South Australia to take effect in late 2022. The campaigns in support of those bills have gone on for decades.

Even when a formal law reform body makes recommendations for change, it may take a long time for the parliament to effect such changes. Courts may respond quickly to disputes and may create a new precedent in doing so, either by establishing a new common law principle or by interpreting a statute. As judges are not elected, they need not concern themselves about making controversial decisions. In *Mabo v Queensland (No 2) [1992]*, the High Court decided that the principle of *terra nullius* was no longer good law, causing quite a stir at the time.

Courts may also declare an act of parliament to be *ultra vires*, outside the parliament’s constitutional powers. In *The State of New South Wales and others v The Commonwealth of Australia [1990],* the High Court held that certain sections of *The Corporations Act 1989* were invalid because the Commonwealth had no constitutional power to provide for the incorporation of trading companies.

It should also be remembered that courts have developed large areas of law where there is no legislation. The law of negligence was largely developed through cases coming before the courts.