

LEGAL BRIEFS

THE JOURNAL OF THE
LEGAL STUDIES ASSOCIATION
OF NSW INC



Volume 28, Edition 1

2021



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Legal Briefs Editor: Keith Thomas

Legal Briefs
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The information contained in Legal Briefs is not legal advice and is written for teachers of Legal Studies and the students who study this course in NSW. Opinions expressed in the articles within this journal are not necessarily those of the LSA Committee as a whole or individually.

We welcome contributions!

All contributions will be acknowledged and are treated as the intellectual property of the author(s).

Please send your contributions as Word documents to office@lsa.net.au

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From the Editor's Desk

Keith Thomas – Editor of Legal Briefs

Dear members!

Welcome to the first edition of Legal Briefs for 2021. This edition contains 9 articles that are wide and varied.

It is most pleasing to have an article contributed by Julia Kostalas from Henry Kendall High School. It is a case study / media file on International Crime and World Order and is the first article that I have received via our Legal Briefs email.

Committee members Vanessa Gilmore, Teresa O'Dwyer, Helen Preketes and our President, Sophie Mynott, have all provided articles for this edition.

Some of our articles are most useful across a range of topics. For example, Vanessa Gilmore's article on Keli Lane could be utilised in Year 11 or as part of the HSC Crime unit, or both.

The final offering is from me. It is two excerpts from our final Year 9 Commerce examination. The first excerpt is a newspaper analysis and the second is an extended response on the courts. These can be used as class activities, homework or as part of an assessment.

We love receiving contributions from our Members!

Legal Briefs submission style guide

Content:

- Teaching strategies, worksheets, activities, ideas for teaching Legal Studies
- Formal papers exploring an issue / topic area
- Assessment tasks
- Contemporary issues media, reports, statistics
- Conditions, agencies of mechanisms of law reform
- Tips for students regarding writing, integrating, evaluating, assessing, making judgements and so on
- Any useful resource or strategy that works / engages students

Submission format:

- Font: Arial
- Font size: 11
- Font colour: Black
- Layout: portrait
- The less formatting within the article the better

How to submit?

- Email to office@lsa.net.au
- Include your name and school at start of document

Thanks to everyone for their contributions to Legal Briefs in 2020! If you have a useful resource that you would like to share, email it to the address above. Have a wonderful Easter break and hope to see many of you at one of our events this year!

Keith Thomas

From the LSA Office

Julie Gleeson – Office Manager



2020 Members are reminded that subscriptions for 2021 are now due. Please ensure that the LSA office receives a copy of the completed membership form. We cannot send our information and resources to your staff if we don't know who they are. A membership form can be found at the back of this edition. A huge thank you to the many schools who have already renewed. We are pleased to be welcoming several new member schools in 2021.

Kind regards,
Julie

The President's Report 2020

Sophie Mynott, LSA President

The mission of the Legal Studies Association of NSW is to support the teaching and learning of Legal Studies in New South Wales and beyond. We seek to promote the study of Legal Studies, support teachers and students, nurture teacher capacity, increase equality of access to opportunities and resources, and advance the professional development of Legal Studies teachers and educators. We achieve this by providing a range of events, publications and activities to assist teachers and students, including an annual state conference, other professional learning opportunities for teachers, student lectures, examination papers, and a regular journal for our Members. It is also part of our role to celebrate the successes of students and teachers, advocate on behalf of Legal Studies teachers and students, and maintain relationships with the NSW Education and Standards Association, the Professional Teachers' Council NSW and other professional organisations on behalf of Legal Studies teachers.

As the President of the Legal Studies Association, it is my pleasure to present an account of our activities and achievements in fulfilling that mission in 2020, our 27th year of operation.

At the Annual General Meeting on the 4th of February the 2020 Committee was voted into office. The Committee members for 2020 were:

Laurie Brady	Judith Macdonald – Treasurer
Wendy Campbell	Jennifer Mater
Erin Carney	Sophie Mynott – President
Brian Elliott	Teresa O'Dwyer
Nick Fernandez	Helen Preketes
Vanessa Gilmore	Maria Tatsis
Natasha Isbel – Deputy President	Keith Thomas – Deputy President
Kate Kempthorne – Secretary	Jennifer Venhuizen

We were extremely pleased to welcome two new members to the Committee – Wendy Campbell and Nicholas Fernandez – who made an outstanding contribution to the Committee and the Association throughout the year, and brought a fresh perspective to our work and planning. We were extremely grateful that our long-standing Office Manager, Julie Gleeson, was willing to fulfil that role again in 2020. Without Julie's hard work and corporate knowledge, the Association would not be able to hold such a high number of successful events every year, nor would we be able to respond to all the queries and requests for assistance we receive from Members.

In February the new LSA Constitution was passed. This was the result of considerable reflection and discussion about the role of the LSA, the changing environment for teachers, and how we could best serve our Members in the future. We developed a five-year strategic plan, the motto of which is 'accountability, equality, sustainability'. A key part of the rationale for making changes was to increase the access to resources and opportunities for all of our Members, and to ensure that the organisation is accountable and sustainable into the future. Obviously events in 2020 impeded some of these plans, but on the other hand it has enabled us to bring forward others, including moving some events online and increasing access for Members from rural and regional areas. In addition to this the Committee has recently voted to expand into Queensland where Legal Studies is offered, but which does not currently have its own organisation. We are excited to welcome our friends in Queensland to the LSA from the start of 2021.

Following our AGM and the amendments to our Constitution, in February we started operating under our new sub-committee structure. We have five sub-committees – Executive, Conference, Events, Exams and Publications – and we found that this allowed for better communication and a clearer division of labour amongst the Committee Members. We hope that our Members perceive that it has led to a better events and resources. The Committee Members certainly have enjoyed being able to focus on one skill or area of interest, and really make it their own.

On the 12th of February, the LSA held the third annual HSC Legal Studies Outstanding Achievement Awards ceremony at which we recognised the hard work and success of the students who gained the top 20 places in the 2019 HSC course, and their teachers. This evening provided an opportunity to congratulate the students, their teachers and parents for their efforts in achieving such wonderful results. Those in attendance heard from each student about which factors they felt had been most important in contributing to their success. Some key things which were mentioned were having a teacher who makes the course more interesting, regularly marks essays and gives feedback; seeking and acting upon feedback; actively engaging with your own learning; and staying up to date with the law. The evening also provided a valuable networking opportunity for the students as they compared plans for university and travel. We were very pleased this year to be able to hold the event in the beautiful Jubilee Room at NSW Parliament House, and to hear an entertaining and inspiring speech from Minister for Skills and Tertiary Education, Dr Geoff Lee.

I want to take this opportunity to thank the members of the LSA Committee for the work they have done this year to provide professional development and resources to all our Members under difficult circumstances. We had to cancel our Conference in March with 10 days' notice and we were able to move that event online reasonably successfully, even though none of us had ever organised an online conference before. I want to give special thanks to all the Committee members who pitched in to make that, and all of our other events this year, work, and to our Office Manager Julie Gleeson who fielded all the calls, emails and paperwork with great aplomb. All LSA Committee members are volunteers, and most of us work full-time. I know we did not always get it right, but it was important to us to continue to offer something to our Members rather than cancelling everything. We believe that what we have learnt this year, and most especially our decision to revamp the website to a much higher degree of functionality, will lead to an increase in access to resources and opportunities for all of our Members.

The 18th annual State Conference was our first online event. Ten hours of lectures were available over a three week period, and covered content from the HSC and Preliminary courses, as well as teaching and learning strategies. The Conference is the most significant event through which we work to achieve our mission, and twelve months of effort and planning go into it every year. Whilst it was disappointing to have to change the way the Conference was presented, and we lost several speakers who were uncomfortable presenting online, overall I believe it was a great success and the feedback was overwhelmingly positive. On behalf of the Members I would like to thank all of the presenters for their willingness to contribute and for the time and effort involved in preparing and filming their presentations. I would also like to thank all of the Committee members who contributed to the organisation of our flagship event, but particularly Sonia Monger, Judy Macdonald and Julie Gleeson for their efforts in moving things online.

Many of our other planned events had to be cancelled, but we were able to hold four webinars early in Term 2 to support teachers dealing with online learning and assessment. The workshop style was very useful and it was wonderful to hear everyone's ideas. We are planning to run more of this style of event in 2021. We held two online Information Nights – one on preparing your students for the HSC, and one on sentencing and post sentencing issues. I am very grateful to Wayne Gleeson for giving up his time and presenting his usual high quality work to 209 Members – an Info Night record – and to Erin, Teresa, Nick and Keith for sharing their tips for supporting Year 12 through the HSC. I also wish to thank Maria, Jennifer, Kate and Laurie for planning and co-ordinating both nights. In addition to supporting teachers, the LSA has a long and proud history of support for students of Legal Studies, and this continued in 2020 with the delivery of our student lecture program – albeit online. Feedback on the online lectures and the Q&A session was overwhelmingly positive and indicated that student and teachers alike found the materials very useful. The Association is indebted to all the Members (organisers and presenters) who were involved in running this event for their dedication, commitment and professionalism, and their willingness to share their expertise.

In 2020 the Association produced three editions of *Legal Briefs*, the journal of the LSA. *Legal Briefs* is included as part of LSA membership, as are the Preliminary and HSC examination papers. Our aim with all three is to provide resources which teachers can adapt for their own classes. As always, *Legal Briefs* contained a variety of quality articles, across a range of syllabus topics, from both a content and pedagogical perspective. Thank you to Keith Thomas for his curation of the articles for the journal, and to the many people who contributed throughout the year. To all of you who have found *Legal Briefs* to be useful in your teaching practice, I exhort you to consider submitting a contribution or two.

The examination committee for 2020 consisted of Natasha Isbel, Erin Carney and Jennifer Venhuizen. They produced a Preliminary yearly examination and a trial examination – without being

able to meet in person to finalise them – which were reviewed by an independent expert who has been on the HSC Exam Committee. I would like to extend my thanks to the committee for their contributions and engagement in the process of writing, checking, and editing the examinations, and pay a particular tribute to Natasha Isbel for her coordination of the team.

None of the above-mentioned activities occur without much planning, organisation, and commitment. As well as attending all the LSA events, the LSA Committee members meet after school hours to plan and prepare for the various events. A number of subcommittees met in addition to the regular Committee meetings, and often a representative of the LSA attended additional meetings and events, such as those run by the Professional Teachers Council. We held our annual Planning Day on Saturday 19th of September. This day was an opportunity to evaluate our progress and develop our 2021-2025 Strategic Plan, with a view to meeting the changing and developing needs of our Members. We also finalised the website revamp and worked on creating content for it.

As evident, much time, thought and effort are expended in running the Association. The LSA relies entirely on volunteers to plan, organise, run and present at its events. Without the dedicated efforts of a relatively small number of people over the last 27 years, the LSA would not be a robust, financially stable organisation which is able to offer a range of support to teachers and students in NSW. I would like to thank each and every one of the 2020 LSA Committee, along with our Office Manager Julie Gleeson, for their dedication, commitment, hard work and support throughout the year. Special thanks to Deputy Presidents Keith Thomas and Natasha Isbel for their counsel and willingness to step in whenever I asked.

In October on World Teachers Day we launched our new logo and branding, to update our ‘look’ and ensure consistency across all our events and publications. One of the exciting things we are looking forward to in 2021 is the launch of our new website. This is linked to our goals around equality of access and sustainability, both environmental and financial, and was the primary driver behind our new logo and colour scheme. The new website will include an increased number of resources for Members, including on the law topics in the Commerce course, as well as a section for students. Legal Briefs will be distributed through the website, and videos and handouts for events such as the Conference and Info Nights will be available on dedicated pages. Members will also be able to register for events through the website. The majority of resources available on the new website will be behind a paywall and you will have to log in with your LSA Member number. Every teacher will have their own login to the website and teachers will be able to register for events on the site. This also means that all teachers in your school will be sent information about upcoming events.

I wish to pay tribute to Sonia Monger, who resigned from the LSA part way through 2020. Sonia contributed significantly to the running of the Association, particularly in the area of registered professional development, as well as providing valuable contributions to the running of the Conference and other events, and student learning. I am sure every Member has attended one of Sonia’s presentations, or an event she organised. Thank you all for your dedication, wisdom, mentoring of new teachers, and invaluable contributions to the LSA. We understand that you are focusing on different priorities, but we hope to still see you in a part time capacity. In the meantime, we wish you all the best in your other endeavours.

As I am sure you are aware recently the LSA, along with most other providers, lost its endorsement to provide accredited teacher professional development. Regardless of NESAs policies, the LSA will continue to offer professional development for our Members, updating issues relevant to the syllabus and sharing effective teaching and learning strategies. We will include in our information about these events the Standards for are relevant for Elective PD. Obviously this is an emerging situation and we will continue to represent our Members in discussions with NESAs and other organisations in an attempt to resolve the situation fairly.

Thank you to all Members of the Association for your involvement in 2020 – for attending events, asking questions, reading Legal Briefs, using the exams, following us on social media and for your feedback. We hope that in 2021 the Association build on its strengths and continue to provide meaningful support and networking, despite the external factors which are making it harder to come together and to gain credit for the excellent contributions we make to each others' practice and to education as a whole. The LSA continues to be a robust, financially stable organisation which is able to offer a range of support to teachers and students in NSW due to the work of its Members. I invite you to contribute to your Association in whatever way you can in 2021.



Sophie Mynott
LSA President 2020
2 February 2021

International Crime and World Order

Case study / Media file

Julia Kostalas, Henry Kendall High School

Activity: read the article and use it and the the table that follows to answer the questions.

Article

Australia to prosecute troops for war crimes in Afghanistan

Australia is forming a new investigative agency to build criminal cases against Australian special forces suspected of committing war crimes in Afghanistan

Rod McGuirk
Associated Press
12 November 2020
<https://abcnews.go.com/International/wireStory/australia-prosecute-troops-war-crimes-afghanistan-74164557>

Australia on Thursday announced a new investigative agency to build criminal cases against Australian special forces suspected of committing war crimes in Afghanistan.

The Office of the Special Investigator is to be formed after a four-year investigation into allegations and rumours surrounding behaviour of some soldiers in Special Air Service and Commando Regiments in Afghanistan from 2005 and 2016.

Benjamin Roberts-Smith, Australia's most highly-decorated member of the armed services when he left the SAS in 2013, has been accused of by former colleagues of unlawful treatment of prisoners including illegally killing prisoners. The former corporal, who was awarded the Victoria Cross and the Medal for Gallantry for his service in Afghanistan, has denied any misconduct. Defense Force Chief Gen. Angus Campbell will make public a redacted report on the four-year investigation next week.

Prime Minister Scott Morrison said the new agency, headed by a retired judge or senior criminal lawyer, was needed because the workload would "seriously overwhelm" existing police resources.

"This report will be difficult news and all of our partners must be assured and those around the world who rightly hold the Australian Defence Forces in high regard," Morrison told reporters.

"In Australia, we deal with this stuff and we deal with it honestly, but in accordance through the rule of law and by following the justice practices and principles that makes Australia what it is," he added.

Two Australian Broadcasting Corp. journalists until recently faced potential prison sentences for using leaked classified defence documents as a basis for a 2017 report that detailed allegations of Australian soldiers killing unarmed men and children.

Police raided ABC Sydney headquarters with search warrants last year but prosecutors decided that charging the journalists would not be in the public interest.

Prosecuting alleged Australian war criminals is expected to take years.

“These are incredibly complex events involving actions and conduct in another country, in a war,” Morrison said.

“This is not a simple matter ... and so it will take as long as it needs to take to ensure we deal with our dual objectives of addressing the justice that is necessary in accordance with our laws and systems but also ensuring the integrity of our defence forces on which we all rely,” he added.

Neil James, chief executive of the Australian Defence Association think tank, said the Australian military wanted soldiers to have their day in court to end a “continuous rumour mill.”

“It’s certainly the case that they’re going to take a long time because we’re talking about a complex investigation, witnesses will have to be interviewed under caution, in many cases those witnesses will be overseas, and in some cases it’ll be hard to interview them because they are in enemy-held territory in a war zone,” James said.

“So the complexity of this is going to be difficult, but it’s got to be faced because ... Australia has to face up to this, that things did go wrong and we need to fix it,” he added.

Around 39,000 Australians served in Afghanistan and 41 were killed.

An international crime can be any act or omission that has international consequences on nation states, their citizens and international law.	
<p>Crimes against the international community: These are ‘the gravest conceivable crimes’(James Catano) and therefore they require international attention. Domestic law and domestic institutions cannot effectively respond and they are a global concern.</p> <ul style="list-style-type: none"> • Genocide: involves acts with the intention of destroying ‘all or part of a national, ethnic, racial or religious group.’ • Crimes against humanity: systematic attack against any civilian population. • War crimes: a breach of the rules of conflict according to the Geneva Conventions and other customary rules of conflict. 	<p>Transnational crimes: are crimes that cross international borders or crimes committed in one country that may have significant negative implications for other countries, eg:</p> <ul style="list-style-type: none"> • Human trafficking and people smuggling • International fraud and white-collar crime, facilitated by computer technology. • Terrorism, including cyber terrorism • The creation and trafficking of child pornography.
<p>Methods of dealing with international crime:</p> <ul style="list-style-type: none"> • Extradition: the process of legal surrender of a fugitive to the jurisdiction of another state, country or government for trial. <i>Extradition Act 1988 (Cth)</i> has guidelines to follow, eg the accused will receive a fair trial. • <i>International Criminal Court Act 2002 (Cth)</i> and the <i>International Criminal Court (Consequential Amendments) Act 2002 (Cth)</i> means Australia’s domestic CJS complies with the Rome Statute. This means we have enacted the provisions of the <i>Rome Statute 2002</i> 	<p>Methods of dealing with international crime: Agencies are set up to deal with these types of crimes:</p> <ul style="list-style-type: none"> • The Australian Crime Commission • The Australian Federal Police • Australian Customs Service • The Australian High Tech Crime Centre (AHTCC)

<p>Evaluation:</p> <ul style="list-style-type: none">• Prosecuting offenders who have committed the worst types of crimes against the international community on a large scale has been a recent development over the last 20 years.• Events in Rwanda 1990's saw ad hoc tribunals set up by the UN, leading to the ICC.• The ICC, a permanent court is symbolically powerful, however, the extent to which it can stop atrocities is limited. It is reactive.• More and more armed conflicts occur internally in countries. It would be more proactive to attempt to stop these conflicts before they escalate.	<p>Evaluation:</p> <ul style="list-style-type: none">• Transnational crimes are committed with ease: enforceability issue.• Authorities have responded and perpetrators are being discovered and prosecuted, but this is a reactive approach.• Three main issues for transnational crime to be better dealt with:• The extent of international cooperation between states and the provision of adequate resources.• The effectiveness of coordination among international agencies, reliant on exchanges of information.• The level of compliance among weaker or poorer states, where the rule of law may be weak.
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Source: Milgate, P; *Study Guide for Students and Teachers, HSC Legal Studies*, Cambridge Checkpoints 2018-2019.

Questions:

1. What type of crime did Julian Assange allegedly commit?
2. What is the role of the ICC? (<https://www.icc-cpi.int/about>)
3. What is a war crime?
4. Why is Australia preparing 'to build criminal cases against Australian special forces suspected of committing war crimes in Afghanistan', instead of sending them to the ICC? (Hint: use the table above)

Activity: read the article and use it and the the table that follows to answer the questions.

Article (extract)

The same AK-47 was photographed on two dead Afghan civilians killed by Australian soldiers

Mark Willacy and Rory Callinan
15/7/2020

<https://www.abc.net.au/news/2020-07-15/sas-soldiers-allegedly-plant-gun-on-dead-bodies-in-afghanistan/12452964>

Australian special forces allegedly planted the same weapon on the bodies of two different Afghan civilians after a raid in which locals say unarmed civilians were executed, the ABC can reveal.

Key points:

- The same AK-47 was pictured with the bodies of two civilians killed in a 2012 raid on the village of Shina
- Special forces soldiers say assault rifles and radios were often planted on bodies to cover up unlawful killings
- The ABC understands the alleged planting of weapons is being investigated by the IGADF's Afghanistan inquiry
- An AK-47 assault rifle with teal-coloured tape wrapped around the stock was photographed next to two bodies in separate locations and logged in the special forces database after the raid at the village of Shina in May 2012.
- The operation by members of 3 Squadron SAS left three Afghans dead, with the special forces claiming they were all insurgents and legitimately killed.
- Australian sources have told the ABC that while one of the dead men was a Taliban fighter, the other two were civilians. This is backed by accounts from the families of two of the men.
- ABC Investigations understands the killings at Shina and the alleged use of a planted assault rifle are being investigated by the Inspector-General of the Australian Defence Force (IGADF).
- For more than four years, the IGADF has been conducting an inquiry into allegations of war crimes committed by Australian special forces in Afghanistan.
- ABC Investigations can confirm that the body of Jan Mohammad was one of two photographed with the same AK-47 with teal coloured tape on the stock.
- The third Afghan killed in the SAS raid was the imam of the local mosque, Muhibullah.
- Abdul Wali says the killing of his father was unforgivable.
- "He was on his own land. He never stole or did anything bad to anyone. He was an elderly person. This is impossible to forgive and I won't forgive it," he said.

"I want [the Australians] to be tried," said Sakhi Daad. "If the government cares about us, if they care about our widows and orphans, then they must summon them and try them in the court."

The Inspector-General is believed to be in the final stages of preparing its long-awaited report for the chief of defence.

An Australian Defence Force spokesperson said: "It is not appropriate for Defence to comment on matters that may or may not be the subject of the Afghanistan Inquiry."

Questions: Rules Regarding the Conduct of Hostilities

1. What is international humanitarian law, and how does it apply to this situation?
2. Which Nuremberg principles apply here?
3. Is this a war crime according to the *Rome Statute*?
4. Which *Geneva Convention* applies to this situation?
5. How does the 'Principle of Distinction' apply to this situation?

The case of Keli Lane

Vanessa Gilmore, Hornsby Girls High School



In 2018, the ABC ran a 3 part special about the conviction of Keli Lane for the murder of her 2 day old baby. Keli Lane was sentenced to 18 years imprisonment.

The documentary examined the evidence presented at trial and raised questions about other evidence that was not admitted.

Activity: Watch the Keli Lane series which at <https://iview.abc.net.au/show/exposed-the-case-of-keli-lane>

As you watch:

1. Identify FIVE pieces of evidence that you think demonstrates guilt beyond reasonable doubt.

Evidence of Guilt	Why is it convincing?

- Identify FIVE pieces of evidence that you think demonstrate reasonable doubt that Keli Lane is guilty.

Evidence that shows reasonable doubt	Why is it convincing?

- Keli Lane was found guilty by a majority verdict. Research how these work in NSW. Type your response.
- What does beyond reasonable doubt mean?
- Read the [Rule of Law Casenote](#). On what grounds was Keli Lane's appeal rejected by the Court of Criminal Appeal?
- How does the evidence presented at trial differ from the evidence presented in the media? Can media reporting create a level of misunderstanding in the community? How?
- What do you think? Guilty or not guilty? Record your decision with a justification that uses correct terminology and post to the Google Classroom / Edmodo / whatever platform the class is using.
- Note any new terminology or questions you have during the lessons.

Changes to Residential Tenancy Laws March 23rd, 2020

LSA Committee Member

Visit the following site to understand more about the changes to the residential tenancy laws, which came into effect on 23 March 2020. These changes amended the *Residential Tenancies Act 2010* and the new *Residential Tenancies Regulation 2019*.

<https://www.fairtrading.nsw.gov.au/about-fair-trading/legislation-and-publications/changes-to-legislation/new-residential-tenancy-laws>

Activities:

1. Read through each of the changes listed below and complete the table:

Change to the law	Brief Explanation	How does this change protect the rights of tenants AND/OR landlords?	Are there any potential issues that might come from this change?
Minimum Standards to clarify fit for habitation			
Changes of a 'minor nature'			
Damage and removing modifications			
Additional water efficiency measures			
One other change (your choice)			

Important Stages in the Developing Recognition of Human Rights

Teresa O'Dwyer, St. Luke's Grammar School

Why is this important?

The syllabus identifies a number of important stages in the development of human rights. You NEED to know and understand them as they have been used as short answer questions and may well be used again. Ensure that you can answer the following questions for each stage:

- What is the 'stage'?
- How and why is it important?
- What human rights outcomes does it achieve?
- Which ones continue to be human rights issues today?

Use this table to summarise each of the stages. *Abolition of Slavery* has been completed for you.

STAGE	IMPORTANCE	HR OUTCOMES ACHIEVED	OUTSTANDING ISSUE TODAY
Abolition of Slavery	Principle over money – morally wrong to buy, sell or own another human being	<i>Abolition of Slavery Act 1807</i> <i>Slavery Convention 1926</i> UDHR Article 4 SCSECR Article 8 <i>Commonwealth Criminal Code 1995 & 2013</i> Amendments S270 & S271 <i>Modern Slavery Act 2018</i>	40.3 million slaves in the World today. 71% are women and 1 in 4 is a child. – 15,000 living in Australia – (Global Slavery Index 2018)
Trade Unionism			
Universal Suffrage			

STAGE	IMPORTANCE	HR OUTCOMES ACHIEVED	OUTSTANDING ISSUE TODAY
Universal Education			
Self- Determination			
Environmental Rights			
Peace Rights			

Crime Media Activity

Helen Preketes, Castle Hill High School

This media article can be used in various areas of the Crime topic including:

- International Crime (dealing with transnational crime)
- Authorities dealing with transnational crime (NSW police, AFP, Maritime Border Command, New Zealand Customs, District court)
- Bail, remand (and custody)
- Police powers (surveillance, covert operations, phone interception, search & seizure, evidence, arrest)
- Drug Offences, Conspiracy
- Sentencing (aggravating factors)

Third time not so lucky for cocaine ring importing largest ever Australian seizure by yacht

Sydney Morning Herald

Feb 29, 2020

<https://www.smh.com.au/national/nsw/third-time-not-so-lucky-for-cocaine-ring-importing-largest-ever-australian-seizure-by-yacht-20200228-p54594.html>

It was meant to be third time lucky. Bobbing just 370 kilometres off the east coast of Australia in a yacht laden with 1.42 tonnes of cocaine, they were almost home.

After two failed voyages over two-and-a-half years they had finally sourced the illicit treasure worth almost half a billion dollars; the culmination of a plan hatched between two convicted drug smuggler cell mates in an Australian prison years earlier.



Figure 1 The cocaine bust on board the yacht Elakha. CREDIT:NSW POLICE

From New Zealand to Fiji, Tahiti, Solomon Islands, Micronesia, Polynesia, even Chile, the 13.3-metre Elakha yacht had served them well. The vessel had been purchased by New Zealander Hamish Thompson following his release from jail in 2013. Thompson was one of four men who spent the better part of three years planning the commercial importation and pay day was coming. But so were the Australian Federal Police. A team of officers had monitored almost every step of the attempted importation through a years-long covert operation prompted by the \$140,000 purchase of the Elakha in the convicted drug smuggler's name.

Under the cover of darkness Maritime Border Command personnel boarded the Elakha shortly before midnight on February 2, 2017. More than three years later two 66-year-old men have been sentenced to life in prison, their two co-conspirators to a combined 51 years, for what remains the largest cocaine seizure in Australian history.

'Known entity'

When authorities boarded the Elakha it was the culmination of a lengthy investigation by federal police and international authorities. The AFP-led Operation Armour was launched in August 2014 to investigate a conspiracy between six people to import a commercial amount of cocaine by sea.

An 18-week trial in the NSW District Court last year found four men guilty of the conspiracy: Thompson, 66, and three associates, removalist Kevin Michael Geraghty, 66, tiler John Majdalawi, 35, and retired electrician Glen James Willcox, 65. The men were connected through terms of imprisonment served in various NSW prisons between 1999 and 2013. A mariner, Thompson wasted little time getting back on the water after serving 13 years for a large maritime cocaine importation in 2000.

Unbeknownst to the then 59-year-old, he was considered a "known entity" by New Zealand Customs following his incarceration, meaning the purchase of the vessel in his name did not go unnoticed. New Zealand authorities were soon aware Thompson was planning a journey in the Pacific Ocean while in contact with Australian associates like Geraghty, also a formerly convicted smuggler with whom he had once shared a cell. "These two principals already had a significant history for importing drugs, so NZ Customs made contact and we started sharing intel across the Tasman to start putting the pieces of the puzzle together," said AFP Investigations Commander, Northern Command,

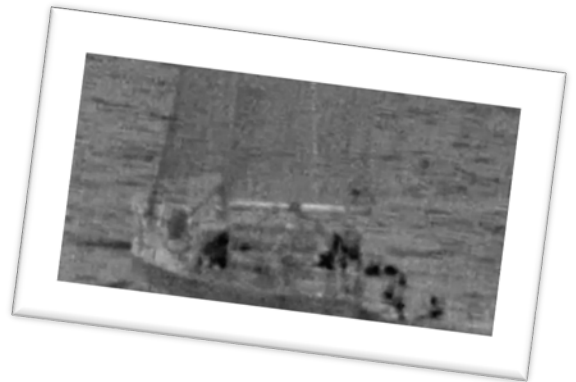


Figure 2 Vision shows that a third attempt wasn't so lucky for a cocaine ring attempting to import the largest ever Australia haul by yacht. Vision: AFP

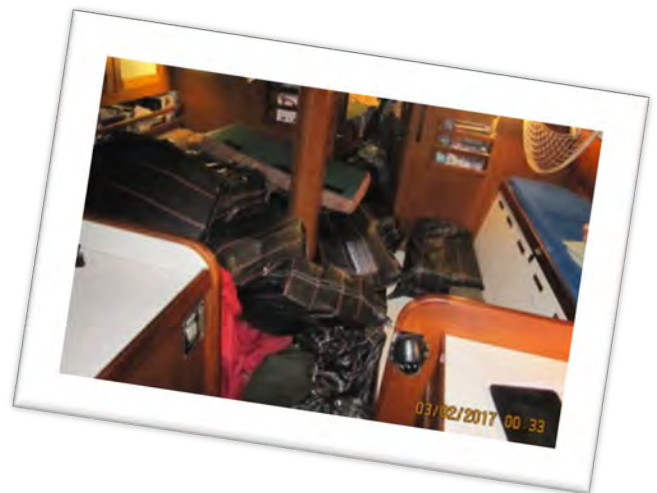


Figure 3: Inside the 13.3-metre yacht. CREDIT:NSW POLICE

Andrew Donoghoe. After intercepting a series of “cryptic” phone calls between them, the AFP confirmed “something was being planned.”



Figure 4 The cocaine seized on February 2, 2017. CREDIT:NSW POLICE

Investigators conducted more than two years of surveillance over those linked to the conspiracy, led by Geraghty and Thompson. Telephone intercepts and other covert videos, photos and devices were monitored in real-time, revealing the evolving plan to source, obtain and deliver the cocaine to Australia. The final brief of evidence tendered to the court included 5800 individual files.

On Friday the court heard the single conspiracy was made up of three separate attempts between January 2014 and February 2017, two of which failed. The third attempt, while successful in obtaining the drugs, was frustrated at the final hurdle by the intervention of authorities. During a combined sentencing on Friday the four men sat together in the Downing Centre District Court to learn their fate.

With the potential to “saturate the Australian community,” the quantity of the drug and the threat it posed to the community “virtually overwhelmed all other factors,” Judge Paul Zahra said upon sentencing Geraghty and Thompson to life, with non-parole periods of 25 and 22 years. Majdalawi was sentenced to 27 years, with a non-parole period of 18 years, while Willcox was sentenced to 24 years, with a non-parole period of 16 years.



Figure 5 John Majdalawi, right, the only one of the four men on bail, arriving at court on Friday. CREDIT:KATE GERAGHTY

In the first stage of the conspiracy the drugs were to be sourced from a contact of Majdalawi’s in Turkey. When that fell through, a second attempt was made to source the drugs from another contact of Majdalawi’s, colloquially described by the group as his “Asian connections”. Again, the plan failed and Geraghty facilitated a new arrangement with a contact he had in the United States. Between the conspirators there was talk of “Mexicanos”, learning “how to sail,” and bikie gangs moving “four hundred kilos of coke a week.” Geraghty, who took on a “managerial role”, would succeed in lining up a commercial quantity of cocaine on credit, telling the conduit in an intercepted phone call that the market in Australia was “just out of control ... we’re talking super super money.”

On the Elakha the group installed satellite communications and used encrypted Blackberries, often struggling to operate the technology. They used coordinates to plot their journey around the world applying code words like “FJ1” for Fiji, “SA1” for South America. “The people we assign to these investigations have to be really tenacious ... we’re talking 12 to 18 months before you start to establish a picture of what the criminality is,” Commander Donoghoe said...On Friday Judge Zahra

said, despite defence submissions made last year and through the trial, he had found Geraghty and Thompson operated together "at the top of the hierarchy". He said he did not accept earlier submissions by Geraghty's defence that his contact with the Elkaha and those upon it was in fact "virtually non-existent" towards the end of the conspiracy.

During the trial last year crown prosecutor Sean Flood told the court the members of the group were "effectively behaving like a transport company, putting themselves out there to be available" to transport the drugs using the Elakha. He said the crown case was not that the group were "going to get the whole amount" garnered from the importation, but that they would be paid on commission, pointing to conversations covertly recorded in a vehicle in which the offenders discussed "10 per cent" being their ultimate reward, which Judge Zahra accepted.

As they received their sentences, the group showed little emotion, but hugged and shook hands with their legal teams before being taken into custody. For Geraghty, Thompson and Willcox, all aged over 65, they will likely spend the rest of their lives in jail, each eligible for parole in 2041, 2039 and 2033 respectively. Majdalawi blew a kiss to a large group of family supporters as he was taken from the court. He will be eligible for parole in 2033.

Questions:

1. List the offences mentioned in this article.
2. Define:
 - Principle in the first degree
 - Conspiracy
 - Transnational crimes
3. Which court heard the trial?
4. How effective is the *Law Enforcement (Powers and Responsibilities) Act* NSW in relation to police powers used in this case?
5. What was the role of:
 - the Crown Prosecutor
 - Australian Federal Police
 - Maritime Border Command
6. What sentences did the men receive? What aggravating factors would have been used by the sentencing judge?

Year 11 Case Study: *Love v Commonwealth of Australia* [2020] HCA 3, *Thoms v Commonwealth*

Sophie Mynott, Barker College

From the syllabus:

Students learn about:

Part I: The legal system

- Aboriginal and Torres Strait Islander Peoples' customary laws
- spiritual basis, significance of land and water
- family and kinship
- relevance to contemporary Australian law

4. Law reform

- conditions that give rise to law reform including: changing social values, new concepts of justice, new technology
- agencies of reform including law reform commissions, parliamentary committees, the media, non-government organisations
- mechanisms of reform including courts, parliaments, United Nations intergovernmental organizations

5. Law reform in action

- B) a contemporary law reform issue

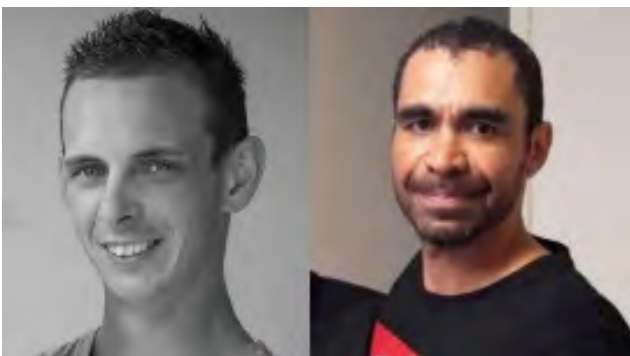
Part II: The individual and the law

- resolving disputes with the state

Part III: Law in practice

Students learn to:

- examine the hierarchy and jurisdiction of state and federal courts
- outline the extent to which Aboriginal and Torres Strait Islander Peoples' customary laws have been integrated into Australian law
- examine the conditions that give rise to law reform
- describe the role of agencies involved in law reform
- examine the operation of the different mechanisms of reform
- identify and investigate a contemporary law reform issue
- examine the conditions that give rise to the need for law reform, the agencies of reform and mechanisms of reform
- assess the effectiveness of law reform in achieving just outcomes with regard to a contemporary law reform issue
- assess the effectiveness of methods of resolving disputes
- distinguish between non-legal and legal methods of enforcing rights and resolving disputes
- assess the effectiveness of dispute resolution processes in achieving justice for and between individuals
- describe the legal and non-legal responses to this issue
- evaluate the effectiveness of the legal and non-legal responses to this issue.



Activities:

1. Students read the articles about the High Court's ruling on the deportation of non-citizens with Indigenous heritage in *Love v Commonwealth of Australia* [2020] HCA 3, *Thoms v Commonwealth of Australia*.

Other resources on this topic:

Dozens in immigration 'now claim Indigenous heritage' due to High Court ruling: Kenny
2 Mar 2020
Sky News Australia
<https://www.youtube.com/watch?v=yDFfigk88VI>

The High Court rules Indigenous people can't be 'aliens'.
Tue 11 Feb 2020
The Law Report
<https://www.abc.net.au/radionational/programs/lawreport/high-court-indigenous-deportation-and-illegal-evidence-in-court/11948486>

2. Students complete the worksheet, then as a class brainstorm how they could use this case study to respond to an essay question.

Articles

High court rules Aboriginal Australians are not 'aliens' under the constitution and cannot be deported

One of the Aboriginal plaintiffs was released from immigration detention on Tuesday following the court's ruling

Paul Karp
The Guardian
Tue 11 Feb 2020 16.40

The Australian government has released an Aboriginal man from immigration detention after a landmark high court case decided Aboriginal Australians are not aliens for the purpose of the constitution and cannot be deported.

On Tuesday afternoon the acting immigration minister, Alan Tudge, said the government is still reviewing the decision but "in the light of the court's ruling, Mr [Brendan] Thoms was this morning released from immigration detention".

The case was a major defeat for the deportation powers of Peter Dutton's home affairs department and a significant development in the rights of Indigenous Australians.

In a four-to-three split decision the high court ruled that Aboriginal people with sufficient connection to traditional societies cannot be aliens, giving them a special status in Australian constitutional law likely to have ramifications far beyond existing native title law.

The majority of the high court ruled that New Zealand-born Brendan Thoms was not an alien and the commonwealth therefore did not have power to order his deportation.

The court was not able to decide if the second plaintiff, Daniel Love, was an Aboriginal Australian, requiring a further hearing to establish whether he is accepted as a member of the Kamilaroi tribe. Speaking outside the court earlier, the men's lawyer, Claire Gibbs, called on the government to immediately release Thoms, who had been in immigration detention for 500 days. Love had previously been released in September 2018.

Gibbs said she was "confident" Love will also be found not to be an alien and told reporters the pair will seek "significant" damages.

"This is significant for Aboriginal Australians ... regardless of where they are born.

"It's about who belongs here, who is an Australian national and who is a part of the Australian community."

"So for now, what this means is that the high court has found that Aboriginal Australians are protected from deportation."

The plaintiffs were born in Papua New Guinea and New Zealand, each with one Aboriginal parent, and faced deportation due to laws which allow the cancellation of visas on character grounds.

Both were convicted of criminal offences and served time in prison. At the conclusion of their sentences in 2018, both had their visas revoked and were taken to immigration detention in Brisbane where they were advised they would be deported.

Lawyers for the two Indigenous men, backed up by the state of Victoria, argued the Australian government cannot deport Aboriginal or Torres Strait Islanders even if they do not hold Australian citizenship because the constitutional definition of "alien" cannot be set by the government of the day through citizenship law.

In separate judgments, justices Virginia Bell, Geoffrey Nettle, Michelle Gordon and James Edelman ruled that the tripartite test of biological descent, self-identification and recognition of indigeneity by a traditional group – established by the landmark Mabo native title cases – can put Indigenous Australians beyond the reach of the aliens power in the constitution.

In doing so, the majority recognised a new category of "belonger" – somebody who is neither an alien nor a citizen – who owe allegiance to and are owed protection by the crown.

Tudge said "on the face of it, [the decision] has created a new category of persons; neither an Australian citizen under the Australian Citizenship Act, nor a non-citizen".

“The department of home affairs will consider the best methods to review other cases which may be impacted.”

Justice Nettle said that the Mabo native title decisions had recognised the existence of Aboriginal societies before European settlement.

To have classified an Aboriginal person as an alien would be to “to tear the organic whole of the society asunder, which would have been the very antithesis of the common law’s recognition of that society’s laws and customs as a foundation for rights and interests enforced under Australian law”, he said.

In separate judgments, the chief justice, Susan Kiefel, and justices Stephen Gageler and Patrick Keane disagreed with the conclusion Aboriginal Australians cannot be aliens.

Kiefel said it was “erroneous” to apply the connection to land required in native title cases to an “entirely different area of the law” to answer that question because the Mabo cases “explain what is native title ... but they do not speak more broadly”.

She suggested the majority had recognised a new immutable right for certain non-citizens that “cannot be said to be a development of the common law”.

“Because it is immutable it might be understood to bear the characteristics of a higher principle of which natural law might conceive.

“But such conceptions are generally not regarded as consistent with constitutional theory.

“And they are regarded by some as antithetical to the judicial function since they involve an appeal to the personal philosophy or preferences of judges.”

The majority ordered the commonwealth to pay the plaintiffs’ costs.



Another Indigenous man leaves immigration detention following 'Aboriginal aliens' ruling

More than 20 people who say they are Indigenous Australians could be freed from immigration detention after a landmark High Court ruling.

Updated 03/03/2020
By Tom Stayner, Evan Young
www.sbs.com.au

Another Indigenous man has been quietly released from immigration detention following the landmark High Court decision that found Aboriginal Australians cannot be considered "aliens" under the constitution.



Home Affairs Secretary Mike Pezzullo at a Senate Estimates hearing, Monday, March 2, 2020 Source: AAP

The unnamed man was released last week and more than 20 others are still trying to prove they meet the test of Indigeneity set out by the High Court, Home Affairs representatives told a Senate Estimates hearing on Monday.

Last month, the High Court ruled Aboriginal Australians could not be considered "aliens", and thus were unable to be deported, when it heard the cases of two convicted criminals and non-Australian citizens.

The four-three majority decision was a big victory for New Zealand-born Brendan Thoms, who was released immediately after the ruling.

But the High Court was unable to agree as to whether Papua New Guinea-born Daniel Love was Aboriginal. He remains vulnerable to deportation unless it can be proved he meets the Indigeneity test.

The man released last week "clearly met" the Indigeneity test, Home Affairs secretary Michael Pezzullo said.

Home Affairs general council Pip De Veau said the department was currently reviewing the cases of roughly 20 other immigration detainees who claim to be Indigenous.

"Negotiations are ongoing to establish evidence in a number of matters," she said.

"In round figures, I think it is in the vicinity of 23 cases but that spans all possible indications of Indigeneity not those who could ultimately reach the threshold."

Home Affairs would be unable to detain them further if they met the test, Mr Pezzullo conceded.

"There would be an absence of power to detain people in those circumstances ... We're working on that as quickly as possible," he said. Home Affairs Minister Peter Dutton has criticised the High Court's ruling on a number of occasions, saying the finding represented a "very bad thing" and that it undermined Australia's border protection regime.

Questions

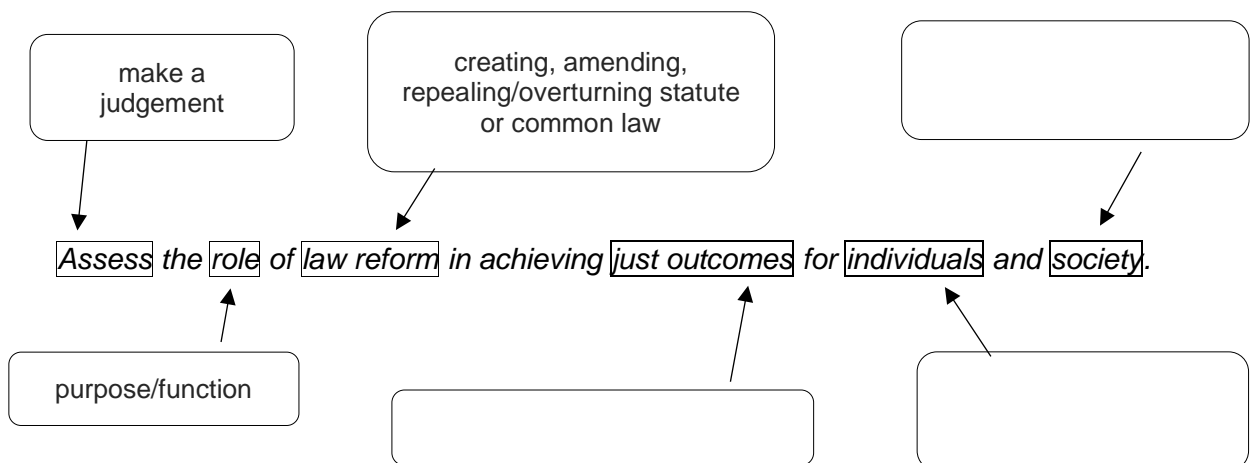
1. Outline the facts of the case.
2. Identify the rights of individuals which are relevant for this case study.
3. Identify the needs of the state which are relevant for this case study.
4. Outline the role of the High Court in this case study.

5. Describe the difficulties with enforcing rights in this situation. (What were the problems in this case study?)

6. Describe the implications of this case for the government. (What problems are there with this decision?)

7. Discuss whether law reform achieved just outcomes in this case. (For individuals and society)

Now let's plan a paragraph for an essay for the following question:



Relevant legal terminology	
LCMID	
Explanation (how and why)	
Answer to the question (judgement)	

Commerce Resources

Keith Thomas, Cumberland High School

Activity: Newspaper article analysis

10 marks

Read *Discrimination in a Pandemic* and answer the following questions (2 marks each)

1. List 4 types of business where mass layoffs have placed workers in an insecure position.
2. Why are women and older/younger workers at a disadvantage?
3. Outline the government program to keep people in work and comment on its effectiveness.
4. Describe why “Employers need to prioritise the health and wellbeing of staff”.
5. Describe how “There is equality in male and female superannuation in Australia” by referring to relevant statistics.

Article

Discrimination in a Pandemic (excerpts)

Associate Professor Alysia Blackham
University of Melbourne
<https://pursuit.unimelb.edu.au/articles/discrimination-in-a-pandemic>

Many Australians are facing potential unemployment, but the reality is some people are more likely to face discrimination and inequality in the workplace during COVID-19.

COVID-19 is fundamentally reshaping the economy and the world of work.

Mass layoffs – in tourism, bars, clubs, cafes, restaurants, cinemas and casinos, and also increasingly in professional services – have particularly affected people in precarious or insecure work.

Governments are scrambling to offer social security and JobKeeper payments to compensate for some of these job losses, but there has been little acknowledgment of the potential inequities that accompany these broader trends. Unless these are recognised and managed, people face long-term disadvantages in employment long after the COVID-19 pandemic ends.

Casual and insecure employees are far more likely to be affected by COVID-19 as they have few protections against a reduction in shifts or dismissal.

Women are also at a disadvantage as they are less likely to have paid leave entitlements than men. Older and younger workers are disproportionately over-represented in insecure work, too.

In August 2019, before COVID-19 affected Australian workplaces, according to Australian Bureau of Statistics (ABS) data, there were 2,573,200 employees without paid leave entitlements in Australia. This represents 24.5 per cent of all employees, and 20.5 per cent of all employed persons (once we include those who are owner managers of incorporated or unincorporated enterprises).

Lack of paid leave entitlements is just one characteristic of insecure work. Others can include lack of certainty around the duration of a job, unpredictable working hours or pay and having little or no voice to determine working conditions.

For employees of 'prime age' – between 35 and 44 – the ABS found that only 14.6 per cent were in insecure work (that is, had no paid leave).

But for younger and older workers, this picture was not so positive, with 73.9 per cent of 15 to 19-year-old employees in insecure work and 43.1 per cent of Australian employees aged 20 to 24 in the same position. Insecure work also becomes a greater issue for older workers, affecting 34.5 per cent of Australian employees aged 65 and over.

So the impacts of COVID-19 are likely to mostly be felt by female workers along with younger and older workers, and there is increasing concern that youth employment will not recover quickly or easily after COVID-19.

The ABS Labour Force data collected for February and March 2020 did not identify notable impacts from COVID-19, as the reference period was before most shutdowns commenced. April 2020 data is likely to tell a very different story. Around 43 per cent of Australians aged between 20 to 24 are in insecure work.

The government has developed the JobKeeper Payment scheme to keep people in work, but this does not extend to casuals with less than one year at an employer, or to migrant workers. This disadvantages young workers who, on average, have much shorter job tenure than older workers.

Concern that older workers will experience more catastrophic COVID-19 symptoms may lead employers to resist putting older workers in customer-facing roles.

Employers need to prioritise the health and wellbeing of staff but older employees may lose work due to fears for their health and safety, putting them at significant financial risk.

Employers may also be reluctant to rely on older workers to avoid potential legal ramifications. Workers' compensation claims have already been lodged in relation to COVID-19 and this is likely to grow substantially. While workers' compensation claims are not limited to older workers, the issue is around how employers view and value their older workforce.

Added to these concerns is the current ability to draw down on superannuation to tide people over financially during COVID-19 which risks draining the superannuation accounts of workers, especially women.

According to the Association of Superannuation Funds of Australia, in 2017, the median superannuation balance at retirement for men was *three times higher* than for women. By the time they were aged 60 to 64 men had a superannuation balance of \$A110,000 compared to only \$A36,003 for women. Adding to this worrying picture, in 2015–16, around 32.7 per cent of women – almost a third – reported having no superannuation, compared with 27 per cent of men. Further, the median superannuation balance for women aged 30 to 34 was \$A23,396, compared with \$A30,000 for men.

We also need to be more proactive and preventative in addressing discrimination and inequality at work: seeking a remedy cannot rest solely with an individual employee.

The best way forward is for employers to take reasonable and proportionate measures to avoid discrimination in their organisations.

Activity: Extended Response

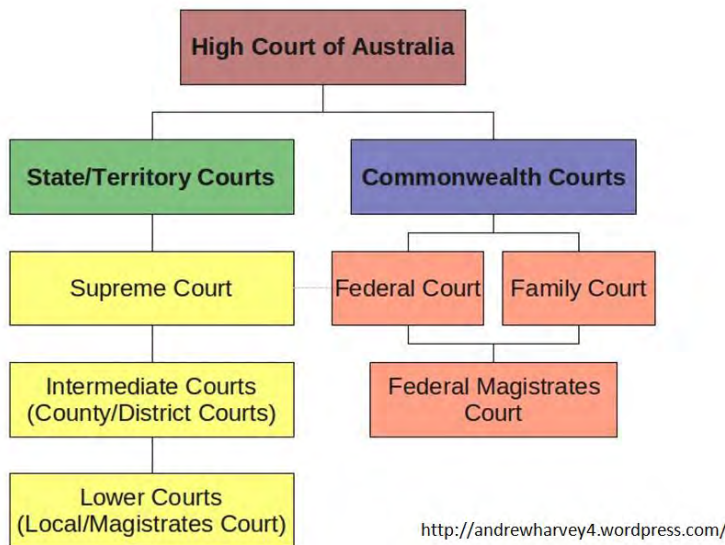
10 marks

In your answer you will be assessed on how well you:

- Communicate using relevant Commerce terminology and concepts
- Present a well-structured, sustained and logical extended response with an introduction, sequential body and conclusion.
- Use appropriate grammar, spelling and punctuation.
- Provide enough good points with an appropriate amount of explanation.
- Accurately integrates information / examples from the syllabus provided.

Explain the court structure of Australia. Refer to the stimulus to complete your response.

Australian Court Hierarchy



Civil matters

The Local Court is limited to dealing with civil cases claiming cases up to \$60,000.

The District Court can deal with all motor accident cases, regardless of the amounts of claim involved. It is limited to dealing with other types of cases up to \$750,000.

There are no upper limits on civil court cases in the Supreme Court.

Role of High Court

The role of the High Court is to act as the final appellate court in the Australian judicial system.

It's Word is final. This means that any new precedent made by the high court applies to all courts underneath it in the judicial hierarchy

It must deliberate on the constitutionalism of laws made by parliament

Make interpretations of statutes in Australia

Adjudicate between commonwealth and states, and between the people of a state and the state or commonwealth.

Although it is not an intended role, the High Court is also the key agent for constitutional change.

DEFINITION



MARKING CRITERIA

Criteria	Mark
<ul style="list-style-type: none"> • Presents a thorough answer to the question, using a range of own knowledge and examples. • Explains in extreme detail the court structure / hierarchy of Australia. • Accurately and actively refers to the stimulus in producing a cohesive and accurate response. • Writes within a structured, easy to follow response style. 	9 – 10
<ul style="list-style-type: none"> • Presents a sound answer to the question, using some own knowledge. • Covers the court structure / hierarchy of Australia in some detail. • Refers to the stimulus within a structured response. 	5 – 8
<ul style="list-style-type: none"> • Utilises the stimulus to respond to the question • Provides very little, if any, own information 	1 – 4