



LAWS820

Competition Law

S1 External 2016

Dept of Law

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Disclaimer

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General Information

Unit convenor and teaching staff

Unit Convenor

Susan Carter

susan.carter@mq.edu.au

Contact via susan.carter@mq.edu.au

515 W3A

Friday 10-11 a.m. or by appointment.

Credit points

4

Prerequisites

(16cp in LAW or LAWS units at 600 level or above) and (admission to JD or LLM or GradCertLaw or GradDipLaw)

Corequisites

Co-badged status

Unit description

This unit examines the competition law provisions of the Competition and Consumer Act 2010 (Cth). The unit considers the policy framework behind the law, including Australia's National Competition Policy, and the current policy debates surrounding the regulation of competition. Topics include the regulation of cartels, anti-competitive arrangements and understandings, and abuse of market power. Considerable time is spent reading and interpreting statutes and on the administration of schemes of government regulation.

Important Academic Dates

Information about important academic dates including deadlines for withdrawing from units are available at <https://www.mq.edu.au/study/calendar-of-dates>

Learning Outcomes

On successful completion of this unit, you will be able to:

Understand the scope of the Competition and Consumer Act 2010 (Cth)('the Act') and examine the key competition provisions in detail; consider the relation between the competition and consumer provisions; build an awareness of the Constitutional issues influencing its design; and how an Application scheme operates to address these Constitutional issues.

Critically appraise the Act, considering: whether it achieves its stated aims; the difficulties of translating policy into legislation; and the tensions between competing aims in the legislation.

Develop knowledge of and skills in statutory interpretation by working closely with the Act's key competition provisions.

Apply the Act to solve problems in competition law.

Examine the differences between the previous legislation and its current form; analyse ongoing amendments and proposed amendments, appreciate the process of legislative change, the relationship between the courts and Parliament and the dynamic nature of the law.

Analyse the role of regulatory bodies, in particular the ACCC, in law enforcement and the policy considerations which may influence enforcement.

Assessment Tasks

Name	Weighting	Due
<u>Class Test</u>	20%	Week Five Tutorials/OCS
<u>Presentation of research</u>	10%	Friday 15th April
<u>Assignment</u>	30%	6/5/16 at 5 p.m.
<u>Take home</u>	40%	15/6/16 at 5 p.m.

Class Test

Due: **Week Five Tutorials/OCS**

Weighting: **20%**

The Class Test will be of 50 minutes duration and consist of one problem question about an aspect of competition law. It will be completed by students in their regular tutorial time and will cover material covered in the first three lectures. Students may bring a copy of the legislation (either a published annotated copy such as that written by Steinwall or Miller, or pages students have printed out themselves) and one A4 page of their own notes (front and back, at least 10 point font), but no other materials. Students should also bring their own paper to complete the task.

On successful completion you will be able to:

- Understand the scope of the Competition and Consumer Act 2010 (Cth)('the Act') and examine the key competition provisions in detail; consider the relation between the competition and consumer provisions; build an awareness of the Constitutional issues

influencing its design; and how an Application scheme operates to address these Constitutional issues.

- Develop knowledge of and skills in statutory interpretation by working closely with the Act's key competition provisions.
- Apply the Act to solve problems in competition law.

Presentation of research

Due: **Friday 15th April**

Weighting: **10%**

Research Assignment **SEE PART ONE BELOW**

In *ACCC v Coles* [2014] FCA 1405, Gordon J at [102] observed (emphasis added):

*Coles' misconduct was serious. I reject Coles' submission that these contraventions are somehow distinguishable, or of a less serious nature, because they did not involve vulnerable consumers. Coles' conduct did not involve vulnerable consumers. Coles' conduct did involve vulnerable suppliers – some of Coles' smaller suppliers.... Indeed, their lack of size was one of the reasons why they were classified as Tier 3 Suppliers and targeted by Coles. These vulnerable suppliers were up against Coles - the second largest retailer of grocery products in Australia. It is unsurprising that Coles admits that it had substantially stronger bargaining power. **It is difficult to envisage circumstances involving a larger disparity in bargaining power.***

In their press release advising that they were bringing action against Woolworths for breach of s21, the ACCC noted(emphasis added):

*The ACCC also alleges that these requests were made in circumstances where Woolworths was in a **substantially stronger bargaining position** than the suppliers, did not have a pre-existing contractual entitlement to seek the payments, and either knew it did not have or was indifferent to whether it had a legitimate basis for requesting a Mind the Gap payment from every targeted Tier B supplier.*

<https://www.accc.gov.au/media-release/accc-takes-action-against-woolworths-for-alleged-unconscionable-conduct-towards-supermarket-suppliers>

What is meant by 'bargaining power'? In what way is this the same or different to 'market power' in the context of s46? Could these actions against Coles and Woolworths been run using s46 instead of s21? If this is the case, then do any changes to s46 also have to consider s21?

Support your discussion by reference to case law and the discussion surrounding the Harper Review.

This task is to be done in two parts:

PART ONE – Due Friday 15th April at the On Campus Session – 10 MARKS

Prepare a short presentation (no more than 5 slides) outlining your views so far. You do not need to have reached a concluded view but must be able to explain your thoughts so far, and

demonstrate wide reading to support your views.

PART TWO – Due Friday 6th May at 5 p.m. – 30 MARKS

Final assignment - **Total word limit: no more than 3,000 words - excluding references.** (Note: references are excluded, not footnotes. If footnotes contain argument they will be included in the word count. Penalties apply for exceeding the word limit.)

Further instructions:

You should provide an integrated discussion of the issues raised, well supported by appropriate legal references. It is expected that your work will demonstrate a strong understanding of the current debate around s46 informed by your reading. This reading will be reflected in your references, but more importantly in your demonstrated understanding of the arguments.

Your work should **not** be presented in point form and all standard conventions of grammar and spelling should be observed. Please proof read before submission.

- Referencing should be in accordance with AGLC 3.
- Please use a font size no smaller than 12 point font. Headings and sub-headings may be used as appropriate to assist in the clear structure of your argument.
- All assignments are to be submitted through the Turnitin portal on the ilearn webpage.

Late Submission and extensions

Law School Policy is that late submissions will not be marked and students will receive a mark of zero - unless prior dispensation has been sought and received in accordance with the special consideration policy.

Ample time has been made available for the completion of this assignment. Accordingly, last minute illness or misadventure is unlikely to meet the requirements for special consideration. **If you are applying for special consideration, please submit your work in progress through Turnitin with a note that an application for special consideration has been lodged.**

Grading Criteria: please see this Unit Guide for grading criteria.

On successful completion you will be able to:

- Critically appraise the Act, considering: whether it achieves its stated aims; the difficulties of translating policy into legislation; and the tensions between competing aims in the legislation.
- Develop knowledge of and skills in statutory interpretation by working closely with the Act's key competition provisions.
- Examine the differences between the previous legislation and its current form; analyse ongoing amendments and proposed amendments, appreciate the process of legislative change, the relationship between the courts and Parliament and the dynamic nature of the law.

- Analyse the role of regulatory bodies, in particular the ACCC, in law enforcement and the policy considerations which may influence enforcement.

Assignment

Due: **6/5/16 at 5 p.m.**

Weighting: **30%**

Research Assignment PLEASE SEE INSTRUCTIONS ABOVE AND COMPLETE PART TWO BELOW

PART TWO – Due Friday 6th May at 5 p.m. – 30 MARKS

Final assignment - **Total word limit: no more than 3,000 words - excluding references.** (Note: references are excluded, not footnotes. If footnotes contain argument they will be included in the word count. Penalties apply for exceeding the word limit.)

Further instructions:

You should provide an integrated discussion of the issues raised, well supported by appropriate legal references. It is expected that your work will demonstrate a strong understanding of the current debate around s46 informed by your reading. This reading will be reflected in your references, but more importantly in your demonstrated understanding of the arguments.

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- Analyse the role of regulatory bodies, in particular the ACCC, in law enforcement and the policy considerations which may influence enforcement.

Take home

Due: **15/6/16 at 5 p.m.**

Weighting: **40%**

The take home will consist of one hypothetical problem question which may raise any issues discussed in the course.

Word length: 3000 words.

Footnotes: As this task is in lieu of a formal exam there is no need for footnotes or AGLC referencing. However all cases and legislation should be referenced in appropriate exam style (that is short name, no need for full citation), and if footnotes are included they will be counted in the word length.

Release date: the Take home will be released on the Unit web site on Saturday 11th June before midday.

Students will have four days to complete this task. This is not an indication of the length or complexity of the task - if students are well prepared they should be able to complete the task in 4-5 hours. The extended time period allows students to plan the completion of this task around their other commitments. This should obviate the need for any requests for extensions - which are unlikely to be given.

On successful completion you will be able to:

- Understand the scope of the Competition and Consumer Act 2010 (Cth)('the Act') and examine the key competition provisions in detail; consider the relation between the competition and consumer provisions; build an awareness of the Constitutional issues influencing its design; and how an Application scheme operates to address these Constitutional issues.
- Develop knowledge of and skills in statutory interpretation by working closely with the Act's key competition provisions.
- Apply the Act to solve problems in competition law.

Delivery and Resources

DELIVERY

Students are expected to attend one two hour lecture and one tutorial each week.

Lectures begin in week one, tutorials commence in week two.

Lectures are also available on ilecture, but students are reminded that if they have not either attended a lecture or completed the ilecture prior to the tutorial **they will not understand the tutorial discussion, will not benefit from it, and will not be able to participate in the discussion.**

ON CAMPUS SESSION

Attendance at the on campus session is compulsory. If students do not attend they will be unable to complete the 20% class test.

The on campus classes will be held on Wednesday 13th, Thursday 14th April and Friday 15th April.

TECHNOLOGY

Students are encouraged to check the unit webpage regularly, which can be accessed through <http://ilearn.mq.edu.au> Unit materials, including tutorial questions, are available through the unit webpage.

The assignment and the take home exam are to be submitted using the Turnitin portal on the unit webpage.

PC and internet access are required, as are basic computer and word processing skills.

REQUIRED READING

Texts

- Corones, SG *The Australian Consumer Law* 2nd edition (Thomson Reuters 2013)
- Corones, SG *Competition Law in Australia* 6th edition (Thomson Reuters, 2014)

Legislation

- You will need access to the *Competition and Consumer Act 2010* (Cth). As we will see, this legislation is the subject of heavy and almost constant amendment, so it is critical to have access to an up-to-date version. The versions on line are usually up to date, but not as helpful as the printed, annotated legislation. Two versions of the annotated legislation are available - one by Miller and one by Steinwall. Both are excellent, and it will be advantageous if you obtain a copy of the annotated legislation of your choice. Second hand copies are available, but as the legislation changes frequently, any annotated legislation older than 2012 will be of little use - and even a 2014 copy will need to be

checked against the current text of the legislation. It should be clear from lectures which sections have been the subject of recent amendment.

- You should expect the legislation to change during the course of 2016 - especially the Competition provisions.

Useful websites

- Australian Competition and Consumer Commission www.accc.gov.au
- Australian Federal government consumer site www.consumer.gov.au
- Australian Productivity Commission www.pc.gov.au
- Consumers Federation www.consumersfederation.com
- European Union consumer materials www.europa.eu.int/comm/consumers/
- Home Page of Recalled Items www.recalls.gov.au
- Ministerial Council on Consumer Affairs www.consumer.gov.au
- New Zealand Consumer Affairs www.consumeraffairs.govt.nz/productsafety/
- Office of Fair Trading New South Wales www.fairtrading.nsw.gov.au
- Standards Australia www.standards.org.au

GRADING CRITERIA

GRADING CRITERIA FOR INDIVIDUAL ASSESSMENTS

1. ASSESSMENT CRITERIA FOR ASSIGNMENT

FAIL (49% AND BELOW)

- does not answer question;
- few if any identifiable arguments;
- inappropriate and/or irrelevant content;
- plagiarism, use of other students' work, 'recycling' own work from other units;
- difficult to read and/or understand through poor grammar, spelling, expression or structure.

PASS (50% - 64%)

- attempts to answer question, but does not answer the entire question, or follow through with reasoned argument;
- does not demonstrate engagement with the issues;
- descriptive summary of material relevant to question;
- superficial use of material and tendency to paraphrase and/or quote heavily;
- minimal analysis and evaluation;

- adequate expression.

CREDIT (65%-74%)

- mostly answers the question;
- contains no significant errors and covers relevant issues fairly well;
- articulates own argument including critical evaluation of the issues;
- good use of material relevant to question;
- has clear structure and clear expression

DISTINCTION (75%-84%)

- completely answers the question;
- articulates own argument including critical evaluation of the issues;
- excellent use of material relevant to question;
- excellent expression and free from errors

HIGH DISTINCTION (85% and above)

- satisfies all the criteria for a Distinction; and
- contains striking originality in analysis;
- innovative use of material relevant to the question;
- exceptionally well written and exceptionally well-structured.

2. ASSESSMENT CRITERIA FOR PROBLEM QUESTIONS

FAIL (49% AND BELOW)

- fails to identify and discuss relevant issues of law raised by facts;
- contains incorrect statements of law;
- does not provide relevant authorities for propositions of law;
- inappropriate and/or irrelevant content;
- plagiarism, use of other students' work, 'recycling' own work from other units;
- difficult to read and/or understand through poor grammar, expression or structure
- fails to comply with formatting instructions.

PASS (50% - 64%)

- correctly identifies and discusses a limited number of issues of law raised by the facts
- contains no significant errors of law;
- provides correct authorities for propositions of law;
- attempts to apply relevant law to the given facts;
- adequate expression.

CREDIT (65%-74%)

- correctly identifies and discusses most of the issues of law raised by the facts;
- contains no errors of law;
- provides correct authorities for propositions of law;
- successfully applies relevant law to the given facts;
- identifies differences between facts in the question and fact patterns in cases, and attempts to discuss relevance of this to the solution;
- identifies discrepancies/inconsistencies within the law, and attempts to resolve these where they are relevant to the given facts;
- attempts to explain which outcome is more likely where there is more than 1 possible solution to the problem;
- has clear structure and clear expression

DISTINCTION (75%-84%)

- correctly identifies and discusses all of the issues of law raised by the facts;
- contains no errors of law
- provides correct authorities for propositions of law;
- successfully applies relevant law to the given facts;
- identifies differences between facts in the question and fact patterns in cases, and successfully discusses the relevance of this to the solution;
- identifies discrepancies/inconsistencies within the law, and successfully resolves these where they are relevant to the given facts;
- successfully explains which outcome is more likely where there is more than 1 possible solution to the problem;
- has very clear structure and clear expression

HIGH DISTINCTION (85% and above)

- satisfies all the criteria for a Distinction;
- is exceptionally well written and exceptionally well-structured.
- demonstrates superior and original analytical skills.

3. ASSESSMENT CRITERIA FOR GROUP PRESENTATION

FAIL (49% AND BELOW)

- does not relate item to legal issue;
- few if any identifiable arguments;
- inappropriate and/or irrelevant content;

- plagiarism, use of other students' work, 'recycling' own work from other units;
- relying on the work of other group members rather than making own contributions;
- difficult to understand through poor grammar, expression or structure.

PASS (50% - 64%)

- attempts to address legal issues raised by item, but does not address all legal issues or follow through with reasoned argument;
- does not demonstrate engagement with the issues;
- descriptive summary of material relevant to question;
- superficial use of material and tendency to paraphrase and/or quote heavily;
- minimal analysis and evaluation;
- adequate expression.

CREDIT (65%-74%)

- mostly develops the legal issue raised by the item;
- contains no significant errors and covers relevant issues fairly well;
- articulates own argument including critical evaluation of the issues;
- good use of material relevant to question;
- has clear structure and clear expression

DISTINCTION (75%-84%)

- completely discusses the relevant legal issue;
- articulates own argument including critical evaluation of the issues;
- excellent use of material relevant to question;
- excellent expression and free from errors

HIGH DISTINCTION (85% and above)

- satisfies all the criteria for a Distinction; and
- contains striking originality in analysis;
- innovative use of material relevant to the question;
- exceptionally well expressed and exceptionally well-structured.

LATE SUBMISSION

Law School Policy is late submissions will not be marked and will be given zero, unless prior dispensation has been sought and received, in accordance with the Disruption to Studies policy.

EXTENSIONS

Extensions are only available in extraordinary circumstances in accordance with the Disruption to Studies Policy: http://www.mq.edu.au/policy/docs/disruption_studies/policy.html

Unit Schedule

Week/ Lecture Date	Lecture Content	Assessment
Week 1 4th March	Introduction to the Unit, Statutory Interpretation, History of Competition and Consumer regulation and the design of the <i>Competition and Consumer Act 2010(Cth)</i>	Regular lecture attendance is a continuing unit requirement
Week 2 11th March	Introduction to competition regulation	Regular lecture attendance is a continuing unit requirement
Week 3 18th March	Collusion and Cartel Regulation	Regular lecture attendance is a continuing unit requirement
Week 4 25th March	Cartel Regulation continued; NO LECTURE TODAY. TUTES THIS WEEK WILL BE I-TUTES - DETAILS TO BE PROVIDED GOOD FRIDAY	Regular lecture attendance is a continuing unit requirement
Week 5 1st April	Misuse of Market Power	Regular lecture attendance is a continuing unit requirement Tutorial Test 20%
Week 6 8th April	Exclusive Dealing and RPM; Mergers and Acquisitions; Authorisation.	Regular lecture attendance is a continuing unit requirement
	LECTURE BREAK	
Week 7 29th April	Introduction to Consumer Protection Regulation; Consumer Protection – warranties and guarantees	Regular lecture attendance is a continuing unit requirement
Week 8 6th May	Misleading and deceptive conduct	Regular lecture attendance is a continuing unit requirement
Week 9 13th May	Misleading and deceptive conduct continued; Manufacturers' Liability	Regular lecture attendance is a continuing unit requirement

Week 10 20th May	Unconscionable conduct	Regular lecture attendance is a continuing unit requirement
Week 11 27th May	Unfair Contract Terms	Regular lecture attendance is a continuing unit requirement
Week 12 3rd June	Remedies and enforcement	Regular lecture attendance is a continuing unit requirement

Week 13 10th June	No lecture this week but tutorials continue	Revision as required	<i>Take Home Exam</i> <i>Available Saturday 11th June</i> <i>Due Tuesday 15th June at 5 p.m.</i>
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Policies and Procedures

Macquarie University policies and procedures are accessible from [Policy Central](#). Students should be aware of the following policies in particular with regard to Learning and Teaching:

Academic Honesty Policy http://mq.edu.au/policy/docs/academic_honesty/policy.html

New Assessment Policy in effect from Session 2 2016 http://mq.edu.au/policy/docs/assessment/policy_2016.html. For more information visit http://students.mq.edu.au/events/2016/07/19/new_assessment_policy_in_place_from_session_2/

Assessment Policy prior to Session 2 2016 <http://mq.edu.au/policy/docs/assessment/policy.html>

Grading Policy prior to Session 2 2016 <http://mq.edu.au/policy/docs/grading/policy.html>

Grade Appeal Policy <http://mq.edu.au/policy/docs/gradeappeal/policy.html>

Complaint Management Procedure for Students and Members of the Public http://www.mq.edu.au/policy/docs/complaint_management/procedure.html

Disruption to Studies Policy http://www.mq.edu.au/policy/docs/disruption_studies/policy.html *The Disruption to Studies Policy is effective from March 3 2014 and replaces the Special Consideration Policy.*

In addition, a number of other policies can be found in the [Learning and Teaching Category](#) of Policy Central.

Student Code of Conduct

Macquarie University students have a responsibility to be familiar with the Student Code of Conduct: https://students.mq.edu.au/support/student_conduct/

Results

Results shown in *iLearn*, or released directly by your Unit Convenor, are not confirmed as they are subject to final approval by the University. Once approved, final results will be sent to your student email address and will be made available in [eStudent](#). For more information visit [ask.m](#)

mq.edu.au.

Student Support

Macquarie University provides a range of support services for students. For details, visit <http://students.mq.edu.au/support/>

Learning Skills

Learning Skills (mq.edu.au/learningskills) provides academic writing resources and study strategies to improve your marks and take control of your study.

- [Workshops](#)
- [StudyWise](#)
- [Academic Integrity Module for Students](#)
- [Ask a Learning Adviser](#)

Student Services and Support

Students with a disability are encouraged to contact the [Disability Service](#) who can provide appropriate help with any issues that arise during their studies.

Student Enquiries

For all student enquiries, visit Student Connect at ask.mq.edu.au

IT Help

For help with University computer systems and technology, visit http://www.mq.edu.au/about_us/offices_and_units/information_technology/help/.

When using the University's IT, you must adhere to the [Acceptable Use of IT Resources Policy](#). The policy applies to all who connect to the MQ network including students.

Graduate Capabilities

PG - Discipline Knowledge and Skills

Our postgraduates will be able to demonstrate a significantly enhanced depth and breadth of knowledge, scholarly understanding, and specific subject content knowledge in their chosen fields.

This graduate capability is supported by:

Learning outcomes

- Understand the scope of the Competition and Consumer Act 2010 (Cth)('the Act') and examine the key competition provisions in detail; consider the relation between the competition and consumer provisions; build an awareness of the Constitutional issues influencing its design; and how an Application scheme operates to address these

Constitutional issues.

- Critically appraise the Act, considering: whether it achieves its stated aims; the difficulties of translating policy into legislation; and the tensions between competing aims in the legislation.
- Develop knowledge of and skills in statutory interpretation by working closely with the Act's key competition provisions.
- Apply the Act to solve problems in competition law.
- Examine the differences between the previous legislation and its current form; analyse ongoing amendments and proposed amendments, appreciate the process of legislative change, the relationship between the courts and Parliament and the dynamic nature of the law.
- Analyse the role of regulatory bodies, in particular the ACCC, in law enforcement and the policy considerations which may influence enforcement.

Assessment tasks

- Class Test
- Presentation of research
- Assignment
- Take home

PG - Critical, Analytical and Integrative Thinking

Our postgraduates will be capable of utilising and reflecting on prior knowledge and experience, of applying higher level critical thinking skills, and of integrating and synthesising learning and knowledge from a range of sources and environments. A characteristic of this form of thinking is the generation of new, professionally oriented knowledge through personal or group-based critique of practice and theory.

This graduate capability is supported by:

Learning outcomes

- Understand the scope of the Competition and Consumer Act 2010 (Cth)('the Act') and examine the key competition provisions in detail; consider the relation between the competition and consumer provisions; build an awareness of the Constitutional issues influencing its design; and how an Application scheme operates to address these Constitutional issues.
- Critically appraise the Act, considering: whether it achieves its stated aims; the difficulties of translating policy into legislation; and the tensions between competing aims in the legislation.
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- Analyse the role of regulatory bodies, in particular the ACCC, in law enforcement and the policy considerations which may influence enforcement.

Assessment tasks

- Class Test
- Presentation of research
- Assignment
- Take home

PG - Research and Problem Solving Capability

Our postgraduates will be capable of systematic enquiry; able to use research skills to create new knowledge that can be applied to real world issues, or contribute to a field of study or practice to enhance society. They will be capable of creative questioning, problem finding and problem solving.

This graduate capability is supported by:

Learning outcomes

- Develop knowledge of and skills in statutory interpretation by working closely with the Act's key competition provisions.
- Apply the Act to solve problems in competition law.
- Examine the differences between the previous legislation and its current form; analyse ongoing amendments and proposed amendments, appreciate the process of legislative change, the relationship between the courts and Parliament and the dynamic nature of the law.
- Analyse the role of regulatory bodies, in particular the ACCC, in law enforcement and the policy considerations which may influence enforcement.

Assessment tasks

- Class Test
- Presentation of research
- Assignment
- Take home

PG - Effective Communication

Our postgraduates will be able to communicate effectively and convey their views to different social, cultural, and professional audiences. They will be able to use a variety of technologically supported media to communicate with empathy using a range of written, spoken or visual formats.

This graduate capability is supported by:

Learning outcome

- Apply the Act to solve problems in competition law.

Assessment tasks

- Class Test
- Presentation of research
- Assignment
- Take home

PG - Engaged and Responsible, Active and Ethical Citizens

Our postgraduates will be ethically aware and capable of confident transformative action in relation to their professional responsibilities and the wider community. They will have a sense of connectedness with others and country and have a sense of mutual obligation. They will be able to appreciate the impact of their professional roles for social justice and inclusion related to national and global issues

This graduate capability is supported by:

Learning outcomes

- Examine the differences between the previous legislation and its current form; analyse ongoing amendments and proposed amendments, appreciate the process of legislative change, the relationship between the courts and Parliament and the dynamic nature of the law.
- Analyse the role of regulatory bodies, in particular the ACCC, in law enforcement and the policy considerations which may influence enforcement.

Assessment task

- Assignment

Changes from Previous Offering

This is the first offering of this subject