



Award Summary

Outstanding Achievement (OA)	72
High Achievement (HA)	213
Satisfactory Achievement (SA)	222
Reassessed into neighbour	48
Total candidates	555

Gender Breakdown

Males	212
Females	343

Ratings awarded (internally and externally)

Criterion	A		B		C		D	
	int	ext	int	ext	int	ext	int	ext
Criterion 1	143	105	224	211	174	196	12	25
Criterion 2	159		229		152		12	
Criterion 3	142	86	178	201	205	181	26	68
Criterion 4	117	93	195	220	214	193	25	30
Criterion 5	148		215		178		11	
Criterion 6	202		191		140		18	
Criterion 7	190		233		121		7	
Criterion 8	144	69	222	240	183	204	4	24
Criterion 9	262		200		82		9	
Criterion 10	241		174		117		21	

T A S M A N I A N

S E C O N D A R Y

A S S E S S M E N T

B O A R D

LS845

Legal Studies

2000 External Examination Report



General Comments

529 candidates sat the external paper. Approximately 14% received OAs, 39% received HAs, 42% received SAs and 5% received NN.

The correlation between external and internally assessed criteria fell well within the TASSAB guidelines from a state-wide perspective, although we continue to be more generous internally compared with student's external performance. Only a few schools fell outside the desired variation range and in most instances they were schools with very small samples.

In 1999 criteria 3 posed a problem, in that the average external rating was significantly lower than the internal ratings. This problem seems to have been overcome this year. Probably because we moderated criteria 3 this year and discussed ways of better preparing students for this criteria on the external exam.

The anecdotal evidence and comments would suggest that most teachers and students were pleased with the paper and found it very manageable. The markers meeting recommended that two 'either or' questions be introduced in 2001 to reduce the opportunity of students doubling up on the same topics, especially the jury and adversary questions and the sources of law questions.

Section A

Question 1

Why is the Commonwealth of Australia correctly described as a federal system of government?

232 candidates answered this question. The better answers clearly stated that a federal system of government has two tiers, consisting of a national parliament and state parliaments, each having its own responsibilities and sovereignty. More able candidates could describe the historical development of Australian democracy, could give detailed explanation of the constitutional differences of exclusive, concurrent and residual powers and contrasted Australia's system of government with the unitary model as used in New Zealand. Poorer answers included irrelevant details such as the bicameral system, the separation of powers and the importance of the cabinet.

Question 2

Describe the structure of the Tasmanian State court system. Include clear reference to its original and appellate jurisdiction.

202 candidates answered this question and generally they did quite a good job. The better answers detailed both the original and appellate jurisdiction of the various courts in the State hierarchy. Mention of the subdivisions of the Magistrates Court (Court of Petty Sessions, Small Claims division, Civil division, Children's Court and Coronial division) was advantageous. There was considerable confusion about the value limits on the Small Claims Court (\$3000) and the Magistrates Court - Civil division (\$20,000).

Question 3

Explain the difference between the standard of proof and burden of proof in criminal prosecutions and civil actions.

Students needed to recognise that these are essential elements of the adversary system.

Many students failed to explain the meaning of the two terms ie burden of proof relates to the question of which party has to prove the facts of the case, whilst the standard of proof refers to the strength of the evidence needed to prove the case.

Students also needed to explain the concepts of, 'beyond all reasonable doubt' in a criminal case (what does this actually mean?) and 'balance of probabilities' in a civil case ie the plaintiff must prove that they are more probably in the right and the defendant is more probably in the wrong. Better answers explained why there is a less stringent standard of proof in a civil trial and used terms such as plaintiff and defendant correctly.

It was also necessary to explain why the onus of proof rests with the party bringing the action. Better answers discussed the presumption of innocence.

Question 4

*What is meant by 'evidence' in the trial of a legal case? Give **three** examples of inadmissible evidence.*

Most of the 282 students who answered this question were able to mention the various types of evidence: oral, documentary and real and to outline a few examples of inadmissible evidence (eg, hearsay, opinion, character, privileged information, illegally obtained, duress, irrelevant). A number of students sought to argue that circumstantial evidence is inadmissible. Circumstantial evidence is admissible, although what weight is given to it is entirely up to the jury, as indeed is the task of assessing the credibility of all admissible evidence.

Question 5

Explain the availability of Legal Aid in the community.

Many students failed to make a distinction between legal advice and legal representation. Better answers alluded to the range of services available.

To properly address the question of availability, the eligibility of legal aid through the means and reasonableness tests needed to be discussed as well as special conditions which may be applied.

The discussion of the problems created by the cuts in government funding to legal aid was well discussed. In particular as it affects representation in criminal and family cases. The vital importance of access to legal advice and representation was also emphasised and many students also used the Dietrich case in explanation.

Question 6

Explain some of the major controls or 'checks' in regard to delegated or subordinate legislation.

Of the 148 candidates who answered this question, most could explain the tabling of subordinate legislation in parliament and the power of the Supreme Court to determine whether regulation, which was the subject of legal challenge, was *ultra vires*.

The more capable candidates were able to explain the limiting provisions of the relevant enabling act, the use of parliamentary committees, the creation of regulatory impact statements, ministerial responsibility and the role of the ombudsman. Poorer answers wandered into discussion of the benefits and limitations of subordinate legislation and defined the terms used, neither of which had any relevance to the question posed.

Question 7

Explain the meaning of the following legal terms in relation to legal precedent:

- *ratio decidendi*
- *stare decisi*
- *obiter dictum*

Better answers gave an introduction to this question with a discussion of precedent – the process of judges following previous decisions of higher courts in the same hierarchy.

Many students did not explain 'stare decisi' – to stand by previous decisions. When a decision has been reached the reason for the decision stands and is part of the law that binds or guides later cases. Better answers explained the purpose of this process and referred to consistency and predictability.

Most answers to 'Ratio decidendi' and 'obiter dictum' were thorough and indicated a sound understanding, although poorer answers merely gave the literal translation of the terms without an explanation.

Question 8

Explain the difference between 'reversing', 'over-ruling' and 'distinguishing' in the adversary system of trial.

This was a less popular question.

Good introductions briefly discussed the importance of precedent and the question of flexibility and the development of the law.

The main problem with many answers was the confusion between overruling and reversing.

Overruling, when a higher court in a new case decides not to follow an earlier decision of a lower court in a previous case. The ratio decidendi from the latest case becomes the new precedent.

Reversing, when a case is taken on appeal to the higher court which decides to change the decision of the lower court. The higher court decision becomes the precedent to be followed in future cases.

Most students had a good understanding of 'distinguishing' and gave sound explanations.

Question 9

What are some of the principle differences between moral rules and laws?

358 students attempted this question, but the standard of answers was somewhat disappointing. While most students had a good understanding of how formal laws generated in the various parliaments differ from non-legal rules in general, many were uncertain about what constituted a moral rule. Students often cited as examples of moral rules such things as football club rules, household rules regarding washing up and school dress codes rather than citing such principles as truthfulness, honesty, greed, vindictiveness, infidelity, insensitivity, etc.

Most students understood that formal laws apply to all in the community and are enforceable through the courts but were vague about how moral rules operate.

Question 10

Describe the process by which a jury is selected for a criminal trial before the Supreme Court of Tasmania.

This was a relatively popular question with 305 candidates responding to it. Most responses covered the random selection of prospective jurors from the electoral roll and the facts that people in some occupations were not required to do jury duty. The notion of geographical proximity of the prospective juror's home to the court was introduced by many but few understood the exact rule. Similarly, the concepts of peremptory challenge and challenge for cause were understood but the numbers available for defence and prosecution in criminal and civil trials was not widely known.

The relatively few candidates who achieved more than a C for criterion 1 were able to explain the relationship between the court and the electoral officials, were able to provide details of the categories of citizens precluded from jury service and knew the rules about peremptory challenges and challenges for cause in both criminal and civil trials. Poorer answers revealed patchy understanding of the process. Some even thought that prosecution and defence lawyers interviewed prospective jurors and actually chose the ones they wanted. A score of candidates spoke of 'electorate roles' and one, probably thinking of the adversary system, spoke of the citizens having to go to a 'challenging room'.

Section B**Question 11**

'The major way in which the law is made in Australia is by the passage of a Bill through Parliament.' What are the advantages and disadvantages of making law by Act of Parliament? Critically evaluate the role of the Executive in this process.

Criterion 1

Although the question did not specifically ask candidates to describe the parliamentary law making process or the role of the Executive (especially Cabinet) in the legislative process, any answer of the question needed to identify the key elements of the process when discussing the advantages and disadvantages of law making via Parliament.

- Basic answers outlined the various stages a bill must pass through on its way to becoming an Act and the important role Cabinet has in setting the agenda of Parliament. Some answers spent too much time on describing the stages and not enough time on the ‘advantages and disadvantages’ part of the question.
- Better answers explained the different roles of the Upper and Lower Houses in the legislative process (e.g. appropriation bills) and the link between the Lower House and the formation of the Executive Government, which enables the Cabinet to set the legislative agenda.
- The best answers also mentioned how conflict over legislation is resolved in the Commonwealth Parliament (i.e. the double dissolution mechanism) and explained differences between the Tasmanian and Commonwealth Parliaments (e.g. the different powers of the Upper Houses). Mention was also made of private members bills and the reason for their general lack of success.

Answers that made use of good examples to illustrate their point also fared better than those that did not.

Criterion 4

Students needed to discuss the advantages and disadvantages of law making by Parliament and the role of the Executive in a coherent and thorough way.

- Basic answers talked about the various stages of a bill and how this enabled thorough discussion of prospective laws.
- Better answers explained how parliaments are elected by the people and therefore are more likely to reflect the values and attitudes of the community. They explained how legislation could more effectively cover an issue of concern or a problem that faces a community. They countered these points with concerns about the part politics plays in the scheme of legislation and how an obstructive Upper House can frustrate a Government that has a mandate from the people. Or they expressed concern that the Parliament may simply become a ‘rubber stamp’ for a Cabinet/Government that controls the Upper and Lower Houses of Parliament and can therefore legislate without any real fetter.
- The best answers also briefly compared legislation with common law and extrapolated a more sophisticated set of advantages and disadvantages of legislation. The advantages of time frames for making law, the ease of finding laws and the power to delegate were raised. The problems of persuasive minority pressure groups and drafting difficulties were also addressed.

Candidates that performed best had good breadth and depth in their answers and used examples effectively.

Question 12

Two significant legal Commissions of Inquiry were set up in Tasmania this year. Why do governments set Commissions of Inquiry? What function do they serve? Using examples, critically evaluate these inquiries including aspects such as cost, duration, personal rights or freedoms and outcomes.

Disappointingly, a hand full of candidates only attempted this question. Those who did choose it did not come to grips with the content nor could they evaluate aspects of the inquiry as directed by the question.

The question was referring to the Deaths in Custody Inquiry and the Gilewicz Inquiry. In both instances government agencies were under suspicion of failing to fulfil their role, with extremely serious consequences. The former, although strictly speaking a coronial inquest, resulted in an inquiry into the procedures at Risdon Prison for dealing with at risk prisoners and the latter inquired into the part the police force may have played in the death of the Vietnam veteran Jo Gilewicz and the alleged police cover ups of their mishandling of the affair.

Inquiries into such government departmental actions are set so that they are separate from the system of government to ensure they are independent and, therefore, fairer and more just investigations of the truth. Their role is to uncover the truth using broad powers of investigation. The process is very public. Their powers can at times exceed those of a prosecutor in a criminal action.

Comments needed to be made about time frame each of these inquiries occupied and the cost of running them. Each exceed four months in duration and cost millions of dollars to administer. Because of the broad powers of inquiry those who are required to give evidence may be asked to answer question that may incriminate them, although there is no official trial. Following such inquiries criminal action may follow because of what is uncovered. Such was not the case in either of the above inquiries. But recommendations were made about the administration of the prison system and the police force.

Question 13

Retiring Supreme Court Judge, Justice Christopher Wright, said that in 25% of cases, juries got their verdict wrong and he recommended that alternatives to jury trials be examined.

Critically discuss this assertion in the light of ongoing criticism of jury trials and the role of the judge in relation to them. Discuss some suggest reforms regarding the role of the jury and the judges.

Criterion 1

In order to discuss whether juries get it 'wrong' candidates needed to explain what juries do when they get it wrong.

Basic answers mentioned: how juries are empanelled after section from the electoral role, the exemption and exclusion rules and the verdicts they can reach. Some candidates spent an inordinate amount of time on the selection process to the exclusion of other more relevant material.

Better answers included the 'challenge' processes and distinguished the criminal and civil jury trial processes. They recognised the declining role of juries in civil trials and the growing jurisdiction of the Magistrates Courts, which is marginalising the use of juries in criminal cases in the Supreme Court.

Criterion 4

The question invited students to discuss whether juries got their decisions wrong and to propose some reforms to the jury system and the role of the judge re the jury. Although this required a discussion of the advantages and disadvantages of the jury system, not all the advantage and disadvantage arguments were relevant to the issue of correct verdicts, e.g. the argument that juries are valuable because they involve society in the legal process does not go to accuracy of verdicts.

Basic answers tended to focus on the obvious shortcomings of the jury, i.e. the jury is not really a cross section of the community, evidence can be too complex for ordinary people to understand and people can be influenced by the media or clever counsel.

Better answers were more balanced in that they recognised that there are arguments in favour of juries getting it right, e.g. twelve opinions are better than one, ordinary people can evaluate ordinary crimes and majority verdicts helps overcome prejudices and obstructive jurors.

The best answers challenged the accuracy of Justice Wright's statement and queried the evidence he had for his conclusion. How often would judges get it wrong? Is it the jury or the systems fault that incorrect verdicts are reached? Better answers used example to support the points they made.

Most students were able to identify a number of alternatives to the jury system and possible reforms. Better answers not only listed the proposed changes but also evaluated them in the light of them helping to improve the accuracy of verdicts.

Question 14

'Adversaries, opponents, two sides locked in battle'. Such is the adversarial nature of dispute adjudication in Australian Courts.

What are the advantages and disadvantages of this system as a means of dispute resolution?

This question on the adversary was the most popular Section B essay with 282 candidates answering it.

Criterion 1

Strong candidates were able to readily identify the principal characteristics of the adversary system:

- the role of the parties and its related need for professional legal representation
- the role of the judge
- complex rules of evidence and procedure
- one continuous hearing
- the contest nature of the trial.

A number of candidates did not seek to outline these essential features – some detail was required on each of these points.

Discussion and description of alternatives to the adversary system were not accepted as a relevant component of the discussion.

Criterion 4

In evaluating the operation of the adversary system the more effective responses were able to relate strengths and weaknesses to the key features of the adversary system.

Criterion 8

Strong responses could be identified by:

- a clear statement of intent or overview in the introduction
- discussion tended to move from the general to the particular
- a logical development in analysis was apparent
- paragraphs were used appropriately
- spelling was accurate
- expression was coherent
- vocabulary employed was appropriate and efficient
- discussion was concluded with reference to a theme or preceding discussion was summarised.

Question 15

'The single most important characteristic of the common law has been the ability of judges to develop and expand the law so that it is not unduly rigid in terms of judicial precedent.'

Critically discuss this statement.

The question provided an opportunity for candidates to relate their understanding of the operation of judicial lawmaking through the doctrine of precedent as well as evaluate its operation within the Australian legal system.

Criteria 1

Strong candidates were able to address a number of the elements of the operation of the doctrine of precedent.

Some candidates were able to discuss the **historical background** of the British legal system prior to the development of the common law and the distribution of sovereign justice. The foundation principle – *stare decisis* – was identified and explained.

In addressing the characteristics of the doctrine of precedent mention was made of the two principal features of the doctrine - **hierarchy** and **facts** - and how they were the basis upon which one could distinguish between **binding** and **persuasive** precedent.

Mention also needed to be made of two concepts fundamental to the operation of the doctrine - ratio decidendi and obiter dicta.

Finally, candidates needed to discuss techniques common to the operation of the doctrine of precedent. The fundamental principle - *stare decisis* - was qualified in a number of instances - overruling, reversing, disapproving and distinguishing.

Strong candidates were able to accurately define each of the above concepts and processes.

Less strong candidates had a selection of the above - not always recorded accurately.

Criteria 4

In discussing the issue of flexibility and rigidity in the operation of the doctrine of precedent a number of points were made and accepted.

Rigidity; **sophistry**; the inability of the doctrine, strictly applied, to facilitate **growth**; to **repeat an error** does not, of itself, produce just outcomes; the **retrospectivity** of the judicial law making process; and **conservatism** attributed to the judiciary, or the problems inherent in judicial **activism** under the doctrine of separation of powers.

The value acknowledged of the doctrine of precedent was manifold. **Predictability**; **certainty**; **convenience**; **practicality**; **flexibility**; and **lack of arbitrariness**. Each were accepted by the examiner. Strong candidates were able to relate these values and problems to their preceding discussion. Both, in turn, related to the central proposition of the question - rigidity. The proposition contained in the question was in fact controversial. Strong candidates recognised this and addressed it.

Less strong candidates listed one or two of the above points and made no real attempt to relate them to the question asked.

A number of candidates did not address this aspect of the question. This made it very difficult for them to do well of this criterion- despite sound performance on criteria 1.

Criteria 8

A number of features were sought in identifying an effective communication of understanding. Strong responses could be identified by:

A clear **statement of intent or overview** in the introduction.

Essential terms were also defined in the early part of the essay.

Discussion tended to move from the **general to the particular**.

A **logical development** in analysis was apparent.

Paragraphs were used appropriately.

Spelling was accurate.

Expression was **coherent**.

Vocabulary employed was **appropriate** and **efficient**.

Discussion was **concluded** with reference to a theme or preceding discussion was **summarised**.

Question 16

No legal system can be completely impartial and just – major weaknesses do exist.

Evaluate the accuracy of this statement with regard to the limitations or imperfections within the Australian legal system.

There were 94 candidates who attempted this question earning the full range of marks. Stronger answers explored a range of weaknesses and limitations, including costs, delays, dated and outmoded laws, system constraints, the British legal system bias in a multicultural society, socio-economic factors, lack of knowledge of the law, and technological change.

Many students simply listed some of these factors and showed how they were weaknesses and limitations. A number also supplied information about how the legal system seeks (or should seek) to improve. Only a very few actually addressed the question directly and sought to evaluate the accuracy of the statement. And even fewer pointed out the strengths of the system.

Unfortunately, several candidates used the question as a springboard to write a general question on a variety of prepared topics ranging from the adversarial system, through the jury system, to ones on the separation and division of powers, which usually contained the key words thrown in for occasional linkage and containing much irrelevant material.

Overall the answers to this question were quite good, although the standard of grammar, spelling and English expression in general was fairly low.

Question 17

The division of powers between the State and Commonwealth Governments has sometimes resulted in constitutional tensions.

How are State and Commonwealth Government powers divided in Australia? Explain and evaluate the short term and long term effects of constitutional tension over events and issues that have changed the relative power of the Commonwealth versus the States.

The question provided an opportunity for candidates to relate their understanding of the operation of Australian federalism, with an emphasis on changing constitutional relationships with a particular emphasis on the central role of the High Court in this process.

Criteria 1

An outline of the broad scheme of Commonwealth/State legislative responsibilities was required. The limited powers of the Commonwealth, which are specified within the Constitution, needed to be defined. Of these specific powers, some are, by express declaration or necessary implication, made exclusive to the Commonwealth, whilst the preponderance are held concurrently with the States. In the case of conflict between a Commonwealth and State law in the area of concurrent powers, s.109 of the Constitution provides that the Commonwealth law shall prevail and the State law will be invalid to the extent of the inconsistency. The remaining residue of powers, not specifically granted to the Commonwealth in the Constitution, were retained by the States and are known as the residual powers.

A number of mechanisms for constitutional change and expansion of powers, which clearly have been a source of tension, needed to be discussed:

Legislative and Administrative action at the margins of Commonwealth power has been the principal source of tension. This has had two broad dimensions: Financial dominance, or the 'purse strings process', with reference to the Income Tax cases of the 1940's and s.96 grants.

The second dimension has been the broad process of external affairs, s.51 (XXIX), expansion,

The use of the external affairs power of the Commonwealth has been a clear source of tension. Candidates needed first refer to the power - s.51 (XXIX) external affairs - explain how this enabled the Commonwealth to enter into international treaties, thereby acquiring power to pass domestic legislation to enforce the treaty (a point too often overlooked). If this legislation conflicted with a state law, then through the operation of s.109, the Commonwealth law prevailed and the State law was rendered invalid to the extent of the inconsistency. The role of the High Court in constitutional adjudication needed also to be explained. A number of cases might have been drawn upon to explain the process - Koowarta, Tasmanian Dams, Tasmanian Forests, even the Gay Law Reform process or potential use in mandatory sentencing.

High Court Interpretation of the existing words to new and changed circumstances, for example Brislan's case.

Referral of powers, by either State to Commonwealth or Commonwealth to State, such as occurred in relation to Family Law in 1975 and 1983, clearly caused some tension, particularly in Western Australia.

Referendum, including the process and need for a double majority, was accepted as a potential source of tension between the States and the Commonwealth.

Criteria 4

Candidates needed to discuss and evaluate the relationship between the Commonwealth and the States and examine the short term and long term consequences of tension.

Strong responses were able to readily identify a series of short term consequences which related directly to the constitutional tensions discussed: acquisition of Commonwealth power over Income Taxation; Racial Discrimination; the environment and natural heritage; family law; power to prescribe policy in areas the subject of tied grants.

In terms of long term effects, all roads lead to Commonwealth expansion of powers and a diminution in the powers of the States.

Strong candidates were able to discuss the above issues within the context of the initial vision of the cooperative federal compact.

Still others were able to allude to procedural issues in the process of change. The undemocratic nature of judicial reform of the constitution. The difficulty of popular constitutional reform of the constitution through referendum.

Criteria 8

A number of features were sought in identifying an effective communication of understanding. Strong responses could be identified by:

A clear **statement of intent or overview** in the introduction.

Essential terms were also defined in the early part of the essay.

Discussion tended to move from the **general to the particular**.

A **logical development** in analysis was apparent.

Paragraphs were used appropriately.

Spelling was accurate.

Expression was **coherent**.

Vocabulary employed was **appropriate** and **efficient**.

Discussion was **concluded** with reference to a theme or preceding discussion was **summarised**

Question 18

In 1999, an attempt was made at constitutional change using Section 128 of the Constitution of the Commonwealth of Australia.

*Explain the constitutional process which took place. In the light of the experience of the referendum, evaluate the benefits and disadvantages of the **process** for Australians.*

This question was well answered by the majority of candidates but was unfortunately misinterpreted by a significant number. Despite the word *process* being highlighted too many candidates argued the case for and against Australia becoming a republic. Whilst it was appropriate to use the 1999 referendum to illustrate the constitutional process it was not appropriate to ignore the process in favour of a presentation of the Republic debate.

Criterion 1

Candidates needed to outline the process for passing a referendum bill through the Federal Parliament and the requirements for the acceptance/rejection of a referendum question by a national vote.

Criterion 4

Candidates needed to outline the benefits and disadvantages of changing the Constitution by the referendum process.

Benefits:

- all registered voters have a say

- publicity ensures there is a general awareness of the issues
- smaller States interests are protected.

Disadvantages:

- issue becomes politicised
- media bias may influence opinion
- cost
- conservatism of voters – only 8/42 ‘Yes’ votes before 1999.

Criterion 8

Candidates needed to present all the necessary facts and relevant arguments in a balanced and organised manner. The referendum process needed to be accurately presented and the arguments for and against referendums presented in a balanced manner. Reference to both 1999 referendum questions to illustrate facts and arguments was desirable.

Question 19

‘Interest groups which do not necessarily enjoy the support of the majority of the community nevertheless are able to play a significant role in the development of the law.’?

Explain and evaluate the way in which interest groups can effect changes in the law.

This question began with a quote that referred to minority interest groups. The question, however, was not restricted to these groups but to interest groups in general. The student needed to ‘explain and evaluate the way in which interest groups can effect changes in the law.’

Criterion 1

Satisfactory answers took examples of minority groups with a specific issue and described how they influenced a change in the law.

Better answers explained the different ways interest groups could use to influence the lawmakers. These answers also gave examples of interest groups and the situation in which the relevant method was employed.

The best answers included a definition of interest groups (including that they are not part of the formal legal system but they exert influence on those who make law), the types of groups (i.e. permanent or for a specific temporary purpose) and the functions of interest groups. Lastly the best students legitimately included the limitations upon the effectiveness of interest groups to change the law (e.g. conservatism of the government and /or general public, federalism and political populism.)

Criterion 4

Satisfactory answers limited the evaluation to specific interest groups and whether they were successful in changing the law. These answers focussed on the outcome rather than discussing the advantages and disadvantages of the methods used by the interest group.

Best answers explored in turn the various methods used (e.g. lobbying, petitions, protests, defiance of the law, the role of the spokesperson and the use of the media.) The best answers also clearly addressed the evaluation of these methods and also gave relevant examples of its use.

Criterion 8

Structure of the essay depended on the approach students took to answer the question.

If students identified specific groups and wrote about the group's experiences of changing the law then the essay structure tended to be haphazard.

The best answers structured their information and argument to explain logically the methods used by interest groups. Expression and spelling were accurate and information was relevant and organised.

Question 20

In this Olympic year and on the eve of the Centenary of Federation, describe and evaluate the changing nature of the legal rights of the Australian Aborigine since white settlement.

This question was unusual but gave students an unprecedented opportunity to write broadly on the topic of the legal rights of the Australian Aborigine since white settlement. It was poorly done and students attempting the question had little or no understanding of the key moments. Not exclusively, these could have included:

- (a) The concept of *terra nullius* and the assumption that English law would prevail in the colonies.
- (b) The inhumane treatment of Aborigines throughout the 19th century as a result of their status in the community.
- (c) The Constitutional decree that the Federal Parliament would have the power to make law for the Aborigines.
- (d) The 1967 referendum to include Aborigines in the Australian census.
- (e) Race discrimination laws and their impact on the Australian Aborigine.
- (f) Challenges to the concept of *terra nullius* (eg *Mabo* and *Wik*).
- (g) 'Stolen generation' inquiries and questioning of administrative regulation.
- (h) The recognition of 'customary law' in some jurisdictions.
- (i) Conflicts of interests in the administration of criminal law (eg mandatory sentencing).

Criteria 1 would have addressed some of these points (and perhaps others) and accurately identified and described the nature of the discussion point. Criteria 4 would have enabled students to expand on the significance of the defining moment in the historical context. Criteria 8 would have been easily addressed by evidence of a command of spelling and an interconnected explanation that addressed the question.

The study of law in Australia should acknowledge the evolution of the Aboriginal position and questions such as this should flag the importance of this context to teachers and students alike.

Section C**Question 21**

'The law is a reflection of a society's past, its present needs and the goals it is trying to reach. Society's laws are, therefore, rarely static but are adapted to suit the changing circumstances and community attitudes.'

Discuss this statement using your knowledge of at least two topical legal issues and their relationship in the Australian legal system.

The topical legal issues covered this year were overwhelmingly about mandatory sentencing and IVF. Other topics covered were abortion, euthanasia, drug law reform (the introduction of injecting rooms), stolen generation, battery hens, prison reform, police powers, gambling and illegal immigration.

Criterion 3

Satisfactory answers described the facts (e.g. what are the terms of mandatory sentencing) and contained little information on the interaction of legal processes involved in the issue. Some explained unnecessarily how some legal processes worked e.g. PMB rather than how it was used and influenced the outcome of the issue.

Better answers gave accurate information and could show how the courts, parliaments, interest groups and if applicable international treaties were used to work through the issue.

It was pleasing to read a compact discussion of the moral or philosophical element of the issue (in contrast to some past years). Students have, therefore, focussed more on the requirements of criterion 3.

Many students argued that the introduction of mandatory sentencing was an assault on the concept of the separation of powers. The courts do not have any constitutional right to a discretion when sentencing and parliament is well within its right to direct the court re sentencing.

Criterion 4

Satisfactory answers contained general statements about the nature and function of the law but did not apply it to the issue.

The best answers were able to address the quote with quality analysis, using theoretical concepts to highlight the progression of the processes involved in resolving the issue. The best answers were also able to combine the notion of changing values and attitudes in society as well as identify the checks and balances in place to prevent changes in the law-taking place that would change the nature of the legal system.

Criterion 8

Many satisfactory answers began with the introduction as a repetition of the quote. Statements about the function or nature of law and/or a description of the issue followed this.

Better introductions to the essay addressed the quote and clearly directed the reader to the argument to be developed within the two issues.

In the body of the essay, satisfactory answers contained disorganised description of the issue. Better answers were logically developed allowing the issue to be explained and evaluated using relevant detail and theoretical concepts.

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