



GENERAL COMMENTS

The 2009 Legal Studies examination was handled well by most students. Students demonstrated that they were familiar with the *VCE Legal Studies Study Design* and could apply their knowledge to the questions asked. Areas of strength in this examination included tribunals and their advantages, the jury system and the adversary system.

Knowledge of course content

It is essential that students are familiar with the study design. It contains the key knowledge on which students are assessed and identifies the key skills that students are expected to demonstrate in the examination. Students are urged to use the dot points in the study design as relevant headings to assist with the organisation of their notes.

The study design also identifies key terminology that students must be able to identify as well as use correctly in their answers, for example, terms such as 'referendum', 'remand', 'royal assent' and 'doctrine of precedent'.

Responding to questions

It is expected that students practise examination questions regularly to assist them in developing good responses. Students should refer to past examination papers available on the VCAA website and make reference to past Assessment Reports to gain feedback on their responses.

Teachers should encourage students to practise writing their own examination questions. This not only helps students become familiar with the content that could be assessed but also allows them to practise responding to questions that are worded differently or ask for information in a different way.

Students should consider how they will present their response. For short answer questions, lengthy introductions are not necessary; responses should be to the point and relevant to the question. For extended answer questions, students should practise using clear topic sentences and paragraphs to structure their response.

It is crucial that students do not come to the examination with pre-prepared answers to questions. Students should expect that questions will be asked in different ways on the examination and that their answers should respond directly to the question and provide material that is relevant. Examples are often a useful way for students to demonstrate their understanding; however, examples should only be used where appropriate and relevant.

Students are expected to be familiar with the different task words of questions such as 'evaluate', 'explain', 'compare' and 'discuss'. Each task word demands a different skill. For example, 'explain' requires a description, whereas 'critically evaluate' requires students to come to a conclusion as to the value or worth of a thing or system after consideration of its strengths and weaknesses. Students are again encouraged to practise answering different types of questions to develop these skills.

It is essential that students answer all parts of a question. For example, Question 3b. required students to both identify the court that would hear the matter as well as identify one aspect of its appellate jurisdiction. If a question asks for a certain number of examples or points, students should respond by providing the number of examples or points required (for example, Question 6 asked students to explain two advantages of tribunals; there was no benefit in providing more than two advantages).

Examination technique

Good examination technique is crucial. Students are encouraged to:

- manage their time appropriately. Students should not be tempted to write any more on a question than what is required, particularly for questions worth 1–3 marks
- use the number of lines provided for each question as guidance on how much is expected in a response
- use the 15 minutes of reading time appropriately by starting to think about responses to the short answer questions or developing a plan for the extended answer response
- avoid the use of dot points, charts and diagrams
- state clearly if a response is continued at the back of the booklet. The continuation of the answer at the back of the book should be clearly labelled with the question number
- practise writing clearly and legibly
- ensure legal terminology is spelt correctly, including words such as 'petition', 'precedent', 'royal assent' and 'parliament'.



SPECIFIC INFORMATION

Note: Student responses reproduced in italics herein have not been corrected for grammar, spelling or factual information.

For each question, an outline answer (or answers) is provided. In some cases the answer given is not the only answer that could have been awarded marks.

Question 1

Marks	0	1	2	Average
%	7	27	66	1.6

Possible outcomes of the bail application include:

- Alex will be denied bail and will be kept in remand, meaning he will remain in custody until the time of his trial
- Alex will be granted bail, meaning he will be released into the community to await his trial, on his own undertaking to return rather than being held in custody, possibly with conditions attached.

Students could also have used two different forms of bail (such as bail without certain conditions and bail with conditions) for the two outcomes.

This question was handled well by most students; however, many students did not explain the two outcomes. To 'explain' requires a definition or description; therefore, if students stated that one outcome was that Alex would be denied bail, they needed to explain what this meant – that is, he would be remanded in custody.

A minority of students still incorrectly defined bail as a 'payment of money'. Teachers should ensure that students understand the correct meaning of the term 'bail'.

The following is an example of a good answer.

One possible outcome is that Alex may be refused bail. If this occurs he will be remanded in custody until the time of his trial. Another possible outcome is that Alex may be granted bail. Consequently, this would mean he would be released from custody until it his time for him to appear in court.

Question 2

Marks	0	1	2	3	Average
%	19	13	26	43	1.9

This question was handled well by many students. It was pleasing to see that many students were familiar with the principle of separation of power, and could explain the three arms of power and the reasons for the separation of these powers.

To gain full marks, students were expected to identify and explain the three arms of power and then explain the reason for their separation.

Weaker answers explained the three arms of power but did not explain the need for their separation. A minority of students confused this question with the division of law-making powers (specific, exclusive, concurrent, residual). This is a perennial problem and should be addressed in the classroom, particularly in assisting students to read questions properly in examination conditions.

The following is an example of a good answer.

The principle of separation of powers refers to the three arms of power: the legislative function (those that make the law), the executive function (administer the law) and the judicial function (interpret the law). The powers of each arm are kept separate to each other and carried out by a separate body, to ensure that no one body or arm has complete authority and each are independent from the other. This enables each power to act as checks and balances on each other and ensures a system of democracy.

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Question 3a.

Marks	0	1	Average
%	45	55	0.6

Acceptable responses included:

- forms government
- represents voters
- provides a forum for debate
- scrutinises government.

The most popular response was that the Lower House forms the government. Some students did not read the question properly and wrote that the Lower House makes/reviews/debates laws and therefore did not gain any marks.

Question 3b.

Marks	0	1	2	Average
%	26	36	39	1.2

Many students correctly identified that the High Court would most likely hear this matter. No marks were given if a student provided two courts.

The second part of the question required students to have knowledge of the High Court's appellate jurisdiction. The appellate jurisdiction of courts is part of Unit 4, Area of Study 1 and students should have been familiar with all courts' appellate jurisdiction. Students had to answer both parts of the question to gain two marks.

As to its appellate jurisdiction, the High Court can hear appeals from:

- its own court
- the Full Court of the Federal Court
- the Full Court of the Family Court
- state and territory Supreme Courts.

Weaker answers did not correctly identify the High Court. Some students did not know the High Court's appellate jurisdiction and incorrectly stated that it hears appeals from the County Court.

Question 3c.

Marks	0	1	2	Average
%	38	21	42	1.1

Many students struggled with this question as they were not familiar with Section 109 of the Constitution. Section 109 is listed in Unit 3, Area of Study 2 and students are expected to have an understanding of this section as well as be able to apply its meaning within a question.

An essential component of this question was the application of students' knowledge of Section 109 to the question. The question did not ask for an explanation of Section 109; rather, it asked students to apply their understanding of Section 109 to show how it would affect the Victorian law in question (the *Marital Status Act 2009*).

It should also be emphasised that if the Marital Status Act was successfully challenged in terms of its consistency with a similar Commonwealth law, then the whole of the Marital Status Act would not be 'invalid'; rather, only those sections of the law which are inconsistent with the Commonwealth law would be invalid (as per the wording in Section 109).

The following is an example of a good answer.

Section 109 of the Constitution states that if both the commonwealth and a state parliament make a law on a certain area and there is an inconsistency, then the Commonwealth law would prevail to the extent of the inconsistency. If the Marital Status act 2009 contradicted a similar commonwealth act, then those parts of the Marital Status Act that are inconsistent with the commonwealth law would become invalid.

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Question 4

Marks	0	1	2	3	Average
%	6	17	36	42	2.2

Advantages that could have been critically evaluated included (but were not limited to):

- cross section of the community: juries reflect prevailing community attitudes and values. Their verdict is more likely to be accepted by the community
- decisions reflect the views of the community: a juror will often take into account the behaviours of an ordinary person in particular circumstances, and can apply an ordinary rather than a legalistic view of the situation
- jurors are independent: they are ordinary men and women with no biases or prejudices about the legal system
- involves the community: provides people with the opportunity to involve themselves with the Australian justice system. This also ensures the public have an opportunity to 'scrutinise' the Australian legal system
- spreads the responsibility: ensures that the decision is less likely to be jeopardised by one person's prejudices and ensures decisions like these are not the responsibility of only one person
- juries can act as a social conscience
- provides a trial which is free from political interference.

Corresponding disadvantages included:

- jury deliberations are kept secret and reasons for outcomes do not have to be given: there is no way of checking that the jury understood the evidence or the law
- juries are not a true cross section of the community: many people are ineligible, excused for good reason or are challenged
- acquittal rates are too high: jurors have been criticised for high acquittal rates
- costly and time-consuming: adds to the length of a trial and is a significant cost
- jurors often do not understand evidence: it has been suggested that some jurors get confused by some cases and evidence, and this may result in wrong verdicts and/or disinterest in the trial
- jurors can be easily influenced: whether it be from their own bias, the media or rhetoric of counsel, some jurors may be influenced and this may be reflected in their verdict
- juries may have difficulty reaching a decision even though majority verdicts have been introduced in Victoria in all cases but murder and treason.

Many responses indicated that students need to work on their ability to 'critically evaluate'. Students who merely explained an advantage of our jury system did not gain full marks. 'Critically evaluate' requires students to provide a corresponding weakness or disadvantage of their chosen advantage and give an assessment of the advantage. Better students were able to provide enough depth and detail in their answer to gain full marks. Some students either provided no corresponding disadvantage or did not provide enough detail.

The following is an example of a good answer.

One advantage of the jury system is that jurors represent a broad cross section of the community. As jurors are chosen randomly from the electoral roll, people from all ages (over 18), cultures and backgrounds are represented. However, many people are excused, ineligible or not allowed to do jury duty for various reasons such as language, legal profession and distance from court. Ultimately certain parts of society may be overrepresented on a jury while some may be underrepresented. However, despite this problem, the jury is still formed from a random selection of people from society, therefore ensuring to some extent a cross section of the community.

Question 5

Marks	0	1	2	3	4	5	Average
%	12	11	17	21	22	17	2.8

The following comments could have been made in relation to the statement.

- Allow parties to fully prepare and determine which issues they will defend/proceed with.
- Enhance the opportunity of settling out of court.
- Give each side some knowledge of the opposing case – parties may concede some issues and therefore this saves time.
- Allow issues to be clarified before going to court.
- Allow either side to discover whether it is worthwhile proceeding.
- Provide the court with information about the case before it begins. This allows the court to expedite some aspects of the trial.

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- It is difficult to conduct civil proceedings without legal assistance. This makes the process expensive and can still be time-consuming.
- The complexity adds to the time it takes to prepare a case for court. This adds to the period of stress which litigants must endure.
- The time taken means that the remedy is denied for a longer amount of time; key witnesses might die or disappear, or their memories might become less reliable.

Pre-trial procedures that could have been described included:

- letter of demand
- writ
- notice of appearance
- statement of claim or defence
- counter-claim
- discovery
- interlocutory order
- pre-trial conference
- directions hearings.

Students could have taken broad headings such as pleadings and discovery and used them in a general sense.

Most students managed to gain some marks for their answer; however, the discrepancy in the allocation of marks depended on the amount of detail students provided. Some students did not provide sufficient detail to gain full marks.

Some students incorrectly wrote about and discussed committal hearings and hand-up briefs, confusing these criminal pre-trial procedures with civil ones. Other students confused this with alternative dispute resolution and discussed conciliation and arbitration.

Better answers gave examples of how pre-trial procedures speed up the resolution of civil disputes, as well as providing the negative view that often pre-trial procedures slow down the process, therefore causing delays. Other students took the approach of stating that not only do pre-trial procedures speed up the resolution, but they are also designed for other purposes such as gaining information about the other party's case. This was also an acceptable approach.

The following is an example of a good answer.

Pre-trial procedures are designed to speed up civil disputes to an extent. An example of a pre-trial procedure is a pre-trial conference. This is where both parties and the judge attend a conference where the facts and reasons for the dispute, and the remedies, are looked at. This may also encourage an out of court settlement. In one way pre-trial procedures such as the pre-trial conference speed up resolution of disputes as they ensure both parties are prepared for trial, as well as clarifying what the issues are in dispute before trial to ensure that the trial does not address issues that both parties agree on. It also ensures that the parties are given every opportunity to settle before going to trial, therefore speeding up the resolution. On the other hand, the procedures slow down the time it takes to reach a resolution, because many of the procedures are complex and requires the involvement of lawyers. This may therefore delay the time it takes to reach a settlement.

Question 6

Marks	0	1	2	3	4	5	6	Average
%	7	5	11	15	20	21	21	3.8

Some students struggled to outline the jurisdiction of the Residential Tenancies List of the Victorian Civil and Administrative Tribunal. Students are expected to know that the Residential Tenancies List hears disputes between tenants and landlords, normally in relation to a claim of \$10 000. If students did not specify the monetary amount, they were required to explain the types of disputes that the list hears, such as disputes in relation to rent, return of bond, repairs or maintenance.

Although many students were familiar with the advantages of tribunals, more work is required so that students are able to fully explain these advantages. Many students simply say that 'tribunals are cheaper, quicker and more informal' without fully explaining each advantage. Identifying an advantage without giving an explanation of each one will not gain full marks.



The following is an example of a good answer.

The jurisdiction of the Residential Tenancies List is that it hears disputes between landlords and tenants normally for claims up to \$10,000.00.

One advantage of tribunals is that is generally cheaper than going to court. This is because there are no expensive legal fees because legal representation is not usually required. There are no expensive court fees required for the filing of documents – normally the fee to lodge the application with VCAT is around \$35.00.

Another advantage of tribunals is that they can resolve disputes more quickly than courts. This is because the rules of evidence and procedure are not as strict, therefore meaning that the hearing is far more relaxed and quicker. Also, there are normally no pre-trial procedures, thus meaning that the waiting time for a case to be heard is much less.

Question 7a.

Marks	0	1	2	Average
%	16	19	64	1.5

This question was handled well; however, students needed to avoid simply rewriting the statement given in the question. Students needed to demonstrate how the doctrine of precedent requires a hierarchy of courts in order to operate.

The following is an example of a good answer.

If there was no hierarchy of courts the doctrine of precedent could not operate. The decision of higher courts are binding on lower courts in similar cases in the same hierarchy, therefore if there wasn't a court hierarchy and all courts were on the same level, there would be no way of determining which was a binding precedent and which was a persuasive precedent, so the doctrine of precedent would not operate.

Question 7b.

Marks	0	1	2	3	4	5	6	Average
%	14	13	17	18	18	12	8	2.8

Elements that assist judges to make laws include:

- the doctrine of precedent allows for some flexibility. The law can be expressed as a general principle (for example, the 'neighbour test'), allowing the courts to adapt it to fit the circumstances before the court
- judges have some flexibility in avoiding precedent by:
 - distinguishing: a judge can avoid following a precedent if the case can be distinguished on the facts
 - overruling and reversing previous decisions. The High Court can overrule its own decisions
 - disapproving of a decision (for example, a decision from another jurisdiction): a court can indicate that a precedent should no longer be regarded as good law
- judicial decisions are not elected and are therefore free from outside pressure, allowing judges to make more objective assessments of the need for a change in the law
- the doctrine of precedent limits the possibility of prejudices or bias influencing judicial decisions.

Elements that may limit judges to make laws include:

- courts cannot determine what the law is until a case is brought before the court. Thus, if there has not been a decision on a particular point of law from a higher court, there is uncertainty surrounding that area of law
- courts may be bound by an old precedent, which could lead to unjust results
- some judges are very conservative and could be reluctant to change bad laws, thus leaving it to parliament to fully investigate the area of law
- courts cannot comprehensively research, review and make sweeping changes to the law. They can only make rulings on the legal issues relevant to the case before them
- courts cannot seek public opinion or consult committees before making a decision, although they can consider to some extent what current popular opinion is on an area of law
- common law can be overridden by parliament as the supreme law-maker.

This was a challenging question from Unit 3, Area of Study 3. Responses indicated that many students do not understand how common law is made. Many students were unable to answer this question.

The question required students to make a judgment regarding the extent to which judges are limited in making law. Students were then required to provide reasons for their answer. Better answers stated that judges are limited to some

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extent in their ability to make law; however, they have methods or techniques to be able to manoeuvre around these limitations. Reasons were then provided as to how judges are limited, and what techniques they could use to still make law.

The following is an example of a good answer.

Although judges can make law, they are limited in their ability to a certain extent. Courts are limited in their ability to make law because they act ex-post facto. This means that courts cannot make a law until a case comes before them. Therefore, they cannot make laws whenever they want (unlike parliament).

Courts are also limited because they are bound by precedents made by higher courts in the same court hierarchy where the legal principles within similar circumstances. Therefore, if a binding precedent exists, courts do not have any ability to change the law and must abide by it.

Courts are often also limited because judges can be very conservative and reluctant to change a bad law. Courts also cannot seek public opinion or consult committees before making a decision.

Despite this, however, courts do have some ability to make law. Judges are not 'elected' by the people and are therefore free to make decisions and not be influenced or pressured by consequences of not being re-elected if they make an unpopular ruling. Further, judges have some flexibility in being able to avoid following precedent. A common method is to distinguish the facts of the case before them from the facts in the case which is a binding precedent, thereby being free to make a ruling different to the binding precedent. Another common method is to disapprove a decision made in a higher court, therefore opening the door for that case to be overruled in a future case in a higher court.

Overall, courts do have the ability to make laws, but are limited to some extent.

Question 8a.

Marks	0	1	2	Average
%	24	21	56	1.3

Any of the following processes was acceptable:

- first reading: the long title is read, the Bill is put on the agenda and copies of the Bill are circulated
- second reading: compatibility with the Charter of Human Rights and Responsibilities, the purpose of the Bill is outlined, the explanatory memorandum is presented, debating commences and a vote is taken
- consideration in detail (optional): each clause is discussed in detail once the speaker leaves and amendments can be made
- third reading: the house will formally accept or rejected the Bill, may be further debate, vote
- certification: the Bill is certified by the Clerk of Parliaments after it has passed through both houses
- royal assent: presented to the Governor-General for royal assent/signing
- proclamation: comes into effect on a day stated in the Act or on a day proclaimed by the Governor-General (if neither, 28 days after royal assent).

The legislative process of a Bill through parliament is a fundamental part of Unit 3, Area of Study 1, and students must be familiar with the various steps, as well as be able to explain what happens in each step.

Weaker answers identified a process but were unable to provide enough detail as to what happens in the process in order to gain full marks. Royal assent was the most popular response, though some students did not explain what royal assent is – the process of the Queen's representative signing the Bill. The second reading stage was also very popular, but again some students were not able to describe what happens in this process.

Question 8b.

Marks	0	1	2	3	4	5	6	Average
%	15	5	10	13	17	18	23	3.6

Features of the adversary system which needed to be explained then compared were:

- the role of the parties
- the role of the judge
- the need for legal representation
- rules of evidence and procedure
- standard and burden of proof.



This question was generally handled well, with many students showing good knowledge of the features of the adversary system of trial. Some students struggled to compare their chosen features with those of the inquisitorial system.

Some students responded by saying that the jury system is a feature of the adversary system of trial. The study design specifically lists the major features of the adversary system and students should be familiar with these features. Jury system is not listed as a feature of the adversary system. Another common error made by students was stating that in the inquisitorial system the defendant is ‘guilty until proven innocent’.

The following is an example of a good answer.

One feature of the adversary system of trial is the role of the judge. The judge generally acts as an independent and impartial adjudicator, ensuring that the parties adhere to the rules of evidence and procedure. A judge will not become involved in what evidence is brought before the court. In contrast, in the inquisitorial system, the judge(s) play an active role, taking part in the investigation, the questioning of witnesses as well as generally running the trial, collecting the evidence and ultimately reaching a verdict.

Another feature is the rules of evidence and procedure. In the adversary system, witnesses must only answer the questions put to them by the lawyers/barristers. There are strict rules relating to evidence involving hearsay, character evidence and past convictions in criminal trials. In the inquisitorial system the rules of evidence and procedure are more relaxed. Witnesses can recount their own version of events and hearsay evidence is permitted. In this way the inquisitorial system seems to be more in search of the truth by letting the witnesses recount their version, in real contrast to the adversary system’s strict rules.

Question 9a.

Marks	0	1	2	3	4	Average
%	18	17	33	22	12	2

Students could have made some of the following points.

Strengths

- The process ensures unsound or unclear proposals are avoided. As the process is a lengthy and difficult one, it ensures that only valid changes are put up for referendum.
- Protects the Constitution from ad hoc and major changes, and from being changed by parliament vote only.
- The vote is compulsory, therefore allowing for a better representation of the community’s views.
- The provision of double majority protects the smaller states from being dominated by larger, more populated states.
- The provision of double majority also ensures that the majority of voters in Australia agree with the change.

Weaknesses

- The process is costly. It was estimated that the failed 1999 referendum cost nearly \$67 million.
- As it must first be passed by both houses, the process is largely controlled by government and is often more about power.
- Lack of understanding – many have claimed that voters have not understood the process and/or the proposal, and have tended to vote no as a result.
- Distrust – many voters may see it as a way of increasing the power of politicians and those who distrust them tend to vote no.
- Uncertainty in accepting major changes – most of the successful referenda have related to minor changes to the Constitution. Voters are far less willing to vote yes to substantial changes.
- Voting according to political lines – most voters will follow the views of their political party.
- Timing of the referendum – often held at the same time as an election and as a result generates less interest.

This was one of the more challenging questions on the examination. However, many students misread the question and assumed they were only required to ‘explain’ the process. A question asking students to ‘evaluate’ the process requires a very different focus.

Students were expected to discuss the strengths and weaknesses of the process and come to a conclusion as to its value or worth. Although some students identified weaknesses in the process, few managed to discuss the strengths of the overall process. More emphasis in the classroom in assessing the strengths and weaknesses of the process is required.



The following is an example of a good answer.

Section 128 of the constitution refers to process of changing the words of the constitution. One strength of this process is that it is a complex one. Not only must it first be passed by both houses, but it also requires a double majority (a majority of voters in Australia, and a majority of voters in a majority of states) to be passed. This strict formula ensures that the constitution is very well protected and it cannot be changed too simply or irrationally.

Another strength of the process is that it protects the smaller states. As the double majority requirement needs the majority of voters in a majority of states to vote yes as well as a majority of Australia, it ensures that large states such as New South Wales and Victoria do not control whether or not the referendum is passed.

One weakness of the process is that public conservatism means that a change to the constitution is unlikely. Many voters often distrust the process and are far less willing to vote yes. Another weakness is that often the timing of the referendum – normally held at the same time as an election – means that voters pay far less attention to it, therefore do not understand it and vote no.

Overall the process has some weaknesses but its strengths ensure that only the most important changes to the constitution are made.

Question 9b.

Marks	0	1	2	3	4	5	6	Average
%	19	14	18	18	15	10	6	2.5

Students could have made some of the following points about the Constitution’s strengths and weaknesses.

Strengths

- The five express rights can only be removed by amending the Constitution using s.128 – this is a difficult process, making it unlikely these rights will be removed easily.
- The High Court has the ability to imply rights; this is noted in the implied right to political communication.
- The rights are fully enforceable by the High Court – that is, the High Court may declare legislation invalid if it contravenes one of these rights.
- Additional rights can be added through the s.128 process. The High Court can also imply further rights (including make further statements in ratio on the right to vote) but needs to wait for a case to come before them.
- Rights are defined by parliament, which can be done more easily and ensures confidence in the legislatures.
- Rights are protected by legislation and common law – this ensures they can be continually added to and amended to keep with changing values.
- None of the protected rights can be overridden by parliament (contrast Canada where parliament can override a court order that has declared a law invalid because it infringes a right).

Weaknesses

- The Constitution contains a limited number of express rights. The list is not comprehensive, particularly in comparison to other countries such as South Africa and Canada.
- The just terms and interstate trade and commerce rights are more operational/economic. Right to jury is limited to indictable Commonwealth offences.
- There are some limitations on the scope of the express rights and the implied right.
- The High Court does not give advisory opinions on the scope of the protection of rights. It will only rule on those matters (and any other matters) when a dispute is before the Court and a judgment is required (contrast Canada where the court can give an advice on proposed legislation).
- There is no requirement to develop the common law or to interpret legislation in such a way as to promote the concept of protected rights (contrast South Africa, for example, where courts must promote the spirit and purpose of the Bill of Rights).

This question required students to reach a conclusion as to whether or not the Constitution is effective in protecting human and democratic rights, and justify this conclusion. Students could have taken one of two approaches and both approaches were acceptable. Some students focused solely on Australia and discussed the strengths and weaknesses of the Constitution in protecting rights. Other students assessed Australia’s approach by looking at the extent of the protection offered in the Constitution in comparison to another country.



Many students did not provide sufficient detail to earn full marks. Some students described the five entrenched rights and implied right to political communication without any attempt to discuss whether the Constitution was effective in protecting these and other rights.

Better responses talked about the limited number and limitations of entrenched rights, the ability of the High Court to imply rights, and the strict referendum process, thereby ensuring those entrenched rights cannot be easily removed.

The following is an example of a good answer.

Our Constitution is not an 'ineffective mechanism' for protecting rights. While the Commonwealth Constitution does not protect a large range of democratic and human rights, it is very effective in protecting the rights that do exist. The Constitution protects five express rights – freedom of religion, acquisition of property on just terms, trial by jury for a commonwealth indictable offence, free trade between states and no discrimination between people on the basis of which state they live in. The High Court has also implied one right in the Constitution – freedom of political expression. The express rights are very well protected, as it is very difficult to change the wording of the Constitution by referendum. The nature of at least one implied right also means that the High Court has the ability in the future to imply certain rights in our Constitution.

Further, if a law was made which contravenes one of these rights, the High Court can rule this law ultra vires as it has the power to fully enforce any of these rights.

There are some weaknesses. Some of the rights that are protected are limited in their scope – for example, the right to trial by jury is only for those offences which are indictable commonwealth offences. Australia also does not have a comprehensive list, such as those protected in the USA's Bill of Rights, which is a far more comprehensive and detailed mechanism for protecting rights.

In conclusion, whilst our Constitution does protect some rights, and does protect them well, the number of rights that are protected is not comprehensive.

Question 10

Question chosen	None	a.	b.
%	2	75	22

Marks	0	1	2	3	4	5	6	7	8	9	10	Average
%	5	3	7	9	12	13	15	13	11	6	6	5.4

Question 10a.

All of the following points needed to be addressed to gain full marks:

- discussion of at least two reasons why laws may need to change – for example, new technology and changes in community attitudes and values
- strengths and weaknesses of parliament in responding adequately to changing the law
- methods in which individuals and groups can influence a change in the law
- the role of one law reform body in influencing change (Australian Law Reform Commission, Victorian Law Reform Commission, parliamentary committees, government enquiries or a Royal Commission).

This was by far the more popular choice for Question 10. Unfortunately, some students misread the question and simply described why laws need to change, and how individuals, groups and a law reform body could influence these changes. These students failed to address the second part of the statement, 'sometimes parliament fails to respond adequately'. This second part of the statement also required students to discuss the strengths and weaknesses of parliament in responding adequately to changing the law.

Better answers structured their response by first discussing the statement, and then discussing ways in which individuals, groups and a law reform body could attempt to influence a change in the law.

Students needed to discuss at least two reasons why laws needed to be change. Some students gave more than two, meaning they spent far less time on addressing parliament, individuals, groups and a law reform body.

The following is an example of a good beginning to this question. The student went on to discuss the weaknesses of parliament in responding adequately, methods of change used by individuals, groups and a law reform body.



Laws do need to change for many reasons. One reason why laws may need to change is changing community attitudes and values. Attitudes and values of people will change over time, such as attitudes towards abortion, and so laws need to change to reflect this. Another reason why laws need to change is to keep up to date with technology. Technology is changing at a very fast rate, such as cloning and stem cell research, and the law needs to keep up to date with addressing these advances in technology.

Indeed, sometimes parliament fails to respond adequately, however ultimately parliament is a very effective law-maker. One strength of parliament is that it is democratically elected. Therefore, it is expected that parliament will legislate to reflect the majority of the people, because if it doesn't, it has the risk of being voted out at the next election. Another strength of parliament is that it has access to extensive resources when making laws. It will thoroughly research an area to ensure that it makes the most comprehensive law. It can publish a discussion paper, for example, or make reference to a law reform body such as create a Royal Commission to research a particular area.

Question 10b.

This question was generally well answered by students who chose to respond to it. The focus on the question was on the extent to which our systems and procedures achieved the four elements of an effective legal system, and how recent changes and/or recommendations for change could improve the legal system. Students could have focused on the adversary system, jury system, criminal and civil pre-trial and trial procedures, or a combination of any or all of these. The distinguishing factor was the level of detail in the answer, and the way in which it was structured.

Structured responses were important in this question. Students generally structured their answers in two ways and both approaches were acceptable. Some students discussed each change and/or recommendation in turn, linking it to an element. Other students looked at each element in turn, discussing how the legal system currently achieved the element and how a change/recommendation could improve it.

All of the elements needed to be addressed, with changes/recommendations corresponding to each element. Weaker responses did not cover all four elements of an effective legal system and therefore could not address all four elements to gain full marks. Other students confused this with changes in the law. This is a common problem.

Popular recent changes and/or recommendations include the expansion of the Koori Court system, the increased emphasis on alternative dispute resolution, and the increased civil jurisdiction of the County Court. As in previous years, some students suggested that committal proceedings, tribunals and the provision of legal aid were recent; however, these processes have been a part of the legal system for many years.

The following is an example of a good beginning to this question. The student then went on to discuss the next three elements and explained a change/recommendation for each.

Although our legal system is moderately effective in achieving the four elements of an effective legal system, changes that have been made, and proposed changes, will further enhance the effectiveness of our system. Our four elements of an effective legal system are fair and unbiased hearing, timely resolution of disputes, effective access to mechanisms for the resolution of disputes and recognition of values and human rights.

The first element is fair and unbiased hearing. Having a fair and impartial adjudicator by way of a judge ensures that all parties receive a fair and unbiased hearing. Further, having a random selection of jurors in many cases which represent a cross-section of the community ensures that all criminal and civil trials are heard in a fair and unbiased manner. However, sometimes the element is not achieved, such as judges often affected by personal biases or not being representative of society, particularly in relation to indigenous parties. One recommendation to improve this is to require all judges to attend compulsory training in relation to the Aboriginal culture. This will ensure they are more familiar with the Aboriginal culture and are more sensitive to particular issues, thus ensuring indigenous people have access to a fair and unbiased hearing.