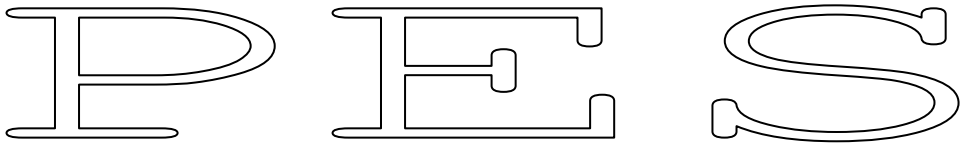
LEGAL STUDIES

Units 3 & 4 – Written examination



2013 Trial Examination 2

Suggested Solution

General information for teachers and students:

- Students are encouraged to write full sentences and explain concepts fully.
- They should not list or dot point answers
- When asked for advantages/disadvantages or similarities or differences, students should indicate which is the advantage and which is the disadvantage etc
- As a general guide students should be writing 2-3 lines per allocated mark
- Whilst examples, unless specified, are not necessarily required, they can help to make an answer clearer for the reader.
- If there is a question requiring a specified number of answers, Eg Outline 2 advantages. Students should not supply more than the specified number as only the first two responses will be considered.
- If asked to justify an answer, students should supply the positive reasons to support their answer and not introduce negatives. Contrast, evaluate, argue, discuss and analyse will require students to argue both sides.

The responses below are only suggested answers as each question *may* have other answers that would be acceptable. If you are unsure about your answer, you should check with your teacher or tutor. The main points that are required in each question can be found in the dot points that precede the written sample answer.

Question 1a

Outline the structure of the Victorian Parliament. 2 marks

Students must identify the three branches of the Victorian Parliament, i.e. that there is an upper house, lower house and the Crown.

Sample answer: The Victorian Parliament is a bicameral parliament which means that there is an upper house, known as the Legislative Council, a lower house, the Legislative Assembly. There is also the Crown, represented by the Governor.

Question 1b

Explain the stage in the legislative process identified in the extract. 2 marks

Students should identify the stage as the 'Statement of Compatibility' and then outline what occurs during the stage of the process. Students that only identify without any explanation should receive 1 mark.

Sample answer: The stage referred to in the extract is the tabling of the Statement of Compatibility. This Statement is required under the Victorian Charter of Rights and Responsibilities. The Statement must be presented to the Legislative Assembly prior to the second reading speech. The Statement must state either that, the Bill is compatible with the Charter, or that parts of the Bill are incompatible with the Charter. If parts are incompatible, the Statement must explain the nature and the extent of the incompatibility.

Question 1c

Explain the role of the upper house in the law-making process 2 marks

Students should do more than simply identify the role, some explanation must be given. Students may choose to discuss more than one role, however this is not necessary, provided their answer is detailed. The roles should focus on law-making rather than government.

Possible answers:

- Making laws
- Reviewing laws

Sample answer: The role of the upper house in the law-making process is to make and review laws. Whilst most laws are initiated in the lower house, the upper house can begin the process of introducing a Bill, provided it is not an appropriation Bill. The Bill would follow the same steps as if it had originated in the lower house. The upper house also reviews any laws that were initiated in the lower house. During the review process, the upper house can amend or reject the proposed law.

Question 2

Signing a petition is one means individuals can adopt to influence a change in the law. Evaluate the effectiveness of petitions and compare petitions with one other method individuals can utilise to effect a change in the law. 4 marks

Students should discuss the strengths and weaknesses of using a petition as a means of influencing a change in the law. They must then make a concluding statement as to whether, overall, the petition is an effective method. They should then compare the petition with either demonstrations or the media. Compare requires students to show similarities and differences.

Sample answer: Individuals may become involved in the law-making process through the use of a petition. A petition is a written request to the government asking them to take action in relation to a particular issue or law. A petition is a collection of signatures that shows concern for the issue. The petition is tabled in parliament.

A petition is effective as it allows either a large number of people, or only a few, to voice their concerns in parliament. This means that members of the public feel that parliament is hearing the views, and also allows parliament to hear a variety of opinions and concerns, not just from the powerful groups in society.

However, a petition can be time-consuming and costly, meaning that the time and effort may not match the outcome. Further, it is not clear as to the degree petitions influence parliament, thus although the petition may be given to parliament, they do not have to act on it, and may ignore it if there are not a large number of signatures attached or it is not in the required structure.

Another method of influencing a change in the law is through the use of a demonstration. A demonstration is a gathering of members of the public, held in a public place, to show the group's support for a change in the law. Petitions and demonstrations both involve the coming together of a group of like-minded people to inform parliament of their desired change; however, a petition involves a written statement of the issue and change, whereas a demonstration involves a physical gathering of people in a prominent area to gain attention. Whilst a petition requires a formalised structure, as outlined by parliament, a demonstration can take a number of forms with no requirement enforced by parliament. Further, a demonstration can gather media attention whereas it is unlikely a petition will. Both methods are time-consuming in their organisation, requiring planning prior to execution.

Question 3

In 2012 the Victorian Legislative Assembly sat for 52 days. Evaluate the weaknesses of parliament as a law-maker. 6 marks

Students are required to explain at least three weaknesses of parliament as a law-maker and then discuss the corresponding strengths of those weaknesses. Thus, the strengths and weaknesses must be related. Students that merely describe weaknesses and no strengths, or who do not link the strengths and weaknesses can only receive half of the available marks. Further, students must mention the weakness before the strength, if the strength is discussed first; no marks can be awarded as they are not answering the question. Better students should include a discussion about the sitting days of parliament, so as to include the stimulus material in their answer.

Sample answer: One weakness of parliament is that it cannot always make a law quickly. Parliament is only able to make laws when it is sitting and on average, parliament only sits for about 70 days a year. Thus, when a law is required immediately, if parliament is not in session, no Bill can be introduced into parliament to begin the legislative process. Further, the legislative process was designed to allow adequate debate and amendment of a Bill, thus the process is lengthy and time-consuming, therefore, even when parliament is sitting for these limited number of days, the number of laws that can be made is limited. However, when parliament is sitting, it devotes its time to making laws, as this is its main role. Therefore, whilst they do only sit for a limited time each year, when in session laws are being made as and when they are needed.

Another weakness of parliament is that the impact of party politics can influence the types of laws being made. Members of parliament are elected to represent the views of those who elect them, however, once elected, members may represent the views of their political party, rather than their electorates when making laws. This can mean that laws which are wanted by the community may not be made, if the political party in control does not agree with the law, for example, if it is deemed controversial. The democratic nature of parliament however, is also a strength. As members of parliament are elected by members of the community, this generally ensures that legislation reflects the will of the majority of people in society. Members of parliament are sensitive to public opinion so as to ensure re-election, thus they are careful when making laws not to alienate voters. Therefore, most laws that the community want, are made.

Finally, parliament delegates its law-making powers to a number of delegated bodies. This can be seen as a weakness as parliament does not necessarily have adequate control over these bodies and the legislation they create, thereby lessening the extent to which parliament can ensure that they maintain supremacy as a law-maker. Further, delegated bodies are not elected and thus do not have to take community views and values into consideration when making laws, therefore laws may not be reflective of contemporary society. Despite this, by authorising delegated bodies, parliament is ensuring that law-making remains flexible and efficient as not only does parliament gain more time to deal with more comprehensive law-making that benefits the entire nation or state, but it allows bodies with expertise in certain areas to make laws that better reflect the needs of the community in those areas; ensuring all necessary laws are made.

Question 4

'Courts rarely make laws because Parliament leaves them little scope to do so as legislation covers most situations'.

Discuss this statement explaining why it is necessary for courts to make laws. 6 marks

This is a discuss question, so students need to talk about the pros/cons, strengths/weaknesses or advantages/disadvantages of this statement, whilst explaining the reasons courts make laws. If students do not make reference to the statement, they cannot receive full marks.

This question should be marked globally, but students should discuss at least three reasons why courts need to make laws and why they may not.

Possible reasons for courts making laws include:

- No current law in existence
- Need to extend legislation to fit the situation
- Interpretation of a statute/s is necessary to resolve the dispute/case
- Parliament is unwilling/unable to make a law in a particular area

Possible reasons for courts not making laws include:

- No case before them requiring a law
- Not a superior court of record
- Law is adequate in the area
- Judge is unwilling to make a new law

Sample answer: Although it is not the primary role of courts to make laws, they are called upon regularly to make a new law or alter an existing law. Parliament, as supreme law-maker does create the majority of laws in Australia, however, this does not stop the courts from playing a role.

Courts are able to make a law when an issue is brought before them that has not yet been legislated, or adequately legislated on. For example, prior to the Donoghue v Stevenson case

of 1932, parliament had not legislated in regards to manufacturers' liability for negligent products. This meant that the courts had to step in and create an entire new area of law, as parliament had failed to do so. Thus, the courts provide citizens with an avenue of creating law when their parliament has been unwilling or unable to do so.

Further, courts have the ability to make laws quickly, once a relevant case comes before them. This is why it is necessary for courts to make laws. Unlike parliament, courts are not burdened with long processes and procedures when it comes to making laws. Judges are required to rule on cases before them and must come to a final decision; they do not have to take voter views and values into consideration and do not need to conduct in-depth debate. Therefore, judges can create an immediate law that applies directly to the case before them, as well as creating a binding precedent that applies to similar cases being heard in lower courts in the same court hierarchy. This creates efficiency in operation as well as the ability to create laws as soon as the need arises. This is something that parliaments are not able to do. Parliament must wait until they are sitting and then conduct the lengthy legislative process, before a law can be made.

However, courts must wait for an appropriate test case to come before them before they can create or change the law. This relies on there being a party with standing willing to bring a case to court. This can mean changes in the law are slow and done so in an ad hoc manner. Further, judges are limited to only being able to rule on points of law at issue before them, and often this can be of quite narrow scope. Parliament, on the other hand, can create laws in a more consistent manner, planning for the future, and therefore can create a much more comprehensive legislative program.

Despite this, courts play a necessary role in the legislative process, particularly when parliament is unwilling, or unable to legislate or alter existing legislation.

Question 5

Since 2008 there have been over a dozen murders committed by offenders released early from prison and placed on parole.

Outline the purpose of criminal sanctions and explain how one sanction you are familiar with satisfies at least one of the purposes of criminal sanctions. 7 marks

Students should identify and explain the five main purposes of criminal sanctions, namely: punishment, deterrence, rehabilitation, denunciation and protection. Approximately 5 marks should be awarded for this part of the question. Students should then identify and briefly define a sanction they have studied this year and then link one purpose of criminal sanctions to their chosen sanction.

Sample answer: When imposing a sanction on an offender, a judge must take into consideration the five purposes of criminal sanctions. These purposes include punishment, deterrence, rehabilitation, denunciation and protection.

A sanction should punish an offender in a manner that is just to the circumstances. The offender must know that what they did is not acceptable and society must feel that there has been some retribution against the offender. The punishment must be appropriate to the offence committed. The sanction must also act as a deterrence, either generally by discouraging members of the community from committing an offence, or specifically by discouraging the offender from committing crimes in the future. Further, the sanction should rehabilitate the offender. The offender should be assisted in changing their behaviour and attitudes so they can take their place in society following the conclusion of the punishment. A sanction should also aim to denunciate. This shows the community that the court disapproves of the offender's behaviour. Finally, a sanction must protect the community from the offender. The offender should be removed from society to prevent them from reoffending.

One sanction available to a judge is imprisonment where an offender is detained in prison for a period of time, suffering a loss of freedom and liberty. This sanction meets many of the purposes of criminal sanctions, in particular protection and punishment. Imprisonment ensures that the offender is physically removed from the community and held in a secure location. This means they are unable to harm the community for the duration of their sentence. Imprisonment also punishes the offender as they suffer a loss of freedom, not only in the sense of being permitted to move freely in society but they are limited in who they can associate with. This means they are unable to live a normal life, and thus are punished for their behaviour.

Question 6a

Explain the role of VCAT. 2 marks

Students should mention the following roles in their answer: accessible, informal, low-cost, timely method.

Sample answer: The role of VCAT is to provide a dispute resolution avenue that is easily accessible to members of the community by providing informal, low-cost dispute resolution in a timely manner. It does this by providing expert dispute resolution in certain areas of law, such as tenant and landlord disputes.

Question 6b

Explain how the changes mentioned above will impact the effectiveness of VCAT.
4 marks

Student answers must refer to the case material. That is, it must explain how the increase in lodging fees for a small claim will impact on the ability of VCAT to perform its role as outlined in question 6a.

Mark globally, however students should refer to at least two of VCAT's roles when answering this question – low-cost and accessibility would be the most obvious choices.

Sample answer: VCAT's ability to remain effective as a cheap and accessible method of dispute resolution, will be greatly impacted by the increase in lodging fees mentioned above. With fees tripling, many people will no longer be able to afford to initiate a claim in the Tribunal. A fee of $38 is extremely cheap and encourages people to take a claim to VCAT, as the outlay is only minimal should they be unsuccessful. However, with fees increasing to over $150, fewer people will be either able to pay the fee, or willing to make the commitment as it means there is more at stake should they be unsuccessful.

Despite this, VCAT still remains relatively cheap, compared to taking a case through the courts, where legal fees are extremely high, even before the trial occurs. Further, the ability for a case to be resolved quickly is not impaired by the increased fee, thus a matter once filed will still be heard and hopefully settled, within a few weeks.

Thus, whilst the increase may discourage few people from initiating a case, the general role of VCAT is not compromised and it is still an effective body.

Question 7

'Individuals have a say in the laws that are made – that is the purpose of the Victorian Law Reform Commission'.

Explain the process of investigation used by the VLRC and evaluate its role in effecting changes in the law. 8 marks

There are two parts to this question. Firstly, students should outline the five step process used by the VLRC to investigate a change in the law. Approximately 4 marks should be awarded for this part. Students then need to discuss the strengths and weaknesses of the VLRC in effecting changes in the law. Students must then come to a conclusion as to whether or not it is effective at encouraging change. Students that fail to make a concluding statement should lose 1 mark. Students may use an example of a recent change in the law that was made as a result of a VLRC report to assist their answer, although this is not necessary. Approximately 4 marks should be awarded for this second part.

Sample answer:

The VLRC is the formal law reform body in Victoria, whose main role is to develop, monitor and coordinate law reform in Victoria after receiving a reference from the Attorney General. The VLRC generally works on issues that have been referred to it by the attorney-general, although it can investigate small matters on its own recourse.

The VLRC uses a five-step process to investigate a proposed change in the law. The first step involves the body receiving a reference from the Victorian Attorney-General. This reference may be quite focused or apply to a more general area of law. Once the VLRC has received the reference, it will review and research the current operation of the existing law, focusing on reasons for any necessary changes. The third stage then begins with the body investigating any issues and possible effects of a change in the law. They may focus this investigation on the community at large or a more specific group. Consultation with the public follows, with public meetings being held and submissions being sought from interested individuals or groups. The VLRC uses a number of approaches to guage public views, such as conducting surveys, engaging specialist consultants and publishing issues papers. When the VLRC has gathered all necessary information it will formulate a report. This is the final step in the process and concludes with the report being provided to the Attorney-General. This report will contain a number of recommendations for change.

The VLRC can be effective in causing a change in the law, as parliament is more likely to consider a proposed change in an area that it has recommended for investigation. Parliament would be unlikely to waste the VLRC's money and time in investigating an area that it is not seriously considering making changes to.

Further, the VLRC conducts lengthy research into the operation of the current law and then investigates any issues and possible effects of a change in the law. Consultation with the public is also undertaken in great length and detail. As such, the report that is finally produced and provided to the Attorney-General is hard to ignore by members of parliament

as it cannot be argued that community views have not be considered and incorporated. This makes the proposal from the VLRC an effective method to encourage and ensure a change in the law.

However, the report and recommendations created by the VLRC do not have to be considered or implemented by parliament. Thus, a lot of money and time may be invested into creating a report that may end up in the bin of the Attorney-General. Further, parliament does not have to accept all of the recommendations made by the VLRC, if it chooses to adopt some form of change. Thus, particular groups or individuals in the community may miss out on an improvement to a particular area of law, whilst others gain. This could be seen to be unfair or discriminatory, even if this is not parliament's intention.

As discussed, the role of the VLRC in effecting change in the law is purposeful, however as parliament does not have to take the body's recommendations into account or can pick and choose which recommendations it does implement, their role is limited and dependent on the discretion of parliament.

Question 8

Distinguish between conciliation and arbitration. In your answer identify which dispute resolution method is the most effective and justify your decision. 5 marks

Students must show the differences between conciliation and arbitration. They do not need to discuss any of the similarities. Students must show a clear difference in the points they are discussing, so the use of words such as 'however' or 'whereas' must be included. If students fail to use such words, they cannot receive full marks. 3 marks should be awarded for the first part of this question. The final 2 marks should be awarded for identifying the most effective method and then stating why they have chosen this method. Students can choose either as the most effective, however they must be able to justify why they have chosen the one they did, in order to receive the full 2 marks.

Possible points to distinguish include:

- Role of the third party
- Role of the parties
- Nature of the decision
- Costs

Sample answer: Conciliation and arbitration are two methods of dispute resolution that may be used as an alternative to judicial determination in the courts or as dispute resolution methods at VCAT. Conciliation is a process involving an independent third party known as the conciliator who assists disputing parties to reach a decision. The conciliator listens to all of the evidence as presented by the parties and then may suggest a resolution to the dispute. Ultimately, the resolution is decided between the two parties which may or may not be what the conciliator suggested. The conciliator cannot force a decision onto the parties. On the other hand, arbitration involves an independent arbitrator that has the power to make an order to resolve the dispute. Arbitration occurs in both VCAT and the courts; in particular it is compulsory for all civil claims under $10,000 to be heard using arbitration in the Magistrates' Court. Conciliation is rarely used by the courts but is used largely to settle disputes in VCAT. Unlike conciliation, the decision in arbitration is made by the arbitrator and not the parties involved and the final decision is binding on the parties. The arbitrator makes this binding decision after hearing the evidence of both parties. The decision in arbitration is made in favour of one party, whereas in conciliation the decision may benefit both parties.

Arbitration is the most effective dispute resolution method as it is the most likely method that will see the dispute resolved completely and finally. This is because the decision is binding and thus the parties are more likely to abide by the decision. If arbitration occurs at VCAT then the resolution means the parties avoid having to go to court and incurring the extra costs that court action involves. Further, arbitration follows a more formalised process than conciliation, so it is suitable for a wide range of disputes, including more serious disputes, and thus emphasises the seriousness of the situation for the parties. Therefore, arbitration is the most effective of the two methods of dispute resolution.

Question 9

Adam received a Jury Questionnaire from the Juries Commissioner and complained to his partner Eve that serving on a jury would be a waste of his time as he has nothing to offer because he knows little about the law.

Question 9a

Explain to Adam how he is possibly incorrect in his statement. 4 marks

Students should discuss the role of individuals in a jury and the role of a jury in general. Mark globally, however students cannot receive full marks if they do not refer to Adam in their response.

Sample answer: Adam is incorrect in his statement that serving on a jury is a waste of time and that he has nothing to offer due to his limited knowledge of the law. The jury is made up on regular members of the community, to ensure that a person is tried by a jury of their peers. Jury service is a responsibility of all citizens in the community and as such should be taken seriously. Serving on a jury will also allow Adam to gain an insight into the operation of the legal system and thus perform an educative function for him and other members of the jury, thus it will not be a waste of Adam's time to serve on the jury.

It is not necessary for Adam to have knowledge of the law to make a purposeful contribution to the jury. In fact, a deep knowledge of the law may mean that person is ineligible to be a member of a jury; for example police officers and lawyers are not permitted to sit on a jury. Further, a jury does not make decisions about the law, a jury makes a decision based on the facts before them; it is the role of the judge to make any findings on the law. Thus, Adam is incorrect in his statement.

Question 9b

Eve responded to Adam stating that the jury is a key component of our legal system and it is important that all persons called to do jury duty should serve.
Evaluate the role of the jury in our legal system. In your answer identify two possible reforms to the jury system that would improve its operation. 8 marks

Students have two parts to answer. The first is an evaluation of the jury system – this requires them to discuss the strengths and weaknesses of the jury system and decide, overall, whether it performs a positive or negative role in the legal system. If they fail to make a conclusion, full marks cannot be awarded. Approximately 5 or 6 marks should be awarded for this first section. The second part to the answer requires students to identify two possible reforms to the jury system that will improve its operation. Students should briefly explain how their chosen reforms might improve the jury's operation. Approximately 2 to 3 marks should be awarded for this part. Students that discuss alternatives to the jury system cannot receive any marks for this part of the question so should not score above 6 marks overall.

Possible strengths include:

- Independent, fact-finding body
- Safeguards freedom
- Cross-section of the community
- Allows for public scrutiny

Possible weaknesses include:

- No reasons given for finding
- Costly and time-consuming
- Easily influenced by emotions
- Not a true cross-section

Possible reforms include:

- Giving reasons for verdicts
- Reducing the size of the jury
- Providing a greater cross-section
- Specialist foreperson

Sample answer: The jury system plays an important role in our legal system having many strengths. Of course, there are weaknesses, however with a few reforms; the system can retain its positive role.

One strength of the jury system is that it provides an accused with a trial that is conducted before a cross-section of the community. Thus, an accused's fate is determined in accordance with current community attitudes. The jury acts as a barometer of social norms and values and thus the verdict is decided by ordinary citizens based on these considerations. This also

ensures that the decision of the jury is more likely to be accepted by the accused and the community at large. However, it could be argued that the jury is not a true cross-section of the community as there are a large number of people who are ineligible or excused from service. For example, those who are self-employed or who live far away from the court are often excused from serving on the jury. Further, people with legal knowledge such as police officers or lawyers are not eligible to serve on a jury. These categories of ineligibility or excuses are quite broad and thus it could be argued that the jury does not truly represent the wider community.

Another strength of the jury system is that it is an independent, fact-finding body, free from bias and political influence. As the jury consists of ordinary men and women, they are not prejudiced by past dealings with the legal system and not bound by the doctrine of precedent. Thus, they provide a fresh view of how the law should be applied to the particular case before them. This ensures that each accused person is treated fairly on the particular facts of their case. Further, as the jury is not elected by parliament it is not subject to any pressure from the community or political parties to come to a certain decision. Thus only the values of the community at large are applied, rather than a political agenda. However, as jurors are only ordinary citizens, they are likely to be influenced by the skill and eloquence of experienced barristers. Barristers, particularly those with many years' experience, are known for putting on great performances that may appeal to the jury more so than the actual evidence. At present there is no way to determine whether a jury has reached its decision based on the evidence or the skill of the barrister, as juries do not give reasons for their decision, thus the barrister's influence may be unduly reflected in the decision reached by the jury.

One way to improve the operation of the jury is to require them to provide a reason for their verdict. This would improve the jury system and thus the legal system as juries would be held accountable for their verdict. Thus, there would be a decreased likelihood that juries make a decision merely to finish the case or based upon dubious grounds such as the appearance of the accused. Another way to improve the operation of the legal system is to decrease the number of people who are excused or ineligible for jury service. By removing some of the categories of people who cannot serve on the jury, the cross-section eligible would increase and thus the jury would become more representative. This would ensure that the decision reached is based on the current community values and standards more so than at present.

Question 10

'The individual rights of Australian citizens are protected in numerous ways.

Discuss this statement detailing how rights are protected in the Commonwealth Constitution Australia. In your response compare Australia's protection of rights with the protection of rights in one other country you have studied this year. 10 marks

Students should approach this answer like an essay. Thus there should be a brief introduction and conclusion.

There are two parts to this question. The first requires students to explain how rights are protected in Australia, namely via structural protection, express rights and implied rights. Students should identify each of the three methods of protection and briefly explain how these protect rights in Australia. The second part requires students to compare rights protection in Australia with that in another country. Compare requires students to show similarities and differences between the two approaches. Better answers will combine the two parts of the question. This question should be marked globally.

Students should choose from the following countries to compare:

- South Africa
- Canada
- United States
- New Zealand

Sample answer: Australia's approach to the protection of rights is significantly different from that of the South African constitutional approach to protecting the rights of its citizens.

The differences in the two approaches can be clearly illustrated in the extent to of protection that each country's constitution offers. Australia's constitution only has five express rights – that is, rights explicitly mentioned in the constitution which can only be removed or amended via a successful referendum. They include the 'freedom or religion s.116', the 'right to freedom from discrimination on basis of state residence s.117', the 'right to trial by jury on commonwealth indictable offences s.80', the right to 'freedom of interstate trade and commerce movement s.92, and the 'acquisition of property on just terms s.51xxxi'. These five express rights are considerably limited in their application. For example, the right to not be discriminated against based on the state in which you live does not provide a general protection from discrimination eg. on race, gender or age.

Australia also has one implied right, that is, a right that the High Court has interpreted from the words of the Constitution. This right was established in the 1992 "Political Advertising Case", and is the implied right to 'freedom of political communication. It was interpreted on the basis of the notion of 'representative government' under s.7 and s.24 for the Constitution. The court found that in order for representative government to be effective voters need to be 'informed' and thus citizens have the right to discuss or debate political affairs. This right

too however is subject to limitation. It only protects the freedom of communication on 'political matters' and does not provide an absolute protection to freedom of communication.

Australian's rights are also indirectly protected in a number of ways via structural protections found within the structure and text of the Constitution. The ideas of representative and responsible government, the separation of powers as well as the process of referendum all indirectly protect the democratic rights of Australians, by ensuring that parliament is prevented from abusing its power. Australia's rights are therefore few and limited.

South Africa on the other hand, provides its citizens with a comprehensive and entrenched Bill of Rights in Chapter Two of their Constitution. It provides considerable protection of the rights of its citizens under four main categories. South Africans rights cover 'equality', for example the right to freedom or religion, thought and body; 'civil and political rights' such as the right to vote; 'social and economic rights' , that is the right to basic education; and finally 'legal process rights' such as the right to be presumed innocent until proven guilty. Further, the South African Bill of Rights specifically recognises the rights of children such as the right to basic nutrition, shelter, health care and social services, a category of rights that currently are not protected in Australia.

Australia's constitution does not contain a limitation clause. So whilst parliament can attempt to limit rights through legislation or the process of referendum, the High Court can disallow this should it find that the parliament has acted outside its power ultra vires. South Africa's Bill of Rights however, contains a limitation clause. This clause allows parliament to limit some rights if it can be argued that it is 'reasonable and justifiable in an open and democratic society based on dignity, equality and freedom'. However, some rights such as children's rights and equality rights which cannot be limited.

In Australia the High Court is considered the 'guardian' of the Constitution. If the Commonwealth parliament makes a law that violates a constitutionally protected right, then the High Court can declare it 'ultra vires' beyond their power and therefore unconstitutional and invalid. The Commonwealth parliament cannot override a decision by the High Court. In declaring a law invalid, the High Court cannot offer any remedy. In South Africa, courts have the overall responsibility for the interpretation and enforcement of the Bill of Rights. The court must interpret the law in order to 'promote the spirit of the Bill of Rights'. In South Africa the High Court and Supreme Court of Appeal can both make an order as to the extent that a law is unconstitutional and then provide 'temporary relief' until the Constitutional Court declares a law officially invalid. It may also award damages or grant an order to cease the unconstitutional conduct.

Thus, whilst Australia has protected the rights of citizens in numerous ways, the approach taken to protect these rights is different to that in other countries.