

Legal Studies 2020 –Assessment Guide

Section A

VCAA Key
Knowledge

Question

Answer guide

Brian and his wife Jacinta had a fight during which Brian broke Jacinta’s arm. The police have charged Brian with intentionally causing serious injury to Jacinta, and Brian has been committed for trial in the County Court. Brian is currently unemployed and has no assets. Brian has told the police that Jacinta was trying to stab him with a knife and that he was only acting in self-defence.

the rights of an accused, including the right to be tried without unreasonable delay, the right to a fair hearing, and the right to trial by jury

Question 1a (2 marks)

Brian is concerned that if his trial is reported in the media, this will seriously affect his reputation among his friends. Advise Brian whether he is entitled to have the media excluded from his trial.

Answer:

- *Under the Victorian Charter of Human Rights and Responsibilities, the trial of an accused must be held in public, unless a law authorises the court to exclude people from the hearing.*
- *There is no law that authorises a court to exclude people from a trial just because the reputation of the accused (Brian) may be affected, and so Brian does not have the right to have the media excluded from his trial.*

Marking protocol:

One mark for each of the above points.

It is important to learn the source (but not the section number) of each right that an accused has (e.g. the Victorian Charter of Human Rights and Responsibilities) because some questions may require the identification of a right that is given by a particular source.

The answer must refer to the facts of the case and include a conclusion as to Brian’s entitlement to have the media excluded from his trial.

Because the proceeding involves a family violence offence, the *Criminal Procedure Act 2009 (Vic)* permits the judge to direct that only certain persons are present in court when Jacinta is giving evidence. However, this is not a right that Brian has as the accused.

the rights of victims, including the right to give evidence as a vulnerable witness, the right to be informed about the proceedings, and the right to be informed of the likely release date of the accused

Question 1b (2 marks)

Jacinta is to be a witness for the prosecution at the trial but is very scared of Brian. Describe **one** right that Jacinta has which could assist her in feeling less scared in providing evidence.

Answer:

- *Under the Criminal Procedure Act 2009 (Vic), a witness in proceedings for a family violence offence may give evidence by closed circuit television from a place other than the courtroom.*
- *This will assist Jacinta because she would not be in the same room as Brian and so would feel less scared in giving her evidence.*

OR

- *Under the Criminal Procedure Act 2009 (Vic), a witness in proceedings for a family violence offence may give evidence from behind a screen so they cannot see the accused.*
- *This will assist Jacinta because she would not have to see, and would not be seen by, Brian and so would feel less scared in giving her evidence.*

OR

- *Under the Criminal Procedure Act 2009 (Vic), a witness in proceedings for a family violence offence may have a support person beside them to provide emotional support.*
- *This will assist Jacinta because the support person (e.g. a friend) would give Jacinta more confidence in giving evidence against Brian even though she was scared of him.*

OR

- *Under the Criminal Procedure Act 2009 (Vic), a witness in proceedings for a family violence offence cannot be cross-examined by the accused in person, but only by the accused's lawyer.*
- *This will prevent Brian from intimidating Jacinta by directly asking her questions, and so Jacinta would feel less scared in giving her evidence.*

Marking protocol:

One mark for each of the above points.

The answer must refer to the facts of the case, describe a right that Jacinta has as a witness in this case, and explain how that right can address Jacinta's fear of Brian.

It is important to learn the source (but not the section number) of each right that a victim has (e.g. the *Criminal Procedure Act 2009 (Vic)*), because some questions may require the identification of a right that is given by a particular source.

the role of institutions available to assist an accused, including Victoria Legal Aid and Victorian community legal centres

Question 1c (3 marks)

Describe **one** type of legal assistance that may be available to Brian in relation to his trial in the County Court and explain whether Brian is likely to be eligible for that legal assistance.

Answer:

- *Brian might be entitled to be represented at his trial by a lawyer who is funded by Victoria Legal Aid. To be eligible for this kind of legal assistance, Brian must satisfy two requirements.*
- *The first requirement is the means test, under which Brian's weekly net income must be less than \$360 and his net assets must be less than \$1,095. Because he is unemployed and has no assets, Brian is likely to satisfy this test.*
- *The second requirement is the merits test, under which Brian's case must have a reasonable chance of success. Brian might be able to satisfy this test if, for example, there is evidence that he was acting in self-defence or that Jacinta is not a reliable witness. If so, Brian is likely to be eligible for this kind of legal assistance.*

Marking protocol:

One mark for each of the above points.

An alternative type of legal assistance would be the provision of legal advice by a lawyer who is funded by Victoria Legal Aid, in which case the same two tests apply.

The answer must refer to the facts of the case and contain a conclusion as to whether Brian would be likely to be eligible for the relevant type of legal assistance.

Brian would not be entitled to free legal advice from, or free representation by, a duty lawyer because duty lawyers only operate at the Magistrates' Court, and Brian's case is being heard in the County Court.

the purposes and appropriateness of plea negotiations and sentence indications in determining criminal cases

Question 2 (2 marks)

Explain **one** reason sentence indications are not frequently given in the County Court and the Supreme Court.

Answer:

- *The County Court and the Supreme Court hear indictable offences. Where a judge in either of these courts gives a sentence indication for an indictable offence, that sentence indication can only state whether the judge is likely to impose an immediate term of imprisonment. It cannot indicate the likely length of the imprisonment term.*
- *Because indictable offences are more serious offences, an accused who pleads guilty is likely to be punished by a term of imprisonment. Accordingly, there is often no point in a person who has been charged with an indictable offence asking for a sentence indication.*

OR

- *The County Court and the Supreme Court hear indictable offences. A judge in either of these courts can only give a sentence indication for an indictable offence where the prosecution consents.*
- *Because indictable offences are more serious offences, the prosecution might be less willing to consent to a sentence indication so that justice can be seen to be done through there being a full trial.*

OR

- *A judge in the County Court or the Supreme Court has a discretion to give a sentence indication, and the judge is likely to be reluctant to give a sentence indication if they do not have sufficient evidence on which to base the sentence indication.*
- *Because indictable offences are more serious offences, evidence about the impact of the offence on the victim is likely to be an important factor in deciding the appropriate sentence. Accordingly, if the judge does not have that evidence at the time the accused applies for the sentence indication, then the judge is likely to refuse to give a sentence indication.*

Marking protocol:

One mark for each of the above points.

key concepts in the Victorian criminal justice system, including:
– the standard of proof

key concepts in the Victorian civil justice system, including:
– the standard of proof

Question 3 (3 marks)

Roshan is charged with assaulting Mark. The prosecution alleges that Roshan broke Mark's nose and gave Mark a black eye in a fight at the football. In a separate civil action, Mark sues Roshan for damages as a result of the injuries that he suffered in his fight with Roshan. Explain why Roshan could be found not guilty of assault in the criminal case but liable to pay Mark damages in the civil case.

Answer:

- In Roshan's trial for assaulting Mark, Roshan will only be found guilty if the prosecution can prove beyond reasonable doubt that Roshan assaulted Mark. This means that the prosecution must prove that the only reasonable explanation for Mark's injuries is that Roshan hit Mark.
- On the other hand, for Roshan to be liable to Mark in the civil case, Mark (the plaintiff) must prove on the balance of probabilities that Roshan hit him. This means that Mark need only prove that it was more likely than not that Roshan hit Mark.
- Because the criminal standard of proof is much higher than the civil standard of proof, Roshan could be found to be liable to Mark in the civil case but not guilty of assaulting Mark in the criminal case. For example, as where there was a possibility, but not a likelihood, that a person other than Roshan hit Mark.

Marking protocol:

One mark for each of the above points.

recent and recommended reforms to enhance the ability of the civil justice system to achieve the principles of justice.

factors that affect the ability of the civil justice system to achieve the principles of justice, including in relation to costs, time and accessibility

Question 4 (4 marks)

Discuss the extent to which **one** recent reform to the civil justice system may assist in achieving justice.

Answer:

VCAT three-tier fee structure

- In 2016, the Victorian Civil and Administrative Tribunal (VCAT) revised its fee structure so that there are now three levels of fees. Health care card holders pay the lowest fees; other individuals, not-for-profit organisations, and companies with less than \$200,000 per annum (pa) turnover pay the next highest level of fees; and companies with over \$200,000pa turnover pay the highest fees. This recent reform will assist in achieving justice to a moderate extent.
- The revised fee structure assists in achieving fairness because it is fair to charge companies and individuals who are not health care card holders higher fees to access VCAT as they are in a better position to afford to pay those fees than health care card holders.
- In addition, these different levels of fees are intended to ensure that people who have little money can still access VCAT to enforce their rights and resolve their disputes.
- On the other hand, the fact that health care card holders are required to pay a fee may mean that they cannot afford to take their disputes to VCAT, especially if their matter lasts for more than one day. This could disadvantage health care card holders and may detract from their access to VCAT.

Judicial Commission

- In 2016, the Victorian Parliament established the Judicial Commission of Victoria. The purpose of the Commission is to deal with complaints about the capability or capacity of

judges in Victorian courts and of members of the Victorian Civil and Administrative Tribunal (VCAT). This recent reform will assist in achieving justice to a moderate extent.

- *The Commission contributes to fairness and equality by ensuring that parties are treated in an unbiased and professional way during the hearing of their case. For example, the Commission can investigate complaints about inappropriate remarks made by judges or VCAT members, including where those remarks show that the judge or VCAT member has treated one party less favourably than the other party.*
- *The Commission also contributes to access because it can investigate complaints about excessive delay in judges or VCAT members delivering their judgments. A delayed decision detracts from access because it delays the enforcement of a party's rights. For example, if a plaintiff has been injured due to a defendant's negligence, then a delay in the decision means that there is a delay in the plaintiff being paid the compensation that they are entitled to.*
- *However, the Commission cannot investigate systemic delays that arise from general causes such as pre-trial procedures. As a result, the Commission is limited in the extent to which it can speed up decisions and therefore contribute to access.*

Marking protocol:

One mark for each of the above points. Full marks cannot be awarded unless the answer expressly states the "extent" to which the recent reform may assist in achieving justice as this is an important part of the question. For example, the answer could describe this extent as being "small", "minor", "limited", "moderate", "significant" or "large".

There may be other recommended reforms that could be described. However, to be a recent reform the reform must have been made within the past four years. In addition, the reform must relate to the civil justice system (not the criminal justice system).

Note: To be a "discussion" the answer must weigh up how the recent reform achieves justice against the limitations on the recent reform in achieving justice. A good way of doing this "weighing up" is to use words such as "however", "on the other hand", "in contrast", "while" and "whereas".

the purposes of committal proceedings

the principles of justice: fairness, equality and access

Question 5 (5 marks)

Discuss the ability of committal proceedings to uphold the principle of fairness **or** the principle of access. Tick the box below that represents your choice.

Principle of fairness

Principle of access

Sample answer:

Fairness

- *Fairness means that each party is given a reasonable opportunity to present their case and is able to have their case heard and decided in an impartial way. As part of committal proceedings, the accused is provided with the hand-up brief before the committal mention hearing. The hand-up brief contains all the prosecution's evidence, such as witness statements and police interview transcripts.*
- *This is fair because it means that the accused knows the prosecution's evidence and so will not be caught by surprise at their trial. Instead, the accused is able to properly prepare their case, taking into account the evidence against the accused.*
- *In addition, the accused is only committed for trial at their committal hearing if the Magistrate is satisfied that the prosecution's evidence is of sufficient weight to support a conviction by a jury at trial. This is fair because it is consistent with the presumption of innocence that the prosecution must show that there is sufficient evidence to support a jury conviction.*
- *On the other hand, the rules of evidence and procedure apply in committal proceedings and, during committal proceedings, the accused has the opportunity to cross-examine prosecution witnesses and to make submissions.*
- *An accused who is not represented by a lawyer during committal proceedings might not be able to properly present their case. This is because such an accused is unlikely to understand the rules of evidence and procedure and is unlikely to have the skills to cross-examine and make submissions. This is unfair because an unrepresented accused will therefore not have a reasonable opportunity to present their case.*

Access

- *Access means that a party is able to understand their legal rights and pursue their case. Committal proceedings assist in achieving access to the justice system because they ensure that matters where there is insufficient evidence against the accused do not go to trial in a higher court.*
- *This reduces backlogs in the County Court and the Supreme Court by eliminating cases that are unlikely to succeed, and so allows other parties to pursue their cases in those courts. In this way, committal proceedings increase access to these other courts.*
- *In addition, during the committal proceedings the accused is required to plead guilty or not guilty. If an accused decides to plead guilty after seeing the prosecution's evidence, then this will mean that the case does not proceed to trial, which helps*

avoid backlogs in the higher courts. Again, this improves access by freeing up the higher courts so that other parties can pursue their cases in those courts.

- On the other hand, it is rare for an accused not to be committed for trial. This means that a significant amount of the time and resources of the Magistrates' Court are used in committal proceedings which are not really necessary because the accused will be sent for trial in any event.
- This reduces access to the Magistrates' Court because the Magistrates' Court will have less time and resources to deal with summary offences. As a result, there may be a delay in people who are accused of summary offences having their cases decided.

Marking protocol:

This answer is globally marked (i.e. an overall mark is awarded for the entire answer). The following criteria could be used to assess a response:

5 High	<ul style="list-style-type: none"> • Demonstrates understanding of fairness or access (as appropriate). • Demonstrates comprehensive understanding of the extent to which committal proceedings contribute to and detract from fairness or access (as appropriate) by addressing a number of relevant arguments, including by using examples. • Weighs up the "for" and "against" arguments by using words such as "however", "on the other hand", "in contrast", "while" and "whereas".
3-4 Medium	<ul style="list-style-type: none"> • Demonstrates understanding of fairness or access (as appropriate). • Demonstrates reasonable understanding of the extent to which committal proceedings contribute to and detract from fairness or access (as appropriate) by addressing some relevant arguments, including by using examples. • Weighs up the "for" and "against" arguments by using words such as "however", "on the other hand", "in contrast", "while" and "whereas".
1-2 Low	<ul style="list-style-type: none"> • Addresses some of the ways in which committal proceedings contribute to or detract from fairness or access (as appropriate). • Describes "for" and/or "against" arguments rather than weighs them up.
0 No score	<ul style="list-style-type: none"> • Response does not address the question.

Note: To be a "discussion" the answer must weigh up the arguments "for" and "against" the proposition, i.e. how committal proceedings contribute to and detract from fairness or access (as appropriate). A good way of doing this "weighing up" is to use words such as "however", "on the other hand", "in contrast", "while" and "whereas".

Use the following hypothetical scenario to answer Question 6:

As a result of concerns that some school students were using social media to bully other students, the Commonwealth Parliament passed the *Social Media (Prevention of Bullying) Act 2021 (Cth)*. This Act prohibited students in Australian schools from using social media during school hours. A Victorian school student challenged the validity of the Act in the High Court. Four of the seven High Court judges who heard the case decided that, because most people now relied on social media to provide them with news about current affairs, a new right should be implied into the Australian Constitution. This new right was the right to use social media to access news about current affairs. Because the *Social Media (Prevention of Bullying) Act* was inconsistent with this right, these judges decided that the Act was invalid. The other three High Court judges disagreed and refused to imply into the Constitution a right to use social media to access news about current affairs.

factors that affect the ability of courts to make law, including:
– *judicial conservatism*
– *judicial activism*

Question 6a (4 marks)

Referring to this High Court decision, distinguish between judicial conservatism and judicial activism.

Answer:

- *Judicial conservatism is where judges are cautious about making a major or controversial change to the law and base their decisions only on legal considerations.*
- *On the other hand, judicial activism is where judges may make a major or controversial change to the law and base their decisions not just on legal considerations but also on social and political values.*
- *The four High Court judges who decided that there was a right, implied into the Constitution, to use social media to access news about current affairs were being judicially activist. This is because they took into account the fact that people have become increasingly reliant on social media as a way of accessing news about current affairs.*
- *The three High Court judges who decided that there was no constitutionally-protected right to use social media to access news about current affairs were being judicially conservative. This is because they based their decision only on legal considerations; in this case, the actual words of the Constitution.*

Marking protocol:

One mark for each of the above points.

Note that judicially activist judges (like judicially conservative judges) still take legal considerations into account. It is just that they also take into account social and political values.

Note: To “distinguish” the answer must highlight the differences between judicial conservatism and judicial activism.

One way of doing this is to use words such as “however”, “on the other hand”, “in contrast”, “while” and “whereas”.

the means by which the Australian Constitution acts as a check on parliament in law-making, including:
– *the role of the High Court in interpreting the Australian Constitution*

the roles of the Victorian courts and the High Court in law-making

factors that affect the ability of courts to make law, including:
– *costs and time in bringing a case to court*
– *the requirement for standing*

Question 6b (5 marks)

Discuss the extent to which the High Court, by implying new rights into the Australian Constitution, is able to restrict the powers of the Commonwealth and State Parliaments to make laws.

Sample answer:

- *Where the High Court interprets the Constitution to imply new rights into it, this can, to a significant extent, restrict the powers of the Commonwealth and State Parliaments to make laws that breach those rights. However, there are some limitations on the ability of the High Court to imply rights into the Constitution in the first place.*
- *The High Court is the only court that can interpret the Constitution and no parliament can abrogate that interpretation. In addition, a parliament cannot validly make a law where that law breaches the Constitution.*
- *Because the High Court interpreted the Constitution to include an implied right to use social media to access news about current affairs, a law such as the Social Media (Prevention of Bullying) Act 2021 (Cth) will be invalid to the extent that it breaches this right, and the Commonwealth Parliament does not have the power to abrogate this implied right so as to avoid this consequence.*
- *However, the High Court can only interpret the Constitution to imply a new right where it is hearing a case that requires it to interpret the Constitution. For a case to be brought to the High Court, there must be a party with standing (i.e. a party that is directly affected by the case), and that party must have the money and time needed to bring the case. If a party with standing does not bring such a case to the High Court, then the High Court cannot imply a new right into the Constitution, and the law made by parliament will continue to operate.*
- *In addition, there is only likely to be a small number of rights that the High Court will imply into the Constitution, and so these implied rights are not likely to be a significant restriction on the powers of the Commonwealth and State Parliaments to make a large range of laws.*

Marking protocol:

This answer is globally marked (i.e. an overall mark is awarded for the entire answer). The following criteria could be used to assess a response:

5 High	<ul style="list-style-type: none">• Addresses the “extent” part of the question including by, for example, expressly referring to the extent as being “small”, “minor”, “limited”, “moderate”, “significant” or “large”.• Demonstrates understanding of the role of the High Court in interpreting the Constitution and the concept that laws made by parliament will be invalid if they breach the Constitution.• Demonstrates understanding of the need for standing and limitations on the scope of implied rights.• Weighs up the “for” and “against” arguments by using words such as “however”, “on the other hand”, “in contrast”, “while” and “whereas”.• Refers to the stimulus material in the context of the discussion.
3-4 Medium	<ul style="list-style-type: none">• Demonstrates understanding of the role of the High Court in interpreting the Constitution.• Demonstrates understanding of the need for standing.• Weighs up the “for” and “against” arguments by using words such as “however”, “on the other hand”, “in contrast”, “while” and “whereas”.
1-2 Low	<ul style="list-style-type: none">• Demonstrates limited understanding of the effect of the High Court’s interpretation of the Constitution on the law-making powers of parliament.• Does not address how the High Court implying new rights into the Constitution does not restrict the powers of the Commonwealth and State Parliaments to make laws.
0 No score	<ul style="list-style-type: none">• Response does not demonstrate any understanding of either concept.

Note: To be a “discussion”, the answer must weigh up the arguments “for” and “against” the proposition, i.e. how the High Court implying new rights into the Constitution restricts the power of parliaments to make laws and does not restrict the power of parliaments to make laws. A good way of doing this “weighing up” is to use words such as “however”, “on the other hand”, “in contrast”, “while” and “whereas”.

factors that affect the ability of parliament to make law, including:

- the roles of the houses of parliament
- the representative nature of parliament
- political pressures
- restrictions on the law-making powers of parliament

the roles of the Victorian courts and the High Court in law-making

the reasons for, and effects of, statutory interpretation

factors that affect the ability of courts to make law, including:

- the doctrine of precedent
- judicial conservatism
- judicial activism
- costs and time in bringing a case to court
- the requirement for standing

the ability of parliament and the courts to respond to the need for law reform

Question 7 (10 marks)

In her retirement speech, the Chief Justice of the Victorian Supreme Court said that “the effectiveness of law-making in Victoria depends upon both parliament and the courts fulfilling different roles”. Evaluate the extent to which the courts are able to overcome the limitations of parliament in law-making.

Sample answer:

- *In my opinion, the courts are effective in overcoming some of the limitations of parliament in law-making because they complement the role of parliament as a law-maker. However, because the primary role of the courts is to resolve disputes, rather than to make law, they cannot overcome all of the limitations of parliament in law-making.*
- *One limitation of parliament in law-making is that parliament cannot make statutes that cover all possible circumstances. For example, when the Commonwealth Parliament passed the Marriage Act 1961, which defined marriage as being between a man and a woman, it did not foresee that people would be able to change their gender through gender reassignment surgery.*
- *Courts are able to overcome this limitation by interpreting statutes so as to give meaning to ambiguous words and to decide whether the statute should apply in a particular situation. For example, in the Kevin and Jennifer case, the court interpreted the word “man” in the Marriage Act to include a person who was born female but who had a gender reassignment operation to become a male.*
- *However, the courts are limited in their ability to interpret statutes because they can only interpret a statute when a case that requires them to interpret the statute is brought before them. This will only be the case if a party with standing is willing to bring the case and if that party has the money and time to bring the case. In addition, the courts can only give meaning to the words in the statute. They cannot actually change those words, even if it seems that parliament has made a mistake.*
- *Another limitation on parliament is that the Australian parliamentary system is based on representative government. Representative government means that the representatives of the people are chosen by the people, and so should represent the views of the majority of the people. While it is generally appropriate that parliament should make laws that are supported by the majority of voters, this does mean that parliament might make laws that disadvantage a minority. For example, the Victorian Parliament has recently passed laws that impose minimum terms of imprisonment for offences such as car-jacking. While these laws are popular with voters who are concerned about the amount of violent crimes committed in Victoria, imprisoning offenders is costly and does not address the causes of the offending.*
- *Courts are able to overcome this limitation because judges are not elected and so are free to make law that is fair even if it is not popular.*
- *On the other hand, judges need to be careful that they do not overstep their role. If judges are judicially activist, then they*

are prepared to make a major or controversial change to the law and base their decisions not just on legal considerations but also on social and political values. While this can result in fairer laws being made because these judges take into account a range of social and political values, judges need to be conscious that their social and political values do not necessarily reflect those of the majority of the community.

- *The final limitation on parliament is that parliament does not have the time or expertise to make all the laws that may be required. Parliament can only make laws while it is sitting, but it only sits for a limited number of days in each year. For example, in 2019 the House of Representatives sat for 55 days and the Senate sat for 50 days.*
- *Courts are able to overcome this limitation because they sit for most of the year and can hear cases during that time. Moreover, judges are legal experts and, provided that a case is brought before them, a court can make law. For instance, it was the courts that largely developed the law of negligence through deciding cases and developing precedents.*
- *However, a limitation on the courts is that, unlike parliament, they cannot comprehensively reform an area of law. In addition, lower courts are bound by the precedents established by higher courts. Accordingly, unless a lower court can distinguish a binding precedent because the material facts are different or unless that precedent is overruled or reversed, the lower court is bound to apply the precedent, even if it is outdated.*

Marking protocol:

This answer is globally marked (i.e. an overall mark is awarded for the entire answer). The following criteria could be used to assess a response:

8-10 High	<ul style="list-style-type: none">• Gives a definitive but qualified opinion that is supported by the arguments considered in the response. Addresses the “extent” part of the question through a qualified opinion (e.g. “In my opinion... However...”) or that expressly refers to the extent as being “small”, “minor”, “limited”, “moderate”, “significant” or “large”.• Demonstrates comprehensive understanding of the extent to which the courts are able to overcome the limitations of parliament in law-making by addressing a number of relevant arguments in some detail, including by using examples.• Weighs up the “for” and “against” arguments by using words such as “however”, “on the other hand”, “in contrast”, “while” and “whereas”.• Is a logically structured answer that is set out in paragraphs. One possible structure is for the opening paragraph to set out the opinion, followed by one paragraph for each limitation of parliament where that paragraph (i) describes a limitation of parliament, (ii) describes how courts could overcome that limitation, and (iii) describes any restrictions on courts when overcoming that limitation.• Uses relevant technical legal vocabulary e.g. “ambiguous”, “standing”, “representative government”, “judicial activism”, “precedent”.
5-7 Medium	<ul style="list-style-type: none">• Gives an opinion that is supported by the arguments considered in the response.• Demonstrates reasonable understanding of the extent to which the courts are able to overcome the limitations of parliament in law-making by addressing some of the relevant arguments in some detail, including by using examples.• Weighs up the “for” and “against” arguments by using words such as “however”, “on the other hand”, “in contrast”, “while” and “whereas”.• Is a logically structured answer that is set out in paragraphs.• Uses some technical legal vocabulary.
1-4 Low	<ul style="list-style-type: none">• Gives a basic opinion or no opinion.• Addresses some of the ways in which the courts can and/or cannot overcome the limitations of parliament in law-making.• Describes “for” and/or “against” arguments rather than weighs them up.
No score	<ul style="list-style-type: none">• Response does not address the question.

Note: To be an “evaluation” the answer must:

- express an opinion that responds to the question; and
- weigh up the arguments “for” and “against” the proposition - a good way of doing this “weighing up” is to use words such as “however”, “on the other hand”, “in contrast”, “while” and “whereas”.

Section B

Question 1 (17 marks)

At a New Year's Eve rave party, around 150 people were injured when they were caught in a stampede as party-goers crowded into the venue to watch the hugely popular heavy metal band Smash'n Grab. There were too few security guards to control the crowd as it surged towards the stage, knocking over chairs and pushing through rope barriers. A crowd control expert subsequently criticised the venue as entirely unsuitable for the party because it only had one entrance and was far too small for the number of people who had been sold tickets for the party.

As a result of the stampede, 35 people were hospitalised and 115 required on-site first aid treatment. Three months after the party, lawyers for some of the injured party-goers filed representative proceedings against the party organisers, GalaEvent, for negligence. The action was brought in the name of one of the injured party-goers Seamus Flint, as the lead plaintiff, and 90 other party-goers were group members.

the responsibilities of key personnel in a civil trial, including the judge, jury, the parties and legal practitioners

Question 1a (2 marks)

Outline **one** responsibility of GalaEvent's lawyers in defending GalaEvent against the negligence action.

Answer:

- *GalaEvent's lawyers must be well-prepared. For example, they must have collected all relevant evidence, be familiar with the applicable law and have prepared the arguments necessary to defend GalaEvent.*
- *This ensures a fair trial because the truth is more likely to be found where both sides put their best case forward, and the judge or jury (if there is one) decides the case after considering all the evidence and arguments.*

OR

- *GalaEvent's lawyers owe a duty to the court to act ethically (e.g. not to mislead the court), and to act in accordance with the law, even if this goes against their client's instructions.*
- *This ensures that the community can have confidence in the legal system.*

OR

- *GalaEvent's lawyers must present their client's case in the best possible light, by putting forward evidence that supports their case and making any reasonable arguments in favour of GalaEvent not being liable in negligence to the plaintiffs.*
- *This ensures a fair trial because the truth is more likely to be found where both sides put their best case forward, and the judge or jury (if there is one) decides the case after considering all the evidence and arguments. It also ensures that GalaEvent has access to the legal system by being able to properly defend itself against the negligence action.*

OR

- *GalaEvent's lawyers must comply with the overarching obligations under the Civil Procedure Act 2010 (Vic), including to make a reasonable attempt to resolve the dispute and to minimise delays.*
- *This minimises the costs, time and stress of a trial. Indeed, if the dispute can be settled before trial, then the costs, time and stress of a trial will be avoided altogether.*

OR

- *GalaEvent's lawyers must comply with the overarching obligations under the Civil Procedure Act 2010 (Vic), including to disclose the existence of critical documents, such as any safety reports that have been prepared in relation to the venue.*
- *This ensures that the trial is fair because all relevant evidence will be presented at the trial.*

OR

- *GalaEvent's lawyers must cross-examine witnesses appearing for the plaintiffs to test the accuracy and reliability of their evidence.*
- *This ensures a fair trial because the verdict will then be based on evidence that has been thoroughly tested.*

OR

- *GalaEvent's lawyers must represent their client (GalaEvent) in the trial by making opening and closing addresses to the court in relation to the legal arguments and evidence that they are relying on to defend their client against the claims of negligence that are being made by the plaintiffs.*
- *This ensures that the trial is fair because the judge and jury (if there is one) will be given a better understanding of GalaEvent's case.*

Marking protocol:

One mark for each of the above points.

Question 1b (4 marks)

Describe **one** pre-trial procedure that applies to this case and explain **one** purpose of that procedure.

Answer:

- *One pre-trial procedure that applies to this case is pleadings. Pleadings are documents (such as the plaintiff's writ and statement of claim and the defendant's defence) that are exchanged between the plaintiff and the defendant in a civil case and which set out the plaintiff's claim, the defendant's defence and the issues that are in dispute.*
- *One purpose of pleadings is to inform each party about the other party's case.*
- *This may assist the plaintiffs and GalaEvent to settle their dispute before trial because they will better understand the strengths of the opposing case and the weaknesses of their own case.*
- *It also ensures that neither party is caught by surprise at trial. This is fair because, if a party is caught by surprise, then they might not be able to properly prepare their case, which means that they might not be given a reasonable opportunity to present their case.*

OR

- *One pre-trial procedure that applies to this case is discovery of documents. This is a pre-trial procedure which requires each party to list all the documents in its possession that are relevant to the case and to provide copies of them to the other party.*
- *One purpose of discovery of documents is to require each party to disclose all relevant documents to the other party.*
- *This may assist the plaintiffs and GalaEvent to settle their dispute before trial because they will better understand the strengths of the opposing case and the weaknesses of their own case.*
- *It also ensures that neither party is caught by surprise at trial. This is fair because, if a party is caught by surprise, then they might not be able to properly prepare their case, which means that they might not be given a reasonable opportunity to present their case.*

OR

- *One pre-trial procedure that applies to this case is exchange of evidence. For example, where a party intends to present lay evidence (i.e. evidence that is given by an ordinary person about the facts in dispute), then that party might be required to provide the other party with a witness outline that describes the topics the witness will give evidence on at trial.*
- *One purpose of exchanging evidence is to require each party to disclose their evidence to the other party.*
- *This may assist the plaintiffs and GalaEvent to settle their dispute before trial because they will better understand the strengths of the opposing case and the weaknesses of their own case.*
- *It also ensures that neither party is caught by surprise at trial. This is fair because, if a party is caught by surprise, then they might not be able to properly prepare their case, which means that they might not be given a reasonable opportunity to present their case.*

Marking protocol:

One mark for each of the above points.

judicial powers of case management, including the power to order mediation and give directions

the principles of justice: fairness, equality and access

Question 1c (4 marks)

Analyse how the use of case management powers could help in achieving **one** of the principles of justice in this case.

Answer:

Fairness

- *One case management power that the judge has is the power to give directions about how the trial is to be conducted. This achieves the principle of fairness because it enables the judge to control the proceedings so as to minimise delays.*
- *Minimising delays means that the case will be decided as soon as possible so that, if GalaEvent is liable, the plaintiffs will be compensated for the losses that they have suffered as soon as possible, which is fair to the plaintiffs.*
- *Another case management power that the judge has is the power to order mediation. This achieves the principle of fairness because, in a mediation, both the plaintiffs and GalaEvent are given a reasonable opportunity to explain their side of the dispute to each other. In this way mediation may assist the parties to resolve their dispute by reaching a fair agreement.*
- *In addition, both the power to give directions and the power to order mediation reduce the legal costs of the parties. This is because the purpose of directions is to ensure that proceedings are conducted efficiently and, if the parties are able to resolve their dispute at mediation, then this will avoid the costs of a full trial. This is fair because the legal costs of both the plaintiffs and the defendant in representative proceedings, such as the representative proceedings that are being brought against GalaEvent, are likely to be very significant.*

OR

Access

- *One case management power that the judge has is the power to give directions about how the trial is to be conducted.*
- *This achieves the principle of access because it means that both the plaintiffs and GalaEvent will know the procedures that they need to follow, i.e. what they have to do to properly present their cases.*
- *Another case management power that the judge has is the power to order mediation. This achieves the principle of access because, if the parties are able to resolve their dispute before trial, then the court's time and resources will not be used in dealing with the representative proceedings against GalaEvent but can instead be used in dealing with other cases. This will improve the access of those other cases to the legal system.*
- *On the other hand, the success of mediation does depend on the willingness of the parties to compromise.*

Marking protocol:

One mark for each of the above points.

key concepts in the Victorian civil justice system, including:
– representative proceedings

the principles of justice: fairness, equality and access

Question 1d (7 marks)

Evaluate the extent to which representative proceedings can contribute to the achievement of justice in this case.

Sample answer:

- *In my opinion, representative proceedings can contribute to the achievement of justice in this case because they reduce the cost of legal proceedings for all of the plaintiffs. However, if a litigation funder pays the costs of the proceedings, then there is a risk that the plaintiffs will be treated unfairly depending on the percentage of the plaintiffs' damages that must be paid to the litigation funder.*
- *One way in which representative proceedings can assist the injured party-goers in achieving justice is by improving their access to the Victorian civil justice system. This is because representative proceedings allow plaintiffs who cannot afford to bring a proceeding by themselves to join in a test case with other plaintiffs who have suffered loss caused by the same defendant in similar circumstances. Group members can share the costs of the test case, which will be less than the total cost of each plaintiff bringing their own case. As a result, more plaintiffs will be able to enforce their rights. In this case, the 90 plaintiffs will share in the costs of Seamus Flint's test case. For many of these plaintiffs, it is unlikely to have been worthwhile bringing their own action because their legal costs are likely to outweigh the damages that they would receive.*
- *However, in representative proceedings, the way the case is argued is largely decided by the lead plaintiff (Seamus Flint). As a result, the other group members might feel as if they do not have much input into the case.*
- *If a litigation funder pays the costs of the representative proceedings, then the plaintiffs will not pay any legal costs. This will significantly improve their access to the legal system.*
- *On the other hand, the litigation funder will only pay the costs of the representative proceedings if the plaintiffs agree to pay the litigation funder a percentage of any damages that are paid to the plaintiffs. This means that, even if they are successful, the plaintiffs will not be fully compensated for their losses. Depending on the size of the percentage, this may be unfair to the plaintiffs.*
- *Another way that representative proceedings promote access is because they avoid the need for all of the plaintiffs to spend time attending court and instructing lawyers. Only the lead plaintiff, Seamus Flint, really needs to attend. Again, this means that it is easier for the plaintiffs to have their rights enforced in the courts.*
- *Finally, representative proceedings promote access by reducing court backlogs. In representative proceedings, the court deals with a number of similar claims at the same time rather than separately. This frees up court resources and time, so that they can be used to hear other cases.*

Marking protocol:

This answer is globally marked (i.e. an overall mark is awarded for the entire answer). The following criteria could be used to assess a response:

6-7 High	<ul style="list-style-type: none">• Gives a definitive but qualified opinion that is supported by the arguments considered in the response. Addresses the “extent” part of the question through a qualified opinion (e.g. “In my opinion... However...”) or that expressly refers to the extent as being “small”, “minor”, “limited”, “moderate”, “significant” or “large”.• Demonstrates comprehensive understanding of the extent to which representative proceedings contribute to the achievement of justice by addressing a number of relevant arguments in some detail, including by referring to the case study.• Weighs up the “for” and “against” arguments by using words such as “however”, “on the other hand”, “in contrast”, “while” and “whereas”.• Is a logically structured answer that is set out in paragraphs.• Uses relevant technical legal vocabulary e.g. “lead plaintiff”, “group member”, “litigation funder”.
4-5 Medium	<ul style="list-style-type: none">• Gives an opinion that is supported by the arguments considered in the response.• Demonstrates reasonable understanding of the extent to which representative proceedings contribute to the achievement of justice by addressing some of the relevant arguments in some detail, including by referring to the case study.• Weighs up the “for” and “against” arguments by using words such as “however”, “on the other hand”, “in contrast”, “while” and “whereas”.• Is a logically structured answer that is set out in paragraphs.• Uses some technical legal vocabulary.
1-3 Low	<ul style="list-style-type: none">• Gives a basic opinion or no opinion.• Addresses some of the ways in which representative proceedings contribute to and/or detract from the achievement of justice.• Describes “for” and/or “against” arguments rather than weighs them up.
0 No score	<ul style="list-style-type: none">• Response does not address the question.

Note: To be an “evaluation” the answer must:

- express an opinion that responds to the question; and
- weigh up the arguments “for” and “against” the proposition - a good way of doing this “weighing up” is to use words such as “however”, “on the other hand”, “in contrast”, “while” and “whereas”.

Question 2 (23 marks)

Use the following hypothetical scenario to answer Question 2:

Source 1

The following is an extract from the *Terrorism (Security) Act*, which was passed by the Commonwealth Parliament in 2025:

6. Definitions

potential terrorist means a person who is visiting Australia from another country and who the Minister for Defence reasonably believes is likely to commit a terrorist act in Australia.

terrorist act means an act that endangers the safety of the public.

7. Penalty for being a potential terrorist

The Minister for Defence may determine that a person is a potential terrorist. If the Minister for Defence determines that a person is a potential terrorist, then the Minister may sentence that person to a term of imprisonment of up to 2 years.

Source 2

The following is an extract from an article about the *Terrorism (Security) Act*, which was written by Max Wilson and published in the *Daily Journal* newspaper:

First step on a very slippery slope

Max Wilson

The passage of the *Terrorism (Security) Act* by the Commonwealth Parliament today is Australia's first step on a very slippery slope that threatens to undermine our democracy. This Act allows the Minister for Defence to sentence a person to imprisonment where the Minister reasonably believes that the person might commit an act of terrorism. There is no trial, no jury, and no appeal. The Minister for Defence is the jury, judge and executioner. While it is important that the public is protected from the threat of terrorism, this is not the right way to address this problem. Every person, no matter what they are suspected of or where they come from, has the right to a fair and public trial. Once we depart from this crucial principle, we risk turning into a totalitarian state where the government takes over the role of the courts.

Not surprisingly, civil rights groups have come out in protest. Demonstrations will be held in all capital cities throughout the week, and citizens are being urged to write letters to their local members calling for the Act to be repealed. You can be sure that there will be a legal challenge to the Act as soon as the first person is sentenced to prison under it.

Source 3

The Commonwealth Government is now considering proposing legislation to expand the operation of the *Terrorism (Security) Act* so that it applies to people who live in Australia as well as to people who are visiting Australia from another country. The following is an extract from the legal advice that the Commonwealth Government has obtained in relation to this proposal:

There is a strong argument that the Commonwealth Parliament does not have the power to make a law that applies to people who live in Australia and who are likely to commit a terrorist act in Australia. This is because a law about the commission of a terrorist act within a State by a resident of that State is covered by the residual powers of the State Parliament. Instead, it would be necessary to hold a referendum to amend the Australian Constitution so as to give this law-making power to the Commonwealth Parliament.

the roles of the Crown and the Houses of Parliament (Victorian and Commonwealth) in law-making

Question 2a (2 marks)
Describe **one** role of the Crown in making the *Terrorism (Security) Act*.

Answer:

- *One role of the Crown in law-making is to give Royal Assent to a Bill (a proposed law) so that the Bill comes into operation as a law. Royal Assent is the approval (or signing) of a Bill by the Crown's representative.*
- *In this case, the Governor-General would have given Royal Assent to the *Terrorism (Security) Bill* so that it became a law.*

Marking protocol:

One mark for each of the above points.

The role of the Crown must be a role in law-making rather than a more general role such as acting as the Head of State.

the means by which the Australian Constitution acts as a check on parliament in law-making, including: – the separation of the legislative, executive and judicial powers

Question 2b (4 marks)
Explain whether section 7 of the *Terrorism (Security) Act* is likely to be valid.

Answer:

- *Section 7 of the *Terrorism (Security) Act* is not likely to be valid because it is inconsistent with the separation of powers that is required by the Australian Constitution.*
- *The Constitution requires that judicial power, which is exercised by the federal courts, must be strictly separate from legislative power (which is exercised by the Commonwealth Parliament) and executive power (which is exercised by the Commonwealth Government).*
- *This means that the same body must not hold or exercise both judicial power, on the one hand, and legislative or executive power, on the other hand.*
- *Judicial power is the power to enforce the law and determine disputes. Section 7 gives the Minister for Defence judicial power because it gives the Minister the power to determine that a person is a potential terrorist and to sentence that person to imprisonment. This is an example of judicial power that is exercised by the courts. Because the Minister, who exercises executive power, will also be exercising judicial power, section 7 will be invalid as it is inconsistent with the Australian Constitution.*

Marking protocol:

One mark for each of the above points.

features of the relationship between courts and parliament in law-making, including:

- the supremacy of parliament
- the ability of courts to influence parliament
- the interpretation of statutes by courts
- the codification of common law
- the abrogation of common law

Question 2c (4 marks)

Describe **one** feature of the relationship between courts and parliament in law-making that could be illustrated using Source 1.

Answer:

- *One feature of the relationship between courts and parliament in law-making is that the courts apply and interpret the law made by parliament.*
- *This means that the courts will need to apply and interpret the Terrorism (Security) Act. In particular, where words in that Act are ambiguous, the court must decide the correct meaning of those words.*
- *The definition of a “terrorist act” is ambiguous. A “terrorist act” means an act that endangers the safety of the public. This could be narrowly interpreted to mean a random act, such as a bomb attack, or a shooting or stabbing rampage, that is intended to cause widespread deaths among the public.*
- *Alternatively, a “terrorist act” could be broadly interpreted to include the killing of just one person (e.g. the shooting of a person during a bank robbery) as this is an act that endangers the safety of a member of the public. This interpretation would significantly expand the operation of the Act.*

Marking protocol:

One mark for each of the above points.

Note the use of the case study to give an example of how words in the Terrorism (Security) Act, i.e. “an act that endangers the safety of the public”, is required, but there may be a range of student responses that would be acceptable.

the means by which the Australian Constitution acts as a check on parliament in law-making, including: – the requirement for a double majority in a referendum

Question 2d (5 marks)

Referring to Source 3, evaluate the effectiveness of the requirement for a double majority in a referendum as a check on parliament in law-making.

Sample answer:

- *In my opinion, the double majority requirement is a reasonably effective check on parliament in law-making because the Constitution establishes the law-making powers of the Commonwealth and State Parliaments, and so these law-making powers can only be altered by changing the Constitution. However, the Constitution can only be changed at a referendum that satisfies the double majority requirement.*
- *The double majority requirement acts as a significant restriction on the Commonwealth Parliament in making a law to expand the operation of the Terrorism (Security) Act to apply to terrorist acts that are committed in Australia by people who live in Australia. This is because, according to the legal advice provided to the Commonwealth Government, there is a strong argument that the Commonwealth Parliament does not have the power to make this law under the Constitution. Importantly, the Commonwealth Parliament cannot change the Constitution by itself to give it this law-making power.*
- *Instead, the Constitution can only be changed in this way if that change is also approved at a referendum by the majority of voters in Australia and by the majority of voters in the majority of States. In other words, this change will only be made if it has significant support from Australian voters. It seems that the referendum referred to in Source 3 is unlikely to be successful because there is a lot of opposition to the Terrorism (Security) Act and so many voters are unlikely to be willing to give the Commonwealth Parliament the power to expand the operation of that Act.*
- *In addition, voters tend to be conservative and so are likely to vote against a proposal to change the Constitution unless there is a strong reason for the change. In fact, only 8 out of the 44 referendums that have been held since federation have been successful. In this case, voters might believe that there are better ways of dealing with terrorist threats than by giving the Commonwealth Parliament such a broad law-making power.*
- *On the other hand, the double majority requirement also means that changes to the Constitution that would further restrict parliaments' law-making powers might not be approved. For example, the 1988 referendum to include some new express rights in the Constitution failed to satisfy the double majority requirement. In this case, the double majority requirement did not act as an effective check on parliament in law-making, but actually prevented these checks being included in the Constitution.*

Marking protocol:

This answer is globally marked (i.e. an overall mark is awarded for the entire answer). The following criteria could be used to assess a response:

5 High	<ul style="list-style-type: none">• Gives a definitive but qualified opinion that is supported by the arguments considered in the response.• Demonstrates understanding of the double majority requirement.• Demonstrates comprehensive understanding of how the double majority requirement does, and does not, act as a check on parliament in law-making.• Weighs up the “for” and “against” arguments by using words such as “however”, “on the other hand”, “in contrast”, “while” and “whereas”.• Refers to Source 3 in the context of the evaluation.
3-4 Medium	<ul style="list-style-type: none">• Gives an opinion.• Demonstrates understanding of the double majority requirement.• Demonstrates reasonable understanding of how the double majority requirement does, and does not, act as a check on parliament in law-making.• Weighs up the “for” and “against” arguments by using words such as “however”, “on the other hand”, “in contrast”, “while” and “whereas”.
1-2 Low	<ul style="list-style-type: none">• Gives no opinion.• Demonstrates limited understanding of how the double majority requirement acts as a check on parliament in law-making.• Does not address how the double majority requirement is an effective check on parliament in law-making and how the double majority requirement is not an effective check on parliament in law-making.
0 No score	<ul style="list-style-type: none">• Response does not address the question.

Note: To be an “evaluation” the answer must:

- express an opinion that responds to the question; and
- weigh up the arguments “for” and “against” the proposition, i.e. how the double majority requirement is an effective check on parliament in law-making and how it is not an effective check on parliament in law-making. A good way of doing this “weighing up” is to use words such as “however”, “on the other hand”, “in contrast”, “while” and “whereas”.

factors that affect the ability of parliament to make law, including:

- the roles of the houses of parliament
- the representative nature of parliament
- political pressures
- restrictions on the law-making powers of parliament

the ability and means by which individuals can influence law reform including through petitions, demonstrations and the use of the courts

Question 2e (8 marks)

Evaluate the ability of the Australian people to prevent the Commonwealth Parliament from making controversial laws such as the *Terrorism (Security) Act*.

Sample answer:

- *In my opinion, while there are a number of ways in which the Australian people can try to persuade the Commonwealth Parliament not to make controversial laws such as the *Terrorism (Security) Act*, ultimately they cannot actually stop the Commonwealth Parliament from making such laws. This is because parliament is the supreme law-maker and it can ignore the wishes of the people, at least in the short term.*
- *The Australian parliamentary system is based on representative government. This means that the members of parliament are chosen by the people, and so should represent the views of the majority of the people. Accordingly, the members of parliament should make laws that reflect the views and values of the community. If they do not, then they risk being voted out at the next election.*
- *However, this does not always happen and parliament might make laws that are not supported by the majority but are instead supported by a vocal minority or a lobby group. Business groups, trade unions, civil rights groups and environmental groups often place significant political pressure on parliament to make laws that favour their interests or causes, even if those laws are not necessarily in the interests of the broader community. (For example, business groups are lobbying the Commonwealth Parliament to make laws that cut the corporate income tax rate even though many voters are likely to oppose such a law.)*
- *Nonetheless, there are a number of ways in which the Australian people can try to persuade the Commonwealth Parliament not to make a controversial law in the first place. One way is through petitions. A petition is a formal written request to parliament for or against a change in law. A petition against a law, such as the *Terrorism (Security) Act*, is more likely to be successful if it has a large number of signatures because this demonstrates significant opposition to the law. A major strength of petitions is that they are easy and inexpensive to organise, particularly if the petition is an e-petition.*
- *However, unless the petition is supported by an influential member of parliament, it is unlikely to be successful. This is because parliament receives many petitions and cannot respond to them all. In addition, if there are petitions in favour of the law, then this may counterbalance the effectiveness of petitions against the law.*
- *Another way in which the Australian people can try to persuade the Commonwealth Parliament not to make a law such as the *Terrorism (Security) Act* is through demonstrations against the law. Large demonstrations will show that there is significant opposition to the law, which might persuade parliament not to make the law.*

- *On the other hand, if the demonstration is violent or causes considerable inconvenience to the public, then this may reduce the effectiveness of the demonstration because parliamentarians might use this as a justification not to take the views of the demonstrators into account.*
- *Finally, if a controversial law is made, then a person might be able to challenge the validity of that law in the courts. For example, section 7 of the Terrorism (Security) Act is likely to be invalid because it breaches the constitutional requirement that judicial power must be strictly separate from the legislative and executive powers. However, a law can only be challenged by a party who has standing (i.e. who is directly affected by the law) and who has the time and money to bring the case. If there is no party with standing then a court will not be able to rule on the validity of the law. Even if a case is brought to court, there is no guarantee that the court will invalidate the law, and this does not prevent parliament from making the law in the first place.*

Marking protocol:

This answer is globally marked (i.e. an overall mark is awarded for the entire answer). The following criteria could be used to assess a response:

7-8 High	<ul style="list-style-type: none">• Gives a definitive but qualified opinion that is supported by the arguments considered in the response.• Demonstrates comprehensive understanding of the extent to which the Australian people are able to prevent the Commonwealth Parliament from making controversial laws.• Weighs up the “for” and “against” arguments by using words such as “however”, “on the other hand”, “in contrast”, “while” and “whereas”.• Is a logically structured answer that is set out in paragraphs. One possible structure is for the opening paragraph to set out the opinion, followed by separate paragraphs that address the ways in which the Australian people are able to prevent the Commonwealth Parliament from making controversial laws and the limitations on the influence that the Australian people have to prevent the Commonwealth Parliament from making controversial laws.• Uses relevant technical legal vocabulary e.g. “parliamentary supremacy”, “representative government”, “vocal minority”, “petition”, “demonstration”, “validity”.• Incorporates references to the case study.
5-6 Medium	<ul style="list-style-type: none">• Gives an opinion that is supported by the arguments considered in the response.• Demonstrates reasonable understanding of the extent to which the Australian people are able to prevent the Commonwealth Parliament from making controversial laws.• Weighs up the “for” and “against” arguments by using words such as “however”, “on the other hand”, “in contrast”, “while” and “whereas”.• Is a logically structured answer that is set out in paragraphs.• Uses some technical legal vocabulary.
1-4 Low	<ul style="list-style-type: none">• Gives a basic opinion or no opinion.• Addresses some of the ways in which the Australian people are able or not able to prevent the Commonwealth Parliament from making controversial laws.• Describes “for” and/or “against” arguments rather than weighs them up.
0 No score	<ul style="list-style-type: none">• Response does not address the question.

Note: To be an “evaluation” the answer must:

- express an opinion that responds to the question; and
- weigh up the arguments “for” and “against” the proposition - a good way of doing this “weighing up” is to use words such as “however”, “on the other hand”, “in contrast”, “while” and “whereas”.