



VCE LEGAL STUDIES 3/4 2021

CPAP Practice Examination No 1

SUGGESTED RESPONSES, MARKING SCHEME AND ADVICE

SECTION A

Note that any question in Section A that follows on from stimulus should use that stimulus material; in some questions it will be appropriate for this use to be a very brief name-check reference, but it depends on the question.

Question 1

Describe one difference between exclusive powers and residual powers as they relate to the division of law-making powers set out in the Australian Constitution. **2 marks**

Advice: In 2020 the Examination Report highlighted the difference between the division of powers and the separation of powers as a common area of confusion: "Others confused the division of law-making powers with the separation of powers."

The powers do not need separate definitions at the start, before the task word is addressed.

Note that only the *first* identified difference should be marked.

MARK RANGE	QUALITIES OF ANSWER
2 marks	- An answer that demonstrates an understanding of 'exclusive powers' and 'residual powers', even though separate definitions are not required; and - That clearly identifies at least one difference between the two; and - That provides sufficient elaboration, detail, or an example, appropriate to the mark allocation.
1 mark	- An answer that meets the criteria for a 2-mark response, but that contains some error of fact that is more than merely superficial; or - An answer that is accurate but that lacks any elaboration and is slightly short; or - More than <i>nothing</i> that is accurate and responsive, but limited to one point that is something less than the 2-mark range.

Sample answers:

- ✓ *Exclusive powers can only be exercised by the Commonwealth Parliament in passing legislation, whereas residual powers can only be exercised by the state parliaments. For instance, defence is an exclusive power because of the state restriction in s114, while healthcare is a residual power and each state makes its own laws.*
- ✓ *Exclusive powers are listed in the Constitution, whereas residual powers are not written into the Constitution. For instance, the power over customs and excise is in s90, while the residual powers of primary education and public transport are not enumerated.*

Question 2

Explain the relationship between the supremacy of parliament in law-making, and the representative nature of parliament. **4 marks**

MARK RANGE	QUALITIES OF ANSWER
4 marks	• A clear and comprehensive answer that shows an accurate understanding of the supremacy of parliament – that parliament has the power to overrule other law-makers and cannot itself be overridden within its jurisdiction; and • That shows an accurate understanding of the representative nature of parliament – that parliament is composed of members democratically elected to govern on behalf of the people; and • That draws a clear connection between the two; and • That includes elaboration appropriate to the number of points made and that may or may not include case examples or hypotheticals.
3 marks	Something slightly less than a sophisticated, complete 4-mark answer. For instance, any of the following in an otherwise complete answer: • Some inaccurate elaboration on parliamentary supremacy; or • Some inaccurate elaboration on the representative nature of parliament; or • Slightly too little content, in terms of number of points and/or elaboration; or • A lack of connection drawn between the two concepts, even though the content on each is good; or • Errors in understanding or content that are something more than superficial but that do not undermine the answer as a whole; or • Slightly too much reliance on a case example.
2 marks	• An answer that gives a thorough and accurate description of parliamentary supremacy, but omits the representative nature of parliament; or • An answer that gives a thorough and accurate description of the representative nature of parliament, but omits parliamentary supremacy; or • An answer that gives a brief explanation of the two but fails to connect them; or • An answer that is too brief and makes only a couple of points; or • An answer that focuses significantly on a case study example and does not adequately answer the question in a theoretical sense; or • An answer that contains significant errors in understanding or content and is therefore partly undermined.
1 mark	• More than <i>nothing</i> that is accurate and responsive, but limited to one point that is something less than the 2-mark range.

Sample arguments:

- ✓ *Parliament is the supreme law-maker and makes laws that no-one in society has the authority to ignore, even if they disagree with them. This is valid in a democratic society because parliament has been delegated law-making authority directly by the people, because we live in a representative democracy where members of parliament have been elected by the public.*
- ✓ *In theory, members of parliament will usually reflect the needs and values of the majority of voters when passing legislation and, if the majority is unhappy with the performance of their representative, they are likely to vote them out at the next election. The representative function of parliament will influence it to pass laws that reflect the will of the majority, and is one reason why parliament is the supreme law-maker while courts – which are not representative – are not.*

- ✓ *There will sometimes be a tension between the representative following their own opinion or party line, and the representative following majority opinion in their electorate or the state or country as a whole. This can mean that parliament, as supreme law-maker, overrides other law-makers such as courts or delegated bodies, even though the elected MPs are ignoring what the people want the law to be.*
- ✓ *Individuals can use processes such as petitions to gather support for legislative issues and have more influence overall. Studies of petitions and political engagement show that they “foster a sense of unity and purpose within a community which is then publicly demonstrated when the petition is presented to the House.” This makes the supreme law-maker in society one that encourages public participation and investment, which is democratic.*

Question 3

The Long Trial Case Management List pilot ('the LTL pilot') commenced in February 2018 to manage criminal trials with an estimated trial duration of 25 days or more. After three years, the LTL pilot has managed 99 matters involving 234 accused and, on average, resolved cases 4.4 weeks prior to the trial date.

a. Distinguish between summary offences and indictable offences. 3 marks

Advice: Summary offences and indictable offences do not need separate definitions at the start, before the task word is addressed. This was highlighted by the Chief Assessor in the 2017 Report as follows: “It is not necessary to define legal terms before answering a question (unless the question specifically asks for this). In some instances it may be necessary to explain what a legal term means, but this is best done within the response.”

MARK RANGE	QUALITIES OF ANSWER
3 marks	• An answer that clearly expresses an understanding of both summary offences and indictable offences, even though a freestanding definition of each is <i>not</i> required; and • That clearly and explicitly identifies at least one difference between the two – two separate definitions will not be sufficient; and • That elaborates on this base content to a level appropriate for the number of differences identified; and • That uses the stimulus material in a meaningful way. Note that there are a range of differences that could be chosen, but the key difference is that indictable offences are more serious than summary offences. It would be difficult to achieve full marks without giving an indication of this.
2 marks	Something slightly less than a sophisticated, complete 3-mark answer. For instance, any of the following in an otherwise complete answer: • The answer provides a good amount of relevant content, but is vague on the specific difference between the concepts and therefore fails to address the task word; or • The answer contains some small factual inaccuracies; or • The answer lacks meaningful use of the stimulus material; or • The answer has one or more significant content errors; or • The answer is overall too brief.
1 mark	• More than <i>nothing</i> that is accurate and responsive, but limited to one point that is something less than the 2-mark range.

Sample answer: *Summary offences are less serious offences than indictable offences, and are heard in the Magistrates' Court in hearings before a single magistrate, rather than the County or Supreme Courts in trials*

before a judge and jury of 12. The LTL pilot aims to efficiently resolve indictable matters not summary ones, which we can see by the use of “trial” in the description.

- b. Explain one factor that affects the ability of the criminal justice system to achieve access, and discuss the ability of one recent reform to better achieve justice in the resolution of criminal disputes.

6 marks

Advice: Note that only the *first* identified factor and the *first* identified reform should be marked. Also note that recent reforms must have been implemented within the last four calendar years, and answers must identify the specific location of the reform – general reforms that have no precise implementation are not sufficient.

MARK RANGE	QUALITIES OF ANSWER
6 marks	- An answer that clearly identifies one relevant factor; and - That provides elaboration and detail with enough depth for 2-3 of the 6 marks; and - That shows meaningful engagement with at least one argument on the achievement of access in relation to this feature; and - That clearly identifies one recent criminal reform; and - That provides detail on the reform to show understanding of what specifically has been changed; and - That shows meaningful engagement with at least two arguments in relation to the reform’s ability to improve justice; and - That provides a level of elaboration and detail appropriate to the number of arguments covered, with enough depth for 3-4 of the 6 marks; and - That shows meaningful use of the stimulus material in at least one section of the answer. Note that the Study Design provides the factors of cost, time, and cultural difference. Answers should use one of these. It is possible for answers to use a different factor, but markers will have to judge whether the factor is appropriate. Note that arguments do not need to expressly argue ‘both sides’ for the task word ‘discuss’, but more is required than a simple list of strengths or weaknesses with no reflection or engagement. Note also that no definitive ‘opinion’ needs to be given in conclusion, because that is not required for ‘discuss’.
5 marks	- An answer that meets all the criteria for a 6-mark answer, but is inadequate in one aspect; or - An answer that meets all the criteria for a 6-mark answer, but that contains a few small errors of understanding or fact.
4 marks	An answer that meets the criteria for a 6-mark answer and is otherwise strong, but that suffers from one of the following problems: - The stimulus material is not used; or - The reform answer relies on content facts rather than on a meaningful engagement with arguments (and therefore does not ‘discuss’); or - There are material errors of understanding or fact; or - The answer is overall too general or brief; or - The answer is too heavily weighted towards the chosen factor, so that the discussion is worth no more than 1-2 marks; or - The answer does not explain any factor, but gives an excellent reform discussion.
2-3 marks	An answer that suffers two of the problems identified in the 4-mark range; or

	• An answer that omits 'discussion' entirely in favour of memorised content facts; or • An answer that does not explain any factor and has only a satisfactory reform discussion; or • An answer that is undermined by significant errors of understanding or fact; or • An answer that fails to provide a discussion and has only an excellent factor explanation.
1 mark	• More than <i>nothing</i> that is accurate and responsive, but limited to one point that is something less than the 2-mark range.

Sample factors:

- ✓ *Delays can affect the ability of the accused to access a just trial as defendants can be compelled to plead guilty because they are not financially or emotionally able to defend themselves over a long period of time. Two-thirds of disputes receive a guilty plea before committal, and the LTL pilot shows how the average long case can be resolved over a month before trial; perhaps defendants are unable to last for a long trial. Also, long delays can impair the ability of witnesses to give accurate evidence, hampering both the prosecution and the defence in the presentation of their case. When disputes are committed to trial, they have already spent an average of 228 days in the Magistrates' Court, for committal proceedings.*
- ✓ *Lack of cultural diversity in the judiciary is a key way in which cultural factors reduce the capacity of our criminal justice system to achieve the principles of justice. In 2008, the Judicial Research Project found that "larger proportions of judges, compared with Australians generally, are male, older, have grown up in a large city, identify as Australian, have no religious affiliation, attended a private or Catholic school and are married/partnered." This can reduce access to justice for people who don't fall into the same demographic as the typical judge as they may feel alienated or not be treated fairly.*

Sample reform discussion:

- ✓ *In August 2016 the Victorian Law Reform Commission released its Victims Report into The Role of Victims of Crime in the Criminal Trial Process. Recommendation 18 said that Parliament should amend the law to disallow all questions that were misleading, confusing, harassing, intimidating, humiliating or repetitive, and submitted that there were no circumstances in which an improper question was appropriate. In 2019 the Evidence Act 2008 was amended to implement this change. Canadian judge the Hon Donna Hackett spoke in support of these kinds of rules, saying that "If judicial impartiality means that judges should ignore equality issues unless counsel raise them, then 'judicial impartiality' will be a barrier to the protection and enforcement of equality rights." However, some of the ways in which a question could be deemed 'improper' require the court to make a subjective judgment – such as the tone used in asking the question. Different judges could make different judgments, resulting in inequality across cases, which make the implementation a concern.*

Question 4

In March 2021, the Australian Republican Movement announced that it would unveil its preferred model for an Australian republic in the second half of the year. A republic could only be achieved by amending the Australian Constitution to remove the Crown as the head of state and replacing it with an elected or appointed member of government.

In 1905, Professor of International Law at the University of Cambridge, L Oppenheim, wrote regarding international law:

“The Law of Nations [expressed in international declarations and treaties] prescribes no rules as regards the kind of head a State may have. Every State is, naturally, independent regarding this point, possessing the faculty of adopting any Constitution it likes and of changing such Constitution according to its discretion. Some kind or other of a head of the State is, however, necessary according to International Law, as without a head there is no State in existence, but anarchy.”

- a. Describe how the double majority measures public support for a change in the Australian Constitution. **4 marks**

MARK RANGE	QUALITIES OF ANSWER
4 marks	- A comprehensive answer that clearly expresses an understanding of the double majority, even though a freestanding definition is <i>not</i> required; and - That draws meaningful connections between the double majority and public support; and - That shows meaningful use of the stimulus material.
3 marks	- An answer that meets all the criteria for a 4-mark answer, but is weaker in one aspect; or - An answer that meets all the criteria for a 4-mark answer, but that contains a few small errors of understanding or fact.
2 marks	- An answer that lacks meaningful engagement with any arguments, and instead covers basic factual information on the double majority; or - An answer that discusses public support and changing the Constitution but fails to use any detail from the double majority requirement; or - An answer that provides only general arguments about the double majority and fails to connect it with public support; or - An answer that superficially meets the criteria for a 4-mark answer, but that contains fundamental errors of understanding or fact; or - An answer that reads like a ‘shopping list’ of dot points rather than an explanation of relationship.
1 mark	- One fact about the double majority, such as that it is required to change the wording of the Constitution, but nothing more; or - Anything else that is more than <i>nothing</i> accurate and responsive, but is limited to one point that is something less than the 2-mark range.

Sample answer: A double majority is the requisite outcome of a referendum, used to change the wording of the Constitution. The people must accept the change by a majority of votes nationwide, and a majority of votes in a majority of states. If, for instance, the proposal for a republic was put to the people, its ability to gain both of these majorities would show an overwhelming level of public support for removing the Crown – and this public support would be both spread across the country and present in large numbers in at least four states. Public support gathered in only two or three states would not be sufficient.

Problematic answer: A double majority is a requirement of a referendum, used to change the wording of the Constitution. The people must accept the change by a majority of votes nationwide, and a majority of states.

This is problematic because it is not the states themselves that vote – it is the voters *in* the states. This is not generally accepted as a definition.

b. Analyse the significance of one referendum in which the Australian people have protected or changed the Australian Constitution. 5 marks

Advice: Note that only the *first* identified referendum should be marked. Some referenda comprise more than one proposal or change – such as the 1967 referendum regarding both s51 and s127. Answers could focus on either change, or on both changes combined.

MARK RANGE	QUALITIES OF ANSWER
5 marks	- An answer that clearly identifies one referendum proposal, and whether or not it succeeded; and - That presents a range of subjective arguments in relation to the significance, importance or meaningfulness of that outcome; and - That provides an appropriate level of detail in elaboration that may or may not include examples or hypotheticals; and - That makes meaningful use of the stimulus material. Note that arguments should cover ‘both sides’ for the task word ‘analyse’, because ‘analyse’ means to argue the different aspects, components or sides to something. More is required than a simple list of strengths or weaknesses with no reflection or engagement. No definitive opinion needs to be given in conclusion, however.
4 marks	Something slightly less than a sophisticated, complete 5-mark answer. For instance, any of the following in an otherwise excellent answer: - An answer that contains slight errors in fact; or - An answer that lacks something in the elaboration and detail of the material; or - An answer that makes slightly too few points and lacks in scope; or - An answer that shows a slightly excessive focus on the basic facts of the referendum to the detriment of a broader answer to the question; or - An answer that fails to make properly meaningful use of the stimulus material.
3 marks	- An answer that demonstrates two of the above weaknesses; or - An answer that demonstrates one of the above weaknesses to a more significant degree; or - An answer that focuses on the basic facts of the referendum and fails to give a broader answer to the question; or - An answer that contains meaningful errors in fact, even though the underlying points are sound; or - An answer that fails to use the stimulus material in any way, despite addressing the rest of the question well; or - An answer that discusses the stimulus, but that does not relate it to the answer on a referendum.
2 marks	- An answer that identifies a proposed referendum change but lacks entirely in elaboration and explanation; or - An answer that gives general arguments about the significance of a referendum, but that fails to identify the specific change or changes being proposed; or

	• An answer that makes one adequate point about the stimulus material, and one adequate point about a referendum; or • An answer that discusses the stimulus material, but that fails to identify a referendum; or • An answer that contains fundamental errors that undermine the answer; or • An answer that elaborates well on only one point; or • An answer that runs through a short laundry list of dot points.
1 mark	• More than <i>nothing</i> that is accurate and responsive, but limited to one point that is something less than the 2-mark range.

Sample answer: *The Constitution Alteration (Rights and Freedoms) Bill 1988 (Cth) sought to alter ss80 and 116, and to add two new sections to work in conjunction with the existing s51(xxxi) 'just terms' protection. All amendments were drafted to expand existing rights in the sections, or to add additional rights. For instance, the s80 right to trial by jury was to be extended to trials for state crimes, and the limited freedom of religion was to be extended to protect against state and territory legislation. Any proposal for a republic would require much more extensive changes than this – the structure of parliament and government would need to be rewritten, instead of just adding to two sections. It would have a much bigger impact on the Act.*

The 1988 proposal was rejected by the people and the Constitution was not changed. Instead, its existing form was protected. If the republic proposal is rejected in a similar way, the existing constitutional monarchy will be protected and Australia will retain the Crown as head of state.

In 1988, a majority of the people chose to preserve a significant amount of state independence. They chose to permit states to continue to decide on the presence or absence of juries, for instance. A republic proposal would not change the division of legislative powers, but it would be something decided without the participation of state parliaments. It would affect them, but they would not be able to vote on the change. In 1988 the state parliaments also could not vote on the proposal, but they could campaign based on the laws each state government wanted to keep power over in their state.

c. Discuss the impact of international declarations and treaties on the power of the Commonwealth Parliament to introduce a bill for an Australian republic. 6 marks

Advice: In the 2019 Examination Report, the external affairs power and international declarations and treaties were identified as an area in need of additional work.

MARK RANGE	QUALITIES OF ANSWER
5 marks	• An answer that communicates a clear understanding of the impact of international declarations and treaties – essentially, that the Commonwealth Parliament can legislate to implement legitimate instruments; and • That communicates a clear understanding of the stimulus material, insofar as the named treaty does <i>not</i> oblige the Commonwealth to legislate for or against any particular head of state; and • That uses this content as the basis for two or more thoughtful and subjective points on the impact. Answers may elaborate with reference to the High Court interpretation of the scope of the external affairs power – specifically, that treaties will effectively 'add' legislative heads to the Commonwealth's power. Note that arguments do not need to expressly argue 'both sides' for the task word 'discuss', but more is required than a simple list of weaknesses or strengths with no reflection or engagement. Subjective arguments could cover the size of the impact; the clarity of the precedent in the area; or the strengths and weaknesses of the impact.

	Note also that no definitive opinion needs to be given in conclusion, because that is not required for 'discuss'.
4 marks	Something slightly less than a sophisticated, complete 5-mark answer. For instance, any of the following in an otherwise excellent answer: • An answer that demonstrates an understanding of the High Court's interpretation of the external affairs power, but is slightly unclear or confused in its explanation; or • That demonstrates an understanding of the impact that international instruments may have on the scope of the external affairs power, but is unable to explain it clearly; or • That has a slightly brief acknowledgement of the subjective arguments due to too much focus on factual content; or • That allows the answer to be somewhat dominated by a case example; or • That contains one or two factual errors that are more than just superficial (for instance, conflating treaties and declarations, but not allowing that to otherwise ruin the answer); or • An answer that is slightly short.
3 marks	• An answer with two of the problems indicated in the 4-mark answer range; or • An answer with any one of the above problems, but present to a larger extent; or • An answer that responds entirely through a case study, so that the required content is present in the answer but is consistently implied rather than clear and express; or • An answer that discusses the relationship between the High Court interpretation and international agreements, but that fails to say clearly what the actual interpretation of 'external affairs' is; or • An answer that makes a significant legal error – such as overstating the impact of international agreements and saying that any matter relevant to any international agreement can be legislated on broadly by the Commonwealth, rather than the commitments in the treaty being implemented; or • An answer that either fundamentally misunderstands the stimulus material or fails to use it at all; or • An answer that is significantly short.
2 marks	• An answer that contains no subjective argument and thus does not answer the task word; or • An answer that relies entirely on a relevant case example but fails to clearly answer the question with it; or • An answer that makes an attempt at engaging with the question and making subjective arguments supported with content detail, but that has significant content errors.
1 mark	• More than <i>nothing</i> that is accurate and responsive, but limited to one point that is something less than the 2-mark range.

Sample arguments:

- ✓ *International agreements and the "Law of Nations" do not, by themselves, increase or change the legislative power of the Commonwealth, because they are non-binding in domestic Australian law.*
- ✓ *Over time, the High Court has found that the meaning and scope of the Commonwealth's specific power over 'external affairs' can be expanded by the international instruments to which Australia is a signatory. Specifically, if the Australian Government enters into a treaty, the Commonwealth Parliament can pass laws to implement that treaty, even if the subject matter of the treaty covers issues of residual power. Therefore,*

if an international treaty obliged Australia to have a head of state, the Commonwealth would be able to introduce a bill that legislated on our head of state.

- ✓ *The current reading of the external affairs power does not allow the Commonwealth to legislate on all matters of international concern. The Commonwealth is still restricted by clear constitutional prohibitions. For instance, the federal parliament can introduce a referendum bill to change our head of state, but it could not rely on a treaty provision to ignore the s128 double majority procedure that is needed to pass that referendum.*

Question 5

Evaluate the ability of rights granted to both an accused and to victims of crime to achieve fairness in the resolution of criminal disputes. 10 marks

Advice: The rights do not need separate definitions at the start, before the task word is addressed.

In 2019 the final Part B question called for an analysis of fairness in relation to the source case. The Chief Assessor commented that answers often repeated the word ‘fairness’ in a simplistic way: “Many students spoke about the case being ‘fair’ or ‘unfair’ without explaining what that meant; it would have been better to use other terms.”

In relation to the task word “evaluate”, students should heed the advice provided by the Chief Assessor in the 2020 and 2019 reports: “Higher-scoring responses had sufficient depth to the strengths and weaknesses considered, and a meaningful conclusion.” (2020) ...“Other students did not achieve full marks because they had no conclusion to their evaluation.” (2019)

MARK RANGE	QUALITIES OF ANSWER
10 marks	• A comprehensive answer that provides a clear opinion in response to the question, at the start of the answer, at the end of the answer, or woven throughout the answer; and • That demonstrates meaningful engagement with multiple arguments in relation to more than one right of the accused; and • That demonstrates meaningful engagement with multiple arguments in relation to more than one right of victims; and • That has support provided for the arguments in the form of specific detail and/or examples; and • That draws meaningful connections between the arguments and the principle of fairness; and • That covers both sides of the issue <i>to some extent</i> in these arguments. Note that arguments <i>do</i> need to cover ‘both sides’, regardless of the opinion given, because of the task word ‘evaluate’. Arguments should also engage with each other and not be a list. Note that reforms will only be relevant if they are linked with how the system does or does not achieve the principles of justice.
9 marks	Something slightly less than a sophisticated, complete 10-mark answer. For instance, any of the following in an otherwise complete answer: • It lacks a sophisticated opinion in response, and gives a more general “I agree to a certain extent” with insufficient clarification through the arguments; or • It is slightly general in its discussion of the rights; or • It only covers one right for either the accused or victims, instead of two or more each; or • It lacks scope or detail in its arguments, either covering slightly too few, or a good number in slightly too little depth; or

	• It is slightly repetitive in its use of the word 'fairness'; or • It contains a small number of minor errors in understanding or content that do not undermine the answer; or • It covers both sides of the issue, but lacks some engagement between the sides.
8 marks	• An answer that has one of the above problems, demonstrated to a slightly greater extent.
7-6 marks	• An answer that has two of the above problems; or • An answer that has one material failing from the above list, demonstrated to enough of a degree that 8 marks would be inappropriately high; or • An answer that provides a strong to excellent evaluation, but that fails to fully ground the arguments in the factual detail of the rights; or • An answer that concentrates too heavily on the factual detail of the rights, and fails to fully develop the evaluation; or • An answer that evaluates each of the rights individually, but fails to bring them together into one coherent answer.
5 marks	Answers that demonstrate more significant problems or omissions begin to place from this mark range down. Problems or omissions include the following in an otherwise complete answer: • An answer that lacks meaningful engagement with fairness; or • An answer that focuses on access and/or equality instead; or • An answer that contains significant errors of fact or understanding; or • An answer that covers significantly too few arguments (such as perhaps two or three points only); or • An answer that provides little detail to support its arguments and relies instead on assertion and general conjecture; or • An answer that reads like a 'shopping list' of dot points rather than a discussion.
4-3 marks	• An answer that demonstrates any of the above significant problems to a greater extent; or • An answer that has two or more of the above problems; or • An answer that fails to use the principle of fairness <i>and</i> that demonstrates at least one of the above significant problems; or • An answer that fails to evaluate and provides only factual content.
2 marks	• An answer that makes only two accurate and effective points; or • An answer that makes three very brief points.
1 mark	• More than <i>nothing</i> that is accurate and responsive, but limited to one point that is something less than the 2-mark range.

Sample arguments:

- ✓ *The right to be tried without unreasonable delay means criminal trials should be held as quickly as possible after the events that give rise to the charges. The concept of 'as quickly as possible' rests on the idea that the need for the accused to be properly prepared for legal proceedings – which will take time, but is necessary for a fair trial in which the accused can properly defend themselves – must be balanced against the need for the community to see justice be done and to gain closure. This is why the right is to be tried without unreasonable delay, and not without any delay at all.*
- ✓ *The accused's right to a fair hearing includes elements such as a competent and independent arbiter to be in charge of the hearing. The accused and the community must have confidence in the actual impartiality of*

the judicial officer presiding over the trial, but just as important is that they must not perceive reasons for potential bias or else they may lose confidence in the system. This is why, in LAL v The Queen, the judge ought to have stepped down when the accused was charged with the same crime her daughter had been a victim of, because the perception of fairness is as important as actual fairness. This will, however, sometimes result in delays to the resolution of criminal disputes, which compromises fairness – the accused may not have the resources to keep defending themselves, and evidence may be lost.

- ✓ *The law has developed to be flexible in relation to the content and form of victim impact statements, so that the victims have the ability to participate in the processes but without being oppressed by unfair rules. They are not designed to be onerous or to add even more stress to the experience for the victims; instead, the victims of the crash are able to choose, with a significant amount of freedom, how they want to express themselves and what they want to say.*
- ✓ *The judge has been given the power to declare any part of a victim impact statement inadmissible if it contravenes the rules of evidence, or if they fear it will otherwise unfairly prejudice the sentencing of the accused. These restrictions are in the interests of fairness to the accused and the rules of evidence that are required for justice, but they can also result in parts of the statements being inadmissible at trial and sometimes this is disappointing or distressing for victims.*

SECTION B

Advice: Students should note that, since 2018, the Chief Assessor has consistently made it clear that the source material *must* be used in each answer to Section B: “Many students used the relevant stimulus material for Section A [...], and for every question in Section B, as was required, although some students did not [...] and therefore could not get full marks.” (2020)

Question 1 (24 marks)

Source 1

The following is an extract taken from the Victorian County Court’s decision in the case of *Borelli v State of Victoria (Department of Education and Training)*. Borelli had requested an extension of the limitation period in his negligence case against the Department.

Borelli v State of Victoria (Department of Education and Training) (Ruling) [2021] VCC 581

Subject: LIMITATION OF ACTIONS
Catchwords: Personal injury
 Common law claim for damages commenced out of time
 Application to extend time
 Fair trial

Legislation Cited: *Limitation of Actions Act 1958, s23A*

Cases Cited: *Brisbane South Regional Health Authority v Taylor* [1996] HCA 25

Introduction

- 1 The plaintiff commenced a proceeding in this Court on 30 January 2020. The Writ was endorsed with a Statement of Claim.
- 2 The defendant filed a Defence dated 24 February 2020. The relevant part of the Defence pleads that the plaintiff’s cause of action is barred by reason of the provisions of the *Limitation of Actions Act 1958*.
- 3 The plaintiff filed a Summons dated 11 March 2021 responding to the limitation defence seeking an extension of time.

The pleaded causes of action

- 4 The plaintiff pleaded that he was employed by the Defendant at a secondary college (“the College”) as a science teacher.
- 5 In paragraph 5 of the Amended Statement of Claim, the plaintiff pleaded that in or about 2004 the Plaintiff was subjected to bullying, harassment and intimidation from 2 science teachers within his department.
- 6 The plaintiff was requested to provide details of the instances of bullying, harassment and intimidation. To that request, the plaintiff provided the following Further and Better Particulars:

PARTICULARS

- (i) The bullies made repeated unfair and offensive personal attacks on the Plaintiff including calling the Plaintiff as ‘asshole’ to other members of staff, including on occasions within earshot of the Plaintiff.
- (ii) The bullies regularly deliberately and publicly ignored the Plaintiff when he attempted to

	speak with them. (iii) When the Plaintiff politely asked one of the bullies whether he could address her by her nickname, as most other members of staff did at the school, she told him 'No you can't!'.
7	The plaintiff swore an affidavit on 10 March 2021. The plaintiff described the steps he took to obtain legal advice, and once he was in possession of legal advice, the steps that were taken in pursuit of a compensation claim, and then a common law claim, culminating in the filing of the Writ and the Summons. "Shortly after stopping work in October 2015, I sought legal advice from Ms Lisa Paul, a solicitor at Adviceline Injury Lawyers, about my entitlements to compensation. I first met Ms Paul on 30 November 2015, at which time I was told that I may have some entitlements to a lump sum payment and a common law claim but the initial focus should be on attempting to reinstating my weekly income. I accepted that advice and I instructed Ms Paul accordingly, particularly as I had no income at that stage and I was under great financial pressure. As soon as my weekly payments were reinstated and I was advised to proceed with a common law claim, I provided my instructions to do so."
8	I will now set out the relevant evidence of the Defendant. "I humbly submit that the inability to locate Witness B will cause specific prejudice to the Defendant's ability to defend this proceeding. Further, it is apparent that while the other witnesses strongly deny the Plaintiff's allegations, their ability to recall exact events of 17 years ago will be compromised. In a claim alleging bullying, with little to no supporting documentary evidence, I humbly submit the ability for witnesses to recall matters with accuracy is essential to the proper carriage of justice."
9	I refer to the oft quoted observations of McHugh J in <i>Brisbane South Regional Health Authority v Taylor</i>, in which his Honour made a number of telling observations, among other observations, that evidence may disappear without anyone knowing that it ever existed, and that time will diminish the significance of the known facts or circumstances.
10	The plaintiff bears the onus of persuading me that it is just and reasonable to extend time. That brings me to the question of whether a fair trial can be had in the circumstances. A fair trial does not mean an ideal trial, but one which is acceptably fair. The plaintiff must persuade me that what prejudice there is would not make the chances of an acceptably fair trial unlikely.
11	After weighing up the competing considerations, I think it is just and equitable to grant the plaintiff leave to bring the proceeding out of time.

a. How does the doctrine of precedent affect the ability of courts to make law? 4 marks

Advice: In 2019 the Chief Assessor said that the doctrine of precedent was an area that students found most challenging. It is therefore an area in which confident students can make up marks relative to other students in the cohort.

MARK RANGE	• QUALITIES OF ANSWER
4 marks	A comprehensive answer that clearly expresses an understanding of the doctrine of precedent – that the legal principles underlying court judgments form binding rules for society and for courts lower in the same hierarchy; and
3 marks	- An answer that omits a key part of the understanding of precedent; or - An answer that lacks some elaboration; or - An answer that focuses too heavily on content and provides too little subjective argument on the effect; or

	• An answer that fails to link its arguments entirely to law-making, even though the points themselves are accurate in relation to precedent and the operation of courts; or • An answer that meets all the criteria for a 4-mark answer, but that contains a few small errors of understanding or fact; or • An answer that refers to the source material only briefly and superficially.
2 marks	• An answer that lacks meaningful engagement with any arguments, and instead covers basic factual information on the doctrine of precedent; or • An answer that discusses the source material but fails to relate it to the impact of the doctrine of precedent; or • An answer that fails to use the source material; or • An answer that superficially meets the criteria for a 4-mark answer, but that is undermined by fundamental errors of understanding or fact; or • An answer that reads like a short 'shopping list' of dot points rather than an explanation of arguments.
1 mark	• One fact about the doctrine of precedent, such as that precedent will be binding on lower courts, but nothing more; or • An identification of one fact about the source material that illustrates the doctrine of precedent, but nothing more; or • Anything else that is more than <i>nothing</i> accurate and responsive, but that is limited to one point that is something less than the 2-mark range.

Sample arguments:

- ✓ *The doctrine of precedent means that when a court is required to resolve a legal dispute, the reasons for the decision (the ratio decidendi) establish a new legal rule that is binding on all lower courts in the hierarchy and prevent those lower courts from developing their own legal principles in the area. For instance, the judge in Borelli refers to the statement by McHugh in the case of Brisbane South, which would be binding in this case because it comes from the High Court.*
- ✓ *The principle of stare decisis means that, even if other courts in Victoria disagree with precedent set by the Supreme Court or the Court of Appeal, they should treat it as authority and only depart if the facts of the case are distinguishable. Courts are discouraged from abandoning precedent set by other courts, even if they have the legal ability to depart. For instance, here the County Court does not need to follow precedent set by courts in other states, but the principle of stare decisis encourages the court to apply those persuasive rules unless there is an important reason not to.*
- ✓ *Judicial activism refers to the willingness of judges to consider the need for 'changes' in the law and to be willing to use their ability to set precedent to adapt the law to modern needs. If the decision of the County Court in Borelli were appealed, and the Court of Appeal justices acted in an activist way, they would take a proactive approach to developing the meaning of "just and reasonable" in the legislation – perhaps by taking into account the greater availability of legal advice and information in the current information age of the Internet.*

Problematic example:

- ✗ *Judicial conservatism is the idea that the proper role of judges is to say what the law is and to apply it: not to change it or say what they think it should be. An example of judicial conservatism is the Trigwell case, in which Justice Mason agreed with the majority judgement when he said "The court is neither a legislature nor a law reform agency. Its responsibility is to decide cases by applying the law to the facts as found." Judicial activism, on the other hand, is the idea that the proper role of judges is to keep the law in good*

repair as a vehicle for justice and society's contemporary attitudes. The source refers to judges acting "legislatively" if it overturns a previous precedent.

This is problematic because it has two separate definitions rather than a discussion. It also relies on outside, pre-prepared examples rather than the source material.

b. Describe two purposes of civil pre-trial procedures. 6 marks

Advice: Note that only the *first two* identified purposes will be assessed so students should ensure that they don't waste time including three or more purposes .

MARK RANGE	QUALITIES OF ANSWER
6 marks	- An answer that clearly identifies two specific and different purposes of procedures; and - That provides a level of detail appropriate to the task word 'describe, with enough depth on each purpose for 2-3 of the 6 marks; and - That shows meaningful use of the source material. Note that procedures themselves are not required content. It would be difficult to elaborate on the purposes with sufficient detail <i>without</i> using information from specific pre-trial procedures, but this information is not required content based on the wording of the question.
5 marks	- An answer that meets all the criteria for a 6-mark answer, but is slightly short or lacking in detail; or - An answer that meets all the criteria for a 6-mark answer, but that contains a few small errors of understanding or fact that do not undermine the answer as a whole; or - An answer that meets all the criteria for a 6-mark answer, but that has something less than a sophisticated use of the source material.
4 marks	An answer that meets the criteria for a 6-mark answer and is otherwise strong, but that suffers from one of the following problems: - The source material is not used; or - There are material errors of understanding or fact; or - The answer is overall too general or brief; or - The answer is too heavily weighted towards one purpose, so that the second purpose is superficial; or - The answer has some overlap between purposes, or ambiguity in the line separating one purpose from the next.
2-3 marks	- An answer that suffers two of the problems identified in the 4-mark range; or - An answer that overlooks purposes and concentrates on the procedures themselves; or - An answer that is undermined by significant errors of understanding or fact; or - An answer that only outlines two purposes.
1 mark	More than <i>nothing</i> that is accurate and responsive, but limited to one point that is something less than the 2-mark range.

Sample purposes:

- ✓ *Pre-trial procedures ensure that each party is aware of the legal claims made by the other side. For instance, the specific civil wrongs that the College, the defendant, is alleged to have committed were spelt out by Borelli in the Statement of Claim mentioned in para 5. The College would also have been required to give notice of the defences they planned to rely on, so Borelli was aware of these legal claims.*

- ✓ *Pre-trial procedures ensure that each party is aware of the evidence the other party has to prove their submissions. Pre-trial procedures such as discovery ensure that each party has copies of all admissible, non-privileged evidence held by the other side so they can properly inspect it. Borelli was required to supply copies of any emails, for instance, that proved his claims, or letters he sent to the College's management.*
- ✓ *Pre-trial procedures encourage settlement before trial, partly by giving both parties full and equal knowledge of claims, facts and evidence. Both Borelli and the College were better able to make educated decisions about their likelihood of success, and had the opportunity to offer (the College) or accept (Borelli) settlement if either decided they were likely to fare worse at trial. This was not successful in the current case – possibly because the College decided Borelli was out of time and they might receive a better result by arguing that in court.*

c. Analyse the extent to which the limitation of actions contributes to an effective legal system. 6 marks

Advice: The limitation of actions does not need a separate definition at the start, before the task word is addressed.

MARK RANGE	QUALITIES OF ANSWER
6 marks	• A comprehensive answer that provides a clear response to the question 'to what extent'; and • That demonstrates an accurate understanding of the limitation of actions, even though a freestanding definition is not required; and • That demonstrates meaningful engagement with multiple arguments in relation to the limitation of actions; and • That provides a level of elaboration and detail appropriate to the number of arguments covered; and • That draws meaningful connections between the arguments and the effectiveness of the legal system – which can go beyond the principles of justice, as the question does not limit the answer to these; and • That meaningfully uses the source material in some parts of the answer. Note that arguments should cover 'both sides' for the task word 'analyse', because 'analyse' means to argue the different aspects, components or sides to something. More is required than a simple list of strengths or weaknesses with no reflection or engagement. No definitive opinion needs to be given in conclusion, however.
5 marks	Something slightly less than a sophisticated, complete 6-mark answer. For instance, any of the following in an otherwise excellent answer: • Inadequate detail on the limitation of actions, rendering some parts of the answer slightly general; or • A slightly brief acknowledgement of the benefits and/or drawbacks, with too much focus on factual content or the source case; or • A lack of completeness in the linking of the arguments with the effectiveness of the legal system; or • A tendency towards superficial naming in the use of 'effectiveness'; or • A slightly superficial or brief use of the source material; or • An answer that meets the criteria for a 6-mark answer, but that contains one or two factual errors that are more than just superficial; or • An answer that is slightly short.
4 marks	• An answer with two of the problems indicated in the 5-mark answer range; or

	- Any one of the above problems, but present to a larger extent; or - An answer that reads like a 'shopping list' of dot points rather than a discussion.
3-2 marks	- An answer that contains content detail but little to no subjective argument relating to the benefits or drawbacks of the limitation of actions, and thus does not answer the task word; or - An answer that fails to refer arguments to the concept of effectiveness, and reads as pre-memorised strengths and weaknesses; or - An answer that makes only one or two arguments; or - An answer that makes an attempt at engaging with the question and making subjective arguments, but has significant content errors that work to undermine the quality of the answer as a whole; or - An answer that fails entirely to mention the source material.
1 mark	More than <i>nothing</i> that is accurate and responsive, but limited to one point that is something less than the 2-mark range.

Sample arguments:

- ✓ *Having a 'limitation of actions' means a potential defendant knows that the plaintiff must bring his cause of action within a period of time defined by the Limitation of Actions Act 1958 (Vic), giving them some predictability or closure. This is a claim for personal injury, so the College knew that Borelli needed to commence the claim within three years after the date on which the cause of action accrued – after he was aware of the effects of the alleged bullying.*
- ✓ *Borelli risked having his civil claim against the College struck out because he waited too long and the limitation period expired. He argued, as the judge explains in para 7, that he wanted to wait until his psychological harm settled and he was receiving a weekly income. These were important to give him the stability and mental health to endure a long civil dispute, but they also were the things that almost cost him the ability to seek redress for the alleged bullying.*
- ✓ *Having a limitation of actions timeframe ensures that cases brought to the courts are based on recent evidence that is reliable, which contributes to a fairer hearing. This is particularly important for Borelli's claim, for instance, because many of the alleged incidents were in conversation – these would not have documentary evidence to support them, and would rely on witness memory. Here, 17 years had elapsed, and the College defendant argued the evidence had faded and that it could not properly defend itself.*

d. Discuss the trial responsibilities of the judge and the parties in the civil justice system. 8 marks

Advice: The responsibilities do not need separate definitions at the start, before the task word is addressed. Students should note advice provided by the Chief Assessor in the 2020 Report where it was made clear that a 'discussion' is more than an explanation, requiring students to write about a topic in detail, taking into consideration issues, limitations, benefits, restrictions and/or reforms."

MARK RANGE	QUALITIES OF ANSWER
8 marks	- An answer that gives a clear identification of at least two responsibilities for each, given the plural wording of the question; and - That engages with one or more thoughtful and subjective points on those responsibilities; and - That illustrates these arguments with some content detail and enough depth for at least 2 of the 6 marks for each; and - That makes meaningful use of the source material. Note that the answer does not need to be split 50/50 across the two topics.

	Note that arguments do not need to expressly argue ‘both sides’ for the task word ‘discuss’, but more is required than a simple list of weaknesses or strengths with no reflection or engagement. Subjective arguments could cover the effectiveness of the responsibilities; how successful each person is at performing the responsibilities in practice; or possibly the ability for the responsibilities to further the principles of justice. Note also that no definitive opinion needs to be given in conclusion, because that is not required for ‘discuss’.
7 marks	Something slightly less than a sophisticated, complete 8-mark answer. For instance, any of the following in an otherwise excellent answer: • Slightly inadequate detail on either the judge or parties, rendering some parts of the answer slightly general; or • Slightly too much focus on one personnel at the expense of a full and sophisticated comment on the other; or • A slightly brief acknowledgement of subjective arguments, with too much focus on factual content; or • An answer that meets the criteria for an 8-mark answer, but that contains one or two factual errors that are more than just superficial; or • An answer that is slightly short; or • An answer that has a slightly superficial integration of the source material or a lack of integration of the source material.
6-5 marks	• An answer with two of the problems indicated in the 7-mark answer range; or • An answer with any one of the above problems, but present to a larger extent.
4 marks	• An answer that entirely lacks either the judge or parties; or • An answer that fails to use the source material; or • An answer that engages with the question and makes subjective arguments, but that has significant content errors; or • An answer that discusses no more than one responsibility each; or • An answer that reads like a ‘shopping list’ of points; or • An answer that is significantly short.
3-2 marks	• An answer that contains content detail but little to no subjective argument, and thus does not answer the question; or • An answer that makes only a couple of arguments; or • An answer that gives a somewhat shallow discussion of one personnel only; or • An answer that is fundamentally undermined by content errors.
1 mark	• More than <i>nothing</i> that is accurate and responsive, but limited to one point that is something less than the 2-mark range.

Sample arguments:

- ✓ *Parties have the responsibility of choosing whether they will be legally represented; and, if so, which layer will represent them most effectively. Here, Borelli chose not to represent himself, but to rely on the expertise of solicitor Lisa Paul. Using Paul, an expert, instead of representing himself, saved the courts time and money, because Paul knows the correct way to prepare documents, the correct way to make legal submissions and elicit evidence from witnesses, and the best arguments to make to allow the court to home in on the significant issues. This efficiency increases overall access to the system because it allows the County Court to operate more quickly.*

- ✓ *The ten overarching obligations for parties introduced by the Civil Procedure Act give a duty to parties to resolve civil disputes as efficiently as possible. Arguably, this has not been honoured by Borelli, because he has waited 17 years after the alleged bullying in order to launch his claim.*
- ✓ *The judge has the responsibility to remain impartial, and not side with either party to the dispute. Even if, as in para 11, they decide to give the plaintiff, Borelli, permission to bring his action out of time, they are meant to do it with impartiality and without unreasonably prejudicing one side. This is why the judge in para 10 states that Borelli must persuade the Court that giving an extension of time would not result in unfairness to the College. The civil justice system cannot be effective overall if it prejudices one side and only delivers 'justice' to the other.*
- ✓ *The judge has the responsibility to ensure that the evidence in the case comes out clearly and according to the rules of evidence and procedure. This may be difficult in the current case because of the extension of time granted. The judge can ensure that the evidence follows the rules of admissibility, but some clarity and detail may be lost because the judge has permitted a case to go forward that witnesses for the defence say they have faded memories of.*

Question 2 (16 marks)

Source 1

The following is an extract taken from an opinion piece published on 21 June 2021, regarding the change in leadership of the Nationals Party from Michael McCormack to Barnaby Joyce. The Nationals form government with the Liberal Party at the federal level.

Extract has been edited for length and clarity.

View from The Hill: Nationals give Scott Morrison a muscle man to deal with — especially on net zero

21 June 2021

Michelle Grattan, Professorial Fellow, University of Canberra, for *The Conversation* online journal

Joyce said after his Monday win he hoped he returned to leadership of the National Party “a better person.” The question is whether he will be a better leader.

Everyone acknowledges Joyce’s campaigning ability. He’s larger-than-life and people, especially in the country, warm to a “character.” The crucial relationship for Joyce to manage is with the Prime Minister, Scott Morrison – promoting an agenda on behalf of the National Party but not to the extent of creating destructive divisions that harm the entire Liberal-National coalition government.

The stretch point for Morrison and Joyce will be the net zero 2050 carbon emissions target. Morrison has been inching towards embracing 2050 as a firm climate change policy target, and the feeling by some Nationals that their previous leader, McCormack, would probably roll over and support the Liberal Party was one factor in his demise. Morrison must decide whether to press the case for firming the commitment, as Joe Biden and Boris Johnson urge him to do, or stay with his present loose wording of net zero “preferably” by 2050, to avoid a fight with the Nationals.

Joyce said after his Monday victory he will be guided by his party on this issue. Only a minority in the Nationals would favour endorsing the target. Joyce has varying voices in his party and its broader constituency. But his own view, as of February this year, was clearly stated in an article published in *The Australian*: “Even before you consider the impact on our mining and manufacturing industries, a net-zero emissions policy would destroy any hope of expanding Australian farming. If the Nationals supported net-zero emissions we would cease to be a party that could credibly represent farmers.”

<https://theconversation.com/view-from-the-hill-nationals-give-scott-morrison-a-muscle-man-to-deal-with-especially-on-net-zero-163109>

Source 2

The following is an extract taken from the 2021 Intergenerational Report published by the federal Department of Treasury. The Report analyses a range of issues in the country in order to produce a likely economic forecast for the next 40 years.

Extract has been edited for length and clarity.

2021 INTERGENERATIONAL REPORT

28 June 2021

Australian Government Department of Treasury

The Intergenerational Report projects an outlook for the economy and the Australian Government's budget over the next 40 years. This outlook has been profoundly affected by the COVID-19 pandemic, which has caused the most severe global economic shock since the Great Depression.

Slower population growth is the main reason for the expected slowdown in economic growth. Australia's total population is projected to reach 38.8 million in 2060-61. This is lower than previous projections due to the lower level of migration resulting from the COVID-19 pandemic and a lower fertility rate.

The likely physical and social effects of climate change, the impacts of mitigation efforts and the benefits of early adaptation measures will also affect the economy and the budget over the next 40 years. The transition to lower carbon emissions globally will mean that some sectors will need to adjust to falling demand for some exports, while new opportunities will be created in other sectors. The effects will depend on domestic and global actions, as well as the pace, extent and impacts of climate change.

The Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999* found that Australia's natural environment and iconic places are in decline and are under increasing threat, and that the current environmental trajectory is unsustainable.

a. Illustrating your answer with an example, explain one reason why laws may need to change. 3 marks

Advice: Note that only the *first* identified reason should be marked.

MARK RANGE	QUALITIES OF ANSWER
3 marks	- An answer that gives a clear identification of one reason; and - That goes beyond the identification to provide detail or elaboration, including an example; and - That uses the source material in a meaningful way.
2 marks	Something slightly less than a sophisticated, complete 3-mark answer. For instance, any of the following in an otherwise complete answer: - An answer that lacks detail in the description of the reason; or - An answer that lacks meaningful use of the source material; or - An answer that does not make meaningful reference to an example; or - An answer that has one or more significant content errors; or - An answer that is overall too brief.
1 mark	More than <i>nothing</i> that is accurate and responsive, but limited to one point that is something less than the 2-mark range.

Sample answer: Laws must match community values, or they won't be accepted and followed. So, as society's attitudes change, laws should change to reflect the new ideas. We value protection of the natural environment because of the impact it has on human life, animal life, and the continued health of ecosystems. Therefore, there is currently pressure put on Parliament to adopt laws that implement climate protection policies, such as the 2050 carbon emissions target mentioned in Source 1.

b. Describe the impact of the representative nature of parliament on the operation of parliament.

3 marks

MARK RANGE	QUALITIES OF ANSWER
3 marks	- An answer that clearly expresses an understanding of representative government, even though a freestanding definition is <i>not</i> required – that members of parliament are democratically elected by the public, to represent the interests of the public; and - That clearly identifies one or more effects this has on the operation of parliament; and - That provides a level of elaboration and detail appropriate to the number of points covered; and - That uses the source material in a meaningful way.
2 marks	- An answer that provides a good amount of relevant content, but that is vague on the connection between representative government and the source material; or - An answer that provides at least one effect, but that lacks in elaboration; or - An answer that contains superficial factual inaccuracies; or - An answer that is unclear on the relationship between representative government and the operation of parliament.
1 mark	- More than <i>nothing</i> that is accurate and responsive, but limited to one point that is something less than the 2-mark range; or - A simple definition of standing, without a case explanation.

Sample answers:

- ✓ *Members of parliament will usually reflect the needs and values of the majority of voters; and, if the majority is unhappy with their representative, they are likely to vote them out at the next election. Parliament will be influenced to pass laws that reflect the will of the majority. If the Intergenerational Report in Source 2 scares enough people about the future of the environment, parliament may be urged by voters to pass laws adopting “early adaptation measures.”*
- ✓ *Even though parliament will be influenced in its law-making by the needs and values of the people it represents, it is virtually impossible to make laws that match the views of all members of the community. This can create division within parliament, and prevent it from being able to effectively legislate and agree on policy. One reason the leader of the Nationals was replaced was this disagreement over climate change policy.*

Problematic example:

- ✗ *A representative parliament is one where the people elect representatives to govern on their behalf. Members of parliament will usually reflect the needs and values of the majority, and if the majority is unhappy with their performance the representatives may be voted out at the next election. Source 2 shows the results of the 2021 Intergenerational Report, and shows that the economic outlook over the next 40 years will be impacted by the Covid-19 pandemic and climate change.*

This is problematic because it contains a definition of representative government and an observation about the sources, but these are not linked, and neither is connected clearly to the effect on the operation of parliament.

c. Analyse the role played by the media in law reform.

4 marks

MARK RANGE	QUALITIES OF ANSWER
4 marks	- An answer that demonstrates an accurate understanding of what is meant by 'media', even though a freestanding definition is not required; and - That has meaningful engagement with multiple arguments on the role of the media; and - That links these arguments with the impact on law reform; and - That provides a level of elaboration and detail appropriate to the number of arguments covered; and - That makes meaningful use of the source material. Note that arguments should cover 'both sides' for the task word 'analyse', because 'analyse' means to argue the different aspects, components or sides to something. More is required than a simple list of strengths or weaknesses with no reflection or engagement. No definitive opinion needs to be given in conclusion, however.
3 marks	- An answer that superficially meets all the criteria for a 4-mark answer, but is weaker in one aspect; or - An answer that meets all the criteria for a 4-mark answer, but that contains a few errors of understanding or fact.
2 marks	- An answer that lacks meaningful engagement with any arguments (for instance, that states 'the media can spread awareness of the need for law reform' but lacks any detail as to <i>how</i> or the impact this would have on law reform); or - An answer that fails to use the source material in any way; or - An answer that fails to relate the arguments back to law reform; or - An answer that contains significant errors of understanding or fact; or - An answer that reads like a short 'shopping list' of dot points rather than an analysis.
1 mark	More than <i>nothing</i> that is accurate and responsive, but limited to one point that is something less than the 2-mark range.

Sample points:

- ✓ *Groups and individuals can use a range of social media platforms to distribute campaign materials for free, and reach an unlimited number of supporters. Building a broad support base like this can convince parliament that there is grassroots support for change and trust it more than paid advertisements from a few wealthy stakeholders. The new Nationals leader is good at working with people at the local level like this, as Source 1 describes him as a "character" and says that people warm to him. He may be able to work with the community to get them to support reform he wants as National Party policy.*
- ✓ *Social media and individual paid media campaigns may raise awareness but not cause long-term change. Studies suggest that media campaigns are only effective in the short-term at raising interest, but that changing laws and behaviours requires other strategies. This is why formal reports such as the Intergenerational Report are important, because their researched findings come from inside the Government, and support the policy of taking measures to combat climate change. Combined with public support demonstrated through media channels, this may have more influence.*
- ✓ *Posts on Facebook, Twitter, Instagram, YouTube and private blogs can engage citizens in lobbying government by giving template letters or MP contact details. If an environmental group, for instance, reads the Intergenerational Report and wants the Nationals to support the Liberals in setting a 2050 target, they could*

use their media contacts to ensure that Nationals MPs are swamped with individual lobbying messages from individual constituents all concerned about the same issue.

- ✓ Most members of parliament will be guided by their party's platform on an issue. Influencing reform will often involve influencing the party's position, and not just the position of one individual member. Media such as Source 1 targets individual MPs such as Joyce, and suggests that Joyce was promoted because he did not support climate change law reform. Source 1 also acknowledges that this would put him into conflict with the Prime Minister Scott Morrison, who is being influenced by outside factors to adopt a 2050 climate emissions target. Joyce might feel personally pressured by this reporting, but he will be unlikely to speak out to change Nationals Party policy on the target because he was only just made leader on the basis of his lack of support. Media that targets individual MPs may not affect party policy, but it is whole-party policy that affects law..
- ✓ The article written by Michelle Grattan was able to reach more people by being published on the Internet, as Internet journals reach a wider number of people nowadays than traditional print media. These readers could have been motivated to change their vote or contact their local MP on the basis of the LNP carbon emissions target, and this could influence Government policy for law-making.

d. Evaluate the impact of political pressures on the ability of parliament to make and change the law.

6 marks

Advice: In 2020 the Examination Report noted that students needed more work on political pressures. Note that political pressures do not need a separate definition at the start, before the task word is addressed.

MARK RANGE	QUALITIES OF ANSWER
6 marks	- An answer that clearly expresses an understanding of what political pressures are, even though a freestanding definition is <i>not</i> required – political pressures refer to the influences on law-making that come from relationships, public image, diplomacy and power, but students may use a range of wordings; and - That provides a clear opinion in response to the question of what impact political pressures have; and - That shows sophisticated engagement with multiple arguments about the impact of political pressures, both for and against; and - That links these arguments clearly with the ability of parliament to legislate; and - That provides a level of elaboration and detail appropriate to the number of arguments covered; and - That makes meaningful use of the source material. Note that the task word 'evaluate requires <i>both sides</i> of the question to be addressed to some extent, <u>and</u> requires a concrete opinion or answer to be provided. Arguments do need to 'match' the opinion given, because both sides must be considered. The most sophisticated answers will link all their arguments together in a coherent evaluation, however, considering concessions and rebuttals in their final conclusion. Note also that the 'ability' of parliament to legislate may be the literal ability of parliament to pass a law, but it may also be the practical ability of parliament to pass law or be <i>willing</i> to pass law. The word 'ability' covers questions of willingness or <i>ease</i> of legislating.
5 marks	Something slightly less than a sophisticated, complete 6-mark answer. For instance, any of the following in an otherwise excellent answer: - An answer that contains slight errors in fact; or - An answer that lacks something in elaboration and detail; or

	• An answer that focuses too significantly on the sources and does not adequately draw out the practical or theoretical political arguments in relation to them; or • An answer that focuses slightly too heavily on content detail and lacks in the subjective 'evaluation' component; or • An answer where the opinion given in response is unhelpfully vague, such as "to some extent" and not developed further; or • An answer that has slightly superficial use of the source material; or • An answer that is slightly short.
4 marks	• An answer that fails to use the source material; or • An answer that relies heavily on examples of political pressures and gives inadequate attention to arguments; or • An answer that has one of the problems listed in the 5-mark range, and demonstrates it to a slightly greater extent.
3-2 marks	• An answer that contains multiple of the above errors, or one error to an extent that dominates; or • An answer that contains little to no subjective argument, and thus does not answer the task word; or • An answer that makes only a couple of valuable points quite briefly; or • An answer that contains significant content errors.
1 mark	• An answer that gives only a definition of political pressures; or • An answer that summarises one of the sources and does not otherwise answer the question; or • An answer that is otherwise more than <i>nothing</i> accurate and responsive, but that is limited to one point that is something less than the 2-mark range.

Sample arguments:

- ✓ *One political pressure is the need of a member of parliament to project a favourable image in the community. This will often involve publicly supporting the ideas that they think are most popular, and tearing down the opposition in a combative way rather than working collaboratively with them. Source 1 demonstrates that Barnaby Joyce was appointed as the new Nationals leader following a political disagreement within the party, because some members of the party don't want the Government to support a 2050 climate change target. This policy position might be trying to cater to some rural voters, and therefore has the potential to prevent the Parliament from being able to legislate on it.*
- ✓ *Members of parties will feel a pressure to support the policies of their party, to keep the public affiliation with their parties, because this will mean the party campaigns on their behalf at election time. The Intergenerational Report was produced by a Government department, which gives the LNP a political conflict: the LNP policy is not keen to legislate for strong climate change measures, but the Government's own report tells voters that they may be affected economically in the next 40 years if the Government doesn't change its policy and introduce bills into parliament. Unless the Government changes its official policy, Government MPs may not feel comfortable publicly speaking out on the report and supporting law reform.*
- ✓ *When the Government needs to rely on crossbenchers to pass legislation, the parliament is able to make law that is more considered and developed from varying points of view. This is an example of political cooperation helping parliament to make and change the law. Even if the Nationals do not support a 2050 climate target, it is possible that other non-Government parties do. The Liberals could work with them politically to change the law together.*

- ✓ *International politics are not binding law in Australia, but they can influence domestic law-makers in parliament and government because Australia wants good diplomatic relations with other countries. The comments from US President Biden and UK Prime Minister Johnson in Source 1 cannot force the Australian parliament to change the law, and neither of those politicians can introduce a bill into the Australian parliament, but they can encourage Australian MPs such as the Prime Minister and the Deputy Prime Minister to support law reform in an effort to build good international relations.*

Problematic example:

- ✗ *Political pressures can be internal, within the party; they can be parliamentary, between parties in the parliament; they can be domestic, relating to Australian politics and elections; or they can be international, relating to Australia's relationship with other countries. Political pressures will have an effect on the ability of the Australian parliament to make and change the law to a significant extent.*

This is problematic for two reasons. Firstly, it begins with a definition of political pressures – this is not required. A freestanding definition also does not address the task word, and it does not actively contribute to any of the arguments. It would be better if it were integrated into the body of the answer, as part of arguments. Secondly, it begins with a vague opinion in response to the question. The opinion would be stronger if it were more specific than 'significant', or if the sentence continued with 'because' and an overall reason why.