

# **LEGAL STUDIES**

## **Unit 3&4 Examination 1**

### **MARKING GUIDE**

**SECTION A****Instructions for Section A**

Answer **all** questions in the spaces provided.

**Question 1** (10 marks)

Bradley was expected to stand trial for armed robbery and culpable driving causing death. His legal team informed him that the prosecution might be willing to drop the armed robbery charge if he pleads guilty to culpable driving causing death.

- a.** Identify **one** purpose of a plea negotiation and describe how it can meet the principle of fairness. 3 marks

*1 mark – stating one purpose*

*1 mark – outline how it can help meet fairness*

*1 mark – further description about how it can help meet fairness*

*Notes:*

- The question is about a “purpose”, and therefore is not asking for a description about the nature of plea negotiations*
- If more than one purpose is stated, only the first one mentioned can be considered for marking*
- Possible purposes include (but are not limited to): saving the court’s time, removing the need for a trial which can be traumatic for victims, allowing a plea that is commensurate to the crime that has been committed*

**SAMPLE RESPONSE:**

One purpose is to save the court’s time. This helps achieve fairness because it limits the number of trials that will occur, because when someone pleads guilty following a plea negotiation, a trial is not needed. This allows more time for other trials where it is inappropriate or not feasible for plea negotiations to take place, and allows for their prompt resolution, so victims of crime can move on with their lives more quickly.

- b. In reference to plea negotiations, distinguish between aggravating factors and mitigating factors. 3 marks

*1 mark – defining the terms only*

*1 mark – articulation of the difference*

*1 mark – reference to plea negotiations*

**SAMPLE RESPONSE:**

Aggravating factors are circumstances that increase the severity of a crime or culpability of the offender, compared to what it otherwise would be. However, mitigating factors are circumstances that decrease the severity of the crime or culpability of the offender. A successful outcome to plea negotiations will result in a guilty plea, which is a mitigating factor as it demonstrates the offender's willingness to take some responsibility for their actions.

- c. Discuss how **one** purpose of sanctions could be met if Bradley is subjected to a community corrections order. 4 marks

*2 marks – how a community corrections order could help meet one purpose (1 mark for a brief outline and/or lack of reference to Bradley's situation)*

*2 marks – how a community corrections order might not help meet that purpose (1 mark for a brief outline and/or lack of reference to Bradley's situation)*

**Notes:**

- *If one side of the discussion is answered in significant detail, it can be awarded 3 marks; in which case, 1 mark is sufficient for the other side of the discussion*
- *If more than one purpose is stated, only the first one mentioned can be considered for marking*
- *Purposes to choose from include: punishment, deterrence, denunciation, protection, rehabilitation*

**SAMPLE RESPONSE:**

One purpose of sanctions is rehabilitation. This will be met since a community corrections order [CCO] helps address the underlying causes behind offending through tailoring restrictions and activities to reform the offender. For instance, if Bradley's culpable driving causing death was occasioned by a drug addiction, then the CCO would impose a requirement to undergo drug rehabilitation treatment. This could then allow Bradley to reform his character and be a law-abiding member of society. However, a CCO might not rehabilitate if Bradley does not co-operate with the terms set, but instead uses his freedom in the community to revert to past behaviour and influences. Through being in the community, he is given freedom that he might well misuse due to a criminal mindset being so deeply ingrained in him.

**Question 2** (4 marks)

How can **one** purpose behind **one** civil pre-trial procedure meet the principle of equality?

*1 mark – outline of a purpose*

*1 mark – clear reference to a specific civil pre-trial procedure*

*2 marks – how that purpose helps achieve equality (1 mark for a brief outline, but which lacks depth)*

*Note:*

- *If more than one purpose and/or civil pre-trial procedure is stated, only the first one mentioned can be considered for marking*
- *Possible civil pre-trial procedures include: pleadings, discovery of documents, exchange of evidence*
- *Possible purposes of pleadings*
  - *Procedural fairness*
  - *Allowing for precise written records of the issues of the case*
  - *Allowing for clear limitations of the dispute*
- *Possible purposes of discovery of documents:*
  - *Disclosure of all relevant documents*
  - *Reducing surprise in the trial, by allowing each side to adequately prepare*
  - *Can help prompt an out of court settlement*
- *Possible purposes of exchange of evidence*
  - *Reduces surprise in a trial*
  - *Helps determine the strength of the other side's case*
  - *Helps with planning for rebuttals by having experts on your side to do this*

**SAMPLE RESPONSE:**

One civil pre-trial procedure is the exchange of documents, and one purpose involves reducing the element of surprise in a trial. This occurs due to both the plaintiff and defendant having access to the relevant documents that pertain to the dispute. Therefore, it ensures equality as both parties have access to all the documents, so both parties can then adequately prepare for the trial.

**Question 3** (5 marks)

Analyse the extent to which the doctrine of precedent can foster law reform.

*Mark globally*

| Mark Allocation | Descriptor: typical performance in each range                                                                                                                                                                                                                                                                                        |
|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5 marks         | <ul style="list-style-type: none"> <li>• <i>Clear statement about the “extent”, which is also reflected across the response</i></li> <li>• <i>Very well explained conceptual clarity between the concept of “precedent” and the concept of “law reform”, considering different facets of their inter-connection</i></li> </ul>       |
| 3-4 marks       | <ul style="list-style-type: none"> <li>• <i>Clear statement about the “extent”, which is somewhat reflected across the response</i></li> <li>• <i>Fairly well explained conceptual clarity between the concept of “precedent” and the concept of “law reform”, considering different facets of their inter-connection</i></li> </ul> |
| 1 - 2 marks     | <ul style="list-style-type: none"> <li>• <i>Response provides a knowledge of the concepts of “precedent” and “law reform”, but fails to make meaningful connection as required by an “analyse” question</i></li> <li>• <i>Response does not clearly address the “extent”</i></li> </ul>                                              |
| 0 marks         | <i>Response does not relate to any elements of the question or no attempt to answer the question</i>                                                                                                                                                                                                                                 |

*Notes:*

- *While there is flexibility about “the extent”, it would be difficult to score full marks if the student argues for completely one side (e.g.: to a “full extent”, or to “no extent”). Doing so would involve oversimplifying the doctrine of precedent, which has aspects that can assist with law reform, but also factors that do not assist with law reform.*
- *Possible reasons why the doctrine of precedent facilitates law reform:*
  - *Allows for higher courts to set interpretations of statute law, thereby developing it, which will then be used for future cases*
  - *Allows for higher courts to reverse and overrule precedents set by lower courts, thereby reforming common law*
  - *Can influence parliament to modify statute law through codification or abrogation*
  - *Ability for lower courts to distinguish precedents, thereby reforming how a law applies to certain unique circumstances*
- *Possible reasons why the doctrine of precedent does not facilitate law reform:*

- *Requirement for standing to have a case heard*
- *Still bound to base decisions on statute law, which limits the scope by which courts can set precedents and reform currently held notions*
- *Binding precedents limit the scope for lower courts to reform the law*

**SAMPLE RESPONSE:**

The doctrine of precedent [DOP] allows for law reform to some extent, depending on how it is exercised. Firstly, the DOP reforms law through developing its meaning via statutory interpretation, through which precedents are set for future court cases that are similar. Secondly, the DOP allows for law reform through higher courts reversing and overruling precedents set by lower courts. Through this, there is an in-built mechanism by which precedents can reform prior precedents. However, there are limitations in how the DOP can be exercised in the first place. It requires cases to be brought to the courts in the first place, which might not be straightforward due to the requirement for standing. Until someone directly affected by an issue (more than what the general population would be) brings the case to court, the courts will not have the opportunity to set precedents and thereby reform the law. Additionally, binding precedents limit the scope for lower courts to reform law insofar as they are bound by such precedents. While lower courts could still distinguish a precedent, this is only possible when circumstances are sufficiently different.

**Question 4 (10 marks)**

"The timely resolution of disputes is essential for restoring the wronged party to their original position".

In reference to this statement and **one** recent reform, evaluate how Consumer Affairs Victoria can help people achieve greater access to the civil justice system.

***Mark globally***

| <b>Marks</b>              | <b>Descriptor: typical performance in each range</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|---------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>9-10<br/>Very High</b> | <ul style="list-style-type: none"> <li>• <i>Very comprehensive evaluation, including in depth detail about how CAV helps achieve access, and how it is limited in achieving access, with a clear overall statement</i></li> <li>• <i>A recent reform is meaningfully interwoven in the evaluation in a sophisticated manner</i></li> <li>• <i>The quoted statement is meaningfully interwoven in the evaluation in a sophisticated manner</i></li> </ul>                                                  |
| <b>7-8<br/>High</b>       | <ul style="list-style-type: none"> <li>• <i>Reasonably detailed evaluation, including in depth detail about how CAV helps achieve access, and how it is limited in achieving access, with a clear overall statement</i></li> <li>• <i>A recent reform is interwoven in the evaluation in a clear manner</i></li> <li>• <i>The quoted statement is interwoven in the evaluation in a clear manner</i></li> <li>• <i>If a recommended reform is given, but not a recent reform, then this is</i></li> </ul> |

|                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|---------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                       | <p><i>the highest range that the response could fall in</i></p> <ul style="list-style-type: none"> <li><i>• If other principles of justice are linked to, instead of “access”, then this is the highest range that the response could fall in</i></li> </ul>                                                                                                                                                                                           |
| <p><b>5-6</b><br/><i>Medium</i></p>   | <ul style="list-style-type: none"> <li><i>• Response contains an evaluation, but it lacks reference to a recent reform and the quoted statement</i><br/><b>OR</b></li> <li><i>• Evaluation does not address both sides of the issue, and there is some reference to a recent reform and the quoted statement</i><br/><b>OR</b></li> <li><i>• All the elements of the question are addressed, but in a somewhat vague or superficial way</i></li> </ul> |
| <p><b>3-4</b><br/><i>Low</i></p>      | <ul style="list-style-type: none"> <li><i>• Response provides a brief summary of a recent reform, CAV, and the quoted statement, but provides no evaluation</i><br/><b>OR</b></li> <li><i>• Response provides a very brief attempt at an evaluation, but there is no reference to a recent reform or the quoted statement</i></li> </ul>                                                                                                               |
| <p><b>1-2</b><br/><i>Very Low</i></p> | <ul style="list-style-type: none"> <li><i>• Some terms of the question are defined only, but there is no evaluation and no connection to a recent reform and the quoted statement</i></li> </ul>                                                                                                                                                                                                                                                       |
| <p><b>0</b></p>                       | <ul style="list-style-type: none"> <li><i>• Response does not relate to any elements of the question or there is no answer provided</i></li> </ul>                                                                                                                                                                                                                                                                                                     |

**Notes:**

- *The two sides of the evaluation do not have to have equal detail for full marks, as long as both sides are addressed. If one side is addressed in significant detail, this decreases the level of detail required for the other side*
- *Maximum of 9 marks if there is no “overall” statement*
- *Possible ways CAV can help with access*
  - *No cost, therefore less barriers for entry*
  - *Conciliation assists with ideas being obtained, to access an appropriate solution*
  - *Provision of advice*
- *Possible ways CAV might not help with access*
  - *Does not compel other party to co-operate with the process*
  - *Results of conciliation are not legally binding, unless terms of settlement are signed*
  - *Could further cause delays, if a trial is needed after anyway, due to CAV failing to assist successfully*

- *Jurisdiction limited to specific types of disputes: landlords and tenants, traders and customers, owners' corporations*
- *Possible recent reforms could include:*
  - *Group class orders in class actions*
  - *Technological improvements in the legal system*
  - *Expansion of VCAT's fast track mediation and hearing processes*

**SAMPLE RESPONSE:**

Consumer Affairs Victoria [CAV] can help ensure “the timely resolution of disputes” through allowing the parties to avoid taking the case to court. By avoiding courts, it allows for many formalised processes and procedures to be avoided, such as pre-trial procedures, and the trial itself which might be delayed due to backlogs. The CAV offers a simplified and time efficient process, whereby the plaintiff can seek general advice about their rights and how to approach the other party. CAV can also offer conciliation between the disputing parties, which will allow for both parties to discuss their dispute in a relatively informal format, while receiving suggestions about how to resolve their dispute, allowing more easily for a just outcome to be accessed. Such suggestions can help speed up the process of the parties reaching an agreement. As a result of the dispute not dragging out, the original position of the plaintiff can be restored sooner and more easily due to less trauma that would otherwise result from a delayed process. However, CAV is limited in ensuring the “timely resolution of disputes” because its jurisdiction is limited to only specific types of disputes, such as between traders and clients, landlords and tenants, and owners' corporations. Many disputes fall out of the scope of these criteria, and therefore are not afforded the opportunity by CAV for a timelier resolution. Additionally, even if CAV can help with a dispute, there is no guarantee the dispute will be resolved to allow the plaintiff to be restored to their original position. This is because CAV cannot generally make any legally binding decisions. Therefore, if the defendant is not willing to compromise, then the conciliation process will prove fruitless. Moreover, there can be other ways of timely resolving disputes, without CAV, which means CAV is limited in helping people do this. For instance, a recent reform to the civil justice system involved the expansion of the Victorian Civil & Administrative Tribunal's [VCAT] fast track mediation and hearing processes. Through allowing civil claims up to \$10 000 to experience this process, as opposed to just \$3 000, results in more civil claims having the opportunity to experience a speedy process. Since this process can include a hearing, a guaranteed binding outcome will result, allowing justice to be accessed quickly. However, with CAV, an outcome is not guaranteed. Therefore, whilst CAV can allow for quick outcomes depending on the dispute, it is limited due to its narrow jurisdiction, inability to enforce resolutions, and other speedy options provided through VCAT.

**Question 5** (5 marks)

Analyse how **one** recent referendum has allowed the Australian people to change **or** protect the Australian Constitution.

*Mark globally*

| Mark Allocation    | Descriptor: typical performance in each range                                                                                                                                                                                                                                                                      |
|--------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>5 marks</i>     | <ul style="list-style-type: none"> <li><i>A recent referendum is clearly named and referred to throughout the response</i></li> <li><i>Comprehensive analysis through establishing connections between the referendum and how it helped Australians either change or protect the Constitution</i></li> </ul>       |
| <i>3-4 marks</i>   | <ul style="list-style-type: none"> <li><i>A recent referendum is clearly named and somewhat referred to throughout the response</i></li> <li><i>Reasonable analysis through establishing connections between the referendum and how it helped Australians either change or protect the Constitution</i></li> </ul> |
| <i>1 - 2 marks</i> | <ul style="list-style-type: none"> <li><i>Summary of a recent referendum is provided, but no analysis is present</i></li> <li><i>Small analysis is provided through using the concept of a referendum, but no reference to an actual referendum is provided</i></li> </ul>                                         |
| <i>0 marks</i>     | <i>Response does not relate to any elements of the question or no attempt to answer the question</i>                                                                                                                                                                                                               |

*Note:*

- If more than one referendum is referred to, only the first one can be considered for marking*
- Recent referendums could include: 1999 referendum, 1967 referendum*

**SAMPLE RESPONSE:**

One recent referendum was the 1999 referendum in which Australians exercised their power to protect the Constitution from change. It allowed Australians to consider whether the Constitution should be amended to remove the monarchy as head of state, through which Australia would become a republic. Additionally, it allowed consideration for a preamble to be included in the Constitution. Australian citizens of voting age were allowed to decide whether such changes should

proceed or not. Since the referendum failed in both its aspects, it shows that Australians used their democratic rights to maintain the status quo of the Constitution, perhaps due to concerns about the uncertain nature of what a republic would entail. This was significantly displayed through not just the majority of Australians overall voting against change, but the majority of Australians in all states (as opposed to just four out of six states for instance).

### Question 6 (6 marks)

Sally is a rape victim. The accused will be standing trial after the Magistrate decided there is sufficient evidence to warrant a conviction. Whilst Sally is relieved the case will be progressing to trial, she is upset that the committal proceedings took so long to finalise.

- a. Justify to Sally the importance of committal proceedings. 2 marks

*1 mark – outline about the importance*

*1 mark – further detail, with justification tailored towards Sally as a victim*

#### SAMPLE RESPONSE:

Committal proceedings are important because they ensure that only cases with sufficient evidence to warrant conviction in a higher court, end up going to trial. Since this occurs with other cases involving indictable offences as well, it will allow for the trial in this case to occur sooner, because other cases lacking evidence will not be going to trial.

- b. Explain **one** role that the jury will have during this trial, and how the judge can assist with the fulfilment of this role. 4 marks

*2 marks – explanation of one role of a jury (1 mark for a brief outline of it)*

*2 marks – explanation about how judges could help with the fulfilment of that role (1 mark for a brief outline as to how)*

#### Notes

- *This question requires students to synthesise their knowledge about the role of juries and judges. Students need to connect a role or roles of the judge, to the role of the jury selected.*
- *If more than one role of a jury is mentioned, only the first can be considered for marking*
- *Possible roles of a jury:*
  - *To listen to the evidence*
  - *To deliver a verdict*
  - *To follow the judge's directions*
  - *To be unbiased*
- *Possible roles of judges that could help*
  - *To manage the trial*
  - *To clarify points of law to the jury*

- *To disallow misleading evidence*

**SAMPLE RESPONSE:**

One role the jury has is to deliver the verdict. This involves reaching a unanimous decision (or eleven out of twelve, if this is not possible) about the accused being 'guilty' or 'not guilty'. This verdict will be following consideration of the evidence as a whole, and if there is no reasonable doubt that the accused raped Sally, then this will be basis for a guilty verdict. The judge will assist with the fulfilment of this role clarifying points of law to the jury. This will involve the judge carefully explaining the definition and elements of the crime, so the jury is aware about what they are applying the evidence in reference to. This allows for a verdict to be based on a common understanding between jurors about the nature of the crime when determining if that crime has occurred.

**Instructions for Section B**

Use the stimulus material provided to answer the questions in this section. Answers must apply to the stimulus material. Answer **all** questions in the spaces provided.

**Question 1 (20 marks)**

**Source 1:**

Unlike most similar liberal democracies, Australia does not have a Bill of Rights. Instead, protections for human rights may be found in the Constitution and in legislation passed by the Commonwealth Parliament or State or Territory Parliaments.

There are five explicit individual rights in the Constitution. These are the right to vote (Section 41), protection against acquisition of property on unjust terms (Section 51 (xxxi)), the right to a trial by jury (Section 80), freedom of religion (Section 116) and prohibition of discrimination on the basis of State of residency (Section 117).

'How are human rights protected in Australian law?', Australian Human Rights Commission,  
<<https://humanrights.gov.au/our-work/rights-and-freedoms/how-are-human-rights-protected-australian-law>>

**Source 2:**

A subject of the Queen, resident in any State, shall not be subject in any other State to any disability or discrimination which would not be equally applicable to him if he were a subject of the Queen resident in such other State.

'Rights of residents in States', Section 17, Australian Constitution

**Source 3:**

The constitution does include some sections that prohibit a state discriminating against Australian citizens who are residents of other states.

However... it has long been accepted by the courts that there can be valid exceptions to these prohibitions, where it is necessary to protect the people of a state from the risk of injury from inbound goods, animals, and people.

[T]he deadly coronavirus was likely to fall under such an exception as long as the restrictions imposed by a state are limited to the life of the emergency, tailored to protecting public health and do not single out people's interstate status without good reason.

'Fact Check: Is it illegal under the constitution for a state to close its borders to other Australians?', RMIT University, 23 April 2020

< <https://www.rmit.edu.au/news/all-news/2020/april/fact-check-state-border-closures> >

- a.** Source 1 outlines the express rights contained in the Australian Constitution. Discuss how express rights can help limit the law-making power of parliament. 6 marks

*2 marks – how express rights limit the law-making power of parliament (1 mark for a brief outline)*

*1 mark – reference to stimulus*

*2 marks – how express rights do not limit the law-making power of parliament (1 mark for a brief outline)*

*1 mark – reference to stimulus*

**Notes:**

- *If one side of the discussion is answered in significant detail, it can be awarded more marks; in which case, fewer marks are needed for the other side of the discussion*
- *Possible reasons why express rights can limit the law-making power of parliament*
  - *Causes reluctance to pass laws contradicting express rights*
  - *Likely High Court challenge if parliament were to pass such laws, which would then be declared ultra vires*
- *Possible reasons why express rights do not limit the law-making power of parliament*
  - *Parliament can still pass laws contradicting express rights*
  - *High Court challenges to laws contradicting express rights is not guaranteed, and can be delayed due to the requirement for standing*
  - *The express rights themselves are few, and so parliament does not have many constraints*

**SAMPLE RESPONSE:**

Express rights limit the law-making power of parliament in practice by generating a reluctance for politicians to attempt to pass laws that contradict them. This is because if a person with standing then challenges such a law with the High Court, it will then be ruled ultra vires and rendered invalid. For instance, if parliament passed a law which allowed property acquisition without compensation, this would contradict the notion of “just terms” being required for such acquisitions. As such, if challenged in the High Court by a person whose property was acquired through this law, then the High Court would have the opportunity to declare it ultra vires. However, the existence of express rights does not negate parliament’s power as such to make laws contradicting express rights. As long as a bill passes both houses of parliament, and receives royal assent, then it becomes law, and has the force of law until if or when a High Court decision declares it ultra vires. Additionally, there are only “five explicit express rights”, meaning that parliament is not significantly limited in its law-making scope.

- b.** In reference to state border closures, explain the role of courts in using statutory interpretation. Justify how a judicial activist **or** conservative approach could have been used. 5 marks

*2 marks – explanation of statutory interpretation (1 mark for a brief outline)*

*1 mark – reference to state border closures*

*2 marks – justification about approach used (1 mark if justification lacks compelling depth)*

*Notes:*

- *Possible reason for a conservative approach*
  - *When regarding the intended meaning of a text, common sense exceptions can be assumed*
  - *Discrimination is based on other factors, (e.g.: public health) and the fact that the person is from another state is an incidental aspect*
- *Possible reason for an activist approach*
  - *Considering social/political factors beyond the text of the Constitution itself, based on a contemporary context (e.g.: concerns about safety outweighing the need to not discriminate)*

**SAMPLE RESPONSE:**

Statutory interpretation involves courts applying written laws to actual situations. This is done through determining the meaning of such laws, and then determining how these laws apply or do not apply to a given case. In this case, it involves the High Court interpreting the Australian Constitution’s express right about not discriminating against people based on the state they are from. The question of application involves considering whether border closures, against residents of particular state/s, constitutes the discrimination that is forbidden under this express right. A judicial activist approach could have been used, through which such border closures will be deemed not to be contrary to the Australian Constitution. The idea here is that other social/political factors should be considered when interpreting the express right, such as the alleged severity of the covid 19 pandemic being sufficient to outweigh considerations about discrimination.

- c. Apart from limitations to the right described in Source 2, outline how two other express rights have limitations. 4 marks

*2 marks – outline how one other right has limitations (1 mark for just stating a limitation of this right)*

*2 marks – outline how another right has limitations (1 mark for just stating a limitation of this right)*

**SAMPLE RESPONSE:**

Firstly, the right to a trial by jury is limited to commonwealth offences, which excludes offences under state law. It also only applies to offences deemed indictable under commonwealth law. Therefore, the Australian Constitution only guarantees this right to very specific criteria. Secondly, freedom of religion is limited because this freedom exists in the context of other laws, such that this freedom cannot be used as a pretext to disobey laws in general by linking civil disobedience to a religious obligation. Laws can be passed to regulate religious organisations in various ways as well, such as regulations surrounding tax-exemption.

- d. If people wanted to challenge the border restrictions, identify and discuss **one** way they might try to do this. 5 marks

*1 mark – identifying a way*

*2 marks – how this way could help achieve law reform (1 mark for a brief outline)*

*2 marks – how this way might not help achieve law reform (1 mark for a brief outline)*

*Notes:*

- *If one way is discussed in significant detail, it can be awarded 3 marks; in which case, 1 mark is sufficient for the other side of the discussion*
- *If more than one way is mentioned, only the first can be considered for marking*
- *Possible ways: petitions, demonstrations, use of the courts*

**SAMPLE RESPONSE:**

One way is through demonstrations. This involves publicly gathering and expressing disapproval of the border closures. This can help generate public awareness about how people are adversely impacted by such closures, which can then generate increased sympathy for such concerns. As a result, politicians can be pressured to amend border closures out of fear of losing their seat at a following election. However, demonstrations can be limited in the numbers attending, due to

restrictions on public gatherings due to covid restrictions. This can limit the potential for generating public awareness. Additionally, if demonstrations turn violent, it can turn public opinion against their cause, which in turn will pressure politicians in the opposite direction.

## Question 2 (20 marks)

### Source 1:

During the course of this reference it became clear that stalking is an invisible crime, frequently not recognised by police and even by those who experience it. It is often minimised or trivialised, and victim survivors are often expected to manage the situation on their own.....

For that reason, the interim report focuses on improving practices within Victoria Police. We recommend changes to the entire process of a report to police of stalking, including:

- implementing specialised interviewing and gathering of evidence
- Improving communications with victim survivors of stalking
- Strengthening record keeping
- Implementing guidance for what action should be taken

'Our recommendations for change', 'Stalking Interim Report', page 7, Victorian Law Reform Commission, December 2021  
<[https://www.lawreform.vic.gov.au/wp-content/uploads/2022/04/VLRC\\_Stalking\\_Interim\\_Report\\_Par1.pdf](https://www.lawreform.vic.gov.au/wp-content/uploads/2022/04/VLRC_Stalking_Interim_Report_Par1.pdf)>

### Source 2:

Every time Kate\* logs onto the internet or makes a phone call she worries that a cyber stalker is tracking her. The Victorian woman says she has encountered 18 months of personal hell — her phones and computers have been hacked and fake social media and online dating accounts have been created in her name. The incidents left Kate so afraid that she quit her job and moved to the country to work on a farm. To minimise risk of cyber attacks, she now visits the bank in person and receives emails through a third party.

Kate believes she is being stalked by her ex-partner.

Police are looking into the case, but Kate says she has been told by officers there is little chance of any action being taken for months or even years due to a huge backlog of internet-based crimes.

'Cyber stalking victim says phones, computers have been hacked for months', M Marozi & Kristian Silva, ABC, 18 November 2020,

< <https://www.abc.net.au/news/2020-11-18/cyber-stalking-victim-says-phones-computers-hacked-by-ex-partner/12894584> >

- a. Source 1 details a recent investigation by the Victorian Law Reform Commission.

Describe **two** reasons why laws might need to be reformed.

4 marks

*2 marks – one reason described (1 mark for a brief outline)*

*2 marks – another reason described (1 mark for a brief outline)*

**Note:**

- *If more than two reasons are provided, only the first two can be considered for marking*

One reason is to keep up to date with technological trends. Source 2 refers in detail to technology being used as a means of stalking. Therefore, laws need to be defined in a way to account for how technology can be used to commit stalking, as opposed to being more defined in physical and non-virtual terms. Another reason is to reflect society's values. There is an increased awareness that stalking has a profound impact on victims due to the stress and safety concerns it generates. Therefore, laws should be reformed to recognise this through allowing a wide range of stalking behaviours to be criminalised.

- b. Analyse the extent to which the Victorian Law Reform Commission can help bring about law reform. Refer to **one** of the reasons from Question 2a in your response. 6 marks

*Mark globally*

| Mark Allocation    | Descriptor: typical performance in each range                                                                                                                                                                                                                                                                                                                                                                    |
|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>5 marks</i>     | <ul style="list-style-type: none"> <li>• <i>Clear statement about the “extent”, which is also reflected across the response</i></li> <li>• <i>Very well explained conceptual clarity between the VLRC and the result of “law reform”, considering different facets of their inter-connection</i></li> <li>• <i>One reason from Question 2a is interwoven into the analysis in a sophisticated way</i></li> </ul> |
| <i>3-4 marks</i>   | <ul style="list-style-type: none"> <li>• <i>Fairly clear statement about the “extent”, which is somewhat reflected across the response</i></li> <li>• <i>Fairly well explained conceptual clarity between the VLRC and the result of “law reform”, considering different facets of their inter-connection</i></li> <li>• <i>One reason from Question 2a is somewhat interwoven into the analysis</i></li> </ul>  |
| <i>1 - 2 marks</i> | <ul style="list-style-type: none"> <li>• <i>Response provides a knowledge of the concepts of “VLRC” and “law reform”, but fails to make meaningful connection as required by an “analyse” question</i></li> <li>• <i>Response does not clearly address the “extent”</i></li> </ul>                                                                                                                               |
| <i>0 marks</i>     | <i>Response does not relate to any elements of the question or no attempt to answer the question</i>                                                                                                                                                                                                                                                                                                             |

*Notes:*

- *While there is flexibility about “the extent”, it would be difficult to score full marks if the student argues for completely one side (e.g.: to a “full extent”, or to “no extent”). Doing so*

*would involve oversimplifying the impact of the VLRC, which has aspects that can assist with law reform, but also factors that do not assist with law reform.*

**SAMPLE RESPONSE:**

The Victorian Law Reform Commission [VLRC] can help bring about law reform to some extent, depending on how much weight politicians place on its recommendations. Firstly, the VLRC will generally investigate an issue following a government request for this. As such, the recommendations following the investigation into stalking will likely be followed up on and put into law. Moreover, the public might pressure parliament to enact recommendations from the VLRC, which is seen to recommend reforms following careful investigations. This is especially the case if a proposed law reform reflects society's values because such values will become more solidified when confirmed by an expert body such as the VLRC. However, the VLRC can only advise, and cannot enact law reform itself. There can be other political pressures that prevent such recommendations from becoming law, such as a hostile upper house where the government does not have a majority. Moreover, while the VLRC might recommend changes to laws about stalking, this might only influence politicians to some extent. It might be the public interest in the issue through their values that is the key influencing factor.

- c. In reference to Source 2, explain **one** right that victims of crime have.

2 marks

*1 mark – outline of a right*

*1 mark – further explanation of the right, with clear reference to Source 2*

*Notes:*

- *If more than one right is mentioned, only the first can be considered for marking*
- *Possible rights: the right to give evidence as a vulnerable witness, the right to be informed about the proceedings, the right to be informed about the likely release date of the accused*

**SAMPLE RESPONSE:**

Victims of crime have the right to be informed about the proceedings. This means that Kate should be informed about what stage the case is at, such as whether or not charges have been laid against her stalker, the date for a committal hearing if needed, any arrangements made in the committal proceedings (e.g.: about plea negotiations, guilty pleas etc), and the date for a trial if it progresses to that point.

- d. Criminal cases have the potential to also result in civil cases.

Discuss how injunctions and general damages can meet their respective purposes when attempting to restore a victim of stalking to their original position.

8 marks

*2 marks – how injunctions can meet their purpose (1 mark for a brief outline and/or lack of reference to stalking victims)*

*2 marks – how injunctions are limited in meeting their purpose (1 mark for a brief outline and/or lack of reference to stalking victims)*

*2 marks – how general damages can meet their purpose (1 mark for a brief outline and/or lack of reference to stalking victims)*

*2 marks – how general damages are limited in meeting their purpose (1 mark for a brief outline and/or lack of reference to stalking victims)*

*Notes:*

- *If one discussion (e.g.: about general damages) is answered in significant detail, it can be given 5 marks; in which case, 3 marks is sufficient for the other discussion (e.g.: about injunctions)*
- *If one side of a discussion is answered in significant detail, it can be given more marks; in which case, fewer marks are sufficient for the other side of the discussion*

**SAMPLE RESPONSE:**

Injunctions, through court orders, help directly rectify civil wrongs through either mandating or restricting behaviour. For instance, a stalker could be restricted from engaging in any form of contact with the plaintiff. This can help generate a sense of closure for Kate as a result of stalking behaviours being expressly forbidden. Knowing that the court has issued restrictive injunctions aimed at curtailing the stalking would give her a sense of greater ease in living her life. However, such restrictions might not be far reaching enough to cover the various ways a stalker can be creative in causing trauma. Therefore, she might not be able to recover her original position since the behaviour might continue in some fashion.

General damages aim to compensate for pain and suffering through money paid to the plaintiff by the defendant. The amount of such money is approximated to 'cancel out' the pain and suffering caused by the stalking. This could help as it might provide Kate the opportunity to invest in more security devices to give her a sense of greater ease and can provide her the means to have greater comforts in life to help alleviate her past trauma. However, general damages cannot automatically remove deeply ingrained trauma, as money cannot fix all hurt. Moreover, since general damages are hard to approximate, an insufficient amount might awarded, since it is hard to exactly quantify pain and suffering in financial terms.