

LEGAL STUDIES

Unit 3&4 Examination 2

MARKING GUIDE

SECTION A**Instructions for Section A**

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

Question 1 (15 marks)

Yasin is considering commencing legal action against his former client. He claims that he is owed \$7 200 worth of fees and has written a letter to his former client stating that "I will sue you until you are in jail". His former client claims that the fees have been paid, but that Yasin failed to give him the correct bank details.

a. Identify the parties in this case.

1 mark

1 mark – identifying ‘plaintiff’ as a party (Yasin)

1 mark – identifying ‘defendant’ as a party (former client)

SAMPLE RESPONSE:

The parties consist of the plaintiff (Yasin) and the defendant (the former client).

b. Distinguish between the burden of proof and standard proof in this case.

3 marks

1 mark – defining the terms only

1 mark – articulation of the difference

1 mark – reference to this case

SAMPLE RESPONSE:

The burden of proof in a civil case such as this rests on the plaintiff, which is the party that is bringing action against the defendant. Yasin as the plaintiff has the burden of proof in this case. However, the standard of proof refers to the extent to which the plaintiff must prove their case, which in a civil case is the balance of probabilities, meaning that Yasin would be more likely than not to be correct that his former client owes him \$7 000 worth of fees.

c. Identify and correct **one** mistake in the extract above.

2 marks

1 mark – stating the mistake

1 mark – correcting the mistake

SAMPLE RESPONSE:

The mistake is Yasin referring to the prospect of this civil case resulting in the defendant going to jail. Imprisonment is not a remedy in civil cases, and so an actual remedy such as damages or an injunction should have been referred to instead.

- d. Analyse two factors that Yasin should consider before commencing his civil claim. 6 marks**

1 mark – stating one factor that can be considered

1 mark – explanation about why that factor should be considered

1 mark – clear and relevant connection to Yasin’s situation

1 mark – stating another factor that can be considered

1 mark – explanation about why that factor should be considered

1 mark – clear and relevant connection to Yasin’s situation

Notes:

- *Factors to consider include: cost, enforcement issues, scope of liability, limitation of actions, negotiation options*
- *“Scope of liability” stands out as one factor that can be easily connected, owing to the possibility of Yasin being at fault for not receiving his fee (due to not updating his bank details)*
- *If more than two factors are mentioned, only the first two can be considered for marking*

SAMPLE RESPONSE:

One factor is the scope of liability. Yasin needs to consider to what extent his former client is responsible for non-payment of the debt. There is a possibility that the former client attempted to make payment, but that Yasin failed to receive it due to providing incorrect bank account details. If this is true, then while it is true that Yasin may not have received the funds, it was on account of his error, and not the client refusing payment. If this were established, then Yasin would then have a big share in the responsibility for not receiving his money, meaning it would be hard to blame the former client for what occurred. Another factor that should be considered are negotiation options. Since the former client might well have tried to make the payment, they should discuss this further and determine what bank account the payment went to. From there, a negotiated outcome could ensue, involving trying to recover the funds that were sent to the wrong account. Moreover, negotiation could allow time to be saved because it will not involve going to court over the matter which could be time consuming.

e. Justify how mediation **or** conciliation could help resolve this civil dispute.

3 marks

1 mark – statement about how one method could help

1 mark – further outline as to why

1 mark – further detail in justification with reference to this situation

Notes:

- *Since the question says “or”, students need to select either mediation or conciliation. If more than one method is mentioned, then only the first can be considered for marking*
- *Possible reasons for mediation*
 - *Ensures an orderly structured discussion*
 - *Facilitated discussion allows for solutions to be brainstormed in a constructive atmosphere*
 - *Parties retain control over their interests, as they must come to a mutually acceptable resolution*
 - *Less expensive than courts*
- *Possible reasons for conciliation*
 - *As above for mediation*
 - *Ability to make use of suggestions from conciliator, to assist with coming to a mutually acceptable resolution*

SAMPLE RESPONSE:

Conciliation could help resolve this dispute because it will provide an avenue for Yasin and the former client to discuss their issues in the presence of a third party who can ensure that the discussion remains focused and calm. This will decrease the chances for emotional outbursts, for instance, involving threats of imprisonment. It will also allow for the two parties to receive suggestions about how to resolve their dispute, which might be hard if both parties are adamant that they are in the right, in which case it might be hard to think of mutually acceptable outcomes. Suggestions could help guide them to a mutually acceptable resolution.

Question 2 (7 marks)

Janelle fears that constitutional rights are being violated due to banks charging high interest rates. Whilst she is debt free, she is worried about the younger generation being able to afford to buy their first home.

Evaluate the extent to which the requirement for standing can impact the ability of courts to make law.

Mark globally

Mark Allocation	Descriptor: typical performance in each range
<i>7 marks</i>	<i>Very comprehensive evaluation, including in depth detail about how standing can impact the ability of courts to make law, considering factors than limit its scope and increase its scope</i> <i>Clearly stated overall statement, with reference to the “extent”, which is consistent with the rest of the response</i> <i>Very effective utilisation of the stimulus in response</i>
<i>5-6 marks</i>	<i>Thorough evaluation, including reasonable detail about how standing can impact the ability of courts to make law, considering factors than limit its scope and increase its scope</i> <i>Clearly stated overall statement, with reference to the “extent”, which is somewhat consistent with the rest of the response</i> <i>Utilisation of the stimulus in response</i> <i>Without an overall statement, the maximum number of marks would be in this range</i>
<i>3-4 marks</i>	<i>Some attempt at evaluation, but lacking knowledge about the impact of precedents</i> <i>Evaluation might consider only one side of the issue, but not the other</i> <i>The extent is not clearly stated, if stated at all</i>
<i>1 - 2 marks</i>	<i>Response provides basic knowledge of some key concepts to do with precedent, but does not evaluate the concept in any meaningful way</i>
<i>0 marks</i>	<i>Response does not relate to any elements of the question or no attempt to answer the question</i>

Note:

- *Possible reasons why standing allows for courts to develop law:*
 - *Frees up the court's time to deal with cases where people are affected by an issue, allowing for laws to be made in meaningful situations*
 - *People with standing can be given assistance from others to take their case to court, thereby giving courts the opportunity to make law*
 - *People with standing have a legal right to take a case to court, thereby giving courts the opportunity to make law*
 - *Criteria for standing is not overbearing: it does not have to involve being extremely impacted; just more impacted than someone in the population generally, whereby winning the case will bring a benefit beyond the mere satisfaction of winning*
- *Possible reasons why standing limits the ability of courts to make law*
 - *Limits the cases brought to court, as not everyone can take the case to court, thereby limiting the potential for courts to make law*
 - *Even those with standing might find it difficult and time consuming to bring a case to court, thereby limiting the potential for courts to make law*
- *Apart from considering how standing helps/limits the courts (as detailed above), the evaluation could refer to other ways courts are helped/limited. For instance, other factors might assist a court's ability to make law, thereby making the requirement for standing insignificant. Also, other factors might be limited in assisting the court, making the impact of standing more significant.*

SAMPLE RESPONSE:

The requirement for standing enables courts to make law to some extent through providing an opportunity for cases to be heard, even though there are some limitations resulting about who can bring forth cases. It can impact the court's ability to make law by enhancing that ability. This is because it allows someone who is affected by an issue (in a manner greater than what people in general population would be affected) the opportunity to take their case to court. Through this, courts can make law by applying statute law to an actual situation. For instance, someone with a home loan, suffering from high interest rates, would have standing if contesting the constitutional validity of high interest rates. Whilst there is a condition for standing, it would still enable a lot of people to take the case to court, as many will be in that position. Even if those with standing find it hard to take their case to court (for instance, due to financial pressures), others could assist. For instance, Janelle could assist a younger person take their case about interest rates to court, allowing the case to be heard, and giving courts the opportunity to make law through interpreting the Constitution. However, the requirement for standing does impact the court's ability to make law through limiting the court's ability to do so. Standing limits the potential people who can bring the case forward, and therefore will limit the potential for cases to be heard and therefore for laws to be developed. Perhaps those with standing do not believe in the prospect of a case's success, and therefore do not want to attempt challenging higher interest rates. Despite the potential for others to help them, the process might be seen as too daunting to attempt in the first place, especially for someone struggling with cost-of-living pressures from high interest rates.

Question 3 (10 marks)

"High recidivism rates should not become the excuse to issue more lenient sanctions. If it does, then it is an affront to victims of crime".

Compare imprisonment to another sanction. Discuss how both sanctions help meet **two** purposes behind sanctions.

Mark globally

Marks	Descriptor: typical performance in each range
9-10 <i>Very High</i>	• <i>Thorough comparison, which clearly establishes similarities and differences to another sanction</i> • <i>Comprehensive discussion about how both sanctions meet two different purposes behind sanctions, showing exceptional knowledge of these purposes and how the sanctions connect to them</i> • <i>Very effective utilisation of the stimulus in response</i>
7-8 <i>High</i>	• <i>Well written comparison, which establishes similarities and differences to another sanction</i> • <i>Reasonable discussion about how both sanctions meet two different purposes behind sanctions, showing good knowledge of these purposes and how the sanctions connect to them</i> • <i>Reasonable utilisation of the stimulus in response</i> • <i>Some elements of the discussion might not have been incorporated, e.g.: discussing in reference to one purpose, but only mentioning the other purpose in passing</i>
5-6 <i>Medium</i>	• <i>Reasonable comparison, which establishes some basic similarities and differences to another sanction</i> • <i>Basic discussion about how both sanctions meet two different purposes behind sanctions, showing some knowledge of these purposes and how the sanctions connect to them</i> • <i>Some elements of the discussion might not have been incorporated, e.g.: discussing in reference to one purpose, but only mentioning the other purpose in passing</i> <i>OR</i> • <i>Discussion is well written, but comparison is missing</i> <i>OR</i> • <i>Comparison is well written, but discussion is very basic</i>
3-4 <i>Low</i>	• <i>Comparison implies some similarities and differences, but appears more as a definition of both sanction types</i> • <i>Discussion is about the sanctions themselves, but the purposes are not linked to</i>
1-2 <i>Very Low</i>	• <i>Some key terms are defined, but no comparison or discussion is present</i>

0

- *Response does not relate to any elements of the question or there is no answer provided*

Notes:

- *Sanctions that imprisonment could be compared to: fines, community correction orders*
- *Purposes of sanctions that could be referred to: punishment, deterrence, rehabilitation, denunciation, protection*
- *If more than two purposes are mentioned, only the first two should be considered for marking*

SAMPLE RESPONSE:

Imprisonment and fines are both sanctions. Whilst imprisonment involves being removed from society and being incarcerated for a period of time, fines involve paying a sum of money, defined in penalty units, to the government. Therefore, fines are more temporary in nature, because once the sum of money has been paid, the sanction is finalised, whereas imprisonment can last for several years. Fines allow the offender to keep living in society, whereas imprisonment involves removing an offender from society. A similarity between the two is that both will cause inconvenience, because being removed from society will limit the ability to engage in recreational pursuits for instance. Fines can also have this effect, because funds need to be allocated towards their payment instead of other pursuits someone might value. Both sanctions also can help meet the different purposes of sanctions, albeit in different ways and extents. One such purpose is punishment. Fines punish because they cause financial discomfort to someone who otherwise might need the money to pay for bills, mortgages, medication, and other such things that are important or valued. However, if someone is wealthy, then a fine will not punish in any meaningful way, because of it being deemed miniscule compared to the person's overall financial position. Imprisonment has a greater ability to punish, since it involves being removed from society, which means people miss out on work, living in their homes, seeing family often, and more generally cannot decide how to run their day to day lives. The time spent in prison can be significant, and therefore takes away a big portion of someone's life being lived in a normal way. However, the prospect for parole can allow for an early exit to prison, limiting its potential as a punishment. Terms of imprisonment can be set as concurrent which will also limit this timeframe. Another purpose behind sanctions is rehabilitation. Fines can help rehabilitate an offender by allowing them to carefully reflect on what led their financial inconvenience, and thereby come to the realisation that it is better for their character to be reformed to live more wholesome lives. However, fines can cause anger from those who must pay them, which might have the opposite effect of addressing the root causes behind their offending, especially if the motivating causes behind offending relate to addictions. Imprisonment can involve programs aimed at improving the skills of those imprisoned, thereby allowing them to transition to society more successfully when released and decreasing the chances of them falling back on bad habits and friendship groups. As a result, recidivism can be reduced, even if a sentence is long, so long as their eventual transition to society is properly considered. However, imprisonment might not rehabilitate due to the influences of others in a prison environment encouraging an offender to continue in a criminal mindset both during their term of imprisonment and upon release. This could increase the chance for recidivism, which if properly considered would decrease the chance of further offending (and further victims) upon release.

Question 4 (5 marks)

- a. Outline a recent example of a royal commission **or** parliamentary committee investigating a potential law reform. 2 marks

1 mark – stating a recent example

1 mark – further outline of it

Notes:

- *Recent examples of royal commissions include:*
 - o *Commonwealth Royal Commission into Aged Care Quality and Safety (2018-2020)*
 - o *Royal Commission into Violence, Abuse, Neglect, and Exploitation of People with a Disability (2019-2022)*
 - o *The Victorian Royal Commission into the Management of Police Informants (2018-2020)*
- *Recent examples of parliamentary committees include:*
 - o *Inquiry into safe injection clinics*
 - o *Inquiry into proposal for drug testing for those on unemployment benefits*

SAMPLE RESPONSE:

One recent example is the Royal Commission into the Management of Police Informants. It was to investigate how people are recruited to serve as police informants and how such informants are managed. It was recommended that Victoria Police be more ethical in how it does this process, to ensure that lawyers are not recruited, as informing police would go contrary to their obligations to clients.

- b. Describe how the role of the media helped or could have helped the above example generate actual law reform. 3 marks

1 mark – outline about how the media can promote law reform

1 mark – further description as to how

1 mark – description is linked to this recent example

SAMPLE RESPONSE:

Through reporting on the issue in various formats (newspaper articles, television programs, radio talk shows), the media could help pressure the government to reform procedures at Victoria Police. This is because the public were made aware about problems surrounding how Victoria Police was using informants. Therefore, there was increased public pressure for reforms to follow to make sure that community standards are upheld surrounding how lawyers conduct themselves. Additionally, community concerns resulted because of the potential for high profile convictions to be overturned due to tainted evidence.

Question 5 (3 marks)

Describe how parliament has supremacy over the judiciary.

1 mark – stating a reason how/why parliament has supremacy

1 mark – further outline

1 mark – further description

SAMPLE RESPONSE:

Parliament has supremacy because ultimately, it is responsible for making the law, whereas the judiciary is responsible for interpreting and applying the law to actual cases. Therefore, courts are reliant on statute law when forming interpretations, and need to reasonably base their decisions on statute law to develop common law. A judge cannot simply disregard statute law because of a difference of opinion. If a court forms an interpretation that parliament does not approve of, parliament can abrogate such common law as well.

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:**

Two men accused of raping a woman in Balmoral will have their case heard for a fourth time after the jury was discharged without verdict today (April 17 2022).

Judge Mark Dean declared the trial had miscarried in the County Court in Bendigo this morning, after it emerged one of the jurors did their own investigation directly related to evidence given in the trial.

The two men are accused of raping a woman in Balmoral in April 2016.

The Bendigo Advertiser reported earlier this week that the judge urged the jury not to compare their roles to that of "true crime podcast" producers.

"In this instance, the juror conducted an experiment at 4.30am, which is when the alleged offending occurred ... in relation to the available lighting in the caravan," Judge Dean said.

"There is strong public interest that juror abide by directions judges give them

"The fundamental reason is to provide a fair trial for the accused.

'Rape trial abandoned for third time after juror's 'flagrant breach' of judge's directions', A Darling, A Burns et al, ABC, 7 April 2022,

< <https://www.abc.net.au/news/2022-04-07/bendigo-rape-trial-abandoned-after-juror-breaches-instructions/100973386>>

Source 2:

More than one in five criminal and civil jury trials have been "discharged" since 2017 due to some fatal flaw in the process – illness, accidents, misconduct or incompetence in how a trial was conducted or the behaviour of people associated with it.

Against the rules, jurors conduct their own research or read media reports of the trial they are involved in. Jurors have been sacked for falling asleep during cases or accepting a throat lozenge from an associate of the accused.

University of Melbourne professor Jeremy Gans, who wrote the book *The Ouija Board Jurors* about a famous English case of jury misbehaviour, said judges essentially have to ensure things don't go too far with juries.

Members of the public have also forced discharges for shouting "he's guilty" within hearing of the jury room. The media has also irrevocably corrupted trials by publishing damaging information that was not before the jury.

‘ ‘Weird things happen’: Inside the jury room and why sometimes trials are aborted’’, C Vedelago & A Cooper, The Age, 7 February 2022,
< <https://www.theage.com.au/national/victoria/weird-things-happen-inside-the-jury-room-and-why-sometimes-trials-are-aborted-20211220-p59iy2.html>>

- a.** Outline **one** role of a jury in criminal cases and discuss how that role can help fulfil the principle of equality. 5 marks

1 mark – one role of a jury outlined

2 marks – explanation about how the role connects to equality (1 mark for a brief outline and/or lack of connection to equality)

2 marks – explanation about how the role is limited in connecting to equality (1 mark for a brief outline and/or lack of connection to equality)

Note:

- *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 role is mentioned, then only the first one can be considered for marking*
- *Possible roles include: to listen to evidence, to follow the judge’s directions, to deliver a verdict*

SAMPLE RESPONSE:

One role of the jury is to listen to evidence. This involves carefully listening to evidence presented during the trial and seeing how that evidence applies to determine if an accused is guilty or not guilty. For instance, the jury in the Balmoral rape case in source 1 would have the role of considering various forensic evidence and witness testimony pertaining to that case. This role helps meet equality because it ensures that juries have consistently consider the evidence in different cases. This means that different trials will have juries observing this role, which can result in a fairer analysis and therefore verdict across different trials. However, this role is limited in meeting equality due to the difficulty faced by juries in properly undertaking this role. Some jurors have gone beyond considering the evidence they are meant to consider in the trial but have also done their own unauthorised investigations (such as about a location’s lighting) about the case which can unduly influence them. Therefore, some trials have had the misfortune of having juries not fulfilling their roles properly, whereas other trials have had no such issues.

- b.** Outline a potential role of juries in civil cases that is not a role in criminal cases. Explain how this role could have an unfair impact. 4 marks

1 mark – outline of a role, relevant for civil cases, but not relevant for criminal cases

1 mark – stating a reason why this role could be problematic

1 mark – further outline as to why

1 mark – further explanation as to why, with clear reference to the concept of unfairness

Notes

- *Not any role is acceptable for this response. The one role that stands out is: deciding on damages.*
- *For some roles, it might depend on how it is used in the response, so long as it is connected to a civil case. For instance, the role of delivering a verdict can be sufficiently distinguished*

through highlighting how it is based on the 'balance of probabilities', instead of 'beyond reasonable doubt'.

SAMPLE RESPONSE:

A potential role involves deciding on damages to be awarded, which is a type of consequence following a plaintiff successfully proving their case. In criminal law however, only the judge will decide the consequences (known as sanctions) in the event of a guilty verdict (such as a term of imprisonment, if the accused were found guilty of rape in the source 1 case), and never the jury. This role in a civil case could have an unfair impact due to juries miscalculating an appropriate amount of damages. There are various complexities in calculating damages, especially when approximations must be made. Since jurors are inexperienced in comparing their assigned case to other like cases (something a judge would be experienced with instead), damages might be overestimated or underestimated, resulting in unfairness either to the defendant or plaintiff respectively.

- c. Describe how **one** right of victims and **one** right of the accused can be impacted if juries do not fulfil their roles properly. 6 marks

1 mark – stating how a right of victims could be impacted

1 mark – further outline as to why

1 mark – further description as to why, with clear connection to the roles of juries

1 mark – stating how a right of the accused could be impacted

1 mark – further outline as to why

1 mark – further description as to why, with clear connection to the roles of juries

Note:

- *If more than one role is mentioned for each, only the first can be considered for marking*
- *The question is about the impact on the rights mentioned, as opposed to describing the rights in general.*
- *1 mark can be awarded if the rights are outlined only in general*
- *Possible rights for the victims: to give evidence as a vulnerable witness, to be informed about the likely release date of the accused, to be informed about the proceedings*
- *Possible rights for the accused: right to be tried without unreasonable delay, right to a fair hearing, right to a trial by jury*

SAMPLE RESPONSE:

One right of victims is to give evidence as a vulnerable witness. This involves special methods of giving evidence being approved by the court for victims who meet a specific criteria. For instance, purported sexual assault victims (such as the woman in source 1) would not have to give evidence in the normal format, but might do so via video conference, and might not have to be cross examined. If a jury does not fulfil its role, to the point of requiring retrials for a fourth time, then this right is hard to apply, as giving evidence as a vulnerable witness will be deeply traumatic due to the repetition involved, even if such special considerations are made. One right of the accused is to be tried without unreasonable delay. When juries do not fulfil their role properly, requiring retrials, then this is not reasonable because it is the result of a jury unreasonably failing in its essential responsibilities to consider evidence in the context of the courtroom only. Such delays

follow a dereliction of duty, which are not reasonable or unavoidable delays which sometimes can happen due to backlogs.

- d.** Outline **one** recommended reform in the criminal justice system that could help address concerns about juries not fulfilling their roles properly. Describe how the Victorian Law Reform Commission could potentially encourage this reform to be implemented.

5 marks

2 marks – outline of a recommended reform (1 mark for stating it)

1 mark – stating how the VLRC could encourage its implementation

1 mark – further outline about this

1 mark – further description about this

Note:

- *If a recent reform is mentioned, instead of a recommended reform, then the second part of the question (“describe how”) can still be given 3 marks.*
- *Possible recommended reforms include:*
 - *Continued expansion of the Koori Court*
 - *Judge-alone trials*
 - *Increased funding for legal aid, legal centres and other services*
- *If more than one reform is mentioned, then only the first one can be considered for marking*
- *Possible ways the VLRC could encourage its implementation*
 - *by being asked to investigate the issue by the government, it increases likelihood of its advice being followed*
 - *VLRC collecting evidence from qualified experts, as well as those affected by the issue in question, and therefore this can increase the VLRC’s perspective being seen as valid*
 - *increasing public awareness which can then cause politicians to be influenced*

SAMPLE RESPONSE:

One recommended reform is judge alone trials. This will involve a trial where a jury is not present, and in which the judge will fulfil the role of the jury in considering the evidence and delivering a verdict. Such trials could occur when there is significant media coverage about it, this could tempt jurors to “conduct their own research” about it, leading to misleading considerations about the actual evidence. The Victorian Law Reform Commission [VLRC] could encourage this reform to be implemented through recommending its implementation. Governments are likely to seriously consider and act upon such recommendations, because the VLRC is tasked to investigate the issue by the government itself. Additionally, due to the careful research undertaken by the VLRC, by consulting various experts and people affected by the issue, the recommendations following this carry much weight.

Question 2 (20 marks)**Source 1:**

The following table shows the results of a proposed referendum, in which the Australian population was asked the following question:

“Should all residual powers be reclassified as concurrent powers?”

Region	Percentage voting “yes”	Percentage voting “no”
Victoria	27%	73%
Tasmania	65%	35%
Queensland	54%	46%
New South Wales	41%	59%
Northern Territory	88%	12%
Western Australia	49%	51%
Australian Capital Territory	58%	42%
South Australia	72%	28%
Australia overall	53%	47%

Source 2:

This Constitution shall not be altered except in the following manner:

The proposed law for the alteration thereof must be passed by an absolute majority of each House of the Parliament, and not less than two nor more than six months after its passage through both Houses the proposed law shall be submitted in each State and Territory to the electors qualified to vote for the election of members of the House of Representatives.

‘Mode of altering the Constitution’, Section 128, Australian Constitution

- a.** Explain the double majority requirement for referendums. In reference to this, justify if this referendum would have been successful. 5 marks

1 mark – outlining the requirement for a majority of states

1 mark – outlining the requirement for a majority of Australians overall

1 mark – stating whether this referendum would be successful or not

1 mark – reference to one majority in justification

1 mark – reference to the other majority in justification

Notes:

- *The justification ought to refer specifically to the stimulus material, otherwise the justification will lack detail for full marks*
- *Students should be mindful that the territories do not count as states*

SAMPLE RESPONSE:

Two majorities are required for a referendum to be successful. The first majority involves the majority of Australians voting in favour of it. The second majority involves the majority of Australians in the majority of states voting in favour of it, which means at least four out of six states. This referendum would not have been successful because the double majority requirement was not met. Whilst most Australians overall voted in favour (53%), this is not sufficient, because the majority of states needed to as well. In this case, only three out of six states voted in favour it (Tasmania, Queensland, South Australia), whilst the other three states voted against it (Victoria, New South Wales, Western Australia).

- b.** Analyse the extent to which political pressures can impact whether a referendum is put to the Australian people. 6 marks

Mark globally

Mark Allocation	Descriptor: typical performance in each range
<i>5-6 marks</i>	• <i>Clear statement about the “extent”, which is also reflected across the response</i> • <i>Very well explained conceptual clarity between political pressures and the impact of this on a referendum resulting, considering different facets of their inter-connection</i>
<i>3-4 marks</i>	• <i>Fairly clear statement about the “extent”, which is somewhat reflected across the response</i> • <i>Reasonably explained conceptual clarity between political pressures and the impact of this on a referendum resulting</i>
<i>1 - 2 marks</i>	• <i>Response provides knowledge of the concept of “political pressures”, but does not analyse these in reference to a referendums</i> • <i>Response does not clearly address the “extent”</i>

0 marks***Response does not relate to any elements of the question or no attempt to answer the question******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 political pressures, which has aspects that can promote referendums but also not promote them.***
- ***Possible reasons how political pressures can have an impact either way:***
 - ***Desire to follow through with election promises, to be better positioned for future elections***
 - ***Pressure from cross benchers during a minority government***
 - ***Organisations advocating either way***
 - ***Desire to vote on party lines***
 - ***Pressures from international bodies***

SAMPLE RESPONSE:

Political pressures can impact to a certain extent about whether a referendum is put to the Australian people, depending on what the referendum is about and what priorities people have. For instance, if a party promised a referendum prior to being elected into government, it would be pressured to follow through with this promise to gain favour for a future election on the basis that it keeps its promises. However, if it was a minority government, it might struggle to pass it through parliament (as an “absolute majority” is required), which is a requirement before Australians get to vote on it. Additionally, even if it is not a minority government, individual politicians can cross the floor and vote against the general policy of the party (which might be in favour of putting a referendum to the Australian people). Organisations and lobby groups can pressure parliament to allow a referendum to take place. The extent to which parliament will be influenced by this will depend on how much popular support such organisations have, along with considering how different organisations might be lobbying for different outcomes – with some wanting a referendum, and others not wanting it.

- c. Discuss the impact of international treaties on the external affairs power if this referendum occurred and was successful. 6 marks

2 marks – how international treaties impact the external affairs power (1 mark for a brief outline)

1 mark – based on this referendum being successful

2 marks – how international treaties are limited in impacting the external affairs power (1 mark for a brief outline)

1 mark – based on this referendum being successful

Notes:

- *If one side of the discussion is answered in significant detail, it can be given 4 marks; in which case, 2 marks are sufficient for the other side of the discussion*
- *The question requires students to synthesise a proposed referendum being successful, and the consequent impact on how international treaties impact the external affairs power.*
- *Possible reason how the impact on the external affairs power could be limited:*
 - *No need to use the external affairs power, through appealing to international treaties signed, due to concurrent powers being sufficient to override state laws in what were previously residual matters*
- *Possible reason how the impact on the external affairs power might not be limited:*
 - *Commonwealth parliament might not wish to excessively use its power to pass laws in concurrent matters, but might prefer to appeal towards implementing international treaties signed instead, as this might prove to be a more popular basis behind passing a law*

SAMPLE RESPONSE:

If this referendum succeeded, it would give Commonwealth Parliament [CP] the power to make laws in areas that were previously residual matters, but now reclassified as concurrent. Therefore, if CP wanted to make a law that was contrary to an existing state law, it would have the power to override it based on Section 109 of the Australian Constitution, to the extent that the Commonwealth law contradicts the state law. As a result of this, there would be no need to appeal to international treaties to make use of the external affairs power. This is because the Commonwealth would automatically have the right based on Section 109, since there would no longer be residual powers in the first place. However, CP might not always want to appeal to Section 109 of the Constitution, because this might be seen to be arrogant and potentially problematic for upcoming federal elections. Therefore, CP might still base a law in reference to the external affairs power instead, by stressing the importance of Australia being a positive member of the international community through making international agreements binding in Australian law.

d. Describe the role of the Crown in law making.

3 marks

1 mark – stating how the Crown has a role

1 mark – further outline

1 mark – further description

Note:

- *Possible roles that could be referred to*
 - *Granting royal assent*
 - *Withholding royal assent*

SAMPLE RESPONSE:

The role of the Crown is either granting or withhold royal assent, after a bill has passed through both houses of parliament. Granting royal assent involves allowing the bill to pass into law but withholding it will stop it from becoming law. In practice, the Crown will tend to always grant royal assent. For example, if the hypothetical referendum in Source 1 was successful, there could be several bills passed through both houses of Commonwealth Parliament in matters that were

previously classified as residual for the states. The Crown, through the Governor General, would then likely be granting royal assent to such bills.