

LEGAL STUDIES

Unit 3&4 Examination 3

MARKING GUIDE

SECTION A**Instructions for Section A**

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

Question 1 (5 marks)

a. Describe **one** recent reform to the criminal justice system.

3 marks

1 mark –stating a recent reform

1 mark – outline of this reform

1 mark – further description of this reform

Notes:

- *If more than one reform is mentioned, then only the first one can be considered for marking*
- *No marks should be awarded if a recommended reform is given*
- *Possible reforms include:*
 - *Expansion of the Koori Court (2020)*
 - *Victim Support Dog Program (2019)*
 - *Changes to committal proceedings for some sexual offence matters (2018 and 2020)*

SAMPLE RESPONSE:

One recent reform is the Victim Support Dog Program. This involves vulnerable witnesses being able to have a dog nearby to provide them comfort while giving evidence, which can be traumatic to do, especially with offences of a sexual nature. Studies have shown that the presence of a dog helps to make the process of giving evidence less stressful. The dog is situated in a manner where it does not interfere with court proceedings, e.g.: by being out of view for others, but not for the victim, when evidence is given remotely.

b. Outline how this reform could help address time issues.

2 marks

1 mark – stating how the reform could address time issues

1 mark – further outline as to how

SAMPLE RESPONSE:

It allows for vulnerable witnesses to give evidence in a timelier manner because it will be a less traumatic experience for such witnesses, leading to less delays and hesitation throughout the process of giving evidence. Therefore, the trial will be resolved at a faster pace overall, alleviating time pressures on the criminal justice system.

Question 2 (3 marks)

Distinguish between the burden of proof and standard of proof in criminal cases.

1 mark – defining the burden of proof

1 mark – defining the standard of proof

1 mark – clear articulation of the difference

SAMPLE RESPONSE:

The burden of proof relates to who has the responsibility of establishing the guilt of the accused, and this responsibility lies with the Prosecution. However, the standard of proof relates to the nature or extent of the proof required, which in a criminal case is beyond reasonable doubt, meaning there can't be any rational reason to doubt the guilt of the accused. Whilst the burden of proof is identified with the prosecution as a party, the standard of proof is the type of proof that needs to be established.

Question 3 (8 marks)

a. Outline 'division of powers'.

2 marks

1 mark – stating what the division of powers is about

1 mark – further outline of the concept

SAMPLE RESPONSE:

Division of powers relates to the power of parliaments to pass laws in different matters. The Australian Constitution gives different areas of law-making responsibility to commonwealth and state parliaments respectively. They are divided up into exclusive powers (for the commonwealth only), concurrent powers (for the commonwealth and states), and residual powers (for the states only).

b. Discuss how **one** High Court case has impacted the division of powers.

6 marks

Mark globally

Mark Allocation	Descriptor: typical performance in each range
5-6 marks	<i>Clear reference to a High Court case, with thorough detail given about it throughout the response, in a way that is relevant for the discussion</i> <i>Comprehensive discussion about how the High Court case impacted the division of powers, but also how it was limited</i>

	<i>in its impact</i>
3-4 marks	• <i>Some reference to a High Court case, with reasonable detail given about it throughout the response, in a way that is relevant for the discussion, but might lack some clarity about the complexities involved in the case</i> • <i>Reasonable discussion about how the High Court case impacted the division of powers, but also how it was limited in its impact</i> • <i>If discussion is completely one sided, then marks cannot exceed this range</i>
1 - 2 marks	• <i>A High Court case is summarised only, but no discussion is provided</i> OR • <i>A very basic discussion is provided, but only states one or two points</i>
0 marks	<i>Response does not relate to any elements of the question or no attempt to answer the question</i>

Notes:

- **Possible cases could be:**
 - *McBain v Victoria (2000) [infertility case]*
 - *R v Brislan (1935)*
 - *New South Wales v Commonwealth (2006) [WorkChoices case]*
 - *Commonwealth v Tasmania (1983) [Dam case]*

SAMPLE RESPONSE:

One case is *R v Brislan (1935)*, which was about whether Commonwealth parliament [CP] could legislate about radios. CP passed a law called the Wireless Telegraphy Act (1905) which required all owners of a radio to hold a license. This case involved someone being charged for not having such a licence. CP believed it had the right to pass laws about radios on the basis that the Australian Constitution [AC] allows CP to pass laws about postal, telegraphic, telephonic and other like services. However, the defendant argued that radios are not a service, and are not named in the Constitution as a concurrent power. However, the High Court determined that radios came under “other like services” due to it being a communicative device as the other services listed. Therefore, this case is significant as it expanded the scope for CP to make laws about anything that is a communicative device, now deemed to be covered by this section of the AC. Instead of radios or other communicative devices being regarded as residual powers, it was determined that they are concurrent powers due to being linked to this section of the AC. Owing to increases in technology, the principles established in this case presumably give wide ranging powers to CP to anything that can be used for communication, such as the internet, mobile phones, apps etc, allowing for CP to generate national consistency in laws

for such matters. However, such extrapolations might not be automatic, and could potentially be challenged in future cases, which could potentially put limitations on CP. Also, this issue relates to a specific area of concurrent powers, and therefore does impact other areas of concurrent power.

Question 4 (12 marks)

Javier pled guilty to two counts of armed robbery. The alternative was to stand trial for three counts of armed robbery, and one count of aggravated burglary. His legal team argued for a community corrections order due to its increased potential to rehabilitate him.

a. Outline **one** mitigating factor in this case.

2 marks

1 mark – stating a mitigating factor

1 mark – further outline of it

Notes:

- *If more than one mitigating factor is referred to, only the first can be considered for marking*
- *Mitigating factor in this case relates to the guilty plea. Other examples would not be relevant for “this case” as required by the question*

SAMPLE RESPONSE:

One mitigating factor was Javier’s guilty plea, through which the court’s time has been freed up for other cases, as this case would now go to a sentence hearing without the need for a trial. This makes Javier deemed to have some consideration and respect to the legal system which would consequently be a factor that leads to a more lenient sentence.

b. Discuss how plea negotiations can meet **one** principle of justice, based on a victim's perspective.

6 marks

1 mark – outlining why plea negotiations are beneficial

1 mark – further detail in reference to a principle of justice

1 mark – further detail in reference to a victim’s perspective

1 mark – outlining why plea negotiations are not beneficial

1 mark – further detail in reference to a principle of justice

1 mark – further detail in reference to a victim’s perspective

Notes:

- *If one side of the discussion is answered in significant detail, it can be awarded 4 marks; in which case, 2 marks are sufficient for the other side of the discussion*
- *Principles of justice to choose from: equality, fairness, access.*

- *If more than one principle of justice is referred to, then only the first can be considered for marking*
- *Possible reasons why plea negotiations are beneficial for victims*
 - *No need to give evidence in trial, which can be traumatic*
 - *Time saved to resolve the case, due to no trial*
 - *Sanction guaranteed, as opposed to a trial where a not guilty verdict is possible*
- *Possible reasons why plea negotiations are not beneficial for victims*
 - *Gives the accused an opportunity to plead guilty to a less serious crime to what they did*
 - *Lack of consultation for the victim in the plea negotiation process*
 - *Less serious sanction, due to lesser/fewer charges, compared to being found guilty in a trial for greater/more charges.*

SAMPLE RESPONSE:

Plea negotiations are beneficial as it means that victims of crime do not have to give evidence at a trial, which can be a traumatic experience in which they are forced to relive their sufferings. This meets the principle of fairness because it ensures that victims do not continue to suffer through the justice system which should be aimed at promptly resolving the case. The case would be promptly resolved because it would proceed to a sentencing hearing, which fairly allows the victim to move on with their lives sooner. However, plea negotiations will tend to result in a less serious sanction or sentence. A victim could view this as unfair because it allows the offender to get away with what they have done and not face more serious consequences. Additionally, plea negotiations can lower the number of charges, for instance, from three counts of armed robbery to two. This is exceptionally unfair to the group of victims of the armed robbery that was removed from the charges, who therefore will not have their experience recognised in the administration of justice.

- c. Apart from rehabilitation, justify how a community corrections order could meet **two** other purposes behind sanctions. 4 marks

2 marks – justification about another purpose (1 mark for a brief outline)

2 marks – justification about another purpose (1 mark for a brief outline)

Notes:

- *Other purposes to choose from include: protection, punishment, deterrence, denunciation*
- *If more than two other purposes are mentioned, only the first two can be considered for marking*

SAMPLE RESPONSE:

A community corrections order [CCO] can meet the purpose of deterrence because it still places restrictions on the offender. Such restrictions can include being prevented from associating with certain people, going to certain places, and being required to report to a police station on a regular basis. This can disrupt someone's ordinary way of living their life, and will therefore act as a specific deterrent against future offending. Also, a CCO can meet the purpose of punishment. Through such inconveniences such as having to avoid certain suburbs or people, report to police stations, and undergo unpaid community service, the offender cannot live an ordinary free life, even though they

are in the community. Others around them might live a free life, but the offender's schedule needs to fit around the CCO, which is a punishment as it diminishes freedom.

Question 5 (10 marks)

"The existence of courts allows laws to become a lived reality, and not just words on a page."

Evaluate how the doctrine of precedent assists courts in making law, and how the Australian Constitution can be protected through courts.

Mark globally

Marks	Descriptor: typical performance in each range
9-10 <i>Very High</i>	• <i>Comprehensive evaluation, considering how precedent helps/does not help courts with making law, and how the Australian Constitution can be protected by courts/not be protected by courts</i> • <i>Very well summarised overall statement</i> • <i>In depth knowledge displayed throughout response, in a relevant way, regarding the doctrine of precedent and the role of the courts</i>
7-8 <i>High</i>	• <i>Thorough evaluation, considering how precedent helps/does not help courts with making law, and how the Australian Constitution can be protected by courts/not be protected by courts</i> • <i>Well summarised overall statement</i> • <i>Very good knowledge displayed throughout response, in a relevant way, regarding the doctrine of precedent and the role of the courts</i>
5-6 <i>Medium</i>	• <i>Reasonable evaluation, considering how precedent helps/does not help courts with making law, and how the Australian Constitution can be protected by courts/not be protected by courts</i> • <i>Overall statement present, but might be superficial</i> • <i>Some knowledge displayed throughout response, in a somewhat relevant way, regarding the doctrine of precedent and the role of the courts</i> • <i>Evaluation might only consider one side of the issue</i> • <i>Evaluation might only consider one part of the question: doctrine of precedent, or how courts protect the Constitution, but <u>not</u> both</i>
3-4 <i>Low</i>	• <i>Superficial evaluation, which does not properly incorporate the concepts in a meaningful way</i> • <i>The response reads more as a summary about both the role of the courts and the doctrine of precedent, with a limited evaluation contained</i>
1-2 <i>Very Low</i>	• <i>Some key terms are defined, but no evaluation is present</i>

0

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

Notes:

- *Possible reasons how doctrine of precedent can assist with law making:*
 - *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 reversing and overruling precedents set by lower courts,*
 - *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*
 - *Binding precedents limit the scope for lower courts to reform the law through setting their own precedents distinct from such binding precedents*
- *Possible ways the courts help protect the Australian Constitution*
 - *High Court declaring legislation ultra vires if it contradicts the Constitution*
 - *Ability to use the courts when having standing*
 - *Mere existence of judiciary discourages legislature from passing legislation contradicting the Constitution*
- *Possible ways the courts are limited in helping protect the Australian Constitution*
 - *No guarantee High Court would declare legislation ultra vires, owing to personal bias / activist considerations, that are not consistent with the Constitution*
 - *Requirement for standing limits the potential people who can challenge problematic legislation*
 - *Cannot stop the will of the Australian people to change the Constitution through a referendum*

SAMPLE RESPONSE:

The doctrine of precedent helps court make law through enabling higher courts to reverse or overrule precedents set through lower courts. As a result of this, common law is developed. Precedents themselves involve the mechanism of providing a ratio decidendi (reason for the decision) which will develop the meaning of statute law in its application to specific situations, thereby making laws become a “lived reality”. Moreover, precedents are not limited to making law via common law, but can influence parliament to amend statute law through codification of a precedent (if parliament agrees with it). However, precedents can only be issued insofar as cases come before the courts. The requirement for standing places a limitation on the cases that will be heard, because only those affected by the issue at stake (at a greater level to how anyone in the general population could be affected) can bring the case to court. Additionally, lower courts are restricted to make law through developing precedents due to being required to follow binding precedents issued by higher courts in the same hierarchy. Therefore, in practice it is only the higher courts that will have a meaningful role in making law, and not courts more generally. Additionally,

courts can play a significant role in protecting the Australian Constitution [AC]. Since the AC is the most foundational legal document, the courts allow for it to be a “lived reality” through ensuring that the legislature does not overstep its authority. This is done through declaring statute law from parliament ultra vires if it contradicts the AC. Anyone with standing has the right to have their case heard if they believe their constitutional rights are being infringed upon. Moreover, since the legislature will know the likely result of unconstitutional laws being overturned by the High Court, it is less likely to pass such laws in the first place. However, the High Court is still limited in protecting the AC in this manner because the legislature still has the power to pass such unconstitutional laws in the first place, so long as they pass both houses of parliament and receive royal assent. If no case comes before the High Court about it, the matter will not be rectified. Moreover, even if someone with standing takes the case to the High Court, there is no guarantee that the justices will recognise that such laws contradict the AC, possibly due to personal bias clouded with an excessively activist approach. Overall, courts certainly are enabled to make law through precedents and protect the AC, even if there are some limitations resulting from the processes involved.

Question 6 (2 marks)

"In the Victorian Parliament, the Senate acts as a house of review to ensure that legislation is appropriate for rural areas as well as urban areas."

Identify and correct **one** error in the above extract.

1 mark – stating an error

1 mark – correcting an error

SAMPLE RESPONSE:

The error is referring to the “Senate” acting as a house of review in the Victorian Parliament. The upper house in Victorian Parliament is known as the “Legislative Council”, not the “Senate”.

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 (24 marks)**Source 1:**

Kevin Green's nose stings before he's opened his eyes.

It's a yeasty, grainy smell with a sharp chemical undertone, like a cocktail of hops at a brewery on a warm day, rotting fruit and bleach. And during the night, it crawled up his nostrils again.

In recent years, the 59-year-old has taken to documenting those bad nights. As most of the town of Numurkah sleeps, Mr Green pulls out his Android phone and films.

About 120 metres to the east, across the road and a patch of grassland, stand the metallic silos and heavy machinery of the GrainCorp Oilseeds refinery.

It's one of the country's largest oilseed processors, heating then crushing primarily canola seed using chemicals and solvents. The result is components for cooking oil, spreads, animal feed, fuels and more. The human result is a town divided: some Numurkah locals tell stories of friends and family refusing to ever visit them because of the refinery's odours and noise. Others never notice the stench.

Mr Green has hired a lawyer to commence Supreme Court proceedings against the \$2 billion-valued GrainCorp. He is seeking damages for nuisance and negligence.

Victoria's Environment Protection Authority has been Numurkah's mediator so far.

'In tiny Numurkah, Kevin has been fighting GrainCorp for years. Now David is suing Goliath', M Fowler, The Age, 11 March 2022,
<<https://www.theage.com.au/national/victoria/in-tiny-numurkah-kevin-has-been-fighting-graincorp-for-years-now-david-is-suing-goliath-20220308-p5a2y0.html>>

Source 2:

Where in relation to a claim for damages for deprivation or impairment of earning capacity or for other personal injury it becomes material to assess such damages having regard to loss of earnings or of future probable earnings, there shall be taken into account in reduction of the sum assessed such amount as is reasonably considered to be the amount that would have been payable as income tax by reason of the receipt of such earnings by the person who has suffered loss of them had he received them.

'Damages for deprivation or impairment of earning capacity', Section 28A, Wrongs Act 1958

a. With reference to source 1, provide two reasons why this is a civil dispute.

4 marks

1 mark – one reason outlined

1 mark – connection of reason to source material

1 mark – another reason outlined

*1 mark – connection of reason to source material**Note:*

- *When approaching this question, students should consider key terms in source 1 which indicate its relation to civil law. Examples include: overall it is a dispute between individuals/groups, specific references to damages, nuisance, negligence, mediation*

SAMPLE RESPONSE:

One reason this is a civil dispute is due to the request for damages, which would involve a payment of money from the defendant (Graincorp) to the plaintiff (Kevin Green). Damages are only relevant in civil cases, and not criminal cases. In criminal cases, financial consequences will involve fines paid to the government. Another reason this is a civil dispute is the possibility of mediation taking place, with is a dispute resolution process used in civil cases as an alternative to a court trial. The Victorian Environment Protection Authority has offered to be the mediator in this dispute.

- b.** Discuss the ability of general damages in fulfilling their purpose.

4 marks

2 marks – how general damages can fulfil their purpose (1 mark for a brief outline)

2 marks – how general damages can be limited in fulfilling their purpose (1 mark for a brief outline)

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*
- *How general damages can help*
 - *Helps approximate pain and suffering / future earnings, which can be alleviated through monetary gain*
 - *Monetary gain can help generate greater enjoyment in life, to offset pain suffered*
- *How general damages might not help*
 - *Pain and suffering might be beyond repair where money cannot fix it*
 - *The amount of damages awarded might not be approximated properly in terms of future earning capacity*

SAMPLE RESPONSE:

General damages aim to compensate for something that cannot be precisely calculated, such as “future probable earnings”, as it is not possible to know exactly what someone might have been able to earn in the future if they were not wronged in the current case. Kevin Green could benefit from general damages because he has been suffering from the chemicals used by Graincorp which could be having long lasting health impacts on him, preventing his capacity to earn in the future. Such a future earning capacity could be approximated, allowing him to be adequately compensated. Additionally, pain and suffering from such negligence and nuisance would be alleviated through money being paid to compensate for this. However, general damages are hard to calculate, and therefore the approximations might be incorrect by either overestimating or underestimating Kevin

Green's level of pain and suffering and future earning capacity. Therefore, it could overcompensate or under compensate, which is contrary to its purpose of appropriate compensation.

- c. Describe how mediation could be used to resolve this dispute. Propose and justify a different dispute resolution method in your response. 5 marks

2 marks – how mediation could help solve this dispute (1 mark for a brief outline)

1 mark – stating an alternative method

2 marks – justifying this alternative method (1 mark for a brief justification)

Note:

- *The other methods are: conciliation, arbitration*

SAMPLE RESPONSE:

Mediation would involve an impartial third party who will facilitate discussions between Kevin Green and Graincorp. This will involve ensuring the discussion is fairly conducted so both sides can get their say in a constructive environment. The Victorian Environmental Protection Authority has offered to be this third party in this case. Another method is conciliation. This would be more beneficial because the third party in this method, known as the conciliator, is able to offer suggestions about how to resolve the dispute. This would give Kevin Green and Graincorp ideas to consider that might be suitable, involving compromise solutions that neither had thought of. Therefore, it could help the two parties achieve a resolution their dispute sooner, without resorting to future costs in a long drawn-out dispute.

- d. What is **one** reason for statutory interpretation? In reference to source 2, provide **one** example of what might need statutory interpretation. 3 marks

1-2 mark – providing a reason for statutory interpretation

1-2 marks – providing an example (1 mark for referring to it, 1 mark for linking it to the reason provided)

SAMPLE RESPONSE:

One reason for statutory interpretation is that words can be ambiguous, or unclear in precisely what is meant by them. One example in source 2 is the phrase “future probable earnings”. It is unclear how exactly to determine what will constitute future earnings to be “probable” or likely, because the concept of probability involves various degrees, from ‘somewhat likely’ to ‘very likely’.

- e. If the matter proceeds to court, pre-trial procedures will be necessary.

Explain **one** purpose of the discovery of documents and evaluate this purpose in its ability to meet the principle of equality. 8 marks

2 marks – explanation of a purpose (1 mark if a purpose is just stated)

1 mark – outlining a benefit of this purpose

1 mark – further explanation of this benefit or another

1 mark – link to equality

1 mark – outlining a negative of this purpose

1 mark – further explanation of this negative or another

1 mark – link to equality

Notes:

- **Possible purposes include:**
 - *Disclosing all relevant documents*
 - *Reduce surprise in the trial*
 - *Determining the strength of the other side's case*
 - *Assisting with reaching an out of court settlement*
- *If more than one purpose is referred to, then only the first can be considered for marking*
- *If one side of the evaluation is answered in significant detail, it can be awarded 4 marks; in which case, 2 marks is sufficient for the other side of the evaluation*
- *Maximum of 7 marks if no overall statement is present*

SAMPLE RESPONSE:

One purpose involves reducing surprise in a trial. This is because all relevant documentation is revealed to each side prior to the trial, with the plaintiff receiving copies of relevant documents from the defendant and vice versa. Therefore, parties can effectively prepare for the trial in the knowledge that all relevant documentation has been disclosed. Reducing surprise in a trial meets the principle of equality because it applies to both parties. Both parties receive copies of each other's documents and therefore both will not be surprised by new documents emerging. For instance, Kevin Green might have documentation establishing how his health was impacted based on a likely cause of Graincorp's activities. Graincorp might have documentation establishing that it has properly adhered to environmental regulations. Both Kevin Green and Graincorp will know about each other's documents. As a result of this, both can participate in their trial with the best preparation possible, which increases the chance for a correct outcome. However, reducing surprise in a trial does not ensure equality between the parties, as there are other factors that lead towards inequality, such as incomparable legal representation. Graincorp might afford very experienced legal representation, beyond what Kevin Green can afford. Therefore, Kevin Green's legal representation might be feeling surprised by the expertise and convincingness of Graincorp's legal team.

Question 2 (16 marks)**Source 1:**

The following is a hypothetical breakdown of elected representatives in Commonwealth Parliament.

House of Representatives

Party	Number of seats held
<i>Coalition</i>	78
<i>Australian Labor Party</i>	62
<i>One Nation</i>	3
<i>Greens</i>	2
<i>United Australia Party</i>	2
<i>Independents</i>	4

The Senate

Party	Number of seats held
<i>Coalition</i>	32
<i>Australian Labor Party</i>	31
<i>One Nation</i>	4
<i>Greens</i>	5
<i>United Australia Party</i>	3
<i>Independents</i>	1

Source 2:

The following extract details a hypothetical bill:

The *Respect Australia Bill*, introduced in parliament by a Coalition MP, aims to boost support for the Australian Defence Force, through additional funding and by phasing in compulsory military service for Australian citizens between the ages of 18 and 23.

Unless an exemption applies, there would be a requirement to serve in the Australian Defence Force for one year within this age range.

One Nation has expressed support for the bill, and the United Australia Party has requested modifications in the form of greater exemptions. Meanwhile, the Australian Labor Party and the Greens have vowed to vote against the bill. Independents have not yet stated whether they support the bill.

- a. Do you think the Respect Australia Bill would successfully become law? Justify your response in reference to Source 1. 5 marks

2 marks – justification in reference to lower house (1 mark if lacking detail)

2 marks – justification in reference to upper house (1 mark if lacking detail)

1 mark – clear statement about whether it would be successful, in your view

Notes:

- **Considerations for Lower House**
 - *Coalition governs in its own right, and so has the numbers to pass it through. One Nation's support solidifies this in case of members 'crossing the floor'*
 - *Support could be even higher, if some independents support this, along with the United Australia Party*
- **Considerations for Upper House:**
 - *Coalition does not have a majority, and so would require support from minor parties/independents*
 - *Even if all Coalition and One Nation senators vote in favor, it is 36 votes. With Greens and Australian Labour Party opposing, it is 36 against. Therefore, it would come down to independents and United Australia Party.*
 - *Modifications to the bill could help obtain United Australia Party's support, sufficient for it to pass in the end. If no modifications, then the bill could well fail.*

SAMPLE RESPONSE:

The Respect Australia Bill would probably become law after slight amendments. For it to become law, it would need to pass both houses of parliament. It would pass the House of Representatives because the Coalition (78 representatives) and One Nation (3 representatives) support it, leading to presumably 81 votes. Even if all other parties voted against it (70 votes), it would pass the House of Representatives. In the Senate, the parties indicating support for the bill do not have a majority, with the Coalition and One Nation adding up to 36 votes. With ALP and Greens voting against it, there are 36 votes against it. 39 votes in favour are needed for a majority, which means three more Senators would need to vote in favour of it. The United Australia Party [UAP] has indicated it wants more exemptions placed in the bill to the compulsory military service. If some more exemptions are put in, which would likely happen as it would not betray the 'essence' of the bill, then the UAP would give support for it, allowing it the 39 votes to pass.

- b.** Identify **one** means by which individuals might try to help ensure that the Respect Australia Bill becomes law. Discuss the extent to which this means could be effective. 6 marks

1 mark – stating one means

2 marks – how this means could be effective (1 mark for a brief outline)

2 marks – how this means might not be effective (1 mark for a brief outline)

1 mark – clear statement about the “extent”

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 means is mentioned, then only the first can be considered for marking*
- *The means by which individuals can promote law reform include: petitions, demonstrations, use of the courts**
- **Use of the courts would likely be difficult to link to this scenario, since it is not about disputing an existing piece of legislation in effect, but about advocating for a proposed legislation (bill)*

SAMPLE RESPONSE:

One means is petitions, which could be effective to the extent such petitions are effectively publicised and signed. Petitions would allow people to express support for the bill by officially indicating so in a formal written statement which would then be submitted to parliament. If the reasoning included in the petition is persuasive, then when it obtains more media coverage, it could also then obtain more support, leading to more signatures etc. If politicians see a substantial amount of support for the bill due to high signature numbers, they will be inclined to vote in favour of it to keep their electorate happy and increase their prospects for re-election. For instance, some senators of the Australian Labor Party might consider crossing the floor or abstaining, if significant support for the bill was shown in their state. This could be the difference between the bill successfully passing or not. However, petitions sometimes are hard to publicise if media organisations prefer to focus on other news. Also, if there is not much passionate support for the bill, but there is passionate support against it, then the impact of a supportive petition would not be great due to low signature numbers. This will not persuade members of parliament to vote in favour of it but could in fact persuade them to vote against it.

- c.** Suppose the Respect Australia Bill became law. In reference to the division of powers, describe if Australian states can pass their own laws to override it. 2 marks

1 mark – stating if states could pass their own laws to override it

1 mark – further description

SAMPLE RESPONSE:

States would not be allowed to pass laws to override it, because laws about the armed forces are an exclusive power for the Commonwealth. Moreover, the concept of overriding contradictions between commonwealth and state legislation applies to concurrent powers and not residual powers,

and even in such a scenario, it is the commonwealth legislation that overrides state legislation, not vice versa.

- d. If someone aged between 18 and 23 believed the Respect Australia Bill was unconstitutional, describe what they could do about it and why, if the bill became law. 3 marks

2 marks – description about how the matter could be taken to the courts (1 mark for a brief outline)

1 mark – reason provided

SAMPLE RESPONSE:

Such an individual could take the matter to court by arguing that the Commonwealth parliament has overstepped its constitutionally established boundaries. This individual could do this because he or she would have standing due to being directly affected by the issue. In being aged between 18 and 23, the law would require them to undertake military service, making them more affected by the issue than others in the population more generally, such as a 30-year-old who would not be required to undergo military service.