

Legal Studies

2023 examination

Part A: Response to sources (Question 1) 30 marks

Answer **all** questions in Part A

Allow approximately 65 minutes

Part B: Extended response (Question 2) 30 marks

Answer **one** question from Part B

Allow approximately 65 minutes

Total time: 130 minutes

Total marks: 60

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Excerpt from an article in the *Bulletin (Law Society of South Australia)*

Because of the important interests at stake in lawmaking, the parliamentary process is designed to help lawmakers appreciate the [effects] of proposed legislation. Significant measures of accountability and transparency are part of the legislative process that must be followed before a bill can become law. ...

Over the past few decades, there has been a shift away from parliamentary lawmaking to an alternative lawmaking process. ... This alternative form of lawmaking side-steps the parliamentary process by having the executive branch of government make laws directly. Such laws have the same legal force as legislation enacted by parliament. It occurs through the parliamentary delegation of legislative powers. Almost all bills include significant delegations that permit the executive to make delegated legislation directly. ... Last year, 88% of all new laws made were delegated laws. ...

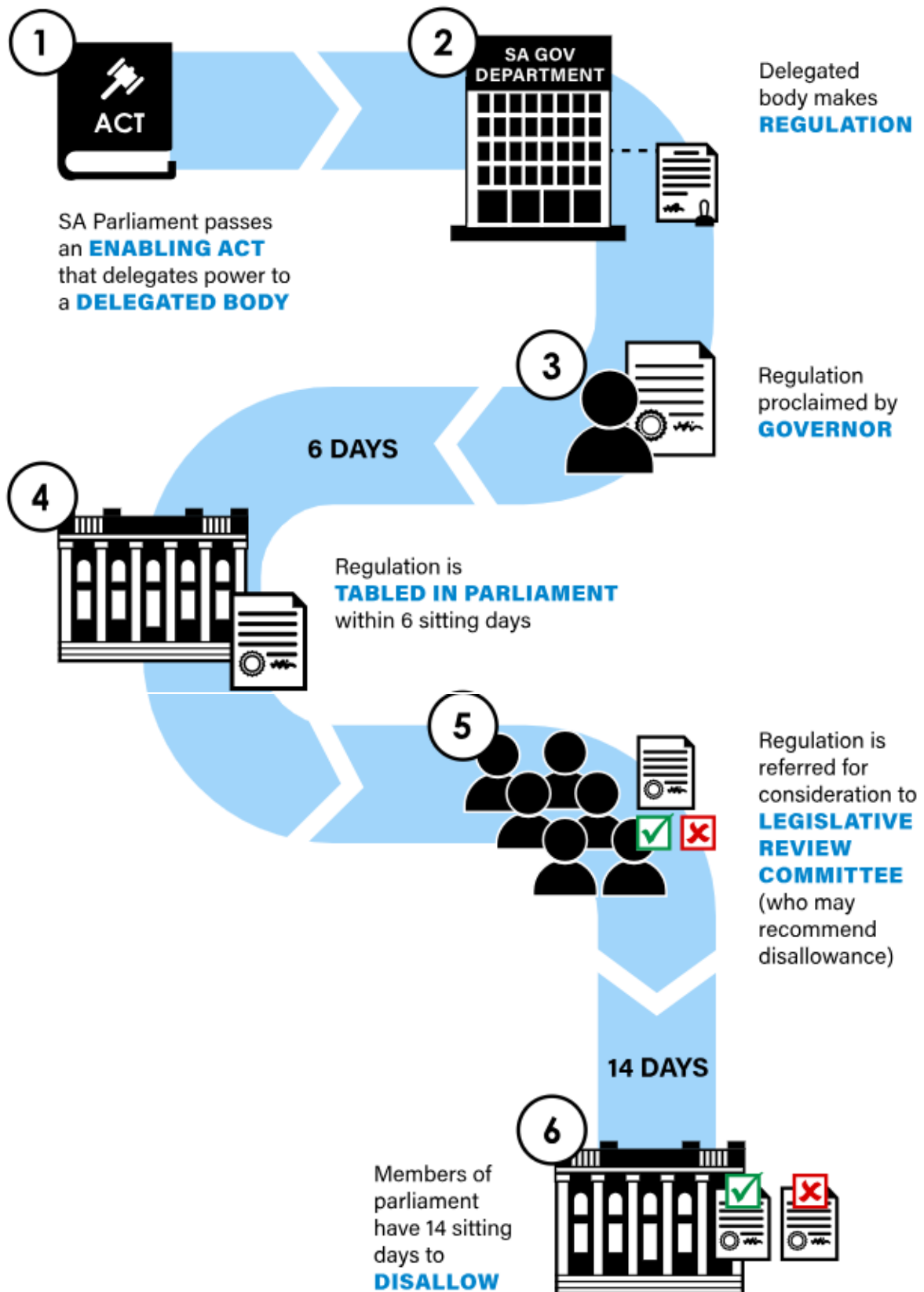
Discussions and deliberations by the Cabinet relating to delegated legislation are confidential and protected by legal privilege. [There are] no requirements for consultation of any kind before new delegated laws are made. Details of any consultation carried out are not published. It is not possible to see what information was relied upon by the executive in making legislative choices or who might have influenced them. ...

The only parliamentary oversight of delegated legislation takes place in the over-burdened and under-resourced Legislative Review Committee. Consisting of six members drawn from both Houses, the Committee scrutinises all 'rules, regulations and by-laws' that are required to be tabled in parliament – a Herculean task if there ever was one. Last year, more than 1400 pages of delegated legislation were made in 324 different [legislative] instruments, which does not include all the new bylaws made by the state's 68 local councils ...

Source: excerpts from Neudorf, L (2021) 'Time to take lawmaking seriously: The problem of delegated legislation in South Australia.' *Bulletin (Law Society of South Australia)*, 43(8), 10–11

Source 2

How delegated legislation is made



Source 3

Legislative Council: Tuesday, November 15, 2022 – Snapper Fishery

The Hon. C. BONAROS (15:34): Supplementary: on information currently before it and its commitment to the reliance on scientific data, is the government likely to extend the snapper ban, given the concerns that have been raised by MFA¹?

The Hon. C.M. SCRIVEN (Minister for Primary Industries and Regional Development, Minister for Forest Industries) (15:34): It would be premature to be talking about what we will or won't do. The MSFMAC² is the appropriate body to provide recommendations. Science, of course, is one of the most important parts of that, but I will wait for those recommendations, and then a decision will be forthcoming following that.

¹ Marine Fishers Association

² Marine Scalefish Fishery Management Advisory Committee, a committee made up of fisheries experts who are not members of parliament

Source: adapted from South Australia, Legislative Council 2022, *Debates*, 15 November, viewed 5 May 2022, hansardsearch.parliament.sa.gov.au

Source 4

Snapper management

Snapper is an iconic fish in South Australia and important for commercial, recreational, charter boat, and Aboriginal traditional fishers.

The decline of Snapper stocks has been noted for several years and is supported by the latest science.

In 2019, management measures were announced to secure the long-term future of the Snapper fishery for all South Australian fishers.

Following the release of the independently reviewed SARDI¹ Snapper Stock Assessment Report 2022, the Marine Scalefish Fishery Management Advisory Committee (MSFMAC) recommended that the total Snapper closure in the West Coast, Spencer Gulf and Gulf St Vincent/Kangaroo Island Fishing Zones continue. The Government of South Australia has accepted this recommendation and extended the closure to 30 June 2026.

¹ South Australian Research and Development Institute

Source: adapted from Department of Primary Industries and Regions (PIRSA), Snapper management, pir.sa.gov.au, reviewed 14 February 2023

Source 5

Fisheries Management (General) Regulations 2017 (South Australia) under the *Fisheries Management Act 2007*

23C—Taking of snapper in certain waters

(1) Unless the Minister has, by notice in the Gazette, made a determination to the contrary, a person must not take snapper in the Gulf St. Vincent and Kangaroo Island Fishing Zone, the Spencer Gulf Fishing Zone or the West Coast Fishing Zone.

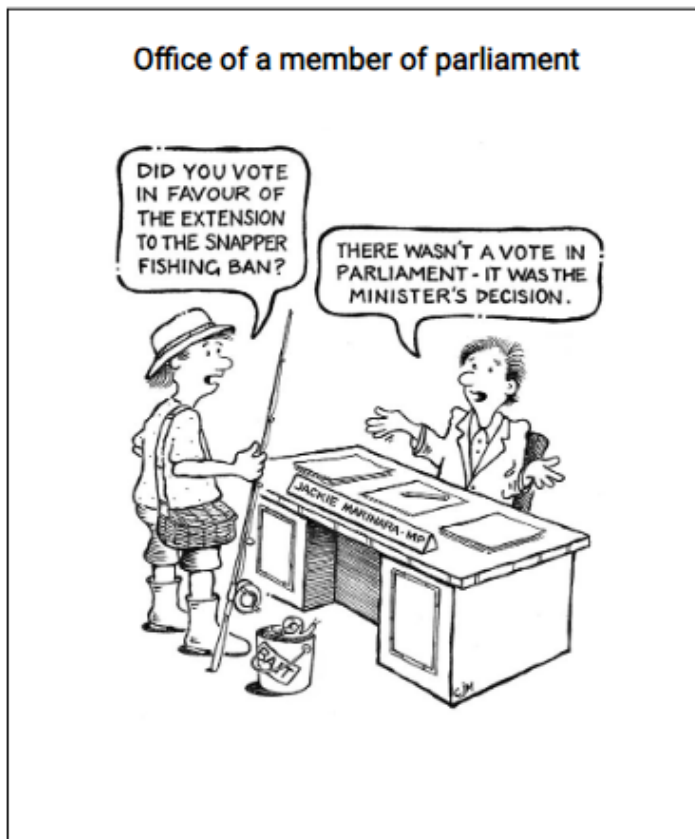
Maximum penalty:

- (a) for a first offence—\$5000;
- (b) for a second offence—\$10 000;
- (c) for a third or subsequent offence—\$20 000;

Expiation fee: \$500

Source: adapted from Fisheries Management (General) Regulations 2017 (South Australia) under the *Fisheries Management Act 2007*, legislation.sa.gov.au

Source 6



Source 7



PART A: Response to sources (Question 1) 30 marks**Question 1 (a) to (h)**

Examine Sources 1 to 7 before answering Question 1.

- (a) Outline **two** differences between legislation and delegated legislation.

ABC	B	I	U	x ²	x ₂	≡	≡	≡	≡	≡	≡	≡	≡	↶	↷

(2 marks)

- (b) With reference to the sources, outline **two** ways in which groups or individuals in the Australian community can influence laws made by the executive arm of government.

ABC	B	I	U	x ²	x ₂	≡	≡	≡	≡	≡	≡	≡	≡	↶	↷

(2 marks)

- (c) With reference to Source 3, explain **one** strength of question time.

ABC	B	I	U	x ²	x ₂	≡	≡	≡	≡	≡	≡	≡	≡	↶	↷

(2 marks)

- (d) With reference to Source 1, explain **one** weakness of parliamentary committees.

ABC	B	I	U	x ²	x ₂	≡	≡	≡	≡	≡	≡	≡	≡	↶	↷

(2 marks)

- (e) With reference to the sources, explain **one** strength **or** weakness of the principle of Cabinet confidentiality, as outlined in Source 1.

ABC	B	I	U	x ²	x ₂	≡	≡	≡	≡	≡	≡	≡	≡	↶	↷

(2 marks)

- (g) With reference to the sources, discuss whether or not the executive arm of government adequately protects the rights of groups and individuals in the community. Consider the tension between the empowered and the disempowered in your response.

ABC

B

I

U

x^2

x_z

- ABC

B

I

U

x^2

x_2





















(10 marks)

Statement 1 to Statement 4

Statement 1

Australian parliaments and courts are not truly representative of the community; urgent reform is needed.

Statement 2

Given the success of juries in resolving criminal disputes, the use of juries should be extended to civil trials in all Australian jurisdictions.

Statement 3

The Australian Constitution is effective in dealing with the challenges of contemporary Australian society.

Statement 4

The Australian legal system does not fairly or efficiently resolve tensions between groups and individuals in the Australian community.

PART B: Extended response (Question 2) 30 marks

Choose **one** statement.

Evaluate this statement with reference to examples and one or more of the following competing tensions:

- competing rights and responsibilities
- fairness and efficiency
- the empowered and the disempowered
- certainty and flexibility.

Select the statement you are evaluating from the following list.

- ☐ Statement 1
- ☐ Statement 2
- ☐ Statement 3
- ☐ Statement 4

ABC B <i>I</i> <u>U</u> x^2 x_z 0 Words

(30 marks)

Final checklist

- ☐ I have reviewed my work
- ☐ I understand that by selecting 'Next' I cannot return to the examination

Next