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Legal Studies

2016 Chief Assessor’s Report

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## Overview

Chief Assessors’ reports give an overview of how students performed in their school and external assessments in relation to the learning requirements, assessment design criteria, and performance standards set out in the relevant subject outline. They provide information and advice regarding the assessment types, the application of the performance standards in school and external assessments, the quality of student performance, and any relevant statistical information.

## School Assessment

Assessment Type 1: Folio

Most folios were organised well. Teachers should ensure that students’ SACE registration numbers are on the front cover of all tasks. Word-limits were generally adhered to.

**The more successful responses**

* incorporated a range of task types in the folio
* provided tasks in which students had opportunities to demonstrate in-depth analysis and evaluation in essays and media-response tasks, which allowed students to achieve at higher levels
* included tasks requiring research and then sourcing and use of appropriate bibliographies, which enabled students to achieve at the higher levels for communication
* used oral presentations or mock trials and provided a record of every performance in film, audio, or text that was able to clearly demonstrate to moderators the standard achieved
* included extended responses that required a student to present an argument, providing both sides and reaching a conclusion — use of terms such as ‘critically analyse’ or ‘evaluate this statement’, enabled students to demonstrate achievement at a higher level for analysis and evaluation.

**The less successful responses**

* comprised folios of mainly short-answer tests that provided limited opportunity for students to demonstrate analysis and evaluation at the higher levels
* were not provided with the opportunity to address all aspects of the inquiry, analysis and evaluation, and communication assessment design criteria, in particular, to demonstrate sourcing — providing at least one task in the folio requiring research and sourcing gives students an opportunity to achieve against all specific features
* contained tasks that required students to just explain an event, a case, or basic features, which often did not allow students to display knowledge and understanding at higher levels.

**General information**

* The use of performance standard in most folios was evident.
* Understanding of the criteria for the A and B band of the performance standards was not always evident in the marking.
* Achieving in the A band for knowledge and understanding was often difficult in tasks which only required very short answers or in tasks which comprised ‘What is’ type questions.
* Performance standards should be used for all assessment tasks, including tests. Use of marks and percentages should also be accompanied by the use of performance standards.

Assessment Type 2: Inquiry

The choice of inquiry topics was often crucial in allowing students to demonstrate higher levels of achievement in specific features of analysis and evaluation.

Inquiry topics were generally related to Topic 1: The Australian Legal System, but they must also be current issues. Many students provided evidence from a recent source that showed that it was a current issue.

**The more successful responses**

* used a question or statement that could be argued
* provided recommendations that related clearly to the argument
* were sufficiently narrow to allow students to focus on specific aspects, rather than broad concepts, like ‘republic’ or ‘juries’.

**The less successful responses**

* did not present both sides of an argument
* had questions that allowed a yes or no response, or asked ‘What is’; these questions did not encourage students to provide sufficient analysis and evaluation, and students often provided only simplistic knowledge
* contained too much scaffolding by teachers; while scaffolding can support students, some inquiries used headings that were not appropriate to their question or topic
* addressed social, political, physical education, or business and enterprise issues, instead of legal issues.

## External Assessment

Assessment Type 3: Examination

The examination provided students with ample opportunity to demonstrate their level of knowledge and understanding, communication, and analysis and evaluation of the legal principles and processes in the subject outline.

The 2015 examination format was maintained (60% short-response questions and 40% extended-response questions).

Students and their teachers are encouraged to structure their revision around the content of the subject outline.

Part A: Short Responses

It was evident that some students had only a partial knowledge of the course, with Topic 3: Law-making posing the greatest challenge for students. The less successful papers contained incomplete explanations or lacked clarity in the use of legal terminology. Some students rewrote or reworded the question, which is unnecessary.

Students need to make sure that they address the wording of the question closely. The directive ‘outline’ requires a brief description of a principle, process, or structure, while ‘explain’ requires a fuller explanation of a principle, process, or structure.

The directive ‘discuss’ requires students to weigh up competing factors and to come to a clear conclusion, which may be outlined at any point in the answer. Students can successfully answer a question with the ‘discuss’ directive by only addressing one side of the argument, or they may explain one point for both sides of an argument.

It is important to give students the opportunity to practise interpreting and responding to short-answer questions.

Question 1

This question covered Topic 1: The Australian Legal System and was generally well answered by students. Many students were unable to identify that the Court of Criminal Appeal hears all criminal appeals in South Australia or the Northern Territory. Students were generally able to outline reasons for why a court hierarchy exists, but some struggled to explain why these reasons do or do not support the delivery of just outcomes. Responses to parts (d) and (e) were of varying accuracy; many students were unable to explain how government is formed, which is a fundamental concept of the course. Most students could identify two roles performed by the Governor-General, but some students selected roles that were not related to elections. Part (h) was successfully answered by many students, but some responses showed only a partial understanding of the two principles being assessed and were unable to show the connection between the two.

Question 2

This question covered Topic 2: Constitutional Government and was generally well answered. Most students were able to outline a consequence of the 1967 referendum, but some students incorrectly stated that it led to Indigenous people being allowed to vote. Many answers to part (b) required more detail and precision, with some students simply listing the stages, such as ‘parliament stage’, without showing a full understanding of exactly how a referendum takes place and the criteria it must achieve to be carried. In part (c), those students who focused on an aspect of the referendum procedure and then analysed whether that aspect made changing the Constitution too difficult, achieved more highly. Understanding of the treaty-making process was generally good, but as with part (b), some responses to part (d)(iii) needed greater clarity.

Question 3

This question covered Topic 3: Law-making and was statistically the most challenging for students. It was evident that some students did not understand the difference between legislation and regulations, and so some students could not explain how a regulation is made. For part (c), students were generally able to outline one or two reasons why delegated legislation exists and to link this to an analysis of its appropriateness. A number of students struggled to identify a rule used by judges in statutory interpretation; some referred to internal guidance and external guidance, which were not relevant to the question. Similarly, many students struggled to identify how regulations are supervised and a number of responses referred to judicial review, despite that being explicitly excluded as a possible answer by the wording of the question. This reinforces the need to give students the opportunity to practise short-answer questions and to encourage them to read questions carefully.

Question 4

This question covered Topic 4: Justice Systems and was statistically the best answered. Some students could not accurately define the term ‘majority verdict’, but most understood the role of the jury and the difference between the burden of proof and the standard of proof. Part (h) was the most challenging for students, despite there being many possible answers and approaches. Those students who identified a feature of the inquisitorial system and explained why it was or was not an improvement on the adversary system, in terms of its impact on the rights of the defendant, achieved more highly.

Part B: Extended Responses

Students are advised to refrain from highlighting words or phrases in their extended responses. This makes responses difficult to read for markers, especially when the highlighting is indiscriminate. Signposting by using headings or topic sentences is encouraged.

Section 1

As was partly introduced in the 2015 examination, the directive for part (b) in all Section 1 questions was changed to ‘explain’ to provide greater clarity to students about what the question was asking them to do and to distinguish from the use of the directive ‘discuss’ in the short-response questions of Part A.

A change to the marking scheme for parts (a) and (b) was implemented in 2016 to allow the asking of questions with varying degrees of complexity and to give students greater clarity about the depth of response required in each.

Part (c) continued to pose challenges for a number of students. Students must understand that simply outlining points without explanation will not be well rewarded. Both sides of an issue need to be analysed, not just the aspect with which the student agrees. As a general guide, students should aim to write 1½−2 or more pages for part (c) questions. The more successful responses selected a small number of points and wrote in great detail about them, often with the use of examples. Less successful responses wrote too little, or offered a series of short judgments without explanation of how all of the judgments should be balanced to reach a conclusion. A ‘critical analysis’ involves more than just the presentation of competing judgments or arguments; there must be some indication of which arguments or judgments are more convincing or important.

Question 5

1. Students generally had a good understanding of the double dissolution process, but many neglected to mention that if a deadlock remains after the dissolution, it can lead to a joint sitting of both Houses.
2. Students could generally identify three features of the Constitution, but some responses were unable to explain why those features are important in the Australian system of government.
3. The most successful responses considered both the strengths and weaknesses of judicial independence in the context of the separation of powers, as well as the benefits and drawbacks that flow from having an independent judge in the adversary system of trial. Successful responses also tended to explain how the Constitution protects the independence of judges and analysed how this interacted with other principles of the Australian legal system, such as the rule of law and representative government.

Question 6

1. The most successful students outlined the fact that the High Court has both original and appellate jurisdiction, and that the original jurisdiction includes, but is not limited to, the interpretation of the Constitution.
2. Most students could explain two or three factors of initiation, but some answers lacked precision and instead focused on the functions of law. Providing examples was not essential, but many of the most successful responses gave real-life illustrations to demonstrate the student’s understanding.
3. Responses to this question varied in quality. Many students failed to understand that the Governor-General plays a critical role in the system of constitutional monarchy that operates in Australia. Comparisons to the republican system of government were useful only to the extent that they highlighted strengths and weaknesses of the Australian system of government. Many students incorrectly stated that the separation of powers and the division of powers are elements of constitutional monarchy, when in reality, they are mutually exclusive concepts.

*Question 7*

1. Most students were able to provide a broad definition of the concept of social progress. The most successful responses outlined the areas of law-making that must be addressed if social progress is to be achieved.
2. Most students were able to accurately identify two or three differences between the trial and post-trial stages of criminal and civil law. Some responses required greater clarity on the circumstances in which a jury is available, and some students referred to alternative dispute resolution, which, as a pre-trial process, was irrelevant to the question.
3. There were two acceptable responses to this question. One was to explain, using case examples, the role that the High Court has played in the shifting of the division of powers, and then to analyse whether this shift has been a positive or negative development, or to critique whether the High Court had much discretion as to how it resolved the disputes. The second option available to students was to additionally explain the other methods by which the division of powers has shifted so as to analyse the degree to which High Court decisions have been influential. Less successful responses offered only an explanation of how High Court decisions have led to a shift, without offering any analysis. Responses that failed to identify a High Court case were not well rewarded.

Question 8

1. Students had difficulty with this question. Many students wrote about the pre-trial stage of a criminal dispute. Students who used the correct legal terminology to outline three or more events in the pre-trial stage achieved more highly.
2. Students were generally able to define the elements of the rule of law. The most successful responses explained why the principle is important and how it supports other features of the Australian legal system.
3. This question was generally well answered. Responses that explained why there is a need for judges to make law and then weighed this against the shortcomings of the process and principle achieved most highly. Responses that focused solely on how case law achieves (or is supported by) judicial independence were less successful.

Part B: Extended Responses

Section 2

To maximise student success, teachers are encouraged to explicitly teach this style of extended response in the classroom. Students need to more closely address the wording of the question and ensure that their responses are not just a series of legal facts, but instead contain evaluative judgments that address the proposition in the question. Students are expected to discuss and illustrate opposing arguments to reach an informed conclusion; therefore, students who only agree or disagree with the proposition without considering alternative arguments limit their opportunity to achieve at the highest level.

Communication is a criterion on which this section is assessed, and students need to ensure their response is logically structured, coherently expressed, and uses the correct legal terminology. As a general guide, students should aim to write at least 3 pages for this part of the examination; responses of 2 pages or less limit the opportunity for students to demonstrate higher achievement.

Students and teachers are reminded that the question directs respondents to answer ‘using examples’. The best responses contained a number of well-explained examples drawn from recent illustrations of principles, processes, and structures. Less successful responses named cases or pieces of legislation without explanation; a significant number of otherwise sound responses contained no examples, and this prevented high achievement.

In contrast to previous years, the four questions were relatively equal in terms of their popularity with students.

Question 9

This question provided students with considerable scope to evaluate a range of different features of the Australian system of government. Students tended to write more accurately and in greater detail about representative government and it was evident that many students are unclear on how the principle of responsible government operates. The most successful responses gave examples from recent parliaments and presented reasons why full attainment of representative government and responsible government is sometimes impaired.

Question 10

There were some excellent responses to this question and it was evident that, in general, this part of the course is being comprehensively taught, and that students are engaged and interested in discussing how the legal system has impacted on Indigenous Australians. Less successful responses were confined to evaluating just one or two developments. Stronger responses addressed a broader range of actions by both the legislative and the judicial arm, and engaged in an analysis of whether one arm or the other had been more influential.

Question 11

The question invited students to consider the role of the parliament in making legislation relative to other forms of law-making (i.e. delegated legislation and case law), but most students confined their response to an evaluation of the role of the Senate. Students with an extensive knowledge of the structure and role of the Senate achieved highly. The best responses showed an awareness of the varied roles of the Senate and used examples from recent parliaments to support the judgments being made.

Question 12

Responses to this question varied in quality. A number of students simply described one or two methods of alternative dispute resolution (ADR) and did not achieve highly. Students needed to evaluate the strengths and weaknesses of ADR in relation to the strengths and weaknesses of the adversary system. The best responses demonstrated detailed knowledge of the different forms of ADR and compared the effect of using ADR to resolve disputes with how the disputes would be resolved in a court. Students who were able to evaluate the more formal methods of ADR (mediation, conciliation, and arbitration) typically reached a higher level of complexity in their analysis than students who focused on self-help, consensus, and abandonment.

## Operational Advice

School assessment tasks are set and marked by teachers. Teachers’ assessment decisions are reviewed by moderators. Teacher grades/marks should be evident on all student school assessment work.

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