# 2018 Legal Studies Subject Assessment Advice

## Overview

Subject assessment advice, based on the previous year’s assessment cycle, gives 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, and the quality of student performance.

Teachers should refer to the subject outline for specifications on content and learning requirements, and to the subject operational information for operational matters and key dates.

# School Assessment

Assessment Type 1: Folio

Most Folios were organised well, comprising a balanced program that allowed for assessment across all four assessment design criteria. Assessment conditions were generally adhered to.

The more successful Folios commonly:

* incorporated a range of task types in the Folio, such as tests, essays, media responses
* provided opportunities to demonstrate all performance standards; several opportunities were provided to show ‘Inquiry’ and ‘Analysis and Evaluation’
* included extended responses, especially in tests, 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’
* included tasks requiring research and then sourcing and use of appropriate bibliographies, which enabled students to achieve at the higher levels for ‘Inquiry’
* where oral presentations or mock trials were used, the teacher provided a record of every performance in film, audio, or text that was able to clearly demonstrate to moderators the standard achieved
* included relevant primary source materials, particularly of current examples, and where case studies were used, the supporting material was not excessively long
* provided students with a range of assessment opportunities to allow them to show their strengths

The less successful Folios commonly:

* comprised too many short-answer tests that provided limited opportunity for students to demonstrate ‘Analysis and Evaluation’ at the higher levels
* did not address all aspects of the Inquiry, Analysis and Evaluation, and Communication assessment design criteria, in particular to demonstrate sourcing
* included tasks that required students to merely explain an event, a case, or basic features, which often did not allow students to display knowledge and understanding at higher levels.

General information

* teachers are reminded to use the SACE performance standards in assessing all tasks and that Folios should be graded as a holistic package; using percentages/numerical systems are unnecessary and often fail to provide meaningful support for the grade entered by the teacher
* achieving in the ‘A’ grade band for ‘Knowledge and Understanding’ was often difficult in tasks that only required very short answers, or in tasks that comprised mostly ‘outline’ or ‘describe’ type questions
* tasks that were excessively scaffolded, such that student responses were very similar, provided students with insufficient opportunity to demonstrate higher level achievement in the ‘Knowledge and Understanding’ and ‘Analysis and Evaluation’ criteria

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 aspects of the Australian legal system, and were mostly current issues. Many students provided evidence from a recent source that showed that it was a current issue.

Teachers are encouraged to include mark sheets showing which assessment design criteria were assessed in each Inquiry, which can vary depending on the question posed by the student, and to show the achievement level against each assessment design criterion.

The more successful responses commonly:

* used a question or statement that could be argued rather than just identifying a broad topic
* provided recommendations that related clearly to the arguments raised
* were sufficiently narrow to allow students to focus on specific aspects of the legal system, as opposed to broad concepts such as ‘republic’, ‘juries’, ‘death penalty’, or ‘adversary/inquisitorial systems’
* used a range of reputable sources that went well beyond classroom textbooks, Wikipedia, and short newspaper articles.

The less successful responses commonly:

* did not present both sides of an argument
* had questions that allowed a yes or no response or invited description rather than analysis; these questions did not encourage students to provide sufficient Analysis and Evaluation
* contained too much scaffolding by teachers; while scaffolding can support students, some Inquiries used headings that were not appropriate to their question or topic
* where the same question had been answered by all students in the assessment group, students were given insufficient opportunity to demonstrate higher level achievement in the ‘Inquiry’ and ‘Analysis and Evaluation’ criteria
* addressed social, political, physical education, or business and enterprise issues, rather than legal issues.

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, processes and structures in the subject outline.

The 2017 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**

Students are reminded to write all of their answers to Part A in the question booklet provided. If a student runs out of space, they should continue their answer on another page and clearly indicate they are doing so. Part A responses should not be written in the separate script book.

Questions relating to Topic 1: The Australian Legal System and Topic 2: Constitutional Government posed the greatest challenges 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 2: Constitutional Government and was statistically the most challenging for students. Most students could identify powers of the Commonwealth and the states but a number were unable to explain how state powers are preserved. Most students could identify at least one feature of the constitutional system but a number of responses lacked sufficiently detailed explanation. Part (g) posed difficulties for a number of students; the most successful responses identified one or two features and explained why the feature(s) contribute to an effective (or ineffective) system of government.

*Question 2*

This question covered Topic 3: Law-making and was generally well answered. Most students could explain a theoretical reason why parliament delegates power to the executive but a number of students failed to link this reason back to the scenario, which was an explicit direction of the question. Part (e) was not well answered with many students writing vague answers about the rules of statutory interpretation. Part (f) proved equally challenging, with a number of responses writing incorrectly about “judicial review”. In part (g), the best responses identified specific components of social cohesion and social progress that might be achieved by delegated legislation.

*Question 3*

This question covered Topic 4: Justice Systems and was statistically the best answered. Most students could identify the standard of proof and could outline at least one legal process that occurs after a finding of liability. Most also understood the purpose of cross-examination, and most could explain the different purposes behind sanctions and remedies. Responses that used terminology associated with criminal law rather than civil law were less successful. The best responses to part (i) showed an appreciation of how civil trials differ from criminal trials and why the judge taking on an inquisitorial role may or may not assist the delivery of just outcomes.

*Question 4*

This question covered Topic 1: The Australian Legal System and was quite challenging for students. Many students struggled to identify features of the Constitution that reinforce judicial independence. Most students could outline at least one role of the federal executive government but many struggled to explain how government is held accountable by the parliament, which was rather surprising given that the concept of ‘responsible government’ is so fundamental to the Legal Studies course. Part (e) proved challenging for a number of students, some of whom wrote quite vague answers that failed to provide a tangible example from the Australian legal system. The most successful responses to part (f) showed an understanding of the current process by which judges are appointed; less successful responses tended to contain vague or unconvincing judgments, such as the notion that electing judges would reduce corruption.

**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**

The directives used in the 2017 paper were retained for the 2018 paper.

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 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 and the reasons why.

*Question 5*

1. Most students who attempted this question were familiar with the treaty-making process, although some struggled to use the correct terminology or erroneously stated that Parliament signs/approves the treaty.
2. A number of students stated the reasons for federation and made little or no attempt to explain why federation itself was difficult to achieve. Successful responses gave 2 or 3 reasons and explained each in 2-3 sentences, often with use of supporting examples.
3. Most students were able to identify at least one or two rights that the accused has in the adversary system of trial and to pass judgement on the appropriateness of these rights. Less successful responses focused too heavily on inquisitorial systems without establishing a clear comparison with the adversary system, or made quite bold assertions without providing a convincing rationale.

*Question 6*

This question was the least popular.

1. Most students who attempted this question could identify features of Australia’s system of government that were inherited from elsewhere but there was some confusion about the nature of the separation of powers, with a number of students incorrectly asserting that the American model was adopted in our Constitution.
2. Most students could outline one or two roles performed by the Governor-General but many responses failed to ascribe ‘importance’ to those roles.
3. This question was poorly answered. Many students showed limited understanding of what is meant by the phrase ‘international law’. The best responses analysed the influence of treaties and the decisions of international courts on the Australian legal system.

*Question 7*

This question was the most popular.

1. A number of students were unclear on the distinction between the two types of bills with quite a few responses erroneously saying that private members’ bills are made by people from outside the Parliament.
2. The most successful responses provided a clear explanation of a feature and a measured reason for why that feature might be perceived as a weakness. Less successful responses made sweeping statements or unconvincing assertions such as “the judge is biased” or “there are no rules of evidence”.
3. This question was generally well answered. It is clear that this part of the course is being well taught and that students are being exposed to a range of examples, many of them recent. Less successful responses either failed to address whether further constitutional change is desirable or provided an inaccurate description of fundamental developments such as the 1967 Referendum and the Mabo decision.

*Question 8*

1. Most students could outline one or two procedures but quite a few responses struggled to ascribe a ‘purpose’ to the procedure.
2. This question was generally well answered, with most students who attempted it able to explain the concepts of ‘representative government’ and ‘responsible government’. The more successful responses tended to explain quite specific features of how elections are run or explained specific features of the Parliament such as Question Time.
3. Many students found this question challenging. Most students could explain how deadlocks are resolved, with many providing an accurate description of the double dissolution process. However, many responses contained little or no analysis of these processes and did not achieve highly.

**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.

*Question 9*

The most successful responses contained a number of recent examples of how the Australian legal has (and hasn’t) protected human rights and clearly identified a range of ‘diverse groups’ that have been affected. Responses that understood the distinct role of the three arms and could ascribe an action of each that has impacted on the rights of the people were more successful. Less successful responses focused on the role of only one arm of government, misunderstood the role of one or more arms, or failed to provide any semblance of balance in their response; indeed, a number of responses asserted that human rights were fully protected and did not address any aspect in which rights protection could be better achieved.

*Question 10*

Although the least popular question, it was pleasing to see a greater number of students attempting the ‘Constitutional Government’ question than in previous years. Students who attempted this question tended to achieve either very highly or were not overly successful; there with comparatively fewer responses at a ‘B’ or ‘C’ level. The most successful responses understood both the full breadth of the High Court’s influence as well as the supervisory capacity of the Parliament and how judges are appointed and dismissed. Less successful responses showed an overly narrow understanding of the Court’s role or made unconvincing assertions about the appropriateness of historic decisions or presented an uncompelling argument in favour of electing judges.

*Question 11*

Students need to be aware that when the three arms of government are explicitly mentioned in the question, there is an expectation that they will demonstrate knowledge and understanding of the role of each arm in their response. The arms need not be addressed in equal depth but there must be demonstration of *some* understanding of what each arm does in a law-making or supervisory capacity. A number of less successful responses only addressed the role of judges and in doing so were unable to convince the markers that the student understood the comparative strengths or weaknesses of the other arms. Students seem to be particularly vague about what the ‘executive’ is, with many students under the misunderstanding that the executive is the ‘police’ or that its only role is to ‘enforce the law’. Additionally, it was necessary for students to show how the strengths and weaknesses of the arms of government impact on attainment of the functions of law. The most successful responses explained specific components of social cohesion and social progress and evaluated the degree to which each arm achieved these components. Some very successful responses narrowed their focus to something as specific as whether the three arms are reflecting the values of the people, or even whether the three arms are meeting the environment or health aims of social progress.

*Question 12*

This was the most popular question and the quality of responses varied considerably. The most successful responses addressed both juries *and* the law of evidence and procedure in detail, explaining both strengths and weaknesses, and critically, linked these judgements of strength and weakness to whether or not ‘just outcomes’ are achieved. Less successful responses addressed only one aspect of the question or could not show how the judgements impacted on just outcomes. A number of students reflected on the fact that the selection process reduced the diversity of juries but were unable to show whether this could impact a jury’s verdict and thus whether just outcomes are achieved. There was also some confusion about the distinction between evidence and procedure.