

# 2020 VCE Legal Studies examination report

## General comments

In 2020 the Legal Studies examination was based on the *VCE Legal Studies Adjusted Study Design for 2020 only*. Students generally performed well, with many of them attempting all questions. Students demonstrated a good understanding of key knowledge, including remedies, victim impact statements, community legal centres, and the distinction between summary and indictable offences. Other aspects of the course require more focus, including parliamentary committees and royal commissions, the principles of justice and political pressures.

Many students used the relevant stimulus material for Section A, Question 3, and for every question in Section B, as was required, although some students did not, particularly for Section B, Question 1b., and therefore could not get full marks.

Most students were familiar with task words such as 'outline', 'describe' and 'evaluate'. However, more work is required on questions that ask students to analyse and discuss. An 'analysis' requires students to examine facts, data or issues in detail. A 'discussion' is more than an explanation, requiring students to write about a topic in detail, taking into consideration issues, limitations, benefits, restrictions and/or reforms.

Regarding the structure of student responses and exam technique:

- Some students did not use paragraphs for structuring extended responses. Therefore, their responses were poorly structured.
- Many responses lacked adequate signposting. For example, for Section B, Question 2a., the reason for law reform should be made clear in the first sentence.
- Some students did not correctly label responses when continuing these at the end of the booklet by not clearly indicating that the answer was continued.
- Some students provided more than one reason, role, strength or weakness when a question asked for only one. Only the first one was marked. In addition, in some instances it was not clear which reason, role, strength or weakness was being written about. For example, for Section B, Question 1a., some students made multiple points about why Tom was charged with an indictable offence, but it was not clear which specific reason they were offering in response to the question.
- For Section A, Question 5, some students did not correctly identify each error and explain the correct process, even though a structure for their response was included in the question and answer booklet.

Finally, students should avoid writing prepared answers for questions, and should not define key legal terms or processes before answering a question, unless the question asks for it or it is a critical part of their answer.

## Specific information

Student responses reproduced in this report have not been corrected for grammar, spelling or factual information.

This report provides sample answers or an indication of what answers may have included. Unless otherwise stated, these are not intended to be exemplary or complete responses.

The statistics in this report may be subject to rounding resulting in a total more or less than 100 per cent.

## Section A

### Question 1

Marks	0	1	2	Average
%	4.8	35.4	59.8	1.5

This question was generally well handled. For full marks, there needed to be sufficient depth to the description, and a link between that role and how it helps an accused (as opposed to helping a party to a civil dispute).

The most common roles described by students were:

- providing legal advice to an accused about their rights, processes or next steps
- providing free legal information, such as information about the stages of a criminal proceeding.

Other roles that could have been described included providing legal representation in some circumstances, and assisting an accused person to fill out legal forms or documents (e.g., an application for legal aid).

Some responses provided more than one role but did not describe the first role sufficiently to earn full marks. Others did not provide sufficient depth to the description to earn full marks. Some students confused community legal centres with Victoria Legal Aid.

A good way to start a response to this question would be by writing, 'One role of community legal centres in assisting an accused is to ...'. The next sentence(s) would then elaborate on that role (i.e., what does it mean to give legal advice or representation?).

The following is an example of a high-scoring response.

*A role of community legal centres is to provide an accused with basic legal information. This information is available for free and can give the accused valuable information regarding their rights and the processes that will be used in their hearing/trial. The information can be sought via their website and the accused can also phone a community legal centre to inquire about information.*

### Question 2

Marks	0	1	2	Average
%	3.8	24.5	71.7	1.7

For full marks, students needed to provide an explanation of how a statement is used in a sentencing, not just an explanation of a victim impact statement and what it contains.

The most popular response was that a judge or magistrate will consider a victim impact statement to understand the loss, damage or injury suffered by the victim, which could then act as an aggravating factor and increase the severity of the sentence. Some students stated that in some cases, a victim may ask the court that the accused be spared a severe sentence, and this could influence the court in its sentencing of the accused.

Some responses confused victim impact statements with witness statements generally and stated that a victim impact statement is used to determine guilt. These responses could not be awarded marks. Others stated that a victim impact statement is seen by or given to a jury, which is not correct, given juries are not involved in sentencing.

The following is an example of a high-scoring response.

*When handing down a sentence, a judge must consider the impact of the crime on any victim and ensure the sentence given reflects this. To do this, judges will refer to a victim impact statement which is given by a victim of the crime and outlines particulars of any loss, harm or injury suffered as a direct result of the offending. This can prompt a judge to give a more severe sentence where the impact is substantial.*

### Question 3

Marks	0	1	2	3	4	Average
%	10.9	12.9	15.5	26.2	34.4	2.6

This question required an understanding of the double majority requirement, and, more particularly, whether that requirement was met in two referendums. For full marks, responses needed to state that the proposal for change would not have been successful in both referendums, and explain why with reference to the table. That is, while a majority of voters in Australia voted 'yes' in Referendum 1 (thus achieving the first limb of the double majority requirement), a majority of voters in a majority of states did not vote 'yes'. In Referendum 2, neither limb of the double majority requirement was achieved.

The differentiating factors were the extent to which a student understood the double majority requirement, and the use of the data in the table to support their answer for both referendums. The better responses specifically referred to the data, such as which states did not achieve the second limb of the double majority requirement, and what percentage of voters voted 'yes' or 'no'.

Some responses stated that Referendum 1 was successful, but Referendum 2 was not, displaying a limited understanding of the double majority requirement. Others incorrectly stated that a majority of voters in a majority of voters meant a majority of voters in three states. Some responses referred to the table for Referendum 1, but not for Referendum 2.

Students are encouraged to use paragraphs in a question such as this. One paragraph could have been used in relation to each referendum.

The following is an example of a high-scoring response.

*The proposal for change will be unsuccessful in both Referendum 1 and Referendum 2.*

*This is because, as outlined in S128 of the Australian Constitution, for a referendum to be successful, more than 50% of Australia must support the change and more than 50% of individuals in 4/6 states must also support the change. Thus, referendum 1 will not be successful as there are only 2 states that have over 50% of people supporting the change. These states are Victoria (65.10%), and Queensland (61.87%). However, more than 50% of Australia supports the change but still this will be unsuccessful as 4/6 states (a majority in those states) need to accept and support.*

*Further, Referendum 2 will also not be successful as only 3 states (Western Australia, Tasmania, and Queensland) support the change. Thus, one requirement is already not satisfied. Also, there is no more than 50% of Australia supporting the change as only 49.44% supporting thus making this referendum unsuccessful as both provisions that need to be satisfied are not being satisfied.*

## Question 4

Marks	0	1	2	3	4	5	Average
%	2.8	5.7	15.7	32.5	30.9	12.4	3.2

Students mostly responded well to this question. For full marks, a statement was needed to indicate the extent to which fines achieve two purposes of sanctions, with sufficient points to support that statement. The most common purposes chosen were punishment and deterrence, with many responses pointing to various factors that would affect whether a fine could achieve those purposes (e.g. the amount of the fine or the personal circumstances of the offender).

The points that could have been made depended on the two purposes chosen. No minimum points needed to be made as this question was marked globally. The differentiating factor was how well each point was developed. If responses stated that fines achieve the two purposes to a moderate extent, they needed to then justify that statement with reference to factors or circumstances that either help and do not help in achieving the purposes.

In relation to the responses:

- Some were specifically about speeding fines and demerit points. These types of responses tended to be limited, as the student did not understand that fines can be imposed for offences other than speeding, and the demerit point system is not relevant to a question about fines.
- Some repeated the points they made about each type of purpose – noting that if an offender was wealthy they would not be punished or deterred. While some points can be repeated, students are encouraged to make new points for each purpose.
- Some confused deterrence with denunciation.
- Very few raised points in relation to corporate offenders, such as companies and businesses (e.g., fines for corporate breaches or workplace negligence).
- Very few referred to how many fines are unpaid and, if a fine remains unpaid, how this could achieve purposes such as punishment.
- Some appeared to use prepared answers and did not score highly as a result.

Points that could have been made were:

- Punishment – punishment is more likely to be effective when the fine is significant and/or when the offender is financially affected. This does not necessarily mean that the offender needs to be of a low socioeconomic status; a wealthy offender may be penalised because of a financial penalty. However, if a fine remains unpaid, then it is questionable how punishment could be achieved.
- Deterrence – deterrence may depend on factors such as the amount of the fine, the circumstances of the offender and whether the imposition of the fine is publicised or known to the public.
- Rehabilitation – fines are largely ineffective in addressing the underlying causes of offences but a fine could rehabilitate an offender by conditioning them (i.e., a person may modify their behaviour in response to getting a fine).
- Denunciation – this could be achieved through large fines, but smaller fines could also achieve denunciation if regularly imposed and enforced.
- Protection – fines do not protect the community from an offender as they remain in the community, but protection could be achieved if an offender changes their ways and doesn't commit the offence again (e.g., by not speeding to avoid getting a fine).

The following is an example of a high-scoring response.

*To a limited extent fines achieve the purposes of rehabilitation and protection. Fines are a monetary value paid as a sanction for minor offences. As a fine does not address underlying issues which cause offenders to break the law, rehabilitation is not achieved by a large extent through fines. A fine may show an offender the errors of their ways and prevent them from reoffending in the future so to a limited extent fines may achieve the purpose of rehabilitation.*

*Protection is achieved to a limited extent by fines as the offender may avoid undertaking behaviour which would result in a future fine and would put the community at risk. Therefore if a fine prevents future dangerous, law breaking behaviour the community may be safer and protection may be upheld. Yet fines do not physically prevent offending in the future so protection is not upheld to a large extent as the safety of the community can not be ensured by giving an offender a fine.*

## Question 5

Marks	0	1	2	3	4	5	6	Average
%	2.0	1.5	3.0	5.2	12.1	29.5	46.7	5.0

This question was handled well. Many students were able to identify three errors and explain the correct process. The errors that were accepted were as follows:

- Error: The burden of proof lay with Adrian. Correction: The burden of proof lay with Maria, the plaintiff, as she was the one who brought the action against Adrian.
- Error: Adrian was found guilty. Correction: As this is a civil dispute, there was no finding of guilt, but there could be a finding of liability.
- Error: The judge did not have the power to order the case to go to mediation. Correction: As this was heard in the Supreme Court, the judge would have case management powers, which includes the power to order parties to attend mediation before trial.
- Error: The matter proceeded straight to the Supreme Court. In relation to this error, two corrections were allowed. First, a student could have assumed the reference to 'straight to the Supreme Court' meant straight to trial, which is incorrect, as parties will go through pre-trial procedures first, and/or most likely attend mediation. Second, a student could have stated that this matter was more suitable to be heard and determined by the Magistrates' Court or a body such as VCAT, given the nature of the dispute and that the Supreme Court is generally reserved for hearing more complex cases (notwithstanding it has unlimited jurisdiction).

Some responses did not provide enough detail about the correct process to get full marks. For example, more needed to be said beyond the judge having the power to order mediation. A better explanation is, 'The judge has the power to order mediation because he or she has powers of case management, including the power to order parties to attend mediation before trial'.

Other responses confused criminal and civil principles and stated that Maria was the prosecutor. These were not high-scoring responses.

## Question 6

Marks	0	1	2	3	4	5	Average
%	18.0	14.0	18.9	23.2	18.4	7.6	2.3

This question assessed students' understanding of the checks by the Australian Constitution on parliament in law-making, which is required key knowledge within Unit 4, Area of Study 1. Several ways could have been evaluated, including the role of the High Court, the express protection of rights, the separation of powers and the bicameral structure of the Commonwealth Parliament. Higher-scoring responses had sufficient depth to the strengths and weaknesses considered, and a meaningful conclusion, with the evaluation focused on how well this 'way' checked parliament in law-making.

The more popular ways used by students in their responses included the bicameral structure of the Commonwealth parliament, the role of the High Court, and the express protection of rights. Some responses evaluated the division of law-making powers or section 109 of the Australian Constitution, but these were limited in the number of points that could have been made. Others confused the division of law-making powers with the separation of powers, and only received around one mark (depending on the response).

Examples could have been used to demonstrate the strengths and weaknesses of the way, but very few responses used such examples. For example, in relation to the bicameral structure of parliament, the 'Medevac bill' and the role of the Senate and particularly senators in passing that bill was a good example to demonstrate the strengths and weaknesses of the bicameral structure in law-making. As another example, recent attempts by individuals to challenge laws passed in response to the COVID-19 pandemic in the High Court could have been used to demonstrate the limitations of express rights in the Australian Constitution. Students are encouraged to understand when examples may be useful in enhancing their responses.

The following is an example of a high-scoring response.

*One of the ways that the Australian Constitution acts as a check on the Commonwealth parliament's law making is through the express protection of rights. Express rights are explicitly stated in the Constitution and are entrenched, meaning they cannot be removed except by a referendum which provides a check on parliament's law-making. Because of the double majority requirement and associated costs with a referendum, these 5 express rights are extremely hard to change. However, this is limited by the fact there are only 5 express rights entrenched in the Constitution, which compare to a proposed national bill of rights, is not much.*

*These express rights explicitly prevent the Commonwealth parliament from legislating in those specific areas. For example, if they were to pass a law saying that Victoria could not trade with Queensland, that would be unconstitutional. Therefore limiting the Commonwealth Parliament's law-making ability, as they cannot legislate in these specific areas. However, the express rights only stop parliament from legislating in the areas explicitly written in the Constitution. For example, section 116 which protects the right to the freedom of religion is limiting in that several laws have and can be passed on religion, such as the Religious Discrimination Bill 2017, it only prevents the Commonwealth from legislating in the areas explicitly stated in section 116. Therefore is limited in its ability to provide a check on parliament.*

*The express rights as part of the Constitution's ability to act as a check on the Commonwealth Parliament's law-making is also limited by the fact that parliament can actually legislate on whatever they want, and for a law to be deemed unconstitutional, it must be challenged in the High Court of Australia (HCA), whom have the power to declare the legislation ultra vires, and invalidate the law. The HCA also requires a challenge must be brought by a party with standing, and they also must have reasonable access to resources, further limiting the ability of the Constitution to act as a check on the Commonwealth Parliament.*

*Therefore, it is reasonable to conclude that the express protection of rights via the Australian Constitution, allows for a limited check on the Commonwealth parliament's law making.*

## Question 7

Marks	0	1	2	3	4	5	6	Average
%	21.0	10.0	12.6	20.2	18.6	12.5	5.1	2.6

Students needed to explain one strength and one weakness of either a parliamentary committee or a royal commission in being able to influence a change in the law in order to attain full marks. Students were also required to use a recent example of a recommendation for law reform. This required students to refer to a specific recent recommendation that was made by a parliamentary committee or a royal commission (e.g., the recommendation by the Royal Commission into Victoria's Mental Health System in its interim report for a levy to be imposed to support Victoria's mental health system). A reference to a recent committee or commission was not enough.

Various issues meant that responses could not get full marks:

- Some did not provide enough depth to the strength or the weakness to be awarded full marks. An explanation is more than an identification. Sufficient detail about the feature of the committee or commission, and why this feature is a strength or a weakness, was required.
- Some students confused parliamentary committees and royal commissions with the Victorian Law Reform Commission.
- The strength and weakness needed to be linked to why it specifically enabled or did not enable commissions or committees to influence a change in the law. For example, many pointed to the fact that commissions are expensive, but some did not explain how this was relevant to whether commissions could influence a change in the law. Better responses pointed out that given commissions are expensive, they are seldom used to investigate law reform and therefore their ability to regularly make recommendations for law reform is limited.
- Many students did not use a recent example of a recommendation for law reform, and only referred to a recent committee or a royal commission.
- Some students referred to a recent example of a recommendation for law reform, but did not incorporate this into their response. The recommendation needed to support the strength and/or the weakness.
- Others used an example of a recommendation for law reform recommended by a body other than a parliamentary committee or royal commission, such as a recommendation by the Victorian Law Reform Commission. These responses could not then use that example in their explanation of the strength or weakness and could not get full marks.

Strengths and weaknesses that could have been explained include:

### Parliamentary committees

#### Strengths

- Parliamentary committees can investigate specific matters of policy or government performance, and these investigations can be in-depth.
- Committees can request individuals and organisations to give evidence at hearings, which can allow their recommendations to be supported by evidence and thus seem more influential.
- There can be community and expert input by various means, including submissions.

#### Weaknesses

- Government does not have to implement recommendations.
- There are limited resources, so a committee cannot always research issues.
- Committees are limited to their terms of reference.
- Many committees don't get a significant amount of public submissions as the public are sometimes not aware of their existence.

## Royal commissions

### Strengths

- Investigations can expose individual and institutional wrongdoing, which could influence government to strengthen laws around criminal conduct and wrongdoing.
- Commissioners are independent from government, commonly judiciary/legal professionals, which can make their recommendations more influential.
- They are conferred specific coercive powers of investigation.

### Weaknesses

- The commission is limited to its terms of reference, over which government ultimately has influence.
- There can be a lack of follow-up, particularly given the government does not have to implement recommendations.
- Royal commissions can be used to put pressure on political opponents, rather than as a means of law reform.

The following is an example of a high-scoring response. The specific recommendation for law reform in this response was well-integrated into the response.

*One strength of a royal commission is that it is an effective way to gauge community opinions and measure the views and values of the people. This is evident through the royal commission on family violence initiated by Alex Chernov as it received 1000 submissions from individuals who were interested in the matter and organisations with expertise on family violence such as the Australian Law Research Centre. As a result royal commissions and their suggestions regarding possible law reform are informed, credible and knowledgeable as a wide range of perspectives have been taken into account and those who have expertise in the field have been consulted as royal commissions have coercive powers and can force individuals to give their opinion.*

*However one weakness of a royal commission is that parliament is under no compulsion or obligation to accept suggestions or the verdict regarding law reform and can easily ignore it if they don't agree wasting the time and costs of this research body. But parliaments request the use of royal commissions which means that they are more likely to accept their propositions. This is demonstrated in the royal commission on family violence where the parliament accepted all 227 recommendations including increased establishment of family violence courts and increased support hubs in the community for victims – establishing the 2016 Family Violence Implementation Monitor to ensure that the parliament continue to implement the suggestions.*

## Question 8

Marks	0	1	2	3	4	5	6	7	8	9	10	Average
%	2.6	3.5	7.2	11.0	15.7	18.1	18.2	11.9	7.7	3.1	1.1	5.0

For full marks, students needed to state whether jury trials achieve the principles of justice, and provide sufficient, comprehensive justification, referring to all three principles of justice, in relation to both criminal and civil trials.

It was not necessary to refer to all three principles of justice in relation to both criminal and civil trials. For example, a student could have discussed fairness and equality in relation to criminal and civil trials, and access in relation to civil trials only. It was also not necessary to give equal weight to all three principles of justice, but all three did need to be addressed to get full marks.

This type of question required some thought and planning. While the question was straightforward, students were required to address both criminal and civil juries, and each of the three principles of justice. Better planning would have assisted students. Use of paragraphs was also critical, as well as well-signposted answers.

Students were asked a direct question, so the first part of the answer should create a contention. Creating a contention gives the student a clear direction to begin writing and creates a 'roadmap' for their answer. This can help students keep their answer on track and focus on supporting the stated contention. If students did not provide a contention, they were more prone to describing what a jury was or how it was empanelled, which was not relevant.

High-scoring responses demonstrated sufficient and a well-developed understanding of the three principles of justice and how they were or were not achieved in criminal and civil cases. These responses made connections with various features of those principles and the use of a jury. For example, what does it mean that a jury is randomly chosen? How does this ensure a fair trial?

Various points could have been made about each of the principles of justice, including:

### **Fairness**

- Criminal: Juries are intended to be impartial and independent adjudicators. Impartiality is a central concept of a fair trial – as noted in the Charter of Human Rights and Responsibilities and international agreements that require hearings to be heard before competent, independent and impartial bodies.
- Criminal and civil: Decision-making is shared rather than given to one person. Jurors can act as a check on each other, thus ensuring there is no bias or prejudice that informs the verdict – again upholding impartiality, which is a central feature of fairness.
- Criminal and civil: Jurors are expected to make decisions based on fact and law and not on their own biases or research. A fair trial requires the jury to decide based on facts presented in court. However, there is question whether jurors make decisions based on their own biases, or do inadvertently come across information that may influence their decision. This is particularly relevant for high-profile cases.

### **Equality**

- Criminal and civil: All individuals in the community are responsible for administration of justice – trial by one's peers (equals). However, this isn't always the case. Some cannot be on the jury because of their occupation or individual circumstances.
- Criminal and civil: Over the past two decades, the internet has made it increasingly difficult for jurors not to become aware of high-profile cases or stories about the case that is before them. This could theoretically affect their ability not to indirectly discriminate against one of the parties in their deliberation. This was noted in *R v Glennon*: the possibility that a juror can acquire prejudicial information is inherent in a criminal trial.

### **Access**

- Civil: A party can elect to have a jury, but they must pay for it. This could potentially limit jury trials for civil cases to those who are able to pay for it.
- Criminal and civil: It could be argued that the community itself gets access to both systems and see them at work. However, some are not eligible.
- Criminal and civil: A jury trial can simplify legal jargon and processes and arguably make the trial more accessible to everyone. It can also slow the trial process.

Some observations about the responses are as follows:

- Long, introductory descriptions of the three principles of justice were unnecessary. There was no need to define the principles within the answer. It should be clear from the answer that the student understands each of these principles.
- There appeared to be some confusion about who pays for a jury. An accused charged with an indictable offence does not pay for a jury. The party in a civil dispute that requests a jury must pay for it.
- Some students stated that juries do or do not achieve one or more of the principles but did not explain 'how'. How does the existence of a criminal jury achieve fairness? To answer, some understanding of 'fair' is needed (e.g., through the existence of independent and impartial jury members).

- Some students provided good descriptions of the role of the jury but made no connection with how that role upholds one or more of the principles of justice.
- It is not 'inequitable' for there to be a jury for indictable offences and not for summary offences. In addition, it is not 'inequitable' because there are jury trials for all serious criminal offences and not for all serious civil disputes. That is, some students misunderstood the meaning of the principle of equality.
- Many students incorrectly stated that the right to trial by jury in Victoria was protected by section 80 of the Australian Constitution, misunderstanding the meaning of that section.
- Very few students raised the point that very few civil trials use juries, less because of costs but possibly because of questions about their efficacy or ability to understand complex civil cases, and to award appropriate remedies.
- Very few students raised concerns around jury trials, particularly for high-profile cases, and how this can affect the principles of justice.

The following is an excerpt from a high-scoring response, addressing access.

*In civil trials particularly, the proceedings are high in complexity and are difficult for jurors to understand, particularly in understanding the evidence presented such as in a defamation claim which are substantially complex. This limits the ability of access to be achieved in civil jury trials. However it is also important to consider that by allowing community members to experience juror duty in both civil and criminal matters, it is allowing them to participate in legal proceedings, enhancing their ability to understand and access the criminal and civil justice systems and upholding access to jury trials.*

## Section B

### Question 1a.

Marks	0	1	2	3	Average
%	3.2	9.5	30.2	57.1	2.4

For full marks, students needed to state that Tom was charged with an indictable offence, and detail one reason why, with reference to the stimulus material. The first reason stated within any response was considered by assessors for marking.

There were several facts that pointed to Tom being charged with an indictable offence.

- There was a committal hearing in Tom's case. Committal hearings are only used for accused persons who have been charged with an indictable offence.
- Tom was sentenced in the County Court for the crime. The County Court generally only sentences people charged with indictable offences.
- The maximum penalty and the sentence Tom received all point to this being an indictable offence (students could have mentioned Magistrates' Court's limitations in terms of sentences it can impose).
- Tom was charged with a crime in the *Crimes Act 1958* (Vic), the main statute in Victoria that contains indictable offences.

Many responses stated that Tom was charged with an indictable offence. The main error made was that their one reason for this was not clear. Some responses gave multiple reasons but did not give enough detail for the first one to obtain full marks. Other responses did not make the link between the reason and the information in the stimulus material. For example, some responses stated only that Tom was charged with an indictable offence because his case was heard in the County Court. The response needed to also state that this must mean that Tom was charged with an indictable offence because the County Court generally only sentences people charged with committing an indictable offence.

Some responses stated that because Tom had caused injury to Guy, he was charged with a serious offence, not understanding that in some instances a minor offence can also involve personal injury. Others incorrectly stated that imprisonment is a sentence that can only be given for indictable offences and therefore this must be an indictable offence.

The following is an example of a high-scoring response.

*Tom was charged with an indictable offence.*

*This is evident because he 'pleaded guilty at the committal hearing', and committal proceedings (such as the committal hearing) are only available and used in indictable offences. They are not used in summary offences.*

## Question 1b.

Marks	0	1	2	3	Average
%	11.4	28.8	42.6	17.2	1.7

Generally, students understood that the standard of proof in a criminal case is beyond reasonable doubt, and the standard of proof in a civil case is on the balance of probabilities. The question did not ask what the two standards of proof are, but instead asked for an explanation of how they are different. Students needed to distinguish the two by explaining that one standard is higher, or requires more evidence, than the other (or distinguish the standards in some other way or using other words). Many students did not do this.

Students also needed to refer to the stimulus material. Students who did this referred to either Tom's criminal case, or to Guy's civil case against Tom, and the standard in either or both. High-scoring responses stated that the standard to which Guy would have to prove his case against Tom was not as strong or as high as the standard that would have been required in the prosecutor's case against Tom.

Many responses did not refer to the stimulus material. If students had sufficiently explained how the two standards are different, but did not use the stimulus material, they could have received two marks.

The following is an example of a high-scoring response.

*The standard of proof in a criminal case would require the prosecution to prove Tom guilty of intentionally causing serious injury beyond reasonable doubt (if the matter went to trial). Yet, to prove Tom liable of the civil breach to Guy, he needs to be proven liable on the balance of probabilities.*

*These standards differ because the standard in a civil case is lower. In a criminal case, jurors must not have any reasonable doubts that Tom may be innocent, whilst a judge or jury must decide who's story is more believable, Tom or Guy.*

## Question 1c.

Marks	0	1	2	3	4	5	6	Average
%	11.3	18.1	24.4	27.2	12.4	4.9	1.7	2.3

This question required a discussion (not an explanation) of at least two responsibilities of the parties in Guy's civil case against Tom. Many responses explained the responsibilities but did not discuss them.

A discussion requires students to go beyond providing detail about the responsibilities and consider their limitations, restrictions, benefits or weaknesses. A discussion is multifaceted, whereas an explanation is a linear exposition. For example, one of the responsibilities of the parties in a civil case is to discover relevant documents. An explanation of this responsibility would involve describing what discovery means and what documents may need to be discovered. A discussion is more than this – it may consider the costs of discovery, or the complexities in identifying relevant documents, the difficulties that Guy may face in undertaking discovery without a lawyer, and/or why discovery would be important in Guy's case.

Some responses confused criminal and civil principles and discussed Tom's criminal case. Others stated that Guy was the prosecutor. Some extended their discussion to responsibilities of legal practitioners. These were not appropriate responses.

Some of the responsibilities that could have been discussed included:

- Guy, as the plaintiff, has the burden to prove the case against Tom.
- As the plaintiff, Guy is responsible for gathering evidence, identifying critical and relevant documents, and preparing witness statements. Guy may find this difficult, particularly given he does not have a lawyer to help him navigate these processes.
- Guy has to choose which facts to present, the course of action and how the claim will be pleaded.
- Both parties have pre-trial obligations, including in relation to discovery, pleadings and attending mediation.
- Both parties are subject to overarching obligations (e.g. the requirement to cooperate, disclose relevant documents at the earliest possible opportunity, and to act honestly).

The following is an excerpt from a high-scoring response. The first part of the response considered Tom and Guy's overarching obligations:

*Furthermore, both Guy and Tom have responsibility of presenting their case to the judge (and potentially jury). They both can cross-examine witnesses, and sum up the facts of their case to the court. This ensures they both have the same opportunity to present their case, and can test the other party's evidence through cross-examination, which is fair as it enables a just and equitable trial for both parties.*

*However, since Guy is financially disadvantaged and is unable to afford legal representation, he may be at a disadvantage to Tom who may have a proficient lawyer and be able to present his case in the best possible light. This means that Tom and Guy may not be on an equal footing before the law, and may not be able to both present their cases as best they can.*

*Finally, Tom and Guy are able to have full control over their cases (party control). They are able to decide what documents to disclose, what witnesses to call up, what evidence to present, and what legal representation they want (if any). This ensures both Tom and Guy have full agency over their cases, and are not dictated by anyone else.*

*However, this means they may receive minimal assistance from the Court, which could be a disadvantage for Guy who is unrepresented and may be unable to understand the evidence and rules and procedures. This means he may miss vital evidence, may be under undue stress due to lack of understanding, and may cause further delays in the trial.*

## Question 1d.

Marks	0	1	2	3	4	5	6	Average
%	4.1	6.3	15.5	24.7	27.1	15.5	6.7	3.4

This question required an analysis of two factors that Guy should consider before suing Tom. Five factors are listed in the Study Design. Many students selected costs and enforcement issues. Some chose negotiation options and limitation of actions. Fewer wrote about scope of liability.

An analysis is more than explanation. It requires a deeper consideration of factors. Responses needed to unpack each factor by reference to the stimulus material. For example, in relation to costs, students could have considered how much Guy's case would cost against how much he might receive in damages, the difficulties Guy may face in paying for disbursements given he can't afford legal representation, and the possibility he may lose if he represents himself because he can't pay for a lawyer.

In relation to the other factors, these points could have been made:

- Negotiation options: Guy could seek to negotiate, facilitated or not, with Tom. This will save on costs and time, which will benefit Guy, given he cannot afford a lawyer. Is this feasible, given Tom is in prison? How would negotiation work, and would Guy be willing to negotiate with Tom directly?
- Limitation of actions: Guy will need to keep an eye on time, as there are limitations that would apply to when he can issue a claim. Limitations doesn't seem to be an issue, given Guy is ready to sue Tom, but given Tom is in prison, is Guy best to wait, and if so, will he run into limitations issues?
- Scope of liability: Guy may need to consider the extent to which Tom is liable. Could Tom in some way argue that he is not liable, or that Guy somehow contributed to his own injuries? Is there some way that Tom could argue that he is not entirely responsible?
- Enforcement issues: Even if Guy wins, will he be able to enforce a damages amount? Will it ever be paid, particularly given Tom is in prison? Not much is said about Tom's financial capacity, so Guy may need to make some enquiries to see if a civil claim is worth it. He may need some help from a lawyer to advise him, but unfortunately he cannot afford a lawyer.

The following is an excerpt from a high-scoring response, addressing costs:

*One factor that Guy should consider before initiating civil action against Tom is the cost of civil litigation. As Guy is 'unable to afford legal representation' it is likely that he is financially disadvantaged. This means he should consider whether he can finance all other costs associated with action, including hearing/filing fees, expert witness fees (e.g. he may need a doctor to act as a witness to verify the severity of his injuries) as well as the possibility of an adverse costs order given that he is unsuccessful. Guy should decide whether obtaining a remedy will outweigh all of these costs, as well as his potential stress and anxiety as a result of trying to finance action.*

## Question 1e.

Marks	0	1	2	3	4	5	Average
%	5.9	6.7	17.0	33.2	28.7	8.5	3.0

There were two parts to this question. The first required a description of the purposes of remedies. At least two purposes needed to be described. The second required students to suggest why damages would be more appropriate for Guy than an injunction. This part required an understanding of damages and injunction, and why a sum of money would better compensate Guy than a court order compelling Tom to do or not do something.

Some responses only described one purpose of remedies and therefore could not receive full marks. Others, while making valid points why an order for damages would compensate Guy, did not make those points by reference to why an injunction would not compensate Guy. Weaker responses suggested that an injunction is akin to an intervention order. Better responses pointed to the fact that there is no continuing conduct that needs to be stopped, nor is there any performance required by Tom that can be compelled by an injunction.

The following is an example of a high-scoring response.

*There are two main remedies in a civil trial, damages and injunctions. The main purpose of damages is to provide Guy with monetary compensation (paid for by Tom), to restore him back to his original position before the civil wrong occurred. The main purpose of an injunction is to either compel Tom to act (mandatory injunction) or prohibit Tom from acting (restrictive injunction) to rectify the civil wrong he has committed.*

*Damages would be more appropriate than an injunction in Guy's case, as Guy has suffered quantifiable losses that can only be restored through a monetary compensation. Specific damages would be awarded to compensate for Guy's quantifiable losses, such as the cost of his medical treatment and \$150,000 in loss of earnings. In this way, damages would achieve their purpose and fully restore Guy back to his original financial position. On the other hand, an injunction prohibiting Tom from further causing harm to Guy would only prevent Guy from suffering future loss, and would not compensate him for the harm already caused. They could not restore his medical bills.*

## Question 2a.

Marks	0	1	2	3	4	5	6	Average
%	5.9	7.4	14.0	22.1	24.8	17.7	8.0	3.4

For full marks, students needed to comprehensively explain two reasons why laws may need to change, with meaningful and accurate use of the source material. Various reasons for law reform could have been used, but the more relevant ones had greater links to the stimulus material.

- Changes in community values: Hundreds of thousands of Australians took to the streets seeking greater action on climate. Many school students demonstrated, which suggests a shift in values and attitudes in relation to expectations around laws on climate change.
- Changing environmental and economic conditions: The proposed Climate Change (National Framework for Adaptation and Mitigation) Bill 2020 seeks to address climate change, including by setting targets for zero greenhouse gas emissions and making changes to ensure the economy responds to climate change.
- Protection of the community: The sources indicated that climate change was a 'crisis' and there was a need for law reform because everyone deserved a 'safe future'.
- International pressure or obligations: Australia has obligations under international agreements (e.g., the Kyoto Protocol and Paris Agreement), as noted in the Bill.

The differentiating factor was how well the source material was used and incorporated in the response. Vague, general or brief explanations with little reference to the source material were low-scoring responses.

The following is an example of a high-scoring response. This response was well structured, using a paragraph to separate the two distinct reasons, and making the reason clear in the first sentence.

*Law reform may need to occur due to societies changing beliefs, attitudes and values. As demonstrated in the introduction, the younger generation believes climate change and its global implications to be more of a 'crisis' than older generations in the past. This demonstrates that society is moving to be more proactive and taking leadership in addressing climate change because they believe that it is a serious issue. Therefore in order to address this more progressive stance on climate change by the youth, parliament needs to listen to vocal group and increase their popularity, as these young kids/teens may not be voting now but they are future voters that will undoubtedly remember which party was able to initiate reform to support their case.*

*Another reason is to provide greater protection to the community. As outlined in Source 1, climate change can reduce the ability of the present youth to enjoy a 'safe future'. This means that in order to increase the safety of society, and limit the potential of this 'crisis' impacting on the communities health, parliament must demonstrate initiative and be proactive in limiting its adverse consequences. If parliament fails to act, people may think they are recklessly neglecting their duty to increase societies protection, which may jeopardise their chances of re election, due to voter backlash.*

## Question 2b.

Marks	0	1	2	3	Average
-------	---	---	---	---	---------

Marks	0	1	2	3	Average
%	13.33	28.29	36.33	22.05	1.7

This question assessed students' understanding of reasons for statutory interpretation, and more particularly why a phrase contained in the Climate Change (National Framework for Adaptation and Mitigation) Bill 2020 may require interpretation by a court. Points that could have been made included:

- There may be no definitions section in the Bill, so the meaning of the term 'climate change' as it applies to specific cases may be unclear.
- The term, if used in a specific section, may be ambiguous. What does 'change' mean, and what does 'climate' encompass?
- The legislation may not cover a specific issue in relation to climate change.
- There may be changing definitions of climate change over time.

Generic, vague or general responses with little reference to the stimulus material or without sufficient explanation could not be awarded full marks (e.g., it was not enough to say that the words may be ambiguous. Better responses explained what that meant and provided examples of what may be ambiguous about the phrase).

Some responses incorrectly stated that only the High Court interprets statutes.

The following is an example of a high-scoring response.

*This is because it is not defined in MP Steggall's statute and therefore may be ambiguous in meaning.*

*For example, it may be unclear/ambiguous what constitutes a 'change' in the climate (e.g. how much do temperatures have to rise? Could climate change be indicated through natural disasters?) making it difficult to apply MP Steggall's bill (if it passed and became an act) as the framework of the bill (i.e. the objectives it sets out) requires climate change to occur.*

*Thus, statutory interpretation may be needed to clarify what constitutes 'climate change' and therefore allow the bill to be applied.*

## Question 2c.

Marks	0	1	2	3	4	5	6	7	8	Average
%	5.4	6.1	10.8	15.2	20.7	18.9	14.2	6.6	2.2	4.0

This question required students to discuss the extent to which they agreed with a statement that political pressures are effective in changing the law. The statement specifically identified two pressures: demonstrations and the media. Students were expected to address these two pressures, but could have addressed others (e.g., internal political pressures, international pressures, electorate pressures).

For full marks, students needed to provide their view and comprehensively discuss political pressures, with meaningful use of stimulus material. Generic responses about demonstrations and the role of the media were not high-scoring responses. For example, while it is valid that if there is bad weather then a demonstration is less likely to have an impact, this point was not raised in the source material (and given that hundreds of thousands of Australians attended the demonstration, one would expect that weather was not an issue). Better responses specifically used the source material. The following points could have been made:

- The pressure to win elections can also mean demonstrations are an influential means of effecting law reform, if they are an indication that support for an issue is widespread enough. With an estimated 300 000 demonstrators attending the School Strikes for Climate, the desired change is arguably well supported by the public.

- Members of parliament (MPs) have a responsibility to represent their constituents, who are not necessarily the demonstrators. Do the demonstrations reflect the majority of views? It seems likely, given the numbers who attended.
- The demonstrations/strikes 'spilled out' into Melbourne streets – did it cause inconvenience? Was there negative media attention?
- Many School Strike for Climate demonstrators may not yet be old enough to vote – parliamentarians could disregard their views for this reason.
- Favourable media and social media coverage can present the influential role of individuals in pressuring lawmakers, amplifying their political messages for change. Adversely, negative media and social media coverage can pressure lawmakers, limiting the willingness of lawmakers to change the law.
- In this case, the *Guardian* appeared to publish a somewhat favourable view of the demonstration, noting the call for 'greater action' and reporting on the widespread support for the change. This could arguably influence parliamentarians more.
- It's questionable whether the demonstrations/media have been effective in changing the law, given an independent MP introduced the bill – clearly it doesn't have government support.
- The media's ability to influence in this area may be affected by media ownership or alliances – could some newspapers negatively report on the demonstrations or on the issues?

Other points could have been made about parliament's ability to change the law, as well as other political pressures, but very few students raised these points. For example, a good point could have been made about Australia's international obligations to address climate change issues, as noted in the Bill, and pressures that can be placed on government to meet those obligations.

The following is an example of a high-scoring response.

*The actions of student demonstrators are somewhat effective in changing the law. By turning out large numbers of people (300,000) the School Strike 4 Climate (SS4C) protestors have increased domestic political pressure on politicians, as well as attracting media and spreading awareness of the need for climate change. In particular, they have shifted the framing to a 'climate emergency' which puts pressure on the government to respond. However, because they are children and so cannot vote, parliament may not feel electoral pressure to support climate action. Furthermore, while the Climate Change Bill 2020 adopts a 2050 target for net zero emissions, it is significantly lower than the SS4C demand which suggests student demonstrators have been effective only to a limited extent.*

*The role of the media is effective in influencing law reform to a moderate extent. It can nationalise a smaller event and bring together the various protests of SS4C, therefore amplifying pressure on parliament to change the law, as the Guardian did. They can also gain access to interviews with politicians and so hold them accountable, putting pressure on them to support the reform or else be portrayed in a bad light. Furthermore, social media allows individuals to share their opinions by messaging politicians, or raise awareness with others by sharing the introduction of MP Zali Steggall's Bill to parliament.*

*However, the media can also polarise an issue like climate change and a government may become defensive rather than adopt some law reform, because it is so combative. This may be seen to stagnate reform by forcing politicians to choose a side and punishing inconsistency or shift in opinion by portraying them badly.*

*Therefore, while the role of media is moderately effective in changing the law, its polarising nature may stagnate reform, as has occurred with the government 'not yet' supporting SS4C and climate action.*