

# 2024 VCE Legal Studies external assessment report

## General comments

In general, students demonstrated a good understanding of key legal concepts and [command terms](#) in the 2024 VCE Legal Studies examination, effectively responding to terms such as ‘outline’, ‘explain’ and ‘to what extent’. Many students were able to use paragraphs, where appropriate, as well as key words to signpost responses. For example, when responding to ‘analyse’ questions, students used phrases such as ‘moreover’ and ‘this can be seen’ to transition from explanation to analysis. Additionally, students demonstrated a good understanding of foundational concepts such as burden and standard of proof, the rights of the accused and class actions.

Areas with potential for improvement included:

- demonstrating understanding of the division of law-making powers, parliamentary committees and Royal Commissions, and the checks on the law-making powers of the Commonwealth Parliament
- carefully reading questions to fully understand their scope and limitations. For example, in Section A Question 3b., students were required to analyse two factors that may affect the success of future constitutional reform through the referendum process. While responses identified relevant factors, many did not link these to the success of future constitutional reform
- accurately addressing the specific command term within each question. For example, responses to Question 3c. often *explained* how the Australian Constitution acts as a check on the law-making powers of the Commonwealth Parliament rather than *discussing* the necessary points
- avoiding inclusion of unnecessary definitions that are not explicitly required by the question. Where needed, definitions should be incorporated implicitly into responses rather than rote learned and included in a separate paragraph
- making effective use of stimulus material beyond simply incorporating names within responses, and where appropriate, identifying connections between sources and using multiple sources to strengthen a response
- providing the specified number of reasons, differences or features asked for in the question, and ensuring these are clearly identified in the response. For example, Section B Question 2b. asked for one role of the lower house of the Victorian Parliament. Where more than one role was provided, only the first role was marked
- providing comprehensive and detailed responses. Students are encouraged to develop a strong understanding of the relevant key knowledge and key skills to ensure they can provide detail when required
- using cases, evidence or data studied throughout the year to substantiate or expand on points where appropriate – particularly in response to questions in Section A. For instance, examples or evidence could have been used to enhance responses to Section A Question 3a. (reasons for constitutional reform) and Question 3c. (checks on the law-making powers of the Commonwealth Parliament).

Additionally, examination techniques that could improve student responses include ensuring handwriting is clear and legible, using blue or black pen for readability, and correctly labelling responses. The examination is scanned and marked electronically, and it is therefore important that students write 'PTO', 'see extra space' or similar to direct assessors to continued responses where necessary. Moreover, structuring responses with well-organised paragraphs and clear transitions helps to ensure clarity and alignment with the requirements of the question. For example, when analysing two factors, each factor should be addressed in a separate paragraph, with use of analytic language to support the response.

In 2024, 65 examinations were potentially impacted by the early publication of the examination material. After extensive analysis, only 5 exams were found to have been impacted. The Legal Studies examination was one of those 5 examinations.

The independent Expert Advisory Panel led by Professor John Firth:

- reviewed student marks in the affected exams and identified any anomalies in how students have responded to the affected questions, including how the affected question related to the rest of the exam
- analysed if any discrepancies were identified. If so, the panel conducted further analysis.

The statistical analysis revealed anomalies in the data where a small number of students performed significantly better on the impacted questions compared to their performance in the rest of the paper.

To avoid any consequent disadvantage for other students, the Panel recommended that those students were removed from the standard study score, including the distribution of study scores. The scores of impacted students were then inserted into the overall distribution at a matched point after the study scores had been distributed.

This has ensured that no student lost a mark through this process and no student was disadvantaged as a result of this process.

## Specific information

Note: 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 1a.

Marks	0	1	2	Average
%	7	27	67	1.6

This question required students to give a brief outline of the burden and standard of proof in relation to the stimulus material. To attain full marks, responses needed to correctly identify the burden and standard of proof and link these to the stimulus: for example, stating that the burden of proof is on Louise's client and the standard of proof is on the balance of probabilities.

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

*The burden of proof is the responsibility of the party to prove the facts of the case. In this case the burden of proof is on the clients as they are the plaintiffs who want to sue Louise. The standard of proof is the strength of evidence required to prove the facts of the case. Because the clients want to sue Louise, as it is a civil action and therefore the standard of proof is on the balance of probabilities which means that both parties must provide sufficient evidence to prove that their version of the facts is more probable than not.*

## Question 1b.

Marks	0	1	2	3	Average
%	3	12	47	38	2.2

This question was generally answered well. Students needed to provide a comprehensive response that addressed the command term 'to what extent' by providing a contention or statement that determined whether a class action was appropriate in this case.

The focus of the response needed to be on the appropriateness of a class action, rather than what a class action is, types of class actions, or advantages and disadvantages of class actions.

Responses may have included the following points:

- Class actions could be appropriate because:
  - the circumstances of each plaintiff and the nature of their claim against Louise are the same/similar; it is the same issue of law and facts that needs to be determined by the court
  - all plaintiffs have suffered a small amount of loss (\$10,000 each), which combined could mean it is a more cost-effective way to seek a remedy
  - there are enough group members (at least seven) for a class action
  - group members can seek a remedy without bearing the costs of the proceedings (unless they are successful in obtaining a settlement or court judgement)
  - it would allow efficiency in determining the claims (for example, avoiding multiple claims, backlogs, cost and so on)
- Class actions may not be appropriate because/if:
  - the County Court has no jurisdiction to hear a class action; the plaintiff instead would have to issue the claim in the Supreme Court or the Federal Court (responses did not need to mention both courts)
  - there is nobody willing and able to be the lead representative/plaintiff
  - the size of the claim may be too small to be attractive to a law firm / litigation funder to fund the civil case.

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

*It may be somewhat appropriate for Louise's clients to initiate a class action against Louise. 22 clients were affected by the matter, which fulfills the criteria of seven or more people affected by the same matter to initiate proceedings against the same party, a class action encompasses. Additionally, they are all equally effected by the matter which would ensure that they are compensated through the damages as all plaintiffs are awarded the same amount of damages. However, one client must be willing to be the lead plaintiff and represent the other clients, including bearing the burden of costs and engaging in legal practitioners and participating in court processes, which may make a class action inappropriate if there is no willing plaintiff.*

## Question 2

Marks	0	1	2	3	4	Average
%	2	3	25	46	24	2.9

This question required students to comprehensively explain a victim impact statement and how it may be considered by a judge when sentencing Jai. Responses needed to effectively address both parts of the question (that is, both what a victim impact statement is and how it may be considered by the judge in sentencing). Students could refer to how the victim impact statement can be either an aggravating or a mitigating factor when sentencing, but full marks could be attained without doing so. If students did raise this point, technical accuracy was not required. In particular, the statement itself is not an aggravating or mitigating factor; rather, it is the circumstance or factor (such as the impact on the victim) that may aggravate or mitigate the offender.

The response needed to reference the case study. In this instance, simply incorporating the names from the case study was sufficient.

Responses may have included the following points:

- A victim impact statement is a written or oral statement presented to the court during the sentencing phase of a criminal trial. It is provided by the primary victim or the primary victim's family to express the emotional, physical and financial impact of the crime on their lives.
- When sentencing Jai, the court must consider the impact of Jai's offending on Georgia (and possibly other victims such as her family) and her personal circumstances. A victim impact statement allows the judge to understand the impact of Jai attempting to murder Georgia and/or her family, and is a factor that the judge can consider when sentencing Jai.
- The victim impact statement is one factor to be considered by the judge when sentencing Jai – the impact of which may vary depending on the context and content of the statement. It may emphasise the severity of the harm or trauma Georgia experienced, and demonstrate how the crime has had a lasting impact on her (for example, psychological trauma, physical disabilities and long-term financial struggles). In these instances, the victim impact statement could contribute to the argument for Jai to receive a more severe sentence. It is also possible that Georgia could express forgiveness or a desire for leniency in her victim impact statement.

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

*A victim impact statement is a submission made to the court by the victim detailing the extent of any injury, harm or loss suffered as a result of the offender's actions. They are used in sentencing to help the judge gain an understanding about the long-term effects of the offence on the victim, as well as the degree of harm done to the victim. When sentencing Jai, the judge would have considered Georgia's impact statement in order to assess the level of protection Georgia may need from Jai due to seriousness of the harm she has suffered. As this is an attempted murder case it is likely that Georgia will suffer serious long term effects from Jai's actions which may prompt the judge to increase Jai's sentence to correspond to his offending. Thus the statement may be considered as an aggravating factor, as it increases Jai's culpability and may lead to the judge imposing a harsher sentence due to the severe harm caused by Jai's offence.*

## Question 3a.

Marks	0	1	2	Average
%	18	33	49	1.3

This question required students to outline one reason why the wording of the Australian Constitution may need to be reformed. To receive full marks, students needed to provide a correct reason as well as supporting details, such as a relevant example.

Some responses focused on general reasons for law reform (such as changing technology) and were not awarded marks. Responses needed to focus on the reason (the 'why'), not the change (the 'what').

Possible reasons for reform included:

- outdated language – the language used in the Constitution reflects the style and norms of the late 1800s, which might not align with contemporary values and societal expectations
- recognition of First Nations peoples – there is currently no mention of First Nations peoples in the Constitution, or recognition of them as the original inhabitants of Australia. There have been calls for changes to the Constitution to give First Nations peoples a voice to parliament (for example, the unsuccessful 2023 referendum) or to recognise them in the preamble
- republicanism – if Australia is to become a republic, the Constitution will need to be changed to require an Australian person, rather than the King, as head of state (for example, the unsuccessful 1999 referendum)
- change to the Commonwealth's law-making powers – if there is a need or desire for the law-making power of the Commonwealth Parliament to change, this can be achieved through constitutional reform. A new situation may arise in which it is best for the Commonwealth Parliament to legislate; this will need to be added to the Commonwealth's specific powers (for example, addition of the social services power in 1946)
- the changing nature of society – the values and attitudes of Australian society have changed since Federation and are more diverse. Consequently, the Constitution may need to be changed. For example, if the majority of Australian voters support Australia becoming a republic, a referendum to change Australia's head of state may be required
- any other relevant reason, such as changing the structure of our legal and political systems (for example, recognition of local government or changing federal election terms) and improving rights protection.

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

*One reason why the wording of the Australian Constitution may need to be reformed is to change the division of law-making powers. Since the Constitution limits the powers of the Commonwealth parliament, they could possibly want to expand their law-making powers so that they can make laws on some areas. By passing the Constitutional Alteration Bill and bring a referendum to the people, the Constitution may be able to be reformed.*

## Question 3b.

Marks	0	1	2	3	4	5	6	Average
%	6	5	11	25	35	15	3	3.4

Students were expected to analyse two factors that affected the success of future constitutional reform through the referendum process. The command term ‘analyse’ requires students to identify components and look at significance, relationships, cause and effect, and impact. Specific language that might support an analysis could include ‘Moreover’, ‘This means that ...’, ‘This is significant because ...’ or ‘The impact of this is ...’.

Responses needed to consider:

- the relationship between two or more factors or issues, such as a lack of clarity in the proposal and the absence of bipartisan support)
- the significance of a particular factor, such as bipartisan support, given that only eight out of 45 referendums held to amend the Constitution have been successful
- historical patterns and their potential influence on future reforms
- the extent to which a factor may impact on voting behaviour.

Relevant factors may have included:

- bipartisan support – the level of support from political parties significantly influences public opinion. Unified support from major parties can increase the likelihood of success, while opposition from one party often leads to divisive campaigns and reduced chances of a ‘yes’ vote
- clarity of proposal – a clear, simple referendum question is crucial. Complex or confusing proposals often result in voter uncertainty, with many opting to vote ‘no’ to maintain the status quo. Conversely, clear and accessible proposals may encourage public support and a ‘yes’ vote
- double majority provision – the requirement for a double majority (more than 50% of voters nationwide and a majority in at least four of six states) makes achieving a ‘yes’ vote challenging. This stringent provision ensures that only proposals with overwhelming public support succeed.

Additional factors that may have been considered included the conservatism of Australian voters, whether voters are seeking change, and the level of public education about the proposal.

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

*A factor that may affect the success of a referendum is bi partisan support. Bi partisan support regards Australia’s political duopoly, in which the country has 2 major political parties. (labour/liberal)*

*1-way bi partisan support may assist in affecting the success of a referendum is where it is present. This means both major political parties support constitutional reform, therefore members/supporters/those unaffiliated with any party are more inclined in voting in favour of change, thus in turn increasing the likelihood of success of a referendum.*

*Opposingly where there is a lack of bi partisan support, a referendum is likely to fail. Where 1 major political party opposes constitutional reform a “no” campaign is likely to be established, thus influencing members, supporters, those unaffiliated to adopt a conservative approach which may hinder the likelihood of a future referendum in succeeding.*

*Another factor that may affect the success of constitutional reform is the double majority requirement. Under S128, to change the Australian Constitution requires the approval of the people through a referendum. Where the people disapprove the referendum, proposals are unlikely to satisfy the double majority requirement (majority of yes votes across Australia and a majority of states) in turn leading to an unsuccessful attempt at constitutional reform.*

## Question 3c.

Marks	0	1	2	3	4	5	Average
%	21	12	19	23	18	7	2.3

This question required students to discuss a way the Australian Constitution acts as a check on the law-making powers of the Commonwealth Parliament, other than the referendum process. A discussion goes beyond an explanation and requires students to consider strengths and weaknesses and to provide a multi-faceted response, which may include phrases such as ‘however’, ‘conversely’ or ‘on the other hand’. For example, when discussing express protection of rights as a check on law-making powers, students were expected to address the restrictions and limitations of these rights. Responses were expected to focus specifically on how the Constitution limits the Commonwealth Parliament’s law-making powers (not those of state parliaments) and address one of the three key means outlined in the study design:

- the role of the High Court in protecting the principle of representative government
- the separation of the legislative, executive and judicial powers
- the express protection of rights.

Students could have selected other means by which the Constitution acts as a check on the Commonwealth Parliament’s law-making powers, excluding the referendum process, as specified by the question.

Responses may have included the following points:

- A ‘check’ on law-making powers refers to process, devices or sections of the Constitution that limit the Parliament’s ability to pass legislation in certain areas, so that the Parliament does not have supreme law-making powers.
- The express protection of rights – students needed to explain how express rights in the Constitution act as a check on Parliament’s law-making. The Constitution contains five express rights, each explicitly limiting the Commonwealth Parliament’s powers in specific areas. For example, section 116 prohibits laws that establish a religion or interfere with religious freedom, thus acting as a check on Parliament’s law-making power in this area. However, the limited number and narrow scope of express rights means the restrictions on Parliament’s powers are also limited.
- The separation of powers ensures that legislative, executive and judicial powers are held by different branches of government, preventing the concentration of power. This helps protect against abuses of power, as no single branch can control law-making. However, the executive and legislative branches are intertwined in practice, as Cabinet members, who hold executive power, are also members of Parliament, limiting the effectiveness of the separation of powers as a check.
- The role of the High Court in protecting the principle of representative government – the High Court acts as the guardian of the Australian Constitution and can restrict Commonwealth law-making that infringes upon the principle of representative government. Representative government refers to the situation whereby the people elect members of parliament to represent them. This is enshrined in the Constitution through sections 7 and 24 of the Constitution, which guarantee that members of Parliament are directly chosen by the people. The High Court can invalidate laws that infringe upon voters’ rights, as seen in *Roach v Electoral Commissioner*, where the High Court ruled that the Commonwealth Parliament can only restrict the right of people to vote for a substantial reason. The High Court has also recognised an implied right to political communication, acting as a check on laws that limit free political discourse.

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

*The Australian Constitution acts as a check on Commonwealth Parliament in law making through the separation of powers. This principle divides the responsibilities into three distinct categories, thus checking the legislative branch of Commonwealth Parliament through the independent judiciary and executive. This is evident with the judiciary holding the power to interpret legislative principles through application ensuring that Parliament remain within their law making powers. This may occur through the protection of express rights, such as the freedom of religion in s116 as the courts can rule Parliament to have violated their abilities ruling the act ultra vires. However the separation of powers is limited through the overlap of branches, with the Prime Minister and cabinet members sitting in both the legislature and executive arms. This raises the possibility of corruption as the bodies making and administering the laws are composed of the same members.*

## Question 4

Marks	0	1	2	3	4	5	6	7	8	Average
%	18	6	9	10	15	16	15	9	3	3.7

This question was generally answered well, demonstrating students' sound understanding of how law reform bodies influence legislative reform. Many students provided relevant examples from Parliamentary Committees or Royal Commissions. Some confusion arose around the Victorian Law Reform Commission.

The command term 'evaluate' required students to assess the effectiveness of these bodies by considering their strengths and weaknesses and then forming an overall judgement based on this analysis. To be awarded full marks, a judgement informed by points for and against was required.

This question was marked holistically, and therefore a specific number of points was not required. Generally, however, students were expected to provide between two and four points. Those who provided fewer points could still achieve full marks by exploring these points in greater depth.

Responses may have included the following points about parliamentary committees:

- In-depth investigation – committees can undertake in-depth investigations into specific areas of policy or legislation, gathering evidence and consulting experts and stakeholders. This process helps to address gaps in existing laws. However, due to time and funding constraints, not all issues can be investigated.
- Public consultation – committees facilitate public participation through submissions and hearings, ensuring diverse perspectives are considered. However, public awareness of these consultations can be limited, reducing community input.
- Recommendations – committees issue public reports with recommendations that can influence legislative change. However, their recommendations are not binding, and government may choose to ignore them.
- Influence – while parliamentary committees do not have legislative power, they can influence reform through information gathering, stakeholder engagement and informed recommendations.

Possible examples included but were not limited to:

- Inquiry into Anti-Vilification Protections (Vic)
- Inquiry into the 2022 Flood Event in Victoria (Vic)
- Inquiry into securing the Victorian food supply (Vic)
- Inquiry into Australia's Human Rights Framework (Federal)
- Inquiry into online gambling and its impacts on those experiencing gambling harm (Federal).

Responses may have included the following points about Royal Commissions:

- Investigation and inquiry – Royal Commissions have extensive powers to conduct thorough inquiries, summon witnesses and gather evidence. However, they control the scope of investigations, meaning some groups may not be consulted, leading to incomplete findings.
- Recommendations – after investigation, Royal Commissions provide detailed reports with recommendations for legislative changes, policy reforms and institutional improvements. However, conducting a Royal Commission can be time-consuming and costly, which can delay reforms.
- Public awareness – Royal Commission findings often generate public debate, creating support for reforms. However, there may not be bipartisan support for the recommended reform, which could restrict the ability for a change to be passed through parliament.
- Government response – the government is not obliged to act on all recommendations, though it is expected to formally respond to and may accept, reject or modify the recommendations based on various factors, including legal considerations, political implications and public opinion. If the government accepts the recommendations for legislative changes, it may introduce bills or amend legislation accordingly – though it is not obliged to do so.

Possible examples included but were not limited to:

- Royal Commission into the Casino Operator and License (Vic)
- Royal Commission into the Management of Police Informants (Vic)
- Yoorrook Justice Commission (Vic)
- Royal Commission into Victoria's Mental Health System (Vic)
- Royal Commission into the Robodebt Scheme (Federal)
- Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Federal).

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

*Royal Commissions like the Yoorok Justice Commission are more able in influencing legislative reform because of their community inquiry function. Members of the Yoorok Justice Commission can meet with members across Australia and various stakeholders gain an insight into the systemic injustices faced by First Nations people. This can be done by meeting with Elders in the community and seeking information via group yarning circles that can help them create a report with all of their recommendations. One recommendation the Yoorok has made is improving the criminal justice system for Aboriginal and First Nations children as they are facing such injustices in the system. By gathering such first hand data, it can make Parliament more likely to change the law to address these concerns to gain electoral support.*

## Question 5

Marks	0	1	2	3	4	5	6	7	8	9	10	Average
%	6	4	6	9	15	18	19	12	7	3	1	4.8

This question was generally answered well, with students demonstrating sound knowledge of the Victorian Civil and Administrative Tribunal (VCAT) as a dispute resolution institution linked to the principles of justice. The question required students to discuss the statement and conclude the extent to which they agreed or disagreed with it, considering both the strengths and weaknesses of VCAT, and when it may or may not be the most appropriate institution to resolve civil disputes.

Higher-scoring responses used terms such as ‘always’ and ‘most’ to explore the appropriateness of VCAT in resolving civil disputes, comparing it to alternatives like the courts or Consumer Affairs Victoria, and referenced at least two principles of justice.

Responses may have included the following points:

- VCAT may be the most appropriate institution for resolving some civil disputes. However, it is not always the most suitable choice. Other institutions, such as courts or Consumer Affairs Victoria, may be better suited depending on the dispute and the circumstances.
- Jurisdiction – VCAT resolves disputes across nine lists, each with specific expertise, which can lead to fairer and more informed decisions. However, VCAT cannot hear certain disputes (for example, class actions, neighbourhood disputes, federal law cases and so on), limiting its accessibility for those cases. Courts may be more appropriate in these instances. Additionally, appeals from VCAT are restricted to questions of law only, limiting avenues for appeal compared to the courts.
- Binding decision – VCAT’s decisions are binding, providing finality and resolution. However, VCAT cannot create new laws, unlike the courts, which can set precedents. Some parties may prefer for their dispute to be resolved by a (higher) court, as it is able to create a precedent and they may feel that this is fairer.
- Costs – VCAT is generally more affordable than the courts, with low application and hearing fees and no pre-trial procedures, making it more accessible to those who might otherwise be unable to afford court proceedings. However, the cost of legal representation in VCAT may be high, in which case the courts might be a more affordable option for some parties.
- Formality and flexibility – VCAT’s informal atmosphere can make it more accessible and comfortable for some parties, allowing them to present their case in their own way. However, some parties may prefer the formality of the courtroom, where strict rules of evidence and procedure help to ensure fairness and equality.
- Complexity – for complex cases involving intricate facts, law or evidence, VCAT may not be the most appropriate venue. Courts, with their strict rules of evidence and procedure, may be better suited to ensure fairness and uncover the truth.

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

*I agree with this statement to a moderate extent. VCAT is an independent body that aims to provide access to a just, timely, cost-effective dispute resolution service, VCAT may “always” be appropriate if either parties are seeking a legally binding outcome. VCAT offer a final hearing which involves both the plaintiff and the defendant to have equal opportunities to present their case including evidence to a VCAT member. This final hearing comes to the resolution through legally binding decision that the VCAT member will decide after giving both parties equal opportunities to present their case. This means that if a member prefers a legally binding outcome as it ensures that the remedy proposed will be fulfilled. VCAT may “always” be an appropriate body moreover because the final hearing is less costly and formal.*

## Section B

### Question 1a.

Marks	0	1	2	3	Average
%	7	13	54	26	2.0

This question was generally answered well, with most students correctly identifying that, as Luke's case was heard in the Magistrates' Court, the most relevant rights were the right to silence or the right to be tried without unreasonable delay. Responses discussing the right to trial by jury were incorrect as juries are not used in the Magistrates' Court. Some responses referred to rights outside the study design, such as the presumption of innocence or the right to an interpreter. These were acceptable provided they were relevant and applied specifically to Luke's case.

Responses may have included the following points:

- Right to silence – Luke does not have to answer police questions or provide any information during the investigation of the case. Additionally, during his hearing for contempt of court, Luke cannot be compelled to give evidence or call any witnesses. The *Evidence Act 2008* (Vic) further protects this right, as it states that the court cannot draw a negative inference where an accused exercises their right to silence. The burden of proof rests with the prosecution, and Luke is within his rights to make them establish his guilt.
- Right to be tried without unreasonable delay – Luke is entitled to have his charges heard in a timely manner. Any delay in hearing these charges must be reasonable. What is considered reasonable depends on the particular case: for example, how long the police/prosecutor needed to gather evidence against Luke. This right is guaranteed under the Victorian Charter of Human Rights and Responsibilities.

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

*Luke would have the right to a hearing without unreasonable delay as stipulated by Section 21(b) of the Victorian Charter of Human Rights. Any person accused of a crime has a right to be tried without unreasonable delay, that is any wait times before the hearing or trial must be justified and necessary.*

*Since Luke's case appears to be relatively straight forward- it involves only a single accused and there is no complex evidence such as pathology reports-then lengthy delays do not appear necessary and consequently Luke has a right to have his charge heard relatively quickly.*

## Question 1b.

Marks	0	1	2	3	4	5	Average
%	4	9	28	35	20	4	2.7

This question was generally answered well, with students stating the extent to which they believed that the ability to appeal promotes the principle of fairness in the criminal justice system. Responses needed to provide a clear reason linked to fairness (rather than equality or access), as well as a discussion considering the strengths and weaknesses of appeals, and the circumstances in which an appeal may or may not promote fairness. Additionally, students were expected to demonstrate an understanding that an appeal is a review of the original decision, not a rehearing or a new trial (except in specific circumstances).

Responses may have included the following points:

- As Luke believes that the Magistrate made an error in applying the law in his case (that is, misinterpreting the statute), he can appeal the case to the Supreme Court. Here, a more experienced judge, who is impartial and has no vested interest in the outcome, will review the decision to determine if there has been a miscarriage of justice. Should this be the case, the error made in the lower court will be changed.
- Luke's ability to further participate in the justice system via an appeal is fair. Participation is a central pillar of fairness and extends to the ability or opportunity for a person to use the court system to correct an error in the lower court.
- However, if Luke has limited financial means, he may not be able to afford to appeal his conviction for contempt of court, and therefore the decision of the Magistrate will stand. This limits the ability of the criminal justice system to correct errors leading to a wrongful conviction, and diminishes Luke's ability to further participate in the justice system. This decision may then be applied in future cases until someone else lodges a potentially successful appeal. This would not help Luke to achieve fairness, however, as decisions made on appeal are not retrospective.

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

*Firstly appeals promote the principle of fairness by allowing an avenue for biased or erroneous verdicts to be reviewed and potentially overturned. Since Luke claims that the Magistrate made an error in applying the law to his case, then the decision may not have been based entirely on the relevant facts of the case, and a correct interpretation of the Juries Act. This would impact the impartiality and thus the fairness of the decision. Therefore an appeal, if successful, would allow Luke to obtain a fairer verdict.*

## Question 1c.

Marks	0	1	2	3	Average
%	13	19	40	28	1.8

Many students were able to correctly identify a reason from Source 1 as to why statutes need to be interpreted, such as:

- the wording of the statute may be ambiguous
- the act might be silent on an issue
- the courts may need to fill in gaps
- the bill may not have been clearly expressed.

Responses may have included the following points:

- Ambiguity – there may be ambiguity or a lack of clarity about the meaning of a word. For example, what do the terms ‘trial matters’ or ‘enquiries’ mean? Do ‘trial matters’ extend to factual matters?
- Resolve a case – section 78A of the *Juries Act 2000* (Vic) may have needed interpretation due to a dispute over the meaning of the words and phrases that are contained in the legislation. Therefore, the court would need to resolve whether Luke’s conduct did in fact fall foul of the restrictions in section 78A.
- Broad language – the legislation uses broad phrases such as ‘make enquiries about trial matters’, ‘matters relevant to the trial’ and ‘proper exercise of his function as a juror’. The judge hearing the appeal will need to determine if these phrases refer specifically to information about the actual case on which Luke was a juror (such as media reports and the background of the accused), or if it extends to looking up legal terminology or the elements of an offence. Additionally, can looking at legal terminology be considered ‘a proper exercise of his function as a juror’?

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

*It may have required interpretation as the wording was ambiguous, for example, “for the purpose of obtaining information about a party to the trial” could be conveyed as not including research and legal terminology but could also be conveyed as including any research about the case at all. This would damage Luke’s culpability and his guilt in the case. Therefore as legislation is drafted in general terms courts and judges may have to interpret the meaning of them, broadening and narrowing, the meaning of the legislation. It can be applied to cases brought before them, such as Lukes, where if the statute was interpreted broadly Luke would be guilty of failing to follow a direction of the judge.*

## Question 1d.

Marks	0	1	2	3	4	5	6	Average
%	2	5	16	33	30	12	3	3.3

The command term 'analyse' requires students to identify components/elements and look at significance, relationships, cause and effect, and impact, with use of appropriate analytic language. In this instance, students were expected to explore:

- the relationship between a role and what happened in this case (for example, delivering a verdict or discharging a jury)
- the relationship between roles (for example, listening to directions and deliberating)
- the significance of factors such as complex trials
- the potential accuracy and relevance of what Luke may have found and how that may have impacted on a role.

Responses could have included varied interpretations of roles, but it was crucial that a clear connection to the scenario was demonstrated.

Responses may have included the following points:

- Listen to and remember evidence – one role of the jury in the County Court case where Luke was a juror was to listen to and remember the evidence presented by the prosecution and the defence, as well as follow the judge's directions. This requires understanding of legal arguments and the tracking of evidence, which can be challenging when a trial involves complex or technical terminology. Jurors are permitted to take notes to help them make sense of the evidence, especially where conflicting evidence may have been presented. However, Luke's decision to 'make enquiries' outside the courtroom suggests he did not fully understand the judge's instruction to avoid independent research, potentially undermining the fairness of the trial.
- Deliver a verdict – the jury's role includes deliberating to determine whether the accused is guilty beyond reasonable doubt, based solely on evidence and arguments presented in court. Luke's external research could compromise this role by introducing external factors into the decision-making process, tainting the deliberations. If Luke shared his findings with other jurors, this could create bias, apply undue pressure on others, and risk an unfair verdict. In this case, the jury was likely discharged due to Luke's research and would therefore not have reached a verdict.
- Directions – a role of a criminal jury is to listen to and understand the directions given by the trial judge. Members of the jury need to ensure that they understand the directions and summing up, and must ask for an explanation about any legal point they do not understand. For example, Luke should have used the opportunity to clarify his understanding of the legal terminology used in the case, such as 'make an enquiry'.

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

*One role of the jury is to be objective. Jurors are people randomly selected from the electoral roll who must put aside any preconceived ideas and ensure that they have no connection with either party. Moreover as part of their role to be objective, a jury must ensure all decisions are based on fact and not their own research which may instil them with a prejudice. Indeed jurors are independent of parties and do not take sides thereby fulfilling their role of being objective. However, jurors may have subconscious biases or not comply with obligations which can impede on their objectivity. For example in the trial where Luke was a juror, Luke conducted his own enquiries which may have given him a bias that unduly swayed his decision.*

*Another role of the jury is to understand directions and summing up. At several stages in a case, a judge will give directions to a jury to explain important principles such as an accused's right to silence or key points of law. Hence it is the role of the jury to listen to such directions and ask the judge for clarification if need be. However despite directions given by the presiding judge, and several warnings, Luke continued to undertake his own research, failing to comply with his obligations. It is thus possible that Luke did not ask clarifying questions to the judge when he should have such as if he was allowed to conduct inquiries into factual matters.*

## Question 1e.

Marks	0	1	2	3	4	Average
%	5	9	35	36	15	2.5

The focus of this question was the capacity of fines to meet their purpose in Luke's case. A detailed definition of fines was not specifically required; an understanding of what a fine is would have been implicit in an accurate response. The response needed to refer to at least one source: the maximum penalty (Source 1), Luke's penalty (scenario text) or the value of penalty units (Source 3).

Responses may have included the following points:

- Amount of fine – fines can achieve both general and specific deterrence in relation to the contempt of court charges faced by Luke. The scenario states that he received the maximum penalty of 120 penalty units, equating to around \$23,000. This represents a significant financial burden for most individuals and could result in personal hardship. The fine is likely to achieve specific deterrence by discouraging Luke from similar behaviour if he serves on a jury in the future. However, if Luke has significant wealth, the fine may have a limited impact on his behaviour. Additionally, it is unlikely that Luke will be required to serve on a jury again.
- Awareness – fines can fulfil the goal of general deterrence if the public is aware of the extent of penalties they might face for similar offences. For fines to serve as a general deterrent, the community must see that courts impose the maximum penalty when warranted. Source 2 indicates that penalty units are indexed annually, meaning that the fine amount increases over time. This means future offenders may face even higher fines, potentially enhancing the deterrent effect. Furthermore, cases like Luke's often attract media coverage, amplifying public awareness and emphasising the importance of adhering to jury obligations, and thereby deterring others from doing something similar.

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

*A fine can somewhat achieve deterrence which is the purpose of sanctions that seeks to discourage future offending. Specific deterrence refers to when the offender is previously discouraged from committing that type of crime. In this case, Luke would be discouraged from not listening to a judge in the future as he had to pay a large fine for an individual \$22,000. This provides certainty of apprehension for Luke so he will not repeat such conduct to avoid a financial penalty.*

*General deterrence refers to the public being discouraged from committing crimes. Luke was sentenced with a fine of penalty units, which is the maximum penalty outlined in s78A of the Juries Act 2000 (VIC). The imposition of such a fine means that people are more likely to avoid committing crimes to avoid having to pay money. Although deterrence relies on public awareness and education as Luke's case and the fine is relatively low in severity, the public may not be strongly discouraged.*

## Question 2a.

Marks	0	1	2	3	Average
%	14	21	39	26	1.8

This question related to a new key knowledge dot point in the [VCE Legal Studies Study Design](#) and was generally answered well. Responses were expected to explain what international pressures are: that is, demands from outside of Australia for Australian parliaments to address matters of international concern. 'Demands' may include issues, events, circumstances, bodies, countries and individuals. Responses were also expected to refer to the stimulus material, as well as the information contained in the preamble to the question: for example, by referring to the *United Nations Framework Convention on Climate Change* (The Paris Agreement).

Responses may have included the following points:

- International pressures are demands made upon Australian parliaments by groups, organisations or countries beyond Australian borders to make (or not make) laws to address issues of international concern. Pressures also include global or international circumstances, events or issues.
- In recent decades, Australian governments at both the national and state levels have been subject to international pressure to reduce environmental emissions by phasing out combustion engine vehicles and increasing the uptake of electric vehicles.
- To maintain Australia's alliances and adoption of international agreements, parliament has had to ensure it upholds its commitments as a global leader for climate change.
- The most significant international pressure has come through the *United Nations Framework Convention on Climate Change*, which includes the Paris Agreement. This has encouraged Australian governments to introduce laws in line with Australia's obligations under the Paris Agreement, which Australia ratified in 2016.

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

*International pressures can be placed on Parliament from a variety of sources and impacts law making. One such source is international treaties. In this case, the Australian government had signed the United Nations Framework Convention on Climate Change (the Paris Agreement). Once a treaty has been signed by Parliament it is expected that the government will introduce legislation to ratify and incorporate the terms of the treaty into domestic law. In this case, it would place political pressure on Parliament to change laws relating to zero and low emission vehicles. The impact of this is seen in Source 2, where Parliament has continued to amend laws related to low emission vehicles. Although the result of Parliament adopting the National Electric Vehicle Strategy may be a result of domestic campaigns and other pressures, not just international pressures.*

## Question 2b.

Marks	0	1	2	3	Average
%	13	31	43	13	1.6

Students handled this question well and demonstrated a good understanding of one role of the lower house of the Victorian Parliament. Students were required to refer to the stimulus material in their explanation of the role of the Legislative Assembly. It was not required to name the lower house, but an incorrect reference to the Legislative Council, House of Representatives or Senate did negatively impact on marks.

The two roles that most directly relate to the source material were representing the people of Victoria in Parliament, and initiating and passing bills. Students may also have explained other roles such as forming government, scrutinising government administration or controlling government expenditure. However, these are not as directly relevant to the source material, and responses focusing on these areas generally did not receive full marks.

Responses may have included the following points:

- Representative government – members of the Legislative Assembly are elected to represent the interests of the people. Their actions in law-making should reflect the views and values of the people. If not, they are at risk of being voted out of government at the next election. We can clearly see this in Treasurer Tim Pallas' second reading speech in Source 2, where he refers to all motorists contributing their fair share to the cost of running Victorian roads. The Zero and Low Emission Vehicle Distance-based Charge Bill 2021 was an initiative by the government to address community interests, including those highlighted by Adrian Dwyer in Source 1, regarding the need for electric vehicle owners to make a fair financial contribution for Victorian roads.
- Initiate and pass bills – bills tend to be introduced by a government minister, as the government has a majority of seats in the lower house and most ministers sit in the lower house (although any member may introduce a proposed law). For instance, Treasurer Pallas introduced the *Zero and Low Emission Vehicle Distance-based Charge Act 2021 (Vic)* in his second reading speech in Source 2.
- Debate bills – parliamentary members will debate bills, such as the Zero and Low Emission Vehicle Distance-based Charge Bill, in the lower house and propose amendments. This can be seen in Source 2, where Treasurer Pallas explains the Zero and Low Emission Vehicle Distance-based Charge Act in his second reading speech to Parliament, which would have been followed by a debate.

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

*One role of the lower house (Legislative Assembly) is to initiate and propose bills. The key role of the lower house is to initiate and propose bills that will reflect the views of the majority of Victorians. Bills are proposed and initiated in the Lower house and debated and scrutinised before being either passed, amended or denied. If passed they will then go to the Legislative Council in order to be further debated and scrutinised. In relation to the Low Emissions Distance-based Charge Act 2021 the role of the Legislative Assembly was fulfilled as the proposed bill reflected the Victorians concerns in Source 1 about "only right then that electric vehicles make a fair contribution".*

## Question 2c.

Marks	0	1	2	3	4	5	6	Average
%	15	8	16	24	23	11	3	2.8

This question covered content from Area of Study 1 Unit 4. Responses were required to include an explanation of exclusive powers, concurrent powers and residual powers, with reference to the stimulus material – particularly Source 3. Students may have included examples of the types of powers evident in the stimulus material, such as section 90 of the Australian Constitution making excise duties an exclusive power of the Commonwealth Parliament (Source 3). Taxation is a concurrent power, shared by both the Commonwealth and state parliaments. Students may also have explained the relevance of section 109 to this case – although full marks could be achieved without doing so.

Responses may have included the following points:

- The Commonwealth Constitution divides law-making powers between the Commonwealth and state parliaments (that is, they each make laws in particular areas).
- Exclusive powers are those law-making powers that only the Commonwealth Parliament can exercise. This means that only the Commonwealth can make laws in these areas. These law-making powers are made exclusive either by their nature, or by other sections of the Constitution that strictly prohibit the states from making laws. Section 90 of the Constitution specifically states that the power to impose duties of excise is an exclusive power of the Commonwealth Parliament. This was the argument of the plaintiffs in *Vanderstock v Victoria*.
- Concurrent powers are those law-making powers outlined in the Constitution that are shared between the Commonwealth and state parliaments. This means that both levels of parliament can make laws in these areas. For example, both levels of parliament can make laws relating to taxation. Indeed, the defendants in *Vanderstock v Victoria* ‘argued that the Victorian legislation was not an “excise”, but rather a “consumption tax”, based upon use of public roads’. As such, it fell under section 51(ii) of the Constitution – a concurrent power that allows for both the Commonwealth and state parliaments to levy taxation.
- There are also residual powers. These areas of law-making power are not listed in the Commonwealth Constitution. They were retained by the colonies (states) at Federation. This includes the power to make laws in relation to the use of Victorian roads, such as requiring registered users to record kilometres.

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

*The law making powers are set out and divided by the Australian Constitution. Firstly, exclusive powers which are outlined under Section 51 and 52 of the Constitution are afforded only to the Commonwealth (Cwth) Parliament meaning only they can legislate on these areas, and the states can't. In the Vanderstock v Victoria case, it outlines one example of an exclusive power being the power to impose duties but others include s114 defence forces and s115 currency.*

*Secondly concurrent powers are the law making powers afforded to both Cwth and State Parliaments, meaning that they can both make laws in this area. Therefore their laws sometimes contradict and if they do, the contradiction can be challenged in the High Court and s109 would be applied, resulting in the Cwth law prevailing and the State law being declared invalid to the extent of the inconsistency, thus sometimes restricting law making power in this area. Examples include marriage and divorce.*

*Finally the third division of power is residual and these apply only to state parliaments and are not listed in the Constitution. Residual powers allow the states to make differing laws that specifically reflect the needs and views of their residents. In Vanderstock v Victoria, Vanderstock being the plaintiff referred to the residual power of “consumption tax” but others include health and secondary education.*

## Question 2d.

Marks	0	1	2	3	Average
%	26	25	31	18	1.4

This question required students to determine whether the ruling in *Vanderstock v Victoria* represented judicial conservatism or judicial activism, and to justify their answer. Full marks were possible whether students were arguing in favour of judicial conservatism or judicial activism, provided a strong justification for their choice was evident. Like all questions in Section B, responses needed to refer to the stimulus material.

Responses arguing that the ruling was an example of judicial activism may have included the following points:

- Judicial activism refers to the idea that when interpreting legislation – or in this case, the Commonwealth Constitution – judges make rulings against politically conservative or traditional views, considering factors such as the views and values of the community, the rights of the people and other social and political issues.
- As Justice Gordon clearly states in Source 3, in broadening the definition of the term ‘excise’ to include taxes on consumption, the High Court overturned precedent that ‘has held for many decades that a tax on the use of goods ... is *not* a duty of excise’. She believes that the majority verdict has amended the Constitution, not just interpreted it, and has gone beyond the text of the Constitution, thus adopting a more liberal approach to its meaning. This suggests the majority adopted an ‘activist’ approach by choosing not to follow a long line of precedent.

Responses arguing that the ruling was an example of judicial conservatism may have included the following points:

- Arguably, conservatism occurs when the High Court is prepared to restrain state law-making powers and interpret the Constitution in a way that preserves Commonwealth law-making power. The majority may have limited the excise power too much.
- There is nothing in the decision to suggest that the views and values of the community or other social and political issues were considered – on the contrary, the effect of the ruling centralised further the power to make excise laws, thus limiting the states to make such laws to represent the views and values of their own residents.

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

*Despite having instances of both judicial activism and conservatism, the Vanderstock case has a primarily judicial conservative approach. Judicial conservatism refers to when judges interpret the law relatively narrowly, generally speaking to avoid making changes to the law and uphold previous laws. Though Justice Gordon argued the majority ruling “amends the Constitution” (suggesting judicial activism by changing the meaning) this case is an example of judicial conservatism. For example by declaring the tax imposed by the legislation as invalid, the High Court referred the continuing of the Zero Low Emission Vehicle Distance Based Charge Act 2021 (Vic) as they deemed the consumption tax is an excise. Hence this avoids legislation being made and developed, as the new Act has faced amendments. Thus by avoiding new legislation, the justices (4 of them) acted mainly conservatively.*

## Question 2e.

Marks	0	1	2	3	4	Average
%	9	16	39	28	8	2.1

This question was generally answered well, with responses demonstrating sound understanding of costs as a factor that the plaintiffs in *Vanderstock v Victoria* should have considered before deciding to pursue their case. This question did not require a general explanation or discussion of costs, but rather an examination of the specific issues relating to costs in the stimulus material. Students were required to draw on Source 3 within their response.

Responses may have included the following points:

- Taking a case to court (in this case, to the High Court of Australia) can be very costly and may have deterred the plaintiffs (Chris Vanderstock and Kathleen Davies) from initiating their civil action, particularly because the defendants (the State Government of Victoria) had relatively unlimited financial resources.
- For a party to have the best chance of winning any civil case, they generally need to engage legal representation to ensure their case is prepared and presented in the best possible manner. This is particularly important in constitutional matters heard before the High Court of Australia, where complex constitutional issues must be clearly researched and succinctly argued with reference to established and relevant precedents. This necessitates the expense of highly skilled and experienced barristers and solicitors.
- The lodging of a constitutional claim before the High Court also incurs a number of other financial costs, including filing fees and hearing fees, which can run into thousands of dollars.
- In addition, the plaintiffs would have needed to consider the possibility that if they lost the case, they could be ordered to pay for some or all of the defendant's legal costs (an adverse costs order). This would have likely been very significant given the complexity of the case and its hearing before the full bench of the High Court.
- These factors may have been a significant deterrent to Vanderstock and Davies. However, it is important to note that, as indicated in Source 3, the plaintiffs were financially supported by the Commonwealth. This means that the costs of legal counsel may have been partially or wholly shared by the Commonwealth Government in this case.
- The plaintiffs may also have considered whether they were eligible for any free legal assistance, or whether they could find a legal firm to represent them pro bono or on a 'no win, no fee' basis.

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

*Given the complexity of constitutional law, the plaintiff/s would have required legal practitioners to represent them. Therefore, the cost of the litigation would have been substantial, as solicitors will charge 200-800 dollars per hour for their services, and barristers charge several thousand dollars per day in court. Moreover, the High Court standard filing fee is \$4050 in most instances, which is also substantial. Adding to this is the possibility of an adverse costs order (Vanderstock and Davies may have had to pay Victoria's legal costs if their arguments were unsuccessful). However, the plaintiffs could also consider the extent to which the Commonwealth will shoulder the burden of the litigation. If they agree to pay legal fees, court disbursements and any adverse court orders, then costs would not be a major factor for the plaintiffs to consider.*