

2025 VCE Legal Studies external assessment report

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 of more or less than 100 per cent.

Section A

Question 1

Mark	0	1	2	Average
%	30	28	42	1.1

Students were required to provide a brief outline of one reason that the County Court of Victoria may not be bound by a precedent set by the Supreme Court. In order to gain full marks, students needed to provide an outline of a correct reason that the County Court may not have to follow a Supreme Court precedent. This question asked for one reason. Often responses provided more, but doing so was not required, nor could it earn any further marks.

Many students did not accurately recognise and apply word limits within questions, resulting in these responses not fully addressing questions.

Possible relevant points included the following:

- Distinguishing the precedent
 - The judge in the County Court rules that the material facts of a case are different to the material facts of the case in the Supreme Court, where the precedent was set.
 - The County Court judge is therefore not bound to follow the precedent set in the Supreme Court, despite it being a superior/higher court in the same court hierarchy.
- Reversing the precedent
 - The precedent set in the Supreme Court may have been reversed on appeal to the Victorian Court of Appeal or the High Court of Australia.
 - If the Supreme Court case where the precedent was set has been appealed to a higher court, and the higher court reverses the decision, this new precedent becomes the one to follow in subsequent cases. Therefore, the County Court would not be bound to follow the precedent set in the Supreme Court.
- Overruling the precedent
 - A judge in a superior court to the Supreme Court, such as the Court of Appeal or the High Court of Australia, may choose not to follow the precedent set in an earlier case in the Supreme Court.

- The superior court changes the precedent, and a new precedent is created. It will be this new precedent that the County Court must follow.
- Parliament may have abrogated precedent.
- The higher court statement was *obiter dictum* and therefore not binding.

Following is an example of a high-scoring response:

One reason why the County Court of Victoria may not be bound by a precedent set by the Supreme Court could be that they have been able to distinguish between the material facts of the case. If these material facts are dissimilar enough then the precedent wouldn't apply and the County Court won't be bound by it, even if it were set by the Supreme Court in the same court hierarchy.

Question 2a.

Mark	0	1	2	3	Average
%	10	18	43	29	1.9

Students were asked to explain one purpose of plea negotiations in a criminal case.

This question was generally well answered, although some students identified more than one purpose, when only the first purpose provided within a response would be considered by assessors. Students are reminded that while a plea negotiation will not reduce the length of a trial, a settled plea negotiation will remove the need for a trial. Students therefore could have written that a successful plea negotiation reduces the time of the trial process. High-scoring responses made reference to the facts of the case study. Students should note that judges are not involved in plea negotiations that do not automatically reduce a sentence, but rather are an agreement for the accused to face fewer and/or lesser charges that are likely to lead to a more lenient sentence.

Possible answers included the following:

- One purpose of plea negotiations in Grant's criminal case is to reach a resolution that benefits both parties – Grant and the prosecution – while avoiding the uncertainties and delays of a trial.
- By entering plea negotiations, Grant may be able to negotiate a reduced charge (such as assault instead of aggravated assault) or dismissal of one charge (such as threatening to harm) in exchange for pleading guilty to certain offences. This can provide Grant with more certainty about the outcome of his case and potentially avoid a lengthy trial process.
- On the prosecution's side, plea negotiations ensure a conviction without the need for a trial and save costs, time and resources. This can be especially important in a case involving serious charges such as aggravated assault.
- It reduces trauma and stress on victims, the accused, witnesses and other involved parties.

Following is an example of a high-scoring response:

One purpose of plea negotiations in Grant's criminal case would be to procure a guilty verdict without the need for a full trial in the court. A full trial would require costs, time and many resources as well potentially the victim of the aggravated assault, Andy and Maya, to give evidence, which could retraumatize them. Hence by being able to procure a guilty verdict through plea negotiations it would prevent the need to make them come to court and reduce stress for both the victims and the court resources.

Question 2b.

Mark	0	1	2	3	4	Average
%	4	9	34	43	11	2.5

Students were asked to compare the roles of the prosecution in the criminal case and the plaintiff in the civil case. Students were required to present a comprehensive response to achieve the full four marks. Brief, inaccurate, vague or general responses were not awarded full marks. Both similarities and differences in the roles of each were required. It is recommended that students visit the [VCAA website](#) and become familiar with the list of command terms and their requirements.

Responses were expected to refer to the scenario in order to gain full marks. An equal number of similarities and differences was not required to gain full marks. It was acceptable for students to have presented, for example, one similarity and two differences to fulfil the brief of the question.

Overall this question was well answered, but many responses did not go beyond simply 'both plaintiff and prosecution have burden of proof, but there are different standards of proof'. There was little mention of obligations parties had to each other regarding the disclosure of evidence and overarching obligations to the court.

Possible relevant points included the following:

- The roles of the prosecution in Grant's criminal case and the plaintiff, Andy, in his civil case are **similar** in the following aspects:
 - Both commence the action in their respective cases.
 - Both bear the burden of proof.
 - Both present their case to the court, make opening and closing statements and undertake examination of their witnesses and cross-examination of the other party's witnesses.
 - Each has ongoing obligations to cooperate with the opposing parties.
- The roles of the prosecution in the criminal case and the plaintiff in the civil case **differ** in several ways:
 - Purpose: The prosecution in the criminal case represents the state and its objective is to prove that the defendant (Grant) has committed a crime. The goal is to seek justice by holding the defendant accountable and ensuring public safety. The prosecution aims for a conviction and an appropriate criminal sanction, such as imprisonment or fines. In comparison, the plaintiff in the case, Andy, is seeking compensation for harm or injury caused by Grant's actions. The objective is not criminal punishment, but rather financial compensation or restitution for pain, suffering and damages incurred due to the defendant's actions. The plaintiff is seeking justice in the form of civil remedies, such as monetary damages.
 - Standard of proof: The prosecution in the criminal case must prove Grant's guilt beyond a reasonable doubt, which is a very high standard. This is necessary to protect the rights of the accused. Andy, the plaintiff, has a lower standard of proof than in the criminal case. He needs to prove his case on the balance of probabilities; that is, it is more likely than not that Grant, the defendant, is responsible for Andy's pain and suffering.
- Ultimately, the prosecution in a criminal case focuses on holding the defendant to account and proving their guilt beyond reasonable doubt for criminal behaviour on behalf of the state; the plaintiff in a civil case seeks to remedy personal harm through compensation with the burden of proof being on the balance of probabilities.

Following is an example of a high-scoring response:

Both the prosecution and the plaintiff, Andy have ongoing disclosure obligations. This means that they must disclose to Grant the relevant documents and evidence that they intend to rely on and use against Grant during their trial or hearing. Another similarity is that they both have the role to participate in the

trial or hearing. This includes cross-examining and examining witnesses and opening and closing addresses to the jury panel (if one is present in Andy's civil hearing).

On the other hand, the standard of probabilities with Andy and the prosecution differs since the prosecution must prove Grant's guilt 'beyond reasonable doubt', which is a more higher and difficult standard to achieve.

Question 3

Mark	0	1	2	3	4	5	Average
%	14	12	18	28	21	6	2.5

Overall this question was answered reasonably well. High-scoring responses discussed in detail the efficacy of express rights in acting as a check on parliament in law-making and the difficulties involved in challenging laws in the High Court that are considered *ultra vires* of established express rights protections. This question was marked globally, meaning the assessor looks at the work as a whole and gives one overall judgement, rather than adding up marks for each individual part. High-scoring responses required some consideration of strengths/weaknesses, as well as limitations and restrictions. A multi-faceted, as opposed to a linear, response was required. A comment about the extent to which the student agreed with the statement was required. This could have been written in the first person and be more detailed – for example, to some extent / to a limited extent / to a great extent – followed by a justification of the stance presented in the response.

Possible points included:

- An explanation of what is meant by a 'check' on law-making powers: for example, process/device/section of the Constitution that limits the ability of the Commonwealth Parliament to pass legislation in particular areas so that the parliament does not have supreme law-making powers.
- That an express right is specifically stated within the Australian Constitution. Students could have referred to one or more of the following express rights to support their discussion:
 - the right to freedom of religion (section 116)
 - the right to free interstate trade and commerce (section 92)
 - the right to trial by jury for indictable Commonwealth offences (section 80)
 - the right to receive 'just terms' when property is acquired by the Commonwealth (section 51[xxxi])
 - the right to freedom from discrimination based on the state in which you live (section 117).
- The express rights are worded in a way that limits or places a check on the Commonwealth Parliament's law-making in these areas. For example:
 - s.116 prohibits the Commonwealth Parliament from making laws that establish any religion, impose any religious observance, prohibit the free exercise of any religion, or make a religious test a requirement for any public office. This therefore protects the right of freedom of religion by acting as a check on the Commonwealth Parliament's law-making powers in this area. However, s.116 does not apply to state parliaments, so does not act as a check on state law-making powers.
 - s.51(xxix) compels the Commonwealth Parliament to provide just terms when acquiring property – the Commonwealth must pay fair and reasonable compensation for property that they acquire compulsorily. Further, this land can only be used for a purpose for which the Commonwealth Parliament has the power to make laws (for example, for airports). However, s.51(xxix) only applies to the Commonwealth Parliament and not the states, so does not act as a check on state law-making powers.
 - s.92 states that trade between the states shall be free, thereby preventing parliament from restricting trade between states by, for example, imposing tariffs or duties. This right also extends

to freedom of movement between Australian states. It applies to both state and Commonwealth Parliaments.

- s.80 states that there must be a jury for indictable Commonwealth offences. However, this section provides limited protection from parliament law-making, as it relates only to Commonwealth criminal offences, and most criminal offences are state offences. Section 80 operates only for the most serious Commonwealth criminal offences.
- s.117 places a limit on both state and Commonwealth Parliaments from passing legislation that discriminates against someone based on the state in which that person lives.
- There are only five express rights in the Constitution, and some of them are very narrow. This therefore means that the restrictions on the law-making powers of the Commonwealth Parliament are limited.
- The express rights are entrenched in the Constitution, as they can only be removed or amended by the mechanism to change the wording of the Constitution – that is, a successful referendum. Therefore, parliament cannot make a law to change these rights. The low success rate of referendums means that it is not likely that parliament will be able to successfully change the protection of the right.
- However, the low success rate of referendums also means that parliament is unlikely to be able to add additional express rights, thereby reducing the possibility of further checks on parliament.
- If the Commonwealth Parliament passes legislation that is thought to infringe on one of the express rights, then the Constitutional validity of that law can be challenged in the High Court. The High Court can declare the law to be *ultra vires* – that is, beyond the Parliament's law-making powers – and declare the legislation to be invalid. This is an effective check on the Commonwealth Parliament in law-making. However, this relies on a case being brought before the High Court by a party that has standing. High Court challenges are likely to be complex and expensive, which may act as a disincentive to commence an action.

Students who demonstrated a greater understanding of the question and used the High Court point were able to incorporate an understanding of the term 'standing' in their response and show how this may impact upon a High Court challenge.

Following is an example of a high-scoring response:

I agree with this statement to a moderate extent as while the express protection of rights are effective in acting as a check on Parliament, they come with their limitations.

*The express rights include five rights that are explicitly stated in the Constitution and can only be changed through a referendum. An advantage of the express rights is that if Parliament attempts to create a law that breaches the express right, it can be challenged by the High Court and will instantly be invalidated and declared *ultra vires*. This ensures that Parliament passes laws that act in accordance with the Constitution and therefore enabling the express rights to act as a check. However a disadvantage is that if Parliament passes a law that goes against the express rights, it can only be invalidated if it is challenged in the High Court. Additionally, a person that wishes to challenge an unconstitutional law made by Parliament must have standing meaning they are directly affected by the case they are initiating.*

Question 4a.

Mark	0	1	2	Average
%	35	52	12	0.8

Students were asked to outline the role of the Commonwealth Parliament in the referendum process to amend the Constitution.

In responding to this question, outline precision was expected for full marks. It needed to be noted that the Parliament must pass a Bill proposing the alteration to the Constitution through each House with an absolute

majority or through one House twice. Many responses lost marks for vague and general comments about the Parliament providing information to the public, inaccurate statements about the Parliament counting the votes and inaccurate references to Royal Assent. Royal Assent is only given to a Bill proposing an alteration to the Constitution after a referendum has been successful, not before the referendum takes place.

Possible points:

- All proposed changes to the wording of the Constitution must be introduced to Commonwealth Parliament as a Constitutional Alteration Bill.
- The bill must be passed by an absolute majority of both houses of parliament. Alternatively, if one house fails to pass the bill by an absolute majority, after three months the first house can pass the bill again by an absolute majority.

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

One role of the Commonwealth Parliament is for both houses to pass the proposal for the referendum with an absolute majority. The lower house will provide its approval to the bill. The upper house will debate the bill but would also approve it in order for it to be a successful referendum.

Question 4b.

Mark	0	1	2	3	Average
%	8	18	43	31	2.0

Students were asked to explain one factor that contributed to the success of the 1967 referendum.

Overall this question was answered well. The most common factor that was identified was the strong level of bipartisan support that resulted in the lack of a 'No' campaign. Higher-scoring responses illustrated the effect of this support with reference to the recorded 'Yes' vote percentage along with support of all states. Many generalised comments were made about the positive effect of education, demonstrations and the simplicity of the referendum question. These required further explanation and direct linking to the question.

High-scoring responses focused on factors affecting the success of the referendum on First Nations Peoples, not on the retelling of an account of the referendum itself.

Students were able to refer to First Nations Peoples synonymously as Aboriginal, Aboriginal and Torres Strait Islander, Indigenous or First Nations Peoples.

Possible points included the following:

Bipartisan support:

- If both major political parties support a proposed Constitutional change, it is more likely to succeed or pass the double majority provision. Voters who are inclined to vote in line with their chosen political party will all be united in their support of the referendum. This was the case with the 1967 referendum, which was supported by both the Liberal Government and the Labor Opposition at the time.
- This is further advanced if the state governments also support the change, as the proposal is more likely to pass the majority of voters where a majority of states is a requirement.
- A 'No' campaign may not be put to the people if both major political parties support the change, leaving only the 'Yes' campaign to influence voters. This was the case with the 1967 referendum, where the 'Yes' case was presented by the Federal Council for Aboriginal Advancement; a national 'No' case was not presented.

Public support for change

- If the Australian people support and call for change – that is, if people feel ownership of the referendum proposal – then it is more likely to receive ‘yes’ votes and satisfy the double-majority provision.
- However, if a referendum is proposed and supported by government or a political party, Australian voters may be sceptical of the change.
- The 1967 referendum passed convincingly due to its high level of public support. Throughout the 1950s and 1960s, Australians became increasingly aware of the plight of Aboriginal Australians and the discrimination that they faced. Activists organised petitions to gain public support for constitutional change. Thus, the 1967 referendum was a people’s movement.

Clarity of the proposal

- When the proposed referendum question is complex and difficult to understand, voters may be more inclined to vote ‘no’; they are more likely to stick with the status quo, rather than vote for a change that is not understood.
- Alternatively, if the referendum question is clear and its implications understood, then the Australian voters are usually more inclined to vote ‘yes’.
- In the 1967 referendum about First Nations Peoples, there was one clear question put to Australian voters. The question clearly asked whether people approved of omitting words ‘relating to the People of the Aboriginal Race’. This question related to changing two sections of the Constitution but was phrased in one question. The Australian people understood the change, so were more inclined to vote ‘yes’.

Following is an example of a high-scoring response:

One factor that contributed to the success of the 1967 referendum was that there was bipartisan support. Bipartisan support refers to when the two main political parties are both in support for the change, rather than solely the government in support and the coalition against it. This positively contributed to the 1967 referendum because of the ability for people to be more inclined to vote alongside their preferred political party. When voters in 1967 saw that their preferred party was in support they would have been more likely to vote “yes” because they believe that their party will do what is best for their voters and therefore voting yes was the right decision to make. This positively contributed to the 90.77% national support as both political sides were in agreement for the amendments.

Question 4c.

Mark	0	1	2	3	4	Average
%	26	19	26	22	8	1.7

Students were asked to explain the impact of the 1967 referendum on the law-making power of the Commonwealth Parliament.

The response needed to address the impact of the 1967 referendum on law-making powers. A simple account of the referendum itself was insufficient, as was an account of the societal or other implications of the 1967 referendum.

The focus needed to be on the law-making powers of the Commonwealth Parliament. Consideration of state law-making powers was not necessary, but could have been mentioned, notably in the context of a residual power becoming concurrent. Students were not expected to be able to state the section numbers of the Constitution, nor quote the relevant sections. They are included below for reference.

Students should have noted that there were two major effects of the referendum on the law-making powers of the Commonwealth Parliament. Firstly, the removal of s.127 meant that the Commonwealth Parliament could make laws considering the whole of the population, including Aboriginal Australians. Secondly, that the

amendment of the race power (s.51[26]) allowed the Commonwealth government to make laws for Aboriginal Australians. This also increased the law-making powers of the Commonwealth Parliament.

General responses about the referendum increasing general recognition of Aboriginal Australians could not be awarded full marks.

Note that the amendment of s.51(26) did not grant an exclusive power to the Commonwealth Parliament, but its concurrent power over the making of laws with regard to a race was amended to permit laws to be made about included Indigenous peoples, by removing the pre-referendum prohibition.

Possible points included the following:

- As a result of the successful referendum, the law-making powers of the Commonwealth Parliament increased. The Commonwealth Parliament could then legislate about First Nations Peoples through the 'race power'. Thus, what had been an area of residual power became a concurrent power.
- The Commonwealth was therefore able to pass important legislation for First Nations Peoples, such as the *Native Title Act 1993* (Cth).
- As a concurrent power, the Commonwealth could override any state laws that were discriminatory, through passing federal legislation inconsistent with the state laws, and having this inconsistency declared through the High Court.
- The inclusion of First Nations Peoples in the census enabled the Commonwealth Parliament to make policies based on the population of all Australians.

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

The 1967 referendum was highly significant as it broadened the law-making powers of the Commonwealth Parliament to legislate for First Nation Australians. As the referendum passed with a large amount of support, fulfilling the double majority requirement, the Commonwealth Parliament law-making powers was extended to include making laws for indigenous people. Consequently they were able to move into a previously considered residual area of law making power and this resulted in the passing of the Native Title Act 1993 (Cwth) legislating over land rights of First Nations people. Furthermore this allowed the Commonwealth Parliament to pass laws in 1975 that over rid Queensland laws that were discriminatory against Indigenous Australians. Thus, the impacts of the 1967 referendum was that it broadened the Commonwealth Parliament's law-making power.

Question 5

Mark	0	1	2	3	4	5	6	7	Average
%	10	10	17	19	23	15	6	1	3.0

Generally this question was answered well. High-scoring responses analysed the relationships between parliament and courts in law-making. The command word 'analyse' requires students to identify components/elements and consider significance, relationships, cause and effect and impact. Words or expressions such as 'moreover', 'this means that', 'this is significant because', 'the impact of this is' may have been used by students to show an analysis, though those words alone do not necessarily mean that the analysis is there.

The relationships between courts and parliament in law-making from the study design include:

- the supremacy of parliament
- the ability of courts to influence parliament
- the codification of common law
- the abrogation of common law.

Students could analyse other relationships, such as the court's interpretation of legislation and how parliament is responsible for passing legislation to establish the jurisdiction of the courts.

Students did not need to cover all of these possible relationships, nor did they need to address them all to the same extent – that is, they could go into more detail on some than others.

Many responses appeared to confuse the law-making relationship of the parliament and courts with the separation of powers doctrine. The study design clearly lists the separation of powers doctrine as a constitutional check on parliament's law-making. Many responses incorrectly stated that courts only make common law through interpreting statutes. Courts also make common law when articulating principles for resolving conflicts between individuals, such as defamation, negligence or contractual disputes. It is typically these common law principles that are either codified or abrogated, as in *Mabo* and *Trigwell*.

Possible points included the following:

- Courts and parliament working together in law-making: Each has a role to play in ensuring laws can change to reflect the views and needs of society. Parliament's main role is to make laws that represent the views and needs of society. It does this through passing legislation/statutes. The main role of courts is to resolve disputes, but they may create laws while doing so, through creating precedents while deciding a case.

- Supremacy of Parliament: Parliament is the supreme law-making body, with the ability to make laws within its Constitutional power. It can pass legislation to codify (confirm) or abrogate (cancel) precedent created by courts. It is therefore superior to courts.

Parliament can pass legislation to establish courts, or change their jurisdiction, to restrict their decision-making in some instances, thereby impacting the law-making power of courts. However, under the doctrine of the separation of powers, courts need to remain independent from parliament. This is important in situations where a court (for example, High Court) needs to determine whether parliament has the power to make laws in a particular area.

- The ability of courts to influence parliament: Judges may influence parliament to change laws either through the comments made during a case or the decisions they make. In making a judgement in a case, a judge may make a comment (either in their *ratio decidendi*, or as *obiter dicta*) that can subsequently influence parliament to make or change a related law.

Similarly, if a judge is bound to follow precedent set by a higher court and that results in a decision deemed to be unjust, parliament may be influenced to make a legislative change – which parliament is able to do due to its supremacy.

If there is no legislation to apply to a particular case, or the legislation is silent on an issue/aspect, the court may decide to create a law through precedent. This may influence the parliament to pass legislation in that area.

However, courts can only create common law when a case is brought before them, which limits their ability to influence parliament through judicial comments or decisions.

- The codification of common law: Parliament may pass legislation that reinforces or adopts the legal principles established by the courts through precedent (common law). This therefore strengthens the stance of those laws. This may be in relation to a particular law, or the parliament may draw together laws (both statute and common law) in an area and create a piece of legislation.
- The abrogation of common law: Parliament may decide to pass legislation that abrogates, or cancels, previously established common law made by courts (apart from High Court cases that interpret the Constitution). Parliament may believe that courts have misinterpreted legislation, or that they have created common law that does not reflect the values of the community. As the superior law-making body, parliament has the ability to pass such legislation.

Following is an example of a high-scoring response:

Parliament and the Courts have an interconnecting role that compliments each other.

Because Parliament is the supreme law-making body, it results in them being able to legislate in many areas of law within their jurisdiction (they are unable to legislate on Constitutional matters as these must

be left to the High Court). This means that Parliament is responsible for making laws that give the courts jurisdiction on the cases that they can hear, this is significant because Parliament can determine the court's role and ability to hear cases. This is evident as Parliament passed the Magistrates Court Act and as a result the Magistrates Court can only hear cases the Act outlines. This leads to Parliament being responsible for virtually all courts/except High Court and how they can create law.

Question 6

Mark	0	1	2	3	4	5	6	7	8	9	10	Average
%	4	2	4	8	15	17	21	16	9	3	0.5	5.2

Students were asked to evaluate the effectiveness of dispute resolution methods in resolving civil disputes and upholding the principles of justice.

This question was generally answered well by students, and they were able to work within the parameters of the question's requirements. An evaluation requires determination of the value or worth of something and to then provide evidence for and against points raised, arguments, concepts, processes, opinions or other information. The response to this question required inclusion of an overall judgment to achieve full marks. The judgment should have been arrived at based on the points for and against. This judgment did not necessarily need to be at the end of the response; it could have been at the start. The judgment should also have been meaningful – that is, using words such as 'because' or 'while' and drawing (briefly) from the points made.

To receive high scores, responses needed to be an actual evaluation of how dispute resolution methods uphold the principles of justice. They also needed to be focused and address the confines of the question. Responses that consisted of shopping lists / checklists of points were not awarded full marks. Higher-scoring responses used the material from the question – which in this case was about the effectiveness of dispute resolution methods in achieving the principles of justice – and connect their points/structure in their answer so it read as a holistic, comprehensive evaluation, rather than a list of points.

It should be noted that the focus of the question is on dispute resolution **methods**, not institutions. Therefore, responses that focused only on institutions and not their methods did not score highly. However, students could have used methods within institutions as part of their responses, such as court hearings / trials (judicial determination), Victorian Civil and Administrative Tribunal (VCAT) hearings, compulsory conferences or mediation at VCAT, and conciliation done within Consumer Affairs Victoria (CAV).

In this question, the evaluation needed to be in the context of the achievement of the principles of justice: fairness, access and equality.

Students could have considered each dispute resolution method and each principle of justice in turn, or may have combined them together in their response. Students were not expected to evaluate each dispute resolution method using all principles of justice.

Possible points included the following:

The Victorian civil justice system employs a variety of dispute resolution methods to resolve civil disputes, and these methods aim to uphold the key principles of justice: fairness, equality and access. These methods include mediation, conciliation and arbitration.

- mediation (private, within VCAT, court-directed etc., pretrial directions hearings)
- conciliation (within CAV or otherwise)
- arbitration (private or Magistrates Court)
- compulsory conferences within VCAT
- VCAT hearings

- court hearings / trials (students may refer to it as judicial determination)

Mediation and conciliation

- **Fairness:** impartial mediator, informal discussion-based nature means parties may feel more comfortable participating and presenting their side of the story. But it's a closed process.
- **Equality:** informal discussion-based nature may assist in putting parties on a more even playing field compared to a more formal method. A third party will ensure both parties are given an opportunity to present their case. But due to being a closed process with no strict rules of evidence and procedure, it relies on the skill of the third party to ensure one party doesn't overpower the other. It is a balancing process, as both parties are encouraged to express their concerns, and the mediator ensures both parties can participate.
- **Access:** it is often less costly and quicker than more adversarial methods and long, drawn-out court proceedings. Less need for legal representation means that parties are able to use the civil justice system in a more efficient and timely way. Conciliation within CAV is free.
Having the parties resolve their dispute themselves may result in them both being happier with the outcome, compared with if there is a winner and a loser. However, it may not work in cases where there is entrenched conflict or power disparities.
Conciliation can be very effective for resolving disputes that require more direction and guidance; however, its success depends on both parties' willingness to reach a compromise. Furthermore, one party may compromise too much, particularly if they feel manipulated or intimidated by the other party.

Arbitration

- **Fairness:** impartial third party (arbitrator). Rules of natural justice will generally apply. Both parties are given an opportunity to present their case/evidence to the arbitrator (they participate). But it's a closed process.
Arbitration can provide a fair process when the arbitrator is impartial and both parties have an equal opportunity to present their case. However, if arbitration clauses are included in contracts without negotiation, there can be concerns about fairness, especially if the parties have unequal bargaining power.
- **Equality:** more formal and structured than the cooperative methods. Higher costs can mean parties may be disadvantaged if they are not able to obtain legal representation. Arbitration can be more formal and structured than mediation or conciliation, and in this sense it can provide a more equal platform for resolving disputes. However, the cost of arbitration can sometimes limit access for individuals with fewer resources.
- **Access:** can be faster and more cost-effective than litigation. There are generally limited options to appeal. The decision is binding, which can restrict access to further justice.

Judicial determination (students may refer to court hearings or trials)

- **Fairness:** impartial magistrate or judge, strict rules of evidence and procedure means both parties will be given an opportunity to present their case/evidence to the court. It's an open process. However, without legal representation, a party may not be able to present their case in the best possible light, due to the complex nature of the method.
- **Equality:** high level of formality (strict rules of evidence and procedure) may disadvantage parties without the resources to obtain legal representation.
- **Access:** the complexity of this method can mean that trials in the higher courts are often lengthy, especially if using a jury.

This is a good example to show the distinction between a response that refers to the courts as an institution versus the method they use. If responses stated 'courts are often experiencing significant delays', this is moving more into the courts as an institution, rather than focusing on evaluating the method they use.

VCAT hearing

- Fairness: impartial VCAT member will ensure rules of natural justice are followed (for example, unbiased, both parties given opportunity to present evidence). It's an open process.
- Equality: Both parties will be given an opportunity to present their case to the VCAT member. Legal representation is generally not used at VCAT hearings (and often not permitted), which can ensure parties are not disadvantaged if the other party has legal representation and they do not.
- Access: VCAT hearings are generally less complex than courts and therefore can achieve a faster resolution. There is a lower cost associated with VCAT hearings (for example, less likely to have/need legal representation). It's more difficult to appeal from a decision of a VCAT member (for example, question of law only).

The following is from a high-scoring response:

Alternative dispute resolution methods within the civil justice system uphold the principles of fairness, equality and access to a moderately high extent.

Firstly the principle of fairness is upheld by the increased party control offered by mediation and conciliation due to the ability of the parties to achieve their own outcome. As mediation and conciliation both see parties reach a mutually beneficial outcome through negotiation, it is likely to be agreed upon and therefore accepted by both parties. As such the outcome is likely to be fair for both and not disadvantage one party as it is beneficial for both parties and is thus likely to be followed without having to utilize a deed of settlement or other extensive processes to make the outcome binding.

Fairness is also upheld as during arbitration and court trials, an independent third party makes the decision free from bias or prejudice and therefore allows for a fair outcome for both parties that they are bound to follow by an arbitral award or the judges remedy awarded.

Section B

Question 1a.

Mark	0	1	2	3	4	5	Average
%	0.6	3	21	42	27	7	3.1

This question required students to explain what is meant by ‘right to silence’ and how it upholds the presumption of innocence.

This question was generally answered well, with students demonstrating a good understanding of the right to silence and the presumption of innocence. However, while the terms could be easily explained in isolation, some responses failed to link the two and then explain exactly how the right to silence upholds the presumption of innocence. Stronger responses used other concepts such as the role of the prosecution, the burden and standard of proof and the need for evidence. It is also important to note here that a high-scoring response would have made adequate reference to the stimulus material provided.

Responses may have included the following points:

- Emma did not have to answer questions during the police investigation or give evidence or call witnesses during the trial. Emma’s legal representative can ask the judge to explain the adverse inference rule to the jury.
- Emma should be treated as innocent until proven guilty beyond reasonable doubt, based on evidence in a court of law. The onus is on the prosecution to prove their case and it is within Emma’s rights to make the prosecution discharge their burden of proof without any assistance from her.
- The right to silence and the presumption of innocence work hand in hand to protect Emma’s rights. The right to silence protects her from self-incrimination and undue pressure to confess, and the presumption of innocence ensures the prosecution presents sufficient evidence to establish guilt beyond reasonable doubt.

The following is from a high-scoring response:

The right to silence offers an accused person the ability to refuse to answer questions and give information during police questioning and prosecution as well as to choose not to provide a defense at trial without their silence or un-cooperation being interpreted as a sign of guilt. In exercising their right to silence, Emma’s presumption of innocence was upheld as it means that the jury in her County Court trial (on instructions from the judge) would not have been able to assume guilt based off her silence.

Question 1b.

Mark	0	1	2	3	4	5	Average
%	4	8	29	38	18	3	2.7

Students were asked to discuss the ability of community legal centres (CLCs) to provide access to the justice system for Agu and Kim as victims of crime.

In the responses to this question, CLCs were sometimes confused with VLA and dispute resolution bodies such as CAV. The focus of the question was on the ability of CLCs to enhance access to the justice system for victims of crime such as Agu and Kim. Therefore, the specific needs of Agu and Kim should have been integrated into the discussion of their situation.

Additionally, responses needed to move beyond simply stating that a CLC can provide information, and be explicit in relation to the information or other assistance that might be provided. Both positive and negative points were required, though not necessarily in equal parts. The question could have been approached from the perspective of the criminal case against Emma or the potential civil action that Agu and Kim were considering – the rights of victims and/or the significant financial loss they faced due to the actions of Emma. Students needed to present a comprehensive discussion for full marks. Brief, inaccurate or vague discussions were not awarded full marks. The question required students to provide a discussion. Note that a discussion is more than an explanation; it requires some consideration of strengths/positives, as well as limitations/restrictions/weaknesses of CLCs in relation to Agu and Kim. It is not a linear response – it needs to be multi-faceted. As this question was marked globally, students did not need an equal number of positive and negative points.

Responses may have included the following points:

- CLCs provide free legal advice and information to victims of crime, such as Agu and Kim.
 - This enhances their understanding of the legal system and their rights as victims of crime – for example, the right to give a victim impact statement or be informed about the proceedings.
 - Specialist CLCs can provide more tailored advice on specific areas of law, thereby providing more specific assistance. Potentially this might extend to victims who have had their property used for illegal purposes, such as Agu and Kim.
 - They can advise on whether they are eligible for compensation as victims of crime and assist with completing the relevant paperwork.
- CLCs are located across Victoria, providing increased access to people in regional areas. Assistance is also available by phone, negating the need for in-person communication, which further enhances access to information and advice.
- Although their focus is primarily on criminal matters, CLCs may be able to offer general advice in relation to a civil claim against Emma or dealing with their insurance company who have denied their claim.
- Lack of funding may mean the assistance given to Agu and Kim is limited, especially in relation to their civil claim and dealing with their insurance company.

The following is from a high-scoring response:

Community legal centres are general or specialised bodies that aid both victims and accused persons with legal issues. For Agu and Kim, their access to justice is upheld through the legal advice that CLCs provide. It was mentioned that the victims wished to file a civil claim and an insurance claim. CLCs can aid with filling out forms or preparing letters for legal reasons like contacting an insurer moreover CLCs can give advice on how to assist a civil claim going forward.

Question 1c.

Mark	0	1	2	3	4	Average
%	5	9	30	39	16	2.5

The majority of students were able to identify imprisonment as the sanction that will be imposed by the judge and linked this to Sources 1 and/or 3. A common error was the failure to explain what this sanction was; by way of explanation, students could have referred to the deprivation of liberty, regimented lifestyle and restricted contact with friends and family. A range of factors the judge would consider in sentencing were referenced by students; victim impact statements was the most popular. Although Emma's age was not stated on the scenario, the fact that she was able to rent property and had studied Legal Studies when in Year 12 suggest that she was above 18 and therefore age would not be a relevant factor. The lack of a guilty

plea was not accepted; Emma cannot be penalised for exercising her right to silence and requiring the prosecution to make their case. Although not explicit in the case study, responses that suggested that Emma might not have any prior convictions, be under some personal strain or have excellent rehabilitation prospects were accepted if linked to her offending.

Responses may have included the following points:

- Both Sources 1 and 3 indicate that Emma has committed a Category 2 offence and this type of offence carries a mandatory term of imprisonment. There is no evidence that she is under 18, has a mental impairment or assisted the authorities.
- Additionally, Source 1 includes references to the serious nature of Emma's offending and her being found guilty in the County Court. Source 2 demonstrates the impact of Emma's behaviour on the victims Agu and Kim.
- The most common factor the judge would consider was a victim impact statement. Aggravating and mitigating factors were also referenced.

The following is from a high-scoring response:

The judge will impose the sanction of imprisonment on Emma most likely. Because Emma has committed a category two offence, she is subject to up to 25 years of imprisonment for the cultivating of a commercial quantity of drugs. A term of imprisonment involves removing Emma from the community and placing her in prison for a specified period of time.

One factor the judge is likely to consider is the impact her crimes had on Agu and Kim. If Agu and Kim provided victim impact statements in court this would act as an aggravating factor on the judge's sentence for Emma. Because of the extensive loss that has occurred to their lives and loss of income the judge may be more influenced to employ a harsher term of imprisonment on Emma because she took advantage of Kim and Agu's property.

Question 1d.

Mark	0	1	2	3	Average
%	21	14	36	29	1.7

In this question, responses were expected to include the identification and explanation of one enforcement issue that Agu and Kim should consider before initiating their civil claim against Emma. It was important to note that only enforcement issues were relevant to this question; references to cost, time, limitation of actions or any other factor were generally not relevant. Some students were able to mount a valid argument that the cost incurred in undertaking enforcement proceedings would leave Agu and Kim further in debt, though such responses did not score highly if this was the only consideration. The fact that Emma's assets were seized as the proceeds of crime (Source 1) and she will be imprisoned are clear indicators that Emma will not be able to pay any damages awarded by the court.

Responses may have included the following points:

- Enforcement issues refer to the capacity of Emma to pay the potential damages awarded by the court, meaning that Agu and Kim would incur hefty legal fees and no restitution.
- Source 1 states that Emma's assets were seized as the proceeds of crime; therefore, she has no assets that could be sold to pay damages.
- The amount of money needed to demolish and rebuild the property plus the loss of rental income would be substantive, meaning that Agu and Kim may not be able to meet the mortgage payments and might suffer financial hardship.

- The nature of the offence as a category 2 offence means that Emma will be imprisoned. This means she will not have an income, and Agu and Kim would not be able to get a court order to deduct payment from her wages to meet her financial obligations.
- Even when Emma is released from prison the debt may still not be recoverable, as Emma may struggle to find employment.

Following is a high-scoring student response:

Enforcement issues refers to the ability of the defendant if found liable to comply with the court orders such as paying damages. One enforcement issue that should be considered is whether Emma has the ability to pay for the damages that Agu and Kim wish to seek. If Emma cannot afford to pay the damages, Agu and Kim should decide whether it is worth initiating a civil claim as there is a chance they will receive nothing in return and the trial will become a waste of time and costs for them.

Question 1e.

Mark	0	1	2	3	4	5	Average
%	7	9	24	43	15	2	2.5

In this question, responses were expected to discuss the extent to which damages could achieve their purposes in the case of Agu and Kim. Students needed to make a brief statement in relation to the task words ‘the extent to which’; this was often missing from responses. As the term ‘purposes’ is plural, more than one purpose needs to be considered. Many students only addressed one and could not score more than three marks. The most common choice was restoration. The response must also be a discussion – both positive and negative comments are required, and they must be clearly linked to the capacity of damages to meet their purposes in relation to Agu and Kim.

Responses may have included the following points:

- The main purpose of damages is to return the plaintiffs to the position that they were in before the harm that was caused by the defendant. Compensatory damages have this aim through claiming special/specific damages, which are quantifiable, and/or general damages, which are not quantifiable.
- The loss of the property is quantifiable; therefore, it is possible for damages to achieve their purposes to some extent. However, there are a number of factors that may limit the ability of damages to compensate and restore Agu and Kim.
- The property is tangible, so it is possible to quantify the amount needed to meet the following expenses:
 - cost of demolition and rebuild
 - lost rent, while the property is out of action
 - lost rent until a new tenant moves in.
- However, given that Emma will be in prison and her assets have been seized (Source 1), it is unlikely she can pay any damages awarded to Agu and Kim. In which case they will be neither compensated nor restored.
- As the property was used as a drug lab (Source 1) and needs to be demolished (Source 2), should they choose to sell, the sale value may not be sufficient to pay out their mortgage and they will not be sufficiently compensated and will not be restored.
- If Emma cannot pay damages and the property is uninhabitable (Source 2), Agu and Kim may not be able to meet their mortgage repayments due to the loss of rental income. Nor will they be able to sell the property in its current state to recover their initial outlay.
- Ultimately, the property may be repossessed by the bank, or they will have to sell for a significant loss, in which case they will be neither compensated nor restored.

- Additionally, Agu and Kim will have been placed under significant stress, and this may have taken a toll on both their health and their relationship. This type of harm does not have a precise value and is difficult to quantify.

The following is from a high-scoring response:

Damages are able to achieve their purposes in this case to a moderate extent. One way in which compensatory specific damages may achieve their purpose of restoring Agu and Kim to their original position is by compensating for quantifiable financial loss. For example the awarding of compensatory specific damages in a value which matches the financial losses of demolishing and rebuilding their property will be highly effective at restoring Agu and Kim to their previous economic position.

Question 2a.

Mark	0	1	2	3	Average
%	5	14	42	39	2.1

The question asked for one reason that laws relating to public protests may need to be reformed. In this question, responses were expected to include clear reasons as to why laws relating to public protests needed to be reformed. Students generally handled this question well but are reminded that there is a limiting word within the question ('one reason'), and that the first reason given within a response will be the only one considered by the assessors. Students needed to provide a full and comprehensive explanation for three marks. Brief, inaccurate, vague or general responses were not awarded full marks. Responses needed to clearly explain one reason for law reform in relation to public protests with specific use of the source material. Reasons for law reform are not specifically listed in the study design, so students could have explained any reasonable and relevant reason. This may have included reasons more associated with statutory interpretation, such as to address/clarify ambiguous or vague laws. This may have been awarded one mark if the student had linked it to reforming protest laws, but no marks were awarded if the response was about statutory interpretation per se.

Possible points:

The most appropriate reasons based on the source material included:

- Changing views and values in the community: Laws must reflect society's values and attitudes, which tend to change with the passage of time. Protests are public gatherings of community members designed to demonstrate support for law reform. The right to protest is protected in Victoria by the Victorian Charter of Rights and Responsibilities Act 2006. However, the frequency and nature of many protests in Victoria have led many Victorians to question the extent of this right, particularly when protests all too frequently occur and interfere with the rights of many other Victorians to pursue their legal rights.
- Changes in social, economic and political conditions:
 - Social conditions: The Victorian community is ever-increasing in size and diversity. This has led to increased support for a diverse range of community needs and interests through the use of protests, in order to demonstrate to the Victorian Parliament the need for law reform. In so doing, however, the number of protests has caused consternation among many Victorians for whom daily commutes and movement around Victoria have been significantly impacted. This has led to calls for the right to protest to be regulated through law reform.
 - Economic conditions: The number and location of protests in Victoria has caused a significant economic impact upon the operation of businesses, particularly small businesses in and around the Melbourne CBD. This has led to calls from business owners, consumers, politicians and commuters to introduce law reforms to regulate the location and frequency of protests.

- Political conditions: Changing political conditions within Australia and in the global community has led to a significant increase in the nature and frequency of protests in Victoria seeking law reform. The frequency of these protests, in particular, has led many Victorians to call for law reform to regulate the right to protest due to the social dislocation caused.
- Greater need for protection of the community: Law reform must regularly occur to ensure that the rights of all Victorians are protected. The right to protest ensures that Victorians can make parliament aware of the need for law reform. However, the nature and conduct of protests may also cause social and economic harm or financial damage. These latter needs have led to calls for law reform to regulate the right to public protests.

The following is from a high-scoring response::

One reason why laws relating to public protests need to be reformed is due to shift in community values and views. For example, recent media publications by both the Age and 3AW's interview with Tom Elliot may indicate growing community frustrations with the "disruptions caused by weekly protests". This may render law reform necessary to address the public's concern and limit the ability of protesters impeding on the community's daily lives or disrupting their ability to get to work.

Question 2b.

Mark	0	1	2	3	4	Average
%	13	11	35	33	8	2.1

Students needed to demonstrate a comprehensive understanding of the function of section 109 of the Australian Constitution to be awarded full marks for this response. Many responses included explanation that the legislation will need to be challenged in the High Court in order to be declared invalid by the High Court. Higher-scoring responses were able to provide a comprehensive explanation of 'the impact' that section 109 of the Constitution will have on Victorian protest laws, if the Commonwealth Parliament passes laws in conflict with existing Victorian laws. Students were expected to make effective and accurate use of the stimulus material and draw on at least one of the sources in framing their response.

Possible points:

- Section 109 provides a mechanism to resolve inconsistencies between Commonwealth and state laws.
- If the Commonwealth Parliament passes a law to 'enshrine the right to protest' (Source 2), this may be inconsistent / in conflict with a potential Victorian law allowing police to 'move protestors on'.
- If a case was brought to the High Court, the impact of s.109 on this inconsistent potential Victorian law would be that the Commonwealth law would prevail and the Victorian law would be invalid to the extent of the inconsistency.
- The practical impact of this would be that the Victorian law allowing police to move protestors on would not be operational, to the extent that it conflicts with the Commonwealth law enshrining a right to protest.

This is from a high-scoring response:

S109 would have an impact on the State laws in relation to protests by providing a mechanism to resolve inconsistencies between Commonwealth and State legislation. If both Commonwealth and State parliaments were to legislate on public protests, inconsistencies may arise that need to be resolved. If such a case is brought before the courts and challenged S019 would apply to resolve the conflict and by allowing the Commonwealth law to prevail and declaring the state law invalid to the extent of the inconsistency.

Question 2c.

Mark	0	1	2	3	4	5	Average
%	5	8	26	40	19	4	2.7

Students were asked to analyse the role of the media in influencing law reform relating to protests.

This question highlighted the need for students to have developed their ability to analyse by identifying components and explaining the significance of relationships such as cause and effect. Students were required to draw out and relate implications of the role of the media in influencing law reform relating to protests. Words or expressions such as ‘moreover’, ‘this means that’, ‘this is significant because...’, ‘the impact of this is...’, may have been used by the student to demonstrate analysis.

Possible roles of the media that may have been considered included:

- informing and raising community awareness
- assessing levels of community support
- influencing community opinion on law reform.

Student responses needed to utilise a range of sources. They may have referred to media in general, or different types of media such as ‘traditional’ media, for example, radio (Source 1) and print media (Source 3), digital media (Source 2) and/or social media (Source 4).

Points that could have been made included:

- informing and raising community awareness regarding protest laws
- assessing levels of community support regarding protest laws
- influencing community opinion regarding protest laws
- the role of traditional media such as newspapers (for example, Source 3) and radio (for example, Source 1) as a trusted source of information, especially for older generations, although less of a role/impact on younger generations who are unlikely to use this form of media
- viewers less likely to be swayed by media if they see information as one-sided or biased, and put pressure on MPs to reform the laws regarding protests
- both traditional media and social media providing a platform for MPs to generate awareness on controversial issues (for example, Source 1 with Brad Battin’s radio interview).

The following is from a high-scoring response:

Media allows for the spreading of information. For traditional media like newspapers and TV it is easy to distribute events and knowledge. For protests for example it is through the Age as seen in Source 3 that individuals can express their views and opinions. For instance, Reece and other influential people can inform society of their views around protests.

Social media can also contribute with over 80% of Australians owning an account. This allows information to be distributed across many people. Moreover, a broader scope of views is presented through social media, both people in support of protests but also against can express and inform others of their views.

Question 2d.

Mark	0	1	2	3	4	5	6	Average
%	28	15	15	17	14	8	2	2.0

Students were required to discuss one factor that may affect the ability of parliament to reform laws relating to protests.

Students needed to be aware of the limiting word ('one factor') in the question and ensure that they provided one factor only in their discussion. A 'discussion' is a multifaceted response that requires students to consider strengths, limitations, restrictions, weaknesses and circumstances that may limit or enhance the ability of the parliament to reform protest laws.

Students may have selected one of the factors in the study design:

- the bicameral structure of parliament
- the representative nature of parliament
- international pressures (unlikely to be relevant in this scenario but must make connection to the question if used).

It was essential that students made reference to the stimulus material in their response.

Possible points:

Representative nature of parliament

- The Victorian and Commonwealth Parliaments consist of members who are elected by the people to make laws on their behalf.
- If parliament fails to make laws that reflect the views and values of the majority or address the needs of the community, members risk not being re-elected.
- This encourages MPs to listen to the views of the community (for example, through letters to the editor and protesting), and can enhance law-making if the views of the community are clear on an issue, such as laws surrounding protesting.
- Parliament's representative nature can also make it more difficult to pass controversial laws, such as laws regarding protesting, where there are strong conflicting views on both sides (for example, Brad Battin versus Greens versus businesses versus protestors).
- This makes it difficult for parties to see where the majority view lies, and therefore legislate on protest laws accordingly to retain power in the next election. The impact on law-making is hence a reluctance to introduce and pass controversial laws like this.
- Membership of parliament needs to relate to the mood of the community.
- In Victoria the small presence of opposition does not reflect changing community values.
- MPs are elected without reference to the issue.

International pressures

- There are demands for the Victorian and Commonwealth Parliament to reform protest laws coming from outside Australia, or considering the right to protest as an international human rights matter.
- This pressure may be seen from other countries or international bodies such as the UN encouraging Australia to uphold its international obligations and 'enshrine the right to protest in Australian law'. Or it may come from more authoritarian countries or conservative international activists who are encouraging a tightening of protest laws.
- If this international pressure is able to influence Victoria's or Australia's reputation on the world stage (for example, Source 3 – 'potential damage to the city's international reputation'), it may enhance the willingness of parliament to legislate to reform the law.

- Additionally, it could influence the views of voters regarding this issue, which links to the representative nature of parliament.
- However, international actors such as other countries and the UN do not vote in Victorian or Australian elections, so it is much easier for the parliament to ignore these issues and legislate only according to the views of their constituents, reducing its impact on law-making.

Bicameral structure

- Adequate explanation of bicameral structure in context of the question – not just that it refers to two Houses of Parliament, but that a bicameral structure requires that a proposed law is passed by both Houses of Parliament in identical form.
- Knowledge – from source and own knowledge – that both Victorian and Commonwealth Parliaments have hostile upper houses in which governments do not have a majority
- Greens proposing national legislation – use stimulus material. While they hold balance of power in the Senate they lack a majority in the House of Representatives, therefore they would need to gain support of government in the House of Representatives and the Senate to ensure passage of legislation.
- Bicameral structure may mean that governments may not be able to pass laws as they intended, as the price of upper house support may be having to negotiate amendments that they do not consider acceptable. Bicameral structure also means that proposed laws can be delayed or referred to committees by a hostile upper house.
- Brad Battin, as Victorian opposition leader, will also find it very difficult to pass the 'more extensive move-on laws' through Victoria's bicameral parliament, due to the government having a strong majority in the Legislative Assembly.

This is from a high-scoring response:

One factor that can impact parliament to influence law reform for protests is the bicameral structure of parliament. The bicameral structure refers to that there are two houses in Parliament, in the Commonwealth it is the Senate and the House of Representatives. Specifically, it is the composition that can impact whether parliament can pass laws to amend the protest laws.

One weakness that will impact whether parliament can reform laws is if there is a hostile upper house. A hostile upper house refers to when parliament does not hold the majority of seats in the Senate and will require support from minor parties to pass legislation. The Government did not have the majority of seats in the Senate and the Greens held the balance of power holding 11 seats. This means that if the government wishes to legislate to change "move on" principles they would require support from the minor parties or coalition to pass laws. This negatively impacts law making because it means the government would potentially need to incorporate the desires and views of the Greens party so that they can pass legislation.