SECTION A

Question 1


Question 2

This question was by far the most popular in the section (75 candidates). With the exception of some extremely weak answers practically devoid of any knowledge is this regard, the majority of candidates referred immediately to Section 109 of the Commonwealth Constitution by quoting the Section, and supported their reference by illustration of particular cases where Section 109 has been applied. The role of the High Court of Australia was competently handled with candidates using specific examples such as: the current challenge by the Commonwealth Government to the ACT’s same-sex marriage legislation, the Tasmanian Dams Case 1983 and the Uniform Taxation Case 1942. Some candidates noted that Section 109 can also operate in favour of the States where a Commonwealth law is declared ultra vires. Few answers acknowledged the shift in attitude on the part of the High Court as early as in the Engineers Case, 1920, when the Court decided the Constitution should be interpreted according to the natural meaning of the words, a broader interpretation which has characterised the Court’s decisions ever since.

Question 3

Most candidates could identify the characteristic of a Westminster system of parliament, i.e., a bicameral parliament which must have the assent of the Crown in order to legislate. But many could not expand their answer to include the features of government outside the legislature/parliament. Better answers discussed the concept of Separation of Powers and how that operates in the Westminster system of government. In particular, good answers highlighted the fact that there is a significant overlap between the parliament/legislature and the Executive Government (usually referred to as ‘the Government’ in the media). They explained that the Executive Government is formed by the political party or coalition of parties who controls the Lower House of Parliament/Legislature and that ministers must be members of parliament. Excellent answers explained the notion of ministerial responsibility (particularly to parliament), contrasted the Westminster system with countries like the USA, explained how the judiciary is reasonably independent from the other sections of government and understood the role of the Crown as Head of State.

Question 4

This was another unpopular question. Better responses mentioned the role of the United Nations as well as other international organisations in creating international law. These responses also discussed the procedures and difficulties in enforcing and ratifying international law. Examples were used
prominently to demonstrate candidates’ knowledge and understanding as well as making relevant connections. Where some responses were lacking was when examples were emphasised too heavily without the adequate commentary / links to show the relevance. Many poorer responses also failed to answer the second part of the question ‘how (does international law) become part of the Australian domestic law?’

Question 5

Better answers distinguished between standing and special committees, how they were formal pressure groups for law reform in that they were advising the parliament and had considerable input in the formulation of new legislation. They also mentioned how they had the full resources of parliament available to them to research issues and that they also canvassed community opinion. Some students referred to the committee established by the legislative council to consider changes to abortion law.

Question 6

This question was attempted by many candidates with a good range of performance demonstrated. Competent answers identified the role of the Legislative Council in the bi-cameral Tasmanian Parliament, and its role in providing legislative oversight and review. Better answers also discussed the limits placed on the Legislative Council in terms of introducing appropriations bills, the historical independence of the Legislative Council from party politics and the process by which legislation passes through the Legislative Council in conjunction with the House of Assembly.

Question 7

Simply stated, a private members bill is a bill that is not sponsored by the Government and is not part of the Governments agenda. Any member of parliament can introduce a bill to parliament and, if they are doing so in their own right rather than on behalf of the Government, the bill is known as a private members bill. Usually ministers introduce bills to parliament on behalf of the Government but there have been occasions when ministers have also introduced private members bills, e.g., when Nick McKim and Lara Giddings introduced the bill to legalise same sex marriage in Tasmania. Those who understood the nature of a private members bill usually understood why they are often unsuccessful. Clearly, because the Government invariably has a majority in the lower house of parliament, they are going to be reluctant to support the agenda of people from other political parties and persuasions. This is not to say that private members bill will always fail but generally the Government wants its priorities to dominate the legislative agenda and does not want to be upstaged by other MPs or political parties.

Question 8

This was another very specific question answered by a number of candidates, many of whom did not note that there are ways of changing or avoiding precedent, a fact which would have made a good starting point. Most candidates could explain the meaning of ‘distinguishing’, but failed to mention that to distinguish on the facts of a case means that a judge may refine a precedent or formulate a new precedent, and that this allows for continuous development of the common law. Not surprisingly, there was some confusion between the meanings of ‘reversing’ (where a higher court hears a case on appeal
and decides that the lower court had made the wrong decision) and ‘over-ruling’ where a case relies on a legal principle which has been formed in an earlier case and in a lower court, and the higher court is said to over-rule the earlier decision.) It is easier to remember this if candidates think of over-ruling as requiring two separate cases.

**Question 9**

Those who answered this question generally did it well identifying that the Burden of Proof lay with the Prosecution in a criminal matter and with the Plaintiff in a civil matter. They also gave good explanations of the terms ‘beyond reasonable doubt’, as the standard in a criminal trial, and ‘on the balance of probabilities’ in a civil trial, clearly recognising that this was the lower standard.

**Question 10**

Those candidates that were able to provide clear and factually accurate responses when answering this question were rewarded. Better responses provided a context for juries in the Tasmanian legal system including mentioning the Jury Act and clearly distinguished between a verdict in a civil and criminal trial. Unfortunately many responses were factually incorrect.

**Question 11**

This question was not overly popular amongst candidates and the answers provided were of a generally weak standard. Competent answers demonstrated an understanding of the function of the two services they had selected, and expanded into higher level responses by discussing exactly how those two services improved access to the legal system. The majority of responses chose to discuss the Legal Aid Commission and many did so to a reasonable degree, but it was in demonstrating knowledge of a second service that many candidates fell short. Better candidate’s responses were able to show knowledge of issues which limit access to services such as costs, access to funding and any applicable eligibility criteria.

**Question 12**

Only two students attempted this question. The examiners were looking for mention of Diversionary Conferencing, Police Cautions, Bail Conferences etc. and a reasonable discussion on how, when and why these are used and some comment as to their effectiveness.

**Question 13**

One of the most popular questions in Section A, but a large number of candidates took the opportunity to write all they knew about bail, which was often why it might not be granted, how it was granted and who could grant it, rather than answering the question asked. Good answers began by explaining that bail is the release of an accused person into the community while they are awaiting trial and noted that this supports the notion of the presumption of innocence, also allowing the accused to prepare a defence and support their family. The point that bail saves the government a considerable amount of
money was often made. The best candidates were able to link their comments to natural justice and the rule of law.

**Question 14**

Not answered.

**Question 15**

This was a very popular question with most candidates identifying the main differences in where, how and by whom summary and indictable offences are dealt with. Stronger candidates were able to articulate different outcomes, the purpose of these different outcomes, strict liability crimes and discussed relevant legislation.

**Question 16**

This question was answered fairly poorly with most respondents talking about the rights of the accused with little or no mention of the rights of the victim. Better answers included use of Witness Impact Statements, bail conditions, Criminal Compensation, paid either by the offender or through the Victims of Crime fund, the Witness Support Program and Parole notification and the right to object.

**SECTION B**

**Question 17**

This question is a very common question but was complicated a little by reference to the fact that there seems to be ‘decreasing co-operation’ between the Commonwealth and state governments. Although the question didn’t specifically invite comment about this apparent lack of co-operation, the invitation seemed to be inferred. A number of students successfully integrated commentary on this apparent lack of co-operation into their responses; although students were not penalised if they did not comment on this issue.

Generally candidates could ‘describe’ the essential features of the Australian federal system of government but the majority of essays did not address ‘why’ the division of power has altered over time. Most discussed ‘how’ power has shifted; although too many did not discuss the implications of the key High Court decisions they identified.

Knowing the central High Court decisions in relation to the shift in power from the States to the Federal Government is important but more important is their future consequences for the States on their residual powers.

Returning to the ‘why’ the division of power has altered over time, there are a number of important explanations that could have been briefly explored. Some of these explanations are: that international obligations and pressures are increasingly requiring a national response; that increasingly domestic issues (environmentally, economically, in terms of infra-structure, socially etc.) require a national
response; that national allegiance is beginning to be preferred, versus state allegiance; that communication and transport has made the ‘tyranny of distance’ less of a factor in governing; that the problems of lack of uniformity are becoming more apparent; that the Commonwealth Government needed time to identify their powers and learn how to use them over time; and many more reasons.

There were a number of common mistakes or misconceptions that need to be addressed about the division of sovereign power, e.g.:

- The States still have sovereignty over residual matters, even though the Commonwealth can strongly influence such sovereign power by using the grants power (s96).

- S109, enabling Commonwealth law to ‘prevail’, only applies to concurrent powers and not all powers to govern.

- The Commonwealth powers are ‘specific’ and are known as exclusive (not executive) and concurrent powers and that most specific Commonwealth powers are concurrent.

Question 18

This was a predictable question and reasonably popular with students, many of whom had clearly prepared well in advance. Most students were able to adequately describe the role and composition of each of the three powers which make up Australia’s political and legal institutions – the legislature, the executive and the judiciary. Better responses examined in detail the interrelationships and overlap between the three powers, giving specific examples of the checks and balances in place. Some responses compared Australia’s system to that of the U.S., using the recent U.S. government shutdown as an example. Students who performed well evaluated the powers with regards to the principles of responsible and representative government and the rule of law. Quality evaluation proved to be the most challenging aspect of this task for students. Those who were able to reach a logical conclusion about the effectiveness of the Australian system in achieving the objectives of accountable and transparent governance were best rewarded.

Question 19

There were 20 answers to this question, which had elements of the previous year’s question and therefore more good answers could have been expected. Most candidates were able to refer to Treaties and Conventions as sources of IL; only two candidates mentioned Custom as a source of International Law and none referred to the growing importance of the decision of judges in international courts.

The few solid B and A answers could discuss the strengths and limitations, although some were a little shaky on the strengths. An A standard answer discussed the role of IL in dispute avoidance or settlement; in dealing with international issues such as climate change; and in being a vehicle for human rights and humanitarian law (with examples) as well as in providing the mechanisms and benchmarks for a global community to interact as it does. It was obvious that the writer of the best answer had carefully read last year’s comments on the International Law question; a piece of preparation all candidates should undertake.
B standard answers could discuss only the limitations e.g. the fact that there is no compulsory enforcement mechanism, more powerful countries seem more exempt, the use of the veto by permanent members of the UN Security Council and that it is often difficult to get enough signatories to a treaty to make it credible.

Few candidates answered the whole question. Those who received Cs really only discussed how IL is made and enforced (criterion 4), leaving the second part of the question unanswered and thus barely acknowledging criterion 6. It was disappointing to note that, in the majority of answers, there was no reference to topical issues, or even historical matters, which could have helped with explanations.

**Question 20**

Most candidates discussed how judges make and develop the law by making common law, interpreting legislation and through judicial creativity. In relation to common law, candidates described the Doctrine of Precedent with reference to stare decisis, ratio decidendi and obiter dictum, reversing, overruling, distinguishing and disapproving, and binding and persuasive precedent. In relation to statutory interpretation which defines the parameters of legislation, rather than making law, candidates were familiar with the reasons why legislation may need to be interpreted and some of the methods used to do this. Cases that were cited included the Studded Belt case and the Chroming case. Judicial creativity that sees courts creating new areas of laws where Parliament has been unable to meet the changing needs of society, such as Native Title and Negligence were discussed. While the detail of the origin of common law in Britain, the Snail in the Bottle case and the Grant v Australian Knitting Mills case are interesting, candidates do not need to include minute detail of them.

Some candidates discussed the viewpoints of judges and whether they saw their role as judicial (conservative) or activist in shaping the legal system in Australia. Conservative judge, Justice Gibbs, was quoted as saying, ‘No justice is entitled to ignore the decisions and reasonings of his predecessors or to arrive at his own judgement.’ Retired Justice Michael Kirby was quoted as saying, ‘Justices in the High Court are to fashion law principles of the Constitution and common law. I will contribute wisely to the good governance of the Australian people.’

In evaluating the strengths and limitations of the law-making role of the judiciary, most candidates addressed a range of positives and negatives.

**Strengths:**

- The doctrine of precedent ensures consistency and certainty in resolving disputes and flexibility through a judge’s ability to reverse, overrule, distinguish or disapprove a precedent.
- Judges are appointed, not elected, so political considerations do not impede the courts.
- The courts deal with a problem that is brought before them.
- Judges are trained in the operation and application of the law.
- The courts can deal with matters not foreseen by legislators.
• In relation to interpretation of legislation, judges can ensure the rule of law is upheld because they are independent from the legislature.

• Anyone can bring a case before the courts and achieve an outcome, whereas only elected members can put laws before the parliament.

Limitations:

• The cost of going to court is high, especially since a case needs to go to a court of appeal, in order for the law to change.

• Courts are reactive, ex post facto. They can only make law on cases that come before them. Unlike Parliament, they cannot make law proactively. If a problem with the law becomes apparent, the courts cannot change the law until a case comes before it.

• According to the strict definition of the Separation of Powers, only parliament should make law.

• The common law can be difficult to find.

• Judges are not elected by the people so are not accountable to them.

• ADRs have moved many disputes out of the court system, thereby reducing the role of courts in setting precedent in certain areas.

• Parliament has the power to abrogate court decisions by legislating to take certain disputes out of the court system.

• The Doctrine of Precedent can entrench poor legal principles and inhibit reform of the law.

Question 21

This was not a popular question but those few candidates who attempted it, on the whole, provided a good standard of answers. Most candidates address the four law reform bodies competently with reference to the Australian Law Reform Commission (ALRC) and the Tasmanian Law Reform Institute, Royal Commissions, parliamentary committees, Ombudsman, pressure/interest groups such as the Australian Christian Lobby and individuals. Most candidates could refer to examples of law reform in relation to each of the four bodies. The effectiveness of social media was also discussed.

The second part of the question was difficult in that it required candidates to establish a link between law reform bodies. Better answers were able to discuss this link and their effectiveness in respect of law reform or legislative change.

Most candidates referred to topical legal issues such as abortion and the role of pressure groups, for and against in this issue. This demonstrates an understanding of different parts of the syllabus in law reform and topical legal issues.
**Question 22**

The student answers tended to lack detail with respect to both how parliaments make law and the strengths and limitations of the process. In addition, many overlooked discussion of delegated legislation which was specifically asked for in the question. Those who did cover delegated legislation integrated it well in their essay. It may have been easier for candidates if they had made use of examples, such as their topical issues (same-sex marriage, abortion, carbon tax etc.), in order to strengthen their evaluation and highlight how difficult the process can be depending on the issue. It is also recommended that students make it clear as to whether their focus is state or federal level. There were some inaccurate cross overs (incorrect names for houses or governor v governor-general).

With respect to law making, most could briefly outline the process; however mention of drafting and the use of committees would have been valuable. It was expected that delegated legislation and the use of Enabling/Parent Act be included in this description. Students could outline the types of bills; however they often were not accurate in describing the passage of a bill.

The evaluation was disappointing given so much could have been said about minority government, the role of the upper house and the nature of a democracy. Some comparison to common law would have allowed students to highlight the strengths and limitations of parliament. The role of Cabinet, separation of powers, sovereignty of parliament could also be mentioned. Very few essays contained the words responsible and representative.

**Question 23**

This was answered by 139 candidates, making it the most popular question. The question was similar to last year, and many students demonstrated a good understanding of the adversary system of trial. The question was in two parts, and most students addressed the first part well, by describing the main features of the adversary system – contest, party control, impartial adjudicator, rules of evidence and procedure, and a single event process. Sound responses then addressed the second part of the question - this included some consideration of alternatives (e.g. the inquisitorial system) and possible reforms (e.g. more investigative role of the judge, use of written statements, more informal conduct, greater availability of legal aid, Koori Courts). However, many responses did not directly make the connection to the effectiveness of the system – i.e. being fair and just, accessible and timely and underpinning the principles of natural justice.

Responses at a C level typically identified some of the key features of the adversarial system, and some strengths and weaknesses, usually with a reasonable understanding of the legal system. Often responses were not related to the effectiveness of the system and may not have included cases to support arguments. Stronger students (B standard) confidently identified the key features, considered the strengths and weaknesses of these, and usually outlined some alternatives and proposals for change. This was typically supported by some relevant cases, and some attempted to draw links to the effectiveness of the system. The best responses (A standard) evaluated the main features, alternatives and reforms in relation to the effectiveness of the system, and some considered principles of natural justice. These responses conveyed a depth of legal knowledge that demonstrated an understanding of the adversary system in the broader context of the legal and political system that was not demonstrated by other students.
Against the criteria, legal knowledge was generally sound, and essays were well structured although did not always deliver on the outline in the introduction. Analysis and evaluation was usually the area that students were weakest. Many arguments were not linked to the effectiveness of the system.

**Question 24:**

Many of the comments on last year’s jury question are applicable to 2013 with the exception of the part of the question which asked for the role of the jury. This year few students wrote more than one or two sentences on the role of the jury, and far too many ignored this part of the question altogether, thus impacting on Criteria 3 and 6. The best answers were able to conduct a good, though brief, discussion, both on the actual tasks of the criminal jury, and also on the philosophical reasons for retaining the jury system. A handful of students unfortunately substituted an historical account of how, rather than why, the jury came into being, for an analysis of the jury’s role.

Students must remember to take time to read the question, (which in this case was about the jury in a criminal trial,) rather than the one they have prepared for. Those who wrote on the civil jury wasted valuable time on both criteria 4 and 6. Last year’s comment on the selection and empanelling process is applicable as some students discussed possible reforms pertaining to this process, but less thoughtful students simply wrote a description and left it at that. Many C answers wrote all they knew about the jury e.g. lengthy descriptions of majority verdicts. There were too many incorrect facts, and not just because students had studied from a Victorian text book; one student noted that the jury, collectively, is responsible for declaring evidence inadmissible. Information on the Tasmanian jury system is easily available and clearly explained from the Supreme Court website.

Better students were able to evaluate the advantages and disadvantages of the system and outline possible reforms and alternatives as they did this; rather than creating lists for each part of the question they weighed up the pros and cons of each possibility. These well prepared students were also able to clearly distinguish between a possible reform and an alternative to the present system. Again, to do well on Criterion 6, the question called for more than just a list of reforms, it required these reforms to have benefits and negative impacts analysed.

**Question 25**

This was not a popular question but most candidates answered the question competently. Refer to previous exam comments as a useful guide, except for 2009. Better answers incorporated examples of tribunals and recorded cases. There was a slavish tendency to just rely on the text Justice & Outcomes. Some candidates referred to mechanisms which were Victorian but did not mention that they were Victorian. The only Tasmanian example given overall was the Juvenile Justice Act 1997 which was sometimes mistakenly referred to as the Juvenile Justices Bill 1997, which encompasses Community Conferencing a useful diversionary procedure. Similarly, the Sentencing Act (TAS.) provides useful diversionary procedures for drug offenders. There is also the Mental Health Diversion List. In any event, Victorian examples are okay provided such examples are referred to as Victorian.

There is a complex system of tribunals etc. in Tasmania and also within our court system. As an example, the Magistrates Court web site is a useful guide particularly in relation to the Small Claims Tribunal which deals with civil disputes for amounts under $5000.00. For cases involving amounts over $5,000.00...
but under $50,000.00 are subject to the Magistrates Court civil jurisdiction and compulsory conferencing to try and effect settlement is a major part of case management in this jurisdiction.

**Question 26**

Because of the number of sentencing options available it is difficult to evaluate them all effectively. Some students chose three and discussed them at length. A better approach, however, was to discuss categories of options, e.g., restorative/therapeutic options, custodial options, common options for minor offences, options for juvenile offenders etc... Another structural piece of advice is to introduce your essay with a broad contextual comment, e.g., note the shift from a retributive approach to a restorative approach or note the recent changes in the incidence of crime and any link to sentencing options.

**Criterion 4**

As mentioned in an earlier Assessment Report (2010) for this question the underlying focus is Tasmania. NSW and Victoria sentencing options were only relevant if the candidate could relate it back to reforms needed or recommended (especially by the Tasmanian Law Reform Institute in their Sentencing Report). Some candidates also gave information at length of what the judge takes into account when deciding a sentence. This was not specifically asked for and is not directly relevant to this question.

**Criterion 6**

Analysis was the most difficult challenge for the candidates. When discussing nominated options students needed to evaluate their effectiveness in meeting the spectrum of possible aims. None of the options are designed to meet all the aims of punishment and some are more effective in meeting particular aims of punishment compared to others.

When discussing the effectiveness of an option, better answers were able to cite evidence (e.g. government reports, law reform bodies reports or verified statistics) to support their contentions. Although examples of cases can be useful to illustrate a point and support a proposition, some students let the example’s narrative take over their essay, which detracted from their analysis.

Given the shift to restorative justice, it was disappointing that many students did not bother to evaluate options such as drug treatment orders or family violence rehabilitation orders or diversionary orders etc.. The tension between retributive and restorative justices seems to be re-emerging, so a discussion of this issue would have been very pertinent.

**Question 27**

This question was repeated from last year, with a modest amount of students attempting a response. Many students performed well in C4, being able to compare and contrast the rights of the accused versus the victim from pre-trial through to post-trial processes. Students did well to link their examples with the principles of natural justice and recognise that the rights of the accused are protected because they are up against the state and have a great deal to lose. Most students were able to recognise that the balance of rights favours the accused, but were not able to hypothesize why in much depth. Better responses gave detailed examples of ways in which the criminal justice system has compromised its procedures to attempt to redress the imbalance, discussing the removal of double jeopardy and the
reversal of the burden of proof in ‘unexplained wealth’ cases. Other concepts that could have been discussed include the use of unsworn statements and the relatively new concept of ‘absolute liability’.

Furthermore, a growing number of jurisdictions are diluting the right to silence.

Many responses mentioned the use of victim impact statements and compensation available to victims, but few mentioned the role of victim support services throughout the trial process and post-trial.

**Question 28**

Most students were able to address the first half of this question well, detailing the role of the police when investigating crime. Some students described these roles in very superficial and general terms, without referring in detail to specific powers explored in the course i.e. the power to arrest, detain and charge. Some provided obscure examples yet omitted key powers. It was encouraging to see more students referring to specific legislation under which police exercise their powers, however, a small number of students did not go beyond providing the name of a relevant Act to explain how they limit police powers.

Students should take care to use inclusive language when referring to police (i.e. not policemen) or when providing general examples involving an unnamed accused (i.e. use ‘an accused’ rather than ‘a man’, use female pronouns as well as male pronouns). Students are also reminded to remain objective and not reference their own opinions explicitly or use first person.

As with previous years, very few students answered the second half of this question adequately, struggling with the skill of evaluation. Rather than writing a detailed essay on police powers, with cursory comments (usually in the introduction and conclusion) about the ‘effectiveness’ of police powers, students should aim to address this question through an evaluative lens, by addressing big picture concepts e.g. What challenges are faced in attempting to balance the rights of the accused with the role of police in apprehending criminals? What are the consequences when police overstep their limitations? Would increasing police power actually reduce the rate of crime? The best responses will link descriptions of police powers with these overarching concepts to create an integrated essay.

Students are also encouraged to use recent cases as examples to support their arguments. The current situation in QLD with increased police powers to deal with bikie gangs was a good example for 2013. It is worthwhile noting that the criminal law relates differently to juvenile offenders and terrorist compared with the ‘traditional’ criminal.

Students should also read the assessors comments from 2011, which are very useful.

**SECTION C**

**Question 29**

**Marker 1**

I only marked one bundle so don’t have a lot to say. The most popular issues were Same Sex Marriage, Abortion and Euthanasia, followed by Asylum seekers, which, despite its complexities, was generally
done well with a good focus on the relevant International and domestic laws, and on developments this year, with only a brief acknowledgement of previous history.

The old problem still remains: that students pay scant attention to the question asked i.e. the quotation at the beginning of the question. Very good students spent some time discussing community needs and whether the legal system actually should adapt quickly when needs change. There was plenty of scope for discussing the role of the Upper Houses. Few students distinguished between ‘needs’ and ‘wants’.

Other students did well on Criterion 5, knowing the facts of their issues, but failing to give more than a brief sentence’s acknowledgment of the quotation, usually at the end of the essay, and often without exploring the relationship of their issues to the legal system.

In relation to criterion 5, there is really no excuse for wrong facts about these issues as they are researched and prepared. A small number of students were penalised for factual inaccuracy, including confusion between Federal and State parliaments and accounts of the passage of a Bill. The names of Bills and Acts of Parliament were also sometimes incorrect; if titles are going to be used, then they should be accurate.

**Marker 2**

The most popular topics by far were same sex marriage, abortion and euthanasia. Other topics included the Royal Commission, asylum seekers, no consent age, whaling, the proposed referendum on Local Government, Bikie legislation, parole & bail, gene patenting and drugs/corruption in sport.

It was disappointing to see repeated examples of the following:

- Explanations of the issues limited to superficial or random (and sometimes inaccurate) bits of information
- Lack of a clear explanation of why the issue is topical (i.e. developments this year), and too much time spent on historical developments (e.g. the decriminalisation of homosexuality in Tasmania)
- Focusing mainly on the need for government action on a social issue (e.g. greater funding for child protection)
- Failure to explain relevant State or Federal laws or international treaties/covenants that governed their chosen issues.
- Superficial references to aspects of the legal or political system, without adequate explanation of their relevance.
- “Dumping” of lengthy explanations of aspects of the legal system which were of marginal relevance, or failing to link relevant material to the chosen issues.
- Illegible handwriting and poor spelling, especially of key words such as asylum, marriage, parliament
- Ignoring the quote, possibly because of writing out a memorised generic essay, without attempting to tailor it to the specific question that was asked.

Stronger candidates presented accurate information, and achieved the right balance between thoroughness and conciseness in their explanations of their chosen topics, including very recent developments, and relevant state or federal legislation. The significance of different aspects of the legal and political systems was explained, and their importance analysed as either contributing to or limiting the capacity of the legal system to adapt quickly to changes in society. Information was well
organised in coherent paragraphs (dealing with one issue at a time rather than jumping between two issues), with a distinct introduction and conclusion.

**Marker 3**

There were a wide range of issues covered this year that included Same sex marriage, Euthanasia, Abortion, Asylum seekers, the Electoral system, Whaling, Banning plastic shopping bags, National Disability scheme, the Gonski report, Age of consent, Live animal export, Climate change, Parole laws, Drugs in sport, Gene patents, Local government referendum, the Republic debate, the Super trawler, the Susan Neil Fraser case and Synthetic drugs.

Better students were able to identify what was topical about their issue in 2013 and were able to describe the current law reform processes pertaining to their issue. This included knowledge of the current law, the name of the proposed laws, who was trying to change the law and how this was happening (5 W’s + How). It involved a discussion of the structures and processes of the Australian legal system that were involved (hindering or assisting) in the process of changing the law; namely, the division of powers, the workings of parliament, the courts, law reform bodies, etc. They then went onto discuss some of the legal arguments that either supported the law reform or did not. They were able to address the quote throughout and there was evidence that the student had researched widely on the topics.

Weaker students often were not able to succinctly write about their issue and became too involved in the historical contexts and their own personal social commentary, particularly evident on whaling abortion, asylum seekers and euthanasia.

Many weaker students were unable to distinguish between Same-sex marriage law reform at a federal level and at a state level. Many referred to the ACT as a state. Confusion with the Tasmanian House of Assembly and Legislative Council with the House of Representatives and the Senate was very common.

Many lacked evidence of any research on their topic and were not able to mention laws, dates and events.

Entwining the two issues throughout the essay is unhelpful, best to write about one and follow with the second. Use of headings is not appropriate in a formal essay.

**Marker 4**

Most students this year focused their discussion on same-sex marriage, abortion law reform in Tasmania, euthanasia and asylum seekers, and this was expected given the topicality of these issues in 2013. Other issues considered included drugs in sport, the threat of synthetic drugs, the Royal Commission into Institutional Abuse of Children and Queensland’s “bikie” legislation. The majority of students had a thorough understanding of their chosen issues and their connection to the Australian legal and political system.

A few students were unable to demonstrate any real knowledge or preparation for this section of the course. Given that extra time is now given, and that this is a prepared answer, detailed, analytical discussion is expected. It was disappointing to read essays that contained a firm argument and were accurately written (in terms of grammar, expression, and spelling) but could have been “lifted” from a remembered newspaper article or class discussion. These attempts did not include the relevant facts,
names of specific Acts, the nature of the debate/controversy or anything much that would identify them as Legal Studies essays.

Students, who are aiming for the higher ratings, need to pay much more attention to the set question. This is a statement made every year, but if students could only be confident in their own ability to recognise the key ideas and not fearful of forgetting their information, they would achieve a higher result.

- Use the actual words of the question in the introductory paragraph e.g. “needs”. What needs? (i.e. identify the community’s needs in relation to each issue).
- Explain how these needs vary and conflict according to the beliefs and values of different members.
- Acknowledge how difficult it often is for the legal system to accommodate these competing needs.
- Refer to the question throughout your essay.

Some outstanding essays adopted a narrow focus on the question and completely ignored the community’s views, in favour of a concentration on the formal processes of law reform and a close analysis of legislation. (For example, discussion of the Royal Commission … tended to concentrate on its role, how it was set up; roles of state commissions; various formal legal processes. Little, if any attention, was given to the victims, who have campaigned for justice, whistle blowers, Brave Heart etc.) Given the controversial nature of many of the issues, this was a mistake.

**Marker 5**

To provide a competent response candidates were expected to clearly describe two topical legal issues, and demonstrate sufficient knowledge to show an understanding and appreciation of how these matters were both topical and linked to the legal system.

Generally, it was also expected that candidates would identify whether the issues were state or Commonwealth based (and how conflicts in this regard are resolved) and accurately cite legislation, case law precedent and societal opinions (polling, statistics etc.) on the matter. Surprisingly few candidates examined the benefits of a slow legislative process, though many did identify the role that a bi-cameral system plays in slowing down the passage of legislation.

Popular topics included Marriage Equality, Abortion law reform, attempts to legalise euthanasia and asylum seekers. As a general comment, analysis of Abortion Law Reform and Marriage Equality was of a higher standard with better responses showing a detailed understanding of abortion’s previous status under the Criminal Code Act and the new legislation to address the matter, together with the social and legislative processes involved in passing the legislation. Marriage Equality responses of a higher calibre were able to describe the role of Section 51 and 109 of the Constitution of Australia, analyse why some legal experts believe that state bases same sex marriage and the Marriage Act (Cth) can co-exist, and provided details of same sex couple recognition in Tasmania.

In respect of Euthanasia better responses provided analysis of societies expectations (using poll results etc.) together with attempts at legislative reform and the role of private members bills in passing controversial legislation.

Asylum seeker rights responses were of a lower standard, with a general failure of candidates to identify accurately Australia's obligations to Asylum seekers under international law and UN convention.
<table>
<thead>
<tr>
<th></th>
<th>EA</th>
<th>HA</th>
<th>CA</th>
<th>SA</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>This year</td>
<td>9% (30)</td>
<td>16% (54)</td>
<td>44% (149)</td>
<td>32% (109)</td>
<td>342</td>
</tr>
<tr>
<td>Last year</td>
<td>9% (36)</td>
<td>23% (86)</td>
<td>34% (127)</td>
<td>34% (130)</td>
<td>379</td>
</tr>
<tr>
<td>Last year (all examined subjects)</td>
<td>11 %</td>
<td>19 %</td>
<td>39 %</td>
<td>31 %</td>
<td></td>
</tr>
<tr>
<td>Previous 5 years</td>
<td>9 %</td>
<td>17 %</td>
<td>39 %</td>
<td>35 %</td>
<td></td>
</tr>
<tr>
<td>Previous 5 years (all examined subjects)</td>
<td>11 %</td>
<td>19 %</td>
<td>39 %</td>
<td>30 %</td>
<td></td>
</tr>
</tbody>
</table>

**Student Distribution (SA or better)**

<table>
<thead>
<tr>
<th></th>
<th>Male</th>
<th>Female</th>
<th>Year 11</th>
<th>Year 12</th>
</tr>
</thead>
<tbody>
<tr>
<td>This year</td>
<td>39% (133)</td>
<td>61% (209)</td>
<td>19% (65)</td>
<td>81% (277)</td>
</tr>
<tr>
<td>Last year</td>
<td>33% (125)</td>
<td>67% (254)</td>
<td>18% (69)</td>
<td>82% (309)</td>
</tr>
<tr>
<td>Previous 5 years</td>
<td>39%</td>
<td>61%</td>
<td>24%</td>
<td>76%</td>
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</table>