

Legal Studies

Course Code: LST315116

Question 1

Students who attempted this question did reasonably well. Most students understood the basic theory and its application in Australia, with the better responses pointing out the overlap between legislative and executive branches and the importance of the independence of the judiciary. The latter is particularly relevant to the rule of law and those answers that included cases illustrating the importance of judicial review as a check on executive power did well (e.g. Haneef case, 'Malaysian solution' case).

In order to do well it was necessary to explain how the separation of powers contributes to the rule of law but it was still possible to pass if students didn't make this connection.

Question 2

This question allowed students to assess the High Court's influence on changes to the division of powers. Most students were able to discuss a case in some detail. As the question only stipulated discussion of one case, the choice of case was important and a significant number of students mistakenly used the 2013 ACT same-sex marriage case as an example. This case simply illustrates the application of s109 of the Constitution and has really had no impact on the division of powers. A number of students incorrectly suggested that s109 was the only way in which power has shifted. The majority of students discussed the Tasmanian Dams case but many did so in insufficient detail or with important inaccuracies. When it's only one case, it's important to get the key details right and explain the significance of the case fully.

A good choice for this question is the First Uniform Tax Case 1942. This case opens up discussion of vertical fiscal imbalance and can be linked to a brief discussion of the Roads Case 1926. The concentration of financial power in the Commonwealth's hands is certainly the most significant change to the division of powers and those students who chose this case generally did well.

Question 3

Students needed to show how common law evolves by discussing both binding and persuasive precedent, reversing, overruling disapproving and distinguishing, and examples of these to do well. Many students also analysed strengths and weaknesses of common law addressing the second part of the question.

Cases which featured and worked well as illustrations were *Donoghue v Stevenson* [1932], *Grant v Aust Knitting Mills* [1935] (using *Donoghue v Stevenson* as persuasive precedent), *Trigwell's Case* [1979] (disapproving of precedent). Good answers also pointed out how common law helps fill gaps in statute law and can lead to law reform through obiter dicta as in *Trigwell*. Strong answers recognised that areas such as negligence and contract law have their genesis in the court room, and are still developing today.

The role judges in superior courts play in developing the common law, and a notable strength, can be seen in *Mabo v Queensland [No2]* (1992), where the High Court recognised native title and overturned the concept of terra nullius because the latter was "based on a policy which has no place in the contemporary law of this country" according to the majority decision. Prior to this case, successive Australian Parliaments had failed to address this issue. Strong responses made the point that legislation can overturn common law, as Parliament is the sovereign lawmaker. *Mabo* was a catalyst for legislative change and for continuing contributions by judges and the Federal Parliament to the law of native title.

Question 4

Very few students attempted this question and the answers were generally of poor quality. Few accurately explained the operation of either the ALRC or the TLRI and most tended to confuse which issues had been

investigated by which body. There were accurate comments on law reform generally but the question required specific information on either body.

It was important for students answering this question to acknowledge that formal law reform bodies, such as the ALRC and TLRI, do not actually “pass bills” rather they provide recommendations to parliament. These recommendations are non-binding.

A number of students also confused the ALRC and TLRI with Royal Commissions.

Students who did do well on this question referred to relevant areas of investigation and pointed out the strengths and weaknesses of such bodies in contributing to the law reform process.

There was a much higher percentage of non-responses or one paragraph responses in Sources of Law, Section A, probably because students were more prepared for a question on statute law.

Question 5

This question was answered well by students who assessed the adversary system as it operates in a civil trial, emphasising its features as a fair and unbiased hearing, providing access to justice and a timely resolution of disputes and then pointed out the strengths and weaknesses of ADR in relation to these features. Many students however, thought this was an essay just on the adversary system or just on ADR and did not make sufficient or any comparisons. A few made the point that mediation has been incorporated into all civil court processes in Australia.

Advantages of ADR included:

- Less costly, timelier resolution of disputes.
- There is a win-win resolution as parties are involved in the solution and relationships are more likely to be maintained.
- Most ADRs involve breaking down the rules of evidence and procedure so that the parties feel more included in the process.
- It is less intimidating.
- It empowers the individual and allows them to feel ownership of the process.

Disadvantages:

- Only arbitration binds the decision, so in other forms of ADR time may be spent in mediating and the case still ends up in court.
- If there is a power imbalance between the parties, the case is more suited to the adversary system.
- Some civil disputes involve public interest and should be dealt with in courts, which are open to the public and whose decisions are enforceable. For example, if the Donohue versus Stevenson case had been resolved using ADR, then the tort of negligence may not have been established. A court decision may also lead to law reform as in the Mabo case.
- A two tier system of justice has developed in which those who are well off can access both, whereas the less well-off are limited to ADR as Legal Aid is now extremely limited for civil cases.
- With increasing emphasis on ADR, Governments have underfunded courts, contributing to delays.

Question 6

This question caught many by surprise. It was evident that many students had to think how to address the question with their prepared response on the adversary. To the vast majority of student's credit, they were able to do this.

Better responses were able to consider whether the self-represented defendant in a criminal trial was given the right to a fair trial. There were two approaches to the question: the student who could launch directly into the problems of self-representation and the other (approach), which was to discuss each of the adversary features (not just role of the judge and legal representation) and then consider the problems created by being self-represented.

The better answers covered Legal Aid, Court processes and the Dietrich case and considered the following points, in no particular order:

1. Legal Aid- important to note that only granted to those living well below the poverty line and likely to receive a term of imprisonment, hence rise in self represented in criminal trials. There have been Commonwealth cuts of up to \$60 million. The impact has led to a significant impact on Community legal services, Family Violence and Indigenous legal services. Criminal trials being stopped and complex criminal trials proceeding without proper representation (Law Council of Australia).
2. Power imbalance with the parties: resources, knowledge of legal system, and limitations of judge to assist. In a criminal trial the Prosecution has the resources of the state behind them.
3. Courts are disadvantaged as self-representation leads to additional costs, and increased demands on court officials.
4. Individuals are under greater pressure to plead guilty or abandon cases.
5. Delays contribute to costs because the unrepresented are more likely to not comply with court directions and proceedings due to lack of familiarity with operation of the courts. In addition there have been instances of victims being cross-examined by abusers, outbreaks of courtroom violence (overseas), cases taking longer, increased costs to the justice system.
6. The real cost of legal representation has led many lawyers to withdraw their service from legal aid work, leading to ethical concerns.
7. Potentially compromises the impartiality of the judge
8. In the adversary trial the reliance on oral evidence, especially during cross examination highlights communication problems that can present with cultural and language differences.
9. Many students mentioned the Dietrich case but few could articulate the important implications of the case which are:
 - Access to legal representation is fundamental to the effective operation of the criminal justice system and that
 - Governments have responsibility to provide sufficient funds for legal service and their failure to do so may result in an indefinite stay of procedures in trials of serious criminal offences. Legal Aid is now forced to fund some cases that it would not otherwise support. (Making and Breaking the Law – Aldous)

Question 7

This was a popular question and was answered satisfactorily. It emphasises the empanelment of the jury which, at first blush, necessitates a very close reading of the Juries Act 2003. This was not the expectation of markers. Fortunately, this feature was connected to the role of the jury. Therefore, a discussion of the selection and empanelment of juries and general role of the jury together with advantages and disadvantages with suggested reforms, was required. Further, this discussion had to be related to the defendant being 'judged by ones' peers.'

The expectation of the marking group was that students raise the issue of empanelment which involves the challenge system and jurors being stood aside. Once potential jurors are challenged or stood aside then the argument is that it is not really a jury of ones' peers as jurors are excluded. Answers featured a discussion of the 6 pre-emptory challenges by the Defence with the Crown's being unlimited. Good answers included a reference to advantages and disadvantages together with a reform and whether this would achieve the desired outcome of being judged by ones' peers.

The same argument could be related to the selection of potential jurors by Jury summons. Most candidates answered this part of the question quite well with the exclusions identified and the argument made that the jury is not a true cross-section of the community.

There also seemed to be confusion between random selection of the Jury pool and empanelment. The process of selection and empanelment of the jury includes the jury summons randomly selecting the jury pool and, once at court, the jury is empanelled. Empanelment involves the jury member being called into the court room and taking a seat. They may be challenged or stood aside. Again, the Supreme Court website is excellent in explaining this process.

It was clear that candidates had watched the excellent videos on the Supreme Court website which provides a practical guide to what happens when a potential juror arrives at court.

The question was general and did not specify whether it was a criminal or civil jury. Most candidates correctly included a discussion of civil juries, despite the courts infrequent use of the latter.

There were some varied references to the number of jurors on a civil jury which is 7. There was also some confusion as to the number of reserve jurors in a civil or criminal trial. Some students referred to juries in the Magistrates Court!

Many candidates referred to the Victorian system which is fine as the question did not specify a jurisdiction. Further, most students refer to a Victorian text. In future, it should be made clear by students that they are describing a Victorian procedure or Tasmanian or both.

Question 8

There was a variety of interpretation. Some candidates explained and evaluated the latest sentencing reforms that are either in the process of passing through Tasmania's parliament or recently have passed. These are deferred sentencing to replace suspended sentences and mandatory sentencing for serious assault on frontline workers such as paramedics, child protection workers and midwives. (Such sentencing for assault on police officers has been in existence since 2014 with no cases regarded as serious enough to invoke the sentence.) Many pointed out that mandatory sentencing is regarded by some members of the judiciary as Executive overreach in regard to the separation of powers. They prefer to use judicial discretion when sentencing offenders. Others took a wider perspective and discussed prison programs of rehabilitation such as Risdon Prison's Storybook Dads, a community garden and health programs. Circle sentencing of Aboriginals and Scandinavian attitudes to imprisonment and rehabilitation were also discussed. The shift to greater use of therapeutic jurisprudence, in which the underlying issues causing the breaking of law and recidivism are addressed, was noted by most candidates. They argued that it better fulfils rehabilitation, which is one of the goals of sentencing.

Most candidates referred to the Tasmanian Sentencing Act 1997 which contains the aims of sentencing and the sentence options available to the courts and the Youth Justice Act 1997 which emphasises restorative justice. Many referred to the Tasmanian Law Reform Institute's Report on Sentencing 2008 and to the 2016 Report of the Tasmanian Sentencing Advisory Council.

Candidates need to understand that these reports advise the government of the day and it is up to the government whether they proceed with changing the law. The proposed reforms in the Final Report, Phasing out of Suspended Sentences, March 2016 represents a cultural shift in sentencing. The reforms are:

- imprisonment (with or without parole)
- imprisonment (of up to two years) without parole, combined with a Community Control Order (of up to three years)
- an alcohol and drug treatment order with a two year review period
- home detention of up to 18 months
- a community correction order of up to three years with or without a conviction
- rehabilitation program order (only for family violence offences)

- a fine with or without a conviction
- an adjourned undertaking, conviction only, or dismissal without conviction.

Some of these reforms (alcohol and drug orders to be extended to the Supreme Court and elevated to the third most serious option and fines without conviction are currently before the Tasmanian parliament. The reforms, based on rehabilitation and therapeutic jurisprudence, but also on deterrence and punishment are to be phased in over at least a five year period with judges and magistrates still having access to suspended sentences during this time.

With reference to the statement that these reforms 'will better achieve the goals of sentencing' (punishment, deterrence – personal and community, rehabilitation, incapacitation, denunciation), candidates could have argued for or against the case. While in theory they may do so if passed through parliament, their effectiveness will depend on funding and the degree to which judges and magistrates adopt these reforms.

With regard to the communication criterion, many candidates did not adhere to a well-structured essay. Paragraphs frequently contained many ideas. It was apparent that there was difficulty in adapting learning to the unexpected orientation of a specific question on reforms. Because of this candidates may well have been focused on choosing relevant information rather than also focusing on the structure of the essay. If the question is outside of normal expectations, candidates are encouraged to write their introduction so that it directs the reader to how the question will be interpreted and answered.

Question 9

This essay question was answered by a moderate number of students but proved difficult to answer well, with most responses prioritising general description about the safeguard at the expense of critical analysis of the purpose and value of the safeguard. Many students also neglected to (or did so superficially) discuss the second part of the question, regarding whether the safeguard conflicts with the rights of the victim and the interests of the community. Some students acknowledged that the rights of the accused can conflict with the rights of the victim and the interests of the community, but few recognised that they do not necessarily conflict as it is possible to consider the rights and impact on others without penalising the accused.

Students benefited from considering 3-4 safeguards in depth. Reference to the purpose of the safeguard, the level to which it achieves the same and consideration of the effect of each safeguard on the community and/or victims was rewarded. Better responses engaged in evaluation of the safeguards and good analysis also considered whether the safeguard had been compromised. Students who selected safeguards that have, in recent times, been "watered down" generally engaged in more sophisticated evaluation (e.g. presumption against bail in family violence cases, significant changes to safeguards for those charged with terrorism offences, legislation permitting retrials if 'fresh and compelling' evidence is located, compromised right to silence in some jurisdictions). Weaker responses merely described the safeguard. Few students used case law, legislation and international law to add authority to their argument. It is important that students do so meaningfully, noting how it applies to the question and its significance in the context of their argument.

Question 10

Students used their knowledge of the criminal justice system in general to respond to this question. Many students ignored the question and recycled a prepared sentencing essay, making little or no attempt to mould their material to the question. Any attempt to adapt material to the question was rewarded.

Students who did well chose categories of crime where there have been innovative responses by the criminal justice system such as in the restorative justice approach in juvenile crime with community conferencing, and the therapeutic approach for drug related crime with specialised drug courts and drug treatment orders. They were aware that there has been significant crime reduction in Australia in almost all categories of crime, while pointing out that assessing crime rates depends on the level of reporting of crime (car theft has a high level of being reported, sexual assault, a much lower level) and the police resources devoted to investigating particular crimes.

The strongest responses argued that the most effective, long term crime reduction centres on prevention. While acknowledging the criminal justice system plays a role in this by pre and post release support, for example, the

most effective prevention, according to Professor Rick Sarre, comes from outside of the criminal justice system and involves pre and post-natal support for the children of women with low psychological resources. Protecting children from child abuse and neglect and restricting alcohol is another very effective way of reducing crime according to Don Weatherburn.

Question 11

This was a straightforward question and there were many excellent responses that represented a great deal of hard work, attention to detail and a strong understanding of the issue.

Better responses restricted discussion to the issues that have arisen in 2016 and not a historical recount of the issue. They were able to mention:

- The arrest of Bob Brown under the Workplaces (Protection from Protestors) Bill 2014, in the Lapoinya forest and his subsequent appeal to the High Court of his right to protest.
- Cassie O'Connor's Private Member's Bill to repeal the Workplaces (Protection from Protestors) Bill 2014
- John Preston, found guilty of contravening the Reproduction Health (Access to Terminations) Act 2014, safe access zones.

Students discussed in detail the groups for and against the legislation and strong answers discussed the how this plays out in a representative democracy. Many mentioned the following points in their discussions:

Nature and function of law; to protect people, to make people feel safe in society, to make everyone equal. These laws aim to protect the employees and businesses in Tasmania. The debate centres around the protection of protesters.

Rule of law - All are equal before the law, including the government, and should obey the law. The law should be such that the people are willing, and able to be guided by it¹. Fair trial and independence of the judiciary, freedom of speech/press, access to justice.

Division of powers -Freedom of speech and civic rights are not mentioned in S51 of the Constitution, meaning that they are residual powers and are defaulted to the state parliaments. However, due to the interpretation by the High Court of the external affairs power held by the Commonwealth government (S51 xxxix), the Commonwealth may claim jurisdiction of freedom of speech and civic rights as it is a signatory to several international treaties regarding these matters. This is due to precedent set in the Commonwealth v Tasmania (1983) (Tasmania Dams) case. Any Commonwealth challenge of State Legislation would thus need to be interpreted by the High Court of Australia.

Separation of power- The legislative (and executive due to merging of powers) have passed legislation and the executive have administered it in practice. A case is now being prepared to challenge the validity of the legislation before the judiciary.

Bob Brown can fairly contest the Acts through the judiciary as the courts are separate from the legislative and executive bodies of government.

The independence of the judiciary is especially important as any decision made in the High Court will set precedent.

Judge made law, interpretation of legislation - Bob Brown is intending to challenge the legislation in the High Court. His case is built around the points raised by Cassy O'Conner in her second reading speech of the Workplaces (Protection against Protesters) Repeal Act 2016.

¹ "Principles," Rule of Law Institute of Australia, accessed August 8, 2016.
<http://www.ruleoflaw.org.au/principles/>.

Parliamentary law making process- Both Bills were passed through the Lower and Upper houses of the Tasmanian parliament. The Workplaces (Protection from Protesters) Repeal Bill 2016 however did not pass through the Tasmanian House of Assembly due to the government of the day opposing the legislation.

Law reform process- Casey O'Connor, with the support of the Greens party, proposed the Workplaces (Protection from Protesters) Repeal Bill 2016 to reform the law through parliamentary process, however the Bill failed.

Bob Brown and Ms Hoyt are intending to challenge the Workplaces (Protection from Protesters) Bill in the High Court, acting as individuals.

Court system -The Workplaces (Protection from Protesters) Bill will be challenged in the High Court, which is the highest court in Australia and its rulings set precedent for all national courts.

International law- United Nations Special Rapporteur "if passed, the law would almost certainly run afoul of Australia's human rights obligations, which Tasmania is also obliged to uphold."²

The right to freedom of opinion and expression is contained in the International Covenant on Civil and political Rights.³

Universal Declaration of Human Rights

Declaration on the Rights and Responsibility of Individuals

Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (1999)

"Three UN experts have urged the State Parliament of Tasmania in Australia to refrain from adopting legislation against protests that disrupt businesses. The proposed bill, the experts say, could silence legitimate and lawful protests, is disproportionate and targets specific issues such as the environment."⁴

Question 12

This topical legal issues question directed students to discuss the functions of law in the context of same sex marriage and to evaluate the differing political and legal perspectives in 2016. Two aspects students need to be mindful of in this section is to develop an argument in response to the question and to frame the argument around developments in the law and politics in the calendar year of study, carefully avoiding personal opinions.

Any developments prior to 2016 need to be linked to the issues currently on the agenda. Far too many students took a chronological approach, recycling a set of class notes which were poorly, if at all, adapted to the question. This soon becomes apparent to markers when they read very similar responses which rely on the same evidence, expressed in the same way, containing far too much history and far too little discussion of how politics has shaped the legal discourse.

Quite a few students argued law should not regulate marriage because current law discriminates against same sex couples. Stronger responses pointed out the debate in 2016 centred on whether the Commonwealth Marriage Act 1961 and the Marriage Amendment Act 2004 needed to change to reflect the changing needs of society, a society where the level of support for marriage equality is growing. They discussed the role law, both domestic and international, has in deciding who can get married, in regulating rights and responsibilities and protecting human rights. They discussed the basis for those supporting the current definition of marriage as the union between a man and a woman and those who support redefinition to include same sex couples and gender diverse

² Workplaces (Protection from Protesters) Repeal Bill 2016 (TAS)

³ "Freedom of Speech," Queensland Government, accessed August 5, 2016. <https://www.qld.gov.au/law/your-rights/right-to-protest-freedom-of-speech-and-censorship/freedom-of-speech/>.

⁴ "UN experts urge Tasmania to drop its anti-protest bill," United Nations Information Centre: Canberra, accessed August 10, 2016. <http://un.org.au/2014/09/10/un-experts-urge-tasmania-to-drop-its-anti-protest-bill/>

couples, arguing the law should continue to regulate marriage but that there is a strong case for marriage equality, to more adequately protect the human rights of those currently excluded from marriage, thus also honouring Australia's obligations under international law in treaties such as the International Covenant For Civil and Political Rights, 1966. Strong essays covered the competing lobby groups and analysed their capacity to influence public opinion and political parties.

Many students understood that marriage is a Commonwealth power under S51 (xxi) of the Constitution and that the significance of the Commonwealth v ACT case decided by the High Court in 2013 was to affirm that only the Commonwealth Parliament can change the definition of marriage. The plebiscite, supported by the Coalition Government, was widely discussed, with most students commenting it was non-binding and potentially divisive and harmful for gender diverse couples and their children. One student cited former High Court Justice, Michael Kirby's view that the plebiscite undermines representative democracy and that Parliament should not avoid an issue it has the power to resolve. Many students commented the Coalition failed to steer the plebiscite bill through the Senate due to opposition from Labor, the Greens and some cross benchers. Very few explained why the Prime Minister, who supports marriage equality, did not allow a conscience vote on the Private Members' Bills before the Federal Parliament, opting instead to support the plebiscite.

Question 13

This question challenged students. Some students ignored the first part of the question and merely discussed Aust law with regard to child asylum seekers in a very general way, failing to outline the Migration Act 1958 or the Border Force Act 2015, but most could cite these Acts and discuss the reasons the Coalition Government and the Federal Opposition support the mandatory offshore detention of child asylum seekers who arrive by boat.

It was very pleasing to read the number of responses which discussed the very important role of international law in this area. Students referred to the Convention on the Rights of the Child, 1990, The Refugee Convention 1951 and the Convention against Torture 1984 and used the Nauru Files and the Reports from the Human Rights Commission and Amnesty International to support their argument that current Australian law is in serious breach of Australia's international obligations. Not many students made the point that the enforceability of these treaties is problematic. They do, however, provide a standard of behaviour against which current Australian law can be measured and pressure applied for conformity.

The strongest responses outlined the tension between Australian and International law, pointing out the validity of current law in terms of parliamentary process (bi-partisan support) and validation by the High Court early this year, but understood this validation depended on hastily passed retrospective legislation. Some were able to point to the decision of the PNG Supreme Court declaring Manus Is Detention Centre unconstitutional and the impact this had on the very recent decision to strike an agreement with the US Government for a refugee exchange.

Many students outlined the role of lobby groups supporting and opposing child asylum seekers who arrive by boat in challenging or endorsing current Australian law, both in the form of protests, civil disobedience and High Court challenges to existing law, with the Doctors for Refugees succeeding in having health workers exempted from the secrecy provisions of the Border Force Act 2015 on the eve of a High Court challenge.

Students need to be mindful to use information from the current calendar year and to make an effort to tailor their material to the question. It is not easy to do under exam conditions, but effort in this regard is richly rewarded.

Question 14

The question unfortunately seemed to be misinterpreted and appeared to invite candidates to give their opinions on cyber-bullying. Students who did well were able to evaluate Commonwealth legislation, including the Online Safety for Children Act 2015, which established the Children's e Safety Commissioner who can fine social media companies for failing to remove offensive material. The Commissioner plays a strong educative role, encouraging parents and children to monitor what is posted. They also discussed Tasmanian law such as the provisions in the Police Offences Act 1935 criminalising the publishing or distribution of prohibited material.

Better responses pointed out that 2016 saw the release of the Tasmanian Law Reform Institute's (TLRI) Final Report on Bullying, with a subsection on cyber-bullying, recommending comprehensive cyber-bullying education programs in all Tasmanian schools, based on restorative justice for most cases, with the Criminal Code dealing with the most serious cases. There is a strong link between this and the discussion of an internet site set up in 2016 by male school students to share photos of girls in a derogatory way and without their permission—precisely the behaviour the new laws are attempting to address.

Although very few candidates were able to address cyber-bullying with accuracy, most were able to identify the difficulties of confining and policing cyber-bullying. Many were able to describe cases of bullying that ended tragically and talked about Chloe's law as if it were law! There was confusion with a number of concepts. Firstly, the Tasmanian Law Reform Institute is not a pressure group but an independent law reform body asked by the Tasmania Government to inquire into certain issues as they arise and where there may be a need for law reform. Secondly, very few accurate definitions of cyber-bullying were given even though there were good definitions in the TLRI Report. Thirdly, few candidates showed good understanding of the diversity of Federal and State legislation.

Question 15

Most students were generally well prepared in terms of having a good understanding of the changes this year in relation to Senate voting. Not a single candidate took their analysis beyond this particular issue even though the possibility existed in the first part of the question. Most candidates were able to provide an effective and accurate background to the Senate changes in 2016, then a chronology of the events of this year culminating in changes to the Senate voting rules in 2016. This involved providing:

- A brief and accurate description of the Senate voting system in existence prior to the changes brought about by the Commonwealth Electoral Amendment Act;
- 2016 and the implications of this to the likelihood of electing to the Senate independents and candidates from micro-parties with a low primary vote;
- Evidence of this from the 2013 General Election (most usually with reference to Ricky Muir's 0.51% primary vote);
- The role of the Joint Standing Committee on Electoral Matters in facilitating reform;
- The process and deliberation surrounding the Bill to change the Senate rules;
- The predicted implications of the changes;
- The High Court Challenge to the proposed law;

Better candidates provided a description of the implications of the legislation to the composition of the Senate following the 2016 Double Dissolution Election and pointed out that this election is, perhaps, not an effective indicator of the long term effects of the change on the likelihood of electing independents and micro-parties.

Whilst markers were impressed with the level of factual recall, the question itself significantly called upon the candidates to assess whether our election processes achieved representative government and, in particular whether the changes promoted this. What generally determined the differences in marks between candidates was the level and sophistication and nuance that was put into this 'evaluation' 'element of the question. Generally there was not a great deal of investment by candidates into evaluating what is meant by 'representative government' in the context of the bicameral Westminster system and particularly speculating on whether there is more to 'representative government' than ensuring that the views of the first preference of the majority of voters prevailed in both Houses. While many candidates simply assumed that this resulted in 'more effective representation', the better candidates pointed out the danger of a lack of diversity of views that may result and the silencing of the rights and interests of minorities.

Very few candidates went into the limitations of the 'two party system' and the lack of true consideration of alternative interests and deliberation of issues that may result from domination of the Senate by the government. Ricky Muir's maiden speech, albeit historical, is a useful reference in this respect as are the many media statements made by the various crossbenchers leading up to the passing of this year's bill. Candidates need to be mindful in their research to ensure a sophisticated level of evaluation is incorporated into research methodology, not just recall and explanation.

Candidates need also to be mindful in their research to provide evidence to support the conclusions that they reach. While candidates liberally and boldly asserted that the Senate was 'obstructive' or 'not representative' on the one hand or the new rules would 'reduce diversity' on the other, very rarely did candidates point toward a piece of legislation or a current issue in support of their assertions, except when they incidentally referred to the Australian Building and Construction Commission bill, more or less as part of their 'chronology of events' leading up to the election.

The markers became aware of certain patterns of answers revealing communities of learners adopting a very consistent approach to the range of facts that they described, the order and emphasis of the description of those facts, the terminology used, and the conclusions that were drawn. Students need to be able to evaluate the issue in terms of the question and not merely reproduce a prepared memorised scaffold.

Whilst the markers do not mark to a prescribed list of 'necessary facts' it is important that, should a candidate assert a particular fact, it is accurate! For example there were several references to Nick Xenophon introducing the Bill, a variety of claims as to Ricky Muir's primary vote, assertions that the amendments eliminated proportional representation (it did not), all variety of names for the amendment bill, and the Joint Standing Committee on Electoral Matters and the government was frequently referred to as the Liberals rather than the Coalition.

In terms of Criterion 1, the standard lessons to be learned involve, construction of coherent and cohesive analytical essays with introductions, conclusions, thesis statements and topic sentences, but this essay on technical elements of the Federal Westminster system clearly exposed the need for candidates to concentrate on "appropriate terms to explain ideas". Candidates frequently referred to "government" and "Liberal Party" when, in the context of their argument, they meant 'Parliament', the High Court 'tossing out' the challenge, a 'bill' when they meant 'an Act' and vice versa, to name but a few. Whilst leeway is given for this sort of thing under examination conditions candidates need to be mindful to develop good technical habits of expression in this respect over the year.