VICTORIAN CURRICULUM AND ASSESSMENT AUTHORITY

State Government Victoria

2014 Legal Studies GA 3: Examination

GENERAL COMMENTS

Overall, students responded well to the 2014 VCE Legal Studies examination. Most students attempted all questions, and time was managed well, with very few students unable to complete the paper. Students should ensure that they allocate sufficient time to answer questions worth more than four marks. The mark allocation should be used as a guide to the level of detail required in responses and the amount of time that should be spent on each question.

Higher-scoring students showed a strong understanding of the parliamentary system, the court system, the Constitution, and court processes and procedures. These students were able to use this understanding to respond to different task words, particularly those that required higher-order thinking such as 'evaluate' and 'discuss'. Planning for these types of questions is critical – Questions 12 and 13 in particular required paragraph structure and some critical thinking in advance of writing a response.

Students are expected to understand the overlap and interaction between different aspects of the study. This was important for Question 12, which required students to consider how the operation of VCAT could overcome the weaknesses of pre-trial procedures. Many students struggled with Question 4b., an area of the study that has not been directly assessed previously.

Good examination technique is important. If a question asks for a number of examples or reasons, the student will be assessed on the examples or reasons in the order that they are given. If contradictory answers are given, full marks cannot be awarded. Correct spelling is important, particularly for key legal terms. Blue or black pen should be used, and students should indicate where their answers continue at the back of the question and answer book. Paragraph structure is recommended for longer responses, whereas questions worth one to three marks normally require only one to three lines to answer the question.

SPECIFIC INFORMATION

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

This report provides sample answers or an indication of what the 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 errors resulting in a total less than 100 per cent.

Question 1

Marks	0	1	2	Average
%	23	27	50	**1.3**

Possible responses included:

- words or phrases in the statute are given meaning
- a precedent is set for future cases to follow
- the law is extended because of a broad interpretation
- the law is restricted or narrowed because of a narrow interpretation.

This question was generally handled well. An 'outline' requires more than stating or identifying something, but less than a full description or explanation. Many students were able to outline an effect of statutory interpretation, which required no more than two or three sentences. An example was a good way to provide a fuller outline in order to gain the second mark.

Students are expected to know the difference between the reasons for statutory interpretation and the effect of statutory interpretation. Some students provided a reason rather than an effect, and therefore did not gain any marks.

Question 2

Marks	0	1	2	3	Average
%	9	12	38	41	**2.1**

Possible responses included:

- the binding nature of the outcome reached by the parties
- the role of the third party

- the types of disputes suitable for each method
- where each method is held – arbitrations are often conducted in a formal setting such as a courtroom whereas conciliations normally take place in private rooms
- the use of rules of evidence and procedure – conciliations normally have no such rules but arbitrations can adopt certain rules such as the requirement to file evidence.

The majority of students were able to obtain some marks for this question; however, many fell short of providing a description worth three marks, and received only two marks. For an answer to gain three marks, students needed to provide some depth to their response, and go further than simply stating the difference. A mere identification of the difference would gain one mark; a short description would gain two marks.

The most common response to this question was that a conciliation outcome is not binding, whereas an arbitration outcome is. For example, students could have explained what the word 'binding' means. Alternatively, students could have provided some detail about what the arbitration outcome is – that is, the making of an arbitration award that can be enforceable through the courts.

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

> *One difference between conciliation and arbitration is the binding nature of the outcome. Usually in conciliation the parties will often sign a deed of settlement recording the resolution, which is like a contract between the parties, which can then be enforceable if breached. On the other hand, arbitration involves a third party making the decision for the parties, which will normally be recorded in what is called an 'arbitration award', which can then be enforceable through the courts. Therefore, the binding nature of each method is different.*

Question 3

Marks	0	1	2	3	Average
%	14	12	31	43	**2.1**

Many students obtained full marks for this question, or showed some understanding of the principle. To gain full marks, students were expected to demonstrate knowledge of the three arms of power, provide a brief description of each power (or at least identify who holds the power) and explain why the principle is important or is in place. This required some explanation of the need for the three arms of power to remain separate and independent from each other, so as to avoid an abuse of power or to ensure each arm can act as a check or balance on the other. While there was no need to do so, many students were able to explain that, in practice, the executive and legislative powers were often exercised by the same group of people.

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

> *The separation of powers refers to the division of three arms of powers: the legislature, held by the parliament and which makes the laws, the executive, which administers the laws, and the judiciary, held by the courts which interprets and enforces the laws. The separation of powers is critical to the operation of government as it ensures that each arm of power is separate from each other to avoid abuse of power and to ensure a checks and balance of each power.*

Question 4a.

Marks	0	1	2	Average
%	10	10	81	**1.7**

Most students were able to state that Casey had been charged with an indictable offence. Students who did not gain full marks either stated that Casey had been charged with a summary offence or could not justify why it was that they said Casey had been charged with an indictable offence. For the justification, many students were able to explain that because Casey was facing a trial in the County Court, and because the County Court's jurisdiction is to hear indictable offences, Casey had to have been charged with an indictable offence.

While students were not penalised for this, many wrote far too much for two marks. Students need to use their time wisely and use the mark allocation and the answer space as a guide to the amount of detail required in the response.

Question 4b.

Marks	0	1	2	Average
%	35	18	46	**1.1**

There are a number of factors that can influence the composition of a jury panel. They include:

- random selection – potential jurors are selected at random if they are aged 18 years or above and are enrolled as an elector for the Legislative Assembly and Legislative Council
- deferral of jury service – a person who has received a jury questionnaire, at any time before becoming part of a jury panel, can apply to the Juries Commissioner to defer jury service to another period within the next 12 months
- excused for good reason – the Juries Commissioner has discretion to excuse a person from jury service on application by the person if there is good reason to do so. Good reasons for being excused are illness or poor health, incapacity, distance, substantial hardship, carer obligations, advanced age or religious beliefs incompatible with jury service
- permanently excused – the Juries Commissioner has discretion to permanently excuse someone from jury service on application by the person if there is a good reason to do so. Good reasons are continuing poor health, disability and advanced age
- disqualification – certain persons are disqualified from serving as jurors. These include bankrupt persons, a person on remand and a person on bail for an indictable offence
- ineligibility– some persons are not, because of their occupation, able to participate in a jury. These include people who in the last 10 years have been a judge, magistrate, judicial officer, governor, bail justice, lawyer or person engaged in law enforcement
- exemption – the Juries Commissioner can grant to a person who attends for jury service an exemption for a period of time, not exceeding three years. This can be granted where the juror has attended a trial as a juror for a lengthy period, or for other good reasons
- excused upon giving information to the Court – a person may be excused if the Court is satisfied the person will be unable to consider the case impartially or is unable to serve for any other reason
- challenged for cause – each party in a criminal trial has an unlimited number of 'challenges for cause', that is, a challenge that is made because of a particular reason. The judge will determine the outcome of the challenge
- peremptory challenges – in a criminal trial, each party is able to challenge between four and six potential jurors without cause, depending on how many persons are arraigned in the trial
- discharge – a juror can be discharged during a trial if it appears that the juror is not impartial, the juror is incapable of continuing to act, the juror becomes ill or it appears to the judge that the juror should not continue to act.

The most common responses were those that used the following mechanisms in the *Juries Act 2000* (Vic) (Juries Act), which precluded someone from being on a jury panel: persons being excused, disqualified, ineligible or challenged. The use of an example was a good way to provide a fuller description in order to gain the second mark. Responses gaining only one mark identified the factor, but did not adequately describe it or described it incorrectly.

A question on factors influencing the composition of the jury has not appeared in previous examination papers and it appears that many students did not understand what the question was asking them to do. In particular, some students did not seem to know what the word 'composition' means, despite the wording in the key knowledge of the study design.

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

> *One factor that can influence the composition of Casey's trial is the ineligibility of certain persons to be able to be a member of a jury panel. Many people are ineligible because of their occupation – for example, lawyers and police officers cannot partake in a jury panel. This can impact on the composition of Casey's panel as it means that it will not include people of particular occupations, such as police officers.*

Question 4c.

Marks	0	1	2	3	Average
%	6	6	38	50	2.3

Depending on the sanction chosen, the acceptable purposes that could have been described were those set out in the *Sentencing Act 1991* (Vic): punishment, deterrence, rehabilitation, denunciation and protection.

Many students were able to gain full marks for this question. One mark was awarded for the identification of a sanction, and two marks for the description of one of its purposes.

Correct reading of the question is critical. Some students described the sanction and identified the purpose, and not the other way around as the question required. The most common sanction identified was imprisonment. Other acceptable sanctions included a community correction order, a drug treatment order or a fine. Suspended sentences were accepted

as a response in 2014, but students should now know that courts can no longer hand down suspended sentences after changes in the law were implemented in September 2014. Home detention was not accepted, nor was a youth justice order or youth residential justice order.

Question 5a.

Marks	0	1	2	Average
%	8	34	58	**1.5**

This question required an understanding of the reasons for a court hierarchy. While many students were able to provide one of those reasons, some did not make any reference to Audrey's dispute in their answer.

Far too many students tried to explain that because mediation was unsuccessful, Audrey appealed to the Supreme Court of Victoria. This is incorrect. There is no appeal process when parties attend mediation and it is unsuccessful. Students should understand the way that courts and dispute resolution methods work in order to apply this knowledge in their responses.

Most students used the appeal process as the reason for the existence of a court hierarchy, and were able to demonstrate, to gain the second mark, that Audrey could appeal to a higher court if dissatisfied with the decision. While it was not necessary to do so, many students showed understanding that the Court of Appeal would hear the appeal.

Question 5b.

Marks	0	1	2	3	Average
%	33	8	30	29	**1.6**

The only acceptable response for this question was judicial determination. The stimulus material provided information to students to identify that this will be the method used by the Supreme Court at trial. Some students incorrectly explained arbitration; fewer explained mediation and conciliation.

There are quite a number of points that students could have made to explain what judicial determination is, but many stopped short at stating that it involves an independent third party hearing the matter and making a binding decision. Other points that could have been made included:

- the judge will ensure the parties are bound by and follow the rules of evidence and procedure
- the judge may need to make determinations as to the admissibility of evidence during trial
- the judge will hear the parties' submissions, and read witness statements or hear the oral evidence of lay and expert witnesses
- the judge will normally reserve judgment and hand down a decision at a later date, which will be binding and enforceable unless reversed on appeal.

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

> *The dispute resolution method that will be used is judicial determination. This involves a third party, in this case a Supreme Court judge, presiding over the trial of the matter and making a binding decision at its conclusion. The judge will act as a referee, by ensuring the parties follow rules of evidence and procedure, and will hear the evidence given by both parties, as well as submissions that are made. The judge's decision as to which party is successful will be binding and fully enforceable.*

Question 6a.

Marks	0	1	2	Average
%	19	26	55	**1.4**

The referral of powers has generally been a concept that students have found difficult to understand, but many students gained full marks for their response. An example was a good way to demonstrate understanding of the concept and earn the second mark. Good examples included the referral of powers related to terrorism laws and de facto laws.

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

> *If the states refer or give their residual powers to the Commonwealth Parliament, it will mean that the states no longer have that power and the Commonwealth will be able to legislate in that area. This means that there will be a shift in the balance of power, and the Commonwealth will have more power and the state will have less.*

Question 6b.

Marks	0	1	2	3	Average
%	12	13	28	48	**2.1**

This question required knowledge of the criteria needed for a referendum to be successful. To gain full marks, students needed to mention the word 'referendum' or section 128 in their response (so that it was clear they understood that the question was about the referendum process and not any proposed law), and they needed to identify why the referendum was unsuccessful (by referring to the double majority requirement, and which part of the double majority was not achieved in this instance).

Many students did not address all of these aspects. Many were able to explain what the referendum process entailed, and what a double majority required, but did not say why this particular proposed law was unsuccessful. Students should ensure that they become familiar with and can respond to questions that require reference back to the stimulus material.

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

> *A proposed law to alter the Commonwealth Constitution needs to satisfy the requirements set out in section 128 of the Constitution. Section 128 requires a proposed law, known as a referendum, to be voted 'yes' to by a majority of voters in Australia, and a majority of voters in a majority of states. As there are six states in Australia, this means that the majority of voters in four of the states voted 'yes'. As only a majority of voters in two states have voted in favour, the proposed law has not passed.*

Question 7a.

Marks	0	1	2	Average
%	13	16	71	**1.6**

The most common example given was the right to freedom of religion. Students should understand that section 116 of the Commonwealth Constitution is more complex than simply providing for 'freedom of religion' and is quite specific about what the right entails. Note that the section number did not need to be included for full marks. The examples that could have been used are:

- freedom of religion – section 116 provides that no law may establish a state religion, impose any religious observance, prohibit the free exercise of any religion or require a religious test as a requirement for Commonwealth office
- interstate trade and commerce is to be free
- it is unlawful for state and Commonwealth governments to discriminate against someone on the basis of that person's state residence
- the Commonwealth must provide 'just terms' when acquiring property
- there must be a jury trial for indictable Commonwealth offences.

This question was generally handled very well. One mark was awarded for the definition, and one mark was awarded for the use of an example. In their definition, students were expected to use a word other than 'express' to explain what it meant. Therefore, the definition should have used words such as 'entrenched', 'written in the Constitution' or 'stated in the Constitution'.

Question 7b.

Marks	0	1	2	3	4	Average
%	34	7	17	21	21	**1.9**

This question drew on knowledge from Unit 3, Area of Study 2. Students are expected to know at least one High Court case that relates to the constitutional protection of rights in Australia, and the significance of that case. The key word was 'significance' – it was not enough to describe the case without any demonstration about what that case represents.

There were a number of issues prevalent in the responses to this question:

- far too many students used the wrong cases or examples, such as cases that had nothing to do with the constitutional protection of rights. These included: *Mabo* (not a constitutional case), *Franklin Dam*, *Brislan*, *Studded Belt* case, the *Kevin and Jennifer* case, and even the 1967 referendum. No marks were awarded for these cases or examples
- many students, while correctly identifying a case such as the *Roach* case or the *Lange* case, simplified the facts of the case too much, or simplified its significance, meaning they could not gain full marks

- many students did not provide the name of the case, or made some vague reference to it such as the 'freedom of political communication case', meaning that it was difficult to know to which case they were referring.

An example is the *Roach* case, being a reference to *Roach v Electoral Commission & Anor* [2007] HCA 43. Far too many students simplified the facts of this case or confused it with the 1967 referendum on Aboriginal Australians. Many other students were not able to explain any of the principles that were discussed in this case, such as the requirements set out in sections 7 and 24 of the Commonwealth Constitution that the houses of Federal Parliament needed to be chosen directly by the people.

To gain full marks, the following elements needed to be evident:

- the case should have been adequately named or identified. A mere description of the case without any mention of any of the parties' names rendered it difficult to gain full marks
- enough facts of the case needed to be given to explain its significance. Not all the facts were required, but enough to demonstrate knowledge of what the case was about
- the significance needed to be adequately explained, and not simplified to the point where its significance was lost or misunderstood.

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

> *Roach was a Victorian woman serving a term of imprisonment. Roach challenged the validity of amendments made in 2006 to the Electoral Act which prohibited persons who were serving a term of imprisonment from voting in federal elections. The case was heard in the High Court which held that the amendments were inconsistent with the principle of representative government established by the Constitution. The Court held that sections 7 and 24 of the Constitution required the Houses of Parliament to be 'directly chosen by the people' and this right may only be limited for a substantial reason. The decision was significant because it upheld the structural protection of the right for parliament to be directly chosen by the people, as well as the right to a representative government.*

Question 8

Marks	0	1	2	3	4	Average
%	3	2	8	17	71	**3.5**

Most students were able to gain full marks for this question. One mark was provided for each incorrect statement selected, and one mark was provided for each outline. Those students who were not able to gain full marks either did not adequately select one of the statements, or did not correctly outline why each was incorrect.

There were three statements that were incorrect in the stimulus material, which were incorrect for the following reasons:

- 'the jury created a precedent in its decision'. As juries do not give reasons for their decision, both in civil and criminal trials, it is not possible for a precedent to be created. Only judges, in handing down a judgment, are able to create precedent
- 'the defendant appealed straight to the High Court'. There is no right of appeal from the Supreme Court (Trial Division) to the High Court – one must first appeal to the Court of Appeal
- 'the High Court then stated it was bound by the decision of the Supreme Court of Victoria (Trial Division)'. The High Court is higher than the Supreme Court (Trial Division) and, therefore, because of the operation of doctrine of precedent, is not bound by any decision made by it.

Question 9

Marks	0	1	2	3	4	5	Average
%	17	15	22	23	16	8	**2.3**

Students are expected to know the role of the High Court, as well as the mechanisms that are used to change the Commonwealth Constitution. This type of question not only drew on students' knowledge of the High Court and its role, but also on their knowledge of the ability of judges and courts to make law (Unit 3, Area of Study 3). Stronger students were able to see this question as not only asking about the role of the High Court in changing the Constitution, but also on the role of courts generally in changing statute – as the Constitution is a statute.

Students could have made any number of the following points in their responses:

- the High Court is able to add meaning to the Constitution through its interpretation. Examples could have been used to demonstrate this point
- the High Court is unable to change the words of the Constitution. The Constitution has a unique mechanism, being the referendum process, which is required to change its actual words

- the High Court must wait for a case to come before it before it can exercise powers to interpret the Constitution
- a party must have standing to bring a case before the High Court
- the High Court may be conservative in its interpretation
- many cases that come before the High Court are not constitutional matters, and constitutional cases are somewhat rare.

Many students addressed the point that the High Court could not change the words of the Constitution, and gave an example, but could go no further. This type of response may have been able to achieve three marks maximum.

While an overall conclusion is not necessary in a 'discuss' question, the 'extent to which' needed to be addressed in the response.

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

To some extent, the High Court is able to change the Commonwealth Constitution.

The original jurisdiction of the High Court, as enshrined in the Constitution, is to deal with all matters arising under the Constitution or involving its interpretation. That means that matters which require an interpretation of the Constitution will be heard by the High Court.

There have been many examples where the High Court has in its exercise of its jurisdiction interpreted the Constitution, and because of that, changed its meaning or interpreted rights as being protected. Examples include cases relating to the division of powers, such as the Franklin Dam case, where the High Court expanded the meaning of the term 'external affairs'. Other examples include cases relating to rights, where the Court has found there to be either an implied right (such as the right to freedom of political communication) or a structural protection of a right.

However, the High Court can only ever interpret the Constitution and give it meaning, but cannot change its words. The only way the words of the Constitution can be changed is through the referendum process, which is provided for by section 128 of the Constitution.

Further, for the High Court to be able to add meaning to the Constitution, it must wait for a case to come before it. That is, the High Court cannot 'react to' a need for a constitutional issue to be clarified. A person must have standing to bring the case to the Court, and the Court can then deal with it.

Therefore, to some extent the High Court can change the Commonwealth Constitution through its interpretation, but its ability to do so is limited.

Question 10

Marks	0	1	2	3	4	5	6	Average
%	24	6	17	20	10	10	13	2.7

This question required students to explain one recent change and one recommendation for change in the legal system, and how each could contribute to an effective legal system. Many students were able to address the latter part of the question by drawing on the key elements of an effective legal system: fair and unbiased hearing, timely resolution of disputes and effective access to the legal system.

The following are not recent changes:

- introduction of VCAT
- introduction of legal aid
- creation of the Koori Court system
- use of the hand-up brief
- use of mediation or dispute resolution methods in court processes.

While the term 'recent' is not defined in the study design, students are expected to keep up-to-date with recent changes to the legal system and should be familiar with changes that have taken place in the last few years. Some examples of recent changes include:

- changes to VCAT's structure and lists in 2013
- expansion of the Koori Court to other Magistrates' Court locations or in the County Court
- increased use of mediation or dispute resolution methods
- introduction of the *Civil Procedure Act 2010* (Vic)
- creation of Court Services Victoria

- creation of the Mediation and Arbitration Centre
- increased use of technology in the courts and in courtrooms.

Recommendations for change should be those that are discussed in the community or recommended by groups, individuals or bodies, such as the Victorian Law Reform Commission (VLRC). They cannot be made up.

Better recommendations used by students included:

- changes to the challenges process in the empanelment of juries
- increasing the jurisdiction of Koori Courts or expanding those courts into other areas
- expansion of multi-jurisdiction courts and justice centres
- increased regulation around third-party litigation funders
- development of educational resources and activities to improve greater knowledge about whether and what action people should take in relation to legal problems.

Many students saw this question as asking for recent changes and recommendations for changes to the law. Emphasis needs to be given to the differences between changes to the law (abortion laws, etc.) as opposed to changes in the legal system.

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

One recent change to the legal system is the expansion of the Koori Court into the County Court, and in particular the recent opening of the Melbourne Koori County Court. The Koori Court is a sentencing court and enables greater participation of the Aboriginal community in the sentencing of an Aboriginal Australian who has pleaded guilty. The Koori Court system is able to achieve an effective legal system by ensuring a fair and unbiased hearing, by enabling Aboriginal Elders and Respected Persons to take part in the sentencing process and to attempt to ensure Aboriginal culture is taken into consideration in sentencing.

One recommendation for change to the legal system is to reduce the number of peremptory challenges available to parties in criminal trials. Currently, the number of peremptory challenges (challenges without cause) available to a single accused is 6. A recent enquiry by the VLRC has found that the number of peremptory challenges impacts on the representativeness of a jury panel, thus meaning that some people such as women are under-represented. By reducing the number of challenges, this will provide for a greater representation and cross-section on a jury, thus ensuring a more fair and unbiased hearing in criminal trials.

Question 11

Marks	0	1	2	3	4	5	6	Average
%	10	11	16	19	18	16	9	3.1

Students were asked to evaluate the role of the parties in the adversary system of trial, meaning that students needed to consider both the strengths and weaknesses of the feature, and come to an overall conclusion as to its value or worth. A conclusion in an evaluation must be meaningful and be drawn from the rest of the response – a conclusion that is generic, pre-prepared or has no regard to what is in the rest of the response cannot gain a mark.

While the focus of this question was on the role of the parties, students needed to understand that each feature of the adversary system of trial cannot be seen in isolation or in a vacuum. That is, students were able to draw on other features of the adversary system of trial in their answer to demonstrate the strengths and weaknesses of the role of the parties as a feature. By way of example, one of the strengths of the role of the parties in the adversary system of trial is that they get to choose what legal representation they have before and during trial. However, a weakness of this is that this may result in one party choosing far more sophisticated or quality legal representation because they have the means to do so. This is a good point to make, and shows the interaction of two features of the adversary system of trial and how one can impact on the other. Critically, however, a student must ensure that their focus remains on the role of the parties and an evaluation of that feature, and that their response does not become an evaluation of other features.

Generally, many students were able to make at least one or two points about the role of the parties, but the discriminating factor was in the evaluation. Stronger students were able to signpost their answer, address both strengths and weaknesses, and provide a meaningful conclusion.

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

The role of the parties is one of the features of the adversary system of trial.

One of the key strengths of this feature is that the parties have complete control over their case. That means that they get to choose what evidence they lead, which witnesses to call, the submissions to make, the applications to make and what legal representation they want, if any. This ensures that the parties get to choose how the case is run, and are not dictated by anyone else.

A disadvantage of this, however, means that the parties are likely to get minimal support and assistance from the court in running their case. That is, whilst the judge may make directions or orders, or has powers as to when certain things might take place, the court cannot intervene in how the parties run their case. That means that an unsophisticated party with little knowledge about the legal system may struggle without legal representation.

A strength of this, though, is that parties get to choose what legal representation they want. They can choose which law firm, how much they want to pay and whether they want a senior or junior barrister (if at all).

However, this means that a party may be disadvantaged based on the financial resources that are available to it. This may give an advantage to another party that may have the funds to choose better or more experienced legal representation. A party may also have no financial resources available, meaning that it might be left with no legal representation at all.

In summary, whilst the role of the parties is such which ensures that they have complete control over how to run their case, this control can sometimes work at a disadvantage to the parties, meaning that a fair hearing may not ultimately prevail.

Question 12

Marks	0	1	2	3	4	5	6	7	8	Average
%	15	9	13	12	15	11	11	7	5	**3.5**

To answer this question, students needed to plan their answer by first asking: what are two weaknesses of civil pre-trial procedures? The most common weaknesses that were addressed by students who were able to answer this question correctly were the cost of undertaking those procedures and the time it takes to complete them. Other weaknesses included their complexity and the stress involved in undertaking them.

Following on from that, students needed to ask themselves: can the use of VCAT overcome those weaknesses, and to what extent can it overcome them? This is where many students struggled. Any number of the following points could have been made, depending on how the students answered the response:

- many lists in VCAT do not use pre-trial procedures, and applications made to VCAT are dealt with by way of a simple hearing before a member, therefore avoiding the cost, time, stress and inconvenience of pre-trial procedures; more recently, however, VCAT has adopted the use of pre-trial procedures, particularly mediations, directions hearings and compulsory conferences, therefore this limits the ability of VCAT to overcome some weaknesses of pre-trial procedures
- some matters are simply not suited to VCAT, therefore its operation is not available at all, meaning the parties have no choice but to complete pre-trial procedures as part of the court process
- VCAT is much cheaper overall, therefore reducing the financial burden on parties; however, more recently VCAT costs have increased, such as the cost of making the application and the hearing fee for some matters. Therefore, while costs may be reduced in some areas, they may be higher than courts in other areas
- VCAT matters are generally heard much quicker than court matters, as the waiting time is shorter and there is no need for pre-trial procedures; however, in some VCAT lists there is a backlog, and more recently the courts have been able to reduce the time between the issuing of a proceeding and the hearing of a trial
- VCAT matters that do not use pre-trial procedures may still be stressful, difficult to understand or take a lot of time to be heard, therefore it may not necessarily overcome certain weaknesses
- there are other factors that may mean that VCAT is not the best option for the parties, despite it overcoming certain weaknesses. These include the fact that there is a limited right to appeal from VCAT, there is no operation of the doctrine of precedent, and it may simply not be the best method to use to resolve the dispute.

The following is the beginning of a high-scoring answer.

Parties to a civil dispute use pre-trial procedures before having a matter heard before an independent third party. They include directions hearings, discovery and the completion of pleadings. Whilst they are useful in preparing the parties for a trial or hearing, there are weaknesses associated with these procedures.

The first weakness is the cost of completing these procedures. Discovery, in particular, has been seen to be very costly, with the parties reviewing and exchanging thousands of documents that are relevant to the dispute. Often parties have to engage lawyers to complete discovery and other pre-trial procedures, which means that it can be very costly.

VCAT can to some extent overcome the costly nature of pre-trial procedures. In many matters heard by VCAT, the discovery process is not necessary and the parties can save the cost of having to undertake it. This may also mean that parties generally do not need to engage legal representatives to assist them in their VCAT matter, therefore again saving cost. VCAT can also overcome the cost issue by reducing costs in other areas, such as the application fee and the hearing fee.

However, VCAT costs have recently increased, as in 2013 the application fee was increased for many matters, and a hearing fee was introduced for any hearings beyond 1 day. Additionally, VCAT has recently increased the use of some pre-trial procedures, particularly mediation and compulsory conferences, which the parties may attend with a legal representative, therefore increasing cost.

Therefore, to some extent VCAT can overcome the cost of pre-trial procedures, but it depends on the matter and it depends on how VCAT manages the dispute.

Question 13

Marks	0	1	2	3	4	5	6	7	8	9	10	Average
%	11	8	11	11	11	10	10	10	9	5	5	4.5

Unit 3, Area of Study 1, is a study of parliament and its role in making and changing the law. Students are expected to know that 'making law' will also necessitate 'changes' to the law. One of the key skills of this Area of Study is the use of contemporary examples to explain the influences on legislative change, therefore students are expected to be familiar with and use recent examples of influences on legislative change.

The first part of the question was the key focus of the question. A discussion requires something more than an explanation – normally, it requires a consideration of all sides of an issue and, in this case, would require the students to consider both the strengths of parliament in being able to change the law and its weaknesses. Stronger students were able to draw on the following points.

Strengths

- Parliament is elected by the people and therefore is in a position of being able to represent the people through its changing of the law.
- Parliament can investigate a whole topic and can use expert bodies or government departments to consider what changes need to be made.
- Parliament can provide terms of reference to the VLRC or ALRC, for example, to fully investigate the need for change.
- Parliament has the ability to make laws quickly when necessary.
- Parliament can delegate its law-making powers.
- It can make laws for the future and as the need arises.
- It can abrogate common law.
- Where there is majority government in the Senate or Legislative Council, laws can be easily passed.

Weaknesses

- Parliament is not always sitting and so cannot change the law at any time.
- There are very few sitting days so the times when it can change the law are few.
- Often there are conflicting views about when change is necessary such that parliament may be reluctant to change.
- The law-making process is long – it can often result in Bills lapsing.
- Parliament is restricted by its own law-making powers and by the Constitution in the laws that it can make.
- Members may be required to vote on party lines, therefore denying legitimate laws requiring change from being changed.
- Parliament is not always up-to-date with societal needs for change.

Many recent examples were used in responses to this question. The example did not need to be one that had successfully influenced legislative change, and could have been a current one that has not yet had any effect. Examples included:

- Oscar's law
- petitions and demonstrations pressuring for changes to marriage laws
- Derryn Hinch – changes regarding suppression orders made in courts
- hurdle racing – RSPCA using social media to stop hurdle racing in Victoria
- abortion laws, namely the changes regarding doctors who have conscientious objections to abortion

- animal testing and cosmetics.

The following is an example of a start of a high-scoring answer.

Parliament is our supreme law-making body, therefore has significant powers in being able to make (and therefore change) law.

Firstly, parliament has the ability to abrogate common law and statute. That is, if parliament considers an old common law which is no longer of any use or is outdated should be abolished, then it is able to introduce a bill which abrogates it. The same goes for statute.

However, parliament is not able to change law if it is considered to be ultra vires – outside the powers of the parliament. Normally a law is considered ultra vires if it is contrary to the provisions of the Constitution, and can result in the High Court declaring that law void.

Parliament is able to have access to various expert bodies, groups and commissions to advise it on changes. For example, the Victorian Parliament can send terms of reference to the Victorian Law Reform Commission to investigate an area of law, gauge with members of the public and provide recommendations to parliament. Further, parliament is able to listen to the needs of the people, who elected it, to determine whether or not change is necessary. By way of example, most recently there has been an increased number of petitions, demonstrations and commentary on social media by various individuals and groups who have pushed for changes to marriage laws, and in particular changes to the Commonwealth marriage law to allow same-sex marriages.