2004 Assessment Report

VICTORIAN CURRICULUM AND ASSESSMENT AUTHORITY

2004 Legal Studies GA 3: Written examination

GENERAL COMMENTS

Preparation for the examination

From student responses to the 2004 examination, it was clear that many students had consulted past exams and Assessment Reports in order to prepare for the examination. It is a worthwhile part of any class work for students to refer to previous examinations and to relevant comments from the Assessment Report as they consider particular sections of the Study Design. Familiarity with past exam papers and the Legal Studies Victorian Certificate of Education Study Design should enhance students' capacity to adapt the information they have learnt to the question being asked. However, careful reading of the exam paper during reading time is crucial. Students need to be flexible in the way they use material. It is important that they understand what material is required to answer a particular question and that their answer is not based on a question they expected to see or on a previous year's examination. Assessors were looking for answers that provided relevant details (and examples where required) in a logical and legible way and that responded directly to the question; practise throughout the year can provide the relevant skills to produce answers of this type.

The examination was divided into three sections. Section A provided short answer questions that were based on all parts of the course, and **all** questions should have been answered. Section B provided two questions based on material from Unit 3, and students were to choose **one** question. Section C provided two questions based on material from Unit 4, and students were to choose **one** question. Where students answered both questions from Sections B and C, assessors marked both questions and the better mark was awarded to the student. All sections were worth 20 marks.

The Legal Studies Victorian Certificate of Education Study Design is a vital part of any student's preparation for the examination. It is required in order to provide relevant headings for notes and to ensure that students understand the vocabulary that is required of Legal Studies students. The examination covers all parts of Units 3 and 4 and it is essential that all parts of the Study Design are covered in class. It was clear from answers to Question 4 that some students had **not** studied an appropriate 'formal law reform body'. The only acceptable formal law reform bodies (from which a choice of one must be made) are: Parliamentary Law Reform Committee; Australian Law Reform Commission; Victorian Law Reform Commission; a government inquiry; and a Royal Commission.

Study Designs, past examinations and Assessment Reports are available at the VCAA web site (www. vcaa.vic.edu.au). The 2004 Assessment Report should be read in conjunction with previous reports.

Time management

In most instances students followed the instructions for each section of the examination and completed all required questions in the time allocated; however, there are still some students who are not managing their time adequately. It is essential that students give themselves the appropriate time to respond to questions, that they use reading time wisely and that they follow instructions correctly. When writing answers, the broad rule is that students should double the marks for each question to determine how much time they spend on their answers (an eight mark question should have a maximum time of 16 minutes spent on its answer). In Section A this rule may be applied less strictly; it may be possible to spend less time in order to provide a good answer to the question. However, students **must** provide the appropriate detail in order to achieve full marks, and if this takes the maximum time (even in Section A) then this should be used.

There are fifteen minutes of reading time for the Legal Studies examination and students should use this time by reading, very carefully, all the questions and making decisions about which question they will choose from Sections B and C. In 2004 there were too many students who began writing an answer to one question from either Section B or C and then crossed this out and wrote an answer to the other option. This is a considerable waste of time and good use of reading time would avoid this costly error. It takes practice to read and think for fifteen minutes without being able to make notes or highlight information, and teachers should incorporate the development of this skill into their teaching practice.

Organisation of material

Students can also use reading time to think about **how** to present the material they have remembered in their answers. It may be helpful to use words from the question as topic sentences for paragraphs. For example, the answer to Question 8b, 'Describe how courts and Parliament make law. Discuss two differences between the lawmaking processes of courts and Parliament. (10 marks)', could have paragraphs that begin with the following topic sentences:

- Paragraph 1: Courts make the law in two ways, by interpreting the statutes passed by parliament and, where no statute law exists, by creating precedents.

- Paragraph 2: Parliament makes the law by investigating the need for law and by debating the details of bills that reflect government policy or that are introduced by the opposition or individual members of parliament.
- Paragraph 3: One difference between the processes used by the courts and Parliament to make law is that Parliament can investigate a whole area of law prior to introducing a bill.
- Paragraph 4: Another difference between the lawmaking processes of courts and Parliament is that the parliamentary process is conducted by people who are democratically elected by the community.

The use of plans requires careful thought in the Legal Studies examination. In 2004 too many students spent far too long writing information on the unlined pages of the answer booklet. This material is not marked (unless a student runs out of time and writes a note requesting the assessor to look at the plan) and it is wise to spend only a very brief time planning a response. A plan should consist of a few key words and should take only a minute or so to write. A plan may not be necessary for questions worth less than 10 marks.

Presentation of answers
Students often seemed to use pencil to write their answers to the 2004 examination. Students must understand that their answers need to be legible, and a dark blue or black pen is generally the most appropriate to produce clear writing. Writing on every second line is not usually necessary if a good, clear pen is used. It has been noted in previous reports that the clear numbering of answers is an essential part of the examination process.

It is also important that students are able to use the vocabulary of Legal Studies correctly. Students are expected to know terms such as 'Royal Assent', 'delegate', 'referendum', 'double majority' and so on. It is also desirable that students are able to spell the words that are particularly relevant to this study, such as 'trial', 'legislation', and 'Parliament' amongst others.

'Task' words
In previous Assessment Reports it has been noted that students are required to **use** information in a particular way in each of the questions on the Legal Studies exam. For example, Question 3 required an **outline** of information. This means that students should give a brief response (perhaps two sentences) that encapsulates the information as succinctly as possible. On the other hand, a **discussion** requires much greater detail and will often look at the advantages and disadvantages of a particular topic. Practice will help students to develop an understanding of the differing demands of these 'task' words.

SPECIFIC INFORMATION

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

Section A

Question 1

Provide two reasons why judges need to interpret statutes.

Marks	0	1	2	Average
%	25	33	42	**1.2**

Some students provided general responses stating that statutes require interpretation so that people understand the law or to make the law clear. Students need to understand that judges only interpret statutes in the course of resolving a dispute and that there are specific reasons why legislation may require explanation by judges. Many students also mentioned interpretation of the Constitution. This question was **not** a constitutional interpretation question and students need to be able to distinguish between the statutes that are often considered during the litigation process and the *Commonwealth of Australia Constitution Act 1900*.

One very good answer said: *Judges may need to interpret statutes because the wording in the statute may be ambiguous. Parliament must make laws that are applicable to a large number of situations, and therefore, wording may be vague. Another reason why statutory interpretation is necessary is that an Act may be silent on an issue, and the courts may need to fill in the gaps in legislation. A parliament may not be able to take every eventuality into account when legislating, and therefore, a situation may occur that parliament did not take into account.*

Other reasons why statutes may require interpretation are:
- the meanings of some words may change over a period of time
- the statute may be outdated and inappropriate for the current legal dispute before the court

- the wording of the statute may be complex or unclear.

Question 2

Joe is very concerned. He talks constantly to you about how he believes a particular law is unfair. He knows you are studying Legal Studies and asks for your advice.

Explain to Joe two ways individuals and groups can influence a change in the law.

Give two reasons why laws might need to change.

Marks	0	1	2	3	4	Average
%	2	5	19	31	43	**3.1**

This question had two parts to it and some students answered only one part. Under exam pressure it is easy to rush ahead; however, it is very important for students to take the time to read every question carefully and to check that they have responded to **every** part of each question.

Examples of the ways in which individuals and groups can influence change in the law include:

- organising and signing petitions. A petition is a list of names and signatures either in support of or against an issue
- joining associations or pressure groups such as Greenpeace that are able to use their numbers to lobby politicians
- defiance of the law. By breaking the law, individuals, such as Frank Penhalluriack who opened his store on a Sunday in order to extend shopping hours, can attract media attention; however, individuals must be prepared to be punished for their defiance.

Reasons why laws might need to change include:

- changes in community attitudes and values. For example, changes in attitudes towards same sex partnerships have led to changes in laws relating to superannuation and property ownership
- advances in technology. For example, the development of in vitro fertilisation has led to changes in the law that protects donors and prevents commercial surrogacy.

Some students used the characteristics of an effective law to answer this question by explaining that the law may need to change because it is ineffective. One example of this approach is to say that effective laws need to be accepted by the community and the law might have to change in order to be acceptable. For example, it became unacceptable for children to work long hours in harsh environments and the law was changed in order to be acceptable to society.

Question 3

Outline one role played by the Crown in the Australian parliamentary system.

Marks	0	1	Average
%	28	72	**0.7**

Most students answered this question by saying, for example: *One role played by the Crown in the parliamentary system is giving Royal Assent to bills. This is where the Governor (at state level) or the Governor General (at federal level) signs proposed laws made by Parliament in the name of the monarch so that the bills can become laws.*

Other roles played by the Crown in the parliamentary system include:

- appointing times for the holding of Parliament
- proroguing Parliament
- dissolving Parliament
- appointing ministers.

Some students failed to read the question correctly and said that the Crown prosecuted criminal matters.

Question 4

This year you have studied one formal law reform body. Describe its role in assessing the need for change in the law.

Marks	0	1	2	Average
%	45	23	31	**0.9**

As noted in the General Comments, this question was not answered well. Many students did not know what a formal law reform body was and others did not know the role of the body in assessing the need for change in the law.

An example of a very good answer is: *the Australian Law Reform Commission assesses the need for change in the law by reviewing the current law and providing individuals with the opportunity to comment on proposals for changes in the law by holding public hearings, conducting surveys, polls and questionnaires about the need for reform. They also employ specialist consultants to advise on details of reform, providing the community with information through discussion papers and preparing a report that is submitted to Parliament.*

Other formal law reform bodies are:

- Parliamentary Law Reform Committee
- Victorian Law Reform Commission
- Government inquiries
- Royal Commissions.

Question 5
Outline the jurisdiction of one of the following courts
Childrens Court or
Coroners Court
And one of the following tribunals
Victorian Civil and Administrative Tribunal – residential tenancy list or
Victorian Civil and Administrative Tribunal – anti-discrimination list

Marks	0	1	2	3	4	Average
%	11	14	22	27	25	**2.4**

Most students knew the jurisdictions of the courts; however, common errors with the Children's Court jurisdiction included a failure to mention the Court's Family Division that hears protection applications; breaches of welfare orders; irreconcilable differences applications; and permanent care orders for young people aged under 17 who are in need of care and protection.

Other errors included inaccuracy about the age of young people who come before the Criminal Division of the court (between the ages of 10 and 17 at the time the offence is alleged to have occurred). Legislation to increase this by one year has been passed but is not yet in force.

A good answer about the Coroner's Court said: *The Coroner's Court jurisdiction is essentially to investigate reportable deaths and fires. It conducts inquests in order to find out the identity of the deceased, how death occurred, the cause of death and the identity of any person who contributed to the cause of death. Reportable deaths are those that are sudden, violent or unusual. The court investigates the cause of fires and circumstances surrounding them. The Court also informs the community of its findings.*

The Tribunal jurisdictions were also generally handled well. Most students know that the residential tenancy list of VCAT determines matters between residential landlords and tenants involving money up to $10 000. The anti-discrimination list hears disputes involving complaints from people who feel they have been discriminated against in particular areas (such as employment, education or club membership) on the basis of a range of grounds (including age, gender, race, marital status and impairment).

Question 6
Describe one possible improvement to the adversary system of trial.

Marks	0	1	2	3	Average
%	31	19	27	24	**1.5**

Most students responded to this question by saying the role of the judge should be increased; however, too many students failed to explain how this would be an improvement to the adversary system of trial. Other students mentioned reforms to the jury system; the jury system is **not** a feature of the adversary system and these responses were inappropriate.

A good answer said: *One possible improvement to the adversary system is to have a greater role played by the judge. Currently the judge remains an impartial adjudicator who is not involved in the collection of evidence and does not interfere in the principle of party control. However, this does not make use of the judge's considerable legal expertise, and the judge cannot help a party with inadequate legal representation. A more involved judge would be an improvement because if the judge is playing a more active role*

in directing the parties, and intervening in the questioning of witnesses (more so than already) it is more likely that the truth of a matter will be discovered and a more just outcome will be achieved.

Other possible improvements include:

- simplification of the rules of evidence and procedure
- encouragement of alternative methods of dispute resolution
- increased availability of legal aid to facilitate improved access to legal representation.

Question 7

Describe two elements a legal system requires in order to be effective.

Marks	0	1	2	3	4	Average
%	25	10	14	14	37	**2.3**

Far too many students provided information about the characteristics of an effective **law** in answer to this question. Once again, it must be reinforced that students need to read the question with great care and make sure that they don't rush ahead and provide information based on only one word of a question.

The elements of an effective legal system are:

- entitlement to a fair and unbiased hearing
- effective access to mechanisms for the resolution of disputes
- timely resolution of disputes
- recognition of prevailing values and basic human rights.

A very good response explained: *An element of an effective legal system is the entitlement to a fair and unbiased hearing or trial. This means that the parties would have the right to equal treatment in relation to the presentation of evidence and the opportunities to present their case before an impartial adjudicator. For this element to be satisfied parties would be entitled to equal treatment during police investigations and consistency in sentencing, in criminal matters. The judiciary must be seen as being totally independent, judging cases on the present circumstances only and not being influenced by irrelevant factors.*

Another element necessary for the legal system to operate effectively is access to mechanisms for resolving disputes. The legal system cannot merely set out rights and obligations, it must also provide ways in which disputes can be settled. The legal system attempts to do this by providing cheaper alternatives to court action in mediation or tribunals, a system of appeals and pre-trial procedures such as committals that ensure that only those with sufficient evidence against them go to court in serious criminal cases.

Section B

Question Chosen	0	8	9
%	2	53	46

Question 8ai-ii and Question 9a

Marks	0	1	2	3	4	5	6	7	8	9	10	Average
%	10	6	8	9	10	10	11	11	11	9	7	**5.1**

Question 8b and Question 9b

Marks	0	1	2	3	4	5	6	7	8	9	10	Average
%	9	5	7	8	11	10	12	12	11	8	7	**5.2**

Question 8ai

In 2002 the Prime Minister publicly considered holding a referendum to change the Commonwealth Constitution. The opposition indicated that it was worth thinking about.

Explain how the Constitution can be changed by holding a referendum. Comment on two factors that could influence the outcome of a referendum.

This question was answered well, although there were still some common errors. One problem that occurs year after year is that students don't seem to have an understanding of the 'double majority' requirement of a successful referendum: for the Constitution to change more than half the voters in Australia must vote 'yes' **and** more than half the voters in more than half the states must vote 'yes'. Students also often forget the parliament stage of referenda proposals and the requirement of the Royal Assent if the double majority is achieved.

Some factors that can influence the outcome of a referendum include:

- it is hard to get a 'yes' vote from more than half the voters in Australia as well as more than half the voters in more than half the States
- if political parties disagree with the change they may lobby against it and encourage people to vote 'no'
- special interest groups may lobby against the change and encourage voters to vote 'no'
- voters may not want to increase the powers of Commonwealth (the focus of many referenda) and so vote 'no'.

Question 8aii

Using one example, illustrate how the lawmaking powers of the State and Commonwealth Parliaments have been changed by High Court interpretation of the Commonwealth Constitution.

Students were expected to show the effect of a particular case (as heard by the High Court) on the division of powers between the State and Commonwealth Parliaments. Although many students were familiar with appropriate cases, they often failed to explain how the case impacted on the division of powers.

One answer that demonstrated a knowledge of the effect of a case said: *One of the most significant ways in which the lawmaking powers of the Commonwealth has been increased at the expense of the States is through its 'external affairs power' and the wide interpretation this has been given by the High Court. In the Franklin River Dam case the Tasmanian Government proposed to build a dam in order to provide hydro-electricity. The provision of power and the environment are both areas of residual power; however, the Commonwealth passed legislation that included the area around the proposed site of the dam on the World Heritage listing which protected it from any development. The Tasmanian Government challenged the constitutional validity of this legislation before the High Court. The Court determined that under the external affairs power, the Commonwealth had the power to legislate in areas usually belonging to State's residual powers in order to implement the terms of an international treaty. This changed the division of power between State and Commonwealth Parliaments considerably, increasing Federal Parliament's powers by allowing them to impinge on the powers of the States.*

This case is an interesting example of the High Court's ability to impact on the division of powers because of its potential to allow the Commonwealth to intervene in any area of residual power affected by an International Treaty to which Australia is a signatory, including human rights.

Question 8b

Describe how courts and Parliament make law. Discuss two differences between the lawmaking processes of courts and Parliament.

In order to complete this question in twenty minutes, students were required to present succinct information about the lawmaking process. Some students spent far too long on a detailed explanation of the legislative process and only one or two sentences on the courts' lawmaking process.

A very good answer presented the material in the following way: *Courts make law essentially as a by-product of dispute resolution. They make common or case law through the doctrine of precedent and statutory interpretation. The doctrine of precedent is based on the concept of 'stare decisis' (to stand by the decision) and refers to the notion that the reasoning (or ratio decidendi) behind decisions of higher courts should be binding on lower courts in the same hierarchy where the facts of the case are so similar that they cannot be distinguished. Statutory interpretation is where a judge gives meaning to the words in the laws passed by Parliament. This meaning may form a precedent for future, relevant cases.*

Parliament is the supreme lawmaker and is able to make laws by following the legislative process of debate and questioning in order to create statutes or legislation. Bills are introduced into either house of Parliament (with the exception of money bills that must originate in the lower house) by the Minister responsible for the area of law or an individual member of Parliament. The bill undergoes a first and second reading, detailed scrutiny in the committee stage, and a third reading in both houses of Parliament. The Royal Assent is given by the Queen's representative if this process is passed successfully. The final stage is the proclamation of the law.

One difference between the lawmaking processes of courts and Parliament is the ability of Parliament to make law at any time, as long as they are sitting. They have the capacity to make laws very quickly whenever the need arises, as long as the issue isn't so controversial that they decide to defer the decision to legislate (eg, abortion). In contrast, courts may perceive the need to create a law, but can only make laws when a case is brought before a superior court. They are not as free as Parliament to make laws, and may even be bound by precedent that will prevent a court from making law even if there is a need to.

Another difference is the resources available to both lawmakers. Parliament has an array of experts and technical advice at its disposal when assessing the need for change and drafting a bill. They can even initiate government inquiries such as the Penington Report on the decriminalisation of marijuana, to assess the alternatives and variety of opinions on an issue. In contrast, courts are reliant on and limited by the information presented to them by the parties to a dispute and so the resources available are much less than those available to the Parliament

Other differences that could have been mentioned include:

- Parliament can make law in futuro, while changes in the law through the courts are ex poste facto
- Parliament can delegate legislative power to subordinate authorities in areas where this is most effective; courts do not have this authority
- Members of Parliament are democratically elected; judges are appointed and are independent
- the Parliamentary process can be compromised by pressure from special interest groups; the courts are free from any obligation to listen to the community's views on a matter relating to cases before them.

Question 9a

Explain the process of lawmaking by courts. Include in your answer an evaluation of two strengths and two weaknesses of this process.

Common errors that appeared in answers to this question were that the doctrine of precedent applies to punishments or remedies given by judges and that juries contribute to judicial lawmaking. The sentences handed down by judges in criminal cases should not be used as examples of the doctrine of precedent. Sentences are given on the basis of each case, victim and offender, taking into account any sentencing legislation. The doctrine of precedent applies to questions of law, such as, 'What is murder?', or 'What is a prohibited weapon?'; it does not answer questions such as, 'What punishment will be given to this defendant?' Juries answer questions of fact, such as, 'Is the defendant guilty of murder?', they do **not** answer questions of law (a definition of what murder is will be provided by the judge) and therefore do not contribute to the common law.

Most students organised their answers to this question by presenting an explanation of the lawmaking process and then evaluating two strengths and two weaknesses; however, some students were able to present their evaluations as they worked their way through the explanation of the lawmaking process.

In the example provided below, the student presented an explanation and then provided a strength with a weakness and another strength with a weakness. The answer indicates that the student was very well prepared and had an excellent understanding of the material required by the question.

Courts make law through the operation of the doctrine of precedent (also know as the doctrine of 'stare decisis'). This is a legal principle that states that laws made in the superior courts of record are binding on law courts in the same hierarchy, providing that the material facts in the cases are so similar that they cannot be distinguished. The reason for the decision (ratio decidendi) becomes the binding element of a precedent, not the sanction given or facts of a case. Precedent can also be persuasive. Persuasive precedents occur when the precedent occurred in a court on the same level (a single judge is not bound by the decision of a single judge of the same court, although such decisions will always be given considerable respect), in a lower court in the same hierarchy, in a different hierarchy, or obiter dictum (things said by-the-way) in a higher court in the same hierarchy. Persuasive precedent does not need to be followed, but may be influential. Precedent may also be made through statutory interpretation, which occurs when a word or section of an Act of Parliament is interpreted when a dispute concerning its meaning comes to court. The interpretation forms a precedent which is read together with the Act in the future.

Precedents can be overruled by a higher court in the same hierarchy, this will result in the precedent becoming 'bad' law and of no effect. Lower courts that are bound by precedents can avoid being bound if they can distinguish the facts of the case before them from the facts of the case used as precedent; however, courts that are bound may disapprove a precedent and therefore encourage the losing party to appeal to a higher court that is able to overrule the precedent if they wish to. Precedents can also be reversed, or changed on appeal in a higher court, this will also make the precedent 'bad' law.

A strength of lawmaking by courts is that judges are impartial and unbiased adjudicators, are not elected and therefore, can make controversial laws without fear of an electoral backlash. However, this may be considered a weakness, because judges may not take public opinion into account when making precedent or applying an outdated precedent. Judges may tend to be conservative and leave lawmaking to Parliament, thus applying laws that are unacceptable to the community. However, it is necessary for judges to remain impartial in order to apply necessary laws independently.

Another strength of lawmaking by judges is that they can keep the law flexible by distinguishing, overruling or reversing precedent. However, a precedent may not be able to be distinguished and therefore, judges may have to apply outdated laws. This may mean that the law will become rigid and unable to keep up with the changing social/economic demands of the community. Because cases can only become precedents in particular circumstances, eg when in a high enough court and when the court is willing to depart from precedents, the process of lawmaking by courts is a slow process; however, courts have contributed huge areas of law, such as negligence, and are a necessary part of our lawmaking process.

Other strengths could be:

- courts can fill gaps in the law by making a decision on a matter when it arises
- the appeals process allows for the review of decisions

- a court can change a law quickly if a relevant case is brought before it.

Other weaknesses could be:

- changes in the law through the courts are ex poste facto
- changes through the courts are expensive for the parties involved
- Parliament can override court made law
- a dispute needs to be brought before an appropriate court.

Question 9b

Parliament has the ability to delegate lawmaking powers to subordinate authorities and to check this process. This is both a strength and a weakness.

Describe the lawmaking process of Parliament and discuss the views expressed in this statement.

The legislative process is often taught by using a flow chart; however, students must not use flow charts, dot points or diagrams to answer the questions on the Legal Studies examination. Answers should be provided in clear sentences in logical paragraphs. Some students were able to provide detailed information about the legislative process but failed to answer the part of the question that commented on the delegation of lawmaking powers and the processes used by Parliament to check delegated legislation. It is important that students carefully consider the material given in questions and try to use it in their answers. Better answers were able to provide relevant information that described the lawmaking process as well as good discussion of the pros and cons of delegated lawmaking and the parliament checks on delegated legislation. An example of this type of response follows:

Parliament makes law through passing a bill through both houses of parliament before it can be enacted. The first stage is the initiation of a bill into parliament, which is before the first reading when the long title is read and copies distributed. The second reading and committee stage follow. In the committee stage the bill is read clause by clause and checked for inconsistencies and flaws. After the committee stage the third reading occurs if the bill is passed this procedure is repeated in the second house. After a bill is passed by both houses it is presented to the Queen's representative for the Royal Assent and it is then proclaimed.

Parliament can delegate its power to subordinate authorities, the main reason for this is to save parliamentary time so that it can deal with more complex issues while the subordinate bodies deal with the detail of the law. However, it could be said that Parliament is giving its lawmaking power to bodies that have not been elected to represent the people (with the exception of local councils that are elected). Subordinate authorities are seen to have greater expertise in particular areas of law and therefore are able to make laws in greater detail and with more precision than Parliament. They are also able to pass rules and regulations more quickly than parliament. However, this is not the same amount of debate and discussion as used by Parliament and therefore the laws may not be as considered or appropriate. Subordinate bodies are, however, more accessible than Parliament as they are often in the local area, and it is easier to approach them and have one's views heard and considered. However, there are many subordinate authorities and significant overlapping of laws could occur as well as fragmentation and the laws in different areas could be inconsistent. It is often difficult to find delegated legislation and it could be said that there are too many bodies making laws.

A checking process exists to make sure that subordinate bodies make laws in line with their enabling acts. However, parliament receives thousands of rules and regulations each year, so it is debatable whether an effective checking process really exists. It could also be argued that time spent checking delegated legislation negates any time saved with the details of laws. However, checks such as sunset clauses that require checking and updating of delegated legislation every 10 years and the tabling of delegated legislation should ensure that delegated legislation is appropriate and acceptable to the community.

Once again it is clear that the student who provided this answer was well prepared and was able to present their answer in a clear and logical way.

Section C

Question Chosen	0	10	11
%	3	38	60

Question 10a and Question 11ai-ii

Marks	0	1	2	3	4	5	6	7	8	9	10	11	12	Average
%	5	3	5	6	8	8	10	9	11	9	11	7	8	**6.8**

Question 10b and Question 11b

Marks	0	1	2	3	4	5	6	7	8	Average
%	16	6	9	10	11	11	14	10	15	**4.2**

Question 10a
Discuss how the adversary system of trial used by courts can be quite different to the form of dispute settlement used by tribunals.
This question required some thought in terms of how the answer should be presented. Better answers used the features of the adversary system (role of the judge, role of the parties and so on) as topic sentences for paragraphs that explained how dispute settlement by courts and tribunals differ.

A section of a good answer provided the following details: *One aspect of the adversary system is the need for legal representation. In the adversary system, legal representation is essential due to the principle of party control. Legal counsel helps to argue one's case in the best possible light and are necessary to navigate the complex rules of evidence and procedure. In tribunals, legal representation is discouraged and parties do not act to such a degree as adversaries. There need not be such large costs in tribunals because of the discouragement to have counsel and there is only a nominal filing fee that also keeps costs down. However, the parties may continue to act as adversaries in the tribunal system, and as such, legal representation may be allowed in some case, eg where the other party is a government body.*

Other relevant points could include:
- some tribunals encourage mediation and conciliation; they try to bring out the issues and assist the parties to explore possible solutions to the dispute. Courts using the adversary system are much more formal with set rules of procedure
- while courts now encourage mediation, it is not undertaken by the judge or magistrate; in a court hearing, the judge or magistrate (and jury if relevant) hears the evidence put forward by each party and then makes a decision which is binding on the parties
- tribunals are generally seen as less threatening and more accessible than courts using the adversary system
- the ability to appeal against a decision of a tribunal is limited compared to a decision of a traditional court where there is a clear appeal process that can be undertaken.

Question 10b
Using three examples, discuss changes or proposed changes which have helped, or could help, overcome limitations faced by people using our legal system.
Once again, better answers showed that thought had been given to the way in which material would be presented. Some good answers used a change or proposed change to the legal system as the topic sentence for a paragraph that discussed the change in terms of how it achieved the elements of an effective legal system by overcoming one or more of the limitations noted in the Legal Studies Victorian Certificate of Education Study Design. Other students used a limitation of the system as the topic sentence and discussed the change/proposed change in these terms. By using these approaches, students were encouraged to discuss the change/proposed change, rather than just describe it. Better answers provided detail rather than just making sweeping statements like 'provide legal aid'. Assessors were pleased to see answers that provided information that was current and demonstrated a real engagement with the material.

For example: *Another change in the legal system that has already occurred, is the introduction of a Koori Court in Victoria, as part of the Magistrates' Court. The Koori Court aims to provide a method of sentencing Aboriginal offenders that is more sensitive to the cultural needs, and in line with the recognition of appropriate cultural punishments. An Aboriginal elder is present when hearing a case involving an Aboriginal offender who advises the court on appropriate cultural issues. This initiative has improved access to justice for many indigenous offenders and also improves the chance for a fair and unbiased hearing to occur for Aborigines who tend to face inequality in the 'white' justice system. For example, many Aboriginal cultural issues (such as looking down when in the presence of a person of authority, or replying 'yes' to questions posed by a person of authority) are not recognised by our justice system and often interpreters are not provided or are inadequate for conveying meaning. The Koori Court should help to provide Aborigines with basic human rights and a recognition of our prevailing social value of justice and equality for all.*

Other examples that could have been discussed include:
- the appointment of part-time magistrates, acting judges and even lay people at the Magistrates' Court
- schemes such as legal expenses insurance and 'no win/no pay' schemes
- recognition of a range of issues spelt out in the Attorney General's Justice Statement
- the proposed increase to the jurisdictional limit of civil cases in the Magistrates' Court
- the pilot of home detention as a sentencing option
- the proposed increase to the criminal jurisdiction of the Children's Court.

Question 11ai
Calls have been made to limit a defendant's right to trial by jury in criminal cases. In certain matters, such as serious fraud cases, it has been argued that trials should be heard before a judge alone.
Describe the role of the judge and jury in criminal trials.

Students have a good knowledge of the jury system and traditionally 'jury questions' are popular. Generally, students were able to provide adequate detail to answer this question; however, many forgot to mention the role of the judge in determining the sanction for the defendant. Some students mentioned points relating to civil cases, rather than criminal trials.

Question 11aii
Explain two arguments for, and two arguments against, the suggestion of limiting the right to trial by jury in criminal cases. Giving reasons, what is your view on this issue?
Students were required to give a view about limiting the right to trial by jury in criminal cases; however, many answers failed to respond to this part of the question. Better answers were detailed and provided a well-thought out opinion about the issue.

For example: *There are unquestionably significant benefits of the process of trial by jury; however, the benefits do not outweigh the disadvantages and I believe that the use of juries should be limited in criminal trials.*

One of the most important reasons for having a jury is because it represents the community and is able to bring a fresh outlook to the courtroom which will often consider the social, cultural and economic implications of their decision. In contrast, judges may be to legalistic and may not represent the values of the community in the same way a jury, selected from 'ordinary people' from the electoral roll, can. While this is a good thing, some complex cases, such as serious fraud cases, are better off being heard by a judge alone. Judges are better qualified than jurors in dealing with complex issues like fraud or forensic evidence to determine the credibility of a case. In such complex cases, the evidence is often difficult to understand and requires a certain amount of expertise in order to fully evaluate the evidence. In more complex cases, judges would be better suited to determining the outcome as they have the experience and are not likely to be swayed by the rhetoric of counsel. In this way the jury's use should be limited; however, juries should still be used in most criminal trials where the evidence is less complex.

Another important reason for the jury system is that they democratise the court. They can spare the accused from the partiality of the judge. They ensure the members of the court are accountable for their actions, allow public scrutiny of the legal system and ensure that the language of the court is understandable to everyone, including the defendant. The public influence of the jury, in theory, is able to prevent injustice, particularly because they spread the decision making amongst twelve people. However, in practice, the reality may be very different as juries are not required to give reasons for their verdicts. When deliberating there is no guarantee that the decisions are not made because of a desire to hasten the proceedings, juror biases or a misunderstanding and wrongful application of the appropriate law. This is particularly important in more complex cases like fraud because they can be lengthy and can put pressure on jurors. In cases such as these, a sole judge would be better able to determine the verdict because, although the public influence in the court would be removed, a fair decision based on reasoned thought would more likely be achieved as judges have the expertise jurors lack.

Question 11b
Using two criminal pre-trial procedures and two civil pre-trial procedures to illustrate your answer, consider how pre-trial procedures can promote or limit the effective operation of the legal system.
Students needed to think about how they were going to organise the material in order to answer this question in the most effective way. Better answers used the pre-trial procedure as the topic sentence and then explained how the procedure promoted and/or limited the elements of an effective legal system. Some students confused these elements with those of an effective **law**.

Part of a very good response presented the following information: *Criminal pre-trial procedures can undoubtedly promote the effective operation of the legal system, as evident in the process of bail. This is where an accused person, who is deemed unlikely to re-offend, endanger the community or fail to appear before the court for trial and is not charged with murder, may be free (and not held in remand) until their trial. Bail allows an offender to go free on a promise to appear at the trial, sometimes money must accompany the promise and this will be forfeited if the accused does not appear for trial. Bail upholds basic human rights essential to the legal system, in that it is based on the presumption of innocence until proven guilty, the accused is not detained without good reason. It also enables a fair and unbiased hearing to occur, as the accused is able to prepare his/her case with a legal representative and ensure that they have the best chance in court, where someone in remand may have been limited in this regard.*

Other criminal pre-trial procedures include:
- police investigation and powers
- arrest, with or without a warrant
- Committal Proceedings
- Directions Hearing.

Civil pre-trial procedures include:
- letter of demand

- pre-trial negotiation
- writ of notice or originating motion
- notice of appearance
- statement of claim
- statement of defence
- counter-claim
- interrogatories
- discovery of documents
- pre-trial conference (County and Supreme Court)
- Directions Hearing.