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Notes from the Examination Centre

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# **1999 Higher School Certificate Legal Studies Notes from the Examination Centre**

## **2/3 Unit (Common)**

### **General Comments**

In 1999, 7498 candidates sat for the 2/3 Unit examination and 1232 for the 3 Unit examination. In Section II – Options, the standard of candidate responses was excellent with good use being made of stimulus material provided. The more able candidates were able to refer to relevant legislation and discuss the effectiveness of the legal system in addressing particular issues. These candidates were up-to-date in the changes in legislation and terminology. As in previous HSC years, the poorer candidates failed to:

refer to the stimulus material;

address the specific question; and

use knowledge gained during the course to support their responses.

Often these candidates gave detailed answers to parts (a) and (b) but little relevant information and analysis in part (c). Of particular note this year was the disproportionately high number of candidates who did not attempt questions on Consumers, Housing and Workplace. As in past years 95% of candidates attempted the Family and the Law Option.

In Section III – Case Studies, the overall quality of responses was very good. As in past years Women and Aboriginal and Torres Strait Islander Peoples remain the two most popular Case Studies.

In the 3 Unit paper the candidature was split almost equally between the first three sections, with the final Section IV Challenge: Indigenous Peoples being chosen by only 14% of candidates. There are many candidates still lacking an understanding of the Core area and its relationship to the individual Depth Studies.

## Section I

The multiple choice answers were as follows:

Question	Response
1	D
2	D
3	C
4	A
5	B
6	C
7	B
8	C
9	C
10	D
11	B
12	C
13	A
14	B
15	B
16	D
17	B
18	C
19	A
20	A

## Section II—Options

### Consumers and the Law

#### Question 21

##### General Comments

This question was attempted by 79% of the candidates of all standards who answered the Consumers and the Law Option. The question, which elicited a full range of responses, required candidates to identify problems created by the notion of *caveat emptor* and to discuss the consumer legislation aimed at controlling advertising and marketing. While candidates were required to evaluate the effectiveness of the legislation, the stimulus indicated that consumers must be aware of deceptive and misleading advertising.

Some candidates attempted to refer to the stimulus; the majority, however, failed to respond to the need to be vigilant when reading advertising and marketing materials. Well-argued responses attempted to link the idea of the problems of *caveat emptor* and the need for adequate legislation to protect the consumer against false and misleading advertising.

Many candidates described the history and meaning of *caveat emptor* but failed to identify the problems created by the concept.

General discussion of the consumer legislation was attempted by most candidates. Many gave a descriptive account of the *Trade Practices Act 1987 (NSW)* but the better candidates were able to discuss other general legislation such as the *Sale of Goods Act, 1923 (NSW)* as well as specific legislation such as the *Door to Door Sales Act 1967 (NSW)*.

However, most candidates failed to evaluate the effectiveness of the legislation by using appropriate case studies and discussing the extent to which the current legislation controls advertising and marketing.

Many candidates wrote prepared answers based on their knowledge of the legislation and the process of redress. They failed, however, to link their knowledge with an attempt to evaluate the effectiveness of the legislation in providing adequate consumer protection and redress against false and misleading advertising.

##### **Excellent responses**

In these responses candidates were able to successfully answer all aspects of this question. Their answers reflected an understanding of the question and ability to provide a satisfactory response to the various elements including the stimulus.

These candidates revealed a clear understanding of the problems created by *caveat emptor*. Their responses gave clear definitions and provided a number of relevant examples to explain the shortcomings of *caveat emptor* in a sophisticated consumer society. Responses included the difficulties in inspecting pre-packaged goods, the technological nature of products and sales methods, the proliferation of deceptive marketing techniques and the general inequality of bargaining power between buyers and sellers.

These candidates were significantly more analytical and selective in the way in which their information was presented, avoiding a mere chronology of the market place from pre-industrial days to the present.

Excellent candidates possessed a comprehensive knowledge of relevant cases and legislation and successfully incorporated both general and specific legislation into their answers. These candidates were able to dissect the legislation, emphasising those aspects which particularly referred to harsh

and unconscionable selling practices such as bait and switch, misrepresentations, pyramid selling, referral selling, provision of credit, cooling off periods related to door to door selling.

These candidates were able to blend current examples with existing case law to illustrate their answers: for example, investigations of SOCOG marketing strategies by the ACCC as well as established cases such as *Cahill v Carbolic Smoke Ball Co.* (1893)

In excellent responses, candidates provided an analysis of the effectiveness of the legal system. These responses emphasised the notion that *caveat emptor* still has a place in the contemporary consumer world supported by strong and effective legislation to balance the relative power of buyers and sellers.

### ***Above Average responses***

In these responses candidates attempted to deal with the whole of the question and incorporated the stimulus into their response. They were able to identify the problems created by the notion of *caveat emptor*. They were also able to discuss in some detail the legislation aimed at controlling advertising and marketing. These candidates used case studies to show the effectiveness of the legislation. They were able to link some of the problems presented by *caveat emptor* to law-makers in developing effective controls of contemporary buying and selling.

Many candidates were able to explain the steps involved in enforcement and the provision of redress but were unable to relate it to the main concept of controlling advertising and marketing.

### ***Average responses***

Here candidates attempted to deal with most of the question but in less detail than those in the above average and excellent responses. Consequently, a number of these answers were shorter and failed to address the whole question; many candidates failed to refer to the stimulus in their responses.

These candidates were able to provide an overview of the problems created by *caveat emptor* but their responses lacked depth. Their approach was descriptive, comprised of lists of legislation and cases aimed at controlling advertising and marketing that did not refer to the question in the process and so failed to provide any real understanding of the notion of effectiveness. The case studies used were largely descriptive and failed to provide any analysis of effectiveness. In these responses candidates mentioned the stimulus but were unable to explain its significance in the context of deceptive marketing practices.

## **Question 22**

### **General Comment**

This question, which was attempted by 21% of those who answered the Consumers and the Law Option, required candidates to identify problems created by the inequality of bargaining power between parties to consumer contracts. They were also able to demonstrate how inequality has led to a range of general and specific consumer legislation and the need to keep abreast of change in contemporary society.

In this regard candidates fulfilled the Syllabus Outcomes relating to concepts of justice such as equality, fairness and equity as reflected in the law.

Many candidates found this question challenging. They failed to come to terms with the meaning of 'inequality of bargaining power'. This was a key element in the stimulus and in each of the subsequent questions, many candidates struggled throughout their responses to come to some understanding of the question. The term 'contract' was raised in the stimulus but not in the questions. This led to a variety of responses from candidates, some of whom focused on 'contracts' while others were more concerned with the equality of bargaining power.

There were a significant number of prepared answers in which candidates provided tedious lists of redress and remedies available to disadvantaged consumers.

The majority of candidates had a good knowledge of relevant acts and cases but were unable to integrate them into an analytical answer dealing with inequality and effectiveness.

### ***Excellent responses***

The typical candidates in this category successfully answered the whole question. In part (a) candidates identified the various sources of inequality in bargaining power between the parties to a consumer contract. They were able to list clearly and describe how the weaker bargaining power of the consumer was brought about through a lack of education, literacy and experience in commercial dealings and the disadvantages of youth, the aged, women and those of ethnic origin when dealing with the more powerful suppliers or manufacturers. Candidates also referred to the strength of suppliers assisted by technology, advertising and the persuasive tactics of salespeople.

In part (b) the excellent responses revealed an understanding of the legislation that exists to redress the inequality of bargaining power. Candidates were able to identify relevant legislation including :

*Sale of Goods Act 1923 NSW*

*Trade Practices Act 1974 Commonwealth*

*Fair Trading Act 1987 NSW*

*Door to Door Sales Act 1967 NSW*

*Motor Dealers Act 1974 NSW*

These candidates were able to indicate clearly the aspects of specific pieces of legislation which supported the consumer when redress from inequality was required. In particular they noted instances when discharge from an unjust contract was provided under the *Credit Act, (1984), NSW* and which parts of legislation acted as a deterrent to suppliers, including methods deemed illegal under the *Trade Practices Act*. These included bait and switch advertising, claiming payment for unsolicited goods and pyramid selling. Many candidates also discussed the remedies available through legislation. The better candidates elaborated on protection of consumers provided by the *Credit Review Act, (1996), Commonwealth* including the requirement for contracts to be in 'plain English'.

In part (c) candidates gave detailed explanations of how the law attempts to protect consumers from problems caused by the inequality of bargaining power. In these responses candidates were able to appreciate the lack of effectiveness despite the intentions of the legislation.

Candidates noted that effectiveness was limited by a lack of consumer awareness of the legislation and of government and private agencies able to provide advice and assistance when seeking redress. In this category excellent candidates were able to incorporate relevant case law to demonstrate effectiveness. The more relevant cases included:

*Amadio v CBA*

*Cahill v Carbolic Smoke Ball Co.*

*Thornton v Shoe Lane Parking*

*Blomley v Ryan*

They referred to specific legislation that effectively protected consumers from problems of inequality. The ten day cooling off period required by the *Door to Door Sales Act* was often used to demonstrate this, with the requirement for the supply of first hand information under the Consumers Credit Code used less often.

In this category candidates clearly analysed the effectiveness of the legal system through considered opinion supported by relevant legislation and cases.

### ***Above Average responses***

In these candidates answered the whole question, but with less detail and analysis than in the excellent responses.

In part (a) the candidates identified several sources of inequality of bargaining power between the parties. Most commonly these candidates listed three sources of inequity: particular problems with persuasive salespeople, the large range of technical, specialised products which consumers found daunting and problems caused by packaging. Candidates tended to list the sources, giving only a scanty explanation or description of what they were, rather than detailing the underlying issues of lack of education, poor literacy skills or cultural differences.

In part (b) candidates tended to list a variety of legislation including *Sale of Goods Act*, *Trade Practices Act*, *Fair Trading Act* and *Door to Door Sales Act*. Candidates gave a sketchy description of some details of the legislation but did not link this with the inequality of bargaining power.

In part (c) these candidates tended to assume that people were protected because laws existed to serve this purpose. These candidates attempted to evaluate effectiveness but concluded mostly that consumer protection laws worked well.

Some candidates did note that a consumer's lack of knowledge of legal rights decreased the effectiveness of the law. Candidates referred to appropriate case law but were less able to provide critical analysis of effectiveness.

### ***Average responses***

In average responses candidates ignored the more difficult aspects of this question.

In part (a) these candidates tended to refer to *Donohue v Stevenson* as a case which demonstrated inequality of bargaining power between parties to consumer contracts. These candidates concluded that inequality led to legislation providing consumer protection but gave few details and did not substantiate their answers with cases or legislation.

*Caveat emptor* was frequently discussed in this section by the average student (perhaps borrowing from Question 21); this, however, was not directly relevant to the question.

In part (b) the average candidates discussed redress in a very descriptive manner. Many responses appeared to have been prepared and did not fully address the question. Candidates used a variety of relevant cases and legislation but largely as lists.

In part (c) average responses stated that the law was effective but gave no further evidence in support of this statement. Some candidates stated that *caveat emptor* was no longer relevant, while others gave considerable detail on the various methods of consumer redress, which was not part of this question.

## **Environment and the Law**

### **Question 23**

#### **General Comments**

This question was attempted by 47% of those attempting the Environment and the Law Option.

This question was answered better than Question 24. Candidates generally showed the ability to produce more depth of knowledge without the confines of sections.

The better candidates recognised the stimulus as the ‘transference of State-or-public-owned resources to private concerns (and profits).’ However, many of the candidates simply rewrote the stimulus without attempting to analyse its meaning.

Many candidates did not answer the question; rather they provided prepared answers on the roles of Local, State and Federal Governments and their responses to environmental protection.

The second dot point, ‘discuss the areas of conflict’, was not fully understood and analysed; candidates tended to generalise the conflict as being simply economics versus the environment. Many candidates referred to individual and local cases, without relating them to the question.

Students should make use of more contemporary cases and issues such as Jabiluka, Walsh Bay, East Circular Quay, Bondi Beach, when discussing the conflict between community, environment and commercial interests.

Many candidates emphasised ‘lists’ of environmental law rather than offering analysis of the role of a particular law in addressing environmental conflicts. A number of candidates relied on a descriptive approach, which did not allow them to evaluate the effectiveness of the law in resolving conflict.

Most candidates included discussion of relevant legislation, including the *Local Government Act, 1993, NSW*, *Environmental Planning and Assessment (Amendment) Act, 1997, NSW*, and the *Protection of the Environment Operations Act, 1997 NSW*. The better candidates included analysis of a wide range of State legislation when discussing conflict resolution.

The better candidates used a wide array of recent cases (as mentioned previously) when discussing the resolution of conflict. There were still however many candidates who relied totally on textbook cases and out-of-date legislation.

### ***Excellent responses***

In these candidates answered the whole question. They recognised the issue inherent in the stimulus and were able to interpret it in relation to relevant legislation and cases. They also critically analysed the conflict as well as effectively evaluating the role of the law in balancing the rights of various parties while still purporting to protect the environment.

Candidates in this category fully explained the role of local government in protecting the environment, including in their responses a discussion of:

- Local Environment Plans
- Preservation Orders
- Building Regulations
- Waste Management

They were able to cite relevant legislation such as the *Local Government Act, 1993, NSW*, the *Environmental Planning and Assessment (Amendment) Act, 1997*, and the *Protection of the Environment Operations Act, 1997, (PEO)*. These candidates were able to integrate the legislation into their evaluation of the legal system’s management of both environmental, community and commercial needs.

These candidates were able to analyse and evaluate the effectiveness of this level of government in balancing the rights of various parties and their role in protecting the environment.

The role of the State Government was fully outlined with reference to various responsibilities and consequent legislation. There was emphasis on the allocation of resources and the role of the State in resolving conflict between the various parties. There was recognition of the importance of the State Government in this area as well as some criticism of the new PEO Act and its tendency to support environmental damage, for example, licences to pollute.

The role of the Federal Government was mentioned in terms of evaluating the effectiveness of the law. Candidates discussed this level of government in reference to inconsistencies and the unpredictability of 'political will' in addressing environmental conflict.

### ***Above Average responses***

Candidates in this category answered most of the question with some recognition of the stimulus. There was good discussion of the role of Local and State Governments; however, candidates in general concentrated on one level to the detriment of the other. There was relevant use of both legislation and cases. Candidates attempted to evaluate the effectiveness of the law in protecting the environment in terms of a balancing of rights. There were limited attempts to analyse in terms of community, environment and commercial needs.

### ***Average responses***

Some candidates in this category recognised the stimulus; it was not used, however, to analyse the issues of balancing rights. Answers in this category described the role of both state and local government. There was use of relevant and accurate legislation and cases, although they tended to rely heavily on textbooks. There was also limited analysis of the effectiveness of the law in balancing rights and interests. Prepared answers were common in this category.

## **Question 24**

### **General Comments**

This question was attempted by 53% of those attempting the Environment and the Law Option.

Poorer candidates who tended to use prepared answers generally answered this question.

Many of the candidates recognised the stimulus as the basis for Common Law, that is, that Common Law protects the rights of the individual landowner.

Candidates were, in general, able to:

- discuss the factors which influenced the developments of Environmental Law, although some candidates misunderstood the question to mean the *sources* of environmental law as opposed to the *historical development* of environmental law including population pressures, urbanisation, environmental deterioration, pressure groups, and technology.
- describe the rights and duties imposed by Common Law.

Some candidates did not understand the term Common Law, referring to the term 'common sense' law. Many candidates also confused Common and Statute Law. This was particularly evident in their answers to part (c).

In part (b) rights were generally discussed in a comprehensive manner but duties were often overlooked and/or poorly understood, while the term 'users of land' was ignored.

In general there was more emphasis on parts (a) and (b) of the question, and these were generally well answered by most candidates. Discussion of the effectiveness of the common law in protecting the environment was limited to analysing the problems of landowner rights and the anthropocentric nature of Common Law. Very few candidates offered detailed analysis of the effectiveness of Common Law. Candidates, in answering this section, outlined concepts such as locus standi, the reactive nature of the law and the fact that it can be overruled by Statute Law, and the limiting factors of cost and access to courts.

Candidates tended to rely upon textbook cases and therefore did not consider more up-to-date cases, for example, *ACF v Commonwealth*, *ESSO Petroleum* and *Burnie Port Authority*.

### ***Excellent responses***

Candidates in this category successfully answered the whole question with reference to the stimulus.

In part (a) candidates identified and critically discussed a variety of factors that have influenced the development of environmental law. For example, the precautionary principle, inter and intra generational equity and democratic processes (International Law developments)

In part (b) candidates were able to clearly explain the relevant rights and duties referring to both natural and created rights. Discussion included a solid understanding of absolute rights and the right of the owner to utilise the torts of negligence, nuisance and trespass. Also included were discussions on the right to remedy, duties of self-regulation, the duty of care to neighbours and strict liability. There was good use of supportive cases.

In part (c) candidates were able to evaluate critically the lack of effectiveness of common law in protecting the environment. Concerns such as the following were outlined and used in analysing and evaluating the effectiveness or lack of effectiveness of the common law in protecting the environment:

- no specific protection offered by common law
- focus on individuals and their rights
- limited actions, including injunctions and difficulty and expense in obtaining them
- short-term solutions offered to complex and long term environmental problems
- the need for locus standi
- the reactive nature of common law
- the slowness of common law to change due to precedent.

There was a wide use of relevant cases. There was also recognition of the fact that common law does allow for class actions, thereby increasing access to the legal system, and the notion that injunctions may offer future protection.

### ***Above Average responses***

Candidates in this category addressed most of the question with some understanding of the stimulus.

In part (a) these candidates displayed a well developed understanding of the development of environmental law, but many also included unnecessary discussion of the sources of environmental law.

In part (b) candidates were able to outline the rights and duties of landowners but did not refer to the users of land. A wide range of remedies was also outlined.

In part (c) candidates understood the nature of common law but evaluation and analysis of the limited effectiveness of common law in protecting the environment was not superficial.

### ***Average responses***

Candidates attempted to answer most of the question but with limited use of the stimulus.

In part (a) there were descriptive lists of the factors influencing the development of environmental law. There was some confusion between the factors and the sources of environmental law.

In part (b) there was a descriptive outline of the rights of landowners, with limited attempts to discuss duties.

In part (c) there was limited analysis of the effectiveness of common law. Common law was not fully understood, with some candidates confusing common and statute law.

## Family and the Law

### Question 25

#### General Comments

This question was attempted by 26% of those attempting the Family and the Law Option.

Most candidates had a reasonable understanding of the rights of children and the nature of crises in family relationships. Candidates were aware of the relevant legislation, case law and the role of child welfare authorities, which provide a protective framework for children.

Most responses failed to refer to all aspects of the question, in particular that dealing with anti-social behaviour. This reinforced the need to plan a response to an holistic question ensuring that all parts of the question are covered and that reference given to the stimulus as is required.

As a result of a lack of structure, most candidates did not fully evaluate the effectiveness of the family law system in recognising and protecting the interests of children within a family.

#### Excellent responses

The excellent responses were well written and addressed all aspects of the question.

Here candidates understood that Australian Family Law derives from both Federal and State legislation. Candidates knew and understood the range of statutes and institutions/bodies with a role in recognising and protecting the interests of children. These responses were characterised by a comprehensive coverage of the rights of children.

The role of International Law (UN Declaration /Convention on the Rights of the Child) was identified. Candidates recognised that this was ratified by Australia and has influenced the *Family Law Reform Act, 1995 (Commonwealth)* by emphasising the child as being of paramount importance, as well as the rights of children to know about parents, except where inappropriate (eg domestic violence), and parental responsibilities.

Excellent responses referred to Teoh's case 1994 –1995 as an example of how the courts have given effect to Australia's international obligations. Further they were able to show how international law has influenced State legislation, eg *Children (Care and Protection) Act, 1987 (NSW)*. Some candidates referred to the *Children and Young Persons (Care and Protection) Act, 1998 (NSW)* which is to be proclaimed by July 2000.

A characteristic of excellent responses was the way they fully evaluated the effectiveness of the Family Law system in dealing with specific children's rights. Areas that were covered included:

- the *Education Reform Act, 1990, (NSW)* regarding the right of the child to an education at least between the ages of 6 to 15.
- *Family Provisions Act, 1987 (NSW)* in relation to children's rights to claim an inheritance.
- discipline must be moderate and reasonable under the *Children's (Care & Protection) Act, 1987 (NSW)* as in the case of R v Terry.
- children have a right to receive medical treatment and failure to ensure this constitutes neglect and may lead to criminal charges (R v Senior). From the age of 14, children have the right to determine their own medical treatment, which raises issues involving contraception and abortion.
- the *Minors (Property and Contracts) Act, 1970, (NSW)* protects children by stipulating that they may not be bound to contracts that are deemed not to be in their best interests.

Excellent responses recognised that all children were equally protected under the *Children (Equality of Status) Act, 1976 (NSW)* and *Family Law Act, 1975 (Commonwealth)*

Some candidates discussed the rights of children in terms of:

- artificial conception; surrogacy eg the Baby Evelyn case, and the lack of legislative protection in this area; adoption and the rights of children to trace their biological parents subject to a veto; as well as recent development in areas such as labour laws and protection from exposure of registered sex offenders.

When discussing the role of the law in meeting the needs of children in trouble and dealing with crises in family relationships, excellent candidates demonstrated an understanding of the rationale behind the changes to the *Family Law Reform Act, 1995 (Commonwealth)*. This provided a link to a discussion of divorce in relation to children's rights where issues relating to parental responsibility were evaluated.

Candidates also recognised that the Family Court is mandated to take account of State AVOs. Some candidates even discussed the recent High Court decision *Re Wakim: ex parte McNally 1999*, to strike down cross-vesting which may impact on Family Law and therefore the interests of children.

Excellent candidates then discussed crises in family relationships in terms of domestic violence and the impact of a violent household either directly or indirectly on a child. Candidates specifically referred to the protection afforded by the *Crimes (Domestic Violence) Amendment Act, 1987 (NSW)* and the *Children (Care and Protection) Act, 1987 (NSW)*. The limitations of AVOs were explained, often with reference to Schwarzkopf & Schwarzkopf.

The discussion was broadened to identify the role of child welfare authorities, especially DOCS, in meeting the needs of children in trouble. The limited efficiency of DOCS was analysed in terms of a lack of funding, resources and staffing. The use of statistics was relevant here eg the number of child deaths despite notifications. Specific cases such as the homicide of Daniel Valerio and Jayden Leskie were used as illustrative examples.

Excellent responses also discussed the role of the Children's Court in relation to determination of children who have been subject to abuse or neglect and the implications of being made a Ward of the State.

The Children's Court was also discussed in terms of the anti-social behaviour of children that has led to their prosecution under the *Crimes Act, 1900, (NSW)*. Relevant answers alluded to the *Children's (Criminal Proceedings) Act, 1987 (NSW)* and the age of criminal responsibility eg the case of Corey Davis.

In relation to juvenile justice, better candidates referred to the *Young Offenders' Act, 1997 (NSW)* and the implementation of youth conferences as a positive means of dealing with children in trouble.

Conversely the implications of the *Children (Protection and Parental Responsibility) Act, 1997 (NSW)*, although recognising the value of making parents responsible for the anti-social behaviour of their children were discussed in terms of its possible discriminatory application. The potential for the detention of children 'at risk' and the pursuant racial repercussions were questioned, particularly in light of the discretionary powers of the police.

In terms of the protection of children, excellent responses alluded to the role of non-government organisations such as the Wayside Chapel, Salvation Army and refuges for the victims of domestic violence.

Excellent candidates referred to the implications of the Wood Royal Commission including mandatory reporting, by anyone in a protective role, of all abuse, the establishment of the Children's Commission, and significant concern over systemic abuse of children. Such candidates often broadened their response to discuss the implications of a lack of equity in wealth distribution, socio-economic status and education.

Excellent responses were characterised by an identification of the limitations of family law in protecting the interests of children. This was often a theme that was developed throughout the response. Candidates followed a line of argument and used legislation, cases and legal issues to support their contentions.

### ***Above Average responses***

Candidates in this category explored issues such as basic care (food, clothing, shelter), discipline, medical treatment and education in some detail. However, a consistent depth of analysis and evaluation was often absent. These answers tended to be more descriptive.

Candidates were familiar with relevant legislation such as the *Family Law Act, 1975 (Commonwealth)*, the *Family Law Reform Act, 1987 (Commonwealth)* and the *Children (Care and Protection) Act, 1987 (NSW)*.

Above average responses provided sound analysis of the rights of children without necessarily fully explaining the implications of abuse and neglect. For example, many limited their discussion to domestic violence and the role of DOCS without fully discussing the broad range of measures relevant to the protection of children. Conversely other candidates focused almost exclusively on divorce. Candidates also tended to overlook anti-social behaviour as mentioned in the stimulus and did not extend their responses to allude to the protection of children in trouble. Appropriate reference was made to cases including *B v B*, *Baby Evelyn*, *Schwarzkopf v Schwarzkopf*.

Many candidates mentioned further issues such as mandatory reporting of child abuse, adoption, financial support and equality of status of children. Very few discussed juvenile justice. Above average candidates tended to fall short of developing a balanced argument.

### ***Average responses***

These candidates demonstrated a basic understanding of the operation of the legal system in the area of Family Law. The majority of responses identified the rights of children without fully discussing the effectiveness of the legal system in protecting their interests.

Answers tended to be descriptive and anecdotal in discussing crises within family relationships and often spent too long in referring superficially to AVOs and DOCS. Such responses were characterised by adequate reference to legislation and case law, without demonstrating an understanding of how this framework protects the interests of children.

Very limited consideration was given to the needs of children in trouble. Most average candidates presented little argument and analysis and their responses also tended to lack balance.

## **Family and the Law**

### **Question 26**

#### **General Comments**

This question was attempted by 74% of those attempting the Family and the Law Option and their responses were generally much better than those to other questions.

Most candidates performed well in part (a) unless they examined only the '*Hyde v Hyde & Woodmansee*' statement. A very small minority of candidates had some inaccurate ideas about what constituted the formal requirements of a valid marriage.

In part (b) most candidates could describe a variety of alternative family arrangements. Candidates had difficulty in identifying and discussing the legal issues arising from alternative family relationships.

In part (c) excellent responses had no difficulty in evaluating the effectiveness of the law. Again, as in past years, this section was a good discriminator as poorer responses just stated that the law was 'not effective' 'very effective' or 'more effective', ensuring a tie to the question but not giving depth or analysis.

In the majority of scripts the allocation of time and depth to each section was well managed, illustrating the increasing sophistication of student responses.

1999 saw some major legislative changes with the introduction of the *Property (Relationships) Legislation Amendment Act, 1999 (NSW)* and the *Property (Relationships) Act, 1984 (NSW)* and the *Family Law Amendment Bill, 1999 (Commonwealth)*. Very few candidates had knowledge about these changes to the law and as a result were not penalised in the marking process.

### ***Excellent responses***

Candidates in this category were able to focus on, and successfully deal with, the main issues within the question. These included the legal issues arising from alternative family arrangements and the effectiveness of the law in protecting parties to formal marriages and alternative family arrangements.

In part (a) excellent responses clearly outlined the formal requirements for a valid marriage. They recognised that the definition of a valid marriage stemming from case law (*Hyde v Hyde & Woodmansee, 1866*) was already contained in the statement material and did not waste time in simply repeating it. They succinctly mentioned how the case law was contained in the *Marriage Act, 1961 (Commonwealth)* and mentioned related cases eg *Corbett v Corbett, (1971)*.

Excellent responses discussed the formal statutory requirements as outlined in the *Marriage Act, 1961 (Commonwealth)*. Namely: age, consanguinity, valid ceremony, intention etc.

Candidates in this response range were quite aware of the need to be brief and not labour the points at the expense of parts (b) and (c) which were worth the majority of the marks.

In part (b) candidates were not only able to list the alternate family arrangements but could clearly identify and describe the legal issues arising from these.

Candidates were able to discuss the legal issues that were relevant to the different family alternatives, which included: de facto relationships, same sex relationships, polygamy, traditional Aboriginal marriages, single parent, and blended: some included the use of new birth technologies in the creation of families and the legal issues involved.

Candidates were able to identify clearly that many of these issues arose as a result of the changing societal values in relation to family and its composition. 'Alternate family relationships can be defined as any relationship that exists between two parties that does not comply with the *Marriage Act, 1961 (Commonwealth)*.'

The issues most commonly discussed were: children, property, inheritance, maintenance, adoption, surrogacy and new birth technology, violence and the recognition of different family structures.

A small number of candidates successfully applied this knowledge by using the *Property (Relationships) Legislation Amendment Act, 1999 (NSW)* which was passed on June 1 1999. Those in the excellent response category acknowledged this historic passage and successfully applied this information to add an extra dimension to their discussion. 'The Act amends the *De Facto (Relationships) Act, 1984* by redefining de facto relationships to include the relationship between two adult persons who live together as a couple and who are not married or related by family. A new category of domestic relationships is also created by the Act.'

Superior use of legislation and case law was made by these candidates. Examples included:

- *De Facto Relationships Act, 1984 (NSW)* changed to the *Property (Relationships) Act, 1984 (NSW)*
- *Artificial Conception Act, 1984 (NSW)*
- *Family Provisions Act, 1982 (NSW)*
- *Adoption of Children Act, 1965 (NSW)*
- *Children (Equality of Status) Act, 1976 (NSW)*
- *Child Support Assessment Act, 1989 (Commonwealth)*
- *Family Law Act, 1975 (Commonwealth)* and the *Family Law Reform Act, 1995 (Commonwealth)*
- *Marriage Act, 1961 (Commonwealth)*
- The case of *B v B and R v R (1997)*
- Bell & Watson
- *Children (Care and Protection) Act, 1987 (NSW)* to be replaced by *Children and Young Persons (Care and Protection) Act, 1998 (NSW)* – for implementation in July 2000.

In part (c) candidates were able to sustain a well-reasoned and balanced argument and identify a broad range of examples illustrating the positive and negative aspects of the law being discussed. Candidates were able to compare successfully the legal rights of partners in a marriage to those in alternate family arrangements. The legal protection offered to parties in all types of family arrangements was discussed in a very competent manner.

Candidates demonstrated an accurate understanding of the current status of cohabitation and pre-nuptial agreements. A minority of candidates discussed the *Family Law Amendment Bill, 1999* (which was up to its second reading at the time of the examination) and the impact of this on the parties to a marriage. Candidates were able to acknowledge that formal marriages are covered by the law ‘from conception to dissolution’ and that ‘other arrangements lack this defined degree of protection’. Candidates argued that ‘consistent, uniform laws need to be established in the area of Family Law as the family is the fundamental and basic unit of society’.

Once again a thorough coverage of legislation and case law was used by candidates. Some responses evaluated extremely well the High Court decision in June 1999 to strike down the cross vesting of jurisdiction from State to Federal Courts and the effect this will have on domestic violence victims when claiming damages for assault as part of divorce property settlements ‘... an undesirable and more expensive process in the road to resolution of relationship issues’.

### ***Above Average responses***

Candidates in this category attempted to deal with the whole of the question, however the depth of evaluation was lacking in comparison with that in an excellent response.

In part (a) candidates included the stimulus and listed a few other legal requirements but generally lacked reference to legislation and Case Law.

In part (b) candidates were able to list comprehensively and define all family alternatives. However the responses had a limited explanation of the legal issues associated with these alternatives; many dealt with two or three general issues.

In part (c) candidates addressed both formal marriages and alternative family arrangements, concentrating on either but not necessarily addressing both comprehensively. Candidates were using relevant legislation and case law without the breadth of knowledge evident in the excellent

responses. They were able to evaluate and analyse the protection given to parties of either formal marriages or alternative family arrangements very well with limited coverage of the other area.

### ***Average Responses***

Here candidates showed a basic knowledge of the required information but their responses were descriptive rather than analytical. Many of the responses dealt with parts (a) and (b) really well; they were, however, unable to expand on this in part (c).

In part (a) most average responses did very well, gaining full marks.

In part (b) average responses described a number of alternative family arrangements without specifically identifying and discussing the relevant legal issues. Limited use of legislation and cases was evident in these responses. The legislation that was referred to mainly consisted of the *de Facto Relationships Act, 1984 (NSW)* which was used appropriately.

In part (c) candidates listed the different legislative acts protecting the rights of parties to formal marriages and alternative family arrangements and included only limited analysis and evaluation.

Some responses focused on one point of view rather than offering a balanced evaluation of the effectiveness of the law in protecting the interests of parties to formal marriages and alternative family arrangements. Many average responses tended to be anecdotal, bringing in personal opinions with little supporting argument or evidence.

## **Question 27 – Housing and the Law**

### **General Comments**

This question was attempted by 26% of the candidature answering the Housing and the Law questions.

Overall the standard of the responses for this question was higher than that for Question 28. A large number of candidates referred to the stimulus, only the excellent and above average responses, however, actually discussed the stimulus as it applied to *'the transfer of title to property'*.

The poorer candidates were confused by the stimulus material and their responses reflected this confusion. Many poorer responses failed to deal with any protection, advice and assistance that can be sought before the exchange of contract takes place.

Many candidates were able to discuss the various forms of finance available and had a sound knowledge of the advantages and disadvantages of mortgages. Some performed poorly because they were unable to comment on *'the manner in which Bianca and Andrew could protect their legal interest and investment'*.

### ***Excellent responses***

In these candidates discussed the stimulus in a well developed and constructive manner. Their discussion was incorporated into all sections of the response, and they were able to identify that there were actually four parts to this question:

- how the law assists with the transfer of title to property
- sources of assistance and advice available to Bianca and Andrew
- the advantages and disadvantages of mortgages compared with other forms of finance
- protection of Bianca and Andrew's legal interest and investment.

The question lent itself to the use of legislation rather than case law, although some candidates were able to use cases competently. The excellent responses recognised from the stimulus that Bianca and Andrew were first home buyers and, therefore, identified the fact that they were probably inexperienced and eligible for special provisions regarding loans and stamp duty payment deferred.

(i) *Transfer of Title*

- identified the types of title and more importantly the indefeasibility of title
- most responses were able to evaluate how the law assists at each stage of the transfer of title to property
- they understood the protection offered by a contract and the *Contracts Review Act, 1980*
- recognised the changes in the *Conveyancing Registration (Sale of Land) Amendment Act, 1990* and the *Vendor Disclosure and Warranty Act, (1990)*, discussed anti-gazumping and the role of the Real Estate Agent
- the better candidates identified the 66W form which waived the cooling off period and was not in the interests of the purchaser
- the *Conveyancing Licensing Act, 1992* extended the right to conveyancing to licensed conveyancers
- the professional indemnity insurance of solicitors and licensed conveyancers
- the cost, security and expertise of the above was compared to do-it-yourself kits for conveyancing.

(ii) *Sources of Assistance and Advice*

In this section candidates listed and discussed the role of a number of sources of information available to Bianca and Andrew. These included each of the following or a combination of these as a source of assistance and advice:

- real estate agents
- lawyers and solicitors
- Department of Fair Trading
- Banks
- Newspapers, magazines and consumer group journals
- Financial Advisers and Investment Consultants
- Local government
- Family and friends who had purchased previously

Some responses suggested that the purchase of the first home may involve building and the importance of the Department of Fair Trading if problems with builders arise.

(iii) *Mortgages compared with other forms of finance*

The candidates in this group were able to describe clearly the procedures involved in getting a mortgage including issues such as income levels, debts, ability to pay and credit checks. They discussed the need to raise a deposit but indicated that mortgages are the most common form of home finance. They discussed the advantages and disadvantages in a variety of ways but most tended to list them as follows:

Advantages of mortgages –

- instalments
- large purchase over time
- lower interest over other loans

Disadvantages of mortgages –

- interest
- title held by lender
- ability of lender to foreclose
- charges

Candidates competently distinguished between mortgages, equity financing and personal loans as a means of financing their house purchase.

(iv) *Protection of legal interest and investment*

This section of the question was handled in two ways by the candidate:

- throughout the response, OR
- as a dedicated section of the response.

Either approach was equally effective.

These candidates understood how Bianca and Andrew could protect their legal interest and investment by seeking legal help and taking out various forms of insurance. The types of insurance discussed included mortgage, contents, house, public liability and indemnity.

They discussed the standard contract for sale of land and how contract procedures such as cooling off, anti-gazumping and vendor disclosure were all designed to protect Bianca and Andrew's legal interest and investment. Different inspection reports such as architectural reports, building reports, pest reports and where applicable strata inspection were mentioned by the excellent responses. A few responses were extended to include joint tenancy or tenancy in common.

The better responses referred to a range of statutes including:

- *Conveyancing Act, 1919 (NSW)*
- *Real Property Act, 1900 (NSW)*
- *Conveyancing (Sale of Land) Amendment Act, 1990 (NSW)*
- *The Conveyancing (Vendor Disclosure and Warranty) Regulation, 1986 (NSW)*
- *Auctioneers and Agents Act, 1941 (NSW)*
- *Conveyance Licensing Act, 1992 (NSW)*
- *Contracts Review Act, 1980 (NSW)*
- *Credit Act, 1984 (NSW)*
- *Credit (Home Finance) Act, 1984 (NSW)*

### ***Above Average responses***

Candidates covered all aspects of the question adequately and made good use of the stimulus material. They did, however, tend simply to refer to Bianca and Andrew rather than to discuss the stimulus in relation to the law assisting in the transfer of title to property.

These candidates were able to make good use of law but there was insufficient evaluation of the effectiveness of the law in regards to protecting the interest and investment of Bianca and Andrew.

Some candidates were not balanced in their discussion of all aspects of the question and focussed particularly on mortgages and/or gazumping and/or insurance. Very few used any case law. Some were unclear on the mechanisms of anti-gazumping legislation and did not tie it into the *Conveyancing (Sale of Land) Amendment Act, 1990* and the *Conveyancing (Vendor Disclosure and Warranty) Regulation, 1986*.

### ***Average responses***

These responses were shorter and of a more descriptive nature. They did not adequately discuss the stimulus material and, only in passing, tried to evaluate the transfer of title procedures. Most candidates ignored the transfer of title aspect of the question and confined their discussions to a brief listing of the advantages and disadvantages of mortgages and/or insurance. There was little discussion of 'other forms of finance'. The majority were confused about equitable and legal mortgages. If transfer of title was discussed, confusion occurred over the role of the Real Estate Agent. Responses were generally approached from the stages of transfer rather than an understanding of how Bianca and Andrew could protect their interest and investment. There was little or no mention of appropriate legislation or case studies.

## **Housing and the Law**

### **Question 28**

#### **General Comments**

This question was attempted by 74% of the candidates answering this option. Overall the responses were not as competent as those to Question 27. Although most students referred to the stimulus and used it throughout the response, many accepted as a 'fait accompli' that no reasons had to be stated in the notice. Many students were unable to distinguish between a public and a private tenant.

Part (a) was handled adequately by the majority of candidates. In part (b), however, the majority of students confined their discussion to the role of the Residential Tenancies Tribunal and the Rental Bond Board and ignored the role of other administrative bodies such as the Department of Housing Committee, the Tenants' Union and the Anti-Discrimination Board, and the Tenants' Advisory Advocacy Service as part of the Department of Fair Trading. Many students also failed to recognise that rent increases are handled by the Residential Tenancies Tribunal and not the Rent Control Board. Students identified matters that could be ruled on by the Residential Tenancies Tribunal but very few discussed the process of resolution as being mediation, conciliation and arbitration and the orders that can be enforced, in addition to the role of the Courts, including appeals to the Supreme Court.

Many responses found part (c) difficult because of their failure to understand the concept of 'security of tenure' and the difference between a public and a private tenant. The best responses discussed the Residential Tenancy Agreement and the protection offered by the Tenancy Agreement. They also showed understanding of the advantages offered by a fixed agreement over a continuing agreement. The poorer responses confused the word 'security' as meaning locks etc. Part (b) was often rehashed in this section.

The majority of students could quote the appropriate tenancy legislation. The better students were able to use appropriate cases and it is recommended that teachers seek out up-to-date case studies for this option.

### ***Excellent responses***

- (a) Candidates identified that Helen and Jack were public tenants and this entitled them to a reason for eviction. They discussed the general rights and responsibilities of tenants as well as the special responsibilities of a public tenant with regards to:
- income disclosure and reporting of changes
  - family changes and the number of occupants of the premises.

Some quoted the *Residential Tenancy Act, NSW, 1987* and the Commonwealth-State Housing Agreement and how it affected public housing. A number of the excellent responses were able to refer to the *Residential Tenancies (Social Housing) Act, NSW, 1998*.

- (b) These candidates discussed the role of the Residential Tenancies Tribunal and the methods it uses to resolve disputes, the enforcement of orders, the rights of appeal. They recognised the advantages of this body over a court and the imbalance which can exist between landlord and tenant in issues of representation before the Residential Tenancies Tribunal.

The role of the Rental Bond Board was well discussed and these candidates mentioned the importance that the condition report plays in determining return of bond at the end of the lease. These responses discussed how the Rental Bond Board was used to protect both the rights of the tenant and the rights of the landlord.

There was a discussion of other administrative bodies in this category of response. They did not just discuss the Residential Tenancies Tribunal and the Rental Bond Board but included the Anti-Discrimination Board, Tenants' Union, Tenancy Advocacy Service, Public Tenants Appeal Panel, Department of Fair Trading and the Department of Housing.

It was impressive to see that some of these candidates were aware of recent changes to legislation including the *Residential Tenancies (Social Housing) Act, NSW, 1998* which allows the Department of Housing to evict anti-social tenants. Some referred to the *Residential Tribunal Act, NSW, 1998*, which replaced the Residential Tenancies Tribunal with the Residential Tribunal effective from March 1999.

- (c) Candidates in this category defined security of tenure and quickly noted that security of tenure of tenants involved a variety of legal aspects of leasing. They identified and discussed various pieces of legislation that help secure tenure. The legislation discussed included:

- *Residential Tenancy Act, NSW, 1987*
- *Residential Tenancies (Social Housing) Act, NSW, 1998*
- *Landlord and Tenants (Rental Bond) Act, NSW, 1977*
- *Anti-Discrimination Act, NSW, 1977*

These candidates clearly identified the difference between a public and a private tenant and how the law protected the security of tenure of both types of tenant. They distinguished between fixed and continuing tenancy agreements and the level of security offered by each.

Some candidates provided more information than the question required and compared the effectiveness of security of public and private tenants with other forms of accommodation including caravan parks, hostels, boarding houses, retirement villages and nursing homes.

These candidates often commented on the imbalance of power between the Department of Housing (as landlord) and public tenants because these tenants were often the most vulnerable in the community because of:

- Federal Government funding cutbacks
- shortages of all forms of rental accommodation; and
- inadequate knowledge of and access to the law

These candidates tried to evaluate fully the effectiveness of the law in protecting the security of tenure of leasehold tenants in public and private housing. They supported their evaluation with statistics, legislation and case law examples.

### ***Above Average responses***

- (a) In these responses candidates described the rights and responsibilities of tenants and made some attempt to distinguish between public and private tenants. Some mentioned that the Department of Housing was the landlord for public tenants.

- (b) The better candidates discussed the role of both the Residential Tenancies Tribunal and the Rental Bond Board while the less able candidates just listed the responsibility of each authority. Quality responses in this category were able to describe some of the orders and decisions that both authorities can make. Some mentioned the grounds for legal evictions and eviction notices, and referred to the relevant legislation and occasionally to other authorities such as the Tenants' Union. There was a tendency for candidates to concentrate on either the Residential Tenancies Tribunal or the Rental Bond Board, in more or less detailed discussion.
- (c) These candidates referred to and discussed the Residential Tenancy Agreement and how it helped secure tenancy. They mentioned the rights and responsibilities it places on both public and private tenants. The importance of the Condition Report was mentioned by some of the candidates but all discussed how bond money should be returned on termination of agreement.

Reference was made to the role of other authorities, government departments and agencies. The Tenants' Union was mentioned but there was little evaluation of its role in protecting tenants. Alternative dispute methods and anti-discrimination legislation was discussed in relation to how they could help protect security of tenure of leasehold tenants.

Evaluation was attempted but tended to be superficial and lacking in depth of discussion of the excellent category responses.

### ***Average responses***

- (a) These candidates mostly listed the rights and responsibilities that Helen and Jack have as tenants but few distinguished between private and public tenants.
- (b) The responsibility of the Residential Tenancies Tribunal and Rental Bond Board were listed by these candidates with little discussion and these responses tended to be very descriptive. Some incorrect information was given in relation to both authorities and some candidates were confused over the role of each. The better responses in this category did make some mention of eviction notices and the grounds for legal evictions.
- (c) Descriptive attempts were made to discuss how the law tries to balance the rights and responsibilities of the landlord and tenants. Some gave scant reference to the Residential Tenancy Agreement and how it helps secured tenancy tenure. Evaluation of the effectiveness of the law in protecting the security of tenure of tenants was attempted by some candidates in this category but they tended to be single point discussions with only cursory reference to the stimulus.

## **The Workplace and the Law**

### **Question 29**

#### **General Comments**

This question was attempted by 56% of those attempting the Workplace and the Law Option.

The question required candidates to explain the forms of workplace injuries and diseases, the legal remedies available and to evaluate legal responses to occupational health and safety issues. Particular emphasis was given to problems associated with technological change.

The stimulus required candidates to discuss the specific response of WorkCover NSW and the role of both employers and employees in promoting, maintaining and improving workplace safety. Candidates were also required to refer to the cartoon in the stimulus denoting a specific unsafe work practice.

Most candidates attempted to integrate the stimulus, however, this tended to be quite superficial, particularly in reference to the cartoon stimulus. The stimulus provided a springboard for a discussion of various aspects of workplace safety such as:

- what constitutes safe and unsafe work practice
- responsibilities of both employers and employees to promote, maintain and improve workplace safety.
- strategies employed by WorkCover which indicate a serious commitment to workplace safety.

Most candidates were competent in explaining some forms of workplace injuries and diseases.

Examples ranged from cuts, bruises, fractures to cancer and asbestosis. The better responses expanded this discussion by referring to causes of common workplace injuries and diseases. Excellent responses linked this to the responsibilities of employers and employees to promote, maintain and improve workplace safety. On the whole, responses lacked accuracy and depth when dealing with the legal remedies available under legislation and Common Law. Where responses did refer to common law responsibilities and remedies, discussion was fairly general and failed to take the opportunity to use case law to illustrate any claims. Treatment of the *Occupational Health & Safety Act, 1983 (NSW)* and the *Workers's Compensation Act, 1987 (NSW)* lacked detail and tended to confuse the aims and procedures of these laws.

In general, responses succeeded in discussing the promotion of workplace safety, but failed to examine the aims of maintenance and improvement. Few answers demonstrated a thorough understanding of the role of WorkCover or its statutory authority under the *Workers's Compensation Act, 1987 (NSW)*. A significant number of responses focused on either the *Occupational Health & Safety Act, 1983 (NSW)*, WorkCover or *Workers's Compensation Act, 1987 (NSW)* rather than incorporating a balanced account of the various instruments and procedures. In addition, there was a lack of clarity in distinguishing the roles of the NSW WorkCover body and the Federal authority, Comcare. Federal Government employees are covered by *Commonwealth Employees Rehabilitation and Compensation Act, 1986 (Commonwealth)*.

A common approach to addressing risks associated with technological change was to give a very general account of computerisation and mechanisation of the workplace with little analysis of increased safety risks. Many candidates limited their discussion of risks to redundancies rather than giving a broad treatment of the safety risks associated with technological change, for example, inadequate training, repetitive strain injury and stress.

In evaluating the responsiveness of the law, the better answers balanced the historical overview with a thorough discussion of the current mechanisms including:

- adjustments to payouts under *Workers's Compensation Act, 1987 (NSW)* from 1998
- obligations under *Workplace Injury Management and Workers's Compensation Act, 1998 (NSW)* which focuses on an injured person's receiving early and effective treatment.
- promotion of WorkCover safety campaigns
- increased penalty ranges under Occupational Health & Safety legislation for corporations.

Most answers attempted to substantiate claims through the use of statistics on workplace injury. In particular they made comparisons of Australia's workplace injury data with that of the United Kingdom and the USA comparing data on workplace accidents and deaths over the last few years.

Overall, many responses were very general and lacked both clarity and depth in the treatment of legislation, common law remedies and evaluation of increased risks associated with technological change.

### ***Excellent responses***

A candidate in this category successfully addressed all aspects of the question giving weight to a sophisticated analysis of the responsiveness of the law to workplace safety.

These candidates clearly distinguished between common and statute law principles and provisions and were able to discuss the relationship between these. Case studies were used effectively to illustrate the duties of both employer and employees with regard to workplace safety. Responses in this range referred to two or more cases, specifying the principles demonstrated in each case. The most commonly referred cases were: *Lister v Romford*; *Wilson v Tyneside Window Cleaning 1958*; *Paris v Stepney Borough Council (1951) AC 367* and *Bankstown Foundry Pty Ltd v. Braistina (1986)*.

In addition, excellent responses systematically analysed the costs and benefits of both Common Law and statutory provisions, procedures and remedies. This analysis included cost factors, payout range, time limitations and rehabilitative focus of various avenues. Candidates clearly explained how employees can now claim for work place injury only under very limited circumstances. Candidates understood when fault had to be proven.

A range of workplace injuries and diseases were identified, eg back injury, loss of limb, electrocution, hepatitis B & C, HIV/AIDS, and related them to the responsibilities of employers and employees. The best responses used statistics to assess the extent of injuries and diseases and incorporated strategies employed by WorkCover to reduce the incidence and impact of workplace injury and disease. Most answers in this range clearly explained what was meant by the term 'in the course of employment'.

Excellent responses were distinguished by their superior evaluation of the responsiveness of the law to occupational health and safety issues and their ability to discuss the increased risks associated with technological change. A broad range of indicators were used to substantiate claims such as:

- statistics of Australia's safety record
- criminal sanctions and fines specified in the *Occupational Health & Safety Act, 1983 (NSW)*. eg. Theiss Constructions
- to date the judiciary has not imposed the maximum penalties
- provision of safety equipment such as hard hats, goggles, protective clothing
- accessibility of the law in terms of costs and delays
- lack of enforcement especially of inspections of workplaces due to budget constraints at WorkCover NSW
- inequities in the treatment of workers employed in a contract for services compared with a contract of service
- the importance and success of the rehabilitative aims of the *Occupational Health & Safety Act, 1983 (NSW)*
- inadequacy of payouts for serious injury and diseases
- role of unions in being a 'watchdog' for safety issues, now that the union sphere of influence in enterprise bargaining has been changed.

The more capable candidates understood the meaning of 'torts' and explained the significance of a 'duty of care' in relation to workplace safety. Some candidates were able to explain vicarious liability.

### ***Above Average responses***

The responses in this category placed a heavier emphasis than excellent responses on identifying and discussing workplace injuries and diseases. A descriptive account of common law duties and remedies was given in addition to a brief overview of the *Occupational Health & Safety Act, 1983 (NSW)* and the *Workers' Compensation Act, 1987 (NSW)*. Some discussion of recent amendments was evident.

These responses were generally sound in terms of identifying the legal remedies arising from both the Common Law and legislation, and in acknowledging the role of WorkCover NSW. Some analysis of the legal responses to workplace safety was attempted, however, this was less critical than that found in excellent responses. Evaluation was generally limited to the short-comings of Common Law remedies (higher cost to employers) and the smaller payouts under the *Workers' Compensation Act, 1987 (NSW)*. Many candidates identified the fines imposed under the *Occupational Health & Safety Act, 1983 (NSW)* and the reluctance of the judiciary to use the full range of penalties available under the Act. The better responses in this range illustrated this point by using Theiss Construction as an example.

Many candidates concentrated on one or two aspects of technological change, but failed to address adequately the issue of the responsiveness of the law in this regard.

### ***Average responses***

Candidates in this category were able to give a general discussion of workplace injuries and diseases. Some gave prepared answers on the arguments for and against legal intervention in workplace safety.

Candidates concentrated on the remedy of compensation with little reference to the relevant legislation or procedures. Lack of knowledge of the legislative basis of workplace safety law was evident. Discussion was limited to either *Occupational Health & Safety Act, 1983 (NSW)*, or *Workers' Compensation Act, 1987 (NSW)* rather than incorporating both Acts. Confusion over the role of WorkCover was common and few responses linked this scheme to the *Workers' Compensation Act, 1987 (NSW)*.

Responses tended to be descriptive rather than evaluative. Often they made general claims without supportive evidence from cases, statistics and legal provisions. Evaluation was generally limited to the continued occurrence of workplace injury and disease. Average candidates failed to address adequately the preventative and rehabilitative aspects of current initiatives.

## **The Workplace and the Law**

### **Question 30**

#### **General Comments**

This question was attempted by 44% of those attempting the Workplace and the Law Option.

In part (a) the question required candidates to identify the forms of industrial action available to both employees and employers when workplace negotiations break down. In part (b) candidates were required to discuss the role of collective bargaining in the industrial relations environment. This required them to distinguish between collective bargaining and other forms of negotiations between employees and employers. In part (c) candidates were asked to evaluate the effectiveness of the legal system in dealing with industrial disputes whilst having regard for the rights and interests of both employers and employees, and achieving a balance between these different rights.

The question required candidates to have an up-to-date knowledge of both Federal and State industrial legislation in order to address each part of the question fully and, in particular, parts (b) and (c).

It was noted that some candidates interpreted the term 'industrial action' to mean methods of dispute settlement ie conciliation and arbitration. Most candidates gave examples of direct action: strikes, bans, secondary boycotts, work to rule. Of particular concern was the fact that collective bargaining was poorly understood. This meant that discussion of the role of collective bargaining was limited.

In part (c) many candidates attempted to deal with balancing the rights and interest of employers and employees. A significant number of candidates concentrated on and demonstrated a working knowledge of the Federal legislation but failed to mention or deal adequately with State legislation. Most candidates referred to the 1998 Patrick Stevedore and Maritime Union of Australia dispute and court hearings and attempted to integrate issues between the parties into their responses. Some candidates spent a disproportionate amount of time discussing proposed second wave changes to Federal legislation at the cost of discussing current legislation. Many did not use the stimulus efficiently and merely restated it. It is important that candidates keep up with current changes to the law in this area. Whole centres had the *Industrial Relations Act, 1988 (Commonwealth)* and the *Industrial Relations Act, 1991 (NSW)* as the most recent Acts. It is reasonable to expect candidates to refer to the *Workplace Relations Act, 1996 (Commonwealth)* especially when there are significant changes in this Act.

### ***Excellent responses***

Excellent responses addressed each part of the question fully. They displayed a sound knowledge and understanding of the industrial relations environment at both Federal and State levels.

In part (a) candidates clearly identified and gave a brief definition of the various forms of industrial action. These candidates clearly distinguished between actions taken by employers or employees. A number of candidates identified pickets, bans, go-slows, demonstrations as forms of industrial action. The majority used brief examples or case studies to illustrate the industrial action: Patrick's & the MUA dispute, Dollar Sweets dispute, Ansett and the Pilots' Federation dispute. Further, some candidates discussed the fact that secondary boycotts are now illegal under the *Trade Practices Act, 1974 (Commonwealth)* and the *Workplace Relations Act, 1996 (Commonwealth)* and the legislative restrictions on the right to strike.

In part (b) the candidates defined the various types of collective bargaining at the industry or workplace level, with or without the involvement of trade unions. The best responses identified and discussed changes in the role of collective bargaining as a result of the *Workplace Relations Act, 1996 (Commonwealth)* and the *Industrial Relations Act, 1996 (NSW)*. Candidates discussed the change from centralised industry-wide union-led forms of collective bargaining to a decentralised workplace centred system. They discussed Certified Agreements, Australian Workplace Agreements and Awards (noting the stripping of awards to 20 allowable matters) at the Federal level. At the State level, candidates discussed enterprise agreements. They noted that the *Industrial Relations Act, 1996 (NSW)* has less emphasis on individual contracts than its Federal counterpart. Many candidates discussed the power imbalance inherent in individual bargaining processes. They also discussed the fact that declining union membership has changed the face of collective bargaining in Australia, in particular at the Federal level.

In part (c) candidates displayed a thorough and sophisticated level of analysis and evaluation. They discussed the *Workplace Relations Act, 1996 (Commonwealth)* and the *Industrial Relations Act, 1996 (NSW)* and related these to the rights and interests of employees and employers. Most candidates focused on a conflict (such as Patrick's) covered by the *Workplace Relations Act, 1996 (Commonwealth)* and unfair dismissals, Australian Workplace Agreements and the decision of the courts. Some candidates also referred to and briefly discussed and evaluated:

- worker's compensation
- redundancies (balancing the right of bosses to terminate and unfair dismissals)
- Occupational Health and Safety
- anti-discrimination
- non-compulsory union membership
- *Essential Services Act, 1988 (NSW)*

as they related to industrial disputes.

These candidates attempted a critical analysis of Federal and State legislation in relation to the rights of employees and employers in industrial disputes. They referred to disputes such as:

- Patrick Stevedore Pty and the Maritime Union of Australia (MUA)
- Pilots' Federation and Ansett
- Rio Tinto and the Construction Forestry Mining & Energy Union (CFMEU)
- Oakdale Miners,

to illustrate their points of view.

Excellent responses noted the roles of the Australian Industrial Relations Commission and the NSW Industrial Relations Commission in dispute-settling. Further, they noted that the changes to legislation to do with the workplace depended on the political party in government.

### ***Above Average responses***

Many of the above average candidates responded well to part (a) but differed from excellent responses in parts (b) and (c).

In part (a) most candidates were able to identify and briefly discuss the various types of industrial action available to employees and employers.

In part (b) above average candidates were able to define collective bargaining and its role in redressing the power imbalance between employees and employers. Some mentioned both the *Workplace Relations Act, 1996 (Commonwealth)* and the *Industrial Relations Act, 1996 (NSW)* but the majority limited themselves to the *Workplace Relations Act, 1996 (Commonwealth)*.

In part (c) candidates limited their discussion to an evaluation of the *Workplace Relations Act, 1996 (Commonwealth)* and the *Industrial Relations Act, 1996 (NSW)*. They used case studies to illustrate their points but limited the range of cases, mostly referring to Patrick's. However, these candidates did not achieve the level and depth of analysis evident in excellent responses. Many included a lengthy discussion of the 'second wave' of workplace reforms without clearly indicating that these were merely proposals.

These responses often failed to mention other avenues available in dealing with industrial disputes such as action under anti-discrimination legislation and the *Essential Services Act, 1988 (NSW)*.

### ***Average responses***

In part (a) these candidates often listed types of industrial action without describing each. They concentrated only on action taken by employees and often had only a lengthy discussion of conciliation and arbitration.

In part (b) candidates were able to give a basic description of collective bargaining. The discussion of the role was limited to noting the power imbalance between employers and employees. There was little mention of relevant legislation by these candidates.

In part (c) discussion was limited to the Federal legislature, but this lacked any real analysis of the reasons for the shift from emphasis on employees' rights to employers' rights. Many responses were also limited to restating only the various forms of industrial action mentioned in part (a) with a very general discussion of the rights of employers and employees in such circumstances. There was little or no discussion of conflicting interests.

Average candidates had difficulty in correctly identifying the current Federal and State legislation, which now applies to industrial disputes. Some candidates discussed the common law rights and duties of employers and employees without relating these to industrial disputes.

## Section III — Case Studies

### Aboriginal and Torres Strait Islander Peoples

#### Question 31

##### General Comments

This question was attempted by 21 % of the candidates answering the Aboriginal and Torres Strait Islander Peoples Case Study, indicating a greater degree of difficulty than Question 32.

The standard of responses to this question was generally quite good, with the very best responses across the ATSI case study found in answers to this question.

Few candidates presented prepared responses and the majority clearly followed the structure of the bullet points in answering the whole question, using the stimulus appropriately, without quoting it verbatim.

Most candidates were able to give good definitions of racial vilification, with explanations of discriminatory conduct, and successfully linked this to a number of civil law situations. Some candidates devoted most of their text to writing about the consequences of discrimination to the detriment of other aspects of their response. Candidates were able to use statistics and relevant statutes to support their discussion; there was, however, less use of contemporary case law in response to this question.

Better responses were able to evaluate the legal system effectively in responding to the pursuit of justice by Aboriginal and Torres Strait Islanders and this again proved to be a major discriminator between responses.

##### *Excellent responses*

These responses were characterised by an ability to clearly define racial vilification as the act of ‘denigration or discrimination against a person on the basis of race or ethnic origin’ or ‘inciting hatred or violence towards a person because of race or ethnicity.’ Excellent responses also noted that the penalty under the *Racial Vilification Act, 1989 (NSW)* was only an apology in some cases which led to discussion on the justice of this situation. Excellent candidates were able to link the *Anti-Discrimination Act, 1977 (NSW)*, *Racial Discrimination Act, 1975 (Commonwealth)* and the *Racial Vilification Act, (NSW) 1989* to their discussion and the best candidates were able to discuss how these Acts address direct and indirect discrimination .

A distinguishing feature of these responses was their ability to outline and explain discriminatory practices in a range of civil law situations citing evidence (cases, acts and statistics) including:

Housing - household population densities, home ownership rates, discrimination when renting and the lack of provision of basic amenities including fresh water and sanitation.

Education - school retention rates, tertiary education levels, literacy levels.

Employment - unemployment rates, income levels, workplace discrimination, linked to poverty.

Health - infant mortality rates, life expectancy, incidence of health problems such as glaucoma, diabetes, chronic ear infections

Consumer issues - isolation, discrimination, lack of consumer information, education.

Family law - non recognition of traditional marriages (de facto), recognition for adoption purposes.

These candidates were able to evaluate the positive and negative aspects of a wide range of mechanisms intended to achieve justice for ATSI peoples including anti discrimination laws, the stolen generation report ‘Bringing Them Home’, ATSIC, the Social Justice Commissioner, Land Rights Acts and these responses referred meaningfully to the ineffectiveness of the criminal legal

system in providing justice for ATSI people. These candidates were able to link racial vilification to the criminal justice system, stating that ATSI people are more visible due to their culture and this contributes to their over-representation in the criminal justice system. These responses also discussed over-policing, misuse of police discretionary powers, over-representation in arrest rates, difficulties experienced in court appearances and imprisonment rates. Some of the best responses were also able to discuss the effects of the Summary Offences Act, the zero tolerance policy currently in effect in the Northern Territory and the implementation of the 'Anunga Rules' in police / ATSI relations.

Overall, these candidates were able to discuss a wide range of issues pertaining to all parts of the question, recognising that the central issue was 'effectiveness of the legal system in responding to the pursuit of justice....'. They were able to integrate evaluation of the issues effectively and to reach a logical conclusion which displayed a clear understanding of the issues involved.

### ***Above Average responses***

These responses generally were not able to provide the breadth of issues or depth of analysis of the excellent responses. Here candidates were able to give an appropriate definition of racial vilification but often they became entrenched in discussion of past government policies rather than taking a broader view, including discussion of more contemporary issues. These candidates were able to provide current legislation and contemporary cases, but not to the same degree as the excellent responses.

Often in these responses candidates described disadvantages in civil law quite effectively but to the detriment of evaluation of laws and other mechanisms. As a result, many of these responses were quite detailed but did not answer the whole question to the same degree as the excellent responses, particularly in their evaluation of the ability of the legal system to achieve justice for ATSI people.

### ***Average responses***

Here candidates tended to be descriptive in their approach, providing limited specific legal information in support of their discussion. These responses covered some areas of civil law but in general terms with little reference to cases, Acts and statistics. There was also an over-reliance on historical government policies which were discussed but not directly linked to the question. This tended to result in some candidates writing all they know in an area of the case study without linking this knowledge to the question being addressed. Evaluation was attempted by these candidates but it tended to be limited to very basic, general statements that ATSI people should be given more justice by the legal system and society in general.

## **Aboriginal and Torres Strait Islander Peoples**

### **Question 32**

#### **General Comments**

This question was attempted by 79% of the candidates attempting the Aboriginal and Torres Strait Islander Peoples Case Study.

When answering this question most candidates were better able to organise their thoughts into a logical and sequential order than in answering Question 31. Each of the four parts of the question allowed candidates to display a detailed knowledge of the legal system as it applies to ATSI people.

Part (a) was similar to the 1998 question in that it focused on the effects of the 1967 Referendum and changes that have occurred since. Most candidates were aware of the rights obtained by ATSI peoples in that referendum but the better candidates were more specific in explaining the changes that occurred as a result of the referendum.

In part (b) many candidates directed their responses to outlining the changes in government policy since 1788. The better candidates were able to cite a wide range of more contemporary changes in the law rather than limiting their responses to government policy.

Part (c) was generally well answered by candidates who were able to respond by using a variety of stumbling blocks, citing both civil and criminal law issues as well as social issues that contribute to ATSI disadvantage.

The main discriminator between candidates in part (d) was their ability to respond to the specific concepts of traditions, language and culture when evaluating the legal system. Many responded by referring to the 'effectiveness of the legal system' without specifically referring to the three components in enough detail to answer the question fully.

### ***Excellent responses***

In part (a) these candidates had a clear understanding of 'rights' which was reflected in the breadth of rights they were able to discuss. They dealt with the 1967 Referendum in detail, citing the percentage of the population that voted for the change and the exact changes to the constitution that resulted, including Sections 51, 26 (xxvi) on Federal government power to make laws regarding ATSI and Section 127 allowing ATSI peoples to be counted in the census. These responses were also able to explain accurately how ATSI voting rights changed from State to State after the Referendum.

A feature of excellent responses in this part was the range of rights discussed including rights related to Land Rights, anti-discrimination Acts, Criminal Law, Anunga Rules and Common Law Rights as well as the discussion of the 1967 Referendum. Excellent responses in this section tended to be characterised by brief treatment of a variety of rights that were covered rather than in depth treatment of any one area.

In part (b) excellent candidates used a variety of statutes including the *Native Title Act, 1992, (Commonwealth) (MABO)*, the *Native Title Amendment Act, 1998 (Commonwealth) (WIK)*, *Aboriginal and Torres Strait Islander Commission Act, 1990 (Commonwealth)*, *Racial Discrimination Act, 1975 (Commonwealth)*, the *Anti-Discrimination Act, 1977 (NSW)*, *Heritage Act, 1977*, *Summary Offences Act, 1988, (NSW)* and a variety of common law cases including *Wilson Walker*, *Skinny Jack* and the *Gove Land rights case* to illustrate changes to the law that have reflected the changing status of ATSI people. These responses were also able to briefly outline the effect on ATSI status each of the aforementioned Acts and cases had on the status of ATSI people.

Excellent responses in part (c) were characterised by the discussion of a wide range of civil and criminal law 'stumbling blocks'. These responses discussed the nature, cause and effects of these 'stumbling blocks' and included issues such as racial stereotyping, the *Native Title Amendment Act, 1998, (Commonwealth)* lack of implementation of the recommendations arising from the Muirhead Royal Commission into Black Deaths in Custody, employment, housing, education, health issues, police/ATSI relations, zero tolerance and mandatory sentencing in the Northern Territory and imprisonment rates. These responses also recognised the related nature of the issues being discussed and so presented the content in a logical format, grouping 'stumbling blocks' together where they were linked.

Excellent responses in part (d) responded directly to the question in terms of traditions, language and culture. These responses focused on the evaluation of the legal system's recognition of these areas and were able to evaluate a range of issues in some depth. Issues these responses focussed on included customary law punishments including *Skinny Jack*, *Sidney Williams*, *Mabo*, *Wik*, *Heritage Act 1977 (Commonwealth)*, the *Anunga rules*, *ATSIC* and self-determination, courtroom processes and family law issues including marriage and adoption. The difficulties involved in incorporating traditions, language and culture into the existing legal framework were also examined.

Excellent responses were typified by a breadth of issues being discussed, each of which was evaluated leading to the logical conclusion that there has been limited recognition of traditions, language and culture by the legal system. It is worth noting that the ability to evaluate the effectiveness of the legal system was again the main discriminator between candidates in this part of the question.

### ***Above Average responses***

In part (a) these candidates displayed a clear understanding of the 1967 Referendum and its impact in giving voting and citizenship rights and were able to discuss briefly other rights that had changed since 1967 such as Land Rights. These candidates also recognised that the Referendum gave the Federal Government power to legislate regarding ATSI people but were not as specific as the excellent responses.

In part (b) these responses discussed a wide range of changes to the law but not with the same specific detail as the excellent responses. In them candidates were also able to relate changes in law to changes in ATSI status.

In part (c) these candidates were able to discuss a range of 'stumbling blocks' in an effective manner, citing good evidence, particularly statistics, to support their discussion. They also displayed a good understanding of the differences between civil and criminal problems faced by ATSI people; the major stumbling blocks discussed included discrimination, racial stereotyping, and civil and criminal law problems.

In part (d) these candidates were able to display a similar breadth of knowledge as those in the excellent responses but did not come to a clear conclusion of overall effectiveness. They attempted to evaluate issues facing ATSI people; the depth of coverage however was not as developed as in the excellent responses.

### ***Average responses***

In part (a) candidates in this category placed an emphasis on the 1967 Referendum but tended to be more general and descriptive in their discussion. Many of these responses mentioned other rights but did not discuss these rights at all. Some candidates discussed government policy from 1788 to the present but did not link their discussion to the question, giving the impression of a prepared response.

In part (b) these candidates covered only a few changes in the law and had difficulty in linking these changes to the status of ATSI people. Some understanding of Land Rights was displayed, but this again tended to be general. Clearly too much emphasis was placed on historical government policies such as dispersal, protection etc. at the expense of more contemporary and varied changes in the law.

In part (c) these responses were more descriptive of the 'stumbling blocks', with less emphasis being placed on linking the stumbling blocks to achieving equality. Too much emphasis was placed on anecdotal evidence regarding racial stereotyping rather than on providing Acts and statistics to support their discussion.

In part (d) these candidates tended to be descriptive rather than analytical. There was little emphasis on linking content to tradition, language and culture as stated in the question. While being able to cite a reasonable range of issues these candidates provided little evaluation which was a major discriminator in the responses read.

## **Migrants**

### **Question 33**

#### **General Comments**

Despite being topical and containing wording from the Syllabus, this question was not a popular choice. Only 14% of candidates attempted it.

In general, scripts tended to be brief and very descriptive. Candidates experienced difficulty in restricting their answers to 'refugees and illegal entrants.' The 'special criminal law process' also posed problems, with the majority of candidates glossing over the processes. The more able candidates referred to the stem, which was largely ignored by the majority of candidates.

#### ***Excellent responses***

Scripts in this category were lengthy and able to demonstrate a sound understanding of the criminal law processes of deportation and extradition, relating this information to the stem.

Candidates were able to define and explain the difference between refugees and illegal entrants, mentioning those who had over-stayed visas as unlawful citizens.

Candidates made good use of recent cases, current affairs and relevant legislation, which they integrated into their responses. Reference was also made to the present government's response to the current wave of illegal entrants.

Students responded comprehensively to the second dot point and included analysis of problems in accessing courts. A variety of courts and tribunals were discussed in the better responses.

These included

- Department of Immigration and Multicultural Affairs
- Migration Internal Review Office-
- Immigration Review Tribunal
- Refugee Review Tribunal
- Federal Court
- High Court
- Ministerial Discretion
- Also pressure groups, Amnesty International, U.N.

Problems analysed included language barriers, lack of finances, fear of courts and authorities and appeals.

Candidates critically evaluated the procedures to challenge decisions by

- UN Conventions
- Legal Aid
- Red Cross
- Access to the various Courts/Tribunals.

Candidates in this category were able to demonstrate the limitations of the legal process.

#### ***Above Average response***

Candidates in this category generally wrote lengthy scripts that addressed all the dot points. In a bid to respond to the first dot point on special criminal law processes, some attempt was made to outline

deportation and extradition. The role of detention centres was also discussed, and included accurate definitions of refugees and illegal immigrations. Some relevant cases were presented.

Candidates were able to discuss some courts and tribunals and gave accurate information and discussion of problems in accessing courts. Generally the problems were limited to language barriers and unfamiliarity with the legal system.

Candidates attempted to evaluate procedures available for challenging decisions. There was some mention of relevant legislation and cases. Scripts tended to ignore the stem. although throughout their responses it was clear that they made a sound attempt at answering all parts of the question.

### ***Average responses***

Responses in this category tended to be shorter in length, very descriptive and usually ignored the stimulus.

Candidates often glossed over the first dot point and launched into a discussion of the problems faced by illegal entrants and refugees.

Comments were often made about the procedures for challenging decisions, but evaluation was lacking. Some responses mentioned a few relevant topical media cases to illustrate their points.

## **Migrants**

### **Question 34**

#### **General Comments**

This was by far the most popular choice of question, being attempted by 86% of candidates in the Migrants Case study. The quality of scripts was impressive, which indicated a sound understanding of the Topic Area. That the majority of candidates were able to apportion the responses in line with the marks for each part was also pleasing. This allocation of time has not been evident in past years.

Candidate's responses were generally lengthy, addressed each part of the question and did not tend to stray from the set question. Unfortunately, many did not use the stimulus to their advantage.

#### ***Excellent responses***

- (a) Candidates were able to list at least four major categories of migrants including family reunion, concessional and preferential, economic migration, humanitarian migration and illegal migration. Candidates gave full and in depth explanations of these types of migration, with particular reference to the *Migration Reform Act, 1992*.
- (b) This section was particularly well done. Candidates integrated the stimulus to their advantage. The most popular approach to answering this part was to take a historical approach to changes in Australian attitudes to migrants, giving detailed coverage of various government policies from the *Restrictive Migration Act, 1901*, the White Australia Policy, the *Migration Act, 1958*, assimilation and multiculturalism in the Whitlam Era and to the present views of cultural diversity.

Excellent responses were able to conclude that, as Australian attitudes have changed, so too have government policies in order to reflect these attitudes.

A few candidates presented an alternative and just as effective approach to answering this part. They presented the view that our Federal legislation has moved from keeping out migrants to one that protects migrants, eg *Anti-Discrimination Act, EEO*. This change in government policy was explained in terms of a response to changes in Australian attitudes towards migrants over the period since 1901.

- (c) This was particularly well done by candidates who focused on the legal aspects of problems faced by migrants in areas such as housing, employment, exploitation and qualifications,

social security (ineligibility to obtain benefits), contracts, government services, legal services and crime and social problems (culture shock, language, discrimination and racism).

- (d) Candidates were able to identify the needs of migrants and were able to evaluate how our legal system has responded to those needs.

Relevant legislation was used to good effect, and included:

- *Anti-Discrimination Acts, 1977*
- *Racial Discrimination Acts, 1977*
- *Workplace Relations Act, 1996*
- *Industrial Relations Act, 1993*
- *Human Rights and Equal Opportunity Commission Act, 1986*

Other pressure groups such as the Red Cross and Amnesty International were evaluated in terms of their response to the needs of migrants and the pressure they can place on the legal system.

Candidates drew conclusions about the effectiveness of the legal response and offered critical analysis of the present conditions in Australia available to migrants. They were able to integrate into their scripts relevant comments on:

- Migration Internal Review Office
- Migration Agents Registration Board
- Federal Ombudsman
- Anti Discrimination Board
- Legal Aid

Examiners were particularly pleased to read in these excellent responses ideas presented by the candidates of ways of improving our existing legal system. This was evidence of their analysis and critical thoughts on the question answered.

### ***Above Average responses***

Candidates in this category generally wrote lengthy scripts that addressed the first, second and third bullet points. In a bid to respond to the first bullet point on special criminal law processes, some attempt was made to outline deportation and extradition. The role of detention centres was discussed. Responses gave accurate definitions of refugees and illegal immigrants. Some relevant cases were presented.

Responses gave accurate information and discussion of problems in accessing courts. Generally the problems were limited to language barriers and unfamiliarity with the legal system. Candidates were able to discuss some courts and tribunals.

Responses attempted to evaluate procedures available for challenging decisions, and made some mention of relevant legislation and cases. Candidates tended to ignore the stem throughout their response; it was clear, however, that they made a sound attempt at answering all parts of the question.

### ***Average responses***

Responses in this category tended to be shorter in length, very descriptive and usually ignored the stimulus. Candidates often glossed over the first bullet point and launched into a discussion of the problems faced by illegal entrants and refugees. Comments were often made about the procedures for challenging decisions but evaluation was missing. Some responses mentioned a few relevant topical media cases to illustrate their points.

## Women

### Question 35

#### General Comments

This question was attempted by 66% of those attempting the Women and the Law Case Study. The question required candidates to discuss the stimulus in relation to the range of problems women are experiencing in the workplace and how effective the Australian legal system has been, and is, in addressing these problems. The stimulus included issues that migrant and Aboriginal women face as well as the wider community. The stimulus targeted sexual harassment as one problem; candidates were required, however, to explore a much wider range.

The dot points provided candidates with a minimum reference point, and should not be regarded by candidates as the sole aspect of the question. A number of candidates focussed their response on the dot points and failed to deal with the question adequately, which required them to discuss the stimulus and evaluate the legal system in relation to countering the problems women face in the workplace.

Many candidates devoted a great deal of their response to giving a detailed account of women's work role throughout history, which was more than was required by the question and thus impeded their progress in other areas of the question.

#### *Excellent responses*

Candidates skilfully answered each part of this question, relating it to a general discussion of the stimulus statement and evaluating the effectiveness of the Australian legal system. Candidates in this category addressed each of the dot points, using relevant legislation and meaningful case studies.

This category of response clearly identified the legal and non-legal responses to the problems faced by women in the workplace and critically evaluated these responses. The legal responses included the *Affirmative Action (Equal Opportunity for Women) Act, 1986 (Commonwealth)*, the *Sex Discrimination Act, 1984 (Commonwealth)*, the Human Rights and Equal Opportunity Commission, the *Anti-Discrimination Act, 1977 (NSW)*, *Workplace Relations Act, 1996 (Commonwealth)*. These candidates also incorporated international covenants relating to women in their responses, eg Convention on the Elimination of Discrimination against Women. The better candidates included reports eg. Halfway to Equal, Pregnancy and Prejudice and the Affirmative Action Agency Report as well as the Anti-Discrimination Board's annual report.

The non-legal responses included a thorough discussion of support groups eg. Business Women's Association, trade unions, enterprise bargaining, media, education and training schemes.

Candidates in this category identified a wide range of problems including sexual harassment, glass ceiling, difficulties for migrant and ATSI women, pregnancy, flexible work practices, lack of child-care facilities, superannuation, lack of access to training opportunities, interrupted careers, accessing post-graduate courses, equal remuneration, overtime, 'old boys network' and the failure of women to access these network practices, and bias in recruiting procedures.

The concepts such as 'pink ghetto, sticky floor, glass elevator' were used in a relevant manner.

The better candidates included a range of cases such as: Katie's, Steggle's, ANZ, Gloria Marshall, BHP, Hickey v Hunt and the Henderson case. Candidates related these cases to the argument they had developed rather than simply listing and describing the case. This enabled them to enhance the standard of their response. These candidates also incorporated the stimulus material throughout their discussion in a relevant manner.

### ***Above Average responses***

These candidates focussed more on the dot points and stimulus with less emphasis on the overall question.

Candidates tended to describe the changing roles of women in detail and covered a wide selection of problems faced by women in the workplace. Legal responses were thoroughly identified and evaluated from a positive perspective, though often with little attention to the ineffectiveness of the legal response. Thus these candidates differ from the excellent category in that they do not provide a critical evaluation of the legal responses.

For example, the discussion of the Sex Discrimination Act highlighted the positive aspects of this law but failed to address the problems of the law such as exemptions and difficulties for pregnant women as identified by the Sex Discrimination Commissioner.

A range of non-legal responses was presented but, once again, these candidates limited their discussions to the positive aspects, failing to note where these responses proved to be inadequate.

These candidates demonstrate a sound knowledge of workplace legislation, their examples of case law, however, were limited.

### ***Average responses***

Responses in this category tended to be general and descriptive, with little evaluation of legal responses. Candidates focused solely on the stimulus material or the dot points. Many responses were historical descriptions of the changing role of women, with little relevance to the statement or the question. A number of candidates ignored directives: eg 'outline' tended to be an explanation over several pages rather than simply an outline of the changing roles of women in the workplace. Many candidates limited their discussion of problems to sexual harassment. They often went on a tangent discussing many types of domestic violence, which bore little or no relevance to the topic question. There was some confusion concerning the difference between sexual harassment and sexual assault.

Legislation was mentioned but not explained or related to the workplace issues. Assessment was limited to legal responses, with little or no analysis of their effectiveness.

## **Women**

### **Question 36**

#### **General Comments**

This question was attempted by 34% of the candidates attempting the Women and the Law Case Study.

The question required candidates to refer to the stimulus statement which emphasised the issue of women's continuing struggle for equality with men on socio-economic levels.

Candidates could have incorporated the stimulus in any of the four question parts. Better candidates tended to refer to it throughout their response.

In responding to part (a) a substantial number of candidates wrote extensively on the rights women currently enjoy as opposed to their pre-1890 position. However, a number of candidates referred to women in Britain and elsewhere rather than to the Australian experience. Furthermore, a number of candidates spent too much time on this part which was worth four marks only, drawing attention to the need for candidates to manage their time more effectively.

Candidates generally answered part (b) well, referring to a wide range of legal changes that have affected women's role in society. Many candidates quoted a considerable number of Acts, both Federal and State.

Part (c) was in general dealt with less well. Many candidates focused on either social or economic pressures that affect women's right to equality.

Part (d) was less well handled by the greater number of candidates, with many focusing on gender bias in the law and ignoring the processes and practices of the legal system on women's quest for equality in Australia in 1999. This question opened up the possibility for candidates to explore current legal comment and practice as reported by the media.

### ***Excellent responses***

Candidates in this category successfully dealt with the whole question as structured. In part (a) these candidates successfully recognised the question's emphasis on rights not available to women before 1890. These included the right to vote, own property, sit on juries, enter contracts in their own right, have custody of their children and their ability to divorce. These candidates also clearly indicated the process of change from the 1890s to the present. They also referred to the position of indigenous women and their lack of rights even after the 1890s. Part (a) did not require description of large sections of legislation as this was required in part (b) and these candidates recognised that fact, they did, however, make good use of relevant case law eg. the Harvester Case.

In part (b) these candidates identified the legal changes that have occurred and incorporated descriptions of how these shaped and reflected the changing role of women in Australia. Legislation was effectively used including *Sex Discrimination Act, 1984 (Commonwealth)*, *Anti-Discrimination Act, 1977 (NSW)*, *Affirmative Action (Equal Opportunity for Women) Act, 1986 (Commonwealth)*, *Family Law Act, 1975 (Commonwealth)*, *Married Women's Property Act 1893, (NSW)*, *Jury Act, 1947 (NSW)* and some candidates included the Racial Discrimination Act when they referred to migrant and ATSI women. Candidates in this category integrated these Acts into their responses demonstrating a depth of understanding. A number of candidates also referred to international conventions as influencing legal changes in Australia.

Stimulus material was incorporated into sections (a) and (b) very successfully. The better candidates were able to identify and separate the economic and social pressures. Economic pressures included: 'glass ceiling', rate of pay, childcare cuts, lack of flexible work practices, the need for a second income and single income families. Social pressures mentioned were: lack of access to education and training, care of children, language and cultural barriers, racial barriers, poverty traps, the 'superwoman' syndrome, violent relationships, pregnancy, sexual harassment and cultural expectations within certain groups of Australian society.

Candidates effectively used case law: eg. *Hickey v Hunt*, *Steggles*, *Henderson* as well as reports such as *Halfway to Equal*, *Juggling Time and Pregnancy and Prejudice*.

Part (d) proved to be the discriminating section, with candidates displaying a clear understanding of the effect of gender bias in the legal system. Candidates were able to distinguish between culture, processes and practices and illustrated this with current examples: eg. the pro-male bias of some judges, including relevant comments, the 'boy's club', lack of female representation in the upper levels of the legal profession, problems of understanding and empathising by the police, the Battered Women's Syndrome as a defence. Problems were clearly illustrated for the poor, migrant, professional and indigenous women. Some candidates raised the concept of the 'reasonable man test' as an example of continuing gender bias. Case law was well used: eg. the *Osland* case, the comments of Justices Bollen and Bland, recent magisterial surveys which indicated that there are still problems of bias among magistrates—'nagging leads to violence'. Reports cited were *Equality before the Law*, and other Law Reform Commission Reports and Findings. Candidates also highlighted the fact that most lawmakers are men, both in the judiciary and in Parliament and that this results in limited input from women. These candidates also pointed out that the reduced funding to Legal Aid has led to a decrease in representation for women in civil cases.

### ***Above Average responses***

Candidates in this category attempted to deal with the entire question incorporating the stimulus, however they encountered difficulties in fully addressing part (d).

These candidates answered parts (a) and (b) well, often reflecting the quality of the excellent category candidate. In part (c) these candidates discussed both economic and social pressures but within a limited range. However, they did make good use of cases and current reports, and quoted an extensive range of legislative changes and current legislation. In part (d) these candidates explained gender bias but did not extend it to the culture, processes and practices of the legal system. The most commonly mentioned aspect of women's lives was the workplace.

### ***Average responses***

Candidates in this category attempted to deal with most of the question but encountered difficulties with part (c) and part (d). A majority of candidates referred at some stage in their response to the stimulus but did not analyse it in any way. Many responses were short, descriptive and often repetitive.

Part (a) responses were brief and to the point. Many candidates just listed a few women's rights without any elaboration in relation to the question.

Part (b) was often short lists of legislation with little or no reference to the changing role of women.

In part (c) there was some attempt to describe pressures on the right to equality but with little distinction between economic and social pressures. If cases were referred to, they tended to be descriptive with limited relation to the question. These candidates often listed statistics but did not explain them or link them to the question.

In part (d) candidates focussed on gender bias in the workplace and in some instances had difficulty explaining the term 'gender bias'. The legal system as such was occasionally referred to.

## **Other Disadvantaged People**

### **Question 37**

#### **General Comments**

This question was attempted by 68% of candidates answering the Other Disadvantaged People Case Study. The quality of responses and the ability of candidates to answer the question in its totality was encouraging.

The majority of candidates were able to give an accurate definition of the term *legal capacity* and presented a comprehensive coverage of the problems faced by people with intellectual disabilities and mental illnesses. Candidates were sound in their understanding of the distinction between these two groups in society.

Many candidates related their response to the stimulus and used it as a focus for their assessment of the effectiveness of the legal system in its ability to guarantee rights.

#### ***Excellent response***

Responses in this category were lengthy and displayed a sophisticated use of language. They revealed a sound understanding of the question and were able to evaluate it critically and present relevant argument to support their conclusion.

These responses correctly followed the question format, including reference to the stimulus. Candidates were able to give concise and accurate definitions of *legal capacity*. Some candidates used the definition as per the *Mental Health Act, 1990* and often compared this with the *Mental Health Act, 1958*.

Responses included discussion on various disabilities and distinguished between the mentally ill and the intellectually disadvantaged. Responses reflected a solid knowledge of the *Guardianship Act* and the allocation of a guardian to those incapable of legal capacity.

One of the key problems that were highlighted by candidates was the right of Voluntary vs Involuntary Institutionalisation. Key legislation that was discussed in this area was:

- *Mental Health Act, 1990*
- Mental Health Review Tribunal

Candidates were well versed in the timing of reviews and the make-up of the Tribunal.

Other problems addressed included discussion of:

- Contracts: mention was made of Power of Attorney, the *Contracts Review Act* plus some appropriate cases eg *Gibbon v Wright 1958*
- Housing and the *Residential Tenancies Act*
- Employment and Anti-Discrimination Laws
- Prejudice
- Relationships
- Medical rights
- Education
- Mens rea: criminal capacity and forensic patients

Candidates in this category were able to evaluate critically the effectiveness of the legal system in the context of the Anti-Discrimination legislation and the *Mental Health Act*. Excellent discussion and criticism stemmed from the Richmond Report and the Burdekin Report. Key criticisms focused on the weighting of funding to institutions which conflicted with the current trend to de-institutionalisation, and the outcome of the Richmond Report.

Relevant legislation used included:

- *Mental Health Acts, 1958, 1983 and 1990*
- *Mental Health Care and Protection Act, 1993*
- *Mental Health Amendment Act, 1997*
- *Guardianship Act, 1987*
- *Disability Discrimination Act, 1992*
- *Disability Services Act, 1993*
- *Protected Estates Act, 1983*

### ***Above Average response***

Responses in this category were not as long nor did they display the same level of critical analysis of the question as in the excellent category. Candidates did address the whole question, but by describing rather than evaluating the effectiveness of the legal system.

Correct definitions of legal capacity were presented, but there was limited use of the stimulus in their responses. Candidates usually differentiated between those with a mental illness and those with an intellectual disability and presented a list-type approach to the issue of problems faced. Fewer problems were discussed with very little evidence of any attempt at analysis.

Responses tried to make comments on the effectiveness of the legal system, although this was generally in the form of a comment on the Richmond and Burdekin Reports.

### ***Average responses***

These scripts were short in length and failed to come to terms with the issue of effectiveness. They tended to be descriptive and emotive with little or no analysis. They generally provided a correct definition of legal capacity. This was generally in isolation and not integrated into the response.

It was disappointing to read many prepared answers on the Mental Health Act and the Burdekin Report. Candidates presented lists of problems faced by the disadvantaged groups. These were looked at in isolation and never integrated into the response as a whole.

## **Other Disadvantaged People**

### **Question 38**

#### **General Comments**

This question was attempted by 32% of candidates. Part (d) posed problems for the majority of candidates and many presented a very emotional response that tended to reflect stereotyping of social security applicants.

Examiners were disappointed with the lack of integration and reference to the stimulus within scripts. On the whole, parts (a), (b) and (c) were answered satisfactorily by most candidates.

#### ***Excellent responses***

(a) Here all candidates were able to list and succinctly explain categories of disadvantaged people receiving social security. These included:

- Unemployed
- Aged
- Youth
- Homeless
- ATSI
- Mentally and physically disabled
- War Veterans

Whilst this section required only a list and explain approach, many candidates introduced problems with the legislation.

(b) In this part candidates were able to nominate and explain the problems suffered by disadvantaged groups. This tended to centre on poverty and its associated social problems such as low literacy, poor health, earlier mortality and poor life expectancy.

Candidates mentioned social and psychological factors such as low self-esteem, alcohol and drug dependence, suicide and domestic violence. Candidates observed that poverty was often 'inherited' from one generation to the next amongst social security recipients (and the concept of the 'poverty trap' for low-income earners) as they become dependent on welfare.

The concept of 'sudden poverty' was sometimes discussed, and the social trauma of isolation and dislocation caused by unexpected unemployment, death of breadwinner or separation from parents resulting in unaccustomed reliance on social security payments.

Appeal procedures through Social Security Appeals Tribunal and AAT were mentioned.

- (c) Here most candidates were obviously familiar with the *Anti-Discrimination Act, (NSW)* and *Social Security Act, 1991* but could not do more than discuss the intent of this legislation. Most also recognised that discrimination is not abolished by enacting legislation.

The concept of the 'social wage' through the provision of Medicare, public housing and free education was discussed. Income support testing (via income or assets) was also comprehended. The better candidates included a detailed discussion of benefits such as the 'dole', aged and disability pension, allowances and concessions. Even in excellent responses very few candidates dealt with the issue of access to the law and Legal Aid.

- (d) In part (d) the examination of attitudes of the community toward social security recipients revealed stereotypical attitudes.

Most candidates recognised the social stigma of being labelled 'dole bludgers' and looked to the *Anti-Discrimination Act, 1997 (NSW)* as legislation which could counter these attitudes. However quoting cases prosecuted under this legislation was not attempted.

Stereotyping the poor as criminals and drug dealers, particularly the attitudes of police (law enforcers) towards such people was also discussed.

Other discussions focussed on government-funded income support which was linked to the *Social Security Act, 1991*. Centrelink and the restructured employment agency sector were also mentioned.

The obvious link was the concept of mutual obligation resulting from 'work for the dole' schemes which candidates saw as a reaction to the 'dole bludger' stereotyping.

Generally however candidates found it difficult to go beyond these three issues.

#### ***Above Average responses***

- (a) The candidates had listed at least four categories of applicants but gave very brief explanations.
- (b) Scripts revealed sound knowledge and understanding of problems experienced. They discussed some legislation, mainly referring to the Social Security Act and AAT.
- (c) The disadvantages were listed and various pieces of legislation were mentioned. Scripts presented limited analysis of the Federal and State legislations.
- (d) The influence of the community on the low earners was mentioned but again the evaluation of the law was very limited. Scripts tended to focus on one attitude sometimes becoming emotive rather than evaluative.

#### ***Average response***

These scripts were generally short in length and repetitive in content. Parts of (a) and (b) were answered adequately. Here candidates failed to make a real attempt at evaluation. They failed to come to terms with part (d). Part (d) was often answered in terms of a general comment that applicants were dole bludgers. These candidates were unable to give any form of evaluation in this part.

## 3 Unit (Additional)

### Section I - Challenge: Global Environmental Protection

#### Question 1

##### General Comments

Around 87% of candidates attempted this question with the marine environment being the most popular depth study. Wildlife and Atmosphere followed, with a minority of candidates attempting Natural Resources.

Responses to questions in this module were not as comprehensive as those in previous years. There was a lack of relevant new case studies and legislation was dated. Students are encouraged to research the latest current legislation and case studies. eg. Sydney oil spill (1999), Laura D'Amato oil spill, the *Biodiversity and Conservation Act, 1998*, and the Jabiluka conflict.

##### *Excellent responses*

Students in this category addressed all parts of the question and showed a deeper insight into the stimulus material.

They demonstrated good essay writing skills and supported their arguments with a range of current and relevant legislation and case studies. eg *The Biodiversity and Conservation Act, 1998* and the Laura D'Amato oil spill in Sydney Harbour 1999.

Candidates were able to describe and analyse the interface between Australian domestic law and public international law. They were able to relate such concepts as intergenerational equity, soft law, hard law, ecological integrity, precautionary principle, sustainability and 'polluter pay.' These concepts were often illustrated with examples.

The structure of these responses was superior in that it covered thoroughly all aspects of the topic, achieving the required balance between Core material and Depth Studies as required by the Syllabus. Significant international bodies such as the U.N., I.C.J., W.T.O., N.G.Os (Greenpeace and IUCN), I.G.Os and Australian bodies, for example, the Land and Environment Court and Greenpeace, Australia were also mentioned.

The better candidates were also able to cite relevant or recent case studies such as the depletion of gene pools of selected species, ecotourism, issues for whaling, Antarctica and fishing industries.

International dispute resolution mechanisms were also described and analysed, eg the I.C.J.

##### *Above Average responses*

Candidates in this category attempted to address the whole question but with little or no reference to the stimulus. Evaluations were shorter and often the effectiveness of all issues was not fully explained. These students tended to examine one depth study in detail but the second one was not examined in the same detail.

Students were selective and more limited in the range of organisations, treaties, conventions, regimes and examples discussed. Often there tended to be an imbalance in their discussion of issues relating to National and International Law.

General use of appropriate terminology from the Core was adequate.

### ***Average responses***

In this category the responses tended to be mostly descriptive, often prepared and lacking in analysis. They failed to address both the stimulus and the question adequately and there tended to be an imbalance in the treatment of national or international issues. These candidates often failed to balance the Core and Depth Studies.

## **Question 2**

### **General Comments**

This question was attempted by 13% of candidates. The very limited number of excellent responses reflects the challenging nature of the question.

The narrow scope of the first part of the question (compare the approaches of two cultural traditions) limited responses.

Prepared answers tended to be the norm, due to the candidates' inability to understand and interpret the stimulus.

Many chose to ignore the competing environmental and developmental issues and therefore were unable to evaluate the effectiveness of national and international bodies.

### ***Excellent responses***

Only a small percentage of candidates could interpret the specifics of 'the various cultural traditions' ie. the indigenous view, the scientific view and spiritual renewal. They were also able to show an understanding of the terms 'co-operation and unity.' The 'indigenous view of country as home' is reflected in the preservation of the habitats of wildlife and the 'scientific view of wilderness as essential to the protection of biodiversity' aims to preserve the species.

These candidates produced responses that demonstrated excellent analysis of régimes, concepts and issues and their arguments were reinforced by relevant legislation, conventions, and case studies. The better candidates were able to assess the impacts of legislation on indigenous peoples and local communities, for example, the Earth Summit's five important principles addressing both indigenous and scientific views.

Most responses indicated clear understanding of the relevant international and national bodies eg. GESAMP, Caring for the Earth, WWF, ICCJ, NGO's (IUCN). They were then able to demonstrate their knowledge of treaties and organisations relevant to their chosen Depth Studies, for example, cities, biodiversity conventions.

### ***Above Average responses***

Candidates in this category found it difficult to interpret the essence of the stimulus. Often key words relating to cultural traditions were merely restated. Some candidates failed to align the key legal responses to the two cultural traditions chosen by them.

Generally the better candidates were able to address most parts of the question using relevant régimes, treaties and legislation. Analysis was limited due to the challenging nature of the question.

### ***Average responses***

Candidates in this category tended to attempt the question in general terms from two perspectives. Some candidates tried to interpret the stimulus and failed to understand the view expressed in it. Others ignored the stimulus and seemed to resort to prepared responses.

With these responses there was a more pronounced imbalance between the Core and Depth Studies compared to better responses.

## Section II - Challenge: Technological Change

### Question 3

#### General Comments

73% of the candidates doing the Challenge of Technological Change module chose this question and the majority of those used Bioethics and Biotechnology and Multimedia as their Depth Studies.

In general, the quality of responses, even the prepared responses, was an improvement on previous years, with more students attempting to use the stimulus and actually refer to it. However, there was still a tendency by many candidates simply to quote the stimulus, rather than actually to refer to it and integrate it into their response. In general, there was more of an attempt to evaluate and to consider effectiveness, but unfortunately, not always with reference to the question.

The responses to this question tended to be longer than those for Question 4 and this question attracted more prepared answers.

A significant number of candidates who started answering Question 4 ended up changing mid-response and answering Question 3 instead.

Students should be encouraged to direct their responses more closely to the question and to ensure that they aim for a balance of material from the Core and their Depth Studies. They should also be advised to identify their Depth Studies very clearly and early in their response.

#### *Excellent responses*

Excellent responses answered all parts of the question using a balance of material drawn from the Core and the Depth Studies.

The first part of this question required the candidates to consider the extent to which it is necessary for a nation to be part of an international régime to benefit from, and control, technological change. The excellent responses explained how a nation could benefit from and control technological change, and how being a part of an international régime may or may not facilitate this.

For example, the better candidates were able to explain how some nations benefit because they are not part of any particular régime. An often utilised example was that of China, with numerous students pointing out that China is actually benefiting from the use of technology which allows it to engage in large scale piracy of CDs and computer software. China has thus benefited from technological change and this would be lost were they part of an international regime.

The other side of the coin is that nations like the US are more likely to benefit from being part of an international régime such as that to protect copyright, for example, through being signatories to international instruments.

Candidates seem to be making better use of the Syllabus than they have in the past. The best responses were those that picked up on the issues associated with the focus questions (as outlined in the Syllabus) and incorporated them into their responses. For example, in response to the first part of this question, many students referred to 'the global village' concept and also the vulnerability of indigenous peoples and local communities.

The second part of the question required candidates to evaluate the effectiveness of national and international law in creating a coherent, cooperative global response to technological change. The best candidates began by explaining this concept and some went on to consider whether or not this was achievable.

The excellent responses were characterised by the candidate's ability to outline comprehensively yet succinctly the relevant national and international law, using examples drawn from their Depth Studies as well as the Core. In doing so, they were able to analyse the law in relation to whether or not it succeeded in creating a coherent, cooperative global response to technological change.

For example, those candidates who had studied Bioethics and Biotechnology as one of their Depth Studies made the point that Australia, with the limitations inherent in our Federal structure and the associated Constitutional division of powers, didn't even have a coherent, cooperative national response. Consequently, how realistic was the achievement of a coherent, cooperative global response? The classic example here referred to euthanasia laws and their variance from State to State or Territory.

The better candidates also recognised that, since the question called for an evaluation of national law as opposed to Australian law, it was therefore appropriate to refer to the laws of other nations as well. In doing so, these candidates clearly demonstrated their ability to compare and analyse the differences between Australian law and laws of other countries as indicated in the Syllabus Outcomes.

Similarly, the best candidates were able to:

- describe and analyse the mechanisms for developing international law, as well as
- describe and analyse the institutions and the limitations of international law (as in the Syllabus Outcomes), by referring to appropriate conventions, treaties and international organisations.

In demonstrating this ability, the better candidates raised various issues associated with getting nations to agree on international law, particularly in the area of Bioethics and Biotechnology, such as cultural conflicts, as well as the conflicting needs and interests of developed versus developing nations.

Excellent responses also featured some recognition of the relationship between international and domestic law and were able to give examples of where this did or did not exist. For example, by reference to the Washington Treaty on Intellectual Property in Respect of Integrated Circuits (1989) and Australia's *Circuits Layouts Act, 1989*.

Competent use of the stimulus was once again a feature of the excellent responses with these candidates doing more than merely quoting it. Instead, they were able to refer actively to the stimulus by integrating it into their response. For example, in their evaluation, the better candidates illustrated the inadequacy of technology's being regulated by a 'multitude of nation-based legal structures' by raising the issues of 'law shopping' by individuals and corporations. That is, moving from nation to nation, in search of more friendly legal structures where activities such as embryo research or drug testing, for example, could be carried out with relative ease.

As expected, excellent responses were those which used appropriate terminology with ease and confidence, and thus clearly demonstrated ability to use vocabulary in the international legal context in accordance with the Syllabus Outcomes.

The excellent responses were also superior in their utilisation of cases and other examples which they explained quite succinctly, and which they integrated and used appropriately, in order to illustrate the candidate's argument. Commonly used cases and examples included:

Strunk v Strunk, 1969

Airedale NHS Trust v Bland, 1993

Computer Edge Pty Ltd v Apple Computer Inc., 1986

Karen Quinlan

Diane Blood

### ***Above Average responses***

Above average responses were those which displayed good understanding and attempted to answer the whole question.

They generally contained numerous relevant examples, cases and law, but these were not utilised nor integrated as well as in the excellent responses. These candidates tended to produce responses which left the reader to infer how the various laws, cases, and examples illustrated the issue of effectiveness, rather than being clearly explained by the candidate. Accordingly, the above average candidates referred less directly to the question.

Candidates in this category attempted to deal with the first part of the question, but tended to ignore the issue of 'benefit from, and control'.

With respect to the second part of the question, these responses attempted to evaluate the effectiveness of national and international law but lacked the depth of analysis of an excellent response. These candidates tended to evaluate quite well, but more generally and with less reference to a 'coherent, cooperative global response'. As such, they were clearly not dealing with the question in its entirety and so were more limited in their ability to describe and analyse the mechanisms for developing international law.

Use of the stimulus was more limited in these responses but most candidates still attempted to make some reference to it.

Candidates in this category also showed a tendency to favour slightly one depth study over the other. Time management during the actual examination may have been an issue for some candidates.

Use of appropriate terminology was generally evident in these responses.

### ***Average responses***

The average responses did not deal with all of the question and made little or no direct reference to the question.

In dealing with the second part of the question, any evaluation tended to be focused on a 'global response' generally, rather than a '*coherent, cooperative* global response'.

Responses in this category tended to be very descriptive and contained limited legal analysis and evaluation. They were characterised by either exhaustive lists of legislation/conventions with no explanation as to how or why they were relevant, or by lengthier explanations that dealt with only one or two examples. Thus, a number of candidates explained the Karen Quinlan case in great detail, but never alluded to how or why it was relevant in the context of the development of international law.

Average responses made little or no reference to the stimulus. They tended merely to quote parts of the stimulus, rather than to refer to it. Because the question contained words which had been used in the stimulus, it appeared that some of the candidates in this category felt that by regurgitating the question, they had made sufficient reference to the stimulus.

## **Question 4**

### **General Comments**

27% of the candidates doing the Challenge of Technological Change Module chose this question and again, the majority of those used Bioethics and Biotechnology and Multimedia as their Depth Studies.

This question was more specific in its focus than Question 3, although the responses often weren't and they tended to be shorter in length. There was less evidence of prepared answers, but the responses, in general, were not as strong as those for Question 3.

Students who had studied the Multimedia Depth Study were better able to cope with this question, perhaps because the content of this Depth Study enhances the material covered in the Core ,

particularly with respect to intellectual property. Once again however, there was a tendency towards an imbalance in the treatment of the Core and the Depth Studies.

Attempts by candidates to use the stimulus appear to have increased and there was greater use of relevant legislation, cases and examples.

Likewise, more candidates attempted some evaluation, but the degree of interpretation needed in order to answer this part of the question specifically was lacking in many responses. Few candidates could fully address the implications of the public versus private issue.

### ***Excellent responses***

Excellent responses specifically answered all parts of the question using a variety and balance of material from the Core and two Depth Studies.

The first part of the question required the candidates to outline and describe the international instruments and agencies dealing with the protection of intellectual property. The best responses tended to begin by actually defining the nature of intellectual property. In doing so, they displayed a comprehensive knowledge of aspects of interest in technology such as copyright, patents, trade marks, trade secrets, and designs, as outlined in the Syllabus. They then distinguished between, and explained the nature of, instruments and agencies, before going on to outline and describe those which specifically dealt with intellectual property.

The best candidates were able to outline and describe a wide variety of instruments and agencies very clearly and succinctly. Accordingly, they were clearly able to describe and analyse the mechanisms for developing international law and the institutions of international law, as per the Syllabus Outcomes.

The second part of the question required candidates to evaluate the effectiveness of national and international law in balancing the desirability of encouraging innovation and protecting technology while seeking to ensure that technologies are made available in the public interest.

The excellent responses were those which demonstrated a solid understanding of the issues, as raised in the Syllabus, particularly that concerning the need to balance private rights versus public interest. An often utilised example was that of the Wellcome Company's monopoly of the AZT treatment for AIDS which was initially priced at \$US 10000 a year. The issue of public interest was obvious here, but the best candidates also made reference to the high cost of research and development incurred by the company, and thus dealt effectively with both sides of the issue. These candidates also made good use of *Millar v Taylor* in establishing the importance of recognising private rights.

Excellent responses contained a comprehensive yet succinct outline of relevant national and international law using examples drawn from both the Core and each of their Depth Studies. Each example was explained and then clearly related to the issue of private rights versus public interest. To illustrate, Australia's *Patents Act, 1990* was often cited as an example of a law which very effectively achieves a balance between private rights and public interest in that the patent is granted for 20 years, thus protecting the inventor's rights, but the invention is made public, hence allowing public interests to be served.

Competent use of the stimulus was once again a feature of the excellent responses. Candidates recognised and commented on the difference between developed and developing nations in terms of their access to, and level of benefit from, technology. They then expanded on the public interests versus private rights issue in relation to developed and developing countries. Some of the better candidates even used the stimulus to suggest that it was not just the developed countries in which there was a need to establish a 'system for managing intellectual property and instilling a culture of awareness of intellectual property rights'. The argument was that this was also required in the developing countries in order to help make international law more effective.

Excellent responses used appropriate terminology with ease and confidence, and thus clearly demonstrated an ability to use vocabulary in the international legal context as per the Syllabus Outcomes. They were also superior in their reference to cases and other examples in that these were explained quite succinctly, but used appropriately, in order to illustrate the candidate's argument.

### ***Above Average responses***

Above average responses displayed good understanding and attempted to answer the whole question, although not in the same depth as the excellent responses.

These candidates were able to outline and describe a number of international instruments and agencies dealing with the protection of intellectual property, although they tended not to differentiate between the instruments and the agencies. Comprehensive definitions of intellectual property were more rare in this category.

In terms of evaluation, these candidates recognised the private rights versus public interest issue and attempted to evaluate the effectiveness of national and international law in relation to this issue. Reference to both national and international law was included and the evaluation was generally quite good, but lacked the depth of analysis of an excellent response. These candidates also made good use of cases and examples, but these were not quite as well integrated as in the excellent responses. Their responses also tended to be a little more general and less focused on the question. As such, some candidates strayed slightly away from a focus on intellectual property.

With respect to the use of the stimulus, these responses were characterised by quite limited use of the stimulus, with a tendency towards merely quoting quite small sections of it rather than actually referring to it. Unlike the excellent responses, few candidates in this category mentioned the differences between developed and developing nations. They also showed a tendency to favour one depth study over another or to focus more heavily on the Core rather than on the Depth Studies.

Use of appropriate terminology was also evident in the above average responses.

### ***Average responses***

Average responses were those which did not address all of the question and they showed a tendency to focus far more on the first part of the question, frequently giving the second part quite cursory treatment.

In them candidates ignored the need to focus on intellectual property and they therefore included a variety of other instruments and agencies not strictly involved with protecting intellectual property.

Responses in this category tended to be quite descriptive and contained limited legal analysis and evaluation. Many simply evaluated the effectiveness of law generally, rather than with reference to the issue of public interest versus private rights.

Where cases, law and examples were used, they tended merely to be mentioned, without detailed explanation, and often without any explanation as to why they were worthy of mention at all.

Average responses were also characterised by an imbalance in their treatment of national and international law and a similar imbalance in the use of material from the Core and the Depth Studies.

Average responses generally made little or no mention of the stimulus, much less a useful reference to it. Unlike the average responses for Question 3, a significant number of average responses for Question 4 failed to quote the stimulus, thus indicating some difficulty in reconciling the stimulus with the question.

## Section III - Challenge: World Order

### Question 5

#### General Comments

This question was attempted by 50% of candidates who attempted this section.

The most popular Depth Study was Military Conflict, with Displaced Persons and International Crime being equally represented as the second choice. Transnational Trade was dealt with by very few candidates.

Due to the complexity of the question many students had difficulty in interpreting it which led to problems in structuring their responses. This was shown in the limited incorporation by students of the stimulus material in their essays; few utilised it in their arguments.

Students tended to ignore the question in writing their introductions. Textbook definitions of terms such as 'world policing' and 'world order' were common. These introductions were often technical in nature and therefore did not allow candidates to develop their own line of argument in relation to the question.

While many candidates displayed a good knowledge and understanding of the course content, only a limited number demonstrated the ability to use this material to support and develop a cohesive argument in response to the question.

The term 'world policing' was variously interpreted as 'united international action', with or without the use of force where threats to sovereignty were an issue. The term 'perception' within the stimulus was frequently used synonymously with 'factors generating conflict' and only the better students clarified the relationship between the two.

Too few students related the securing of settlements to world order conflicts as evidence of the effectiveness of world policing. Most interpreted the use of UN peacekeeping forces to be evidence of settlement rather than a step towards it: eg, the Korean conflict was utilised as a common example of successful UN intervention, but almost no candidate recognised the fact that the conflict remains unresolved fifty years on.

#### *Excellent responses*

These answers addressed the whole question or responded in an analytical manner to the issues raised by the question, namely those responses of the international community to the impact of world policing on national sovereignty and the idea of international co-operation in a world where global consensus does not exist.

Candidates in this range were able to incorporate their Depth Studies into their line of argument effectively, saying, for example, that states find it easier to co-operate in the area of International Crime than they do with Military Conflict as the issues are usually less likely to affect sovereignty and are more likely to be in the national interests of States. Anti-hijacking, piracy and anti-terrorism measures were interpreted in this manner.

These responses clearly identified and discussed factors generating conflict such as cultural, religious, ideological, and economic, disputes over territory and resources and different perceptions of them that have resulted in conflict. This was usually done in the early part of the best essays, and set the direction of the argument. Examples such as Iraqi expansionism leading to the Gulf War, political takeover in East Timor and cultural and religious conflict in Kosovo were frequently cited. However, the best candidates differentiated between the nature of these conflicts.

The ability of the world community to respond was equated with a post-Cold War consensus that naked aggression by one country against another as in the Gulf War was clearly unacceptable to the international community. There was less unanimity of resolve where human rights abuses within sovereign states occurred.

The ability to discuss customary law and its ongoing development particularly in the human rights area was also a distinguishing feature of Excellent responses.

Most candidates interpreted 'national' response as referring to Australia only, but the use of other individual nations' responses enhanced some answers, eg. Australia's role in East Timor, leading to the coalition of friendly nations, the provision of a safe haven for Kosovo refugees. This was frequently used to illustrate Australia's role as a 'good global citizen'.

These candidates clarified their ideas. This was demonstrated by those who distinguished between differing perceptions in the area of human rights and the impact of ideology, the support of ICCPR by democratic nations and the support of ICESCR by the former Communist Bloc countries. This was extended to present day conflicts where human rights are interpreted differently by China (eg Tibet) and the USA, (eg Kosovo) demonstrating different perceptions and the impact on global consensus formation so that final international agreement might be contingent upon weakening the degree of consensus.

In the course of discussion Excellent answers usually reached the following level of achievement with respect to the Syllabus Outcomes:

- Students used sophisticated vocabulary in the context of international law: economic sanctions, ideology, ethnic conflict, diplomacy and coercion, non-refoulement, sovereignty;
- There was successful analysis of international dispute resolution mechanisms, including the Security Council and the problems associated with the veto;
- There was successful analysis of international law related to the failure of important states to sign and implement treaties such as the Comprehensive Test Ban and problems relating to extradition;
- Students successfully evaluated the relationship between domestic and international law usually by examining the Australian response but sometimes by evaluating the response of other nations. Specific examples were given of Australia's adherence to the rights of other states and respect for the sovereignty of other states.

### ***Above Average responses***

Analysis at this level was less sophisticated and candidates frequently gave examples of international policing, discussed the strengths and weaknesses of responses to conflict and identified examples of their Depth Studies which are current such as Kosovo and East Timor. The analysis was generally less balanced in terms of Core and Depth Studies with an emphasis on 'policing' rather than on 'settlement'.

In the course of discussion these responses usually reached the following level of development with respect to Syllabus Outcomes:

- Analysis of mechanisms in securing settlement of world conflicts through intergovernmental organisations such as the UN and regional organisations and non-government organisations.
- Analysis of international dispute resolution mechanisms such as the ICJ and ICC demonstrating an understanding of the ICJ's limited power and the ICC's embargo development.
- A well developed understanding of relevant legal vocabulary regarding peacekeeping, jurisdiction, refugees (within the meaning of the Convention Relating to the Status of Refugees) and convention.

- They described and analysed institutions of international law and their limitations, such as the Security Council and the limitations inherent in the veto.
- Unfortunately there was little on the various ways in which disputes can be resolved in a co-operative way between nations: focus was on states' ability to ignore international convention, the unenforceable nature of ICJ decisions and the capacity of states rights to non-interference by the UN under Art. 27 of its Charter.

### ***Average responses***

The average response concentrated primarily on national and international policing without considering causal factors in any depth. Here candidates gave examples of UN peacekeeping operations, UN peace-making efforts through military intervention, international criminal investigations, (eg. drug investigations, human rights abuses such as genocide), reduced protectionism to promote global free trade, and efforts to address the needs of displaced persons, particularly refugees. However, these were discussed in general terms in a descriptive rather than an analytical way.

Only some outcomes were achieved and this was done in a relatively unsophisticated way, eg.

- International treaties were listed, or at best described, rather than analysed;
- The international legal framework was described rather than analysed;
- There was almost no understanding of the international framework for the operation of the Australian legal system.

## **Question 6**

### **General Comments**

50% of candidates attempted this question with most doing the Depth Study Military Conflict and approximately an equal number doing Displaced People and International Crime.

The stimulus in this question was brief and straightforward and more candidates were able to use it effectively. The stimulus also related more directly to the question and it was utilised by students as a basis of their argument. The issue of acceptability of processes of negotiating World Order was linked to examples which allowed students to illustrate its effectiveness, eg. Serbia's response to NATO's bombing of Kosovo.

The better candidates clearly outlined a range of approaches to achieving World Order by acceptable means such as:

- co-operating on development and problem-solving (eg. through UNDP);
- mediation and discussion in global forums (UN General Assembly, ICJ);
- use of non-violent sanctions and economic sanctions including the withdrawal of IMF funds in Indonesia, and trade embargoes;
- the use of different levels of military intervention from 'peace-keeping' to 'peace-making' (Security Council resolution). The best responses were able to distinguish between the two and recognise a continuum of progressive approaches to achieving World Order. There was generally little recognition of any non-military process in promoting World Order and many students referred to the lack of power of international bodies to enforce decisions (eg. voluntary acceptance of ICJ decisions) but failed to recognise the importance of peace building, diplomacy and negotiation in promoting World Order.

There is a general need to assist students to identify clearly the relationships between international institutions eg. a surprising number of even above average candidates considered NATO to be part of the United Nations.

### ***Excellent responses***

The best answers discussed a wide range of institutions ranging from the UN and its agencies through to IGOs (such as NATO) and NGOs (such as the Red Cross, Amnesty International and the World Council of Churches) and were able to evaluate the strengths and weaknesses of these organisations in promoting World Order, eg the wide recognition that NGO's operate more effectively to alleviate human rights suffering within sovereign states where IGO's and the UN may be seen as intruding on sovereignty.

In the course of discussion, reference was made to international instruments such as the Geneva Conventions relating to the treatment of prisoners and civilians, Convention on Torture and Other Cruel and Inhuman Treatment or Punishment, and the Vienna Convention on Diplomatic Relations. These were used to support arguments regarding the effectiveness of these instruments in achieving World Order.

The better students were able to evaluate the effectiveness of negotiations which empower countries to accept World Order initiatives rather than imposed conditions which may be unacceptable and therefore ineffective. Examples included the response to the Yugoslav government of Milosevic, the actions of the TNI (Indonesian Army) in East Timor and Saddam Hussein's response to UNSCOM. A frequent conclusion about acceptable processes despite the lack of enforceability was reached about the work of the ICJ.

The distinguishing features of these responses was the successful demonstration of the achievement of the following Syllabus Outcomes:

- The recognition and analysis of institutions of international law such as the United Nations, IGOs, the ICJ and NGOs while appreciating that they do exhibit limitations in practice;
- Distinguishing the various ways in which disputes can be resolved co-operatively between nations despite the paradoxical nature of the international recognition of sovereignty under the Montevideo Convention and US global action.
- Analysis of the interface between Australian domestic law and Australia's international efforts in implementing public international law through current actions in East Timor and Kosovo refugee crisis;
- Use of questioning approach to issues including the media's role in forming international opinion and domestic responses.

### ***Above Average responses***

While these responses substantially addressed most of the question the quality of their treatment of the Depth Studies was generally not as well balanced as the Excellent responses.

Military Conflict tended to be over-emphasised to the detriment of the second Depth Study. This was evident in the less effective distinction between Core and Depth Studies. The use of reference to military force in the stimulus probably encouraged this bias.

Students who referred to East Timor and Kosovo as case studies were generally able to illustrate Australia's response to both in terms of peacekeeping (INTERFET) and through giving temporary safe haven to refugees. When applied to international and national approaches in the Depth Studies of Displaced People and Military Conflict, this was frequently seen as evidence of Australia's effectiveness as a 'good global citizen.' However, this was frequently the limit of the analysis of the national response.

Outcomes generally satisfactorily demonstrated by Above Average responses were:

- An understanding of the relationship between international and domestic law eg. legislation to implement international conventions such as the Single Convention on Psychotropic Drugs and Aircraft Hijacking Conventions such as the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation;
- Analysis of important international instruments including the Universal Declaration of Human Rights, the Hague Convention for the Peaceful Settlement of International Disputes and the Convention on the Prevention and Punishment of the Crime of Genocide;
- The attempt to analyse how domestic and international legal systems respond to the challenge of World Order.

### *Average responses*

Average answers, while demonstrating a reasonable understanding of the Topic Area, tended to place most emphasis on their Depth Studies to the detriment of the Core . Many of them focused on current case studies which were described rather than analysed. East Timor and Kosovo, as current areas of conflict, dominated answers in this response range.

There appeared to be a considerable amount of rote learning of instruments which were mostly listed and applied to the issues.

A number of candidates gave limited explanation of the mechanics of institutions (eg. the United Nations' agencies and its composition), to the detriment of their analysis of the key issues.

Limited achievement of the following Course Outcomes were prominent:

- identification of the need for and elements of World Order;
- utilisation of appropriate terminology in relation to international law;
- a limited understanding of the international framework for the operation of the Australian legal system.

## Section IV - Challenge: Indigenous peoples

### Question 7

#### General Comments

This question was attempted by 65% of candidates. The question required candidates to explain the common features of the history of indigenous peoples and to relate international and national law responses to practical outcomes. Too few candidates referred to the stimulus material and integrated it into their answers. Too much generalist discussion was spent on common features without specific examples. Many candidates listed national and international responses rather than evaluating the responses by providing sufficient Common Law but not sufficient case law. The most common Depth Studies were Self Determination, Land Rights and Human Rights, few candidates dealt with Historic Debt.

#### *Excellent responses*

The introduction of these responses created a sense of understanding of the relevance of historical truths to the current disadvantages experienced by indigenous peoples. This was done through examples, which related to the two Depth Studies they were going to develop and through reference to the Core .

Excellent responses integrated a large range of legislation and cases from both Depth Studies. The better responses used organisations and international law relevant to the particular Depth Studies, to analyze the international framework for the operation of the Australian legal system.

Candidates clearly stated that, whilst individual peoples have experienced different actual histories, the general elements of dispossession of traditional land, discrimination, loss of cultural identity, breaches of treaties, where treaties existed, the injustice of the Eurocentric doctrine of terra nullius, genocide, segregation and general mistreatment by the colonising or invading nation was common to many indigenous peoples. The best responses provided examples of some of the above as they related to ATSI and others such as Maoris, Inuit etc. The two Depth Studies were clearly identified and interwoven (especially self-determination, land rights and human rights).

As these candidates discussed the Depth Studies they referred back to the common features of indigenous peoples around the world, indicating clearly whether the national or international responses have led to practical outcomes. The excellent responses critically evaluated whether the outcomes were practical or not.

Whilst these responses used most of the criteria from each of their Depth Studies, the key feature was their ability to interpret the question, use the stimulus appropriately and develop appropriate examples to support their conclusions. Analysis relating to the usefulness/effectiveness of the national and international actions in bringing about practical outcomes which have made a difference to ATSI and other indigenous peoples around the world was evident in these responses.

#### *Above Average responses*

These responses clearly identified most of the common features of the history of indigenous peoples and they clearly discussed the Depth Studies, they also included most of the relevant material from the Core . However, the links between the Core , the Depth Studies and the question were not as clearly developed and the use of stimulus material was limited.

The national and international responses were presented to a large extent and most of the practical outcomes outlined, for example, land rights and human rights, however the conclusion as to how practical these outcomes have been in addressing or improving the position of indigenous peoples was not as explicit as in the excellent answers.

The information on the national and international actions was accurate and relevant to the question, the following examples of content were common in many responses:

- Cobo Report
- The role of the ICJ and the UN General Assembly
- The role of NGO and IPO
- Working Group on the Rights of Indigenous People
- Rio Declaration
- International Decade of Indigenous Peoples
- Council for Aboriginal Reconciliation
- ILO Convention 169
- Koowarta Case
- Mabo v State of Qld 1992
- Wik decision
- Proposed changes to Preamble of Australian Constitution

Some of these did not relate the outcomes of each depth study to the common history of indigenous peoples but tended to focus more on the practical outcomes, with limited evaluation of the practicality of the outcomes. However discussion was included on the plight of other indigenous peoples such as the Tahitians, East Timorese, Burmese, Sami (Scandinavia) and the Inuit (Canada) as well as ATSI.

### ***Average responses***

In most cases the two Depth Studies were mentioned, however the links of the Depth Studies to the common features of the history of indigenous peoples were not developed. The common features of the history of indigenous peoples were listed, these, however, were limited explanations and few used examples from a global perspective or spent the bulk of their answers on this section rather than moving on to the national and international responses.

The outcomes of national and international responses were listed but little evaluation of the practicality of these outcomes was done. Most of the responses were descriptive and while depth of content was good, there was less depth than in the better responses. Some had an imbalance in the presentation of the Depth Studies and used few case studies (many did not go beyond Mabo and the ILO Conventions 107 and 169).

## **Question 8**

### **General Comments**

This question, which was attempted by 35% of candidates, required them to discuss the meaning of the term “indigenous peoples” and evaluate the international and Australian responses in relation to land, language and cultural rights. As with Question 7 there were a large number of responses which showed a reasonable understanding of the issues but did not use case studies to illustrate or explain their arguments satisfactorily. Many responses outlined the number of indigenous people worldwide, the number of countries in which they exist, named a few of the more prominent groups and gave the definition ATSI use for identifying themselves. There was little explanation of the global distribution of indigenous peoples or of differences in self-identification. There was also a lack of higher order responses that explored the links between Depth Studies such as Land Rights and Self-determination.

Those who used the stimulus took it too literally. There was (again) a lack of reference to the issues it raised to build an answer. Many candidates appeared to have difficulty in interpreting the stimulus. There was some evidence of prepared 'shopping list' type responses.

### ***Excellent responses***

A candidate in this category successfully dealt with the whole question. The meaning of the term 'indigenous' was discussed with reference to the origins and development of the concept in the international legal framework and the development of the 'indigenous/settler' dichotomy in specific cases. The two Depth Studies were clearly identified and used to provide evidence and examples of attempts to define indigenous peoples and the failings of these. The concept of 'peoples' and the role of self-identification by indigenous peoples are clearly discussed, using case studies, analysis of conventions, reports, treaties etc.

The relationship between development in the international legal framework and domestic legal frameworks is clearly explained, with evidence from the Depth Studies being used.

These responses provided a critique of actual and possible international and domestic responses and the limits to these responses. Legal and social factors were distinguished between and incorporated into answers. Concepts such as Autonomy, Land Rights, Self-Determination, independence, colonialism etc were clearly explained and used to develop arguments. Case studies etc were used as integral parts of discussion and to develop arguments, not inserted as 'semi-detached' information.

These answers showed breadth and depth of content, a balance between Depth Studies, using Australian and international examples.

### ***Above Average responses***

These responses clearly identified the Depth Studies and discussed the difficulties involved in giving meaning to the term 'indigenous people'. Reference is made to the role of indigenous peoples in identifying themselves, but discussion/analysis was more limited than in the excellent responses.

The two Depth Studies and national and international responses were both used but there was a more limited range of examples and less depth of analysis. The balance between Depth Studies and domestic and international law was not as good as in the excellent responses and the reference to the examples, whilst clear, was not as well integrated into the arguments presented.

The situation of ATSI and the limitations of International Law were reasonably well explained.

### ***Average responses***

These responses tended to have a general understanding of the issues and identified the Depth Studies used. The range of case studies used and instruments referred to tended to be limited, or presented in a 'list', with little analysis. Many responses were heavily weighted toward either domestic or international responses with little reference to the one not dealt with in depth. Many responses relied on one Depth Study more than the other.

There was little interrelating of the Depth Studies or case studies contained within them. These responses tended to be descriptive and superficial with little analysis. Not all aspects of the questions were addressed and little or no reference was made to the stimulus material.

Many attempts to use the stimulus material tended to be inappropriate or without a link to the rest of the response.