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1998 Higher School Certificate Examination Report Legal Studies

General Comments

In 1998 6316 candidates sat for the 2 Unit examination and 1268 for the 3 Unit examination. In Section II – the Options, the overall standard of candidates responses was excellent with good use of the 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). There was overall more candidates answering the holistic question in 1998 than in previous years. In Section III – The Case Studies, the overall quality was excellent. Fewer candidates responded to the case studies on Migrants and Other Disadvantaged People but the quality here was improved. The rest of the candidature concentrated on the other two case studies where the quality of the response was excellent.

Section I

The multiple choice answers were as follows.

Question	Answer	% Correct
1	D	95.49
2	B	35.87
3	D	82.37
4	B	61.58
5	B	75.85
6	C	56.78
7	A	34.85
8	C	54.86
9	D	54.90
10	A	61.80
11	B	18.87
12	C	41.27
13	A	21.33
14	D	62.39
15	B	65.34
16	C	73.47
17	A	53.43
18	D	24.60
19	D	46.88
20	C	60.38

Section II Consumers and the Law

Question 21

The protection of consumers requires more than simply passing laws. Governments must ensure consumers are aware of their rights and are able to enforce those rights.

Discuss this statement, and evaluate the effectiveness of the law in protecting the rights of consumers.

Your answers should refer to the stimulus material, provide relevant information, and *at least*:

- identify the problems faced by consumers;
- discuss the forms of redress available to consumers.

General Comments

This question was attempted by 60% of those attempting the Consumers and the Law option.

The question required candidates to identify the problems faced by consumers and the consequent legislative response by governments to provide for their protection. While candidates were required to evaluate the effectiveness of consumer law as well as the forms of redress available, the stimulus material posed the issue of the onus on governments to ensure consumer education to enable the enforcement of consumer rights.

Some students attempted to make reference to the stimulus. However, most neglected to respond to the issue of consumer education as a government responsibility. A few of the well argued responses attempted to address the issue by reference to government and non-government services available to provide consumer education. Very few candidates took up the challenge to debate the suggestion that governments must ensure consumers are aware of their rights.

A common approach taken to identifying the problems faced by consumers included a brief history of consumer law. To this end the concepts of 'caveat emptor' and 'laissez-faire' received mention.

Generally discussion of the problems faced by consumers was not approached directly, rather it was implied throughout. In a descriptive account of relevant consumer protection legislation, candidates relied significantly on the *Trade Practices Act 1987* (NSW) with better responses including the *Sale of Goods Act 1967* (NSW) and the *Motor Dealers Act 1974* (NSW).

Candidates were generally well prepared to refer to the many forms of redress available to consumers. This is the way most candidates were able to attempt an evaluation of the effectiveness of consumer law, although many missed the opportunity to complete their evaluation by linking redress with remedies which give a binding outcome to consumer problems.

The better responses were able to distinguish between 'redress' and 'remedies' and able to examine the strengths and weaknesses of the various forms of redress available, namely: awareness and prevention, self-help, mediation, conciliation, Community Justice Centres, tribunals and courts.

There was a full range of responses to this question. Candidates of all standards felt comfortable in selecting to answer Question 21.

Excellent Responses

Excellent responses are characterised by a complete answer to all aspects of the question. There is an awareness that the question itself is the focus and the dot points assist in structuring a response to the question.

Significant time was spent on identifying problems faced by consumers prior to discussing redress. A variety of approaches were taken. Legislation and case law were used to identify areas of consumer vulnerability. For example the *Trade Practices Act* protects consumers against referral selling, pyramid selling, misleading advertising, etc. Another approach was to include an historical discussion of consumerism with a contrast between the need for protection today and apparent lack of protection in the past.

An additional feature in excellent responses was the obvious incorporation of the stimulus material into the body of the response. Candidates were comfortable in agreeing with the first statement and then competent in discussing the need for additional action by government and non-government agencies. They also may have established a link between consumers being aware of their rights and the identification of 'problems faced by consumers'. The necessity for consumer education is addressed and reference may have been made to government and non-government action in this area.

Excellent responses included a very detailed discussion and sophisticated evaluation of all avenues of redress, including a comprehensive coverage of legal remedies which were seen to add strength to the redress process.

Above Average Responses

Above average responses typically made a good attempt at answering the question. Like the excellent responses candidates maintained a commitment to the stimulus as a relevant part of their answer.

A good knowledge of current legislation relating to consumer protection was displayed – with reference to the *Trade Practices Act*, *Fair Trading Act*, *Sale of Goods Act* (and perhaps the *Door to Door Sales Act* and *Motor Dealers Act*).

Effectiveness focused upon the avenues of redress in an ordered discussion and evaluation from self help, through Alternative Dispute Resolution (ADR), mediation, to court action.

A clear attempt was made to refer back to consumer problems and some may have also mentioned consumer education.

Average Responses

Average candidates relied mainly on the dot points as a structure for their response. They tended to give little attention to the stimulus and the core question. Candidates were comfortable in identifying some problems faced by consumers whether by reference to legislation and/or cases or merely stating the problems.

They were also competent in discussing many avenues of redress with evaluation usually being limited to comments about the cost and delay of various remedies.

There was little or no reference made to the role of government and consumer education.

Many average responses appeared to be well prepared general discussions on consumer protection.

Question 22

Consumers enter into contracts every day. Many of the terms and conditions of those contracts remain invisible to the consumer.

Refer to the above statement, and use your knowledge of the legal system to answer the following questions.

- (a) What are the essential elements of a contract?
- (b) Why was it felt necessary for the law to add to the consumer's common law rights?
- (c) How effective are the processes available to consumers for resolving complaints against sellers?

General Comments

This question was attempted by 40% of those attempting the Consumers and the Law option.

Candidates were required to display a detailed knowledge of contracts. Many were able to identify the essential elements of a contract, however, some became confused between essential elements, such as offer acceptance, consideration, legal intention and other elements such as terms, conditions, warranties etc. The latter being identified in the stimulus.

Students had a good knowledge of major legislation relating to consumer protection such as *Trade Practices Act 1974* (Cth), *Fair Trading Act 1987* (NSW), *Sale of Goods Act 1923* (NSW) and the *Contracts Review Act 1980* (NSW). Many students were also capable of using case law to identify consumer rights, eg *Donoghue v Stevenson* (1932), *Thornton v Shoe Lane Parking Ltd* (1971), *CBA v Amadio* (1983). The most common approach to part B was to discuss why it was necessary to add to common law by outlining the protection provided by legislation. Some students also approached this from an historical point of view. They pointed out the gains in protection from common law indicating a need for further protection through legislation.

Most students who attempted this question were able to discuss the different forms of redress available to consumers in allowing them to resolve complaints against sellers, they included awareness and prevention, self help, mediation and conciliation, Community Justice Centres, tribunals and courts. A student's ability to discuss the effectiveness of these methods distinguished the better answer from the average.

Excellent Responses

- a) These candidates responded to this part clearly and succinctly and were able to identify and accurately explain the essential elements prior to discussing the terms and conditions mentioned in the stimulus.
- b) In answering this part of the question the excellent responses were able to give a detailed explanation of why it was necessary to add to the consumers' common law rights. Most mentioned the changing nature of the commercial environment over the past two centuries. Typically they used cases to support this explanation. This was then followed with an outline of major consumer protection legislation (*Trade Practices Act, Fair Trading Act, Sale of Goods Act, Contracts Review Act, Door to Door Sales Act, Motor Dealers Act*). A significant number of candidates were able to begin an evaluation of the above law prior to answering part C.
- c) Answers to this part displayed a thorough understanding of the strengths and weaknesses of the processes available to consumers for resolving complaints. These candidates evaluated all processes available for redress namely self help, consumer groups, media, conciliation and mediation, Community Justice Centres, Consumer Claims Tribunal, and the courts. Candidates saw the stimulus as having little relevance in part C.

Above Average Responses

- a) Many above average responses gained full marks for part A as they were able to identify and explain essential elements of a contract. Most attempted to discuss other elements in addition to the essential elements, often at length.
- b) Candidates demonstrated a good knowledge of the relevant legislation and some attempt was made to explain why it was necessary for the law to add to the consumer's common law rights. Some candidates made some reference to relevant case law.
- c) Most answers explained the different forms of consumer redress and made a good attempt at evaluating the effectiveness of the law in relation to each of these methods.

Average Responses

- a) Many average responses displayed a reasonable knowledge of the elements of a contract, however, they were often confused with the essential elements and other elements. Many answers contained a brief list of essential elements (offer, acceptance, consideration) followed by a more detailed discussion of the non essential element (warranties, terms, conditions etc).
- b) Candidates typically listed relevant legislation with little or no explanation as to why it was necessary for the law to add to consumers common law rights. Some candidates offered comments in relation to change in protection over time from 'caveat emptor' and/or 'laissez faire' to legislative protection, but these comments lacked depth and were of a prepared nature. Few showed any awareness of how common law protects consumers.
- c) Candidates felt it was adequate to list and explain avenues of redress with little attempt at evaluating the effectiveness of each. There was little or no indication of a link between methods of redress and problems created by unfair contracts.

Environment and the Law

Question 23

The need to integrate environmental considerations into all aspects of activity is being given increasing recognition by governments. The problems involved in finding effective and equitable ways to realise sustainable development are likely to occupy governments well into the twenty-first century.
(Terry Walls, ed, *Background Briefs*, Dept of Environment, Sport and Territories, 1995.)

Discuss this statement, and evaluate the effectiveness of the law in balancing the present and future use of resources.

Your answer should refer to the stimulus material, provide relevant information, and at least:

- **describe the role of the Commonwealth Government in protecting the environment;**
- **discuss the effectiveness of international agreements in preserving the global environment.**

General Comments

This question was attempted by 24% of those answering the Environment and the Law option. Candidates that answered this question displayed a good understanding of the need to integrate environmental considerations into the activities of government.

Candidates particularly addressed the element of sustainable development including inter/intra generational concerns. Better candidates recognised there existed a dichotomy between environmental concerns and the need for economic growth. The quality of responses is indicative of the fact that this aspect of the syllabus is being addressed.

The role and powers of the Commonwealth in relation to its international obligations were well covered. Candidates tended to place more emphasis on the international aspect of environmental concerns at the expense of the Commonwealth Government's role in protecting the environment.

International agreements were well documented with particular reference to the Rio Conference, Agenda 21 and more recently Kyoto. However a number of candidates presented information that was used in a descriptive manner as opposed to being used as a precedent to support statements made. In particular most candidates made reference to the Franklin Dam case and Fraser Island; however only a few candidates included more recent examples such as Jabiluka and Hinchinbrook Island. Candidates would be well advised to use a broader range of sources, for example newspapers, the internet and Hot Topics from the State Library (July 1998 focused on environmental law). Only a small number of candidates acknowledged Commonwealth legislation and the proposed changes.

The majority of candidates referred to the stimulus but it was only the better candidates that discussed the stimulus statement. A substantial number of the average responses contained little or no analysis. They relied on a descriptive approach, which did not allow them to develop an argument on the effectiveness of the law. Thus they were unable to address the need for a balance of resource use with respect to present and future generations.

Excellent Responses

These responses dealt with the total question and used a global approach incorporating a discussion of the stimulus material and the integration of environmental considerations into all aspects of government activity.

Analysis of Commonwealth powers, their application and reference to the proposed political changes were well addressed. A few candidates mentioned the relationship between environmental priorities and the political will of the government of the day. This was well supported by examples drawn from all levels of government. For example, noteworthy of mention is:

- Ministerial discretion at all levels of government,
- The impact of the 1997 Council of Australian Governments meeting that discussed their roles and responsibilities,
- Proposed jurisdictional changes ie devolving powers to the States.
- Kyoto (Japan) Protocol 1997 and Rio Conference 1992.
- “carbon sinks” and the ability to trade these emission credits with other nations,
- Difficulties associated with enforcing international law such as shown in the India/Pakistan nuclear tests and exploitation of fishing rights and driftnet fishing within international waters, particularly in Pacific Ocean waters.

Above Average Responses

These responses recognised the stimulus material and the need to integrate economic and environmental concerns. They mentioned inter/intragenerational concerns, the role of the United Nations and the International Court of Justice. They tended to limit their analysis to either Commonwealth legislation or international agreements without giving a balance to both. Reference was made to the stimulus without detailed analysis and support of recent national and international issues.

Average Responses

Candidates referred to the stimulus but their analysis was descriptive and did not integrate the need for a balanced approach to environmental protection. These responses tended to concentrate on the global environment and the various international agreements. Often these were listed without being used to support an argument presented.

Question 24

The development of environmental law requires consideration by today's lawmakers of the needs of those living in the world in the twenty-first century. All levels of government are challenged in meeting these needs as well as in trying to protect the environment and encourage economic growth.

Refer to the above statement, and use your knowledge of the legal system to answer the following questions.

- (a) What are the main sources of environmental law in Australia?

- (b) Describe the concerns of local and State Governments with regard to the environment.
- (c) Evaluate the effectiveness of government measures in protecting the environment.

General Comments

This question was attempted by 76% of those answering the Environment and the Law option.

Candidates demonstrated a reasonable understanding of the questions asked. Candidates need to be aware that the marks allocated for each section of the paper should reflect the time allocated in answering the question. Some candidates failed to read instructions regarding starting each part of the question on a new page.

Part (a)

Candidates showed a fair understanding of the main sources of law:

- Aboriginal and Torres Strait Islander customary law,
- Common law
- Statute law – State and Federal
- Delegated legislation
- International law.

Less able candidates merely listed the above whereas better candidates acknowledging the time and weight allocation, explained each one using relevant examples. It must be noted that there is still confusion between sources of law and the levels of government and in particular local government and the local court. The latter are not the same.

Part (b)

Although candidates could describe the roles of the various levels of government they were not able to extend this into analysis. Too much time was spent on listing the various Acts of Parliament without acknowledging which level of government was responsible for each Act and what its purpose was. Only the better candidates mentioned the recent changes to local and state legislation and alluded to the jurisdictional division of these powers.

Part (c)

Better responses evaluated each level of government rather than limiting themselves to State and Local Government. Many candidates limited the scope of environmental measures to those of conservation and protection rather than expanding into areas such as planning, resource allocation and the balancing of these with economic factors.

Better candidates used a wide range of government measures and went beyond discussion of Fraser Island and Franklin Dam to discuss cases that have emerged from the Land and Environment Court of NSW. Better candidates were also able to discuss recent legislative changes such as the *Environmental Planning and Assessment (Amendment) Act 1997* (NSW) and the *Protection of the Environment Operations Act 1998* (NSW) which consolidated five previous pieces of legislation.

Excellent Responses

These candidates provided a detailed explanation of the five sources of environmental law without the responses containing irrelevant material. These candidates also alluded to the relevance of Aboriginal customary law to statutory developments.

Responses to part (b) identified the concerns and compared the roles of State and Local Government. Candidates also addressed the aspect of the stimulus that referred to the challenges of government in protecting the environment whilst encouraging economic growth. Excellent responses recognised jurisdictional boundaries and used legislation and relevant cases to support their arguments.

In part (c) candidates evaluated each level of government and alluded to the global concerns. Many candidates when providing examples of each level of government also stated examples of the Minister for the Environment overriding Local Government decisions such as the Sydney Harbour Tunnel, Darling Harbour and the third runway at Kingsford Smith Airport and Club Med at Byron Bay.

These candidates also made good reference to the stimulus.

Above Average Responses

These candidates answered part (a) well mentioning all five sources and elaborating on some of these.

In part (b) they gave a detailed description of State and Local Government with limited analysis.

In part (c) candidates tended to give limited description and analysis of the global issues. These candidates also alluded to the stimulus part of the question without fully integrating it into their responses.

Average Responses

These candidates listed the sources of environment law or provided some sources but with a substantial amount of irrelevancy in their responses.

In part (b) they tended to list substantial amounts of legislation without linking it to the question sufficiently. There was some confusion between State and local concerns and also they failed to address key measures such as the Land and Environment Court of NSW and the *Local Government Act 1993* (NSW).

In part (c) there was limited evaluation and many candidates failed to recognise the role of the Commonwealth Government in environmental matters. These candidates limited themselves to descriptive or prepared responses and relied solely on the Franklin Dam case and that of Murphys Pty Ltd.

Family and the Law

Question 25

The Family Law Act 1975 (Cth) requires the Family Court to have regard to the need to give the widest possible protection and assistance to the family as the natural and fundamental group unit of society.

Discuss this statement and evaluate the effectiveness of the legal system in recognising, regulating and protecting the many types of families that exist.

Your answer should refer to the stimulus material, provide relevant information and *at least*:

- explain the formation and dissolution of marriages;
- discuss alternative family arrangements.

General Comments

This question was attempted by 64% of those attempting the Family and the Law option. These responses were longer and better in quality than those for Question 26.

However many candidates were not up-to-date with relevant legislation and made limited use of case law, media articles and current affairs.

Most students had difficulty in addressing all the descriptors given in the question — ‘recognition’, ‘regulation’, and ‘protection’. Most candidates only addressed one or two of the areas. Better answers were able to describe and evaluate the jurisdictional questions, that is relating the dot points to the stimulus.

Many responses indicated that candidates struggled with the notion of alternative family arrangements and the legal response to these. There was an emphasis on description – especially in relation to the dot points on formation and dissolution of marriages with less description of alternative family arrangements.

Some responses read like prepared answers rather than addressing the question.

Excellent Responses

The excellent responses were well written but often not as lengthy as other scripts. These excellent scripts dealt with the set question well, especially in the area of evaluation. It was quality and not necessarily quantity that made the excellent responses stand out.

The excellent scripts recognised the changing concepts of the family and identified comprehensively the various types of families.

Marriage, along with the requirements of a valid marriage was discussed with reference to both the common law, *Hyde v Hyde and Woodmansee* (1866) and statute law, *Marriage Act 1961* (Cth). The definition and discussion were accurately presented and the discussion did not take up the bulk of the response.

Candidates were familiar and aware of the changing philosophies recognised by *Family Law Act 1975* (Cth), eg ‘*The Family Law Act 1975* (Cth) strove to increase the flexibility of the legal system so as to increase the judiciary’s protection in the case of marriage breakdown’. Reference was also made to the *Family Law Reform Act 1995* and *Family Law Reform Bill No 2*.

Students in this category were up-to-date with terms such as; ‘residence order’, ‘contact order’, ‘specific issue’ and ‘parenting orders’. They not only made reference to these terms but proved clearly they understood ‘the terms’ and ‘the reasons for the change’ (in mid 1996). In this area the excellent students made reference, knew accurately and quoted precisely relevant and recent case law, eg *B v B* (1997).

The majority of the excellent responses made reference to AVOs and child protection, eg ‘the legal system has also moved to protect families from domestic violence through the issuing of AVOs and Family Court Injunctions. The police service has also moved to train officers in dealing with such cases particularly through the appointment of domestic

violence liaison officers. However, while 25% of women continue to be victims of domestic violence, more needs to be done to protect these victims'. These students also pointed out in evaluating this issue that 'the burden of proof is on the balance of probabilities and thus easier to prove'.

Students were not only able to recognise 'alternative family arrangements' but were also able to critically evaluate the level of protection given, eg '*the De Facto Relationships Act 1984* (NSW) accords some protection to the parties of a relationship, including the recognition of cohabitation and separation agreements. However the protection to these couples is less than that awarded to married couples'. These students also pointed out 'limited recognition of Aboriginal customary marriages has been criticised for its lack of sensitivity towards the importance of kinship, spiritual and extended families'.

Reference was made to legislation relating to adoption and this was also evaluated. Students referred to the *Adoption Information Act 1990* (NSW) and discussed that this gave 'greater access to information' and thus 'protection'. Students also pointed out that because 'parents need to be within the ages of 21 and 38' that this gave added 'protection'.

Other family arrangements were 'recognised' and 'regulated' including 'polygamous arrangements' and 'same sex couples'. Again these arrangements were evaluated especially in the area of the protection offered.

Students in critically evaluating the level of protection given to different family arrangements discussed the fact that financial and property division is considerable for married couples but less for the de facto and even less for same sex relationships.

Many of these students were also aware of 'new birth technology' and 'surrogacy' and made reference to the common law and relevant statute law.

A minority of students in their evaluation discussed 'the reduction in legal aid' and questioned the recent 'budget cutbacks' and expressed concern about these 'cutbacks'.

Again, in a minority of cases students recognised that 'cross-vesting' has allowed matters to be expedited through the Family Court to hear cases regarding domestic violence and property settlements.

Above Average Responses

Most typical above average responses were able to describe quite well the definition of marriage (*Hyde v Hyde*), the requirements of marriage (eg age, blood relationship, witnesses etc) and the reasons for the introduction of irrevocable breakdown.

Some used the case of *Willis & Cooper* (1997) to show challenges to the age of 18 as the marriageable age.

Many did not fully understand about the *Family Law Reform Act 1995* (Cth). Many were confused with terminology, which is quite surprising since this Act has been in use since 1996. This was an area of concern.

Most responses wrote at length explaining the background and process of dissolution of marriage. Many used the three month 'kiss and make up' clause as an example of the *Family Law Act* trying to protect the family and also the role of mediation in marriage breakdown. A solid 'above average' answer kept referring back to effectiveness.

Although students did not refer to Family Law Reform Bill No 2, many dealt with the topic of property and problems of equitable division in more general terms. Most recognised the role of the child support agency and spousal maintenance. Few dealt with superannuation.

Most candidates did cover *Family Provisions Act 1982* (NSW) as an effective means of protecting family members.

The driving force behind the legislation of having the 'best interests of the child as of paramount concern' was known, but it became apparent that many students failed to follow through with an examination of the recent landmark decisions of *B v B* and *R v R*.

Above average responses referred back to protection and assistance as referred to in stimulus. Most were familiar with relevant UN conventions, ie Declaration of the Rights of the Child and Human Rights. Candidates in this category were mainly familiar with the following legislation although they were not fully explored:

- *Family Law Act 1975* (Cth)
- *De Facto Relationships Act 1984* (NSW)
- *Family Provisions Act 1982* (NSW)
- *Children (Care & Protection) Act 1987* (NSW)
- *Children (Equality of Status) Act 1986* NSW
- The Child Support Scheme

The *Family Law Reform Act 1995* (Cth) was largely ignored. Terminology was used, without full reference or understanding of this Act.

Above average responses identified the alternative family forms. De facto relationships were reasonably well handled and understood. Other identified forms were polygamous, traditional Aboriginal, single parent, blended and same sex. However cases were not provided and few explored problem areas within these relationships, eg wills, superannuation, welfare, workers compensation and legal status.

Responses attempted to analyse but lacked depth in areas of recognition, regulation and protection of families.

Average Responses

The majority of these responses were able to state how the law recognised the many family types yet they were unable to evaluate the regulation and protection of families.

Very few answers were able to set the context of how the Family Court was able to give protection and assistance to families.

Many responses gave a limited introduction with little reference to stimulus material or to the question. Those that used the stimulus tended to simply copy it out.

The following introduction is an example of a brief response that tries to encapsulate the question:

‘The family Law Act 1975 (Cth) is one step taken to recognise the family unit, as the ‘...fundamental group unit of society...’ yet the effectiveness of the law to regulate or (put into effect) and protect the ‘many types of families that exist’ is debatable’.

The issues of marriage and divorce were usually well described. However, few responses were able to evaluate the effectiveness of the legal system in regulating or protecting the institution of marriage along with the rights of the family in relation to divorce.

Most students were able to identify and discuss de facto relationships as an alternative family arrangement however, few were able to either identify or discuss any other alternatives eg polygamous, same sex, single-parent, Aboriginal customary relationships, artificial conception.

Many candidates did not compare and contrast alternative family arrangements therefore making evaluation impossible.

Overall evaluation was weak as students did not relate their discussion to the issues of protection and assistance offered by the Family Court.

Question 26

The Family Law Act 1975 (Cth) provides that children have the right to know and be cared for by both parents.

Refer to the above statement, and use your knowledge of the legal system to answer the following questions.

- (a) What legal rights do parents have over their children?
- (b) How does the law deal with contact and care between parents and children where parents have divorced?
- (c) Evaluate the effectiveness of the law in balancing the rights of children with the obligations of parents.

General Comments

This question was attempted by 36% of those attempting the Family and the Law option. Responses for this question were shorter and poorer in quality than those for Question 25. Most responses were descriptive rather than analytical.

Poorer responses tended to be short and tended to confuse rights and responsibilities in part (a). This meant that parts (b) and (c) were either repeats of (a) or contained very little new material. This was particularly evident with prepared answers.

Very few cases were used along with little reference to past and current legislation. This resulted in little or no evaluation being used in many responses.

Only the best responses could evaluate the effectiveness of the law. Most candidates just said that it was 'more effective' or 'not effective' or 'very effective' ensuring a tie to the question but not giving depth or analysis.

Excellent responses for this question were scarce.

Excellent Responses

In these responses candidates answered the whole question, referred to the stimulus and evaluated the issue of parental obligations and children's rights effectively.

Part (a): this section was handled extremely well in the excellent responses. These focused on rights of parents. This was represented in the following candidate's work:

‘As well as responsibilities and obligations to their children, parents also have rights, particularly regarding the development and guardianship of the children’.

Candidates did not confuse rights with responsibilities. These rights included reasonable discipline, choice of religion, choice of school, adoption, abortion, choice of medical services.

Excellent responses were also able to use cases and legislation to highlight parental rights, eg *Gillick v West Norfolk Health Services* (1985) UK and *Education Reform Act 1990* (NSW).

Part (b): a typical excellent response followed the historical development of law in relation to care and contact of children by parents. They were able to distinguish between past and current legislation in this area. Candidates had a clear and focused knowledge of the *Family Law Reform Act 1995* (Cth) and its terminology along with how it differed to the 1975 *Family Law Act* (Cth).

Emphasis was also placed on the fact that the child's needs are now stated to be of paramount consideration while less emphasis is now placed on parental rights in relation to contact, eg use of cases such as *B v B* and the baby Evelyn case.

Most candidates in this area were able to examine maintenance as an area of care that parents must attend to upon dissolution of marriage.

Complementary pieces of legislation were also discussed. This allowed for a more comprehensive response, eg *Child Support (Assessment) Act 1989* (Cth).

Part (c): these candidates were able to give a wide and thorough coverage of children's rights in both state and federal jurisdictions.

What appeared much more difficult was evaluation of the obligations of parents. Many students focused on DOCS, UN Conventions of Rights, wills, adoption, *Family Provisions Act 1982* (NSW) and other related concepts to illustrate the rights of children.

An example of the above was:

‘Australia has ratified the UN Declaration on the Child in 1989 and under this there are provisions for parents basic duties in caring for their children’.

Students in this section also evaluated the importance and impact of Legal Aid cuts along with the delay in both getting to the Family Court and decisions from the Family Court, eg:

‘The rights of the child are to be ‘paramount’ in any divorce case. Of the 5% of Family Court cases that come to judicial hearings, 90% involve children. ‘Custody battles’ have an infamous history of being expensive, traumatic and bitter’.

Above Average Responses

Part (a): candidates in this category scored well in part (a). They explored issues such as education, basic care (food, clothing, shelter), discipline and medical in some detail.

The occasional candidate introduced the relevant legislation such as the *Education Reform Act 1990* (NSW).

Part (b): candidates in this category recognised children as the ‘paramount’ concern of the Family Court, and that children have the right to know both parents. Candidates recognised the concepts of joint responsibility and rationale behind parenting plans. Some used the case of *B & B* but not *R v R* (1997).

Most were familiar with new terminology introduced by the *Family Law Reform Act* (1995), although extended analysis of the impact of the new act was missing. Perhaps in the future candidates could consider whether changes in terminology have been effective.

Most candidates recognised that domestic violence or abuse could affect a parent’s right to have contact with a child (best interests of child). Cases illustrating violence were not used.

Part (c): many simply restated instead of evaluating what had previously been said in part (a).

Most Above Average responses included an analysis of UN Declaration on the Rights of the Child as well as domestic legislation, eg *Education Reform Act*, *Children (Care and Protection) Act*, *Children (Equality of Status) Act*, *Family Provisions Act* and the issue of medical care.

Many candidates mentioned further issues such as mandatory reporting, adoption, financial support and increased autonomy of children. Few candidates, however, covered issues of historical ownership of children and juvenile justice.

There was an imbalance between examination and analysis of rights and obligations and there appeared to be confusion as to what part (c) actually required. Many candidates had difficulty separating the rights of children with the obligations of parents.

Candidates generally made limited reference to the stimulus.

Average Responses

In these responses the candidates did not give correct weighting to the different parts in relation to time and length.

Part (a): students seemed to be confused between the concepts of parental rights and responsibilities. Students often used this part to answer parts (a), (b) and (c). Lists of rights and obligations were common. The following exemplify the confusion of many in relation to parental rights.

- (i) 'The legal right that parents have on their children is to supply an education for their child, food and clothing, medical assistance and proper housing environment for their child.'
- (ii) 'Parents also have the legal obligations to discipline their child. A parent has the right to administer moderate and reasonable punishment. However, under the Child (Care and Protection) Act, a child can not be subject to abuse or harassment.'

The second example identifies parental rights better than the first.

Part (b): in this section *Family Law Reform Act 1995* (Cth) was not widely known or used. The older terminology, of 'custody' and 'access,' from *the Family Law Act 1975* (Cth) was referred to much more frequently than 'contact' and 'residence'.

The terms and conditions for parenting plans were rarely mentioned.

The following quote illustrates 1975 terminology used to convey a 1995 concept:

'The popular decisions now is equal custody of the child, which means one week with mum and one week with dad. The reason for this is because the court has realised that both parents are equal and the child has the right to know both.'

Part (c): this section tended to be very brief as many covered the obligations in Part (a) and did not revisit them. There tended to be a heavy emphasis on the rights of a child rather than a balanced presentation of children's rights and parental obligations. Students' responses contained little consideration of the arguments for and against each concept. This resulted in poor evaluation.

Housing and the Law

Question 27

Almost 15% of Australians are in a housing crisis, often unable to feed or clothe themselves after paying the rent. Public housing has not solved the problem and charities are having to care for the homeless and people who are struggling in the private rental market.

(Adele Horin, Sydney Morning Herald, 12/11/1997.)

Discuss this statement, and evaluate the effectiveness of the law in assisting those in a 'housing crisis'.

Your answer should refer to the stimulus material, provide relevant information, and *at least*:

- discuss the right to shelter, and the role of public housing authorities in satisfying that right;
- outline the special problems faced by the poor and disadvantaged in renting in the private market.

General Comments

This question was attempted by 56% of those answering the Housing and the Law option. Overall the standard of this question was higher than Question 28. A large number of candidates referred to the stimulus but only the excellent and above average responses discussed the stimulus in relation to how the law assists people in 'housing crisis'. There was a large gap in the quality of the excellent responses to all other responses. Few students mentioned new changes to eviction powers available against public housing tenants.

Excellent Responses

These candidates referred to the stimulus and incorporated this into their responses. They developed the argument that the housing crisis is a result of many factors and the failure of governments to provide adequate public housing has shifted responsibility on to other areas such as charities.

Most responses refer to the United Nations Declaration of Human Rights 1948 and relate it to a moral obligation to provide shelter to all Australians. The very best answers refer to the different housing policies of the various political parties. They stress that Australian governments try to provide access to shelter and that political parties promote policies to provide private housing. A number of excellent responses reflect the syllabus section on government policies. They stated that the ALP and Australian Democrats give greater emphasis on public housing for the poor or disadvantaged. The Liberal and National Parties emphasise a strong economy to provide conditions for private housing and where necessary public housing for the disadvantaged.

These candidates mentioned that the NSW Government provides public housing under the Commonwealth-State Housing Agreement 1945.

Candidates referred to public housing eligibility and waiting list problems. They listed the requirements for consideration to be placed on public housing waiting lists. They described the problems that many poor people face once on waiting lists. These candidates used statistical data to justify the claims they are making.

Some students introduced evaluation early in their responses. They claimed a failure or ineffectiveness of governments and the legal system in providing public housing as a means of a right to shelter:

- 235,000 families or 1,000,000 people on public housing waiting lists
- 800,000 households in housing crisis, 15% of 18million is 2.7million people
- there are estimates of over 70,000 homeless people who have no shelter
- demand for public housing not being matched by supply
- maintenance of public housing poor
- increasing role of charities and other welfare agencies in providing housing.

On the effectiveness side these responses developed the idea that public housing authorities try to provide for those in housing crisis via priority and emergency housing. Excellent candidates stress that the Department of Housing in NSW is the largest landlord in the state.

Excellent responses defined or mentioned who the poor or disadvantaged are including, the aged, Aboriginal and Torres Strait Islander peoples, recent migrants, young people and the homeless. They extended their responses to show how these groups face problems in the private rental market. The problems faced by the poor and disadvantaged in the private renting market include:

- lack of knowledge of their rights
- limited access to the law
- power situations with the landlord
- fear
- direct and indirect discrimination.

During this discussion some responses included information from the *Racial Discrimination Act 1975* (Cth) and the *Anti-Discrimination Act 1977* (NSW) that discrimination for housing is illegal under such legislation. A number of cases were used to show discrimination both in public and private renting.

A major problem described by these candidates is the difficulty of the poor and disadvantaged being able to raise a bond in the first place so as to even enter the private rental market. There was acknowledgment that the problem of credit ratings and checks or the availability of references almost automatically excluded the poor and disadvantaged from entering the private rental market.

Some of the excellent responses noted that due to barriers faced by the poor and disadvantaged in entering the private rental market they may be forced into caravan parks, boarding houses, lodgings or squatting. They then described how each of these areas was less protected at law especially those in boarding houses, lodgings or forced to squat.

These candidates attempted to evaluate the effectiveness of the law in assisting those in housing crisis. They used statistics to describe the extent of the housing crisis and evaluate how the law is ineffective in providing solutions to these people. Some commented on the ineffectiveness of the law as seen by the inability of governments to provide adequate levels of housing for all Australians. As stated earlier many of these candidates did their evaluation throughout their answer.

A number of these candidates came to the conclusion that the evidence shows that public housing authorities and governments have not been effective in providing housing for those in a housing crisis. They stressed there are concerns in relation to the maintenance of public housing and the increasing role of charities, refuges and other welfare agencies in providing housing.

This was balanced with discussion of help for the poor and disadvantaged via the Tenants Union, Tenants Advisory Service, Temporary Emergency Assistance, Residential Tenancy Tribunal, standard Residential Tenancy Agreements, Adverse Possession and Appeal to Department of Public Housing. These candidates did acknowledge how the law does try to help those in housing crisis via such things as Rental Assistance Schemes, ATSI housing cooperatives, Public Housing Appeals Committee and the provision of priority and emergency housing.

Above Average Responses

A large percentage of these candidates referred to the stimulus but only the better answers in this category actually discussed it in any effective manner.

A number referred to the United Nations Declaration of Human Rights 1948 and related it to a moral obligation to provide shelter to all Australians. This was often the extent of any real discussion on the right to shelter in Australia.

These candidates referred to public housing eligibility and waiting list problems. Candidates often noted the number of Australians who are either homeless, in public housing or on public housing waiting lists. They tried to develop this argument but without the sophistication of the excellent responses.

There was some recognition by these candidates as to who the disadvantaged are. They tried to develop a discussion on how these groups face problems in the private rental market. There was some listing type responses with attempts at analysis of the problems.

Evaluation was attempted but it was superficial and lacked depth as displayed in the excellent type responses.

Average Responses

Token reference was made to the stimulus but no developmental use of it was included within the answer. There was general discussion on homelessness and those who find they are in a housing crisis. There were many general type responses who ranged from a genuine attempt at the question but lacked analysis and evaluation skills to those essays that tended to be very verbose and general studies style in their nature.

Some candidates attempted to simply answer a question on public housing and ignored the specific sections on disadvantaged groups in the private rental market.

There was only superficial discussion on the problems of public housing and housing for the poor but little if any attempt to develop this into any evaluation. Many simply stated that the poor and disadvantaged have difficulty in getting adequate housing.

Question 28

Joanne lives in high density housing. She has been skateboarding in the common areas and neighbours have complained about the noise and damage she has caused to both common and private property.

Refer to the above statement, and use your knowledge of the legal system to answer the following questions.

- (a) What are the advantages and disadvantages of medium and high density housing?
- (b) Discuss the role of the body corporate in regulating shared spaces.
- (c) Evaluate the effectiveness of the procedures available for settling disputes between neighbours.

General Comments

This question was attempted by 44% of those answering the Housing and the Law option. Overall the response to this question were not as well answered as Question 27. There was a lack of understanding of Part (b) by many candidates. They tended to mention the body corporate yet failed to discuss the role of the body corporate in regulating shared space. A large percentage of candidates did not mention the changes brought about by the new *Strata Scheme Management Act 1997* (NSW). Those candidates who did not include this were not penalised.

Excellent Responses

These responses in Part (a) often had a balance between advantages and disadvantages of medium to high density housing. These included advantages such as:

- lower cost of housing
- low maintenance
- increased supply of housing
- communal living

and disadvantages such as:

- isolation
- lack of facilities
- crowding

- decreased privacy
- subject to regulation
- restriction
- noise/damage

Many of these candidates did not simply provide a list of advantages or disadvantages but tried to incorporate some discussion. These candidates also mentioned different government policies in this area including dual occupancy.

In part (b) these candidates tended to be the only group that actually answered the question. Most attempted to integrate both the new concept of owners corporation and the older term body corporate. These candidates usually explained the new *Strata Scheme Management Act 1997* (NSW) and the role of the owners corporation. There was mention of the by-laws both in the new and old legislation.

Joanne was included in this section of the response and this category of responses tended to mention her and the problem of shared space throughout their answer. These candidates defined shared space and then discussed its legal implications especially in relation to Joanne. Joanne was often referred to as an example of how the dispute procedures could be varied depending on the situation.

Included in these responses was the role of council, fees payable by strata unit owners and the role of by laws in describing rights and responsibility of individual owners. A number of excellent responses mentioned the increased role of the body corporate (owners' corporation) in relation to dispute settlement. They mentioned the relationship between the owner's corporation and the Strata Scheme Commission and Strata Scheme Board.

In part (c) these candidates gave a variety of dispute settlement procedures. Some concentrated solely on shared space dispute settlement while others took a wider view in relation to dispute settlement between neighbours in all housing situations.

In shared space situations candidates gave a series of steps which could be taken in the settlement of dispute between neighbours. These included:

- direct discussions with dispute creator (Joanne)
- mediation via Department of Fair Trading (Strata Scheme Offices)
- Strata Scheme Adjudicator or Strata Scheme Board
- body corporate (owners corporation) can issue a notice to comply

- Strata Scheme Board can fine if notice is not complied with
- appeals to SSB within 21 days of adjudicators ruling
- failure to comply with SSB order can result in fines up to \$5,000 plus cost and
- finally appeals to Supreme Court on points of law.

Those candidates who took a holistic approach evaluated all the different settlement dispute to Community Justice Centres, mediation, conciliation, arbitration, local processes available to neighbours. These ranged from self help and negotiation councils, police, Environmental Protection Agency and litigation within the courts and tribunals. Once again these excellent responses applied evaluation to these processes and tried to determine if they were effective or not from the view of the different people involved in the dispute.

Above Average Responses

In part (a) these candidates gave some balance between advantages and disadvantages of medium to high density housing.

Part (b) saw some of the candidates in this category of responses mention there had been a change in strata scheme legislation and often left it at that and continued to talk only about the body corporate. There was some discussion of Joanne in these responses but they were more general in nature than in the excellent type responses. They mentioned the increased role of body corporate in relation to dispute settlement but did not go into the same detail or analysis as the excellent responses.

The responses in part (c) saw some attempt to discuss the different procedures but the responses lacked the depth of analysis of the excellent type answers. Some referred to the stimulus but failed to develop it in any meaningful manner. Joanne cropped up occasionally, usually the discussion of procedures was general and descriptive. Evaluation was attempted but was superficial and lacked depth as displayed in excellent type responses.

Average Responses

There was only token reference to the stimulus. In part (a) a few points of the advantages and disadvantages of medium to high density housing were mentioned but there was no depth to the responses.

In part (b) there was greater concentration on just mentioning body corporate with little reference to its role. The answers did not necessarily relate to the regulation of shared space. There was no real detail or discussion. There was a lack of discussion on changes or how shared space was managed in strata type housing.

The responses in part (c) tended to lack discussion or evaluation. They were limited to just mentioning mediation and local council. No real attempt was made at evaluation. Many of these answers mentioned or listed various legislation such as the *Noise Control Act 1975* (NSW) (now replaced) and *Dividing Fences Act 1991* (NSW) but did not evaluate dispute resolution mechanisms.

The Workplace and The Law

Question 29

It is unlawful to dismiss a person on discriminatory grounds, including union membership or non-membership. In situations of both unfair and unlawful dismissal, the employer and employee must first attempt to negotiate the dispute.

(Trish Luker, Hot Topics No.11, *Industrial Relations*, Legal Information Access Centre, Feb 1997.)

Discuss this statement, and evaluate the effectiveness of the legal system in protecting the rights of employers and employees in the termination of employment.

Your answer should refer to the stimulus material, provide relevant information, and *at least*:

- **explain when the employers have the right to dismiss an employee, and when it is unlawful;**
- **examine the factors that the Australian Industrial Relations Commission must consider when arbitrating claims of unfair and unlawful dismissal.**

General Comments

There was a very high proportion of non attempts (1.6%) relative to the total candidature attempting this option. This was double the number of non attempts compared to other options. This perhaps indicates that candidates found Workplace and the Law difficult to attempt.

This question was attempted by 54% of those answering the Workplace and the Law option. Superior answers embraced the whole question. The question gave the students an opportunity to explore the area of unfair and unlawful dismissal especially in the light of

the new legislation. Candidates as a whole, however, did not distinguish between unfair and unlawful dismissal nor fully explored the factors affecting unfair and unlawful acts that are taken into account by the Australian Industrial Relations Commission.

There was a general tendency for candidates to sidestep the question and focus on the bullet points. There was more extensive coverage usually of the first point. Many of the candidates failed to go beyond an enumeration of the legal grounds for dismissal and did not examine the effectiveness of the law. Many students failed to relate the right to dismiss to the new *Workplace Relations Act*.

Evaluation of the effectiveness of the legal system is an area where more work needs to be done. There was some good use made of case law and legislation in analysis in these questions by the very best candidates. Most candidates attempted some comments on the law in relation to the question but the discussion often tended to be descriptive.

Excellent Responses

These responses were balanced answers covering the whole question. They dealt with the termination of employment, fully considered both aspects of lawful and unlawful dismissal. These candidates used the *Industrial Relations Act, 1996* (NSW) and the *Workplace Relations Act, 1996* (Cth) in accurate detail. When discussing unfair and unlawful dismissals they were able to do so in relation to both the Commonwealth and State levels.

Relevant details of legislation and cases were used in answering the question. These candidates typically had a high level of understanding of the Patrick dispute and the ongoing disputes at Rio Tinto.

Effectiveness was considered in the light of the balancing of the rights of employer and employee in the context of termination. Other cases discussed include *Gregory v Phillip Morris* (1988) and, *Wheeler v Phillip Morris* (1990).

These responses are always very well structured with a clear introduction which addresses the question and with an appropriate conclusion.

Above Average Responses

All parts of the question were attempted but analysis was less sophisticated than with typical excellent answers. Understanding of the concepts of unfair and unlawful dismissal was displayed. In these answers there was less evaluation of the effectiveness of the legal

system in protecting rights of employees and employers in the workplace than with Excellent responses. There was accurate but less extensive discussion through relevant legislation and case law. Quality argument and relatively long responses were features of these papers.

Average Responses

Some analysis was evident in the response to the question but this was not always presented in a balanced way and some parts of the question were ignored. A competent grasp of some key issues was exhibited along with a satisfactory level of analysis. There were often inaccuracies of fact and there was also evidence of some candidates attempting to use prepared answers. Use of lists of relevant information rather than discussion of that information was present. The answers were often relatively brief or they were padded or repetitive.

There was a tendency for answers to ignore the rights or duties of employers or to do the same in relation to employees

Average responses had very limited evaluation of the effectiveness of the law in the area covered by the question. Students were able to define the various types of dismissal but did not relate them fully back to the protection of the legal system except in the area of discrimination.

Question 30

The Workplace Relations Act 1996 (Cth) presents a new challenge to participants in the industrial relations system. The Act attempts to bring a new focus to industrial relations by introducing avenues for individualised bargaining and by restricting the role of third parties in regulating agreements.

(Therese McDermott, Hot Topics No.11, *Workplace Relations Act*, Legal Information Access, Feb 1997.)

Refer to the above statement, and use your knowledge of the legal system to answer the following questions.

- (a) Outline the various forms of workplace bargaining.
- (b) Describe the role of unions in the changing workplace.
- (c) Evaluate the effectiveness of the legal system in protecting the rights of employees and employers in the workplace.

General Comments

This question was attempted by 46% of candidates answering Workplace and the Law.

Good responses described the role of the unions in a workplace which is changing. The students recognised that these changes forced the unions into a new role in industrial relations. Better responses evaluated the effectiveness of the legal system in protecting the rights of both the employer and the employee.

Sometimes too narrow a coverage of the forms of workplace bargaining was evident. Often there was no mention of Australian Workplace Agreements. Often there was confusion between the general concept of collective bargaining at common law and statutory forms of collective bargaining.

Prepared answers centred on the rights and duties of the employers and employees without the flexibility to allow the response to best fit the question. There was also evidence of the use of emotive language in an attempt to make a statement relevant. Candidates at times demonstrated bias and failed to discuss alternative views of the role of unions in the workplace.

There was evidence of an understanding of the legislation and relevant case law. In many cases current material, issues and media sources were employed in argument. With these responses reference was made to the air pilots' dispute (*Ansett Transport Industries (Operations) Pty Ltd v Australian Federation of Air Pilots* (1989)), the Patrick case, the ongoing Rio Tinto disputation and other relevant cases.

Only a small number of the candidates incorporated in their discussion an analysis of the stimulus provided.

Excellent Responses

There was a balanced analysis of the variety of union roles in an ever changing workplace environment along with an evaluation of those roles in relationship to their understanding of common law and statutory mechanisms. These answers were universally objective in their appraisal of the roles of the parties in workplace bargaining. The comprehensive coverage of the effectiveness of the legal system in protecting both employee and employer rights separated these excellent responses from the rest of the candidature.

Above Average Responses

These candidates were able to list and accurately describe individual bargaining, collective bargaining and enterprise bargaining.

These candidates were able to recognise the existence of common law forms of individual and collective bargaining and statutory forms of individual and collective bargaining.

Candidates recognised the diminishing role of unions within the present Australian industrial environment.

The role of the union in Award wage settlements and Certified Agreements under the Workplace Relations Act, 1996 (Cth) was discussed.

Average Responses

Understanding of workplace bargaining was more general than the excellent and above average responses. Average responses tended to give a very one sided view of the role of unions in the workplace. They were either inclined to view the *Workplace Relations Act, 1996* (Cth) as entirely beneficial to workers or entirely detrimental to their interests.

Students understood the general role of unions in the workplace but they did not discuss their changing role in the workplace very successfully.

Aboriginal and Torres Strait Islander Peoples

Question 31



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Refer to the above cartoon, and evaluate the effectiveness of the legal system in responding to the pursuit of justice for Aboriginal and Torres Strait Islander peoples.

Your answer should refer to the stimulus material, provide relevant information, and at least:

- Explain why Aboriginal and Torres Strait Islander peoples are disadvantaged;
- Outline the problems associated with the division of responsibilities between State and Federal Governments;
- Discuss the factors leading to the development of policy and laws aimed at achieving justice and equality for Aboriginal and Torres Strait Islander peoples.

General Comments

This question was attempted by 67 % of those answering the Aboriginal and Torres Strait Islander People Case Study.

The standard of responses for this question were generally quite good despite many students ignoring or failing to respond effectively to the division of powers issue. Students who were able to describe and analyse the situation related to the division of powers were clearly in the minority.

Candidates generally spent the majority of their time in this response focusing on why Aboriginal and Torres Strait Islander peoples are disadvantaged, sometimes to the detriment of other aspects of the question.

There was a clear improvement in the ability of the candidates to integrate the stimulus in their responses in comparison to previous years although many candidates still neglect the stimulus. Inclusion of the stimulus was best done when candidates used it for analysis rather than just quoting it verbatim as part of their response.

As in past years there are a number of candidates who have written prepared responses and the style of these responses is typified by their lack of direct reference to the question and lack of any analysis and evaluation.

Of concern was the increase in the number of candidates who argued (with virtually no evidence) that Aboriginal and Torres Strait Islander peoples are not disadvantaged. As this is contrary to the syllabus themes of law and justice, these candidates ranked near the bottom of the responses marked.

Excellent Responses

These responses were characterised by an ability to write a holistic, integrated response about the pursuit of justice for Aboriginal and Torres Strait Islander peoples effectively including all parts of the question. These candidates were able to integrate the stimulus into their responses throughout their essays.

These candidates were able to cite a range of factors contributing to the disadvantage of Aboriginal and Torres Strait Islander peoples and were able to relate historical perspectives to the disadvantage they face today. Some factors discussed by these candidates included historical factors and policies, (dispersal, protection, assimilation, integration, self-determination) policing issues, courtroom disadvantage, health, education, employment, imprisonment rates and social attitudes.

A distinguishing feature of these responses was the incorporation of analysis of the Federal/ State division of powers with reference to the Constitution, 1967 referendum and international treaties. The best responses related these factors to a lessening of effectiveness of law, both at a state and federal level. Lack of uniformity, loss of accountability and the reluctance of some States to support Aboriginal and Torres Strait Islander peoples' self determination policies were cited as reducing the effectiveness of the law at both a state and federal level. Funding disputes and incompatible political views were proposed as inhibiting factors in some responses. This standard of response was also able to critically evaluate legal responses by referring to statistical and legislative evidence, relevant cases and by comparing the performance of state and federal governments over time.

These candidates were able to discuss a wide range of factors causing change including the Aboriginal and Torres Strait Islander Commission (ATSIC), pressure groups (ALS), education of the general public (Stolen Generation Report and the Royal Commission into Aboriginal Deaths in Custody and the ALRC Report into Customary Law), international conventions, the degree of disadvantage and self determination policies.

These candidates then continued to evaluate the legal system's response to these change factors including land rights and anti discrimination acts, often leading to a conclusion congruent to their arguments, indicating that much has been done but that Aboriginal and Torres Strait Islander peoples still face disadvantage in many ways. These candidates also used cases effectively to highlight issues and changes to the law.

Above Average Responses

These responses generally were not able to provide the breadth of issues or the depth of analysis of the excellent responses. In the area of factors causing disadvantage there was more a reliance on historical factors with less reference to contemporary issues and how they are related to historical factors.

These candidates were able to discuss the division of powers through the 1967 referendum and section 109 of the constitution but were not as effective in analysing the problems created by the division of powers. This part of the question often discriminated between the excellent and the very good responses.

These candidates were able to evaluate the effectiveness of the legal system but did not effectively discuss the factors that lead to change to the same extent as the excellent responses.

Average Responses

Many of these candidates were able to respond most effectively to the causes of and responses to Aboriginal and Torres Strait Islander peoples' disadvantage but did not address the issue of the division of powers in any meaningful way. There was a greater reliance on historical factors as a cause of disadvantage without directly linking these factors to the contemporary situation. Factors causing disadvantage were usually briefly discussed and evaluation of issues usually revolved around one or two issues such as land rights or police relations.

Question 32

The Human Rights Commission's report, Bringing Them Home (1997), contains disturbing allegations of criminal conduct in the treatment of Aboriginal children who were removed from their families. There were some terrible things done and in any other situation there would be some belief that those responsible would be brought to justice.

Refer to the above statement, and use your knowledge of the legal system to answer the following question.

- (a) How did the status of Aboriginal and Torres Strait Islander peoples change after 1967?
- (b) Outline the major inquiries held into the treatment of Aboriginal and Torres Strait Islander peoples.
- (c) Describe the role of reports from these major inquiries, and other mechanisms, for achieving justice for Aboriginal and Torres Strait Islander peoples.
- (d) Evaluate the effectiveness of recent changes in the law to achieve justice, fairness and equity for Aboriginal and Torres Strait Islander peoples.

General Comments

This question was attempted by 33% of those answering the Aboriginal and Torres Strait Islander Peoples Case Study.

Due to the nature of the question many candidates had difficulty separating their responses into the sections indicated. This was particularly true of parts (b) and (c) of the question where content overlap could occur. Better candidates were able to outline (in part (b)) and describe the role (in part (c)) of inquiries thus ensuring repetition did not occur across the two parts.

Generally in part (a) there was some confusion in terms of what the 1967 referendum was about and many candidates did not consider change of status since 1967. In part (b) most candidates were able to introduce the Royal Commission into Aboriginal Deaths in Custody and the Stolen Generation report 'Bringing Them Home'. Some candidates ignored the directive term 'outline' in this part and went into detail that was more appropriate for part (c).

Many students answered parts (c) and (d) as one, apparently unable to differentiate the difference between the two. In part (c) most candidates were able to indicate that the reports had raised public awareness and that some changes had occurred within policing procedures but overall the inquiries had been disappointing in their impact on Aboriginal and Torres Strait Islander peoples justice issues. Generally candidates were able to discuss other mechanisms that have helped to achieve justice but overall the

breadth of mechanisms discussed was disappointing. Part (d) was well answered with candidates evaluating a wide range of recent changes such as the ALS, application of traditional punishments, changes to policing procedures/ police culture and land rights issues such as Mabo and Wik. The major discriminators in this section of the question were the breadth of changes discussed and the ability to evaluate the changes in the law.

Excellent Responses

In part (a) these candidates accurately assessed the changes brought about by the 1967 referendum including change to Section 51 part 26 of the Constitution. These candidates also dealt with changes to the status of Aboriginal and Torres Strait Islander peoples since 1967 by discussing anti-discrimination laws, land rights and self-determination policies. In part (b) these candidates outlined a number of inquiries including the Royal Commission into Aboriginal Deaths in Custody (Muirhead), the Stolen Generation Report ('Bringing Them Home'), the Human Rights and Equal Opportunity Commission (HREOC) report into racist violence and the Australian Law Reform Commission's customary laws report (1986). The purpose of each inquiry was outlined and in some cases outcomes and findings were included.

In part (c) these candidates were able to describe the outcomes and effects of these reports (including changes to policing procedures that resulted from the Royal Commission into Aboriginal Deaths in Custody and National Sorry Day that resulted from the Stolen Generation Report), but generally could recognise that as a mechanism, the reports had not precipitated enough change in the status of Aboriginal and Torres Strait Islander peoples.

These candidates were then able to describe other mechanisms such as land rights legislation, legal aid, Abstudy, anti-discrimination Acts and the Aboriginal and Torres Strait Islander Commission (ATSIC). Typically, at this level, the answers described a broad range of mechanisms.

In part (d) these candidates were able to evaluate the effectiveness of recent changes including land rights (Mabo and Wik in some detail, the *Native Title Act* and the *Native Title Amendment Act*), anti-discrimination acts, traditional punishments (eg cases of Sydney Williams and Wilson Walker), the Aboriginal Law Service, ATSIC, public order offences and the *Summary Offences Act*. Again these responses were typified by the breadth of issues, each of which was evaluated, leading to the logical conclusion that some progress has been made but that there is still a long way to go before Aboriginal and Torres Strait Islander peoples achieve justice, fairness and equity.

Above Average Responses

These candidates were able to efficiently respond to all parts of the question but not to the same extent as the excellent responses. In Part (a) there was a tendency to focus on (i) a detailed discussion of the 1967 referendum or (ii) the 1967 referendum in a general manner with references to later changes such as self determination.

In part (b) the candidates were able to efficiently outline the two major inquiries; the Royal Commission into Aboriginal Deaths in Custody and the Stolen Generation and give a summary of the purpose of each inquiry.

In part (c) these candidates were able to discuss the effect of the reports as well as discussing some mechanisms designed to achieve justice.

In part (d) the two elements that separated these candidates from the excellent scripts were the (i) breadth of issues evaluated and (ii) the depth of evaluation of each issue. A good example of this was in the area of land rights when discussing the Mabo and Wik cases.

Average Responses

These candidates tended to be more descriptive, using fewer issues and evaluating in a very general manner that did not indicate the clear grasp of the issues. Some responses in this range tended to mix sections (b), (c) and (d). In parts (a), (b) and (c), these candidates clearly had a general understanding of the question but were not able to provide enough specific content to gain higher marks.

Again, as in past years, the ability to evaluate remains a strong discriminator. Candidates need to recognise that simple understanding and description of issues is not enough in an area of the syllabus that requires a comprehensive knowledge base, which then allows for effective evaluation of issues.

Migrants

Question 33

Identifying the problems faced by legal and illegal entrants to Australia is easy; identifying the solutions is not. Fundamental change is not a practicable option even if it was thought desirable.

Discuss this statement, and evaluate the effectiveness of the Australian legal system in responding to the differing needs of entrants to Australia.

Your answer should refer to the stimulus material, provide relevant information, and at least:

- Outline the Australian legal system's response to the cultural and social diversity of entrants to Australia;
- Discuss the effectiveness of the Commonwealth Government's response to the problems faced by persons coming to live in Australia;
- Evaluate the procedures available to the entrants who wish to challenge decisions made about them.

General Comments

This question was attempted by 41% of those answering Migrants Case Study. In general this question was answered well. Candidates who chose this question appeared to understand the legal system's responses to issues concerning entrants to Australia.

Most candidates correctly identified a number of problems faced by entrants, naming in particular each of the categories under which migration was possible. Some candidates dealt with these categories at length enabling them to further display their knowledge of the processes associated with migration to Australia. Some responses were able to deal with actual solutions which had occurred as a response to these problems however, few candidates were able to answer this part of the question well.

Many candidates related their answers to the stimulus, using it as a focus for their explanations of Australia's legal response to the problems associated with entrants into Australia. When referring to the dot points of the question, candidates often isolated one part and generally failed to respond to the other. An example which was common to

many scripts was that the candidate outlined the Australian legal system's response to problems faced by entrants to Australia, failing to note how the legal system, responded to the cultural and social diversity of these entrants to Australia. Many candidates appeared not to understand the concepts of cultural and social diversity.

In discussion of the effectiveness of the Commonwealth Government's response to the problems faced by persons coming to live in Australia, candidates were in general able to provide a response, nominating various Acts of Parliament aimed at alleviating the severity of these problems and, explaining that they had generally not gone far enough in solving these problems. Some candidates included legislation and initiatives of the State Governments in explaining how problems in the workplace, housing and policing were being addressed.

Candidates' evaluation of procedures available to entrants who wish to challenge decisions made about them were generally answered very well. Candidates were familiar with a variety of tribunals, their roles and the procedures they followed. Stronger candidates referred to recent cases in the High Court and recent press releases from the Minister's office. These responses showed that these candidates were well prepared to answer questions in this case study, and through this preparation, were able to secure higher marks than those who merely wrote prepared answers.

In general, this question was better answered than Question 34, with candidates who were capable, being able to incorporate the stimulus firmly into their response.

Excellent Responses

Scripts in this category were generally extremely well written and lengthy. They addressed all aspects of the question. Candidates were able to integrate the stimulus into their response and critically evaluate information.

One excellent response began in the following manner:

'In 1966 Australia abolished the White Australia Policy (formulated in 1973). This allowed for an influx of migrants to Australia from a range of diverse ethnic backgrounds and precipitated Australia's cultural diversity. There are many problems that migrants face and in many ways the legal system and the Commonwealth Government have failed to adequately respond to the problems of migrants'.

Many candidates used an historical approach to answer the first bullet point of the question. 'Australia's response to a multitude of cultural and social diversity has not always been positive. The history attached to Australia's gradual acceptance of migrants has changed from one of fear and hostility to one of acceptance and welcoming ...

The Immigration Restriction Act 1901 (Cth) provided the government with the power to exclude all migrants who were unable to pass the language test. This test was passed at Federation and was implemented until the 1970's. During the 1950's Australia followed a policy of assimilation ... By the 1970's ... it was recognised that the policy of assimilation was creating considerable hardship for migrants and hence making it an inadequate policy. It was replaced by a policy of multiculturalism'.

Candidates clearly outlined the Commonwealth Government's response to problems faced by persons coming to our country. They used relevant legislation and tribunals. These were then analyzed for their effectiveness.

'In 1997 the Commonwealth Government introduced sweeping reforms to the welfare system, in relation to access to welfare for newly arrived migrants. The changes meant that migrants would have to wait two years before receiving income support from the government. It is perhaps then, that migrants most need support in establishing themselves in Australia'.

Candidates considered several aspects of the Commonwealth response, for example:

- workplace — governments implementation of multilingual signs
- wages — outworkers
- recognition of overseas qualifications policy — changes in this area — 'in 1988 the National Office of Overseas Skill Recognition was established which aims to redress this problem'.
- current reforms to the Migration Act 1958 (Cth) — 'In 1977, the Commonwealth Government introduced sweeping reforms to the welfare system, in relation to access to welfare by newly arrived migrants. The changes meant that most migrants would have to wait two years before receiving income support from the government. It is perhaps, then, that migrants most need support in establishing themselves in Australia ...'
- slashes to legal aid — decreased funding for Adult Migrant Education Program; reduced funding for the Asylum Seekers Assistance Scheme.

The candidates were also able to evaluate procedures available to entrants who wish to challenge decisions. The better answers listed a variety of avenues and were able to differentiate between formal and informal challenges. For example, 'If a migrant wishes to challenge decisions made about them in relation to their migration status, the Migration Reform Act 1993 provided a new review system. The initial appeal is to be made to MIRO (Migration Internal Review Office), which charges a \$300 fee (refundable if outcome is positive) to review the initial application based on its merits. MIRO involves an officer from the Department of Immigration reassessing the merits of an application'.

‘The second level of appeal is the Immigration Review Tribunal (Asylum Seekers Review Tribunal also exists). The Immigration Review Tribunal consists of ...’ where there is ‘a \$500 refundable fee and applicants can use the assistance of legal representation’, however, legal aid is ‘limited ... Appeals about procedure ... can be lodged with the Administrative Appeals Tribunal’.

Excellent responses also analysed the procedures of the Federal Court and its ‘limited availability of appeal’ due to the *Migration Reform Act 1993* (Cth).

‘Informal means of challenging decisions affecting migrants included the media, voting and ethnic community bodies’.

Candidates successfully linked their analysis and evaluation to the given quote, for example, ‘to overcome the problems faced by migrants such as unemployment, poverty, exploitation etc, fundamental change must take place. The solution to the problem is not easy to identify ... The governments of Australia must acknowledge that migrants are perhaps the most vulnerable members of our society, and the entire community must change its attitude towards migrants if the problem is to be overcome ... the response of the Commonwealth has been minimal, and of late, the Commonwealth Government has acted regressively in its treatment of migrants eg reduced welfare benefits. Fundamental change has been shown to work eg with the success of the new migrants appeals process outlined in the Migrants Reform Act 1993 (Cth). Migrants can challenge decisions about them through formal and informal avenues’.

Excellent answers incorporated both a variety of legislation and cases:

- *Racial Discrimination Act 1975* (Cth)
- *Anti Discrimination Act 1977* (NSW)
- *Administrative Appeals Tribunal 1975 Act* (Cth)
- *Immigration Restriction Act*
- UN Universal Declaration of Human Rights 1948
- *Human Rights and Equal Opportunity Commission Act 1986* (Cth)
- International Covenant on Economic, Social and Cultural Rights
- *Migration Reform Act 1993* (Cth)
- *Racial Hatred Act 1995* (Cth)
- *Racial Vilification 1989* (NSW) (Amendment to Anti Discrimination Act)
- social security legislation
- *Contracts Review Act 1980* (NSW)
- *Residential Tenancies Act 1987* (NSW)
- *Workplace Relation Act 1996* (Cth)
- *Administration Decisions (Judicial Review) Act 1977*

Cases:

- *Chekehov v Commonwealth Government* (social security)
- *Amadia v Commonwealth Bank* (unfair contract)
- *Chan Yee Kin v Minister for Immigration and Ethnic Affairs* (1989) (refugees – well founded fear of persecution)
- *AIS v Banovic* (1991) (direct / indirect discrimination)

It should be noted that reforms are at hand with formal avenues of challenging decisions. The Australian Law Reform Commission's recommendation has been accepted by Cabinet and the upcoming changes will include:

- the Administrative Appeals Tribunal, the Social Security Appeals Tribunal, the Immigration Review Tribunal, the Refugee Review Tribunal and the Veterans Review Board would

d

be amalg

a

merged into the Administrative Review Tribunal.

Proposals include:

- maintain the level of independence in reaching decisions
- Administrative Review Tribunal will be non adversarial and there will be limited access to second tier
- Administrative Review Tribunal bound by strict rules of evidence
- procedures streamlined for greater productivity and efficiency
- priority given to applicants in genuine need
- MIRO and IRT costs to increase to \$500 (non refundable)
- Refugee Review Tribunal \$1000 fee if an applicant is found not to be a refugee

Above Average Responses

Scripts in this grouping were often lengthy yet rarely used the stimulus to advantage. Most simply addressed the three bullet points with little emphasis on evaluation.

'The Australian government recognises cultural and social diversity in Australia to the extent where it has developed legal and non legal initiatives to help migrants. For example, it has passed legislation such as the Anti Discrimination Act, Racial Discrimination Act and Racial Vilification laws to address problems relating to discrimination and racism which migrants may face. It is up to the Governments to print information in various languages outlining migrant peoples rights, as citizens or non citizens of Australia'.

Many candidates presented relevant facts regarding problems faced by persons coming to live in Australia. The effectiveness of the Commonwealth Government's response was frequently lacking depth, if at all present. 'The government's attempt to provide social services and interpreters are often provided but often the migrant is not even aware of the interpreter service'.

In an attempt to answer the third bullet point on procedures and challenges, candidates frequently presented a list of avenues for challenge. At the conclusion of this list a simple statement of effectiveness was often presented. 'In conclusion, it is particularly evident that there are many "problems faced by legal and illegal entrants to Australia" and as yet there are not satisfactory solutions to all of them despite government attempts'.

Average Responses

Responses in this category were generally very descriptive and ignored the stimulus altogether. Candidates favoured a list type response where they presented problems faced by migrants. Evaluation of the government's response to cultural and social diversity was sadly lacking. Some scripts made passing mention of the *Anti Discrimination Act 1977* (NSW), *Racial Discrimination Act 1975* (Cth) and racial vilification laws.

In a bid to answer the third bullet point, candidates listed possible avenues of appeal, neglecting to evaluate these options.

Question 34

The legal status of non-citizens in a community, as well as their acceptance by that community, is a measure of the extent to which that community observes human rights.

Refer to the above statement, and use your knowledge of the legal system to answer the following questions.

- (a) What is the legal status of migrants upon entry to Australia?
- (b) What problems do migrants face in achieving equality of opportunity in Australian society?
- (c) To what extent do the Australian civil and criminal legal systems recognise cultural diversity?
- (d) Evaluate the effectiveness of the Australian legal system in achieving justice, fairness and equity for migrants.

General Comments

This question was attempted by 59% of those answering Migrants Case Study. This structured question was, in general, answered with less sophistication than question 33. Candidates who chose to answer this question generally wrote responses which were poorly planned. Many candidates wrote more to achieve four marks in Part (a) than they did for twelve marks in part (d). In effect, these candidates were writing an unstructured essay for part (a) and short responses for parts (b), (c) and (d).

Responses by candidates showed that they were very familiar with content of the syllabus. Many candidates were able to write competently about the legal status of migrants upon entry to Australia. When answering parts of the question which required a more conceptual response, candidates in general did not convince the examiner that they understood the concept and/or how the legal system has responded.

Candidates' responses to part (b) in general showed an incomplete understanding of the question. Candidates tended to answer part of the question – what problems do migrants face – and did not respond to the remainder of the question – in achieving equality of opportunity in Australian society. Hence candidates may have written a list of problems with some explanation but failed to relate these in any way to equality of opportunity. Candidates found this question quite difficult to answer.

In response to part (c) candidates tended to 'lump together' Australian civil and criminal legal systems. A few candidates noted any civil issues except polygamous marriages. Most responses referred to criminal law matters, often suggesting questionable responses by the police and courts.

Attempting to respond to part (c) and Australia's recognition of cultural diversity many candidates concentrated their responses on how the legal system responds to problems experienced by migrants rather than how the system recognises cultural diversity. Some responses which attempted to respond to this section offered weak links to cultural diversity, quoting questionable examples.

In responding to part (d) candidates in general tended to answer only a part of the question. Some candidates made no distinction between justice, fairness and equity. Many responses tended to 'lump' these together in one or two sentences while explaining how the legal system had either failed to/had been successful in achieving them all. Candidates tended to rush their response to this question offering only very short scripts which lacked any depth of understanding. The stronger candidates answering this part of the question were able to evaluate by giving comprehensive examples, references to legislation and the responses for the courts in some recent cases.

Excellent Responses

Candidates generally explained that there are three primary categories under which migrants are legally accepted into Australia: skilled migrants, family reunion/sponsored migrants and refugees. These categories were then explained. Relevant facts were presented.

‘Refugees come to Australia because of their fear of persecution by their home government due to their race, culture or political views. Being a signatory to the UN Convention relating to the Status of Refugees, Australia is obliged to accept them’.

Candidates in this category were able to answer the entire question, refer to the stimulus and support their evaluation with relevant information and legislation. Scripts were lengthy and well written.

Candidates generally distinguished the legal status of migrants as being legal or illegal upon entry into Australia. Major emphasis of discussion was placed upon legal migrants. Relevant legislation was presented: the main legislation which governs migrants’ status are the *Migration Act 1958* (Cth) and the *Migration Reform Act 1993* (Cth).

The status of the illegal migrant was discussed. ‘When a person/migrant has no authority to be in Australia, they are given the status of “unlawful, non citizens” under the *Migration Reform Act 1993* (Cth)’

In part (b) the ability of a script to address problems faced by migrants and often discuss and evaluate these in the light of ‘equality of opportunity’ was a major factor in placing a script in the excellent category.

Candidates generally presented approximately four major problems encountered by migrants. Relevant facts and issues were discussed and appropriate legislation was involved.

Problems covered included:

- language barriers and associated spin offs, eg workplace difficulties, accessing information
- access to employment
- recognition of overseas qualifications
- understanding of the adversary system
- housing/rentals
- social security benefits

‘For migrants to receive equality of opportunity in Australian society social attitudes need to be addressed ... It is hard for non English speaking children to receive the same schooling as fluent English speaking children which also reduces their opportunity of receiving a good education’.

In part (c) candidates placed an over emphasis on the ‘criminal legal system’, sometimes only making a vague reference to the ‘civil system’ in reference to polygamous marriages and special circumstances granted to some religious groups. Scripts did however address the issue of cultural diversity.

In order to address the issue of cultural diversity and the legal system candidates chose relevant pieces of legislation.

‘Legislation such as the Racial Vilification Act and the Racial Discrimination Act are fine examples as to how the Australian legal system has come to protect those who are of a different culture’.

Candidates also attempted to make some analysis and evaluation of the criminal system’s response.

‘The defence of provocation used to change the charge of murder to that of manslaughter is based on the ‘ordinary person’ test, but this is based on the ordinary person of the majority of the people and does not take into account what was considered normal for the defendant in their country of origin. Therefore cultural diversity is not recognised in this instance’.

In part (d) scripts were able to evaluate the effectiveness of the Australian legal system and relate this to the achievement of justice, fairness and equity for migrants.

‘The current government policy essentially means an acceptance of migrant cultures being brought into Australia. Although it has been implemented since the Whitlam government (1970s) public opinion about the effectiveness of the system is still largely divided. In ... policies and legal response that the Australian system has achieved should be evaluated based on such criteria as justice fairness, equality, utilitarianism (greatest satisfaction for most people) and the availability of avenues to balance the needs of all parties’.

‘The enactment of the Racial Discrimination Act (Cth) and Anti Discrimination Act (NSW) and its Racial Vilification provisions enable a clear legal avenue in attempting to bring justice to migrants. Since they are in a disadvantaged position (due to language incompetency, unfamiliarity with culture etc) the law should attempt to place them in a position ... to those in the rest of society’.

‘The Howard government introduced a new piece of legislation last year through the Social Securities legislation (Waiting Periods) Amendment Act ... the only way they (migrants) can receive benefits is if they can show a ‘substantial change’ in circumstances beyond their control’. But what is a substantial change and what is beyond their control? Chelekhov was the first case to use this condition to receive benefits. The inequality created by this act is far reaching. Studies have shown that if migrants are helped during the first years of their lives in Australia they quickly become self sufficient and help contribute to the Australian economy’.

Above Average Responses

In these evaluation all four parts of the question were addressed; the stimulus was as a rule ignored.

In part (a) candidates gave a comprehensive coverage of the status of migrants entering Australia and also discussed the status of illegal migrants.

A range of problems faced by migrants were discussed in part (b) and to limited degree analysed. Candidates were usually quite clear in their discussion in this part but generally were unable to take this into an analysis of how these problems impacted upon equality of opportunity for migrants. Some candidates suggested ways in which the NSW and Commonwealth governments were attempting to solve these problems.

In part (c) candidates experienced some difficulty in coming to grips with the civil legal system’s response to cultural diversity. Some made mention of marriage differences, marriageable ages. This was often covered in a single descriptive paragraph.

The candidates’ response to the issue of the legal system’s recognition of cultural diversity was covered more thoroughly. Relevant legislation was discussed; attempts were made to evaluate key areas.

Candidates’ scripts revealed an understanding of the issue in part (d). They were able to relate relevant legislature and attempts were made to evaluate key points.

Many candidates grouped justice, fairness and equity under the same banner as opposed to distinguishing between these terms.

Average Responses

Scripts in this group generally spent more time on part (a) where they obviously felt more comfortable with the information. A very descriptive list type answer was given for part (b) where the concept of equality of opportunity was overlooked.

Again in part (c) the response was very descriptive frequently placing the 'civil and criminal legal system' under the same umbrella. Part (d) was sadly lacking in evaluation and frequently a list of legislation was presented in a bid to answer the question.

In all four parts to the question the stimulus was basically ignored.

Women

Question 35

Women today not only work outside the home, but they also usually come home to their second job of looking after the family. There are still many companies that remain unsupportive of flexible work arrangements. However, until men start pushing for, and taking advantage of family-friendly work practices, women's lives will not be equal.

Discuss this statement, and evaluate the effectiveness of the Australian legal system in achieving equality of outcomes for women.

Your answer should refer to the stimulus material, provide relevant information, and at least:

- Outline the traditional role of women in Australian society;
- Discuss whether formal equality in the workplace achieves equality outcomes for women;
- Discuss the extent to which women's roles have changed in different forms of families and the workplace.

General Comments

This question was attempted by the larger percentage of candidature. The question was well answered by most candidates who integrated parts of the stimulus into the answer and addressed the whole question. Some candidates ignored the stimulus.

Most candidates were able to outline the traditional role of women in Australian society. The better candidates were able to discuss the traditional role in the work and domestic environment, these answers were well supported with landmark legislation. Concepts such as lack of property rights, lack of status and power in society were usually mentioned. Many candidates used the following examples to support their answer: *Married Person's (Property and Torts) Act 1901* (NSW), *Women's Legal Status Act 1918* (NSW), *Jury Act 1977* (NSW), the 1972 Equal Pay Decision, *Sex Discrimination Act*, Affirmative Action.

These candidates were able to link the many historical legal milestones into their answers, linking these with the changing social position of women in Australian society.

Case studies were also used by the better candidates to support their answers.

Excellent Responses

Candidates addressed the total question of evaluating the effectiveness of the Australian legal system in achieving equality of outcomes and incorporated the stimulus where relevant. It examined the role of women within the home through the 'traditional' role of women and also within the workplace and work culture.

Candidates defined formal equality in the workplace and equality of outcomes and used terminology such as glass ceiling and explained the meaning of 'an invisible structural barrier that stops women from progressing past certain levels of promotion' and introduced issues of segregation as reason for inequality while incorporating indigenous and multicultural perspectives in the answer.

These responses provided a balance between changes to family law and workplace law that have resulted in gains relating to achievement of equality of outcomes for women. Candidates named and applied legislation which promoted formal equality. Legislation such as the *Sex Discrimination Act 1984* (Cth) was introduced and the interrelationships linked to the Committee for Discrimination Against Women (CEDAW) and to the International Labour Organisation (ILO) convention on discrimination. Further the concept of Equal Employment Opportunity (EEO) was introduced and related to workplace and Affirmative Action programs.

Reference was frequently made to women in part time work, being poorly unionised and disadvantaged in relation to enterprise bargaining. Non legal responses such as the role of trade unions in protecting the rights of women were discussed and explained why they are often ineffective.

Excellent responses would integrate common law and statute law and introduce the link to the external affairs power in adopting the UN Convention on the Elimination of all forms of Discrimination against women.

Candidates were also able to discuss that bias and indirect discrimination are still prevalent in the structural framework. Candidates were able to recognise that women still do not experience equality of outcomes but the legal measures to promote it exist.

Above Average Responses

Candidates explained the traditional role of women in Australian society and the concept of formal equality. However the discussion did not always extend to equality of outcomes. Some candidates showed the link between formal equality and equality of outcomes and provided historical references with appropriate development in legislation advancing the equality argument in the workplace.

Stimulus material was referred to but candidates failed to incorporate the material effectively.

Legislation was noted but not comprehensively explained. Case studies were numerous but often not well linked to evaluation.

While candidates in this category were able to display a good legal knowledge on family issues and women, especially in the workplace, evaluation of the changes in the forms of families was less evident.

The changing nature of women's roles in different family structures was discussed by some of the better candidates while the changes in the role of women in the workplace was addressed by most candidates.

The difference between an above average response and an excellent response was often reflected in the level of analysis and explanation of the facts provided.

Average Responses

Candidates in this category attempted to deal with most of the question but in less detail than those in the higher categories. Consequently many of the answers were shorter and omitted parts of the question.

The stimulus was recognised but limited discussion followed and the issues raised were often treated in a descriptive rather than analytical way.

Responses had a prepared tone about them and made minimal effort to embrace the specific issues in the question such as different forms of families or the difference between formal equality and equality of outcomes. These responses were very descriptive and contained minimal analysis. Very few referred to the need for men to take advantage of family friendly workplaces.

Many candidates acknowledged the problems faced by women in the work place but had limited in depth knowledge of changing roles in the families and the workplace. The reference to the changing domestic role of male partners and men as employers was only occasionally addressed.

Question 36

Many women are the victims of domestic violence. Others are the victims of another form of violence, which is sexual harassment in the workplace. Some are subject to both forms of violence.

Refer to the above statement and use your knowledge of the legal system to answer the following questions.

- (a) What are the types of violence women may encounter?**
- (b) Explain the role of women's support and welfare groups in protecting women from violence.**
- (c) Describe the impact of violence on women's lives.**
- (d) Evaluate the effectiveness of the Australian legal system in ensuring a women's right to live and work free of violence**

General Comments

This question was attempted by 44% of those answering the Women Case Study.

Question 36 attracted a broad range of candidates and the standard was generally not as high as that of Questions 35. Candidates had difficulty distinguishing between domestic violence and workplace harassment, despite it being given as stimulus in the question.

Most candidates generally scored well in parts (a) and (b) although the poorer responses had difficulty responding to describing the impact of violence on women's lives in part (c) and evaluating the effectiveness of the legal system in part (d).

In part (a) the majority of candidates would name the forms of domestic violence but many omitted that it also occurs in the workplace. While other students went on to discuss not only the types of violence experienced by women but also the context in which they occurred, often being supported with examples.

In part (b) most students were aware of the existence of women support and welfare groups. The better students were able to give a broad range of examples of support and welfare groups and made an evaluation of the effectiveness of their roles.

Part (c) required the students to give a range of impacts in both the domestic and workplace situations. Better candidates made reference to the concept of social justice in society, making a pertinent link between the impact of domestic violence and the ability of women to perform in the workplace. This section lent itself to emotional responses by some candidates.

In part (d) generally most students were able to list some of the Australian legislation relevant to ensuring women's rights to live and work free of violence. Analysis of the effectiveness of Australian legal system identified the better candidates. These students supported their answers with precedents and landmark cases and identified forms of redress available to individuals.

Students attempting Questions 35 and 36 concentrated on the case study of women and most failed to incorporate the concluding topics of the Individual and the State and Justice, Law and Society. The questions were framed using terminology from the concluding topics and the excellent answers distinguished concepts of formal equality and equality of outcomes. Women's rights or the rights of the individual were examined superficially.

Relevant legislation was used by better students.

It is important for teachers to note that case studies need to address these two areas of Justice Law and Society and the Individual and the State in evaluating the effectiveness of the law within the framework of legal protections and the nature of law and justice.

Excellent Responses

A candidate in this category successfully dealt with the whole of the question. In part (a) candidates identified a variety of types of violence. They are able to give clear and concise definitions of domestic violence and sexual harassment, with a range of examples such as emotional, psychological, physical, verbal, sexual, financial, stalking, intimidation. Students were able to support answers with legislation, landmark cases and using statistics indicating the extent of violence.

In part (b), candidates clearly explained the way support and welfare groups protect women from the various forms of violence. The best candidates focused on the role of these groups including financial assistance, counseling crises care emergency and long-term accommodation, advisory services and legal advice. Excellent responses distinguished between support and welfare services and gave examples. These candidates also mentioned the support area to sexual harassment.

In part (c) candidates identified a range of impacts that violence had on women's lives, in both the workplace and domestic environment. These candidates were able to give a full description and explanation of the impact of violence on women's lives through physical, mental, social and economic abuse. The better candidates used examples of well known cases to support their answer and incorporated the concepts of social justice and attitudes.

In part (d) responses in this category considered the various aspects of the legal system. They will analyse and evaluate a range of ways in which the legal system promotes the right of women to be free of violence, beyond just domestic violence and sexual harassment to recognise the 'right to live' is more than home and work. Candidates explained the effectiveness of a range of legislation, eg Crimes Act, Anti Discrimination Act, Affirmative Action, EEO, AVO etc. These candidates also used appropriate well known court case examples to support their evaluation. Responses identify various forms of redress available to individuals, discussing the rights of the individual, incorporating justice, law and society. An analysis of the overall effectiveness of the legal system is evident.

Above Average Responses

The candidates in this category attempted to deal with the whole of the question.

- (a) Candidates were able to identify examples of both domestic violence and sexual harassment and some also had limited examples of types of violence.

- (b) Candidates were able to identify and explain the roles of women's support services and welfare groups. These candidates were able to give examples of the various support and welfare groups available to help women.
- (c) Candidates attempted to describe the impacts of violence on women's lives. Outlining and explaining physical, mental and emotional impacts, also its consequences in both domestic and workplace areas using relevant case studies and appropriate legislation.
- (d) Candidates attempted to evaluate the effectiveness of the Australian legal system although responses usually lacked depth of analysis and often did not extend to both domestic and workplace situations. Responses evaluated how AVOs are implemented and examines their success and failures using examples. Responses were usually more descriptive in using fact rather than evaluation of the legal system.

Average Responses

Candidates in this category attempted to deal with most of the question but in less detail than those in the higher categories. Consequently, many of these answers were shorter and omitted certain parts of the question.

- (a) Candidates were able to identify a variety of types of violence and briefly describe them.
- (b) Responses were able to describe the way in which support and welfare groups try to protect women from violence, eg advise, assistance, crisis care etc, but often would not identify these organisations or give a limited range of examples.
- (c) Average candidates found difficulty in fully comprehending what was required in relation to the impact of violence on women's lives. Often candidates' answers tended to be emotional rather than analytical in their response. Many candidates would concentrate on the domestic or workplace situation and only make brief reference to the other. Many students would make over-generalisations with not enough use of important legislation or case studies.
- (d) Responses tended to be descriptive rather than evaluative. Often responses would make statements that were unsupported by statistic facts, legislation or court case examples. Candidates tended to deal mainly with domestic violence with little or no attempt to deal with violence in the workplace.

Other Disadvantaged People

Question 37

No single group can be expected to solve all the problems posed by mental illness. This is an area where the law and medicine meet. Psychologists, social workers, nurses, police and many more may be involved.

Discuss this statement, and evaluate the effectiveness of the Australian legal system in achieving justice for the mentally ill or intellectually disabled.

Your answer should refer to the stimulus material, provide relevant information, and *at least*:

- **outline the problems faced by the mentally ill;**
- **identify the rights affected by mental illness, including the problem caused by lack of legal capacity;**
- **discuss the roles of institutions and the people who provide protection for, and treatment of, mentally ill and intellectually disabled persons.**

General Comments

This question was attempted by 50% of those answering the Other Disadvantaged People Case Study.

Most of the candidates were able to effectively outline the problems faced by the mentally ill. Specifically these include loss of basic rights such as self-determination, the right to vote, make wills, privacy and discrimination in employment, education and access to housing, both public and private.

A number of candidates did not make adequate use of the stimulus or the stem. Use of the concepts raised in the stem, 'effectiveness of the legal system' and 'achieving justice' were generally poorly analysed and evaluated. Most candidates either described legislation, for example *Mental Health Act 1990* or government programs or reports, such as Burdekin and what they were meant to achieve rather than evaluating the achievements.

The rights of the mentally ill were generally identified. These include the rights of voluntary and involuntary patients. Discussion included proper assessment, appointment of legal and financial guardians and the provision of proper standard health and housing.

However, the rights were not always evaluated in relation to the problems caused by lack of legal capacity, that is the ability to make informed decisions about personal, financial and legal concerns.

There was a reliance on textbooks with little evidence of other sources of information, for example, Mental Health Rights Manual, Legal Association Papers.

Excellent Response

Responses in this category dealt with the total question, including reference to the stimulus material and use of the stem to analyse the role of law in dealing with the provision of justice for the mentally ill (and the intellectually disabled). These candidates were able to give a clear definition of the problems of the mentally ill, while discussing and evaluating how well the problems are being solved. There was excellent discussion of rights affected by mental illness in terms of lack of legal capacity. There was excellent use of relevant legislation. Candidates could quote legislation, the most common being *Mental Health Act 1990*, *Anti-Discrimination Act 1977*, Social Security legislation and the Guardianship Act and analyse and evaluate their impact in achieving justice.

The roles of institutions and people were discussed and analysed, for example, police, doctors, families and guardians. The role of the general community was also discussed particularly in regard to acceptance of institutionalisation and deinstitutionalisation. Candidates were able to discuss, critically analyse and evaluate the effectiveness of the legal system in achieving justice with reference to the Burdekin and Richmond Reports.

Above Average Responses

Most candidates in this category made reference to the stimulus and attempted to answer the whole question. Candidates had an understanding of the problems faced by the mentally ill. Candidates knew what lack of legal capacity meant and were able to discuss the problems of the mentally ill in reference to this lack of legal capacity. Candidates referred to relevant legislation and reports, however some were unaware of the 1994 amendments to the *Mental Health Act 1990*. Candidates displayed a knowledge of the roles of institutions/people who provide protection. There was an attempt to analyse in terms of achieving justice with some evaluation of the issues relating to the provision of protection.

Average Responses

Many candidates ignored the stimulus or rewrote it. Many failed to address the whole question, answering the dot points without relating back to the question. There was poor understanding of many of the issues with only limited analysis of rights and problems. Most limited problems to those of general discrimination, based on appearance or lack of wealth.

There was no real attempt to discuss or evaluate the role of institutions/people in the provision of care. Candidates mentioned some legislation with one or two points factual points. Many focused on the *Anti-Discrimination Act* rather than legislation specifically aimed at the mentally ill.

Question 38

Few would disagree with the objective of equality before the law. The Australian legal system has, however, in the past been an instrument of discrimination and even oppression in relation to disadvantaged groups.

Refer to the above statement, and use your knowledge of the legal system to answer the following questions. In your answer do NOT discuss women, migrants or Aboriginal and Torres Strait Islander people.

- (a) What are the characteristics of disadvantaged people?
- (b) What are the sources and forms of discrimination faced by disadvantaged people?
- (c) Describe how society might abuse the rights of disadvantaged people.
- (d) Evaluate the effectiveness of the legal system in protecting disadvantaged people.

General Comments

This question was attempted by 50% of those answering Other Disadvantaged People Case Study.

The majority of candidates did not refer to the stimulus material and thus failed to address the 'objective of equality before the law'.

Part (a): there was confusion concerning the difference between a 'group' of disadvantaged, for example, social security recipients and characteristics of these groups. The characteristics that were recognised included; low levels of education, low self esteem, poor health, poor diet, over represented in crime statistics etc.

Many candidates were too narrowly focused, discussing only the mentally ill or social security recipients. A number adopted a sample study approach and discussed for example the 'homeless' in great detail rather than being inclusive of all groups of ODP.

Part (b): candidates in general found it difficult to distinguish between sources (direct discrimination — when the person knows they are being discriminated against) eg housing, employment, visibility in public (police), education/literacy, and forms of discrimination, failure to gain employment, inability to present well at job interviews — clothing, speech, resume etc.

Part (c): the majority of candidates were able to list the rights of the disadvantaged but did not analyse the abuse of their rights. Abuse would best be defined , in the context of this question, as indirect discrimination. The disadvantaged person would probably not be aware that it was happening. Society was best interpreted as 'the system'. Some examples would include: over represented in crime statistics as a result of lack of legal aid and the nature of the legal system, no right to privacy — intrusion by DSS & DOCs, the practice of depriving some of the mentally ill of some of their basic rights, appropriate medical care, access to benefits for all disadvantaged etc

Part (d): candidates were aware that the legal system has mechanisms for protecting the rights of the disadvantaged but were unable to evaluate the effectiveness of the legal system in adapting to meet their needs. The majority listed and described the key pieces of legislation and focused on the *Social Security Act* (Cwth), the *Mental Health Act 1990* NSW, review boards and administrative appeals processes. The best candidates were able, initially, to describe the methods used to deal with the generic problems of the disadvantaged (those that affect the MI, ID and social security). This allowed students to look at the *Anti-Discrimination Act 1977* (NSW), Ombudsman, Legal Aid, and the Social Security System's effectiveness as a safety net. They then moved on to look at the methods provided by the legal system to protect each specific group. These included: for social security recipients — internal review, SSAT, AAT, judicial review; for mentally ill — Guardianship Board, Protective Commissioner, CCO, CTO, MHRT, Psychosurgery Review Board, Official Visitor, judicial review.

Excellent Responses

Responses in this category were aware of the total question, they included reference to the stimulus throughout the parts. They discussed characteristics of the disadvantaged with a factual approach. They distinguished between the sources and forms of discrimination and were able to analyse by discussing relevant and current examples.

There was a logical argument of the abuse of rights, with reference made to previous and current societal attitudes. This section included analysis of 'oppression', with the legal system as an instrument of disadvantage in the past. There was critical evaluation of the law in its role of protecting the disadvantaged and achieving its objective of equality before the law.

With reference to the mentally ill and intellectually disabled, there were a small number of students who utilised international standards (the 1991 UN Declaration on Protection of the Mentally Ill) to evaluate domestic legislation, while the majority used local studies including the Burdekin Report. Social security legislation was the subject of some review in the Richmond Report and some students also effectively used ACOSS material.

Above Average Responses

In these responses the main issues and problems were discussed throughout the script. The candidates were able to identify and discuss the characteristics of disadvantaged people. They were aware of discrimination but may not have separated sources and forms. Abuse was recognised as a problem however there was limited analysis of rights. There was an attempt to evaluate the effectiveness of the legal system with logical argument of issues and problems. However they may not have related their response to the objective of equality before the law.

Average Response

In these responses there was little mention of the stimulus. Some parts were answered better than others. Many candidates confused groups of disadvantaged with characteristics, and lists of both were common. Most responses displayed an awareness of discrimination faced by the disadvantaged, but may not have separated sources and forms. Many responses were descriptive in recognising rights and consequent abuses of rights. There were a number that were emotive in discussing rights. There was limited analysis but no evaluation of how the law protects the disadvantaged.

3 Unit

SECTION I

Challenge: Global Environmental Protection

Question 1

[A 1994 advertisement for the chemical, DDT appeared here].

Much activity such as clearing forests, harvesting animals for fur, and the use of pesticides, fertilizers and other chemicals was not regulated fifty years ago. Today the world faces the consequences of those activities, including the degradation of the environment and habitat destruction.

Clearly identify, at the beginning of your answer, the TWO depth studies you will discuss.

Refer to the above statement and cartoon, provide relevant information from the CORE and use examples drawn from the TWO depth studies you have identified, to answer the following questions.

Why do we need to protect the global environment?

Evaluate the effectiveness of national and international environmental law in addressing the problems caused by the impact of industrial society and culture on the environment.

General Comments

This question was attempted by 50% of the candidates. Students tended to ignore the stimulus or made token reference to it without relating it to the need for global environmental protection. Better candidates utilised the message of the stimulus more effectively.

Most candidates seemed to have difficulty in interpreting and relating each component of the question with the intergenerational nature/context of the question. Many answers appeared to be prepared with students describing all they knew about international law, whilst with some scripts it was not clear which question was being answered.

It would appear that students need to develop interpretation and evaluation skills, which are critical in coming to terms with the demands of this course.

The Marine depth study was by far the most popular and many students failed to give a proper weighting to their second depth study. The Marine depth study generally lacked current case study material; it was dated and tended not to be clearly related to the need to protect global environments.

Many students found it difficult to relate their answers to the impacts of industrial societies and culture and thus tended to ignore this part of the question. Candidates tended to present a more comprehensive analysis of international law with national law being covered superficially.

Excellent Responses

Students in this category addressed all parts of the question. They demonstrated good essay writing skills and supported their arguments with a range of current and relevant legislation and cases—for example Kyoto 1997 and Indonesian fires 1997.

They were able to relate the ‘essence’ of the stimulus material to the need for international and national responses to protect the global environment. They were also able to relate to such concepts as intergenerational equity, environmental boundaries, global commons, precautionary principle, sustainability, anthropocentric approaches to global protection and the philosophy of ‘think globally, act locally’.

Candidates who produced excellent responses addressed the core as well as their depth studies, successfully achieving balance between each component—that is, the international and national response through both depth studies with analysis and evaluation of the impacts of industrial society and culture.

Candidates were able to identify significant bodies such as the United Nations, National governments, the Land and Environment Court and Non-Government Organisations such as Greenpeace. There was well-developed analysis, evaluation and discussion of relevant treaties, conventions and domestic legislation.

These candidates were also able to cite relevant specific examples—Bhopal, Ok Tedi, Trail Smelter Case, to support their arguments.

Above Average Responses

Candidates in this category addressed most of the question. They recognised the nature of the stimulus but were not able to use it to articulate the relevance of it to the need for global environmental protection.

They demonstrated a good understanding and knowledge of the need to protect the global environment. They understood the basic concepts such as sustainability and were able to cite relevant problems and issues while discussing their depth studies. Problems and issues included ozone depletion, greenhouse effect, Antarctica, pollution, commercial harvesting and tourism. These candidates attempted to evaluate how effective environmental law, both international and national is, in solving the impact of these problems. There was not always a balance between the international and national approach. The number of key issues developed was adequate.

Generally there was a more limited discussion of the need to protect the global environment with past problems (free use of DDT) associated with unregulated industrialisation.

Average Responses

Candidates attempted to address most of the question but their responses were descriptive and lacked meaningful analysis. These candidates often referred to the stimulus but their interpretation was often simplistic and in the case of the cartoon too literal. Many prepared answers fell into this category.

Candidates concentrated mainly on international responses to the issues raised in the questions and their coverage of national responses was often limited. The examples given were treated superficially with little analysis and evaluation. Whilst many of these candidates used key terminology, such as, sustainable development and precautionary principle, they usually failed to define these terms or apply them to answering the question.

Generally they tended to provide a basic coverage of their depth studies with concentration on one and superficial coverage of the other.

Cases and examples cited were dated, descriptive and at times irrelevant.

Question 2

[A quote referring to the environment and political boundaries appeared here.]

Clearly identify, at the beginning of your answer, the TWO depth studies you will discuss.

Refer to the above statement, provide relevant information from the CORE, and use examples drawn from the TWO depth studies you have identified, to answer the following questions.

Why is it important to cooperate at a global level to address the problems caused by humans in relation to the environment?

Evaluate the effectiveness of national and international bodies in achieving global environmental protection.

General Comments

This question was attempted by approximately 50% of the candidates doing this option. The range in quality of responses was from excellent to very poor, however many prepared answers were encountered and in some instances it was difficult to determine whether the candidates were answering Question 1 or Question 2.

This failure to address the whole question and to organise relevant material was also obvious in the failure by many students to achieve a proper balance between their two depth studies and between the responses of national and international bodies.

Most candidates have studied the Marine Environment and this depth study seems to be emphasised above all others. Students who demonstrated a sound understanding of one of the other three depth studies and who were able to support their arguments with relevant and up to date cases and legislation stood out

Excellent Responses

Candidates in this category were able to address the whole question including the stimulus by elaborating on the transboundary nature of environmental problems and the need for international cooperation. These candidates also demonstrated an appropriate balance between their two depth studies and they included relevant terms, which were well used and defined.

Most responses indicated clear understanding of the term ‘bodies’ which included a range of NGOs such as Greenpeace, WWF, IMF and ACF. They were able to analyse whether these bodies and relevant legal instruments were effective at solving global environmental problems. These candidates produced responses that demonstrated excellent analysis and their arguments were reinforced by relevant legislation, conventions, protocols and cases.

Above Average Responses

These candidates attempted to address the entire question but with little or no reference to the stimulus. These candidates clearly defined each of their depth studies however, the balance between the two was often biased in favour of one study – this was usually the marine environment. The responses demonstrated a sound understanding of the issues and problems inherent in environmental law and they cited some relevant cases and instruments accurately in order to give emphasis to their arguments.

There was limited evaluation in terms of cooperation at a global level but there was some successful analysis of the role of individual countries and bodies in overcoming environmental problems.

The struggle between economic growth and global environmental protection was discussed in relation to national and international bodies. However the evaluation of their effectiveness tended to be limited.

Average Responses

There were many prepared answers. These failed to address both the stimulus and the question adequately. Responses in this category tended to be very descriptive with little real analysis of the issues. Relevant terms were often used but usually not well defined nor well related to the issues being discussed. Cases and examples of international cooperation (such as Kyoto) were often mentioned but frequently with too much irrelevant detail.

SECTION II

Challenge: Technological Change

Question 3

Our Society went blindly into the era of nuclear energy and information technology, but we cannot go blindly into the 21st century developing new technologies that can be used for evil as well as good. The line between good and evil, dream and nightmare is an unbelievably fine one.

Clearly identify, at the beginning of your answer, the TWO depth studies you will discuss.

Refer to the above statement, provide relevant information from the CORE, and use examples drawn from the TWO depth studies you have identified, to answer the following questions.

How has international law responded to technological change?

Evaluate the effectiveness of national and international law in responding to technological change?

General Comments

This was the most popular of the questions with almost 80% of the responses. Biotechnology was the most commonly referred to depth study. It was apparent that student responses were more lengthy than previous years. Generally, students referred to the stimulus in their introductions and conclusions, particularly the phrase ‘used for good or evil’ but most did not pay any attention to it in the remainder of their answers.

Most candidates referred to the legislation, agreements and conventions (both national and international) and there did appear to be a general improvement in the treatment of the issue on effectiveness.

Excellent Responses

Excellent responses by candidates were able to use the stimulus materials to their advantage throughout the whole response. Whilst critically evaluating the issues raised by technological advancement, they were also able to balance and integrate the core and depth study requirements of the syllabus into their answers.

The key issues were intelligently and concisely illustrated with the use of case studies and topical examples and ideas. They provided clear, concise critical evaluation of the effectiveness of national and international laws in response to changing global circumstances. The candidates were also able to provide a balance of appropriate national and international examples specifically required by the question.

Above Average Responses

Candidates tended to focus on issues relating to technological advancement and discussed both national and international responses.

Scripts were lengthy but often lacked the same degree of analysis and depth evident in excellent responses. Similarly, candidates often were not able to demonstrate the same level of understanding of the stimulus occasionally reverting to a descriptive approach.

These responses frequently did not maintain a balance between their depth studies.

Average Responses

Candidates presented an answer which was largely descriptive and which often did not address the question or the concepts presented within the stimulus. Many of these responses were unable to treat the core and depth study aspect of the question adequately. Candidates did not support their answers with sufficient examples of international and domestic law.

Some candidates appeared to rely heavily on prepared answers which they did not adapt to suit the needs of the question.

Question 4

International law has selectively regulated technological change. Technologically advanced nations have used their economic and political power, rather than the law to protect the efforts and ideas of citizens. At the same time, they have made very little effort to share the benefits of technological change with developing nations.

Clearly identify, at the beginning of your answer, the TWO depth studies you will discuss.

Refer to the above statement, provide relevant information from the CORE, and use examples drawn from the TWO depth studies you have identified, to answer the following questions.

Discuss the extent to which cooperation at a global level addresses issues relating to technological change.

Evaluate the effectiveness of national and international law in dealing with the concept of shared global responsibility.

General Comments

This question required students to discuss the need for cooperation between nations when addressing issues relating to technological change and to evaluate laws when dealing with shared global responsibility.

This question was attempted by a smaller number of candidates (20%) than question 3. This may be because the stimulus contained a variety of concepts which students may have found difficult particularly ‘the concept of shared global responsibility’.

Generally students mentioned the stimulus in the introduction and conclusion but did not link it to the concept of shared global responsibility.

Excellent Responses

These responses addressed the core and provided a balanced treatment of both depth studies.

They included a wide range of depth study examples drawn from conventions, agreements, legislation and cases to illustrate international and national responses to shared global responsibility. They provided a clear, concise, critical evaluation throughout the answer, which logically responded to the issues raised by the question.

Many of these responses distinguished themselves with their use of a variety of current cases rather than the typical text book examples.

Above Average Responses

Responses were structurally sound, they addressed the core and attempted to balance depth studies. Whilst lengthy, they tended to be more descriptive in the core component of the question and they proceeded to strike the appropriate balance with the depth studies.

Candidates identified ethical and moral issues but failed to appropriately link back to cooperation at a global level as required by the question.

Average Response

Key moral and ethical issues were addressed however, candidates tended not to present a balanced view.

Responses were descriptive with little evaluation evident. Examples of international and national law were generally limited and when present, were not well linked to the concepts being examined.

SECTION III

Challenge: World Order

Question 5

[A quote referring to the effects of globalisation on governmental influence appeared here.]

Clearly identify, at the beginning of your answer, the TWO depth studies you will discuss.

Refer to the above statement, provide relevant information from the CORE, and use examples drawn from the TWO depth studies you have identified, to answer the following questions.

To what extent do national, business and humanitarian concerns affect the perception of World Order?

Evaluate the effectiveness of national and international policies and laws in responding to issues of World Order.

General Comments

This question was attempted by 40% of those answering Challenge: World Order. The stimulus for this question was quite complex and this was dealt with by candidates with varying degrees of success.

Better candidates could recognise that sovereignty was under pressure from individuals and corporations. There was an analysis of reasons for growing interdependence of states with consequent reduction of the sovereignty of individual states.

The outstanding candidates understood all of the terms of the first question, particularly the concept of perceptions of World Order. This concept was interpreted in terms of religious, social and different cultural perspectives. An example of this was the purported greater Western concerns with individual rights as opposed to purported Asian emphasis on economic development rather than on individual rights.

In addressing the core many students made reference to the Australian Government's response to issues of international policy and law.

Excellent Responses

The best candidates identified themes and issues from the stimulus and incorporated discussion of these throughout their answer.

The answers had a sophisticated discussion of the concept of sovereignty and issues which impinge on sovereignty such as the power of transnational corporations, and international humanitarian issues.

Candidates gave extensive treatment of the core and equal treatment to both of the depth studies. Very few candidates selected Transnational Trade as a depth study for discussion. Military Conflict was dealt with by nearly all candidates with similar numbers discussing International Crime and Displaced Persons.

Students linked in logical sequence national, business and humanitarian concerns to the perception of World Order. These students understood the concept of perception of World Order as determined by political viewpoint etc.

These answers had an analytical approach to national and international policies and laws. For example there was discussion of issues such as concerns of the United States about the powers and structures of the new International Criminal Court. There was also discussion of problems of extradition, the lack of power of the International Court of Justice and the lack of political will of member nations of the United Nations to adhere to international agreements.

There was also discussion of the role of other international organisations, non government organisations and the media in responding to issues of World Order.

These candidates typically used current examples in their analysis, such as the attempts to extradite Christopher Skase, the extradition of Phillip Bell, weapons inspection problems in Iraq and UN and NATO involvement in Kosovo. It was however, the integration of these examples into their analysis which made these responses superior.

Above Average Responses

These answers incorporated discussion of the stimulus and there was a good level of analysis in response to the question but this was more limited than with excellent responses.

There was a more descriptive treatment of the core and the depth studies but often there was an imbalance in the treatment of the two identified depth studies. However, this may reflect the time constraints on candidates.

There was some difficulty in discussing perceptions of World Order, but this part of the question was addressed.

There was generally a sound analysis of international initiatives but there was a less effective examination of the connection of these to national laws and policies.

There was a sound use of case studies and current issues though these were not integrated into the argument as well as in the excellent responses.

Average Responses

Candidates often only used terminology from the stimulus and question rather than demonstrating a deeper understanding of the underlying concepts.

There was adequate treatment of the core but this was descriptive rather than analytical. Typically with these answers there was an imbalance in the treatment of the two depth studies.

Average answers often appeared to be prepared, listing conventions and explaining the role of the United Nations without specifically addressing the question. There was very little analysis.

Candidates did refer to current issues but these were merely noted rather than used in discussing the question.

These students nevertheless had a reasonable grasp of the concept of World Order.

Question 6

Since the move towards a more shared global responsibility, general trends in economics and society are entirely different. They require a rethinking of economic, political, social and cultural rights.

Clearly identify, at the beginning of your answer, the TWO depth studies you will discuss.

Refer to the above statement, provide relevant information from the CORE, and use examples drawn from the TWO depth studies you have identified, to answer the following questions.

Describe the framework in which international problems are resolved.

Evaluate the effectiveness of the current World Order in achieving fairer national and international solutions to world problems.

General Comments

This question was attempted by 60% of those attempting World Order. Most candidates recognised and were able to incorporate shared global responsibility into their responses with varying degrees of success. Difficulty was encountered in interpreting the general trends and the rethinking of economic, political, social and cultural rights. The variation in the level of students' analytical skills and their ability to interpret the stimulus material proved to be the discriminating factor.

The framework in which international problems are resolved was generally understood and examples referred to included:

- the role of the UN and the Security Council;
- the International Court of Justice;
- inter governmental organisations (IGOs) such as NATO, European Union, Interpol and ASEAN;
- non-governmental organisations (NGOs) such as Red Cross, Amnesty International and Greenpeace;
- the media in highlighting problems of world order;
- international instruments including treaties and conventions;
- diplomatic relations.

In evaluating the effectiveness of the current World Order in achieving fairer national and international solutions to world problems, the students referred to:

- shared global responsibility, the concept of the global village and interdependence;
- the lack of political will of nation states and its link to economic, political, social and cultural rights;
- the use of veto power and its limited effectiveness;
- the concept of sovereignty of nation states and that in order to achieve shared global responsibility some sovereignty might need to be surrendered;
- difficulty of enforcing international instruments.

The depth studies Military Conflict, International Crime and Displaced People were discussed by the majority of students. Very few discussed Transnational Trade.

Excellent Responses

These candidates demonstrated an understanding of and an ability to critically analyse the stimulus material. They were able to apply contemporary issues to explain the core and the two depth studies. They were concise in their examples and clear in their analysis. Equal weight was given to international and national examples. Candidates used the terms of the topic question such as, 'solutions', rather than planned 'responses'. In addition most of these candidates possessed excellent knowledge of current events and discussed these within the legal framework, referring, for example, to:

- the Rome Statute of the Criminal Court, July 1998 and its jurisdiction;
- the United Nations/Iraq crisis;
- Kosovo and the role of NATO;
- War Crimes Tribunals and the difficulties of prosecutions;
- the role of the United Nations in crimes against humanity;

- the recent growth of humanitarian law and international interest in this area;
- Australia's stand on East Timor;
- the situation in Bougainville;
- Hurricane Mitchell in the Caribbean;
- Christopher Skase, Dolly Dunn, Phillip Bell and the link with extradition problems.

Above Average Responses

These responses examined the whole of the question, but the level of analysis was less critical than the excellent responses. Students made extensive use of the core and two depth studies but, at times, the treatment of one depth study was very brief.

The stimulus material tended to be given relatively less treatment and there was less understanding of its intent.

Average Responses

These responses tended to be very descriptive with little analysis. Stimulus material was not incorporated into arguments. Students demonstrated a good understanding of the concept of World Order, however they could not apply this knowledge to the question asked.

Many responses were prepared with little or no reference to the question asked.

SECTION IV

Challenge: Indigenous Peoples

Question 7

The United Nations Charter states:

All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Some indigenous peoples argue that self-determination on an internal basis is not in reality 'true' self-determination and that indigenous peoples should have the right to choose to be politically independent.

Clearly identify, at the beginning of your answer, the TWO depth studies you will discuss.

Refer to the above statement, provide relevant information from the CORE, and use examples drawn from the TWO depth studies you have identified, to answer the following questions.

How do indigenous peoples identify themselves?

Evaluate the effectiveness of national and international law in responding to the rights of indigenous peoples to determine their own culture, history, society and political identity.

General Comments

This question was attempted by 58% of candidates choosing to answer this section.

The quality of responses were generally of a higher standard than those to Question 8. Candidates made use of the stimulus material to varying degrees. The majority of candidates found it difficult to achieve a balance between the core and the selected depth studies in their responses, although they did identify their chosen depth studies clearly at the beginning of their response. Most candidates were able to define indigenous peoples but had more trouble evaluating the effectiveness of national and international law in responding to the rights of indigenous peoples.

The majority of candidates struggled with the concept of 'the rights of indigenous peoples to determine their own culture, history, society and political identity.' Candidates utilised a wide range of case studies of different indigenous groups but they lacked the analytical skills necessary to evaluate legal responses to the rights of these groups. Historic Debt as a depth study was generally very poorly handled by the small number of candidates that used it.

Excellent Responses

These responses were well written and contained substantial material from both the core and depth studies as well as fully utilising the stimulus material. 'The diversity of IP as a group is also characterised in their diverse aims with regards to land rights. Some IP want to secede from the sovereign nation and others want to have self determination within the existing national framework'. A balanced approach was taken in presenting material from both depth studies.

Responses at this level provided an analytical discussion of the difficulties involved in the identification of indigenous peoples. This was often used as a means of introducing the depth studies. 'There are over 250 million indigenous peoples (IP) in over 70 countries worldwide, and despite historical assumptions, the culture, and therefore history, society and political identity are extremely diverse. However it is their commonality of experience which identifies IP as a group in need of global concern. The difficulty presented to both national and international governments is how to identify IP. There have been attempts at international level to determine a criteria, however without any permanent or effective mechanism at international law, it remains largely with national governments. Therefore issues such as land rights and self determination are not uniformly or adequately addressed by national governments. There is an obvious need for an international set of standards with reference to IP's'.

Candidates excelled in the critical evaluation of the effectiveness of national and international responses in protecting the rights of IP's, and continually supported this with examples of relevant legislation, case studies and a wider range of other national examples.

'The issue of land rights is inexorably combined with identification of IP. Again it is evident that without concrete international standards, IP rights are left up to national governments. At the international level, the UN Declaration of Human Rights 1948 and additional covenants (1966) emphasised a right for all "peoples" to freely own land and inherit it. The ILO Convention 169 which replaced the discriminatory, paternalistic and authoritarian ILO 107 (1957) identifies IP as "peoples" but expressly states that this confers no rights of peoples. Therefore the denial of the status of peoples to IP effectively denies group rights with respect to land rights at international law'.

Above Average Responses

These responses clearly identified two specific depth studies, drew on the core and referred to the stimulus material. The information presented was accurate and comprehensive demonstrating a clear grasp of relevant national and international law, eg:

- Cobo Report
- Draft Declaration on the Rights of Indigenous Peoples (DDRIP)
- Working Group on Indigenous Peoples (WGIP)
- Native Title Act 1993 (Cth)
- Racial Discrimination Act 1975 (Cth)
- Mabo v The State of Queensland 1992 66 ALJR 408
- Wik Decision
- ILO Conventions 107, 169.
- UN Declaration on Human Rights 1948
- International Convention on Civil and Political Rights (ICCPR)
- International Convention on Economic, Social and Cultural Rights (ICESCR).

These students drew not only from Australian experience but often included case studies of other indigenous peoples such as the Inuit (Canada); Sami (Scandinavia); Maoris (New Zealand). However their responses did not attain the degree of critical analysis achieved by the excellent responses.

Many of these candidates did not present a balanced view of both depth studies. Many also did not treat the national and international material in a balanced fashion, emphasising one often to the detriment of the other.

Average Responses

Students made limited use of the stimulus but in general clearly identified both depth studies. There was discussion of material from both the core and depth studies, however, the balance between them varied greatly.

The section on the identification of indigenous peoples was generally poorly handled and often not covered at all.

Answers were very descriptive with students tending to use material with little attempt to analyse with reference to the question. There was little attempt to balance discussion of relevant national and international law. If students attempted to evaluate the effectiveness of this it was often done with a simple statement eg ‘this is effective’.

These responses tended to use more Australian examples with little or no reference to other national examples.

Question 8

The experience of indigenous peoples worldwide has been that the superior force of the majority culture law has overridden their law, and with it their sense of identity and purpose.

(Bringing Human Rights to Life, P H Bailey, Federation Press 1993.)

Clearly identify, at the beginning of your answer, the TWO depth studies you will discuss.

Refer to the above statement, provide relevant information from the CORE, and use examples drawn from the TWO depth studies you have identified, to answer the following questions.

Explain why cultural identity and integrity are important to all peoples.

Evaluate the effectiveness of developments in national and international law aimed at assisting indigenous peoples to achieve autonomy.

General Comments

This question was attempted by 42% of those answering the Indigenous Peoples question. The stimulus was used in the majority of responses particularly in the introductions. While the majority of candidates clearly identified their two depth studies, they struggled to relate this information to the two parts of the question. Candidates had difficulty in addressing the concepts of ‘cultural identity and integrity’ particularly with respect to ‘all peoples’.

Many candidates seem to have the wrong perception of the role and application of the International Court of Justice (ICJ) to indigenous peoples. Candidates need to correctly use the acronyms and ensure a full explanation of instruments and regimes is given. The least popular and most poorly addressed depth study was Historic Debt.

Excellent Responses

These responses were generally well written and contained substantial material relating to both the core and depth studies. They gave a balanced discussion between relevant international and national law.

Candidates in excellent responses explained the significance and ‘cultural identity and integrity’ throughout the response — for example:

‘Cultural identity and integrity are important to all peoples because they define self-identity and therefore foster group solidarity. The experience of Indigenous Peoples (IP) world wide has been a superior force of the majority culture law’ diminishes ‘their sense of identity and purpose.’ IP all around the world are shared common aspects such as dispossession of land through colonisation, abrogation of treaties and the destruction of self-identity to a great extent.’

Candidates were able to critically evaluate the effectiveness of both international and national law in relation to assisting IP to achieve autonomy — for example:

‘Canada amended its constitution to give this recognition (land rights). Clearly it recognises the inherent rights and legitimate aspirations for autonomy of IP and promotes cultural identity and integrity. But...IP are still subject to ‘the superior force of the majority culture law.’

A wide range of legislation was used, supported by both international and national case studies. The best responses integrated this material within a framework of a thorough and critical analysis. The most capable candidates maintained a sense of objectivity throughout their discussion.

Above Average Responses

Candidates clearly identified their two depth studies and provided a comprehensive coverage of relevant and accurate material. They drew on the core and referred to the stimulus material.

These responses attempted to address both questions, however their discussion of ‘cultural identity and integrity’ and ‘autonomy’ was not dealt with in a thorough fashion.

Above average responses often lacked a balance between the international and national law. Their analysis was not as comprehensive or analytical as that found in excellent responses.

Candidates made a reasonable effort to integrate their case studies to support their response.

Average Responses

Most candidates clearly identified their two depth studies and referred to the core. They often listed a great deal of information and only attempted a brief analysis at the end — for example ‘it is not effective.’

Many candidates emphasised one aspect of the law — for example Australian case examples to the detriment of international case examples. Many made sweeping statements and generalisations rather than developing a case. Some students actually contradicted themselves by stating that something was ‘effective’ and then not supporting the statement.

Most candidates failed to explain ‘cultural identity and integrity’. Little attempt was made to come to terms with the concept of ‘autonomy’. More often than not ‘self-determination’ was used with little evidence that students understood this concept.

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