

LEGAL STUDIES

In 1996 7848 candidates presented for the 2 Unit Legal Studies examination. Of these 1542 presented for the 2 Unit paper and 306 for the 2 Unit paper. This represents a slight decrease in both the 2 Unit and the 3 Unit candidature. 1996 was the second year of the new format for the examination and it was pleasing to note that many students were quite familiar with the changes.

2 UNIT

General Comments

As in past years, essay questions were structured in format or required answers in essay form. Students attempting the structured questions answered them in their entirety and followed the prescribed structural format; in the essay-type questions the structure was not fully understood by many candidates. The relevance of the stimulus material was not fully appreciated; only the better candidates were able to assess its relevance critically. Average candidates tended simply to include quotations from the stimulus material in their responses without attempting any critical use of that material. Only the better candidates were able to answer the question. Average candidates tended to jump straight into the suggested minimum content points. **Students need to be informed of the approach to be taken in answering holistic questions.**

In the structured questions the better students discussed all parts in a way that reflected the relevant mark allocation. There appeared to be a general improvement in the writing style, and the better candidates were able to incorporate recent changes in legislation as well as case material. While many candidates included legislation and cases in their responses, far too many failed to evaluate these sufficiently. The ability to discuss and evaluate the legislation and cases is a major discriminator in both 2 Unit and 3 Unit responses.

The number of candidates presenting prepared answers was small and most failed to address the issues raised by the questions. The examination assumed that the key Syllabus Outcomes of:

knowledge of basic legal vocabulary,
the use and interpretation of legal language, and
the use of language appropriate to Legal Studies
had been covered in the classroom.

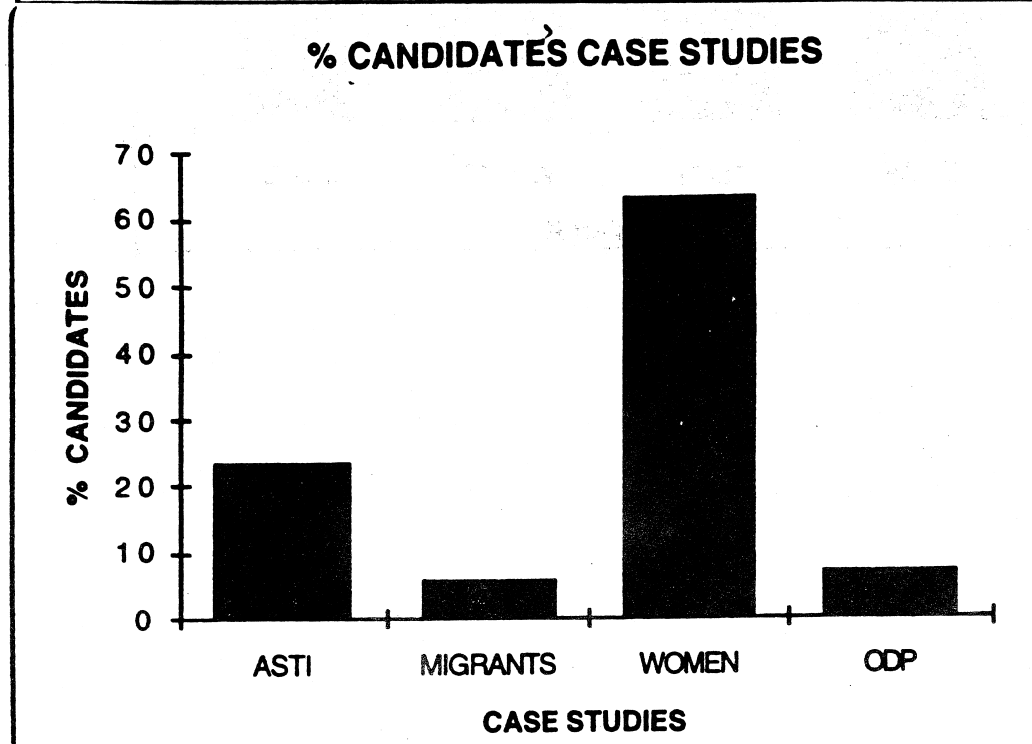
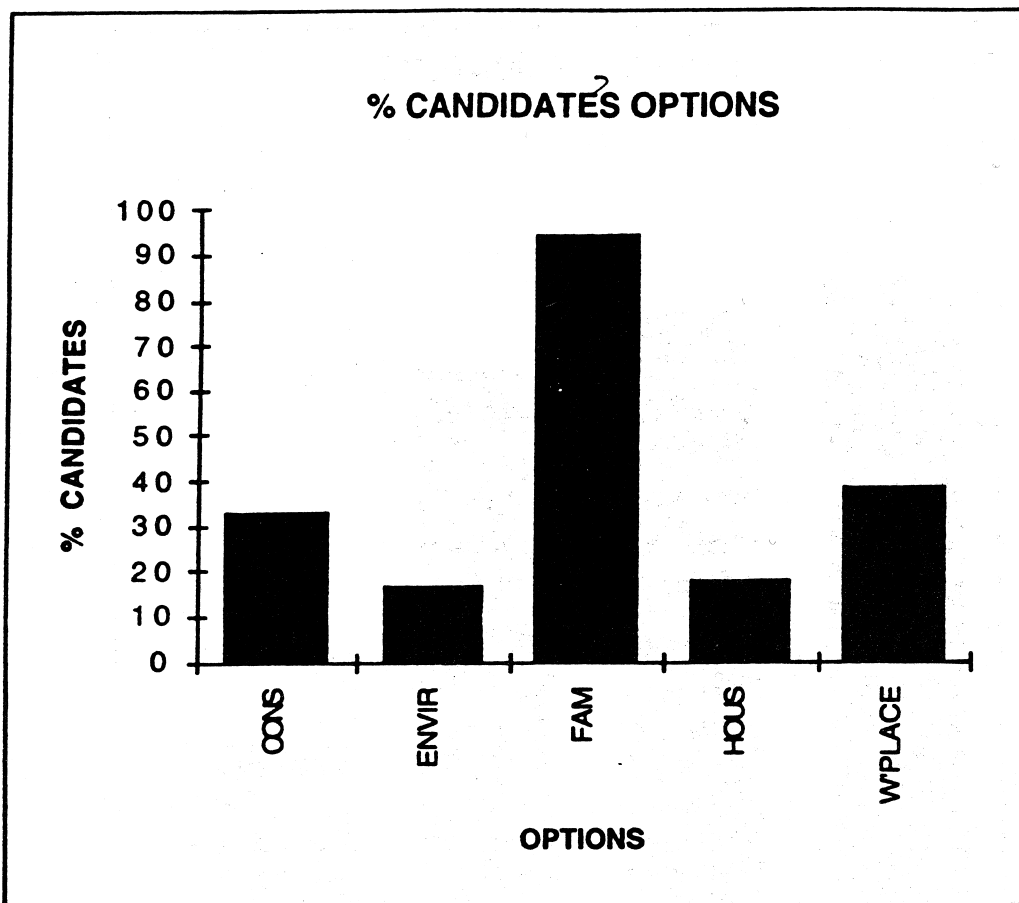
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Question 36 is an example of what students must recognise as being Studies that are to be taught in conjunction with the other two sections of the concluding topic. It also reflected the dangers associated with making assumptions about the content of future examination questions.

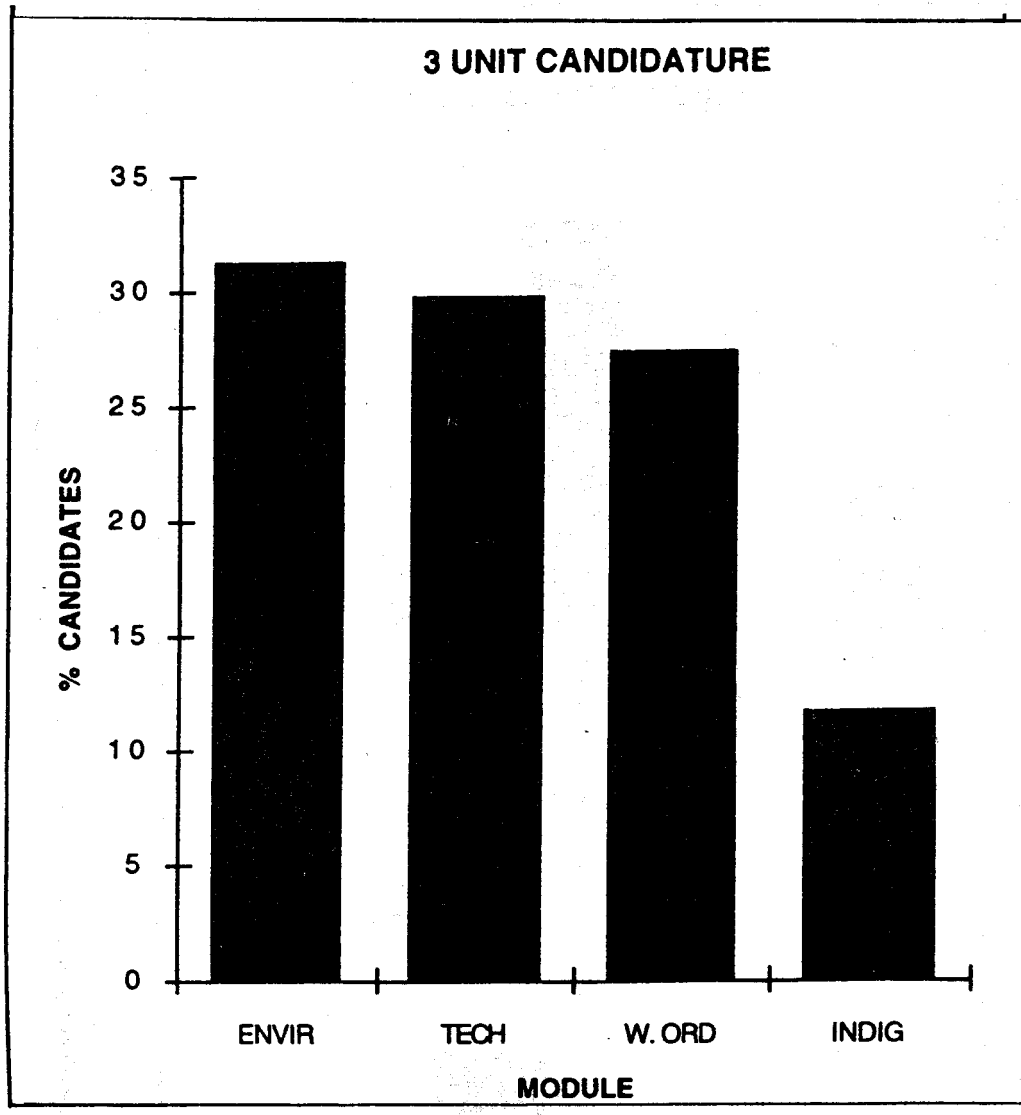
2 UNIT : MULTIPLE CHOICE ANSWERS

Question	Answer	% Correct
1	b	85.78
2	d	77.52
3	a	24.44
4	b	74.47
5	c	17.90
6	b	54.27
7	d	64.25
8	a	52.19
9	c	31.52
10	a	91.42
11	c	21.86
12	d	61.57
13	c	36.66
14	a	18.20
15	c	31.65
16	a	29.63
17	b	44.79
18	c	56.94
19	b	74.77
20	d	46.13

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STATISTICS SECTIONS II AND III



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2/3 UNIT (COMMON)

CONSUMERS AND THE LAW

Question 21

A short quotation by David Harland was included here

Discuss this statement and evaluate the effectiveness of the legal system in responding to the growing concern about consumer protection. Your answer should refer to the stimulus, provide relevant information, and *at least*

- identify concerns for consumer protection, and explain the processes for redress of consumer complaints;
- comment on the role of law reform agencies and other groups in the development of consumer law.

General Comments

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

Reference to the stimulus material was generally poor and many candidates interpreted the reference to *the past 25 years* to be an invitation to provide an exhaustive history of consumer law dating back to the Industrial Revolution.

In general there appeared to be an improvement in candidates' knowledge as compared with that in previous years. Concerns for consumer protection were well identified and most candidates were able to explain the processes for redress, although some still simply listed the processes.

The role of the law reform agencies and other groups in the development of consumer law was dealt with rather poorly by almost all candidates. The majority ignored this section completely, while others seemed to feel that merely mentioning agencies in a brief sentence constituted a comment. Many who did attempt to address the role of such agencies tended to comment on their role in providing redress for consumer complaints rather than their role in the development of consumer law.

The use of relevant legislation and case law characterised the better answers, although there was still a tendency to concentrate too much on the facts of the case, whilst ignoring the application of the principle. The capacity to analyse the question, provide explanation and relevant evaluation was apparent in these responses. Candidates who were able to do this readily scored higher than those who confined themselves merely to listing and describing the concerns and processes.

In most responses there was a general tendency towards description rather than evaluation and there was some evidence of prepared answers.

Excellent Responses

Excellent responses were typified by an analytical treatment of the question, all parts of which were addressed in depth, while references to the stimulus material were detailed.

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In these responses candidates followed all instructions, i.e. referred to the stimulus, provided relevant information that gave more information than was indicated by the dot points in the question. They also provided significant and useful evaluation of the effectiveness of various aspects of the legal system. An excellent response was, therefore, one in which the candidate provided detailed information about legislation, in particular the Trade Practices Act and its reform, the new Consumer Credit Code, case law, the operation of various legal institutions, organisations and agencies and also commented on the strength and weakness of each.

In addition, candidates in this category applied legislation and case law in a relevant manner. Attention was drawn to specific provisions of legislation. The principle of any relevant cases was included and accompanied by a brief statement of the facts but without allowing the actual circumstances to dominate the response. In so doing, excellent candidates demonstrated a clear understanding of the relevance of the response of the legal system to growing concern about consumer protection. Their responses dealt with these concerns in depth, including issues such as the changing nature of technology, the growth of large corporations, sales techniques, advertising and packaging.

In dealing with the process of redress, these responses not only considered avenues available to the consumer, ranging from self-help through to common law remedies, but also analysed and evaluated such avenues. In exploring the viability of each in terms of cost, convenience, time, formality, access and enforceability, excellent candidates offered critical appraisal of all means of redress, giving a detailed account of the operation or administrative benefits of each.

In commenting on the role of law reform agencies and other groups, e.g. the media, consumer associations, individuals or government departments, these responses dealt with a range of possible influences on consumer law. Here candidates indicated the role and influence of each specific agency on consumer law, rather than merely naming agencies. Their responses included the general influence of agencies or bodies on consumer law as well as the impact of specialist agencies or groups upon parts of the consumer market.

Above Average Responses

In this category the main issues were identified and the question was analysed, although to a lesser degree than in the excellent responses. The main consumer concerns were clearly identified and, whilst contemporary consumer concerns were mentioned, there was greater emphasis upon an historical account than in the excellent responses.

The processes of redress were dealt with quite well, indicating an understanding of the application and particular benefits of each. An understanding of the operative requirements and benefits and of the bodies administering redress was evident. In dealing with the role of law reform agencies, these responses tended to describe the agency as well as providing a partial evaluation/analysis.

Such responses also used legislation and case law in a relevant and accurate manner, although to less depth and with less use of provisions than the excellent responses. A greater reliance on the facts rather than the principle of a relevant case was also evident.

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Average Responses

The average response was one in which the main issues were identified and the candidate attempted to discuss most of the question. A more general approach, with only partial analysis, was characteristic of such responses as was the tendency to be descriptive rather than evaluative. In identifying consumer concerns, these responses placed a heavy emphasis on history, making little reference to more contemporary concerns. It was apparent that in some of these candidates experienced difficulty in applying knowledge to the specifics of the question. This was frequently indicated by the use of some irrelevant material as average candidates tended to take a more descriptive approach to the question, simply listing the major processes of redress which they accompanied with a declaration or defining statement, but making little attempt to explain at any length. Evaluation was confined in general to comparative financial costs.

In these responses there was some mention of legislative provisions and some use of case law, often perfunctorily and/or mechanically presented with little or no evaluation and even factual error. These responses were also characterised by a tendency to use descriptions of different types of legislation instead of identifying consumer concerns. The role of law reform agencies and other groups was either ignored or cursorily or inaccurately discussed, with no evaluation.

Question 22

Ken and Barbie selected an engagement ring from a jeweller's catalogue. The ring could not be made in time for their engagement party and so the jeweller gave Barbie a replica to wear. This was much admired. When the real ring arrived, the diamond was much smaller than the replica.

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

- (a) What is a consumer contract?
- (b) Describe the forms of consumer redress and remedy available to people like Barbie and Ken. Discuss the protection afforded by the law to people like the jeweller.
- (c) Evaluate the effectiveness of consumer law in regulating the rights and obligations of buyers and sellers of consumer goods.

General Comments

This question was chosen by approximately 47% of students attempting this option.

The question tended to be chosen by the average to lower ability candidates, who were, perhaps, enticed by the simple scenario or perhaps by the division of marks, thus giving the question more direction. The stimulus material was handled quite well with nearly everyone referring to Ken, Barbie and the jeweller.

Candidates apparently did not have any difficulty with the terminology of the stimulus or the question. The majority divided their responses into (a), (b) and (c), although they did not all

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follow the directive of starting each part on a new page. Some candidates had difficulty in differentiating between *redress* and *remedy* and, as a result, tended to concentrate on one or the other. Candidates still had difficulty with evaluating the effectiveness of consumer law and most had difficulty in assessing the balance of rights and obligations between Ken and Barbie and the jeweller.

Excellent Responses

In these responses candidates answered the whole question, referred to the stimulus material and gave a response that was well balanced between the consumers and the jeweller. They showed a good understanding of the law of contract, discussing the elements, types and terms of a contract, and successfully supported their answers with references to relevant legislation and cases.

The excellent responses clearly listed and differentiated between redress and remedy, dealing with remedies and redress in a hierarchical manner, e.g. self-help mediation CONSUMER CLAIMS TRIBUNAL Courts, explaining the remedies available at each stage. These candidates also discussed the protection available to the jeweller through legislation and case studies, e.g. exclusion clauses.

In part (c) these responses critically evaluated the effectiveness of consumer law rather than simply stating that the law was or was not effective. These candidates argued that buyers and sellers were protected, quoting legislation as justification, e.g. Sale of Goods Act, Contracts Review Act. These candidates also attempted evaluation through an analysis of the rights and obligations of Ken and Barbie and the jeweller, using a variety of measures, time, cost, availability, etc, to evaluate the various forms of redress and remedy.

Above Average Responses

In these responses candidates defined a consumer contract giving a good description of terms, elements, forms and conditions.

In part (b) these candidates described the hierarchy of consumer redress: self-help mediation tribunals courts. They attempted to describe the various forms of remedy, but failed to give adequate coverage to the protection afforded by the law to the jeweller, simply saying that the jeweller was protected but failing to explain how.

In part (c) candidates attempted to evaluate the effectiveness of consumer law but tended to concentrate on the rights and obligations of buyers, describing them in detail but failing to state adequately the rights and obligations of sellers.

These responses referred to legislation and cases, but failed to show the effectiveness of these in terms of the obligations and rights of both buyers and sellers.

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Average Responses

These responses were mainly descriptive. Part (a) was answered by a very basic definition of a contract with mention being made of some of the elements of a consumer contract or types of contracts. There was rarely any detail in these descriptions.

In part (b) many of the average responses concentrated on the scenario, describing Ken and Barbie in detail. These candidates generally covered forms of redress well but gave less information about remedies and, in some cases, confused the two. Most of the average responses failed to mention the protection afforded by the law to the jeweller.

In part (c) the average responses discussed the fact that the consumers were protected by the law but failed to indicate what this protection was. Many commented that because redress was available the law must therefore be effective.

Many of these candidates appeared to give prepared answers detailing the nature of contracts and then simply listing every piece of consumer legislation that they could remember, including Sale of Goods Act, Fair Trading Act, Trade Practices Act, Door to Door Sales Act, Motor Dealers Act. Some of this information was then related back to the question, but much was irrelevant.

ENVIRONMENT AND THE LAW

Question 23

*A short quotation from **Report of the National Estate, 1974** was included here.*

Discuss this statement and evaluate the effectiveness and justice of the legal system in providing for participation in decisions about the environment.

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

- identify the interests of various parties or groups that are relevant to environmental decisions
- describe the statutory framework within which environmental decisions are made.

General Comments

This question was chosen by approximately 62% of the students attempting the Environment and the Law Option.

The standard of responses to this question was generally high. Many candidates, however, still failed to appreciate the significance of the stimulus material. This hampered their ability to elaborate in these areas within the body of the essay. Students need to practise the use of stimulus material as it is an integral part of the question and, therefore, of the marking process.

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The better candidates were able to divide the stimulus into three areas:

- the need for simplification of the legal and administrative maze,
- the participation of the public in environmental decision-making, and
- how far freedom of information extends and citizens' rights regarding the environment.

They were then able to combine these areas into complete and thorough discussion of the effectiveness and justice of the law with particular reference to the provision of public participation in environmental decision-making.

Many candidates failed to recognise the fact that the phrase *at least* referred to a minimum amount of information. The better candidates were able to adapt their knowledge and use the stimulus material to suit the focus of the question.

Excellent Responses

Excellent responses addressed thoroughly all aspects of the question. Here candidates integrated the various elements into a concise discussion with an emphasis on providing appropriate and up-to-date legislation and case law to illustrate their point. These candidates made excellent use of the stimulus material which they not only related to certain aspects of the question but also used to develop other ideas that might have been relevant. These responses also highlighted the change in environmental law over past years and examined how effectively it allowed for public participation.

The candidates reviewed the problems with the common law and its limited rights in terms of standing and its retro-active remedies. Many also included discussion of class action, the Ombudsman and environmental impact statements. They also discussed the role of the Land and Environment Court in providing merit appeals and judicial reviews and the public participation aspect of environmental groups.

These candidates were able to track the development of the legislative framework at Federal and State level as well as the delegated authority of the local governments and statutory bodies.

Most of these responses included a complete evaluation of the problems remaining in environmental law, as well as current law reform recommendations for change.

Above Average Responses

Above average responses reflected a more limited ability in discerning the elements of the question and addressing the stimulus material. Whilst still demonstrating a thorough analysis of most of the main issues, together with a sound understanding of case law and legislation, these responses were less able to identify difficulties with the status quo.

Here candidates obviously possessed good knowledge of the problems of the *locus standi* and the slow development of its more broad availability in the public interest. They could also identify the competing interests and the difficulty of providing for these within the framework of environmental law, at both a Federal and a State level.

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Average Responses

In average responses candidates showed a general understanding of the failure of environmental law to deal effectively with public participation and competing interests. They often identified specific lobby groups and sometimes concentrated on these at the expense of other issues.

These candidates were generally able to list relevant legislation and quoted some well known cases but usually without reference to the way in which these have led to public participation in the broader sense. They were able to identify the differences between the tiers of government but were largely unable to highlight the ensuing problems. These responses often simply listed the sources of environmental law without making any meaningful use of the stimulus material.

Question 24

*A short quotation from **Brian Preston, Environmental Litigation, 1989** was included here.*

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

- (a) Outline the powers given to the Land and Environment Court by legislation.
- (b) Describe the manner in which environmental impact statements place emphasis on public interest considerations and allow conflicts between environmental protection and resource management to be resolved.
- (c) Evaluate the effectiveness of the legal system in providing for environmental protection and resource management.

General Comments

This question was attempted by approximately 38% of those attempting the Environment and Law Option.

Whilst fewer candidates chose this question, it was answered as well as the alternative one. Many candidates failed to see the significance of the stimulus material and, therefore, did not refer to it in the main section of the essay. It is important for students to read the stimulus carefully and to relate it to the question.

It appears that the majority of candidates have very poor knowledge of the powers of the Land and Environment Court. It was pleasing, however, to find that some had very comprehensive knowledge of the seven classes of the court.

Whilst environmental impact statements were dealt with well by candidates in respect of who drafts them and any possible bias, there was confusion between environmental impact statements and development applications. On the whole there appeared to be some problem in understanding the difference between State and Federal environmental impact statements and their requirements

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under the relevant planning legislation. Although students could list laws and cases very well, they generally failed to discuss adequately the effectiveness of these with regard to the environment.

It was pleasing to see that students are really trying to tailor their responses to the weighting of marks for each section.

Excellent Responses

In excellent responses candidates provided thorough answers to each section of the question whilst incorporating sound use of the stimulus material.

In part (a) candidates discussed the specialist jurisdiction of the Land and Environment Court, including all classes of hearing as well as the role of judges and assessors. Alternate remedies used by the Court were also discussed. These candidates recognised the fact that the Land and Environment Court does not deal with torts but, rather, enforces all types of environmental legislation including the Court's own enabling legislation.

In part (b) the responses identified the need for designated developments to have an environmental impact statement as well as the inherent bias in their provision by the developer. They identified the limited nature of public participation and also recognised the failings of such statements in terms of drafting and application.

In part (c) these candidates carefully outlined the effectiveness of Common Law and the statutory framework and identified issues of fragmentation, the limitation of locus standi requirements and the impact of global issues.

Above Average Responses

Above average responses tried to incorporate the stimulus material into each specific response and reflected a reasonable understanding of the jurisdiction of the Land and Environment Court without including all aspects of the relevant legislation.

Part (b) was generally very well handled since the students clearly showed that they recognised the impact of the conflict between competing interests, i.e. economic versus environmental. These responses included the failure of the Environmental Impact Statements arising from bias and fast tracking.

Responses to part (c) demonstrated a thorough understanding of the development of environmental law as well as a good knowledge of legislation and case law. Here candidates also successfully analysed some of the common problems involved in the application of both legislation and case law.

Average Responses

These responses generally ignored the stimulus material and concentrated only on each itemised section of the question.

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In part (a), although students were able to describe accurately some of the powers of the Land and Environment Court, their responses either lacked detail or included incorrect information regarding this court's jurisdiction.

In part (b), responses reflected some understanding of the workings of Environmental Impact Statements and addressed both the positive and the negative aspects. There were, however, many inaccuracies and these responses tended to show some confusion, especially in regard to development applications.

Responses to part (c) were generally descriptive, often providing information on legislation and cases unrelated to the question. They often expressed a general *happiness* with the approach of the legal system to environmental protection and resource management, but did not analyse any of its failures to deal with these issues.

FAMILY AND THE LAW

Question 25

A short quotation by Andrew Sullivan, The Sydney Morning Herald, 1996 was included here.

Discuss this statement and evaluate the effectiveness and justice of the law in recognising marriage and alternative family arrangements. Your answer should refer to the stimulus, provide relevant information, and *at least*:

- outline the legal definition and requirements of a valid marriage;
- describe the varied forms of alternative family arrangements and comment on the justice of a legal system that recognises some and not other family arrangements.

General Comments

This question was chosen by approximately 79% of those attempting the Family and the Law Option.

By far the majority of candidates chose this unstructured question in comparison with the number in previous years. Most responses were lengthy, included a good general knowledge of legal issues and used appropriate legislation and cases. Some candidates, however, were not up-to-date with new Family Law reforms and the subsequent terminology associated with those reforms. Candidates need to allocate their time evenly when responding to this type of question. There was a tendency in the poorer responses to spend too much time on the legal definition and requirements of a *valid marriage* to the detriment of the main thrust of the question.

Most candidates referred to the stimulus material in varying degrees. Many, however, presented descriptive arguments rather than analysis or evaluation. It is interesting to note that most of those who referred to the stimulus material agreed with it instead of critically analysing the

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material. Although the candidature itself represented wide-ranging social, moral, religious and cultural values, as one would expect, there was an overwhelming support for the principle of the opportunity for all to experience equality before the law, and the stimulus material chosen was most effective in directing discussion towards this end. In general, candidates identified the need for the law to be dynamic and this suggests a growing maturity both within the study of this option and in candidates' responses.

The use of point form in the essay is quite acceptable.

Students should be aware of the need to analyse the stimulus material critically and should not simply accept it at face value. They should develop an argument and justify it with facts. Those who use this approach can do so without penalty.

The majority of candidates referred only to the two dot points given and disregarded the words *at least*. Students are encouraged to extend their focus beyond what is given in the dot points.

Students need to read widely and keep abreast of legal issues and changes to legislation.

Above Average Responses

These responses commented on the stimulus material, identified relevant legal issues, and then attempted evaluation of the effectiveness of the legal system in dealing with these issues. These candidates were able to incorporate the stimulus material into their responses and also to interweave the concept of marriage and alternative family arrangements into such responses. Referring to inappropriate legislation, cases and statistics, candidates emphasised the similarities and differences between the two, including the varying obligations of partners in alternative family arrangements.

These responses attempted to establish an historical context with relation to social inequalities and mentioned the idea of justice versus reality. They evaluated change over time with a relatively balanced discussion of alternative family arrangements, clearly identifying and accurately analysing factual information. They linked their points for discussion to the question, concentrating upon both effectiveness of the arrangements and justice. Many, however, displayed some difficulty in drawing together their arguments to achieve sound conclusions.

Average Responses

Candidates commented appropriately on the quotation in dealing with alternative family arrangements. They identified some of the issues, but failed to relate these directly to the question. They possessed a general understanding of justice but were unable to integrate it into a discussion of the effectiveness of the legal system. In these responses, too, the links between the two points for discussion and the actual question were often weak.

Candidates were able to give a comprehensive definition of marriage and included some description of the legal requirements. They used the presence or absence of relevant legislation and cases to distinguish between alternative family arrangements and attempted to compare these arrangements.

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Limited information was often presented. This was not always used to form a complete response as was evident from their concentration upon the words *outline*, *describe* and *comment* rather than *evaluate*. They often failed to come to terms with the way in which the law treats other forms of family arrangements. Moreover, these responses usually included superficial analysis of the rights of homosexuals and, perhaps, de facto relationships. Where an evaluation was attempted it was often prejudiced and lacked substantive argument.

Question 26

A short quotation from The Justice Statement, 1995 was included here.

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

- (a) What are the mutual duties and rights of husbands and wives?
- (b) Describe and discuss the effect of termination of marriage by death or dissolution on the duties and rights of husband and wife.
- (c) Evaluate the effectiveness of the legal system in providing counselling and judgments to achieve justice for husbands and wives during and after a marriage.

General Comments

This question was chosen by approximately 21% of the students attempting the Family and the Law Option, considerably less than those attempting the alternative question.

In general, responses were of adequate length and commensurate with the time available for answering them.

There were, however, few quality responses, which reflects both the candidates' difficulties in distinguishing between the terms *describe* and *discuss* and the failure to take a comprehensive view of the legal system as a whole, not just the Family Court.

The stimulus material appeared to be too difficult for many of the candidates and only the better responses made useful reference to it.

Few were capable of effective discussion of the term *justice* and the scope for judgments by the Family Court was given little attention, in direct contrast to the often excessively descriptive comments on counselling.

Some candidates are still not using their allocation of time wisely, with half of the response being devoted to part (a).

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Excellent Responses

Typical responses here adopted an analytical approach and provided accurate information and a clear discussion of rights and duties within a marriage. Most saw these as the natural outcome of the marriage contract, saying *both of the spouses have a number of legal obligations to each other as a married couple; these duties being the legal consequences of marriage.*

A full range of consequences of marriage dissolution and termination via death was also cited, as well as the obvious but often neglected point that *...dissolution of marriage changes the rights and duties of husbands and wives.*

Dissolution of marriage was handled in a superior manner, with residency, contact, property division and maintenance being covered, with case law and legislation being skilfully integrated within the response.

In part (c) these candidates displayed a complete understanding and knowledge of the concept of justice in Family Law and were able to use the stimulus material as a stepping stone to critical evaluation of counselling, education and community-based services *...lack of funding has cut down counselling and mediation services ...making it difficult for the legal system to prove effective.*

In addition to counselling, they discussed the implications of Family Court judgments in areas of violence, parenting plans and the problems that joint responsibility, care, control and guardianship of children can create.

These responses gave a balanced appraisal of the factual content required in each section in relation to the marks allocated.

Above Average Responses

These candidates answered each part of the question fully and had a sound understanding of the law involved.

In part (a) candidates usually identified many of the key issues, e.g. property, maintenance and, in part (b), they were able to describe the position in which husbands and wives were placed on death of a spouse or on divorce. Such responses often failed, however, to focus critically on one or both parts adequately, so that the information that was presented appeared limited in comparison with that in the better responses *...spouses are also required to continue to support the children of the marriage; this duty exists whether or not the parties are still in wedlock.*

These candidates possessed a good grasp of the facts governing counselling and court judgments, but did not show the same degree of analysis as the best responses. In general, such candidates were able to draw on the stimulus material appropriately and also offered a reasonably balanced appraisal of the question.

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Average Responses

While having a fair knowledge of the content, candidates here showed a certain lack of clarity in respect of factual material. There was little reference to the stimulus material and it was disturbing to see so many prepared responses in this particular category. Here candidates showed little knowledge of recent reforms to the Family Law Act or the changing role of, and emphasis on, counselling initiatives.

In part (a) the consequences of rights and duties were inadequately developed and there was little appreciation of the changing nature of marriage.

In part (b) the emphasis was on description rather than discussion. There was far less emphasis on termination of marriage through death than via dissolution.

Responses in part (c) failed to see the significance of the term *judgment* and there was limited evaluation of justice issues or the effectiveness of counselling, e.g. ... *the duties of husbands and wives is to love one another, care for each other's safety, work for each other, enjoy each other's company and the duty of a sexual relationship.*

HOUSING AND THE LAW

Question 27

A short quotation from Alex Ilkin, Strata Title Management and the Law, 1989 was included here.

Discuss this statement and evaluate the effectiveness of the legal system in providing individuals with security of title and ownership of housing.

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

- outline the types of title for shared space which the legal system recognises;
- compare the rights and duties of owners of shared space with the rights and duties of other owners of housing.

General Comments

This question was chosen by approximately 12% of the students attempting this option.

It was encouraging to see that most candidates referred to the stimulus material. It was evident, however, that students must be aware of the fact that they are required to make better use of this material by fully analysing it and linking it to both the stem and the specific parts of the question. Some spent too much time in describing the history of government housing policy at the expense of a well balanced essay.

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Candidates, generally, followed the question format closely but tended to understand *at least* to mean *only do this much!*

Many candidates produced examples of excellently written communication. They used relevant topic sentences to open paragraphs, followed by development of ideas with clear links to the question stem and the stimulus material.

The majority of candidates displayed a good knowledge of content in this area. They were able to name and describe the various types of title related to both shared space and low density housing. Some disadvantaged themselves by presenting prepared responses. This was particularly evident in the second part of the question where some candidates went through the laws relating to a wide range of types of dwellings including boarding houses and caravans. This type of response was most likely due to the fact that these candidates misinterpreted the question which clearly asked them to compare the rights and duties of owners of shared space with owners of other types of housing. These candidates also failed to read or interpret correctly the stimulus and stem, which referred to security of title and ownership.

The biggest discriminator in this question was the ability to evaluate the effectiveness of the legal system in providing security of title. Far too many candidates were neither able nor prepared to show that some forms of title provided more security than others.

Excellent Responses

Excellent responses acknowledged the stimulus material and both listed and discussed the types of titles for shared space, viz, Strata, Company and Community titles. Comparisons were then drawn between the different types of title.

Candidates discussed the importance of the Old System and Torrens Titles with respect to security of title and ownership of housing. These responses then compared the rights and duties of owners of shared space with those of other owners of housing. They included a detailed examination of issues ranging from the keeping of pets to home renovation.

Throughout, these responses emphasised the evaluation of the effectiveness of the legal system in providing security of title, referring to relevant legislation and associated structures.

Above Average Responses

In these responses candidates also showed excellent knowledge of the subject matter and tended to maintain the same logical pattern as the excellent responses. The discriminating factor was that these candidates tended to place less emphasis on comparison and the evaluation aspects of the question.

Average Responses

Average responses tended not to cover all alternative types of title associated with shared space and, in those that did, the response tended to be more descriptive, with little evaluation of the

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types of title. Usually no attempt was made to compare the rights and duties of owners of shared space and those of other owners of housing, but evidence of critical evaluation was lacking.

Question 28

Col and Joanne have recently moved from a rented flat to a rented house. They are concerned about three disputes in which they are now involved. The real estate agent from whom they rented the flat has not returned their bond money to them. They have asked the landlord of the house to fix a blocked drains, but this has not been done. The third dispute is with their new neighbours who have been throwing rubbish over the fence into Col and Joanne's yard.

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

- (a) What obligations do landlords have to tenants?
- (b) Outline the mechanisms which could be used to address each of the three problems.
- (c) Evaluate the effectiveness of dispute resolution procedures that exist to deal with disputes between landlords, tenants and neighbours.

General Comments

This question was chosen by approximately 88% of the students attempting the Housing and the Law Option.

The stimulus material provided was in the form of a scenario and, as such, most candidates used it as the basis of their essay.

Part (a) of the question was generally well answered. Some candidates did confuse the issue by concentrating on the obligation of landlords solely from the tenant's point of view.

Part (b) was also well answered by most candidates who emphasised the Landlord and Tenants (Rental Bond) Act (NSW) and the Rental Board as the primary mechanism to deal with non-return of bond disputes; the Residential Tenancies Act (NSW) and the Residential Tenancies Tribunal for blocked drains; and direct negotiation, Community Justice Centres and local councils for the *throwing rubbish* situation.

Part (c) proved to be the discriminator between candidates, many of whom were able to present a logical sequence of mechanisms starting from direct negotiation and moving through to the use of the Court system.

Critical evaluation of each of these mechanisms was, however, limited to the better responses, with many candidates simply describing each mechanism. There were very few examples of prepared responses to this question. This could have been as a direct result of the nature of the stimulus which set out clear situational guidelines, especially for parts (a) and (b).

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Excellent Responses

In part (a) the responses looked specifically at the obligations of the landlord and included a description of requirements such as: the preservation of the tenant's right to quiet enjoyment, notice of inspections, security, notice of rent increase and eviction, and provision of a fit and habitable dwelling. These candidates also linked these obligations to the Residential Tenancies Act (NSW).

In part (b) candidates dealt specifically with each problem, referring to the appropriate mechanisms and associated Acts and tribunals. For example, in the case of non-return of bond money, these responses developed a logical sequence, starting with a visit to the real estate agent, to written communication with the landlord through the Rental Bond Board.

In part (c) excellent responses elaborated on the dispute resolution procedures referred to in part (b) and usually included other relevant mechanisms and avenues. Additional legislation and its effectiveness were discussed and in all cases the emphasis was on the critical evaluation of the procedures and included cost, time, delay and positive outcomes. This evaluation was both logical and cohesive.

Above Average Responses

Answers to parts (a) and (b) were generally of the same standard as the excellent responses.

The discriminator was in part (c) where candidates tended to place less emphasis on the evaluation of the effectiveness of each mechanism or procedure, though they still tended to cover a wide range of procedures from direct negotiation to mediation, to tribunals, the police and the courts. These responses were more descriptive, with evaluation being less critical or limited to only a cross section of mechanisms.

Average Responses

In part (a) candidates tended to list rights and obligations of both landlord and tenant, ignoring the question which required only those obligations owed by the landlord to tenants. They tended not to relate these back to the appropriate legislation.

In part (b) these responses were limited to the primary mechanisms and did not recognise the existence of a sequence of alternatives.

In part (c) candidates recognised a range of procedures but did not display a sound knowledge of them. They limited themselves to descriptions of the Rental Bond Board, Community Justice Centres and, occasionally, the police and courts. The evaluation was limited and revolved around statements such as *...dispute resolution procedures to deal with disputes between landlords and tenants and neighbours are quite effective.*

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Question 29

A short quotation by Andrew Stewart, Labour Lawyer, 1996 was included here.

Discuss this statement and evaluate the effectiveness of the legal system in regulating the termination of employment.

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

- outline the basis on which employers are entitled to terminate employment;
- describe the remedies that an individual employee can utilise against wrongful dismissal.

General Comments

This question was chosen by approximately 68% of those attempting the Workplace and the Law Option.

The question required candidates to respond to changes in conditions in the workplace. Students must endeavour to keep up-to-date with the changes in statutes. The precise detail is not as important as an understanding of the nature, reasons and impact of the change.

It is very important that stimulus material should be used as an integral part of the response, but it should not merely be rewritten. Candidates may challenge the content of the stimulus material, since they do not necessarily have to agree with the thrust or direction of the quotation.

The true discriminator of the top responses was the ability to analyse the question carefully rather than providing descriptive information in the form of lists, statutes and other material. The main part of the question was the evaluation of the effectiveness of the legal system. Dot points serve as a guide and should support the analysis of the question rather than forming the major part of the response.

It was obvious that candidates are still preparing responses which do not readily relate to the question. Nevertheless, they are responding to the new examination format with longer and, in many cases, better planned responses.

Excellent Responses

These responses showed a good understanding of termination and involuntary loss of employment. They evaluated the effectiveness of the legal system in regulating the termination of employment and, in doing so, they incorporated key parts of the stimulus into their response. Such responses presented a large selection of Acts and cases which were applied extremely well in responding to the question. In them candidates addressed the key issues of redundancy, summary dismissal and dismissal with notice, and understood unfair dismissal related to discrimination on grounds of age, gender, race, marital status, etc. They also had a good understanding of recent changes to unfair dismissal laws as well as the reasons for those changes.

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In these responses candidates showed a clear understanding of redress, e.g. Industrial Relations Commission, Equal Opportunity Tribunal and the Courts, as well as remedies such as damages, reinstatement or redeployment. They were well able to discern between State and Federal systems.

Above Average Responses

Here candidates placed less emphasis on recent changes and too much on past remedies and outdated legislation. Many responses used the stimulus in only a superficial manner rather than using it to enhance the evaluation.

Such responses, however, tended to be logical in answering the question, indicating that the response had been planned. All aspects of the question were addressed, with some knowledge of the differences between the State and Federal systems in relation to workplace law being shown.

Average Responses

These responses tended to be descriptive with little or no analysis. Some indicated a prepared format which was modified only slightly to respond to the specifics of the question. Here candidates outlined rather than evaluated, and expressed limited knowledge of State and Federal systems, e.g. the difference in emphasis which the State Labor and Federal Coalition governments place on the provisions within Industrial Relations legislation, e.g. the Workplace Relations Bill.

Lists of facts rather than carefully structured responses were a significant aspect of average responses. Many candidates made emotional or social comments on the costs of unemployment in response to the stimulus, rather than showing knowledge of the legal response.

Question 30

Kelly and Tay have just got their first jobs. They have been asked to join the union but have read that Federal Government policy is designed to weaken the role and influence of unions. Kelly and Tay need to decide whether to join the union.

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

- (a) Outline the historical role of trade unions.
- (b) What role to unions play in industrial relations today?
- (c) Evaluate the advantages and disadvantages of union membership in achieving industrial justice and industrial peace in the workplace.

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General Comments

This question was chosen by approximately 32% of students attempting the Workplace and the Law Option.

Candidates showed some confusion between the history of Trade Unions and the historical role of unions. The terms *industrial justice* and *industrial peace* in part (c) of the question appeared to challenge many candidates. There was an imbalance in response which did not recognise the mark allocation to each part, consequently a disproportionate amount of information was provided in both parts (a) and (b) which were valued at 4 and 9 marks respectively, compared with part (c) with a mark value of 12.

There was also a lack of reference to contemporary issues regarding the changing role of unions, e.g. their role in Enterprise Bargaining and also their involvement in Occupational Health and Safety as well as social issues. In addition, few candidates referred to recent legislative change, e.g. the Workplace Relations Bill as a means of demonstrating not only a changing role for unions but also their contribution to achieving industrial justice and peace.

There was some confusion as to the dual nature of the State and Federal systems of industrial relations. It was often difficult for candidates to incorporate the stimulus material into their responses. Most referred to the stimulus material only in part (c) where it was briefly mentioned as part of the conclusion.

It was obvious that candidates are still preparing responses which do not readily relate to the question. They are, however, responding to the new examination format with longer and, in many cases, better planned responses.

Excellent Responses

These responses addressed all parts of the question with an appropriate balance. They evaluated the effectiveness of union membership in achieving industrial justice and peace, e.g. the involvement of the unions in the CRA dispute and older cases such as the Pilots' dispute. In these responses candidates also integrated key parts of the stimulus into their response, presenting a wide selection of Acts such as the Industrial Relations Reform Act and the Workplace Relations Bill, and demonstrating how these reflected the changing role of unions, especially with the removal of compulsory membership at State and Federal level. These candidates addressed the key issues of individual rights and standing as well as the current role of unions in a period of declining membership.

Each part of the question was discussed, e.g. advantages and disadvantages of union membership ... industrial justice and industrial peace. Some candidates attempted to analyse whether the achievement of both was possible simultaneously, which indicated a higher level of understanding of the issues involved.

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Above Average Responses

There was less analysis of the question in these responses, although candidates did attempt to use the stimulus material and relate it to the question. They recognised the historical role of trade unions from the time when they had a more fundamental role in the protection of pay and working conditions. They acknowledge the fact that, in more recent times, legislation has given greater protection to employees and this has contributed to a decline in the role of unions, e.g. employment termination, anti-discrimination and Occupational Health and Safety legislation.

Many responses used the stimulus only briefly and, although candidates here understood the concepts of industrial justice and peace, they could not link the advantages and disadvantages of union membership in achieving this. Above average responses examined all aspects of the question and candidates systematically answered parts (a), (b) and (c) and gave the greatest emphasis to part (c) in keeping with the mark allocation.

Candidates understood the different role of unions under the State and Federal systems and, in particular, the current trend at national level to call for individual contracts.

Average Responses

These responses tended to be descriptive and included little or no analysis. It was evident that some candidates are still presenting a prepared response with little modification to answer the question. This type of response tended to be a good text-book answer rather than an analysis of the specifics of the question.

In average responses candidates *outlined* rather than *evaluated*. They also appeared to possess a limited knowledge of the current role of unions, relying more heavily on the historical role. The balance between parts (a), (b) and (c) was not adequately addressed. The descriptions in (a) and (b) were good, but the analysis in (c) tended to be only superficial and brief.

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SECTION III : Case Studies

ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES

Question 31

A short quotation from a report of the Aboriginal and Torres Strait Islander Commission, 1994 was included here.

Discuss this statement 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, provide relevant information, and *at least*:

- describe the changes in government policy towards Aboriginal and Torres Strait Islander peoples;
- outline the manner in which the law has dealt with the status of Aboriginal and Torres Strait Islander peoples;
- assess the success of bodies such as the Aboriginal and Torres Strait Islander Commission and Regional Councils in empowering Aboriginal and Torres Strait Islander peoples.

General Comments

This question was chosen by approximately 69% of those attempting the Aboriginal and Torres Strait Islander Peoples Case Study.

There was generally a sound knowledge of the history of government policy and the impact of this on the ATSI and their culture. Most candidates were able to relate past policies to the present situation of ATSI peoples.

Stimulus material was rarely referred to directly, but there was evidence in the majority of answers that it did provide a guide to responses.

The responses to this question were generally of a higher standard than those to Question 32, as the majority of candidates provided logically structured responses to the question. Here they tended to analyse and give a critical evaluation of the issues more than those who attempted the next question.

Excellent Responses

In these candidates provided a clear analysis of all aspects of the question. The better responses were written in a logical and articulate manner and examined various aspects of the subject matter. There was a clear understanding and knowledge of legislation such as the Protection Act, 1909 and Common Law decisions such as Mabo, 1992. There was an appreciation of the potential effectiveness of bodies representing ATSI peoples but also an acknowledgement of the fact that they are not achieving as much as they should. Issues evaluated in this way included ATSIC, the

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Native Title Tribunal and the Native Title Act 1994 (Commonwealth).

These candidates used current issues such as Pauline Hanson, the Dunghatti peoples and the Crescent Head land claim. The success of the land grant at Crescent Head indicates how ATSI people are achieving justice within the legal system.

Evaluation by these candidates was well balanced, with consideration being given to both positives and negatives in the issues discussed and the conclusions reached which were logical in the context of the response.

Above Average Responses

Those whose responses fell into this category generally provided a good summary of the question but did not analyse the implications of what was being said. Such candidates had good knowledge of government policy and its contemporary effects, but were less likely to evaluate their effects to the same extent as the best responses. One example is a description of Regional Councils but their significance and achievements towards the self-determination process were not fully explored.

In response to the issues of ATSI status, these candidates were also able to provide a range of issues in their responses such as the 1967 census and various pieces of legislation such as the Anti-Discrimination Act, 1977 (NSW), but they did not analyse the impact of such changes to the same extent as the best responses.

Average Responses

These responses had a reasonable factual basis but tended to be less analytical. Where legislation was mentioned, it was often simply listed and briefly explained with little if any analysis and evaluation. Changes in government policy were dealt with in a general and superficial manner, often being discussed in emotive language.

Similarly, indigenous representative bodies were mentioned but there was not clear understanding of the role they play or the conflicts generated by such bodies, e.g. ATSIC funding. There was also failure to show how the sections of the question were linked.

Adding to the general nature of the range of responses was the emotive tone taken throughout in some essays which were an obstruction to a logical discussion of these issues.

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Question 32

*A short quotation from **Working Families materials** was included here*

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

- (a) Identify the difference between Aboriginal and Torres Strait Islander peoples and other Australian people recognised by civil law.
- (b) To what extent does the legal system recognise the social and cultural values of Aboriginal and Torres Strait Islander peoples?
- (c) To what extent does Australian legislation provide equality for Aboriginal and Torres Strait Islander peoples in the areas of WORKPLACE AND FAMILY LAW?
- (D) Evaluate the effectiveness of the legal system in recognising and addressing problems that arise from ignorance and differences of tradition.

General Comments

This question was chosen by approximately 30% of those attempting the Aboriginal and Torres Strait Islander Peoples Case Study. The lower number of candidates choosing this question could be the result of the perceived difficulty of part (a) relating to Civil Law.

Generally responses were of a poorer quality than those to Question 31, as the majority of candidates failed to analyse the links and conflicts between ATSI cultural values and the legal system.

Most candidates were able to provide a catalogue of evidence related to the question, but many failed to evaluate to any great depth the implications of these issues. The stimulus quotation was poorly understood and was often quoted without any evidence of critical analysis.

Many students failed to allocate their writing time to match the mark allocation. As a result, part (d) was often not covered adequately enough to reflect its importance, although almost half the marks in the question are allocated to this part.

Part (a) was very poorly done, with few candidates showing an understanding of Civil Law and almost no candidate relating Civil Law to ATSI differences.

Excellent Responses

The very best answers identified and discussed the significance of Civil Law, giving appropriate cases related to ATSI peoples to support their response.

These responses discussed and analysed all parts of the question in great depth, using a wide variety of issues and concepts. Some of these areas included native title, employment law, family law and legislation designed to prevent racial discrimination and vilification.

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The better candidates identified the different social and cultural values of ATSI peoples and identified conflicts that arise within the legal system, e.g. marriage and adoption. Such candidates were able to give detailed evaluation of the impact of the Family Law Act, 1975 (Commonwealth) on ATSI marriages and adoption. They identified weaknesses in the law related to ATSI peoples and discussed causes and effects, with examples including the Royal Commission into Black Deaths and the Summary Offences Act 1988 (NSW).

It is important to note that the factor that discriminates between these candidates is not just their knowledge of issues and content, but their ability to think about the questions and then apply thinking skills such as analysis and evaluation to develop a satisfactory response to the question.

Above Average Responses

In these responses candidates identified civil law without applying it to ATSI peoples in specific circumstances. Cultural and social values of ATSI peoples were clearly identified but less clearly related to legal issues than in the best responses.

Generally there was a good understanding of how legislation relates to and has the potential to benefit ATSI peoples without indicating how equality can be achieved. These candidates provided a wide variety of information and showed an ability to discuss these issues but failed to analyse and evaluate to the same extent as the excellent responses. Many responses in this range were excellent in all but a particular area of the question.

Here candidates used such things as Anti-Discrimination Acts, Land Rights legislation, employment law, the Family Law Act, case law including *R v Williams*, *R v Walker*, and the Royal Commission into Black Deaths in Custody to support their arguments in response to the question.

Average Responses

These responses showed a limited understanding of Civil Law and, in many cases, ignored the Civil Law aspect altogether.

Aspects of social and cultural values were described, e.g. relationships to the land, but these were applied to the legal system only in a general manner.

Such responses showed some understanding of Family Law and were able to explain the de facto status of ATSI marriages but were not able to discuss the consequences such as loss of social security benefits to illustrate the inequality that exists.

Workplace law responses for this range were based on the Anti-Discrimination Act, 1977 (NSW) and the Racial Discrimination Act, 1975 (Commonwealth) but, again, such responses tended to describe the Acts rather than critically evaluating their effectiveness to show that they are ponderous, expensive and hard to implement for ATSI peoples.

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In part (d) these responses provided a few issues for discussion and evaluation which did not allow these candidates to evaluate the situation fully; often this section was written in a very descriptive manner.

On the whole these responses tended to be more general, using less supporting evidence and thus providing less critical evaluation than better responses, despite a reasonable content base.

Migrants

Question 33

*A statement by **Rob White** was included here.*

Discuss the statement and evaluate the effectiveness of the legal system in addressing the exclusion of migrants from participation in Australian life.

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

- identify areas of Australian life from which migrants may be excluded;
- explain the factors that lead to this exclusion;
- discuss the ways in which the legal system attempts to meet the problems of exclusion.

General Comments

This question was the better answered of the two migrant questions, and responses tended to be both articulate and well informed. On the whole, they were of a better standard than in previous years, with very few candidates submitting non-attempts. The better candidates referred to the stimulus, incorporated it into their response and also provided more relevant information than that required by the three dot points, including the role of unions, aspects of the education system, the welfare system, criminal justice system, etc.

The analysis of the legal system and its response to the needs of migrants was answered well by only the better candidates. Many good responses displayed a sound knowledge of factors that lead to this exclusion but they tended to be descriptive rather than analytical. The evaluation section continues to be the area of poorest response. The skills of evaluation and analysis need to be clearly recognised by students.

Excellent Responses

These responses gave detailed examinations of how non-English-speaking migrants are excluded from participation in Australian life. The way in which poor English skills affect their ability to operate within the legal system was emphasised and expanded to show how these poor language skills affect migrants' ability to obtain access to legal information about their rights in areas such as work, housing, health, education, etc. Candidates indicated how the absence of such language skills places migrants in a position in which they were ill-equipped to deal with matters involving the police and the courts. These candidates were able to discuss and evaluate clearly the relevant legislation and its effectiveness at both the State and Commonwealth levels.

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Above Average Responses

These candidates possessed a good knowledge of the main problems and described accurately and in detail how migrants are excluded from participation in Australian life. They successfully identified the key pieces of legislation, explained how such legislation attempts to deal with the problems of exclusion, and provided examples at both the Commonwealth and State level.

In the part of the question requiring an analysis of the effectiveness of the legislation, responses tended to be both superficial and limited.

Average Responses

Candidates in this category generally displayed good knowledge and understanding of the areas and factors that lead to exclusion. Many responses were quite detailed but tended to be very descriptive. Candidates were able to list accurately the relevant legislation, but failed to analyse the effectiveness of the legislation in relation to the specific problems. Such candidates also referred briefly to the stimulus but failed to incorporate it in discussion of the question.

These responses tended to focus on the three dot point areas only and, as a result, were limited in the discussion of the question.

Question 34

The Varayudej family arrive in Australia on a small boat that sailed from Thailand.

They have no visa and are therefore confined to a detention centre. Mr Varayudej's brother is a permanent resident of Australia.

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

- (a) What is a refugee?
- (b) Outline the different types of status which an individual arriving in Australia can be given.
- (c) How would a migrant obtain an administrative review of an immigration decision?
- (d) Evaluate the effectiveness of the legal system in providing justice, fairness and equity for families such as the Varayudejs.

General Comments

The standard of responses to this question was an improvement on that in previous years, although most tended to be weaker than those to Question 33. Students should be informed that it is not sufficient just to list the relevant legislation and its function; it must be examined in the light of the question being posed. It is essential that candidates be familiar with the importance of the evaluation of the effectiveness of the legal system in dealing with the disadvantages faced by migrants in Australia.

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Ability to use the skills of evaluation clearly distinguished the excellent from the average responses.

Excellent Responses

- (a) Candidates provided the United Nations' definition of refugees and an explanation of this definition. The better responses indicated the consequences of being a refugee.
- (b) Candidates recognised the fact that the term *status* referred to the various immigration categories, which were named and the relevant criteria provided.
- (c) Candidates clearly understood the appeals mechanism and were able to identify and rank in correct order the various tribunals. The very best responses were based on current knowledge regarding the abolition of ministerial discretion and the diminishing of the role of the Federal Court.
- (d) The better candidates evaluated the information presented and attempted to come to terms with the concepts of justice and fairness.

Such candidates referred back to the stimulus material and so were able to consider the situation of both Varayudej families. Detailed reference to detention centres and Australia's policy in relation to the UN Declaration of Human Rights were incorporated into these better responses which also commented on Australia's legal controls. Good candidates also made reference to *bridging visas*, evaluated the MIRO and IRT and referred to the role of the Commonwealth Ombudsman. These candidates presented coherent and logical arguments which showed an understanding of the legal processes involved.

Above Average Responses

The typical responses in this category answered parts (a) and (b) well; many candidates, however, were unable to answer parts (c) and (d) equally well. Knowledge of the review mechanisms was provided but candidates presented outdated information. A number referred to the stimulus in their response to part (c), and suggested ways in which the Varayudej family could apply for permanent residence. Poor responses were generally given to part (d) where a lack of analysis and poor recognition of the difference between refugees and families such as the Varayudejs occurred. References to the Varayudej family were in the nature of a general comment rather than a specific evaluation of their position. Some reference to case examples would have improved the quality of responses to this part of the question.

Average Responses

- (a) These candidates generally provided a correct definition of *refugee*, though not necessarily the UN definition. Some provided too brief a definition or gave incorrect information, while many did not refer to the UN definition.

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- (b) Candidates tended not to cover all the relevant categories of status, generally naming only two. They did, however, attempt to explain the different categories, although some created their own unusual categories.
- (c) Candidates generally had a poor understanding of the review process and reference to tribunals was made in very general terms. Some referred to tribunals that were not relevant to migrants.
- (d) The majority of candidates failed to refer to the law or to the stimulus material in their response to this part. Some, when incorporating the stimulus, did so in a judgmental manner. A number of candidates assumed that the Varayudej family were refugees, if they considered them at all. Many moralised on the case material rather than examining it in reference to the question.

Women and The Law

Question 35

Police claim that they lack power to deal with domestic violence. A recent response to this claim is the provision of protection orders. Yet the first assault, which provides the basis of the order, goes unpunished. It is only a breach of the protection order which leads to police action. This reinforces the idea that domestic violence is a civil matter, not a criminal offence. Such law reform is a step backwards.

Discuss this statement and evaluate the effectiveness of the Australian legal system in controlling domestic violence.

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

- discuss the role of protection orders;
- explain how law can reflect and change a society's moral values;
- comment on the role of women's groups in contributing to law reform and challenging gender bias in the legal system.

General Comments

This question was answered by approximately 66% of those attempting the Women and the Law Option.

Very few candidates referred to the stimulus in a way which helped them to respond to the question. Even very good candidates assumed that it was valid and incontrovertible. This was despite the fact that many good responses then gave information which questioned the view expressed in the stimulus, e.g. they argued that the use of the Civil Law in gaining a protection order was essential to its usefulness, and that the criminal charge of assault was always an option for each violent episode including the first. Students should be aware of the purpose of the quotation, i.e. to stimulate ideas, and to be confident in justifying the opinions expressed.

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Many candidates focused on the minimum content points rather than on the question. This sometimes resulted in lengthy discussion on workplace legislation without attempting to relate such issues to domestic violence. Students must learn to pay attention to the stem of the question.

Excellent Responses

In these responses candidates were able to evaluate protection orders critically by examining procedural issues such as the mix of civil and criminal law in AVOs and by comparing different types of orders (notably Family Court Injunctions and AVOs) and assault charges.

Here candidates were able to identify the way in which the law regarding domestic violence reflects changes in society's values and attitudes. They recognised, for example, that there have been institutional changes within the police force (like the placement of Domestic Violence Officers in police stations, legal requirements placed on police to intervene, and the treatment of domestic violence in police training) which have made a difference to the way in which police respond to domestic violence situations. A few excellent responses commented on the Family Law Reform Act, 1995, and the fact that the Family Court now notes evidence of domestic violence issues when dealing with Contact and Specific Issues Orders. Very few candidates, however, discussed how the law can actually influence society's moral values or lead to change.

Excellent responses clearly assessed rather than simply giving opinions. They recognised the fact that *the legal system* is a broad term and not limited to actual laws and procedures. In them candidates discussed services and women's groups, although few identified groups which have contributed to law reform or challenged gender bias, e.g. the Women's Electoral Lobby. Many candidates identified instances of gender bias and commented on their impact on the community; few could discuss the means whereby such bias is being challenged.

Above Average Responses

These tended not to answer the whole question. They mentioned a range of issues and relevant legislation, e.g. Battered Wife Syndrome and specific protection orders. They did not distinguish between civil and criminal aspects of Protection Order legislation and, therefore, evaluation in this area was weaker than in the excellent responses. Often, when they did comment on the use of Civil and Criminal Law, they did not use it as a platform on which to develop arguments, e.g. they failed to note that the use of a civil standard of proof from the outset makes AVOs accessible, whereas the introduction of criminal law at the point of breach of the order means that it is more enforceable than a Family Court Injunction.

Most above average responses came from candidates with a good knowledge of the law, although they could neither use their knowledge to draw analytical conclusions nor use the stimulus material effectively.

Above average responses tended to focus on protection orders and did not deal well with the relationship between the law and society's moral values. Many made very basic comments about police reluctance or refusal to intervene, with no recognition of changes in police

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response or structure. Many referred to services to help domestic violence victims, but could neither identify women's groups nor discuss the role they played.

Average Responses

Many average responses limited discussion to protection orders and gave simple descriptions rather than examining their role and effectiveness. The majority referred to AVOs and gave only a general description. In discussing the link between the law and changes in society's moral values, many discussed matters like workplace legislation without relating such material to domestic violence. They treated the minimum content points as if each were a different question rather than ways of exploring the issues raised in the question. Most average candidates wrote all that they knew about domestic violence without specifically discussing the terms of the question or trying to relate points to the stimulus material.

Many ignored the issue of women's groups. Their treatment of police response was very basic and negative, often assuming that police refuse to intervene. Many were prepared responses containing, for example, irrelevant material on causation theories, e.g. male supremacy and cyclical theories.

Question 36

*The quotation here was from Peter Bailey's **Bringing Human Rights to Life**, 1993.*

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

- (a) What force do international declarations of rights have in Australia?
- (b) What Australian legislation has been passed to put human rights conventions affecting women into effect?
- (c) Describe the problems that women continue to face, both at home and at work.
- (d) Evaluate the effectiveness of domestic and international law in addressing the problems faced by women.

General Comments

The stimulus, despite its usefulness, was generally not used by candidates. Those who did so often used it simply as a source from which to quote rather than as a statement to be analysed. It is important to stress to candidates the need to measure the theme of the question by evaluating the stimulus and not just agreeing with it.

A lack of understanding of International Law was shown by the majority of candidates. Those who were capable of discussing these issues, however, provided quite outstanding responses. The problem with parts (a) and (b) was that candidates were asked *what*, which resulted in brief statements or lists being made. While these responses varied greatly, so did answers within the different parts. Candidates were obviously more comfortable with part (c).

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Excellent Responses

In part (a) the excellent responses showed a solid understanding of the passage of International Law into Domestic Law. They understood the role of Section 51 of the Constitution and discussed methods that can be used if a country does not fulfil its obligations to International Treaties.

In part (b) the best responses were able to name International Declarations or Conventions and made direct links to Australian Legislation, especially Human Rights and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). They were also able to link the idea of a general push for women's rights in the 1970s with the resulting Australian legislation. They therefore limited their discussion of specific Acts to those which had direct relevance to International Law, e.g. the Affirmative Action (Equal Opportunity for Women) Act, 1986 (Commonwealth), the Family Law Act, 1975 (Commonwealth), the Sex Discrimination Act, 1984 (Commonwealth) and the Anti-Discrimination Act, 1977 (NSW).

In excellent responses to part (c) candidates answered very well. The best quoted statistics and up-to-date information and treated home and the workplace equally. Some linked the idea that the attitudes learnt at home are often reflected in those expressed at work. Relevant cases and statistics were discussed and used to support the arguments. The problems were also related back to the issues underlining International Conventions in part (a) and (b).

In part (d) the very best responses referred to International Law as well as Domestic Law in addressing the problems faced by women. The evaluation of the effectiveness of the law was discussed in relation to how the workplace has made structural changes to eliminate problems faced by women. Excellent responses pointed out that, while some gains have been made, there are many areas in which women still face problems, either at home or in the workplace. Many of these candidates pointed out that both international and domestic law have failed to remove many of the problems faced by women, e.g. domestic violence, glass ceiling, pink ghettos, social attitudes and disparity in wage levels.

Above Average Responses

In part (a) these responses showed a sound understanding of the lack of force of international treaties until Australia ratifies these with domestic legislation.

In part (b) candidates pointed out the various statutes which have transformed human rights conventions within Australia. They discussed various legal aspects but did not refer to any specific international law such as CEDAW.

In part (c) most candidates described the problems faced by women both at home and at work. This included domestic violence, home responsibilities, social expectations and child-care dilemmas at home, while the workplace problems identified included labour market segregation, part-time and casual work, glass ceiling, sexual harassment and male hierarchies. Sometimes, however, there was an emphasis on either the home or the workplace. Usually domestic violence was highlighted.

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In part (d) above average responses usually ignored or dealt in a cursory manner with international law in addressing the problems faced by women. They concentrated on Australian legislation and cited relevant cases and up-to-date information. Their evaluation tended to focus on legislation, with neither reference to the stimulus material nor a full discussion of how the legal system has effectively or ineffectively addressed the problems faced by women.

Average Responses

In part (a) average responses discussed briefly the fact that international law has no force in Australia unless it has passed into domestic law. There was very little understanding of the question asked or of the stimulus material.

In part (b) most candidates listed a few Acts, e.g. the Affirmative Action (Equal Opportunity for Women) Act, 1986 (Commonwealth), the Family Law Act, 1975 (Commonwealth), the Sex Discrimination Act, 1984 (Commonwealth) and the Anti-Discrimination Act, 1977 (NSW). They described the features of these Acts with little or no reference to how they represent the ideals of human rights.

In part (c) average responses were mainly descriptive with some anecdotal information. They concentrated either on home or work while discussing some of the problems faced by women.

In part (d) average responses ignored the international law part of the question and focussed on a few specific examples of the ineffectiveness of domestic law in addressing the problems faced by women. Rarely did they link the idea of international law with the development of domestic laws. Responses which fell into this category made little or no attempt to evaluate the question.

Other Disadvantaged People

Question 37

The short quotation here was taken from Dr John Holt, Human Rights and Mental Illness (Burdekin Report), 1993.

Discuss this statement and evaluate the effectiveness of the legal system in providing appropriately for all people with mental illness or disability.

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

- refer to the rights that are affected by mental illness or intellectual disability;
- describe the roles of institutions and people who protect those with mental illness or intellectual disability;
- describe and explain the legal position of the following three groups of mentally ill or intellectually disabled persons; people being treated voluntarily in an institution, people being treated involuntarily in an institution, and people being treated involuntarily in the community.

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General Comments

This question was answered by the majority of the candidates as it involved most areas listed in the Syllabus. While there was some evidence of prepared answers, the better candidates were guided in their answers by both the stimulus and the dot points. While some candidates treated the dot points as a structured essay, the better responses treated the question as a whole, producing essays that flowed coherently. The majority possessed good knowledge of the legislation, regulations and appeals structures with respect to mental health care. The third dot point did require application of the legal system to specific groups, including some detailed knowledge of each rather than a simple awareness of such divisions. Poor responses included comprehensive treatment of the more sensational aspects of mental health care rather than retaining a focus on the question asked.

Students should be discouraged from writing limited responses.

Excellent Responses

Here candidates included a wide range of material in their responses, and defined intellectual disability and mental illness and the distinction between them. Awareness of the rights of these groups as detailed in the Syllabus was obvious. Those in this category included relevant legislation and its impact on mental health care. In addition a detailed knowledge of auxiliary legislation providing protection for personal and property rights was also included in a number of responses.

Candidates in this range also presented good responses on the role of institutions and people involved in mental health care and the limitations placed on them by the legal system.

They also showed a sound knowledge of the Richmond and Burdekin Reports with respect to de-institutionalisation and the state of community-based care.

Above Average Response

Candidates in this range tended to be quite knowledgeable but failed to evaluate the effectiveness of the legal system in providing for the mentally ill or intellectually disabled. Responses tended to be descriptive, with some attempts at evaluation, notably in line with the Burdekin Report.

Many described case scenarios relevant to the question, the breadth of which allowed for prepared answers to gain some relevance.

Average Responses

Candidates here tended to focus on the Burdekin Report because the stimulus material distracted them from the dot point questions. Legislation was mentioned by these candidates who, nevertheless, failed to show knowledge or understanding of the purpose of such legislation.

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Candidates also did not understand fully the nature of institutions or community-based care. The result was that they failed to make the relevant distinctions within the dot points. Many listed rights without relating them to the two groups.

Question 38

*A short quotation from **The Independent Social Security Handbook, 1994** was included here.*

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

- (a) Describe the categories of social security applicants.
- (b) Identify and explain the rights, entitlements, responsibilities and obligations found in social security legislation.
- (c) Describe the legal processes available to applicants to claim and enforce their rights and entitlements.
- (d) Evaluate the effectiveness of the legal system in providing social security applicants with appropriate rights, entitlements, responsibilities and obligations.

General Comments

The standard of answers here was average since very few answered all aspects of the question or provided evaluative comment. Although less able candidates tended to answer this question, many had difficulty in ascertaining the difference between *rights* and *entitlements* and between *obligations* and *responsibilities*. Many were uncertain about how many categories were required for question (a) given the range of social security categories. Candidates also found it difficult to come to terms with what was required in questions (b) and (c). Generally, question (d) was poorly answered. The more able candidates seemed to have answered Question 37.

Excellent Responses

- (a) Candidates provided adequate description of the categories of social security applicants.
- (b) Candidates explained adequately the rights, entitlements, responsibilities and obligations found in the social security legislation. A good understanding of the statutory requirements was shown.
- (c) A complete coverage of the legal processes available to applicants to claim and enforce their rights and entitlements was provided by these candidates, beginning with the appeals at the level of the regional office to the S.S.A.T., A.A.T., Federal Court and High Court.

In many responses candidates also discussed the role of the Commonwealth Ombudsman and the Privacy Commissioner.

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- (d) Here candidates provided well written responses and made good use of legal terminology. The rights, entitlements, responsibilities and obligations of candidates were discussed and evaluated. Many then expanded this into broader aspects of the legal system, including the relevance of Legal Aid, discrimination legislation, assistance through DSS such as interpreter services and managerial advice, the role of the CES and Government policy changes in this area. The role of other support agencies such as the Chamber Magistrate, the Commonwealth Ombudsman and welfare agencies was also discussed as required.

Candidates effectively incorporated the stimulus material and provided critical evaluation of it as required by the questions.

Above Average Responses

- (a) Responses here fulfilled the requirements of the question.
- (b) These candidates both identified and explained the rights, entitlements, responsibilities and obligations of social security applicants as found in the legislation.
- (c) Most candidates explained well the legal processes available to applicants in attempting to enforce their rights and entitlements satisfactorily, though many responses failed to explain how the legal processes enforced such rights.
- (d) Responses to this question tended to focus only on the rights and entitlements of applicants. A substantial number ignored the obligations and responsibilities aspects of the question. There was limited evaluation of the stimulus and a failure to broaden the discussion to include all aspects of the legal system.

Average Responses

- (a) Here candidates generally listed the categories of social security applicants without any further description or explanation.
- (b) Candidates provided an incomplete coverage of the rights, entitlements, responsibilities and obligations found in social security legislation.
- (c) Candidates failed to provide a full coverage of the legal processes available to social security applicants who want to enforce their rights and entitlements. The most frequently mentioned elements of the legal process mentioned were the S.S.A.T. and the A.A.T. Few candidates made reference to the role of the courts.
- (d) Candidates tended to repeat the information that they provided in response to part (c). To this was added a limited attempt to evaluate such material. The stimulus material was not referred to, indicating that candidates had difficulty in understanding the terminology used.

A number of candidates made little reference to the role of the legal system as a whole in relation to this question.

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General Comments

The number of candidates attempting the question on World Order and Indigenous People increased significantly this year.

The responses reflected a general improvement in standard which was reflected in the increased length of responses. The nature of the questions this year required a thorough understanding of the Core and the ability to integrate the Case Studies effectively with the Core in the response. The scope of this year's questions highlighted the dangers associated with trying to predict the focus of individual questions.

SECTION I

Challenge : Global Environmental Protection

Question 1

*A short quotation was included here from **Department of the Environment, Sport and Territories**.*

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 question.

What is meant by sustainable development?

Discuss the effectiveness of national and international law in addressing issues of sustainable development and environmental protection.

General Comments

The responses tended to be longer and of a higher standard than in previous years. This was reflected in the fact that it was harder to identify the below average and poor responses.

A higher standard was achieved even though candidates were faced with a new format in which they were asked not only to identify the two chosen depth studies and discuss the stimulus in relation to the question; they were also asked to provide relevant information from the Core and to discuss the effectiveness of national AND international law in addressing issues of sustainable development and environmental protection.

Due to the fact that a broad range of information was asked for, it was still possible for candidates to attain excellent or above average marks without covering every aspect of the question equally.

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Even though both depth studies were clearly identified, most candidates failed to refer to the stimulus material, and the majority usually provided relevant information from the Core.

On the whole, the skills of interpretation and analysis has improved.

Excellent Responses

Candidates here possessed superior essay-writing skills, providing a flow of information that included cohesive and supportive arguments.

Introductions to the answers clearly defined sustainable development. They also discussed the issues raised in the question. For example:

'In protecting parts of the environment such as the atmosphere and wildlife, international law protects and sustains these resources for the future. The international legal system has responded to the issues of sustainable development and environmental protection with agencies, regimes and, most significantly, treaties. In turn Australia is a party to these agreements and the government has provided legislation and strategies in response.'

Some candidates, in attempting to cover the Core briefly, highlighted a couple of significant treaties and conventions relating to sustainable development, for example, the *Brundtland Report* and the *Rio conference* which produced *Agenda 21*. Many discussed significant concepts relating to sustainable development, for example, the *precautionary principle* and *intra- and inter-generational equity*.

The majority did not discuss their specific depth studies in detail but tended, rather, to give examples of international and national law in attempting to discuss the effectiveness of issues related to sustainable development and environmental protection.

Excellent responses critically evaluated both national and international responses throughout the essay rather than by means of a single paragraph evaluation at the conclusion of the essay. The best responses selected appropriate national and international laws upon which to base their discussion and evaluation.

Above Average Responses

Most responses in this category were well structured and showed a clear understanding of the stimulus material.

While candidates here were able to define sustainable development adequately and to refer to significant treaties and conventions, they were generally unable to discuss significant concepts as was done in the excellent responses.

Most candidates identified their depth studies but did not discuss them in enough detail. Often one case study was discussed at length, while the other received a mere mention.

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Candidates in this category did not evaluate the question critically.

Average Responses

There was quite a range of quality, structure and detail offered by responses in this category. Whilst many were able to provide an adequate definition of sustainable development, there was often little reference to this concept in the rest of the response.

Often candidates ignored the Core and, after a brief definition of sustainable development, launched into discussion of their depth studies. Treatment of these was descriptive and often unbalanced, with one receiving more detailed treatment than the other. Such responses also avoided the issue of effectiveness, preferring, instead, to give lists of treaties and conventions without attempting any analysis. Some responses were prepared, ignored key elements of the question and also used irrelevant and factually incorrect material.

Question 2

A short quotation was included here from Elizabeth Dowdeswell, UN Environmental Programme.

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 have concepts of international environmental law evolved and expanded?

Discuss the way in which national and international law responds to and incorporates new and innovative ideas of environmental law.

General Comments

The questions this year emphasised the importance of the Core and the use of the depth studies to provide examples to substantiate the responses, which tended to be longer than in previous years. Candidates either totally ignored or gave brief answers to the last section of the questions.

Even though both of the depth studies were clearly identified, many candidates failed to refer to the stimulus material. Usually they provided relevant information from the Core but failed to support it with their depth studies.

Excellent Responses

Candidates in this category possessed a good writing style and presented logical arguments. The introductions gave a detailed analysis of the question and highlighted the pro-active and reactive nature of environmental law. Many candidates answered the global approach to environmental law by identifying important concepts and recognising the importance of such

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concepts in achieving global environmental protection. They possessed a high level of understanding of the key conventions and organisations involved in the formulation of a comprehensive response, but did not give a great deal of information in discussing the depth studies, using them, rather, to support key arguments through their responses. These candidates critically analysed both international and national responses to environmental law. Their choice of national and international laws was not only appropriate but showed a good understanding of issues relating to the question.

Above Average Responses

These responses were well expressed and showed an obvious understanding of the topic; in them candidates identified the reasons for environmental protection and discussed the relevant concepts, conventions and organisations central to the development of a global approach. The treatment of depth studies, however, was often not as good as the treatment of national and international laws.

Candidates in this category analysed the material satisfactorily but found it difficult to come to terms with the phrase *new and innovative ideas* of environmental law.

Average Responses

In these responses there were many different interpretations of the question. Here most candidates were able to state why there is a need for international environmental law, but few could explain how it has evolved and expanded. Many responses were descriptive and failed to establish the relationship between the Core and the depth studies.

In these responses candidates often failed to discuss the depth studies equally. Usually they provided a detailed account of the development of a few relevant laws or treaties instead of analysing the impact of each.

In many average responses candidates provided a great deal of information which, at times, was descriptive, irrelevant or factually incorrect. Some seemed to be prepared answers which failed to answer the set question.

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SECTION II

Challenge : Technological Change

Question 3

The short quotation here was taken from Kerry Stokes: Boyer Lectures, 1994.

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 question.

Discuss the effectiveness of national and international law in addressing issues arising out of technological achievement.

General Comments

This was the more popular choice of the two alternatives, the two depth studies most often presented being Biotechnology and Multimedia. This question, which was probably more attractive to students because of the straightforward stimulus material, was quite challenging and many candidates had difficulty in addressing all areas of the question: the Core, the two depth studies, the stimulus material, national and international law, the issues arising out of technological achievement, and discussing and evaluating the effectiveness of the checks and balances framework. Whilst many candidates were able to identify the relevant legislation, conventions and issues, they had difficulty in analysing and evaluating the effectiveness of the responses of the law and the legal system to change.

Responses this year were generally longer and this was necessary in order to cope with the required width and depth of the question.

Excellent Responses

These responses clearly evaluated the effectiveness of national and international law in discussing issues arising out of technological achievements and gave specific examples from their two depth studies. For example, *international law can often be ineffective in terms of the challenge presented to it by technology. It tries to show that it cares about the rights of individuals by providing property rights and, on the other hand, equity in allowing access to new technology. But it can often take decades for international law to be formed and become widely accepted, while technology is forever changing and the pace of that change increasing. By comparison the Australian legal system is much faster than international law and can deal with local issues that arise much more effectively.*

In dealing with international issues the better candidates compared and contrasted the impact of technology on the developed as well as the developing nations.

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Above Average Responses

Responses in this category showed a sound knowledge of the issues involved and discussed both international and national legislation and conventions. These responses were not as good as those in the highest category because they did not fully analyse the effectiveness of the legislation they cited. Although there were good answers in this category, they often lacked the balanced treatment that this question demanded, tending, instead, to concentrate too much on the knowledge/content of their depth studies at the expense of the Core.

Average Responses

The average response in this category was shorter than answers in the higher categories, relying heavily on a descriptive approach to both legislation and depth studies and often presenting a checklist prepared for any general question in this module. Some prepared answers were not specifically related to the question and, as a result, almost failed to get into the average category. Many responses concentrated on either international or national legislation.

Question 4

A short quotation by Ian Lloyd, 1993 was included 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.

Explain how the private interest in change and innovation conflicts with the public interest in certainty and respect for precedent.

Discuss the effectiveness of national and international law in reconciling these conflicting interests.

General Comments

This question was attempted by a small number of candidates, many of whom found the stimulus material difficult and also ignored the section of the question relating to the conflict between private and public interest. These students often merely discussed the effectiveness of international and national law.

Those responses which examined the issue of conflict between public and private interests interpreted the question to mean that private interest (representing profit and ownership) conflicts with public interest (access).

Students needed firstly to grapple with the ideas put forward by Ian Lloyd, that is the proposition that technology, which is *constantly striving for change and innovation*, is at odds with the law which values *certainty and respect for precedent*. Yet, despite these

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differing agenda which make technology and the law *uneasy companions*, according to Lloyd it is important ! of *critical importance* ! that there be a legal response to the moral problems and dilemmas raised by technology.

The second issue to be explained was the conflict between private and public interests, with candidates being required to use the Core and the two depth studies to discuss how effectively these conflicting interests are dealt with in the international and national arenas.

Many had difficulty in addressing all these areas and simply concentrated on what the law is doing in, for example, biotechnology and multimedia without analysing the effectiveness of such an approach. It was apparent that many students had a sound working knowledge of their content area and were able to identify relevant legislation and cases.

Excellent Responses

These responses made good use of the stimulus material and recognised the fact that the legal system needs to come to terms with *the pace and desirability of change*. They stated that the law can influence, facilitate and even prevent technological change ! for example, surrogacy, IVF, and organ transplants. Nevertheless, the law cannot ignore technological change, as it is an *inescapable factor of life*. To develop a *satisfactory legal response* the law must consider economic, moral, ethical and social factors in balancing private and public interests.

Responses showed a clear understanding of the Core - why we need a global response; the shortcomings of international laws such as the issue of sovereignty and the slow response rates; the fact that international law is not binding until ratified and incorporated into domestic legislation for most countries. Many responses linked the issues in the Core with examples from their two depth studies. For example, Bioethics was linked with the issue of sovereignty, thereby highlighting the problems faced by some nations in regard to the sale of organs and tissues for transplantation.

Other responses took a historical view of the role of law in relation to intellectual property whereby the private rights of the inventors are protected and their right to benefit from their efforts have been defended.

These candidates argued that there are difficulties for the legal system in developing a global response to technological change. Various factors such as differing cultural and moral values, as well as the rift between developing and developed nations over the right to make information available, were examined.

Responses in this category were easy to identify as they were well expressed, were based on excellent knowledge of the Core and depth studies and linked content to all parts of the question. Their understanding of the issues raised in the stimulus material was apparent throughout the essay.

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Above Average Responses

These responses were based on a good understanding of the issues and referred to the Core and two depth studies. Students were aware of the challenge of technological change. They usually discussed national and international legislation but clearly failed to analyse fully the effectiveness of such legislation. The depth studies were not treated equally, with candidates concentrating on one to the detriment of the other. These responses did not fully understand the stimulus, and had difficulty in referring to it.

Average Responses

In these responses candidates showed an awareness of relevant content but were easily distracted from the issues raised by the question, preferring to rely on prepared answers. For example, when biotechnology was discussed, mention was made of organ transplants, artificial life supports, artificial reproductive technologies, and drugs, with little or no reference to the issue of public and private interests in these areas.

Candidates recognised the fact that it was difficult to achieve a complete response, but often failed to ascertain why this was the case. Responses did not refer to the stimulus material and there was a failure to link the two depth studies back to the issue of whether the law, at both national and international levels, effectively reconciled the conflict between private and public interests.

World Order

Question 5

A short quotation from Louise Shelley was included 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.

What measures can contribute to increasing the stability of World Order?

Compare the effectiveness of national and international responses to the problem of World Order.

General Comments

The majority of students attempted Question 5 in this module. The better candidates realised the breadth of information required and the limited time in which to write an evaluative response. Often they used a narrative approach rather than analysis and related the role of democracy to the acceptance of international law and to the achievement of stability and world order.

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Depth studies were used in regard to both national and international legislation. Average students concentrated on the details of the depth studies rather than the issues arising from them.

Excellent Responses

Here candidates showed a good understanding of the Core and effectively applied the depth studies to the issues raised in the question. They referred to the stimulus and discussed the role of conflict and the need for stability. The role of the rule of law and its application was explained and analysed in relation to democratic government.

In discussing measures to increase the stability of world order, a range of approaches such as diplomacy, monitoring and intervention were discussed, especially in relation to issues of displaced people, international crime, military conflict or transnational trade.

It was evident that students understood the important link between national and public international law. Customary law and international frameworks of conventions, treaties and declarations were examined and the extent of their effectiveness discussed in relation to the UN inter-governmental and regional agencies, NGOs and the media.

Above Average Responses

Candidates discussed the issue of world order by examining the framework of conventions, declarations, treaties and agencies. There was some discussion of the stimulus material in relation to the concepts of stability, democracy and the rule of law. Discussion of factors which contribute to instability involved the use of depth studies. Candidates used examples to emphasise and develop a point.

The majority of candidates discussed peace-keeping when addressing the issue of stability, and current world conflict situations such as Bosnia, Rwanda and Zaire were often cited. Effectiveness was examined in relation to acceptance, adherence and enforcement of national and international initiatives. Most candidates attempted to use analysis here.

Average Responses

Candidates discussed the meaning of world order in terms of world peace and world government, and attempted to define stability. Concepts of the rule of law and democracy were either treated briefly or overlooked.

Measures to promote world order were described in relation to depth studies, and international frameworks used without any analysis of their effectiveness.

The issue of sovereignty was examined while discussing the role of intergovernmental and regional agencies as well as NGOs. Terms and concepts were introduced without necessarily being explained.

Often there was description of the types and existence of national and international laws without any analysis or evaluation.

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Question 6

A short quotation from Keith Suter's Global Change, 1992 was included 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.

Describe the different perceptions and frameworks that may be adopted in approaching questions of World Order.

Evaluate the effectiveness of national and international law in dealing with the division of power.

General Comments

Only a small number of students attempted this question. The excellent responses were distinguished by their reference to the stimulus quotation and by their evaluation of it. The term *division of power* caused confusion and many students interpreted it in the constitutional sense. The better responses defined the terms and concepts in the quotation and discussed it in relation to the Core and depth studies. There was a tendency for poorer responses to be too factual and historical, with limited knowledge and analysis of the impact of economic, political, ideological and cultural factors on world order.

Evaluation of the effectiveness of national and international law in dealing with the division of power was either well discussed or poorly treated.

Excellent Responses

Candidates examined the concept of nation state, global power and political divisions through discussion of the stimulus material. Frameworks were treated in terms of instruments, treaties, conventions, declarations and customary law which were discussed as an introduction to the Depth Studies.

Excellent responses referred to the Core in defining perceptions from national, individual, government and business points of view. Candidates elaborated on how perceptions arose from national events, business interests, humanitarian concerns, natural disasters and legal systems. The role of the United Nations, regional and inter-governmental agencies and non-government organisations, as well as the media, were discussed in relation to the division of power. Students referred to relevant examples from the depth studies in the analysis of the effectiveness of international and national law with regard to the division of power.

Above Average Responses

Referring to the quotation, candidates discussed globalising power and dividing politics.

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Frameworks were examined fully through reference to depth studies, as were perceptions which were mentioned and discussed. Those who possessed an understanding of national and international law as it affects the division of power made some attempt at evaluation.

The effectiveness of national responses was discussed by these students, using Australia's external affairs power under Section 51. Using the depth studies they contrasted this with the power of other countries. Specific treaties and conventions were referred to in elaborating and analysing the effectiveness of national law.

Average Responses

Candidates attempted to discuss the issue of nation-states, sovereignty and the sharing of power in a world context. Some perceptions were stated but not really discussed. The frameworks of the United Nations, regional and inter-governmental agencies were mentioned in relation to the depth studies, while the role of the international organisations was referred to briefly. Bilateral agreements were mentioned, but no in-depth analysis given, likewise some discussion of international and national law took place without addressing effectiveness.

SECTION IV

Challenge : Indigenous Peoples

Question 7

A short quotation by Paul McGeogh in The Sydney Morning Herald, 1995 was included 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 question.

Discuss the effectiveness of national and international law in addressing the problems of indigenous people in the twentieth century.

General Comments

This question was attempted by the majority of candidates and was answered better than the following question. Responses to both questions appeared to use similar content and similar methods of discussing the stimulus material.

The majority achieved a good balance between the Core and the two depth studies. Although the evaluation of the effectiveness of the legal response proved difficult for many candidates, a number of whom could list and describe key Content Areas but were unable to evaluate

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individual legal responses.

Candidates also experienced difficulties in discussing the stimulus material in any great depth. While they were well aware of events in North America and Northern Europe, precise details of the events and the effectiveness of the measures taken by other countries were not well developed.

Excellent Responses

These included well written introductions which clearly identified the two depth studies and drew substantial links to the Core. It was clear from such introductions that an integrated approach would be taken in discussing all parts of the question. The interface between Australian domestic law and public international law was also emphasised through reference to the stimulus material.

Such responses used a comprehensive list of relevant information from the Core and the depth studies. A key feature of these was their ability to present a logical and cohesive argument regarding the effectiveness of national and international legal responses in narrowing the gap between indigenous and non-indigenous peoples.

Excellent responses also compared and contrasted ATSI peoples and a number of other indigenous peoples, in particular the New Zealand Maoris and the Canadian Inuit. In these students evaluated the differences between such groups and clearly related them to the differences in commitment to such groups in different countries.

Above Average Responses

As with excellent responses, candidates here identified their depth studies, drew some links to the Core and referred to the stimulus material.

The treatment of the information was comprehensive, with the differences that exist between ATSI and other indigenous peoples being highlighted. The focus was on national rather than international responses to indigenous peoples. The treatment of links between national and international responses to such peoples was limited and referred only to key cases and examples.

Average Responses

Responses in this category mentioned the two depth studies but did not treat the Core material fully. Introductions tended to be brief and did not relate to the specific aspects of the question, that is, the effectiveness of the national and international responses in examining the problems of indigenous peoples in Australia and elsewhere.

In these responses candidates tended to list international responses, for example, WIG, the Rio Declaration, NGOs, UN charter, and ILO Convention 169. Such responses, however, failed to discuss the effectiveness of these provisions. At a national level average responses similarly listed the major instruments that have been ratified by the Australian Government. References to ATSIC, the Native Titles Act, the 1967 Referendum and other content areas provided for in

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the Syllabus were referred to briefly.

Limited analysis of the problems creating the gap between indigenous and non-indigenous peoples was included but the comparison of ATSI peoples and other groups tended to be merely descriptive.

Question 8

*A short quotation from Peter Bailey's **Bringing Human Rights to Life**, 1993 was included 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 does the self-identification of indigenous peoples demand a global and domestic response?

Evaluate the effectiveness of national and international law in responding to this challenge.

General Comments

This was the less popular question in this module; at times, indeed, it was difficult to assess which question students were answering since there was little difference in the approach and information used in answering this question and Question 7. The link to the stimulus material was less evident here than in responses to Question 7.

Many students were unable to strike a balance between the Core and their selected depth studies. Candidates using the historic Debt depth study found it more difficult to draw the links to self-identification and the need for a global and domestic response.

The ability to evaluate the effectiveness of national and international legal responses gave students a distinct advantage. Those who integrated the Core and their depth studies appeared to possess a better grasp of the issues, thereby leading to clearer and more reflective conclusions.

Excellent Responses

In these responses candidates not only defined the term *self-identification* but also discussed the links and the importance of the concept of self-identification to indigenous peoples. All aspects of self-identification such as race, culture and tradition, kinship, ancestry and inhabitation history were discussed. Various problems and approaches relevant to self-determination were investigated and analysed before candidates moved into depth study material. Excellent responses used content from the Core and depth studies to identify problems and issues and to evaluate the effectiveness of national and international responses.

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The better candidates in this category showed an understanding of sovereignty and the threats posed by self-determination. This was supported by specific national examples, especially by those using the Land Rights depth study. Their responses referred to an analysis of the stimulus material and fairly assessed the problems and issues raised. The limited effectiveness of national and international legal responses was well discussed and relevant, logical conclusions drawn.

Above Average

As with excellent responses self-identification was clearly defined and associated problems were examined. A narrower range of information was included and fewer comparisons drawn between ATSI peoples and overseas examples. Information dealing with the national and international responses was generally comprehensive but tended to lack effective evaluation.

Specific examples from particular depth studies were mentioned - such as Koowarta's case, Mabo, and the instruments at an international level such as the Human Rights Convention.

Average Responses

In these responses little or no reference was made to self-identification or to the need for global response as well as a national response. Some discussion of domestic responses such as Mabo was included but this was generally highly descriptive. The problems posed by self-identification attracted little analysis, since students appeared to be more intent on including as much information from the Core and depth studies as possible. These responses tended to mention a single indigenous group instead of examining a range of examples; they also tended to lack balance in their treatment of the depth studies, while key issues from the Core received superficial treatment.