



BOARD OF STUDIES
NEW SOUTH WALES

1997

HSC

EXAMINATION REPORT

Legal Studies

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Published by
Board of Studies NSW
GPO Box 5300
Sydney NSW 2001
Australia

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ISBN 0 7313 1418 2

1997 HIGHER SCHOOL CERTIFICATE
EXAMINATION REPORT
LEGAL STUDIES

General Comments

In 1997, 6379 candidates presented for the 2 Unit Legal Studies examination and 1415 for the 3 Unit examination, a decrease for 2 Unit on the previous year's candidature and an increase from the number of 3 Unit candidates in the same year.

2/3 Unit (Common)

Section I

The multiple choice answers were as follows. As in previous years, there were very few candidates who chose more than one answer for a question or who failed to choose any correct answer.

Question	Answer	% Correct
1	A	26.39
2	C	53.34
3	A	83.12
4	B	81.81
5	C	93.91
6	B	39.07
7	D	89.59
8	D	85.90
9	B	82.15
10	D	63.79
11	B	61.67
12	A	46.05
13	B	52.12
14	A	20.06
15	A	45.78
16	C	31.54
17	A	80.81
18	D	53.46
19	D	69.41
20	C	81.60

Consumers and the Law

Question 21

Consumers will never be fully protected so long as the sellers of consumer goods, such as motor cars, are allowed to link these sales to the provision of easy credit.

Discuss this statement, and evaluate the effectiveness of the legal system in providing protection for sellers, consumers and credit providers.

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

- discuss the role of credit legislation in addressing the problems facing consumers and credit providers;
- evaluate the legislation that protects consumers against unconscionable contracts.

General Comments

This question was attempted by approximately 17.9% of those attempting the Consumers and the Law option.

Many candidates were able to discuss the role of credit legislation in dealing with the problems facing credit providers; few, however, dealt with unconscionable contracts in their response.

The use of relevant legislation, including the Credit Act 1984 (NSW) and the Contract Review Act 1980 (NSW), the recent introduction of the Credit Code 1996, the role of the Commercial Tribunal and case law, characterised the better answers. In these, candidates dealt with all parts of the question, their responses including both depth of analysis and evaluation of the effectiveness of the law.

Reference to the stimulus material was generally poor and many candidates saw this question as the one to attempt if they had a prepared answer. Such prepared answers failed to link the question to the facts they were giving; instead, they concentrated on a historical approach to consumer law and protection. There was, moreover, a general tendency towards description rather than evaluation in these prepared answers.

Excellent Responses

Excellent responses dealt with all aspects of the question in detail, covering sellers, consumers and credit providers in particular and examining the rights and responsibilities of all groups. They dealt with, and evaluated, the law dealing with contracts, defining different types of contracts and their implications for consumers. These candidates discussed the importance of the Minors (Property and Contract) Act 1970 (NSW), privity of contract and the binding nature of contracts. In these responses candidates were also able to identify unconscionable contracts as well as the use of undue influence, and referred to language and literacy problems while using relevant case studies to support their argument. They were able to discuss comprehensively, and evaluate, the methods of gaining redress, including the Commercial Tribunal and Courts.

Here candidates referred to the stimulus provided, including a discussion of linked credit and how the law protects consumers from this practice if it is used unfairly. They were also able to identify cases such as *Barton v Armstrong* (1973), *CBA v Amadio* and *Tirant*, and *Another v LNS Auto Pty Ltd* and to explain their relevance to the stimulus material provided.

In addition, in excellent responses candidates were able to apply legislation and case law as well as to discuss the recent introduction of the Credit Code across Australia. They provided a detailed definition of credit as contained in the relevant legislation and discussed the implications and advantages of the change in the credit laws, with particular reference to the way(s) in which these changes affect the consumer, seller and credit provider. Candidates also discussed the Contract Review Act 1980 (NSW) in regard to the regulation of contracts and the role of case law, and the Trade Practices Act 1974 (Commonwealth) and the Fair Trading Act 1987 (NSW) in protecting consumers and credit providers, especially in relation to advertising of credit.

Above-average Responses

Candidates whose responses fell into this category were able both to identify the main issues and to analyse the question, but to a lesser extent than in an outstanding response. They successfully identified the Credit Act 1984 (NSW) and explained components, but were unable to identify the consequences of unconscionable contracts. The responses in this range dealt with one or two types of credit available to consumers, but did not fully explain the nature of such credit. Here candidates were able to identify a case study relevant to credit legislation but failed to use this as supporting evidence for the stimulus.

Many referred to the introduction of the Australian Competition and Consumer Commission but did not discuss, to the same degree as the excellent respondents, the implications of these changes for the protection of consumers and credit providers. The responses to the changes to legislation were descriptive rather than analytical. Candidates in this range tended to concentrate on the implications of contracts for consumers but failed to do the same adequately for creditors.

Average Responses

The average response was generally written by a capable student who had prepared an essay for the Consumers option, and who emphasised the history of consumer protection and the issue of credit.

Most of these responses identified the Credit Act 1984 (NSW) and case law, but included very little evaluation of how this dealt with the problems facing consumers. The responses for this part of the question were descriptive rather than analytical.

The responses in this range also referred only minimally to the stimulus and, in doing so, were limited to the credit link when purchasing a car. Candidates neither took the opportunity to deal with other legislation or provisions of protection for other creditors, nor did they fully discuss the role of the Commercial Tribunal or deal with the area of contracts and the Contract Review Act.

Question 22

Mr Jones read an advertisement for *Slimming Patches* in a magazine. The advertisement promised:

Use Slimming Patches for three weeks and lose five kilos!

Mr Jones purchased the Slimming Patches and used them according to the instructions. After three weeks Mr Jones had a skin rash on his arm around the area where he had applied the Slimming Patches, and he had not lost any weight.

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

- (a) What is meant by the term *caveat emptor*? To what extent does it apply to Mr Jones' case?
- (b) How are the marketing and advertising of consumer goods regulated?
- (c) Evaluate the effectiveness of the law in protecting consumers such as Mr Jones and in providing redress against manufacturers and suppliers of faulty goods and services.

General Comments

This question was attempted by 82.1% of the candidates doing the Consumer option. They were attracted by the combination of a realistic scenario and the division of marks, both giving the question more direction. The stimulus material was handled quite well by all candidates, except those in the lower range, whose responses tended to be emotive and descriptive and to be based on the assumption that Mr Jones did not follow the instructions provided with the Slimming Patches.

Candidates apparently did not have any difficulty with the terminology used in the stimulus or parts (a) or (b) of the question. The majority were able to answer adequately the second part of part (c), dealing with consumers' redress against manufacturers. Many candidates, however, did have difficulty in understanding the concept of *evaluating the law in relation to protecting consumers*. This part of part (c) was attempted by only a few candidates, who adapted their answers to part (b) to comply with the evaluation of the law.

Excellent Responses

In these responses candidates answered the whole question, referred to the stimulus material and analysed problems and issues logically. These candidates supported their arguments by using relevant information and carefully considered opinions.

- (a) These candidates responded to this part by defining *caveat emptor* and giving a brief historical account of its decline in relevance as well as emerging legislation reflecting the changes in technology and markets. They referred to the stimulus material and discussed the limitations of *caveat emptor* in relation to Slimming Patches. Such candidates also referred to common law and the responsibilities of the manufacturer in providing goods to consumers. The majority indicated that, according to the Trade Practices Act 1974 (Commonwealth), the Sale of Goods Act 1923 (NSW) and the Fair Trading Act 1987 (NSW), the consumer was entitled to some form of compensation from the manufacturer of Slimming Patches. Some answers suggested that a legal requirement of caution is needed where faults in goods are possible and should be either noticed by the purchaser or pointed out by the seller.

- (b) In answering this part the excellent responses gave a comprehensive discussion of the relevant legislation regarding marketing and advertising of consumer goods. Here candidates gave comprehensive explanations of the Trade Practices Act 1974 (Commonwealth), the Sale of Goods Act 1923 (NSW) and the Fair Trading Act 1987 (NSW), and their applications to Mr Jones' case. Other Acts or provisions relating to misleading or deceptive conduct and quality of service were also discussed. Such legislation included: the Door-to-Door Sales Act 1967 (NSW), Motor Dealers Act 1974 (NSW), Motor Vehicle Repair Act 1980 (NSW), Occupational Licensing. Other provisions discussed included: False Representation, Gifts and Prizes, Bait Advertising, Referral Selling, Pyramid Selling and Inertia Selling. These were all discussed and used as evidence in support of their assertion that the marketing and advertising of consumer goods are both regulated. Candidates in this range also applied relevant case studies such as *Carlill v Carbolic Smoke Ball Company*, *Donoghue v Stevenson* and *Grant v Australian Knitting Mills* as supporting evidence when explaining Mr Jones' case.
- (c) The excellent responses in this part reflected a thorough understanding of the strengths and weaknesses of consumer protection laws. They indicated legislative provisions and common law principles in relation to specific forms of redress against manufacturers and suppliers of faulty goods and services. These candidates explained all processes for redress and the strengths and weaknesses of: self-help, Department of Consumer Affairs, consumer groups, the media, conciliation and mediation, the Community Justice Centre, the Consumer Claims Tribunal and the courts. Such candidates also successfully evaluated the law and forms of redress applicable to the case of Mr Jones.

Above-average Responses

In these responses, candidates attempted to analyse the main problems and issues and to relate their knowledge to the stimulus. Such responses indicated a good understanding of the question and used relevant and accurate information.

- (a) When answering this part, candidates defined *caveat emptor* and referred to Mr Jones' case without using specific legislation to explain his case.
- (b) Here candidates showed a good knowledge of relevant legislation including the Trade Practices Act 1974 (Commonwealth), the Fair Trading Act 1987 (NSW) and the Sale of Goods Act 1923 (NSW). They showed a clear application of the legislation to the regulation of marketing and advertising of consumer goods and also discussed the provisions of these Acts in relation to False Representation, Gifts and Prizes, Bait Advertising, Referral Selling, Pyramid Selling and Inertia Selling. Candidates in this category also explained two or three of the following Acts: Door-to-Door Sales Act 1967 (NSW), Motor Dealers Act 1974 (NSW), Motor Vehicle Repair Act 1980 (NSW). Although these candidates were able to identify perhaps one case study, many could not relate it to the stimulus provided.
- (c) In answering this part candidates showed a reasonable understanding of consumer protection laws. Most answers, however, explained not only the different forms of consumer redress but also the advantages and disadvantages of each process. The majority of candidates in this range failed to evaluate the laws relating to consumers.

Average Responses

- (a) In this part candidates were able to define *caveat emptor*, but with only very limited application to Mr Jones' case. A number of those in the lower range tended to argue that Mr Jones was responsible for his own purchase, and, therefore, *caveat emptor* still applied.
- (b) Here, candidates generally limited their discussion to the Trade Practices Act 1974 (Commonwealth), and the Fair Trading Act 1987 (NSW). They were able to explain the provisions of these Acts, but were unable to explain their relevance to Mr Jones' case. Candidates attempted to mention the other Acts and provisions but failed to relate them to the regulation of marketing and advertising.
- (c) In this part candidates failed to deal with the first part of the question, *the effectiveness of consumer legislation*, and concentrated on explaining the types of redress available for consumers. They limited their evaluation to cost and time factors and excluded access and enforceability issues.

Environment and the Law

Question 23

Many of the environmental problems we face today do not respect State and Territory boundaries, and cannot be resolved piecemeal. Increasingly the Australian community is demanding national approaches to major environmental issues. They do not want as many systems for dealing with these problems as there are States and Territories.

Adapted from R J L HAWKE

Our Country, Our Future — Statement on the Environment, 1989

Discuss this statement and evaluate the effectiveness of the various laws in managing the environment.

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

- identify the various sources of environmental law in Australia;
- describe the present balance of power among Commonwealth, State and Local governments to legislate for management of the environment.

General Comments

64% of candidates attempting the Environment and the Law option chose this question.

Most responses were lengthy and included a good general knowledge of legal issues which was used appropriately, as were legislation and cases. For example, the better candidates referred to well known cases such as the Franklin Dam Case, *Murphy Ores Inc Pty Ltd v the Commonwealth*, as well as the less well known cases such as the Parramatta Park Case and the Black Mountain Tower Case. Most candidates possessed a detailed knowledge of relevant legislation such as the Environment Protection (Impact of Proposals) Act 1974 (Commonwealth), the World Heritage Properties Conservation Act 1983 (Commonwealth) and the Environmental Planning and Assessment Act 1979 (NSW).

Candidates need to allocate their time appropriately and to answer all parts of the question. Although the majority referred to the stimulus material, they did so to varying degrees. There was a tendency for them to skim over the stimulus and not to follow the direction *discuss this statement*. Many responses contained little or no analysis or evaluation; moreover, there was a lack of synthesis and a tendency to include rote-learned material that demonstrated no true understanding of the effectiveness of the legislation.

Excellent Responses

Excellent responses dealt with the topic from the beginning, usually referring to the stimulus material in context. All mentioned the sources of environmental law:

- 1 Aboriginal Customary Law
- 2 Common Law
- 3 Delegated Legislation
- 4 Statute Law
- 5 International Law

and evaluated their effectiveness in managing the environment. They successfully discussed the different levels of government and the balance that exists between them in managing the environment. Discussion of the effectiveness of the law was an integral part of responses in this category, rather than being tacked on at the end as was the case in poorer quality responses. A typical example follows:

... the transboundary nature of the environment, the political will associated within each tier of government and the serious need for environmental management are factors that need to be considered when evaluating the effectiveness of environmental law in Australia.

Any mention of the stimulus material tended to be in phrases, noted in quotation marks and within the context of the answer. The changing nature of environmental law, reflecting a gradual change from an anthropocentric to a more ecocentric approach, was highlighted, with reference to relevant legislation and cases. For example, noteworthy of mention is:

- the Protection of the Environment Bill 1996 and its ramifications for State environmental legislation;
- the shift in common law with the High Court decision in the *Burnie Port Authority v General Jones Pty Ltd* 1994 to classify *Rylands v Fletcher* as being negligence rather than strict liability;
- the extension of the Land and Environment Court to senior classes.

Above-average Responses

In these, candidates recognised the stimulus material and attempted to elaborate on the issues raised. These were solid responses reflecting a good understanding of the *balance of power* and the sources. Although attempts at evaluation and analysis were quite successful, there was a lack of synthesis and poor use of recent and relevant information. Candidates answered the whole question and capably discussed the quoted statement. Whilst these responses showed some depth in their analysis, they could, nevertheless, be distinguished from an excellent response by minor misunderstandings of environmental law — for example, statements such as ... *although bodies such as the United Nations and the International Court of Justice have no legislative power, they are still one of the best available natural forums to achieve cooperation in the international community*. What differentiates the above-average response from that of an average response are astute and succinct comments such as ... *however, Commonwealth Government ineffectiveness in managing the environment can be observed through the fact that they use indirect powers*. Average responses simply listed the Commonwealth powers and stated that they had been effective in the Fraser Island and Franklin Dam cases.

Average Responses

These responses generally recognised the stimulus material, but were unable to discuss fully the issues raised and, often, did not answer the whole question. There was limited use of cases and examples and only little understanding of the question asked, as well as a lack of logical sequencing — points tended to be listed without analysis. The listing of legislation and cases does not constitute an argument. If an example or case were mentioned at all, it tended to be treated in disproportionate detail. Candidates need to establish an argument and then use cases and legislation to support such argument; average responses tended to comprise general comments and there was a lack of analysis.

Question 24

Conservationists are destined to fight again and again for places they believe worth keeping. Forests declared as national parks, buildings subject to heritage orders, even plants and animals classified as endangered, can be stripped of these protections by ministerial decision or an Act of Parliament.
Adapted from TIM BONYHADY, *Places Worth Keeping*, 1993

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

- (a) To what extent can lobby and pressure groups influence change in environmental law?
- (b) How does the common law allow individuals to protect their environment?
- (c) Evaluate the effectiveness of environmental protection and preservation legislation in balancing the interests of environmental protection and resource management.

General Comments

36% of candidates attempting this option chose the structured response question. They tended to answer it poorly since many failed to appreciate the significance of the stimulus material and, therefore, did not refer to it in their responses. There was strong misconception of the term *environmental law*, with many students referring to local government and legislation in association with it. This highlighted a lack of understanding concerning essential Preliminary course material. Whilst students understood the concept of lobby and pressure groups, they could not show how they influenced *change* in environmental law. The better students were able to show a good understanding of how conservationists protect the environment. Candidates generally were able to refer to a wide range of environmental protection and preservation legislation but were unable to show how this legislation balances the interests of environmental protection and resource management.

Excellent Responses

In these responses the better students were able to recognise the issues raised in the stimulus and wove these into their responses. These candidates defined and explained the effectiveness of lobby and pressure groups, showed how these bring about change in environmental laws, and cited examples of lobby and pressure groups as agents of law reform, eg unions with green bans, the Greens party as a political force and Greenpeace. These candidates were able to analyse and synthesise information, saying, eg: *In order to facilitate change or the implementation of specific social attitudes into the legislation for environmental protection, the general public often voice their concerns through the pressure or lobby groups.* Use of cases was incorporated into these answers. One such example included the Parramatta Park case; here students were able to identify the relevant common law principles of private interests, locus standi, trespass, nuisance (public and private) and negligence. They used relevant case studies to illustrate each of these principles. Further analysis included the limited resources available, the retroactive nature of common law and the restricted ability of individuals to take action to protect the environment. The law provides individuals with various avenues to protect their own rights, but it is not effective in protecting the general community in relation to the environment, eg: *Common law requires locus standi and it is the individual's choice to bring forward cases and protect the environment adequately. The notion of strict liability was challenged in Burnie Port Authority v General Jones Pty Ltd (1994): High Court found Ryland v Fletcher would be better suited to the tort of negligence.* This part of the question was answered well.

- (c) Here a typical answer stated: *In all development there are competing interests, usually environmental versus economic. Various environmental factors that should be taken into account include the precautionary principle, loss of biodiversity, conservation and protection for future generations: pleasing and harmonising with the environment.* Most analysis included the fragmentary nature of governments, relevant environmental protection and management legislation. Here candidates were able to explain how attempts are made to balance the interests of environmental protection and resource management. Evaluation of the effectiveness of environmental protection and preservation in balancing the interests of environmental protection and resource management was carried out effectively.

Above-average Responses

- (a) In these responses limited use of the stimulus material was made. Candidates showed a good understanding of lobby and pressure groups and were able to give relevant examples. They failed to show how the groups are agents of law reform in order to influence environmental law.
- (b) Here candidates could explain the common law and relate it to specific cases, but their responses included limited analysis. They stated the torts, with dependence on explanation via the court system, viz *in environmental law, common law is an aspect which is concerned almost totally with the rights of the landowner*. Although making such statements, candidates failed to develop and support, in a cohesive manner, the process by which the law allows individuals to protect the environment. Remedies were listed, but their relevance to the response was not indicated.
- (c) Relevant legislation and examples were used to show environmental protection and preservation legislation. Candidates found it difficult, however, to evaluate the balancing of interests of environmental protection and resource management.

Average Responses

Little or no use of the stimulus material was made in these responses.

- (a) Answers here were descriptive, referring in general terms to lobby and pressure groups, with limited examples, eg *Franklin Dam, Greenpeace, lobby and pressure groups in society have made society think just what they are doing to the environment and with this we see certain groups stand against environmental injustice that they feel should be stopped*.
- (b) In this part there was a general lack of understanding of common law and often there was confusion between common law and government and statute law. This reflects a general misunderstanding of basic concepts explored in the Preliminary course, eg: *Common law allows individuals to protect the environment in many ways. The main Act involved is the EPAA*. These students tended to use the Pickles and Rylands v Fletcher case in a purely descriptive way without relating it to the topic. Such descriptions were often both long and irrelevant; a single sentence would have sufficed.
- (c) Here answers were very general, mainly quoting legislation without analysis and evaluation. They tended to evaluate the environmental impact geographically rather than to adopt a legal perspective. Irrelevant and incorrect legislation was often cited.

Family and the Law

Question 25

A cartoon, *The Fairytale*, was included here.

Refer to the above cartoon, and evaluate the effectiveness of the legal system in regulating the duties and responsibilities of parties to a marriage.

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

- identify the obligations that marriage imposes upon spouses for each other and their children;
- discuss the way in which the law addresses division of property and responsibilities towards children after the dissolution of marriage.

General Comments

69.85% of candidates attempted this question. Scripts tended to be of a better quality than those for Question 26. It was encouraging to note that the wider depth of reading, as well as the use of media articles in case law, enhanced responses.

Some candidates were still unfamiliar with the Family Law Reform Act 1995 (Commonwealth) and were unable to use terminology relevant to the question. Students must be aware of new and amended legislation since those who did not mention the Family Law Reform Act were significantly disadvantaged.

Many candidates failed to give equal discussion to the obligations that marriage imposes, concentrating on obligations to children and ignoring those relating to spouses.

Weaker scripts went into great detail about the obligations that marriage places on spouses for each other and their children. They generally made no reference to the stimulus and no attempt at evaluation. Such scripts included lengthy discussion on the divorce process and this was unnecessary; some attempted to answer the two bullet points and failed to deal with the real question.

Excellent Responses

Scripts in this range were lengthy and well written and dealt well with the question. The following is typical of such answers.

The new Family Law Reform Act 1995 (Commonwealth) introduces a fundamental shift in the way the duties and responsibilities of spouses to one another and their children within the institution of marriage are regarded. The changes in philosophy and terminology are designed to underpin a more cooperative and child-rights-orientated approach to the dissolution of marriage which, in some respects, could be argued to be an idealistic and inherently intolerable regime.

These candidates linked all aspects of the question back to the issue of effectiveness, saying, for example:

Thus the Family Court and Family Law Acts have attempted to provide justice in the least traumatic way possible. The recent reforms will help the system, and new reforms will need to adapt to future needs of Family Law. Recent criticism of the Court have demonstrated a need to reform counselling services and the Court's administration as the long waiting periods and shared services of the Court are contributing to the agony of divorce.

Here responses referred directly to the cartoon and discussed the ideal of the fairytale concept. An excellent response was distinguished by the student's ability to explain the irony behind the cartoon. Still other students, however, were able to recognise the fact that the Family Court is used to settle conflict in a only minority of cases.

The cartoon suggests that the dissolution of marriage is a simple process and that 'parents live happily ever after' but this is not always the case. Litigation is used in only 5% of court cases. The other 95% are able to solve the matter between themselves.

Candidates were familiar with relevant legislation. They were able to define marriage as in the case of *Hyde v Hyde and Woodmansee* 1866 and referred to the Marriage Act 1961 (Commonwealth). Students also discussed obligations that marriage imposes upon spouses; these include maintenance, consortium, wills, non-violence and agency. These were not dealt with as a list but explained effectively. Relevant legislation also referred to the Family Provisions Act 1982 (NSW) and the Wills Probate and Administration Act 1898 (NSW).

Students identified the obligations of parents towards children. These included the registration of birth and naming, maintaining and supporting the child, as well as education, medical procedures, discipline and inheritance. They referred to relevant Acts — the Crimes Act 1900 (NSW), Education Reform Act 1990 (NSW), Children (Care and Protection) Act 1987 (NSW) and the Family Provisions Act 1982 (NSW). These obligations were sometimes analysed in relation to the UN Declaration on the Rights of the Child, viz: *Parental duties towards their children have been given greater emphasis with the adoption of the UN Convention on the Rights of the Child which has been ratified by the executive and used by the Family Court in interpreting legislation.* In these responses candidates also supported their arguments through the use of relevant cases, eg *Gillick v West Norfolk* and *Wisbech, White v Weller* 1959 and *R v Senior*.

Excellent responses discussed specifically the Family Law Act 1975 (Commonwealth) and the Family Law Reform Act 1995 (Commonwealth). They used up-to-date terminology: *residence order, contact order, specific issue and parenting plans*. They possessed a clear insight into the reasons for the reforms, saying, for example: *The Family Law Reform Act 1995 is designed to change the proprietarial attitudes of some parents towards children after the break up of marriage. The old terminology of 'custody', 'access' and 'guardianship' have been supplanted with that of 'parental responsibility', 'residence orders' and 'specific issues orders'.* The terminology used was very clearly defined. They supported their arguments with reference to specific case studies, eg *B v B* 1997. They were able to refer to the Family Court's role in implementing the Family Law Act 1975 (Commonwealth) and the Family Law Reform Act 1995 (Commonwealth) — effective from 11 June 1996. They referred to the role played by conciliation, mediation and arbitration in resolving the problems of marriage breakdown, saying, for example: *The new shift in family law that brought about the new act has also been evident in the evaluation of alternative dispute mechanisms — conciliation, mediation and arbitration. Although this is designed to facilitate a quicker, cheaper and less traumatic settlement, it can lead to inequitable outcomes for women who are generally in a weaker bargaining position.*

In relation to property, students were able to differentiate between financial and non-financial contributions. Some mentioned the relevance of the Family Law Reform Bill No 2, which advocates a 50/50 split as a starting point and its possible implication in the division of property. They explained the weighting by judges on non-financial contributions, particularly in relation to the future needs of each spouse and responsibilities towards children, eg: *The court will take into account the financial and non-financial contributions of the parties as well as any future needs such as those that might arise from being granted custody of children. These contributions do not, however, have to be regarded equally. In the case of Mallet v Mallet 1984, Justice Gibbs expressed the opinion that a 50/50 starting point was a presumption unsupported by legislation.* Such students were also able to discuss superannuation entitlements and problems associated with them.

Students were able to distinguish between spousal maintenance and child maintenance and discuss the fact that women are generally worse off after divorce. They discussed child maintenance and the difficulties associated with it and referred to the Child Support Scheme, saying: *The parent responsible for paying maintenance may often refuse to pay perhaps due to other obligations with another family. The Child Support Scheme was established as part of the Taxation Office and was introduced to rectify this problem.*

In these responses candidates were able to evaluate the problem that still exists when trying to ensure child maintenance payments from the self-employed, saying: *The main problem is self-employed people who do not declare their income and escape payment. The Child Support Agency has thus moved towards the use of settlements and negotiation between couples.*

Above-average Responses

These responses were generally lengthy and detailed, yet few used the stimulus to advantage. Most referred to the cartoon but there was little analysis and the evaluation tended to be limited. Although current legislation was referred to, the use of case studies was generally inadequate.

Here candidates defined marriage and referred to relevant legislation (*Hyde v Hyde and Woodmansee* 1866). They considered in depth the obligations of spouses to each other and to their children; many sacrificed other parts of the question in their discussion of such obligations.

Students discussed the dissolution of marriage. Most referred to the Family Law Reform Act 1995 (Commonwealth) and described the new terminology. There was, however, very little analysis of the reasons for the changes.

These candidates were able to discuss the general nature of division of property and the various factors taken into account. Some referred to the 50/50 split as a starting point under the Family Law Reform Bill No 2, financial and non-financial contributions to a marriage and the future earning capacity of spouses. Few dealt with superannuation. In relation to maintenance, these students referred to both spousal and child maintenance and the role of the Child Support Agency.

The essay structure in these responses tended to deal with each part of the question separately rather than linking all aspects of it back to the issue of effectiveness.

Average Responses

These responses were generally very descriptive. Here few students referred to the stimulus and those who did so merely mentioned it, without discussing its relevance. Candidates made little attempt to evaluate their responses; the majority made a statement comprising only one or two sentences in response to the issues of effectiveness. It was evident that some of these answers were pre-prepared and, thus, the set question was not dealt with. The language used was simple and little legal terminology was used. Most students gave a definition of marriage and referred to the Hyde v Hyde and Woodmansee 1866 case. Responses to the obligations of marriage and responsibilities towards children were generally in list form, little reference being made to relevant legislation.

Most students mentioned the Family Law Act 1975 (Commonwealth) but often failed to refer to the Family Law Reform Act 1995 (Commonwealth). New terminology was not used, while discussion of maintenance, property and parental obligations towards children was limited; moreover, there was no real analysis.

Question 26

Patsy and Edwin have been trying to have a baby for a number of years. They visit their doctor, who explains that there are many other ways of forming a family, such as adoption, guardianship or taking advantage of recent birth technology.

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

- (a) Explain the terms ‘adoption’ and ‘guardianship’. Who can adopt children?**
- (b) Outline the legal and moral issues arising from scientific and medical developments in birth technology and surrogacy.**
- (c) How has the law dealt with the concept of a family unit? Evaluate the effectiveness of the legal system in balancing the rights and obligations between parents and children in different family units.**

General Comments

30.15% of candidates attempted this question. Generally, the quality of response was inconsistent across each section, with part (c) being least well answered. The question covered a wide content area presenting students with difficulties in focusing on answering any part. Responses were generally shorter than those to Question 25; those who achieved a better result in this question used the mark allocation as a guide to the length of their answers.

There was little reference to the stimulus material by the majority of candidates; when it was referred to, it was only superficially. Outstanding scripts, however, recognised the link between each aspect of the question and made effective use of the stimulus material.

Most candidates tended to provide a descriptive response in each section instead of adopting an analytical approach that dealt with the effectiveness of the legal system. This was particularly the case in part (b), where candidates tended to list rhetorical questions rather than presenting a well balanced analysis of moral and legal issues. A common trend was for candidates to list the different types of family unit and children's rights in part (c) rather than to analyse the legal response to the different types of such units, as was done in the better scripts. These responses referred to the fragmented nature of relevant legislation, in particular in part (b), where a knowledge of the 3 Unit course was sometimes evident.

The use of current legislation including the Family Law Act 1975 (Commonwealth) and the Family Law Reform Act 1995 (Commonwealth), Adoption of Children Act (Amended) 1982 (NSW), Artificial Conception Act 1984 (NSW), the United Nations Declaration on the Rights of the Child and case law characterised a better response.

Excellent Responses

In these responses candidates answered the whole question, referred to the stimulus material and analysed the issues relating to the formation of a family from a legal and moral perspective.

- (a) In this part candidates provided a comprehensive definition of adoption and guardianship, stating:

Adoption is the process whereby a man and a woman become the legal parents of a child born to someone else. It is the legal transfer of parental responsibility from the biological parent to the adoptive parent.

Candidates supported definitions with appropriate terminology, eg *loco parentis* and legislation such as the Adoption of Children Act 1982 (NSW) and the Adoption Information Act 1990 (NSW), and also included a comprehensive list of those who can adopt, namely:

- a married couple over the age of 21 years
- females at least 16 years older and males 18 years older than the adopted child
- people under 38 years of age.

There was some discussion and development of the position of each group when adopting. Different family groups discussed by students included married couples, de facto couples in a relationship of more than three years' duration, single applicants (who could be homosexual) and Aboriginal couples (customary adoption).

Outstanding responses identified the link between adoption and guardianship, a typical response stating:

Guardianship is the long term responsibility for the care and welfare of a child. A guardian is a person who is given the power to make some or all of the decisions for a child under guardianship in the area of personal and life decisions (loco parentis). It is similar to adoption but does not give the same legal recognition for the child.

- (b) Candidates in this range responded to this part by dealing with a wide range of legal and moral issues, each of which was thoroughly analysed, with relevant information being provided to outline each one. Candidates were able to refer to the Artificial Conception Act 1984 (NSW), the Australian Law Reform Commissions findings and the Children (Equality of Status) Act 1976 (NSW). They gave accurate definitions of surrogacy, in-vitro fertilisation, artificial insemination and cloning. Problems and possible solutions were discussed clearly and logically with reference to the stimulus material, with students stating: *New birth technology and surrogacy give infertile couples the right to have a child with at least some of their own genes.*

Examples of legal issues for an excellent response to this part included:

- the right of the child to know his/her biological parents
- paternity
- maternity
- rights of the surrogate mother
- legal ban on commercial surrogacy in NSW
- Adoption of Children Act 1982 (NSW)
- parental responsibilities of non-legal parents unenforceable (Family Law Act 1975 (Commonwealth))
- IVF and AI — who can/should be able to access ART (different family relationships)
- the right to sue if technology damages the child.

Examples of moral issues dealt with by candidates within this type of response included:

- the cost of fertility programs
- storage and disposal of embryos
- the rich exploiting the poor, selling of babies on the black market through surrogacy
- genetic engineering such as sex preselection, cloning and control of physical characteristics
- effects on the donors, birth mothers, children (genetic bewilderment) etc.

- (c) Here excellent responses identified and explained the changing concepts of the family unit, briefly analysing nuclear families, single-parent families, homosexual families, de facto families etc. The legal basis and status of each family unit was given and explained, with students stating: *In protecting de facto couples the legal system has introduced the De Facto Relationships Act 1984 (NSW) which addresses the rights of each partner in a de facto relationship.* This discussion also dealt with issues such as cohabitation and separation agreements, legal definition of de factos, welfare payments etc which were appropriate for each family unit.

Excellent responses correctly identified and explained the equality afforded all children, regardless of the family unit to which they belong. They referred to relevant legislation such as: Children (Care and Protection) Act 1987 (NSW), Children (Equality of Status) Act 1976 (NSW), Family Provisions Act 1982 (NSW) and the Education Reform Act 1990 (NSW).

These responses dealt with the dichotomy of the social and legal obligations between parents and children and outlined the merits of legislation and its effectiveness. The cohesive nature of their responses and the depth of evaluation included in this section typified these candidates.

Above-average Responses

In these responses candidates answered each part of the question fully and showed a sound understanding of the laws involved.

- (a) Here candidates usually defined adoption and guardianship accurately, although their definitions were not comprehensive. The terminology was not expressed in legal terms but, rather, in general terms. Reference was made to the supporting legislation and candidates accurately listed those who are legally able to adopt. Only brief explanations of each group's position were provided, however, and the link between adoption and guardianship was not always clearly analysed.
- (b) Candidates in this part dealt with a range of legal and moral issues; the development and analysis of these issues, however, were not as comprehensive as those in an excellent response. An accurate range of legislation was provided, and the concepts of surrogacy, IVF and artificial insemination were discussed, with some attempts being made to evaluate the problems associated with new birth technology and possible solutions to such problems.
- (c) In this part the changing concept of the family unit was clearly identified, with an analysis of the most common family structures being provided, viz nuclear, de facto and blended families. Here candidates explained the legal bases of these family units and showed that, in them, all children were treated the same. This link was a major discriminator between an above-average result and the lower range. The analysis of legislation, although sound, was not as comprehensive as in an excellent response. A narrower range of legislation was presented, with a thorough and accurate description of the rights and obligations between parents and children being provided. Although their answers were sometimes too descriptive, these candidates did attempt to provide an evaluation of the legal system as it related to this area.

Average Responses

Here candidates showed a fair knowledge of the required information, but their responses were descriptive rather than analytical. Many focused on areas that were irrelevant to the question, particularly in parts (b) and (c).

- (a) Although both terms were dealt with here, only some supporting legislation was mentioned. In many cases the definition of *adoption* was very well stated and supported, but little information was provided about *guardianship*. A less comprehensive list of who can adopt was provided and little development was included.
- (b) In this part a good range of legal and moral issues were outlined, although most responses were very descriptive. Only one type of birth technology tended to be emphasised, while many students provided comprehensive definitions but did not focus on the legal and moral issues involved. Little legislation was referred to. Some responses were very emotional, particularly in relation to moral issues such as *playing God*.

- (c) In this part average students generally listed the different types of family unit and provided only brief descriptions. There was little evaluation of the effectiveness of the legal response in balancing the rights of different family units. Many candidates provided prepared responses on the rights of children generally, but these were not relevant to the specific question.

Some legislation was included but this mainly consisted of the Family Law Act 1975 (Commonwealth) and the Children (Equality of Status) Act 1976 (NSW).

Such responses were anecdotal and descriptive, while any evaluation was limited to one or two short sentences.

Housing and the Law

Question 27

In 1987, Justice Einfeld shed tears at the condition of housing for Aborigines in Toomelah, Northern NSW. In early 1997, consideration was being given to bulldozing 'The Block', an Aboriginal housing estate in Eveleigh Street, Redfern in inner Sydney.

Discuss this statement, and evaluate the extent to which government has been successful in addressing housing issues affecting the whole community.

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

- discuss the right to shelter, and the role of government in satisfying that right;
- outline the specific issues raised in relation to Aboriginal and Torres Strait Islander housing in both rural and urban locations.

General Comments

This question was chosen by approximately 40% of the students attempting this option.

The majority of the candidates used the stimulus material. A significant number ignored the stem of the question, *Discuss this statement and evaluate the extent to which government has been successful in addressing housing issues affecting the whole community*. These candidates did not discuss *issues affecting the whole community*; rather, they focused on Aboriginal and Torres (ATSI) housing and public housing issues only.

Most responses that focused on ATSI housing issues included very little supporting data, tended to be highly descriptive and focused on social observation. The main discriminator in this question was candidates' ability to deal with various housing issues ranging from renting and retirement villages to building a house. Too many candidates interpreted the *role of government* to mean provision of public housing.

Excellent Responses

The excellent responses provided detail on a wide range of housing issues, eg nursing homes, boarding houses, building, buying, renting, public housing. Specific government policies were discussed, eg Commonwealth State Housing Agreement and relevant Acts, eg Landlord and Tenant (Bond) Act, Strata Titles (Amendment) Act 1997, Residential Tenancies Act 1987, Anti-Discrimination Act 1983 and Native Title Act 1993. These Acts were analysed critically and alternatives offered. Stimulus material was effectively referred to when dealing with the issues specifically related to Aboriginal and Torres Strait Islanders. Candidates successfully analysed the relative issues, eg transitory housing and urban issues, as well as substandard housing and social/economic disadvantages. There was a good understanding of the implications of the Mabo and Wik decisions and the role of Native Title legislation.

Above-average Responses

In above-average responses candidates referred to the UN declaration and to some specific housing issues, eg retirement villages, making some attempt at evaluation. The main emphasis in these responses was on public housing and the Aboriginal and Torres Strait Islander (ATSI) housing issues. Candidates referred to the stimulus when evaluating the ATSI housing issues and concentrated mainly on the present and not on the past. They referred to government policies mainly in relation to public housing.

Average Responses

These essentially descriptive responses tended to focus on the Aboriginal and Torres Strait Islander housing issues. In them candidates presented a historical perspective of government policy in both urban/rural issues. There was mention of Mabo and Wik decisions, with some candidates analysing the importance of these events. A number tended to concentrate on non-legal social issues of various disadvantaged groups, making little or no reference to law. Some answers described relevant Acts but made little attempt to evaluate the effectiveness of such pieces of legislation.

Question 28

Eleanor and David have decided that they will purchase their first residential property. Before they do so, however, they will need to make a number of important legal and financial decisions.

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

- (a) What types of title to property can they acquire?**
- (b) What are the advantages and disadvantages of mortgages, compared with other forms of finance?**
- (c) What problems could David and Eleanor encounter prior to the purchase being completed? Evaluate the effectiveness of the law in protecting their legal interests and investment.**

General Comments

This question was chosen by approximately 60% of those attempting this option. The majority acknowledged and used relevant material in answering the question and used the required format. Many, however, failed to equate each section with the mark allocation.

Part (a) of the question was generally well answered. Some students used the titles, eg Strata Title, Community Title, Torrens Title, Old Systems Title and Company Title. The better candidates explained the meaning of *title*.

Part (b) posed difficulties for many candidates. The better candidates defined a mortgage and discussed the advantages and disadvantages of this type of finance. They then compared this to at least one other form of finance, eg personal loans, family loans.

Once again, part (c) proved to be the discriminator between candidates, most of whom could state the problems; the best responses, however, evaluated the relevant legislation that protected the legal interests and investments of the couple named. Many candidates read the question but overlooked the words *prior* and *purchase* and so provided much irrelevant material.

Excellent Responses

- (a) In this part the candidates gave a detailed explanation of each type of title.
- (b) In this category candidates always defined a mortgage and explained *legal* and *equitable* mortgages. They then discussed a variety of advantages, eg length of time in which to repay a loan, percentage of income, regular instalments allowed planning of income, set asset, legal protection (Contract Review Act), as well as a variety of disadvantages, eg discrimination against low income earners, resumption of property if loan is not repaid, interest rates.

Here candidates usually compared other forms of finance, eg personal loans, bridging finance, and incorporated this into their discussion of the advantages and disadvantages of mortgages.

- (c) Here candidates considered the problems faced prior to purchase of property and included relevant legislation, such as Real Property Act 1900 (amended in 1989), Conveyancing (Sale of Land) Amendment Act 1987 (NSW), Credit (Finance) Act 1984, Auctioneers and Agents Act 1941 (NSW), Contracts Review Act, Building Services Corporation Act 1989 (NSW), with many candidates acknowledging the recent changes resulting from BSCS being amalgamated with the Fair Trading Department. In all discussions of this legislation the effectiveness of such loans in protecting the legal interests and investment of David and Eleanor were critically evaluated. Such evaluation was both logical and cohesive.

Above-average Responses

- (a) Answers to this part were generally of the same standard as the excellent responses.
- (b) In this part candidates usually defined *mortgage* and discussed a range of advantages and disadvantages, but did not effectively compare other forms of finance with mortgage finance.
- (c) Here candidates examined a limited number of problems, eg gazumping, contracts, real estate agents etc, and discussed relevant legislation. Evaluation was often limited and basic, however, and, in dealing with such legislation, none of these responses considered problems related to building or purchasing a house.

Average Responses

- (a) In answering this part most candidates in this category either listed a few types of title or provided only a limited number of titles with detailed explanations.
- (b) Here there appeared to be a lot of confusion as to what a mortgage actually refers to. Many candidates were under the impression that a bank mortgage is different from a mortgage from a credit union. Many discussed the sources of mortgages and the wide variety of interest rates available, while a significant number focused only on advantages, with a passing look at disadvantages. Rarely did these candidates consider other sources of finance available and none compared these with mortgages.
- (c) Here candidates tended to focus on one or two problems relevant to the question. Many misread it and consequently provided a detailed discussion on irrelevant issues, eg Residential Tenancies Act. They usually referred to some legislation, but did not relate the Act to the actual problem. If any evaluation were provided, it was extremely basic and often in the form of *this is effective*. No reasoning was given to justify this type of statement.

The Workplace and the Law

Question 29

<p>Employers should devote more effort to injury prevention, rather than simply paying expensive workers' compensation costs once injuries have occurred.</p>
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Discuss this statement and evaluate the effectiveness of the law in dealing with the protection of employees in the workplace.

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

- refer to the rights and obligations of employers and employees in addressing the issue of safety in the workplace;
- discuss the role of government and other agencies in providing for compensation and rehabilitation after an injury sustained in the course of employment.

General Comments

55% of the candidature in this option attempted this question. The quality of answers was very high, with some excellent responses being submitted. Students' awareness of syllabus requirements was evident from their answers. The number of prepared answers was low, since candidates showed a greater propensity to frame answers in the context of the question, and to incorporate the stimulus into the discussion, than in some other questions.

Evaluation of the effectiveness of the legal system is still an area in which more work needs to be done. The better candidates combined analysis and evaluation throughout the essay, while some attempt to do so was made by weaker candidates, who recognised the importance of evaluation but clearly lacked either the ability or knowledge to incorporate such discussion into their responses. Good use was made of cases such as *Zuijs Bros v Wirth Bros Circus*, *Donoghue v Stevenson*, *Wheeler v Philip Morris* and *Lister v Romford Ice*. The excellent and above-average candidates were recognisable through their understanding of the use of case law in the areas of rights and duties and workplace safety.

Candidates had a good understanding of the common-law rights and obligations of employers and employees in dealing with the issue of safety in the workplace. The roles of government and legislation were adequately covered, although there was only superficial treatment of the roles of other agencies.

Excellent Responses

Here candidates showed a clear understanding of the distinction between common law and statute law in relation to safety in the workplace. They emphasised the concept that safety in the workplace is a two-sided responsibility, shared by both employers and employees, and that the costs of safety would be substantially reduced by a cooperative and rational approach to the problem.

These candidates used a wide-ranging framework, fully explained the historical development of statute law and described in detail the current statutes such as the Occupational Health and Safety Act 1982 (NSW) and the Workers Compensation Act 1987 (NSW), including the key sections of the Acts, while analysing the ethical/social justice aspects of the question. Candidates were able to distinguish the cost-benefit attached to improving workplace safety. Their depth of understanding was evident from the evaluation, which was incorporated throughout the essay rather than being placed in isolation at the end. The details of the Occupational Health and Safety Act 1982 (NSW) (criminal liability, safety committees etc), Worksafe Australia and WorkCover were discussed, with their roles in rehabilitation being emphasised. The concept of *in the course of employment* was detailed, with discussion of the areas which were proving difficult to improve. These students recognised the constitutional authority which allows Federal and State Governments to legislate in this area. Good use of cases was made, and reference to the stimulus material was incorporated into the answer, while candidates critically evaluated the effectiveness of the law. One response stated: *Common law retains a number of legal principles dealing with safety*. The desirable suggestion of the stimulus, viz *employees should devote more effort to injury prevention* is echoed by the common-law implied *terms in a contract*.

These candidates also included the Workplace Relations Act 1996 (Commonwealth), analysed the impact which this could have on safety in the workplace, and referred to the Anti-Discrimination Act 1977 (NSW), Racial Discrimination Act 1975 (Commonwealth) and Affirmative Action Act 1986 (Commonwealth).

Above-average Responses

These responses referred to both statute and case law but did not clearly deal with the effectiveness of the legal responses to the issue of safety in the workplace. The responses mentioned the role of the law and discussed injury statistics but did not make a critical analysis of the legal responses to the protection of employees in the workplace.

Here most candidates showed knowledge of the current legal response to safety, eg WorkCover limitations as well as problems and issues relating to rehabilitation. They provided details of a limited number of key statutes, but there was little evaluation and, in some cases, they did not deal with the question fully.

Generally these responses grasped the breadth of issues but lacked the analysis provided in an excellent response, being more descriptive while attempting to evaluate the key issues in the question.

Average Responses

In these answers candidates tended to list the duties and responsibilities of employers and employees, rather than discussing them. They did not clearly distinguish between common and statutory law as avenues of redress.

Here candidates confused safety rights and obligations with their common-law equivalents. They also confused common-law compensation with Workcover judgements, while little or no mention was made of other agencies such as unions, insurance companies and the Social Security Department. They tended to refer only briefly to the quotation.

Reference to specific cases was not effective, while knowledge of compensation and rehabilitation was very general and mainly descriptive. Some responses were obviously prepared answers on rights and duties, and many candidates failed to use the correct titles of relevant statutes. There was some awareness of issues and Acts, but responses were, on the whole, more general, showing reliance on a textbook-answer approach.

Question 30

Historically, the common law governed the contract of employment, but legislation aimed at combating discrimination has fundamentally altered the rights and duties of employers and employees.

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

- (a) Outline the historical development of the contract of employment.**
- (b) Discuss the common law rights and duties of employers and employees in the contract of employment.**
- (c) Evaluate the effectiveness of legislation in dealing with ongoing technological change and ensuring equal treatment of workers in today's workplace.**

General Comments

45% of the candidature in this option attempted this question. The majority of candidates had a clear understanding of part (a), the historical development of the contract of employment, and part (b), the common-law rights and duties of employers and employees. The weakness in this section was the lack of understanding of common and statutory rights and obligations of employers and employees.

Part (a) was not well answered, since candidates tended to concentrate on the issue of equality in the workplace and dealt only superficially with the effectiveness of legislation in dealing with ongoing technological change. In some cases, candidates ignored the issue completely.

In good responses only a small number of candidates incorporated the Workplace Relations Act into their answers, in which they also discussed the stimulus to the question.

Excellent Responses

These well balanced responses dealt with all parts of the question equally, since candidates clearly incorporated key parts of the stimulus into their response, eg discussion of discrimination in part (c).

- (a) Candidates gave a detailed account of the historical development of the contract of employment, from the master-servant relationship through to current legislation and incorporation of the Workplace Relations Act 1996 (Commonwealth).
- (b) Answers in this part reflected a clear understanding of common-law rights and duties. In them, candidates explained the consequences of failure to fulfil these duties. Relevant cases were used to substantiate the discussion on common-law rights and duties and included discussion of both implied and expressed terms.
- (c) As well as clearly analysing technological change and relevant statutes, candidates also evaluated current legislation dealing with discrimination as an effective measure to ensure equal treatment of workers.

The ability of the candidates to relate the question, through discussion of such things as social values and attitudes, to legislation relevant to today's workplace was used as a factor in determining the standing of candidates in this question. Excellent responses also indicated the limitations to the effectiveness of legislation in dealing with ongoing technological change.

Above-average Responses

Here candidates attempted to relate the stimulus material to the question. Their answers, however, incorporated less analysis than the very best responses but still showed a sound understanding of the question and the issues involved.

- (a) Although this part was not treated in depth, the historical development of contracts of employment was described quite adequately.

- (b) Common-law rights and duties were well described, but case law was referred to less frequently. A number of candidates were able to identify the evolution of some rights into statute law from common law, eg Safety Issues through Occupational Health and Safety legislation.
- (c) In this part candidates analysed redundancy resulting from technological change and referred to the difficulty of legally keeping pace with technological change.

These above-average responses answered parts (a) and (b) well but did not show the same depth of analysis in part (c). Discussion of the effectiveness of legislation in dealing with ongoing technological change and equality in the workplace was not always well balanced. Candidates spoke at length on the discrimination against women and referred to anti-discriminatory acts, the Human Rights and Equal Opportunity Commission, and Affirmative Action legislation. Equal treatment was not well discussed in relation to other groups in the workforce.

Average Responses

These responses tended to be very descriptive and superficial.

- (a) Here many candidates omitted key points in historical development and tended to concentrate on either master-servant relationship or two types of contract. Historical knowledge was often poor or inaccurate.
- (b) Weaker answers simply listed common-law rights and duties of employers and employees without discussing them as required by the question. Lack of understanding of common-law rights and duties and statute law was evident in these responses.
- (c) Many candidates concentrated on legislation relating to discrimination only or tended to overemphasise a disadvantaged group, eg women. The impact of technological change was either treated very briefly or completely ignored.

Section II — Case Studies

Aboriginal and Torres Strait Islander Peoples

Question 31

An Aboriginal juvenile is 21 times more likely to be held in custody in Australia than a non-Aboriginal. One distinguishing factor is undoubtedly the hangover of the racism of the past, eroding the self-esteem of Aboriginal families. Particularly damaging was the policy of removing children from their parents and institutionalising them.

DR MARLENE GOLDSMITH, MLC

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 material, provide relevant information, and *at least*:

- discuss the status of Aboriginal and Torres Islander peoples under the criminal law;
- outline the problems that arose from government misunderstanding of Aboriginal and Torres Strait Islander peoples' tradition and culture;
- evaluate the effectiveness of federal and state mechanisms for achieving justice for Aboriginal and Torres Strait Islander peoples in the criminal justice system.

General Comments

The responses to Questions 31 and 32 were relatively equal in number. Generally the standard of responses to both questions was good, although Question 31 produced a wider range of responses. Answers were generally longer than in past years; this did not translate into results, however, as there were some long and rambling essays that did not refer to cases, Acts or statistics but rather took an *all I know about ATSI* approach which did not answer the question asked. In both questions the distinction between state and federal legislation was not well made. The improvement in candidates' ability to evaluate information indicates greater practice in honing the skill which is central to Legal Studies. It is worth noting that the outstanding candidates were able to evaluate each issue as it was discussed. The very best responses in both questions incorporated appropriate use of the stimulus and used a wide range of current material such as cases, Acts and statistics to support their arguments. Essays that did not refer to these data adopted a more general approach that did not reflect a clear understanding of the issues related to ATSI peoples. In this question candidates were able to apply logically constructed and well supported arguments to answering the question asked. A number of candidates did not adequately focus on criminal law in the question, however this indicated failure to read the question closely.

Excellent Responses

In these responses candidates considered all aspects of criminal law, including the police, the courts, prison and legal commissions, eg law reform commissions. They also recognised the importance of ATSI – police relations as being vital to the status of ATSI peoples, as police are often the first contact that ATSI peoples have with the legal system. Here candidates quoted supporting acts, cases and statistics to justify their arguments. This included reference to *R v Williams*, David Gundy, imprisonment rates, rates of deaths in custody, the Anunga rule, the Local Street Act 1990 and the use of police discretion. These responses also incorporated a clear understanding of the nature of traditional ATSI peoples' cultures and how conflicts could arise — eg no written law, different concepts of land ownership. They discussed in sequence the various government policies that have been formulated as a result of misunderstandings such as dispersal protection, assimilation etc, and also showed how such policies have been based on misunderstanding. Most importantly, excellent candidates evaluated a wide range of mechanisms across the legal system including RCIADIC, ATSI Social Justice Commission, ALS, change in police and court procedures, Anti-Discrimination Acts and policies relating to civil law status. With the use of statistics, these mechanisms were each critically evaluated to show that, despite efforts at achieving justice for ATSI people, the legal system has not been successful in improving their status.

Above-average Responses

Here candidates were able to respond effectively to most aspects of the status of ATSI peoples under criminal law, tending to focus on one area such as police and producing valid statistics on over-policing, arrest and imprisonment rates. Analysis of government misunderstandings was quite good, with detailed explanation of a variety of policies including dispersal, protection, assimilation and integration. In evaluating the effectiveness of the legal system in the pursuit of justice for ATSI peoples, these candidates did not cite as many issues as excellent candidates and their analyses, whilst effective, tended to be found at the end of the essay rather than in the discussion of the issues.

Above-average candidates quoted many cases, Acts and statistics to support their arguments and were also able to provide effective evaluations but not always to the same extent as the excellent respondents.

Average Responses

In general these responses showed ability to respond to the question as it was asked, but in more general terms than the better scripts. In relation to criminal law these candidates tended to rely on the issues of racism and over-policing, with the provision of some supporting evidence; claims of racism, however, tended to be discussed at length to the exclusion of other possible issues such as courtroom and prison difficulties.

On the whole these scripts tended to be more descriptive than evaluative. Often, due to failure to refer to cases, Acts and statistics, they attempted simple evaluation and drew conclusions that were of little value as they were not supported with evidence.

Question 32

Colonisation meant the dispossession and relocation of Aboriginal people to different living areas. It also meant the imposition of a particular European-defined lifestyle.

Adapted from C CUNEEN AND T LIBESMAN

Indigenous People and the Law in Australia, 1995

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

- (a) What was the official policy towards indigenous peoples in the early 1800s, and how has it changed?
- (b) How successfully has native title been embodied in federal and state law?
- (c) Describe the problems experienced by Aboriginal and Torres Strait Islander peoples in relation to housing, the workplace, consumers and family law.
- (d) Evaluate the effectiveness of the legal system and other mechanisms for achieving justice for Aboriginal and Torres Strait Islander peoples.

General Comments

This question was generally well answered since most candidates could respond to each part and the stimulus material was often well incorporated into parts (a) and (b).

The majority of candidates dealt with part (a) effectively. There tended to be two common approaches to this part. The first approach was a historical review of each official policy stage — dispersal, segregation, protectionism, assimilation, integration, self-determination and, finally, reconciliation. The other approach examined the situation in the early 1800s and compared this with the current situation. Some candidates, however, devoted too much time to part (a) in relation to the mark allocation.

In part (b) candidates were able to refer quite adequately to federal native title issues such as *Mabo* and *Wik*, but often did not include an evaluation of state law such as the Aboriginal Land Rights Act 1983 (NSW). There was some confusion between the terms *native title* and *land rights*. An area of concern was the inability of many candidates to discriminate explicitly between state and federal law. There is a need to reinforce this distinction as it applies to any areas within the ATSI case study.

Responses to part (c) were generalised, with many candidates referring to racism and discrimination in relation to the four areas listed in such a way that answers tended to focus on social perspectives rather than on the legal issues. The majority of candidates dealt with all four issues and gave some statistical illustrations. The best answers in part (c) expanded on the effectiveness of the legal system. The evaluative requirement in part (d) acted as a clear discriminator of scripts. Evaluation was incorporated into all responses, but generally, poorer responses failed to incorporate a variety of mechanisms for achieving justice for Aboriginal and Torres Strait Islander peoples in the criminal justice system.

Excellent Responses

- (a) Here responses included all aspects of official policy from the 1800s to the present day, drawing conclusions with regard to the future impact of the official policy towards indigenous peoples and any subsequent disadvantage of each policy stage. Examples taken from the genocidal policies of denial of access to culture and the removal of children were evident in the best responses. These responses also referred to the legislative mechanism of Land Rights to redress the historical injustice of terra nullius and the application of common-law justice in the Mabo case and its embodiment in Native Title legislation.
- (b) In this part candidates briefly discussed the Gove Land Rights case and NSW and NT Land Rights Acts before explaining in detail the impact of the Mabo and Wik decisions. The very best candidates were able to discuss the likely effects of the 10-point plan, recognising its discriminatory nature.
- (c) Excellent responses here covered all four civil law areas very effectively, using cases, Acts and statistics in each area to support an argument for ATSI peoples' disadvantage. Candidates also showed the interrelated nature of ATSI peoples' civil law problems — for example the fact that housing disadvantages may create disadvantages in family and workplace settings.
- (d) In this part excellent responses cited a variety of legal mechanisms, each of which was briefly explained and then logically evaluated. This integration of evaluation throughout the response to this part proved to be a discriminating factor in determining the very best candidates. Some examples of mechanisms that were discussed and evaluated included Mabo, the Native Title Act 1993 (Commonwealth), the Royal Commission into Black Deaths in Custody, ATSIC, the Council for Aboriginal Reconciliation, legal aid — including the Aboriginal Legal Service, the Anunga Rules (Instruction 38), as well as Anti-Discrimination and Racial Discrimination Acts. The best scripts evaluated each mechanism as they progressed, and their conclusions and/or recommendations regarding justice were more substantially supported. This created more of an impact as the impression of the response became one of a cohesive whole.

Above-average Responses

- (a) In this part candidates discussed different policies in depth, but did not treat all policies alike. For example, these candidates accurately discussed dispersal, protection and assimilation policies, but could not provide similar detail in relation to self-determination and reconciliation policies of recent years.
- (b) Here a number of very good responses were able to focus on Mabo and the Native Title Act 1993 (Commonwealth), giving a good analysis of each. There was, however, less breadth in these responses due to the absence of state legislation such as the Aboriginal Land Rights Act 1983 (NSW).

- (c) Responses to this part dealt very effectively with all four areas. Generally statistics were produced to discuss housing and workplace disadvantages for ATSI peoples, while cases relating to discrimination in regard to housing were discussed. In the area of family, the effects of the Family Law Act 1975 and Marriage Act 1961 (Commonwealth) were discussed, while, in this section, some candidates also discussed the effects of the stolen generation to good effect. The main discriminator between above-average and excellent responses, however, was the breadth of issues effectively discussed in each area.
- (d) Here above-average candidates were often able to cite as many mechanisms as the excellent candidates, but did not evaluate them as thoroughly, which meant that the conclusions drawn were not as conclusive.

Average Responses

- (a) In answering this part candidates in this category either discussed one or two policies in depth or mentioned all of the policies in very general terms, while there was also a lack of clarity in describing self-determination and reconciliation policies.
- (b) Here these candidates related the Mabo case to the native title issue but failed to analyse its effect to any great extent. State laws were generally ignored or only briefly mentioned, with no explanation being given.
- (c) Many average candidates omitted one or two of the civil law areas mentioned here and, no matter how good their analysis of the remaining areas, they failed to gain the highest marks. The majority of average responses, however, successfully linked one piece of evidence to each of the four areas mentioned without any great analysis or recognition of the interrelated nature of civil law cases.
- (d) In this part average responses discussed two or three mechanisms (as listed in the report on excellent responses), with some evaluation of the situation being given at the end of the essay. As previously mentioned, continuing evaluation of each mechanism would provide a stronger basis for a final conclusion.

Question 33

Migrants

Immigration over the last forty years has posed a number of challenges to which the government has been required to respond.

Adapted from OFFICE OF MULTICULTURAL AFFAIRS,
Access and Equity Evaluation Report, 1992

Discuss this statement, and evaluate the effectiveness of the legal system in responding to the challenges posed by immigration over the last forty years.

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

- identify the challenges faced by migrants as they seek access to housing, employment, social services and the law;
- outline the government policies developed to meet these challenges;
- discuss the effectiveness of the Federal Government's response to the problems created by immigration.

General Comments

This was the most popular question in this part and the answers indicated an improvement in candidates' knowledge. Reference was made to the stimulus, but few students made full use of it. Too much use was made of irrelevant historical information, indicating a prepared answer. One example was the way in which students ignored the forty-year time-frame in the stimulus and included too much material related to the last war. There appeared to be inadequate use of case studies, the candidates preferring to parrot a variety of political and current media reports such as the constant and irrelevant references to Pauline Hanson. Of the four areas that were to be examined in the first dot point, employment and access to the law were reasonably well done. Language was all that was mentioned for housing, and few candidates discussed basic facts associated with social services.

Excellent Responses

Successfully dealing with the requirement *to analyse and evaluate* was essential to place a candidate into this category. Working with a good knowledge of facts supported by reference to the stimulus, an excellent answer required in-depth analysis of Acts (the Migration Act 1958, and Reform Act 1993) and policies (Assimilation Policy, Integration Policy, Multicultural Policy) and a wide range of social conditions. There also needed to be a clear correlation between the challenges faced by migrants and government responses at both State and Federal levels, and discussion of Federal Government responses. Excellent answers identified challenges of housing, employment, social security and the law. In them, candidates were able to elaborate on each and gave examples. These candidates also discussed the crisis of legislation and showed whether these aims had been achieved.

Above-average Responses

Candidates identified the principal problems of the categories mentioned in the stimulus and also made good use of relevant cases and policies, combining the two well. These answers acknowledged the differences between the State and Federal legislation, and also provided the required elaboration of government response.

Average Responses

These responses referred to an adequate amount of legislation. The Administrative Appeals structure was acknowledged, although candidates might not have fully examined it. Some parts of the question were answered well; in others, analysis and reference to cases were not evident, while often responses were far more descriptive than was required. These answers tended to blend government legislation and policies, failing to distinguish Federal and State.

Question 34

In dealing with migration decisions we must make sure that the mechanisms for entering and remaining in Australia, and the enforcement of the departure of persons who have no further entitlement to stay, is 'fair, just, economical, informal and quick'.

Adapted from GERRY HAND, *Minister for Immigration,
Local Government and Ethnic Affairs, 1992*

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

- (a) Identify the principal categories of migrants entering Australia.
- (b) Outline the ways in which migrants can challenge government decisions associated with their status.
- (c) Outline the special problems of migrants with respect to administrative and court procedures associated with deportation and extradition.
- (d) To what extent is the administrative review of migration decisions 'fair, just, economical, informal and quick'?

General Comments

Candidates had difficulty in understanding parts of this question, consequently parts (a) and (b) were reasonably well done, whilst part (c) was not. Many candidates appeared to believe that the special problems associated with deportation and extradition needed to be considered, rather than access to the courts and administrative procedures. Some merely defined the two terms, while others outlined the special problems of being a migrant instead of how courts can be made accessible. The evaluation of the basic review structure of the Migration Internal Review Office, Administrative Review Tribunal, Refugee Review Tribunal and Federal Court was poor, with little real consideration being paid to the attributes of the above structures which might lead to their being considered *fair, just, economical, informal and quick*. Many candidates resorted to generalisations which failed to answer the question adequately.

Excellent Responses

Excellent answers tended to be focused on the questions asked and were relevant to the stimulus.

- (a) In this part candidates set out the principal groupings, with some explanation of each category of migration.
- (b) Here candidates outlined, but did not list, the material and administrative structures, making clear differentiation between the various tribunals and courts. These answers linked migrant status with the relevant tribunal and court.
- (c) This reflected a good knowledge of obtaining access to the law, particularly with regard to administrative tribunals and courts. Specific reference was also made to some singular problems associated with decisions regarding extradition, eg language, legal assistance, detention, impounding of property. Examples were used to distinguish between administrative court procedures.

- (d) Answers to this part involved a real identification, in terms of the words of the stimulus, of the procedures associated with administrative review of migrant decisions.

Above-average Responses

Candidates in this category tended to answer parts (a), (b) and (d) reasonably well, while their responses to part (c) tended to be poor. Candidates showed knowledge and understanding of the structure of administrative review, but did not show sufficient understanding of the procedural mechanism to allow them to indicate why they might be classed as economical or informative. These answers presented much of the information found in the excellent answers — categories of migrants, relevant legislation (eg Migration Reform Act 1993), special problems etc — but failed to include the requisite evaluation and analysis at the same level. Here students also used case studies to illustrate their points.

Average Responses

In this category candidates tended to provide less explanation of the principal migration categories and also listed the various administrative mechanisms and the special problems faced by migrants. Here the better candidates provided slight evaluation of the effectiveness of the legal process, although the majority tended merely to provide generalised descriptive responses.

Women

Question 35

Unequal power relationships within the family, ideas about male authority and women's unequal access to economic security are all causes of domestic violence.

Discuss this statement and evaluate the effectiveness of the Australian legal system in responding to gender bias between women and men.

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

- **outline the historical position of women in Australian society;**
- **identify the problems women face in gaining protection from violence, and discuss the legal and non-legal responses to these problems;**
- **comment on the mechanisms available to women to combat the problem of gender bias in access to education, training and promotion within the workplace.**

General Comments

Approximately 51% of candidates attempted this question. On the whole, the question seemed to attract a higher proportion of the better candidates and the responses were longer than in previous years. This may indicate a perception amongst candidates that this type of question is more challenging. The stimulus was generally ignored, although some outstanding candidates did attempt to integrate this material into their answers.

The historical position of women in Australian society covered areas such as the workplace, the family and society as a whole. The concepts of *unita caro*, no property rights, lack of status and power were covered. Early in their answers many candidates referred to relevant legislation including the Married Person's (Property and Torts) Act 1901 (NSW) and Women's Legal Status Act 1918 (NSW). Case law was used to show how women fought through the courts in order to gain status and to try to redress gender bias throughout history. Cases such as *Bebb v Law Society* 1914 (UK), *Sophie Jex-Blake v Senatus of the University of Edinburgh University* 1873 (UK), and *Ada Evans* 1902 (NSW) pointed to the fact that women were not classed as persons and therefore could not practise in certain occupations, most notably law and medicine. Some students were able to link the British cases to the attitudes that Australia inherited from Britain.

Many candidates introduced a number of historical milestones into their answers, linking these with the social position that women held in Australia. This included lack of voting, jury service, standing for parliament, owning land and equal pay. The better candidates included the relevant legislation, dates or cases, such as: *Jury Act 1977 (NSW)*, *1894 South Australia gave the vote to women over 21 years as a result of constant lobbying* and *1902 white women over 21 years could vote in Federal Elections, Ex Parte Ogden 1893 (NSW)* and *1972 Equal Pay Decision of the Commonwealth Conciliation and Arbitration Commission*.

Most candidates concentrated on the second part of the question (violence), with the better responses referring it back to the issues concerning gender bias. Many candidates ignored the difficulties faced by women in gaining protection from violence. They misread the question and wrote about the problems of domestic violence rather than the problems women face in gaining protection from violence. A number of candidates mentioned that domestic violence is institutionalised and that it is therefore very difficult to change society's values. These candidates also discussed how violence can reinforce gender bias and has a profound affect on the status and position of women in society.

A large number of candidates pointed out that attitudes of various groups in society, such as some judges, some members of the police force and some institutions and governments, help create and foster the problems women face in gaining protection from violence.

Discussion of the legal responses to the problems women face in gaining protection was generally good. Candidates referred to legislative changes such as *Bail (Domestic Violence) Amendments Act 1993 (NSW)*, *Firearms (Amendments) Act 1993 (NSW)*, the new *Firearms Act 1996 (NSW)* and *Crimes (Domestic Violence) Amendment Act 1983 (NSW)*. Recent violent incidences such as Jean Lennon's (Mijadalawi) being killed outside Parramatta Court House and Irene Davis's being killed in Cronulla, both by men on Apprehended Violence Orders, were used as examples of ineffective legal protection for such women. Others then countered this with reference to changes to such orders that make it easier for women to gain protection. Quality answers gave both points of view.

The non-legal approach to these problems was often overlooked. The better responses referred to refuges, crisis housing, women's campaigns such as *Reclaim the Night*, political think-tanks and lobby groups to agitate for legislative and educational changes to improve the situation for women facing violence in the family.

Discussion of the mechanisms available to women to combat gender bias in access to education, training and promotion within the workplace was not as good as that on the violence section of the question. Candidates referred to broader educational opportunities for women at both school and tertiary level that have helped combat gender bias. The case of *Leves v Minister of Education* (1986) was used by a number of candidates in referring to changes to educational opportunities for women. The majority of students had no difficulty in mentioning the legislative changes that have developed in an effort to combat gender bias in the workplace. These included the Sex Discrimination Act 1984 (Commonwealth), the Anti-Discrimination Act 1977 (NSW), the Affirmative Action (Equal Employment Opportunity for Women) Act 1986 (Commonwealth) and the 1972 Equal Pay Decision of the Commonwealth Conciliation and Arbitration Commission.

The better candidates could discuss the effectiveness of Equal Employment Opportunity policies for women and a number indicated that these were ineffective because the problems of gender bias still exist. The concepts of the *glass ceiling*, *pink ghetto* and *sticky floor* were evident in most responses but a good level of analysis of these occurred in only the better responses. A variety of case law decisions was used to highlight both the effectiveness and ineffectiveness of the legal system in responding to gender bias in the workplace. These included *Australian Iron and Steel v Banovic* 1989, *Hill v Water Resources Commission* 1985, *Wardley v Ansett Pty Ltd* 1984 and the recent *Katies* case.

Excellent Responses

The candidates in this category dealt with the whole question and presented a well integrated answer rather than a series of separate points. They recognised the issues raised in the stimulus and elaborated on the impact of the balance of power both in relationships and at work. Such candidates identified various historical gains made by women throughout the century and outlined how women's roles have changed over this period.

In these responses candidates could explain the extent of domestic violence and the complexity of contributing factors, including those outlined in the stimulus. They discussed the problems faced by women in gaining protection from violence, such as lack of power, lack of access to resources, funding cutbacks in areas relating to women, gender bias, time delays and, in addition, they assessed the legal responses such as Apprehended Violence Orders, injunctions, police help, courtroom procedures and the role of government departments such as the Department of Community Services and the Department of Housing. Non-legal responses such as refuges, women's groups, the role of education and the Office of the Status of Women were included in many of these responses.

Many candidates recognised the practical limitations of Apprehended Violence Orders in providing effective protection for all women in violent situations. They supported this by citing relevant cases from recent years and up-to-date statistical information. There were, however, many candidates who supported the effectiveness of such orders for many victims of violence.

These responses discussed at length the mechanisms available to combat gender bias in gaining access to education, training and promotion; these mechanisms included the relevant anti-discrimination and equal employment opportunity legislation, recent and past relevant case law and the Workplace Relations Act 1996 (Commonwealth). The effectiveness of such mechanisms was successfully assessed.

Above-average Responses

Candidates in this category attempted to deal with the whole question but often lacked the depth of knowledge and analysis shown in the excellent responses. These responses, whilst still very thorough, tended to be less comprehensive and often failed to link points back to the question. In many of them candidates did, however, recognise the stimulus and make some attempt to elaborate on the issues raised.

Successful attempts were made to chart the changing role of women, often by the use of a timeline approach. This was used to show the evolving power of women, although many of these more capable candidates presented very basic notions of the relationships between women's work and, consequently, their power and status, both at home and in society.

These respondents recognised the extent of domestic violence, but were less successful than the excellent candidates in their understanding and evaluation of legal and non-legal measures to deal with this. They provided some good analysis of anti-discrimination and EEO legislation in relation to women combating gender bias in the workplace and supported their arguments with relevant case law and legislation.

Average Responses

The candidates in this category attempted to deal with most of the question; some recognised the stimulus and provided limited discussion of the issues raised. Their answers tended to be descriptive rather than analytical; for example, they described an Apprehended Violence Order in a limited way but did not explain how it works or what is effective or ineffective about such remedies, or to indicate the variety of ways in which an AVO can be framed. These responses also tended to provide incomplete lists of possible legal and non-legal responses as well as lengthy accounts of relevant case law, while ignoring the legal principles involved.

These responses tried to deal with the problems faced by women because of gender bias in the workplace but provided limited analysis of the mechanisms available for solving these problems. Some mention was made of anti-discrimination and EEO legislation in relation to combating gender bias against women in the workforce.

Question 36

Women were seen as the homemakers, and the idea that they could, or should, also play a role in public life was unheard of. For centuries, women had worked at home in cottage industries, and later, outside the home, in factories, hospitals and offices. However, leadership was seen as a male right and men ran the government, the law, business and professions. It was only in the twentieth century that the exclusion of women from public life began to be seriously challenged.

Adapted from PATRICK PARKINSON, *Tradition and Change in Australian Law*, 1994

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

- (a) What were the historical roles of, and attitudes towards, women in Australian society?
- (b) In what ways have the difficulties faced by women in entering the workforce changed since early colonial times?
- (c) To what extent does the law reflect the changing role of women in the workforce?
- (d) Evaluate the effectiveness of legal and non-legal methods in addressing the needs of women in the workforce.

General Comments

This question was attempted by 49% of the candidature. Although it attracted a wide range of candidates, the standard was not as high as that in the alternative question. Candidates had difficulty in referring to the stimulus in their responses, despite the issues it raised for potential development.

They generally scored well in parts (a) and (b) but the standard dropped when evaluation was required. Students need to note carefully the marks allocated to each part and to structure their answers accordingly. Many poorer responses failed to break up the issues according to the structure of the whole question.

In part (a) many candidates listed the roles of women in Australian society from a historical viewpoint. This included the concept of *unita caro*, housewife, slave, child raiser, property of the male and generally lacking in status. The discussion of attitudes towards women was not as well presented.

In the better responses, however, candidates could describe the attitudes towards women that have existed in Australian society. These included the concepts of the *weaker sex* and the fact that the male was the *bread winner*. While most of these discussions were superficial, some candidates referred their answers back to the stimulus material. These better responses showed that a change in attitude resulted in a change of status and therefore a change in the roles that women played in society. In these responses candidates indicated that the change in law was reflected in a change in attitudes rather than that women's roles in society changed because the law acted to women's advantage.

Part (b) was answered mainly from the point of view of the difficulties faced by women on entering the workforce but failed to indicate how this has changed since colonial times. Many candidates answered this section only by listing such things as workplace segregation, pink ghettos, lack of education and opportunity, lack of equal pay, sexual harassment and equal employment opportunities. The better responses discussed the difficulties faced by women and compared the roles of women in colonial times with those of the present day. They related legal and non-legal changes in the workplace to the promotion of the causes of women in the workforce. Some candidates asserted that educational changes offered women opportunities that were not available to women prior to the introduction of compulsory education.

The availability of proper and affordable child-care facilities was seen by the better candidates to be one of the main difficulties faced by women entering the workforce in recent times. Many of these candidates related these changes in opportunity to changes in the roles played and expected of women in society today. A number of responses noted the role that World War II played in advancing the cause of women, although their position was reversed with the return of the men from the war.

Part (c) was generally well answered by the average to excellent candidates. The poorer responses tended to list the different legislation or common-law decisions that have helped support the changing role of women in the workforce. Few responses actually identified the fact that the law changed as a reflection of the changing roles of women and did not go ahead of changes in women's roles. Developments in flexible working hours, improved union representation, maternity leave, technological advances and legislative changes were shown to influence the changing role of women in the workforce.

Excellent Responses

The candidates in this category successfully dealt with the whole of the question.

- (a) Here the best respondents realised that society and its values/attitudes evolved over a period of time and, therefore, they provided a historical perspective on women's roles in Australia and relevant changes over a period of time. They related this back to the stimulus by highlighting the roles of homemakers and child-bearers and the desire by women to break out of the patriarchal society.
- (b) Here the best candidates provided examples of difficulties faced by women in the workplace and assessed the importance of changes that have occurred in this area such as moving from carer to responsible positions in public life. They also recognised the fact that earlier difficulties such as inequality of pay and barriers to entry into specific professions have been replaced by other problems such as sexual harassment and gender bias.
- (c) Excellent respondents to this part not only identified relevant areas of law but they were also able to recognise the fact that the law has not always been effective in reflecting the role of women in the workplace. For example, the complexity and entrenched nature of sexual harassment means that the remedy of reinstatement can fail to protect women fully. On the other hand, the award of damages effectively removes a woman from the workplace and presents her as a victim.

- (d) Responses in this category comprehensively outlined the broad range of legal and non-legal methods available to deal with the needs of women in the workforce. They critically evaluated the effectiveness of legal methods such as anti-discrimination and EEO legislation and maternity leave, together with non-legal methods such as trade unions, lobby groups, provision of child-care facilities, the decreased role and influence of the church, improved technology and contraception methods, as well as improved educational and training opportunities in helping women in the workforce. These candidates showed an understanding of the fact that ignorance of and unwillingness to resort to these methods has limited their practical effectiveness.

Above-average Responses

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

- (a) In answering this part candidates dealt very well with the historical roles of women but were less effective in discussing the social attitudes behind such roles; in them candidates made some attempt to relate these issues back to the stimulus.
- (b) Here candidates provided a sound coverage of the difficulties faced by women entering the workforce and made a good attempt to explain how these difficulties have changed over a period of time.
- (c) Candidates' attempts to discuss the extent to which the law reflects the changing role of women in the workplace were not as good. For example, while most mentioned the relevant legislation, they did not critically evaluate the impact of this on the opportunities for women to participate in the workforce on equal terms.
- (d) Whilst candidates in this category were able to list a wide range of legal and non-legal methods of dealing with the needs of women in the workforce, they were less successful in evaluating their effectiveness.

Average Responses

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

- (a) In answering this part, these responses described a list of historical roles and attitudes towards women; the majority referred to the stimulus or, at best, provided subjective analysis of the issues it raised.
- (b) Responses here tended merely to list the difficulties faced by women entering the workplace, with little understanding being shown of how and why these difficulties have changed over a period of time.
- (c) Average candidates made little attempt to assess the extent to which the law reflects the changing role of women in the workforce, and tended to provide just a list of legal breakthroughs.
- (d) Candidates in this category listed some legal and non-legal methods of dealing with the needs of women in the workforce, but made little attempt to assess the effectiveness of such methods.

Other Disadvantaged People

Question 37

Poverty is costly not only to the disadvantaged but to the whole society. It is not only a personal or local concern but also a social and national problem.

Adapted from N PODDER, *The Economic Circumstances of the Poor*, 1978

Discuss this statement, and evaluate the effectiveness of the legal system in providing for the disadvantaged in society.

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

- identify the categories of social security applicants;
- outline the problems faced by applicants in accessing the social security system;
- evaluate the effectiveness of social security legislation in responding to the problems faced by the socio-economically disadvantaged.

General Comments

Those who chose this question tended to be the weaker candidates. Many adequately covered the categories of social security applicants and identified a range of problems that applicants face in approaching the social security system. A number of candidates, however, did not make adequate use of the stimulus, merely tending to refer to social security applicants as being *poor*. Few candidates presented extended responses. There was a lack of analysis of the problems of these people and the effectiveness of the legislation in providing for them. Current changes to legislation were referred to by only a small number of candidates, while few referred to cases and many failed to distinguish between common law and statute law. There was also evidence of reliance on textbooks, with little evidence of the use of other materials such as newspapers, articles, discussion papers, journals etc, and, as a result, answers were commonly couched in very general terms.

Excellent Responses

In these responses candidates dealt with all aspects of the question. They made good use of legislation, referring to the Social Security Act 1994 as well as to relevant case studies. The restructuring of the Department of Social Security as the centre link was used to indicate changes in government policy. Controversial issues such as *working for the dole* were also discussed. There were, however, few excellent responses. Candidates focused on statute law, making little reference to common law, while the Review and Appeals Tribunal, Federal Court and the Ombudsman were all analysed. The evaluation of social security was linked to poverty by most candidates and, thus, social security was presented as being ineffective in dealing with poverty, as were the various levels of government.

Above-average Responses

Most candidates in this category referred to the stimulus and answered all parts of the question but provided little or no evaluation, and tended to focus on problems faced by the poor rather than examining the social security system. Approaches to the system through the different appeal mechanisms were also dealt with but in a descriptive manner. These candidates generally wrote on only the three dot points and did not extend their remarks further; they showed a knowledge of content but did not show any critical analysis in this context.

Average Responses

In these responses candidates dealt with most of the question, yet there was little, if any, analysis of the issues raised by it. Most students made fleeting reference to the stimulus, but their answers were textbook-based and descriptive. Much of the information presented by them was outdated; later legislative developments were not dealt with and no use was made of any cases.

Question 38

Mental health law serves a mass of conflicting interests and ideas. The general public is no doubt suspicious that some people may use mental incapacity as an excuse for anti-social behaviour. But they forget that the consequences may be just as severe for these people, and sometimes more so, if they are institutionalised.

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

- (a) What is legal capacity and when is it lacking?**
- (b) What is a guardian and when would one be appointed?**
- (c) What problems arise for decision makers attempting to balance a person's rights with the need for protection and/or treatment?**
- (d) Evaluate the effectiveness of the legal system in responding to the needs of those who are mentally ill or intellectually disabled.**

General Comments

Although the majority of candidates answered this question, many did not refer to the stimulus. There was neither mention of civil standard of proof as against criminal standard of proof, nor of the medical and scientific procedures followed. The majority of students dealt with the concept of legal capacity, though a small number found it difficult. The Mental Health Act 1990 was referred to, but the 1994 amendments to the Act were not mentioned. Both the Burdekin Report and the Richmond Report were referred to.

Excellent Responses

In responses in this category candidates discussed the relevant legislation, as well as raising the impact of the Burdekin and the Richmond Reports. As a result of their ability in analysing the effectiveness of the legal system, they made a clear distinction between the mentally ill and the intellectually handicapped. These candidates dealt with part (c) competently, showing a clear understanding of the problems faced by these people, particularly with reference to hospitalisation and the different categories of mental patient. The right to appeal through the Mental Health Tribunal was also dealt with.

Above-average Responses

In these responses candidates covered the different categories of mental health care — voluntary, involuntary, forensic etc — and discussed all aspects of the question, providing occasional analysis. Many considered decision makers only as guardians and did not consider other types of decision makers such as trustees, doctors, family members. Many candidates also failed to deal with the stimulus material effectively, particularly in relation to the consequences of being institutionalised for the mentally ill. Better candidates distinguished mental incapacity from anti-social behaviour. Most of these responses dealt with mental illness and not with intellectual disability.

Average Responses

In the average category candidates did not refer to the stimulus. The Mental Health Act 1990 was mentioned but no reference was made to any amendments. Analysis of the rights and protection of the disadvantaged was very limited. These candidates also made no reference to inquiries or reports and their responses were of a general and descriptive nature.

3 Unit (Additional)

Section I

Challenge: Global Environmental Protection

Question 1

Under current international law the concept of one shared global environment does not exist. International law divides the Earth up according to false boundaries: state territory and areas beyond national jurisdiction. What this means is that a state can do what it likes to its own environment, limited only by a duty not to cause substantial, legally-provable, harm to the environment of another state.

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.

Why do we need to protect the global environment?

Discuss the effectiveness of national and international environmental law in addressing issues posed by political and geographical boundaries.

General Comments

By far the majority of those who did this module attempted this question (78.7%). A relatively good standard was achieved, as in previous years, and there were fewer weak essays. There was, however, a marked absence of extremely good or excellent responses.

The majority of students clearly identified their two depth studies in the introductory section of their essays and clearly stated the relevant aspects of the Core.

There is still a need for students to refer to the stimulus statement as directed in the question. Some still seem to think that merely quoting sections of the stimulus without using it to support any arguments is sufficient. This does not, however, constitute a satisfactory reference to the stimulus. There was also a general tendency to agree with the stimulus statement and very few students attempted to dispute it.

While more were able to deal with the question *Why do we need to protect the global environment?*, the essence of the question, namely to *discuss the effectiveness of national and international environmental law in addressing issues posed by political and geographical boundaries*, was the discriminating factor. Many students focused too heavily on a descriptive treatment of the effectiveness of national and international law generally, without referring to issues. Interestingly, this year there was a notable absence of the quotations and references that were a feature of responses in previous years.

Students need to refer to the Core, depth studies, stimulus and question in a balanced manner, since a well structured essay attracts better results. Indeed, the poorer responses consisted of little more than a lengthy discourse on the content of the basic international environmental treaties and agreements, with no analysis or reference to effectiveness.

Excellent Responses

Responses in this category dealt with the whole question, referred to the stimulus and gave a well balanced response. In particular, a balance between the Core and the depth studies, which reflected the structure of the syllabus, was characteristic of these responses. They showed a good understanding of environmental law, both nationally and internationally, and were noteworthy for a good essay structure which tied the Core, depth studies, stimulus and question together and which had a clear introduction and conclusion. The responses were well written and comprised a coherent argument and good use of terminology. They tended to blend the evaluation of national and international law rather than to treat them separately.

In these responses candidates referred to relevant national legislation and international agreements and showed that they were well informed about current global environmental issues.

In responding to the question of why we need to protect the global environment, candidates in this category focused on the *global* aspect rather than simply the need for environmental protection in general. In doing so, these candidates were able to identify the issues posed by political and geographical boundaries as providing some of the reasons for the need for global protection. In addition, many also referred to the historical perspective as outlined in the syllabus.

Having identified the issues, the better candidates were then able to give examples of how national and international law deals with these issues, as well as by detailed analysis of how effectively the law does so. The examples were drawn from both the Core and the depth studies.

In discussing effectiveness, responses in the excellent range were notable for their attempt to highlight both the positive and the negative features of the laws to which they referred, instead of focusing merely on the negative aspects as was the tendency in so many poorer responses. In some, candidates even suggested improvements which could be made in order to render the various laws effective.

Above-average Responses

Responses that fell into this category were those in which the analysis was not as good as in those in the excellent range. Moreover, although in these responses candidates made use of the stimulus, such usage was not as comprehensive as that in the excellent responses.

Here candidates showed a good understanding of the concepts and issues inherent in the question, eg sovereignty, transboundary effects, and were quite well informed about national and international law. Such candidates made good use of the law, with some attempt at evaluation, as well as integration of the depth studies and associated key issues.

The above-average responses were generally quite coherent and well structured, although there tended to be slightly more emphasis on the depth studies than the Core and, in some cases, greater focus on one depth study than the other.

In discussing the effectiveness of national and international law, these responses differed from the excellent responses in that there was a tendency for candidates to deal with the international law first, then treat the national law separately. Whilst this method of structuring a response is not necessarily inadvisable, a well blended response tends to be more impressive and, therefore, attracts a better ranking.

Average Responses

The average responses were those in which the candidates attempted to deal with most of the question but which, nevertheless, generally lacked substance and depth of analysis. Thus, a more general approach, with only partial analysis, was characteristic of these responses as was a tendency to be descriptive rather than evaluative. Therefore, while, in these responses, candidates were able to outline many laws, particularly examples of international law, they were not always of great relevance to the question and included little or no analysis.

Many of these candidates tended to expatiate on why we need to protect the global environment and a number took this as an opportunity to launch into an extensive account of the various environmental catastrophes which have occurred over a period of time.

Likewise, in discussing the effectiveness of national and international law, many in this category outlined at length the historical development of international law. These responses tended to become more of a general discourse on the effectiveness of international law rather than dealing satisfactorily with the question of its effectiveness in terms of dealing with issues posed by political and geographical boundaries. Indeed many responses in this category made little or no reference to boundaries of any kind and certainly did not show much understanding of issues posed by such boundaries.

Such responses made poor use of relevant terminology and made little use of the stimulus. In many there was an imbalance in candidates' use of the Core and depth studies; moreover, there was also evidence of their inability to identify and/or comment on the effectiveness of national law.

Question 2

Environmental law is concerned with resolving disputes about the use of physical surroundings, whether natural or human made. At one extreme these uses may involve development on a substantial scale and, at the other, they may require preservation of the environment in its existing state. The difficulties arise in balancing ecological issues with development issues.

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.

Evaluate the extent to which national and international communities have been able to balance the competing ecological and development issues.

General Comments

This question attracted fewer candidates (21.22%) than Question 1 and, in general, the standard was not as good. Many responses missed the point of the question. Interestingly there was a tendency for candidates to make less reference to the stimulus statement, perhaps reflecting some difficulty with the wording. Once again the majority of candidates clearly identified their depth studies and most used appropriately issues raised in the Core of the module. Unfortunately, very few seemed to understand what was meant by the word *communities*. Indeed, a number of students simply substituted the word *countries* for *communities* and then responded accordingly. Those who did refer to communities tended to focus on groups like the European Union and the South Pacific Regional Environment Program. Many also appeared to have some difficulty, not only in identifying ecological and development issues, but also in recognising their conflicting nature and the need for there to be a balance between them.

The majority were able to refer to relevant national and international institutions by their names and also to show a good knowledge of their purpose. Very few referred to actual cases. As with Question 1, many candidates, even those who were obviously the better prepared, frequently failed to refer directly to the question.

The better candidates once again presented well structured and well balanced responses, the most impressive of which frequently referred to very recent events such as the Indonesian bushfires and Australia's current stance on greenhouse gas emissions.

Excellent Responses

Candidates in this category presented well structured responses which dealt with the whole question, referring to the Core, depth studies, stimulus and the question itself, using all available information.

Excellent responses were those which had a very strong introduction and conclusion and very good general structure and which included only relevant information throughout the essay. They also made clear, detailed reference to the stimulus and the question throughout the essay by means of specific key words and phrases such as *natural/human-made physical surroundings*, *preservation*, *balancing*, *ecological issues*, *development issues* etc.

These responses were also characterised by their use of a wide range of appropriate terminology, eg *ecologically sustainable development*, *inter/intragenerational equity*, *precautionary principle* etc. In them candidates attempted to define *communities* in the context of the question; even some of the best candidates, however, had difficulty here.

Candidates in the excellent category were again those who were able to incorporate evaluation into their responses, ie evaluation which balanced examples from the Core and the depth studies and which dealt with both national and international aspects of environmental law.

These candidates were also better able to identify ecological and developmental issues before evaluating the community's efforts in balancing environmental economic aims. Such candidates possessed an obvious and extensive understanding of ecologically sustainable development.

Above-average Responses

Responses in this category endeavoured to deal with the whole question but, once again, the depth of analysis and evaluation was not as good as that which characterised excellent responses. Here candidates also showed fairly detailed knowledge of relevant legal instruments but were able neither to relate these to the question as successfully nor to evaluate them in as much depth as was done in the excellent responses.

Above-average responses made good use of the depth studies and successfully referred to various national and international aspects within them. They were quite well written and some attempt was made by most candidates to include an appropriate conclusion. Although most dealt with all parts of the question, there was a slight tendency to focus on one depth study over the other and to emphasise international rather than national aspects. Moreover, less attempt was made by these candidates to use the stimulus than was the case with the excellent responses and this quickly became a discriminating factor.

Average Responses

Responses in the average category were characterised by an attempt to deal with most of the question. Many, however, failed to refer to the question and tended to be very general. These responses showed a satisfactory knowledge of international legal instruments to balance the competing ecological and development issues, particularly those drawn from the Core such as the Stockholm Declaration, Agenda 21 and the Rio Declaration. Candidates here were also reasonably conversant with treaties and conventions drawn from their respective depth studies. The majority provided quite extensive descriptions of the content of such instruments, but were, unfortunately, characterised by a general inability to relate these to the question satisfactorily. In addition, there was little or no analysis/evaluation of these instruments. Indeed, in many of the average responses, evaluation consisted of statements such as ... *it is not effective because everyone must agree ...* and ... *the effectiveness of international environmental law ... can in some instances be limited.*

Responses in this category also tended to focus on only one part of the question, eg *national and international*, and then to proceed to produce a complete response about the effectiveness of national and international efforts to balance the competing ecological and developmental issues, without reference to the remainder of the question. There was also some indication of prepared answers.

In the average category in particular, candidates had obvious difficulty with the term *communities* and also in identifying competing ecological and developmental issues. They used terminology sparingly and, at times, even inappropriately, and tended to focus either on the Core at the expense of the depth studies or on one depth study at the expense of the other.

Section II

Challenge: Technological Change

Question 3

With only a few years until the twenty-first century some of our wildest dreams and fantasies today will become the realities of tomorrow. Technology will impact on all aspects of human existence.

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 advancement.

General Comments

This was the most popular of the two alternatives (74.78%) and the two depth studies most often presented were Biotechnology and Technological Fraud. The non-specific nature of the question and stimulus allowed the students great latitude in their answers. Most referred briefly to the stimulus in the introduction and/or conclusion but failed to pay any great attention to it throughout their answers. It was pleasing to see the majority moving away from the stimulus and using a variety of reference materials to support their answers.

Although many students referred to relevant legislation, conventions and issues, they often found difficulty in discussing the effectiveness of these in dealing with the issues arising out of technological advancement. It was to their advantage to refer to specific cases and some landmark conventions such as the Berne and Washington Agreements.

Excellent Responses

In excellent responses candidates critically evaluated the issues raised by the question. These responses were written fluently and most explained well the issues which result from technological advancements, both ethical and legal. They incorporated these issues into their answers and then evaluated them; rather than simply listing rhetorical questions, they answered the whole question by:

- (a) striking a balance between the Core material (which was the backbone of an introduction) and the depth studies. In doing so they were able to identify key elements of the stimulus and pinpoint the depth studies that had been completed, incorporating these into the body of the answer
- (b) treating both depth studies alike
- (c) analysing issues in terms of ramifications and importance as well as their application worldwide

- (d) evaluating a wide range of international responses by examining the value of conventions, treaties and conferences. Many criteria, such as the number of signatories, were well explained
- (e) explaining how ratification of treaties etc influences domestic legislation and then evaluating such legislation rather than simply referring to it
- (f) helping their evaluation of national law by referring to supportive case law and relevant current issues, some of which related to countries outside Australia. The effect of these on Australian legislation was explained.

Above-average Responses

In these, candidates adopted a more *structured* approach to their answers than candidates in the average range. Issues relating to technological advancement, both ethical and legal, were discussed, with these students then focusing on international and domestic responses to such issues and progressively evaluating them.

The above-average responses then dealt with each depth study in turn. They examined specific international organisations which were relevant, discussing the effect such organisations had on domestic legislation and also highlighting support or deficiencies by referring to case law.

These responses referred to a great deal of international and domestic legislation and also incorporated the stimulus into part of their answer, unlike the excellent responses which included it throughout.

Average Responses

In these responses candidates referred to much international and national legal law but, nevertheless, tended to be descriptive rather than evaluative. They incorporated little discussion of key moral or legal issues relating to technological advancement and made little reference to the stimulus material.

It appeared that many average responses were prepared answers which, fortunately, fitted part of the requirements of the answer.

Question 4

With the coming of any brave new world technology, the tendency is to resist its development. Future shock does not apply just to the impact of change. The implication of change can be just as shocking ... the area is full of ethical and legal time bombs.

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.

Why do we need a global response to technological change?

Discuss the effectiveness of national and international law in addressing issues relating to these ethical and legal time bombs.

General Comments

This question was attempted by a smaller number of candidates (25.22%) than the previous question, possibly because the students saw this as being the more difficult question. The two most popular depth studies discussed were Biotechnology and Technological Fraud.

The question seemed to be more specific than Question 3, requiring students to explain the need for a global response to technological change and to deal with issues relating to the *ethical and legal time bombs*. The better students answered these questions by using relevant material from the Core and depth studies such as international law and domestic legislation. Discussion and analysis of the effectiveness of these involved the use of specific cases to support arguments. More attention should have been given to balancing the discussion of the Core and the two depth studies.

Too many responses were very short, too general and descriptive and were often obviously prepared answers.

Excellent Responses

This question required students to discuss the *need* for a global response. Excellent scripts included a thorough analysis of this need, incorporating a variety of key issues, concepts and arguments, such as Global Village, the developed as opposed to developing nations argument, protection of indigenous peoples and various rights to privacy arguments.

In these responses candidates showed a thorough knowledge of Core material, particularly conventions and treaties and then, in using their depth studies, evaluated their effectiveness by introducing many examples of case law and topical legal issues, both national and international. It was apparent that wide reading and research benefited those who wrote excellent responses. Such students showed great ability in tying the stimulus material to their argument; this is a skill that all 3 Unit students should strive to acquire.

Above-average Responses

Above-average responses to this question were structurally sound and, for the most part, they attempted to strike a balance between Core material and depth studies. Whilst many of these essays were quite lengthy, they failed to match the quality of consistent, cohesive argument that typified excellent responses.

In this category students responded directly to the question and referred to the stimulus quotation. Many moral, legal and ethical issues were identified and discussed, while the information offered was accurate, with case law often being used to good effect, especially in the depth studies.

Average Responses

In this type of response candidates often showed an understanding of key elements in the question, but often presented an unbalanced treatment of the issues. A more concerted effort to balance Core material with depth studies should have been made. Generally some analysis was included but treatment of conventions and treaties was often only descriptive.

Some of these responses relied too heavily on issues relating to ethical and legal time bombs, without linking their arguments to relevant national and international law. Such answers were too descriptive and general when compared with excellent and above-average responses.

Section III

Challenge: World Order

Question 5

There is no universal definition of a World Order issue. Many argue that, in the ‘global village’, national issues, as well as international ones, can be World Order concerns. Others argue that state sovereignty and the right of every nation to be free from outside interference in domestic matters is paramount. From this point of view, only where national issues have an international impact should they become a World Order concern.

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.

Outline the problems in reaching an internationally accepted definition of World Order.

Evaluate the effectiveness of legal systems in dealing with World Order issues at national and international levels.

General Comments

51% of those choosing this option attempted this question. The more capable students recognised the underlying pressure of *state sovereignty* rather than an effective international order if states are part of a *global village*. The better students clearly identified a wide range of factors such as diverse religious, political and social ideologies and economic circumstances which make it difficult to resolve the underlying issue. These students were also able to provide a critical evaluation of the effectiveness of legal systems at both national and international levels, using Australia’s legal system as their national reference. The majority revealed an excellent knowledge of international law in their chosen options, but many failed to recognise the underlying issue or to provide a critical evaluation of the effectiveness of international law in dealing with World Order issues. Most students now understand the importance of including the Core in attempting 3 Unit essays.

Excellent Responses

Throughout these, students emphasised the issue of *state sovereignty*; the introductions to these essays usually included a discussion of that issue, including reference to relevant sections of the UN Charter, Charter 1 Article 1, part 1, and Article 2, part 7. They clearly identified factors such as relative wealth, cultural and ideological differences and degrees of nationalism as those which create the dilemma between *state sovereignty* and an effective international order. These responses referred to the Core when evaluating the effectiveness of legal systems in dealing with World Order issues. Within their chosen options, most began by referring to the actions of the UN and included examples of international treaties, covenants and tribunals where outcomes had been influenced by the issues of state sovereignty (eg Genocide Convention 1948, the War Crimes Tribunal for Bosnia, the Comprehensive Nuclear Test Ban Treaty, problems over weapons inspections in Iraq, the status of landmines and the Ottawa Agreement, treaties on hijacking — the Hague, Tokyo, Montreal, and extradition cases — Skase, Biggs, Dunn). These answers tended to include good, strong, recent examples of relevant incidents showing that the candidate could use and interpret current World Order issues, such as the Bougainville and PNG conflict, the Teoh case and French nuclear testing in the Pacific.

Above-average Responses

As with the excellent responses, candidates identified here the underlying issue of *state sovereignty* and the problems which arise when dealing with World Order issues, but they tended to emphasise them less throughout the body of the essay. These students also identified factors which create the problems and referred to aspects of the UN Charter. Emphasis was placed on the Core and their examination of the options tended to be balanced. There were fewer references to international law or case examples in which the issue of *state sovereignty* had had a negative impact or outcome. These students evaluated most of the aspects of the legal system at national and international levels but they did not place as much emphasis on critical evaluation and their general statements were not always backed with relevant evidence.

Average Responses

Many of the mid-range answers tended to be descriptive and simply related what these candidates knew about World Order, without placing the required emphasis on either the underlying issue or the evaluation of legal systems in dealing with World Order issues. Some of these responses appeared to be prepared responses. At best, students here referred to the issue of *state sovereignty* versus international order in their introduction and tended to make such reference very brief. Most were able to identify the fact that this issue was a problem, but tended to ignore this when discussing or evaluating the effectiveness of the legal systems. They also tended to provide a less balanced coverage of their chosen option and placed less emphasis on the Core topic. The majority did provide some evaluation of the effectiveness of legal systems, but failed to back these with recent examples.

Question 6

The ideal of World Order is pursued through a variety of processes and institutions, including the actions of individuals, government and non-government agencies, nations and the wider international community.

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.

Evaluate the effectiveness of the various processes and institutions involved in striving for the achievement of World Order.

General Comments

This question was attempted by 49% of those who chose this option. The stem of the question gave students clear direction but although they examined actions of government and non-government agencies, nations and the international community, they rarely mentioned the role of individuals in World Order.

The concept of *processes and institutions* was generally understood and examples referred to included:

- the role of the UN and the Security Council in peace-keeping and imposing sanctions;
- the International Court of Justice;
- intergovernmental organisations (IGOs) such as NATO, APEC and Interpol;
- non-governmental organisations (NGOs) such as Red Cross and Amnesty International;
- the media, including its ability to inform and shape opinion;
- UN conventions and other treaties, both bilateral and multilateral;
- diplomatic relations and negotiations.

In evaluating the effectiveness of processes and institutions in striving to achieve World Order, students' responses referred to:

- the lack of political will of member nations of the United Nations;
- the lack of financial resources for the United Nations and its agencies;
- the veto power of the Security Council;
- the difficulty of gaining adherence to international conventions;
- the sovereignty of nations and their desire to be free of outside interference.

The depth studies *Military Conflict*, *International Crime* and *Displaced People* were discussed by equal numbers of students. Very few discussed international and transnational trade.

Excellent Responses

These responses evaluated the effectiveness of the different processes and institutions involved in striving for the achievement of World Order, using the Core and identifying two depth studies as required by the question. In addition, they discussed the stem of the question in their analysis, showing a high level of evaluation and using a variety of relevant examples to support their arguments. In addition most of these candidates obviously possessed excellent knowledge of current events, referring, for example, to:

Military Conflict

- the problems that arose in trying to gain Iraq's cooperation with the United Nations' inspection of weapons;
- the consensus reached at Ottawa on the banning of landmines.

Conventions referred to included:

- Hague Conventions dealing with the treatment of prisoners of war
- Genocide Convention (1948)
- Nuclear Non-Proliferation Treaty
- Strategic Arms Limitation Talks.

International Crime

- problems of extradition of criminals, eg Dolly Dunn, alleged paedophile;
- difficulties in prosecuting war criminals in relation to Rwanda and Bosnia.

Conventions referred to included:

- various conventions on hijacking, including the Tokyo Hijacking Convention (1963)
- Genocide Convention.

Displaced People

- logistical problems in caring for large numbers of displaced persons, eg in Rwanda and Zaïre;
- Australian government internment of some of those illegally seeking refugee status.

Conventions mentioned included:

- Convention Relating to the Status of Refugees (1951)
- International Covenant on Civil and Political Rights (1966)
- the role of the United Nations High Commissioner for Refugees.

Above-average Responses

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

In discussing processes and institutions, some areas of the stem could have been covered in less detail.

These answers were less balanced than the excellent responses, emphasising either only positive aspects of processes and institutions or negative aspects only.

Average Responses

These responses tended to be very descriptive, indicating processes and institutions striving for World Order rather than directly answering the question.

Some relevant information might have been included but there was little evaluation of the effectiveness of processes and institutions involved in striving to achieve World Order.

Section IV

Challenge: Indigenous Peoples

Question 7

There are at least 60 different indigenous peoples in the world and they inhabit all continents. The legal arrangements at international level are as yet unsatisfactory as they focus on individual rather than collective rights.

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

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

Discuss and evaluate the effectiveness of national and international law in defining and protecting the rights of indigenous peoples.

General Comments

This question was attempted by approximately 85% of candidates choosing to answer a question on indigenous peoples.

The quality of responses was generally of a higher standard than those to Question 8. Many candidates lacked skills in interpretation and, as a result, simply wrote all they knew about indigenous peoples rather than dealing with the question. Key terms and concepts such as *individual* and *collective rights*, *effectiveness*, and *national* and *international* responses were not dealt with adequately. Candidates generally wrote long responses that were often repetitive and included much inaccurate detail. Contradiction seemed to be a feature of many answers. For example, candidates would state that a national law was effective, but would then provide examples which suggested the opposite. While the majority of candidates achieved a balance between the Core and the selected depth studies, the same could not be said for their treatment of the effectiveness of the law and the inclusion of content. The majority presented examples of case studies of different indigenous groups, but there needed to be more emphasis on the effectiveness of legal responses to the rights of such groups.

Excellent Responses

These responses were generally well written and contained substantial material relating to both the Core and depth studies. Their distinguishing feature was the fact that the evaluation of the effectiveness of national and international responses in protecting the rights of indigenous peoples was their principal focus. The content was the vehicle for achieving this end.

The use of national and international case studies of indigenous peoples on which to build logical and cohesive arguments that were first included in extensive introductions was also a key feature of excellent responses. Such responses compared, contrasted and reached educated conclusions about the future of the different case study groups they considered — eg ATSI, Maoris, Inuit and others. In only the very best responses did they also provide or suggest possible legal initiatives which could lead to greater justice for indigenous peoples.

The distinction between individual rights and collective rights was dealt with appropriately and related to the issue of effectiveness throughout superior responses.

Above-average Responses

These responses clearly identified two specific depth studies and defined relevant terms such as *individual* and *collective rights*. They also drew on the Core and referred to the stimulus material. The information provided in relation to each depth study was accurate, relevant and comprehensive. The range of examples from the case studies used to support the national and international responses was not as comprehensive nor as analytical as that found in excellent responses. Whilst attempts were made to evaluate the responsiveness of national and international law to the rights of indigenous peoples, there appeared to be a lack of balance, so that either both the national and international responses were discussed only briefly or the national response was treated comprehensively to the detriment of the international response. Conclusions drawn from one depth study were not successfully linked to the other.

Average Responses

The two depth studies were usually written at the top of these responses but they were not related to the Core. Introductions included a range of information from the depth study and the Core but the relationship to the question was often tenuous. The distinction between individual and collective laws for the protection of the rights of indigenous peoples was not clearly spelt out. These responses had limited evaluation of the effectiveness of international law. They tended to concentrate on one depth study and provided few case studies and examples in support of their key arguments. There was limited discussion of the Core. Average responses tended to list relevant content — eg ILO Convention 169, the Rio Declaration, ATSIC, the 1967 Referendum and Section 51(26) of the Commonwealth Constitution 1901. Such information was rarely evaluated in terms of international and national initiatives. Comparisons between various groups of indigenous peoples tended to be more descriptive and little was provided by way of contrasting the achievements of various groups at national and international levels.

Question 8

The displacement of indigenous peoples is usually the result of an invasion of their territory by an ethnically and culturally different group. The invader is able to establish sufficient control over the territory and society to suppress the indigenous culture and history and to impose a new legal system. The *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights* contains as Article 1 a declaration that ‘all people may freely determine their political status and freely pursue their economic, social and cultural development’.

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 global approaches are relevant for indigenous peoples?

Evaluate the extent to which national and international law responds to the rights of indigenous peoples to determine their own culture, history and society.

General Comments

This was the less popular of the two questions in this module and, generally, candidates made little reference to the question asked on the relevant global approaches. They experienced difficulty in relating the Core and particularly their specific depth studies to Indigenous Peoples’ (IP) rights to determine their own culture, history and society. This resulted in two types of response, one of which was very general, with some discussion but little information from the depth studies and which also relied heavily on the Core content. The other type of response listed a great deal of information, but failed to relate it to the question asked. Candidates using the Historic Debt depth study experienced the greatest difficulty in relating their knowledge of the topic to the question, eg whilst the conflict in Bougainville was described, students rarely indicated how such information related to the extent to which international law responds or fails to respond to the rights of indigenous peoples to determine their own culture, history and society. Some of the candidates appeared to have little knowledge of international law and the 3 Unit course, but rather covered material only from the 2 Unit Aboriginal and Torres Strait Islander case study and attempted to make this relevant to the question.

Above-average Responses

These responses discussed culture, historical and societal issues, but only in very general terms. Global approaches were discussed quite effectively and some comparisons with national responses were included. There was appropriate use of legislation and the inadequacies of national and international responses were discussed.

Average Responses

These responses often gave brief definitions of depth study terms, were superficial, lacking both precision and detailed knowledge of the issue and relevant legislation. Candidates referred to the stimulus material only briefly and without a very clear understanding of its relevance to the main question.

Acknowledgements

3 Unit

- Q1 Extract: 'Under current international law ...', an extract from 'The failure of international environmental law', P Taylor, *Our Planet* Vol 4 No 3 1992, the UN Environment Programme.
- Q2 Extract: 'Environmental law is concerned ...', 'The Environmental Law Handbook', 2nd ed D Farrier, RLCP.
- Q3 Extract: 'With only a few years until ...', SMH February 1997.
- Q4 Extract: 'With the coming of any brave new world ...', 'Legal issues & Technology', A Riches, CCH 1990.
- Q5 Extract: 'There is no universal definition ...', 'Challenges to law', M White & L Devine, CCH, 1995 p134.
- Q7 Extract: 'There are at least ...', 'Human rights – Australia in an International Context', P Bailey, Butterworths 1990.
- Q8 Extract: 'The displacement of indigenous peoples ...', 'Researching Indigenous Peoples' Rights under International Law', S Perkins, 1992.

2/3 Unit

- Q21 Extract: 'Consumers will never be ...', courtesy the author.
- Q23 Extract: 'Many of the environmental ...', 'Our country, our future', AGPS July 1989 RJJ Hawke p10. Commonwealth of Australia copyright reproduced by permission.
- Q24 Extract: 'Conservationists are destined ...', 'Places worth keeping ...', Tim Bonyhady, Allen & Unwin 1993 p146.
- Q25 Extract: Cartoon: 'The Fairytale', Reproduced with permission from the Alternative Law Journal (1996) Vol. 21, p215 and Ms Tonia Walden.
- Q29 Extract: 'Employers should devote ...', permission the author.
- Q31 Extract: 'An Aboriginal juvenile is 21 times ...', courtesy Marlene Goldsmith MLC.
- Q32 Extract: 'Colonisation meant ...' (adapted), 'Indigenous People and the Law in Australia', C Cuneen & T Libesman, Butterworths, 1995.
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- Q38 Extract: 'Mental health law serves ...', 'Mental health law', B Haggett, Sweet & Maxwell 1990 p1.