

# Legal Studies 2019 v1.1

IA1 high-level annotated sample response

October 2018

## Examination — combination response (25%)

This sample has been compiled by the QCAA to assist and support teachers to match evidence in student responses to the characteristics described in the instrument-specific marking guide (ISMG).

### Assessment objectives

This assessment instrument is used to determine student achievement in the following objectives:

1. comprehend legal concepts, principles and processes of Australian and Queensland governance
3. analyse a legal issue involving Australian and/or Queensland governance
4. evaluate a legal situation relevant to Australian and/or Queensland governance.

**Note:** Objectives 2 and 5 are not assessed in this instrument.

# Instrument-specific marking guide (ISMG)

## Criterion: Part A — Comprehending

### Assessment objective

1. comprehend legal concepts, principles and processes of Australian and Queensland governance

The student work has the following characteristics:	Marks
<ul style="list-style-type: none"> <li>• accurate and detailed identification of the essential features of Australian and Queensland governance</li> <li>• thorough explanation of legal concepts, principles and processes of Australian and Queensland governance</li> <li>• precise use of legal terminology.</li> </ul>	9–10
<ul style="list-style-type: none"> <li>• effective identification of the essential features of Australian and Queensland governance</li> <li>• effective explanation of concepts, principles and processes of Australian and Queensland governance</li> <li>• effective use of legal terminology.</li> </ul>	7–8
<ul style="list-style-type: none"> <li>• adequate identification of the features of Australian and Queensland governance</li> <li>• adequate explanation of legal concepts, principles and processes of Australian and Queensland governance</li> <li>• adequate use of legal terminology.</li> </ul>	5–6
<ul style="list-style-type: none"> <li>• partial identification of features of Australian and Queensland governance</li> <li>• partial description of concepts, principles and processes of Australian and/or Queensland governance</li> <li>• narrow use of legal terminology.</li> </ul>	3–4
<ul style="list-style-type: none"> <li>• identification of aspects of governance</li> <li>• identification of aspects of concepts, principles or processes of governance</li> <li>• inconsistent or unclear use of terminology.</li> </ul>	1–2
<ul style="list-style-type: none"> <li>• does not satisfy any of the descriptors above.</li> </ul>	0

## Criterion: Part B — Analysing

### Assessment objectives

3. analyse a legal issue involving Australian and/or Queensland governance

The student work has the following characteristics:	Marks
<ul style="list-style-type: none"> <li>perceptive application of legal concepts, principles and/or processes to determine the nature and scope of a legal issue involving Australian and/or Queensland governance</li> <li>interpretation of legal information to perceptively examine different viewpoints and their consequences</li> <li>discerning use of evidence to support the analysis.</li> </ul>	7–8
<ul style="list-style-type: none"> <li>effective application of legal concepts, principles and/or processes to determine the nature and scope of a legal issue involving Australian and/or Queensland governance</li> <li>interpretation of legal information to effectively examine different viewpoints and their consequences</li> <li>effective use of evidence to support the analysis.</li> </ul>	5–6
<ul style="list-style-type: none"> <li>adequate application of some legal concepts, principles and/or processes to determine the nature and scope of a legal issue involving Australian and/or Queensland governance</li> <li>interpretation of legal information to adequately examine viewpoints and their consequences</li> <li>sufficient use of evidence in the analysis.</li> </ul>	3–4
<ul style="list-style-type: none"> <li>description of the nature and/or scope of the issue</li> <li>identification of viewpoints and/or consequences</li> <li>narrow use of evidence.</li> </ul>	1–2
<ul style="list-style-type: none"> <li>does not satisfy any of the descriptors above.</li> </ul>	0

## Criterion: Part B — Evaluating

### Assessment objectives

4. evaluate a legal situation relevant to Australian and/or Queensland governance

The student work has the following characteristics:	Marks
<ul style="list-style-type: none"> <li>relevant legal alternatives presented leading to an insightful decision</li> <li>justification of the decision through the discerning use of legal criteria</li> <li>fluent discussion of relevant implications of the decision.</li> </ul>	6–7
<ul style="list-style-type: none"> <li>relevant legal alternatives presented leading to an effective decision</li> <li>justification of the decision through the effective use of legal criteria</li> <li>discussion of relevant implications of the decision.</li> </ul>	4–5
<ul style="list-style-type: none"> <li>alternatives presented and/or decision</li> <li>some justification of the decision</li> <li>discussion identifies some implications.</li> </ul>	2–3
<ul style="list-style-type: none"> <li>superficial alternatives and/or a decision or narrow discussion based on personal opinions.</li> </ul>	1
<ul style="list-style-type: none"> <li>does not satisfy any of the descriptors above.</li> </ul>	0

# Task

See the sample assessment instrument for IA1: Examination — combination response (25%) (available on the QCAA Portal).

## Sample response

Criterion	Marks allocated	Result
<b>Part A — Comprehending</b> Assessment objective 1	10	10
<b>Part B — Analysing</b> Assessment objective 3	8	8
<b>Part B — Evaluating</b> Assessment objective 4	7	7
<b>Total</b>	<b>25</b>	<b>25</b>

The annotations show the match to the instrument-specific marking guide (ISMG) performance-level descriptors.

<p><b>Comprehending [9–10]</b></p> <p><b>accurate and detailed identification of the essential features of Australian governance</b></p> <p>correctly identifies relevant sections of the Australian Constitution, and details of the parliament and people (double majority)</p> <p>appropriate review (others could have been chosen), with two appropriate improvements noted, extended by links to efficiency and fairness</p> <p><b>thorough explanation of legal concepts, principles and processes of Australian governance</b></p> <p>legal concept of liability and legal processes to effect a change in Australian legislation</p>	<h2>Part A</h2> <h3>Question 1 (50 words)</h3> <p>Section 44(i) of the Australian Constitution requires amendment. Section 128 of the AC requires a referendum, needing the support of both the Parliament (House of Representatives and Senate), and the people, in a double majority being a national majority of electors and a majority in at least four states.</p> <h3>Question 2 (50 words)</h3> <p>After a review of efficacy of the federal courts, the Family Court of Australia and the Federal Circuit Court of Australia are to be merged. Legal outcomes would be improved by resolving disputes faster for parties and enabling greater consistency in dispute resolutions, making justice more efficient and legal processes fairer.</p> <h3>Question 3 (100 words)</h3> <p>The case involves liability for digital copyright with file-sharing technology. The High Court found that Internet Service Providers (ISPs) are not liable for their customers' copyright breaches using their internet service, given existing legislation. This did not solve the legal problem of online piracy, where creative endeavours are 'stolen' and profits are diverted from the legal owners. Consequently, the television and film industry advocated for legislation that resulted in the Copyright Amendment (Online Infringement) Act (2015). This allows content owners to apply to the Federal Court of Australia requiring ISP's to take 'reasonable steps' to disable access to foreign piracy-related websites.</p>
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**Comprehending  
[9–10]**

**accurate and detailed identification of the essential features of Australian governance**

essential features of concurrent, exclusive and residual powers

**thorough explanation of legal concepts, principles and processes of Australian governance**

division of powers and processes in the event of an inconsistency in state and federal laws

**thorough explanation of legal concepts, principles and processes of Australian governance**

reasoning about laws reflecting common values (advantage) is thorough and explicit

legal concept of the separation of powers / Westminster model (disadvantage) is thoroughly explained

**accurate and detailed identification of the essential features of Australian and Queensland governance**

essential features: confidence and supply agreements, and their implications for Australian and Queensland governance

**Analysing [7–8]**

**perceptive application of legal concepts**

perceptively applies concept of representative government to determine the issue's nature (lack of female diversity) and scope (in two-party political systems)

**Question 4 (100 words)**

Section 51 identifies legislative powers that are shared by the federal and state governments, called concurrent powers. Other legislative powers are exclusive (only exercised by the federal parliament) and others are residual (state only) – collectively called the division of powers. State and federal legislation can co-exist in an area of concurrent power. However, s109 provides that when concurrent federal and state laws conflict, federal law prevails and any inconsistency in state law can be struck down. If a state considers that federal law oversteps the s51 power, they can take the Commonwealth to the High Court for a ruling.

**Question 5 (100 words)**

Unicameral governments with only one house of parliament have the advantage of less bureaucracy, particularly for issues where Queensland citizens have similar interests, e.g. laws regarding commodity rights. A single house is more efficient because it enables the faster passage of laws, with less opportunity for bills caught between an upper and lower house.

A disadvantage of unicameral government is it removes the House of Review of government decisions. This can be problematic for the Westminster model that Australia follows, where the Executive forms part of the Legislature. Without review, the Executive's power can be unbalanced and the separation of powers can be weakened.

**Question 6 (100 words)**

A confidence and supply agreement allows a minority party to form a majority in Queensland or Australian parliament with support from small parties or independents. The purpose of 'confidence' gives the government the ability to win against any parliamentary motions of no confidence. 'Supply' means voting only for supply of money for the government's budget, to allow the parliament to pay public servants such as the law and order system, public schools and hospitals. In all other legislation, these independents have no obligation to vote with the government, creating difficulties for the government, and giving independents some power to influence laws passed.

**Part B**

**Question 1 (400–500 words)**

The legal issue of representativeness is a concern for governance of Australian laws. The data in Source 6 demonstrates parliament in Australia has less women representatives, with 30% and 40% representation in the upper and Lower House respectively. The lack of diversity is replicated in less of members of parliament who are from non-English speaking backgrounds, 6% compared to 23% nationally. The focus of this response is on the representation of women, as they present half of all citizens in Australia. The legal problem of lack of diversity is connected with Australia's two-party political system, as evidenced by the majority of power in the Lower House and significant power in the Upper House (Source 5).

### Analysing [7–8]

#### **interpretation of legal information to perceptively examine different viewpoints and their consequences**

examines viewpoint that candidature preselection is cause; provides evidence in terms of details and facts (e.g. if the less diverse political party is in government)

examines viewpoint that two-party system, and consequences of crossing the floor, is cause; provides evidence (the oath of allegiance) to support statements

#### **discerning use of evidence to support the analysis**

### Evaluating [6–7]

#### **relevant legal alternatives presented leading to an insightful decision**

two alternatives used to lead to the astute decision in the last paragraph

#### **justification of the decision through the discerning use of criteria**

#### **fluent discussion of relevant implications of the decision**

criteria used to interrogate each alternative; implications of each alternative fluently discussed

#### **relevant legal alternatives presented leading to an insightful decision**

#### **justification of the decision through the discerning use of criteria**

#### **fluent discussion of relevant implications of the decision**

further fluent discussion of positive discrimination's implications

One viewpoint of the lack of diversity problem is that candidature preselection is the cause, as the party system controls who is preselected (Source 7). Candidates preselected that are not diverse means the parliament itself has less opportunity to mirror Australia's diversity. This results in limited viewpoints represented during Bills debates, interrogation of ministerial decisions and items which primarily impact women. Members of parliament (MPs) and senators have no obligation to promote the interests of their electorate (Source 4), and consequently 'party politics' can undermine representative government, particularly when the political party without appropriate diversity is in government.

A second viewpoint is that the two-party system itself that impedes representativeness where MPs blindly follow or support party policies despite electorate, state or personal interests (Source 3). Consequently, it is less important how diverse the party is, if members who 'cross-the-floor' to vote against their party often face retaliation. Similarly, the party machinery can change who is PM, rather than the voters. As a result, party decisions are arguably privileged over the views of individual electorates or state interests. These party-orientated perspectives imposed on parliamentarians by their parties are possible as the oath that they take which only requires allegiance to the Queen (Source 4), rather than national or local interests.

One alternative is to amend the oath of allegiance (Source 4) to refocus MPs attention toward their gender equal electorates and therefore achieve a greater diversity and representativeness. However, this would require a referendum to amend the Constitution, which is historically difficult to achieve given the absolute and double majority thresholds. Further, it may not reduce party influence in practice, and policing an oath to uphold local interests would have obvious legal difficulties. On the other hand, an alternative to implement quota arrangements (Source 7) as a solution to preselection barriers, could ensure that more women survive the preselection process. However, this could lead to unjust or discriminatory outcomes when the highest merit candidate locally does not 'fit' the quota.

The evaluation concludes that while both alternatives have the potential to increase the representativeness of women in parliament, a decision to introduce a female quota for preselection can achieve just and equitable outcomes in a more efficient legal manner than one that requires a referendum. This situation involves positive discrimination, a special measure to achieve equality of opportunity is not against federal discrimination laws, and would result in an improvement in diversity of future parliaments.