

Legal Studies marking guide

External assessment

Combination response (34 marks)

Assessment objectives

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

1. comprehend legal concepts, principles and processes of Australian human rights laws
3. analyse a legal issue involving human rights in Australia
4. evaluate a legal situation relevant to human rights in Australia.

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

Purpose

This document is an External assessment marking guide (EAMG).

The EAMG:

- Provides a tool for calibrating external assessment markers to ensure reliability of results
- Indicates the correlation, for each question, between mark allocation and qualities at each level of the mark range
- Informs schools and students about how marks are matched to qualities in student responses.

Mark allocation

Where a response does not meet any of the descriptors for a question or a criterion, a mark of '0' will be recorded. Where no response to a question has been made, a mark of 'N' will be recorded.

External assessment marking guide (EAMG)

Short response

Q	Sample response	The response:	M
1	Ratification is the action by which a State indicates its consent to be bound by an international treaty. It grants States the time necessary to seek approval for the treaty on the domestic level and to enact legislation, if needed, to give domestic effect to treaty obligations.	<ul style="list-style-type: none"> correctly defines ratification correctly describes the purpose of ratification 	2
		<ul style="list-style-type: none"> correctly defines ratification <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> correctly describes the purpose of ratification 	1
		<ul style="list-style-type: none"> does not satisfy any of the descriptors above. 	0
2	The right to trial by jury is an express right within s 80 of the Australian Constitution, which states 'the trial on indictment of any offence against the Commonwealth shall be by jury'. This appears to be a strong protection for those charged with indictable offences as the Constitution cannot be easily altered, however, there are two limitations to this section. Firstly, it only applies to indictable offences, meaning persons charged with summary offences are not entitled to this right. Secondly, the Commonwealth Parliament can determine what is an indictable offence. This means it can re-categorise offences, such as terrorism. These	<ul style="list-style-type: none"> states the right to trial by jury is an 'express right' states 2 limitations of the right to trial by jury provides a full explanation of both limitations and their impact on this right 	5
		<ul style="list-style-type: none"> states the right to trial by jury is an 'express right' states 2 limitations of the right to trial by jury provides an explanation of both limitations and their impact on this right 	4
		<ul style="list-style-type: none"> states 2 limitations of the right to trial by jury provides an explanation of both limitations and their impact on this right 	3
		<ul style="list-style-type: none"> states 2 limitations of the right to trial by jury provides an explanation of 1 limitation <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> states the right to trial by jury is an 'express right' states 1 limitation of the right to trial by jury 	2

Q	Sample response	The response:	M
	limitations render s 80 less effective by restricting a person's right to a jury trial. Clearly, the right to trial by jury is not a right that is fully protected even by the Constitution.	<ul style="list-style-type: none"> states 1 limitation of the right to trial by jury does not satisfy any of the descriptors above. 	<p>1</p> <p>0</p>
3	The federal government's power to legislate in response to human rights issues is strengthened and weakened by the Constitution. The Constitution divides the power to make laws between the states and the Commonwealth, identifying the areas to which this power extends for each level of government. As it does not mention human rights issues and any issue not mentioned could be deemed to fall under the category of residual powers — power to make laws relating to areas not specifically mentioned in the Constitution — held by the states, the federal government's power to make laws with respect to human rights issues could be described as non-existent. In contrast, s 51(xxix) provides that the federal government has the power to legislate with respect to 'external affairs'. The High Court of Australia has interpreted this to include the power to pass laws giving effect to Australia's obligations under international treaties and conventions, including those	<ul style="list-style-type: none"> provides a valid and detailed explanation of <ul style="list-style-type: none"> how the Constitution weakens the power of the federal government to legislate in response to human rights issues how the Constitution strengthens the power of the federal government to legislate in response to human rights issues refers to 2 relevant sections of the Constitution 	5
		<ul style="list-style-type: none"> provides an explanation of <ul style="list-style-type: none"> how the Constitution weakens the power of the federal government to legislate in response to human rights issues how the Constitution strengthens the power of the federal government to legislate in response to human rights issues refers to 2 relevant sections of the Constitution 	4
		<ul style="list-style-type: none"> provides an explanation of how the Constitution weakens the power of the federal government to legislate in response to human rights issues refers to 2 relevant sections of the Constitution <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> provides an explanation of how 1 identified section strengthens the power of the federal government to legislate in response to human rights issues refers to 2 relevant sections of the Constitution <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> provides an explanation of how the Constitution <ul style="list-style-type: none"> weakens the power of the federal government to 	3

Q	Sample response	The response:	M
	relating to human rights such as the Convention on the Rights of the Child. This strengthens the power of the federal government to make laws regarding human rights issues.	<ul style="list-style-type: none"> legislate in response to human rights issues <ul style="list-style-type: none"> – strengthens the power of the federal government to legislate in response to human rights issues • refers to 1 relevant section of the Constitution 	1
		<ul style="list-style-type: none"> • describes how the Constitution impacts the federal government’s power to legislate in response to human rights issues • refers to 1 relevant section of the Constitution 	2
		<ul style="list-style-type: none"> • states 1 relevant section of the Constitution 	1
		<ul style="list-style-type: none"> • does not satisfy any of the descriptors above. 	0
4	The purpose of royal commissions is to provide advice or investigate an issue, through research and community input. They hear witnesses under oath, collect evidence and offer protection to people who co-operate. Ultimately, they hold people accountable for doing the wrong thing by law. They are powerful in addressing human rights issues through awareness-raising, leading to changes in the law and prosecution of wrongdoers. However, their recommendations are non-binding, which can impact their effectiveness. This was evidenced in the Royal Commission into the Detention	<ul style="list-style-type: none"> • provides <ul style="list-style-type: none"> – a correct description of the purpose of RCs – a detailed explanation of the effectiveness of RCs in protecting human rights in Australia • supports explanation with a relevant RC 	4
		<ul style="list-style-type: none"> • provides <ul style="list-style-type: none"> – a correct description of the purpose of RCs – an explanation of the effectiveness of RCs in protecting human rights in Australia • identifies a relevant RC • 	3
		<ul style="list-style-type: none"> • provides <ul style="list-style-type: none"> – a description of the purpose of RCs – a description of RCs in protecting human rights in Australia 	2

Q	Sample response	The response:	M
	<p>and Protection of Children in the Northern Territory. This royal commission raised public awareness of issues relating to juvenile detention and led to changes in the juvenile justice system including increasing diversionary approaches to youth justice. However, because its recommendations are non-binding, it did not lead to the raising of the minimum age of criminal responsibility or to prosecution of those who violated the rights of the inmates of the Don Dale Youth Detention Centre.</p>	<ul style="list-style-type: none"> • provides a description of the purpose of RCs <li style="text-align: center;">OR • identifies a relevant RC <li style="text-align: center;">OR • defines RC 	1
		<ul style="list-style-type: none"> • does not satisfy any of the descriptors above. 	0

Extended response — Question 5

The response, for 1 viewpoint:	M	The response, for another viewpoint:	M
<ul style="list-style-type: none"> identifies a valid viewpoint linked to the nature and scope of the legal issue provides an accurate and detailed explanation of the identified viewpoint and its consequence/s that is <ul style="list-style-type: none"> based on credible evidence supported by information from the stimulus 	6	<ul style="list-style-type: none"> identifies another valid viewpoint linked to the nature and scope of the legal issue provides an accurate and detailed explanation of the identified viewpoint and its consequence/s that is <ul style="list-style-type: none"> based on credible evidence supported by information from the stimulus 	6
<ul style="list-style-type: none"> identifies a valid viewpoint linked to the nature and scope of the legal issue provides an explanation of the identified viewpoint and its consequence/s that is <ul style="list-style-type: none"> based on credible evidence supported by information from the stimulus 	5	<ul style="list-style-type: none"> identifies another valid viewpoint linked to nature and scope of the legal issue provides an explanation of the identified viewpoint and its consequences that is <ul style="list-style-type: none"> based on credible evidence supported by information from the stimulus 	5
<ul style="list-style-type: none"> identifies a valid viewpoint linked to the nature and scope of the legal issue explains the identified viewpoint and its consequence/s using credible evidence 	4	<ul style="list-style-type: none"> identifies another valid viewpoint linked to the nature and scope of the legal issue explains the identified viewpoint and its consequence/s using credible evidence 	4
<ul style="list-style-type: none"> identifies a valid viewpoint related to a description of the nature and scope of the legal issue describes the identified viewpoint with support 	3	<ul style="list-style-type: none"> identifies another valid viewpoint related to the nature and scope of the legal issue describes the identified viewpoint with support 	3
<ul style="list-style-type: none"> identifies a viewpoint related to the legal issue describes the identified viewpoint 	2	<ul style="list-style-type: none"> identifies another viewpoint related to the legal issue describes the identified viewpoint 	2
<ul style="list-style-type: none"> states a viewpoint related to the legal issue 	1	<ul style="list-style-type: none"> states another viewpoint related to the legal issue 	1
<ul style="list-style-type: none"> does not satisfy any of the descriptors above. 	0	<ul style="list-style-type: none"> does not satisfy any of the descriptors above. 	0

The response:	M
<ul style="list-style-type: none"> • provides an insightful decision about the extent to which the DDA protects the human rights of people who use service animals that <ul style="list-style-type: none"> – is clearly linked to the relevant legal alternatives presented from the analysis of both viewpoints – is supported by discerning use of relevant legal criteria – discusses plausible implication/s of the decision 	6
<ul style="list-style-type: none"> • provides an appropriate decision about the extent to which the DDA protects the human rights of people who use service animals that <ul style="list-style-type: none"> – is linked to the relevant legal alternatives presented from the analysis of both viewpoints – is supported by use of relevant legal criteria – discusses plausible implication/s of the decision 	5
<ul style="list-style-type: none"> • provides a decision about the extent to which the DDA protects the human rights of people who use service animals that <ul style="list-style-type: none"> – is linked to legal alternatives presented from the analysis of 1 viewpoint – refers to relevant legal criteria – discusses plausible implication/s of the decision 	4
<ul style="list-style-type: none"> • provides a decision about the extent to which the DDA protects the human rights of people who use service animals that <ul style="list-style-type: none"> – is linked to a legal alternative or the analysis – refers to legal criteria – states an implication of the decision 	3
<ul style="list-style-type: none"> • provides a decision about the extent to which the DDA protects the human rights of people who use service animals that is linked to the analysis 	2
<ul style="list-style-type: none"> • makes a statement about the DDA or service animals 	1
<ul style="list-style-type: none"> • does not satisfy any of the descriptors above. 	0