External assessment 2022

Stimulus book

Legal Studies

General instruction

- Work in this book will not be marked.

Queensland Government | QCAA Queensland Curriculum & Assessment Authority

Stimulus 1

Excerpt from the International Covenant on Civil and Political Rights [ICCPR] 1966

Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
   a. For respect of the rights or reputations of others;
   b. For the protection of national security or of public order … or of public health or morals.

Stimulus 2

Excerpt from Australian Law Reform Commission Report 129 — Traditional Rights and Freedoms — Encroachments by Commonwealth Laws, 2016

Redacted excerpts are from section 4.16, 4.30, 4.32, 4.47 of the source text. Australian Law Reform Commission 2016, Traditional Rights and Freedoms — Encroachments by Commonwealth Laws, Report 129, www.alrc.gov.au/wp-content/uploads/2019/08/fr_129ch_4._freedom_of_speech.pdf.

Stimulus 3

Excerpt from journal article, 2007

In a joint judgment in that case[2] in 1997 the High Court argued that the Constitution protects 'that freedom of communication between the people concerning political or government matters which enables the people to exercise a free and informed choice as electors'. The High Court went on to state that the freedom was not an unrestricted one, and that it could be limited in certain circumstances by laws that were 'reasonably appropriate and adapted to achieving [a] legitimate object or end'.

…

[We] have witnessed increasing encroachments on freedom of speech. Anti-terrorism measures have curtailed speech in some ways. Anti-vilification measures[3] are now more widespread than they were in 2000, and it appears that threats of defamation suits are now stifling community activism more than in previous times.

Stimulus 4

Excerpt from French CJ in *Monis v The Queen* (2013) 249 CLR 92, [60]

Excerpt from French, CJ 2013, Monis v The Queen [2013] HCA 4, High Court of Australia, www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2013/4.html?context=1;query=monis%20v%20the%20queen;mask_path=.

2 *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520

3 measures protecting people against public acts inciting hatred based on race, religion, sexuality or gender identity

Stimulus 5

Excerpt from online article

***Coleman v Australia*, HRC, Communication No 1157/2003, UN Doc CCPR/C/87/D/1157/2003 (10 August 2006)**

In a decision with important ramifications for the human rights obligations of federal, state and local governments and officials, the UN Human Rights Committee ('Committee') has concluded that the application of a Queensland law and a Townsville bylaw impermissibly restricted the complainant's right to freedom of expression, placing Australia in breach of its obligations under the *ICCPR*.

The complainant, Patrick Coleman, was charged, convicted and fined under *Townsville City Council Local Law No 39* for 'taking part in a public address in a pedestrian mall without a permit' and s 120(1) of the *Police Powers and Responsibilities Act 1997* (Qld) for obstructing police. The charges related to two public addresses delivered by Mr Coleman in 1998 and 1999 in a pedestrian mall on issues such as bills of rights, land rights and freedom of speech. The content and delivery of the addresses was not threatening or unduly disruptive. Mr Coleman did not, however, obtain a permit for either address and refused to voluntarily accompany police when he was charged with this offence. Mr Coleman was initially convicted in the Magistrates' Court and this conviction was subsequently upheld by the Supreme Court of Queensland and the Queensland Court of Appeal. Leave to appeal to the High Court was denied. In late 1999, Mr Coleman was imprisoned for five days for non-payment of the fine.

Stimulus 6

Excerpt from journal article, 2007

Most countries are able to point to constitutional or legislative bills of rights, which enable them to show how human rights are nationally promulgated[4] and protected (albeit to differing degrees) by domestic law. Without a national bill of rights, Australia is more compromised than most countries when it comes to ensuring that all levels of government abide by international agreements.

Two Australian jurisdictions — the Australian Capital Territory and Victoria[5] — now have bills of rights which protect freedom of expression. A standard criticism of these sorts of bills of rights is that, as mere Acts of Parliament, they can easily be overridden by the legislatures that enacted them.

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4 declared publicly

5 Queensland introduced a *Human Rights Act* in 2019

Stimulus 7

Excerpt from Lord Steyn in *Regina v Secretary of State for the Home Department Ex Parte Simms (A.P.) Secretary of State for the Home Department Ex Parte O'Brien (Consolidated Appeals)* [House of Lords 1998–99]

[Freedom] of speech is the lifeblood of democracy. The free flow of information and ideas informs political debate. It is a safety valve: people are more ready to accept decisions that go against them if they can in principle seek to influence them. It acts as a brake on the abuse of power by public officials. It facilitates the exposure of errors in the governance and administration of justice of the country …

Stimulus 8

Excerpt from online article, 2019

A charter [of rights] is not a sole solution. Many nations that abuse human rights have one. But under Australian law, a charter would give greater power to the courts to ensure that common law freedoms were respected.

…

A charter is a check on government power that is vital to contemporary democracy.

Stimulus 9

Excerpt from online article, 2019

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References

Stimulus 1

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Stimulus 2

Australian Law Reform Commission 2016, *Traditional Rights and Freedoms — Encroachments by Commonwealth Laws*, Report 129, www.alrc.gov.au/wp-content/uploads/2019/08/fr_129ch_4._freedom_of_speech.pdf.

Stimulus 3

Excerpt from Chesterman, J 2007, 'The "Delicate Plant" of Free Speech Needs Water: Coleman v Australia', *Alternative Law Journal*, vol. 32, no. 1, pp. 4–7, http://classic.austlii.edu.au/au/journals/AltLawJl/2007/2.html.

Stimulus 4

Excerpt from French, CJ 2013, *Monis v The Queen* [2013] HCA 4, High Court of Australia, www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2013/4.html?context=1;query=monis%20v%20the%20queen;mask_path=.

Stimulus 5

Excerpt from Human Rights Law Centre 2006, *UN Human Rights Committee Finds Australia in Breach of Right to Freedom of Expression; Comments of obligations of States and Territories*, www.hrlc.org.au/human-rights-case-summaries/coleman-v-australia-hrc-communication-no-11572003-un-doc-ccprc87d11572003-10-august-2006.

Stimulus 6

Excerpt from Chesterman, J 2007, 'The "Delicate Plant" of Free Speech Needs Water: Coleman v Australia', *Alternative Law Journal*, vol. 32, no. 1, pp. 4–7, http://classic.austlii.edu.au/au/journals/AltLawJl/2007/2.html.

Stimulus 7

Excerpt from House of Lords 1999, *Judgments — Regina v. Secretary of State for the Home Department Ex Parte Simms (A.P.) Secretary of State for the Home Department Ex Parte O'Brien (Consolidated Appeals)*, https://publications.parliament.uk/pa/ld199899/ldjudgmt/jd990708/obrien01.htm. Licensed under the Open Parliament Licence v3.0.

Stimulus 8

Excerpts from Trigg, G 2019, 'Why an Australian Charter of Rights is a Matter of National Urgency', *The Conversation*, 13 August, https://theconversation.com/why-an-australian-charter-of-rights-is-a-matter-of-national-urgency-121411. Licensed under Creative Commons Attribution NoDerivatives (CC BY-ND 4.0) licence.

Stimulus 9

Excerpts from Forsyth, A 2019, 'Will the High Court Ruling on Public Servant's Tweets have a 'Powerful Chill' on Free Speech?', *The Conversation*, 7 August, https://theconversation.com/will-the-high-court-ruling-on-public-servants-tweets-have-a-powerful-chill-on-free-speech-121556.