

Legal Studies subject report

2022 cohort

February 2023



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Introduction

Throughout 2022, schools and the QCAA worked together to further consolidate the new Queensland Certificate of Education (QCE) system. The familiar challenges of flood disruption and pandemic restrictions were managed, and the system continued to mature regardless.

We have now accumulated three years of assessment information, and our growing experience of the new system is helping us to deliver more authentic learning experiences for students. An independent evaluation will commence in 2023 so that we can better understand how well the system is achieving its goals and, as required, make strategic improvements. The subject reports are a good example of what is available for the evaluators to use in their research.

This report analyses the summative assessment cycle for the past year — from endorsing internal assessment instruments to confirming internal assessment marks, and marking external assessment. It also gives readers information about:

- how schools have applied syllabus objectives in the design and marking of internal assessments
- how syllabus objectives have been applied in the marking of external assessments
- patterns of student achievement.

The report promotes continuous improvement by:

- identifying effective practices in the design and marking of valid, accessible and reliable assessments
- recommending where and how to enhance the design and marking of valid, accessible and reliable assessment instruments
- providing examples, including those that demonstrate best practice.

Schools are encouraged to reflect on the effective practices identified for each assessment, consider the recommendations to strengthen assessment design and explore the authentic student work samples provided.

Audience and use

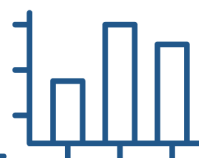
This report should be read by school leaders, subject leaders and teachers to:

- inform teaching and learning and assessment preparation
- assist in assessment design practice
- assist in making assessment decisions
- help prepare students for external assessment.

The report is publicly available to promote transparency and accountability. Students, parents, community members and other education stakeholders can use it to learn about the assessment practices and outcomes for General subjects (including alternative sequences (AS) and Senior External Examination (SEE) subjects, where relevant) and General (Extension) subjects.

Report preparation

The report includes analyses of data and other information from endorsement, confirmation and external assessment processes. It also includes advice from the chief confirmer, chief endorser and chief marker, developed in consultation with and support from QCAA subject matter experts.



Subject completion

The following data includes students who completed the General subject or AS.

Note: All data is correct as at 31 January 2023. Where percentages are provided, these are rounded to two decimal places and, therefore, may not add up to 100%.

Number of schools that offered the subject: 325.

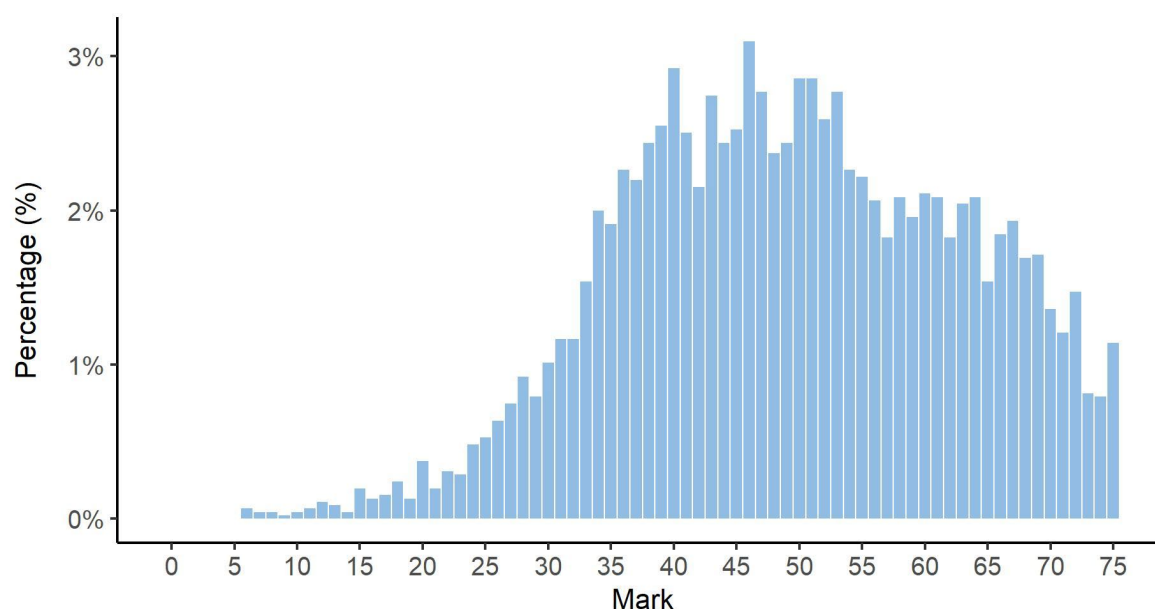
Completion of units	Unit 1	Unit 2	Units 3 and 4
Number of students completed	6050	5378	4507

Units 1 and 2 results

Number of students	Satisfactory	Unsatisfactory
Unit 1	5150	900
Unit 2	4750	628

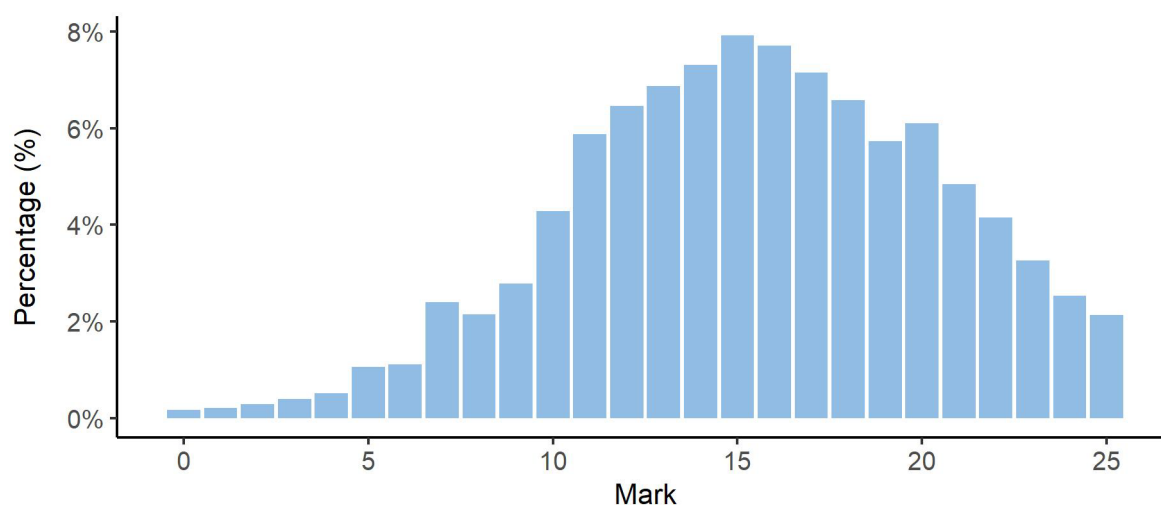
Units 3 and 4 internal assessment (IA) results

Total marks for IA

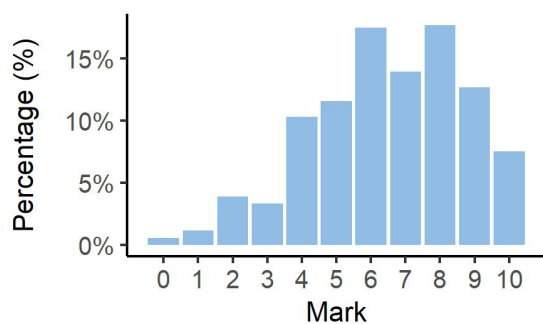


IA1 marks

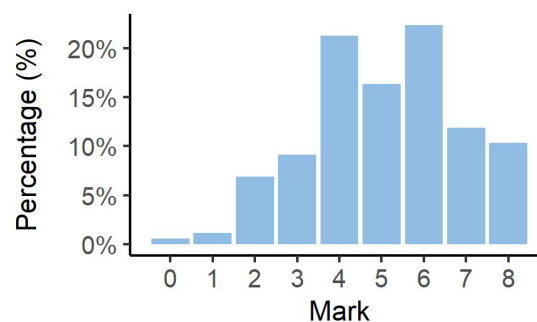
IA1 total



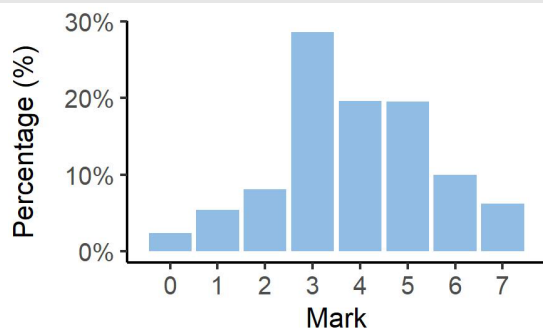
IA1 Criterion: Comprehending



IA1 Criterion: Analysing

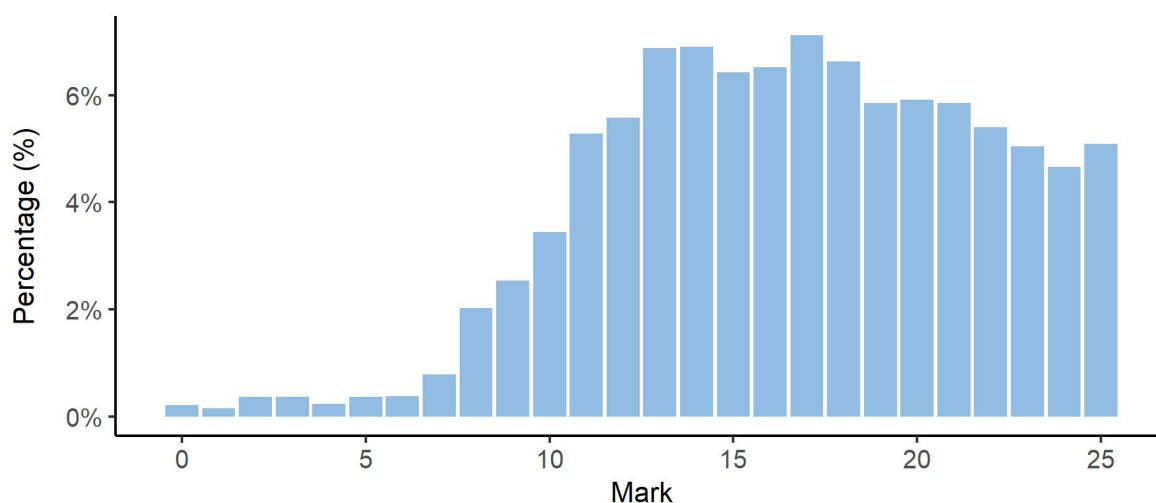


IA1 Criterion: Evaluating

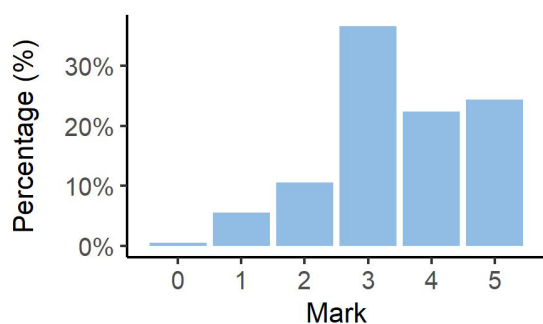


IA2 marks

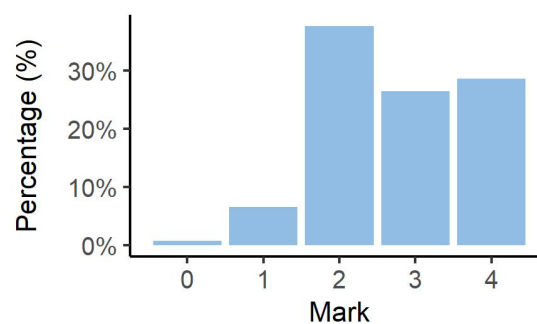
IA2 total



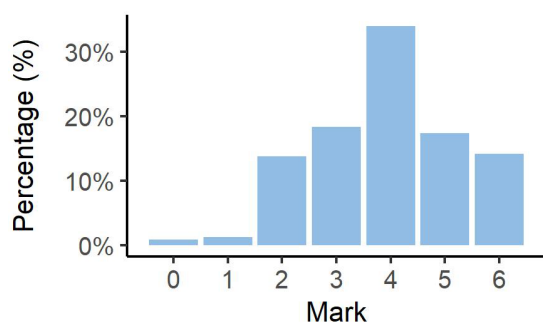
IA2 Criterion: Comprehending



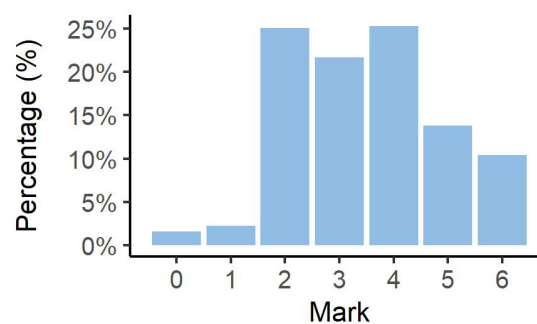
IA2 Criterion: Selecting



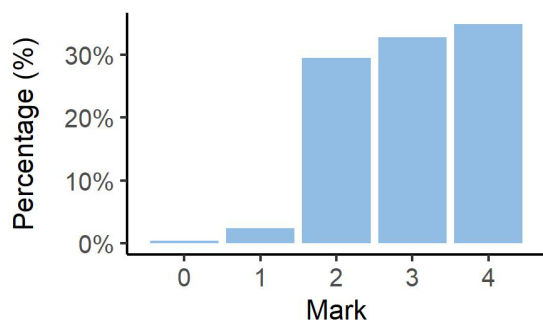
IA2 Criterion: Analysing



IA2 Criterion: Evaluating

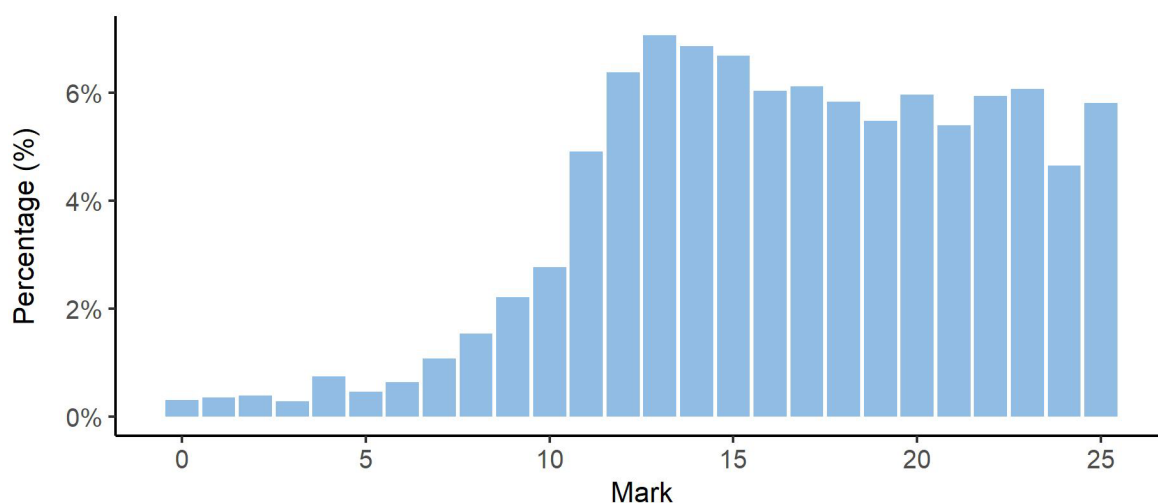


IA2 Criterion: Creating a response

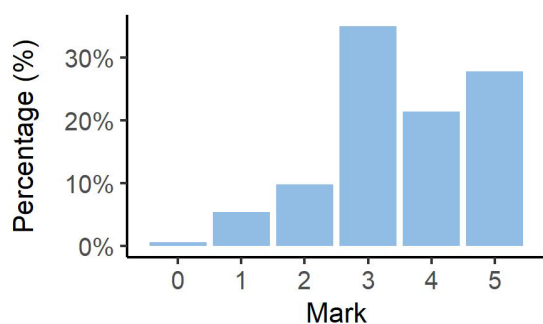


IA3 marks

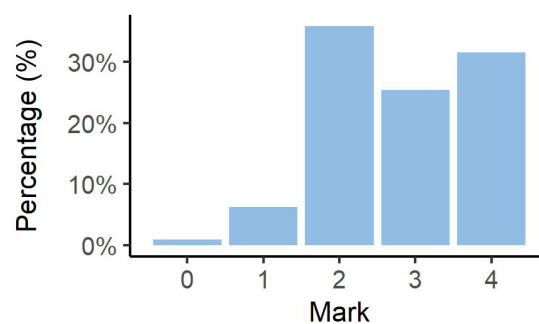
IA3 total



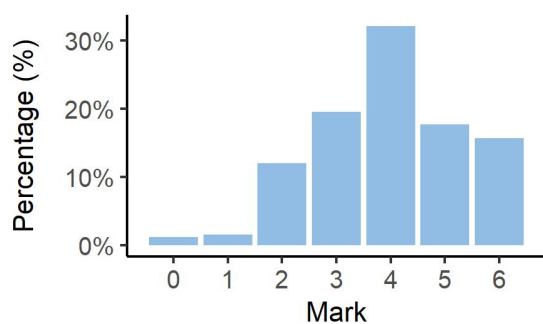
IA3 Criterion: Comprehending



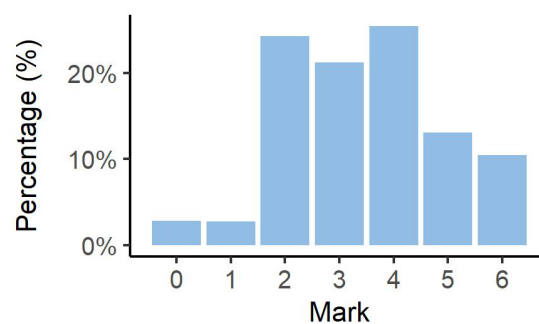
IA3 Criterion: Selecting



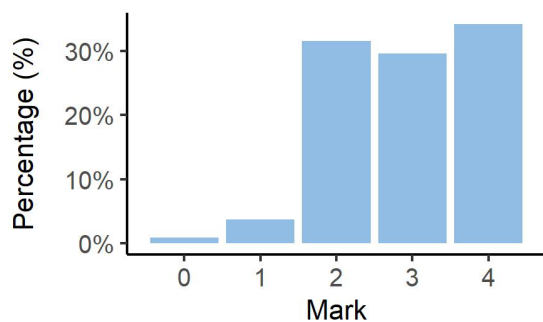
IA3 Criterion: Analysing



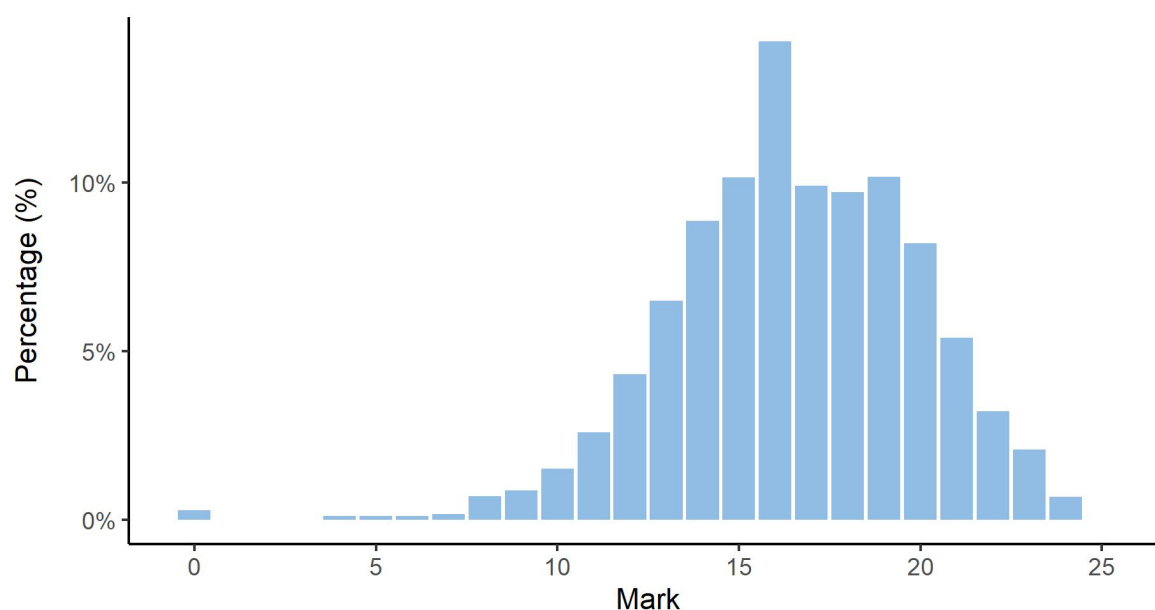
IA3 Criterion: Evaluating



IA3 Criterion: Creating a response

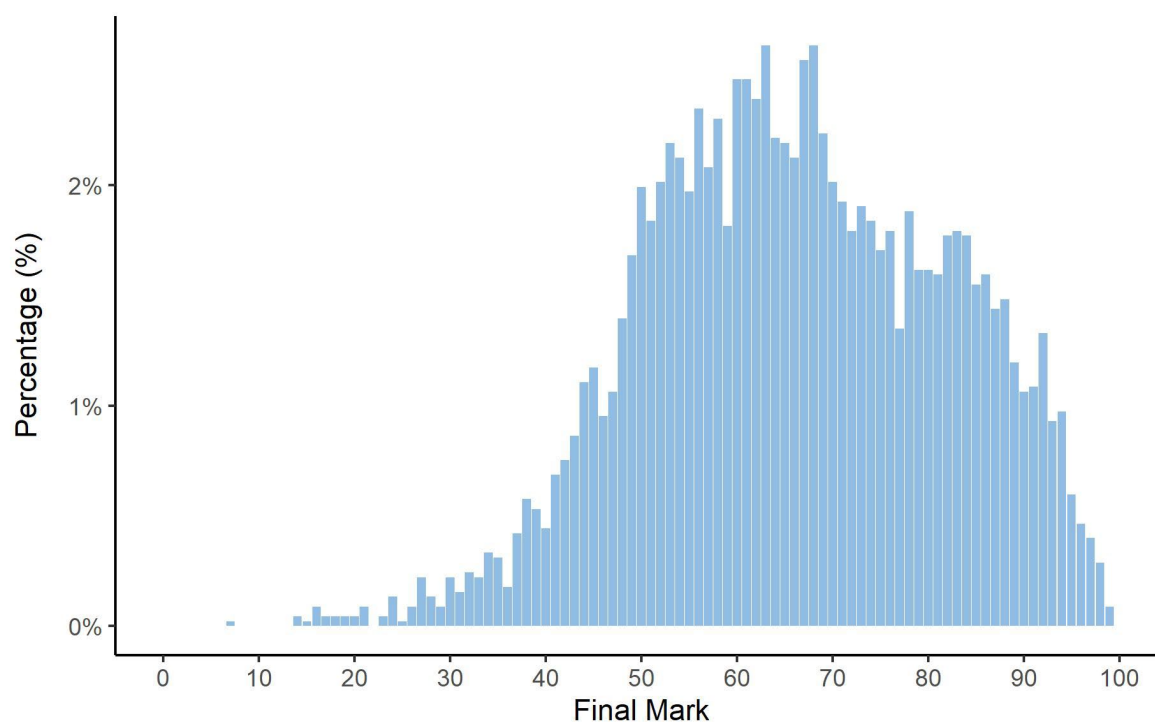


External assessment (EA) marks



Final subject results

Final marks for IA and EA



Grade boundaries

The grade boundaries are determined using a process to compare results on a numeric scale to the reporting standards.

Standard	A	B	C	D	E
Marks achieved	100–83	82–64	63–45	44–18	17–0

Distribution of standards

The number of students who achieved each standard across the state is as follows.

Standard	A	B	C	D	E
Number of students	814	1658	1665	360	10

Internal assessment



The following information and advice relate to the assessment design and assessment decisions for each IA in Units 3 and 4. These instruments have undergone quality assurance processes informed by the attributes of quality assessment (validity, accessibility and reliability).

Endorsement

Endorsement is the quality assurance process based on the attributes of validity and accessibility. These attributes are categorised further as priorities for assessment, and each priority can be further broken down into assessment practices.

Data presented in the Assessment design section identifies the reasons why IA instruments were not endorsed at Application 1, by the priority for assessments. An IA may have been identified more than once for a priority for assessment, e.g. it may have demonstrated a misalignment to both the subject matter and the assessment objective/s.

Refer to *QCE and QCIA policy and procedures handbook v4.0*, Section 9.5.

Percentage of instruments endorsed in Application 1

Number of instruments submitted	IA1	IA2	IA3
Total number of instruments	326	326	319
Percentage endorsed in Application 1	31%	67%	49%

Confirmation

Confirmation is the quality assurance process based on the attribute of reliability. The QCAA uses provisional criterion marks determined by teachers to identify the samples of student responses that schools are required to submit for confirmation.

Confirmation samples are representative of the school's decisions about the quality of student work in relation to the instrument-specific marking guide (ISMG), and are used to make decisions about the cohort's results.

Refer to *QCE and QCIA policy and procedures handbook v4.0*, Section 9.6.

The following table includes the percentage agreement between the provisional marks and confirmed marks by assessment instrument. The Assessment decisions section of this report for each assessment instrument identifies the agreement trends between provisional and confirmed marks by criterion.

Number of samples reviewed and percentage agreement

IA	Number of schools	Number of samples requested	Number of additional samples requested	Percentage agreement with provisional marks
1	319	1984	334	70.22%
2	318	1882	259	70.13%
3	318	1921	229	72.64%



Examination — combination response (25%)

The examination assesses the application of a range of cognitions to multiple provided items — questions, scenarios and problems.

Student responses must be completed individually, under supervised conditions, and in a set timeframe.

Assessment design

Validity

Validity in assessment design considers the extent to which an assessment item accurately measures what it is intended to measure and that the evidence of student learning collected from an assessment can be legitimately used for the purpose specified in the syllabus.

Reasons for non-endorsement by priority of assessment

Validity priority	Number of times priority was identified in decisions*
Alignment	176
Authentication	37
Authenticity	12
Item construction	24
Scope and scale	53

*Each priority might contain up to four assessment practices.

Total number of submissions: 326.

Effective practices

Validity priorities were effectively demonstrated in assessment instruments that:

- provided opportunities for students to demonstrate their ability to identify essential features and explain legal concepts, principles and processes of the relevant subject matter, using appropriate legal terminology
- provided opportunity for students to demonstrate across the range of performance levels by designing questions that combined relevant concepts and principles or principles and processes, e.g. Explain the significance of *Dietrich v The Queen* (1992) 177 CLR 292 and [1992] HCA 57 in influencing law reform
- appropriately used cognitions and question words (e.g. 'who', 'what') as cues
- ensured that the focus of the Part B question and stimulus was on Australian and/or Queensland Governance (or Australian and/or Queensland criminal investigation process for AS schools)
- allowed for unique student responses by ensuring questions did not overlap in subject matter and/or did not lead students to a particular response.

Practices to strengthen

It is recommended that assessment instruments:

- focus on alignment to the syllabus specifications. Instruments must contain short response questions covering both Queensland and Australian governance. For AS schools, short response items must focus on both the criminal legal system and criminal investigation process
- are constructed using a range of syllabus content relevant to Unit 3 Topic 1: Governance in Australia (for AS schools, AS Unit 3 Topic 1: Legal foundations — criminal law focus and Topic 2: Criminal investigation process). The data shows that there were a number of instances where the Part A questions focused on only one area, e.g. constitutional powers or where the Part B question focused on reform or human rights issues rather than governance or, for AS schools, on criminal trials, punishment or sentencing rather than the criminal investigation process
- align with syllabus specifications regarding word length. Part A questions must be designed for responses of 50–100 words per item for a total of 400–500 words. This will ensure that, when combined with the extended response item, the length of the examination in its entirety is 800–1000 words (Syllabus section 4.5.1; AS section 4.7.1) ensuring equity for all students completing the task
- contain stimulus items that provide a clear legal issue relevant to the question and support students to demonstrate their skills of analysis and evaluation, including at least two legal alternatives, for students to draw from
- are devised with consideration given to the scope and scale of the content and depth required in responses, e.g. 'Explain the implications of a Queensland minority government' is broad. Stating the number of implications requiring explanation can help to manage the length of responses and more readily ensure a match of the expected length to the scale of the question
- include a variety of different stimulus items from a range of sources and viewpoints. The text and images must support students in demonstrating their skills in the objectives being assessed, e.g. a photograph of Parliament House will not support students in analysing a legal issue related to Queensland or Australian governance.

Accessibility

Accessibility in assessment design ensures that no student or group of students is disadvantaged in their capacity to access an assessment.

Reasons for non-endorsement by priority of assessment

Accessibility priority	Number of times priority was identified in decisions*
Bias avoidance	14
Language	31
Layout	36
Transparency	23

*Each priority might contain up to four assessment practices.

Total number of submissions: 326.

Effective practices

Accessibility priorities were effectively demonstrated in assessment instruments that:

- included the use of stimulus items that could be easily accessed by students with appropriate font size and image clarity
- provided stimulus items that complied with the syllabus specifications of a minimum of four items, one side of an A3 page, and a maximum of 150 words
- included correct use of case and/or legislation terminology and citations, e.g. *Mabo v Queensland (Mabo No. 2)* (1992) 107 ALR 1; 175 CLR 1.

Practices to strengthen

It is recommended that assessment instruments:

- avoid bias and predetermined responses by ensuring that stimulus items show a variety of viewpoints and do not favour one viewpoint
- provide students with sufficient lines to respond to each question within the stated word limits
- include questions that are clear and succinct.

Additional advice

- Explicitly direct students in Part B to 'make a decision from the alternatives presented' in their evaluation rather than 'determine' or 'give recommendations', to align with the specifications for IA1.

Assessment decisions

Reliability

Reliability is a judgment about the measurements of assessment. It refers to the extent to which the results of assessments are consistent, replicable and free from error.

Agreement trends between provisional and confirmed marks

Criterion number	Criterion name	Percentage agreement with provisional	Percentage less than provisional	Percentage greater than provisional	Percentage both less and greater than provisional
1	Comprehending	84.95%	6.58%	4.39%	4.08%
2	Analysing	82.76%	13.79%	2.82%	0.63%
3	Evaluating	76.49%	20.69%	1.25%	1.57%

Effective practices

Accuracy and consistency of the application of the ISMG for this IA was most effective when:

- in Part A (Comprehending)
 - judgments were made across the entirety of Part A when matching evidence in short responses to the performance-level descriptors

- responses matched to the upper performance-level descriptors contained all the information required
- responses that did not respond correctly to all questions were not matched to the upper performance-level descriptors. In such cases, the combined evidence for Part A is not accurate and detailed as some essential features are absent and/or the explanations are not thorough across the whole of Part A
- in Part B (Analysing and evaluating)
 - for the Analysing criterion, the requirements of the ‘application of legal concepts, principles and/or processes to determine the nature and scope of a legal issue’ and the interpretation of legal information to examine different viewpoints and their consequences were recognised as being necessary at the upper and mid performance levels
- students incorporated the language from the ISMG into their legal responses, e.g. *viewpoint* and *legal alternative*, and when schools aligned decisions according to the best-fit approach.

Samples of effective practices

The following excerpts have been included to demonstrate:

- the interpretation of legal information to *perceptively* examine one of two viewpoints and its consequences relating to the legal issue of the *relevance* and impact of Section 44 of the Australian Constitution
- the *discerning* use of evidence to support the analysis
- the alignment of a *relevant* legal alternative with a viewpoint and its consequences examined in the analysis section of the response.

In the excerpts provided:

- Excerpt 1 examines the viewpoint that the law was drafted in 1900 and that there have been significant changes in Australia’s population and diversity since then. This point is corroborated in the response using evidence from Sources 4 and 2. The paragraph then goes on to discuss the consequences of this viewpoint — that groups of citizens will be overlooked and that excluding them impacts the representativeness of parliament. The viewpoint is reinforced, once again using evidence (Source 6) from the stimulus to support it.
- Excerpt 2 presents a legal alternative that is aligned to the viewpoint and its consequences.
 - The alignment with the viewpoint is evident because the legal alternative — changing Section 44 of the Constitution — is clearly linked to the consequences discussed in the analysis as it addresses the unfairness of Section 44 for dual citizens and the impact on the representativeness of parliament. This alternative is ‘legal’ as it requires a change to the law.
 - This paragraph also begins to use legal criteria to justify the relevance of this legal alternative by stating that it will resolve the ‘unfairness’ that is a consequence of S44 and address the resulting impact on the ‘representativeness’ of parliament. It also discusses some of the implications of this legal alternative, including cost and likelihood of success given past referendums.

Note: The characteristic/s identified may not be the only time the characteristic/s has occurred throughout a response.

Excerpt 1

Secondly, the section was drafted in 1900 (source 4), and passed in 1901. There is a change in population, in terms of the diversity since ~~the~~ 1900. With 28% of the ~~popul~~² Australian population who is born overseas (source 3), there is a need to include these Australians and allowing their opinions to be expressed in the parliament by some representatives, that is the Parliament members ~~who~~ with dual citizenship. When people who have dual citizenship are banned from being a parliament member, this group of population is ~~then~~ then ~~excluded~~ ~~in~~ exempted in the parliament. This would bring to an impact that they will be overlooked, in terms of welfare, employment, etc. The exclusion of these dual citizenship holders has violated the initial purpose of parliament — being representatives for the people. Whereas, ~~this~~ ~~set~~ Section 44 is preventing this. Dual citizenship is now common (source 6), and ~~go~~ Australian government should update the section which was passed in long time ago.

Excerpt 2

The second alternative could be changing the section, from disallowing people with dual citizenship from ~~running~~ being a parliamentarian, to allow. By changing the Constitution, the unfairness brought to these dual citizenship holders can be resolved, and the democracy of the government can be ensured. However, to change the Constitution, a referendum is required. Referendum is not easy to pass, as evident that in Australian history, only 8 out of 44 ~~chang~~ proposed changes it were successful. Also, a referendum is costly, given that the government had already spent \$20 million in relation to dual citizenship (source 3).

The following excerpt is from an AS student response; it has been included to demonstrate the application of legal concepts, principles and/or processes to determine the nature and scope of a legal issue involving an Australian and/or Queensland criminal investigation process.

- The opening sentences of the excerpt establish the legal issue and summarise the scope of its impact and significance.
- The second paragraph states the relevant law and applies that to summarise the nature of the issue. An example of application of the legal concepts, principles and/or processes can be seen in the second sentence of this paragraph which begins to discuss how the law impacts police investigations.

Excerpt 1

The controversial issue of DNA sampling and retention in criminal investigation currently hinders both individual right and society's need for order. This issue can affect more entering the criminal justice system, and ^{help or} hinder police investigative process, but ^{also} has the potential to affect society ^{as a} whole when considering legal alternatives. Therefore, the issue is incredibly significant due to the ~~magnitude~~ ^{and potentially invasive} widespread ^{and} nature of its effects.

Currently, the Queensland Police Power and Responsibilities Act 2000 (QPPRA), rules that DNA sampling can be done with, or without ^{full or limited} consent, and is retained if convicted of an indictable offence. ^(Some) This limited consent can impact upon the efficiency of police investigations, but long term retention may also ^{simplify} ~~assist~~ future investigations.

Practices to strengthen

To further ensure accuracy and consistency of the application of the ISMG for this IA, it is recommended that:

- for the Comprehending criterion, evidence across Part A of the responses
 - demonstrates consistently correct responses to all aspects of each short response item in order to be matched to the upper performance levels, e.g. if a question asks students to explain the importance of a landmark High Court decision to legal change in Australia,

- a correct response does more than describe the circumstances of the case. It also explains why the case is important for legal change in Australia
- contains consistently correct legal terminology, e.g. responses to a question which asks students about some aspect of Queensland's unicameral parliament refer to the Legislative Assembly and the abolished Legislative Council, rather than referring to the House of Representatives and the Senate which are the houses of federal parliament in Australia
 - for the Analysing criterion, evidence across the Part B response
 - demonstrates application of legal concepts, principles and/or processes to determine the nature and scope of the legal issue. Responses matched to the top three performance levels do more than describe what the legal issue is and to whom it applies
 - interprets legal information from the stimulus material to examine different viewpoints and their consequences about the legal issue. Responses matched to the top three performance levels demonstrate that meaning is being made from the legal information provided, i.e. that it is being *interpreted*
 - examines different viewpoints and their consequences. At the top performance level, the examination is *perceptive*. The glossary definition of *perceptive* is 'having or showing insight'. It is important to note that viewpoints must be 'different', not opposing, and that responses are required to examine different viewpoints and their consequences, rather than different stakeholders
 - *uses* evidence from the stimulus to support the analysis. At the top two performance levels the evidence from the stimulus is used to corroborate or give credibility to the analysis. When stimulus is simply quoted without being linked to the point being made in the analysis, it is matched to the bottom two performance levels
 - for the Evaluating criterion, evidence across the Part B response
 - presents *relevant* legal alternatives leading to a decision
 - The glossary definition of *relevant* is 'applicable and pertinent'. In this instance, a relevant legal alternative is aligned to the analysis, i.e. it can clearly be linked to one of the viewpoints and its consequences examined in the analysis
 - To be 'legal', an alternative must be related to the law, e.g. the introduction of new legislation or an amendment to existing law, the creation of a new court or changing the jurisdiction of a court or tribunal (note, these would also require amendments to the law). Examples of alternatives that are **not** 'legal' include education programs, policy changes, cultural programs and increased funding
 - The legal alternatives presented must lead to the decision that is made in response to the question being addressed. At the top performance level, the decision is *insightful*. The glossary definition of *insightful* is 'showing understanding of a situation'. Therefore, like the legal alternatives presented, the decision aligns to the viewpoints examined about the legal issue
 - *justifies* the decision through the use of legal criteria.
 - The syllabus glossary defines *justify* as 'give reasons or evidence to support an answer, response or conclusion'
 - Justification of the decision must use *legal criteria*. The glossary definition of *legal criteria* is 'examples can be drawn from the following: elements of the rule of law; common law and/or statutory law; just and/or equitable outcomes'

- To be matched to the top performance level, there is *discerning* use of legal criteria in the justification of the decision. The syllabus glossary defines *discerning* as 'discriminating; showing intellectual perception ...'. Responses matched to this performance-level descriptor, use the chosen legal criteria in the justification to give reasons or evidence to explain why the decision is being made. This requires more than simply stating that a decision will lead to more just and equitable outcomes.

Additional advice

- The stimulus material provided to students must be able to support them in demonstrating their skills of analysis and evaluation.
- Students should be provided with opportunities to practise using stimulus sources to support their analysis and evaluation.
- Schools should discuss strategies for constructing responses within the response length. They must annotate student samples about the policy applied when a student response exceeds response length.



Investigation — inquiry report (25%)

The assessment requires students to research a current legal issue by collecting, analysing and synthesising primary and secondary information, data and sources. An inquiry report uses research practices to assess a range of cognitions in a particular context. Research practices include locating and using information beyond students' own knowledge and the information they have been given.

Students are encouraged to use technology (e.g. word processors, spreadsheet programs and legal databases) to increase their productivity during the investigation:

- as a means of locating information
- as an aid in recording sources and notes
- assisting analytical processes, for example, graphing and/or exposing patterns or trends
- assisting with the drafting process or production of the final response.

Assessment design

Validity

Validity in assessment design considers the extent to which an assessment item accurately measures what it is intended to measure and that the evidence of student learning collected from an assessment can be legitimately used for the purpose specified in the syllabus.

Reasons for non-endorsement by priority of assessment

Validity priority	Number of times priority was identified in decisions*
Alignment	69
Authentication	6
Authenticity	29
Item construction	11
Scope and scale	7

*Each priority might contain up to four assessment practices.

Total number of submissions: 326.

Effective practices

Validity priorities were effectively demonstrated in assessment instruments that:

- followed the specifications of the syllabus and clearly used the inquiry method. The data showed that this task is the one that is most effectively constructed with the majority of submitted tasks aligned to the syllabus specifications

- provided a single clear topic, e.g. family law, which lends itself to multiple issues on which students could focus their investigation, or a small range of two or three legal issues from which they could choose.

Practices to strengthen

It is recommended that assessment instruments:

- contain instructions that are constructed using the 'To complete this task you must' stem. Tasks that did not include a clear outline of each component of the task did not align to all elements of the ISMG, e.g. the inclusion of 'the examination of different viewpoints and their consequences' as part of the Analysing criterion
- focus on 'an area of law that requires reform, change, or a new legislative instrument' legal reform (Syllabus section 4.5.2) not an area that has already been reformed or an area that is currently before Parliament. Tasks that included topics relating to legal issues that have recently been reformed (e.g. abortion, assisted dying etc.) may affect the ability of students to meet the top performance-level descriptors because of a focus on the completed reform, rather than investigating a legal issue requiring reform
- for AS cohorts, focus on a specific legal issue relating to criminal trials and/or criminal punishment and sentencing, rather than criminal legal issues in general, to align with the specifications of this task
- instruct students to 'examine different viewpoints and their consequences' not stakeholders
- ensure that the allocated timelines align with the syllabus specifications.

Accessibility

Accessibility in assessment design ensures that no student or group of students is disadvantaged in their capacity to access an assessment.

Reasons for non-endorsement by priority of assessment

Accessibility priority	Number of times priority was identified in decisions*
Bias avoidance	1
Language	4
Layout	0
Transparency	19

*Each priority might contain up to four assessment practices.

Total number of submissions: 326.

Effective practices

Accessibility priorities were effectively demonstrated in assessment instruments that:

- followed the syllabus specifications. The data showed that the accessibility priority was clearly addressed in the construction of this task.

Practices to strengthen

It is recommended that assessment instruments:

- ensure that, where a context statement is used, it either contextualises the relevance of the task to the unit of work being studied or is an impartial reference to the topic to be investigated. It must not lead to unnecessary bias or pre-empt a specific response
- provide clear expectations about the requirement of primary and/or secondary sources and, if required, the number of cases to be included. There is no requirement that students include cases in their investigation; however, where a task asks students to include cases, consideration must be given to the number to be included given the word length conditions of this task
- include the use of correct references to cases, legislation and conventions.

Additional advice

- When constructing 'To complete this task you must:' scaffolds or directions, consider the performance descriptors in the ISMG and ensure that students are directed to demonstrate the objectives. Tasks that specify that students are to 'examine different viewpoints and their consequences' or to 'determine the nature and scope of the legal issue' support students to demonstrate these descriptors.

Assessment decisions

Reliability

Reliability is a judgment about the measurements of assessment. It refers to the extent to which the results of assessments are consistent, replicable and free from error.

Agreement trends between provisional and confirmed marks

Criterion number	Criterion name	Percentage agreement with provisional	Percentage less than provisional	Percentage greater than provisional	Percentage both less and greater than provisional
1	Comprehending	90.25%	6.6%	2.83%	0.31%
2	Selecting	93.08%	5.03%	1.57%	0.31%
3	Analysing	82.7%	12.89%	3.46%	0.94%
4	Evaluating	76.42%	20.75%	1.57%	1.26%
5	Creating a response	94.03%	4.09%	1.57%	0.31%

Effective practices

Accuracy and consistency of the application of the ISMG for this IA was most effective when:

- the difference between the top two performance-level descriptors of the Selecting criterion was clearly understood. The first descriptor refers to the 'choice' of legal information and the second descriptor refers to the *use* of legal information
- judgments about the examination of different viewpoints and their consequences at the top two performance levels were based on the student's interpretation of legal information. The syllabus glossary definition of *interpret* is 'identify or draw meaning from, or give meaning to, information presented in various forms'
- judgments about the Creating a response criterion recognised that the expression and development of ideas were related to the enhancement of legal meaning, as relevant to the report's intended purpose.

Samples of effective practices

The following excerpt has been included to demonstrate the first descriptor in the Analysing criterion: 'perceptive application of relevant legal concepts, principles and/or processes to determine the nature and scope of criminal trials and/or criminal punishment and sentencing'.

- The second sentence makes reference to concepts of 'fairness and impartiality' and their importance to jury trials is stated. These concepts are then applied to the issue that is the focus of this report — the impact of social media on juror impartiality — and then further developed in the sentence beginning 'Preserving juror impartiality ...'. At the end of this paragraph the response explains how jurors' access to information that would not be allowable under the *Evidence Act 1977* (Qld) can change the way jurors view evidence and the repercussions of that.
- The second paragraph uses a case to further demonstrate the application of these concepts and one possible outcome available to the courts in response to the likely impact of such significant and widespread publicity on the level of impartiality of any potential jurors. This application is once again supported using reference to the relevant section of the law and why it is applicable in these circumstances.

Note: The characteristic/s identified may not be the only time the characteristic/s has occurred throughout a response.

2.0 Nature and Scope of the Legal Issue

A jury is a group of people who swear to determine the issue of fact fairly and impartially at a trial and deliver a verdict (Finkelstein, Hamer, Howie, & Hepburn, 2021). The concepts of fairness and impartiality are central to a jury being able to perform its duties, but the practices in place to safeguard them nationwide are no longer sufficient (Horan, 2019). Once a jury is empanelled, the judge instructs them that they are to base their verdict only on evidence given during the trial (Dahlstrom, 2022; Trimboli, 2008). Once the trial begins, s51(1) of the *Jury Act 1995* (Qld) states that a juror may only be discharged if “...it appears to the judge... that the juror is not impartial or ought not, for other reasons, be allowed... to act as a juror at the trial...” (Queensland Parliament, 2022). Preserving juror impartiality is now difficult as they have effortless access to evidence and information that would be inadmissible in court under the *Evidence Act 1977* (Qld) (Krawitz, 2014). This means that jurors are likely beginning the trial having been exposed to information about the case which would not be allowed in court and would impact the way they view the evidence that is presented in court and verdict they deliver, severely decreasing the defendant’s chances of a fair trial.

In the case *R v Ferguson* 2008, the Attorney-General sought to overturn a permanent stay of prosecution granted to the respondent Dennis Ferguson. Mr Ferguson was arrested and charged with three child sex offences concerning two children. He had previous convictions of this type. There was a high amount of publicity surrounding the case due to the serious nature of the offences and the appellant’s previous convictions. He applied for a permanent stay of the proceedings against him and though initially granted, the appellate was successful in having it overturned on appeal (*R v Ferguson*, 2008). In *R v Ferguson* 2009, Ferguson again applied for a permanent stay of proceedings and though it was dismissed, the judge set down an order for a judge-only retrial under s615(4)(c) of the *Criminal Code*, stating that given the current context it would be impossible to empanel an impartial jury (*R v Ferguson*, 2009). The public response to Mr Ferguson’s actions, aided by social media, meant that he was unable to receive a fair jury trial as they would have been exposed to highly prejudicial material before being empanelled and have a bias against Mr Ferguson that would have been very difficult to rectify in court.

The following excerpt has been included to illustrate the second descriptor in the Evaluating criterion: ‘synthesis of information that justifies the recommendation/s through the *discerning* use of legal criteria’.

- The recommendation aligns to a legal *alternative* presented in the preceding paragraph of the report and provides a brief overview of what the proposed amendment could include.
- The justification of the recommendation synthesises information provided in the examination of different viewpoints and their consequences, raised earlier in the response, including juveniles’ brain development and its impact on cognitive function, and community concerns about juvenile crime rates. The justification makes use of a range of legal criteria that are relevant to this specific legal issue. Their use is *discerning* as it is linked back to the legal issue and the viewpoints and consequences that were examined earlier in the response.

While it will not always be possible, or necessary, to use such a wide range of different legal criteria in the justification of the recommendation, this response incorporates them with discernment as each is clearly linked back to a part of the analysis and the legal issue itself.

Notes:

- The characteristic/s identified may not be the only time the characteristic/s has occurred throughout a response.
- MACR (minimum age of criminal responsibility); QCC (*Criminal Code Act 1899* (Qld)); HRA (*Human Rights Act 2019* (Qld)).

5 Recommendation

The above investigation suggests that the most effective recommendation to resolve the issue of Queensland's MACR is to amend the QCC s29(1), to create similar laws to New Zealand. To accomplish this, Queensland must create subsections within s29(1) specifying the minimum age remains at ten years old, followed by subsections specifying what crimes specific age brackets can be held responsible for, with the number of offences increasing as the juvenile age increases. Initially the section will state that a person under the age of 10 years cannot be criminally responsible for any act or omission, with subsections, such as these, to follow; a) Juveniles 10-12 can be held responsible for i) manslaughter ii) murder, b) Juveniles 13-15 can be held responsible for i) all that is stated in sub section a, ii) Rape, iii) Arson, iv) aggravated assault, v) Drug abuse, c) Juveniles 16-17 can be held responsible for all offences, similar to the average adult. This would allow for equitable outcomes as the amendment considers both undeveloped juvenile brain functions, which inhibit the ability to make rational decisions, and community concerns regarding high juvenile crime rates. Just outcomes are achieved as the justice system is forced to take into account a child's age and therefore immaturity before asserting responsibility. Additionally, it allows for fair outcomes in the community, making younger juveniles unaccountable for minor crimes, while keeping the community safe from juveniles who have committed serious offences regardless of their age. This recommendation upholds the Rule of Law by providing a presumption of innocence for all juveniles, accounting for their inability to regulate behaviour and impulses. Furthermore, this recommendation upholds Queensland statute law as it upholds Queensland's HRA s33(3) that "A child who has been convicted of an offence must be treated in a way that is appropriate for the child's age", as the reform considers the different neurological and maturity development of all adolescents. Lastly, common law regarding MACR, *doli incapax*, is satisfied as the amendment reiterates the idea that children 10-14 do not possess the knowledge required to have criminal intent. This is reflected in the recommendations as children 10-15 can only be held criminally responsible for severe offences. This amendment should be introduced into Queensland and other Australian legislation by 2024 to ensure a safer community and that the rights of the child are better upheld.

Practices to strengthen

To further ensure the accuracy and consistency of the application of the ISMG for this IA, it is recommended that

- for the Analysing criterion,
 - the focus of the second descriptor is the examination of viewpoints rather than stakeholders. This helps to ensure the legal issue is analysed rather than the nature of the stakeholder group being described
 - the viewpoints examined are different, but do not have to be opposing

- viewpoints and their consequences must be examined through the 'interpretation of legal information' at the mid and upper performance levels. This means they are examined from a legal perspective, using legal information, i.e. the viewpoint about the law and how it currently addresses the legal issue and the consequences of that viewpoint
- for the Evaluating criterion,
 - for legal alternatives to be *relevant* there must be alignment between the viewpoints examined in the analysis, the legal alternatives presented, and the recommendation/s being made at the mid and upper performance levels
 - legal alternatives, referred to in the first descriptor, must relate to the law. Only when both alternatives presented are legal in nature can they be matched to the first descriptor in any performance level. If one or both alternatives are non-legal in nature, but a recommendation is made, the evidence in the response can be matched to the first descriptor at the lowest performance level
 - legal criteria, referred to in the second descriptor, should be appropriate to the context of the response and must be 'used' to justify the recommendation/s made. To be *discerning* or *effective*, this requires more than a statement that the recommendation will ensure adherence to the rule of law.

Additional advice

- When a case is used to illustrate a point in the analysis, students should be discouraged from providing a detailed description of the circumstances surrounding the case. The relevant elements are generally related to the application of the law and the legal reasoning behind the decision handed down.
- Evidence at confirmation indicates that teachers may need to review the best-fit approach. It is advised that schools review the *Understanding ISMGs* and *Making judgments* webinars which can be found in the syllabus resources in the QCAA Portal.

Internal assessment 3 (IA3)



Investigation — argumentative essay (25%)

The assessment requires students to research a current legal issue through collection, analysis and synthesis of primary and secondary information, data and sources. An argumentative essay uses research practices to assess a range of cognitions in a particular context. Research practices include locating and using information beyond students' own knowledge and the information they have been given.

Students are encouraged to use technology, for example, word processing, spreadsheet programs and accessing legal databases to increase their productivity during the investigation. This may be as:

- a means of locating information
- an aid in recording sources and notes
- assisting analytical processes, for example, graphing and/or patterns or exposing trends
- assisting with the drafting process and the production of the final response.

Assessment design

Validity

Validity in assessment design considers the extent to which an assessment item accurately measures what it is intended to measure and that the evidence of student learning collected from an assessment can be legitimately used for the purpose specified in the syllabus.

Reasons for non-endorsement by priority of assessment

Validity priority	Number of times priority was identified in decisions*
Alignment	122
Authentication	8
Authenticity	18
Item construction	23
Scope and scale	16

*Each priority might contain up to four assessment practices.

Total number of submissions: 319.

Effective practices

Validity priorities were effectively demonstrated in assessment instruments that:

- focused on a contemporary international human rights issue in which Australia has a legal interest rather than the process of ratification or the governance of an issue
- directed students to analyse and evaluate the law and Australia's interest in the contemporary international human rights issue.

Practices to strengthen

It is recommended that assessment instruments:

- ensure the topic is an international human rights issue first and foremost and not an Australian human rights issue which is addressed in Unit 4 Topic 3
- support students in meeting the assessment objectives by focusing on 'Australian laws and international obligations of a contemporary international human rights issue where Australia has a legal interest'
- instruct students to 'examine different viewpoints and their consequences' rather than refer to stakeholders
- focus on the assessment technique of an argumentative essay. The data shows that tasks that were not endorsed because of item construction, often did not provide a clear statement that allowed students to respond in an argumentative essay, e.g. asking students to analyse and evaluate Australian laws does not lead to an argumentative essay response.

Accessibility

Accessibility in assessment design ensures that no student or group of students is disadvantaged in their capacity to access an assessment.

Reasons for non-endorsement by priority of assessment

Accessibility priority	Number of times priority was identified in decisions*
Bias avoidance	6
Language	14
Layout	0
Transparency	32

*Each priority might contain up to four assessment practices.

Total number of submissions: 319.

Effective practices

Accessibility priorities were effectively demonstrated in assessment instruments that:

- correctly referenced and identified international conventions and declarations relevant to the focus of the argumentative essay
- provided clear expectations regarding sources and specifically the required number of cases as well as the requirement for primary and/or secondary sources.

Practices to strengthen

It is recommended that assessment instruments:

- provide explicit and clear instructions that align to the assessment objectives and descriptors in the ISMG
- are carefully proofread before submission to ensure that all sections refer to the same legal issue. This is of particular concern when instruments are updated from a previous year, but some changes are not followed through in all sections.

Assessment decisions

Reliability

Reliability is a judgment about the measurements of assessment. It refers to the extent to which the results of assessments are consistent, replicable and free from error.

Agreement trends between provisional and confirmed marks

Criterion number	Criterion name	Percentage agreement with provisional	Percentage less than provisional	Percentage greater than provisional	Percentage both less and greater than provisional
1	Comprehending	91.51%	5.97%	1.26%	1.26%
2	Selecting	94.97%	2.83%	1.89%	0.31%
3	Analysing	88.36%	8.49%	2.2%	0.94%
4	Evaluating	77.99%	20.75%	0.63%	0.63%
5	Creating a response	93.4%	4.4%	1.89%	0.31%

Effective practices

Accuracy and consistency of the application of the ISMG for this IA was most effective when:

- for the Comprehending criterion, evidence in student responses could be clearly matched to the second descriptor. This required clear links between the contemporary international human rights issue in which Australia has a legal interest that was the focus of the response and the legal concepts, principles and/or processes of Australia's human rights laws and its international obligations
- for the Selecting criterion, to be *discerning*, the choice of legal information was both 'current and relevant' to the international human rights issue in which Australia has a legal interest being investigated
- for the Analysing criterion, the examination of different viewpoints and their consequences was based on the interpretation of legal information at the top two performance levels. Responses that only described stakeholders or only provided information about other jurisdictions' responses to the issue, without linking the analysis to Australia's legal interest, could only be matched to the second descriptor at the lowest performance level
- for the Creating a response criterion, the expression and development of ideas were related to the enhancement of legal meaning, as relevant to the essay's intended purpose, which was to argue a contention that was stated in the introduction.

Samples of effective practices

The following excerpt has been included to demonstrate the alignment between a legal alternative presented and the analysis. It also demonstrates the proposal of an insightful recommendation from the legal alternatives presented; synthesis of information that justifies the recommendation through *discerning* use of legal criteria; and *fluent* discussion of the implications of the recommendation. Note: This excerpt only contains one of the two legal alternatives presented in the response.

- The legal alternative — to amend legislation — is linked directly to a viewpoint about the legal issue that was examined in the analysis. Each of the proposed amendments links to a specific point made previously and is briefly unpacked to describe how it will address the points examined. Legal criteria are also used to justify how this alternative would lead to ‘more equitable outcomes’ and greater ‘access to justice’.
- The legal alternative is then identified as the proposed recommendation. Information from both the analysis and the presentation of the legal alternative is synthesised and linked to legal criteria that are used to justify the recommendation. This use of legal criteria is *discerning* as it makes explicit links between the elements of the recommendation and relevant aspects of the legal criteria. One example of this can be found in the fourth sentence in the final paragraph of the excerpt in which the response states that the recommendation will result in the balance of protection of refugees’ rights with the national interest.
- A range of implications of the recommendation are discussed. Each one is identified and then explained, e.g. Federal Budget allocations will be required to fund the provision of legal assistance which may lead to funding reductions elsewhere.

Notes:

- The characteristic/s identified may not be the only time the characteristic/s has occurred throughout a response.
- IAA (Immigration Assessment Authority); RSD (refugee status determination).

To better protect refugees in Australian immigration detention, amendments to the Act should legislate a time limit on detention, reintroduce government-funded legal assistance for all asylum seekers and economical, quick, *fair* and *just* reviews by the IAA (Refugee Advice and Casework Service, 2015). Establishing a time limit on detention increases justice by providing an explicit, legislative protection of the right against arbitrary detention to prevent prolonged detainment during RSD or resettlement processes thereby, enhancing the effectiveness of international laws in protecting refugees in Australian detention. Legal assistance increases just outcomes by aiding asylum seekers to submit accurate applications which can be assessed more efficiently. This prevents claims being rejected due to language and cultural barriers, reduces the likelihood of reviews and limits time spent in detention (Amnesty International, 2015). The government has funds and resources to support all asylum seekers, not just the exceptionally vulnerable, creating equitable and fair access to justice and refugee status (Dehm & Vogl, 2019). Improving IAA review processes would involve increasing the circumstances in which an interview is required and allowing the submission of information after initial decisions. This creates just and robust reviews that adequately analyse individual circumstances to ensure refugees are recognised and protected from refoulement (Law Council of Australia, n.d.). Removing the category of “excluded fast-track review applicants” protects the right of all asylum seekers arbitrarily deprived of liberty to challenge the lawfulness of their detention in court (ICCPR Article 9). This creates equitable outcomes by placing more rigorous checks and balances on executive decisions and ensuring equal access to legal processes in detention, regardless of perceived merits, to reduce instances of arbitrary detention. Such improvements to Australian legislation enhance the effectiveness of international laws in protecting the rights against arbitrary detention and refoulement for immigrants in Australia’s immigration system.

It is recommended that the *Migration Act 1958* (Cth) be amended to establish a time limit on detention, reintroduce government-funded legal assistance and broaden the scope of IAA reviews. This ensures immigrants in Australian detention are treated justly and fairly and afforded their rights according to international law. This recommendation requires the proposed amendments to be introduced and passed in both houses of Federal Parliament. The detention limit should balance the rights of asylum seekers with the time required for robust RSD and review processes, to equitably protect refugees and national interest. Other implications include that the Federal Budget would allocate funds towards legal assistance meaning other sectors may experience funding reductions. As legal assistance will be financed by taxes, publicly accessible reports should outline this expenditure and the impact on detention thereby, improving public awareness about RSD processes and the rights of immigrants in Australia. Furthermore, with reduced demands, community and pro bono legal services can adequately respond to cases they receive. If these recommendations are implemented, it will ensure the greatest efficacy of international laws in protecting the rights of refugees in Australian immigration detention by reducing instances of arbitrary detention and refoulement.

Practices to strengthen

To further ensure accuracy and consistency of the application of the ISMG for this IA, it is recommended that:

- the requirements at the upper performance levels for the Analysing and Evaluating criteria are applied
 - when determining the nature and scope of the international human rights issue in which Australia has a legal interest, that concepts, principles and/or processes are applied (not just described), and that clear links are made to the thesis of the argumentative essay
 - in the interpretation of legal information (not social or general information), to inform the examination of different viewpoints about the legal issue being analysed (not stakeholder groups)
 - to ensure the alternatives presented are legal, relating to the law (not social), and align to the viewpoints examined in the analysis and lead to the explicit proposal of the recommendation
 - to locate evidence that the justification of recommendation/s is through the use of legal criteria
- in making judgments for the Evaluating criterion, it is recognised that, to be relevant, legal alternatives align to the analysis of the legal issue and that the recommendation is clearly stated and comes from the alternatives presented. Additionally, discerning use of legal criteria in the justification of the recommendation requires more than a mention in the essay's conclusion.

Additional advice

- Teachers should ensure students know and understand the structure of an *argumentative essay*. The glossary definition for *argumentative essay* states 'takes a position on a topic, such as a particular legal reform issue, decision or policy, then presents arguments that support that position; the essay can be structured either by presenting the opposing view first then counter this view with stronger evidence, or vice versa'.
- Many schools give students the option to choose a legal issue to investigate for this task. In approving a legal issue for students to investigate, teachers must ensure the context aligns to the syllabus specifications.

- The context of the assessment must be a contemporary international human rights issue in which Australia has a legal interest (Syllabus section 5.6.1; AS section 5.6.1).
- The descriptors in the ISMG in the Comprehending criterion, require, ‘description of legal concepts, principles and/or processes of Australian human rights laws and international obligations’. This descriptor cannot be met if a student response is essentially about an Australian law reform issue such as abortion.
- The assessment objectives related to each criterion link each section of the ISMG to an international human rights issue in which Australia has a legal interest.
- While evidence from other jurisdictions can be used to inform the analysis, this must always be used to support the analysis, rather than be the analysis.
- It is necessary to present more than one legal alternative from the analysis. Limiting the legal alternatives to two enables students to respond in sufficient depth to each, and facilitates access to the higher performance level in the evaluation.
- An explicit recommendation must be proposed from the alternatives presented.

External assessment



External assessment (EA) is developed and marked by the QCAA. The external assessment for a subject is common to all schools and administered under the same conditions, at the same time, on the same day.

Examination — combination response (25%)

Assessment design

The assessment instrument was designed using the specifications, conditions and assessment objectives described in the summative external assessment section of the syllabus. The examination consisted of one paper (47 marks).

The examination assessed subject matter from Unit 4. Questions were derived from the context of:

- Topic 1: Human rights
- Topic 3: Human rights in Australian contexts.

The assessment required students to respond to four short response items and one extended response to stimulus item.

The stimulus included a range of text stimulus comprising excerpts from international law, Australian Law Reform Commission report, court decisions and journal articles relevant to the legal issue of freedom of speech in Australia.

The AS assessment instrument was the same as the external assessment for the General syllabus.

Assessment decisions

Assessment decisions are made by markers by matching student responses to the external assessment marking guide (EAMG). The external assessment papers and the EAMG are published in the year after they are administered.

Effective practices

Overall, students responded well to:

- the Comprehending criterion, when signposting was used to ensure all elements of short response items were addressed
- the Analysing criterion, when evidence from the stimulus material was matched to and used to support the viewpoint/s being examined
- the Evaluating criterion, when alternatives presented from the analysis were both legal and different.

Samples of effective practices

Short response

Question 3 required students to describe 'neutral observers' and their 'role' in the context of one aim of the Queensland Council for Civil Liberties, and to explain two ways the strategy protects human rights in Australia. A contextual statement was provided.

Effective student responses:

- provided an *accurate* description of neutral observers, including describing their role
- provided an *accurate* explanation of two ways the neutral observer strategy supports the protection of human rights in Australia.

This excerpt has been included:

- as it provides an accurate description of neutral observers in the context of the identified aim of the Queensland Council for Civil Liberties, e.g. 'people who are unaffiliated with the aims of the protesters or demonstrators'
- to show an accurate description of the role of the neutral observers at the demonstration or march, e.g. 'are present at the demonstrations to ensure the civil liberties and rights of protesters are protected and, if necessary, ensure any violation of these rights is recorded'
- to demonstrate an accurate explanation of two ways this strategy supports the protection of human rights in Australia. Each way is identified, e.g. 'by acting as a deterrent to ensure the rights of protesters are not infringed upon', and further developed through the provision of more detail to make the point clear, e.g. 'This means that the law enforcement or government officials are less likely to use violence or unlawful detention to suppress protests'. The second way this strategy supports the protection of human rights in Australia is dealt with in a similar manner.

Neutral observers are people who are unaffiliated with the aims of the protesters or demonstrators, and are present at the demonstrations to ensure the civil liberties and rights of protesters are protected, and if necessary, ensure any violation of these rights is recorded and distributed to the public. One way in which this strategy supports the protection of human rights in Australia is by acting as a deterrent to ensure the rights of protesters are not infringed upon. This means that the law enforcement or government officials are less likely to use violence or unlawful detention to suppress protests, as they may fear ~~distribution~~ ^{criticism} from the media or intergovernmental organisations such as the UN if observers record such incidents.

Another way in which this strategy protects human rights is by holding governments accountable if the protesters' rights are not respected. This may be done by publishing details of the rights violation in the media, which would spread awareness about the incident and potentially lead to international backlash or sanctions on the government in question.

Extended response

Question 5 required students to use the stimulus material provided to analyse the legal issue of freedom of speech in Australia and evaluate the extent to which it is protected under Australian law.

Effective student responses:

- accurately explained the nature and scope of the legal issue
- provided a perceptive explanation of two valid viewpoints and their consequences to the legal issue
- made discerning use of evidence from the stimulus material to support the analysis
- effectively used information from the analysis to present two relevant legal alternatives
- justified a valid decision through the effective use of relevant legal criteria
- effectively discussed a plausible implication of the decision.

This excerpt has been included as it provides an *accurate* explanation of the nature and scope of the legal issue and uses a range of *relevant* information from the stimulus *discerningly* as support.

- The nature and scope are evident in the discussion of both international and domestic protections and restrictions of this right.
- The link to the decision required is shown by beginning to focus the discussion on the extent to which the right to freedom of expression is protected under Australian law.
- The nature of the right to free speech is explained as an implied right which can be infringed by legislation that makes that intention explicit.
- Examples are provided to identify the types of legislation that have become common since 2000 and that impact on the scope of this freedom.
- Information from the stimulus is incorporated in various ways throughout the excerpt to support this part of the analysis, including
 - the use of short quotes from relevant stimulus items to emphasise and/or establish a point, e.g. in the second and third sentences
 - making links between the point being made in the response and a comment in the stimulus, e.g. in Stimulus 9, the third-last sentence states that 'Banerji claimed her dismissal should

be considered unreasonable since it was carried out in breach of the implied constitutional freedom of political communication'. The response makes the link that freedom of speech/expression is both 'an implied right in the Constitution' and that freedom of speech/expression and freedom of political communication are synonymous

- the incorporation of a reference to the principle of legality from Stimulus 2 to explain how this freedom can be infringed.

The freedom of expression is protected by ~~a selection of~~ both international and domestic law. The International Covenant on Civil and Political Rights (ICCPR) 1966 states that "everyone shall have the right to hold opinions without interference" (S1). However, it may be subject to certain restrictions "for the rights or reputations of others" (S1). It is evident that although Australia provides individuals with protection of free speech by signing the ICCPR, this freedom is restricted by the law of defamation. The law of defamation means that one cannot legally use any form of communication to damage the reputation of others. Within the domestic jurisdiction of Australia, the right to free speech is an implied right in the constitution (S9), but can be infringed by legislature that has an intention with 'irresistible clearness' (S2). The true scope of this legal issue is reflected by the increasing encroachments on free speech caused by anti-terrorism measures, anti-vilification measures and threats of defamation suits, which are now more widespread than they were in 2000 (S3).

Practices to strengthen

It is recommended that when preparing students for external assessment, teachers consider:

- supporting students to develop strategies to respond to all elements of the short response items. Strategies could include
 - the use of synonyms when responding to questions that ask students to describe a specific thing, e.g. What are ‘neutral observers’?
 - planning, drafting, and editing responses to ensure all aspects of each question being asked are addressed
- providing multiple opportunities for students to develop strategies for the extended response to stimulus task. Strategies could include
 - carefully reading and annotating the question and stimulus to ensure that, even when the legal issue is one with which they might be familiar (e.g. freedom of speech/expression), students develop a response that uses evidence from the stimulus material to respond to the question being asked
 - recognising that cognitions are subsumed in the external assessment question and developing and using a mnemonic or similar memory device to ensure all elements of analysis and evaluation are addressed in the response
 - developing and using a graphic organiser to help plan the response and ensure evidence from the stimulus is incorporated throughout
 - having a clear understanding about terms such as ‘nature and scope’, ‘viewpoints and consequences’ and ‘legal alternatives’.