

# Legal Studies subject report

2023 cohort

January 2024





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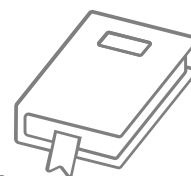
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# Introduction

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Throughout 2023, schools and the Queensland Curriculum and Assessment Authority (QCAA) continued to improve outcomes for students in the Queensland Certificate of Education (QCE) system. These efforts were consolidated by the cumulative experience in teaching, learning and assessment of the current General and General (Extension) senior syllabuses, and school engagement in QCAA endorsement and confirmation processes and external assessment marking. The current evaluation of the QCE system will further enhance understanding of the summative assessment cycle and will inform future QCAA subject reports.

The annual subject reports seek to identify strengths and opportunities for improvement of internal and external assessment processes for all Queensland schools. The 2023 subject report is the culmination of the partnership between schools and the QCAA. It addresses school-based assessment design and judgments, and student responses to external assessment for this subject. In acknowledging effective practices and areas for refinement, it offers schools timely and evidence-based guidance to further develop student learning and assessment experiences for 2024.

The report also includes 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 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 internal and 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 senior 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 highlights

**331**

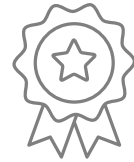
schools offered  
Legal Studies



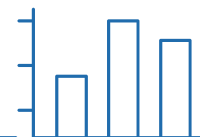
**76.34%**  
of students  
completed  
4 units



**92.81%**  
of students  
received a C  
or higher



# Subject data summary



## Subject completion

The following data includes students who completed the General subject or Alternative Sequence (AS).

**Note:** All data is correct as at January 2024. Where percentages are provided, these are rounded to two decimal places and, therefore, may not add up to 100%.

Number of schools that offered Legal Studies: 331.

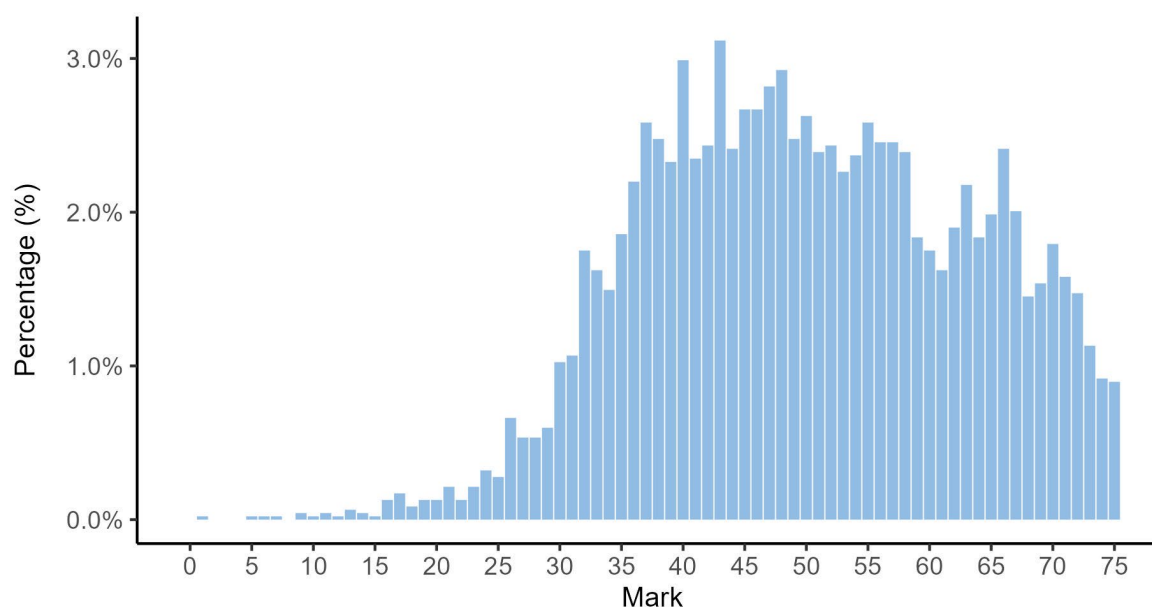
Completion of units	Unit 1	Unit 2	Units 3 and 4
Number of students completed	6,065	5,534	4,630

## Units 1 and 2 results

Number of students	Satisfactory	Unsatisfactory
Unit 1	5,216	849
Unit 2	4,946	588

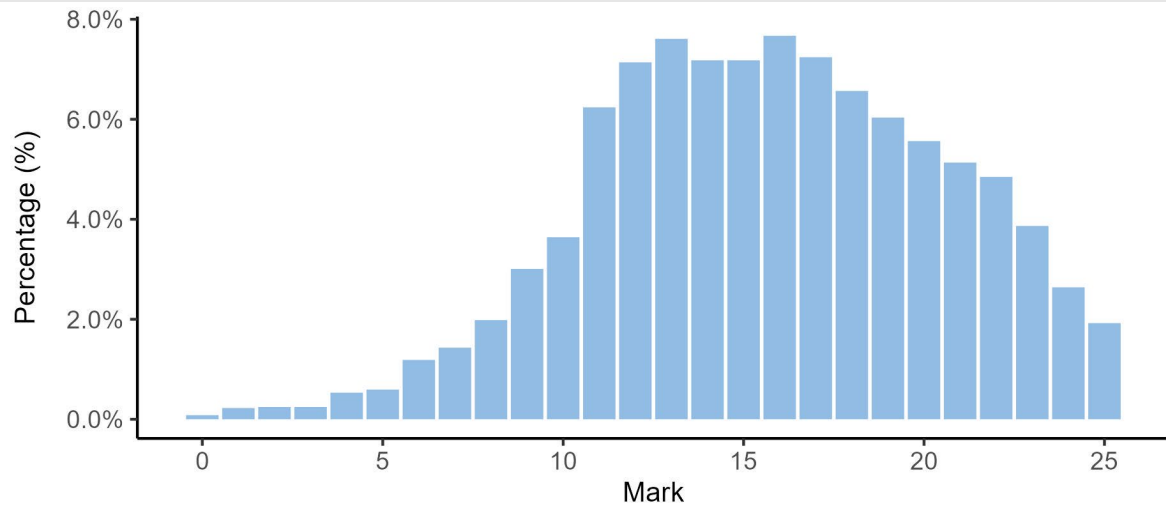
## Units 3 and 4 internal assessment (IA) results

### Total marks for IA

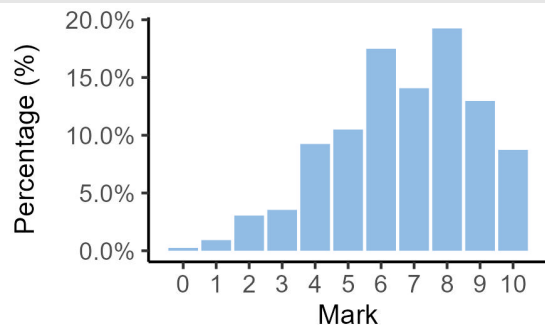


## IA1 marks

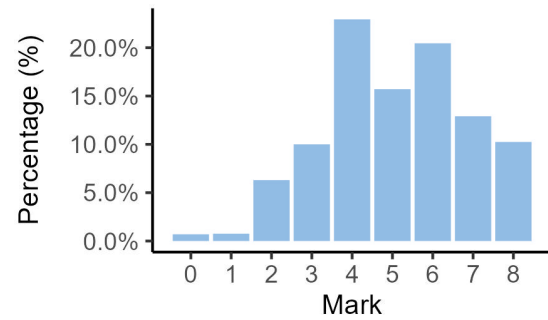
### IA1 total



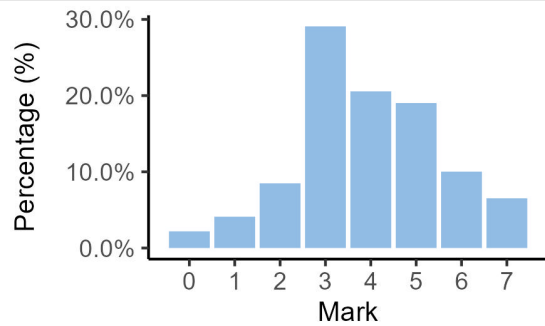
### IA1 Criterion: Comprehending



### IA1 Criterion: Analysing

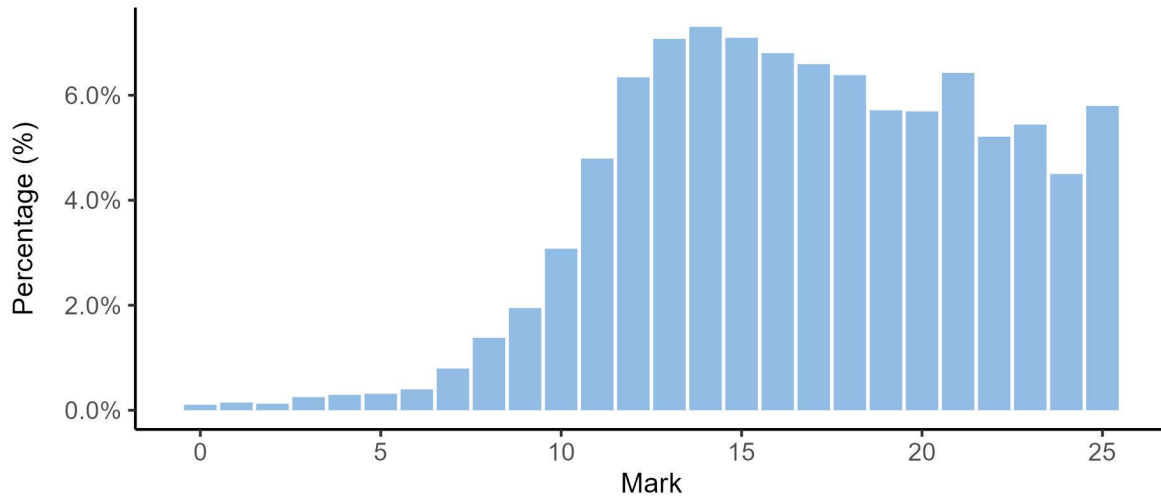


### IA1 Criterion: Evaluating

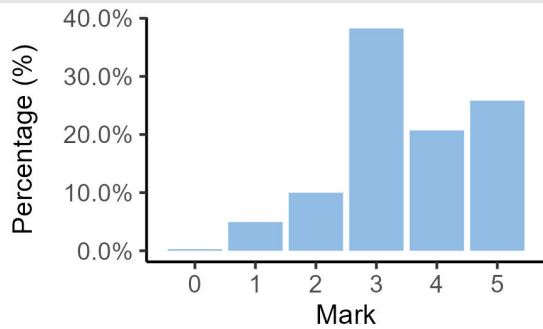


## IA2 marks

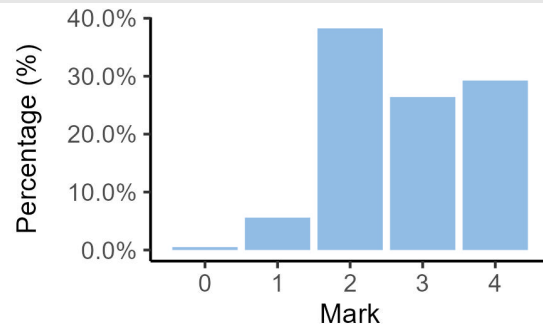
### IA2 total



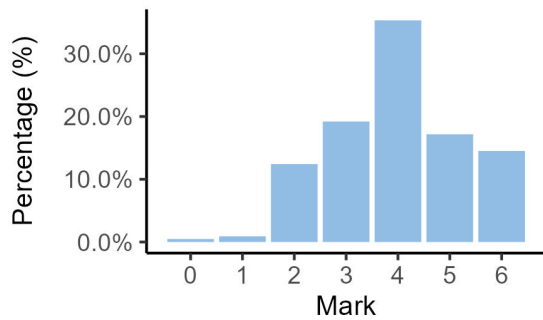
### IA2 Criterion: Comprehending



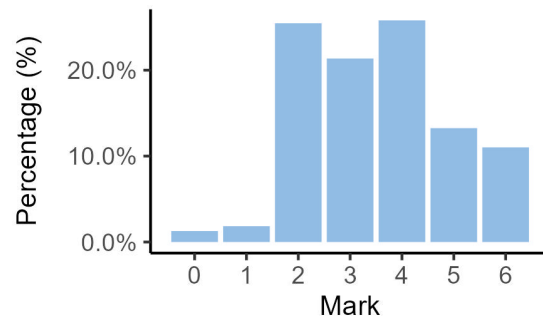
### IA2 Criterion: Selecting



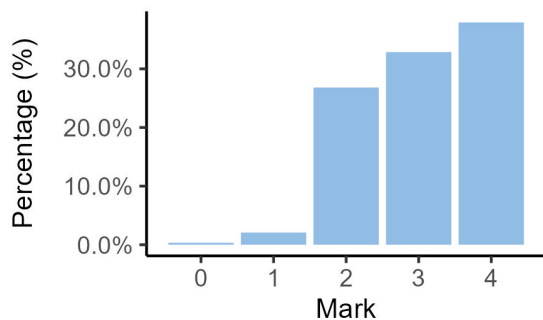
### IA2 Criterion: Analysing



### IA2 Criterion: Evaluating



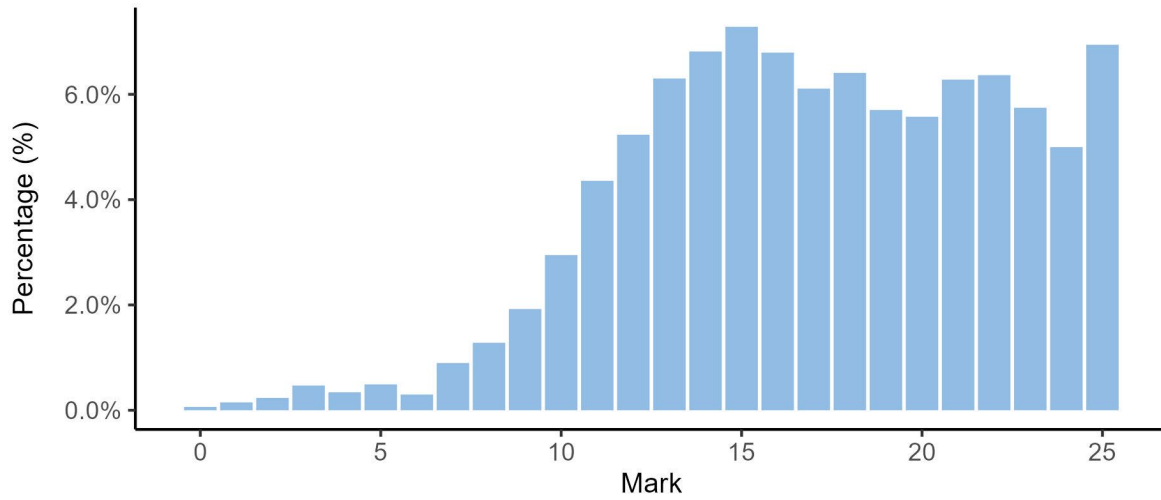
### IA2 Criterion: Creating a response



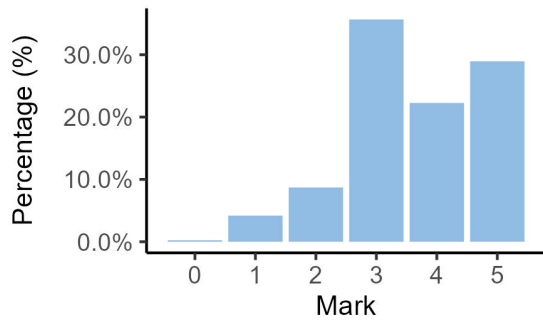


# IA3 marks

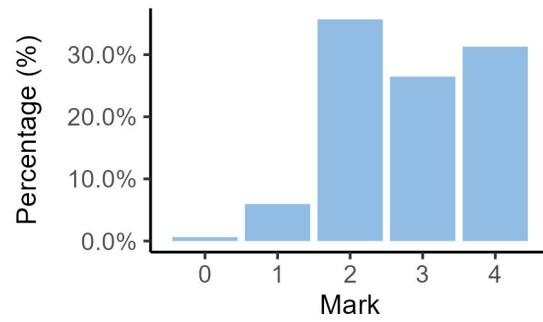
## IA3 total



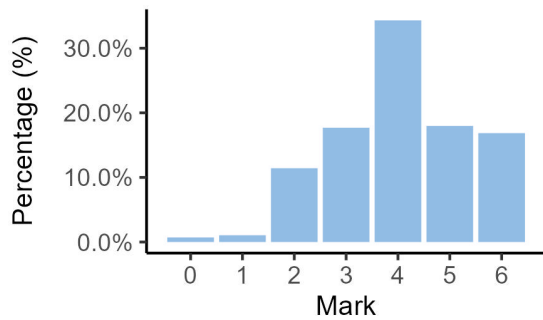
## IA3 Criterion: Comprehending



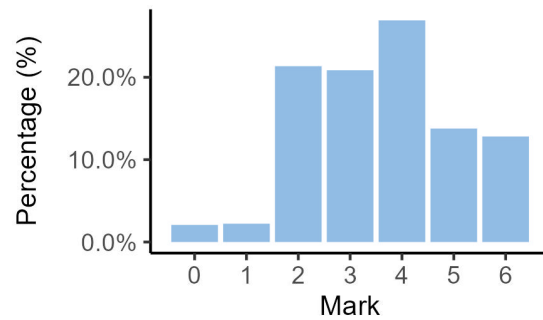
## IA3 Criterion: Selecting



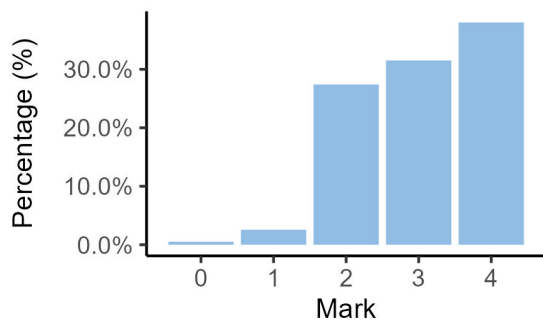
## IA3 Criterion: Analysing



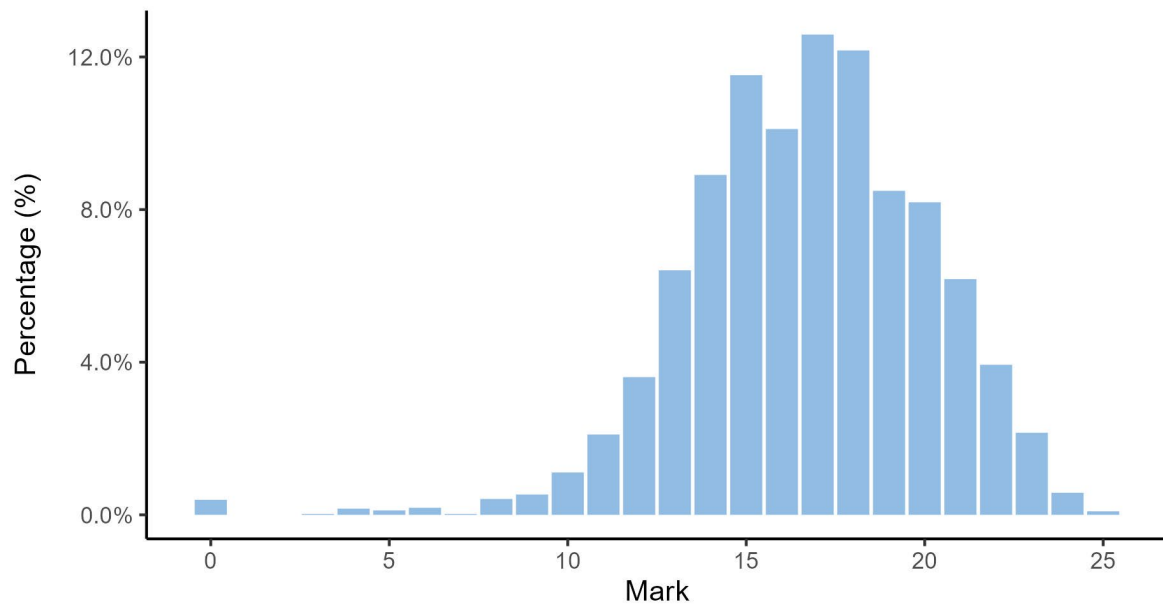
## IA3 Criterion: Evaluating



## IA3 Criterion: Creating a response

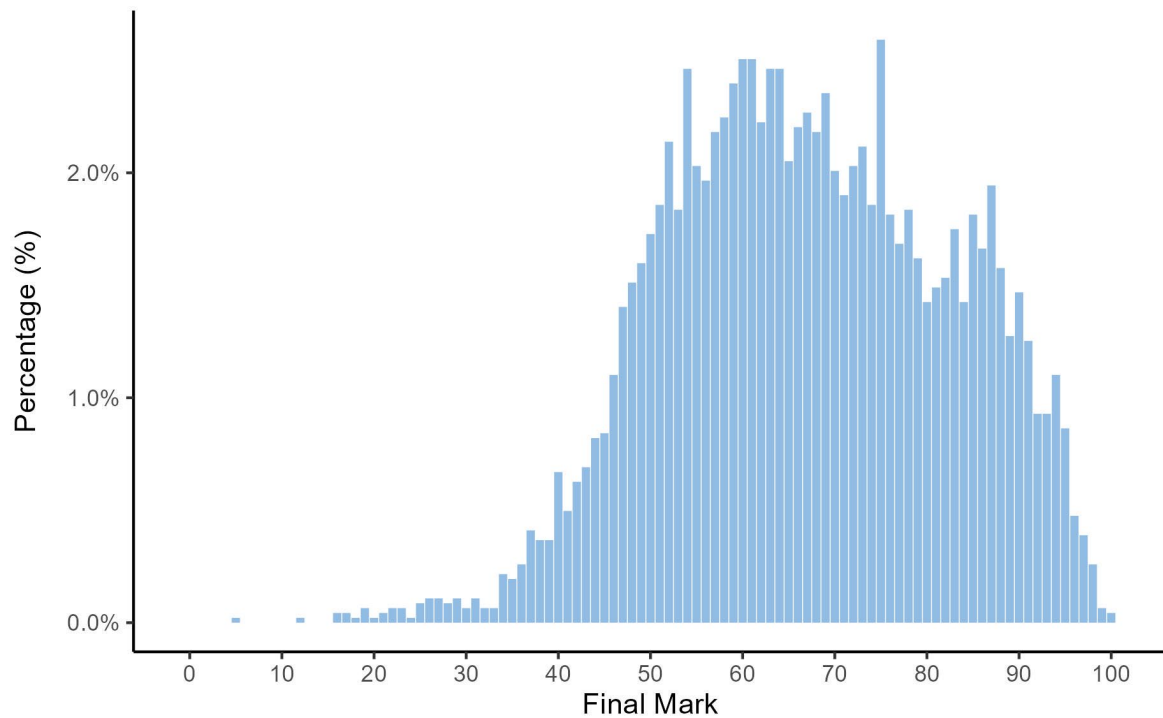


## External assessment (EA) marks



## 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	100–84	83–65	64–46	45–19	18–0

## 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	809	1,700	1,788	326	7

# 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 v5.0*, Section 9.6.

### Percentage of instruments endorsed in Application 1

Number of instruments submitted	IA1	IA2	IA3
Total number of instruments	329	329	328
Percentage endorsed in Application 1	40%	61%	32%

## 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 v5.0*, Section 9.7.

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	326	2,146	116	66.87%
2	326	2,100	107	76.62%
3	326	2,107	58	79.14%

# Internal assessment 1 (IA1)



## 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	140
Authentication	28
Authenticity	22
Item construction	32
Scope and scale	34

\*Each priority might contain up to four assessment practices.

Total number of submissions: 329.

### Effective practices

Validity priorities were effectively demonstrated in assessment instruments that:

- provided students with questions that allowed them to identify key elements and demonstrate accurate knowledge and understanding of legal terms related to the syllabus topic, e.g. explain the difference between responsible and representative government
- provided a broad range of questions that blended relevant concepts and principles to enable all students to demonstrate their understanding across the performance-level descriptors, e.g. included questions that allowed students to identify, describe and explain in Part A: Comprehend
- considered the breadth and depth of the content and the detail required in responses, and specified the number of elements (e.g. advantages, roles or limitations) required in the response. For instance, explain two (2) implications of having a minority government in terms of parliament's legislative function.

## Practices to strengthen

It is recommended that assessment instruments:

- align with the syllabus specifications. Endorsement data suggests this is a critical area for improvement, as ongoing issues arise from assessments not including Part A questions about both Queensland and Australian governance or, for the AS assessment instruments, both civil justice systems and contractual obligations
- are constructed using a range of relevant syllabus subject matter. There are numerous instances where Part A questions were too narrow, focusing only, for example, on Constitutional Powers, or where Part B questions provided stimulus items that covered issues related to law reform or human rights instead of governance. In other instances, while the Part B questions were about governance, the stimulus did not offer significant enough links to governance, which inhibited students' ability to demonstrate all performance-level descriptors
- contain stimulus items that
  - relate to a clearly stated legal issue relevant to the syllabus specifications
  - enable students to demonstrate their skills of analysis and evaluation
  - provide information about the nature and scope of the issue, including at least two different viewpoints and their consequences and at least two legal alternatives for students to explore. These elements must be drawn from the stimulus, not from students' own knowledge. This remains a consistent issue, leading to tasks not being endorsed, and can be addressed by ensuring the inclusion of stimulus items from various sources and perspectives.

## 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	10
Layout	26
Transparency	21

\*Each priority might contain up to four assessment practices.

Total number of submissions: 329.

### Effective practices

Accessibility priorities were effectively demonstrated in assessment instruments that:

- used clear cognitive cues in the questions and aligned with the performance-level descriptors in the ISMG. This was particularly evident in the questions that assessed Analysing and Evaluating criteria in Part B questions
- provided an appropriate number of lines for student responses that matched the scope and scale of each question.

## Practices to strengthen

It is recommended that assessment instruments:

- include stimulus items that offer a range of views on the stated issue, including the nature and scope of the issue and do not present bias
- ensure there is transparency in the task instructions. Part B does not require students to 'evaluate alternative arguments to make a legal recommendation' but rather to 'evaluate a legal situation relevant to Australian and/or Queensland governance' (or for the AS, 'to evaluate a legal situation relevant to an Australian and/or Queensland contractual obligation') by
  - presenting relevant legal alternatives leading to a decision
  - justifying the decision through the use of legal criteria
  - discussing implications of the decision.

## Additional advice

- It is recommended that Part B questions clearly identify the legal issue for students to analyse and the legal situation to be evaluated. Students are assessed on their ability to analyse and evaluate, not to determine a legal issue from the stimulus provided.

## 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	88.04%	7.06%	3.37%	1.53%
2	Analysing	82.21%	15.34%	2.15%	0.31%
3	Evaluating	73.31%	24.54%	1.84%	0.31%

### 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 all responses when matching evidence to the performance-level descriptors, e.g. when a student provided incorrect answers to two of the six questions, and incomplete responses to the other four questions, judgment was appropriately matched to the 'adequate' or 'partial' descriptors
  - responses matched to the upper performance-level descriptors contained all the information required to answer the question, and used legal terminology that was exact and relevant

- in Part B (Analysing and Evaluating)
  - for the Analysing criterion, the requirement of the ‘application of legal concepts, principles and/or processes to determine the nature and scope of a legal issue’ was recognised as matching the 1–2 mark range in responses that merely stated the legal issue and/or what it relates to, and identified a group of people affected by it.
 

An example of part of a response that describes the nature and scope of the issue (1–2 mark range) is: ‘The legal issue being analysed is minors’ capacity to contract. There are some restrictions on this because they are not experienced enough to make such important decisions. This issue can impact minors and the people they try to make a contract with.’
  - for the Evaluating criterion
    - the presentation of relevant legal alternatives leading to an insightful decision used knowledge from the analysis. To be relevant, and matched to the upper performance-level descriptors, legal alternatives must be aligned to the nature and scope of the legal issue, and the viewpoints and their consequences examined in the analysis. To be insightful, the decision must respond to the question being asked, be legal and linked to one or both of the legal alternatives presented. Additionally, it must address one or more of the issues highlighted within the analysis section of the response
    - the justification of the decision without using legal criteria, or where legal criteria were simply stated, was appropriately matched to the second descriptor at the 2–3 mark range.

### Samples of effective practices

The following excerpts have been included to demonstrate evidence to match the top performance-level descriptors of the ISMG for the Analysing criterion and the Evaluating criterion in Part B of the IA1.

Excerpt 1, from AS U1 IA1, demonstrates perceptive application of legal concepts, principles and processes to determine the nature and scope of a legal issue involving an Australian and/or Queensland contractual obligation.

It does this by opening with a general statement about the importance of contractual capacity and what the legal issue is. It then applies this information by providing an example of inequity between parties to a contract when one party lacks capacity, as well as the possible legal outcome. This then leads into an explanation of the crux of the nature of this legal issue: ‘...some have questioned the extent to which the current law of contractual capacity actually protects vulnerable parties from exploitation ...’ This section of the response concludes by foregrounding the decision that is further unpacked towards the end of the response.

Specific groups who lack or have limited contractual capacity are identified in the next section of the response, and an example is provided of the court’s response in such circumstances.

Excerpt 2, from U3 IA1, demonstrates relevant legal alternatives presented leading to an insightful decision, justification of the decision through the effective use of legal criteria, and ‘fluent discussion of relevant implications of the decision’.

Each legal alternative aligns with one of the viewpoints and its consequences are examined in the analysis. A legal alternative is presented in each of the first two paragraphs for consideration. This is achieved by describing the legal alternative and what it would entail, as well as briefly discussing possible outcomes, both positive and negative, and linking them to the legal criteria to be used in the justification of the decision: just and equitable outcomes. The excerpt also discusses the implications of each alternative.



The excerpt (and the response) concludes with a decision that, of the two, the second alternative will ensure more just and equitable outcomes 'through ensuring representation of diverse peoples without compromising democracy as well as ensuring the legislature's loyalty to Australia'.

Implications of the decision are discussed within the presentation of each of the legal alternatives, including that a referendum will be required and that the proposed alternative will mean that parliamentarians are still subject to s 44 of the Constitution, which will ensure the loyalty of members of parliament.

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

### Excerpt 1

1. Contractual capacity is a critical element within contract law. When forming legally-binding agreements, it is important that both parties understand the consequences and obligations of a contract. Where a contracting party lacks the mental capacity to understand the general nature of what he/she is doing, and the other party is aware of this, the relevant contract will be voidable. However, ~~some~~ some have questioned the extent to which the current law on contractual capacity adequately protects ~~the~~ vulnerable parties from exploitation and produces just and equitable outcomes in contractual disputes. Some have suggested that the doctrine of ~~top~~ capacity ought to be abolished ~~entirely~~, entirely, with the courts instead relying upon doctrines such as unconscionable conduct, undue ~~the~~ influence and misrepresentation. Others hold the view that the current law on ~~the~~ capacity is ~~adequate~~ adequate and should be retained. Having considered these potential alternatives, it is clear that abolishing the doctrine of contractual capacity is the most suitable alternative for ensuring just and equitable outcomes in contractual disputes.

## Excerpt 2

repeal s44(i) and

One legal alternative is to <sup>1</sup>introduce ethnic quotas<sup>1</sup> in parliament through constitutional reform. ✓  
~~This would increase quota~~ Quotas proportional to the population of people of diverse background would ensure their views are heard in parliament upholding a representative government. ✓ This however ~~is unjust and the~~ ~~as~~ undermines the legal principle of democracy ✓ as candidates may be unjustly disqualified due to their background and ~~need~~ <sup>requirements</sup> to fill quotas. ✓ As this requires alteration to the constitution, as per s128 of the constitution, <sup>an</sup> absolute majority and double majority must be achieved for this proposed change to take place (Source 7). Referendums have historically been costly, ~~time~~ and largely unsuccessful. ✓ This alternative however may lead to decisions made in parliament that are <sup>not</sup> aligned with Australia's interest, undermining the citizens' trust and confidence within the parliament (Source 2). ✓

The second legal alternative is to introduce committees ~~to~~ to advise the parliament and provide a vessel for which the views of people of diverse background are heard. ✓ This would be achieved through alteration of the constitution, which as previously stated, ~~is~~ costly and potentially unsuccessful. ✓ This would uphold ~~on~~ a representative government as <sup>the</sup> views of ~~people~~ diverse peoples' are heard in parliament as they occupy almost half of the population (Source 6). ✓ This alternative

also ensures just and equitable outcomes for members of parliament as they are not unfairly and unjustly disqualified due to their background. In addition to this, the legislature is still subject to s44(i) ensuring the loyalty of members of parliament to her people as well as maintaining the trust and confidence of the citizens (source 2). ✓

As both alternatives require <sup>alterations to the</sup> constitution, the second legal alternative ensures just and equitable outcomes to a greater extent ✓ through ensuring representation of diverse ~~people's~~ peoples without compromising democracy as well as ensuring the legislature's loyalty to Australia ✓. Through the introduction of ethnic committees, <sup>stakeholder interests are balanced</sup> a ~~representative~~ government <sup>as</sup> the value of diverse peoples are heard upholding a representative government, ensuring just and equitable outcomes for ~~both~~ diverse peoples <sup>citizens,</sup> and members of parliament, upholding the rule of law as well as ensuring legislature's loyalty, upholding the rule of law. ✓

### 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 the Part A response
  - demonstrates consistently correct responses to all aspects of each short response item, including containing consistently correct use of appropriate legal terminology in order to be matched to the upper performance level
- for the Analysing criterion
  - evidence across the Part B response must examine different viewpoints and their consequences at the top two performance levels. It must be remembered that

- viewpoints of a legal issue are opinions or perspectives about an aspect of the issue, e.g. that Royal Commissions are an effective accountability measure for governments because they are independent
  - consequences of the viewpoint of a legal issue are the impacts or outcomes of the viewpoint, e.g. as a result of their independence, Royal Commissions cannot be controlled or influenced by the government and can make findings that are critical and/or supportive of government practices
  - viewpoints examined in a response need to be different, but do not need to be associated with any particular group of people. Instead, the evidence used in the analysis should support the validity of the viewpoint
- for the Evaluating criterion
    - evidence in the Part B response must present relevant legal alternatives. A match to the top performance levels is achieved by
      - presenting two **legal** alternatives
      - ensuring that the legal alternatives align with the viewpoints and their consequences examined in the analysis, and link to the nature and scope of the legal issue, thereby making them **relevant**
    - legal alternatives presented must lead to a decision that is justified through the use of legal criteria. A match to the top performance levels is achieved by
      - selecting legal criteria that are relevant to the circumstances of the legal situation being evaluated. Selected elements of the rule of law should be specified, e.g. the law applies equally to all or punishment can only be administered by the courts
      - providing an explanation linking the criteria and the decision for example, about **how** the decision will result in outcomes that are fairer and more equitable, or satisfy the requirements of specified elements of the rule of law.

### Additional advice

- Ensure that stimulus material provided to students is appropriately relevant and succinct to allow them to demonstrate their analysis and evaluation skills. Stimulus must be unseen and able to be analysed, not simply used as a memory prompt for information learnt in class.

# Internal assessment 2 (IA2)



## 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	87
Authentication	2
Authenticity	21
Item construction	21
Scope and scale	21

\*Each priority might contain up to four assessment practices.

Total number of submissions: 329.

### Effective practices

Validity priorities were effectively demonstrated in assessment instruments that:

- adhered to the syllabus specifications and effectively employed the inquiry method. Endorsement data for Application 1 highlights that this instrument is predominantly well-constructed with most submitted tasks being in alignment with the syllabus specifications
- offered a clear area of law requiring reform that students could choose from, (e.g. youth crime, family law, technology and the law), rather than an exhaustive list or a single specific legal issue

- ensured that in AS tasks, students were directed to focus on their chosen aspect of the law of negligence and the duty of care within the jurisdiction of either Australia (federally) or Queensland.

### Practices to strengthen

It is recommended that assessment instruments:

- direct students to select a topic that relates to an area of law that may require reform, not a process for reform. Issues listed under lobbying and advocacy relate to law reform processes rather than an area of the law that may require reform, change or a new legislative instrument
- ensure that the 'to complete this task you must' instructions direct the students to justify their recommendation/s using legal criteria. A recurring issue was the absence of specified criteria or instructions for students to use legal criteria in their justifications
- provide cues for the inclusion of consequences to the viewpoints examined in the analysis, not just the examination of viewpoints. Note also that viewpoints need to be different but do not need to be opposing.

### 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	0
Language	5
Layout	0
Transparency	22

\*Each priority might contain up to four assessment practices.

Total number of submissions: 329.

### Effective practices

Accessibility priorities were effectively demonstrated in assessment instruments that:

- provided task instructions that clearly stated what knowledge and skills students were required to demonstrate in their response
- contained context statements that did not lead to a pre-determined response or offer bias.

### Practices to strengthen

It is recommended that assessment instruments:

- clearly indicate that checkpoints align with syllabus specifications.

### Additional advice

- The validity data showed that tasks that included topic options for areas of law that have recently been, or are in the process of being, reformed continue to be submitted. It is important to remember that the context of the assessment should focus on an area of law that may require reform, change or a new legislative instrument. Therefore, it is necessary that updates

and current reforms are checked before submission for endorsement. While topics such as abortion and voluntary assisted dying did not appear as often as in previous years, topics such as defamation, consent and coercive control have been reformed recently and therefore do not currently meet the task specifications.

- While a generic ‘choose any topic’ directive can meet the endorsement requirements, there is no guarantee that students will be able to demonstrate the ISMG requirements at the upper performance levels if the topic or legal issue chosen does not align with the syllabus specifications.

## 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	92.92%	6.15%	0.62%	0.31%
2	Selecting	93.85%	4.92%	1.23%	0%
3	Analysing	86.77%	11.08%	1.85%	0.31%
4	Evaluating	82.77%	15.69%	1.23%	0.31%
5	Creating a response	96%	2.77%	1.23%	0%

### Effective practices

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

- in the Selecting criterion, it was recognised that responses that did not acknowledge sources of all information, not just quotes, correctly and consistently using a recognised referencing system, could only be matched to the third descriptor at the 1- or 2-mark levels
- in the Creating a response criterion, responses that contained recognised features of a report genre were able to be matched to the second descriptor at the top performance level.

#### Samples of effective practices

The following excerpts have been included to demonstrate evidence to match the top performance level of the first two descriptors of the ISMG for the Analysing criterion.

Excerpt 1 has been included to demonstrate perceptive application of relevant legal concepts, principles and/or processes to determine the nature and scope of a legal issue that involves negligence and the duty of care in Australia and/or Queensland (AS U1 IA2).

In the first paragraph, the response clearly outlines what negligence is, why it exists as a legal principle and what must be proven in order for a negligence claim to be successful. The focus is then narrowed to medical negligence, establishing how the elements apply in this specific field, including the importance of ‘causation’ and the impact and purpose of the *Civil Liability Act 2003* (Qld).

The second paragraph of the excerpt applies those general elements to medical situations in order to establish and clarify the extent of the duty owed by medical practitioners to their patients and why that standard is greater than that owed in general circumstances. The relationship between the common law elements and legislation is also established, concluding that the impact of such a high standard of care is the difficulty it causes in balancing the rights of both parties in medical negligence situations.

Excerpt 2, in response to Unit 3 IA2, has been included to demonstrate interpretation of legal information to perceptively examine [one] viewpoint and [its] consequences in relation to the law reform issue of youth justice. (**Note:** the response also examined a second, different viewpoint and its consequences, as required).

The opening sentence indicates that this is an opposing viewpoint — it is not necessary for viewpoints to be opposing, only different as per the second descriptor in the ISMG.

The first paragraph presents the viewpoint that tougher youth sentencing has long-term negative effects and foregrounds a possible legal alternative — ‘adopt a smarter, not tougher, approach that prioritises early intervention and rehabilitation’.

The viewpoint and its consequences are examined by interpreting relevant legal information from a range of reputable sources. The consequences of the viewpoint — that tougher penalties have resulted in increased numbers of youth being brought into the criminal justice system rather than being diverted from it — are discussed in the second paragraph, paraphrasing information from the Queensland Human Rights Commissioner.

The third paragraph provides further support for the viewpoint and its consequences, adding emphasis through the use of statistics regarding youth in detention and reinforcing the likely outcomes of the tough approach to youth crime.

These points are cemented in the final paragraph, linking back to the minimum age of criminal responsibility and expert responses regarding its inappropriateness and predicted outcomes, such as increased likelihood of reoffending.

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



**Excerpt 1****Nature and Scope**

Negligence is a failure to do what a reasonable person would have done in similar circumstances to prevent loss or harm to another person (Australian Law Reform Commission, 2014). The purpose of this negligence standard is to protect others from inconsiderate conduct resulting in foreseeable harm. To prove negligence, the plaintiff must first prove the defendant owed a duty of care, and breached that duty (State of Queensland, 2003). In terms of medical duty of care, the common law surrounding a doctor's duty of care holds that doctors have a legal obligation to their patients to adhere to a standard of reasonable care which balances the interests of both the patients and the doctors (Dean, et al., 2013). This protects the patient as those seeking medical attention are typically in vulnerable positions, relying on professional opinions, while holding doctors to a high standard to deter them from acting carelessly. To prove medical negligence in Queensland, it is also necessary to prove causation, meaning the medical practitioner's breach duty of care was the cause of the injury to the plaintiff (Bowes, 2022). Without causation, a defendant cannot be held financially liable for damages, even if the defendant is guilty of wrongdoing, so this element is crucial (Marzzacco Niven & Associates, 2023). The CLA limits duty of care to ensure public liability insurance can remain affordable and services can continue to be provided to communities (State of Queensland, 2003).

Under Queensland law, healthcare professionals are held to a more rigorous standard of care compared to the general population, primarily because of their specialized expertise, knowledge, and skills in the field, as well as the unique vulnerability of their patients (Bowes, 2022). Included in a medical practitioner's duty of care is an overriding duty to warn patients of risks associated with treatments and procedures (Maurice Blackburn Lawyers, 2023). Highlighted in s21 of the CLA, a doctor has a proactive and reactive duty to advise and warn their patient of any risks associated with the treatment (State of Queensland, 2003). The information provided must be sufficient to enable the patient to make an informed decision about whether to undergo the treatment and provide information the doctor knows, or ought reasonably to know, that the patient would want (Parliamentary Counsel, 2020). This high standard of care, reflected in s21, gives surety to society that doctors aren't acting carelessly and patients are protected. A breach of this duty to warn affects patient autonomy, affordability of medical care, and the burden placed on doctors, making it difficult to fairly balance the rights and interests of both parties. This begs the question of which right, in the pursuit of justice and equity, is more important.

**Excerpt 2**

In contrast, strong opposition was shown by human rights advocates and experts who warn tougher sentencing is ineffective (Gillespie, 2022). Organisations have called on the government to adopt a smarter, not tougher, approach that prioritises early intervention and rehabilitation (Gillespie, 2023). Law Society president, Tony Rossi, stated, “Extending the length of incarceration and isolation without extra support may send at-risk children on a destructive path of career criminality.” While tougher sentencing could provide “short-term comfort” to the community, it could lead to greater social harm in the long run (ABC News, 2017).

The Queensland Human Rights Commissioner, Scott McDougall, warned the changes to the legislation are “unlikely to improve the life prospects of children or better protect victims of crime and the community”. The changes have resulted in significant increases in children being brought within, rather than being diverted from, the criminal justice system. No evidence suggests increased penalties will deter children from engaging in criminal behaviours (Queensland Human Rights Commission, 2023).

The Queensland Law Society (QLS) president, Chloe Kopilovic, says the government should introduce evidence-based measures as those recently passed will “cause more crime, more community harm and not achieve the intended outcome of community safety”. QLS is also concerned that “enacting a breach of bail offence will place further burden on an already overburdened youth justice system” (Silk, 2023). Statistics have shown 80% of children in detention in Queensland are on remand, therefore, criminalising breach of bail conditions could unfairly punish innocent and disadvantaged children (Smee, 2023). The new laws fail to address the underlying causes of juvenile offending, particularly financial and social disadvantages. They would not reduce recidivism, increase community safety or rehabilitate children, so limiting children’s rights is not proportionate (Silk, 2023).

The minimum age of criminal responsibility is considered too low and adversely affects children. Children under the age of 12 lack the capacity to properly engage in the criminal justice system, resulting in a propensity to accept a plea bargain, give false confessions or fail to keep track of court proceedings (Australian Human Rights Commission, 2021). Experts suggest incarcerating children does not reduce but contributes to the likelihood to reoffend – 94% of children imprisoned between the ages of 10 to 12 receive another prison sentence before reaching adulthood (Amnesty International, 2022). Australia has been repeatedly criticised by the United Nations for failing to raise the age of criminal responsibility to the international benchmark – 14.

ABC News (2017) ‘Tougher sentencing would drive youths onto path of “career criminality”, SA Law Society says’ ABC News 4 July <https://www.abc.net.au/news/2017-07-05/law-society-warns-against-tougher-sentences-for-young-offenders/8679454>

Gillespie, E. (2022) ‘Victims of crime seek tougher youth sentencing in Queensland, but could that make things worse?’ *The Guardian* <https://www.theguardian.com/australia-news/2023/feb/21/queensland-to-override-states-human-rights-act-in-bid-to-make-breach-of-bail-an-offence-for-children>

Gillespie, E. (2023) ‘Queensland to override state’s Human Rights Act in bid to make breach of bail an offence for children’ *The Guardian* <https://www.theguardian.com/australia-news/2022/jun/19/victims-of-see-tougher-youth-sentencing-in-queensland-but-could-that-make-things-worse>

Smee, B. (2023) ‘Labor backflips to make breach of bail an offence for children’ *The Guardian* <https://www.theguardian.com/australia-news/2023/feb/20/queensland-labor-backflips-to-make-breach-of-bail-an-offence-for-children>

## Practices to strengthen

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

- for the Analysing criterion
  - emphasis on the second descriptor should centre on the examination of viewpoints, rather than stakeholders. This ensures the focal point remains on the analysis of the legal issue rather than describing groups of people who have an interest in it
  - the viewpoints examined need to be different but not necessarily opposing, and are examined through the interpretation of legal information at the mid and upper performance levels, i.e. the investigation is from a legal perspective using legal information
- for the Evaluating criterion, it is noted that
  - for legal alternatives to be relevant, there must be alignment between the viewpoints in the analysis, the legal alternatives presented and the recommendation/s made to match the mid and upper performance levels
  - legal alternatives must be related to the law (not social or educational alternatives). Only when both legal alternatives presented contain legal elements can they be matched to the upper two performance levels
  - 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 an explanation as to how the recommendation will improve or satisfy an element of the rule of law or lead to just and equitable outcomes.

## Additional advice

- Schools should ensure that the ISMG is annotated in full, indicating how evidence has been matched to descriptors, to support consistent application of the best-fit approach to determine marks. Clarification of the ‘best-fit’ approach can be found in resources such as *Making judgments* webinar located in the Resources section of the Syllabuses application (app) and *Module 3: Making reliable judgments* in the Assessment Literacy app in the QCAA Portal.
- Schools should ensure accurate scanning of files submitted for confirmation to ensure pages are not missed.

# 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 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	204
Authentication	15
Authenticity	26
Item construction	13
Scope and scale	13

\*Each priority might contain up to four assessment practices.

Total number of submissions: 328.

### Effective practices

Validity priorities were effectively demonstrated in assessment instruments that:

- ensured the task clearly had an outward focus on an international human rights issue in which Australia has a legal interest, e.g. death penalty, human trafficking, forced marriage
- in AS tasks, the context and task description had a clear focus on an area of law that may require reform, change or a new legislative instrument at the state (Queensland) or federal level, not an area recently, or in the process of being, reformed, such as coercive control, consent and/or defamation.

## Practices to strengthen

It is recommended that assessment instruments:

- do not focus on domestic and state-based human rights issues as this does not align to the assessment specifications. This was a recurring issue during the endorsement event and was identified in the sample data
- direct students to present an argumentative essay and include a task question that allows them to develop an argument or position on a topic
- direct students to refer to legislation and/or case law. However, there is no need to mandate specific numbers of cases
- use appropriate legal terminology. Reference to case law (legal decisions), not case studies (descriptions of events), helps to focus student attention on the legal information from relevant case law needed to support their examination of viewpoints and their consequences.

## 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	8
Layout	0
Transparency	16

\*Each priority might contain up to four assessment practices.

Total number of submissions: 328.

## Effective practices

Accessibility priorities were effectively demonstrated in assessment instruments that:

- contained clear and transparent instructions that followed the assessment specifications and the ISMG performance-level descriptors, e.g.
  - To complete this task you must demonstrate
    - comprehension of legal concepts, principles and/or processes of Australian laws and international obligations of a current international human rights issue where Australia has a legal interest
    - selection of legal information from sources relevant to current international human rights where Australia has a legal interest
- provided a concise context description, which gave relevance to the topic and a brief description of the human rights issue that students are to address when completing the task but did not include the task details or compromise student responses.

## Practices to strengthen

It is recommended that assessment instruments:

- ensure that the checkpoints and allocated timelines align with the syllabus specifications. The data showed that several non-endorsed tasks exceeded the conditions of the syllabus specifications.

## Additional advice

- While communities of practice and the sharing of resources are encouraged, the copying of assessment instruments can lead to significant authenticity issues. Schools need to ensure they are submitting tasks suited to their school context as well as the task specifications.
- While a generic 'Choose any topic' task can meet the endorsement requirements, there is no guarantee that students will be able to meet the upper performance-level descriptors if the chosen international human rights issue does not align with the syllabus specifications.

## 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	94.17%	5.21%	0.31%	0.31%
2	Selecting	93.56%	5.52%	0.61%	0.31%
3	Analysing	91.1%	8.59%	0%	0.31%
4	Evaluating	85.28%	14.11%	0.31%	0.31%
5	Creating a response	95.4%	3.37%	0.92%	0.31%

### Effective practices

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

- for the Comprehending criterion, it was recognised that
  - for Unit 4 IA3, to be matched to the second descriptor at the top performance levels, responses must make explicit connections between the contemporary international human rights issue being investigated and the description of the legal concepts, principles and/or processes of Australian human rights laws and international obligations.

Further, it is recognised that Australian law related to the international human rights issue is not necessarily law that is generally perceived as being 'human rights law' such as the *Sex Discrimination Act 1984* (Cth), e.g. the *Family Law Act 1975* (Cth), Family Law Regulations 1984 (Cth), Family Law (Child Abduction Convention) Regulations 1986 (Cth) and Family Law (Child Protection Convention) Regulations 2003 (Cth) form part of the body of

Australian human rights law that addresses the international human rights issue of international parental child abduction.

Responses that contained little or no specific reference to relevant Australian human rights laws could only be matched to the second descriptor at the lowest performance level

- for AS U2 IA3, responses must
  - investigate an Australian (federal) and/or Queensland (state) law reform issue. Responses that deal with law reform issues within other states or territories cannot be matched to the first or second descriptor at the top two performance levels
  - describe the legal concepts, principles and/or processes of the legal issue being investigated, with a focus on the aspects of those that make the legal issue one that may require reform to Australian and/or Queensland law
- for the Selecting criterion, judgments made matching evidence in responses to the first descriptor at the top performance level ensured that the choice of legal information did not focus on one particular type of information source (e.g. media articles), but made use of a variety of legal commentary from a range of reputable and relevant sources (e.g. law journal articles, judges' comments, case decisions) as appropriate
- for the Creating a response criterion, to be matched to the first descriptor at the top performance level it was recognised that responses must combine concise expression with logical development of ideas that are relevant to the argument being made and enhance legal meaning.

#### Samples of effective practices

The following excerpts have been included to demonstrate evidence to match the top performance level of the second and third descriptors of the ISMG for the Analysing criterion.

Excerpt 1 has been included to demonstrate discerning use of case law as evidence to support the analysis. **Note:** This is only one way case evidence can be used to support the analysis.

The excerpt forms part of the response in which relevant legal concepts, principles and/or processes are being applied to determine the nature and scope of the international human rights issue in which Australia has a legal interest. The first paragraph of the excerpt is part of the introductory section of the response in which the essential legal features of the international human rights issue are identified and legal concepts, principles and/or processes of Australian human rights law and international obligations are described.

These legal concepts, principles and/or processes are then applied by first identifying a challenge faced by Australia when dealing with Hague Convention cases when family violence is involved. The second sentence of this paragraph then provides detail about the nature of the challenge.

The approach of Australian courts in handling allegations of family violence is then summarised, highlighting the inconsistencies and providing case evidence as an example of the court's strict interpretation approach.

The case is identified and the purpose of the appeal is briefly described. The foundation of the appeal is then summarised, with the final sentence of the paragraph summarising the outcome of the case.

The final paragraph in the excerpt summarises the court's reasoning, then provides a general comment raising concerns about whether or not the court's approach is likely to result in positive outcomes for women and children in similar circumstances.

Excerpt 2 demonstrates one way a viewpoint about the legal issue being investigated, and its consequences, can be examined.

In the first two sentences, the excerpt states what the viewpoint is, situating it in relation to Australia's 'ethical, moral and international' obligations with respect to the international human rights issue being investigated. The third sentence clearly identifies the consequences of this viewpoint. The viewpoint is then supported using evidence from *C v Australia*. The details of the case are very briefly identified, and the link to the viewpoint and its consequences established in the next three sentences. The next sentence then reinforces the link between the case and the consequences of the viewpoint.

The excerpt draws on evidence from a reputable source, the Australian Human Rights Commission, to further clarify the viewpoint and prove its veracity with statistics. The paragraph concludes by briefly presenting a possible legal alternative to address the viewpoint and its consequences. The legal alternative was further developed later in the response.

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

### Excerpt 1

Australia administers the 1980 Hague Convention on the Civil Aspects of International Child Abduction through its Australian Central Authority, under the Attorney-General's Department (Australian Government, 2023). The convention, active between Australia and around 90 other states like Canada, Ukraine, USA, China, etc., facilitates the legal process for returning abducted children to their country of origin and supports parents in establishing contact or access to children residing in foreign countries (Australian Government, 2023).

However, Australia has faced challenges in applying Article 13(b) in Hague Convention cases, particularly when dealing with allegations of family violence or abuse that could endanger the child's safety upon return. Proper assessments of abuse under the terms "grave risk" and "intolerable situation" have been overlooked, and sufficient safeguards for the child's well-being may not have been implemented (Afolabi, et al., 2023; Alanen, 2008).

Australian courts have taken varying approaches to handling domestic violence allegations. Some courts have adopted a strict approach, while others have considered the unique circumstances of each case. For example, in the prominent Australian case of *Murray & Director of Family Services ACT* [1993], an appeal was made to prevent the children from being returned to New Zealand. The appeal was based on the father's affiliation with a Dunedin motorcycle gang and the mother's allegations of a significant history of domestic violence and threats against her. However, the court rejected the appeal, reserving the power to prevent return for only the most severe cases of risk, seemingly disregarding the 'grave risk' posed by domestic violence allegations.

The court emphasized that a return order does not require the mother to return or live in the same area as the father in New Zealand. The court rejected the notion that New Zealand authorities would be unable to protect the mother and children upon their return. However, this approach may not ensure complete safety for the child and mother or address the underlying reasons for the abduction. Relying solely on the New Zealand court may raise concerns, as not all countries provide equal rights and protections for women and children. Leaving the matter to be determined by another country may put the child and mother at risk of harm or an intolerable situation.

Australian Government (2023) *Hague Convention on the Civil Aspects of International Child Abduction*. Retrieved from Attorney-General's Department. <https://www.ag.gov.au/families-and-marriage/families/international-family-law-and-children/hague-convention-civil-aspects-international-child-abduction>

Afolabi, H. S., Kay, E; Lunn, E; Mihardja, T; Rix, O; Smith, E. (2023, February 24). *Shocked by the harms inflicted by the Hague Convention*. Retrieved from *Hague Mothers* – <https://www.hague-mothers.org.uk/2023/02/24/shocked-by-the-harms-inflicted-by-the-hague-convention/>

*Murray v. Director, Family Services*, FLC 92-416, [1993] FamCA 103, 16 Fam LR 982 (Full Court of the Family Court of Australia at Sydney June 10, 1993)



**Excerpt 2**

Australia has an ethical, moral, and international legal responsibility to not subject refugees to inhumane treatment within indefinite arbitrary detention. However, sections 189 and 196 allow arbitrary detention by stating those without a visa “must be detained and kept in immigration detention until granted” one, thus making the detention period undetermined and indefinite. The issue with this process is that refugees who are undergoing the effects of these sections are suffering physical and mental health consequences as a result of a systematically flawed framework (Doherty, 2020). The serious concerns are evident in *C v Australia (HRC, 2002)*, as ‘C’ was sentenced to 42 months imprisonment post-detention due to his “threatening behaviour” which resulted from “acquired serious mental illness in detention” (Remedy Australia, 2002). After receiving psychiatric medical attention, he made significant behavioural improvements. The Human Rights Council (2002) was able to identify that the dehumanising circumstances of C’s detention was the “direct cause” of his mental illness (Remedy Australia, 2002). This case exemplifies that being subjected to the inhumane conditions of arbitrary detention for an undetermined amount of time results in unjust consequences for refugees, as they develop complications deterring their quality of life. The Australian Human Rights Commission (2005) expresses their “serious and grave concerns” of the MA detention process and conditions, reiterating that it is in direct breach of article 25(1) of the UDHR which states that, “everyone has the right to a standard of living adequate for the health and well-being,” to which section 189 and 196 inevitably disregard (UNHCR, 2023). As aforementioned, the Nauru files which reported 30 instances of self-harm and 159 self-harm threats, is corroborating evidence that indefinite detention is the cause for mental health concerns (Evershed, 2016). Therefore, *C v Australia (HRC, 2002)* reinforces that sections 189 and 196 of the MA need amendment to better reflect Australia’s ICCPR obligations that “no one shall be subjected to arbitrary [...] detention” (Article 9).

**Practices to strengthen**

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

- for the Analysing criterion
  - the second descriptor focuses on the examination of different viewpoints and their consequences about the legal issue being investigated, rather than on stakeholders. This distinction is made to ensure that the primary focus remains on the analysis of the legal issue itself, rather than describing one or more stakeholder groups involved in, or with an opinion about, the legal issue.

Responses that describe stakeholder groups/individuals can only be matched to the second descriptor at the lowest performance level (description or identification of superficial viewpoints and/or consequences)

  - case law can be used as evidence to support the legal issue and viewpoint/s being presented in the analysis. However, this task is not an analysis of case law, therefore describing the facts and circumstances surrounding a legal case and its outcome does not match the second descriptor in the analysing criterion
  - when making judgments about the third descriptor (use of evidence to support the analysis), it is recognised that describing the circumstances of a legal case is most likely to be matched to the lowest performance level. To be matched to the top two performance levels, the legal judgment in a case may be used as evidence to support the viewpoint being examined. However, detailed descriptions of events and/or scenarios leading up to a legal challenge do not constitute or contribute to the analysis and should not be used in responses

- for the Evaluating criterion
  - two relevant legal alternatives are required and must both be aligned to the analysis of the legal issue and lead to the recommendation/s. Responses that recommend implementation of legal processes that already exist or changes to law that have already occurred can only be matched to the first descriptor at the lower performance levels
  - it is essential for legal alternatives to relate to the law and fall within the appropriate jurisdiction. A legal alternative that proposes introducing or changing international law is not a relevant legal alternative as it is not within Australia’s jurisdiction to enact such changes. Similarly, a legal alternative proposing that the Queensland government should enact federal legislation is not relevant.

### **Additional advice**

- To support teachers to accurately use the best-fit approach, it is advised schools review the *Understanding ISMGs* and *Making Judgments* webinars that can be found in the Resources in the Syllabuses app in the QCAA Portal.
- Evidence at confirmation also suggests schools need to have robust quality assurance processes to ensure the uploaded files are those that are required, and not, for example, incorrect subject responses or incorrect IA responses.
- When students are provided with Unit 4 IA3 tasks that allow them to choose an international human rights issue in which Australia has a legal interest, close guidance must be provided at the classroom level to ensure students are not choosing to focus on domestic legal issues such as youth detention or the age of criminal responsibility.
- Responses to AS U2 IA3 must focus on areas of law that require reform, change or a new legislative instrument. Students must not investigate the legal issue through a human rights lens.

# 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 Legal Studies assessment instrument was designed using the specifications, conditions and assessment objectives described in the summative external assessment section of the syllabus.

The assessment required students to respond to short response questions that assessed the Comprehending objective and an extended response to unseen stimulus item that assessed the Analysing and Evaluating objectives.

Questions were derived from the context of Unit 4 Topic 1: Human rights and Topic 3: Human rights in Australian contexts. The examination consisted of four (4) short response items and one (1) extended response to stimulus item (47 marks).

The stimulus included excerpts from a range of relevant sources, including international and Queensland law, the Australian Bureau of Statistics Census and Queensland sentencing data, and law journals.

The AS assessment required students to respond to short response questions that assessed the Comprehending objective and an extended response to unseen stimulus item that assessed the Analysing and Evaluating objectives.

Questions were derived from the context of AS Unit 2 Topic 2: Governance in Australia. The examination consisted of five (5) short response items and one (1) extended response to stimulus item (48 marks).

The AS stimulus included excerpts from a range of relevant sources, including the Australian Constitution, conference papers, legal reference texts and journal articles.

### 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 when they:

- responded to all elements of short response items
- analysed the legal issue stated in the extended response to stimulus item
- made a decision about the legal situation stated in the extended response to stimulus item.

## Samples of effective practices

### Short response

The following excerpts are in response to Question 4 (General paper) and Question 5 (AS paper). Question 4 (Excerpt 1) required students to describe the Australian Human Rights Commission and explain its role, including the powers it has under anti-discrimination legislation.

Effective student responses:

- described the Australian Human Rights Commission, including two of the following relevant details
  - federal
  - an independent, statutory body
  - established under the *Australian Human Rights Commission Act 1986*
- explained the role of the Australian Human Rights Commission by identifying a role of the Commission, and providing details about the identified role
- explained the Australian Human Rights Commission's powers under anti-discrimination legislation, by identifying the powers and explaining them.

Excerpt 1 has been included to demonstrate a successful response to Question 4 as it provides evidence of a clear and correct response to all elements of the question. It does this by stating, in the first sentence, what the Australian Human Rights Commission (AHRC) is and identifying what its role is. The explanation of the AHRC's role is continued in the final two sentences of the response.

The second sentence clearly identifies the powers the AHRC has under Anti-Discrimination legislation, '*can investigate and conciliate disputes under the Sex, Racial, Age and Disability Discrimination Acts*' and the third sentence adds detail using an example to provide clarity.

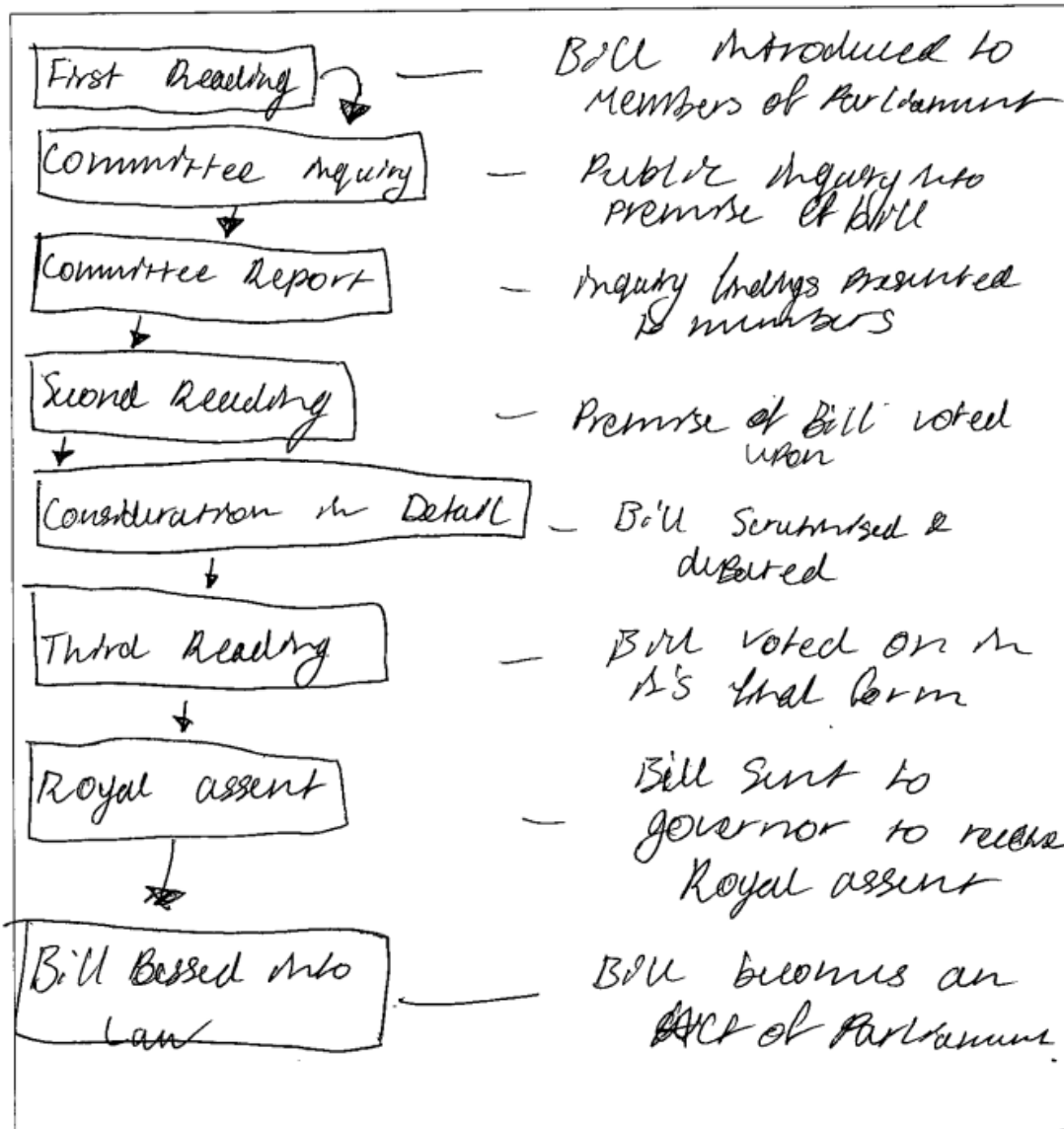
Question 5 (Excerpt 2) of the AS examination required students to draw and label a diagram illustrating the Queensland parliament law-making process. Effective student responses correctly identified the seven steps involved in passing a Bill through Queensland parliament, including placing the steps in the correct order.

The excerpt has been included to demonstrate a mostly successful response to Question 5 as it correctly states six of the seven steps involved in the passage of a Bill through Queensland parliament. The second stage is 'Committee consideration' rather than 'Committee inquiry' and does not always involve a public inquiry, although comments and suggestions from the public can be called for during this stage. The final stage, 'Royal assent', correctly identifies 'the Governor', rather than the Governor-General, as the King's representative, who provides royal assent at state level.

## Excerpt 1

The Australian Human Rights Commission (AHRC) is an independent organisation set up by the Australian Human Rights Commission Act seeking to promote and uphold Australian Citizen's rights and provide a remedy when those rights are breached. Under the AHRC can investigate and conciliate disputes under the Sex, Racial, Age and Disability Discrimination Acts, providing a free and confidential dispute resolution mechanism. This means if an Australian <sup>has</sup> felt they suffered an alleged breach of their human rights, the AHRC can hear their complaints and facilitate an agreement between the parties and provide a decision ~~and~~ as to whether the citizen's rights have been breached. The AHRC advocates to governments <sup>about</sup> human rights issues, ~~to~~ by making submissions ~~and~~ <sup>which can lead to changes in legislation to improve the administration of human rights</sup> laws. It also promotes public awareness of human rights abuses and ~~also~~ engages with the UN regarding Australia's compliance with its international obligations.

## Excerpt 2



## Extended response

Effective student responses:

- analysed the legal issue stated in the question — how criminalising public nuisance offences affects the right of access to justice for people experiencing homelessness — rather than the general issue of homelessness
- evaluated the legal situation stated in the question, e.g. in the AS examination, the extent to which an independent judiciary exists in Australia, rather than the effectiveness of an independent judiciary in Australia
- used information from the stimulus to support the analysis of the legal issue and evaluation of the legal situation stated in the question
- addressed all elements of analysis (i.e. nature and scope of the legal issue, examination of viewpoints and their consequences, use of evidence) and evaluation (i.e. presentation of legal alternatives from the analysis leading to a decision, justification of the decision using legal criteria, discussion of implication/s of the decision).

## Samples of effective practices

The following excerpts are from the General and AS examinations. The General examination required students to ‘analyse how criminalising public nuisance offences affects the right of access to justice for people experiencing homelessness’, and make a decision about ‘the extent to which homeless people’s access to justice is affected in Queensland’. The AS examination required students to ‘analyse the legal issue of judicial independence’ and make a decision ‘about the extent to which an independent judiciary exists in Australia’.

Excerpt 1 is from an AS examination response. It has been included to demonstrate one way that a viewpoint and its consequences related to the legal issue of judicial independence can be examined in order to be matched to the top performance level in the EAMG. In the paragraph that precedes the excerpt, the response uses evidence and information from the stimulus material to determine the nature and scope of the legal issue of judicial independence.

In the excerpted paragraph, the response first identifies the viewpoint ‘the legislature’s involvement in the selection and dismissal of justices may improperly influence the judiciary’, and its consequence, ‘undermining the separation of powers’. If the response had finished here, it would have been matched to the EAMG at the 1-mark level.

However, in the next sentence the response draws on information from Stimulus items 2 and 3 to unpack the relationship between the legislature and the judiciary, before further discussing possible impacts of this relationship. Potential consequences, for both the general public and the judiciary, are further developed with a link back to the independence of the judiciary and the aspiration of ‘never be[ing] frightened or intimidated’, outlined by The Honourable Justice Marilyn Warren, Chief Justice of Victoria, in 2010, which was taken from Stimulus 7.

Excerpt 2 is a response from the General examination. It has been included to demonstrate both the perceptive examination of a valid viewpoint and its consequences related to the legal issue of ‘how criminalising public nuisance offences affects the right of access to justice for people experiencing homelessness’ and the effective ‘use of information from the analysis to present a relevant legal alternative’. It also demonstrates one way that ‘a range of relevant information from the stimulus’ can be discerningly used to support the analysis.

The viewpoint that ‘police discretion is too great’ and its consequence that ‘it attributes greater power to police and places homeless people at a greater risk of wrongful imprisonment’ are clearly stated in the first sentence of the excerpt. The response then uses evidence from Stimulus 7 to further develop these by quoting one of the aims of criminalising public nuisance offences. Potential positive and negative aspects of police discretion are examined, contrasting the fact that increased discretion allows police to ‘better respond to public concerns’ with the ‘rights of homeless individuals’. The link is made between this and the fact that, once charged and before the court, a guilty plea is required for homeless individuals to gain support. The consequent lack of access to justice is then unpacked, drawing on evidence from Stimulus 8 using short quotes and interpretation of legal information.

In the second paragraph, the legal alternative is presented. It is relevant as it is both legal and aligns to the viewpoint being examined in the previous paragraph. The legal alternative of limiting police discretion by reintroducing the Vagrancy Act, as proposed in Stimulus 10, is presented before its benefits (‘temporarily ensuring homeless individuals gain shelter ...’) and negative impacts (including the resultant impact on the human rights of homeless people), are discussed. Interpretation of legal information continues with the link between the legal alternative presented and mandatory sentencing, and the potential harm that could result, being made.

## Excerpt 1

One viewpoint is the legislature's involvement in the selection and dismissal of justices may improperly influence the judiciary, undermining the separation of powers. As justices are selected by the Governor-General on advice of the Prime Minister, <sup>(source 2)</sup> adverse interests may be apparent in the recommendation. This would allow a judge to politicise their <sup>judgements</sup> ~~decision~~, failing to uphold the impartiality of the separation of powers. This could result in the government enacting and interpreting laws tyrannically, overriding the checks and balances designed by the constitution. Consequently, citizens would be unwilling to accept the findings of courts, ~~leading to~~ threatening peace and order <sup>(source 3)</sup>. Moreover, ~~the~~ the legislature provides funding for the operation of the judiciary, <sup>(source 6)</sup>. This could lead to <sup>the</sup> favouring <sup>of</sup> various parties to achieve additional funding, which is contrary to the oath of office <sup>(source 7)</sup>. This could cause judges to be frightened or intimidated by the legislature, undermining their independence, <sup>thus</sup> failing to serve and protect the community.



**Excerpt 2**

Another viewpoint is that Police Discretion is too great, therefore by criminalising public nuisance offences it attributes greater power to police and places homeless people at a greater risk of wrongful imprisonment. As reported in S7, criminalising public nuisance aimed to better balance a "fair compromise between the rights of individuals to engage in certain behaviours that might not ordinarily warrant criminal justice behaviour, and the right to all sectors of the community to be able to enjoy public places..." Although the criminalising of public nuisance allows for police to "better respond" to public concerns, such as public intoxication, as the discretion of whether the actions of the individual warrant an arrest or reprimand are left to the police (S3), the rights of homeless individuals are unbalanced. The system for homeless individuals to gain social and emotional aid requires them to plead guilty in court (S8). This presents a lack of access to justice because the evidence "is not tested" and so those who believe they were wrongfully charged and detained by police are unjustly incentivised to plead guilty regardless. This implication presents a negative affect on the justice system as it insinuates an expectation that individuals were guilty prior to a trial (S8).

Another alternative is for police discretion to be limited by re-introducing the Vagrance Act legislation which standardises that any individuals without "lawful means of support" to be imprisoned regardless of police discretion. The benefits of this act is that it would temporarily ensure homeless individuals to gain shelter, medical attention and connection to support services. However, this alternative would further encroach upon human rights as the Vagrance Act in addition to the criminalising of public nuisance both continue to encroach upon an individuals right to liberty of movement and freedom to choose their residence (S1). Additionally, this alternative fails to acknowledge that homelessness is not merely based on the lack of housing, but also due to domestic violence, unemployment, mental illness and addiction disorders amongst more (S5). Mandatory sentencing would greater harm those whom are already disadvantaged, especially since imprisonment is only temporary.

**Practices to strengthen**

When preparing students for external assessment, it is recommended that teachers:

- model and explicitly teach the differences between the cognitions — identify, describe and explain. The *Year 7–10 Cognitive verb toolkit* and *Cognitive verb toolkit — Years 11–12*, which can be found on the Noticeboard in the QCAA Portal, provide resources to support the explicit teaching of these and other commonly used cognitive verbs
- provide students with strategies to carefully read and annotate both short response and extended response exam questions to ensure they respond to all elements of each question. For instance
  - short response items often contain more than one part, as the requirements of the response must be explicitly stated
  - when examples are required, as stated in the short response item, the reason they are required should be noted, e.g. short response item 3 required students to 'use an example to support your response'. While most responses provided an example, the examples were not always sufficiently linked to the rest of the response to *support* it
  - the extended response item will explicitly state the legal issue to be analysed and the legal situation to be evaluated. It is important that students respond to the question being asked, rather than generalising the legal issue or legal situation, e.g. the extended response task in the AS examination required students to make a decision about the extent to which judicial independence is present in Australia, rather than the broader and more general

concept of 'judicial independence'. Similarly, the extended response task in the General examination required students to analyse how criminalising public nuisance offences affects the right of access to justice for people experiencing homelessness, rather than the broader issue of homelessness

- support students to develop strategies to engage with and use stimulus material provided for the extended response to stimulus item. To be used effectively, information from the stimulus material should be selected and used to support the analysis. Additionally, rather than quoting large sections of stimulus items, students should practise how to paraphrase and extend the information from the stimulus to align with and prove or support the point they are making
- support students to identify consequences of the viewpoints being examined. Consequences are the outcomes or effects of the viewpoint being examined and do not simply constitute a summary of the viewpoint itself.