**LEGAL STUDIES  
  
Units 3 & 4 – Written examination**

# PES

# 2018 Trial Examination 2

**SOLUTIONS**

**SECTION A**

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| **Instructions for Section A**  Answer **all** questions in the spaces provided. |

**Question 1** (2 marks)

Distinguish between the burden of proof in a civil case and the burden of proof in a criminal case.

**Mark Allocation**

* 1 mark: who has the BOP: in civil cases, the plaintiff; In criminal cases, the prosecution
* 1 mark: explanation of the BOP – rests with the party responsible for proving the facts
* - 1 mark: no distinguishing word or phrase such as ‘whereas’

**Sample Response**

The burden of proof refers to the responsibility of a party to prove the facts of the case. In a civil case, the burden of proof rests with the plaintiff, whereas in a criminal case the burden of proof rests with the prosecution.

**Question 2** (2 marks)

Describe **one** law-making role of the Legislative Council in the Victorian Parliament.

**Mark Allocation**

* 1 mark: a brief outline of one role
* 1 mark: a more detailed description of the role.

**Possible roles include:**

* Act as a house of review
* Initiate and make laws
* Represent the regions of Victoria
* Scrutinise bills through the committee process

**Sample Response**

One role of the Legislative Council, as the upper house in the Victorian Parliament, is to represent the regions of Victoria. Victoria is divided into 8 geographical regions, with each region having 5 members elected to the Legislative Council (ie a total of 40 seats). In this way, bills passed by the Legislative Council should represent the interests of the different regions of Victoria.

**Question** **3** (3 marks)

Explain how representative proceedings uphold the principle of access.

**Mark Allocation**

* 1 mark: explanation of representative proceedings
* 1 mark: link to the achievement of access
* 1 mark: depth of response. This may be through the use of an example

**Sample Response**

Representative proceedings uphold the principle of access by providing people with an increased ability to assert their rights and pursue their case through the courts. A person who may otherwise be deterred from pursuing their claim, because of the cost of legal proceedings or the low value of the damages sought, may be able to pursue their claim through representative proceedings such as a class action. Such actions are initiated in the name of one person (the lead plaintiff) on behalf of a group. The group members are able to share the costs of the litigation and thus improve access by making litigation a viable option.

**Question 4** (3 marks)

Explain how individuals can influence law reform through petitions.

**Mark Allocation**

* 1 mark: explanation of petitions
* 1 mark: explanation of how individuals can use petitions to influence law reform
* 1 mark: depth of response. This may be through the use of an example

**Sample Response**

Petitions are a formal request for parliament to take action on an issue. They are documents that include a list of signatures of people in support of a proposed legislative change. They can be used by individuals to influence law reform, as once the signatures have been collected (either on paper or electronically) they are presented to a Member of Parliament who must then table (present) the petition in the next sitting of parliament. This is the only way that an individual or pressure group can put their concerns directly to parliament.

**Question 5** (4 marks)

Dahlia slipped on a greasy chip at Frank’s Chicken & Chips and suffered a serious spinal injury. Since the incident, Frank’s Chicken & Chips has closed down, and its owner, Frank has been declared bankrupt.

Dahlia is considering legal action, however, she is uncertain about how she will cover the legal costs due to her limited income as a part-time bartender.

Analyse **two** factors that Dahlia should consider before initiating a civil claim.

**Mark Allocation**

* 1 mark: analysis of first factor
* 1 mark: analysis of second factor
* 1 mark: quality of the links to the case study
* 1 mark: depth of analysis

**Possible factors include:**

* Negotiation options
* Costs
* Limitation of actions
* Scope of liability
* Enforcement issues

**Sample Response**

As Dahlia has limited income as a part-time bartender, the costs involved in litigation is one factor that she should consider before initiating a civil claim. Usually the most significant cost involved in litigation are the fees for legal representation, which is required for conducting the pre-trial procedures such as pleadings, discovery and mediation, as well as legal research and then the presentation of the case at trial. Further costs include disbursements such as court filing fees and hearing/trial fees and the possibility of an adverse costs order, where Dahlia may be order to pay Frank’s costs if she loses the case.

Dahlia must also consider enforcement issues. Even if Dahlia’s action is successful and Frank is found liable for negligence, she is unlikely to be able to have an award of damages enforced as Frank’s Chicken and Chips has closed down and Frank has been declared bankrupt. Thus, as neither the business or the owner is likely to be able to pay, there is realistically no point in Dahlia pursuing her claim.

**Question** 6 (5 marks)

Discuss the extent to which political pressures affect the ability of parliament to make laws.

**Mark Allocation**

* 1 mark: explanation of political pressures
* 3 marks: discussion of the effect of political pressures on the ability of parliament to make laws. Student must cover a number of different types of political pressures or include examples and must consider both strengths and weaknesses.
* 1 mark – quality of response, including a conclusion regarding the ‘extent’

**Sample Response**

Political pressures refer to the influences on parliament that affect the parliament’s legislative agenda. Parliament must be representative of the views and values of the people, otherwise they will be voted out at the next election. This representative nature of parliament is generally considered to be a strength of our parliamentary system. However, it is possible for powerful organisations that only represent the interests of a minority group to have significant influence over the government’s legislative agenda through lobbying and providing financial support to political parties.

For example, the Mineral Council of Australia, which is funded by Australia’s mining companies, successfully lobbied the government to repeal the Mineral Resource Rent Tax in 2014, which was a tax on profits generated from the mining of non-renewable resources. The Mineral Council also paid for a significant advertising campaign against the tax that may have been influential in the Coalition, who supported the repeal of the Tax, winning the 2013 election.

However, the ability an organisation or group is able to successfully exert political pressure can depend on the extent to which organisations with a competing political agenda are able to exert political pressure on the government. For example, same sex marriage was legalised in December 2017, despite political pressure from conservative organisations such as the Australian Christian Lobby. This was in part due to successful campaigns by lobby groups such as Australian Marriage Equality, but also due to overwhelming support from the majority of Australians as evidence by the success of the postal survey on the issue.

**Question 7** (5 marks)

Describe **one** recommended reform to the criminal justice system that addresses time factors.

Discuss the ability of this reform to achieve **one** of the principles of justice.

**Mark Allocation**

* 2 marks – description of one recommended reform
* 2 marks – discussion of the ability of the reform to achieve one principle
  + Strength/s linked to the principle
  + Weakness/s linked to the principle
  + Must include a brief description of the principle
* 1 mark – depth/quality
* Max of 2/5 marks – if a student describes a recent instead of recommended reform

**Sample Response**

One recommended reform to the legal system is to abolish committal proceedings.

There have been numerous calls over recent years to remove this time-consuming procedure, from former Director of Public Prosecutions Jeremy Rapke in 2008 and former VLRC Chairman David Jones in 2012. Furthermore, committal hearings were abolished in New Zealand in 2011 and have been abolished in WA and Tasmania.

With committal proceedings abolished, an accused who pleads not guilty would be sent straight to trial. This would therefore improve access to the to the criminal justice system by reducing the time taken between when an accused is charge and their trial. This would also improve access by reducing the caseload burden of the Magistrates’ Court, which hears approximately 3000 committal hearings each year, each taking on average 3 days to finalise.

However, abolishing committal proceedings could actually hinder the achievement of access as they filter out approximately 20% of cases, thus saving the time and resources of the County and Supreme Courts.

**Question 8** (6 marks)

Using **one** recent example, evaluate the ability of the Victorian Law Reform Commission (VLRC) to influence law reform.

**Mark Allocation**

* 1 mark - one recent example
* 1 mark - one strength
* 1 mark – one weakness
* 1 mark – conclusion
* 2 marks – depth of response – eg:
  + additional strengths and weaknesses
  + an explanation of the role of the VLRC

**Sample Response**

One recent example of law reform conducted by the VLRC was in relation to the legalisation of medicinal cannabis. In December 2014, the Attorney-General asked the VLRC to research and report on options for changes in the law to allow people to be treated with medicinal cannabis in exceptional circumstances. The VLRC’s research included conducting nine public consultations across metropolitan and regional Victoria. They also received almost 100 submissions. The VLRC’s report, delivered in August 2015, included 42 recommendations for changes to the law. The report was then table in Parliament in October. Parliament fully accepted 40 of the recommendations and in April 2016, the Access to Medicinal Cannabis Act 2016 (Vic) was passed, enabling access to medicinal cannabis to certain groups.

As is clearly evident in this example, one strength of the VLRC is that it has the ability to extensive research a law reform issue through a number of means including seeking submissions from experts and consulting with the community. This enables their final recommendations to be more persuasive to parliament as they reflect community attitudes and values. Hence parliament is more likely to accept their recommendations.

However, one significant weakness is there is no obligation on parliament to act on the VLRC’s recommendations. Therefore, considerable time, resources and effort could be wasted. Despite this, overall VLRC has significant influence on law reform in Victoria, which can be seen on their website which shows that a large number of their recommendations into various areas of law reform have been implemented by parliament.

**Question** **9** (10 marks)

‘As parliament is the supreme law-making body, the courts only have a complementary role to parliament in making laws.’

With reference to this statement, analyse the relationship between parliament and courts in law-making.

**Mark Allocation**

Mark globally. However, the following points must be covered:

* An explanation of the supremacy of parliament
* An explanation of the complementary law making role of courts
* At least 2 more features of the relationship between courts and parliament in law-making
* An analysis of the relationship – this involves looking at both when parliament acts as a check on the courts and when the courts act as a check on parliament

**Features of the relationship between parliament and courts include:**

* The supremacy of parliament
* The ability of courts to influence parliament
* The interpretation of statutes by courts
* The codification of common law
* The abrogation of common law
* The High Court being able to declare legislation ultra vires

**Sample Response**

The ‘supremacy of parliament’ is a reference to parliament’s ability to make and change any law within its constitutional power. Under the separation of powers, legislative power - the power to make law - is exercised by parliament. The court’s ‘complementary role’ in law-making is largely a reference to their role of interpreting and applying the law, for example through statutory interpretation, where the courts can create common law by giving meaning to the words in statutes.

However, the relationship between parliament and the courts in law-making is more complex that a simple statement that parliament is the supreme law-making body. There are some circumstances where parliament is supreme, and other circumstances in which the courts having law-making authority over parliament.

The supremacy of parliament is evident in parliament’s ability to either codify or abrogate common law principles developed by the courts. Codification involves parliament passing legislation that confirms a legal principle developed by the courts. For example, the Commonwealth Parliament’s Native Title Act (1993) codified the High Court’s decision in the Mabo case (1992) that overruled the common law principle of terra nullius and instead recognised the existence of native title.

Abrogation, on the other hand, involves parliament passing legislation that overrides a legal principle developed by the courts. For example, in 1984 the Victorian Parliament passed legislation that abrogated the High Court’s decision in the Trigwell case (1979). In this case, relying on an old common law precedent, the High Court held that farmers were not responsible for damage caused by their animals that strayed onto roads. The Victorian Parliament passed the Wrongs (Animals Straying on Highways) Act (1984), which changed the law so that farmers were responsible for the actions of their animals on the roads.

In general, therefore, it is true that the law-making role of the courts is complementary to parliament, as parliament is the supreme law-making body. However, there are circumstances in which the courts perform the role of checking on the law-making powers of parliament. In particular, the High Court’s role as guardian of the Commonwealth Constitution allows it determine the constitutional validity of legislation passed by parliament. Where a relevant case has been brought before it, the High Court is able to declare legislation passed by parliament to be invalid and unconstitutional if it is beyond the law-making powers of that parliament - that is, where the legislation is ‘ultra vires’. In this way the courts are able perform their role under the separation of powers as providing a check and balance on the law-making power of parliament in order to prevent the abuse of power.

Ultimately, the courts and parliament play complementary roles in law-making, with each providing checks and balances on the law-making power of the other. And therefore, the quote above is only true to some extent as there is a significant inter-relationship between the law-making roles of parliament and the courts, with neither being the ‘superior law-making body’ in all circumstances.

**SECTION B**

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| **Instructions for Section B**  Use stimulus material, where provided, to answer the questions in this section. It is not intended that this material will provide you with all the information to fully answer the questions.  Answer **all** questions in the spaces provided. |

**Question 1** (15 marks)

Massimo, 23 years of age, was sentenced today in the County Court to 2 years’ imprisonment on one charge of armed robbery. Massimo entered an early plea of guilty after receiving a sentence indication from the court during plea negotiations.

The maximum penalty for armed robbery is 25 years’ imprisonment.

The offences relate to an incident that occurred 10 months ago. In the early hours of a Saturday morning, Massimo walked into a 7-11 store with a fake gun. He pointed the fake gun at the attendant behind the counter and demanded all of the money in the cash register. The attendant, mistakenly believed the gun to be real, and gave him $420. Massimo then ran out of the store.

Massimo has no previous convictions and claimed that, as he had recently been made unemployed, he needed the money to pay for rent. A victim’s impact statement was made by the 7-11 store attendant, who stated that this has had a significant impact on his mental health. Since the incident he has been unable to return to work as he now suffers from severe anxiety and panic attacks. There were also a number of witnesses in the store, including children; however, none of them made victims impact statements.

1. Outline **two** factors affecting the appropriateness of plea negotiations in this case.

(2 marks)

**Mark Allocation**

* 1 mark – 1st factor outlined – & linked to the case
* 1 mark – 2nd factor outlined – & linked to the case

**Factors include**

* Willingness of Massimo to plead guilty
* Strength of the prosecution’s case – eg: a number of witnesses
* Possible adverse consequences of a full trial – trauma, stress & inconvenience to the 7-11 store attendant
* The cost & time associated with running a trial – eg due to multiple witnesses

**Sample response**

Plea negotiations are appropriate in this case because Massimo has been ready and willing to plead guilty. In addition, the fact that the main victim, the 7-11 store attendant now suffers from severe anxiety and panic attacks is another factor indicating the appropriateness of plea negotiations. This will mean that the store attendant will avoid the adverse consequences of a full trial such as the trauma and stress of having to relive the events by giving evidence in court.

1. Explain the purposes of sentence indications. (3 marks)

**Mark Allocation**

* 1 mark – one purpose explained
* 1 mark – 2nd purpose explained
* 1 mark – quality of explanation – eg through a definition of sentence indications

**Sample response**

One purpose of sentence indications is to provide the accused with some clarity about the likely sentence that will be imposed if they plead guilty. Another purpose is to assist the achievement of the timely determination of a criminal case by encouraging the accused to plead guilty and eliminating the need for a full trial. Sentence indications also save the time, cost, resources, stress and inconvenience of having a full trial/hearing – therefore providing benefits to the accused, the victim/s and their families.

1. Discuss the ability of imprisonment to achieve the purposes of rehabilitation and punishment in this case. (5 marks)

**Marking guide**

* 1 mark – discussion point relating to rehabilitation (strength or weakness)
* 1 mark – discussion point relating to deterrence (strength or weakness)
* 2 marks – depth of discussion:
  + Additional strengths and weaknesses
  + Detailed explanations of rehabilitation, deterrence or imprisonment
* - 1 mark – if only strengths or only weaknesses are discussed
* - 1 mark – if no link to the case study

**Possible responses**

Massimo appears to have good prospects of rehabilitation as he has no previous convictions.

Imprisonment aims to rehabilitate the offender through various treatment programs aimed at addressing the underlying reasons for their offending. Victorian prisons such as Karreenga Prison, offer an extensive range of treatment and educational programs - such as drug rehabilitation, anger management counselling and TAFE courses. However, imprisonment maybe more likely to lead Massimo to commit further crimes because of the influence of other prisoners and the difficulty of getting back into a normal life after having spent time in prison.

Imprisonment is likely to be effective as a specific deterrent to Massimo as a couple of years in prison would discourage most people from committing further crimes. Imprisonment is also an effective general deterrent in this case, as most people will be discouraged from committing armed robbery by the possibility of going to prison. They will see that committing armed robbery, even with a fake gun, can land you in prison for 2 years. However, imprisonment may not be effective in deterring some repeat offenders who have become used to prison life and are not discouraged by the possibility of returned to prison.

1. With reference to the factors considered in sentencing, discuss the appropriateness of judge’s sentencing decision in this case. (5 marks)

**Marking guide**

* 1 mark – 1st factor
* 1 mark – 2nd factor
* 1 mark – 3rd factor
* 2 marks – depth of discussion:
  + Additional sentencing factors
  + Detailed links to the case
  + Explanation of the meaning of aggravating factors, mitigating factors, guilty pleas & VIS
* - 1 mark – if the student does not discuss both sides of the argument
* - 1 mark – if the student does not link to the facts of the case – including the sentence given and the maximum sentences

**Factors considered in sentencing include:** Aggravating factors, Mitigating factors, Guilty plea, and Victim impact statements.

**Sample response**

Although 2 years’ imprisonment may seem low compared to the maximum sentence of 25 years for armed robbery, in my opinion, this is an appropriate sentence for Massimo.

Firstly, he has pleaded guilty. Guilty pleas are rewarded by more lenient sentences as they areencouraged as they have considerable benefits for the courts, the victims and society in general by avoiding the time, resources and stress involved in a trial. Secondly, there are a number of mitigating factors. Although a weapon was used in the commission of the offence, the weapon was a fake gun. Therefore, to some extent, this reduces the gravity of Massimo’s offending behaviour. Also Massimo has no previous convictions and was under personal strain at the time as he was unemployed and unable to pay his rent.

However, there are also a number of aggravating offences that indicate that a significant term of imprisonment is justified. For example, there were a number of children in the store at the time of the offence. The long term negative effects of witnessing armed robbery at a young age cannot be underestimated. Also, the victim impact statement made by the 7-11 store attendant, highlights the significant psychological harm caused by Massimo’s offending. The store attendant has been unable to return to work as they suffer from severe anxiety and panic attacks.

**Question 2** (12 marks)

Sofia was injured while competing at the Australian University Soccer Championships at La Trobe University. Due to poor maintenance of the grounds, Sofia’s foot got caught in a hole. She has suffered a severe tear to her ACL (anterior cruciate ligament). Sofia has been advised by her surgeon that she will require reconstructive surgery and that it is unlikely that she will ever be able to play competitive soccer again. Before the incident, Sofia had been selected in the Australian Under 20 Soccer team and had career hopes to make the National Open team.

After receiving legal advice, Sofia initiated civil action for negligence in the County Court of Victoria against both La Trobe University and the organisers of the championship.

1. Describe the powers of judicial case management to give directions. In your response, provide **one** appropriate direction that the judge could make in this case. (3 marks)

**Marking guide**

* 1 mark – description of power to give directions
* 1 mark – one appropriate direction
* 1 mark – depth of response, eg:
  + Description of case management
  + Where the power comes from

**Sample response**

Under the Civil Procedure Act, the powers of judicial case management are very broad as they allow the court to give any direction or make any order that it considers appropriate at any stage of the proceedings. This allows judges to actively manage civil proceedings as they are able to give appropriate directions before and during the trial. Furthermore, sanctions can be imposed on a party who fails to comply with a direction of the court.

One appropriate direction in this case could be that the judge orders Sofia to file and serve, within a certain time frame, a medical expert’s report regarding her ACL injury, the necessity of reconstructive surgery and the likelihood of her being able to play soccer at a competitive level again.

1. Explain the purposes of **two** civil pre-trial procedures that would be undertaken in Sofia’s civil action. (5 marks)

**Marking guide**

* 1 mark – explanation of one purpose
* 1 mark – explanation of a 2nd purpose
* 1 mark – one pre-trial procedure
* 1 mark – 2nd pre-trial procedure
* 1 mark – depth – including links to the case study

**Sample response**

Pleadings are a series of documents filed and exchanged between the parties to a court proceeding. The purpose of pleadings is to achieve procedural fairness by ensuring that each party knows the other parties claims and defences. For example, the Statement of Claim, which is filed with the court by the plaintiff and served on the defendant, sets out the nature of the claim made against the defendant, the facts alleged & the remedy sought. This also serves the purposes of giving the court a written record of the case and helping define the issues that are in dispute.

Discovery of documents involves each of the parties making available to the other party, copies of all the documents relevant to the dispute. The purpose of discovery is to enable each party to determine the relative strength of their case. This in turn, can encourage an out-of-court settlement, as parties are able to make decisions regarding their likelihood of success. Another purpose of discovery is to avoid taking an opponent by surprise at trial and avoiding a trial by ambush since the parties have seen all relevant documents well in advance of the trial and have time to prepare their arguments.

1. Discuss the ability of damages to achieve its purposes in Sofia’s case. (4 marks)

**Marking guide**

* 1 mark: Explanation of the purpose of civil remedies
* 1 mark: Strengths – the ability of damages to achieve its purpose
* 1 mark: Weaknesses – limitations on the ability of damages to achieve its purpose
* 1 mark: Depth of response eg:
  + - Additional strengths and weaknesses
    - Explanation of damages and the difference types of damages
* - 1 mark: If no link to the case study

**Sample response**

The main purpose of all civil remedies is to return the plaintiff to their original position before the wrong occurred. Damages are able to achieve this purpose to some extent in Sofia’s case.

Special damages would be effective in providing monetary compensation to Sofia for the exact dollar amounts of the expenses she has incurred as a result of the incident, such as medical bills. In a similar manner, general damages would be able to compensate Sofia for estimated future loss of earnings as a potential professional soccer player. Furthermore, general damages would be effective at providing some compensation to Sofia for her pain and suffering and the loss of enjoyment of life suffered as a consequence of the defendants’ negligence.

However, despite its strengths, damages can never fully return Sofia to the position she was in prior to wrong having occurred, as she will now never be able to play soccer at a competitive level, fulfil her potential and lead the life that she had planned for herself.

**Question 3** (13 marks)

In 1999 Australia held its most recent referendum. The government announced that two proposed constitutional changes would be put to the direct vote of Australian electors. The first change was whether Australian voters approved the proposal to establish Australia as a republic and the second change was whether they approved the proposal to insert a preamble in the Constitution.

**Republic Question**

The question on the republic put to electors at the 1999 referendum was whether they approved of:

A proposed law: To alter the Constitution to establish the Commonwealth of Australia as a republic with the Queen and Governor-General being replaced by a President appointed by a two-thirds majority of the members of the Commonwealth Parliament.

Results

* 54.87% voted No
* No States supported the proposed change

**Preamble question**

Electors were also asked to vote on a second question at the 1999 referendum which asked whether they approved of:

A proposed law: To alter the Constitution to insert a preamble.

Results

* 60.66% voted No
* No States supported the proposed change

1. A successful referendum must achieve a double majority. Explain what is meant by a double majority and indicate whether either of the proposed changes in the 1999 referendum achieved a double majority. (3 marks)

**Marking guide**

* 1 mark: Explanation of a double majority
* 1 mark: indicating that neither referendum achieved a double majority
* 1 mark: explanations and reference to the 2 questions in the referendum

**Sample response**

A double majority in a referendum requires a Yes vote from a majority of voters across Australia and from a majority of voters in a majority of states (ie 4 out of 6 states).

Neither of the two questions in the 1999 referendum achieved a double majority. For both questions a majority of voters across Australia was not achieved. And again for both questions, a majority of Yes votes in a majority of states was not achieved (each achieving 0 out 6 states).

1. With reference to at least **one** referendum, analyse the ability of the Australian people to protect or change the Australian Constitution. (6 marks)

**Marking guide**

* 2 marks: explanation of one referendum, including the factors affecting its success
* 3 marks: analysis of the ability of Australians to change or protect the Constitution:
  + Ability to change the Constitution
  + Limitations on the ability to change the Constitution
* 1 mark: depth of response

**Sample response**

One successful referendum that changed the Australian Constitution was the 1967 referendum. This referendum was held to alter the words of the Constitution to give the Commonwealth power to make laws in relation to Indigenous people and to include aboriginal people in the Census (s.127 was deleted and certain words from s.51(xxvi) were deleted). The referendum succeeded - it achieved 6 out of 6 states and approximately 91%, the highest ever vote since federation. This referendum was significant because it resulted in the power to make laws regarding indigenous people to change from a residual power to a concurrent power, thus shifting the division of law-making powers in favour of the Commonwealth parliament at the expense of the states.

There were a number of reasons why this referendum was the most successful since federation. Firstly, there was bipartisan support for the change. A majority of parliamentarians from the major political parties supported the amendment, and therefore, only a ‘Yes’ campaign was formulated and implemented as part of the referendum campaign. Secondly, the level of voter understanding of the proposal was high. The successful referendum was seen to be a reflection of the desire of the Australian people to end discrimination against aboriginal people.

Overall, as only 8 out of the 44 referendums have been successful, it is safe to say that the ability of the Australian people to protect the Australian Constitution has been greater than their ability to change the Constitution. This is largely due to the difficulty of achieving a double majority. For example, the 1977 referendum on simultaneous elections achieved a Yes vote of 62% across the country, but failed because it only achieved a majority in 3 states. But the failure of most referendums is also due to a number of other factors, including voter conservatism, a low level of voter understanding and a lack of bipartisan support.

1. Other than the requirement for a double majority in a referendum, describe **two** means by which the Australian Constitution acts as a check on parliament in law-making.

(4 marks)

**Marking guide**

* 2 marks: for each means: (x 2 = 4 marks)
  + brief description
  + More depth

**Sample response**

The Constitution contains a limited number of express rights, specifically written and entrenched in the Constitution. There are five express rights. For example, s.116 protects the freedom of religion in a number of ways, including preventing parliament from making laws that prohibit the free exercise of religion. Express rights provide a check on parliament’s law-making as they are fully enforceable through the High Court of Australia. If an Act of Parliament infringes an express right, the High Court can declare the legislation invalid and unconstitutional.

The principle of the separation of powers also creates a check on parliament. This Constitution creates the separation of legislative, executive and judicial power by ensuring that each of these powers is exercised by a separate body. This provides a system of checks and balances and prevents the abuse of power. For example, the High Court, in exercising judicial power has the role of interpreting the Constitution and thus can declare legislation to be invalid and unconstitutional where it is beyond the law-making powers of that parliament.