

Stage 2 Legal studies
Extended response (supervised conditions)

B sample

Length: up to 1000 words

Description: 'The three arms of government effectively uphold the rule of law in Australia.'
Using examples, evaluate this statement.

Your response should contain the following:

- Application of legal principles to specific contexts (examples).
- Understanding of the way the legal system balances competing tensions. Refer to one or more competing tension.
 - Rights and responsibilities
 - Fairness and efficiency
 - The empowered and the disempowered
 - Certainty and flexibility
- Judgments about the effectiveness of the three arms of government in upholding the rule of law.
- Application of a range of specific examples. As this is a supervised and timed task, referencing is not required. However, provide adequate context for examples and quotes.
- Ensure examples relate to how institutions of government protect the rights of groups and individuals in the Australian community.
- Clear and accurate communication. Use appropriate paragraphs.

‘The three arms of government effectively uphold the rule of law in Australia.’ Using examples, evaluate this statement.

In The Oxford Australian Law Dictionary, the rule of law is described as a legal regime in which everyone is subject to the law regardless of the status that they hold. This includes government officials and the sovereign head (the Queen). Whilst there is no set definition for the rule of law, it essentially protects people from the exercise of arbitrary power of governments.

The *World Justice Project ‘Rule of Law Index’* measures countries in relation to the application of the rule of law in everyday society and the index indicates that Australia ranks an outstanding 11 out of 128 countries. Fundamental principles exist for the rule of the law, with the World Justice Project having stated four features in particular that have been recognised universally. The first being accountability, the government as well as private practices must be held accountable under the law. The laws must be clear, coherent and balanced and have the responsibility to ensure that laws are made through transparent processes and applied equally and evenly to protect basic human rights. There is an open government in which laws are made, recognised, and enforced in a fair and efficient manner. Justice is also to be delivered as ethically (fairly) and as timely (efficiently) as possible and should reflect back on the community. Australia does well at upholding open government with transparency with low corruption. Regulatory Enforcement which refers to how ‘government regulations are applied and enforced without improper influence’ is another aspect that Australia does well at. On the other hand, Australia does not do the best in terms of Order and Security as many people ‘resort to violence to redress personal grievances.’

The Separation of Powers is important for upholding the rule of law as restrains the exercise of power on each arm of the government, thus allowing for checks and balances. Although the legislative and executive arms are connected, the independence of the Judiciary ultimately protects individuals against the power of the state. An example in which the Judiciary have upheld the rule of law is when Michelle Bridges, a celebrity fitness trainer, was taken to court for drink driving with her 5-year-old son in the car. Her barrister submitted that ‘she should be treated differently... because she is different’ due to her status and how much her work has ‘helped Australians in losing weight.’ However, the Magistrate was not persuaded asking, ‘Are you advancing that there is a special tier of justice to a person who has a special standing in the community?’. Ultimately, the Judiciary upheld the rule of law by imposing a sanction by suspending her licence. However, Prince Frederick of Denmark was provided entry into a Queensland nightclub despite not having the legally required identification. In this instance, the rule of law was not upheld and it seems that sometimes empowered people with high status are given special treatment.

Natural justice, an element of the rule of law, protects every individual, especially when it comes to criminal accusations. There is a power imbalance between the empowered (police and department of prosecutions) and the disempowered (the accused) who may have limited financial resources. No matter the extent of the crime, the police have the responsibility to state the charges and the accused has the right to remain silent and be presumed innocent until proven guilty. The prosecutor has the responsibility to disclose all evidence so the accused person can prepare a defence. The government has the responsibility to provide legal representation if the accused cannot afford it. The right to an independent or impartial judge is also important. An independent judge is not part of

the legislature or the executive and an impartial judge is one that does not have a connection to the party or an interest in the outcome of the verdict. Impartial judges help control the bias present in the court.

In administrative law the government is also in an empowered position. For example, if an average worker was in dispute with the ATO about their tax claims, the ATO has much more power than the individual worker. However, model litigant rules provide guidelines that 'seek to address an inherent and substantial power imbalance' and uphold the rule of law. These rules require the government to act honestly, use transparent processes, act fairly and efficiently, not take advantage of people with limited resources, and use ADR where possible.

The principles of the rule of law that have been highlighted are crucial as it promotes equality and fairness amongst everyone. Although parliamentary privilege is a major issue in relation to the Legislature as it allows politicians the freedom of speech inside the parliament. This means they are empowered to say anything they please without fear of being held legally accountable. This can be seen as unfair to those on the other end of accusations (the disempowered) as politicians can speak as they wish ultimately going against the rule of law. An example of parliamentary privilege in Australia is when Derryn Hinch used his speech to the parliament to name and shame countless sex offenders whose identities were protected by suppression orders after having vowed to only use it as a 'last resort'.

The three arms of government to a large extent effectively uphold the rule of law. The judiciary is the most important in protecting individuals against the power of the state and ensuring justice is not influenced by the legislature and executive. Australia rates highly for the rule of law compared to other countries due to a system of checks and balances, and an emphasis on transparency, accountability, and the protection of rights.

Word count: 935

- UA1 - The student demonstrates substantial understanding of rights and responsibilities and the empowered and the disempowered, and also shows some understanding of fairness and efficiency.
- UA2 – The student has demonstrated their understanding of the rule of law through proficient application to a range of specific contexts such as criminal disputes, administrative disputes, and parliamentary privilege.
- AE1 – The student has demonstrated well-considered analysis of principles (separation of powers, judicial independence, rule of law), criminal and civil case resolution processes, and parliamentary processes. The analysis is evaluative and the student makes a number of judgments throughout.
- C1 – communication is mostly clear and effective.

OFFICIAL

	Understanding and Application	Analysis and Evaluation	Communication
A	<p>Perceptive understanding of the ways that the legal system balances competing tensions.</p> <p>Astute application of legal principles and processes to specific contexts.</p> <p>Thorough and focused research to select, apply, and appropriately acknowledge a range of relevant sources.</p>	<p>Perceptive analysis and evaluation of concepts, legal principles, processes, or problems.</p> <p>Insightful evaluation of arguments or issues to reach a convincing conclusion and/or make informed recommendations.</p>	<p>Clear and effective communication of legal concepts, opinions, and arguments.</p>
B	<p>Substantial understanding of the ways that the legal system balances competing tensions.</p> <p>Proficient application of legal principles and processes to specific contexts.</p> <p>Well-informed research to select and appropriately acknowledge a range of relevant sources.</p>	<p>Well-considered analysis and application of concepts, legal principles, processes, or problems.</p> <p>Well-considered evaluation of legal arguments or issues to reach a mostly convincing conclusion and/or make mostly informed recommendations.</p>	<p>Mostly clear and effective communication of legal concepts, opinions, and arguments.</p>
C	<p>Sound understanding of the ways that the legal system balances competing tensions.</p> <p>Generally informed application of legal principles and processes to specific contexts.</p> <p>Adequate research to select and appropriately acknowledge a range of relevant sources.</p>	<p>Adequate analysis and application of concepts, legal principles, processes, or problems.</p> <p>Sound evaluation of legal arguments or issues to reach a conclusion and/or make recommendations.</p>	<p>Generally effective communication of legal concepts, opinions, and arguments.</p>
D	<p>Some understanding of the ways that the legal system balances competing tensions.</p> <p>Partial application of legal principles and processes to specific contexts.</p> <p>Some research to select and appropriately acknowledge a range of relevant sources.</p>	<p>Some analysis and application of concepts, legal principles, processes, or problems.</p> <p>Partial evaluation of legal arguments or issues to reach a conclusion and/or make recommendations.</p>	<p>Some communication of legal concepts, opinions, and arguments.</p>
E	<p>Limited understanding of the ways that the legal system balances competing tensions.</p> <p>Limited application of legal principles and processes to specific contexts.</p> <p>Rudimentary research, selection, and acknowledgement of a range of sources.</p>	<p>Limited analysis of concepts, legal principles, processes, or problems.</p> <p>Limited consideration of legal arguments or issues to reach a vague or unsubstantiated conclusion and/or recommendation.</p>	<p>Limited communication of legal concepts, opinions, and arguments.</p>

Grade: B