Part B – Crime (15 marks)

Attempt Question 24

In your answer you will be assessed on how well you:

- demonstrate knowledge and understanding of legal issues relevant to the question
- communicate using relevant legal terminology and concepts
- refer to relevant examples such as legislation, cases, media, international instruments and documents
- present a sustained, logical and cohesive response

QUESTION 24 (15 marks)

Over time this Parliament, as the representative of the community, and the courts have given police certain powers required to effectively fulfil their role in law enforcement. In return for these powers, however, police are required to exercise their power responsibly, particularly when these powers affect the civil liberties of members of the community whom the police serve.

THE HONOURABLE ROBERT DEBUS, ATTORNEY-GENERAL,
Second Reading Speech
Law Enforcement (Powers and Responsibilities) Bill 2002 (NSW)
17 September 2002

To what extent does the criminal investigation process balance the rights of victims, suspects and society?

In your answer, refer to the above statement.
QUESTION 24 Sample 1

Planning: A Investigation!

1) Police Powers → Comprising Laws

Criminals Amendment (Conducting Organised Crime) Act 2012 (NSW)

R v Foster - Stephen Jeffrey CMH "We are going to obtain" a breach of discretion

2) Right to Silence

Evidence Amendment (Evidence of Silence) Act 2013 (NSW)

Anne Patti SMH 2012 "Right to silence laws changed"

Brain to think well of silence.

Journal (NSW Bar Assoc Autumn Issue) "drawn such an adverse inference as to erode the right to silence."

Patty v Martin v The Queen (1991) - cause of entrapment

3) Bail Laws

Bail Act 1978 (NSW) → Bail Act 2012 (NSW)

Plenary powers

Less inconsistent

Former Prime Minister 01 February 2012 media release.

Mahmoud Hami - Justice Harrison

Intro!

The Criminal Investigation process, to a certain extent, balances the rights of victims, suspects and society. The chief aim of the system is to ensure justice is appropriately served, and so there are difficulties inherent in this concept of justice due to the conflicting interests of all parties involved.

Thus, as corroborated by Attorney General Robert...
Deburs, police are required certain powers to ensure they effectively fulfill their role in law enforcement. However, this must be balanced with the "right to liberty of members of the community." The issue of striking this balance of rights is evidenced in recent law reforms in police powers, the right to silence, and bail laws.

A just balance of the scope of powers required by police and the safeguarding of rights of victim, suspect, and society, has to a certain extent, been achieved in the Criminal Investigation process. The (Consorting and Organized Crime) Act 2012 (Now) was introduced by Parliament, allowing police to prosecute individuals who 'habitually consort' and is a response to the prevalent issue of organized crime. This reinforces Deburs' statement that Parliament is "representative of the community" and addresses the needs of society. However, the case R v Foster (2012) highlighted the flaws of the legislation as the individual did not have any links to organized crime, nor did he pose a threat to the community. Thus, the broad application of the power enables those who engage in the criminal activities associating to be convicted of a criminal offence, significantly reducing the rights of individuals.
Conversely, if the Act were endorsed selectively, this would undermine the rule of law and limit just outcomes for parties. Stephen Jeffrey's SMH article "Give anyone too much power, and they're going to abuse it" suggests the Act "gives police too much discretion", contrary to Deben's claim that police need to "exercise their power responsibly", so law must be formed to ensure this. Essentially, despite its aim at protecting the rights of society, the existing laws reduce the rights of suspects and so curiously carefully balance these rights to a certain extent.

The right to silence has become universally accepted as a key aspect to procedural fairness, ensuring the balance of rights for victims and suspects. The recent Evidence Amendment (Evidence of Silence) Act 2013 (NSW) has showcased the extent to which the criminal investigation process balances the rights of victims, suspects, and society. It has harmonised by staving off conflicting views on justice to suspects. Essentially, the Act allows an unfavourable inference to be drawn on the suspect if they mention something they later rely on in court. This, with serious indictable offences, the right to silence, to an extent, is diminished. The
QUESTION 24 Sample 1 continued

2013 Autumn Issue Journal of the NSW Bar Association claimed that "drawing such an adverse inference evades the right to silence" and can compel accused persons to speak or risk having their silence used against them, contrary to the right to silence. Furthermore, Petty and Maiden (M) in The Queen (1991) stated that this unfavourable inference acts as a 'source of entrapment', limiting the rights of suspects in the criminal investigation process. Nevertheless, the Act reflects communal values and societal standards as Anna Petty's SMH 2012 article, 'Right to silence laws,' charged indicates this law reform was prompted by the ongoing issue of drive-by shootings and organized crime, aiming to tackle the wall of silence which often impedes an investigation. Thus, balancing the rights of victims and society. Its application to any serious indictable offense ensures proven are exercised responsibility as intended by O'Brien Second Reading Speech. Overall, the Amendment to a said extent, ensures the balance of rights between victim and society, with some expense to suspects.

Matters pertaining to bail processes were originally codified in the Bail Law Act 1978 (NSW), which to a limited extent, protected the rights of suspects and delegated police extensive powers. With a
QUESTION 24 Sample 1 continued

A plethora of 85 existing acts, the Bail Act, according to former Attorney General Greg Smith became "too difficult to comprehend and navigate" significantly reducing its ability to balance rights and therefore achieve just outcomes. This led to the Bail Act 2013 (NSW) which aimed to address the shortcomings of previous legislation and provide consistency and transparency in the bail process of granting bail. This stipulated a risk-management approach with clear emphasis on the rights of suspects. However, the investigation involving Malinard had raised considerable concerns on the limited extent to which society and victims' rights are protected by these bail laws. As Justice Harrison determined that while there are some unacceptable risks, these could be mitigated by appropriate conditions, and no conditional bail was granted. Thus, these bail laws arguably reduce the extent to which the criminal investigator, process balance, the rights of victims, suspects and society. Yet, the simplification of these laws ensure police "exercise their powers responsibly".

**Conclusion**

Holistically, the criminal investigation to a certain extent balances the rights of victims, suspects and society through
The process has to some extent aligned with Debra's statement that police are required certain power to ensure the effective enforcement of law and that the civil liberties of people are maintained.

Comment

This response satisfies all elements of the marking criteria. The student shows extensive understanding of the criminal investigation process. Their judgement is clearly informed, recognising the need to balance between groups. Although 'victim' and 'society' are run together at times the judgement of extent is very good. Excellent integration of statements and examples. The response reads beautifully, is clear, succinct and refers to key legal ideas.