**WSHS Semester One Examination**

**POLITICS AND LAW**

**ATAR UNIT 1**

**SUGGESTED ANSWER GUIDE**

**This is a suggested answer guide only.**

**Alternative answers to questions may be possible.**

**Assessment key words used include:**

Analyse Identify components and the relations between them; draw out and relate implications

Assess Make a judgement of value, quality, outcomes results or size

Compare Show how things are similar and / or different

Define State meaning and identify essential qualities

Describe Provide characteristics or features

Discuss Identify issues and provide points for and/or against

Distinguish Recognise or note/indicate as being distinct or different from; note differences between

Explain Relate cause and effect; make the relationships between things evident; provide why and /or how

Evaluate Make a judgement based on criteria; determine the value of;

Identify Recognise and name

Outline Sketch in general terms; indicate the main features of

Note:

This marking key incorporates reference to the Constitution. While it is not essential for students in Year 11 to do so for full marks it is desirable for the more capable student.

**Section One: 30% (30 Marks)**

**Question 1 (10 marks)**

(a) What is meant by ‘representative government’? (2 marks)

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| **Description** | **Marks** |
| Describes what is meant by ‘representative government’. | 2 |
| Makes a general statement about ‘representative government’. | 1 |
| **Total** | **2** |
| **Answers could include information such as this:*** Representative government is a type of democracy in which the will of the people is expressed through the selection of candidates to represent the interests of people through the law making processes in a nation’s legislature (and executive where relevant).
* In Australia this is reflected through federal elections being conducted every third year to select all members of the House of Representatives and half of the Senate.
 |

(b) Distinguish between ‘political participation’ and ‘political freedom’. (3 marks)

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| --- | --- |
| **Description** | **Marks** |
| Distinguishes between ‘political participation’ and ‘political freedom’. | 3 |
| Outlines what is meant by ‘political participation’ and ‘political freedom’. | 2 |
| Makes a general statement about ‘political participation’ and/or ‘political freedom’. | 1 |
| **Total** | **3** |
| **Answers could include but not limited to:*** Political participation:
* involves the ability of all citizens to take an active role in the decision making processes of their system of government.
* in its most basic form this involves voting while a more active form of participation might include running for office as a candidate.
* Political freedoms:
* are the entitlements shared by all citizens of a sovereign nation which enable political participation.
* include movement, speech, association and assembly.
* Differences include:
* Political participation incorporates the activities associated with involvement in the political process while political freedoms are the rights that enable one to engage in such activities.
 |

(c) Discuss three features of the rule of law as it operates in australia. (5 marks)

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| --- | --- |
| **Description** | **Marks** |
| **Discusses three f**eatures of the rule of law, as it operates in Australia with supporting examples, or one detailed example. | 5 |
| **Outlines three** features of the rule of law as it operates in Australia, or discusses two feature and outlines another feature. | 3-4 |
| Ide**ntifies** **oneor two**  features of the rule of law as it operates in Australia, or makes a general statement concerning the rule of law. | 1-2 |
| **Total** | **5** |
| **Answers could include, but are not limited to:*** Rule of law is the principle by which everyone is subject to the law, regardless of power, wealth, or any other quality.
* It relies on a number of principles, which can be observed in Australia to varying extents:
	+ Courts and judges should be independent of government, so their decisions are not influenced by political concerns. In Australia, the High Court is established as a separate branch by the Constitution, and judges are not able to be removed by government, except in the case of proved misbehaviour or incapacity.
	+ The law should apply universally to everyone. A recent example of this has been the application of s44 of the Constitution to several members of parliament, so that they were found not eligible to sit in parliament, including the Deputy Prime Minister.
* The law should be known, clear, consistent, and coherent. In Australia, all laws are published on government websites and are accessible to the public. Although statute laws may at times be vague or inconsistent, courts are able to engage in statutory interpretation to clarify the meaning of statute laws as they apply to specific cases.
 |

**Question 2 (10 marks)**

(a) Outline the purpose of a constitution. (2 marks)

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| **Description** | **Marks** |
| Outlines the purpose of a constitution. | 2 |
| Makes a general statement about a constitution. | 1 |
| **Total** | **2** |
| **Answers could include information such as this:*** A national constitution is a set of rules for governing a country. Such rules may be based on tradition or may be written down in the form of a law or a number of laws. In some countries laws forming the constitution are ordinary laws which can be changed just like any other law, but in most countries the laws forming the constitution have a special status.
* The Commonwealth Constitution (Australia) has a special status as it cannot be changed in the same way as other laws can be changed and it is a supreme law, that is, it overrides other laws.
* The purpose of a constitution is:
* to limit the power of the government such that the rights and freedoms of the citizens are protected from government abuse;
* to outline the elements of the political and legal system of a state;
* to divide powers between branches and levels of government and
* to provide for the adjudication of disputes between levels of government.
 |

(b) Describe **three** features of the constitutional monarchy as it operates in the Australian political system. (3 marks)

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| --- | --- |
| **Description** | **Marks** |
| Describes **three** features of the constitutional monarchy as it operates in the Australian political system. | 3 |
| Outlines **two** features of the constitutional monarchy as it operates in the Australian political system. | 2 |
| Makes a general statement about the constitutional monarchy in Australia. | 1 |
| **Total** | **3** |
| **Answers could include but not limited to:*** Constitutional monarchy is a form of government where the head of state is an inherited position whose powers are limited by a written constitution or by unwritten constitutional conventions.

Features of the constitutional monarchy could include:* Australia’s monarch is Queen Elizabeth II who holds her position through birth. The Queen is Australia’s head of state but her power is limited by the Commonwealth Constitution and Westminster convention.
* The Queen is represented in Australia by the Governor-General at the monarch’s leisure (Section 2).
* Legislative power is vested in the Queen (Section 1).
* Executive power is vested in the Queen and exercisable by the Governor-General (Section 61). In reality, executive power is wielded by the Prime Minister and the Cabinet.
* Thus, the Queen is Australia’s Head of State but not the Head of Government.
 |

(c) Discuss **two** reasons why the division of powers is an important feature of the structure of Australia’s political and legal system. (5 marks)

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| **Description** | **Marks** |
| Discusses **two** reasons why the division of powers is an important feature of the structure of Australia’s political and legal system.Reference made to detailed examples.  | 5 |
| Describes **two** reasons why the division of powers is an important feature of the structure of Australia’s political and legal system.orDiscusses **one** reason why the division of powers is an important feature of the structure of Australia’s political and legal system.Reference made to examples.  | 3-4 |
| Makes general statements about the division of powers being important to Australia’s political and legal system.Limited if any reference made to examples.  | 1-2 |
| **Total** | **5** |
| **Answers could include, but are not limited to:*** Australia divides power between its central government located in Canberra and the eight various state and territory governments.
* The division of power is an important feature of Australia’s political and legal system as:
* At the time of federation smaller states such as Tasmania, South Australia and Western Australia were concerned about the possibility of the larger states dominating. Federalism provided the opportunity for the powers of the smaller states to be protected by the inclusion of a States’ House within the Constitution and protection of state constitutions in S106.
* Division of power within the Constitution provides for greater certainty over areas of responsibility for each level of government. Disputes over which level of government has the right to make laws over an area of power can be heard in the High Court.
* It provides a mechanism for the sharing of power and resources between different levels of government which theoretically prevents power from becoming centralised at any one level of government.
* It enables political power to be shared between different political parties enabling a variety of different approaches to government. For example, after the 2019 election the Liberal/National Coalition held power at a federal level while at a state level the Labor Party held power in Western Australia, Queensland, Victoria, Tasmania, the Northern Territory and the ACT.
* It enables the national government to deal with matters of national significance while providing the ability of the state/territory governments to implement policy that is more relevant to their own constituents. For example, the federal response to the COVID pandemic enabled the shutting down of national borders and international travel enabling the country to acclimitise to the pandemic without health systems being overwhelmed. Various states have responded to the pandemic using policy settings which have been appropriate to the conditions faced in each state. Victoria, which faced high levels of infected persons early into the pandemic, faced over 200 days of lockdowns under its Premier Daniel Andrews. New South Wales under the leadership of former Premier Gladys Berejiklian, took a more laissez-faire approach to the pandemic with few restrictions to their daily lives.
* It enables for House of Representativesizontal fiscal equalisation between the states ensuring that all citizens of Australia have access to the same level of services as those in other parts of the nation (at least in theory).
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**Question 3 (10 marks)**

1. What is meant by the executive in the Australian political system? (2 marks)

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| **Description** | **Marks** |
| Describes what is meant by the executive in the Australian political system. | 2 |
| Makes a general statement about the executive in the Australian political system. | 1 |
| **Total** | **2** |
| **Answers could include information such as this:*** The executive refers to the body responsible for administering the law within a sovereign state.
* In theory, executive power rests with the Queen represented by the Governor-General who is to be advised by a Federal Executive Council (Section 61).
* In reality, executive in Australia consists of the Prime Minister (currently Anthony Albanese) and the Cabinet made up of the key ministers of government ( e.g. Penny Wong,Richard Marles, Katy Gallagher).
 |

1. Distinguish between the ‘government’ and the ‘opposition’ in either the state or federal legislature. (3 marks)

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| --- | --- |
| **Description** | **Marks** |
| Distinguishes between the ‘government’ and the ‘opposition’ in either the state or federal legislature. | 3 |
| Outlines the the difference between the ‘government’ and the ‘opposition’ in either the state or federal legislature. | 2 |
| Makes a general statement about the the government and the opposition in the state or federal legislature. | 1 |
| **Total** | **3** |
| **Answers could include but not limited to:*** The government is:
* formed from the party/ies that hold the majority of seats in the lower house of parliament i.e. the House of Representatives at a federal level and the Legislative Assembly within the states.
* The opposition is:
* the party/ies that hold the second highest amount of seats in the lower house of parliament.
* At a federal level the Lib/Nat coalition led by Scott Morrison holds government while the opposition is the ALP by Anthony Alabanese.
* Key differences might include:
* the number of seats held within the parliament.
* roles played by each e.g. the government initiates approx. 95% of legislation (including money bills), opposition scrutinises government and acts as the alternative government.
 |

1. Discuss the role of an independent judiciary in Australia’s political and legal system.

 (5 marks)

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| --- | --- |
| **Description** | **Marks** |
| Discusses the role of an independent judiciary in Australia’s political and legal system.Reference made to detailed examples.  | 5 |
| Describes the role of an independent judiciary in Australia’s political and legal system.Reference made to examples.  | 3-4 |
| Makes general statements about the role of an independent judiciary in Australia’s political and legal system.Limited if any reference made to examples.  | 1-2 |
| **Total** | **5** |
| **Answers could include, but are not limited to:*** An independent judiciary is a key democratic principle. It implies the judiciary must be completely free from interference and influence from the parliament, the government or any other institution or person. It is a vital component of the separation of power and the rule of law.
* Judicial independence in Australia at the federal level is protected through Section 72 which provides for: tenure of judges to the age of 70 years, remuneration is unable to be reduced upon appointment and removal can only occur through a joint sitting of both Houses of parliament on the grounds of ‘proved misbehaviour or incapacity’.
* Independence of the judiciary is seen as an important check and balance on both the legislature and executive.
* This independence is especially important in systems based on responsible government where both the legislature and the executive are fused.
* The HCA is the constitutional umpire and hence adjudicates disputes between states and between the states and the Commonwealth. It is also responsible for the interpretation of the Commonwealth Constitution (Australia).
* Decisions made in courts are based solely on the evidence that is presented by the two parties to the case and is not clouded by political interference.
* Examples of decisions that have limited the power of the legislative arm of government; Williams (2012), Citizenship Seven (2017)
* Examples of decisions that have limited the power of the executive arm of government; Williams (2014), Robodebt (2019)
* The Judiciary is also not completely separate due to the appointment process of the justices especially in the HCA, these are appointed by the Governor-General on the advice of the Prime Minister, hence can be said to be political appointments.
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**Question 4 (10 marks)**

1. What is meant by ‘statutory interpretation’? (2 marks)

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| **Description** | **Marks** |
| Describes what is meant by statutory interpretation | 2 |
| Makes a general statement about statutory interpretation | 1 |
| **Total** | **2** |
| **Answers could include information such as this:*** The process by which courts interpret and apply legislation. This may be due to the ambiguity of words in the statute, changing circumstances or inconsistencies or contradictions within or between acts.
 |

1. Describe **three** maxims used in statutory interpretation. (3 marks)

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| --- | --- |
| **Description** | **Marks** |
| Describes **three** maxims. | 3 |
| Outlines **two** maximx | 2 |
| Makes general statements about maximx used in statutory interpretation | 1 |
| **Total** | **3** |
| **Answers could include but not limited to:*** ejusdem generis – meaning of the same kind
* noscitur a sociis- meaning by the company it keeps
* expression unis estn exclusion alterius – meaning the express mention of one excludes all others
 |

 (c) Discuss the relationship between statute law and common law in Australia. (5 marks)

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| --- | --- |
| **Description** | **Marks** |
| Discusses **three** significant points using examples | 5 |
| Describes **two** significant points with one example | 3-4 |
| Makes general statements about the relationship.Limited if any reference to examples.  | 1-2 |
| **Total** | **5** |
| **Answers could include, but are not limited to:*** Defining both common law and statute law
* Explaining the supremacy of parliament
* Explaining that statute law has democratic legitimacy while common law is authoritative
* Explaining that courts must sometimes interpret statute law
* Explaining that parliament can make a law to abrogate a common law decision
* Explaining that statute law is the higher authority
* Providing examples
 |

**Section Two: Source analysis 20% (20 Marks)**

**Question 5**

(a) What is meant by the term ‘federalism’? (2 marks)

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| **Description** | **Marks** |
| Describes what is meant by the term ‘federalism’. | 2 |
| Makes a general statement about the term ‘federalism’. | 1 |
| **Total** | **2** |
| **Answers could include information such as this:*** Federalism refers to a system of government where law making power is divided between a central government and two or more state or regional governments.
* Federal systems require a written constitution in order to facilitate resolution of disputes between the different levels of government in a superior court.
* Examples of countries with a federal structure include Australia and the United States of America.
 |

1. With reference to **Source 1**, explain in your own words, **two** benefits of Australia’s federal structure in tackling the COVID-19 pandemic. (4 marks)

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| --- | --- |
| **Description** | **Marks** |
| Explains **two** benefits of Australia’s federal structure in tackling the COVID-19 pandemic. Explains in their own words with direct reference to the source. | 4 |
| Outlines **two** benefits of Australia’s federal structure in tackling the COVID-19 pandemic. **or**Outlines **one** benefit and identifies the other. Attempts to answer in their own words with some reference to the source. | 3 |
| Identifies **two** benefits of Australia’s federal structure in tackling the COVID-19 pandemic. **or**Identifies and outlines **one** benefit of Australia’s federal structure in tackling the COVID-19 pandemic.Answer is mostly in their own words. | 2 |
| One or two benefits are cited verbatim from the source | 1 |
| **Total** | 4 |
| **Answers could include but not limited to:*** Australia’s federal structure has enabled different state governments to respond to COVID-19 in the manner that best suits the circumstances of their state.
* Unaffected states have the power to close their border which has enabled “normal social and economic life” to continue. Within affected states it has been possible to lock down hot spots to prevent the spread of infection.
* Premiers of states with higher levels of infection have held daily press conferences which “have governed life in these abnormal times”.
* The ability to trial different policy approaches for dealing with the pandemic. For example, the “soft touch” of the former NSW Premier Gladys Berejiklian has contrasted with the “go hard, go early” approach of Victorian Premier Daniel Andrews.
 |

1. Discuss **three** separate Westminster conventions and their relevance to the Australian political and legal system in the 21st century. (6 marks)

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| --- | --- |
| **Description** | **Marks** |
| Discusses **three** separate Westminster conventions and their relevance to the Australian political and legal system in the 21st century.Refers to rich and detailed examples.  | 5 - 6 |
| Describes **two** separate Westminster conventions and their relevance to the Australian political and legal system in the 21st century.Refers to examples.  | 3 - 4 |
| Makes general statements about Westminster conventions and their place in the Australian political and legal system in the 21st century. | 1 - 2 |
| **Total** | 6 |
| **Answers could include but not limited to:*** Conventions are unwritten rules by which the political system runs. These were inherited from the British Westminster system and are necessary for making sense of the Commonwealth Constitution (Australia) and key operations of parliament and the executive.

**Conventions include:*** The Governor-General must act on the advice of the EXCO or his ministers;
* Government is formed in the lower house from the party/ies that hold the majority of seats;
* The Prime Minister and Treasurer must be members of the lower house;
* The Prime Minister and ministry must have majority support in the lower house, i.e. confidence of the lower house, if not then the government must resign;
* Ministers are collectively and individually responsible to the parliament.

**Relevance:*** The power vested in the Governor-General by the Commonwealth Constitution is significantly limited by conventions. The use of reserve power by Governor-General Kerr to dismiss Prime Minister Whitlam in 1975 was an exception.
* The formation of government in the lower house from the party/ies that hold the majority of seats has resulted in a chamber in which the executive is dominant. It can be argued that this inhibits the ability of the lower house to fulfill many of its other functions including the legislative and responsibility function.
* For example, executive dominance in the lower house ensures that government is able to employ tactics such as gags, guillotines and floodgating in order to push legislation through the lower house of parliament. For example, the government made use of gags to ensure passage of the controversial *Fair Work (Registered Organisations) Amendment (Ensuring Integrity No. 2) Bill 2019* in the final week of the parliamentary sitting in 2019. In May 2020 the Bill was shelved by the government due to concerns it would not pass the Senate.
* Executive dominance in the lower house makes it difficult for the parliament to fulfil its responsibility function. Censure motions against the government and motions of no-confidence against individual members fail due to government holding a majority in the chamber. In 2020, a significant motion of no-confidence was made against Premier Daniel Andrews in the Victorian parliament regarding his government’s handling of hotel quarantine. Premier Gladys Berijiklian also faced a motion of no-confidence within the NSW parliament for her relationship with a disgraced former minister in her government. At a federal level, no motion of no confidence has ever been successful.
* IMR & CMR can also be discussed.
 |

(d) Evaluate the extent to which the structure of the Australian political and legal system was influenced by other key western liberal democracies. (8 marks)

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| --- | --- |
| **Description** | **Marks** |
| Evaluates the extent to which the structure of the Australian political and legal system was influenced by other key western liberal democracies. | 7 - 8 |
| Describes the extent to which the structure of the Australian political and legal system was influenced by other key western liberal democracies. | 5 - 6 |
| Outlines the extent to which the structure of the Australian political and legal system was influenced by other key western liberal democracies. | 3 - 4 |
| Makes general statements concerning countries which have had an influence on Australia’s political and legal system. | 1 - 2 |
| **Total** | 8 |
| **Answers could include, but are not limited to:**British Westminster model:* Monarchy – hereditary head of state but limited by unwritten constitutional conventions.
* Constitutionalism – that power of government is limited through a written or unwritten constitution, UK’s is unwritten.
* Responsible Parliamentary Democracy –
* Bicameral parliament:
	+ House of Commons made up of elected representatives each with their own electorate proportional to population;
	+ House of Lords made up of hereditary members based on peerage;
	+ The lower chamber being the House of government due to being elected and that the political party that won the most seats in that house got to form government, their leader becoming the Prime Minister who would then select special members to form an executive, in this way the British executive was chosen from within the legislature – fusing the two together.
* Conventions – unwritten rules by which the parliament functions.
* Electoral process – fixed 5yr terms for elections to the House of Commons; the upper House of Lords have appointed members.
* Separate and independent judiciary that follows the rule of law – English common law with the adversarial system of trial.

US Federal model:* The founding fathers of the US created a maximalist Constitution to provide the context of the federation that was created as a result of the War of Independence from Britain.
* Written Constitution to outline the powers of each level of government and institutions for co-operation between the levels.
* Complete separation of powers:
* Executive – directly elected President serving a 4yr term with a maximum of 2 terms only, so as to limit the chances of power remaining with one person for too long. Only a US citizen can become the President. They can not sit in the Congress. President selects secretaries to form a Cabinet, they can not sit in the Congress.
* Legislature – Congress: bicameral with both houses being elected.
* House of Representatives: a peoples’ house representing electorates
* Senate: a states’ house with 2 senators from each state. Serving fixed 6yr terms.
* Judicature – strictly separate from the other arms of government. Nominated judges must be confirmed by the Senate (check and balance on executive power); English common law provides the basis for fair trials using the adversarial system, with the presumption of innocence & right to silence for the accused, the accuser bearing the burden of proof.
* Electoral process – Congress: 2yr cycle for House of Representatives and 1/3 of senators being up for election every 2yrs; voting is voluntary and secret; voter registration can be strictly limited in some states. Presidential: 4yr cycle with a 2 term limit.

The Canadian ‘Washminster’ model:* Was a working example of a hybrid of the Westminster and Federal systems of govt, this illustrated to the founding fathers that this was a feasible system already working successfully in a Commonwealth colony. This only offered limited appeal to the founding fathers because:
* despite both the central and regional (provincial) governments being given specified powers, there were extensive areas of residual power allocated to the central government. Australian states did not wish to lose too many of their existing powers.
* the Canadian Senate (upper house) was created and composed of ‘leading citizens’ appointed by the central government. The Australian states didn’t like this idea as it would give the central government unlimited power over the states.
* the central government was given unlimited taxing powers and the power to disallow any provincial legislation. The Australian states certainly didn’t want a central government that could disallow their legislation.
* the Australian founding fathers did not wish for the central government to become too powerful, rather to have specified ‘exclusive’ powers that were confined to ‘whole of nation’ policy areas.

The Swiss model:* Based on the belief of the ‘sovereignty of the people’ provided a way the Constitution could be formally amended through a successful referendum that would be approved by a majority of the citizens nationally as well as a majority of people in a majority of the states.
* This was a minor input to the Australian political and legal system.
 |
| NB – for full marks the student must include an assessment of the extent to which the Australian system is a hybrid. |

**Question 6**

(a) What is meant by a bill? (2 marks)

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| --- | --- |
| **Description** | **Marks** |
| Describes what is meant by the term ‘bill’. | 2 |
| Makes a general statement about the term ‘bill’’. | 1 |
| **Total** | **2** |
| **Answers could include information such as this:*** A bill is a proposed piece of legislation that is yet to progress successfully through the parliament.
* A bill is not a law, it has no effect and cannot be enforced.
* In order for a bill to become an Act it must pass through the statutory processes of parliament then be granted Royal Assent through signing by the Governor-General.
 |

1. With reference to **Source 2**, explain in your own words, **two** arguments against the introduction of the *Electoral Legisation Amendment (Voter Integrity) Bill* 2021. (4 marks)

|  |  |
| --- | --- |
| **Description** | **Marks** |
| Explains **two** arguments against the introduction of the *Electoral Legisation Amendment (Voter Integrity) Bill* 2021. Explains in their own words with direct reference to the source. | 4 |
| Explains **one** argument against and outlines the other. **or**Outlines **one** argument against and identifies another. Attempts to answer in their own words with some reference to the source. | 3 |
| Outlines **one** argument against the introduction of the *Electoral Legisation Amendment (Voter Integrity) Bill* 2021. Uses some of their own words. | 2 |
| One or two arguments are cited verbatim from the source. | 1 |
| **Total** | 4 |
| **Answers could include but not limited to:**Arguments against:* The bill would interfere with the liberal democratic principle of participation as some people may not be able to vote and could lead to low voter turnout due to the “perception that identification is required to vote”.
* The bill would interfere with the liberal democratic principle of political freedom as some groups in Australia as the requirement to show identification would have a “disproportionate impact” on groups such as indigenous Australians and the homeless.
 |

1. Discuss **three** differences between laws made in the parliament and laws made through the courts in Australia. (6 marks)

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| --- | --- |
| **Description** | **Marks** |
| Discusses **three** differences between laws made in the parliament and laws made through the courts in Australia.Refers to rich and detailed examples.  | 5 - 6 |
| Describes **three** differences between laws made in the parliament and laws made through the courts in Australia.Refers to examples.  | 3 - 4 |
| Makes general statements about thelaws made in parliament and the courts in Australia. | 1 - 2 |
| **Total** | 6 |
| **Answers could include but not limited to:*** Parliament made law includes statutes and delegated legislation.
* Court made law includes common law that evolves over time.
* Dfferences could include:
* Statutes are sovereign and superior to common law.
* Statute law applies to everyone in society while common law only applies to the parties involved in the case.
* Statute law is ‘in futuro’ while common law is ‘ex post facto’
* Statute law is considered to be more democratic as it is made by elected representatives in the parliament while common law is made by unelected judges.
* Statute law can override common law through the abrogation of common law e.g. Trigwell (1979) and the Victorian *Wrongs (Animals Straying on Highway) Act* 1984.
* Statutes are written in broad terms while the common law is there to clarify and fill in the gaps of statute law.
* Students should use examples to illustrate the key differences they discuss.
 |

(d) Evaluate the extent to which parliamentary committees enhance the functions of parliament. (8 marks)

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| --- | --- |
| **Description** | **Marks** |
| Evaluates the extent to which parliamentary committees enhance the functions of parliament.Makes explicit reference to the functions of parliamentUses examples | 7 - 8 |
| Discusses the extent in relation to **one** or two functions.Makes reference to one example. | 5 - 6 |
| Outlines committee roles | 3 - 4 |
| Makes general statements about committees | 1 - 2 |
| **Total** | 8 |
| **Answers could include, but are not limited to:*** Students had to explicitly refer to the functions of legislation, representation , accountability and forum for debate in order to answer this question
* Students should have explained the different types of committees and their different attributes in relation to the functions, depednding on whether they were form the House or the Senate, of joint, and whether they were standing or select.
* For high marks, this answer needed examples of committees.
 |

**End of Section Two**

**Section Three: Essay 50% (50 Marks)**

**Marking guide to essay answers**

**Questions 7 – 10**

|  |  |
| --- | --- |
| **Description** | **Marks** |
| **Explains relevant terms and outlines parameters of discussion** |
| Explains all relevant terms and outlines parameters of discussion | 5 |
| Explains some of the terms and outlines parameters of discussion | 4 |
| Indicates what will be addressed in the discussion | 3 |
| Attempts to provide a focus for discussion | 2 |
| Makes a general statement concerning the topic / claim | 1 |
| **Subtotal** | **5** |
| **Discussion of relevant issues including pertinent examples** |
| Discusses comprehensively relevant issues using a well-structured format & supportive examples in a cohesive, logical sequence and using relevant political and legal terminology | 9-10 |
| Discusses some relevant issues incorporating some examples in a cohesive, logical sequence and using relevant political and legal terminology | 7-8 |
| Limited discussion with limited examples in a logical sequence & some relevant political & legal terminology | 5-6 |
| Limited discussion of the issues with limited political and legal terminology | 3-4 |
| Makes a general statement concerning the topic | 1-2 |
| **Subtotal** | **10** |
| **Evaluation / Assessment / Analysis** |
| Evaluates/Assesses/Analyses the claim using specific evidence which demonstrates a comprehensive understanding of the topic  | 7 |
| Evaluates/Assesses/Analyses the claim using appropriate evidence which demonstrates an understanding of the topic | 6 |
| Evaluates/Assesses/Analyses the claim using some evidence which demonstrates some understanding of the topic | 5 |
| Constructs a relevant but weak evaluation / assessment / analysis | 4 |
| Constructs a weak evaluation / assessment / analysis | 3 |
| Limited evaluation / assessment / analysis | 2 |
| No relevant evaluation / assessment / analysisA statement only | 1 |
| **Subtotal** | **7** |
| **Conclusion** |
| Draws together the argument linking evidence | 3 |
| Summarises the argument  | 2 |
| Makes general / superficial statements | 1 |
| **Subtotal** | **3** |
| **TOTAL** | **25** |

**Question 7 (25 marks)**

Evaluate the extent to which the legislative process provides the necessary standard of scrutiny required for good government at either the state or Commonwealth level.

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| **Relevant terms and parameters of discussion:** Legislative process.Good government.Scrutiny.Reference to appropriate examples.**Issues including pertinent examples could include:** * For government bills idea is presented to Cabinet 🡪 Drafted by Parliamentary Counsel 🡪
* 1st Reading (introduced by Clerk) 🡪
* 2nd Reading (Minister responsible outlines key aspects of the Bill. It is normally the most substantial debate that takes place on a bill. Its purpose is to consider the principles of the bill. Debate may cover, for example, reasons why the bill should be supported or opposed, the necessity for its proposals or alternative means of achieving the same objectives. Although listed on the Notice Paper ‘for the next sitting’, the second reading debate does not usually commence for several sitting days, and sometimes much later. The timing will depend on the Government’s legislative program and is usually negotiated with the Opposition. When the debate resumes an opposition Member (usually the ‘shadow minister’) outlines the Opposition’s position on the bill. Government and non-Government Members then usually speak in turn. The total time for the debate is not restricted by the standing orders. At the end of the debate a vote is taken to decide the House’s view on the motion moved by the Minister—‘That this bill be now read a second time’. If this is agreed to the House has agreed to the bill in principle and the Clerk stands and reads out the long title of the bill to signify the completion of this stage—the second reading, hence why it is a key stage 🡪
* Committee Stage (Consideration in Detail – consider the text of the bill in detail, clause by clause, and to enable changes to it to be proposed. Proceedings are less formal than they are for the second reading debate and procedures can be more flexible. For example, Members may speak briefly (5 minutes each) an unlimited number of times on each proposal put forward. Clauses are taken in their numerical order but, if no Member objects, a number of clauses may be taken together, the question put from the Chair being ‘That the clause (or clauses) be agreed to’. Often Members may be happy to consider the bill as a whole and in this case the question is simply ‘That the bill be agreed to’. The form of an amendment may be by omitting, substituting, or adding words. When an amendment has been moved, the Chair proposes a question to the House usually in the form ‘That the amendment be agreed to’, although sometimes more complicated procedures may be necessary. If the House votes to accept an amendment it must then decide on a further proposal ‘That the clause/clauses/bill as amended be agreed to’. These procedures ensure that every part of the bill is considered and agreed to with or without changes. However, Members may be in agreement that a particular bill does not need to be examined in detail. In this case the consideration in detail stage may be by-passed. The Chair ascertains the wish of the Members in the House and if no-one objects allows the bill to proceed directly to the third reading. Detailed debate is considered unnecessary for many bills which are supported by all parties or, in a technical or drafting sense, are very limited in scope or when, in the case of appropriation and taxation bills, private Members would be prevented from moving certain amendments.
* Bill is returned for the 3rd Reading - final stage in consideration of a bill and is usually a formality. Although the standing orders (written rules) provide for the 3rd reading to take place on another sitting after the consideration in detail has been completed, in practice the House allows the Minister to move the motion ‘That this bill be read a third time’ immediately. Debate at this stage is relatively rare and is restricted to the contents of the bill, that is, the matters contained in the clauses and schedules of the bill. When the motion has been agreed to, the Clerk again reads out the long title of the bill. This signifies that the bill has finally passed the House.
* If needed, a Bill can be referred to a Committee for an advisory report which specialises in the subject area of the bill. The committee can hear witnesses and gather evidence relating to the bill and can recommend action to the House, although it cannot amend the bill itself. If the Government accepts changes to the bill recommended by the advisory report, these are incorporated into government amendments moved during the consideration in detail stage. If the committee finds no issues requiring a formal report, the chair or deputy chair may make a statement to the House to that effect. The statement, together with the presentation of the relevant minutes of proceedings, discharges the committee’s obligation to report on the bill.
* Bill is transferred to the other House, usually the Senate, where it undergoes the same processes. Due to the more diverse nature of representation in the Senate resulting from the use of proportional voting, greater scrutiny of the Bill often occurs than in the House of Representatives which enables minority views to be expressed withing the legislative process and may conflict with the concept of majority rule.
* Royal Assent 🡪 When a bill has finally passed both Houses in identical form and been checked and certified accordingly by the Clerk of the House, it is presented to the Governor-General for assent. The words of assent used by the Governor-General are: In the name of Her Majesty, I assent to this Act. At this point the bill becomes an Act of Parliament and part of the law of the land, although the validity of the Act may be tested in court subsequently.
* Date of Proclamation 🡪 Acts do not necessarily come into operation immediately on assent, although this is common. An Act may specify a particular date for commencement, perhaps retrospective, or the day of a stipulated event, or a date to be decided later by the Government and announced (‘proclaimed’) by the Governor-General. If no commencement date is specified in an Act, it comes into effect on the 28th day after it receives assent.
* For further information go to: <http://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/00_-_Infosheets/Infosheet_7_-_Making_laws>

**Evaluation:**Evaluation of the legislative process must incorporate reference to the importance for scrutiny of legislation to ensure good government. The discussion of the key stages must show an understanding of this principle and illustrate it through rich and relevant examples as suggested in the marking guide. |

**Question 8**

Evaluate the need for court hierarchies in the Australian legal system. **(25 marks)**

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| **Relevant terms and parameters of discussion:** Court hierarchiesOriginal and appellate jurisdictionAppeals processSpecialisation of courtsApplication of dotrine of precedent**Issues including pertinent examples could include:** * Outline the civil and criminal original and appellate jusrisdictions of the WA court hierarchy using examples of types of crimes for criminal and damages amounts for civil
* Explain the need for the hierarchy and its specialisation to create practical efficiencies
* Explain the need for a system of appeals using examples such as Mabo
* Explain that cases are appealed in higher courts than the court where the original case was heard
* Identify that appeals can only occur on legal grounds
* Make the link between the appeals process and common law
* Common law can be defined as judge made law i.e. made in courts by judges when deciding cases which give rise to the need for new decisions of precedents.
* Based on the principle of *stare decisis* (to stand by what has been decided) and is made through the doctrine of precedent.
* Outlined in the *ratio decidendi* of the judge when deciding a case, these are recorded and applied in future similar cases.
* Operates in court hierarchies in which appellate court precedents bind lower courts within the hierarchy.
* Precedents set in one court may also be persuasive to courts above it or in other common law hierarchies (including internationally).
* Evolve over time through: distinguishing, overturning, reversing or disapproving previous decisions.
* Distinguishing a decision – occurs in circumstances where a judge believes that there is no precedent on which they may base their decision e.g. Donoghue v Stevenson which created the common law tort of negligence and established the legal concept of ‘duty of care’.
* Overruling precedent – superior appellate courts have the power to overrule outdated precedents to overcome the problem of stagnation and injustice resulting from outdated common law e.g. Mabo (1992) over turned the common law principle of *terra nullius* and established the right of indigenous Australians to claim *native title*.
* Reversing precedent – can occur when a superior appellate court reviews the evidence and the judicial reasoning of the lower court. If the appeal court decides the original decision was not correct, it can substitute its own ratio decidendi for that of the lower court i.e. the superior court reverses the decision of the higher court e.g. Wilson v Bauer Media Pty Ltd (2018).
* Disapproving the precedent – Lower courts are bound by the decisions of superior courts. A lower court may disapprove the precedent established by a superior court despite having to apply it. In such a case the justice will outline the reasons why they think the law is unjust in their ratio decidendi. Courts at the same level of the court hierarchy may also produce two conflicting ratios in similar matters. Both ratios will stand until one of the cases is appealed to a higher court which will have the ability to find in favour of one decision and overrule the other. Any time the High Court reinterprets a section of the Constitution or law, that contradicts its previous ratio/decision, it is disapproving of the old

**Evaluation:**Make a statement regarding the extent to which court hierarchies are necessaryi.e. major, minor, great, extensive, significant, minimal. |