

Ch 11

Accountability of the Parliament

Accountability through elections

- **Election**: a procedure allowing eligible citizens to hold elected officials to account for their previous term in office, and to delegate popular sovereignty to elected officials for their next term in office.

- Elections are:

- ↳ the most important accountability tool of parliament
- ↳ the means by which mandates are given.
- ↳ the primary mechanism of the **social contract** (people governed by elected officials, officials bound to use their power for benefit of people)

- Accountability through electoral laws + procedures

↳ electoral processes must:

- be free from intimidation/influence by those seeking office
- allow representation of the **will of the majority** while also protecting the **rights of minorities**.
- allow elections to be **frequent and regular**.

↳ how these requirements are met in Australia

- independent statutory authority (**AEC**) administers elections under **Commonwealth Electoral Act** so elected officials don't run elections

• **Preferential Voting (PV)** for HoR: Will of the Majority and **Proportional Voting** for Senate: diversity + house of review → **Commonwealth Electoral Act**

• **Compulsory Voting** under **CEA** → true will of the majority, protection of minorities

• s28 Constitution → max 3yr term HoR

• s7 Constitution → fixed 6yr term (1st July) Senate

↳ electoral processes are able to be adapted

• eg **2016 Preference Whispering Reforms** March 2016 after 35 hours of debate: removal of **Group Ticket Voting** which had allowed for **preference deals**, introduction of **optional preferential voting**

- Electoral Accountability in Theory

↳ accountable for functions: legislation, debate, accountability and representation

↳ HoR: form govt, Senate: house of review → accountable

- Electoral Accountability in Practice

↳ party contests and duality → vote by party means more focus on party performance than individual MP performance

*Is the AEC and/or electoral system vulnerable because of the nature of statute laws?

Does this indicate vulnerability in our political/electoral system?

- Electoral Accountability of the HoR

↳ single member electorates

- very high standard of accountability
- voters know their local MP very well, will direct dissatisfaction with legislation to them
- MHRs' position, voting, speeches readily available
- Media readily holds MHRs to account
- eg. Craig Thomson: former head HSU, entered parliament 2007. Audit of union records found misuse of union funds - used union credit card to pay for prostitutes. Was reported on heavily → lost position in ALP and sat as a backbencher before losing NSW seat of Dobell in 2013. Referred to House Privileges Committee for investigation of misleading parliament-convicted
- eg. Clive Palmer: 2013 elected Qld Fairfax. By Feb 2016: questions on donations of his company, Queensland Nickel, and its donations to PUP - media reports, polling indicated drop in support. Announced not recontesting seat in 2016
- eg. Sophie Mirabella: lost seat of Indi (Vic) in 2013 after accusations of prioritising Shadow Minister portfolio over electoral matters
- Independent Cathy McMoran elected for 2 terms, replaced 2019 by Independent Dr Helen Haines

→ independents (particularly if supporting a minority govt) come under greater scrutiny (eg. Adam Bandt - Greens, Andrew Wilkie - supported Gillard) because have role of ensuring parliament stays accountable through their votes. Party MHRs less scrutiny → vote by party line eg. Keryn Phelps

↳ Majoritarian electoral systems

- produce a winners bonus: % of total seats won is greater than % total votes won by the candidate, such that a disproportionate # of seats is won. Feature of majoritarian systems
- misrepresents views and intentions of voters
- govts usually stable - but not always case
- eg. 2016 Turnbull 1 seat majority
- 2018 Gillard minority govt.
- overall, majoritarian = weaker accountability

eg. Dr Keryn Phelps: passed Medical Bill against Liberal minority govt → voted out of seat of Wentworth months later → 'punished' by the electorate, as had promised to support the govt.

- Electoral Accountability of the Senate.

- 6 year terms.
- Don't know members
- Only 14.6% voting above line gives party the choice
- Voting below line confusing
- Malapportioned - smaller states greater power
- Other states can't hold senators of a state to account

↳ federal role: Senators have most often been elected by party, rather than in the interests of the state - except eg. Nick Xenophon.

↳ Multi-member electorates.

↳ weak accountability as there is more than 1 member for citizens to hold to account.

↳ complexity of Proportional Representation Systems impedes accountability

↳ voting above the line: numbers 1-6 - party is able to choose order of candidates, >90% vote above line

↳ voting below the line: at least 12 candidates.

↳ time consuming, mistakes may be made → voters retain control of their vote, but more votes exhausted or informal

↳ Frequency of elections: 6 years (infrequent)

↳ reduces ability of voters to hold senators to account

↳ eg. Bill Heffernan 1996 - 2016, only faced voters twice.

↳ 2016 'Below the Line' reforms

↳ Lisa Singh - sitting ALP Senator, pushed to unwinnable 6th place on ALP ballot. Mounted 'vote below line' campaign - successful in being elected. No senator elected from below the line since above the line voting introduced 1984. Singh won Tasmanian Senate seat 2016.

↳ Equal State representation - breaches 'one vote one value'

↳ Malapportionment - NSW voter 13.7x less voting power in Senate than Tas voter

↳ limited franchise eg. large-state senators cannot hold powerful small-state senators to account because cannot express their vote outside their electorate

↳ eg. Tas Senator Brian Harradine: held 0.12%

↳ overall national vote (small state) but held balance of power 1994-1999. - blocked Bills

- Marginal seat campaigns

↳ margin: % change in vote from previous election that would see the sitting MP lose their seat

↳ Marginal: <56% → form majority of Opposition campaign

↳ Fairly safe: 56-60% eg. in 2018 both leaders covered

↳ safe: >60% → 70,000km on campaign trail

eg. Cowan, WA - changed hands 2016, PM visited three times 2019, Anne Aly (ALP) won 50.3% TPP - ahead by 749 votes.

- Preference Whispering Reforms

- ↳ Joint Standing Committee on Electoral Matters 2016
- ↳ Optional Preferential Voting introduced - reduced impact of preference whispering
- ↳ minor parties argued that it was intended to eliminate minor/micro parties and independents from the Senate - debated pooling resources to target marginal MHR seats from major parties

- Sitting member last campaigns

- ↳ used by politically active groups/minor party
- ↳ in campaigning and #TV cards
- ↳ affects preference flows
- ↳ eg. Tas seat of Bass 2016, Andrew Nikolic lost seat by ~10.6% to ALP's Ross Hart after Getup supporters handed out #TV cards putting 'sitting member last'

Accountability through Privileges Committees

- 3 Committees that focus on accountability of parliament
 - ↳ House Standing Committee of Privileges and Members' Interests
 - ↳ Senate Standing Committee for Privileges
 - ↳ Senate Standing Committee for Members' Interests.
- Accountability for Privileges
 - ↳ Parliamentary privilege: the principle that all MPs have special exemption from criminal prosecution or civil liability for anything they say in parliament when parliament is in session, i.e. an enhanced form of freedom of speech.
 - ↳ members may be in contempt/breach of privilege, but courts cannot impose any restraint or sanction on them for such a breach, accountability is left to Parliament.
 - ↳ MPs may act in an 'unparliamentary' way, may be referred to privileges committees for discipline
- Privileges Committees: composed of MPs, they act as 'courts within the parliament' and may sanction an MP who has breached privilege
 - ↳ cannot exercise judicial power but can discipline members
 - ↳ lack impartiality: MPs judging other MPs
 - ↳ effectiveness may be compromised by partisanship: especially in high-profile cases where potential for political point-scoring is high

- ↳ eg. Craig Thomson (ALP), 2007 Member for Dobell (NSW)
 - before election, had been head of Health Services Union
 - had misused HSU credit card to purchase hotel accommodation and prostitute services
 - 21 May 2012, made statement in House naming HSU members for conspiracy and 'setting him up' → breached privilege.
 - found guilty in criminal proceedings
 - Parliament issued motion of regret, apologised to the individuals who had been named
 - 6 April 2016: Privileges Committee handed down decision: noted difficult circumstances experienced by Thomson, decided to reprimand him.
 - Thomson was part of the privileges committee during his investigation
- ↳ only expelled MHR: Hugh Mahon, 1920 Member for Kalgoorlie
 - PM Billy Hughes moved motion for expulsion
 - did not win by-election

- Members and Senators' Interests

- ↳ each house has 'interests committee'
- ↳ purpose: maintain transparency + openness of Parliament
- ↳ MPs must declare shareholdings, property, investments and other financial interests
- ↳ interests committee can investigate declarations, and any MP whose financial interests may create a conflict of interest with their duties as an MP.
- ↳ conflicts of interest must be circumvented: MPs must not covertly influence a law where they are a beneficiary directly or indirectly

- Codes of Conduct

- ↳ committees responsible for developing codes of conduct ie guidelines on 'parliamentary conduct' or rules outlining how parliamentarians should behave
- ↳ committees investigate + sanction members for breaching code of conduct

Accountability through Parliamentary Processes and Procedures

- s50: gives each house power to make its own 'rules and orders'
 - ↳ parliament follows Westminster tradition as well
- Standing Orders: rules governing the conduct of all the business of the House and Senate. They determine conduct, orders of business, motions + votes, passage of Bills, how to address the speaker.
 - ↳ provide sanctions for breaches of rules
 - ↳ Speaker and President are responsible for enforcing
 - ↳ uphold accountability by ensuring due process eg. rules for Question Time → responsibility function. Without Standing Orders, these functions wouldn't work
 - ↳ limitations on Standing Orders: may be modified by majority vote (or suspended), means govt can amend or suspend them, to benefit itself. eg. 2019 Feb: Coalition govt changed standing orders to extend Question Time to avoid vote on National Disability Royal Commission
- Speaker and President: presiding officer of each house
 - ↳ enforce Standing Orders of each house, able to interpret and apply rules to a session of parliament
 - ↳ in case of unparliamentary behaviour, any member may make 'point of order' to speaker/president to interpret standing order and make a ruling
 - ↳ every fortnight: Procedural Digest published by H&R documents rulings and new precedents of speaker
 - ↳ can caution/warn members re: behaviour. If member persists in contempt, may be ejected at speaker's discretion
 - ↳ H&R appoints speaker by majority vote - means in practice, speaker appointed by prerogative of PM. Speakers open to partisan bias - speaker position may be used as reward for committed party members eg. Bronwyn Bishop: 2013-2015 ejected 400 MHRs, only 3 from government side
 - ↳ Senate appoints president by vote but are more free of partisan bias - more impartial.
- Order of Business: agenda governing sitting days.
 - ↳ Senate: Order of Business and Notice Paper. Senators wishing to participate in debate on other business must have names entered
 - ↳ House: Order of Business/Notice paper, speaker operates business of house off them

- Hansard

- ↳ debates in chambers and committees recorded and published online by Hansard
- ↳ hold members to account for previous statements, comments and votes etc.

- Matters of Public Importance

- ↳ allows MPs to discuss/speak on other issues not raised by debates
- ↳ eg. 2015 Bill Shorten: Indigenous Affairs
- ↳ limited in terms of accountability measures, but may draw attention to a particular issue or downfall of a government

- Parliamentary Committees.

- ↳ parliament increases its efficiency through:
 - division of labour: dividing up its workload
 - specialisation: passing labour onto specific, specialised persons or groups → parliamentary committees
- ↳ parliamentary committee: a specialised subset of MPs which has defined membership and a specific area of work to focus on
- ↳ s 28 and s 57: committees are dissolved when parliament is dissolved

↳ Categorising by membership

- House Committees: members of HoR
- Senate Committees: members of Senate
- Joint Committees: members of both houses.

↳ Categorising by duration

- standing committees: formed when a parliament is established after an election, and endure for the life of the parliament, before being dissolved before the next election.
- select committees: formed for a particular purpose and dissolve when that purpose is achieved

House Committees:

- Agriculture + Water Resources
- Economics
- Health, Aged Care + Sport
- Indigenous Affairs

Senate Committees:

- Economics
- Education + Employment
- Foreign Affairs, Defence + Trade
- Scrutiny of Bills

Joint Committees:

- Electoral matters
- Human Rights.
- Treaties.

- ↳ committees made up of partisans elected as party members, not independent MPs. i.e. parliamentary committees, by convention, mirror the partisan composition of the house in which they are formed.
- ↳ means govt automatically has majority in House committees - executive dominance
- ↳ committees are much less partisan: usually conducted out of the public eye, less incentive for political point-scoring, less adversarial
- ↳ committees seek to represent public interests in their delayed business of scrutinising, debating and examining issues and laws. Take submissions from public, stakeholders and expert advisors, may travel to investigate local concerns, have reports tabled in parliament to encourage review and reform/action.
- ↳ provide role for backbenchers to influence legislation
- ↳ Joint Committee on Human Rights: mandatory for each parliament under Human Rights Act 2011.
 - scrutinises legislation for compliance with human rights agreements.
 - holds parliament to account: if a statute doesn't comply, committee issues statement of compatibility
- ↳ Scrutiny of Bills Committee - since 1981
 - assesses legislation for impact on rights, rule of law etc, may alert parliament to concerns

Accountability through Judicial Review

- No constitutional provisions, but sOP means that courts have ability to check parliament in 2 ways:
 - ↳ adjudicating constitutional validity of statutes
 - ↳ power to interpret statutes.
- Reviewing constitutionality of legislation
 - ↳ statutes must be based on a head of power: if not, HC can deem them unconstitutional (ultra vires)
 - ↳ unchallenged legislation: HC cannot adjudicate a law if it is not brought before the court
 - ↳ if it is invalid, part or all of it will be struck down
 - ↳ ultimate accountability measure for the parliament

↳ eg. Williams 2 → HC struck down Financial Management and Accountability Act 1997 which authorised payment of funds to Scripture Union of Queensland for NSCP under 'benefits to students' under s51(xxiiiA) of the constitution. HC found that because students weren't the direct beneficiaries of the funds, this law was invalid.

↳ eg. Communist Party Case 1951.

• Menzies Government made Communist Party Dissolution Act 1950 → 20 October 1950.

• Declared CPA to be unlawful and thus dissolved, allowed GI to declare 'bodies (eg. trade unions)' as Communist affiliates and thus unlawful or prejudicial to Australia's security + defence. GI empowered to declare a person to be a Communist, and thus prevent them from being employed by the Commonwealth or hold office in security, defence, or union positions.

• Communist Party challenged in HC → plaintiffs represented by Dr H.V. Ewert

• 9 March 1951: HC ruled 6:1 CPA Dissolution Act was unconstitutional: because Aus not in a state of war, govt didn't have power to proscribe groups. Further, Act prevented CPA from proving or disproving their allegations made against them.

- Statutory interpretation

↳ courts may interpret statutes to adapt them to changing or new circumstances - parliament writes Acts in broad terms to allow interpretation.

- Maxims of interpretation

↳ Eiusdem generis: 'of the same kind' - specific group of words in an Act create a 'class'. Courts decide case-by-case what else belongs to said class.

↳ Noscitur a sociis: 'by the company it keeps' - courts read words of Act in context of the surrounding words

↳ Expressio unius est exclusio alterius: 'the express mention of one is to exclude all others' - An Act containing words that create a 'class' but doesn't contain a general term offer them - implies strict application without expanding said class

↳ rules of interpretation

- literal rule: courts apply standard dictionary definition of a word in a statute. Courts use ordinary meaning of language in the statute
- golden rule: courts seek alternative meanings of a word if the literal meaning results in an absurd outcome or injustice
- mischief rule: court seeks to interpret the purpose of the law or mischief the law aims to prevent, in order to interpret the meaning of its words. Applied if the literal and golden rule may produce absurd or unjust outcomes.

↳ courts apply maxims and rules of interpretation to adapt and change acts, to deliver just outcomes

↳ frequent interpretation signifies to a parliament that the Act requires attention - encourages Parliament to review the Act or amend it

↳ interpretive powers: parliament must construct laws broad enough for parliament to interpret, but narrow enough such that the courts must follow the parliament's intention.

Ch 12.

Accountability of the Executive

Executive

- Formal/Constitutional executive: GG and EXCO
- Real/Political executive: PM and Cabinet
- Administrative executive: public service.

- Size and scale of government

- ↳ Australia 3rd lowest ratio of govt spending to GDP of 30 OECD countries.
- ↳ govt spends ~26% GDP (taxpayer money)

IMR and CMR

- Originating from Britain - unelected House of Lords ∴ no accountability function
- ∴ with convention, HoR only house where IMR and CMR are operable
- If applicable, Senate would censure govt. ministers too often - partisan.

Traditional methods of accountability

- Westminster Conventions

- ↳ Westminster Chain → directly accountable to the people
- ↳ IMR and CMR - allows disciplining and dismissal of incompetent/corrupt ministers.

- Individual Ministerial Responsibility - dismiss a Minister

↳ Censure in the HoR

- a censure motion has never passed a Minister in HoR
- party discipline: partisans vote as a bloc to defeat censure motions against their own government
- censure still enables Opposition to speak out → may bring enough pressure to force a resignation or draw media attention
- eg. under Turnbull govt → Stuart Robert forced to resign after censure motion attempted against him. Had misrepresented himself on a business trip to Hong Kong: raised question of conflict of interest, source of embarrassment for government.

↳ censure in the Senate

- unique Westminster feature in Australia
- eg. Senate censured Senator George Brandes March 2015 - still maintained his position
- Senate censures no formal effect - do not have the weight of Westminster Convention

↳ weak as accountability measure:

- censure motions almost always fail: ineffective
- even successful censures have little formal effect
- somewhat successful accountability if able to draw media attention or force a resignation

- Collective Ministerial Responsibility - dismiss a Ministry
 - ↳ motions of no-confidence in the government
 - ↳ if moved, will be debated + addressed immediately by PM and OL for 30 minutes, Ministers 20 mins.
 - ↳ can be used to frustrate executive by triggering immediate debate and speaking against/ embarrassing the govt
 - ↳ government dominates HoR - rare to pass ie. only NC motion passed → 1975, after parliament was dissolved.
 - ↳ withdrawing confidence in government in ways other than a vote: defeat of key govt policy is an effective vote of no-confidence. Govt will either immediately resign, or move a motion of confidence to test support

* in House of Reps
 * By convention govt expected to resign - but if they still hold confidence of House, may stay in office

Committees and Accountability.

- Strong bicameralism:
 - ↳ creates a Senate not controlled by government which acts as an effective House of Review to keep the government accountable.
- Senate legislation and references committees:
 - ↳ 8 important standing committees:
 - Community Affairs
 - Economics
 - Education + Employment
 - Environment + Communications
 - Finance + Public Administration
 - Foreign Affairs, Defence + Trade
 - Legal + Constitutional Affairs
 - Rural + Regional Affairs
 - ↳ these committees cover almost every area of government activity
 - ↳ each has two sub-committees:
 - references committee → for matters of inquiry
 - legislation committee → for matters of legislation
 - ↳ committees are a robust check on the power of government, especially with the balance of power in the Senate
 eg. Australian Democrats → minor party with significant Senate representation 1980s - 2005. Founder, Don Chipp, declared the party would 'keep the bastards honest' - hold govt to account.

Most recent
Senate Estimates
2-4 Apr 2019.

- projects to encourage electric vehicles.
- violent social media content
- funding for mental health services.
- budget cuts to foreign aid
- QLD floods.

- Senate estimates committees

- ↳ estimates hearings: special sittings of the eight legislative/nominations committees of the Senate, which conduct investigations during the budget hearings, at which the executive's spending is examined by parliament.
 - conducted for 4 days in May (2 optional extra days)
 - further hearings conducted in November.
- ↳ used to scrutinise govt spending, form part of the budget cycle: the period of budget preparation where govt departments submit estimates of their costs and funding required.
- ↳ recent expansion of the power of Senate estimates i.e. now expand to almost all areas of govt activity
- ↳ estimates committee hearings: inquisitorial investigations where groups of senators from different parties ask forensic + general questions of Ministers in the Senate.
- ↳ Senate committees not dominated by govt: more independent
- ↳ each year: govt budget directed to one of 8 committees for Senate Estimates
- ↳ independence of Senate committees → led to greater investigation of not just financial issues/activities.
- ↳ can call in Ministers (if they are senators) and any member of Senior Executive Service or public service to ask questions about their department
 - must not mislead parliament
 - covered by parliamentary privileges can be extracted
- ↳ most powerful, uniquely Australian, accountability check
- ↳ limitations
 - cannot call HoR Ministers - are represented by a delegated senator who appears on their behalf.
- ↳ e.g. 2018: CEO of CSIRO, Larry Marshall, questioned by Senate estimates for cutting 350 jobs, including jobs of scientists in climate change modelling sector. Estimates concerned that climate change modelling was an essential resource to uphold Australia's international reputation and climate integrity - public hearing, much debate
- ↳ e.g. 2013: Abbott evaded Senate Estimates inquiry into Dept of Immigration and Border Force's towing of asylum seeker boats back into Indonesian waters. Claimed revealing off-shore matters would compromise border security: govt discretion to make decision on what is classified

Delegated Law

1. Delegated law is made in accordance with a statute
2. Law presented to parliament within 6 sitting days.
3. MPs have 15 days to propose to override
4. Parliament has additional 15 days to decide if law overruled - if no decision, then it is overruled

- Senate Regulations + Ordinances Committee

- ↳ governments/parliaments may delegate law-making power to the executive through statutes
 - subordinate legislation: ordinance, regulations etc eg. yearly indexation of pensions under Social Security Act 1991
 - risks breaking SoP
- ↳ Senate Regulations + Ordinances Committee supervises how executive uses subordinate law-making power, keeping law-making power ultimately with parliament
 - ↳ composed of 8 senators: 3 executive, 2 opposition, 1 crossbench → Chairperson is govt senator
 - ↳ Committee examines any regulations/subordinate legislation that can be disallowed by parliament, up to 1500 regulations/ordinances per year
 - table weekly report: Delegated Legislation Monitor where it publishes inquiries + recommendations.
 - ↳ examination focuses on:
 - if law is in accordance with statute
 - that it doesn't infringe on rights/liberties.
 - that it is not better suited to parliamentary enactment
 - that it is not retrospective
 - that it does not reverse the onus of proof (criminal matters)
 - ↳ Delegated Legislation Monitor includes Index of Instruments (subordinate legislation of concern) and Disallowance Alert (recommendations of legislation that the Senate reject)
 - ↳ if Senate disallows → delegated legislation revoked
 - ↳ maintains accountability of executive by ensuring they don't overstep their power eg. Disallowed Migration (Fast Track Applicant Class) Instrument 2019
- Parliamentary Joint Committee on Human Rights - est 2011
 - ↳ role to scrutinise legislation for HR compliance with 7 treaties
 - ↳ standing committee: 5 MHRs and 5 senators - Ministers ineligible to participate → free of exec interference
 - ↳ publishes weekly scrutiny Report to alert parliament of HR violations in Bills and regulations
 - ↳ independent of executive
 - ↳ helps ensure HR/treaty compliance
 - ↳ ineffective: since initiation to Jan 2016, committee found 95 Bills violated HR - 69 of these still passed

Accountability in the Modern Era

- Commonwealth Auditor General

- ↳ created by Auditor General Act 1997 (Cwth) along with Australian National Audit Office
- ↳ role to provide parliament with independent assessment of areas of public administration, public sector financial reporting, administration etc
- ↳ 10 year term → current (2015) current Hehir.
- ↳ independent officer of Parliament, has bipartisan support
 - recommended by Joint Committee of Public Accounts and Audit → more bipartisan support
 - PM advises all to make appointment

↳ operations

- conduct audits of all departments
- 2 types of audit: performance and financial
- conducts assurance reviews

↳ performance audits

- an inspection of day-to-day activities of a government department
- uses Key Performance Indicators to measure effectiveness - standard of measurement
- Auditor General advises Parliament about how money spent and business outcomes achieved

↳ financial audits

- check financial statements/records of govt
- hold financial departments accountable for spending to avoid inefficiency or corruption

↳ assurance review

- a check to ensure that a govt department/agency is carrying out its responsibilities using the correct information.
- manage 'information risk' by ensuring public service is complying with laws governing it

↳ eg. Sophie Mirabella lost seat of Indi 2013. 2016, claimed that election had missed out on \$10 mill of funding for hospitals by not electing her

- MPs not allowed to offer inducements (incentives) for votes in return
- referred by ALP to Auditor-General → investigate if \$10 mill withdrawn because Mirabella not elected.

- Administrative Appeals Tribunal - est. 1975
↳ concerned with accountability of public service.

↳ tribunals

- do not exercise judicial power
- can review a government's activities not only for legal compliance but also for merit
- more informal, cost less, faster than courts
- parties represent themselves in front of a panel
- do not enforce/interpret statutes - only check that govt depts are fair and meritorious.

↳ jurisdiction

- administrative decisions: any decision made by a govt dept or agency in course of carrying out law
- only where the law provides that the AAT to review the administrative decision - over 400 eg. child support, migration + refugee visas, taxation, citizenship, freedom of information, customs.

↳ accountability

- provides independent review of govt activity
- anyone can challenge a law - not just for its legality, but also its merit

eg. 2019, after 11 years of fighting, former public servant appealed to AAT, who ordered that Comcare pay compensation for therapeutic gym sessions and housework help after the woman claimed workers' compensation for a shoulder injury.

- Judicial Review

↳ courts:

- exercise judicial power
- make judgements on law + evidence only
- judgements are legally binding
- check power of really political executive

↳ sources of accountability power

- strength of judicial power
- independence of judiciary - allows it to check executive
- rule of law:

↳ everyone inc. govt, subject to law

↳ independent judiciary

↳ live process in lawmaking

↳ Writs of Mandamus

- writ of mandamus: a court order requiring a public servant or official to carry out a particular action
- power granted to federal judiciary under s75(v)
- court will interpret statute, declare its meaning, issue writ to compel govt to comply with law
- demonstrates rule of law - hold govt to account to law.

↳ Injunctions

- a civil remedy preventing a party from carrying out a particular action
- eg. Plaintiff S99 v Minister for Immigration and Border Protection - S99 refugee on Nauru, became pregnant after being raped - requested to have access to legal abortion in Australia. Federal Court decided that Minister had duty of care to enable S99 to access a safe and legal abortion → lawyer had sought an injunction that would prevent her from having abortion on Nauru, mandated her transfer to Australia for medical care

- Judicial review of Cabinet Policy.

↳ statutory construction

- recent attempts to write statutes in clear English to enable easy understanding → still open to interpretation
- written in futuro for present & future situations, are written in broad terms to capture unforeseen circumstance
- must allow Ministerial discretion: give Ministers some freedom to make wide ranging decisions to cover unforeseen circumstance
- means different governments interpret law differently

↳ Migration Act and the Gillard 'Malaysian Solution'

- asylum seeker: claims to be a refugee
- refugee: claim has been found valid under Convention relating to the Status of Refugees 1951 - ratified
- in 2018: Aus refugee quota 13 750 (+ extra 12000 Syrians)
- 2000-Dec 2013, 1900 people died at sea
- Pacific Solution - Howard - mandatory offshore detention on Nauru - harsh but worked to reduce arrivals
- Gillard Malaysian solution July 2011 - no offshore detention
 - ↳ Malaysia would receive 800 Aus asylum seekers to send tough message to people smugglers
 - ↳ Malaysia would send 4000 confirmed refugees to Aus

- Aug 2011: David Manne, lawyer, challenged Malaysian Solution in High Court.
- Argued that policy unlawful - s 198a Migration Act
- Act required that a country to which Australia transfers asylum seekers must be able to provide sufficient protection to them. Malaysia was not a signatory to Refugee Convention, and thus had no obligation to protect them under international or domestic law.
- Gillard govt tried to convince parliament to amend Migration Act - failed, minority government

- Question Time

- ↳ allows Opposition to ask questions of executive government + critically examine its work
- ↳ Ministers must present their skills, ideas and policy knowledge for scrutiny, and Oppositions can present themselves as govt alternative
- ↳ Questions without notice: Opposition starts, then in turn the govt and opposition put questions to PM and Ministers
- ↳ publicised - television + print → public scrutiny
- ↳ questions without notice: ~~are~~ ^{are} ~~by~~ ^{by} ~~the~~ ^{the} ~~backbenchers~~ ^{backbenchers} pose questions to Ministers that allow them to describe the benefits of their policy
- ↳ Questions on notice: written questions to Ministers by MPs, placed on Notice Paper and answered in writing by Ministers - more detailed information. Not read in Chamber but are printed in Hansard
- ↳ over time, Questions without notice have evolved as an accountability mechanism for the government.