Politics and Law

Stage 3 Standards Guide

Exemplification of Standards through the 2010 WACE Examination

2010/34227

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Introductory notes for Politics and Law Stage 3 Standards Guide 2010

What are the 'standards' and how were they developed?
Standards describe the kinds of qualities seen across candidate responses in external examination conditions. In late 2010, WACE (written) examination scripts for Politics and Law Stage 3 were analysed by teacher expert panels who identified the qualities of candidates' scripts at each of five performance bands: 'excellent achievement', 'high achievement', 'satisfactory achievement', 'limited achievement' and 'inadequate achievement'. WACE Course scores were reported against these performance bands.

The band descriptions for Politics and Law Stage 3 are provided in Appendix 1.

What do standards tell us?
The standards described through the band descriptions tell us, in general terms, how students need to be performing if they wish to achieve a particular 'standard'. To get a clearer picture of what the standard means, teachers and students can refer to the candidate responses provided. This will help students see what they need to do to improve and help them understand how their work compares with the standard. Standards can also assist teachers in providing students with feedback about their work and see how they might need to modify their teaching.

What is provided in this Standards Guide?
There are five main components in this standards guide:
1 questions from the examination paper
2 the marking key for each question
3 candidate responses and annotated marker notes
4 statistics such as the highest and lowest marks achieved, mean, standard deviation, etc
5 examiner comments.

What standards have been exemplified in this guide?
Sample candidate responses which illustrate 'excellent' and 'satisfactory' performance have been included in this guide, along with marker annotations. In most cases, 'excellent' responses received full marks or close to full marks. If there were no responses judged to be 'excellent', a 'high achievement' response sample may be provided. For questions worth 1 mark (or a small number of marks) judgments about an 'excellent' or 'satisfactory' standard are less precise. Judgements about 'excellent' and 'satisfactory' standards illustrated in a candidate response must also take into account the difficulty of the question. It should also be remembered that overall judgments about standards are best made with reference to a range of performances across a range of assessment types and conditions.

How well did this examination 'target' the ability of candidates?
Rasch analysis of raw marks achieved by candidates enables us to provide estimates of question difficulty and student ability, on the same scale. From this relationship, we are able to evaluate how well the questions in this examination were broadly targeted to candidates' abilities.

Data which estimates the difficulty of each question is provided in Appendix 2. A graph showing the relationship between student ability (on this examination) and question difficulty is also provided in Appendix 2.

Other points to consider when viewing this guide

Use of half marks
Examination items are marked out of whole numbers. Half marks occurring in this guide are a result of averaging the whole number marks from each of two markers.

Section statistics and marks weightings
Section statistics for the highest mark achieved, lowest mark achieved, mean and standard deviation are based on weighted section total marks. Raw mark totals are provided for each section. The raw marks distribution and the weighted total marks distribution is provided on the following page.

Examination standards for 2010 WACE examinations
The analysis of written examination scripts was used to determine performance band descriptions for 2010.

Marks distribution for this examination

Section	Number of questions available	Number of questions to be answered	Suggested working time (minutes)	Marks available	Percentage of exam
Section One: Short response	4	3	45	30	30
Section Two: Source analysis	2	1	35	20	20
Section Three Part A Unit 3A: Extended response	2	1	50	50	50
Part B Unit 3B: Extended response	2	1	50		
				Total	100

Government of **Western Australia**
Curriculum Council

Politics and Law
Stage 3

Section One: Short response

30 marks

Note:
Raw section total marks = 30
Weighted section total marks = 30

Weighted section statistics

Statistic ID = 35
Number of attempts = 798
Highest mark achieved = 29.00
Lowest mark achieved = 0.00
Mean = 15.16
Standard deviation = 6.47
Correlation between section and exam total = 0.92

This section has **four (4)** questions. You must answer **three (3)** questions.

Part A: Answer **one (1)** question from a choice of **two (2)**.
Part B: Answer **one (1)** question from a choice of **two (2)**.
The third response can be chosen from **either** of the remaining questions in Part A **or** Part B.

Suggested working time: 45 minutes

Question

Part A: Unit 3A

Question 1

(10 marks)

Question statistics

Statistic ID = 25
Number of attempts = 766
Highest mark achieved = 10.00
Lowest mark achieved = 0.00
Mean = 5.97
Standard deviation = 2.33
Correlation between question and section = 0.89

1(a) What is 'federalism'? (2 marks)

Marking key

Description	Marks
• Clearly explains the term recognising that federalism is a system of government which distributes formal authority between a central government and regional (State) governments, as well as the processes of this system.	2
• Identifies the concept of division of power.	1
Total	**2**

Question statistics

Statistic ID = 1
Number of attempts = 765
Highest mark achieved = 2.00
Lowest mark achieved = 0.00
Mean = 1.26
Standard deviation = 0.62
Question difficulty = Moderate
Correlation between question part and section = 0.61

Candidate responses

Notes

1(a) What is 'federalism'? (2 marks)

In a federal system of government (where powers are divided between a central government and one or more regional levels of government) federalism refers to the ongoing ~~power~~ of the central and regional government relating to one another. Over time in Australia this has tended to favour the Commonwealth, which has become dominant in power over the states.

Excellent response
2/2 marks

Correctly explains the term 'federalism'. Outlines the correlation between several governing bodies and the distribution of power between them.

Federalism is when one central government and one or more state or regional governments operate together in their own seperate areas of power.

Satisfactory response
1/2 marks

States that 'federalism' involves a central government and regional governments. However, omits making reference to the division of powers between these spheres of government.

Examiners' comments

The question, with the focus upon federalism, was attempted by nearly all candidates. Generally part (a) was well answered. There is no universal definition of federalism nor is there a 'model' federalism against which others can be judged. Nevertheless, Australia, Canada, the United States of America and Switzerland are often called 'classic federalisms'. However, it must be indicated that federalism in broad terms is a system of government in which a written constitution specifies a division (rather than separation) of powers between a central and regional or state governments. Importantly, too, federalism is not only a structure of government, but also a process, and in Australia the process has been controversial.

Question

1(b) With reference to the Constitution of the Commonwealth of Australia, distinguish between exclusive, concurrent and residual powers. (3 marks)

Marking key

Description	Marks
• Clearly distinguishes between the Constitution of the Commonwealth of Australia classification of exclusive, concurrent and residual players. • Provides specific examples of exclusive, concurrent and residual powers with reference to the Constitution of the Commonwealth of Australia where appropriate.	3
• Distinguishes between exclusive, concurrent and residual powers. • Generalised examples may be provided.	2
• Identifies either an exclusive, concurrent or residual power or provides a list of examples.	1
Total	**3**

Question statistics

Statistic ID = 2
Number of attempts = 755
Highest mark achieved = 3.00
Lowest mark achieved = 0.00
Mean = 2.20
Standard deviation = 0.76
Question difficulty = Moderate
Correlation between question part and section = 0.69

Candidate responses

Notes

1(b) With reference to the Constitution of the Commonwealth of Australia, distinguish between exclusive, concurrent and residual powers. (3 marks)

An exclusive power is a power which is stated explicitly in the constitution and is the direct ~~addressed~~ responsibility of the Commonwealth only such as the Commonwealth's exclusive power to collect customs and excise duties (section 90). A concurrent power is one stated in the constitution which is shared between the States and the Commonwealth for example powers set out in section 51 of the constitution. A residual power is one not set out in the document which becomes the responsibility of State such as hospitals, schools and civil and criminal laws.

Excellent response
3/3 marks

Distinguishes clearly between the three classifications of power. Provides specific examples of each.

~~One~~ Exclusive powers are those areas in which the commonwealth government only, is able to legislate. Concurrent powers are areas in which both Commonwealth and State governments are able to legislate. Whilst residual powers are not mentioned in the constitution and are ~~not~~ areas in which only State governments can legislate. Both exclusive and concurrent powers are specified in the constitution.

Satisfactory response
1.5/3 marks

Defines exclusive, concurrent and residual powers and identifies a distinguishing feature between them. However, omits to include examples of each from the Constitution of the Commonwealth of Australia.

Examiners' comments

On average candidates clearly understood the distinction between exclusive, concurrent and residual powers. The description of the powers, though, was generally better than the examples which were provided. If sections of the Constitution are specified it is important to be correct with the nomination of the sections. Some references, such as Section 100 re rivers and Section 115 re coinage of money indicated detailed study of the various powers. Candidates need to avoid citing incorrect sections of the Constitution.

Question

1(c) 'In Australia, the Commonwealth has gained dominance in Commonwealth-State financial relationships.' Discuss **two** main reasons why this has occurred. (5 marks)

Marking key

Description	Marks
• Presents a detailed discussion of the Commonwealth financial dominance of the States providing two main reasons. These may include the weak financial constitutional provisions for the States, for example S.87. This has led to a situation known as vertical fiscal imbalance. A major reason for dominance has been a series of High Court decisions, particularly for instance Uniform Taxation (1942), which has enabled such policies to be pursued. Other reasons may include the recent April 2010 Council of Australian Governments (COAG) health agreement (without Western Australian as a signatory) which has entailed transfer of further financial dominance to the Commonwealth.	5
• Discusses the gradual Commonwealth financial dominance of the States and provides two main reasons.	3-4
• Provides one key reason to account for the Commonwealth financial dominance of the States.	1-2
Total	**5**

Question statistics

Statistic ID = 3
Number of attempts = 760
Highest mark achieved = 5.00
Lowest mark achieved = 0.00
Mean = 2.56
Standard deviation = 1.37
Question difficulty = Moderate
Correlation between question part and section = 0.82

Candidate responses

Notes

1(c) 'In Australia, the Commonwealth has gained dominance in Commonwealth-State financial relationships.' Discuss **two** main reasons why this has occurred. (5 marks)

The High Court is one catalyst for exacerbating the problem of vertical fiscal imbalance within Australia (i.e. when the Commonwealth has substantially higher (taxation) revenue than the States). Rulings such as: South Australia v. Commonwealth (1942) and later re-trialled in Victoria v. Commonwealth (1957), where the States challenged the validity of the Uniform Tax Act (1942), saw the Court uphold the Federal Government (then under John Curtin) to control income taxation, an erstwhile concurrent power. Income tax is the ~~largest~~ most 'profitable' form of tax in Australia for the government. ~~Furthermore~~, thus giving the Federal government a ~~another~~ huge financial windfall the States do not receive

- Another reason why the Commonwealth has gained dominance in Commonwealth-State financial relationships is constitutional clauses.
  S.87, otherwise known as the 'Bradden Blot' (named after its brainchild, then-Tasmanian Premier Joe Bradden), stipulated that from 1911 onwards, all excise and duties tax revenue would be given to the Commonwealth (from State coffers). In addition, S.90 and 92 then go on to affirm that excise and duties are an exclusive power - a contradiction that nevertheless benefited the Commonwealth.
  Moreover, S96 allows the Federal government to distribute both tied and specific purpose grants to the states. In recent times, this clause has been used to coerce States; for example, former Prime Minister Kevin Rudd threatened to withhold grants if States would not implement his policies, such as Medicare. A similar situation arose in 2010 when Kevin Rudd proposed his =

See next page

Excellent response
5/5 marks

Articulates two main reasons why the Commonwealth has gained dominance in Commonwealth-State financial relationships. Clearly explains how that dominance has been achieved.

Uses relevant examples to substantiate statements regarding the dominance of the Commonwealth in Commonwealth-State financial relationships.

Uses relevant terminology.

Candidate responses

own National Health and Hospitals Scheme, albeit using the GST as the bargaining chip.

One of the major reasons why the Commonwealth has gained dominance is due to its superior capacity to raise revenue reinforced by High Court judgements. The Commonwealth collection of personal Income Tax has enabled this financial dominance, which was reinforced by the Uniform Tax cases of the 1940's. Also contributary to this is the right of the Commonwealth to collect Customs duties and excises as seen in the Ha case (1997). The ~~[illegible]~~ idea of vertical fiscal imbalance whereby the States spend disproportionately more than they collect is the result of this.

In addition the need for tied use of tied grants by the Commonwealth enables them to dominate the relationship as they can largely dictate where and how such grants are spent. As you can see the Constitution, High Court interpretations and the nature of tied grants have all led to considerable Commonwealth dominance of the Commonwealth - State financial relationship.

Notes

Satisfactory response
3/5 marks

Identifies two reasons for the Commonwealth financial dominance of the States but the explanation lacks details of how and why this dominance occurred.

Omits using specific examples or referencing sections of the Constitution of the Commonwealth of Australia.

Examiners' comments

A sound understanding of the Commonwealth dominance of Commonwealth State financial relations was generally displayed by candidates. The best answers discussed two main reasons, not one or several, for this dominance. Reference could readily be made to the original constitutional arrangements, the taxation powers of the Commonwealth government and key High Court decisions with respect to those powers. Section 96, coupled with the High Court decision *Victoria v Roads (1925),* could be a main reason, plus a range of inter-governmental arrangements including agreements signed at various Council of Australian Governments Conferences (COAG). It should be noted that horizontal fiscal imbalance is not itself a reason for Commonwealth financial dominance but an outcome of the processes of Australian federalism.

Question

Question 2

(10 marks)

Question statistics

Statistic ID = 26
Number of attempts = 703
Highest mark achieved = 10.00
Lowest mark achieved = 0.00
Mean = 5.03
Standard deviation = 2.55
Correlation between question and section = 0.90

2(a) In the context of judicial interpretation, what is meant by the term 'legalism'? (2 marks)

Marking key

Description	Marks
Clearly explains the term as characterised by abstract logical reasoning focusing on the applicable legal text rather than on the wider social, economic, or political context.	2
Identifies the concept of judicial decision making, legalism as opposed to activism.	1
Total	**2**

Question statistics

Statistic ID = 4
Number of attempts = 697
Highest mark achieved = 2.00
Lowest mark achieved = 0.00
Mean = 1.09
Standard deviation = 0.67
Question difficulty = Moderate
Correlation between question part and section = 0.63

Candidate responses

Notes

2(a) In the context of judicial interpretation, what is meant by the term 'legalism'? (2 marks)

Legalism is approach to the decisions made by court where it is believed that the separation of powers states that parliament makes laws and courts should merely apply the law to different cases. Judicial decisions should be based on pre-existing legal norms, where a judge should in no way take into consideration values or attitudes of society in making their decision.

Excellent response
2/2 marks

Correctly explains the term 'legalism' in the context of judicial interpretation. Acknowledges that 'legalism', as a form of judicial interpretation, is more than the 'black letter of the law'.

Refers to the wider social, economic and political context.

Legalism refers to judges interpreting the law to the 'black letter' of the law. They seek to reinforce longstanding traditions and precedents, whilst leaving any necessary 'changes' in the hand of the legislative arm of government.

Satisfactory response
1/2 marks

Identifies that 'legalism', in the context of judicial interpretation, reinforces the application of precedent, leaving change to Parliament.

Examiners' comments

Candidates generally displayed a sound understanding of the meaning of the term 'legalism'.

Question

2(b) Distinguish between the original jurisdiction and the appellate jurisdiction of the High Court of Australia. (3 marks)

Marking key

Description	Marks
Clearly explains the difference between the two jurisdictions, of first reference and of appeal, possibly with reference to the Constitution or constitutional cases.	3
Provides a definition of each term.	2
Provides a general meaning of the term jurisdiction or provides a definition of one of the terms.	1
Total	**3**

Question statistics

Statistic ID = 5
Number of attempts = 688
Highest mark achieved = 3.00
Lowest mark achieved = 0.00
Mean = 1.81
Standard deviation = 0.86
Question difficulty = Moderate
Correlation between question part and section = 0.72

Candidate responses

Notes

2(b) Distinguish between the original jurisdiction and the appellate jurisdiction of the High Court of Australia. (3 marks)

The original jurisdiction, where cases are brought and heard in the court for the first instance, of the High court is constitutional decisions (ie interpreting the Constitution). Furthermore it covers areas under s75, which includes areas under treaties, cases brought against the Commonwealth, and disputes between the Commonwealth and States. Appellate Jurisdiction of the High Court are (cases which are) appealled to the High Court from lower courts, and following the 1986 Australia Act, the High Court decisions are final. (The Constitution) gives the High Court appellate jurisdiction over all cases appealled to it, criminal and civil.

Excellent response
3/3 marks

Succinctly differentiates between the original jurisdiction and the appellate jurisdiction of the High Court of Australia.

Refers correctly to the constitutional section of the Constitution of the Commonwealth of Australia, as providing the High Court with its authority.

original jurisdiction are those cases which originate in the High court and this is outlined in section 45 and 46 of the constitution. Appellate jurisdiction relates to cases which have been appealed to the High court from either the supreme court or other state courts. The power to hear cases of appeal comes from section 43 of the constitution.

Satisfactory response
2/3 marks

Provides definitions of both original jurisdiction and appellate jurisdiction of the High Court of Australia. However, does not identify a key distinguishing feature between the two.

Examiners' comments

The question was well answered with many candidates specifying the relevant constitutional provisions. Section 75 specifies the original jurisdiction of the High Court, with Section 76 specifying additional original jurisdiction of the High Court. The Appellate jurisdiction of the High Court is covered in Section 73. It should be noted that original jurisdiction does not necessarily relate to the origin of a law.

Question

2(c) Outline the main features of **one** High Court of Australia constitutional decision. Assess the constitutional significance of this decision. (5 marks)

Marking key

Description	Marks
Clearly identifies in political and legal language a High Court decision highlighting the principles within the case that make it **constitutionally** significant, rather than just significant.	5
Identifies a High Court decision with a description of the facts and recognises some general reasons why it is significant.	3–4
Identifies a High Court decision with a general description of the case with some reference to its significance.	1–2
Total	**5**

Question statistics

Statistic ID = 6
Number of attempts = 688
Highest mark achieved = 5.00
Lowest mark achieved = 0.00
Mean = 2.23
Standard deviation = 1.53
Question difficulty = Moderate
Correlation between question part and section = 0.78

Candidate responses

Notes

2(c) Outline the main features of **one** High Court of Australia constitutional decision. Assess the constitutional significance of this decision. (5 marks)

The High Court's ruling in New South Wales v Commonwealth (2006) determined the validity of then-Howard Government's Workplace Relations Amendments Act (No 2 2005), AKA Workchoices. The High Court dismissed the plaintiffs case, upholding the Federal Government's ability to govern in financial corporations (s.xx); upholding a similar ruling in Strickland v ~~Comcare~~ Rocla Concrete Pipes (1971) and also Amalgamated Society of Engineers v Adelaide Steamship Co Ltd. (1920) AKA the Engineers Case, which gave the Commonwealth power over the conciliation and arbitration over industrial disputes (s.xxxv).

The legislation in contention was relevant to these powers as it sought to strip back many employment protection safeguards in the Australian ~~labour~~ workforce.

The constitutional significance of the ruling was substantial. In addition to upholding s.51(xx) and s.51 (xxxv) as exclusive powers, it gave the Commonwealth to virtually legislate in anything, as the term 'financial corporations' applied to anything that used money to operate (i.e. virtually everything). NSW Solicitor-General Michael Sexton described the Commonwealth as 'an aggressive neighbour trying to gain territory (from the States)', whereas political writer George Craven went to the extreme of calling it 'the endgame of ~~federalism~~ federation' – underpinning the significant ramifications of the High Courts' ruling in favour of the Cwealth.

See next page

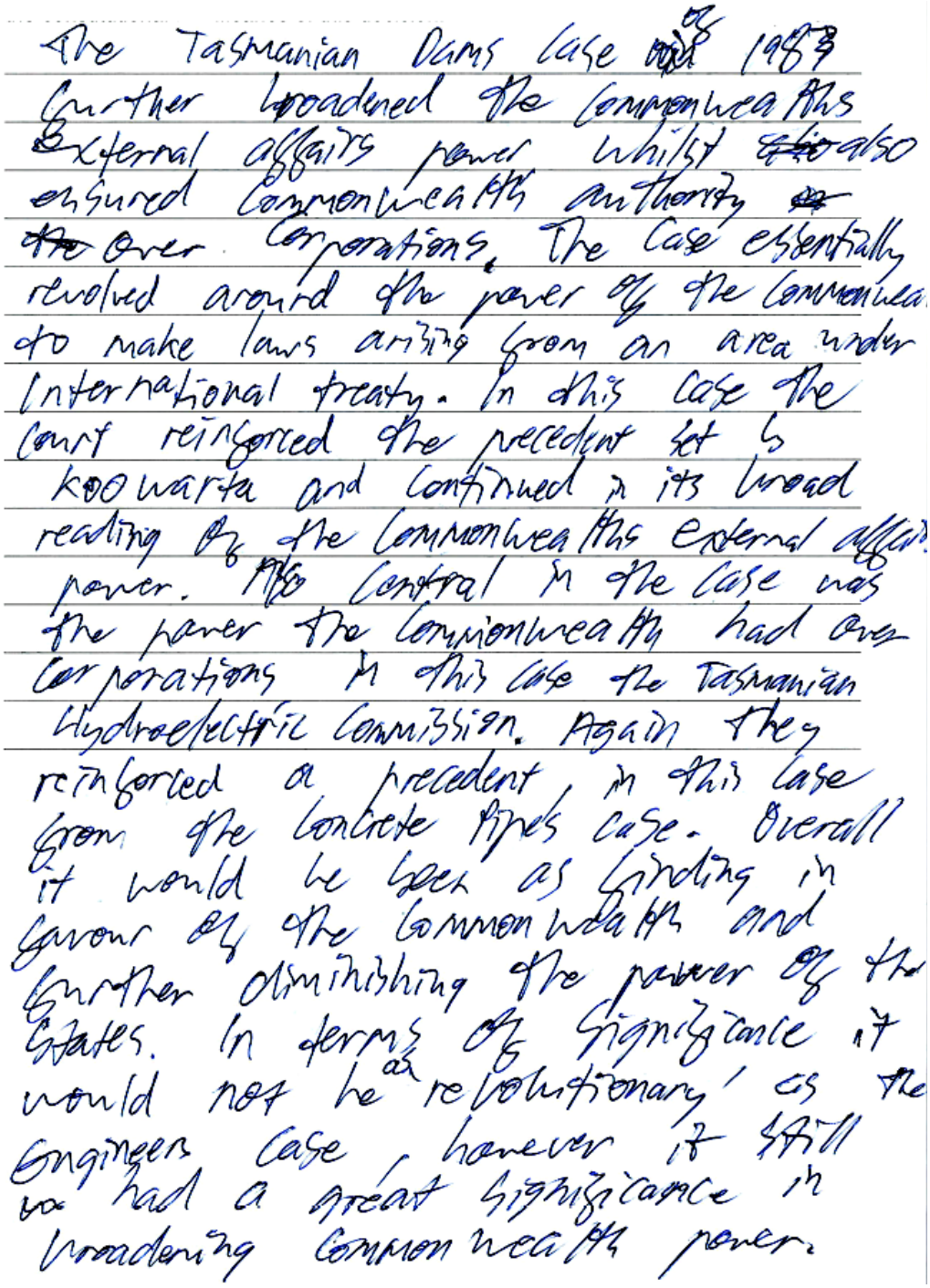
Excellent response
5/5 marks

Accurately details the main features of one significant High Court constitutional decision. Assesses the constitutional significance of this decision.

References cases and constitutional sections of the Constitution of the Commonwealth of Australia to substantiate statements.

Uses relevant terminology such as 'plaintiff', 'safeguards', 'ruling' and 'upholding'.

Candidate responses



The Tasmanian Dams case of 1983 further broadened the Commonwealths external affairs power whilst also ensured Commonwealth authority over corporations. The case essentially revolved around the power of the Commonwea to make laws arising from an area under International treaty. In this case the court reinforced the precedent set by koowarta and continued in its broad reading of the Commonwealths external affair power. The central in the case was the power the Commonwealth had over corporations in this case the Tasmanian Hydroelectric Commission. Again they reinforced a precedent, in this case from the concrete pipes case. Overall it would be seen as finding in favour of the Commonwealth and further diminishing the power of the States. In terms of significance it would not be as revolutionary as the Engineers case, however it still so had a great significance in broadening Commonwealth power.

Notes

Satisfactory response
3/5 marks

Identifies a specific High Court case and outlines some key features of the case and the decision.

Makes some general statements about why the decision was significant, rather than elaborating on the constitutional significance.

Examiners' comments

The range of answers to this question varied greatly. Assessment of the constitutional significance of the High Court decision was important in addition to the mere outline of the main features of a decision.

Question

Part B: Unit 3B

Question 3

(10 marks)

Question statistics

Statistic ID = 27
Number of attempts = 294
Highest mark achieved = 9.50
Lowest mark achieved = 0.00
Mean = 4.10
Standard deviation = 2.38
Correlation between question and section = 0.88

3(a) What is meant by the term ‘natural justice’? (2 marks)

Marking key

Description	Marks
• Clearly identifies that the term ‘natural justice’ refers to the right for a person to procedural fairness and to be given a fair hearing and the opportunity to have a decision made by an unbiased judge. It can also incorporate the principle of the right of appeal.	2
• Identifies one dimension of ‘natural justice’.	1
Total	**2**

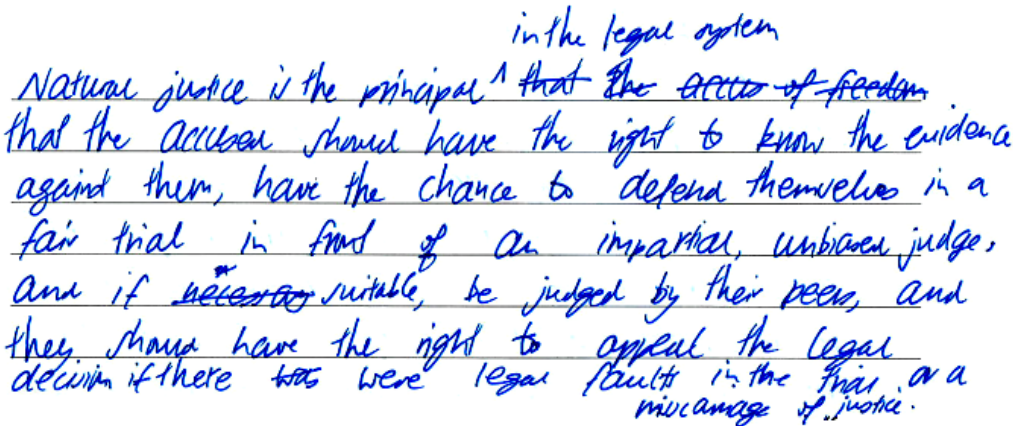
Question statistics

Statistic ID = 7
Number of attempts = 281
Highest mark achieved = 2.00
Lowest mark achieved = 0.00
Mean = 0.78
Standard deviation = 0.78
Question difficulty = Moderate
Correlation between question part and section = 0.64

Candidate responses

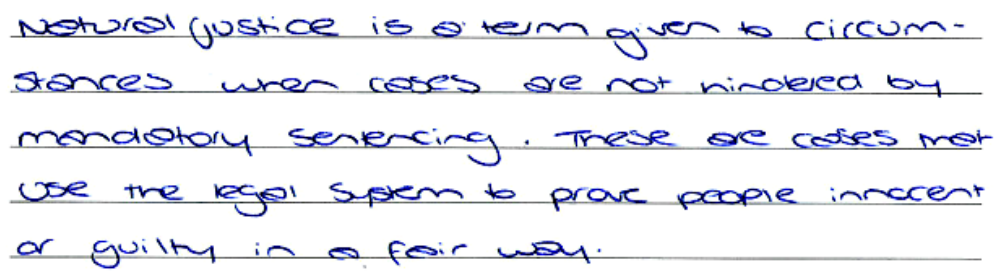
Notes

3(a) What is meant by the term 'natural justice'? (2 marks)



Excellent response
2/2 marks

Articulates the meaning of the term natural justice, identifying more than one dimension to the principle of natural justice.



Satisfactory response
1/2 marks

Offers a dimension of natural justice in relation to procedural fairness.

Examiners' comments

The key aspect of procedural fairness was not always identified. It is an important term which needs to be well understood.

Question

3(b) Outline **three** features of 'judicial independence' in Australia. (3 marks)

Marking key

Description	Marks
• Clearly outlines three features of judicial independence in Australia. Theoretically the Westminster design sets the judiciary as an independent arm of the Constitution; security of tenure is guaranteed by the Constitution; and adherence to rule of law principles and due processes.	3
• Outlines two features of judicial independence in Australia.	2
• Outlines one feature of judicial independence in Australia or provides a list.	1
Total	**3**

Question statistics

Statistic ID = 8
Number of attempts = 286
Highest mark achieved = 3.00
Lowest mark achieved = 0.00
Mean = 1.42
Standard deviation = 0.79
Question difficulty = Moderate
Correlation between question part and section = 0.73

Candidate responses

Notes

3(b) Outline **three** features of 'judicial independence' in Australia. (3 marks)

Judicial independence is a term that expresses that courts and judges should be free from the influence of the executive or legislative when deciding individual cases. It requires that judges have guaranteed tenure, as granted in Australia where judges can only be removed by a 2/3 vote in parliament. Secondly, in Australia, judges cannot be members of the executive or legislature whilst sitting or presiding over executive investigations such as Royal Commissions. Thirdly, judges' must and ~~can~~ be able to make a decision in individual cases where the executive and legislature cannot overturn that ruling. This is the case in Australia where appeals are available, but cases cannot be overturned once appeals have been exhausted.

Excellent response
2.5/3 marks

Correctly defines the term 'judicial independence'. Outlines three features of judicial independence in Australia.

Elaborates on aspects of each feature.

Judicial independence involves the selection rather than election of judges and Magistrates to remove popular influence and bias. Judicial officers are impartial, qualified lawyers who are not politically affiliated and have no connection to the executive and legislative branches. Where the executive and legislative ~~change~~ not change at election, the judiciary remains in place and therefore cannot be 'stacked' to assist a government with favourable rulings.

Satisfactory response
1.5/3 marks

Outlines two features of judicial independence in Australia.

Examiners' comments

Although there are many features of 'judicial independence' in Australia, candidates did not clearly identify three features as outlined in the marking key.

Question

3(c) Evaluate **two** processes by which Australian courts and judges are held accountable for their decisions. (5 marks)

Marking key

Description	Marks
• Recognises that judicial accountability, as for the executive and legislative branches, incorporates the acknowledgment and assumption of responsibility for actions and decisions. Specifically **evaluates** two processes by which Australian courts and judges are held accountable for their decisions. These may include: Australian courts and judges are held accountable for their decisions through appeal processes; reasons for judgments (oral or written); and possibly S.72 of the Constitution of the Commonwealth of Australia which indicates a justice can be removed from office for proved misbehavior or incapacity. • Another indirect 'accountability' factor is public opinion and media comment. Sometimes criticism by government ministers and members of Parliament (such as the Mabo and Wik decisions) may be mentioned although judges are expected to resist this form of 'pressure'.	5
• Outlines two processes by which Australian courts and judges are held accountable for their decisions.	3–4
• Outlines one process by which Australian courts and judges are held accountable for their decisions.	1–2
Total	**5**

Question statistics

Statistic ID = 9
Number of attempts = 284
Highest mark achieved = 5.00
Lowest mark achieved = 0.00
Mean = 2.03
Standard deviation = 1.21
Question difficulty = Moderate
Correlation between question part and section = 0.80

Candidate responses

Notes

3(c) Evaluate **two** processes by which Australian courts and judges are held accountable for their decisions. (5 marks)

The court hierachy and appeal process is on process by which Australian courts and judges are held accountable for their decisions. If the parties to a dispute are unsatisfied with ~~the legal~~ matters of law their case concerns or feel their treatment has been harsher than the precedent they can appeal the decision to a court higher up in the hierachy. This holds judges and courts to account as it ensures they must give valid legal reasons for their decisions.
A judge of the High Court can also be held to account and dismissed by the process of dissMissal by parliament This would only take place under extradinary circumstances of inprobity ~~and~~ impropriety and injustice as it requires a joint sitting of parliament.

Excellent response
4/5 marks

Specifically evaluates two processes by which Australian courts and judges are held accountable for their decisions.

Candidate responses

Judges are expected to give reasons for their judgements reached, and where a number of judges are to return a verdict each must outline their individual reasons behind their chosen verdict to ensure each decision is reached independently of the others. This involves referring to appropriate statutes, conventions and precedents to formally and professionally back up their judgement. A form of accountability amongst judges is collegiality, where judges support one another and give counsel if necessary to ensure their behaviour is consistent, unbiased and in line with due process. Where a judge has had a case of serious misconduct, he may be asked to resign by a senior judge.

Notes

Satisfactory response
3/5 marks

Outlines two processes by which Australian courts and judges are held accountable for their decisions.

Examiners' comments

This question was not attempted by a high percentage of candidates. Good answers could have included the appellate procedures of the hierarchy of courts, the codes of conduct which judges must comply, the publication of the reasons for decisions (including minority opinions) and the capacity for dismissal of judges (which is an approach rarely adopted). Public criticism by the media and even parliamentarians including Ministers is another 'check' on the judiciary. The evaluation component of two processes was not always undertaken.

Question

Question 4

(10 marks)

Question statistics

Statistic ID = 28
Number of attempts = 604
Highest mark achieved = 9.50
Lowest mark achieved = 0.00
Mean = 4.62
Standard deviation = 2.17
Correlation between question and section = 0.85

4(a) What is meant by ‘access’ and ‘equity’ in a legal system? (2 marks)

Marking key

Description	Marks
• Clearly explains the meaning of access (the ability of citizens to exercise rights) and equity (degree to which to citizens are treated with fairness).	2
• Identifies the meaning of either access or equity.	1
Total	**2**

Question statistics

Statistic ID = 10
Number of attempts = 602
Highest mark achieved = 2.00
Lowest mark achieved = 0.00
Mean = 1.15
Standard deviation = 0.64
Question difficulty = Moderate
Correlation between question part and section = 0.55

Candidate responses

Notes

4(a) What is meant by ‘access’ and ‘equity’ in a legal system? (2 marks)

Access refers to the ability for which individuals can exercise their rights within the legal system, utilizing the legal institutions to protect their rights. Equity refers to the degree of fairness in the exercise of these rights within the legal system, and the degree of equality to which individuals are treated ~~with~~ legal procedure and personnel.

Excellent response
2/2 marks

Clearly and correctly defines the terms ‘access’ and ‘equity’ in a legal system.

Access is a persons rights to the political and legal system whereas equity is the degree in which a person is treated equally by the law or in a more broader sence by the general Population.

Satisfactory response
1/2 marks

Identifies the meaning of ‘equity’ in a legal system.

Question

4(b) With reference to a country other than Australia, outline **three** ways in which a group or an individual can experience obstacles to achieving their rights as citizens. (3 marks)

Marking key

Description	Marks
• Clearly outlines three ways, in another **political or legal system**, in which a group or an individual can experience obstacles to achieving their rights as citizens. In some countries ethnicity, gender, religious and property barriers can exist. Joining political parties or pressure groups may be hindered. Freedom of the media can be denied. Other ways to undermine popular participation can include difficult voter registration procedures, lack of absentee voting opportunities and complicated voting formulas- sometimes exacerbated by the use of voting machines. Even in a so-called 'democratic polity' of the United States of America, with a constitutional right to vote, many such barriers to participation exist. A lack of education or adequate health and housing, or poor communications may be obstacles for groups or individuals. Unrest, violent gangs or even terrorism may be prevalent.	3
• Outlines two ways in which a group or an individual can experience obstacles to achieving their rights as citizens	2
• Outlines one way in which a group or an individual can experience obstacles to achieving their rights as citizens	1
Total	**3**

Question statistics

Statistic ID = 11
Number of attempts = 580
Highest mark achieved = 3.00
Lowest mark achieved = 0.00
Mean = 1.25
Standard deviation = 0.89
Question difficulty = Moderate
Correlation between question part and section = 0.61

Candidate responses

Notes

4(b) With reference to a country other than Australia, outline **three** ways in which a group or an individual can experience obstacles to achieving their rights as citizens. (3 marks)

Native Indians in America experience obstacles in achieving their rights due to past injustices of European colonialism and segregation which forced their current inequality to occur. Also the cycle of poverty which many encounter living on one of 300 reserves in America causes socio-economic barriers on right obtainment such as high suicide and substance abuse. Wages of Native Americans are 60% of the national average which leaves them, also, with a limited understanding English, can in legal representations and knowledge to be limited which decreases their ability to fully participate as citizens.

Excellent response
2.5/3 marks

Clearly identifies a group in a country other than Australia. Outlines three ways in which this group can experience obstacles to achieving their rights as citizens.

Provides evidence to support two of the three ways.

There are three areas in any country of which obstruct a group or individual from achieving their rights as citizens. These are faults or obstructions in the legal system, the judicial system and their treatment in a society itself. In China, Tibetans are obstructed in each of these forms in their pursuit of equal rights as citizens. Legally, Tibetans are barred from holding positions in government or in senior government agencies, a highly undemocratic approach to citizenship. In the judicial spectrum, Tibetans can be faced with capital punishment, another factor obstructing rights of punishments. In society, Tibetans are faced with widespread discrimination & are treated as "second class citizens", which obstruct idealistic democratic rights for Tibetans.

Satisfactory response
1.5/3 marks

Clearly outlines one way in which a group, in a country other than Australia, can experience obstacles to achieving their rights as citizens.

Provides two further reasons which are general in nature.

Examiners' comments

Some very high quality answers were presented, particularly those which focussed on minority groups in countries such as China. Some very good answers referred to the experience of African Americans in the United States citing in particular Supreme Court decisions and statutes which discriminated against such peoples achieving rights as citizens. Often, though, many candidates found it difficult to provide three ways particularly if their study was based was a very broad grouping such as 'North American Indians'. This drew very general examples such as language barriers, high levels of poverty and different notions of justice.

Question

4(c) Assess the extent to which **two** main barriers to participation by a particular group or individual in Australia's political and legal system have been reduced. (5 marks)

Marking key

Description	Marks
• Clearly identifies a group, or person, to have faced barriers to participation in Australia's political and legal system (such as Indigenous peoples/Ernie Bridge/Carol Martin). • Identifies two main barriers and makes an **assessment with examples** of whether the two barriers have been reduced.	5
• Clearly identifies a group, or person, to have faced barriers to participation in Australia's political and legal system. • Identifies two main barriers and makes a general assessment as to whether the two barriers have been reduced.	3–4
• Identifies a group, or person, to have faced barriers to participation in Australia's political and legal system. • Identifies two barriers without reference to whether these have been reduced.	1–2
Total	**5**

Question statistics

Statistic ID = 12
Number of attempts = 583
Highest mark achieved = 5.00
Lowest mark achieved = 0.00
Mean = 2.35
Standard deviation = 1.16
Question difficulty = Moderate
Correlation between question part and section = 0.76

Candidate responses

Notes

4(c) Assess the extent to which **two** main barriers to participation by a particular group or individual in Australia's political and legal system have been reduced. (5 marks)

~~barriers~~ Aboriginal citizenship and participation has been achieved in recent times through various government policies. Starting with amendments to the Electoral Act in 1962 which granted Aborigines the right to vote, ~~and~~ then 1967 referendum which overwhelmingly allowed for Aborigines to be counted as citizens, and then the Racial Discrimination Act 1975) under the Whitlam government all safeguarded Aboriginal rights to participate in Australia's political and legal system.

Furthermore, the Gillard government has proposed ~~the~~ a referendum to include Aborigines in the Constitution, as a further step in reconciliation.

In assessing the extent to which these barriers have been reduced, it can be ~~concluded~~ argued that Aborigines continue to suffer hardships in achieving equity. For instance, it is reported that 39% of Aborigines graduate from Year 12, compared to 75% of non-Aborigines; moreover, 3% of Aborigines have a bachelor's degree compared to 24% of non-Aborigines. These statistics underpin the fact that the barriers to Aboriginal ~~access and~~ equity in Australia have been reduced to a negligible ~~effect~~ extent.

Another barrier in accessing the justice system. The Northern Territory government has sought to reduce this barrier by hiring Aboriginal translators to allow for fair hearings for native Australians not necessarily adept in English. In assessing this attempt, however, it can be said that barriers have been reduced to a small extent. with Aborigines continuing to be disproportionately represented in Australian jails (as founded in the 1996 Royal Commission into Aboriginal Deaths in Custody).

See next page

Excellent response
4.5/5 marks

Identifies two main barriers to participation by a particular group in Australia's political and legal system.

Draws conclusions about the extent to which these two barriers have been reduced.

Candidate responses

For Aborignal People in Australia there are two main barriers of Culture and language and both have been reduced to some extent.
In terms of culture, Many Aboriginals have trouble understanding Australia's political and legal system, as our system ~~of~~ is so different from theirs. This has resulted in a High rate of Aboriginal prisoners in Australian Jails of 12% when Aboriginals only compriise of about 2% of the population. There is also a High rate of recidivism.

In recent years, however there has been the introduction of fusing Australian law and Aboriginal law together in the Koori Courts in Victoria and the circle courts in Kalgoorlie WA.

Language is another barrier as many Aboriginals do not understand Law enforces. There have been efforts by Northern Territory in recent years to introduce translators However, there only two translators for 75 Aboriginal languages.

See next page

Notes

Satisfactory response
3/5 marks

Identifies two main barriers to participation by a group in Australia's political and legal system.

Candidate responses

In ~~0661~~ assessing the ~~Victim~~ two main barriers of ~~Aborigin~~ Aboriginal peopu in the Australian ~~courts~~ legal system, it is clear that barriers of language and culture are there. However, there have been attempts to remove these barriers but there is more that can be done.

Notes

Makes little assessment as to whether the barriers have been reduced.

Examiners' comments

A high number of candidates selected Australian Aborigines or Indigenous Peoples. Very few candidates chose to focus on an individual. Many answers were very broad with a general reference to barriers such as language difficulties, unemployment, poor health and geographic location. It is acceptable to mention such barriers but some specific detail should be indicated. With Indigenous peoples constitutional and franchise barriers can be identified. However, many candidates erred in their interpretation for the 1967 referendum amendment to the Commonwealth Constitution of Australia. It was not a grant of citizenship, nor was it the grant of the franchise. The features of this referendum amendment, strongly endorsed by the electorate, should be carefully examined.

Government of Western Australia
Curriculum Council

Politics and Law
Stage 3

Section Two: Source analysis

20 marks

Note:
Raw section total marks = 20
Weighted section total marks = 20

Weighted section statistics

Statistic ID = 36
Number of attempts = 798
Highest mark achieved = 20.00
Lowest mark achieved = 0.00
Mean = 10.72
Standard deviation = 3.62
Correlation between section and exam total = 0.87

This section has **two (2)** questions. You must answer **one (1)** question. Write your answer in the space provided.

Suggested working time: 35 minutes

Examiners' comments for this section

For the first year of examination in Stage Three it was decided to use text book readings. Future examinations may adopt other sources (including text book readings). One feature of the source questions was an attempt to have comparable levels of question difficulty in each question. Thus 5a, 5b, 5c and 5d should be comparable to the alternative 6a, 6b, 6c and 6d. The first source question with a focus on the Constitution was more popular than a question on a new dimension of the course, namely democratic governance.

Question

Question 5

(20 marks)

Read **Source 1** and answer all parts of the question that follows.

Source 1: Unit 3A

Narelle Miragliotta, Wayne Errington and Nicholas Barry (2010), *The Australian political system in action*, South Melbourne: Oxford University Press, pp. 13-14.

> The Australian [Commonwealth] Constitution was neither a product of a revolution (as in the United States) nor a long process of institutional struggle (as in Britain). It was designed by men who had respect for both systems of government. Just as the British had insisted on written constitutions for the Australian colonies, a written constitution was necessary for Federation in 1901. Indeed, Australia's constitution was in the first instance an Act of the British Parliament. The system of responsible government was not fully explained in the constitution. Attendees of the federation conventions during the 1890s were mostly drawn from colonial parliaments and simply assumed that the system of government with which they were familiar would persist at the Commonwealth level. The Australian [Commonwealth] Constitution thus says nothing about the office of prime minister or cabinet, and very little about political parties. A casual reading of the Australian [Commonwealth] Constitution gives the impression that the Governor-General is the most powerful actor in national politics. A lack of clearly codified rules for government is not as unusual as you might think. The United Kingdom has no written constitution at all, relying instead on conventions and certain pieces of legislation.

Question statistics

Statistic ID = 29
Number of attempts = 632
Highest mark achieved = 19.50
Lowest mark achieved = 0.50
Mean = 10.86
Standard deviation = 3.63
Correlation between question and section = 1.00

5(a) What is a constitution? (2 marks)

Marking key

Description	Marks
• Clearly explains the term recognising that a constitution reflects the fundamental law, institutions and conventions which establish a system of government.	2
• Makes reference to a constitution being law or a set of processes for government.	1
Total	**2**

Question statistics

Statistic ID = 13
Number of attempts = 631
Highest mark achieved = 2.00
Lowest mark achieved = 0.00
Mean = 1.48
Standard deviation = 0.54
Question difficulty = Easy
Correlation between question part and section = 0.55

Candidate responses

Notes

5(a) What is a constitution? (2 marks)

A constitution is a formal document or series of legislative documents that governs the governors. It sets out the institutions, processes and systems of government, as well as outlining the powers and operations of the arms of government. A constitution can be based on conventions and can be written or unwritten.

Excellent response
2/2 marks

Clearly explains the term constitution. Identifies key elements of a constitution including the system and arms of government.

States that conventions can operate within constitutions.

A Constitution is a written document outlining the process by which a particular Country's political and legal System shall operate. Included are how it will work and who makes up the three arms of government. It is considered to be a Supreme piece of legislation and change is usually difficult and rare.

Satisfactory response
1/2 marks

Outlines that the constitution establishes a process for government.

Examiners' comments

This question was well answered particularly by those which gave emphasis to how a constitution is the fundamental law of a nation.

Question

5(b) Distinguish between an Act of Parliament and a 'convention' of Parliament. (4 marks)

Marking key

Description	Marks
• Clearly identifies the main features of an Act of Parliament being a Bill passing through both Houses of Parliament and receiving Royal Assent. May recognise the significance of proclamation. • As 'part of the law of the land', an Act contrasts with unwritten practices or established customs of Parliament such as responsible government or the role of the Opposition, known as 'conventions'. • Provides an example of an Act and/or convention to illustrate the difference.	3–4
• Makes the distinction between an Act of Parliament and a 'convention' of Parliament or provides a definition of each term.	2
• Identifies the meaning of either term.	1
Total	**4**

Question statistics

Statistic ID = 14
Number of attempts = 629
Highest mark achieved = 4.00
Lowest mark achieved = 0.00
Mean = 2.50
Standard deviation = 0.96
Question difficulty = Moderate
Correlation between question part and section = 0.75

Candidate responses

Notes

5(b) Distinguish between an Act of Parliament and a 'convention' of Parliament. (4 marks)

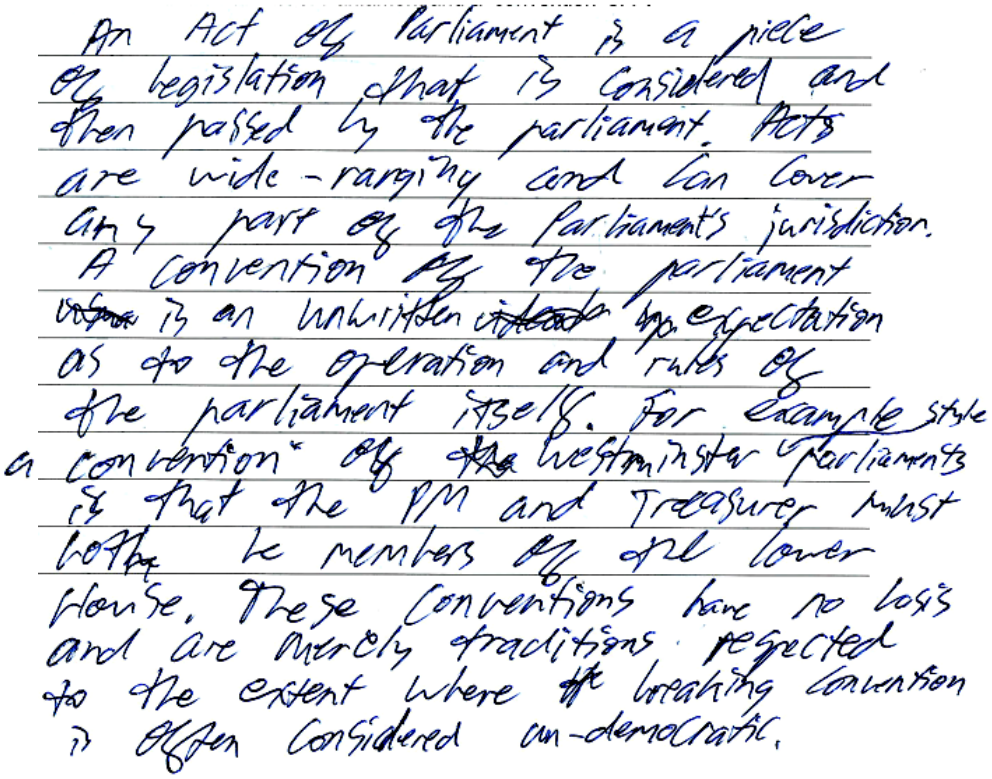
An Act of Parliament is a written law that is created by the elected representatives of the people under statute. ~~Convention~~ power As indicated by Source 1 the Australian Constitution was created ~~as~~ as an 'Act of the British Parliament'. An Act of Parliament can be later repealed, or amended with the consent of the elected representatives. On the other hand a convention is an unwritten law that is consistently and conciously followed by means of ease of operation or as a historical practice. Whilst ~~laws are~~ always Acts of Parliament are ~~fol~~ always followed, as enforced by courts, Conventions can and have on occassion been broken. Examples of Westminster conventions adopted by the Australian system of government include, as indicated by Source 1, the "system of responsible government."

Excellent response
4/4 marks

Clearly distinguishes between an Act of Parliament and a convention of Parliament. Provides clear examples to illustrate the difference.

Refers to the source to highlight the difference.

Candidate responses


An Act of Parliament is a piece of legislation that is considered and then passed by the parliament. Acts are wide-ranging and can cover any part of the Parliaments jurisdiction. A convention of the parliament is an unwritten ~~rule~~ type expectation as to the operation and rules of the parliament itself. For example style a convention of the Westminster Parliaments is that the PM and Treasurer must both be members of the lower House. These conventions have no basis and are merely traditions respected to the extent where the breaking convention is often considered un-democratic.

Notes

Satisfactory response
2.5/4 marks

Identifies the key component of each term but does not specifically distinguish between the two terms.

Examiners' comments

Most candidates provided a satisfactory answer. Best answers mentioned that an Act of Parliament was subject to passage through both Houses of Parliament of a Bill through the required steps (readings), assent by the Governor-General and Proclamation, followed by an example. The best answers for a convention of Parliament also provided a good example, such as 'responsible government'.

Question

5(c) Discuss the extent to which **three** key features of the 'unwritten' constitution of the United Kingdom were adopted as part of the Constitution of the Commonwealth of Australia.

(6 marks)

Marking key

Description	Marks
• Recognises that many of the key features of the unwritten constitution of the United Kingdom were not adopted as part of the written Constitution of the Commonwealth of Australia but were adopted as constitutional conventions that operate alongside the written document. • Makes use of examples which could include: ▪ The Prime Minister being a member of the lower house and the leader of the executive government. ▪ The Treasurer being a member of the lower house. ▪ The Constitution does refer (in Section 53) to financial Bills which must originate in the House of Representatives and in Sec. 64 that a Minister, after a period of three months, must be members of Parliament. ▪ The collective executive (Cabinet) is responsible to the lower house. Ministry should resign as the executive if they do not maintain the confidence of the lower House. Moreover governments are formed on the basis of seats in the lower house. ▪ Many of the conventions of the Westminster parliament were adopted such as the procedures of parliament, its privileges, and the roles of the Opposition. ▪ Cabinet decisions are made in secret and all Ministers are publicly loyal to those decisions. If a Minister publicly disputes Cabinet decisions then they should resign although this principle is not strictly upheld. ▪ Individual Ministers are responsible to the Parliament for their individual probity and propriety and will resign on a vote of no confidence. ▪ The public service will be politically neutral and provide "frank and fearless" advice. • Draws a conclusion as to the extent to which these features were adopted as part of the Constitution of the Commonwealth of Australia.	5–6
• Recognises the features that were adopted from the unwritten constitution of the United Kingdom without necessarily identifying that many of these operate alongside the written document. • Makes a statement about the extent to which these features were adopted as part of the Constitution of the Commonwealth of Australia.	3–4
• Cites responsible government as a feature adopted from the unwritten constitution of the United Kingdom.	1–2
Total	**6**

Question statistics

Statistic ID = 15
Number of attempts = 606
Highest mark achieved = 6.00
Lowest mark achieved = 0.00
Mean = 2.56
Standard deviation = 1.32
Question difficulty = Moderate
Correlation between question part and section = 0.81

Candidate responses

Notes

5(c) Discuss the extent to which **three** key features of the 'unwritten' constitution of the United Kingdom were adopted as part of the Constitution of the Commonwealth of Australia.

(6 marks)

The unwritten understanding that the Prime Minister of Australia would be the leader of the house ~~of~~ with a majority of seats in the lower house of parliament was definately not clearly stated in the Australian constitution as there is no mention of the position of the prime munster in the ~~m~~inamalist document. Also the convention that real executive power is wielded by the Prime munster and Cabinet and not the Governor General and the Queen as stated under section 61. In this respect the constitution account was misleading, the constitution not stating expressly that this is the case, not adopted to any extent. The westminster convension that the governor general would act on the advice of the Prime Munster is not stated anywhere in the constitution and as the source says "The Constitution gives the impression that the Governor General is the most important actor in national politics." However, the westminster convension regarding the separation of powers is stated as under section 1, 61, and 71 the constitution outlines the Judician, Legislature and executive. The extent to which the constitution adopted these accurately however is minimal due to the previously stated reasons.

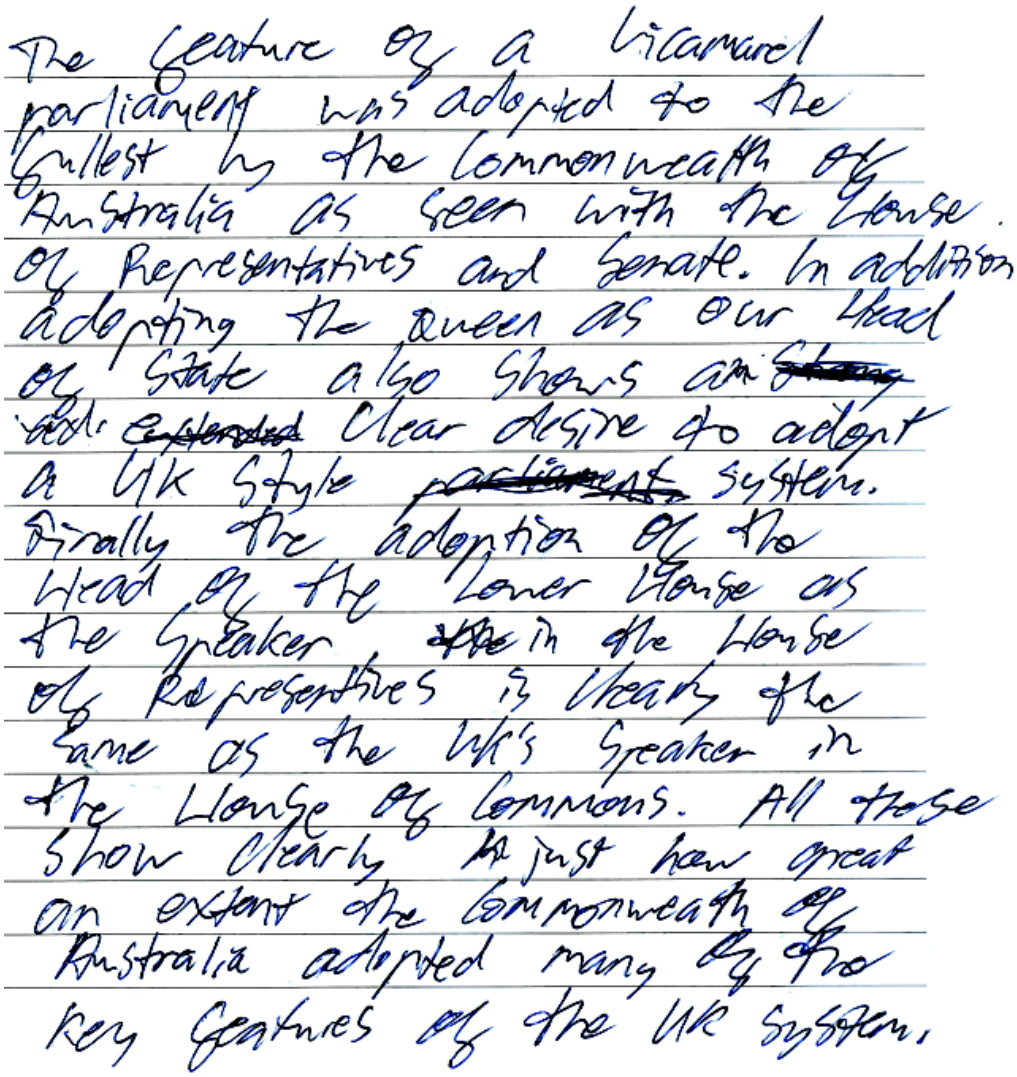
Excellent response
5/6 marks

Correctly identifies three key features of the unwritten constitution of the United Kingdom.

Explains that these conventions were not expressly stated in the Constitution of the Commonwealth of Australia.

Correctly acknowledges that conventions sit outside the formal written document that is the Constitution of the Commonwealth of Australia.

Candidate responses



Notes

Satisfactory response
3/6 marks

Identifies three features of the unwritten constitution of the United Kingdom that have been incorporated in to the written Constitution of the Commonwealth of Australia. However, omits to note that the Westminster conventions adopted, sit outside the written document.

Examiners' comments

Competent answers were provided by most candidates. The question did make reference to key features which meant that topics such as responsible government, bicameralism and role of Opposition would have been suitable topics for discussion. However, candidates needed to identify that a number of features of the 'unwritten' constitution of the United Kingdom were adopted as conventions, rather than included in the written document.

Question

5(d) 'The Australian Constitution ... says nothing about the office of the prime minister ... A casual reading of the Constitution gives the impression that the Governor-General is the most powerful actor in national politics.'

Assess the main powers of the Governor-General and Prime Minister as 'actors' (participants) in national politics. (8 marks)

Marking key

Description	Marks
• Identifies the Governor General's powers as stated in the Constitution of the Commonwealth of Australia. • Acknowledges the reserve powers of the Governor General with an example to highlight the power. • Refers to the constitutional provisions relating to the Governor General. • Identifies the role of Prime Minister entails many powers including party leader/chair of cabinet, advice to Governor General to call elections, represent the government to the media and power of patronage. • Makes extensive use of examples in drawing a conclusion about the respective roles of each in national politics.	7–8
• Identifies the Governor General's powers. • Reference to reserve powers and may make reference to other constitutional provisions. • Identifies the role of Prime Minister and the powers associated with this role. • Makes a statement about the respective roles of each in national politics.	5–6
• Identifies the Governor General's powers and may make some reference to constitutional provisions. • Identifies that the role of Prime Minister and some powers associated with this role. • Makes a statement about the relative power of each.	3–4
• Describes the powers of the Governor General compared to the Prime Minister and makes a statement in relation to the power of each.	1–2
Total	**8**

Question statistics

Statistic ID = 16
Number of attempts = 622
Highest mark achieved = 8.00
Lowest mark achieved = 0.00
Mean = 4.51
Standard deviation = 1.55
Question difficulty = Moderate
Correlation between question part and section = 0.89

Candidate responses

Notes

5(d) 'The Australian Constitution ... says nothing about the office of the prime minister ... A casual reading of the Constitution gives the impression that the Governor-General is the most powerful actor in national politics.'

Assess the main powers of the Governor-General and Prime Minister as 'actors' (participants) in national politics. (8 marks)

The office of the Prime Minister is the single most powerful role in Australia's political system today despite not being mentioned in the Constitution. It is a convention that the Prime Minister is the leader of the party (or coalition) in the House of Representatives which has the majority and forms government. The Prime Minister has many powers as a result of their control of Cabinet, ~~parliamentary~~ political patronage, partisan support in the House, media attention and ~~a near monopoly~~ a great deal of expert advice. The powers of the Prime Minister include the power to call an election, to select and dismiss Ministers, to decide business of Cabinet and thus effectively decide on policy and legislation which will be put to the House of Representatives. All of these powers are due to the full acceptance of convention. In contrast to this the ~~Governor~~ General as Head of State has very few powers that are significant. While the powers set out in the Constitution seem to give the Governor General a great deal of authority, such as being the Chief Commander of the armed forces

Excellent response
7/8 marks

Compares the main powers of the Prime Minister and the Governor General as 'actors' (participants) in national politics. Provides specific examples of their powers and the source of these powers.

Candidate responses

and appointing members to the ~~Federal~~ Executive Council, these are in reality either fiction or decisions made in council, with the advice of the Prime Minister and Cabinet. Many roles of the Governor General are ceremonial & other powers such as the power to dismiss the Prime Minister are considered to be reserve powers. While Sir John Kerr ~~the~~ a former Governor General dismissed Gough Whitlam the Prime Minister in 1975, by this power has never otherwise been used and hence is seen as a reserve power. Therefore while the Prime Minister is not mentioned in the Constitution their role is very powerful in comparison to the Governor General who has very limited authority despite having a constitutional mention.

Notes

Makes an assessment of each in terms of their power and role as 'actors' (participants) in national politics and the inter-relationship between the two.

Candidate responses

The Governor-General enjoys a largely symbolic role in Australian politics. The Governor-General, despite having the constitutional power to select and dismiss ~~of~~ the Ministers, appoint justices ~~and~~ of the High Court and a role as Commander in Chief of the armed forces the GG ~~the~~ has almost no ~~role~~ power in Australian politics. ~~Other than performing~~ Roles are more often than not the opening of parliament the swearing in of the Executive and the greeting of distinguished guests such as the Queen. The obvious exception was the 1975 ~~dismissall~~ dismissal of the Whitlam government a scenario very unlikely to be repeated. The Prime Minister on the other hand is the most powerful player in national politics. The Prime Minister dominates Cabinet which in turn dominates the parliament. In addition due to strong party discipline the position is seen as quite secure and the legislative program ~~of~~ of the particular PM usually comes about. In addition all decisions in one hands of the Governor General are made on the advice of the PM. Here things such as ministerial appointments, appointment of High Court justices and declarations of war are the powers of the PM. Overall it is easy to see PM is most powerful political player.

See next page

Notes

Satisfactory response
5/8 marks

Identifies the powers of the Governor General but makes no links to the Constitution of the Commonwealth of Australia.

Correctly identifies the Prime Minister as the most powerful 'actor' in national politics, but the assessment of the role is not supported with adequate evidence.

Examiners' comments

Some candidates gave undue focus to either the office of prime minister or of the Governor General.

Question

Question 6

(20 marks)

Read **Source 2** and answer all parts of the question that follows.

Source 2: Unit 3B

Extract One from:

Graham Maddox (2005), *Australian Democracy in Theory and Practice,* (5th edn). Frenchs Forest, NSW. Pearson Education Australia, 465.

As scholars have maintained, the miracle of democracy is that people are content to abide by decisions of the electors, and that losers are prepared to accept their disappointment and wait for their turn to seek office at some another time. 'People with guns obey those without them'. That is why we emphasise the fragility of democracy, since it could easily be unravelled 'by people with guns' or other means of overwhelming power. It is our civic duty to see to it that democracy does not even begin to be eroded by undermining the principles through which its fragile existence is sustained. Australians should be greatly worried, even if it is out of self- interest, that their government is prepared to demonise human beings from other places.

Question statistics

Statistic ID = 30
Number of attempts = 166
Highest mark achieved = 18.50
Lowest mark achieved = 2.00
Mean = 10.19
Standard deviation = 3.52
Correlation between question and section = 1.00

6(a) What is meant by the word 'democracy'? (2 marks)

Marking key

Description	Marks
• Clearly explains that democracy is a representative system of government based on the principle of people's rule and political equality. May include reference to majority principles and ideals of political equality.	2
• Makes reference to representative government based on majority rule.	1
Total	**2**

Question statistics

Statistic ID = 17
Number of attempts = 166
Highest mark achieved = 2.00
Lowest mark achieved = 0.00
Mean = 1.31
Standard deviation = 0.50
Question difficulty = Easy
Correlation between question part and section = 0.54

Candidate responses

Notes

6(a) What is meant by the word 'democracy'? (2 marks)

Democracy is a system of government which emphasises the role of the citizen and seeks to keep the government answerable to the people. It is founded on the people's ability to openly participate in a country's political and legal system to have their will heard, often this is achieved through democratic processes of elections and the guaranteeing of civil liberties like rights of free speech.

Excellent response
2/2 marks

Clearly and correctly explains the term 'democracy'. Identifies key components such as representative system of government, public participation and political equality.

A democracy is a ~~form~~ of government in which individuals are regarded as citizens and have basic ~~freedom~~ and rights. ~~Parliament~~ These citizens are protected under law and choose representatives who are ~~also~~ not above the law through free, fair and regular elections.

Satisfactory response
1/2 marks

Alludes to representative government and citizens' rights.

Question

6(b) Distinguish between ‘consensus’ and ‘open government’ as practices of governance.

(4 marks)

Marking key

Description	Marks
• Clearly indicates that the term ‘consensus’ is an agreement on principles with possibly some room for disagreement on minor matters and possibly an example, whereas ‘open government’, an ideal of democratic governance, holds that the business of government should be available or open to public scrutiny and oversight on the basis of a free flow of information. • Provides an example or other distinguishing point should be provided.	3–4
• Makes the distinction between ‘consensus‘ and ‘open government’ as practices of governance or provides a definition of each term.	2–3
• Indicates the meaning of either ‘consensus’ or ‘open government’.	1
Total	**4**

Question statistics

Statistic ID = 18
Number of attempts = 160
Highest mark achieved = 4.00
Lowest mark achieved = 0.00
Mean = 1.67
Standard deviation = 1.04
Question difficulty = Moderate
Correlation between question part and section = 0.73

Candidate responses

Notes

6(b) Distinguish between 'consensus' and 'open government' as practices of governance.

(4 marks)

Good governance is defined as the management of a nation's affairs in a efficient, ~~and~~ equitable and sustainable manner. It also means that the government is more responsive to the people's needs. Consensus in government refers to agreement and participation in politics, with a fair agreement reached in a consultative and participative manner. It is a key element in providing good governance. Open government, however refers to transperancy and accountability in government with citizens able to be informed about the procedures and processes of Parliament and the ways in which executive power is utilised. Open government is also a key principle of ensuring good governance.

Excellent response
3.5/4 marks

Distinguishes between the terms 'consensus' and 'open government' in the context of governance.

Identifies that 'consensus' allows for differing opinions through 'consultative processes'. Notes that 'open government' enables public scrutiny through the free flow of information.

The idea of a 'consensus' style of governance refers to the idea that the government has recieved a mandate to govern by winning the previous election on the back of certain campaign promises. The idea of an 'open government' style of governance relates to the idea that all government actions and decisions are available to the public and the media so that the Government can be effectively scrutinised. Both ideas are important in carrying out 'good' governance.

Satisfactory response
2.5/4 marks

Defines each term as practices of governance, but omits to highlight a distinguishing feature between the terms.

Examiners' comments

This question sought a distinction rather than a comparison between the 'consensus' and 'open government' practices of governance. It is recommended that more attention be given to the terms consensus and open government which are part of everyday political discourse. Open government was generally more effectively addressed.

Government of **Western Australia**
Curriculum Council

Question

6(c) Discuss **three** ways in which the 'opposition' can hold the 'executive' to account in a democracy, using Australia as an example. (6 marks)

Marking key

Description	Marks
• Clearly acknowledges that in Australia one of the main functions of 'the opposition' is to help ensure governmental accountability. The right to oppose is a tenet of democracy. Although oppositions typically lack resources, a discussion of the ways in which the opposition can hold the executive to account could include: the use of 'questions without notice', questions with notice, the estimates committees and other committees which may have an investigatory purpose. Grievance and adjournment debates may also have an accountability function. On occasions it may be possible to block, delay legislation or improve legislation in the Upper House (Senate). The opposition, through its Shadow Cabinet as the alternative government with a counter set of policies keeps the Government to account as the likely replacement in office. The Opposition may appeal to the media and employ critical findings of accountability agencies such as the auditor general, ombudsman, information commissioner or the Corruption and Crime Commission. Sometimes, too, oppositions may commission research and even assist in the pursuit of legal action. • Makes use of examples in the discussion from the Australian context.	5–6
• Recognises that the opposition has an executive accountability role and provides two ways in which the opposition can hold the executive to account. • Discusses two ways an opposition can hold the executive to account. • Makes some use of examples.	3–4
• Provides a list of roles of the opposition rather than discussing the ways in which the opposition can hold the executive to account.	1–2
Total	**6**

Question statistics

Statistic ID = 19
Number of attempts = 164
Highest mark achieved = 6.00
Lowest mark achieved = 0.00
Mean = 3.48
Standard deviation = 1.26
Question difficulty = Moderate
Correlation between question part and section = 0.85

Candidate responses

Notes

6(c) Discuss **three** ways in which the 'opposition' can hold the 'executive' to account in a democracy, using Australia as an example. (6 marks)

- Question Time is one such time the opposition can hold the executive to account. ~~Almost~~ The opposition ask questions directly of executive Ministers about actions of the government. However, this method is relatively ineffective as Ministers often evade the question with long answers. It once took Kevin Rudd as PM 11 minutes to answer a question. ~~and~~
- Censure motions ~~and votes of no confidence~~ are another such way. A censure motion is a vote to sack a Minister, ~~under~~ following a successful motion, they must resign under Westminster convention. A censure motion was proposed against Environment Minister Peter Garrett in Feb 2010 for the electrification of 1000 roofs and four deaths in the 'Pink Batts fiasco'. It was destined to fail because the Govt held the majority. However, in the new Hung Parl it may be more effective.
- The Senate has become much more important in holding the exec to account. As no party has held a majority since 1981 (except 2005-2008), inquiries can be referred to Senate committees even if the govt does not approve. This is true for the current make up of the Senate with 32 ALP, 37 Lib, 5 Greens, Steve Fielding & Nick Xenophon. One such inquiry is the inquiry into the Energy Efficient Homes Package by the Environment, Telecomms and Arts standing committee chaired by Senator Mary Jo-Fisher. It investigated into the actions of the executive, attempting to hold it to account.

Excellent response
5.5/6 marks

Explains and discusses three ways in which the opposition can hold the executive to account in a democracy. Uses Australia as an example.

Assesses the likely success of the opposition holding the executive to account. Uses the government majority allowing for the defeat of censure motions, as an example.

Supports the explanation with specific, recent examples.

Candidate responses

The Opposition refers to the political party who received the second most seats in the most recent election. One role of the opposition is to hold the government accountable and as the executive is created from the Government, the opposition must also hold them accountable.
One way in which the opposition can hold the executive accountable is the parliamentary procedure of Question Time. During question time, the opposition can ask the Government questions relating to government decisions and actions. These questions may shows incompetence of the Government which is then usually exposed to the public by the media which allows the public to remove the government. A censure motion is a statement in which the parliament has lost confidence in the Government and thus, if the vote is passed, an election is held. By being able to call censure motions, the opposition can hold the executive accountable. A final way that the opposition can hold the executive accountable is through elections. By gaining power in an election, the opposition proves that the executive have been ineffective and thus removes their power from them and holds them accountable.

Notes

Satisfactory response
4.5/6 marks

Discusses two ways in which the opposition can hold the executive to account in a democracy. Uses Australia as an example but the response lacks supporting evidence.

Examiners' comments

Generally the question was well answered although it is surprising that some candidates did not discuss three ways the 'opposition' can hold the 'executive' to account in a democracy such as Australia. Examples of three ways of bringing the 'executive' were necessary for a good mark.

Question

6(d) Assess the main ways Australian citizens can exercise their 'civic duty' to maintain the 'miracle of democracy' and the ways their actions may also undermine democracy. (8 marks)

Marking key

Description	Marks
• Outlines and assesses the main ways Australian citizens can exercise their 'civic duty' to maintain the 'miracle of democracy' which could include: Australian citizens have a duty (by law) to enrol to vote and to cast a vote. They may also join political parties and pressure groups, communicate with parliamentarians and government, write to newspapers, engage with the media/preparing petitions and fulfil jury duty when required. Although efficacy towards the system is thought to be enhanced by participation and most citizens enrol and vote, very few join political parties. A higher number become members of interest and pressure groups. A low percentage of citizens engage with the media despite large audiences. Most members of society are law abiding. • Makes some reference to the notion of democracy and participation. • Identifies ways in which citizen's actions may undermine democracy which could include: failing to enrol to vote and failing to vote without reasonable excuse. More broadly citizens may fail to be law-abiding. Illegal strikes, and even revolution, may undermine democratic governance. A most serious undermining of democracy can be due to the 'guns' of the modern horror of terrorism. Democratic ideals may not be able to be fulfilled due to the absence of adherence to open government and the rule of law. Citizens upholding racist beliefs and practices may be another way that Australian citizens may undermine democracy. • Makes extensive use of examples from the 'Australian citizen context' to support the assessment.	7–8
• Outlines the main ways Australian citizens can exercise their 'civic duty' with a general statement assessing these collectively. • Identifies ways in which citizen's actions may undermine democracy. • Makes reference to some examples from the 'Australian citizen context'.	5–6
• Identifies the main ways Australian citizens can exercise their 'civic duty'. • Identifies ways in which citizen's actions may undermine democracy. • Makes a statement about participation and democracy generally.	3–4
• Describes ways in which Australian citizens can exercise their 'civic duty' and makes a statement in relation to how citizen's actions may undermine democracy.	1–2
Total	**8**

Question statistics

Statistic ID = 20
Number of attempts = 166
Highest mark achieved = 7.50
Lowest mark achieved = 0.50
Mean = 3.84
Standard deviation = 1.61
Question difficulty = Moderate
Correlation between question part and section = 0.84

Candidate responses

Notes

6(d) Assess the main ways Australian citizens can exercise their 'civic duty' to maintain the 'miracle of democracy' and the ways their actions may also undermine democracy. (8 marks)

- The most important way Australians can maintain the 'miracle of democracy' is to vote. A healthy voter turnout indicates a politically aware and scrutinising public. The actions of Mark Latham at the last election to encourage an informal vote was described by Peter van Onselen (01 Sept, 2010) as "like promoting the spread of the cancer that is political indifference". In a worrying sign, informal votes were 50% higher at 5.55% at 2010 election.
- Another such method is the challenge the Commonwealth about the constitutional validity of such policy - this In Pape v Australian Tax Commissioner (2009), the constitutional validity of the Rudd Govt 2009 stimulus handout was challenged, as the Govt can not give out 'gifts'. This was upheld, however, the stimulus was allowed to go ahead. In assessing, this is an effective, but limited and very expensive way to be of an individual holding the govt to account
- Participating in a Pressure Group allows the chance to be part of a movement that can take direct action to criticise the govt and maintain this 'miracle'. In assessing, the actions of ~~'Humanist' Group~~ 'altruistic' groups such as GetUp! has been very successful. GetUp! v. AEC (2010) was successful in extending the right to vote to 100,000 people, following Howards decision to close registration the day after an election was called.
However, under the elitist theory, indirect action can often erode democracy as it is not open. The involvement of lobbyists, such as Brian Burke is not visible by the public and can undermine democracy.

Excellent response
7.5/8 marks

Identifies three key ways Australian citizens can exercise their civic duty to maintain the 'miracle of democracy'. Highlights voting, High Court challenge to public policy and participation in pressure groups.

Explores how citizen participation enhances democracy and the extent to which it supports or undermines democracy.

Candidate responses

Given that the founding principle of democracy is "a government for the people, of the people, by the people", it can be assumed that citizens of a democracy can uphold democracy in some way. The most effective of these ways is by voting for a representative who displays your values. By voting, or not voting for a candidate in an election, Australian citizens are ensuring that their values are upheld and thus the founding principle of democracy is also upheld.
Another, less effective, way in which citizens can maintain democracy is through protests and petitions. By signing a petition or protesting, Australian citizens demonstrate that they oppose a government decision or they want action on an issue. This may prompt the government to act because if they are seen to not be working in the best interests of the public, they will not be re-elected. A final way in which the public can maintain democracy is by forming a pressure group that highlights and advocates for a certain issue. By forming a pressure group, the equity that democracy prides itself on may not be upheld as this group may convince the government to act in a way that advantages certain people but disadvantages other people. This may also occur as a result of a petition or protest and thus it is possible for Australian citizens to undermine democracy in their attempts to uphold it.

Notes

Satisfactory response
5/8 marks

Discusses three ways Australian citizens can exercise their civic duty to maintain the 'miracle of democracy'. However, there is little discussion on how these actions may undermine democracy.

Omits to make reference to examples from the Australian context.

Examiners' comments

Assessment of civic duties maintaining the 'miracle of democracy' was much stronger than the main ways of possibly undermining the 'miracle'. Participation in the polity may both enhance democracy and also undermine its delivery. For the part (d) assessments in the source questions there is a requirement for an 'assessment' rather than an 'outline' or 'listing'. Mention of voting, interest group activity, political party membership and jury duty, amongst other activities including the new electronic mediums, needed to be assessed.

Government of Western Australia
Curriculum Council

Politics and Law
Stage 3

Section Three: Extended response
Part A: Unit 3A
Part B: Unit 3B

50 marks

Note:
Raw section total marks = 25
Weighted section total marks = 25

Weighted section statistics

Part A
Statistic ID = 37
Number of attempts = 785
Highest mark achieved = 24.00
Lowest mark achieved = 0.00
Mean = 12.69
Standard deviation = 4.94
Correlation between section and exam total = 0.92

Note:
Raw section total marks = 25
Weighted section total marks = 25

Part B:
Statistic ID = 38
Number of attempts = 779
Highest mark achieved = 24.00
Lowest mark achieved = 0.00
Mean = 12.62
Standard deviation = 4.89
Correlation between section and exam total = 0.91

This section has **four (4)** questions. Answer **one (1)** question from Part A: Unit 3A and answer **one (1)** question from Part B: Unit 3B.

Suggested working time: 100 minutes

Government of Western Australia
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Question

Part A: Unit 3A

Question 7

(25 marks)

The claim in Australia that Parliament has been reduced to a ‘rubber stamp’ of the Cabinet has been described by some commentators as ‘the decline of parliament thesis’.

Assess the validity of the ‘decline of parliament thesis’.

Question statistics

Statistic ID = 31
Number of attempts = 383
Highest mark achieved = 24.00
Lowest mark achieved = 0.00
Mean = 13.74
Standard deviation = 5.01
Correlation between question and section = 1.00

Marking key

Description	Marks
• Explains what is meant by the decline of parliament thesis in terms of parliament fulfilling the functions assigned to it. • States a clear and confident argument regarding the validity of the thesis. • Presents evidence in support of the argument and deals critically with evidence that may counter the argument. • Integrates relevant examples of legislation or parliamentary issue that support or conflict with the claim that Parliament is a 'rubber stamp' of Cabinet. • Presents a reasoned, balanced and coherent assessment of the validity of the decline of parliament thesis using relevant political and legal terminology.	23–25 Does most 21–22 Does some
• Explains what is meant by the decline of parliament thesis. • Presents an argument regarding the validity of the thesis. • Presents evidence in support of the argument. • Integrates some relevant examples of legislation or parliamentary issues that support or conflict with the claim that Parliament is a 'rubber stamp' of Cabinet. • Presents a mostly reasoned, balanced and coherent assessment of the validity of the decline of parliament thesis using relevant political and legal terminology.	18–20 Does most 16–17 Does some
• Demonstrates some understanding of the decline of parliament thesis. • Provides some reference to the validity of the thesis. • Provides some examples of legislation or parliamentary issues that support or conflict with the claim that Parliament is a 'rubber stamp' of Cabinet. • Presents a discussion rather than an assessment with some reason, balance and coherence about the validity of the decline of parliament thesis using some relevant political and legal terminology.	13–15 Does most 11–12 Does some
• Demonstrates limited understanding of the decline of parliament thesis. • Provides limited reference to the validity of the thesis. • Provides limited examples of legislation or parliamentary issues that support or conflict with the claim that Parliament is a 'rubber stamp' of Cabinet. • Presents statements rather than a reasoned, balanced and coherent discussion as to the validity of the decline of parliament thesis using limited relevant political and legal terminology.	8–10 Does most 6–7 Does some
• Demonstrates minimal or no understanding of the decline of parliament thesis. • Provides minimal or no reference to the validity of the thesis. • Provides minimal or no examples of legislation or parliamentary issues that support or conflict with the claim that Parliament is a 'rubber stamp' of Cabinet. • Presents minimal statements and no discussion with minimal or no political and legal terminology.	3–5 Does most 1–2 Does some
Total	**25**

Question statistics

Statistic ID = 21
Number of attempts = 383
Highest mark achieved = 24.00
Lowest mark achieved = 0.00
Mean = 13.74
Standard deviation = 5.01
Question difficulty = Moderate
Correlation between question part and section = 1.00

Candidate responses

Notes

Question 7 **(25 marks)**

The claim in Australia that Parliament has been reduced to a 'rubber stamp' of the Cabinet has been described by some commentators as 'the decline of parliament thesis'.

Assess the validity of the 'decline of parliament thesis'.

"The House of Representatives is Australias most depressed public institution. It ranks poorly amongst the great Westminster parliaments of the world... It needs reform." (Adjucnt professor of Public Policy at Australian Catholic Uni, J R Nethercoote, August 7th, 2010 - The Australian). Given J.R. Nethercoates words, the role of the HoR in holding the executive to account supports the decline of parliament thesis. However, the increasing importance of the Senate in the accountability function has resulted in a unique 'Australian Compromise' that challenges this suggests otherwise.

Under the Westminster Convention, the executive is decided by the HoR. As such, during in contemporary society, in an age of rigid party politics, it would be expected one party has a majority in the HoR (although 2010 Fed election changed this). According to Paul Kelly, in the March of Patriots

"The modern day role of government parties is to find a leader who will deliver government. Hereafter, that leader will dominate most facets of the executive."

This As such, the party will support the leader This was witnessed of Kevin Rudd following the 2007 election. He was the leader credited with delivering the ALP out of 11 years of opposition. As such, the factions allowed him the unprecedented gift of choosing his own 40 man ministry. As Therefore, Kevin Rudd dominated the ~~MIA~~ Cabinet, and in turn Prime Minister & Cabinet (PM&C) dominated the party. As the ALP had the majority in the HoR, they thus dominated the House.

Excellent response
23.5/25 marks

Articulates a valid thesis in relation to the 'decline of parliament thesis'. Elaborates on this thesis throughout the response.

Provides evidence to explain the relationship between the executive and the House of Representatives. Highlights the dominant position of Prime Minister and Cabinet.

Candidate responses

Notes

This executive domination of the House of Reps has led to JR Nethercotes concern that

"Ato For too many members, the forum for debate is the party room, not the chamber."

Thus, the domination of the HOR has eroded the House role as a forum for debate. This was a development recognised by the Speaker Harry Jenkins during Question Time on the 16th Nov 2010.

"To those inside and outside of this house that think this is a debate, it is not."

Furthermore, this 'decline of parliament thesis' is witnessed in other traditional functions. The accountability function of the House is vital ~~aret~~ for ensuring good governance by the executive. ~~However, the one~~ One ~~of~~ manifestation of this function is Individual Ministerial Responsibility ~~ed~~ (IMR) and Collective Ministerial Responsibility. CMR is the theory that as governments fall and rise as one body, Ministers of that Govt must support the decisions of Cabinet. This is the essence of Cabinet solidarity and has led to the resignation of Minister Assisting for Aviation Services Gary Punch in 1994 for his inability to support ~~EG~~ Hawkes Cabinet decision to construct a third Runway at Sydney Airport.

Draws on expert opinion in relation to the House of Representatives being a forum for debate, to further support the argument.

Substantiates the argument with respect to IMR and CMR. Uses relevant terminology.

However, more important is IMR. This is the theory that Ministers are: 1. must act with 'probity and propriety', in that they will not mislead parliament or bring parliament into disrepute. 2. They are responsible for the actions of thier department and thier Ministerial decisions, just as they can claim the credit for the successes of thier Ministry. This aims to discomfort ministers to search for 'maladministration' within thier departments.

Candidate responses

Notes

This theory of IMR has not been practised ~~and has~~ by successive governments, beginning with Howard. ~~In~~ In his first term, he would lose 7 ministers under his new Ministerial Code of Conduct. In 1987, the 'Travel rorts' claimed Transport Minister John Sharp for his complicities ~~consent of~~ knowledge that Ministers Tuckey and McGauran were overcharging Canberra for accomodation.

However, in 2000, Howard protect Minister for Aged Care ~~Bronwyn~~ Bishop following revelations that salmonella had spread throughout nursing homes and that people were bathed in kerosene. Howard would state

"~~It is unless~~ If Ministers were to resign for ~~the~~ actions ~~of~~ in some far off corner of their department ... Ministers would be resigning all over the place."

The experience with Kevin Rudd would be somewhat different. Although Joel Fitzgibbon (Minister for Defence) resigned in 2009 ~~over this~~ for misleading parliament about his relationship with a Chinese national, it was only done so because of intense political pressure. The demotion of Peter Garret from Environment Minister ~~too~~ in Feb 2010 would confirm this, after 1000 roofs 400 house fires and 4 deaths occured because of the implementation of the insulation 'Pink Batts program' under the $42 bn stimulus package. The fact that Rudd held on to Garret for a few weeks, only relenting under political pressure, and even then only demoting the Minister would lead Peter van Onselen to exclaim in The Australian Feb 2010

"~~The bar~~ In Australia's political history, no Minister has resigned under the westminster Convention of Ministerial Responsibility ... whether or not they do so is an entirely political decision."

Integrates relevant and recent examples to substantiate the argument being developed.

Uses recent examples to support the argument.

Candidate responses

Nevertheless the role of the Senate has ~~increased~~ largely replaced the degradation of the HoR. This has been caused by the fact that except for 2003-2008, no one party has held a majority in the Senate for from 1981 ~~to 2010~~

This diversity in political representation exists today, with 32 ALP, 37 Liberals, 5 Greens and Nick Xenophon & Steve Fielding. This allows ~~issues~~ inquiries to be referred to Senate committees, even if the government does not approve. In fact, according to former Clerk of the Senate Harry Evans, in the Age Sep 2008 "It is often the case that the inquiries the government opposes may very well be the inquiries most worth undertaking."

One such example of this is the Inquiry into the Energy Efficient Homes Package by the Environment, Telecoms and Arts Senate Standing Committee, chaired by Ex Liberal Senator Mary Jo-Fisher. It would investigate the "Pink Batts" scandal, inviting the PM Kevin Rudd, Minister for Energy Efficiency Greg Combet, Minister for Employment Mark Dreyfus and former Environment Minister Peter Garrett to attend for questioning. Although they did not attend, it was highly embarrassing for the government, suggesting the decline of peril is incorrect.

Notes

Begins to develop the second aspect of the argument by indicating that the second chamber, the Senate, is arresting the decline of the functions of the House of Representatives.

Highlights the representative function of the Senate by providing evidence of the diverse composition of the Senate.

Draws on expert opinion to support the argument. Establishes the connection between the role of the Senate and the independence of the Senate from executive control. Provides a targeted example.

Returns to the thesis that is stated in the introduction and upon which the argument is developed.

Candidate responses

Furthermore, other such inquiries into the activities of the executive include inquiry into a certain wartime event by Standing ~~Com~~mittee of Foreign Affairs and Trade, chaired by ALP Senator John Faulkner. It was also this committee that ~~uncovered~~ unravelled the AWB scandal during tri-annual estimates committees. ~~Con~~ Combined with the fact the Senate often rejects legislation, such as the 2004 Medicare Tax and CPRS in 2010, it would suggest parliament is not just a 'rubber stamp of the executive.'

In conclusion, the aforementioned actions of the Senate have ~~resulted in a partial~~ & in some way made up for the what could more aptly be described as a 'decline in the HoR.' The source of this 'decline' is the creation of a party system not around during the formation of the Westminster system. According to Henry Evans, "parties are organised in such a way as to prevent parliamentary govt from occuring".

Notes

Produces a fluent and cogent response that assesses the validity of the 'decline of parliament thesis'. Writes an effective conclusion that restates the basis of the argument presented.

Candidate responses

The ~~Federal~~ Australian Federal Parliament has been seen by many as an institution in decline for several years. The House of Representatives has been the main benifactor of this thesis due to it's Cabinet Dominance. However, the ~~Senate since the introduction of proportional voting in 1977 has meant~~ common Balance of Power Senate has ensured for many years that the Commonwealth parliament is not an ~~its~~ institution in decline.

Firstly, the House of Representatives ~~to some extent~~ can be considered ~~a House of parliam~~ an institution in decline. It is often argued that because of its ~~two party a~~ preferential voting system that there is a majority of one party, the government that will always control the house and be a rubber stamp for legislation.

Notes

Satisfactory response
12.5/25 marks

Clearly identifies a position in regards to the 'decline of parliament thesis'. Revisits this position throughout the response.

Makes broad statements in regards to the government majority in the House of Representatives.

Candidate responses

This argument is true of most sitting Houses between Australia's first parliament in 1901 lead by Prime Minister Barton and the Rudd parliament of 2007 - 2010. There is however the examples of the Fadden government in 1991 and the Gillard government of 2010 that this argument does not hold true, as the government has/had to negotiate with the opposition and independents to pass legislation as they were hung parliaments.

Furthermore, In the ~~parliaments~~ ~~House of Representatives~~ that were not hung between 1901 and 2010, their main functions were not upheld. The ~~parliament~~ House legislated but it did so because it had majority. The ~~House~~ of Representatives did not appoint the government, as the people did so due to preferential voting. The parliament could ~~attempt to~~ check and scrutinize government but the government would would always be in control because it had a majority. The

Notes

Makes use of both historical examples and the current example of the hung parliament. However, omits to elaborate on why this impacts on the functions of parliament, in relation to the 'decline of parliament thesis'.

Candidate responses

Notes

~~parliament~~ members of parliament usually behaved as partisians rather than delegates and trustees as they would ~~vote~~ have to vote with their party because of a pledge ~~or not~~ if they were a labor parliamentarian or because it was prefferred if they were Liberal. The parliament did have the opportunity to be a forum of debate as there are the parliamentary practises of ajournment and grievance debates, question time and the second reading of a legislative bill, However ~~in~~ the government always had the opportunity to gag and Gulliotine debate if it had the opportunity.

On the other hand, ~~the 2010 Gillard gove~~ in the 2010 Gillard parliament the House of Representatives is not an institution in decline as the government does not have majority ~~The govern~~ parliamer and it upholds its intented

States the functions of parliament, particularly as a forum for debate. Uses relevant terminology such as ‘adjournment debate’, ‘question time’, and ‘guillotine’.

Candidate responses

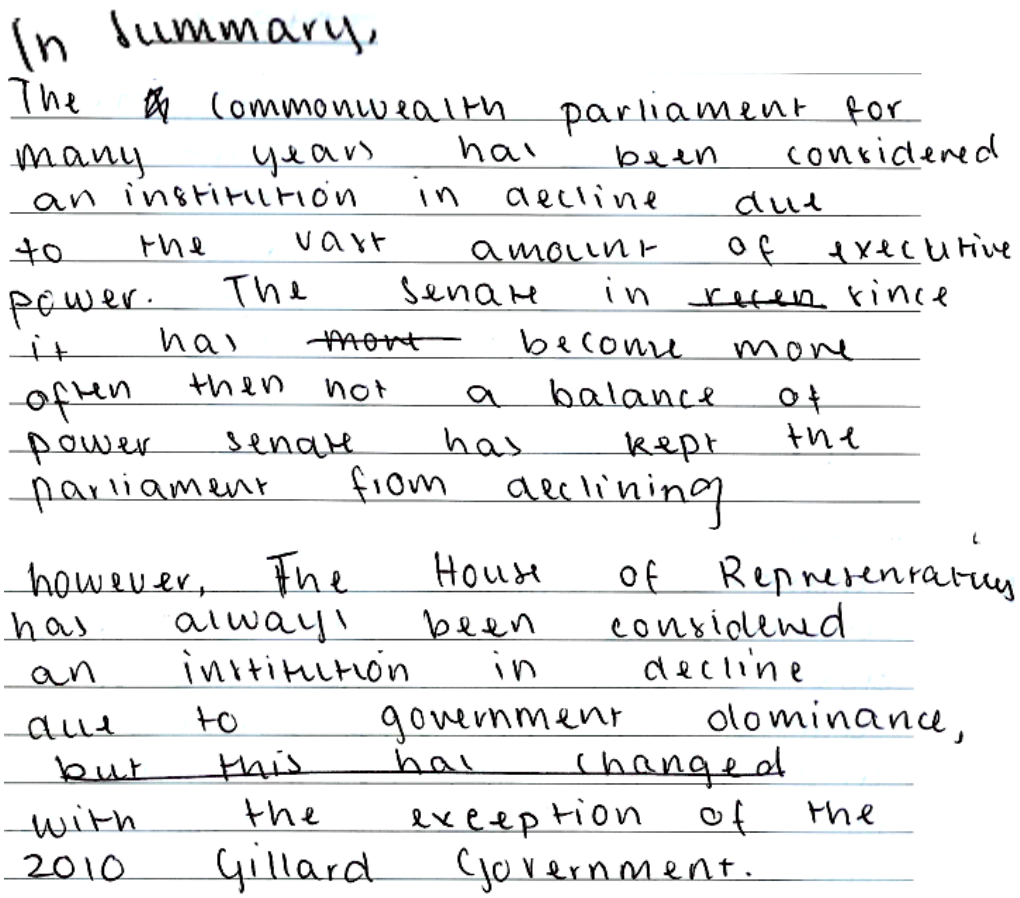
Notes

functions. The parliament did choose government, it is a forum for debate and legislation is not just passed through the House with a rubber stamp.
The Senate is the part of parliament that keeps parliament from being institution in decline. Due to proportional representation the Senate has been for many years a balance of power Senate. A Balance of power Senate ensures that the ~~parliament~~ parliament does not just pass legislation using cabinet as the rubber stamp and also ensures that there is a significant amount of accountability of the government. ~~The i~~ The introduction of the senate committee system ~~the~~ meant that there was significant investigation into government spending and government legislation. The Senate also decides whether to pass legislation as it has the ability to stop it through teaming up. ~~with~~ This can be seen in the Rudd senate with the Emissions Trading Scheme.

Uses the functions of the Senate to support the counter argument to the 'decline of parliament thesis'.

Candidate responses

Notes


In summary,
The Commonwealth parliament for many years has been considered an institution in decline due to the vast amount of executive power. The Senate in ~~recen~~ since it has ~~most~~ become more often then not a balance of power senate has kept the parliament from declining

however, The House of Representatives has always been considered an institution in decline due to government dominance, ~~but this has changed~~ with the exception of the 2010 Gillard Government.

Returns to the proposition in the introduction. Distinguishes between the House of Representatives and the Senate in terms of assessing the validity of the 'decline of parliament thesis'.

Examiners' comments

This extended response (essay) question was the most favoured in Part A. It also yielded the highest average mark of all the extended response (essay) questions. As the political (and legal year) unfolded the roles and relevance of Parliament was a matter of keen public debate. A preponderance of candidates did mention the contemporary hung parliament although this reference was not universal. Best answers needed this consideration. Best answers required discussion of the significant role of the Cabinet, the emergence of party discipline and the absence of procedures and resources normally available to the Opposition. A key matter that required discussion was the role of the Senate (with the Government holding or not holding a majority in the upper house). Also the influence of the Committee System (particularly in the Senate) required discussion. There was an opportunity to discuss the notion of a mandate and whether there has ever has been a 'golden age of parliament'.

Question

Question 8

(25 marks)

‘Our instrument of government, the Constitution, was never meant to be a hard and fast piece of machinery … the wording provided for its alteration but voters have been reluctant to approve reform.’

Explain the provisions for formally amending the Constitution of the Commonwealth of Australia by referendum and, referring to at least **one** reform proposal, assess why amendment is so difficult.

Question statistics

Statistic ID = 32
Number of attempts = 402
Highest mark achieved = 22.00
Lowest mark achieved = 0.00
Mean = 11.69
Standard deviation = 4.67
Correlation between question and section = 1.00

Marking key

Description	Marks
• Clearly indicates the process for a referendum, identifying S. 128 of the Constitution of the Commonwealth of Australia, that after introduction to the Parliament, the formal amendment proposal needs to pass through both Houses of Parliament by an absolute majority, or only one House after a period of three months, and then submitted to the electors in a referendum after two months but not beyond six months. The amendment is then subject to approval by a national majority of electors (including those in the Territories) and also must be approved by electors in a majority of States. • Explains that only eight of the 44 referendums (may refer to 'in 19 polls') have satisfied the formula with several of them being of relatively minor importance and only two have pertained to federal powers. • Identifies possible reasons to account for the failure of the amendments utilising examples from past referenda to support these reasons. • Outlines **one past or future** reform proposal such as the change to a republic in 1999 or Aboriginal recognition proposed in 2010 linking this to why amendment is so difficult. • Presents a reasoned, balanced and coherent assessment using relevant political and legal terminology.	23–25 Does most 21–22 Does some
• Presents an accurate description of the referendum process. • Identifies the overall success/failure record of referendums. • Presents the main reasons to account for the acceptance or rejection of referendums using some examples to support the reasons • Outlines one past or future reform proposal and may link this to why amendment is difficult. • Presents a mostly reasoned, balanced and coherent discussion using relevant political and legal terminology.	18–20 Does most 16–17 Does some
• Presents a simplistic description of the referendum process. • Broadly identifies the overall success/failure record of referendums. • Provides some reasons to explain the success/failure of referendums with few examples to support the reasons. • Presents a brief description of a past or future reform proposal with few links to why amendment is difficult to achieve. • Presents a discussion rather than assessment using some relevant political and legal terminology.	13–15 Does most 11–12 Does some
• Presents statements about the referendum process. • Refers in general terms to the overall success/failure of referendum with reference to a past or future reform proposal. • Presents statements rather than reasoned, balanced and coherent discussion using limited political and legal terminology.	8–10 Does most 6–7 Does some
• Demonstrates minimal or no understanding of the formal provisions for constitutional referendum. Does not provide an overall view of the success or failure rate of referendums. • Presents minimal statements and no discussion on a past or future reform proposal.	3–5 Does most 1–2 Does some
Total	**25**

Question statistics

Statistic ID = 22
Number of attempts = 402
Highest mark achieved = 22.00
Lowest mark achieved = 0.00
Mean = 11.69
Standard deviation = 4.67
Question difficulty = Moderate
Correlation between question part and section = 1.00

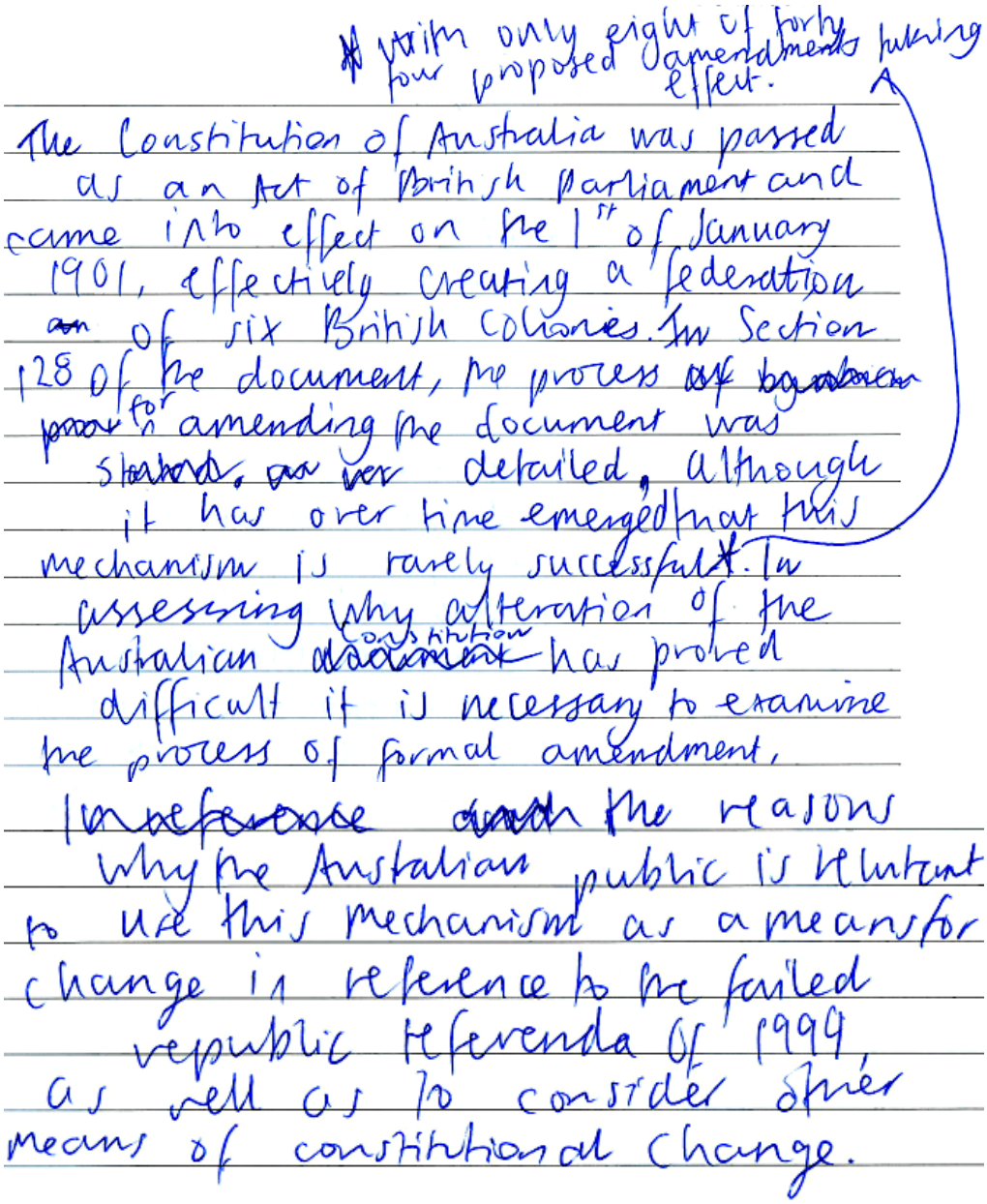
Candidate responses

Notes

Question 8 **(25 marks)**

'Our instrument of government, the Constitution, was never meant to be a hard and fast piece of machinery … the wording provided for its alteration but voters have been reluctant to approve reform.'

Explain the provisions for formally amending the Constitution of the Commonwealth of Australia by referendum and, referring to at least **one** reform proposal, assess why amendment is so difficult.



* with only eight of forty four proposed amendments taking effect.

The Constitution of Australia was passed as an Act of British Parliament and came into effect on the 1st of January 1901, effectively creating a federation of six British Colonies. In Section 128 of the document, the process for amending the document was stated, however detailed, although it has over time emerged that this mechanism is rarely successful*. In assessing why alteration of the Australian constitution has proved difficult it is necessary to examine the process of formal amendment, in reference to the reasons why the Australian public is reluctant to use this mechanism as a means for change in reference to the failed republic referenda of 1999, as well as to consider other means of constitutional change.

Excellent response
21/25 marks

Articulates a thesis as to why amendment of the Constitution of the Commonwealth of Australia is so difficult.

Indicates the reform proposal that will be used to examine why amendment is so difficult, i.e. the Republic Referendum.

Candidate responses

In Section 128 of the Constitution, the ~~Be~~ founding fathers (~~the~~ documents authors) documented the process by which it would be amended. In this Section it is stated that for an amendment to be successful it ~~requires~~ must be passed as an Act of Parliament by both ~~Houses~~ houses of Commonwealth Parliament (or one house twice after a period of three months has (lapsed) and also be ~~a~~ approved in a ~~fe~~ referenda in which it is accepted by a majority of electors in a majority of States and an overall majority. ~~Then~~ Finally the amendment also requires vice Regal approval in the assent of the Governor General to take effect. ~~this process of amendment was adopted from the referend a process o~~ ~~inspiration~~ outlined in the Constitution of Switzerland. ~~However the discussion~~ It has appeared however that the Australian people have been reluctant to use referenda to approve rapid or radical change, and hence only eight of forty four proposed amendments have been accepted since federation in 1901.

Notes

Clearly outlines the process of constitutional change with specific reference to Section 128 of the Constitution of the Commonwealth of Australia.

Candidate responses

Notes

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Therefore the reasons for the failure of referenda in altering the Constitution ~~have been~~ can be examined in detail in reference to the 1999 republic referendum, in which 55% of Australians voted no to removing links with the British monarchy, and establishing an Australian republic.

The republican movement began early into Australia's federation, however was for a major long considered minority sentiment. However the Constitutional crisis with the unelected ~~co~~ governor General dismissing an elected Prime Minister in 1975 and a changing ~~inter~~ cultural make up of Australia and ~~interacts~~ growing international relationships, throughout the 1990's, the idea of a republic was the most debated constitutional issue. The Australian Republican Movement was created in 1990 and in 1991 the ~~id~~ creation of a republic became official Australian Labor Party policy. In 1995 Paul Keating, Prime Minister at the time, committed to a referendum

Provides a background to the Republic Referendum to support the argument being developed.

Candidate responses

Notes

on the issue, and then opposition leader John Howard also committed to the same bipartisan policy, as to avoid it becoming a deciding factor in the 1996 election. Howard and the Liberal Party were consequently elected and then carried out a process of education and community consultation before taking a republican model of a parliamentary appointed Head of State to the Australian people on November the 6th 1999. The referendum was defeated, which the Howard Government then considered ended the Coalition issue.

Before the referendum was held support for a republic was recorded in opinion polls to be as high as 55%. However the reluctance of the Australian people to initiate Constitutional change through referenda is however believed to have caused its defeat.

One of the factors considered to influence the outcome of a referendum is opposition party bipartisan political party donor support. Whilst initiating the referendum John Howard, was

Begins to prioritise reasons for the failure of the referendum, i.e. lack of bipartisan support and personal opposition of the Prime Minister.

Candidate responses

Notes

firmly against a referendum and stated that "I hope we reject the ~~re~~ republic. It will not produce a better Australia." (AustralianPolitics.com). Without the support of the prime minister, and given that the issue was personally identifiable with ALP ~~Paul~~ Keating, weakened the appeal of the republic to Liberal voters. ~~Also~~ It is considered that due to the dominance of the two ~~ruling~~ major political parties, without bipartisan support most referendums will not succeed - ~~Howard~~ In addition on occassions Opposition parties have been known to run strong campaigns against an amendment proposal, given the failure of a referendum is believed to weaken the government's authority, as evident in the Opposition's "read the fine print" campaign which proved effective in 1988.

Links the previous argument – the failure of the referendum to achieve amendment, with the failure of the 1988 referendum due to a strong opposition campaign.

~~For~~ Other than the ~~recent~~ crisis in ~~Aust~~ political 1975, the Constitution has provided lasting stability in Australia, and the radical change to principles of executive power as proposed by the republic referendum was seen by

Candidate responses

Notes

many voters as unnecessary, which led to them voting no to reinforce existing ~~mechanisms~~ institution. This idea that "if it ain't broke don't fix it" ~~mentality~~ ~~that~~ is considered a factor as to why many Australians are reluctant to ~~initiate an~~ approve constitutional change.

~~Australia~~ Australia adopted compulsory voting during the 1920's and whilst ensuring maximal participation, the enforcement of voting ~~to~~ is considered to be a factor in the failure of many referenda as uninterested or ~~unin~~ uninformed voters tend to reinforce tradition with a 'safe' no vote.

A period of eleven years between ~~a~~ referenda (apart from the 1999 vote, ~~was~~ almost as well as being almost twenty years since the incidence of a successful amendment to the Constitution. This is believed to have influenced the outcome of the referendum, as unfamiliarity with the amendment process tends to

Presents a further reason for the rejection of the referendum proposal, to support the argument being developed.

Introduces different perspectives on the failure of referenda to achieve amendment, refers to the referenda voting system. Links related concepts when trying to determine why amendment of the Constitution is difficult.

Candidate responses

encourage a no vote. In addition a factor which has historically ~~increased~~ resulted in a no vote, is the voter confusion which is known to develop when multiple questions are put to the people, as was the case in 1999, when voters were also asked to approve an amendment to the preamble of the Constitution.

In Australia, there appears to be a general distrust of politicians, especially at the Commonwealth level. This suspicion of executive power is believed to have been a significant factor in the defeat of the 1999 referendum, and that given the parliamentary appointment model that was put to the people, which saw the office of head of State to be selected by the Parliament and not the people. This factor was manipulated by ~~the~~ opposition campaigns, who used the ~~her~~ slogan "a politicians republic" to sway suspicious voters to reject the proposal.

Notes

Further develops the argument by linking the reason, i.e. the distrust of politicians, with the model for the republic presented at the referendum. Uses the opposition slogan 'the politicians' republic', as supporting evidence.

Candidate responses

The choice of the model is also a crucial factor in why the proposal was defeated. The model was decided in a Constitutional Convention held in 1998, which was attended by 152 delegates, of which half were appointed by the Prime Minister and the other 76 were elected by a voluntary postal vote. The parliamentary ~~pro~~ appointment model chosen didn't incorporate a direct role of the people to elect the ~~head~~ Head of State, and this resulted in the ~~re~~ proposal failing to gain the support of a camp of 'direct electionists' who wanted ~~the~~ ~~head~~ of greater public participation. In a report documenting why the referendum failed professor David Charnock revealed that "the no votes of the direct electionists were just as important as those of the monarchists in the defeat of the referendum." 'Direct electionists' as the group was termed campaigned for the defeat of the proposal aimed to another republic model to be put to the people.

The influence of the model put to the people was considered by Constitutional ~~and~~ References Committee a legal and

Notes

Introduces further reasons as to how the model decided by the constitutional convention played an important role in the ultimate failure of the referendum. Further develops the argument by making the link between the convention and the failure of the referendum.

Candidate responses

Notes

in 2004, who recommended that if the republic was to be put to the people again, a plebiscite vote on the preferred republican model would be a useful tool to gauge the public response. ~~such a course be exercised~~

It is evident that there are a number of factors that make referenda difficult to be passed. Eight referendums have been successful and these proposals have shared characteristics, such as bi partisan support, minor procedural changes (1977 retirement age of judges) reflective of almost universally held Australian values (1967 Aboriginal citizenship) or conferred benefits to States (Loans Council 1928) or voters (social services 1946) (a recognition of the tendency of referendum to fail, ~~is~~ whilst indicating support for recognition of Aboriginal people in the Australian Constitution. Prime minister Julia Gillard in The Australian on the 17th of November 2010 stated a referenda on the issue would only go ahead if the proposal gained the support of the opposition.

Reiterates reasons for referendum failures. However, draws the conclusion that if negative aspects are absent, constitutional change can succeed. Uses examples to support the statement.

Candidate responses

Notes

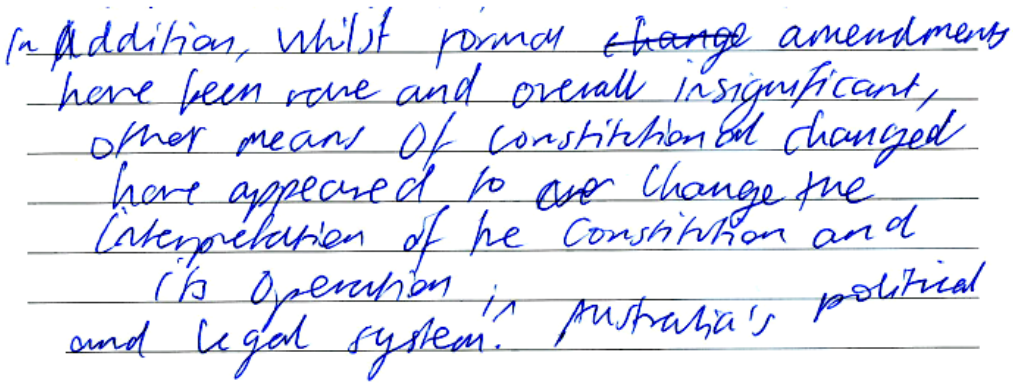
Whilst formal amendment has proved relatively unsuccessful, Australia's constitution and its operation has been altered by other means of change, namely High Court decisions, under its role in section 76 to interpret the document, the referral of powers permittable under section 51 part 37 and the incidence of unchallenged legislations that are to the financial dominance of the Commonwealth has ~~seen~~ ~~permitte~~ seen the federal government expand its powers into areas of residual State control.

In conclusion, it is evident that whilst the founding fathers didn't consider the Australian Constitution to be a 'hard and fast piece of machinery*... ~~vote~~ voters have been reluctant to approve reform. While constitutional change via referenda has proved difficult, it is not impossible, and many governments have been learning from history and ~~appt~~ adopting proposals in recognition of a number of influencing factors.

Draws the thesis originally stated to a conclusion. Presents a reasoned, balanced and coherent assessment of why amendment is so difficult. Uses relevant terminology.

Candidate responses

Notes



Examiners' comments

Best answers recognised that an amendment, which must be moved or initiated in Parliament, can 'in theory' receive passage without necessarily being passed by both Houses. Most candidates mentioned the need for a double majority of voters, now including Territory voters and a majority of voters in a majority four (4) States. Explanations, or theories, about why so few formal amendments have been passed (8 out of 44), varied from comprehensive to minimal. The scope to discuss specific referendums is (was) extensive. The question required that at least one reform proposal be assessed. A high number of candidates gave this component of the question insufficient attention. On the other hand some candidates gave undue weight to the prospect of a republic without consideration of how difficult it would be to gain passage as a constitutional amendment.

Candidate responses

Since 1901, the Australian constitution has remained largely unaltered, despite provisions to allow its change through popular referendums. Only eight of 44 proposals have passed, and as demonstrated by the failure of the 1999 referendum for an Australian republic there are a number of reasons why amendment is so rare. Institutional errors relating to the ~~Parliamentary~~ limited proposal input due to Parliament exclusivity and the difficulty of the double majority, political errors concerning voters loyalty to the Opposition and State ~~voting~~ 'bias' ~~votes~~, as well as attitudinal errors relating to distrust of centralisation and content with the system are all factors in the failure of so many referendum proposals.

Constitutional amendment by referendum is a three-step process. A Bill for a proposal must pass both Houses of Parliament with a two-thirds majority, or pass the same House twice after an interval of three months. Once passed by Parliament, the proposal is put to the people in a popular vote of 'yes' or 'no'. To be passed, the proposal must achieve a double majority: the support of a total majority of citizens as well as gaining a majority in at least four states. Upon achieving a double majority the proposal receives royal assent from the Governor General before being formally inserted into the Constitution.

Notes

Satisfactory response
15.5/25 marks

Sets out the points for discussion rather than establishing a thesis.

Identifies the key processes for amending the Constitution of the Commonwealth of Australia. Uses relevant terminology. However, omits specific reference to Section 128 of the Constitution of the Commonwealth of Australia.

Candidate responses

The process itself seems simple, but many errors lie within the three steps that lead institutional factors to cause the failure of many proposals. Under the nature of our parliamentarian system, referendum Bills can only come from the Parliament, causing a limited range of proposal ideas. This was shown in the republic proposal: though it was shown that many people preferred a direct election model, the submitted proposal suggested an indirect minimalist model as a reflection of parliamentary unwillingness to sacrifice powers and authority to an elected head of state. Had there been greater consultation with the people to gain wider proposal ideas (such as through a plesbiscite) the proposal may have been more successful. (WP) There is also the difficulty of obtaining the popular double majority. The republic was supported by states such as new South Wales and Victoria, but faced great opposition from small-population states of South Australia and Western Australia. In order to pass a proposal must have most or all states in agreeance, a difficult task especially when considering major reforms that could have an unpredictable effect on federalism and threaten state powers, such as the republic.

There exists a number of political factors that effect referendum success. If the proposal is opposed publicly by the Opposition and state parties, votes may be swayed in accordance with their voting preference; a Labor supporter may reconsider a 'yes' vote if the Labor party rejects the amendment. This is especially true for State support: many Australians have state-loyal

Notes

Identifies the 1999 Republic Referendum as the context for why amendment is so difficult. However, the explanation lacks detail.

Makes a general statement in regards to states voting in the 1999 referendum.

Candidate responses

a distrust of the Commonwealth as always moving towards an increase in the centralisation of power, and therefore view Federal government proposals with suspicion. In the case of the republic proposal, ~~Howard~~ Prime Minister Howard and the Coalition government itself were largely opposed to the proposal that was only held as a mandated agreement due to a push from the previous Keating government. Where not even the government supports a proposal, people are increasingly likely to reject the reform as not being in their best interest.
Attitudinal factors also play a role in leading to the downfall of many referendum proposals. Where citizens are content with the system and see no reason to change, a 'no' vote is cast. Many Australians felt there was no great need to overhaul our system (most republics are formed through revolution or new independence), and many rural voters even saw it as a distraction from more pressing issues the government could be dealing with. 'No' votes may also be cast where a person doesn't have an opinion, or the question is too complex. Many voters supported a republic yet didn't agree with the proposed minimalist model, prompting a 'no' vote. As previously stated, distrust in the Parliament is a major contributor to proposal rejection, such as the republic disendorsement by regional voters who saw it as a push by the elitist eastern states rather than being in the nations' interest

Notes

Makes a statement about centralisation of power, but fails to provide a specific referendum proposal and result to support the statement. Adds distracting and incorrect information about the 1999 referendum proposal.

Provides a succinct argument as to why referenda fail, but it is isolated in the context of the response.

Candidate responses

constitutional amendment through broad popular consensus is a fundamental right of Australian democracy, yet when given the opportunity very few referendum pass. Errors relating to the limited range of proposals and the difficulty of double majorities, State and Opposition party loyalty, and attitudinal satisfaction, distrust or confusion all contribute to the failure of referendum ideas, like the 1999 Republic, in the Australian system.

Notes

Misuses the term 'errors' in the conclusion. Restates the proposition presented in the introduction.

Government of Western Australia
Curriculum Council

Question

Part B: Unit 3B

Question 9

(25 marks)

'Particularly in recent years Australian Parliaments have created, or strengthened, a number of accountability bodies such as the auditor general, ombudsman, tribunals and commissions'.

Explain why accountability is an important feature of Australia's political and legal system and evaluate how at least one body performs its accountability role.

Question statistics

Statistic ID = 33
Number of attempts = 255
Highest mark achieved = 22.00
Lowest mark achieved = 1.00
Mean = 12.21
Standard deviation = 4.69
Correlation between question and section = 1.00

Marking key

Description	Marks
• Clearly explains why the scrutiny of government is an important feature of Australia's 'democratic' political and legal system. Scrutiny of legislation is a key traditional function of parliament. Responsible bodies should be answerable for their actions and inactions. In relation to the performance of public functions, there is a requirement to account for the manner in which those functions are exercised. It includes providing information available for scrutiny as well as accepting remedies and sanction in the case of unsatisfactory performance. • Discusses the growth of accountability agencies beyond the procedures of Parliament and that this is a dominant theme in contemporary government, public administration and law. • Identifies a body which has been established by parliament for an accountability role (either from the State or Commonwealth level) which could include the Auditor General, ombudsman, tribunals and commissions and presents a comprehensive explanation of the role of the body. Some reference may be made to Senate Committees. • Provides specific examples of the work of the body identified. • Provides an evaluation of the performance of the body. • Presents a reasoned, balanced and coherent assessment using relevant political and legal terminology.	23–25 Does most 21–22 Does some

Question statistics

Statistic ID = 23
Number of attempts = 255
Highest mark achieved = 22.00
Lowest mark achieved = 1.00
Mean = 12.21
Standard deviation = 4.69
Question difficulty = Moderate
Correlation between question part and section = 1.00

Marking key (continued)

Description	Marks
• Explains why scrutiny of the conduct of government is regarded as a tenet of Australia's 'democratic' political and legal system. • Identifies the growth of accountability agencies beyond the procedures of Parliament. • Identifies a body which has been established by parliament for an accountability role and presents a detailed explanation of the role of the body. • Provides examples of the work of the body identified • Provides some evaluation of the performance of the body. • Presents a mostly reasoned, balanced and cogent assessment using relevant political and legal terminology.	18–20 Does most 16–17 Does some
• Broadly explains why scrutiny of government is an important accountability feature of Australia's political and legal system. • Indicates the growth of accountability agencies beyond the procedures of Parliament. • Identifies a body which has been established by parliament for an accountability role and presents a discussion of the role of the body. • Provides an example or some examples of the work of the body identified. • Attempts to provide some evaluation of the performance of the body. • Presents a mostly reasoned discussion using relevant political and legal terminology.	13–15 Does most 11–12 Does some
• Demonstrates limited understanding of the need for scrutiny of government as part of the Australia's political and legal system. • Identifies a body which has been established by parliament and provides a limited description of the role with limited relevant examples. • Presents statements rather than a reasoned, balanced and coherent discussion using limited relevant political and legal terminology.	8–10 Does most 6–7 Does some
• Briefly mentions the scrutiny of government as part of Australia's political and legal system. • Provides a minimal description of the role of a body established by parliament. • Presents minimal statements and no discussion with minimal or no political and legal terminology.	3–5 Does most 1–2 Does some
Total	**25**

Candidate responses

Notes

Question 9 **(25 marks)**

'Particularly in recent years Australian Parliaments have created, or strengthened, a number of accountability bodies such as the auditor general, ombudsman, tribunals and commissions'.

Explain why accountability is an important feature of Australia's political and legal system and evaluate how at least one body performs its accountability role.

~~The data~~ The increasing complexity of the modern day political system, combined with a general decline in the standard of the accountability of the executive to parliament has necessitated the formation of other accountability measures to improve governance. These ~~se~~ organisations include Royal Commissions, the Crime and Corruption Commission to name a few.

The Australian legislature and executive are compartmentalised into a parliamentary democracy based on the Westminster system of responsible government. For the executive to remain accountable to the people, parliament (the representative of the people) must hold the exe to account. This accountability is important as it is the basis of Australia's evolution to representative democracy from the original Greek ideal of direct democracy. For the electorate to have trust in its system of government, there must thus be accountability to ensure good governance.

Excellent response
22/25 marks

Sets out a clear thesis in regards to accountability in Australia's political and legal system and the establishment of bodies to strengthen accountability.

Develops the argument by using recent and appropriate examples in relation to Westminster conventions.

Candidate responses

Notes

However, recent examples have shown otherwise. The recent 'Pink Batts' fiasco caused 4 deaths, numerous house fires and the ~~electrification~~ death of four people. In an effort to hold the actions of the executive to account, the opposition leader Tony Abbott moved a censure motion against Environment Minister Peter Garrett and then PM Kevin Rudd. He would accuse the PM of "industrial manslaughter".

~~However~~ Nevertheless, despite the barbs of the opposition, these censure motions would be voted down because the government then held a 24 seat ~~many~~ majority. The rigid discipline of party politics ensured that in the HOR, the executive would not be publicly held to account.

The PM would demote the Minister following intense pressure from the media, yet this would be characterised by The Australian's Peter van Onselen (Feb, 2010) as an action that confirmed that

> "In the history of Australian politics, no Minister has stood down under the west minister convention of Ministerial responsibility... whether they deserve or not is entirely ~~political~~ political."

Effectively uses quotations to support arguments throughout the response.

Candidate responses

Notes

This shirking of ~~for~~ Westminster conventions of ~~are~~ that ensure ~~are~~ accountability highlight a ~~political~~ democratic deficit. When it comes to the accountability of the executive in the HOR. This has led adjunct professor of Public Policy at Australian Catholic Uni to remark in the Australian (Sept, 2010)

"The House of Representatives is Australias most depressed Public Institution. It ranks poorly among the great Westminster Parliaments of the world."

As such, except for the anomaly that is the current hung ~~Parliament. Despite this failure of the~~ parliament, ~~the executive~~ there is a general trend for the House of Reps to ~~display~~ fail to enforce executive accountability.

Integrates structure of the current parliament, as a potential counter argument to problems with accountability in Australia.

~~Never~~ It can be said however, that in spite of this failure, the Senate has performed increasingly well in terms of accountability. As no one party has held a majority since 1981 (except 2008-09) a healthy committee system has experienced an accountability renaissance of sorts. The current make up of the Senate is 32 ALP, 32 Lib, 5 Green, 1 Nick Xenophon & Steve Fielding. This allows for matters to be referred to Committees for Inquiry even if the govt does not agree. In fact, according to former Clerk of the Senate Harry Evans in the Age Sept 2008, "The Inquiries that the government does not want may very well be the Inquiry most worth undertaking."

Identifies that the Senate has an accountability function. Contrasts the two chambers of Parliament in relation to accountability.

Candidate responses

One such Inquiry was the Inquiry into the ~~Howes~~ Energy Efficient Homes Package by the Environment, Telecoms and Arts Standing Committee, chaired by Liberal SA Senator Mary Jo-Fisher. It would investigate into the actions of Peter Garret and the executive and is a prime example of the ~~the~~ depamise of the Senate in hold the government to account on such matters. Nevertheless, a democratic deficit still exists, hence the implementation of various governance agencies / commissions to ensure accountability of the executive

One such commission is the Royal Commission. These are inquisatorial bodies with wide reaching and compelling powers established under the Royal Commissions Act (1902). Given a terms of reference by the government of the day, they investigate into an area in an attempt to uncover government malfeasance or corruption. Notable examples include the 2009 Victorian Bushfires Commission ~~Part~~ of the Royal Commission, however the Cole Inquiry is a very prominent case.

The Cole Inquiry was a follow on ~~f~~ commission from the Volcker Report by the UN that alleged AWB had paid the Iraqi Government, under the guise of a Jordanian trucking company, $2.52m to secure wheat contracts. ~~The AWB to~~ Under the UN Oil-for-Food program. The AWB was then a government agency and the Howard Govt was in power for a period of this time during the 1990s.

Notes

Uses relevant examples to support the development of the argument in relation to accountability.

Outlines the role of one accountability body, the Cole Inquiry. Offers an evaluation of the Cole Inquiry in relation to holding the government to account.

Candidate responses

Following a recent Inquiry by the Foreign Affairs and Trade Standing Committee headed by ALP Senator John Faulkner and a public outcry, the PM called the 'Inquiry into the actions of a certain company in relation to the oil-for-food program.' Howard limited the terms of reference to exclude the actions of government, focusing only on the actions of the AWB employees. This is despite an assertion by Paul Kelly in March of patriots that "Alexander Downer most definitely knew of these dealings, as did Trade Minister Mark Vaile". 1

Despite being called before the Commission, the Government Ministers and staff alleged they knew little of the actions of AWB. In evaluating, it is evident that the government wielded to much control over the direction of the commissions investigations.

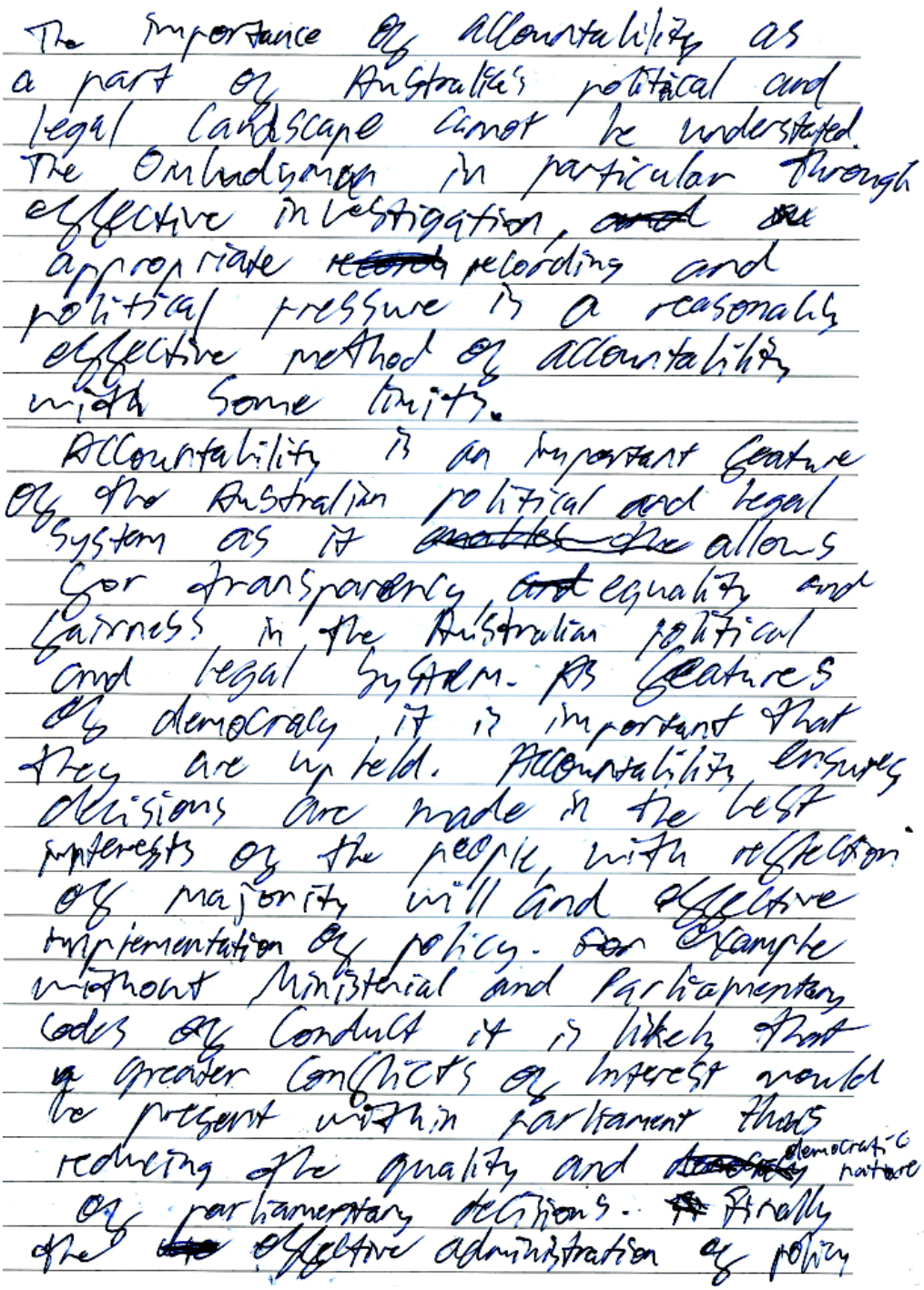
Furthermore, Step Professor Steven Bartos of AWA asserts in his essay 'AWB Scandal- A failure of Governance' - "As we examples such as the Tabled notes and children overboard affair show, even if a document from a department puts the minister in the picture, ministerial staff provide for a deniability regime. Staff will always take the fall."

In conclusion, governance agencies are unnecessary development to safeguard good accountability in the partial failure of parliament to hold the government to account and address the democratic deficit.

Notes

Presents a reasoned and balanced evaluation of accountability in the Australian political and legal system. Revisits the thesis in the conclusion.

Candidate responses



The importance of accountability as a part of Australia's political and legal landscape cannot be understated. The Ombudsman in particular through effective investigation, ~~and~~ ~~the~~ appropriate ~~record~~ recording and political pressure is a reasonably effective method of accountability with some limits.

Accountability is an important feature of the Australian political ~~and~~ legal system as it ~~enables the~~ allows for transparency ~~and~~ equality and fairness in the Australian political and legal system. As features of democracy it is important that they are upheld. Accountability ensures decisions are made in the best interests of the people, with reflection of majority will and ~~effective~~ implementation of policy. For example without Ministerial and Parliamentary Codes of Conduct it is likely that a greater conflicts of interest would be present within parliament thus reducing the quality and ~~democracy~~ democratic nature of parliamentary decisions. ~~It~~ Finally the ~~the~~ effective administration of policy

Notes

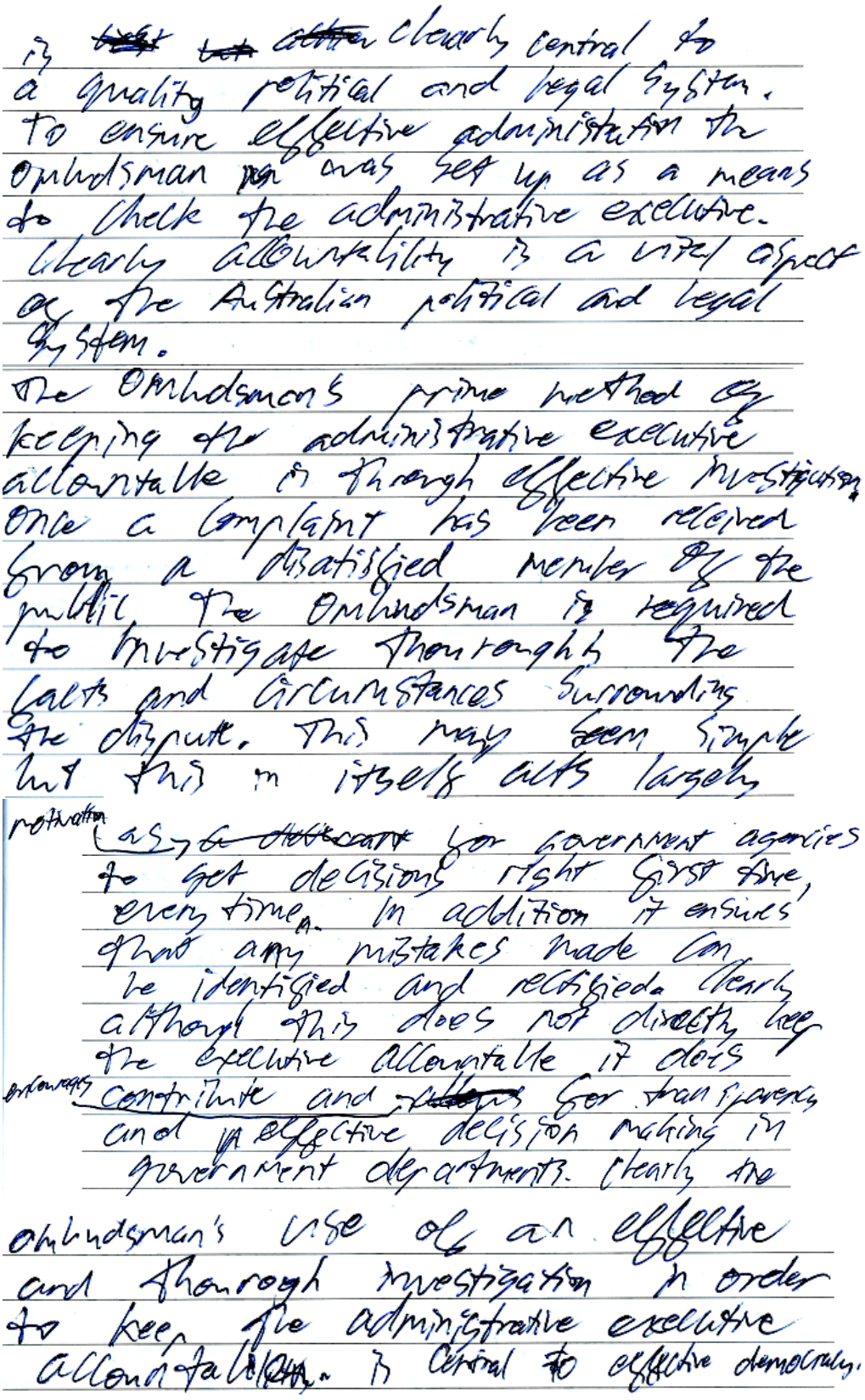
Satisfactory response
14.5/25 marks

Presents a statement rather than a thesis in regards to accountability in Australia's political and legal system.

States why accountability is an important feature in the Australian political and legal system.

Candidate responses

Notes



Introduces an accountability body, i.e. the ombudsman. However, fails to articulate a consistent meaning for 'Executive', and uses the term 'ombudsman' without specifying State or Federal.

Identifies the role of the ombudsman in a general manner without referring to specific processes employed by this accountability body, or providing examples.

Candidate responses

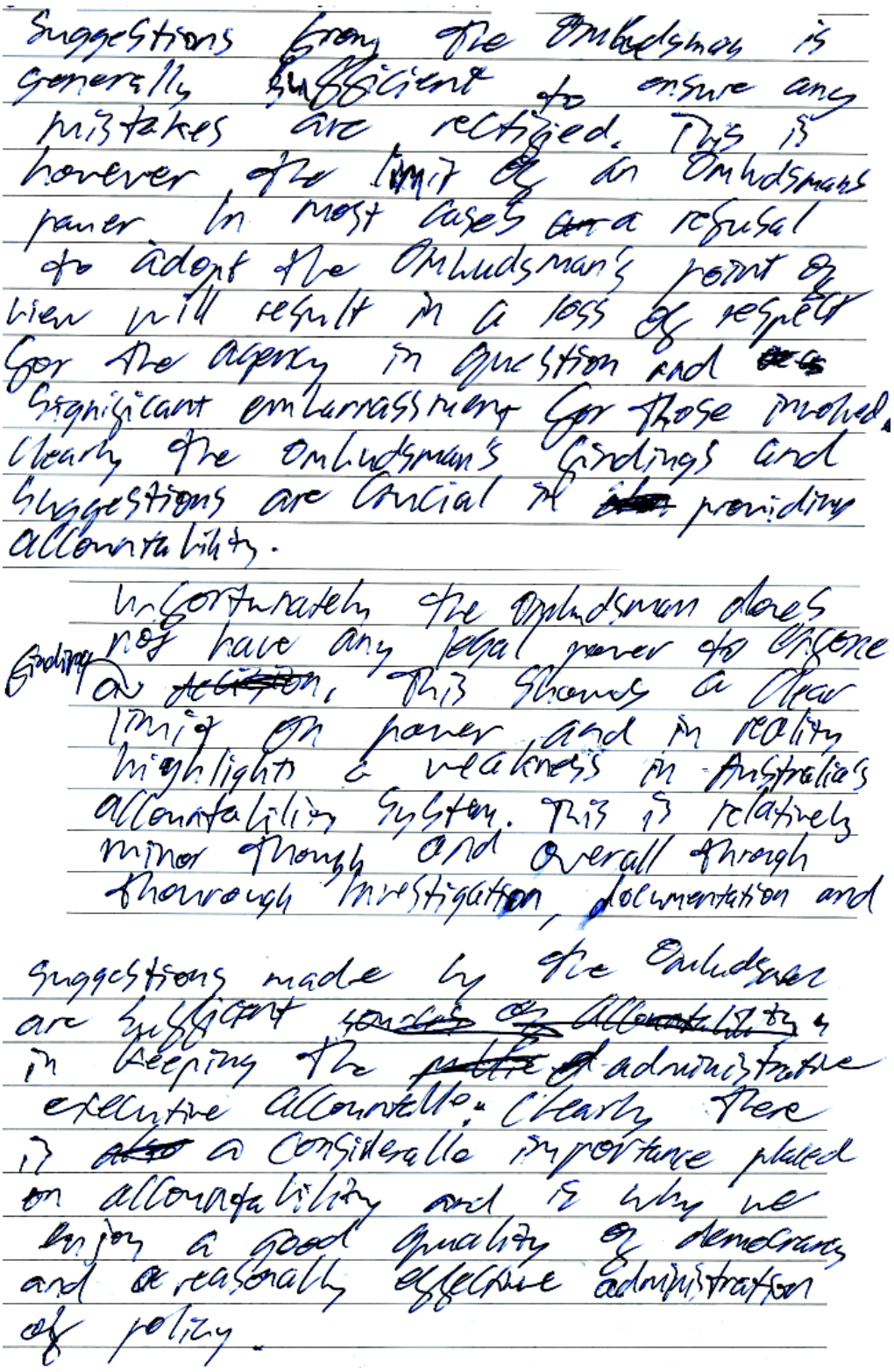
Notes

the documentation and records kept by the Ombudsman is are also critical ~~parts of~~ in effectively keeping the administrative executive accountable. Documentation kept by the ~~Ombudsman~~ Ombudsman certainly allows for the ~~embarrassment~~ exposure of poor administrative decisions and acts further as ~~a deterrent~~ motivation for the administrative executive to uphold procedural correctness and ensures the correct decisions are made. It also ensures past mistakes are not forgotten and are easily recalled. As such it provides for long term accountability by the administrative executive and encourages ~~long term~~ reform to ensure better overall administration of government. Overall it is clear that the documentation of disputes is critical in keeping the administrative executive accountable. The suggestions of political posture that the Ombudsman derives from his findings is ultimately the extent of the Ombudsmans power. Here is where the Ombudsman seeks to either endorse, alter or reverse ~~of~~ the public sectors decisions. Findings from a comprehensive investigation when combined with ~~recommendations~~

Makes statements about the way in which the ombudsman holds the executive to account. However, does not provide examples.

Candidate responses

Notes


Suggestions from the Ombudsman is generally sufficient to ensure any mistakes are rectified. This is however the limit of an Ombudsmans power. In most cases a refusal to adopt the Ombudsman's point of view will result in a loss of respect for the agency in question and significant embarrassment for those involved. Clearly the Ombudsman's findings and suggestions are crucial in providing accountability.

Unfortunately the Ombudsman does not have any legal power to enforce a finding or decision. This shows a clear limit on power and in reality highlights a weakness in Australia's accountability system. This is relatively minor though and overall through thorough investigation, documentation and

suggestions made by the Ombudsman are sufficient in keeping the public administrative executive accountable. Clearly there is also a considerable importance placed on accountability and is why we enjoy a good quality of democracy and a reasonably effective administration of policy.

Makes reference to the role of the ombudsman in relation to public sector decisions. Partially evaluates the effectiveness of the ombudsman's role.

Effectively uses relevant political and legal terminology throughout the response.

Offers a simplistic statement in conclusion that has not been substantiated. Repetitively uses terms that have not been clarified such as 'accountability' and 'administrative executive'.

Examiners' comments

This question was the least popular in the extended response category. Some candidates who undertook detailed case studies of the accountability role of some specific institutions such as the Parliamentary Commissioner (Ombudsman), the Corruption and Crime Commission (CCC), the State Administrative Tribunal (SAT) and the Commonwealth or State Auditor General, did produce high quality answers. It was noted that some candidates interpreted the question to encompass parliamentary committees and other parliamentary processes as Parliament itself has an accountability function. This was partly explained by the fact that the question did include a request to 'evaluate why accountability is an important feature of Australia's political and legal system.'

Government of Western Australia
Curriculum Council

Question

Question 10

(25 marks)

'There has been much debate about whether Australia should adopt a legislative Charter of Rights.'

Assess the main arguments **for** and the main arguments **against** Australia adopting a legislative Charter of Rights.

Marking key

Description	Marks
• Clearly explains what is meant by a legislative Charter of Rights. • Presents a comprehensive explanation of the current human rights protection in Australia utilising examples (this may be incorporated in to the arguments for and against). • Provides a critical assessment of the arguments for Australia adopting a legislative Charter of Rights which could include: minority rights are currently overlooked with examples; may reinforce Australian values such as a 'fair go' for all and an egalitarian society; it deters parliament from abrogating the rule of law; it would improve the governmental and administrative consistency and predictability in its recognition of human rights; present constitutional provisions are inadequate and that reliance on judicial activism is inadequate; it enables Australia to properly meet its international obligations. • Provides a critical assessment of the arguments against Australia adopting a legislative Charter of Rights which may include: claims that the common law adequately protects rights in contemporary Australia; it may shift power to an unelected judicial branch; some rights may be excluded; there is no consensus upon how competing rights will be resolved. • Integrates relevant examples which may include references to the Victorian and Australian Capital Territory Charters as well as the United Kingdom and New Zealand 'Human Rights Bills'. Reference may be made to the National Human Rights Commission chaired by Father Frank Brennan. The Report of September 2009 gave qualified support for a Charter of Rights and admitted that many rights – particularly those of minority groups were not sufficiently protected. May make reference to the two Human Rights Bills introduced in the Commonwealth Parliament. • Presents a reasoned, balanced and coherent assessment using relevant political and legal terminology.	23–25 Does most 21–22 Does some

Question statistics

Statistic ID = 24
Number of attempts = 524
Highest mark achieved = 24.50
Lowest mark achieved = 0.00
Mean = 12.82
Standard deviation = 4.97
Question difficulty = Moderate
Correlation between question part and section = 1.00

Government of Western Australia
Curriculum Council

Marking key (continued)

Description	Marks
• Explains what is meant by a legislative Charter of Rights. • Presents a comprehensive explanation of the current human rights protection in Australia utilising examples • Presents an assessment of the main arguments for a legislative Charter of Rights. • Presents an assessment of the main arguments against a legislative Charter of Rights. • Integrates mostly relevant examples. • Presents a mostly reasoned, balanced and coherent assessment using relevant political and legal terminology.	18–20 Does most 16–17 Does some
• Identifies some features of a legislative Charter of Rights. • Presents a description of the current human rights protection in Australia using some examples. • Presents some strengths and weaknesses in regards to a legislative Charter of Rights. • Provides some relevant examples. • Presents a discussion rather than an assessment using some relevant political and legal terminology.	13–15 Does most 11–12 Does some
• Shows limited understanding of what is meant by a legislative Charter of Rights. • Presents a limited description of the strengths and weaknesses in regards to a legislative Charter of Rights. • Presents statements rather than a reasoned, balanced and coherent discussion using limited relevant political and legal terminology.	8–10 Does most 6–7 Does some
• Demonstrates minimal or no understanding of a legislative Charter of Rights. • Provides minimal or no description of the arguments for and against a legislative Charter of Rights. • Presents minimal statements and no discussion with minimal or no political and legal terminology.	3–5 Does most 1–2 Does some
Total	**25**

Candidate responses

Notes

Question 10 **(25 marks)**

'There has been much debate about whether Australia should adopt a legislative Charter of Rights.'

Assess the main arguments **for** and the main arguments **against** Australia adopting a legislative Charter of Rights.

A human right is defined as the intrinsic rights enjoyed by all human beings and which are afforded by human existence, and include such things as the right to vote or the right to equality before the law. It is a fundamental aspect of democracy that human rights are protected and different countries go about this in different ways – rights can either be protected through a Bill or Charter of Rights or through alternative mechanisms like constitutional or common law, statutes or international treaties and covenants. Australia is the only Western democracy which does not have a Charter of Rights, and so relies on these alternative means, which have been criticised as being unsatisfactory and unreliable. Although many argue that Australia's current protection of human rights is adequate, it is also possible to determine that in order to sufficiently safeguard human rights, Australia should adopt a legislative Charter of Rights.

The United Nations' (UN) International Bill of Rights splits human rights into 3 generations. 1st generation rights (or negative rights) are those civil and political rights such as the right to vote or the right to a fair trial. 2nd generation (or positive rights) include social, cultural and economic rights such as the right to education or freedom of religion. 3rd generation rights involve the right to self determination or the right to social and economic progression. The UN states that "all people of all nations... shall strive ... to secure the universal recognition of these rights"

Excellent response
23.5/25 marks

Correctly defines human rights, indicating the manner in which rights can be protected in different countries. Presents a thesis in regard to the need for Australia to adopt a legislative Charter of Rights.

Candidate responses

As Australia does not have a Charter of Rights, it relies on mechanisms such as the constitution, the common law system, Parliamentary statutes and international treaties and covenants to uphold human rights. The constitution has both entrenched and implied rights, although these are few in number. There are only 7 entrenched rights written into the constitution, including the freedom of religion (s116) or the right to a trial by jury for indictable offences, because the Founding Fathers believed that the existing institutions of the Parliament and the Common law system adequately protected human rights. Lately the High Court has begun reading 'implied' rights into the constitution, as under s72 it has the jurisdiction to interpret the meaning of the constitution in cases. These include the right to free political communication (established in Australian Capital TV 1992) or right to legal representation (Dietrich's case 1992). Many argue that this is a reason why Australia does not need a Charter of Rights, as the High Court can simply read implied rights into the Constitution. However this only applies to cases before the High Court, and the complainant must be directly affected by the alleged breach of rights. Also the High Court is not bound to follow precedent, and so can overrule its judgements (as was seen in the 1997 Large case, which overturned the decision of Australian Capital TV).

Most of Australia's legal rights are protected by the Common law system, which is based on the assumption that all citizens hold basic legal rights unless they are limited

Notes

Highlights the range of rights protected in Australia. Distinguishes between express rights and implied rights. Providing evidence of these rights.

Assesses the High Court's role in effectively upholding and protecting rights in Australia.

Candidate responses

Notes

by law. These common law standards, first outlined in the British Magna Carta, include the right to equality before the law, and the presumption of innocence, as well as the rules of evidence as applied in courts today (such as the fact that illegally obtained evidence is inadmissible). Those who advocate Australia's protection of human rights say that this system, which is been operational for hundreds of years (it was derived from the British legal system) is adequate at ensuring the protection of Australia's legal rights. However it can also be argued that the courts can only recognise a right if it is relevant to the case before it, and for most Australians the court system is largely inaccessible due to costs and delays.

As the Constitution contains few rights, Australia relies on Parliament to pass statutes which protect and enhance these rights. Examples of key legislation which protects human rights includes the Racial Discrimination Act (1975) or the Human Rights and Equal opportunity Act (1986). Under this latter Act, the Parliament established the Human Rights and Equal Opportunity Commission, a non-judicial body which investigates allegations of discrimination. This is promoted as another reason why Australia has a satisfactory protection of human rights, as it can bring to the attention of the public and the government of any breaches of human rights and thus put pressure on the government to remedy the situation. However as a non-judicial body, it cannot award damages or sanctions, and so people must go to the Federal Court to receive compensation. Another issue with statutory protection of rights is that due to Parliamentary Sovereignty, Parliament can easily amend or dissolve these Acts and so endanger rights without legal consequence, although others argue that the fact that Parliament can amend legislation protecting rights is a positive, as it can update rights to suit the changing values of contemporary society.

Analyses the effectiveness of the protection of rights by common law and acknowledges the weaknesses inherent in the system. Develops an argument for Australia to adopt a legislative Charter of Rights.

Assesses the role of parliament in the protection of rights. Uses evidence to support the argument. Uses relevant terminology.

Links the concepts of the sovereignty of parliament with the positive and negative effects of parliament's role in the protection of rights.

Candidate responses

Notes

Australian law can also be influenced by international treaties and covenants. Australia is signatory to several UN agreements such as the International Declaration of Human Rights (1948), and has chosen to ratify some of these agreements into Australian law through Statutes. For instance, ~~the Black~~ in 1975 the ~~Gov~~ government introduced the Racial Discrimination Act, which codified the terms of the UN's Convention on the Elimination of Racial Discrimination. Under the government's external affairs power in s51, any State law which is inconsistent with the statute is invalid (as was supported in the High Court case Koowarta in 1982). However this only applies to ~~Acts~~ international laws which have been ratified by statutes. For instance, the Howard Government's 2005 Anti-Terrorist legislation was criticised for ~~being~~ threatening basic civil rights such as freedom from arbitary detention or the presumption of innocence. The government received much criticism over the enactment of these laws, as well as its failure to recognise the rights of asylum seekers or Indigenous Australians. However as the rights breached were not ratified into Australia law through statutes, there was no legal consequence (as established in the 1991 Teoven case).

Develops a sophisticated argument in relation to international agreements. Refers to Toonen in 1991 to strengthen the argument.

So should Australia adopt a legislative Charter of Rights? There are some who argue that what is currently put in place is adequate, and as the existing system has worked well for the last 100 years, why change it? These people also argue that listing rights in a charter would merely restrict them and make it more difficult to change, and would place too much power in the hands of the unelected judiciary, who interprets the law. However others argue that the unelected nature of the judiciary is a strength, as it ensures justice's decisions are impartial and independent from political influence. These people believe that a legislative charter of Rights is needed to make a clear statement about rights in Australia and provide a solid

Candidate responses

Notes

framework for Parliament and court decisions to adhere to. It would also bring Australia on par with other Western nations, and alleviate its dispute with the UN over its human rights record. ~~Lastly,~~ It would also be of educative and cultural significance in that it would raise awareness about rights and reflect Australia's nature as a multicultural, egalitarian society. Lastly it would reflect the will of the people, as a recent survey found that over 70% of Australians believed a Charter of Rights was necessary.

In essence, there are both arguments for and against the adoption of a legislative Charter of Rights in Australia. There are some who believe that the current method of protecting rights - through constitutional, statutory, common and international law - is satisfactory, and that introducing a Charter of Rights would only limit rights and place power in an unelected judiciary. Others maintain that the current protection of rights is patchy and inconsistent, particularly regarding the way legislation can threaten rights without legal consequence. As such, these people argue that it is necessary that Australia adopt a legislative Charter of Rights to accurately safeguard the human rights of its citizens.

After exploring both sides of the argument, draws a conclusion as to whether Australia should adopt a legislative Charter of Rights.

Candidate responses

The idea of a Bill of Rights has existed for centuries however the Australian nation has not yet adopted a Bill, or charter, of Rights. There are valid ~~reasons~~ arguments both for and against the adoption of a charter of rights ~~and~~ however the fact that a charter of rights has not yet been adopted shows that the ~~same~~ need for a charter of rights does not exist in Australia. This is largely because of current level of rights protection and the fact that Australian citizens and institutions maintain a attitude that ensures the protection of rights. The biggest advantage of a Bill of Rights is the fact that it creates a legal base upon which citizens can claim rights violations. The arguments against the adoption of a Bill of Rights included the fact that, by defining rights, rights become limited and ~~the fact that rights may become fixed~~ the fact that by adopting a Bill of Rights, a significant amount of power is invested in the courts and taken from the legislature.

Australia currently employs ~~about~~ a mix of ways in which ~~those~~ Rights are protected. The first and most tangible, of these is those rights written into the Constitution. These rights are: The right to vote, the right to freedom of religion, the right to fair acquisition of land, the right to freedom of discrimination between states

Notes

Satisfactory response
14.5/25 marks

Uses the term ‘Bill of Rights’ and interchanges with ‘legislative Charter of Rights’, without clearly defining the difference between these terms.

Develops a thesis in relation to whether Australia should adopt a legislative Charter of Rights. Reinforces the thesis throughout the response.

Describes the way human rights are protected in Australia beginning with those rights set out in the Constitution of the Commonwealth of Australia. However, omits to make reference to specific sections of the Constitution.

Candidate responses

Notes

and the right to legal representation. The fact that these are written explicitly into the constitution mean they are inviolable. Another important way rights are protected is through the Australian institutions such as the High Court. The High Court has the role of ruling on matters to do with the Constitution and this includes maintaining the democratic traditions that the Constitution was founded on and upholding those rights implied by the fact that Australia is a democracy. This role is performed effectively as shown in the Dietrich case in which a ruling was overturned because the right to legal representation was not upheld. The fact that Australia's existing rights protection is adequate means that the government is unwilling to implement a costly bill of rights which also has disadvantages.

Identifies the role of the High Court of Australia in However, could have selected stronger evidence to support the argument.

The biggest advantage of adopting a bill of rights or charter of rights is the fact that ~~they~~ creates a ~~new~~ legal document is created upon which citizens can claim rights violations. As it exists today, Australians must rely on the courts to dictate whether a right has been violated. Thus clearly does not provide security for rights and thus by implementing a Bill of Rights, a document is created upon which citizens can legitimise violations of rights. A case in which this

Begins the counter argument as to why Australia needs to adopt a legislative Charter of Rights. However, the interchangeable use of terms detracts from the response.

Candidate responses

Notes

advantage is clear is the Haneef case in which a suspected terrorist, Mohammed Haneef, was detained for 10 days without being charged with a crime. This was possible under the anti-terrorism laws that were passed in the wake of September 11. If Australia had a bill or charter of rights, this violation would be able to be legitimised and the anti-terrorism legislation would be considered illegal. This case shows that if Australia adopted a bill of rights, citizens would be able to have a way to legitimize claims of rights violations and there would be a criteria to which proposed legislation would be subjected.

One role of the courts is to interpret legislation and thus by adopting legislative charter of rights, a huge amount of power is delivered to the courts. This power is an issue because of the fact that judges are not elected so as to uphold judicial independance. By upholding judicial independance, judicial accountability is removed so as to ensure judges do not become corrupted by attempting to uphold popular, yet unjust, judgements. The fact that judges interpret legislation and that a legislative bill of rights is a piece of legislation means that judges would have the role of interpreting the

Uses evidence to support the argument being developed, i.e. Haneef to support the introduction of a legislative Charter of Rights.

Makes broad statements as to the role of the courts in upholding rights.

Candidate responses

Notes

Bill of rights. This is an issue because of the lack of judicial accountability that exists in Australia. The fact that judges are not accountable means that they can make decisions without fear of repurcussions and as such can be easily corrupted. Given the magnitude of the issue of rights, this is too much power to deliver to unelected, unaccountable people.

Another significant issue that arises from adopting a bill of rights is that, by defining rights, rights become limited. This occurs because of the fact that it is impossible to ~~[illegible]~~ include ~~the~~ every single obscure ~~[illegible]~~ or rarely used right. This means that these rights that are not included can be abused and because they are not included in the Bill of Rights this abuse can occur legally. This is clearly a significant issue because the intention of a bill of rights is to protect rights however by adopting a bill of rights, some rights become open to abuse. It is also impossible for us to foresee what may occur in the future and to create rights for these circumstances. For example in 1901, it would of been impossible for the writers of a bill of rights to foresee the invention of the internet. This would mean that it would not be included

Makes an assumption about judicial accountability without substantiating the argument.

Restates the argument presented in the introduction, that to 'define is to limit', in relation to rights. Attempts to support this with evidence.

Offers no assessment of the main arguments for and against Australia adopting a legislative Charter of Rights.

Candidate responses

Notes

in a bill of rights which would mean our rights on the internet could be severly violated. The fact that by defining rights, rights become limited is an incredibly significant disadvantage of adopting a bill of rights.

Whilst the implementation of a bill of rights would create a standard for legislation and a legal document upon which rights abuses could be legitimised, the disadvantages of a bill of rights and our current level of rights protection means that adopting a bill of rights is unnecessary and ill advised. By adopting a Bill of Rights, a huge amount of power is invested in the courts and the fact that the judiciary is unelected and unaccountable means that this is unacceptable. By defining rights, rights become limited because of the fact that obscure and uncommon rights may be overlooked. This opens the rights to the possibility of violation which is the opposite of what a bill of rights is intended to do. These disadvantages as well as the fact that Australias current level of rights protection is adequate, means that it would be a negative decision to adopt a bill, or charter, of rights.

Presents relevant information and structures the response according to established conventions. However, the contemporary examples used are not explained in relation to the argument.

Examiners' comments

Candidates provided evidence of extensive study of the rights dimension of the course including some consideration of its international aspect. Some candidates did overlook that the question sought to assess the main arguments for or against a legislative Charter. The focus of the question was not a constitutional Bill of Rights although some of the debate about such documents could readily be considered in the response. This is a topic area which provides a wide opportunity for the contemporary literature to be examined. The tabling, on 30 September 2009, of the National Rights Consultation Committee (Brennan Report), which extensively canvassed the rights question in Australian politics and law, was rarely mentioned. There was more scope to discuss the legislative Charter of Rights which has been introduced in Victoria and the Australian Capital Territory. There was also scope to examine the New Zealand experience, and possibly that of the United Kingdom, with their respective legislative Charters of Rights. It should be noted, though, that the Canadian Charter of Rights and Freedoms is a constitutional document.

Appendix 1: Course achievement band descriptions

Excellent achievement (75 - 100)
- Applies course content in depth for all aspects of the questions.
- Analyses, prioritises and synthesises arguments by writing fluent and cogent responses which utilise relevant examples to substantiate statements.
- Articulates a valid thesis that is elaborated throughout the discourse in extended answers, and structures succinct, accurate responses to short answer questions.
- Extensively uses relevant terminology.

High achievement (65 - 74)
- Applies considerable course content in most aspects of the questions.
- Develops rational and well-expressed arguments which are supported by discussion of relevant examples.
- Articulates a valid thesis that is usually referred to throughout the discourse in extended answers, and structures mostly succinct, accurate responses to short answer questions.
- Consistently uses relevant terminology.

Satisfactory achievement (50 - 64)
- Uses appropriate course content in some aspects of the questions.
- Discusses information relevant to the topic with some reference to examples; conclusions are often simplistic.
- States, but does not sufficiently develop, a thesis in extended answers and writes generalised responses to short answer questions.
- Generally uses relevant terminology.

Limited achievement (35 - 49)
- Responds superficially to most questions demonstrating limited application of course content.
- Briefly identifies some information in extended answers that is relevant to the topic but frequently lacks meaningful references to examples.
- Writes generalised responses to short answer questions but does not fully answer all questions.
- Rarely uses relevant terminology.

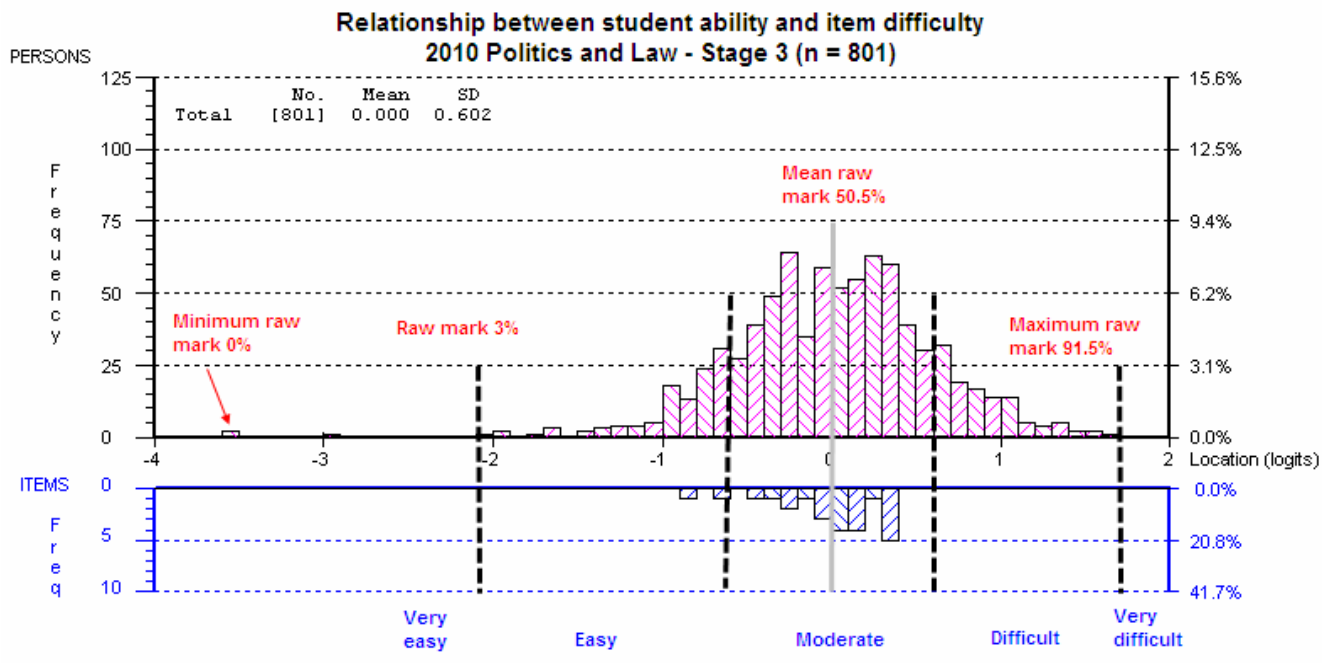
Inadequate achievement (0 - 34)
- Fails to complete the examination paper; gives misdirected answers and demonstrates little or no engagement with the topic.
- Provides little or no use of relevant terminology.

Cut point Scores
Excellent/High = 74.18
High/Satisfactory = 63.48
Satisfactory/Limited = 51.22
Limited/Inadequate = 39.77

Appendix 2: Question difficulty analysis

Question	Location	Difficulty
Section One: Short response 1 a	-0.26	Moderate
Section One: Short response 1 b	-0.499	Moderate
Section One: Short response 1 c	0.061	Moderate
Section One: Short response 2 a	0.043	Moderate
Section One: Short response 2 b	-0.021	Moderate
Section One: Short response 2 c	0.38	Moderate
Section One: Short response 3 a	0.329	Moderate
Section One: Short response 3 b	0.05	Moderate
Section One: Short response 3 c	0.352	Moderate
Section One: Short response 4 a	-0.261	Moderate
Section One: Short response 4 b	0.273	Moderate
Section One: Short response 4 c	0.171	Moderate
Section Two: Source analysis 5 a	-0.825	Easy
Section Two: Source analysis 5 b	-0.356	Moderate
Section Two: Source analysis 5 c	0.358	Moderate
Section Two: Source analysis 5 d	-0.025	Moderate
Section Two: Source analysis 6 a	-0.626	Easy
Section Two: Source analysis 6 b	0.392	Moderate
Section Two: Source analysis 6 c	-0.119	Moderate
Section Two: Source analysis 6 d	-0.001	Moderate
Section Three: Part A Unit 3A Extended response 7	0.154	Moderate
Section Three: Part A Unit 3A Extended response 8	0.18	Moderate
Section Three: Part B Unit 3B Extended response 9	0.151	Moderate
Section Three: Part B Unit 3B Extended response 10	0.099	Moderate

Relationship between Student ability and question difficulty



Notes

The spread of raw marks from 0% to 91.5% is appropriate and indicates that the examination provided for satisfactory discrimination between candidates. The mean mark of 50.5% is lower than the recommended value of 60% indicating that the examination was difficult for this cohort of candidates. The low mean score may seem to be at odds with the observation of no questions in the 'difficult' category and the 'very difficult' category. The explanation for this is that the graph shows only the mean difficulty of questions, and not the difficulty of attaining the highest, or lowest, marks for a particular question. These statistics therefore suggest that, for a number of questions, it has been difficult to attain the highest marks of some questions. Difficulty estimates for individual question parts can be found in the chart on the previous page.

Guide to interpretation of examination statistics

- When evaluating the **range** (spread) of examination marks, consider the size of the cohort sitting the examination. A small cohort may involve a narrow range of student abilities and produce a narrow range of marks.
- When evaluating the **average** of examination marks, consider the nature of the cohort sitting the examination. The examination difficulty may be appropriate for the cohort for which the course was designed, but the actual cohort may be weaker or stronger than expected.
- In these notes, the **difficulty** of the question refers to the *average* of the difficulties of acquiring each different possible mark for the question. For example, it may be very difficult to obtain a high mark for a question rated as being of 'moderate difficulty', if that question is worth a large number of marks. Conversely it may be very easy to obtain a low mark.
- Recommendations to remove items of a certain level of difficulty or easiness do not imply that these are poor items, but simply that there are too many items at the same level of difficulty.