

Politics + Law Year 12 Examples

Luke Warner

Unit 3

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functions of the Commonwealth Parliament in theory and in practice, including Sections 7, 24, 51, 53

Religious Discrimination Bill – Representative Function

- Proposed in 2021 – prohibits religious belief based discrimination
- 5 members of Coalition siding with labor

George Brandis – Responsibility Function

- Censured by Senate (Penny Wong)
- Due to role in attempting to force resignation on Gillian Triggs

Bronwyn Bishop – Debate Function

- Speaker from 2013-2015
- Biased - Ejected 400 MHRs, 3 Liberals

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roles and powers of the opposition and the shadow ministry at the Commonwealth level

Bronwyn Bishop

- Biased – Weakens the opposition's purpose

Tony Smith

- Speaker from 2015-2021
- Been elected 3 times unopposed
- Evidence of his bipartisan support and impartiality
- Smith once refused his casting vote to save the Turnbull govt from losing control of the HoR in 2016
- Enhances opposition's role

2016 Four Corners Episode

- Led to Turnbull govt establishing a Royal Commission into juvenile detention in NT – sacked minister for Corrections – removes oppositions accountability of government purpose.

Penny Wong & Simon Birmingham

- Wong Minister for foreign affairs, Birmingham Shadow Minister

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roles and powers of the Governor-General, including Sections 61, 62, 63, 64, 68, 28, 57, 72, and 'the 1975 crisis'

1974 Double Dissolution

- S57
- GG Sir Paul Hasluck accepted PM Whitlam's advice for DD after senate blocked appropriation bills.
- Labour re-elected with reduced majority

Ceremonial Roles

- 2016 Cosgrove attended ANZACDay service in France
- 2022 Hurley welcomed president of Nauru to Australia.

1975 Dismissal

- Coalition used power in senate to block budget through stopping 2 appropriation bills – hoped Whitlam would call for DD
- Whitlam didn't want to call for a DD or resign as he had called for one recently (1974).
- Whitlam advised GG to call half-senate election (breaking convention).
- GG Sir John Kirr worried PM would call for his resignation – he asked opposition leader Malcolm Frazier to ensure he would pass supply bills.
- In November 1975 – GG dismissed Whitlam govt, appointing Fraser as caretaker PM.

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roles and powers of the Prime Minister, Cabinet and the Ministry

Barnaby Joyce - Cabinet Solidarity

- 2015 – publicly disagreed with Abbott government development of Shenhua Liverpool Plains – wasn't required to resign.
- Cabinet Solidarity not enforced in practice

Abbott Cabinet – Limit to cabinet's power

- 2013-2015

- His personality and 'captains call' decision making style dominated decision making.
- He isolated himself in the PM office and appointed advisors who kept ministers at arms-length.
- This alienated most of his cabinet.

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lawmaking process in parliament and the courts, with reference to the influence of individuals, political parties, and pressure groups

Williams 2 – Individuals influencing court Lawmaking

- Gillard govt rushed new laws to authorise National School Chaplaincy Program (NSCP).
- NSCP amended Financial Management and Accountability Act 1997, including provisions authorising NSCP payments as 'benefits to students.'
- Did this using S51(xxiiiA) - the welfare power.
- Ronald Williams challenged this in the HC
- HC ruled unanimously – welfare power allows benefits to be paid directly to beneficiaries.
- However, the payments were authorised to the Scripture Union Queensland (SUQ) and not the students themselves.
- This resulted in it being struck down a second time.

Jacqui Lambie – Individuals influencing parliament Lawmaking

- TAS Senator
- Elected in 2013
- Had the final vote needed to deny the Home Affairs Legislation Amendment Act 2019 (MEDEVAC).

- Lambie supported the govt after striking a deal with them.
- Lambie had the chance to influence either the passing or the repeal of the MEDEVAC bill – representing individual's influence.

Senator Bob Day – Parties influencing lawmaking

- Any party/party member can launch a challenge to a law or policy.
- 2016 – Senator Bob Day challenged Electoral Amendment Act 2016.
- He claimed the Senate electoral reforms didn't provide electors a choice between candidates
- He claimed that above the line voting didn't represent senators being directly chosen by the people.
- He also claimed above the line voting constituted different methods of choosing senators, which is forbidden under S9.
- HC dismissed Day's argument and upheld the Act

'No Jab, No Pay' – Pressure Groups influencing lawmaking

- 2015 – AMA (Australian Medical Association) (Also a pressure group) made an inquiry into the Social Services Legislation Amendment Bill 2015 (No Jabs, No Pay), supporting its introduction
- The amendment bill passed in 2015, allowing parents of children who are fully immunised to receive Childcare Benefits.
- AMA works with govt aiming to improve community health.

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Political mandates in theory and in practice, including competing mandates

MEDEVAC – Majoritarian Mandates repealing old laws

- 2019 election
- Morrison and coalition promised to repeal Medevac laws forced upon weakened Morrison govt in early 2019.
- Govt claimed mandate to do this through the election campaign.

2019 election – Majoritarian Mandates adopting approaches

- 2019 election.
- Morrison govt promised to get budget back to surplus in 2019/20 financial year.
- It has been revised due to bush fire and COVID-19.

MEDEVAC – Balance of Power Mandate

- TAS Senator Jacqui Lambie was the final vote the Morrison govt needed to repeal the MEDEVAC Bill 2019 – means she held the balance of power in the senate.
- Used this mandate in order to support the govt in repealing the bill.

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Roles and powers of the High Court of Australia, including Sections 71, 72, 73, 75 and 76 with reference to at least one common law decision and at least one constitutional decision

Constitutional Case – Williams 2

Constitutional Case – Love and Thoms

- Section 51 (xix) classifies non-citizens as ‘aliens’
- Daniel Love and Brendan Thoms – foreign citizens born overseas; both have Aboriginal parents.
- Their visas were cancelled and were held in immigration centres until they were to be deported due to their criminal records.
- In May 2019, Love and Thoms argued to the HC against their deportation
- They argued the literal meaning of ‘alien’ meaning ‘lack of connection to a place.’
- They then used Mabo 2 (1992) precedent to argue the Aboriginal Australians connection to Australia.
- HC ruled 4:3 in favour of Love and Thoms
- Also ruled that Aboriginal Australians can’t be classified as ‘aliens’
- Limits parliament's power to make laws under section 51(a).

Common Law Case – Voller

- Came into attention in 2016 when CCTV footage exposed treatment of children in juvenile detention in NT
- Voller was a former detainee in the NT’s Don Dale Youth Detention Centre
- 3 separate defamation proceedings: Voller sued Fairfax Media, Australia News Channel and Nationwide News – for defamatory comments posted on Facebook in reply to articles on pages of Sydney Morning Herald, The Australian, Sky News, The Bolt Report and The Centralian Advocate.
- Voller claimed the media companies enabled defamation and should be held liable – media companies believed they weren’t publishers of third-party comments and weren’t liable.
- Voller won in Federal Court – media companies were then granted special leave to appeal to the High Court in December of 2020
- 5:2 decision – HC rejected the argument made by the media company appellants that they shouldn’t be liable for defamatory posts of Facebook pages that they controlled, because they didn’t intend the material to be posted.

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change in the balance of power since federation, with reference to financial powers, including vertical fiscal imbalance and horizontal fiscal equalisation, the Grants Commission, referral of powers Section 51(xxxvii), the Council of Australian Governments (COAG), National Federation Reform Council (NFRC) and the National Cabinet (replaced COAG June 2020), co-operative federalism as opposed to coercive federalism, High Court of Australia constitutional interpretation, including external affairs power Section 51(xxix), corporations power Section 51(xx), and taxation powers

Williams 2 – Changing the Federal Balance of Power – Financial Power

- When the CW lost to Williams, it sought to continue the NSCP by making payments under s96

Federal Family Court – Changing the Federal Balance of Power – Referral of Powers

- All states except WA referred their powers over custody and maintenance of children of divorced parents to the CW

Murray-Darling Basin Plan – Changing the Federal Balance of Power – COAG

- The Murray Darling River system flows from QLD through NSW, Vic and SA
- Under the Howard Govt – the CW attempted to have the states refer their power over this river – Vic refused.
- Negotiations at COAG with the Rudd govt – Plan was established and came into effect in 2012
- The plan determines the amount of water that can be extracted annually from the basin for urban, agricultural and industrial use

Uniform Tax Case (1942) - HC interpretations

- Section 51 (ii) taxation – is a concurrent power.
- Due to WW1 the level of CW expenditure rose – to avoid this the CW sought temporary transfer of income taxes to become an exclusive power.
- Income Tax Act 1942 – enforced a uniform tax agreement combining existing CW and state taxes into 1 uniform tax.
- 4 states challenged the validity of this legislation to the HC but lost.
- HC rules that it was valid on the grounds on s51
- HC also ruled that under s96 the CW could attach conditions to funding payments
- At the end of WW2, the CW didn't hand back the income tax power to share with the states

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Formal and informal methods of constitutional change and their impact ²
referendums, including Section 128, High Court of Australia decisions, referral of powers, unchallenged legislation

1967 Referendum - Formal Change

- 90.77% yes
- Aimed to count Aboriginal Australians to be counted in the national census.
- Entirely removed S127 - "Aboriginals not to be counted in the reckoning of the population.
- Altered wording of S51 (xxvi) to remove - "other than the Aboriginal race in any state."

Love and Thoms – Informal Change – HC decisions

- HC determined the constitutional meaning of 'alien' in section 51(xix)

Family Law – Informal Change – Referral of Powers

- The referral of the state's family law powers allowed for nationally consistent and more convenient family laws.
- Divorce rates are higher than ever, and separated families often have members residing in different states.
- The CWs limited marriage and divorce powers don't cover de facto marriages or the children of such marriages.
- The referral of state family law powers by five states between 1986 and 1990 resolved many of these issues and brought the law up to date.
- It enabled Aus to create the Family Court of Australia under S71.

CSIRO – Informal Change – Unchallenged Legislation

- Commonwealth Science and Industry Research Organisation – national science agency.
- It assisted the AUS defense force during WW2.
- Some of their breakthrough consist of the Atomic Absorption Spectra (1946) and the plastic banknotes (1980s)
- Currently leading in developing faster internet and working on the COVID 19 vaccine.
- Although the Science and Industry Research Act 1949 wasn't made under any head of power and is thus unconstitutional, CSIRO is a vital institution to the progression of Australia and has remained unchallenged.

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The accountability of the Commonwealth Parliament, through elections for the House of Representatives and the Senate, through the House of Representatives and Senate Privileges Committees, within the procedures and processes of the Parliament, through judicial review

Jacqui Lambie – Individuals held to account through elections

- Deputy Leader of PUP, retired from PUP in 2014 after a disagreement with Palmer.
- After resignation, she was able to be a strong advocate for Tasmania.
- Frequently appears on media and has public profile due to plain-speaking.
- Example of Independent who attracts a personal vote to win a Senate Quota.
- These factors, such as concern for defense veterans, as well as persona profile in her state means TAS electors hold her to account personally and vote for her instead of partisan candidates.

Tony Abbott – Single Member Electorates

- LIB MP in Warringah (NSW) from 94' to 2019
- Initially well suited to represent Warringah due to being a generally economically conservative, and hostile to ALP and Greens
- 2019 – not well suited to represent Warringah – had become more socially progressive over recent years, while remaining solidly liberal in outlook
- Marriage equality vote highlighted this as 75% of the electorate voted yes, while Abbott campaigned vigorously for no.
- Zali Stegall – considered more suited to represent Warringah in 2019 – she is a liberal leaning independent with more progressive views on climate change and marriage equality.

Lisa Singh – Below the line campaign

- ALP Senator for TAS
- Demoted by Party to unwinnable 6th position in 2016 election
- She mounted a campaign encouraging electors to vote below the line for her instead of her party
- TAS electors voted her in, instead of the ALP and she was re-elected to the Senate.
- Made history – no senator had been elected below the line.
- Accountability – individual senators are more directly accountable to electors.

Jacqui Lambie – Malapportionment

- Held BoP IN MEDEVAC repeal bill 2019
- Demanded Morrison govt agreed to secret deals which wasn't revealed to the public
- Lambie can't be held accountable for impart of secret deal as 98% of electors don't live in TAS, therefore can't hold her to account.

Andrew Nikolic – Sitting member last campaign

- MP of Bass (TAS)
- Lost his seat to ALP Ross Hart after GetUp! Handed out how to vote cards to Bass electors telling them to put Nikolic last

Bruce Billson – Accountability through privileges and interest committees

- Former LIB minister
- Censure for failing to disclose salary collected from powerful business lobby group while still and MP
- He announced in March 2016 he was taking a job as Franchise Council fo Australia (FCA) executive director but didn't notify the Parliament's register of interest that he had begun receiving a salary in the job months before he was due to retire from his seat.

- A parliamentary inquiry from the House Standing Committee of Privileges and members interests into his failure sent in their report in 2018 – it moved a motion censuring Billson, the motion passed in the House.

Abbott Government – Committee processes keeping parliament to account

- 2013
- Govt avoided Estimates scrutiny into activities of the Department of Immigration and Border force (given power to intercept asylum seeker boats and tow them back to Indonesian water)
- Govt claimed the divulging operational matters to an Estimates hearing would be detrimental to Australia's national security.
- SEC by convention cannot compel ministers from the lower house to appear before them, but those invited to attend can choose to do so voluntarily

Scrutiny of Bills Committee – Committees with a legislative accountability role

- Senate standing committee for scrutiny of bills has assessed legislation for its effect on rights, rule of law and parliamentary propriety
- They report and alert the Senate of bills it thinks are of concern

Williams 2 – Judicial Review

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The accountability of the Executive and public servants, through collective and individual ministerial responsibility, through Senate Estimates and at least one other committee of the Commonwealth Parliament, through the Commonwealth

Auditor General and the Administrative Appeals Tribunal (AAT), through judicial review

George Brandis – IMR

- 2015
- Govt wasn't able to defeat the motion as it lacked upper house majority
- Brandis was defended by Abbott and survived the motion.

Morrison Government – CMR

- 2019
- First Morrison govt fell into minority after loss of 2 seats in HoR
- Lost a vote on a signature bill – MEDEVAC
- Vote of no confidence wasn't raised

Sophie Mirabella – Auditor-General holding executive to account

- Mirabella was the member for Indi until losing her seat in 2013
- She was reelected to run as candidate in 2016.
- During her campaign she made a claim that her electorate had missed out on \$10 million of government hospital funding when she failed to win her seat in 2013
- The Shorten opposition referred the matter to the AG and it could lead to possible political corruption

Bridget McKenzie – Auditor-General holding executive to account

- Minister for Sport in 45th parliament
- Came under scrutiny in 2020 for her conduct of allocating funds to sporting clubs based on political objectives rather than merit.
- The matter was referred to AG Grant Hehir by the Opposition Shadow Attorney General, Mark Dreyfus

- Following the AGs reports, media investigations revealed a list of marginal electorates that had been drawn up by the Ministers Office
- Due to public pressure, the Morrison govt announced their own inquiry into the matter, focusing on the awarding of a grant to a shooting club that McKenzie was part of
- McKenzie ultimately resigned as Minister due to the mounting pressure, which the AGs reports significantly contributed to.

Robodebt – Committees holding executive to account

- Scheme initiated in May 2015 to recover alleged welfare debts
- Aimed to crack down on welfare fraud, saved up to \$1.5 billion over four years.
- Used algorithms to compare taxpayer income data with welfare payments.
- Led to unintended consequences and demands for executive accountability reform
- The Public service didn't advise the scheme was potentially unlawful
- 2017 – Senate Community Affairs Standing Committee launched an inquiry into robodebt
- They accused govt and public service of 'deliberately withholding' information about the botched scheme.
- They demanded a royal commission to investigate the scandal
- The report included 21 recommendations to fix the flawed system.

Robodebt – AAT

- Terry Carney – worked at AAT for almost 40 years
- Rules against Robodebt 5 times in 2017
- Criticized 'income averaging' method for lack of evidence and flawed mathematics.
- DHS didn't appeal any of Carney's AAT decisions.
- Carney's notes DHS usually appealed major policy issues.
- DHS and Minister ignored AAT warnings

Robodebt – Judicial Review

- Amato v Commonwealth – legal challenge against Robodebt
- The government settled, conceding a \$2500 debt against Deanna Amato as unlawful.
- Federal Court declared the debt was ‘not validly made’
- Case affected hundreds of thousands of Australians.
- Government refunded over \$720 million to around 470,000 people

Williams 2 – Judicial Review

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the extent of the accountability of the Governor-General, through appointment, through removal, ‘the 1975 crisis’ and ‘the Hollingworth affair’

Sir David Hurley – Accountability through Appointment

- Scott Morrison appointed Sir David Hurley in 2019.
- Morrison commented on the significance of Hurley’s long military service.
- The power of the PM to recommend the appointment of an individual to GG also implies they have the power to remove them from the position.

The Hollingworth Affair

- Commissioned as GG in 2001 on recommendation of John Howard.

- In 2003 allegations arose that whilst Hollingworth was previously Archbishop he had covered up allegations of child sex abuse in the Anglican Church
- Hollinworth denied these allegations and Howard refused to withdraw his support from Hollinworth.
- In the end, public opinion made it impossible for Hollingworth to continue his role as GG.
- A campaign calling for Hollingworth to resign was led by Hetty Johnson, a child sex abuse advocate.
- In 2003 Hollingworth was forced to defend himself against allegations that he had raped a woman during the 1960s.
- Contrary to Howard, other senior ministers suggested Hollingworth reconsider his position.
- Ultimately, Hollingworth was forced to resign due to public pressure and scrutiny in 2003.

1975 Crisis

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the accountability of the courts within the Australian legal system, through the appeals process, through parliamentary scrutiny and legislation, through transparent processes and public confidence, through the censure and removal of judges, including Section 72

George Pell – Accountability of Courts through Appeals

- The trial lasted five weeks.
- In September of 2018 the jury was discharged as they could not reach a unanimous verdict.
- Pell's second trial in November of 2018 would see him be found guilty by the jury of one count of sexual penetration of a child under the age of 16

and four counts of committing an indecent act with, or in the presence of a child.

- In 2019, the county court of Victoria sentenced Pell to six years in prison, with a non-parole period of three years and eight months.
- Pell's August 2019 appeal was dismissed after three appeal court judges ruled that it was "open to the jury to be satisfied beyond reasonable doubt that Cardinal Pell was guilty of the offences charged.
- In April 2020 the full court of the HC upheld Pell's appeal, acquitting him of all five sexual offences and releasing him from prison after having served 13 months of his six year sentence.
- The decision of the HC in regard to his case was that a "jury acting rationally on the whole of the evidence, ought to have entertained a doubt as to the applicants guilt with respect to each of the offences for which he was convicted".

Media Group – Accountability of courts undermined

- 2022 – Federal Court made new rules about public access to pre-trial documents.
- Rules allowed parties enough time to apply for suppression orders if pre-trial documents contained confidential or sensitive details.

Angelo Vasta – Removal of Judges

- Justice Vasta implicated in corruption by Commission of Inquire into Possible illegal activities and associated police misconduct.
- QLD Parliament established the commission led by former HC justice Harry Gibbs to investigate the allegations.
- Found that Vasta engaged in misconduct with a company his family was associated with.
- His wrongdoing was deemed 'misconduct' and he was removed from office in June 1989 by QLD Parliament.

Sandy Street – Judges held to account

- Numerous cases reversed and criticised by CJ

- Criticism for failure to provide timely written decisions and for not ensuring fairness in hearings.
- Iranian man seeking visa rejection review – Street didn't rule in favour, leaving the man with 21 days to appeal. However, Street made his written judgement available after 75 days, requiring the man's lawyer to seek an extension.
- He has also had 10 cases appealed due to unfairness, and 80 reversed on appeal since appointment in 2015.

Justice Lionel Murphey – Parliament holding judges to account

- Senator Lionel Murphey appointed by Whitlam govt to the HC.
- A Senate Committee was established which eventually led to the recommendation that Murphey be prosecuted.
- He was found guilty but was later reversed on appeal by the NSW court.
- Following the appeal, a Parliamentary Commission of Inquiry was established via legislation to inquire Murphey's fitness to be a HC judge.
- Many allegations were investigated by the commission, however at this stage Murphey was diagnosed with terminal cancer and the Commission disbanded.
- Had Murphey not become terminally ill, the Commission would have continued investigations and made recommendations to parliament on the removal of Murphey.

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the ways human rights are protected in Australia, including in the Constitution, common law, statutory law, and charter of rights, such as the Charter of Human Rights and Responsibilities Act 2006 (Victoria), the Human Rights Act 2004 (Australian Capital Territory) and the Human Rights Act 2019 (Queensland)

Charter of Human Rights and Responsibilities Act 2006

- VIC law that sets out the basic rights, freedoms and responsibilities of all people in Victoria.

- It requires public authorities to act consistently with the human rights in the charter.
- Includes rights such as the right to equality and the protection from cruel, inhuman or degrading treatment

Human Rights Act 2004

- Law which recognises and describes the fundamental civil and political rights that individuals have
- It gives the Attorney General and Human Rights Commissioner some power to intervene in courts and tribunals where human rights are concerned
- It also gives the Supreme Court the power to declare Territory laws 'incompatible' with the Human Rights Act

Human Rights Act 2019

- The Act protects 23 fundamental human rights in law
- The act requires each arm of government to act compatibly with these human rights
- It requires parliament to consider human rights when proposing and scrutinising new law.
- It also requires courts and tribunals to interpret legislation in a way that's compatible with human rights

Castles v Secretary to the Department of Justice (2010) - State protecting HRs

- Kimberly Castles serving jail time for social security fraud
- She had already been receiving IVF treatment to become pregnant
- She requested to continue treatment while in prison as she would be ineligible for treatment after her release due to her age
- The department of Justice refused – claimed prisoners have no entitlement to IVF treatment
- Castles began court action under s47(1)(f) of Victorian Corrections Act 1986: prisoners have a right to have access to reasonable medical care and treatment necessary for the preservation of health.
- This enabled her to bring forward the Charter of Human Rights and Responsibilities Act's s13 on privacy and family rights, more specifically the right to equality (s8) and humane treatment in detention (s22)

- The court ordered the Department of Justice to review their decision in relation to rights.

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the status of international covenants, protocols and treaties in protecting human rights in Australia

Convention on the Elimination of all forms of Discrimination against Women

- Adopted by the UN in general assembly in 1979 – signed on by Australia in 1980
- Described as the international bill of rights for women
- Consists of a set of rights for women in numerous fields
- e.g. equal rights in education and employment

Sex Discrimination Act 1984

- Introduced by ACT Senator Susan Ryan in 1983
- Identifies Sexual Discrimination when someone is treated less favorable than a person of the opposite sex would be treated in the same/similar circumstances
- The act makes it unlawful to discriminate against someone due to their sex, gender identity, intersex status, sexual orientation, etc.

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the ways human rights are protected in one other country

Civil Rights Act – Statutes protecting human rights in the US

- 1946
- In response to the Civil War (1961-1965)

- African Americans were discriminated against from segregation to killings, etc.
- The act granted equal rights to all American citizens regardless of race.

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the ways in which Australia and one other country can both uphold and/or undermine democratic principles, with reference to political representation, popular participation, the rule of law, judicial independence, natural justice

Black Lives Matter – Popular Participation

- Began as a # in 2013
- George Floyd died in 2020 after being arrested by police outside a shop in Minnesota.
- At the end of May over 450 major protests were held across the US in response to Floyd's death.
- Protestors marched through the streets, hung signs on buildings and places of worship.
- In Australia, thousands of people took part in BLM protests and marches across the country.
- The movement showcased both popular participation in the demonstrations and the message being portrayed – that race is a factor that can undermine participation in a society.

AFP Raids on Journalists

- In 2019 the AFP (Aus federal police) raided the home on News Crop Australia journalist Annika Smethurst.
- Occurs 401 days after she wrote an article suggesting the Australia Signals Directorate was seeking to broaden its powers to spy on Australians.

- Article used documents that were top secret.
- A warrant was issued alleging the publishing of the documents undermined Australia's national security laws.
- AFP officers raided her home and searched her phone and computer to determine the source of the leak.
- 5th of June 2019 – AFP also raided ABC's Sydney headquarters, sorting through more than 9000 documents and emails that they hoped would build a case against 2 journalists – Dan Oakes and Sam Clark.
- The 2 journalists produced stories 2 years earlier known as the 'Afghan Files'.
- These detailed the Department of Defence documents exposed during the clandestine operations of Aus' elite forces.
- Raids were seen as an attempt to intimidate journalists and discourage whistle-blowers.
- ABC challenged the validity of the raid but was dismissed by the Federal Court.

M65 v Minister for Immigration

- 2015 – HC decided a case brought by Bangladeshi asylum seeker M68.
- M68 claimed the Aus govt was detaining her in Nauru unlawfully.
- 2012 – Aus and Nauru entered into a migration agreement.
- Agreement called Memorandum of Understanding MOU – transfer of asylum seekers by Aus to Nauru detention centre (run by Australian authorities).
- Migration Act 1958 didn't authorise Aus to make these arrangements.
- Govt relied on executive powers to sign MOU instead of authorisation from statute.
- M68 challenged validity of executive powers.
- HC held that govt has the power to participate in MOU, but only if authorised by a valid law of CW.
- CW passed Migration Amendment Act 2015 to authorise this.

- Retrospective laws undermine rule of law as laws must be known and predictable. A person cannot comply with a law which has not come into effect and govt polities should be lawful at the time of implementation.
- In Director of Public Prosecutions v Keating 2013, the HC upheld the common law principle of 'presumption against retrospectivity.'

Brett Kavanaugh

- Power of President to appoint judges to US Supreme Court is one of the most consequential decisions a president can make.
- July 2018 – Trump nominated Kavanaugh to the SC – Kav is a relatively conservative judge who has history with the White House
- Kav faced 48 hours before the Senate Judiciary Committee, answering more than 1,200 questions.
- During this, sexual assault allegations emerged against him, requiring further investigation.
- The committee votes 11-10 to send Kav's nomination to the full Senate.
- All republican members voted for the motion and all democrats voted against.
- In 2018, the Senate voted 50-48 in favour of Kav.
- All Democrats bar one voted against.
- This highlights the political contest between the President and the Senate.