

Name: Dana Hart

Politics and Law Essay

25 Marks

Allow 50 minutes for this essay including planning time.

Evaluate the extent to which the Governor-General of Australia can be held accountable.

The Governor-General (GG) is the representative of the monarch in Australia. An important feature of Australia's political system is accountability which describes being held responsible for one's conduct, decisions or [in]actions. ~~At~~ Appointment of the GG is made by the Queen at the "Queen's pleasure". This implies that the appointment of GG and assignment of their powers by the Queen is the formal mechanism to which the GG is held to account. ~~In~~ In reality, by convention, the <sup>Prime Minister (PM)</sup> ~~PM~~ advises the Queen on the appointment of the GG, and by implication, has the power to recall or dismiss the GG. This suggests that the GG is therefore accountable to the PM. However, formal mechanisms have not been employed to hold the GG to account. It is the Australian people themselves that have arguably ensured that GG's are responsible for their actions. This has been demonstrated in ~~the~~ 'the 1975 Crisis' and ~~the~~ Hollingworth affair (2003) involving Sir John Kerr and Dr Peter Hollingworth respectively. Also, judicial review has been effective in ~~scrutinising~~ scrutinising the decisions of the Office of

the GG, therefore upholding <sup>their</sup> ~~the~~ accountability. ~~Thus,~~  
Although ~~the~~ formal mechanisms such as Section 2  
of the Constitution regarding the appointment of the  
GG and the implication of removal ~~the~~ being ineffective  
at holding the GG to account, the Australian people and  
the courts ensure GG accountability to a substantial extent.

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Appointment of the GG is the formal mechanism to  
which the GG is supposedly held accountable. As  
~~highlighted~~, Section 2 of the Constitution emphasises  
that the GG is selected at the "Queen's pleasure"  
and is vested with "such powers and functions of  
the Queen Her Majesty may be pleased to assign  
him. This implies that the GG is therefore accountable  
to the Queen. Since the 1930's, ~~the~~ selection of  
the GG has been made by the PM ~~in~~ with assistance  
from staff or colleagues. As such, the implication  
exists that the GG is accountable to the PM. The  
monarch may ~~any~~ refuse advice by the PM, however  
they are bound by convention to ~~except~~ <sup>accept</sup> it. For  
example, Sir Isaac Isaacs was not a popular  
candidate for King George V as he was not ~~a~~ English  
and so he believed that he was not appropriate for the  
position. However, ~~the~~ King George V still accepted  
the nomination despite showing dissatisfaction. The  
GG must take an Oath of Office, in which  
they swear to serve the Australian monarch "according  
to law" and also take ~~an~~ an Oath of Allegiance.  
The Oath of Office is completed on the floor of the



Senate and is overseen by the PM, the ~~presiding~~ Presiding Officers of both Houses and the Chief Justice of the High Court of Australia. The witnessing of the Oath of Office by the PM is important for reinforcing that the GG is accountable for their actions. ~~The~~ The appointment process also provides the implication that the GG can be removed by the PM, thus providing a theoretical framework for the accountability of the GG.

~~The~~ A reading of the Constitution assures that the power of the Queen under Section 2 to appoint a GG, also implies the ability to remove the GG, therefore acting as a theoretical mechanism of accountability. In Australia's political system the Queen may only remove a ~~PM~~ GG on the advice of a PM as per convention. This creates the feature of circular accountability as the PM and GG can both hold each other to account through the dismissal of one another. However, in reality, no GG has ever been removed, indicating that circular accountability is weak. This raises question as to how the Queen may respond if advised by the PM to remove the GG. As this process has never occurred, it is uncertain whether the Queen would follow convention, and as such, the extent of the accountability of the GG through removal is ~~not clear~~ minimal. GGs ~~can~~ have the opportunity to resign as was the case for Lord ~~Adrian~~ John Adrian Louis Hope ~~1903~~ (1903), Sir John Kerr ~~1977~~ (1977) and Dr

Peter Hollingworth (2003). Thus, the ~~informal~~ <sup>formal</sup> fact that no GG has been removed signifies that the <sup>mechanisms of</sup> appointment and dismissal have failed to keep the GG to account.

Despite the formal mechanisms under section 2 of the Constitution and the conventions of responsible government being ineffective in upholding the accountability of the GG, the Australian people themselves have sufficiently scrutinised the GG for their actions. This has been demonstrated through 'the ~~1975~~ 1975 crisis' and the Hollingworth affair in 2003. Sir John Kerr used his reserve powers on 11 November 1975 to dismiss the Whitlam Labor Government. This was because the Senate had been unsuccessful at passing supply and ~~the~~ <sup>Whitlam</sup> was refusing to pursue a double dissolution election. As a result, Kerr ~~replaced~~ appointed the Fraser Opposition as a caretaker government. This sparked much debate as ~~many~~ <sup>arg</sup> questioned the role of the Office of GG. Many Australians argued that the GG, an undemocratically appointed body, should not be able to remove a democratically elected government. ~~As~~ This resulted in Kerr being held accountable for the rest of his term including when he was hissed and booed at the Melbourne Cup in 1977 whilst being intoxicated. He shortly resigned afterwards during the same year. This



Example highlights that it is fundamental for the GG to maintain public support as the Australian people will hold them accountable. Dr. Peter Hollingworth was another controversial GG who was commissioned in ~~2003~~<sup>2001</sup> after serving as the Archbishop of Brisbane. Immediately, many were ~~skeptical~~<sup>s</sup> of a religious authoritative leader holding this role as they believed religion and the State should be separate. In 2003, allegations arose that as Archbishop, Hollingworth had been involved in the cover up of child sexual abuse within the Anglican Church. Public backlash made it untenable for Hollingworth to continue his term. Thus, through lacking support of the public, he resigned in 2003. This means that unpopular GG's who are believed to have been involved in misconduct will be <sup>substantially</sup> held accountable for their actions by the public.

Another informal mechanism of accountability of the GG is judicial review. The GG is equally ~~sh~~ subject to the law and can be challenged for their actions in the <sup>courts</sup> ~~courts~~. This was demonstrated in the case of *Hine v the Official Secretary to the Governor-General* (2003). Ms Hine wanted documents held by the Official Secretary with respect to the Order of Australia. The Official Secretary denied access on the basis

that the documents were not of an "administrative nature" as per Section 6(1) of the Freedom of Information Act 1982. As a result, <sup>Ms</sup> Kline ~~took~~ challenged this in the Australian Information Commission which ~~declined~~ <sup>upheld</sup> the Official Secretary's decision. <sup>Ms</sup> Kline then appealed the decision to the Administrative Appeals Tribunal, the Federal Court and the High Court, all of which ~~did~~ upheld the Official Secretary's decision. Although unsuccessful, the case highlights that the ~~GS~~ is ~~not~~ not immune from scrutiny for their actions and can be challenged through the courts like any other Australian. Thus, judicial review considerably contributes to the accountability of the ~~GS~~.

Overall, several mechanisms exist to ensure the ~~GS~~ is held accountable, but only some of these have been implemented in the past. Formal mechanisms such as Section 2 which establish the appointment ~~of~~ the ~~GS~~ at the "Queen's pleasure" and imply the ability to remove the PM have been applied minimally. No ~~GS~~ has ever been removed from office indicating that vicarious accountability is weak. However, the ~~GS~~ has been substantially held accountable by the Australian people as demonstrated in ~~the~~



'the 1975 crisis' and Hollingworth affair. Also, judicial review has appreciably contributed to accountability of the GO. Thus, despite ineffectiveness of formal mechanisms, the Australian people and judicial review ensure the GO is held accountable to a high extent.

Dara. Hart-

Marking guide:

Very clear direction  
Resene vs Oporto case

Description	Marks
<b>Explains relevant terms and outlines parameters of discussion</b>	
Explains all relevant terms and outlines parameters of discussion	5
Explains some relevant terms and outlines parameters of discussion	4
Indicates what is to be addressed in the discussion	3
Attempts to provide a focus for discussion	2
Makes a general statement concerning the topic/claim	1
Introduction omitted	0
<b>Subtotal</b>	<b>5</b>
<b>Discussion of relevant issues including pertinent examples</b>	
Discusses relevant issues comprehensively using a well-structured format and supportive examples in a cohesive, logical sequence and relevant political and legal terminology	9-10
Discusses some relevant issues incorporating some examples in a cohesive, logical sequence and using relevant political and legal terminology	7-8
Limited discussion with limited examples in a logical sequence and some relevant political and legal terminology	5-6
Limited discussion of the issues with limited political and legal terminology	3-4
Makes general statements concerning the topic	1-2
<b>Subtotal</b>	<b>10</b>
<b>Evaluation / assessment / analysis</b>	
Evaluates/assesses/analyses the claim using specific evidence which demonstrates a comprehensive understanding of the topic	7
Evaluates/assesses/analyses the claim using appropriate evidence which demonstrates an understanding of the topic	6
Evaluates/assesses/analyses the claim using some evidence which demonstrates some understanding of the topic	5
Constructs a relevant but weak evaluation/assessment/analysis	4
Constructs a weak evaluation/assessment/analysis	3
Limited evaluation/assessment/analysis	2
No relevant evaluation/assessment/analysis. A statement only	1
<b>Subtotal</b>	<b>7</b>
<b>Conclusion</b>	
Draws together the argument linking evidence	3
Summarises the argument	2
Makes general/superficial statements	1
Conclusion omitted	0
<b>Subtotal</b>	<b>3</b>
<b>Total</b>	<b>25</b>

4

9

7

3

23

92% Superb. Essay.  
Outstanding