**2020 PLEAWA Mock Examination**

**POLITICS AND LAW**

**ATAR Unit 3&4**

**SUGGESTED ANSWER GUIDE**

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

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

**Assessment key words used include:**

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

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

**Compare:** Show how things are similar and / or different

**Define:** State meaning and identify essential qualities

**Describe:** Provide characteristics or features

**Discuss**: Identify issues and provide points for and/or against

**Distinguish:**  Recognise or note/indicate as being distinct or different

from; note differences between

**Explain:**  Relate cause and effect; make the relationships between

things evident; provide why and /or how

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

**Identify:** Recognise and name

**Outline:** Sketch in general terms; indicate the main features of

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

**Question 1 (10 marks)**

(a) Explain the meaning of the term ‘horizontal fiscal equalisation’. (2 marks)

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| **Description** | **Marks** |
| Explains the full meaning of the phrase and some mention of the ways this can occur. | 2 |
| Outlines one point explaining the meaning of the term without elaboration. | 1 |
| **Total** | **2** |
| **Answers could include information such as this:**  The term is used to refer to the discrepancy between the federal government's capacity to raise revenue and the responsibility of the States to provide most public services, such as physical infrastructure, health care, education, despite having only limited capacity to raise their own revenue. In Australia, to ensure horizontal fiscal equalization, the federal government transfers funds as grants from the [federal government](https://en.wikipedia.org/wiki/Government_of_Australia) to the [states and territories](https://en.wikipedia.org/wiki/States_and_territories_of_Australia) so as to provide a uniform standard of services and infrastructure throughout the Commonwealth. | |

(b) Briefly outline **two** recent reforms and/or programs that are jointly administered by the Commonwealth and States/territories. (3 marks)

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| --- | --- |
| **Description** | **Marks** |
| A full outline of 2 recent reforms or programs with some explanation of what they hope to achieve | 3 |
| An outline of one feature with a brief mention of the aim of the reform. | 2 |
| One reform briefly outlined | 1 |
| **Total** | **3** |
| **Answers could include but not limited to:**  COAG has adopted ‘a streamlined agenda built around five themes of strategic importance that lie at the intersection of jurisdictional responsibilities:'  The COAG Reform Council is the key accountability body for the COAG reform agenda.  Current intergovernmental agreements monitored by the council are:   * National Healthcare Agreement * National Education Agreement * National Agreement for Skills and Workforce Development * National Disability Agreement * National Affordable Housing Agreement * National Indigenous Reform Agreement   Currently, there are around 24 National Partnerships which support the objectives of the National Agreements.  Some of these partnerships have reward payments attached for reaching targets and these include:   * National Partnership on Preventative Health * National Partnership on Elective Surgery Waiting List Reduction Plan * National Partnership on Essential Vaccines * National Partnership on Improving Teacher Quality * National Partnership on Literacy and Numeracy * National Partnership on Youth Attainment and Transitions * National Partnership to Deliver a Seamless National Economy   Other partnerships include:   * National Partnership on Social Housing * National Partnership on Homelessness * National Partnership on Closing the Gap in Indigenous Health Outcomes * National Partnership on Remote Indigenous Housing * National Partnership on Indigenous Economic Participation   **Other programs could include:**   * The ‘Smart Cities plan’ (2016) developed by the Commonwealth govt sets out a vision for metropolitan and regional cities * The National Digital Engineering Policy Principles (2016) have been developed by State and Fed govts in recognition of the potential benefits that digital engineering and building information modelling can bring to the design, delivery and operation of land transport and infrastructure assets. * The Intergovernmental Agreement on Implementing Murry-Darling Basin reform setting out specific water planning and market reform requirements. | |

(c) Discuss the extent to which **two** financial powers of the Commonwealth Parliament allow it to dominate the federation. (5 marks)

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| --- | --- |
| **Description** | **Marks** |
| Clearly and fully explains two financial powers of the Commonwealth and discusses how this allows it to dominate the federation.  Discusses the extent of the financial domination. | 5 |
| Explains two financial powers of the Commonwealth with some discussion on how this allows it to dominate the federation.  Some discussion of the extent of the financial domination. | 3-4 |
| Some accurate information provided but with no or ineffective discussion | 1-2 |
| **Total** | **5** |
| **Issues including pertinent examples could include:**  Examples of constitutional financial powers could include:  S.90 On the imposition of uniform duties of customs the power of the Parliament to impose duties of customs and of excise, and to grant bounties on the production or export of goods, shall become exclusive.  S 94. After five years from the imposition of uniform duties of customs, the Parliament may provide, on such basis as it deems fair, for the monthly payment to the several States of all surplus revenue of the Commonwealth. Basis of Surplus Revenue case (1908)  s.96 allows for the Parliament to ‘grant financial assistance to any State on such terms and conditions as the Parliament thinks fit’. Thus, there is no limit to the ‘terms and conditions’ that Parliament may attach to such a grant. (inequitable, even at federation).  S 81 All revenues or monies raised or received by the Executive Government of the Commonwealth shall form one Consolidated Revenue Fund, to be appropriated for the purposes of the Commonwealth in the manner and subject to the charges and liabilities imposed by this Constitution.  s51(ii) taxation – it is a concurrent power; one is taxing the individuals on money earned whereas s90 is taxing the consumer on products purchased. Both 51(ii) and 90 contributed to the VFI. One, since the inception of the constitution and the other more recently.  The High Court has played a significant role in consolidating Commonwealth financial power.  S51(ii) - The Uniform Tax case (*South Australia v Commonwealth 65 CLR 373*). The Australian 2nd WW effort entailed vastly increased spending by the federal govt. which introduced four Acts effectively giving it a monopoly over income taxation during the war. The Uniform Tax case marked the point at which the Commonwealth gained clear financial predominance. From 1942 the States had to rely on the federal govt. to return to them an adequate proportion of the income tax paid by their citizens.  S90 - Hammond and Ha cases 1997 (Walter Hammond and Associates v the State of NSW and others and Ha and anor v the State of NSW and others) The validity of licensing and franchise fees imposed by NSW were questioned. These fees had been imposed on the sale of alcohol, tobacco, and petrol products. The HC ruled that because of their excessive nature the fees were really an excise and thus an exclusive power of the Commonwealth. The fees were ruled invalid and the States became more reliant on the Commonwealth.  Over time therefore, the effect of the changing govt financial arrangements has been that the Commonwealth has collected more funds than it has needed for its own expenditure, whereas the states and local govt councils have been unable to raise sufficient funds to finance their governmental responsibilities. The result is VFI. This can be seen in all federations world-wide, but Australia has the most extreme imbalance of all. Today the Commonwealth raises approx. 75% of total government revenue but is responsible of only around 60% of total expenditure on governmental programmes.  The centralisation of the finances has allowed the Commonwealth to intrude into areas of State powers shifting the balance of power in favour of the central govt and changing the coordinate model of federalism established in 1901. | |

**Question 2**

(a)Differentiate between a micro party and a minor party (2 marks)

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| **Description** | **Marks** |
| Provides an explanation of a micro and minor party with a point of differentiation | 2 |
| Outlines what a minor party and/or micro party is, but with no point of differentiation. | 1 |
| **Total** | **2** |
| **Answer could include but is not limited to:**  A micro party is typically a party focusing on one issue eg. the Australian Motoring Enthusiasts Party. It is often only centred in one state or localized area and with limited national organization and support.  Whereas a minor party may have policies covering a range of national issues and portfolios, but whose electoral strength is so small as to prevent its gaining control of a government except in rare and exceptional circumstances. Eg Pauline Hanson’s One Nation Party and the Greens. | |

(b) Outline **two** recent examples of pressure groups successfully impacting government

policy. (3 marks)

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| --- | --- |
| **Description** | **Marks** |
| Provides a full and accurate explanation of two pressure groups impacting government policy with the emphasis on the impact the campaign had. | 3 |
| Provides an explanation of two pressure groups impacting government policy with some attempt to emphasise the impact the campaigns had. | 2 |
| Provides an explanation of one pressure groups impacting government policy with minimal attempt to emphasise the impact the campaigns had. | 1 |
| **Total** | **3** |
| Answers could include but not limited to:   * The Minerals Council of Australia campaigned against the Rudd Government’s Resources Super Profits Tax. It was abandoned by the Gillard Government in 2012 and replaced with the less effective Mineral Resource Rent tax. * Get-Up! campaigned successfully against the Howard government’s Amendment to the Electoral Act when the High Court ruled in *Rowe & Anor v Electoral Commissioner* & *Anor* (2010) that [Commonwealth](https://en.wikipedia.org/wiki/Government_of_Australia) legislation that sought to restrict the time in which a person may seek to enroll in an election or alter their enrolment details after the writs for an election have been issued was invalid. * 2016 - the Pharmacy Guild, the Pharmaceutical Society of Australia and the Australian Self Medication Industry pressured the government into delaying the moves to make codeine a prescription-only drug citing the cost to the health budget of having to make GP visits. * Business Council of Australia lobbied the Morrison government in 2019 to establish a Productivity Commission review into streamlining regulation in the resources sector. * BCA successfully lobbied the government in 2019 to introduce changes to allow for faster access to temporary skilled visas for businesses. | |

1. Discuss the effectiveness of Independent members of Parliament by referring to one recent example of them influencing the formulation of legislation. (5 marks)

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| --- | --- |
| **Description** | **Marks** |
| Clearly and fully explains a recent example of an Independent MP influencing legislation and discusses the effectiveness that an Independent MP may/may not have on the formulation of legislation. | 5 |
| Fully explains a recent example of an Independent MP influencing legislation with some discussion of the effectiveness that an Independent MP may/may not have on the formulation of legislation. | 3-4 |
| Some explanation of a recent example of an Independent MP influencing legislation with limited discussion of the effectiveness that an Independent MP may/may not have on the formulation of legislation. | 1-2 |
| **Total** | **5** |
| **Answers could include but not limited to:**  Independent MPs and their influence on legislation:   * Evidence Amendment (Journalists’ Privilege) Act 2011 (Wilkie) * Auditor-General Amendment Bill 2011 (Rob Oakeshott) * Antony Green and the Electoral Amendment Act 2016 * Rosie Batty active campaigner against domestic violence led to legislation at Commonwealth and State level: * Family Law Amendment (Family Violence and Other Measures) Bill (2017) * Migration Amendment (Family Violence and Other Measures) Bill (2016) * Marriage Equality Bill 2017 (Dean Smith) * Kerryn Phelps and the Medevac legislation (2018)   The crossbench in the present Senate consisting of two PHON senators, 1 Centre Alliance senator, Jacqui Lambie and since August (2020) Independent Rex Patrick (ex-Centre Alliance senator for SA) have had little success in introducing and passing their own legislation, however they can prevent government legislation by rejecting it outright or negotiating compromises as seen with the Tax cuts Bills in 2019.  A fully detailed discussion of independent members effectiveness in the HOR would indicate it is very difficult for them to influence legislation as they require bi-partisan support, or at least attract enough support from the crossbench, the Opposition and enough government MPs willing to back them as they did with the Medevac Bill.  Independents could also succeed if the major party MPs are given a conscience vote as they were with the Marriage Equality legislation in 2017.  They were effective during the Gillard prime-ministership when she had to rely on Oakeshott, Windsor and Wilkie to form government.  However, you could conclude that they are only effective to a minor extent in the HOR. It is a different story in the Senate where the crossbench are crucial in the passage of government legislation. | |

**Question 3 (10 marks)**

1. Briefly outline the role of the AAT. (2 marks)

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| --- | --- |
| **Description** | **Marks** |
| Fully outlines at least **two** roles of the AAT. | 2 |
| Gives a general explanation of one of the roles. | 1 |
| **Total** | **2** |
| **Answers could include but are not limited to:**  The Administrative Appeals Tribunal (AAT) conduct:   * Independent merits review of administrative decisions made under Commonwealth laws. * They review decisions made by Australian Government ministers, departments and agencies. * and, in limited circumstances, decisions made by state government and non-government bodies. * Since 2015 the AAT also took responsible for * The Migration Review Tribunal * Refugee Review Tribunal * Social Security Appeals Tribunal | |

(b) Explain how the convention of Cabinet Solidarity supports OR weakens accountability. (3 marks)

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| --- | --- |
| **Description** | **Marks** |
| Identifies and explains the concept of Cabinet Solidarity and gives an explanation of how it supports or weakens accountability. | 3 |
| Briefly explains what the term means with some attempt to discuss how it supports or weakens accountability. | 2 |
| Minimal explanation of the term with limited attempt to discuss how it supports or weakens accountability. | 1 |
| **Total** | **3** |
| Answers could include but not limited to:  In a Parliamentary system, the Prime Minister appoints a cabinet, usually selecting from among parliamentary members of the PM's own party. Cabinet solidarity refers to the tradition that once decisions are reached in cabinet, they are supported by all members of the cabinet, regardless of their opinion before consensus.  A breach of (or breaking with) cabinet solidarity traditionally requires the offending cabinet member's resignation or firing. (Gary Punch and Stuart West resigning from the Hawke Ministry in the 80s)  It promotes accountability by ensuring that collectively Ministers are held to account by virtue of supporting a united policy position and cannot escape criticism for failures of the policy.  Cabinet Solidarity can weaken accountability as individual ministers can hide behind a collective decision and limit scrutiny. | |

(c) Discuss **two** ways in which the legislative branch of a political system you have

studied (other than Australia) holds the executive branch accountable. (5 marks)

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| **Description** | **Marks** |
| Discusses fully and clearly, with examples, two ways that the legislative branch is held to account in one other country. | 5 |
| Discusses with some examples, two ways that the legislative branch is held to account in one other country. | 3-4 |
| Limited discussion on two ways that the legislative branch is held to account in one other country. | 1-2 |
| **Total** | **5** |
| **Answers could include but not limited to:**  If you have studied USA examples include:   * The Congress has the authority to impeach and remove the President, Vice-President and other federal civil officers after determining that the officer has engaged in treason, bribery or other high crimes and misdemeanours. Examples of presidential impeachments or attempts to, would be expected - Johnson, Nixon, Clinton and Trump could be included. * Congress can overturn an executive order by passing legislation that invalidates it. * The President may veto Bills from Congress, but Congress may also override a veto by two thirds vote in both the Senate and HOR. * The constitution requires the Senate confirmation for a number of high-ranking executive branch positions. * Budget process – Congress can refuse to pass the budget requested by the President.   Similar details would need to be provided for other non-Westminster models that have been studied. | |

**Question 4 (10 marks)**

1. What is meant by the term ‘open government’? (2 marks)

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| **Description** | **Marks** |
| Provides a full and clear explanation of the term. | 2 |
| Gives a minimal explanation of the term | 1 |
| **Total** | **2** |
| **Answers could include, but are not limited to:**  In general terms, an open government is one with high levels of transparency and mechanisms for public scrutiny and oversight in place, with an emphasis on government accountability.  Transparency is considered the traditional hallmark of an open government, meaning that the public should have access to government-held information and be informed of government proceedings. In recent years, however, the definition of open government has expanded to include expectations of increased citizen participation and collaboration in government proceedings through the use of modern open technologies. | |

1. Outline **three** ways that the principle of natural justice is upheld in Australia (3 marks)

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| --- | --- |
| **Description** | **Marks** |
| Outlines three ways that the principle of natural justice is upheld | 3 |
| Outlines two ways that the principle of natural justice is upheld | 2 |
| Outlines one ways that the principle of natural justice is upheld | 1 |
| **Total** | **3** |
| **Answers could include but not limited to:**  Natural justice or procedural fairness:a set of procedures that are designed to ensure that:   * All persons accused of a wrong require notice of what is accused against them * Decisions made are fair i.e. there is procedural fairness * Right of individuals to have access to court proceedings so as to be able to argue their case before an unbiased judge and in the presence of the other party/ies to a dispute. * All evidence used in a dispute that is relevant must be known and presented to the parties in a dispute. * Right to appeal through the court hierarchy, ultimately to the HCA * Right to a jury where appropriate as guaranteed under s.80 of the constitution. | |

(c) Discuss **two** ways that executive power is controlled and checked in Australia.

(5 marks)

|  |  |
| --- | --- |
| **Description** | **Marks** |
| Discusses fully two ways that the executive is checked in Australia. Specific examples must be provided and explained. | 5 |
| Some discussion on two ways that the executive is checked in Australia. An example provided and explained. | 3-4 |
| Minimal discussion on one way that the executive is checked in Australia with no examples. | 1-2 |
| **Total** | **5** |
| **Answers could include but are not limited to:**   * The Senate, when not controlled by the government can use their combined voting power to reject or amend legislation. * The Senate committee system enables Senators to inquire into policy issues in depth and to scrutinize the way laws and policies are administered by Ministers and the Public Service as well as the Senate Estimates Committee. * Individual and Collective Ministerial Responsibility. * Censure and no-confidence motions in the HOR and the Senate. * The Auditor General and the ANAO * The AAT * Judiciary – eg the Malaysian Solution * Ultimately the executive is held to account by the electorate every three years. | |

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

# Source 1:

**Question 5 (20 marks)**

1. What is meant by the term ‘Shadow Minister’? (2 marks)

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| **Description** | **Marks** |
| Provides a full and accurate explanation of the term. | **2** |
| Outlines the general meaning of the term. | **1** |
| **Total** | **2** |
| **Answers could include but not limited to:**  Shadow ministers are members of the [opposition](https://peo.gov.au/understand-our-parliament/parliament-and-its-people/opposition/), chosen by the [Leader of the Opposition](https://peo.gov.au/understand-our-parliament/parliament-and-its-people/people-in-parliament/leader-of-the-opposition/). They have the important responsibility of scrutinising the work of the government and individual ministers. Each shadow minister concentrates on the work of a particular minister and government department. Shadow ministers also put forward and explain Opposition policies. Top-level shadow ministers form a shadow Cabinet which meets regularly to develop these policies. | |

(b) With reference to the **Source 1**, explain in your own words, **two** benefits of having a

large opposition. (4 marks)

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| --- | --- |
| **Description** | **Marks** |
| Identifies and explains two benefits of a large opposition in their own words with direct reference to the source for each benefit. | 4 |
| Outlines two benefits of a large opposition with reasonable reference to the source | 3 |
| Outlines two benefits about of a large opposition but with limited or no reference to the source. | 2 |
| Outlines one **or** correctly references one of the benefits in the source. | 1 |
| **Total** | 4 |
| **Answers could include but not limited to:**  Two of the following could be discussed:  ‘A strong opposition would have ‘a moral authority to challenge government forcefully.’  ‘a large opposition heightens the sense of two-sided competition for executive and legislative power.’  ‘An opposition’s ability to project itself as a government-in-waiting will be stronger the more credible the electoral threat it poses to the governing party.’  ‘it would pose an electoral threat to governments making it more likely that government will see the need to justify the actions it takes.’ | |
| **Note:** reasons must be drawn from the source. | |

1. Discuss the impact of the proportional voting system on the composition of the

Australian Senate. (6 marks)

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| --- | --- |
| **Description** | **Marks** |
| Clearly explains the proportional voting system including the recent changes to the ‘above the line voting’ process and fully and accurately discusses the impact on the composition of the present Senate. It would be expected that the accurate party breakdown in the Senate be included. | 5 – 6 |
| Gives some explanation of the proportional voting system including reference to the recent changes to the ‘above the line voting’ and with some discussion on the impact on the composition of the present Senate. | 3 – 4 |
| Limited explanation of the proportional voting system with no reference to the recent changes to the ‘above the line voting’ and with minimal discussion on the impact on the composition of the present Senate. | 1 – 2 |
| **Total** | 6 |
| **Answers could include but not limited to:**  The proportional voting system requires a candidate to achieve a quota of votes in their State in order to be elected as one of the 12 senators for the State. In a half-Senate election, the quota is 14.2% and 7.6% for a double dissolution election.  This system allows for minor parties and Independents to be elected to the Senate.  It has become apparent over recent elections that many voters deliberately vote differently for MHR and Senators in order to ensure that the government does not have a majority in both houses and the Senate does not become a ‘rubber stamp’ for government legislation (as it was after the 2004 election)  Consequently, Independents and minor parties have made up a considerable crossbench voting block with whom the government has had to negotiate.  As a result of the 2016 double dissolution election there were 19 crossbench Senators.  However when the full effect of the [Commonwealth Electoral Amendment Act 2016,](https://www.legislation.gov.au/Details/C2016A00025)which introduced optional preferential voting both above and below the line on the Senate ballot paper, became evident after the 2019 election there were only 14 cross-bench senators (9 Greens and 5 others). The governing coalition presently has 36 senators requiring them to get 3 crossbench votes in order to pass legislation which often means accepting alterations and compromises to the Bills before the Senate.  Examples could include the Individual tax cuts legislation supported by Jacqui Lambie and the Centre Alliance in July 2019 and Pauline Hanson refusing to support the company tax cuts in 2018 despite the Turnbull government proposing numerous amendments.  Electoral reform   * In 2016 the Senate voting system was changed to remove the use of group voting tickets; and to require voters to allocate six or more preferences above the line or twelve or more below the line on the ballot paper. The 2016 federal election—a double dissolution election—was the first to be conducted under the new system. | |

1. Briefly explain the notion of ‘competing mandates’ and indicate who has more

claim to have the mandate in the Australian Parliament.

(8 marks)

|  |  |
| --- | --- |
| **Description** | **Marks** |
| Fully and accurately explains the notion of competing mandates and discusses how parties in both the HOR and the Senate can claim a mandate. Specific reference to parties and their relative numbers in each house would be expected. | 7 – 8 |
| Clearly explains the notion of competing mandates and discusses how parties in both the HOR and the Senate can claim a mandate. Some reference to parties and their relative numbers in each house would be expected. | 5 – 6 |
| Brief explanation of the notion of mandates with some discussion on how parties in both the HOR and the Senate can claim a mandate. Some reference made to particular parties and their numbers in each house | 3 – 4 |
| Minimal understanding of the notion of mandates and with a few reference to the present parliament. | 1 – 2 |
| **Total** | 8 |
| **Answers could include reference to, but are not limited to:**  ‘*Approval given by the electorate to the party that has won the election to carry out its platform and policies, as outlined during the election campaign’*  Or *‘authorization to act in a particular way on a public issue given by the electorate to its representative’*.  Seat numbers will also be expected and a discussion on who has more of a claim.  Govt claims it has a mandate in the HOR to enact legislation and carry out necessary administration as a result of an election victory in 2019 with 77 seats, while the Opposition and the cross bench will claim a mandate from their supporters to oppose the govt and hold them to account. The APL has 68 MPs and the cross bench consists of 6 MPs.  Govt doesn’t have to worry too much about claims of a mandate in the HOR from the opposition, but it is in the Senate that problems arise.  At present the govt has to negotiate and often compromise with the crossbencher senators. The Coalition have 36 Senators, the ALP 26, Greens 9 and 5 other crossbenchers – 2 PHON, 1 Centre Alliance, and 2 Independents - Jacqui Lambie and Rex Patrick.  The crossbench in the Senate can claim that they were elected to keep the government accountable on a specific issue.  They are also elected on a set platform with clear legislative goals and they can claim that the Senate is a house of review.  You will need to give an example of recent legislation that has required changes to accommodate the wishes of the crossbench. The Individual and Company tax legislation would be a good example.   * Come to a conclusion as to whether or not a government or “will of the majority” mandate is stronger than a Senate or Opposition mandate. | |

**Source 2:**

**Question 6 20 marks**

1. Outline **two** constitutional rights of citizens expressly protected by the Australian constitution. (2 marks)

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| --- | --- |
| **Description** | **Marks** |
| Outlines two constitutional rights in the constitution | 2 |
| Outlines one constitutional right in the constitution | 1 |
| **Total** | **2** |
| **Answers could include but are not limited to:**  The requirement that a compulsory acquisition of property by the Commonwealth must be on just terms. S51(xxi)  The right to trial by jury for federal indictable offence. S80  The requirement that the Commonwealth must respect freedom of religion. S116  A resident of a state shall not be discriminated against on the basis of the state they come from. S.117  A right to vote is implied in s.7, s.24 and s.41 | |

1. With reference to Source 2, explain in your own words, **two** reasons/benefits as to why Australia should adopt a Statutory National Bill of Rights. (4 marks)

|  |  |
| --- | --- |
| **Description** | **Marks** |
| Identifies and explains two reasons/benefits in their own words with direct reference to the source for each point. | 4 |
| Outlines two reasons/benefits with reasonable reference to the source | 3 |
| Outlines two reasons/benefits but with limited or no reference to the source. | 2 |
| Outlines one **or** correctly references one reason/benefit in the source. | 1 |
| **Total** | **4** |
| **Answers could include, but are not limited to:**  Any two of the following could be used:  ‘It would work within the framework of democracy to promote the rights of all individuals, including those in the minority.’  ‘A statutory Bill of Rights could be [changed](https://www.humanrights.gov.au/sites/default/files/content/letstalkaboutrights/downloads/HRA_questions.pdf) by the Commonwealth Parliament, allowing it to more easily evolve with society and remain relevant.’  ‘It would allow the protections that are enumerated to adapt and more consistently reflect the view of contemporary society.’  ‘Parliamentary sovereignty would remain intact’ | |
| **Note:** reasons must be drawn from the source. | |

1. Discuss **two** separate ways human rights are protected in one country (other than Australia) that you have studied. (6 marks)

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| --- | --- |
| **Description** | **Marks** |
| Fully analyses two ways that human rights are protected in one country other than Australia. Specific reference must be made to how and where the right is protected – eg constitution, statute, common law etc | 5 – 6 |
| Some analysis of two ways that human rights are protected in one country other than Australia. Reference must be made to how and where the right is protected – eg constitution, statute etc | 3 – 4 |
| Limited discussion of two ways that human rights are protected in one country other than Australia. | 1 – 2 |
| **Total** | **6** |
| The question requires **two ways** that human rights are protected, **not** just two rights that are protected.  **Answers could include, but are not limited to:**  If you have studied the USA your answers could cover some of the following  **The Constitution.**   * The first 10 amendments of the US constitution which include the freedom of religion (1st Amendment), freedom of speech (5th Amendment) rights of criminal suspects covered in 8th Amendment. * Other amendments could include: the equal protection clause of the 14th Amendment and the 19th Amendment which effectively gave women the right to vote.   **Legislation**   * eg. US has adopted anti-discrimination legislation for people with disabilities, the *Americans with Disabilities Act* was passed in 1990. * *Civil Rights Act* (1964) is comprehensive legislation prohibiting discrimination on the basis of race and national origin in the workplace.   **Supreme Court decisions.**   * Privacy laws including *Wade v Roe (*1973) overturning laws against abortion. * *Miranda v Arizona* (1966) requires police departments to inform arrested person of their rights. (The Miranda warning)   **Justice system**   * The 4th 5th 6th and 8th amendments as well as the 14th amendment ensures criminal defendants are given significant procedural rights in the courts. The 14th amendment added these constitutional protections to the state and local levels of law enforcement. * US system also possess a system of judicial review. | |

1. Briefly explain how well Australia’s commitment to international covenants, protocols and treaties protects human rights in Australia. (8 marks)

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| --- | --- |
| **Description** | **Marks** |
| A clear explanation of what international, covenants, protocols and treaties are, and how Australian commitment to the international agreement is signed, ratified and legislated domestically. At least two examples are crucial and must clearly indicate how they have developed from an international agreement into domestic legislation. Fairly comprehensive discussion on how well Australia’s international commitment protects human rights. | 7 – 8 |
| Some explanation of what international, covenants, protocols and treaties are, and how Australian commitment to the international agreement is signed, ratified and legislated domestically. At least one examples used that outline how they have developed from an international agreement into domestic legislation. Some discussion on how well Australia’s international commitment protects human rights. | 5 – 6 |
| Brief explanation of what international, covenants, protocols and treaties are, and how Australian has committed to legislating domestically. An examples used that indicates how it evolved from an international agreement into domestic legislation. Very little discussion on how well Australia’s international commitment protects human rights. | 3 – 4 |
| Minimal explanation of what international, covenants, protocols and treaties are, and brief outline as to Australia’s commitment to legislate domestically. No examples of international obligations or discussion. | 1 – 2 |
| **Total** | 8 |
| **Answers could include, but are not limited to:**  Section 61 of the constitution allows Australia to enter into international treaties, protocols and covenants as an exercise of Executive power. Australia may sign an agreement in principal, but it is not legally bound by the treaty until it is ratified and then tabled in the Houses of Parliament which implements the agreement as an Act of Parliament.  Australia has signed various international treaties and conventions regarding human rights and have agreed to be bound by the following treaties:   * The International Covenant on Civil and Political Rights (ICCPRP * the [International Covenant on Economic, Social and Cultural Rights](http://www.austlii.edu.au/au/other/dfat/treaties/1976/5.html) (ICESCR) * the [International Convention on the Elimination of All Forms of Racial Discrimination](http://www.austlii.edu.au/au/other/dfat/treaties/1975/40.html) (CERD) * the [Convention on the Elimination of All Forms of Discrimination against Women](http://www.austlii.edu.au/au/other/dfat/treaties/1983/9.html) (CEDAW) * the [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](http://www.austlii.edu.au/au/other/dfat/treaties/1989/21.html) (CAT) * the [Convention on the Rights of the Child](http://www.austlii.edu.au/au/other/dfat/treaties/1991/4.html) (CRC) * the [Convention on the Rights of Persons with Disabilities](http://www.austlii.edu.au/au/other/dfat/treaties/2008/12.html) (CRPD) * Discussion should revolve around the fact that although Australia is a signatory to these, the rights given in the treaties are only applicable in Australia if domestic legislation is established. * For example, the *Racial Discrimination Act* 1975 (Cth), implements the Convention on the Elimination of All Forms of Racial Discrimination, and the *Sex Discrimination Act* 1984 (Cth), provides some of the rights outlined in the Convention on the Elimination of All Forms of Discrimination Against Women.   However, another way the rights provided in a treaty can be seen in Australian law is where provisions of a treaty are already a part of domestic legislation (for example, the Convention of the Rights of People of Disabilities can be seen as incorporated into domestic law through similar provisions in the *Disability Discrimination Act* 1992 (Cth)).   * Criticism of the Australian govts commitment to its international obligations could mention   Australia is a signatory to the [Refugee Convention](https://en.wikipedia.org/wiki/Convention_Relating_to_the_Status_of_Refugees) and from the late 1990s unauthorised arrivals, popularly referred to as "[boat people](https://en.wikipedia.org/wiki/Boat_people)", were transferred to one of the [Australian immigration detention facilities](https://en.wikipedia.org/wiki/Australian_immigration_detention_facilities)  to [Manus Island](https://en.wikipedia.org/wiki/Manus_Island) or [Nauru](https://en.wikipedia.org/wiki/Nauru) as part of the [Pacific Solution](https://en.wikipedia.org/wiki/Pacific_Solution). The  [Australian Human Rights Commission](https://en.wikipedia.org/wiki/Australian_Human_Rights_Commission) published a report, which found that many basic rights outlined in the [Convention on the Rights of the Child](https://en.wikipedia.org/wiki/Convention_on_the_Rights_of_the_Child) were denied to children living in these immigration detention centres. | |

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

Marking guide to essay answers

Questions 7 -10

|  |  |  |
| --- | --- | --- |
| **Description** | **Marks** | |
| **Explains relevant terms and outlines parameters of discussion** | | |
| Explains all relevant terms and outlines parameters of discussion | 5 | |
| Explains some 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 | |
| **Subtotal** | **5** | |
| **Discussion of relevant issues including pertinent examples** | | |
| 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 |
| **Subtotal** | | **10** |
| **Evaluation / assessment / analysis** | | |
| Evaluates/assesses/analyses the claim using specific evidence which demonstrates a comprehensive understanding of the topic | 7 | |
| Evaluates/assesses/analyses the claim using appropriate evidence which demonstrates an understanding of the topic | 6 | |
| Evaluates/assesses/analyses the claim using some evidence which demonstrates some understanding of the topic | 5 | |
| Constructs a relevant but weak evaluation/assessment/analysis | 4 | |
| Constructs a weak evaluation/assessment/analysis | 3 | |
| Limited evaluation/assessment/analysis | 2 | |
| No relevant evaluation/assessment/analysis. A statement only | 1 | |
| **Subtotal** | **7** | |
| **Conclusion** | | |
| Draws together the argument linking evidence | 3 | |
| Summarises the argument | 2 | |
| Makes general/superficial statements | 1 | |
| **Subtotal** | **3** | |
| **Total** | **25** | |

**Question 7 (25 marks)**

Assess the extent to which the democratic operation of the Australian Parliament is hindered by political parties and executive dominance.

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| **Relevant terms and parameters of discussion:**   * Demonstrate an understanding of what political parties are and what their role is within parliament. * Distinguishing between major and minor parties, * An outline of the role of the executive within the parliament * A discussion of tactics available to both the executive (government) and parties to call upon in the course of daily parliamentary procedures * Demonstrate how the role of Parliament as a legislator specifically can be hampered by such events. * Reference made to present-day parties in the parliament. * ‘political parties’ does not just refer to the Opposition parties. * It is not necessarily a ‘decline of parliament thesis’ essay. |
| **Issues including pertinent examples could include:**   * Outline the key democratic functions of the parliament – representative, legislative, responsibility and debate. * Several key functions of the Commonwealth Parliament which could include: to legislate for the peace, order and good government of the Commonwealth (S51, S52); to authorise expenditure (S53); to represent the people (House of Representatives) and the States (the Senate); to make and unmake governments/ check the executive; to be a forum for national debate. * Very specific discussion on parties such as the Liberal Party and the ALP, the Nationals, One Nation and the Greens and the composition of the current parliament HOR * HOR: Coalition 77 seats, ALP 68, minor parties and independents 6 * Senate: Coalition 36, ALP 26, Minor parties and independents 14   The role of parliament as the key legislative body in our system, its capacity to represent the views and values of the people and the differing but connected bicameral roles of the House and the Senate.   * A knowledge of the very slim majority held by the current executive and the impact of both that and a need to negotiate with a crossbench in the Senate. * Relevant and accurate examples from recent Parliaments are incorporated in the discussion which could include PM Howard and the Parliament especially 2005-2007 (control of both Houses of Parliament); Gillard 2010-13 (minority government). * Behind the scenes deals done on legislation by some minor parties and Independents with the government in the Senate – eg Jacqui Lambie making a deal with the Federal Government to waive Tasmania's $150 million housing debt during the midst of the Federal Government's tax negotiations. * Specific examples of how political parties and the executive have hindered or had a negative impact on the democratic role of the parliament in recent times. * Executive dominance over the party to ensure there is party discipline and solidarity thus preventing the representative function as MPs (particularly in the ALP with their signed ‘pledge’) are gagged from deviating away from the party line and reflecting the views of their electorate. This factors would then be part of the evaluation regarding the Executive as a dominant force and whether or not the functions of parliament are compromised. * Executive dominance over parliament * Government’s use of parliamentary procedures to limit debate and scrutiny – guillotines and gagging Second Reading Debate and flood-gating Bills. The Executive using its numbers to vote to adjourn debate on Opposition Private Members Bill – the Marriage Amendment (Marriage Equality) Bill 2015. * Executive control of House agenda – 2015 Abbott rushed through an emergency amendments made to close loopholes in the Migration Act in 2 days. * Executive through the Leader of the House (Christian Porter) controls the tabling of Bills and thus PMB are seldom tabled. * Governing party’s ability to defeat censure and no-confidence motions in the HOR   The opposition parties use various tactic available to hinder the government’s political  agenda eg:   * The hijacking of Question Time by the opposition party focusing on political rather than legislative questioning. * ALP, Greens and crossbench combining to defeat government bills and amendments in the Senate eg. [**Building and Construction Industry (Improving Productivity) Bill 2013**](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr5129%22)One of three bills listed in the [proclamation dissolving both Houses of Parliament](https://www.gg.gov.au/documents-relating-calling-double-dissolution-election-2-july-2016) on 9 May 2016 as having met the requirements of section 57 of the Constitution.   Representative function is compromised by ALP, Greens and PHON by refusing to allow MPs to represent the views of their electorate by enforcing strict adherence to the party line.  A discussion could include whether the Opposition, by hindering the government’s agenda in parliament, is blocking the mandate the electorate gave to the governing party during the election. |
| **Assess the extent of relevance:**  As the question asked, ‘assess the extent’, it was important for students to take a clear line of argument and attempt to pursue this throughout the essay.  Executive dominance and political parties needs to be addressed with equal weight in this question. |

**Question 8 (25 marks)**

Assess the extent to which the legislative, executive and judicial powers are more obviously separated in Australia than in one non-Westminster system that you have studied.

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| **Relevant terms and parameters of discussion**  An explanation of the principle of the separation of powers.  Discussion must include the powers of the Executive, Legislature and Judiciary in Australia, and the non-Westminster system that has been studied.  Examples of courts exercising their independence from the Legislature and the Executive  Examples where it can be argued that there is interference in their role by the other arms of government  An assessment as to whether the powers are more obviously separated in Australia. |
| **Issues including pertinent examples could include:**  Separation of powers: **it is the** division of the [legislative](https://www.britannica.com/topic/legislature), [executive](https://www.britannica.com/topic/executive-government), and [judicial](https://www.britannica.com/topic/judiciary) functions of [government](https://www.britannica.com/topic/government) among separate and independent bodies. Such a separation, it has been argued, limits the possibility of arbitrary excesses by government, since the sanction of all three branches is required for the making, executing, and administering of laws.  The [Australian Constitution](https://peo.gov.au/understand-our-parliament/how-parliament-works/the-australian-constitution/australian-constitution/) is the set of rules by which Australia is run. The first 3 chapters of the Constitution define 3 mostly separate groups—the Parliament, the Executive and the Judiciary—and the roles they play in the governing of Australia. The power to make and manage Australian law is divided between these 3 groups. This division is based on the principle of the 'separation of powers'.  Parliament makes laws and amends the law  Executive puts the laws into action  Judiciary upholds the law.   |  | | --- | |  |   Little distinction exists between the Australian legislature and executive   * as members of the executive are actually members of the legislature. * The Governor-General is responsible for appointing the executive and the judges of the High Court, yet he is part of the parliament. * Section 64 of the constitution provides that members of the executive who are federal ministers must be part of the parliament * this establishes a clear connection between the legislature and the executive, hence eliminating the total separation of the executive and legislature as seen in some other systems. * It could be argued that the power of the legislature has declined relative to the Executive because of the influence of strong party discipline, particularly in the lower houses. * On the other hand, one could argue that the upper house, the Senate, restrains the power of the Executive through its ability to query, amend and block government legislation. * Because the Executive sits in Parliament and dominates it to a large extent, the debate about the separation of legislative and executive power is relatively muted in Australia.   The separation between the Judiciary and the Executive/Legislature is more pronounced.  The federal judiciary has strictly protected its independence and it is one of the most vital safeguards of a democracy and is underpinned by the rule of law.   * The rule of law is the system where everyone is equal under the law and all persons are subject to the rule of law. * Everyone is entitled to have an action heard by an independent and impartial court or tribunal. * A judiciary which exists merely to do a government's bidding or to implement government policy provides no guarantee of liberty. * Security of tenure is an important part of judicial independence so that governments cannot influence the decisions of a judge. A judge cannot be removed from office except by the Governor-General (or State Governor) following an address from both houses of parliament. Judges are appointed by the Governor on the recommendation of cabinet. * The Chief Justice is closely consulted during the process.   Evidence of the independence of the judiciary whereby the judiciary overruled the Executive and the Legislature could include some landmark decisions:  Eg.   * R v Kirby; Ex parte Boilermakers' Society of Australia, (1956) known as the Boilermakers' Case,. The High Court held that the [judicial power of the Commonwealth](https://en.wikipedia.org/wiki/Australian_Constitution#The_Judicature) could not be vested in a tribunal that also exercised non-judicial functions. * *Kable v Director of Public Prosecution for NSW (1994)* The High Court held that the law was unconstitutional, and in the process construed a limitation on the powers of state courts vested with federal jurisdiction under Chapter III of the Constitution. * 1950 *Act to provide for the Dissolution of the Australian Communist Party* and of other Communist Organizations and to disqualify Communists from holding certain Offices, and to have their property forfeited without compensation was declared unconstitutional by the High Court.   However, there are occurrences that demonstrate an alleged infringement of the separation of powers doctrine. One involves the introduction of Queensland’s anti-gang legislation, which imposes mandatory sentencing on motorcycle club members and restricts their ability to socialise in public.  It was argued that this law eroded the separation of powers by allowing political interference in the dispensation of criminal justice.  In particular, its provision for mandatory sentencing was criticised as an [incursion on judicial discretion](http://www.theaustralian.com.au/business/legal-affairs/campbell-newman-says-judges-dont-understand-that-queenslanders-have-had-enough/story-e6frg97x-1226746320906) to impose prison sentences based on the individual circumstances of each case, a task that is generally reserved for the courts.  This perceived usurpation of judicial power formed the basis for the  [High Court challenge](http://www.abc.net.au/news/2013-12-04/motorcycle-group-continues-high-court-challenge-to-qld-bikie-law/5133646) to the anti-gang laws. the High court ruling in South Australia v Totani (2010) struck out the South Australian ruling which had aimed to prevent gang members from associating with each other.  A similar analysis of the Executive, Legislature and Judiciary in one other non-Westminster system of government that you have studied would need to discuss the extent to which these powers are separated. |
| **Discussion of extent:**  Rather than merely outline what the separation of powers is, it is necessary to assess the extent of the separation.  Clearly in Australia there is no separation between the Executive and the Legislature, but there is between these two bodies and the judiciary.  The extent in one other country would need to analyse the roles of the arms of government, their composition and the powers each have. |

**Question 9 (25 marks)**

The office of the Governor-General is highly controversial in Australia in terms of their powers, appointment and accountability.

Evaluate this claim making reference to specific Governors-General of Australia.

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| **Relevant terms and parameters of discussion**   * Powers of the Governor-General to be explained * Method of their appointment * Discussion on whether they can be held accountable * integrates relevant sections of the constitution and refer to particular Governors-General in each aspect of the discussion * It must **not** just be a discussion on the 1975 crises |
| **Issues including pertinent examples could include:**  Outlines and examines the constitutional provisions re appointment and removal of the Governor-General.   * According to Section 2 of the Australian Constitution, the Governor-General is appointed by the Queen to be her representative in Australia. They are appointed on the recommendation of the Prime Minister, usually for a term of 5 years. * Most appointments are non-controversial. Some have been – Sir Issac Issacs in 1931, Archbishop Peter Hollingworth 2001 * Dismissal is controversial so some discussion as to how the PM can dismiss the Governor-General. Refer to 1975 and Kerr’s suggestion that the dismissal was ‘a race to the palace’. * Hollingworth’s resignation 2003   Discussion as to whether it is controversial  Explains the office of Governor-General within the executive in Australia (FEC)  Outline the powers of the Governor-General  Explain the reserve and express powers  Some of the following could be mentioned, specifically Section 64   * [**Section 2**](https://australianpolitics.com/text/2.shtml): Queen’s Representative. * [**Section 5**](https://australianpolitics.com/text/5.shtml): Appoints sitting times for Parliament, as well as being responsible for its prorogation and dissolution. * [**Section 28**](https://australianpolitics.com/text/28.shtml): May dissolve the House of Representatives. * [**Section 32**](https://australianpolitics.com/text/32.shtml): With the Executive Council, may issue writs for House of Representatives elections. * [**Section 57**](https://australianpolitics.com/text/57.shtml): May dissolve both houses of parliament in the event of a deadlock between them. * [**Section 58**](https://australianpolitics.com/text/58.shtml): May assent, or withhold assent, to laws passed by Parliament, or reserve laws for the Queen’s assent, or return laws to the parliament recommending amendments. * [**Section 61**](https://australianpolitics.com/text/61.shtml): Exercises the executive power of the Commonwealth. * [**Section 64**](https://australianpolitics.com/text/64.shtml): May appoint officers (ministers) to departments of State, such officers holding office during his pleasure. * [**Section 68**](https://australianpolitics.com/text/68.shtml): Command in chief of the naval and military forces of the Commonwealth. * [**Section 72**](https://australianpolitics.com/text/72.shtml): With the Executive Council, appoints Justices of the [**High Court**](https://australianpolitics.com/constitution-aus/high-court), and also receives their resignations.   Most of these powers are exercised by the Governor-General on the advice of his ministers, through the Prime Minister and carrying out these powers has been **non-controversial**  Those reserve powers relating to the dissolution of parliament and the appointment of ministers are the subject of **controversy**, particularly since the actions of the Governor-General Kerr in [**dismissing Prime Minister Whitlam in 1975**](http://whitlamdismissal.com/)**.**  Discuss constitutional conventions and whether they are controversial  Examines the mechanisms/ processes/or lack of that hold the Governor- General accountable and are they controversial.  • Could use 1975 as a bases for discussion, but detailed explanation of the 1975 Dismissal is **not** required, unless they brought the discussion back to the key elements of the question, i.e. appointment and removal, powers, accountability of the office of Governor-General being controversial or not.  Hollingworth Affair: controversial in terms of appointment and accountability.  Peter Hollingworth resigned his positions Governor-General of Australia in May 2003 more than three years short of the term for which he had been appointed. His resignation came after nearly eighteen months of controversy over how he had handled cases of sexual abuse of children while in his previous job  Principal lesson in the Hollingworth affair is that the Governor-General cannot survive in office without the confidence of the Australian people. The office is regarded as socially important and is increasingly subject to media scrutiny.  The Governor-General’s tenure lies in the hands of the Prime Minister. Public opposition to the Governor-General’s continuation in office will eventually rebound on the Prime Minister, who will ultimately be forced to urge the Governor-General to resign.  Accountability of the Office of the Governor-General - Annual report tabled in parliament,   * Currently the annual report is simply laid before each House of Parliament and members and senators are prohibited from discussing or commenting on it. * Standing order 74 prevents scrutiny of Governor-General by parliament – “Any criticism of the Queen or her representative, the Governor-General, is banned from federal parliament.” This restriction was adapted from similar convention governing Britain’s House of Commons” * A proposed amendment to the standing order by Anthony Albanese in 2003 was defeated in the HOR. thus limiting accountability   Quentin Bryce (25th Governor-General) courted controversy   * Appointed by Kevin Rudd in 2008 * Mother-in-law of Bill Shorten ALP leader (2013-2019) * Made public comments on asylum seekers, climate change and gay marriage - 2013 * Opposition accusations of supporting Labor stance on these controversial issues * Expectation that Governor-General remain politically neutral and above politics. |
| **Evaluation:**  Students are required to present an evaluation as to whether the office of Governor-General is highly controversial in terms of their powers, appointment and accountability. Evidence would suggest that some appointments are controversial, most are not. Reserve powers, if used, can be controversial and accountability is debatable. |

**Question 10 (25 marks)**

Discuss the role of the courts in the Australian legal system and evaluate the extent to which the judiciary is held to account.

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| **Relevant terms and parameters of discussion:**  Knowledge of the role of the court system evidenced by the correct use of terms such as original jurisdiction, appellate jurisdiction, rule of law, procedural fairness, censure, separation of powers, doctrine of precedent etc.  Accountable: processes available to ensure that members of the judiciary and court proceedings can be subject to scrutiny.  Discussion should revolve around the 4 syllabus dot points:   * through the appeals process * through parliamentary scrutiny and legislation * through transparent processes and public confidence * through the censure and removal of judges   With an evaluation of the extent of each of these points in holding the courts to account. |
| **Issues including pertinent examples could include:**  **The role and effectiveness of the appeals process**  An appeal is a review by a higher court of a decision made by a lower court in the court hierarchy   * + Can be sought ‘on the basis of claimed error of fact or through claims that the judge had misdirected the jury when summing up the case, or against the sentence handed down. Defence can appeal to the sentence and the verdict. Prosecution can only appeal the sentence   + Available to both defence and prosecution [except under the principle of double jeopardy, in which the prosecution cannot appeal against a verdict on a matter of fact]   + The High Court is the highest court of appeal: must be persuaded that there are significant legal or justice issues in the case for it to agree to hear an appeal * If an appeal is successful the superior court may quash the original conviction or send the case back to the lower court for a re-trial.   Eg:   * George Pell Dec 2018 - convicted in Victorian County Court (6-year sentence)   Aug 2019 - appealed to Vic Supreme Court decision upheld (2:1)  Sep 2019 - sought leave to appeal to HC  Apr 2020 – HC overturned the decision.  **Through parliamentary scrutiny and legislation**  While there clearly is a separation of powers in Australia as regards the Legislature and the Judiciary, Statute law is superior to common law.   * Any judgements made by courts can be limited by parliament, as it can legislate to reinforce, modify or negate the case law set by courts   + **Reinforce** = Mabo decision(1992) -> Native Title Act 1993   + **Modify** = Wik decision -> Native Title (Amendment) Act 1997   + **Negate** = Trigwell case -> Parl overruled precedent by introducing the Wrongs (Animals Straying on the Highway) Act   Mandatory sentencing – courts held to account by parliament for not sentencing criminals according to community expectations.  The superiority of parliament together with the principles of the rule of law require judges to apply the statute even if it conflicts with already established precedents. Thus, elected parliaments maintain oversight over unelected judges.  **The extent that judicial processes are transparent including judgements**   * **Judicial Independence:** the independence of the judiciary ensures thatjudges are not subject to external pressures when exercising their adjudicatory functions.   + Judges should have security of tenure.   + Should not be subject to criticism in parliamentary debate [except in a motion for dismissal]   + Should be immune from civil and criminal liability in respect of their judicial functions   Natural Justice – trial process and public confidence  Due process: impartial adjudicator  Each side presenting their case  Evidence based decisions  Open and transparent hearings.  **Other accountability measures:**  **Chief Justice – monitors performance of justices**  **Judicial Ethics** – Council of Chief Justices set about drafting a Judicial Code of Conduct in 1998 to enhance public confidence and to provide a uniform set of guidelines for all court It was published as the **Guide to Judicial Conduct in 2002** paying particular attention to:   * Use of judicial office for private advantage * Private financial affairs * Proper conduct of court proceedings * Sexual conduct * Paid work after retiring on a judicial pension   **Parliamentary and Judicial commissions**  2012 Commonwealth Parliament enacted the Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Act to enable the Parliament to establish a formal parliamentary commission to investigate specific allegations of misbehaviour or incapacity amongst federal judges.  **State Judicial Commissions**   * In 1975 Victoria established a **Judicial Commission** to investigate complaints about the conduct of judicial officers and to guard against any erosion of public confidence in the courts to ensure a high standard of conduct that the public expects. * In 1986 NSW established a **Judicial Commission** with the purpose of ensuring that there is a proper independent process for dealing with misconduct claims against judicial officers and that this process is transparent. NSW further developed the judicial commission with the Judicial Commissioners Act 1994 * In Queensland Parliament passed the Official Misconduct Division of the State Criminal Justice Division to investigate complaints against judicial officers.   **Appointment, censure and removal of judges with examples**  *Federal Judges*   * Federal judges can only be removed “by the Governor-General on address from both Houses of Parliament in the same session praying for such removal on the grounds of ‘proved misbehaviour or incapacity’” (s72) * With respect to federal judges this power has only been invoked once, in 1985 in relation to Justice Lionel Murphy, who was convicted of attempting to pervert the course of justice [although this conviction was subsequently quashed on appeal as a result of misdirection by the trial judge in1986] He was still impeached by the Commonwealth parliament, but once it was known he had a terminal disease the case was dropped. Murphy died in Oct 1986   *State Judges*   * Removed only on an address by both Houses of Parliament, however it can be on any grounds [unlike federal judges] * This power has only been invoked in June 1989 against Justice Angelo Vasta of the QLD Supreme Court; his removal was prompted by allegations raised in the Fitzgerald Inquiry into police corruption – while the Judicial Commission concluded that there was no reason to believe he was guilty of misconduct in his duties as a judge, the Legislative Assembly voted to dismiss him which:   + Raised questions about the separation of powers at state level   + Can be compared to the attempted removal of Justice Vince Bruce in NSW in 1998   Example of judges censured or dismissed could include:  In 2002, **Dianne Fingleton** Queensland Chief Magistrate found guilty and imprisoned, but released after an appeal.  In August 2006, **Justice Marcus Einfeld** contested an A$77 speeding ticket. He was arrested, charged and convicted for knowingly making a false statement under oath.  **NSW Justice, Vince Bruce** had a number of complaints made against him in respect of the delays in the delivery of his judgments .  Western Australian Magistrate **Deborah Bennett-Borlase** was sacked after it was discovered that she had worked 3 years past the mandatory retirement age of 65 because she had given an incorrect birthdate.  Controversial WA Magistrate, **Barbara Lane,** breached procedural fairness  NSW magistrate, **Brian Maloney,** was accused of behaving “well below the standard of a judicial officer’.  NSW magistrate **Jennifer Betts** also faced the NSW Parliament in 2011 after the Judicial Commission recommended her dismissal on the grounds that she had been rude and offensive in court.  **Dominque Burns,** a magistrate in NSW resigned in 2017. The NSW Judicial Commission conducted a hearing into allegations that she had misused her powers to detain people, encouraged prosecutors to charge a defendant with additional charges and denied procedural fairness to others.  **Judge Garry Neilson** who made controversial comments in 2015 about incest and paedophilia. The NSW Judicial Commission found the remarks brought the NSW courts into disrepute and recommended that he no longer sit on cases involving sexual offences. |
| **Evaluation:**  In evaluation each of the 4 syllabus points would need to be covered.  The internal appeals process can be seen to hold the courts and the judicial office to account to a large extent.  The doctrine of precedents, open courts and the strict procedures within the courts ensure public confidence and to a large extent the courts are held to account via these factors.  Parliamentary scrutiny does to some extent hold them to account.  And censure, while appearing to hold the judicial officers to account has been criticised for a lack of a federal judicial watchdog to investigate complaints against judges. So, it can be argued that the mechanisms of holding judges to account is limited to some extent. |