

Joseph Banks Secondary College
Year 12 ATAR Politics and Law

TASK 6
7.5% OF FINAL MARK

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STRUCTURE OF THIS PAPER

Format	Number of questions available	Number of questions to be answered	Marks available
Short Answer	4	3	28/30

Write answers to **all** parts of **each** question in the spaces provided.
Refer to examples to illustrate wherever possible.

Time allowed for this test: 60 minutes

Task Outline: Under test conditions, answer all the following questions.

Question 1

10

(a) List two advantages of a court hierarchy in keeping the judiciary accountable. [2 marks]

overturning
decisions

One advantage is that lower court decisions can be reviewed through the process of appeals. This provides the opportunity for improvement. Superior courts will review ratio decidendi. Another advantage is that superior courts can create precedent and common law. Lower courts should abide by this, creating consistency. Section 71 establishes the High Court as the "federal supreme court".

(b) Explain, with reference to an example, how a judge might be removed. [3 marks]

Judges can be removed on the grounds of "proven misbehaviour and incapacity", established in Section 72. If a judge is accused of misbehaviour/incapacity, it is thoroughly investigated and must be proven. Both Houses of Parliament must convene in a joint sitting to approve the judge's removal. They are then removed by the Governor General "in council" - on the advice of the Prime Minister + Attorney General. No High Court judge has ever been removed. Supreme court judge Angelo Vasta was removed in 1989 for breaching the corporations law with a company he was involved with.

good answer.

(c) Evaluate the extent to which appeals hold the Australian judiciary accountable. [5 marks]

Appeals hold the judiciary accountable to a high extent. They provide the opportunity for a direct check on the quality of lower court decision, as ~~lower judges~~ must provide a "ratio decidendi", a written reason for their decision. They also allow for unhappy parties to contest a court decision. This holds the courts accountable as they can

reinforce or overturn common law or precedent. An example of a successful appeal is Williams No. 2 (2014) HCA. The lower court decision was successfully overturned regarding the constitutionality of chaplaincy programs. *Statute?*

However, the appeals process is very slow and expensive. There is a huge backlog of cases, and filing a notice for appeal can cost up to \$3220. Mallard (1994) was imprisoned wrongfully for murder for 12 years before his appeal was heard and his sentence was overturned. } *yes!*

Overall, despite problems with the court system, the appeals process keeps the judiciary accountable to a high extent, and can be complementary to accountability measures such as removal of judges + parliamentary scrutiny.

Question 2

8/10

(a) Define the term 'judicial review'. [2 marks]

Judicial review is the ability ~~not~~ the courts to keep the legislature accountable, through reviewing cases for constitutionality. A law must be grounded in a constitutional head of power. If it is not, the judiciary has the power to overturn and invalidate this legislation. This jurisdiction is created in Section 73 (appellate) and Sections 75 + 76 (original).

(b) Distinguish between the roles of the High Court of Australia and the Administrative Appeals Tribunal in providing judicial review. [3 marks]

Some legislation will ~~allow a minister with an appropriate portfolio to create by-laws or delegated legislation.~~ allow a minister with an appropriate portfolio to create by-laws or delegated legislation. The High Court reviews legislation, while the Administrative Appeals Tribunal ^(AAT) reviews delegated legislation. This original jurisdiction is provided in Section 75 and additional original jurisdiction is provided in Section 76. This ensures that Parliament is accountable for legislation and ministers are accountable for delegated legislation.

examples?

(c) Explain, using at least one example, how the High Court provides a check and balance on the legislative branch of government in Australia. [5 marks]

The High Court provides checks and balances through hearing constitutional cases. They can deem a case constitutional or unconstitutional, creating precedent. An example of this is Williams No. 1 (2012) HCA. Williams challenged the constitutionality of national chaplaincy programs for private schools, on the

grounds that the legislation that allowed for this was not grounded in a constitutional head of power. The High Court agreed, and invalidated the legislation. The Parliament then rushed legislation to create a loophole. This legislation was challenged in Williams No. 2 (Gully) HCA as the funds were not directly benefiting the children and this legislation was also overturned.

The High Court effectively creates checks + balances on the legislature through hearing constitutional cases.

repetitive.

Question 3

10/10

(a) Outline two internal processes and/ or procedures of Parliament that promote its accountability. [2 marks]

One process is parliamentary committees. Some of these include the House Committee for Privileges and Interests, the Senate Committee for Senators' ^{Members'} Privileges, and the Joint Human Rights Committee. These all hold members accountable for behaviour. Another measure is censure motions, which temporarily remove members for misconduct. For example, the censure of Fraser Anning for "pathetic and shameful" comments following the Christchurch attacks in 2019.

(b) Explain how 'parliamentary privilege' might undermine the accountability of parliamentarians. [3 marks]

Parliamentary privilege is an enhanced form of free speech, established in Section 49, to assist in the debate function. However, it can undermine parliamentary accountability as they can say things in Parliament freely that they could be arrested for saying outside of the chamber. For example, Peter Dutton received no consequence for accusing Roman Quaedvlieg of "grooming" a girl 30 years younger in 2018.

(c) Evaluate the effectiveness of elections in keeping Parliament accountable. [5 marks]

Elections are the ultimate accountability measure for keeping Parliament accountable. If a member of Parliament falls out of popularity in their electorate for suspected or actual misconduct, they are very likely to lose their seat. For example, Sophie Mirabella lost her seat in the 2013 election for being accused of prioritising her shadow minister role over her

electorate. Another example is Lisa Singh in 2016 winning a seat after running a below the line voting campaign and being well-liked within her electorate.

However, malapportionment and long terms impede the effectiveness of elections, especially in the Senate. Tasmanian voters have 12.8% more voting power than NSW voters, which means that it may be a lot harder for NSW to remove a disliked parliamentarian. Furthermore, six year terms of Senators may cause voters to forget instances of misconduct by the next election.

Overall, Australia's democratic system causes elections to be a very effective accountability measure of the Parliament. Parliamentarians are directly accountable to their people and rely on their votes to be re-elected.

as Section 7 and 24 ~~establish~~ establish that members must be "directly chosen" by the demos (people).

~~Question 4~~

~~(a)~~ Explain what is meant by 'public confidence in the courts'.

[2 marks]

~~(a)~~ Outline three aspects of Section 72 of the Commonwealth Constitution.

[3 marks]

~~(b)~~ Evaluate how parliamentary scrutiny and legislation can act as an accountability measure of the Judiciary.

[5 marks]
