



POLITICS AND LAW

ATAR course examination 2019

Marking key

Marking keys are an explicit statement about what the examining panel expect of candidates when they respond to particular examination items. They help ensure a consistent interpretation of the criteria that guide the awarding of marks.

Section One: Short answer

30% (30 Marks)

Question 1

(10 marks)

- (a) Outline **one** source of the powers of the Governor-General in the Commonwealth Constitution. (2 marks)

Description	Marks
Outlines one source of the Governor-General's power	2
Makes a general statement about the Governor-General's power	1
Total	2
Answers could include but are not limited to: <ul style="list-style-type: none"> the Commonwealth Constitution s 61 executive power rests with the Queen this executive power is 'exercisable by the Governor-General, as her representative'. 	

- (b) Explain the relationship between the Governor-General and the Federal Executive Council (FEC) as outlined in Section 62 of the Commonwealth Constitution. (3 marks)

Description	Marks
Explains the relationship between the Governor-General and the Federal Executive Council Makes reference to the content of Section 62 of the Constitution	3
Outlines the relationship between the Governor-General and the Federal Executive Council Makes limited reference to the content of Section 62 of the Constitution	2
Makes a general statement about the relationship between the Governor-General and the Federal Executive Council	1
Total	3
Answers could include but are not limited to: <ul style="list-style-type: none"> the Federal Executive Council is a body established by the Constitution of Australia to advise the Governor-General the Governor-General is President of the Federal Executive Council members of the Federal Executive Council shall be chosen and summoned by the Governor-General and sworn as Executive Councillors and shall hold office during his/her pleasure the Governor-General is bound by convention to follow the advice of the Executive Council on almost all occasions, giving it de facto executive power. This power is used to legally enact the decisions of the Cabinet, which has no recognised constitutional authority. 	

- (c) Discuss **one** argument for and **one** argument against the power of the Governor-General to dismiss a Minister, including a Prime Minister. (5 marks)

Description	Marks
Discusses one argument for the power of the Governor-General to dismiss a Minister, including a Prime Minister Discusses one argument against the power of the Governor-General to dismiss a Minister, including a Prime Minister Makes reference to a specific example/issue/factor	5
Outlines one argument for the power of the Governor-General to dismiss a Minister, including a Prime Minister Outlines one argument against the power of the Governor-General to dismiss a Minister, including a Prime Minister or Discusses one argument for/against and outlines one argument for/against or Discusses one argument for or against the power of the Governor-General to dismiss a Minister, including a Prime Minister Makes reference to a specific example/issue/factor	3–4
Outlines one argument for and/or against the power of the Governor-General to dismiss a Minister, including a Prime Minister or Makes a general statement concerning the power of the Governor-General to dismiss a Minister, including a Prime Minister	1–2
Total	5
<p>Answers could include but are not limited to:</p> <p>Arguments for:</p> <ul style="list-style-type: none"> • s 64 states that the Governor-General appoints Ministers; as well as the ability of the Governor-General to dismiss Ministers holding office 'at the pleasure of the Governor-General' • Governor-General is an independent official that holds Ministers accountable • a Minister may refuse to resign and this allows the Prime Minister to request it (e.g. Dr Jim Cairns who refused to resign as Minister for the Environment (2/7/75) for misleading Parliament) • Government may have become unworkable. <p>Arguments against:</p> <ul style="list-style-type: none"> • Governor-General is an unelected official in a representative democracy • Ministers/Prime Minister have been elected by the people in a representative democracy. 	

Question 2

(10 marks)

- (a) According to the Commonwealth Constitution, outline in which bodies Commonwealth judicial power is vested. (2 marks)

Description	Marks
Outlines the bodies in which Commonwealth judicial power is vested	2
Lists at least one body in which Commonwealth judicial power is vested	1
Total	2
Answers could include but are not limited to: <ul style="list-style-type: none"> • a Federal Supreme Court to be known as the High Court of Australia • other federal courts that Parliament creates • see s 71 Commonwealth Constitution. 	

- (b) Explain the concept of 'separation of powers' as it exists in Australia. (3 marks)

Description	Marks
Explains the concept of 'separation of powers' as it exists in Australia	3
Outlines the concept of 'separation of powers' as it exists in Australia	2
Makes a general statement about the concept of 'separation of powers'	1
Total	3
Answers could include but are not limited to: <ul style="list-style-type: none"> • the term 'separation of powers' refers to the separation of the executive (the Ministry), the legislature (the Parliament) and the judiciary (the Courts), with none of the three branches of government able to exercise total power • the essence of the doctrine of 'separation of powers' is based on the idea of checks and balances • in Australia's Westminster system of parliamentary democracy, the separation is not total because the executive government is drawn from, and accountable to, the legislature. 	

- (c) Discuss **two** features of the separation of powers as it operates in a particular non-Westminster political and legal system. (5 marks)

Description	Marks
Discusses two features of the separation of powers as it operates in a particular non-Westminster political and legal system	5
Outlines two features of the separation of powers as it operates in a particular non-Westminster political and legal system	3–4
Lists one or two features of the separation of powers as it operates in a particular non-Westminster political and legal system or Makes a general statement about the separation of powers as it operates in a non-Westminster political and legal system	1–2
Total	5
Answers could include but are not limited to: Non-Westminster political system examples include: <ul style="list-style-type: none"> • congressional/presidential system such as United States of America, France – clear separation between the executive, legislature, judiciary • communist regime such as China – domination of the executive branch over the other two branches • theocracy such as Iran. 	

Question 3

(10 marks)

- (a) Outline the purpose of Standing Orders in the Commonwealth Parliament. (2 marks)

Description	Marks
Outlines the purpose of Standing Orders in the Commonwealth Parliament	2
Makes a general statement about Standing Orders in the Commonwealth Parliament or Lists at least two examples of Standing Orders in the Commonwealth Parliament	1
Total	2
Answers could include but are not limited to: <ul style="list-style-type: none"> • guide the way the chambers operate each day • how the powers and privileges may be enforced • how each House conducts its business separately and with the other House • examples of Standing Orders could include: <ul style="list-style-type: none"> ◦ rules of debate ◦ maintenance of order ◦ voting procedures in the chamber • s 50 <i>Commonwealth Constitution</i>. 	

- (b) Explain
- one**
- way in which the Senate can keep the Commonwealth Parliament accountable. (3 marks)

Description	Marks
Explains one way in which the Senate can keep the Commonwealth Parliament accountable	3
Outlines one way in which the Senate can keep the Commonwealth Parliament accountable	2
Makes a general statement about the way the Senate can keep the Commonwealth Parliament accountable	1
Total	3
Answers could include but are not limited to: <ul style="list-style-type: none"> • Senators are able to use their combined voting power to reject or amend government legislation • the Senate's large and active committee system also enables Senators to inquire into policy issues in depth and to scrutinise the way laws and policies are administered by Ministers and public servants. 	

Question 3 (continued)

- (c) Discuss **one** argument for and **one** argument against the proposition that 'elections keep the House of Representatives accountable'. (5 marks)

Description	Marks
Discusses one argument for the proposition that 'elections keep the House of Representatives accountable' Discusses one argument against the proposition that 'elections keep the House of Representatives accountable' Makes reference to an example in the discussion	5
Outlines one argument for and one argument against the proposition that 'elections keep the House of Representatives accountable' or Discusses one argument for/against and outlines one argument for/against the proposition that 'elections keep the House of Representatives accountable' or Discusses one argument for or against the proposition Makes reference to an example in the discussion	3–4
Outlines one argument for or against the proposition or Makes a general statement about elections and keeping the House of Representatives accountable	1–2
Total	5
<p>Answers could include but are not limited to:</p> <p>For:</p> <ul style="list-style-type: none"> voters can evaluate the performance of individual Members of the House of Representatives (MHRs) voters can evaluate the performance of government and/or opposition voters can support a particular candidate or alternative party because of an action/policy of an MP/party every three years, or sooner, voters can pass judgement on their representatives and government. <p>Against:</p> <ul style="list-style-type: none"> tends to reinforce the two party system focus of elections is usually on party leaders and policies, rather than individual candidates, and this limits the effectiveness of elections in holding individual MHRs to account precludes minor party/independent representation in the House of Representatives/governments. For example 2013, with a clear majority of votes going to the Coalition and only three minor parties and two independents gaining seats out of the 150 available where most voters choose according to a party rather than an individual candidate the deals of exchange of preferences is little understood by electors and diminishes accountability time span between elections means elections as an accountability mechanism for individual members is limited (three years could be an argument for) many MHRs represent 'safe' seats and are unlikely to lose an election regardless of significant dissatisfaction e.g. Curtin. 	

Question 4

(10 marks)

- (a) Outline what is meant by 'transparent processes' in the Australian courts. (2 marks)

Description	Marks
Outlines the meaning of 'transparent processes' in the Australian courts	2
Makes a general statement about 'transparent processes' and the Australian courts or Lists at least two examples of 'transparent processes'	1
Total	2
Answers could include but are not limited to: <ul style="list-style-type: none"> • open processes/procedures within the courts. All information is made accessible to the public • most trials are held in public • judgments are published (law reports) or broadcast and can be subject to appeal. 	

- (b) Explain the process for removing Justices from the High Court in Australia. (3 marks)

Description	Marks
Explains the process for removing Justices from the High Court in Australia	3
Outlines the process for removing Justices from the High Court in Australia	2
Makes a general statement about the process for removing Justices from the High Court in Australia	1
Total	3
Answers could include but are not limited to: <ul style="list-style-type: none"> • according to s 72 of the Australian Constitution, Justices of the High Court can only be removed: <ul style="list-style-type: none"> ◦ by the Governor-General in Council, on an address by both Houses of Parliament in the same session ◦ on the basis of proved misbehaviour or incapacity. 	

Question 4 (continued)

- (c) Discuss **two** ways in which the Commonwealth Parliament can hold the courts accountable. (5 marks)

Description	Marks
Discusses two ways in which the Commonwealth Parliament can hold the courts accountable Makes reference to relevant evidence	5
Outlines two ways in which the Commonwealth Parliament can hold the courts accountable or Discusses one way and outlines the other way in which the Commonwealth Parliament can hold the courts accountable or Discusses one way in which the Commonwealth Parliament can hold the courts accountable Makes reference to some relevant evidence	3–4
Lists one or two ways in which the Commonwealth Parliament can hold the courts accountable or Outlines one way in which the Commonwealth Parliament can hold the courts accountable or Makes a general statement concerning how the Commonwealth Parliament can hold the courts accountable	1–2
Total	5
<p>Answers could include but are not limited to:</p> <ul style="list-style-type: none"> • Commonwealth Parliament can decide to endorse, ignore or abrogate common law: <ul style="list-style-type: none"> ◦ endorsing: parliament may scrutinise court decisions and decide to create a statute law that will uphold the decision. An example of this was the <i>Native Title Act</i> (1993) which endorsed the Mabo decision of 1992. The legislation ensured that there were clear processes and procedures in place, which created some limitations as to who could make native title claims. Courts would now be bound to apply this legislation to future cases, thus kept accountable via this ◦ abrogating: parliament may not agree with a court decision and thus revoke/abrogate this decision by creating legislation that will not allow judges to make a similar decision in the future. An example of this is the <i>Native Title Amendment Act</i> (1998) in response to the Wik decision of 1996. The High Court expanded the principles laid out in the <i>Native Title Act</i> (1993) to allow native title claims to co-exist with pastoral leases. Parliament did not agree with this, so created amendments to the Act to impose more limitations and restrictions in regards to native title claims • Commonwealth Parliament can create statutes that can affect the operation of the courts, such as the <i>High Court of Australia Act</i> (1979) which outlines the required qualifications of High Court Justices and requires the court to keep proper records and accounts of the affairs of the court • Chapter 3 of the Commonwealth Constitution provides Commonwealth Parliament with some methods for keeping the courts accountable e.g. it decides how many Justices there should be and they may decide if a judge should be removed for incapacity of misbehaviour • Commonwealth Parliament can create a commission to scrutinise the courts or High Court Justices, such as the inquiry into the conduct of the Hon Justice Murphy. The Parliamentary Commission of Inquiry (the commission) was established in May 1986 under the <i>Parliamentary Commission of Inquiry Act</i> (1986) 	

- Standing Committee on Regulations and Ordinances can examine all delegated legislation relating to the courts and provide recommendations to the Senate which are generally accepted
- Senate Estimates – Legal and Constitutional Affairs – can examine the financial accounts of the courts.

Section Two: Source analysis

20% (20 Marks)

Question 5

(20 marks)

- (a) Outline the purpose of Section 128 of the Commonwealth Constitution. (2 marks)

Description	Marks
Outlines the purpose of Section 128 according to the Commonwealth Constitution	2
Makes a general statement about the purpose of Section 128 and the Commonwealth Constitution	1
Total	2
The answer could include but is not limited to: <ul style="list-style-type: none"> • it outlines the method of changing the Constitution • ensuring that the vote of the people (democratic means) was the only way of altering the wording of the Constitution. 	

- (b) With reference to **Source 1**, explain in your own words, **two** reasons why some referendums fail. (4 marks)

Description	Marks
Identifies two reasons why some referendums fail Explains each reason in their own words with direct reference to the source	4
Identifies two reasons why some referendums fail Explains one reason and outlines the other reason Answer is mostly in candidate's own words with some reference to the source	3
Identifies two reasons why some referendums fail or Identifies and explains one reason why some referendums fail Attempts to explain in the candidate's own words	2
One or two reasons are cited verbatim from the source	1
Total	4
Answers could include: <ul style="list-style-type: none"> • ignorance/'the 'don't know, vote no' idea' – if people do not understand the change being put forward or the reason for why it might be necessary, then they will tend to vote no • 'politicians often haven't sold the proposal well' – to elicit a 'yes' vote, it is necessary for parliament to educate and publicise the reasons for the changes. It also helps if there is bi-partisan support so that the public is not receiving mixed messages • 'No we are actually happy with the powers you've got.' – the public generally have a distrust of politicians and are reluctant to vote yes to any change that may give them more power (e.g. 1951 Communist Party of Australia ban) • 'in Australia a referendum requires more than 50 percent of a national vote, and four of the six states also have to vote in favour of the change' – the double majority requirement can be difficult to achieve (e.g. 1977 simultaneous elections 62% yes/three states). 	
Note: reasons must be drawn from the source.	

- (c) With reference to **two** successful referendums in Australia, discuss how each altered the Commonwealth Constitution. (6 marks)

Description	Marks
For each successful referendum: <ul style="list-style-type: none"> • identifies the referendum and outlines the question/issue • discusses the changes that were made to the Commonwealth Constitution, with reference to section(s) that were altered 	5–6
For each successful referendum: <ul style="list-style-type: none"> • identifies the referendum and outlines the question/issue • outlines the changes that were made to the Commonwealth Constitution, with general reference to section(s) that were altered or <ul style="list-style-type: none"> • identifies and discusses how one successful referendum altered the Commonwealth Constitution 	3–4
Makes a general statement about one or two successful referendums or Lists two successful referendums	1–2
Total	6
Answers could include: Successful referendums: <ul style="list-style-type: none"> • 1928: inclusion of s 105A – Commonwealth take over of existing State debts • 1946: inclusion of s 51(xxiiiA) to give the Commonwealth more extensive social security power compared to ‘Invalid and old-age pensions’ – s 51(xxiii) <div style="border: 1px dashed gray; padding: 5px; margin: 10px 0; text-align: center;"> For copyright reasons this text cannot be reproduced in the online version of this document. </div> <ul style="list-style-type: none"> • 1977: s 72 which meant that High Court Justices were appointed until the age of 70. Hitherto it had been a lifetime appointment <div style="border: 1px dashed gray; padding: 5px; margin: 10px 0; text-align: center;"> For copyright reasons this text cannot be reproduced in the online version of this document. </div>	

Question 5 (continued)

- (d) Evaluate the impact of referrals of power in bringing about informal change to the Commonwealth Constitution. (8 marks)

Description	Marks
Discusses in detail the impact of referrals of power in bringing about informal change to the Commonwealth Constitution Makes reference to valid and relevant referrals of power Makes an evaluation of the impact of referrals of power in bringing about informal change to the Commonwealth Constitution	7–8
Discusses the impact of referrals of powers in bringing about informal change to the Commonwealth Constitution Makes reference to valid and relevant referrals of power Attempts an evaluation of the impact of referrals of power in bringing about informal change to the Commonwealth Constitution	5–6
Outlines the impact of referrals of power in bringing about informal change to the Commonwealth Constitution Makes some reference to one particular referral of power Makes a statement concerning the impact of referrals of power in bringing about informal change to the Commonwealth Constitution	3–4
Makes a general statement concerning the impact of referrals of power in bringing about informal change to the Commonwealth Constitution and/or Outlines one or two examples of States referring a particular power to the Commonwealth	1–2
Total	8
<p>Answers could include but are not limited to: Explain 'referral of power':</p> <ul style="list-style-type: none"> • s 51(xxxvii) gives the Commonwealth Parliament the power to make laws on matters referred to them from the States. <p>How it can and has informally changed the Commonwealth Constitution: States may choose to refer their powers (residual) for a number of reasons which include:</p> <ul style="list-style-type: none"> • lack of resources to deal with the area/issue • a need for a more uniform law across the country. <p>If States wish to refer a (residual) power, the legislature of that State must pass a bill in order to officially refer the power to the Commonwealth. Examples include:</p> <ul style="list-style-type: none"> • in response to terrorism concerns after 9/11, all States referred power to the Commonwealth to make laws regarding terrorism as per <i>The Criminal Code Amendment (Terrorism) Act</i> (2003) • in 1977, the South Australian and Tasmanian governments referred their powers regarding railways to the Commonwealth • de facto relationships – all States (except Western Australia) have referred the power to make laws regarding de facto relationships to the federal government, so that the federal Family Court can hear cases regarding custody etc. of de facto couples just as it would married couples. <p>Limitations of referral of powers in informally changing the Commonwealth Constitution include:</p> <ul style="list-style-type: none"> • States are generally reluctant to refer their powers to the Commonwealth in fear of further exacerbating an unequal federal balance. <p>Note: a candidate can achieve full marks on the basis of evaluating the referral of powers only.</p>	

Question 6

(20 marks)

- (a) Outline what is meant by ‘equality before the law’. (2 marks)

Description	Marks
Outlines the meaning of ‘equality before the law’	2
Makes a general statement about ‘equality before the law’	1
Total	2
Answers could include but are not limited to: <div style="border: 1px dashed gray; padding: 10px; margin: 10px auto; width: 80%;"> For copyright reasons this text cannot be reproduced in the online version of this document. </div>	

- (b) With reference to **Source 2**, explain in your own words, **two** issues associated with the expansion of anti-discrimination law. (4 marks)

Description	Marks
Identifies two issues associated with the expansion of anti-discrimination law Explains each issue in their own words with direct reference to the source	4
Identifies two issues associated with the expansion of anti-discrimination law Explains one issue and outlines the other issue Answer is mostly in candidate’s own words with some reference to the source	3
Identifies two issues associated with the expansion of anti-discrimination law or Identifies and explains one issue associated with the expansion of anti-discrimination law Attempts to explain in the candidate’s own words	2
One or two issues are cited verbatim from the source	1
Total	4
Issues the author sees with the expansion of anti-discrimination law include: <ul style="list-style-type: none"> • a minority has ‘come of age’ as a pressure group and pushed a particular agenda • the laws have been expanded without regard to ‘logical’ or ‘evidence-based’ reason • Section 18D perhaps disallows discussion on topics of legitimate interest • questions whether or not anti-discrimination law is the best means of accomplishing a new political goal • certain anti-discrimination laws may not be resolving the problem/issue they were designed to address. 	
Note: issues must be drawn from the source.	

Question 6 (continued)

- (c) Discuss **two** rights protected by common law in Australia today. (6 marks)

Description	Marks
Identifies two rights protected by common law in Australia today Discusses each of these rights or Discusses one of the rights protected by common law and outlines the other right protected by common law in Australia today	5–6
Identifies two rights protected by common law in Australia today Outlines each of these rights or Discusses one of the rights protected by common law in Australia today	3–4
Outlines one or two rights protected by common law in Australia today or Makes a general statement about common law rights in Australia today or Lists two rights protected by common law in Australia today	1–2
Total	6
<p>Answers could include but are not limited to:</p> <ul style="list-style-type: none"> • <i>Northern Territory v Griffiths (dec) and Jones, Commonwealth of Australia v Griffiths (dec) and Jones</i> (Timber Creek decisions) (2019) and how to resolve native title compensation claims <div style="border: 1px dashed gray; padding: 5px; text-align: center; margin: 10px 0;"> <p>For copyright reasons this text cannot be reproduced in the online version of this document.</p> </div> <ul style="list-style-type: none"> • right to a fair trial by a jury for serious criminal offences. 	

- (d) Evaluate the extent to which specific statutes have impacted the experience of a particular group in Australia in terms of their political and legal rights. (8 marks)

Description	Marks
Discusses in detail the impact of specific statutes on the experience of a particular group in Australia in terms of their political and legal rights Makes reference to valid and relevant experiences Makes an evaluation of the impact of specific statutes on the experience of a particular group in Australia in terms of their political and legal rights	7–8
Discusses the impact of specific statutes on the experience of a particular group in Australia in terms of their political and legal rights Makes reference to valid and relevant experiences Attempts an evaluation of the impact of specific statutes on the experience of a particular group in Australia in terms of their political and legal rights	5–6
Outlines the impact of statutes on the experience of a particular group in Australia in terms of their political and legal rights Makes a statement concerning the impact of statutes on the experience of a particular group in Australia in terms of their political and legal rights	3–4
Makes a general statement concerning the experience of a particular group in Australia in terms of their political and legal rights and/or Lists one or two statutes that have impacted on the experience of a particular group in Australia in terms of their political and legal rights	1–2
Total	8
<p>Statutes could include, but are not limited to:</p> <p>Aboriginal and Torres Strait Islander Peoples:</p> <ul style="list-style-type: none"> • 1901 Commonwealth Constitution; <i>Commonwealth Franchise Act</i> (1902) – denied the vote to all Indigenous people, except those on a State roll • 1957 Northern Territory Welfare Ordinance – almost all Indigenous people in the Northern Territory declared ‘wards of the state’ and denied the vote • 1962/1984 <i>Commonwealth Electoral Act</i> (1962)/<i>Commonwealth Electoral Legislation Amendment Act</i> (1983). Indigenous people could enrol to vote in Commonwealth elections/voting made compulsory for all Indigenous people, mobile voting introduced across remote regions • <i>Racial Discrimination Act</i> (1975) (Cth) including section 18C • <i>Aboriginal Land Rights Act</i> (1976) (Cth) – Northern Territory and land occupation and rights • <i>Aboriginal and Torres Strait Islander Commission Act</i> (1989) (Cth) ATSIC 1990-2004 • <i>Native Title Act</i> (1993)/<i>Native Title Amendment Act</i> (1998) (Cth) • <i>Northern Territory National Emergency Response Act</i> (2007) (Cth) • Western Australia legislation in terms of mandatory sentencing: <i>Criminal Code Amendment Act</i> (2009) (WA); <i>Criminal Law Amendment (Home Burglary and Other Offences) Act</i> (2015) (WA). <p>Women:</p> <ul style="list-style-type: none"> • voting/stand for Parliament: <ul style="list-style-type: none"> ◦ 1895 women in South Australia granted the vote and stand for election ◦ 1923 Victoria granted women the vote ◦ <i>Commonwealth Franchise Act</i> (1902) – all non-Indigenous women over 21 had right to vote and stand for Parliament ◦ <i>Parliament (Qualification of Women) Act</i> (1920) (WA) Western Australian women given the right to stand for Western Australian Parliament ◦ <i>Commonwealth Electoral Act</i> (1962) Indigenous women given the right to vote 	

Question 6(d) continued

- *Public Service Act (1902) (Cth)* forced women to resign from public service upon marriage; ban remained until 1966
- *Maternity Leave (Australian Government Employees) Act (1973)* saw the first paid maternity leave granted to federal public servants
- *Sex Discrimination Act (1984) (Cth)*
- 1980s all Australian States legislated to criminalise marital rape
- women in the workplace:
 - *Commonwealth Affirmative Action (Equal Employment Opportunity for Women) Act (1986) (Cth)*
 - *Equal Opportunity for Women in the Workplace Act (1999) (Cth)*
 - *Workplace Gender Equality Act (2012) (Cth)*.

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 of the terms and outlines parameters of discussion	4
Indicates what will 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 comprehensively relevant issues using a well-structured format and supportive examples in a cohesive, logical sequence and uses relevant political and legal terminology	9–10
Discusses some relevant issues incorporating some examples in a cohesive, logical sequence and uses relevant political and legal terminology	7–8
Limited discussion with limited examples in a logical sequence and uses 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 evaluation/assessment/analysis. A statement only	1
Subtotal	7
Conclusion	
Draws together the argument linking the evidence	3
Summarises the argument	2
Makes general/superficial statements	1
Subtotal	3
Total	25

Section Three: Part A**Question 7****(25 marks)**

In recent years, the Prime Minister's roles and powers have been too dependent on the Senate of the Commonwealth Parliament.

Evaluate this claim.

Relevant terms and parameters of discussion:

'Recent years': last 10 years:

- Rudd (2010–2010)
- Gillard (2010–June 2013)
- Rudd (June 2013–September 2013)
- Abbott (September 2013–September 2015)
- Turnbull (September 2015–August 2018)
- Morrison (August 2018–).

Prime Minister's roles:

- Head of Government (House of Representatives)
- set the political agenda
- advise the Governor-General.

Prime Minister's powers:

- hiring and firing Ministers
- set the agenda
- structure and processes of Cabinet
- control of Parliament/House of Representatives
- powers of appointment/removal of senior public servants
- decide election date.

Senate (Upper House of the Commonwealth Parliament) with specific powers especially in terms of:

- legislation
- finance bills
- committees.

Issues including pertinent examples could include:

Roles:

- Head of Government
- sets political agenda (also related to power)
- coalition and legislative agenda
- advise the Governor-General.

Powers:

- hire/fire Ministers
 - Senate, as a body, has little to do with this although censure motions against a Minister may influence the thinking of Prime Minister:
 - Rudd Government/Peter Garrett 2010 home insulation – Garrett was demoted
 - Senator Fiona Nash 2014 conflict of interest – Chief of Staff resigned
 - Senator Brandis and Triggs 2015 – ignored
 - Barnaby Joyce over propriety 2015 resigned but not necessarily due to Senate

- control of Parliament/House of Representatives and legislative agenda
 - Senate can block, delay, refer, introduce legislation
 - 2016 two pieces of legislation were rejected twice by the Senate: the scrapping of the Clean Energy Finance Corporation (CEFC) and the toughening of union governance through the registered organisations bill
 - November 2016 Senate rejected same-sex marriage plebiscite bill
 - March 2017 Labor, the Greens, the Nick Xenophon Team and the Tasmanian independent Jacquie Lambie voted together to defeat the proposed legislative change to section 18C of the *Racial Discrimination Act (1975)*
 - 2017 Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill removed from the Senate Notice paper October 2017. Bill reintroduced 2018 and referred to Senate Legal and Constitutional Affairs Committee which is due to report in March 2019
 - 2019 Senate passed Refugee Evacuation Bill and later it passed the House of Representatives whilst Government opposed the legislation
 - but Senate can also agree and endorse government legislation. For example, in 2018 Telecommunications and Other Legislation (Assistance and Access) Bill the Opposition supported the legislation in the Senate
- decide election date:
 - Turnbull and defeated legislation (ABCC) in Senate and 2016 Double Dissolution election
- appointment and removal of senior public servants:
 - 2013 Prime Minister Abbott on assuming office terminated three Departmental Secretaries' contracts:
 - Dr Don Russell, Department of Innovation, Industry, Science and Research
 - Blair Comley, Department of Resources, Energy and Tourism
 - Andrew Metcalfe, Department of Agriculture
 - 2016 Prime Minister Turnbull appointed Joe Hockey Ambassador to the United States of America
- Other factors that affect the power/role of Prime Minister in recent years include:
 - their own party or Coalition partner. All recent Prime Ministers have gained/lost their position as a result of internal party politics
 - polling and perceived electoral success.

Evaluation:

Have the roles/powers of Prime Minister been too dependent on the Senate?

Have other factors been more important?

Question 8**(25 marks)**

The High Court of Australia, through its judgments, has had a significant political impact in Australia.

Evaluate this claim, making reference to particular judgments of the High Court of Australia.

Relevant terms and parameters of discussion:

High Court of Australia:

- superior court in the Australian court hierarchy to which all other courts, both Commonwealth and State, are subject.

Significant:

- the judgments were fundamental to/changed the political landscape.

Political impact could include:

- judgments that have affected the:
 - decisions/Acts of Parliaments
 - the decisions of the Executive/Cabinet
 - who is elected to Parliament
 - the individual within the body politic
 - the federal balance within the Federation.

Relevant judgments could include:

- Federal Balance and the erosion of residual State powers or the Commonwealth has assumed State powers:
 - *Engineers' Case (Amalgamated Society of Engineers v. Adelaide Steamship Co. (1920)*
 - *Jones v. Commonwealth (1965)* (television = 'other like services') extended Commonwealth power in the area of 'postal, telegraphic, telephonic communication'
 - *Commonwealth of Australia & Anor v. The State of Tasmania & Ors (1983)* Franklin Dam
 - *New South Wales v. Commonwealth of Australia; Western Australia v. Commonwealth of Australia (2006)* Work Choices
- Federal Balance and the financial relationship between the Commonwealth and States:
 - *South Australia v. Commonwealth of Australia (1942)* Uniform Tax Case
 - *Ha & Ors v. New South Wales; Walter Hammond and Associates Pty Ltd v. New South Wales (1997)*
- Executive/Cabinet decisions:
 - Gillard's Malaysia Solution invalid [*Plaintiff M70/2011 v. Minister for Immigration and Citizenship (2011)*]
 - Williams No. 1 2012 (executive) and Williams No. 2 2014 (legislation)
- Who sits in Parliament/how disqualified members are replaced:
 - s 44 cases
 - Who can sit include: Culleton, Joyce, Nash, Waters, Ludlum, Roberts
 - How a member is to be replaced include: Culleton, Day both on a special recount (2017); Senator Skye Kakoschke-Moore (2018) the Court ruled that she could not replace herself in the Senate

The individual within the body politic:

Voting:

- *Roach v. Electoral Commissioner (2007)* was in terms of reducing the voting rights of prisoners. Changed nothing in terms of the status quo/legislation was deemed unconstitutional. Decision was significant as the Court found that there was no express right to vote in the Commonwealth Constitution
- *Rowe & Anor v. Electoral Commissioner & Anor (2010)* was earlier closure of electoral rolls constitutionally invalid?

Implied freedom of political communication:

- *Nationwide News Pty Ltd v. Wills* (1992) and *Australian Capital Television Pty Ltd. The Commonwealth of Australia* (1992) (Political ads case) the majority of the High Court held that an implied freedom of political communication exists as an incident of the system of representative government established by the Constitution. This was reaffirmed in *Unions NSW v New South Wales* [2013]
- *Brown v Tasmania* (2017) held that key provisions of the Tasmanian law *The Workplaces (Protection from Protestors) Act* (2014) (Tas) restricting protest violated the implied freedom of political communication in the Commonwealth Constitution.

Regulating political donations (NSW & Qld and donations by property developers):

- *McCloy v. New South Wales* (2015)
- *Gary Douglas Spence v. Queensland* (2019).

Evaluation:

- relevant judgment(s) is/are outlined
- its/their political impact is discussed
- whether or not its/their political impact was significant is directly addressed.
- an overall evaluation is made in terms of the validity of the claim

Note: Candidates may discuss High Court judgments that go beyond a political impact but this is not necessary to achieve full marks for this question.

Section Three: Part B**Question 9****(25 marks)**

Analyse the extent to which collective and individual Ministerial responsibility and Senate Estimates have held the Executive accountable in the Australian political system in recent years.

Relevant terms and parameters of discussion:

Collective Ministerial responsibility:

- all Ministers must be prepared to accept collective responsibility for, and defend publicly, the policies and actions of the Government
- the loss of a vote on a no-confidence motion in the House or on a major issue is expected to lead to the resignation of the whole Government. Should a Government lose a vote on a major issue, it would be entitled to propose a motion of confidence to test or confirm its position before resigning or recommending an election
- a Minister must be prepared not only to refrain from publicly criticising other Ministers and their actions but also to defend them publicly, or else resign
- a Minister must not announce a major new policy without previous Cabinet consent – if a Minister does, Cabinet must either provide support or request his/her resignation
- a Minister must not express private views on Government policies nor speak about or otherwise become involved in a Ministerial colleague's portfolio without first consulting that colleague and possibly the Prime Minister.

Individual Ministerial responsibility:

- in terms of his/her portfolio/department:
 - a Minister is responsible for his/her portfolio/department and is answerable to Parliament for what is done in his/her name
 - a Minister is directly responsible for a serious matter that can be clearly attached to him/her personally and should resign
 - a Minister should answer and explain faults and shortcomings of those in his/her department/their actions, but is not directly responsible for them
- as an individual, a Minister should resign/be dismissed for:
 - indiscretion
 - arbitrary exercise of power
 - misleading Parliament
 - condoned or authorised a blatantly and unreasonable use of executive power
 - impropriety.

Senate estimates:

- question Ministers and officials. Questions must relate to the estimates of expenditure but this is interpreted widely/allows for anything related to Government operations and financial position
- only Ministers from the Senate are required to appear in person
- have power to 'send for persons or papers' hence it can demand that individual officials and documents are made available
- questions are normally answered at hearings, but information can be supplied later.

The Executive:

- Prime Minister
- Cabinet
- Ministers.

Recent years:

- the last decade/10 years.

Issues including pertinent examples could include:

- collective Ministerial responsibility and accountability of the Executive:
 - confidence of the House and resignation:
 - up until 2018 the government had a clear majority in the House of Representatives but with Turnbull leaving and Independent Phelps winning the seat of Wentworth the government lost a vote on the floor of the House (Medevac Bill February 2019) but it was not a test of 'confidence'
 - Cabinet solidarity and not being critical of fellow Ministers/Prime Minister:
 - in leadership spills within the party room several Ministers resigned after each challenge as they could not support the returning leader or newly elected leader
 - Gillard Ministry (2010–13)
 - 2012: Rudd resigned as Minister for Foreign Affairs alleging Prime Minister did not repudiate attack by fellow Minister
 - 2013: Crean dismissed as Minister for Regional Australia, Development, Arts after publicly and privately demanding Prime Minister call a leadership spill
 - 2013: Bowen, Ferguson and Senator Carr resigned after supporting Prime Minister's opponent in leadership spill
 - Rudd Ministry (2013)
 - 2013: Swan, Combet, Emerson, Garrett, Senator Conroy and Senator Ludwig refused to serve in Rudd ministry after overthrow of Prime Minister Gillard
 - Abbott Ministry (2013–15)
 - 2015: Turnbull had a dispute with the Prime Minister. He resigned and informed the Prime Minister he was launching a challenge for the Liberal Party leadership
 - Turnbull Ministry (2015–18)
 - 2018: Dutton dispute with Prime Minister. Resigned following his defeat in a ballot for the Liberal Party leadership and the Prime Ministership. Turnbull won (August 21)
 - August 21–23 dispute with Prime Minister Turnbull. Resignations included Senator Fierravanti-Wells, Michael Keenan, Steve Ciobo, Angus Taylor, Greg Hunt, Senator Matthias Cormann and Senator Michaelia Cash
- individual Ministerial responsibility and accountability of the Executive:
 - note that the convention concerning resignation and individual Ministerial responsibility has shifted in recent years. A Minister should answer and explain faults and shortcomings of those in their department/their actions, but is not directly responsible for these faults/shortcomings (1976 report of the *Royal Commission on Australian Government Administration*)
 - 2010 Garrett and pink batts; did not resign although in 2014 Royal Commission took 'ultimate' responsibility
 - 2016 Senator Brandis denied he misled parliament concerning Ministerial colleagues' ability to consult the Solicitor-General for independent legal advice; did not resign
 - 2017 Michaelia Cash denied she misled parliament in terms of evidence to Senate Estimates in relation to Australian Workers' Union raid by the Australian Federal Police and informing the media; did not resign, supported by the Prime Minister throughout 'she acted properly'
 - Ministers who have resigned include:
 - 2009: Joel Fitzgibbon – impropriety/conflict of interest. But in 2010 became Government Whip and in 2013 a Minister in Rudd government
 - 2014: Senator Sinodinos stood aside as Assistant Treasurer pending an investigation by the New South Wales ICAC. September 2015 returned to Ministry under Prime Minister Turnbull (Cabinet Secretary)
 - 2015: Personal behaviour – Jamie Briggs resigned re behaviour involving a public servant on an official visit to Hong Kong

Question 9 (continued)

- 2015: Mal Brough – personal behaviour. Stood aside pending the outcome of a police investigation into Speaker Slipper and James Ashby. Did not contest 2016/2017 investigation concluded – no charges laid
- 2016: Stuart Robert resigned for being in breach of Ministerial Standards – indirect financial stake in a company he helped in Beijing. 2018 returned to Ministry by Prime Minister Morrison as Assistant Treasurer
- 2017: Sussan Ley resigned after standing aside, continued negative publicity – abuse of travel expenses especially to the Gold Coast. Prime Minister Morrison returned her to Ministry as Assistant Minister
- 2018: Barnaby Joyce – personal behaviour. Resigned after allegations of sexual harassment, revelations about an affair with a staffer and an investigation into travel expenses
- 2018: Andrew Broad – personal behaviour. Resigned after allegations about his behaviour in Hong Kong were referred to the Australian Federal Police (use of a dating website to meet a woman in Hong Kong.)
- Senate Estimates:
 - only Ministers who are Senators are obliged to appear at Senate Estimates
 - Senate Estimates may request a Minister from the House of Representatives attend but there is no obligation
 - Senate Estimates can become very partisan and one would query its usefulness re: Ministerial accountability

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- for example: 2017 Michaelia Cash in Senate Estimates repeatedly told the committee that neither she nor her office had any involvement in tipping off the media to a police raid
- for example: 2018 Defence Minister Marise Payne in Senate Estimates was asked to explain an appointment by Defence Industry Minister Pyne of 'the first defence force advocate' who had strong Liberal Party connections
- for example: 2019 Senator Cormann in Senate Estimates was questioned over a successful billion dollar Finance Department tender won by a Helloworld subsidiary. Cormann had been in direct contact with the head of the subsidiary who was also the treasurer of the Liberal Party. He was also questioned about family holiday expenses which he stated he had no idea were paid for by the Department (since repaid).

Analysis:

- leadership challenges/spills and solidarity/ability to support Prime Minister/challenger has figured prominently in recent years as the reason for a Ministerial resignation. In that sense collective Ministerial responsibility is strong
- misleading Parliament rarely leads to resignation by a Minister (only three since 1901). Personal propriety has been the major issue in most recent Ministries as a reason for individual Ministers resigning
- conflict of interest does appear to cause a resignation when it is evident and given wide media coverage, as does the abuse of travel and other expenses. Electorally a problem. Ministers in the management of Department seem to survive if there are no negative electoral implications
- many Ministers have been reappointed to positions in the Ministry at a later date by a new Prime Minister
- Senate Estimates can be probing and bring to light conflicts of interest, impropriety and other key issues but generally the government will stand by the Minister. Senate Estimates has become quite partisan at times and this is to its detriment in terms of accountability of the Executive.

Question 10

(25 marks)

Analyse the extent to which Australia and **one** other country uphold the democratic principles of popular participation and the rule of law.

Relevant terms and parameters of discussion:

- 'popular participation' – the active involvement of citizens in the political system which can include:
 - voting in elections
 - active involvement in political debate and/or protest, involvement in pressure group activity
 - involvement in a political party and its activities
- 'rule of law' – the principle that no-one is above the law and that everyone is equal before the law. The law must be applied to everyone equally, regardless of their status. Fundamental to this is the idea of consent and that the law is clear and understandable. It is essential in restricting the use of arbitrary power.

Issues including pertinent examples could include:

Australia:

- how it upholds popular participation
 - all citizens over the age of 18 are entitled to (and in fact must) vote regardless of race, gender
 - active involvement in political debate/protest allowed, *Brown v Tasmania* (2017) HCA 43 c
 - petitions may be submitted to Parliament
 - anyone can join or create a pressure group
 - any citizen can join a political party or create a new political party
 - people can freely speak out against the government and publicise via a free press
- how popular participation is undermined:
 - increasing apathy/disengagement with the political process including voting
 - lack of awareness/education regarding the political process but educational programs and media advertising aim to overcome this
 - protests are subject to some restrictions. Particular State laws include:
 - Queensland: 1977–78 ban on street marches (1972 arrested during the two-year ban)
 - Tasmania: 2014 *Workplaces (Protection from Protesters) Act*. Bob Brown challenged legislation in 2016 and High Court held that the ban was 'impermissible' under the implied freedom of political communication contrary to the Commonwealth Constitution (*Brown v Tasmania*). But High Court left the door open for legislation as the Act's stated aims were legitimate. All States except Western Australia joined with Tasmania in this case
 - New South Wales Government published the Crown Lands Management Regulation 2018 which meant that public officials had broad power to 'direct a person' to stop 'taking part in any gathering, meeting or assembly'
 - petitions rarely have any significant impact
 - National Security and Public Safety laws and State Criminal Codes can and do limit association in terms of associating with a member of a terrorist organisation and thereby supporting it
- how Australia upholds the rule of law:
 - Attorney General's Department has primary responsibility to protect and uphold the rule of law
 - Australia's Constitution clearly sets out a separation of power through Chapters 1–3, and in particular an independent judiciary, in order to effectively uphold the rule of law and prevent an arbitrary exercise of government power
 - the law is applied in a transparent manner to ensure fairness and accountability (e.g. public galleries, law reports)

- there is an appeals process to ensure further accountability and allow for unfair outcomes to be rectified
- the principle of 'innocent until proven guilty' is upheld in our legal system
- the government is bound by the Constitution, and cannot change the Constitution unless it is approved by the Parliament and the Australian people (s 128)
- how the rule of law is undermined:

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- those who can afford better legal representation may have more favourable outcomes
- courts are increasingly overloaded and lack funding (i.e. there are long delays before going to trial)
- overrepresentation of Aboriginal people and certain other ethnic minorities in prison

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Other country:

- how it upholds popular participation
- how popular participation is undermined
- how it upholds the rule of law
- how the rule of law is undermined.

Analysis:

The extent to which Australia upholds the democratic principle of popular participation?

The extent to which Australia upholds the democratic principle of the rule of law?

The extent to which 'another country' upholds each of these democratic principles?

Note:

- this question is not asking for a comparison between Australia and another country
- it is not necessary that each principle is analysed equally, but each must be analysed
- it is not necessary for each country to be dealt with in equal depth but all aspects of the question must be addressed.

ACKNOWLEDGEMENTS

- Questions 1–10** Extracts from: Parliament of Australia. (n.d.). Commonwealth of Australia Constitution Act (The Constitution). Canberra: Attorney General's Department. Retrieved August, 2019, from https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Constitution/preamble
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- Question 4(c)** Text under 'Answers could include, but are not limited to' (2nd, 3rd, 5th and 6th dot points) information from: Parliament of Australia. (n.d.). *The accountability of the Executive and the Judiciary to Parliament; the role of the Senate Standing Committee on Regulations and Ordinances*. Retrieved August, 2019, from https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regulations_and_Ordinances/imported/statements/aial-paper
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- Question 5(c)** Text under 'Answers could include' (3rd and 5th dot points) adapted from: Saunders, C. (1997). *The Australian Constitution* (2nd ed.). Carlton, VIC: Constitutional Centenary Foundation, pp. 33, 54.
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Question 10

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