



POLITICS AND LAW

ATAR course examination 2016

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) Explain the term Cabinet.

(2 marks)

Description	Marks
Explains the term Cabinet.	2
Outlines the term Cabinet.	1
Total	2
Answers could include, but are not limited to: <ul style="list-style-type: none"> • a group of senior ministers who form government • a body that is headed by the Prime Minister • a collective decision-making body • a body that introduces legislation to the parliament through its ministers. 	

(b) Explain briefly **three** roles and/or powers of the Cabinet.

(3 marks)

Description	Marks
Explains briefly three roles/powers of the Cabinet.	3
Explains briefly two roles/powers of the Cabinet.	2
Explains briefly one role/power of the Cabinet or makes a general statement about the role/power of Cabinet.	1
Total	3
Answers could include, but are not limited to: <ul style="list-style-type: none"> • sets the parliamentary agenda • is responsible for the annual budget • initiates most legislation. 	

- (c) Discuss **one** argument for and **one** argument against the proposition that ‘the Opposition does **not** keep the Cabinet accountable’. (5 marks)

Description	Marks
Discusses one argument for and one argument against the proposition that the Opposition does not keep the Cabinet accountable including at least one relevant example.	5
Outlines one argument for and one argument against the proposition that the Opposition does not keep the Cabinet accountable or discusses one argument and outlines the opposing argument to the proposition.	3–4
Identifies either an argument for or against the proposition that the Opposition does not keep the Cabinet accountable or makes a general statement concerning the Opposition and Cabinet accountability.	1–2
Total	5
<p>Answers could include, but are not limited to:</p> <p>Arguments for:</p> <ul style="list-style-type: none"> • Question Time is ineffective and government/ministers not held to account • Censure motions and votes of no confidence are not carried in the H of R due to party discipline. <p>Arguments against:</p> <ul style="list-style-type: none"> • uses Question Time effectively to query governmental policy/ actions of particular Ministers • the Opposition can use the Senate, if it has a majority and/or works with the crossbenchers, to force the Cabinet to reassess a particular policy. <p>There is an expectation that at least one relevant example is used in the discussion.</p>	

Question 2**(10 marks)**

- (a) Explain what is meant by a reserve power of the Governor-General. (2 marks)

Description	Marks
Explains what is meant by a reserve power of the Governor-General.	2
Outlines what is meant by a reserve power of the Governor-General or gives an example of a reserve power.	1
Total	2
<p>Answers could include, but are not limited to:</p> <ul style="list-style-type: none"> • is a constitutional power which the Governor-General can exercise independently without requiring the advice of the elected government, the Prime Minister and/or Federal Executive Council • an example of a reserve power is s.64 of the Commonwealth Constitution by which the Governor-General can appoint or dismiss Ministers. This power was used by Sir John Kerr in November, 1975 to dismiss the Whitlam government without advising the Prime Minister of his intention to do so • a reserve power is different to an express power of the Governor-General which can only be exercised upon the advice of the elected government, the Prime Minister and/or Federal Executive Council. 	

(b) Explain briefly **three** roles of the Governor-General.

(3 marks)

Description	Marks
Explains briefly three roles of the Governor-General.	3
Explains briefly two roles of the Governor-General.	2
Explains briefly a role of the Governor-General.	1
Total	3

Answers could include, but are not limited to:

- being the Queen's constitutional representative
- opening and closing the Commonwealth Parliament
- issuing writs for the dissolution of the Parliament and the calling of elections, including a double dissolution of both Houses of the Commonwealth Parliament
- appointing members to the Federal Executive Council
- appointing Ministers
- making appointments to certain levels of the Commonwealth Public Service
- being Commander in Chief of the naval and military forces
- appointing justices of the High Court of Australia
- representing Australia overseas and at ceremonial and formal occasions
- granting Royal Assent to Commonwealth legislation, including legislation approved by a referendum of the Australian people.

Note: candidates are not required to identify specific sections of the Commonwealth Constitution to achieve full marks.

- (c) Discuss **one** argument for and **one** argument against the proposition that ‘the Governor-General acted improperly by dismissing the Whitlam government’. (5 marks)

Description	Marks
Discusses one argument for and one argument against the proposition that the Governor-General acted improperly by dismissing the Whitlam government.	5
Outlines one argument for and one argument against the proposition that the Governor-General acted improperly by dismissing the Whitlam government.	3–4
Identifies either an argument for and/or against the proposition that the Governor-General acted improperly by dismissing the Whitlam government or makes a general statement concerning the actions of the Governor-General.	1–2
Total	5
<p>Arguments for could include, but are not limited to:</p> <ul style="list-style-type: none"> • although the Governor-General used a reserve power available to him, he was also required by convention to advise his Prime Minister of the possibility of him doing so • the Governor-General failed to advise the Prime Minister that he had sought the opinions of the then Chief Justice of the High Court, Sir Garfield Barwick, and of another High Court Justice, Sir Anthony Mason, about his ability to dismiss the government through the use of reserve powers • the Governor-General did not provide the Prime Minister with a deadline for resolution of the dispute. <p>Arguments against could include, but are not limited to:</p> <ul style="list-style-type: none"> • Governor-General acted in accordance with the reserve powers granted to him • the existence of the reserve powers of the Governor-General were a recognised and established feature of the Commonwealth Constitution, thus the decision was not based on a constitutional fiction • the nature of the constitutional crisis required the Governor-General to act as he did without giving advice to his Prime Minister of his intention to exercise his reserve powers. 	

Question 3

(10 marks)

- (a) Explain a purpose of the Privileges Committees of the Commonwealth Parliament. (2 marks)

Description	Marks
Explains a purpose of the Privileges Committees of the Commonwealth Parliament.	2
Outlines a purpose of the Privileges Committees of the Commonwealth Parliament or makes a statement concerning the Privileges Committees.	1
Total	2
Answers could include but are not limited to: <ul style="list-style-type: none"> • protect certain rights and immunities of MHRs/Senators • deal with offences (contempts) which interfere with the functioning of each of the Houses of Parliament. 	

- (b) Explain briefly **three** procedures and/or processes of the Commonwealth Parliament that promote its accountability. (3 marks)

Description	Marks
Explains briefly three procedures and/or processes of the Commonwealth Parliament that promote its accountability.	3
Explains briefly two procedures and/or processes of the Commonwealth Parliament that promote its accountability.	2
Explains briefly one procedure and/or process of the Commonwealth Parliament that promotes its accountability.	1
Total	3
Answers could include, but are not limited to: <ul style="list-style-type: none"> • naming procedure under Standing Orders for control of disorderly conduct in the chamber that results in suspension from the chamber • reference to the Parliamentary Privileges Committee for breach of parliamentary standards • censure motions by a chamber against a Member/Senator (in terms of accountability of Parliament) • grievance and/or adjournment debates (in terms of promoting the accountability of Parliament) • Question time (in terms of promoting the accountability of Parliament). 	

- (c) With reference to **one** example, discuss how judicial review promotes the accountability of the Commonwealth Parliament. (5 marks)

Description	Marks
Relevant example used in discussion. Discusses how judicial review promotes the accountability of the Commonwealth Parliament.	5
Relevant example used/cited in discussion. Outlines how judicial review promotes the accountability of the Commonwealth Parliament.	3–4
Cites an example of legislation brought to the High Court and/or makes a general statement about the High Court and legislation.	1–2
Total	5
<p>Answers could include but are not limited to: Examples of legislation subject to judicial review include:</p> <ul style="list-style-type: none"> • Plain Packaging Act 2011 (High Court 2012) • Workplace Relations Amendment (Work Choices) Act 2005 (High Court 2006) • Financial Framework Legislation Amendment Bill (No 3) 2012 (High Court 2014. Williams No 2). <p>Use the example to show the accountability of the Parliament</p> <ul style="list-style-type: none"> • the validity or otherwise of the legislation. 	

Question 4**(10 marks)**

- (a) Explain the process of appointing a Justice to the High Court of Australia. (2 marks)

Description	Marks
Explains the process of appointing a Justice to the High Court of Australia.	2
Outlines the process of appointing a Justice to the High Court of Australia or makes a statement concerning the appointment of a Justice to the High Court.	1
Total	2
<p>Answers could include:</p> <ul style="list-style-type: none"> • Justices are appointed by the Governor-General in Council acting on the advice of the government (s.72) • Justices are appointed by the Governor-General upon the recommendation of the Commonwealth Attorney-General, who usually consults with State Attorneys-General • Justices are appointed with immediate tenure until the age of 70 (s.72) • Justices are appointed by the Commonwealth government upon the death, retirement and/or removal of a sitting High Court Justice. 	

- (b) Explain briefly **three** elements of 'natural justice' as it is practised in Australia. (3 marks)

Description	Marks
Explains briefly three elements of 'natural justice' as it is practised in Australia.	3
Explains briefly two elements of 'natural justice' as it is practised in Australia.	2
Explains briefly one element of 'natural justice' as it is practised in Australia or makes a general statement about 'natural justice'.	1
Total	3
<p>'Natural justice' refers to the rules and procedures to be followed by any person or agency that has to adjudicate in disputes between others about the rights of others.</p> <p>Answers could include but are not limited to: Elements of these rules and procedures include:</p> <ul style="list-style-type: none"> • all persons accused of a wrong require notice of what is accused against them • the person adjudicating the dispute must have no actual or suspected interest in the dispute (rule against actual or perceived bias) • each party to a dispute must have the opportunity to openly and fairly present their case 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. 	

- (c) Discuss **two** ways how 'public confidence' is promoted in Australian courts. (5 marks)

Description	Marks
Discusses two ways how 'public confidence' is promoted in Australian courts.	5
Outlines two ways how 'public confidence' is promoted in Australian courts or discusses one way how (and outlines the other way) 'public confidence' is promoted in Australian courts.	3–4
Identifies one or two ways how 'public confidence' is promoted in Australian courts or makes a general statement concerning 'public' confidence' and Australian courts.	1–2
Total	5
<p>Answers could include, but are not limited to:</p> <ul style="list-style-type: none"> • the openness of the Court system which allows for public participation and viewing • the ability of the media to openly report on Court decisions and procedures • the requirement of Judges in the majority of cases to provide written reasons for their decisions • the requirement that Australian courts operate on the principles of natural justice • the existence of an appeals process allowing for one and possibly two levels of judicial review of Court decisions • the ability of State and Commonwealth Parliaments to investigate allegations of judicial misconduct and/or seek the removal of Justices. 	

Section Two: Source analysis

20% (20 Marks)

Source 1

Question 5

(20 marks)

- (a) Explain what is meant by a 'mandate'. (2 marks)

Description	Marks
Explains the term mandate.	2
Outlines the term mandate or gives an example of a mandate.	1
Total	2
The answer could include, but is not limited to: <ul style="list-style-type: none"> the authority given by the voters to the party/parties (government) with a majority in the H of R to implement the programs and policies outlined in its election platform. 	

- (b) With reference to **Source 1**, explain **two** problems Australian governments have in dealing with the Senate. (4 marks)

Description	Marks
Identifies two problems Australian governments have in dealing with the Senate from the source and explains each of these.	4
Identifies two problems Australian governments have in dealing with the Senate from the source and explains one of these.	3
Identifies two problems Australian governments have in dealing with the Senate from the source. or identifies and explains one way.	2
Identifies one problem Australian governments have in dealing with the Senate from the source.	1
Total	4
Answers could include but are not limited to: <ul style="list-style-type: none"> Senate acts as a check on government minor parties/independents have a mandate to support other alternative policies/platforms composition of the Senate. 	
Note: The problems must be drawn from the source.	

- (c) Discuss **one** argument for and **one** argument against Senators claiming a 'competing mandate'. (6 marks)

Description	Marks
Discusses one argument for and one argument against Senators claiming a 'competing mandate'.	5–6
Outlines one argument for and one argument against Senators claiming a 'competing mandate' or discusses an argument either for or against Senators claiming a 'competing mandate' (and outlines the other).	3–4
Identifies one argument for and/or against Senators claiming a 'competing mandate' or makes a general statement concerning Senators and mandates.	1–2
Total	6
<p>Answers could include, but are not limited to:</p> <p>Arguments for:</p> <ul style="list-style-type: none"> • elected to keep government accountable on a specific issue • elected a set platform with clear legislative goals • the Senate is a House of review. <p>Arguments against:</p> <ul style="list-style-type: none"> • Senators are elected to represent the States • disproportional representation ('unrepresentative swill') <p>Note: the argument must be in terms of a mandate.</p>	

- (d) Evaluate the role and power of contemporary Senates with the Senate's intended role at Federation. (8 marks)

Description	Marks
Discusses the role and power of contemporary Senates. Discusses the intended role of the Senate at Federation. Makes an evaluation of the role and power of contemporary Senates relative to its intended role at Federation. Includes an example from contemporary Senates in the discussion. Note: contemporary means Senates in the past three years.	7–8
Discusses the role and power of contemporary Senates. Outlines the intended role of the Senate at Federation. Attempts an evaluation of the role and power of contemporary Senates relative to its intended role at Federation. Includes an example from contemporary Senates in the discussion.	5–6
Outlines the role and power of the Senate in recent years. Identifies the intended role of the Senate at Federation. Makes a statement concerning the role and power of the Senate in recent years relative to its intended role at Federation.	3–4
Outlines the role and power of the Senate in recent years. and/or identifies the intended role of the Senate at Federation. and/or makes a statement concerning the role and power of the Senate in recent years and/or its intended role at Federation.	1–2
Total	8
<p>Senate to May 2016 Coalition 33; ALP 25; Greens 10; PUP 1; Independents 4; LDP 1; FF 1; AMEP 1. Current Senate Senate since July 1 2016 LNP 30; ALP 26; Greens 9; ON 4; NXT 3; LD 1; FF 1; JLN 1; DHJP 1.</p> <p>Answers could include, but are not limited to: Role and power of contemporary Senates:</p> <ul style="list-style-type: none"> • the blocking/ rejection of legislation • the reference of legislation to committees/ review of legislation • Senate Estimates Committee and accountability of ministers/public servants <p>Intended role of the Senate at Federation</p> <ul style="list-style-type: none"> • represent the interests of the States • protect the smaller States (population) from the domination of the larger States • a general House of review. 	

Source 2

Question 6

(20 marks)

- (a) Explain what is meant by 'public servants' (2 marks)

Description	Marks
Explains what is meant by public servants.	2
Makes a statement concerning public servants.	1
Total	2
Answers could include, but are not limited to: <ul style="list-style-type: none"> public servants are employees of the government who work either directly for Ministers or within government departments public servants are required to develop policy, advise Ministers, implement government policies and/or decisions public servants are required to account for decisions taken by government departments. 	

- (b) With reference to
- Source 2**
- , explain
- two**
- differences between law and conventions. (4 marks)

Description	Marks
Identifies two differences between law and conventions from the source and explains each of these.	4
Identifies two differences between law and conventions from the source and explains one of these.	3
Identifies two differences between law and conventions from the source or identifies and explains one difference.	2
Identifies one difference between law and conventions from the source.	1
Total	4
Answers could include but are not limited to: <ul style="list-style-type: none"> conventions are accepted practices of political systems, whereas law is a definite statement of conduct and expectations conventions do not have the authority of a stated law, but their authority rests on the force of shared values and expectations conventions are more fluid in their interpretation than law conventions evolve over time, whereas law, is a statement of a law at a particular time. <p>Note: the differences must be drawn from the source.</p>	

- (c) Discuss **one** argument for and **one** argument against the proposition that 'public servants should be held directly accountable for their actions'. (6 marks)

Description	Marks
Discusses one argument for and one argument against the proposition that, 'public servants should be held directly accountable for their actions'.	5–6
Outlines one argument for and one argument against the proposition that, 'public servants should be held directly accountable for their actions' or discusses an argument either for or against the proposition (and outlines the other argument).	3–4
Identifies one argument for and/or against the proposition that, 'public servants should be held directly accountable for their actions' or makes a general statement concerning public servants and accountability.	1–2
Total	6
<p>Answers could include, but are not limited to:</p> <p>Arguments for:</p> <ul style="list-style-type: none"> public servants are representative agents of parliamentarians and hence are accountable the policy decisions of public servants are central to the implementation of government policy given the size of the contemporary public service/bureaucracy, it is not realistic for Ministers to be aware of all policy actions and decisions of a Department, and for that reason public servants should be directly accountable senior public servants cannot avoid responsibility for actions on the basis that the Minister must take account for all actions of a Department, especially given that the Heads of Departments/ senior public servants have express contracts. <p>Arguments against:</p> <ul style="list-style-type: none"> the responsibility of Ministers will decline to the extent that the convention of responsibility will be entirely diluted public servants are not directly chosen by the public but Ministers are and hence should be held ultimately responsible for all actions of a Department Ministers will be less inclined to supervise the activities of a Department if the Head of a Department will always be held responsible Public servants will always be accountable under the civil and criminal law for their actions. Therefore, sufficient levels of accountability exist. 	

- (d) Evaluate the significance of **two** Westminster conventions within Australia's political and legal system. (8 marks)

Description	Marks
Identifies two Westminster conventions within Australia's political and legal system. Discusses the operation of each convention within Australia's political and legal system. Evaluates the significance of each convention using relevant examples.	7–8
Identifies two Westminster conventions within Australia's political and legal system. Discusses the operation of each convention within Australia's political and legal system. Attempts to evaluate the significance of each convention using an example.	5–6
Identifies two Westminster conventions within Australia's political and legal system. Outlines the operation of each convention within Australia's political and legal system. Makes a statement concerning conventions within Australia's political and legal system	3–4
Identifies one or two Westminster conventions within Australia's political and legal system. or makes a general statement concerning conventions within the political and legal system	1–2
Total	8
Answers could include, but are not limited to: Conventions associated with responsible government: <ul style="list-style-type: none"> • government resigns if it loses confidence of the House of Representatives • government to resign if it loses an election • government to resign if unable to secure Supply Convention of individual ministerial responsibility Convention of collective ministerial responsibility Conventions of express and reserve powers of the Governor-General Convention of the impartiality of the Speaker.	

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 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

Section 3: Part A

Question 7

(25 marks)

'High Court decisions have been the most significant reason for change in the federal balance of power.'

Evaluate this claim.

Relevant terms and parameters of discussion

High Court decisions and their effect on the federal balance of power.

Other formal and informal methods that have influenced the federal balance of power.

'federal balance of power': the strength of the Commonwealth relative to the States in the federation

Issues including pertinent examples could include:

High Court decisions and their effect on the federal balance of power include:

- Engineer's Case; external affairs decisions; corporation power decisions; financial decisions including the Uniform Tax decision and the Ha/Hammond decisions.

Other formal and informal methods that could be part of the discussion include:

- Referendums
- Referral of powers
- COAG decisions- emergence of coercive and cooperative federalism
- Changes in the financial relationship between the Commonwealth and State governments and the vertical fiscal imbalance- apart from the UTC.

Each method/example used should be in terms of its effect on the federal balance of power.

Evaluation

Have High Court decisions been the most significant reason for change in the federal balance of power or are other reasons equally, if not more, significant?

Question 8**(25 marks)**

'Since 2006, events have confirmed that the powers of an Australian Prime Minister depend entirely on personal support within a party.'

Evaluate this claim.

Relevant terms and parameters of discussion

- Prime Ministers since 2006: Howard - 2007; Rudd 2007-10; Gillard 2010-13; Rudd 2013 (June-Sept); Abbott 2013-15; Turnbull 2015
- Powers of an Australian PM include: hiring and firing ministers; to set the agenda, structure and process of Cabinet; control of Parliament/H of R; power of appointment/removal senior public servants; decide election date; advise the Governor-General.
- Caucus; party discipline; factions and the exercise of power in the party room

Issues including pertinent examples could include:

- Gillard: minority government; 'being female'; factional issues including Shorten's support and switch/ 26 ALP caucus members switched vote.
- Influence of opinion polls on the standing of the PM within the party
- Rudd: refashion party and policies: how a leader of ALP parliamentary party is elected; refugee Regional Settlement Arrangement with PNG. Loses the election/ fewer seats than expected
- Abbott: particular policies: 'axe the tax', 'stop the boats' (operation sovereign borders); free trade deals and support compared to 'the captain's call' (Knights & Dames); ministerial/Speaker issues (Sinodinos, Bronwyn Bishop); attitude to the micro parties/Independents in the Senate (July 2014); power of Peta Credlin and party room support; Feb 2015 open criticism of Abbott by colleagues (Entsch, Jensen) and leadership which saw Abbott returned; Sept defeated by Turnbull in party room vote.
- Turnbull: opinion poll reversal; personal popularity of Turnbull compared to the Liberal Party itself; style of leadership compared to predecessors; nature of electoral success in 2016.

Evaluation

Questions whether the powers of an Australian Prime Minister, do depend entirely on personal support within the party or other factors are influential.

Part B**Question 9****(25 marks)**

Assess the extent to which a particular group in Australia has experienced changes in its political and legal rights.

Relevant terms and parameters of discussion

- Identification of a particular group in Australia which could include: Indigenous Australians; women; the mentally ill; refugees.
- Overview of political and legal rights of the group

Issues including pertinent examples include:

- Political rights of the group and their experience over time, which could include: the franchise, right to stand for election; freedom of association; the right to petition
- Legal rights of the group and their experience over time, which could include: procedural fairness; the rights of the accused; right to seek a legal remedy; right to liberty and security; right to freedom from discrimination.
- Particular changes in the law affecting the group.

Assessment

To what extent has the group actually experienced changes in their political and legal rights?

Question 10

(25 marks)

Assess the importance of international covenants, protocols and treaties in protecting human rights in Australia in relation to other methods of protection.

Relevant terms and parameters of discussion

- Australia party to seven key international human rights treaties including ICCPR; ICEESCR; CERD; CEDAW; CRC
- Australia has also signed and/or ratified a number of optional protocols to these treaties including : to eliminate all forms of discrimination against women; on the rights of the child on the involvement of children in armed conflict; rights of persons with disabilities

Other methods of protection in Australia include:

- the Constitution- express/implied
- common law
- statutory rights

Issues including pertinent examples include:

- Status of international covenants; protocols and treaties. *Teoh* case and its implications.
- Extent of human right protection afforded by at least two (methods) of: the Constitution; common law and statute with pertinent examples to support/ refute the protection

Assessment

The relative importance of international covenants, protocols and treaties compared to other methods of protecting human rights in Australia.

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