



POLITICS AND LAW

ATAR course examination 2022

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) What is meant by Governor-General in Council? (2 marks)

Description	Marks
Outlines what is meant by Governor-General in Council.	2
Makes a general statement about Governor-General in Council.	1
Total	2
Governor-General in Council is: The Governor-General acting with the advice of the Federal Executive Council. Powers exercised in Council, which are not reserve powers, include: establishing government departments, appointing federal judges, and appointing ambassadors and high commissioners (Section 63).	

- (b) Explain the role of the Governor-General of Australia in the legislative process. (3 marks)

Description	Marks
Explains the role of the Governor-General of Australia in the legislative process.	3
Outlines the role of the Governor-General of Australia in the legislative process.	2
Makes a general statement about the role of the Governor-General of Australia in the legislative process.	1
Total	3
The role of the Governor-General in the legislative process includes: <ul style="list-style-type: none"> • giving Royal Assent to a bill - proposed law - passed by the House of Representatives and the Senate • the Governor-General may recommend changes to a bill; however, no Governor-General has ever refused to give Royal Assent • convening a joint sitting of Parliament on advice of the government relative to the legislative process. 	
Accept other relevant answers.	

- (c) Discuss **two** reserve powers of the Governor-General of Australia. (5 marks)

Description	Marks
Discusses two reserve powers of the Governor-General of Australia.	5
Outlines two reserve powers of the Governor-General of Australia. or Discusses in detail one reserve power of the Governor-General of Australia and states another reserve power. or Discusses in detail one reserve powers of the Governor-General.	3–4
States one or two reserve powers of the Governor-General. or Makes a general statement about the reserve powers of the Governor-General.	1–2
Total	5
<p>Those powers that the Governor-General may under certain circumstances exercise without or contrary to advice of FEC (PM).</p> <p>Reserve powers of the Governor-General include:</p> <ul style="list-style-type: none"> • the power to dissolve (or refuse to dissolve) the House of Representatives (Section 5) • the power to dissolve Parliament on the occasion of a deadlock (Section 57) • the power to withhold assent to bills (Section 58) • the power to appoint (or dismiss) ministers (Section 64). <p>Reserve powers clearly require the Governor-General to exercise their own discretion as to whether or not to act contrary to advice from PM.</p> <p>Accept other relevant answers.</p>	

Question 2

(10 marks)

- (a) According to Section 51 of the Commonwealth Constitution (Australia), what is the role of the Commonwealth Parliament? (2 marks)

Description	Marks
Outlines the role of the parliament according to s.51 of the Commonwealth Constitution.	2
Makes a general statement about the role of the parliament according to s.51 of the Commonwealth Constitution.	1
Total	2
Answers could include: The role of parliament s.51: <ul style="list-style-type: none"> • have the power to make laws for the peace, order, and good government with respect to the (concurrent) heads of power listed in s.51 • e.g. s.51(ii) taxation. Accept other relevant answers.	

- (b) Identify **one** non-Westminster system and outline **two** powers of its legislature. (3 marks)

Description	Marks
Identifies a non-Westminster system and outlines two powers of its legislature.	3
Identifies a non-Westminster system and outlines one power of its legislature.	2
Identifies a non-Westminster system and its legislature. or Makes a general statement about the power of the legislature in a non-Westminster system.	1
Total	3
Answers could include: Non-Westminster systems include: <ul style="list-style-type: none"> • United States of America • China • any other non-Westminster system. Powers of the legislature based on the Constitution of the nation identified. Accept other relevant answers.	

- (c) With reference to the Commonwealth Constitution (Australia), discuss the legislative power of the House of Representatives compared with that of the Senate. (5 marks)

Description	Marks
Discusses the legislative power of the House of Representatives compared to the Senate making specific references to the Commonwealth Constitution.	5
Outlines the legislative power of the House of Representatives compared to the Senate making reference to the Commonwealth Constitution. or Discusses the legislative power of the House of Representatives compared to the Senate making limited reference to the Commonwealth Constitution.	3–4
States the major difference/s between the legislative powers of the House of Representatives and the Senate. or Makes a general statement about the legislative power of the House of Representatives compared to the Senate.	1–2
Total	5
<p>Answers could include:</p> <ul style="list-style-type: none"> • <div style="border: 1px dashed gray; padding: 5px; margin: 5px 0;">For copyright reasons this text cannot be reproduced in the online version of this document.</div> • <div style="border: 1px dashed gray; padding: 5px; margin: 5px 0;">For copyright reasons this text cannot be reproduced in the online version of this document.</div> <p>Key differences include:</p> <ul style="list-style-type: none"> • most bills can be introduced into either house • under s.53, the Senate cannot introduce appropriations/money bills nor amend tax bills • the Senate may request the House to make amendments to any bill it may not amend • the House of Representatives is the ‘peoples’ House’ and should determine how money is raised and spent • if any bill fails to pass twice after three months and the House of Representatives passes it again, the Governor-General may dissolve parliament in order to break the deadlock • a joint sitting of both Houses can vote on the Bills post-election in which the House of Representatives will usually dominate in terms of numbers. <p>Accept other relevant answers.</p>	

Question 3

(10 marks)

- (a) Outline the role of public servants as part of the Commonwealth Executive. (2 marks)

Description	Marks
Outlines the role of public servants as part of the Commonwealth Executive.	2
Makes a general statement about the role of public servants as part of the Commonwealth Executive.	1
Total	2
Role of public servants includes: <ul style="list-style-type: none"> • to work either directly for Ministers or within government departments • develop policy, advise Ministers, implement government policies and/or decisions • account for decisions taken by government departments. 	
Accept other relevant answers.	

- (b) Outline **two** differences between the Commonwealth Auditor General and the Administrative Appeals Tribunal (AAT). (3 marks)

Description	Marks
Outlines two differences between the Commonwealth Auditor General and the Administrative Appeals Tribunal (AAT).	3
Outlines one difference and states another between the Commonwealth Auditor General and the Administrative Appeals Tribunal (AAT).	2
Makes a general statement concerning the difference between the Commonwealth Auditor General and the Administrative Appeals Tribunal (AAT).	1
Total	3
Differences include: <ul style="list-style-type: none"> • Commonwealth Auditor General is an officer of the Parliament whilst the AAT is an entity • Commonwealth Auditor General investigates the use of public monies whilst the AAT reviews the merits of administrative decisions made under Commonwealth law • Commonwealth Auditor General has the power to investigate the expenditure of all government departments/agencies in terms of 'economy, efficiency and effectiveness' and report to Parliament whilst AAT has the power to affirm, vary, set aside a decision and substitute a new decision or ask that a decision be reconsidered • the AAT is precluded from hearing appeals in certain cases. 	
Accept other relevant answers.	

- (c) With reference to **two** examples, discuss how the Australian courts have contributed to executive accountability in recent years. (5 marks)

Description	Marks
Discusses how the Australian courts have contributed to executive accountability in recent years. Makes reference to two examples in the discussion.	5
Outlines how the Australian courts have contributed to executive accountability in recent years. Makes reference to two examples. or Discusses how the Australian courts have contributed to executive accountability in recent years. Makes reference to one example in the discussion.	3–4
Discusses how the Australian courts have contributed to executive accountability in recent years making no reference to examples. or Makes a general statement about the courts and executive accountability.	1–2
Total	5
<p>Examples could include:</p> <ul style="list-style-type: none"> • <i>Williams v Commonwealth of Australia</i> (2012) HCA 23 (“Williams No 1”) the executive action is over-riden by HCA • <i>Love v Commonwealth; Thoms v Commonwealth</i> (2020) • <i>Djokovic v Minister for Immigration</i> (2022) FCA <ul style="list-style-type: none"> ▪ January 14, Immigration Minister Alex Hawke uses his ministerial powers to cancel Djokovic's visa on "health and good order grounds". ▪ Djokovic's lawyers lodge an application at the Federal Circuit Court to review the cancellation. ▪ January 16, the Federal Court dismisses Djokovic's application before a full bench. He is deported that evening. • <i>Murugappan family members v the Minister for Immigration</i> <ul style="list-style-type: none"> ▪ August 2021, HCA rejected an application to hear an appeal regarding the protection visa for the 4 year old daughter. This decision forced the Minister for Immigration to review the refugee assessment. ▪ January 2022, Murugappan family won case in the Federal Circuit Court when it ruled Immigration Minister Alex Hawke's decision to prevent three members of the family from applying for further bridging visas was procedurally unfair. 	
Note: examples must come from the past 10 years.	
Accept other relevant answers.	

Question 4

(10 marks)

- (a) Outline what is meant by 'public confidence' in the courts. (2 marks)

Description	Marks
Outlines what is meant by 'public confidence' in the courts.	2
Makes a general statement about 'public confidence' in the courts.	1
Total	2
<p>Answers could include:</p> <p>In the exercise of their powers, courts and their personnel are perceived by society as:</p> <ul style="list-style-type: none"> • independent • impartial in the exercise of their power • adhering to due process, natural justice, procedural fairness • not influenced by/sympathetic to the legislature or executive of the day. <p>Drawn from: http://www5.austlii.edu.au/au/journals/FedJSchol/1999/1.html</p> <p>Accept other relevant answers.</p>	

- (b) Outline **two** ways in which the Commonwealth Constitution (Australia) protects the independence of the Australian court system. (3 marks)

Description	Marks
Outlines two ways in which the Commonwealth Constitution protects the independence of the Australian court system.	3
Outlines one way and states another way the Commonwealth Constitution protects the independence of the Australian court system.	2
Makes a general statement about the Commonwealth Constitution and the independence of the Australian court system.	1
Total	3
<p>Ways include:</p> <ul style="list-style-type: none"> • the separation of judicial power, implied by the structure of the Constitution • the requirement that judges be appointed until retiring age and the protection of the level of salaries (s.72) • the constitutional protection of certain key areas of judicial responsibility or 'jurisdiction' in section 75. <p>Saunders, Cheryl (1997) <i>The Australian Constitution</i>, Constitutional Centenary Foundation p.77.</p> <p>Accept other relevant answers.</p>	

- (c) Discuss **one** advantage and **one** limitation of the appeals process in terms of the accountability of the courts within the Australian legal system. (5 marks)

Description	Marks
Discusses one advantage and one limitation of the appeals process in terms of the accountability of the courts within the Australian legal system.	5
Outlines one advantage and one limitation of the appeals process in terms of the accountability of the courts within the Australian legal system. or Discusses one advantage or one limitation of the appeals process in terms of the accountability of the courts within the Australian legal system.	3–4
States one advantage and/or one limitation of the appeals process in terms of the accountability of the courts within the Australian legal system.	1–2
Total	5
<p>Advantages include:</p> <ul style="list-style-type: none"> • increased accountability of the court/judges • means of correcting errors by the trial judge • for the litigant there is increased accountability in terms of the conviction and/or the sentence. <p>Limitations include:</p> <ul style="list-style-type: none"> • availability of competent representation before the appellate court • rules governing appeals may limit the ability of the court to correct mistakes that have occurred (right to appeal is not automatic) • courts may be averse to going against what was a discretionary or evaluative decision (e.g. jury verdict) • the time and cost involved in the appeals process. <p>Accept other relevant answers.</p>	

Section Two: Source analysis

20% (20 Marks)

Question 5

(20 marks)

- (a) Outline what is meant by federalism in Australia. (2 marks)

Description	Marks
Outlines what is meant by federalism in Australia.	2
Makes a general statement about federalism.	1
Total	2
Answers could include: <ul style="list-style-type: none"> • federalism divides political power between the different parts of the Federation • in Australia, powers and responsibilities are divided between the 'Federal'/'Commonwealth' Government, and the Governments of the States and Territories • federalism is about sharing power between the different entities which limits their powers. 	
Accept other relevant answers.	

- (b) With reference to
- Source 1**
- explain, in your own words,
- two**
- reasons why federalism is a barrier to reform. (4 marks)

Description	Marks
Identifies two reasons why federalism is a barrier to reform. Explains each reason, in the candidate's own word, with direct reference to the source.	4
Identifies two reasons why federalism is a barrier to reform. Explains one reason and outlines the other reason. Answer is mostly in the candidate's own word, with some reference to the source.	3
Identifies two reasons why federalism is a barrier to reform. or Identifies and explains, in candidate's own words, one reason why federalism is a barrier to reform.	2
One or two reasons are cited verbatim from the source.	1
Total	4
Reasons why federalism is a barrier to reform could include: <ul style="list-style-type: none"> • ideology is often seen as a barrier to reform. For example, the federal Coalition struggles to deal rationally with climate change issues • when responsibilities overlap and 'institutions are not designed effectively' such as the national Electricity Market. Eastern States and Commonwealth need to agree • federalism plus strong vested interests also block reform. For example, regulating labour hire platforms and improving the management of chronic diseases • GST reform. There is a requirement for any reform to benefit both the states and the federal Government. GST Reform results in "political pain for the federal government, but much of the additional revenue would flow to the states." 	
Note: reasons must be drawn from the source.	
Accept other relevant answers.	

(c) Discuss the division of powers in Australian federalism.

(6 marks)

Description	Marks
Identifies how power is divided in Australian federalism. Discusses each of these types of power and includes relevant examples in the discussion.	5–6
Identifies how power is divided in Australian federalism. Outlines each of these types of power and includes relevant examples in the outline. or Identifies how power is divided in Australian federalism. Outlines two of these types of power and includes relevant examples in the outline. or Identifies how power is divided in Australian federalism. Outlines one of these types of power and identifies one/two other types and includes relevant examples in the outline. or Identifies how power is divided in Australian federalism. Discusses one of these types of powers and includes relevant examples in the discussion.	3–4
Identifies how power is divided in Australian federalism. Outlines one of these types of power and includes a relevant example in the discussion. or Identifies how power is divided in Australian federalism. Gives examples of the different types of power.	1–2
Total	6
The division of power in Australian federalism is: <ul style="list-style-type: none"> • the allocation of lawmaking powers to Commonwealth and the States determined at the time of federation • the allocation of powers is sometimes referred to as the ‘federal balance’ • the constitution lists exclusive and concurrent powers and explains residual powers: <ul style="list-style-type: none"> ▪ Exclusive powers: These are lawmaking powers that were given to the Commonwealth to make laws. These lawmaking powers are given to the Commonwealth to make laws for the 'peace, order and good government of Australia'. They are enumerated (listed one-by-one) under Section 51 and 52 of the Constitution. Exclusive powers are ones that only the Commonwealth can make laws for, and the States cannot. These include areas of national concern such as immigration, defence and currency. These lawmaking powers are part of specific powers, but they are considered and termed differently because the states are excluded from legislating on them. ▪ Concurrent powers: Lawmaking powers shared with the states. These are known as concurrent powers because both the Commonwealth and the States have the authority to legislate in these areas. These areas are marriage, divorce and bankruptcy. However, it is important to acknowledge here that if States made a law that conflicted with Commonwealth's laws, S109 within the Constitution states that Commonwealth's laws will always override that of the states. ▪ Residual powers: These lawmaking powers are not listed within the Australian constitution. At the time of federation, colonies wanted to retain some of their lawmaking powers and not completely give up their legislative authority to the Commonwealth. As such, they retained a set of lawmaking powers that each state can legislate based on. These areas of lawmaking include education, criminal laws and health. 	

Question 5 (continued)

(d) Evaluate the impact of **two** High Court judgments on Australian federalism. (8 marks)

Description	Marks
Identifies two High Court judgments that have impacted on Australian federalism. Evaluates the impact of each judgment on Australian federalism. Incorporates evidence of the decisions and relevant evidence of their impact in the evaluation.	7–8
Identifies two High Court judgments that have impacted on Australian federalism. Attempts to evaluate the impact of each judgment on Australian federalism. Incorporates some evidence of the decisions and some relevant evidence of their impact in the discussion.	5–6
Identifies two High Court judgments that have impacted on Australian federalism. There is no attempt to evaluate the impact of each judgment on Australian federalism. Outlines aspects of the decisions and their impact on Australian federalism. or Identifies one High Court judgment that has impacted on Australian federalism. Evaluates the impact of the judgment on Australian federalism. Incorporates evidence of the decision and relevant evidence of its impact in the evaluation.	3–4
Identifies one/two High Court judgments that have impacted on Australian federalism. or Makes a general statement about the impact of the decision(s).	1–2
Total	8
<p>High Court judgments could include but are not limited to:</p> <ul style="list-style-type: none"> • <i>Uniform Tax Cases</i> (1942) and (1957) • <i>Tasmanian Dams Case</i> (1983) • <i>Ha & Hammond Cases (tobacco)</i> (1997) • <i>Work Choices</i> (2006) <p>Possible impacts of judgments could include but are not limited to:</p> <ul style="list-style-type: none"> • High Court as the adjudicator of constitutional disputes is charged with defending the federal political system • High Court in determining the constitutional validity of State and Commonwealth actions can have a major effect on the federal balance • High Court has been seen to increase Commonwealth power through its interpretation • High Court decisions have consistently favoured the Commonwealth • s.109, partly because HCA justices are chosen by Commonwealth Government (and therefore feel no state allegiance) • High Court decisions have also contributed to increasing financial powers of the Commonwealth at the expense of the states, expanding the VFI. <p>Possible broad areas of impact related to particular judgments:</p> <ul style="list-style-type: none"> • Taxation and fiscal imbalance • Corporations' powers • Customs and Excise and revenue of the States • External affairs power and erosion of residual powers. 	
Accept other relevant answers.	

Question 6

(20 marks)

- (a) What is meant by 'common law rights'? (2 marks)

Description	Marks
Outlines what is meant by 'common law rights'.	2
Makes a general statement about 'common law rights'. or Gives an example of a 'common law right'.	1
Total	2
Answers could include:	
Rights that have been developed over time by the courts and are mainly legal rights; for example – rights to freedom of speech and association; freedom from arbitrary arrest; right to assumption of innocence.	
Accept other relevant answers.	

- (b) With reference to
- Source 2**
- explain, in your own words,
- two**
- factors why common law rights are at risk. (4 marks)

Description	Marks
Identifies two factors why common law rights are at risk. Explains each factor in the candidate's own words, with direct reference to the source.	4
Identifies two factors why common law rights are at risk. Explains one factor and outlines the other factor. Answer is mostly in the candidate's own words, with some reference to the source.	3
Identifies two factors why common law rights are at risk. or Identifies and explains one factor why common law rights are at risk. Attempts to explain in candidate's own words.	2
One or two factors are cited verbatim.	1
Total	4
Factors why common law rights are at risk include:	
<ul style="list-style-type: none"> they offer the weakest protection of rights as they are easily overridden by Parliament and the Executive (Government of the day) overreach by Parliament and the Executive; can be overridden by Parliament's legislation – i.e. bikie legislation curbing freedom of association, the Coalition government's suspension of the Racial Discrimination Act by virtue of them not being written in, and therefore not protected by, the Constitution, they are at risk of erosion by Parliament and the Executive. 	
Note: factors must be drawn from the source.	
Accept other relevant answers.	

Question 6 (continued)

(c) Discuss **two** statutes that protect human rights in Australia. (6 marks)

Description	Marks
Identifies two statutes that protect human rights in Australia. Discusses each of the statutes incorporating which particular rights are protected in the discussion.	5–6
Identifies two statutes that protect human rights in Australia. Outlines each of the statutes incorporating which particular rights are protected. or Identifies one statute that protects human rights in Australia. Discusses the statute incorporating which particular rights are protected in the discussion.	3–4
Identifies one or two statutes that protect human rights in Australia. or Makes a general statement about the statutory protection of human rights in Australia.	1–2
Total	6
<p>Answers could include:</p> <ul style="list-style-type: none"> • <i>Migration Act 1958</i> – right to freedom of movement and right to seek asylum • <i>Racial Discrimination Act 1975</i> – right to equality • <i>Sex Discrimination Act 1984</i> – right to equality • <i>Disability Discrimination Act 1992</i> – right to equality • <i>Crimes (Torture) Act 1988</i> – legal rights <p>Particular rights could include:</p> <ul style="list-style-type: none"> • <i>Racial Discrimination Act 1975</i>: provides that it is unlawful to treat a person less fairly than someone else in the same/similar situation because of their race, colour, nationality or ethnic origin e.g. Native Title Rights: Koowarta. • <i>Sex Discrimination Act 1984</i>: makes it unlawful to discriminate or treat a person differently on the basis of sex, gender identity, sexual orientation or because of pregnancy, particularly in the workplace (and/or public life i.e. education, renting/buying a house), by limiting promotional opportunities or treating the person less favourably in terms of pay in comparison to a counterpart. Also protects from sexual harassment. • <i>Crimes (Torture) Act 1998</i>: used to ratify the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment. • <i>Disability Discrimination Act 1992</i>: provides that it is unlawful to treat a person less fairly than someone else in the same/similar situation (in the workplace and/or public life) because of their disability. <p>Accept other relevant answers.</p>	

- (d) With reference to a country other than Australia, evaluate the extent to which **two** particular human rights are protected in that country. (8 marks)

Description	Marks
Identifies the country and names the two human rights protected. Uses relevant and detailed evidence in evaluating the extent to which two particular human rights are protected in that country.	7–8
Identifies the country and names the two human rights protected. Uses relevant evidence in attempting to evaluate the extent to which two particular human rights are protected in that country.	5–6
Identifies the country and names the two human rights protected. Outlines the extent to which two particular human rights are protected in that country. There is no attempt to evaluate the extent to which two particular human rights are protected in that country. or Identifies the country and names one human right protected. Uses relevant and detailed evidence in evaluating the extent to which the particular human right is protected in that country.	3–4
Identifies a country and names one/two human rights that are protected. or Makes a general statement about the protection of human rights in a country other than Australia.	1–2
Total	8
<p>Countries may include:</p> <ul style="list-style-type: none"> • United States of America • China <p>Human rights may include:</p> <ul style="list-style-type: none"> • Equality: racial, sex, disability discrimination. • Freedoms: religion, expression/speech, movement, from cruel and unusual punishment. • Legal: rights of the accused (e.g. presumption of innocence, right to silence, fair trial, impartial jury, rules of evidence). <p>For example, the United States of America</p> <p>Rights are protected through:</p> <ul style="list-style-type: none"> • Constitution/Bill of Rights • Statutes • Common Law. <p>Constitutional protection through:</p> <ul style="list-style-type: none"> • Explicit Articles of the Constitution: Article 1 (prohibits, amongst other things, discrimination on the basis of state as well as providing for free trade within the USA); Article 3 (trial by jury); Article 6 (no religious affiliation for federal or state office) • Bill of Rights - the first ten amendments to the US Constitution passed en bloc - that offers numerous protections such as freedom of religion, speech, press, peaceful assembly, to petition (First Amendment); protection from unreasonable searches and seizures by the government (Fourth Amendment); protection against self-incrimination and deprivation of life, liberty or property without due process (Fifth Amendment); rights of criminal defendants, including the right to a public trial without unnecessary delay, the right to a lawyer, the right to an impartial jury, the nature of the charges and evidence against the accused (Sixth Amendment); protection from cruel and unusual punishment (Eighth Amendment). Amendments 13-24 expanded safeguards for civil rights. 	

Question 6 (continued)

Statutory protection through legislation of the US Congress:

- *Civil Rights Act 1964*: significant rights statute. Made unlawful discrimination against racial, ethnic, national and religious minorities and women. Outlawed racial segregation in schools and the workplace and granted equal rights to all American citizens regardless of race
- *Americans with Disabilities Act 1990*: elimination of discrimination based on disability
- *Voting Rights Act 1965*: prohibits discriminatory voting practices (particularly in relation to race).

Common Law protections:

- Has most of the Common Law protections Australia has; however, some rights are Constitutional rights (e.g. right to silence, rules of evidence).

International Law:

- USA has not ratified any international rights since 2002.

Note:

- Responses should include sufficient evidence to demonstrate an understanding of the extent of protection offered for a particular right(s).
- Constitution and Bill of Rights provides for a greater safeguarding of explicit rights, although those guaranteed are relatively limited compared to the constitutions of other countries.
- Impact of the Second Amendment (right to bear arms) competing with other rights.
- Issues surrounding human rights and the USA's reluctance to ratify international law, particularly in relation to the 'war on terror' and conduct at Guantanamo Bay (treatment of terror suspects); policy relating to 'extraordinary rendition' which allows for terror suspects to be transferred to countries with less human rights protections.
- Issues surrounding voter suppression (e.g. 2020 US Presidential Election; closing of polling stations, strict voter ID laws, purging of electoral rolls).

Accept other relevant answers.

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; explicitly links the response to the terminology of the question.	7
Evaluates/assesses/analyses the claim using appropriate evidence which demonstrates an understanding of the topic; attempts to explicitly link the response to the terminology of the question.	6
Evaluates/assesses/analyses the claim using some evidence which demonstrates some understanding of the topic; makes a limited attempt to link the response to the terminology of the question.	5
Constructs a relevant but weak evaluation/assessment/analysis; implicit response to the terminology of the question.	4
Constructs a weak evaluation/assessment/analysis; limited use of the terminology of the question.	3
No evaluation/assessment/analysis; attempts to link to the terminology of the question.	2
No evaluation/assessment/analysis. A statement only; little evidence the response is relevant to the terminology of the question.	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)**

Formal and informal methods of constitutional change have significantly altered the Commonwealth Constitution.

Evaluate this claim with reference to referendums, referral of powers and unchallenged legislation.

Relevant terms and parameters of discussion:

- constitutional change
- referendums
- referral of powers
- unchallenged legislation
- federalism.

Issues including pertinent examples could include:

- Each of these can lead to a significant alteration to the Commonwealth Constitution and a transfer of state powers to the Commonwealth.
- Referendums (s.128 of the Constitution) have the power to reset the federal balance in either direction. In practice there have only been four successful referendums that have increased federal powers: State Debts (1910); State Debts (1928) that created Loans Council; Social Services (1946); and Indigenous Australians (1967).
- Referral of powers Section 51(xxxvii) of the Commonwealth Constitution (also called the referral power) is a provision in the Constitution which empowers the Commonwealth Parliament to legislate on matters referred to it by any state. s.51(xxxvii) allows states to surrender powers voluntarily:
 - Tasmania and South Australia non-metro railways
 - Defacto relationships
 - Incorporation processes
 - Terrorism
 - Consumer Credit
 - Mutual Recognition
 - Referral of powers has contributed to an erosion of state power.
- Unchallenged legislation is when the Commonwealth acts in an area where it does not have enumerated powers. Commonwealth Government passes laws regarding areas of responsibility not listed in the constitution (residual powers belonging to the States). The states do not challenge the Commonwealth's actions in these areas. State Governments do not challenge the validity of the laws in the High Court. High Court cannot declare laws invalid unless the matter is brought before them by a State Government or an affected person:
 - examples include Snowy Mountain Scheme, aviation regulation and running the CSIRO
 - impact in shifting power is minimal because if the States have a problem with this Commonwealth intrusion into residual power, they can challenge it.

Evaluation:

- Has there been significant change to the constitution through each of the methods of constitutional change?
- Each of the methods would need to be evaluated separately for higher marks.
- It is not necessary for each method of change to be dealt with in equal depth.

Question 8

(25 marks)

Political parties, rather than pressure groups, have a greater influence on the lawmaking process in the Commonwealth Parliament.

Evaluate this claim with reference to examples in recent years.

Relevant terms and parameters of discussion:

- Lawmaking process of the Commonwealth Parliament.
- Political parties: Major parties ALP and LP as government and opposition; minor and micro parties and the balance of power in the Senate and their role in the legislative process.
- Pressure groups: a group in society who engage in activities to influence lawmaking by parliament and/or the courts including lobbying, making an issue an election issue, publicising an issue to ensure that the government of the day/minor parties/opposition look to introducing legislation.

Issues and pertinent examples could include:

Political parties and lawmaking in Parliament/Courts

- Major parties as government:
 - the introduction of legislation in the House of Representatives to implement policy
 - the use of numbers in the House of Representatives to force through legislation.
- Major parties as opposition:
 - use the committee process to analyse bills and suggest amendments
 - move amendments at 3rd Reading stage in the House of Representatives or as legislation passes through the Senate
 - co-ordinate with minor parties and/or independents to pass amendments in the Senate or defeat the legislation.
- Minor parties, mainly in the Senate, can influence in terms of working with each other and the Opposition:
 - 2011 Gillard Clean Energy Act, Greens led legislation (minority government) which included a price on carbon that worked to reduce emissions
 - 2016 Greens with ALP combined to reject legislation to scrap the Clean Energy Finance Corporation
 - March 2017 Greens, Nick Xenophon Team and Tasmanian Jacqui Lambie Network combined with ALP Opposition to defeat the proposed legislative change to section 18C of the *Racial Discrimination Act* (1975)
 - 2019 *Migration Amendment (Repairing Medical Transfers Bill 2019)* passed in the Senate with the support of Pauline Hanson's One Nation and Jacqui Lambie Network
 - influence depends on government numbers in the House/Senate and policy of Opposition.

Pressure Groups and the lawmaking process:

- AMA and child vaccinations campaign: Social Services legislation Amendment (No Job, No Pay) Act (2015) which resulted in the Family Tax Benefit
- The Australia Institute's National Integrity Committee made up of former judges and corruption fighters calling for the Coalition's proposed NIC to have more power in terms of public hearings and initiating investigations. Submissions to the Select Committee on the Establishment of a National Integrity Commission (2017). Joined by Crossbench MPs and Senators 2019. Australian Federal Integrity Commission Bill 2021 first and second reading Senate (2021) (<https://australiainstitute.org.au/post/crossbench-legislate-national-integrity-commission-with-teeth/>)

Question 8 (continued)

- Clubs NSW 2010 campaign against the Gillard/Wilkie agreement on pre-commitment technology and gambling. Outcome was Gillard reneging on the agreement in 2012. Since then, no state or federal government has been prepared to take on Australia's gambling industry (<https://www.crikey.com.au/2021/12/21/pokies-lobby-knocks-off-reform-minded-minister-nsw/>)
- 2016 - ongoing: Two opposing groups have countered each other in terms of the introduction of a sugar tax on sugary drinks. AMA's use of social media. Countered by both the Sugar Producers especially and the Beverages Council who have targeted both the Opposition and the Government through direct engagement with politicians as well as commercial lobbyists and kept it off the agenda of the major parties. The Greens have adopted a sugar tax policy
- Submissions to parliament: e.g. 2012 Refugee and Immigration Legal Centre (and a number of pressure groups) made submissions to the Joint Committee on Human Rights (Parliamentary Committee) regarding the impact of changes to the Migration Act 1958. As a result, the Committee gave recommendations that if changes were to be made there would be human rights issues that the government would need to answer for.

Evaluation:

- Major parties are the key to influencing the lawmaking process in terms of initiating legislation
- Minor parties can make or break legislation in the Senate through siding with the Government or the Opposition
- Pressure groups attempt to influence lawmaking by Parliament through policy implementation or financial statutes. However, they are less effective in influencing lawmaking as they tend to have limited direct access to MPs.

Section Three: Part B

Question 9

(25 marks)

Evaluate the extent to which Australia and **one** other country uphold the democratic principles of political representation and natural justice.

Relevant terms and parameters of discussion:

- Political representation: ability of the individual to influence the political system through their vote; the extent that the local representative(s) in the legislature reflect the will of the electorate. (Marking key 2020)
- Natural justice refers to:
 - the way rules and procedures are applied by any person or agency that adjudicates disputes between others about the rights of others
 - dispute is resolved by an unbiased adjudicator in an open forum
 - each party to a dispute has an equal opportunity to present its case
 - overall *procedural fairness* is central to the concept.

Issues and pertinent examples could include:

Australia

- How it upholds political representation:
 - Australia is a representative democracy
 - Broad franchise
 - Compulsory voting – means a firm expression of the ‘will of the people’ and limits over-representation of well-funded minorities
 - Australia’s voting system tends to create a stable government, produces links with constituents and their representatives, is relatively simple to use
 - Australia’s compulsory voting and voting systems result in political representation for both the will of the majority and representation of minorities. It balances the political representation of the majority with the diversity of Australian society
 - The use of two different electoral systems for each House ensures overall diversity of representation (and thus, accountability) in the single and multi-member electorates:
 - Preferential Voting in the House of Representatives: provides a clear winner in single member electorates. Provides strong links with constituents, results in stable government, strong accountability, and is simple to use
 - a disadvantage of the Preferential Voting system is that minor parties are disadvantaged which leads to a lack of minor party/independent representation in the House of Representatives. And the system does not reflect the true electoral support of the minor parties
 - Proportional Voting in the Senate: multi-member electorates, fair to parties, and leads to increased political representation for minorities and independents
 - a disadvantage of the Proportional Voting system: can provide too much power for minor parties in the Senate, limited links and accountability to constituents due to multi-member nature, and despite the 2016 voting reforms, the system still remains relatively complex.
- How it undermines political representation:
 - decline of support for the major parties as reflected in the 2016 election (Liberal and ALP achieved a combined primary vote of 77% compared to 90% in previous years). This is countered by the huge increase in votes for minor and micro parties and Independents, which reflects greater awareness and representation
 - disengagement with politics – in 2016 there were more than half of 18+ year olds not enrolled to vote but by 2021 84% eligible were enrolled
 - increased use of postal voting means voters may not hear all arguments and policy proposals from all sides

Question 9 (continued)

- diversity of representation is still a concern. Indigenous and LGBTQIA+ representation is relatively good, however other diversity factors such as age, gender, education are not so well reflected. But there is greater awareness of minority groups and their needs e.g. same sex marriage legislation
 - concerns of 'political donations' and influence due to the weakening of electoral laws
 - greatest concern with the electoral system is the power of the Senate to override the will of the majority. This can cause deadlocks between the Houses (although arguably the Senate is 'checking' the House of Representatives and therefore reducing the 'decline of Parliament'). But this is because of the federal system itself.
- How it upholds 'natural justice':
 - adversarial trial processes include: impartial judge (separation of powers and s72 Commonwealth Constitution), fair and open trials, application of the law according to rules of evidence, neutral juries, rights of the accused (including presumption of innocence, knowing the charges and evidence against the accused, legal representation and knowing their accuser)
 - access to Alternative Dispute Resolution (ADR) in tribunals such as the Administrative Appeals Tribunal, which can review any decision made by a government department or agency against a person with standing. The AAT can only review decisions where an Act or regulation indicates that it may be reviewed by the AAT. There are over 400 Acts that allow AAT to review decisions
 - most common areas where decisions are reviewed relate to: child support, migration and refugee visas, taxation and family assistance payments – it covers broad areas of government decision making. The AAT is not a court – it is a statutory dispute resolution body
 - ADR is inexpensive, less formal and resolves disputes taking into account their merits as well as the law
 - procedures for trial are well-established and ADR is supported by legislation e.g. Australian Human Rights Commission Act requires the commission to use 'conciliation' – a form of ADR
 - specific right to trial s80 (Commonwealth Constitution)
 - *Dietrich* Case led to a qualified common law right to legal representation – led to creation of 'legal aid' for those who cannot afford representation in particular circumstances (enabling both sides to be heard which supports 'natural justice').
 - How it undermines 'natural justice':
 - extensive mechanisms for upholding 'natural justice'. However, adversarial trials are expensive – criticism regarding access and time consuming/delays
 - Legal Aid is only provided for those who can't afford representation – others must exhaust all other resources before they are able to access legal aid resulting in significant financial difficulties
 - high number of indigenous people in the justice system:
 - high rates of Aboriginal deaths in custody
 - mandatory sentencing discriminatory against this group by the 'system'.

Other country:

- how it upholds political representation
- how political representation is undermined
- how it upholds 'natural justice' making reference to particular aspects of natural justice
- how 'natural justice' is undermined making reference to particular aspects of natural justice.

Evaluation:

- The extent to which Australia upholds the democratic principle of political representation?
- The extent to which Australia upholds the democratic principle of the 'natural justice'?
- 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 evaluated equally, but the extent to which each principle is, must be evaluated.
- It is not necessary for each country to be dealt with in equal depth but all aspects of the question must be addressed.

Question 10

(25 marks)

Evaluate the extent to which elections and **two** procedures and processes of the Commonwealth Parliament hold it accountable.

Relevant terms and parameters of discussion:

- Elections: held for all seats in the House of Representatives 'every 3 years' and for the Senate 'every 6 years' (fixed except for a double dissolution). Note that Territory Representatives are elected every House of Representatives election
- Procedures and processes of the Commonwealth Parliament include:
 - legislative committees and particular legislation
 - particular processes involved in passing legislation through both Houses
 - naming procedure under Standing Orders for control of disorderly conduct in the chamber that results in suspension from the chamber
 - reference to the Parliamentary Privilege Committee for breach of parliamentary standards
 - censure motion by a chamber against a Member/Senator (in terms of the accountability of Parliament)
 - grievance and/or adjournment debates (in terms of the accountability of Parliament).

Issues including pertinent examples could include:

Elections

House of Representatives:

- particular MPs can be targeted at election time within their electorates which can lead to them losing their seat or conversely ensuring that they are returned in spite of what is happening to their party more broadly e.g. Sophie Mirabella Indi 2016; Tony Abbott Warringah 2019; c.f. Barnaby Joyce 2019; Josh Frydenberg 2022
- most sitting MPs supported by a major party have less chance of being brought to account as they are 'protected by the party' who campaign on their behalf. Leader of the party campaigns with the local MP
- Green challenges to ALP sitting candidates especially inner city electorates in Queensland, New South Wales and Victoria
- preferential voting can both promote accountability or negate it. Queensland and the conservative vote (Palmer/ Hanson/Katter) preferences can influence one way or the other in terms of the sitting LNP member e.g. 2016 Longman and Wyatt Roy's loss to the ALP. Wyatt clear leader on first preference votes.

Senate:

- Senate elections are based on each State as a single multi-member electorate and this takes away individual Senator accountability
- Senate elections only held once every 6 years normally – Senators can afford to make mistakes early in their term
- Senators are protected by the 'party ticket'
- minor party Senators may be held more accountable because they are responsible for either the success or failure of particular legislation compared to members of the major parties.

Procedures and processes of the Parliament:

A detailed discussion of each identified procedure/process (see above) in terms of it keeping the Commonwealth Parliament accountable. This would include relevant examples.

Evaluation:

- Do elections for the House of Representatives hold it accountable to any extent?
- Do elections for the Senate hold it accountable to any extent?
- Does either of the processes/procedures discussed hold the Parliament to account? How and to what extent?

ACKNOWLEDGEMENTS

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