



POLITICS AND LAW

ATAR course examination 2025

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 what the legislature is under the Commonwealth Constitution. (2 marks)

Description	Marks
Outlines what the legislature is under the Commonwealth Constitution	2
Makes a general statement about the legislature or Identifies the legislature in Australia	1
Total	2
Answers could include: - a Federal Parliament, which consists of the King, a Senate, and a House of Representatives (Section 1 of the Commonwealth Constitution) - legislative power is vested in the Commonwealth Parliament. (for further reference visit https://www.aph.gov.au/constitution). Accept other relevant answers.	

- (b) Explain **one** difference between the executive as outlined in the Commonwealth Constitution and the executive under Westminster conventions. (3 marks)

Description	Marks
Explains one difference between the executive as outlined in the Commonwealth Constitution and the executive under Westminster conventions	3
Outlines one difference between the executive as outlined in the Commonwealth Constitution and the executive under Westminster conventions	2
Makes a general statement about the executive as outlined in either the Commonwealth Constitution and the executive under Westminster conventions or Makes a general statement about the executive in the Australian political system	1
Total	3
Answers could include: - the formal executive outlined in the Commonwealth Constitution and, according to Section 61, is responsible for the execution and maintenance of the Constitution, and of the laws of the Commonwealth; whereas the Westminster executive is not mentioned in the Constitution and is responsible for putting laws into operation and carrying out the day-to-day business of government - the Governor-General does not have the authority to make decisions on behalf of the Prime Minister and ministers; rather, the Governor-General normally acts on the advice of the Prime Minister and Ministers. Definitions: Section 61 of the Commonwealth Constitution: executive power of the Commonwealth is vested in the King and is exercisable by the Governor-General as the King's representative (Section 2); the Governor-General has power to act on behalf of the King in Australia. Under Westminster convention: the political executive is drawn from the party/ies that win the majority of seats in the lower house (House of Representatives). (for further reference visit Australian Constitution: https://www.aph.gov.au/constitution). Accept other relevant answers.	

Question 1 (continued)

- (c) Discuss what is meant by 'responsible government' in the Australian political system.
(5 marks)

Description	Marks
Discusses in detail what is meant by responsible government in the Australian political system	5
Discusses what is meant by responsible government in the Australian political system	4
Outlines what is meant by responsible government with a relevant example	3
Outlines what is meant by responsible government or Makes a general statement about responsible government	1–2
Total	5
Answers could include: Responsible government: • is the foundation of the Westminster system of parliamentary democracy • a system of government that embodies the principle of parliamentary accountability • where the executive is drawn from, and accountable to, the legislature both collectively and individually • the party or coalition of parties must maintain the confidence and support of the majority of the members of the House of Representatives to remain in power. This provides a check on the executive – ensuring they are accountable to the parliament • if it is defeated on a motion of no confidence in the House of Representatives or at an election, the government must resign • the government must be able to guarantee supply. If it cannot, by convention it should resign. (for further reference visit Parkin, Summers, Woodward. <i>Government, Politics, Power and Policy in Australia</i>. pp 47-50, 71-2).	
Accept other relevant answers.	

Question 2

(10 marks)

- (a) Outline what is meant by 'directly chosen by the people' with respect to the Commonwealth Constitution. (2 marks)

Description	Marks
Outlines what is meant by directly chosen by the people in respect to the Commonwealth Constitution	2
Makes a general statement about the meaning of directly chosen by the people in respect to the Commonwealth Constitution	1
Total	2
Answers could include: - that the people vote for the members of the Senate and House of Representatives themselves (rather than like in some other countries where the people vote for an intermediate group who then choose the members) - Commonwealth Constitution Sections 7 and 24. Accept other relevant answers.	

- (b) Explain **one** difference in the role of the House of Representatives compared to the role of the Senate in the Australian political system. (3 marks)

Description	Marks
Explains one difference in the role of the House of Representatives compared to the role of the Senate in the Australian political system	3
Outlines one difference in the role of the House of Representatives compared to the role of the Senate in the Australian political system	2
Makes a general statement about the different role of the House of Representatives compared to the Senate	1
Total	3
Answers could include: - the role of each house is to represent the national interest, the House is the 'people's House' due to its popular/electorate-based composition whereas the Senate is the 'states House' due to the whole of state and territory electorates - whilst both houses are responsible for lawmaking and have a role to scrutinise and hold the executive government to account the Senate is considered the 'house of review' - the House is responsible for the making (and breaking) of government whereas the Senate has no formal or binding role in the formation of government or censure of ministers. Accept other relevant answers.	

Question 2 (continued)

- (c) Discuss the relative powers of the House of Representatives and the Senate, with reference to Section 53 of the Commonwealth Constitution. (5 marks)

Description	Marks
With reference to Section 53 of the Commonwealth Constitution discusses in detail the relative powers of the House of Representatives and the Senate	5
With reference to Section 53 of the Commonwealth Constitution discusses the relative powers of the House of Representatives and the Senate	4
Outlines the relative powers of the House of Representatives and the Senate with some reference to Section 53 of the Commonwealth Constitution	3
Outlines the major difference in power between the House of Representatives and the Senate or Makes a general statement about the power of the House of Representatives and the Senate	1–2
Total	5
Answers could include: - the powers of the House of Representatives and Senate are almost equal - all bills must pass both houses of parliament to become law and both houses have the power to reject any bill - most bills can be introduced into either house 'the Senate may not initiate or amend any bills imposing taxation or appropriating revenue or moneys for the annual services of government' because the House of Representatives is the 'people's House' and should determine how money is raised and spent - the Senate may request the House make amendments to any bill that it may not amend. (for further reference visit https://www.aph.gov.au/constitution).	
Accept other relevant answers.	

Question 3

(10 marks)

- (a) Outline 'the right of appeal' to the High Court of Australia.

(2 marks)

Description	Marks
Outlines the right of appeal to the High Court of Australia	2
Makes a general statement concerning the right of appeal	1
Total	2
Answers could include: - the parties to a case already decided in a lower court may seek review of the decision to a higher court - the right of appeal is not automatic or guaranteed, rights to appeal can also be set (and limited) by respective Commonwealth or state/territory legislation - the High Court of Australia decides itself if it will hear a case 'on appeal' requiring a grant of special leave to proceed. This applies to cases from the full bench of the Federal Court, Family Court, a state court exercising federal jurisdiction or state Supreme Court. For special leave to be granted a case will usually have to raise new points of law; be deemed to be of high public importance; be likely to involve many future cases; involve questions of law that have been decided in inconsistent ways by two or more lower courts. (for further reference visit https://www.hcourt.gov.au/about/operation-of-the-high-court). Accept other relevant answers.	

- (b) Explain the process of removing a Justice under Section 72 of the Commonwealth Constitution.

(3 marks)

Description	Marks
Explains the process of removing a Justice under Section 72 of the Commonwealth Constitution	3
Outlines the process of removing a Justice under Section 72 of the Commonwealth Constitution	2
Makes a general statement about how a Justice is removed	1
Total	3
Answers could include: Section 72 of the Commonwealth Constitution provides: Justices of the High Court and other courts shall only be removed: - on an address by both Houses of the Commonwealth Parliament in the same session, praying for removal - on 'the ground of proved misbehaviour or incapacity' - by the Governor-General in Council. (for further reference visit https://www.apf.gov.au/constitution). Accept other relevant answers.	

Question 3 (continued)

- (c) Discuss **two** ways in which ‘the appeals process’ promotes public confidence in the Australian court system. (5 marks)

Description	Marks
Discusses in detail two ways the appeals process promotes public confidence in the Australian court system	5
Discusses two ways the appeals process promotes public confidence in the Australian court system or Discusses in detail one way the appeals process promotes public confidence in the Australian court system and States another way the appeals process promotes public confidence in the Australian court system	4
Outlines two ways the appeals process promotes public confidence in the Australian court system or Discusses in detail one way the appeals process promotes public confidence in the Australian court system	3
States how the appeals process and public confidence in the courts are linked or Makes a general statement about appeals and public confidence in the courts	1–2
Total	5
Answers could include: - the appeals process promotes public confidence by: - providing accountability of the court decisions and judges, through the review process (regardless of whether the decision is affirmed or overruled) - means of correcting errors by trial judges - means of reviewing verdicts in trials by jury - for the litigant there is increased accountability in terms of conviction and/or the sentence - judges and justices recusing themselves from a case where they may have an actual biases or apprehended bias (perceived conflict of interest); or where courts determine decisions need to be set aside and reheard due to actual bias as part of the ‘double might’ test. As in <i>QYFM v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor</i> [2023] HCA 15 - a unanimous or majority decision of the court, especially the High Court of Australia - openness and transparency of the courts allowing public viewing and engagement as well as the requirement that judges/justices provide written reasons for their decisions, including cases on appeal - establishing or upholding common law rights, such as the right to legal representation for indictable offences or a staying of prosecution - utilises a relevant case example on appeal to demonstrate how the case may promote public confidence in the courts as an institution or in a specific court. Accept other relevant answers.	

Question 4

(10 marks)

- (a) Outline what is meant by a 'political right'. (2 marks)

Description	Marks
Outlines what is meant by a political right	2
Makes a general statement concerning political rights or Gives an example of a political right	1
Total	2
Answers could include: - political rights relate to an individual's participation in the democratic process - political rights enable individuals to actively engage with, and participate in, the political and decision-making process. Includes the right to vote, freedom of speech and assembly free from discrimination. (for further reference visit Article 25 ICCPR: https://humanrights.gov.au/our-work/rights-and-freedoms/right-take-part-public-affairs-voting-rights-and-access-public-service).	
Accept other relevant answers.	

- (b) Explain **one** way in which a 'legal right' of a particular group in Australian society has changed since Federation. (3 marks)

Description	Marks
Explains one way a legal right of a particular group in Australian society, has changed since Federation	3
Outlines one way a legal right of a particular group in Australian society, has changed since Federation	2
Gives an example of a legal right that has changed for a particular group in Australian society since Federation or Makes a general statement about how legal rights of a particular group have changed since Federation	1
Total	3
Answers could include: Groups could include: First Nations peoples, Women, LGBTQIA+ - legal rights are entitlements which are formally protected and enforceable by the legal system; gives protection against and from certain actions or the ability to act in certain ways, such as anti-discrimination laws - e.g., anti-discrimination laws (i.e., Racial Discrimination Act, Sex Discrimination Act, Disability Discrimination Act), same-sex marriage laws, land rights, changes to the Electoral Acts in Australia.	
Accept other relevant answers.	

Question 4 (continued)

- (c) Discuss how **two** elements of natural justice have perhaps been denied to a particular group in Australia. (5 marks)

Description	Marks
Discusses in detail how two elements of natural justice have perhaps been denied to a particular group in Australia	5
Discusses how two elements of natural justice have perhaps been denied to a particular group in Australia or Discusses in detail how one element of natural justice has perhaps been denied to a particular group in Australia and Cites a second element of natural justice and states how it has perhaps been denied to a particular group in Australian society	4
Outlines how two elements of natural justice have perhaps been denied to a particular group in Australia or Discusses in detail how one element of natural justice has perhaps been denied to a particular group in Australia	3
Cites one or two elements of natural justice and links it/them to the experience of a particular group in Australian society	1–2
Total	5
Answers could include: Elements of natural justice include: - 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 (right to be heard; no bias; based on fact) - overall, procedural fairness is central to the concept. (for further reference visit https://unacademy.com/content/upsc/study-material/law/principles-of-natural-justice/). Groups: - may face unfair processes or lack of procedural fairness making it difficult to challenge decisions or receive fair/unbiased hearings - include: people with disability; asylum seekers – including offshore processing; First Nations peoples – including mandatory sentencing. Accept other relevant answers.	

Section Two: Source analysis

20% (20 Marks)

Question 5

(20 marks)

(a) Outline what is meant by 'cooperative federalism'.

(2 marks)

Description	Marks
Outlines what is meant by cooperative federalism	2
Makes a general statement about cooperative federalism	1
Total	2
Answers could include: • is the process by which the Commonwealth and State governments assume shared responsibility over various issues that are not necessarily wholly within their power • • For copyright reasons this text cannot be reproduced in the online version of the document but may be viewed at the following link https://www.austlii.edu.au/cgi-bin/viewdoc/au/journals/FedJSchol/2004/21.html	
Accept other relevant answers.	

Question 5 (continued)

- (b) With reference to **Source 1** discuss, in your own words, how cooperative federalism was revived during the COVID-19 pandemic. (4 marks)

Description	Marks
Using the source as reference, identifies how cooperative federalism was revived during the COVID-19 pandemic Discusses in detail these ways in candidate's own words Uses political and legal terminology	4
Using the source as reference, identifies how cooperative federalism was revived during the COVID-19 pandemic Discusses these ways mostly in candidate's own words Uses political and legal terminology	3
Using the source as reference, outlines how cooperative federalism was revived during the COVID-19 pandemic Relies mainly on the source in the outline	2
Using the source as reference, identifies how cooperative federalism was revived during the COVID-19 pandemic or Makes a general statement about cooperative federalism and the COVID-19 pandemic or Cites verbatim from the source	1
Total	4
Answers could include: - the pandemic demonstrated the strengths of federalism, dealt with the weaknesses of federalism as it required (because of the allocation of powers) the coordinated response of both Commonwealth and state/territory governments collectively <i>"A reasonably clear division of responsibilities operated with the Commonwealth controlling the external border..., and the states and territories exercising responsibility or control measures within their own territories..."</i> - it showed the States' capacity to respond dynamically to suit the needs of their own circumstances and jurisdictions; and showed how federalism can promote different and innovative responses to achieve shared goals <i>"the states were regularly at odds with the Commonwealth"</i> - the pandemic (a crisis) promoted cooperation, and empowered the states, compared to the past where a national crisis often led to the centralisation of power in the Prime Minister/Australian federalism. Note: methods must be drawn from the source.	

- (c) Discuss, with examples, what is meant by 'exclusive powers' and 'residual powers' in Australian federalism. (6 marks)

Description	Marks
Discusses, with at least one example, what is meant by exclusive powers in Australian federalism Discusses, with at least one example, what is meant by residual powers in Australian federalism Uses political and legal terminology	5–6
Outlines, with an example what is meant by exclusive powers in Australian federalism Outlines, with an example what is meant by residual powers in Australian federalism Uses political and legal terminology or Discusses, with at least one example, what is meant by either exclusive powers or residual powers in Australian federalism Uses political and legal terminology	3–4
Makes a general statement about exclusive powers and/or residual powers in Australian federalism or Gives examples of exclusive powers and residual powers	1–2
Total	6
Answers could include: Exclusive powers: Lawmaking powers that 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. Some powers, such as Section 52 are clearly exclusive, whereas some powers become exclusive due to the effect of other sections of the Constitution. Those powers that only the Commonwealth can make laws for and the States cannot, include areas of national concern such as immigration, defence, currency (Section 115) and the seat of government. These lawmaking powers are specific powers, but they are considered and termed differently because the States are excluded from legislating on them. Residual powers: Powers that are not listed in the Constitution. At the time of federation, colonies wanted to retain some of their lawmaking powers and not give up all their legislative authority to the Commonwealth. As such, they retained a set of lawmaking powers that each state can legislate on. Section 107 continued the powers of the colonial Parliaments to the States, unless they were taken away in the Commonwealth Constitution. These residual powers include education, criminal law and policing, health and emergency services. (for further reference visit https://www.aph.gov.au/constitution). Accept other relevant answers.	

Question 5 (continued)

- (d) Evaluate the extent to which the National Cabinet has (2020 to present) promoted federalism in Australia. (8 marks)

Description	Marks
Identifies and discusses ways the National Cabinet has promoted federalism in Australia Identifies and discusses ways that National Cabinet has perhaps not promoted federalism in Australia Makes an evaluation of the extent to which National Cabinet has promoted federalism in Australia	7–8
Identifies and discusses at least one way the National Cabinet has promoted federalism in Australia Identifies and discusses at least one way that National Cabinet has perhaps not promoted federalism in Australia Attempts to make an evaluation of the extent to which National Cabinet has promoted federalism in Australia	5–6
Outlines how the National Cabinet has promoted federalism in Australia and Outlines how the National Cabinet has perhaps not promoted federalism in Australia Makes no attempt to evaluate the extent to which National Cabinet has promoted federalism in Australia	3–4
Makes general statements about National Cabinet and federalism in Australia Little factual evidence of the relationship between National Cabinet and federalism in Australia	1–2
Total	8
Answers could include: - National Cabinet is the central forum (taking over since the cessation of COAG) for the formulation of policy responses to some of the issues of national significance including priorities of health care, housing, disability reform, addressing gender-based violence, closing the gap and intergovernmental Agreements. The priorities are set and may be changed by the group collaboratively each year and have previously included energy and transition to net zero; productivity; recognition of Aboriginal and Torres Strait Islander Peoples - National Cabinet is a key mechanism for the facilitation of intergovernmental (national) agreements or Federal Funding Agreements on priority areas including education, housing skills and workforce as well as infrastructure. - each government remains responsible for implementing the outcomes agreed to by National Cabinet within their respective jurisdiction - National Cabinet confidentiality promotes the (perception of) collaboration and coherence of governments publicly to the community - achievements include responding to the urgent health and economic impacts from the COVID-19 pandemic, gender-based violence, setting the minimum age for social media access to 16 and including an age assurance pilot program, creation of a national database to track antisemitic crime, national firearms register, increases in funding for the NDIS by both Commonwealth and State/Territory governments. Some positions of National Cabinet have been less influential such as the unanimous statement of support for the recognition of the First Peoples of Australia by establishing an Aboriginal and Torres Strait Islander Voice via referendum (for further reference visit https://federation.gov.au/national-cabinet/meeting-outcomes)	

- it has been argued that the COVID-19 pandemic was effectively managed in Australia because the Commonwealth and the States acted in a timely manner both cooperatively and independently. It demonstrated to the community the competence of all levels of government whilst preserving the powers of each government to choose how to use its respective powers to meet the needs of their constituencies. Pandemic management demonstrated Australian federalism in action and at the peak of the pandemic emergency diffused typical divisions between political parties.

Evaluation:

- National Cabinet is claimed to be more streamlined and responsive than COAG, with less bureaucracy whilst providing the States with more ownership and accountability in the process than they had previously under COAG. It also promotes outcomes that are principle-based whilst allowing individual jurisdictions the flexibility to determine the best way to achieve the agreed 'consensus based' outcomes
- National Cabinet has not changed the fundamental dynamics of Australian federalism compared to COAG
- criticism exists that:
 - it now is only required to meet four times annually
 - it continues to prioritise the centralisation of executive power in Australia
 - is not responsible to a (single) body e.g. Parliament
 - National Cabinet decision-making is less transparent than its predecessor and seeks to circumvent both Commonwealth and State/Territory Freedom of Information requests.

National Cabinet:

- National Cabinet is the peak intergovernmental forum in Australia which consists of the heads of government (First Ministers) being the Prime Minister and State Premiers/Territory Chief Ministers
- Ministerial Councils report to National Cabinet along with expert advisory groups
- a representative of the Australian Local Government Association is invited to one National Cabinet meeting per year.

Accept other relevant answers.

Question 6

(20 marks)

- (a) Outline what is meant by 'public confidence' in the judiciary.

(2 marks)

Description	Marks
Outlines what is meant by public confidence in the judiciary	2
Makes a general statement about public confidence in the judiciary	1
Total	2
Answers could include: In the exercise of their powers, courts and their personnel are perceived by society as: • independent • impartial in the exercise of their power • adhering to due process, natural justice and procedural fairness • not influenced by/sympathetic to the legislature or executive of the day. Drawn from: http://www5.austlii.edu.au/au/journals/FedJSchol/1999/1.html Accept other relevant answers.	

- (b) With reference to
- Source 2**
- discuss, in your own words, the potential risks of electing all judges in Mexico. (4 marks)

Description	Marks
Using the source as reference, identifies potential risks of electing all judges in Mexico Discusses in detail these risks in the candidate's own words Uses political and legal terminology	4
Using the source as reference, identifies potential risks of electing all judges in Mexico Discusses these risks mostly in the candidate's own words Uses political and legal terminology	3
Using the source as reference, outlines two potential risks of electing all judges in Mexico Relies mainly on the source in the outline	2
Using the source as reference, identifies a potential risk of electing all judges in Mexico or Makes a general statement about the risks of electing all judges in Mexico or Cites verbatim from the source	1
Total	4
Answers could include: • the potential risks of electing all judges in Mexico include: ▪ erode establishing judicial independence and accountability “ For copyright reasons this text cannot be reproduced in the online version of this document but may be viewed online at the following link https://www.usip.org/publications/2024/11/justice-vote-lessons-mexico-bolivias-judicial-elections ” ▪ increase actual political influence ▪ destroy any faith in the integrity of the judicial system “ For copyright reasons this text cannot be reproduced in the online version of this document but may be viewed online at the following link https://www.usip.org/publications/2024/11/justice-vote-lessons-mexico-bolivias-judicial-elections ” ▪ allow outsiders to influence the judiciary through voting procedures and candidates - political and criminal influences “ For copyright reasons this text cannot be reproduced in the online version of this document but may be viewed online at the following link https://www.usip.org/publications/2024/11/justice-vote-lessons-mexico-bolivias-judicial-elections ”	
Note: risks must come from the source.	

- (c) Discuss **one** way in which ‘popular participation’ is upheld and **one** way it is undermined in Australia. (6 marks)

Description	Marks
Discusses one way popular participation is upheld in Australia Discusses one way popular participation is undermined in Australia Uses political and legal terminology	5–6
Outlines one way popular participation is upheld in Australia Outlines one way popular participation is undermined in Australia Uses political and legal terminology or Discusses either one way popular participation is upheld or one way it is undermined in Australia Uses political and legal terminology	3–4
Makes a general statement about popular participation and/or Gives examples of popular participation	1–2
Total	6
Answers could include: Popular participation is upheld through: • being able to vote in elections (compulsory voting in Australia achieves a high level of political participation) – this impacts the composition of state/federal parliament; allows for participation by a range of diverse parties • record number of independents on the crossbench in the House of Representatives after the 2022 federal election • elections for both state and federal are regular – every three years for the House of Representatives and half Senate every three years (NT and ACT senators every House of Representative election) • via the Commonwealth Constitution – ‘directly elected by the people’ – s7 and s24 • pressure groups provide the opportunity for active citizens to participate in democracy • active involvement in political debate/protest allowed, <i>Brown v Tasmania</i> (2017) HCA 43 • through submissions to parliamentary committees • people can freely speak out against the government and publicise via a free press Popular participation is undermined by: • political party membership is low and declining – increasing disengagement in, and with, the political process • casting of early votes – possibly disengaged voters, not hearing all information/issues/policies prior to voting • must be an Australian citizen over the age of 18 • preselection process – few party members involved. Control over this process has, at times, been by Premier or Prime Minister – leading to a ‘captain’s pick’. Factionalism within all political parties tends to exclude popular participation. With few participating in this process, it is less participatory than the US where it is more participatory through the primaries and caucuses • corporate lobbyists and well-funded significant third parties and associated entities can undermine democracy • sectional pressure groups can distort popular participation through their close links to Ministers and Public Servants, hence having power to influence policy through well-funded campaigns	

Question 6 (continued)

- younger generations of Australian women display a diminished interest in politics. "The prevalent discrimination, gender deafness, sexism and overt abuse not only force women to abandon their leadership aspirations, but also act as signals that discourage young women from corridors of power... Women less represented than men in traditional participatory practices, such as discussing politics or attending political meetings. They are also less likely to contribute money to a party or campaign." - Political power in Australia is still overwhelmingly male. But beneath the despair, there's reason for hope, Jeremy Piper, *The Conversation* (8 March 2024)
- protests are subject to some restrictions. Particular State laws include:
 - Tasmania: 2014 *Workplaces (Protection from Protesters) Act*. Bob Brown challenged the legislation and in 2016 the 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 (for further reference visit <https://www.theguardian.com/australia-news/2017/oct/18/bob-brown-wins-high-court-challenge-to-tasmanian-anti-protest-laws>)
 - 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' [2019].

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 with a political party and its activities.

Accept other relevant answers.

(d) Evaluate the extent to which Australia upholds the rule of law.

(8 marks)

Description	Marks
Identifies key elements of the rule of law Discusses several elements of the rule of law and applies each of these to Australia in terms of the extent to which the element is being upheld Makes an evaluation of the extent to which Australia upholds the rule of law	7–8
Identifies key elements of the rule of law Discusses several elements of the rule of law and applies each of these to Australia in terms of the extent to which the element is being upheld Attempts to make an evaluation of the extent to which Australia upholds the rule of law	5–6
Outlines the meaning of the rule of law Applies this meaning of the rule of law to Australia in terms of it being upheld Makes no attempt to evaluate the extent to which Australia upholds the rule of law	3–4
Makes general statements in terms of Australia upholding the rule of law	1–2
Total	8

Answers could include:

Rule of law includes:

- no one is above the law
- everyone is equal before the law
- the law must be applied to everyone equally, regardless of their status
- the law is clear and understandable
- the law is essential in restricting the use of arbitrary power
- presumption of innocence
- fair and prompt trial.

(for further reference visit <https://www.ruleoflaw.org.au/what-is-the-rule-of-law/>).

How Australia upholds the rule of law:

- no one is above the law
 - external accountability through Auditor General
- the law must be applied to everyone equally, regardless of their status
 - the law is applied in a transparent manner to ensure fairness and accountability (e.g., public galleries, law reports)
 - Justice Lionel Murphy (1986): parliamentary investigation into alleged improper conduct – though was not removed
 - Justice Angelo Vasta (1989): removed from the Queensland Supreme Court following a parliamentary commission's findings of misconduct
 - Justice Gregory Geason (2024): Tasmanian Supreme Court Justice was found guilty of assaulting his former fiancée. He received a 12-month community corrections order
 - Craig Thomson MP (2014): convicted of theft and fraud charges and in 2021, breaches of apprehended violence orders
 - Geoff Clark (2024): convicted of stealing from Aboriginal organisations he was head of. Sentenced to six years imprisonment
- the law is clear and understandable
 - Judicial review – holds parliament to account
Williams v Commonwealth [2014] HCA 23 (Williams #2)
- the law is essential in restricting the use of arbitrary power
 - the Commonwealth 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 appeals process helps to ensure further accountability and allow for unfair outcomes to be rectified – *Sharma & Ors v Minister for Environment* (2020) – judgment overturned on appeal (2022)
- 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)
- checks on the executive by Senate
- written & unwritten constitutional limits (e.g., *Roach v Electoral commission* 2007: implied right to vote); *Theophanous v Herald & Weekly Times* 1994.

Question 6 (continued)

How the rule of law is undermined:

- everyone is equal before the law
 - 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)
 - anti-terror laws: Commonwealth Parliament passed laws criminalising terrorist acts and giving powers to ASIO (Australian Security Intelligence Organisation) and Police – criticised for breaching ‘common law rights’ such as:
 - Right to fair trial – terror suspects not allowed to know the evidence against them
 - Presumption of Innocence – terror suspects can be detained in secret without charge for 7 days
 - Right to Silence – terror suspects can be charged for not answering questions
- the law must be applied to everyone equally, regardless of their status
 - overrepresentation of Aboriginal peoples and certain other ethnic minorities in prison
- the law is clear and understandable
 - Commonwealth Parliament has passed retrospective laws in relation to Immigration policy – a clear breach of the rule of law (an agreement signed with Nauru to transfer asylum seekers before amending the Migration Act – this Act backdated to before agreement with Nauru signed)
- the law is essential in restricting the use of arbitrary power
 - Mandatory Sentencing - as a discriminatory law - where Parliament has decided, through legislation, a specific penalty for a particular offence. Regardless of the principles of sentencing, a judge must impose the penalty irrespective of the circumstances and mitigating factors of the offence
 - Anti-terror laws: Commonwealth Parliament passed laws criminalising terrorist acts and giving powers to ASIO (Australian Security Intelligence Organisation) and Police – criticised for breaching ‘common law rights’ such as:
 - Right to fair trial – terror suspects not allowed to know the evidence against them
 - Presumption of Innocence – terror suspects can be detained in secret without charge for 7 days
 - Right to Silence – terror suspects can be charged for not answering questions.

Accept other relevant answers.

Note: some examples may be pertinent to other elements.

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	8
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	7
Evaluates/assesses/analyses the claim using some evidence which demonstrates some understanding of the topic; attempts to 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; an 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	8
Conclusion	
Draws together the argument linking the evidence	2
Summarises the argument	1
Subtotal	2
Total	25

Section Three: Part A

Question 7

(25 marks)

'Within the Australian political system, the roles and powers of the Prime Minister are unchecked.'

Evaluate this claim with reference to several Prime Ministers since 2007.

Relevant terms and parameters of discussion:

- roles of Prime Minister:
 - Head of government (House of Representatives)
 - set the political agenda
 - advise the Governor-General
- powers of Prime Minister:
 - hire and fire ministers
 - set the political agenda
 - control the structure and processes of Cabinet
 - control of parliament/House of Representatives
 - power of appointment/removal of senior public servants
 - decide the election date
- unchecked: not controlled or restrained.

There is an expectation that several Prime Ministers will be referred to in the discussion.

Roles and powers

- Head of government
 - Prime Minister is recognised unequivocally as head of government
 - party discipline tends to reinforce this
 - until 2013 only the parliamentary party room could remove a PM and appoint another
 - leadership changes often occur after an election defeat
 - leadership changes often occur between elections
 - Australian Labor Party (ALP)
 - 2010 Gillard replaced Rudd as PM
 - 2013 Rudd replaced Gillard as PM
 - 2013 PM Rudd announced changes in ALP leadership rules which now includes voting by the party membership and the Federal Parliamentary Party (50/50)
 - the rule that an ALP prime minister can only be removed if 75 per cent of ALP Members of Parliament (MPs) agree to force a ballot (or 60 per cent of caucus for an opposition leader) is a caucus-approved rule and is not included in the 2018 National Platform
 - Liberal Party (LP)
 - 2015 Turnbull replaced Abbott as PM
 - 2018 Morrison replaced Turnbull as PM
 - on 24 August 2018 former Treasurer Scott Morrison (Cook, NSW) was sworn-in as Australia's 30th prime minister by Governor-General Peter Cosgrove. This followed a turbulent week within the LP party room. On 21 August 2018 a leadership spill occurred – Prime Minister Turnbull (Wentworth, NSW) won a leadership ballot against Home Affairs Minister Peter Dutton (Dickson, QLD) 45 to 38 votes. Following further instability within the party another leadership spill was called by the prime minister for 24 August 2018. When the spill motion was successful, Turnbull stood down as leader; in the subsequent ballot Morrison defeated Dutton 45 to 40 votes

- in December 2018 Prime Minister Morrison announced a change to the rules for election of the leader of the Liberal Party:
 - if an elected Liberal Party leader goes to the election, wins that election and becomes prime minister, they will remain prime minister for the full parliamentary term
 - they will not be able to be removed from office. That could only happen — as a safeguard — by meeting the very high bar of a special majority two-thirds vote
(for further reference visit https://www.aph.gov.au/About_Parliament/Parliamentary_departments/Parliamentary_Library/Research/Quick_Guides/2022-23/PartyChangesChallenges).
- advise the Governor-General
 - a key feature of the Westminster system
 - Governor-General may question this advice but very little evidence that they have since 2010
 - Morrison appointed himself to five additional ministries without the knowledge of his Cabinet colleagues and without questioning by the Governor-General indicates that his role is unchecked
- set political agenda
no evidence to suggest otherwise in terms of the conduct of Cabinet business, but:
 - coalition government the National Party (NP) may influence priorities
 - makeup of the Senate/the crossbenchers and what is possible/impossible in terms of legislation may lead to adoption or dropping of bills
- hire and fire ministers
ALP:
 - caucus selects who are to be ministers and PM allocates portfolios
 - factional deals and ministries
 Coalition:
 - PM selects ministers and allocates portfolios
 - NP leader is the Deputy PM
 - dependent on numbers, certain portfolios are allocated to NP ministers
- control the structure and processes of Cabinet
 - since 1998 PMs have increasingly used committee processes in Cabinet
 - Rudd: Limited use of Cabinet Committees rather use of Strategic Priorities and Budgetary Committee (SPBC) known as the ‘the gang of four’ which dominated policy decisions. It caused resentment amongst other ministers and backbenchers
 - Gillard: Revived various Cabinet Committees including Productivity Committee and the Regional Australian and Regional Development Committee. Membership included both ministers and backbenchers. Disbanded the SPBC
(for further reference visit <https://www.afr.com/politics/federal/gillard-abandons-gang-for-committee-20101022-iufao>).
 - Morrison: Cabinet office policy committee (COPC). Morrison listed as its only permanent member. Morrison stated that Dep. PM, Treasurer, Finance Minister were co-opted on to all meetings
(for further reference visit <https://www.theguardian.com/australia-news/2022/sep/21/scott-morrison-secretive-cabinet-committee-of-one-had-hundreds-of-meetings-foi-documents-suggest>).
 - Albanese (2022) has five Cabinet Committees and two Cabinet subcommittees. The PM chairs the ERC; NSC; PDC and the NZEC.
(for further reference visit <https://www.pmc.gov.au/government/administration/cabinet-handbook-15th-edition/annex-g-cabinet-committees>).
 These Committees tend to allow the PM to have their way and to go relatively unchecked in terms of decision-making.

Question 7 (continued)

- control of parliament/House of Representatives
 - party discipline helps to ensure that the PM is 'in control' and 'unchecked'
- power of appointment/removal of senior public servants
 - PMs are all powerful
 - a change of government often leads to the firing and hiring of senior public servants
 - PM Rudd and PM Gillard: avoided any real bloodletting
 - PM Abbott: sacked four departmental heads on taking office
 - PM Turnbull: replaced three departmental heads on taking office
 - PM Morrison: fired five secretaries
(for further reference visit <https://insidestory.org.au/long-knives-short-memories/>)
 - PM Albanese: five immediate changes including the Head of DFAT and Head of Prime Minister and Cabinet (PM&C)
(for further reference visit <https://www.thesaturdaypaper.com.au/post/max-opray/2022/06/23/albanese-shakes-public-service>).
 - Albanese: Nov 2023 sacks Secretary of Home Affairs Pezzullo
 - appointment of High Commissioners and Ambassadors especially to the UK, the USA and the Vatican are often political appointments of former loyal party politicians. USA: Beazley; Hockey; Sinodinos; Rudd; UK: Downer; Brandis; Smith; the Vatican: Fischer; Pitt.
- decide the election date
 - sole prerogative of the PM.

Evaluation:

- party rules have meant that the PM is relatively secure in their position
 - an ALP PM is now more secure and hence their position is more difficult to question since 2013
 - a LP PM is more secure in their position since 2018
- within the ALP the factional alliances can influence/check the PM especially in terms of the Ministry and in the Coalition the PM can be checked by the NP
- within Cabinet it would appear that most PMs are relatively unchecked especially in terms of the structure; processes; agenda.
- party politics ensures that the PM is unchecked in the House of Representatives although the makeup of the Senate or the House of Representatives (Gillard minority government) may lead to a reassessment of legislation introduced
- hiring and firing of senior public servants. Most PMs this century can be relatively unchecked as these positions become increasingly politicised.

Accept other relevant answers.

Question 8

(25 marks)

'Partisanship has enhanced the lawmaking process of the Commonwealth Parliament.'

Evaluate this claim.

*Partisanship: strong political party identification

Relevant terms and parameters of discussion:

- partisanship:
 - adherence to a particular political party, its ideology, policy positions and political agenda to guide representation and dictate conduct or voting based on allegiance (rather than electorate or national interest or the interests of political compromise)
- the lawmaking process of the Commonwealth Parliament:
 - bill being passed by both houses (House of Representatives and the Senate) in an identical manner and assented to by the Governor-General to become an Act
 - within each house of parliament it must pass each stage including the initiation and first reading, second reading, committee stage (consideration in detail/committee of the whole), and third reading
 - in the event one house makes amendments the other has not yet agreed, the bill is returned to the other place for their consideration and vote
 - in the event the bill introduced in the House is twice not agreed by both houses, it is possible a joint sitting may be called to consider the bill following a double dissolution election (Section 57).

Discussion of relevant issues and pertinent examples:

- political parties' influence and the lawmaking process in Parliament:
 - major parties as government:
 - the introduction of legislation in the House of Representatives to implement policy and attempt to carry out
 - the use of numbers in the House of Representatives (in majority government) to force through legislation
 - major parties as opposition:
 - use of the committee process to analyse bills and suggest amendments
 - move amendments at third 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 legislation
 - minor parties, mainly in the Senate (although at times in the House during minority government), can influence legislation by working with either major party (in government or opposition):
 - influence depends on government numbers in the House/Senate and policy position of the Opposition
- partisanship enhances lawmaking:
 - the contest of ideas and debate within (and outside) parliament encourage government and non-government bills to be introduced and alternatives to be considered
 - 2017: Private Members Bill, the Marriage Amendment (Definitions and Religious Freedoms) Bill 2017 aka Marriage Equality bill passed both houses after a national postal survey and conscience votes in parliament following a significant delay due to Abbott/Turnbull Coalition's reluctance between 2013-2017 to progress the amendments to the Marriage Act
 - the contest of numbers on the floor of the Senate (and sometimes the House) require the government to consider proposals by other political parties including reports and recommendations from committees leading to bills passing that better reflect the diversity of views in Australia; such as during the Gillard/Rudd ALP (2010-2013) and Morrison Coalition (Oct 2018-May 2019) minority governments

Question 8 (continued)

- 2019: Home Affairs Legislation Amendment (Miscellaneous Measures) Bill 2019 aka Medevac bill passed in the Senate with the support of the ALP (in opposition), Pauline Hansen's One Nation and Jacqui Lambie Network - this was then followed in the House - the first time in 80 years a government lost a legislative vote in the House
- political parties offer electors meaningful ways to distinguish and choose (partisan) representatives that reflect their ideological beliefs and preferred policies in the parliament, leading to bills and Acts that better reflect constituent and national interest
- party discipline enables political parties to contribute and vote as a bloc to ensure the beliefs and policies of their political party and those they represent are upheld; that lawmaking is in reality more predictable and efficient
- political pragmatism and ideological convergence – by opposition or minor parties successfully arguing their points or exerting their influence of numbers forcing the government to accept amendments or cease unpopular policy; encourages political parties to adopt policies that appeal to a wider range of voters
- parliamentary committee membership is a reflection of the composition of the house(s) they are drawn from. Therefore committees, especially in the Senate, are able to make meaningful impacts on lawmaking; parliamentarians contribute genuinely in the lawmaking and supplementary functions of each committee
 - 2018: *Modern Slavery Act 2018* was a product of multiple parliamentary committees' inquiries and recommendations and had cross-party support
- use of the Federation Chamber for non-contentious matters makes lawmaking more efficient
- partisanship does not enhance lawmaking: (partisanship hinders or does not value-add to lawmaking; other factors lead to the enhancement of lawmaking)
 - bipartisanship: the vast majority of bills considered by parliament are passed with bipartisan support and/or multi-party support:
 - 2025: the *Electoral Legislation Amendment (Electoral Reform) Act 2025* that passed with ALP and Coalition support, without the support of most Independents and Australian Greens, and without referral to committee for further scrutiny of concerns
 - 2025: Criminal Code Amendment (Hate Crimes) Bill 2025 that passed with 20 Government and four Opposition amendments including mandatory sentencing provisions
 - the contest of numbers on the floor of the House and Senate respectively, the power of certain political parties and individual members of parliament; they exercise their influence because bills need to achieve an absolute majority of support to pass both chambers therefore empowering the opposition or those that hold the balance of power; empowers some to seek to enforce a competing mandate
 - 2024: a series of bills including the Help to Buy Bill and Treasury Laws Amendments (Build to Rent) Bill passed parliament following a lengthy stalemate after the Australian Greens eventually voted with the government for investment 'in the national interest' (including social and affordable housing initiatives through the Build to Rent and Help to Buy programs); the Coalition consistently opposed the Housing Australia Future Fund and associated bills, and previously voted with the Australian Greens to defer consideration of the bills in parliament leading the Albanese Government to schedule the final vote with a threat if they were defeated a second time they may call a double dissolution election
 - 2019: the Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2019 was defeated by the Australian Greens, Pauline Hanson's One Nation, Jacqui Lambie Network and ALP voting together in the Senate

- 2019: Migration Amendment (Repairing Medical Transfers) Bill 2019 passed the Senate, repealing the Medevac law amendment, when the Jacqui Lambie Network voted in the Senate with the Coalition on the basis of a secret deal with the Prime Minister
- the government of the day may always choose whether to engage with or seriously consider proposals from other political parties about government bills before the parliament and when they refuse it may lead to bills being defeated or withdrawn from the notice paper
- the control/dominance of the House by the executive makes lawmaking in the House functionary, can restrict full consideration of bills in the Senate (including using gag or guillotine motions as well as limited time/prospects for consideration of private members/senators' bills) and may prevent significant matters being resolved (where public opinion and government policy are different)
- when the government controls both houses of parliament, partisanship diminishes lawmaking with the functions of parliament being dominated by executive will; such as during the Howard Coalition government (2005-2007)
 - 2005: *Workplace Relations Amendment (Work Choices) Act 2005*
- the Gillard ALP minority government (2010-2013) agreed to an enhanced role for the Independents (Oakeshott and Windsor) where parliamentary rules were amended to allow for more non-government bills to be considered as well as significant cross-party briefings and negotiations took place leading to the passage of a significant amount of legislation
- partisanship can lead to 'opposing for opposing's sake'/obstructionism or political overreach, frustrating lawmaking or not recognising a government mandate
- partisanship can and has led to the dismissal or defeat of government through either the blocking of appropriation bills (in 1975) by the opposition in the Senate and through the amendment of pieces of legislation integral to the government's agenda
- partisanship in Australia is in decline, as voters reduce support for the traditional two-party system; political party membership reduces; leading to issues-based politics.

Evaluation:

- raises both positive and negative arguments related to the claim that partisanship enhances the lawmaking process
- whether or not partisanship has enhanced the lawmaking process of the Commonwealth Parliament is dependent on the makeup of each House
- partisanship leads to greater efficiency and predictability in the lawmaking process the 'battle of ideas' happens within and outside the formal processes of lawmaking and especially within the internal party structures (including the party room), through negotiation outside the chambers and/or between political parties (and members of parliament) in the media/public domain. The origins of the lawmaking process is a reflection of both parliamentary process and procedure as well as extra-parliamentary factors.

Accept other relevant answers.

Section Three: Part B

Question 9

(25 marks)

Analyse how, and to what extent, judicial review and elections hold the Commonwealth Parliament accountable.

This essay does not require a comparison.

Relevant terms and parameters of discussion:

- Judicial review: when a law of the Commonwealth Parliament is challenged in the High Court on the basis that it is not within its legislative power or it is concerned with any other matter that is prohibited by the Commonwealth Constitution
- *Ultra vires*: a law or legal decision that is made without the legal power to make it
- *Intra vires*: within the legal power or authority to make the decision
- Elections: are the formal means by which eligible citizens delegate their sovereignty to chosen, elected representatives through voting process. They ensure accountability, representation and legitimacy
- Accountability: holding members of the Commonwealth Parliament responsible for their actions/inactions and personal and professional probity
- Commonwealth Parliament: members of the House of Representatives and the Senate (and King – s1 Commonwealth Constitution).

Discussion of relevant issues including pertinent examples

Judicial review:

- the High Court of Australia has the power to adjudicate the constitutional validity of Commonwealth legislation; can declare Commonwealth legislation as *ultra vires*
- to be reviewed, the statute must be brought to the High Court by a party with standing in terms of the legislation
- if a law is deemed to be beyond the Commonwealth Parliament's constitutional powers, it is struck down partially or in its entirety.

Legislation subject to judicial review includes:

- *NSW v Commonwealth* [2006] the High Court upheld the validity of the 2005 (Work Choices) Act (Work Choices Act) legislation in its entirety
- *Love v Commonwealth* (2020): prevented deportation of Aboriginal non-citizens under the Migration Act 1958
- *Plain Packaging Act 2011* (High Court 2012) upheld the validity of the legislation
- *Financial Framework Legislation Amendment VIII (no.3) 2012* (High Court 2014 Williams #2) – legislation outside the powers of the Parliament
- *Mineral Resources Rent Tax Act (2012)* (High Court 2013 Fortescue Metals Group v Commonwealth). Legislation valid. Fortescue lost its challenge
- *YBFZ v Minister for Immigration, Citizenship and Multicultural Affairs* (2024); the Commonwealth Parliament rushed through legislation allowing the government to impose harsh new visa conditions on the people released from detention. The High Court determined, by a majority, that the Parliament's imposition of punitive visa conditions (such as mandatory ankle bracelets and curfews) was contrary to Chapter III of the Constitution and invalid (breach of the constitutional separation of powers).

Elections:

- Federal elections held regularly; 3-year cycle for all members of the House of Representatives and half Senate election
- Preferential voting for single member electorates makes Members of the House of Representatives more accountable to the people
- Proportional voting for multimember electorates makes Senators in the Senate less accountable to the people (weaker accountability)
 - e.g., Bill Heffernan (Former Liberal Senator) – faced electorate three times in twenty years (1996-2016)
 - frequency of Senate elections means voters less likely to remember misconduct of a Senator if only voting every 6 years
 - Senators held to account only if the voters choose the person rather than voting for the party – for example 2007 Nick Xenophon had strong state-based support (SA LC 1997-2007) stood as an Independent for Senate and re-elected 2013 and 2016; 2016 Senator Lisa Singh dropped down the ALP party ticket to #4 position but was still elected.
- After the 2022 Federal Election:
 - ALP won 77/151 seats (an increase from their previous 68 seats) to form government
 - record number of independents elected to the House of Representatives (10)
 - Kooyong (Vic): Josh Frydenberg (Liberal) defeated by independent, Monique Ryan – on the issue of climate change
 - Goldstein (VIC): Tim Wilson (Liberal) defeated by Zoe Daniel (Independent) – on the issue of climate action
 - Curtin (WA): Celia Hammond (Liberal) defeated by Kate Chaney (Independent) – dissatisfaction with Morrison government and perceived ‘parachuting in’ of Hammond into the seat, while Chaney ran a campaign based on accountability, climate, and transparency
 - Fowler (NSW): Kristina Kenneally (ALP) defeated by Dai Le (Independent)
 - Liberal-National Coalition experienced a decline in seats from a previous 77 to 58 in the House of Representatives
 - ALP gained 15 seats in the Senate
 - Greens increased their presence in the Senate, increasing their seats from six to 12
 - the crossbench increased their representation in the Senate – with 10 new Senators being either independents or from minor parties
 - ACT Senate: David Pocock (Independent) replaced Zed Seslja (Liberal) – Seslja’s conservative views on social issues did not align with the ACT’s progressive electorate
 - Tas Senate: Tammy Tyrell JLN won the 6th seat.

Analysis:

Judicial Review: occurs by a party with standing bringing a matter to court and arguing the Commonwealth legislation is *ultra vires*; requires constitutional interpretation and judicial review by the courts

- challenges to Commonwealth legislation are sporadic so do not necessarily keep the Parliament accountable
- the courts tend to be impartial and apply the law when a case is brought before it.

Elections:

- are regular
- are primary means for voters to hold Commonwealth Parliament to account; reward for good governance or held accountable for perceived inaction/failures regarding policy, representation and leadership.
- differentiate between the House of Representatives and the Senate outcomes and the different aspects of elections.

Accept other relevant answers.

Question 10**(25 marks)**

Analyse how, and to what extent, individual ministerial responsibility (IMR) and collective ministerial responsibility (CMR) hold the Executive to account in the Australian political system.

Relevant terms and parameters of discussion:

Individual ministerial responsibility (IMR):

- in terms of their portfolio/department
 - is responsible for their portfolio/department and is answerable to Parliament for what is done in their name
 - is directly responsible for a serious matter that can be clearly attached to them personally and should resign
 - should answer and explain faults and shortcomings of those in their 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 blatant and unreasonable use of executive power
 - impropriety.

(for further reference visit https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/practice5/chapter2).

Collective ministerial responsibility (CMR):

- all ministers must be prepared to accept collective responsibility for, and defend publicly, the policies and actions of 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 defend them in public, 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 their 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 the colleague and possibly the Prime Minister.
- The Executive
 - Prime Minister
 - Cabinet
 - Ministers.

Analysis and relevant examples include:

Collective ministerial responsibility and accountability of the executive:

- Confidence of the House and resignation
 - Governments have fallen on eight occasions but not because of a formal vote of no confidence. These have been based on adverse votes on bills or on procedural motions (for further reference visit <https://theconversation.com/explainer-motions-of-no-confidence-and-the-constitution-5258>)
 - Minority governments (Gillard; Morrison) have lost votes on the floor of the House but it has not been a test of confidence in the government of the day, nor was the Opposition in a position to assume government (Morrison government and the Medevac Bill 2019).

- Cabinet solidarity and not being critical of fellow Ministers/Prime Minister
Tensions within the party room leading to leadership spills leads to resignations and/or refusal to serve under the successful candidate
 - Gillard Ministry (2010-13)
 - 2012: Rudd resigned as Minister for Foreign Affairs alleging the PM did not repudiate attack by a fellow Minister (Crean)
 - 2013: Crean dismissed as Minister for Regional Australia, Development, Arts after publicly demanding the PM call a leadership spill
 - 2013 Bowen, Ferguson and Senator Carr resigned after supporting PM's opponent (Rudd) in leadership spill
 - Rudd Ministry (2013)
 - 2013: Swan, Combet, Emerson, Garrett, Sen. Conroy, Sen. Ludwig refused to serve in Rudd ministry after overthrow of PM Gillard
 - Abbott Ministry (2013-15)
 - 2015 Barnaby Joyce (Agriculture Minister) publicly opposed the approval of mining on agricultural land in his electorate (New England). He did not resign. Abbott publicly justified it on the basis of representing his electorate although Joyce argued he spoke as a minister
(for further reference visit <https://www.abc.net.au/news/2015-07-15/coal-mine-debate-barnaby-joyce-leadership/6619210>)
 - Turnbull Ministry (2015-18)
 - 2018: Dutton dispute with PM. Resigned following his defeat in a ballot called by Turnbull, for the Liberal Party leadership and the Prime Ministership. Turnbull won August 21
 - August 21-23 dispute with the PM. Resignations included: Steve Ciobo, Angus Taylor, Greg Hunt, Sen. Matthias Cormann, Sen. Michaelia Cash.

Individual Ministerial responsibility and accountability of the Executive:

- 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 on the *Royal Commission on Australian Government Administration*)
 - 2010: Garrett and pink batts: did not resign although in 2014 Royal Commission took 'ultimate' responsibility
 - 2016: Sen. Brandis denied he misled parliament concerning Ministerial colleague's ability to consult the Solicitor-General for independent legal advice; did not resign
 - 2017: Sen. Michaelia Cash denied she misled parliament in terms of evidence to Senate Estimates in relation to the AWU raid by the AFP and informing the media; did not resign and was supported by the PM throughout- 'she acted properly'
 - 2020: Senators censured the Minister for Aged Care, Sen. Richard Colbeck, in September 2020, for failing to take responsibility for the crisis in residential aged care facilities during a severe COVID-19 outbreak in Victoria. PM Scott Morrison chose to ignore the censure, protecting his minister- did not resign
 - 2023-24: calls for the resignation of Ministers O'Neill and Giles over the actions/alleged crimes of released detainees in various States. Supported by colleagues and the PM. But in July 2024 both were moved out of their respective portfolios in a Cabinet reshuffle.

Question 10 (continued)

Ministers who have resigned include:

- 2014: Sen. Sinodinos stood aside as Assistant Treasurer pending an investigation by the NSW ICAC. Sept 2015 returned to the Ministry under PM Turnbull as Cabinet Secretary
- 2015: Mal Brough – personal behaviour. Stood aside pending a police investigation into Speaker Slipper and James Ashby
- 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 PM Morrison as Assistant Treasurer
- 2018: Barnaby Joyce – personal behaviour. Resigned after allegations of sexual harassment, revelations about an affair with a staffer and an investigation into travel expenses
- 2021: Christian Porter resigned over a perceived conflict of interest regarding who was paying his legal expenses in a defamation case
(for further reference visit <https://australianpolitics.com/executive/ministerial-resignations-and-dismissals-since-1901/>).

Analysis

CMR and Executive accountability:

has little impact in terms of the Executive being accountable in the Australian political system. Party discipline especially in the House of Representatives protects the Executive in most instances. Internal party room conflicts erode Executive accountability in the short term as evident in particular changes in party leadership and the PM. CMR tends not to impact on Executive accountability. It tends to be centred on leadership spills within the party room. These party room spills are now more difficult for both the ALP and the LP. Resignations are few and far between for criticism of colleagues outside the Cabinet room.

IMR and Executive accountability:

this is dependent on the PM, on the political timing and fallout, factional issues. Departmental problems rarely lead to resignation but questionable behaviour tends to lead to resignations. Sometimes only in the short term.

Accept other relevant answers.

ACKNOWLEDGEMENTS

- Question 1(a)** Dot point 1 adapted from: Parliament of Australia. (n.d.). *Commonwealth of Australia Constitution Act (Legislative power)* (s. 1). Retrieved September, 2025, from https://www.aph.gov.au/About_Parliament/Senate/Practice_and_Procedure/Constitution/chapter1/Part_1_-_General#chapter-01_part-01_01
- Question 1(b)** Dot point 1 and Definitions from: Parliament of Australia. (n.d.). *Commonwealth of Australia Constitution Act (Executive power)* (s. 61). Retrieved September, 2025, from https://www.aph.gov.au/About_Parliament/Senate/Practice_and_Procedure/Constitution/chapter2
- Question 1(c)** Information from: Parkin, A., Summers, J., & Woodward, D. (2006). *Government, Politics, Power and Policy in Australia* (8 ed.). Pearson Education Australia, pp. 47–50 and 71–72.
- Question 2(c)** Dot point 4 from: Parliament of Australia. (n.d.). *Commonwealth of Australia Constitution Act (Powers of the Houses in Respect of Legislation)* (s. 53). Retrieved September, 2025, from https://www.aph.gov.au/About_Parliament/Senate/Practice_and_Procedure/Constitution/chapter1/Part_V_-_Powers_of_the_Parliament
- Question 3(a)** Dot point 3 from: High Court of Australia. (n.d.). *To be Called the High Court of Australia*. Retrieved September, 2025, from https://www.hcourt.gov.au/sites/default/files/assets/education/to_be_called_the_high_court_of_australia.pdf
- Question 3(b)** Dot points 1–3 from: Parliament of Australia. (n.d.). *Commonwealth of Australia Constitution Act (Judges' Appointment, Tenure and Remuneration)* (s. 72). Retrieved September, 2025, from https://www.aph.gov.au/About_Parliament/Senate/Practice_and_Procedure/Constitution/chapter3
- Question 3(c)** Dot point 6 information from: *QYFM v. Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor.* (2021, September 15). FCAFC 166. Retrieved September, 2025, from <https://www.hcourt.gov.au/cases-and-judgments/cases/decided/case-m532022>
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- Question 4(c)** Information from: Unacademy. (n.d.). *Principles of Natural Justice*. Retrieved September, 2025, from <https://unacademy.com/content/upsc/study-material/law/principles-of-natural-justice/>
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Question 10

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