



POLITICS AND LAW

ATAR course examination 2024

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 is meant by a 'pressure group' in the Australian political and legal system. (2 marks)

Description	Marks
Outlines what is meant by a 'pressure group' in the Australian political and legal system	2
Makes a general statement about a 'pressure group'	1
Total	2
Answers could include: <ul style="list-style-type: none"> • associations formed by people with common interests • who seek to influence lawmaking, either through the parliament or the courts. Accept other relevant answers.	

- (b) Explain **one** way an individual can influence the lawmaking process in Australia. (3 marks)

Description	Marks
Explains one way an individual can influence the lawmaking process in Australia	3
Outlines one way an individual can influence the lawmaking process in Australia	2
Makes a general statement about how an individual can influence the lawmaking process in Australia or States an example of an individual and a particular law that they influenced	1
Total	3
Answers could include: <ul style="list-style-type: none"> • bringing an action to the court which can negate legislation; initiate a new ruling; cause the Commonwealth Parliament to introduce/change a law • hire a lobbyist or act as lobbyist; make submissions to relevant committees regarding particular legislation • Private Members Bill that is not backed by a political party. Possible examples linking to one way could include: <ul style="list-style-type: none"> • <i>Williams v. Commonwealth</i> (#1, 2012) and (#2, 2014) and the effect on legislation • <i>Mabo & Ors v. State of Queensland</i> (1992) and subsequent legislation • Marriage Equality Bill 2017 (Dean Smith). Accept other relevant answers.	

- (c) With reference to **one** example, discuss how a particular pressure group has influenced the Commonwealth Parliament's lawmaking process in recent years. (5 marks)

Description	Marks
Identifies a particular pressure group Discusses in detail how the identified pressure group has influenced the Commonwealth Parliament's lawmaking process in recent years	5
Identifies a particular pressure group Discusses how the identified pressure group has influenced the Commonwealth Parliament's lawmaking process in recent years	3–4
Identifies a particular pressure group States how the identified pressure group has influenced the Commonwealth Parliament's lawmaking process in recent years or Makes a general statement about pressure groups and the lawmaking process of the Commonwealth Parliament	1–2
Total	5
<p>Answers could include:</p> <ul style="list-style-type: none"> • Australasian Association of Convenience Stores (AACS) and the Master Grocers Association (MGA) and their advocacy, lobbying and submission to the Senate Inquiry examining the Public Health (Tobacco and Other Products) Bill with new proposed laws to update and to improve graphic warnings added to tobacco packaging and vaping products • Australian Medical Association (AMA) and child vaccinations campaign: Social Services legislation Amendment (No Jab, No Pay) Act (2015) which resulted in the Family Tax Benefit <div style="border: 1px dashed gray; padding: 10px; text-align: center; margin: 10px 0;"> <p>For copyright reasons this text cannot be reproduced in the online version of this document.</p> </div> <p>(for further reference visit: https://australiainstitute.org.au/report/submission-to-nacc-joint-select-committee/)</p> <ul style="list-style-type: none"> • AMA's submission to the 2023 House of Representatives Standing Committee on Health, Aged Care and Sport's Inquiry into Diabetes in Australia asserts that the \$3.1 billion cost to Australia's health system from diabetes could be mitigated through the introduction of a sugar tax, a much stronger focus on prevention and addressing inequities in the health system (for further reference visit: https://www.ama.com.au/media/sugar-tax-stronger-focus-prevention-and-tackling-health-inequities-key-reducing-diabetes#:~:text=The%20AMA%20has%20told%20The%20AMA's%20proposal%20for%20a%20tax%20on%20sugary%20drinks%20has%20been%20met%20with%20opposition%20from%20the%20Australian%20Beverages%20Council%20Limited%20(ABCL).%20The%20AMA%20has%20recommended%20the%20federal%20government%20implement%20a%20tax%20of%2040%20cents%20per%20every%20100%20g%20of%20sugar%20that%20manufacturers%20add%20to%20drinks%2C%20meaning%20a%2016%20cent%20increase%20to%20the%20price%20of%20a%20regular%20can%20of%20soft%20drink%20(https://www.c-store.com.au/proposed-sugar-tax-slammed-by-beverages-council/)). <p>Accept other relevant answers.</p>	

Question 2

(10 marks)

- (a) Outline what is meant by 'Cabinet' in the Australian political system. (2 marks)

Description	Marks
Outlines what is meant by 'Cabinet' in the Australian political system	2
Makes a general statement about 'Cabinet' in the Australian political system	1
Total	2
Answers could include:	
<ul style="list-style-type: none"> • group of government senior ministers • decides on government policy and national issues. 	
Accept other relevant answers.	

- (b) Explain **one** way Cabinet dominates the House of Representatives. (3 marks)

Description	Marks
Explains one way Cabinet dominates the House of Representatives	3
Outlines one way Cabinet dominates the House of Representatives	2
Makes a general statement about Cabinet and the House of Representatives	1
Total	3
Answers could include:	
<ul style="list-style-type: none"> • sets the agenda for the House of Representatives • through party discipline and its majority: <ul style="list-style-type: none"> ▪ dictates legislation ▪ uses parliamentary processes such as the guillotine to shut down debate. 	
Accept other relevant answers.	

(c) Discuss **two** sources of prime ministerial power in Australia.

(5 marks)

Description	Marks
Discusses two sources of prime ministerial power in Australia	5
Outlines two sources of prime ministerial power in Australia or Discusses in detail one source of prime ministerial power in Australia and states one other source or Discusses in detail one source of prime ministerial power in Australia or Outlines one source of prime ministerial power in Australia and states one other source of power	3–4
Identifies one or two sources of prime ministerial power	1–2
Total	5
Sources of prime ministerial power could include:	
<ul style="list-style-type: none"> • appointing ministers and/or allocating portfolios (party dependent) • appointment and removal of senior public servants • decides election date • decides the structure and processes of Cabinet • control of the House of Representatives. 	
Accept other relevant answers.	

Question 3

(10 marks)

- (a) Outline what is meant by a 'censure motion' in the Commonwealth Parliament. (2 marks)

Description	Marks
Outlines what is meant by a 'censure motion' in the Commonwealth Parliament	2
Makes a general statement about a 'censure motion' in the Commonwealth Parliament or States an example of a 'censure motion' in the Commonwealth Parliament	1
Total	2
Answers could include: <ul style="list-style-type: none"> • a motion by the House of Representatives or the Senate against a particular Minister, member of the House or Senator, to express disapproval for an action or a statement by that individual • the censure motion has no substantive effect but may lead to other actions. Accept other relevant answers.	

- (b) In terms of parliamentary accountability, explain what is meant by 'naming a member of parliament' by the Speaker. (3 marks)

Description	Marks
Explains what is meant by 'naming a member of parliament' by the Speaker in terms of parliamentary accountability	3
Outlines what is meant by 'naming a member of parliament' by the Speaker in terms of parliamentary accountability	2
Makes a general statement about 'naming a member of parliament' by the Speaker in terms of parliamentary accountability	1
Total	3
Answers could include: <p>Section 94b of the Standing Orders includes:</p> <ul style="list-style-type: none"> • Speaker can name a member of the House for disorderly conduct if they believe that the member's behaviour needs stronger action than a 1 hour suspension • the House will vote on the motion and if carried the member will be suspended and expelled for 24 hours if it is the first offence. This length of time increases for further offences. Accept other relevant answers.	

- (c) With reference to **two** judgments, discuss how the High Court of Australia (HCA) promotes parliamentary accountability. (5marks)

Description	Marks
Refers to two judgments Discusses how each judgment promotes parliamentary accountability	5
Refers to two judgments Outlines how each judgment promotes parliamentary accountability or Refers to one judgment Outlines how the judgment promotes parliamentary accountability or Refers to two judgments Outlines how one judgment promotes parliamentary accountability and makes a statement about the other judgment and parliamentary accountability	3–4
States how one or two judgments promote parliamentary accountability or Makes a general statement about HCA judgments and parliamentary accountability	1–2
Total	5
<p>Answers could include:</p> <p>High Court judgments:</p> <ul style="list-style-type: none"> • <i>Spence v. Queensland</i> [2019] HCA 15 – Queensland argued that Section 302CA of the Commonwealth Electoral Act was unconstitutional and that it was ultra vires for the Commonwealth to interfere in states' electoral matters; Section 302CA was declared invalid • <i>Williams v. Commonwealth</i> [2014] HCA 23 (Williams No. 2) – involved the use of legislative power in the welfare power Section 51(xxiiiA) of the Commonwealth Constitution (Australia). The High Court of Australia reviewed parliament's legislative power and struck down this law for contravening Section 51(xxiiiA) as the authorised payments for the National School's Chaplaincy Program were paid to the Scripture Union Queensland instead of directly to students • <i>Roach v. Electoral Commissioner</i> [2007] HCA 43 – parliament held to account when parliament's amendments to the Commonwealth Electoral Act were declared invalid • Jacqui Lambie 2017 – the High Court determined that Jacqui Lambie was ineligible to be elected to parliament as she had been in breach of Section 44 of the Commonwealth Constitution (Australia). Other Section 44 disqualifications include Senators Nick Xenophon, Scott Ludlam, Malcolm Roberts, Larissa Waters, Matthew Canavan, Fiona Nash and Barnaby Joyce • <i>YBFZ v. Minister for Immigration, Citizenship and Multicultural Affairs</i> [2024] HCA 40 – the High Court decided that the curfew condition and ankle bracelet condition are invalid because they are inconsistent with the Constitution. <p>Accept other relevant answers.</p>	

Question 4

(10 marks)

- (a) Outline what is meant by a 'common law right' in Australia. (2 marks)

Description	Marks
Outlines what is meant by a 'common law right' in Australia	2
Makes a general statement about a 'common law right' in Australia	1
Total	2
<p>Answers could include:</p> <ul style="list-style-type: none"> rights that have been developed over time by the courts and are mainly legal rights – rights to freedom of speech and association; freedom from arbitrary arrest; right to presumption of innocence <i>Northern Territory v. Griffiths (dec) and Jones, Commonwealth of Australia v. Griffiths (dec) and Jones</i> (Timber Creek decisions) (2019) and how to resolve native title compensation claims. <p>Accept other relevant answers.</p>	

- (b) Explain **one** difference between an economic right and a political right. (3 marks)

Description	Marks
Explains one difference between an economic right and a political right The meaning of each right is evident within the explanation	3
Outlines one difference between an economic right and a political right The meaning of an economic right and a political right are alluded to	2
Makes a general statement about an economic right and a political right	1
Total	3
<p>Answers could include:</p> <ul style="list-style-type: none"> Difference: economic right relates to an individual's right to live and work with dignity and the freedom to access the necessities of life, whereas a political right relates to an individual's participation in the democratic process economic rights are focused on ensuring individuals have the means to sustain themselves; they are primarily concerned with individuals' economic well-being; they include the right to work, the right to a minimum wage, the right to form a trade union, the right to strike, the right to own property 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. <p>Accept other relevant answers.</p>	

- (c) Discuss **two** international covenants, protocols and/or treaties that protect human rights in Australia. (5 marks)

Description	Marks
Discusses how each international covenant, protocol and/or treaty protects human rights in Australia	5
Outlines how each international covenant, protocol and/or treaty protects human rights in Australia or Discusses how one international covenant, protocol and/or treaty protects human rights in Australia	3–4
Makes a general statement about how international covenants, protocols and/or treaties protect human rights in Australia or Outlines examples connected to particular human rights in Australia which have their origin in international covenants, protocols and/or treaties	1–2
Total	5
<p>Answers could include:</p> <ul style="list-style-type: none"> • Protection of Civil and Political Rights: Australia is party to the International Covenant on Civil and Political Rights (ICCPR), which outlines a range of civil and political rights. These include the right to life, freedom of expression, freedom of assembly, and the right to a fair trial <ul style="list-style-type: none"> ▪ Australia ratified the ICCPR in 1980, and its provisions have been incorporated into domestic law through the Human Rights (Parliamentary Scrutiny) Act 2011. The Act requires the Parliamentary Joint Committee on Human Rights to assess proposed legislation for compatibility with human rights, including those under the ICCPR ▪ the ICCPR has been invoked in cases challenging laws related to freedom of expression, privacy, and the rights of Indigenous peoples. Legal challenges often refer to the ICCPR to argue that Australian laws and practices are inconsistent with these international human rights standards. • Convention on the Elimination of All Forms of Discrimination Against Women: provides a legal framework for promoting and protecting rights of women. Creates an obligation on the Australian government to implement laws that eliminate discriminatory laws, policies and practices, i.e., Sex Discrimination Act 1984 – prohibits discrimination based on sex, marital status, pregnancy • <div style="border: 1px dashed gray; padding: 5px; text-align: center;">For copyright reasons this text cannot be reproduced in the online version of this document</div> • <div style="border: 1px dashed gray; padding: 5px; text-align: center;">For copyright reasons this text cannot be reproduced in the online version of this document</div> • covenants and protocols have no status in the Australian legal system unless they have been enacted into domestic law (High Court), for example the <i>Racial Discrimination Act</i> (1975) gave effect to provisions in the International Covenant on the Elimination of Racial Discrimination 	

Question 4 (continued)

- Australia has ratified many international covenants; party to seven key international human rights treaties including International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Rights (ICESCR); International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); Convention on the Rights of the Child (CRC)
- Australia has also signed and/or ratified a number of optional protocols to these treaties including to eliminate all forms of discrimination against women; elimination of all forms of racial discrimination; rights of persons with disabilities.

Accept other relevant answers.

Section Two: Source analysis

20% (20 Marks)

Question 5

(20 marks)

- (a) Outline what is meant by the term ‘guillotine’ as it applies to the legislative process in the Commonwealth Parliament. (2 marks)

Description	Marks
Outlines what is meant by the term ‘guillotine’ as it applies to the legislative process in the Commonwealth Parliament	2
Makes a general statement about the term ‘guillotine’ and/or its use in the Commonwealth Parliament	1
Total	2
Answers could include: <ul style="list-style-type: none"> • a parliamentary procedure to limit discussion on a bill or bills, when the Senate (or less often, the House) can agree that a matter is urgent and set a timeframe for completing the remaining stages • the procedure for the guillotine is set out in Standing Orders for each chamber • can be initiated by the government in the House, but can only be approved by a majority in the Senate • when used in the House, it is usually put in place prior to the commencement of debate on a bill. Accept other relevant answers.	

- (b) With reference to **Source 1** discuss, in your own words, how minor parties in the Senate exercise political power. (4 marks)

Description	Marks
Using the source as reference, identifies how minor parties in the Senate exercise political power Discusses in detail these methods in candidate’s own words Uses political and legal terminology	4
Using the source as reference, identifies how minor parties in the Senate exercise political power Discusses these methods mostly in candidate’s own words Uses political and legal terminology	3
Using the source as reference, outlines how minor parties in the Senate exercise political power Relies mainly on the source in the outline	2
Using the source as reference, identifies how (a) particular minor party/ies exercise political power in the Senate or Makes a general statement about the exercise of political power by minor parties alluded to in the source or Cites verbatim from the source	1
Total	4
Answers could include: <ul style="list-style-type: none"> • deal between the Greens and the government • uniting of several minor parties (Greens, One Nation, United Australia Party and the opposition to reject the guillotine motion) • delaying legislation to gain particular advantages from the government. Note: reasons must be drawn from the source.	

Question 5 (continued)

- (c) Discuss
- two**
- ways in which the Australian Senate promotes good government. (6 marks)

Description	Marks
Identifies two ways in which the Australian Senate promotes good government Discusses two ways in which the Australian Senate promotes good government Uses relevant examples in the discussion Uses political and legal terminology	5–6
Identifies two ways in which the Australian Senate promotes good government Outlines two ways in which the Australian Senate promotes good government Uses at least one relevant example in the discussion Uses political and legal terminology or Identifies one way in which the Australian Senate promotes good government Discusses one way in which the Australian Senate promotes good government Uses a relevant example in the discussion Uses political and legal terminology	3–4
States one or two ways in which the Australian Senate promotes good government or Makes a general statement about good government and/or the Australian Senate	1–2
Total	6
<p>Answers could include:</p> <ul style="list-style-type: none"> • representation: <ul style="list-style-type: none"> ▪ as the states' house, it ensures governments do not neglect smaller states, for example, the Jacqui Lambie Network negotiating Tasmania having its social housing debt forgiven, Western Australia and the goods and services tax ▪ more diverse representation preventing tyrannies of the majority, for example, Senator Barnaby Joyce negotiating concessions from his own party for regional Australia in the sale of Telstra (2005) ▪ greater diversity of representation, where governments rarely control the Senate, means more contested debate can occur, leading to greater scrutiny of proposed legislation and potential amendments being offered • under Section 53 of the Commonwealth Constitution, the Senate has almost equal legislative powers, and can force governments to negotiate on legislation, passing amendments in its own right on most matters, and forcing governments to negotiate on money bills by blocking legislation – a reflection of its important function as a house of review • the Committee system of the Senate, which provides Senators with significant power to inquire into legislative issues (through References Committees) and Government bills, administrative action and expenditure (through Legislation Committees). Examples of significant committees that promote good governance through scrutiny, oversight and transparency include: <ul style="list-style-type: none"> ▪ the Scrutiny of Bills Committee ▪ the Scrutiny of Delegated Legislation Committee ▪ the Privileges Committee ▪ Legal and Constitutional Affairs Committee ▪ legislative committees sitting as Senate Estimates to scrutinise government spending. 	
Accept other relevant answers.	

- (d) Evaluate the extent to which the Australian Senate no longer fulfils its original functions. (8 marks)

Description	Marks
Identifies the original functions of the Australian Senate Uses relevant examples in the discussion on each of the original functions Makes an evaluation of the extent to which the Australian Senate no longer fulfils each of its original functions	7–8
Identifies the original functions of the Australian Senate Uses examples in the discussion of the original functions Attempts to make an evaluation of the extent to which the Australian Senate no longer fulfils its original functions The evaluation may be general in nature and not differentiate between original functions of the Australian Senate	5–6
Outlines the original functions of the Australian Senate Attempts to use an example in outlining the original functions Makes no attempt to evaluate the extent to which the Australian Senate no longer fulfils its original functions	3–4
Identifies one or two original functions of the Australian Senate or Makes a general statement about the functions of the Australian Senate	1–2
Total	8
<p>Answers could include:</p> <p>The original functions of the Senate:</p> <ul style="list-style-type: none"> to represent the people of the states in Australia's federal legislature, in accordance with Section 7 of the Commonwealth Constitution (Australia) to act as a house of review primarily through its legislative functions and consultative review of financial bills from the House, limited in joint sittings due to nexus clause Section 24 to legislate in accordance with Section 53, equal in legislative power to the House in all respects but not able to initiate or amend appropriations and taxation bills. <p>Evolutionary changes affecting the functions of the Senate could include:</p> <ul style="list-style-type: none"> representation in the Senate tends to follow a partisan model, with less commitment to states than political parties, with some exceptions, for example, Lambie (Tasmania), Joyce (Queensland), Harradine (Tasmania), diminishing the effectiveness of representation of the states it has gone beyond its function as a house of review, actively seeking to negotiate with executive government on legislation, especially on financial bills, despite the limitations of Section 53, and also willingness to block financial legislation (compare the 1975 Constitutional Crisis) Senate estimates and executive accountability is used extensively. <p>Evaluation:</p> <ul style="list-style-type: none"> the Senate continues to perform some original functions, acting as a very effective house of review: committees such as the Legal and Constitutional Affairs Committee and other legislative committees since 1949 the Senate has grown in independence as government control of the Senate has become increasingly rare when the balance of power is held by minor parties and independents, the Senate is more capable of asserting control/influence over government bills and in initiating its own, forcing greater consensus and compromise. <p>Accept other relevant answers.</p>	

Question 6

(20 marks)

(a)

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Description	Marks
Outlines what is meant by ‘Hurley intended to share the proposals’ with “HMTQ” as it applies to the position of Governor-General	2
Makes a general statement concerning the relationship between the Governor-General and the Queen	1
Total	2
Answers could include: <ul style="list-style-type: none"> • Hurley, as the monarch’s representative, by convention is expected to communicate the proposal regarding the Australian Future Leaders Foundation with Her Majesty the Queen, as a means to inform her • Hurley’s communications with the monarch may have been to seek guidance on matters of protocol and tradition. Accept other relevant answers.	

(b)

With reference to **Source 2** discuss, in your own words, why the government’s grant to the Australian Future Leaders Foundation was seen as controversial. (4 marks)

Description	Marks
Using the source as reference, identifies reasons why the government’s grant to the Australian Future Leaders Foundation was seen as controversial Discusses in detail these reasons in candidate’s own words Uses political and legal terminology	4
Using the source as reference, identifies why the government’s grant to the Australian Future Leaders Foundation was seen as controversial Discusses these reasons mostly in candidate’s own words Uses political and legal terminology	3
Using the source as reference, outlines why the government’s grant to the Australian Future Leaders Foundation was seen as controversial Relies mainly on the source in the outline	2
Using the source as reference, identifies why the government’s grant to the Australian Future Leaders Foundation was seen as controversial or Makes a general statement why the actions of the Governor-General were seen as controversial or Cites verbatim from the source	1
Total	4
Answers could include: <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 but can be viewed at the following link https://www.theguardian.com/australia-news/2023/jul/19/australian-future-leaders-foundation-governor-general-18m-grant-tell-queen-coalition (paragraph 3 and paragraph 7, sentence 1).</div> • Hurley lobbying the Prime Minister to support the concept (25 September 2020) • <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 but can be viewed at the following link https://www.theguardian.com/australia-news/2023/jul/19/australian-future-leaders-foundation-governor-general-18m-grant-tell-queen-coalition (paragraph 3 and paragraph 7, sentence 1).</div> Note: the reasons must come from the source.	

- (c) Discuss **one** argument for and **one** argument against why the Governor-General should be independent and above politics. (6 marks)

Description	Marks
Discusses one argument for why the Governor-General should be independent and above politics Discusses one argument against why the Governor-General should be independent and above politics Uses political and legal terminology	5–6
Outlines one argument for why the Governor-General should be independent and above politics Outlines one argument against why the Governor-General should be independent and above politics Uses political and legal terminology or Discusses either one argument for or one argument against why the Governor-General should be independent and above politics Uses political and legal terminology or Outlines either one argument for or one argument against why the Governor-General should be independent and above politics States another argument either for/against Uses political and legal terminology	3–4
States one argument for and/or one argument against why the Governor-General should be independent and above politics or Makes a general statement about the independence of the Governor-General	1–2
Total	6
Answers could include: Argument for: <ul style="list-style-type: none"> • the Governor-General's independence maintains stability of government and the political system and serves as a constitutional safeguard. The Governor-General's neutrality and impartiality ensures the constitutional framework is upheld. This independence is particularly crucial during times of political uncertainty or crisis, that is, '1975 Constitutional Crisis' • independence of the Governor-General ensures their ability to make decisions free from political pressures can help safeguard the integrity of the constitutional and democratic processes • Governor-General is there to advise and be advised and perhaps should intervene if the situation warrants. Argument against: <ul style="list-style-type: none"> • as the Governor-General, being a representative of the monarch, is not an elected figure and does not derive democratic legitimacy directly from the people, they lack the democratic mandate to make significant decisions that affect the country and/or political system. • Governor-General is not accountable to an electorate, therefore, having an individual independent of political considerations may be undemocratic. Accept other relevant answers.	

Question 6 (continued)

- (d) With reference to 'the Hollingworth affair', evaluate the extent to which a Governor-General is accountable. (8 marks)

Description	Marks
Discusses the key issues/elements of 'the Hollingworth affair' Incorporates relevant facts in the discussion of the accountability of the Governor-General in terms of the monarch, the Commonwealth Constitution and the Prime Minister Makes an evaluation of the extent to which a Governor-General is accountable with reference to 'the Hollingworth affair'	7–8
Discusses some issues/elements of 'the Hollingworth affair' Incorporates facts in the discussion of the accountability of the Governor-General in terms of the monarch, the Commonwealth Constitution and the Prime Minister Attempts to make an evaluation of the extent to which a Governor-General is accountable with some reference to 'the Hollingworth affair'	5–6
Outlines some issues/elements of 'the Hollingworth affair' Incorporates some facts in the outline of the accountability of the Governor-General in terms of the monarch, the Commonwealth Constitution and the Prime Minister Makes no attempt to evaluate the extent to which a Governor-General is accountable with limited reference to 'the Hollingworth affair'	3–4
Makes general statements about 'the Hollingworth affair' Little factual evidence of the relationship between the Governor-General, the monarch, the Commonwealth Constitution and the Prime Minister	1–2
Total	8
<p>Answers could include:</p> <ul style="list-style-type: none"> • the Governor-General's powers are outlined in the Constitution; these powers are significant and therefore mechanisms of accountability are required • while the Governor-General can be theoretically held accountable by appointment (Prime Minister recommends appointment to the monarch) and by this implication, removal (conventions), no Governor-General has ever been removed, recalled or dismissed • 'the Hollingworth Affair' demonstrates that the public has been the most effective at holding the Governor-General to account: <ul style="list-style-type: none"> ▪ Peter Hollingworth, Governor-General at the time, resigned in 2003, as a result of public pressure over allegations that he had been ineffective in dealing with sexual abuse within the Anglican Church in his previous position as Archbishop of Brisbane ▪ appointed to Governor-General in 2001 by John Howard; in 2003 allegations arose that when Hollingworth was Archbishop, he covered up child sexual abuse in the church; Hollingworth denied these allegations ▪ despite the continued support from prime minister Howard, the public's negative sentiment ('court of public opinion') made his position untenable ▪ a campaign led by Hetty Johnson, an advocate for child abuse victims, which gained momentum, called for his resignation ▪ further, Hollingworth, in an interview, had appeared to 'blame' a victim by saying 'my belief is that this is not child abuse' – he later apologised and issued a statement ▪ Hollingworth was eventually asked to resign by the prime minister ▪ Hollingworth resigned not because he misused his powers as was the perception of Kerr, but rather for his actions prior to becoming the Governor-General. <p>Evaluation:</p> <ul style="list-style-type: none"> • formal mechanisms (conventions of removal), whilst not tested, have historically had little impact on the accountability of the Governor-General. Whereas informal mechanisms of accountability (i.e. public opinion) hold the Governor-General to account to a greater extent. 	
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	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)**

The process of formal constitutional change is a strength of Australia's political and legal system.

Evaluate this claim with reference to both successful and unsuccessful referendums since Federation.

Relevant terms and parameters of discussion:

- The process of formal constitutional change is outlined in Section 128 of the Commonwealth Constitution:
 - a bill for the referendum must pass either both houses of Federal parliament or be passed through one house only twice (an interval of three months must pass before it can be reintroduced into the same house)
 - a proposal must go to the people not less than two months and not more than six months after the bill is passed
 - a double majority is needed. Four out of six states must support the referendum and an overall majority of voters in all the states and territories must support the proposal
 - Governor-General must give assent to the amendment
 - Robert Menzies (former prime minister) said in 1951: 'The truth of the matter is that to get an affirmative vote from the Australian people on a referendum proposal is one of the labours of Hercules.'
- Strength of the process:
 - reflects democratic principles; majority rules reflecting the will of the people
 - encourages public political participation; another democratic principle through compulsory voting. Public engagement and citizens directly involved in the decision-making process
 - Federalism: requirement of the double majority balances the interests between smaller and larger states contributing to the federal nature of the Australian political and legal system
 - rationale for the high threshold is to ensure the power to change the Constitution is left to the states and the people; prevents arbitrary changes made by parliament.

Discussion of relevant issues, including pertinent examples.

Successful referendums:

Since 1901 there have been 45 proposals to change the Constitution. A total of 8 out of 45 have been successful:

- 1906 Referendum; elections for both Houses to be held concurrently
- Commonwealth taking over state debts 1910 Referendum
- State Debts Referendum 1928; inserted Section 105A to give the Commonwealth power to set up the Loans Council, responsible for allocating monies borrowed by state governments
- Social Services Referendum 1946; inserted Section 51xxiiiA to extend the Commonwealth's powers in relation to Social Services, to include maternity allowances, widows' pensions, child endowment, sickness benefits and family allowance
- Aboriginal Australians Referendum 1967; amended Section 51xxvi to enable the Commonwealth to enact laws for Aboriginal peoples (deleted Section 127 and removed the prohibition against counting Aboriginal peoples as a part of the population – they were to be included in the census)
- Note: the first question, put to referendum in 1967 failed with only 1 state voting Yes, was about breaking the nexus clause – Section 24 of the Commonwealth Constitution.

Other successful referendums include:

- Casual Vacancies Referendum 1977; altered the way casual vacancies in the Senate were filled. Aimed at ensuring that a replacement Senator should be from the same party as the departing Senator
- Territory Votes (21 May 1977); gave residents of the Australian Capital Territory and the Northern Territory the right to vote in constitutional referendums
- Retirement of Judges (21 May 1977); provided for a retirement age of 70 for all federal judges.

The successful referendums demonstrate the ability to adapt to changing societal norms and highlight responsiveness to evolving community values.

Failed referendums:

On the other hand, the process highlights the difficulty in achieving broad consensus.

- Terms of Senators Referendum and Interchange of Powers Referendum 1984;
 - a proposal to change the terms of senators so that they are no longer of fixed duration and to provide that Senate elections and House of Representatives elections are always held on the same day
 - a proposal to enable the Commonwealth and the states voluntarily to refer powers to each other.
- Republic Referendum and Preamble Referendum 1999;
 - a proposed Law to alter the Constitution to establish the Commonwealth of Australia as a republic with the Queen and Governor-General being replaced by a President appointed by a two-thirds majority of the members of the Commonwealth Parliament
 - a proposal to alter the Constitution to insert a preamble.
- Aboriginal and Torres Strait Islander Voice ('The Voice') Referendum 2023; a proposal that would recognise Indigenous Australians in the Constitution through prescribing a body called the Aboriginal and Torres Strait Island Voice that would be able to 'make representations to the Commonwealth Parliament and the Executive Government on matters relating to Aboriginal and Torres Strait Islander peoples'
 - this proposal was rejected nationally and by a majority in every state. The only state or territory to vote with a majority was the ACT
 - revealed divisions on the issue of constitutional change.

Evaluation:

- it is a robust process in terms that parliament, the people and the states/territories all have an input and hence reflects both democracy and federalism
- constitutional change does occur
- particular referendums do gain strong support both nationally and from the states
- in many ways failed referendums reflect the nature of federalism.

But:

- high threshold for approval; double majority makes it challenging for even popular proposals to pass; the proposed change may have broad public support but lack support in certain states
- limited flexibility; hard to address urgent or rapidly evolving issues. Lengthy and complex process
- complexity and voter confusion/apathy, ill-informed decision-making
- the process creates inflexibility in responding to societal changing views and attitudes.

Accept other relevant answers.

Question 8

(25 marks)

The executive and judicial powers in the Commonwealth Constitution are very similar to the executive and judicial powers in the national constitution of a non-Westminster political and legal system.

Evaluate this claim.

This evaluation requires direct comparisons between Australia and one non-Westminster political and legal system in terms of constitutional executive and judicial powers.

Executive powers

Commonwealth Constitution:

- Chapter 2 Commonwealth Constitution
- formal executive bodies include:
 - Monarch and Governor-General (Section 61)
 - Federal Executive Council (Section 62).
- Governor-General in Council is the Governor-General working with advice from the Federal Executive Council (Section 63)
- Governor-General:
 - appoints ministers, including Prime Minister, to administer departments established by the Federal Executive Council and they hold office at the pleasure of the Governor-General (Section 64)
 - command in chief of the naval and military forces (Section 68) – convention only
 - appoint such times for holding the sessions of Parliament, prorogue Parliament and dissolve the House of Representatives (Section 5) – usually on advice of PM
 - dissolve the House of Representatives (Section 28)
 - may dissolve both Houses of Parliament simultaneously (Section 57)
 - may convene a joint sitting of both Houses of Parliament (Section 57)
 - assent to law passed by parliament in the Monarch's name (Section 58).
- By convention most of these powers are exercised on advice of the Prime Minister/Federal Executive Council or the power is redundant and/or ceremonial – Commander-in-Chief
- Governor-General in Council:
 - appoint Justices of the High Court and other courts created by parliament (Section 72)
 - remove judges after an address by both Houses of Parliament (Section 72).
- Constitutionally the powers of the executive/Governor-General are constrained by the Westminster system of responsible government. In reality, the executive consists of the monarch and the Governor-General; the Prime Minister and other ministers (Ministry/Cabinet); the Federal Executive Council; officers and departments of the public service (the exception was 'the 1975 Crisis').

Non-Westminster, for example the United States of America (USA):

- executive power vested in an elected President with a four-year term, a Vice-President is chosen for the same term (Article 2 s. 1)
- powers of the President (Article 2 s. 2)
 - Commander-in-Chief (actual power compared to Governor-General)
 - appoint members to cabinet/each head of an executive department with consent of the Senate but can remove any cabinet member without Senate approval
 - treaties and appointments – treaties with advice and consent of two thirds of the Senate and with approval of the Senate including ambassadors, justices
 - executive agreements with foreign nations without the consent of the Senate
 - fill Senate vacancies as an interim measure but ultimately must be approved by Senate
 - signs or vetoes a bill or allows it to become law without signing it. Congress can over-ride the veto with two thirds vote of both Houses of Congress.

Comparison:

- US President and Governor-General (constitutionally) have similar powers
- legislation – both sign into law – US President can actually veto legislation which can be over-ridden, Governor-General in theory can withhold assent but this has not occurred
- Commander-in-Chief – both have the title – Governor-General is in fact ceremonial whereas US President is the actual Commander-in-Chief
- Governor-General is in the role at the monarch's pleasure with little accountability whereas the US President can be removed from office through the impeachment process. Note: the Prime Minister can be removed by the Governor-General (Section 64) or a vote of no confidence by the House of Representatives (convention of responsible government)
- appointments: in Australia it is the Federal Executive Council usually compared to the US President who nominates appointees which must be approved by the Senate.

Judicial powers

Commonwealth Constitution:

- judicial power is vested in a Federal Supreme Court to be called the High Court of Australia (HCA) and in other courts created by Parliament (Section 71)
- appointed by the Governor-General in Council until the age of 70 (Section 72)
- hear appeals from the HCA exercising original jurisdiction; any federal court and from State Supreme Courts (Section 73)
- exercise 'original jurisdiction' as listed under Section 75 and additional 'original jurisdiction' as conferred by parliament – e.g. arising under laws made by parliament (Section 76)
- Section 80 and trial by jury for Commonwealth indictable offences.

Non-Westminster, for example the United States of America (USA):

- judicial power is vested in one Supreme Court, and in such inferior courts as Congress may establish (Article 3 s. 1)
- appointed by the President with the advice and consent of the Senate as a lifetime appointment – a public process
- exercise original jurisdiction including cases involving the US government; two or more states; foreign powers
- exercise appellate jurisdiction from lower federal courts and state courts
- jury trial for a federal offense (except impeachment), but the accused can give up this privilege.

Comparison:

- establishment and judicial powers are constitutionally very similar
- appointments are different, as is the 'retirement age'.

Evaluation:

- There are major differences in the executive including:
 - appointment – closed compared to elected
 - assent to bills
 - as Commander-in-Chief
 - in Australia the role of Governor-General is subject to the conventions of responsible government and the role of advice. But Governor-General does have 'reserve powers' as seen in 1975
 - US President is singular but is subject to the approval of the Senate for certain powers.
- Overall, there is less difference between judicial powers compared to executive powers.

Accept other relevant answers.

Section Three: Part B

Question 9

(25 marks)

Evaluate the extent to which Australia and **one** other country uphold the democratic principles of popular participation and judicial independence.

This essay does not require a comparison.

Relevant terms and parameters of discussion:

- Popular participation:
 - involvement of citizens in the political system
 - voting in elections to decide the government of the day
 - involvement in political debate, including submissions to committees, submissions of petitions.
- Judicial independence:
 - a judiciary independent of executive and legislative influence/pressure especially in terms of appointment, security of tenure and conditions of service
 - judges and the judiciary as a whole are impartial and independent of external pressures and of each other
 - those appearing before the courts can have confidence that cases will be heard fairly and in accordance with the law.
- Australia and one other country identified.

Issues including pertinent examples could include:

Australia

- Popular participation:
 - the right to stand for election
 - the right to vote for all citizens without intimidation (exclusions; extensions)
 - freedom of speech on political matters. High Court of Australia judgments could be cited including:
 - *Nationwide News Pty Ltd v. Wills* (1992) 177 CLR 1 and *Australian Capital Television Pty Ltd v. the Commonwealth* (1992) 177 CLR 106, *Unions NSW v. New South Wales* [2013] HCA 58
 - *LibertyWorks Inc v. Commonwealth of Australia* [2021] HCA 18 (16 June 2021)
 - Vic Charter of Rights: Section 15 of the Charter of Human Rights and Responsibilities Act 2006 (Vic).
- Judicial independence:
 - the application of the separation of powers in Australia
 - independence from executive and legislative influence in terms of conduct of a trial and sentencing
 - rarely have governments/ministers been critical of a judge or a judgment of a court note the 2017 case of 3 federal ministers – Hunt, Sukkar and Tudge – who criticised the Victorian judiciary regarding an appeal that was yet to be decided. They stated that the Victorian judiciary were running ‘ideological experiments’ and that the bench was full of ‘hard-left activist judges’ some of whom are ‘divorced from reality’. These were published in *The Australian*. The ministers were called to the Court to explain why they should not be charged with contempt of court. The problem with the comments was that they could appear to influence a decision that the judges had yet to make. Ultimately the ministers, through their representative in the court, offered an unreserved apology. The Victorian Court of Appeal ruled it would not proceed with contempt charges after the apology (for further reference visit: <http://www.cefa.org.au/ccf/executive-and-judicial-tussle-healthy-our-democracy>)

- 1996 following the High Court's judgment in the Wik Case, Premier Borbidge of Queensland described the Court as 'an embarrassment' and suggested that Australia undergo what he called 'constitutional surgery' to allow voters to elect and dismiss judges by referendum. The then prime minister, John Howard, told Parliament that the only way in which the law should be changed was through Parliament passing a law (for further reference visit: <https://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj7Oct2016.pdf>).

Discusses both aspects of the evaluation for the other country:

- popular participation
- judicial independence.

Evaluation:

- raises both positive and negative points in terms of upholding popular participation and judicial independence by Australia and another country
- better responses will differentiate between the two principles in each country.

Accept other relevant answers.

Note: all aspects of the question need to be addressed, but it is not necessarily a 50:50 split between the principles nor the countries.

Question 10

(25 marks)

Both statutes and court judgments have led to an improvement in the political and legal rights of Australians.

Evaluate this claim with reference to a particular group in Australian society.

Relevant terms and parameters of discussion:

- identifies a particular group, for example, Australia's First Nations peoples, Muslim Australians, women, LGBTQIA+ people, refugees, Australians with disabilities
- historically, describes relevant constitutional, legislative and common law political rights
- the development/evolution, through statute law and court judgments, of political and legal rights over time for a particular group
- evaluation as to whether the political and legal rights of that group have improved over time.

Discussion of relevant issues including pertinent examples:

- the development and extent of improvement of political and legal rights by statutes or court judgments
- statutes, include but are not limited to: the Racial Discrimination Act 1975, the Sex Discrimination Act 1984, the Australian Human Rights Commission Act 1986, the Disability Discrimination Act 1992, and the Age Discrimination Act 2004
- specific acts of parliament, state and federal including:
 - the Native Title Act 1993; Native Title Amendment Act 1998
 - the Marriage Equality Plebiscite Act 2015 (and subsequent plebiscite)
 - the Workplace Gender Equality Amendment (Closing the Gender Pay Gap) Act 2023
 - the Fair Work Act 2009 (specific provision protecting workers from action by an employer on the basis of specified protected attributes, including religion)
 - the Disability Services Act (WA) 1993
 - charter of rights: Victoria, Australian Capital Territory, Queensland.
- specific court cases/judgments include:
 - Koowarta (1982), Mabo (1992), Wik (1997), Blue Mud Bay (2008), Love and Thoms (2018) cases (First Nations peoples)
 - Teoh (1995), Ex parte Lam (2003), Al-Kateb (2004), Benbrika (2020), Alexander (2021), NZYQ (2023) cases (refugees)
 - *Commonwealth v. ACT* (2013) case on marriage equality in the ACT.

Evaluation:

- an evaluation relevant to the particular group and whether or not there has been an improvement in their political and legal rights due to statutes and court judgements
- better responses may recognise that improvement is not linear for the group and perhaps cite statutes and judgments that have not led to improvements.

Accept other relevant answers.

ACKNOWLEDGEMENTS

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