



POLITICS AND LAW

ATAR course examination 2018

Marking Key

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

Section One: Short answer

30% (30 Marks)

Question 1

(10 marks)

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

Description	Marks
Explains the meaning of 'political mandate'.	2
Outlines the meaning of 'political mandate' or Makes a general statement about 'political mandates'.	1
Total	2
Answers could include, but are not limited to: <ul style="list-style-type: none"> the authority given by the voters to the party/parties (government) with a majority in the H of R to implement the programs and policies outlined in the election platform different types of political mandates include: government mandate, 'balance of power mandate'. 	

- (b) Explain
- one**
- reason why a minor party
- and/or**
- an Independent in the Australian Senate could argue that they have a mandate. (3 marks)

Description	Marks
Explains one reason why a minor party and/or an Independent in the Australian Senate could argue that they have a mandate.	3
Outlines one reason why a minor party and/or an Independent in the Australian Senate could argue that they have a mandate.	2
Makes a statement concerning minor party/Independents and a mandate in the Australian Senate.	1
Total	3
Answers could include but are not limited to: <ul style="list-style-type: none"> elected to keep a government accountable on a specific issue elected on a set platform with clear legislative goals Senate is a house of review. 	

- (c) Discuss **one** argument for and **one** argument against the claim that: 'in recent years, political mandates no longer have any relevance in Australian federal politics'. (5 marks)

Description	Marks
Discusses one argument for the claim. Discusses one argument against the claim. Makes specific reference to at least one recent example in the discussion.	5
Outlines one argument for the claim. Outlines one argument against the claim. or Discusses one argument for/against and outlines one argument for/against. or Discusses one argument for or against the claim. Makes specific reference to at least one recent example in the discussion/outline.	3–4
Outlines one argument for and/or one argument against the claim. or Makes a general statement concerning 'political mandates have no relevance in recent Australian federal politics'.	1–2
Total	5
<p>Answers could include but are not limited to:</p> <p>Arguments for:</p> <ul style="list-style-type: none"> • elected governments in recent years have tended to ignore the platform/policy on which it was elected e.g. Gillard – 'No carbon tax', Abbott – no funding cuts to the Australian Broadcasting Commission • the lack of government control of the Senate has meant that a government cannot fully implement its policies e.g. Turnbull – plebiscite on marriage equality, family benefits/paid parental leave. <p>Arguments against:</p> <ul style="list-style-type: none"> • political mandates encourage some predictability in the political system in terms of the policies at election time and what will be implemented by: a government/ minority government/particular party in the Senate e.g. Abbott – Carbon tax repeal • provides legitimacy to a party/ies that gains a majority in the House of Representatives to implement a particular policy. <p>Note: 'recent years' refers to the last 10 years.</p>	

Question 2

(10 marks)

- (a) Explain what 'the Opposition' refers to in the Commonwealth Parliament. (2 marks)

Description	Marks
Explains what 'the Opposition' is in the Commonwealth Parliament.	2
Outlines what 'the Opposition' is in the Commonwealth Parliament.	1
Total	2
Answers could include, but are not limited to: <ul style="list-style-type: none"> • it is the political party/ies with the second largest representation on the floor of the House of Representatives • it is a recognised institution within the Parliament/Westminster system with official status • by convention it is seen as the alternative government. 	

- (b) Outline **three** roles of the Opposition in the Commonwealth Parliament. (3 marks)

Description	Marks
Outlines three roles of the Opposition in the Commonwealth Parliament.	3
Outlines two roles of the Opposition in the Commonwealth Parliament.	2
Outlines one role of the Opposition in the Commonwealth Parliament. or Lists two or three roles of the Opposition.	1
Total	3
Roles of the Opposition include, but are not limited to: <ul style="list-style-type: none"> • provide a credible alternative to the party in power • work on committees that examine legislation and important national issues • scrutinise, put forward amendments to legislation • to scrutinise and hold government/Ministers to account <ul style="list-style-type: none"> ◦ ask questions with/without notice ◦ to bring a censure motion against a Minister ◦ to move a vote of no confidence in a Minister/government. <p>Note: this question is not concerned with the power(s) of the Opposition.</p>	

- (c) Discuss **one** factor that enhances the power of the Opposition in the Commonwealth Parliament and **one** factor that inhibits its power. (5 marks)

Description	Marks
Discusses one factor that enhances the power of the Opposition in the Commonwealth Parliament. Discusses one factor that inhibits the power of the Opposition in the Commonwealth Parliament. Makes specific reference to at least one example in the discussion.	5
Outlines one factor that enhances the power of the Opposition in the Commonwealth Parliament. Outlines one factor that inhibits the power of the Opposition in the Commonwealth Parliament. or Discusses one factor and outlines the other factor. or Discusses one factor. Makes reference to at least one example in the discussion/outline.	4
Outlines one factor that enhances the power of the Opposition in the Commonwealth Parliament. Outlines one factor that inhibits the power of the Opposition in the Commonwealth Parliament. or Discusses one factor and outlines the other factor. or Discusses one factor.	3
Outlines one factor that enhances the Opposition's power and/or one factor that inhibits its power. or Makes a general statement concerning the power of the Opposition in the Commonwealth Parliament.	1–2
Total	5
<p>Factors that enhance the power of the Opposition include:</p> <ul style="list-style-type: none"> the Opposition has an officially recognised function, established by convention, of opposing the government of the day Question Time used well to enhance its position vis-a-vis the government is entitled to a certain time in debate, including address in reply to the Budget bills, certain representation on committees work with minor parties in the Senate to amend/block legislation. <p>Factors that inhibit the power of the Opposition include:</p> <ul style="list-style-type: none"> does not command a majority in the House of Representatives a partisan Speaker lack of parliamentary resources compared to the government government sets the parliamentary agenda Senate censure motions have no parliamentary consequence under the Westminster system. 	

Question 3

(10 marks)

- (a) Outline **two** elements of 'collective ministerial responsibility'. (2 marks)

Description	Marks
Outlines two elements of 'collective ministerial responsibility'.	2
Outlines one element of 'collective ministerial responsibility'.	1
Total	2
<p>Answers could include, but are not limited to:</p> <ul style="list-style-type: none"> • strict adherence to an agreed Cabinet decision only applies to Cabinet Ministers unless a Minister outside Cabinet was involved in a particular decision (Hawke/Howard – <i>Cabinet Handbook</i>) • all Ministers give support in public debate to decisions of Cabinet and of the full Ministry in public statements and the party room • the Ministry, as a whole, is accountable to and needs the confidence of the House of Representatives • whole Ministry observe the rule of Cabinet secrecy • a Minister should resign if he/she cannot support the decisions of the Cabinet/Ministry. <p>Government, Politics, Power and Policy in Australia, Parkin, Summers and Woodward (eds) 2006. Pearson Education Australia Frenchs Forest NSW 2086 P.104–5.</p>	

- (b) Explain **one** circumstance in which a Minister might face resignation. Make reference to an example in the response. (3 marks)

Description	Marks
Explains one circumstance in which a Minister might face resignation. Makes reference to a particular Minister in the explanation.	3
Outlines one circumstance in which a Minister might face resignation. Makes reference to a particular Minister.	2
Makes a general statement why a Minister may face resignation.	1
Total	3
<p>Answers could include, but are not limited to:</p> <ul style="list-style-type: none"> • inappropriate personal/ethical behaviour, financial impropriety, conflict of interest • inability to support a Cabinet decision, general policy direction of government/leadership of Prime Minister • direct personal responsibility for policy or administrative failures, particularly if these have been ignored/covered up. <p>Government, Politics, Power and Policy in Australia, Parkin, Summers and Woodward (eds) 2006. Pearson Education Australia Frenchs Forest NSW 2086 P.105.</p>	

- (c) Discuss **two** reasons why individual Ministers have become less accountable in recent years. (5 marks)

Description	Marks
Discusses two reasons why individual Ministers have become less accountable in recent years. Makes reference to at least one valid/relevant example in the discussion.	5
Outlines two reasons why individual Ministers have become less accountable in recent years. or Discusses one reason and outlines the other reason why individual Ministers have become less accountable in recent years. or Discusses one reason why individual Ministers have become less accountable in recent years. Makes reference to at least one valid/relevant example in the discussion/outline.	3–4
Outlines one reason why individual Ministers have become less accountable in recent years. or Makes a general statement concerning why individual Ministers have become less accountable in recent years.	1–2
Total	5
<p>Answers could include, but are not limited to:</p> <ul style="list-style-type: none"> • Ministers can blame personnel in their Department for shortcomings • Governments tend to use their numbers in the House of Representatives to protect a Minister in a censure motion/vote of no confidence • Ministers stay on as long as he/she has the support of the Prime Minister/Cabinet or if the issue is unlikely to become an electoral liability. <p>Some recent Ministers who have 'survived' include: Sen. George Brandis (2016); Sen. Michaelia Cash (2017); The Hon. Peter Garrett (2010).</p> <p>Note: 'recent years' refers to the last 10 years.</p>	

Question 4

(10 marks)

- (a) Explain the term 'popular participation' as it applies to the Australian political system. (2 marks)

Description	Marks
Explains the term 'popular participation' as it applies to the Australian political system.	2
Outlines the term 'popular participation' as it applies to the Australian political system. or Makes a general statement about the meaning of 'popular participation'.	1
Total	2
Answers could include, but are not limited to: <ul style="list-style-type: none"> a democratic principle relating to the active involvement of citizens in the political system which can include: voting in elections, active involvement in political debate and/or protest, involvement in pressure group activity, involvement in a political party and its activities the context of the Australian political system should be addressed. 	

- (b) Explain **how** 'popular participation' differs from 'political representation'. (3 marks)

Description	Marks
Explains how 'popular participation' differs from 'political representation'.	3
Outlines how 'popular participation' differs from 'political representation'.	2
Makes a general statement about the terms.	1
Total	3
Answers could include, but are not limited to: Key differences include: <ul style="list-style-type: none"> 'political representation' is focussed on the link between the voters and the representatives in the legislature, compared to 'popular participation' is how the people/populous are involved in the political system. <p>Note: this response does not require definitions of each term. The focus is on how they differ from each other.</p>	

- (c) Referring to a country other than Australia, discuss **two** factors that can undermine popular participation in that country. (5 marks)

Description	Marks
Identifies a country other than Australia. Discusses two factors that can undermine 'popular participation' in that country. In the discussion makes reference to detailed and relevant evidence.	5
Identifies a country other than Australia. Outlines two factors that can undermine 'popular participation' in that country. or Discusses one factor and outlines the other factor. or Discusses one factor only. In the discussion/outline makes reference to relevant and valid evidence.	3–4
Outlines one factor that can undermine 'popular participation' in that country. or Makes a general statement concerning the undermining of 'popular participation'. or Outlines an example of the undermining of 'popular participation' in a country other than Australia.	1–2
Total	5
Factors could include: <ul style="list-style-type: none"> • extent of the franchise and/or how it is limited • voter apathy or voter boycotts • how 'free' pressure groups and political parties are in terms of the conduct of their activities • how broad the limits are on candidacy for elections and how open elections are • extent of media censorship • restrictions on civil and political rights. <p>Note: the discussion/factors will be dependent on the country chosen.</p>	

Section Two: Source analysis

20% (20 Marks)

Question 5

(20 marks)

- (a) Explain what is meant by a 'ground-breaking decision'. (2 marks)

Description	Marks
Explains the meaning of 'ground-breaking decision'.	2
Outlines the meaning of 'ground-breaking decision'.	1
Total	2
<p>The answer could include, but is not limited to:</p> <ul style="list-style-type: none"> • a decision on an issue that has not been heard before, pioneering, innovative • does not follow precedent, including the High Court • in Easton case it is the first time that s.254(14) of the <i>Commonwealth Electoral Act</i> has been considered by a court. 	

- (b) With reference to **Source 1**, explain in your own words, **two** reasons why Magistrate Heilpern allowed the refusal to vote under the religious exemption. (4 marks)

Description	Marks
Explains two points of the judgement why Magistrate Heilpern allowed the refusal to vote under the religious exemption. The explanation is mostly in candidate's own words with some direct reference to the judgement.	4
Explains one point of the judgement why Magistrate Heilpern allowed the refusal to vote under the religious exemption and outlines a second point why Magistrate Heilpern allowed the refusal to vote under the religious exemption. The explanation is mostly in candidate's own words with some direct reference to the judgement.	3
Attempts an explanation of Magistrate Heilpern's decision, making some reference to points of the judgement. Attempts to explain in the candidate's own words.	2
Gives the basis for the decision verbatim.	1
Total	4
<p>Answers could include:</p> <ul style="list-style-type: none"> • Easton held a well-developed moral code that was similar to that of religious belief that required Easton not to vote • Easton held a 'truly held' view of life and his ideological stance which formed the basis for his decision not to vote • Easton's reason for not voting was devout but not religious which satisfied the requirements under s.14 • Heilpern believes that the exemption in subsection 14 allows for voters to not vote based on a form of 'conscientious objection' which is what Easton enlisted in his decision not to vote. <p>Note: the points forming the basis for the decision must be drawn from the source.</p>	

- (c) With reference to the Commonwealth Constitution, discuss **two** powers of the High Court of Australia. (6 marks)

Description	Marks
Identifies two distinct powers of the High Court of Australia. Discusses each of these powers. or Discusses one of these powers and outlines the other power. Makes direct reference to the Commonwealth Constitution.	5–6
Identifies two distinct powers of the High Court of Australia. Outlines each of these powers. or Discusses one of these powers. Makes direct reference to the Commonwealth Constitution.	3–4
Identifies one/two distinct powers of the High Court of Australia. or Outlines one of these powers. or Makes a general statement concerning the power(s) of the High Court of Australia.	1–2
Total	6
Answers could include, but are not limited to: <ul style="list-style-type: none"> • can hear appeals (appellate jurisdiction) from all courts in Australia, s.73 • is the court of first instance (original jurisdiction) s.75 including matters: arising under any treaty; in which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party; between States, or between residents of different States, or between a State and a resident of another State • additional original jurisdiction s.76 includes matters: arising under the Constitution, or involving its interpretation; arising under any laws made by the Parliament • Court of Disputed returns. The Constitution empowers the Commonwealth Parliament to provide additional original jurisdiction s.76. In 1902 the Parliament provided that the High Court would be the federal Court of Disputed Returns. This jurisdiction is now provided in Part XXII of the <i>Commonwealth Electoral Act 1918</i>. 	

Question 5 (continued)

- (d) Apart from the example in **Source 1**, outline **one** contemporary example of the exercise of legal power in Australia and evaluate its implications. (8 marks)

Description	Marks
<p>Outlines one contemporary example of the exercise of legal power in Australia.</p> <p>Discusses the implications/consequences of this exercise of legal power including relevant and valid detail.</p> <p>Makes an evaluation of the implications of this exercise of legal power.</p>	7–8
<p>Outlines one contemporary example of the exercise of legal power in Australia.</p> <p>Discusses the implications/consequences of this exercise of legal power including relevant and valid detail.</p> <p>Attempts an evaluation of the implications of this exercise of legal power.</p>	5–6
<p>Outlines one contemporary example of the exercise of legal power in Australia.</p> <p>Outlines an implication/consequence of this exercise of legal power including relevant and valid detail.</p> <p>Makes a statement concerning the outcome of this exercise of legal power.</p>	3–4
<p>States a contemporary example of the exercise of legal power in Australia.</p> <p>and/or</p> <p>Identifies the implication/consequence of the exercising of legal power in the last three years.</p>	1–2
Total	8
<p>Examples of the exercising of legal power in the last three years (contemporary) include, but are not limited to:</p> <ul style="list-style-type: none"> • a particular judgment of a court • a decision of the High Court not to hear a case • the High Court sitting as the Court of Disputed Returns • cases involving various sections of s.44 of the Commonwealth Constitution on the eligibility of members to sit in the Commonwealth Parliament. (For example, Culleton, Joyce, Nash, Waters, Ludlum, Roberts) • cases where the court decided who/how a member is replaced after an elected member is disqualified from sitting: <ul style="list-style-type: none"> ◦ 2017 Culleton – special recount of Western Australian Senate votes Peter Georgiou elected ◦ 2017 Day – special recount of South Australian Senate votes Lucy Gichuhi – this was not what Family First advocated (Rikki Lambert) ◦ 2018 ex-Nick Xenophon Team senator Skye Kakoschke-Moore could not replace herself in the upper house (it must be Tim Storer). <p>Note: the question is asking for an evaluation of the implications/consequences of the exercise of legal power. A mere narration of an example is inadequate.</p> <p>Note: 'contemporary' means within the last three years.</p>	

Question 6

(20 marks)

- (a) Explain what is meant by ‘appeal’ as it applies in the Australian legal system. (2 marks)

Description	Marks
Explains the meaning of ‘appeal’ as it applies in the Australian legal system.	2
Outlines the meaning of ‘appeal’.	1
Total	2
The answer could include: <ul style="list-style-type: none"> • to have a decision reviewed by a higher court • it is limited to those parties involved in the case • it can be on the basis of: <ul style="list-style-type: none"> ◦ a matter of law ◦ error in proceedings • puts ‘appeal’ into the context of the Australian legal system. 	

- (b) With reference to **Source 2**, explain in your own words, **two** reasons why judges are obliged to state the reasons for their decisions. (4 marks)

Description	Marks
Identifies two reasons why judges are obliged to state the reasons for their decision. Explains each reason in their own words with some direct reference to the reasons.	4
Identifies two reasons why judges are obliged to state the reasons for their decision. Explains one reason in their own words with some direct reference to the reasons.	3
Identifies two reasons why judges are obliged to state the reasons for their decision. or Identifies and explains one reason. The explanation is mostly in their own words.	2
States one reason, verbatim, why judges are obliged to state the reasons for their decision.	1
Total	4
Reasons from the source include: <ul style="list-style-type: none"> • feature of the ‘administration of justice’ • a way of avoiding the ‘arbitrary exercise of judicial power’ • it allows for scrutiny and criticism by the wider community (‘litigants, colleagues, media and scholars’) and thus part of openness and accountability of the courts. <p>Note: these reasons must be drawn from the source.</p>	

Question 6 (continued)(c) Discuss **two** limitations of the appeals process in the Australian court system. (6 marks)

Description	Marks
Identifies two limitations of the appeals process in the Australian court system. Discusses each of these limitations. or Discusses one of these limitations and outlines the other limitation.	5–6
Identifies two limitations of the appeals process in the Australian court system. Outlines each of these limitations. or Discusses one of these limitations.	3–4
Identifies one/two limitations of the appeals process in the Australian court system. or Outlines one of these limitations. or Makes a general statement concerning the limitations of the appeals process in the Australian court system.	1–2
Total	6
Limitations of the appeal process could include, but are not limited to: <ul style="list-style-type: none"> • availability of competent representation before the appellate court • rules governing appeals may limit the ability of the court to correct mistakes that have occurred • courts may be averse to going against what was a discretionary or evaluative decision (e.g. jury verdict) • the time and cost involved in the appeals process. 	

- (d) Evaluate **two** factors that have the potential to undermine public confidence in the Australian court system. (8 marks)

Description	Marks
Discusses two factors that have the potential to undermine public confidence in the Australian court system. Makes reference to valid and relevant evidence. Makes an evaluation of each factor in terms of their potential to undermine public confidence in the Australian court system.	7–8
Discusses two factors that have the potential to undermine public confidence in the Australian court system. Makes reference to valid and relevant evidence. Attempts an evaluation of one/two factors in terms of their potential to undermine public confidence in the Australian court system.	5–6
Outlines two factors that have the potential to undermine public confidence in the Australian court system. Makes a statement concerning their potential to undermine public confidence in the Australian court system.	3–4
States one/two factors that have the potential to undermine public confidence in the Australian court system. and/or Makes a general statement concerning how public confidence in the Australian court system can be undermined.	1–2
Total	8
Answers could include, but are not limited to: Factors that have the potential to undermine public confidence: <ul style="list-style-type: none"> • media commentary • ignorance of the law and/or court procedure • the lack of a code of conduct for judges in some Australian jurisdictions and hence an open complaints procedure • public perceptions as a result of particular high profile trial and the outcome (e.g. 'soft' sentencing; judge is perceived as being partial or competence is called into question). 	

Section Three: Essay

50% (50 Marks)

Marking guide to essay answers

Questions 7–10

Description	Marks
Explains relevant terms and outlines parameters of discussion	
Explains all relevant terms and outlines parameters of discussion.	5
Explains some of the terms and outlines parameters of discussion.	4
Indicates what will be addressed in the discussion.	3
Attempts to provide a focus for discussion.	2
Makes a general statement concerning the topic/claim.	1
Subtotal	5
Discussion of relevant issues including pertinent examples	
Discusses comprehensively relevant issues using a well-structured format and supportive examples in a cohesive, logical sequence and uses relevant political and legal terminology.	9–10
Discusses some relevant issues incorporating some examples in a cohesive, logical sequence and uses relevant political and legal terminology.	7–8
Limited discussion with limited examples in a logical sequence and uses relevant political and legal terminology.	5–6
Limited discussion of the issues with limited political and legal terminology.	3–4
Makes general statements concerning the topic.	1–2
Subtotal	10
Evaluation/assessment/analysis	
Evaluates/assesses/analyses the claim using specific evidence which demonstrates a comprehensive understanding of the topic.	7
Evaluates/assesses/analyses the claim using appropriate evidence which demonstrates an understanding of the topic.	6
Evaluates/assesses/analyses the claim using some evidence which demonstrates some understanding of the topic.	5
Constructs a relevant but weak evaluation/assessment/analysis.	4
Constructs a weak evaluation/assessment/analysis.	3
Limited evaluation/assessment/analysis.	2
No evaluation/assessment/analysis. A statement only.	1
Subtotal	7
Conclusion	
Draws together the argument linking the evidence.	3
Summarises the argument.	2
Makes general/superficial statements.	1
Subtotal	3
Total	25

Section Three: Part A

Question 7

(25 marks)

The lawmaking process, by both the Commonwealth Parliament and the Australian court system, is subject to many influences, including those from both individuals and pressure groups.

Evaluate the relative influence of individuals and pressure groups in this process.

Relevant terms and parameters of discussion

Lawmaking process Commonwealth Parliament

Lawmaking process of Australian court system

Individuals:

- bring 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

Pressure groups: lobbying; making an issue an election issue; publicising an issue to ensure that government of the day/minor parties look to introducing legislation.

Issues including pertinent examples could include:

Individuals can take action through the courts:

- Williams v. Commonwealth (#1, 2012) and (#2, 2014) and the effect on legislation
 - Williams #1 led to passing of the *Financial Framework Legislation Amendment Act (no3) 2012* (Cth)
 - Williams #2 challenged the validity of the Act, High Court ruled that the statutory provisions to authorise the chaplaincy program were constitutionally invalid/beyond the powers of the Parliament
- Lane v Morrison (2009) and the outcomes related to lawmaking: Military Court of Australia Bill 2010 and 2012.
- Mabo & Ors v State of Queensland (1992) and subsequent legislation.

Individuals and influence on legislation:

- Rosie Batty active campaigner against domestic violence led to legislation at Commonwealth and State level:
 - Family Law Amendment (Family Violence and Other Measures) Bill (2017)
 - Migration Amendment (Family Violence and Other Measures) Bill (2016)
- Marriage Equality Bill 2017 (Dean Smith)
- *Evidence Amendment (Journalists' Privilege) Act 2011* (Wilkie)
- Auditor-General Amendment Bill 2011 (Rob Oakeshott).

Pressure groups:

- GetUp Ltd v Electoral Commissioner (2010) FCA 869 and the acceptability of an electronic signature to enrol to vote using Sophie Trevitt's application as the basis for the challenge. *The Electronic Transactions Act 1999* applied to the *Commonwealth Electoral Act 1918* and overrode the discretion of the electoral commissioner.
- Rowe v Electoral Commissioner (2010) funded by GetUp – found Howard's amendments to the Electoral Act invalid.
- AMA and child vaccinations campaign: *Social Services Legislation Amendment (No Jab, No Pay) Act 2015* which resulted in changes to the Family Tax Benefit.

Evaluation

The influence of individuals in the lawmaking process.

The influence of pressure groups in the lawmaking process.

Which is more influential (relative influence)?

Question 8**(25 marks)**

At federation, there was an equitable financial relationship between the Commonwealth and the States but now, in the twenty-first century, the Commonwealth dominates the States financially.

Evaluate this claim.

Relevant terms and parameters of discussion

'Equitable' financial relationship – a financial relationship where both the Commonwealth and the States are financially independent, each raising the revenue needed to cover expenditure.

'Commonwealth dominates the States financially' – the States are to all intents and purposes financially dependent on the Commonwealth for revenue.

The financial relationship at federation.

The financial relationship in the twenty-first century.

Issues including pertinent examples could include:

The financial relationship during the first decade after federation:

- founders envisaged that the States and the Commonwealth would be financially independent
- all taxes were available to Commonwealth and States [s.51(2)] and how taxes were shared was only indicated for the first 10 years
- all interstate tariffs/customs were abolished and a new uniform national tariff introduced
- Commonwealth alone has the power to impose 'duties of customs and excise' (s.90) with a transitional period of 10 years (s.87) with the Commonwealth retaining one-quarter of net revenue and the remainder returned to the States. The Commonwealth could end this via legislation at the end of 10 years
- Section 90 alone created a revenue imbalance between the States and Commonwealth as it prevented the States from imposing particular taxes on goods. The imbalance has increased ever since as the definition of 'duties of excise' has expanded
- s.96 allows for the Parliament to 'grant financial assistance to any State on such terms and conditions as the Parliament thinks fit'. Thus there is no limit to the 'terms and conditions' that Parliament may attach to such a grant. (inequitable, even at federation).

Financial relationship in the twenty-first century:

Taxation increasingly dominated by the Commonwealth includes:

- income tax- individual 40%; enterprise 18% (of all revenue)
- GST-13%
- Excise taxes 6%
- State taxes include: payroll 5%; conveyance duty/property 4%; motor vehicle taxes 2% i.e. the State taxes are less than 11% of all revenue collected.

Vertical fiscal imbalance:

- Commonwealth collects 81% of total tax revenue
- States collect 16%
- Local 3%

Commonwealth disperses about 50% of what it collects to the States:

- GST is a 'growth tax'. Original agreement (1999) Commonwealth transfer the revenue to States to replace Commonwealth Financial Assistance Grants/States agreed to abolish or reduce a number of indirect taxes and review these taxes in 2005
- GST monies is allocated by Commonwealth Grants Commission under HFE and a 'state's fiscal capacity'. WA receives back 34c in \$ compared to Qld \$1.17 and SA \$1.42. (2017).

(The Conversation: FactCheck: how much of Australia's tax is collected by states and territories? November 12, 2015).

Evaluation

Was the financial relationship equitable at federation? Not really although States were financially independent.

Does the Commonwealth dominate the States financially in the twenty-first century? The facts seem to suggest that the Commonwealth has the upper hand but dominate? (This will depend on how the candidate defined the term.)

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

Analyse the extent to which the procedures and processes of the parliament, compared to judicial review, keep the Commonwealth Parliament accountable.

Relevant terms and parameters of discussion

'procedures and processes of parliament' include:

- naming procedure under Standing Orders for control of disorderly conduct in the chamber that results in suspension from the chamber
- reference to the Parliamentary Privileges Committee for breach of parliamentary standards
- censure motions by a chamber against a Member/Senator (in terms of accountability of Parliament)
- grievance and/or adjournment debates (in terms of promoting the accountability of Parliament)
- '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.

Issues including pertinent examples could include:

Standing Orders:

44th Parliament - Speakers Bishop and Smith

- The Speaker ordered members to leave the House of Representatives on 524 occasions, an increase of 88.5 per cent from the 43rd Parliament when 278 members were ejected. On eight occasions members were named and suspended, 515 were 'sin binned' (ordered to leave the Chamber under SO 94) for one hour.

Current 45th Parliament- Speaker Smith

- MPs have on average been expelled 2.8 times each sitting day, compared to 2.7 times in the 44th Parliament and 1.5 times in the 43rd - hung – Parliament. (Statistics from the Chamber Research Office).

Members were disciplined most frequently under the speakership of Bronwyn Bishop, followed by Peter Slipper, Tony Smith, Anna Burke, David Hawker and Harry Jenkins.

Privileges Committee:

- May 2016: Cabinet secretary Arthur Sinodinos was referred to the Senate Privileges Committee to determine if he was in contempt by refusing an order to attend an inquiry into political fundraising bodies

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- Sept 2016: Derryn Hinch in his maiden speech in the Senate named and shamed a number of convicted child sex offenders, under the protection of Parliamentary Privilege/ no formal action taken.

Question 9 (continued)

Censure motions against MPs/Senators (not Ministers):
August 2017: Sen. Brandis' motion to censure Sen. Penny Wong over the actions of her staff re: Barnaby Joyce/citizenship. Failed on floor of Senate 34-29.

Legislation subject to judicial review includes:

- *Plain Packaging Act 2011* (High Court 2012)
- *Financial Framework Legislation Amendment VIII (no.3) 2012* (High Court 2014 Williams #2)
- *Mineral Resources Rent Tax Act (2012)* (High Court 2013 Fortescue Metals Group v Commonwealth).

Analysis

The extent that the various procedures and processes of the parliament keeps the Commonwealth Parliament accountable?

The extent that judicial review keeps the Commonwealth Parliament accountable?

Are the procedures and processes of the parliament more effective than judicial review in keeping the Commonwealth Parliament accountable? The comparison.

Note: this question is asking for a comparison.

Question 10

(25 marks)

Analyse **two** separate ways human rights are protected in Australia and in **one** other country.

Relevant terms and parameters of discussion

Human rights: recognised freedoms or principles of human beings that cannot be limited by, and are often protected by, laws.

Ways human rights are protected in Australia include: the Commonwealth Constitution; statutes; common law; charter of rights (ACT/Vic); international agreements adopted into Australian law (statute).

Ways human rights are protected in one other country:

Most countries would include: Constitution; statutes; Bill of Rights if separate from constitution.

Clearly identifies **two** separate ways human rights are protected in each of Australia and one other country/to be examined in depth.

Issues including pertinent examples could include:

Australia:

Commonwealth Constitution: right not to be discriminated against on the basis of the state where one resides (s.117); the right to receive 'just terms' when property is acquired by the Commonwealth [s.51(31)]; the right to a trial by jury for indictable Commonwealth offences (s.80); the right to the free exercise of religion and not to impose religious observance on an individual nor establish a state religion nor impose a religious test for any Commonwealth office (s.116).

May identify that the High Court has extended these rights by implication to include freedom of speech on political matters.

Statute law: *Racial Discrimination Act 1975*; *Sex Discrimination Act 1984*; *Disability Discrimination Act 1992*; *Age Discrimination Act 2004*; *Human Rights and Equal Opportunity Commission Act 1986*.

Common law protection in Australia could include: freedom from arbitrary arrest; right to be assumed innocent until proven guilty; right to a fair trial by jury for serious criminal offences. Charter of Rights: *Charter of Human Rights and Responsibilities Act 2006* (Victoria); *Human Rights Act 2004* (Australian Capital Territory). Queensland has announced its intention to enact legislation based on the Victorian and ACT model (2017).

Analysis

Full explanation using evidence regarding the two ways human rights are protected in Australia and one other country.

Critically examines how each of these ways protects human rights in Australia and one other country.

Note: this is **not** a comparison between Australia and one other country.

ACKNOWLEDGEMENTS

- Question 3(a–b)** Text under ‘Answers could include, but are not limited to’ adapted from: Parkin, A., Summers, J., & Woodward, D. (2006) *Government, Politics, Power and Policy in Australia* (8th ed.). Frenchs Forest, NSW: Pearson Education Australia, pp. 104–105.
- Question 5(b)** Text under ‘Answers could include, but are not limited to’ information from: *R v Adam Easton* [2017] NSWLC 19 [41]. Retrieved October, 2018, from <https://www.caselaw.nsw.gov.au/decision/5a39c28ae4b074a7c6e1b416>
- Question 5(c)** Text under ‘Answers could include, but are not limited to’ (1st dot point) information from: Parliament of Australia. (2013). Commonwealth of Australia Constitution Act (The Constitution) (s. 73). Retrieved October, 2018, from https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/~link.aspx?_id=1A4B10F0E0C645D68D16DC6953E7CE52&z=z#chapter-03_73
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- Text under ‘Answers could include, but are not limited to’ (2nd dot point) adapted from: Parliament of Australia. (2013). Commonwealth of Australia Constitution Act (The Constitution) (s. 75). Retrieved October, 2018, from https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/~link.aspx?_id=1A4B10F0E0C645D68D16DC6953E7CE52&z=z#chapter-03_75
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- Text under ‘Answers could include, but are not limited to’ (3rd and 4th dot point) adapted from: Parliament of Australia. (2013). Commonwealth of Australia Constitution Act (The Constitution) (s. 75). Retrieved October, 2018, from https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/~link.aspx?_id=1A4B10F0E0C645D68D16DC6953E7CE52&z=z#chapter-03_76
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- Question 8** Text under ‘Issues including pertinent examples could include’ (6th dot point) quote from: Bennett, S., & Webb, R. (2008). *Specific purpose payments and the Australian federal system (Research paper 17 2007–08)*. Retrieved October, 2018, from https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/RP0708/08rp17
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- Text under ‘Taxation increasingly dominated by the Commonwealth includes’ and ‘Vertical fiscal imbalance’ adapted from: Freebairn, J. (2015, November 12). FactCheck: how much of Australia’s tax is collected by states and territories? *The Conversation*. Retrieved October, 2018, from <https://theconversation.com/factcheck-how-much-of-australias-tax-is-collected-by-states-and-territories-50457>

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Question 9

Text under 'Issues including pertinent examples could include' (1st dot point) adapted from: Parliament of Australia. (2016). *44th Parliament in review (Research paper 2016–17)*, p. 12. Retrieved October, 2018, from <http://apo.org.au/system/files/70794/apo-nid70794-73256.pdf>
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Text under 'Issues including pertinent examples could include' (2nd dot point) adapted from: Peatling, S. (2017, October 14). Disorder in the house: Could fining MPs solve the problem? *The Sydney Morning Herald*. Retrieved October, 2018, from <https://www.smh.com.au/politics/federal/disorder-in-the-house-could-fining-mps-solve-the-problem-20171012-gyze6l.html>

Text under 'Privileges Committee' (1st dot point) adapted from: Nicholls, S. (2016, May 4). Senator Arthur Sinodinos referred to privileges committee over Senate inquiry no-show. *The Sydney Morning Herald*. Retrieved October, 2018, from <https://www.smh.com.au/politics/federal/senator-arthur-sinodinos-referred-to-privileges-committee-over-senate-inquiry-noshow-20160504-gomc9t.html>

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Text under 'Privileges Committee' (3rd dot point) information from: Theodorakis, A. (2016, September 14). Derryn Hinch exposes paedophiles' names in maiden speech. *Your Life Choices*. Retrieved October, 2018, from <https://www.yourlifechoices.com.au/news/senator-hinch-names-paedophiles>

Question 10

'Commonwealth Constitution' excerpt information from: Parliament of Australia. (2013). Commonwealth of Australia Constitution Act (The Constitution) (ss. 117, 51(31), 80, 116). Retrieved October, 2018, from https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Constitution/preamble
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