**2019 PLEAWA Mock Exam**

**POLITICS**

**AND LAW**

**ATAR UNITS 3 AND 4**

**SUGGESTED ANSWER GUIDE**

**This is a suggested answer guide only.**

**Alternative answers to questions may be possible.**

**Assessment key words used include:**

**Analyse:** Identify components and the relations between them; draw out and relate implications

**Assess:** Make a judgement of value, quality, outcomes results or size

**Define:** State meaning and identify essential qualities

**Describe:** Provide characteristics or features

**Discuss**: Identify issues and provide points for and/or against

**Distinguish:**  Recognise or note/indicate as being distinct or different

from; note differences between

**Explain:**  Relate cause and effect; make the relationships between

things evident; provide why and /or how

**Evaluate:** Make a judgement based on criteria; determine the value of;

**Identify:** Recognise and name

**Outline:** Sketch in general terms; indicate the main features of

**Section One: Short response 30% (30 Marks)**

**Question 1 (10 marks)**

(a) Explain the difference between concurrent and residual powers. (2 marks)

|  |  |
| --- | --- |
| **Description** | **Marks** |
| Explain the terms concurrent and residual powers and points out a difference | 2 |
| Explains only one of the terms | 1 |
| **Total** | **2** |
| **Answers could include information such as:**  Concurrent – set out in the constitution eg Section 51 and 92 – in that both the Federal and State Governments may make legislation - both Federal and State have responsibilities and powers but if there is a conflict the Commonwealth law prevails eg marriage, foreign trade, corporations, health and hospitals, education.  Residual – those powers and responsibilities that were not granted solely or as concurrent with Federal Government – they are not mentioned in the constitution, but remain the sole responsibility of State Governments eg policing, criminal law, education heath, water supply, public transport, judicial services (eg courts) | |

(b) Outline the provisions of s109 of the Constitution of Australia as it affects

State/Federal legislation and briefly explain how the section operates.

(3 marks)

|  |  |
| --- | --- |
| **Description** | **Marks** |
| Outline the provisions of s109 and an explanation of its operation in terms of existing State and Federal legislation and that only that part of the state legislation that is inconsistent is superseded. | 3 |
| Outlines the provision of s109 and a statement that there must be a valid State and Commonwealth law in existence. | 2 |
| Outlines the provision of s109 | 1 |
| **Total** | **3** |
| **Answers could include but not limited to:**  Section 109 of the [Constitution of Australia](https://en.wikipedia.org/wiki/Constitution_of_Australia) provides that: ‘When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid’.  In order for s.109 to come into operation at all, there must be a valid State law and a valid Commonwealth law. Instances may arise when it is impossible to obey two laws simultaneously. When s.109 takes effect, only that part of the State law that is inconsistent yields to the Commonwealth law.  The State law ceases to have operative force but remains a valid law of the Parliament which enacted it and if, at some later date, the over-riding Commonwealth law ceases to operate the State law will be operative again. This effect applies also to laws passed by a state prior to the establishment of the Australian Constitution as well as those passed by a state after the Commonwealth had passed a relevant law. | |

(c) Discuss **two** structures and/or processes embodied in the constitution that protect

States’ powers and limit Commonwealth responsibility.

(5 marks)

|  |  |
| --- | --- |
| **Description** | **Marks** |
| Discusses two structures or processes and how they protect State powers | 5 |
| Discusses two processes with some reference to protection of State powers | 3-4 |
| Discusses one structure or process. | 1-2 |
| **Total** | **5** |
| **Answers could include but not limited to:**   * The various sections of the constitution including s92, s99, s106, s107, s108, s113, and s118 (the constitution is one structure/process) * Chapter III - High Court jurisdiction - cases such as Peterwald’s case,1904. Railway Servants Case1906, State Banking case1947, * The Senate - initially intended as a State House with 6 senators (now increased to 12) with the aim of protecting State interests. * Referendums – Section 128 stipulates that there is a requirement that any state specifically affected by the amendment must be one of the states with a majority vote in favour of the change. * State governors - by establishing the position of state governor to be appointed by the Sovereign on the advice of the relevant state premier, the Commonwealth Government plays no role in these appointments. | |

**Question 2 (10 marks)**

1. Explain the difference between the Cabinet and the Outer Ministry (2 marks)

|  |  |
| --- | --- |
| **Description** | **Marks** |
| Explains Cabinet and the difference with the Outer Ministry | 2 |
| Explains the terms Cabinet or Outer Ministry with no point of difference. | 1 |
| **Total** | **2** |
| **Answer could include but is not limited to:**  The Cabinet of Australia is the Australian Government's council of senior Ministers of the Crown, responsible to Parliament. Ministers are appointed by the Governor-General, on the advice of the Prime Minister, who serve at the former's pleasure. Typically, there are 17 Ministers. Cabinet meetings are strictly private and occur once a week where vital issues are discussed, and policy formulated. The Cabinet is also composed of a number of Cabinet committees focused on governance and specific policy issues. The Outer Ministry has a number of junior Ministers, responsible for portfolios in areas of less important government activity. The Cabinet and Outer Ministry, collectively form the full Commonwealth Ministry of the government of the day. | |

1. Outline **three** roles of a Cabinet Minister in the Australian political system. (3 marks)

|  |  |
| --- | --- |
| **Description** | **Marks** |
| Outlines three roles of a Cabinet Minister | 3 |
| Outlines two roles of a Cabinet Minister | 2 |
| Outlines one role of a Cabinet Minister | 1 |
| **Total** | **3** |
| **Answers could include but not limited to:**  Ministers are members of the government who have been allocated an area of responsibility for how Australia is run. This area of responsibility is known as a portfolio.  **Roles include:**  Working with their department, community organisations and professional associations to prepare new laws and change existing laws which need updating or improving.  Steering legislation through the Parliament  Putting government decisions into action  Explaining policy changes to public  **Managing priorities for their respective governmental departments.**  Managing crisis situations | |

1. Discuss the method that Australia uses to appoint the head of government in

comparison with the method used in another political system you have studied.

(5 marks)

|  |  |
| --- | --- |
| **Description** | **Marks** |
| Discusses the method of appointing the head of government in Australia and one other country and makes a comparison with the use of examples. | 5 |
| Discusses the method of appointment of head of government in Australia and one other country. | 3-4 |
| Discusses the method used to appoint the head of government in only one country. | 1-2 |
| **Total** | **5** |
| **Answers could include but not limited to:**  The Australian head of government, the Prime Minister, is appointed by an indirect method. The leader of the political party that is able to command a majority in the House of Representatives becomes the Australian Prime Minister. (In the Liberal Party the Party Room chooses a leader, whereas the ALP has a more complicated process whereby the Caucus as well as Party members in the community have a role to play). In this sense, Australians do not directly choose their head of government.  If the political system you have studied is the USA:  Every four years, registered US voters can vote in an election to select their President and Vice President, who run together in a “ticket”. This generally involves a simple choice between the candidates of the two major parties, the Republicans and the Democrats. The candidate who receives the majority of the Electoral College votes becomes the President. Unlike in Australia, American citizens can also exercise some influence over the candidates who run in the Presidential election via primary elections. It can be argued that the US method is superior as it allows all eligible US citizens a say in who is their head of government. In Australia, this matter is determined not by voters but (primarily) by the elected Members of Parliament within a political party.  Students can use any past or present leaders from either system as examples. | |

**Question 3 (10 marks)**

1. Explain what is meant by the term ‘international covenant’. (2 marks)

|  |  |
| --- | --- |
| **Description** | **Marks** |
| Explains what is meant by the term, ‘international covenant’. | 2 |
| Gives a minimal or general explanation of the term ‘international covenant’. | 1 |
| **Total** | **2** |
| **Answers could include but are not limited to:**  It is a formal agreement between states that defines and modifies their mutual duties and obligations. When a covenant is adopted by the UN General Assembly, they create legally binding international obligations for the Member States who have signed that covenant. When a national government ratifies a covenant the articles of that covenant become part of its domestic legal obligations. eg If a country signs the International Covenant on Civil and Political Rights (ICCPR) 1980, there is an understanding that the article of the covenant will be legislated into domestic law. | |

1. Explain how an international treaty is implemented in the Australian political and legal system. (3 marks)

|  |  |
| --- | --- |
| **Description** | **Marks** |
| Explains how an international treaty is implemented in the Australian and political system. | 3 |
| Outlines how international treaties are implemented. | 2 |
| Makes a general statement about international treaties. | 1 |
| **Total** | **3** |
| **Answers could include but not limited to:**  The Australian law recognises that a[treaty](http://dfat.gov.au/international-relations/treaties/treaty-making-process/Pages/treaty-making-process.aspx) is:  An agreement between States (countries) which is binding at international law. In some cases, international organisations can be parties to treaties. Even if a document is agreed between two or more sovereign countries, it will not be a treaty unless those countries intend the document to be binding at international law.  [Section 61 of the Australian Constitution](http://classic.austlii.edu.au/au/legis/cth/consol_act/coaca430/s61.html) allows Australia to enter into treaties as an exercise of Executive Power.  Treaties are then tabled in both Houses of Parliament.  The legal process:   * **Signature** – agreement in principle, but not legally bound by the treaty. * **Ratification** – a binding agreement that Australia will implement the treaty after being approved by the Governor-General in Council. * **Accession/Implementation** – the Parliament implements the agreement as an Act of Parliament | |

1. Discuss **two** international covenants**,** protocols or treaties which relate to Australia’s

international human rights protections. (5 marks)

|  |  |
| --- | --- |
| **Description** | **Marks** |
| Discusses two international covenants, protocols or treaties **and** how each has influenced a specific law/s or judgement/s in Australia. | 5 |
| Outlines two international covenants, protocols or treaties and makes a link to a specific legislation or judgement. | 3-4 |
| Outlines at least one statute **or** identifies an international covenant, protocol or treaty relevant to Australian law. | 1-2 |
| **Total** | **5** |
| Australia is a party to the seven key international human rights treaties:   * The International Covenant on Civil and Political Rights (ICCPR), * The International Covenant on Economic, Social and Cultural Rights (ICESCR), * The Convention on the Rights of the Child (CRC), * The Convention Against Torture (CAT), * The Convention on the Elimination of All Forms of Racial Discrimination (CERD), * The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and * The Convention on the Rights of Persons with Disabilities (CRPD).   Discusses any **two** of these.  The Universal Declaration of Human Rights (1948) or the International Covenant on Civil and Political Rights (ICCPR) is significant in that it establishes the basis for all human rights in Australia*.*  The Convention on the Rights of People with Disabilities (CRPD) are mirrored in Australian law through the *Disability Discrimination Act 1992* (Cth). This act seeks to:   * eliminate discrimination against people with disabilities * promote community acceptance of the principle that people with disabilities have the same fundamental rights as all members of the community, and * ensure as far as practicable that people with disabilities have the same rights to equality as other people in the community.   The Convention on the Elimination of All Forms of Racial Discrimination (CERD) is reflected in the *Racial Discrimination Act of 1975*. This act seeks to   * promote equality before the law for all persons, regardless of their race, colour or national or ethnic origin, and * make discrimination against people on the basis of their race, colour, descent or national or ethnic origin unlawful.   The ICCPR which protects the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial is also mirrored to some extent in Australian law through the Disability Discrimination Act 1992, the Human Rights (Parliamentary Scrutiny) Act 2011 and Privacy Act of 1988.  The Sex Discrimination Act 1984 came after Australia signed the United Nations' International Convention on the Elimination of All Forms of Discrimination Against Women in 1983 (CEDAW) |  |

**Question 4 (10 marks)**

1. Explain what is meant by the term ‘political rights’ in Australia. (2 marks)

|  |  |
| --- | --- |
| **Description** | **Marks** |
| Explains the meaning of political rights. | 2 |
| Makes general statement about political rights. | 1 |
| **Total** | **2** |
| **Answers could include, but are not limited to:**  The rights that involve participation in the establishment or administration of a government and are usually held to entitle the adult citizen to exercise the franchise, the holding of public office, and other political activities.  These rights give citizens the power to participate directly or indirectly in the political system through the right to political communication, assembly and protest, petitions, and donations to parties. | |

1. Outline **three** legal protections, accessible to minority groups, that exist in the

Australian political and legal system. (3 marks)

|  |  |
| --- | --- |
| **Description** | **Marks** |
| Identifies three legal protections that are accessible to minority groups | 3 |
| Identifies two legal protections accessible to minority groups | 2 |
| Identifies one legal protection accessible to minority groups | 1 |
| **Total** | **3** |
| **Answers could include but not limited to: (depending on the group you have studied)**  Statutory and constitutional protections  The Courts  Human Rights Commission  Aboriginal and Torres Straits islander Social Justice Commissioner  Disability Discrimination Commissioner  [National Children's Commissioner](https://www.humanrights.gov.au/about/commissioners/ms-megan-mitchell-national-childrens-commissioner)  S116 of the Commonwealth Constitution indirectly affords some protection to religious minorities.  Primarily through human rights, the Commonwealth has also indirectly provided some minority rights. The Commonwealth Parliament has passed legislation implementing a number of major international human rights treaties.  The relevant acts include: The Racial Discrimination Act 1975; The Human Rights Commission Act 1981; The Human Rights and Equal Opportunity Commission Act 1986; The Privacy Act 1988; The Crimes (Torture) Act 1988; The Disability Discrimination Act 1993; and The Racial Hatred Act 1995. The Racial Hatred Act of 1995 amends the Racial Discrimination Act 1975 by inserting a new section entitled "Offensive Behaviour Because of Race, Colour or National or Ethnic Origin,"  State Anti-Discrimination, Equal Opportunities and Sex Discrimination Acts have been enacted in every State to provide protections for LBGT citizens. It is unlawful to discriminate against a person on the basis of sexual orientation, gender identity and intersex status under federal law. Same-sex couples are now also protected from discrimination under the definition of ‘marital or relationship status’. | |

1. Discuss the extent to which either the **political** or **legal** rights of a particular group have

improved in Australia since Federation. (5 marks)

|  |  |
| --- | --- |
| **Description** | **Marks** |
| Discusses the extent to which the political and legal rights of a particular group have improved since Federation. | 5 |
| Outlines the extent to which the political and legal rights of a group have improved since Federation. | 3-4 |
| Some discussion of the improvement in the political and legal rights of a particular group. | 1-2 |
| **Total** | **5** |
| **Answers in relation to the group you have studied could include but not limited to:**  Identification of a particular group in Australia which could include: Indigenous Australians; women; the mentally ill; refugees, the disabled.  Overview of political and legal rights of the group  **Issues including pertinent examples include:**  Political rights of the group and their experience over time, which could include: the franchise, right to stand for election; freedom of association; the right to petition  Legal rights of the group and their experience over time, which could include: procedural fairness; the rights of the accused; right to seek a legal remedy; right to liberty and security; right to freedom from discrimination.  Discuss the extent of the improvements in the law affecting the group. | |

**Section Two: Source analysis 20%**

# Source 1:

**Question 5 (20 marks)**

1. Explain **two** requirements necessary for the success of a referendum to formally change the Australian constitution. (2 marks)

|  |  |
| --- | --- |
| **Description** | **Marks** |
| Explains two requirements necessary for the success of a referendum. | **2** |
| Explains one requirement necessary for the success of a referendum. | **1** |
| **Total** | **2** |
| **Answers could include but not limited to:**  The Australian Constitution can be changed by referendum according to s128 of the Constitution. A proposed change must first be approved as a bill by the federal Parliament. It is then sent to the Governor-General in order for a writ to be issued so a referendum can occur. A national ballot is then held in which the Parliament asks each Australian on the electoral roll to vote. If a majority of people in a majority of states and a majority of people across the nation as a whole vote 'yes' (called a double majority), then the proposal to amend the Constitution is agreed to. Otherwise the Constitution remains unchanged.  Only 8 out of 44 referendum questions have been successful. | |

1. With reference to **Source 1**, identify and explain in your own words, **two** reservations that are expressed about the recommendations of the Referendum Council.

(4marks)

|  |  |
| --- | --- |
| **Description** | **Marks** |
| Identifies and explains **two** reservations expressed about the recommendations of the Referendum Council.  The explanation is mostly in the candidate’s own words with some direct reference to the source | 4 |
| Outlines **one** reservation expressed about the recommendation of the Referendum Council  The explanation is mostly in the candidate’s own words with some direct reference to the source | 3 |
| Attempts an explanation of the recommendations of the Council, making some reference to the source. | 2 |
| Gives one recommendation with no explanation. | 1 |
| **Total** | 4 |
| **Answers could include but not limited to:**  Identify two of the following and explain in your own words  ….former Liberal senator Amanda Vanstone, did not support a referendum at this time, arguing further community consultations are necessary before a referendum is held.’  PM [Turnbull’s remarks](https://twitter.com/SkyNewsAust/status/886821998080303104) on Monday show it is now highly unlikely that either major party will embark on constitutional reform unless the changes “meet the expectations of the First Australians”.  Turnbull was non-committal. He described the recommendation for an Indigenous “voice” as a “very big idea”, but one that was “short on detail”  Shorten acknowledged that a “voice” was a legitimate aspiration that should not be pushed aside. Nonetheless, he too considered the recommendation would be a “big change”.  Deputy Prime Minister Barnaby Joyce argued the ‘proposal was a third chamber in politics or something that sits beside or above the Senate, and that idea, just won’t fly.’  Institute of Public Affairs’ Simon Breheny argued that an Indigenous “voice” would be “[undemocratic](https://www.theguardian.com/australia-news/2017/jul/17/referendum-council-endorses-uluru-call-indigenous-voice-parliament)”  Turnbull’s and Shorten’s statements that an Indigenous “voice to parliament” would be a “big change” is the notion that it may be too difficult. | |

1. Discuss the likelihood of this proposal (to recognise Aboriginal people in the Constitution) or another proposal you have studied, being successfully passed in a referendum”. (6 marks)

|  |  |
| --- | --- |
| **Description** | **Marks** |
| Outlines the proposal in detail and discusses the likelihood of the proposal being successful. | 5 - 6 |
| Outlines the proposal and provides some discussion on the likelihood of success | 3 - 4 |
| Limited explanation of the proposal and some discussion on referendums passing | 1 - 2 |
| **Total** | 6 |
| **Answers could include reference to, but are not limited to:**  Any referendum proposal will be difficult considering the low success rate of referendums – only 8/44 have passed, primarily because of the mechanism requiring a double majority.  Direct reference to the proposal is necessary, not a general discussion on why referendums fail.  Go through the reasons referendums pass/fail and link it to the proposal   * eg. It has to have bi-partisan support, from both major political parties * Financial assistance from the federal govt for the campaigns will be significant. They decide on the amount and could well favour one side of the debate against the other. * The question has to be clear and understandable – unlike the 1999 Republic referendum when voters were confused by the question. * The ‘yes’ campaign has to be united in purpose. * The voters have to see benefits as a result of the change. 1946,1967 and 1977 would be good examples to use. | |

1. Evaluate **two** methods of constitutional change in Australia other than referenda and outline a successful example of each of these changes.

(8 marks)

|  |  |
| --- | --- |
| **Description** | **Marks** |
| Outlines and evaluate two methods of constitutional change other than referenda, and includes a successful example of each | 7 - 8 |
| Outlines, with some evaluation, two methods of constitutional change other than referenda, and includes a successful example of each | 5 - 6 |
| Outlines two methods of constitutional change other than referenda, and outline a successful example of each | 3 - 4 |
| Outlines one method of constitutional change other than referenda and includes a successful example. | 1 - 2 |
| **Total** | 8 |
| **Answers could include reference to, but are not limited to:**  How the Constitution is interpreted has also changed and evolved, even without a referendum. These changes been brought about by High Court decisions:  The Commonwealth's increased power to collect income tax (Uniform Tax case 1942) has meant it has a much greater share of revenue than the states. The Commonwealth partly redistributes this revenue in the form of grants to the states. The terms and conditions which are sometimes attached to these means the Commonwealth is able to gain control of areas of responsibility the states previously controlled, for example, tertiary education.   * The Commonwealth's power over 'external affairs' has meant Commonwealth law implementing international treaties can be applied to the states in areas (such as environmental protection) which were previously controlled by the states alone. (Tasmanian Dams case 1983)   Referral of powers. s51(xxxvii) - When the States voluntarily surrender residual powers to the Commonwealth, altering the balance of powers  eg. States referred their powers regarding the legal procedures by which an organisation such as a business or charity becomes a fully-fledged corporation. Commonwealth then passed the Corporations Act 2001 to simplify the process and make it uniform across the country.  eg. States referred their consumer credit regulation powers to the Commonwealth in 2009. Regulating consumer credit at the national level allows for much better coordination in this financial area and provides equal protection to citizens.  Unchallenged legislation -when the Commonwealth passes legislation *ultra vires* but no case is bought before the High Court to challenge its validity. Such laws continue to operate because they have not been declared unconstitutional and therefore remains effective law.  CSIRO - Established by the Science and Industry Research Act 1949. There is no constitutional head of power giving the Commonwealth Parliament to pass this Act.  Commonwealth passed the Snowy Mountains Hydro-Electric Power Act 1949 using the defence power; however, the Act is not directly related to defence so could easily be challenged in the High Court. | |

**Source 2:**

**Question 6 20 marks**

1. Explain what is meant by ‘open government’ as it applies to the Australian political system. (2 marks)

|  |  |
| --- | --- |
| **Description** | **Marks** |
| Explains the term open government | 2 |
| Makes a general statement about open government | 1 |
| **Total** | **2** |
| **Answers could include but are not limited to:**  Refers to the transparency and accountability aspects of practices of governance   * Transparent policies * Information freely and easily available and can be readily understood by all * Open to public scrutiny – free flow of information eg Freedom of Information Act requests by individuals. | |

1. With reference to **Source 2**, identify and explain in your own words, **two** benefits which will flow from the Freedom of Information reforms.

(4 marks)

|  |  |
| --- | --- |
| **Description** | **Marks** |
| Identify two benefits of the Freedom of Information reforms and explains each of these in your own words. | 4 |
| Identify two benefits of the Freedom of Information reforms and explains one of these in your own words. | 3 |
| Identifies two benefits of the Freedom of Information reforms **or** identifies and explains one benefit. | 2 |
| Identifies one benefit of the Freedom of Information reforms. | 1 |
| **Total** | **4** |
| **Answers could include, but are not limited to:**   * ‘promoting a pro-disclosure ethos across the Government and building a stronger foundation for more openness in government.’ * ‘major part of the FOI reforms is the creation of an Information Commissioner position. It is an independent statutory position, with a range of functions that include investigation of complaints about FOI administration, merit review of access denial decisions, publication of FOI guidelines, and providing advice to government on information policy.’ * ‘agencies are being encouraged as part of a new scheme to make documents public independently of an FOI request.’ * ‘which hopefully will be effective in causing a permanent cultural shift of openness within public administration.’ | |

1. What is ‘natural justice’ and briefly outline **two** ways that it is achieved in Australia.

(6 marks)

|  |  |
| --- | --- |
| **Description** | **Marks** |
| Discusses the meaning of natural justice and outlines two ways it is achieved in Australia | 5 - 6 |
| Discusses the meaning of natural and outlines one way that it is achieved in Australia. | 3 - 4 |
| Limited explanation of natural justice and outlines one way it is achieved. | 1 - 2 |
| **Total** | **6** |
| **Answers could include, but are not limited to:**  Natural justice are the rules and procedures necessary to ensure fairness which must generally be followed by a person or body which has power to resolve disputes  It is a common law doctrine that protects against arbitrary exercise of power by ensuring fair play. Natural justice is based on two fundamental rules:  a) ‘Audi alteram partem’ – to hear the other side. In Australia in a civil case the plaintiff can make a statement of claim and the defendant can address these accusations through a statement of defence. Both parties can then seek further and better particulars through interrogatories and discovery of documents.  In a criminal trial there is the right to silence, an opportunity to have their evidence heard through examination-in-chief and cross examination of witnesses to test the evidence. There are strict rules of evidence in play.  And b) ‘Nemo judex in causa sua’ – no man a judge in his own case. No decision is valid if it was influenced by any financial consideration of other interests or bias by the decision makers. In Australia in a criminal trial the judge is a non-participant other than to uphold procedural fairness, charge the jury (instructing the jury on the evidence they must take into account, or evidence they must disregard), and if needs be delivering the judgement. The verdict is decided by a jury randomly selected from the electoral roll. If the judge fails in their duty to ensure a fair trial then there may be grounds for an appeal. | |

1. Evaluate how judicial independence from the legislative branch of government can protect human rights in Australia compared to another political system that you have studied this year.

(8 marks)

|  |  |
| --- | --- |
| **Description** | **Marks** |
| Demonstrates a thorough understanding of the effect judicial independence has on the protection of human rights in Australia compared to another political system | 7 - 8 |
| Demonstrates an understanding of the effect judicial independence has on the protection of human rights in Australia compared to another political system | 5 - 6 |
| Demonstrates an understanding of judicial independence on human rights. Some attempt to make a comparison with another political system | 3 - 4 |
| Makes general statements about judicial independence and/or human rights with no reference to another political system. | 1 - 2 |
| **Total** | 8 |
| **Answers could include, but are not limited to:**  Separation of powers is written into Australia’s Constitution, and divides power between the executive, legislature and judiciary. It means that no one arm of the government has too much power and allows for checks and balances, eg no political party or member of the government can interfere with the decisions made by a judge or magistrate. This is important to avoid the arbitrary abuse of power and to uphold the rule of law. Both the legislature and the judiciary can make laws to protect human rights eg the *Crimes Legislation Amendment (Police Powers at Airports) Bill (2018)* outlines and limit the powers of the executive (police) and in *Dietrich v The Queen (1992*) the High Court judges protected the right to legal representation. Judicial independence enables people to challenge laws made by the parliament in court if they believe the law contravenes their human rights eg Mabo v Queensland (1992). Judicial independence protects human rights by ensuring that no one is above the law and providing fairness and access to the law.  Amongst other cases that may be referred to:  Communist Party Dissolution Act, Teoh case, Roach and Rowe  If you have studied the USA:  The Constitution establishes separation of powers as a way to check and balance the government.  The President can veto legislation to stop Congress.  The Supreme Court can declare laws void and revoke executive actions.  Congress can override vetoes and must approve treaties, Supreme Court appointments, and Cabinet officials.  Judicial independence of the Judiciary, headed by the Supreme Court of the United States, is evident in that they can declare both acts of Congress and the Executive branch unconstitutional, but only if the act, executive order or law is properly challenged. The justices cannot declare anything unconstitutional on their own initiative; they can only exercise judicial review if the question of constitutionality is part of a valid case or controversy before the Court.  Some examples you could use of human rights protections:  *Brown v. Board of Education* (1954) The Supreme Court ruled that segregation in education was unconstitutional and that the African-American students could attend the originally segregated white schools.  *The Religious Freedom Restoration Act (1993)* was ruled unconstitutional, because it overstepped Congress' power to enforce the Fourteenth Amendment.  *Riley* v. *California (2014)* - taking on the complexities of life in a digital age the Supreme Court decided unanimously that police need a warrant to search a suspect's cell phone.  An evaluation as to how effective the separation of powers is in each system would be required. | |

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

**Question 7 (25 marks)**

‘Non-Westminster systems of government clearly differentiate between the separate powers of the Executive and the Legislature, whereas in the Constitution of Australia this is not so noticeable’.

Analyse this statement with reference to the Australian system of government and one other non-Westminster system of government you have studied.

|  |
| --- |
| **Relevant terms and parameters of discussion:**  Provides an assessment of the key factors in Australia, and one other non-Westminster system: the principle of the separation of powers, the role of the executive and the legislative with a focus as outlined in the constitution. |
| **Issues including pertinent examples could include:**  The provisions of the Commonwealth Constitution in terms of executive and legislative power in Australia today must be evident within the discussion. Executive power as defined by the Commonwealth Constitution is identified as being vested in the Queen and is ‘exercisable’ by the Governor-General. Advice may be given to the Governor-General in the Executive Council with the exception of the ‘reserve powers’ i.e. without or against advice.  Reference could be made to particular sections of the Commonwealth Constitution including 61, 62, 63, 64, 68, 28, 57. Legislative power is identified as being vested in the Parliament as outlined in sections 51 and 52 of the Commonwealth Constitution. Section 51 and 52 lists the subjects on which Parliament may pass legislation some of which may be mentioned.  Sections 53 and 54 could be discussed in terms of constraints. This is not a discussion relating to legislative process. Makes comparisons between the provisions of the Commonwealth Constitution and the realities of executive and legislative power in Australia. Discusses executive power in Australia today which includes the Prime Minister and Cabinet and the power wielded vis a vis the Governor- General. Discusses that real executive power lies with PM/Ministers (who are outside the Constitution) on most occasions and highlights the general relationship between the Governor-General and PM/Ministers. Mention may be made of the 1975 Crisis to highlight that the Governor-General does have the powers mentioned in the Constitution but these ‘reserve powers’ are rarely used. Discusses the realities of legislative power, which is close to those outlined in the Constitution. Discussion could include that this is sometimes tested in the High Court with relevant and valid examples. Presents a conclusion regarding whether or not the provisions of the Commonwealth Constitution accurately describe the reality of executive and legislative power in Australia today. Presents a reasoned, balanced and coherent evaluation of the claim that the provisions of the Commonwealth Constitution do not accurately describe the reality of executive and legislative power in Australia.  Similar discussion must follow when analysing the powers of the Executive and the Legislative arm of a non-Westminster system of government, clearly differentiate between the powers of both of them. |
| **Assessment:**  Presents a reasoned, balanced and coherent discussion on the separate constitutional powers of the Executive and Legislative arms of government in Australia and one non-Westminster system of government. |

**Question 8 (25 marks)**

‘The High Court of Australia can make laws. As a result, its judgments are often

considered contentious and controversial.”

Analyse this statement, referring to at least one common law ruling and at least one

constitutional law ruling made by the High Court of Australia.

|  |
| --- |
| **Relevant terms and parameters of discussion**   * Constitutional jurisdiction of the High Court to make laws |
| **Issues including pertinent examples could include:**   * High Court decisions and their effect on the federal balance of power. * High Court decisions in Human rights cases extending the judicial protection of these rights.   Decisions overturning executive decisions  Examples could include some of the following High Court decisions: Engineer’s Case 1920  Uniform Tax case  Hammond and Ha  Tasmanian Dams case 1983  Koowarta  Mabo  Workchoices  Totani  Wakim  Lange  Al-Kateb vs Godwin, 2004 The Commonwealth vs ACT, 2013 – same sex marriage case Malaysian solution  Williams No 1 and Williams No2  Roach and Rowe  Recent decisions concerning s44 on the constitution. |
| **Evaluation**  Presents a reasoned, balanced and coherent evaluation of the way some of these cases have been seen as contentious  How has it affected State/Federal balance – what is the impact for the federal system?  What areas of the law they changing?  Has the High Court overstepped its powers in finding implied rights?  Is the High Court now rewriting rather than interpreting the Constitution? |

**Question 9 (25 marks)**

‘As the power of the Executive arm of government steadily increases it is becoming apparent that the ability to hold it to account is diminishing.’

Evaluate this statement with reference to the Executive arm of government.

|  |
| --- |
| **Relevant terms and parameters of discussion** Discuss areas in which the power of the Executive arm of Government is increasing. Explain how each of Senate Estimates & at least one other committee of the Commonwealth Parliament, the Commonwealth Auditor General & the AAT, individual and collective Ministerial responsibility and Judicial Review holds the executive to account. Evaluates how each of these ways (but not necessarily equally) hold the executive to account, incorporating reference to relevant examples for each method of accountability. |
| **Issues including pertinent examples could include:**  The meaning of ‘accountability of the executive’ should be apparent within the discussion. Identifies the various methods by which the Executive and Commonwealth Public Servants are held accountable. Accountability of the executive and public servants could refer to the extent that the actions, decisions of the Prime Minister/Cabinet/Ministers/public servant can be scrutinised. These include the Parliament and ministerial accountability both collective and individual; Senate Estimates; Parliamentary committees; Commonwealth Auditor-General; the AAT and judicial review.  Role of the High Court re executive accountability is its ability to review decisions/actions of the executive through judicial review which could include: decisions/actions by the executive in terms of the High Court’s original jurisdiction s.75 (3) and (5) ; the constitutional validity of executive decisions including *Combet and others v Commonwealth of Australia* (2005) that the Government’s multi-million dollar industrial relations advertising campaign was outside the authority of the Budget Bills – the Court ruled that the campaign was covered by the Appropriation Act; *Plaintiff M70/2011 v Minister for Immigration and Citizenship* (2011) regarding the validity of the Australian Gillard government and the Malaysian Government’s arrangement to remove and resettle particular people from Australia to Malaysia. *Williams No1* (2014) related to the power of the [Commonwealth executive government](https://en.wikipedia.org/wiki/Government_of_Australia#Executive) to enter into contracts and spend public moneys under [s.61 of the Australian Constitution](https://en.wikipedia.org/wiki/Chapter_II_of_the_Constitution_of_Australia#Section_61:_Executive_power).  Role of the Administrative Appeals Tribunal re executive accountability is its ability to review a broad range of government decisions made by (amongst others) Ministers and public servants with delegated authority which have been outlined in the appropriate Act. What can be reviewed is limited by the Act. The tribunal has no power to consider the constitutional validity of particular laws or the legality of government decision-making. The AAT’s reviews are of the merit of decisions and whether a decision was correctly based on law and government procedures. Any party affected by a decision of the executive may appeal to the AAT- it is relatively straightforward and cheap, and most applications are concerned with Taxation and Social Security decisions and more recently refused visa application appeals have come before AAT. Appeals are possible from the AAT to the Federal Court. 39% of decisions made by the Immigration Minister or his delegate were overturned by the Administrative Appeals Tribunal in 2017.  Senate Estimates – reasonably effective in ‘shining a light’ on Executive policies, departments, agencies, practices and activities, but cannot personally question Ministers from the HOR if they do not wish to appear. egs – CSIRO, ABC, Dept of Immigration and Border Force.  Parliamentary committees could include Scrutiny of Bills Committee, Senate Regulations and Ordinance Committee, Parliamentary Joint Committee on Human Rights.  Individual Ministerial responsibility – censure by the HOR Jamie Briggs, Mal Brough, Stuart Robert. Censure by the Senate – George Brandis not very effective as decision on whether Ministers stay or go rest with PM.  Collective ministerial responsibility – only two Ministers have resigned under this convention Stewart West (1983) and Gary Punch (1987) – therefore not very effective.  Motions of no confidence - ineffectual as govt has majority in HOR  Auditor General – responsible for financial audits which checks on the financial statements and records of government departments and agencies.  Presents a conclusion, based on the evidence on whether or not, or the extent to which, the Executive and Commonwealth Public Servants are actually held accountable in Australia. Presents a reasoned, balanced and coherent evaluation of the extent to which the Executive and Commonwealth Public Servants are held accountable. |
| **Evaluation:**  Presents a reasoned, balanced and coherent evaluation of the extent to which parliamentary committees, the judicial system, Auditor General and AAT, IMR and CMR and judicial review hold the executive to account. |

**Question 10 (25 marks)**

‘Since 1975 the office of the Governor-General has been the subject of debate on

several occasions.’

Evaluate this statement with reference to the powers and roles of the Governor-General as well as the apparent lack of accountability for their actions, making reference to at least **two** specific Governors-General of Australia.

|  |
| --- |
| **Relevant terms and parameters of discussion:**  Role of Governor General within the Executive in Australia  Roles of the Governor General, including constitutional, ceremonial and non-ceremonial roles  Powers – both express and reserve  Conventions re these powers.  Refer specifically to the Constitution  Constitutional provisions in regard to appointment and removal of GG  Examine the process and mechanisms, or the lack of to hold the GG to account  Discussion on whether the office of the GG is debatable and if they can be held to account.  **Issues including pertinent examples could include:**  Explains the office of Governor-General within the executive in Australia and examines the constitutional provisions re appointment and removal of the Governor-General and compares this with the convention; is this debatable? Outlines and examines the powers of the Governor-General , constitutional; convention; and discuss whether it is debatable Examines the mechanisms/ processes/or lack thereof that hold the Governor-General accountable. Include relevant sections of the constitution and refer to particular Governors-General in each aspect of the discussion. While this is not an essay solely on the 1975 Dismissal Sir John Kerr and Gough Whitlam could be used as a basis for discussion of the republic and the Governor-General but would need to bring this discussion back to the key elements of the question, i.e. appointment and removal, powers, accountability and the office of Governor-General being debatable or not  Identify the powers that the Governor-General may exercise which could include: the ‘reserve powers’ which are the power to dissolve the House of Representatives (s.5), the power to appoint and dismiss ministers (s.64), the power to dissolve both Houses of Parliament simultaneously (s.57); and the express powers that the Governor-General in Council may exercise on the advice of a Prime Minister.  There is an expectation that particular Governors- General are referred to in the discussion.  Identify the means or otherwise that the Governor-General is held accountable: no formal means; importance of media and public opinion/confidence.  Make reference to particular Governors-General in the discussion to illustrate arguments  The 1975 crises and Sir John Kerr’s role in the Dismissal  Peter Hollingworth’s 2003 resignation  Quentin Bryce and her public statements on politically sensitive issues (gay marriage, asylum seekers and climate change) and her close relationship with Labor politicians.. |
| **Evaluation**  Present a conclusion, based on the evidence regarding the powers the Governor-General may exercise and evaluate the extent to which the Governor-General is held accountable. |