**unit four**

**a c c o u n t a b i l i t y o f t h e e x e c u t i v e a n d p u b l i c s e r v a n t s**

definitions

*constitutional executive:* the queen, governor general, and federal executive council

*political executive:* prime minister and cabinet

*administrative executive:* public service

*audit:* official inspection of an organisation’s operations and finances

reasons to hold the executive to account

* a defining characteristic of democratic government is limited and accountable government
* government possesses much power over police and military forces, conducting surveillance, gathering and retaining information, detaining citizens, etc.

⤷ “power corrupts but absolute power corrupts absolutely” - john dalberg-acton

* spends twenty six per cent of the gross domestic product

individual ministerial responsibility

* section 64 requires that ministers are accountable to the parliament for their integrity and conduct
* convention theoretically allows for ministers to be sacked for incompetence, corruption, or serious problems within their department

*censures in the house of representatives*

* there has never been a successful censure motion in the house of reps
* government will always vote against censures within their own government
* allows the opposition to speak and may provide enough media coverage or pressure to force a resignation

⤷ mal brough resigned after copying diary of speaker peter slipper (2016)

⤷ jamie briggs resigned after inappropriate behaviour with a female staffer in hong kong

⤷ stuart robert resigned after misrepresenting himself in china, leading to accusations of a conflict of interest (2015)

*censures in the senate*

* senate censures are a unique feature of australia’s washminster system but therefore do not hold the weight of westminster tradition
* government cannot often prevent their members being censured

⤷ george brandis, attorney general, survived a successful censure (2015)

*evaluation*

* censure motions almost always fail, so lack direct effectiveness
* they may provide accountability and embarrassment for the accused

collective ministerial responsibility

* theoretically allows an entire ministry (and therefore government) to be held to account

*formal no-confidence motions*

* most important motion in house of reps and takes precedence over all other business
* allows opposition to frustrate government, and highlight government issues in debate

⤷ only successful no-confidence motion passed after parliament was dissolved following the 1975 crisis

*effective no-confidence motions*

* confidence in the government may be withdrawn when vitally important government policy or legislation is defeated, leading to government resignation

⤷ fadden government voted to reduce budget by £1 (1941)  
⤷ minority governments (e.g. gillard) constantly at threat due to fragile majority

*evaluation*

* rarely successful as it requires breakdown within the governing party
* allows the opposition to suspend house business and embarrass the government

the senate as a house of review

* the lack of executive dominance combined with the power of strong bicameralism allows the senate to very effectively fulfil its function as a house of review
* compensates for the weakness of the lower house through evolving its own strong accountability measures

senate estimates committee

* originally scrutinised government spending and the budget
* now includes much broader range of government activity as everything involves money
* usually composed of 3 government members, 2 from opposition, and 1 cross bencher
* can ask questions of ministers and public servants regarding their department, government policy, controversial events/scandals etc
* the questioned must answer truthfully and are protected by parliamentary privilege, therefore giving the ability to extract highly sensitive information

⤷ chief executive of the csiro questioned for his decision to cut 350 jobs from the climate change sector (2016)

*evaluation*

* arguably the most powerful parliamentary check on executive power
* senate estimates cannot directly call on ministers from the lower house

parliamentary joint committee on human rights

* established by the human rights (parliamentary scrutiny) act 2011
* scrutinises all legislation for compliance to seven international covenants
* civil and political rights, economic social and cultural rights, elimination of all forms of racial discrimination, discrimination against women, torture and other cruel inhumane or degrading treatment or punishment, rights of the child, and persons with disabilities
* composed of five members of the house of reps and five senators (cannot be ministers to prevent executive dominance)

commonwealth auditor general

* auditor general and australian national audit office (anao) created by auditor general act 1997 (cth)
* anao is a statutory authority
* public governance, performance, and accountability act 2013 covers work of auditor general and the anao
* auditor general provides parliament with an independent assessment of public administration, and financial reporting, administration, and accountability

⤷ grant hehir appointed 2015 by tony abbott

* 10 year term and appointed by the governor general after receiving bipartisan support
* conducts performance audits, financial audits, and assurance reviews

*performance audits*

* inspection of how a department or agency carries out day to day business
* uses key performance indicators (kpis) to measure effectiveness, economy, and efficiency
* advises parliament about how public money is being spent and whether or not outcomes are being achieved

⤷ how contracts are handled, human resources managed, and stationery ordered

*financial audits*

* check the financial statements and records of departments or agencies
* ensure the spending is accountable and in accordance with the budget

*assurance reviews*

* australian public service is governed by public service act, public service standards, and a code of conduct
* auditor general ensures laws, standards, and guidelines are being adhered to
* check that department/agency is carrying out its responsibilities using correct information

*auditor general accountability examples*

⤷ sophie mirabella claimed her electorate missed out on ten million dollars of funding for hospitals as a result of not re-electing her. this revealed possible political corruption as the government could be seen to be ‘punishing’ the electorate (2016)

⤷ political donations issue regarding private it company parakeelia raised concerning a possible misuse of taxpayers money to fund a company that donates back to the government (2016)

administrative appeals tribunal

* established by the administrative appeals tribunal act 1975
* concerned with accountability of the public service and ministerial decisions
* does not exercise judicial power but may vary, change, or recommend changes to a decision
* make fair decisions based on merit
* can only review administrative decisions where an act or regulation says it may (400+)

⤷ upheld decision to refuse iranian citizen australian citizenship on the grounds of bad character following two minor criminal offences and dishonest paperwork (2016)

*evaluation*

* provides a powerful accountability mechanism
* can decide whether a decision was correct, not just legal

judicial review

* courts may check the power of both the administrative and political executive
* judicial independence and separation of powers upholds the rule of law

*judicial review of the public service*

writs of mandamus

* may issue a court order requiring or prohibiting a government official from a specific act
* demonstrates the rule of law as the government is being held to account by the courts for the lawfulness of their decisions

injunctions

* prohibit government departments or agencies from certain actions

⤷ injunction issued against the department of immigration and border control in the case of plaintiff 99/2016 v minister for immigration and border protection (2016) to prevent an abortion in papua new guinea and the plaintiff’s transfer back to nauru

*judicial review of cabinet policy*

* the way a government interprets and implements statutes forms part of its policy
* government policy may be challenged in court and become subject to judicial review

⤷ plaintiff m70/2011 v minister for immigration and citizenship, in which gillard’s malaysia solution was deemed unlawful as malaysia could not provide adequate protection for asylum seekers, and therefore turned over in the high court (david manne)

*evaluation*

* supported by the separation of powers and the rule of law
* very formal and expensive so usually a last resort
* can only judge based on the law and not merit
* significant as the courts can hold the government accountable to the law

quizlet

https://quizlet.com/\_7h3q9t

example essay structure

introduction - define the political and administrative executive, reasons to hold the executive to account, brief outline of points, strong thesis with argument

paragraph 1 - censure and no confidence motions, evaluate

paragraph 2 - senate estimates, evaluate

paragraph 3 - auditor general, evaluate

paragraph 4 - administrative appeals tribunal and judicial review, evaluate

conclusion - restate points, restate examples, strong finish with final evaluation

practice essay questions

“westminster conventions and parliamentary processes provide sufficient accountability of the executive and public service.” evaluate the validity of this statement. {25 marks}

“financial accountability of the executive is ensured through the senate estimates process and the auditor general. however, little is done to ensure financial accountability of the public service.” assess. {25 marks}

“recent case studies have shown that judicial review can be used to hold the executive to account, but that parliament can then take steps to change existing laws allowing government policy.” with reference to at least one example, assess the extent to which judicial review does provide for accountability in the relationship between the high court, the government, and the commonwealth parliament. {25 marks}