

POLITICS AND LAW UNIT 3 & UNIT 4

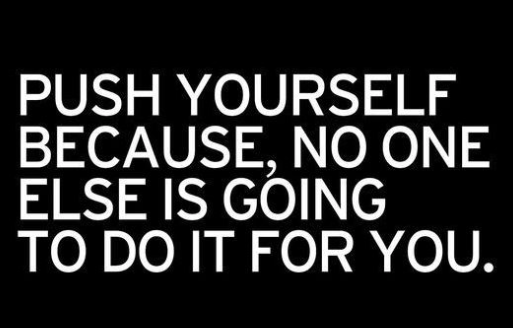
Mock Exam Revision Guide

**Make revision notes on the following and include:**

1. **Definitions/ explanations of key concepts**
2. **Examples, examples, examples!**
3. **Practice on relevant WACE exam questions.**

**UNIT 3**

|  |  |
| --- | --- |
| **Syllabus** | **Chapter & Examples** |
| **Political and legal systems**  **legislative, executive and judicial powers with reference to the Commonwealth Constitution (Australia) and with comparison to one non‐Westminster political and legal system:**  The Commonwealth Constitution: ***legislative, executive and judicial powers:***  • Responsible government and executive power in Australia  **The USA (a non-Westminster system)** Constitution: legislative, executive and judicial powers:  • Representative government in Australia and the USA  • Similarities (legislative and judicial powers) and differences (especially executive powers and the checks and balances) between the two systems.  **Screen Shot 2015-04-19 at 9.04.30 am.png** | Chapter 1 King et al  ***Example(s):***  AUSTRALIA and United States  **AUSTRALIA EXAMPLE:**  **CONSTITUTION –**  **Legislative branch** – powers - Enact legislation for and on behalf of Australian people. Debate issue of public importance. Form government and check government. Approving of the funds (supply bills). Scrutiny of government. Forum for popular representation. Appointing and dismissing the executive and individual ministers  **Executive branch** – powers - Appointing members of the FEC (ss.62&64). Appointing senior government officials (s.67). Being Commander and Chief of the Armed Forces (s.68).  **Judicial branch** – powers - Power to interpret the Constitution of Australia. Judicial review over laws passed. Jurisdiction: Original s75 & s76, Appellate s73  **UNITED STATES EXAMPLE**  **Constitution** – **Article 1** – Congress – Senate and HOR. pass all federal laws, establish all lower federal courts, override presidential veto, impeach the president.  **Article 2** – executive power – President and vice-President. – veto power, appointment of judges, make treaties, pardon power, ensure all laws are carried out, President is Commander and Chief of Military. **Article 3** – Judicial power Supreme Court - try federal cases, interpret laws, declare executive actions and laws unconstitutional  **Checks and Balances**   * USA has a stronger system of checks and balances * Judges in US appointed by President but must be confirmed by Senate * In AU Auditor General appoints judges without requiring parliamentary endorsement * In USA executive is completely separate but in AU executive members must also be part of parliament * This means checks and balances on exec power are less effective in AU   **DIFFERENCES**   * Australia adopted the fused structure of the Westminster System in which the executive is drawn from and accountable to the Parliament. S64 requires that ministers are members of parliament. Whereas in the US the executive is elected separately and has a complete separation of powers. * US is a democratic republic with an executive presidency meaning the head of state and head of govt are combined in one office that has real executive power. * Australia has much weaker checks and balances between the three arms of government * Australia is a constitutional monarchy meaning the head of state and head of government are two separate offices   **Define/Explain/Evaluate:**  **Bicameralism, Constitution, Constitutionalism, Preamble, Double Dissolution, Joint sitting, Enumerated or specific powers, Exclusive, concurrent and residual powers, Separation of powers, Federal Executive Council, Nexus Clause**  **Unitary system, Presidential systems**  **Congress, US Supreme Court, Responsible government, SOP, Westminster conventions, Division of powers** |
| **Political and legal systems**  **Functions of the Commonwealth Parliament in theory and practice and the decline of parliament thesis:**   * legislative, including **Section 51** * legislative process in the House of Representatives and Senate * executive control * party discipline * minor/micro parties and independents * the Senate and political power (contemporary issue of political power) * authorize expenditure, including **Section 53** * make and unmake government: executive accountability (CMR) * representation, including **Section 7** and **Section 24** * party discipline * processes of the parliament and representation * forum for national debate   **Decline of parliament thesis:**   * The extent that parliament is able to fulfil these roles taking into account the executive, the role of party discipline, parliamentary procedures * Is it a valid thesis? Points to consider: * Review function of the Senate   Role of the opposition and minor parties in terms of parliament and these functions including Matters of Public Importance. | Chapter 2 King et al  ***Example(s):***  **KEY SECTIONS OF THE COMMONWEALTH CONSTITUTION!**  **DECLINE OF PARLIAMENT THESIS DISCUSSED/EXPLAINED**  This thesis states that the Parliament, intended as a **representative and lawmaking body**is failing or not effective in its functions – it does not legislate or hold the government to account as it should.  It is **unable** to check **executive power**.   * Parliament, particularly the HoR, is merely a **rubber stamp**for Cabinet and is **not effective**as a forum for legislative debate. * **Cabinet power**– Cabinet determines which legislation is introduced into Parliament, and since the Gov’t has a majority in the HoR, this is **always passed**. Cabinet is dominating the legislative process = e.g. Howard/Gillard. Also cf. Abbott’s reintroduction of Knights and Dames * **Party domination** of the legislature- Members almost always vote along party lines (esp. Labor) or risk losing their membership, status or endorsement for preselections.   As long as the governing party holds its majority, the government and its Ministers are more accountable to their party than to the Parliament.  **REVIVAL OF PARLIAMENT**   * **Senate** is beginning to do its job as a House of Review as there are 18 crossbenchers – 10 Greens, 3 PUP, 1 Democratic Labor, 1 Liberal Democrat, 1 Family First, 1 Motoring Enthusiast, 1 Independent. The proportional voting system **favours minor parties**, which in turn, makes it **more likely that the gov’t is held to account**properly. Senate is also less partisan, and Estimates Committees have been very effective. * **Role of independents and minor parties**in HoR also has led to better scrutiny – e.g. independents forced Gillard to rewrite Standing Orders for QT so that both questions and answers have time limits. Now, 5 crossbenchers are Katter, Palmer, Wilkie, Bandt, McGowan have little say in the Lib-dominated HoR. * Growth of the importance and powers of **committees**especially Estimates.   **Define/Explain/Evaluate:**  **Westminster system / conventions, Responsible Government, Washminster system, Decline of Parliament thesis, Delegate, trustee, partisan role, Legislation, Backbencher, Electoral democracy, Balance of power, Speaker of House, President of the Senate, Main Committee,Pairs, Parliamentary Committees – select, standing and joint, Floodgating, Gag, Guillotine, Question Time, Quotas, Quorum, Parliamentary Privilege, Hung Parliament, Private member, Private member’s bill** |
| **Roles and powers of the Governor‐General, including Sections 61, 62, 63, 64, 68, 28, 57, 72, and ‘the 1975 crisis’**  **Executive**   * What (Constitution compared to convention)   Governor General compared to the PM and ministry  **Governor General**   * Who and how * Sns 2, 61 and 62 * Roles and powers Sns 63, 64, 68, 28 and 57 | Chapter 3 King et al  ***Example(s):***  Discusses, in detail, two powers of the Governor General set out in the Commonwealth Constitution (Australia). For example:   * **Section 5**: Appoints sitting times for Parliament, as well as being responsible for its prorogation and dissolution. * **Section 28:** May dissolve the House of Representatives. * **Section 32:** With the Executive Council, may issue writs for House of Representatives elections. * **Section 57:** May dissolve both houses of parliament in the event of a legislative deadlock such as that involving the ABCC bills in 2016. * **Section 58:** gives assent to laws (and variations thereof) * **Section 61:** Exercises the executive power of the Commonwealth. * **Section 62**: Chooses and summons members of the Federal Executive Council to advise him in the government of the Commonwealth. * **Section 64:** May appoint officers (ministers) to departments of State, such officers holding office during his pleasure. * **Section 67:** With the Executive Council, appoints civil servants. * [**Section 68**](http://australianpolitics.com/text/68.shtml): Command in chief of the naval and military forces of the Commonwealth. * **Section 72:** With the Executive Council, appoints Justices of the High Court, and also receives their resignations. * **Section 128:** gives assent to referenda which have been passed by the parliament and the people.   1975 CONSTITUTIONAL CRISIS -1975 (focus on the constitutional power of the Governor General compared to convention) By 1975 Whitlam Labour government had been rocked by a number of financial crises and their popularity was lowering  **Constitutional Issues**   * Crisis occurred as a result of the breaking of convention * Questions arose as to whether senate had legitimate role in blocking supply * Another issue was precise scope of the GG’s power – unclear * Many people questioned necessity of having a GG and argued AU should become a republic – referendum held in 1999 * Subsequent GG’s have been sure to demonstrate their political neutrality   EXPRESS POWER   * DEFINITION- powers exercised on the advice of the PM * Dissolution of Parliament – S57 * Issuing writs for a new election- S5 * Granting royal assent to new laws (S58) * Acting on the advice of ministers to issue regulations and proclamations under existing laws * Appointing federal judges (S72) * Appointing high commissioners to overseas countries and other senior government officials * Establishing Royal Commissions of Inquiry * Exercising the prerogative of mercy * Authorising many other executive decisions by ministers such as raising government loans or approving treaties with foreign governments   RESERVE POWER   * DEFINITION- Powers which the GG may exercise without or contrary to ministerial advice. In practice these reserve powers exist only to be used as a last resort such as during a political crisis and are exercised at the discretion of the GG. * Appoint a PM if an election has resulted in a hung parliament (S64) * Dismiss a PM if he or she has lost the confidence of the Parliament (S64) * Dismiss a PM or Minister when he or she is acting unlawfully (S64) * Refuse to dissolve the House of Representatives despite a request from the PM (S5 and S28)   **Define/Explain/Evaluate:**  **Express and reserve powers, Fictional, formal, *Constitutional crisis 1975, Federal executive council (FEC)*** |
| **Roles and powers of the Prime Minister, Cabinet and the Ministry**   * Who and how * Roles and powers of the PM including limitations * PM Office and the Department of Prime Minister and Cabinet and their importance in terms of PM’s power * Roles and powers of Cabinet/Ministry including Parliamentary Secretaries * The link between the PM, Cabinet and the Ministry and public servants (brief here the detail is in 3B) | Chapter 4 King et al  ***Example(s):***   * ***RUDD*** *was a presidential micromanager whose hyper- controlling style alienated his cabinet and party colleagues leading to chaos and dysfunction.* * ***GILLARD*** *lacked legitimacy because of the manner of her coming to power followed by her leadership of a minority government. She was also a weak media performer and struggled to deal with an effective opposition and a bitter rival.* * ***ABBOTT*** *was combative and prone to making out of touch decisions without consulting colleagues. All three were ultimately judged harshly by the people in opinion polls which undermined their parties’ confidence in them.* * ***TURNBULL*** *appeared to lack authority within his party and to suffer poor political judgement, calling a double dissolution election that resulted in the loss of Abbott’s strong majority and installing an even more fractious Senate.*   **TURNBULL EXAMPLE**   * *Party support* * *The media/polls* * *Electorate support*   *Limits of power:*   * *Section 44* * *Ideologically out of sync with party* * *Double dissolution and failure to win strong majority* * *Leader of a Coalition of parties*   **Define/Explain/Evaluate:**  **Prime Minister, Cabinet, Administrative, Executive, Political Executive, Public Service, Cabinet solidarity, Caucus, Minister, Inner/Outer ministry, Portfolio**  **Look at Turnbull, Abbott, Gillard, Rudd** |
| **Roles and powers of the opposition and the shadow ministry at the Commonwealth level** | Chapter 5 King et al  *Example(s):*  The opposition is formed by the largest party or coalition of parties that does not have the support of the majority of members in the House of Representatives.  The opposition is sometimes called the alternative government, because it could form government if it was to win the support of the majority of members.  Although the opposition is formed in the House of Representatives, there are also members of the opposition in the Senate. The opposition may or may not hold the majority of seats in the Senate.  OPPOSITION RESPONSIBILITIES  The responsibilities of the opposition include:   * scrutinising (closely examining) the work of the government * asking the government to explain its actions * debating bills (proposed laws) in the Parliament * working on committees that examine bills and important national issues * providing alternatives to government policies.   Duties of the LEADER OF THE OPPOSITION include:   * + Alternate Prime Minister   + chairing weekly party meetings   + leading the development of party policy   + selecting opposition members and senators to be shadow ministers   + leading the team of shadow ministers which is called the shadow cabinet   + acting as the chief spokesperson for the party inside and outside Parliament   + presenting alternate policies to the government and the Australian people   + leading the party in an election.   **Define/Explain/Evaluate:**  **Opposition, Shadow ministry/portfolio, Roles of opposition, who is the current opposition?** |
| **political mandates in theory and in practice, including competing mandates**   * Political mandates – reflect the will of the people * Government mandate (House of Representatives) compared to competing mandates (Senate/House of Representatives) * Reference needs to be made to actual events/episodes/processes in Parliament to highlight these in practice * Some examples that could be drawn from include:   Howard – GST, WorkChoices  Rudd – Fair Work Australia, ETS  Gillard – Carbon Tax  Abbott – Carbon Tax, MRRT, turn back the boats, ETS | Chapter 6 King et al  ***Example(s):***  **Mandate**   1. **MAJORITARIAN** (or government) mandate – ‘will of the majority mandate’  * Turnbull policies = business tax cuts, Australian Building and Construction Commission, Same-sex marriage plebiscite, Health – extend freeze on rebates paid to doctors.  1. **‘BALANCE OF POWER MANDATE’ – claimed by Senate** (equal power given by constitution to both houses) **cross benchers** or **minor parties**. Senators Brian Harradine and Ricky Muir…  * Balance of power arises when opposition opposes a government bill in the senate * Means minor parties or independent senators on cross benches will decide whether a bill succeeds or fails * Extraordinary power given to minor parties who represent such a small amount of constituents * Can determine whether a government bill fails or passes  1. **‘RIGHT TO OPPOSE’ - OPPOSITION MANDATE** – to keep the government accountable.  * Claimed a right to oppose mandate and refused to pass significant parts of the Abbot governments first budget-held Abbot government to account for its 2013 election promises * Refused to pass major proposals such as a $7 GP co-payment, the higher education Scheme, paid parental leave, pharmaceutical co-payment and ABCC Bills were not passed or were amended by the Senate * Called into question Abbot governments ability to govern effectively * Delivered the Greens and others the Balance of power – used to defeat many of Abbots Budgetary measures |
| **role and powers of the High Court of Australia including Sections 71, 73, 74, 75, 76**  **with reference to at least one common law decision and at least one constitutional decision:**  **Common law decision**   * NSW Registrar of Births, Deaths and Marriages vs Norrie (2014) HCA 11   **Constitutional decision**   * New South Wales & Ors vs Commonwealth (2006) HCA 52 Work Choices legislation 2006 and Section 51(xx) | Chapter 7 King et al  ***Example(s):***  ***COMMON LAW DECISION***   * *NSW Registrar of Births, Deaths and Marriages vs Norrie (2014) HCA 11*   EXAMPLE – NORRIE   * Creating new common law - Norrie is a person of non-specific sex * They sought to be registered under births deaths and marriages act 1995 as non-specific * NSW registrar initially approved the request but then decided it was invalid and you had to be registered as either male or female * Norrie appealed to the Administrative decision’s tribunal and then to the court of appeal NSW * In the NSW court of appeal, they agreed with Norrie * The NSW registrar applied for special leave to the HC challenging this decision * Resulted in HC deciding that there needed to be a third category of sex and they created new common law   ***CONSTITUTIONAL DECISION***   * *New South Wales & Ors vs Commonwealth (2006) HCA 52 Work Choices legislation 2006 and Section 51(xx)*   EXAMPLE WORKCHOICES (2006) THE CORPORATIONS POWER   * The use of corporation’s power in section 51 xx is another reason for the current power of the commonwealth over the states * Work choices 2006 was a cw industrial relations law introduced by Howard govt in its final term * Sought to take states industrial relations powers as the corporations power under section 51 xx was very narrow and limited the commonwealth * Work choices passed under the corporations power which is a very broad power * Cw sought to use this law to make laws for workers employed in corporations- back door route * Challenged in HC by states and unions * Deemed constitutional to legislate for industrial law using corporations power * Created a precedent and cw has used this power in many ways since   **Define/Explain/Evaluate:**  **High Court, Court hierarchy, Common law, Precedent, Ratio decidendi, Obiter dictum, Implied rights, Original and appellate jurisdiction, Writs of mandamus**  **Privative clause, Statutory interpretation** |
| **lawmaking process in parliament with reference to the influence of:**   1. **individuals** 2. **political parties: major parties, minor parties, micro parties** 3. **pressure groups**  * Examples are best used to examine the influences of each on the lawmaking process | Chapter 8 King et al  ***Example(s):***  **Parliament**- Democratic, sovereign – parliament final authority on law, superior due to sovereign and democratic nature, flexible, responsive and proactive.  **Courts**- Authoritative – rely on deeply entrenched legal maxims developed over centuries, apolitical and independent, inferior – subject to statute law and has no democratic legitimacy, reactive and incremental.  **INDIVIDUALS-** Only a few individuals are motivated enough to influence law – less are successful**,** Individuals don’t exercise any direct influence over parliament or the courts**,** Some individuals will be very active, motivated or powerful**,** Individuals may not be successful due to a lack of resources, lack of access to key decision makers, lack of organisational support, Some individuals have been incredibly successful   |  |  | | --- | --- | | PARLIAMENT | COURTS | | **Private member’s bills:**   * **COMMONWEALTH ELECTORAL BILL (1924)** * **EUTHANASIA LAWS BILL (1996)** * **EVIDENCE AMENDMENT (JOURNALISTS’ PRIVILEGE) ACT (2011)** | * **WILLIAMS** V COMMONWEALTH (#1 2012) & (#2 2014) * **MABO** (1992) NATIVE TITLE * **ROACH** V ELECTORAL COMMISSIONER (2007) – VOTING RIGHTS AND PRISONERS |   **Legislative and Financial Powers**   * HC principle source of constitutional change * Judgements in landmark cases may alter the way the constitution operates * Perhaps greatest power of the HC – judgements affect operation of fundamental law * Interpretations of legislative and financial powers between two soverign levels of government may alter federal balance of power * If the HC finds a statute is beyond the power of the parliament to enact it then it will strike law down * EXAMPLE – WILLIAMS NO 2 * Ronald Williams challenged the constitutionality of using the section 51 social services power to pay for chaplains in schools * HC found that the payment wasn’t benefits to students and struck down the amended financial management and accountability act 1997 it was found to be ultra vires * According the court benefits under the social services power had to be paid directly to the beneficiary * Now funded through specific purpose payments that have allowed the commonwealth to expand their influence into state law areas   **Executive Power**   * Executive Government makes laws under delegated legislation * S61 vests executive power of the CW in the Queen exercisable by the GG so exec branch may carry out maintenance of the constitution and the laws of the commonwealth * Under common law exec exercises prerogatives of the crown * For example the power to sign treaties or declare war * S61 does not limit exec to same heads of power as the commonwealth * Powers may be limited by statutes passed by parliament and HC interpretations of S61 – it has not been subject to much interpretation * EXAMPLE – WILLIAMS NO 1 * Determining constitutional cases- executive powers * HC found section 61 of the constitution did not permit the govt to fund the NSCP without legislation * This case helped define and limit the prerogative powers of the executive * The court declared the constitution did not permit the exec to fund programs if the parliament has the power to legislate but has not done so * In response the Gillard govt rushed to pass new legislation to cover payments under 427 grants and programs it could no longer fund because of the Williams case * The decision resulted in the govt legislating under the section 51 social services power to continue funding the NSCP * This was achieved by amending the Financial management and accountability act 1997   **POLITICAL PARTIES**  **Major-** Any party with enough electoral support to form government  **Minor-** Regularly win some seats in both houses but not enough to form government  **Micro-** May win a seat – almost always in Senate  **Political Parties and Lawmaking**  **Ideology and policy-**   * Political parties stand for something – beliefs fall along a political spectrum * Each label on a spectrum describes an ideology – set of beliefs about how society should be organised * Ideologies are coherent * Forms basis of policy approaches by a political party * Left – fairness and equality, social justice, bigger government, regulate economic policy, socially progressive –ALP and Greens * Right – individualism, smaller role of government, self-reliance, deregulate market, socially conservative – LIB and NAT   **Ideology and winning elections-**   * Parties have learned they cannot win elections being too ideological – Abbot and Howard  |  |  | | --- | --- | | PARLIAMENT | COURTS | | **ANY PARTICULAR PIECE OF LEGISLATION INCLUDING PRIVATE MEMBERS BILLS HIGHLIGHTING THE ROLE OF PARTICULAR PARTIES**  **RECENT EXAMPLE:**   * BUILDING AND CONSTRUCTION INDUSTRY (IMPROVING PRODUCTIVITY) AMENDMENT BILL 2017 (TURNBULL) * THE BACKPACKER TAX PASSED 2016 (TURNBULL) * SAME SEX MARRIAGE BILL 2017 (TURNBULL)   **CARBON POLLUTION REDUCTION SCHEME (RUDD ALP BILL) AND CARBON TAX (GILLARD ALP PROPOSAL)** | * COMMUNIST PARTY OF AUSTRALIA V COMMONWEALTH OF AUSTRALIA (1951) |   **PRESSURE GROUPS** Sectional groups, Promotional groups, Hybrid groups  **Strategies –** direct lobbying, submissions to parliament, direct action, court action, advertising, online campaigns and celebrities…   |  |  | | --- | --- | | PARLIAMENT | COURTS | | * **TOBACCO PLAIN PACKAGING 2011 SUBMISSIONS TO COMMITTEES SUPPORTING / OPPOSING THE LEGISLATION (VARIOUS PRESSURE GROUPS)** | * **GETUP! CHALLENGE TO THE CLOSING OF THE ELECTORAL ROLLS** * ***ROWE & ANOR V ELECTORAL COMMISSIONER* (2010)** * **COMBET CHALLENGE TO WORKCHOICES PUBLICITY CAMPAIGN AND THE USE OF GOVERNMENT FUNDS *COMBET & OTHERS V COMMONWEALTH & OTHERS (2005)*** |   **Define/Explain/Evaluate:**  **Political participation, Political party, Mass party cadre party, Caucus, Corporatism**  **Democratic centralism, Direct lobbying, Elitism, Pluralism, Factional politics**  **Ideology, Labourism, Left wing, Liberalism, Major party minor party, NGOs, Media, Right wing, Socialism, Pressure group, Promotional pressure group, Sectional pressure group, hybrid pressure group** |
| **Federalism in Australia with reference to**   * constitutional powers of the State and Commonwealth parliaments, including exclusive, concurrent and residual powers, Sections 51, 52, 90, 107, 109 * financial powers of the Commonwealth Parliament, including taxation power, tied or special purpose grants, including Sections 51(ii), 87, 90, 92, 96 * Change in the balance of power since federation:   + financial powers, including vertical fiscal imbalance (VFI) and horizontal fiscal equalization (HFE), the Grants Commission   + referral of powers Section 51(xxxvii)   + the Council of Australian Governments (COAG)   + co-operative federalism and coercive federalism   + High Court of Australia (HCA) constitutional interpretation     - Section 51(xxix) external affairs power     - Section 51(xx) corporations power, taxation power * consequences for federalism in Australia (trends in federalism in Australia) | Chapter 9 King et al  ***Example(s):***  *See syllabus points –* BUT REMEMBER HIGH COURT IS THE BIGGEST INFLUENCE IN CHANGING THE BALANCE OF POWER!!!  **FEDERALISM-** Federalism is divided sovereignty in which the powers of the state are divided between one central and regional governments, each sovereign within their own territories and over their own people. Federal systems have a national government and state governments, each with sovereignty in their own respective areas of responsibility. Federal systems have two levels of government sharing the sovereignty of a nation. This means there will be a distribution of powers between them; a federal balance of power.  TYPES OF FEDERALISM – coercive vs cooperative federalism  DIVISION OF POWERS- exclusive, concurrent and residual  **FINANCIAL POWERS OF THE COMMONWEALTH PARLIAMENT**  The VFI   * Vertical fiscal imbalance is the term used to describe the disproportionate taxing powers and spending obligations of the commonwealth * It means the commonwealth collects much more revenue than it needs and the states spend much more revenue than they collect * Commonwealth collects 80% of the tax but spends 50% of the expenditure * States collect 20% of the tax and spend 50% of the expenditure * Creates an imbalance 30% in favour of the Commonwealth * The transfer of the 30% surplus from the CW to the states redressed the imbalance * Done through S96 grants and the GST * The commonwealth grants commission is a statutory agency established by the Commonwealth grants act 1973 * The purpose of the commission is to distribute commonwealth monies to the states under S96  |  |  |  |  | | --- | --- | --- | --- | | **Name of case** | **Facts** | **The Issue** | **The decision** | | FIRST UNIFORM TAX CASE (1942) | Before World War II both federal and state governments collected income tax. In 1942, in order to run the war effort, the federal government became the sole collector of income tax. It did this by passing laws which raised the federal tax rate and gave some of the proceeds back to the states on the condition they drop their income tax. States receive this money in the form of funding grants. | The Commonwealth government wanted to become the sole income tax collector, with grants given back to the states to compensate for the lost revenue. The states rejected such a system, fearing the Commonwealth would raise income taxes. | The High Court ruled the legislation was valid on the grounds that section 51 (ii) of the Constitution gives the federal Parliament power to make laws relating to taxation, even though in practice the legislation removed a state power. It also ruled that under section 96 of the Constitution, the federal government could attach conditions to funding grants, and therefore it was legal to only give compensation to states that stopped collecting income tax.  As a result the states are now more dependent on the federal govt for revenue – resulting in vertical fiscal imbalance. |  |  |  |  |  | | --- | --- | --- | --- | | **Name of case** | **Facts** | **The Issue** | **The decision** | | HA/HAMMOND CASE (1997) – SN 90 | Ha and Hammond v NSW The plaintiffs were charged under the Business Franchise Licences (Tobacco) Act 1987 (NSW) with selling tobacco in NSW without a licence.  The plaintiffs argued that the licence fee imposed by the Act was an excise and hence invalid due to section 90 of the Constitution. | Even though the cases heard related to the imposition of franchise fees on tobacco, the decision has effectively declared all current State business franchise fees on petroleum, tobacco and alcoholic products to be constitutionally invalid. These fees have been imposed by the States for almost twenty years and have been a significant source of revenue to them. However, the Constitutional basis for these fees has always been insecure. There has always been a suspicion that these imposts might be characterised as an excise and, under section 90 of the Constitution, only the Commonwealth can levy an excise. | The High Court ruled an excise was a tax on sale, production and manufacture of goods prior to consumption, applying to goods whether produced locally or not. Under this broad view, the 'licence fee' imposed by the state government was in fact an excise, which Australian states are constitutionally barred from imposing.  This decision further increased the vertical fiscal imbalance, increasing the degree to which the states rely on the CW for revenue. |   **REFERRAL OF POWERS**   * Section 51(xxxvii) makes it possible for states to pass powers to the Commonwealth if they choose to do so * A referral of power affects only the referring state * It also contains an adopting power in which the states can adopt commonwealth legislation if they wish * The referral of powers affects the federal balance of powers – cooperative federalism * Referrals of power are relatively rare since the states are quite protective of their powers   TERRORISM   * Crime of terrorism has led to the referral of state criminal law powers * Defence power under section 51 does not cover law and order and doesn’t allow commonwealth to make certain anti-terror laws * Most criminal law is a state power * Howard govt wished to create a strong set of uniform national laws to deal with this newly emerging criminal threat * The cw had no power to pass the security legislation (terrorism) act 2002 * Purpose of the law is to create a special category of crime by criminalising terrorist acts * Howard govt successfully asked the States to refer certain state criminal law powers to the cw to give it constitutional authority to pass the law   FAMILIY LAW   * State powers over the custody and the maintenance of children of divorced parents were transferred by all states except WA between 1986 and 1990 * Commonwealth created a new chapter 3 federal court called the family court that has jurisdiction over the newly referred power   **COAG**   * COAG is the council of Australian Governments * It is a peak ministerial council of the federation * A ministerial council is an intergovernmental meeting of commonwealth, state and territory ministers in the same portfolio area * COAG is a ministerial council of the heads of government – The Prime Minister, the 6 State Premiers, the two Territory Chief Ministers and the President of the Local Government Authority * It is the most important coordinating institution within the federation * It meets regularly and debates, plans and monitors reforms and programs that are jointly administered by the Commonwealth and the States/Territories * COAG has attempted the encourage a development of a more cooperative federalism   MURRAY DARLING BASIN PLAN   * First attempted by Howard govt- wished to create a uniform set of laws covering the murray river which flowed through the states of NSW, VIC, OLD and SA * Needed to get these states to refer their powers over the river to the cw * Howard failed at this as VIC refused to accept the conditions necessary to receive the grants * When the Rudd govt came to power in 2007 The Murray Darling Basin Plan came into action with the passage of the Water Act 2008 * Shows how the cw and states can cooperate to achieve a national objective when the commonwealth lacks the power   **HIGH COURT CONSTITUTIONAL INTERPRETATION**   * The High Court has been the single most important agent of constitutional change in Australia since federation * It has had a greater impact on the federal balance of power than any other method of constitutional change * Decisions of the HC in various landmark cases have fundamentally altered the way the constitution operates * S71 establishes the HC and S76 grants it jurisdiction to interpret the constitution * When the HC interprets a case in which any of the exclusive or concurrent powers are in dispute the outcome can redefine the powers and so change the balance of powers   THE UNIFORM TAX CASE 1942   * Section 51 ii the taxation power is a concurrent power * HC decisions in the uniform tax cases of 1942 and 1957 validated the commonwealth’s entry into the field of income tax * During world war 2 the cw desperately needed to improve their capacity to win * Passed 4 acts which essentially meant the cw took over income tax * States challenged the 4 acts in court where it was decided they were constitutional * At the end of the war they were challenged again and were still found to be constitutional * This means the states are unable to collect income tax which had been a major source of state revenue * They became much more reliant on commonwealth grants from this moment   THE HA HAMMOND DECISION 1997  EXTERNAL AFFAIRS POWER - KOOWARTA 1982 & TASMANIAN DAMS CASE 1983   * The external affairs power 51 xxix works by allowing the cw to sign treaties and international agreements and then ratify them by passing them through parliament * This power combined with the power of section 109 means the cw has significant power to become involved in areas of state responsibility * In KOOWARTA 1982 a QLD govt was prevented from making the decision to stop John Koowarta, an aboriginal man, from purchasing a lease on land because he was aboriginal * The state decision contravened the cw racial discrimination act 1975 * This act was passed using the external affairs power to give effect to the UN convention on the elimination of all forms of racial discrimination * OLD lost sovereign powers over land management because of this case   THE CORPORATIONS POWER – WORK CHOICES 2006 & ENGINEERS 1920   * The use of corporations power in section 51 xx is another reason for the current power of the commonwealth over the states * Work choices 2006 was a cw industrial relations law introduced by Howard govt in its final term * Sought to take states industrial relations powers as the corporations power under section 51 xx was very narrow and limited the commonwealth * Work choices passed under the corporations power which is a very broad power * Cw sought to use this law to make laws for workers employed in corporations- back door route * Challenged in HC by states and unions * Deemed constitutional to legislate for industrial law using corporations power * Created a precedent and cw has used this power in many ways since   **Define/Explain/Evaluate:**  **Refer to syllabus column, define all terms and revise all specified sections, Identify and explain at least 3 High Court decisions which have affected the federal balance of power** |
| **Formal and informal methods of constitutional change and their impact**   * **referendums, including Section 128: especially 1928, 1946, 1967, 1977, 1984, 1999** * **HCA decisions (see above)** * **referral of powers Section 51(xxxvii)** * **unchallenged legislation**   ***Methods of constitutional change***   * The focus is on each method of change and how each has ‘changed’ the constitution. * **Referendum S128** * Impact - success 1946, 1967; failure 1999 re: Republic and failure re: the issue of simultaneous elections 1974, 1977, 1988 * **High Court of Australia** – cases could include:   + Engineers Case (1920) – Sn 51(xxxv), WorkChoices (2006) – Sn 51(xx), Burgess (1935) – Sn 51(xxix), Koowarta (1982) – Sn 51(xxix), Tasmanian Dams (1983) – Sn 51(xxix)Uniform Tax Case (1942) – Sn 51(ii)Ha/Hammond Case (1997) – Sn 90, CPA Case (1951) – Sn 51(vi), Nationwide News and Australian Capital TV (1992), Theophonous (1994) * **Referral of Powers** - water and family law, Victoria with industrial relations compared to other states * **Unchallenged legislation** - CSIRO/Snowy Mountains and as a contrast Bryan Pape’s challenge to the ‘stimulus’ payment in *Pape v Commissioner of Taxation* (2009) | Chapter 10 King et al  ***Example(s):***  *See syllabus points*  **FORMAL CHANGE –** Referendums are the only process where actual change to the text of the constitution is possible. It is a formal process governed by the law of the Commonwealth itself.  **INFORMAL CHANGE –** Effective constitutional change can be achieved by other methods such as High Court decisions, referral of powers and the Commonwealth passage of legislation that is ultra vires.   * Both Formal and Informal methods have an effect on the operation of the constitution   **REFERENDA: FORMAL CONSTITUTIONAL CHANGE**   * Set out in S128 * Strict requirement for nature of question, timing and criteria for success * Idea for change may come from government, parliament, parliamentary committees, expert panel, pressure group or review by a royal commission, constitution commission or convention * Proposed change can only be initiated by the Commonwealth parliament through legislation * Can’t be directly initiated by the people   **The Process**   * Example of a direct democracy – citizens must approve any change to fundamental law (democratic feature) * Also protects states (federal feature) * S128 sets out process for changing text of the constitution * Proposal must pass as a bill through both houses and be given royal assent * It must be put to the people as a Yes or No vote, not less than 2 months and not later than 6 months after parliament * To succeed it must achieve a double majority – majority of states and people * Citizens decide if proposal will be accepted and change the words of the constitution   **What makes a successful referendum?**   * Purpose only minor technical changes eg vacancies, judges * Not seen as a grab for power by the CW as these are universally distrusted * Increase in power seen as the right thing to do as in the Aborigines referendum 1967 * They have wide support – have bipartisan support more popular and support from states * Do not generate strong no Campaigns   **Why do so many referenda Fail?**   * Voters are cautious when it comes to referenda * Australia is a tremendous national success * Many people would understand constitution party responsible for this success * “if it aint broke don’t fix it” * Voters reluctant to meddle because of unforeseeable circumstances * Many voters just aren’t interested * If they don’t care they’ll vote no * Distrust of politicians * If people don’t trust political motives they’ll most likely vote no   **1967 aborigines referenda – successful**   * Referendum that altered section 51 xxvi to allow commonwealth to make laws for aborigines and deleted section 127 to allow them to be counted in the census * Supported by both parties and was unopposed by the states * IT was considered the right thing to do in an environment of increasing rights awareness * Had support of various pressure groups and there were no public funds or organised groups campaigning for a No vote * Achieved 90% of national yes vote and passed 6 states * Highest yes vote in Australian history   **Proposed Referendum**   * Proposed referendum to change the preamble and S51xxvi and S25 * About recognition and equality for aboriginals * Preamble- symbolic – recognising aboriginal people as first people of Australia * Ensure document is anti-discriminatory * And insert a non-discrimination cause * Arguments for focus on addressing a history of inclusion, improving sense of self-worth and wellbeing of aboriginals and enshrining principles of non-discrimination in our constitution * Arguments against focus on the fact that this sort of recognition is only a token gesture, is another form of assimilation, also argue recognition is a form of racism – no one should be singled out based on their race   **Failed referendum**   * Australian republic referendum 1999 * Australia to become a republic with a president chosen by parliament * Inserting a preamble * Defeated due to sustained opposition from monarchist groups and division among republicans * 45% yes, 54% no * Strong no campaigns, unnecessary rush, inflexible model chosen, seen to be supported by big elites   **INFORMAL CONSTITUTIONAL CHANGE:**  **Decisions of the High Court**   * S76 of the constitution grants the HC jurisdiction to interpret the constitution * Constitutional cases arise when parties dispute the meaning * HC makes a judgement on what words actually mean * Decisions alter the way the constitution operates * Cant act proactively – case has to come to a court * Landmark cases are those that have significant impact * Many have significantly alter the way the constitution operates * HC is the single most important in constitutional change * Change occurs in 2 areas: The balance of power and the discovery of rights   **Implied Constitutional Rights**   * Freedoms or entitlements that are not specifically expressed but can be inferred from the broader meaning * Implied rights have been discovered * Discovery of rights may occur when the HC interprets the meaning of the constitution * Any case that results in discovery of rights will be a landmark case * Discovery of rights is rare, controversial and adds to rights protected by our fundamental law   IMPLIED RIGHT OF POLITICAL COMMUNICATION   * Australian Capital Television v Commonwealth 1992 was a case in which regulations imposed by the Political broadcasts and political disclosures act 1991 limited political advertising during an election campaign and forced commercial television stations to broadcast at another time * Broadcast companies challenged the constitutionality of this act * Both section 7 and 24 specify that the senate and HOR must be chosen by the people * The HC found that these words create a representative democracy and that such a system implies that the people must be able to hear the arguments of political actors * This means there must exist a right within the constitution to political communication * HC agreed with broadcast companies and struck down the act * No words were changed but a new right exists within the constitution   **REFERRAL OF POWERS**   * S51 (xxxvii) makes it possible for states to voluntarily refer any of their powers to the CW * The constitution is a very stable law * Too inflexible to keep up with the changing world * HC interpretation and referral of powers helps keep it relevant SEE FEDERALISM FOR EXAMPLES…   **UNCHALLENGED LEGISLATION**   * CW legislation must be lawful under the constitution * If it isn’t it risks being struck down as ultra vires by the HC * To be lawful it must reference a head of power and if the law doesn’t it may be challenged in the HC * CW may pass laws that are unconstitutional and hope they aren’t challenged * Unchallenged legislation remains effective until changed * At heart of this concept is two principles: rule of law requires an independent to decide if the law is breached and courts including the HC can’t act proactively * In order to bring a case to court a party must have locus standi * To have a standing a party must have a connection to the disputed law beyond that of the general public * Need to have a special interest * Prevents most people from challenging CW law and partially explains who some unconstitutional law isn’t challenged   THE CSIRO   * Commonwealth scientific and industrial research organisation is the nations most important institution for the development and application of science and technology to real world issues * It has outstanding successes * The science and industry research act 1949 establishes it but there is no constitutional head of power giving the cw parliament power to pass the act * The CSIRO is obviously a good and necessary thing and few would dispute its existence * If someone did dislike the CSIRO they would probably lack the standing to challenge the act * Never been challenged and continues to operate   OTHER EXAMPLES:  THE SNOWY MOUNTAINS SCHEME  CROSS-VESTING JUDICIAL POWERS (ALLOWING STATE COURTS TO HEAR FEDERAL MATTERS & VICE VERSA) FAMILY COURT MATTERS (EXCEPT WA)  **Define/Explain/Evaluate:**  **Referendum, Section 128, Double majority, Referral of powers, Unchallenged legislation, Constitutional Conventions and Commissions**  **Institutional, Political and Attitudinal factors, Financial change (tied grants etc)** |
| ***At least one reform proposal to change the Commonwealth Constitution (Australia) such as the Republic; reference to indigenous Australians in the Commonwealth Constitution (Australia.***   * **The republic**:   What is the proposal? Why is it being proposed? What reasons for and against a republic in Australia? | Chapter 10 King et al  ***Example(s):***  ***The republic****:*  What is the proposal? Why is it being proposed? What reasons for and against a republic in Australia?  WHAT IS A REPUBLIC? EXPLAIN REFERENDUM PROCESS   * The Australian Constitution establishes Australia as a Constitutional Monarchy. An alternative is a Republic. * The essential elements of the definition of a Republic include :   + The people are the source of all political authority and therefore the Head of State (normally a president) must be chosen directly or indirectly by the people.   + The fundamental Republican tenet is that there should be no traditional or political differences in the status of citizens. Any citizens should be able to gain any political office – including the office of president.   ARGUMENTS FOR A REPUBLIC   1. The assertion of an Australian Identity that is appropriate to the political independence and cultural diversity of Australia. 2. The creation of a more egalitarian system, replacing a monarchial tradition that symbolizes social hierarchy and privilege. 3. Recognition of citizens as the basis of all political authority. 4. Ensuring that the Head of State is Australian. 5. Recognition that Australia’s major relationship are now in the Asia-Pacific region. 6. That claims of political and national instability, and greater executive dominance were baseless.   ARGUMENTS AGAINST A REPUBLIC   1. The existing Constitution reinforces political stability and national unity - ‘if it ain’t broke don’t fix it’. 2. The link with Britain emphasised the historical and cultural ties and the legal and political traditions that linked the two countries. 3. The push for the Republic was led by the Labor party and ‘corporatist elites’ and had little community support. 4. The debate is likely to be divisive and particularly set State against state (which could retain their governors and links with Britain). 5. Australia is already a crowned Republic and this is the best of both worlds. 6. Change would have unpredictable political effects and could lead to a powerful president of further increase the dominance of the Prime Minister and theExecutive.   **Failed Referendum**   * Australian republic referendum 1999 * Australia to become a republic with a president chosen by parliament * Inserting a preamble * Defeated due to sustained opposition from monarchist groups and division among republicans * 45% yes, 54% no * Strong no campaigns, unnecessary rush, inflexible model chosen, seen to be supported by big elites   **Define/Explain/Evaluate:**  **Republic, Arguments for and against, Referendum question, Referendum results, Implications for the future** |
| **Contemporary issue (last 3 years) relating to political power**   * The focus for the contemporary issue is who is exerting influence to achieve political power. * Possible areas to be considered include:   + the executive in parliament   + **the senate and political power (minor parties and the opposition)** | ***Example(s):***   * The focus for the contemporary issue is who is exerting influence to achieve political power:   + Minor parties/independents and the opposition and their use of the Senate/HOR * **Define political power** - which is the ability held by individuals and groups in a society that allows them to create and enforce policies for the community and manage public resources. * Power is the ability to influence and direct the behavior and guide the course and outcome of events. * The Senate is a house of review and a powerful check on the government of the day. The proportional representation system of voting used to elect senators makes it easier for independents and the candidates of the smaller parties to be elected.   Senate blocks changes to SECTION 18C OF RACIAL DISCRIMINATION ACT   * The government had sought to replace the words “offend, insult or humiliate” in section 18C with the term “harass” – which would have eroded the current protections against hate speech substantially. "There has been a lack of preparation and consultation before such a fundamental change to Australia's higher education policy," Senator Xenophon said. * Labor, the Greens, the [Nick Xenophon](https://www.theguardian.com/australia-news/nick-xenophon) Team and the Tasmanian independent Jacquie Lambie voted together to defeat the proposed legislative change.   **Define/Explain/Evaluate:**  **Political power, the senate and political power (minor parties and the opposition)** |
| ***Contemporary issue relating to legal power***   * The contemporary issue can be approached in two ways:  1. **AJ Graham vs Minister for Immigration and border protection 2017**   An examination, and an assessment, of the impact of legal power. | ***Example(s):***  ***AJ Graham vs Minister for Immigration and border protection 2017***   |  |  |  |  | | --- | --- | --- | --- | | ***Name of case*** | ***Facts*** | ***The Issue*** | ***The decision*** | | ***GRAHAM V MINISTER FOR IMMIGRATION AND BORDER PROTECTION (2017)*** | ***Graham a New Zealand citizen & resident in Australia held a Temporary Visa – that was cancelled (By Minister Dutton) in the national interest under s 501(3).***  ***Why - Rebels Outlaw Motorcycle Gang member, involved in criminal conduct.***  ***Graham challenged the decision in the HC because Minister failed to disclose information given protection from s503A of the Act.*** | ***The High Court has determined a special case on the validity of ss 501(3) and 503A(2) of the Migration Act 1958 (Cth). Section 501(3) provides that the Minister may cancel a visa where its holder does not pass the ‘character test’.***  ***Issue:***  ***Legal limits of Section 75 of constitution (original jurisdiction & judicial review) not observed - with powers of Minister given by s503A not disclosing information to the courts.*** | ***Section 501 not invalid; s503A(2) invalid to the extent that it would prevent the Minister from being required to divulge or communicate information to the High Court; Section 75(v) could not be given proper effect if the executive did not provide the court with evidence.***  ***HC declares visa cancelation invalid – Judicial review of executive action beyond the power of Parliament to remove.*** |   **Define/Explain/Evaluate:**  **Legal power** |



APPENDIX: HIGH COURT EXAMPLES

|  |  |  |  |
| --- | --- | --- | --- |
| **HCA Cases** | **Section interpreted** | **Nature of the power** | **Nature of constitutional change** |
| UNIFORM TAX CASE 1942  UNIFORM TAX CASE 1957 | **51(ii)** | Concurrent financial power re: TAX | * + Altered the **federal balance of power** by increasing the financial powers of the Cth.   + Led to VFI increase   + Reduced taxing power of the States |
| WORKCHOICES 2005 | **51(xx)** | Legislative power over CORPORATIONS | * + Altered the **federal balance of power** by increasing the legislative powers of the Cth.   + Most power over industrial relations (IR) laws is now Cth, not State power   + Previously the Cth had only relied on Section 51(xxxv) the "industrial relations power", but it is very limited because the Cth could only make laws for industrial disputes that crossed state borders and then only by using "conciliation and arbitration" as the dispute resolution methods. The limited nature of s51(xxxv) is what kept most IR lawmaking a state power until WorkChoices greatly expanded the Cth's power over IR laws |
| KOOWARTA (1982)  TASMANIAN DAMS 1983 | **51(xxix)** | Legislative power re: EXTERNAL AFFAIRS | * + Altered the **federal balance of power** by increasing the legislative powers of the Cth.   + The Cth can enter into international agreements and pass them into law under this head of power.   + If the new law conflicts with a State law Section 109 will invalidate the State law   + Koowarta     - UN **Convention on the Elimination of All Forms of Racial Discrimination** signed in 1966 and ratified in 1975 when the **Racial Discrimination Act** was passed     - Conflicted with QLD laws prohibiting the granting of leasehold land to Mr Koowarta on the basis of his aboriginality. **Section 109 invalidated the race based QLD law**   + TAS Dams     - **International Convention on the Protection of the Worlds Natural and Cultural Heritage** signed and ratified under this head of power when the **World Heritage Properties Conservation Act** was passed in 1983.     - Tasmanian laws allowing the building of a dam on the Franklin River were **invalidated by Section 109 when the Federal government listed the area under the new Act** |
| HA AND HAMMOND CASE 1997 | **90** | Exclusive financial power re: EXCISE | Both cases were very similar - one was a case about franchise fees (a state tax on the franchise transactions) and the other a case about tobacco taxes (state taxes that might be an "excise")    The HCA handed a down decision in both cases simultaneously and found that both franchise fees and tobacco taxes were excises.    Both taxes were thus lost to the States are now Commonwealth excise.    Contributes to the VFI and the financial power of the Commonwealth |
| ACTV, THEOPHANOUS & LANGE CASES | **7 & 24** | IMPIED RIGHT to freedom of political communication | Several cases have developed the implied right to political communication.  Previously electoral laws (the ***Political Broadcasts and Political Disclosures Act*** 1991) prohibited the broadcast of political advertising in the final 24 hours of an election campaign.  This Act was challenged. The HCA found that it breached an ***implied*** right to freedom of political communications because:   * Sections 7 & 24 confirm Australia as a democracy (the two houses must be "**directly chosen by the people**"). * Democracies require and informed citizenry. * Political communication is a necessary right for citizens to become informed. |
| DIETRICH V THE QUEEN (1982) HCA 57 | **Chapter 3** | IMPIED RIGHT to legal representation | * + The HCA found that the **separation of powers** inherent in Ch3 and the requirement that judicially power be exercised with due process. It found that **due process (a fair trial) could not be assured without legal representation** |
| WILLIAMS 2012 NO 1 | **61** | Narrowed executive powers  JUDICIAL REVIEW – ACCOUNTABILITY OF EXECUTIVE | Williams #1 narrowed the executive power of the Commonwealth by declaring that the executive cannot use prerogatives where a head of legislative power gives the parliament power to enact a law.    A very rare case of executive power being reduced. The trend over time has been an expansion of executive power. |
| WILLIAMS 2014 NO 2 | **51(xxxiiiA)** | Defined a legislative power and limited the power of the parliament  JUDICIAL REVIEW ACCOUNTABILITY OF PARLIAMENT | Williams #2 defined and clarified the welfare power declaring that only actually beneficiaries can be recipients of welfare payments.    Financial Management and Accountability Act 1997 declared *ultra vires* |
| COLE V WHITFIELD  BETFAIR | **92** | Redefined the meaning of "absolutely free" trade between the states | These two cases redefined the meaning of "absolute free" when applied to trade between the States.  The cases reduced the legislative power of States by ruling that laws had the effect, and not just the intention, of restrict free trade were unconstitutional |

POLITICS AND LAW UNIT 4

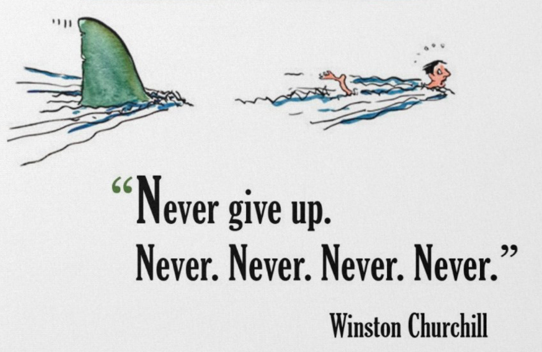
Mock Exam Revision Guide

**Make revision notes on the following and try to include:**

1. **Definitions/ explanations of key concepts**
2. **Examples, examples, examples!**
3. **Practice on relevant WACE exam questions.**

**UNIT 4**

|  |  |
| --- | --- |
| **Syllabus** | **Reference** |
| **the accountability of parliament**   * + through elections for the House of Representatives and the Senate   + through the House of Representatives and Senate Privileges Committees   + within the procedures and processes of parliament   + through judicial review | Chapter 11 King et al  ***Example(s):***  **Electoral Accountability of the CW Parliament: In Theory**  **Accountability for parliaments functions**   * Parliament is accountable for how well it performs its functions * It is accountable for statute laws passed, how well it deals with issues in debate and deliberations, for forming and holding government to account and for how it represents the people   **Accountability for the roles of each house**   * Each house has a different role * HOR is the house of the people and is where government is formed * Senate is the state’s house and a house of review * May be held accountable for how well its roles are preformed   **THE HOUSE OF REPRESENTATIVES – SINGLE MEMBER ELECTORATES**   * Voters choose one representative from their electoral division – high standard of accountability * Voters easily identify with local MHR and get to know/ know of them * Only one rep and no doubt who to hold to account if a voter is dissatisfied with legislation, debate or representation * MHRs actions are readily available in the public space – media   CRAIG THOMPSON   * Former head of Health Services Union before entering parliament in 2007 * Following departure from HSU audit unions records found misuse of union funds by Thompson * He was suspended from ALP * Made statements under parliamentary privilege claiming innocence and naming others * This was considered a breach of privilege and it was referred to the committee * The scandal was reported extensively and contributed to him losing his seat of Dobell in 2013 * He was later found guilty and convicted * MPI took place after his speech it had very limited effectiveness * Final result of Privileges committee was only to reprimand Thompson as he had already left parliament by the time they got to his case and he was also a member of this committee   CLIVE PALMER   * Won QLD seat of Fairfax in 2013 * By feb 2016 he was embroiled in questions about how he managed his company QLD Nickel and its donations to the Palmer United Party * Polling in the lead up to the election indicated a fall in voter support * Palmer announced he wouldn’t recontest his seat   SOPHIE MIRABELLA   * Lost her seat of Indi in 2013 election to independent Cathy McGowan * She occupied a safe seat * Commentary in 2013 suggested she wasn’t representing the interests of her electorate and was prioritising her role as a shadow minister * Held to account by her electorate   ROB OAKSHOTT, TONY WINDSOR, ANDREW WILKIE   * 3 independents who in 2010-2013 with Adam Bandt supported the Gillard government * All came under intense scrutiny from the Abbot Government and media for keeping the Gillard government in power * As a result neither Oakshott or Windsor stood for re-election in 2013   **ELECTORAL ACCOUNTABILITY OF THE SENATE**   * Elections every 6 years – voters have short memories   BILL HEFFERNAN   * NSW Senator appointed in 1996 and retired in 2016 * He served for 20 years but only faced his electorate twice * Personal and professional conduct may call into question the ability of individual senators to be held to account for probity and propriety   LISA SINGH   * Sitting ALP senator from TAS * Demoted down liberal group ticket to an unwinnable 6th position in 2016 * Mounted a below the line campaign and succeeded * The people chose her and not her party   **ACCOUNTABILITY THROUGH PRIVILEGES COMMITTEES**  **Accountability for Privileges**   * 3 special standing committees focusing on accountability of MPs * House standing committee of privileges and members interests * Senate standing committee of senators interests * Senate standing committee of privileges * All Mps have parliamentary privilege – enhanced freedom of speech * Essential for parliament to perform its functions * To prevent abuse there must be some form of accountability for what is said under privilege * MPs may breach privilege but courts and government cannot punish them * Parliament needs its own internal mechanisms to sanction MPS * An MP seen to have breached PP will be referred to privileges committee for discipline * Act like courts within parliament – may sanction * PC composed of MPs judging other MPs- lack impartiality * Effectiveness compromised by partisanship   CRAIG THOMPSON   * Former head of Health Services Union before entering parliament in 2007 * Following departure from HSU audit unions records found misuse of union funds by Thompson * He was suspended from ALP * Made statements under parliamentary privilege claiming innocence and naming others * This was considered a breach of privilege and it was referred to the committee * The scandal was reported extensively and contributed to him losing his seat of Dobell in 2013 * He was later found guilty and convicted * MPI took place after his speech it had very limited effectiveness * Final result of Privileges committee was only to reprimand Thompson as he had already left parliament by the time they got to his case and he was also a member of this committee   **ACCOUNTABILITY THROUGH PROCEDURES AND PROCESSES**   * No set rules about how each house is to conduct its business * S50 gives each house power to makes its own rules and orders   Standing orders and the speaker and the president:  BRONWYN BISHOP   * Speaker from 2013 to 2015 under liberal govt * Ejected 400 MHR from house under standing order 94A * Only 3 of these were from govt side   **ACCOUNTABILITY THROUGH JUDICIAL REVIEW**   * No part of constitution that gives HC explicit power of judicial review * Founding fathers intended HC to exercise this power * S76 empowers parliament to legislate to confer original jurisdiction to HC on matters arising under the constitution and its interpretation * Courts have the power to check parliament * Two distinct aspects of judicial review: 1. HC explicit power to adjudicate constitutional validity of statutes, 2. Courts powers to interpret constitution * Legislation must have a head of power and must be challenged by a party with standing * Striking down of legislation is the ultimate accountability mechanism   COMMUNIST PARTY CASE 1951   * Menzies swept to power in 1949 * Policy included banning of the communist party * Communist party dissolution act 1950 became law on 20th Oct * Communist party and several Unions challenged it in HC * By majority of 6-1 communist dissolution act was declared unconstitutional   EXAMPLE – WILLIAMS NO 2   * If the HC finds a statute is beyond the power of the parliament to enact it then it will strike law down * Ronald Williams challenged the constitutionality of using the section 51 social services power to pay for chaplains in schools * HC found that the payment wasn’t benefits to students and struck down the amended financial management and accountability act 1997 it was found to be ultra vires * According the court benefits under the social services power had to be paid directly to the beneficiary   **Define/Explain/Evaluate:**  **Electoral systems, Australian Electoral, Compromise, Compulsory Voting, Donkey Vote, Exhaustive ballot, First past the post, Gerrymander, Group ticket vote, Informal vote, Malapportionment, Marginal seat, Multi-member electorate, Mixed member voting, One vote one value, Optional preferential voting, Plural voting, Preferential voting, Primary vote**  **Proportional voting, Quota, Secret ballot, Single member electorate, Single transferable vote, Suffrage, Two party preferred vote, Voter wastage, exaggerated majority, Parliament, Accountability, Censure motion, Hung Parliament, Dorothy Dixer, Parliamentarianism, Parliamentary privilege, Privileges committee, Vote of no confidence, Westminster system, Judicial review** |
| **the accountability of the Executive and public servants through**   * + collective and individual ministerial responsibility in practice   + Senate Estimates and the Senate Legal and Constitutional Affairs Committee   + through the Commonwealth Auditor General and the Administrative Appeals Tribunal (AAT)   + through judicial review   An overall review of practices of governance in Australia | Chapter 12 King et al  ***Example(s):***  **INDIVIDUAL MINISTERIAL RESPONSIBILITY**   * Ministers make up the executive – S64 ensures that they are MPs * Ministers are responsible to the parliament for their personal probity and the conduct of their portfolio responsibilities * Individual ministerial responsibility makes it possible for a parliament to sack a minister for incompetence, corruption or serious problems with their portfolio * Parliament can censure an MP by passing a censure motion or motion of no confidence   **Censure by the HOR**   * Never been a successful censure in the House of Representatives * Discipline of the governing party ensures it will always vote en bloc * Despite lack of effectiveness – moving them in parliament allows the opposition to speak about the motion * Combined with other tactics it can bear enough pressure to force a resignation or at least media coverage   MAL BROUGH, JAMIE BRIGGS, STUART ROBERTS   * All subject to censure motions in 2015 to 2016 * Mal Brough for wrongful behaviour in the copying of personal diary of peter slipper * Jamie Briggs behaved inappropriately with a female staffer on a business trip to Hong Kong * Stuart Roberts misrepresented himself on a personal trip to China giving rise to accusations of conflict of interest * None sacked directly but were all forced to resign as a result of pressure from parliamentary tactics * Faced public embarrassment   **Censure by the Senate**   * Senate may also censure a minister – unique to the Australian system * Ministers may come from upper house and senate is extremely powerful * Senate is less subject to executive dominance and more open to diversity * Therefore censure motions have more success there   GEORGE BRANDIS   * Subject to censure motion in 2015 from Penny Wong over his actions in trying to get Human Rights Commissioner Gillian Triggs to resign * While censure was successful Brandis was defended heavily by PM and he faced no real consequences * Although, he was held to account for his actions and he faced embarrassment   **COLLECTIVE MINISTERIAL RESPONSIBILITY**   * The entire executive through Westminster convention is held accountable to the parliament * Theoretically empowers the HOR to sack the whole government * Motions of no confidence are the most important motion the HOR can move – it immediately takes precedence over any other business and is debated automatically * Standing orders allow debate on motion for up to 30 minutes from leader of the opposition, 30 minutes from the PM and 20 mins from any other MP * Opposition can use it to highlight problems and embarrass government * Government usually wins vote – never successful at making a government resign * HOR may withdraw confidence from government in other ways * Defeat of a government policy of legislation which government has declared of vital importance is an effective vote of no-confidence * Would result in government immediately resigning or moving its own motion of confidence to test its support in the house   FADDEN GOVERNMENT   * Last occasion govt fell after motion of no confidence * Fadden govt on 1941 * Minority govt resigned after HOR moved to reduce it’s budget by $1   **COMMITTEES AND ACCOUNTABILITY**  **Senate Estimates Committee**   * Key part of Senate Committee system * Estimates hearings are conducted by 8 legislative and references committees * Special sittings of the committees conducted for 4 days in may with 2 days optional additional days if needed – further hearings in November * Become a powerful mechanism of government accountability   LARRY MARSHALL   * 2016 Chief executive officer of CSIRO * CW agency was questioned by senate estimates into his decision to cut 300 jobs including scientists from the agencies climate change modelling section * Which was seen as highly important for au to be able to adapt to climate change in the future * Inquiry generated much debate in the media and raised issue to a national concern   MARK SCOTT   * Former ABC Director had to defend ABC against accusation that the program Q&A had made a mistake in allowing a Muslim man in audience to express radical views during a live broadcast * Raised and debated in public hearing – exposing workings of govt funded agencies to scrutiny by parliament   **Parliamentary Joint Committee on Human Rights**   * Human Rights act 2001 establishes the PJCHR * It is a standing committee that scrutinises all legislation and delegated legislation for compatibility with 7 international covenants and conventions to which Australia is bound * PJCHR publishes a report, called a scrutiny report to both houses each week that parliament sits * Report alerts parliament of any human rights concerns that it discovers * PJCHR and scrutiny reports help maintain the status of international convents, protocols and treaties * Ensures all bills and regulations are assessed against the human rights standard they established   **THE COMMONWEALTH AUDITOR GENERAL**   * The auditor general act 1997 creates the auditor general of Australia and the ANAO – a statutory authority of which the auditor general is the head * The auditor general has the role of providing parliament with an independent assessment of selected areas of public administration and assurance about public sector financial reporting, administration and accountability * Grant Hehir was appointed as the AG in 2015 by the PM Tony Abbot * They have a 10 year term and are independent officers of the parliament * The auditor general is a new innovation designed to enhance the ability of parliament to keep the government accountable * Being recommended by the joint committee on public accounts and audit means the AG will be a person with broad bi-partisan support * Important requirement of an officer whose job is to ensure government admin and finance is accountable * The AG conducts audits of all government departments and agencies – whole government * An audit is an official inspection of an organisations operations and finances * ANAO conducts performance and financial audits as well as assurance reviews * **Performance Audit** – An inspection of the way a government department or agency carries out its day to day business * **Financial Audit** – Check the financial statements and records of a government department or agency * **Assurance Review** – Ensures the public service act, public service standards and the code of conduct are adhered to within all government entities – it is a check to see that the government is carrying out its responsibilities using the correct information * An assurance review simply aims to make sure all departments and agencies are up to date with what is required of them   SOPHIE MIRRABELLA   * Went to recontest her seat in 2016 * Made the claim that her electorate missed out on 10m hospital funding when she failed to win her seat * Govt’s not allowed to offer inducements in return for votes * Shorten opposition referred matter to AG * Investigating currently if 10m had been withdrawn because electorate voted out Mirabella in 2013   PARAKEELIA   * Private IT company set up by Liberal Party to collect and create a database of constituents in electorates * Charges liberal party members $2500 a year to access the database * Cw electoral allowance used as payment * Parakeelia donated over 1m to libs over past few years * Possible misuse of taxpayers money to fund a company that donates directly pack to govt   Final word about the AG   * ANAU publishes the better practices guide to assist senior public servants with aspects of good administration * Guide serves to inform and educate senior public sector management * Also publishes a newsletter called audit focus to provide info to all those in public sector about roles and practices of the ANAO * These publications are found on the ANAO website and both inform and alert public servants that there is a watch dog ready to hold them to account for their performance and compliance   **THE ADMINISTRATIVE APPEALS TRIBUNAL**   * Created by administrative appeals tribunal act 1975 * AAT is concerned with the accountability of the public service, government departments and agencies that make up the administrative executive and ministerial decisions * Tribunals adjudicate disputes – they don’t exercise judicial power * Review administrative decisions – government decisions reviewed if disputed * Courts are limited to the law and facts but tribunals can conduct a merit review * Tribunals exercise fairness, informality, efficiency, timeliness, economy * The decisions are fair and no lawyers are involved * Parties represent themselves and present their arugement in plain English * Tribunals don’t interpret or enforce statutes they only check that decisions are fair taking into account merit * The AAT is very powerful and can both vary or change a decision as well as recommend a change to the government * The AAT reviews administrative decisions * Any decision made by a government agency or department in course of carrying out law falls under AATs jurisdiction * AAT may only review decisions where an act says it may * There are currently over 400 empowering the AAT to decide on administrative decisions * Most common cases it reviews are child support, workers compensation, welfare entitlements, migration and refugee visas, taxation and veterans entitlement * There is a wide scope of jurisdiction – covers a broad range of decision making * The AAT is a powerful accountability mechanism * AAT has grown to be a one stop shop for independent review of a wide range of decisions made by the AU government * AAT helps members of the public test in an independent body administrative decisions affecting them to see that their public service has served them well   KASHKOOLI (2016)   * Kashkooli v minister for immigration and border protection 2016 is an example of how AAT works * Armin Kashkooli Iranian citizen who was granted refugee visa * After arriving in Australia committed two minor offences * Applied for Aus citizenship but predated application to may 2014 before convictions – no for any convictions * Application refused on grounds of bad character * Applied to AAT to review decision where it was upheld * Officials decision was held to account   THE PENIS CASE (2014)   * A man injured his genitalia at work when caustic soda was spilt onto his clothes. He failed his legal bit to claim the disability support pension. * Centrelink refused to pay him a pension on the ground that his pain was not significant enough. He appealed to the AAT, but the tribunal riles in favour of Centrelink and therefore could not receive a disability support pension. * despite losing his case, this is an example of how the AAT can be used as a means of disputing Public service/Administrative decisions (Centrelink)   **JUDICIAL REVIEW**   * Courts may check the power of both the public service and the real executive * There is a very strict separation of powers between the executive and the judiciary giving the courts a strong capacity to check government power * Taking the government to court is the ultimate test of lawfulness of a decision and is usually a last resort – expensive and time consuming * Cannot judge merits – only law – may limit scope of a fair decision   **Writ of Mandamus**   * If a court finds a decision has been made that is not in accordance with the law it may issue a writ of mandamus to the government official – S75 gives the federal judiciary this jurisdiction * It is a court order requiring a government to carry or to not carry out a specific act the official is obliged to do by law * Court will interpret the statute, declare its meaning and issue the writ to force government to obey the law   PLAINTIFF S297   * Had been in detention since 2012 * June 2014 HC ordered immigration minister to make a judgement on s297s request for a protection visa * Minister complied and refused request * HC rejected reason * HC decided minister had failed to comply and ordered minister to grant s297 a protection visa   **Judicial Review of Cabinet Policy**   * Law is open to interpretation – statutes are infutro * Often written with broad terms to capture unforeseen circumstances * General terms so can be applied in various situations * Parties may dispute the way a government is carrying out law because they can interpret its meaning differently * Governments policy may be challenged in court and become subject to judicial review   MALAYSIA SOLUTION   * AU signatory to UN convention relating to the status of refugees 1951 * Convention ratified in parts of the migration act 1958 * AU bound to international law on refugees * Adopted in 2011 * Aimed to deter asylum seekers and avoid going back to pacific solution * Deal made with Malaysia * Malaysia would send 4000 processed refugees to au and au would send 800 asylum seekers * David Manne in 2011 argued this wasn’t lawful under s198a of the migration act * Malaysia doesn’t provide suitable protection as Malaysia hadn’t signed the refugee convention * Malaysia solution was declared unlawful by HC   ALSO SEE EXAMPLE – WILLIAMS NO 1  **Define/Explain/Evaluate:**  **Cabinet solidarity, Individual ministerial responsibility, Collective ministerial responsibility, Ministerial codes of conduct, Senate Estimates, Government Inquiries, Public Service, Senior executive service, Westminster conventions of public service, eg: Frank and fearless advice, Auditor General, Administrative Appeals Tribunal, Integrity arm of government, Judicial review** |
| **the extent of the accountability of the Governor General and the Office of the Governor General**   * appointment process * removal process * ‘the 1975 crisis’ * ‘the Hollingworth affair’ | Chapter 13 King et al  ***Example(s):***   * ‘the 1975 crisis’ * ‘the Hollingworth affair’   Governor-General **removal**:   * Commonwealth Constitution is largely silent on the method of removal of the Governor-General – Governor-General holds office ‘during the Queen’s pleasure’ * Governor-General can be recalled or dismissed by the monarch before their term is complete * by convention, removal may only be on the advice of the Prime Minister, who retains responsibility for selecting an immediate replacement or letting the vacancy provisions take effect.   THE 1975 CRISIS: Reserve power is a constitutional power which the Governor-General can exercise independently without requiring the advice of the elected government, the Prime Minister and/or Federal Executive Council   * an example of a reserve power is s.64 of the Commonwealth Constitution by which the Governor-General can appoint or dismiss Ministers. This power was used by Sir John Kerr in November, 1975 to dismiss the Whitlam government without advising the Prime Minister of his intention to do so * a reserve power is different to an express power of the Governor-General which can only be exercised upon the advice of the elected government, the Prime Minister and/or Federal Executive Council.   **Arguments for** could include, but are not limited to: • although the Governor-General used a reserve power available to him, he was also required by convention to advise his Prime Minister of the possibility of him doing so the Governor-General failed to advise the Prime Minister that he had sought the opinions of the then Chief Justice of the High Court, Sir Garfield Barwick, and of another High Court Justice, Sir Anthony Mason, about his ability to dismiss the government through the use of reserve powers the Governor-General did not provide the Prime Minister with a deadline for resolution of the dispute.  **Arguments against** could include, but are not limited to: • Governor-General acted in accordance with the reserve powers granted to him the existence of the reserve powers of the Governor-General were a recognised and established feature of the Commonwealth Constitution, thus the decision was not based on a constitutional fiction the nature of the constitutional crisis required the Governor-General to act as he did without giving advice to his Prime Minister of his intention to exercise his reserve powers.  HOLLINGWORTH AFFAIR: Peter Hollingworth resigned his position as Governor-General of Australia in May 2003 more than three years short of the term for which he had been appointed. His resignation came after nearly eighteen months of controversy over how he had handled cases of sexual abuse of children while in his previous job   * + the Anglican Church report was released on 1 May 2003. Five days later a Herald-AC Neilsen public opinion poll showed 76% to 18% support for Hollingworth’s resignation   + Hollingworth temporarily stood aside on 11 May pending the dismissal of rape allegations   + public support from Prime Minister Howard for Hollingworth but senior Cabinet Ministers suggested that Hollingworth should reconsider his position   + 25 May Hollingworth resigned. Principal lesson in the Hollingworth affair is that the Governor-General cannot survive in office without the confidence of the Australian people. The office is regarded as socially important and is increasingly subject to media scrutiny.   The Governor-General’s tenure lies in the hands of the Prime Minister. Public opposition to the Governor-General’s continuation in office will eventually rebound on the Prime Minister, who will ultimately be forced to urge the Governor-General to resign.  **Define/Explain/Evaluate:**  **Refer to UNIT 3 syllabus of Governor General**  **Conventions regarding acting only on the advice of the Prime Minister.** |
| **the accountability of the courts**   * + through the appeals process   + through parliamentary scrutiny and legislation   + through transparent processes and public confidence   + through the censure and removal of judges, including Section 72 | Chapter 14 King et al  ***Example(s):***  **THE PARADOX OF JUDICIAL INDEPENDENCE AND ACCOUNTABILITY**   * The rule of law demands an independent judiciary – free from interference * How can a truly independent court system be held to account when no other part of the system can judge the judges * Subject to law but need to protect the judicial interests of the whole community – cannot be subject to discipline from anyone else * Court business is conducted in public – transparent system * Judges give reasons for decisions and decisions can be appealed * Judges cannot be punished for wrong or unpopular decisions or even conducting business ineffectively * Potential weakness for the accountability of the courts * Usual methods cannot be used * Only exception is sanction available to parliament – removal of a judge in the case of proved misconduct * Cannot be held to account by the people as are appointed by the government   **THE APPEALS PROCESS**   * Superior appellate courts have judges with a higher level of expertise and experience and power to reverse a lower courts original decision * Appeals impose scruitiny and accountability on lower courts   MALLARD   * Appeals * Convicted by Supreme court of murder in 1994 * Lost an appeal at full bench of supreme court * 12 years in jail * HC eventually quashed original conviction in 2005 * Resulted in a reform to appeals process and the establishment of a separate court of criminal appeal   CESAN AND RIVIDAVIA   * Appeal * Both found guilty of drug trafficking in 2004 * In original trial at NSW district court judge fell asleep frequently and snored loudly * Justice Ian Dodd suffered from sleep apnoea * Appealed on grounds that they hadn’t received a fair trial and that a miscarriage of justice had occurred * Chief justice of HC agreed * Miscarriage of justice – judge wasn’t seen to be upholding his duty   **PARLIAMENTARY SCRUTINY AND LEGISLATION**   * Parliamentary sovereignty ensures that statute law is the superior law * Parliament may override judge made common law by passing statutes   MANDATORY SENTENCING   * Mandatory sentencing laws in WA and NT force judges to jail offenders regardless of the severity of the crime and circumstances of the offender * Usual practice is to allow judges a wide latitude (judicial discretion) * This is so they may take into account the unique circumstances of the case * Mandatory sentencing laws severely restrict the judges capacity to balance the 4 aims of sentencing (rehabilitation, retribution, deterrence, community protection) * Laws reaction by parliament to community perceptions that courts weren’t sentencing harsh enough * Negative example of parliamentary legislation holding courts to account   TRIGWELL V STATE GOVERNEMRNT INSURANCE COMMISSION 1979   * Fatal road accident caused by livestock on roads * Owner of animals who’d failed to prevent them from escaping and insurance company of deceased driver involved in accident sued by Trigwells who survived * Following Searle v wallbank HC rejected plaintiffs claim – owner not responsible * VIC parliament passed wrongs act 1984 to abrogate these two cases * Positive example – good result   MABO V QLD   * Recognised new common law form of land title and called it native title * Abolished legal principle of terra nullius * Entire foundation of au land law thrown into doubt * To clarify new common law cw passed native title act 1993 * Recognised native title but only in certain circumstances and not when freehold title existed * Positive example – good result   **CONSTITUTIONAL ACCOUNTABILITY**   * Judges may be sacked by parliament under S72 of the constitution   JUSTICE LIONEL MURPHY   * Appointed by Whitlam govt to HC – controversial figure * Accused of perverting the course of justice in 1984 * Senate committee established which lead to recommendations he be persecuted * He was found guilty but this was later reversed * Following appeal a commission of inquiry was established to inquire into his fitness to be a HC judge * Murphy became ill and died but had he not become ill commission would have continued   JUSTICE ANGELO VASTA   * OLD supreme court removed by OLD parliament following commission of inquiry into possible illegal activities and associated police misconduct in OLD * Justice Vasta accused of wrongdoing in reaction to company with which his family was associated * Found to be misconduct * He was removed in 1989   **Define/Explain/Evaluate:**  **Access to the legal system, Appeal by right, Appeal by leave, Equity within the legal system, Judicial codes of conduct, Judicial independence, Mandatory sentencing** |
| * **types of rights** (general meaning and examples of each:   + civil   + political   + economic   + social   + cultural | Chapter 15 King et al  ***Example(s):***  **Define/Explain/Evaluate:**  **See below** |
| **the ways human rights are protected in Australia, including in the Constitution, common law, statutory rights, and charter of rights, such as the Charter of Human Rights and Responsibilities Act 2006 (Victoria) and the Human Rights Act 2004 (Australian Capital Territory**  The ways human rights are protected in Australia:  • **the Commonwealth Constitution, explicit and implicit rights**  • **common law rights**, including  -right of access to the courts  -legal professional privilege  -privilege against self-incrimination  -freedom of speech and the press  • **statutory rights**, including Commonwealth and State discrimination laws; State (racial) vilification laws  **• charter of rights** such as the Charter of Human rights and Responsibilities Act 2006 (Victoria) and the Human Rights Act 2004 (Australian Capital Territory) and their limitations in terms of protecting rights.  **the ways human rights are protected in one other country** | Chapter 16 King et al  ***Example(s):***  **AUS – CONSTITUTIONAL LAW**  **Express Rights**   * Section 51 xxxi right to a just compensation for the compulsory acquisition of property by the cw * Section 80 – right to a trial by jury for federal indictable offenses * Section 116- the right to freedom of religion * Section 117 – the freedom from discrimination based on state of residence   **Implied Rights**   * AUSTRALIAN CAPITAL TELEVISION V COMMONWEALTH 1992 was a case in which regulations imposed by the Political broadcasts and political disclosures act 1991 limited political advertising during an election campaign and forced commercial television stations to broadcast at another time * Broadcast companies challenged the constitutionality of this act * Both section 7 and 24 specify that the senate and HOR must be chosen by the people * The HC found that these words create a representative democracy and that such a system implies that the people must be able to hear the arguments of political actors * This means there must exist a right within the constitution to political communication * HC agreed with broadcast companies and struck down the act * No words were changed but a new right exists within the constitution   **AUS – STATUTE LAW**  **Human Rights and Equal Opportunity act 1986**   * Attempted to enact a single, broad and powerful act with a strong human rights commission to enforce human rights * Act created the HREOC * HREOC intended to be a powerful dispute resolution body with powers to hear complaints about HR complaints and make legally binding rulings * Powers were struck down by Bandy’s case in 1995 * HC judged that the commission was not a chapter 3 court and therefore could not exercise judicial power * BRANDYS CASE – struck down powers   **International Law in Australia**   * The convention on the elimination on all forms of racial discrimination- Racial discrimination act 1975 * The convention on the elimination of all forms of discrimination against women- Sex discrimination act 1983 * Declaration on the elimination of all forms of intolerance and of discrimination based on religion or belief – Australian Human Rights Commission Act 1986 * The international covenant on civil and political rights- Australian Human Rights Commission act 1986 * The convention on the rights of a child - Australian Human Rights Commission act 1986 * The convention against torture and other curel, inhuman or other degrading treatment or punishment – Crimes (torture) act 1988 * The convention of the rights of persons with disabilities- Disability discrimination act 1992 * International covenant on economic social and cultural rights * OTHERS * Declaration on the rights of mentally retarded persons - Australian Human Rights Commission act 1986 * Convention concerning discrimination in respect of employment and occupation – sex and age discrimination acts 1983 and 2004   **The Parliamentary Joint Committee on Human Rights**   * Established by HR act 2011 * Standing committee with purpose of scrutinising all legislation for compatibility with the 7 international conventions and covenants Australia has agreed to be bound   **The Intervention**   * In response to the LITTLE CHILDREN ARE SACRED report of board of inquiry into the protection of aboriginal children from sexual abuse the Howard govt implemented the NT national emergency response ‘The Intervention’ * Report highlighted serious legal and social crisis centred around sexual abuse, domestic violence and child abuse in the NT * Howard govt ordered the Au army to intervene and take control of the situation * For intervention to be legal sections of the racial discrimination act 1975 had to be amended * Very easily suspended racial discrimination rights   **CHARTER OF HR AND RESPONSIBILITIES ACT 2006**   * The charter protects and promotes 20 basic human rights mostly derived from the international convenant on civil and political rights * Parliament still sovereign but is accountable to the charter * Led to increased human rights awareness * But judiciary has no power to provide remedies for rights being infringed – focused on prevention * CASTLES V SECRETARY TO DEPT OF JUSTICE 2010 in VIC supreme court * Kimberly castles serving a prison sentence for social security fraud * Prior to imprisonment had been receiving IVF * Requested to continue in prison as she would be too old after * Dept of justice declined her request * She began court action under s47 of Victoria corrections act * Then able to argue she had rights under charter of HR and R for privacy and family * Court agreed- HR hadn’t been considered   **Human Rights Act 2004**   * Very similar to above * NONA V R 2012 * HR act applied in ACT supreme court * Charged with 4 offenses and given warrant in 1998 but finally summoned to trial in 2009- case started in 2012 this was 14 years after original warrant * Applied to have case set aside under HR act he had right to be trialed without delay- denied and he appealed * Judge agreed * Judgement only granted leave to appeal and didn’t provide remedy of having case set aside * Judge decided recognition enough- maybe not to Nona   **COMMON LAW**   * Right to silence * Right to a fair trial * Right to the presumption of innocence   **ANTI-TERROR LAWS**   * Common law rights infringed by anti-terror laws * Since 2001 Au has passed a number of statutes criminalising terrorist acts and providing the ASIO, police and prosecutors with significant powers * Criticised for being in breach of common law rights * Right to fair trial- terror suspects not allowed to hear evidence against them * Presumption of innocence- terror suspects detained in secret without charge for 7 days * Right to silence- terror suspects can be charged for not answering questions   **ASYLUM SEEKER TREATMENT**   * Adopted in 2011 * Aimed to deter asylum seekers and avoid going back to pacific solution * Deal made with Malaysia * Malaysia would send 4000 processed refugees to au and au would send 800 asylum seekers * David Manne in 2011 argued this wasn’t lawful under s198a of the migration act * Malaysia doesn’t provide suitable protection as Malaysia hadn’t signed the refugee convention * Malaysia solution was declared unlawful by HC * Au hasn’t ratified convention so offshore detention and many other methods deemed wrong by the convention still take place in au * Criticised by many to not consider rights of refugees   **EVALUATING PROTECTION IN USA**   * Strong rights culture * Bill of rights constitutional guarantee of rights – highly safe and protected * Empowers judiciary – good as judiciary is independent and can defend rights very robustly against the two other branches of government * Also weakness as judiciary unelected by people can also adopt interpretations and expand outdated rights without any accountability from other arms * Bill of rights does suffer from flexibility * Reliance on bill of rights creates a rights aware society but also a litigious culture * War on terror seems to challenge the idea that the USA has strong rights protection * Resisted many international conventions and covenants and exempted itself from the ICC * How USA judged on rights depends on perspective * Negative viewpoint would focus on the war on terror and the 2nd amendment * But positive would focus on a rights aware citizenry and strong constitutional protection * USA refused to ratify any international human rights agreement since 2002 * USA one of only 7 countries not to ratify the convention on the elimination of all forms of discrimination against women * Other countries not to ratify are Iran, Nauru, Palau, Somalia, Sudan and Tonga – not in good company   WAR ON TERROR   * Guantanamo Bay – military prison for captured terrorists * Outside jurisdiction of American courts in Cuba * Waterboarding – detainees subject to waterboarding * American govt applied narrow interpretation of torture * Classified as enhanced interrogation * Extraordinary rendition – transferring terror suspects to countries with less HR laws * Obama passed exec order preventing it but it didn’t ban it all together   **Define/Explain/Evaluate:**  **Human Rights, Civil Rights, Political Rights, Economic rights, Social rights, Cultural rights, Bill of Rights, Common Law Rights, Constitutional Bill of Rights, Constitutional protections of Rights, First generation rights, Implied rights, Positive and negative rights, Second generation rights, Third generation rights** |
| **The status of international covenants, protocols and treaties in protecting human rights in Australia • the ICCPR (1984) and the extent of its application in Australia** | Chapter 16 King et al  ***Example(s):***  ***See AUS Statue Law example above…***  **Human Rights and Equal Opportunity act 1986**   * Attempted to enact a single, broad and powerful act with a strong human rights commission to enforce human rights * Act created the HREOC * HREOC intended to be a powerful dispute resolution body with powers to hear complaints about HR complaints and make legally binding rulings * Powers were struck down by Bandy’s case in 1995 * HC judged that the commission was not a chapter 3 court and therefore could not exercise judicial power * BRANDYS CASE – struck down powers   **The Parliamentary Joint Committee on Human Rights**   * Established by HR act 2011 * Standing committee with purpose of scrutinising all legislation for compatibility with the 7 international conventions and covenants Australia has agreed to be bound   **Define/Explain/Evaluate:**  **International law, International covenants, International protocol, International Treaty** |
| **the ways in which Australia and one other country can both uphold and/or undermine democratic principles, with reference to:**   * political representation * popular participation * the rule of law * judicial independence * natural justice | Chapter 17 King et al  ***Example(s):***  **POLITICAL REPRESENTATION (types of** DELEGATE, TRUSTEE, PARTISAN AND MIRROR**)**  ways in which people can engage in the political process e.g.; is the activity of making citizens' voices, opinions, and perspectives “present” in the public policy making processes. **Political representation** occurs when **political** actors speak, advocate, symbolize, and act on the behalf of others in the **political** arena; Almost all modern states are too big for direct democracy to work. The solution to this problem is a representative democracy. Citizens elect others to represent their views and make decisions on their behalf. The people always retain their sovereignty.  **Australia Positive**   * Has COMPULSORY VOTING – provides firm expression of the will of the majority achieving majority political representation * The AEC is an independent statutory authority tasked with administering the CW Electoral act 1918 – its independence is a strong guarantee against electoral fraud * Australia’s electoral system effectively blends two different systems ELECTORAL COMPROMISE (proportional and preferential) to achieve a balance of stable government and effective political representation for both the majority of people and minority interests * Preferential provides will of the majority and proportional provides political representation of minorities   **Australia Negative**   * Preferential system HIDES THE CONTEMPORARY DIVERSITY of voting - Tends to consolidate primary votes for minor parties into one of the two major parties – disguising their true electoral support * Led to suggestions of electoral reform – NZ Mixed member proportional proposed * DISENGAGEMENT WITH POLITICS – less than half of 18 year olds enrolled for 2016 * Smaller states over represented – S7 – no chance to improve in referendum * Senate has much better representation of Australia’s diversity where HOR really lacks MIRROR REPRESENTATION * In HOR only 29% women (50% in society) and only 2% are 18-34 (31% in society)   **USA Positive**   * USA uses FIRST PAST THE POST for congress every 2 years * Used to elect both HOR and Senate as well as the President * First past the post simple and easy to understand and also achieves a high degree of political representation of the majority – but only in states that don’t suffer from Gerrymandering – not really any other positives * USA SHORT ELECTORAL CYCLES give more opportunity for political representation to be achieved   **USA Negative**   * First past the post deeply flawed – wipes out any chance of minorities achieving representation * GERRYMANDERING is the deliberate manipulation of HOR electoral boundaries for political advantage – power in hands of self-interested state legislators – allows a minority of votes to win a majority of seats – clear breach of terms of political representation * Money in politics big issue – CITIZENS UNITED v federal electoral commission 2010, demolished the barriers to excessive donations, ruling First amendment of Bill of Rights forbids law limiting political speech – which includes political donations - 2016 KOSH BROTHERS donated nearly $900 million to candidates for congress and presidency * Donations lack transparency and must raise suspicions that money buys political influence at expense of political representation of ordinary people ‘Super PACs’   **POPULAR PARTICIPATION** (think – ELECTIONS, POLITICAL PARTIES AND PRESSURE GROUPS)  Broad interaction (able to take part) of citizens in the direction of and operation of the democratic political system; all citizens are able to be involved and this gives them power and a sense of belonging in democracy. Seeks to ensure that all people can and do have access to participate in the democratic process.   * 1. Derives from the freedom to speak out, assemble and associate, to take part in public affairs, to register as a candidate, to campaign for election and to hold office at all levels of government.   2. The electoral system allows people to vote and through their elected representatives have a say in the running of the country.   3. The citizens' use all forms of social media is a key aspect of popular participation.   The activity of making citizens voices, opinions and perspectives present in the public policy making processes such that citizens can participate in their own government. Participation is enabled by political and civil rights – particularly freedoms of conscience, speech, press, assembly and association. Most popular participation occurs through elections, political parties, pressure groups. Major parties supported by 77% of Australians but political party membership has been in decline for decades. US has only 2 parties than can achieve electoral success. Voters who support minor parties waste their votes  **Australia Positive**   * ELECTORAL PARTICIPATION - Australian elections fair * Roach 2004 – protects the right to vote. * Australia’s use of a centralised national electoral system administered by AEC combined with compulsory voting results in much greater popular participation through elections than in the USA * CONSTITUTIONAL IMPLIED RIGHTS OF FREEDOM OF POLITICAL COMMUNICATION - ACTV, THEOPHANOUS & LANGE CASES * COMMONWEALTH ELECTORAL ACT 1918 * Reduces need for donations and influence of money in politics * POLITICAL PARTIES - The diverse range of political parties capable of winning seats demonstrates a high degree of effective participation in law making and governing for their members and supporters (THE GREENS, ALP, LIBERAL PARTY) * PRESSURE GROUPS -The wide range of pressure groups in Australia provides for pluralism in politics – that is a good thing. (SEE PRESSURE GROUPS AND LAW-MAKING SECTION UNIT 3)   **Australia Negative**   * ELECTORAL PARTICIPATION - Declining registration of younger voters and increasing tendency for voters to cast early postal and pre-votes issue * Reinstating lower thresholds for POLITICAL DONATIONS would improve transparency of money in politics and reduce its influence * POLITICAL PARTIES - Declining membership in political parties for decades. * PRESSURE GROUPS - Few powerful corporatist sectional pressure groups distort popular participation CORPORATISM – is a danger to democracy – and that is a bad thing.   **USA Positive**   * ELECTORAL PARTICIPATION - USA has CONSTITUTIONALLY GUARANTEED first amendment rights for popular participation * Ensure equal rights to participate for all Americans, voluntary voting system. * POLITICAL PARTIES Greater participation in the choice of candidates through primaries and caucuses makes this more democratic (rise of trump) * PRESSURE GROUPS used to offer political voice. BUT sectional pressure groups NATIONAL RIFLE ASSOCIATION (NRA).   **USA Negative**   * ELECTORAL PARTICIPATOIN - VOLUNTARY VOTING SYSTEM – only 55% voted in 2016 presidential election * Millions of illegals in America who have lived in USA their whole lives but cannot vote * PROBLEMATIC ELECTORAL SYSTEM – influence of money and partisan control of processes * Not as many political parties – presidential elections are dominated by money and the two major parties * POLITICAL PARTIES – only two viable options – democrats and republicans, because of FPTP.   **THE RULE OF LAW**  All individuals are equal before the law and the laws apply to the actions of government as well as the actions of individuals and rejects arbitrary and absolute power. Laws are clear, consistent, transparent, predictable and accessible with the community able to participate in the law-making process. Laws are adjudicated in independent and public courts. Disputes arising from the law are settled in a fair and efficient manner using predictable and consistent practices.  **Australia Positive**   * Cover rule of law fairly well * CONSTITUTIONAL FRAMEWORK that supports SOP - A strong written constitution with fairly well observed conventions that are generally followed * THE HIGHCOURT – sections 75 and 76 (original jurisdiction) * JUDICIAL REVIEW – Williams No 1 & Malaysia Solution)   **Australia Negative**   * Ignored international law on matters relating to REFUGEES & ASYLUM SEEKERS * Retrospective laws breach the rule of law – found to be constitutional by HC in R v Kidman 1915 * Migration amendment act 2015 is an example of reterospective law * MANDATORY SENTENCING – reduces judicial discretion in sentencing * ANTI-TERROR LAWS - Commonwealth law. Reverse the onus of proof, and denies the right to silence and the presumption of innocence. * ANTI-BIKIE LAWS – freedom of association.   **USA Positive**   * Very similar to AU * STRONG RIGHTS CULTURE * But a stronger SEPARATION OF POWERS – strong judiciary * No retrospective laws – Article 1 Section 9 Clause 3 prohibits congress from passing ex-post facto law. * In the United States the President is not above the Law. This can be seen through the NIXON AND WATERGATE SCANDAL 1974. * Supreme Court has the power to examine the constitutional validity of legislation e.g. Cooper v Aaron (1958), Stogner v California (2003) - government can't retroactively void statutes of limitations in criminal cases   **USA Negative**   * Lack of transparency * Not as fair trials – extremely expensive * War on terror an issue – PATRIOT ACT – suspects of terror offences – prevented from finding out what they are accused of + interception of communications without a warrant. * DETAINING – enemy combatants outside the USA so they outside the jurisdiction of courts. * BREACH OF INTERNATIONAL law – drone strike assassinations in territory of other countries whom USA is not at war.   **JUDICIAL INDEPENDENCE**  Separation of the judiciary from the other arms of government and making it free from interference and intimidation. Essential for effective judicial review  **Australia Positive**   * STRONG INDEPENDENT JUDICIARY – achieved by Chapter 3 of the constitution S71 vests judicial power in HC and S72 guarantees judicial independence by protecting judges from the arbitrary removal of reductions in their pay. Judicial independence further enhanced by in at least 2 S71 cases - BOILERMAKERS CASE 1956 AND BRANDY’S CASE 1995 both narrowly defined and defended judicial power – held only ch3 courts could exercise judicial power * Via section 75 and 76 the High Court is the only court that can interpret and here cases related to the constitution. PLAINTIFF M68/2016 V. MINISTER FOR IMMIGRATION AND BOARDER PROTECTION 2011. A Bangladeshi asylum seeker on Nauru challenged the lawfulness of her detention under the Migration Act 1958, claiming that it was unconstitutional. The High Court ruled (under section 51(xix)) the Commonwealth has the legislative power to establish offshore detention – under *aliens’ power*. * HC judgements are law and cannot be overturned by parliament – though they can be circumvented by legislation – as long as it is deemed constitutional – WILLIAMS 1 AND 1 AND MALAYSIA SOLUTION   **Australia Negative**   * MANDATORY SENTENCING – reduce the capacity of a judge to apply an appropriate sanction. * COMMONWEALTH STATUTORY CHARTER OF RIGHTS, would increase judiciary to defend basic freedoms and rights. Plus encourage dialogue between Parliament and Courts. * ANTI-TERROR LAWS – potentially dangerous to civil liberties. Compromise the independence of the judiciary. * HC justices appointed by GG on advice of PM (selection of justices based on political bias).   **USA Positive**   * The United States achieves judicial independence through ARTICLE 3 of the constitution. Section 1 vests judicial power to the Supreme Court and other courts created by congress. It also states that judges may hold office ‘during good behaviour’. There are also other sections in this article that protect the judiciary from political pressure – lifetime appointment and salaries cannot be diminished. * ARTICLE 2, Section 2 states that the President shall, with the advice and consent of the Senate, appoint the judges of the Supreme Court. * Articles 1 and 2 allow judges to be impeached in the same way as any other federal official if their conduct is deemed not of ‘good behaviour’. * SUPREME COURT – asserts its own jurisdiction over detainees at Guantanamo Bay against the policy of President’s administration (asserting its independence).   **USA Negative**   * 7 states ELECTING JUDGES – exposes them to partisan political processes – bias is an inherent part of partisanship his undermines the most fundamental quality of a judge – impartiality. Abolishing practice of electing judges would significantly improve the judicial independence in the US - Alabama, Illinois, Louisiana, New Mexico, Pennsylvania, Texas, west Virginia   **NATURAL JUSTICE**  Impartiality, fair hearing, transparent processes, evidence-based decisions (rules of evidence). DECISIONS ARE FREE FROM BIAS. Right of individuals to have access to court proceedings before an unbiased judge. Both Australia and the US share almost identical mechanisms to solve disputes – both use the adversarial trial system.  **Australia Positive**   * FORMAL AND INFORMAL DISPUTE RESOLUTION both courts based and ADR are excellent – firmly based on principles of natural justice * Procedures of adversarial trial and mechanisms of ADR are well established and supported by legislation – CW EVIDENCE ACT 1995 legislates the rules of evidence, AUSTRALIAN HR COMMISSION ACT 1986 requires HR commission to use conciliation to resolve disputes, THE FAMILY LAW ACT 1975 forces parents disputing custody to settle these emotional disputes through ADR before court – all these laws entrench natural justice in statute law * DIETRICH CASE 1992 found common law right to legal representation – led to creation of legal aid for criminal cases in AU helping to improve the ‘hear both sides’ part of natural justice * Strong sense of trust in the courts   **Australia Negative**   * Adversarial system TIME CONSUMING AND EXPENSIVE – barrier to achieving justice. ADR aims to solve these two problems * Role of LEGAL AID could be expanded – for those who cannot afford legal representation. Usually only for criminal trials and is means tested. * Natural justice for aboriginal Australians – who reflect a disproportionately high % of criminal justice system trials and are in prisons. * MANDATORY SENTENCING extremely negative in terms of natural justice. * Arbitrary detention for terrorisms, not being told what they are accused of and the denial of the presumption of innocence. This is an undeniable breach of their right to natural justice as it is blatantly denied.   **USA Positive**   * The BILL OF RIGHTS guarantees some legal rights - right to impartial jury, rules of evidence, right to silence etc… * RULES ENABLING ACT 1934 – enables Supreme Court to determine processes and procedures of adversarial trial and rules of evidence. * ADR act passed by congress in 1988 – for quicker and cheaper merits-based dispute resolution. * Legal services corporation established in 1970s to provide funding to legal aid services which provide legal assistance to the poor   **USA Negative**   * USA OVER RELIANT ON LITIGATION to resolve disputes – extremely expensive * Growing levels of income and wealth inequality mean that more people are increasingly unable to use the courts to achieve natural justice – legal aid services are underfunded. * Terror suspects are detained for up to 14 days without trial – 6th amendment Right removed.   **Define/Explain/Evaluate:**  **Review these definitions but consider the “one other country”, probably USA, and have examples and points for each of the democratic principles.** |
| **the experience of ONE group in the Australian political and legal system.**  The changing experience of **Indigenous Australians** with respect to their political and legal rights | See booklet  ***Example(s):***   * The changing experience of **Indigenous Australians** with respect to their political and legal rights   HISTORY - indigenous Australians – there are many inequalities and they often have a negative experience in the political and legal system in Australia.   * Australia federated in 1901, Aboriginal people were excluded from the census and were therefore not counted as part of the population. * The constitution also excluded Aboriginal people from the law, social service benefits and post office employment. * Nor were Aboriginal people given the vote in their own land.   **LEGAL** – TERRA NULLIUS (struggle for native title recognition)   * + Colonial law was used to sanction the removal of Aboriginal people from their lands.   + This was reinforced by doctrine of terra nullius – removed Aboriginal people’s rights to the land.   + In 1992 the High Court of Australia recognized that the application of the doctrine of terra nullius in Australia was based on the error of early colonial perceptions of Aboriginal people.   + In MABO V STATE OF QUEENSLAND, NO 2 (1992)   + Native Title Act 1993 - is a law passed by the Australian Parliament the purpose of which is "to provide a national system for the recognition and protection of native title * INDIGENOUS PEOPLE AND THE AUSTRALIAN CONSTITUTION:   + Discrimination against Indigenous people also existed at federal level.   + Section 25 of the Constitution contemplates electoral disqualification based on race.   + Until 1967 REFERENDUM, S51(XXXI) of the Constitution provided that the Commonwealth could make laws for “the people of any race except the Aboriginal race” (effectively leaving them in the hands of the States), and they were not counted in the census (s 127).   + Call for indigenous recognition in the constitution * THE 1967 REFERENDUM   + Recognised that the interests and welfare of Australia’s Indigenous people was a national responsibility.   + Section 51(xxxi) of the constitution now provides that the Commonwealth may make laws for “people of any race”.   + So 1967 referendum meant that it was the first time Aboriginal people were counted as part of the Australian population and the CW government was given powers to deal with Aboriginal issues.   Important federal laws which rely on the “race” power are:  *SECTION 51 (XXXI):*   * *Aboriginal Land Rights (Northern Territory) Act 1976* * *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* * *Native Title Act 1993* * *Aboriginal and Torres Strait Islanders Peoples Recognition Act 2013*   The Aborigines Protection Board   * + Aboriginal people forced to move from their traditional lands to camps on missions or reserves.   + REGULATION OF ABORIGINAL LIFE   + In 1909 NSW govt enacted the *Aborigine Protection Act* provided for a Chief Protector of Aborigines and an Aboriginal Protection Board.   + *These powers allowed for the regulation of Aboriginal peoples lives.*   + *Aboriginal people encountered constant restriction and humiliation through:*   + *Permission requirements – could not marry without permission*   + *Punishment for traditional practices*   + *Requirement for corroboration of evidence*   + *The dog license*   + *Removal of children – stolen generation*   **POLITICAL:** VOTING RIGHTS **&** MEMBERS OF PARLIAMENT  VOTING RIGHTS:   * In 1949 there was a compromise – the Commonwealth Parliament granted the right to vote in federal elections to Indigenous people who had completed military service or who already had the right to vote in their state (Commonwealth Electoral Act 1949). * In March 1962 the *Commonwealth Electoral Act* was amended to provide that Indigenous people could enrol to vote in federal elections if they wished. Unlike other Australians it was not compulsory for them to enrol. It was also an offence for anyone to use undue influence or pressure to induce them to enrol. Once they enrolled, however, voting was compulsory. Only compulsory in 1983. * In 1962 THE RIGHT TO VOTE in state/territory elections was also extended to Indigenous people in the Northern Territory and Western Australia. * Finally, in 1965, Indigenous people around Australia gained the same voting rights as other Australians when Queensland followed the other states and permitted Indigenous people to vote in state elections. * Low levels of voter turnout especially in remote communities.   MEMBERS OF PARLIAMENT: LACK OF LEGAL PARTICIPATION / REPRESENTATION;   * NEVILLE BONNER became Australia's first Aboriginal parliamentarian when he was appointed to represent Queensland in the Senate in 1971. * Five indigenous Australian people have been members of the Parliament of Australia (the federal parliament) four in the Senate and one in the House of Representatives. * In the legal system there has only been one Aboriginal Judge and one Magistrate. |

****