

# VCE AUSTRALIAN POLITICS

## UNITS 3 & 4

### *Student Survival Pack*

WRITTEN FOR THE 2018 – 2022 STUDY DESIGN



SOCIAL EDUCATION VICTORIA

# Issue 1

## UNIT 3 AREA OF STUDY 1 'AUSTRALIAN DEMOCRACY'

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- ✓ *analyse the operation of electoral systems and the parliament*
- ✓ *evaluate the extent to which democratic values are upheld by the Australian political system*

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### KEY SKILLS:

- ✓ *analyse the operation of electoral systems and the parliament*
- ✓ *evaluate the extent to which democratic values are upheld by the Australian political system*
- ✓ *evaluate the democratic strengths and weaknesses of the Australian political system*

### KEY

- the functions of the parliament – House and Senate
- the role of political parties in parliament
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## FOREWORD

This digital series is designed to help you, the student, master the content in the Australian Politics course as well as improve your skills. You could use it in conjunction with the free SEV Australian Politics updates and with any other resources your teacher may give you. The aim is to cut through to the essentials and to save you time. Each edition will deal with one of the Areas of Study (in order) and will be released throughout the year onto the free Campion MyConnect app. Release dates are January, March, June and August. Students purchasing these packs will also have access, via the SEV website, to additional resources and updates on events as they occur.

Throughout this text, you will be given the opportunity to apply, explain, analyse, evaluate and critically compare – all key task words that can appear on an Australian Politics examination. And although there is a substantial amount of explanation and a number of case studies, you should be prepared to do your own research throughout the year and gather your own evidence from what's happening in Australia and the world. That's one of the great satisfactions of this subject!

Although the contents of this edition will closely follow the Australian Politics Study Design, we are not reproducing the Study Design for you; we strongly advise you to download your own copy from the VCAA website and use it to guide your note-taking.

<https://www.vcaa.vic.edu.au/curriculum/vce/vce-study-designs/ausglobalpolitics/Pages/Index.aspx>

*You should become so familiar with the Study Design that you could recite it in your sleep.* Everything in the study design, (the introductory questions, the blurb that precedes the Key Knowledge, the Outcomes, the Key Knowledge and the Key Skills) is examinable.

You should also become familiar with the VCAA Advice for Teachers (which contains a glossary) and the Frequently Asked Questions, the answers to which have the same status as the Study Design.

The material in this text is organised to cover the basics of the Study Design's Key Knowledge and to emphasise the mastery of the Key Skills. We will provide some model answers, some tips and plenty of questions for you to practise. We encourage you also to memorise the key terms in each Area of Study and practise applying them to the case studies provided in this text. This will help you gain a more sophisticated understanding of the content.

Additionally, this text will use the content of each of the Areas of Study in a blended and integrated way, so that what you will learn in Unit 3 Area of Study 2 or Unit 4 Area of Study 1, for instance, could also appear in issues of this series that deal with other areas of study.

Finally, we welcome your feedback. The authors can be contacted by emailing SEV at [admin@sev.asn.au](mailto:admin@sev.asn.au)

We hope you enjoy your study of VCE Australian Politics.

# Unit 3 AOS 1 “Australian Democracy”

## CHAPTER 1:

The entire focus of Unit 3 is the evaluation – the judgement – about the extent to which Australia’s political system is democratic; the extent to which the various institutions, such as the Parliament, the Electoral System and the Constitution itself, conform to democratic values in the current political climate. (Remember that all your examples and evidence must be from the last ten years).

In this Area of Study, you must be able, firstly, to describe and explain what ‘democracy’ means and how the key features of Australia’s democracy work. Once you can do this you will then be required to discuss, analyse and evaluate the operation of Australia’s political institutions in terms of their democratic strengths and weaknesses.

If you look carefully at the ‘Contents’ pages, you will see that all the Key Knowledge dot points of the Study Design are there, though they may be organised slightly differently. The approach in this text is to first examine the basic facts and characteristics of each of the institutions, follow this up with a discussion of some of the issues that are associated with our democracy and then consider some case studies that highlight the issues. **We have included the relevant Key Skills from the Study Design at the beginning of each section so that you can practise thinking about the Key Knowledge in terms of what you are meant to do with it.** Following that, you will be introduced to some typical exam style questions, which in most cases will be accompanied (initially) by model sample answers or tips. After that you’re on your own!

## How our democracy is meant to work

You could say Australia’s political system was born out of compromise and risk management. The push for uniting the colonies into an independent federation was driven by concerns about the risks associated with our geographical position – thousands of miles from Britain and the rest of Europe; defence, immigration and trading questions were all ingredients in the mix. There were also the vested interests of the existing colonies and their premiers to deal with. None of them wished to give away too much of their power or dilute the special characteristics of their very different colonial settlements. On the other hand, **most** (not all) of the colonies recognised the opportunity to establish a new type of political culture based on democratic principles and **all** were united in wanting to retain ties with Britain.

So, they drafted a constitution that aimed to be all things to all ‘men’ which was democratic *within the bounds of what was possible if the monarchy was to be retained*. Power was very carefully shared while the existing interests of the colonies were constitutionally maintained. How? Certain sections of the constitution set up a division of powers between the national government and the state governments and the American system of equal representation of all states in an upper house of Parliament – a Senate – was adopted. This is why Australia’s democracy is sometimes referred to as the ‘Washminster’ system: a blend of the British Westminster system and the federal setup in Washington.

**The Constitution (\*Key Term\*)** is the founding legal document that sets out the democratic values and the powers of the new national government. It was motivated by two key concerns: firstly, that Australia was established as a **constitutional monarchy (\*Key Term\*)** under the British Crown and secondly, that the new national government (*the Government of the Commonwealth of Australia*) could not be too powerful. These two motivations, taken together, required that we become a **representative** and a **liberal democracy (\*Key Terms\*)** based on the British parliamentary system known as **Responsible Government (\*Key Term\*)**. Further, the problem of **limiting** the power of the national government, while **preserving** the powers of the colonial governments, could be solved by the political arrangement known as **federalism (\*Key Term\*)**.

## Approach to the Key Terms

As you can see from the preceding paragraph, the Key Terms will be introduced as needed. You are strongly advised to set up a word document that is solely devoted to the key terms, any issues associated with them, and ways they can be applied to current Australian political practice.

### STUDY DESIGN

*to democratic theory and practice in Australia*

#### YOUR TASK

1. Go to the Glossary page of VCAA: [Australian Politics Glossary](#)
2. Copy the key terms and their definitions into a new Word Document.
2. **Think about the key terms** and write down (under each definition) any issues you can see that could be associated with the 'terms' in the Australian context. (Each of the Key Terms, *in the context of Australian Politics*, has at least one possible issue associated with it. For example, some issues associated with the Australian Constitution could be that it has no Bill of Rights, no recognition of indigenous Australians and no ability for a citizen-initiated referendum to change it.) **Now reread the paragraph at the top of this page, making sure you understand what it is saying.**
3. Search the current news for any **articles** that contain examples of the issues that are associated with the key terms.



**We have done one key term for you, but you can find more articles from the daily news and you should do the same for the other terms listed below.**

#### HERE:

[https://www.aph.gov.au/About\\_Parliament/Senate/Powers\\_practice\\_n\\_procedures/Constitution.aspx](https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Constitution.aspx)

Click on the link and begin to understand the structure of the constitution – which chapters deal with what!

## KEY TERM: THE CONSTITUTION

This refers to a written document which provides the framework for a government's powers. It may also contain a Bill of Rights, as in the USA.

### POSSIBLE ISSUES

- Does the Australian Constitution adequately protect human rights?
- Is it too difficult to change or too easy to change?
- Should citizens be able to demand a referendum?
- Does the Australian Constitution reflect the reality of who exercises political power in Australia?
- Is the Australian Constitution relevant to today's society, which is characterised by rapid technological change and global issues such as climate change?
- Should there be some kind of recognition of indigenous peoples and their historical and ongoing relationship with this land?

*Interesting article:* [Changing the constitution was always meant to be difficult - here's why!](#)

**DO THE SAME WITH THE OTHER KEY TERMS THAT ARE RELEVANT TO THIS QUESTION OF HOW OUR DEMOCRACY WAS INTENDED TO WORK.**

## KEY TERM: CONSTITUTIONAL MONARCHY

A political system with a hereditary monarch, whose powers are limited by a constitution.

## KEY TERM: RESPONSIBLE GOVERNMENT

The term used to describe a political system where the executive government, the Cabinet and Ministry, is drawn from, and accountable to, the legislative branch.

## KEY TERM: REPRESENTATIVE DEMOCRACY

A political system where people vote for other citizens in free and fair elections, to act on their behalf in the legislative branch.

## KEY TERM: LIBERAL DEMOCRACY

A political system that combines two principles of political theory: that individuals have rights (liberalism) and that political rule should be by the people (democracy). Liberal democracies usually pursue policies that encourage capitalism and private sector involvement in the economy.

## KEY TERM: FEDERALISM

A system of government in which law-making powers and responsibilities are constitutionally divided between a central, national government and a series of state or regional governments. Both Australia and the USA operate a federal system of government.

## SUMMARY OF KEY POINTS

1. **The Founding Fathers** wanted to establish a new **democratic** self-governing nation. This required a **representative democracy**, established in a written **Constitution**.
2. They wanted the powers of the existing colonies to be retained but transformed into state governments, while establishing limited powers for a new national government. This required **Federalism**.
3. They wanted to retain ties with the British Monarchy and so they had to establish a **constitutional monarchy**, headed by a Governor General to represent the Queen.
4. They wanted **parliamentary democracy** based on the British Westminster system. This is known as **responsible government** – completely different in operation from the American Representative Republic. (This will be explored in greater depth in Area of Study Two)
5. They wanted to make sure that all the new states (old colonies) were equally represented in a **bicameral parliament** (*two houses of parliament*). So, they borrowed the American idea of an upper law-making house that would represent the states (known as the Senate for both Australia and America) and combined it with the English idea of a lower house that would represent the people. (The British *House of Commons* became the Australian *House of Representatives*).
6. They introduced elements of **liberalism** into the Constitution, such as the ability for the people to change the constitution by referendum and the provision for some rights to be guaranteed. For example, s.116 forbids the Commonwealth to establish a religion or religious observance or to ban the free exercise of any religion.
7. **Other key concerns of the founding fathers**, however, were to protect individuals from excessive government power, through the establishment of the rule of law and an independent judiciary, as well as providing constitutional guarantees of some economic freedoms. Australia's **liberal democracy** is of a different, less individualistic character to America's - more on that later.

**TAKE THE QUIZ!**

## CHAPTER 2:

**KEY SKILL:** explain the key values and principles of liberal democracy

**KEY KNOWLEDGE:** the key principles and values that underpin a liberal democracy

Every institution and process covered in Unit 3 is measured against the extent to which it is democratic; therefore, you really need to understand what the principles of democracy actually mean. Arguably, the most important of these principles is popular sovereignty; without this there can be no democracy, regardless of what other principles are upheld.

### 1. Popular Sovereignty (popular = of the people; sovereignty = supreme authority)

In simple terms, this refers to the belief that political power essentially belongs to the people of a community and that government of that community must rest upon the people's consent. Not everyone agrees that this should be the case and in fact, even in democracies, there can be competing theories. But as long as the people have some *effective* say in who governs them and how they are to be governed, then it is fair to say that popular sovereignty exists.

Mechanisms for achieving popular sovereignty (i.e., giving people an effective say in who governs them and how) are the following:

- free, fair and frequent elections;
- a constitution setting out how people should be governed and which has their approval;
- the ability of the people to participate and influence the law-making process through committees or submissions or demonstrations / lobbying / petitions etc.
- the existence of an elected Opposition to challenge government and present alternatives
- a separation of the three basic functions of government: if these three functions are concentrated in the hands of one individual or group, the people have been disenfranchised and cut off from decision-making. (See KEY TERM: Separation of Powers' below)
- a free media – citizens need the ability to know what is going on in government if they are to have a meaningful ability to choose their representatives and monitor policies.

**CURRENT EXAMPLES:** the *will of the Australian people* (popular sovereignty) can be undermined by both internal and external challenges. **Chinese and American influence on Australia's politicians; the ability of billionaires like Clive Palmer or Rupert Murdoch to influence election campaigns and Federal Government legislation in relation to whistle blowers or protection of journalist's sources** are some things that you could research. There is also this interesting article from the online journal *Independent Australia* which argues that our politicians are no longer listening to us!

[The Bushfire Calamity and Australia's Rogue Parliament](#)

2. Necessary accompanying principles are **Majority rule and respect for the rights of minorities**. Political philosopher, **John Locke**, argued that government should be based upon the consent of the majority and that specific acts of government should reflect the will of the majority. He reasoned that if all people are equal in the sight of the Creator, then no one person's opinion should have more weight than any other; thus, the fair thing to do was to make decisions based on the greatest number. Modern elections reflect this *majoritarian* principle. Outcomes are decided either by a simple majority (the person with the greatest number of votes), an absolute majority (the person with 50% of the votes +1) and in some cases, such as referenda in Australia, a double majority (a majority of voters in a majority of states).

However, some found this proposition alarming. Another political philosopher, **John Stuart Mill**, reflected that this system might lead to a tyranny by the majority which would end up persecuting minorities and individuals. He argued that there needs always to be protection of the rights of minorities and individuals going hand-in-hand with majority rule. Some voting systems reflect this idea; for instance, the proportional voting system used to elect the Australian Senate, where a mathematically determined quota, rather than a majority, is used to elect Senators. Likewise, some constitutions enshrine the rights of all as a protection against abuse by governments or institutions (The United States Bill of Rights, for example,) and some pieces of legislation, such as Australia's Racial Discrimination Act 1975, which makes it unlawful to discriminate against people on the basis of race, colour, descent or national or ethnic origin.

**CURRENT EXAMPLE: the 2016 plebiscite on marriage equality was seen by many as giving the majority the opportunity to tyrannise over a minority.** If something is seen as a fundamental right of all persons regardless of sexual orientation, then it is the job of a democratic government to guarantee that right *without* the approval of a majority of citizens. This example shows how contested and difficult this idea of majority rule and minority rights can be, especially in areas that have historically not been regarded as a 'human right' or in areas that run up against religious views of what marriage should be. For two opposing perspectives, see [Tyranny of the Majority: a plebiscite betrays liberal principles](#)  
[Why we should have a same-sex marriage plebiscite](#)

3. **Equality:** though this is not specifically mentioned in the Study Design, it is a 'given' in **liberal democratic theory**.

Equality does not mean that all people should be the same or have the same assets (that would be closer to socialist or communist thinking). It does mean, however, that all people should have equal opportunities to live full and happy lives; that no-one should be discriminated against, that everyone is deserving of the same human, civil and social rights and that no citizen's vote should be worth more than any other citizen's vote. It would contradict democratic principles if certain groups had entrenched access to power or if the opportunity to participate in democratic decision-making was not afforded to all, equally.

Finally, the next democratic principle, the **Rule of Law**, recognises the importance of the equality of all people in a truly democratic society. Needless to say, even a very superficial consideration

of a number of democratic societies demonstrates that universal equality of opportunity and power does not exist, though some democracies are better at it than others.

4. **The Rule of Law:** this refers to the idea that all people in a democracy should be equally bound by the laws of the land. This includes those with power. It is the cornerstone of a free society, because it rests on the agreement of the citizens to be bound by the laws enacted by their elected representatives. But it also requires an independent judiciary. The Judges and the courts must be free from political interference; they must be able to apply the law equally to all.

#### KEY TERM: RULE OF LAW

The democratic principle that all people are equal before the law including members of the executive, and that all government action will be undertaken in accordance with the law.

Most importantly, in a democratic society the actions of government must be in accordance with proper legal process; people must not be arbitrarily arrested or detained; neither should they be charged with an offence that did not exist at the time it might have been committed. People are entitled to know the law, to criticise the law and in Australia, to be considered innocent until proven guilty. In this way, it is 'the law' that has supreme authority and if it is to be changed, it must be by open, transparent and representative methods.

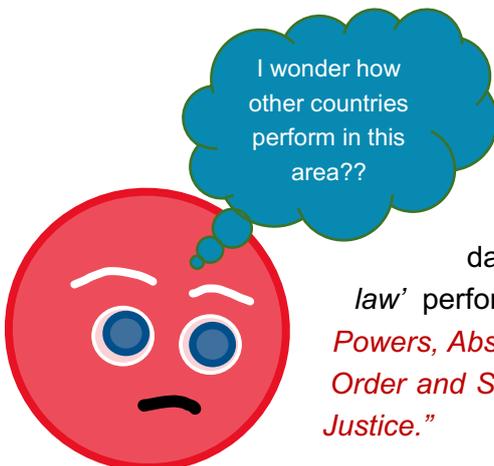
**CURRENT EXAMPLES:** *In the US*, a group known as Republicans for the Rule of Law, are running an advertising campaign aimed at educating voters on what they see as Donald Trump's over-riding of the Rule of Law as a result of his gagging of various members of his administration from testifying at his impeachment hearings.

See [Republican group hits Donald Trump with a new billboard campaign](#)

*In Australia*, the UN Human Rights Council ruled in April 2016 and again in September 2018, that Australia's detention of genuine refugees was illegal on the basis that it was arbitrary and contravened international human rights law. It said that Australia had failed to make the case that the refugees were genuine security risks.

See [Australia's indefinite detention of refugees illegal](#) and

[Australia reported to UN Human Rights Council over illegal detention of asylum seekers](#)



I wonder how other countries perform in this area??

#### ***"The World Justice Project Rule of Law Index®***

measures how the rule of law is experienced and perceived by the general public in 126 countries and jurisdictions worldwide based on more than 120,000 household and 3,800 expert surveys. Featuring primary data, the WJP Rule of Law Index measures countries' 'rule of law' performance across eight factors: *Constraints on Government Powers, Absence of Corruption, Open Government, Fundamental Rights, Order and Security, Regulatory Enforcement, Civil Justice, and Criminal Justice.*"

The 2019 report found that authoritarianism was on the rise world-wide, especially in terms of one of the factors mentioned above - "Constraints on Government Powers". This factor measures "the extent to which, in practice, those who govern are bound by governmental and non-governmental checks such as an independent judiciary, a free press, the ability of legislatures to apply oversight, and more. Over the past four years, Poland, Bosnia and Herzegovina, and Serbia have lost the most ground in this dimension of the rule of law." <sup>1</sup> (If you want to see an interactive map with details on the 126 countries, go to [world justice project data](#).)

5. **Protection of Rights and Freedoms:** Today, Human Rights are definitively expressed in a number of international declarations and treaties, which states can adopt as their own through ratifying these treaties. Ratification means that states undertake to incorporate the key provisions and obligations of the treaty into their own domestic legislation. One example is the Convention Against Torture. Human rights and freedoms are understood as being **universal**; that is, they apply equally to all people regardless of any difference; **inalienable**, meaning that they are inherent to human beings and cannot be taken away and **indivisible**, which means that they are dependent on each other. For example, you cannot be guaranteed civil and political rights unless you can also be guaranteed economic, social and cultural rights.

Liberal democracies prioritise the rights of the individual over the needs of the state. Many mechanisms are designed to protect individual citizens in a democracy from an excess of state power or from exploitation and abuse by powerful groups or institutions. Such mechanisms include

#### **KEY TERM: EXECUTIVE (Australia & USA)**

The executive is the government and has the function of carrying out or administering the law. In Australia, the Governor General and ministers of the governing party carry out this role. In the USA, the President and members of the cabinet carry out this role.

#### **KEY TERM: LEGISLATURE**

The institution which has the function of making and debating the law. The key federal law making body in Australia is the Parliament. In the USA, it is the Congress.

#### **KEY TERM: JUDICIARY (Australia & USA)**

The judiciary refers to the courts which interpret and apply the law. This role is carried about by the courts; in particular, the High Court (in Australia) and the Supreme Court (in the USA). In a democracy, the judiciary should be independent of the executive and legislative branches.

#### **KEY TERM: SEPARATION OF POWERS**

The principle that the three branches of government, the legislature, the executive and the judiciary, should be kept independent and act without interference from each other as means of decentralizing and preventing abuse of power. In Australia, the separation of powers is blurred as the executive and legislative branches are combined; in the USA, the separation of powers is very clear.

constitutional Bills of Rights, statutory legislation, checks on government power such as elections, federalism, an independent court system with rights of appeal, the **separation of the three branches of government, (executive, legislative and judicial)**; free, fair and frequent elections and international treaties.

It is worth noting that the universality of human rights is not accepted by all people and that even in democracies, many states do not adhere to the principles enshrined in the major human rights treaties.

6. **Citizen Participation:** this simply refers to the ability of citizens to participate in civic life and democratic decision-making. This is important as it extends popular sovereignty to many aspects of government that influence us daily and which lie beyond the ballot box. It is also important to the maintenance of a democratic political culture; that is, a culture in which democracy and democratic principles are valued and exercised by all the citizens on a regular basis. Societies in which there is media censorship, no freedom of information, no ability to protest or demonstrate, no ability for ordinary citizens to run for office or join a union or similar organisation cannot be said to be democratic. Equally, societies where there is political disinterest and apathy or where there is little knowledge and understanding of political processes and institutions, are societies where democracy is vulnerable.
7. **Representation:** In modern societies where there are millions of citizens, direct democracy is neither practical nor possible. Thus, the great majority of today's democracies are **representative democracies**. Political Power is given to **representative governments** of which there are a number of different types, the two chief types being **constitutional monarchies** and representative republics.

#### KEY TERM: REPRESENTATIVE GOVERNMENT

Refers to a political system where the **legislative and executive functions** are carried out by citizens who have been elected to make decisions on behalf of the people.

For representation to be effective, it must be reflective of the will of the people. This has problems, though! Society is diverse and made up of many different groups and interests. How can we determine what is actually an accurate representation of all these groups and interests? What kind of representation is going to be the most accurate and the most effective?

Political theorists such as James Madison (1787 – 88) and Edmund Burke (1790) famously argued over whether political representatives should be **delegates** or **trustees**. Madison saw them as being **delegates** or mere agents of various groups in society, faithfully representing their interests. Burke, on the other hand, argued that representatives should surrender their individual interests in favour of the common good. He said “Parliament is a deliberative assembly of one nation, with one interest, that of the whole...”<sup>2</sup> Citizens should **trust** these representatives to make their own decisions based on their own knowledge, intellect and conscience.

That said, what is most common today is the type of representation known as **'party' representation** where voters align their interests with the ideologies and platforms of political parties. Voters may not even know their representative, but they assume they will carry out party

policy. The vast majority of Australians, currently around 70 – 75%, vote for the same party at every election. Most of these Australians vote the way their parents did.

A final way to view representation is as a **mirror of society**: should the executive and legislative branches be reasonable reflections of the composition of society, in terms of gender, race, religion and occupation? Measured in that way, most legislatures would be **unrepresentative**. The Australian parliament is overwhelmingly white, male and occupationally narrow<sup>3</sup>; the ranks of our parliamentary representatives are dominated by ‘career politicians’ – people who have only ever worked in some branch of party political life. See [Australia's career political class](#). Is it even possible therefore to adequately represent the diversity of Australian society?

### *And then there's this to consider.....*

One other aspect to consider when trying to judge the representativeness of a government is whether the electoral system provides an accurate translation of votes into seats. Before recent changes to the Australian Senate voting system, it was possible for a person to be elected to a Senate seat with less than 1% of the vote. It is also relatively common in Australian, British and American elections for a party to form government without a national majority of votes being gained or, in the case of individual candidates in Britain and America, without an absolute majority of votes being gained.

#### YOUR TASK

**OUTLINE one strength and one weakness of each of the four types of representation mentioned above.**

8. **Accountability:** the last of our democratic principles but nevertheless absolutely crucial to the effectiveness of representative democracies. Australia's system of responsible government is meant to provide a *chain of accountability* which proceeds from the electors all the way up to the Crown (the Queen's representative). It explains why our Governor General is at the top of the accountability tree (so to speak), as the constitution vests executive power in this office. The ministers, including the Prime Minister, can be appointed and dismissed by the Governor General. The ministers must have seats in the legislative branch (the parliament), so that they can be held accountable to the parliament through an opposition or alternative government, through Question Time, parliamentary debate and discussion and the record of proceedings known as 'Hansard'. They are also expected to be subject to the doctrine of Individual ministerial responsibility and abide by a ministerial Code of Conduct. If they breach this code, they are expected to resign (in theory). Under the system of responsible government, the government must at all times retain a majority in the House of Representatives (that is, retain the confidence of the House). Finally, as all ministers must have seats in the parliament, they can be dismissed by the people at an election if they fail to perform to the people's satisfaction.

If accountability to the people is to be a democratic reality there must be transparency. If citizens don't know what their elected representatives have said or done, where they get their money from or what their financial interests are, then accountability is meaningless. And the best way to ensure transparency is through an independent and vigorous media, as well as an independent institution to oversee the electoral system. Governments of all political persuasions have demonstrated that

they are all capable, at times, of taking measures to prevent scrutiny and reporting of their actions and their interests.

### YOUR TASK

Read the following article by Laura Tingle of the ABC, which covers new Prime Minister Scott Morrison's approach to the accountability of ministers and public servants: [Scott Morrison has the public service and accountability in his sights](#).

### IDENTIFY AND EXPLAIN THE TYPES OF ACCOUNTABILITY MENTIONED IN MS TINGLE'S ARTICLE

**CURRENT EXAMPLE 1:** The Australian Electoral Commission (AEC) an independent statutory body which oversees Australia's elections, is now requiring the recipients of public funding for their election campaigns to demonstrate proof of actual expenditure for any claims over \$10,000. This was a provision of the new Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2018. See [Increased accountability for Federal Election funding](#)

**CURRENT EXAMPLE 2:** On June 4<sup>TH</sup> 2019, the Australian Federal Police conducted a 7 hour raid on the home of NewsCorp journalist, Annika Smethurst, including her mobile phone and her computer. The next day they raided the ABC's Sydney Headquarters. Ms Smethurst had reported on the basis of a 'top secret memo' that the government was intending to empower the Australian Signals Directorate (ASD) to secretly monitor Australian citizens. The ABC raid followed the publication in 2017 of the Afghan files – thousands of documents that had been leaked to the ABC covering allegations of serious misconduct by Australian Special Forces in Afghanistan. This followed the passage of new laws by the Turnbull government aimed at preventing foreign interference in Australia's political system. But concerns were raised by various sections of the public and the parliament that the new laws would make it an offence for journalists to expose any national security issues, of the type raised by the ABC and Ms Smethurst.

For further information and opinion on this issue read the following articles:

- [Law Council: Journalists to keep government accountable](#)
- [Why the raids on Australian media present a clear threat to democracy](#) (the Conversation)

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## SUMMARY OF KEY POINTS

1. The essential principle of a democratic system is that it rests on the consent of the governed, which means that governing power belongs to the citizens. This known as **popular sovereignty**.
2. The mechanism by which the government is determined is some form of **majority rule**, while at the same time **protecting the rights of the individual and minorities**.
3. An underlying value in all democratic systems is **equality**: in principle, all members of the society should be treated equally, in terms of their opportunities, their rights and their obligations to the law.
4. The **Rule of Law** means that the laws of the land are supreme and applied equally to all. This is essential to protect citizens from the arbitrary exercise of government power.
5. A liberal democracy emphasises the **rights and freedoms** of all individuals in society, including basic human, civil, social and economic rights, which **must be guaranteed by law**.
6. For a democratic society to be able to deliver on popular sovereignty and to be vital, there must be ample opportunities for citizens to **participate** in decision-making or to influence policies and laws.
7. In modern democracies, there must be ways to achieve effective **representation** of the people's views and interests. A mixture of the **four types of representation** is desirable, as are voting systems which produce accurate results.
  - Delegate type representation
  - Trustee type representation
  - Party / partisan type representation
  - Representation that is a Mirror of Society
8. Democratic systems must provide mechanisms for the people's representatives to be held to **account** for what they do. Responsible government in Australia ensures that we can vote out members of the executive and legislative branches if they don't perform. To do this we need transparent political processes and independent and open media channels. Other mechanisms designed to hold the executive to account are Her Majesty's Loyal Opposition, Question Time, parliamentary committees and an independent judiciary.

**TAKE THE QUIZ!**

# EXAM-STYLE QUESTIONS

**KEY SKILL:** explain the key values and principles of liberal democracy

## KEY KNOWLEDGE:

### GENERAL TIPS FOR ANSWERING THESE TYPES OF QUESTIONS:

- Even if you are not asked to, it is always useful to provide a current example of what you are trying to explain.
- Any example used should actually be illustrative and its connection explained.
- Be guided by the number of marks and the 'task' word. (identify, outline, describe, explain.)
- **We have done some sample answers for you to indicate how you should go about these types of questions. In these sample answers, a 'tick' ✓**

#### 1. Outline the concept of 'popular sovereignty' as it applies in the Australian political system. (2 marks)

**Sample Answer:**

*Popular sovereignty is the concept that the power of government belongs fundamentally to the people and rests on their consent. ✓*

*parliament, from which the executive branch is drawn. ✓*

(3 marks)

TIP: Don't be tempted to provide more than one way – examiners will only mark the first way given. 'Describe' means to have a little more detail than 'outline'. You should also note that this question is killing two birds with one stone: 'the Constitution' and 'Rule of Law' are both key terms!

**Sample answer:**

*Chapter III of the Australian Constitution provides for the Rule of Law by ensuring that the Judicial branch, consisting of the High Court of Australia (HCA) and the other federal courts, is independent of the executive and the legislature in personnel and function. No member of the judiciary is permitted to have a seat in parliament. ✓*

*including challenges to the constitutional validity of laws and to hear appeals, by special leave, from Federal, State and Territory courts." (HCA website) ✓*

*or breaches of international laws, such as the Refugee Convention or disputes between states. Thus, it allows the constitution to remain the supreme law of the land, binding upon all citizens regardless of power or position. ✓*

*15 of the current sitting members of parliament were ineligible to retain their seats in the parliament as a result of a breach of s.44's dual citizenship provisions.*

**3. Explain the importance of citizen participation in a liberal democracy. (3 marks)**

*TIP: for the third mark you will really need to either provide two **ways** that citizen participation is important or have three very clear explanatory points (with examples).*

**4. Explain two ways that a liberal democracy can provide accountability. (4 marks)**

*TIP: 4 mark 'explain' questions need even more substantial answers. In this case, you have been asked for two ways, so the marking scheme will be 2 marks for the first way and two marks for the second way. Provide the first way as a general method (for example through responsible government) and then give a specific example, (such as the requirement for members of the executive to have seats in the legislative branch). Then make sure you explain how the example achieves accountability. (For example: this achieves accountability in a liberal democracy by ensuring the members of the executive branch (Ministers) can be questioned by the Opposition on their performance). Repeat the process for the second way.*

**Alternatively**, you could have, as your first general way, 'the requirement for members of the executive to have seats in the legislative branch so that the parliament can hold them to account' and then give a precise example and explanation, such as: ministers in both the House of Representatives and the Senate should be available at Question Time to answer questions from the opposition parties. For example, Minister for Energy and Emissions Reductions, Angus Taylor, was questioned by the Opposition over allegedly faking a document that targeted Sydney Lord Mayor Clover Moore over improper expenditure. NSW police then undertook an investigation into the matter.

**5. Explain how representation is achieved in Australia's political system. (4 marks)**

*TIP: This is an 'explain' question which requires thorough and complete linking of **your answer** to 'representation' as a democratic value. As you have not been asked for a precise number of ways, you need to make sure you have enough points to earn 4 marks. Possibilities include: the constitution, elections & voting systems, political party platforms and membership of a party.*

**Sample Answer:**

*The Australian constitution provides one way that Australian citizens can be represented in the Commonwealth Parliament, through s.7, which stipulates that Senators must be directly chosen by the people of each state and s.24 which requires members of the House of Representatives to be directly chosen by the people in proportion to their numbers. ✓*

*this means it is possible to represent minor parties and minority interests. ✓*

*House requires an absolute majority, so satisfying the value of majority rule. ✓*

*policies designed to represent certain segments of the population. ✓*

*the ALP tries to appeal to a broader range of voters but with an emphasis on 'average' Australians, traditionally blue and white collar workers. Voters can then choose which party's candidate best represents their interests. ✓*

**ticks representing 5 valid points, it is better to have a more complete explanation rather than a lesser one.**

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## Chapter 3: The democratic basis of Australia's political

**KEY SKILL:** *EXPLAIN key features of government in Australia*

**KEY KNOWLEDGE:** *the key features of the Australian political system in practice (meaning as they actually operate).*

### The British Connection

<b>26 January 1788</b>	<b>April 1775 – September 1783</b>
The British colony of New South Wales was established in 1788 as a penal colony.	Americans fought the 'Revolutionary War' to establish their independence from the British Crown
<b>1 January 1901</b>	<b>4 July, 1776</b>
The British Parliament passed legislation enabling the six Australian colonies to collectively govern in their own right as the Commonwealth of Australia.	The 13 original American colonies agreed to and signed the Declaration of Independence.

The above dates explain a great deal. In the years from 1774 to 1788, Britain had fought a war with one of her most lucrative colonies and lost. Her finances were seriously depleted and she had thousands of convicts to dispose of. The new southern land represented one solution to the problem. The colonists who held power in Australia were mostly well connected to the British wealthy classes; those who were not in positions of power (convicts, newly freed settlers and indigenous people), were not in any position during this time to determine how they were to be governed. In America, all that really mattered to those who had power was that they should cut all ties to the monarchy and establish a republic, while retaining as much of their existing colonial powers as possible.

It took another 100 years for Australia to develop a desire for nationhood based upon fairly limited democratic values, at least in terms of today's standards. The people concerned with establishing an independent nation and the founders of our constitution, all agreed that the form of the new national government would replicate what was already established in the colonies – parliamentary government based upon Westminster principles. However, the **franchise\*** (the right to vote) was controversial and there was no really passionate belief in the rights and freedoms of individuals as was the case in the USA. The Australian founders wanted a representative and responsible government but one that did not unduly interfere with the rights of the colonies, which were to become states within a federation. The American federal model represented the best option for this and so it was grafted onto the British system of Responsible Cabinet Government.

**'Washminster'!**

**KEY TERM: FRANCHISE**

**The right to vote in an election.**

## K

The British Westminster system is a **representative parliamentary democracy** with **responsible cabinet government**. Its successful operation depends upon a set of **Westminster 'conventions'**, which are **unwritten rules or traditions**. It is **totally different from a representative republic, such as the American model.**

The **KEY FEATURES** of the Westminster system of government are as follows:

- **It is a bicameral system**, wherein both houses have influence (in Australia, each house has veto power) over any legislation.
- **All members of the Executive (the Prime Minister and the ministers) must have seats in the legislative branch (the Parliament) so that they may be held to account by the legislative branch and by the electors. This is responsible parliamentary government.** This is actually stipulated in our constitution in s.64
- **The Executive Branch** (the government) is determined by the party which has the majority of seats in the people's house (British House of Commons, Australian House of Representatives). The government must be able to maintain a parliamentary majority in the House in order to stay in office. This is known as 'retaining the confidence of the House.'
- The **Prime Minister** is the leader of the winning party and **Head of Government**; they determine the *ministry* and the *Cabinet\** from among the members of their party who have won seats in the parliament. This is known as **responsible cabinet government**.
- An **Opposition** exists, formed by the party/parties who have won the second largest number of seats in the lower House. Their roles are to provide an alternative government and to scrutinise and 'shadow' the government ministers.
- The Ministers are expected to be individually responsible for the competent conduct of their portfolio and for their own honesty, integrity and incorruptibility. Several governments have instituted a ministerial code of conduct; if ministers breach this code they are expected to resign or be dismissed from their portfolio. This is known as **individual ministerial responsibility**. See the current Statement of Ministerial Standards at <https://www.pmc.gov.au/resource-centre/government/statement-ministerial-standards>
- **A constitutional monarch** (or its representative) is 'by convention' a figurehead only, taking advice from the Prime Minister. In Australia, this is the Governor General.
- **There should be an independent and impartial public service**, who serves whichever party is in power, offering free and fearless advice.
- **The Armed services should be obedient to the government.**
- **The rule of law should be adhered to, safeguarded by an independent judiciary and a constitution.**

*\*Key term: See p.20*

## K

Australia is a **constitutional monarchy**. Our system actually goes further than the British system in giving a *political* role to the monarch. This is because, in the Australian Constitution, executive power is legally vested in the Queen and is **exercisable** by her representative, the Governor General (GG) (**s.61**). **Thus, the Governor General is the Head of State**, although this term is not mentioned in the constitution.

Certain other powers are also granted to the Governor General: presiding over the Federal Executive Council (s.62) which in practice generally consists of two ministers or parliamentary secretaries whose role is to keep the Governor General informed of the government's legislative program; they currently meet fortnightly. The Governor General also has power to appoint and dismiss ministers (**s.64**), to be the commander-in-chief of the naval and military forces (**s.68**), to open and prorogue (close) parliament (**s.5**), to issue the writs for an election of the House (**s.32**) and to sign off on legislation once a bill has passed both houses. (**s.58**) This last power is known as Royal Assent.

There are also a number of **reserve powers**, which are fairly controversial. Disputes arise as to the full extent of the Governor General's powers, largely for three reasons:

1. the office of the Governor General has been granted full executive power under s.61,
2. the powers of the Prime Minister have not been codified (listed) in the constitution (indeed, the Prime Minister is not even mentioned in the constitution) and
3. the wording of the constitution has to be interpreted by the courts and constitutional lawyers.

According to the Parliamentary Education Office,<sup>4</sup> the Governor-General's **reserve powers** are generally agreed to include:

- The power to appoint a Prime Minister if an election has not resulted in a clear outcome;
- The power to dismiss a Prime Minister if they have lost the support of the majority of the House of Representatives;
- The power to refuse a request for a double dissolution;
- The power to dismiss a Prime Minister or minister if he or she breaks the law; and
- The power to refuse a request from a Prime Minister to call an election.

### LEARNING TASKS

1. Go to the Governor-General's website <https://www.gg.gov.au/about-governor-general/role-governor-general> and make a list of the Governor General's duties as Head of State, excluding the constitutional ones.
2. The reserve powers have only been used a very few times. The most famous and momentous occasion was the dismissal of the Whitlam Government in 1975 by Governor General Sir John Kerr. For a very readable account of what happened go to [The Conversation Explainer: Gough Whitlam's Dismissal As PM](#) and **summarise** the key points.
3. Using the 'Dismissal' as a case study, **discuss** the democratic strengths and weaknesses of the role of the Governor General. (6 marks)

## KEY KNOWLEDGE:

As stated in the last section, the Prime Minister is not mentioned in the constitution itself; neither are any of his/her roles or powers. These are all dictated by convention (usual practice) and the power of the Prime Minister depends largely on the relationship between him / herself, the party and the electorate. **The position of Prime Minister in Australia's political system is one of very great power, with arguably fewer constitutional checks than many other leaders.**

### KEY TERM: PRIME MINISTER

**The leader of the political party (or coalition of parties) with a majority of seats in the House of Representatives. The prime minister has the day to day role of leading the executive branch and administering the nation.**

## ROLES of the PRIME MINISTER

The Prime Minister is Head of Government, Chair of the Cabinet, parliamentary leader of his party and in control of the parliamentary agenda. He is the face of his government and ultimately responsible for the policies and performance of the government. He and the Cabinet decide what legislation is put to the House of Representatives and thus to the Senate, what the government's position will be on that legislation, whether or not question time will be held and for how long, whether debate and discussion will be extended or gagged and how and when the election campaigns will be run. The Prime Minister can also decide whether to allow a referendum or not. The Prime Minister represents the country internationally; he/she can form formal and informal alliances, make treaties and decide whether we are going to go to war or send troops overseas.

**Sources of prime ministerial power** are as follows:

- **The power of patronage:** Prime Ministers allocate portfolios and so aspiring and current ministers' jobs depend upon keeping the Prime Minister on side. In recent years, there has also been a trend towards prime ministers influencing the tenure of senior public servants. Martin Parkinson, a highly respected career public servant, was sacked as Treasury secretary by the Abbott government, and brought back to the public service as head of the prime minister's department by Malcolm Turnbull. After the election of Scott Morrison in 2019, he announced his resignation. When asked about interference in the public service, Morrison said "I will always reserve that right to make further changes where I believe they are necessary".<sup>5</sup> Read [Morrison brings his own man in to head the DPMC](#) to see how the Prime Minister can influence the public service.
- Prime Ministers have the **Department of the Prime Minister and Cabinet (DPMC)** to advise them on most policy matters, as well as selected political advisors, including a Chief of Staff, numerous other staff and a speech writer.
- **Electoral success** is a source of power for prime ministers. The more elections they win, the more secure their position and the more they will get what they want.
- **The ability to balance the factions** within the party is also crucial to the power of the prime minister. Without control of destabilising elements, a prime minister's days are numbered.

Tony Abbott, a sitting prime minister, was unseated by Malcolm Turnbull on the basis of his extremely low popularity in opinion polls. Turnbull was then unseated as a result of his energy policies and the perception by the right wing of the party that he was not conservative enough. Scott Morrison ended up being the compromise candidate who won a landslide election victory in 2019.

- **Party Discipline:** Closely related to this is the very strong tradition of **party discipline** within Australia's major parties. Party discipline is the extent to which a leader can rely on the members of their parliamentary party to vote as directed by the party room. This is an important source of power for prime ministers, as it enables them to retain control of the parliament, especially in the lower house. A prime minister cannot have members of their party "**crossing the floor**", or they are liable to be subjected to a **vote of no confidence** which, if passed, can lose them the power of government.
- **Control of the agenda and procedures in the lower house** as well as the appointment of the **Speaker** of the House of Representatives can also significantly protect the government and thus the prime minister.

### **Limits on the power of the Prime minister:**

**There are few limits on the Prime Minister's power in practice.** The constitution, an independent judiciary, the rule of law and a democratic political culture are safeguards against a 'rogue' prime minister who might do something unconstitutional. But democracy can be eroded by less dramatic, more incremental actions. An apathetic or ignorant population means that accountability is lost, popular sovereignty becomes meaningless and rights and freedoms become less important than the state's national interests. (State in this sense refers to the executive branch making decisions for the country).

- Apart from the constitution, **the Senate** can act as an effective check on prime ministerial power if, and only if, the government does not have a majority in the Senate (known as a 'hostile Senate'). If the government controls the Senate (known as a 'rubber stamp' Senate), the government can push through any legislation it wishes without any scrutiny.
- **Parliamentary committees** can investigate executive actions, but the government generally has the chairmanship of all committees in the lower house and a majority of the members. Senate committees are much more extensive, with the government having chairmanship of the Legislation committees and the Opposition having chairmanship of the Reference committees. You will examine the committee system more closely in Chapter 6.

### **WHAT IS THE CABINET?**

The **Cabinet** consists of a smaller group of the most powerful ministers, usually judged by the importance of their portfolios or their value to the Prime Minister. They meet about once every week, in secret, and with senior public servants in attendance. The Head of the Department of Prime Minister and Cabinet, as well as the Head of Treasury, are likely to be called to attend. Although minutes are now taken, proceedings remain highly confidential, though there have been numerous occasions when a 'cabinet leak' has occurred. This is typically for political

#### **KEY TERM: CABINET**

**The Prime Minister and her/his senior ministers. The cabinet is the key policy making body and carries out the work of the executive branch in practice.**

purposes, either when a Cabinet minister wants to follow a special interest or when the Prime Minister is under siege from his own party.

### The ROLES OF THE CABINET

Cabinet's essential function is to be the strategic headquarters of the government – the political executive. This means that Cabinet has responsibility for the following roles:

1. To shape government policy
2. To determine budget and policy priorities
3. To discuss and debate national issues
4. To decide parliamentary and political strategy
5. To provide leadership of government departments.
6. To maintain cabinet **confidentiality** – that is, non-disclosure of matters that are discussed, so that cabinet members can speak freely **within** meetings.
7. To maintain cabinet **solidarity** – that is, acting as one unified body with one voice, **outside** cabinet meetings.
8. To be **collectively responsible** for government decisions, successes and failures, being accountable as one body.

Given that Cabinet is composed of roughly twenty or so powerful and usually strong-willed individuals, each trying to put forward their own policy agendas and often with different factional perspectives, managing Cabinet is one of the most difficult of the Prime Ministerial roles. When either Cabinet confidentiality or Cabinet solidarity is breached, through a 'cabinet leak' or through a minister publicly disagreeing with a policy position, the leadership of the Prime Minister or even the existence of the government, can be seriously threatened.

#### CASE STUDY EXAMPLES

1. *In May 2015, it was leaked to the Fairfax media that several senior ministers in the Abbott Government had disagreed vehemently with a proposal by Tony Abbott and Immigration Minister Peter Dutton to strip Australian citizenship from anyone suspected of terrorist links / actions without the need for court-tested evidence. Once leaked, the proposal was all but impossible to implement. It was suggested that the leaks were partly motivated by Abbott's propensity to make policy in public without consulting his cabinet colleagues.  
See [Tony Abbott only has himself to blame](#)*
2. *In October 2017, information was leaked to the media that the Turnbull Cabinet had rejected the key referendum proposal put forward by the Uluru Statement from the Heart – that a referendum be held to facilitate an indigenous voice to parliament. This came after another leak that Attorney General George Brandis was planning legislation to stop paedophiles from travelling, which met with strong opposition from senior Cabinet ministers. There was also the ongoing dual citizenship crisis, where Turnbull's plan to deal with it was quite controversial. Then there was the Marriage Equality bill, which was coming under fire from some conservative ministers as a result of perceived inadequacy of religious protections. In November, another Cabinet dispute, over whether to hold a Royal Commission into the Banks, was leaked to the Daily Telegraph. The push for holding an inquiry into the banks was coming from the Nationals; Senator Barry O'Sullivan circulated a private senator's bill to hold such an inquiry the day before this leak occurred. If one National crossed the floor, Malcolm Turnbull's government would become the subject of a no-confidence vote.*

Turnbull's response was to cancel the House of Representatives session beginning Monday 27<sup>th</sup> November, ostensibly to allow unfettered Senate discussion of the same-sex marriage bill. Labor and other commentators saw it as a ploy to prevent discussion of the Banks Inquiry on the floor of the House, in case it threatened the government's majority. Bernard Keane of Crikey Inq. stated that "All of this is because what was once (i.e. last week) whispered, is now shouted: that the Prime Minister is finished."

See [Cabinet Solidarity unplugged](#)

Also read Michelle Grattan's piece [Julie Bishop Denies Leaks on Banking Royal Commission](#)

## ISSUES FOR ANALYSIS AND EVALUATION

The following are some of the issues and controversies associated with our system of responsible government based on the Westminster model. As you go further into this area of study, we recommend that you **collect pros and cons** for the issues flagged below. Any of them could be an essay topic or the subject of a short answer question. You could have a class debate.

### 1. Should the Westminster conventions be codified in the Australian Constitution?

*For some discussion of this idea see*

- [The Conversation: How unwritten rules shape ministerial accountability](#)
- [The Conversation: Breaking political conventions](#)

### 2. To what extent is individual ministerial responsibility necessary in a democracy?

See

- [That's it - I'm Leaving! Ministerial Departures 1901-2017](#)
- [The Conversation: Breaking political conventions](#)
- [Ministerial responsibility in Canberra appears to have decayed](#)

### 3. Should the powers of the Governor-General and the powers of the Prime Minister be codified?

See

- [Inside Story: The Governor General's Forgotten Power](#)
- [The Conversation: 9 things you should know about a potential Australian republic](#)

The issue of whether the PM's powers should be codified can be looked at through a number of lenses: are there sufficient political or constitutional limits on what a PM can do? That is, does the Australian Prime Minister have too much power? Is the increasing 'presidentialisation' of the office of the Prime Minister placing him above parliamentary scrutiny?

For a discussion that is great for giving you historical and political context see:

- [Museum of Australian Democracy: Prime Ministers - the Pivot of Power](#)

For views about the accountability of a 'presidential' prime minister see:

- [ABC: The paradox of a presidential Prime Minister](#)
- [SMH: Morrison's hubris shows he's turning his back on ordinary Australians](#)

This argues that there are serious structural constraints on the power of prime ministers:

- [4 reasons why Australian politics is so crazy](#)

This second article argues that Canadian Prime Ministers have too much power. It is useful to see how, in contrast, Australian prime ministers are more restricted, **but be careful not to confuse the two systems!**

- [Canadian prime ministers have too much power](#)

Finally, this article examines the pros and cons of the ability of the Australian Executive to declare war or deploy troops overseas without parliamentary approval:

- [Australia's war powers and the role of parliament](#)

#### **4. Does Cabinet Government impede or enhance parliamentary democracy?**

This first article contrasts Australian Cabinet government with British and Canadian models, arguing that there is true collective decision-making in Australia. By Professor Patrick Weller, it gives an interesting historical perspective on why Australia's Cabinet government seems to work better:

- <http://press-files.anu.edu.au/downloads/press/p98331/mobile/ch07.html>

This next article examines the dangers of executive dominance

- [The Perils of Government Dominance](#)

**Also, go back to the previous case study examples and consider the problems involved with Cabinet secrecy and solidarity. Make a list!**



## The American Connection

### K

Australia originally adopted federalism primarily as a means of making sure that the interests of the existing colonies (soon to become states) were represented in the new national parliament. The main purpose of a federal system of government is to allocate responsibilities to both levels of government, maintaining the autonomy of both national and state governments while allowing for cooperation and dispute resolution between the two.

#### KEY TERM: FEDERALISM

**A system of government in which law-making powers and responsibilities are constitutionally divided between a central, national government and a series of state or regional governments. Both Australia and the USA operate a federal system of government.**

There were **three** mechanisms by which the constitution set up a federal system, also known as a **federal division of powers**.

1. Through creating an upper house of parliament, nearly equal in powers to the lower house, which would represent the states on an equal footing. This of course is **the Senate**. Currently each state is represented by 12 Senators regardless of its size and each territory is represented by 2 Senators. You should thus be able to work out that the Senate has 76 sitting members **(though you might be amazed at the number of students who do not know how many states and territories we have!)** **All legislation** must be passed by both the Senate and the House of Representatives in order for it to become an Act (i.e., binding law.)
2. Through creating four types of law-making powers (areas of responsibility):
  - a. Responsibilities that are listed or enumerated under s.51 of the constitution may all be exercised by the Commonwealth government. These are known as **specific powers**.
  - b. Some are **only** able to be exercised by the Commonwealth Government alone; these are known as **exclusive powers**. Some examples are s.51(xix) immigration, s.51(xii) currency and coinage and s.51(vi) defence. S. 52 also gives exclusive power to the Commonwealth Parliament with respect to determining the national capital, acquiring land for public purposes and running a Commonwealth public service.
  - c. Some are able to be exercised by both the Commonwealth and the States together; e.g., s.51(ii) taxation, s.51(xiii) banking, s.51(xxii) marriage and divorce. These are known as **concurrent powers**, though if there is a conflict between state and federal laws in any of these concurrent areas, s.109 says that the Commonwealth laws will “prevail, and the (state law) be invalid to the extent of the inconsistency”.
  - d. All other left-over areas of responsibility or law-making are known as **residual powers** and they are **exercisable by the states alone**. Examples are the environment and lands of the states, the criminal laws of the states, primary and secondary education and anything not mentioned in the constitution.
3. Finally, **three sections of the constitution specifically guarantee the political existence of the states**: S. 106 saves the constitutions of each state, s. 107 saves the powers of the state parliaments (unless affected by the Australian constitution itself) and s.108 which saves the laws that were currently in force at the time of federation in each state.

## ISSUES INVOLVED WITH THE OPERATION OF OUR FEDERAL SYSTEM

Over the one hundred and twenty years since Federation, Federalism has evolved. It has also been plagued by a number of tensions and produced a number of negative impacts on the Australian political system generally. Since the Study Design does not require you to do anything other than be able to explain the operation of Federalism in Australia, we will take a look at some of the issues surrounding its operation.

1. **'Ad hoc-ery'**: a made-up word (by the author) meaning a reliance on improvisation. Because the constitution included little by the way of federal institutional arrangements to deal with commonwealth-state relations, governments and the High Court of Australia had to 'make it up' as needed. An early arrangement was the establishment of the annual Premiers' Conference which, after 1901, included the Prime Minister. This allowed the two spheres of government (federal and state) to discuss matters and attempt to reach cooperative solutions. It became the Council of Australian Governments (COAG) in 1992. Other institutional inventions were the River Murray Commission (1915), the Loans Council (1923), the Agricultural Council (1934) and the Australian Education Council (1934). Thus, a country with a very small population was developing a reliance on meetings between state and federal ministers in particular areas on an *ad hoc*, rather than a planned and rationalised basis.
2. **Increased potential for conflict**: this could be seen as a direct result of the previous issue. Ministerial meetings developed into combative arenas, where each of the representatives of the state and federal spheres was trying to get a better deal for their own state or government. As the years have progressed, the Commonwealth has taken greater control over the agendas and the meetings themselves, especially in relation to COAG. These meetings and their processes lack transparency, so that new commonwealth governments are not bound by past decisions. This is exacerbated by the party system, where party loyalties may intrude upon good decision-making. For example, at the 2016 COAG meeting, the Labor State Premiers of Victoria, South Australia and Queensland rejected a proposal on competition and productivity reforms from the Harper review, which was agreed to by the Liberal State Premiers of NSW, WA and Tasmania, although all the Premiers were united on the need for the Commonwealth to spend more on infrastructure.<sup>6</sup>
3. This leads us to one of the most serious and challenging problems confronting Australian federalism, namely **Vertical Fiscal Imbalance**, which refers to the inability of the states to raise enough revenue to address their spending needs, which makes them reliant on grants from the Commonwealth. This characteristic has largely occurred as a result of the Uniform Tax Cases of 1942 and 1946 which gave power over direct taxation (income tax) to the Commonwealth. This has been a major factor in shifting constitutional power towards the Commonwealth and away from the states, as under s.96 the Commonwealth may impose conditions on any grants it makes to the states.
4. **Horizontal Fiscal Imbalance** is also a serious issue. It refers to the unequal financial capacities of the states which frequently leads to squabbles about how to share out the revenue from the Goods and Services Tax (GST), in particular. This has been addressed to some extent by the Grants Commission which uses a formula to determine how much GST revenue each state should get on the basis of its 'per capita relativities'.<sup>7</sup>

5. **The federalising of political institutions and other organisations**, which can lead to a duplication of functions: this is particularly the case with the public services, especially in areas that have become concurrent, such as primary and secondary education. A good case in point is the Australian Curriculum, which originally was developed under the Howard government, briefly foisted on the states but which then ran aground on the rocks of states' rights. Each state now has a choice of using the Australian curriculum or their own state curriculum. Some may argue that many hours and millions of dollars have been spent unnecessarily. Other institutions are forced to federalise in order to effectively deal with the federal system; political parties themselves, trade unions and many interest groups all have both state and national organisations.
6. **Over-government:** Australia has 9 governments at the national state and territory level, consisting of roughly 837 representatives. This means that, not counting local government representation, Australia has one politician for every 30,295 people. Federally, there is one politician for every 106,000 people, while in America there is one federal representative for every 617,000 people (approximately). Despite this, the Australia Institute argued recently that we need more federal politicians if our democracy is to function effectively.<sup>8</sup> On the other hand, the Guardian newspaper points out that the salaries of federal politicians make them part of an elite class of career politician with little connection to the struggles of ordinary or even disadvantaged Australians.  
Read [How much do we pay for our politicians?](#)
7. **Reliance on the judicial branch:** in America, there is a constant complaint that the federal system leads to an over-reliance on the courts as a result of the need to clarify whether the national government has overstepped its constitutional boundaries. This is less so in Australia, and one could argue that it is a strength of a system where the political executive has so few constraints on their power. The criticism in Australia stems from the fact that much of the shift in power away from the states has occurred as a result of judicial interpretation, in cases such as the Uniform Tax cases mentioned previously, but also in Native Title cases, racial discrimination legislation and national security legislation.

**On the other hand**, there are certain undeniable advantages to the federal system as it operates in Australia:

1. **Better representation** of the multiplicity of different needs and interests of the Australian people. Australia is a large country, with significant differences between states and territories, largely as a result of geography. West Australia for instance has a large indigenous population (3.1% of the population), a small population spread over extensive and often isolated rural landscapes, a resource base to its economy, a significantly different democratic and political history and greater proximity to Asia. Victoria has a much smaller indigenous population with different needs (.8%), a larger population contained in a relatively developed rural, regional and urban areas, an economy largely reliant on the provision of services, food and fibre and a particular political history. These differences produce different needs and interests which, it is argued, can be more effectively represented by state governments.
2. As a result of state and local government, **greater accountability is provided**. Australians generally can express their judgement on their politicians at three levels of government.

Although total voter turnout at Federal elections has decreased a little since 2007<sup>9</sup>, voting at state and local elections remains relatively robust. West Australia, with non-compulsory voting, even saw an increase in voter turnout at both state and local elections.<sup>10</sup>

3. **Government power is limited in scope**, which discourages abuse of individuals by an all-powerful state, thus helping to protect rights and freedoms of citizens. The fact is that state governments can provide checks on the activities of federal governments, and the division of powers helps to prevent a single central government from becoming tyrannical.
4. This 'devolution of power' is said to be **a more effective way of managing the increasing complexity of governing**; one government can't do it all. According to Geoff Gallup in a Senate Occasional Lecture Series at Parliament House, Canberra, on 25 February 2011, the states "provide important services and advocate for the communities within their boundaries and, however limited it may be, they still have important tax-raising powers. They are facilitators of development within a national and global context. Note, too, that they allow for displays of difference, perhaps best illustrated by the absence of poker machines in hotels and clubs throughout Western Australia." This lecture is well worth reading: see [How healthy is Australian Federalism?](#)

### CASE STUDY FEDERALISM

The Australian Capital Territory (ACT) was the first Australian jurisdiction to allow the possession, consumption and cultivation of cannabis. *The Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018* came into effect on January 31, 2020 and enables adults to cultivate two cannabis plants per person and up to four cannabis plants per household. In addition, adults are able to possess 50 grams of dry cannabis and up to 150 grams of fresh cannabis. However, cannabis remains a prohibited substance under the *Commonwealth Crimes Act* (with the exception of medical cannabis).

Under Commonwealth law, adults in the ACT can still be prosecuted for cannabis. "If you're in the ACT waking up today and you want to possess marijuana, be careful, because there are commonwealth laws that still apply" (Christian Porter). Academics argue that this may lead to an increased dependence on the High Court to make rulings on the issue. "There will have to be a court case to work out the meaning of the provisions in the Commonwealth Crimes Act that recognise the freedom of state and territory governments to make their own drug laws" (Professor Desmond Manderson, the Australian National University).

Much of the High Court's constitutional work involves settling disputes between the states and Commonwealth as to what jurisdiction the Constitution comes within. However, the High Court's interpretation of the Constitution has shown a bias towards the Commonwealth, leaving some to argue the states are no longer dominant players. In addition, although federalism preserves the power of the states, many opponents of federalism see it as costly inefficient and anachronistic, particularly in a time when the country faces challenges that require concerted national policy responses, such as those concerning climate change and the global economy.

### QUESTIONS:

1. What arguments and counter arguments can be made in favour of federalism?
2. What impact does federalism have on the role of the High Court?
3. Is it coincidental that the Commonwealth appoints justices on the High Court and the High Court generally favour the Commonwealth decisions?
4. What could this suggest about judicial independence?

### SOURCES:

- [https://www.legislation.act.gov.au/b/db\\_59295/](https://www.legislation.act.gov.au/b/db_59295/)
- [The Conversation: Home-grown cannabis to be legal in the ACT - Now what?](#)
- [ABC: ACT first jurisdiction to legalise personal cannabis use](#)
- [The Guardian: Peter Dutton: government may override 'dangerous' ACT decision to legalise cannabis](#)

## K

It should be very clear from an examination of the definition at right, that Australia at the national level **has a partial separation of powers only**. The three branches of government are separated constitutionally, in that chapter 1 deals with the Parliament (legislature), chapter 2 covers the Queen, the Governor General and the Federal Executive Council (the Executive) and chapter 3 deals with the High Court of Australia and the other federal courts (the Judiciary).

As mentioned earlier in this Chapter (Key Features of the Westminster system), the executive function is actually carried out by the Prime Minister and the ministers. ***This is a matter of convention***. But **responsible government** demands that the executive have seats in the legislature in order to provide accountability to both the parliament and the electors (s.64). In a system where there is a virtually complete separation of powers as in the American one, the executive is not accountable to Congress (the legislature) but can be made partly accountable through presidential elections and through oversight by the judicial branch – the United States Supreme Court. Congress can *check* the power of the Executive branch through vetoes and through impeachment, but the ‘ministers’ in the American system (known as secretaries), are not accountable to anyone but the courts and the President. No member of the Administration may hold a seat in the Congress except the Vice-President, who only has a casting vote in the Senate. (Art.1 s.6)

Thus, accountability means very different things in the two systems.

### KEY TERM: SEPARATION OF POWERS

**The principle that the three branches of government, the legislature, the executive and the judiciary, should be kept independent and act without interference from each other as means of decentralizing and preventing abuse of power. In Australia, the separation of powers is blurred as the executive and legislative branches are combined; in the USA, the separation of powers is very clear.**

## ISSUES FOR ANALYSIS AND EVALUATION

### ISSUE 1: Should Australia have a separation of powers?

Journalists, politicians and even teachers (!) have increasingly taken to referring to Australia as having a separation of powers. This is only true in so far as the **Judicial branch is largely (not completely) independent in both personnel and function** from the other two branches, while the Parliament and the Executive are separate only in terms of their **functions**; even here there is a clear legislative role for the executive, especially in the House of Representatives and in the requirement for Royal Assent. Students often argue that Australia should have a complete separation of powers in order to combat executive dominance and increase the democratic operation of the parliament. This may well occur, but we would probably lose both efficiency and accountability.

### ISSUE 2: The role of the Judiciary

A further issue is whether the Judicial branch has too much power, especially when it disallows government decisions or laws, or interprets the laws in such a way that the constitutional division of power is affected. This is referred to by politicians in a derogatory way as **'judicial activism'**; instances of the judiciary intruding upon the functions of the legislature or the executive. However, the separation of powers, in terms of judicial independence, is also breached when the executive attacks the courts, which are supposed to be 'above politics' or undermines the rule of law.

## LEARNING TASKS

Read the following articles and then complete the activity.

- [The Australian Constitution Centre: The Separation of Powers](#)
- [High Court Case Study: the Separation of Powers](#)
- [Future Challenges: The Separation of Powers in Australia](#)
- [Separation of Powers under threat in Australia \(Queensland\)](#)
- [Anti-terror laws threaten separation of powers](#)

### ACTIVITY: Compile arguments for and against the propositions that follow:

1. 'Australia's partial separation of powers is undemocratic.' (Remember to go back to democratic principles to judge this one).
2. 'The High Court of Australia has too much power.'
3. 'Responsible government requires bicameralism to be democratically effective.'
4. 'There are insufficient checks on Executive power in the Australian political system'. (This one is highly complex and the issue will come up again in the chapters on Rights and the Parliament, but you might as well get started thinking about it!)

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## SUMMARY OF KEY POINTS

1. The Australian system of government is a combination of the British Westminster system of responsible Cabinet Government and the American federal system
2. **Responsible government** depends for its successful operation on what are known as **Westminster conventions**. This is largely because our constitution does not reflect the reality of cabinet government in practice, which is exercised by the political executive, the Prime Minister and ministers.
3. The **key Westminster conventions** or practices can be summarised as follows:
  - Bicameralism, in order to more effectively enable the parliament to hold the executive to account.
  - The executive should retain the confidence of the House of Representatives or resign.
  - The **Prime Minister** is the leader of the majority party and **Head of Government**.
  - **The Governor General** is the Head of State but should act on the advice of the Prime Minister.
  - Ministers should be **individually and collectively responsible** for their performance.
  - **An Opposition** provides an alternative government and helps to keep the government accountable.
  - **The Public Service** should be impartial.
  - The Armed services should be obedient to the government.
  - The rule of law should be adhered to, safeguarded by an **independent judiciary** and a **constitution**.
4. The constitution vests executive power in the Queen, exercisable by her representative, the Governor-General. This establishes Australia as a **constitutional monarchy**. The role of the monarch is almost completely ceremonial.
5. **The Governor General's powers are controversial**, especially the 'Reserve powers' and are subject to legal and academic interpretation. They have been used infrequently, most notably in the dismissal of Prime Minister Whitlam in 1975.
6. **The role of the Prime Minister is increasingly central in Australia Politics** as Head of Government and face of the nation, party leader, chief legislator and the person who must take responsibility for electoral success or failure. **The powers of a successful prime minister** are subject to few limitations; chief among them are the constitution, the judiciary, the Senate and its committees, and in some cases, media scrutiny. **Weak prime ministers** can be further hamstrung by party factionalism, cabinet leaks, ministerial incompetence, a predominance of minor parties and independents in the Senate and effective Oppositions.
7. **The Cabinet is the strategic headquarters of government**. It used to be colloquially spoken of as the 'engine room of government' but the role, power and effectiveness of Cabinet appears to be evolving.
8. **Australia's federal system is achieved through a constitutional division of powers** which is effectively responsible for maintaining the significance of the states and limiting the powers of the national government. There are both advantages and disadvantages of our federal system, but the fact remains that it has an extremely important impact on the shape and operation of our political system.
9. **The separation of powers**, an essentially American practice, **has only been partially adopted** by Australia as a result of our adherence to responsible government. **Accountability** of the executive therefore means very different things in the two systems.

# EXAM-STYLE QUESTIONS

## Question 1

- a. Distinguish between responsible government and representative government. (4 marks)
- b. Explain two other conventions or practices of the Westminster system as they apply in the Australian political system. (4 marks)

## Question 2

- a. Outline one way Australia's constitution provides for a constitutional monarchy. (3 marks)
- b. Describe one role of the Governor-General in the Australian political system. (3 marks)
- c. Explain what is meant by 'reserve powers of the Governor-General' and provide an example. (3 marks)

## Question 3

- a. Outline two roles of the Australian Prime Minister (4 marks)
- b. Explain one source of power of the Australian Prime Minister. (3 marks)
- c. Discuss one limitation on the power of the Australian Prime Minister. (4 marks)

## Question 4

- a. Describe one role of the Cabinet. (3 marks)
- b. Describe and explain the concept of collective ministerial responsibility. (3 marks)
- c. Discuss on strength and one weakness of Cabinet government as it operates in the Australian political system. (4 marks)
- d. Analyse the role of Cabinet in the Australian political system. (5 marks)

## Question 5

- a. Explain one way a federal system of government is established by Australia's constitution. (3 marks)
- b. Evaluate the statement that Australian federalism is a hindrance to the democratic operation of the Australian political system. (6 marks) **or a 20 mark essay!**

## Question 6

- a. Explain the concept of the separation of powers as it operates in the Australian political system. (5 marks)
- b. Discuss how Australia's partial separation of powers can provide for executive accountability in the Australian political system. (6 marks).

## ESSAYS

1. *"Australia's Federal system needs to be reformed."* **To what extent do you agree?**
2. *"Responsible Parliamentary Government provides insufficient accountability."* **To what extent do you agree?**



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# Chapter 4: How well are democratic rights and freedoms protected?

**KEY SKILL:** *explain and evaluate the protection of democratic rights and freedoms*

**KEY KNOWLEDGE:** *the protection of democratic rights and freedoms in Australia*

## BACKGROUND: WHAT ARE RIGHTS?

Human rights, under the [Universal Declaration of Human Rights](#) (UDHR), are considered to be **universal** entitlements that belong to all human beings regardless of nationality, race, gender, religion or culture or any other characteristic. They arise as a result of our essential humanity; that is, they are **inalienable** and can neither be given away or taken away, as they are something we are all born with. Further, they are **indivisible**; this means that there are a number of different categories and kinds of rights, all of equal importance in that no one right can be achieved at the expense of another.

These categories cover basic human rights, such as the right to life and not to be enslaved; civil and political rights, such as the right not to be arrested without a charge or detained without a trial; and a number of economic, social and cultural rights. All in all, there are **nine major human rights treaties** which are said to form the basis of international human rights law. These treaties are <sup>11</sup>:

		<i>Date</i>	<i>Monitoring Body</i>
<a href="#">ICERD</a>	<a href="#">International Convention on the Elimination of All Forms of Racial Discrimination</a>	21 Dec 1965	<a href="#">CERD</a>
<a href="#">ICCPR</a>	<a href="#">International Covenant on Civil and Political Rights</a>	16 Dec 1966	<a href="#">CCPR</a>
<a href="#">ICESCR</a>	<a href="#">International Covenant on Economic, Social and Cultural Rights</a>	16 Dec 1966	<a href="#">CESCR</a>
<a href="#">CEDAW</a>	<a href="#">Convention on the Elimination of All Forms of Discrimination against Women</a>	18 Dec 1979	<a href="#">CEDAW</a>
<a href="#">CAT</a>	<a href="#">Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</a>	10 Dec 1984	<a href="#">CAT</a>
<a href="#">CRC</a>	<a href="#">Convention on the Rights of the Child</a>	20 Nov 1989	<a href="#">CRC</a>
<a href="#">ICMW</a>	<a href="#">International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families</a>	18 Dec 1990	<a href="#">CMW</a>
<a href="#">CPED</a>	<a href="#">International Convention for the Protection of All Persons from Enforced Disappearance</a>	20 Dec 2006	<a href="#">CED</a>
<a href="#">CRPD</a>	<a href="#">Convention on the Rights of Persons with Disabilities</a>		

Every member state of the United Nations (UN) has ratified at least one of these human rights treaties. **Ratified** means that they have consented to be bound by these laws, usually but not always through introducing the relevant legal principles into domestic law. You can click on any of the above links to see what principles are contained in each of the above treaties.

## WHY IS THIS RELEVANT? STATUTORY PROTECTIONS

### KEY KNOWLEDGE

#### rights

If you are going to evaluate whether Australia's constitutional protection of rights is adequate, you need to have a standard by which to make a judgement. Australia has ratified **seven** of the above treaties and supports the UDHR and the 2007 Declaration on the Rights of Indigenous Peoples. (Declarations are not subject to ratification). *This does not mean we have enshrined them in domestic legislation.* According to the Australian Human Rights Commission's Fact Sheet No.7 "While Australia has agreed to be bound by these major international human rights treaties, they do not form part of Australia's domestic law unless the treaties have been specifically incorporated into Australian law through legislation." <sup>12</sup>

We also have passed a number of Federal laws to protect people from discrimination and from breaches of their human rights. Governments have responsibilities under these laws to investigate and conciliate complaints of discrimination and human rights breaches. Some of the most notable domestic laws are the Racial Discrimination Act (1975), the Sex Discrimination Act (1984), the Disability discrimination Act (1992) and the Age Discrimination Act (2004). The Australian Human Rights Commission Act (1986) gives effect to three of the nine major human rights treaties and some other declarations.

## ISSUES FOR ANALYSIS & EVALUATION

### ISSUE 1: IS THE CONSTITUTION EFFECTIVE IN PROTECTING RIGHTS?

#### What is in our constitution? Express & implied rights

As you would know from examining our Constitution in Chapter 1 of this text, we do not have a Bill of Rights. You need to make a judgement about whether or not we need one, so you should now start gathering arguments for and against this idea.

Within the Australian Constitution, there are two classes of rights: **express rights**, which are specifically written into the wording of the Constitution and **implied rights**, which are inferred or assumed to exist as a result of the language or structure of the Constitution.

**The express rights which do exist are not universal human rights in the sense that most people understand them;** rather they are **limited rights** as a result of their key aim of preventing the Commonwealth government from exercising too much power over certain aspects of our behaviour, or interfering with the rights of the states.

#### Express rights are as follows:

- s.41 – the Commonwealth cannot prevent any person who has been granted the right to vote in a state election from voting in a commonwealth election.

- s. 51 (xxxi) – the Commonwealth has the power to acquire property but it must be on “just terms”. This means fair and equitable terms.
- s.80 – this gives a right to a trial by jury to anyone who has been charged with a Commonwealth offence, rather than an offence against a state law.
- s.92 – this stipulates that trade and any kind of commerce between states or people of the states shall be absolutely free; this is reinforced by s.117
- s.117 – forbids any discrimination based upon state of residence.
- s.116 – this is a limited form of religious freedom as it does not apply to states, but only to the Commonwealth. It prohibits the Commonwealth from imposing any kind of religion or religious observance upon citizens or prohibiting the ‘free exercise of any religion.’

**Implied rights:** Several court cases especially since the 1990s have found that the wording and structures set up in the constitution can be construed as conferring rights upon Australian citizens. Implied rights, however, are highly flexible as they depend upon the judicial interpretations of successive High Court cases to maintain their validity. Some notable cases that have led the High Court to find implied rights are the *Nationwide News v Wills* (1992), *Lange v Australian Broadcasting Commission* (1997) and *Roach v AEC and the Commonwealth of Australia* (2007).

**Implied Rights are as follows:**

- an implied right to freedom of political communication
- an implied right to vote

Additionally, the High Court of Australia has found that the democratic structures set up by the constitution, particularly the institutions of an independent judiciary, responsible government and federalism, protect rights in two ways: positively, by allowing the passage of laws “to protect rights that are not currently protected and negatively, by (institutions) restraining themselves from making laws to infringe rights that are recognised by the common law or international law”.<sup>13</sup> Examples of the former are the various anti-discrimination laws mentioned earlier and the establishment of the Parliamentary Joint Committee on Human Rights. The committee's main function is to examine bills and legislation (including delegated legislation) for compatibility with international human rights standards and report to Parliament on this compatibility. Human Rights are defined according to the international laws that are accepted by Australia as binding.

**A negative example of the latter**, (where it was wrongly assumed that the states or the Opposition or the Senate might object to an infringement of the rights of minorities), is in the acceptance of Australia’s border security laws, which have been subject to sustained but ineffective international and domestic criticism.

**LEARNING TASKS**

**Research the Vicky Lee Roach case [Roach v AEC and the Commonwealth of Australia (2007).]**

Go to <https://www.hrlc.org.au/news/roach-decision-prisoners-right-to-vote> and read the case summary. Then read at least three media articles on the case and if you are interested, you could read one or two of the academic articles.

Answer the following questions:

1. On what constitutional basis did the judges reach their decision to find an implied right to vote?

2. Do you think this was a case of 'judicial activism' or judicial interpretation? Justify your answer.

## ISSUE 2: SHOULD WE RELY ON THE JUDICIARY TO PROTECT RIGHTS?

### KEY KNOWLEDGE: the role of the High Court and of judicial independence on rights and freedoms

#### THE ROLES OF THE HIGH COURT IN PROTECTING RIGHTS AND FREEDOMS

The High Court of Australia's (HCA) main roles in this regard are:

- To uphold and interpret the constitution: the cases already mentioned which found that implied rights existed in the constitution, are examples.
- To hear appeals on matters where there may have been a miscarriage of justice: in August of 2019, the HCA found that the right to freedom of political communication **did not exist** for public servants. [Comcare v Banerji [2019] HCA 23]  
See <https://www.hrlc.org.au/human-rights-case-summaries/2019/8/27/policy-preventing-public-servants-from-voicing-political-opinions-is-constitutional-high-court-holds>.  
This case demonstrates that the courts may not always be able to uphold basic rights such as freedom of expression where they do not exist in a constitution.
- To decide the constitutionality or legality of executive actions which may have an adverse effect on human rights. An interesting example here was the case of *Plaintiff M70/2011 & Plaintiff M106 of 2011 by his Litigation Guardian v Minister for Immigration and Citizenship*, otherwise known as *the Malaysian Solution case*. The High Court ruled that the Gillard government's proposal to swap 800 asylum seekers held in detention centres for 4000 refugees waiting in Malaysia for resettlement, was illegal. This was because it contravened Section 198A of the Migration Act, which stipulated that asylum seekers must not be subject to further prosecution on resettlement. Since Malaysia was not a signatory to the Refugee Convention 1951, it was found that 198A could not be guaranteed.

#### LEARNING TASK

Read this explainer on the case.

It cannot, however, do any of these things without a case being brought before it. Further, parliament still has the ability to override the court's decisions through amending existing legislation or creating new legislation.

**THE ROLE OF JUDICIAL INDEPENDENCE:** Clearly, the independence of the judiciary from executive interference is paramount to an effective protection of human rights. However, the

Executive has the power to appoint the justices of the High Court and they tend to do so in ways that suit their political leanings. There is no constitutional guidance about the appointment of justices to the HCA, save to say that they are to be appointed by the Queen's representative and that they must retire on reaching the age of seventy. During the period of so-called judicial activism in the 1990s, it was said that 6 of the 7 justices of the High Court were Labor sympathisers. Since the establishment of the Court, 13 justices have been ex-politicians and 9



politicians have been former High Court justices. Currently, there is an admirable balance on the bench, with three Labor appointees and four Liberal appointees, consisting of three women and four men.

### **CASE STUDY 1: MARRIAGE EQUALITY**

*In 2017, the Human Rights Law Centre (HRLC), representing Australian Marriage Equality and Senator Janet Rice, opposed the government's proposed postal plebiscite on marriage equality claiming it was unlawful for the Government to spend \$122 million under Appropriation Act (No.1) 2017 – 2018, which does not authorise Ministers to appropriate funds for expenditure outside ordinary annual services of government. In addition, the HRLC argued that marriage equality should be achieved in Australia through a vote by elected Members of Parliament, rather than a plebiscite. However, the High Court ruled 7 – 0 to dismiss the challenge, enabling the government to implement their postal survey on marriage equality.*

*The Australian Marriage Law Postal Survey (AMLPS) was conducted by the Australian Bureau of Statistics (ABS) between September 12 and November 7, 2017. The ABS requested statistical information, on a voluntary basis, on whether or not the law in relation to same sex marriage should be changed to allow same sex couples to marry. The majority of Australians voted in favour of same sex marriage (61.6% Australians responded 'yes' and 38.4% responded 'no') which supported the passage of The Marriage Amendment Act 2017 through Parliament on December 7, 2017. The Marriage Amendment Act 2017 allows marriage between persons of marriageable age, regardless of their gender.*

*Opponents of the AMLPS argue the survey was not an exercise in democracy but an abrogation of it. Australia has adopted a democracy that promotes majority rule and respect for minorities. As such, minority rights should not be subject to the **approval** of the majority, evident in the AMLPS.*

#### **QUESTIONS:**

1. Does this case uphold or degrade the democratic principle of majority rule and respect for minorities?
2. Explain the role of the High Court in achieving democratic rights and freedoms in this case.
3. Is the fear that social policies might be formulated by unelected, unaccountable judges instead of democratically elected politicians, a fair judgement of the High Court?

#### **SOURCES:**

- [http://www.hcourt.gov.au/cases/case\\_m106-2017](http://www.hcourt.gov.au/cases/case_m106-2017)
- [HRLC News: High Court challenge to Postal Plebiscite](#)
- [ABC: Postal survey given the green light by High Court](#)
- [HRLC: High Court judgement on marriage equality survey](#)
- [SMH: A vote on marriage equality is not an exercise in democracy](#)
- [Department Parliamentary Library: postal plebiscite on same sex marriage](#)

## **CASE STUDY 2: FREEDOM OF THE PRESS**

*Freedom of the press is a democratic right and freedom that falls under the International Covenant on Civil and Political Rights. The United Nations Human Rights Committee considers a “free, uncensored and unhindered press or other media [as] essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society”. However, freedom of the press is limited in Australia through a lack of constitutional protections, including the absence of a Bill of Rights.*

*In June 2019, the Australian Federal Police (AFP) conducted raids on the home of Annika Smethurst, a News Corporation journalist, and the offices of the national broadcaster, the ABC. The raids were conducted as part of investigations into the publication of classified material, outlined in Part 6 and 7 of the Crimes Act 1914. Although the High Court has acknowledged the right to freedom of political communication, implied in Section 7 & 24 of the Australian Constitution, it does not guarantee freedom of the press. This can be compared to other democratic nations such as the United States of America, where Journalists can assert their constitutional right to freedom of the press through the First Amendment.*

*Australia is one of the few democratic countries that does not have a Bill of Rights. Although parliament can create legislation which protects the rights and freedoms of its citizens, such legislation can be altered by governments. A Bill of Rights entrenched within the Constitution could not be amended without a referendum, outlined in Section 128, a difficult process unlikely to succeed. Opponents of adding a Bill of Rights to the Constitution see this as a problem, while advocates see this as a major advantage. In addition, opponents believe an entrenched Bill of Rights would further enable unelected, unaccountable judges to interpret the Constitution and contribute to the formulation of social policies, instead of democratically elected politicians.*

### **QUESTIONS:**

1. Is Australia’s constitution anachronistic in this regard?
2. What are the arguments for and against having a Bill of Rights outlined in this article?
3. Why is the High Court often described as a constitutional umpire?
4. To what extent does the Australian Constitution protect rights and freedoms?

### **SOURCES:**

- <https://www.humanrights.gov.au/our-work/3-freedom-expression-and-internet>
- [Australian Federal Police Statement](#)
- [ABC: AFP raids - what they tell us about press freedom.](#)
- [Lowy Institute: Press freedom in Australia needs more than piecemeal protection](#)
- [https://www.apf.gov.au/Parliamentary\\_Business/Committees/Joint/Intelligence\\_and\\_Security/FreedomofthePress](https://www.apf.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/FreedomofthePress)

**For further evidence and argument, you should download and read the following PDF by [George Williams AO](#):**

- [The Legal Assault on Australian Democracy](#)

**So, what are the arguments for and against an entrenched Australian Bill of Rights?**

Arguments in favour	Arguments against
Rights protection in the constitution is very limited (see above)	The Founding Fathers were not interested in having a Bill of Rights, as they thought that the institutions of responsible and representative government would provide sufficient protection for individuals.
<ul style="list-style-type: none"> <li>• <b>“Executive overreach”</b>: <i>Australia’s parliaments have “passed laws that explicitly, or in their effect, breach fundamental human rights. Not only have our Parliaments failed to exercise their traditional restraint to protect our common law freedoms and liberties, they also have allowed the executive government to expand its discretionary powers and, increasingly, to limit the courts’ exercise of judicial scrutiny.”</i> <sup>14</sup></li> <li>• George Williams identifies <b>6 human rights areas which have been infringed repeatedly since 2001</b>: freedom of speech, freedom of the press, freedom of association, freedom of movement, the right to protest and basic legal rights. <sup>15</sup></li> <li>• The executive can also make war without parliamentary approval.</li> <li>•</li> </ul>	The Separation of powers, the Senate and the Parliamentary Joint Committee on Human Rights, along with the various statutory rights protections we have enacted, provides sufficient guarantees against too much <b>executive</b> power.
<p><b>Common law rights can be suspended by the parliament</b> e.g., <i>the right to be innocent until proven guilty if travelling to a declared terrorist area and in certain states, bail and drink driving offences.</i></p> <p><i>Also, under the Foreign Fighters Act 2014, Preventative Detention Orders (‘PDOs’) permit a person to be held in secret without arrest or charge for up to two weeks.</i></p>	<ul style="list-style-type: none"> <li>• Rights are sufficiently protected by Australia’s statutes and the common law.</li> <li>• Australia has been a respected democratic country and an upholder of the major international human rights treaties.</li> <li>• In any case, the best guarantee of rights is provided by the <b>political culture</b>, wherein the citizens understand and value liberty and justice.</li> </ul>
<p><b>Statutory rights</b> can be suspended / overridden by the parliament; for example, the 2007 suspension of the Racial Discrimination Act to allow for the ‘intervention’ into aboriginal lives in the NT.</p>	A constitutional Bill of Rights would be inflexible and leave Australia unable to respond to new security threats. We have also been able to deal with other issues, such as enforcing plain packaging of cigarettes, because we haven’t been hamstrung by entrenched ‘freedoms’. See <a href="#">Good That Australia Is Not Burdened By HR Legislation</a>
Ratification of international human rights treaties does not mean they have been incorporated into domestic legislation.	A constitutional Bill of Rights does not work; look at Canada and the USA (same reference as above).
It is too uncertain to rely on the Courts: <b>A lack of constitutional rights</b> can leave rights protection in the hands of unelected judges appointed by the government.	Judges will acquire too much power and intrude onto the lawmaking function of the parliament. One example is the Mabo decision, where the High Court was accused of making law rather than interpreting it.

<p>Ministerial discretion is dangerous: The Minister for Home Affairs can cancel the citizenship of dual nationals and cancel visas on 'character' grounds without any charge or trial to test the accuracy of allegations. The minister can also overturn decisions of the Administrative Appeals Tribunal.</p>	<p>Giving the minister discretion over immigration cases provides more flexibility; better than leaving it up to a department where unusual cases may be the subject of a 'one size fits all' approach. A bill of Rights could interfere with this discretion. The Minister can always be voted out.</p>
<p>According to a <a href="#">2019 Human Rights Watch Report</a>, "Australia has a strong record of protecting civil and political rights, but serious human rights issues remain."<sup>16</sup> It named treatment of refugee and asylum seekers, indigenous imprisonment rates, the imprisonment of children, problems with freedom of expression and a string of other areas.</p>	<p><i>"The best guarantee of freedom is not a Bill of Rights. The strongest guarantee of freedom is a vibrant political process, a free press and independent courts and judges enforcing the laws made by Parliament and the common law. The freedoms and liberties which we enjoy in Australia derive from these elements. It was the absence of these elements which meant that the "Bills of Rights" in some countries were (and still are) empty gestures."</i>  <a href="#">The Australian Family Association.</a></p>

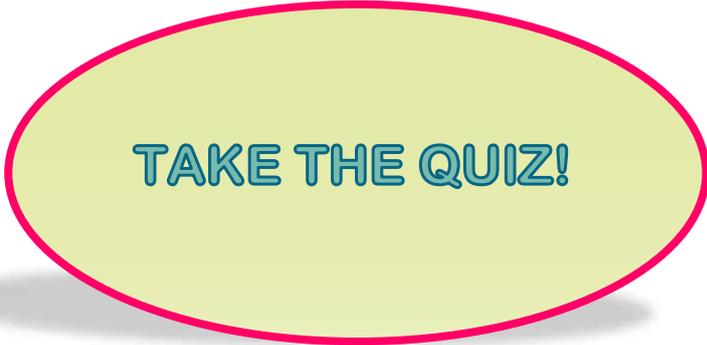
**FURTHER RESOURCES**

- [Prof Gillian Triggs, Human Rights and Executive Overreach](#)
- [Prof Cheryl Saunders, the Australian Constitution and Our Rights](#)
- [Robert French AC, the Constitution and the Protection of Rights](#)
- [ABC Draconian anti-terror plan goes too far](#)
- [The Federal parliament and the Protection of Human Rights](#) (contains a simple list of arguments for and against).

**SUMMARY OF KEY POINTS**

1. Under International law, human rights are considered to be universal, inalienable and indivisible. Some nations, however, regard them as a western construct or as of less importance than the needs of the state. There are 9 key Human Rights 'instruments' or treaties. Australia has ratified seven of them but has only incorporated three into domestic legislation. Human rights can be categorised as basic or foundational, civil and political, economic, social and cultural.
2. Australia's constitution has very limited rights protection as it was not particularly favoured by the founding fathers, who thought that responsible and representative government combined with common law would suffice to protect individual liberties; their main concern was to restrict the power of the new commonwealth government. The constitution has 5 or 6 express rights (s. 41 has not traditionally been regarded as an express right to vote) and the courts have found two implied rights: political communication and a right to vote.

3. The High Court of Australia has the jurisdiction of interpreting the constitution and hearing cases regarding constitutional law, in addition to its appellate (ability to hear appeals) jurisdiction. It is essential in a democracy that there is an independent judiciary with the ability to protect human rights and disallow breaches by the Executive branch. The HCA has had periods where it has interpreted the constitution in a fairly legalistic and narrow way but it also has had periods where it has interpreted the constitution broadly and on the basis of what the words and the constitutionally established institutions might *imply* in terms of rights and the balance of commonwealth and state powers. This was especially the case in the late 1980s to early 2000s; many argued that the court was breaching the separation of powers by performing a legislative role. This is known as judicial activism.
4. It is argued by reputable legal experts that government legislation since 2001 has eroded fundamental civil liberties. This is the chief argument in favour of a constitutional bill of rights, which is unable to be changed by parliament. The chief argument against a constitutional bill of rights is that it is **unnecessary** and unduly **restrictive**.



**TAKE THE QUIZ!**

# EXAM-STYLE QUESTIONS

## Question 1

- a. Outline one right or freedom protected by Australia's constitution. (2 marks)
- b. Identify three broad ways the Australian Constitution protects rights and freedoms. (3 marks)

## Question 2

Using an example, explain what is meant by 'implied rights'. (3 marks)

## Question 3

- a. Explain one role of the High Court of Australia in protecting rights and freedoms. (3 marks)
- b. Using an example, explain the meaning of judicial activism. (3 marks)
- c. Explain the role of judicial independence in protecting rights and freedoms in the Australian political system. (4 marks)

## Question 4

Discuss one strength and one weakness of Australia's constitutional protection of rights and freedoms. (4 marks)

## Question 5

Analyse and evaluate the effectiveness of the Australian Constitution in protecting rights without a formal Bill of Rights. (8 marks)

**TIP: 'analyse' in this case would require you to look at express rights, implied rights and the structures of the Constitution as well as discussing probably two strengths / weaknesses of formal Bills of Right. Evaluate means to start with a contention and follow it all the way through.**

## ESSAY:

*'There are many obstacles to Australia adopting a Constitutional Bill of Rights and it cannot be justified'.* **To what extent do you agree? Provide reasons and evidence for your opinion.**



[CONTENTS](#)

## Chapter 5: Voting and Elections in Australia

### KEY SKILLS:

- ✓ *analyse the operation of electoral systems and the parliament*
- ✓ *evaluate the extent to which democratic values are upheld by the Australian political system*

### KEY KNOWLEDGE:

- ✓ *The operation of the Australian electoral system*

### KEY KNOWLEDGE

#### the Australian Electoral Commission (AEC)

#### KEY TERM: FRANCHISE

The right to vote in an election.

#### What is an electoral system?

It is the institutions and the processes that establish and maintain rules for holding and overseeing elections and referendums. The rules are determined by the government. In Australia, the key institution for implementing and overseeing elections and referenda is the Australian Electoral Commission (AEC). This is an **independent** body created by a statute of parliament known as the Commonwealth Electoral Act 1918.

It is extremely important in a democracy that elections for the people's representatives are fair, free, uncorruptible and accurate. An independent institution like the AEC is a good way to guarantee that no political or other interests have an undue influence on the electoral system. If the operation of the electoral system is left to governments entirely, then there is little guarantee of uniformity (thus equality) or honesty in the result. In the USA, for example, although there is a Federal Election Commission, elections are completely dominated by the state legislatures; they decide the electoral boundaries, the mode of voting, the design of ballot papers, the method of counting, the date and location of polling and the rules regarding registration and enrolment of voters.

#### Role and functions of the AEC

According to the AEC itself, its role is to maintain an "impartial and independent electoral system for eligible voters through active electoral roll management, efficient delivery of polling services and targeted education and public awareness programs."

Specific functions of the AEC are as follows:

1. **To ensure that all eligible voters are enrolled to vote:** anyone who is 16 years of age and over can enrol to vote and it is *compulsory* to enrol to vote once you have turned 18. Anyone who is a citizen, of sound mind and **not** in prison for a period of three years or more is eligible to vote. Currently (September 2019) there are 16,486,185 enrolled voters, which the AEC estimates is 96.8% of eligible voters.
2. **Altering electoral divisions:** The AEC is in charge of administering the redrawing of the boundaries of the electorates for federal elections. A redistribution committee is appointed and population statistics are provided by the Australian Bureau of Statistics. This is done on a mathematical basis to produce a quota determining a state's and territory's entitlement to representation in terms of numbers of seats. There is currently one federal representative for every 164,800 *people* which means that there are now 151 seats in the

House of Representatives. If the number of people in the country changes, then this population quota will be adjusted accordingly. Further, **within** each state or Territory, a redistribution or redrawing of the boundaries of each electorate will occur if there is a greater than plus or minus 10% deviation from the average electoral enrolment in one third of the electorates in a particular state, or one electorate in a territory. Other than that, if there has not been a redistribution in a state or territory for 7 years, then the redistribution process will swing into action. The average divisional enrolment as of October 2019 for Victoria was 110,985, for NSW 113,088, for WA 103,946 and for Tasmania (with a much smaller population of course), 77,575.

See [https://www.aec.gov.au/Enrolling\\_to\\_vote/Enrolment\\_stats/gazetted/2019/10.htm](https://www.aec.gov.au/Enrolling_to_vote/Enrolment_stats/gazetted/2019/10.htm) for more statistics.

3. **Determining ballot paper order:** this is a random draw. To see a video on the process, go to [AEC determining the position on the ballot paper](#). The draw for the Senate is slightly different as the candidates first have to be classified as either grouped (usually into parties) or ungrouped (independents). The Grouped candidates' positions are drawn first. See <https://www.aec.gov.au/Voting/ballot-draw.htm>
4. **Planning voting services:** organising the election requires an enormous effort in provisioning and managing the hundreds of polling places across the country. Additionally, the AEC has to cater for electors living overseas, or in remote areas of the country, in Antarctica or simply unable to visit a booth. So, the AEC provides absentee voting, postal voting, telephone voting and mobile booth voting.
5. **Counting the votes:** after an election or a referendum, the important job of providing an accurate count of first and subsequent preferences begins. Results are first phoned through, then data from the ballot papers is entered into the AEC's computers in the Tally Room. For details read <https://www.aec.gov.au/Voting/counting/>
6. The AEC also **maintains a register of current political parties** and makes sure that parties and candidates abide by the rules relating to **campaign funding and disclosure**.
7. The AEC also has an educative function to help the Australian population stay informed about voting and their rights and duties as citizens. Especially helpful for students of Australia's electoral system is their [GLOSSARY OF TERMS](#)

### **KEY KNOWLEDGE: The Arguments For and Against Compulsory Voting**

Only about 32 countries world-wide have compulsory voting. It was introduced into Australia in 1924 and whereas there have been periodic calls by parliamentarians and the Joint Standing Committed on Electoral Matters (JSCEM) for it to be removed, the parliament has never acted upon it. Australia's voter turnout at Federal elections has never been less than 90% since 1925.

**WHAT IS COMPULSORY VOTING?** It has been compulsory in Australia to **enrol to vote since 2011**. Under the Electoral Act, **the actual duty of the elector** is to attend a polling place, have their name marked off the certified list, receive a ballot paper and take it to an individual voting booth, mark it, fold the ballot paper and place it in the ballot box. However, as a result of the secret ballot, it is impossible for any official to know whether a person has actually placed a mark, legitimate or otherwise, on the ballot paper before folding it and putting it in the ballot box.

Failure to vote in a federal election will cause you to be issued with a \$20 fine, unless you can convince your own divisional returning officer that you had good reason. Failure to vote in state elections varies, from \$20 in WA for a first offence to \$55 in NSW and \$83 in Victoria. Despite it being compulsory to enrol, there is no fine for non-enrolment.

### WHAT ARE THE ARGUMENTS?

There is a good background paper by the AEC on compulsory voting and it does canvass some of the arguments: see [https://www.aec.gov.au/About\\_AEC/Publications/voting/index.htm](https://www.aec.gov.au/About_AEC/Publications/voting/index.htm) The key arguments are below:

IN FAVOUR	AGAINST
It is more in line with democratic values as it increases voter turnout, which in turn produces more <b>accurate representation</b> of voters' wishes. This increases the <b>legitimacy</b> of the elected government.	It may increase voter turnout, but it does not guarantee a thoughtful, deliberate vote. It also may increase the number of informal votes (ballots incorrectly filled out).
It produces a healthier democracy as it makes voters take the democratic electoral process seriously, making them <b>aware of their civic duty</b> as citizens. It increases their political education as they will make more of an effort to get to know the candidates and their policies knowing that they have to vote.	Some argue that Australians seem to be no more politically educated than citizens of comparable countries (for example, New Zealand, the United States, and the United Kingdom) that use voluntary voting. This is difficult to prove.
Candidates for office can concentrate more on policies in their campaigns, rather than spending time and money trying to convince people to vote at all. This is known as "getting out the vote."	Candidates get lazy as a result of compulsory voting and they produce policies that are likely to be indistinguishable from other parties' policies. It encourages them to target swinging seats / marginal electorates.
<b>Candidates are forced to address the needs of all voters</b> , not just the educated or politically aware. In countries with voluntary voting it tends to be the poor and the marginalised who do not vote.	On the other hand, voter turnout in the US 2008 election was one of the highest ever, with large numbers of habitual non-voters turning out to vote for Obama.
<b>It does not infringe the democratic right not to vote, as no-one is actually forced to vote</b> for any candidate(s) as they can just take their ballot paper and put it unmarked into the ballot box.	It is a democratic right not to vote, especially as a protest against the calibre of candidates standing for office or as a protest against the system.

### LEARNING TASK

There are more arguments on this subject. But what you need to do is get some evidence to support your opinion, whatever it might be. So,

1. Write down your **contention** on this topic – Should Voting be Compulsory?
2. Find **evidence** in support of your opinion and arguments.

You could start here: <https://qz.com/746737/there-is-a-way-democracies-can-create-better-informed-voters-but-youre-not-going-to-like-it/> This article also references an Australian study by Jan Shepherd (ANU) which you might be able to get your school library to download for you.

### OTHER REFERENCES:

- [DOES MANDATORY VOTING WORK?](#)
- [IPA In favour of voluntary voting](#)
- [How young Australians will decide who gets their vote](#)

## KEY KNOWLEDGE:

Elections perform a number of different functions in a democratic society:

1. They provide a mechanism for determining leadership
2. They enable accountability
3. They provide governments with legitimacy – a mandate to govern.
4. They reinforce democratic culture and norms
5. They provide choices and alternatives in policy positions.
6. They provide a forum for public discussion of issues.
7. They may contribute to a sense of citizenship and belonging

### LEARNING TASK

Write an explanation for each of the above listed functions and provide an example.

## KEY KNOWLEDGE:

House of Representatives and is known as **Preferential Voting** (or sometimes the Alternative Vote system). It is also used to elect the Senate, but in combination with a quota system; Australians generally refer to this as **Proportional Representation** (or occasionally, the Single Transferable Vote system).

**House of Representatives  
Ballot Paper**

**Victoria:**  
**Electoral division of xyz**  
Number the boxes 1-4 in order of  
your choice

-----

**Jane Brown**  
*Equality Party*

**Trevor Green**  
*Workers' Party*

**Adam Gray**  
*Independent*

**Susan White**  
*Drought Action*

Preferential voting for the House of Representatives is characterised by **single member electorates** (only one person can win a seat), **an absolute majority** (a candidate must get 50% +1 of the votes cast to win), and voters must express **preferences for all candidates** in order of most preferred to least preferred. A ballot paper for the House of Representatives looks roughly like the diagram at left!

The candidate with the least number of '1s' (first preference votes) next to their name is eliminated and the 2<sup>nd</sup> preferences of people who voted for that candidate are distributed accordingly. This process of elimination and distribution continues until one of the candidates has at least 50% +1 of the votes cast. That candidate is then declared the winner of the seat. This way of counting the votes cast is known as the Two-Party preferred or Two-candidate preferred result. Most often, the result is Two-party preferred, as it ends up being between the two major 'parties', the ALP and the Liberal-National Coalition.

## AIMS OF THE PREFERENTIAL SYSTEM

**The main aim of the preferential system is to provide a clear winner and so produce stable government**, with one of the major parties as the Government and the other forming the Opposition. As you can imagine, it is quite difficult for minor parties and independents to gain the absolute majority required. The exceptions are in some rural seats where an independent is well known and popular with the voters; an example would be Tony Windsor (member for New England until 2013) or Bob Katter (member for Kennedy) before he formed Katter's Australian Party. Minor parties have traditionally not had great success in winning seats in the House of Representatives unless they are the Nationals, who work in coalition with the Liberals. Currently there is 1 member of the Greens in the House of Representatives, 1 member of the Centre Alliance, 1 member of Katter's Australian Party and 3 Independents. There are 68 members of the ALP, 44 Liberals, 10 members of the Nationals, and 23 members of the Liberal National Party of Queensland. The Liberal Party under Scott Morrison is able to govern because they can maintain a stable majority with their natural coalition partners (Nationals, NLPQ).

**A second aim of the preferential system** is to produce the most preferred candidate in each electorate. Whereas it can produce some 'anomalies', for example, the candidate with the least first preference votes may end up "winning on preferences", the argument goes that this does not matter, as the most preferred candidate overall must win. This is in stark contrast to the "first-past-the-post system" where only a simple majority is required to win the seat. This can and often does lead to a situation where the most disliked candidate is elected, in the sense that more people may **not** have voted for the candidate than actually voted for the candidate.

### Effectiveness

Effectiveness can be judged in terms of the democratic value of representation. As implied above, the preferential system is effective in producing stable government, the most preferred candidate and also the ability to allow minor party preferences to be instrumental in the result. Elections for the House occur at a maximum of every three years, while Senators must undergo an election every 6 years, with half of them being sent to election at one House of Representatives election and the other half at the following House of Representatives election.

Preferential voting favours the major parties, however, which can be seen as an advantage or a disadvantage, depending on your viewpoint. It can also reduce the number of 'wasted' votes: if an electorate is won by a slim majority, then a large minority of voters have at least had the opportunity to have their preferences counted. On the other hand, if that situation occurs across many electorates, it may happen that the governing party did not actually win a majority of the national vote. This was the case in 1998, where the Liberal government under John Howard won a majority of seats in the House of Representatives with only 49.02% of the votes.

Another issue raised by full preferential voting is that it provides an opportunity for 'preference dealing', where two parties agree to give each other their second preferences on their how-to-vote cards. **Although voters are not bound to follow how-to-vote cards**, there is a tendency for them to do so, especially if they are traditionally loyal to one party. Preference deals have produced some remarkable anomalies in past elections, the most famous being the election in 2013 of Ricky Muir (Motoring Enthusiasts Party) with 479 first preference votes representing .001 of a quota! (To understand what this means read the following section on Proportional Representation.) On the other hand, the Australian National University's 2019 survey results

suggest that Australians are still not particularly pleased with the state of politics or their choice of who to vote for. The proportion of respondents who reported that they always voted for the same party continued to slowly decrease, and fewer than one in three voters followed a party's how-to-vote card.”<sup>17</sup>

A final consideration is that forcing people to express a preference for all candidates on the ballot paper may skew the result. This is because most people are only familiar with one or two candidates standing in their electorate; by requiring voters to preference all candidates they are actually assigning a positive value to candidates they may not want to vote for at all. It is especially problematic when you consider that second, third, fourth etc. preferences are assigned at full value, that is, as though they were a first preference. Moreover, there have been a significant number of occasions when the candidate with the most first preferences has not won the seat. In the 2016 federal election, for example, the Liberal candidate for Melbourne Ports, Owen Guest, had the highest first preference votes (41.9%), but the Labor candidate, Michael Danby, won the Two Party preferred vote, despite having the lowest first preference votes (27%). As a result, many have suggested that we should introduce an optional preferential system, where voters would only be required to express a preference for a minimum of one candidate. Malcolm Turnbull introduced optional preferential voting for the 'below the line' voting in 2016, in an effort to reduce the influence of minor parties and the number of informal votes. This was not particularly successful. See [Double, double, toil and trouble: the 2016 Federal Election](#)

It is possible, however, that optional preferential voting can also produce results where the winning candidate wins with less than half of the votes. It also clearly lessens the importance of preferences in many seats.

To look up any past election results, go to the AEC's information page: [https://www.aec.gov.au/Elections/Federal\\_Elections/](https://www.aec.gov.au/Elections/Federal_Elections/)

## KEY KNOWLEDGE:

This is the voting system used in Australian Senate Elections. Each state and territory represents a single electorate which returns 12 Senators at a full Senate election and 6 Senators at a half Senate election. The Territories return two Senators each. These are known as 'multi-member electorates.' To be elected, a candidate requires a quota of the vote rather than an absolute majority. The **quota** is worked out according to the following formula:

$$\frac{\text{Total Formal Votes}}{\text{Total number of seats} + 1} + 1$$

This produces a quota of 14.3% at a half Senate election and 7.7% at a full Senate election. At the 2016 election, which was a double dissolution election where all Senators had to go to the polls, a successful Senator had to get 7.7% of the vote after preferences.

## AIMS

The main aim of this type of system is to achieve the most accurate translation of votes into seats; i.e., parties should receive seats in proportion to the number of votes they receive. If a party received a quarter of the state's available vote, they should get a quarter of the available seats.

A secondary aim is to make representation more possible for minor parties and independents as a quota is much more achievable than an absolute majority.

## EFFECTIVENESS

The proportional representation voting system is generally effective in achieving its aim of accurately translating votes into seats, despite the opportunity it gives to micro-parties like the Motoring Enthusiasts Party, to take advantage of it. Changes to the system, including to the ballot paper in 2016, have made it easier to use, appear to have reduced problems with micro-parties and have not affected the ability of minor parties to be elected.

The Senate ballot paper now looks something like this below, only much longer horizontally! In the 2019 election, there were about 37 parties, 16 ungrouped candidates and two grouped independents.

Senate Ballot Paper								
State of X: Election of 6 Senators								
<p><b>You may vote in one of two ways</b></p> <p></p> <p><b>Above the line</b> By numbering at least <b>6</b> of these boxes (with number 1 as your first choice)</p>	A	B	C	D	E	F	G	H
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<b>Drought Action Party</b>	<b>Parker's Populist Party</b>	<b>Hunters and Gatherers</b>	<b>Australian People's Party</b>		<b>Equality and Justice Collective</b>	<b>Workers' Party</b>	<b>Bosses' Party</b>
<p></p> <p><b>Below the line</b> By numbering at least <b>12</b> of these boxes (with number 1 as your first choice)</p>	<b>Drought Action Party</b>	<b>Parker's Populist Party</b>	<b>Hunters and Gatherers</b>	<b>Australian People's Party</b>		<b>Equality and Justice Collective</b>	<b>Workers' Party</b>	<b>Bosses' Party</b>
	<input type="checkbox"/> BROWN  <input type="checkbox"/> DRYSDALE	<input type="checkbox"/> PARKER  <input type="checkbox"/> HANSON	<input type="checkbox"/> HESTON  <input type="checkbox"/> BUSH	<input type="checkbox"/> O'CASEY  <input type="checkbox"/> BEATTIE  <input type="checkbox"/> POPPER	<input type="checkbox"/> WRIGHT  <input type="checkbox"/> WINDSOR	<input type="checkbox"/> TRIGG  <input type="checkbox"/> BURNSIDE  <input type="checkbox"/> KING	<input type="checkbox"/> SHORT  <input type="checkbox"/> KEATS  <input type="checkbox"/> HAWK  <input type="checkbox"/> BUTTON	<input type="checkbox"/> TURNER  <input type="checkbox"/> PEABODY  <input type="checkbox"/> BISHOPS  <input type="checkbox"/> MUTTON

You can see that this caters for 'Above the Line' voters - those who only wish to vote for parties rather than for individuals. For these voters, their preferences will be distributed according to a Group Voting Ticket (GVT) worked out by the parties themselves beforehand.

The Optional preferential system has been employed below the line. This is effective in that it gives 'Below the Line' voters much more control over their vote and should in time reduce the informal vote as voters become used to the system. It is also effective in giving expression to minority interests, though there are fewer independents than in the previous parliament.

The current composition of the Senate of the 46<sup>th</sup> Parliament is below:

Liberal Party of Australia	30	Australian Labor Party	26
The Nationals	4	The Greens	9
The Country Liberal Party (NT)	1	The Centre Alliance	2
Pauline Hanson's One Nation	2	Independents (Corey Bernardi)	1
Jacquie Lambie Network	1	<b>TOTAL</b>	<b>76</b>

## ISSUES FOR ANALYSIS & EVALUATION

### ISSUE 1: Representation & Accountability: the impact of voting systems on the composition of parliament

There are three main types of voting systems:

1. **Simple majority or 'First-past-the-post'**, where the candidate with the greatest number of votes wins, regardless of whether it is a majority or not. America and the United Kingdom use this system and it has the effect of favouring major parties and sidelining or excluding minor parties and independents from winning seats in the legislature. It results in an emphasis on marginal seats and a situation where there is very little movement of legislative members – the same people are elected all the time. All this is made worse in systems where voluntary voting is in operation.
2. **The Preferential Voting system, used in the House of Representatives**, has a number of impacts on representation: it favours the major parties, making it harder though not impossible for minor parties and independents to gain seats. Although it includes the wishes of supporters of minor parties and independents through distributing their preferences, this is not very conducive to accurate representation. It has the effect of taking votes away from minor parties and giving them to major parties. It leads to a focus on marginal or swinging seats and thus, some voters feel disenfranchised, as the usual incumbent was elected anyway. The requirement for an absolute majority to win, combined with compulsory voting, avoids the situation where more people did not vote for the elected candidate than actually voted for him/her, but it does not always produce an accurate and fair result. The system in Australia has the effect of exaggerating both majorities (wins) as well as losses. On the other hand, it could be argued that the stability produced by the preferential system has the effect of increasing accountability, as it is very clear who to blame when things go wrong – it can only be the governing party!
3. **Finally, proportional representation**, used in the Australian Senate, more accurately represent the wishes of the voters, in the sense that if 20% of the population voted for a particular party, that party is likely to get close to 20% of the seats. It makes it easier for minor parties and independents to be elected and everyone's vote matters.

*You might like to watch John Cleese explaining the benefits of PR to a British audience.*

<https://www.youtube.com/watch?v=TM2U3XAnv1k>



[CONTENTS](#)

Each of the case studies below is dealing with a particular Key Knowledge dot point. Read the case studies and use the source material to help you answer the questions:

### **CASE STUDY 1: THE IMPACT OF VOTING SYSTEMS ON PARLIAMENT**

*The proportional representation voting system used in the Senate enables minor parties and independents to gain greater representation. In addition, it increases the likelihood of producing a chamber in which neither of the two major parties hold an absolute majority of seats. Minor parties and independents with the balance have increased accountability and pressured governments into compromise that have improved legislation. For example, Pauline Hanson proposed 11 amendments to the Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2019. However, Hanson did not vote for the bill invoking the so-called double standards of the Morrison government, lecturing on the need to “clean up the white-collar crime”. Hanson stated that “the people of Australia want to see that their government is going to deal with white-collar crime, which they haven’t”. With this being said, minor parties and independents with the balance of power can also cast doubt over the notion of the government’s mandate which is a fundamental aspect of the Westminster system.*

*The preferential voting system used in the House of Representatives reduces the chance of minor parties and independents from gaining seats, thus producing an unrepresentative chamber. In the 2019 Federal election, Minor parties and independents received 25.9% of the primary vote, however, only managed to win 4% of the seats in the House of Representatives. However, such a voting system is highly likely to produce a lower house majority and therefore a stable government. For example, the Coalition won 77 seats in the 2019 Federal election, thereby enabling them to form government.*

#### **QUESTIONS:**

1. What impact does the Senate voting system have on the composition of Parliament?
2. What impact does the House of Representatives voting system have on the composition of Parliament?
3. What comparisons can be made between the voting systems used in the Senate and the House of Representatives?

#### **SOURCES:**

- <https://results.aec.gov.au/24310/Website/HouseDefault-24310.htm>
- <https://antonygreen.com.au/preference-flows-at-the-2019-federal-election/>
- [https://www.theaustralian.com.au/nation/politics/cfmeu-link-to-pauline-hansons-industrial-relations-trickery/news\\_story/acc5723383a3fdbab0675d5bb578068b](https://www.theaustralian.com.au/nation/politics/cfmeu-link-to-pauline-hansons-industrial-relations-trickery/news_story/acc5723383a3fdbab0675d5bb578068b)

## ISSUE 2: Popular Sovereignty: consistency with the values of political equality

As we saw in Chapter 1, popular sovereignty rests on the assumption that political or governing power belongs to the people and thus it can only be exercised with their consent. The assumption underlying this is that all people are equal and should therefore have an equal say in determining their representatives.

Political equality can be impaired in a number of areas:

- One person, one vote, one value: this simply means that each electoral division should have roughly the same numbers of voters. This is not always possible and perhaps not always desirable. Rural and remote electorates in Australia necessarily have fewer voters, as otherwise the electorates would be so big that no candidate could easily or meaningfully visit their electorate. Other examples are that as the smallest state in terms of population, Tasmania has been guaranteed under the constitution a minimum of five seats regardless of their population. Thirdly, the Senate itself guarantees equal representation to the states (if not the territories) in order to prevent the larger states from dominating the proceedings – a tyranny of the majority!
- In terms of the ability to vote and to stand for election; if a group of voters were disadvantaged in terms of resources, education or access to political information and the voting system itself, that would infringe political equality. If the ability to stand for office is only really open to wealthy people, that would also impair political equality and thus sovereignty. The AEC attempts to deal with this through having a widespread education campaign and through providing many different ways to vote, such as mobile polling booths. Public funding of elections is another attempt to equalise political access; any candidate or group who receives 4 percent of first preference votes is eligible to receive reimbursement of their campaign expenses at the rate of \$2.80 for every first preference vote. They are also entitled to an automatic payment of \$10,125.
- Where there is a real problem is in the lack of regulation around campaign donations and what may be spent on campaigns. Currently all candidates and parties must make an annual disclosure of total receipts, total payments, total debts and donations above the disclosure threshold (currently \$13,500, indexed annually) for parties and associated entities; annual returns for donors and third party campaigners, and election disclosures for candidates which are made public and viewable on the AEC website. But disclosure is not prohibition!

### CASE STUDY 2: Popular sovereignty and consistency with the values of political equality

*After the 2019 Federal election, where Clive Palmer reportedly spent over \$60 million there were calls from a number of different quarters to reform the laws regarding campaign funding.*

#### QUESTIONS.... *In the interests of political equality*

1. Should there be much tighter regulation and limits on campaign expenditure?
2. Should Australia have publicly funded campaigns?
3. Should there be more restrictions on political advertising?

Cont'd

## SOURCES

- [The Guardian: Clive Palmer's \\$60 million spend shows the need for a cap](#)
- [SMH: Labor pushes for a cap on political expenditure](#)
- [The Conversation: Limits on political advertising are more important than ever](#)
- [ABC News: Ever wondered how much your vote is worth?](#)

## ISSUE 3: Transparency & Accountability: the impact of party pre-selection, electoral funding, political donations, political advertising and campaign techniques

### CASE STUDY 3: POLITICAL ADVERTISING AND CAMPAIGN TECHNIQUES

*The Labor Party has accused the Liberal Party of deliberately misleading Chinese-speaking voters in the 2019 Federal election through their election posters. The posters, which were written in Chinese and used the official colours of the Australian Electoral Commission (AEC), appeared in the Melbourne seats of Kooyong and Chisohm. The text of the poster outlined that the “correct” way to vote was to preference the Liberal candidate first: “Correct way to vote. On the green voting card, put preference 1 next to the Liberal Party. The other boxes can be numbered from smallest to highest”. The signs were authorised by Simon Frost, the acting state director for the Liberal party’s Victorian division. However, the AEC stated that the signs did not breach the Commonwealth Electoral Act.*

*Independent candidate for Kooyong, Oliver Yates, and Chisohm constituent Vanessa Garbett, petitioned the courts to overturn the election results in Kooyong and Chisohm on the grounds the signs were likely to mislead or deceive voters. Yates asserted that the signs “were clearly designed to deceive voters in how to mark their ballot papers or in other words, how to cast their votes. If these signs and the people that approved them are not considered misleading and deceptive, then basically there is no limit on deceptive and misleading conduct at all”. In addition, Yates complained that he had been attacked “through fake web sites and dirt mail that [stated he] was untrustworthy and in bed with the coal industry”.*

*Australia has few laws governing political advertising and campaign techniques, leaving political parties to essentially, do what they desire. The laws that do exist, are overwhelmingly targeted at traditional media, rather than new forms of digital media. The development of digital technologies will present both opportunities and challenges to political advertising and campaign techniques in elections in the future.*

### QUESTIONS

1. Are political parties opting for Americanised, negative advertisements?
2. What impact does political advertising and campaign techniques have on democratic principles and values?
3. What role does the media have in vetting political advertising for accuracy?

### SOURCES:

- [APH: Political advertising in Australia](#)
- [ABC: How do the political advertising blackout laws work?](#)
- [ABC: Labor lodges Chisholm campaign poster complaint](#)
- [Oliver Yates to challenge Liberal's Chinese election signs](#)

## KEY KNOWLEDGE:

This refers to the processes used by political parties to determine who will represent them in elections as candidates. This process is clearly important and has a significant effect on the quality of the candidates and the democratic values of transparency, accountability and representation. The process should be fair, free from bias or vested interest and open to scrutiny. To achieve this, there should be a reasonable degree of internal party democracy. This is seen as so important in other countries, such as America, that they have prior elections for the candidates who wish to represent the party at a general election.

The Liberal Party of Australia conducts pre-selection through a combination of interviews, meetings, speeches and Q & A sessions with local branch members and some randomly selected state party officials. To this extent it is quite fair and equitable, although not particularly transparent. The one exception appears to be the NSW method of pre-selecting candidates, which has been criticised by a number of Liberals themselves for relying too heavily on factional interests and back room deals. The battle for pre-selection in Wentworth after Malcolm Turnbull's defeat by Kerryn Phelps and the fairly public ructions over whether to pre-select Tony Abbott for his own seat of Warringah prior to the 2019 Federal election both showed how much pre-selection can be dominated by factional alliances and networks. Both Liberal and Labor candidates have also been accused of branch-stacking at various times in an effort to control pre-selection outcomes.

For the Australian Labor Party (ALP), internal democracy issues have also related to the election of parliamentary leaders and the degree of voting influence that affiliated trade unions have in pre-selections, but since 2013, "ALP members were able to vote in the parliamentary leadership ballot, with the total of members' votes given equal weight with parliamentary party votes. Although Bill Shorten lost the general membership vote (40 per cent), he was elected leader due to his high level of support in the caucus room (64 per cent). The ALP also trialled community pre-selections ahead of the 2015 NSW State election. <sup>18</sup>

Other reforms are to do with affirmative action to get 50% of party positions (parliamentary and extra-parliamentary) occupied by women. But Federal intervention and factional politics still dominate the pre-selection process, despite rules that require votes of local party members to be available.

The impacts of Australian major parties' pre-selection processes revolve around three major and related issues: firstly, the question of the degree of internal party democracy that should be implemented; secondly, the difficulty for women of becoming candidates and office bearers and thirdly, the tendency to appoint people who are already part of an inner circle of career politicians. This reduces the diversity of candidates available to be elected into parliament with a consequent negative impact on the quality of our parliamentarians.

Finally, the minor parties have also had problems with their pre-selection processes. The Nationals have a strong local membership voice in pre-selections although senior party officials retain influence. The Greens give a vote to their members, but only in candidates who have already been identified by a 'search team'. You might want to do some research on one minor party to make comparisons.

## LEARNING TASK

Read the following articles and answer the questions:

- [Liberal Party hopeful slams selection process for seat of Sydney](#)
- [Pre-selection of candidates for political office is failing us](#)
- [How democratic are these backroom pre-selection battles?](#)
- [Candidate says Michael Danby's pre-selection undemocratic](#)
- [Scott Morrison overruled as Sharma wins Wentworth](#)
- [Liberal Party faces its woman problem](#)
- [It's a myth that Liberal candidates are selected on merit alone](#)

## QUESTIONS

1. Describe two problems associated with the pre-selection of candidates for Australia's Federal Parliament.
2. Explain how these problems affect the democratic principle of representation.
3. Explain how these problems affect the democratic principle of accountability.

## SUMMARY OF KEY POINTS

**KEY KNOWLEDGE: The democratic strengths and weaknesses of the Australian electoral system.**

### **STRENGTHS:**

- ✓ Australia's electoral system is generally agreed to be free and fair and reliable, providing voters with a range of candidates from which to choose.
- ✓ Australia has an independent overseer of the system to monitor electoral equality, funding and transparency.
- ✓ Separate voting systems for the House of Representatives and the Senate enable both stable majority government and minority representation.
  - Preferential voting favours the major parties and thus creates stability in the House of Representatives, although minor parties and independents can still be elected to the House.
  - It allows for some weight to be given to minor parties and independents as their preferences are usually distributed to help elect one of the two major parties.
  - Proportional Representation minimises vote wastage, provides a more accurate translation of votes into seats and facilitates the election of a diverse range of parties. This helps to keep the government accountable to the parliament.

- ✓ Both representation and Accountability are enhanced by the diverse composition of the Senate.
- ✓ Compulsory voting means that Australia maintains very high rates of voter turnout for all elections. In 2019 the turnout was 91.89% while enrolment rose to 96.8%
- ✓ The 2016 reforms to the Senate ballot paper and voting system have provided voters with a greater degree of flexibility and possibly reduced the ability of micro-parties to skew the process through preference harvesting.

## **WEAKNESSES**

- ✗ Although the AEC performs a strong oversight function, Australia has increasing problems with regulation of campaign funding and electoral advertising.
- ✗ A significant proportion of the population believe that compulsory voting infringes a perceived right 'not to vote' and does not actually improve accurate representation.
- ✗ The full distribution of preferences involved with the House of Representatives voting system favours the major parties and discriminates against minor parties and independents as seats are almost never won on first preference votes.
- ✗ The Senate voting system of proportional representation increases the representation of minor parties and independents who can then hold the balance of power and frustrate the will of the elected government.
- ✗ Pre-selection processes for all parties lack transparency and democratic rigour.

**TAKE THE QUIZ!**

# EXAM-STYLE QUESTIONS

## Question 1

- Identify and describe two functions of the Australian Electoral Commission (AEC). (4 marks)
- Explain one way the AEC contributes to equality of representation. (3 marks)
- Discuss the impact of the AEC on executive accountability to the people. (5 marks)

## Question 2

Using examples, explain three functions of elections. (6 marks)

## Question 3

Evaluate the democratic effectiveness of Australia's system of compulsory voting. (8 marks)

## Question 4

- Describe the key features of the preferential system of voting. (3 marks)
- Describe the key features of the proportional system of voting. (4 marks)
- Discuss one impact of the preferential system of voting on the composition of Australia's parliament. (4 marks)
- Discuss one impact of the proportional system of voting on the composition of Australia's parliament. (4 marks)

## Question 5

- Discuss** two weaknesses of Australia's laws relating to election campaign funding. (6 marks)
- Discuss** two weaknesses of Australia's laws relating to election campaign advertising. (6 marks)

**TIP: 'Discuss' means looking at both sides of a strength or weakness; in this case, you should choose 'weaknesses' that have some complexity to them – pros and cons. Public funding is an example, as is the lack of limits on campaign donations, the election 'blackout' period and the lack of regulation of political advertising.**

## Question 6

Analyse the impact of party pre-selection on Australia's democracy. (6 marks)

**TIP: 'analyse' means examining all sides of at least two aspects of the preselection process that affects the democratic operation of the system.**

## ESSAY:

- 'Australia's electoral system is in need of reform.'* **To what extent do you agree?**
- 'Australia's electoral system fails to adequately deliver on democratic values.'* **To what extent do you agree? Provide reasons and evidence for your opinions.**

## Chapter 6: How democratic is the Commonwealth Parliament?

### KEY SKILLS:

- ✓ analyse the operation of electoral systems and the parliament
- ✓ evaluate the extent to which democratic values are upheld by the Australian political system
- ✓ evaluate the democratic strengths and weaknesses of the Australian political system

### KEY KNOWLEDGE: The operation of Australia's Commonwealth Parliament

### KEY KNOW

its own seating plan. The Business of each House is posted the day before the sitting. There are a number of different types of debates which proceed from a *motion* (a proposal submitted to either house of parliament), which must be seconded (agreed to by another member) and then voted on. The most common type of debate is a legislative debate, but there are also urgency debates, matters of public importance (MPIS) and adjournment debates. The work of the parliament is quite ritualistic.

Much of the work is done by parliamentary committees of which there are two general types: Standing committees which are permanent committees and Select committees, which are set up to investigate a particular matter and then disbanded. There can also be 'Joint' committees made up of members of both Houses; these can be Select or Standing.

For any information about the general operation and/or daily workings of the parliament you should visit <https://www.aph.gov.au/>

### FUNCTIONS:

**Both houses of the Australian Parliament have the following key functions:**

1. **To Represent:** **The House of Representatives** represents Australians directly on the basis of one member for every 110,000 people, plus or minus 10%. Currently, there are 151 seats in the House. They must submit themselves for re-election before three years has expired, (give or take a few months), but there is no minimum term stipulated in the constitution. **The Senate** represents the population indirectly, on the basis of their state of residence. Each state is entitled to twelve Senators; each Territory is entitled to two Senators.
2. **To Legislate:** both houses of Parliament can initiate bills and bills (or proposed legislation) must be passed by both houses in order for them to take effect as Acts of Parliament. The exception is that the Senate may not initiate appropriations (money) bills, although it can reject them. The reasoning behind this is that the Government of the day is primarily responsible for the nation's budget and economic policy. There is a typical procedure for

passing bills, consisting of a number of stages of debate and scrutiny and when that is completed, the legislation is submitted to the Governor General for Royal Assent. **Go to <https://questions.peo.gov.au/questions/why-is-each-of-stage-of-the-passage-of-a-bill-through-parliament-so-important/22> and copy out or summarise the stages in the passage of a bill, with an explanation of the importance of each stage.**

3. **To Hold the Government Accountable:** both the Senate and the House are meant to carry out this accountability function. They do so in a variety of ways – through Question Time, through the committee system, through the different types of debates and through Hansard (the official record of parliamentary proceedings). This is made possible by the system of responsible government which requires that the members of the Government must have seats in the parliament. Accountability is also ensured through the doctrine of **Individual Ministerial Responsibility**, which imposes a code of practice on ministers, which if breached should mean their resignation. See [Ministerial Standards](#) (scroll to the end of the page).

***For Collective Ministerial Responsibility see the section on Cabinet.***

4. **To be a forum for debate on national issues:** this involves being receptive to input from individuals and groups via petitions, submissions to committees, listening to backbenchers and other representations from the electorates and allowing the media to report on proceedings. Parliament has been built to house a Press Gallery and a Public Gallery so that its proceedings are transparent. This allows the public and the Press to channel their concerns to the appropriate parliamentarians and so contribute to the debate on national issues such as climate change.
5. **To provide the funds necessary for the nation to be governed properly.** The government develops the Budget and the parliament is expected to debate it, amend it and / or pass it.

**There are two other functions of parliament that are special to each house. Firstly, the formation of government is the special role of the House of Representatives;** government is formed by the party that wins a majority of the seats in that chamber and the leader of that party automatically, by convention, becomes the Prime Minister.

**Secondly, the Senate has a particularly important scrutiny role;** this is because the dominance by the Executive branch of the lower House results in very little real scrutiny of either legislation or government action. The Senate was originally intended by the Founding Fathers to act as a brake on any excesses of the popularly elected House of Representatives, which is why it was given virtually equal powers to those of the House.



## KEY KNOWLEDGE: the role of political parties in parliament

Political parties play a crucial role in the operation of the Australian parliament; indeed, you could argue that it is the party system which enables the parliament to operate as a 'Westminster' style institution. This is not to say that their impact is all positive – more on that later.

**What is a political party?** It is a group of people with like-minded interests and ideas who aim to win seats in a representative body.

**What is a party system?** This refers to the typical structure and operation of parties within a political system. Traditionally, a party system is classified by number – a one party system, two party system or multiparty system.

**What is a major party?** A party which regularly forms government in its own right (like the ALP) or by virtue of winning large numbers of seats in the lower House (like the Liberals).

**What is a minor party?** This is a party which never wins enough seats to form government on its own, but which may be able to govern in coalition or have a significant influence on policy-making by virtue of its strategic seats. An example of the former is the Nationals, who govern in coalition with the Liberals; an example of the latter is the Greens, as they have at times held the balance of power in the Senate. They can also exercise influence in a hung parliament or a parliament where the government has a very slim majority.

The most important role of parties is to form a Government and an Opposition. This function is largely dependent on the existence of the major parties and their dominance in the Australian parliament. From this arises nearly all of their other roles:

- To create policy and express it in legislation.
- To advocate for their policies in parliamentary debates.
- To represent the interests of the voters in the parliament.
- To devise parliamentary strategy through the party room.
- To serve on committees.
- To elect office holders of the parliament (such as ministers, whips, the Speaker. etc.
- To fiercely contest the proposals and policies of other parties.

### The roles of minor parties and independents:

Minor parties and independents have had a significant influence on the parliament and Australian politics in general since the introduction of Proportional Representation in 1948 and again since the expansion of the Senate to include twelve Senators from each state in 1984. The main parliamentary impact has been that governments can now not expect control of the Senate. It is not the Opposition which has seized control but the minor parties and independents who have been able to reach the Senate quota, so winning office and who are then in a position to control the balance of power.

**Balance of Power:** this refers to a situation in the Senate where neither of the major parties has a majority of the seats and so the government must rely on the "cross benchers" (those minor parties and independents who have seats in the Senate) to pass its legislation. It would only cooperate with the Opposition under very rare circumstances.

The evolving roles of minor parties and independents include:

- To scrutinise the policies and performance of the government by serving on committees and during debates and during Question Time.
- To protect the interests of the minorities from majority dominance.
- To represent their own supporters and their policy interests in debates.
- To propose legislation in their own right (e.g., Kerryn Phelps Medivac legislation).
- To put forward constructive amendments to proposed legislation.
- To hold the balance of power in the Senate or negotiate with the government in a hung or minority parliament.

Independents have traditionally been able to gain a seat in the lower house, usually in rural or regional electorates where they are well known. **Currently (January 2020) there are 3 Independents with seats in the lower House:**

- Dr. Helen Haines (Member for Indi, Victoria),
- Zali Steggall OAM (Member for Warringah, NSW) and
- Andrew Wilkie (Member for Clark, Tasmania).

**There are also 3 members of minor parties outside the Coalition:**

- Mr Adam Bandt, Australian Greens, (Member for Melbourne, Victoria).
- Mr Bob Katter, Katter's Australian Party, (Member for Kennedy, Queensland).
- Ms Rebekha Sharkie, Centre Alliance, (Member for Mayo, South Australia).

[To see the numbers of minor party members and Independents in the Senate go to p.48](#)

### Party composition in the House of Representatives

<b>Liberal Party of Australia</b>	<b>44</b>
<b>The Nationals</b>	<b>10</b>
<b>Liberal National Party of Queensland</b>	<b>23</b>
<b>Katter's Australian Party</b>	<b>1</b>
<b>Australian Labor Party</b>	<b>68</b>
<b>The Greens</b>	<b>1</b>
<b>The Centre Alliance</b>	<b>1</b>
<b>Independents</b>	<b>3</b>
<b>TOTAL</b>	<b>151</b>

**Go to the website of one of the Independents and take a note on what they have contributed to the operation of the parliament.**

## KEY KNOWLEDGE: the key positions within parliament

### LEARNING TASK

Research the roles of the key personnel in parliament so you can complete the table below.

Go to

<https://www.peo.gov.au/understand-our-parliament/parliament-and-its-people/people-in-parliament/> and

<https://www.directory.gov.au/commonwealth-parliament>

KEY POSITION	PARLIAMENTARY ROLE
The Prime Minister	
The Deputy Prime Minister	
The Leader of the Opposition	
Deputy Leader of the Opposition	
Speaker of the House	
Deputy Speaker	
President of the Senate	
Deputy President & Chair of Committees (Senate)	
Leader of the House	
Manager of Opposition Business	
Manager of Government Business in the Senate	
Party whips	
Ministers	
Assistant ministers / parliamentary Secretaries	
Shadow Ministers	
Backbenchers	

## KEY KNOWLEDGE: the role of the executive in parliament

The Executive in Parliament consists of the Prime Minister, the Ministers and the Cabinet. As discussed in earlier chapters, there is a clear **leadership role** for the **Prime Minister**, who is the face of the Government in the Parliament. As such, he is the leader of the party or coalition of parties that govern with the support of the majority of members of the House. He is also usually

the focus of Question Time. The Prime Minister takes the lead in presenting policies and the government's position on many issues of the day.

**Executive Dominance of Question Time:** It is the Prime Minister, in consultation with the Leader of the House, who determines whether there will be a Question Time and how long it should run. He and the Cabinet make an educated guess as to what questions are likely to be the focus of Opposition strategy and they decide who will field them and what line they will take – spin! They work out what they want to get across to the public and they devise their own questions which are designed to allow the relevant ministers to cast themselves in a good light. These questions are given to backbenchers to ask; they are known as **Dorothy Dixers**. Government members and Opposition members take it in turns to ask questions; independent members can ask questions in proportion to their numbers in the Chamber. There are two types of questions: questions on notice and questions without notice. If the Prime Minister wants to not answer any questions on a topic, he can close question time by proposing that all further questions be put on notice.

**According to Chapter 15 of 'Parliamentary Practice 7<sup>th</sup> Edition'**, Ministers do not ask questions except occasionally to the Speaker, not to other Ministers. Each question is limited to 30 seconds and must be in relation to the matters for which ministers are responsible to the House. This includes their portfolios but also in relation to any breaches of the code of ministerial conduct (individual ministerial responsibility). They are not supposed to take the opportunity to criticise opposition policies, but this regulation can be avoided by careful wording of the question.

“Questions must not be debated, or contain debate; nor can they contain arguments, comments or opinions. Questions must not contain inferences, imputations, insults, ironical expressions or hypothetical matter; nor may they be facetious or frivolous or attribute motive.”<sup>19</sup> There are many other restrictions on the kinds of questions that can be asked, but it is safe to say that the Speaker interprets these restrictions very leniently and tends to allow them in one way or another.

Answers have very few restrictions in comparison to questions. The two key ones, introduced in 2010, are that answers must be “*directly relevant*” to the question and *no longer than three minutes*.

Problems with question time remain, however. Apart from Dorothy Dixers and lengthy irrelevant answers, question time has become, for many observers, a degrading spectacle. According to Ross Vasta, (Liberal Chair of the Committee on Procedures) which is holding an inquiry into Question Time's rules, “the feedback we're getting from the public and the school students that visit Parliament House, they say to me that the shouting out and discourtesy is not parliamentarian-like behaviour and they would expect better from us.”<sup>20</sup>

**Executive control of legislative debate in the House:** Ministers are responsible for introducing legislation relating to their portfolio into the House. They are the ones who must speak in favour of the bill and answer questions relating to the bill. The Cabinet has already decided whether the bill will be sponsored by the government, when it will be presented to parliament and in what way, the length of time between stages in the passage of the bill, the actual time allocated to its discussion on the floor of the parliament, whether it will go to the main committee or another committee and, in short, everything to do with its passage through the House. Fortunately, there

is no such ability to control initiation and debate of proposed legislation in the Senate, although the manager of Government business in the Senate will certainly try to.

**Executive Control of parliamentary committees:** government members are appointed to chair the House of Representative committees and Government members are always in the majority on House committees. This is because membership is determined in proportion to the numbers in the House. Control of the committee system is important because their essential function is to inquire into policy matters and to take submissions from the public. If a committee produces a report that conflicts with or questions the government's policy position on a matter, that can be embarrassing and could lead to a loss of confidence in the government.

For any information on **House of Representatives committees**, see:

- [https://www.aph.gov.au/About Parliament/House of Representatives/Powers practice and procedure/Practice7/HTML/Chapter18/Parliamentary committees](https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/Practice7/HTML/Chapter18/Parliamentary_committees) and
- [https://www.aph.gov.au/About Parliament/House of Representatives/Powers practice and procedure/00 - Infosheets/Infosheet 4 - Committees](https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/00_-_Infosheets/Infosheet_4_-_Committees)

For information on **current** House of Representatives committee work see [https://www.aph.gov.au/Parliamentary Business/Committees/House](https://www.aph.gov.au/Parliamentary_Business/Committees/House)

**In the Senate**, the Government has the chair of legislative committees while the Opposition chairs the reference committees.

For more information, see

[https://www.aph.gov.au/About Parliament/Senate/Powers practice n procedures/Senate Briefs/Brief04](https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Senate_Briefs/Brief04)

For the current work of Senate committees see

[https://www.aph.gov.au/Parliamentary Business/Committees/Senate](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate)

## ISSUES FOR ANALYSIS & EVALUATION

### KEY KNOWLEDGE: The significance of party discipline

#### ISSUE 1: the impact of party discipline

**Party discipline** refers to the ability of a parliamentary political party to get its members to support the policies and positions of the leadership, usually achieved through **coercion** (*if you vote against us you will be sent to the backbench or lose pre-selection!*) or **inducement** (*if you vote with us, you will be rewarded with a position of responsibility!*)

Australia has one of the most highly disciplined political party systems in the democratic world. Members of parliament are only permitted to vote according to their own preferences in the case

of a conscience vote – a situation where the leader determines that the issue is most suitable to the exercise of individual conscience – euthanasia for instance.

If a member of a parliamentary party decides to vote against his party, that is termed '**crossing the floor.**' This tends to happen occasionally in the Senate: for example, Liberal Senator from South Australia, Simon Birmingham, voted against his party's decision to support KAP Senator Fraser Anning's motion to condemn public exclusion zones around abortion clinics (June 2018). Senator Anning was absent, as were 12 members of the Liberal Party!

There are arguments for and against the practice of strict party discipline: on the one hand, if all members of a party voted according to their own beliefs, passing any new laws would depend entirely on deal-making and the stability and transparency of government would be diminished. On the other hand, it could be said that strong party discipline prevents a more vibrant democracy where a diverse range of views and positions are advocated. It also creates a system where individuals are routinely required to vote in a way which compromises their own views, which is undesirable for the mental health of our representatives.

### LEARNING TASK

**Read the articles below and answer the questions.**

#### SOURCES:

- [A system of disciplined parliamentary parties](#) (about half-way down the page) **Excellent!!**
- [ABC - the only hope for democracy is for politicians to stand up](#)
- [The Conversation - Politician's inability to speak freely leaves democracy all the poorer](#)
- [Canberra Times - Our Parliament: power, weakness and serendipity](#)

#### BIG QUESTION:

**Evaluate the proposition that party discipline is necessary to parliamentary democracy.**

#### ISSUE 2: EXECUTIVE DOMINANCE: THE ABILITY OF THE EXECUTIVE TO AVOID PARLIAMENTARY RECKONING

##### CASE STUDY: ACCOUNTABILITY

*Minister for Energy and Emissions Reduction, Angus Taylor, claimed City of Sydney mayor Clover Moore and nine other councillors spent \$1.7 million on international travel and \$14.2 million on domestic travel. However, the council's annual report showed that the costs were \$1,727.77 on international travel and \$4,206.32 on domestic travel. Taylor conceded that he used incorrect figures to attack Moore, but strongly denied that he forged documents, instead claiming he had sourced the figures from a document on the council's website. The NSW police confirmed an investigation into the affair to determine if criminal offences had been committed.*

*The opposition used Question Time to call on Scott Morrison to stand Taylor aside citing 7.1 of the ministerial code of conduct. "Moments ago, it was revealed that the NSW police have formed Strike Force Garrad to investigate possible criminal behaviour connected to the Minister for Emissions Reductions. What action will the Prime Minister take?" (Anthony Albanese).*

## CASE STUDY: ACCOUNTABILITY (CONT'D)

*However, Morrison rejected calls to stand Taylor aside, stating he would first discuss the matter directly with the NSW police. In addition, the opposition denied Taylor's request for pairing to attend the International Energy Agency's conference in Paris during the investigation into the origins of the doctored document. Pairing is a longstanding convention that preserves the voting strengths of the parties in parliament; an absent member of parliament who is expected to vote on one side of a bill, is paired with another member of parliament who is expected to vote on the other side of the bill, who is in turn refrained from voting.*

*Responsible government implies a chain of accountability which ensures the government is responsible and accountable to parliament. However, the government has been embroiled in matters that highlight a lack of accountability, which often arise from the Westminster traditions which the Australian political system has arisen from. Some consider that methods of accountability that have arisen from the Westminster system, such as Question Time and Individual Ministerial Responsibility (IMR), have declined in effectiveness.*

### QUESTIONS:

1. How is accountability achieved in Parliament?
2. To what extent can accountability be evaded?
3. How has Australia's Westminster system of government affected accountability?

### SOURCES:

- [Guardian - Labor rebuffs Taylor's request to be covered to attend climate talks](#)
- [SMH - NSW Police investigating Taylor over fraudulent documents](#)
- [ABC Are our politicians finally getting serious about changing the rules?](#)
- [The Conversation: don't change the contest we want to watch](#)

## ISSUE 3: THE SENATE: 'UNREPRESENTATIVE SWILL' OR GUARDIANS OF DEMOCRACY?

- All you need to cover this issue is at [ABC - Is the Senate still vital for democracy?](#)
- And a very long article – interesting, but only if you have time:  
[The Monthly - How politics works and how to fix it Scott Ludlum](#)

## SUMMARY OF KEY POINTS

### **KEY KNOWLEDGE: The democratic strengths and weaknesses of the Commonwealth Parliament.**

This is best judged against the democratic principles mentioned in Chapter 2 and the functions of the Parliament.

#### **STRENGTHS**

**Popular Sovereignty:** *The Parliament enables the people to decide who is to represent them through free, fair and relatively frequent elections, as well as providing opportunities for participation in the legislative process via submissions to committees and petitions. Any eligible citizen is able to stand for election to the Parliament.*

**Representation:** *the parliament is a representative institution as it allows the citizens to elect their representatives on an equal basis in proportion to the population. Individual Senators are directly elected by citizens on a proportional basis, though there is deliberate malapportionment built in (each state gets 12 Senators, each Territory gets 2) in order to protect the interests of smaller states. It fulfils the requirements of majority rule through providing stable government in the lower House as well as minority representation in the Senate. Historically, major parties have always governed, although there has often been scope for independents to be elected to the House as well.*

**Accountability:** *the system of responsible government requires that the Executive is held to account by the parliament. This occurs through having an Opposition, who shadows the government and scrutinises their actions at all times, as well as providing alternative policies which contest the government's; it occurs through Question Time, which is designed to hold Ministers to account, through Hansard, (which records what parliamentarians say in debates and records their votes), through parliamentary committees and through the Media in parliament.*

*The Senate is also able to provide greater scrutiny and oversight through not being controlled or even dominated by government, through its diverse composition, as well as through its more extensive committee system.*

**Legislation:** *the Parliament is an effective legislator as it requires both Houses to pass legislation, after scrutiny and opportunities for amendments as well as input from committees and the general public. Compared to other legislatures (the US Congress for instance), it is quite functional; the Federal Parliament passes about 160 bills annually and supply is always guaranteed.*

**Protection of Rights and Freedoms:** *the parliament has introduced measures to ensure that human rights are not contravened in proposed legislation. Once a bill is tabled, the Parliamentary Joint Committee on Human Rights examines it to ensure it meets Australia's human rights obligations, as set out in the seven core human rights treaties to which Australia is a signatory. The committee then reports to both houses of Parliament on its findings. If a problem is identified, the Parliament can consider whether the bill should be amended or even withdrawn.*

*As a house of review, the Senate subjects legislation to additional scrutiny. Each bill that comes before the Senate is examined by the Scrutiny of Bills Committee, which is concerned to ensure*

that legislation does not impinge unduly on the fundamental rights and liberties of citizens, and that it observes certain legislative proprieties. See [Senate Powers, Practice and Procedures](#).

## **WEAKNESSES**

**Popular Sovereignty:** *politicians have frequently been accused of being out of touch and unresponsive to citizens' demands. A good example is climate change; despite many protests, demonstrations, surveys and some media scrutiny, successive Australian Governments have demonstrated great reluctance to develop renewables, eliminate coal, set high emissions targets or introduce carbon trading schemes.*

*Strong Party discipline is also blamed for reducing the ability of our representatives to carry out the people's will. Individual politicians are too beholden to the party leadership for their position and future career prospects to give their best efforts to decision-making. The party system itself encourages conflict and game-playing with an emphasis on winning rather than collaborating on producing good policy.*

*The Transparency of the political decision-making process is also undermined by the influence of factional and party-room politics; the recent changes of leadership in government and Opposition have led many to become alienated and disillusioned with politics, which might explain the higher than normal informal vote at the last election.*

See [Quick Guide to Party Leadership Changes and Challenges](#)

**Representation:** *although the parliament has strong, stable and reasonably accurate election results, delivering a good mix of major parties, minor parties and independents, it is unrepresentative in terms of being a mirror of society. There are too many career politicians, not enough women and not enough indigenous representatives. The occupational balance is also skewed towards legal and administrative areas. There is little scope for delegate-type representation and parliamentarians have little time to do effective electoral work.*

**Accountability:** *accountability is seriously undermined by executive dominance of the Parliament generally. Government control of Question Time, the appointment of a Speaker from the ranks of government members, the government's control of committees, its ability to call an election at a time of its own choosing and its control of the parliamentary agenda and debate in the lower House (provided it has a clear majority) all obstruct the parliament's ability to hold the government to account. If the government manages to control the Senate, the Opposition is effectively and completely neutralised.*

**Protection of Rights and Freedoms:** *despite the Scrutiny of Bills committee and the Joint Committee on Human Rights, parliament is able to push through with its legislative program anyway. The perfect example is Australia's detention of children on Manus island and Nauru on and off for 18 years. This contravenes the Convention on the Rights of the Child at a minimum.*

Reading [Here's how to renew Australia's democracy](#)

**TAKE THE QUIZ!**

# EXAM-STYLE QUESTIONS

## Question 1

- a. Distinguish between Standing and Select committees of the Australian Parliament (3 marks)
- b. Explain one function of the Australian Parliament. (3 marks)
- c. Explain two differences between the functions of the House of Representatives and the functions of the Senate.(4 marks)

## Question 2

- a. Distinguish between major and minor parties. (2 marks)
- b. Discuss two roles of parties in the Australian Commonwealth Parliament. (4 marks)
- c. Using an example, explain one role of independents in the Australian Commonwealth Parliament. (4 marks)

## Question 3

- a. Describe the roles of a backbencher in the Federal Parliament. (3 marks)
- b. Describe the roles of the Opposition in the Federal parliament. (4 marks)

## Question 4

- a. Explain the role of the Prime Minister as the leader of his parliamentary party. (3 marks)
- b. Explain what is meant by Executive dominance. (5 marks)

## Question 5

Analyse the strengths and weaknesses of Question Time. (6 marks)

## Question 6

- a. Explain the impact of party discipline on the democratic operation of Federal Parliament. (4 marks)
- b. Evaluate the impact of party discipline on the operation of the Federal Parliament. (5 marks)

## Question 7

Evaluate the ability of the Federal Parliament to hold the executive to account. (8 marks)

## ESSAYS:

1. *“Australia’s Parliament is in need of significant reform.” To what extent do you agree?*
2. *“Australia’s Parliament adequately fulfils democratic principles.” To what extent do you agree?*

## GLOSSARY of ADDITIONAL TERMS

bicameralism	The practice of having law-makers (legislators) in two separate houses, chambers or assemblies, usually representing different interests.
Bill of Rights	A bill of rights is a list of the fundamental rights of citizens of a country. It exists to protect the rights of individuals from being violated by the state or by other individuals. A bill of rights can be entrenched or unentrenched. An entrenched bill of rights is contained within the constitution of the country, meaning it cannot be changed by an act of parliament but only by referendum. An unentrenched bill of rights is an ordinary act of parliament which can be altered or repealed by parliament. In the United States, the Bill of Rights refers to the first 10 Amendments of the Constitution.
Cabinet	This consists of the Prime Minister and her/his senior ministers. The cabinet is the key policy making body and it is bound by the ideas of collective responsibility and cabinet solidarity. This means Cabinet proceedings are confidential and should remain secret and that Cabinet ministers must all agree in public with the decisions / statements of the Prime Minister. There are currently 23 ministers in the Cabinet.
'crossing the floor'	Voting in the parliament against the decision or stance of your party in a division. This entails crossing the floor of the parliamentary chamber to sit with the Opposition or cross-bench.
Group Voting Ticket	A written statement that sets out the order in which a Senate group wants its preferences distributed. Group voting tickets <i>indicating preferences between parties</i> were abolished prior to the 2016 federal election following legislative change.
Ministry	This refers to the members of the government (executive) who have been allocated special areas of responsibility, known as portfolios. Examples are Trade, Education, Foreign Affairs, Defence and Environment. There are currently 30 Ministers in the 46th Parliament and 12 Assistant Ministers (also known as parliamentary secretaries).
Parliamentary committees	They are normally composed of Members from the various parties or non-aligned Members in proportion to the numerical strength of each group in the House. Thus, government members are generally in a majority on each committee. In practice most committees are chaired by a government member and have an opposition member as deputy chair.
Parliamentary democracy	In Australia, it is a democratic form of government in which the party (or a coalition of parties) with the greatest representation in the lower house of parliament forms the government. Its leader becomes the prime minister. Executive functions are exercised by members of the parliament appointed by the prime minister to the ministry through cabinet. The parties in the minority serve in opposition to the majority and have the duty to challenge it

regularly. Prime ministers may be removed from power whenever they lose the confidence of a majority of the ruling party or of the parliament. The parliamentary system originated in Britain.

party discipline

the ability of a parliamentary political party to get its members to support the policies and positions of the leadership, usually achieved through coercion or inducement and to vote in line with party room decisions.

Shadow Ministry

These are members of the Opposition who have been allocated certain areas of responsibility, such as Trade or Education etc., whose role is to closely scrutinise ('shadow') the minister for this area of responsibility. They should also be developing alternative policies to the government's policies in that area.

Vote of no confidence

A motion put to the parliament which indicates that the parliament has lost confidence in the government or a Prime Minister, normally moved by the Leader of the Opposition, and debated just like any part of parliamentary business. If passed, the government will need to either resign or call an election.



## NOTES

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<sup>1</sup> <https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2019>

<sup>2</sup> <http://press-pubs.uchicago.edu/founders/documents/v1ch13s7.html>

<sup>3</sup> See <https://www.abc.net.au/news/2018-03-09/politicians-professions-do-mps-know-how-to-do-your-job/9360836>

<sup>4</sup> <https://questions.peo.gov.au/questions/in-what-instance-in-the-past-has-the-governor-general-used-his-powers/22>

<sup>5</sup> <https://theconversation.com/morrison-brings-his-own-man-in-to-head-the-prime-ministers-department-120973>

<sup>6</sup> <https://www.theguardian.com/australia-news/2016/dec/09/coag-states-confront-turnbull-on-infrastructure-and-competition-reform>

<sup>7</sup> For an excellent discussion of these issues see Kefford et al, *Australian Politics in the Twenty-First Century: Old Institutions, New Challenges*, Cambridge University Press 2018, chapter 2.

<sup>8</sup> <https://www.tai.org.au/content/its-time-more-politicians>

<sup>9</sup> <https://theconversation.com/renters-hold-the-key-to-low-voter-turn-out-at-federal-elections-120494>

<sup>10</sup> <https://www.elections.wa.gov.au/about-us/media/whats-new/1725>

<sup>11</sup> <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>

<sup>12</sup> <https://www.humanrights.gov.au/our-work/education/human-rights-explained-fact-sheet-7australia-and-human-rights-treaties>

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<sup>13</sup> [http://www.futureleaders.com.au/book\\_chapters/pdf/Future Justice/Cheryl Saunders.pdf](http://www.futureleaders.com.au/book_chapters/pdf/Future_Justice/Cheryl_Saunders.pdf)

<sup>14</sup> [https://www.mq.edu.au/\\_data/assets/pdf\\_file/0008/213749/mlj\\_2016\\_triggs.pdf](https://www.mq.edu.au/_data/assets/pdf_file/0008/213749/mlj_2016_triggs.pdf)

<sup>15</sup> <https://lr.law.qut.edu.au/article/view/651/589>

<sup>16</sup> <https://www.hrw.org/world-report/2019/country-chapters/australia>

<sup>17</sup> [the 2019 Australian Election study](#)

<sup>18</sup> Norm Kelly, "Party registration and political participation: Regulating small and 'micro' parties" in Anika Gauja and Marian Sawyer (eds.), *Party Rules?: Dilemmas of political party regulation in Australia*, ANU Press, The Australian National University, Canberra, Australia. 2016. Pp.90-91

<sup>19</sup>

[https://www.aph.gov.au/About Parliament/House of Representatives/Powers practice and procedure/Practice7/HTML/Chapter15/Rules governing questions](https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/Practice7/HTML/Chapter15/Rules_governing_questions)

<sup>20</sup> <https://www.abc.net.au/news/2019-08-27/parliament-question-time-changing-the-rules/11450356>

## Issue 2

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Josie Gorman**

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## FOREWORD

This digital series is designed to help you, the student, master the content in the Australian Politics course as well as improve your skills. You could use it in conjunction with the free SEV Australian Politics updates and with any other resources your teacher may give you. The aim is to cut through to the essentials and to save you time. Each edition will deal with one of the Areas of Study (in order) and will be released throughout the year onto the free Campion MyConnect app. Release dates are January, March, June and August, although the Covid-19 pandemic may interfere with our intentions!

Throughout this text, you will be given the opportunity to apply, explain, analyse, evaluate and critically compare – all key task words that can appear on an Australian Politics examination. And although there is a substantial amount of explanation and a number of case studies, you should be prepared to do your own research throughout the year and gather your own evidence from what's happening in Australia and the world. That's one of the great satisfactions of this subject!

Although the contents of this edition will closely follow the Australian Politics Study Design, we are not reproducing the Study Design for you; we strongly advise you to download your own copy from the VCAA website and use it to guide your note-taking.

<https://www.vcaa.vic.edu.au/curriculum/vce/vce-study-designs/ausglobalpolitics/Pages/Index.aspx>

*You should become so familiar with the Study Design that you could recite it in your sleep. **Everything in the study design, (the introductory questions, the blurb that precedes the Key Knowledge, the Outcomes, the Key Knowledge and the Key Skills) is examinable.***

You should also become familiar with the VCAA Advice for Teachers (which contains a glossary) and the Frequently Asked Questions, the answers to which have the same status as the Study Design.

The material in this text is organised to cover the basics of the Study Design's Key Knowledge and to emphasise the mastery of the Key Skills. We will provide some model answers, some tips and plenty of questions for you to practise. We encourage you also to memorise the key terms in each Area of Study and practise applying them to the case studies provided in this text. This will help you gain a more sophisticated understanding of the content.

Additionally, this text will use the content of each of the Areas of Study in a blended and integrated way, so that what you will learn in Unit 3 Area of Study 2 or Unit 4 Area of Study 1, for instance, could also appear in issues of this series that deal with other areas of study.

**Finally, we welcome your feedback.** The authors can be contacted by emailing SEV at [admin@sev.asn.au](mailto:admin@sev.asn.au)

We hope you enjoy your study of VCE Australian Politics.

# Unit 3 AOS 2 “Comparing democracies: Australia and the United States of America”

## Chapter 1: Introduction to the Study

### The Basics of

The key to really getting on top of this area of study is to make sure you remember what you learned in AOS 1 without getting the two political systems of Australia and the US confused. The whole focus is comparison, but in order to be able to do that you **need sound knowledge of both systems**. You also need to **remember the key democratic principles** of popular sovereignty and equality, the rule of law, representation, accountability, the protection of rights and freedoms and participation. **They remain the yardstick for evaluation and comparison of the two systems.**

**The Outcome for this AOS is how you will be assessed. On completion of this unit the student should be able to:**

- 1. analyse the key features of the political system of the United States of America and**
- 2. critically compare the political systems of Australia and of the United States of America in terms of the extent to which democratic values and principles are upheld.**

### ADDITIONAL RESOURCE

A **free digital resource** on this area of study produced in 2018 by SEV can be found here:

<https://www.sev.asn.au/resources/vce-australian-and-global-politics/free-resources>

### A Note on the Key Skills

There are two key skills mentioned in the Study Design that apply to all key knowledge and every chapter, so it is advisable for you to think about them before you begin. They are as follows:

- use contemporary examples and evidence to **explain, analyse** and **compare** the political systems
- develop **arguments**, explanations and **points of view** which use **evidence** from contemporary examples.

**Explain:** *this requires more than a description* as you must outline **WHY** the concept or event or phenomenon is the way it is.

**Analyse:** *this requires more than an explanation* as you must break the thing to be analysed into its parts, including conceptual parts like strengths and weaknesses. You need to show what, when, where, why and **HOW** and then reach some kind of **conclusion**

**Compare:** this requires an examination of both **similarities and differences**. Comparative tables and Ven diagrams can help here.

**Develop arguments:** this means that you should **be on the look-out** for alternative arguments. The more you appreciate the complexity of a topic and the scope of its reasoning, the more sophisticated your understanding will be. If, for example, you believe that the Australian system of responsible government is more democratic than the American system of ‘separation of powers’, collect as many arguments on both sides as you can. Create your own and try them out! The author can think of at least five arguments in favour and a similar number against.

**Develop points of view:** this means use the broad range of arguments you have discovered to refine your views. You don’t want to be in the Exam or the Sac not knowing what you really think.

**Use evidence** from contemporary examples: the main skill here is to actually use any examples or evidence in such a way that it supports your argument. **This needs to be explained.**

**So, keep practising these skills right from the beginning. That’s why there are exam-style questions included in this resource.**

## Approach to the Key Terms

### KEY SKILL:

- define and explain key terms and concepts relating to democratic theory and practice in Australia.

### LEARNING TASK

**There are rather a lot of key terms in this AOS. Copy the table below, complete it and keep referring to it and adding to it. Hopefully, none of the terms are completely unfamiliar to students of Politics at this stage of the year. We have done the first one as an example.**

\*you can use the Glossary page of VCAA: [Australian Politics Glossary](#) to help.

TERM	DEFINITION (with key elements highlighted)	ASSOCIATED ISSUES	APPLICATION (examples)
<b>Liberal democracy</b>	A political system that combines two principles of political theory: that <b>individuals have rights</b> (liberalism) and that political <b>rule should be by the people</b> (democracy). Liberal democracies usually pursue <b>policies that encourage capitalism</b> and private sector involvement in the economy.	<ul style="list-style-type: none"> <li>• Is a constitutional bill of rights effective?</li> <li>• Is capitalism incompatible with popular sovereignty?</li> </ul>	<ul style="list-style-type: none"> <li>• The gun control issue</li> <li>• Judicial activism / conservatism US Supreme court</li> <li>• Issue of healthcare for all</li> <li>• Rising inequality and the unregulated power of TNCs</li> </ul>
<b>Separation of powers</b>			
<b>Checks and balances</b>			
<b>The American Constitution</b>			
<b>executive</b>			
<b>legislature</b>			

Judiciary			
Federalism			
Rule of Law			
Bill of Rights			
Primaries			
caucuses			
The Electoral college			
Party Conventions			
Congress			
President			
Impeachment			
veto			

As you read through this resource, the key terms will be **highlighted\*** and further explored, especially in the case studies. This is because the key terms and concepts all have ‘issues’ associated with them (in the political sense) that will affect your ability to evaluate and compare the two systems.

## SUMMARY of KEY POINTS

### Remember and understand key democratic principles

#### Reproduced from Issue 1:

1. The essential principle of a democratic system is that it rests on the consent of the governed, which means that governing power belongs to the citizens. This is known as **popular sovereignty**.
2. The mechanism by which the government is determined is some form of **majority rule**, while at the same time **protecting the rights of the individual and minorities**.
3. An underlying value in all democratic systems is **equality**: in principle, all members of the society should be treated equally, in terms of their opportunities, their rights and their obligations to the law. (*Even though this is not a key principle included in the Study Design, it is absolutely fundamental to genuine democracies and to the key democratic principles of popular sovereignty, rule of law, rights and freedoms and representation.*)
4. The **Rule of Law** means that the laws of the land are supreme and applied equally to all. This is essential to protect citizens from the arbitrary exercise of government power.
5. A liberal democracy emphasises the **rights and freedoms** of all individuals in society, including basic human, civil, social and economic rights, which **must be guaranteed by law**. Therefore an **independent judiciary is essential**.

6. For a democratic society to be able to deliver on popular sovereignty and to be vital, there must be ample opportunities for citizens to **participate** in decision-making or to influence policies and laws.
7. In modern democracies, there must be ways to achieve effective **representation** of the people's views and interests. A mixture of the **four types of representation** is desirable, as are voting systems which produce accurate results.
  - Delegate type representation
  - Trustee type representation
  - Party / partisan type representation
  - Representation that is a Mirror of Society
8. **Accountability**: Democratic systems must provide mechanisms for the people's representatives to be held to **account** for what they do. A system of Responsible Government (as exists in Australia) ensures that we can vote out members of the executive and legislative branches if they don't perform. To do this we need **transparent** political processes and **independent and open media** channels. Other mechanisms designed to hold the executive to account are Her Majesty's Loyal Opposition, Question Time, parliamentary committees and an independent judiciary. Accountability in the American system is pretty much confined to the elections, the constitution and the operation of the Supreme Court.

## Chapter 2: How does the US system work?

### KEY SKILL:

- *explain the key features of the US political system*

### KEY KNOWLEDGE:

#### A federal system of government

- the separation of powers
- checks and balances

### American

**NOTE: refer to the section in Issue 1 on Australian Federalism to refresh your memory.**

Just like Australia, the US adopted what is known as a 'federal division of powers' in order to safeguard the rights of the colonies. After the second constitutional convention agreement was reached on how power was to be distributed. The constitution listed the specific powers that were to be attached to the national government in Washington, known as expressed powers

#### KEY TERM: FEDERALISM

*A system of government in which law-making powers and responsibilities are constitutionally divided between a central, national government and a series of state or regional governments.*

– there are 17 of them – and all the rest were reserved to the colonies that achieved statehood reserved powers. Some powers were to be exercised ‘concurrently’. This arrangement has caused a great deal of conflict between the two spheres of government and has resulted in the Supreme Court, the arbiter or interpreter of the meaning of the constitution, becoming very powerful.

**THE BASICS:** There are now 50 states, each of whom was admitted to the Union at different times. Each state has two representatives in the upper house of Congress (the Senate); each state has its own elections for governor and for its own legislature. They each run elections for President and Congress in their own way, with very little interference from the national electoral body, the Federal Election Commission (FEC).

Each state has its own special characteristics – arguably more so than the Australian states do and stemming from their particular histories. The principle of ‘states’ rights’ in the US is fiercely defended; it is represented by the **10<sup>TH</sup> Amendment in the Bill of Rights** which states:

**“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”**

**Expressed powers** refers to areas of law-making listed as belonging exclusively to the Federal Government

**Reserved powers** refers to areas of law-making **not** listed in the constitution as belonging to the Federal Government. The Tenth Amendment states that these powers belong to the states.

**Concurrent powers** refers to areas of law-making able to be shared by both Federal and State governments. Examples are taxation, the establishment of a court system and the regulation of elections.

### **KEY TERM: LIBERAL DEMOCRACY (American variant)**

*In the American political system, the emphasis is on ‘liberalism’, referring to the desire to protect individuals from being tyrannised by governments. Thus, features like elections for all government positions (excluding ministers/secretaries), the Bill of Rights, the Separation of Powers and small government especially in the economy (fiscal conservatism) were prioritised over government provision of services such as health or education, the regulation of private corporations such as banks or political efficiency. The latter roles are viewed as ‘socialist’ or ‘left wing’. Americans refer to themselves as a **Constitutional Federal Republic** rather than a democracy. (CIA Factbook)*

One reserved power which is especially relevant to the way that US federalism operates, is the ‘policing power’ which provides that states have their own judicial systems. This principle of states’ rights, especially when combined with the American version of **liberal democracy\*** which frowns upon any ‘excessive’ intervention by governments in US economy or society, has resulted in a number of **ISSUES**:

### **ISSUES ASSOCIATED WITH AMERICAN FEDERALISM**

1. Increased and ongoing conflict between state and federal governments
2. Increased and ongoing legal conflicts between state and federal court systems.
3. A reliance on judicial interpretation which ultimately makes the US Supreme Court very powerful (some argue that it is too powerful.)
4. Greater difficulty in achieving any kind of uniform standards in terms of laws, practices and policies.
5. Greater difficulty in achieving any kind of national response to social problems, such as health care or Covid-19 or even natural disasters.

## CASE STUDY 1: FEDERALISM AND SPORTS BETTING

In 1992, Congress passed the Professional and Amateur Sports Protection Act (PASPA) which prohibits states from authorising sports betting. In **2012**, the state of New Jersey enacted the Sports Wagering Act, authorising regulated sports betting at New Jersey casinos and racetracks. The NCAA (National Collegiate Athletic Association) and the major professional sports leagues argued New Jersey could not legalise sports gambling under PASPA. In contrast, New Jersey argued that PASPA was unconstitutional under the anti-commandeering doctrine.

In *Murphy v. NCAA* (2018) the **Supreme Court** ruled in favour of New Jersey, finding that PASPA's provision prohibiting state authorisation of sports gambling violates the anticommandeering doctrine under the **10th Amendment** in the Constitution. ***The Court stated that complying with the anticommandeering rule is important because it serves as one of the Constitution's structural safeguards of liberty and advances political accountability. With PASPA struck down, states have the opportunity to make their own laws on sports betting for the first time in a quarter of a century. Many have now legalised the practice, while others are in the process of doing so.***

### READING:

- [Murphy v. NCAA \[SCOTUS brief\]](#)
- [CATO INSTITUTE: Anyone's Game: Sports-](#)
- [OYEZ: THE CASE Murphy v. National Collegiate Athletic Association](#)
- [US SUPREME COURT - the result of the appeal](#)

## CASE STUDY 2: FEDERALISM and MARIJUANA

The CSA categorises marijuana as a Schedule 1 drug, meaning it is perceived to have no medical value and a high potential for abuse. This law was passed under Article I, Section 8 of the American Constitution, the Commerce Clause, which gives Congress the power to regulate commerce among the states. However, this is in conflict with state legislation. Currently, 33 states have legalised medical cannabis, and 11 of those states have further legalised recreational cannabis.

This conflict between state and federal legalisation creates a situation where people can be charged with a federal crime for activities that are legal within a state. In addition, it has led to an increase dependence on the Supreme Court to make rulings on issues, which

has led some to argue the Supreme Court exerts too much power. For example, the Supreme Court upheld the power of the Federal Government to regulate marijuana in *Gonzales v. Reich* (2004). The Supreme Court concluded that the “exemption for cultivation by patients and caregivers can only increase the supply of marijuana in the California market”. Therefore, the “aggregate impact on the national market” would be “substantial” and within Congress’ power to regulate.

### READING

- [Gonzales v. Raich Summary | quimbee.com](#)
- [The GlobePost: American Federalism and Policy Chaos: Marijuana legalization and Decriminalization](#)
- [Business Insider: Legal marijuana goes on sale today in Illinois. Here are all the states where cannabis is legal.](#)
- [Bill of rights Institute: Gonzalez v. Raich \(2004\)](#)

## CASE STUDY 3: FEDERALISM & COVID 19

COVID – 19 has revealed the limitations of America’s federal system of government, which divides law making powers and responsibilities between the federal government and the state governments. The federal government is confined to enumerated powers, which has limited their ability to respond to the challenges of COVID – 19. In comparison, it is the state governments that are endowed with most of the powers needed to respond to epidemics, such as COVID – 19.

The Tenth Amendment grants state governments police powers, which enables them to establish and enforce laws protecting the welfare, safety, and health of the public. As such, the responsibility to respond to COVID – 19 has been divided among 2,684 state, local and tribal public-health departments, causing many to argue that a patchwork response to the virus has been carried out.

However, some have argued that America’s federal system of government has allowed states to devise appropriate solutions to COVID – 19 as they are best placed to understand their jurisdictions, such as the availability of local resources. For example, the Governor of Maryland, Larry Hogan, suspended operations at the state’s Vehicle Emissions Inspection Program to instead use the sites as drive through coronavirus testing centres.

Despite the national nature of COVID – 19, the response to the virus has been localised to states. The inability to coordinate a national response has seen the number of cases and deaths from the virus surpass every other country on the globe.

### READING:

- [CORNELL: Police Powers](#)
- [NEJM: Thinking Globally, Acting Locally — The U.S. Response to Covid-19](#)
- [WSJ: Federalism and the Coronavirus Lockdown](#)
- [The Atlantic: A Coronavirus Quarantine in America Could Be a Giant Legal Mess](#)

## Strengths and

Some of the strengths of federalism are represented by the original reasons for adopting it:

- ✓ It is a way to limit the power of government so that tyranny is contained.
- ✓ It is a good way to represent the diverse interests and character of different states.
- ✓ It encourages local participation and brings government closer to the people.

We mentioned some of the weaknesses in the Issues section above. For instance:

- ✗ It can encourage conflict
- ✗ It can lead to *judicial activism*
- ✗ It is inefficient and costly as it causes duplication of resources and personnel
- ✗ It makes it difficult to address national issues or achieve uniformity of national standards.

**Judicial activism** refers to the practice of judges overturning decisions / laws of the Executive or legislature, supposedly as a result of personal opinion or political ideology, which has the effect of intruding upon the proper functions of the executive and legislative branches.

**Further references:**

- [US Govt: Federalism Pros and Cons](#)
- [US Connect: 15 advantages and disadvantages of Federalism](#)

### LEARNING TASK

Use the case studies and the references above to answer the questions that follow:

## EXAM-STYLE QUESTIONS

**1. Describe one way the US constitution upholds a federal system of government. (4 marks)**

**TIP:** 'Describe', for 4 marks, requires quite a lot of detail. So choose your one way carefully! The best possibilities are the 10<sup>th</sup> amendment, (where you would have plenty of case material to flesh out your answer) and the division of powers into enumerated /expressed, reserved and concurrent. You could use the fact that the constitution has established a states' house of Congress, but there may not be 4 marks worth in it unless you do some extra research.

**2. Using an example, explain how disputes between state and federal governments can be resolved. (4 marks)**

**TIP:** The best thing to use here is the judicial branch – the Supreme Court and other federal courts and the state courts. I would use two of the case studies to illustrate the point that judicial interpretation, though a way of solving federal-state disputes, is also somewhat in conflict with states' rights with no guarantee of the outcome.

### 3. Discuss two impacts of federalism on the American Political system. (6 marks)

**TIP:** *identify your impacts first and then make sure you can discuss the two-sided nature of each of them. Must be linked clearly to the federal structure. Must have examples! (at least one for each impact).*

### 4. Analyse the strengths and weaknesses of American federalism. (8 marks)

**TIP:** *this is actually a nice question which allows you to focus on the pros and cons of federal systems. 'Analyse' means that you must examine the separate elements of something; in this case, the focus is on the strengths and weaknesses of federalism **overall**. You need to arrive at some kind of conclusion so choose your strengths and weaknesses carefully and support your points with examples. If you are in favour of federalism on the whole, have more strengths than weaknesses. Try to discuss the Strengths ( select three) in terms of their corresponding weaknesses (and vice versa if you are not in favour of federalism) rather than examining strengths and weaknesses sequentially. It is nearly an evaluate question as a result of being asked to focus on strengths and weaknesses, but not quite.*

## The Separation of Powers

This now quintessentially American system was the brainchild of Baron Charles-Louis de Secondat of Montesquieu. He was an aristocrat, a judge and a philosopher who had a significant influence on the American Founding Fathers. He believed and argued that it was necessary in a republican form of government that the executive branch – those holding the power of government – should be separated from the legislative or law-making branch and from the judicial or judging branch in terms of *personnel* as well as *function*. This was in order to prevent despotism – tyranny as a result of the possession of concentrated and unlimited power.

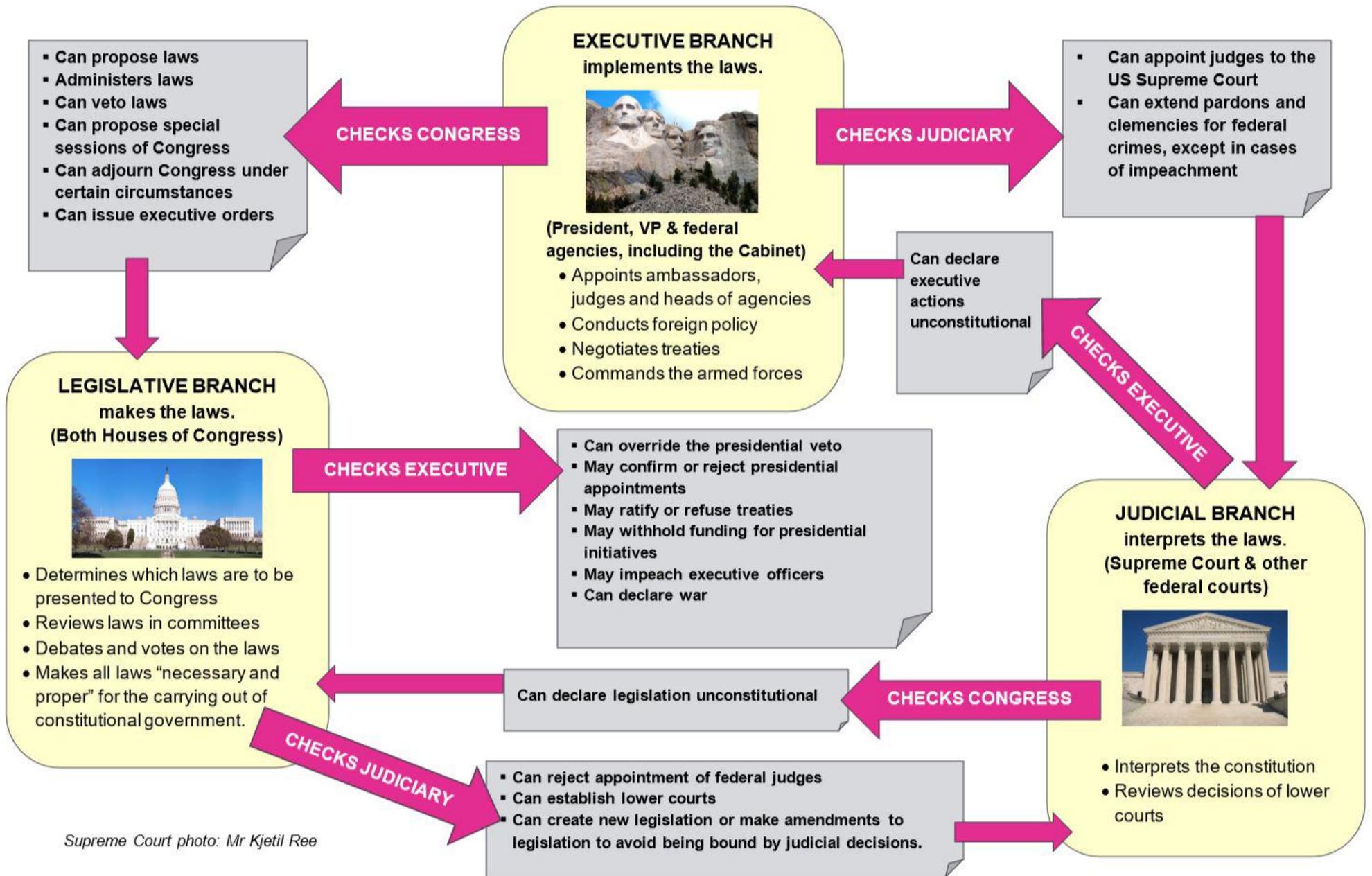
In non-democratic governments there is little or no separation of these 'powers' or functions. Largely as a result of James Madison, the US constitution provides that there be a full (though not complete) separation of these branches in order to preserve liberty. In the American system, the President and White House staff are not members of the Congress, although the Vice -President is the President of the Senate. The justices of the Supreme Court, whose primary function is constitutional interpretation, may not be members of the other two branches, although they are appointed by the President and approved by the Senate.

## Checks and Balances

This separation of personnel and function allows for a system that, in theory, **balances** the powers of each branch in a reasonably equal fashion, although many would argue that the Founders intended Congress to have more power than the Presidency. It also allows for a series of **checks** to be **constitutionally** placed on the power of each branch, by at least one of the other branches.

**Examine Figure 1** to see how this works in practice.

**FIGURE 1: THE AMERICAN SYSTEM OF SEPARATION OF POWERS AND CHECKS AND BALANCES**



Supreme Court photo: Mr Kjetil Ree

## ISSUES ASSOCIATED WITH THE SEPARATION OF POWERS AND CHECKS AND BALANCES

1. Judicial partisanship as a result of political appointments
2. The growing power of the Executive branch with possible undermining of the Rule of Law
3. Increasing partisanship in Congress which nullifies the ability to check Presidential power.
4. The inability of Congress to legislate effectively for what the nation needs.

**Partisanship** refers to a strong, even over-riding adherence to a particular ideology without necessarily considering the truth or reasonableness of other views.

### CASE STUDY 4: Judicial Independence or Judicial

Research suggests that the partisan ideology of a president is a good predictor of judicial voting patterns, leading some to claim, “tell me who appointed a Justice, and I can tell you how she or he voted.” As such, presidents have become more strategic in vetting judicial nominees to fill Supreme Court vacancies. This was evident in 2016 by the refusal by the Republican-controlled Senate to hold hearings on President Barack Obama’s nominee Merrick Garland, after the death of Justice Antonin Scalia.

On July 9, 2018 President Trump announced Brett Kavanaugh as his nominee for the Supreme Court. After appearing at a Senate Judiciary Committee over allegations of sexual misconduct, he was confirmed by the Senate and was sworn in as a Supreme Court Justice on October 7, 2018. Kavanaugh, who is expected to be a reliable conservative, will fundamentally alter the balance of the court, and will create an ultraconservative insurgency in what some have described as a red court. Democrats argue that the conservative dominance will enable the Supreme Court to carry out Trump’s agenda for decades to come.

During his first term on the Supreme Court, Kavanaugh was more conservative than the justice whom he replaced, Justice Kennedy. However, research reveals that during this period he voted with some of the more liberal justices, just as often as he did with the conservative ones. Kavanaugh sided with justices such as Stephen Breyer and Elena Kagan, who were nominated by Bill Clinton and Barack Obama respectively, the same percentage of the time he sided with Justice Gorsuch, who was nominated by Donald Trump.

#### READING:

- [TIME: Inside Brett Kavanaugh's First Term on the Supreme Court](#)
- [NY Times: Trump, in India, Demands 2 Liberal Justices Recuse Themselves From His Cases](#)
- [SCOTUS Blog: Is Kavanaugh as conservative as expected?](#)
- [The Atlantic: Kavanaugh Could Carry On Trump's Agenda for Decades](#)

## CASE STUDIES 5 & 6: The Growing Power of the

Many have argued that President Donald Trump's use of clemency has directly undermined the rule of law. It has been argued that Trump has bypassed the norms and procedures that govern the use of clemency, including circumventing the Justice Department's Office of the Pardon Attorney, and those seeking clemency through the Department's procedures. Instead, he has been driven by friendships, personal empathy and fame. One of his most notable clemencies this year include that of former Governor Rod R. Blagojevich of Illinois, who was sentenced to 14 years in prison for trying to sell or trade the vacant Senate seat left by Barack Obama. The president alleged that the former governor was a victim of the same forces that investigated him for years, stating "It was a prosecution by the same people — Comey, Fitzpatrick, the same group". Blagojevich also appeared on The Celebrity Apprentice which Trump hosted.

Bernie Sanders commented on the lack of political equality of citizens stating that *"Today, Trump granted clemency to tax cheats, Wall Street crooks, billionaires and corrupt government officials. Meanwhile, thousands of poor and working-class kids sit in jail for nonviolent drug convictions. This is what a broken and racist criminal justice system looks like."*

### READING:

- [USSC: Ex Parte Garland](#)
- [The Guardian: Donald Trump's Use Of Clemency Undermines The Rule Of Law](#)
- [NY Times: The 11 Criminals Granted Clemency by Trump Had One Thing in Common: Connections](#)
- [NY Times: Trump Grants Clemency to Blagojevich, Milken and Kerik](#)

## CASE STUDY 6

On January 27, 2017 President Donald Trump signed Executive Order 13769, titled Protecting the Nation from Foreign Terrorist Entry. The Executive Order, known more commonly as the Muslim ban, banned foreign nationals from seven predominantly Muslim countries from entering the country, including Iran, Syria, Libya, Yemen, Somalia, North Korea and Venezuela. Trump argued that such a measure was necessary for the safety and security of the United States. The ban drew several legal challenges on statutory and constitutional grounds but was narrowly upheld by the Supreme Court on June 26, 2018 (5 - 4 vote).

The court's conservative judges ruled in favour of the President, holding that the challengers had failed to show that the ban violated either immigration law or the Constitution's First Amendment prohibiting the government from favouring one religion over another. The court's liberal justices denounced the decision, claiming it was no better than *Korematsu v. United States*, the 1944 decision that endorsed the detention of Japanese-Americans during World War II.

### READING:

- [SCOTUS Blog: Trump v Hawaii](#)
- [Reuters: Explainer: Inside the plans for Trump's expanded travel ban](#)
- [NY Times: Lesson of the Day: 'Trump Administration Adds Six Countries to Travel Ban'](#)
- [NY Times: Trump's Travel Ban Is Upheld by Supreme Court \(very comprehensive\)](#)

### CASE STUDY 7: a partisan

Despite nominating Merrick Garland on March 16, 2016, 32 days after Justice Scalia's death, the nomination was pending before the Senate for a total of 293 days, as Majority leader of the Senate, Mitch McConnell, refused to hold a confirmation hearing. On January 31, 2017, 11 days after Donald Trump assumed office, he announced his intention to nominate Neil Gorsuch to fill the vacancy. Neil Gorsuch was confirmed by the Senate and was sworn in as a Supreme Court Justice on April 7, 2017, by a vote of 54 – 45. Justice Gorsuch has made significant decisions in the Supreme Court in favour of Trump, including upholding his ban on travel from several predominantly Muslim countries, known more commonly as the Muslim ban.

### READING

- [SCOTUS Blog: How Gorsuch's first year compares](#)
- [TIME: Congress Has Always Been Partisan and That's a Good Thing.](#)
- [Washington Post: the Supreme Court has become just another arm of the GOP](#)

### MINI

### ineffectiveness

Read these articles:

- [Cato Institute: It's time to make Congress great again!](#)
- [ProPublica: How Congress Stopped Working](#)
- [Pew: A productivity scorecard for the 115th Congress](#)

### TASK:

Identify and list the reasons that are suggested for Congressional ineffectiveness. Discuss with your fellow students.

## EXAM-STYLE QUESTIONS

1. **Outline the meaning of ‘executive’ as it applies in the American political system. (3 marks)**

*TIP: Because the question is worth 3 marks you should be thinking about key phrases, such as “as it applies”. You need to not only define the composition of the executive branch but explain its function and provide an example of it in action.*

2. **Explain the operation of the separation of powers as it applies in the American political system. (4 marks)**

*TIP: again, it’s all about the wording of the question; in this case, explain the operation” is crucial to a full answer. It means ‘how does it operate in practice?’ So you would need to explain the theory and then look at how the theory plays out in US politics. Work from Figure 1. Clearly an example or two is very necessary! And remember that separation of powers really incorporates checks and balances, even though the two things are different.*

3. **Analyse the operation of the separation of powers as it applies in the American political system. (6 marks)**

*TIP: the difference between this question and question 2 revolves around the task word ‘analyse’. Take the question 2 answer further by looking at the issues / problems associated with the way the separation of powers is working and reach a conclusion.*

4. **Discuss two strengths of the operation of the separation of powers as it applies in the American political system. (4 marks)**

*TIP: Discuss two strengths requires you to identify two distinct strengths and for each strength, comment on why it is not always a strength. Emphasis is on discuss. If you just explain two strengths you will only get half marks.*

5. **Explain the system of checks and balances as it operates in the American political system. (5 marks)**

*TIP: Here, ‘explain’ means more than ‘describe’. It means that you need to describe the thinking behind the checks, and balances, and provide illustrative examples. But you also need to show the link between the checks in particular and the aims – i.e., limiting power, preventing tyranny, safeguarding the constitution.*

6. **Evaluate the extent to which checks and balances achieve democratic values in the American political system. (8 marks)**

*TIP: by the time you get to this question, you should have formed a firm opinion – a contention – and be able to provide three convincing arguments. You must refer to at least two democratic values.*

## CHAPTER 3: Constitution of the United States

### KEY SKILLS:

- *explain and evaluate the protection of democratic rights and freedoms*
- *evaluate the extent to which democratic values are upheld by the US political system*
- *critically compare the US system with the Australian system and the extent to which each reflects liberal democratic values*

### KEY KNOWLEDGE:

- the protection of democratic rights and freedoms in the USA
  - the rule of law and judicial independence
  - the effectiveness of the American Constitution as a protector of democratic rights and freedoms
- comparison of key features of the USA political system with the Australian political system including: protection of rights and freedoms

**NOTE:** *the Study design key knowledge as written above seems to suggest that students need to know both the effectiveness of rights protection in the USA, as well as the effectiveness of constitutional protection of rights in the USA, as well as being able to critically compare rights protection (generally) between the two countries and the extent to which each reflects liberal democratic values. Students should read exam and SAC questions really carefully to make sure they answer what is actually being asked.*

## THE AMERICAN CONS

Since **\*\*The American Constitution** is a **key term** it is probably a good idea to know the basics of this document. SEV's free digital resource on AOS2 has a lengthy section on the constitution that is worth reading for background information. Here we are just going to describe its broad structure. It has a *preamble*, which expresses the values of the new federal republic, followed by 8 Articles (Chapters) dealing with the following matters:

### KEY TERM: American Constitution

*A written document which provides the framework for a government's powers. It may contain a Bill of Rights, as in the USA.*

<b>PREAMBLE</b>	<b>We the People</b> of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.
<b>Article 1 (10 sections)</b>	All about the <b>legislative branch – Congress</b> – organisation and powers
<b>Article 2 (4 sections)</b>	All about the executive branch and <b>executive power</b> and <b>elections</b> for the Presidency
<b>Article 3 (3 sections)</b>	Sets up the <b>Judicial branch</b> - the Supreme Court and the federal courts - and its jurisdiction. Also gives Congress the power to punish treason.

<b>Article 4 (4 sections)</b>	Provides for <b>states</b> to recognise each other, prohibits discrimination against <b>citizens</b> on the basis of state of residence and provides for the establishment of <b>new states</b> .
<b>Article 5</b>	How to <b>amend the constitution</b> (proposal passed by two thirds both houses of Congress, or two thirds of state legislatures and ratified by ¾ states)
<b>Article 6</b>	<b>Supremacy of Congressional laws</b> if in conflict with state laws; no religious test for Office.
<b>Article 7</b>	Constitution will come into effect once ratified by 9 states.
<b>Amendments 1-10</b>	<b>Bill of Rights</b>
<b>Amendments 11- 27</b>	Various. (see below)

To learn more about the American Constitution go to this interactive site: [National Constitution Center](#)

## How are rights and freedoms protected in the

1. Certain rights are **constitutionally guaranteed** in the **\*\*Bill of Rights** (the first 10 amendments to the constitution) as well as in subsequent amendments, such as amendments 15, 19 and 24 which give citizens the right to vote regardless of race, colour, previous condition of servitude and regardless of sex, as well as prohibiting any form of 'poll tax', which had been used to prevent poorer coloured citizens from voting. Amendment 26 gave the right to vote to citizens who were 18 years old. Other rights are further protections against abuse of government power, such as Amendment 20, which sets an end date for a presidential term (12 noon on January 1<sup>st</sup>) and Amendment 22 which limits the president to two terms of office only.

### KEY TERM: Bill of Rights

*A statement of the rights, privileges or liberties to which citizens are entitled, incorporated into a nation's constitution or a statute. In the USA, it is generally meant to refer to the first 10 amendments to the US Constitution.*

You can read about any of [America's Founding Documents](#) at the National Archives site.

2. Rights are also protected through the **\*\*Rule of Law** and an **Independent Judiciary**, though the independence of the US Supreme Court is tainted by partisanship as we have seen. The Supreme Court has on a number of occasions upheld individual liberties on the basis that actions taken against or by certain individuals were unconstitutional. This has led to significant controversy ( see Case Studies 9 – 11 below).
3. **Statutory protection**: this means that Congress has passed laws to protect human rights although these laws or 'statutes' (Acts of Congress) do not have the 'rigidity' or inflexibility of the constitutionally guaranteed rights. On the other hand, these laws have arguably been more effective than the Bill of Rights or other amendments. Significant pieces of legislation include:
  - [The Equal Pay Act of 1963](#)
  - [Civil Rights Act of 1964](#)
  - [The Age Discrimination in Employment Act of 1967](#)
  - [Americans with Disabilities Act of 1990 \(ADA\)](#) and the [2008 Amendment](#)
  - [The Genetic Information Non-discrimination Act of 2008](#) (GINA)

**TASK**

Choose two of the above statutes and *briefly* summarise their key provisions in terms of the rights being protected.

4. **International laws and treaties:** there are 9 core international human rights treaties. (Refer Issue 1 Chapter 4). In order for these treaties to be binding on states they are usually ratified through being introduced into domestic law. However, the US has for a long time had a problem with committing to the international human rights agenda, seeing it either as a threat to US sovereignty, an interference with states' rights or simply unnecessary, as a result of the constitutional protection of rights which already exists in the country. Thus, the US has not signed the core treaties that follow:

**KEY TERM: Sovereignty**

*Legitimate or widely recognised ability to exercise effective control of a territory within recognised borders.*

- First optional Protocol on the International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR)
- Convention on the Elimination of All Forms of Discrimination against Women(1979) (CEDAW)
- Convention on the Rights of the Child (1989) (CRC)
- Rome Statute of the International Criminal Court (1998)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990)
- Convention on the Rights of Persons with Disabilities (2006) (CRPD)
- International Convention for the Protection of All Persons from Enforced Disappearance (2006)

Read [Global Justice Center: U.S. Aversion to International Human Rights Treaties](#)

It is also arguable that the US commitment to universal human rights has often been about the protection of sovereignty and national interests. Under President Trump, this is referred to as “principled realism” and it is a key component of ‘*America First*’ – part of the National Security Strategy.

Read [Whitehouse: Promoting Human Rights is Essential to an ‘America First’ Vision](#) and [Guardian: US halts cooperation with UN on potential human rights violations](#)

**KEY KNOWLEDGE:** In order to judge *the effectiveness of the American Constitution as a protector of democratic rights and freedoms*, you need to do two things:

- ✚ Be able to explain which rights and freedoms are protected
- ✚ Be able to explain what is not protected.

## Which rights and freedoms are constitutionally protected?

Because the main intent was to protect citizens from abuses of government power generally, the constitutional rights can be grouped according to the limits placed on each of the arms of government. (See the summary below).

The Founders were also very keen to preserve state powers and states' rights, so they established the 10<sup>th</sup> Amendment which allows for the further expansion of rights. What they were not so

## THE BILL OF RIGHTS – IN BRIEF.

### Amendment 1: Limits on Congress

Congress cannot make any law establishing a religion or abridging freedoms of religion, speech, press, assembly or petition.

### Amendments 2, 3, 4: Limits on the Executive

The Executive branch cannot infringe on the right of people to keep arms (2), cannot arbitrarily take houses for militia (3) and cannot search for or seize evidence without a court warranty swearing to the probable existence of a crime.(4)

### Amendments 5, 6, 7, 8: Limits on the Judiciary.

The courts cannot hold trials for serious offences without provision for a grand jury (5), a trial jury (7), a speedy trial (6), presentation of charges and confrontation by the accused of hostile witnesses (6), immunity from testimony against oneself (5) and immunity from trial more than once for the same offence (5). Furthermore, neither bail, fines nor punishment can be excessive (“cruel and unusual”) (8) and no property can be taken without “just compensation”(5).

### Amendments 9 & 10: Limits on the National Government

Any rights not enumerated are reserved to the states or the people (10), but the enumeration of certain rights in the Constitution should not be interpreted to mean that those are the only rights the people have.

(Lowi, Ginsberg, Shepsle, 2006, p. 70)<sup>1</sup>

concerned about was the protection of economic social and cultural rights such as the right to an education or to health care.

Apart from these express or enumerated rights, the United States' Supreme Court has found a number of implied rights. Some of these have been inferred from the 14<sup>th</sup> Amendment as a result of the “due process” clause. Others have been inferred from the word ‘liberty’ which occurs in a number of places throughout the constitution. These include the 5<sup>th</sup> Amendment, which makes use of the same phrase as the 14<sup>th</sup>, namely, “nor be deprived of life, liberty, or property, without due process of law”.

It was held by Justice McReynolds in Meyer v State of Nebraska (1923) that liberty “...denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience and to enjoy those privileges ... essential to the orderly pursuit of happiness by free men.”<sup>2</sup> As a result,

### Amendment 14:

*All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.***

subsequent cases found implied rights to travel, the right to marry and have children, the right to association, the right to study a foreign language, the right to educate one's children, and the right to privacy.... A very impressive list, especially when compared to Australia's meagre number of constitutional rights.

On the other hand, as we indicated earlier, Americans have a dearth of social, economic and cultural rights in practice. Large numbers of Americans live in poverty, have poor access to health and education, little economic security when things go wrong and little protection against violence despite, or perhaps because of, the 'right to bear arms.' Australians by comparison are well-served after in these regards, although our treatment of our indigenous people and refugees has been a constant source of criticism.

To get a perspective on the state of rights protection in the USA have a look at the website of the 'Advocates for Human Rights Organisation's view of the [US HUMAN Rights Record](#).

## ISSUES ASSOCIATED WITH THE PROTECTION OF RIGHTS IN THE USA

1. Guaranteeing rights in a constitution – such as in the Bill of Rights and subsequent amendments – makes it too hard to change when there is a need.
2. Federalism and states' rights lead to a great deal of conflict and litigation as well as encouraging states to find ways around the Supreme Court's interpretations of the rights protected in the Constitution.
3. Supreme Court involvement can be influenced by partisanship, thus judicial independence can turn into judicial activism or conservatism which affects the protection of rights.

### LEARNING TASK

**Take notes on the case studies below as well as reading the references.**

### CASE STUDY 1: Constitutional Protection of Rights is too

In *District of Columbia v. Heller* (2008), the Supreme Court held that a D.C. law that restricted unlicensed handguns within homes violated the Second Amendment. The Supreme Court upheld that "the Second Amendment protects an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defence within the home" (Justice Scalia). Two years later in *McDonald v. Chicago* (2010) the Supreme Court upheld its decision.

However, some have argued that the inflexibility of the Bill of Rights means that rights are protected in ways which may not match the requirements of contemporary society. In

McDonald v. Chicago (2010), Justice Stevens questioned the Second Amendment stating “the fact that the right to keep and bear arms appears in the Constitution should not obscure the novelty of the Court’s decision to enforce that right against the States. By its terms, the Second Amendment does not apply to the States; read properly, it does not even apply to individuals outside of the militia context”. Furthermore, proponents of the Second Amendment argue that the right to life listed in both the Declaration of Independence and the Constitution is infringed upon by the Second Amendment. For example, the increase in mass shootings, such as the Parkland massacre in 2018 which killed 17 people and injured 17 others, has undermined the right to life of citizens.

#### **READING:**

- [McDonald v. Chicago, 561 U.S. 742 \(2010\)](#)
- [VOX: After Sandy Hook, we said never again.](#)
- [CONSTITUTION CENTER: On this day, a divided Supreme Court rules on the Second Amendment](#)
- [REUTERS: Parkland massacre survivors post sweeping U.S. gun-control plan ahead of 2020 election](#)

## **Case study 2: The Effect of States’ Rights on Protections of**

In 2019, Alabama passed the Human Life Protection Act (2019), which would ban abortion at all stages of pregnancy, including in cases of rape and incest. Under the law, abortion would only be legal if the pregnant person’s life was at risk. The law was scheduled to take effect on November 15, 2019. However, Judge Myron H. Thompson of the U.S. District Court for the Middle District of Alabama issued a preliminary injunction blocking the legislation from taking effect, stating it “[defied] the United States Constitution.”

In Roe v. Wade (1973), the Supreme Court held that abortion was unconstitutional as it violated a woman’s right of privacy, which is implicit in the liberty guarantee of the due process clause of the Fourteenth Amendment. Alabama is among several states passing legislation designed to challenge Roe v. Wade (1973) in the Supreme Court. According to the Guttmacher Institute, in 2019, 17 states enacted some type of abortion restriction. Despite the Constitution, states have introduced burdensome legislation designed to deny care to patients undergoing an abortion, and restrictions on the operation of abortion clinics, leading to closures.

#### **READING AND VIEWING:**



- [YouTube: Roe v Wade summary](#)
- [NY Times: Alabama Abortion Ban Is Temporarily Blocked by a Federal Judge](#)
- [Guttmacher Institute: State Policy Trends 2019: A Wave of Abortion Bans, But Some States Are Fighting Back](#)
- [Guardian: Alabama abortion ban: Republican state senate passes most restrictive law in US](#)

## CASE STUDY 3: Judicial Partisanship can affect the

In *Obergefell v. Hodges* (2015), the U.S Supreme Court ruled that bans on same-sex marriage are unconstitutional under the due process and equal protection clause of the Fourteenth Amendment in the Constitution. The case involved several groups of same-sex couples, led by Jim Obergefell, who sued their respective states for their bans on same sex-marriage and their refusal to recognise such marriage performed in other states. In each case, the trial courts sided with the same-sex couples, but the Court of Appeals for the Sixth Circuit disagreed, bringing the case to the Supreme Court.

In 2015, the Supreme Court held that “the right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty. The Court now holds that same-sex couples may exercise the fundamental right to marry. No longer may this liberty be denied to them”. Before the landmark case, 14 states had bans on same-sex marriage, however, the Supreme Court ruling makes same-sex marriage a constitutionally protected right, making it legal right in all 50 states across the U.S.

### READING AND VIEWING



- [OYEZ: Obergefell v. Hodges](#)
- [YouTube: Obergefell v. Hodges Summary | quimbee.com](#)
- [Supreme Court Opinions](#)
- [Constitutional Accountability Center: Obergefell v. Hodges](#)

## C

### KEY SKILL

**Critically compare** the US system with the Australian system and the extent to which each reflects liberal democratic values.

*Critically compare is a difficult skill to master as it requires both comparison and evaluation.* The comparison requires both similarities and differences while the evaluation requires a contention, arguments in support, discussion of the arguments against and a conclusion.

Thus, a **PLAN** is absolutely crucial.

**The good news** is that critically comparing the protection of rights in both countries can really only be done one way:

- **Explain the similarities** in rights protection between the USA and Australia (the numbers of similarities will depend on the available marks).
- **Discuss the strengths and weaknesses of the similar approaches** in both countries
- **Explain some key differences and evaluate which approach is better** (arguments why one is better than the other. (Strengths and weaknesses).

## LEARNING TASK

Using the material in Chapter 4 of Issue 1 as well as the material and case studies above, fill in the table below:

SIMILARITIES			
FEATURE	AUSTRALIA	USA	Strengths / Weaknesses? Explanation.
Institutional Features	Independent judiciary Rule of law	Independent judiciary Rule of Law	
EXPRESS RIGHTS	YES	YES	
IMPLIED RIGHTS	YES	YES	
Statutory protections	Many e.g., Racial Discrimination Act, Fair Work Act	Many: e.g., The Equal Pay Act, Civil Rights Act.	
DIFFERENCES			
FEATURE	AUSTRALIA	USA	EVALUATION (Arguments)
Bill of Rights	No	Yes	
EXPRESS RIGHTS	Five	About 22 (6 in 1 <sup>st</sup> amendment alone)	
IMPLIED RIGHTS	Possibly two.	Many.	
Institutional Protections	Responsible government	Separation of powers & checks and balances	
Support for international rights law	High – 7 of the 9 core treaties ratified	Low: 2 optional protocols on the CRC	
Rights protection in practice	Government provision/subsidisation of health, education, conditions of employment; regulation of firearms;  BUT Poverty & inequality increasing, indigenous discrimination and hidden gender, age & disability discrimination. Treatment of refugees who come by boat.	Little to no government provision/subsidisation of health, education, conditions of employment; regulation of firearms.  Poverty & inequality increasing, indigenous discrimination and hidden gender, age & disability discrimination. Treatment of refugees.  Inadequate protection of citizens from violence.	
Access to Justice in the event of a breach of HR	Quite high: State, federal and international tribunals	Medium: only state and federal courts, as the US has not ratified the 1 <sup>st</sup> optional protocol to the ICCPR	
OTHER			

# EXAM

1. Describe two ways the American Constitution establishes the rule of law. (4 marks)
2. Explain two ways the American Constitution protects rights and freedoms of American citizens. (4 marks)
3. Distinguish between enumerated and implied rights as they occur in the American Constitution. (4 marks)
4. Explain three ways that rights and freedoms are protected in the American political system. (6 marks)
5. Discuss two obstacles to the achievement of judicial independence. (6 marks)
6. Analyse the effectiveness of the separation of powers in protecting rights and freedoms. (6 marks)
7. Analyse the effectiveness of the American political system in protecting rights and freedoms. (7 marks)
8. Evaluate the effectiveness of the American Constitution in the protection of rights and freedoms. (8 marks)
9. Discuss two similarities between the American political system in terms of the protection of rights and freedoms and the Australian political system's protection of rights and freedoms. (4 marks)
10. Discuss two differences between the American political system in terms of the protection of rights and freedoms and the Australian political system's protection of rights and freedoms. (6 marks)
11. Critically compare the effectiveness of America's constitutional protection of rights and freedoms with the effectiveness of Australia's constitutional protection of rights and freedoms. (8 marks)

## **ESSAY:** (20 marks)

1. Critically compare the protection of rights and freedoms in the US political system with the protection of rights and freedoms in the Australian political system.
2. '*There are many obstacles to the effective protection of rights and freedoms in democracies.*' To what extent do you agree? Evaluate this statement with reference to both the American and Australian political systems.

## Chapter 4: Elections in the Time of Coronavirus

### KEY SKILLS

- analyse the features and operation of the US electoral system
- evaluate the extent to which democratic values are upheld by the US political system
- critically compare the US system with the Australian system and the extent to which each reflects liberal democratic values

### KEY KNOWLEDGE: The Electoral System of the USA

- voting methods
- the arguments for and against voluntary voting
- voter turnout and the degree to which universal franchise is achieved
- the role of political parties in the electoral process
- consistency with the values of political equality (one person one vote, one vote one value, a free and fair electoral system and provision of a legitimate mandate to govern)
- the process of electing Congress
- the processes of electing presidents: primaries and caucuses, nominating conventions, presidential elections
- the democratic strengths and weaknesses of the US electoral system
- comparison of key features of the USA political system with the Australian political system including: the electoral system

### THE

Americans have elections for the House of Representatives in Congress every two years and elections for *one third of Senators* every two years. This is because the term of office for a 'Rep' is two years but for a Senator it is 6 years. Elections for the President and vice-President occur every four years. All elections are 'fixed term' elections; that is., there is no flexibility in when they can be held. There are also elections for State legislatures and for State 'governors' (corresponds to our State Premiers) and local county elections to determine positions like Sheriff or Mayor or even judges and magistrates.

- Congressional elections are known as General elections
- Elections for President and Vice-President are known as Presidential elections (or 'race to the White House'!)
- Elections for state governors are known as "Gubernatorial" elections.
- In many states, elections are also an opportunity to hold a 'ballot' on a particular local proposal or state constitutional or legislative amendment. These ballots can be initiated by citizens themselves in some states upon gathering sufficient signatures on a petition. **This is a strong form of direct democracy not available in Australia.**

See [BallotPedia: Forms of direct democracy in the United States](#)

Although US elections take place on the basis of universal suffrage and most states use the Australian Ballot – also known as the Secret Ballot – in many states there is a significant and stringent and permanent limitation of the franchise, usually on the basis of the existence of previous felonies (crimes). Administrative procedures also are responsible for discouraging people from voting. Read [FairVote: right to Vote FAQs](#)

## VOTING METHODS

The electoral system of the USA is characterised by a number of key features:

- ✚ Firstly, it has **voluntary registration and voting**. This affects turnout and as a result, popular sovereignty and accuracy of representation.
- ✚ Secondly, the whole electoral process is largely controlled by the **states** rather than by an independent statutory commission, as is the case in Australia. This affects the values of political equality, transparency and protection of minorities. There is a Federal Elections Commission (FEC) which has jurisdiction over federal campaign finance law but does not have authority over the administration of elections.
- ✚ Thirdly, the **major political parties** have a stranglehold on US elections; they have significant influence over the *nomination* and *pre-selection of candidates* in both Congressional and presidential elections, as well as dominating the ability of third party candidates to even be listed on the *state-controlled ballot papers*. This is said to contribute to low voter turnout and affects equality of representation and popular sovereignty.
- ✚ Fourthly, increasing **partisanship** amongst voters contributes to political gridlock – in Congress, in public debate and in the electoral college, in which all but two states have a winner-takes-all method of allocating electoral college votes to the candidate who won the state in the **\*primaries** or **\*caucuses**. This also affects representation and popular sovereignty.



[2020 U.S. Election: Primaries and caucuses, explained](#)

### KEY TERM: Primaries

*These are elections to determine who will run as a candidate in both elections for Congress and for President. There are three kinds of primaries: **open** (where anyone can vote for any candidate; **closed** (where only registered party members can vote for their own party's candidate) and **semi-closed** (where unaffiliated / independent people can vote for any candidate but affiliated / registered party members may only vote in their own party's primary. **Primaries are run and financed by the state.***

- ✚ To be elected to any position in the United States requires a simple majority, also known as a plurality vote or first-past-the post. This system simply requires that the candidate with the most votes wins the seat; it does not have to be more than 50%. This affects accuracy of representation as well as popular sovereignty, as it is often the case that more people did not vote for the winning candidate than those who did.
- ✚ The use of the Electoral College system in Presidential elections is a feature of US elections (more later).
- ✚ Finally, **money** plays a vital role in US elections as it is really only candidates who are, privately, extremely wealthy or who have the backing of huge party campaign advertising who can win nominations and elections.

### KEY TERM: Caucuses

*Similar to primaries in that their purpose is to 'pre-select' the person who will become the party's candidate for a Congressional seat or for the Presidency. The difference is that **the political party concerned runs and pays for the 'event'**, which is held in a big room and where participants literally **vote with their feet.***

## ARGUMENTS FOR AND AGAIN

### ISSUE: SHOULD VOTING BE VOLUNTARY OR COMPULSORY in the USA?

#### CASE STUDY: VOLUNTARY VOTING IN THE USA

Given that America has so many elections, it seems rather perplexing that usually less than half the population votes. **Arguments for and against are just the inverse of the arguments for and against compulsory voting, which we covered in Issue 1 of the SSP. See Chapter 4, p.44.**

Some facts are undeniable, however; according to the Lowy Interpreter (reference below):

*“In the lead up to the 2014 mid-term elections, Pew found that non-voters tended to be poorer, younger, and less-educated than likely voters (a finding that aligned with a similar survey conducted before the 2012 presidential election). More than half of non-voters (54%) had not graduated college, compared to 72% of likely voters who had completed at least some college, and 46% had family incomes less than \$30,000. More than a third (34%) of non-voters were under 30. Of those likely to be abstaining from voting, 43% were African-American, Hispanic or belonged to another ethnic or racial minority, compared to 22% of likely voters. In particular, 23% of non-voters were Hispanic, compared to 6% of likely voters and 15% of all adults. While these historical figures need to be analysed in light of contemporary circumstances, it is interesting to consider what impact mandatory voting could have on the 2016 presidential election.”*

**On the other hand**, these facts **by themselves** may not constitute an argument against voluntary voting if you hold the view that low turnout and low civic engagement is not related to voluntary voting but to other factors, such as administrative and structural barriers to voting, lack of education or physical opportunity to register and vote or parties having a vested interest in keeping turnout low. **Read the report by the Center for American Progress on Increasing Voter Participation in America listed below.**

#### READING

- [CAP: Increasing Voter Participation in America](#) (remains in favour of voluntary voting)
- [NY Times: Make Voting Mandatory](#) (arguments against)
- [Lowy Interpreter: 'We the People - what mandatory voting would mean for the US](#)

#### QUESTION

Analyse the democratic effectiveness of the system of voluntary voting in US elections.  
(8 marks)

## Voter

This key knowledge is clearly closely linked to the above issue of the arguments for and against voluntary voting. The question is to what extent is low voter turnout a product of voluntary voting or of other factors (such as were mentioned in the first reference above). To get more statistics on who votes and who doesn't and the limits to the franchise, please see [NPR: On The Sidelines Of Democracy: Exploring Why So Many Americans Don't Vote](#) and the FairVote FAQs cited above.

## The

### There are a number of general roles performed by parties in American elections:

- **They are often the ones who determine the agenda of public debate**; that is, what issues are relevant to the time, what issues will get into the media and what issues and policies will be put forward during elections. Through public opinion polling and the publication of results, through their posts, tweets and advertisements on social media, as well as through press conferences and interviews on TV they play a vital role in shaping the public perception of what is an issue and which party will be better at solving it. This can include third parties in America, such as the [Green Party](#), who have strong views on rebuilding the economy post-Covid-19 or the [Libertarian Party](#), who believe in complete freedom of the market and of persons. Unfortunately, perhaps, as a result of covid-19 and social distancing laws in most states, these third parties will be most unlikely to reach the required numbers of petition signatures to earn even the right to stand as a candidate in the presidential elections in various states. See [Politico: Will the Pandemic Keep Third Parties Off the 2020 Ballot?](#)
- **They provide a bridge between government and the people** as the vast majority of Americans vote for one of the major parties. Thus, they fulfil the representative function necessary in large modern democracies. They articulate the beliefs and interests of the population or at least sections of the population.
- **They organise and fund campaigns.** Candidates without the backing of a political party, with its financial resources, willing and enthusiastic door-knockers and campaign staff, must be extremely wealthy to compete. One such example this year was Michael Bloomberg who entered the race very late in November 2019. According to Advertising Analytics “the former New York City mayor spent \$558 million on ads during his time in the race.”<sup>3</sup> As a result of not winning enough delegates he withdrew, pledging his support for Joe Biden to defeat Donald Trump.
- **They recruit and train interested people to run for political office**, providing a career path to the House, Senate, Presidency, state legislatures and state governorship.
- **They organise the selection of candidates** through running the primaries so that ordinary party members can choose whom they want to represent them. Each of the two major parties (Democrats and Republicans) have an organisational wing that is dedicated to winning office. Within these wings, both parties have three main committees:
  1. The national committees of the parties, the Democratic National Committee (DNC) and the Republican National Committee (RNC), are **standing committees** (permanent committees) that work to raise funds and attract positive media coverage. They organise the quadrennial National Conventions of each party, where the winning presidential candidate is presented to the country. This year the [Democratic National Convention](#) will be held in August in Milwaukee, while the [Republican Convention](#) will be held in Charlotte, North Carolina. The national committees also finance polling and research, develop and decide party platforms and electoral strategy and support candidates in every state contest with funding.

2. The other two committees are known as 'Hill' committees (Capitol Hill) where their function is to help party candidates to be elected or re-elected. There is one committee for the House and one for the Senate.

### LEARNING TASK

Go to [https://ballotpedia.org/Democratic National Committee](https://ballotpedia.org/Democratic_National_Committee) and see how much the committees spent during the 2018 election cycle. Read further about the role of party National Committees in the electoral process and summarise your findings.

Thus it is clear that the major parties have a dominating influence on the electoral process in the USA, particularly in Presidential elections. While it is true that there is some scope for direct democracy in the primaries, and that the influence of the political party may not be as great as it once was, partisanship has increased over the last twenty years or so, which keeps the two major parties at the forefront of electoral influence. Ironically, the electorate is also more divided between those who hate the major parties and those who identify strongly with them!

Read [Vox: Challenges to parties in the United States and beyond](#)

## CONGRESSIONAL ELECTIONS

As mentioned above, these take place every two years and are known as the 'mid-terms' when they fall in between the four-year presidential elections. There are a total of 435 seats in the House of Representatives, each representing an individual geographical electorate or district. The districts are determined on the basis of population; each district should have roughly equal populations. Larger states therefore have more seats in the House. For example, California, with a population of roughly 39.5 million people, has 53 electoral districts, while Pennsylvania with a population of 12.8 million, has 18. That means that each seat represents approximately 725,000 people. The state of Wyoming, however, with a population of 579,315, still gets one seat. Although this means that Wyoming has greater representation than the average citizen, all states are guaranteed at least one member in the House of Representatives by the constitution. Otherwise, the small states may be unrepresented.

There are primaries for Congressional seats and these are conducted by both the state concerned and the relevant parties. This has implications for the kinds of candidates that can get themselves on the ballot paper – usually only those with the backing of the major parties or those who are able to get large personal followings to fulfil state requirements about 'petitioning the ballot'. The Simple Majority / plurality voting system is used and the manner in which elections are conducted is determined by the relevant state. This includes drawing the boundaries of each electorate (known as Congressional districts in the US), legislating about who can or can't vote, who can or cannot stand and deciding on the form of special elections, (known as by-elections in Australia). Will there be postal voting? Will there be electronic voting or in the case of a special election, will there be a jungle primary?

**Jungle primary:** If no candidates get more than 50% of the vote in a special election, the top two candidates face each other in a 'run-off' election which is repeated in the November 3<sup>rd</sup> general election.

As a result, transparency, representation and accountability all suffer. If a state legislature is dominated by one of the major parties (usually the case) there is little to prevent the legislature from 'redistricting' (redrawing the boundaries) in a way that suits the incumbent party. (See Case Study below).

Elections for one third of the Senate take place at the same time as House elections, also regulated by the state in all aspects except that gerrymandering cannot occur in a Senate election. This is because the whole state is the electorate. There are Senate primaries for each party and for each state. Each state elects two candidates, who must have reached the age of 30, been a US citizen for 9 years and who lives in the state concerned. For a simple guide to Senate elections see [Ben's Guide](#); for more details, go to [BallotPedia](#).

In the 2020 elections to be held in November, there will be 435 House seats and 35 Senate seats up for re-election.

## ISSUE: SHOULD STATES HAVE CONTROL OF THE ELECTORAL PROCESS?

### CASE STUDY 1: STATE CONTROL OF ELECTIONS

In the current climate of Coronavirus, the Governor of Wisconsin Tony Evers (Dem) in March called for the state primaries, scheduled to be held on 7<sup>th</sup> April, should be held by mail. The Republican controlled legislature refused to allow this as it said that there were many positions that had to be filed and the election would go ahead, Covid-19 notwithstanding. A voting rights group appealed to the Wisconsin Supreme Court, asking for the vote to be postponed; this was rejected although the deadline for receiving absentee ballots was extended for 6 days. Republicans appealed this decision to the Republican dominated US Supreme Court which reversed the extension of the deadline.

#### REFERENCES

- [Reuters: Wisconsin Republicans Reject Governor's Call To Delay Tuesday's Primary And Vote By Mail](#)
- [VOX: Wisconsin Republicans rebuff governor's 11th-hour bid to delay Tuesday's election](#)
- [NY Times: Rulings on Wisconsin Election Raise Questions About Judicial Partisanship](#)

### CASE STUDY 2: CORRUPTION IN ELECTIONS

In 2010, the Republican Party won control of Pennsylvania's state legislature, enabling them to change the boundaries of the Congressional districts within the state. The process of changing Congressional boundaries occurs every ten years and has been widely abused, with many districts being drawn in such a manner that significantly advantages one political party over another. This was no exception for Republican leaders who redrew the Congressional districts within Pennsylvania with a partisan skew towards the Republican Party. In 2018, Pennsylvania's Supreme Court overturned a Republican *\*gerrymander* that had been used in the past three Congressional elections. Pennsylvania's Supreme Court ruled Pennsylvania's existing map violated the state constitution's guarantee of "free and equal" elections by marginalising Democratic voters.

#### REFERENCES

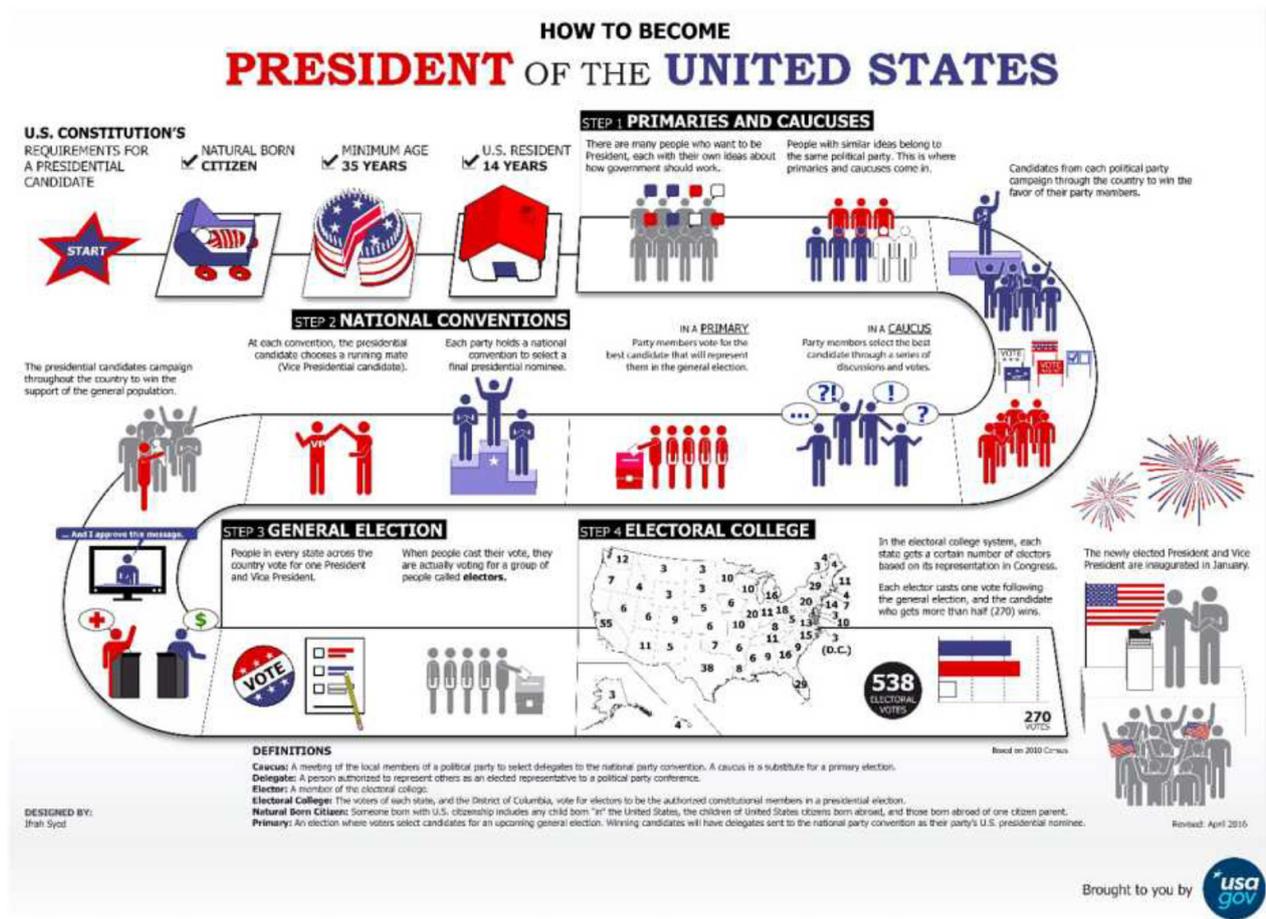
- [Ballotpedia: State legislative elections, 2010](#)
- [Vox: Pennsylvania's gerrymandered House map was struck down — with huge implications for 2018](#)
- [NY Times: The New Pennsylvania Congressional Map district by district](#)

*\*gerrymander: to manipulate the boundaries of an electorate so as to favour one party or class.*

#### QUESTION

Analyse the impact of state control of us elections. (8 marks)

# PRESIDENTIAL ELECTIONS



The diagram above, created by USA.gov can be accessed in a much larger version at <https://www.usa.gov/election>. If you click on 'description of infographic' there is a simple and very clear step-by-step description of the stages in the presidential election process. There is also a video!

## LEARNING TASK

**Go to the above website and memorise the stages in the process of electing the President of the USA. THEN read through what follows very carefully and complete the questions at the end of this section.**

Basically, various would-be Presidents begin their race to be nominated President at the primaries (which in a few cases are caucuses). They begin about a year beforehand and they are usually, though not always, holders of some kind of political office e.g., Senator Amy Klobuchar, Mayor Pete Buttigieg and US House of Representatives member Tulsi Gabbard. An exception of course was Donald Trump, who had no experience of politics before running in the Republican primaries in 2015-16. In this year's presidential race, at the time of writing, the Republican Party has cancelled primaries in 5 states as a result of not wanting to enable any effective challenges to Trump's re-election. Read [NBC: Nevada canceled its Republican caucus to help Trump re-election bid](#) and [Politico: Republicans to scrap primaries and caucuses as Trump challengers cry foul](#)

Additionally, as a result of Covid-19, 18 states have postponed their primaries, most of them to June 23.

## How do they win the

Americans have an extremely complicated and unique system for selecting the candidates who will be eligible to run for President. Much like what happens in the electoral college, the major parties (Democratic and Republican) choose a set of delegates or representatives whose allegiance (loyalty) will be allocated to any candidate who wins a substantial number of votes in a **state primary** (typically 15%).

The parties determine the number of delegates that each state will be allocated based on various factors. For example, the Democratic Party decides the number of delegates allocated to each state based on the state's popular vote for the Democratic nominee in the previous three elections, the state's electoral votes, and **when the state's primary is held**. It is recognised that the states who hold their primaries early are in a better position to influence the result than those who hold their primaries late. As an example, just consider this year's primaries where Buttigieg, Warren and Sanders (all high-profile candidates) had all dropped out by April 8<sup>th</sup>. Voters in about half of the States have not held their primaries yet and will only have a choice of Joe Biden.

The candidates for presidential nomination must campaign in all states if they want the nomination unless they win easily more than half of the delegates before the end of the primary season. Or, as is the case with President Trump, when the party has decided to support a candidate against all other challengers. When all the primaries are finished, the delegates are sent to the National Convention of each party to vote for the candidate they represent; whoever has the majority of delegate votes wins the nomination.

The number of delegates allocated to each candidate in a state primary is in proportion to the percentage of votes they received in that state's primary. For example, **for the first state primary – Iowa** - (which is actually a caucus), the Democratic Party allocated **41 pledged delegates** and **8 superdelegates** to that state. (See sidebars)

It took place on February 3<sup>rd</sup> 2020. Pete Buttigieg won 26.2% of Iowans' votes, which gave him 14 delegates pledged to vote for him at the National Convention in August. Bernie Sanders, with 26.1% of the vote landed 12 delegates and Joe Biden, with 15.8% of the votes, won 6 delegates. In the **California Primary**, which took place on Super Tuesday (so-called because of the large numbers of primaries held on that day - March 3<sup>rd</sup>), Sanders won 35.5% of the vote and 221 delegates, Biden won 28% and 172 delegates, while Buttigieg, with only 4% of the vote, received no delegates pledged to vote for him.

### Pledged delegate:

A person who is mandated to vote for a particular state's choice of presidential candidate at a national party convention. For example, as of April 19, 2020, 2415 delegates have been pledged to vote for (allocated to) various candidates as a result of the primaries held so far. Joe Biden has won 1305 of the necessary 1991 needed to win the nomination; Bernie Sanders won 939 and then dropped out of the race.

### Superdelegate:

a person who is chosen as a delegate to a political party's presidential nominating convention because of his or her status as a leader or official within the party. Superdelegates are free to vote for any candidate regardless of the results of the popular vote in primary elections and caucuses preceding the convention. Superdelegates were invented by the Democrats after the 1980 election in the expectation that in any future close nomination race, they would line up behind the establishment candidate and head off the possibility of a ruinous floor fight at the convention.

This year, for the Democrats there are 3,979 pledged delegates and 771 automatic delegates—more commonly known as superdelegates – making a total of 4750 delegate votes. **To win the Democratic presidential nomination a candidate must win more than half of the pledged delegate votes available on the first ballot, that is 1991. If no candidate does that, there will be a second ballot where superdelegates will be allowed to vote.** In that case, the successful candidate must win a majority of the total votes, equalling 2376 votes.

For Republicans, there are approximately 2,441 pledged delegates and 110 unpledged delegates. To win the presidential nomination a candidate must win more than half of the total delegate votes available for that state. Republicans also have a small number of superdelegates (about 7%) but they are bound to vote for the candidate who won their state in the primary.

## REFERENCES

[BallotPedia: Democratic Delegate Rules 2020](#)

[BBC: US election 2020: What are primaries and caucuses and how do they work?](#)

[USA TODAY: 2020 Presidential Primary Election Results](#)

YOU COULD TRY THIS, THOUGH YOU MAY GET MORE CONFUSED THAN BEFORE!



[Understanding the Primaries: Delegates, Democracy, and America's Nonstop Political Party](#)

## QUESTIONS

1. Explain the process of the US system of primary elections for the President. (6 marks)
2. Read the following references and then answer the essay question:
  - [How Stuff Works: Problems with Primaries](#)
  - [The New Republic: There Is Only One Way to Fix Our Broken Presidential Primary](#)
  - [the Atlantic: Too Much Democracy Is Bad for Democracy](#)
  - [Fairvote: the primary problem with American primaries](#)

## ESSAY:

*Evaluate the democratic effectiveness of the US system of primary presidential elections.*

## THE ELECTORAL COLLEGE

The presidential election occurs on the first Tuesday after the first Monday in November. Voters have a choice between the Democratic presidential nominee and his Vice-president (chosen by him) and the Republican nominee and his Vice-President. In theory, there is nothing to stop the election of a third party candidate or an independent, except for the dominance of the two major parties over the whole of the electoral process within states and nationally. To be elected President, a candidate must win a majority of the Electoral College votes, currently 270. (435 seats + 3 for the District of Columbia + 100 senators =  $538 \div 2 = 270$ )

Although similar in principle, the electoral college system is less complicated than the primaries. Every state gets the same number of ‘electors’ as their Congressional entitlement; that is, the number of representatives they have in the House of Representatives plus two senators. According to Article II, Section 1, Clause 2 of the Constitution, each state legislature determines the manner by which its state’s electors are chosen, but in practice the state political parties (once again!) select various people to be ‘electors’, usually from within their own ranks. The main role of the electors is to go to the Electoral College after the election and vote according to their state’s result in the Presidential election. One problem with this, however, is that most states have a “winner takes all” approach to the ‘slate of electors’, which can, when all states electors are added together, seriously distort the result.

For example, in the 2016 presidential election, **Hillary Clinton won the popular vote with 65,853,625 votes (48.0%)** which only netted her **232 electoral college votes**, while **Donald Trump won 62,985,106 votes (45.9%)** which entitled him to **304 electoral college votes**. The table below illustrates some of the ways this can occur:

State	No. electors	Number of votes Trump	Trump %	No. electoral college votes received	Number votes Clinton	Clinton %	No. electoral college votes received	Total number people who voted Dem & Rep
Iowa	6	800,983	51.1	6	653,669	41.7	0	1,454,652
California	55	4,483,810	31.5	0	8,753,788	61.5	55	13,237,598
Illinois	20	2,146,015	38.4	0	3,090,729	55.2	20	5,236,744
Pennsylvania	20	2,970,733	48.2	20	2,926,441	47.5	0	5,897,174
Florida	29	4,617,886	48.6	29	4,504,975	47.4	0	9,122,861
New York	29	2,819,534	36.5	0	4,556,124	59	29	7,375,658
*Nebraska	5	495,961	58.7	5	284,494	33.7	0	780,455
*Maine	4	335,593	44.9	1	357,735	47.8	3	693,328
Texas	38	4,685,047	52.2	38	3,877,868	43.2	0	8,562,915
<b>TOTALS</b>	<b>206</b>	<b>23,355,562</b>	<b>45.57 (average)</b>	<b>99</b>	<b>29,005,823</b>	<b>48.56</b>	<b>107</b>	

\* States with no ‘winner take all’ provision. Instead, there is an electoral college vote per Congressional district, with two for the overall winner of the state. Maine has 2 Congressional districts and Nebraska has 3.<sup>4</sup>

**NOTE:** Trump was elected as the 45th President with 304 Electoral College votes compared to Clinton who received 227 votes because seven electors voted for someone other than their party’s candidate) <https://www.nytimes.com/elections/2016/results/president>

## ISSUES:

- ✚ **The number of major party votes required to win 1 electoral college vote varies markedly**, as a result of voluntary voting and the generally low number of votes won by third party candidates: 1 elector for every 240,684 votes in California and about the same in Iowa; 261,837 in Pennsylvania; 314,581 in Florida; 254333 in New York; 156,091 in Nebraska and 173,082 in Maine; 225,340 in Texas.
- ✚ **Even in this selection of states, in most instances neither Clinton nor Trump received more than 50% of the votes, but the winner collected all the electoral college votes.**
- ✚ **The winner-take-all system is a serious distortion of voter choice: If you combine Pennsylvania, with only .7% difference in the votes won by each candidate and Florida, with 1.2% percent difference in the votes won by each candidate, Trump received 49 electoral college votes and Clinton zero.**

- ✚ **The system ‘advantages’ both parties:** Over these 9 states, Trump received 48% of the available electoral college votes with an average of 45.6% of votes cast; Clinton received about 52% of electoral college votes with an average of 48.6% of votes cast.
- ✚ **Further,** as a result of the “plus 2 rule” – the addition of two electoral college votes to represent the two Senate seats states have, the number of electoral college votes is no longer proportionate to the state’s population. <sup>5</sup>

## OTHER ISSUES RELATING TO THE ELECTORAL COLLEGE:

### ISSUE 1

A few states such as California and Texas have a disproportionate influence on the results, which is unfair to other states and which exacerbates the lack of representation of very large numbers of people throughout the country. Additionally, it encourages candidates to ignore voters in ‘safe’ Republican or Democrat states: in 2016, 94% of campaign events were held in just 12 states.

### ISSUE 2: State and party dominance

You could argue that the states use the electoral college system to maintain their power and interests. Because the Constitution has mandated that the Electors cannot be federal government officials, the selection of the slate of Electors for each state is left to the state legislatures (who are all either Republican or Democrat controlled) to decide. This is said to preserve ‘states’ rights’ but it actually helps to entrench the interests of the state government.

### ISSUE 3: The Electoral College is undemocratic and outdated

The purpose of the Electoral College was to provide a safeguard against an uneducated population who was ignorant / unfamiliar with the presidential candidates from choosing a corrupt, dangerous or fanatical President. However, the level of formal education of the population has changed significantly and the prevalence of all kinds of media *might* mean we have a better chance of getting to know who is on offer.

### ISSUE 4: Faithless Electors

There are regularly a small number of Electors who don’t vote the way they were meant to do, choosing their own preferred candidate instead. There were 7 in the 2016 election. 29 states have introduced fines for Electors who don’t faithfully represent their state’s choice at the Electoral College.

### ISSUE 5: The provision of a legitimate mandate to the Presi

If there were a direct national popular vote, (it is argued), you might get a situation where President could be elected with as little as 5% or 10% of the vote. “The Electoral College, then, is an engine of legitimacy: Since 1900, 17 out of 29 U.S. elections have been decided by 200 or more electoral votes.” (See Guelzo’s article below in National Affairs magazine).

## READING

- [USA Today: Winner-take-all presidential elections: Unconstitutional and unfair to voters in 48 states](#)
- [National Affairs: in defence of the Electoral College](#)
- [Medium.com: The Benefits and Drawbacks of the Electoral College](#)
- [Vote Smart: Government 101: Electoral College](#)

## OTHER ISSUES RELATING TO UNITED STATES ELECTIONS:

1. Lack of centralised independent control of the Electoral system makes vote tampering easier, both by internal and external forces. The best known external example is the now-substantiated allegations of Russian interference in the 2016 election.  
See [The Guardian: Not just Russia: China and Iran may target US elections, experts say](#)  
And [NY Times: Lawmakers Are Warned That Russia Is Meddling to Re-elect Trump](#)
2. Related to this is a suite of problems that fall under the general label of corruption. Included is the influence of money, lobbying practices, lack of transparency (ballots can't be seen by anyone outside the state unless by a court order), lack of regulation around campaign financing, restrictive and unconstitutional voter registration laws, dishonest and unaccountable election advertising, particularly on social media and a lack of ethical conduct amongst all federal officials, including President, Vice-President, Secretaries and Federal Judges. The 116<sup>th</sup> Congress (democrat controlled) in early 2019 passed the ["For the People Act"](#) which was a giant set of reforms to the electoral process which covered all these issues. (*Really worth having a look at!*) However, it has not been received well by the Republican-controlled Senate. **For commentary read [Vox: House Democrats just passed a slate of significant reforms to get money out of politics](#)**
3. A final issue (though there are probably more) is the practice of "ballot harvesting", legal in California and many other states where postal voting is an option. Those who cannot get to the polling place can have their filled out ballots picked up by volunteers who usually work for one of the major parties and brought to the polling place. Clearly this is an insecure practice, one which Senate Republicans want to make illegal. *And given the pandemic, this practice will be even more widespread in Election 2020.*  
See [New York Intelligencer: What Democrats Might Need to Sacrifice to Get Voting by Mail](#)

# SUMMARY OF KEY POINTS

The study design expands on what is meant by political equality: **one person one vote, one vote one value**, a **free** and **fair** electoral system and provision of a **legitimate mandate** to govern.

*If we consider the following, it is hard to argue that political equality is well served.*

1. Elections are certainly frequent and ubiquitous, but there are so many opportunities for interference of one kind or another that this point is largely nullified.
2. The requirement for candidates to be wealthy or have the strong backing of a major party in order to win means that the system is **not fair**.
3. Many voters are disenfranchised by virtue of their education, occupation or alienation – the feeling that their vote does not matter anyway.
4. Most but not all states have a secret ballot throughout the primaries and the general elections which means that elections are **generally free** from coercion / intimidation.
5. The fact that the elections are controlled at the state level infringes upon **fairness**, as there is little uniformity in the opportunities and abilities of voters to vote and candidates to stand.
6. There have been frequent instances of gerrymandering and other corrupt practices as a result of a lack of an independent body with oversight. (See [the Guardian: Rigging the vote: how the American right is on the way to permanent minority rule](#) ) **This impinges upon ‘free elections’.**
7. **Major Party control of the electoral process reduces voter choice**; thus representation is affected, which reduces the legitimacy of the elections.
8. The **voluntary** nature of US elections, combined with the **plurality** or simple majority system is not an **accurate representation of voter preference**; neither is the Electoral College system, particularly as a result of the “winner-takes-all” rules. All these seriously affect the legitimacy of the mandate in both Congressional and Presidential elections.
9. Lack of transparency at all levels of the process – from registration of voters and candidates to preselection to final election, from counting of votes to recounting of votes, as well as in terms of campaign financing - all affect the free and fair nature of US elections.
10. The Electoral System has become a partisan game where the major parties make decisions on the basis of whether voting rules and reforms will advantage or disadvantage their electoral prospects.

## LEARNING TASK

**If you have read through this chapter and completed the reading you will be able to fill out the following table!**

## THE DEMOCRATIC STRENGTHS AND WEAKNESSES OF THE U ELECTORAL SYSTEM

Democratic value	Congressional elections		Presidential elections	
	Strengths	Weaknesses	Strengths	Weaknesses
Popular sovereignty				
Political equality				
Accurate Representation				
Transparency				
Legitimacy				
Ability to hold government Accountable				
Participation				

### COMPARISON BETWEEN AUSTRALIA AND U ELECTIONS

Given that the two systems are completely different, the only kind of comparison you could do would be on the basis of the extent to which the two systems deliver representation, political equality, transparency, accountability and participation.

Refer back to Issue 1 to develop contentions about how well the Australian system delivers on each of these democratic values in comparison to what you have just learned about the American system. Make sure you do the essay questions below.

# Exam-style Questions

## Question 1

- a. Outline the meaning of a primary election as it applies in the United States electoral system. (2 marks)
- b. Distinguish between 'primaries' and 'caucuses' as methods of preselecting candidates. (3 marks)

## Question 2

- a. Describe one role of the Democratic or Republican National Convention. (3 marks)
- b. Describe one role of the Democratic or Republican Party Committee. (3 marks)
- c. Explain two roles of political parties in the electoral system of the United States. (4 marks)
- d. Discuss two impacts of the two party system on representation in the United States of America. (6 marks)

## Question 3

- a. Analyse the relationship between voter turnout in the U.S. and the degree to which universal franchise is achieved. (5 marks)
- b. Discuss the democratic effectiveness of voluntary voting. (8 marks)

## Question 4

Explain the process of electing a person to Congress. (6 marks)

## Question 5

Discuss two impacts of state control of elections in the United States. (8 marks)

## Question 6

**Critically compare the process of electing Congress to that of electing the president in terms of providing a legitimate mandate to govern (7 marks)**

**TIP:** The task word critically compare requires you to explain the similarities and differences between judicial independence in Australia and the U.S. and to make a judgement on the democratic success or otherwise of its achievement. Remember, anything with a marking scheme above 5 marks requires you to include an introductory and concluding sentence.

### Sample answer:

*Although both processes undermine the provision of a legitimate mandate to govern, the process of electing Congress renders itself superior in comparison to that of the process of electing the president. In both Congressional and presidential elections, political parties use primaries to determine their final candidate for the general election. This allows individuals to select their Congressional and presidential nominations, and thus enhances their legitimacy to govern when elected. For example, both Alexandria Ocasio-Cortez (representatives of New York's 14th Congressional district) and Donald Trump (the president of the United States) were selected in primaries to become their party's nomination and subsequently elected to office.*

*Congressional elections use the first past the post, or simple majority, voting system. The first past the post voting system operates with voters indicating on a ballot paper their candidate choice and*

*the candidate with the most votes wins. This may lead to inaccurate representation as the winning candidate may be elected with less than 50% of the votes, thus undermining the provision of a legitimate mandate to govern. However, voters are able to directly vote for their candidates.*

*Unlike Congressional elections, presidential elections use the electoral college to formally elect its candidate. Rather than voting directly for their preferred candidate, voters elect a list of electors who support a particular candidate, who in turn elect the president. Such electors may be “unfaithful” and break their commitment, voting for a different candidate other than those to whom they were pledged, thus undermining a legitimate mandate to govern. For example, in the 2016 presidential election there were 7 successful “unfaithful” electors. In addition, the winning candidate may not obtain a majority of the votes from the entire nation. For example, in the 2016 presidential election Donald Trump won 306 Electoral College votes, while Hillary Clinton received 232 votes, however, Donald Trump received about 2.9 million fewer votes than Hilary Clinton.*

*Although both processes undermine the provision of a legitimate mandate to govern, the process of electing Congress renders itself superior as it requires individuals to directly vote for candidates, rather than use electors who vote in the electoral college.*

### **Question 7**

- a. What is the Electoral College? (3 marks)
- b. Explain the role of the Electoral College. (4 marks)
- c. Analyse the impact of the Electoral College system on popular sovereignty. (7 marks)

### **Question 8**

- a. Discuss two obstacles to accurate representation of voters posed by the operation of Presidential Primaries. (6 marks)
- b. Explain the roles of pledged delegates and superdelegates in the Presidential primaries. (4 marks)

### **ESSAYS (20 marks)**

1. “The U.S. Electoral system delivers effectively on democratic values.” To what extent do you agree?
2. Compare the Australian and American electoral systems in terms of three key democratic values.

# Chapter and its Power

## KEY SKILLS

- analyse the features and operation of the US Congress
- evaluate the extent to which democratic values are upheld by the US political system
- critically compare the US system with the Australian system and the extent to which each reflects liberal democratic values

## KEY KNOWLEDGE: The Congress of the USA

- the composition of the Congress and its effectiveness as a law-making body
- the role of committees within the Congress
- the role and impact of political parties within the Congress
- the effectiveness of the Congress in holding the president accountable
- the democratic strengths and weaknesses of the US Congress
- comparison of key features of the USA political system with the Australian political system including: the legislative branch

## The Representative Function:

As you should all know, the Congress is the United States legislature; that is, their law-making branch. It has two Houses, just like Australia's: the House of Representatives and the Senate. It is a powerful institution, but increasingly it has become a partisan institution, which in some ways has diminished its power.

**HOUSE OF REPRESENTATIVES:** There are 435 members with voting rights and 3 more for the District of Columbia, who are not given voting rights. Each member of the House **represents** a *Congressional district* (electorate) and the number of districts apportioned (allocated) to each state is based upon the population of that state according to the census, which occurs every 10 years. The number of members has been capped at 435, out of convenience and manageability; what happens is that three years after each census, a formula is used to 'reapportion' the districts per state to accurately reflect changes in the populations of the states. The only **constitutional requirements regarding representation** are in Article 1, Section 2, Clause 3, which says: "The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative". **Currently, apportionments are as set out in the table below:**

STATE	NO.	STATE	NO.	STATE	NO.	STATE	NO.
Alabama	7	Indiana	9	Nebraska	3	South Carolina	7
Alaska	1	Iowa	4	Nevada	4	South Dakota	1
Arizona	9	Kansas	4	New Hampshire	2	Tennessee	9
Arkansas	4	Kentucky	6	New Jersey	12	Texas	36
California	53	Louisiana	6	New Mexico	3	Utah	4
Colorado	7	Maine	2	New York	27	Vermont	1
Connecticut	5	Maryland	8	North Carolina	13	Virginia	11
Delaware	1	Massachusetts	9	North Dakota	1	Washington	10
Florida	27	Michigan	14	Ohio	16	West Virginia	3
Georgia	14	Minnesota	8	Oklahoma	5	Wisconsin	8
Hawaii	2	Mississippi	4	Oregon	5	Wyoming	1
Idaho	2	Missouri	8	Pennsylvania	18	South Carolina	7
Illinois	18	Montana	1	Rhode Island	2		

The next census is scheduled to be this year (2020) and therefore the reapportionment will take place in 2023. The 116th Congress convened on January 3, 2019 and will conclude on January 3, 2021. (New members of Congress were elected on November 6, 2018).

Article 1, Section 2, Clause 2 of the constitution provides that “No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.”

### Composition of The House by Party, Gender, Race & Age

PARTY		GENDER		RACE		AGE	
<b>Democratic</b>	232	<b>Female</b>	106	<b>Non-Hispanic white</b>	319	<b>&gt;75</b>	37
<b>Republican</b>	196	<b>Male</b>	321	<b>African American</b>	55	<b>56 - 74</b>	234
<b>Independent</b>	1	<b>LGBTQ+</b>	8	<b>Hispanic/Latin American</b>	42	<b>40 - 55</b>	138
<b>Vacancies</b>	6			<b>Asian/Pacific Islander</b>	15	<b>25 - 39</b>	26
				<b>Native American</b>	4		
<b>TOTALS</b>	435		435		435		435

*Courtesy Business Insider<sup>6</sup> and BallotPedia<sup>7</sup>*

**SENATE:** There are two senators elected for every state, regardless of the size of its population and they serve for a fixed term of 6 years, one third of them to be elected every two years. Article 1, Section 3, Clause 3 of the Constitution provides that “No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.”

In the 116<sup>th</sup> Congress, 53 Senators are Republican and 45 are Democrats. There are two independents who both caucus with the Democrats. (In this sense, caucus means to meet together over policy).

26 of the current Senators are women, 74 are men; 90 are Non-Hispanic white, 3 are African American, 3 are Asian American and 4 are Hispanic. The average age of senators is nearly 63 years old. As you can see, diversity is a problem!

**Congress also has internal bodies known as ‘caucuses’ (completely different meaning from the caucus that is a primary election).**

#### Caucus

In this sense of the term we are referring to the voting members of the two parties in Congress. Thus, the House Democratic Caucus refers to all the Democrats with seats in the House of Representatives who meet together to decide the party policy, strategy, appointments etc.

There are also other less formal groups who meet together on the basis of having something in common with each other, such as gender, race, ideology or pure interest. Examples are the **bipartisan** Congressional Caucus for Women’s Issues, the Democratic Women’s Caucus, the Congressional Black Caucus (CBC), the Republican Israel Caucus and the Small Brewers Caucus! There are hundreds of caucuses across both houses of Congress, some more influential than others.

They **can** perform a vital representative function. According to the CBC website: “For the 116th Congress, the CBC has a historic 55 members of the U.S. House of Representatives and the U.S. Senate, representing more than 82 million Americans, 25.3 percent of the total U.S. population, and more than 17 million African-Americans, 41 percent of the total U.S. African-American population. In addition, the CBC represents almost a fourth of the House Democratic Caucus.”

<https://cbc.house.gov/about/>

## ISSUE: How Representative is Congress?

Apart from the impact of electoral systems on representation (as was explained in Chapter 4), representation can also be measured by the extent to which a legislature is a mirror of the society it represents. In the case of the United States' Senate, it would be reasonable to argue that it is a highly unrepresentative institution in this sense. It is true that the Senate was designed to represent the states and their governments rather than the people directly, but given that it is such a powerful House it may be more democratic to have it filled with a more diverse range of law-makers than is currently the case. Even the House of Representatives, when measured by gender, race, age and religion (overwhelmingly Christian), has a democratic deficit in that respect.

### READING

- [Congressional Research Service: Membership of the 116th Congress: A Profile](#)
- [The Guardian: America has become a gerontocracy. We must change that.](#)

### ESSAY QUESTION

*Using the material in Chapter 4 as well as the above references, evaluate the extent to which the US Congress effectively fulfils the value of representation.*

## The Legislative Function

## an effective law

It is not possible to answer this question without understanding a little more about how Congress operates. This includes the role of committees and the impact of political parties within the Congress, as well as the relationship between the Houses and to the other two branches of government – the Judiciary and the Executive.

**THE ROLE OF COMMITTEES:** Committees are set up to match legislative areas (such as Agriculture or Homeland Security); **their key role is to consider bills and issues and oversee agencies, programs, and activities within their jurisdictions.** There are 28 active committees in the House, 3 of which are Select (there is one *permanent* select committee on Intelligence) and one which is a Joint Select committee. The other 24 are standing / permanent committees, 4 of which are Joint Standing committees. The Chair of the committee is traditionally a senior member of the party that controls the House and the minority party usually provides the “Ranking Member” (Deputy Chair).

In the Senate, there are 24 committees, all but two of which are standing committees and four of which are Joint. See <https://www.senate.gov/committees/index.htm> The party that controls the Senate always has Chairmanship of the Committees.

### LEARNING TASK

1. Go to <https://www.house.gov/committees> and investigate the work of the House Ways and Means Committee and the House Judiciary Committee.
2. Go to <https://www.senate.gov/committees/index.htm>. Choose one to investigate so that you might be able to **describe and explain the roles of Congressional committees with examples.**

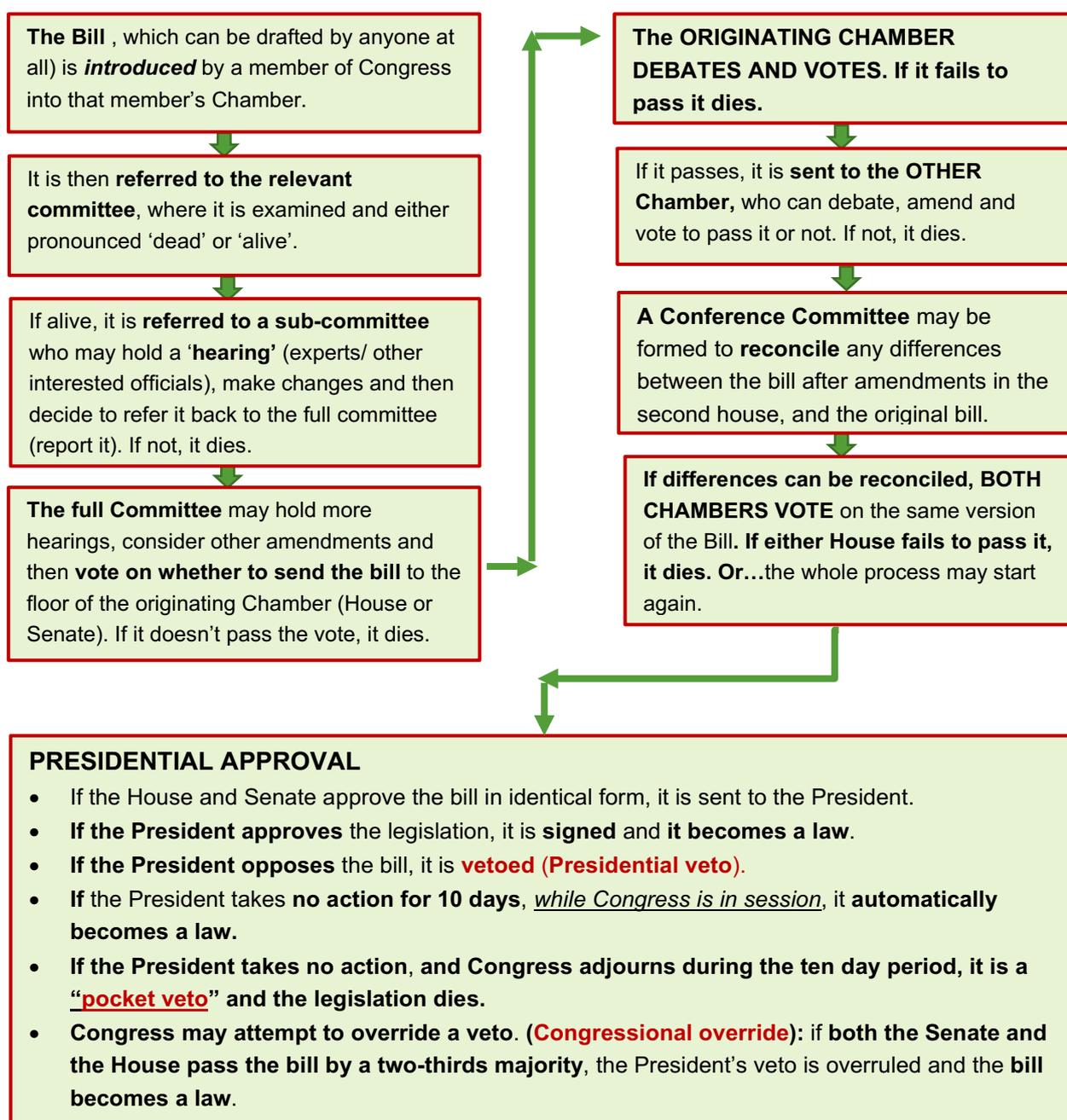
The most important thing to remember is that all proposed bills must be sent to the relevant committee first, then to the appropriate sub-committee and then back to the full committee. *“Many bills are simply allowed to ‘die in committee’ with little or no serious consideration ever given to them. Often, members of Congress introduce legislation that they neither expect nor desire to see enacted into law, merely to please a constituency group. These bills die a quick and painless death. Other (bills)... die in committee only after a long battle...Most bills are never reported out of the committee to which they are assigned.”*<sup>8</sup>

**Effectiveness:** In the 115<sup>th</sup> Congress ( 3/1/17 – 3/1/19), **11,474 bills were introduced** to either House of Congress by a sponsor (current member of Congress); of those, **867 “got a vote”** (which means “had a significant vote in one chamber”, **758 of those passed both houses** but only **433 became enacted** into law.

See <https://www.govtrack.us/Congress/bills/statistics> to compare with the record of the current Congress and past Congresses.

**Figure 2:**

in



## THE ROLE

### 1. Parties have a great deal of power in Congress over legislation and oversight of procedures:

- They **caucus** or conference to select leadership positions
- They 'structure' the chambers by nominating the Speaker and the President Pro Tempore, the majority and minority leaders, the whips and committee chairs
- They approve procedures for appointment to committee
- Each party can set the rules relating to term limits for committee chairs and composition of committees
- The Speaker and Majority Leaders manage the 'floor action' (what occurs during a session).
- The majority party in each house controls the legislative agenda.

### 2. Party unity has an uneven impact on Congressional functioning:

- The Speaker endeavours to maintain control of the legislative agenda and the party majority, although it is historically easier for members to break ranks than in Australia. The large numbers in the House make a big difference to party discipline, as it is likely to take large numbers of the party members breaking ranks before it affects the control of the legislative program. There is no such thing as a vote of no confidence in the executive government, (because of the separation of powers), although there have been calls to change the constitution to allow one.
- The Senate has traditionally thought of itself as a more reflective and 'wise' Chamber, which does good work as a result of its longer terms and the resulting greater independence afforded to Senators to follow their consciences. But it has been argued by a number of writers and researchers that the increasing partisanship of the Senate is affecting that Chamber's power and prestige. Read the following short articles:
  - ✓ [LA Times: How the Senate's once-revered traditions are falling victim to partisan divide](#)
  - ✓ [GlobePost: Partisan Divide in US Congress the Worst It's Ever Been \[Study\]](#)
  - ✓ [Business Insider: This 60-second animation shows how divided Congress has become since 1949](#)
- On the other hand, parties need to retain their numbers in the houses via doing everything to ensure the re-election of new Congressmen (freshmen). But this works both against party discipline and in favour of a more moderate line. So, members would be encouraged to do whatever it took to get re-elected, even voting against a president's policy though he was a member of their own party.

### 3. As party unity becomes stronger (as a result of electoral polarisation), legislation is more likely to be blocked by partisanship in the committees.

### 4. Party leaders have little ability to discipline or punish lack of loyalty especially in cases of mavericks with strong personal electoral following; this means more reliance on incentives, e.g. **pork-barrelling, logrolling or patronage**, which some regard as contributing to corruption.

5. **The Rules Committee can decide how to construct bills in a partisan way**, in terms of what is to be included in the version that goes to the other house; for example, the 2018 ‘omnibus bill’ – a spending bill combining a number of different and unrelated budget areas – was treated in this way. See [Vox: Congress’s new \\$1.3 trillion omnibus spending bill, explained](#). **At the same time** there has been a decline in the influence of the **conference committees**, who have traditionally had to align Senate and House versions of legislation.

6. **Parties are increasingly inclined to vote along party lines in order to block or support executive action.** This has been a very clear feature of government under President Trump, especially in relation to the whole lead-up to his **\*impeachment**.

#### KEY TERM: impeachment

*The process by which a public or elected official can be removed from office. Most often used in relation to a method for removing the US president from office, by the legislature.*

#### LEARNING TASK

Look up the meaning of the terms ‘pork-barrelling’, ‘log-rolling’ and patronage.

## The Accountability Function: can hold the President to

Accountability in United States politics is a very different thing from accountability in Australian politics. Responsible Government, as it operates in Australia, is specifically designed to allow the Parliament to hold the government accountable, through such mechanisms as an Opposition, Question time, the Motion of No Confidence and the scrutiny functions of the Senate. However, the separation of powers in the United States is more about preventing the executive branch from having too much power and so it tends to be more of a contest between Congress and the Presidency over which branch is more powerful. Then the forces of partisanship come into play.

Increasing partisanship in Congress and in the Judicial Branch is weakening the ability of both those institutions to hold the Executive accountable. Constitutional mechanisms such as impeachment and other checks and balances on power can only work when individuals are willing to forfeit the power and influence of their respective parties in order to exercise their responsibilities with impartiality and integrity.

**ISSUE: is partisanship in Congress reducing the effectiveness of checks and balances?**

#### CASE STUDY: A PARTISAN

On August 12, 2019, an anonymous whistle blower filed a complaint with the intelligence community alleging that President Donald Trump had pressured the Ukrainian government to investigate [former Vice President Joe Biden](#), after withholding a \$US400 million military-aid package. The complaint alleged that Trump had used “the power of his office to solicit interference from a foreign country in the 2020 U.S. election.” As such, the House Judiciary Committee passed two articles of impeachment against him. The first charged Trump with abuse

of power, and the second with obstruction of Congress. Both articles of impeachment were voted on and approved by the House of Representatives on December 18, 2019. After the articles of impeachment passed the House of Representatives, a trial in the Senate followed. On February 5, 2020, after a three-week trial, Senators voted to acquit Trump 52 to 48 on charges of abuse of power and 53 to 47 on obstruction of Congress. Only one Republican, Senator Mitt Romney, broke with his party and voted to convict him. Trump is only the third President in U.S. history to be impeached.

#### **READING:**

- [BBC: Trump acquitted by Senate in impeachment trial](#)
- [NY Times: A Quick Guide to the Trump Impeachment](#)
- [VOX: The ultimate guide to the Donald Trump impeachment saga](#)
- [NY Times: Document: Read the Whistle-Blower Complaint](#)
- [Business Insider: House Judiciary Committee passes 2 articles of impeachment against Trump, charging him with abuse of power and obstruction of Congress](#)

#### **QUESTION:**

Describe the process of impeachment. (4 marks)

#### **CASE STUDY:**

#### **over the President**

On October 28, 2016 James Comey announced that the FBI would investigate emails related to Hillary Clinton's private server. In addition, he would lead an investigation into whether Trump colluded with Russia in the 2016 presidential election. Despite once praising Comey for his pursuit of Clinton, on May 9, 2017 Trump dismissed Comey as Director of the FBI claiming he had mishandled the investigation into Clinton's use of her private email server. Under the Omnibus Crime Control and Safe Streets Act of 1968, the position of the FBI Director is to be nominated by the President and confirmed by the Senate. The President also has the power to dismiss the Director of the FBI at his discretion. White House press secretary Sean Spicer stated that "President Trump acted based on the clear recommendations of both Deputy Attorney General Rod Rosenstein and Attorney General Jeff Sessions". However, Trump told NBC news that he was thinking of "this Russia thing" when he decided to fire Comey, suggesting that the Russia investigation factored into his decision. By dismissing Comey, many have argued that Trump obstructed justice, and in doing so, evaded the rule of law. Comey is only the second F.B.I. director to be fired in bureau history.

#### **READING:**

- [Congressional Research Service: FBI Director: Appointment and Tenure](#)
- [The Guardian: Donald Trump admits 'this Russia thing' part of reasoning for firing Comey](#)

#### **QUESTION:**

1. Analyse the effectiveness of impeachment as a check on Executive power. (5 marks)
2. Discuss two other ways the Congress can hold the President accountable. (6 marks)

## Democratic Strengths & Weaknesses of

Democratic Value	Feature	Strength	Weakness
<b>Popular sovereignty</b>	<ul style="list-style-type: none"> <li>• House: 2 yearly elections</li> <li>• Senate: 6 yearly</li> <li>• Constitutional limits</li> <li>• Voluntary Direct elections</li> </ul>	<ul style="list-style-type: none"> <li>• Free, fair and frequent opportunities for citizens to vote</li> <li>• Powers of and requirements for Congress safeguarded constitutionally</li> <li>• Democratic right not to vote?</li> </ul>	<ul style="list-style-type: none"> <li>• Senate elections not frequent enough;</li> <li>• Not enough senators per state</li> <li>• Difficult to be elected to without party backing</li> <li>• Many people disenfranchised</li> </ul>
<b>Representation</b>	<ul style="list-style-type: none"> <li>• 435 Representatives of Congressional districts</li> <li>• 100 Senators per state</li> <li>• Caucuses (in the sense of sub-bodies with common interests)</li> <li>• Two year terms for House</li> </ul>	<ul style="list-style-type: none"> <li>• The House has a reasonable degree of diversity;</li> <li>• states' rights are well protected</li> <li>• the caucuses provide another way for minorities to have a voice</li> </ul>	<ul style="list-style-type: none"> <li>• The Senate is overwhelmingly white, male, old and Christian; not a mirror of modern USA.</li> <li>• It is highly representative of 'party' interests and unrepresentative of minorities.</li> <li>• Longer terms help make it a bastion of entrenched power</li> <li>• Short House term means a constant and dominating focus on re-election</li> </ul>
<b>Participation</b>	<ul style="list-style-type: none"> <li>• Ability for any person or group inside or outside Congress to draft a bill</li> <li>• Strength and number of committees</li> <li>• Minimum age requirements for membership of both Houses</li> </ul>	<ul style="list-style-type: none"> <li>• Is a mechanism for hearing the concerns of the community, while the sponsorship provision ensures protection from zealous interest groups.</li> <li>• Access to committee hearings is quite open</li> <li>• Age requirements may encourage experienced politicians</li> </ul>	<ul style="list-style-type: none"> <li>• Committee <b>control</b> over bills negates outside participation and entrenches power with a few powerful officials;</li> <li>• Committees can be used to 'fob off' electoral concerns.</li> <li>• The process is extremely long</li> <li>• Age requirements discriminate against younger people</li> </ul>
<b>Limits on Executive Power</b>	<ul style="list-style-type: none"> <li>• A number of constitutional checks on the Executive (see Figure 1)</li> </ul>	<ul style="list-style-type: none"> <li>• Congress can act as a counterweight to a powerful, even tyrannical Executive branch</li> </ul>	<ul style="list-style-type: none"> <li>• Partisan loyalty can render Congress' power ineffective as a check on the Executive</li> </ul>
<b>Accountability to voters</b>	<ul style="list-style-type: none"> <li>• Only through elections and the system of checks and balances</li> </ul>	<ul style="list-style-type: none"> <li>• Judiciary can check any unconstitutional acts of Congress;</li> <li>• presidential veto can do the same</li> </ul>	<ul style="list-style-type: none"> <li>• Judiciary is largely partisan;</li> <li>• Congress can override the veto</li> </ul>
<b>Political Equality</b>	<ul style="list-style-type: none"> <li>• See the section on political equality in Chapter 4</li> </ul>		
<b>Transparency</b>	<ul style="list-style-type: none"> <li>• Role of committees</li> <li>• Roles of parties in legislative process</li> </ul>	<ul style="list-style-type: none"> <li>• Standing committees provide expert oversight of bills</li> <li>• Proceedings are recorded in the "Congressional Record" and some committee hearings are taped.</li> </ul>	<ul style="list-style-type: none"> <li>• Committees and Sub-committees can be used to bury bills that might embarrass the majority party</li> <li>• Proceedings of party caucuses are usually selectively made public.</li> </ul>

## Comparison of key features of the USA

### LEARNING TASK

Referring back to Issue 1, complete the following table and then make a list of similarities and differences.

KEY FEATURE	AUSTRALIA	USA
<b>Name of Legislative System</b>	Responsible Parliamentary Government	Nationally elected legislature
<b>Number and names of Houses</b>	2	2
<b>Composition of House of Representatives</b> (party, gender, race, age etc.)		
<b>Composition of Senate</b> ((party, gender, race, age etc.)		
<b>Relationship to the Executive Branch</b>		
<b>Legislative process for passing a bill</b>		
<b>Roles of Committees</b>		
<b>Impact of Political parties</b>		
<b>Representativeness</b>		
<b>Participation</b>		
<b>Transparency</b>		
<b>Ability to hold the Executive accountable</b>		
<b>Popular Sovereignty and Accountability to voters</b>		
<b>Political Equality</b>		

# Exam-style Questions

## Question 1

- a. Explain the meaning of 'caucus' as it applies in the United States Congress. (4 marks)
- b. Discuss the impact of the caucuses on the representativeness of Congress.

**TIP:** Watch out for these kinds of 'train carriage' questions: if you get derailed on the first one, it will take the second carriage out as well!

## Question 2

Explain how the composition of the United States Congress can affect its representativeness. (6 marks)

## Question 3

- a. Explain two impacts of committees on the legislative process. (4 marks)
- b. Explain two impacts of parties on the legislative process (6 marks)
- c. Describe and explain the passage of a bill through the United States Congress. (6 marks)

## Question 4

Discuss two strengths of Congress as an effective legislative body. (8 marks)

**TIP: For this question in particular, discuss means a consideration of the corresponding weaknesses of the strengths chosen. That is, strength 1 will need you to say, "on the other hand, this is ineffective because...." Then repeat for strength 2. For 8 marks you need examples!**

### Possible STRUCTURE:

- i. identify the first strength and explain why it is a strength. (1 mark)
- ii. Provide one or two examples or further explanation (1 mark)
- iii. Identify and explain a possible counter argument (1 mark)
- iv. Rebut the counter argument with a reason and example. (1 mark)

Repeat steps i – iv for the Second strength.

## Question 5

Discuss the impact of political parties on the composition of Congress (4 marks)

### Sample Answer:

*The two major political parties, the Republican Party and the Democratic Party, support electoral systems that make it more difficult for minor parties and independents to do well, affecting the composition of Congress, which has no third parties in the House of Representatives or the Senate, and one independent in the House of Representatives and two in the Senate. Through their control of state legislatures, political parties determine the rules and procedures regulating the conditions under which a candidate or political party is entitled to appear on a ballot paper. For example, in the State of South Carolina, to run as an independent you must gain more than 10,000 people to sign a petition for you. As a result, no independent candidate for the House of Representatives has ever*

*appeared on a ballot paper in South Carolina. In addition, political parties redraw Congressional districts (every 10 years) to preserve their advantage, making it more difficult for minor parties and independents to secure a seat in Congress. For example, in 2011 Republican leaders redrew the Congressional districts within the state of Pennsylvania with a partisan skew towards the Republican Party, thus making it more difficult for minor parties and independents.*

### **Question 6**

Analyse the effectiveness of the United States Congress in terms of two democratic values.

(7 marks)

### **ESSAY: (20 marks)**

*“On the surface, the Australian Parliament and the United States Congress have many things in common, but their differences outweigh their similarities.”* To what extent do you agree?

**TIP:** this is a deceptively simple essay if you fail to notice that it is actually asking you to evaluate the proposition. Thus you must have an interesting and sophisticated contention. It’s all about the wording of “on the surface”, ‘outweigh’ and the phrase “to what extent”. If you just have a couple of paragraphs on similarities and a couple on differences you are unlikely to get more than about 12 marks.

## Chapter 6

### KEY SKILLS:

- analyse the role and constraints of political leadership
- evaluate the extent to which democratic values are upheld by the US political system
- critically compare the US system with the Australian system and the extent to which each reflects liberal democratic values

### KEY KNOWLEDGE: political leadership in the USA:

- the role of the president as head of government and head of state
- constraints on the power of the president
- methods of appointing and dismissing the president of the USA
- comparison of key features of the USA political system with the Australian political system including political leadership

**NOTE:** as there has never been a female president, we will use the

### The Role of the

The office of the President is governed by [Article 2 of the Constitution](#). This vests executive power in a President of the United States; it goes on to stipulate the four year term of office and the manner of his election, which is via an Electoral College. (See Chapter 4). The President must be a citizen of the US, have lived in the country for at least 14 years and have reached the age of 35 years old. The Constitution goes on to lay out the roles and powers of the Office; these are known as the **PRESIDENT'S FORMAL POWERS** and consist of the following:

- To “faithfully execute the Office of President of the United States, and... to the best of my ability, preserve, protect and defend the Constitution of the United States.” (Article 2, S. 1) This is a ‘power’ because of the reference to ‘execute’, but it is also a limitation on the power of the president because he has sworn to uphold the constitution.
- To nominate Federal officials such as Judges and Ambassadors (with Senate confirmation)
- To request written opinions from administrative officials, such as Cabinet Secretaries (corresponds to our ministers)
- To fill administrative vacancies during Congressional recesses
- To act as Commander-in-Chief of the Armed Forces, (but not to declare war)
- To make treaties (with Senate ratification)
- To receive ambassadors, (which gives him diplomatic power) and to confer diplomatic recognition on other governments
- To grant reprieves and pardons for federal offences (except impeachment)
- To recommend legislation to Congress
- To convene Congress on extraordinary occasions
- To adjourn Congress if House and Senate cannot agree
- To veto legislation (Congress may overrule with a supermajority)
- To present information on the State of the Union to Congress

The United States President is both **Head of State** and **Head of Government**. The role of Head of State is to be the symbolic and actual representative of the nation both abroad and at home; to be the 'First Citizen' in the sense of chief leader (ancient Roman emperors referred to themselves as "first citizen") and to embody the values of the political system in ceremonial duties and functions. The Head of Government is the Chief Executive Officer in whom executive power is constitutionally vested. The formal roles above are a combination of executive, diplomatic, representative and legislative roles. But the President also has informal roles that have developed over time:

- The Executive Order – not actually mentioned in the Constitution but derived from the broad executive powers vested in the President. Executive orders can only be directed at federal agencies but they usually impact upon citizens or individuals
- The power to negotiate with Congress: Setting priorities for Congress and attempting to get majorities to put through the president's legislative agenda. This may include a "signing statement", used by Presidents "to claim a constitutional right to bypass provisions of bills they are signing into law."<sup>9</sup>
- Negotiating executive agreements: Agreements with heads of foreign governments that are not ratified by the Senate are increasingly common, as is the President's ability to withdraw from treaties, accords and agreements without Congressional approval
- The power to impose trade sanctions (Executive orders) and tariffs has also shifted away from Congress and to the President. See [Vox: Why Trump can raise steel tariffs without Congress](#) and [CNN: US imposes new sanctions on Iran](#)

## Constraints on the Power of the President

### KEY SKILL:

There are significant **constitutional constraints** on the President's power, such as are mentioned in the 'Checks and Balances' section of this textbook and which arise from the powers given to Congress and the Judiciary. These constitutional constraints can be side-stepped, however; consider the President's increasing ability to execute war through his role as Commander-in-Chief. The constitution grants Congress the power to declare war, raise and support armies, and to provide and maintain a navy. (Article 1, section 8, clause 11). Towards the end of the Vietnam War, Congress passed the War Powers Act 1973, which provides for the president to consult, report and terminate the deployment of armed forces with the approval of Congress after 60 days of military engagement. Successive Presidents have ignored that on the basis of their constitutional duties as Commander-in-Chief or the nature of the engagement being inconsequential.

Read [ProPublica: What Exactly Is the War Powers Act and Is Obama Really Violating It?](#)

There are also **structural constraints** on presidential power, arising from the party system and the electoral system. In the first case, partisan control of Congress can block the presidential program if there is an opposition party in either House. And there often is! This obstruction is one of the factors leading to the (arguably) 'over-use' of executive actions. Consider the House of Representatives stalling on providing funds for President Trump to build his wall.

Secondly, if the President is in his second and therefore last term of office, he is referred to as a 'lame duck President'. He has little hope of winning Congressional approval for any major reforms and so will resort to executive orders and actions, which may then come under judicial scrutiny.

## ISSUE: Does the President have too much power?

### CASE STUDIES: Presidential Power

Executive Orders are signed, written and published directives from the President. After the president issues an Executive Order, that order is recorded in the Federal Register and is considered binding, which means it can be enforced in the same way that a federal law is. The power is derived from Article II of the U.S. Constitution which vests executive powers in the President and requires that the President “shall take Care that the Laws be faithfully executed.” However, Executive Orders are not legislation; they require no approval from Congress, and Congress cannot simply overturn them. Congress may pass legislation that might make it difficult, or even impossible, to carry out the order, *such as removing funding*. Only a sitting U.S. President may overturn an existing Executive Order by issuing another Executive Order to that effect.

In 2017, President Donald Trump made Executive Order 13769, titled Protecting the Nation from Foreign Terrorist Entry into the United States, often referred to as the Muslim ban or the travel ban. Executive Orders are subject to legal review, and the Supreme Court or lower federal courts can nullify, or cancel, an Executive Order if they determine it is unconstitutional. After several legal challenges on statutory and constitutional grounds the US Supreme Court upheld Donald Trump's Executive Order. The court held that the challengers had failed to show that the ban violates either US immigration law or the US constitution's First Amendment prohibition on the government favouring one religion over another.

### READING

- [How Stuff Works: the Executive Order](#)
- [REUTERS Explainer: Inside the plans for Trump's expanded travel ban](#)
- [Cato Institute: Presidents Gone Wild — with Executive Orders](#)
- [BBC: What executive actions has Trump taken?](#)

### CASE STUDY: Workin

When President Obama (a Democrat) was elected in 2008, one of his signature promises was to introduce a Health Insurance Scheme – a policy which past Democrat Presidents had tried to introduce without success. But the Democrats had control of both Houses of Congress, so the Bill was submitted to Congress and began the process of approval through the committees. Passage was not a certainty, however, as shortly after the bill was approved in the Senate with amendments, the Democrats had lost control of the House at the 2010 midterms and a Republican, Scott Brown, had won Ted Kennedy's old seat in a Special Election for the Senate. Finally, after a series of negotiations and a special bipartisan health meeting between Obama and the leaders of both houses, the Senate's version of the bill was passed in the House by a margin of 7 votes.

### READING:

- Affordable Health California [Affordable Care Act history](#) and click on the timeline at the end of the article.
- [Miller Center: Presidential Constraints](#) **MUST read and summarise!**

## CASE STUDY: Working Against

### READING:

- [Vox: Trump's threat to adjourn Congress and make recess appointments, explained](#)

## CASE STUDY: Presidential use of Signing Statements

A signing statement (as described above) is a ploy the President can use to avoid obeying certain provisions of bills he has signed into effect at his discretion - a little like reservations to a treaty. In 2012, President Obama agreed to sign the National Defence Authorization Act for fiscal year 2011 but issued a statement with it that made it clear he would not agree to the provision within the Act that made it lawful to hold terrorism suspects in indefinite detention. In 2017, President Trump issued a Signing Statement against certain provisions in the 'Russia Sanctions Bill' 2017.

### READING:

- [NY Times: Presidential Signing Statements](#)
- [Constitution Center: What's a presidential signing statement?](#)
- [Forbes: President Obama Signed the National Defense Authorization Act - Now What?](#)
- [NY Times: Trump's Signing Statement on the Russia Sanctions Bill, Explained](#)
- [Politico: Timeline: Russia Sanctions bill](#)

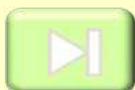
## CASE STUDY: The President's Emergency Powers

A little known fact is that under certain laws enacted by previous Congresses, U.S. presidents have emergency powers. President Trump has done a great deal of talking lately about how the President can do anything and, in the current climate he has certainly more scope to enact "draft proclamations, executive orders and proposals for legislation that can be quickly deployed to assert broad presidential authority in a range of worst-case scenarios." (See NY Times article below.) Some examples include search and seizure without a warrant, the imposition of martial law and detention of citizens who are *suspected* of being subversives.

A related question that has emerged is whether the President has the power to cancel the forthcoming presidential election (it appears he hasn't) or whether, under the emergency powers, he can shut down whole cities on Election Day. This is apparently a possibility.

### READING:

- [NY Times: Trump Has Emergency Powers We Aren't Allowed to Know About](#)
- [Politico: 'The Nightmare Scenario': How Coronavirus Could Make The 2020 Vote A Disaster](#)



[Legal Eagles: Can the President Cancel The Election & What Would Happen?](#)

## Methods of appointing and dismissing the

There are two ways that a president can be removed from office. The first – **Impeachment** - is set out in Article 1 Section 3:

*“The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.*

*Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of Honora, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.”*

**You should know all about this method of removing a President from Office from Chapter 5.**

The **second method** is contained in Amendment 25 S.4 of the U.S. Constitution, which was passed by Congress on July 6, 1965 and ratified on February 10, 1967. It states:

*Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.*

*Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.*

What this means is that if there is a concern about the President's ability to discharge the duties of his office, the Vice President and a majority of Cabinet secretaries can make a written declaration to that effect to the President pro tempore (temporary) of the Senate and the Speaker of the House. Upon that occurring, the Vice President (VP) will assume the powers and duties of the President (problematic in itself). If the President declares that he is fit, but the VP and Cabinet Secretaries maintain in writing within four days that he is not, then Congress will decide by a two thirds vote.

This amendment also makes it clear that a President can be appointed by being next-in-line in the case of the death or resignation of an elected President. The chain of succession is the Vice

President, followed by the Speaker of the House and then by the President of the Senate, even when they do not belong to the same party as the President.

**REFERENCES:**

- [Constitution Center: 25th Amendment](#)
- [Vox: The 25th Amendment, explained: how a president can be declared unfit to serve](#)
- [The New Yorker: How Trump Could Get Fired](#) a really interesting but rather long article!

## Comparison of political leadership

**KEY SKILL** critically compare the US system with extent to which each reflects liberal democratic values

Even though the Study Design is not too specific about what is meant by political leadership, we suggest it is only practical to confine yourself to a comparison of the United States President with the Australian Prime Minister.

**LEARNING TASK**

Referring back to Issue 1, complete the following table and then make a list of similarities and differences.

KEY FEATURE	Prime Minister of AUSTRALIA	President of the USA
Qualifications for Office		
Method of appointment / election to office		
Term limits		
Constitutional Powers		
Formal Powers		
Informal Powers		
Constraints on power		
How Representative?		
Ability to be held to Account?		
Impact on Political Equality?		

# EXAM

## Question 1

- a. Describe one role of the President of the United States.(3 marks)  
**TIP: a current example is highly advised.**
- b. Outline two formal powers of the President of the United States. (4 marks)
- c. Distinguish between the United States' President's role as Head of Government and his role as Head of State. (5 marks)
- d. Explain two informal powers of the President of the United States. (6 marks)

## Question 2

Fully explain the process of electing the president (8 marks)

**TIP: For 8 marks you must structure your answer to enable you to show details and examples**

### Sample answer:

*There are four stages in the presidential election process: primaries and caucuses; the nominating convention; the presidential election; and the Electoral College. Primaries, in which voters attend a polling place, and caucuses, a series of meetings, determine how many delegates the presidential nominee is awarded. For example, in 2016 Donald Trump won 11 delegates at the New Hampshire Primary. After the primaries and caucuses are completed, the major parties hold a nominating convention to officially select and announce their candidate for president. The elected delegates gather at their party conventions and formally submit their votes for the various candidates. The first candidate to receive a majority number of delegate votes becomes the party's presidential nominee. For example, at the 2016 Republican National Convention, delegates met at the Quicken Loans Arena in Cleveland, Ohio to choose the Republican presidential nominee, Donald Trump.*

*Having selected their candidates, the presidential election begins. The presidential election is held on the first Tuesday after the first Monday in November. Rather than voting for their preferred candidate for president directly, US voters elect a list of electors who are supporters of particular presidential candidates, who in turn elect the president through a system called the Electoral College. Each state is allocated a number of electoral votes (one for each of the 435 members of the House plus one for each of the 100 Senators, and the District of Columbia gets three). Each state's Electoral College members meet in their respective state capitals to cast their electoral votes. There is a total of 538 electoral college votes, so to be elected president a candidate must get 270 or more votes. In 2016, Donald Trump was formally elected as the 45<sup>th</sup> President with 306 Electoral College votes.*

## Question 3

Analyse the ability of the United States President to fulfil his roles. (7 marks)

**TIP: Note that this is actually about constraints as well as roles.** For 7 marks you would need to concentrate on two roles, outlining each one separately and discussing each in terms of pros and cons – the ability to fulfil and the inability to fulfil. Finish with a conclusion.

#### Question 4

- a. Explain the process of dismissing a President under the 25<sup>th</sup> Amendment. (4 marks)
- b. Discuss the effectiveness of impeachment as a method of holding the United States President to account. (6 marks)

#### Question 5

Discuss two weaknesses in the United States Constitution in regard to the power of the Presidency. (6 marks)

#### Question 6

Analyse the relationship between the President and Congress in terms of effective checks and balances. (8 marks)

**TIP: It would be easier to start with two key checks – such as the veto powers of both branches or the requirement for Senate approval of appointments – and then explain the relationship. Two good paragraphs needed, with examples from the case studies.**

#### Question 7

Compare the power of the United States President with the power of the Australian Prime Minister. (6 marks)

**TIP: Because this question is only worth 6 marks choose either one significant area of comparison with similarities and differences, or two lesser areas of comparison, each with similarities and differences. Make sure you focus on power rather than roles.**

#### ESSAYS:

1. *'The Australian Prime Minister is far more powerful than the president of the United States.'*  
To what extent do you agree?
2. Critically compare national political leadership in the United States of America with national political leadership in the Australian Political system. Evaluate which system better upholds democratic values.

## END ISSUE 2

## NOTES

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<sup>1</sup> Lowi, Ginsberg and Shepsle, *American Government*, Brief 2006 edition, W.W. Norton & Company Ltd. New York and London, 2006.

<sup>2</sup> <https://www.law.cornell.edu/supremecourt/text/262/390>

<sup>3</sup> <https://www.usatoday.com/story/news/politics/elections/2020/03/04/election-2020-michael-bloomberg-drops-out-of-presidential-race/2595841001/>

<sup>4</sup> [https://www.fairvote.org/maine\\_nebraska](https://www.fairvote.org/maine_nebraska)

<sup>5</sup> <https://medium.com/the-cynical-report/the-benefits-and-drawbacks-of-the-electoral-college-e61262d97175>

<sup>6</sup> <https://www.businessinsider.com.au/changes-in-gender-racial-diversity-between-the-115th-and-116th-house-2018-12?r=US&IR=T>

<sup>7</sup> [https://ballotpedia.org/116th\\_United\\_States\\_Congress](https://ballotpedia.org/116th_United_States_Congress)

<sup>8</sup> Lowi, Ginsberg, Shepsle, 2006, p.104

<sup>9</sup> <https://www.nytimes.com/interactive/2019/us/politics/presidential-signing-statements-executive-power.html>

## Issue 3

## UNIT

## AREA OF STUDY 'Domestic Policy'.

### Authors:

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**Nicola Sabbadini**

Australian Politics VCE Units 3 & 4 Student Survival Pack.

1st Edition

By Nicola Sabbadini & Josie Gorman

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### **KEY SKILL:**

- *analyse the influences on policy making of elements outside the formal institutions of government*

### **KEY KNOWLEDGE:**

government that influence public policy: international influences, opinion polls, the media and interest groups

- **INTERNATIONAL INFLUENCES** 179

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## F

This digital series is designed to help you, the student, master the content in the Australian Politics course as well as improve your skills. You could use it in conjunction with the free SEV Australian Politics updates and with any other resources your teacher may give you. The aim is to cut through to the essentials and to save you time. Each edition will deal with one of the Areas of Study (in order) and will be released throughout the year onto the free Campion MyConnect app. Release dates are January, March, June and August, although the Covid-19 pandemic may interfere with our intentions!

Throughout this text, you will be given the opportunity to apply, explain, analyse, evaluate and critically compare – all key task words that can appear on an Australian Politics examination. And although there is a substantial amount of explanation and a number of case studies, you should be prepared to do your own research throughout the year and gather your own evidence from what's happening in Australia and the world. That's one of the great satisfactions of this subject!

Although the contents of this edition will closely follow the Australian Politics Study Design, we are not reproducing the Study Design for you; we strongly advise you to download your own copy from the VCAA website and use it to guide your note-taking.

<https://www.vcaa.vic.edu.au/curriculum/vce/vce-study-designs/ausglobalpolitics/Pages/Index.aspx>

*You should become so familiar with the Study Design that you could recite it in your sleep.*

**Everything in the study design, (the introductory questions, the blurb that precedes the Key Knowledge, the Outcomes, the Key Knowledge and the Key Skills) is examinable.**

You should also become familiar with the VCAA Advice for Teachers (which contains a glossary) and the Frequently Asked Questions, the answers to which have the same status as the Study Design.

The material in this text is organised to cover the basics of the Study Design's Key Knowledge and to emphasise the mastery of the Key Skills. We will provide plenty of questions for you to practise. We encourage you also to memorise the key terms in each Area of Study and practise applying them to the case studies provided in this text. This will help you gain a more sophisticated understanding of the content.

Additionally, this text will use the content of each of the Areas of Study in a blended and integrated way, so that what you will learn in Unit 3 Area of Study 2 or Unit 4 Area of Study 1, for instance, could also appear in issues of this series that deal with other areas of study.

**Finally, we welcome your feedback.** The authors can be contacted by emailing SEV at [admin@sev.asn.au](mailto:admin@sev.asn.au)

We hope you enjoy your study of VCE Australian Politics.

# Unit 4: Australian Public Policy

## Chapter 1: Introduction to the Study

Unit 4 is all about the formulation and implementation of federal government policy both domestic and foreign. The stages of originating and developing a policy, known as 'formulation', are beset with many difficulties and challenges. While the government intends to be able to deliver on its election promises, it has to balance very many competing interests. Certain sectors of society, such as business or unions or professional associations, will be lobbying the government in order to get outcomes they regard as favourable to their own interests. Before a policy can even get to be discussed in Cabinet, it has to have a minimal level of support from the public service and key ministers. The opposition parties in parliament are likely to want to vote against it or substantially amend it; deals will have to be done with minor parties and independents in the Senate. It would be better if the embryonic policy had media support. It has to have a quantifiable level of support amongst the electorate, especially if the government has only just come into power, as an unpopular policy electorally can actually bring down a government. The Howard Government's 'Work Choices' package springs to mind or Joe Hockey's first budget for the Abbott Government.

Once passed by parliament and enacted as law, it then has to be implemented (carried out) in such a way that it is efficient, fair and practical. If we consider the current federal government's response to Covid-19 which was, by necessity, formulated in a hurry and implemented almost immediately, we note that Australia's federal system has played a very positive role. The formation of a 'national cabinet' consisting of all state premiers and key federal ministers, managed to achieve a judicious balance between preferred state policies towards the lockdown and a set of federally mandated guidelines. This is not always the case, sadly; the government made a serious miscalculation regarding the cost to taxpayers of the size of the pandemic bailout package (luckily in taxpayers' favour) and the 'Robo-debt' scandal (an automated debt recovery program that was introduced by the federal government in mid-2016) shows how important it is to have policies implemented competently and fairly by the public service.

Foreign policy is a different matter entirely. While there is increasingly an overlap between domestic and foreign policies in this globalised world (think environment and tourism for example), there is at the same time a greater level of bipartisanship on many issues – the American Alliance for example.

A further difference with foreign policy is that its formulation is much less formal. Wars, alliances, treaties, public diplomacy and leader-to-leader meetings can all be declared and / or implemented by Prime Ministers without parliamentary approval. Further, foreign policy is seldom an election issue or the subject of opinion polling unless it has the potential (like restrictions on foreign investment) to affect domestic policies. Another key difference is that foreign policy is often frequently made by people on the ground – ambassadors and diplomats – in their daily decisions in countries overseas. So, foreign policy faces quite a different set of challenges to domestic policy.

Finally, there has been a trend over the last two examination papers to have a more integrated approach to answering questions on public policy (domestic and foreign) so it is well to bear this in mind as you study both. Keep **differences** and **similarities** to the forefront as well as **inputs**, **challenges** and **change**.

## The Basics of AOS

As a result of the pandemic, this Area of Study has been reduced. You no longer have to study a particular policy in-depth. This will have ramifications for the types of questions that can be asked on the examination. Nevertheless, as always, the Outcome for this AOS is how you will be assessed, both in SACs and on the examination at the end of the year. For Domestic policy, on completion of this unit, you should be able to:

- ❖ explain how Australian federal domestic public policy is formulated and implemented
- ❖ analyse the factors which affect these processes.

## ADDITIONAL RESOURCE

A free digital resource on this area of study produced in 2018 by SEV can be found here: <https://www.sev.asn.au/resources/vce-australian-and-global-politics/free-resources>

## A Note on the Key Skills

Key Skills should act as a guide for how you approach the study and the key knowledge. For example, the key skill of “develop points of view, explanations and arguments about policy making and implementation which use contemporary examples as evidence” is quite crucial. Most of the short answer questions and the essay will require you to be able to produce an example and you will not have the ready-made examples that you would have had from a study of one particular policy.

**Explain:** *this requires more than a description* as you must outline **WHY** the concept or event or phenomenon is the way it is.

**Analyse:** *this requires more than an explanation* as you must break the thing to be analysed into its parts, including conceptual parts like strengths and weaknesses. You need to show what, when, where, why and **HOW** and then reach some kind of **conclusion**

**Compare:** *this requires an examination of both **similarities and differences***. Comparative tables and Ven diagrams can help here.

**Develop arguments and points of view:**

*this means that you should **be on the look-out** for alternative arguments.* The more you appreciate the complexity of a topic and the scope of its reasoning, the more sophisticated your understanding will be. If, for example, you are trying to assess the comparative influence of the government and the public service on policy-making, collect as many arguments on both sides as you can. Create your own contentions and test them against different perspectives / opinions. You don't want to be in the Exam or the Sac not knowing what you really think.

**Use evidence** from contemporary examples:

the main skill here is to *actually* use any examples or evidence in such a way that it supports your argument. **The use of evidence needs to be explained, not just slotted in.**

**So, keep practising these skills right from the beginning. That's why there are exam-style questions included in this resource.**

## Approach to the Key Terms

### KEY SKILL:

- define and explain key terms and concepts relating to domestic policy.

*Ensure you can define, explain and provide an example for each the following terms:*

**Executive:** the executive is the government and has the function of carrying out or administering the law. In Australia, the Governor General and ministers of the governing party carry out this role.

**Cabinet:** The Prime Minister and her/his senior ministers. The cabinet is the key policy making body and carries out the work of the executive branch in practice.

**Ministry:** those members of government who have responsibility for a particular portfolio or policy area.

**The public service:** Government departments, consisting of unelected and non-political public servants who administer government policies and provide advice on policy to Ministers.

**Interest groups:** A group of like-minded people who work to influence government policy and decision making, either for the benefit of those they represent or society more broadly, but do not seek election themselves.

**Policy platforms:** A written set of ideas or plans for action to achieve particular outcomes in government, which are devised by political parties and campaigned on by them prior to an election.

**Mandate:** The authority given to a political party to form government and implement policies, as a result of their democratic election by the people.

**VCAA Australian Politics Glossary:**

<https://www.vcaa.vic.edu.au/curriculum/vce/vce-study-designs/ausglobalpolitics/advice-for-teachers/Pages/Units3and4AustralianPoliticsGlossary.aspx>

As you read through this resource, the key terms will be further explored, especially in the case studies. This is because the key terms and concepts all have 'issues' associated with them (in the political sense) that will affect your ability to evaluate and compare the two systems.

## Chapter 2:

The concept of 'public policy' is viewed in different ways within the political community. There have been many attempts to define the term but its meaning still remains vague. *The Australian Policy Handbook* defines public policy as an authoritative statement by a government about its intentions.

### Some of the common characteristics of public policy include:

*It is **intentional** - public policy means pursuing specific government goals through the application of identified public or private resources; is about making decisions and testing their consequences; is structured, with identifiable players and a recognisable sequence of steps; is political in nature, expressing the electoral and program priorities of the executive; is programmatic, because it expresses a proposed set of actions.*

The Australian Policy Handbook by Catherine Althaus, Peter Bridgman and Glyn Davis

Public policy can also be divided into two categories: domestic policy and foreign policy. This resource will focus on domestic policy, however, as foreign policy will be the focus of the next issue, it will also be defined:

***Domestic policy** refers to "the decisions made by a government regarding issues and activities that **occur within the country**. This term encompasses all of the laws, planning, and actions of the government which concern internal issues that affect the entire country. Many domestic policies are devised by the federal government, though many are developed through the combined efforts of federal, state, and local governments." (Legal dictionary).*

***Foreign policy** is public policy whose objective, actions and / or impact **focuses on the relationship between Australia and other nations and Australia's participation in a globalised world**. It is policy that involves one or more international bodies – that is, other country / countries or international agencies (e.g. the United Nations).*

*(Australian Politics VCE Unit 4, Area of Study 1: Domestic Policy by Lisa Shukroon)*

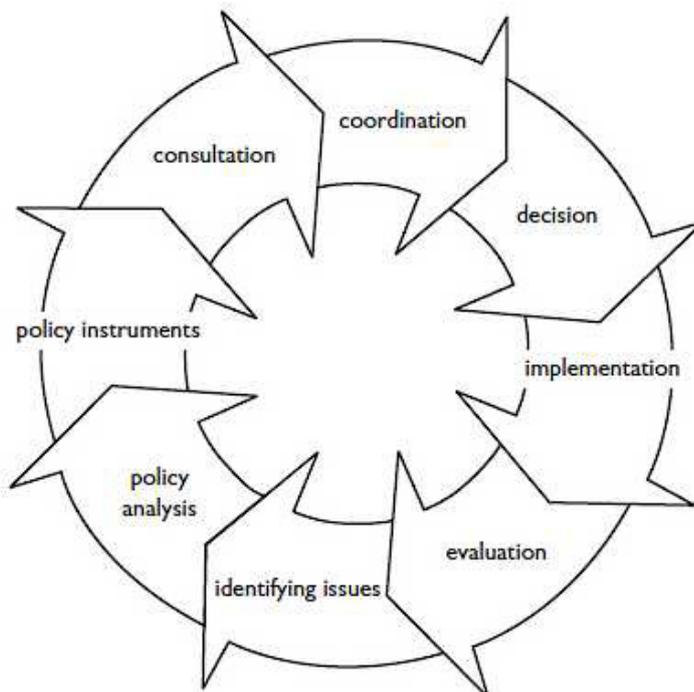
**What both domestic and foreign policy have in common is the achievement of national interests.**

## THE POLICY CYCLE

Public policy is never static, with many describing it as a cyclical process. The policy cycle demonstrates the sequence of stages public policy goes through in regard to its formulation and implementation. Different models of the policy cycle have been developed, however, the one adopted by *The Australian Policy Handbook* is the most comprehensive. It depicts the policy cycle as going through the following eight stages:

1. **identifying issues;**
2. **policy analysis;**
3. **policy instruments;**
4. **consultation;**
5. **coordination;**
6. **decision;**
7. **implementation; and**
8. **evaluation.**

Refer to the following page to understand each stage of the policy cycle in more detail.



*The Australian Policy Handbook* by Catherine  
Althaus, Peter Bridgman and Glyn Davis

## THE POLICY CYCLE

**The policy-making process begins with *identifying issues*.** Issues arise from a variety of sources, such as the media, interest groups etc. As *The Australian Policy Handbook* states, “there is never a shortage of people telling the government what it should be doing”.

**Once an issue has been identified, *policy analysis* occurs.** Policy analysis is often conducted by the public service, who research broader debates surrounding the issue. They create briefing papers that enable ministers to make informed decisions.

**Policy analysis leads to identifying *policy instruments*.** Recommendations are made in regard to carrying out the policy itself. Policy instruments could include legislation or adjustments of the internal operations of government agencies.

**The next stage is *consultation*.** Policy consultation involves discussing and developing proposed policy initiatives with government departments and non-government interests, including experts working within the field.

**Once completed, issues of *coordination* arise.** This includes coordinating with Treasury on available funding; with central agencies on how the policy aligns with current government initiatives; and with different agencies who have a shared interest in the area.

**Once these steps have been taken, a *decision* is made by Cabinet.** Cabinet receives the policy submission and must make an informed decision on the suggested policy.

**If Cabinet decides to pursue the policy, *implementation* will follow.** In this stage, the policy is implemented through legislation or a necessary program. The public service play a significant role in the implementation of policy, in addition to the relevant minister.

**The final stage is *evaluation*.** Evaluation is essential so government can gauge the overall success of the policy and adjust the policy design if appropriate. This stage starts the cycle again, as *The Australian Policy Handbook* states “making policy is a wheel continually turning, a task never completed”.

*The Australian Policy Handbook* by Catherine Althaus, Peter Bridgman and Glyn Davis

## POLICY FORMULATION AND IMPLEMENTATION

Policy formulation is the process undertaken to develop a policy with the intention of implementing it. The formulation of domestic policy is often influenced by a range of factors including: the prime minister; the cabinet and ministry; the public service; parliament; ministerial advisers; elections; the opposition; minor political parties; independents; international influences; opinion polls; the media; and interest groups. Each of these factors will be discussed at length in this resource.

**\*A note on Policy Implementation:** it is the act of putting a policy into action. The Australian Public Service (APS) plays a significant role in policy implementation. It has developed **seven principles** that should be considered when implementing a policy including the following:

- **planning;**
- **governance;**
- **engaging stakeholders;**
- **risks;**
- **monitoring, review and evaluation;**
- **resource management; and**
- **management strategy.**

Each stage can be explored in more detail on the website of the Department of Prime Minister and Cabinet. <https://www.pmc.gov.au/government/policy-implementation#>

### MINI

The National Disability Insurance Scheme (NDIS) was introduced by the Gillard Labor Government in 2013 to provide support to people with a disability, their families and carers. There have been major formulation and implementation challenges associated with the NDIS. Access the following resources and evaluate the formulation and implementation of the NDIS in terms of its successes and failures.

### REFERENCES

- [Once in a generation NDIS introduced to Parliament \(ABC News\)](#)
- [What next for the NDIS? \(ABC News\)](#)
- [The National Disability Insurance Scheme: a chronology](#)

### QUESTIONS

1. Define the term domestic policy (2 marks)
2. Outline one difference between domestic policy and foreign policy (3 marks)
3. Outline one difference between policy formulation and policy implementation (3 marks)
4. Explain the process of formulating and implementing domestic policy (6 marks)
5. Discuss two challenges associated with the formulation of domestic policy. (6 marks)
6. Discuss two challenges associated with the implementation of domestic policy. (6 marks)

# CHAPTER

## GOVERNMENT INSTITUTIONS

### KEY SKILL:

- *analyse the role and influence of government institutions in public policy formulation and implementation*

### KEY KNOWL

the role of government institutions in public policy formulation and implementation:

- the executive, the prime minister, the Cabinet and the ministry
- the public service
- the Commonwealth Parliament
- the judiciary

## THE EXECUTIVE

The executive is the government and has the function of carrying out or administering the law. In Australia, the Governor General, the Prime Minister and ministers of the governing party carry out this role. In Australia, the executive has come to dominate the domestic policy making process. This is largely because of Australia's system of **responsible government**, which lacks a true separation of powers. (As you know, the separation of powers is the principle that the three branches of government, the legislature, the executive and the judiciary, should be kept independent and act without interference from each other as a means of decentralising and preventing abuse of power.) In Australia, the separation of powers is blurred, as the executive and legislative branches are combined. This allows the executive to dominate the legislative process, and thus the development of domestic policy.

### LEARNING TASK

The Governor General, Sir David Hurley, delivered a speech to parliament outlining the Morrison government's policy agenda for the 46th Parliament. **Read the [Governor General's speech](#) and**

**outline Morrison's policy agenda on the following issues:**

- reform of tax, regulation and industrial relations;
- job creation;
- home ownership;
- infrastructure planning and development;
- management of the health system, the National Disability Insurance Scheme and mental health;
- education; government services and payments;
- Defence, veterans, security and foreign policy;
- energy, climate change and the environment;
- rural and regional Australians;
- Indigenous Australians;
- older Australians;
- crime and safety, including online and violence against women.

## THE PRIME MINISTER

The prime minister is the leader of the political party (or coalition of parties) with a majority of seats in the House of Representatives. He / she has the day to day role of leading the executive branch and administering the nation. As part of this role, the prime minister drives the policy agenda of the government and becomes the public face of all policy decisions made. In addition, the prime minister has the power to choose who becomes a minister within the government, and what portfolios each minister is awarded, which in turn shifts the policy priorities of the government.

Changes in the policy agenda may also come from leadership changes with a party. If a prime minister loses the support of the party room, they can be removed from office through a spill motion which can, in turn, directly affect the policy agenda of the government. The rapid and repeated turnover of prime ministers in recent years has led both the Australian Labor Party (ALP) and Liberal Party of Australia (LPA) to change the requirements of removing their leaders.

The ALP requires that the prime minister can only be removed if 75 per cent of the caucus agree to force a ballot (or 60 per cent for an opposition leader). The LPA requires two-thirds of the party room to support a leadership spill if there is to be a change of prime minister. A change in the prime minister can bring about a different policy agenda as they introduce different initiatives from those of their predecessor.

### LEARNING TASK

**Watch *A Form of Madness* and *Malcolm and the Malcontents*. Four Corners investigates the rise and fall of Malcolm Turnbull, the leader of the Liberal Party and how that affected the policy agenda of the Liberal Party of Australia.**

- [A Form of Madness](#)
- [Malcolm and the Malcontents](#)

## ISSUES FOR ANALYSIS AND EVALUATION

**To what extent is the power of the Prime Minister to develop policy limited by the strength of his backing in the Party room?**

### CASE STUDY 1: POWER OF THE PM TO FORMULATE POLICY

In 2017 Turnbull established the Home Affairs Portfolio. The Home Affairs Port Folio brought together Australia's immigration, border protection, law enforcement and domestic security agencies in a single portfolio. Turnbull described the changes as the "the most significant reform of Australia's national intelligence and domestic security arrangements and their oversight in more than 40 years". There is little doubt that this in turn set the policy tone and agenda for the government within this area.

#### REFERENCE:

[Turnbull announcing the establishment of the Home Affairs Portfolio](#)

#### QUESTION:

**What were the factors that allowed Malcolm Turnbull to take this decision?**

## CASE STUDY 2: LIMITS ON THE ABILITY OF THE PM TO FORMULATE

A leadership spill is a declaration that the leadership of a parliamentary party is vacant and open for re-election. Leadership spills within the government can directly affect their policy agenda. After internal disagreement about the direction of the Liberal Party, including Malcolm Turnbull's National Energy Guarantee (NEG), a series of leadership spills occurred within the party. On 21 August 2018 Turnbull (Wentworth, NSW) called a leadership spill – Turnbull won the leadership ballot against Home Affairs Minister Peter Dutton (Dickson, QLD) 45 to 38 votes. Following further instability within the Liberal Party, another leadership spill was called by Turnbull on 24 August 2018. When the spill motion was successful, Turnbull stood down as leader. Bishop, Morrison and Dutton all nominated to become the leader of the Liberal Party. After Bishop was knocked out in the first round of voting, Morrison won the second round 45 to 40 against Dutton to become Australia's 30<sup>th</sup> Prime Minister. Morrison's victory led to the announcement that "the NEG is dead", effectively ending Turnbull's energy policy.

### REFERENCE:

[https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1920/Quick\\_Guides/PartyLeadershipChangesChallenges](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1920/Quick_Guides/PartyLeadershipChangesChallenges)

### QUESTION:

**Explain two factors that constrain a PM's policy-making ability. (4 marks)**

## CABINET & THE MINISTRY

Cabinet is the primary decision-making body of government. It includes the prime minister and his most senior ministers. Note that not all ministers sit in cabinet, although ministers in the outer ministry and assistant ministers, may be present for cabinet considerations if issues affecting their portfolios arise. At the time of publication, Scott Morrison's government contains 30 ministers; 23 who are in Cabinet, and 7 who are in the outer ministry. In addition, there are 12 assistant ministers who are designated as parliamentary secretaries under the Ministers of State Act 1952.

Cabinet generally meets once a week, with such meetings taking precedence over all other ministerial business. Cabinet is often described as the apex of government, or "the engine room of government" as it discusses a range of things including government policy, issues of national importance, and parliamentary and political strategy. As stated in the Cabinet Handbook, "the Cabinet considers significant, complex or controversial matters which benefit from collective and collaborative discussion and decision making. Ministers should put before their colleagues the sorts of issues on which they themselves would wish to be consulted—matters of public interest, importance, or controversy".

It is ultimately the prime minister who decides what matters require Cabinet consideration; as such, ministers must write to the prime minister to seek authority for any matter they wish to discuss in Cabinet. Ministers may also put forth Cabinet submissions, which are proposals that seek agreement

from Cabinet to take a particular course of action. To ensure that Cabinet can make an informed decision on the suggested policy proposal, *ministers are required to provide detail on the challenges and risks associated with the implementation of the proposal*. In addition, ministers are responsible for all Cabinet policy decisions that affect their portfolio, regardless of whether they agree with such policy decisions or not. **This is part of the doctrine of *collective ministerial responsibility*, which also involves *cabinet solidarity* and *cabinet confidentiality (secrecy)*.**

### Collective Ministerial Responsibility

*“requires that whatever the range of private views put forward by ministers in the Cabinet, once decisions are arrived at and announced they are supported by all ministers. It ensures that the Government is collectively accountable and responsible to the Parliament and to the people of Australia. In practice, a decision of the Cabinet is binding on all members of the Government regardless of whether they were present when the decision was taken.”*

**Cabinet solidarity** requires that *“Members of the Cabinet must publicly support all Government decisions made in the Cabinet, even if they do not agree with them. Cabinet ministers cannot dissociate themselves from, or repudiate the decisions of their Cabinet colleagues unless they resign from the Cabinet. It is the Prime Minister’s role as Chair of the Cabinet, where necessary, to enforce Cabinet Solidarity.”*

**Cabinet Handbook, 13<sup>th</sup> Edition, p.9-10**

The Cabinet’s role does not end with a decision. Ministers must oversee the formulation and implementation of all policy proposals relevant to their portfolios. In providing oversight, ministers regularly track the progress of policies, ensuring that any problems that arise are addressed as soon as possible. In addition, ministers work closely with the public service, particularly the Secretary of a Department, who provide the minister with critical advice. Ministers are responsible for informing Cabinet of any policy implementation challenges and risks, as the ultimate success or failure of the policy has implications for all members of Cabinet.

To understand the internal processes of Cabinet further, read the [Cabinet Handbook \(13<sup>th</sup> edition\)](#).

Cabinet also contains committees, which play an important role in the effectiveness of the Cabinet system. Each committee is responsible for discussing items during the early policy development phase within the committee’s specialisation. Items are then raised in Cabinet for subsequent consideration. **All decisions made by Cabinet committees must be endorsed by Cabinet, except for those decisions made by the National Security Committee, which can make quick decisions without consulting the cabinet as a whole.** At the time of publication, there are seven Cabinet committees including: Cabinet Office Policy Committee; Expenditure Review Committee; Governance Committee; National Security Committee, National Security Investment Committee; Parliamentary Business Committee; and the Service Delivery and Coordination Committee.

## ISSUES FOR ANALYSIS AND EVALUATION

1. Do the traditions and practices associated with Collective Ministerial Responsibility (Cabinet Solidarity and Secrecy) contribute to effective policy formulation and implementation?
2. How do Cabinet Committees impact upon democratic and effective policy formulation?
3. Are ministers sufficiently accountable for their role in domestic policy making?

### **CASE STUDY 3: the impact of cabinet conventions on policy**

As the role of cabinet has expanded, some prime ministers have relied on personal advisers rather than on Cabinet in making decisions. This was particularly true for Tony Abbott, who was known for making of what he called captain's calls, without Cabinet consultation. His Chief of Staff, Peta Credlin, became a particular source of irritation among members of Cabinet.

In May 2015, Cabinet ministers leaked to the media that they had revolted against a policy put forth in Cabinet by Prime Minister Tony Abbott and Minister for Immigration Peter Dutton. The policy sought to strip Australian citizens of their citizenship if they were suspected of terrorism, which would be at the discretion of the Minister for Immigration. Cabinet leaks revealed that the deliberations were tense and heated, and that up to five senior ministers, including Malcolm Turnbull, Barnaby Joyce, Christopher Pyne, George Brandis and Julie Bishop, had strongly spoken out against the proposal.

The Cabinet leaks were supposedly prompted by Abbott's treatment of his Cabinet colleagues and his disregard for Cabinet conventions. The proposal was not presented to Cabinet in a written submission, nor was it on the official agenda. Such tensions were compounded by Abbott's micromanagement of his colleagues, which ultimately led to the announcement that he no longer possessed the confidence of a majority of his Cabinet, leading him to lose the leadership ballot to Turnbull by 54 to 44 votes, in September 2015.

*Australian Politics in the Twenty-First Century* by Glenn Kefford

#### **QUESTIONS:**

- 1. What effect does Cabinet disunity have on domestic policy?**
- 2. What generalisations can be made about the sources of cabinet disunity?**
- 3. Is it fair for ministers to be held responsible for decisions they do not agree with?**

### **CASE STUDY 4: the role of the Prime Minister as Chair of Cabinet**

Scott Morrison announced the First Home Loan Deposit Scheme without the approval of Cabinet. The scheme enables eligible first home buyers to purchase a house with a deposit as low as 5%. Such a scheme is eligible for first home buyers with an income of up to \$125,000 (or \$200,000 for a couple). The first time members of Cabinet heard about the plan, was when the Prime Minister announced it during the Coalition's election campaign. The policy has since been criticised as it has not been modelled for its impacts on the property sector. Labor promised to match the coalition's policy within two hours of Morrison announcing it, and like Morrison, Bill Shorten did not consult with the full shadow Cabinet before the announcement.

#### **REFERENCE:**

[Controversial policy to help first-home buyers did not go through cabinet](#)

#### **QUESTION:**

**Explain one factor that undermines the effectiveness of Cabinet (4 marks)**

## CASE STUDIES &

### CASE STUDY

The Expenditure Review Committee (ERC) contains Scott Morrison, Josh Frydenberg, Michael McCormack, Mathias Cormann and Greg Hunt. The ERC is responsible for examining all proposals in relation to the Government's overall fiscal strategy, including the development of the Budget, which is done in light of the government's political, social and economic priorities. For example, the ERC reviewed stimulus measures in response to COVID – 19, such as the Job Keeper and Job Seeker package.

The ERC is a committee of Cabinet responsible for examining all proposals in light of the Government's overall fiscal strategy, advising Cabinet on Budget spending priorities and initiating reviews of individual ongoing programmes. Membership of the ERC consists of the Prime Minister, Treasurer and the Minister for Finance, along with other selected portfolio ministers.

#### REFERENCE:

- [Australian government plans coronavirus 'safety net' package as fresh rate cut tipped](#)

#### QUESTION:

**What are the strengths and weakness associated with Cabinet committees?**

.....

### CASE STUDY

In March of this year, Labor accused Prime Minister Morrison of using Cabinet Confidentiality to avoid scrutiny of his various policy decisions made without full consultation with Cabinet. He did this by establishing himself as the only permanent member of the Cabinet Office Policy committee and inviting various non-parliamentary officials to provide policy advice. Minutes need not be taken at these meetings and decisions would most likely be protected by Cabinet Confidentiality.

Replying to questioning in the Senate by Senator Penny Wong, Senator Matthias Cormann representing the government said it was "part of "good public policy development" to get the "broadest possible input" to government decision-making, accusing Labor's Penny Wong of "confected outrage" about the workings of the committee." (The Guardian)

#### REFERENCES:

- [Scott Morrison's one-man cabinet committee an 'abuse of process', Labor says](#)
- <https://www.directory.gov.au/commonwealth-parliament/cabinet/cabinet-committees>

#### QUESTION:

**Analyse the impact of Cabinet Committees on domestic policy formulation. (6 marks)**

**LEARNING TASK**

Research one of the following ministers and outline the influence they have had over a policy within their portfolio.

<b>MINISTERS OF THE 46TH PARLIAMENT</b>	
1. The Hon Scott Morrison MP	13. The Hon Paul Fletcher MP
2. The Hon Ken Wyatt AM MP	14. The Hon Daniel Tehan MP
3. <u>The Hon Michael McCormack MP</u>	15. Senat
4. The Hon David Littleproud MP	16. The Hon Karen Andrews MP
5. The Hon Alan Tudge MP	17. The Hon Keith Pitt MP
6. The Hon Josh Frydenberg MP	18. The Hon Angus Taylor MP
7. <u>Senator the Hon Mathias Cormann</u>	19. The Hon Sussan Ley MP
8. Senator the Hon Marise Payne	20. Senator the Hon Linda Reynolds CSC
9. Senator the Hon Simon Birmingham	21. The Hon Darren Chester MP
10. The Hon Christian Porter MP	22. Senator the Hon Anne Ruston
11. The Hon Greg Hunt MP	23. The Hon Stuart Robert MP
12. The Hon Peter Dutton MP	

***The Full Ministry List, including the Outer Ministry and the Parliamentary Secretaries can be found at***

[https://www.aph.gov.au/about\\_parliament/parliamentary\\_departments/parliamentary\\_library/parliamentary\\_handbook/current\\_ministry\\_list](https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/parliamentary_handbook/current_ministry_list)

## CASE STUDY

Ministers have an important role in being the public face for policy decisions within their portfolio. Josh Frydenberg, the Minister for the Environment and Energy, spent months trying to convince the public, the premiers, and members from within the Liberal Party of the merits of the National Energy Guarantee (NEG). However, other ministers within the government alternatively did their best to undermine the policy. Peter Dutton, Minister for Home Affairs and Christopher Pyne, Minister for Defence Industry became increasingly exasperated by the NEG, with Dutton calling it the “noodle nation NEG”. Dutton and Pyne believed that the NEG stood no chance of getting passed by parliament, and therefore believed it should not be put up for vote. After Frydenberg had lodged the NEG legislation in the Table Office in Parliament, Pyne later removed it that same evening.

*‘Plots and Prayers: Malcolm Turnbull’s demise and Scott Morrison’s ascension’* by Niki Savva

### QUESTION:

**Discuss the role of ministers in formulating domestic policy (4 marks)**

## THE PUBLIC SERVICE

The public service contains government departments, consisting of unelected and non-political public servants who administer government policies and provide advice on policy to ministers. Since Federation, the public service has played a significant role in the Australian political system. On 1 January 1901, the Commonwealth Public Service was established, and included seven departments including: Postmaster-General, Trade and Customs, Defence, External Affairs, Home Affairs, Attorney-General and Treasury. Australia’s small population and vast land mass meant the public service played a significant role in providing important services. Since Federation, the size and scope of the public service has grown.

There are currently 14 Departments within the Public Service. The head of each government department is called the secretary and is responsible for co-ordinating the staff and resources within their department. The public service is a central component of the domestic policy making process as it is meant to provide ‘frank and fearless’ advice to ministers on the formulation of policy, and then further implement government choices. It is important to note that the public service is not involved in direct political questions, as that’s the prerogative of members of parliament.

However, recently there have been many questions raised over the role of the public service. In recent years, public servants have been hired on short term contracts, allowing them to be quickly removed if they do not meet government expectations. In addition, department secretaries have been replaced upon the election of a new government. For example, in 1996 John Howard sacked six department secretaries in what is known as the “night of long knives”. Similarly, Tony Abbott sacked four department secretaries, in what is known as the “night of short knives”. This practice has resulted in the public service losing much of its independence, with many questioning their ability to provide frank and fearless advice. As former Secretary of the Department of Prime Minister and

Cabinet, Peter Shergold, stated, “my experience suggests that speaking truth to power is more a matter of conviction and courage than contractual condition”.

**In addition, while the public service was once considered the primary source of policy advice, the emergence of ministerial advisers has undermined their role in this area.** The tension between the public service and ministerial advisers is one that has been long questioned. This was evident in the 2014 Royal Commission into the Home Insulation Scheme, which found that public servants were unable to adequately communicate with the ministers due to the involvement of ministerial advisers, leading to policy failings.

## APS VALUES

The APS Values are set of in **section 10 of the *Public Service Act 1999***. The principles of good public administration are embodied in the APS values:

### ❖ **Impartial**

The APS is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence.

### ❖ **Committed to service**

The APS is professional, objective, innovative and efficient, and works collaboratively to achieve the best results for the community and the Government.

### ❖ **Accountable**

The APS is open and accountable to the Australian community under the law and within the framework of Ministerial responsibility.

### ❖ **Respectful**

The APS respects all people, including their rights and their heritage.

### ❖ **Ethical**

The APS demonstrates leadership, is trustworthy, and acts with integrity, in all that it does.

<https://www.apsc.gov.au/aps-values-1>

## LEARNING TASK

1. Dennis Richardson has spent a lifetime in the public service, including as Head of the Department of Defence, DFAT and ASIO. Watch his interview with Barry Cassidy on *One Plus One*.



<https://www.abc.net.au/news/programs/one-plus-one/2020-05-06/one-plus-one:-dennis-richardson/12221620?nw=0>

2. Research one of the departments within the APS and outline its **role in the domestic policy making process** including the following: The Secretary; Ministers associated with the department; areas of focus; and **current initiatives**.

A list of Australian Public Service Departments can be found [here](#).

## ISSUES FOR ANALYSIS AND EVALUATION

Should the public service ultimately serve the government or the broader public?

### CASE STUDY 8: an impartial servant of government?

The Australian Bureau of Statistics (ABS) is a statutory agency within the APS that provides statistics on a wide range of economic, social, population and environmental matters. On 9 August 2017, the Australian Treasurer Scott Morrison issued a direction for the ABS to collect statistical information from participating electors on whether or not the law should be changed to allow same-sex couples to marry.

The ABS worked and consulted with almost 30 different Government Departments and Agencies, who provided their expertise and staff to help deliver the Australian Marriage Law Postal Survey. The ABS also consulted many external stakeholders and extensively shared information with the 'Yes' and 'No' campaign organisers.

12,727,920 (79.5%) eligible Australians participated in the Australian Marriage Law Postal Survey. The majority indicated that the law should be changed to allow same-sex couples to marry, with 7,817,247 (61.6%) responding 'yes' and 4,873,987 (38.4%) responding 'no'. Statistics published from the survey directly informed the *Marriage Amendment Act 2017* which passed the Australian Parliament in December 2017.

#### REFERENCES:

- <https://www.abs.gov.au/ausstats/abs@.nsf/mf/1800.0>
- <https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/1001.0~2017-18~Main%20Features~Australian%20Marriage%20Law%20Postal%20Survey~1009>

#### QUESTION:

Explain the significance of the public service in the domestic policy-making process.

(5 marks)

### CASE STUDY 9: an impartial public service?

One department in the public service that works closely with the Prime Minister and Cabinet is the Department of Prime Minister and Cabinet (PM&C). ***Although policy is formalised in Cabinet, it is often formulated on the expert and impartial advice provided to the Prime Minister and Cabinet by the PM&C.*** The PM&C also liaise with interested parties, such as interest groups, think tanks, lobbyists and specialist experts in forming their advice.

**Philip Gaetjens** is the current Secretary of the PM&C and his appointment by Scott Morrison to this position has been widely criticised. This is because he has been formerly Chief of Staff to two senior Liberal Party politicians, Peter Costello (from 1997-2007) and then to Scott Morrison until Morrison appointed him to Secretary of the Treasury in August 2018. As Secretary of the PM&C he was asked by the Prime Minister to investigate the Sports Grants scandal, which many thought was not sufficiently at 'arm's length' to provide an impartial investigation.

### REFERENCES:

- <https://www.pmc.gov.au/#>
- [The Guardian: Scott Morrison's former chief of staff Phil Gaetjens handed top public service role](#)
- [AFR: Gaetjens report 'reflects poorly on its author'](#)

### QUESTIONS:

Do public servants ultimately serve the government or the broader public?  
Considering the appointment of Gaetjens, can the advice of senior public servants ever be truly apolitical?

## CASE STUDY 10: an apolitical source of advice?

The CSIRO is Australia's national science agency. In 2015, leaked emails revealed concerns that the agency had been "missing in action" in providing advice on climate change to the government. Critics say these tensions between CSIRO management and scientists are a symptom of ongoing self-censorship by an organisation fearful of offending government and losing funding.

"When I joined the organisation, they were known for giving fearless advice. Now, CSIRO likes to think of themselves as a trusted adviser... there's an element of them being trusted to say what the government wants to hear" Dr John Church, a senior CSIRO sea-level-rise expert who lost his job within the CSIRO in 2016.

In addition, the CSIRO has raised concerns over the coalition's Average Staffing Level (ASL) Cap, that was introduced in an effort to restrict government employment numbers to 2006-07 levels. The Opposition have raised concerns on the impact this will have on the CSIRO, deeming it a continuation of the coalition's "war on science".

Brendan O'Connor, the Shadow Minister for Science, stated "Labor is concerned that the Morrison Government's cap on public sector staffing numbers is hurting the CSIRO and undermining its role in advancing science and innovation... The government's arbitrary staffing cap has seen jobs cut at the CSIRO, with others placed on insecure contracts and conditions."

### REFERENCES:

- [The Mandarin: CSIRO Staff Reveal Struggles Under Aps Staff Cap](#)
- [ABC: CSIRO: Leaked emails reveal claims organisation 'missing in action' on climate advice](#)



Watch [Climate Wars on Four Corners](#). *Climate Wars* examines the failure of politicians to comprehensively tackle climate change.

Take note of the response of politicians and the advice given to them by the departments within the public service, chief scientists and social researchers.

### QUESTIONS:

1. Discuss the limitations of the public service in providing frank and fearless advice (4 marks)
2. Analyse the role of the public service in the domestic policy-making process (5 marks)

## THE COMMONWEALTH PARLIAMENT

While the executive dominates the policy making process, the executive is largely constrained by the composition of parliament. In recent years, declining party loyalty has seen a rise in the number of minor party representatives and independents elected to Parliament. This has led to slimmer government majorities in the House of Representatives and the Senate. At the time of writing, in the House of Representatives, the government has 77 seats; the opposition have 68 seats; minor party representatives have 3 seats; and independents have 3 seats. In the Senate, the government have 36 seats; the opposition have 26 seats; and minor party representatives have 14 seats. A typical lack of a government majority in the Senate has created a different policy dynamic in which the government has to negotiate with the opposition and the crossbench to advance its legislative agenda.

<b>The House of Representatives</b>		
<b>Political Party</b>	<b>Numbers</b>	<b>Total</b>
Liberal Party of Australia	44 seats	77 seats
Liberal National Party of Queensland (LNPQ)	23 seats	
The Nationals	10 seats	
Australian Labor Party	68 seats	68 seats
Australian Greens	1 seat	6 seats
Centre Alliance	1 seat	
Katter's Australian Party	1 seat	
Independents	3 seats	
<b>The Senate</b>		
<b>Political Party</b>	<b>Numbers</b>	<b>Total</b>
Liberal Party of Australia	31 seats	36 seats
The Nationals	4 seats	
Country Liberal Party	1 seat	
Australian Labor Party	26 seats	26 seats
Australian Greens	9 seats	14 seats
Centre Alliance	2 seats	
Pauline Hanson's One Nations	2 seats	
Jacqui Lambie Network	1 seat	

<https://peo.gov.au/understand-our-parliament/how-parliament-works/parliament-at-work/parliamentary-statistics/>

When the government holds the balance of power in the Senate, it is easier to implement policy. The Senate loses its relevance as a House of Review and becomes a rubber stamp for the executive. For example, following the 2004 federal election, the Howard government held a majority in the Senate for the first time since 1981. It was during this time that Howard introduced the Workplace Relations Amendment (Work Choices) Bill 2005 to reform Australian industrial relations laws. This was an unpopular bill and was the crucial reason Howard lost the election in 2007. Although the current government does not hold a majority in the Senate, leader of the opposition, Anthony Albanese, has described the Coalition as having a notional majority, as they only require the support of three crossbenchers to pass a bill.

On the rare occasion a minority government is formed, power shifts from the government to the opposition and crossbench. A minority government is one in which no party or coalition of parties holds a majority in the House of Representatives. For almost 70 years, a government had held a majority in the House of Representatives, up until the federal election in 2010, in which neither the Coalition nor the Australian Labor Party obtained a majority. This led to the formation of Gillard's minority government, which she formed with the support of a group of non-ALP MPs (Rob Oakeshott, Tony Windsor, Adam Bandt & Andrew Wilkie) in the House of Representatives. Between 2011 and July 2014, nine Greens Senators held the balance of power in the Senate in their own right, meaning their nine votes determined whether a piece of Gillard government legislation would pass or not. Scott Morrison also had a minority government in 2018 when the Liberal Party of Australia faced a historic loss in the seat of Wentworth. Kerryn Phelps won the by-election, achieving a swing of more than 20 per cent against Liberal Candidate Dave Sharma. This shifted power to the hands of the opposition and crossbench.

Parliamentary committees can also drive domestic policy. Committees can investigate and scrutinise government policies, and further suggest recommendations and amendments the government can adopt, therefore directly affecting the formulation of domestic policy. The government generally has the chairmanship of all committees in the lower house due to its dominance in the House of Representatives. Senate committees are much more extensive and are seen as more powerful, with the government having chairmanship of the Legislation committees and the Opposition having chairmanship of the Reference committees.

There are two kinds of committees – 'Standing' or permanent committees and 'Select' or temporary committees, which can be set up by either house of parliament in order to investigate a particular issue and which have a finite life. There can also be *Joint* committees which have members drawn from both houses; these joint committees can be either Standing or Select.

A list of committees is set out below:

<b>SENATE COMMITTEES</b>
<u>Administration of Sports Grants</u>
<u>Appropriations, Staffing and Security</u>
<u>Australian Government's Northern Australia agenda</u>
<u>Autism</u>
<u>Community Affairs</u>
<u>COVID-19</u>

Economics

Education and Employment

Environment and Communications

Finance and Public Administration

Financial Technology and Regulatory Technology

Foreign Affairs, Defence and Trade

Foreign Interference through Social Media

Legal and Constitutional Affairs

Management and Execution of the Murray Darling Basin Plan

Privileges

Procedure

Publications

Rural and Regional Affairs and Transport

Scrutiny of Bills

Scrutiny of Delegated Legislation

Selection of Bills

Senators' Interests

Temporary Migration

## **HOUSE OF REPRESENTATIVES COMMITTEES**

Agriculture and Water Resources

Appropriations and Administration

Communications and the Arts

Economics

Employment, Education and Training

Environment and Energy

Health, Aged Care and Sport

Indigenous Affairs

Industry, Innovation, Science and Resources

Infrastructure, Transport and Cities

Petitions

Privileges and Members' Interests

Procedure

Publications

Regional Australia

Selection

Social Policy and Legal Affairs

Tax and Revenue

## JOINT COMMITTEES

[Australian Commission for Law Enforcement Integrity](#)

[Australia's Family Law System](#)

[Broadcasting of Parliamentary Proceedings](#)

[Corporations and Financial Services](#)

[Electoral Matters](#)

[Foreign Affairs, Defence and Trade](#)

[Human Rights](#)

[Intelligence and Security](#)

[Law Enforcement](#)

[Migration](#)

[National Broadband Network](#)

[National Capital and External Territories](#)

[National Disability Insurance Scheme](#)

[National Redress Scheme](#)

[Northern Australia](#)

[Parliamentary Library](#)

[Public Accounts and Audit](#)

[Public Works](#)

[Publications](#)

[Road Safety](#)

[Trade and Investment Growth](#)

[Treaties](#)

[https://www.aph.gov.au/Parliamentary\\_Business/Committees](https://www.aph.gov.au/Parliamentary_Business/Committees)

## ISSUES FOR ANALYSIS AND EVALUATION

1. Should parliamentary committees be given more powers?
2. To what extent can they provide more effective policy?
3. Should parliamentary committees be guardians of rights and freedoms?

## CASE STUDY

In April, the Senate established a Select Committee on COVID-19 to inquire into the Australian Government's response to the COVID-19 pandemic. Parliament has reduced its number of sitting days, which reduces the opportunities that members of parliament have to scrutinise the work of the government. Senator Katy Gallagher told the Senate that this was a reason for forming the committee, stating that the committee would "provide the appropriate scrutiny that's needed not just over the next few months but, indeed, over the next 18 months or so" as the committee can still operate when the Parliament is not sitting. Labor Senator Katy Gallagher is the chair of the committee, which also includes Liberal senator James Paterson as the deputy chair, Labor's Kristina Keneally and Murray Watt, the Greens' Rachel Siewert, the National's Perin Davey, and Jacqui Lambie. The committee is to present its final report on or before 30 June 2022.

### REFERENCES:

- [The Guardian: Committee to review Australia's coronavirus response expects 'maximum cooperation'](#)
- [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/COVID-19/COVID19](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/COVID-19/COVID19)

### QUESTIONS:

1. What are the strengths of Senate committees in comparison to their counterparts in the House of Representatives?
2. Considering that Josh Frydenberg has refused to appear before the Select Committee on COVID-19, what are the limitations of committees in holding the executive accountable?

## LEARNING TASK

Track the Select Committee on COVID-19 to receive email notifications on any updates made in their inquiry into the response of the government to COVID-19.

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/COVID-19/COVID19](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/COVID-19/COVID19)

## CASE STUDY 12: powers of parliamentary committees

The Counter-Terrorism (Temporary Exclusion Orders) Bill 2019 prevents Australian citizens from returning home from an overseas conflict zone like Syria and Iraq for up to two years on anti-terror grounds. The Parliamentary Joint Committee on Intelligence and Security (PJCIS) issued a bipartisan report recommending that the bill be passed following the implementation of 18 amendments or safeguards, including judicial oversight. The government accepted seven recommendations in full, nine in-part and noted, but did not implement, two. The Labor Party argued that the legislation ignored many of the committee's recommendations, either in part, or completely. Central to their concerns was that the Minister of Home Affairs had too much power in making temporary exclusion orders. Centre Alliance also called on the government to demonstrate the bill was constitutional and improve the oversight regime for issuing and reviewing exclusion orders. Despite criticism, the bill passed the parliament in July 2019.

### REFERENCES:

- [\*The Guardian: What is a temporary exclusion order? Australia's foreign fighters bill explained\*](#)
- [\*Counter-Terrorism \(Temporary Exclusion Orders\) Bill 2019\*](#)

### QUESTIONS:

1. Are committees an effective way to review and revise legislation?
2. If committees are useful in reviewing and revising legislation, why aren't all recommendations implemented?

## CASE STUDY 13: ability of committees to protect rights and freedoms in

The Australian Citizenship Amendment (Allegiance to Australia) Bill 2015 automatically removes citizenship from dual nationals found to have engaged in terrorism. **The Parliamentary Joint Committee on Intelligence and Security's (PJCIS) inquiry into the bill spanned over two months, attracted around 50 written submissions and involved three public hearings in addition to private briefings.** It issued a bipartisan report resulting in 26 amendments to the legislation, the majority of which were rights' enhancing changes. For example, one recommendation narrowed the range of conduct that can trigger the provisions and made it clear that the laws cannot be applied to children under 14.

However, in 2019 the Independent National Security Legislation Monitor (INSLM) (an independent statutory body set up by the Commonwealth Parliament in 2010) tabled a report in Parliament that heavily criticised the legislation in place. Some of their criticisms included the

fact that the legislation breaches the international Convention on The Rights of the Child as it pays no regard to the best interests of a child over 14 years of age.

#### REFERENCES:

- <http://www.austlii.edu.au/au/journals/UNSWLJ/2018/3.html>
- [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=r5507](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r5507)
- <https://www.inslm.gov.au/sites/default/files/INSLM%20Citizenship%20unclassified%20report%20FINAL.pdf>

#### QUESTIONS:

1. What is the purpose of the [Senate Standing Committee on the Scrutiny of Bills](#)?
2. To what extent do committees protect democratic rights and freedoms?

### LEARNING TASKS

1. Research the [Parliamentary Joint Committee on Intelligence and Security \(PJCIS\)](#) including its role; its membership; and current inquiries.
2. Research and outline the influence that the following people within parliament have over domestic policy:
  - the prime minister;
  - ministers;
  - the opposition,
  - shadow ministers;
  - back-benchers;
  - crossbenchers;
  - minor parties;
  - independents.

## THE JUDICIARY

The High Court of Australia is the highest court in the Australian judicial system. It interprets and applies the law of Australia; decides cases of special federal significance including challenges to the constitutional validity of laws; and hears appeals from Federal, State and Territory Courts. It is often argued that the High Court should not enter the political arena, however, the roles of the High Court enable it to influence the implementation of domestic policy.

Former Chief Justice Robert French, in his paper “Judicial Activists – Mythical Monsters?” explains the role of the High Court in the domestic policy making process. He argues “the meaning of legislative words are not like rocks lying around on the ground waiting to be picked up. They are products of interpretation. That interpretation is legitimate when it is principled and invokes criteria which, whether developed by courts or decreed by statute or both, are broadly understood by the legislature, the executive and the judiciary. And to that extent they represent another example of a necessary, legitimate and generally accepted authority to the judges to determine what the law is by determining what it means” (2008).

Access the paper here: [R. French, Judicial Activists - Mythical Monsters?](#)

Current Justices of the High Court	Appointment
Chief Justice Kiefel	3 September 2007
Justice Bell	3 February 2009
Justice Gageler	9 October 2012
Justice Keane	5 March 2013
Justice Nettle	3 February 2015
Justice Gordon	9 June 2015
Justice Eldelman	30 January 2017

<https://www.hcourt.gov.au/justices/about-the-justices>

## LEARNING TASK



Watch *A Short Documentary on the High Court of Australia* to gain an understanding of the role of the High Court in the domestic policy-making process. [High Court Documentary](#)

## ISSUES FOR ANALYSIS AND EVALUATION

1. Should the judiciary have an influence on policy formulation and implementation?
2. Should its influence and role be limited?

### CASE STUDY 14: the proper role of the High Court of Australia

The High Court has authority to decide the application and meaning of Australian law where this is in dispute. For example, in 2017 the High Court unanimously confirmed the validity of the government’s proposed postal survey on same-sex marriage. Two separate challenges were brought to the High Court against the government’s proposed postal survey. They argued that the government did not have the authority to appropriate \$122 million needed for the survey as it did not warrant an urgent or unforeseen matter, as outlined in the *Appropriation Act No 1 2017-2018*, otherwise known as the *Advance to Finance Minister*.

**REFERENCE:**

- [The Conversation: High Court dismisses challenge, so Australia is off to the \(postal\) polls on same-sex marriage](#)

**QUESTION:**

What role does the judiciary play in the policy-making process?

**CASE STUDY**

In 2011, the High Court found Gillard's proposed Malaysian Solution, which aimed to swap 800 asylum seekers held in detention centres for 4000 refugees awaiting resettlement in Malaysia, illegal as it contravened Section 198A of the *Commonwealth Migration Act*. Section 198A of the Migration Act stipulates that asylum seekers must not be subject to further prosecution on resettlement. Since Malaysia was not a signatory to the Refugee Convention 1951, the High Court found that 198A could not be guaranteed.

**REFERENCE:**

[The Conversation: Malaysia Solution: High Court ruling explained](#)

**QUESTIONS:**

1. Does the judiciary help or hinder the operation of the executive in governing?
2. Why should the executive, legislature and judiciary be kept separate?

## CHAPTER

### KEY SKILL:

**NOTE:** although ‘ministerial advisers’ are included in the key knowledge (see below), they are not specifically mentioned in the Key Skills. We think it is safe to assume that the skills requirement would be as follows:

- Analyse the role and significance of ministerial advisers in public policy formulation and implementation

### Key knowledge: the role and significance of ministerial advisers

**Ministerial advisers** are members of a politician’s personal staff who are employed to provide direct advice to the minister. There are many types of ministerial advisers including a minister’s chief of staff, policy advisers, media advisers, personal assistants and secretaries. Ministerial advisers are generally drawn from the public service or from the political parties themselves, with many aspiring to become politicians in their own right. Some scholars have traced the role of ministerial advisers to the informal kitchen table, where the minister’s trusted friends would gather to provide the minister with political advice and strategies (Yee-Fui Ng 2017).

Despite ministerial advisers being a relatively new aspect of the policy making process, their influence has grown significantly within the last 40 years, with some scholars estimating there has been as much as a 173 per cent increase in their numbers within Australian political system (Yee-Fui Ng 2017). The exponential increase of ministerial advisers is partly due to the increasing pressures placed on ministers, whether that be in regard to their roles associated with the media, parliament or their portfolios.

**Ministerial advisers play a considerable role in the policy making process. Ministerial advisers perform a range of roles including controlling access to ministers; determining the flow of information that reaches a minister; managing media perceptions; making decisions on behalf of ministers; conducting policy research; and giving directions to departments and agencies about government activities and actions.** The role of ministerial advisers is contentious, particularly because of the considerable influence they wield over ministers and their increasing role in the policy making process. As ministers rely more on their advisers, rather than the public service, advice can be skewed in the interest of the minister, rather than the general public. In addition, questions are raised in regard to accountability and transparency.

However such concerns are often disputed by ministers themselves. “The growth of ministers’ personal staff was originally thought to create a rival source of policy advice, added means of interfering in the work of the public service and more opportunity for ministers to exercise influence without responsibility. Like public servants, ministerial staff are accountable through ministers to the parliament and to the people . . . Working well, staff are an extension of busy ministers enabling them to cover a much wider range of policy issues and to scrutinise a wider range of program administration” (Tony Abbott 2002).

## ISSUES FOR ANALYSIS AND EVALUATION

1. Is there a legitimate place for ministerial advisers and if so, what is it?
2. Do ministerial advisers have sufficient accountability?

### CASE ST 1: the proper role of ministerial advisers

Since the Coalition's victory in the Federal election in 2019, Scott Morrison has held a series of policy planning sessions attended by the relevant minister, departmental heads and key advisers. Morrison used the sessions to brainstorm a range of policy ideas such as plastic waste, veterans' affairs and Indigenous suicide.

Some of Morrison's key advisers include chief of staff John Kunkel; principal private secretary Yaron Finkelstein; head of media Andrew Carswell; policy head Alex Caroly; Jimmy Kipploks on defence; Michelle Chan on national security; Rachel Howard on education; Brendan Pearson on trade, David Hughes on strategy and research; Craig Evans and Nico Louw on economics.

#### REFERENCE:

- [The Guardian: Scott Morrison finalises inner circle of advisers and will now get to work on policy](#)

#### QUESTION:

**Outline the role of ministerial advisers in the domestic-policy making process (3 marks)**

### CASE STUDY 2: the proper role of ministerial advisers

In 2018, the Turnbull government adopted the National Energy Guarantee (NEG). The NEG required retailers to meet two targets; a reliability guarantee and an emissions guarantee. The emissions guarantee proved contentious within the Coalition. It imposed a 26 per cent emissions reduction target by 2030, based on a 2005 baseline, in alignment with Australia's commitment under the Paris Agreement. In 2018, Katrina Di Marco was a senior adviser to Malcolm Turnbull. Instead of legislating to achieve the target, Di Marco advised Turnbull to regulate it, with a 'poison pill' attached, restricting a minister from changing the target. Critics argue, that if regulation had been the option put to the party from the outset, instead of legislation, it might have spared Turnbull the conflict that ensued within the Coalition.

#### REFERENCE:

*Plots and Prayers: Malcolm Turnbull's demise and Scott Morrison's ascension* by Niki Savva

#### QUESTION:

**Explain the importance of partisan ministerial advisers. (3 marks)**

### CASE STUDY 3: ACCOUNTABILITY

The following is an edited extract from *Credlin & Co* by Aaron Patrick.

*“There was one woman of whom Abbott was in awe. She was so good in her role that some in the new government felt she became more powerful than the prime minister himself. That was Peta Credlin. The chief of staff’s job, in most ministerial offices, is to advise and protect. They manage the office, hire the staff, oversee the paper flow, and serve as gatekeeper, ambassador and cheerleader. Sometimes they have to clean up messes and make decisions that their boss doesn’t know about – and doesn’t want to know about. “You need to give them plausible deniability,” one ministerial chief of staff said. “What the chief of staff does that the boss doesn’t know. It’s a judgment call you make every day. How much to tell them? Sometimes it’s a matter of: ‘Can they handle the truth?’”. Leaders’ chiefs of staff are important figures in their own right. They are the conduit between the leader and his or her MPs. They have to enforce discipline, counsel, console, befriend and advise. Political leaders rarely have enough time to give their MPs the attention they crave. The chief of staff has to exercise judgment about how to use the leader’s scarce time. Credlin redefined the role of the prime ministerial chief of staff. Through the strength of her character, her capacity to absorb information and her relationship with Tony Abbott, she turned a powerful backroom position into a proxy for the prime minister himself. In meetings between Abbott and businesspeople seeking government action, for instance, Credlin would often take over completely. Credlin was Abbott’s enforcer, his disciplinarian, his counsellor, his brain, his mother. Her strength as a chief of staff was a sign of his weakness as a prime minister: she gave him the option of disengaging. Credlin allowed Abbott to be who he wanted to be; the good bloke, the philosopher, the weekend fire-fighter, the surfer, the orator, the man of action.”*

#### REFERENCE:

[AFR: Peta Credlin: Her role in Tony Abbott’s downfall](#)

#### QUESTIONS:

1. Discuss the extent to which ministerial advisers may undermine responsible government (4 marks)
2. Evaluate the extent to which ministerial advisers undermine the public service (5 marks)

#### LEARNING TASK

1. Read [Ministerial advisers and the Australian Constitution](#) by Yee-Fui Ng



2. Watch [Who is Peta Credlin \(7.30 Report\)](#)

## CHAPTER

### KEY SKILL:

- **analyse the role and influence of elections and the electoral mandate in public policy formulation and implementation**

### KEY KNOWLEDGE: the significance of elections and electoral mandate

Section 28 of the Australian Constitution states that elections for the House of Representatives must be held at least every three years. As Australia has unfixed terms, elections can be called at the discretion of government at any time during the three year term. The three year cycle of elections causes the government to have a narrow window in which they drive their policy agenda. As Margo Kingston (2001) observes “The first year you take the risks. The second year you bed down your risks. And the third year you give away all the money you saved in the first two years. It’s suck-simple, it’s just pathetic really”.

Elections are also important for providing the government with a mandate. A mandate can be defined as the authority given to a political party to form government and implement policies, as a result of their democratic election by the people. However, the mandate theory has proven to be far more complex. In the Australian political system, a political party (or coalition of parties) that receives a majority of seats in the House of Representatives will form government. In this context, a general mandate is bequeathed to the government to implement its policy agenda. In addition to having a general mandate to govern, the government also has a specific mandate to implement specific policies they campaigned on prior to an election. However, it is possible to add a third dimension. The Opposition, minor parties and independents can also claim to have a mandate of their own to implement their own election promises. This is particularly evident in the Senate, where the government generally does not hold a majority.

At the time of writing, the Coalition has 77 of the 151 seats in the House of Representatives, giving them a majority in the lower house. However, the Coalition has 36 of the 76 seats in the Senate, meaning they need support from at least three cross-benchers to pass legislation. The role of the Senate, to provide a check on the powers of the government, is often in conflict with the government’s general and specific mandate. The government must negotiate with the cross bench to pass legislation. Pauline Hanson highlighted her mandate to hold the government accountable when she stated “it’s a house of review. And people are relying on me with my decision making and I’m not just going to tick everything they want to put up. It’s not going to work that way”. It’s important to acknowledge that while the mandate theory is an important influence on domestic policy, there are many complexities that govern its use.

## ISSUES FOR ANALYSIS AND EVALUATION

1. What is the extent of the government's mandate after an election?
2. Given that Australians generally elect a Senate that is not controlled by the government, can the Senate be said to have an electoral mandate also?

### CASE STUDY

Scott Morrison's major policy item during the 2019 federal election campaign was the '\$158 billion in income tax cuts over a decade' policy. The policy meant that people earning up to \$126,000 got \$1,080 back at tax time. The Coalition argued that the policy was central in its election campaign and that their re-election in 2019 meant that voters had endorsed the policy and granted the Coalition a mandate to implement it. However, as the policy was to be implemented over three stages, commencing in 2018–19, 2022–23 and 2024–25, the Opposition argued that the Coalition's mandate only extended to one term of parliament and that the longer term elements of the policy should not be passed through parliament. As Shadow Treasurer Jim Chalmers argued "The Government in their arrogance wants to pretend that they won two elections in one night... They have a mandate for the term of Parliament that followed their election win, they don't have a mandate for every subsequent election". The Opposition has pledged support for the first phase of the policy but called for the second phase to be brought forward. They further called for the third phase, which would be implemented in 2024, to be deferred. The bill, *The Treasury Laws Amendment (Tax Relief So Working Australians Keep More Of Their Money) Bill 2019*, passed parliament in July 2019 without any of the suggested amendments from the Opposition.

### REFERENCES:

- [ABC: Government's \\$158b tax cuts pass Parliament, giving Coalition first win since election](#)
- [ABC: What is an election mandate and why do politicians keep talking about it?](#)
- [The Conversation: The 'will of the people'? It's the bastardisation of democracy](#)
- [ABC RADIO NATIONAL: Unrepresentative swill or vital for democracy? Australia's upper houses](#)



Watch Prime Minister Paul Keating's attack on the Senate: go to YouTube and search "Unrepresentative Swill (19989): The collected insults of former PM Paul Keating."

You might also like to read this account by three veteran journalists of the influence of televising the Senate on elections: [APH- Reporting the Senate: Three Perspectives](#)

### LEARNING TASK

Read the following article and compare the policy agenda of the major political parties during the 2019 federal election campaign in the areas of tax, climate change, industrial relations, education, health, immigration and foreign affairs. To what extent does the Coalition have a mandate to

implement the policies they campaigned for?

[The Guardian: Who should I vote for? Guide to party policies in the 2019 Australian federal election](#)

### QUESTIONS:

1. Outline the meaning of the term policy mandate (3 marks)
2. Evaluate the extent to which elections influence the domestic policy process. (5 marks)
3. 'The concept of mandate is one that has little meaning in practice'. Analyse the role of electoral mandates in the formulation and implementation of domestic policy.

(10 marks)

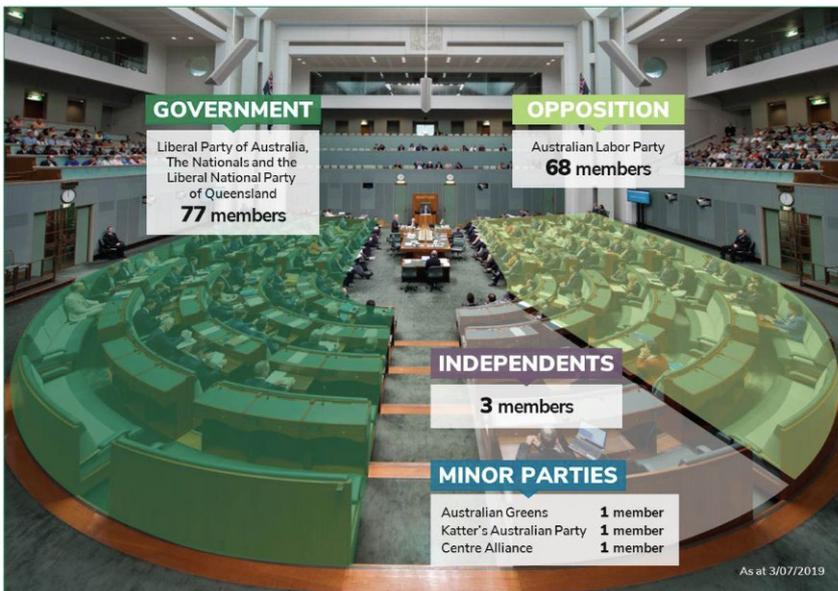
# CHAPTER 6: THE CONTRIBUTION OF THE

## KEY SKILL

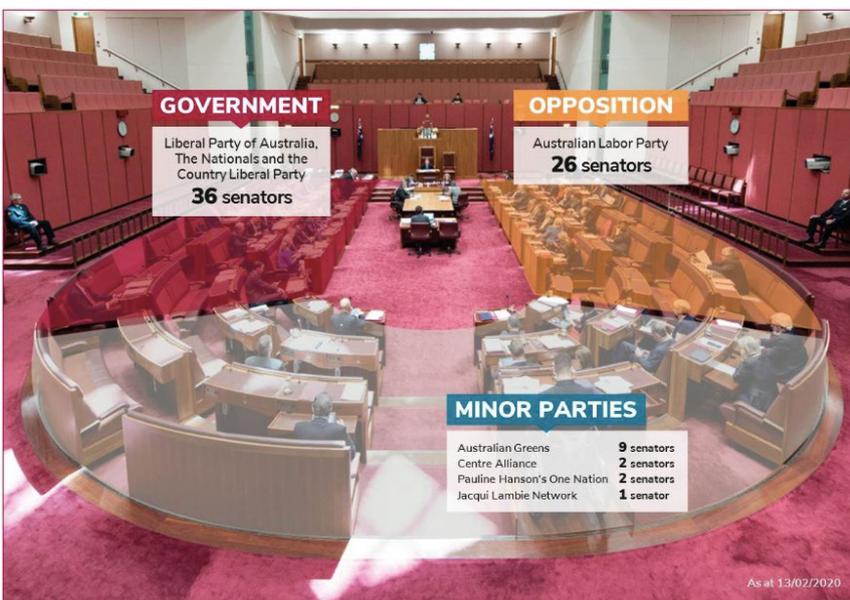
- analyse the role and influence of the Opposition, minor parties and independents in public policy formulation and implementation

## KEY KNOWLEDGE: the contribution of the Opposition, minor and independents in public policy formulation

In formulating domestic policy, the government is subject to an array of influences including the opposition, minor parties and independents. When parliament is finely balanced, there is a shift in power to the opposition and crossbench. This is particularly evident when there is a minority government, or the government do not hold a majority in the Senate.



<https://peo.gov.au/understand-our-parliament/parliament-and-its-people/house-of-representatives/house-of-representatives-current-numbers/>



<https://peo.gov.au/understand-our-parliament/parliament-and-its-people/senate/senate-current-numbers/>

## THE OPPOSITION

The Opposition, sometimes called the alternative government, is the largest party or coalition of parties who did not form government. “Her Majesty’s Loyal Opposition” has traditionally performed twin roles; firstly, providing an alternative government through developing their own policies, critiquing those of the government and demonstrating the credibility of the leader as a future prime minister. Secondly, through fiercely scrutinising the proposed legislation and behaviour of government ministers through question time and debates and serving on parliamentary committees; in short, holding the government to account. This is the chief way that the Opposition can influence policy.

A different and arguably equally important channel of influence is external; through gaining effective exposure via the media for its policy preferences. Although the Opposition does not have the same power as the government to drive domestic policy, it still plays an important role in influencing it.

### **The ability of the Opposition to influence policy is affected by a number of factors:**

1. **The 24 hour news cycle:** this means that there is more opportunity for the Opposition to publicise both its policies and its shadow ministers, although it can backfire if the Opposition leader is either a poor communicator or keeps his ‘team’ out of the media gaze. Tony Abbott, while in Opposition, during Julia Gillard’s Minority Government, was frequently criticised for having no policies and avoiding in-depth media scrutiny, while also dominating the media space. <sup>1</sup> Further, as a result of changes to the media landscape which have seen many journalists and reporters lose their ability to carry out investigative journalism, news outlets are constantly looking for news that is easy to simply report. After Scott Morrison’s address to the nation in early March 2020, for example, Anthony Albanese delivered a similar address on prime time television and then posted the speech on Twitter.
2. **The shift to New Media:** Similarly, the Opposition, including the Shadow Ministers, can use Twitter or Facebook to maintain their profiles and publicise policies. A quick search of Twitter revealed that all the Shadow Ministers have active Twitter accounts where they talk to each other and to journalists, upload their own stories, photos and videos and have thousands of followers.
3. **The personalisation of politics:** in some ways this has negatively affected domestic policy formulation as the focus on politicians as people leads to less scrutiny of policy. For a good discussion of “personality politics” see Marija Taflaga’s [We need to talk about Tony: Media coverage of the Abbott Opposition](#)
4. **Internal party structure and processes:** the power of factions, the strength of party room support for the Opposition Leader and the ways in which formal party policy is developed all influence the ability of the Opposition to get traction in national policy-making.

5. **Finally, the effectiveness of the Leader of the Opposition in communicating to the public and performing in parliament** can force the government to shape or change policies. For example, Labor's solid support for a Banking Royal Commission (in conjunction with the minor parties in the Senate) was a factor in forcing the Turnbull government to establish the Banking Royal Commission.<sup>2</sup>

## CASE STUDY

As a result of the Covid-19 pandemic there has been an unusual degree of bipartisan support for the government's response, which included massive spending on Job Seeker and Job Keeper programs as well as a range of other measures designed to help Australians weather the necessary lock down of society and the economy. The spending on these programs was entirely at odds with government policy on New Start and unemployment benefits prior to the pandemic; it showed how flexible and pragmatic the Morrison government could be.

As the lockdown has gradually been eased, Scott Morrison has been urging Australians to "snap back" to the pre-Covid economy with the ending of the Job Seeker and Job Keeper payments. This has been heavily criticised by the Opposition, with the leader of the Opposition Anthony Albanese saying "Let's not SnapBack to insecure work, to jobseekers stuck in poverty, to scientists being ignored. It's no time for a 'SnapBack' to the Liberal agenda of cutting services, suppressing wages and undermining job security." Mr Albanese took the opportunity to outline a wide ranging set of policies that could frame the post-Covid recovery.

In response, the Prime Minister has dropped the 'Snapback' terminology and created a Committee of business leaders, mostly from mining and resources companies, to make recommendations and oversee the recovery. He is "optimistic" about the cooperation between the Government and Labor continuing, amid calls from Labor and the Australian Industry Group to address the covid-19 recovery and the need to reduce carbon emissions in the same set of policies.

## REFERENCES:

- [ABC: Albanese calls for Scott Morrison to reshape Australia's economy in wake of coronavirus pandemic](#)
- [The Guardian: Morrison reminds us nothing lasts forever – especially the coronavirus spending spree](#)
- [ABC: We're learning a great deal about Scott Morrison from how he's handling the coronavirus](#)
- [SBS: Scott Morrison may need to extend JobSeeker and JobKeeper, says Labor](#)
- [The Guardian: Labor calls for end to 'decade-long barney' on climate wars in post-pandemic recovery](#)
- [ABC: Coronavirus economic recovery committee looks set to push Australia towards gas-fired future](#)

## QUESTION:

Compare the influence of the prime minister and the leader of the Opposition on the formulation of domestic policy (4 marks)

## MINOR PARTIES

A minor political party is an organisation that represents a particular group of people or set of ideas, that only has a small number of members elected to Parliament. Minor political parties may form part of the government or the opposition through a coalition with another party, or alternatively sit with the independents on the crossbench. Similar to the opposition, minor political parties can drive domestic policy through parliamentary processes. However, as the Australian political system is dominated by the Liberal Party of Australia (LPA) and the Australian Labor Party (ALP), the capacity for minority parties to influence domestic policy depends greatly on the composition of parliament.

With this being said, Australia's use of the proportional representation voting system in the Senate and the preferential voting system in the House of Representatives, has enabled a greater diversity of political parties within both chambers. Within the last decade, there has been an increase in the percent of first preference votes for minor parties and independents, illustrated by the figure below.

This has seen minor parties become intertwined within the policy outcomes of the government, as their support is often needed for legislation to pass parliament.

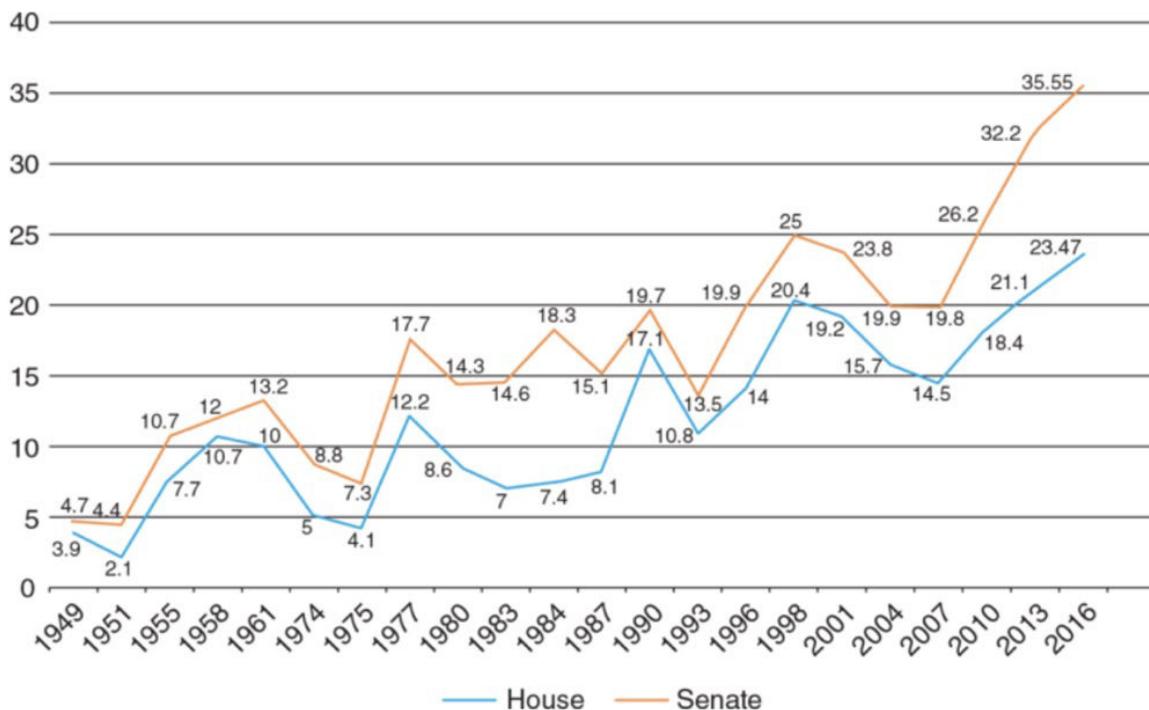


Figure 1: *Australian Politics in the Twenty-First Century* by Glenn Kefford. <sup>3</sup>

## CASE STUDIES

### CASE STUDY 1

In November 2019, One Nation, the Jacquie Lambie Network and the Greens voted with Labor against the government's Ensuring Integrity Bill. The Ensuring Integrity Bill makes it easier to deregister law-breaking unions and their officials. The union has run up 2166 breaches and legal contraventions in the past 15 years, with Attorney General and Minister for Industrial Relations Christian Porter saying these are repeated and blatant breaches "that actually undermine health and safety at building sites". Despite Pauline Hanson proposing 11 amendments to the Ensuring Integrity Bill, Hanson did not vote for the bill invoking the so-called double standards of the Morrison government, lecturing on the need to "clean up the white-collar crime". "The people of Australia want to see that their government is going to deal with white-collar crime, which they haven't".

#### REFERENCE:

[ABC: Federal Government's crackdown on unions rejected by Senate after One Nation sides with Opposition](#)

### CASE STUDY 2

Ten months after the law was enacted, Parliament passed the Migration Amendment (Repairing Medical Transfers) Bill 2019, which repealed medevac. The bill was repealed after a "secret deal" was struck between the government and key crossbencher, Jacquie Lambie. Lambie refused to disclose details of the proposal she put to government saying, "I can't let the boats start back up and I can't let refugees die, whether it's sinking into the ocean or waiting for a doctor, and I am voting to make sure that neither of these things happen". Lambie also said it would return decision-making power from doctors to elected officials, whose approval was required for a medical transfer. "You can take advice from doctors, but doctors aren't elected. They aren't accountable to the public," Lambie stated. Labor and the Greens lambasted the deal, calling for details of the "secret deal" to be made public. Labor's home affairs spokeswoman Kristina Keneally said the parliament and the Australian people "have a right to know" what had been agreed to.

#### REFERENCES

- [NY Times: Australia revokes medical evacuations for offshore detainees](#)
- [PEO: Medevac repeal](#)

### CASE STUDY 3

The Government waived Tasmania's \$150 million housing debt as part of a deal struck with Senator Jacquie Lambie, to secure her vote in favour on the Government's \$158 billion tax cut. The debt was accumulated to pay for construction of public housing in Tasmania between 1956 and 1989. The Welfare sectors says the waiving of the debt will allow the state to build 30 new houses a year.

#### REFERENCE:

[ABC: Government's \\$158b tax cuts pass Parliament, giving Coalition first win since election](#)

### **EXAM-STYLE QUESTIONS:**

- 1. Describe the role of minor parties in upholding accountability (3 marks)**
- 2. Explain two other roles played by minor parties in domestic policy formulation. (6 marks)**
- 3. Analyse the extent to which minor parties hinder democracy. (8 marks)**
- 4. Compare the impact of minor parties in the House of Representatives in comparison to minor parties in the Senate. (8 marks)**

## **INDEPENDENTS**

Similar to the opposition and minor political parties, independents can drive domestic policy through parliamentary processes. However, the capacity for independents to influence domestic policy depends greatly on the makeup of parliament at the time. Private Members, defined by the standing orders as any Member of the House other than the Prime Minister, the Speaker, a Minister or parliamentary Secretary, can also introduce a private member's bill. Independents can initiate private member bills which can create policy debate and keep issues of public interest in the public domain, eventually leading to policy action.

In addition, independents can also play a significant role in shaping domestic policy when there is a minority government. The Gillard minority government from 2010 – 2013 is the most notable example of the importance of independents. The Gillard-led Australian Labor Party was supported by three independents who negotiated with Gillard on policy outcomes in return for concessions such as poker machine reform, climate change initiatives and aspects of tax. Some argue that fragmentation of the Australian political landscape will see a rise in the number of minority governments, giving independents a more profound role in the future.

At the time of writing, there are no independents in the Senate and three independents in the House of Representatives:

-  Dr Helen Haines, Member for Indi, Victoria
-  Ms Zali Steggall, OAM, Member for Warringah, NSW
-  Mr Andrew Wilkie, Member for Clark, Tasmania.

## **ISSUES FOR ANALYSIS AND EVALUATION**

- 1. Do independents perform a positive role in policy-making?**
- 2. Should there be more opportunities for independents to influence the policy making process?**

## CASE STUDY

The Migration Amendment (Urgent Medical Treatment) Bill 2018, otherwise known as medevac, was sponsored by Kerryn Phelps, Andrew Wilkie, Adam Bandt, Julia Banks and Rebekha Sharkie and passed parliament in the last sitting week of parliament in February 2019 without government support. The Bill requires the temporary transfer to Australia of transitory persons on Manus Island or Nauru, and their families, if they are assessed by two or more treating doctors as requiring medical treatment; and require the temporary transfer of all children and their families from offshore detention to Australia for the purpose of medical or psychiatric assessment. This was the first time the government lost a vote on the floor of the House of Representatives since 1929.

### REFERENCES:

- [Migration Amendment \(Urgent Medical Treatment\) Bill 2018](#)
- [ABC: Senate passes controversial refugee evacuation bill](#)

### QUESTIONS

1. To what extent do independents usurp the executive's policy agenda?
2. Do independents have too much power in situations such as this?

## CASE STUDY

Independent MP Zali Steggall plans on introducing a private member's bill to Federal Parliament. The bill, *Climate Change (National Framework for Adaptation and Mitigation) Bill 2020*, aims to transition Australia to a decarbonised economy and is based on the UK's Climate Change Act, passed in 2008. Steggall is hoping to garner bipartisan support for the bill. "This bill is a sensible and bipartisan approach to safeguarding Australia's future against the impacts of climate change" Steggall said. However, the bill is unlikely to pass without a conscience vote, with the government holding a majority in the House of Representatives.

### REFERENCES:

- <https://climateactnow.com.au/>
- [The Guardian: Zali Steggall to unveil climate change bill and push for a conscience vote for MPs](#)
- [The Guardian: Zali Steggall launches ad campaign to rally support for climate change bill](#)

### QUESTIONS

Why have independents been successful in Australian federal politics?

### EXAM-STYLE QUESTION:

Analyse the role and influence of independents in domestic policy formulation and implementation. (8 marks)

## CHAPTER

### KEY SKILL:

- analyse the influences on policy making of elements outside the formal institutions of government

### KEY KNOWLEDGE:

There are many external forces outside of the formal institutions of government that shape domestic policy. This resources will focus on four forces: international influences, opinion polls, the media and interest groups.

## INTERNATIONAL INFLUENCES

In an increasingly globalised world, Australian domestic policy can be influenced by a range of international factors such as international events, international trends and international opinion. In addition, members of parliament travel to comparable countries to investigate and research policies they can formulate and implement within the Australian context. At times, international factors can have a significant influence in Australian policy, however, not always.

### CASE STUDY 1: Same

Changes in laws to recognise marriage equality in many countries around the world increased the pressure for a similar policy change in Australia. For example, in May 2015 Ireland had a referendum on same-sex marriage. In addition, in June 2015 the US Supreme Court ruled that the fundamental right to marry was guaranteed to same-sex couples by the Constitution (Obergefell v. Hodges). This seems to have an impact on the debate in Australia which led to the Australian Marriage Law Postal Survey and subsequent legislation of same-sex marriage (2017).

### REFERENCES

- [Parliamentary Library: Same Sex Marriage](#)
- [Pew Research: A global snapshot of same-sex marriage](#)

### CASE STUDY 2: Climate Change & Greenhouse Gas Emissions Targets

Despite an increase in international concern about climate change, international opinion has had a mixed impact on Australia's climate change policy. Kevin Rudd seemed to be influenced by international opinion when he quickly ratified the Kyoto Protocol in 2007 and tried to reduce an emissions trading scheme modelled on those used in other nations. Similarly, in 2010 Julia Gillard announced a carbon emissions scheme. However, Tony Abbott was largely unconcerned

by international opinion when he removed the price on carbon in June 2014. Similarly, although Australia signed the Paris Agreement in a coordinated effort to reduce emissions, it has since introduced policies that have contradicted that agreement, such as the approval of the Adani coal mine. Most recently, Malcolm Turnbull developed his National Energy Guarantee (NEG) policy, however it was later abandoned due to a lack of support from within his party. Although climate change is considered by the United Nations as “the defining issue of our time” with international trends revealing an increase in concern for climate change, in recent times the Australian government has been largely unaffected by international opinion on the matter.

### REFERENCES:

- [SBS: The recent history of Australia's climate change wars](#)
- [Pew Research: A look at how people around the world view climate change](#)

### CASE

Global conflicts have led to 70.8 million people being displaced worldwide (United Nations). This has influenced the development of Australia’s refugee and immigration policies. For example, in 2013 Tony Abbott announced Operation Sovereign Borders, a multi-pronged initiative designed to address issues surrounding illegal maritime arrivals. Most recently, in July 2019 Morrison’s *Counter-Terrorism (Temporary Exclusion Orders) Bill 2019* became law. The law can prevent Australian citizens aged 14 years or older from returning to Australia for up to two years at a time. It also enables the Minister to impose conditions on a person entering Australia for up to 12 months. Both policies have been influenced by an increase in global conflicts.

### REFERENCES:

- [UNHCR: Global trends - Forced Displacements 2018](#)
- [Counter-Terrorism \(Temporary Exclusion Orders\) Bill 2019](#)
- [Parliamentary Library: Boat ‘turnbacks’ in Australia: a quick guide to the statistics since 2001](#)

### LEARNING TASK

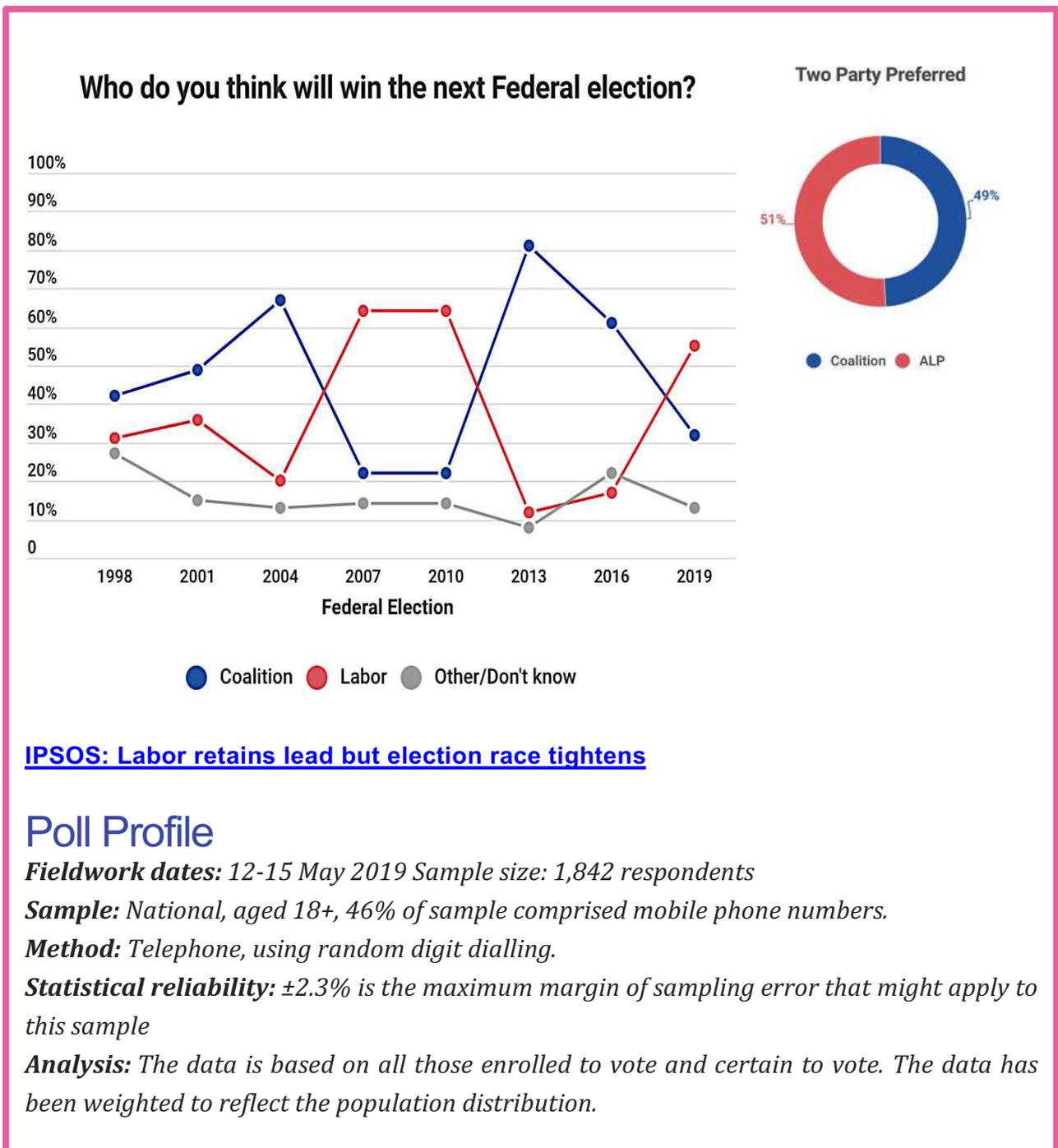
Research Australia’s response to COVID-19 in comparison to other countries. To what extent was Australia’s response to COVID-19 influenced by policies implemented in other countries?

### EXAM-STYLE QUESTIONS:

1. Describe one way that international issues can influence Australian domestic policy formulation. (3 marks)
2. Explain one example of international influences on Australian domestic policy formulation and implementation. (4 marks)
3. Using examples, discuss the limits of international influence on Australian domestic policy formulation and implementation. (6 marks)
4. Analyse the extent to which international factors can influence Australian domestic policy formulation. (7 marks)

## OPINION POLLS

Opinion polls ask people to divulge their opinions about a range of issues, events, topics and people, and are conducted by various organisations including political parties, media outlets, think tanks and interest groups. There are generally two indicators that provide for an accurate opinion poll. One, opinion polls must have a large and representative sample of people. Two, they must enable people to divulge honest information. Prior to the 2019 federal election, the accuracy of opinion polls was never questioned. It was thought that opinion polls were an accurate indicator of public opinion. However, the 2019 federal election put the accuracy of opinion polls under question. The Ipsos poll conducted on 16 May 2019 revealed that a majority of people (55%) believed Labor Party would win the election, a third (32%) believed the Coalition would win and 13% mentioned another party or said they didn't know. Refer to the figures below.



Opinion polls may also play a role in leadership spills which can in turn directly affect the policy agenda of the government. Julia Gillard was dumped as leader of the Labor Party for Kevin Rudd because internal Labor polling predicted Rudd could swing crucial votes during the 2013 federal election. Similarly, Malcolm Turnbull 'weaponised' opinion polls for political purposes when he justified his challenge to Tony Abbott's prime ministership in 2015 on the basis that Abbott had lost 30 consecutive news polls. The media fixated on the same arbitrary threshold during his time in office. Go to the website below to study the poll depicting the overall satisfaction of leaders.

<https://www.theaustralian.com.au/nation/newspoll>

And as far as the 2019 election of Scott Morrison's government after the deposing of Malcolm Turnbull, the polls turned out to be radically wrong.

*"Did polling create a parallel universe where all the activity of the past few years, especially the leadership coups and prime ministerial changes, were based on illusions, phantoms of public opinion that did not exist?" (John Utting)*

READ [AFR: Australian polling is broken: here's how to fix it](#)

## CASE STUDY

The Abbot government showed little sign of legislating to allow same sex marriage despite a clear majority of the Australian public being in favour of it. In this case, the government did not seem to trust or believe the opinions polls and promised to hold a plebiscite on same sex marriage. However, same-sex marriage was legalised in Australia on the 9th of December 2017 (The Marriage Amendment Act 2017). The 2017 voluntary postal survey on marriage law is the first clear instance of a specific policy being decided on what many people considered to be a nation-wide poll. Refer to the results of the postal survey below.

- [ABC Poll: Results: Same-sex marriage postal survey](#)

### QUESTION:

**To what extent do opinion polls democratise the policy making process?**

## THE MEDIA

The media has come to play a significant role in influencing domestic policy. The media includes newspapers, television, radio news programmes and online content whether that be Facebook, Twitter or Reddit, all of which report on news and current affairs.

The media is often called the fourth estate, because of its role in promoting openness, transparency and accountability, particularly of our elected representatives. Although this role is not codified in the Australian Constitution, unlike the American Constitution, it has been recognised in legislation and High Court interpretations of the constitution. The media also acts as a conduit of information. The

majority of what we, the electorate, know about the news, is through the media. This can spark a sway in public opinion and can consequently influence the policy agenda of the government.

An example of this is the 2017 Four Corners program highlighting the mistreatment of youths at the Don Dale Detention Centre in the Northern Territory. The Four Corners episode revealed the mistreatment of youths with some being stripped naked, while others were strapped to chairs with hoods over their heads. The outrage that was sparked by the investigation led the Prime Minister, Malcolm Turnbull, to establish *The Royal Commission into the Detention and Protection of Children in the Northern Territory*.

However, it must be noted that Australia has one of the most concentrated press ownership structures of any liberal democracy. The largest media owners are News Corp, Fairfax Media and Seven West Media. Australia's concentrated media ownership has implications for domestic policy, as it may hinder the performance of some news sources in providing objective and unbiased reporting.

## LEARNING TASK

Choose one policy and create a case study that examines how that policy was reported on by the media. Examine the effectiveness of the media in influencing its formulation.

## CASE STUDY

Shock jocks such as Alan Jones and Ray Hadley, and climate change deniers such as Andrew Bolt and Peta Credlin, used their platforms to attack Malcolm Turnbull's National Energy Guarantee (NEG). Malcolm Turnbull noted their influence stating: "You've just got to look at the way the Murdoch Media and other right wing voices, you know? 2GB, people like Alan Jones and Ray Hadley and others have been relentless in their criticism of anyone or any policy that seeks to reduce greenhouse gas emissions or address climate change. I mean, people who take climate change seriously are described by some of the news corporation columnists as warmists, you know? It's that absurd" (Turnbull in *Climate Wars* on Four Corners).

Niki Savva also raised some interesting points about the media's reporting of the NEG in her book *Plots and Prayers: Malcolm Turnbull's demise and Scott Morrison's ascension*. She noted that when Peta Credlin challenged liberal senator Jim Molan over his support for the NEG, a few days later, he announced via Facebook that he was revising his support for the policy. In addition, she noted that shock jock Alan Jones said to Frydenberg "My judgement of you is that you've sold your political soul for the sake of ministerial office" due to his support of the NEG.

The Daily Telegraph was also critical of Turnbull. It reported that MPs had "Hit the Panic Dutton" and were urging Dutton to challenge Malcolm Turnbull for the leadership over his energy policies. The story read: "Conservative MPs are urging Peter Dutton to seize the leadership from Malcolm Turnbull within weeks, on a policy platform of lower immigration and

cheaper energy bills." The next day, the paper followed up with a more blatant headline: "Dutton ready to roll". The story read: "Peter Dutton is seriously considering a leadership challenge for the prime ministership". This led to a series of leadership spills that eventually saw Turnbull step down as leader of the Liberal Party, causing Scott Morrison to declare "the NEG is dead".

### REFERENCE

[ABC: What did Rupert Murdoch and Kerry Stokes have to do with the Liberal leadership spill?](#)

### QUESTION:

To what extent has the media influenced climate policy? (4 marks)

## LEARNING TASKS

### FOUR CORNERS & MEDIA WATCH

1. Watch ***Australia's Shame*** on Four Corners. *Australia's Shame* examines the juvenile justice system in the Northern Territory. The outrage that was sparked by the investigation led the Prime Minister, Malcolm Turnbull, to establish The Royal Commission into the Detention and Protection of Children in the Northern Territory.  
<https://www.abc.net.au/4corners/>
2. Watch ***Who Cares?*** on Four Corners. This is a two-part investigation into the failings in aged care facilities. The investigation led to the Prime Minister, Scott Morrison, calling a Royal Commission into Aged Care Quality and Safety.  
<https://www.abc.net.au/4corners/>
3. Watch ***A Bloody Business*** on Four Corners. *A Bloody Business* examines the cruelty inflicted on Australian cattle exported to the slaughterhouses of Indonesia.  
<https://www.abc.net.au/4corners/>
4. Watch ***News Corp's Fire Fight*** on Media Watch. This episode examines how News Corp's loudest voices deny and downplay the role of climate change in Australia's bushfires.  
<https://www.abc.net.au/mediawatch/episodes/news-corp-fire/11925590>
5. Watch ***News Corp's Climate Campaign*** on Media Watch. This episode examines New Corp's reporting of Labor's climate change policy.  
<https://www.abc.net.au/mediawatch/episodes/climate/11083494>
6. Watch ***PM sledges media over climate*** on Media Watch. This episode looks at whether the media is accurately representing the government's action on climate change.  
<https://www.abc.net.au/mediawatch/episodes/climate/11555730>

## INTEREST GROUPS

An interest group is a group of like-minded people who work to influence government policy and decision making, either for the benefit of those they represent or society more broadly, but do not seek election themselves. Although interest groups seek to influence the formulation and implementation of domestic policy, just how much influence they wield in the Australian political system is under question. Interest groups may also include private organisations and think tanks.

Private organisations are established with the specific purpose of lobbying and making representation to government on behalf of clients. Private organisations are hired for their links to politicians and the public service. A think tank is a research organisation whose objective is to influence the policy process through the provision of information and ideas, either directly to government or by informing the community more generally. Most think tanks in Australia are established as research centres within universities. Both aim to influence the formulation and implementation of domestic policy.

The Australian Government has introduced a Lobbying Code of Conduct and established a Register of Lobbyists to ensure that contact between lobbyists and Commonwealth Government representatives is conducted in accordance with public expectations. Government representatives who are approached by lobbyists can establish whose interests they represent so that informed judgments can be made about the outcome they are seeking to achieve.

### LEARNING TASKS

1. Access the [Lobbyist Register](#)
2. Access the [Lobbying Code of Conduct](#)
3. Read the following article on how big business connects to government in Australia

[The Guardian: Lobbying in Australia: how big business connects to government](#)

## ISSUES FOR ANALYSIS AND EVALUATION

1. Are the **regulations** surrounding lobbying, (such as the prohibition on Ministers or departmental advisers not engaging in lobbying for a period of 18 months and 12 months respectively) **sufficient to prevent undemocratic or partisan influence on the policy-making process?**
2. Are the activities of lobbyists and interest groups sufficiently transparent and accountable?
3. Do special interests have too much power in the Australian political process?

### LEARNING TASK

*Read the case studies below, as well as reading the Grattan Institute report [“Who’s in the room? Access and Influence in Australian Politics.”](#) Use the Contents page to*

1. *Summarise their identification of the major problems and*
2. *their proposals for reform.*

## CASE STUDY 1

The following case studies are taken from *“Who’s in the room? Access and influence in Australian politics”* by Danielle Wood and Kate Griffiths

Australia’s response to climate change has been inconsistent and lacking in direction for at least three decades. Opinion polls show support for action on climate change peaked in 2006, when 68 per cent of Australians backed action ‘even if this involves significant costs’. In 2007, both major parties went to the federal election with plans to introduce an emissions trading scheme to combat climate change. But after the election, the policy consensus was quickly derailed – partly by political manoeuvring and partly by special interests. Small groups of carbon-intensive firms, who would inevitably suffer most under a sound, national-interest policy proposal, were able to lobby much more powerfully than large groups like taxpayers or consumers, and arguably changed the proposal into something which better protects their special interests.

Kevin Rudd’s Carbon Pollution Reduction Scheme failed to gain political support and was replaced by Julia Gillard’s Clean Energy Futures package, which included a carbon price. The package passed Parliament, but only with the inclusion of overly-generous subsidies for emissions-intensive gas and coal industries added in response to intense lobbying. The carbon price was repealed in 2014, to the delight of special interests.

Major lobby groups spent more than \$300 million on advocacy between 2010 and 2014, including on an anti-carbon-tax advertising campaign. Companies in the energy and mining sectors donated more than \$1 million to the Liberal Party in 2011-12 and 2012-13. Since then, the policy paralysis appears to have been the result of political and ideological divides rather than special-interest activism. But the result is that in [2020] Australia still lacks a credible mechanism to achieve its Paris Agreement commitments.

## CASE STUDY 2

Australia’s food and beverages industry has so far managed to keep proposals for a sugary drinks tax off the table, despite public health benefits and popular support. The World Health Organisation supports taxing sugary drinks to help reduce consumption of sugar. In 2016, the Grattan Institute recommended introducing a tax on sugar sweetened beverages to fund the additional health and welfare expenses sugary drinks create. The Australian Medical Association also backs such a tax “as a matter of priority” and argues “progress should not be slowed by [the food industry’s] unwillingness”.

In its 2016 annual report, the lobby group representing the non-alcoholic beverages industry stated that: “The Beverages Council devoted significant resources to keeping a tax off the policy table of either the Government or Opposition, through direct engagement with key politicians. Whilst the Greens have stated their support for a tax, which is very much a risk going forward, as an industry we should be very pleased with the outcomes to date in this space.”

The food and beverages industry employs a range of lobbying strategies in Australia. It hires commercial lobbyists, donates to political parties, develops relationships with policy makers and funds research to influence debate on public health policies. The major players – Coca-Cola, Nestle, McDonalds, Mars, Mondelez, and the Australian Food and Grocery Council – all have in-

house and commercial lobbyists...Sugar producers have also been vocal in opposing a sugary drinks tax, and politicians have been unwilling to take them on. The producers are a powerful group politically, because they are concentrated in marginal seats in North Queensland.

### CASE STUDY 3

Consumers and taxpayers pay a lot more for medicines in Australia than in other countries. These inflated costs can be traced, at least in part, to the influence of the pharmaceuticals industry over pricing arrangements agreed under the Pharmaceuticals Benefits Scheme (PBS). There are big dollars at stake. The government spent \$12 billion subsidising pharmaceuticals in 2016-17, and costs have been growing at more than 10 per cent per year. At least \$500 million a year could be saved by benchmarking drug prices to those of comparable countries and having prices set by an independent authority. The industry is heavily involved in choosing the data and methods used to calculate price gaps on drugs (the gap between government subsidy and full price).

A joint working group of the Health Department and Medicines Australia – the peak body for the Australian pharmaceuticals industry – is described as ‘agreeing’ on and ‘determining’ how policy is designed and implemented. One of Medicines Australia’s main objectives is “building and maintaining relationships with government for fair reimbursement of medicines (through the PBS) to ensure the continuation of a viable medicines industry”. Medicines Australia is active in lobbying. It has an in-house government relations team and is also a client of four different commercial lobbying firms, three of which employ former government representatives and advisers. The pharmaceuticals industry has a substantial say in PBS policy. Other voices, particularly those representing consumers, have considerably less input.

#### REFERENCE:

- [“Who’s in the room? Access and Influence in Australian Politics.”](#)

#### QUESTIONS:

1. Outline one way in which interest groups may influence public policy (3 marks)
2. Explain two impacts of the operation of interest groups on democratic policy-making. (4 marks)
3. Analyse the influence of interest groups on domestic policy formulation and implementation. (8 marks)

### LEARNING TASK

Choose **one** article from [The Conversation: Articles On Australian Lobby Groups](#) webpage.

Take notes on the following:

- *Which key groups are referred to?*
- *What kind of groups are they?*
- *What are they trying to achieve?*
- *What techniques do they use?*
- *How successful have they been?*
- *Are there any key people referenced?*
- *Are any issues relating to democracy raised?*

## EXAM-STYLE ESSAY QUESTIONS

(20 marks)

1. ***'The influence of interest groups on public policy making in Australia is of great significance.'*** To what extent do you agree? Evaluate this statement using contemporary examples as evidence.
2. ***'Special interests have too much power in the Australian domestic policy-making process.'*** To what extent do you agree? Evaluate this statement using contemporary examples as evidence.
3. ***'The formulation of Australian domestic policy can be difficult, lengthy, highly politicised and uncertain.'*** Evaluate this statement with reference to at least one policy issue that you have studied this year (2018 Exam)
4. **Critically compare the role and influence of ministerial advisers with that of the Public Service on the formulation and implementation of domestic policy.**
5. ***'The Commonwealth Parliament has a limited impact on domestic policy formulation in comparison to the Cabinet.'*** To what extent do you agree? Evaluate this statement using contemporary examples as evidence.
6. ***'Minor parties and independents have changed the policy-making landscape significantly over the last 10 years'.*** To what extent do you agree? Evaluate this statement using contemporary examples as evidence.
7. ***'The media has a generally negative impact on effective policy formulation.'*** To what extent do you agree? Evaluate this statement using contemporary examples as evidence.
8. ***'Opinion polling only exerts influence on policy formulation during election campaigns.'*** To what extent do you agree? Evaluate this statement using contemporary examples as evidence.
9. **Assess the significance of the electoral mandate on policy formulation. Use contemporary examples as evidence.**
10. ***'There are few opportunities for individuals to participate in the Australian domestic policy-making process.'*** To what extent do you agree? Evaluate this statement using contemporary examples as evidence.
11. ***'Political parties have a stranglehold on the Australian domestic policy-making process'.*** To what extent do you agree? Evaluate this statement using contemporary examples as evidence.

## CHAPTER

**Please note that for the year of 2020, the following dot point has been deleted:**

“The nature and context of ONE selected contemporary policy and government response, including significant influences on the formulation of the policy and the extent of and reasons for the success or otherwise in implementing the policy.”

**HOWEVER.....**

*The following activity may aid your understanding of this unit and be useful for REVISION.*

**CONSIDER THE REVISED OUTCOME FOR THIS UNIT:**

### Outcome 1

On completion of this unit the student should be able to explain how Australian federal domestic public policy is formulated and implemented, (AND) analyse the factors which affect these processes.

***So, select one or more policies and describe how the following factors influence its formulation and/or implementation.***

Factor	Influence on selected contemporary polic
The executive	
The Prime Minister	
The Ministry	
The Cabinet	
The Public Service	
The Parliament	
The Judiciary	
Ministerial advisers	
Elections	
The Opposition	
Minor Political Parties	
Independents	
International Influences	
Opinion Polls	
The Media	
Interest Groups	

**END ISSUE 3**

## NOTES

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<sup>1</sup> [https://www.auspsa.org.au/sites/default/files/we\\_need\\_to\\_talk\\_about\\_tony\\_marija\\_tafлага.pdf](https://www.auspsa.org.au/sites/default/files/we_need_to_talk_about_tony_marija_tafлага.pdf)

<sup>2</sup> <https://www.abc.net.au/news/2017-11-30/banking-royal-commission-announced-by-pm-after-big-four-letter/9209926>

<sup>3</sup> The textbook sources the diagram from the following:

- Green, A. (2015a). Explaining the results. In C. Johnson, J. Wanna and H.A. Lee, eds, *Abbott's Gambit*, Canberra: ANU Press, pp. 393–410.
- Australian Electoral Commission. (2016). 2016 Federal Election. URL: <http://vtr.aec.gov.au/senatedownloadsmenu-20499-csv.htm>
- Kefford, G. (2017a). Minor parties. In A. Gauja, P. Chen, J. Pietsch and J. Curtin, eds, *Double Dissolution: The 2016 Australian Federal Election*, Canberra: ANU Press.

## Issue 4

### UNIT

### AREA OF STUDY ' Foreign

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Australian Politics VCE Units 3 & 4 Student Survival Pack.

1st Edition

By Nicola Sabbadini & Josie Gorman

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## KEY SKILL

- *explain and analyse the nature of contemporary foreign policy formulation and implementation*
- *explain the key objectives of Australian foreign policy.*
- *use contemporary examples and evidence to explain and evaluate Australian foreign policy*

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## KEY SKILLS

- *explain and analyse the nature of contemporary foreign policy formulation and implementation*
- *develop points of view, explanations and arguments about formulation and implementation of foreign policy which use contemporary examples as evidence.*

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## KEY SKILLS

- *analyse the key instruments of contemporary foreign policy*
- *use contemporary examples and evidence to explain and evaluate Australian foreign policy*
- *develop points of view, explanations and arguments about formulation and implementation of foreign policy which use contemporary examples as evidence.*

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## F

This digital series is designed to help you, the student, master the content in the Australian Politics course as well as improve your skills. You could use it in conjunction with the free SEV Australian Politics updates and with any other resources your teacher may give you. The aim is to cut through to the essentials and to save you time. Each edition will deal with one of the Areas of Study (in order) and will be released throughout the year onto the free Campion MyConnect app. Release dates are January, March, June and August, although the Covid-19 pandemic may interfere with our intentions!

Throughout this text, you will be given the opportunity to apply, explain, analyse, evaluate and critically compare – all key task words that can appear on an Australian Politics examination. And although there is a substantial amount of explanation and a number of case studies, you should be prepared to do your own research throughout the year and gather your own evidence from what's happening in Australia and the world. That's one of the great satisfactions of this subject!

Although the contents of this edition will closely follow the Australian Politics Study Design, we are not reproducing the Study Design for you; we strongly advise you to download your own copy from the VCAA website and use it to guide your note-taking.

<https://www.vcaa.vic.edu.au/curriculum/vce/vce-study-designs/ausglobalpolitics/Pages/Index.aspx>

*You should become so familiar with the Study Design that you could recite it in your sleep. **Everything in the study design, (the introductory questions, the blurb that precedes the Key Knowledge, the Outcomes, the Key Knowledge and the Key Skills) is examinable.***

You should also become familiar with the VCAA Advice for Teachers (which contains a glossary) and the Frequently Asked Questions, the answers to which have the same status as the Study Design.

The material in this text is organised to cover the basics of the Study Design's Key Knowledge and to emphasise the mastery of the Key Skills. We will provide plenty of questions for you to practise. We encourage you also to memorise the key terms in each Area of Study and practise applying them to the case studies provided in this text. This will help you gain a more sophisticated understanding of the content.

Additionally, this text will use the content of each of the Areas of Study in a blended and integrated way, so that what you will learn in Unit 3 Area of Study 2 or Unit 4 Area of Study 1, for instance, could also appear in issues of this series that deal with other areas of study.

**Finally, we welcome your feedback.** The authors can be contacted by emailing SEV at [admin@sev.asn.au](mailto:admin@sev.asn.au)

We hope you enjoy your study of VCE Australian Politics.

# Unit 4 AOS 2: Australian Foreign Policy

## Chapter 1: Introduction to the Study

### The Basics of AOS

As a result of the pandemic, this Area of Study has been reduced. You no longer have to study two key challenges facing contemporary foreign policy – just one. This will have ramifications for the types of questions that can be asked on the examination. Nevertheless, as always, the Outcome for this AOS is how you will be assessed, both in SACs and on the examination at the end of the year.

### Outcome 2:

Australian foreign policy.

### A Note on the Key Skills

Key Skills should act as a guide for how you approach the study and the key knowledge. For example, the key skill of “**develop points of view, explanations and arguments about formulation and implementation of foreign policy which use contemporary examples as evidence**” is quite crucial. Most of the short answer questions and the essay will require you to be able to produce one or more examples. The other key skill that has been affected is “**Evaluate one key selected challenge facing contemporary foreign policy**”. You should assume that this could encompass ‘**explain**’, ‘**discuss**’ or ‘**analyse**’; it may also mean that you have an essay option on **one** challenge which would require you to know it in great depth. For all the key skills, the case study examples are highly relevant and should be mined for ways you can use them to provide examples for all key knowledge.

<b>Describe:</b>	<i>Provide enough factual detail about the topic to get the available marks.</i>
<b>Explain:</b>	<i>this requires more than a description as you must outline <b>WHY</b> the concept or event or phenomenon is the way it is.</i>
<b>Analyse:</b>	<i>this requires more than an explanation as you must break the thing to be analysed into its parts, including conceptual parts like strengths and weaknesses. You need to show what, when, where, why and <b>HOW</b> and then reach some kind of <b>conclusion</b></i>
<b>Compare:</b>	<i>this requires an examination of both <b>similarities and differences</b>. Comparative tables and Ven diagrams can help here</i>
<b>Develop arguments and points of view:</b>	<i>this means that you should be on the look-out for alternative arguments. The more you appreciate the complexity of a topic and the scope of its reasoning, the more sophisticated your understanding will be. If, for example, you are trying to assess the comparative influence of the government and the public service on foreign policy-making, collect as many arguments on both sides as you can. Create your own contentions and test them against different perspectives / opinions. You don't want to be in the Exam or the Sac not knowing what you really think.</i>
<b>Use evidence from contemporary examples:</b>	<i>the main skill here is to actually use any examples or evidence in such a way that it supports your argument. <b>The use of evidence needs to be explained, not just slotted in.</b></i>

**So, keep practising these skills right from the beginning. That's why there are many exam-style questions included in this resource.**

## Approach to the Key

### KEY SKILL:

- ❑ define and explain key terms and concepts relating to foreign policy.

This area of study contains quite a few key terms. It is critical that you understand them and use them appropriately. Some of the terms, namely *national interest*, *sovereignty*, *national security*, *global citizenship*, *bilateral* and *multilateral* and *bipartisanship* are **theoretical** terms that are central to the choices states makes in the foreign policy area. The other terms are essential to an understanding of the challenges facing all states today. We will begin with an examination of the theoretical underpinnings of this area of study.

**National Interest:** *The national interests of a state are pursued to ensure the survival and potential growth of that state. States implement policies and types of power to achieve their national interests and maintain state sovereignty.*

This is a fairly 'elastic concept' that governments and statesmen use to justify what the state wants and does. The state is the only actor that can formulate national interests. The achievement of national interests are the key objectives of the state and of foreign policy. The typical national interests of a state are the maintenance of its **sovereignty**, its **national security**, the maintenance and advancement of **economic prosperity**, the development of **positive regional relationships** and the promotion of the state as a **good global citizen** (its commitment to international institutions and law.)

'**Sovereignty** is the legitimate and recognised ability of the state to run its own affairs. It is a defining principle of the operation of the **multilateral** approach to international affairs as exemplified by the United Nations, where all member states are considered equal in sovereignty and with the right to do whatever they wish within their borders without intervention. It also confers the **right to represent** the population of the state on the global stage.

**Sovereignty:** *Legitimate or widely recognised ability to exercise effective control of a territory within recognised borders. This is the primary organising principle of global politics, providing states with the authority to represent their territorial entity within the international community. State sovereignty can be challenged internally (for example, secessionist groups) or externally (for example, one state invades another).*

**National Security:** *this is a key national interest of states. Closely related to sovereignty, this term traditionally refers to the protection of a state's borders from intruders but has **evolved** to include other forms of security, such as resource and environmental security, which are necessary for a state to maintain sovereignty. All of the challenges listed on p.26 of the study design are capable of threatening national security in one way or another.*

**Global citizenship:** *another of the national interests, this refers to membership of the global community that requires certain rights, privileges and responsibilities. A global citizen may refer to a state, non-state actor or an individual.*

To achieve national interests states can adopt either **bilateral or multilateral foreign policy approaches** or a combination of both. Some states, like the United States under President Trump or Australia under the Howard government prefer bilateral doctrines of foreign policy, believing them to be more effective. Some states view multilateral doctrines of foreign policy with suspicion. **Good global citizenship**, however, requires a **commitment to multilateralism**, which is a belief that cooperation between states on an equal basis with mutual obligations is necessary to ensure collective security – the security of all states and individuals, remembering that security encompasses anything that threatens the survival or safety of the state and its people .

Finally, as foreign policy is an official state activity, it has **tended** to be bipartisan; that is, characterised by general agreement on the key national interests and approaches of the state’s foreign policy. But in situations where ideological cleavages are increasing, bipartisanship can break down.

**Bilateral:** *this refers to **action** by, or **agreement** between **two states** on a foreign policy issue.*

**Multilateral:** *this refers to **action** or **agreement** by **more than two** nation states on a foreign policy*

**Bipartisan:** *In the Australian context, this refers to **agreement by the two major political parties** in Australia (the Liberal Party and the Australian Labor Party ALP) on a policy or political issue.*

**LEARNING TASK**

**Complete the following and put your results in your notes:**

1. Find an example of an issue or event that is considered threatening to national security or economic prosperity. What is Australia’s foreign policy response?
2. Find a foreign policy issue or action that is designed to maintain our sovereignty.
3. Identify one area of Australian foreign policy that has generally bipartisan agreement.
4. Find an example where Australia has or has not shown any interest in being a ‘good global citizen’.
5. Has the current Foreign Minister expressed any opinion about bilateral as opposed to multilateral approaches to foreign policy?

**SOME HELPFUL REFERENCES** (but you can just do a google search and see what comes up):

- [Lowy: where do Australian rivals stand on foreign policy](#)
- [Lowy: Labor's Commitment to Multilateralism is pragmatic not ideological](#)
- [Is Bipartisanship on National Security Beneficial? Australia's Politics of Defence and Security](#)

## Chapter 2: the nature of contemporary Australian Foreign Policy

### KEY SKILLS:

- define and explain key terms and concepts relating to foreign policy
- explain and analyse the nature of contemporary foreign policy formulation and implementation
- explain the key objectives of Australian foreign policy.
- use contemporary examples and evidence to explain and evaluate Australian foreign policy

### KEY KNOWLEDGE:

#### IMPORTANT NOTE:

We are departing from the order of key knowledge set out in the Study Design because we feel that you need to know more about our foreign policy before we look at who formulates and implements it. So this chapter will deal with the key knowledge dot points of:

- ✚ the distinction between domestic and foreign policy
- ✚ The bipartisan nature of foreign policy
- ✚ The Key Objectives of contemporary Australian Foreign Policy
  - The Concept of National Interest
  - Maintaining National Security
  - Promoting Australia's Economic and Trade Interests
  - Promoting Australia as a Good Global Citizen

## The

**Domestic policies** are those that affect or apply to people or institutions within a particular country and which are executed within that country.

**Foreign policy** has to do with policies that are designed to guide the actions of the state and its agencies outside the state's borders, through relations with states, IGOs and other non-state actors.

However, the lines between the two are becoming increasingly blurred and often have overlapping elements. In order to see both the overlap and the distinction most clearly between foreign and domestic policy, it is useful for you to look at the case studies associated with some of the issues canvassed in chapter 5. Refugees, for example, are an internal problem once they arrive on your shores but if you process them off-shore in Nauru or send them back to Indonesia they then become the subject of foreign policy.

Climate change is another good example which ticks all the boxes of involving multiple actors and goals that are simultaneously impacting upon domestic policy and foreign policy. Australia's decision under PM Tony Abbott to sign on to the Paris Agreement in December of 2015 meant that the Department of Foreign Affairs and Trade was involved with representations and the coordination of

our response on the global stage while the actual introduction of measures to achieve reduced emissions within Australia was a matter for various government departments such as the Department of Energy and the Environment and the Department of Agriculture, as well as intra-party factions and parliamentary action, through committees and legislation.

Leading Global Politics author Andrew Heywood has this to say:

*“Foreign policy making involves the establishment of **goals** and the selection of **means** to achieve them. In view of the increased interpenetration of domestic and foreign affairs in modern global politics, the term ‘external relations’ is sometimes preferred to ‘foreign policy’, allowing for interactions that take place on multiple levels and which involve multiple actors. At the very least, the realm of foreign policy can no longer be confined simply to relations between foreign ministers / ministries, or between national diplomatic services. ... As the distinctions between home and abroad, inside and outside and ‘high’ and ‘low’ politics\*\* became perhaps hopelessly blurred, the divide between ‘foreign’ politics and domestic politics became increasingly difficult to sustain.....The matter was made yet more problematical by the fact that globalizing trends have also been associated with the advent of **post-sovereign governance** and the burgeoning importance of non-state actors.” (Emphasis mine).*

**Taken from Andrew Heywood “Global Politics” 2<sup>nd</sup> edition, Palgrave MacMillan, 2014. P.133 -134**

\*\* ‘high’ politics means that foreign policy was sometimes considered more prestigious as it was concerned with the very survival of the state and undertaken by elites – people with expert knowledge; ‘low’ politics was more about economics and other less important fields!

- **Post-sovereign governance** broadly refers to some cosmopolitan theories that suggest that the sovereignty of the state is evolving into a shared, globalised context.

## The Bipartisan Nature of

There are still areas of foreign policy where the two major parties are in **broad** agreement, notably the US Alliance, our commitment to the international rules based order (see text box below), our position on the offshore processing of refugees and our stated commitment to the Paris Agreement on climate change. However, the world in the 21<sup>st</sup> century has changed dramatically and in such a way that the normal bipartisanship that characterised Australia’s foreign policy during the latter part of the twentieth century has been under increasing strain. Since 2010, Australia has been increasingly riven by differences between and within the major parties over climate change, refugees, responses to terrorism, issues of human rights and genocide, the rise of China and the apparent waning of American power, the increasing willingness of Russia to act outside the accepted rules of international conduct, the issue of development aid and the constant threats of data breaches by both ‘friends’ and foes. We have had five prime ministers and four foreign ministers. *Multilateralism* is ‘on the nose’ as it is viewed increasingly by some global leaders as both unable to cope with international challenges and bad for national interests. A final blow to bipartisanship has arisen as a result of the increasing overlap between domestic and foreign policy areas (as mentioned above) such as climate change, environmental issues generally, irregular migration, economic instability, global terrorism and even pandemics; all these issues mean that

“public discourse surrounding foreign policy issues has taken on populist tones, as the issues, and the way they are managed, are seen as having implications for Australians’ everyday lives.”<sup>1</sup> These issues pose real challenges to foreign policy making; they are dealt with in chapter 5.

### LEARNING TASK

Read the following articles and identify areas of agreement and disagreement between the major parties on Foreign Policy:

- [SMH: Despite Pledges of Eternal Mateship, US and Australia not on song on China](#)
- [ABC: Scott Morrison uses UN speech to slam 'internal and global critics' of Australia's climate change policy](#)
- [Lowy Institute: Australian Values, Australia's interests — Foreign Policy Under a Shorten Labor Government](#)
- [AIIA: What We Learned in 2019: Morrison's Foreign Policy](#)

### Exam

1. Analyse the extent of bipartisanship in contemporary Australian Foreign policy. (6 marks)
2. Using examples, explain the distinction between domestic and foreign policy. (4 marks)



### The Key Objectives

Unsurprisingly, Australian Foreign Policy has been shaped by our geography, history and political culture. Our location in the Indo-Pacific, thousands of kilometres from European politics, our attachment to our past colonisers and to our big brother across the Pacific, as well as our institutions of parliamentary democracy have all contributed to a foreign policy narrative that has **traditionally** been characterised by three things:

1. '**dependence**' (on “great and powerful friends”<sup>2</sup> and on our trading partners);
2. the idea that we are a **middle power** who ‘punches above our weight’
3. our commitment to the **international rules-based order**.

## The concept of national interest

Australia's national interests are described most fully in the [2017 Foreign policy white paper](#) (FPWP). It is based on the premise of a rapidly changing and “contested world” as a result of globalisation, power shifts, nuclear threats, state fragility, climate change and terrorism. The overview also sees threats as a result of increasing inclinations towards protectionist economic policies and decreasing commitment to the international rules-based order.

**National Interest:** *The national interests of a state are pursued to ensure the survival and potential growth of that state. States implement policies and types of power to achieve their national interests and maintain state sovereignty.*

**International rules-based order** refers to the multilateral system of international laws and the institutions that create them, such as the UN and the WTO, designed to maintain global peace, stability and security. This is **sometimes referred to as global governance**.

Australia has shown a very strong commitment to this idea of ‘**global governance**’ since its involvement in the creation of the United Nations, mostly through the work of H.V. Evatt. We have been elected to the UN Security Council as a temporary member five times.

### From the Foreign Policy White Paper overview:

“In this dynamic environment, Australia must seek opportunity while protecting our interests in the face of complexity and uncertainty. In a more contested and competitive world, our domestic and international policies will have to work together to maximise our national power and international influence. We will require active, determined and innovative foreign policy built on strong domestic foundations—a flexible economy, strong defence and national security capabilities and resilient democratic institutions within a cohesive society.

These broad themes—opportunity, security and strength—sit at the heart of this White Paper. They recognise that an outward-looking Australia fully engaged with the world is essential to our future security and prosperity.”

## Maintaining National Security

Australia's national interest of **national security** and the **promotion of our economic and trade interests** are bound up in the Indo-Pacific region, the region ranging from the eastern Indian Ocean to the Pacific Ocean connected by Southeast Asia, including India, North Asia and the United States.

**It is of paramount importance to the government that the region remains prosperous and stable and committed to free trade principles and values associated with the international rules-based order - respect for international law, human rights and cooperative dialogue.** The FPWP emphasises defence cooperation between Australia and the countries of the region in terms of training and joint exercises through a “more capable, agile and potent Australian Defence Force.” The alliance with the US and its continued deep engagement in the region, the maintenance of

freedom of navigation in the South China Sea and the friendship with Japan, India, South Korea and Indonesia are all singled out as important. The White Paper makes it very clear that Australia is committed to a “Comprehensive Strategic Partnership” with China, acknowledging the importance of the trading relationship but encouraging China to “exercise its power in a way that enhances stability, reinforces international law and respects the interests of smaller countries and their right to pursue them peacefully.” (See China Case study)

**A good idea: carefully examine the map below to get an idea of how**



## Specific National Security Concerns

According to the [2016 Defence White Paper \(DWP\)](#) there are six key drivers that will shape the development of Australia’s security environment to 2035:

- First, the relationship between the United States and China, which is likely to be characterised by a mixture of cooperation and competition.
- Second, challenges to the stability of the rules-based global order.
- Third, the growing threat from terrorism and foreign terrorist fighters to Australia’s security.
- Fourth, state fragility, including within our immediate neighbourhood
- Fifth, the increasing pace of military modernisation in our region.
- Sixth, increasing security threats in cyberspace and space

Click on the link to the DWP above to see the nature of these national security 'drivers' (threats). There has also been a **Defence Strategic Update** published this year (2020) which deals with the threat posed from the 'Grey Zone' - the opposite of the rules-based order. (See references below).

**Chapter 5 of the FPWP** identifies "**a diverse range of risks that will threaten our security, our freedom and our values.**" These include **terrorism**, threats to our **border security** (from **organised crime, people smuggling, exotic pests and diseases, cyber-attacks and foreign interference**). The government must also monitor and respond to **situations which could endanger Australians** and Australia's interests abroad.

Add to these the **specific challenges** identified in the Foreign Policy White Paper **which require global cooperation** and it becomes apparent that national security is concerned with very many things. The FPWP argues that global cooperation is necessary for three reasons:

- first, the interdependent nature of the issues requires global cooperation;
- second, if Australia does not engage in cooperation on these issues then the solutions may be shaped in ways that are not in our national interest
- third, such cooperation (multilateralism) increases our power and influence. ([See chapter 6 of the FPWP](#)).

Areas requiring global cooperation, apart from those already mentioned, are:

- Countering the proliferation of *weapons of mass destruction*
- *Climate change*
- *Antarctica*
- Promoting *sustainable development*
- Advancing *human rights*
- Responding to the *challenge of displaced people*
- Strains on *food, energy and water*
- Protecting the *oceans*
- Guarding against *global health risks*
- Security in *space*

## USEFUL REFERENCES

- ❑ [Lowy: Australia Must Enter the Grey Zone to Counter Threats of The Future](#)
- ❑ [The Australian: Our first priority is what's good for Australia](#) (China / USA challenges)
- ❑ [Lowy: Defence Strategic Update - A First Assessment](#)
- ❑ [Lowy: Climate change, Security and the Australian Bushfires.](#)

## EXAM

1. Explain, using contemporary examples, two key aims of Australia's foreign policy objective of maintaining national security. (6 marks)
2. Evaluate Australia's pursuit of its national security objectives. (8 marks)

## Promoting

This is of central importance to Australia and it influences just about everything we do in terms of foreign policy although various commentators have been concerned recently that trade is being downgraded in importance compared to security. (See China Case Study that follows). Our top trading partners are set out below:

Australia's top 15 trading partners, countries that imported the most Australian shipments by dollar value during 2019. Also shown is each import country's percentage of total Australian exports.

1. China: US\$89.2 billion (32.7% of total Australian exports)
2. Japan: \$24.4 billion (9%)
3. South Korea: \$13.6 billion (5%)
4. United Kingdom: \$10.4 billion (3.8%)
5. United States: \$10 billion (3.7%)
6. India: \$9 billion (3.3%)
7. New Zealand: \$7.1 billion (2.6%)
8. Taiwan: \$6.8 billion (2.5%)
9. Hong Kong: \$5.3 billion (2%)
10. Singapore: \$5.3 billion (1.9%)
11. Malaysia: \$4.6 billion (1.7%)
12. Vietnam: \$4.2 billion (1.6%)
13. Indonesia: \$3.7 billion (1.3%)
14. Thailand: \$2.6 billion (0.9%)
15. Germany: \$2.1 billion (0.8%)

Taken from  
<http://www.worldstopexports.com/australias-top-import-partners/>

Here is a list of Australia's top 10 **\*\*two-way** trading partners:

Australia's Top 10 Two-Way Trading Partners 2018-19

(\$ billion)					
Rank	Trading partners <sup>(a)(b)</sup>	Goods	Services	Total	% share
1	China	213.0	22.0	235.0	26.4
2	Japan	81.4	7.1	88.5	9.9
3	United States	48.7	27.7	76.4	8.6
4	Republic of Korea	38.0	3.4	41.4	4.6
5	Singapore	21.4	11.3	32.7	3.7
6	New Zealand	17.8	12.8	30.6	3.4
7	United Kingdom	15.1	15.2	30.4	3.4
8	India	21.1	9.2	30.3	3.4
9	Malaysia	21.4	3.7	25.1	2.8
10	Thailand	20.7	4.0	24.7	2.8
Total top 10 trading partners		498.8	116.3	615.1	69.0
Total two-way trade <sup>(c)</sup>		692.9	198.7	891.6	100.0
of which: APEC		534.1	118.3	652.4	73.2
ASEAN		92.4	31.3	123.7	13.9
EU28		76.8	37.5	114.3	12.8
OECD		279.9	96.0	375.9	42.2

Taken from DFAT Report

[Trade and Investment at a glance 2020](#)

**\*\* Two way trade refers to trade of the same commodity between countries. For example, Australia both imports and exports crude petroleum as a result of variations in transport and other costs in different countries. (See <https://open.lib.umn.edu/principleseconomics/chapter/17-2-two-way-trade/>)**

What is interesting about these figures is the significant extent to which we rely on our trading relationship with China, using either measurement. The second noteworthy feature is that 13 of our largest trading partners are located in the Indo-Pacific, the region identified as our foreign policy focus. Thirdly, the volume of our trade with the 10 ASEAN countries exceeds that of the USA and Japan.

Also, Australia's trade as a percentage of its GDP (45.7%) is significantly higher than many of our trading partners (Japan at 36.82%, China at 35.68%, the USA at 27.5%, though not Singapore or South Korea) underlining the importance of free and open trade to our economic growth and prosperity.<sup>3</sup>

We have a favourable balance of trade with China and Japan (we export more than we import) but not with the USA. Our top exports are iron ore, coal, education, personal travel (tourism), gold and natural gas, worth a combined \$275.4 billion in 2018 - 2019.<sup>4</sup>

It is easy to see where the vulnerabilities lie in the light of the increasingly tense Australia – China relationship, climate change obligations, impacts of the pandemic, a backlash against globalisation and trade liberalisation.

## ISSUE FOR ANALYSIS AND EVALUATION

What are the challenges in our relationship with China?

### CASE STUDY: THE AUSTRALIA CHINA RELATIONSHIP

IN 2014, PM Tony Abbott and China's President Xi Jinping agreed to refer to the Australia-China relationship as a "Comprehensive Strategic Partnership" encompassing cooperation on a number of levels. Then after many years of negotiation and effort, Australia signed a free trade agreement with China (ChAFTA) IN 2015. We have annual High Level Security Dialogues with China (conducted by senior officials from each country or retired eminent people such as former PM John Howard) but the relationship has been beset by a number of controversial incidents over the last few years:

- Arrest of Stern Hu, the Australian head of Rio Tinto's iron ore team on bribery
- Attempts by some to counter Huawei's influence leading to Australia's decision not to allow Huawei to roll out the 5G network
- the arrest of Huawei executive Meng Wanzhou in Canada.
- Accusations of intellectual property theft and cyber espionage
- Accusations of foreign interference in our universities, attempts to influence our politicians and to infiltrate Parliament's computer network
- Australian rejection of the Belt and Road Initiative (BRI)
- Australian support for the Hong Kong protests
- The call by Scott Morrison early this year for an investigation into the origins of the Covid-19 pandemic.

So, even though China is our most important trading partner and our bilateral political engagement is extensive - foreign and strategic relations, trade and economic cooperation, international security, human rights, law enforcement, development cooperation, climate change and defence cooperation – the relationship is challenged by the increasing assertiveness of President Xi in the South China Sea, by China's growing influence in the Pacific, its growing economic influence through the BRI, and its decisions to ignore international law when it conflicts with China's national interests.

"The Chinese people's feelings have been hurt" in particular by the call for a Covid-19 investigation. Since that time, China has placed an 80% tariff on Australian barley, an import ban on five Australian abattoirs and two investigations into Australia's wine industry to

determine whether Australia has been subsidising it and selling it on the Chinese market for less than it cost to produce.

### REFERENCES

- ❑ [ABC: Stern Hu release: Why the former mining executive was convicted in China](#)
- ❑ [ABC: Australia and China's relationship has become tetchy over the past two months.](#)
- ❑ [CSIS: Countering China's Influence Operations: Lessons from Australia](#)
- ❑ [ABC: China is still stealing intellectual property — but that's not the biggest problem](#)
- ❑ [ABC: China launches second probe into Australian wine, claiming government subsidies could infringe trade rules](#)

### QUESTION

With reference to **one** specific example, explain and evaluate Australia's foreign policy.

(6 marks)

**TIP:** evaluation should be in relation to the achievement of 1 or more of our key foreign policy objectives - use China as the specific example.

## Promoting

This is the final key objective mentioned in the Study Design. The phrase 'good global citizen' denotes a willingness to abide by international law, to play a part in the resolution of global issues and crises, to uphold peaceful attempts to resolve conflict and commit to upholding the broad spectrum of human rights. This is really the cosmopolitan agenda, defined in the box at right, but it also represents a commitment to the rules-based order and some willingness to sacrifice the national interest in the interests of the human community.

**Cosmopolitanism** reflects a desire among global actors to cooperate to reach common goals and outcomes to meet challenges that are presented to the global community.

Development Aid, disaster relief, climate change negotiations, human rights conferences, conventions and compacts on displaced people, organised crime, terrorism and the wide array of matters that comprise international security, are all covered by the good global citizenship banner.

The DFAT Annual Report 2018 – 2019 measures the achievement of Priority 5 – [“To advance Global Cooperation”](#) through this performance indicator:

“Australia helps shape the evolution of institutions, rules and forms of cooperation *in line with our national interests.*’ (See below.) The extent to which Australia can be both a ‘good global citizen’ and maintain our national interests is questionable and seems to depend largely on the nature of the issue.

Performance measures	How we rate our performance*
Australia helps shape the evolution of institutions, rules and forms of cooperation in line with our national interests.	On track but progress towards shaping international rules and norms is under strain
Source: Corporate Plan 2018–19 p. 18   Funding: PBS 2018–19 programs 1.1 and 1.4	
The department’s contributions shape multilateral outcomes, institutions and norms to advance the interests of Australia and our Commonwealth partners.	On track
Source: PBS 2018–19 program 1.4 p. 32   Funding: PBS 2018–19 programs 1.1 and 1.4	
* Our assessments are informed by international resolutions and statements, diplomatic reporting, membership of multilateral bodies and tracking implementation of Australia’s Strategy for the Abolition of the Death Penalty. See <a href="#">Priority 2</a> for our contribution to the multilateral trading system and <a href="#">Priority 4</a> for our development cooperation work with multilateral partners.	

## Future Time Saver!

1. Read the DFAT [annual report on priority 5](#) and take a few notes on the ways Australia promotes itself as a good global citizen.
2. **Then go to the challenges to foreign policy case studies in chapter 5 and try to assess *the extent to which Australia’s perceived national interests prevent us from being a good global citizen.***

## Chapter 3: Foreign Policy Formulation

### KEY SKILL

- explain and analyse the nature of contemporary foreign policy formulation and implementation
- develop points of view, explanations and arguments about formulation and implementation of foreign policy which use contemporary examples as evidence.

### KEY KNOWLEDGE:

- the role of the executive, the parliament, the public service
- the effect on Australian foreign policy of elections, economic conditions, public opinion, interest groups and the media

## The Role of The Executive in the formulation and implementation of

**FORMULATION:** Traditionally, it is the executive branch that is largely responsible for the determining the country's foreign policy response. This is accomplished through producing foreign policy white papers: an overview of the government's national interest goals and strategic priorities, which then becomes the public expression of the state's direction for the next few years. Australian Foreign Policy White Papers are generally produced relatively infrequently, perhaps as a result of the bipartisanship that characterised foreign policy prior to the twenty first century. The current white paper is entitled "[Opportunity, Security Strength: the 2017 Foreign Policy White Paper](#)". (The previous white paper was published in 2003 and called "Advancing the National Interest".)

There is an introduction by former Prime Minister Malcolm Turnbull and a foreword by former Ministers for Foreign Affairs (Julie Bishop) and Trade, Tourism and Investment (Steve Ciobo). However, before Australia's international direction was established, submissions were called for and received from a wide variety of interested parties. The White Paper Taskforce received around [600 individual submissions and around 8,600 submissions](#) from a diverse range of stakeholders including business and industry groups, NGOs, community groups, the media, think tanks and academia, as well as interested members of the public. They held public consultations across Australia. See [Foreign Policy White Paper Public Consultation Summary Report](#)

In the end, it was the White Paper Task Force (WPTF) in consultation with the Prime Minister and relevant Ministers as well as *members of Australia's embassy staff*, who produced the strategic direction. As far as I can tell,<sup>5</sup> The WPTF consisted of members of government agencies. Following that, a number of roundtable discussions with 'heads of mission' (Australia's overseas ambassadors, high commissioners and consuls-general) were held "to debate and contest the ideas heard during the public consultations, test some of our (the WPTF's) early thinking, and provide their perspectives on current challenges in foreign policy."<sup>6</sup> So, the involvement of the broad executive in the formulation of Australian Foreign Policy is key.

The Prime Minister himself can exercise a decisive influence on foreign policy formulation through his meetings and relationships with overseas leaders, as well as his personal reactions to events, such as the pandemic. For example, Scott Morrison has delivered a number of speeches defining Australia's attitude to President Trump's foreign policy, his attitude to China, their rising influence

and the origins of the virus, to North Korea, to the UN, the Paris Agreement, Australia's defence needs and the question of development Aid (amongst other things). Some Prime Ministers are more interested in foreign policy than others. Scott Morrison is clearly enjoying the foreign policy area. (see the references below). Prime Ministers can also make foreign policy 'on the run' through their utterances and private meetings with other leaders. They can agree to send Australian troops overseas and make alliances and agreements with other states without prior parliamentary or even Cabinet approval.

### LEARNING TASK 1

Read the following articles, complete Learning Task 2 and then answer the question:

- [The Guardian: Scott Morrison Gave 'Negative Globalism' Speeches Without Consulting DFAT](#)
- [AIIA: What We Learned in 2019: Morrison's Foreign Policy](#)
- [Lowy Institute: Morrison's defence reset](#)

### LEARNING TASK 2

There have been some very high profile and globally respected Ministers for Foreign Affairs over the years since Australia achieved the ability to determine our own foreign policy (1935). In order to assess the influence of contemporary Ministers, research one of the following: Kevin Rudd, Bob Carr, Julie Bishop, Marise Payne.

**QUESTION:** Analyse the role of the executive in the formulation of contemporary Australian Foreign Policy. (7 marks)

## IMPLEMENTATION

The implementation of Australian Foreign Policy is a role of the PM and relevant ministers when they attend summit meetings or hold bilateral talks with their counterparts overseas.

The Morrison government moved recently to introduce legislation into the Parliament which would have the effect of restricting the ability of a range of players – state and territory governments and their entities – from entering into trade, cultural and academic policies with foreign governments. This will affect their ability to both formulate and implement foreign policy if passed.

See this press release: [ENSURING A CONSISTENT AUSTRALIAN FOREIGN POLICY](#)

## The Role of The Public

The most important departments involved in both the formulation and the implementation of foreign policy are the [Department of the Prime Minister and Cabinet](#), The Treasury must be included in all policy decisions which require expenditure, but it is also in charge of the Foreign investment Review Board, for example. The [Department of Foreign Affairs and Trade](#) and the [Department of Defence](#) are critical for both formulation and implementation as you will have discovered in the preceding pages. Sometimes the Department of [Agriculture, Water and the Environment](#) is also involved; for example, with regard to imports and exports or in adapting to climate change impacts.

Embassy staff (ambassadors, consuls and diplomats generally) are key players in both the formulation and implementation of Australian Foreign Policy. The Department of Foreign Affairs and Trade employs more than 6000 staff, about half of whom are overseas and half working across 9 locations in Australia. They carry out (implement) our foreign and trade policies in ways that serve our national interests.

**[The 2018 – 2019 annual report of DFAT](#) identifies 7 priorities:**

- Priority 1: Promote a stable and prosperous Indo-Pacific
- Priority 2: Pursue our economic, trade and investment agenda for opportunity
- Priority 3: Keep Australia and Australians safe and secure
- Priority 4: Deliver an innovative development assistance program
- Priority 5: Advance global cooperation
- Priority 6: Support Australians overseas
- Priority 7: Provide a secure and effective overseas presence

## Future Time Saver!

**FOREIGN POLICY IMPLEMENTATION:** *You can get more detail on any of these priorities by clicking on the link above. This will help you to be able to explain the **other key knowledge dot points** of Australia’s **key national interest objectives** as well as key **foreign policy instruments**.*

**Complete the table below:**

Foreign policy Priority	Links to which national interest?	Example of its implementation	Details: who implements this and how.
Priority 1: a stable and prosperous Indo-Pacific	<b>National security</b> <b>Economic Growth</b>		
Priority 2: Pursue our economic, trade and investment agenda for opportunity			
Priority 3: Keep Australia and Australians safe and secure			
Priority 4: Deliver an innovative development assistance program			
Priority 5: Advance global cooperation			
Priority 6: Support Australians overseas			
Priority 7: Provide a secure and effective overseas presence			

## Highlights 2018–19



Promote a stable and prosperous Indo-Pacific  
Priority 1

- Strengthened Indo-Pacific relationships
- Stepped up support for the Pacific and Timor-Leste
- Celebrated five years of the New Colombo Plan—creating people-to-people links in our region with almost 50,000 Australian scholars since 2014



Pursue our economic, trade and investment agenda for opportunity  
Priority 2

- Helped facilitate \$470 billion in Australian goods and services exports
- Free trade agreements signed with Indonesia and Hong Kong
- Secured new access for Australian businesses to government contracts worth \$2.3 trillion in 47 international markets



Keep Australia and Australians safe and secure  
Priority 3

- Led international advocacy on counter-terrorism, cyber and international security
- Worked against modern slavery, human trafficking and nuclear proliferation
- Supported PM leadership at G20 to prevent the use of social media platforms by terrorists



Deliver an innovative development assistance program  
Priority 4

- Delivered world class \$3.9 billion development assistance program
- A record \$1.2 billion to the Pacific
- Humanitarian assistance to Vanuatu, Indonesia and Laos for disaster response



Advance global cooperation  
Priority 5

- Championed human rights in the United Nations Human Rights Council
- Shaped the world's institutions, rules and norms
- Flagship *Australia now* public diplomacy promotion in Japan and ASEAN



Support Australians overseas  
Priority 6

- Issued a record 2.1 million passports
- Assisted 13,715 Australians in difficulty overseas, about 1,400 consular cases each day



Provide a secure and effective overseas presence  
Priority 7

- Opened three new posts—Kolkata (India), Funafuti (Tuvalu) and Shenyang (China)
- Award-winning Post-in-a-Box mobile global communications capability

04

This summary graphic is taken from the

[The 2018 – 2019 annual report of DFAT](#)

## The Role of the

The Commonwealth Parliament has a fairly limited role in foreign policy formulation and implementation when compared to its role in domestic policy-making and when compared to the key players of the Prime Minister, the Minister for Foreign Affairs and the Departments of Defence and Foreign Affairs and Trade.

### LEARNING TASK

Click on the live links below to get specific examples of the role of the parliament in foreign policy formulation and implementation.

The Parliament as a legislative body lacks the constitutional basis for foreign policy decisions, which are given to the Executive largely through ss. 68 and 69. Traditionally foreign policy is the preserve of the executive and parliamentarians by and large are more interested in domestic than foreign policy. There is a certain amount of research and oversight which can be provided by the [Joint Committee on Foreign Affairs, Defence and Trade](#) which, at the time of writing, has seven current

inquiries under way, three of which are concerned with our relationship with Pacific Island countries, two with human rights questions, one with the impact of the pandemic on Defence and one with the elimination and remediation of PFAs-related impacts in and around defence bases. (PFAs are manufactured chemicals used in products that resist heat, oil, stains and water.)

There are also Senate committees for Foreign Affairs, Defence and Trade, as well as a Select Committee on Foreign Interference through Social Media. Other parliamentary committees cover migration, human rights, the environment and intelligence and security matters. Some parliamentarians have called for the parliament to be more involved in decisions about [war](#) and trade – especially to [decouple trade from security concerns](#). There has also been much parliamentary concern expressed over [Australia's declining aid budget](#), especially by the ALP and the Greens.

Cameron Hill, author of [Australia's 2017 Foreign Policy White Paper: what role for the Parliament?](#) argues amongst other things that an “important role for the Parliament is as an institutional expression of Australia’s ‘soft power’; defined by the White Paper as ‘the ability to influence the behaviour or thinking of others through the power of attraction and ideas’ (p. 109). In this context, while often modest in its aims and impact, parliamentary diplomacy is an important vehicle for promoting Australia’s values and interests internationally.”<sup>7</sup>

It is worth reading this relatively short paper to get an idea of the possibilities!

Finally, parliament can introduce legislation governing foreign policy areas such as refugees and people smuggling, climate change, aid and development matters, disaster relief spending and terrorism. The case studies in chapter 5 will provide examples.

## The

Probably as a result of the bipartisan nature of our foreign policy, it rarely features prominently in Australian election campaigns and thus elections don't really have an impact on policy formulation. The exceptions are the terrorism issue and troops in Iraq back in the 2004 election (which still failed to change the Howard governments' policies in these areas), the campaigning by One Nation and Clive Palmer's UAP against free trade and the 'softer' issues of climate change and asylum seekers which figured in some seats in both the 2016 election and the 2019 election.

Both of these latter issues were raised in Kerryn Phelps campaign in the October 2018 Wentworth by-election for Malcolm Turnbull's seat. Following President Trump's controversial relocation of the American embassy to Jerusalem with the implicit recognition of Jerusalem as the capital of Israel, Phelps' opponent, Dave Sharma, also campaigned on his support for moving our embassy to Jerusalem instead of Tel Aviv where it is currently located. Twelve percent of the Wentworth electorate is Jewish according to census figures. Scott Morrison indicated that he would not be averse to doing that, but to date the embassy remains in Tel Aviv. Getting the refugee children off Nauru was one of the reasons that Phelps stood and once elected, she was responsible for introducing the Medevac legislation which was passed in February 2019. This allowed for sick asylum seekers and refugees to be treated in Australia rather than Nauru. However, after the strong Coalition victory in the May 2019 general election, Phelps lost her seat and the Medevac legislation was repealed in December of 2019 as a result of negotiations with Independent Senator Jacqui Lambie, who supported the government in the Senate.

## READING:

- ❑ [AllA: Little to Choose: Comparing Foreign Policies of the Major Parties](#)
- ❑ [AllA: Australian Foreign Policy: Not Quite a BBQ Stopper](#)
- ❑ [AllA: Minor Parties and the Implications for Australian Foreign Policy](#)
- ❑ [The Conversation: Foreign policy should play a bigger role in Australian elections. This is why it probably won't](#)
- ❑ [BBC: 'Medevac' law: Australia denies medical evacuations for refugees](#)

## EXAM-STYLE QUESTION:

Analyse the impact of elections on the formulation of foreign policy. (5 marks)

## The public opinion

The first thing to note about this key knowledge dot point is that there is no such thing as a single public opinion. In the realms of foreign policy, more than other policy areas, there are at the very least two types of public opinion – mass opinion which is highly susceptible to media influence and ‘organised public opinion’, which is representative of special interests.

Mass public opinion can be mobilised or develop around particular issues, especially those that threaten Australia’s security or which are to do with peace and war. Although there have been a few of these over the last 50 years, which have proved to have an influence on foreign policy, there have been none in the time frame stipulated by the study design. One could point to the anti-Vietnam War protests, the anti-French nuclear testing movement in the Pacific and the protests involving hundreds of thousands of Australians against our involvement in the 2003 Iraq war. Whereas the first two examples were relatively effective in terms of their influence on foreign policy-making, the latter was largely ignored by the Howard Government of the day.

On the other hand, a majority of Australians have consistently believed that climate change is a pressing issue. According to the Lowy Institute Polls, since 2015 a majority of Australians said that “Global warming is a serious and pressing problem. We should begin taking steps now even if this involves significant costs”. In the most recent poll (2020), 56% said this; 34% said ‘The problem of global warming should be addressed, but its effects will be gradual, so we can deal with the problem gradually by taking steps that are low in cost’ and 10% said ‘Until we are sure that global warming is really a problem, we should not take any steps that would have economic costs.’<sup>8</sup> In a separate Lowy poll taken in June 2019, 64% of Australians identified climate change as the most critical threat facing Australia’s vital interests, over terrorism and China’s influence. This had reduced to 59% in 2020, with (unsurprisingly) drought, Covid-19, severe economic issues and bushfires beating climate change. And according to an article written for the Australian Institute of International Affairs by Allan Gyngell AO, “John Howard, for example, writes in his memoirs that a change in the public mood was

the reason his government shifted its position on climate change.”<sup>9</sup> So we might deduce from all this that mass public opinion on some critical issues is capable of influencing foreign policy.

The other kind of public opinion ‘organised public opinion’ really depends on whether the issue can get political leverage. Organised public opinion is representative of various **interest groups** – perhaps producer groups like the mining lobby or agricultural groups like Meat and Livestock Australia. Then there are a number of groups who represent Australians of migrant origin, who may have a view on Australia’s foreign policy direction, and many humanitarian organisations who seek to influence Australia’s foreign policy on refugees, human rights in various overseas destinations and foreign aid. For example, aid organisations such as Campaign for Australian Aid have made very many strong representations to the FPWP process and continue to press for an increase in Australia’s aid budget, but without success.

## READING

- ❑ [ALLA: Australian Foreign Policy: Does the public matter? Should the community care?](#)
- ❑ [Lowy: National security: Australians and their elites](#)
- ❑ [Lowy Institute Poll: Security and defence Threats to Australia's vital interests](#)

## The effect on Australian foreign policy of the media

There is an obvious connection between the media and the formation of public opinion. That is one way in which media can influence the making of foreign policy. A contemporary example of this is the rise in the number of Australians (and other nationalities) [who view China with suspicion](#) since the more aggressive policies of President xi Jinping, in the South China Sea, in the Pacific, with regard to the Belt and Road Initiative, with regard to foreign interference and since the outbreak of the Covid-19 pandemic. **All these have been extensively reported** since about 2014 – 15 (not the pandemic of course!) It is the indirect impact of the volume of reporting that can influence foreign policy formulation.

A second way that the media can influence foreign policy is more direct, but still using the same mechanism of influencing public opinion, as well as alarming politicians. The best example from recent times is the ABC’s **4 Corners** programs on foreign interference in Australia’s politics. The first, entitled [‘Power and Influence’](#) aired in 2017 and the second, [‘Interference’](#) aired in April last year. Dr Andrew Chubb suggests that these programs “helped pave the way for a series of controversial national security laws aimed at, among other things, cracking down on foreign interference.”<sup>10</sup>

Another example was the 2011 4 Corners report into the live cattle trade with Indonesia “A bloody Business” which prompted the Labor government of the time to suspend live cattle exports to Indonesia. The program was based on secret footage obtained by an **interest group** “*Animals Australia*”. The Federal Court in June of this year found that the Minister acted recklessly in imposing the ban which has opened the way for millions of dollars’ worth of compensation claims against the Federal Government.

## READING

- ❑ [ZDnet: Countering foreign interference and social media misinformation in Australia](#)
- ❑ [Alla: The ABC's China Interference Investigations](#)
- ❑ [ABC: Australian Government's ban on live exports to Indonesia 'irrational', cattle farmers tell court](#)
- ❑ [ABC: Live export ban decision sets 'controversial' precedent and could win an appeal, legal expert says](#)

## The effect on Australian foreign policy of interest groups

We have already covered the influence of interest groups in terms of those that seek to influence the direction of foreign policy, such as the thousands of organisations that made submissions to the FPWP and the last paragraph in the section on public opinion.

Other groups constantly lobby the government in order to try to influence foreign and trade policy. For example, Agribusiness Australia has produced a report calling for a decoupling of Australia's Trade with china from our foreign and security policy

### LEARNING TASK

**Use the two ABC articles above on the live cattle trade ban, as well as the references below to write a description of the power of interest groups on foreign policy.**

- ❑ [Grattan Institute: Wo's in the room? Access and influence in Australian politics.](#) Go to p.71 and read the case study on *Blocking reforms that have broad support – climate change*.
- ❑ [The Guardian: Australian farmers call for separation between foreign relations and trade ties with China](#)

## The effect on Australian foreign policy of economic conditions

The FPWP identified global moves towards protectionism as a threat and a challenge to Australia's economic interests. Another impact can be as a result of changes in the value of the Australian dollar; if it rises too much against other currencies, it makes our goods and services more expensive for overseas buyers. Fluctuations in demand for our products in other countries can also affect our trade and our ability to negotiate favourable terms. Economic fluctuations caused by Brexit has

similar impacts on our foreign economic policy. In April this year, UK GDP fell by 20%, 20 times worse than any monthly fall during the 2008–09 global financial crisis. As Davison and Markovic Khaze argue in a recent Lowy article, “If the UK’s post-Brexit economic performance remains consistently below average, this is likely to impact Britain’s outward investment position in Australia considerably”. And this may also affect Australia’s ability to negotiate a Free Trade Agreement with the EU.

The global pandemic has created conditions of extreme economic uncertainty. The effect on Australia’s foreign relations will be quite complex. John Edwards, a Senior Fellow at the Lowy Institute and an Adjunct Professor with the John Curtin Institute of Public Policy at Curtin University, argues that “Australia’s increasing integration into the East Asia economic community offsets the drag from the major advanced economies, but the US–China quarrel and the dislocation of global trading and investment relationships it threatens, heightens the tension between Australia’s economic and security choices.”<sup>11</sup> (See final Lowy article listed below).

But domestic economic conditions also play a significant role in the formulation of foreign policy. If there is economic hardship as a result of drought or floods or bushfires, this puts pressure on the money available for development assistance (aid), for example. Additionally, the characteristics of Australia’s labour market can also impact foreign policy; Australia’s 15 year preference for filling agricultural labour shortages with overseas backpackers has implications for our foreign policy goal of fostering the stability and prosperity of our Pacific neighbours. And the very common exploitation of international students in terms of ‘wage theft’ will affect Australia’s international standing.

## READING

- ❑ [CHAPTER 4 FPWP, Our Agenda for Opportunity](#)
- ❑ [Lowy: Australia needs the workers, the pacific needs the jobs](#)
- ❑ [Lowy: Europe’s big bonds and the prospect of a boom for Australia](#)
- ❑ [The Guardian: 'It's everywhere': the foreign students exposing Australia's wage theft epidemic](#)
- ❑ [Lowy: The Costs of Covid: Australia's Economic Prospects in a Wounded World](#)

## Chapter 4: Key foreign Policy Instruments (FPis)

### KEY

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**CONSIDER:** How do you analyse the key instruments of foreign policy? The best way is to try to evaluate whether they are used effectively and successfully. This involves a consideration of the extent to which they achieve their aims and the key aims of Australian foreign policy are that the national interests / key objectives should be attained!

Foreign policy instruments are tools that governments can use to achieve their key foreign policy objectives: national security, economic growth and trade objectives, positive regional relationships and a good international reputation. Generally speaking there are four key tools available to governments to achieve their national interests. They are diplomacy, trade, military instruments and foreign aid. These four instruments / tools can be conducted within a bilateral and / or a multilateral framework.

### Bilateral

As explained in Chapter 1, bilateral doctrines of foreign policy focus on the relationship between two states in the belief that this will be the most effective framework for the achievement of common goals. Thus, the foreign policy instrument of *diplomacy* can be used to negotiate trade or security agreements between two states, where the states concerned are aiming for a mutual benefit. An example of this is the US Alliance (the ANZUS Treaty which is solely between the USA and Australia for security purposes, or the Australia-Hong Kong Free Trade Agreement (A-HKFTA) which came into force in January 2020. Bilateral diplomacy involves two countries dealing directly with each other.

**diplomacy** refers to the interactions between states and other global actors, often through the use of negotiations and discussions, but also through public or private communications of any sort. It is a non-violent means of achieving national interests, though it may still be coercive.

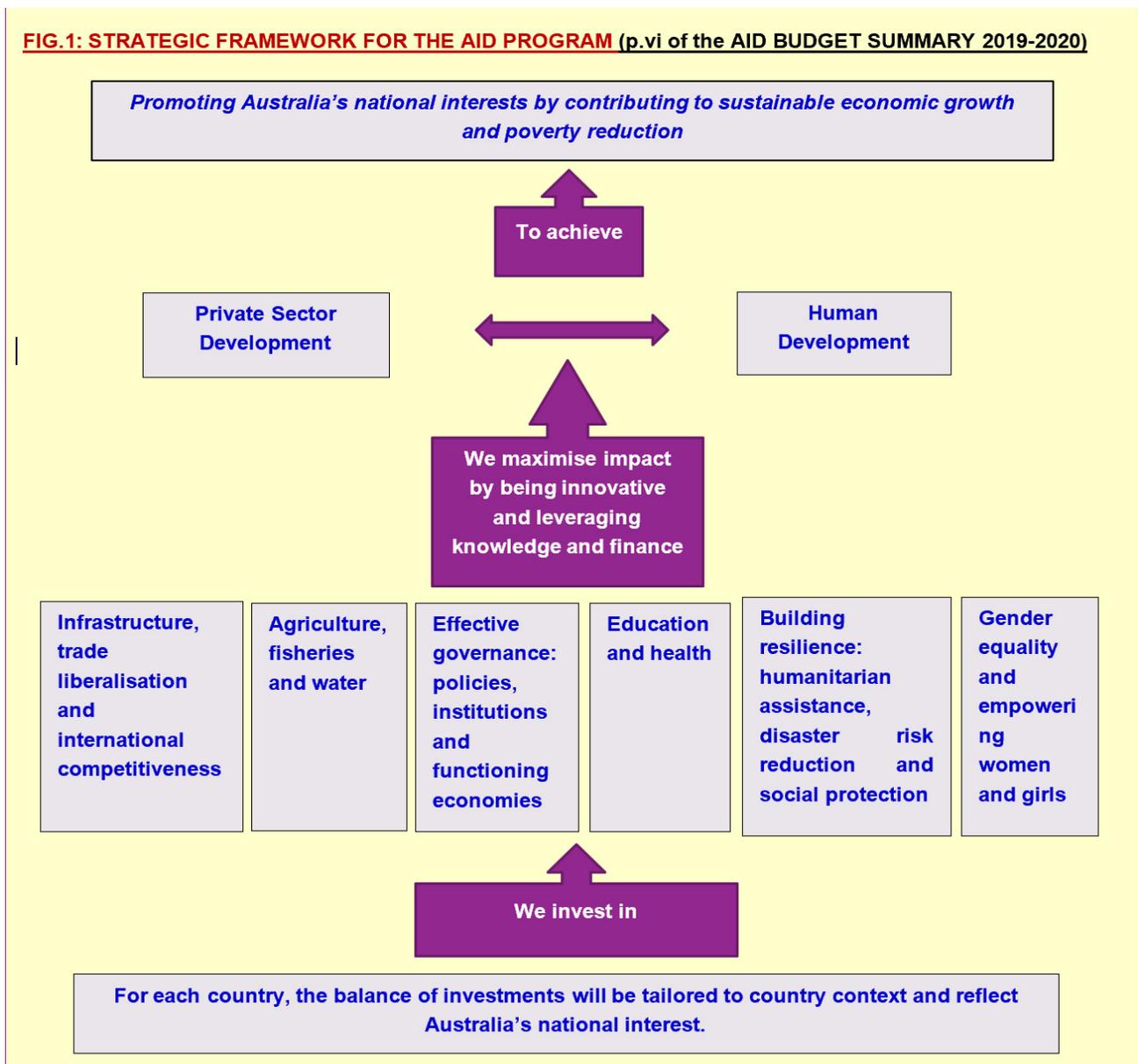
Multilateral diplomacy, by contrast, is the practice of involving *three or more states or parties* in achieving collective solutions to common problems or goals. This is usually accomplished by states becoming members of intergovernmental organisations such as the United Nations (UN) or the International Monetary Fund, or the European Union, where the founding charters of those organisations lay out the common aims, roles and powers of the organisation as well as the obligations of the member states. Membership of a multilateral regional grouping like Australia Pacific Economic Cooperation (APEC) or an international forum like the G20, advances Australia's economic prosperity, regional relations and international standing. Membership of the UN advances our national security and our position as a 'good global citizen' as it provides the means of addressing issues such as climate change, peace-keeping and poverty.

Most states, including Australia, use a combination of both bilateral and multilateral approaches to achieving goals.

## F

Australia is a member of the Development Assistance committee of the Organisation for Economic Cooperation and Development (OECD). This means we are one of the 30 member countries who are considered to be donors of development assistance (Aid) and who are committed to the target of spending .7% of GNI on foreign aid. We are also a signatory to the 2030 Agenda for Sustainable Development which commits member countries to the achievement of 17 Sustainable Development goals (SDGs) by 2030. Article 43 of this international law also supports the .7% target. Australia currently allocates about .20% of its GDP to Foreign Aid.

According to the [Australian Aid Budget Summary 2019–20](#), the Strategic Framework for Australia’s aid program is guided by Australia’s **national interests** to achieve both human development and private sector development.



To read more about Australia’s use of aid as a foreign policy instrument see the case studies on the SDGs and foreign aid to the Pacific in Chapter 5 - the Economic Development of the Region.

## F A

Australia is a member of a large number of multilateral organisations, including the UN, the World Trade Organisation (WTO), the International Monetary Fund (IMF), the World Health Organisation (WHO), the G20 and more. These organisations help Australia achieve key foreign policy objectives. Go to [DFAT: International organisations](#) one of these and research how it helps serve Australia's national interests.

We are also a party to a number of important formal alliances, known as 'regional architecture', which promote our economic and security interests, such as the ASEAN Regional Forum (ARF), APEC and the Pacific Islands Regional Organisation and we are a dialogue partner for others, such as ASEAN. Visit [DFAT'S Regional Architecture page](#) and research one of these.

Finally, we are party to 14 bilateral free trade agreements (see case study in the chapter on Challenges) and we are a depositary for a number of important multilateral treaties including ANZUS. We also have bilateral treaties with other countries regarding extradition, investment and health cooperation.

## Humanitarian and emergency assistance

See the case studies in Chapter 5.

## Peace

Australia has had a long involvement with United Nations peace-keeping missions and they have generally been an effective way to enhance our national interest of promoting us as good global citizens. However, despite being the 11<sup>th</sup> largest contributor to the UN's peacekeeping budget, our commitment of troops and personnel has decreased; currently we have only 34 personnel involved in any peace-keeping mission.

Read the following articles carefully and then answer the question:

- [DFAT: Peacekeeping and Peacebuilding](#)
- [LOWY: The Shape of Australia's Future Engagement with the United Nations](#)
- [ASPI: How ready is Australia for peacekeeping operations?](#)

## QUESTION

Evaluate the effectiveness of Australia's peace-keeping operations in the achievement of our national interest. (8 marks)

## Overseas

Australia sends many delegations overseas to represent our perspectives and our interests.

### LEARNING TASK

Go to the FPWP's section on [Foreign Policy in Action](#) and choose one or two case examples from the 'Representation' page to see how delegations help to achieve our key objectives.

[Austrade](#) also organise overseas trade delegations consisting of members of parliament and Australian businesspeople.

## Chapter 5: Key Challenges Facing contemporary Australian

### KEY SKILLS

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### INTRODUCTION

Generally speaking, there are many challenges to foreign policy making, just as there are to domestic policy-making, although *perhaps* there are fewer **political** challenges as a result of the concentration of foreign policy formulation in the hands of the Executive.

However, there are other internal challenges, **chiefly financial** ones. To begin with, the Department has to compete with other policy areas for funds; see the article from the University of Melbourne entitled [Australia's Incredible Shrinking Department of Foreign Affairs and Trade](#).

Other domestic events and issues are also going to make it increasingly difficult for the Department to do its work: last January's bushfires had a global audience, which then impacted areas such as tourism and educational services.

It is a similar story with the Covid-19 pandemic, which poses both internal and external challenges to Australian Foreign Policy formulation and implementation.

Read: [AIIA: Australia's Foreign Policy in Practice \(Part One\)](#)

As mentioned earlier in this textbook, geopolitical shifts such as the rise of China and shifting alliances in the Indo-Pacific also introduce a new set of challenges. In response, PM Morrison has decided to maintain our defence spending and focus on our ability to have a long range strike capability. (See this article from the Lowy Interpreter on [Morrison's Defence Reset](#)).

There is also the continuing challenges associated with Non-state actors such as terrorist groups, displaced people, climate change and other environmental problems and economic instability.

For a broad canvassing of challenges facing Australian Foreign Policy, read this extract from ['Navigating the New International Disorder'](#) from the Australian Institute of International Affairs 'World Affairs Series 2011 – 2015.

**The rest of this chapt**

## G

The 2017 Foreign Policy White Paper charts a clear course of actions for Australian foreign policy. As previously mentioned, the paper has a strong focus on Australia's location within the Indo-Pacific region and discusses the challenges that global and regional conflicts have to Australia's security and prosperity. Scott Morrison's recent commitment of \$270 billion over the next decade on defence capabilities also highlights a more aggressive strategy that aims to combat the rising tensions and conflicts within the Indo-Pacific region.

Morrison's speech to launch the 2020 Defence Strategic Update summarises the impact that the emerging regional and global conflicts could have to Australia's national interests. "The Indo-Pacific is the epicentre of rising strategic competition. Our region will not only shape our future, increasingly though, it is the focus of the dominant global contest of our age. This is the setting for it. Tensions over territorial claims are rising across the Indo-Pacific region, as we have seen recently on the disputed border between India and China, and the South China Sea, and the East China Sea. The risk of miscalculation and even conflict is heightening" Scott Morrison.

### LEARNING TASK

**Read Chapter 2 of the 2017 Foreign Policy White Paper and PM Scott Morrison's launch of the 2020 Defence Strategic Update.**

- ❑ [2017 Foreign Policy White Paper: A Contested World](#)
- ❑ [Launch of the 2020 Defence Strategic Update](#)

## CASE STUDY – The Strait of Hormuz

In 2019, Scott Morrison deployed 200 Defence Force personnel, warships and surveillance aircrafts to the Persian Gulf to combat Iran's actions in the Strait of Hormuz. The Strait of Hormuz has been described as the most important chokepoint for the world's oil supply, with 20 per cent of the global oil supply flowing through the narrow strait. Destabilising behaviour in the Strait of Hormuz was described by Morrison as being a major threat to Australia's national interests as about 15 – 16% of crude oil and 25 - 30% of refined oil destined for Australia comes from the region.

### READINGS:

- [What is the conflict between the US and Iran about and how is Australia involved?](#)
- [Australia to send warships and Defence personnel to Middle East to support US](#)

### QUESTIONS:

- Describe the conflict in the Strait of Hormuz (3 marks)
- Discuss the extent to which has Australia's actions in the Strait of Hormuz upheld Australian foreign policy objectives? (5 marks)

## CASE STUDY – Violence in Rakhine State, Myanmar

often been described as the most persecuted people in the world. There have been long standing grievances between the Rohingya Muslims and Rakhine Buddhists. Although they have lived in Myanmar's Rakhine State for centuries, the ethnic Muslim minority are considered as "Bengali" meaning non-indigenous or illegal and as such, have faced ongoing discrimination and persecution from both the community and the Government.

In 2016, Myanmar security forces conducted "area clearance operations" that aimed to recover weapons and capture militants from ongoing conflict in northern Rakhine State. However, the such operations saw major human right violations being perpetrated against the Rohingya. In 2017, the OHCHR released a report documenting restrictions of movement, killings, disappearances, beatings, rape, and sexual violence during the operations. The report claimed that since 9 October 2016, 90,000 Rohingya suffered internal or cross-border displacement, with around 66,000 of those crossing the border into Bangladesh. Australia has responded by working closely with humanitarian partners to provide assistance to displaced people in both Bangladesh and Myanmar. In addition, Australia has committed \$51.5 million towards the crisis.

### READINGS:

- [Violence in Rakhine State, Myanmar](#)
- [Australia needs to stand up and help as the situations worsens](#)
- [Interviews with Rohingyas fleeing from Myanmar since 9 October 2016 \(OCHCR\)](#)
- [Australia's response to the Rohingya human rights and migrant crisis](#)

### QUESTIONS:

- Describe the persecution of the Rohingya in Myanmar (3 marks)
- Explain how the conflict in Myanmar could be described as a challenge to Australian foreign policy (4 marks)

## CASE STUDY – South China Sea

China Sea. China has been increasingly assertive over its claims within the region, intensifying its military presence in addition to placing missiles in the region and fortifying man-made islands.

Australia has adopted a largely neutral stance on the conflict. It has called upon states to respect the 2016 international court ruling on the status of the disputed areas of the South China Sea and have further called on all states to respect the rules-based international order. In addition, although Australia has not conducted freedom of navigation operations similar to those of the United States, since 1980 Australia has conducted airborne surveillance operations, called Operation Gateway.

However, in recent times Australia has stepped up its concern to the ongoing conflict. In July 2020, it wrote a letter to the United Nations (UN) declaring China's claims to the South China Sea as "inconsistent" with international law". The declaration stated: "Australia rejects China's claim to 'historic rights' or 'maritime rights and interests' as established in the 'long course of historical practice' in the South China Sea."

Australia has significant interests in the South China Sea, both economically and geopolitically. Economically, the South China Sea is critical to trade and the free navigation of commercial vessels. Geopolitically, the South China Sea has increased tension between the United States and China. The South China Sea is important to the US because of China's challenge to the liberal rules-based order, which America has promoted since the second world war.

### READINGS:

- [South China Sea](#)
- [Territorial disputes in the South China Sea](#)
- [Australia's declaration to the United Nations](#)

### QUESTIONS:

- Describe the conflict in the South China Sea (3 marks)
- Evaluate one key challenge facing contemporary foreign policy (7 marks)

## Humanitarian and natural

According to the Department of Foreign Affairs and Trade (DFAT), humanitarian crises and natural disasters are increasing in frequency. DFAT reports that since 2005, natural disasters have killed more than 700,000 people globally and left nearly 23 million homeless. This has been most prevalent in the Indo-Pacific region, which is the most disaster-prone region in the world according to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA). Australia's location in the Indo-Pacific region means it is expected to lead and play a major role in times of humanitarian crises and natural disasters.

DFAT is the leading body responsible for the Australian Government's response to humanitarian crises and natural disasters. DFAT do this by “building the capacity of the national government and civil society to respond to disasters. [They] also work with experienced international partners to prepare for and respond to disasters in support of partner governments, including other donors, United Nations agencies, the International Red Cross and Red Crescent Movement and non-government organisations” (DFAT 2020). DFAT’s Humanitarian Strategy provides a framework to how Australia responds to humanitarian crises and natural disasters. Our response is divided into three categories:

- Australian personnel deployed to provide humanitarian expertise;
- lifesaving humanitarian relief supplies;
- partnerships with local and international humanitarian organisations that have capacity to deliver support in line with Australia's humanitarian priorities.

However, the Australian Council for International Development (ACFID) in its [2018 – 2019 Federal Budget analysis](#) states: “It is further disappointing that this year’s budget contains no increase for the Humanitarian Emergency Fund which remains at \$150 million. The Humanitarian Emergency Fund enables Australia to respond quickly, flexibly and generously to emerging crises and spikes in humanitarian need. With the number and scale of disasters increasing, including in the Indo-Pacific where Australia is best placed to respond, this flatlining of the emergency fund may compromise Australia’s ability to provide timely and generous assistance. This year’s budget sees a \$3 million reduction for Disaster Risk Reduction, Preparedness and Response.”

### LEARNING TASK

**Explore the following links and summarise how Australia’s approach to humanitarian crises and natural disasters either promotes or undermines Australia’s key foreign policy objectives.**

- [2018 Year in Review \(OCHA\)](#)
- [Humanitarian Strategy \(DFAT\)](#)
- [The Indo-Pacific region \(OCHA\)](#)
- [Humanitarian preparedness and response \(DFAT\)](#)

## CASE STUDY – The Manaro Vouï volcano

The violent Manaro Vouï volcano on Vanuatu's Ambae Island has erupted three times since 2017, forcing people to flee their homes. In response, the Government of Vanuatu declared a state of emergency on 12 April 2018 and ordered the immediate evacuation of the entire population of Ambae. In support of the evacuation, Australia committed a third package of assistance, bringing Australia's total assistance to those affected by volcanic activity on Ambae to \$5.55 million. The assistance provided included the following: supporting to the Government of Vanuatu for logistics; provision of health and education services and emerging infrastructure needs; supporting to the Vanuatu Police Force to bolster their capacity to maintain stability on Maewo; and funding local and Australian NGOs with a focus on protection, psychosocial support, livelihoods, shelter and early recovery.

### READINGS:

- ❑ [Australia's humanitarian assistance to Vanuatu](#)
- ❑ ['When to Ambae'? Volcano-hit islanders long for home – in pictures](#)

## CASE STUDY – Tropical Cyclone Winston

Tropical Cyclone Winston is the strongest tropical cyclone ever recorded in the southern hemisphere. The Category 5 cyclone caused widespread damage in Fiji in 2016, causing 42 deaths and affecting more than sixty per cent of the population of Fiji (about 540,000 people). The Australian government provided \$35 million in assistance to Fiji including \$20 million dedicated to recovery and reconstruction; \$10 million dedicated to early recovery; and \$5 million dedicated to life saving relief.

### READINGS:

- ❑ [Development assistance in Fiji](#)
- ❑ [Cyclone Winston: tens of thousands homeless in Fiji a week after storm](#)

## CASE STUDY The Ebola Crisis

The 2014 – 2016 Ebola outbreak in West Africa was the largest outbreak of the disease since its discovery in 1976, killing a total of 11,325 people. The Prime Minister at the time, Tony Abbott, was heavily criticised for not sending medical experts to help contain the Ebola Virus in West Africa. Shadow Minister for Foreign Affairs, Tanya Plibersek, described Abbott's actions as "beyond belief". The Australian Medical Association (AMA) also condemned Abbott with the President, Brian Owler, stating "I don't think it is time to put our heads in the sand and suggest that Australia should shut its doors and just pretend the problem is a West African problem and let other nations handle the problem by themselves".

### READINGS:

- ❑ [2014 – 2016 Ebola Outbreak in West Africa](#)
- ❑ [Ebola: Tony Abbott resists pressure to deploy medical specialists to west Africa](#)

**LEARNING  
TASK**

**Ensure you can answer the following questions in relation to  
Australia's response to humanitarian crises and natural disasters:**

- 1. Discuss the extent to which responding to humanitarian crises and natural disasters is in Australia's national interests (6 marks)**
- 2. Critically evaluate Australia's response to humanitarian crises and natural disasters (6 marks)**

## **Threat terrorism**

Global Terrorism has many avenues for policy-making and implementation and it cuts across a number of government departments – Home Affairs, the Attorney General's Department, Department of Defence, Foreign Affairs and Trade and others. It also concerns the specialised agencies of government: ASIO, Australian Federal police and the Defence Signals Directorate, for example.

Australia has been involved since the Second World War in the joint intelligence-sharing operation 'Five Eyes', comprising the USA, Canada, New Zealand, Australia and the United Kingdom, which plays a significant role in countering terrorist threats globally. We have been involved in joint military operations to fight Al Qaeda and ISIS and we have a strong commitment to international counter-terrorism initiatives, such as our membership of the [Global Counter Terrorism Forum](#).

According to DFAT's Counter-Terrorism Branch, their role is to:

- Ensure a comprehensive policy approach to combating terrorism internationally, including by recommending to Ministers priorities for international counter-terrorism engagement
- Build and maintain international links by leading negotiations on counter-terrorism cooperation and holding regular consultations with partner countries
- Support and coordinate capacity-building initiatives by Australian agencies
- Support and develop international initiatives that build resilience against violent extremist groups and build social cohesion
- Support Australia's security interests through effective international approaches to managing foreign terrorist fighters
- Coordinate efforts to ensure Australia's effective implementation of its obligations under United Nations counter-terrorism instruments
- Manage the listing of individuals and organisations under Australia's terrorist asset freezing regime

## CASE STUDY ISIS RELATED ATTACKS IN THE REGION

One of the greatest challenges posed to our foreign policy resides in the ability of global terrorist movements to infiltrate and destabilise the Indo-Pacific. Indonesia has the largest Muslim population in the world and we have had a number of joint programs with them to help combat the influence of Al Qaeda affiliated groups. We have also been affected by the ability of groups like ISIS to recruit foreign fighters via the Internet and we have suffered some attacks by Islamist terrorist groups on Australian soil.

The Philippines also presents a particular concern, especially with the recent announcement by President Duterte that the US-Philippines Visiting Forces Agreement will be terminated. There is significant terrorist activity in the Philippines, the most recent in August of this year (2020), when a motorcycle bomb exploded in Jolo in the Southern Philippines, killing 14 people and wounding at least 75.

On 23 May 2017, pro-ISIL militants attacked Marawi City leading to a five-month siege and the displacement of more than 360,000 people. Since the Marawi crisis, Australia has provided \$24 million to the Philippines to support the response, recovery and long-term peace building efforts for Marawi.

### READINGS:

- [FPWP CHAPTER 5: Countering terrorism and violent extremism](#)
- [DFAT: Counter Terrorism](#)
- [DFAT: Improving Conditions for Peace and Security in the Philippines](#)
- [ABC NEWS: 14 killed, 75 wounded in bomb attacks in south Philippines](#)
- [Philippines Embassy: Australia Boosts PNP Efforts to Combat Terrorism](#)
- [Lowy: Indigenous roots of the “first” Filipino suicide bombing](#)

### LEARNING TASK

**Investigate Australia’s aid program to Indonesia to see what counter-terrorism measures have been put in place since 2010.**

Use [Joint Statement between The Government of the Republic of Indonesia and The Government of Australia](#) (February 2020)

AND

[ASPI: A powerful partnership to counter terrorism: Australia and Indonesia](#)

### QUESTION:

**Evaluate Australia’s response to the challenge of Global and regional terrorism. (6 marks)**

## Climate change and environmental issues

The Climate Council define climate change as “as any change in the climate, lasting for several decades or longer, including changes in temperature, rainfall or wind patterns”. Although earth’s climate has changed throughout history, in recent times, earth has experienced significant changes to its climate caused by human activity. Scientists argue that since the pre-industrial period, earth’s temperature has risen 1.1°C. Although this may not seem significant, scientists have linked this rise in temperature to disastrous environmental impacts. For example, in Australia alone we have experienced bushfires, floods and droughts. The Climate Council further link this rise in temperature to more intense and longer-lasting heatwaves; greater risk and severity of bushfires; increases frequency of extreme weather events; rise in sea levels leading to flooding and erosion; changes in air pollution, air-borne allergens and vector-borne diseases; and increased pressure on emergency and health systems. The Intergovernmental Panel on Climate Change (IPCC) have revealed there will be further damage if we fail to limit the global temperature to 1.5°C.

### LEARNING TASK

**Explore the following links and ensure you can answer the questions below in relation to Australia’s response to climate change and environmental issues:**

- **What is climate change?**
  - **How does climate change differ to global warming?**
  - **Why is climate change a key challenge to Australian foreign policy?**
  - **Is it in Australia’s national interest to address the challenges of climate change?**
- 
- ❑ [Climate change performance index](#)
  - ❑ [What is climate change and what can we do about it?](#)
  - ❑ [Impacts of 1.5°C global warming on natural and human systems](#)

There has been a long-running debate about Australia’s approach to climate change. As one of the world’s biggest per capita greenhouse gas emitters, Australia has been ranked 56<sup>th</sup> in the Climate Change Performance Index (CCPI). The CCPI have given Australia a *very low* rating due to its lack of progress toward climate change. Despite this, Prime Minister Scott Morrison has defended his government’s stand on climate change maintaining it is on course to meet its 2030 commitments under the Paris Agreement.

Over the last two decades, there has been a national desire to address climate change, which has been revealed by numerous opinion polls. In addition, both of the major parties have attempted to

address climate change and environmental issues. However, the Australian Parliament has proved itself unable to reach a consensus, casting doubt over Australia's climate change policies.

**LEARNING  
TASK**

**Research and summarise the following policies the Australian government has formulated and implemented in response to climate change and environmental issues. To what extent have these policies addressed the issue of climate change and environmental issues?**

- **The Carbon Tax (2011)**
- **Direct Action (2014)**
- **The Paris Agreement (2016)**
- **The National Energy Guarantee (2018)**
- **Climate Solutions Package (2019)**

## **CASE STUDY - The Paris Agreement**

The Paris Agreement was adopted in 2015. Under the United Nations Framework Convention on Climate Change, states are required to put forth their best efforts to combat climate change through nationally determined contributions (NDCs). Australia has pledged to reduce its emissions by 26 to 28 per cent from 2005 levels by 2030. However, Australia's committed has largely been criticised, particularly for its use of carry over credits which it plans to use from the Kyoto Protocol - a move that a number of other countries have explicitly rejected.

### **READINGS:**

- [What is the Paris Agreement?](#)
- [Is Australia on track to meet its Paris emissions targets?](#)



- Watch the Four Corners episode [Climate of Change](#)**
- Watch the Four Corners episode [Is Australia on track to meet its Paris target?](#)**

### **QUESTION:**

- **To what extent has Australia upheld its agreement under the Paris Agreement?**

## CASE STUDY - Climate Solutions Package

On 25 February 2019, the Australian Government announced the Climate Solutions Package, a \$3.5 billion investment to deliver on Australia's 2030 Paris Agreement commitments. The initiatives within the package include: a \$2 billion Climate Solutions Fund; investments in a high-tech expansion of the Snowy Mountains Scheme, Snowy 2.0; funding for the Battery of the Nation Project in Tasmania and Marinus Link; and the development of a National Electric Vehicle Strategy. However, the Climate Solutions Package has been heavily criticised with many some arguing it does not include any serious policy efforts to combat climate change (Climate Action Tracker 2019).

### READINGS:

- [Climate Solutions Package](#)
- [Climate Action Tracker](#)

### QUESTION:

To what extent does the Climate Solutions Package address climate change?

## CASE STUDY - The Sustainable Development Goals (SDG)

The Sustainable Development Goals (SDG) were adopted by all United Nations Member States in 2015. There are 17 goals in total. Goal 13 (SDG 13) urges countries to take action to combat climate change and its impacts. According to the global SDG Index, Australia is the worst-performing country in the world in relation to this goal. The Sustainable Development Report labels Australia as 'stagnating' in the area of climate change, suggesting that there are major challenges that remain within the country.

### READINGS:

- [Australia's Sustainable Development Report](#)
- [Australia falls further in rankings on progress towards UN goals](#)

## SUSTAINABLE DEVELOPMENT GOALS



## CASE STUDY – Climate Action Tracker (CAT)

The following excerpt from Climate Action Tracker (CAT) summarises Australia's commitment to the Paris Agreement:

*While the federal government continues to repeatedly state that Australia is on track to meet its 2030 target “in a canter”, the Climate Action Tracker is not aware of any scientific basis, published by any analyst or government agency, to support this. The OECD has warned the Australian Government that it will not achieve its target without intensified mitigation efforts. It describes current climate policy as a “piecemeal approach”. Australia’s climate policy is further deteriorating, as it focusses on propping up the coal industry and ditches efforts to reduce emissions, ignoring the record uptake of solar PV and storage, and other climate action at state level. The Australian government has turned its back on global climate action by dismissing the findings of the IPCC Special Report on Global Warming of 1.5°C and announcing it would no longer provide funds to the Green Climate Fund (GCF). It will also continue to subsidise fossil fuel extraction and export, against the need to phase out fossil fuels, in particular coal, globally. There are no signs from the recently re-elected government that they intend to scale up climate action. If all other countries were to follow Australia’s current policy trajectory that we rate “Highly Insufficient”, warming could reach over 3°C and up to 4°C.*

### READINGS:

- [Climate Tracker](#)

### QUESTIONS:

- Explain how domestic policy in Australia has challenged our commitment to the Paris Climate Agreement?

### LEARNING TASK

**In 2017 the Foreign Affairs, Defence and Trade References Committee reported on the implication of climate change on Australia’s national security. Read the report below.**

[Implications of climate change for Australia’s national security](#)

- **What threat does climate change pose to Australia’s national security?**
- **What are the conclusions and recommendations made in the report?**

## Economic development of the region

Australia has a vested interest in the economic development of the region which it is located in. Economies within the region are co-dependent on one another, and thus the economic performance of a single country can affect the performance of Australia as a whole. This was evident in the 2017 Foreign Policy White Paper which clearly stated that aid to the Indo-Pacific was designed to strengthen Australia's security by enhancing economic prosperity in the region.

### LEARNING TASK

To get a good overview and understanding of the challenges posed by development issues in our region read [AIIA: Australia's Foreign Policy in Practice Part 2](#)

## CASE STUDY – FREE TRADE AGREEMENTS

The Department of Foreign Affairs and Trade define free trade agreements (FTA) as “an international treaty between two or more economies that reduces or eliminates certain barriers to trade in goods and services, as well as investment”. Australia has entered into 14 FTAs with both individual countries and groups of countries to further the ability of Australian primary producers to sell Australian products overseas. In addition to the direct economic benefits of FTAs to Australia, FTAs also contribute to the economic development of the region. This in turn can result in significant increases in the standard of living and overall wealth of a country. The most recent FTA agreement Australia has entered into is the Indo-Australia Comprehensive Economic Partnership Agreement (IA-CEPA) which entered into force on 5 July 2020. The IA-CEPA enables Australia and Indonesia to foster economic cooperation between businesses, communities and individuals between the two states.

### READINGS:

- [Free Trade Agreements](#)
- [Indonesia-Australia Comprehensive Economic Partnership Agreement](#)

### QUESTIONS:

1. Explain how Australia promotes the economic development of its immediate region (4 marks)
2. Discuss the extent to which FTA's uphold Australia's foreign policy objectives (5 marks)

## CASE STUDY – Foreign Aid to the Pacific

Australia's foreign aid budget totalled \$4.04 billion in 2019/20. Much of this money was redirected to fund Australia's push in the Pacific where a total of \$1.4 billion was pledged (35 per cent of the aid budget). Australia's renewed push to the Pacific is partly driven by the accumulating debts Pacific nations have accrued from China and others, which has increased in the region over the past decade.

Australia has traditionally been the most significant donor to the Pacific, but in 2017 China committed to spending more than four times as much as Australia. As such, Australia has increased its aid to the Pacific. In 2013/14, 21.1 per cent of the foreign aid budget was spent on the Pacific region. In 2019-2020 that figure had increased to 35 per cent.

According to some academics, this is a strategic decision in part to counter the influence of China in the region. "That's why you see a concentration of aid in our immediate region – Asia, the Pacific – and far less in Africa" (Jonathan Pryke). In addition to promoting national security, foreign aid can be used to further economic interests. By helping nations develop their economies, Australia's potential trading partners are expanded. The Australian National University (ANU) found that every additional \$1 Australia spent on foreign aid in Asia, resulted in \$7.10 in Australian exports (2017).

### READINGS:

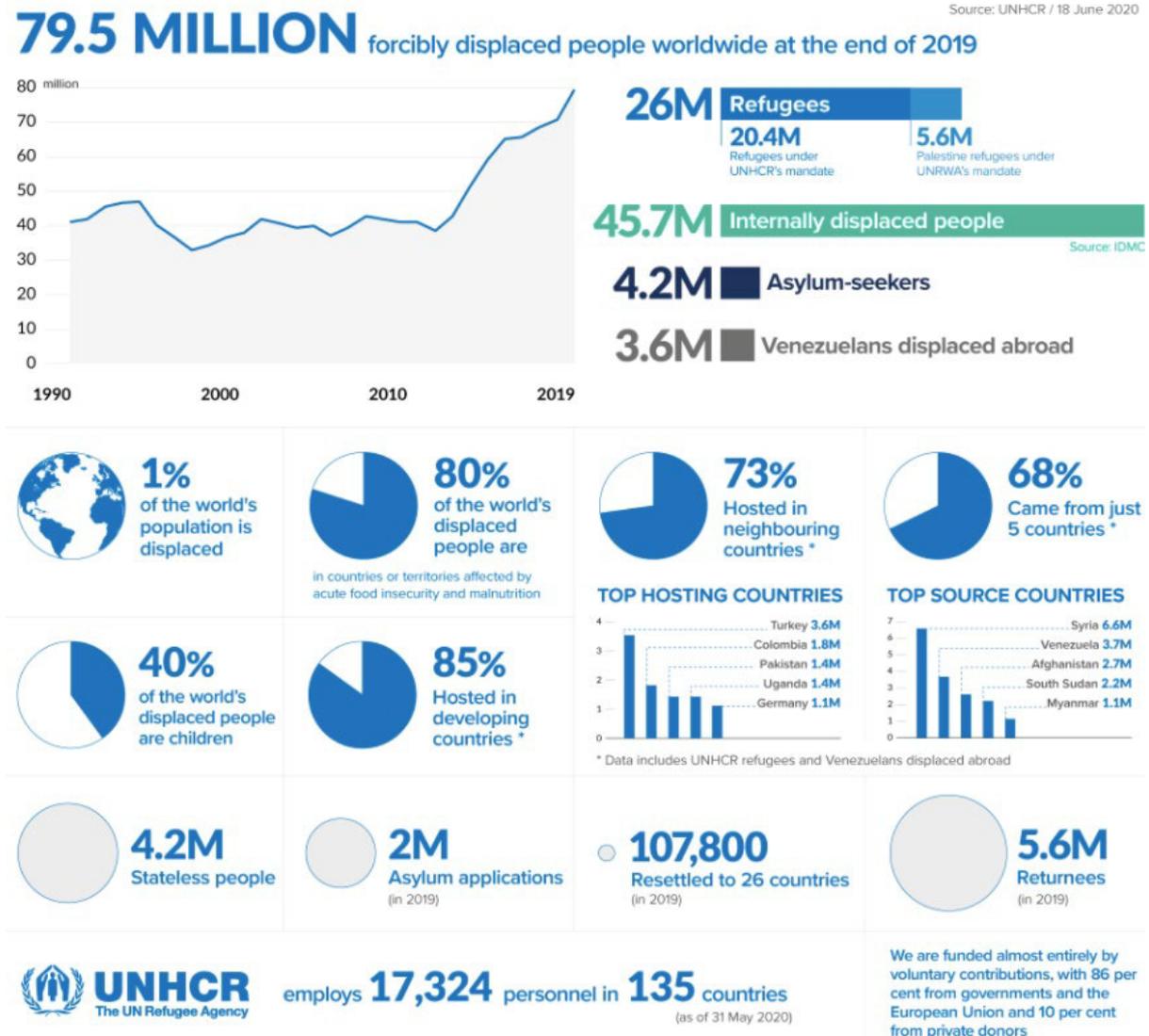
- ❑ [Budget 2019: the race to the bottom for foreign aid](#)
- ❑ [Aid study shows every \\$1 spent returns \\$7.10 in exports](#)
- ❑ ['Dereliction of duty': five charts that explain Australia's approach to foreign aid](#)

### QUESTIONS:

1. Explain how Australia's foreign aid budget contributes to the economic development of the Pacific region (4 marks)
2. Discuss the extent to which has Australia's economic development of the region contributes to the promotion of Australia's foreign policy objectives? (5 marks)

## Refugees, people smuggling and trafficking

At the end of 2019, an unprecedented 79.5 million people around the world had been forced from home by conflict and persecution. Among them, were 26 million refugees and 4.2 million asylum seekers. This is mainly a consequence of conflict. Almost half of all refugees are from three states including Syria, Afghanistan and South Sudan, all of which have experienced significant conflict. In addition to conflict, natural disasters such as floods, earthquakes, hurricanes, mudslides, are increasing in frequency and intensity and can also force people to seek refuge in other countries.



## Australia's response to refugees, people smuggling and trafficking in

In 1951 Australia signed the Refugee Convention, also known as the Convention Relating to the Status of Refugees. **The Refugee Convention outlines the rights of displaced people.** As Australia has signed the Refugee Convention, it is obliged to consider the claims of those people

who seek asylum in Australia. In addition, Australia is a major contributor to the programs of the High Commissioner for Refugees (UNHCR) which aims to provide international protection to refugees. Under the Humanitarian Programme, Australia accepts a certain number of people every year who are refugees or have special humanitarian needs. Australia's Humanitarian Program had 6,250 places in 2017-18 and rose to 18,750 places in 2018-19.

**LEARNING  
TASK**

**Read the following document and answer the questions below:**

**Asylum Seeker** refers to a person who has fled their home country to escape persecution and who is looking for protection and safety in another country as a refugee

**Asylum seekers and refugees: what are the facts?**

1. Explain the meaning of the term refugee as it applies to Australian foreign Policy (2 marks)
2. Outline one difference between refugees and asylum seekers (3 marks)
3. Explain Australia's response to refugees and asylum seekers (4 marks)
4. To what extent does Australia adhere to the Refugee Convention (5 marks)

**LEARNING  
TASK**

**Australia has responded to the issue of refugees, people smuggling and trafficking in a various ways. Research the following policies that Australia has implemented:**

- The Bali Process
- Mandatory detention
- Operation Sovereign Borders
- On-shore v. off-shore processing
- Refugee and Humanitarian Program

**Refugee** refers to a person who has fled their state due to fear of persecution in their home state and is determined (found) to be a refugee according to the 1951 Refugee Convention.

**People smuggling and people trafficking:**

\* People smugglers are individuals or groups who assist others to illegally enter a country.

\* People traffickers use coercion and/or deception, to force people to illegally enter a country (AFP).

## CASE STUDY – Operation Sovereign Borders

Operation Sovereign Borders was introduced following the election of the Abbott Government in 2013. It is a border protection operation led by the Australian Defence Force aimed at stopping maritime arrivals of asylum seekers to Australia. The operation has largely addressed the issue of people smuggling into Australia by implementing a "zero tolerance" posture towards illegal boat arrivals in Australia, in conjunction with mandatory detention. Any foreigner who attempts to enter Australia by boat without a visa is turned back to their point of departure, returned to their home state or transferred to another state.

Operation Sovereign Borders has been successful in protecting Australia's borders and has led to a sharp decline in the number of people seeking to reach Australia by sea and the number of lives lost at sea. As Peter Dutton has stated, "nobody has drowned at sea under Operation Sovereign Borders". However, some have stated that Operation Sovereign Borders has come at a price – a diminution of Australia's reputation as a good global citizen. In addition, many people have drowned at sea trying to reach Australia since Operation Borders started, however, as this has occurred in Indonesian waters, it is beyond the remit of the operation. The Australian Border Deaths Database maintains a record of all known deaths associated with Australia's borders since 1 January 2000, claiming there have been a total number of 2021 deaths from 2000 - 2019.

Many argue that Operation Sovereign Borders is in contravention with *Refugee Convention* as there may be legitimate refugees on board the boats. It is not clear if authorities make any attempt to ascertain this information. Despite the fact that Article 31 explicitly states that illegal entry by asylum seekers should not be punished, Article 31 also states that this only applies if they are coming "directly from a territory where their life or freedom was threatened". As these boats typically come from Indonesia, despite people fleeing other states, the Australian government argues that Article 31 does not apply.

### READINGS:

- ❑ <https://osb.homeaffairs.gov.au/>
- ❑ <http://www.sbs.com.au/news/interactive/border-related-deaths>
- ❑ <https://arts.monash.edu/border-crossing-observatory/research-agenda/australian-border-deaths-database>
- ❑ <https://www.abc.net.au/news/2016-06-27/fact-check-coalitions-record-on-refugees/7541522>

## CASE STUDY – The Bali Process

The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (the Bali Process) is a forum for policy dialogue, information sharing and practical cooperation to help the region address these challenges. It is co-chaired by Indonesia and Australia and has 45 member countries and 4 member organisations. It has raised regional awareness of the consequences of people smuggling and trafficking in persons and developed strategies and practical cooperative measures. The Seventh Bali Process Ministerial Conference in August 2018 achieved significant outcomes in addressing people smuggling, human trafficking and irregular migration in the region. Members agreed to the 2018 Bali Declaration, which reaffirmed the inaugural 2016 declaration, and commits members to enhanced cooperation on addressing human trafficking, improving information and policy sharing, promoting regular migration pathways, and countering criminal networks.

### READINGS:

- ❑ <https://www.baliprocess.net/>
- ❑ <https://dfat.gov.au/international-relations/themes/people-smuggling-trafficking/pages/the-bali-process.aspx>

## CASE STUDY The UN Human Rights Council

The working group on arbitrary detention, a key part of the UN's Human Rights Council, described Australia's detention of refugees and asylum seekers as unlawful. The working group recommended that Australia immediately release some of the refugees and asylum seekers, in addition to paying them compensation and other reparations for their unlawful detention. Despite criticism, the Australian government has defended its approach to refugees and asylum seekers claiming the detention regime "is administrative in nature and not for punitive measures".

### READINGS:

- [UN body condemns Australia for illegal detention of asylum seekers and refugees](#)

### QUESTION:

- Evaluate one key challenge facing contemporary foreign policy (7 marks)

# EXAM-STYLE QUESTIONS

1. Distinguish between the terms 'asylum seeker' and 'refugee' (3 marks)
2. Explain the role of the Cabinet in the formulation of foreign policy (4 marks)
3. Distinguish between 'bilateral doctrines' and 'multilateral doctrines' (3 marks)
4. Analyse the influence of parliament on the formulation of foreign policy (6 marks)
5. Discuss the extent to which the media influences foreign policy (4 marks)
6. Critically compare the influence of interest groups on the formulation and/or implementation of Australian foreign policy in comparison to domestic policy (5 marks)
7. Analyse the influence of economic conditions on the formulation and/or implementation of foreign policy (7 marks)
8. Outline three reasons why it is important that the Australian government promotes Australia's economic and trade interests (3 marks)
9. Evaluate one key instrument of contemporary Australian foreign policy that has been used to address the challenge of maintaining security within our region (5 marks)
10. Analyse the importance of peace-keeping operations and military involvement in achieving Australia's key foreign policy objectives (5 marks)
11. Traditionally, Australian foreign policy has been bipartisan in nature. Discuss the extent of bipartisan political support for contemporary Australian foreign policy (6 marks)
12. Critically evaluate Australia's response to one key challenge facing Australian contemporary Australian foreign policy (7 marks)

## EXAM-STYLE ESSAY QUESTIONS

1. 'The Prime Minister is, compared with other factors, the most significant influence on the formulation of Australian foreign policy.' To what extent do you agree? (20 marks)
2. 'National security and the promotion of economic interests have dominated Australian foreign policy at the expense of Australia's reputation as a good global citizen.' To what extent do you agree? (20 marks)
3. "... it is hard to find any significant role played in the formulation of Australian foreign policy by the Federal Parliament. In addition to lacking the capacity to contribute or a formal role in the foreign policy process, Parliament is constrained by the lack of interest... in foreign affairs by the majority of parliamentarians" (Alan Gyngell and Michael Wesley 2003). To what extent do you agree with this statement? (20 marks)
4. Discuss the key challenges facing contemporary Australian foreign policy. How has Australian foreign policy dealt with each of these challenges in recent years? (20 marks)
5. The key objective of Australian foreign policy should be good global citizenship rather than trade and national security.' To what extent do you agree?

# SAMPLE QUESTIONS AND RESPONSES

**NOTE:** There are a number of different ways that exam questions can be answered – these represent sample only and should not be considered as binding upon your responses!

## **1. Define the term foreign policy (1 mark)**

*The term foreign policy includes all actions made by a state in relation to other states or global actors in the international context. For example, the China-Australia Free Trade Agreement (ChAFTA) which came into force on December 20, 2015.*

## **2. Outline one key distinction between foreign policy and domestic policy (2 marks)**

*One distinction between foreign policy and domestic policy is their objectives. Domestic policy is public policy whose objective, actions and/or impact is primarily focused on the national interest of Australia as a whole and its people. For example, Morrison's \$158 billion in income tax cuts. This can be compared to foreign policy which is public policy whose objective, actions and/or impact focus on the relationship between Australia and other nations and involves one or more international bodies. For example, Morrison's commitment to redirect \$500 million in foreign aid towards renewable energy projects and disaster relief throughout the Pacific.*

## **3. Discuss the extent to which public opinion influences the formulation of Australian foreign policy (4 marks)**

*Public opinion does not exert significant influence over the formulation of Australian foreign policy. Foreign policy is often formulated by policy elites and the executive in confidence, due to reasons of national security, reactive timing and the use of policy experts, therefore the public has a limited role. For example, Scott Morrison sent a warship, a surveillance aircraft, and Defence Force personnel to the Persian Gulf to join an international effort to combat Iran's actions in the Strait of Hormuz, without the influence of public opinion. However, sometimes the government responds to the views of the public in relation to foreign policy, particularly if it relates to jobs, when Australian lives are threatened or there is a humanitarian issue sparking an emotive response. For example, Scott Morrison contributed an additional \$5 million in aid to assist Indonesia with the fallout from a devastating earthquake and tsunami that left more than 1,200 dead in October 2018.*

**4. Compare the role of the Prime Minister and Minister for Foreign Affairs in the formulation of Australian foreign policy (4 marks)**

*The Prime Minister and Minister for Foreign Affairs both represent the nation abroad. For example, Scott Morrison attended the G20 Summit in Osaka from 28-29 June 2019. Similarly, Marise Payne visited Bangkok from 31 July to 2 August 2019 to attend the East Asia Summit Foreign Ministers' Meeting, the ASEAN Regional Forum and the ASEAN-Australia Post Ministerial Conference. However, the Prime Minister wields far greater power in the formulation of foreign policy in comparison to the Minister for Foreign Affairs. The Prime Minister's personal view as to Australia's place in the world, as well as the international community's perception of Australia's place in the world, sets the tone of Australia's foreign policy. For example, Scott Morrison made the Pacific his signature foreign policy priority. In addition, the Prime Minister has wide discretionary powers with few, if any, constraints to make foreign policy as they choose. For example, Scott Morrison sent 200 personnel to the Strait of Hormuz. This can be compared to the Minister for Foreign Affairs who generally assists in the creation of foreign policy within their role as a minister responsible for a portfolio. For example, the minister has a role in the implementation of foreign policy decisions at a ground level through access to DFAT, which can feed into subsequent policy formulation. In addition, as the Minister for Foreign Affairs reports to the Prime Minister and is in fact usually selected by them, they wield less power in the formulation of foreign policy.*

**5. Outline one way in which Australian foreign policy undermines sovereignty (3 marks)**

*Sovereignty refers to a state having control over its borders and a recognised right to make laws pertaining to its population. Challenges to state sovereignty can come from entering into international agreements that dilute the state's ability to make its own laws. For example, ChAFTA includes a so-called Investor State Dispute Settlement (ISDS) mechanism that will allow Chinese corporations to sue Australia's government if a change in Australian law can be claimed to have harmed their investments in Australia.*

**END ISSUE 4**

# End Notes

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<sup>1</sup> Beeson, M and Hameiri, S., *'Navigating the New International Disorder'*, November 2016, OUP in association with AIIA.

<sup>2</sup> At a speech to Asialink in June 2019 Scott Morrison resurrected Robert Menzies' famous reference to Britain and the USA as our 'great and powerful friends' but redefined it to mean the USA and China. <https://asialink.unimelb.edu.au/stories/australia-and-the-indo-pacific-an-address-by-prime-minister-scott-morrison>

<sup>3</sup> <https://www.macrotrends.net/countries/AUS/australia/trade-gdp-ratio>

<sup>4</sup> <https://www.dfat.gov.au/sites/default/files/australias-goods-services-by-top-25-exports-2018-19.pdf>

<sup>5</sup> This is the case to the best of my knowledge, gleaned from the [Foreign Policy White Paper Public Consultation Summary Report](#))

<sup>6</sup> [Foreign Policy White Paper Public Consultation Summary Report](#)

<sup>7</sup>

[https://www.aph.gov.au/About Parliament/Parliamentary Departments/Parliamentary Library/FlagPost/2017/December/Foreign Policy White Paper Parliament](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2017/December/Foreign_Policy_White_Paper_Parliament)

<sup>8</sup> <https://poll.lowyinstitute.org/charts/attitudes-to-global-warming>

<sup>9</sup> <http://www.internationalaffairs.org.au/australianoutlook/foreign-policy-should-community-care/>

<sup>10</sup> <http://www.internationalaffairs.org.au/australianoutlook/abc-china-interference-investigations/>

<sup>11</sup> <https://www.lowyinstitute.org/publications/costs-covid-australia-economic-prospects-wounded-world#>