

MLP323 Constitutional Law

Exam Notes

Trimester 2, 2026 • SOURCE-ONLY EDITION

Prepared exclusively from the materials contained in the uploaded MLP323 ZIP archive. No external sources or gap-filling have been used.

How to use these notes

The uploaded exam instructions say the exam is problem-based, can assess all topics, and awards most marks for identifying issues, identifying material facts, and applying the law to those facts. Use these notes as an issue-spotting and application framework. Do not reproduce generic rule dumps: connect each proposition to the facts.

1. Exam strategy and master checklists

Exam format

- Two questions, 30 marks each; each may contain multiple parts.
- 2 hours 30 minutes total, including the extra time described in the exam instructions.
- No word limit. All topics may be assessed.
- The instructions emphasise application: issue + relevant material fact + legal rule/authority + analysis + conclusion.
- Case names can be given in identifiable shorthand; footnotes/AGLC format are not required.

Problem-question method

1. Read the precise question and identify what legal validity/procedure/power issue is actually being asked.
2. Break legislation into separate provisions where necessary; different provisions may depend on different heads of power or limits.
3. State the governing constitutional/statutory provision and the controlling test.
4. Identify the facts that matter to each element of the test.
5. Apply both sides where the materials support competing arguments.
6. Give a short, qualified conclusion and move on in proportion to the marks.

Master checklist — Commonwealth legislation

7. Identify the subject matter(s) and legal operation of each relevant provision. Practical operation may also be considered.
8. Find constitutional authority: s 51 or another source such as ss 81, 96 or 122; more than one head may support a law.
9. Ask whether there is a sufficient connection between the law and the head of power. Heads are read broadly/plenarily (Jumbunna); Engineers supports plain/natural meaning and rejects reserved-powers implications.
10. If within the core of a subject-matter power, purpose is generally irrelevant. Dual characterisation is permitted: validity follows if the law is with respect to at least one head (Murphyores).
11. If relying on an incidental aspect, ask whether the measure is necessary/appropriate to give effect to the core power (Grannall).
12. If relevant, consider s 61 + s 51(xxxix), s 96 grants, s 81 appropriation plus a separate substantive spending authority (Pape), or s 122.
13. Then test constitutional limits: express/implied rights or freedoms, Ch III/separation of powers, Melbourne Corporation, and any other limit raised by the facts.
14. Finally ask whether special legislative procedures apply, including ss 53, 54, 55, 57 or 128.

Master checklist — State legislation

15. Start with the State's general legislative power (for Victoria, s 16 of the Victorian Constitution as used in the unit materials) and any territorial connection issue raised by the facts.
16. Check constitutional limits: s 117, implied freedom, voting implications, Ch III/Kable, and intergovernmental immunity concerning Commonwealth executive capacities.
17. Check Victorian restrictive procedures, especially s 18 and s 85; use the restrictive-procedure roadmap below.
18. If both State and Commonwealth laws are valid and operative, test s 109 inconsistency: direct inconsistency and cover-the-field inconsistency.

2. Topic 1 — Australian constitutionalism and responsible government

- The Australian Constitution is treated in the unit as the fundamental law: Commonwealth, State and Territory legislation must be sourced to or compatible with it.
- The constitutional system combines Westminster traditions with a federal structure influenced by the United States.
- Responsible government links executive government to Parliament: Ministers exercise real governmental power and are politically accountable through Parliament.
- At Commonwealth level, the materials depict the chain as King → Governor-General → Ministers (including Prime Minister/Cabinet) → government departments/public service.
- The Crown is discussed as operating separately in right of the Commonwealth and each State in practical Australian constitutional arrangements.

Exam cue

When a problem concerns the Executive, distinguish the formal constitutional text from conventions/responsible government. The unit materials repeatedly stress that Ministers, rather than the monarch personally, exercise real governmental power.

3. Topic 2 — Parliament and legislative procedures

Commonwealth Parliament: procedure issues

- Chapter I establishes the Commonwealth Parliament. The unit materials focus on standard legislative procedure plus special procedures/limitations.
- For taxation and money bills, check ss 53–55 where raised by the facts. The 2025 exam marking guide states that under s 53 the Senate cannot amend a proposed law imposing taxation, but can reject it; otherwise the Senate has equal power except as provided by s 53.
- Section 57 provides the double-dissolution mechanism when the Senate rejects or fails to pass a bill twice with the required interval/process. The 2023 marking guide treats prolonged deferral without deliberation as potentially a “failure to pass”, while stressing that the Senate’s conduct, not individual senators’ anticipatory statements, is relevant (PMA case).
- Section 128 governs constitutional alteration by referendum; the topic materials also note that it is not the only mechanism by which constitutional text may be affected in the broader constitutional setting discussed in class.

Section 57 — exam sequence

19. House of Representatives passes the proposed law.
20. Senate rejects, fails to pass, or passes with amendments to which the House will not agree.
21. After the constitutionally required interval, the House again passes the proposed law.
22. Senate again rejects/fails to pass/passes with unacceptable amendments.
23. The conditions may create a double-dissolution trigger; then consider the remaining constitutional process if the question asks beyond trigger status.

Victorian restrictive procedures — roadmap

24. Is there an applicable restrictive procedure? The lecturer roadmap flags Victorian Constitution s 18 (referendum/special majority/absolute majority) and s 85.
25. Has the restrictive procedure been complied with? Identify whether the required referendum, special majority or absolute majority occurred.
26. Is the restrictive procedure legally effective? Step 1: is it a valid manner-and-form requirement regulating the law-making process rather than an attempt to deprive Parliament of law-making power? Key authority: West Lakes.
27. Step 2: is the later law one “respecting the constitution, powers or procedure of the Parliament” for Australia Act s 6? Focus on the substance of the later law. Key authority: Marquet.
28. Step 3: is the restrictive procedure itself entrenched? If steps 1–3 are satisfied, s 6 makes the manner-and-form requirement binding and the later bill has no legal effect unless complied with.

Carney categories reproduced in the lecturer roadmap

- Constitution of Parliament: abolition/restoration of a House; removal of Queen/representative as constituent element; royal assent; electoral districts; number of seats; voting system; parliamentary term; relationship between Houses.
- Powers of Parliament: laws imposing/repealing/amending a manner-and-form provision; parliamentary privilege; deadlock resolution.
- Procedure of Parliament: Standing Orders; Speaker; quorums; and certain laws concerning parliamentary powers.

Key authorities

McCawley: State constitutions do not automatically possess a special legislative status preventing ordinary amendment, including implied repeal, unless an effective restrictive procedure applies. Trethowan, West Lakes and Marquet are central to the restrictive-procedure/manner-and-form analysis in the unit materials.

4. Topic 3 — Characterisation of Commonwealth laws

Core test

Characterisation asks whether a Commonwealth law is “with respect to” a constitutional head of legislative power. The topic summary states the basic validity test as whether there is a **sufficient connection** between the law and the subject matter of the head of power. Analyse the rights, duties, powers and privileges the law changes, regulates or abolishes.

- Every relevant provision must be supported by at least one constitutional source.
- Heads of power are construed broadly/plenarily (Jumbunna).
- Engineers is the major interpretive turning point in the course: use the constitutional text in its plain/natural meaning and do not imply reserved State powers merely to cut down Commonwealth grants.
- Dual characterisation: a law can have more than one character; if one character falls within power, another character outside power does not itself invalidate the law (Murphyores).
- Purpose is generally irrelevant for subject-matter powers, even if the practical effect reaches activity outside the power. Purpose matters for purposive powers such as defence.
- Each head includes an incidental aspect. The checklist describes legislation on incidental matters as needing to be necessary/appropriate to give effect to the core power (Grannall).

Characterisation answer skeleton

29. What does the impugned provision legally do? Identify rights/duties/powers/privileges altered.
30. What constitutional head(s) might support that operation?
31. Is the connection direct/core, or is reliance placed on the incidental aspect?
32. If core: apply broad construction; usually disregard legislative purpose.
33. If incidental: explain why the measure is or is not necessary/appropriate to give effect to the core.