

Sir Anthony Mason Constitutional Law Essay Competition 2026 – Questions and Guidance

Questions and Guidance

Your essay should answer **one** of the four questions.

The following suggestions are provided as potential starting points for your essay. Your essay **need not** engage with all of the suggestions. Indeed, it is not advisable to attempt to do so, given the word limit. Your essay might not engage with any of the suggestions, provided that it **does engage with your selected question**.

Essays will be judged on their merits, including:

- Whether they contain a clear and sustained thesis;
- The extent to which they demonstrate legal knowledge and research;
- The strength of their critical analysis; and
- The quality of their communication.

Question 1: Constitutional Implications of Artificial Intelligence in Government

To what extent does the increasing use of artificial intelligence in government decision-making challenge existing principles of Australian constitutional law?

- Students may wish to explore whether algorithmic decision-making can be reconciled with the entrenched minimum provision of judicial review under s 75(v) of the Constitution.
- Consider whether the separation of judicial power under Chapter III, as established in *R v Kirby; Ex parte Boilermakers' Society of Australia* (1956) 94 CLR 254, constrains the delegation of decisional functions to AI systems.
- Discussion may include the implications for responsible government and ministerial accountability, with reference to the Royal Commission into the Robodebt Scheme (2023).
- Students should consider how existing constitutional principles, including procedural fairness and the duty to give reasons, might require adaptation for AI governance.

Question 2: The Aliens Power

Discuss the implications of NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs [2023] HCA 37 and the subsequent developments in Australian immigration detention law.

- Students should briefly outline the constitutional basis for the High Court's decision in NZYQ, including the application of the principle in Chu Kheng Lim v Minister for Immigration (1992) 176 CLR 1 and the overruling of Al-Kateb v Godwin (2004) 219 CLR 562, as context for analysing the decision's implications.
- Discussion may include the legislative response to NZYQ, including the Migration Amendment (Bridging Visa Conditions) Act 2023 (Cth) and the introduction of monitoring conditions and curfews for released detainees.
- Students may wish to consider the High Court's decision in EGH19 v Commonwealth [2026] HCA 7 regarding the constitutional validity of monitoring conditions, including ankle bracelets and curfews, imposed on released detainees.
- Consider the implications of Abdel-Hady v Commonwealth [2026] HCA 17 for civil liability arising from unlawful immigration detention, including claims for damages for false imprisonment.

Question 3: Constitutional Responses to Contemporary Challenges

Discuss a constitutional issue that should be addressed by the Australian Government that is currently impacting Australians. Analyse the relevant heads of power and evaluate what steps the Government could take to address this issue.

- Students should identify a specific constitutional issue and analyse it by reference to the relevant heads of Commonwealth legislative power, which may include the trade and commerce power (s 51(i)), the taxation power (s 51(ii)), the defence power (s 51(vi)), the external affairs power (s 51(xxix)), the freedom of religion provision (s 116), or other relevant constitutional provisions.
- Students should explain why the identified issue is significant and analyse the potential consequences for Australia and Australians if the issue is not addressed in the near future.
- Students should critically evaluate whether new legislation should be introduced, or existing legislation amended, to address the identified issue, providing reasons for their conclusion. Examples of issues that may be addressed include fuel security and supply chains (trade and commerce), taxation reform (taxation power), the intersection of religious practice and human rights concerns such as domestic violence or child protection (freedom of religion), or cost of living pressures (nationhood power).

Question 4: Constitutional Law in Transition

Discuss and evaluate the most significant constitutional development in Australia during 2025–2026.

- Students may wish to focus on key High Court decisions handed down in 2025–2026.
- Legislative or political developments with constitutional implications may also be discussed.
- Examples might include developments concerning implied freedoms, structural constitutional principles, executive accountability, or Indigenous constitutional recognition.
- Students should critically evaluate the significance of these developments in shaping the trajectory of Australian constitutional law.