

# CONSTITUTIONAL LAW GUIDEBOOK

## SECOND EDITION

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### CHAPTER 10

#### PROBLEM QUESTION

In 2014 the New South Wales Parliament enacts the *Engineers' Board Act 2014* (NSW). The Act incorporates a statutory body called the Engineers' Board of New South Wales. The Act requires that all engineers practising in New South Wales register with the Board, which levies a \$500 per annum subscription fee on engineers (approximately 500 in number) practising within the State, and also receives a further \$500,000 grant from the State Government.

The Board is governed by a Charter which states that it is a non-profit body, the purpose of which is to keep a register of engineers practising in the State, to make representations and comment on behalf of the engineering profession on matters of public interest, to promote the profession as a career among university graduates, and to provide to engineers opportunities for skills development. The Board holds an annual New South Wales Engineers Conference, which members may attend free of charge and at which local and overseas delegates deliver papers on the latest advances in engineering and on the management of engineering practices.

A series of specialist workshops on engineering techniques is usually held a few days before the conference. Attendance at these workshops costs \$200 per day, and from them the board earns in the region of \$50,000 per annum, which it uses to defray the costs of the Conference. The board also produces a series of booklets on professional skills development, which it distributes free of charge to its members and sends on request to university students who are contemplating engineering as a career.

Assume that the Commonwealth enacts the *Workplace Practices Act 2015* (Cth), s 4 of which states as follows:

#### 4 Application

This Act applies to

- (i) corporations which are foreign corporations, trading corporations, financial corporations, corporations incorporated in a Territory or holding companies of such corporations, and
- (ii) any person trading with a corporation as defined in paragraph (i).

Section 120 of the Act states as follows:

#### 120 Clerical employees

Any person employed by a corporation or a person to whom this Act applies shall be entitled to the benefits specified in Schedule I of this Act.

Schedule I lists certain benefits relating to maternity leave, superannuation and medical insurance benefits.

Mary owns a printing works which has contracts with the Engineers' Board. Her business is not incorporated. She employs her niece, Jane, as a typesetter. Jane claims the right to the benefits mentioned in Schedule I of the Act. Compliance with the Act would be financially ruinous for Mary.

Advise her as to her legal position.

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#### ISSUES TO CONSIDER

1. Is the Board a trading or financial corporation? What tests would you use to answer that question, and what facts about the Board would be important in doing so?
2. Assuming that it is, is it constitutional to apply s 4 to it?
3. Again assuming that the Board is a trading or financial corporation, is s 120 *intra vires* the corporations power in so far as the relationship between Mary and Jane is concerned?
4. Is there a role for severance here?