

CONSTITUTIONAL LAW GUIDEBOOK

SECOND EDITION

BEDE HARRIS

CHAPTER 13

There are two problem questions dealing with the broad area of taxation, grants and expenditure. Remember to look at procedural issues (dealt with in Chapter 3) when answering these questions. There is also an issue from Chapter 8 hidden in Problem 1!

PROBLEM QUESTION 1

Following a severe drought in the summer of 2014–15 caused by the El Nino phenomenon, representatives of rural industry lobby the Commonwealth Government for assistance. The Commonwealth decides to provide assistance by, among other things, encouraging decentralisation, and enacts the *Rural Assistance Act 2015* (Cth), parts of which provide as follows:

3 Rural Assistance Board

There is hereby established a Rural Assistance Board, which will administer assistance to applicants for drought relief.

4 Composition of Board

The Minister for Agriculture shall appoint members of the Rural Assistance Board.

5 Decentralisation levy

Any business the registered office of which is located within 50 kilometres of any State or Territory capital shall pay a levy equal to 5 per cent of its annual income.

The Commonwealth also enacts the *Drought Assistance Act 2015* (Cth), the essential provision of which provides as follows:

3 Drought relief

(1) The Commonwealth hereby appropriates for transfer to any State which enacts the Commonwealth Rural Industries Employment Award contained in Schedule I of this Act an amount calculated at a rate of \$10,000 per employee covered by the award per annum (or pro rata).

(2) Money appropriated to a State under subsection 1 of this section shall be paid by the State to employers in the amount of \$10,000 per employee employed by the employer for a calendar year (or pro rata), provided that the employer is resident in the State.

The award in Schedule I prescribes rates of pay, conditions of employment and procedures for mediation, conciliation and arbitration of industrial disputes covering workers employed in rural industries. Queensland passes legislation enacting the award into State law.

Sam lives in Sydney but owns a garage close to the city centre of Brisbane and a cattle station near Mt Isa in north-west Queensland. Advise him as to the constitutionality of the above scheme.

ISSUES TO CONSIDER

1. What power do you think the Commonwealth has used to enact the *Rural Assistance Act 2015* (Cth)? (Hint—it is not in the text of the Constitution).
2. What is the nature of the exaction in s 5?
3. Given the type of law it appears in and the geographical criteria attaching to its operation, what three sections of the Constitution might s 5 breach, and why?
4. What power has the Commonwealth relied on in enacting the *Drought Assistance Act 2015* (Cth)?
5. What restrictions are there on the way the Commonwealth uses this power, and how is Sam's location relevant to the validity of s 3(2)? What part of that subsection do you think the courts would sever?

PROBLEM QUESTION 2

Assume that you are legal adviser to Sydney Electronics Ltd, a manufacturer and retailer of electronic goods, including microprocessors. The Commonwealth enacts the Electronic Industry Workers Benefit Act 2015 (Cth) which contains the following provisions:

16 Application

This Act applies to trading and financial corporations.

17 Electronic Industries Board

- (1) Any corporation which manufactures electronic goods shall register with the Electronics Industries Board.
- (2) The register shall be maintained by the Minister for Industry.

18 Electronic Industries Levy

- (1) Every manufacturer registered under s 17(1) shall pay an annual levy in the amount of \$1000 per employee to the Electronic Workers Benefit Fund Ltd.
- (2) Distributions from the Fund will be determined by the managers of the Fund and shall be for the benefit of workers employed by manufacturers registered under s 17(1) of this Act.

19 Safety

The Minister for Industry may make rules governing the safety of employees employed by corporations registered under s 17(1) of this Act.

Advise Sydney Electronics Ltd as to its liabilities under the Act.

ISSUES TO CONSIDER

1. What power or powers do you think the Commonwealth has used to enact this law?
2. What is the nature of the exaction in s 18(1)?
3. What two provisions in the Constitution are breached by s 18 and why?