

CONSTITUTIONAL LAW GUIDEBOOK

SECOND EDITION

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CHAPTER 17

PROBLEM QUESTION

In a report on housing affordability, the Australian Productivity Commission states that a major reason why houses are so expensive in Australia is that State and Territory governments have been slow to develop land for house construction. The Commonwealth Government decides to remedy the situation. It registers a corporation called the Commonwealth Housing Corporation, which is wholly owned by the Commonwealth Government. It then enacts the *Housing Act 2015* (Cth), s 1 of which authorises the Commonwealth to employ people under the *Public Service Act 1999* (Cth) to run the corporation. Section 2 of the Act states that it applies to the Crown in right of the States. Section 3 of the Act provides as follows:

3 Exclusive right to develop land for residential purposes

The Commonwealth Housing Corporation has the exclusive right to develop land for residential purposes.

The economic consequence of the Act is that landowners on the periphery of major cities and towns in the States sell their land to the Commonwealth for development of infrastructure instead of to the States, and the States lose a significant income stream from the sale of developed land to builders.

In response, the Parliament of Victoria enacts the *Land Development Taxation Act 2008* (Vic), s 1 of which is stated to be binding on the Crown in right of the Commonwealth, and s 2 of which provides as follows:

2 Land development taxation

Taxes are imposed as follows:

- (a) A tax of 2 per cent on the assets of the Commonwealth Housing Corporation.

(b) A payroll tax on the Commonwealth Housing Corporation of \$500 per person employed by it.

Advise as to the constitutionality of the above legislation.

ISSUES TO CONSIDER

1. What powers do you think the Commonwealth has relied on in enacting the *Housing Act 2015* (Cth)?
2. On what ground could the States challenge the validity of the act? What test will be applied to determine whether their challenge is successful?
3. Upon what grounds could the Commonwealth challenge the validity of the *Land Development Taxation Act 2008* (Vic)?