

INTERGOVERNMENTAL IMMUNITIES:

STATE IMMUNITY FROM COMMONWEALTH LAWS

THE EARLIEST POSITION:

- State and Federal Governments were immune from each other's legislation.
- The Engineer's case however, rejected the doctrine of implied governmental immunity.

D'EMDEN V PEDDER (1904) 1 CLR 91

- A Commonwealth officer was held to be immune from having to pay tax on his salary under the Tasmanian Stamp Act. The court said at pg91:
 - ...When a State attempts to give to its legislative or executive authority an operation which if valid, would fetter, control or interfere with, the free exercise of the legislative or the executive power of the Commonwealth... And this appears to be the true test to be applied in determining validity of State laws and their applicability to federal transactions.
- NB The above does not apply if the Constitution provides otherwise.

DEAKIN V WEBB (1904)1CLR585

- Griffith CJ at 616 provided two reasons why Commonwealth officers were not to be subjected to State taxes:
 1. Such tax diminishes the recompense allotted to the officers of the Commonwealth.
 2. It interferes with the freedom of action of the Commonwealth in its transfer of officers from State to State.

FEDERATED AMALGAMATED GOVERNMENT RLY AND TRAM SERVICE ASSN. V NSW RAILWAY EMPLOYEES ASSOCIATION (THE RAILWAY SERVANTS CASE) (1906) 4CLR488.

- Here a Commonwealth award made under the Commonwealth Conciliation and Arbitration Act 1904 (Cth) was held not to bind the instrumentality of the NSW Govt, in relation to its employees.

BAXTER V. COMRS OF TAXATION (NSW) (1907)4 CLR 1087

- It was held that the state had 'a right to disregard and treat as inoperative any attempt by any other authority to control their exercise of power'. Of course, this would not apply if it was permitted by the Constitution itself.

EROSION OF IMPLIED GOVERNMENTAL IMMUNITIES (APPLICABILITY OF COMMONWEALTH LAWS TO STATES)

ENGINEER'S CASE.

- Here, implied governmental immunities (based on the Railway Servant's case) was to the effect that such immunities applied to WA state employers who should have been immune from a ruling by the Commonwealth Arbitration Court.
- HCA by a bare majority held that:
 1. Commonwealth heads of power should be interpreted according to their natural and ordinary meaning and should not in any way be limited.
 - a. Therefore there was no State immunity in this instance.
 2. A limitation to the power would only apply if such an implication followed necessarily or logically from the text.
 3. It was no longer necessary or logical for the courts to imply that state instrumentalities were immune from laws enacted under Commonwealth's conciliation and arbitration power s.51(xxxv).
 4. Therefore, if on a true construction Commonwealth legislation applied to the States, then that would be so.
 5. Obiter statements authorised exercise of reciprocal authority by the states (see pgs 260-61).

METHOD OF CONSTITUTIONAL INTERPRETATION ARISING FROM THE ENGINEERS CASE

ENGINEERS CASE:

- The salient facts of this case were a claim arose made by a union of engineers in the Commonwealth Court of Conciliation and Arbitration for an award relating to 843 employers across Australia.
- In Western Australia, the employers included 3 governmental employers. The central question was whether a Commonwealth law made under the "conciliation and arbitration" power (s.51(xxxv) of the Constitution) could authorise the making of an award binding those employers.
- The HC stated that the settled rules of construction in a written Constitution would be interpreted by rules laid down in the Privy Council. At pg 148 of the judgment they said:

S 96 GRANTS:

INTRODUCTION AND S96:

- The power to make grants by the C'wealth is clearly set out in s.96 of the Constitution which relates to the C'wealth's ability to grant financial assistance to the States 'on such terms as it thinks fit'. It is relevant to consider the wording of s.96 which provides:
 - During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, the Parliament may grant financial assistance to any State on such terms and conditions as it thinks fit.
- **It is important to note that the Federal Parliament may impose any terms and conditions on s.96 grants. These terms and conditions need not be related to those aspects on which the Federal Parliament has the power to make laws.**
- Grants power is used by the C'wealth to fund various state activities such as health, education, housing and transport.
- First uniform tax case (1942) asserted the Comm's rights to take away the states right that it had hitherto had to levy taxes.
- It was argued (at the time) during the war that taxes needed to be determined by a unified body (Comm).
- Grants replaced States ability to collect taxes.

LIMITATION OF S.99 ON 96:

- **It prohibits C'wealth from providing any law or regulation of trade, commerce or revenue giving preference to any one State over the other or to a part of a State over the rest of the State.**

DIFFERENT CATEGORIES OF GRANTS

1. **General purpose** grants. Provided to the States. These compensate States for their loss in income tax revenues
2. **Specific purpose** grants. Not in the scope of C'wealth's legislative powers, so used in C'wealth's specific policies implementation or furtherance.
3. **Special assistance** grants. To help out with financial inequalities amongst the States.