

Commonwealth Act regulating the State

1. Is the Cth Act valid under a **Head of Power**? (Scope or limits within HoP)
 - External Affairs
 - Red flag: treaty
 - Corporations
 - Red flag: a body
 - Financial
 - Red flag: Cth gives financial assistance to State
2. Are there any **implied limits** to Cth legislative power in the Cth Constitution which would prohibit the Cth Act from being constitutional?
 - State Inter-Governmental Immunities (IGI)
 - Red flag: Cth binding State; employment – *AEU*
 - Cth Separation of Power
 - Red flag: Judges & exercise of power, control orders, ex-parte, a body, tenure
 - Implied Freedom of Political Communication (IFPC)
3. Are there any **express limits** to Cth legislative power in the Cth Constitution which would prohibit the Cth Act from being constitutional?
 - S92: Freedom of Interstate Trade & Commerce
 - Red flag: taxes, fees, import/export of goods, national marketing schemes
 - S109: Inconsistency

State Act regulating the Commonwealth

- State's power to legislate is plenary
 - Are there any State or Cth Constl limitations/prohibitions on the plenary power to legislate? No substantive limits.
1. Is there a **restrictive procedure** that must be followed by the State legislature?
 - M&F provisions
 - Red flag: absolute majority, referendum
 2. Are there any **implied limits** to State legislative power in the Cth Const which would prohibit the State Act?
 - Cth IGI – all implied powers impact on States
 - Red flag: State binding Cth's exercise of capacities & functions
 - State Separation of Power
 - Red flag: state pmt vesting NJP in court, eligible judges
 - IFPC
 3. Are there any **express limits** to State legislative power in the Cth Const which would prohibit the State Act?
 - S92
 - S109

