Topic 1– An Introduction to Australian Constitutionalism

Federalism

- Federalism refers to the fact that *the power to govern publicly is divided between two levels of government: State and Commonwealth*
- Federalism is a governmental trait which is unique to Australia. It was not adopted nor inherited from the **UK system**.
    - The UK is a Unitarian state insofar as all of the legal power is centralised in the English Parliament at Westminster.
    - Ultimate sovereignty resides in that parliament
- In Australia however, the **States retain some powers which are constitutionally invested and hence cannot be interfered with by the Federal Parliament** (the Commonwealth)
    - An example of a such as right is **s92** which prescribes that trade between states will be free of Commonwealth interference
- The **US system** provided the most influential stimulus in establishing our system of federalism.
    - The US upper house is designed to protect the states and is called the Senate. We adopted this states house and its name
    - Also, our system of conferring enumerated powers on the central government (the commonwealth) and leaving all else to the States (residual powers) was also adopted from the US
    - From this, it can be seen that the US model was of far more influence that the UK model in this respect
- Early constitutional decisions tended to favour the preservation and even enhancement of the **powers of the States**; **R v Barger:**
    - *Excise tax validity > state reserve powers preserved*
        - However, the **balance of power between the States and the Federal governments** for a long time has shifted inexorably (impossible to stop, prevent) *in favour of the Commonwealth.*
        - This is due to the interpretations of the tax power, the grants power and the prohibition of the states to impose excise duties under **s90** which have all heavily favoured the Cth and left the financial resources of our state disproportionately in the hands of the Cth.
- Therefore this concept of federalism has declined somewhat. The States abilities to meaningfully exercise their power is now, to a degree, dependent on the good will of the Cth providing the funds to do so.

Separation of Powers – Chapter 11

- There is a philosophical and practical reason for this separation
    - **Philosophically**, it is a hark back to liberalism. People want to be free and do not want their liberties impinged upon by the government. Not centralising or conglomerating power in one body ensures that liberties will not be trampled on. Each arm acts as a check and balance on the other
    - From a **practical** point of view, it is efficient to have the separation as they specialise and become the best at what they do.
- This doctrine prescribes that the three arms of government be *clearly and institutionally separated*. These three arms are the executive, the legislature and the judiciary.
- The separation of powers ensures than no one governmental body acquires to much power and 'unduly harms the interests of the governed'
- However, in practice, the separation really refers to a separation with the judiciary on one side, and the executive and the legislature on the other.
    - This is primarily due to **s64** which requires that Commonwealth ministers (i.e. the executive) be drawn from the legislature, and hence prescribing for a merger or blurring of the line between the executive and the judiciary.

Responsible Government

- Under this constitutional doctrine, the **executive is responsible to the legislature**.
- This is implicitly recognised in **s64** whereby a system of drawing Government ministers from and being accountable to be Parliament is prescribed.
- The doctrine of responsible government is quite a logical one:
    - A Government will only remain in power if their party commands a majority in the lower house (that is, they have the confidence of the house). As all the members of the lower house are directly responsible to the Australian public and moreover to the peoples in their electorate who voted for them, and the executive is drawn from the lower hose, the executive is directly responsible to the Australian people
- There is also a degree of collective responsibility, in that ministers are also individually responsible to the parliament for the activities of the administrative departments that they head.
    - In this sense, **the accountability of public service is ensured**; public servants are responsible to their Minister who is turn responsible to the Parliament (who are responsible to the people)

Judicial Review

- The High Court is the ultimate guardian of the Constitution and is vested with the power to review and determine the constitutionality of a legislative and executive administrative action
- Whilst the judiciary is separate from the executive and legislature in theory and in practice, there is one way in which the executive may intrude upon the sovereignty of the Court; that is, **appointments to the bench** as per **s72(i)**
    - There are no constitutional constraints on the appointment of High Court justices – they are still appointed directly by cabinet.
- The personalities and beliefs of the justices on the High Court will have a large effect on the prevailing views of that court relating to interpretation trends regarding constitutionality
    - For example, the 'Mason Court' took an unprecedented interest in protecting human rights. With the retirement of Justices Mason and Deane in 1995 and 1996 respectively, thus ended the period of radical constitutional interpretation.

The Rule of Law

- The rule of law refers to the fact that our society is governed by laws and not by an arbitrary wielding of power by any government (as is the case in a dictatorship)
- Albert Venn **Dicey** argued that the rule of law had three main facets:
    1. The law is absolutely supreme;
    2. There is equality before the law; and
    3. The law is to reflect the fundamental rights of the individual
- The Australian Constitution expressly recognises the rule of law in **clause 5** where it states: "this Act, and laws made by Parliament of the Commonwealth under the Constitution, shall be binding on the courts, judges and people of every State and every part of the Commonwealth"
    - Dicey also noted that for the rule of law to work, he prefers bottom up constitutionalism
        - ➢ That is that there is no written constitution and what the constitution of a state is is to be derived from its actions, its peoples beliefs and how they decide cases amongst many other things.
        - ➢ In Australia we have a top-down constitutional model, we have a written document which provides for the running of our State
            - However, our constitution only has 127 sections, it is quite short. Many things are inferred from our constitution and it is by no means exhaustive.
            - So, in this sense, **although we have a written constitution, we do have a bottom up system in some respects**.

Parliamentary Sovereignty and Supremacy

- No Australian parliament is absolutely sovereign.
- The powers of all Australian legislatures are *constrained by the Commonwealth Constitution*.
- This contrasts directly with the UK parliament whereby the parliament is absolutely sovereign (plenary) and has the power to make or unmake whatever law it wants.
    - Further, no person or body is recognised by the laws of England as having the right to override or set aside the legislation of the UK parliament
- In Australia, we have what is referred to as **Parliamentary Supremacy**.
    - Parliamentary supremacy relates to the fact that the legislature is supreme over the two arms of government.
        - As long as a law which is enacted is ruled as constitutional, a Parliament can legislatively abrogate the effect of a judicial decision.
            - Appropriation Act needed to fund government
    - The fact that parliament is the supreme arm of government in Australia is consistent with the authority it derives from its **democratic mandate** and the new constitutional maxim that the ultimate power of the constitution is present in the people and effectively it is the people who decide what the constitution means.

Sources of Constitutional Law//

The Constitution

- The most pertinent source of constitutional law is the Constitution itself
- Drafted in the 1890's, it was given formal legal status by the UK via the Australian *Constitution Act* 1900 (UK) and birthed the new political and legal entity of Australia.
- It has been suggested that Australia is 'constitutionally frozen', in that the process for altering our constitution (A section 128 referendum) is highly restrictive and has prevented any major evolution of the actual document itself.

State Constitution Acts

- Each individual state also has its own constitution act, which defines the basic formal institutes of government that operate within that state.
- In some State Constitutions the state Supreme Courts are even provided for, et, in Victoria we have a separate Supreme Court Act
- The State Constitution acts also define the location of executive power: In **the governor** who is the crowns representative and also in the **executive council** (lower house)
    - The **constitutional powers of the executive** are also defined within the State Constitutions. The summoning and dissolving of power, the appointment and dismissal of ministers, assent given to bills in the name of the Crown, all of it is defined in the State Constitution Acts
    - They are ultimately concerned with the mechanics of the institutions of government within the State. They are far narrower in content than the Federal Constitution and they make no reference of effort to build a framework for economic activity or the location/source of fiscal power.

Statute of Westminster

- The Statute of Westminster 1931 (UK) was the first major step Australia took towards **emancipation from the UK**
- After a series of what were called 'Imperial Conferences' – meetings between the UK and its dominions regarding the nature of their interaction -
    - At these conferences it became clear that the dominions (of which Australia is one) were factually, if not legally independent. The Statute was enacted in 1931
- The Statute did not apply in Australia however until it was adopted by the Commonwealth Parliament (s10) which occurred with the passage of the ***Statue of Westminster Adoption Act 1942***

- The adoption backdated to September 3rd 1939.

- The statute effectively solidified Australia's position as an independent country from the UK.
- **s2(1)** of the Act declared that the ***Colonial Laws Validity Act 1895 (UK)*** **did not apply to Australia anymore**
  - This act meant that if a law of a dominion and a law of the UK were inconsistent as relating to that colony, the UK law would be supreme and the dominion law made void. This did not apply anymore
- **s2(2)** confirmed that **no law of a Dominion would be held to be invalid for the reason of repugnance** to any law of the UK
  - This section also gave the Commonwealth the power to repeal or amend any UK act which has previously applied.
- **s3** Stated that the Cth had **full extraterritorial power.**

- Due to these changes, the Commonwealth was legally free from the UK Parliament as of the 3rd of September 1939

The Australia Acts

- Despite the passing of the Statue of Westminster, and its adoption into our system, the **States remained subservient to the UK.**
  - For example, in the case of ***China Ocean Shipping v SA*** the HC found that a South Australian law was invalid due to its inconsistency with a UK merchant shipping law made in *1984*
- The **Australia Acts** (not passed until 1986) were passed to address issues like this and hence the States were legally independent from the UK too, just as the Cth had been for nearly 50 years.
- The way the *Australia Act 1986* (Cth) operated was very similar to the State of Westminster
  - Most pertinently, **s1 terminated the power of the UK parliament to legislate for any of the Australian States.**
- **Section 15** entrenched (a legislative procedure discussed more later) the Australia act and the Statute of Westminster by stating that it could only be amended under a s.128 referendum or with the joint consent of all of the States.
  - A return to British rule was therefore made, in effect, impossible.
    - The Australia acts were thus given constitutional status under **s.15**
- On another note, the **Australia Acts made the HC the highest court of appeal in out system.** The Privy Council was removed from out system and was no longer binding on our courts; **s11**
  - However, appeals to the Privy Council are constitutionally protected in the Constitution and hence they can not be abrogated by legislation, however, the appeal is dependant on a certificate from the HC to allow the appeal.
  - The **HC has however indicated that they will never institute or award such a certificate** and hence the Privy Council has been removed from our system; ***Kirmani v Captain Cook Cruises***

Topic 2 – The Executive

The Crown

Executive is personified by the crown.

- **Section 61 of the Cth Constitution vests federal and state executive power:**
- **This cements Australia's status as a constitutional monarchy**

The 'Crown' is a legal person and is capable of enforcements of its rights in a Court of law.

Function of the executive is to implement law and make policy

Reserve and Non Reserve Powers

Ostensibly the Governor General or Governor (state) has two types of powers: those exercisable by 'GG alone' and those exercisable by the 'GG in Council'

- The GG in Council is defined in **s63** as 'the GG acting with the advice of the Federal Executive Council (FEC)
- The FEC in turn is defined is **s62** as persons "chosen and summoned by the GG", who "hold office during his pleasure". Federal Executive Council is NOT the Cabinet.
- FEC contains only ministers who are elected in the present day government and acts as a mere formality (none are ever willing to refuse consent for an act or statute) .

GG in Council

The GG in consultation with the Federal Executive Council has the power to

1) Issue writs for a new election;
2) Establish departments; and
3) Appoint civil servants

GG Alone – reserve powers

Three are generally recognised:

1. **Appointment of a Prime Minister:**
    a. The power which is used to commission the leader of a party who has won the confidence of the lower house
2. **To dissolve parliament**
    a. Whitlam dismissal
3. **Refusal to dissolve Parliament:**
    a. May be exercised by the GG when the current PM advices the GG to go to a general election after a vote of no confidence, but the leader of another party has in fact gained the confidence of the lower house
4. **Dismissal of the Prime Minister:**
    a. The PM may be dismissed where they have lost the confidence of the lower house, where they consistently fundamentally breach the constitution or where the PM cannot guarantee 'supply'

Reserve powers
Reserve powers are the powers which the Governor of GG can exercise without, or country to ministerial advice.

- Goes against the fundamental principle of responsible government that states that the GG or G must act upon the advice of the ministers or Government of the day.
- Royal assent is not a reserve power
    - Governer no ability to ignore the ministers advice – however 'Bagets 3 rights' state:
        - Consulted
        - Encouraged
        - Warned

GG's Theoretical Executive Power and the PM and FEC's Practical Executive Power

Appointment of Cabinet by the GG upon the advice of the PM is simply a creature of *convention*:

- Despite the apparent wording of the Constitution **true power resides in the PM and their Cabinet**. The GG may only act on advice of the PM and the FEC (which effectively is the same ministers which form Cabinet)
- True executive power is only truly exercised at the request of the government of the day

Prerogative Powers (common law powers)

- Don't need legislation to exercise prerogative powers
- The descriptions of executive power which are held in **s61** are not exhaustive; ***Barton v Cth***
- Implicit in the grant of executive power' under s **61** is the vesting of *prerogative powers* within the Cth executive
    - *Prerogative Power* is that 'residue of arbitrary authority which at any given time is legally left in the hands of the Crown'
    - Put more simply, prerogative power is the executive power which draws it source from common law rather than the Constitution; ***Barton v Cth***

Common law prerogatives inherited from the UK Crown include (not exhaustively): Power

- To declare war (and make peace);
- To execute treaties;
- To coin moneys;
- The ownership of 'Royal' fish, minerals and seabed;
- To conduct enquiries under the banner of 'Royal Commissions'

The prerogative powers are split between the Cth and the States depending on which is the more appropriate vessel for that particular prerogative power.

- However, not all prerogatives were inherited from the UK, such as the Queen's power over the Church of England.

The enactment of a relevant statute will limit or even extinguish a prerogative power; ***Attorney-General v Mutual Life Society***

- This is due to the fact that statute law trumps the common law

Since the ***Aboriginal Land Commission Case*****,** the HC has been willing to judicially review the executive of certain prerogative powers.

- However, some remain non-justiciable due to their political nature

Ruddock v Vadarlis (2001) – prerogative powers of the cth.

Facts:

- Cth argued there was a common law prerogative power of the crown to prevent the landing of aliens on Australian territory.
- Vadarlis argued that the migration act overrides the prerogative power conferred on the crown.
  - This is intended to be a complete statement of the law in regards to migration which evinces an intention to override prerogatives power.

Held:

- **Majority**: French said vadarlis argument false – migration act does not evince an intention to displace the prerogative power of the crown in this instance.
  - Said **there must be clear unambiguous intention to displace a prerogative powers of the crown** – expressly eg this section 1 this act displaces any prerogative powers of the crown.

The Extent of The Executive Power

The executive's power is sourced from two separate provisions in the Constitution:

- Section 61; and
- Section 2

Section 2 – effectively useless now as any prerogative powers relevant to the Australian crown were transferred automatically on the day of federation as held by majority in the high court.

Section 2 of the Constitution states that the GG is to have "*such powers and functions…as Her Majesty the Queen may be pleased to assign to him*"

Until the current *Letters Patent* in 1984, "*such powers and functions"* was defined and assigned in the original Letters Patent in 1900

- These purported to assign the powers of appointing judges and other public officials, and the summoning, proroguing and dissolving of Parliament.

However, these original **'letters'** reflected the view that Cth executive power extended no further than the powers which were expressly created by the Constitution or in any Commonwealth Legislation:

- This meant that Executive only had power that was expressly conferred upon it.
- This restrictive view was elucidated in ***Cth v Colonial*** and was departed from in ***Barton v Cth***

The **Balfour Declaration of 1926** recognised the autonomy of the office of the GG from the UK government affirming the GG as solely a representative of the Queen

Responsible government therefore meant that the GG would not act without the advice of democratically elected ministers regardless of whether the power expressly stated that the GG would act on advice from the FEC.

- Hence much of the GG's executive power **resides in the TRUE executive – The Prime Minister and Cabinet**

Section 61

As stated above, section **61** prescribes that executive power may be exercised for the "*execution and maintenance of this Constitution, and of the laws of the Commonwealth*"

- The exact meaning, and scope of this statement is debated.

For one, it was unclear if this statement gave the executive the right to **exercise prerogative powers over the Crown**.

- HCA initially took a restrictive approach that limited executive power to those areas which were listed in the 'Letters Patent' (which state what executive power is given to the GG by the Queen); ***Cth v Colonial Combing Spinning and Weaving***

- However, over time the HC took a more expansive approach to interpretation of 61 eventually recognised that it had to include those prerogative powers which had been inherited from the UK common law
    - Dixon and Evatt JJ in ***Federal Commissioner of Taxation v Official Liquidator of E O Farley*** and Williams J in ***Australian Communist Party v Cth*** all expressed views of this enhanced expansive view of 61 (enhanced by the inclusion of the 'prerogative powers').

This desire of the HC to read up 61 to include prerogative powers came to a head in the case of ***Barton v Cth***

- ***Barton v Cth*:**
    - ***Facts***: The Commonwealth attempted to extradite Barton from Brazil, yet there was no extradition treaty.
    - Australia made request to get Barton back to Australia
    - For the cth to make any decisions it must be sourced to law
    - There is no express power vested in the cth by the constitution to support extradition.
    - ***Held***: The court **held** that executive power of the Cth included a prerogative power to request a foreign country to return to Australia a fugitive offender where Australia has no extradition treaty with that country. The executive power was held to exist even though it had never been conferred onto the GG by the Queen (which was the only way executive power arose at the time).
        - Mason J stated that section 61 "*enables the Crown to undertake all executive action which is appropriate to the position of the Cth under the Constitution and to the spheres of responsibility vested in it by the Constitution*"
        - So, the court held the power to extradite, whilst not expressly conferred onto the GG was nevertheless an executive prerogative power as it fell within its sphere of operation

Victoria v Cth (AAP Case) 1975:

- ***Facts***: The government passed the *Appropriation Act 1974* which aimed to authorise a substantial spending of money on the 'Australian Assistance Plan (AAP)'. The moneys were to be allocated and distributed to a number of State, federal, local government and voluntary

agencies to spend on social and community welfare programmes. The programme was administered under a very complex executive scheme and hence arguments of *ultra vires* (outside jurisdiction) were pleaded under s61 by Victoria.

- ***Held***: 5-2 held that the allocation of the money to regional councils was valid.
    - A different majority of 4-3 held that the proposed scheme in general would be valid.
    - *Mason J* – s 61 does confer on the Executive Government a power to 'engage in enterprises and activities peculiarly adapted to the government of a nation and which cannot otherwise be carried on for the benefit of the nation.' – nationhood power.
    - *Jacobs J* explained that the words in s61 "maintenance of the Constitution" lays the idea of Australia as a nation within itself and in its relationship with the external world. He argued that the growth of the nations identity resulted in a corresponding growth in the activities that the responsibility of the Cth executive. The establishment of a nationwide social welfare program fell into this meaning. This marks the beginnings of the '*nationhood power'* which was later fully elucidated in *Davis*.

Davis v Cth - 1988

- ***Facts***:
    - Case re validity of s22 of the *Australian Bicentennial Authority Act* 1980.
    - Section 22 prohibited the use of certain symbols and words without the consent of the Australian Bicentennial Authority. The list of prohibited words included "200 years", "Bicentenary", "Bicentennial", "Sydney" and "Melbourne" when used in conjunction with the words "1788", "1988" or "88". The act didn't prohibit the use of the phrases per se but set up a mechanism which said that you must seek the consent of the bicentennial authority to use it. Davis challenged the validity of the act after he was refused permission to sell T-Shirts which stated "Bicentennial, 200 years of slavery and oppression" or words to that effect. ***In order or the cth to establish that their legislation is valid they must source it a relevant subject matter (head of power) under s 51. –*** **Here no clear subject matter that supports the** *Australian Bicentennial Authority Act* 1980.
- ***Held***: The court held that the relevant legislation which created the ABA and the coordination behind the bicentennial celebrations fell within the scope of executive power due to implied nationhood power. Established there is a further aspect of cth executive power - implied nationhood power.
    - This was based on the view that **s61**, read in light of **s51(xxxix),** granted executive powers that derived from Australia's status as a nation. However, the act was found to be enacted in the 'incidental range' of the head of power and hence an element of proportionality had to apply (this will be discussed at length in 'characterisation').
    - S 61 confers on the Cth all the prerogative powers of the crown except those that are necessarily exercisable by the states under the allocation of responsibilities made by the constitution and those denied by the constitution itself.
    - **S22 was found invalid** as the punishment outlined in that section was disproportionate to the end of the act, namely, the organisation and administration of commemorating the bicentennial.

So in Summary:

- **in *Cth v Colonial Combing Spinning and Weaving*** the Executive's power was limited to that given by the letters patent
- then in ***Barton*** the HCA finally read up **s 61** to include prerogative powers. The power to extradite hadn't been conferred by the Queen but was nevertheless an executive prerogative power as it fell within the Executive's sphere of operation
- then in ***Davis v Cth*** we see the view that **s61**, read in light of **s51(xxxix),** granted executive powers that derived from Australia's status as a nation. S 61 confers implied nationhood power to the cth.
- Note in ***Tasmanian Dams*** we see the limitations of the nationhood power. Only 4 justices referred to it and none felt it applied (note the **coerciveness** of the law and fact that it was arguably an area of state law.

The 'Nationhood' Power

It is clear form the above cases (most pertinently from ***Davis***) that the HC has developed a new source of executive power (derived from Australia's status as a nation)

The power is derived from **s51 (xxxix)** which states that the executive (and Parliament) may make laws in regard to:

- *Matters **incidental** to the execution of any power vested in this Constitution*.

In other words, it is the '**incidental power'**

- **Rationale**: in order to execute its function under **s61**, the executive must have the power to make and manage laws concerning Australia as a nation, this is incidental to its original function.

The nationhood power was recognised in ***Vic v Cth (AAP Case)*** and in the case of ***Davis*** (both above) as well as in the ***Tasmanian Dams Case (Tas Dams)***

- ***Tas Dams:***
    - **Facts:** Cth passed the *World Heritage Properties Conservation Act 1983* which purported to prohibit Tasmania from building a dam on a heritage listed site. 4 justices in the case considered the validity of the above act based on the 'nationhood power' (3 justices did not make reference to it – it is not as powerful as it would seem, remember that). Note that the case was predominantly concerned with the external affairs power and the nationhood played a far smaller role.
    - **Held:** None of the 4 justices which considered it, felt that the act, being a coercive law, fell within the ambit of the nationhood power. The fact that the area in question was arguably an area of State law was also a major factor in the defeat of the Nationhood power.

Limitations on the Nationhood Power

When it was first enumerated the nationhood power had the potential to be a very, very powerful head of power for the Commonwealth. However, a number of restrictions have been imposed upon it and nowadays it will only be discussed if no other heads of power seem relevant:

1) The power is limited to areas where there is clear Federal responsibility (i.e. the nation as a whole would benefit from the proposed law); ***Tas Dams***

2) The court have elucidated an unwillingness to extend the power of the nationhood power to coercive laws unless it "*is necessary to protect the efficacy of the execution by Executive Government of its powers and capacities"; **Davis v Cth*** as per Brennan J

- Most likely, the executive will need the backing of a more substantial head of power if they are created an onerous coercive law.

Pape v Commissioner of taxation **– scope of executive power and implied nationhood power discussed**

- **Facts:** *Tax bonus for Working Australians Act 2009* was challenged. This act was a reaction of the cth gov during the GBH which provided a one off payment to certain categories of taxpayers. The legislation was challenged on a number of basis, one of which was that the legislation did not have a valid head of power.
  - **Cth argued that the act was supported by the tax power under s51 – however the nature of the act gives money and is thus not a tax.**
- **Held**: legislation valid – due to the combination of s61 and s 51(xxxix) - same as ***Davis.***
  - Why would this be nationhood power? – states don't have the money, cth easier to coordinate, National economy the subject.

Nationhood Power Will Apply When

Areas which have been recognised as falling within the realm of the nationhood power are:

1. National incentives in science, literature and the arts; ***Davis*** per Brennan J
2. Internal security and protection of the State against disaffection and subversion; ***AAP case*** per Mason J
3. Exploration, the conduct of scientific and technical research and inquiries, investigation and advocacy in relation to matters affecting public health; ***AAP*** per Barwick CJ, Mason and Jacobs JJ
4. Note that the HC has recognised that due to its nature, things that fall under the nationhood power are not fixed, and may alter over time as the responsibilities of the Federal Government change.

A very succinct and accurate **definition** of the nationhood power was given by Mason J in the ***AAP*** case, he stated:

> There is to be deduced from the existence and character of the Commonwealth as a national government…*a capacity to engage in enterprises and activities peculiarly adapted to the government of a nation and which cannot otherwise be carried on for the benefit of the nation*

Nationhood Power Test for the Exam

To determine whether or not the nationhood power covers the activity or act in the question, one must ask:

1. **Was the law peculiarly adapted to the government of the Nation.**
    a. In other words, was the area about which the legislation was made an area which requires national legislation or action; ***Davis*** (also check the already recognised areas above)

2. **Could this particular area be otherwise carried on for the benefit of the nation**
    a. In other words is the area an area which could be effectively and efficiently legislated and taken care of by the States?
    b. Must be more than convenient, must be a benefit which can only be obtained If the Federal Government legislates

3. **Was the law or activity appropriate and proportionate.**
    a. Note here the unwillingness to extends the law to *coercive* legislation (legislation that makes people/bodies do things); **Tas Dams**.

Summary Of Commonwealth Executive Power

In summary, the **executive government has the following powers**:

- The powers expressly conferred upon the GG by the Constitution and the Queen which are exercisable by the PM and Federal Executive Council (similar to Cabinet) pursuant to responsible government
- The power to make decisions and policy on any area for which the constitution provides express legislative power; **s51** and **s52**
- Prerogative Powers which are sources from the UK inherited common law.
- The 'Nationhood' power, derived for **s61** read in the light of **s51(xxxix**) and as recognised in ***Davis v Cth***

State Executive Power - Victoria

The organisation, membership and power of the State executive mirrors that of the Commonwealth with each state having a Governor (the same as the GG) at its apex.