

LAW314: TESTS

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SECTION 51(XXIX): EXTERNAL AFFAIRS

Power to implement laws in relation to external affairs.

S 51(XXIX): External affairs

Section 51(xxix) of the Commonwealth Constitution provides:

The parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to ... external affairs.

Test –

1. Scope (Is it an external affair?)

- Geographically external, recognised by parliament as affecting Australia:
Horta v Commonwealth; XYZ v Commonwealth.

2. Implementation

- Koowarta v Bjelke-Peterson (1982)* – Mason J waffled on but Stephen J wrote the ratio
- Tasmanian Dams Case (1983)* –
- Industrial Relations Act Case (1996)* –

3. 'International concern'

4. Limitations

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1. Scope

2. Is the law reasonably appropriate and adapted as a means of achieving the purpose of the treaty? (*Tasmanian Dams case*)

- The purpose of the treaty – must be clear (not merely aspirational/vague):
Industrial Relations Act case, upholding Deane J in Tas Dams case.
 - Aspirational (hopeful/desirability)

- ii. Vague (doesn't define actual parameters of the treaty, 'reasonable measures' but reasonable not defined)
 - b. The law must be faithful to the purpose: [Tasmanian Dams case](#). A matter of proportionality – limitations: **qualitative** (effect of law is such that it does not affect anything that the treaty concerns itself with, then the law is not *faithful to purpose*; if so much of the law has nothing to do with the treaty, then it is not faithful) and **quantitative** (issue of severability; enough of the law is about the treaty).
 - c. Pretext – but not enough of an argument on its own.
3. 'International concern' (not an independent basis for getting the law under the external affairs power – you need all the other elements too, just being of 'international concern' is not enough). ([Stephen J in Koorwarta](#))

Note: When is doubt for an authority for external affairs, just use Tasmanian Dams case!!!

SECTION 51(XX): CORPORATIONS POWER

Section 51(xx): The corporations power

Section 51(xx) of the Commonwealth Constitution provides:

*The parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to ... **foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth.***

Section 51(xxxv): The industrial relations power

Section 51(xxxv) of the Commonwealth Constitution provides:

*The parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to ... **conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State.***

Main cases:

- [Adamson's Case](#) – Activities and purpose test
- [Queensland Rail](#) – Develops ^ test
- [In Re Dingian](#) – Interpretation of power
- [Work Choices](#) – Interpretation of power

Test –

1. **(Scope) Is the corporation a 'constitutional corporation'?**
 - a. **Look at activities, then purpose: [Adamson's case](#).**

