

Interpretation of the Constitution

- The broader interpretation of the constitution is favoured:

*We are interpreting a Constitution broad and general in its terms ... the court should in my opinion, always lean to the **broader interpretation** unless there is something in the context or the rest of the Constitution to indicate a narrower interpretation is better*

Dixon J in the *Bank Nationalisation Case* [interpretation of banking power; held: power to be construed broadly]

- Engineer's Case

Facts

- Industrial dispute between the Amalgamated Society of Engineers and the Adelaide Steamship Co. LTD and 843 others
- States sought to rely on their immunity from Commonwealth control in respect of State trading – reserved state powers doctrine
- Question was whether the legislation allowed for an industrial dispute extending beyond the limits of one state
- Reserved state powers doctrine could not displace ordinary principles of construction are applied to provide expressed or implied meaning.
- **Adopted a literal approach**
- **The fundamental rule of interpretation is that a statute is to be expounded according to the intent of parliament**
- **Determined by examination of language used in statute as a whole**
- **Determine meaning of language in its ordinary and natural sense**

Payroll Tax Case

- Interpretations of the limits of constitutional powers meant adhering to rules of statutory interpretation - *Windeyer J in the Payroll Tax Case*

Graine Poole

- The constitutional text is to be construed “with all the generality which the words used admit”
- “... and when the validity of such legislation is in question the task is to consider whether it “answers the description, and to disregard purposes or object” – *Gleeson CJ, Gaudron, McHugh, Gummow, Hayne and Callinan JJ in Grain Poole*
- Interpretation results in broad reading – *Graine Poole*

Cole v Whitfield

- **Original intent and use of historical material**
- Court looked at original drafting documents (convention debates) to ascertain the original meaning of s92

Characterisation of the law

A law must be characterised in order to be valid.

Subject matter powers are characterised via the sufficient connection test, purposive powers are characterised via the reasonably appropriate and adapted test

Characterisation of a law in relation to state powers

Simply examine the state law in question and ask, is the subject matter something that where the power has been taken FROM the states.

This is different from commonwealth characterisation as you instead examine if a certain power has been given TO the commonwealth.

Subject matter powers - sufficient connection test

The sufficient connection test is used to characterise a law under a subject matter power.

As long as the law can be characterised as being a law with respect to a subject matter which is within power it does not matter that it might also be characterised as bearing upon some other subject matter not within.

To characterise a law the focus should be on the direct legal operation of the law

In characterising a law the court is not concerned with the policy it embodies but only whether it can fairly be described as a law with respect to a specified subject matter – is there a sufficient connection between the law and the head of power. Do not examine the motives which inspire it or the consequences which flow from it.

As in the *Bank Nationalisation Case*

- The subject matter of the head of power is construed broadly
- The commonwealth may make any law within this subject matter

Dixon J in the *Bank Nationalisation Case* [limit of banking power]

As in *Fairfax (1965)*

1. What is the law with respect to?
2. What does it do?
3. What does it command or prescribe

Once it appears that a law has an actual and immediate operation within a field assigned to the CW as a subject of power that is enough ... That it discloses another purpose that lies outside power is not sufficient to invalidate it

Test: is it a law with respect to the head of power – ascertain substantive legal operation by determining the rights, duties, obligations, powers and privileges which it creates: *Fairfax v Commissioner of Taxation*. SUFFICIENT CONNECTION

- What right, duties and privileges is it trying to give or take away and is it within the scope of the head of power.

Kitto J in *Fairfax v Commr of Taxation* [involving taxation and superannuation]