STEP 1: INTRODUCTION

— ALWAYS WRITE THIS FIRST

<write this>

▨ OPENING ISSUE SCRIPT — write this first (fill the [red] blanks)

This constitutional validity of the [ACT] must be assessed provision by provision. Each provision must be supported by a head of Commonwealth power and comply with any applicable constitutional limitation. On these facts the potential heads of power are [insert from the FACT-TRIGGER ROUTER above] and the potential limitations are [insert]. Where a provision goes only partly beyond power, it is read down or severed so the valid remainder stands — s 15A AIA (Cth) for Commonwealth laws, and s 31 IA (NSW) for NSW laws.

STEP 2: DETERMINE HEAD OF POWER (characterise each provision FIRST, inside its section)

HoP 1 — CORPORATIONS POWER

s 51(xx) — Restructured Scaffold

The one question: is **THIS PROVISION** a law "with respect to" constitutional corporations (s 51(xx))? Everything below is just how you show that.

The method — two loops, in order, no going backwards:

STEP A — classify the entity **ONCE per company** (foreign / trading / financial / inactive / not-a-corp). Produces a one-line label you reuse everywhere.

STEP B — test each provision's connection, **ONCE per provision** (direct target / employees / officers / family / contractor / penalty).

Golden rule: characterise **each provision separately** — never the Act as a whole. The High Court characterises each challenged provision (*NSW v Commonwealth (Work Choices)* (2006)).

Part 0 — Orientation: the test spine

WRITE THIS

Section 51(xx) supports laws with respect to **foreign, trading and financial corporations** formed within the Commonwealth (*Strickland v Rocla Concrete Pipes* (1971); *Work Choices* (2006)). Two things must both hold for a provision to bite:

WRITE THIS

(A) Constitutional corporation? The entity must be foreign, trading or financial. Decided **once per company** — Step A.

(B) Sufficient connection? This provision must be a law "with respect to" that corporation. **Direct regulation of the corp** is the strong case (*Work Choices*); regulating **third parties** needs a real connection — their conduct must be "capable of affecting" the corporation, not remotely or speculatively (*Re Dingjan; Ex parte Wagner* (1995); *Fontana Films* (1982)). Decided **per provision** — Step B.

Don't confuse the two loops.

"Is the entity a corporation?" is answered once.

"Does this provision connect to it?" is answered again for every provision.

A sole trader is not a constitutional corporation (Step A fails for it) — but a provision aimed at a sole-trader contractor can still be valid if it is sufficiently connected to a constitutional corporation (Step B). Keep them apart.

Part 1 — Fact-scan router (words → step) READ ONLY

Read ONLY the scenario once. Each trigger sends you to Step A (entity) or a Step B row (provision).

WORDS IN THE SCENARIO	FLAG	GO TO	FIRST MOVE
“Pty Ltd / Ltd / Inc”; “incorporated under the Corporations Act”	Entity	Step A	Classify the company (once)
revenue / sales / fees; “buying and selling”	Trading corp	Step A — Trading	Current-activities test; revenue not profit
lending / investment / insurance / superannuation	Financial corp	Step A — Financial	Significant/substantial financial activity
incorporated overseas (Delaware / UK / Singapore)	Foreign corp	Step A — Foreign	Formed under foreign law = foreign corp
“not yet trading” / shelf company; objects clause	Inactive	Step A — Inactive	Timestamp check, then purpose test
sole trader / individual / unincorporated club / govt dept	Not a corp	Step A — STOP	s 51(xx) inapplicable to that entity
“corporation must …”; lodge / report / comply	Direct target	Step B — row 1	Corp is object of command → valid
employees / wages / dismissal / directors / officers	Workforce	Step B — rows 2–3	Employment relationship → valid (Work Choices)
spouses / dependants / family of directors	Family — split	Step B — row 4	“Capable of affecting” test (Dingjan)
contractor **currently supplying**	Current contractor	Step B — row 5	Existing relationship → valid
contractor **merely applying / tendering**	Prospective only	Step B — row 6	Remote → **INVALID** (Dingjan)
“all corporations” + penalty / fine	Read down	Step B — row 7	Read down to constitutional corps

Part 2 — STEP A: classify the entity (once per company)

🚩 **READ ONLY**

WHICH TEST? — decide once, then reuse.

There are two ways to prove a trading/financial corporation.

One question picks between them: **has the company started trading yet?**

- **YES — it was already trading when the events happened** → judge it by **what it actually does** → use the Trading / Financial rows below (current-activities test).
- **NO — it has never traded at all (a brand-new shelf company)** → judge it by **what it was set up to do** → use the Inactive row (purpose test; *Fencott v Muller* (1983)).

★ SELECT ONE — the entity is...

IF IT IS...	✍ WRITE THIS	KEY CASE
TRADING	**[Entity]** is incorporated under the Corporations Act 2001 (Cth) and earns substantial revenue from **[activities, e.g. room bookings / enrolments / membership fees]**. A trading corporation need not trade for profit; revenue-generating activities suffice, and it is the corporation's *current activities* — not its purpose of incorporation — that are decisive, provided trading is a substantial and not merely peripheral activity. **[Entity]** is a trading corporation within s 51(xx). ✅	*R v Federal Court of Australia; Ex parte WA National Football League (Adamson's Case)* (1979); *State Superannuation Board* (1982); *Tasmanian Dam Case* (1983)
FINANCIAL	**[Entity]**'s activities include **[lending / investment / insurance / superannuation]**, which form a significant or substantial part of its overall activities. A corporation is a financial corporation where financial activity is a significant or substantial part of what it does. **[Entity]** is a financial corporation within s 51(xx). ✅	*State Superannuation Board v Trade Practices Commission* (1982); *Re Ku-ring-gai Co-operative Building Society* (1978)
FOREIGN	**[Entity]** is incorporated in **[country]** under **[foreign law]**. Any entity formed under the law of a foreign country and given corporate legal personality is a foreign corporation within s 51(xx). ✅	*Work Choices* (2006)
INACTIVE (never traded)	Timestamp check first — if **[Entity]** had **commenced trading** by the date of conduct, use the Trading/Financial row above. If it **has *never* traded**: **[Entity]** had not commenced any activities as at **[date]**. For an entity that has never traded, the purpose test applies — the test looks to its constitution / objects clause. The objects provide **[insert objects]**. If those	*Fencott v Muller* (1983) (purpose test); cf *St George County Council* (1974) (older purpose approach — do not rely on it for current activities)

IF IT IS…	✍ WRITE THIS	KEY CASE
	objects include trading or financial activity, **[Entity]** qualifies as an (inactive) trading/financial corporation ✅; if not, it does not qualify ❌ as applied.	
NOT A CORP	**[Entity]** operates as a **[sole trader / individual / unincorporated partnership / government department]** and is not a foreign, trading or financial corporation. Section 51(xx) **does not extend to natural persons or unincorporated associations,** so it cannot support a law directed at **[Entity]** as such. ✗ STOP — s 51(xx) inapplicable to this entity; consider other heads of power. **Note:** a provision may still reach **[Entity]** as **a third party connected to a constitutional corporation** — test that at Step B.	s 51(xx) text — no natural persons / unincorporated bodies

→ CONCLUSION WRITE THIS

"**Coastline Resorts Ltd is a trading corporation within s 51(xx)**." Reuse this one line for every provision in Step B.

Part 3 — STEP B: test each provision (loop per provision)

For *each* provision: (1) characterise it, then (2) pick the row that matches its target.

✍ OPEN EVERY PROVISION WITH THIS (characterisation) WRITE THIS
In its real substance, Provision **[#]** creates / regulates **[conduct / obligation / relationship]** (*Fairfax v Federal Commissioner of Taxation* (1965)). The question is whether it is a law with respect to constitutional corporations under s 51(xx).

★ SELECT ONE — the provision's target is…

TARGET · 🔍 LOOK FOR · ASK	✍ WRITE THIS	OUTCOME
The corporation DIRECTLY (must lodge / report / comply) 🔍 **Look for:** "the corporation must / shall / is required to / must not"; lodge, report, register, pay, comply — the duty names the company itself. **Ask:** *Does the provision command the corporation itself to do or not do something?*	Provision **[#]** imposes an obligation directly on **[the corporation]** — it requires/prohibits **[action]**. The corporation is the direct object of the law; regulating its activities, obligations or governance falls squarely within s 51(xx) (*Work Choices* (2006); *Concrete Pipes* (1971)). Provision **[#]** is properly characterised as a law with respect to constitutional corporations.	☑ VALID
EMPLOYEES (wages / conditions / dismissal) 🔍 **Look for:** employees, staff, workers; wages, hours, leave, unfair dismissal, workplace safety, enterprise agreement. **Ask:** *Does it regulate how the corporation treats or manages its workforce?*	Provision **[#]** regulates **[employment conditions / dismissal]** of employees of **[the corporation]**. The employment relationship is central to a constitutional corporation's activities, and laws regulating it are within s 51(xx) (*Work Choices* (2006)). Properly characterised as a law with respect to constitutional corporations.	☑ VALID
DIRECTORS / OFFICERS in corporate capacity 🔍 **Look for:** directors, company secretary, officers, the board; acting "on behalf of" the company. **Ask:** *Does it regulate officers acting in their corporate (not personal) capacity?*	Provision **[#]** regulates **[directors / company secretaries]** of **[the corporation]** in their corporate capacity. Officers act on behalf of the corporation, so regulating them regulates the corporation itself (*Work Choices* (2006)).	☑ VALID
FAMILY of directors (SPLIT — analyse each limb) 🔍 **Look for:** spouse, partner, children, dependants, "relatives of a director/officer"; two classes joined by "and". **Ask:** *Is one group outside any commercial link to the corporation? Split it out and test "capable of affecting".*	Provision **[#]** applies to two groups, characterised separately. As to *employees*: within s 51(xx) (*Work Choices*). As to *family members of directors*: there is no direct commercial relationship with the corporation, so the question is whether their conduct is "**capable of affecting**" it (*Re Dingjan; Ex parte Wagner* (1995)). If relevant If **[family status could affect the corporation's solvency / governance]**, that limb may be valid as **incidental;** if it is **purely personal** with no corporate dimension, it is too	⚠ SPLIT

TARGET · 🔍 LOOK FOR · ASK	✍ WRITE THIS	OUTCOME
	remote — ❌ INVALID as to that limb. Conclude each limb separately.	
CURRENT contractor (supply already underway) 🔍 **Look for:** "currently supplying", "under an existing contract", "engaged to provide", supply has commenced, ongoing services. **Ask:** *Is there a real, existing commercial relationship with the corporation right now?*	Provision **[#]** applies to **[a person currently contracted to supply the corporation]**. An actual, existing commercial relationship exists, so the provision is **sufficiently connected** — the contractor's conduct is capable of affecting the corporation (*Re Dingjan* (1995); *Fontana Films* (1982), as broadened by *Work Choices*). Valid, subject to the closeness of the connection.	☑ VALID
PROSPECTIVE contractor ONLY (merely applying / tendering) 🔍 **Look for:** "applying", "tendering", "bidding", "seeking to contract", "in the process of" — before any contract. **Ask:** *Has any contract or relationship actually formed yet? If no → remote → invalid.*	Provision **[#]** applies to **[a person merely applying / tendering to supply the corporation]**. At that point **no commercial relationship has formed,** so the connection is **remote and speculative**. *Work Choices* broadened the test to a "sufficient connection" but did not remove the need for a real (not remote) connection; a provision that can operate where the corporation's interests are only remotely affected is not a law with respect to constitutional corporations (*Re Dingjan; Ex parte Wagner* (1995)). ❌ INVALID. ✗ END HERE for this provision.	❌ **INVALID**
"ALL CORPORATIONS" penalty (too broad) 🔍 **Look for:** "all corporations", "any corporation", "a corporation that contravenes"; a broad offence/penalty with no limit to constitutional corps. **Ask:** *Is the class wider than foreign/trading/financial corps? If yes → read down.*	Provision **[#]** imposes a penalty on "all corporations." It must be **read down** to apply only to foreign, trading and financial corporations within s 51(xx) (*NSW v Commonwealth (Incorporation Case)* (1990)). Read down, and to the extent it enforces the valid obligations in **[provisions X, Y]**, **it is valid.**	☑ VALID (read down)