SCRIPT

Heads of power (s 51)

I. trade and commerce with other countries, and among the States;
II. taxation; but so as not to discriminate between States or parts of States;
III. bounties on the production or export of goods, but so that such bounties shall be uniform throughout the Commonwealth;
IV. borrowing money on the public credit of the Commonwealth;
V. postal, telegraphic, telephonic, and other like services;
VI. the naval and military defence of the Commonwealth and of the several States, and the control of the forces to execute and maintain the laws of the Commonwealth;
VII. lighthouses, lightships, beacons and buoys;
VIII. astronomical and meteorological observations;
IX. Quarantine;
X. fisheries in Australian waters beyond territorial limits;
XI. census and statistics;
XII. currency, coinage, and legal tender;
XIII. banking, other than State banking; also State banking extending beyond the limits of the State concerned, the incorporation of banks, and the issue of paper money;
XIV. insurance, other than State insurance; also State insurance extending beyond the limits of the State concerned;
XV. weights and measures;
XVI. bills of exchange and promissory notes;
XVII. bankruptcy and insolvency;
XVIII. copyrights, patents of inventions and designs, and trade marks;
XIX. naturalization and aliens;
XX. foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth;
XXI. Marriage;
XXII. divorce and matrimonial causes; and in relation thereto, parental rights, and the custody and guardianship of infants;
XXIII. invalid and old-age pensions;
    A. the provision of maternity allowances, widows' pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services (but not so as to authorize any form of civil conscription), benefits to students and family allowances;
XXIV. the service and execution throughout the Commonwealth of the civil and criminal process and the judgments of the courts of the States;
XXV. the recognition throughout the Commonwealth of the laws, the public Acts and records, and the judicial proceedings of the States;
XXVI. the people of any race for whom it is deemed necessary to make special laws;
XXVII. immigration and emigration;
XXVIII. the influx of criminals;
XXIX. external affairs;

XXX. the relations of the Commonwealth with the islands of the Pacific;
XXXI. the acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws;
XXXII. the control of railways with respect to transport for the naval and military purposes of the Commonwealth;
XXXIII. the acquisition, with the consent of a State, of any railways of the State on terms arranged between the Commonwealth and the State;
XXXIV. railway construction and extension in any State with the consent of that State;
XXXV. conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State;
XXXVI. matters in respect of which this Constitution makes provision until the Parliament otherwise provides;
XXXVII. matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law;
XXXVIII. the exercise within the Commonwealth, at the request or with the concurrence of the Parliaments of all the States directly concerned, of any power which can at the establishment of this Constitution be exercised only by the Parliament of the United Kingdom or by the Federal Council of Australasia;
XXXIX. matters incidental to the execution of any power vested by this Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the Federal Judicature, or in any department or officer of the Commonwealth.

FINANCIAL POWERS

EXECUTIVE ENTERING INTO CONTRACTS

The federal executive generally lacks autonomous powers to enter into contracts or to spend money, and any such contracts have concerned public money and fettered "future executive action in the public interest". Cth may thus argue that the contract with [who contract is with] fetters the future executive action of [what] in the public's interest of [what]. However, this is not substantial to amount to constitutional validity.

The federal executive may, however, have considerable autonomous powers to spend under its constitutional "nationhood power" (s 61). It is uncertain whether s 61 might furnish the Cth with more non-statutory powers than are recognised at common law. **French J** inferred that Cth inherent executive powers extend beyond those traditionally recognised by the common law because they stemmed from s 61. [Party] may suggest the Cth is not acting under its "nationhood power" here under s 61 as policy suggest that it seems desirable to rein in the inherent coercive powers of the executive and instead such power should be conferred upon the executive by the more democratic and accountable arm of government, the legislature, unless clearly recognised as an aspect of prerogative power. Considering the legislature had no responsibility in the process of entering the contract with [who Cth entered contract with], it is unlikely that the contract is constitutionally valid under s 61.

The Cth may then refer to their autonomous powers under s 64 of the Constitution to spend for the purposes of conducting ordinary business of government departments. Cth may argue that [purpose of the contract] is a purpose of conducting ordinary business of government departments as [analysis]. [Party] may counterargue that [purpose] does not fall within the ordinary business of government departments as [analysis], and thus the contract is likely not constitutionally valid under s 64.

Finally, given executive spending alone is constitutionally invalid, it is likely that [outcome].

GRANTS (S 96)

The Cth may grant on such terms as it thinks fit, to which the State need not accept. Here, the Cth has made a grant of [grant] to [which States]. To determine if it is constitutionally valid, the issues of whether [main issues] must be discussed.

Inducement or coercion

The first limit on grants being made under s 96 is whether it is an inducement or coercion. The Cth's grant of [grant] is merely an inducement given [is there a meaningful choice here; is it a realistic option not to accept; must the state do the conditions regardless;] and can thus be distinguished from coercion **("temptation is not compulsion", Latham CJ, First Uniform Tax)**.

- The Cth may further argue that the sum of [grant] and [conditions] are not so large an extent that it would be unrealistic for the states to decline by analogising to the **First Uniform Tax Case** where it was permissible for the Cth to induce the States to cease collecting income taxes. By suggesting that [sum] and [grant condition] is not as large an inducement as States foregoing their own income taxes, the Cth would suggest the states are not being compelled here to abandon any legislative powers.
- Given [minister] has ministerial discretion on the amount [amount of the grant], the grant is permissible and not coercive **(Second Uniform Tax).**
- The Cth's intention for the State/s to be a conduit for funds to the third parties of [the third parties] within the state is permissible **(Moran; DOGS).** In doing so, the court may analogise to the **DOGS** case where Cth grants that were channelled through States to fund private school were deemed valid as they did not infringe s 116, to suggest that [analysis from the analogy].
- [Party] could argue that the conditions of [conditions] concern matters outside Cth power as [why they are outside].

Category A

The court would then consider Category A, which sets out that the State must be constitutionally capable of fulfilling the condition and thus the Cth cannot require States to breach the Constitution **(Second Uniform Tax).**

1. The grant's conditions of [conditions] are likely valid as they are conditions to ...
    - Adopt uniform curriculum
    - Set minimum educator pay
2. The grant's conditions of [conditions] are likely invalid as they are conditions where the Cth is requiring the State to ...
    - Exercise powers left to Cth, such as impose customs or excise duty which is reserved for the Cth under s 90.
    - Enact laws that infringe the federal separation of judicial power by [how the conditions infringe].
    - Enact laws that infringe the institutional integrity of state courts by [how the conditions infringe].
    - Enact laws that violate the implied freedom of political communication by [how it violates].
    - Enact laws that impermissibly burden interstate trade and commerce (s 92) by [how it burdens].

Category B

The Court would then consider Category B which states that the Cth cannot evade its own constitutional limits via s 96. The Privy Council in **Moran** warned that a purported s 96 grant may be "merely colourable", meaning that once looking "under the guise or pretence of assisting a State with money", the "real substance and purpose of the Act" is revealed. The court may suggest that the real substance and purpose of the [the act] is likely simply to [intended effect] by [analysis], and thus such an Act might well be ultra vires the Cth Parliament. However, the colourable-device warning has never succeeded, and the Court rarely examines parliamentary motive in characterisation **(Fairfax; Leask).** The Cth can make this grant under s 96 despite it ...

- Distinguishing between the states, affording [favoured states] favourable treatment than [other states] by [the favourable treatment] **(First Uniform Tax).**
- Requiring [state] to use the money for [power], which is outside the Cth's powers **(Federal Roads Act Case).**
- Discriminating between the [states] by [discrimination], although there are explicit prohibitions in ss 99 and 51(2) **(First Uniform Tax; Moran).**
- Inducing [state] to exercise or abstain from exercising its power to [powers], and/or having the purpose of weakening or destroying state activity by [how it is weakening] (**First Uniform Tax, Latham CJ).**
- Requiring [state] to make the co-contribution of [the contribution] to [whatever is being funded by the Cth] **(Federal Roads Act Case).**

*In addition, this type of case concerns s 51(xxxi), where the Cth must provide fair compensation when it acquires property as [facts as to why it is this case]. Initially, **Magennis** struck a Cth grant scheme characterised as one with respect to acquisition, for failing s 51(xxxi). Whereas, **Pye v Renshaw** survived only because the Cth had removed every express reference to acquisition in the law. **ICM Agriculture** confirmed **Magennis** and rejected the **Pye** formalism to hold that s 96 "does not extend to the grant of financial assistance to a State on terms and conditions requiring the State to acquire property on other than just terms" **(French CJ, Gummow and Crennan JJ).** Consequently, the Act here is likely valid/invalid as it does/doesn't require [state] to acquire property on the unjust terms of [the unjust terms]. Furthermore,

- Analogising to **Magennis** where the Cth funded NSW to acquire land at below-market value and was struck down for doing so, the Act is likely invalid as it is really also a law about acquisition.
- Analogising to **Pye v Renshaw** where the Cth redrafted and removed all mention of land acquisition, the Cth [how they removed mention of land acquisition] and thus the Act cannot be characterised as an acquisition law and is likely valid. Section 51(xxxi) is not engaged merely because a person loses property, or because property is destroyed, forfeited, or confiscated. There must be an acquisition of a proprietary benefit or interest by the Commonwealth.

The court may also consider whether withholding existing revenue can be distinguished from conditioning a new grant. In doing so, the court may distinguish from the **First Uniform Tax Case** where it was permissible for the Cth to induce the States to cease collecting income tax as it did not legally compel or coerce them to abandon their legislative powers, to suggest that [analysis].

APPROPRIATION AND EXPENDITURE

This case is likely one of appropriation and expenditure as the Cth is seeking to withdraw [amount of money] from the Consolidated Revenue Fund for the specific purpose of [purpose] through the [name of act] Act. ss 81 and 83 require parliamentary appropriation but do not themselves authorise expenditure given that "substantive power to spend the public moneys of the Cth is not to be found in s 81 or s 83, but elsewhere in the Constitution or statutes made under it" **(French CJ in Pape)**.

Firstly, parliament must have appropriated the money by authorising money to be set aside. It is likely that this step of appropriation has been met here as [how parliament appropriated money by passing an Act] and appropriation is itself broad **(Combet; Wilkie v Cormann),** and thus step two proceeds. OR. It is unlikely that this step of appropriation has been met here as [how parliament has not appropriated money by passing an Act], and thus Cth cannot spend [the money]. Although this step is necessary, it is not sufficient to authorise the spending.

Secondly, a separate head of power is required to authorise the spending. The executive generally needs statutory authority to spend, even within a head of power **(Williams No 1; Williams No 2).**

1. The executive can likely spend [money] on [the spending] ...
    - As it is pursuant to the valid s 51 statute of [the Act] which has authorised the spending.
    - As it is an exercise of the prerogative power of [defence/foreign affairs].

CASES

FUNDAMENTAL CONCEPTS, INSTITUTIONS AND INSTRUMENTS

CASE/CITATION	FACTS	DECISION / PRINCIPLE
Victorian Stevedoring and General Contracting Co. v Dignan (1931) 46 CLR 73	• s 3 of the Transport Workers Act 1928 (Cth) authorised the GG to make regulations, which “notwithstanding anything in any other Act …, shall have the force of law”, with regard to “the employment of transport workers” • s 3 was a broad grant of legislative power because there were no discretionary guidelines imposed on the GG, the Act did not set up a legal regime with respect to transport workers, and the delegation expressly authorised the overriding of prior Acts of Parliament • Legislative power with regard to transport workers’ employment was wholly delegated to the executive under s 3	**Held: Challenge was rejected** **Principle:** • It is the Legislature of the Commonwealth, and it alone, which may lawfully exercise legislative power • Parliament could delegate legislative power, but it could not abdicate such power • A regulation will not bind as a Commonwealth law unless both it and the statute conferring power to regulate are laws with respect to a subject matter enumerated in s 51 or 52 • The Separation of Powers cannot apply under the Australian Constitution • The following matters would appear to be material in examining the question of the validity of an Act of the Parliament of the Commonwealth Parliament which purports to give power to the Executive or some other agency to make regulations: 1. The fact that the grant of power is made to the Executive rather than to an authority which is not responsible to Parliament, may be a circumstance which assists the validity of the legislation. The further removed the law-making body is from continuous contact with Parliament, the less likely the law will be a law with respect to any of the subject matters enumerated in ss 51 and 52 of the Constitution 2. The scope and extent of the power of regulation-making conferred will be very

		important circumstances. The greater the extent of law-making power conferred, the less likely is it that the enactment will be a law with respect to any subject matter assignment to the Commonwealth Parliament
New South Wales v Commonwealth ('Work Choices') (2006) 229 CLR 1	• s 356 of the Workplace Relations Act 1996 (Cth) provided that "prohibited content" in the context of workplace agreements between employers and employees would be specified in regulations • s 356 effectively delegated to the executive the power to decide what would and what would not be allowed in workplace agreements	**Held: Delegation valid** • Majority agreed that the technique employed in s 356 was an undesirable one which ought to be discouraged
Palmer v Western Australia (2021)	• WA passed a law that retroactively nullified an arbitration award • Stripped contractual rights from a specific person • Granted immunity from all legal consequences	**Held: Upheld** **Principle:** • The rule of law supports neither expansion of judicial power nor contraction of legislative or executive power beyond the Constitution's limits
Victoria v Commonwealth and Hayden (1975) 134 CLR 338 *('AAP case')*	• The Appropriation Act (No 1) (Cth), which authorised substantial expenditure on the Australian Assistance Plan, was at issue • The money was to be allocated to 35 Regional Councils for Social Development across Australia which would in turn disburse the money to a number of State, federal, local government and voluntary agencies to spend on social and community welfare programs • The expenditure was to be administered within a complex executive, as opposed to statutory, scheme	**Held: Allocation of the money to Regional Council was a valid appropriation under s 81** • The Australian Assistance Plan is an expenditure of money in the exercise by the Commonwealth of its executive power to formulate and co-ordinate plans and purposes which require national rather than local planning and of its legislative power to appropriate its funds accordingly. **Principle:** • The distribution of executive power between the States and the Commonwealth is influenced by the division of federal and state legislative power

		• The legislative distribution of powers is not the only factor which governs the respective allocation of federal and State executive power • It is to be deduced from the existence and character of the Commonwealth as a national government and from the presence of ss 51(xxxix) and 61 a capacity to engage in enterprises and activities peculiarly adapted to the government of a nation and which cannot otherwise be carried on from the benefit of the nation • The executive power to engage in activities appropriate to a national government, arising as it does from an implication drawn from the Constitution and having no counterpart, apart from the incidental power, in the expressed heads of legislative power, is limited in its scope
Pape v Federal Commissioner of Taxation (2009) 238 CLR 1	• Pape was a taxpayer who challenged certain aspects of a federal government stimulus package adopted to combat the effects of the global financial crisis of 2008-9 • Under the Tax Bonus for Working Australians Act (Cth) and the tax Bonus for Working Australians act (Consequential Amendments) (Cth), the government was authorised to pay out means-tested bonuses to taxpayers who earned less than $100,000 in taxable income in the fiscal year 1007-8. • Payments ranged from $250 up to $900 per person • Pape was entitled to a $250 bonus • Was the payment of Pape's bonus as well as all bonuses under the act valid?	**Held: Valid** • Entire Court concluded that no power of expenditure was found in s 81 • The majority found that the expenditure was authorised under legislation passed pursuant to s 51(xxxix) in conjunction with s 61. **Principle:** • The executive power of the Commonwealth conferred by s 61 of the Constitution extends to the power to expend public moneys for the purpose of avoiding or mitigating the large scale adverse effects of the circumstances affecting the national economy disclosed on the facts of this case and which expenditure is on a scale and within a time-frame peculiarly within the capacity of the national government • Chief justice limited the nationhood power by reference to the federal distribution of powers. He

		added that the power to authorise short-term economic measures to combat a global economic downturn which was impacting on Australia's economy did not equate with a general power to manage the national economy ● Powers of expenditure under the executive nationhood power might be very broad
Australian Communist Party v Commonwealth (1951) 83 CLR 1	● Communist Party Dissolution Act 1950 (Cth) purported to outlaw the Australian Communist Party, vest all its property in the Commonwealth, and punish anyone who supported its teachings ● Act empowered the Governor-General to make a declaration with respect to any person who, the Governor-General believed, supported the communist ideology	**Held: Invalid** ● Communist Party Dissolution Act was found to be invalid, because there was no apparent link between it and the heads of 'defence' **Principle:** ● Nothing depends on the justice or injustice of the law in question. If the language of an Act of Parliament is clear, its merits and demerits are alike beside the point ● The rule of law forms an assumption underlying the Constitution

STATE LEGISLATIVE POWER

CASE/CITATION	FACTS	DECISION / PRINCIPLE
McCawley v R (1920) 28 CLR 106	● When the Queensland Parliament enacted the Industrial Arbitration Act 1916 (Qld), a few years later, it created a Court of Industrial Arbitration whose judges, including the President, only had tenure for seven years, with the possibility but no guarantee of renewal ● The Act provided that its judges could be made Judges of the Supreme Court, despite a limit on the number of judges that appeared in the Supreme Court Act itself ● The validity of his appointment was challenged, by	**Held: Appointment was valid** **Principle:** ● "[t]he Legislature of Queensland is the master of its own household, except in so far as its powers have in special cases been restricted" ● "the Constitution could be ignored as if it were a Dog Act" ● Established that the doctrine of implied repeal or amendment applied to Constitution Acts as much as to the most trivial of Acts

NOTES

FUNDAMENTAL CONCEPTS, INSTITUTIONS AND INSTRUMENTS

CONSTITUTIONAL LAW

Definition: Branch of the law which regulates the three arms of government: the legislature, the executive and the judiciary

- The constitution provides the source of authority for the exercise of public power, and circumscribes the limits of that power
- Governs the relationship and demarcation of power between the federal and state governments
- Has descended and evolved from the constitutional law of the UK

STRUCTURE OF THE CONSTITUTION

Chapter	Subject	Key Sections
I	The Parliament	ss 1-60 (incl. s 51 heads of power)
II	The Executive	ss 61-70
III	The Judicature	ss 71-80
IV	Finance and Trade	ss 81-105A
V	The States	ss 106-120
VI	New States	ss 121-124
VII	Miscallaneous	ss 125-127 (s 127 repealed)
VIII	Alteration	s 128

Key sections:

1. s 51: Commonwealth heads of power (39 of them)
2. s 61: Executive power
3. s 71: Judicial power vested in courts
4. s 109: Cth prevails over inconsistent State law
5. s 128: Referendum required to amend
6. s 51(xx)/s 51(xxix): Corporations/ External Affairs
7. s 92: Interstate trade "absolutely free
8. s 96: Conditional grants to States
9. s 107: States retain residual powers
10. s 125: To amend the Constitution
    - Bill passed by Parliament
    - Referendum with double majority
    - Majority nationwide and majority in at least 4 of 6 States

ORIGINS OF THE CONSTITUTION

1770:

- Captain Cook claims Australian territory for Britain

1788:
- Governor Phillip arrives with the First Fleet. English law is "received" into NSW
- Hundreds of Indigenous nations with their own laws and systems of governance had existed for tens of thousands of years

Before 1823:
- NSW ruled by the Governor as a military dictatorship

1850:
- Australian Constitutions Act (No 2) 1850 (Imp) – colonial Parliaments authorised to draft their own constitutions

1855-1890:
- Colonies adopt responsible government with bicameral Parliaments
- Three limits:
  - <u>Repugnancy</u>: Colonial law void if repugnant to UK legislation extending to the colony (Colonial Laws Validity Act 1865, s 2) (CLVA)
  - <u>Extraterritoriality</u>: Colonies presumed unable to legislate outside their territory
  - <u>Disallowance</u>: Crown could disallow colonial law even after Governor's assent

1890s:
- Constitutional Conventions draft the Constitution

1899:
- Federation approved by referenda in all colonies (WA in 1900)
- Reasons to federate:
  - Commerce: Intercolonial trade barriers were inefficient
  - Defence: French and German expansion in the Pacific
  - Nationalism: Growing colonial identity

1900:
- Imperial Parliament passes Commonwealth of Australia Constitution Act 1900 (the Constitution is s 9 of a UK Act of Parliament)

After 1901:
- Australia was still legally subordinate to the UK
- Colonial Laws Validity Act still applied
- UK could still legislate for Australia
- No full extraterritorial power

1931:
- Statute of Westminster 1931 UK
  - Freed Dominion Parliaments from the Colonial Laws Validity Act
  - UK would no longer legislate for a Dominion without its request and consent
  - Only applied to the Cth Parliament
  - The states remained bound by the Colonial Laws Validity act until 1986

1942:
- The statute of Westminster Adoption Act 1942 (Cth) was adopted by Australia

1986: The Australia Acts

- What changed
    - States freed from Colonial Laws Validity Act
    - States' extraterritorial power confirmed
    - UK Parliament cannot legislate for Australia
    - Appeals to Privy Council abolished
    - Crown reservation and disallowance removed for States
- What it means
    - UK law can no longer override State law
    - s 2(1) of Australia Acts confirmed pre-existing power (with sufficient connection to the state)
    - Full legislative independence
    - HC is final court of appeal
    - States fully self-governing

PARLIAMENTARY SOVEREIGNTY

UK: Parliament is sovereign and can make or unmake any law. Courts cannot strike down Acts of Parliament

- In British Constitutional law, the Parliament has the constitutional power to make or unmake any law whatever, and no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament
- Parliamentary statutes are the supreme laws of the UK
- Before parliamentary sovereignty Was enshrined in British law in 1689, the battle for supreme legal power had been waged between Parliament and the crown
- The Bill of Rights 1689 confirmed Parliament as the vessel of supreme legal power over the monarchy

Australia: Parliamentary sovereignty is limited by the Constitution. Courts can invalidate laws that breach the Constitution.

- The powers of all Australian legislatures are constrained by the Commonwealth Constitution
- Parliamentary sovereignty still plays a crucial role in Australian constitutional interpretation
- Judges will only strike down statutes in Australia if there is constitutional authority for such disallowance
- More restrictions on State Parliaments stem from the Commonwealth Constitution rather than State Constitutions
- What stops Parliament from passing unfair laws?
    - Heads of power (s 51)
    - A few constitutional rights (s 80, s 116, s 117, implied freedom)
    - Judicial review

SEPARATION OF POWERS

Power divided between legislature, executive, and judiciary to prevent abuse. In Australia: executive and legislature are fused, whereas the judiciary is strictly separated.

1. Parliament comprises the legislature who makes laws
2. Executive comprises the prime minister, Cabinet and departments who administer laws
3. Judiciary comprises the courts who interpret and reviews laws

Separation of judicial power is strict. Separation of legislative/executive power is not:

1. Executive and legislature are fused in Westminster system
    - Ministers are MPs (s 64)
    - Executive exercise delegated legislative power

2. Judiciary is strictly separated (Ch III)
    - Judges cannot be MPs
    - Ch III protects independence

RESPONSIBLE GOVERNMENT

The executive is accountable to the legislature. The government must command the confidence of the House. If it loses confidence → resign or call an election

REPRESENTATIVE GOVERNMENT

Parliament is elected by the people. An implied constitutional requirement (implied freedom of political communication).

RULE OF LAW

Dicey's three aspects:

1. Supremacy of law over arbitrary power
2. Equality before the law
3. Rights derived from ordinary law

- The rule of law is an assumption, not an independent constitutional limit
- Communist Party Case: The rule of law forms an assumption underlying the Constitution
- Plaintiff s157/2002: The Constitution is framed upon the assumption of the rule of law

THE COMMONWEALTH EXECUTIVE

Persons within the executive

- The Crown: A legal person, capable of seeking enforcement of its rights in Court and enjoying rights under common law and statute
- **s 61:** "The executive power of the Commonwealth is vested in the King and is exercisable by the GG as the King's representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth"
    - Vests federal executive power and confirms Australia to be a constitutional monarchy
- **s 63**: Defines the GG in council as "the GG acting with the advice of the Federal Executive Council"
- **s 62:** defines the Federal Executive Council as persons "chosen and summoned by the GG" who "hold office during his pleasure"
- **s 64:** authorises the creation of administrative departments supervised by the "Queen's Ministers of State for the Commonwealth"
    - Ministers are members of the Federal Executive Council and "hold office during the pleasure of the GG", so they can constitutionally be sacked by the GG
    - Also prescribes that no Minister may hold office for more than three months without becoming a member of the Commonwealth Parliament, ensuring a measure of individual "Ministerial responsibility"
- The legal picture of Commonwealth executive power in Ch II prescribes the GG, the Federal Executive Council, the Ministers, Ministerial departments and the armed forces
    - The real players are the Prime Minister, the Cabinet, the outer Ministry, Ministerial departments, the armed forces, statutory bodies and commissions, administrative tribunals and miscellaneous government workers
    - The GG has only formal and ceremonial duties and rarely acts independently of the Prime Minister and Cabinet

The reserve powers