

Intergovernmental Immunities Doctrine	1
Executive Power	2
Separation of Powers Doctrine.....	4
Kable.....	9
Excise Duties.....	10
HoP Taxation	13
Grants Power.....	15
Freedom of Interstate Trade (s 92).....	16
Implied Freedom of Political Communication.....	17
Communication.....	17
Donations and Protests.....	18
Voting.....	20

Intergovernmental Immunities Doctrine

The issue is whether (provision) violates a limitation on CW legislative power imposed by the intergovernmental immunities doctrine (IID), rendering them constitutionally invalid.

Under the doctrine, (provision) will be held invalid if it restricts or burdens (state) in the exercise of its/ their constitutional powers (Gaudron, Gummow and Hayne JJ in JSC).

- The core inquiry is whether (the provisions) impair the State's constitutional status or its capacity to function as government (Gleeson CJ in JSC).
- **(State) will contend that the assessment must consider the form, substance and actual operation of (provision) (JSC).**
 - The HC rejected the relevance of the subjective intention of CW Parliamentarians in AEU.
 - There, the relevant legislation was drafted in general terms and did not explicitly discriminate against the state of Victoria.
 - Victoria argued that it was discriminating against them because, because its criteria only applied to them.
 - It said that if an employee is in a State which has a system like the Victorian system (eg. individual employer-employee agreements), then they can get these sets of protections.
 - It just so happened that only VIC had a system of individual contracts between employers and employees.

Considerations	
Insufficient Impairment Arguments by CW	1. The CW will argue that differential treatment, without more, is insufficient to violate the II doctrine (Gaudron, Gummow and Hayne JJ in JSC). 2. It is insufficient for a CW to merely affected "the ease with which those functions are exercised" (JSC). 3. There must be a sufficient level of interference with a state's capacity to function as a government; merely affecting the ease with which powers are going to be exercised do not restrict or burden those powers (Industrial). a. Here, the mere fact that (provision) applies to the states is insufficient. 4. The CW will argue that deprivation does not necessarily equal discrimination. a. The court stated that not every law that deprives the state of a right, privilege or benefit is unjustifiable discrimination, on the basis that, in some circumstances, the state enjoys a privilege that no one else enjoys. i. If that privilege is removed and the state is placed on an equal footing as every other state, it is solely a removal of a privilege – not subjugation to discrimination (QLD). 5. The CW will emphasise that there will not be deprivation if there is a justifiable criteria. a. In AEU, the criterion chosen by CW Parliament only applied to VIC, but that was not a sham or facade designed to only pick on and harm Victoria. b. It was a logical response to Victoria changing their system, thus the CW changed their protections.
Sufficient Impairment Arguments by State	1. (State) will argue that this is a discrimination that has a disabling effect on the State (Gleeson in Austin) 2. In JSC, Gaudron, Gummow and Hayne JJ argued that it is critical to the state's capacity to function as a government to provide secure judicial remuneration as it serves to advantage and protect the interest of the body politic in various way, such as independence. Judges (Austin's case) 1. In Austin, the majority found that the CW in creating a special mechanism for collecting taxation on retirement benefits from State judges violated the II doctrine because it significantly affected the State's ability to determine the remuneration arrangement of its judges. a. The court held that there was ample evidence of sufficient interference, not least because the Parliament of New South Wales was forced to enact new legislation to offset the burden that the Commonwealth law imposed on State judges.

Employment Case (AEU)	
In Australian Education Union (AEU), the majority deemed that, critical to the States' capacity to function as governments, is the right to determine:	
For regulator employees:	- The number and identity of the people whom it wishes to employ - The term of appointment of (above) people. - The number and identity of the people whom it wishes to dismiss with or without notice from its employment on redundancy grounds. - However, notice requirements might not be sufficient because (provisions) are merely prescribing a step to be taken (Industrial). - Therefore, did not, burden the number and identity of those who it wishes to dismiss on redundancy grounds. However, their terms and conditions of employment can be affected (AEU). - In AEU, the majority deemed that it is not critical to the States' capacity to function as governments for them to have the right to determine the operation of federal awards made in respect of most employees. - Eg. Minimum wages and working conditions. Insufficient: - In the Industrial case, the court held that some sections of the Act only applied to people already employed by the government. - Therefore, it did not restrict the state's ability to determine the number and identity of new employees. - Not every burden will violate the IID. This case may be more burdensome than the Industrial Relations case as the Minister must acknowledge receipt of the notice. If they delay their acknowledgment, this might interfere with the operation of a termination.
For higher-level employees:	- The terms and conditions of employees engaged at the higher levels of government are protected. This includes minimum wage and working conditions. - This includes: - Ministers, - Ministerial assistants and advisers - Heads of departments - High level statutory office holders - Parliamentary officers - Judges - And others. - However, Justice Dawson, in dissent, argued that: - If the determination of the number and identity of persons to be employed is critical to the functioning of a State, then so too will be the wages and conditions of employment. - Moreover, he stated that it is artificial to draw a line between those employed at the higher and lower levels of government

Analogous to the QLD Case	
QLD case involved a law that discriminated against the QLD Electricity Commission, an agency of the QLD government. - This doctrine covers agencies of the state – not just the state itself. - It would have applied as much if it were applied to the QLD gov itself. - QLD Electricity Commission was a wholly QLD government owned agency.	
Not a problem	The CW will argue that it was acceptable: - for Parliament to single out disputes in the electricity industry, to which (state) and its agencies might be a party and subject them to different procedures than those in other industries (QLD). - In that case, the law discriminated against employment in the electricity generation industry which affected some agencies in QLD.
Problem	(State) will argue: - That a law that singles out disputes in a certain industry, to which agencies of the State are parties, and subject them to special procedures violates the doctrine. - This discriminates against the agency of the State by subjecting them to a special disability (Mason in QLD). - That it can be discrimination, even if discrimination occurs against all states, as opposed to other people in society (eg. Corporations) (Mason in QLD). - The law is still discriminatory even if it subjects others to that special burn. - There, disputes between QLD Electricity Commission and its employees who were represented by the union, that were not part of QLD, were affected. - The law still constituted discrimination as the only reason the unions were entangled was due to their disagreement with QLD. - The regime was tailored to QLD authorities, as distinct from the authorities of other states and the general run of employers in the industry.

For (the executive's action) to be constitutionally valid, two requirements must be met.

1. First, the expenditure of X for Y must be authorised by an appropriation made by law, as required by ss 81 and 83 of C.
 - a. This is satisfied by ...

However, ss 81 and 83 only appropriate and regulate the expenditure of public money—they do not confer any substantive spending power on the Commonwealth, which must instead be found elsewhere in the Constitution or in statutes enacted under it (French in Pape and Williams).

2. Secondly:

Statutory Power
Here, the authorisation of (act of CW exec) is said to come from the (CW act). - The issue is therefore whether (CW act) is constitutionally valid. For (CW Act) to be C valid, 1. <u>(1) it must be supported by head of power.</u> a. The incidental power in s 51(xxxix), read with s 61, is potentially relevant. b. S 51(xxxix) supports laws incidental to the exercise of the executive power in s 61. c. Two questions arise in determining whether (Act) is supported by the incidental power. i. First, whether (ACT) concerns a matter incidental to the executive power. 1. A statutory conferral of power may be valid if it relates to a subject matter already within the scope of the non-statutory executive power. a. Go to list of things that CW exec has the power to do. i. French CJ and Gummow, Crennan and Bell JJ also indicated that Parliament cannot enact coercive laws under the incidental power. In Pape, the payments were valid in part because no “strings” were attached. 2. <u>must not violate any limitation to legislative power.</u>

Non-Statutory Executive Power	
Because no Commonwealth Act directly authorises the provision of _____ it must be determined whether this power can instead be supported by the executive's non-statutory powers.	
The Commonwealth executive has the power to:	
Administer government departments of State pursuant to s 64 of the Constitution (Williams No 1);	For: (Action of exec) falls within the ordinary running of the government. Against: (Action of exec) is analogous to the case of Williams No 1. - It is a new government program.
Celebrate national events, under the nationhood power (Davis).	In the exercise of inherent authority derived from the character and status of the Commonwealth as the national government (nationhood power) (Davis; Pape; Williams No 2), there is a capacity to engage in activities: - Adapted to the government of a nation and - Which cannot otherwise be carried on for the benefit of the nation This is the power to commemorate national events and establish an organisation to run that commemoration (Davis). For: Against: - The majority in Pape accepted that the nationhood power does not allow the Commonwealth to interfere with state responsibilities. - Here, the (activity) are being run by states, local governments and private corporations. - The nationhood power does not extent to areas of state responsibilities. - Even if it is the national interest, benefit or concern, it was stated in Williams No 2 that this is not enough.
Respond to national emergencies or crisis (Pape).	The executive has the capacity to engage in enterprises and activities adapted to the CW gov and which cannot otherwise be carried on for the benefit of the nation (Mason in AAP). - This is the nationhood power - derived from the character and status of the Commonwealth as a national government (AAP; Pape; Davis; William). - This includes responding to national emergencies. In Pape, the High Court has expressed different views on the scope of the nationhood power. French CJ held that executive power extends to short term fiscal measures to meet adverse economic conditions, affecting the nation, where such measures are peculiarly within the capacity and resources of the CW gov. <i>P will argue that the present measure does not comfortably fit within this conception.</i> - The Rudd government issued \$900 stimulus checks to respond to the Global Financial Crisis. - In Pape, the Commonwealth had the resources and capacity to quickly implement measures rationally iudged as necessary to mitigate the nationwide effects of the GFC.

	2. Gummow, Crennan and Bell JJ adopted a broader view of nationhood power, holding that the exec is empowered to respond to a crisis. a. This includes war, natural disaster or a financial crisis on the scale in Pape. 1. <i>CW will argue that the initiative is plainly of a scale and nature suited to the Commonwealth.</i> a. A key indicator that an activity does not fall within the nationhood power is where the States already perform, or could readily perform, the function themselves (AAP). The nationhood power cannot be relied upon to intrude into areas of state responsibility or power (Gummow, Crennan, Bell JJ in Pape). i. More broadly, the demands of national government cannot override the Constitution's division of powers—whether between the Commonwealth and the States, or between the branches of government (French in Pape). ii. In Pape, the Court upheld the short-term taxpayer payments because the measure did not interfere with this division. 3. Hayne and Kiefel rejected extending the nationhood power to crises, emergencies or adverse effects of circumstances affecting the national economy. a. They held that such imprecise notions cannot serve an independent criteria for defining executive power. i. P will respond that it has been cautioned that it is not a general power to manage the national economy (French in Pape; Williams No 2).
Capacities power: to contract and spend public money (Pape; Williams).	1. The CW does not have a general power to contract and spend money like other legal people. 2. In Williams, the court recognised that the executive's power to enter into contracts and spend public money extends to, among other things: a. The administration of departments of State (s 64 of the C). i. Administration refers to administering the day-to-day activities of the organisation and running government departments. ii. However, the precise scope has not been settled yet. b. Even in the absence of express statutory authorisation to contract and spend, there is an authorisation to contract and spend on things that are necessary or reasonably incidental to the execution and maintenance of CW laws (s 61 of C). c. The exercise of power conferred by or derived from an Act. i. reasonably necessary or incidental idea (s 51(xxxix)) ii. Under this category, the government can spend money on anything that is necessary to give effect to the statute. d. the exercise of powers defined by reference to such of the prerogatives of the Crown as are properly attributable to the Commonwealth. e. the exercise of inherent authority derived from the character and status of the Commonwealth as the national government. i. This is the nationhood power. 3. The Commonwealth does not have a power of expenditure in relation to a matter merely because that matter is within its legislative power. The assumption that the Commonwealth's power of expenditure extended to expenditure on subject matters within CW legislative competence was rejected in Williams No 1.