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Exam study guide: the Australian Constitution and its limits

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TOPIC 00

The Constitutional Method: Issue-Spotting and Answer Frameworks

1 Purpose and Overview

A constitutional problem question supplies a short statute, a government decision or a pair of colliding laws and asks for advice on validity. Problem questions typically raise several issues at once and reward ordering and authority: finding each issue, taking the issues in a defensible order, stating the governing test, applying it element by element and saying what follows if the law fails. This chapter is the manual for that process: two entry questions, a checklist for a Commonwealth law and another for a State law, the fact patterns that signal each issue, and a method for building and citing an answer under time pressure. Chapters T01 to T11 supply the doctrine; T12 tests the method across topics.

 **Reading Guide:** *First pass:* read §2 with Figure 0.1, then the checklists in §3 and §4; those pages are the method. *Deep revision:* learn the trigger table in §5 until each cue produces its issue and chapter unprompted, then rehearse the five moves in §6 on a fact pattern of your own. *Critical thinking:* the checklists are scaffolding, not law; at each step ask which High Court decision supplies the test, how firmly it is settled, and what facts would resolve the step the other way.

 **Currency Check:** Law stated as at 5 October 2026. *NZYQ* overruled the constitutional holding in *Al-Kateb*, and *Abdel-Hady* (10 June 2026) confirms that a law held invalid is treated as having always been invalid.¹² *G Global* (15 October 2025) holds that s 109 renders a State law "inoperative", not void, and overruled *Metwally*.³ *Yunupingu* (12 March 2025) holds that a law made under s 122 is subject to s 51(xxxi).⁴ *Babet* (14 May 2025) treats structured proportionality as a flexible tool of analysis, not a compulsory three-step ritual, and *Hopper* (15 April 2026) invalidated Victoria's whole donations scheme on a concession and for inseparability, not because donation caps are invalid as such.⁵ The Constitution has not been altered since 1977.⁶ Avoid: *Al-Kateb* as authority on Chapter III; "void" for a State law displaced by s 109; *Metwally*; the older view that s 122 laws escape s 51(xxxi); and any claim that donation caps are unconstitutional as such.

2 The Two Entry Questions

Two questions come before any test or case name. Their answers select the checklist and show whether a second layer of law will be needed.

2.1 Entry question one: which legislature made the law?

The Commonwealth Parliament holds only the powers the Constitution gives it, so the checklist in §3 begins by demanding a source of power. A State Parliament holds a plenary power preserved by s 107 of the Constitution, so the checklist in §4 demands no head of power; a State law fails only if the Commonwealth Constitution, or a binding manner-and-form requirement, takes the subject away or limits how the power is used.⁷ A law the Commonwealth Parliament makes for a Territory rests on s 122 and takes the Commonwealth checklist; it is not exempt from the just-terms guarantee in s 51(xxxi).⁸

Identify the instrument as well as the legislature. A regulation is tested twice: the authorising Act must be valid, and the regulation must stay inside both that Act and the Constitution; where it overreaches it can be read down rather than struck out.⁹ Executive conduct with no statute behind it must find its

source in s 61 and cannot do what a Commonwealth law expressly or impliedly excludes.¹⁰

2.2 Entry question two: does the other level of government appear in the facts?

Three situations bring the second level into play. A Commonwealth law may burden a State government; a State law may burden the Commonwealth or its agencies; or a Commonwealth law and a State law may regulate the same conduct, which raises s 109.¹¹ Section 109 ranks laws; it does not decide whether a law is valid. It applies to two laws that both survive their own checklists, so it is reached last.¹² Figure 0.1 combines both checklists and the s 109 step.

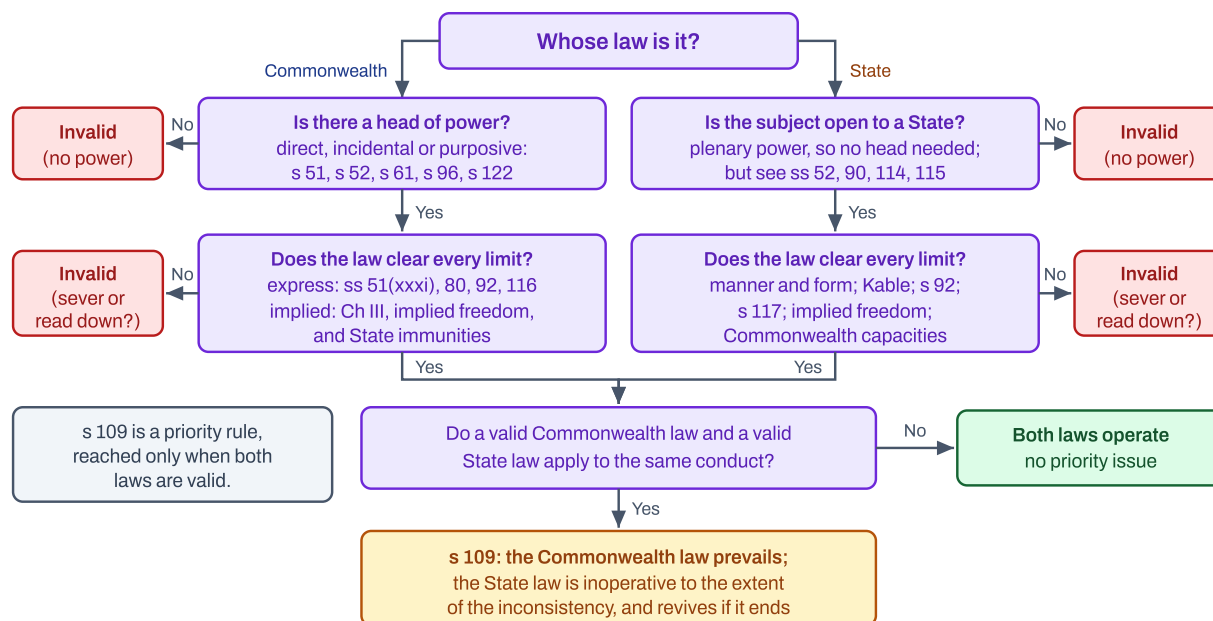


Figure 0.1: Is this law valid? The master decision tree. The left column is the Commonwealth checklist (§3), the right column the State checklist (§4); the limits box is applied provision by provision, and the s 109 step is reached only when both laws have survived.

3 Checklist A: A Commonwealth Law

A Commonwealth law is valid only if a head of power supports it and no limit defeats it. Run the stages in that order: a law that fails for want of power never reaches the limits, while a law that has power can still fail at the second stage.

3.1 Stage one: find a source of power

- 1. Characterise the law by what it does.** Work from the rights, duties and privileges it creates and from its practical operation, and ask which listed subject the law is truly about. A law needs only one valid character, whatever else it may also be.¹³
- 2. Read the head of power broadly.** The constitutional text is read 'with all the generality which the words used admit'; the old idea that Commonwealth powers must be cut down to protect State domain has been rejected, and federal limits now operate at the second stage.¹⁴
- 3. Test the connection.** For a head that is not purposive, a law operating directly on the subject matter needs no further connection and proportionality is not an extra test; the question is sufficiency of connection, whether in the core of the power or its incidental reach (s 51(xxxix) states the express incidental power).¹⁵
- 4. Test the means for a purposive head.** Where the power is defined by an end, defence being the paradigm, ask whether the means chosen are reasonably appropriate and adapted to that end.¹⁶
- 5. Look elsewhere if no s 51 or s 52 head fits.** The remaining sources are s 61 read with s 51(xxxix) (the nationhood power), a s 96 grant to a State, and s 122 for a Territory.¹⁷

6. Ignore the label. A recital that the Act is a law on a particular subject does not decide validity; the Court decides.¹⁸

3.2 Stage two: express limits

The table gives the working test for three express guarantees. Section 51(xxxi) reappears as a limit in T03, s 116 beside s 96 grants in T06, and s 80 only here; T02 explains why none binds a State.

LIMIT	WHAT TO ASK	AUTHORITY
s 51(xxxi)	Does the law both deprive a person of property and confer an identifiable proprietary benefit? If so, are the terms just? A s 122 law is inside the guarantee.	<i>JT International SA v Commonwealth</i> (2012) 250 CLR 1; <i>Commonwealth v Yunupingu</i> [2025] HCA 6 ¹⁹
s 80	Is it a Commonwealth offence tried on indictment? If so, jury trial is mandatory, but Parliament decides which offences proceed on indictment, so the guarantee is procedural only.	<i>Cheng v The Queen</i> (2000) 203 CLR 248 ²⁰
s 116	Does the law, in substance, establish a religion, compel observance, forbid free exercise, or set a religious test for office under the Commonwealth? 'For establishing' is read narrowly.	<i>Attorney-General (Vic) (Ex rel Black) v Commonwealth</i> (1981) 146 CLR 559 ('DOGS Case') ²¹

Section 92 binds the Commonwealth as well as the States (T10), and Commonwealth taxation must not discriminate among States or their parts (s 51(ii); T09).²²

3.3 Stage two: implied limits

- **Chapter III.** The judicial power of the Commonwealth belongs exclusively to Ch III courts, and those courts cannot take on non-judicial functions beyond what is incidental to judging (*Boilermakers*).²³ Involuntary detention is exclusively judicial unless within a recognised exception, which is why the detention provisions were invalid as applied to a person with no real prospect of removal.²⁴ Detail is in T07.
- **Implied freedom of political communication.** The freedom limits legislative and executive power and is not a personal right. It has invalidated Commonwealth laws, and the test asks whether the law burdens the freedom and, if it does, whether the burden is justified.²⁵ Detail is in T08.
- **Federalism.** A Commonwealth law is invalid if it discriminates against the States or significantly impairs their capacity to function as governments.²⁶ Detail is in T09.

A law that clears both stages is valid. Whether a State law yields to it is a separate question, answered by s 109 (§4.4).

4 Checklist B: A State Law

A State law starts from validity. The enquiry is whether something in the Constitution, or in State law itself, takes the law away.

4.1 Stage one: no head of power is needed

State legislative power is, in the Court's words, 'as ample and plenary as the power possessed by the Imperial Parliament itself', and 'peace, order and good government' grant power rather than limit it. A State law cannot be attacked for want of a head of power, and no common law right to compensation restrains it.²⁷

4.2 Stage one: subjects the Constitution withdraws

Four provisions take subjects away from the States. Section 52 makes Commonwealth power exclusive over matters such as the seat of government and Commonwealth places. Section 90 makes the power to impose customs and excise duties exclusive once uniform customs duties are imposed. Section 114 bars

a State, without Commonwealth consent, from taxing Commonwealth property or raising a naval or military force. Section 115 bars a State from coining money or making anything but gold and silver coin legal tender. A State law within these subjects is beyond State power, and s 90 is the live provision: a State charge on the use of goods can be an excise.²⁸

4.3 Stage two: limits on how a State may legislate

- **Manner and form.** A State law 'respecting the constitution, powers or procedure of the Parliament of the State' has no force unless made in the manner and form that State law requires (T02).²⁹
- **Institutional integrity of State courts.** A State law is invalid if it substantially impairs the institutional integrity of a State court, the quality that makes it a suitable repository of federal jurisdiction (*Kable*). The *Boilermakers* separation of powers does not apply to the States as such (T07).³⁰
- **Implied freedom and s 92.** A State statute can be invalid for burdening the implied freedom without justification (T08),³¹ and State laws, including border directions, are tested against s 92 (T10).³²
- **Section 117.** A State law offends s 117 if it imposes on a resident of another State a disability or discrimination that would not equally apply to a resident of the legislating State; the test is one of substance, asking whether the disability would disappear if the person were notionally resident there.³³
- **Commonwealth capacities.** A State law may not impair the executive capacities of the Commonwealth, but a general State law may regulate how those capacities are exercised (T09).³⁴
- **Guarantees that do not bind a State.** Section 51(xxxi), s 80 and s 116 do not bind a State Parliament; s 116 forbids only laws made by 'the Commonwealth'.³⁵

4.4 The last step: section 109

s 109 When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.³⁶

The word 'invalid' does not mean void. A State law displaced by s 109 stays within State legislative power and is inoperative while the inconsistency lasts:

'The type of invalidity effected by s 109 does not render the State law void or beyond State legislative power but instead renders the State law "inoperative" — Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ, *G Global 120E T2 Pty Ltd v Commissioner of State Revenue* [2025] HCA 39 at [38].

Apply s 109 in two stages. Direct inconsistency comes first, as where the State law would alter, impair or detract from the operation of a Commonwealth law; if it is made out, the second stage need not be reached. The second stage, covering the field, applies when the Commonwealth law was meant as an exhaustive statement on its subject and the State law trespasses on that subject.³⁷ Detail is in T11.

The table sets the two checklists side by side; the chapters that own each row are in §8.

CONSTRAINT	COMMONWEALTH LAW	STATE LAW
Head of power	Required: s 51, s 52, s 61, s 96, s 122	Not required: plenary power
ss 52, 90, 114, 115	Only s 114 restrains (tax on State property)	All four restrain
s 51(xxxi), s 80, s 116	Bind	Do not bind
s 92	Binds	Binds
Chapter III	<i>Boilermakers</i> limbs; <i>Lim</i>	<i>Kable</i> limit on State courts only

CONSTRAINT	COMMONWEALTH LAW	STATE LAW
Implied freedom	Binds	Binds
Federal immunities	<i>Melbourne Corporation</i> limit	<i>Cigamatic</i> limit
Manner and form	Not applicable	<i>Australia Act</i> s 6
s 109	Prevails if valid	Inoperative if inconsistent

5 Issue-Spotting Triggers

Read the facts once against the left-hand column before writing anything. Each cue signals an issue, and several cues in one problem are the norm.

FACT CUE	ISSUE TRIGGERED	FIRST TEST TO RUN	CHAPTER
A Commonwealth Act regulates companies, their directors or employees	Corporations power	Is the body a trading, financial or foreign corporation, and does the law regulate its activities, functions, relationships or business?	T04
An Act implements a treaty, or reaches conduct abroad or dealings with another country	External affairs power	Which limb of s 51(xxix) applies; for a treaty, how closely does the law track its terms?	T05
A federal scheme has no Act behind it, or no obvious head of power	Executive and nationhood power	Is there a statute, prerogative or capacity, and does a statute exclude the action?	T05; T06
Federal money flows to a State or private body on conditions	Grants, appropriation, spending	Is it a s 96 grant, or is there statutory authority and a head of power?	T06
A State levies a charge on goods, or on their sale, use or production	Excise under s 90	Tax or fee for service; an inland tax on goods?	T02; T06
A State Act changes the Parliament's composition or procedure, or an earlier Act demands a referendum or special majority	Manner and form	Does the earlier requirement bind under s 6 of the <i>Australia Act</i> , and did the later law comply?	T02
A court must decide as the executive directs, or a Minister detains, punishes or strips citizenship	<i>Kable</i> (State) or Ch III (Commonwealth)	Is institutional integrity impaired, or a judicial function exercised outside Ch III?	T07
Rules on protest, campaigning, donations, advertising or party registration	Implied freedom	Is there a burden, and is it justified?	T08
A Commonwealth law singles out State governments or loads State staff, services or revenue	<i>Melbourne Corporation</i> limit	Discrimination, or significant impairment of State capacity?	T09
A State law binds Commonwealth officers, property or contracts	Commonwealth immunity from State law	Does it alter Commonwealth capacities or only regulate their exercise?	T09
Border closures, fees or licences favour local traders or burden movement between States	Section 92	Burden, then discrimination, then justification	T10
A Commonwealth law and a State law cover one activity; penalties differ; one permits what the other forbids; an Act declares itself exclusive	Section 109	Direct inconsistency, then cover the field; both laws valid first	T11

FACT CUE	ISSUE TRIGGERED	FIRST TEST TO RUN	CHAPTER
Property is taken or controlled; a Commonwealth trial has no jury; a religious practice is restricted	Express limits on a Commonwealth law	Run the table in §3.2	§3.2
A regulation or ministerial direction is attacked	Validity of the instrument; reading down	Does a valid Act authorise it; can it be read down?	T03

Order of issues. Order the issues by dependency, not by the order of the facts: Commonwealth power, then limits, then State-law validity, then immunities, and s 109 last. An issue that decides another comes first, because if the Commonwealth law is invalid no s 109 question arises.

6 Answer Architecture

6.1 Five moves for every issue

Each issue receives the same five moves, in order. Figure 0.2 shows how they lead into the consequence vocabulary of §6.2.

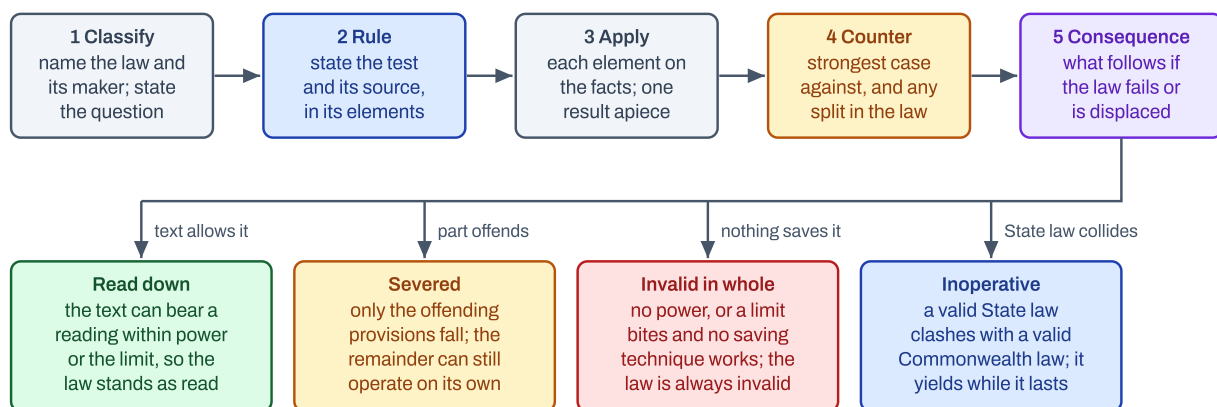


Figure 0.2: The five moves and the four consequences. Try a reading that keeps the law valid first, then severance, and treat invalidity in whole as the last resort; inoperativity under s 109 is a separate outcome for a State law that is itself valid.

- **Classify.** Name the law, its maker and the question in one sentence, for example whether a section is supported by the corporations power. The classification fixes the checklist stage and therefore the test.
- **Rule.** State the test in a sentence or two, give its source and list its elements so each can be taken in turn.
- **Apply.** Take each element on the facts and conclude on it before moving on. Where the test is flexible, say which version is being used. Structured proportionality asks whether a burden is suitable, necessary and adequate in the balance,³⁸ but the High Court has said that the steps are a tool and not a ritual:

'The flexible application of all or any of the steps of structured proportionality is to be understood as a "tool of analysis", express or ritual invocation of which is by no means necessary in every case.' — Gageler CJ and Jagot J, *Babet v Commonwealth* [2025] HCA 21 at [49] (footnote omitted).

- **Counter.** State the strongest argument against the conclusion and weigh it. Where authority truly divides, say so: the Justices in *Babet* agreed on the answers but divided on whether structured proportionality is a flexible tool or binding precedent.³⁹ Where it does not divide, do not invent a split.

- **Consequence.** State the legal result and what it means for the client (§6.2).

6.2 The consequence vocabulary

OUTCOME	WHEN IT IS THE ANSWER	EFFECT	AUTHORITY
Read down	The text can bear a construction within power or within the limit	The law stands as construed; a construction that keeps it valid is preferred where the language permits	<i>Munro</i> ; <i>Deripaska</i> ⁴⁰
Severed	One provision offends and the remainder can operate without it	Only the offending provision falls; the Act is valid to the extent it is not in excess of power	<i>Air Caledonie</i> ; s 15A ⁴¹
Invalid in whole	No head of power, or a limit bites and no saving technique works	The law is treated as always invalid	<i>NZYQ</i> ; <i>Abdel-Hady</i> ; <i>Hopper</i> ⁴²
Inoperative	A valid State law is inconsistent with a valid Commonwealth law	The State law yields to the extent of the inconsistency and resumes when it ends	<i>G Global</i> ⁴³

One refinement belongs to the invalidity row. A superior court's order made under a statute later held invalid stays valid until set aside, so the statute's invalidity does not by itself undo the order; the point is confined to judicial orders and does not extend to executive acts.⁴⁴

6.3 The five moves in a paragraph

Illustration. A State Act imposes a charge of two dollars on each tonne of crushed rock sold in the State, payable by the seller. *Classify.* The law is a State law, so no head of power is needed; the issue is whether s 90 has withdrawn the subject. *Rule.* Once uniform customs duties are imposed, the power to impose duties of excise is exclusive to the Commonwealth, and 'Duties of excise are "inland taxes" on goods'.⁴⁵ *Apply.* The charge is compulsory, falls on goods at the point of sale inside Australia, and gives the seller no direct benefit in return, which marks it as a tax and not a fee for service.⁴⁶ *Counter.* The State may say the charge pays for access to a limited public resource, but a charge on every sale of rock, whatever its source, has no such link on these facts.⁴⁷ *Consequence.* The Act is invalid to the extent that it imposes the charge, and whether the rest survives turns on severance (§6.2).

6.4 Order and economy under time pressure

- List the issues first, in dependency order (§5), then write; spend length where the facts are arguable and give a plainly satisfied or conceded point one sentence.
- Give one authority for each proposition and do not narrate a doctrine's history.
- Conclude each issue before starting the next, state an alternative conclusion where the issue is finely balanced, and finish with advice on who succeeds and what follows.

7 Citing the Constitution and Cases Under Time Pressure

- **Constitution.** In prose write 's 51(xx) of the Constitution'; in a footnote write 'Australian Constitution s 51(xx)'. Placita take lower-case roman numerals in brackets, and Chapter III is 'Ch III'. Name the head of power with its section on first mention ('the corporations power, s 51(xx)'). The text still says 'the Queen' and is quoted as printed; prose refers to the Crown.
- **Cases.** Give the full name and report in the footnote and use the italic short name in prose: *Engineers*, *Lange*, *McCloy*, *Pape*, *Work Choices*, *Kable*, *Boilermakers*, *Lim*, *Melbourne Corporation*. Add a year or topic when two decisions share a name: *Davis* (1988) is the nationhood case and *Davis* (2023) the executive-instruction case; *Palmer* is the s 92 border case and *Palmer* (*Mineralogy*) the manner-and-form decision.⁴⁸

- **Recent decisions.** Where only the medium neutral citation is known, cite it after the case name, as in *Babet v Commonwealth* [2025] HCA 21, and never add a CLR page from memory. Add a pinpoint only when it is known; a wrong pinpoint costs more than none.
- **Statutes.** Write '*Australia Act 1986* (Cth) s 6', italicising the title and year but not the jurisdiction, and define a short title on first use.

8 Map of the Guide: Which Chapter Owns Which Doctrine

CHAPTER	OWNS	ANCHOR AUTHORITIES
T01 Fundamental Concepts, Institutions and Instruments	Interpretation, Imperial history, responsible government, executive institutions, s 128	<i>Engineers; Mabo (No 2); Plaintiff S157/2002</i>
T02 State Legislative Power and Manner and Form	State plenary power, extraterritoriality, State constitutions, manner and form, constitutional limits on States	<i>Union Steamship; Trethowan; Marquet; Durham Holdings</i>
T03 Commonwealth Legislative Powers: Characterisation and Judicial Review	Characterisation, incidental power, proportionality, invalidity, severance, reading down	<i>Grain Pool; Murphyores; Leask; Thomas v Mowbray</i>
T04 The Corporations Power	Section 51(xx)	<i>Work Choices Case; State Superannuation Board; Incorporation Case</i>
T05 The External Affairs Power and the Nationhood Power	Section 51(xxix); sources of executive power under s 61	<i>Koowarta; Tasmanian Dam Case; Industrial Relations Act Case; Davis (2023)</i>
T06 Financial Powers: Grants, Appropriation and Spending	Section 96; ss 81 and 83; executive spending	<i>Pape; Williams (No 1); Federal Aid Roads Case</i>
T07 Judicial Power: Chapter III and the State Courts	Chapter III, <i>Boilermakers</i> , the <i>Kable</i> line, State separation of powers	<i>Boilermakers; Lim; NZYQ; Kable</i>
T08 The Implied Freedom of Political Communication	The implied freedom; the implied right to vote	<i>Lange; McCloy; Babet; Roach</i>
T09 Intergovernmental Immunities	Commonwealth laws affecting States; Commonwealth immunity from State law	<i>Melbourne Corporation; Clarke; Cigamic</i>
T10 Freedom of Interstate Trade and Commerce: Section 92	Section 92	<i>Cole v Whitfield; Betfair (No 1); Palmer</i> (border case)
T11 Inconsistency: Section 109	Section 109	<i>Kakariki Case; Telstra v Worthing; Dickson; G Global</i>
T12 Revision and Cross-Topic Synthesis	Tests at a glance, cross-topic traps, four multi-issue problems	All of the above

9 Cross-Topic Traps

TRAP	CORRECT APPROACH	WHERE
Starting with s 109	Establish that both laws are valid; s 109 ranks them and is reached last	§2.2; T11
Calling a State law "void" under s 109	The State law is inoperative while the inconsistency lasts and revives when it ends	§4.4; <i>G Global</i>
Treating the implied freedom as an individual's right or a general protection of speech	It limits legislative and executive power	§3.3; T08

TRAP	CORRECT APPROACH	WHERE
Reciting structured proportionality as a compulsory three-step test	Use it as an organising tool and note the split	\$6.1; <i>Babet</i>
Applying <i>Boilermakers</i> to a State, or reading <i>Kable</i> as a State separation of powers	The <i>Kable</i> limit protects the integrity of State courts only	\$4.3; T07
Applying s 51(xxxi), s 80 or s 116 to a State law	None binds a State Parliament	\$4.3; T02
Assuming the executive may act wherever no statute forbids	Non-statutory action needs a source in s 61, cannot contradict a statute, and executive spending under contract generally needs statutory authority ⁴⁹	T05; T06
Treating an invalid law as valid until struck down	The law is treated as always invalid; the exception for judicial orders is narrow	\$6.2; T03
Citing a stale or mismatched authority	<i>Al-Kateb</i> on Ch III, <i>Metwally</i> and the pre-2025 view of s 122 are gone; two <i>Palmer</i> and two <i>Davis</i> decisions must not be confused	Currency Check; \$7
Reading down towards invalidity	The construction that preserves validity prevails if the language permits, but the Act cannot be rewritten	\$6.2; T03

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FOOTNOTES

1. *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* (2023) 280 CLR 137; [2023] HCA 37, [45] ('*NZYQ*') (overruling the constitutional holding in *Al-Kateb v Godwin* (2004) 219 CLR 562); leave to reopen the statutory construction holding was refused: [23].
2. *Abdel-Hady v Commonwealth* [2026] HCA 17.
3. *G Global 120E T2 Pty Ltd v Commissioner of State Revenue* [2025] HCA 39, [38], [89] ('*G Global*') (overruling *University of Wollongong v Metwally* (1984) 158 CLR 447).
4. *Commonwealth v Yunupingu* [2025] HCA 6, [44].
5. *Babet v Commonwealth* [2025] HCA 21, [49]; *Hopper v Victoria* [2026] HCA 11, [52]–[68].
6. *Commonwealth of Australia Constitution Act 1900 (Imp)* 63 & 64 Vict, c 12, s 9 (Federal Register of Legislation compilation No 6, 29 July 1977).
7. *Union Steamship Co of Australia Pty Ltd v King* (1988) 166 CLR 1 ('*Union Steamship*'); Australian Constitution ss 51, 107.
8. Australian Constitution ss 51(xxxi), 122; *Yunupingu* (n 4).
9. *Deripaska v Minister for Foreign Affairs* [2026] HCA 14; *Acts Interpretation Act 1901* (Cth) s 15A; *Legislation Act 2003* (Cth) s 13.
10. Australian Constitution s 61; *Davis v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2023) 279 CLR 1; [2023] HCA 10, [30] ('*Davis* (2023)').
11. *Melbourne Corporation v Commonwealth* (1947) 74 CLR 31 ('*Melbourne Corporation*'); *Commonwealth v Cigamatic Pty Ltd (in liq)* (1962) 108 CLR 372 ('*Cigamatic*'); Australian Constitution s 109.
12. Australian Constitution s 109.
13. *Grain Pool of Western Australia v Commonwealth* (2000) 202 CLR 479 ('*Grain Pool*'); *Murphyores Inc Pty Ltd v Commonwealth* (1976) 136 CLR 1.
14. *Grain Pool* (n 13) 492 [16]; *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* (1920) 28 CLR 129 ('*Engineers*').
15. *Plaintiff S156/2013 v Minister for Immigration and Border Protection* (2014) 254 CLR 28 ([2014] HCA 22), [24]; *Leask v Commonwealth* (1996) 187 CLR 579; Australian Constitution s 51(xxxix).

16. *Thomas v Mowbray* (2007) 233 CLR 307.
17. Australian Constitution ss 51(xxxix), 61, 96, 122; *Pape v Commissioner of Taxation* (2009) 238 CLR 1.
18. *Australian Communist Party v Commonwealth* (1951) 83 CLR 1.
19. *JT International SA v Commonwealth* (2012) 250 CLR 1; *Yunupingu* (n 4); Australian Constitution s 51(xxxi).
20. *Cheng v The Queen* (2000) 203 CLR 248; Australian Constitution s 80.
21. *Attorney-General (Vic) (Ex rel Black) v Commonwealth* (1981) 146 CLR 559 ('*DOGS Case*'); Australian Constitution s 116.
22. *Gratwick v Johnson* (1945) 70 CLR 1; Australian Constitution ss 51(ii), 92.
23. *R v Kirby; Ex parte Boilermakers' Society of Australia* (1956) 94 CLR 254.
24. *Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs* (1992) 176 CLR 1; *NZYQ* (n 1).
25. *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520; *Farmer v Minister for Home Affairs* [2025] HCA 38; *Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1; *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106.
26. *Melbourne Corporation* (n 11); *Clarke v Federal Commissioner of Taxation* (2009) 240 CLR 272.
27. *Union Steamship* (n 7) 10, quoted in *Durham Holdings Pty Ltd v New South Wales* (2001) 205 CLR 399 ([2001] HCA 7), [9] ('*Durham Holdings*').
28. Australian Constitution ss 52, 90, 114, 115; *Vanderstock v Victoria* (2023) 279 CLR 333; [2023] HCA 30.
29. *Australia Act 1986* (Cth) s 6 ('*Australia Act*'); *Attorney-General (WA) v Marquet* (2003) 217 CLR 545.
30. *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51; *Baker v The Queen* (2004) 223 CLR 513; *Assistant Commissioner Condon v Pompano Pty Ltd* (2013) 252 CLR 38; [2013] HCA 7, [22] (French CJ).
31. *Hopper* (n 5); *McCloy v New South Wales* (2015) 257 CLR 178.
32. *Palmer v Western Australia* (2021) 272 CLR 505; [2021] HCA 5.

33. Australian Constitution s 117; *Street v Queensland Bar Association* (1989) 168 CLR 461.
34. *Cigamatic* (n 11); *Re Residential Tenancies Tribunal (NSW); Ex parte Defence Housing Authority* (1997) 190 CLR 410.
35. *Durham Holdings* (n 27); *Byrnes v The Queen* (1999) 199 CLR 1 ([1999] HCA 38); Australian Constitution s 116.
36. Australian Constitution s 109.
37. *Victoria v Commonwealth* (1937) 58 CLR 618 ('Kakariki Case'); *Telstra Corporation Ltd v Worthing* (1999) 197 CLR 61; *Dickson v The Queen* (2010) 241 CLR 491.
38. *McCloy* (n 31).
39. *Babet* (n 5) [49], [72], [242] (structured proportionality as a tool), [176]–[183], [210]–[212] (as binding precedent).
40. *Federal Commissioner of Taxation v Munro* (1926) 38 CLR 153, 180 ([1926] HCA 58); *Deripaska* (n 9).
41. *Air Caledonie International v Commonwealth* (1988) 165 CLR 462; *Acts Interpretation Act 1901* (Cth) s 15A.
42. *NZYQ* (n 1); *Abdel-Hady* (n 2); *Hopper* (n 5).
43. *G Global* (n 3) [38]–[39].
44. *New South Wales v Kable* (2013) 252 CLR 118 ([2013] HCA 26) ('*Kable (No 2)*'), [41].
45. *Vanderstock* (n 28) [5]; Australian Constitution s 90.
46. *Parton v Milk Board (Vic)* (1949) 80 CLR 229.
47. *Harper v Minister for Sea Fisheries* (1989) 168 CLR 314.
48. *Davis v Commonwealth* (1988) 166 CLR 79; *Davis* (2023) (n 10); *Palmer v Western Australia* (2021) 272 CLR 505; [2021] HCA 5; *Palmer v Western Australia* (2021) 274 CLR 286 ([2021] HCA 31).
49. *Davis* (2023) (n 10) [30]; *Williams v Commonwealth* (2012) 248 CLR 156 ('*Williams (No 1)*').

TOPIC 01

Fundamental Concepts, Institutions and Instruments

1 Overview

Topic 1 supplies the vocabulary and the chain of instruments that every later chapter assumes. A problem question asks which instrument gives a legislature or office-holder its power, whether the limit relied on is a rule of law or only a convention, whether a change needs s 128, and how a constitutional term is read. A complete answer names the instrument and its date, classifies the norm, states the rule with authority, and says what a court can and cannot do about a breach.

 **Reading Guide:** *First pass:* learn the instrument chain (§5.4, Figure 1.1), the s 128 pathways (Figure 1.2) and the decision ladder (Figure 1.3). *Deep revision:* work through §5.9 to §5.12 until the legal powers, the conventions that confine them and the available remedies can be separated from memory. *Critical thinking:* test the claims in §5.16 that a text-first method is neutral, that the rule of law limits Parliament and that s 128 is too rigid.

 **Currency Check:** The most recent authoritative statements are *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* (2023) 280 CLR 137; [2023] HCA 37 (28 November 2023, 7:0), which overruled the constitutional holding in *Al-Kateb v Godwin* (2004) 219 CLR 562, and *Abdel-Hady v Commonwealth* [2026] HCA 17 (10 June 2026, 7:0), under which an invalid law is treated as 'always' invalid and officers have no common-law defence of having acted on the overruled decision. The Constitution has not been altered since 1977, and current s 128 refers to 'each State and Territory'. Forty-five referendum proposals have been put and 8 carried; the most recent was the Voice proposal on 14 October 2023 (39.94% Yes nationally; no State majority). Avoid treating *Al-Kateb* as good authority on Ch III, quoting s 128 without 'and Territory', or stating that 44 proposals have been put.

2 Key Definitions

TERM	DEFINITION	AUTHORITY
Constitution	The rules that create, distribute and limit the institutions of government; for the Commonwealth, the instrument in s 9 of the <i>Commonwealth of Australia Constitution Act 1900</i> (Imp) 63 & 64 Vict, c 12 ('Constitution Act').	Constitution Act s 9, covering cl 5
Supremacy	A law outside the Constitution is invalid, and the courts, not Parliament, decide validity.	<i>Australian Communist Party v Commonwealth</i> (1951) 83 CLR 1
Convention	A rule of political practice, followed from obligation, governing how a legal power is used; breach has a political sanction only.	Australian Constitution ss 61, 64
Parliamentary sovereignty	Dicey's doctrine that Parliament may make or unmake any law and no body may override it; no Australian Parliament holds it.	A V Dicey, <i>Introduction to the Study of the Law of the Constitution</i> (Macmillan, 10th ed, 1959)
Rule of law	Government under law applied to all by independent courts; in Australia an assumption of the Constitution, not a free-standing limit.	<i>Plaintiff S157/2002 v Commonwealth</i> (2003) 211 CLR 476, [31]; <i>Palmer v Western Australia</i> (2021) 274 CLR 286, [8]

TERM	DEFINITION	AUTHORITY
Representative and responsible government	Representative: power exercised by persons chosen by the electors. Responsible: the Executive sits in, and answers to, Parliament.	<i>Australian Capital Television Pty Ltd v Commonwealth</i> (1992) 177 CLR 106; <i>Egan v Willis</i> (1998) 195 CLR 424
Repugnancy; paramount force	Before 1986, a colonial or State law inconsistent with an Imperial Act extending to it was void to that extent.	<i>Colonial Laws Validity Act 1865</i> (Imp) 28 & 29 Vict c 63; <i>China Ocean Shipping Co v South Australia</i> (1979) 145 CLR 172
Legalism; connotation and denotation	Natural reading in context. Connotation (essential meaning) is fixed in 1900; denotation (things covered) can grow.	<i>Amalgamated Society of Engineers v Adelaide Steamship Co Ltd</i> (1920) 28 CLR 129 ('Engineers'); <i>Attorney-General (NSW) v Brewery Employees Union of NSW</i> (1908) 6 CLR 469 ('Union Label Case')
Double majority	Under s 128, a majority of all electors voting and a majority of voters in a majority of States.	Australian Constitution s 128

3 Constitutional and Legislative Framework

The Constitution still refers to 'the Queen' because it has not been altered since 1977. This chapter writes 'the Sovereign' or 'the Crown' and quotes the text as printed.

PROVISION	WHAT IT DOES	WHY IT MATTERS
Constitution Act covering cl 2, 3, 5; s 9	Extend the Act to the Sovereign's successors, commence it by Proclamation and bind the courts and people of every State; s 9 enacts the Constitution.	s 128 reaches only 'this Constitution'.
ss 1, 7, 24, 53, 81, 83	Parliament of the Sovereign, Senate and House; Members 'directly chosen by the people'; limits on the Senate over money Bills; appropriation by law.	Representative government; supply (T06; T08).
ss 2, 5, 57 to 59, 61 to 64, 68	Governor-General; dissolution; assent, reservation, disallowance; executive power; Executive Council; Ministers.	Executive institutions (T05).
ss 74, 75, 106, 107, 109, 122, 128	Privy Council appeals limited; High Court original jurisdiction; State Constitutions and powers continued; Commonwealth law prevails; Territories; alteration.	s 75 is never an appeal provision.
<i>Colonial Laws Validity Act 1865</i> (Imp) s 5	Colonial legislatures' power over their own constitution, powers and procedure, subject to manner and form.	Pre-1986 State laws (T02).
<i>Statute of Westminster 1931</i> (Imp) ss 2, 3; <i>Statute of Westminster Adoption Act 1942</i> (Cth) s 3	No repugnancy for Dominion laws; extraterritorial power; adopted with effect from 3 September 1939.	Commonwealth independence.
<i>Australia Act 1986</i> (Cth) ss 1 to 3, 5 to 9, 11, 15	UK Acts cease to extend; State plenary and extraterritorial power; repugnancy ends; manner and form; Governors; no appeals to the Privy Council.	State independence.

Two provisions are critical: the executive power clause and the current amendment procedure.

s 61 The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth. [^k_s61]

s 128 This Constitution shall not be altered except in the following manner:— The proposed law for the alteration thereof must be passed by an absolute majority of each House of the Parliament, and not less than two nor more than six months after its passage through both Houses the proposed law shall be submitted in each State and Territory to the electors qualified to vote for the election of members of the House of Representatives. But if either House passes any such proposed law by an absolute majority, and the other House rejects or fails to pass it or passes it with any amendment to which the first-mentioned House will not agree, and if after an interval of three months the first-mentioned House in the same or the next session again passes the proposed law by an absolute majority with or without any amendment which has been made or agreed to by the other House, and such other House rejects or fails to pass it or passes it with any amendment to which the first-mentioned House will not agree, the Governor-General may submit the proposed law as last proposed by the first-mentioned House, and either with or without any amendments subsequently agreed to by both Houses, to the electors in each State and Territory qualified to vote for the election of the House of Representatives. When a proposed law is submitted to the electors the vote shall be taken in such manner as the Parliament prescribes. But until the qualification of electors of members of the House of Representatives becomes uniform throughout the Commonwealth, only one-half the electors voting for and against the proposed law shall be counted in any State in which adult suffrage prevails. And if in a majority of the States a majority of the electors voting approve the proposed law, and if a majority of all the electors voting also approve the proposed law, it shall be presented to the Governor-General for the Queen's assent. No alteration diminishing the proportionate representation of any State in either House of the Parliament, or the minimum number of representatives of a State in the House of Representatives, or increasing, diminishing, or otherwise altering the limits of the State, or in any manner affecting the provisions of the Constitution in relation thereto, shall become law unless the majority of the electors voting in that State approve the proposed law. In this section, "Territory" means any territory referred to in section one hundred and twenty-two of this Constitution in respect of which there is in force a law allowing its representation in the House of Representatives.[^k_s128]

4 Key Cases

CASE	CITATION	PRINCIPLE	EXAM APPLICATION
<i>Mabo v Queensland (No 2)</i>	(1992) 175 CLR 1 ([1992] HCA 23)	Terra nullius rejected; native title survives reception and can be extinguished by valid inconsistent government action.	Reception of English law.
<i>Engineers</i>	(1920) 28 CLR 129	Natural reading of the text; reserved powers and implied immunities rejected.	Interpretation; federalism.
<i>Union Label Case</i>	(1908) 6 CLR 469	Connotation fixed in 1900; denotation may grow.	Modern technology in an old term.
<i>Australian Communist Party v Commonwealth</i>	(1951) 83 CLR 1	Parliament cannot recite itself into power; the Court decides validity.	Supremacy; judicial review.
<i>Plaintiff S157/2002 v Commonwealth</i>	(2003) 211 CLR 476 ([2003] HCA 2)	The Constitution assumes the rule of law; s 75(v) entrenches a minimum of judicial review.	Rule of law.
<i>Palmer v Western Australia ('Palmer (Mineralogy)')</i>	(2021) 274 CLR 286 ([2021] HCA 31)	The rule of law is an assumption, not a free-standing limit.	'Unjust or retrospective, so invalid'.

CASE	CITATION	PRINCIPLE	EXAM APPLICATION
<i>Egan v Willis</i>	(1998) 195 CLR 424 ([1998] HCA 71)	A House may superintend the executive.	Responsible government.
<i>Abdel-Hady v Commonwealth</i>	[2026] HCA 17	After <i>NZYQ</i> , the detention provisions are taken always to have been invalid; no defence for officers.	Consequences of invalidity.

Case Summaries

Mabo v Queensland (No 2)[^k_c_mabo]

FACTS:

Members of the Meriam people of Mer (Murray Island) sought declarations of rights in their traditional lands; Queensland contended that annexation in 1879 vested absolute beneficial ownership in the Crown.

ISSUE:

Whether reception of English law and the acquisition of sovereignty extinguished pre-existing indigenous interests in land.

HELD:

A majority, on reasons given by Brennan J (Mason CJ and McHugh J agreeing), rejected terra nullius. Native title survived the Crown's acquisition of radical title, is recognised by the common law and can be extinguished by valid inconsistent government action. The Court did not examine the validity of the acquisition of sovereignty or of reception.

WHY IT MATTERS:

Reception did not import an assumption of empty land into the common law, yet the foundation of the Australian State was left unquestioned.

Amalgamated Society of Engineers v Adelaide Steamship Co Ltd[^k_c_eng]

FACTS:

A union sought a federal industrial award against employers that included State government undertakings, which relied on an assumed immunity of State instrumentalities and a reserved area of State power.

ISSUE:

Whether Commonwealth heads of power are read subject to an implied reservation of State powers or an implied State immunity.

HELD:

Knox CJ, Isaacs, Rich and Starke JJ, jointly, rejected both doctrines. The text is read naturally and in context, a Commonwealth power extends to its full terms, and Commonwealth laws may bind State governments, subject to s 109.

WHY IT MATTERS:

The foundation of the modern method: text and structure first. Implied limits later returned by another route (*Melbourne Corporation*, T09); characterisation is in T03.

Palmer v Western Australia ('Palmer (Mineralogy)')[^k_c_palmer]

FACTS:

A State statute amended iron ore agreement legislation to extinguish arbitral awards and project proposals arising under the agreement; the mining company and its director challenged it.

ISSUE:

Whether the rule of law, as an assumption of the Constitution, invalidates a State statute that extinguishes accrued rights.

HELD:

The Act was valid. The joint reasons (Kiefel CJ, Gageler, Keane, Gordon, Steward and Gleeson JJ), with Edelman J separately, treated the rule of law as an assumption and aid to construction, not a limit beyond those inherent in the text and structure.

WHY IT MATTERS:

A statute is not invalid merely because it is unjust or retrospective; a limit must come from text or structure (Ch III, T07; implied freedom, T08). The border decision of the same name, (2021) 272 CLR 505, concerns s 92 (T10).

| *Egan v Willis*[^k_c_egan]

FACTS:

A Minister sitting in the New South Wales Legislative Council was suspended after refusing an order to produce State papers, and challenged the suspension.

ISSUE:

Whether a House may, without statute, compel production of documents and suspend a member who refuses.

HELD:

The appeal was dismissed. Gaudron, Gummow and Hayne JJ and Callinan J held that a House has the powers 'necessary to the existence of such a body, and the proper exercise of the functions which it is intended to execute', including requiring State papers and suspending a refusing member. McHugh J and Kirby J agreed the substantive claim failed but would have allowed the appeal on technical grounds.

WHY IT MATTERS:

The clearest High Court statement that superintending the executive is a function of a House under responsible government.

| *Abdel-Hady v Commonwealth*[^k_c_abdel]

FACTS:

After *NZYQ* held ss 189(1) and 196(1) of the *Migration Act 1958* (Cth) invalid for an alien with no real prospect of removal, persons detained between 28 July 2022 and 8 November 2023 claimed damages for false imprisonment. The Commonwealth said officers had acted lawfully on *Al-Kateb*, then binding.

ISSUE:

Whether a common-law defence exists because officers acted on a High Court decision later overruled.

HELD:

No (7:0 on the answer). Gageler CJ, Gleeson and Beech-Jones JJ gave joint reasons; Gordon, Edelman and Jagot JJ gave separate reasons; Steward J agreed with Gordon J's answer. The provisions must be taken always to have been invalid for the cohort.

WHY IT MATTERS:

Invalidity operates from the start, and reliance on an overruled decision is no shield. The *Kable (No 2)* exception covers only orders of a superior court of record (T03).

5 Substantive Content

5.1 What a constitution is and what it is for

A constitution creates the institutions of government, limits and distributes their powers and governs their relations with the governed. Australia's system includes the Commonwealth Constitution, the six State Constitutions (continued by s 106), the statutes that fixed Australia's status (§5.4), the common law limits on the Crown, and conventions (§5.9).^[^k_1a] The Constitution constitutes, limits (s 51 operates 'subject to this Constitution') and distributes power, and controls its own alteration (s 128).^[^k_1b]

5.2 From colonisation to federation

English law was received with settlement, and each colonial legislature acted under Imperial authority.^[^k_2a] Three Imperial controls followed. *Repugnancy*: a colonial law repugnant to an Imperial Act extending to the colony was void to that extent. The *Colonial Laws Validity Act 1865* (Imp) 28 & 29 Vict c 63 ('CLVA') stated the rule, and the *Merchant Shipping Acts 1894–1900* (UK) applied in South Australia by paramount force until the *Australia Act 1986* (Cth) ('*Australia Act*').^[^k_2b] CLVA s 5 confirmed a colonial legislature's power over its own constitution, powers and procedure if exercised in the manner and form required.^[^k_2c] *Extraterritoriality*: colonial laws were presumed confined to the colony;^[^k_2d] for the States, *Australia Act* s 2(1) now declares extraterritorial power, subject to a liberally applied connection with the State.^[^k_2e] *Disallowance and reservation*: colonial Acts could be disallowed and Bills reserved for the Crown's pleasure; Constitution ss 58 and 59 preserve both for Commonwealth laws, restrained by convention, and *Australia Act* ss 8 and 9 removed them for State laws.^[^k_2f] The colonies federated for practical reasons (a single market, shared defence, a national voice), keeping their constitutions as States.^[^k_2g]

5.3 The Commonwealth Constitution in overview

The Constitution is s 9 of the Constitution Act. The covering clauses provide for commencement by Proclamation (cl 3), extension to the Sovereign's successors (cl 2) and the binding force of the Act and Commonwealth laws on the courts, judges and people of every State (cl 5).^[^k_3a] Section 128 regulates alteration of 'this Constitution', the instrument in s 9, so the covering clauses sit outside it.^[^k_3b] The eight chapters follow the institutions and the compact: Parliament, Executive, Judicature, Finance and Trade, the States, New States (including s 122 on Territories), Miscellaneous and Alteration.^[^k_3c] The text omits the Prime Minister, Cabinet and political parties; conventions supply them.^[^k_3d]

5.4 From federation to the Australia Acts

Federation on 1 January 1901 did not make Australia independent; independence came in stages, earlier for the Commonwealth than for the States (Figure 1.1). The Balfour formulation came from the 1926 Imperial Conference (not 1918): the Dominions were autonomous and equal in status, united by allegiance to the Crown. It had no legal force until enacted.

The *Statute of Westminster 1931* (Imp) 22 & 23 Geo 5 c 4 ('*Statute of Westminster*') provided that the CLVA does not apply to Dominion laws, that no Dominion law is void for repugnancy (s 2) and that a Dominion Parliament may legislate extraterritorially (s 3). It reached Australia when s 3 of the *Statute of Westminster Adoption Act 1942* (Cth) adopted ss 2 to 6 with effect from 3 September 1939.^[^k_4a] That freed only the Commonwealth Parliament: State laws stayed subject to the CLVA, and the United Kingdom could still legislate for Australia at the Commonwealth's request and consent.^[^k_4b]

The *Australia Act* and its United Kingdom counterpart (the 'Australia Acts') commenced on 3 March 1986. [^k_4c] Section 1 ends the application of later UK Acts; s 2 declares State plenary and extraterritorial power; s 3 disapplies the CLVA and repugnancy for later State laws, though s 5 keeps ss 2 and 3(2) subject to the Constitution; s 6 imposes manner and form requirements (T02); ss 7 to 9 make the Governor the Sovereign's representative, with the Premier advising the Sovereign, and end disallowance and required reservation; s 15 allows amendment only by a Commonwealth Act at the request of all State Parliaments. [^k_4d]

Privy Council appeals ended in steps: s 74 required a High Court certificate on *inter se* questions, the *Privy Council (Appeals from the High Court) Act 1975* (Cth) ended appeals from the High Court, and *Australia Act* s 11 ended appeals from every Australian court. Section 75 is the High Court's original jurisdiction, never an appeal provision. [^k_4e] The Crown remains, but the Crown in right of Australia is distinct from the Crown in right of the United Kingdom: *Sue v Hill* treats the United Kingdom as a foreign power for s 44(i). [^k_4f] *Mabo (No 2)* rejected terra nullius without examining the validity of the acquisition of sovereignty. [^k_4g]

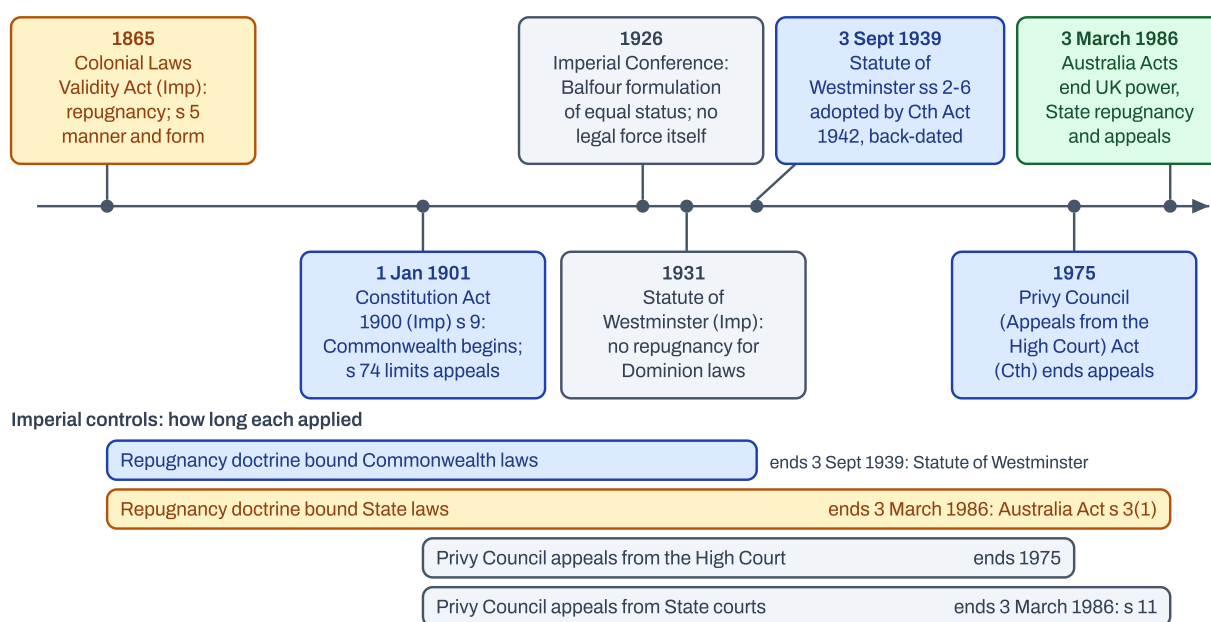


Figure 1.1: From colonial legislature to the Australia Acts. Milestones sit on the axis; the bars show how long each Imperial control lasted, and that it ended earlier for the Commonwealth (3 September 1939) than for the States (3 March 1986).

5.5 Constitutional interpretation

The Constitution is an Imperial statute read as a constitution: its terms are broad and general and apply to varying conditions, so the Court leans to the broader reading of a power unless context indicates otherwise. [^k_5a] *Engineers* fixed the orthodox method, legalism:

'to read it naturally in the light of the circumstances in which it was made, with knowledge of the combined fabric of the common law, and the statute law which preceded it, and then lucet ipsa per se.'
— Knox CJ, Isaacs, Rich and Starke JJ, *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* (1920) 28 CLR 129, 152.

Legalism does not exclude structure or purpose: Dixon J warned against pedantic and narrow constructions of an instrument of government and accepted constitutional implications. [^k_5b] History informs but does not control; the Convention Debates identify the mischief and the contemporary meaning, not the meaning itself. [^k_5c] A constitutional decision is reconsidered only with great caution, and a change in the Court's membership is not a reason. [^k_5d]

Originalism and contemporary conditions. Originalism fixes meaning by the framers' intention or the meaning at 1900. The Court's position is narrower: connotation is fixed at 1900, but denotation can change, so 'postal, telegraphic, telephonic and other like services' extends to wireless broadcasting and 'marriage' to same-sex marriage.[^k_5e] *Reading down.* Where a statute is open to more than one construction, the Court selects the one that keeps it within power if the language permits;[^k_5f] reading down preserves validity and never prefers the invalidating reading. Severance, s 15A and the consequences of invalidity are in T03.

5.6 Dicey's principles

Dicey's account of the British constitution rests on parliamentary sovereignty (§5.7), the rule of law (§5.8) and conventions (§5.9). His rule of law has three senses: regular law prevails over arbitrary power; everyone, officials included, answers to the ordinary courts; and rights flow from judicial decisions, not a charter.[^k_6a] The first two are accepted in Australia and are rooted in the *Case of Proclamations* and the *Case of Prohibitions*.[^k_6b] The third is only partly true: the Constitution has a few express guarantees, and the common law protects rights through the principle of legality, under which fundamental rights are not abrogated without clear and unambiguous words.[^k_6c]

5.7 Parliamentary sovereignty

Diceyan sovereignty means that Parliament may make or unmake any law and no body may override it. No Australian Parliament has it. The Commonwealth Parliament legislates only 'subject to this Constitution', and the courts decide whether it has: Parliament cannot recite itself into power.[^k_7a] State power is 'as ample and plenary as the power possessed by the Imperial Parliament itself', and is not reviewable for want of wisdom or welfare, but it is subject to the Commonwealth Constitution (ss 106, 107, 109), to manner and form (*Australia Act* s 6; T02) and to implied limits (T07; T08).[^k_7b] A law within power stands however unjust.[^k_7c] A law outside power is invalid from the start: *Abdel-Hady* treats the detention provisions as always invalid, and the rule that a superior court's order is 'valid until set aside' protects judicial orders, not statutes.[^k_7d]

5.8 The rule of law

Its content is contested: Bingham's account lists eight requirements, including accessible and predictable law, equality before the law, public power exercised within its limits, protection of fundamental rights, fair adjudication and compliance with international law.[^k_8a] In Australian constitutional law it is an assumption: 'the Australian Constitution is framed upon the assumption of the rule of law'.[^k_8b] Judicial review of executive action enforces it, and s 75(v) entrenches a minimum of that review.[^k_8c] It is not a free-standing limit on legislative power:

'the rule of law supports neither expansion of judicial power nor contraction of legislative or executive power beyond those limits that inhere in the text and structure of the Constitution.' — Kiefel CJ, Gageler, Keane, Gordon, Steward and Gleeson JJ, *Palmer v Western Australia* (2021) 274 CLR 286, [8].

It informs construction and structural implications such as Ch III, not an independent ground of invalidity.

5.9 Constitutional conventions

A convention is a rule of political practice followed from a sense of obligation, not a rule of law. The Governor-General acts on ministerial advice; the person who commands the confidence of the House of Representatives is commissioned Prime Minister; a government that loses that confidence resigns or seeks a dissolution. The text states none of this and gives the Governor-General wide legal powers (ss 61, 64) that convention confines.[^k_9a] No court will void an act or compel compliance because a convention was breached; the sanction is political.

5.10 Bicameralism and representative government

The Commonwealth Parliament has two Houses: the Senate, with equal representation of the original States, and the House of Representatives, tied in size to the Senate by the s 24 nexus. Both are 'directly chosen by the people'.^[^k_10a] Their powers are equal except over money Bills: the Senate may not originate or amend a taxation Bill or a Bill appropriating for the ordinary annual services, but may reject it or request amendments (s 53).^[^k_10b] Queensland and the two Territories have a single House.^[^k_10c] Representative government rests on ss 7, 24 and 128, is a constitutional institution, and is the source of the implied freedom (T08), which reaches State and Territory political matters.^[^k_10d]

5.11 Responsible government and parliamentary control of supply

Responsible government makes the Executive answerable to Parliament. *Collectively*, the ministry must hold the confidence of the House of Representatives and, on losing it, resigns or advises dissolution; the Senate is not a House of confidence. *Individually*, each Minister answers to Parliament for a department, through question time, committees and estimates. The text anchors this by requiring Ministers to be, or within three months to become, members of Parliament (s 64); the confidence relationship itself is conventional.^[^k_11a] *Egan v Willis* treats superintendence of the executive as a function of a House.^[^k_11b]

Supply is the lever. No money leaves the Treasury without an appropriation by law (ss 81, 83), but appropriation is control, not power:

'The provisions of ss 81 and 83 do not confer a substantive "spending power" upon the Commonwealth Parliament. They provide for parliamentary control of public moneys and their expenditure.' — French CJ, *Pape v Commissioner of Taxation* (2009) 238 CLR 1, 23 8.

An appropriation must identify a purpose and earmarks money without itself authorising spending (T06).^[^k_11c] The Senate keeps the power to reject or defer an appropriation for the ordinary annual services (s 53); restraint is convention only, and its failure in 1975 is the centre of the reserve powers debate.^[^k_11d]

5.12 The executive institutions and the reserve powers

Executive power is vested in the Sovereign and exercisable by the Governor-General (s 61, quoted in §3). Its sources are in T05; here it suffices that s 61 does not authorise non-statutory action that a Commonwealth law expressly or impliedly excludes, and that the Crown has no prerogative beyond what the law allows.^[^k_12a] The *Governor-General* (ss 2, 61) holds some powers by name: prorogation and dissolution (s 5), deadlock dissolution (s 57), assent (s 58), appointment of Ministers (s 64) and command-in-chief (s 68). The *Federal Executive Council* (s 62) advises the Governor-General; a power conferred on the 'Governor-General in Council' is exercised on its advice (s 63), as with appointments of High Court Justices (s 72). Its members are in practice the Ministers, who hold office at the Governor-General's pleasure, administer departments and sit in Parliament (s 64); Cabinet, a conventional body, makes the decisions the Council formalises.^[^k_12b]

Convention requires the Governor-General to act on advice. The *reserve powers* are the legal powers that may be used without, or against, advice and only in a crisis: appointing or dismissing a Prime Minister, and granting or refusing a dissolution. Their source is the text (ss 5, 57, 64); their limits are conventional. In 1975, after the Senate deferred the Appropriation Bills, the Governor-General dismissed the Prime Minister and commissioned the Leader of the Opposition, who advised a double dissolution. Defenders rely on the legal power over Ministers; critics say convention required action on advice.^[^k_12c] In the States the Governor exercises the Sovereign's powers, and no law may require a Governor to withhold assent or reserve a Bill.^[^k_12d]

5.13 Separation of powers in outline

The Constitution separates its chapters but only partly the functions: s 64 fuses legislature and executive, while federal judicial power may be vested only in Ch III courts, which may exercise no non-judicial power except what is incidental.^[^k_13a] State Constitutions entrench no equivalent: Ch III does not subject State courts to the full doctrine, and a State Parliament may legislate to affect pending proceedings, subject to the *Kable* limit (T07).^[^k_13b]

5.14 Federalism

Federalism divides power between a central government and constituent governments, each with a constitutional footing. Australia has seven autonomous governments, the Commonwealth and six States; Territory governments depend on Commonwealth law under s 122 and are not 'States'.^[^k_14a] The Commonwealth has concurrent powers (s 51) and exclusive powers (s 52 and, once uniform duties are imposed, s 90); each State keeps the residual power s 107 preserves. After *Engineers* nothing is implicitly reserved to the States, so each federal problem asks whether a head of power supports the Commonwealth law.^[^k_14b] Where valid laws overlap, s 109 makes the Commonwealth law prevail and renders the State law 'inoperative', not void.^[^k_14c]

5.15 Referendums and constitutional reform: section 128

The Constitution can be changed only under s 128.^[^k_15a] A proposal reaches the electors by one of two routes (Figure 1.2). On Route 1 each House passes it by an absolute majority and it is submitted not less than two nor more than six months later. On Route 2 one House passes it by an absolute majority twice, three months apart, in the same or the next session, and the other House rejects it, fails to pass it or amends it unacceptably; the Governor-General then 'may' submit it, and the text states no time limit. Approval needs a double majority: a majority of all electors voting and a majority of electors voting in a majority of the States (four of six). A proposal that cuts a State's proportionate representation or minimum number of seats, or alters its limits, also needs that State's own majority.^[^k_15b] Since the *Constitution Alteration (Referendums) 1977* (Cth), Territory electors count in the national total, but a Territory is not a 'State' for the State-majority limb.^[^k_15c] Provisions that apply 'until the Parliament otherwise provides' (for example ss 7 and 24) can be altered by ordinary legislation under s 51(xxxvi).^[^k_15d]

Of 45 proposals put since 1906, 8 have been carried: Senate Elections (1906), State Debts (1910, 1928), Social Services (1946), Aborigines (1967) and, on 21 May 1977, Senate Casual Vacancies, Referendums (Territories) and Retirement of Judges. The Voice proposal of 14 October 2023 won 39.94% of the national vote and no State majority.^[^k_15e]

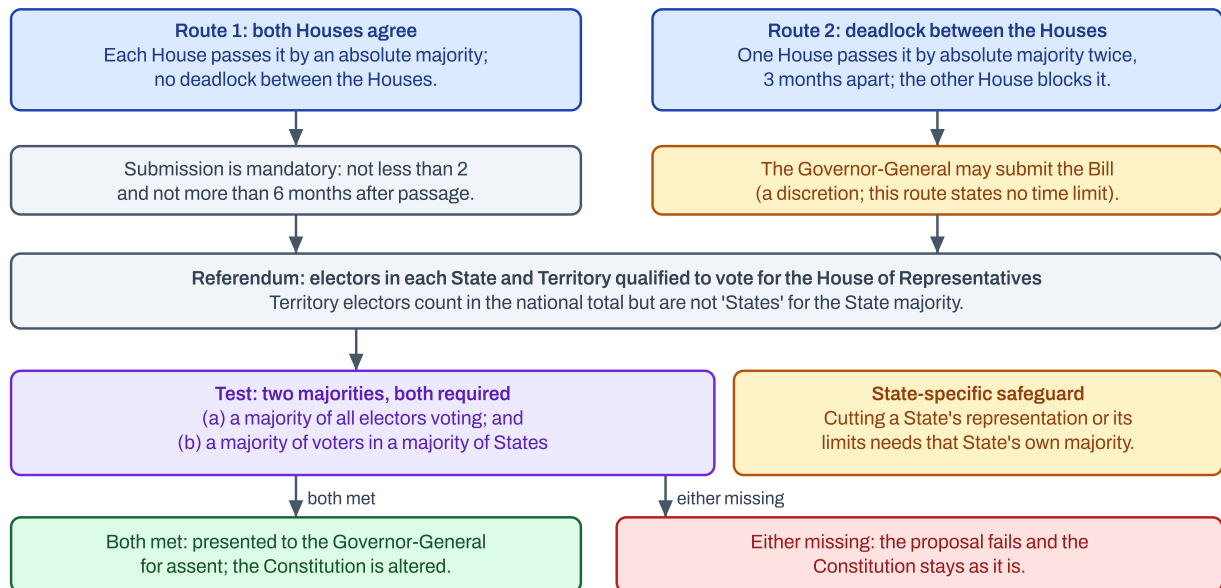


Figure 1.2: The two routes by which a proposed alteration reaches the electors under s 128, and the double-majority test that decides it.

5.16 Critical Perspectives

PERSPECTIVE	SOURCE	ARGUMENT	COUNTER-ARGUMENT
A text-first method is neutral	<i>Engineers</i> ; Dixon J in <i>Australian National Airways Pty Ltd v Commonwealth</i> (1945) 71 CLR 29	A natural reading gives certainty and keeps judges out of federal-balance policy.	Removing the reserved powers took away the only check on Commonwealth power, and implied limits later returned, suggesting that choices were made.[^k_16a]
Originalism	<i>Cole v Whitfield</i> ; <i>Marriage Equality Case</i>	Fixing meaning at 1900 constrains judges and respects the founding compact.	The Court fixes only connotation; a framers' intention cannot control the text, and denotation grows.[^k_16b]
The rule of law limits Parliament	<i>Plaintiff S157/2002</i> ; Dixon J in <i>Australian Communist Party</i> ; <i>Palmer (Mineralogy)</i>	An assumption of the Constitution should bar laws that destroy accrued rights or operate retrospectively.	The assumption informs construction only; limits must inhere in text and structure, and its content is contested. [^k_16c]
Judicial review is anti-democratic	<i>Australian Communist Party</i> ; Brennan J in <i>Church of Scientology Inc v Woodward</i>	Unelected judges override elected Parliaments.	The electors approved the Constitution and alone can alter it; validity is a legal question, and review enforces the rule of law over executive action.[^k_16d]
Section 128 is too rigid	Australian Electoral Commission record; s 128	Only 8 of 45 proposals carried; the double majority makes reform near-impossible without bipartisan support.	Rigidity protects the federal compact; failures reflect content as well as procedure; much changes by ordinary law.[^k_16e]

6 Answer Framework

Work through the steps in order; each ends the analysis if it disposes of the issue (Figure 1.3).

1. Classify the norm.

- Is the limit a rule of law (Constitution, statute, common law) or a convention? Describe a convention and the legal power it confines; do not seek a remedy.

2. Identify the instrument and its date.

- State law: before 3 March 1986 the CLVA applies (repugnancy; s 5 manner and form); afterwards *Australia Act* ss 2, 3, 5 and 6.
- Commonwealth law: the CLVA ceased to apply to laws made after 3 September 1939.
- Territorial reach: *Australia Act* s 2(1) for the States; Statute of Westminster s 3 for the Commonwealth.

3. Classify any proposed change.

- Text of the Constitution: s 128 only. Trace the route, the double majority, the State-specific limb and Territory counting.

4. Identify the institution and its accountability line.

- Representative (ss 7, 24), responsible (ss 62 to 64) or supply (ss 53, 81, 83); the Governor-General on advice, or a reserve power.

5. Read the term.

- Natural reading in context; history informs but does not control; connotation fixed, denotation grows; reading down preserves validity.

6. State the consequence.

- An invalid law is invalid from the start (T03 for severance); a breached convention has a political sanction only.

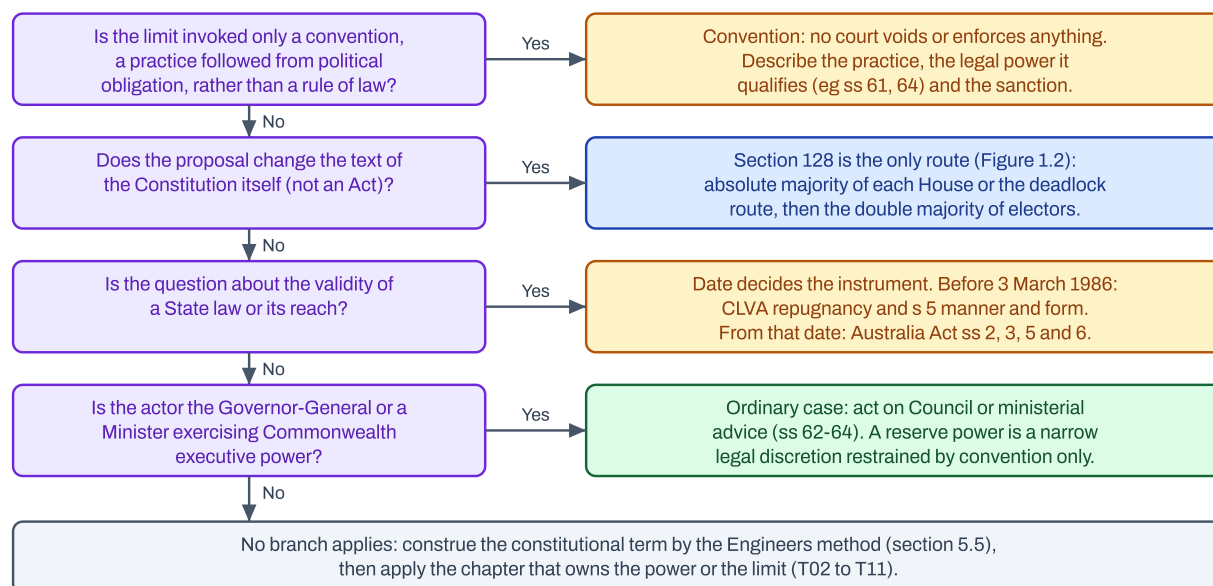


Figure 1.3: Decision ladder for a Topic 1 problem question. Take each question in order; the first Yes identifies the rule that governs.

7 Applying the Rules: Problem-Question Practice

Common Fact Patterns

FACT PATTERN	ISSUE TRIGGERED	KEY AUTHORITY
The House passes a no-confidence motion and the Senate defers supply	Responsible government; supply; reserve powers	Australian Constitution ss 53, 64, 81, 83; <i>Pape</i>
A Bill proposes to change the text of the Constitution	Routes and double majority	Australian Constitution s 128
A State Act of 1984 and one of 1992 are said to conflict with an Imperial Act	Repugnancy before and after 3 March 1986	<i>Australia Act</i> 1986 (Cth) s 3; <i>China Ocean</i>
A State law regulates conduct outside the State	Extraterritorial operation	<i>Australia Act</i> 1986 (Cth) s 2(1); <i>Pearce v Florenca</i>

FACT PATTERN	ISSUE TRIGGERED	KEY AUTHORITY
A law is attacked as unjust, retrospective or contrary to the rule of law	Rule of law as a limit	<i>Palmer (Mineralogy)</i> ; S157
A modern technology is said to fall within a 1900 term	Connotation and denotation	<i>Union Label Case</i> ; <i>R v Brislan</i>
Officers detained people relying on an overruled decision	Consequences of invalidity	<i>Abdel-Hady</i> ; NZYQ

Question Type 1: Constitutional alteration under section 128

SCENARIO:

The House of Representatives passes a Bill to alter the Constitution by an absolute majority and the Senate rejects it. Four months later, in the same session, the House passes it again and the Senate again rejects it. The Governor-General submits the Bill to electors. Nationally 54% vote Yes, with Yes majorities in three States and the Northern Territory.

APPROACH:

- Identify s 128 as the only mode of alteration and the route used.
- Check each step: absolute majority twice, the three-month interval, continued disagreement, submission.
- Count the national majority, then the State majorities, treating Territory electors correctly.

KEY POINTS TO INCLUDE:

- On the second route the Governor-General 'may' submit the Bill; the text sets no time limit.
- A majority of the States means four of six.
- Territory electors count nationally but are not 'States'.
- The Constitution is altered only if the Bill is carried and presented for assent.

SAMPLE PARAGRAPH:

The issue is whether the Bill is carried under s 128. Section 128 is the only mode of altering the Constitution, and it provides a second route where one House twice passes a proposed law by an absolute majority and the other House blocks it.^[^k_s1] The House passed the Bill, the Senate rejected it, and four months later in the same session the House passed it again and the Senate again rejected it. The interval exceeds three months and the session requirement is met, so the Governor-General could submit the Bill to the electors of each State and Territory.^[^k_s2] Approval requires a majority of all electors voting and a majority of electors voting in a majority of the States.^[^k_s3] The national 54% satisfies the first limb. Yes majorities in three of six States do not make a majority of the States, and the Northern Territory is not a 'State', although its electors count in the national total.^[^k_s4] The second limb fails, so the Bill cannot be presented for assent and the Constitution is not altered.

Question Type 2: The date of a State law and the Imperial instruments

SCENARIO:

A State Parliament enacted a statute in 1984, and a second in 1992, each regulating its residents' conduct on ships anywhere in the world. An Imperial Act that applied in the State by paramount force conflicts with both. A shipowner argues that both statutes are void for repugnancy.

APPROACH:

- Date each statute against 3 March 1986 before choosing the instrument.
- For the 1984 statute apply the CLVA and paramount force; for the 1992 statute apply *Australia Act* ss 3 and 5.

- Treat extraterritorial operation separately from repugnancy.

KEY POINTS TO INCLUDE:

- Repugnancy voids a State law only to the extent of the inconsistency.
- After 3 March 1986 no State law is void for repugnancy to Imperial law, although ss 2 and 3(2) remain subject to the Constitution.
- Extraterritorial operation needs a liberally applied connection with the State.

SAMPLE PARAGRAPH:

The issue is whether either statute is void for repugnancy. A State law made before 3 March 1986 that is repugnant to an Imperial Act applying to the State by paramount force is void to the extent of the repugnancy.^[^k_s5] The 1984 statute is therefore void so far as it conflicts with the Imperial Act, as the *Merchant Shipping Acts 1894–1900* (UK) operated in South Australia by paramount force in *China Ocean*.^[^k_s6] The 1992 statute stands differently. Section 3(1) of the *Australia Act* provides that the *Colonial Laws Validity Act 1865* (Imp) does not apply to State laws made after commencement, and s 3(2) provides that no such law is void or inoperative for repugnancy to Imperial law.^[^k_s7] Those provisions remain subject to the Constitution, but an Imperial Act is no longer a ground of invalidity. The shipowner's argument therefore fails for the 1992 statute and succeeds for the 1984 statute only to the extent of the conflict. The extraterritorial reach of either statute is a separate question: s 2(1) confirms State power to legislate with extraterritorial operation, subject to a liberally applied connection with the State, which residents of the State supply.^[^k_s8]

Worked Scenario 1: Multi-Issue Problem

SCENARIO:

The Government of the Commonwealth holds office with a bare majority in the House of Representatives. On a Tuesday the House passes, by one vote, a motion that it has no confidence in the Prime Minister. The Senate, controlled by the Opposition, has already deferred the Appropriation Bill for the ordinary annual services of the Government, and public servants will not be paid after the month ends. The Prime Minister refuses to resign and advises the Governor-General to dissolve the House of Representatives; the Leader of the Opposition, who says she commands the House's confidence, asks the Governor-General to commission her instead. Separately, Parliament of State Q enacted in 2024 an offence of bribing a foreign official anywhere in the world, and an officer of a Q company, charged in Q, argues that the Act is invalid because it operates outside the State.

ISSUES IN ANSWER ORDER:

1. Is the Governor-General bound by the Prime Minister's advice? (responsible government; conventions and reserve powers)
2. May the Senate defer supply, and what follows? (ss 53, 81, 83; T06)
3. Is State Q's Act invalid for extraterritorial operation? (*Australia Act* s 2(1); T02)

ANSWER PLAN:

Issue 1 — responsible government and the reserve powers. The text gives the Governor-General legal power to appoint and dismiss Ministers and to dissolve the House (ss 5, 64), but convention requires action on advice and requires a ministry to hold the House's confidence.^[^k_w1] The Prime Minister has lost that confidence, so the advice is itself contestable. A reserve power to refuse it, or to commission the Leader of the Opposition if she commands the House, is legally available and justified only in a crisis. No court will compel either course; the sanction is political.

Issue 2 — supply. No money may be drawn from the Treasury without an appropriation by law, and ss 81 and 83 are controls, not spending powers.^[^k_w2] The Senate may not amend a Bill appropriating for the ordinary annual services but may reject or defer it (s 53); restraint on doing so is convention only.

[^k_w3] The deferral is lawful, and without an appropriation payments lack authority (T06). The resolution is a dissolution or a change of ministry, not a court order.

Issue 3 — State extraterritoriality. Section 2(1) of the *Australia Act* declares State power to make laws for the State's peace, order and good government with extraterritorial operation, and the Court requires only a liberally applied connection with the State.[^k_w4] An officer of a company resident in Q has that connection, so the Act is not invalid on this ground. Any conflict with a Commonwealth law is for s 109 (T11), and any Commonwealth power question for T03.

ADVICE:

The Governor-General's choice is governed by convention, and no court will review it. Supply can lawfully be withheld, so the dispute is resolved politically. The State Act is not invalid for operating outside the State, subject to s 109.

8 Exam Tips & Traps

✓ Do:

- Date every State law against 3 March 1986 and every Commonwealth law against 3 September 1939 before choosing an instrument.
- Separate the legal power from the convention that confines it, and say that no court enforces the convention.
- Count the s 128 majorities separately and state that Territory electors are not 'States'.
- Quote s 128 from the current text, including 'and Territory'.

✗ Don't:

- Say the Statute of Westminster gave independence in 1931, or place the Balfour formulation in 1918.
- Call s 75 an appeal provision, or say Privy Council appeals still lie.
- Cite *Al-Kateb* as good authority on Ch III, or say that s 52 confers executive power (it confers exclusive legislative power).
- Say that reading down prefers the invalidating construction.

⚠ Watch Out For:

- Two 2021 decisions share the name *Palmer v Western Australia*: (2021) 272 CLR 505 (s 92) and (2021) 274 CLR 286 (rule of law).
- The *Kable (No 2)* rule protects judicial orders only; a statute is invalid from the start.
- The Constitution says 'Queen'; write 'the Sovereign'. The CLVA still governs State laws made before 3 March 1986.

9 Connections to Other Topics

RELATED TOPIC	CONNECTION	WHERE
T00 — The Constitutional Method: Issue-Spotting and Answer Frameworks	Method for issue-spotting; this chapter supplies the instrument ladder.	\$6
T02 — State Legislative Power and Manner and Form	CLVA s 5, <i>Australia Act</i> s 6 and State plenary power in detail.	\$5.2; \$5.4
T03 — Commonwealth Legislative Powers: Characterisation and Judicial Review	<i>Engineers</i> applied; reading down; consequences of invalidity.	\$5.5; \$5.7
T05 — The External Affairs Power and the Nationhood Power	The sources of s 61 executive power.	\$5.12

RELATED TOPIC	CONNECTION	WHERE
T06 — Financial Powers: Grants, Appropriation and Spending	Appropriation and executive spending.	\$5.11
T07 — Judicial Power: Chapter III and the State Courts	Separation of powers; the <i>Kable</i> line.	\$5.13
T08 — The Implied Freedom of Political Communication	Representative government as its source.	\$5.10
T09 — Intergovernmental Immunities	<i>Melbourne Corporation</i> after <i>Engineers</i> .	\$5.14
T11 — Inconsistency: Section 109	Overlap of concurrent powers.	\$5.14

10 Quick Reference Card

Key tests

QUESTION	TEST	AUTHORITY
How is the text read?	Naturally, in context; history informs but does not control; connotation fixed, denotation grows.	<i>Engineers</i> ; <i>Cole v Whitfield</i> (1988) 165 CLR 360
Law or convention?	Courts enforce law; a convention has a political sanction only.	Australian Constitution ss 61, 64
Which instrument governs a State law?	Before 3 March 1986 the CLVA; afterwards <i>Australia Act</i> ss 2, 3, 5, 6.	<i>Australia Act 1986</i> (Cth) s 3

Elements of a section 128 alteration

STEP	REQUIREMENT
1	Absolute majority of each House, or one House twice (three months apart) with the other blocking.
2	Submission to electors two to six months later, or by the Governor-General's discretion on the deadlock route.
3	Majority of all electors voting.
4	Majority of electors voting in a majority of States; Territory electors count nationally only.
5	A State whose representation or limits are cut must also approve.
6	Presentation to the Governor-General for assent.

Leading case per proposition

PROPOSITION	CASE
Terra nullius rejected	<i>Mabo v Queensland (No 2)</i> (1992) 175 CLR 1
Parliament cannot recite itself into power	<i>Australian Communist Party v Commonwealth</i> (1951) 83 CLR 1
State power is plenary	<i>Union Steamship Co of Australia Pty Ltd v King</i> (1988) 166 CLR 1
Rule of law is not a free-standing limit	<i>Palmer v Western Australia</i> (2021) 274 CLR 286
Appropriation is control, not power	<i>Pape v Commissioner of Taxation</i> (2009) 238 CLR 1
Invalid law is always invalid	<i>Abdel-Hady v Commonwealth</i> [2026] HCA 17

11 Rule Statement Bank

- 1. Supremacy.** The Constitution binds the courts and people of every State, and the courts, not Parliament, decide whether a law is within power; Parliament cannot recite itself into power. — *Australian Communist Party v Commonwealth* (1951) 83 CLR 1 (High Court).

- 2. Method.** The Constitution is read naturally, in its circumstances and against the earlier common law and statute law, and a Commonwealth power takes its full terms with no implied reservation to the States. — *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* (1920) 28 CLR 129 (Knox CJ, Isaacs, Rich and Starke JJ).
- 3. Meaning over time.** A term's essential meaning is fixed in 1900 but the things it covers can change, and history informs but does not control the text. — *Attorney-General (NSW) v Brewery Employees Union of NSW* (1908) 6 CLR 469 (Higgins J); *Cole v Whitfield* (1988) 165 CLR 360 (High Court).
- 4. Reading down.** Where a statute is open to more than one construction, the Court selects the one that keeps it within power if the language permits. — *New South Wales v Commonwealth* (2006) 229 CLR 1 (Gleeson CJ, Gummow, Hayne, Heydon and Crennan JJ).
- 5. Imperial controls.** A State law made before 3 March 1986 is void to the extent of repugnancy to an Imperial Act extending to the State; a later State law is not void on that ground. — *China Ocean Shipping Co v South Australia* (1979) 145 CLR 172 (High Court); *Australia Act 1986* (Cth) s 3.
- 6. State power.** State legislative power is as ample and plenary as that of the Imperial Parliament, reaches extraterritorially with a liberally applied connection to the State, and is subject to the Constitution. — *Union Steamship Co of Australia Pty Ltd v King* (1988) 166 CLR 1 (High Court); *Pearce v Florenca* (1976) 135 CLR 507 (High Court).
- 7. Native title.** Terra nullius is not the common law's basis for dealing with land: native title survives the Crown's radical title and is extinguished only by valid inconsistent government action. — *Mabo v Queensland (No 2)* (1992) 175 CLR 1 (Brennan J).
- 8. Rule of law.** The rule of law is an assumption of the Constitution and an aid to construction, not a free-standing limit on legislative power. — *Palmer v Western Australia* (2021) 274 CLR 286 (Kiefel CJ, Gageler, Keane, Gordon, Steward and Gleeson JJ).
- 9. Responsible government.** A House has the powers necessary to its existence and functions, which include superintending the executive; ministerial accountability otherwise rests on convention. — *Egan v Willis* (1998) 195 CLR 424 (Gaudron, Gummow and Hayne JJ).
- 10. Supply.** Sections 81 and 83 give Parliament control of public money; they are not a power to spend. — *Pape v Commissioner of Taxation* (2009) 238 CLR 1 (French CJ).
- 11. Alteration.** The Constitution is altered only under s 128: an absolute majority of each House (or the deadlock route), then a majority of all electors and a majority of electors in a majority of States. — Australian Constitution s 128.
- 12. Invalidity.** An invalid law is treated as always invalid and officers have no defence of acting on an overruled decision; only a superior court's judicial order stands until set aside. — *Abdel-Hady v Commonwealth* [2026] HCA 17 (Gageler CJ, Gleeson and Beech-Jones JJ); *New South Wales v Kable* (2013) 252 CLR 118 (French CJ, Hayne, Crennan, Kiefel, Bell and Keane JJ).

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SAMPLE EDITION

This is a preview

The complete guide contains all **13 topics** across **207 pages**.

TOPICS IN THE COMPLETE EDITION

- 1.** The Constitutional Method: Issue-Spotting and Answer Frameworks
- 2.** Fundamental Concepts, Institutions and Instruments
- 3.** State Legislative Power and Manner and Form
- 4.** Commonwealth Legislative Powers: Characterisation and Judicial Review
- 5.** The Corporations Power
- 6.** The External Affairs Power and the Nationhood Power
- 7.** Financial Powers: Grants, Appropriation and Spending
- 8.** Judicial Power: Chapter III and the State Courts
- 9.** The Implied Freedom of Political Communication
- 10.** Intergovernmental Immunities
- 11.** Freedom of Interstate Trade and Commerce: Section 92
- 12.** Inconsistency: Section 109
- 13.** Revision and Cross-Topic Synthesis