# CASE NOTES

## THE STATE OF VICTORIA AND OTHERS v. THE COMMONWEALTH OF AUSTRALIA AND ANOTHER[1]

*Federal Constitutional Law — Australian Assistance Plan — Appropriation Power — Appropriation Act — Executive Power — Incidental Power — Implied Power — Locus standi — Justiciability.*

The precise power that the Commonwealth Government possesses with respect to the expenditure of Consolidated Revenue has rarely received examination from the High Court. Although a right to appropriate revenue clearly exists for those matters covered by each head of power contained in ss. 51, 52 and 122 of the Constitution, a substantial body of opinion has always regarded the Commonwealth's ambit of expenditure as being general and not limited to those areas.[2] Certainly Commonwealth Parliamentary practice has long been founded on such an interpretation.[3] The validity of such a practice was raised but not finally determined in *Attorney-General for Victoria (ex. rel. Dale) v. Commonwealth*[4] where a majority of the Court favoured the narrower position that Consolidated Revenue could only be appropriated for purposes 'found within the four corners of the Constitution' with the possible addition of matters incidental to the existence of the Commonwealth as a state and to the exercise of the powers of a national government.[5] Other questions concerning the ability of the Commonwealth to enact legislation on the basis of the appropriation power were also discussed.

The conflict of opinion thus existing involves the interpretation of two sections of the Constitution, ss. 81 and 83 which deal with the appropriation of Consolidated Revenue. They provide:

> S. 81 All revenues or moneys raised or received by the Executive Government of the Commonwealth shall form one Consolidated Revenue Fund, to be appropriated for the purposes of the Commonwealth in the manner and subject to the charges and liabilities imposed by this Constitution.
> S.83 No money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law
> . . .

Only with the recent challenge by three of the States to the validity of the Commonwealth appropriation in 1974-75 for the Australian Assistance Plan (hereinafter referred to as the A.A.P.) was this question again raised.

The A.A.P. part of a stress on a regional approach to both the planning and execution of domestic decisions by the Whitlam Labor Government was established

[1] [1975] 7 A.L.R. 277, (1976) 50 A.L.J.R. 157 High Court of Australia; Barwick C.J., McTiernan, Gibbs, Stephen, Mason, Jacobs and Murphy JJ.

[2] See *e.g. Report of the Royal Commission on the Constitution of the Commonwealth* (1929) 137-40 and Campbell E., 'The Federal Spending Power' (1968) 8 *University of Western Australia Law Review* 443.

[3] *Ibid.* and Sackville R., 'Social Welfare in Australia: The Constitutional Framework' (1973) 5 *Federal Law Review* 248 and Lumb R. D. and Ryan K. W. *The Constitution of the Commonwealth of Australia (Annotated)* (1974) 272.

[4] (1945) 71 C.L.R. 237 (*The Pharmaceutical Benefits* case).

[5] *Ibid.* 282 (*per* Williams J.), 266 (*per* Starke J.) and 269 (*per* Dixon J.).

in 1973 under the supervision of the Social Welfare Commission, a federal statutory body. It had the general stated object of 'assisting [i]n the development, at a regional level within a nationally co-ordinated framework, of integrated patterns of welfare services, complementary to income support programmes and the welfare-related aspects of health, education, housing, employment, migration and other social policies . . .'.[6] This purpose was to be implemented through Regional Councils for Social Development established in defined areas throughout the nation. These Councils were charged with the task of 'stimulating [i]nterest and activity in the broad field of social development within their regions'.[7] Towards this end, individual citizens as well as organized groups were to be involved through the Councils in the planning, development and evaluation of social welfare services available in the Region. Although operating as independent bodies at this regional level, each Council was charged with pursuing a co-operative relationship with other governmental bodies working in similar fields.[8]

Aside from this framework, the A.A.P. was to be experimental in format and purely administrative in structure, possessing no legislative backing other than the Appropriation Act (No. 1) 1974-5 which allocated $5.97 million to its purposes.[9]

This appropriation was to be distributed in an innovatory manner through direct financing by the Commonwealth Government of regionally based organizations. This distribution took four forms: (a) through 'initiating grants' for the formulation of Regional Councils; (b) to existing Regional Councils to provide salaries for staff employed and to cover administrative costs; (c) to local government bodies within the Regions to enable a Community Development Officer to be employed to work in areas related to the A.A.P. and (d) per capita payments to a small number of Regions as part of a pilot programme in the full implementation of the A.A.P. These latter payments were then to be distributed by the Councils among a diverse group of eligible bodies broadly associated with the provision of social welfare services.[10]

Victoria and its Attorney-General joined by the States of New South Wales and Western Australia sought a declaration that the Appropriation Act was void in so far as it contained an appropriation for the A.A.P. and an injunction to restrain the Commonwealth Government and the Minister for Social Security from making expenditures in pursuance of it. The Full High Court with McTiernan, Stephen, Jacobs and Murphy JJ. forming the majority dismissed the action overruling the plaintiffs' demurrer to the Commonwealth's defence. The major issues dealt with in this decision were as follows:

## (i) APPROPRIATIONS FOR THE PURPOSES OF THE COMMONWEALTH

A majority of the Court adopted an interpretation of the purposes for which Commonwealth Consolidated Revenue could be validly expended that would in most cases support the practice adopted in Federal Appropriation Acts.

McTiernan J. adhered to the position he had adopted in the *Pharmaceutical*

[6] *Victoria v. Commonwealth* [1975] 7 A.L.R. 277, 285. See also Sawer G., 'The Whitlam Revolution in Australian Federalism — Promise, Possibilities and Performance' (1976) 10 M.U.L.R. 315.

[7] *Ibid.* 286.

[8] *Ibid.* 287.

[9] *Ibid.* 284. A full outline of the format of the A.A.P. appears in the judgment of Barwick C.J. see [1975] 7 A.L.R. 277, 284 ff.

[10] See *Victoria v. Commonwealth* [1975] 7 A.L.R. 277, 329 (*per* Mason J.) for details of this funding. See also the Constitution Alteration (Local Government Bodies) Act 1974 for details of the Commonwealth Government's unsuccessful referendum attempt to obtain an amendment to s. 96 to enable it to make grants directly to local government bodies.

*Benefits* case[11] that the determination whether a particular purpose should be adopted as a Commonwealth purpose is a political matter to be decided by the Commonwealth Parliament and Mason and Murphy JJ. reached largely similar conclusions.[12] All Justices stressed that the adoption of the narrower interpretation of s. 81 favoured by the States would have a detrimental and prejudicial effect upon the operations of the Commonwealth Parliament. Items listed in the Schedule to an Appropriation Act might be declared invalid even after the challenged expenditure had occurred, while the High Court in determining whether an appropriation was intended for a valid purpose within the terms of s. 81 would often have only the brief description of the item appearing in the Schedule on which to rely. Perhaps more importantly the Commonwealth would lack power to make any of the numerous grants to persons or bodies having little connection with any head of power but considered deserving of government financial support that appear in any federal Appropriation Act. In addition, the validity of appropriations for such diverse fields of Commonwealth endeavour as education, housing, agriculture and the environment would be in doubt.[13]

Murphy J. also relied upon two points of construction arising from the wording ss. 81 and 94 and contended that a narrow reading of s. 81 would help ensure that wording of the phrase 'the purposes of the Commonwealth' would be contrasted with the specific limitation to purposes 'in respect of which Parliament has power to make laws' contained in s. 51(xxxi) and secondly that s. 81 should be read as a reference to the purposes of the citizens forming the particular political entity known as the Commonwealth rather than to the entity itself.[14] Yet Murphy J. would not concede an unlimited ambit of expenditure to the Commonwealth and read into s. 81 a limitation that appropriations in breach of 'express constitutional prohibitions' such as ss. 92, 116 or 117 would not be for 'the purposes of the Commonwealth'.[15]

Both Mason and Murphy JJ. referred to the wide interpretation given the General Welfare Clause — the provision of the United States Constitution equivalent to s. 81. Although this Clause combines both the taxing and spending powers and has consequently been stated to be inapplicable as a precedent in the interpretation of s. 81,[16] the Supreme Court interpretation has been influenced by a reluctance to interfere with a long established legislative practice — sentiments similar to those expressed by McTiernan, Mason and Murphy JJ.[17] Such an attitude lead Professor Corwin to comment that the Supreme Court was in fact abandoning the task of interpreting the Constitution in favour of merely confirming the constitutional history made by the legislature.[18]

By way of contrast, Jacobs J. accepted the tenor of the interpretation given to ss. 81 and 83 by the majority in the *Pharmaceutical Benefits* case.[19] His Honour pointed to the qualification there made by Starke J. to this prima facie narrow construction of s. 81 that to be included within the purposes of the Commonwealth were '[o]ther purposes which now adhere fully to Australia as a nation externally, and internally sovereign'.[20] This qualification together with that of Dixon J. in the

[11] (1945) 71 C.L.R. 237 McTiernan J. in fact quoted extensively from the judgment of Latham C.J. in that case.
[12] *Victoria v. Commonwealth* [1975] 7 A.L.R. 277, 323-4, 344-5 respectively.
[13] *Ibid.* 344-5.
[14] *Ibid.* 344 and 347
[15] *Ibid.* 347.
[16] *Ibid.* 307 for references.
[17] See *United States v. Butler* (1935) 297 U.S. 1.
[18] Corwin E. S., 'The Passing of Dual Federalism' (1950) 36 *Virginia Law Review* 1, 8.
[19] (1945) 71 C.L.R. 237.
[20] *Ibid.* 266.

same case[21] because of their general expression lend themselves to varying and even conflicting interpretation. Jacobs J. could maintain that to be included among 'the purposes of the Commonwealth' in a modern society would be inquiries and planning on a national scale as well as other activities that could be said to possess an Australian rather than a local flavour. His Honour in fact stated that in pursuance of the prerogative power of the Executive Government found in s. 61 to spend revenue for the purposes voted by the Parliament, expenditure could occur for any matter which is the concern of Australia as a nation.[22]

Despite the wide terms of the judgment of Jacobs J., a majority of the Court did not support the present Commonwealth Parliamentary practice without reservation. Commonwealth appropriations that could not be related to any head of power including s. 51(xxxix) and s. 61 would be reliant for support on the above qualifications of the narrow reading of s. 81. For this reason and also because of the conflict that exists between the judgments of McTiernan, Mason and Murphy JJ. and the opinion of the majority in the *Pharmaceutical Benefits* case[23] the main themes of the dissenting judgments of Barwick C.J. and Gibbs J. are of special significance.

Both Justices construed s. 81 narrowly: to the Chief Justice a reasonable synonym for the expression 'the purposes of the Commonwealth' was the language of s. 51(xxxi) itself, while Gibbs J. referred to any purpose 'which the Commonwealth can lawfully put into effect in the exercise of the powers and functions conferred upon it by the Constitution'.[24] Barwick C.J. first traversed the origin of the federal financial provisions and concluded that ss. 81 and 83 had been inserted in the Constitution as part of the distribution of the available revenue of the federation between the Commonwealth and the States. In addition both Justices pointed to an interrelation between ss. 81 and 94 and contended that a narrow reading of s. 81 would help ensure that the claims of the States on the Consolidated Revenue Fund through s. 94 would again be recognized and respected as that had been when the Constitution was framed with the States abdicating the fields of customs and excise to the Commonwealth.[25] Such stress on s. 94 almost seventy years after the High Court had 'greatly weakened'[26] its practical effect may with respect appear unjustified.

Both Barwick C.J. and Gibbs J. rejected the points of construction relied upon by McTiernan and Murphy JJ. and emphasized the need to support the original purpose of s. 81.[27] Gibbs J. also referred to two previous decisions of the Court containing *dicta* which can be read as lending some support to the State's arguments.[28]

However, neither Justice totally ignored the claims of Parliamentary practice and both conceded that certain limited inherent powers accrued to the Commonwealth. These arose either from the formation of the Commonwealth as a polity and its emergence as an international State or were incidental to the functions of a national government. Yet neither Justice suggested the limits of such qualifications although the Chief Justice did emphasize that no power accrued to the Commonwealth over a subject matter merely by describing it as national.[29] However, with respect, it may

[21] *Ibid.* 269.
[22] *Victoria v. Commonwealth* [1975] 7 A.L.R. 277, 333 and 340.
[23] (1945) 71 C.L.R. 237.
[24] *Victoria v. Commonwealth* [1975] 7 A.L.R. 277, 299 and 308.
[25] *Ibid.* 294.
[26] *Ibid.* 308 (*per* Gibbs J.) referring to *New South Wales v. Commonwealth* (1908) 7 C.L.R. 179.
[27] *Ibid.* 297 and 308 respectively.
[28] *Ibid.* 307. These two decisions were: *New South Wales v. Commonwealth* (1908) 7 C.L.R. 179, 200 and *Australian Woollen Mills Pty Ltd v. Commonwealth* (1954) 92 C.L.R. 424, 454.
[29] *Ibid.* 298.

well be considered that if the *prima facie* narrow interpretation of s. 81 is not completely accepted there is no other effective way of limiting the matters on which expenditure can be incurred.

### (ii) THE VALIDITY OF THE A.A.P.

As a majority of the Court did construe 'the purposes of the Commonwealth' widely, the vital question arose as to whether the administrative measures undertaken pursuant to the appropriation for the A.A.P. were within federal power.

No member of the Court suggested that the Appropriation Act by itself provided the Commonwealth with the authority to engage in the establishment of the A.A.P. Mason, Jacobs and Murphy JJ. as well as Stephen J., who considered this question when dealing with the standing of plaintiffs' took a very limited view of the functions performed by such an Act. An Appropriation Act was described as a '*rara avis*' in the world of statutes neither conferring rights or privileges nor imposing duties or obligations.[30] Its major role lay in satisfying the requirement of s. 83 that money can only be removed from the Treasury by an appropriation made by law. Such an interpretation is supported by previous decisions of the Court and other authority.[31] McTiernan and Gibbs JJ. did not expressly deal with this issue but would appear to have based their judgments upon a similar interpretation, at least both were prepared to look beyond the Act to find support for the A.A.P.

Only Barwick C.J. saw the Appropriation Act as performing an additional function — that of giving the Executive the authority to spend the revenue upon the specific purposes listed in the Schedule, provided that the same were valid purposes within the terms of s. 81.[32] However, as the Chief Justice concluded that the Commonwealth lacked the power to implement a social welfare plan such as the A.A.P. this difference did not prove decisive.

All members of the Court appear to have rejected a submission by the plaintiffs that the challenged appropriation was invalid because its terms did not reveal a 'purpose' within the meaning of s. 81. Murphy J. expressly stated that very briefly described or 'one-line' appropriations were adequate[33] and all other Justices seem to have similarly regarded the brief specification of the purpose of the A.A.P.

An additional submission by the plaintiffs that the Commonwealth Parliament could only appropriate revenue in respect of a purpose that was already the subject of separate legislation was also rejected. Jacobs J. as noted previously stated that the prerogatives of the Federal Executive under s. 61 of the Constitution included that of spending moneys voted by Parliament, while Murphy J. thought that separate legislation might be enacted in reliance on s. 51(xxxix) to ensure '[t]hat the moneys appropriated are spent for the purpose of the appropriation'.[34] However, as the Appropriation Act was the only legislative support for the A.A.P., the Court did not consider the extent to which the appropriation power can support other legislation such as an Act embodying the features of the A.A.P.

A division of opinion occurred when the Justices who had adopted a narrow analysis of the functions of an Appropriation Act considered the alternative sources of support available to the A.A.P. McTiernan and Murphy JJ. agreed that the appropriation was valid and stated briefly that the establishment of the Regional Councils

[30] *Ibid.* 323 (*per* Mason J.).
[31] *Commonwealth v. Colonial Ammunition Co. Ltd* (1924) 34 C.L.R. 198, 224 (*per* Isaacs and Rich JJ.). See also Campbell E., 'Parliamentary Appropriations' (1972) 4 *Adelaide Law Review* 145.
[32] *Victoria v. Commonwealth* [1975] 7 A.L.R. 277, 297-8.
[33] *Ibid.* 347 *cf.* 297 (*per* Barwick C.J.).
[34] *Ibid.* 333 (*per* Jacobs J.) and 349 (*per* Murphy J.).

was within the federal executive power. Yet while McTiernan J. rejected the suggestion that Parliament possessed power to enact separate legislation regarding the subject matter of the A.A.P., Murphy J. reached the opposite conclusion stating that legislation authorizing the enquiry and report envisaged by the A.A.P. or the establishment of the Regional Councils would be incidental to the execution of the Commonwealth's wide powers in the area of social welfare.[35]

Gibbs and Mason JJ. adopted a much narrower reading of the executive power flowing from s. 61 and on the basis of previous decisions stated that with few exceptions, it was limited to the execution and maintenance of the powers contained in ss. 51, 52 and 122. Both Justices considered that the Regional Councils extended far beyond federal power and Gibbs J. expressed similar views in regard to the whole of the A.A.P. Like Barwick C.J. and Gibbs J., Mason J. conceded that certain as yet undefined powers accrued to the Commonwealth as a result of its existence and character as a polity enabling it to engage enterprises peculiarly adapted to the government of a nation such as the establishment of the Commonwealth Scientific and Industrial Research Organization. These powers were to be either implied into the Constitution from the Commonwealth's existence or flowed from a combination of s. 61 and s. 51(xxxix). Mason J. did not suggest a method of gauging the limits of such power beyond agreeing with Gibbs J. that it would not extend to supporting a radical transformation in the hitherto existing responsibilities of the Commonwealth and the States — a result the A.A.P. was considered to have.[36]

Jacobs J. stated that in so far as the proposed expenditure did not fall within a specific head of power it could be supported as being incidental to the execution by the Commonwealth of its wide powers in the social welfare field. His Honour referred to previous decisions of the Court that have held the incidental power to be capable of supporting matters of substance and extending beyond actions merely in aid of or procedural to an express head of legislative power.[37] In addition this appropriation involving as it did the formulation and co-ordination of plans requiring national rather than local planning was within his Honour's extended definition of 'the purposes of the Commonwealth' discussed previously.[38]

Jacobs J., along with McTiernan and Murphy JJ. considered that a combination of the heads of federal power could be relied upon to support the A.A.P. in so far as it did not fall within anyone of these heads. Barwick C.J. specifically rejected such an argument and appears to have been joined in this view by Gibbs and Mason JJ.[39]

But Jacobs J. was the only member of the Court to point to a perhaps more fundamental difficulty arising from the nature of the plaintiffs' case. His Honour maintained that it was a consequence of the narrow analysis of the functions of an Appropriation Act, that its validity could not be challenged in a similar manner to ordinary legislation. As no overall scheme of expenditure existed in such legislation, it was necessary for the plaintiffs to carefully and precisely delineate those expenditures in respect of which relief was sought. It was insufficient for the plaintiffs to merely bring all the available details of the A.A.P. before the Court by demurring to the whole of the Commonwealth's defence.[40]

Mason J. appears also to have noted a procedural difficulty to the challenging of an Appropriation Act. No doubt influenced by the limited functions he saw such

[35] *Ibid.* 346.
[36] See *ibid.* 312 and 327.
[37] *Ibid.* 340-2.
[38] See *supra* n. 22.
[39] *Victoria v. Commonwealth* [1975] 7 A.L.R. 277, 300 (*per* Barwick C.J.) 305 (*per* McTiernan J.) 342 (*per* Jacobs J.) 346 (*per* Murphy J.).
[40] *Ibid.* 339.

legislation performing his Honour did not grant the declaration of the Acts invalidity but only an injunction to restrain expenditure pursuant to it.[41]

### (iii) LOCUS STANDI TO CHALLENGE AN APPROPRIATION ACT

While Gibbs, Stephen, Mason and Murphy JJ. considered the standing possessed by both categories of plaintiff: the States and the State Attorney-General, Barwick C.J. concentrated on the position of the former describing the latter as an '[u]nnecessary party to the action'.[42] McTiernan and Jacobs JJ. did not find it necessary to consider either issue. No doubt the presence of both categories of plaintiff reflects the uncertainty surrounding the standing possessed by the State Attorney-General to challenge spending legislation.

Barwick C.J., Gibbs and Mason JJ. all considered that the States possessed sufficient standing to challenge the validity of the appropriation. They argued that such an appropriation if invalid would deprive the States of the opportunity however slight of sharing in any possible distribution of surplus revenue pursuant to s. 94. The Chief Justice in fact stated that such an interest existed even if the States lacked an enforceable right to obtain a distribution of surplus revenue.[43] Gibbs and Mason JJ. also pointed to a more general interest of the States stemming from their rights as 'constituent elements' in the Federation to ensure that the Commonwealth kept within the limits of power assigned to it by the Constitution.[44] Gibbs J. stated that the Constitution itself assumed a remedy to be available to one party to the federal compact should the other trespass beyond the boundaries imposed upon it through an *ultra vires* act such as the challenged appropriation.[45] Both Justices also thought similar reasoning to be applicable to the question of the standing possessed by the State Attorney-General.

Neither Gibbs or Mason JJ. considered that previous decisions of the Court on the question of the State Attorney-General's standing to challenge Commonwealth legislation were applicable to the issue to be decided. Gibbs J. described these decisions as not intended to be exhaustive and as being influenced by principles of private law not entirely applicable to constitutional cases. His Honour also distinguished decisions of the United States Supreme Court denying States standing to challenge federal spending legislation.[46] Similarly Mason J. considered both categories of decisions to be inapplicable stressing the special nature of the legislation under consideration. However, his Honour stated a willingness to apply the previous decisions of the Court had the A.A.P. been the subject of ordinary legislation.[47]

Stephen J. with whose comments Murphy J. expressed general agreement was the only member of the Court to dismiss the plaintiffs' action on the ground of their lack of standing. His Honour denied that the States could demonstrate sufficient standing by relying upon s. 94 and noted that doubtless due to the influence of the *Surplus Revenue* case[48] the States had not even raised such a claim.[49] In support of this conclusion it has been argued that as s. 94 in framed as a grant of power to the Commonwealth, it cannot be looked to as support for the States claims to surplus

[41] *Ibid.* 331.
[42] *Ibid.* 302. Barwick C.J. thought that the Constitution itself recognized the standing of the States and relied upon s. 75(iv).
[43] *Ibid.* 301.
[44] *Ibid.* 314 (*per* Gibbs J.) and 330 (*per* Mason J.).
[45] *Ibid.*
[46] *Ibid.* 315.
[47] *Ibid.* 331.
[48] *New South Wales v. Commonwealth* (1908) 7 C.L.R. 179.
[49] *Victoria v. Commonwealth* [1975] 7 A.L.R. 277, 319.

revenue.[50] Stephen J. did not directly consider the second ground relied upon by Gibbs and Mason JJ.

When dealing with the standing possessed by the State Attorney-General, Stephen J. relied upon the same decisions Gibbs and Mason JJ. had distinguished. Sir Owen Dixon had in fact stated the settled doctrine of the Court on the point to be that a State Attorney-General could challenge Commonwealth legislation '[w]hich extends to, and operates within, the State whose interest he represents'.[51] However, some differing statements of doctrine have occurred[52] and Stephen J. referring to all relevant principles concluded that the Appropriation Act did not extend to or operate in any State nor affect or interfere with public rights and in fact possessed no ordinary law making function at all — not purporting to govern the conduct of the citizens of any State nor causing injury to their activities.[53]

This conclusion is certainly consistent with the analysis of an Appropriation Act adopted by his Honour. Nevertheless it may well be considered that the issue of the plaintiffs' standing to obtain an injunction to restrain expenditure pursuant to the appropriation should have been considered separately from the issue of their standing to obtain a declaration of the appropriation's invalidity. Many of the actions taken in pursuance of the establishment of the A.A.P. would appear to come within the tests of standing outlined above.

Stephen and Murphy JJ. also briefly commented upon the standing requirements of an individual taxpayer challenging federal spending legislation. Murphy J. suggested that such requirements should be liberalized[54] and thus went against the traditional reluctance to facilitate challenges to Appropriation Acts by taxpayers suffering no special injury.[55]

The final issue to be noted is the question whether the challenge to the Appropriation Act was in fact justiciable. Of the members of the Court who considered the question, Barwick C.J., Gibbs J. as well as by implication Mason J. were of the view that appropriation laws should not be placed in a special position of constitutional inviolability.[56] Only McTiernan J. concluded that the dispute was not justiciable, and shortly stated that it was in the field of politics not of law.[57] However subject to the comments of Jacobs J. discussed above as to procedural difficulties in challenging an Appropriation Act it may well be argued that no matter how limited an interpretation is adopted of the functions of appropriation legislation its validity should still be the subject of judicial review.

TIMOTHY GINNANE*

[50] Fajgenbaum J. I. and Hanks P., *Australian Constitutional Law* (1972) 680, n. 88.
[51] *A.-G. for Vict. (ex. rel. Dale) v. Commonwealth* (1945) 71 C.L.R. 237, 272.
[52] *Cf. A.-G. for New South Wales v. Brewery Employés Union of New South Wales* (1908) 6 C.L.R. 469, 499 (*per* Griffith C.J.) and 557-8 (*per* Isaacs J.).
[53] *Victoria v. Commonwealth* [1975] 7 A.L.R. 277, 321.
[54] *Ibid.* 350.
[55] See *e.g. Anderson v. Commonwealth* (1932) 47 C.L.R. 50, 52.
[56] *Victoria v. Commonwealth* [1975] 7 A.L.R. 277, 301-2 (*per* Barwick C.J.) and 313 (*per* Gibbs J.).
[57] *Ibid.* 305.

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