

COMMONWEALTH-STATE RELATIONS: FEDERALISM. CHAPTER 9

THE AUSTRALIAN MODEL OF FEDERALISM (9.1-9.4)

- ❖ It was always clear that if the Australian colonies were to unite, it must be in a federation.
- ❖ The United States, Canada and Switzerland were the best-known models.
- ❖ Of these, the US is the closest, but there are significant differences.
- ❖ Australia chose a "co-ordinate" model in which Commonwealth and States are supposedly independent in their own spheres.
- ❖ The reality has been more a combination of co-operative and coercive federalisms.

FISCAL FEDERALISM (9.10)

- ❖ 1890s economic troubles instrumental in persuading colonies to federate
- ❖ clear condition that Cth has a monopoly on issuing of money (CC ss 51(xii) and 115).
- ❖ other conditions: a single external customs barrier, and trade between States must be free of protectionist barriers (s 92)
- ❖ S 90 entailed a ban on States imposing customs duties, but also duties of "excise" (a much less certain parameter causing extensive litigation; see 9.36ff)
- ❖ States otherwise have wide tax powers, but hit by Cth takeover of income tax (see 9.25) and broad interpretation of "excise" prohibition
- ❖ Meanwhile the Cth has made the most of its broad taxing and spending powers to enhance its power within the Federation.

Cth POWER TO BORROW (9.13-9.14)

- ❖ CC ss 51(iv); Ch IV s 105, s105A
- ❖ CC s51(iv): Cth has power to borrow "on the public credit of the Commonwealth".
- ❖ Chapter IV, "Finance and Trade", starts at s 81
 - s 105: the Cth Parliament may take over some or all of the States' debts, but can demand to be indemnified by the State concerned.
 - s 105A added in 1928, authorising Cth-State agreements on Cth takeover of State debts
 - s 105A(3) empowers Parliament to legislate for carrying out such agreements.
- ❖ This led to the establishment of a Loans Council in which Cth and States could agree on borrowings. An attempt to bypass this body was crucial in leadup to 1975 Dismissal (see Ch 11).
- ❖ The legislative power was soon put into effect in response to the decision of the Lang Labor Government in NSW to suspend payment of interest on its debts during the Great Depression (see 9.27).

FISCAL FEDERALISM (9.14)

- ❖ Borrowing by both the Commonwealth and the States has continued to be contentious, both politically at Commonwealth and State level, and between the Commonwealth and the States.
- ❖ It is an important part of the overall picture of the finances of the federation. Credit ratings have been zealously guarded.
- ❖ A period of pursuing surpluses has recently given way to an understanding that borrowing is necessary — as seen for example in the response to the COVID-19 pandemic with the need for increased health and social security spending and a reduction in tax revenue.

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