**unit three**

**F e d e r a l i s m**

definitions

*federalism:* a system of government in which sovereignty is geographically divided between one central and two or more regional governments, each sovereign within their own sphere

*coercive federalism:* where the central government is very powerful and the regional government lacks autonomy within their sphere of sovereignty. the central government uses its

powers to dictate policy to the regional governments

*cooperative federalism:* where there is an even power balance between the systems of government. neither is dominant and there is substantial cooperation between the levels. there is a strong federal institution that links the two levels and allows for joint decision making

*coordinate federalism:* where each level of government is more or less autonomous within its own sphere of sovereignty and there is little cooperation between the levels. interaction takes place within weak federal institutions

*vertical fiscal imbalance:* the disproportionate taxing powers and spending obligations of the commonwealth and the states (cth has 80% revenue and 50% expenditure, states have 20% revenue and 50% expenditure)

*horizontal fiscal equalisation:* the need for all states to have access to the same living standards, despite state income (mainly achieved through commonwealth grants commission and the distribution of gst)

sections (exclusive to the commonwealth)

*section 52:* administration of the capital city and to run the public service

*section 69:* defence, telephones, lighthouses, quarantine, etc.

*section 90:* customs, bounties, and excise

*section 115:* states may not coin money

sections (concurrent to both the commonwealth and the states)

*section 51(ii):* taxation

*section 51(xxi):* marriage

*section 51(xxii):* divorce and parental rights

sections (exclusive to the states)

*section 100:* control over states’ own rivers

*section 113:* liquor licensing

residual powers

education

health

public transport

financial powers of the commonwealth

*section 51(ii):* income tax has been collected only by the commonwealth since the uniform tax case 1942

*section 87:* braddon’s blot, 75% of section 90 revenue to be transferred to the states for a period of ten years after federation

*section 90:* the power to tax goods crossing state borders is exclusive to the commonwealth to ensure free trade (limited by high court interpretations, favouring commonwealth)

*section 92:* free trade between states (limited state power through high court interpretation in cole v whitfield 1988)

*section 94:* redundant section that required surplus commonwealth revenue to be distributed to states but all excess revenue was placed into a trust fund (challenged in surplus revenue case 1908 but upheld as constitutional)

*section 96:* allows commonwealth to grant “financial assistance” to the states on the “terms and conditions” that it sees fit (has allowed commonwealth to interfere with residual powers)

commonwealth grants commission

* statutory authority established by the commonwealth grants commission act 1973
* distributes revenue under section 96 power using general purpose payments/untied grants
* calculates the sizes of grants according to how much each state needs to provide services equal to that of other states

⤷ the western australia mining boom meant that w.a. received more income, and therefore less money was distributed to them by the cgc

* distributes the 10% goods and services tax (gst) as the states technically cannot collect it under section 90

council of australian governments (coag)

* comprised of the prime minister, state premiers, chief ministers and the president of the local government association
* acts as an intergovernmental forum where major issues and programs can be discussed

⤷ anti-terror laws, ndis, closing the gap, murray darling river system

⤷ mirror legislation - uniform gun laws 1997

⤷ murray darling basin plan - unified laws with the water act 2008

⤷ health reform 2016 - turnbull paid $2.9 billion to states for hospitals

incentive payments

* used instead of tied grants as it became hard to monitor state compliance to conditions
* asset recycling scheme 2014

partisanship

* senators voting along party lines rather than in the interests of their state

⤷ labor members must sign a pledge against crossing the floor

⤷ mathias cormann (w.a. senator) supported the 2016 budget, which did not deliver the infrastructure funding w.a. had asked for

court cases

uniform tax case 1942 & 1957 ruled that states could no longer collect income tax

tasmanian dams case 1983 found that the commonwealth could create legislation that ratified international treaties

cole v whitfield 1988 broadened commonwealth power to legislate concerning section 92

unchallenged legislation

* when the commonwealth creates statutes that expand its activity into areas of state residual power

⤷ snowy mountains hydroelectric power act 1949 created the snowy mountains scheme

referral of powers

* when a state chooses to give a concurrent power to the commonwealth

⤷ howard government requested all states to refer their criminal law powers to the commonwealth in order to create counterterrorism legislation (2002)

quizlet for definitions, cases, and sections

<https://quizlet.com/_740vo7>

example essay structure

introduction - define federalism, brief history of the change in the balance of power, strong thesis with argument

paragraph 1 - financial powers of the commonwealth

paragraph 2 - legislative powers of the commonwealth

paragraph 3 - impact of court cases

paragraph 4 - factors allowing cooperative federalism

conclusion - restate argument and finish strong

practice essay questions

“the legislative powers, rather than the financial powers, have led to more change in the balance of powers in australia.” evaluate. {25 marks}

“the high court’s interpretations have always had far-reaching effects on australian federalism.” assess. {25 marks}

“although federalism is a central feature of the australian political and legal system, it has changed markedly over time.” evaluate this claim. {25 marks}

“there is only one reason for the present power of the commonwealth government over state governments within the australian federal system and that is the growth of the financial dominance of commonwealth governments over a number of decades.” evaluate the validity of this claim. {25 marks}

“high court decisions have been the most significant reason for change in the federal balance of power.” evaluate this claim. {25 marks}

“at federation, there was an equitable financial relationship between the commonwealth and the states but now, in the twenty-first century, the commonwealth dominates the states financially.” evaluate this claim. {25 marks}