

**LEGAL PROFESSION ADMISSION BOARD**

**SEPTEMBER 2009**

**AUSTRALIAN CONSTITUTIONAL LAW**

**TIME: Three Hours**

This paper consists of **six** questions.

Candidates are required to attempt any **four** questions.

No question is compulsory.

All questions are of equal value.

If a candidate answers more than the specified number of questions, only the first **four** questions attempted will be marked.

All questions may be answered in one examination booklet.

Each page of each answer must be numbered with the appropriate question number.

Candidates must indicate which questions they have answered on the front cover of the first examination booklet.

Candidates must write their answers clearly. Lack of legibility may lead to a delay in the candidate's results being given.

**Permitted Material:**

**This is a closed book exam. No materials are permitted in the examination room.**

**Attached to this paper is a copy of the Law Extension Committee's Case List and the Course Outline incorporating appropriate excerpts from the Constitution.**

**As some instances of cheating and of bringing unauthorised material into the examination room have come to the attention of the Admission Board, candidates are warned that such conduct will result in instant expulsion from the examination and may result in exclusion from all further examinations.**

*This examination should not be relied on as a guide to the form or content of future examinations in this subject.*

### **Question 1**

Dalrymple Bay coal terminal in central Queensland is the largest coal export port in Queensland but due to infrastructure problems the queue of coal carriers waiting to be loaded at the port exceeds 40, with waiting time for each vessel to be loaded, being 32 days. These delays in Australia have forced Asian coal buyers to seek alternative supplies from Indonesia and South Africa.

Deliveries to Dalrymple Bay occur by way of a railway. The railway line is privately owned by two businessmen who operate it in partnership. An investigation by the port's management finds that insufficient deliveries of coal to the port are occurring due to poor rostering of train drivers to operate the coal chain rail network.

The Commonwealth Government is alarmed at the situation at Dalrymple Bay and the loss of Asian coal buyers and seeks your advice in respect of the following proposals that will provide immediate relief to the queues:

- (a) A law imposing quota restrictions on the export of coal from Dalrymple Bay; and**
- (b) A law imposing rostering arrangements for train drivers on the coal chain rail network to the port at Dalrymple Bay.**

**Advise the Commonwealth Government whether relying upon the Constitution s51(i) it may legislate in respect of (a) and (b).**

**(25 marks)**

### **Question 2**

The Commonwealth Parliament, being seriously concerned at allegations that tertiary institutions have lowered their educational standards in order to attract and retain fee-paying students, proposes to create a new body, the Educational Qualifications Board, pursuant to the Educational Standards Act 2009 (Cth). The statute limits the Board's activities to tertiary educational institutions that have corporate status.

The Board is given power to investigate, inter alia, (i) the rates of pay and working conditions of the academic teaching staff as well as (ii) complaints with respect to marking of students' examinations.

The University of Sydney is a body incorporated by an Act of the New South Wales Parliament. Over 50% of its funds come from fee-paying students, many of them from overseas, with the balance of the funds coming from grants by the Commonwealth Government.

The University of Sydney has received notice to appear before the Board in respect of:

**(Question 2 continues)**

**(Question 2 continued)**

- (i) An investigation into the adequacy of the rates of pay for academic teaching staff; and
- (ii) An investigation into the alteration of marks given to a class of students.

**The University seeks your advice on whether there is a constitutional basis for the Board's investigative powers. Advise the University of Sydney.**

**(25 marks)**

**Question 3**

Australia and other countries negotiated a Convention. The final document executed by the signatory States (including Australia), provided a comprehensive scheme. The parties undertook to ensure equal rights, such as the rights to life, liberty and freedom of association. Specific provisions dealt with arbitrary arrest and detention and access to the courts to determine the lawfulness of a detention. Compliance with the covenants was to be secured through education and in the last resort the ordinary courts of the land.

The Federal Parliament recited the Convention in the preamble to its Aboriginal Criminal Justice Act 2009. This Act proceeded to bring within the control of the Commonwealth Government all aspects of the administration of criminal justice relating to Aboriginal people, including all police activities and imprisonment.

In the second reading speech on the Bill the responsible Minister explained that the provisions were concerned with the failure of the New South Wales and Queensland police forces to eliminate the arbitrary arrest, detention and imprisonment of Aboriginal people. The Minister referred to the numerous New South Wales and Queensland Commissions of Inquiry which had reported on the unequal treatment of Aboriginal people in the areas of arrest, detention and imprisonment.

**Would the Commonwealth law, through the Constitution s109, pre-empt the Crimes Act 1900 (NSW) and the Criminal Code 1899 (Q) in their application to Aboriginal people in those states?**

**(25 marks)**

**Question 4**

The Commonwealth Government wishes to increase productivity in the handling of containers on Australian wharves in order to enhance Australia's competitive standing in relation to overseas trade and after discussion with all the major stevedoring companies the Government has agreed to establish a body to provide finance to the stevedores to fund redundancies in the industry.

**(Question 4 continues)**

**(Question 4 continued)**

To this end, assume the Commonwealth Parliament enacts the Stevedoring Industry Act 2009. The Act imposes a levy of \$12.00 a container on each container which crosses the wharves at the ports of Sydney, Melbourne, Brisbane and Perth. The omission of Adelaide and Hobart is due to the fact these ports have already achieved the world's best practice in the handling of cargo.

Under the Act the levy is a debt due to the Commonwealth and it is payable to the Commissioner of Taxation who has the general administration of the Act. The statute provides for the levy to be paid to the Stevedoring Redundancy Fund which is set up under the statute to be used to finance redundancies and is payable on the application of the relevant stevedores. In fact most of the redundancies will be payable in respect of the operations in Melbourne and Sydney.

S is a small stevedoring company operating in Perth. It will not be making any redundancies and it objects to being obliged to fund redundancies for the larger operators who are located in Sydney and Melbourne.

**Advise S whether it can challenge the Stevedoring Industry Act 2009 (Cth).**

**(25 marks)**

**Question 5**

The Australian Broadcasting Authority established under the *Australian Broadcasting Services Act 1992* (Cth) is comprised of a Chairman, a judge of the Federal Court of Australia, and two other members all appointed for a term of five years. Recently the Authority heard a complaint in respect of "L" station on the basis that it was alleged that some of its broadcasters had been paid "cash for comment", that is, the radio broadcasters were being paid fees by commercial undertakings to give favourable comment to a product without publicly disclosing the existence of substantial retainers to promote those products.

When the Authority embarked upon these public hearings it had power to compel witnesses to appear and give evidence under oath and produce documents to it. Under the statute, the Authority had a duty to ensure that every person having an interest in the proceedings was given a reasonable opportunity to be heard.

Failure to answer a question or produce a document, when required by the Authority, under the statute, constituted contempt and was punishable in proceedings before a single judge of the Federal Court of Australia.

The Authority had power, under the statute, to revoke a broadcasting license or impose conditions on any renewal of a license and/or impose a fine where it found that a licensee had acted contrary to the public interest or had failed to have due regard to the interests of broadcasting.

**(Question 5 continues)**

**(Question 5 continued)**

“L” station has held a commercial broadcasting license for several years. The Authority following upon a public hearing made a determination to cancel “L” station’s license and imposed a \$10million penalty.

**L station wishes to challenge the validity of these proceedings in the High Court alleging a denial of natural justice.**

**Advise “L” station as to:**

- (a) The validity of the provisions of the Australian Broadcasting Services Act 1992 (Cth).**
- (b) The jurisdiction of the High Court to hear judicial review proceedings for the quashing of the Authority’s determination (as to cancellation of its license and imposition of a fine) on grounds of a denial of natural justice.**

**(a) and (b) must be answered.**

**(25 marks)**

**Question 6**

The Australian Postal Commission proposes to install a bright yellow coloured “Express Mail” box in a residential street of Bellevue Hill, New South Wales; the Commonwealth Authority is prepared to acquire land, even compulsorily to this end. Woollahra Municipal Council, the local council, under the Environmental Planning and Assessment Act 19796 (NSW) has a planning scheme which would not permit an “Express Mail” box to be installed in that locality.

At the instigation of the residents the local council has convened a meeting to consider the issue as the Commonwealth Authority has made it clear that it believes the law is on its side. When the residents attend the meeting they discover it is closed to the residents at the request of the Commonwealth Authority. The residents consider that the closure of the meeting can be challenged and wish to seek legal advice. To permit the residents to seek such advice the meeting is delayed.

The Commonwealth Authority, pending the re-convening of the local council meeting, becomes determined to erect the “Express Mail” box at the site it has chosen even though the local council has made it clear it will offer an alternative site in a nearby street.

- (a) Does the Australian Postal Commission have the law on its side?**
- (b) Do the residents have the law on their side?**

**(a) and (b) must be answered.**

**(25 marks)**

**END OF PAPER**