**Moot Points: Offering an opportunity for authentic assessment in Commonwealth Constitutional Law**

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**Abstract**

*Facilitating deep learning[[1]](#footnote-1) and engagement in law students in compulsory courses is an inevitable challenge.  This is certainly true in public law courses taught over a single semester,  in which some student “conscripts” are challenged or even baffled by the conceptual frameworks, the level of abstraction of legal argument and judicial statement, and the sheer volume of primary data to be ingested.  One of the ways in which deep learning can be facilitated is through the use of “authentic” assessment tasks.[[2]](#footnote-2)  This poster explores the offering of mooting assessments in Commonwealth Constitutional Law at the Newcastle Law School, Australia, as an example of an authentic assessment task designed to promote deep learning in students.  There are many “points” or dimensions to this opportunity for students: the opportunity to learn professional writing skills in written submissions, the opportunity to enhance oral communication skills in an appellate advocacy setting, the opportunity to approach constitutional law topics through the lens of advocacy, and not just judicial statement, the opportunity to enhance critical thinking and persuasive writing skills.  One of the advantages of the way in which this assessment offering is designed at Newcastle, is that whilst it aligns with the school’s traditional integrated clinical ethos, the moot assessment* *in not compulsory, but one of a range of assessment types available in the course.*

**Teaching and Learning Objectives in Commonwealth Constitutional Law**

The *teaching objectives* adopted by Kate for this [Constitutional Law] course, include the following:-

1. to assist students in their development as independent and critical thinkers;
2. to offer opportunities in class for students and teachers to engage actively with primary and secondary materials;
3. to assist students to gain more confidence with constitutional law materials; and
4. to share her enthusiasm for and love of constitutional law with students.

These teaching objectives work together with the following *learning objectives* which have been developed for students.

By the end of, and during, this course, students will be asked to demonstrate the following skills:

1. a thorough and contextual knowledge of constitutional law doctrine;
2. the capacity to analyse and synthesise primary and secondary constitutional data;
3. the capacity to prepare and present cogent arguments, both orally and in writing; and
4. the capacity to identify legal issues, adduce relevant legal principles and rules and apply these to hypothetical problems based on constitutional law.

Assessment during semester

1. *In class oral assessment and written assessment (40 marks)*

Students must choose one of the four forms of continuous assessment set out below. Each comprises both an oral and written component. The marking criteria for each choice are posted on the LAWS4001 Blackboard site. The oral presentation will be made in class and the related written work will be due within 14 days of the oral presentation.

Numbers for each form of in-class assessment are restricted. Students will be asked to confirm their choice by the end of the second class in week 1.Please consult the schedule of classes where each item of assessment and its presentation date is listed.

Choice 1

* Participation in moot as counsel 6-8 minutes (20 marks); and
* Written moot submissions for plaintiff/appellant or respondent - 2000 words (20 marks).

OR

Choice 2

* Participation in class debate 6-8 minutes (20 marks); and
* Submission of written arguments for debate and written rebuttal responses as appropriate – 2000 words (20 marks).

OR

 Choice 3

* Presentation in class of proposed solution and reasoning for hypothetical problem or oral critique of 6-8 minutes (20 marks); and
* Written answer to hypothetical problem - 2000 words (20 marks).

OR

 Choice 4

* Presentation in class of an oral critique and/or commentary on constitutional material 6-8 minutes (20 marks); and
* Written argument in support of your constitutional critique and/or commentary - 2000 words (20 marks).

**2006 Sir Harry Gibb’s Constitutional Law Moot question. ‘Work Choices Contribution Levy Act’**

* Tax
* Immunities

 **Permission to reproduce granted.**

The federal government recently introduced a uniform industrial relations system into Australia. The purpose of the legislation is clearly expressed in section 3 of the *Workplace Relations Act 1996.* One of the objectives mentioned in this section is for “establishing and maintaining a simplified national system of workplace relations”. To this end the government has enacted the *Workplace Relations Amendment (Work Choices) Act* 2005. This Act relies primarily on the corporation’s power for its constitutional validity. However, the federal government has decided that this will not give sufficient coverage to ensure a ‘simplified national system of workplace relations throughout Australia. Accordingly, it has decided to also rely upon the taxation power to further extend its control over industrial relations.

To this end, the federal government has introduced the Work Choices Contribution Levy Act 2006. This Act imposes what amounts to a payroll tax. Employers are taxed on the salary or wages of employees whose contract of employment does not meet the requirements of the Workplace Relations Act 1996.

South Australia has challenged the constitutional validity of the Work Choices Contribution Levy Act.

**Work Choices Contribution Levy Act 2006**

Act No 999 of 2006

An Act relating to the establishment and administration of the work choices contribution scheme and for related purposes.

**Part 1 Preliminary**

1. Short Title

This Act may be cited as the Work Choices Contribution Levy Act 2006.

1. **Commencement**

This Act commences on 1 June 2006.

1. **Act binds the Crown etc**
2. This Act binds the Crown in right of the Commonwealth, each State, the Australian Capital Territory and the Northern Territory.
3. Nothing in this Act permits the Crown to be prosecuted for an offence.
4. **Purpose**

The purpose of this legislation is to better ensure provision of a structure for the implementation of an Australian wide workplace employment strategy through employer contributions for maintenance of an Australian Fair Pay Commission.

**Part 2 Explanation of Terms**

1. **Interpretation**

In this Act, unless contrary intention appears:

**Earning base** is the salary or wage of an employee including any commission and fringe benefit component for the income year, or for the period of the income year for which an employee was employed

**Employee, employer**

1. In this Act, employee and employer have their ordinary meaning.
2. A person who is entitled to payment for the performance of duties as a member of the executive body (whether described as the board of directors or otherwise) of a body corporate is, in relation to those duties, an employee of the body corporate.

**Employment** means the employment of an employee by an employer

**Income year** is the period 1 July in one year to 31 June in the succeeding year.

**Responsible** authority has the meaning set out in section 8.

**The Act** means the Workplace Relations Act 1996.

1. **Taxable Amount**
2. Taxable Amount is based upon the earnings base of an employee where
3. the employee’s contract for employment was entered into otherwise than prescribed in The Act; or
4. The employee’s contract for employment comprises matters prohibited by The Act or matters less than the prescribed minimum set by the Act.
5. Where because neither (i) or (ii) of subsection (1) of this section occur the taxable amount shall be zero.
6. **Aggregate Chargeable Levy** is the aggregate of all taxable amounts arising to an employer over the course of an income year.

**Part 3 Governing Authority**

1. **Responsible Authority**

The Commissioner of Tax has the general administration of this Act.

1. **Functions**

The functions of the responsible authority are:

1. education of employers of their obligations under this Act
2. collection of the levy imposed by this Act
3. prosecutions authorized by this Act
4. **Powers**

The responsible authority will have all those powers bestowed upon it under the Taxation Administration Act 1953 necessary for collection of the levy.

**Part 4 Liability**

1. **Levy**

The levy shall be payable by all employers at the rate of 12.5% on the taxable amount.

1. **Payment of Levy**

The aggregate chargeable levy is payable 60 days after the close of income each year.

1. **Act excludes some State laws**

This Act is intended to apply to the exclusion of the laws of a State to the extent that a law of a State impacts on the taxable amount of an employer.

1. **Exemptions**

Those employment circumstances exempt from the operation of The Act are exempt from the levy imposed by this Act.

**Part 5 Collection of levy**

1. **Returns**
2. A person who is liable to pay levy must lodge a return with the Commissioner within 60 days after the end of the income year.
3. The return must be in a form approved by the Commissioner and must contain the information required by the form.
4. **Penalty for late payment**
5. if any levy remains unpaid after the time when it is due for payment, an additional amount is payable to the Commonwealth by way of penalty, calculated at the rate of 20% per annum on amount of the levy from time to time remaining unpaid, to be computed from the day on which the levy became due for payment.
6. Late payment penalty in respect of unpaid levy is payable by the person or persons who are liable to pay the unpaid levy.
7. The Commissioner may remit the whole or part of an amount of late payment penalty, if the Commissioner considers that there are good reasons for doing so.
8. Applications may be made to the Administrative Appeals Tribunal to review of a decision of the Commissioner not to remit, or to remit only part, of an amount of late payment penalty.
9. **Recovery of levy and penalty**
10. the following amounts may be recovered by the Commonwealth as debts due to the Commonwealth:
11. levy that has become due for payment;
12. late payment penalty.
13. In the proceedings for recovery of levy, a statement or averment in the complaint, claim or declaration of the plaintiff is prima facie evidence of the matter stated or averred.
14. **Offences**

A person must not:

(a) fail to lodge a return as required by section 10; or

(b) provide a false or misleading return or information for the purposes of this Act

Penalty: 50 penalty units.

**Part 6 Miscellaneous**

1. **Regulations**

The Governor General may make regulations prescribing matters:

1. required or permitted by this Act to be prescribed; or
2. necessary or convenient to be prescribed for carrying out or giving effect to this Act.
3. Prescribing penalties for offences against the regulations by way of fines up to 10 penalty units.
1. M Le Brun and R Johnstone *The Quiet Revolution* (Law Book Company, 1994), 59-61. [↑](#footnote-ref-1)
2. There is a massive literature on this topic.  Two recent examples in Australian legal education are  C Hart et al “The Real Deal: Using Authentic Assessment to Promote student Engagement in the First and Second Years of a Regional Law Program” (2011) 21 *Legal Educ Rev* 97; L Kam et al “Get Real! A case study of authentic learning activities in legal education”, (2012) 19, 2 *Murdoch University Law Review*  17 [↑](#footnote-ref-2)