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# Agricultural and Veterinary Chemicals Legislation Amendment Bill 2001

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# Agricultural and Veterinary Chemicals Legislation Amendment Bill 2001

**Date Introduced:** 3 April 2001

**House:** Senate

**Portfolio:** Agriculture, Fisheries and Forestry

**Commencement:** Royal Assent, except Schedule 2 which hinges on the start-up of the Administrative Review Tribunal[1]

## Purpose

To attempt to secure the constitutional validity of conferrals of powers and functions on Commonwealth bodies, under the co-operative scheme between Commonwealth States and Territories for the evaluation, regulation and control of agricultural and veterinary chemicals.

## Background

### The National Regulation of Agricultural and Veterinary Chemicals

This Bill addresses the system of evaluation, regulation and control of agricultural and veterinary chemicals. In the last decade this area has seen the consolidation of disparate Commonwealth State and Territory regimes into a single national system. This has happened in three main stages:

- committing the Commonwealth's role to legislation
- establishing a single national body to administer the system, and
- synchronising regulation across the country by creating uniform national legislation through a co-operative legislative scheme.[2]

In 1988 the system was put on a statutory footing, and the Commonwealth assumed responsibility for determining *policy* on clearance and registration of agricultural and veterinary chemicals. A new national body, the Australian Agricultural and Veterinary

Chemicals Council (the Council), was given the task of granting clearances for the registration of chemical products by States and Territories, imposing conditions on such clearances and evaluating the effects of chemical use.

However duplication continued, because Commonwealth clearance was merely a step on the way towards registration of chemicals by State and Territory authorities.

Intergovernmental negotiations, kickstarted at the Special Premiers' Conference in October 1990, then paved the way for the next step towards a single national scheme for clearance *and* registration of agricultural and veterinary chemicals.

In 1992 a new body, the National Registration Authority for Agricultural and Veterinary Chemicals (NRA), was set up to replace the Council. It was to administer Commonwealth State and Territory laws relating to agricultural and veterinary chemicals, where those laws conferred powers on the NRA.

Finally in 1994 Parliament passed a package of legislation, laying the foundation for the NRA to administer a uniform national system for the evaluation, registration and control of agricultural and veterinary chemicals ('the Agvet scheme'). Following a model used in other co-operative schemes such as the Corporations Law, the Commonwealth enacted the Agricultural and Veterinary Chemicals Code ('Agvet Code') for the ACT, using one of its most comprehensive sources of constitutional authority, the Territories power.[3] The States and the Northern Territory then proceeded to enact complementary legislation in each jurisdiction, applying the Agvet Code as a law of their own jurisdiction, and each one in turn conferring powers and functions on Commonwealth authorities, such as the NRA and the Commonwealth Director of Public Prosecutions (DPP) (who was given power to prosecute offences under the Agvet Code).

## Co-operative Legislative Schemes and the Constitution

The Commonwealth Parliament is a legislative body of limited powers. Even by aggregating those various powers together, the Constitution probably does not permit the Commonwealth to reach into the States and regulate the use of chemicals in all its aspects.[4] The idea of a national co-operative scheme is that the States will plug the constitutional gaps:

- regulating behaviour in an identical fashion where Commonwealth legislation cannot reach, and
- conferring administrative responsibilities for the scheme on a single national body.

Recently confidence in the constitutional validity of national co-operative schemes has been shaken by a series of High Court decisions. The main focus of attention has been in the area of corporations law.[5] In 1990 the High Court denied that the Commonwealth had jurisdiction over the incorporation of companies, forcing a return to intergovernmental

arrangements. But a major blow was struck in 1999 in *Re Wakim*[6] when the Court decided that important parts of the 'cross-vesting scheme' were constitutionally invalid. Cross-vesting legislation in the Commonwealth States and Territories allowed legal actions to be transferred between jurisdictions and consolidated so that one court could hear all matters related to the one dispute. Cross-vesting had seen the Federal Court develop a specialist jurisdiction in Corporations Law matters.

However, in the cross-vesting scheme, the Federal Court was only able to hear corporations matters arising under a State version of the national Corporations Law because:

- the State law also conferred *jurisdiction* in such matters on the Federal Court, and
- the Commonwealth law 'consented' to such a conferral.

The High Court, relying on a negative implication arising from Chapter III of the Constitution, decided by a 6:1 majority in *Re Wakim* that the States were prohibited from conferring jurisdiction on federal courts in this way. Legislation is currently before the Parliament designed to deal with aspects of this problem.[7]

The constitutional assault on national co-operative schemes by litigants has, however, continued.[8] Meanwhile the Commonwealth has been taking steps to try and shore up the many schemes currently in existence. The High Court case of *R v Hughes*, and the Bill described in this Digest, respectively, continue that theme of litigious attack and legislative response.

## *R v Hughes*

The litigation in *Hughes* took its cue from the basis for successful challenge in *Re Wakim*: the scheme of 'conferral and consent' by State and Commonwealth law respectively. This scheme, which permits a *federal* body to exercise functions in both federal and State matters, and thereby achieves uniform national coverage, had been found constitutionally invalid in *Re Wakim* (in relation to courts). The defendant in *Hughes* took the same tack but this time attention was focused on administrative bodies not courts, and not so much on the first element (the State law *conferring* functions on the federal body) as on the second limb of the conferral and consent mechanism: the Commonwealth law 'consenting' to that conferral. In doing so the case posed the question:

> When the Western Australian Parliament conferred prosecution functions under its Corporations Law on the Commonwealth DPP, did the Commonwealth Parliament have the power to pass a law which effectively said 'The Commonwealth DPP shall have the functions which are conferred on it under the Corporations Law of Western Australia by the Western Australian Parliament'?

Again there was, until recently, some cause for confidence, but again that confidence has taken a serious knock. In 1983 the High Court unanimously upheld Commonwealth legislation which, together with New South Wales legislation, jointly constituted the Coal Industry Tribunal. The Court seemed relatively relaxed about the constitutionality of that co-operative scheme and its sympathetic attitude seemed to be encapsulated in Justice Deane's remark that co-operation between Commonwealth and State Parliaments is not antithetical to the Constitution but 'to the contrary, it is a positive objective of the Constitution'.[9]

In *Hughes* the High Court upheld the validity of the DPP's functions in the case of Mr Hughes. But it did so on the narrowest of grounds, consigning many future cases with just slightly different facts to the category of 'constitutionally suspect'.

Whereas *Re Wakim* relied (controversially) on a negative implication drawn by the Judges from the text and structure of Chapter III of the Constitution, the legal basis for the decision in *Hughes* is more straightforward and familiar:

> for a Commonwealth law to be valid, one must be able to point to a head of legislative power in the Constitution which supports it.

The question exposed by the litigation in *Hughes* and which now must be considered in relation to all other co-operative legislative schemes is this:

> when a *Commonwealth* law states that a Commonwealth body may or must exercise a function or power conferred on it by State legislation, what head of power does it rely on?

This seems clear and straightforward. Unfortunately, while the High Court managed to forge unanimous agreement on the outcome in *Hughes* and 6 out of 7 judges merged their reasoning into a single joint judgment, the precise implications of *Hughes* remain clouded by questions about what the Court did and did not say. The existence of a separate and concurring judgment by Kirby J, written with customary clarity but differing on emphasis while agreeing on outcome, breeds further uncertainty.

We can probably extract from the decision in *Hughes* the following propositions and implications:

1. **If a State law confers functions on a Commonwealth entity then a Commonwealth law may *permit* it to exercise those functions, by relying on what is called the 'incidental power'.[10]** The incidental power exists by implication in relation to most heads of power (eg trade and commerce, defence etc) as well as standing as an independent and express head of power in section 51(xxxix) of the Constitution. Basically the incidental power supplements a head of Commonwealth power, broadening it out beyond the immediate subject matter in a limited way to authorise laws which are, for example, necessary to give proper effect to the exercise of that bit of the Commonwealth's constitutional authority. An example of using the 'incidental

power' might be giving the Australian Federal Police a power to investigate allegations which could lead to prosecution for a quarantine offence. The law granting such a power might not be centrally about quarantine, but it is reasonably necessary and incidental to the effective exercise of the Commonwealth's constitutional authority over quarantine matters.

2. **If, however, the Commonwealth law effectively imposes a *duty* on the Commonwealth entity to exercise the function or power then the search for a source of constitutional authority intensifies.** This is particularly so, perhaps, if the duty is to exercise powers 'adversely to affect the rights of individuals'.[11] Clearly carrying out prosecutions adversely affects the rights of individuals; presumably a wide range of other official functions carried out by Commonwealth agencies under co-operative schemes would equally answer that description.

3. **It is possible that the incidental power may support a Commonwealth law which imposes such a duty.** It has been suggested in the High Court that an implied power, the 'nationhood power', might also plug the gap where no other relevant Commonwealth powers can be identified, although this is speculative and perhaps overly optimistic in the present judicial climate.

4. **Sometimes other heads of constitutional power can be readily identified as supporting a Commonwealth law imposing a duty on its officials**. *Hughes* is such a case—Mr Hughes engaged in an overseas commercial transaction and thus the DPP's prosecutorial role was authorised by the Commonwealth's powers in relation to overseas trade and commerce (section 51(i)) and external affairs (section 51(xxix)).

5. **But co-operative schemes are usually devised because it is hoped that the States can plug a perceived *gap* in the Commonwealth's constitutional armoury.** It seems quite likely that several co-operative schemes have a real constitutional question mark hanging over them after *Hughes*, specifically over the constitutional authority of Commonwealth agencies to carry out duties apparently conferred by State law and 'authorised' by Commonwealth law.

6. **The existence of a *duty* on the DPP to exercise its functions was implied rather than express in the case of *Hughes*.** The co-operative scheme involved State laws disavowing any role in corporate law offences for their own State prosecution authorities. The only prosecution authority under the co-operative scheme was the Commonwealth DPP, and this *exclusive* role seems to have been relevant to the High Court's finding that a *duty* was imposed on the DPP to carry out its prosecutorial functions under the corporations scheme. The significant thing about *Hughes* picked up in this Bill is that the High Court found that a duty was imposed there *not by State law but by the Commonwealth law* (a point further discussed below). Whether the reasoning in *Hughes* means that an absence of exclusiveness equates to the absence of a duty is unclear. If a Commonwealth law does not impose a duty but merely *permits* additional (State-conferred) functions to be exercised by a Commonwealth entity, then

presumably proposition 1 (above) applies and the Commonwealth law is valid, supported by the incidental power.

7. **But even the proposition in the last sentence is complicated by a question left unanswered in *Hughes*. *If* a particular co-operative scheme involves a duty being imposed on a Commonwealth entity, the High Court left open whether it would have to be imposed *by the Commonwealth law* as a 'constitutional imperative'.**[12] In other words the High Court was unwilling to commit itself in *Hughes*, but may decide in future that the only legislature which can impose a duty under a co-operative scheme on a Commonwealth body is the Commonwealth Parliament.[13]

If that last possibility transpires then the constitutional situation might look like this:

- a co-operative scheme may operate, relying on the incidental power of the Commonwealth, but only where multiple Commonwealth, State and Territory agencies retain responsibilities for its administration (thus surrendering one of the major perceived advantages of such schemes: the single national regulator)

- any scheme which compels a single national body to assume exclusive regulatory functions can only survive constitutional scrutiny if a supporting head of Commonwealth power for its activities can be identified (thus in many cases rendering the whole idea of a co-operative scheme redundant, because the Commonwealth could have legislated to that effect without the agreement of the States).

The Commonwealth, in drafting this Bill, keeps hope alive that the possibility mentioned in proposition 7 may not transpire. In other words, it maintains the hope that the High Court will not insist that duties on Commonwealth bodies can only be imposed by Commonwealth law (ie there is no such 'constitutional imperative'). As will be seen below, the Bill contemplates the possibility that *State* laws may also impose duties on Commonwealth bodies.

## Section 15A of the Acts Interpretation Act 1901

The High Court is the ultimate arbiter of whether a law of the Commonwealth Parliament is constitutionally valid or not. The Parliament cannot, by legislative assertion, talk its laws into being constitutionally valid if, when properly interpreted, they exceed the powers available to Parliament. Similarly, if a law is *partly* invalid, it is ultimately up to the High Court (if asked by litigating parties) to state what part survives constitutional scrutiny and what part does not.

That said, there is nothing wrong with Parliament attempting to shape the High Court's perception of these issues by inserting interpretative statements into an Act, statements which push a Commonwealth argument that a particular law is valid or has a particular constitutional impact.

An example of such a provision is found in section 15A of the *Acts Interpretation Act 1901*. It states:

> Every Act shall be read and construed subject to the Constitution, and so as not to exceed the legislative power of the Commonwealth, to the intent that where any enactment thereof would, but for this section, have been construed as being in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.

This provision is designed to signal to the courts that if the outer limits of a law risk constitutional invalidity, the Parliament intends that nonetheless those parts of the law which are within power should stand. Another way of putting this is that Parliament intends that its statutes be 'read down' so as to operate to the extent that they are constitutional. The High Court used section 15A in coming to the conclusion that the *specific* exercise of DPP functions in the case of Mr Hughes' overseas transaction was constitutionally valid, even if the general conferral of power on the DPP was open to constitutional question.

Much of the Bill:

- caters to a variety of constitutional possibilities, by second-guessing alternative judicial interpretations of the Agvet scheme, based on the somewhat cryptic statements in *Hughes*, and then
- attempts, in a similar way to section 15A, by expression of Parliamentary intention, to save as much of those schemes as possible from any finding of constitutional invalidity.

## Main Provisions

**Item 1** ensures that when the term 'confer' is used it includes situations where a duty is imposed. The High Court found that a duty was imposed on the DPP in *Hughes* by implication rather than express terms, and this amendment gives statutory recognition to that possibility.

**Item 2** repeals the existing section 18 and replaces it with an expanded 'consent' provision. Under the Agvet scheme, State and Northern Territory legislation confers certain functions on Commonwealth entities such as the NRA. The existing section 18 states that these State and Territory laws 'may confer prescribed functions and powers on authorities and officers of the Commonwealth'.

The High Court's willingness to imply the existence of a duty in *Hughes* despite the absence of language to that effect puts the Commonwealth on notice that duties may be found to exist in other co-operative legislative schemes which also refrain from using the word 'duty'. If it turns out that *State* laws *can* impose such duties (an unanswered question

from *Hughes*, see proposition 7 above) then to ensure validity the Commonwealth 'consent' to that conferral will need to cover duties as well functions and powers so conferred.

This explains the revised wording of section 18 now found in **proposed subsection 18(2)**.

The insertion of **proposed subsection 18(1)** is motivated by reasons which are largely independent of the High Court's decision in *Hughes*. Any person with appropriate qualifications can be appointed an inspector or analyst under sections 69F and 69G respectively of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*. They may not, therefore, answer the description of an 'officer of the Commonwealth'. As a result proposed subsection 18(2) would not cover them and thus there would be no Commonwealth 'consent' to the States' conferral of functions on them. Without proposed subsection 18(1), the outcome would be constitutional invalidity, if non-Commonwealth officers sought to exercise the duties, functions and powers of an inspector or analyst.

Similarly the Administrative Appeals Tribunal (AAT), although not a judicial body, may not answer the description of an 'authority of the Commonwealth'. Thus without **proposed paragraph 18(1)(a)** there may be no Commonwealth 'consent' to the States' conferral of functions on the AAT under the Agvet scheme, again spelling constitutional trouble for the exercise of its duties, functions and powers.

The flaw in the Commonwealth 'consent' provisions relating to lay inspectors and analysts, and the AAT, has been in the legislation for some time. Consequently, **item 4** backdates the effect of **proposed subsection 18(1)**. The Explanatory Memorandum states in paragraph 8:

> This will provide a foundation for State legislation validating the past actions of the AAT and inspectors and analysts under relevant State laws where there is some doubt about the past conferral of relevant functions or powers.

As noted above, the Commonwealth persists in the hope that State laws can impose duties on Commonwealth entities. **Proposed section 18** has, the Explanatory Memorandum states, been drawn up to encompass and indeed (subject to validity) encourage this interpretation.

**Proposed subsection 18(3)** simply makes clear to the High Court that the Parliament intends that the section be supported by as wide an array of constitutional powers as might be available.

**Proposed subsection 18A(1)** in **item 3** functions in a similar way to section 15A of the Acts Interpretation Act (discussed above). It caters to the combined possibility that:

- the High Court might interpret the Agvet scheme as involving the conferral of a duty, function or power *by a Commonwealth law*, and
- the Constitution denies the Commonwealth power to make such a conferral.

In that event it says that the Court should not treat the Commonwealth law as intending such a conferral, in the hope that this will 'save' the conferral to the extent it has been validly made by the relevant State law.

As discussed above, without deciding the issue, the High Court entertained the possibility that where a co-operative scheme imposes a duty on a Commonwealth entity, that duty must be imposed *by Commonwealth law*. **Proposed subsection 18A(2)** caters to the possibility that this proves to be the case. It says that if the Constitution requires that a duty (or function or power) be imposed by Commonwealth law then this Act expresses such an intention, to the extent necessary to secure constitutional validity. **Proposed subsection 18A(3)** merely confirms that in doing so the Parliament relies on the widest array of powers available to it under the Constitution.

**Item 1 in Schedule 2** simply changes a reference in the Act from the AAT to the ART (ie the Administrative Review Tribunal) in the event that that new body comes into existence.[14]

## Concluding Comments

When one examines the Agvet scheme a little more closely, one can see for example that the Commonwealth DPP does not have *exclusive* powers of prosecution as it did in relation to Corporations Law offences in *Hughes*. Perhaps, as a consequence, the DPP is not subject to a *duty* to carry out its functions under the Agvet scheme. As a result perhaps the incidental power supports its role under the Agvet scheme without any need for the Bill. Perhaps also section 15A of the Acts Interpretation Act already achieves much of what the Bill sets out to do.

But one can understand the conservative approach taken by the Commonwealth's drafters in the Bill. First, the issue of exclusivity may vary across the Agvet scheme depending on which Commonwealth authority one is looking at (eg the role of the NRA may well be exclusive). Secondly, the finding in *Hughes* was made on the narrowest of grounds, leaving several questions critical to the constitutional viability of co-operative schemes unanswered, or at least clouded by speculation. Prudence dictates catering to as many theoretical interpretations as reasonably possible. Thirdly, section 15A is a general provision and subject to contrary intention, either express or implied. The provisions of the Bill are much more explicit and specific in trying to save as much of the Agvet scheme as possible, in the event that the Court takes a negative view on the scheme's constitutionality.

Finally, it may be that State Parliaments can amend their components of the national legislative scheme to try to maximise its chances of constitutional survival. For example, if a duty is clearly conferred at present on a Commonwealth entity (such as the NRA), a State law could be amended to more transparently express an intention that that duty is conferred *by State law*. The Commonwealth could then confine itself to a purely

permissive 'consent' law, the incidental power would support such a law, and the constitutional problem evaporates. But, as with all aspects of *Hughes*, it is not necessarily that simple: the High Court left open the possibility that the only legislature which can confer a duty on a Commonwealth entity is the Commonwealth Parliament. To allow for this possibility, a State amendment would need to be drafted in a similar fashion to the formula used in proposed subsection 18A(1), but referring instead to State laws and State legislative power. The coming months may well see State laws introduced which seek to repair the Agvet scheme (eg the potentially invalid actions taken in the past by lay inspectors and analysts, or by the AAT) or which encourage courts to take interpretations most favourable to the scheme's survival in the post-*Hughes* era. A Bill which seeks to do both has, for example, already been introduced into the Victorian Parliament.[15]

## Endnotes

1 The Senate voted not to give the Administrative Review Tribunal Bill 2000 a Second Reading on 26 February 2001, which means the Bill has, for the moment, stalled in the Senate after passing the House of Representatives.

2 For more details, see the Background to an earlier Bills Digest: Ian Ireland, *Agricultural and Veterinary Chemicals Bill 1993*, Bills Digest No 3 of 1994, Department of Parliamentary Library, 16 December 1993, at http://search.aph.gov.au/search/ParlInfo.ASP?action=view&item=10&from=browse&path=Legislation/Bills+Digests/1993&items=175 (22 May 2001).

3 Section 122 of the Constitution.

4 For example, perhaps where chemicals are used by non-corporate entities in purely intrastate commerce.

5 Justice Kirby, however in *R v Hughes* [2001] HCA 22 at para 109 n146, listed a variety of situations in which State laws had conferred functions on Commonwealth authorities: 'See eg *Aboriginal and Torres Strait Islander Commission Act* 1989 (Cth), s 9; *Air Navigation Act* 1920 (Cth), s 30; *Australian Federal Police Act* 1979 (Cth), s 8(1)(bc); *Australian National Railways Commission Act* 1983 (Cth), s 11; *Australian National Training Authority Act* 1992 (Cth), s 6; *Australian Prudential Regulation Authority Act* 1998 (Cth), s 9A; *Australian Sports Drug Agency Act* 1990 (Cth), s 9A; *Child Support (Assessment) Act* 1989 (Cth), s 15; *Civil Aviation Act* 1988 (Cth), s 9; *Classification (Publications, Films and Computer Games) Act* 1995 (Cth), s 4; *Gas Pipelines Access (Commonwealth) Act* 1998 (Cth), s 13; *Human Rights and Equal Opportunity Commission Act* 1986 (Cth), ss 11(1)(c), 16; *National Crime Authority Act* 1984 (Cth), s 11; *National Road Transport Commission Act* 1991 (Cth), s 8(1)(d); *Public Service Act* 1999 (Cth), s 71; *Taxation Administration Act* 1953 (Cth), s 13L; *Therapeutic Goods Act* 1989 (Cth), s 6A; *Trade Practices Act* 1974 (Cth), ss 44ZZM, 150F; *Workplace Relations Act* 1996 (Cth), s 5(6).'

6 *Re Wakim; ex parte McNally* (1999) 198 CLR 511.

7 Corporations Bill 2001

8 See, for example, *In the matter of Damian Michael Lynch; GPS First Mortgage Securities Pty Ltd v Lynch* (B51/2000) a matter due to be argued before the High Court. It calls into question the power of ASIC to carry out incorporation of companies, a power conferred on it by State law. The Commonwealth does not have constitutional authority over incorporation under section 51(xx) of the Constitution (which relates only to corporations already formed).

9 *R v Duncan; ex parte Australian Iron and Steel* (1983) 158 CLR 535 at 589.

10 *R v Hughes* [2000] HCA 22 at paras 31 and 34. Some observers seem to doubt that this proposition emerges unambiguously from the judgment. They do so presumably because they interpret another cryptic comment in the judgment in a certain way. The cryptic comment is the following statement in the joint judgment in *Hughes*: 'Whether the further step taken here of imposing duties by Commonwealth law was necessary…as a constitutional imperative, we need not stay to consider.' (at para 34). The possible 'constitutional imperative' is open to two interpretations: 1. *if* a scheme involves any duties being conferred on Commonwealth entities, then the only Parliament which can confer those duties is the Commonwealth Parliament (ie duties can't be effectively conferred on Commonwealth bodies by State law); or 2. all co-operative schemes, if they are to work, must involve a duty being conferred on the relevant Commonwealth body (a duty which presumably can only be conferred by Commonwealth law). If one adopts the second of these interpretations, then it seems to directly contradict the statement about the incidental power in the text of this Digest at proposition 1 (and the High Court's statement in paras 31 and 34). For this reason the author prefers the first interpretation, which is the one adopted by the Government in its Explanatory Memorandum. It allows the unambiguous statement about the incidental power in paras 31 and 34 of the joint judgment to be given its natural meaning. For a commentator who appears to at least speculate that the second interpretation might apply, see: Dennis Rose QC, 'The Hughes Case: The Reasoning, Uncertainties and Solutions', *Western Australian Law Review*, Vol 29, October 2000, pp 180-195 at 186.

11 *R v Hughes* [2000] HCA 22 at para 46.

12 ibid at para 34.

13 As discussed in endnote 10, there is an alternative interpretation of the High Court's rather cryptic comment about a 'constitutional imperative'. It appears to be one drawn by Dennis Rose QC (or at least speculated upon) in his recent article 'The Hughes Case: The Reasoning, Uncertainties and Solutions', *Western Australian Law Review*, Vol 29, October 2000, pp 180-195 at 186. The alternative interpretation is this: the question the Court explicitly left unanswered is not, if a duty is imposed can it be imposed only by Commonwealth (rather than State) law; but rather whether the imposition of a duty is itself *and always* a 'constitutional imperative' in order for a co-operative scheme to achieve constitutional validity. However as noted previously, there is a logical problem with this latter interpretation, because it seems to contradict the High Court's clear statement on the incidental power (see text at endnote 10). (unless the High Court was contemplating the truly weird proposition that such a duty is both necessary and may be imposed by *State* law but frequently cannot be imposed by Commonwealth law—a proposition which incidentally Rose shows no sign of supporting).

14 See endnote 1.

15 Agricultural and Veterinary Chemicals (Victoria) (Amendment) Bill 2001 (Vic).