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Spence v Queensland and the Federal Balance: How Many Swallows Make a Summer? – *Nicholas Aroney*

This article examines the reasoning in *Spence v Queensland* (*Spence*), in which a majority of the High Court held that s 302CA of the *Commonwealth Electoral Act 1918* (Cth) was beyond the Commonwealth's legislative power to make laws with respect to federal elections. It is argued that while the reasoning invokes orthodox approaches to the interpretation of the *Constitution* established since *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* (*Engineers' Case*), it also affirms propositions that have previously been regarded as heretical invocations of reserved powers reasoning. In particular, the majority affirmed that there is a "heartland of State legislative power" and that it is relevant, when considering whether a federal law is incidental to the subject matter of Commonwealth power, that the effect of the law is to "invade State power". In previous decisions, members of the Court have criticised such propositions as endorsing ideas rejected in the *Engineers' Case*. Is the *Spence* an indication of a subtle but significant shift in the Court's approach to adjudicating the boundaries of Commonwealth legislative power? 33

The Engineers' Case and Intergovernmental Immunities: A Century On – *Stephen Donaghue QC and Christine Ernst*

Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (*Engineers' Case*) enjoys a seminal status in Australian constitutional law. It famously swept away the doctrines of reserved powers and implied intergovernmental immunities. Following the *Engineers' Case*, it was clear that a power to legislate with respect to a given subject enabled the Commonwealth Parliament to make laws which, upon that subject, affected the operations

of the States and their agencies. However, in the century since the *Engineers' Case* was decided, the High Court has progressively breathed new life into the intergovernmental immunities that were so emphatically rejected in that case. That revival continued in *Spence v Queensland*, where the Court affirmed that the principle derived from *Melbourne Corporation v Commonwealth* operates symmetrically, protecting the Commonwealth as well as the States. This most recent development in the evolution of intergovernmental immunities provides occasion to consider precisely where this leaves the principles articulated a century ago in the *Engineers' Case*. 46

Impairment and Limited State Immunity – *David Tan*

The modern doctrine of limited State immunity allows the Commonwealth to make laws that affect a State's functioning unless those laws impair the States. This article draws attention to a distinction that French CJ made in *Clarke v Federal Commissioner of Taxation* between the practical effects of a law as opposed to non-practical ones. His Honour asserted that non-practical effects must also be taken into account when considering impairment. It is argued that a prohibition against non-practical impairment cannot be derived using the High Court's methodology for constitutional implications (including principles from *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* (*Engineers' Case*)). This has an important consequence for constitutional doctrine – the test of discrimination is not relevant to practical impairment. 58

Engineers and Constitution-building – *Cheryl Saunders AO and Michael Crommelin AO*

Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (*The Engineers' Case*) was decided relatively early in the life of the *Constitution* of the Commonwealth of Australia. In contemporary parlance it contributed to "Constitution-building" in recently federated Australia. This article examines *Engineers* through the lens of Constitution-building. It explores its continuing relevance for 21st century Australia, after the *Constitution* is well and truly built, the context in which it operates has dramatically changed, and the challenges that Australian federal democracy faces are quite different. It also asks what insights might be drawn from Australian experience with constitutional interpretation in the first few decades of federation for countries elsewhere facing the challenges of implementing new arrangements for multi-level government. 75

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