

# CONSTITUTIONAL LAW GUIDEBOOK

## Chapter 15 – Freedom of Interstate Trade, Commerce and Intercourse

### Problem Question (pg 228)

Note how some of the information contained in this question has been tabulated. You may find it helps you to organise information in this way when assessing the impact of a law on interstate trade.

The South Australian Parliament enacts the *Wine and Spirits Control Board Act 2008* (SA), the long title of which states that it is 'an Act to set and maintain standards in the grape, wine and spirits wholesale and retail industry'. The Act provides as follows:

#### 1 South Australia Wine and Spirits Control Board

There is hereby established the South Australia Wine and Spirits Control Board ('the Board'), whose members shall be appointed by the Minister of Consumer Affairs.

#### 2 Functions of Board

The Board shall maintain standards in the wine and spirits industry in South Australia.

#### 3 Regulations

The Governor shall make regulations on the advice of the Board in respect of the cultivation, distribution and sale of grapes, the distillation of liquor and the distribution and sale (both wholesale and retail) of wine and spirits in South Australia.

In 2007 statistics were produced which revealed the following:

Origins of wine	Grams of sulphur/100 ml of wine	Litres sold in SA
Vic	9.5	2000
WA	2.1	70,000
Tas	2.2	40,000
NSW	1.7	4000
SA	1.9	25,000

A study by the School of Medicine at the University of Adelaide shows that adverse effects are caused to the brain if wine with a sulphur content in excess of 2.5g/100ml is consumed on a regular basis. In response, the Wine and Spirits Control Board issues a public statement to the effect that it wishes to discourage the consumption of wine with a 'high sulphur content', and, on the advice of the Board, the Governor proclaims the *Wine Sales (Sulphur Limitation) Regulations 2008* (SA), the essential section of which provides as follows:

# CONSTITUTIONAL LAW GUIDEBOOK

## 3 Prohibition of the sale of high-sulphur wine

No person shall sell, give or offer for sale in South Australia any wine unless such wine has a sulphur content of less than 2g/100ml.

That same week, a scientific study reveals that the highly transmissible disease phylloxera, which is carried by grapes and is highly damaging to vines, has broken out on four of the 20 vineyards in Tasmania. On the advice of the Board the Governor proclaims the *Grape Control Regulations 2008 (SA)*, the essential section of which provides as follows.

## 2 Prohibition of Tasmanian grapes

No person shall bring any grape, vine or part of any vine originating in Tasmania into the State of South Australia.

You are legal adviser to Bacchus Industries Ltd, which imports bottled wine from other States for sale in South Australia, as well as grapes from Tasmania used for the fermentation of its own range of table wines. Advise the company of its legal position in light of the new regulations.

### How to answer this problem - issues to consider:

1. What section of the Constitution is relevant here?
2. What is the test provided by case law for interpreting whether this provision of the Constitution has been breached?
3. What is the practical impact on Bacchus Industries Ltd of s 3 of the *Wine Sales (Sulphur Limitation) Regulations 2008 (SA)*?
4. Can that effect ever be justified and, if so, what test does case law provide for determining justification? What happens if you apply that test to s 3 of the Regulations?
5. What happens if you apply the test to s 2 of the *Grape Control Regulations 2008 (SA)*?