

# CONSTITUTIONAL LAW GUIDEBOOK

## Chapter 7 – State and Territory Constitutional Law

### Problem Question (pg 129)

In 2007 the incumbent South Australian Government, fearing defeat at upcoming elections and anxious to preserve public sector cutbacks, passes the *Public Sector Efficiency Act 2007* (SA). The Act provides in part as follows:

#### **35 Public Sector Efficiency Commissioner**

There is hereby established the office of Public Sector Efficiency Commissioner, who shall discharge such functions as are conferred upon him by this Act.

#### **36 Limitations on size of public service**

The total number of public servants in South Australia shall not exceed 35,000.

#### **37 Amendment and repeal**

A Bill either expressly or impliedly amending or repealing sections 35, 36 or this section of this Act must, after passage of such amendment or repeal by both houses of Parliament, be approved of by

- (a) a majority of registered voters voting in a referendum and
- (b) the Public Sector Efficiency Commissioner.

In 2008 a new government is elected. Using its majority in both houses, it seeks to enact the Public Sector Efficiency (Amendment) Bill, which authorises the recruitment of 5000 additional public servants. The government announces that it does not intend to submit the Bill to a referendum or to seek the approval of the Public Sector Efficiency Commissioner. Prior to the Bill being sent to the Governor for assent, Jane Thatcher, an opposition member of the Legislative Assembly, decides to apply to the Supreme Court for an injunction prohibiting the Governor from assenting to the Bill. Advise her fully as to the constitutional issues presented by these facts.

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

1. Was the *Public Sector Efficiency Act 2007* (SA) one that could be entrenched? (Note that all statutes in problem questions in this book are fictional).
2. What *types* of entrenchment are evident in s 37? What consequence does that have for the validity of s 37?
3. Would a court entertain an application by Jane Thatcher at this stage?