

CONSTITUTIONAL LAW GUIDEBOOK

Chapter 12 – Defence

Problem Question (pg 193)

Concerned about the need to take steps to counter international terrorism in the wake of the attacks on the United States in 2001 and the Bali Bombings of 2002, the Commonwealth Government secures passage of the *Prevention of Terrorism (Professional Services) Act 2008* (Cth), the essential provisions of which are as follows:

1 Prohibition on access to financial services

No person may offer or provide financial services to any organisation declared by the Governor-General to be a designated organisation under this Act.

2 Security clearance for providers of legal services

Where a person or organisation is charged with an offence under the *Prevention of Terrorism Act 2008* (Cth), and the Minister of Defence issues a certificate to the effect that evidence that is, or will be, tendered by the prosecution involves matters of national security, no person may provide legal services to the person or organisation unless they have applied for and been granted security clearance under this Act.

The remaining three sections of the Act prescribe the conditions that have to be satisfied before a provider of legal services can obtain security clearance, one of which being that no person who is a partner or employee of the provider of legal services can have been convicted of a criminal offence.

The Governor-General declares the Western Australian Liberation Front (WALF)—a group campaigning for the independence of Western Australia—to be a designated organisation under the Act. Following a bomb blast outside the electorate office of a Western Australian federal MP, several members of WALF are charged under a section of the *Prevention of Terrorism Act 2008* (Cth), which makes it an offence to commit certain acts with a political motive. The Commonwealth's case is largely based on evidence of an ASIO informer who infiltrated WALF that members of WALF placed the bomb in order to mark their disapproval of what they viewed as the co-option of Western Australian federal politicians by Commonwealth Government structures.

WALF wishes to challenge the Governor-General's declaration, as it prevents them from obtaining donations from supporters. They also want to obtain legal representation for the upcoming criminal trial. They approach Gill, Goldonton & Gerrans, a Perth law firm, asking the firm to represent them. Gill, Goldonton & Gerrans apply for security clearance, but it is denied to them on the ground that one of its partners was convicted of swearing a false statutory declaration in 2006. Advise WALF and Gill, Goldonton & Gerrans of their legal positions.

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How to answer this problem - issues to consider:

1. What are the two features of the defence power which set it apart from other powers?
2. Can the defence power be used to make laws operating within Australia?
3. Is the discretion vested in the Governor-General by s 1 challengeable? What cases does it remind you of?
4. Where, in the zones of operation of the defence power, do you think Australia is, based on the facts of this problem?
5. Given the special features of the defence power, how does a court determine whether a law is supported by it? Do you think the measures relating to the providers of legal services in this statute are supported by the power, given the situation faced by Australia?
6. Could you suggest how the law might be re-drafted?