

CONSTITUTIONAL LAW GUIDEBOOK

SECOND EDITION

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CHAPTER 9

PROBLEM QUESTION

Susan Sweet owns a sugar cane farm in North Queensland. She has a longstanding agreement with the North Queensland Sugar Co-operative, under the terms of which she sells her entire crop to the Co-op, trucking it from her farm near Tully to the Co-op's terminal at Rockhampton. Approximately 25 per cent of the Co-op's sugar is exported, and the rest is sold to wholesalers in Queensland.

A vocal lobby group, Students Against Pesticides (SAP), successfully lobbies the Commonwealth Government to enact the *Pesticides Control Act*, s 5 of which provides as follows:

5 Licences

- (1) It shall be an offence to export sugar to which pyrethrum-based pesticides have been applied.
- (2) It shall be an offence to apply pyrethrum-based pesticides to sugar cane produced in Australia.

Sweet uses a pyrethrum-based pesticide on her crop, some of which is exported. She has been prosecuted under s 5 of the Act. Advise her as to her legal position.

ISSUES TO CONSIDER

1. What power do you think the Commonwealth has used to enact the Pesticides Control Act?
2. Which parts of the law fall within the core and which into the incidental aspect of the power?
3. Is it an *intra vires* use of the power to regulate the activity Susan is engaged in? Does the fact that the ultimate destination of any particular piece of sugar cane is not known make a difference?