

## Chapter 18

# The Federal Trajectory of Australian Law

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### Introduction

The legal and regulatory landscape has changed significantly in Australia in the 40 years since the Federal Court came into existence. The evolution of the legal system itself reflects broader imperatives at work. In this final chapter I seek to step back a little from particular practice areas of the Federal Court, and make some points – necessarily selective – about how Australian law has changed over the course of the last four decades or so, and the implications of these developments for the Federal Court.

The major theme that I will explore is the expansion in both the perceived constitutional reach of federal legislative power and in the regulatory footprint of the Commonwealth. When the majority of the High Court decided the *Engineers' Case* in 1920<sup>1</sup> the foundation was set for a significant expansion in the federal exercise of power. But it is perhaps easy to lose sight of the fact that federal regulatory control of many important areas of economic and social activity is relatively recent. The fact that the High Court has continued to take an expansive view of the legislative powers allocated to the Commonwealth by the *Constitution* is one relevant factor in this regard. However, other factors are also significant in explaining the way in which the Commonwealth has come to play such a large role in regulation of Australian life. For example, it is notable that in recent times the States have facilitated new federal statutory regimes with referrals of power to the Commonwealth. A greater value has come to be placed on uniformity of law within Australia. I shall explore these issues first with respect to economic development, then in relation to social, cultural and environmental matters.

The federal trajectory of Australian law is connected to other important developments in the legal system. Statute law – the tool of parliaments – has become the dominant source of law. And the Federal Government, like governments throughout the developed world, has come to play a very significant role in the life of its subjects through the provision of welfare and other benefits, the granting of permissions or licences, and the like. This, in turn, has been linked to the greatly increased importance of administrative law.

The existence and importance of the Federal Court reflect all of these developments. The expanded regulatory reach of the Commonwealth has expanded both

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1 *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* (1920) 28 CLR 129.

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