



## The 2016 Governor-General's Undergraduate Essay Prize

Competition entries must answer one of the following eight questions.

1. Why did Prime Minister Billy Hughes conduct plebiscites on conscription in 1916 and 1917? Was this necessary, desirable, or effective?
2. To what extent can the Commonwealth Parliament's defence power be used to enact laws with respect to the unconventional forms of conflict represented by terrorism and terrorist attacks—carried out by non-state agents—on the Australian nation and its people during times of conventional 'peace'?
3. "The Governor-General is every bit as much the Commander in Chief of the Australian Defence Force as the American President is the Commander in Chief of the United States Armed Forces." Discuss.
4. "The experience of war has impacted significantly upon the evolution of the federal relationship between the Commonwealth and the States." Discuss by reference to the evolution of the current vertical fiscal imbalance between the Commonwealth and the States.
5. Did the Australian Delegation 'punch above its weight' at the Paris Peace Conference of 1919? How is Australia's constitutional status in 1919 relevant to your assessment? Discuss by reference to the ambit of the Commonwealth's executive power pursuant to s 61 of the Constitution (ie absent statutory authorisation) with respect to defence and external affairs in 1919, and the precise sources of the content thereof. How does the legal and constitutional position differ today, if at all?
6. During the First World War, Isaacs J stated in *Farey v Burvett* that the defence power was "the ultima ratio of the nation ... the pivot of the Commonwealth Constitution ... the bulwark of the State [whose] limits then are bounded only by the requirements of

self-preservation”. Is this suggestive of a limitless Commonwealth legislative power during times of war? Discuss by reference to current law.

7. In what circumstances can the Commonwealth detain individuals indefinitely without judicial sanction in wartime or in peacetime? Discuss with reference to the High Court’s decision in *Lloyd v Wallach*, which upheld Commonwealth legislation giving a minister the power to detain any person who, in the minister’s opinion, could pose a threat to the Commonwealth’s defence during the First World War.
8. The First World War highlighted the necessity for the Commonwealth to engage in broad management of the economy to support the war effort. Edmund Barton, as a Justice of the High Court, stated in *Farey v Burvett* that

*“[w]hat is necessary in the control and disposal of this country’s resources, in food as well as in arms, ships and men, is a matter that can only be known by those who, as Government and Parliament, have the best knowledge of the facts relating to the strategy of the War, and the conditions under which the people can be victorious’. The necessity for relevant laws was ‘a question for our Parliament’ and urged the courts not ‘to tread on legislative ground.’”*

How has this tension between judicial review and deference to Parliament, which emerges when consideration is given to the defence power, been resolved by the High Court, if at all?

The essay must not exceed 2,500 words. All sources must be cited, however footnotes and bibliography are not included in the word count.