



HIGH COURT OF AUSTRALIA

Public Information Officer

13 April 2006

STATE OF NEW SOUTH WALES v JOYCE AMERY, LYN BOVARD, MARGARET DOUGLAS, JENNY DRURY, LINDA FREEMAN, LEONIE HANCOTT, JACKI IRVINE, DENISE McHUGH, KAREN MORS, CHERYL O'LOAN, MARION PLATT, MEGAN PURSCHE AND MARCIA SKELTON

Different pay scales for casual and permanent New South Wales teachers were not unlawfully discriminatory, the High Court of Australia held today.

Permanent teachers are paid on a 13-level pay scale while the casual pay scale has only five levels. The highest casual rate equated to level eight on the permanent pay scale. Thirteen female teachers who have been supply casuals (some are now permanent again) argued that the differences in salary had the effect of indirectly discriminating against them on the ground of sex, in contravention of section 24(1)(b) of the *Anti-Discrimination Act*. Very few casual teachers are men. Most of the women had ceased teaching on a permanent basis while they brought up children or for other family reasons as they required greater flexibility in their working hours and did not wish to be posted to distant locations. The teachers claimed they performed work of a value equal to that performed by permanent teachers but they were not paid the same and this affected women teachers much more so than male teachers.

The 13 women established their claims for damages in the Equal Opportunity Division of the NSW Administrative Decisions Tribunal. This decision was overturned by the tribunal's Appeal Panel. The teachers appealed to the Court of Appeal which, by majority, allowed the appeal. The State appealed to the High Court.

NSW argued that the statutory ground for claiming discrimination had not been made out. It also argued that the system was reasonable because permanent teachers were subject to statutory requirements that did not apply to casuals, including having to transfer anywhere in NSW; the 13 teachers had placed geographical limitations on their acceptance of permanent positions; and that the enterprise agreement and the award were relevant for determining reasonableness.

The Court, by a 6-1 majority, allowed the appeal. Three members of the majority held that there was no requirement or condition on casuals that potentially contravened the *Anti-Discrimination Act* and three members of the majority held that the basis of differentiation between casual and permanent teachers had not been shown to be unreasonable.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*