



HIGH COURT OF AUSTRALIA

Public Information Officer

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STATE OF NEW SOUTH WALES v COMMONWEALTH OF AUSTRALIA
STATE OF WESTERN AUSTRALIA v COMMONWEALTH OF AUSTRALIA
STATE OF SOUTH AUSTRALIA v COMMONWEALTH OF AUSTRALIA
STATE OF QUEENSLAND v COMMONWEALTH OF AUSTRALIA
STATE OF VICTORIA v COMMONWEALTH OF AUSTRALIA
AUSTRALIAN WORKERS' UNION & ANOTHER v COMMONWEALTH OF AUSTRALIA
UNIONS NSW & OTHERS v COMMONWEALTH OF AUSTRALIA

The High Court of Australia, by a 5-2 majority, today dismissed challenges to the validity of the Work Choices legislation.

In December 2005, Commonwealth Parliament enacted the *Workplace Relations Amendment (Work Choices) Act* (Work Choices Act) which extensively amended the *Workplace Relations Act 1996* (WRA). The principal amendments commenced on 27 March 2006. One of the most important changes was to invoke section 51(xx) of the Constitution (the corporations power) as the basis for a new legislative framework, creating a scheme of regulation of industrial relations between corporations and their employees. The corporations power was not the only power invoked, but it was relied on to support much of the new legislation. Some provisions of the earlier legislation had been based on the corporations power but the Work Choices Act placed more extensive reliance on that power and used it to alter the focus of the regulatory system. The earlier legislative scheme had depended largely on the power conferred by section 51(xxxv), that is, the power to make laws with respect to conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State.

The Work Choices Act did not take section 51(xxxv) as its primary focus. In its Australia-wide application to corporations and their employees, it established key minimum contained entitlements of employment relating to basic rates of pay and casual loadings, maximum ordinary hours of work, annual leave, personal leave, and parental leave and related entitlements, many of which had formerly been contained in industrial relations awards. It established the Australian Fair Pay Commission to perform many of the functions previously performed by the Australian Industrial Relations Commission (AIRC). It provided for workplace agreements between employers and employees or involving unions which are registered organisations. The Act regulated certain aspects of the content of workplace agreements. It dealt with industrial action and bargaining in respect of agreements. It altered the role and powers of the AIRC. Other aspects of the Work Choices Act are described in the reasons for judgment.

The States of New South Wales, Victoria, Queensland, South Australia and Western Australia and two trade union organisations commenced proceedings in the High Court to challenge the constitutional validity of the Work Choices Act. The challenges were to the whole of the Act or alternatively to particular aspects. The Attorneys-General of Tasmania, the Northern Territory and the Australian Capital Territory intervened in support of the plaintiffs challenge to the constitutional validity of the law.

Much of the argument was directed to the legislative power conferred by section 51(xx), and the relationship between section 51(xx) and section 51(xxxv). The plaintiffs claimed the Commonwealth's use of the corporations power to underpin what the legislation described as "a framework for cooperative workplace relations" was constitutionally impermissible. This claim involved arguments both generally as to the scope of the corporations power and specifically as to its potential use by Parliament to regulate directly relations between corporations and their employees.

The plaintiffs argued that Parliament's power to make laws with respect to foreign, trading and financial corporations was limited in one or more ways. They submitted that section 51(xx) was limited to laws with respect to the "external relationships" of such corporations. The external relationships of corporations, and the trading and financial activities of such corporations, were said not to include relationships between a corporation and its actual or prospective employees.

The plaintiffs also submitted that the meaning ambit of section 51(xx) of the Constitution was affected by the existence in the Constitution of the power under section 51(xxxv) so that Parliament has no power to legislate with respect to the relationship between a corporation and its employees except pursuant to section 51(xxxv), which gives Parliament the power to make laws for "conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State".

The High Court, by a 5-2 majority, rejected these submissions and upheld the Commonwealth's reliance on the corporations power. It rejected the challenge to the central features of the Work Choices Act and also the various challenges to particular provisions. In each action there was judgment for the Commonwealth and the plaintiffs were ordered to pay costs.

- *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.*