



HIGH COURT OF AUSTRALIA

12 December 2012

THE PUBLIC SERVICE ASSOCIATION AND PROFESSIONAL OFFICERS' ASSOCIATION AMALGAMATED OF NSW v DIRECTOR OF PUBLIC EMPLOYMENT & ORS

[2012] HCA 58

Today the High Court unanimously upheld the validity of a provision of the *Industrial Relations Act 1996* (NSW) which requires the Industrial Relations Commission of New South Wales to give effect to regulations declaring aspects of government policy.

The Industrial Relations Commission is constituted by judicial and non-judicial members and it exercises certain functions conferred upon it by the Act. Other functions conferred by the Act are exercised by the Industrial Court of New South Wales, and that Court is constituted only by the judicial members of the Commission.

The central provision in this appeal was s 146C(1) of the Act. That sub-section provides that the Industrial Relations Commission must "give effect to any policy on conditions of employment of public sector employees ... that is declared by the regulations to be an aspect of government policy that is required to be given effect to by the Commission" when making or varying any award or order. The Industrial Relations (Public Sector Conditions of Employment) Regulation 2011 (NSW) stated policies affecting the conditions of employment of public sector employees, among which was a limitation upon the increases in remuneration that the Commission could award.

The appellant brought proceedings in the Industrial Court challenging the validity of s 146C(1). The appellant claimed that it undermined the integrity of the Industrial Court for its judicial members to be required to give effect to policy declared in regulations when sitting as, and exercising the functions of, the Commission. The Industrial Court rejected that claim and the appellant, by special leave, appealed to the High Court.

The High Court unanimously dismissed the appeal. Although s 146C(1) and the Industrial Relations (Public Sector Conditions of Employment) Regulation used the words "policy" and "government policy", the policies contemplated by s 146C(1) (and those contained in the Regulation) were no different from any other laws (including any applicable statutes and regulations) which the Industrial Relations Commission must apply in exercising its functions. It cannot undermine the integrity of the Industrial Court for its judicial members to apply the law as it stands from time to time when sitting as, and exercising the functions of, the Commission.

- *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.*