

November 15, 2006

HIGH COURT HANDS DOWN DECISION - WORKCHOICES IS VALID

By a 5-2 majority, the High Court of Australia today dismissed challenges to the validity of the WorkChoices legislation.

Background

The WorkChoices legislation essentially used the Corporations Power of the Constitution to make laws with regard to industrial relations for all Constitutional Corporations, thereby effectively transferring approximately 85% of organisations and their employees into the Federal system.

The Challenge

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

Much of the argument was directed to the legislative power conferred by the Corporations Power and the relationship between this power and the Conciliation and Arbitration Power. The plaintiffs claimed that the Commonwealth's use of the Corporations Power to underpin what the legislation described as "a framework for cooperative workplace relations" was constitutionally impermissible.

The plaintiffs argued that Parliament's power to make laws with respect to foreign, trading and financial corporations was limited, and that the Corporations Power was limited to laws with respect to the "external relationships" of such corporations. The plaintiffs submitted that 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 Decision

The High Court, by a 5-2 majority (with Justices Michael Kirby and Ian Callinan in dissent) rejected these submissions and upheld the Commonwealth's reliance on the Corporations Power. It rejected the challenge to the central features of the WorkChoices legislation 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.

Implications of the Decision

- All aspects of the WorkChoices legislation are valid
- State systems of industrial regulation, especially state industrial tribunals, will become increasingly less relevant

- The decision paves the way for a possible consensus among States and the Commonwealth to create a single national industrial relations system
- The Australian Labor Party recently acknowledged that if the High Court did decide this way, it would also devise its industrial relations policies recognising the desirability of Federal regulation

For further information please contact one of our Partners in Sydney on (02) 9922 5188 or Melbourne on (03) 9614 3900.

**Fisher Cartwright Berriman
Employment and Industrial Law Specialists**

Sydney Office

Level 11
83 Mount Street
NORTH SYDNEY NSW 2060
Ph: (02) 9922 5188
Fax: (02) 9955 9575

Melbourne Office

Level 18
607 Bourke Street
MELBOURNE VIC 3000
Ph: (03) 9614 3900
Fax: (03) 9614 1966