



TRANSCRIPT

HIGH COURT RULES WORKCHOICES CONSTITUTIONALLY VALID

ACCI Workplace Policy Director Peter Anderson on ABC Radio's The World Today Program - High Court WorkChoices Decision - 14 November 2006

Reporter: Alexandra Kirk

ELEANOR HALL: To Canberra, where the High Court of Australia has this morning ruled against the States and has found that the Federal Government's controversial industrial relations legislation is constitutionally valid.

In a five-two decision, the High Court justices dismissed the case brought by the States, who'd argued that the Commonwealth could not rely on the corporations power in the Constitution to override the States on industrial relations.

The court also rejected the States' challenges to specific parts of the act.

In Canberra, Alexandra Kirk reports.

ALEXANDRA KIRK: From the outset, the Federal Government's maintained its new workplace laws were constitutional.

Today the High Court backed that up. By a majority of five to two, it's upheld the validity of the seventh-month-old WorkChoices legislation, dismissing the challenge launched by five States and two unions.

They argued, unsuccessfully, that the Commonwealth's use of the corporations power to underpin its national IR laws was constitutionally impermissible, and questioned its potential use to regulate directly relations between corporations and their employees.

The High Court upheld the Government's reliance on the corporations power and ordered the States and unions to pay costs.

STEPHEN PERCIVAL: I mean, the whole thing's disappointing. Our forefathers would be disgusted today.

ALEXANDRA KIRK: That's the view of unionist Stephen Percival from the Public Sector Union.

The ACTU's Greg Combet isn't countenancing the word disappointment.

GREG COMBET: Oh, I'm focused on what's ahead of us.

What this High Court judgment has done is removed legal uncertainty about the new IR laws, and it's now clear that millions of people have been dragged into the federal industrial relations system, where they have lost 100 years of legal protections.

So the capacity for employers to sack people unfairly, the introduction of the individual contracts that will remove penalty rates and the like and public holidays, all these things now, you know, are cleared to remove more protections for people.

And people have now got one very clear choice ahead of them, I think, in the lead-up to the next federal election, because the only way to get rid of these unfair industrial relations laws now is to vote against the Federal Government.

ALEXANDRA KIRK: Doesn't this deal the union case, though, a big blow, because until now you've been arguing also that what the Government sought to do was illegal?

GREG COMBET: No, I don't believe it's a big blow at all. We've been running our campaign in the community and in the workplace against what are unfair industrial relations laws.

ALEXANDRA KIRK: Employers are happy. The Chamber of Commerce and Industry's Peter Anderson says it's a historic nation building decision.

PETER ANDERSON: The critical thing from this decision is that Australia has a national industrial relations system. Australia is a national economy, and it needs a national industrial relations system.

This will mean that Australian employers can now, with confidence, implement WorkChoices in a way that will lead to more jobs and improved productivity and living standards.

ALEXANDRA KIRK: John Robertson from Unions NSW, one of the plaintiffs, says his organisation has no regrets about spending union funds to launch this challenge.

JOHN ROBERTSON: There is nothing stopping this Government from going even further with these laws, and now it is clear we have to get rid of this Government to get rid of these laws.

ALEXANDRA KIRK: The message from the Federal Opposition is much the same.

Industrial Relations Spokesman Stephen Smith says he's not surprised by the result.

STEPHEN SMITH: Just because the High Court says it's constitutional doesn't make it right, doesn't make it fair, and we will continue our campaign that these laws are unfair, extreme, a massive attack upon living standards and living conditions, a massive attack upon fairness in the workplace and values and virtues like a fair go.

But what it means for Australians is, if you want to get rid of these laws, you've got to throw out the Howard Government, you have to elect Labor.

ALEXANDRA KIRK: New South Wales Premier Morris Iemma says ironically this defeat may work in Labor's favour and keep IR on the agenda for both his State and the federal elections.

MORRIS IEMMA: Absolutely. And it is one for state as well, because we have a coalition who have promised to hand over the New South Wales industrial relations system to John Howard. We're not going to do that. We will continue to stand up and fight for families and workers.

ALEXANDRA KIRK: Federal Human Services Minister Joe Hockey's welcomed the High Court decision.

JOE HOCKEY: Let's get on with the job of creating economic prosperity in Australia. Let's just move on.

The workplace laws have been in operation now since the 27th of March. The world hasn't come to an end.

All of the formula that has been put in place by WorkChoices has helped to deliver a stronger economy, so now it's time for the State Labor governments and the unions to get out of the way and let Australia get on with making the best of it.

ALEXANDRA KIRK: Only two High Court judges dissented, Michael Kirby and Ian Callinan.

In the judgment, Justice Kirby writes, "Not one of the complaints about the excessive width of the supposed ambit of

the corporations power is found to have hit its constitutional mark. Not one paragraph or regulation that was challenged was struck down”.

He says, “If the Commonwealth’s view of the corporations power is correct, and is upheld without inhibitions derived from other heads of federal power, it’ll have profound consequences for the rest of the legislative and governmental powers of the States”.

On the question of whether a federal Labor government would use the corporations power, as a matter of principle, to oversee other parts of the economy, Stephen Smith isn’t saying no.

STEPHEN SMITH: Well, firstly, let’s have a careful look at the judgment, but secondly, whatever Labor does, Labor will always utilise the full powers available to it. But when it comes to those areas where there is a State interest, Labor will always operate cooperatively. Federal Labor will sit down with the States and work these issues through cooperatively. We won’t ride roughshod over them, which is what John Howard has done in the industrial relations area.

ELEANOR HALL: That’s Federal Labor’s Industrial Relations Spokesman, Stephen Smith, ending that report from Alexandra Kirk.