



Express law fast track information for clients

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The workplace relations advertising case

The plaintiffs did not establish a basis for declarations or injunctions preventing expenditure on an advertising campaign from the departmental appropriation to the Department of Employment and Workplace Relations (DEWR). The advertising campaign was to promote the Government's workplace relations reforms.

A majority of the High Court found that expenditure for 'departmental items' under annual appropriation Acts is not required to be for any of the stated 'outcomes' for the agency concerned. Instead, all that is required is that the amount paid should be for the 'departmental expenditure' of the agency.

Combet and Anor v Commonwealth and Ors

High Court of Australia, 29 September 2005 (order), 21 October 2005 (reasons), [2005] HCA 61

The Australian Government began a print and radio advertising campaign in support of proposed workplace relations reforms in mid-July 2005. The plaintiffs (the Secretary of the ACTU and the Shadow Attorney-General) instituted proceedings seeking to establish that the departmental appropriation to DEWR would not support the expenditure on the advertising campaign, and seeking to prevent the issuing of money from the Treasury of the Commonwealth to pay for the campaign.

Argument before the Court focussed on whether the proposed expenditure fell within Outcome 2 of the appropriation to DEWR, namely 'higher productivity, higher pay workplaces'.

Decision

Four members of the High Court (Gummow, Hayne, Callinan and Heydon JJ) in a joint judgment, concluded that for departmental items (as opposed to administered items), it is not necessary to demonstrate that the expenditure fell within the terms of a particular outcome (such as outcome 2).

Rather, their analysis of the text of *Appropriations Act (No. 1) 2005–2006* revealed that appropriations for departmental items are unrestricted by the terms of particular outcomes. That expenditure is limited only by the requirement that the amount to be spent is spent for 'departmental expenditure'. It followed that all the Commonwealth needed to demonstrate was that the advertising expenditure was within the terms of 'departmental expenditure'.

The joint judgment did not give detailed consideration to what might be encompassed by 'departmental expenditure'. In the present case it merely noted that the plaintiffs had not

contended that the advertising expenditure was not 'departmental expenditure', and it followed that the plaintiffs could not obtain the relief they sought.

In the course of their reasons, the judges joining in the joint judgment expressed the view that appropriations can be made in extremely general terms, and that it is for Parliament to determine how specific they are. They also discussed the effect of the so-called 'Compact of 1965' which is an agreement between the Senate and the Government about what comprises the 'ordinary annual services of the Government' in sections 53 and 54 of the Constitution, and concluded that it is of little relevance as a tool of construction in relation to appropriations legislation.

Implications

The most important implication of the decision is that while administered expenditure under annual appropriation Acts is confined by reference to the outcomes contained in those Acts, departmental items are confined only by reference to the concept of 'departmental expenditure'.

Questions that agencies may have on the possible implications of the decision for the appropriations framework may be directed to Marc Mowbray d'Arbela at the Department of Finance and Administration, T 6215 3657, marc.mowbray-d'arbela@finance.gov.au.

Text of the decision is available at:

http://www.austlii.edu.au/au/cases/cth/high_ct/2005/61.html

AGS represented the defendants (the Commonwealth, the Minister for Employment and Workplace Relations, and the Minister for Finance and Administration). Kathryn Graham (Senior General Counsel, Office of General Counsel) was junior counsel for the defendants.

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