Legal update

25 June 2025

Ravbar & Anor v Commonwealth of Australia & Ors [2025] HCA 25

In a judgment delivered on 18 June 2025, the High Court unanimously upheld the validity of legislation providing for the Construction and General Division of the Construction, Forestry and Maritime Employees Union to be placed into administration.

Background

Legislative reforms providing for a scheme of administration

In August 2024, the Commonwealth Parliament enacted the *Fair Work (Registered Organisations) Amendment (Administration) Act 2024* (Cth) (Amendment Act), which provides for the Construction and General Division (C&G Division) of the Construction, Forestry and Maritime Employees Union (CFMEU) and its branches (C&G Divisional Branches) to be placed into administration.

Part 2A of Chapter 11 of the *Fair Work (Registered Organisations) Act 2009* (Cth) (FWRO Act), which was inserted by the Amendment Act, establishes a mechanism for deciding whether to place the C&G Division and the C&G Divisional Branches into administration. Section 323B(1) of the FWRO Act authorises the Minister to determine a scheme of administration by legislative instrument if the Minister is satisfied that 'having regard to the Parliament's intention in enacting this Act … it is in the public interest' for that administration to occur.

Part 2A confers various functions and powers on an administrator. Among others, the administrator has control of the property and affairs of the C&G Division and the C&G Divisional Branches (s 323K(1)(a) of the FWRO Act), but must act in the best interests of the members and must have regard to the objects of the CFMEU as defined in its rules (s 323K(5)).

On 23 August 2024, the Attorney-General determined a scheme of administration (Determination) pursuant to s 323B(1), and the General Manager of the Fair Work Commission appointed Mr Irving KC as administrator. The making of the Determination and the appointment of the administrator had the effect of immediately placing the C&G Division and the C&G Divisional Branches into administration (s 323A(1)).

Proceedings

The plaintiffs, who are former officeholders of the C&G Division, commenced proceedings in the original jurisdiction of the High Court on 3 September 2024. The plaintiffs challenged the constitutional validity of Part 2A of the FWRO Act, s 177A of the *Fair Work Act 2009* (Cth) and the Amendment Act on the grounds that they:

- lack a sufficient connection to a head of power in s 51 of the Constitution
- infringe the implied freedom of political communication (and that the Determination was also invalid on this basis)
- involve an exercise of judicial power by the Minister or the Parliament contrary to Chapter III of the Constitution
- effect an acquisition of property other than on just terms contrary to s 51(xxxi) of the Constitution.

The Commonwealth and Commonwealth Attorney-General (Commonwealth parties) were named as first and second defendants, respectively.

The High Court's reasons

The High Court unanimously rejected all of the plaintiffs' constitutional grounds, with each Justice delivering separate reasons.

Part 2A does not pursue an illegitimate purpose of stifling political communication

Ascertaining the purpose of Part 2A was generally relevant to determining each of the constitutional grounds.

The Commonwealth parties characterised the purpose as enabling the C&G Division swiftly to be returned to a state in which it is governed and operates lawfully and effectively in its members' interests, for the ultimate goal of facilitating the operation of the federal workplace relations system. All 7 Justices embraced this purpose, although with some differences as to its precise formulation (Gageler CJ [46]–[47], Gordon J [122]–[123], Edelman J [200]–[201], Gleeson J [308], Jagot J [382] and Beech-Jones J [460], [469]).

The plaintiffs also sought to impute additional purposes, namely, to suppress political donations and political activity by the C&G Division. A majority of the High Court rejected the plaintiffs' alleged additional purpose (Gordon J [139], Edelman J [193], Steward J [270]–[271], Gleeson J [308] and Beech-Jones J [463]–[469]).

By contrast, Jagot J would have recognised such an additional purpose ([382]). Chief Justice Gageler considered that Part 2A pursued an additional, qualified purpose of suppressing political donations and activity, to the extent this was constitutionally permissible ([57], [61]). However, his Honour reasoned that Part 2A could be read down to exclude the purpose of suppressing political donations and activity, pursuant to s 15A of the Acts Interpretation Act 1901 (Cth) ([62]–[66]). This approach to the use of s 15A was criticised by Edelman J ([180]–[185]), Steward J ([271]) and Jagot J ([371]).

Amendment Act is supported by the corporations power in s 51(xx) of the Constitution

All 7 Justices held that the impugned laws were properly characterised as laws with respect to corporations within the meaning of s 51(xx) of the Constitution.

Justice Gordon (with whom Steward J [270], Gleeson J [305] and Beech-Jones J [423] relevantly agreed) drew on the reasoning in *NSW v Commonwealth* [2006] HCA 52; (2006) 229 CLR 1 (*Work Choices case*) to hold that Part 2A is supported by s 51(xx), because the CFMEU is an association of employees a majority of whom are employed, or usually employed, by a constitutional corporation ([91]). Part 2A is not too 'insubstantial, tenuous or distant' in its connection to s 51(xx) as it seeks, in its terms, to regulate the conduct of the C&G Division, as a registered organisation that performs certain functions in the regulation of employer-employee relationships ([95]).

Justice Edelman ([210]) and Jagot J ([419]–[421]) employed similar reasoning by reference to the Work Choices case. Chief Justice Gageler, after noting that the correctness of the

Work Choices case was not in issue ([17]), held that it was impossible to avoid the conclusion that Part 2A was enacted as a means for 'effectuating a desired end which is within power' when considered as a whole, in light of Parliament's original and continuing intention in enacting the FWRO Act as amended by the Amendment Act and against the background of reported problems within the C&G Division ([20]–[22]).

The Commonwealth parties also argued that Part 2A is supported by s 51(xx) because the CFMEU is a 'trading corporation', having regard to evidence of its trading activities. Only Jagot J engaged with this submission and appears to have accepted – without consideration of the activities test – that the CFMEU is a constitutional corporation ([418]).

Part 2A is compatible with the implied freedom of political communication

Constitutional test to be applied

Determining whether a law infringes the implied freedom of political communication depends upon the answers to the following 3 questions:1

- whether the law effectively burdens freedom of political communication in its legal or practical operation
- if so, whether its purpose is legitimate in the sense of being compatible with the maintenance of the constitutionally prescribed system of representative government and
- if so, whether it is reasonably appropriate and adapted to advance that purpose in a manner that is compatible with the maintenance of the constitutionally prescribed system of representative government.

(Gageler CJ [27], Gordon J [101], Edelman J [212], Jagot J [345] and Beech-Jones J [425].)

Although Gleeson J did not expressly set out this test, her Honour's reasons considered the validity of Part 2A by reference to these questions ([307]–[316]). Despite expressing reservations about the existence of the implied freedom, Steward J nevertheless adopted Gordon J's reasons on the applicable test in light of a majority of the High Court accepting the implied freedom's existence 'for nearly 30 years' ([294]–[295]).

As in *Babet v Commonwealth* [2025] HCA 21, the Court diverged on the applicability of structured proportionality in determining whether a law is reasonably appropriate and adapted for the purpose of the third question.

Burden

In rejecting the Commonwealth's submission that Part 2A (as opposed to the Determination) does not, in and of itself, burden political communication, a majority of Justices found that it did so by:

- automatically vacating officers of the C&G Division and conferring their functions and powers on the administrator
- vesting in the administrator the powers of control, management and disposition of the property of the CFMEU, including its funds.

The practical effect of these provisions was held to deprive members of their control of the C&G Division's property or funds to engage in political communication or make political donations and to impede the capacity of members of the C&G Division to engage in collective political communication to further the common objectives of the body (Gageler CJ [38], Edelman J [233], Gleeson J [307], Jagot J [368] and Beech-Jones J [458]).

Justice Gordon (with whom Steward J agreed on this point [295]) found that Part 2A imposed no burden because the freedom of individuals and the C&G Division to participate in political communication was wholly unaffected by the impugned laws ([110]–[115]).

Legitimate purpose

As noted above, all 7 Justices essentially accepted the Commonwealth's submissions as to the legitimate purpose of Part 2A (Gageler CJ [46]–[47], Gordon J [122]–[123], Edelman J [200]–[201], Gleeson J [308], Jagot J [382] and Beech-Jones J [460], [469]).

Reasonably appropriate and adapted

Six Justices also accepted that Part 2A was reasonably appropriate and adapted to serving its legitimate purpose (Gageler CJ [48], Gordon J [141], Edelman J [239]–[247], Gleeson J [316], Jagot J [405] and Beech-Jones J [475]). Steward J did not address this point as his Honour held that the impugned provisions did not burden the implied freedom of political communication ([270]).

Impugned provisions do not infringe Ch III of the Constitution

A law will be contrary to Ch III of the Constitution if the law itself imposes, or the law confers on the executive power to impose, a measure that is properly characterised as penal or punitive in nature. The plaintiffs' Ch III challenge was confined to the validity of s 323B(1), which authorises the Minister to make a scheme of administration, and s 323K(1), which transfers control of the property and affairs of the C&G Division to the administrator.

The High Court unanimously held that neither of the impugned provisions infringe Ch III.

Justice Gordon (with whom Steward J [270], Gleeson J [305] and Beech-Jones J [423] relevantly agreed) held that the detriments imposed by the legislation could not be characterised as legislative or executive punishment ([154]–[158]).

Justice Edelman recognised that ss 323B and 323K may have a 'serious and deleterious' effect on officeholders, but this does not mean they pursue a punitive purpose ([260]). His Honour characterised their purpose as enabling the C&G Division to be returned to lawful operation in its members' interests in an effective, efficient and accountable manner ([260], see also [262]).

Justice Jagot (with whom Gageler CJ relevantly agreed [15]) also held that ss 323B and 323K were not prima facie punitive in character and, even if they were, they were reasonably capable of being seen as necessary for the legitimate and non-punitive purpose of providing a swift response to allegations of serious unlawful conduct and mismanagement, and returning the C&G Division to effective management and operation ([407]).

Impugned provisions do not contravene the requirement for just terms compensation

The plaintiffs submitted that both ss 323K(1) and 323M of the FWRO Act effect acquisitions of property contrary to s 51(xxxi). The plaintiffs submitted that s 323K(1) does this by vesting power and control of the C&G Division's property in the administrator; and that s 323M, which provides for the remuneration of the administrator, effects and authorises an acquisition of property by the administrator.

The High Court unanimously agreed that *if* (and it was not necessary to decide this) either or both of s 323K or s 323M effected an acquisition of property, then s 323S of the FWRO Act was sufficient to ensure that adequate compensation would be provided, thus ensuring their validity (Gordon J [160] (with whom Gageler CJ [14]–[15], Steward J [270], Gleeson J [305] and Beech-Jones J [423] agreed). Section 323S(1) provides that if the operation of Part 2A or an instrument made under Part 2A would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to that person.

AGS (Naomi Carde, Steffen Etherton, Niamh Lenagh-Maguire, Vanessa McGlynn, Alice Nagel, Stephen Morris and Dominic Page from the Constitutional Litigation Unit) acted for the Commonwealth and the Attorney-General. The Commonwealth Solicitor-General, Dr

Stephen Donaghue KC, Nick Wood SC, Celia Winnett, Thomas Wood and Madeleine Salinger, appeared as counsel.

Text of the decision is available at:
https://eresources.hcourt.gov.au/showCase/2025/HCA/25.

For further information please contact (Naomi Carde, Steffen Etherton, Niamh Lenagh-Maguire).

[1] *McCloy v New South Wales* [2015] HCA 34 at [2]; (2015) 257 CLR 178 at 194–195; being the questions propounded in *Lange v Australian Broadcasting Corporation* [1997] HCA 25; (1997) 189 CLR 520 as modified in *Coleman v Power* [2004] HCA 39; (2004) 220 CLR 1.