HIGH COURT OF AUSTRALIA

Public Information Officer

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ATTORNEY-GENERAL FOR THE STATE OF VICTORIA v KEVIN JAMES ANDREWS, MINISTER FOR EMPLOYMENT AND WORKPLACE RELATIONS; MEMBERS OF THE SAFETY, REHABILITATION AND COMPENSATION COMMISSION; OPTUS ADMINISTRATION PTY LTD AND VICTORIAN WORKCOVER AUTHORITY

The High Court of Australia today upheld workers' compensation laws which allowed large companies to opt out of compulsory State schemes.

Optus argued that to have a level playing field it should be subject to the same Commonwealth workers' compensation scheme as its main competitor, Telstra. It applied to the Minister to be declared an eligible corporation and to be licensed under the federal *Safety, Rehabilitation and Compensation (SRC) Act*. The licence was granted by the SRC Commission and took effect on 30 June 2005. Under the licence it is left to a corporation to organise its own insurance cover in respect of its liabilities for death or injury of workers. Optus expects to save $186,000 a month, or $2,232,000 a year, by opting out of Victorian WorkCover.

Victoria and the Victorian WorkCover Authority (VWA) argue that the relevant provisions of the SRC Act are beyond Commonwealth legislative power to the extent that they purport to authorise the grant to Optus of a licence, authorise Optus to accept liability for workers' compensation, and remove Optus from the scheme of State insurance. They say the provisions infringe the constitutional insurance power, section 51(xiv), which provides that Parliament has the power to make laws with respect to insurance, other than State insurance. The Minister argues that the power to enact the provisions is conferred by section 51(xx) (the corporations power) and/or by section 51(v) (dealing with postal, telegraphic, telephonic and other like services).

The VWA issued proceedings in the Federal Court of Australia, seeking declarations that the licence granted to Optus was invalid and that the relevant provisions of the SRC Act were beyond the legislative power of the Commonwealth. Justice Bradley Selway dismissed the application. He found there was no basis for treating "State insurance" in section 51(xiv) as extending to State laws requiring persons to insure with a State insurer or conferring an economic monopoly on a State insurer. The Victorian Attorney-General appealed to the Full Court of the Federal Court and successfully applied to have the matter removed into the High Court.

The High Court, by a 5-2 majority, dismissed the appeal and held that the licensing provisions of the SRC Act are valid. They were not laws with respect to insurance, whether State insurance or otherwise, but were rather supported by other heads of Commonwealth legislative power, including the corporations power in section 51(xx) of the Constitution. It held that a State law requiring Optus to meet liabilities under a State compensation scheme would alter, impair or detract from a federal scheme, so the State law would be invalid to the extent of the inconsistency under section 109 of the Constitution. The result of the operation of section 109 upon Victoria's *Accident Compensation Act* is that Optus is not subject to compulsory WorkCover insurance. The Court held that Victorian provisions which are rendered invalid to the extent of inconsistency with federal licensing provisions share the character of laws with respect to workers' compensation. The federal law did not otherwise impair Victoria's capacity to conduct insurance business.

- *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.*

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