



HIGH COURT OF AUSTRALIA

28 September 2011

ROY MORGAN RESEARCH PTY LTD v COMMISSIONER OF TAXATION & ANOR
[2011] HCA 35

Today the High Court dismissed an appeal by Roy Morgan Research Pty Ltd against the decision of the Full Court of the Federal Court of Australia which had upheld the constitutional validity of the *Superannuation Guarantee (Administration) Act 1992* (Cth) ("the Administration Act") and the *Superannuation Guarantee Charge Act 1992* (Cth) ("the Charge Act").

The challenged legislation imposes the superannuation guarantee charge ("the Charge") on an employer who fails to provide to all employees a prescribed minimum level of superannuation, specified in the Administration Act. Any shortfall created by the employer's failure to meet the minimum level in full becomes the Charge, which is levied on the employer by the Charge Act. The Charge Act does no more than impose the Charge and fix its rate. The Administration Act deals with the incidence, assessment and collection of the Charge.

The Charge is a debt due to the Commonwealth and payable to the respondent, the Commissioner of Taxation. It includes a component for interest and an administration cost. The revenue raised by the Charge is to be paid into the Consolidated Revenue Fund. The lesser of the employee's entitlement and the amount of the Charge actually paid by the employer is then to be paid out to a superannuation fund for the benefit of the relevant employee. The result is to supply an incentive to employers to make contributions to superannuation for their employees without incurring the Charge.

The appeal to the High Court concerned the power of the Parliament to make laws with respect to taxation under s 51(ii) of the Constitution. The appellant challenged the validity of the provisions in the Administration Act and the Charge Act dealing with the Charge. The appellant argued that the Charge was not a "tax" because it was not imposed for "public purposes". This was said to be because the Charge conferred "a private and direct benefit" on the relevant employees. It followed, the appellant argued, that neither the Charge Act nor the Administration Act was a law with respect to taxation within the meaning of s 51(ii), and that the legislation establishing the Charge and providing for its administration was invalid.

The High Court held unanimously that the Charge was a tax, and that the appellant's constitutional challenge to the Administration Act and the Charge Act failed. The receipt of funds into the Consolidated Revenue Fund established that the Charge was imposed for "public purposes". Once the Charge is paid into the Consolidated Revenue Fund its identity is lost. The funds raised by the Charge are thereafter available under s 83 of the Constitution for an appropriation to be spent on any purpose for which the Commonwealth may lawfully spend money. Where other necessary constitutional criteria of a tax are met, as they were in this case, the receipt of funds into the Consolidated Revenue Fund establishes the character of the Charge as a valid tax.

- *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.*