



HIGH COURT OF AUSTRALIA

Public Information Officer

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COMMONWEALTH OF AUSTRALIA v JOHN GRIFFITH CORNWELL

The loss caused by incorrect superannuation advice given to Mr Cornwell in 1965 did not arise until his retirement in 1994 so his negligence action was not defeated by the ACT statute of limitations, the High Court of Australia held today.

In 1962 Mr Cornwell began working for the Commonwealth as the spray painter in the transport section of the former Department of the Interior at the Kingston bus depot in the ACT. He was classified as a temporary employee but employed full-time. In 1987, Mr Cornwell's job was reclassified as a permanent public service position and he became a member of the Commonwealth Superannuation Fund, established in 1976. In 1994, his employment was transferred from the Commonwealth to the ACT but he remained within the Commonwealth super scheme and transferred into a new fund established in 1990. Mr Cornwell retired at the end of 1994 and was paid super benefits based on his combined membership of the 1976 fund and the 1990 fund.

He contended that, although classified as temporary, he had been eligible to join the original 1922 fund but that he had been dissuaded by misleading advice from applying. This was given by the transport section manager, Nelson Simpson, at a meeting in July 1965 and he had reasonably relied on that advice. Mr Simpson allegedly said Mr Cornwell was not entitled to join the super fund because he was an industrial and temporary employee. Mr Cornwell pleaded that the Commonwealth was vicariously liable for Mr Simpson's advice and in reliance on that advice he had lost the opportunity to join the fund in 1965, when he would have become eligible after three years' service as a temporary employee. If he had joined the fund in 1965, he would have been entitled on retirement after 29 years' contributions to a pension of 44.1 per cent of his final salary. By joining in 1987, Mr Cornwell had seven years' contributions which entitled him to a pension of only 12.6 per cent of his final salary.

Under section 11 of the ACT *Limitation Act*, action must be brought within six years of the cause of action accruing. Mr Cornwell instituted action in the ACT Supreme Court in 1999 against the Commonwealth for various causes of action. Chief Justice Terence Higgins held that the cause of action for negligent misstatement was not statute-barred as it had not accrued until Mr Cornwell's retirement date of 31 December 1994. He held that the Commonwealth was vicariously liable for Mr Simpson's statement, which caused Mr Cornwell to suffer economic loss. Chief Justice Higgins entered judgment for Mr Cornwell for damages to be assessed. An appeal to the ACT Court of Appeal by the Commonwealth was dismissed. The Commonwealth appealed to the High Court.

The Court, by a 6-1 majority, dismissed the appeal. It rejected the Commonwealth's submission that Mr Cornwell first suffered loss when the 1976 scheme came into effect, and instead held that his loss was not necessarily and irretrievably sustained until his retirement in 1994. What was prospective before his retirement matured into actual loss only at the end of his service and he had met the statutory criteria for him to be entitled to a retirement benefit.

- *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.*