

New South Wales v Commonwealth (1990) 169 CLR 482

<https://lawcasesummaries.com/knowledge-base/new-south-wales-v-commonwealth-1990-169-clr-482/>

Facts

- New South Wales, South Australia and Western Australia applied to the High Court to determine the validity of particular parts of the *Corporations Act 1989* (Cth) which dealt with the registration and incorporation of companies.
- Historically, section 51(xx) of the Constitution (the "corporations power") had been construed narrowly. This happened after the decision of *Huddart, Parker & Co v Moorehead*.
- This interpretation changed with the decision of *Strickland v Rocla Concrete Pipes Ltd*, which broadened the scope of the corporations power.

Issues

- Was the Commonwealth able to use the corporations power to pass legislation which concerned the incorporation and registration of companies?

Held

- The High Court majority affirmed the view in *Huddart, Parker & Co v Moorehead* that the corporations power was confined to making laws with respect to companies that had commenced trading and could not be interpreted to support laws providing for the formation of companies.
- Section 51(xx) was restricted to companies which had already been "formed" within the Commonwealth - legislation which presupposed the future creation of corporations did not fall within this ambit.
- The corporations power extends only to domestic corporations of a trading or financial character, and to all corporations formed outside Australia; these are collectively referred to as "constitutional corporations".

Full Text

The full text is available here:

<http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1990/2.html>

Law case summary from www.lawcasesummaries.com