

R v Kirby; Ex parte Boilermakers' Society of Australia (1956) 94 CLR 254 ("The Boilermakers' Case")

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Facts

- The Commonwealth Court of Conciliation and Arbitration was responsible for preventing and settling industrial disputes that extended beyond the borders of one state.
- The Court was granted the power to determine the terms of industrial awards and enforce compliance with said awards.
- The Boilermakers' Society of Australia (**Boilermakers**) and the Metal Trades Employers' Association (**Association**) had been parties to an arbitration process in the Arbitration Court, which set the employment terms and conditions for Australian boilermakers.
- The Association alleged that the Boilermakers had breached those terms and conditions, and applied for an injunction-type order from the Arbitration Court.
- The Court granted the order and the Boilermakers refused to comply with it. They were subsequently fined by the Court with contempt. The Boilermakers challenged the validity of the order.
- The Boilermakers challenged the orders on the grounds that sections of the *Conciliation and Arbitration Act* were invalid in that the Court of Conciliation and Arbitration was given non-judicial powers (administrative, arbitral, executive and legislative powers), as well as judicial powers and the separation of powers in Chapter III of the Constitution meant that the same body could not exercise judicial and non-judicial powers.

Held

- The Australian Constitution is organised by chapter. Chapter I deals with the legislative branch, Chapter II deals with the executive branch, and Chapter III deals with the judicial branch.
- The High Court held that the judicial power of the Commonwealth could not be vested in a tribunal that also exercised non-judicial functions.
- The High Court decided that if Parliament wanted to give particular powers to a federal court, it must be able to point to something in Chapter III that allowed them to do that.
- The High Court majority (Dixon CJ, McTiernan, Fullagar and Kitto JJ) held that the Arbitration Court was "a tribunal established and equipped primarily and predominantly for the work of industrial conciliation and arbitration" and it was the attachment of powers of judicial enforcement that were invalid.
- The combined effect of the *Boilermakers'* case is expressed as follows:
 - Only Chapter III courts can exercise the judicial power of the Commonwealth; and
 - Chapter III courts cannot exercise any non-judicial power.

Significance of *Boilermakers*

- *Boilermakers* is one of the most important decisions in Australian constitutional law.
- The biggest exception to the *Boilermakers*' principle is the "persona designata" rule. This rule allows non-judicial functions to be conferred onto federal judges in their personal capacity, rather than in their capacity as a judge. This rule is the exception that allows federal judges to act as the head of administrative tribunals like the AAT.

Quotes

"...[it is] impossible to escape the conviction that Chap. III does not allow the exercise of a jurisdiction which of its very nature belongs to the judicial power of the Commonwealth by a body established for purposes foreign to the judicial power, notwithstanding that it is organized as a court and in a manner which might otherwise satisfy ss. 71 and 72, and that Chap. III does not allow a combination with judicial power of functions which are not ancillary or incidental to its exercise but are foreign to it."

(Dixon CJ, McTiernan, Fullagar and Kitto JJ at page 296)

Full Text

The full text is available here:

<http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1956/10.html>

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