

## Re Australian Education Union & Australian Nursing Federation; ex parte Victoria (1995) 184 CLR 188

<https://lawcasesummaries.com/knowledge-base/re-australian-education-union-ex-parte-victoria-1995-184-clr-188/>

### Facts

- The Australian Industrial Relations Commission (**AIRC**) can refrain from hearing a dispute if that dispute could instead be handled by an appropriate State body.
- Victoria had previously abolished its state system established a new regime in the regulation of industrial relations by the Employee Relations Act 1992 (Vic).
- Victoria argued that the the *Industrial Relations Act 1988* (Cth) (**the Act**) relating to the above was discriminatory.
- There was also a question of whether Commonwealth orders that applied to State employees would prevent the State from exercising their essential functions.

### Held

- The High Court held that the industrial award impaired the capacity of a State government to determine the number and identity of employees it wished to employ and to dismiss on the grounds of redundancy. This infringed the implied limitation of a Commonwealth's ability to legislate upon the States.
- The implied limitation upon Commonwealth legislative power arises because: "The foundation of the Constitution is the conception of a central government and a number of State governments separately organized. The Constitution predicates their continued existence as independent entities." (*Melbourne Corporation v The Commonwealth* (1947) 74 CLR at 82 per Dixon J)
- The High Court accepted the tests of discrimination and structural integrity as laid down in *Melbourne Corporation v Commonwealth*. No discrimination was found, but the Court found that the law affected Victoria's structural integrity.
- In respect to discrimination, even though the purpose of the law was to discriminate against Victoria, that was not a relevant factor for the Court to consider. Further, in its practical effect, the Act could apply to any state, as well as to any industrial employees.
- As for the structural integrity argument, it is required that the law directs attention to aspects of a state's functions that are "critical to its capacity to function". Being able to determine minimum wages and working conditions of its employees, especially those in the higher levels of government, is critical to a state's capacity to function.

### Full Text

The full text is available here:

<http://www6.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1995/71.html>

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