IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No. S201 of 2013

BETWEEN

ADCO Constructions Pty Ltd

Appellant

and

Ronald Goudappeal

First Respondent

WorkCover Authority of NSW

Second Respondent

APPELLANT'S SUBMISSIONS IN REPLY

PART I. Certification re Internet Publication

1. These submissions are in a form suitable for publication on the internet.

PART II. Reply

2. The first respondent's submissions (**1RS**) seek to characterise the issues as focussing on whether the Legislature 'retrospectively extinguished' accrued rights (see 1RS [27], [28], [29], [30]), rather than on construing the words used by the Legislature, thereby inverting the proper order of inquiry.

3. There appears not to be a dispute as to whether the State had power to enact the statutory provisions which enabled the 2012 Regulation, or as to whether that regulation was itself validly made (see 1RS [9], [12]).

4. As to 1RS[21], while the provisions of the lump sum compensation amendments did not themselves affect the first respondent, the relevant point is that the 2012 Amending Act which introduced them always carried within it the potential for such rights to be affected by regulations made pursuant to the expanded regulation-making power. See AS[14].

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5. As to 1RS[22]-[23], of course the Court must construe the 2012 Regulation, but the regulation is in its terms clear – it applies the lump sum compensation amendments to persons in the position of the first respondent. To ask whether an "*outcome*" or "*impact*" of extinguishing accrued rights was "authorised" is not, with respect, an appropriate way to frame the inquiry. One should construe and apply the express words of the 2012 Regulation, and not proceed with outcomes-based reasoning which takes as a starting point that the result of the process is wrong or undesirable.

6. Similarly, the first respondent's reliance (in 1RS[31]-[32]) on generalised suggestions that workers' compensation legislation is "*remedial*" is not to the point. The general character of the scheme may not be irrelevant, but the specific amendments made by the 2012 Amending Act are directly to the point. Their character is devoted to cutting back the circumstances in which lump sum compensation would be available. The particular context, and actual words used are far more relevant than generalised presumptions drawn from different cases.

7. The core of the first respondent's argument is in 1RS[27]-[28]. As to this, the "*broad words*" relied upon by the appellant are the words which specifically provided for the WCA to be deemed to be amended "*in the manner specified in the regulations*". Where the legislature has specifically contemplated that regulations may do this without limiting in any way the permitted scope of such regulations no different or further expression of legislative intent is required. The import of the first respondent's argument is that the legislature could only have deprived him of rights to calculation of lump sum compensation calculated on the basis of the pre-June 2012 regime by referring in terms to the potential of the regulations to extinguish other rights. That conclusion ought be rejected for the reasons set out at AS[29]-[32].

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