



HIGH COURT OF AUSTRALIA

Public Information Officer

28 April 2004

BAYSIDE CITY COUNCIL & ORS v TELSTRA CORPORATION LIMITED & ORS

MORELAND CITY COUNCIL v OPTUS VISION PTY LTD & ORS

WARRINGAH COUNCIL & ORS v OPTUS VISION PTY LTD & ORS

HURSTVILLE CITY COUNCIL & ORS v TELSTRA CORPORATION LIMITED & ORS

The High Court of Australia today held that New South Wales and Victorian laws allowing councils to collect rates and charges from Telstra and Optus for installing and maintaining cables for pay television and high-speed internet access were contrary to Federal legislation preventing discrimination against telecommunications carriers and were invalid.

Telstra and Optus began rolling out their broadband cable networks, using either existing power poles or underground ducts. Some Sydney and Melbourne councils responded by imposing charges for installation of cables or levying rates for space occupied by cables, of between \$500 and \$1,000 per kilometre, while other services and signage in public places did not attract charges or rates.

In the Federal Court of Australia Telstra and Optus challenged the lawfulness of the rates and charges imposed by 14 NSW and five Victorian councils, claiming the impost was discriminatory. The Court dismissed the carriers' action, but on appeal the Full Court declared invalid NSW and Victorian laws authorising councils to set charges and rates to the extent that these provisions were inconsistent with the Federal Telecommunications Act. Section 44(1)(a) of the Act provides that a State or Territory law has no effect if it discriminates against particular carriers, a particular class of carriers or carriers generally. Under section 109 of the Constitution, if State and federal laws are inconsistent the latter prevails to the extent of the inconsistency.

The High Court held that promoting the development of telecommunications fell within a constitutional head of power of the Commonwealth Parliament. Conferring upon carriers immunity from discriminatory burdens imposed by State or Territory laws had a direct and substantial connection with that power. The High Court held that there was a clear general scheme of exemptions for utilities using similar facilities that did not extend to Telstra and Optus.

The High Court, by a 6-1 majority, upheld the decision of the Full Court of the Federal Court that Telstra and Optus had made out a case of discrimination within section 44. The High Court dismissed the councils' appeals with costs.

- *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.*

Long titles of the four cases:

BAYSIDE CITY COUNCIL, MORELAND CITY COUNCIL, FRANKSTON CITY COUNCIL AND YARRA CITY COUNCIL v TELSTRA CORPORATION LTD, TELSTRA MULTIMEDIA PTY LTD, HURSTVILLE CITY COUNCIL, KOGARAH MUNICIPAL COUNCIL, LEICHHARDT MUNICIPAL COUNCIL, PARRAMATTA CITY COUNCIL, PENRITH CITY COUNCIL, RANDWICK CITY COUNCIL, HORNSBY SHIRE COUNCIL, DRUMMOYNE COUNCIL, BURWOOD COUNCIL, CONCORD COUNCIL AND STRATHFIELD MUNICIPAL COUNCIL

MORELAND CITY COUNCIL v OPTUS VISION PTY LTD, OPTUS NETWORKS PTY LTD, WARRINGAH COUNCIL, RANDWICK CITY COUNCIL AND BLACKTOWN CITY COUNCIL

WARRINGAH COUNCIL, RANDWICK CITY COUNCIL AND BLACKTOWN CITY COUNCIL v OPTUS VISION PTY LTD, OPTUS NETWORKS PTY LTD AND MORELAND CITY COUNCIL

HURSTVILLE CITY COUNCIL, KOGARAH MUNICIPAL COUNCIL, LEICHHARDT MUNICIPAL COUNCIL, PARRAMATTA CITY COUNCIL, PENRITH CITY COUNCIL, RANDWICK CITY COUNCIL, HORNSBY SHIRE COUNCIL, DRUMMOYNE COUNCIL, BURWOOD COUNCIL, CONCORD COUNCIL AND STRATHFIELD MUNICIPAL COUNCIL v TELSTRA CORPORATION LTD, TELSTRA MULTIMEDIA PTY LTD, BAYSIDE CITY COUNCIL, MORELAND CITY COUNCIL, FRANKSTON CITY COUNCIL AND YARRA CITY COUNCIL