

Landmark ruling spells industrial strife for Australian workplaces

TODAY'S Federal Court ruling in the [JJ Richards case](#) highlights a major inconsistency between stated government policy on workplace bargaining and the written legislation, according to peak resource industry employer group AMMA.

"The Government must amend obvious shortcomings in the workplace laws that left unchanged will facilitate widespread union strike action occurring in workplaces across Australia," says AMMA Chief Executive Steve Knott.

AMMA and waste disposal provider JJ Richards have been unsuccessful in its attempts to overturn a Fair Work Australia decision; a decision that sets a precedent allowing unions to take strike action without the majority support of workers.

"This issue has moved beyond today's decision alone, it now puts at risk projects and employers across the country that contribute valuably to our national economy and provide ongoing job opportunities for working Australians," Mr Knott says.

"This decision means that a minority number of union delegates can legally cause maximum disruption to their workplaces in circumstances where the majority of workers may not support either the union or the strike activity."

Today's decision

In separate statements this morning that all concurred on the central point, Justices Christopher Jessup, Geoffrey Flick and Richard Tracey said it was legitimate for AMMA and employer JJ Richards to point out that the ability to take protected industrial action 'is to be seen as part and parcel of the statutory regime for bargaining in pursuit of, or in resistance to, the making of such agreements'.

However, they said the drafting of the Fair Work Act (s.443) meant it was simply not possible to construe the Act's requirements in that way.

Responding to the ruling that there was no need for bargaining to have commenced before taking industrial action, AMMA's Steve Knott said: "Today's decision makes a mockery of the Government's past stance on this issue."

"There are circumstances where it may be appropriate for unions to apply for protected industrial action, but it is not when they can't muster the majority support of the workforce; and it is not when they haven't even bothered to bargain properly with their employer," he says.

Well before today's determination, peak employer groups across the country have continued to advocate for legislative clarity in this key area, notwithstanding the government's continued reluctance to take an active role in the court process to reflect their pre-election commitments.

"The key problem here is that the legislation does not reflect the previously stated position of the government on the issue of unions taking strike action in circumstances where they can't muster the majority support of workers for such action," Mr Knott says.

"Yesterday (April 19), [AMMA sent a letter](#) to workplace relations Minister Bill Shorten suggesting a minor legislative amendment that will give certainty to all Australian employers, reflect the Government's pre-election commitment and facilitate a more harmonious industrial environment in all workplaces.

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"The Federal Government has always told employers that majority support would be required before any employees could take protected industrial action and before an employer could be forced into bargaining.

"The Government must now seize the opportunity to restore certainty and security to Australian workplaces by making the appropriate amendments to the Fair Work legislation."

The impact of the JJ Richards decision

Left unattended by government, Mr Knott says this morning's Federal Court ruling will be a major concern for employers in the resource industry as they face the imminent expiry of thousands of industrial agreements between now and 2014.

"AMMA's involvement in *JJ Richards* was never about restricting the rights of the transport workers involved – the initial decision which has now been upheld by the Federal Court has much broader economic and industrial ramifications," he says.

"The threat of strike action and strike action itself is a serious issue for the capital-intensive resources industry. The enormous economic significance of the resource industry is evident, with the government acknowledging there is \$430 billion of resources investment in Australia's pipeline, with \$82 billion expected to flow through this year alone.

"A high proportion of resource sector individual and collective agreements are set to expire in 2013 and 2014, opening the industry up for a campaign of widespread protected industrial action. This will be the first time in many years that some projects have faced the spectre of such action.

"Given the review of the operation of the Fair Work Act is currently underway, now would be the ideal time to close this legislative loophole for the sake of the industry and the economy."

Background on JJ Richards

The matter arose from a full bench decision by Fair Work Australia that held in favour of the Transport Workers Union taking protected industrial action at the worksite of waste removal company JJ Richards, despite the TWU not being able to secure the majority support of the entire workforce to take strike action.

This is despite pre-election commitments from the federal government undertaking that workers would need to support strike action. In an address to the National Press Club in Canberra on 17 April 2007, then-Opposition Leader Kevin Rudd promised, in the lead-up to Labor winning office and subsequently implementing its Fair Work reforms:

The only time industrial action will be legally permitted is if it is taken in pursuit of a collective enterprise agreement during a bargaining period. And even then it will only be protected from legal penalty if it is authorised by the employees who will be taking the action through a secret ballot supervised by the independent industrial umpire.

The union demanded JJ Richards enter into negotiations for a collective agreement despite not having the majority support of the workers. When the employer declined, stating that the majority of workers were satisfied with the arrangements that were in place, the union used the provisions of the Fair Work Act to bypass the alleged original intent of the laws as originally stated by the Federal Government.

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