ACT Visiting Medical Officers Association v Australian Industrial Relations Commission [2006] FCAFC 109 (4 July 2006)

Last Updated: 4 July 2006

FEDERAL COURT OF AUSTRALIA

ACT Visiting Medical Officers Association v Australian Industrial Relations Commission

[2006] FCAFC 109

WORKPLACE RELATIONS – application for registration as association of employees –whether contracts between visiting medical officer and hospital established employment relationship – relevant factors including control test – practical realities – circumstances surrounding making of contract – other contractual relationships as surrounding circumstances – where nature of relationship ambiguous weight given to parties' characterisation of relationship in contract

ADMINISTRATIVE LAW – Constitutional writ relief – jurisdictional error – error of law – characterisation of a person as an employee or independent contractor is a conclusion of law

Workplace Relations Act 1996 (Cth) s 188, 189

Abdalla v Viewdaze Pty Ltd (2003) 121 IR 125 referred to
Albrighton v Royal Prince Alfred Hospital [1980] 2 NSWLR 542 referred to
Anisminic Ltd v Foreign Compensation Commission [1969] 2 AC 147 referred to
Codelfa Construction Proprietary Limited v State Rail Authority of New South Wales (1982) 149 CLR 337 applied
Collector of Customs v Agfa-Gevaert Limited (1996) 186 CLR 389 referred to
Commissioner of Payroll Tax (Vic) v Mary Kay Cosmetics Pty Ltd [1982] VR 871 applied
Connelly v Wells (1994) 55 IR 73 applied
Craig v The State of South Australia (1995) 184 CLR 163 referred to
Damevski v Giudice (2003) 133 FCR 438 referred to
Ellis v Wallsend District Hospital (1989) 17 NSWLR 553 referred to
Hollis v Vabu Pty Limited (2001) 207 CLR 21 applied
JA & BM *Bowden & Sons Pty Ltd v Chief Commissioner of State Revenue* [2001] 105 IR 66 referred to
Marshall v Whittaker's Building Supply Company (1963) 109 CLR 210 referred to
Massey v Crown Life Insurance Co. [1978] 2 All ER 576 applied
Narich Pty Ltd v Commissioner of Pay-Roll Tax [1983] 2 NSWLR 597 applied

Pacific Carriers Ltd v BNP Paribas (2004) 218 CLR 451 referred to
Pawel v Australian Industrial Relations Commission (1999) 94 FCR 231 referred to
R v Hull University Visitor; Ex parte Page [1993] AC 682 referred to
Re Porter; Re Transport Workers Union of Australia (1989) 34 IR 179 referred to
Re Refugee Tribunal; Ex parte Aala (2000) 204 CLR 82 referred to
Reardon Smith Line Ltd v Hansen-Tangen [1976] 1 WLR 989 referred to
Roy Morgan Research Centre Pty Ltd v Commissioner of State Revenue (Vic) (1997) 97 ATC 5070 referred to
Stevens v Brodribb Sawmilling Company Proprietary Limited (1986) 160 CLR 16 applied
Zuijs v Wirth Bros Pty Ltd (1955) 93 CLR 561 applied

ACT VISITING MEDICAL OFFICERS ASSOCIATION v THE HONOURABLE VICE PRESIDENT LAWLER, THE HONOURABLE SENIOR DEPUTY PRESIDENT CARTWRIGHT AND COMMISSIONER CARGILL, MEMBERS OF THE INDUSTRIAL RELATIONS COMMISSION AND ORS

ACD 33 OF 2005

WILCOX, CONTI AND STONE JJ
4 JULY 2006
SYDNEY (HEARD IN CANBERRA)

IN THE FEDERAL COURT OF AUSTRALIA

AUSTRALIAN CAPITAL TERRITORY DISTRICT REGISTRY **ACD33 OF 2005**

BETWEEN:	**ACT Visiting Medical Officers Association** **APPLICANT**
AND:	**The Honourable Vice President Lawler, The Honourable Senior Deputy President Cartwright and Commissioner Cargill, Members of the Australian Industrial Relations Commission** **FIRST RESPONDENT**
	The Honourable Senior Deputy President Williams, a Member of the Australian Industrial Relations Commission **SECOND RESPONDENT**
	Australian Salaried Medical Officers Federation **THIRD RESPONDENT**
	Australian Capital Territory and Australian Capital Territory Health Care Service **FOURTH RESPONDENTS**
JUDGES:	**WILCOX, CONTI AND STONE JJ**
DATE OF ORDER:	**4 JULY 2006**
WHERE MADE:	**SYDNEY (HEARD IN CANBERRA)**

THE COURT ORDERS THAT:

1. The application be dismissed.

Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.

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	Australian Capital Territory and Australian Capital Territory Health Care Service **FOURTH RESPONDENTS**
JUDGES:	**WILCOX, CONTI AND STONE JJ**
DATE:	**4 JULY 2006**
PLACE:	**SYDNEY (HEARD IN CANBERRA)**

REASONS FOR JUDGMENT

THE COURT:

BACKGROUND

1 The applicant is an association of visiting medical officers ('VMOs') who are engaged by the public hospital authorities to provide medical services to public patients in The

Canberra Hospital and the Calvary Hospital in the Australian Capital Territory. On 22 May 2001, the applicant applied to the Australian Industrial Relations Commission ('AIRC') for registration as an association of employees under s 188 of the *Workplace Relations Act 1996* (Cth).

2 The third and fourth respondents objected to the application. Relying on s 188(1)(b) of the Act, they contended that the VMOs were not engaged to perform work at the hospitals as employees and therefore that the association was not eligible for registration. At the relevant time, section 188(1)(b) of the Act provided that, to apply for registration as an employee association under the Act, an association must be :

> *'(b) an association of which some or all of the members are employees who are capable of being engaged in an industrial dispute and the other members (if any) are:*
>
> > *(i) officers of the association; or*
> > *(ii) persons specified in Schedule 3; or*
> > *(iii) independent contractors who, if they were employees performing work of the kind which they usually perform as independent contractors, would be employees eligible for membership of the association.'*

Section 189 of the Act provided that before the AIRC could register the association as an employee association it needed to be satisfied that 'the association has at least 50 members who are employees'.

Proceedings in the AIRC

3 The matter came before Senior Deputy President Williams who, with the agreement of the parties, considered only whether the VMOs were 'employees' within s 188 of the Act. The applicant adduced evidence of the professional activities of four VMOs, on the basis that these four were broadly representative of the applicant's members. It was accepted by the applicant that its substantive application should be dismissed unless at least one of the four VMOs should be found to be an employee.

4 Williams SDP applied the test identified by the Full Bench of the AIRC in *Abdalla v Viewdaze Pty Ltd* (2003) 121 IR 125 at 228, namely that in assessing whether a relationship was one of employment the 'ultimate question' was:

> *'whether the worker is the servant of another in that other's business, or whether the worker carries on a trade or business on his or her own behalf: that is, whether, viewed as a practical matter, the putative worker could be said to be conducting a business of his or her own.'*

5 His Honour concluded that ‘having considered the totality of the relationship between the VMOs and the two hospitals and balancing all the relevant factors’, the VMOs performed their functions at the hospitals as representatives of the hospitals rather than in the course of their own business and therefore were employees of the hospitals.

Appeal to the Full Bench of the AIRC

6 The Full Bench of the AIRC accepted the test in *Abdalla* as the appropriate test but held that his Honour erred in his application of that test to the issue of whether the VMOs ought to be categorised as ‘employees’:

> *‘In holding that they performed their functions at the hospitals* ‘as representatives of and not independently of those hospitals’ *his Honour erroneously equated the question of whether a worker works "*as a representative of and not independently of" *the putative employer with the ‘ultimate question’ specified in* Abdalla. *We agree with the Appellants that whether a worker* ‘represents’ *a putative employer or, more particularly, whether the putative employer holds that worker out to the world at large as being part of the employer’s enterprise, is merely one of the indicia to be considered.’*

7 The Full Bench also accepted his Honour’s findings that the performance of work as a VMO was part and parcel of a specialist practitioners’ pursuit of their profession, and that such work could be considered part of the practitioners’ business. However, the Full Bench held that these findings, and the fact that the work in question also involved the pursuit of remuneration, required that the answer to the ‘ultimate question’ be the opposite to that reached by his Honour.

8 The Full Bench stated that while a party to an employment relationship could carry on business independently of that relationship, it was ‘artificial and unrealistic’ to characterise the activities of the four doctors whose professional activities were examined by Williams SDP in this way. Their Honours were of the view that the contracts regulating the VMOs’ treatment of public patients in the hospitals (‘VMO contracts’) were integral to their professional practice as a whole. The Full Bench explained their reasons for this conclusion as follows:

> *‘Whilst it is undoubtedly the case that a party to an employment relationship can carry on a trade or business in his or her own right independently of that employment relationship we do not think that that is what was occurring in the* [sic] *relation to the VMOs in this case. It is artificial and unrealistic to characterise the professional activities of the four doctors in this fashion. In our opinion the evidence discloses that each of the four doctors entered into VMO contracts with the hospitals as an integral part of his or her professional practice as a whole. Three of the four doctors saw patients in private rooms maintained as part of their professional practice. Frequently those patients were admitted to one of*

the hospitals as either public patients or private patients where they were treated by the doctor. Each of the doctors did rounds and performed theatre lists where he or she dealt with both public and private patients. This intermixing of the public and private patients is such that, in a practical way, it is not open to conclude that the work performed by the doctors as VMOs did not form part of an overall business of professional practice conducted by the doctors, notwithstanding that the private practice portion of that business ... may have been conducted through a company. Thus, applying the relevant principle, it seems to us clear on the evidence that, viewed as a practical matter, each of the doctors was conducting a business of his or her own as a specialist medical professional and that the work as a VMO formed part of that business.'

9 In reaching its conclusion that the doctors were not employees the Full Bench also relied on the following findings:

> • *The work in question was work involving a profession, trade or distinct calling on the part of the person engaged: the doctors are all highly skilled medical professionals.*
> • *The doctors performed work for others and had a genuine and practical entitlement to do so. Each of the doctors conducted a private practice and had a contractual right to treat private patients in the public hospitals where he or she was engaged as a VMO.*
> • *The work could be delegated. Each of the doctors had a right to arrange for a* locum tenens *to substitute for him or her in theatre sessions. Although this right was subject to the approval of the nominated* locum tenens *by the hospital, on the proper construction of the contracts such approval could not be unreasonably withheld. In practical terms the hospital could not refuse approval where the locum was reasonably competent and was prepared to abide by the requirements of the hospital.*
> • *PAYG tax was not deducted from the payments to the doctors.*
> • *The doctors were not provided with paid holidays or sick leave.*

10 The Full Bench also took into account the fact that each of the contracts in question explicitly denied that an employer/employee relationship existed between the parties. It found that apart from this statement, the only significant factor in the contracts pointing to the employer/employee relationship was that of control. On this issue the Full Bench said at [33]:

> *'Certainly, the level of control retained by the hospitals meant that the indicia pointed both ways. Considering the totality of the relationship*

between the parties and taking the Respondent's case at its highest, the result was ambiguous. In those circumstances, the parties removed doubt about the proper characterisation of their relationship by expressly providing in the contracts that the contracts did not give rise to a relationship of employment.'

Accordingly, the Full Bench allowed the appeal.

THIS APPLICATION

11 On 14 October 2005 the High Court of Australia remitted to this Court the applicant's application for an order that the respondents show cause why:

> (a) a writ of certiorari should not be directed to the members of the Full Bench quashing the Full Bench decision and order; and
> (b) a writ of mandamus should not be directed to Williams SDP directing his Honour to consider and determine the application for registration according to law.

Jurisdictional Error

12 The applicant accepted that to make good its claim to the above relief it needed to identify a jurisdictional error made by the Full Bench. Although in its written submissions the applicant asserted that the Full Bench's decision that the applicant's members were not employees constituted a jurisdictional error, the rest of its submissions amounted largely to a detailed factual analysis directed to identifying why the decision was wrong but without explanation as to why the alleged errors involved any error of law, jurisdictional or non-jurisdictional.

13 At the hearing, following questioning from the bench, the applicant clarified its reasoning which, as we understand it, was:

(a) in finding that the VMOs were not 'employees' for the purpose of the Act the Full Bench made a finding of fact or a finding of mixed fact and law;

(b) this was a finding of a jurisdictional fact because the applicant could not be registered as an association of employees under s 188 of the Act unless at least 50 of its members are employees; it had been agreed that the applicant must fail unless one of the four VMOs referred to in [3] above is an employee*;*

(c) the finding was based on an error of law; and

(d) in refusing jurisdiction on this basis, the Full Bench made a jurisdictional error.

14 The distinction between jurisdictional and non-jurisdictional error is notoriously difficult. It has been abandoned by the House of Lords; *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147; *R v Hull University Visitor; Ex parte Page* [1993] AC 682 at 701. The High Court has not adopted that approach; see *Craig v The State of South Australia* (1995) 184 CLR 163 at 179; *Re Refugee Tribunal; Ex parte Aala* (2000) 204 CLR 82 at 141. In this case, however, the facts do not raise the difficulties that often attend the distinction between non-jurisdictional and jurisdictional error. It is accepted that the AIRC does not have jurisdiction to register the applicant as an association of employees if none of the VMOs is an employee. It follows that an error of law made in reaching this conclusion would lead to the AIRC erroneously failing to exercise its jurisdiction – in other words to a jurisdictional error. Accordingly it is necessary for the applicant to identify legal error affecting the Full Bench's decision.

Error of law

15 The applicant did not quarrel with the legal principles that the Full Bench identified as applicable to whether the VMOs were employees. It submitted, however, that the error of law lay in the fact that the Full Bench did not apply those principles correctly. In thus formulating its argument the applicant attempted to avoid its challenge to the Full Bench's conclusion being characterised as a complaint about the determination of factual elements of the claim and the weight to be given to those elements; in other words as a question of fact not law.

16 The distinction between questions of law and questions of fact is elusive at the best of times; *Collector of Customs v Agfa-Gevaert Limited* (1996) 186 CLR 389 at 394. A question may be said to be one of fact or one of law depending on how it is formulated. In *Zuijs v Wirth Brothers Proprietary Limited* (1955) 93 CLR 561 at 568 Dixon CJ, Williams, Webb and Taylor JJ commented that it is an 'undoubted truth' that, 'the issue whether a man was or was not employed under a contract of service is one of fact'. In *Albrighton v Royal Prince Alfred Hospital* [1980] 2 NSWLR 542 at 560 Reynolds JA, with whom Hope and Hutley JJA agreed, referred to this comment as authority for the proposition that whether the doctors concerned were employees of the defendant hospital was 'on the evidence adduced at this trial, a question of fact to be determined by the jury after proper direction'; see also *Ellis v Wallsend District Hospital* (1989) 17 NSWLR 553 at 592.

17 The phrase, 'after proper direction' is the key to understanding the problem. Determining the work that a contract requires to be performed requires findings of fact but deciding the legal nature of the relationship created by the contract, including articulating the relevant principles, is a matter of law. This explains why the question whether a person is an employee or an independent contractor is sometimes said to be a question of mixed fact and law; *Marshall v Whittaker's Building Supply Company* (1963) 109 CLR 210 at 216. Expressed in that way the statement is consistent both with the difference between a question of fact and a question of law being one of degree and with the inquiry involving two distinct elements, namely, the finding of relevant facts and the determination, on the basis of those facts, of the legal nature of the relationship.

18 Irrespective of these difficulties it must be accepted that characterisation of a person as an employee or an independent contractor expresses a legal conclusion which may or may not be affected by error of law. Where such an error leads to an erroneous refusal to exercise jurisdiction, constitutional or prerogative relief is appropriate; *Damevski v Giudice* (2003) 133 FCR 438 at 441, 461 and 481; *Pawel v Australian Industrial Relations Commission* (1999) 94 FCR 231 at 240.

The relationship of employer and employee

19 There are numerous factors that may point to the contract being one of employment and their relative importance will vary with the circumstances. The measure of control that the putative employer is entitled to exercise over the worker is a prominent factor but it is not the sole criterion; it is merely one of a number of indicia; *Stevens v Brodribb Sawmilling Company Proprietary Limited* (1986) 160 CLR 16 at 24 per Mason J (with whom, on this point, Brennan and Deane JJ agreed); *Zuijs v Wirth Bros Pty Ltd* (1955) 93 CLR 561 at 571-572; *Hollis v Vabu Pty Limited* (2001) 207 CLR 21 at 40-41. In *Stevens v Brodribb*, Mason J also commented at 24, that other relevant matters included, 'the mode of remuneration, the provision and maintenance of equipment, the obligation to work, the hours of work and provision for holidays, the deduction of income tax and the delegation of work by the putative employer'. In the same case Wilson and Dawson JJ mentioned, at 36, the following additional factors:

> *'the right to have a particular person do the work, the right to suspend or dismiss the person engaged, the right to the exclusive services of the person engaged and the right to dictate the place of work, hours of work and the like.'*

20 Their Honours cautioned that however comprehensive the list of relevant factors they could never be determinative but only a guide to the existence of a master and servant relationship. Their Honours continued:

> *The ultimate question will always be whether a person is acting as the servant of another or on his own behalf and the answer to that question may be indicated in ways which are not always the same and which do not always have the same significance.'*

21 In *Marshall v Whittaker's Building Supply Co* (1963) 109 CLR 210 at 217 Windeyer J made the same point, commenting that the fundamental distinction is:

> *'between a person who serves his employer in his, the employer's business, and a person who carries on a trade or business of his own.'*

22 There is no dispute between the parties that the Full Bench correctly identified this 'ultimate question' and then proceeded to consider the particular circumstances of the VMO contracts.

The VMO contracts

23 The VMOs' treatment of public patients in the hospitals is governed by the VMO contracts. Separate contracts regulate their treatment of private patients. According to the applicant, the Full Bench made a legal error in taking into account the private patient contracts as well as the VMO contracts. The applicant submitted that the Full Bench had impermissibly conflated the private practice conducted by the doctors with their work as VMOs and, in support, referred to the comments of the Full Bench quoted at [8] above. The applicant submitted that the Full Bench was in error in that it not only had regard to the relationship between the VMOs and their private patients but also found that this relationship could determine the terms and character of the VMO contracts.

24 There is no doubt that this case centres on the VMO contracts and that it was necessary for the Full Bench to examine the terms of those contracts in some detail. It is well established, however, that in determining the character of a relationship created by a contract, the meaning and effect of its terms must be examined, 'in the light of the circumstances surrounding its making'; *Connelly v Wells* (1994) 55 IR 73 at 74; *Narich Pty Ltd v Commissioner of Pay-Roll Tax* [1983] 2 NSWLR 597 at 601. Those circumstances are relevant to determining if the written contract is intended to embody the whole of the relationship between the parties and in resolving any ambiguity as to the meaning and effect of its terms; *Codelfa Construction Proprietary Limited v State Rail Authority of New South Wales* (1982) 149 CLR 337 per Mason J at 350-52; per Brennan J at 401. In *Codelfa* at 350, Mason J quoted with approval the following comment of Lord Wilberforce in *Reardon Smith Line Ltd v Hansen-Tangen* [1976] 1 WLR 989 at 995-6:

> *'In a commercial contract it is certainly right that the court should know the commercial purpose of the contract and this in turn presupposes knowledge of the genesis of the transaction, the background, the context, the market in which the parties are operating.'*

See *Pacific Carriers Ltd v BNP Paribas* (2004) 218 CLR 451 at 462 where the High Court also expressed its approval of this approach**.**

25 In determining whether the VMOs are providing their services in the hospital as part of the hospital's business or as part of their own businesses it is necessary to consider the particular terms and effect of the VMO contracts. However the enquiry goes beyond the meaning of the individual terms and requires a decision as to the nature of the contract as a whole. Consideration of the surrounding circumstances including the VMOs' own businesses and the contracts entered into as part of those businesses, is peculiarly important to such an enquiry. It is similarly important for the Court to have regard to the practical reality of the relationship between the parties; see *Hollis* at [47].

26 The applicant submitted that only the circumstances that pertain to the VMO contracts may be considered; not those that pertain to other contracts including the private patient contracts. This submission ignores the fact that some circumstances pertain to both contracts and, indeed, the private patient contracts are themselves part of the

circumstances surrounding the VMO contracts. This is not to suggest that the terms of the private patient contracts can override the meaning of the terms of the VMO contracts and there is nothing in the Full Bench's reasons to indicate that it made this error.

27 In determining whether the VMO contracts created an employer and employee relationship, the decision maker's task was to balance the relevant factors, assigning such weight to each as was appropriate in the circumstances. There is no single factor that is determinative. The Full Bench correctly identified error in the decision of Williams SDP in that his Honour 'erroneously equated the question of whether a worker works "*as a representative of and not independently of*" the putative employer' with the 'ultimate question' identified in *Stevens v Brodribb*; see [19] above.

28 It is well recognised that informed minds may differ as to the proper conclusion to be drawn from the exercise of balancing the relevant factors; *Commissioner of Payroll Tax (Vic) v Mary Kay Cosmetics Pty Ltd* [1982] VR 871 at 878; *Re Porter; Re Transport Workers Union of Australia* (1989) 34 IR 179 at 184; *Roy Morgan Research Centre Pty Ltd v Commissioner of State Revenue (Vic)* (1997) 97 ATC 5070 at 5075; JA & BM *Bowden & Sons Pty Ltd v Chief Commissioner of State Revenue* [2001] 105 IR 66 at [15]-[17]. Provided the correct criteria have been applied, the fact that another decision maker might have attached different weight to the various factors is not a basis for ascribing jurisdictional error.

29 The applicant submitted that the VMO contracts exhibited all the features of a contract of employment. In particular the applicant referred to the hospitals' control over the VMOs' performance of their work; the discipline imposed by the hospitals including the right to suspend or dismiss for misconduct; the fact that the VMOs had no right to delegate without the approval of the hospital; they had no share of any profit and no risk of loss; they made no capital investment and that the hospitals provided their tools, equipment and staff. The applicant also pointed out that there is a 'sharp distinction' between the relationship the VMOs have with their private patients and their public patients. The applicants placed particular weight on the factors of control, discipline and delegation.

30 The problem for the applicant is that while the above factors may be indicative of a relationship of employment they are not determinative. Moreover the Full Bench was cognisant of each of these factors but was also conscious of factors pointing to the opposite conclusion; see [9] above. In balancing these factors the Full Bench emphasised both the practical reality of the relationships between the VMOs and the hospitals as well as the fact that in their written contracts the parties themselves had expressly rejected characterisation of their relationship as one of employment.

The practical realities

31 Fundamental to the Full Bench's decision was the way in which the VMOs carried out their work under their contracts. Although the private and public patients came under the VMOs' care by different processes the evidence showed that in the course of treatment

the VMOs moved seamlessly between patients in the two groups. This feature was a major factor in persuading the Full Bench that the care of public patients was an integral part of the business that the VMOs carried on for themselves; see the Full Bench's comments quoted at [8] above. In rejecting the applicant's submission that the VMOs were acting as employees in their treatment of public patients while carrying on their own business in treating their private patients, the Full Bench was taking account of the practical realities of the relationship in accordance with *Hollis*; see [25] above. In our view it was correct to do so and its conclusion on this issue was entirely justified even if a different decision-maker may have viewed the matter differently.

The parties' characterisation of the VMO contracts

32 Each of the VMO contracts contained an express stipulation that the contract did not create an employer and employee relationship. The Full Bench correctly accepted that such a stipulation is not conclusive of the position it postulates; the parties cannot by their agreement change the nature of their relationship. Where, however, the nature of the relationship is otherwise ambiguous such a provision may remove the ambiguity; *Massey v Crown Life Insurance Co.* [1978] 2 All ER 576 at 579; *Narich* at 601.

33 In this case there was some ambiguity as to the nature of the relationship. The indicia of an employment relationship between the VMOs and the hospitals relied on by the applicant are summarised in [29] above; those pointing to a different characterisation of the relationship and relied on by the Full Bench are referred to in [9] and [10] above. Contrary to the applicant's submission the Full Bench did not treat the parties' own characterisation of their relationship as decisive but in the circumstances it was justified in attaching considerable importance to it.

Conclusion

34 We are unable to discern any error of law in the Full Bench's reasons and certainly no jurisdictional error that would justify granting the relief sought. In our opinion the application should be dismissed.

I certify that the preceding thirty-four
(34) numbered paragraphs are a true
copy of the Reasons for Judgment
herein of the Honourable Justices
Wilcox, Conti & Stone.

Associate:

Dated: 4 July 2006

Counsel for the Applicant: I Neil

Solicitor for the Applicant:	Williams Love & Nicol
Counsel for the First and Second Respondents:	The First and Second Respondents did not appear
Counsel for the Third Respondent:	J Nolan
Solicitor for the Third Respondent:	Hall Payne Lawyers
Counsel for the Fourth Respondents:	R Tracey QC with P Clarke
Solicitor for the Fourth Respondents:	Australian Capital Territory Government Solicitor
Date of Hearing:	1 March 2006
Date of Judgment:	4 July 2006