

## Chapter 13

# ***BLF v Minister for Industrial Relations: The Limits of State Legislative and Judicial Power***

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### ***Introduction***

The struggle between capital and labour has produced some of Australia's most significant and absorbing constitutional cases. The 1986 decision of the New South Wales Court of Appeal in *BLF v Minister for Industrial Relations*<sup>1</sup> is one example. The case provides an enduring study of the limits of legislative and judicial power in the Australian States. The question before the Court was whether the New South Wales Parliament could validly interfere with the work of the judiciary by directing the outcome of litigation pending in a State court. The Court of Appeal unanimously conceded that Parliament was able to do so. In particular, it held that the *Constitution Act* 1902 (NSW) did not contain a binding separation of legislative and judicial power. In addition, the judges denied that a doctrine of fundamental common law rights restricted the capacity of the New South Wales Parliament to interfere with State courts. Nonetheless, the decision left open the question whether courts could strike down legislation under the *Constitution Act* as contrary to the "peace, welfare, and good government" of the State. This radical suggestion was opposed by the High Court, however, which subse-

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1 *Building Construction Employees and Builders' Labourers Federation of New South Wales v Minister for Industrial Relations* (1986) 7 NSWLR 372 ("*BLF v Minister for Industrial Relations*").

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