2006

The implications of the Constitution

DF Jackson QC

Introduction

David Jackson QC is one of the country's leading constitutional and appellate advocates and has filled that role for a period which spans the careers of most presently practising lawyers. He was a judge of the Federal Court between 1985 and 1987 sitting with, amongst others, Lockhart, Sheppard, Gummow and French JJ. He was the chairman of the Federal Constitutional Commission's Advisory Committee on the Australian Judicial System. He has many other achievements too numerous to list here.

The title of Jackson's lecture invokes a popular one in constitutional discourse. Given recent developments in the High Court its relevance continues unabated. Jackson identifies three types of constitutional implication: textural implications in which particular words or phrases are said to assume or imply some further constitutional rule; structural implications in which features of the way in which the Constitution is laid out – for example, its division of the legislative, executive and judicial powers into separate chapters – is said to suggest some corresponding principle; and, conceptual implications in which the Constitution uses some abstract concept such as executive power from which further constitutional principles may be inferred.

The basis on which these differing implications may be drawn has never been entirely stable and, as Jackson himself notes, by 2006 it was not entirely clear that distinct and separate approaches were still at work. The passage of six years has shown that observation to be well-founded.

In the lecture Jackson ranged across several different implications which authority had established or, at least, suggested. One of these was the implication that there must be an institution answering the description of a Supreme Court for each State. The Court had suggested such a principle in *Kable v Director of Public Prosecutions (NSW)*[1] and had reiterated the point in *Forge v Australian*

---

1   (1996) 189 CLR 51 at 114.