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NOTICEBOARD

High Court Notes November 2002

Prepared for the Law Council of Australia and its constituent bodies by Thomas Hurley, Barrister, Vic., NSW, ACT (Editor, Victorian Administrative Reports)

Constitutional law - Power of Commonwealth agency to prosecute breaches of State law - When Commonwealth agency may appeal

In *Macleod v. ASIC* ([2002] HCA 37; 11.09.2002) the ASC prosecuted M for breach of the 1989 *Corporation Law of WA*. He was convicted of one count by a WA Magistrate in 1998. This conviction was set aside by a Commissioner of the Supreme Court of WA in an appeal commenced by M. The ASC appealed by leave to the Full Court of WA under s206A of the *Justices Act 1902 (WA)*. The Full Court of the Supreme Court restored the conviction of the Magistrate. M appealed to the High Court contending the appeal by the ASC to the Full Court was incompetent because while the ASC was authorised by s49(2) of the ASC Act to carry prosecution of offences against State law this power was spent on the making of the orders by the Magistrate. The Court concluded that s79 of the *Judiciary Act* did empower the ASC to institute the appeal to the Full Court nor "pick up" any provision of State law which would [43], [44]. Appeal allowed.

High Court - Practice - Evidence in applications for special leave

In *Road and Traffic Authority v. Cremona* ([2002] HCA 38;

19.08.2002) Kirby J considered when in an application for special leave to appeal affidavits would be admitted to show the question was of public importance.

Immigration - Refugees - Failure to refer to Minister request for dispensation

In *Re MIMIA; ex p Applic* ([2002] HCA 39; 19.08.2002) Kirby J dismissed an application for a constitutional writ in respect of the failure to forward to the Minister for Immigration a request that he exercise the personal power under s48B of the *Migration Act* to allow a second application

Federal Court Notes November 2002

Prepared for the Law Council of Australia and its constituent bodies by Thomas Hurley, Barrister, Vic., NSW, ACT (Editor, Victorian Administrative Reports)

Migration - Visa cancellation - Whether departmental briefing paper sets out reasons for decision

In *MIMA v. W157/00A* ([2002] FCAFC 281; 4.09.2002) a Full Court considered whether the giving to a person whose visa has been cancelled of a departmental submission to the Minister which the Minister had signed constitutes that the giving of a notice which sets out the reasons for the decision as required by s501G(1)(e) of the *Migration Act*. The Court concluded that while the document did not constitute a statement of "reasons" the ground of review on s476(1)(a) of the *Migration Act*, (failing to comply with procedures required