

Noticeboard

High Court Judgments

Prepared by Thomas Healy, a member of the Victorian Bar. The full version of these judgments can be found on the AustLII website www.austlii.edu.au/databases.html.

Courts and judges – Disqualification for bias – Judge sitting alone – When “forthright” opinions cross line to become bias

1 *Antoun v Q* [2006] HCA 2 (2 February 2006)

A judge sitting alone in the District Court of NSW convicted the appellants of demanding money with menaces with intent to steal. The appellants contended the judge conducted himself in a way that a fair minded observer would conclude constituted bias. This submission was rejected by the Court of Criminal Appeal (NSW). It was accepted by all members of the High Court: Gleeson CJ; Kirby J and Heydon J agreeing with Callinan J; Hayne J sim. All members of the Court concluded that the forthright doubts expressed by the trial judge would lead a reasonable bystander to apprehend bias. Appeal allowed.

Compulsory acquisition (NSW) – Interest in land

1 *Halloran v Minister Administering National Parks and Wildlife Act 1974* [2006] HCA 3 (9 February 2006)

The High Court considered the operation of the provisions in the Land Acquisition (Just Terms Compensation) Act 1991 (NSW). The Court considered whether a person had established on admissible evidence ownership of an interest in land and was entitled to compensation under s37 of that Act. The Court varied orders of the Court of Appeal (NSW): Gleeson CJ, Gummow, Kirby, Hayne JJ jointly; Heydon J sim.

Courts – Appeals – When intermediate appellate court may substitute its own findings as to credibility of witnesses for those of trial judge

1 *CSR Ltd v Della Maddalena* [2006] HCA 1 (1 February 2006)

The trial judge in the District Court of WA found the appellant/employer not liable for injuries consequent on exposure to asbestos by the respondent/worker. This conclusion was reversed by the Full Court of the Supreme Court of WA. An appeal by the employer to the High Court was allowed by all members: Gleeson CJ agreeing with Kirby J; Hayne J; Callinan with Heydon JJ. The members of the High Court concluded that the basis upon which the Full Court had acted in forming the preference for the evidence of the worker was not open to it and this Court had given inadequate consideration to why it was ordering a retrial. Appeal allowed.

Federal Court Judgments

Prepared by Thomas Healy, a member of the Victorian Bar. The full version of these judgments can be found on the AustLII website www.austlii.edu.au/databases.html.

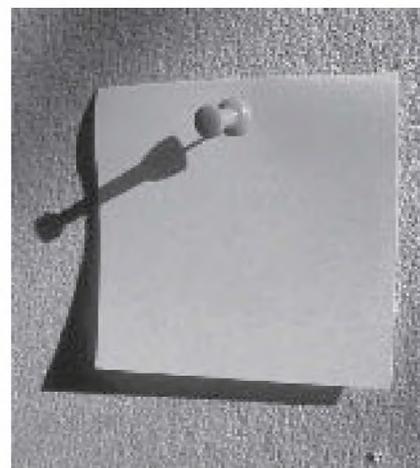
Agriculture – Deregulation of dairy industry

1 *Purvis v Dairy Adjustment Authority* [2005] FCAFC 275 (23 January 2006)

A Full Court considered ten questions of law relating to a decision of the AAT disposing of claims made under the Dairy Structural Adjustment Program Schemes of 2000 and 2001.

Industrial law – Penalty – Breach of freedom of association provisions – Whether penalty should be paid to union

1 *CEEEIPPAS v ACI Operations P/L* [2006] FCA 7 (16



January 2006)

Marshall J concluded the penalty imposed under Part 2A of the Workplace Relations Act 1966 (Cth) should be paid to the applicant union.

Administrative law – Refusal of authority to reconsider and to give reasons for refusal to reconsider – Whether decision under an enactment

1 *WorldAudio Limited v Australian Communications and Media Authority* [2006] FCA 8 (16 January 2006)

Conti J considered whether a decision by a statutory authority to refuse to reconsider its decision or to give reasons for that refusal constituted a decision under an enactment (Broadcasting Services Act 1992 (Cth), Radio Communications Act 1992 (Cth)) that could be reviewed in the Federal Court.

Workers compensation (Cth) – Costs – Exercise of discretion by AAT

1 *Perry v Comcare* [2006] FCA 33 (2 February 2006)

Greenwood J reviewed authority in practice as to the awards of costs by the AAT in Comcare matters. Review also of authority as to when exercise of discretion raises a question of law that can be argued on appeal.

Contempt – When contempt of court order criminal contempt

1 *Louis Vuitton Malletier SA v Design Elegance P/L* [2006] FCA 83 (14 February 2006)

Merkel J considered whether breach of a court order constituted a civil or criminal contempt or was “criminal in nature”, and penalty.

AAT – When proceeding frivolous

1 *Fearnley v Australian Fisheries Management Authority* [2006] FCAFC 3 (10 February 2006)

The Court concluded the AAT did not err in finding a proceeding by a fisherman to review a fishing quota frivolous and vexatious after the fisherman disposed of his rights to the quota.

Statutes – “Minced” fish

1 *H J Heinz Co Limited v Chief Executive Officer of Customs* [2006] FCAFC 4 (15 February 2006)

A Full Court considered how tuna was to be identified as being either “in pieces” or “minced”.

Crime Commission – State offences with a federal aspect

1 *S v Australian Crime Commission* [2006] FCAFC 5 (15 February 2006)

A Full Court considered the validity of the provision in s4A of the Australian Crime Commission Act 2002 (Cth) which gave the ACC power to investigate state offences with a federal aspect. Consideration of whether legislation based on possibility of Commonwealth law

valid.

Constitutional law – When Commonwealth subject to state discrimination law

1 *C of A v Wood* [2006] FCA 60 (9 February 2006)
Heerey J concluded a mother could bring a claim alleging discrimination against her son which resulted in his suicide in the air cadet training course. He concluded that the Anti-Discrimination Act 1998 (Tas) applied to the Commonwealth and its agents and did not offend Ch III of the Constitution in conferring on the Anti-Discrimination Tribunal jurisdiction to adjudicate complaints against the Commonwealth.

Workers compensation – Inconsistent findings

1 *Riddle v Telstra Corporation* [2006] FCA 58 (10 February 2006)
Edmonds J concluded the AAT did not err in making findings on review inconsistent with findings supporting earlier determinations that were not subject of the review.

Income tax – Deductions – Yacht

1 *Ell v C of T* [2006] FCA 71 (10 February 2006)
Emmett J dismissed an appeal by a taxpayer seeking to deduct expenses incurred in the operation of a yacht.

Federal Court Notes

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

Administrative Law - Whether issue and execution of search warrant a “decision” under enactment

In *Jilani v Wilhelm* [2005] FCAFC 269; 20.12.2005 a Full Court considered when decisions to issue and execute search warrants could be reviewable as decisions “under” an enactment. The Court reviewed authority as to the basis upon which legislation authorising searches is construed.

Visas - Mandatory condition

In *Krummrey v MIMIA* [2005] FCAFC 258; 21.12.2005 a Full Court rejected a submission that an act was required to impose a mandatory condition visa on a visa. The Court also considered whether a person granted a visa on the basis that the person intended to visit Australia temporarily for business purposes must maintain this intention.

Patents - Synthetic turf playing surface

In *Synthetic Turf Development P/L v Sports Technology International P/L* [2005] FCAFC 270; 23.12.2005 a Full Court considered whether a reference in a patent for synthetic turf playing surfaces to it being “crimped” involved a novel or inventive step. The Court considered whether it was open to the primary judge to conclude the invention would have been obvious.

Migration - Refugees - Whether applicant took “all possible steps” to avail himself of protection elsewhere

In *NBLC v MIMIA* [2005] FCAFC 272; 23.12.2005 a Full Court considered whether a person had taken “all possible steps” within s.36(3) of the Migration Act to seek protection elsewhere and whether the definition of “persecution” in s.91R applied to s.36(4).

Superannuation - Interest

In *Military Superannuation and Benefits Board of Trustees No 1 v Batt* [2005] FCA 1865; 19.12.2005 Kenny J reviewed authority as to the power of the Superannuation Complaints Tribunal to award interest.

Patents - Obviousness - Deadlock which can be unlocked from outside

In *Lockwood Security Products P/L v Doric Products P/L* [2005] FCAFC 255; 8.12.2005 a Full Court considered whether a patent for a deadlock which could be unlocked

from the outside was void for being obvious.

Admiralty - Compulsory pilotage

In *Braverus Maritime Inc v Port Kembla Coal Terminal Ltd* [2005] FCAFC 256; 12.12.2005 a Full Court considered whether a ship owner could be liable for the fault of a compulsory pilot who was not properly licensed.

Bankruptcy - When creditor prevented from enforcing right against property of bankrupt

In *Piccone v Suncorp Metway Insurance Ltd* [2005] FCAFC 260; 12.12.2005 a Full Court considered when a creditor would be prevented from enforcing a remedy against a bankrupt or his property without leave of the Court and whether damages for personal injuries awarded to a bankrupt were the bankrupt’s property.

Bankruptcy - Application for removal of trustee

In *Trkulja v Morton* [2005] FCAFC 259; 13.12.2005 a Full Court considered when a trustee in bankruptcy could be removed for threats of blackmail or unlawful conduct. Appeal dismissed but papers referred to the Inspector-General in Bankruptcy.

Federal Court practice - Leave to reopen decision of Full Court

In *Yevad Products P/L v Brookfield* [2005] FCAFC 263; 16.12.2005 a Full Court concluded it was necessary to reopen an appeal and to vary orders a Full Court had made on the grounds that a point in the appeal had not been considered.

Corporations - Prospectus - Disclosure

In *Cadence Asset Management P/L v Concept Sports Limited* [2005] FCAFC 265; 16.12.2005 a Full Court concluded a subscriber for shares offered pursuant to a defective prospectus cannot recover from the company that issued the prospectus the loss suffered as a result of the subscription without the subscriber rescinding the contract to acquire the shares.

Security for costs - Non-resident

In *Hardi v Loh* [2005] FCA 1840; 14.12.2005 French J considered whether Indonesian residents should be required to give security for costs before commencing civil litigation.

Migration - Interlocutory orders

In *SZGAP v MIMIA* [2005] FCA 1785; 9.12.2005 Lindgren J considered whether a decision of the FMC to dismiss an application brought outside the 28 day time limit imposed by s.477(1A) Migration Act was an interlocutory order.

Federal Court - Award of interest

In *Walker v Citigroup Global Markets P/L* [2005] FCA 1866; 19.12.2005 Kenny J reviewed authority as to when the Court would order interest under s.51A of the Federal Court of Australia Act and when indemnity costs may be ordered.

Judicial Review - Non-statutory legal aid scheme

In *Ex-Christmas Islanders Association Inc v Attorney-General (Cth)* [2005] FCA 1867; 21.12.2005 French J concluded relief under the AD(JR) Act was not available in respect of the legal aid scheme conducted by the Attorney-General (Cth) on a non-statutory basis.

Freedom of Information - Exemptions - Legal Privilege

In *COMCARE v Foster* [2006] FCA 6; 12.1.2006 Greenwood J reviewed the exemption on the grounds of legal professional privilege in ss.36, 42 of the FOI Act in relation to documents passing between COMCARE and its external lawyers including surveillance videos.