

# Noticeboard

## Federal Court Notes: September 2006

Prepared for the Law Council of Australia and its constituents by Thomas Hurley. THOMAS HURLEY is 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](http://www.austlii.edu.au/databases.html).

### **Evidence – spousal privilege – de facto spouse**

*S v Boulton (Examiner, Australian Crime Commission) [2006] FCAFC 99 (23 June 2006)*

A Full Court held that the privilege against self-incrimination of a spouse may be available at common law but it did not apply to persons claiming to be spouses by virtue of a de facto relationship. Consideration of when a Full Court of the Federal Court should follow the decision on a point by a Full Court of a state.

### **Veterans' affairs – when alcohol abuse compensable as arising from a severe stressor**

*Repatriation Commission v Constable [2006] FCAFC 102 (26 June 2006)*

A Full Court held the primary judge did not err in holding the AAT had impermissibly imposed a requirement of immediacy into the definition of “experiencing a severe stressor” in the Statement of Principles as to when alcohol abuse was compensable.

### **Migration – tribunals – failure of Secretary to provide documents to tribunal**

*WAGP v MIMIA [2006] FCAFC 103 (30 June 2006)*

A Full Court held the failure of the Secretary of the department to provide all documents to the RRT as required by s418(3) of the Migration Act did not constitute jurisdictional error by the RRT. The Court considered whether in the circumstances the Secretary ought to be restrained for acting on the decision.

### **Workplace relations – whether medical officers in hospitals “employees”**

*ACT Visiting Medical Officers Assn v AIRC [2006] FCAFC 109 (4 July 2006)*

A Full Court in a joint judgment concluded the AIRC did not err in finding that medical officers in a hospital were not employees but contractors.

### **Income tax – review of assessments – whether failure of Commissioner to exercise discretion to extend time a part of assessment decision – whether AAT can extend time**

*Isaacs v C of T [2006] FCAFC 105 (30 June 2006)*

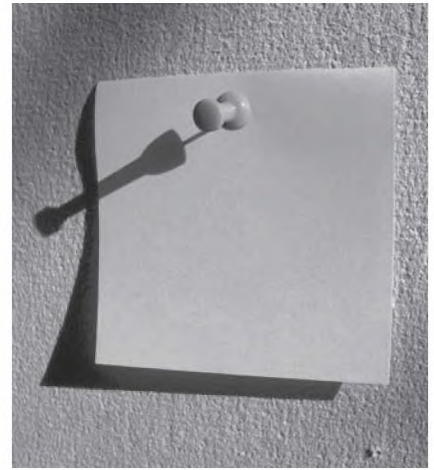
A Full Court concluded the fact that the Commissioner had a discretion to extend time for election in an employee share scheme did not mean the making of the decision was part of the tax assessment. It also concluded the AAT on review could not exercise the discretion given to the Commissioner.

### **Income tax – assessment – validity of assessment combining primary and additional tax**

*C of T v Queensland Trading & Holding Co Ltd [2006] FCAFC 112 (6 July 2006)*

A Full Court concluded the taxpayer was not entitled to reasons under s13 of the AD(JR) Act in respect of a decision not to remit additional tax where the assessment which was subject to objection and appeal proceedings incorporated both primary tax and additional tax.

### **Corporations – appointment of receivers to property of directors – whether receivers may be appointed over property held by third parties**



*ASIC re Richstar Enterprises Pty Ltd v Carey [2006] FCA 814 (29 June 2006)*

French J considered whether the power given by s1323 of the Corporations Act 2001 (Cth) authorised the appointment of receivers over property held by third parties who were not directors or officers of the subject corporation.

### **Search warrant – burden of proving validity**

*Egglisshaw v Australian Crime Commission [2006] FCA 819 (30 June 2006)*

Sundberg J considered how an applicant discharged the onus of establishing that the grant and execution of a search warrant were unlawful and how the agency established it had acted lawfully.

## Federal Court of Australia Practice Note No 19 – List of Authorities and Legislation, Proceedings Generally

*The Chief Justice has revoked the Practice Note No 19 issued on 14 August 2003 and issued a new Practice Note No 19.*

This Practice Note applies to all final hearings, including appeals, unless and to the extent that the Court or a judge otherwise orders. It applies to all parties, including those who are not represented by a legal practitioner.

The Court or a judge may direct that this Practice Note also apply to an interlocutory hearing.

1. In this Practice Note:

*applicant* includes appellant.

*required number of copies* is the number of copies necessary to provide the Judge (and in a matter before a Full Court, each Judge) with a copy of the document and a copy for the Court file.

2. The applicant must file, and serve on each other party, the required number of copies of its list of authorities and legislation, no later than 4.00 p.m. three clear working days before the hearing date.
3. The respondent must file, and serve on each other party, the required number of copies of its list no later than 4.00 p.m. two clear working days before the hearing date.
4. If a case in the list of authorities has been reported, a reference to the report of the case must be given and, if it has been reported in an authorised series of reports, the reference must be to the report in that series.
5. A reference to a case must include:
  - (a) the name under which the case is reported;
  - (b) its citation;

- (c) a reference to the relevant page and part of the page (e.g. A v B 112 CLR 210 at 212.5] or, if the report contains numbered paragraphs that sufficiently identify the passage relied upon, the relevant paragraph; and
- (d) the medium neutral citation of the case (if any) and a reference to the relevant paragraph numbers.
6. References to legislation must specify the legislature and the relevant sections, regulations, rules or clauses.
  7. The list of authorities and legislation must be divided into Parts 'A' and 'B'. Part 'A' must contain only authorities and legislation from which passages are to be read. Part 'B' must contain authorities and legislation to which a party might refer, but from which passages are not to be read.
  8. The Court will supply for the use of the Judge or Judges hearing the matter up to, but not more than, ten cases on Part 'A' of the list that are reported in the Commonwealth Law Reports, Federal Court Reports, Australian Law Reports and the authorised reports of the Supreme Court of the State or Territory in which the application is to be heard. Where more than ten cases are listed in Part 'A' of the party's list, the party must identify with a single asterisk the ten cases that the party wishes the Court to provide for the Judges.
  9. A party may identify in Part 'A' up to five cases in addition to those referred to in paragraph 8, to which the party wishes to refer at some length. These cases should be identified by a double asterisk. It is the responsibility of the party to hand up photocopies of those cases (or the relevant parts) for the use of the Judge or Judges during argument.
  10. A party who intends to cite from:
    - (a) an unreported case, or
    - (b) the report of a case other than a case reported in the reports mentioned in paragraph 8; or
    - (c) a book, must provide photocopies of the case or of the relevant parts of the book for the use of the Court and each party during argument. A photocopy of part of a book must include a photocopy of the page or pages identifying its author, title, publisher, edition and year of publication.
  11. A party may refer to an electronic version of a judgment that has been published in an authorised report, provided that the party has given a reference to the judgment in accordance with paragraphs 4 and 5 and:
    - (a) if the judgment has a medium neutral citation – the passages to be relied upon are identified by paragraph numbers;
    - (b) for any other judgment – the passages to be relied upon are identified by page numbers in the authorised report.

**M E J BLACK**

**Chief Justice**

9 August 2006

*A copy of the Practice Note is available on the Federal Court's web site at <http://www.fedcourt.gov.au/>.*

## **Federal Court of Australia Revocation of Practice Note No 10 – Anton Piller Orders**

*On 23 May 2006 Practice Note No 10 – Anton Piller Orders was revoked by the Acting Chief Justice.*

*Practice Note No 10 was issued by the Chief Justice on 8 April 1994. The Practice Note set out a number of matters*

*that the Court would have regard to when considering making an 'Anton Piller' or analogous order and seeking associated undertakings.*

*On 5 May 2006 the Chief Justice issued Practice Note No 24 – Search Orders which addresses (among other things) the Court's usual practice relating to the making of a search order and the usual terms of such an order. The Practice Note complements Order 25B of the Federal Court Rules, that also commenced on 5 May 2006. Order 25B gives effect to the harmonised rules for search orders developed by the Council of Chief Justices' Harmonised Rules Sub-Committee.*

*As Order 25B and Practice Note No 24 deal with the matters set out in Practice Note No 10, Practice Note No 10 was no longer necessary and has been revoked.*

*Practice Note No 10 (Anton Piller Orders) issued on 8 April 1994 is revoked.*

**Peter R A GRAY**  
Acting Chief Justice  
23 May 2006

## **Court Recording Services**

As of 1 February 2006 the Justice Department will no longer be receiving orders for Civil Proceedings transcripts for the Supreme Court in Darwin.

It will be a requirement that all firms and private parties will need to place an order for any Civil proceedings that are held at the Supreme Court direct to Court Recording Services. Once the matter has been transcribed an invoice from Court Recording Services will be forwarded to your organisation for payment.

An order form, detailing the necessary information that will need to be completed before matters are transcribed, is available from the Civil registry of the Supreme Court building.

If you have any queries or concerns please contact:

Wayne R. King  
Manager - Court Recording Services  
Darwin NT

## **Reintroduction of Business Name Fees**

Fees to register and renew a business name will be reintroduced in the Northern Territory from 1 July 2006. It will cost \$60 to register a new business name and \$50 to renew a business name.

## **DEADLINES**

*Contributions to Balance are welcome. Copy should be forwarded to the Editor of Balance, Law Society NT, either via fax: 08 8941 1623 or email: [publicrelations@lawsocnt.asn.au](mailto:publicrelations@lawsocnt.asn.au).*

*Advertising rates can be obtained from the Society on tel: 08 8981 5104 or downloaded from our website: [www.lawsocnt.asn.au](http://www.lawsocnt.asn.au).*

### **Upcoming deadlines:**

*September - October edition - Friday 22*

*September including a feature on pro*

*bono issues in the NT*

*November - December edition - Monday*

*20 November*