

High Court Notes: April 2009

Copyright – Infringement – Compilation of television guide

In *Ice TV Pty Ltd v Nine Network Australia Pty Ltd* [2009] HCA 14; 22 Apr 09 the High Court concluded the compilation of a television programme guide that reproduced elements of an aggregated guide produced with the consent of the television station did not breach of copyright of the television station in the original programme produced by the television station: French CJ, Crennan Kiefel JJ jointly; sim Gummow Hayne Heydon JJ jointly. Appeal from Federal Court allowed.

Defamation – Test for determining which statements defamatory

Radio 2Ue Sydney Pty Ltd v Chesterton [2009] HCA 16; 22 Apr 09 the High Court considered the standards by which defamatory statements were to be identified and whether in cases involving professional reputation hypothetical referees were assumed to have special knowledge of the business or profession. The court also considered how statements were to be found to amount to defamation and the distinction between injurious falsehood and defamation. Appeal from New South Wales Court of Appeal dismissed.

Statues- Construction – Construction of an exception to an exemption from a prohibition –Trade practices – Prohibition on misleading conduct – Exemption for broadcasters – exception where broadcast is in relation

to supply of goods

In *Australian Competition and Consumer Commission v Chanel Seven Brisbane Pty Ltd* [2009] HCA 19; 30 Apr 09 the High Court referred to the rules for construing statutes in considering how an exemption in one provision of the Trade Practices Act from the exception to a prohibition in another was to be construed. Appeal from the Federal Court of Australia allowed: French CJ with Kiefel J; Gummow J; Hayne J; contra Heydon J.

Practise (NSW) whether appeal lies from a judgment entered in accordance with jury’s answers to questions

In *Keramianakis v Regional Publishers Pty Ltd* [2009] HCA 18; 29 Apr 09 the High Court considered whether an appeal lay from a verdict of a District Court of NSW judgment where the trial judge entered the “verdict” by recording answers as given by a jury verdict. Appeal from decision of the NSW Court of Appeal allowed: French CJ with whom Gummow, Hayne, Heydon, Crennan, Kiefel and Bell JJ each agreed.

Criminal law – Evidence – evidence of co-accused as to bad character of other co- accused

In *Jones v Q* [2009] HCA 17; 29 Apr 09 the high Court dismissed an appeal where an accused contended the jury was misdirected as to the use it could make of allegations of bad character by one accused against another. Appeal from the Supreme Court of Queensland dismissed: French CJ Heydon, Kiefel, Bell JJ jointly.

Criminal law – Sentencing



prosecution appeal – Decision by Court of Criminal Appeal evaluating sentence by reference to matters different from primary judge

In *Carroll v Q* [2009] HCA 13; 21 Apr 09 the High Court concluded the NAW Court of Criminal Appeal had erred in sentencing a person in a way that discarded the reference to the primary judges findings as to why the accused had acted as he had and attributing to him foresight of his conduct that the primary judge had not found. Appeal allowed: Gummow, Hayne, Crennan, Kiefel and Bell JJ jointly.

Tort – Duty of care – Failure of police to utilise powers to detain a suicide risk

Stuart v Kirkland – Veenstra [2009] HCA 15; 22 Apr 09 the Court of Appeal (Vic) found police officers were in breach of a duty of care in accepting the assurance of a person they discovered attempting suicide that he would not pursue the attempt and refraining from detaining him under mental health legislation. The person shortly afterwards committed suicide. The High Court concluded that no duty of care existed because as the person persuaded the officers he was not disturbed they had no power to detain him. Appeal allowed: French CJ; Gummow, Hayne, Heydon JJ; Crennan,

NOTICEBOARD

Kiefel JJ.

Federal Court Notes: April 2009

Industrial law – Award – Allowable award matters – “Incentive based payments”

In *Yirra Pty Ltd v Summerton* [2009] FCAFC 50; 5 May 2009 a Full Court considered whether a severance payment that occurred in circumstances outside s 513(4) of the *Workplace Relations Act 1996 (Cth)* was properly characterised as an “incentive based payment” within s 513(1) (b).

Tribunals – Natural justice – Whether AAT erred in not advising applicant that it would use doubt as to credibility to

make positive finding

In *Habbib v Director-Genera of Security* [2009] FCAFC 48; 24 Apr 09 a Full Court concluded the AAT had erred in an application by H to review a decision to refuse him an Australian passport because of a security assessment in failing to advise H that it was going to use its obvious doubts as to his veracity to make specific findings which could have been the subject of further evidence. However the Court found that this error did not affect the result

Native title – Negotiate “in good faith”

FMG Pilbara Pty Ltd v Cox [2009] FCAFC 49; 30 Apr 09 a Full Court found that the NNT had erred in finding a party had

not negotiated “in good faith “ as required by s 31(1)(b) of the *Native Title Act 1993 (Cth)*.

Migration – Duty of immigration tribunals to disclose adverse information

In *SZLPO v Minister for Immigration and Citizenship* [2009] FCAFC 51; 1 May 09 a Full Court considered three appeals that raised aspects of how the Refugee Review Tribunal (and thus its analogue the Migration Review Tribunal) was to identify “additional information” (s 424(2)); whether its duty was only give it to a “natural person” whose identity was known (s 424(2)); and whether a document was itself “information” and thus “additional Information” within s 424(2).

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