



the High Court was dismissed: French CJ, Crennan, Kiefel, Bell JJ jointly; sim Gageler J. The High Court concluded that the Court of Criminal Appeal had not erred in construing the provision as not requiring re-opening for any error of law or fact and the purpose of the provision was to only address sentences that were affected by the error in any event. Appeal dismissed.

NATIVE TITLE

- **Whether native title extinguished by lease of Crown land that did not grant exclusive possession**

In *Western Australia v Brown* [2014] HCA 8 (12 March 2014) the High Court applied its decision in *Western Australia v Ward* [2002] HCA 28 and concluded that native title was not extinguished by the grant of leases to mine for iron ore that did not grant an unqualified right to exclusive possession: French CJ, Hayne, Kiefel, Gageler, Keane JJ jointly. Appeal from Full Court of Federal Court dismissed.

STATUTES

- **Recovery of duty paid under mistake of fact**
- **Recovery outside prescribed time**

In *Thiess v Collector of Customs* [2014] HCA 12 (2 April 2014) s167 of the *Customs Act* 1901 (Cth) provides that no action lies for the recovery of duty paid except for an action commenced within the time periods provided in s167(4). T owned a yacht that was imported into Australia in 2004 and duty paid according to its believed weight when no duty was payable for a yacht of its actual weight. T's action commenced outside the required time period and was dismissed by the primary court and the Court of Appeal (Qld). T's appeal to the High Court was dismissed in a joint judgment; French CJ, Hayne, Kiefel, Gageler, Keane JJ. The High Court referred to the construction of statutory provisions and concluded the limiting provisions were not to be limited to a valid assessment and expressed a scheme that required

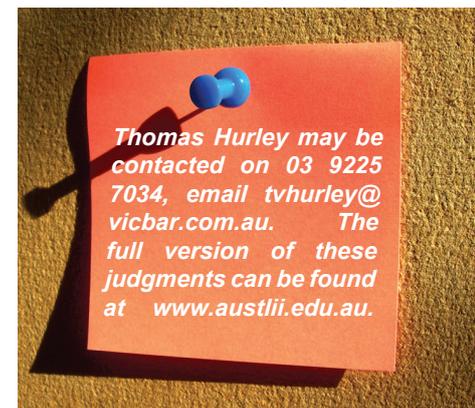
importers to be vigilant. Appeal dismissed.

PERSONAL INJURIES (NSW)

- **Death**
- **Damages**
- **Who is claimant?**

In *Taylor v The Owners-Strata Plan No 11564* [2014] HCA 9 (2 April 2014) s12(2) of the *Civil Liability Act* 2002 (NSW) directed a court considering the award of damages for the death of a person to disregard the amount by which the "the claimant's income" exceeded three times the amount of average weekly earnings. In an action by a widow for damages for the death of her husband (a land surveyor) the primary judge answered a separate question to the effect that the reference to "the claimant's income" was directed to the deceased's income and not that of the plaintiff/widow. The Court of Appeal (NSW) agreed with this construction. The decision was reversed by the High Court: French CJ, Crennan, Bell JJ jointly; contra Gageler and Keane JJ jointly. Appeal allowed. ●

Thomas Hurley's Federal Court judgments



MIGRATION

- **Unreasonableness**

In *Minister for Immigration and Border Protection v Singh* [2014] FCAFC 1 (4 February 2014) a Full Court reviewed authority as to "unreasonableness" when considering whether a refusal by the Migration Review Tribunal (MRT) to further adjourn an MRT hearing because the applicant

was one day late in filing material with the request for further adjournment was "unreasonable". The Court suggested there was an unreasonableness of "outcome" (considering the result of the exercise of a discretionary power) and reasonableness review (considering the stated reasoning process). The Full Court concluded the Federal Circuit Court had not

erred in setting aside the decision of the MRT.

WORKERS COMPENSATION

- **Benefits**
- **Medical treatment**
- **Purchase and modification of a vehicle**

In *Heffernan v Comcare* [2014] FCAFC 2 (3 February 2014) a Full Court considered the definition



of “medical treatment” in s16(1) of the *Safety Rehabilitation and Compensation Act 1988* (Cth) and concluded the trial judge did not err in concluding Comcare was not liable to pay for the purchase and modification of a further vehicle as part of the medical treatment of H’s back condition.

ADMINISTRATIVE LAW

- *Alternative remedy*

SHIPPING

- *Variation of temporary shipping licences*

In *CSL Australia Pty Ltd v Minister for Infrastructure and Transport* [2014] FCAFC 10 (26 February 2014) a Full Court considered appeals from two decision of the Court between the parties ([2012] FCA 1261 per Robertson J; and [2013] FCA 152 per Katzmann J) where CSL had attacked decisions under the *Coastal Shipping (Revitalising Australian Shipping) Act 2012* (Cth) to vary temporary shipping licences. In allowing the appeals in part the Full Court considered how the conflicting objects of the legislation were to be used in its interpretation, unreasonability and when the existence of review by the Administrative Appeals Tribunal precluded review by the Court.

EMPLOYMENT LAW

- *“Extend”*

In *EnergyAustralia Yallourn Pty Ltd v Construction, Forestry, Mining and Energy Union* [2014] FCAFC 8 (19 February 2014) a Full Court considered when protected industrial action may be “extended” under s459 of the *Fair Work Act 2009* (Cth). The Court considered when certiorari will issue alone because there remains no outstanding duty to compel by an order mandamus.

MERCHANT MARINE

- *Merchant marine officer*
- *Contract of employment*

In *Visscher v Teekay Shipping (Australia) Pty Ltd* [2014] FCAFC 5 (13 February 2014) a Full Court considered whether the threat to demote a ship’s officer was a repudiation of the contract of

employment, what payments constituted “wages” and whether there was a reasonable dispute as to liability for s78 of the *Navigation Act 1912* (Cth).

MIGRATION

- *Appeal allowed by Federal Court*
- *Matter remitted to Federal Circuit Court*
- *Whether application can be made to FCC to amend or re-open*

In *SZQDZ v Minister for Immigration and Border Protection* [2014] FCAFC 12 (25 February 2014); *SZGT v MIBP* [2014] FCAFC 23 (25 February 2014); and *SZQER v MIBP* [2014] FCAFC 14 (25 February 2014) a Full Court considered whether there were any limits on amending proceedings in the Federal Circuit Court that had been remitted to the Federal Circuit Court by the Federal Court.

NATIVE TITLE

- *Whether title extinguished by war time orders*

In *Congoo (on behalf of the Bar-Barrum People #4 v State of Queensland* [2014] FCAFC 9 (21 February 2014) a Full Court concluded the occupation of land by the army under national security legislation in World War 2 for a limited time and a limited purpose did not extinguish native title.

PRACTICE

- *Leave to appeal from finding proceeding an abuse of process Practice*

LEGAL PRACTITIONERS

- *Practitioner criticised in judgment for way case conducted*
- *Whether practitioner may appeal adverse findings*

In *Ashby v Slipper (includes Corrigenda dated 24 and 5 March 2014)* [2014] FCAFC 15 (27 February 2014) the primary judge found proceedings commenced by A claiming damages for workplace harassment as an employee of a parliamentarian, S, were an abuse of process as they were predominantly aimed at pursuing a political attack against

S. The primary judge also found A’s solicitor had committed an abuse of process by including various scandalous and irrelevant allegations in the matter. A Full Court concluded the findings against A should not have been made and overturned the orders dismissing the proceedings as an abuse of process within *Federal Court Rules 2011* (Cth) O.26.01. The Full Court observed that while damage to reputation arising from court orders (as distinct from the reasons of the court) could form the basis of an appeal, the subject orders made did not affect the reputation of the solicitor and leave to appeal for the solicitor to separately appeal against the interlocutory orders dismissing the proceeding would be refused.

WORKERS COMPENSATION

- *“Normal weekly earnings”*
- *Allowance received intermittently*

In *Comcare v Simmons* [2014] FCAFC 4 (13 February 2014) a Full Court considered how the normal weekly earnings of a federal police officer were to be calculated for ss8(1) and 19 of the *Safety Rehabilitation and Compensation Act* (Cth)1988 where the officer received an allowance for higher duties intermittently.

ADMINISTRATIVE LAW

- *Fraud*
- *Fraud affecting decision of FCC*

In *SZSXT v Minister for Immigration and Border Protection* [2014] FCAFC 40 (4 April 2014) the Federal Circuit Court refused to extend time for S to seek review of an adverse decision of the Refugee Review Tribunal: [2014] FCCA 1293. S complained that he had been “represented” by a fraudster who falsely claimed to be a migration agent but who was facing charges for not being one. The Full Court concluded that the decision in *SZFDE v Minister for Immigration and Citizenship* [2007] HCA 35 applied and as there had been fraud on the appellant and the FCC the decision refusing

him an extension of time would be quashed.

ADMINISTRATIVE LAW

- **Separation of powers**
- **When administrative body can find licence holder “guilty” of offence absent criminal proceedings**

In *Today FM (Sydney) Pty Ltd v Australian Communications and Media Authority* [2014] FCAFC 22 (14 March 2014) a schedule in the *Broadcasting Services Act 1992* (Cth) provided every licence was subject to a condition that the licensee will not use the service in the commission of an offence. A Full Court concluded this did not authorise the respondent to find a licensee had committed a criminal offence prior to that being determined by a court.

BROADCASTING

- **Offences**
- **Broadcasting of tobacco advertisement**

In *Channel Seven Adelaide Pty Limited v Australian Communications and Media Authority* [2014] FCAFC 32 (21 March 2014) a Full Court allowed by majority an appeal from a primary judge who concluded the appellant broadcaster had by broadcasting a news item about sales of illicit tobacco broadcast a tobacco advertisement (contrary to the *Tobacco Advertising Prohibition Act 1992* (Cth)). Consideration of the intent elements of the offences created by the Act.

INCOME TAX

- **Appeals**
- **Proof assessments excessive**

In *Rigoli v Commissioner of*

Taxation [2014] FCAFC 29 (18 March 2014) a Full Court considered provisions in s14ZZK of the *Tax Administration Act 1953* (Cth) concerning proof in a default assessment under s167 and whether a concession by the taxpayer amounted to proof of income.

INDUSTRIAL LAW

- **Enterprise agreement**
- **Staff discipline**
- **“Custom and usage”**

In *Australian Rail, Tram & Bus Industry Union v KDR Victoria Pty Ltd Trading as Yarra Trams* [2014] FCAFC 24 (18 March 2014) a Full Court concluded the primary judge had not erred in holding the clauses in the enterprise agreement relating to staff discipline were not to be interpreted by reference to “custom and usage” to require determination by a person independent of management.

MIGRATION

- **Untrue information**
- **PIC 4020**

In *Trivedi v Minister for Immigration and Border Protection* [2014] FCAFC 42 (4 April 2014) “Public Interest Criterion 4020” in the *Migration (1994) Regulations* required that to be granted a visa there must be, inter alia, no evidence the visa applicant had made a false or misleading statement. A Full Court considered that the criterion may apply in the absence of a finding the visa applicant was knowingly complicit in the untrue information.

Migration

- **Failure of RRT to consider evidence**

In *Minister for Immigration and*

Border Protection v SZSRS [2014] FCAFC 16 (6 March 2014) a Full Court reviewed authority as to whether failure by the Refugee Review Tribunal to refer to a piece of evidence (a letter in support) meant that relevant evidence or a relevant claim had been overlooked and whether either constituted jurisdictional error.

MIGRATION

- **Deportation**
- **AAT unable to assess best interests of children**

In *Paerau v Minister for Immigration and Border Protection* [2014] FCAFC 28 (19 March 2014) a Full Court concluded that a decision of the Administrative Appeals Tribunal that it was unable in a criminal deportation matter to assess the best interests of the applicant’s children because the provisions of s500(6H) of the *Migration Act 1958* (Cth) prevented the applicant giving that evidence should not be set aside on appeal.

TAX

- **GST**
- **Supply by Australian travel agents of services to off-shore agents for tourists travelling to Australia**

In *ATS Pacific Pty Ltd v Commissioner of Taxation* [2014] FCAFC 33 (27 March 2014) a Full Court considered how GST was to be levied on supplies by Australian travel agents of services to overseas travel agents arranging travel of non-residents in Australia. ●

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