did not represent the state of Queensland. The plaintiff unions brought proceedings in the original jurisdiction of the High Court contending the authority was a trading corporation for s51(xx) of the Constitution and that certain provisions of the Act dealing with industrial matters were inconsistent with the *Fair Work Act* 2009 (Cth) and invalid. The High Court answered questions stated in these proceedings to the general effect that the Authority was a "trading corporation" for s51(xx) of the Constitution. The plurality declined to respond to more general submissions as to when jurisprudence accepted independent legal entities as "corporations" and so declined to decide whether the authority was also a "corporation" simpliciter: French CJ, Hayne, Kiefel, Bell, Keane, Nettle JJ jointly; sim Gageler. Answers to questions stated accordingly.

CONSTITUTIONAL LAW

State legislation cancelling mining licences obtained by corruption – whether legislation invalid as being in effect an exercise of judicial power – whether legislation of a penal and judicial nature

In *Duncan v New South Wales* [2015] HCA 13 (15 April 2015) the Independent Commission Against Corruption in NSW concluded in reports to the NSW Parliament in August 2013 (report on ICAC Operation Acacia) and September 2013 (report on ICAC Operation Jasper) that three exploration licenses had been granted under the *Mining Act* 1992 (NSW) in 2008 and 2009 as a result of corruption. In 2014 the NSW Parliament passed the *Mining Amendment (Operations Jasper and Acacia) Act* 2014 (NSW). This cancelled the licenses without compensation. The current proprietors of the licenses commenced proceedings in the original jurisdiction of the High Court contending, inter alia, that the Act was in excess of the power of the NSW legislature as it amounted to an exercise of judicial power to punish the owners or their predecessors. This submission was rejected by the High Court. It concluded in a joint judgment that the law did not contain the features that characterised a law as a "bill of pains and penalties" and thus an intrusion of the legislature into the judicial process and the law was within power: French CJ, Hayne, Kiefel, Bell, Gageler, Keane and Nettle JJ jointly. The High Court concluded that other submissions such as that part of the Act was contrary to the *Copyright Act* 1968 (Cth) did not arise. Case stated answered accordingly.

CORRUPTION (NSW)

Corrupt conduct – conduct that would adversely affect exercise of official functions – whether conduct that would affect efficacy not probity of official functions is corrupt conduct

In *Independent Commission Against Corruption v Cunneen* [2015] HCA 14 (15 April 2015) s8(2) of the I*ndependent Commission Against Corruption Act* 1988 (NSW) relevantly defined "corrupt conduct" as conduct that would "adversely affect" the exercise of official functions by a public official. C was a Deputy Senior Crown Prosecutor in NSW. In 2014 ICAC served a summons on C inviting her to appear at an inquiry to investigate an allegation that C had (in a personal context and unrelated to duties as a prosecutor) counselled a driver as to how to prevent the police obtaining a reading of the blood alcohol content of that driver. C commenced proceedings in the NSW Supreme Court claiming the alleged conduct was not corrupt conduct for s8 of the *ICAC Act* and it had no jurisdiction. She failed before the primary judge but her appeal to the Court of Appeal (NSW) was allowed. ICAC's appeal to the High Court was dismissed by majority: French CJ, Kiefel and Nettle JJ jointly; contra Gageler J. The majority concluded that the reference to "adversely affect" meant adversely affect the probity of the exercise of an official function and it did not refer to the efficacy of the exercise of an official function in a different manner than would otherwise be the case. Leave to appeal granted; appeal dismissed.

Thomas Hurley's Federal Court Judgements

June 2015

INDUSTRIAL LAW

Power of agent to sign industrial agreement

In *Australian Nursing and Midwifery Federation v Kaizen Hospitals (Essendon) Pty Ltd* [2015] FCAFC 23 (5 March 2015) an employer claimed that its agent had not had authority to sign an industrial agreement that was approved by the Fair Work Commission (FWC) and it should not have been approved under s186 of the *Fair Work Act* 2009 (Cth). The employer failed before the initial Deputy President and on appeal to a Full Bench. The employer succeeded before a single Federal Court judge exercising jurisdiction under s75(v) of the Constitution who quashed the decision of the FWC. The union successfully appealed to the Full Court of the Federal Court which restored the decision of the FWC. Consideration by the Full Court of the difference between an appeal (or application for leave to appeal) within the FWC, establishing jurisdictional error in the Federal Court and an appeal on that question within the Federal Court. The Full Court concluded the employer's representative had apparent authority to act as a "bargaining representative" (see s185 *Fair Work Act*) to sign the agreements and they should stand.

STATUTES

Subordinated legislation – power of executive to make regulations that effectively negate operation of Act

In *Australian Maritime Officer's Union v Assistant Minister for Immigration and Border Protection* [2015] FCAFC 45 (26 March 2015) s9A(5) of the *Migration Act* 1958 (Cth) defined an "offshore resources activity" as, inter alia, to include an activity carried out "within an area as determined by the Minister." In 2014 (and after regulations permitting visas for foreign workers employed in offshore resource activities were disallowed by the Senate) the respondent Minister determined to exclude all operations and all activities from the definition with the consequence the non-citizen workers involved did not require visas. The primary judge declared the determination valid. This decision was reversed by a Full Court which reviewed authority as to the construction of delegated legislation. The Full Court concluded that while Parliament may be taken to have authorised incremental decisions it could not be taken to have authorised a determination that in effect suspended the operation of this provision of the *Migration Act*.

MIGRATION

Cancellation of visas on character grounds

In *Fraser v Minister for Immigration and Border Protection* [2015] FCAFC 48 (2 April 2015) a Full Court concluded the Minister had given "proper genuine and realistic" consideration to all relevant matters before cancelling a visa of a convicted criminal on character grounds under s501 of the *Migration Act* 1958 (Cth). A different Full Court made a like decision in *Gbojueh v MIBP* [2015] FCAFC 43 (24 March 2015). In *Contreras v MIBP* [2015] FCAFC 47 (1 April 2015) a different Full Court concluded the Administrative Appeals Tribunal had not erred in performing the balancing exercise required by Ministerial guidelines before upholding a decision to cancel a visa on character grounds under s501 of the *Migration Act*. In *Grass v MIBP* [2015] FCAFC 44 (27 March 2015) a different Full Court concluded the fact that the Minister as a politician made general public statements about persons of bad character did not reveal bias in the instant decision.

MIGRATION

Refugees – stateless person

In *SZUNZ v Minister for Immigration and Border Protection* [2015] FCAFC 32 (13 March 2015) a Full Court reviewed the provisions relating to the determination of refugee status for the *Migration Act* 1958 (Cth) for a stateless person.

MIGRATION

Refugees – persecution

In *BZAFM v Minister for Immigration and Border Protection* [2015] FCAFC 41 (24 March 2015) a Full Court in a joint judgment concluded the Refugee Review Tribunal had not erred in applying the definition of 'persecution' in s91R(2)(a) of the *Migration Act* 1958 (Cth) and that the decision of a single judge in *WZAPN v MIBP* [2014] FCA 947 (3 September 2014) was not correctly decided.