

### Workplace Relations and Other Legislation Amendment Act 1996 (No 60 of 1996)

Changes made by this Act include the transfer of the jurisdiction of the Industrial Relations Court of Australia to the Federal Court of Australia. Schedule 16 of the Act, which commenced on 25 May 1997, also makes a number of formal changes in the Federal Court, including the abolition of the Divisions of the Court and the renaming of the Chief Judge as the Chief Justice.

### High Court and Federal Court Decisions of Particular Interest

The following case summaries of recent decisions of administrative law interest from the High Court and Federal Court have been contributed by Alan Robertson, Senior Counsel and Member of the Administrative Review Council.

**Register of National Estate – Power of Australia Heritage Commission to enter place in the Register – Whether dependent on Commission’s own view of identity of place or objective ascertainment of jurisdictional fact – *Australian Heritage Commission v Mount Isa Mines Ltd* (1997) 142 ALR 622**

Section 23 of the *Australian Heritage Commission Act 1975* provides that the Commission shall enter in the Register a place “where the Commission considers” that the place “should be recorded as part of the National Estate”. The Commission resolved to enter in the Register an area of some 300,000 hectares which included the Sir Edward Pellew Group of islands. Mount Isa Mines Limited sought judicial review of the decision.

Section 4 of the Act declared that the national estate consisted of ‘places’ having certain aesthetic, historic, scientific or social significance or other special value. A majority of the Full Court of the Federal Court had said that the

status of a place, as provided in section 4, was an objective fact, ascertainable by reference to its qualities and that, in ascertaining whether a particular place had those qualities, the Commission was bound to make an evaluation of the particular place which would involve matters of judgment and degree.

The High Court allowed the Commission’s appeal.

After noting that judicial review may be available, in a case such as the present, at general law or under s 75(v) of the Constitution or under the *Administrative Decisions (Judicial Review) Act 1977*, the High Court approved the dissenting judgment of Black CJ. He had said that the final determination of the question of whether or not a place was part of the national estate was one that was committed by the Act to the Commission: it was not a jurisdictional fact.

The High Court said that the Commission’s determination of the question whether a place should be recorded as part of the national estate was not subject to review provided the Commission otherwise conducted itself in accordance with law.

**Judicial Review of decisions of Casino Control Authority – Challenge to grant of licence to operate casino – Whether jurisdictional error – Privative clause excluding judicial review – *Darling Casino Limited v New South Wales Casino Control Authority and Others* (1997) 143 ALR 55**

The NSW Court of Appeal had ordered that the proceedings brought to challenge the Casino Control Authority’s decision to grant a licence to operate the Darling Harbour casino be dismissed on the footing that they were barred by the privative clause\* in section 155 of the *Casino Control Act 1992* (NSW). In the High Court the appellant relied upon alleged jurisdictional error and submitted that section 155 did not exclude judicial review on that ground.

The relevant part of section 155 provided –