

# S *upreme Court Notes*

*This month's reporter is Mark Hunter*

## **Civil Law – Workers' Compensation – Section 74 Work Health Act** Sanders -v- Northern Territory of Australia – SC 73 of 1996

Judgment of Martin CJ delivered 15 October 1996 (unreported)

The parties had sought the authorisation of the Work Health Court for the commutation of weekly compensation payments pursuant of Section 74 of the *Work Health Act*.

Affidavit evidence submitted to Gillies SM was to the effect that the appellant's condition had stabilised, her rehabilitation was complete, she was not totally incapacitated and had received financial counselling. The appellant deposed to wanting a lump sum to reduce the mortgage debt on her home.

The Magistrate refused to record the parties' written agreement so that it would become enforceable as if it were a determination of the Court. His reasons for refusal were:

- a. It would be unjust to record the agreement because the appellant believed her rights to weekly compensation would be extinguished once the agreement was approved;
- b. The agreement "represents a contracting out of the workings of the *Work Health Act* so far as future payments of weekly compensation are concerned"; and
- c. The agreement represented "an attempt to exclude the rights and entitlements of the worker" and was therefore "null and void" pursuant to Section 186(2) of the Act.

An appeal was lodged against the Magistrate's Order.

**HELD**

- A. The appellant understood the financial consequences of commutation;
- B. The agreement did not represent a "contracting out" of the

- Act;
- C. The agreement was designed to obtain a benefit for the appellant as allowed under the Act in appropriate circumstances. There was no attempt to exclude the rights and entitlements of the appellant; and
  - D. There was no basis for the Magistrate refusing to record the argument.

His Honour set aside the order of gillies SM and directed the recording of the agreement. By consent, it was ordered that the respondent pay the appellant's costs in both Courts.

**APPELLANT:**

Counsel: Priestly  
Solicitors: Waters James  
McCormack

**RESPONDENT:**

Counsel: Grant  
Solicitors: Solicitor for the NT

## **Criminal Law – Possession of anti-personal sprays – "reasonable excuse"**

Taikato -v- The Queen – FC 96/033  
Judgment delivered 16 October 1996 (unreported)

The appellant was convicted by a Magistrate for having in her possession in a public place a prohibited article without reasonable excuse or lawful purpose. The charge was laid under section 545E of the *Crimes Act (NSW)*. She was fined \$400.

The article in question was a pressurised can of formaldehyde, which was found by the police officers in the appellant's handbag when they conducted a search for unrelated reasons.

An analyst's report certified that the canister when discharged produced a clear liquid with a pungent odour, for-

maldehyde being a "known irritant substance".

The appellant told police she had not used the spray, but kept it in her bag so she could defend herself if attacked.

On appeal, a District Court judge stated a case to the Court of Criminal Appeal, which confirmed his view that the appellant had not established a lawful purpose for the possession of the canister. She did not seek to argue "reasonable excuse" and the Court of Criminal Appeal stated that in the absence of a reasonable apprehension of imminent attack, that defence was not open to her.

The High Court granted leave to appeal but, in a majority decision, dismissed the appeal.

**HELD** (per Brennan CJ, Toohey, McHugh and Gummow JJ)

1. Possession of a dangerous article for the purpose of self defence is not possession for a "lawful purpose";
2. The appellant did not have a "reasonable excuse" in view of the fact that she was stopped in a suburban street at 12.15pm.

Dawson and Kirby JJ (dissenting) – "reasonable excuse" was available on the facts found by the District Court judge.

Gaudron J (dissenting) – self defence can constitute a "reasonable excuse" and a "lawful purpose" whether or not there is an apprehension of imminent attack.

**APPELLANT:** Womens' Legal Resources Centre

**RESPONDENT:** DPP

**COMMENTARY:**

S.56A of the Summary Offences Act (NT) prohibits the possession of an 'offensive weapon' without "lawful excuse". This section specifically excludes self defence as a lawful excuse. It is less clear whether an anti-personnel spray would fall within the definition of an "offensive weapon".