

CONFERENCES

1 - 2 August 2002

Information Technology Law
(LAWASIA, Malaysian Bar Council,
Commonwealth Lawyers Association)
Kuala Lumpur, Malaysia
Tel: 61 9 8946 9500
Fax: 61 8 8946 9505
lawasia@lawasia.asn.au

9 August 2002

NSCF Forum: Privacy -
balancing the needs of
researchers and the
individual's right to privacy
under the new privacy laws
ACT

Tel: 02 6125 9860
Fax: 02 6248 6287
aah.office@anu.edu.au

26 - 31 August 2002

40th Annual Congress of the
International Association of
Young Lawyers
Lisbon
Tel: 02 9385 1035
Fax: 02 9313 6658
a.mcnaughton@unsw.edu.au

30 August 2002

World Masters of Law Firm
Management
Sydney, NSW
Tel: 02 6247 3788
Fax: 02 6248 0639
gerard.oneill@lawcouncil.asn.au

2 - 3 September 2002

Current Issues in Regulations:
Enforcement and Compliance
Melbourne, Vic
Tel: 02 6292 9000
Fax: 02 6292 9002
confco@austarmetro.com.au

23 - 24 September 2002

Probation and Community
Corrections: Making the
Community Safer
Perth, WA
Tel: 02 6292 9000
Fax: 02 6292 9002
confco@austarmetro.com.au

2 October - 6 October 2002

8th International Criminal Law
Congress
Melbourne
Jon Tippet
Tel: 08 8981 6833
Fax: 08 8981 6837
jcat@octa4.net.au
Suzan Cox
Tel: 08 8999 3000
Fax: 08 8999 3099
suzan.cox@ntlac.nt.gov.au

10- 12 October 2002

PIAA International Section
Conference 2002
Sydney, NSW
Tel: 02 9954 4400
Fax: 02 9954 0666
PIAA@dcconferences.com.au

20 - 22 October 2002

3rd AIJA Technology for Justice
Conference
Sydney, NSW
Tel: 02 9241 1478
Fax: 02 9251 3552
techjust@icmsaust.com.au

13 - 17 April 2003

13th Commonwealth Law
Conference
Melbourne, Australia
Tel: 03 9820 9115
Fax: 03 9820 3581
comlaw@mcigroup.com

29 June - 5 July 2003

Criminal Lawyers Association of
the Northern Territory
9th Biennial Bali Conference
Bali
Tel: 08 8981 2549
Fax: 08 8981 2596
wildlyn@hotmail.com

1 - 5 September 2003

18th LAWASIA Biennial
Conference
Tokyo, Japan
Tel: 61 9 8946 9500
Fax: 61 8 8946 9505
lawasia@lawasia.asn.au

from previous page

methods to be clear and practical. The second half of the book provides a concise guide to various research tools, particularly those on the Internet, in all Australian and various overseas jurisdictions. The guide includes practical tips regarding access and the limitations of the each information source.

The book will be useful for its primary audience. For those not embarking research projects, it is probably of limited utility.

- Steven Smith, solicitor,
Hunt & Hunt

NOTICEBOARD

Federal Court Notes July 2002

Prepared for the Law Council of Australia and its Constituents by Thomas Hurley,
Barrister, Vic., NSW, ACT
(Editor, Victorian Administrative Reports)

Income Tax - change from cash receipts to accrual basis

In *Dormer v FCT* [2002] FCA 537; 30.4.2002) Gyles J considered that the circumstance that a tax payer assessed on a cash receipts basis transferred his business into a partnership which returned income on an accruals basis did not affect assessment of previous income.

Superannuation - total and permanent disablement - "unable"

In *Constantinides v Du Pont Superannuation Fund P/L* ([2002] FCA 534; 30.4.2002) Marshall J considered a provision in an insurance policy for superannuation authorised benefits for total and permanent disability to a person

continued next page

NOTICEBOARD

from previous page

"unable" to ever engage in work did not set a test different from being "unlikely" to ever do so. *Consideration of when Superannuation Complaints Tribunal must affirm a decision of a trustee if satisfied that it fair and reasonable.*

Social Security - entitlement to disability support pension - recipient unfit to plead

In *Secretary DFCS v Franks* ([2002] FCA 575; 8.5.2002) Cooper J concluded a decision of the AAT that a person remanded to a psychiatric institution for unfitness to stand trial was not entitled to a disability support pension involved an error of law. He concluded the AAT had misconstrued State legislation impacting on the question of whether the recipient was "undergoing psychiatric confinement" within s.1158(1) of the *Social Security Act 1991* (Cth).

Migration - indefinite detention - children of deportee

In *Perez v MIMA* ([2002] FCA 450; 3.5.2002) Allsop J ordered that a deportee held under s.253 of the *Migration Act* be released where the interests of the children of the deportee were not taken into account [123]. He concluded the circumstance that execution of the deportation order was severely delayed did not form a ground for relief [108].

Migration - visas - engage in studies or training for less than three months

In *Desai v MIMA* ([2002] FCA 330; 21.3.2002) a Full Court considered whether the requirement in a regulation that a person not engage in study or work whilst in Australia for more than 3 months recognised that the person could do this for less than that period. Consideration of the tourist long stay visa

Migration - purpose of travel - "purpose related to business"

In *MIMA v Saravanan* ([2002] FCA 348; 3.4.2002) a Full Court considered when a person proposed to enter or remain in Australia for "a purpose related to business".

Migration - when mistake as to translation a mistake of law

In *W375/01A v MIMIA* ([2002] FCA 379; 3.4.2002) a Full Court concluded that the RRT had made a serious mistake in relation to the interpretation of material before it such as it had not decided the case on the evidence before it.

Migration - erroneous MRT decision - privative clause

In *Awan v MIMIA* ([2002] FCA 594; 9.5.2002) North J set aside a decision of the MRT which based its review on an application for a student visa on erroneous facts concerning the Applicant's financial status. North J concluded the MRT made its decision in breach of s.359A of the *Migration Act* and that this authorised grant of a Constitutional Writ.

Extradition - final conviction in absence of person

In *Hellenic Republic v Tzatzimakis* ([2002] FCA 340; 27.3.2002) North J considered that a person was absent at the time of conviction within s.10(1) of the *Extradition Act 1998* (Cth) when the accused was not present for whatever reason.

Extradition - whether Executive or Statutory Power

In *Oates v Attorney-General* ([2002] FCA 347; 28.3.2002) a Full Court considered whether the power to order extradition to Poland was found in the *Extradition Act* or the *Executive Power* and whether the power was circumscribed by a 1934 Imperial Order.

Income tax - mutuality - failure to take reasonable care

In *North Ryde RSL Community Club Ltd v FCT* ([2002] FCA 313; 25.3.2002) a Full Court considered whether Keno receipts were subject to the mutuality principle, or trading receipts, and whether failure to apply for a private ruling can constitute a failure to take reasonable care to comply with the ITAA.

Corporations - administration - application by lessor to recover possession

In *Canberra International Airport Pty Ltd v Ansett Australia Ltd* ([2002] FCA 329; 22.3.2002) Kenny J considered an application by a lessor to recover possession of property leased by an airline in administration and factors relevant to the discretion of the court given by s.440C of *Corporations Act* to grant possession.

Administrative law - AAT - standing

In *Brisbane Airport Corporation Limited v Wright* ([2002] FCA 359; 28.3.2002) Dowsett J granted the Applicant orders under the *AD(JR) Act* setting aside the "conclusive" order of the AAT that the Respondent was a person whose interests were affected by the decision to approve a draft master plan for Brisbane Airport. Consideration of questions of standing before the AAT.

Bankruptcy notice - statement of entitlement to interest erroneous

In *Cosco v Tsatsoulis* ([2002] FCA 358; 28.3.2002) Hely J dismissed a creditors petition which relied on non-compliance with a bankruptcy notice which erroneously stated the source of the entitlement of the judgment creditor to interest.

Bankruptcy - whether distribution to beneficiary of trust for work done

In *Piccolo v McVeigh* ([2002] FCA 323; 25.3.2002) Merkel J concluded the AAT erred in concluding a distribution to a beneficiary of a bankrupt's family discretionary trust was income received as a result of work done or services performed by the bankrupt/trustee.

Practice - costs against stranger to litigation

In *Gore v Justice Corp P/L* ([2002] FCA 354; 28.3.2002) a Full Court considered when a stranger to litigation, who had funded a party to it and stood to gain from a successful result, could be ordered to pay some or all of the other party's costs. The Full Court concluded the primary judge erred in concluding the stranger ought not be liable for costs.

Practice - irregularly obtained ex parte order

In *Liberty Financial Pty Ltd v Scott* ([2002] FCA 345; 26.3.2002) Weinberg J considered the options for a party subject an ex parte order improperly obtained. He considered

NOTICEBOARD

the duty of candour applicable to a party seeking ex parte relief.

Practice - Costs - Calderbank Letter

In *Wenzel v Australian Stock Exchange Ltd* ([2002] FCA 353; 27.3.2002) Sundberg J concluded that the presence of a Calderbank Letter did not lead to a presumption that costs to the successful party should be awarded on an indemnity basis.

Practice - service outside jurisdiction

In *ACCOT & TAG* ([2002] FCA 561; 3.5.2002) R D Nicholson J granted leave to serve proceedings in accordance with Ord 8r2(2) of the Federal Court Rules in Switzerland.

Industrial law - Workplace agreement - duress

In *Canituri v Sita Coaches Pty Ltd* ([2002] FCA 349; 27.3.2002) Ryan J considered when a penalty should be imposed under s.170VW of the *Workplace Relations Act 1996* (Cth) for breach of s.170WG(1).

Industrial law - termination of employment

In *University of Wollongong v NTEIU* ([2002] FCA 360; 28.3.2002) a Full Court dismissed an appeal against a finding that the summary dismissal of an academic was in breach of the relevant enterprise agreement for failure to give the required notice.

Costs of unsuccessful applicant in public interest litigation

In *North Australian Aboriginal Legal Aid Service Inc v Bradley* (no. 2) ([2002] FCA 564; 7.5.2002) Weinberg J considered the extent by which the costs payable by an unsuccessful Applicant in public interest litigation concerning the validity of the appointment of the Chief Magistrate of NT should be reduced to reflect issues upon which the Applicant did succeed and the public interest nature of the litigation.

Costs - application for interlocutory costs to be taxed forthwith

In *Eunsoni v Beaulieu United Ltd* ([2002] FCA 366; 28.3.2002) Kenny J considered when an application under FCR Ord 62R3(2) for an order that interlocutory costs be taxed and payable forthwith be granted.

High Court Notes July 2002

Appeal - Interlocutory orders - Appeal at conclusion of trial against earlier interlocutory orders - Judgment set aside

In *Gerlach v Clifton Bricks Pty Ltd* ([2002] HCA 22; 30.5.2002) before the trial in the District Court of NSW for damages for personal injury the plaintiff obtained an order dispensing with the jury. The plaintiff obtained judgment. The respondent appealed to the NSW Court of Appeal against the decisions of the judge who ordered that the jury be dispensed with and of the trial judge. The Court of Appeal concluded the first order dispensing with the jury should not have been made. As a consequence it set aside the judgment and ordered a new trial. The appeal by the plaintiff/appellant to the High Court succeeded by majority: Gaudron, McHugh, Hayne JJ; *contra* Kirby, Callinan JJ. The majority concluded the order of the Court of Appeal setting aside both the order concerning the

jury and the trial judgment (without considering whether the former order caused a miscarriage of justice) was in error and remitted the matter to that court. Appeal allowed.

Constitutional Law - Imposition by Commonwealth of tax on property of a State

In *SGH Ltd v C of T* ([2002] HCA 18; 1.5.2002) *The Constitution* S114 provided the Commonwealth could not "impose any tax on property of any kind belonging to a State". The High Court concluded by majority (Gleeson CJ, Gaudron, McHugh JJ; Gummow J, Callinan J; *contra* Kirby J that the Appellant (the successor of the SGIO Building Society Ltd.) was not conducting insurance business on behalf of the State of Queensland. The majority concluded that the control which could be exercised by "Sun Corp" (which was accepted did represent the State) was not so absolute so as to constitute the Appellant its agent [32] [65], [146] *contra* [109]. Consideration by the court of when the history and ownership structure of a corporation reveals it is an agent of another person. Question removed into the High Court from the Federal Court answered accordingly.

Aboriginals - Native Title - Land under the sea - Seabed of bays and gulfs

In *Risk v NT* ([2002] HCA 23; 30.5.2002) the High Court concluded that the seabed of bays or gulfs within the limits of the Northern Territory cannot be the subject of a claim under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth): Gleeson CJ, Gaudron, Kirby, Hayne JJ; McHugh J; Gummow J; Callinan J. The Court observed that it was not considering a claim under the *Native Title Act 1993* (Cth).

Administrative Law - Freedom of Information - Jurisdiction to review conclusive certificates

In *Shergold v Tanner* ([2002] HCA 1; 23.5.2002) the High Court concluded (Gleeson CJ, McHugh J, Gummow, Kirby, Hayne JJ) that Parliament had not in enacting provisions in s.33A(1) and (2) of the *Freedom of Information Act 1982* (Cth) indicated an intention that decisions made under the provision were not amendable to review under the AD(JR) Act. The High Court concluded the Full Court of the Federal Court had not erred in determining that there was jurisdiction under the AD(JR) Act to review decisions concerning conclusive certificates made under the FOI Act. Appeal dismissed.

Criminal Law - Homicide - Victim shot by co-accused in joint criminal activity

In *Harwood v Q* ([2002] HCA 30; 23.5.2002) the High Court dismissed an appeal against the conviction for murder of a person who was involved in an armed robbery with another when the co-accused shot the victim. Appeal dismissed.

Patents - Petty patents - obviousness

In *Firebelt Pty Ltd v Brambles Australia Ltd* ([2002] HCA 21; 23.5.2002) the High Court considered when a petty patent should be revoked on the ground that it did not involve an inventive step or was obvious. The court also considered the proper construction of ss.7(2) and (3) of the *Patents Act 1990* (Cth). Appeal against decision of the Full Court of the Federal Court dismissed: (Gleeson CJ, McHugh, Gummow, Hayne, Callinan JJ).