

NOTICEBOARD

Federal Magistrate Court Notes July 2002

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

Disability discrimination - access to premises restricted because of assistance dog

In *Sheehan v Tin Can Bay Country Club* ([2002] FMCA 95; 9.05.2002) Raphael FM concluded the applicant had been unlawfully discriminated against contrary to the *Disability Discrimination Act 1992 (Cth)* where his access to the respondent was restricted because he required assistance from a trained assistance dog.

Discrimination - Discharge from RAAF for diabetes

In *Williams v C of A* ([2002] FMCA 89; 7.06.2002) McGinniss FM concluded the respondent had dismissed the applicant from the RAAF on the basis of a disability, namely diabetes, and this was in contravention of the *Disability Discrimination Act 1992 (Cth)* and not saved by the references to the armed forces in the *Disability Discrimination Regulations 1996*.

High Court Notes July/Aug 2002

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Practice - Validity of State class action provisions

In *Mobil Oil Australia P/L v Victoria* ([2002] HCA 27;

26.6.2002) the High Court concluded that provisions in the *Supreme Court Act 1986 (Vic)* authorising class action which could involve unaware claimants in other States were within the power of State Parliament and did not involve the exercise of judicial power of the Commonwealth.

Criminal Law - Homicide - "unwilled acts"

In *Murray v Q* ([2002] HCA 26; 20.6.2002) the appellant held a gun towards the deceased in an argument before it discharged. The High Court allowed the appellant's appeal against murder on the issue of whether the trial judge had adequately directed the jury about unwilled acts or accident under s.23(1)(b) of the *Criminal Code (Q)*.

Criminal law - Homicide - "unwilled acts"

In *Ugle v Q* ([2002] HCA 2; 20.6.2002) the High Court allowed an appeal where it concluded there was a question as to whether the W.A. trial judge erred in failing to direct the jury about unwilled acts.

Statutory power - Whether fulfillment of condition requires exercise of power

In *Samad v District Court of New South Wales* ([2002] HCA 24; 20.5.2002) by s.149 of the *Poisons and Therapeutic Goods Act 1966 (NSW)* the Director General may suspend or cancel a license to dispose of pharmaceuticals on specified grounds. The High Court allowed an appeal against an order cancelling a license where it appeared the decision to cancel it was based on a view that once the specified grounds were established the Director-General was obliged to exercise the statutory power in favour of cancellation.

Federal Court Notes July 2002

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Migration - visa cancellation - no notice

In *Darko v MIMA* ([2002] FCA 775; 19.6.2002) Merkel J concluded the Minister was required to give the notice under s.129(1) of the *Migration Act* before he was empowered to cancel a visa under s.131.

Industrial law - prejudice to employee for reason of union membership - counselling

In *FSU v ANZ Banking Group Ltd* ([2002] FCA 631; 17.5.2002) Wilcox J considered whether formal counselling and warning to an employee constituted injury or alteration of the employee's position for reason of union membership contrary to s.298K(1) of the *Workplace Relations Act 1996 (Cth)*.

Federal Court - appeal from Federal Magistrate - interlocutory orders

In *Grundy v Wattyl Australia* ([2002] FCA 615; 14.5.2002) Moore J considered that an application for an interlocutory injunction to preserve the status quo pending an appeal from a Federal Magistrate should be determined on the same basis as would an application in an appeal from a single judge [15]. Order for sale of property of bankrupt stayed on condition.

Income tax - deductions - sun protection

In *Morris v C of T* ([2002] FCA 616; 14.5.2002) Goldberg J concluded various persons whose work required them to spend periods of time in the open air were entitled to claim the cost of sun protection as a deduction from income under the *ITAA*.

Migration - failure of MRT to defer one application pending another - jurisdictional error

In *Huo v MIMA* ([2002] FCA 617; 15.5.2002) Conti J concluded the MRT did not err in proceeding to determine an application for a business visa notwithstanding that the application by the sponsor for sponsorship was itself subject to an unresolved application to the MRT. He concluded the failure of the MRT to defer the hearing did not constitute jurisdictional error.

Migration - privative clause - jurisdiction

In *Alam v MIMIA* ([2002] FCA 630; 16.5.2002) Merkel J concluded s.474 of the *Migration Act* did not deprive the Federal Court of jurisdiction, as distinct from power, to consider whether relief should be granted.

Migration - special need relative

In *El Bkassini v MIMA* ([2002] FCA 612; 13.5.2002) Ryan J concluded the MRT erred in finding a person was not "special need relative" by reasoning that a need in the form of childcare did not constitute serious circumstances.

Federal Court - practice - access to court file

In *ACC v ABB Transmission and Distribution Ltd (No. 3)* ([2002] FCA 609; 13.5.2002) Finkelstein J considered when a party could have access to those parts of a court file referred to at trial.

Industrial law - certified agreement - construction where gap

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In *CFMEU v Amecor Ltd* ([2002] FCA 610; 15.5.2002) Finkelstein J considered that it was not appropriate for the court to construe a certified agreement which contained a gap by oversight on the basis that the court could imply its own view of what the parties would have agreed.

Industrial law - re-instatement - whether compliance with orders of AIRC

In *Blackadder v Ramsey Butchering Services P/L* ([2002] FCA 603; 10.5.2002) Madgwick J considered whether an employer breached orders of the AIRC in the way a re-instated worker had been treated. Consideration of re-instatement and right to work at common law.

Industrial law - whether notices of intended action valid

In *Adelaide Brighton Cement v Australian Workers Union* ([2002] FCA 601; 10.5.2002) von Doussa J considered notices of intended industrial action did not comply with s.170MA of the *Workplace Relations Act 1996 (Cth)* because they failed to indicate when rolling stoppages after the first one would occur.

Trade Practices - claim for personal injuries - liability of Transport Accident Commission

In *Lavrick v Lease Auto P/L* ([2002] FCA 599; 10.5.2002) Mansfield J considered, in an action under the Trade Practices Act for damages for personal injuries sustained in a motor vehicle accident involving a leased vehicle, that the Victorian *Transport Accident Commission* was obliged to indemnify the vehicle's lessor.

Migration - privative clause - essential precondition

In *SBBK v MIMA* ([2002] FCA 565; 10.5.2002) Tamberlin J concluded the failure of the RRT to consider whether claims by an applicant for a protection visa constituted the person as a member of a particular social group was such a fundamental error that it was not protected by s.474 of the *Migration Act*.

Administrative law - standing

In *SmithKline Beecham (Australia) P/L v Chipman* ([2002] FCA 674; 30.5.2002) Weinberg J considered when a third party has standing to seek review of an administrative decision made at the request of another, different approaches standing under the *ADJR Act* and s.39B *Judicial Act* and questions concerning alternative remedies.

Migration - interlocutory orders

In *Long v MIMIA* ([2002] FCA 774; 19.6.2002) RD Nicholson J considered the power of the court to grant interlocutory orders did not extend the power to effect the release of a non-citizen detained as a result of an administrative decision.

Constitutional law - validity of s.91R(3) of Migration Act

In *SAAS v MIMA* ([2002] FCA 726; 11.6.2002) Mansfield J considered s.91R(3) of the *Migration Act*, which requires that in determining whether a person is a refugee conduct engaged in by the person in Australia is to be disregarded unless the person establishes it was not for the purpose of strengthening a refugee claim, was Constitutionally valid.

Social Security - farm household support - "farmer"
In *Parrett v Secretary DFCS* ([2002] FCA 716; 7.6.2002) Madgwick J considered when a person was a "farmer" and eligible for financial assistance under the *"Farm Household Support Act 1992 (Cth)*.

Damages for unlawful breach of contract

In *Reynolds v Southcorp Wines P/L* ([2002] FCA 712; 6.6.2002) Hely J considered the basis on which damages should be calculated for unlawful breach by an employer of a contract of employment.

High Court of Australia (Fees) Regulations – Biennial Increase of Fees

The new schedule came into effect on 1 July 2002.

Schedule 1 – Fees for filing, issuing or sealing a document or obtaining a service – corporations (document or service mentioned in subregulation 4(1))

Item 1: Application under rule 1 or Order 55 of Rules
Filing Fee: \$2296, Hearing Fee: nil, Daily Hearing Fee: \$574 (half day Single J), \$1722 (full court)

Item 2: Writ of summons or petition
Filing Fee: \$2296, Hearing Fee: \$3444, Daily Hearing Fee: \$1722

Item 3: Civil leave or civil special leave application
Filing Fee: \$2296, Hearing Fee: nil, Daily Hearing Fee: nil

Item 4: Criminal special leave application
Filing Fee: \$72, Hearing Fee: nil, Daily Hearing Fee: nil

Item 5: Application initiating a proceeding (including removals under section 40 of the Act, but not including an application referred to in another item of this Schedule)
Filing Fee: \$2296, Hearing Fee: nil, Daily Hearing Fee: \$1722

Item 5A: Application for summons for directions
Filing Fee: \$574, Hearing Fee: nil, Daily Hearing Fee: \$574 (half day Single J)

Item 6: Civil notice of appeal
Filing Fee: \$2296, Hearing Fee: \$3444, Daily Hearing Fee: \$1722

Item 6A: Criminal notice of appeal
Filing Fee: \$422, Hearing Fee: \$707, Daily Hearing Fee: nil

Item 7: Certificate of the Registrar other than certificate of taxation
Filing Fee: \$41, Hearing Fee: n/a, Daily Hearing Fee: n/a

Item 8: Taxing a bill of costs for every \$100 or part of \$100
Filing Fee: \$9, Hearing Fee: n/a, Daily Hearing Fee: n/a

Item 9: Searching or inspecting a document for each hour of part of an hour
Filing Fee: \$13, Hearing Fee: n/a, Daily Hearing Fee: n/a

Item 10: Making a photocopy or office copy of any document – for each page
Filing Fee: \$3, Hearing Fee: n/a, Daily Hearing Fee: n/a

Item 11: Copy of reasons for judgement –
(a) for each copy issued to a person not a party to the

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proceedings

Filing Fee: \$3, Hearing Fee: n/a, Daily Hearing Fee: n/a

(b) for each copy in excess of one copy issue to a party to the proceedings

Filing Fee: \$3, Hearing Fee: n/a, Daily Hearing Fee: n/a

(ci) in respect of each copy issued for each page in excess of 10 pages

Filing Fee: \$1, Hearing Fee: n/a, Daily Hearing Fee: n/a

(cii) in respect of each copy issued maximum per copy

Filing Fee: \$28, Hearing Fee: n/a, Daily Hearing Fee: n/a

Item 12: Annual subscriptions for copies of reasons for judgments (including postage)

Filing Fee: \$494, Hearing Fee: n/a, Daily Hearing Fee: n/a

Item 13: Transcript (for each page)

Filing Fee: \$8, Hearing Fee: n/a, Daily Hearing Fee: n/a

Schedule 1 – Fees for filing, issuing or sealing a document or obtaining a service – individuals (document or service mentioned in subregulation 4(1))

Item 1: Application under rule 1 or Order 55 of Rules

Filing Fee: \$1148, Hearing Fee: nil, Daily Hearing Fee: \$287 (half day Single J), \$861 (full court)

Item 2: Writ of summons or petition

Filing Fee: \$1148, Hearing Fee: \$1722, Daily Hearing Fee: \$861

Item 3: Civil leave or civil special leave application

Filing Fee: \$1148, Hearing Fee: nil, Daily Hearing Fee: nil

Item 4: Criminal special leave application

Filing Fee: \$72, Hearing Fee: nil, Daily Hearing Fee: nil

Item 5: Application initiating a proceeding (including removals under section 40 of the Act, but not including an application referred to in another item of this Schedule)

Filing Fee: \$1148, Hearing Fee: nil, Daily Hearing Fee: \$861

Item 5A: Application for summons for directions

Filing Fee: \$287, Hearing Fee: nil, Daily Hearing Fee: \$287 (half day Single J)

Item 6: Civil notice of appeal

Filing Fee: \$1148, Hearing Fee: \$1722, Daily Hearing Fee: \$861

Item 6A: Criminal notice of appeal

Filing Fee: \$422, Hearing Fee: \$707, Daily Hearing Fee: nil

Item 7: Certificate of the Registrar other than certificate of taxation

Filing Fee: \$41, Hearing Fee: n/a, Daily Hearing Fee: n/a

Item 8: Taxing a bill of costs for every \$100 or part of \$100

Filing Fee: \$9, Hearing Fee: n/a, Daily Hearing Fee: n/a

Item 9: Searching or inspecting a document for each hour of part of an hour

Filing Fee: \$13, Hearing Fee: n/a, Daily Hearing Fee: n/a

Item 10: Making a photocopy or office copy of any document – for each page

Filing Fee: \$3, Hearing Fee: n/a, Daily Hearing Fee: n/a

Item 11: Copy of reasons for judgement –

(a) for each copy issued to a person not a party to the proceedings

Filing Fee: \$3, Hearing Fee: n/a, Daily Hearing Fee: n/a

(b) for each copy in excess of one copy issue to a party to the proceedings

Filing Fee: \$3, Hearing Fee: n/a, Daily Hearing Fee: n/a

(ci) in respect of each copy issued for each page in excess of 10 pages

Filing Fee: \$1, Hearing Fee: n/a, Daily Hearing Fee: n/a

(cii) in respect of each copy issued maximum per copy

Filing Fee: \$28, Hearing Fee: n/a, Daily Hearing Fee: n/a

Item 12: Annual subscriptions for copies of reasons for judgments (including postage)

Filing Fee: \$494, Hearing Fee: n/a, Daily Hearing Fee: n/a

Item 13: Transcript (for each page)

Filing Fee: \$8, Hearing Fee: n/a, Daily Hearing Fee: n/a

High Court of Australia Gazetted Rule of Court appointing the sitting dates for the High Court in 2003

(Excerpt of the Commonwealth Gazette)

It is ordered as follows:-

1. Sittings of the Court for transaction of all such business as may be brought before it shall be held during the year 2003 at the places and commencing on the days hereunder mentioned, that is to say:

Canberra - Tuesday, 4 February 2003

Canberra - Tuesday, 4 March 2003

*Hobart - Monday, 31 March 2003 at 2.15pm

Canberra - Tuesday, 8 April 2003

Canberra - Tuesday, 29 April 2003

Canberra - Tuesday, 27 May 2003

Canberra - Tuesday, 17 June 2003

*Brisbane - Monday, 23 June 2003 at 2.15pm

Canberra - Tuesday, 5 August 2003

*Adelaide - Monday, 11 August 2003 at 2.15pm

Canberra - Tuesday, 2 September 2003

Canberra - Tuesday, 29 September 2003

Melbourne - Monday 6 October 2003

*Perth - Monday, 20 October 2003 at 2.15pm

Canberra - Tuesday, 4 November 2003

Canberra - Tuesday, 2 December 2003

* No sittings will be held unless there is sufficient business to warrant the attendance of the Court.

2. Sittings to hear applications for special leave to appeal will also be held on the days hereunder mentioned, that is to say:

Friday 14 Feb 2003, Friday 14 Mar 2003, Friday 11

April 2003, Friday 9 May 2003, Friday 20 June 2003,

Friday 8 Aug 2003, Friday 12 Sept 2003, Friday 3 Oct

2003, Friday 14 Nov 2003, Friday 12 Dec 2003