

NOTICEBOARD

High Court Notes December 2003

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

Discrimination - Disability - Whether disability - Violent disturbed child expelled from State school - Whether disability includes behavioral manifestation of disorder - Whether obligation to accommodate person with disability - Whether comparator for determining less favorable treatment must have characteristics of disabled person - Causation

In *Purvis v. New South Wales (Department of Education and Training)* ([2003] HCA 6; 11.11.2003) in 1997 a child (P) who had by reason of brain injury behavioral problems and violent disposition was expelled from a NSW State school. The complaint of his foster parents to the Human Rights and Equal Opportunity Commission under the Disability Discrimination Act 1992 (Cth) was upheld in November 2000. The Commissioner concluded P had suffered discrimination because the State had failed to accommodate P's anger by adjusting the relevant welfare and discipline policy, providing teachers with appropriate training and obtaining the assistance of experts. Judicial review under the AD (JR) Act was granted to NSW by a Judge of the Federal Court and this conclusion was upheld by a Full Court of the Federal Court. The appeal by the foster parents to the High Court was rejected by majority: Gleeson CJ; Gummow, Hayne, Heydon JJ; Callinan J; contra McHugh, Kirby JJ. The majority concluded the Commissioner had erred by confusing the consequence of the disability (violence) as being a part of it. The majority concluded the correct comparison for determining discrimination was with a student who did not have the disability being the mental impairment rather than a propensity to violence. Appeal dismissed.

Statutes - General and special provisions - Criminal law - Procuring supply of narcotic - Supplier deemed to be consumer

In *Moroney v. Q* ([2003] HCA 63; 11.11.2003) the Appellant was a prisoner charged under s6 of the Drugs Misuse Act 1986 (Q) that he unlawfully supplied a drug "to another" when he procured the drugs for himself. The High Court concluded the Appellant had been properly convicted on the basis that by s7 of the Criminal Code (Q) he was to be regarded as a principal offender because he had counseled or procured the other person to supply him with narcotics in prison. Appeal dismissed.

Criminal law - Murder - Direction concerning manslaughter - Whether miscarriage of justice

In *Gillard v. (Q)* ([2003] HCA 64; 12.11.2003) G was convicted of murder. He had been the driver for another who murdered a drug dealer. The trial Judge did not direct the jury that a conviction for manslaughter was open. This direction was upheld by the Court of Criminal Appeal (SA). On G's appeal to the High Court the prosecution agreed the direction constituted an error of law but contended no miscarriage of justice had occurred within the proviso to s353(1) of the Criminal Law Consolidation Act 1935 (SA). G's appeal to the High Court was allowed: Gleeson J; Callinan J; Gummow J; Kirby J; Hayne J. The Court considered criticisms of its decision concerning criminal complicity in *McAuliffe v. Q* (1995) 183 CLR 108 but observed

that the reconsideration of this case was neither sought nor required. Appeal allowed.

Constitutional law - Exclusive powers of Commonwealth Parliament - Commonwealth places - Local council rates

In *Paliflex P/L v. Chief Commissioner State Revenue* ([2003] HCA 65; 21.11.2003) the High Court considered the operation of the Land Tax Act 1956 (NSW) and the Land Tax Management Act 1956 (NSW) in relation to land that was acquired by the Commonwealth for public purposes within Constitution s52(i) and subsequently sold into private ownership. The High Court concluded the land tax legislation was not State Legislation with respect to a place acquired by the Commonwealth for public purposes. In *South Sydney CC v. Paliflex P/L* [2003] HCA 66 (12 November 2003) between the same parties the Court considered whether the new owner of the land was liable to pay local Government rates and charges.

Statutes - Whether Bill for an Act to repeal an Act is a Bill for an Act to "Amend" it - Whether Bills that have passed Parliament lapsed on it being prorogued

In *Attorney-General (WA) v. Marquet* ([2003] HCA 67; 13.11.2003) by s13 the Electoral Distribution Act 1947 (WA) sought to entrench its provisions by requiring any Bill for an Act to "amend" it be passed by a certain parliamentary majority. A package of legislation was passed whereby one Act repealed the Act and another Act replaced it. The respondent (the Clerk of the Parliaments of WA) commenced proceedings seeking declarations as to whether it was lawful to present the relevant Bills to the Governor for assent. The majority of the Full Court Supreme Court WA concluded it would not be lawful. The appellant's appeal to the High Court was dismissed by majority: Gleeson CJ, Gummow, Hayne, Heydon JJ; jointly contra Callinan J sim Kirby J. The majority concluded that on its proper construction the Bills forming the package of legislation amounted to legislation to "amend" the Act albeit the immediate effect was to "repeal" it [52]; contra Kirby J [187]. The Court concluded that because the Bills had passed through all parliamentary steps before Parliament was prorogued the Bills did not lapse and it would be otherwise lawful to present them for assent [85]. Appeal dismissed.

Federal Court Notes: December 2003

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

Migration - Jurisdictional error - Cancellation of unidentified Visa

In *MIMIA v. Schwart* ([2003] FCAFC 229; 16.10.2003) a Full Court concluded a decision to cancel a visa under s501 of the Migration Act involves a jurisdictional error when it was not clear from the material presented to the Minister what visa it was that was being cancelled.

Migration - Tribunals - Invitation to comment - Interpretation

In *Appellant P119/2002 v. MIMIA* ([2003] FCAFC 230; 16.10.2003) a Full Court considered when the circumstances of a proceeding in the MRT required it to invite an applicant for a visa to comment under s451 of the Migration Act.

NOTICEBOARD

Federal Court - Jurisdiction - Application to enforce settlement of earlier proceedings

In *Macteldir P/L v. Dimovski* ([2003] FCAFC 228; 17.10.2003) a Full Court concluded that the Court did not have jurisdiction to determine a notice of motion seeking to enforce terms of settlement of an earlier proceeding in the Federal Court in relation to events which occurred after the settlement and which could have been the subject of further proceedings.

Federal Court - Way in which appeal on question of law framed

In *Birdseye v. ASIC* ([2003] FCAFC 232; 21.10.2003) a Full Court considered in detailed the way in which an appeal to the Court from the AAT on a question of law should be framed. The Court considered when a decision of the AAT to refuse to extend time to apply a review could involve a question of law.

Corporations - Authority of directors after receivers and managers appoint

In *Ernst & Young v. Tynski* ([2003] FCAFC 233; 21.10.2003) a Full Court considered the validity of the retainer given to solicitors by the directors of a company to institute proceedings after receivers and managers had been appointed to it.

Migration - Jurisdictional error - No evidence - Viability of Taliban in Afghanistan

In *SFGB v. MIMIA* ([2003] FCFAC 231; 24.10.2003) a Full Court allowed an appeal against a decision of the RRT which concluded the Taliban were no longer a threat in Afghanistan when the only evidence before it was that the Taliban was still present in the area from which the appellant came. The Court accepted that if the RRT made a finding which was critical and for which there was no evidence this could constitute jurisdictional error [19], [20].

AAT - Appeal to Federal Court - Relief

In *C of T v. Zoffanies P/L* ([2003] FCAFC 236; 24.10.2003) a Full Court considered whether the AAT had erred in considering a subjective rather than the objective intention of the taxpayer when applying s177D of the ITAA Act. Consideration of whether the Federal Court had power to remit part only of a matter to the AAT.

Superannuation - Reasoning of SCT

In *Hourn v. Farm Plan P/L* ([2003] FCA 1122; 16.10.2003) R D Nicholson J considered whether any failure by the SCT to have regard to, or give sufficient weight to, evidence raised a question of law.

Native title - Extension - Vesting of land in Crown for fee simple

In *Lawson v. Minister for Land & Water Conservation NSW* ([2003] FCA 1127; 17.10.2003) Wilham J considered whether vesting of land in the Crown for an estate in fee simple was a "previous exclusive possession act" within the Native Title Act 1993 (Cth).

Trade practices - Misleading conduct - "No establishment fee"

In *ACCC v. Commonwealth Bank* ([2003] FCA 1129; 17.10.2003) Conti J concluded that an advertisement asserting that "no establishment fee" was payable for a home loan was misleading when charging of less than usual establishment fee occurred for most loans conditional upon acquisition of other products of the bank.

Veterans - Entitlements - "inability" to obtain clinical management

In *Brown v. Repatriation Commission* ([2003] FCA 1130; 17.10.2003) Cooper J considered when a person had an "inability" to obtain appropriate clinical management of sarcoidosis within the Statement of Principles.

Migration - Review of decision of Tribunal - Proof

In *Applicant S33 of 2003 v. MIMIA* ([2003] FCA 1131; 17.10.2003) Jacobson J considered the obligation on an applicant to the Court to provide material in support of a claim that a migration tribunal had failed to deal with a claim.

Health - Modification of food standards

In *Distilled Spirits Industry Council of Australia Inc. v. Food Standards ANZ* ([2003] FCA 1139; 17.10.2003) Madgwick J considered whether the respondent had misconstrued the ANZ Food Authority Act 1991 (Cth) in rejecting an application to modify food standards concerning alcohol labelling requirements.

Migration - Remittal to Federal from High Court - Time limits

In *Applicants A64 of 2002 v. MIMIA* ([2003] FCA 1142; 20.10.2003) Mansfield J considered what time limits applied in the Federal Court where a matter was remitted to it from the High Court having been commenced outside the time prescribed by the High Court Rules. Consideration of whether refusal of extension of time finally determines rights of the parties. In *M162 of 2002 v. MIMIA* ([2003] FCA 1146; 21.10.2003) Goldberg J considered whether an extension of time should be granted in relation to Writs for Certiorari and Mandamus before the hearing of the substantive application in relation to prohibition.

Migration - Absence of logicity - Breach of natural justice

In *NAPE v. MIMIA* ([2003] FCA 1124; 21.10.2003) Hill J considered whether the absence of logically was a ground of review of the decision of the RRT and whether its decision was in breach of the requirements of the rules on natural justice.

Migration - RRT - Whether discretion to refuse to hear a witness

In *NAQS v. MIMIA* ([2003] FCA 1137; 21.10.2003) Hill J considered when the RRT had a discretion in deciding whether it wished to hear witnesses produced by the applicant. Application for Constitutional Writs allowed.

Appeals - Failure of Court to consider submissions of legislative changes post hearing

In *Applicant VBB v. MIMIA* ([2003] FCA 1141; 21.10.2003) Heerey J considered no breach of natural justice had occurred when a Federal Magistrate failed to consider submission on post hearing legislative changes referred in the judgment.

Administrative law - Obligation to consider evidence after Tribunal hearing

In *NANI v. MIMIA* ([2003] FCA 1082; 10.10.2003) Jacobson J considered whether the RRT had an obligation to consider evidence after the RRT hearing. Application dismissed.

Courts - Jurisdiction - Application by non-citizen parent of child

In *Mashood v. C of A* ([2003] FCA 1147; 21.10.2003) Goldberg J considered the Court had jurisdiction to grant interlocutory relief to restrain the removal of non-citizens under the Migration

NOTICEBOARD

Act pending determination by various Courts of whether one of their children was an Australian citizen.

Designs Act - "a person aggrieved"

In *Supaproducts P/L v. Alesevic* ([2003] FCA 1145; 22.10.2003) Heerey J concluded that because of undertakings given by the respondent the applicant was no longer a "person aggrieved" aggrieved within s39 of the Designs Act 1906 (Cth).

Migration - Typographical error in reasons

In *S14/2003 v. MIMIA* ([2003] FCA 1153; 22.10.2003) Moore J considered whether it was possible to construe the reasons of the RRT as involving a typographical error and whether the RRT had dealt with the "essential integers" of the claims.

Judgment - Interest - Whether statutory entitlement to interest subject to estoppel

In *Hanave P/L v. LFOT P/L* ([2003] FCA 1154; 22.10.2003) Moore J considered whether the statutory entitlement to interest was subject to estoppel arising by delay and when delay be a "good cause" in the exercise of the discretion to order interest under s51A of the Federal Court of Australia Act.

Constitutional law - Judicial power - Whether claim by Commonwealth of "right" to claim public interest immunity in another Court gives rise to a justiciable controversy

In *C of A v. Lyon* ([2003] FCA 1155; 22.10.2003) Moore J concluded a claim by the Commonwealth of a "right" to claim public interest immunity preventing disclosure of documents to a Magistrate in NSW did not give rise to justiciable controversy.

Federal Court - Declaratory relief

In *Direct Factory Outlets P/L v. Westfield Management Ltd* ([2003] FCA 1095; 10.10.2003) Cooper J considered when a justiciable issue arose in relation to an application for declaratory relief alone.

Federal Courts - Jurisdiction - "Matter"

In *Australian Gas Light Co. v. ACCC (No. 2)* ([2003] FCA 1229; 31.10.2003) French J concluded the Federal Court had jurisdiction to entertain an application by the ACCC for a declaration as to the effect of a proposed acquisition of shares in a power station and coal mine and that this involved a "matter" under the Trade Practices Act.

Legal professional privilege

In *ACCC v. FFE Building Services Ltd* ([2003] FCA 1181; 27.10.2003) Wilcox J considered whether draft witness statements and draft affidavits were privileged and whether a distinction existed between documents supplied before and after commencement of legal proceedings.

Migration - Visa cancellation - Natural justice

In *Tuncok v. MIMIA* ([2003] FCA 1069; 10.10.2003) Hely J concluded the non-citizen had not been denied natural justice by not being shown the issues paper presented to the Minister.

Trade practices - Misleading conduct - Contract of employment

In *David Walker v. Salomon Smith Barney Securities P/L* ([2003] FCA 1099; 10.10.2003) Kenny J concluded a person had entered a contract of employment after misleading representations were made.

Federal Court - Representative proceedings - Group

In *Au Domain Administration v. Domain Names Australia P/L* ([2003] FCA 1106; 10.10.2003) Finklestein J considered how a group of seven persons was to be identified as forming a

representative action for the purposes of s33C of the Federal Court of Australia Act 1976.

Administrative law - Jurisdictional error - "Want of logic"

In *NACB v. MIMIA* ([2003] FCAFC 235; 31.10.2003) a Full Court accepted that there was an important error in the logic of the RRT but this did not constitute an error of law, still less an error which went to jurisdiction.

Migration - Jurisdictional error - Procedural fairness - Appellant denied access to tapes - Country information

In *WAFV of 2002 v. MIMIA* ([2003] FCAFC 240; 31.10.2003) a Full Court, by majority, dismissed an appeal notwithstanding a breach of procedural fairness by the Tribunal in determining nationality by means of linguistic analysis without providing him with copies of the relevant reports, on the basis that the application for a protection visa was dismissed on an independent ground.

Administrative law - Application for workers compensation - Status of agreement as to medical causation

In *Williams v. Muller* ([2003] FCA 1190; 31.10.2003) Mansfield J considered when a decision-maker, and the AAT on remittal, could be bound to a conclusion on a question of medical causation by an agreement arrived at by the parties.

Bankruptcy - Decision by trustee to abandon litigation

In *Freeman v. NAB* ([2003] FCA 1233; 31.10.2003) Spender J considered whether a trustee had a duty to prosecute litigation and when a decision to abandon it was unjust or inequitable.

Migration - Reasons for decision

In *Nezovic v. MIMIA (No. 2)* ([2003] FCA 1263; 6.11.2003) French J concluded that a substitute set of reasons of the Minister tended to the Court without verification through a third party would not be received into evidence unless verified on oath and where the decision-maker was available for cross-examination.

Trade practices - Unconscionable conduct - Seizure of financed motor vehicle

In *ACCC v. Esanda Finance Corp.* ([2003] FCA 1225; 7.11.2003) Lee J considered when seizure of a motor vehicle subject to a chattel mortgage by a financier could constitute unconscionable conduct or undue harassment. In [2003] FCA 1226 Lee J considered the accessorial liability of companies and individuals involved in the seizure.

Constitutional law - Interstate trade - Bookmakers

In *Sportodds Systems P/L v. NSW* ([2003] FCAFC 237; 29.10.2003) a Full Court considered whether a State requirement that interstate bookmakers advertising in NSW stand at a licensed NSW racecourse contravenes Constitution s92.

Federal Magistrates' Court - Extension of time to appeal to Federal Court

In *Tsimiklis v. Sellers* ([2003] FCA 1257; 7.11.2003) Weinberg J considered what constituted the "special reasons" which would justify the Federal Court granting an extension of time to serve a Notice of Appeal within FCR 052 r15 to appeal against a decision of a Federal Magistrate.

Migration - Notification of decisions

In *Chan Ta Srey v. MIMIA* ([2003] FCA 1292; 12.11.2003)

NOTICEBOARD

Gray J concluded that a non-citizen had not been correctly notified of a decision and that his detention was therefore not lawful and ordered he be released.

Administrative law - Pleading questions of law

In ASIC v. Saxby Bridge Financial Planning P/L ([2003] FCAFC 244; 5.11.2003) a Full Court considered the distinction between an appeal based on a question of law and one based on a question of fact. Consideration of the distinction between questions of law and questions of fact.

Migration - Statutory scheme of natural justice

In Wu v. MIMA ([2003] FCA 1249; 13.11.2003) Hely J concluded the provisions of s51A of the Migration Act introduced by the Migration Legislation Amendment (Procedural Fairness) Act 2002 excluded the operation of the common law rules of natural justice and no jurisdictional error was established.

Employment - Contract of employment made through agents

In Damevski v. Giudice ([2003] FCAFC 252; 13.11.2003) a Full Court considered when a person was to be regarded as an "employee" rather than a "independent contractor" who services were obtained from his former employer by another company through labour-hire arrangements. The Court considered when a contract of employment could be discerned through agency.

Administrative law - Application to stay negative decision

In Shi v. Migration Institute of Australia Ltd ([2003] FCAFC 1304; 14.11.2003) Tamberlin J concluded there was no point issuing an order to stay the operation of a decision which refused registration of an applicant as a migration agent.

Defence - Termination of services of soldier

In Stuart v. Chief of Army ([2003] FCA 1291; 13.11.2003) Wilcox J considered an application by a member of the Defence forces for judicial review of a decision to terminate her enlistment and a further decision to reject her application for redress of grievance.

Migration - Remittal to Federal from High Court - Time limits

In Applicants A64 of 2002 v. MIMIA ([2003] FCA 1142; 20.10.2003) Mansfield J considered what time limits applied in the Federal Court where a matter was remitted to it from the High Court having been commenced outside the time prescribed by the High Court Rules. Consideration of whether refusal of extension of time finally determines rights of the parties. In M162 of 2002 v. MIMIA ([2003] FCA 1146; 21.10.2003) Goldberg J considered whether an extension of time should be granted in relation to Writs for Certiorari and Mandamus before the hearing of the substantive application in relation to prohibition.

Migration - Absence of logicity - Breach of natural justice

In NAPE v. MIMIA ([2003] FCA 1124; 21.10.2003) Hill J considered whether the absence of logically was a ground of review of the decision of the RRT and whether its decision was in breach of the requirements of the rules on natural justice.

Migration - RRT - Whether discretion to refuse to hear a witness

In NAQS v. MIMIA ([2003] FCA 1137; 21.10.2003) Hill J

considered when the RRT had a discretion in deciding whether it wished to hear witnesses produced by the applicant. Application for Constitutional Writs allowed.

Appeals - Failure of Court to consider submissions of legislative changes post hearing

In Applicant VBB v. MIMIA ([2003] FCA 1141; 21.10.2003) Heerey J considered no breach of natural justice had occurred when a Federal Magistrate failed to consider submission on post hearing legislative changes referred in the judgment.

Administrative law - Obligation to consider evidence after Tribunal hearing

In NANI v. MIMIA ([2003] FCA 1082; 10.10.2003) Jacobson J considered whether the RRT had an obligation to consider evidence after the RRT hearing. Application dismissed.

Courts - Jurisdiction - Application by non-citizen parent of child

In Mashood v. C of A ([2003] FCA 1147; 21.10.2003) Goldberg J considered the Court had jurisdiction to grant interlocutory relief to restrain the removal of non-citizens under the Migration Act pending determination by various Courts of whether one of their children was an Australian citizen.

Designs Act - "a person aggrieved"

In Supaproducts P/L v. Alesevic ([2003] FCA 1145; 22.10.2003) Heerey J concluded that because of undertakings given by the respondent the applicant was no longer a "person aggrieved" aggrieved within s39 of the Designs Act 1906 (Cth).

Migration - Typographical error in reasons

In S14/2003 v. MIMIA ([2003] FCA 1153; 22.10.2003) Moore J considered whether it was possible to construe the reasons of the RRT as involving a typographical error and whether the RRT had dealt with the "essential integers" of the claims.

Judgment - Interest - Whether statutory entitlement to interest subject to estoppel

In Hanave P/L v. LFOT P/L ([2003] FCA 1154; 22.10.2003) Moore J considered whether the statutory entitlement to interest was subject to estoppel arising by delay and when delay be a "good cause" in the exercise of the discretion to order interest under s51A of the Federal Court of Australia Act.

Constitutional law - Judicial power - Whether claim by Commonwealth of "right" to claim public interest immunity in another Court gives rise to a justiciable controversy

In C of A v. Lyon ([2003] FCA 1155; 22.10.2003) Moore J concluded a claim by the Commonwealth of a "right" to claim public interest immunity preventing disclosure of documents to a Magistrate in NSW did not give rise to justiciable controversy.

Federal Court - Declaratory relief

In Direct Factory Outlets P/L v. Westfield Management Ltd ([2003] FCA 1095; 10.10.2003) Cooper J considered when a justiciable issue arose in relation to an application for declaratory relief alone.

Federal Courts - Jurisdiction - "Matter"

In Australian Gas Light Co. v. ACCC (No. 2) ([2003] FCA 1229; 31.10.2003) French J concluded the Federal Court had jurisdiction to entertain an application by the ACCC for a declaration as to the effect of a proposed acquisition of shares in a power station and coal mine and that this involved a "matter" under the Trade Practices Act.

NOTICEBOARD

Legal professional privilege

In *ACCC v. FFE Building Services Ltd* ([2003] FCA 1181; 27.10.2003) Wilcox J considered whether draft witness statements and draft affidavits were privileged and whether a distinction existed between documents supplied before and after commencement of legal proceedings.

Migration - Visa cancellation - Natural justice

In *Tuncok v. MIMIA* ([2003] FCA 1069; 10.10.2003) Hely J concluded the non-citizen had not been denied natural justice by not being shown the issues paper presented to the Minister.

Trade practices - Misleading conduct - Contract of employment

In *David Walker v. Salomon Smith Barney Securities P/L* ([2003] FCA 1099; 10.10.2003) Kenny J concluded a person had entered a contract of employment after misleading representations were made.

Federal Court - Representative proceedings - Group

In *Au Domain Administration v. Domain Names Australia P/L* ([2003] FCA 1106; 10.10.2003) Finklestein J considered how a group of seven persons was to be identified as forming a representative action for the purposes of s33C of the Federal Court of Australia Act 1976.

Administrative law - Jurisdictional error - "Want of logic"

In *NACB v. MIMIA* ([2003] FCAFC 235; 31.10.2003) a Full Court accepted that there was an important error in the logic of the RRT but this did not constitute an error of law, still less an error which went to jurisdiction.

Migration - Jurisdictional error - Procedural fairness - Appellant denied access to tapes - Country information

In *WAFV of 2002 v. MIMIA* ([2003] FCAFC 240; 31.10.2003) a Full Court, by majority, dismissed an appeal notwithstanding a breach of procedural fairness by the Tribunal in determining nationality by means of linguistic analysis without providing him with copies of the relevant reports, on the basis that the application for a protection visa was dismissed on an independent ground.

Administrative law - Application for workers compensation - Status of agreement as to medical causation

In *Williams v. Muller* ([2003] FCA 1190; 31.10.2003) Mansfield J considered when a decision-maker, and the AAT on remittal, could be bound to a conclusion on a question of medical causation by an agreement arrived at by the parties.

Bankruptcy - Decision by trustee to abandon litigation
In *Freeman v. NAB* ([2003] FCA 1233; 31.10.2003) Spender J considered whether a trustee had a duty to prosecute litigation and when a decision to abandon it was unjust or inequitable.

Migration - Reasons for decision

In *Nezovic v. MIMIA (No. 2)* ([2003] FCA 1263; 6.11.2003) French J concluded that a substitute set of reasons of the Minister tended to the Court without verification through a third party would not be received into evidence unless verified on oath and where the decision-maker was available for cross-examination.

Trade practices - Unconscionable conduct - Seizure of financed motor vehicle

In *ACCC v. Esanda Finance Corp.* ([2003] FCA 1225;

7.11.2003) Lee J considered when seizure of a motor vehicle subject to a chattel mortgage by a financier could constitute unconscionable conduct or undue harassment. In [2003] FCA 1226 Lee J considered the accessorial liability of companies and individuals involved in the seizure.

Constitutional law - Interstate trade - Bookmakers

In *Sportodds Systems P/L v. NSW* ([2003] FCAFC 237; 29.10.2003) a Full Court considered whether a State requirement that interstate bookmakers advertising in NSW stand at a licensed NSW racecourse contravenes Constitution s92.

Federal Magistrates' Court - Extension of time to appeal to Federal Court

In *Tsimiklis v. Sellers* ([2003] FCA 1257; 7.11.2003) Weinberg J considered what constituted the "special reasons" which would justify the Federal Court granting an extension of time to serve a Notice of Appeal within FCR 052 r15 to appeal against a decision of a Federal Magistrate.

Migration - Notification of decisions

In *Chan Ta Srey v. MIMIA* ([2003] FCA 1292; 12.11.2003) Gray J concluded that a non-citizen had not been correctly notified of a decision and that his detention was therefore not lawful and ordered he be released.

Administrative law - Pleading questions of law

In *ASIC v. Saxby Bridge Financial Planning P/L* ([2003] FCAFC 244; 5.11.2003) a Full Court considered the distinction between an appeal based on a question of law and one based on a question of fact. Consideration of the distinction between questions of law and questions of fact.

Migration - Statutory scheme of natural justice

In *Wu v. MIMA* ([2003] FCA 1249; 13.11.2003) Hely J concluded the provisions of s51A of the Migration Act introduced by the Migration Legislation Amendment (Procedural Fairness) Act 2002 excluded the operation of the common law rules of natural justice and no jurisdictional error was established.

Employment - Contract of employment made through agents

In *Damevski v. Giudice* ([2003] FCAFC 252; 13.11.2003) a Full Court considered when a person was to be regarded as an "employee" rather than a "independent contractor" who services were obtained from his former employer by another company through labour-hire arrangements. The Court considered when a contract of employment could be discerned through agency.

Administrative law - Application to stay negative decision

In *Shi v. Migration Institute of Australia Ltd* ([2003] FCAFC 1304; 14.11.2003) Tamberlin J concluded there was no point issuing an order to stay the operation of a decision which refused registration of an applicant as a migration agent.

Defence - Termination of services of soldier

In *Stuart v. Chief of Army* ([2003] FCA 1291; 13.11.2003) Wilcox J considered an application by a member of the Defence forces for judicial review of a decision to terminate her enlistment and a further decision to reject her application for redress of grievance.

Federal Court Registry relocation

Please be advised that the Northern Territory Registry of the

NOTICEBOARD

Federal Court of Australia relocated on Tuesday 27 January 2004.

The new location is: Level 3, Supreme Court Building, State Square, Darwin

The postal address will remain as: PO Box 1806, Darwin NT 0801.

The telephone number will remain as: (08) 8941-2333.

Howard Philbey

Court/Administration Officer

Manslaughter and Causing Death by a Dangerous Act or Omission

The Department of Justice is conducting a review of the current laws on manslaughter and causing death by a dangerous act (sections 163 and 154 of the Criminal Code).

The review will have particular regard to the following:

- (i) Whether the offence of dangerous act should be abolished
- (ii) Whether standard minimum non-parole periods should be introduced for manslaughter, if dangerous act is abolished, given many dangerous act offences would move into the manslaughter offence;
- (iii) Whether a form of manslaughter resulting from recklessness as to serious harm should be introduced;
- (iv) Whether an offence of dangerous driving causing serious death should be introduced; and
- (v) Whether other offences need to be introduced to cover the element of the current dangerous act offence which relate to grievous harm rather than death.

Comments on this review can either be directed to the Law Society, or submission can be sent directly to the Department of Justice. Submission should be sent either to The Director, Legal Policy, Department of Justice, GPO Box 1722, Darwin NT 0820 or emailed to sue.oliver@nt.gov.au.

Alternatively, submission can be sent directly to Professor Paul Fairall, Dean, Adelaide University Law School via email to Paul.Fairall@adelaide.edu.au. Professor Fairall is conducting the review on behalf of the Department of Justice.

Submissions should be received by 29 February 2004.

New address for David Francis and Associates

David Francis and Associates no longer holds a Court Box at the Supreme Court of the Northern Territory in Darwin.

Please direct all correspondence to David Francis and Associates, GPO Box 3644, Darwin NT 0801.

Practice directions

Work Health Court

This practice direction is issued pursuant to section 95 of the Work Health Act and will be effective from 19 January 2004.

The following practice directions are no longer relevant or have been subsumed into the Work Health Court rules.

The following practice directions are revoked:

- | | |
|----------------|--------------------------|
| 22 August 1996 | Consent agreements |
| 29 April 1997 | Taxation of Costs |
| 11 July 1997 | Authentication of Orders |

Hugh Bradley - Chief Magistrate

Local Court

This practice direction is issued pursuant to section 21 of the Local Court Act and will be effective from 19 January 2004.

The following practice directions are no longer relevant or have

been subsumed into the Local Court rules.

The following practice directions are revoked:

- | | |
|-----------------|---|
| 23 August 1995 | Applications under the Adoption Act |
| 10 October 1995 | Section 51 of Tenancy Act |
| 22 August 1996 | Consent Agreements under the Crimes (Victims Assistance) Act |
| 2 December 1998 | Transfer of matters between the Local Court and Small Claims Court. |

Hugh Bradley - Chief Magistrate

Local Court

This practice direction is issued pursuant to section 50 of the Small Claims Act and will be effective from 19 January 2004.

The following practice direction is no longer relevant or have been subsumed into the Small Claims rules.

The following practice direction is revoked:

- | | |
|-----------------|---|
| 2 December 1998 | Transfer of matters between the Local Court and Small Claims Court. |
|-----------------|---|

Hugh Bradley - Chief Magistrate

De Facto Relationships Act

This practice direction is issued pursuant to section 21 of the Local Court Act and will be effective from 19 January 2004.

Since the issue of the practice direction dated 2 December 1998 regarding applications under the De Facto Relationships Act a new process, the originating application, has been introduced in the Local Court rules. The originating applications a more appropriate form of originating process for application is under the De Facto Relationships Act.

The practice direction dated 2 December 1998 regarding applications under the De Facto Relationships Act is rescinded and replaced by the following:

1. Proceedings for orders, declarations, and other relief under Part 2 of the De Facto Relationships Act are to be commenced by filing the interparte Originating Application.
2. The Originating Application shall be accompanied by an affidavit supporting the application to be served with the Originating application.
3. The Application will then be dealt with pursuant to Division 2 of Part 7 of the Local Court Rules.

Access to Magistrates' Courts files (civil)

The following practice direction, governing access to Local Court files by parties and members of the public, is issued pursuant to section 21 of the Local Court Act and will apply from 19 January 2004.

This practice direction rescinds the practice direction dated 24 June 1996.

Access by party:

- a) A party may view and take a photocopy of any document on file not specifically covered by this practice direction.
- b) A party may view transcript but NOT take a photocopy of it. (Pursuant to section 13 of the Records of Depositions Act, parties may apply in writing for a copy of the transcript and, upon payment of the prescribed fee, a copy will be provided.)
- c) A party may NOT have access to the following documents -
 - * file notes (written by staff or magistrates)
 - * Bench sheets
 - * Subpoenaed documents of other documents not yet in evidence, without an order of the Registrar or a magistrate
 - * Correspondence, without leave of the Registrar or a