

# Listening to Territory businesses

Chief Minister Clare Martin wants to hear directly from Territory business owners and operators about the issues important to them in doing business in the NT.

The Chief Minister's Business Round Table meets throughout the Territory ten times a year, and participants can discuss any topic they like during the two-hour session.

"I want to hear directly from business people about the issues that are important to them," Ms Martin said.

"Business Round Table is an important way for my Government to keep in touch with business people and for business people to talk directly to Government Ministers.

"Business Round Table is a part of my Government's commitment to keeping the Territory moving ahead and I would encourage all Territory business people – whether you're from the smallest enterprise or the largest corporation - to consider attending a session this year."

If you would like to attend the Business Round Table you can register at [www.businessroundtable.nt.gov.au](http://www.businessroundtable.nt.gov.au), or Freecall 1800 193111.

## Laughter at Lucinda's trial cont...

people. Court staff hosted regular tours throughout the court house, including civil and criminal court rooms, jury rooms, and the holding cells.

The Community Justice Centre held a mock mediation, which proved to be very popular. The mediation explained the process and what kinds of disputes can be taken to mediation.

Tony Buckland from the NT Young Lawyers Association held a small claims workshop explaining the small claims process, including tips on how to proceed.

The Law Society would like to thank all those who gave up their Saturday to help with the Supreme Court open day, which is always a popular feature in the Law Week program.

## NOTICEBOARD

### High Court Notes

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

#### **Negligence - Duty of care - Economic loss - Whether engineer designing commercial premises for one owner owes duty of care to subsequent owners**

In *Woolcock Street Investments P/L v. CDG P/L* ([2004] HCA 16; 1.04.2004) the appellant purchased in 1992 a commercial building built in Townsville by the respondent for the original owner in 1987. Defects in the foundations were manifest from 1994 and the appellant sued the respondent for negligence in the Supreme Court (Q). A case was stated for the opinion of the Court of Appeal (Q) as to whether agreed facts disclosed a cause of action. This Court answered the question in favour of the respondent/builder. The appeal by the appellant/owner to the High Court was dismissed by majority: Gleeson CJ, Gummow, Hayne, Heydon JJ; McHugh; Callinan JJ; contra Kirby J. The members of the joint judgment indicated *Bryan v. Maloney* (1995) 182 CLR 609 was not limited to dwelling houses, was based on the disfavored concept of "proximity" [17]-[18] and on the vulnerability of the initial building owner to the economic consequences of negligence [31]. They concluded *Bryan v. Maloney* did not require the Court to hold the respondent owed a duty of care [35]. Appeal dismissed.

#### **Migration - Refugees - Failure of state protection**

In *MIMA v. Respondents S152/2003* ([2004] HCA 18; 21.04.2004) the High Court concluded that "persecution" for the Refugees Convention defining entitlement to a protection visa under the Migration Act 1958 (Cth) requires, where persecution was said to be established by the acts of individuals or citizens, a finding that the relevant Government was in a practical sense unable or unwilling to stop such harm occurring. The High Court (Gleeson CJ, Hayne, Heydon JJ; sim McHugh J; sim Kirby J) concluded the Full Federal Court had erred in finding that there had been evidence before the RRT supporting the conclusion that the government of Ukraine was unable or unwilling to stop persecution of Jehovah's Witnesses involving the respondent. Appeal allowed.

#### **Constitutional law - Local Government - Ability of local councils to levy rates on underground and aerial telecommunications cables - Inconsistency between Commonwealth and State law**

In *Bayside City Council v. Telstra Corp.* ([2004] HCA 19; 28.04.2004) the High Court upheld the decision of the Full Court of the Federal Court which declared invalid certain legislation in Victoria and New South Wales purporting to authorize municipal authorities to impose charges or rates in respect of telecommunications cables on or over public places. By CI 44(1) in Div 8, of Part 1 of Schedule 3 to the Telecommunications Act 1997 (Cth) any State law discriminating against a telecommunications carrier "has no effect". The majority (Gleeson CJ, Gummow, Kirby, Hayne Heydon JJ; contra Callinan J) concluded this provision was "with respect to" postal services within Constitution s51(5) [26], did not attempt to dictate the

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content of State law contrary to the principle in *Melbourne Corporation v. Commonwealth* [29] and as Commonwealth law prevailed by virtue of Constitution s109 [39]. The Court rejected the submission that the provision was invalid as discriminating between telecommunications utilities such as gas or water utilities [44]. Appeal dismissed.

### **Constitutional law - Jurisdiction of Family Court to make orders in respect of children detained under Migration Act**

In *MIMIA v. B* ([2004] HCA 20; 29.04.2004) all members of the High Court concluded that the Family Court did not have jurisdiction to make orders in respect of children detained under the provisions of the Migration 1958 (Cth) Gleeson CJ with McHugh J; Gummow, Hayne Heydon JJ; Kirby J; Callinan J. Appeal allowed.

### **Federal Court Notes**

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

#### **Words and phrases - "piece of fish"**

In *Grocery Holdings P/L v. CEO Customs* ([2004] FCAFC 85; 1.04.2004) a Full Court considered the meaning of the word "pieces" in the phrase "fish, whole or in pieces, but not minced" appearing in subheadings in Schedule 3 of the Customs Tariff Act 1995 (Cth).

#### **High Court - Remitter - Applicant to High Court for Order Nisi out of time remitted to Federal Court - What proceeding remitted**

In *Applicants S422 of 2002 v. MIMIA* ([2004] FCAFC 89; 21.04.2004) a Full Court concluded that an application to the High Court for an Order Nisi commenced out of time that is remitted to the Federal Court involves remitting to the Court the application for extension of time [27]. The 443; 16.04.2004) Sackville J considered whether a decision of the respondent to allocate a community broadcasting licence to one party and not another was made in breach of the requirements of the Broadcasting Services Act 1992 (Cth).

#### **Migration - Persecution - Nepalese women**

In *NAIV v. MIMIA* ([2004] FCA 457; 20.04.2004) Jacobson J concluded the RRT failed to address an integer of a claim by divorced or separated Nepalese women who had converted to Christianity and feared persecution on the grounds of domestic violence.

#### **Income tax - Private rulings**

In *Corporate Business Centres International P/L v. C of T* ([2004] FCA 458; 20.04.2004) Hill J considered the operation of the system for "private rulings" in Part IVAA of the Taxation Administration Act 1953 (Cth), and how this scheme operated where there was a dispute as to whether one taxpayer was a rulee.

#### **Migration - Bridging visa - Imposition of unattainable conditions**

In *VWEX v. MIMIA* ([2004] FCA 460; 20.04.2004) Weinberg J dismissed an application seeking to review a decision of the MRT to grant the Applicant a bridging visa subject to fixing a level of security beyond his means.

#### **Industrial law - Election enquiry - Whether candidate employed in industry**

Court observed that the time limits in High Court Ord 55 were procedural [29] and not substantive so that any appeal against an order of a single Judge refusing to extend time was interlocutory and required leave [38].

#### **High Court - Remitter - Application for enlargement of time to approach High Court**

In *Das v. MIMA* ([2004] FCA 489; 27.04.2004) Sundberg J renewed principles to be applied where an application was made in the Federal Court to extend time in an application remitted from the High Court.

#### **Superannuation - "dependant" of insured**

In *Nole v. Cook* ([2004] FCA 479; 22.04.2004) Bennett J concluded the SCT did not err in finding the respondent's de facto spouse was the "dependant" of a deceased insured and not the appellant wife.

#### **Superannuation - Jurisdiction of SCT**

In *Roads v. Power Superannuation Fund* ([2004] FCA 510; 27.04.2004) French J concluded the SCT did not have jurisdiction to review a decision concerning an exit fee fixed by the terms of an insurance policy.

#### **Corporations - Misleading offers - Adequacy of correction**

In *National Exchange P.L. v. ASIC* ([2004] FCAFC 90; 22.04.2002) a Full Court considered proof of "misleading or deceptive conduct" contrary to s1041H(1) of the Corporations Act 2001 (Cth) [25], when this could be established by inference and when it was established by "fine print" in a contract revealing a qualification [59].

#### **Migration - Criminal law - Sentencing - Whether that person sentenced to concurrent sentences - Sentenced to more than one term of imprisonment**

In *MIMIA v. Ball* ([2004] FCAFC 91; 22.04.2004) and *MIMIA v. Hicks* (2004) FCAFC 114; 7.05.2004) Full Courts concluded, by majority, that the reference in s501(7)(d) of the Migration Act to a person being convicted on "two or more occasions" did not authorise calculating "the term" by accumulating sentences ordered to be served concurrently.

#### **Child support**

In *Mercer v. Child Support Agency* ([2004] FCA 465; 23.04.2004) Spender J considered whether payments by the Child Support Agency regarding paying child support in the absence of a registered maintenance liability were debts owed by the payee to the Commonwealth under s79 of the Child Support (Registration and Collection) Act where there had previously been a successful defence by the payee under s143 of the Child Support (Assessment) Act 1989.

#### **Bankruptcy - Bankruptcy notice - Formal defects**

In *Kyriackou v. Shield Mercantile P/L* ([2004] FCA 490; 26.04.2004) Weinberg J concluded omission of references to "the creditor", and other defects rendered a bankruptcy notice invalid for failure to comply with formal requirements.

#### **Health - Professional Services Review Tribunal**

In *Lee v. Maskell-Knight* ([2004] FCAFC 2; 7.04.2004) a Full Court concluded that the Health Insurance Act 1973 (Cth) did not require that the final determination under s106T be made by the same person who made the draft determination under s106(s). The Court concluded the report of a Professional Services Review Tribunal was not based on an unlawful sampling technique.

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### Health - Validity of referral of medical practitioner

In *Freeman v. Health Insurance Commission* ([2004] FCA 453; 19.04.2004) North J considered whether the conduct of a medical practitioner had been adequately specified in the referral to the Professional Services Review Tribunal under Part VAA of Health Insurance Act 1973 (Cth). He further considered whether the decision of the Determining Authority failed to take into account a relevant matter or was unreasonable.

### Copyright - Infringement - Copy of "substantial part"

In *Tamawood Ltd v. Henley Arch P/L* ([2004] FCAFC 78; 31.03.2004) a Full Court considered whether copyright in plans for a project home had been infringed contrary to the Copyright Act 1968 (Cth) where the alleged infringer intended to copy plans but to incorporate differences in the final building.

### Administrative law - Reviewable decisions - Whether freeway a "controlled action"

In *Mees v. Kemp* ([2004] FCA 366; 31.03.2004) Weinberg J concluded that a decision to construct a freeway in Victoria did not involve decisions under the Environment Protection and Biodiversity Conservation Act 1999 (Cth) that were reviewable under the AD (JR) Act 1977 (Cth).

### Industrial law - Dismissal for membership of registered organisation

In *Australian Nursing Fed v. Alcheringa Hostel Inc* ([2004] FCA 375; 6.04.2004) Ryan J considered how a penalty should be imposed on a respondent employer under ss198U(1) of the Workplace Relations Act 1996 (Cth) on proof of dismissing workers for union membership contrary to s298K(1) of that Act. Consideration of whether the Court had jurisdiction to make declarations as a "associated matter" as to the status of a residential aged care facility under State law.

### Discrimination - Refusal of travel insurance to woman with breast cancer

In *QBE Travel Insurance v. Bassanelli* ([2004] FCA 396; 7.04.2004) Mansfield J dismissed an appeal by an insurer against a conclusion of a Federal Magistrate that in refusing to grant travel insurance to an individual with breast cancer for a short overseas holiday an insurer had unlawfully discriminated against the person contrary to ss5, 24 of the Disability Discrimination Act 1992 (Cth).

### Broadcasting - Community Broadcasting licence

In *Community Television Sydney Ltd v. ABA* ([2004] FCA 462; 20.04.2004) *Lander J considered a candidate for a union election was not entitled to stand on the basis of employment in the industry where the candidate was willing, but unable to, obtain employment.*

## COURT LIBRARY NOTES

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#### Photocopying

The library has a revised photocopying policy; here is an overview.

Photocopy Accounts - Copying is 66 cents per page.

Accounts are sent on a monthly basis; all photocopying accounts go to DCIS for processing. The minimum amount is \$50 dollars; amounts under \$50 are aggregated until they reach that amount. The client should keep a record of photocopying as the library has no record other than the accumulated amount.

Pin Numbers - Pin numbers should be random and between 6-8 digits long. The numbers are not to be recycled; nor should they be given out to other people. Please note that library staff do not give out existing pin numbers. Clients need to contact their own office to obtain pin numbers. Please advise library staff in writing when a person starts and ceases in the firm.

#### NT LEGISLATION

Legislative changes in March 2004, notified in the NT Government Gazette

#### New Acts

- 13/2004 Swimming Pool Safety Act 2004 (15.3.04)
- 14/2004 Liquor Amendment Act 2004 (5.5.04)
- 15/2004 Local Government Amendment Act 2004 (N/C)
- 16/2004 Mining Amendment Act 2004 (15.3.04)
- 17/2004 National Environment Protection Council (Northern Territory) Amendment Act 2004 (15.3.04)
- 18/2007 Statute Law Revision Act 2004 (N/C)
- 19/2004 Firearms Amendment Act 2004 (s.4 – N/C, Rest - 28.4.04)
- 20/2004 Food Act 2004 (N/C)
- 21/2004 Health Practitioners Act 2004 (N/C)
- 22/2004 Fire and Emergency Amendment Act 2004 (N/C)
- 23/2004 Radiation Protection Act 2004 (N/C)
- 24/2004 Animal Welfare Amendment Act 2004 (28.4.04)
- 25/2004 Consumer Affairs and Fair Trading Amendment Act 2004 (28.4.04)
- 26/2004 Racing and Betting Amendment Act 2004 (N/C)
- 27/2004 Unlawful Betting Amendment Act 2004 (N/C)
- 28/2004 First Home Owner Grant Amendment Act 2004 (s.5 – 10.11.03, s.11 – 1.12.00, Rest – N/C)
- 29/2004 Stamp Duty Amendment Act 2004 (s.4(b) – 10.11.03, s.6 – 17.3.04, Rest – N/C)
- 3/1979 Associations Incorporation Regulations – Repealed by Act 56-2003
- 7/1984 Associations Incorporations Regulations Amendment – Repealed by Act 56-2003
- 12/1986 Associations Incorporation Regulations – Repealed by Act 56-2003
- 36/1987 Associations Incorporation Regulations – Repealed by Act 56-2003
- 1/1996 Associations Incorporation (Accountability) Regulations – Repealed by Act 56-2003
- 37/1996 Northern Territory Electoral Regulations - Unit Titles Act – 18.3.03
- Waste Management and Pollution Control Act – 1.5.03