

# High Court

## judgments:

June 2010



### COURTS

- **Access to evidence given in court**

In *Hogan v Australian Crime Commission* [2010] HCA 21 (16 June 2010) the High Court concluded that documents that had been produced to court in a hearing and were then made the subject of confidentiality orders made under the *Australian Crime Commission Act 2002* (Cth) could be inspected under FCR Ord 46 r 6(3) on the lifting of the confidentiality orders. Appeal against decision of the Federal Court dismissed.

### DAMAGES

- **Nervous shock**
- **Mental harm**

In *Wicks v State Rail Authority NSW* [2010] HCA 22 (16 June 2010) the High Court concluded that police officers who assisted after a train derailment that killed and injured many were able to claim as persons who saw persons "put in peril" by the negligence of the rail operator. The Court held they fell within s32 of the *Civil Liability Act 2002* (NSW): French CJ with Gummow, Hayne, Heydon, Crennan, Kiefel and Bell JJ jointly. Appeal allowed.

### FREEDOM OF INFORMATION (VIC)

- **Release of exempt documents in the public interest**
- **High Court**
- **Effect of order setting aside decision**

In *Osland v Sec Department of Justice (Vic) (No 2)* [2010] HCA 24 (23 June 2010) Ms O was

convicted as a "battered wife" of the murder of her husband in 1996. In 2001 a petition to the Victorian Governor for mercy was refused. The Governor acted on the advice of the Attorney-General, who received advice from a variety of legal sources. O sought access to the advices under the *FOI Act 1982* (Vic). The request was refused by the agency on the ground the documents were exempt as subject to legal professional privilege. On review the Victorian Civil and Administrative Tribunal (VCAT) decided in 2005 the documents were exempt as privileged but the public interest required release under the power given to VCAT by s50(4) of the *FOI Act*. The Secretary appealed to the Court of Appeal (Vic). This court dismissed the appeal without reading the documents. In 2008 the High Court set aside this decision and remitted the matter to the Court of Appeal. In 2009 the Court of Appeal again dismissed O's appeal from VCAT. O's second appeal to the High Court was allowed by all members: French CJ with Gummow and Bell JJ; Hayne with Kiefel JJ; Heydon dissented on the question of costs. The High Court observed that its decision in 2008 set aside the earlier Court of Appeal decision completely and not only on some grounds and the Court of Appeal was required to reconsider the whole matter. The High Court held the Court of Appeal had erred because its reasoning on its reconsideration was independent of the contents of the documents (at [6]). The High Court found there

was a basis on which the public interest could require release and the decision of VCAT to this effect should be restored even on different grounds. Appeal allowed with costs in the High Court. Decision of VCAT restored.

### MIGRATION

- **Applicability of rules of natural justice to offshore applications for visas**

In *Saed v Min for Immigration* [2010] HCA 23 (23 June 2010) s51A of the *Migration Act 1958* (Cth) provided that a subdivision in that part of the Act dealing with processing of applications for visas was to be taken as an exhaustive statement of the rules of natural justice hearing rule in relation to the matters it deals with. The High Court concluded this provision did not exclude the common law rules of natural justice in relation to applications made offshore for visas: French CJ; Gummow, Hayne, Crennan, Kiefel JJ; sim Heydon J. Order for certiorari to quash the decision of the delegate in Pakistan to refuse a visa without giving the applicant an opportunity to comment on information obtained by the delegate. ●

## Federal Court Judgments

### ADMINISTRATIVE LAW

- **Power of decision maker to "remake" flawed decision**

In *Flaherty v Secretary Department of Health and Ageing* [2010] FCAFC (8 June 2010) a Full Court concluded a delegate had erred in perceiving a decision to