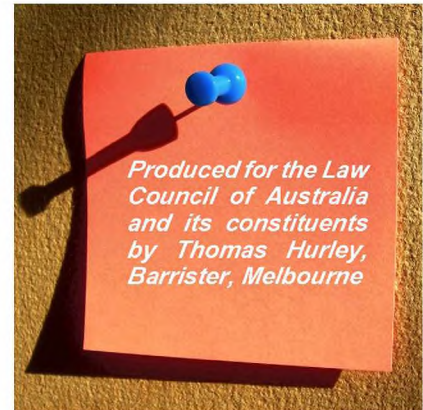


High Court judgments:

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

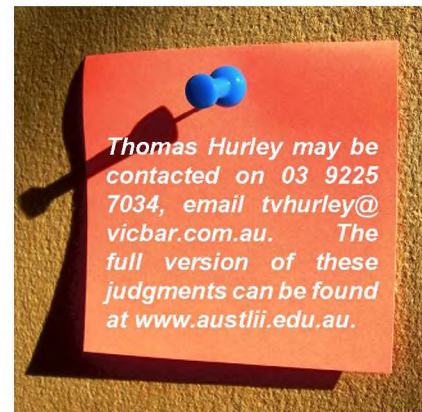
• Power of decision maker to "remake" flawed decision

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

Federal Court

judgments:

June 2010



approve premises for the supply of pharmaceuticals as being flawed. It quashed the decision purporting to set it aside and the subsequent decisions.

APPEAL

- *Findings of primary judge on credibility*
- *Discrimination*

In *Devers v Kindilan Society* [2010] FCAFC 72; (12 June 2010) a Full Court dismissed an appeal against the dismissal of a claim of discrimination. The Court reviewed authority as to the extent to which a court hearing an appeal by way of re-hearing can ignore findings of fact and findings on credibility made by the primary judge.

AUSTRALIAN CRIME COMMISSION

- *Power to interrogate into pending criminal matters*

In *Australian Crime Commission v OK* [2010] FCAFC 61 (2 June 2010) a Full Court concluded by majority that the ACC was able to interrogate a person about matters that were the subject of a pending trial of the examinee.

GST

- *Alcohol-free juices*

In *JMB Beverages Pty Ltd v C of T* [2010] FCAFC 68 (10 June 2010) a Full Court concluded the primary judge had not erred in finding that the appellants' alcohol-removed wine was not GST free.

GST

- *Residential premises*

In *Vidler v C of T* [2010] FCAFC 59; (1 June 2010) a Full Court

concluded that the sale of land zoned for residential purposes but on which no living facilities were erected was not a sale of "residential premises" and GST was payable.

INDUSTRIAL LAW

- *Sentencing appeal*

In *Stuart v CFMEU* [2010] FCAFC 65 (8 June 2010) a Full Court considered the principles by which sentences were imposed under the *Workplace Relations Act* 1996 (Cth) and the *Building and Construction Industry Improvement Act* 2005 (Cth). Appeal by informant allowed.

MIGRATION

- *Jurisdictional error*

In *MIC v SZNPG* [2010] FCAFC 51 (4 June 2010) a Full Court concluded that wrong findings of fact, unsound reasoning and brevity in reasons for decision were not jurisdictional errors.

MIGRATION

- *Jurisdictional error*

In *MIC v SZNSP* [2010] FCAFC 50 (4 June 2010) a Full Court concluded the RRT did not fall into jurisdictional error by first assessing the applicant's credit and then assessing corroborative evidence.

MIGRATION

- *Justiciability of security questions*

In *Aye v MIC* [2010] FCAFC 69; (11 June 2010) a Full Court concluded that the decision of the Foreign Minister that the presence of A (the child of a Burmese military

official) in Australia was contrary to Australia's interests was not justiciable, and even if it were relief would be refused as the Minister would be likely to remake the same decision.

PRACTICE

- *Leave to appeal*

In *Edwards v Santos Ltd* [2010] FCAFC 64 (4 June 2010) a Full Court refused leave to appeal from a decision dismissing an application for native title where it was persuaded there was no error and the applicants could vindicate any claim in other proceedings, rendering the subject one hypothetical.

STATUTES

- *Power to extend time*

In *Huddleston v Aboriginal Land Commissioner* [2010] FCAFC 66 (8 June 2010) by s67A(7) the *Aboriginal Land Rights (NT) Act* 1976 (Cth) provided that if a request for information by the Commissioner was not answered in the time specified the land rights claim was taken to be finally disposed of. A Full Court concluded that this provision was subject to the requirements of a fair hearing and the power to extend time found in s33 of the *Acts Interpretation Act* 1901 (Cth).

TRADE PRACTICES

- *Trade Practices Act s51A*

In *North East Equity Pty Ltd v Proud Nominees Pty Ltd* [2010] FCAFC 60 (8 June 2010) a Full Court reviewed the operation of s51A of the TP Act and the evidentiary onus imposed by s51A(2). ●