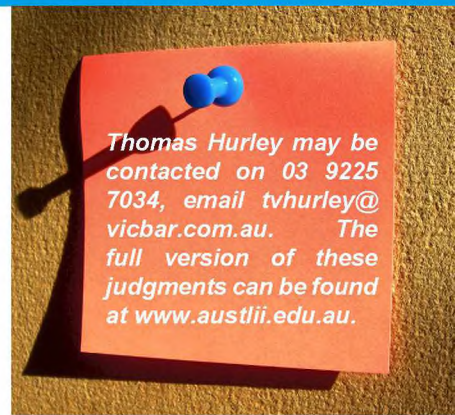


Federal Court

judgments:

September - October 2010



WORKERS' COMPENSATION (QUEENSLAND)

- **Entitlement of workers' compensation insurer to seek indemnity against person liable for death of worker**
- **Whether right of indemnity limited to rights of estate of deceased worker to damages**

In *WorkCover Queensland v Amaca Pty Ltd* [2010] HCA 34 (20 October 2010) the High Court in a joint judgment (French CJ, Gummow, Crennan, Kiefel, Bell JJ) considered the operation of the provisions of s207B of the *Workers' Compensation and Rehabilitation Act 2003* (Qld) that granted WorkCover Queensland a right of indemnity against a person who would have been liable if sued for the deceased worker's injury where no proceedings had been brought by the deceased worker at the time of death. The Court concluded this right of indemnity was not limited by s66(2) of the *Succession Act 1981* (Cth) or limited by reference to the amount the deceased or his estate would have recovered in an action but only by what the party would have been liable to pay. Appeal allowed.

SUPERANNUATION

- **Trust deeds**
- **Benefits**
- **Incapacity for "all active work"**

In *Finch v Telstra Super Pty Ltd* [2010] HCA 36 (20 October 2010) the Victorian Court of Appeal concluded a superannuation trustee had correctly concluded that the appellant (F), who had

undergone gender reassignment procedures, was not entitled to a total and permanent invalidity (TPI) benefit under an employment superannuation fund. The High Court allowed F's appeal in a joint judgment (French CJ, Gummow, Heydon, Crennan, Bell JJ). The court considered the principles by which the trustees of an industry superannuation fund were to decide whether a beneficiary had been absent from "all active work" and was unlikely to ever engage in "gainful work" so as to be entitled to the TPI benefit. The Court observed that the recognition by trustees of the entitlement of members to benefits was not a "discretionary" judgment as choosing between beneficiaries under a testamentary trust as considered in *Karger v Paul* [1984] VR 161. Special leave granted; appeal allowed; decision of the trial judge in favour of the appellant/beneficiary restored.

CRIMINAL LAW (QUEENSLAND)

- **Defences**
- **Provocation**
- **Degree to which accused's loss of self control must immediately follow provocative act**

In *Pollock v The Queen* [2010] HCA 35 (20 October 2010) the High Court in a joint judgment (French CJ, Hayne, Crennan, Kiefel, Bell JJ) considered the elements required to establish provocation as a partial defence to murder under s304 of the *Criminal Code* (Qld). Appeal allowed. Retrial ordered. ●

Federal Court Judgments

CITIZENSHIP

- **Parent**

In *Hudson v MIC* [2010] FCAFC 119 (15 September 2010) a Full Court considered whether the term "parent" as used in s16(2) of the *Citizenship Act 1948* (Cth) required a genetic link. The Court concluded the Administrative Appeals Tribunal did not err in finding that a person who was accepted as the child of parents was their child for the purposes of the Act, even though there was doubt about paternity. Appeal allowed.

INCOME TAX

- **GST**
- **Input tax credits**
- **Credit cards**

In *C of T v American Express Wholesale Currency Services Pty Ltd* [2010] FCAFC 122 (17 September 2010) a Full Court considered the operation of the GST legislation in respect of transactions effected by credit cards.

MIGRATION

- **Jurisdictional error**
- **Persecution for religious belief**

In *MIC v SZLSP* [2010] FCAFC 108 (3 September 2010) the Federal Magistrates Court found the Refugee Review Tribunal (RRT) had committed jurisdictional error by requiring a couple who feared persecution as followers in China of Falun Gong to establish a standard of knowledge of that faith and to do so by reference to an undisclosed

text known to the RRT member. A Full Court dismissed the Minister's appeal by majority: Kenny J; Rares J; contra Buchanan J. The majority concluded the RRT had made a jurisdictional error by requiring the claimants for refugee status to establish knowledge of the faith rather than a genuine belief in it and fear of persecution for this. Consideration of jurisdictional error and failure of reasons to disclose material and reasoning relied on.

MIGRATION

- *Jurisdictional error*
- *Illogical findings*

In *MZXSA v MIC* [2010] FCAFC 123 (22 September 2010) a Full Court briefly reviewed authority in dismissing an appeal from the Federal Magistrates Court where a visa applicant asserted the Migration Review Tribunal had made an illogical decision or failed to understand the evidence.

CONSTITUTIONAL LAW

- *Excise*

In *Australian Capital Territory v Queanbeyan City Council* [2010] FCAFC 124 (24 September 2010) a Full Court considered whether a water abstraction charge and a charge for use of infrastructure facilities in the ACT imposed by the ACT was an excise that could only

be levied by the commonwealth Parliament by reason of the Constitution s90.

INCOME TAX

- *Income*
- *Land*

In *Tagget v C of T* [2010] FCAFC 109 (8 September 2010) a Full Court considered when land transferred to a person can amount to income and how it is valued.

FAMILY LAW

- *Validity of the Child Support Registrar*

In *Whittaker v Child Support Registrar* [2010] FCAFC 112 (7 September 2010) a Full Court again rejected a challenge to the constitutional validity of the Child Support (Registration and Collection) Act 1988 (Cth) and associated legislation.

TRADE MARKS

- *Use in good faith*

In *Nature's Blend Ltd v Nestle Australia Ltd* [2010] FCAFC 17 (13 September 2010) a Full Court reviewed the defence to an infringement of trade mark referred to in s122(1)(b)(i) of the Trade Marks Act 1995 (Cth) where the trade mark was used in good faith to indicate the kind or quality of the goods.

INCOME TAX

- *Whether inchoate tax a "present obligation"*

In *C of T v H* [2010] FCAFC 128 (20 October 2010) a Full Court concluded the obligation to pay income tax in an amount subsequently assessed was a "present legal obligation" for s109Y(2) of the *ITAA* 1936 (Cth) even though no assessment had been made when the tax was due.

ADMINISTRATIVE LAW

- *Tribunals*
- *Jurisdiction of a tribunal to reconsider finding that it has jurisdiction*

In *Duarte v Australian Maritime Safety Authority* [2010] FCAFC 127 (1 October 2010) a Full Court concluded the Administrative Appeals Tribunal (AAT) did not err in deciding that it did not have jurisdiction to determine an application to it (because there was no decision to review) where there had been an earlier decision of the AAT (differently constituted) that there was. The Full Court concluded a decision of a tribunal that it had jurisdiction was not conclusive within the tribunal. Appeal dismissed. ●

NATIONAL & INTERNATIONAL CONFERENCES AND EVENTS 2011

2011

17 -19 February 2010

Superannuation Conference 2011 - Super: a paradise lost?

Surfers Paradise

Host: Superannuation Committee of the Law Council of Australia
Email: mtaylor@conferenceworld.com.au

19 - 24 February 2011

Commonwealth Law Conference

Hyderabad, India

Email: info@commonwealthlaw2011.org

23 - 24 February 2011

Law and Justice in Indigenous Communities

Darwin

Host: Criterion Conferences
Email: registration@critterionconferences.com

16 – 23 April 2011

Europe Oceania Legal Conference

Matterhorn, Cervinia Italy & Zermatt Switzerland

Email: info@educationcpe.com

25 April – 2 May 2011

Pan Europe Pacific Legal Conference

Venice, Italy

Email: info@educationcpe.com

3 – 10 July 2011

Europe Asia Legal Conference

Positano, Italy

Email: info@educationcpe.com

16 – 23 July 2011

East West Legal Conference

Istanbul, Turkey

Email: info@educationcpe.com