

# Federal Court

## judgments:

March - April 2012

tax exempt status of charitable trusts when they are maladministered and charitable and private expenditure intermingled. Appeal from Full Court Federal Court allowed: French CJ, Gummow, Hayne, Crennan JJ jointly; sim Heydon J. ●

## Federal Court judgments:

### MIGRATION

- **Power of Federal Court to remit decision to primary decision maker**

In *MIC v Maman (No 2)* [2012] FCAFC 35 (20 March 2012) a Full Court concluded by reason of the jurisdiction given by s476 of the *Migration Act* it lacked power to remit the decision to the primary decision maker.

### INCOME TAX

In *Consolidated Media Holdings Ltd v C of T* [2012] FCAFC 36 (20 March 2012) a Full Court considered whether the proceeds of an off-market buy back of company shares constituted a dividend for s159GZZPP of the *ITAA* 1936.

### INCOME TAX

- **Assessment**
- **Onus of proving assessment excessive**

In *C of T v Futuris Corporation* [2012] FCAFC 32 (19 March 2012) a Full Court concluded the

primary judge had not erred in finding that expert evidence led by the taxpayer discharged the onus of establishing an assessment was excessive and there was no tax benefit in connection with a scheme for ss177C or 177D of the *ITAA*.

### INCOME TAX

- **Deductions**
- **Dividend payments**

In *C of T v Noza Holdings Pty Ltd* [2012] FCAFC 4 (28 March 2012) a Full Court considered when a sum payable as a dividend was claimable as a deduction where the company was unable to fund and pay the dividend when it was declared.

### TRADE PRACTICES

- **Loss**
- **Valuation**
- **Liability of employees**

In *Propell National Valuers (WA) Pty Ltd v Australian Executor Trustee Ltd* [2012] FCAFC 31 (20 March 2012) a Full Court considered when subsequent sales can be considered in estimating a value of real estate at a point in time. It also considered when employees could be accessories to contraventions of the *Trade Practices Act* established by misleading valuations.

### FEDERAL COURT APPEAL

- **Overturning findings of fact**

In *Frost v Sheahan* [2012] FCAFC 46 (28 March 2012) a Full Court reviewed authority as to when factual findings by the primary judge can be overturned on appeal and when fresh evidence can be

called on appeal.

### INDUSTRIAL LAW

- **Civil penalty orders**
- **Calculation of "loss"**

In *CFMEU v ABCC* [2012] FCAFC 44 (27 March 2012) a Full Court considered how compensation was to be calculated for s49(1)(b) of the *Building and Construction Industry Improvement Act* 2005 (Cth) for a contravention of that Act.

### INDUSTRIAL LAW

- **Interpretation of union rules**

In *CFMEU v CSBP* [2012] FCAFC 48 (2 April 2012) a Full Court considered how eligibility rules in unions registered under the *Fair Work (Registered Organisations) Act* 2006 (Cth) were to be interpreted.

### TRADE PRACTICES

- **Internet advertising**

In *ACCC v Google* [2012] FCAFC 49 (3 April 2012) a Full Court considered whether the practice of third party names appearing in the results of "keyword searches" contravened the *Trade Practices Act* by implying an association between the two.

### TRADE MARK

- **Infringement in third countries**

In *Paul's Retail Pty Ltd v Sporte Leisure Pty Ltd* [2012] FCAFC 51 (11 April 2012) a Full Court considered whether copyright in Greg Norman paraphernalia was infringed by distributing in Australia goods with the relevant mark for which permission was given for use in India. ●

