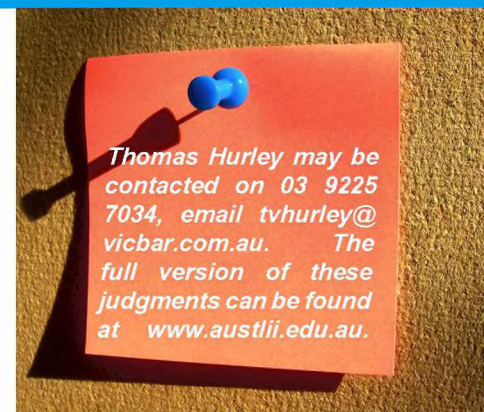


Federal Court

judgments:

September - October 2012



recommended certain rail lines be declared and in 2008 the Minister made one declaration and was deemed to have refused another. These decisions were varied after an extensive hearing by the ACT and various parties sought judicial review of these decisions that concluded with a decision of a Full Court of the Federal Court. Before the High Court the issue arose as to whether the ACT had erred by conducting a full review of the matter on extensive fresh evidence. The High Court concluded the ACT had erred and its role under s44K of the *Competition and Consumer Act* was simply to “reconsider” the decision of the Minister and not review the entire matter. The Court noted that a decision of the Minister as to what was in the “national interest” was not to be set aside lightly: French CJ, Gummow, Hayne, Crennan, Kiefel, Bell JJ jointly; Heydon J sim. The Court reviewed the criterion the Minister was to apply set out in ss44G and 44H. Appeal allowed; decision of the ACT set aside; no order as to costs.

CRIMINAL LAW

- *Manslaughter*
- *Supply of drugs to deceased*
- *Whether supplier under any duty to assist deceased on adverse reaction to the drugs*

In *Burns v The Queen* [2012] HCA 35 (14 September 2012) Mrs B and her husband supplied methadone to H who died from the combined effect of this and a prescription drug. Mrs B was convicted of manslaughter contrary to s24 of *Crimes Act 1900* (NSW). At trial the

prosecution contended that supply of methadone was a dangerous act and also that Mrs B was under a duty to assist H once the effects became apparent but did not do so. Her appeal to the Court of Criminal Appeal (NSW) failed. Her appeal to the High Court was allowed: French CJ; Gummow, Hayne, Crennan, Kiefel, Bell JJ jointly; sim Heydon J. Before the High Court the prosecution accepted that mere supply of the methadone was not an inherently dangerous act and that the conviction could not stand on that ground. The High Court concluded the evidence did not support manslaughter for failure to offer or obtain medical assistance and so a retrial would not be ordered. The joint judgment reiterated that criminal liability fastened on acts and not omissions and outside limited exceptions a person remains at liberty in law to refuse to hold out her hand to the person drowning in a shallow pool. Appeal allowed; verdict of acquittal entered. ●

Federal Court Judgments

INCOME TAX

- *Notice to bank under s264 of ITAA*

In *ANZ Banking Group Ltd v Konza* [2012] FCAFC 127 (12 September 2012) a Full Court concluded an Australian bank was obliged by a notice under s264 of *ITAA*

to disclose from its world-wide electronic database information about customers in Vanuatu. The Full Court generally concluded the customer had not established that disclosure would cause breach of the bank’s non-statutory obligation of confidentiality to customers nor that the notice was in any way not for a proper purpose. The Court accepted that one notice was too vague. Appeals generally dismissed.

ADMINISTRATIVE LAW

- *When tribunal functus officio*
- *Migration*
- *When tribunals may receive further documents*

In *Minister for Immigration and Citizenship v SZQOY* [2012] FCAFC 131 (12 September 2012) a Full Court concluded that the RRT was not *functus officio* until its decision was communicated to the parties. The Full Court concluded the RRT member had erred in not considering further submissions from the review applicant where the member had prepared his decision and sent it to the registry of the RRT before seeing the submissions. Appeal by Minister dismissed.

WORKERS COMPENSATION

- *Injury resulted from reasonable administrative action*

In *Dunkerley v COMCARE* [2012] FCAFC 132 (13 September 2012) a Full Court found the aggravation of the appellant’s adjustment disorder caused by communication of the results of a Selection Advisory Committee was not a

compensable injury as it arose out of “reasonable administrative action” within s5A of the *SRC Act* 1988 (Cth). Appeal dismissed.

EXTRADITION

- **Delay**
- **Validity of “representative” charges**

In *Newman v New Zealand* [2012] FCAFC 133 (13 September 2012) a Full Court dismissed a challenge to an order for extradition to New Zealand on the ground that delay in investigating the matters in New Zealand meant the order was unfair. However, the Court accepted that because the charges of unlawful sexual relations with a minor were “representative” charges of conduct alleged between two dates (which while lawful in New Zealand was not lawful in Australia) extradition would be “unfair, unjust and oppressive”. Appeal allowed. Order for extradition quashed. In [2012] FCAFC 139 (3 October 2012) the Court ordered New Zealand pay the costs of the appellant in the Queensland courts but not otherwise.

COMPETITION LAW

- **Advertisement masking subscription as a sale**

In *Global One Mobile Entertainment Pty Ltd v ACCC* [2012] FCAFC 134 (14 September 2012) a Full Court reviewed authority as to what is

required for an advertisement to contravene ss52, 53(aa) and 53(c) of the *Trade Practices Act* 1974 (Cth) and assessment of penalties.

FEDERAL COURT PRACTICE

- **Nature of appeal to Full Court**

In *Nexus Adhesives Pty Ltd v RLA Polymers Pty Ltd* [2012] FCAFC 135 (29 September 2012) a Full Court reiterated that notwithstanding that an appeal to the Full Court was an appeal by way of rehearing it was essential to identify an error of law and not merely challenge findings of fact.

ELECTORAL ACT

- **Registered officer**

In *Mulholland v Australian Electoral Commission* [2012] FCAFC 136 (19 September 2012) a Full Court dismissed an appeal from a decision of the AAT that found that the appellant had been replaced as the “registered officer” for DLP for the purposes of the *Electoral Act* 1918 (Cth).

INDUSTRIAL LAW

- **Costs in Full Court**

In *Australian Industry Group v Fair Work Australia* [2012] FCAFC 138 (24 September 2012) a Full Court concluded s570(1) of the *Fair Work Act* (Cth) operated to exclude the awarding of costs in a proceeding brought in the original jurisdiction

of the Federal Court.

MIGRATION

- **Refugees**

In *Minister for Immigration and Citizenship v SZQOT* [2012] FCAFC 141 (12 October 2012) a Full Court by majority concluded that the Federal Magistrates Court had not erred in finding an independent reviewer had made jurisdictional error by referring to an applicant for refugee status suffering “severe harm” rather than “serious harm” (as enacted in s91R(1) of the *Migration Act* 1958 (Cth)). Appeal by Minister dismissed.

CONSTITUTIONAL LAW

- **Trade and commerce**
- **Gambling equipment in Victoria for Northern Territory bookmaker**

In *Victoria v Sportsbet Ltd* [2012] FCAFC 143 (12 October 2012) a Full Court concluded Victorian legislation that regulated the installation of gambling equipment in Victoria was valid, did not offend the prohibition on burdening interstate trade with the Northern Territory (s49 of the *Northern Territory (Self-Government) Act* 1978 (NT)) and applied to the respondent bookmaker from the Territory. ●



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