

Thomas Hurley's High Court Judgements

December 2015

ADMINISTRATIVE LAW

Delegable powers of the federal Attorney-General –
referral of petition for mercy to state court

In *Yasmin v Attorney-General of the Commonwealth of Australia* [2015] FCAFC 145 (21 October 2015) a Full Court concluded that the Attorney-General (Cth) was under a duty under the combined effect of s. 68(1) of the *Judiciary Act 1903* (Cth) and s. 140 of the *Sentencing Act 1995* (WA) to consider a request to refer a petition for mercy to the Court of Appeal in relation to a juvenile people smuggler. The Court also brought to the attention of the parties the provisions of s. 17 of the *Law Officers Act 1964* (Cth) that operated to allow the Attorney to delegate the power under s. 140 of the *Sentencing Act*.

BANKRUPTCY

Leave to sue

In *Hudson v Sigalla* [2015] FCAFC 140 (24 September 2015) a Full Court concluded leave was not required under s. 58(3)(b) of the *Bankruptcy Act 1966* (Cth) to sue a person who was previously bankrupt after the creditors have by special resolution accepted a proposal for a composition in satisfaction of the debts of the bankrupt.

DISCRIMINATION

Appeal

In *Vata-Meyer v Commonwealth of Australia* [2015] FCAFC 139 (22 September 2015) a Full Court allowed an appeal in proceedings in the Federal Circuit Court under the *Racial Discrimination Act 1975* (Cth) where it was alleged the Commonwealth was vicariously liable for the acts of its employees. Consideration of what is an irrelevant consideration and the position where the primary judge had not considered all the elements in the legislation.

INDUSTRIAL LAW

Breach of enterprise agreement –
whether clause impose binding obligation

In *National Tertiary Education Union v La Trobe University* [2015] FCAFC 142 (8 October 2015) a Full Court considered who had what onus in establishing breach of an enterprise agreement where it was contended the clause was aspirational.

MIGRATION

Visas – cancellation for criminal conduct

In *Brown v Minister for Immigration and Border Protection* [2015] FCAFC 141 (24 September 2015) a Full Court concluded the Minister did not make any jurisdictional error in ordering the visa of the appellant be cancelled under s. 501 of the *Migration Act 1958* (Cth) on conviction for crimes that attracted a sentence of more than one years' imprisonment.

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