

Friday, 8 February 2019

Weekly Employment Law Selected Bulletins covering Employment

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Executive Summary (1 minute read)

Work Health Authority v Outback Ballooning Pty Ltd (HCA) - constitutional law - *Work Health and Safety (National Uniform Legislation) Act 2011* (NT) was not inconsistent with 'Commonwealth aviation law' - appeal allowed

Lacson v Australian Postal Corporation (FCA) - industrial law - statutory construction - work performed at different locations - operation of enterprise agreements - "particular employment" - s52(2) *Fair Work Act 2009* (Cth) - appeal dismissed

Ferrier v WorkCover Queensland (QSC) - limitation of actions - work injury - limitation period had expired - application for extension of limitation period for action granted

S & AD Basheer Nominees Pty Ltd v Boland (SASCFC) - industrial law - questions of law referred to Full Court by Full Bench of the South Australian Employment Court under s22(2)(b) South Australian Employment Tribunal Act 2014 (SA)

North Adelaide Service Partnership v Retail Employees Superannuation Pty Ltd (SASC) - restitution - 'operative mistake' - superannuation - preliminary issue - plaintiffs prima facie entitled to recover superannuation payments in respect of exempt employees

Summaries With Link (Five Minute Read)

Work Health Authority v Outback Ballooning Pty Ltd [2019] HCA 2
High Court of Australia

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Kiefel CJ; Bell, Gageler, Keane, Nettle, Gordon & Edelman JJ

Constitutional law - appellant, under s32 *Work Health and Safety (National Uniform Legislation) Act 2011* (NT) ('NT WHS Act'), alleged first respondent failed to comply with duty in s19(2) NT WHS Act 'to eliminate or minimise risks to embarking passengers that arose from the use of a fan to inflate' hot air balloon - Northern Territory Court of Summary Jurisdiction dismissed appellant's claim as invalid, finding complaint's subject matter covered by 'Commonwealth regulatory scheme' concerning aviation (scheme) - Magistrate found scheme extended to 'pre-flight operations affecting' passengers' safety on ground - Supreme Court of Northern Territory found Magistrate erred in finding lack of jurisdiction - Court of Appeal upheld appeal, finding 'Commonwealth aviation law' was a 'complete statement' of 'relevant law' and that there was 'indirect inconsistency' between law of Northern Territory and Commonwealth aviation law - "prescription and enforcement of the standards of safety in the conduct of air navigation or air operations" - whether inconsistency between NT WHS Act and Commonwealth aviation law - held: appeal allowed.

[Work Health Authority](#)

[From Benchmark Friday, 8 February 2019]

Lacson v Australian Postal Corporation [2019] FCA 51

Federal Court of Australia

Mortimer J

Industrial law - appeal concerning construction of s52(2) *Fair Work Act 2009* (Cth) - appellant performed work for respondent at 'two different locations, at two different times, and in the performance of two different sets of duties' - question was whether the work, for purposes of enterprise agreements, was 'one "particular employment"' - whether Federal Circuit Court erred in finding that the work should not be seen as one "particular employment" - whether appellant had 'two different jobs' with respondent - operation of enterprise agreements on contracts of employment - held: no error in Federal Court's decision - appeal dismissed.

[Lacson](#)

[From Benchmark Friday, 8 February 2019]

Ferrier v WorkCover Queensland [2019] QSC 11

Supreme Court of Queensland

Crow J

Limitation of actions - work injury - applicant claimed injury in course of employment - limitation period had expired - applicant, pursuant to s31(2) *Limitations of Actions Act 1974* (Qld), sought extension of limitation period for action 'up to and including 60 days' from date on which he complies with s295 *Workers' Compensation and Rehabilitation Act 2003* (Qld) - 'material fact of a decisive nature' - 'means of knowledge' - 'evidence to establish a right of action' - 'prejudice' - delay - held: Court satisfied to allow application.

[Ferrier](#)

[From Benchmark Friday, 8 February 2019]

S & AD Basheer Nominees Pty Ltd v Boland [2018] SASCF 127

Full Court of the Supreme Court of South Australia

Kourakis CJ; Blue & Stanley JJ

Industrial law - proceedings arose from respondent's institution, in capacity as regulator, of prosecution against appellant by laying 'information and summons' - regulator alleged contravention of Work, Health and Safety Act 2012 (SA) concerning incident which resulted in injuries to employee of company - four questions of law referred to Full Court by Full Bench of the South Australian Employment Court under s22(2)(b) South Australian Employment Tribunal Act 2014 (SA) - third question was whether regulator had duty, before laying information against appellant, to inform Minister of intention to lay information against appellant - held: Court answered third question in the negative - unnecessary to answer other questions.

[S & AD](#)

[From Benchmark Friday, 8 February 2019]

North Adelaide Service Partnership v Retail Employees Superannuation Pty Ltd [2019] SASC 5

Supreme Court of South Australia

Blue J

Restitution - 'operative mistake' - superannuation - preliminary issue - plaintiffs sought to recover in restitution from defendants payments 'in respect of exempt employees', contending payments made by 'operative mistake' - determination of preliminary issue - whether plaintiffs had 'prima facie entitlement to recover the payments in restitution, subject to any defences and assessment of quantum' - whether payroll manager's knowledge that plaintiffs were making the payments to exempt employees negated operative mistake finding in respect of the payments - held: plaintiffs were prima facie entitled to recover superannuation payments in respect of exempt employees subject to 'defences' and assessment of quantum - preliminary issue determined.

[North Adelaide Service Partnership](#)

[From Benchmark Friday, 8 February 2019]



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Fishmonger

By: Marsden Hartley

I have taken scales from off

The cheeks of the moon.

I have made fins from bluejays' wings,

I have made eyes from damsons in the shadow.

I have taken flushes from the peachlips in the sun.

From all these I have made a fish of heaven for you,

Set it swimming on a young October sky.

I sit on the bank of the stream and watch

The grasses in amazement

As they turn to ashy gold.

Are the fishes from the rainbow

Still beautiful to you,

For whom they are made,

For whom I have set them,

Swimming?

https://en.wikipedia.org/wiki/Marsden_Hartley

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