

## HIGH COURT OF AUSTRALIA

### RE RANGER URANIUM MINES PROPRIETARY LIMITED AND OTHERS; EX PARTE FEDERATED MISCELLANEOUS WORKERS' UNION OF AUSTRALIA.

Mason CJ, Wilson, Brennan, Deane, Dawson, Toohey and Gaudron JJ

1987

Nov 12;

Dec. 16

#### 163 CLR 656

*Industrial Law (Cth) — Conciliation and arbitration — Industrial arbitration — Industrial dispute — Conciliation and Arbitration Commission — Jurisdiction — Claim for reinstatement of dismissed employees — Application to vary award to provide for reinstatement — Determination of existence of industrial dispute — Judicial power of the Commonwealth — Conciliation and Arbitration Act 1904 (Cth), ss 4(1) "Industrial matters" (k), 18, 24(1), 25, 119.*

Section 18 of the *Conciliation and Arbitration Act 1904* (Cth) empowered the Conciliation and Arbitration Commission to prevent or settle industrial disputes by conciliation or arbitration. Section 25 provided for the notification of disputes to the Commission. Section 24(1) required the Commission, subject to power to vary or revoke any finding, in proceedings relating to an industrial dispute or alleged industrial dispute to determine whether there was an industrial dispute and, if so, who were the parties and what were the matters in dispute, and to record its findings. "Industrial dispute" was defined in terms of a dispute as to "*industrial matters*". "*Industrial matters*" was defined by s 4(1) to mean "all matters pertaining to the relations of employers and employees and, without limiting the generality of the foregoing" to include "the right to dismiss or to refuse to employ, or the duty to reinstate in employment, a particular person or class of persons" and "all questions of what is right and fair in relation to an industrial matter having regard to the interests of the persons immediately concerned and of society as a whole".

A union notified the Commission of a dispute between it and a company which was alleged to have arisen from the company's action "of purporting to summarily dismiss seven of its employees". The award under which the employees had been employed did not oblige the employer to reinstate dismissed employees in any circumstances. In the course of a hearing under s 24(1), the union stated that it sought a variation of the award or a new award providing for the reinstatement of the dismissed employees. The Commission refused to proceed with the matter on the ground that it had no jurisdiction.

*Held:* that a dispute had been notified which was capable of being resolved by the exercise of the Commission's arbitral power.

*Per curiam.* The resolution of the dispute did not involve the assumption of judicial power notwithstanding that in the course of the resolution of the dispute the Commission might undertake similar inquiries and determine similar questions of fact as would be made and determined in proceedings brought in a court for the enforcement of the award under s 119 of the Act, and notwithstanding that in the course thereof it might form an opinion about the legal rights and obligations of the parties.

**(1987) 163 CLR 656 at 657**

*Reg. v Gough; Ex parte Meat and Allied Trades Federation of Australia* (1969), 122 CLR 237; *Reg. v Portus; Ex parte City of Perth* (1973), 129 CLR 312; and *Re Cram; Ex parte Newcastle Wallsend Coal Co Pty. Ltd.* (1987), 163 CLR 140, considered.

MANDAMUS and CERTIORARI.

Ranger Uranium Mines Pty. Ltd ("the company") conducted mining operations at Jabiru in the Northern Territory in which it employed members of the Federated Miscellaneous Workers' Union of Australia ("the Union") and the Australasian Society of Engineers ("the Society") under the Uranium and Metalliferous Mining (NT) Award 1985 ("the Award"). On 22 April 1986, the Union notified the Conciliation and Arbitration Commission of a dispute between the Union and the Society, on the one hand, and the company which was said to have arisen from the company's action in purporting summarily to dismiss eleven of its employees. The dispute came on for hearing before Mr Commissioner Donaldson. At the hearing the representatives of the Union and the Society stated that they sought a variation of the Award or the making of a new award providing for the reinstatement of the dismissed employees. The Commissioner held that he had no jurisdiction in the matter. He refused to make any finding about the existence of a dispute or to entertain the notified dispute further. An appeal to the Full Bench of the Commission was dismissed. On the application of the Union, the High Court granted an order nisi for certiorari directed to the Full Bench and an order nisi for mandamus directed to the Commissioner.

*K R Handley* QC (with him *J W Shaw* QC and *S Crawshaw*), for the prosecutor. We present no argument founded upon *Reg. v Kirby; Ex parte Boilermakers' Society of Australia* ("the Boilermakers' Case") 1 . and do not challenge it. [They referred to *Reg. v Gough; Ex parte Meat & Allied Trades Federation of Australia* 2 ; *Reg. v Portus; Ex parte City of Perth* 3 ; *Reg. v Ludeke; Ex parte Queensland Electricity Commission* 4 ; *Australian Iron & Steel Ltd v Dobb* 5 ; *Slonim v Fellows* 6 ; *Bank of NSW v United Bank Officers' Association* 7 ; *North West County*

**(1987) 163 CLR 656 at 658**

*Council v Dunn* 8 ; *In re Loty and the Australian Workers Union* 9 ; *Australian Broadcasting Commission v Industrial Court (SA)* 10 ; *Re Cram; Ex parte Newcastle Wallsend Coal Co Pty. Ltd.* 11 *Reg. v Spicer; Ex parte Builders' Labourers' Federation* 12 ; *Reg. v Commonwealth Industrial Court; Ex parte Amalgamated Engineering Union* 13 ; *Reg. v Marks; Ex parte Australian Building Construction Employees and Builders Labourers' Federation* 14 ; and *Reg. v Hegarty; Ex parte City of Salisbury* 15 .]

*G Griffith* QC, Solicitor-General for the Commonwealth, and *A R Robertson*, for the Attorney-General for the Commonwealth, intervening in support of the prosecutor, referred as well to *Reg. v Gough; Ex parte Cairns Meat Export Co Pty. Ltd.* 16 ; *Re Manufacturing Grocers' Employees Federation of Australia; Ex parte Australian Chamber of Manufactures* 17 ; *Re Cram; Ex parte NSW Colliery Proprietors' Association Ltd.* 18 *Reg. v Hamilton Knight; Ex parte Commonwealth Steamship Owners' Association* 19 ; *Reg. v Lydon; Ex parte Cessnock Colliers Ltd.* 20 ; *Reg. v Gough; Ex parte Key Meats Pty. Ltd.* 21 ; *Re Amalgamated Metal Workers Union; Ex parte Horwood Bagshaw Ltd.* 22 .

*A M Gleeson* QC and *P H Costello*, for the respondent company, referred as well to *Reg. v Austin; Ex parte Farmers & Graziers Co-operative Co Ltd.* 23 .

*K R Handley* QC, in reply, referred to *Reg. v Bain; Ex parte Cadbury Schweppes Ltd.* 24 and *Reg. v Williams; Ex parte Australian Building Construction Employees' & Builders Labourers' Federation* 25 .

*Cur adv vult*

16 December 1987

THE COURT delivered the following written judgment:—

Section 18 of the *Conciliation and Arbitration Act* 1904 (Cth) ("the Act") empowers the Conciliation and Arbitration Commission "to prevent or settle industrial disputes by conciliation or arbitration". Section 25 of the Act provides for notification of disputes to the Commission. By s 24(1) of the Act, subject to power to vary or revoke any finding, the Commission is required in proceedings relating to an industrial dispute or alleged industrial dispute to "determine whether there is an industrial dispute and, if so, who are the parties and what are the matters in dispute, and record its findings ...".

Section 53 of the *Northern Territory (Self-Government) Act* 1978 (Cth) applies the Act to industrial disputes in the Northern Territory notwithstanding that the dispute is confined to that Territory.

On 22 April 1986 the Federated Miscellaneous Workers' Union of Australia ("the Union") notified the Commission of a dispute between it and the Australasian Society of Engineers ("the Society"), on the one hand, and Ranger Uranium Mines Pty. Ltd ("the company"), on the other hand. The dispute was said to arise from "the company's action on 21 April of purporting to summarily dismiss seven of its employees."

The employees concerned were employed by the company at its Jabiru mine in the Northern Territory in accordance with the Uranium and Metalliferous Mining (NT) Award 1985 ("the Award"). The dispute (numbered C3670 of 1986) came on for hearing before Mr Commissioner Donaldson. During the hearing it was made plain by the Union and the Society that they were seeking a variation of the Award or the making of a new award to provide for the reinstatement of the dismissed employees. The Commissioner held that he had no jurisdiction in the matter, and declined to make any finding as to the existence of a dispute, or to further entertain the dispute so notified.

An appeal from that decision to a Full Bench of the Commission was dismissed by majority (Ludeke J and Mr Commissioner Connell, Boulton J dissenting). The Union now seeks to have made absolute an order nisi for certiorari directed to the members of the Full Bench and an order nisi for mandamus directed to Mr Commissioner Donaldson. It is entitled to succeed in its application if the dispute notified is an industrial dispute capable of resolution by conciliation or arbitration, bearing in mind that the *Northern Territory (Self-Government) Act* has removed the necessity for the dispute to have an interstate character.

**(1987) 163 CLR 656 at 660**

The Act defines "industrial dispute" by reference to "a dispute ... as to industrial matters", which term is relevantly defined in s 4(1) as follows:

" `Industrial matters' means all matters pertaining to the relations of employers and employees and, without limiting the generality of the foregoing, includes—

...

(k) the right to dismiss or to refuse to employ, or the duty to reinstate in employment, a particular person or class of persons;

...

and includes all questions of what is right and fair in relation to an industrial matter having regard to the interests of the persons immediately concerned and of society as a whole."

Notwithstanding that definition, the Commission has generally assumed that it has no authority to entertain reinstatement disputes. The position was put in the majority decision of the Full Bench in the present case as follows:

"In our opinion, the role of the Commission in cases involving claims for reinstatement continues to be that determined by the High Court, despite indications that at the appropriate time the Court may adopt a different opinion.

The restraints upon the exercise of the power to reinstate should continue to be observed by the Commission. This has been the course followed in the Commission for many years ... ."

Reinstatement disputes may take many different forms. The definition of "industrial matters" contemplates that a dispute may arise by reference to "the duty to reinstate". The duty there posited is not a legal duty, but a duty to be imposed by considerations of industrial fairness. In *Australian Iron & Steel Ltd v Dobb* 26 , Dixon CJ (referring to the similarly worded provision of the *Coal Industry Act 1946* (Cth)) said:

"the word `duty' is not confined to an existing antecedent legal duty. That would be an absurd interpretation. The expression refers to a question whether it is not obligatory or incumbent industrially upon the party to reinstate a particular person or class of persons."

Of course an enforceable duty to reinstate in employment can only arise after employment has been terminated. As a general rule disputes as to reinstatement also arise after employment has been terminated, as e.g, occurred in *Reg. v Gough; Ex parte Cairns Meat Export Co Pty. Ltd.* 27 . Where a dispute arises for the first

time after employment has been terminated, ordinarily two questions will immediately present themselves. The first, which by reason of the *Northern Territory (Self-Government) Act* is not here relevant, is whether the dispute has an interstate character. It was the absence of an interstate element that was fatal to the award under consideration in *Reg. v Gough; Ex parte Cairns Meat Export Co Pty. Ltd.* The second question is whether the dispute pertains to the relations of employers and employees and not merely to the relationship between an individual former employee (or former employees) and his (or their) employer: see *Reg. v Staples; Ex parte Australian Telecommunications Commission* 28 .

Whilst some reinstatement disputes may not pertain to the relations of employers and employees, it must be accepted that many such reinstatement disputes are agitated, not merely by or on behalf of the former employee, but by and on behalf of the remaining employees who have a direct industrial interest in the security of their own employment and in the attitude in practice adopted by an employer to the termination of employment. These matters, like questions of manning and recruitment, have a direct and not merely consequential impact on the employer-employee relationship: see *Re Cram; Ex parte NSW Colliery Proprietors' Association Ltd.* 29 and *Slonim v Fellows* 30 .

However, disputes as to the duty to reinstate may be generated in advance of actual termination of employment, and in circumstances in which interstateness is necessary it may be expected that they will be generated as interstate disputes. Two such disputes have been held by this Court to have been beyond the jurisdiction of the Commission: *Reg. v Portus; Ex parte City of Perth* 31 and *Reg. v. Gough; Ex parte Meat and Allied Trades Federation of Australia* 32 .

In *Reg. v Portus; Ex parte City of Perth* a demand had been made that employees whose employment was terminated or who were dismissed should have a right of appeal to the Commission which in turn should have power to determine whether the termination was harsh, unjust and unreasonable and to make such settlement as it deemed just. That demand was held not to create an industrial dispute because the subject-matter of the demand was considered to be "a dispute as to a proposed new function or jurisdiction to be conferred upon the Commission" (per

Stephen J 33 ) and not a dispute as to the "the employer's duty to reinstate in employment" within par (k) of the definition of "industrial matters" in s 4 of the Act; see also Gibbs J 34 .

In the present case there is no claim to confer a new function on the Commission. The claim is simply that the Commission exercise its powers of conciliation and arbitration to settle an industrial dispute as to the duty of the employer to reinstate the dismissed men. However, in *Reg. v Portus; Ex parte City of Perth*, Barwick CJ and Stephen J also expressed the view that a determination by the Commission as to whether a person had been dismissed or his employment terminated harshly, unjustly or unreasonably would involve the exercise of judicial power. In so stating their Honours were doubtless mindful of the earlier decision of this Court in *Reg. v Gough; Ex parte Meat and Allied Trades Federation*. In that case a claim was made for the insertion into an award of a clause prohibiting harsh or unjust dismissal or refusal to re-employ or re-engage employees. The demand then sought that "If any dispute arises under this clause the Commission may on the application of the Union order the reinstatement in employment or re-engagement or re-employment of any such employee" 35 . The demand was construed as embracing disputes as to whether there had been a breach by the employer of his duty to re-engage, re-employ or not to dismiss harshly or unreasonably. Windeyer J 36 thought it was restricted to disputes of that nature. Barwick CJ 37 (with whom Walsh J agreed) and Windeyer J 38 were of the view that a determination as to whether a breach had occurred involved an exercise of the judicial power of the Commonwealth. Menzies J 39 considered that entertaining the demand could not "be regarded otherwise than as a step in the enforcement against one employer of an existing award of the Commission" and was therefore not an exercise of arbitral power. A similar view was taken by Owen J 40 .

Earlier in *Reg. v Gough; Ex parte Cairns Meat Export Co Pty. Ltd.* McTiernan J 41 had said of the order there under consideration:

"It rather looks like a judgment for the plaintiff in an action for wrongful dismissal including an order for wages and an order that he be restored to his former employment."

More recently in *Reg. v Ludeke; Ex parte Queensland Electricity*

*Commission* 42 , this Court said of the log of claims there under consideration:

"Indeed, the dispute arising from non-acceptance of the log would not endow the Commission with jurisdiction to reinstate the dismissed Queensland electricity workers because reinstatement was not dealt with in the log and perhaps because reinstatement involves the exercise of judicial power."

In the present case there is no requirement for interstatehood and no attempt has been made to confer power upon the Commission over and above that conferred by the Act. Thus the only question which arises is whether the dispute notified is capable of resolution by the exercise of the powers of conciliation and arbitration conferred upon the Commission by s 18 of the Act. If so, then in light of par (k) of the definition of "industrial matters" in s 4 of the Act, it is properly to be characterized as an industrial dispute and accordingly should have been so found and recorded pursuant to s 24 of the Act.

It was contended on behalf of the company, both before the Commission and in this Court, that the dispute notified required for its resolution the exercise of the judicial power of the Commonwealth and was thus a dispute which the Commission was not empowered to entertain.

It is clear that reinstatement may be claimed as a legal right or as a remedy for breach of a legal obligation. Section 5 of the Act is illustrative of situations in which reinstatement is a curial remedy for the breach of a legal obligation. A dispute as to the existence or enforcement of a legal right to reinstatement or as to the breach of a legal obligation properly remedied by an order for reinstatement is a dispute which necessarily involves the exercise of judicial power. In conformity with s 71 of the Constitution (which reposes the judicial power of the Commonwealth in Ch III, Courts), the Commission is not endowed with judicial power, and hence has no jurisdiction to entertain disputes as to the existence or enforcement of legal rights or obligations: see *Re Cram; Ex parte Newcastle Wallsend Coal Co Pty. Ltd.* 43 .

However, the *creation* of legal rights and obligations is a function which may be performed in the exercise of arbitral power. This is so even if the function is performed in settlement of a dispute relating to past transactions, events and conduct: *Re Cram; Ex parte Newcastle Wallsend Coal Co Pty. Ltd.* 44 .

**(1987) 163 CLR 656 at 664**

Save for the quite specific situations covered by s 5 of the Act, an employee whose employment is regulated by award made pursuant to the Act has (in the absence of award provision) no legal entitlement to reinstatement either as of right or by way of remedy for breach of a legal obligation. If an employee is dismissed in breach of award, enforcement proceedings may be instituted in the Federal Court or other courts in which jurisdiction has been vested pursuant to s 119 of the Act. If the breach is proved a penalty may be imposed. Additionally, an employee is entitled under s 123 of the Act to recover any payment due under an award. But, s 5 aside, reinstatement is neither a right nor an available legal remedy. Indeed, even if an award created an obligation on the part of an employer to reinstate a particular employee or a particular class of employees, that obligation would itself be enforceable only by imposition of penalty and recovery of payments due under the award.

Where, as here, the relevant award imposes no obligation upon an employer to reinstate a dismissed employee or class of employees and the Act confers no general entitlement to reinstatement, either as a right or as an available legal remedy, then, unless the provisions of s 5 of the Act are invoked, the dispute is properly to be viewed as a claim for the creation of an obligation on the part of the employer to reinstate the dismissed employee or employees. The creation of new rights and obligations is a function which is properly performed in the exercise of arbitral power. In the present case, no claim was made by reference to s 5 of the Act and it was made clear by the Union and the Society that they sought a variation of the Award or the making of a new award to bring such an obligation into existence.

However, as *Reg. v Portus; Ex parte City of Perth* and *Reg. v. Gough; Ex parte Meat and Allied Trades Federation of Australia* demonstrate, a claim that a right or obligation should exist may be formulated in a manner which requires the Commission to assume powers which it does not possess. In the present case it is contended that the resolution of the claim made by the Union and the Society would necessarily involve the assumption by the Commission of the judicial power of the Commonwealth. The starting point of that argument is found in cl 7(d) of the Award which provides as follows:

"Unfair dismissals

- (vi) Termination of employment by an employer shall not be harsh, unjust or unreasonable.

For the purposes of this clause, termination of employment shall include terminations with or without notice.

Without limiting the above, except where a distinction, exclusion or preference is based on the inherent requirements of a particular position, termination on the ground of race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction and social origin shall constitute a harsh, unjust or unreasonable termination of employment."

Ordinarily, in industrial tribunals empowered to order reinstatement, the criterion for the making of an order for reinstatement is that the dismissal was harsh, unjust or unreasonable, although more recently the tendency has been to express the test in terms of unfairness: see *In re Loty and Holloway and Australian Workers' Union* 45 . In the present case the Union and the Society each claimed that the dismissals which gave rise to their claim were harsh, unjust and unreasonable. Accordingly it was said that the resolution of the dispute necessarily involved the determination of whether the dismissals were harsh, unjust or unreasonable — a determination which, it was argued, required the Commission, in the context of the Award, to determine whether the employer was in breach of the obligation contained in cl 7(d)(vi). This, it was contended, necessarily involved an assumption of the judicial power of the Commonwealth, for it involved the Commission in precisely the same task as would be undertaken by a court in the event that proceedings were taken pursuant to s 119 of the Act alleging breach of cl 7(d)(vi) of the Award.

It is well settled that functions "may be classified as either judicial or administrative according to the way in which they are to be exercised": *Reg. v Hegarty; Ex parte City of Salisbury* 46 , per Mason J; see also *Federal Commissioner of Taxation v Munro* 47 , per Isaacs J; *Reg. v Spicer; Ex parte Australian Builders' Labourers' Federation* 48 , per McTiernan J and Kitto J 49 ; *Re Cram; Ex parte Newcastle Wallsend Coal Co Pty. Ltd.* 50 . A finding that a dismissal is harsh, unjust or unreasonable involves the finding of relevant facts and the formation and expression of a value judgment in the context of the facts so found. Although findings of fact are a common ingredient in the exercise of judicial power, such findings may also be an element in the exercise of administrative, executive and arbitral powers: see *Reg. v Trade Practices Tribunal; Ex parte Tasmanian Breweries Pty. Ltd.* 51 , per McTiernan J, and

*Reg. v Hegarty; Ex parte City of Salisbury* 52 , per Murphy J So too with the formation and expression of value judgments.

In our view the fact that the Commission is involved in making a determination of matters that could have been made by a court in the course of proceedings instituted under s 119 of the Act does not ipso facto mean that the Commission has usurped judicial power, for the purpose of inquiry and determination is necessarily different depending on whether the task is undertaken by the Commission or by a court. The purpose of the Commission's inquiry is to determine whether rights and obligations should be created. The purpose of a court's inquiry and determination is to decide whether a pre-existing legal obligation has been breached, and if so, what penalty should attach to the breach.

The power of inquiry and determination is a power which properly takes its legal character from the purpose for which it is undertaken. Thus inquiry into and determination of matters in issue is a judicial function if its object is the ascertainment of legal rights and obligations. But if its object is to ascertain what rights and obligations should exist, it is properly characterized as an arbitral function when performed by a body charged with the resolution of disputes by arbitration.

Inquiry into and determination of facts for the purpose of ascertaining what rights and obligations should be brought into existence in settlement of an industrial dispute does not cease to be an exercise of arbitral power merely because, in the course thereof, the Commission may form an opinion as to the existing legal rights and obligations of the parties. As was pointed out in *Re Cram; Ex parte Newcastle Wallsend Coal Co Pty. Ltd.* 53 , the formation of an opinion as to legal rights and obligations does not involve the exercise of judicial power, at least if it is "a step in arriving at the ultimate conclusions on which [is based] the making of an award intended to regulate the future rights of the parties". For, as was there made clear, "the formation of such an opinion does not bind the parties and cannot operate as a binding declaration of rights".

It follows in our opinion that the dispute notified to the Commission is a dispute capable of resolution by the exercise of arbitral power. The resolution of the dispute does not involve the assumption of judicial power not possessed by the Commission, notwithstanding that in the course of the resolution of the dispute the Commission may undertake similar inquiries and determine similar questions of fact as would be made and determined in proceedings brought for the enforcement of the Award pursuant to

s 119 of the Act, and notwithstanding that in the course thereof it may form an opinion as to the legal rights and obligations of the parties.

It must be acknowledged that where an award seeks to impose limits upon the right of an employer to terminate employment, there exists a potential for inconvenience and embarrassment if proceedings are brought under s 119 of the Act and are concurrently brought in the Commission to create new rights and obligations by reference to the same issues which fall for determination in s 119 proceedings. To some extent that potential will be minimized by reason that considerations other than unfairness will be relevant in determining whether an award should be made creating an obligation upon an employer to reinstate an employee. In some cases the nature of the relationship necessary for the proper performance of the work will render the making of an award for reinstatement undesirable. However, in other cases where enforcement or other legal proceedings are available or current, this will be a matter to be taken into account by the Commission in deciding pursuant to s 41(1)(d)(iii) of the Act whether it should refrain from further hearing or determining the dispute on the ground that further proceedings are not desirable in the public interest.

The order nisi for mandamus should be made absolute in respect of matter No C3670 of 1986. It is unnecessary for certiorari to issue to the members who constituted the Full Bench of the Commission, and the order nisi for certiorari should thus be discharged.

2pOrder nisi for a writ of mandamus in relation to matter No C3670 *made absolute*.

Order nisi for a writ of certiorari discharged.

Solicitors for the prosecutor, *Steve Masselos & Co*

Solicitors for the respondent company, *Corrs Pavey Whiting & Byrne*.

Solicitor for the Attorney-General for the Commonwealth, *Australian Government Solicitor*.

- 1 (1956) 94 CLR 254.
- 2 (1969) 122 CLR 237, at 240.
- 3 (1973) 129 CLR 312, at pp 324, 330.
- 4 (1985) 159 CLR 178, at 191.
- 5 (1958) 98 CLR 586, at pp 597-598.
- 6 (1984) 154 CLR 505, at pp 510, 515.
- 7 [1921] AR (NSW) 138, at 147.

8 (1971) 126 CLR 247, at pp 251-253, 263.

9 [1971] AR (NSW) 95.

10 (1977) 138 CLR 399, at 403.

11 (1987) 163 CLR 140, at pp 148-149, 151-152, 162.

12 (1957) 100 CLR 277.

13 (1960) 103 CLR 368.

14 (1981) 147 CLR 471, at 488.

15 (1981) 147 CLR 617.

16 (1962) 108 CLR 343.

17 (1986) 160 CLR 341, at 353.

18 (1987) 163 CLR 117, at pp 133-134, 136-137.

19 (1952) 86 CLR 283.

20 (1960) 103 CLR 15.

21 (1982) 148 CLR 582.

22 (1986) 60 ALJR 696, at 697; 67 ALR 532, at pp 533-534.

23 (1964) 112 CLR 619, at 627.

24 (1983) 159 CLR 163, at 168.

25 (1982) 153 CLR 402, at 411.

26 (1958) 98 CLR 586, at p 598.

27 (1962) 108 CLR 343.

28 (1980) 143 CLR 614.

29 (1987) 163 CLR 117, at 137.

30 (1984) 154 CLR 505, at pp 515-516.

- 31 (1973) 129 CLR 312.
- 32 (1969) 122 CLR 237.
- 33 (1973) 129 CLR, at p 328.
- 34 (1973) 129 CLR, at p 325.
- 35 (1969) 122 CLR, at p 240.
- 36 (1969) 122 CLR, at pp 244-245.
- 37 (1969) 122 CLR, at p 241.
- 38 (1969) 122 CLR, at p 245.
- 39 (1969) 122 CLR, at p 243.
- 40 (1969) 122 CLR, at p 248.
- 41 (1962) 108 CLR, at 352.
- 42 (1985) 159 CLR 178, at p 191.
- 43 (1987) 163 CLR 140, at pp 148, 158.
- 44 (1987) 163 CLR, at 149.
- 45 [1971] AR (NSW) 95.
- 46 (1981) 147 CLR 617, at 628.
- 47 (1926) 38 CLR 153, at p 177.
- 48 (1957) 100 CLR 277, at p 293.
- 49 (1957) 100 CLR, at p 305.
- 50 (1987) 163 CLR, at 158.
- 51 (1970) 123 CLR 361, at p 371.
- 52 (1981) 147 CLR, at 631.
- 53 (1987) 163 CLR, at 149.