Federal

Karpany and Anor v Dietman Case No A18/2012, High Court

by Victoria Shute[1]

This matter concerns an appeal to the High Court from a decision by the Full Court of the Supreme Court of South Australia delivered on 11 May 2012[2] that overturned the acquittals of two Aboriginal men charged with offences under the *Fisheries Management Act 2007* (SA). Issues raised in this matter include the continuation or extinguishment of the native title right to take fish, and whether s 72(2)(c) *Fisheries Management Act 2007* (SA) is inoperative due to inconsistency with s 221 of the *Native Title Act 1993* (Cth).

The men were charged jointly with being in possession or control of 24 undersized Greenlip abalone, contrary to s 72(2)(c) of the Act. The charges were laid in the Magistrates Court of South Australia, and the defendants argued that they were entitled to take undersized abalone as s 221 of the *Native Title Act 1993* (Cth) rendered s 72(2)(c) of the state Act inoperative by operation of s 109 of the Constitution of Australia.

The Magistrate, in acquitting the defendants, determined that s 115 of the Fisheries Management Act triggered the operation of s 221 of the *Native Title Act* and, therefore, the defendants were not guilty of an offence. Section 115 states:

> Subject to this section, the Minister may, by notice in the Gazette – (a) exempt a person or class of persons, subject to such conditions as the Minister thinks fit and specifies in the notice, from specified provisions of this Act

The Full Court of the Supreme Court disagreed with the decision of the Magistrate and determined that the intent of the Fisheries Management Act and its predecessors was to place all persons, including Aboriginal persons under the regime of the statute and as such, the native title to fish was extinguished and replaced by statutory rights.

This matter has due to progress to a hearing before the High Court in late 2012, however the proceedings were placed on hold following the filing of the appellant's response to the application by the Commonwealth Attorney-General to intervene in the proceedings. Whilst the proceedings are still 'live', it remains to be seen whether the appeal hearing will occur or not.

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2 *Dietman v Karpany & Anor* (2012) 112 SASR 514

New South Wales

Environment Protection Authority v Aargus Pty Ltd; Kariotoglou; Kelly [2013] NSWLEC 19

by Sarah Froh[3]

This case is significant in relation to misleading conduct, company liability, publication orders and consultants' duties.

Mr Bonadio, the owner of a rural/residential parcel of land in Oakville, acquired two stockpiles of topsoil for landscaping works – one from a site in Glendenning and one from a neighbouring property. Compliance officers from Hawkesbury City Council identified in one of the stockpiles:

> numerous contaminants including but not limited to concrete, plastics, metals, roof tiles, bricks, tiles, terracotta pipe and fibre cement sheeting suspected of containing asbestos.

Mr Bonadio engaged Aargus Pty Ltd (Aargus) to assess and report on the stockpiles. Mr Kariotoglou, a project manager at Aargus, inspected the Glendenning stockpile in early October 2010. He prepared an Asbestos Clearance Certificate which declared the stockpile to be 'visually acceptable' and a Soil Classification Report which stated that 'no visible fibro pieces were observed.' Both of these documents were reviewed and countersigned by Mr Kelly in his capacity as 'Environmental Manager'. Mr Kariotoglou had removed two pieces of fibre cement, which he suspected to contain asbestos, for disposal. An analysis he commissioned of two soil samples from the stockpile did not identify the presence of asbestos.

When the stockpile was examined by Council and re-examined by Mr Kariotoglou later in October 2010, it was apparent that it contained asbestos materials. An inspection performed by EPA officers in November 2010, similarly revealed the presence of amosite and chrysotile asbestos.

Mr Kariotoglou, Mr Kelly and Aargus were charged with two offences against s 144AA of the *Protection of the Environment Operations Act 1997* (NSW) (POEO Act) for supplying 'false or misleading information about waste'. Pleading guilty, Mr Kariotoglou was fined $9,000 and 30% of the prosecutor's costs; Mr Kelly was fined $6,000 and 20% of the Prosecutor's costs; and Aargus was fined $30,000 and 50% of the prosecutor's costs.

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