Court of Appeal
Supreme Court
Sydney

Decisions of Interest

5 December 2022 – 18 December 2022

Summaries of recent decisions of the New South Wales Court of Appeal, other Australian intermediate appellate courts, Asia Pacific appellate courts and other international appellate courts, with the aim of collecting and promoting awareness and accessibility of particularly significant recent decisions.

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New South Wales Court of Appeal Decisions of Interest

Employment and Industrial Law: long service leave

***Wipro Limited v State of New South Wales* [2022] NSWCA 265**

Decision date: 14 December 2022

Macfarlan JA, Simpson and Basten AJJA

The proceedings were commenced in the Common Law Division and referred to the Court of Appeal, as there was arguably conflicting relevant appellate authority. The plaintiff, Wipro Limited, is a company in the business of information technology consulting. It is registered in Australia as a foreign company and is incorporated and headquartered in India. It has an India-based workforce that is deployed globally through the use of "deputation" agreements. The second defendant, Mr Deepak Rawat, was one such employee. He was a citizen and resident of India who was offered and accepted employment in India. He worked for the plaintiff in India from 2009 to 2015 under an employment contract made in India and governed by the laws of India. He then agreed to work in New South Wales under a deputation agreement dated 3 February 2015 and did so from 6 February 2015 until 8 November 2019. His service for Wipro totalled 10 years, 8 months and 22 days, of which 5 years, 11 months and 20 days predated the deputation agreement and took place in India. The issue between the parties was whether Mr Rawat's service in India was to be counted as part of his "continuous service" with the plaintiff for the purposes of s 4 of the *Long Service Leave Act 1955* (NSW) ("the LSL Act"). If it was not to be included, his service did not meet the 10-year period required for long service leave.

Held: ordering that the plaintiff is not obliged to pay Deepak Rawat a long service leave entitlement

- Where a statute makes no express provision relevantly addressing the territorial reach of its subject matter: the first task is to identify the hinge or central conception of the legislation; the second task is to inquire as to its connection with New South Wales: [19]–[21], [41]. The central conception or hinge of the LSL Act is the concept of "continuous service"; its intended territorial reach is determined by considering whether the continuous service has a substantial connection with New South Wales: [38], [40]. Mr Rawat's initial period of employment in India was a discrete period which did not have the requisite connection with New South Wales: [42]. Whether a substantial connection exists should be assessed by examining each discrete period of service as it occurs, rather than the entire period of service in retrospect once the service has ceased: [43]. Where there are discrete periods of employment in different locations, their connection to New South Wales can therefore be separately assessed
- *Australian Timken Pty Ltd v Stone (No 2)* [1971] AR 246 ("*Australian Timken*") and *International Computers (Aust) Pty Ltd v Weaving* [1981] 2 NSWLR 64 adopted a retrospective assessment of whether the worker's period of "continuous service" had a substantial connection with New South Wales. This approach was unacceptable: the outcome t may be very different if the assessment were made from time to time in the course of the employment: [43]. The decision in *Infosys Technologies Ltd v State of Victoria* (2021) 64 VR 61; [2021] VSCA 219 should be followed: [55]–[58]. The decision in *Cummins South Pacific Pty Ltd v Keenan* (2020) 281 FCR 421; [2020] FCAFC 204 is wrong to the extent that it adopted and applied the test stated in *Australian Timken*: [49].

Private International Law: enforcement of foreign judgments

***Nyunt v First Property Holdings Pte Ltd* [2022] NSWCA 249**

Decision date: 6 December 2022

Bell CJ, Macfarlan and Gleeson JJA

In 1996, Mr Nyunt and First Property Pte Ltd ("First Property"), a Singaporean company, entered into a joint venture agreement ("the JVA") for the joint purchase and development of several investment properties in Myanmar. The JVA included a "non-exclusive jurisdiction clause" providing that the agreement was governed by Singaporean law. Disputes arose and First Property commenced proceedings in Myanmar in 2003. In 2015, First Property commenced proceedings against Mr Nyunt in Singapore. In 2016, the High Court of Singapore entered default judgment in favour of First Property and subsequently ruled on damages. In 2017, First Property successfully applied to have both Singapore judgments registered as a judgment of the Supreme Court of New South Wales under s 6 of the *Foreign Judgments Act 1991* (Cth) ("the FJA"). Mr Nyunt brought an application to have that registration set aside under s 7 of the FJA ("the set aside application"). In 2019, the primary judge dismissed the set aside application. Mr Nyunt appealed that decision. He argued the primary judge should have set aside registration because: the Singaporean court had no jurisdiction over his dispute with First Property; he had insufficient notice of the Singaporean proceedings; and the proceedings were *res judicata*.

Held: varying the orders of the primary judge but otherwise dismissing the appeal

- Section 7(3)(a)(iii) of the FJA provides that a court will be taken to have jurisdiction where the judgment debtor had agreed, prior to the commencement of the foreign proceedings and in respect of the relevant subject matter, to submit to the court's jurisdiction: [73Given the JVA contained a *non-exclusive* jurisdiction clause, the commencement and continuation of simultaneous proceedings did not necessarily involve any act of election: [74]–[84]. Commencing or continuing foreign proceedings will generally not be vexatious or oppressive where additional remedies are available beyond those attainable in the domestic forum: [85]–[86]. If a matter has been litigated to finality in one jurisdiction, that *may* preclude litigation in another forum, even one that has been contractually chosen by the parties, but that will typically be because of the operation of doctrines of *res judicata*, issue estoppel and/or abuse of process: [87]–[88].

- The construction of a submission to jurisdiction clause is informed by considerations of context. Here, although the non-exclusive jurisdiction clause did not expressly identify the subject matter or scope of the submission to jurisdiction, in the context of a joint venture, no narrow view should be taken of the clause's scope. Where the parties did not seek to delimit the scope of the submission to jurisdiction by specifying any nexus at all, it may be readily inferred that their intention was to cast the net very broadly: [97]–[98]; [154].

- Where a foreign court had jurisdiction to determine a dispute, and a judgment was entered following proceedings in which the judgment debtor did not appear, its registration is required to be set aside under s 7(2)(a)(v) of the FJA only if such insufficient notice was given that the judgment debtor had no opportunity to defend the matter: [107], [113], [133].

- The several decisions of courts in Myanmar referred to by Mr Nyunt did not generate any *res judicata*: [142]–[143]. To the extent that Mr Nyunt relied on notions of abuse of process, the alleged abuse of process did not relate to Australian courts, but the court whose judgment has been registered. Whether it was an abuse of process in one foreign forum to bring proceedings where there was already a relevant decision in another foreign forum will be a matter of evidence and will depend at least in part upon the first foreign forum's law relating to issue estoppel or *res judicata*: [148].

Consumer Law: misleading or deceptive conduct

***Mills v Walsh* [2022] NSWCA 255**

Decision date: 8 December 2022

Bell CJ, White and Brereton JJA

The appellant, Mr Mills, and the second respondent, his now estranged wife Ms Zhang, employed JSW Property Projects Pty Ltd ("JSW"), of which the respondent Mr Walsh was the sole director and shareholder, to renovate their residential property, of which Ms Zhang was the registered proprietor. Neither Mr Walsh nor JSW held a licence under the *Home Building Act 1989* (NSW) ("the HBA"), but Ms Zhang and Mr Mills were unaware of this. Mr Mills' company paid JSW a total of $500,000 in progress payments. A dispute arose and JSW left the site with the renovations incomplete. Ms Zhang later engaged a different builder to demolish the building and rebuild to a different design. Mr Mills and Ms Zhang commenced proceedings in the District Court, claiming damages for misleading and deceptive conduct under the *Competition and Consumer Act 2010* (NSW) Schedule 2*, Australian Consumer Law* and breach of statutory warranties under the HBA. JSW was deregistered and so the claim proceeded against Mr Walsh only. The primary judge found that: the construction contract was with JSW alone and so Mr Walsh had no contractual liability; while Mr Walsh had engaged in misleading and deceptive conduct by representing (implicitly, or by silence), without reasonable grounds, that JSW would be licensed when works commenced, Mr Mills did not rely on the misrepresentation; and although Ms Zhang did, she suffered no loss because only Mr Mills incurred any expenditure. Mr Mills appealed that decision. Ms Zhang was joined as a respondent.

Held: dismissing the appeal

- The primary judge was right to conclude the contract was with JSW, and not with Mr Walsh, as objectively shown by the evidence dating to the earliest point by which there could be said to be a contract: [75]-[81]. The finding that Mr Walsh engaged in misleading and deceptive conduct was correct, primarily on the basis that he misrepresented that the entity that would perform the building works was licensed, and alternatively on the basis that he represented it would be licensed when building works commenced and did not have reasonable grounds for doing so: [94].

- What must be shown is a sufficient causal connection between the misleading and deceptive conduct and the damage suffered, which does not necessarily involve reliance by the plaintiff on the contravening conduct but may be established where a third party relies on the conduct in a manner which results in loss to the plaintiff: [100]-[101].

- In a construction contract, the benefit to the proprietor is not the end product or any enhancement in the capital value of the land, but the value of the works, being the reasonable value of the materials and labour: [140]-[146]. The value might be affected by defects in the works, or the circumstance that they were built by an unlicensed builder; however, Ms Zhang and Mr Mills did not prove what the consequence of such defects and circumstances was on the overall value of the works: [151]-[151].

- In dissent, White JA found that the measure for loss is the price paid less the real value to the plaintiff of the thing acquired: [5]-[10]. But for Mr Walsh's misleading conduct, Ms Zhang would not have contracted with his company: [14], [27], [29]. Ms Zhang and Mr Mills decided to demolish the house rather than continue with the renovation partly because they had been advised that the work that had been done was poor and would require a lot of work to fix: [25]; [27]. That decision was reasonable and therefore did not break the chain of causation between Mr Walsh's conduct and their loss: [28]-[29]; [32]. Ms Zhang did not suffer any loss. Mr Mills proved he suffered loss to the extent of $335,000 ($500,000 advanced in progress payments to JSW, minus the $165,000 settlement sum paid by the architect): [37].

Negligence: professional negligence

***Dean v Pope* [2022] NSWCA 260**

Decision date: 14 December 2022

Ward P, Macfarlan, Meagher, White and Brereton JJA

The appellant, Mr Dean, was a former patient of the respondent, a neurosurgeon named Dr Pope.. Following a consultation in October 2013, the respondent concluded that the appellant's abnormal sensory symptoms in his right lower limb had a lumbar cause. The respondent performed lumbar surgery on the appellant in June 2014. The appellant did not experience any material relief from his pre-operative symptoms and began to experience additional symptoms, including back pain. In March 2015, the appellant sought a further opinion from another neurosurgeon, Dr Steel, who identified cord compression from a thoracic lesion. Dr Steel also did not suspect a thoracic cause for the appellant's complaints. The lesion was surgically excised. This resolved the appellant's lower back pain but not his sensory symptoms. The appellant commenced proceedings in the District Court, alleging that: the symptoms with which he presented to the respondent, and for which he had the lumbar surgery, were attributable to the thoracic lesion; the lumbar surgery was unnecessary; and the respondent had wrongly diagnosed a lumbar cause and had proceeded to surgery with "undue haste". The primary judge concluded that the appellant's claim failed on liability and causation issues but that, had it succeeded, the damages would have been assessed at $611,850. Mr Dean appealed that decision.

Held: dismissing the appeal

- The primary judge was right to find that the respondent had not breached his professional duty of care. When a professional relies on s 5O of the *Civil Liability Act 2002* (NSW), they must specify the "manner" in which they acted and prove that it was at the time widely accepted as "competent professional practice". "Professional practice" refers to the manner in which professionals practise their profession, not to a particular protocol, procedure or process. "Competent professional practice" refers to what a significant body of competent professionals would have done. The past tense "was" is used to highlight that the judgment is to be made as at the time of the relevant conduct: [233]-[236], [256], [266]-[267], [314]. Once invoked, s 5O sets the applicable standard of care and ought to be considered prior to breach and causation: [273]-[274].
- The primary judge did not err in finding that the respondent had acted reasonably in proceeding to lumbar surgery. The appellant had presented to the respondent with symptoms consistent with a lumbar cause (and with an absence of symptoms to indicate a thoracic cause) and the MRI scan had revealed disc herniation and associated disc bulge: [127]. This medical history and scan results was enough to justify lumbar surgery, according to the expert evidence of Professor Sheridan: [130].
- The primary judge did not err in finding that it was reasonable for the respondent not to pursue a thoracic cause for the appellant's symptoms. The appellant's presentation was not indicative of a thoracic cause and the expert witnesses accepted that it would be a rare (if not almost impossible) for a thoracic cause to generate the appellant's symptoms at the time the respondent made his diagnosis: [139].

Australian Intermediate Appellate Decisions of Interest

Administrative Law: judicial review

***Kontis v Coroners Court of Victoria* [2022] VSCA 274**

Decision date: 12 December 2022

McLeish and Walker JJA and J Forrest AJA

In July and August 2020, 50 residents of St Basil's Home for the Aged ("St Basil's") died during an outbreak of COVID-19. During that time, the first applicant, Mr Kontis, was St Basil's chairman and the second applicant, Ms Kos, was its facility manager and director of nursing. In 2021, the State Coroner convened an inquest in the Coroners Court of Victoria into the deaths and served each applicant with a notice under s 42 of the *Coroners Act 2008* (Vic) ("the Act"), requiring them to provide a statement. WorkSafe Victoria ("WorkSafe") appeared in the inquest as an interested party and informed the State Coroner that it was investigating whether, during the St Basil's COVID-19 outbreak, offences may have been committed against the *Occupational Health and Safety Act 2004* (Vic) ("The OHS Act"). The applicants informed the State Coroner that they relied on the protection against self-incrimination provided by s 50 of the Act and would therefore not be providing a statement in response to the notices. The applicants likewise objected to giving evidence at the inquest, relying on the privilege against self-incrimination. The State Coroner ruled that he was satisfied, under s 57(4) of the Act, that it was in the "interests of justice" for both applicants to be required to give evidence. The applicants appealed that decision.

Held: granting leave to appeal but dismissing the appeal

- The State Coroner did not attribute excessive weight to *Priest v West* (2012) 40 VR 521 ("*Priest*"), a case which held that, under s 67(1), the coronial court is obliged to find out "all it can" about unexplained deaths. Here, the Coroner recognised that s 57(4) of the Act operates as a limit on the obligation to investigate:[67]-[68], [72]. The State Coroner considered the factors said to point against requiring the applicants to give evidence, as well as his duty to investigate the 50 deaths and make recommendations following as thorough an inquiry as possible: [69]. The Coroner's analysis of the applicants' arguments revealed that *Priest* formed only a part of a wider evaluative assessment: [70], [71].

- The State Coroner did not misconceive the "interests of justice" in s 57(4)(b) as being confined to the interests of justice to be served by the inquest process. Although the Coroner reached a conclusion about the interests of justice "to be served by the inquest process", this was in the context of dealing with the applicants' "probative value", which was relevant to the inquiry required by s 57(4)(b). The State Coroner looked well beyond the inquest process in evaluating the interests of justice: [75]-[76].

- A requirement that a court be satisfied that the interests of justice "require" evidence to be given is a higher standard than a requirement that the interests of justice "favour" that course (*Roberts-Smith v Fairfax Media Publications Pty Ltd [No 28]* [2022] FCA 115. Section 57(4)(b) spoke of what the interests of justice "require"; however, the ruling concluded it was "in" the interests of justice to require evidence from the applicants: [81]. Regardless of whether there is a difference between what the interests of justice "require" what is "in the interests of justice", a fair reading of the ruling as a whole shows that the State Coroner applied the statutory test and merely used inexact (or different) language in summarising his conclusion: [82]-[83].

Human Rights; Tribunals

Higgins v Orchard **[2022] TASFC 12**

Decision date: 15 December 2022

Brett and Jago JJ and Martin AJ

In 2017, Ms Orchard, the respondent, made a complaint to the Anti-Discrimination Commissioner ("the Commissioner") concerning the conduct of Mr Higgins, the appellant. The alleged conduct occurred while Ms Orchard was employed as an assistant manager of a retail store between 2013 and 2017. Mr Higgins worked as a delivery driver on contract for Toll Transport Pty Ltd ("Toll") and he made regular stock deliveries to the store. Ms Orchard alleged that the conduct in question was in breach of s 17(2) (sexual harassment) and s 18(2) (victimisation) of the *Anti-Discrimination Act 1998* (Tas) ("the Act"). Ms Orchard also alleged that Toll was liable for Mr Higgin's contravention because it had breached its obligations under s 104 of the Act to ensure its employees did not contravene the Act. Toll was named as a respondent. After investigation by the Commissioner, the complaint, in full and against both respondents, was referred to the Anti-Discrimination Tribunal ("the Tribunal"). Toll entered a private compromise with the complainant and took no part in the hearing. The tribunal member found that the appellant had engaged in most of the alleged conduct and that conduct constituted sexual harassment contrary to s 17(2) of the Act, but not victimisation within the meaning of s 18 of the Act. It was ordered that the appellant pay compensation to the complainant in the sum of $45,000, which included $20,000 of "aggravated damages". Mr Higgins appealed that decision, and the Supreme Court dismissed that appeal. Mr Higgins appealed that decision.

Held: allowing the appeal

- The primary judge was correct in finding there was no contradiction in the tribunal member's discussion of the age disparity between Ms Orchard and the appellate. The member found that there was an insufficient causal connection between age and Mr Higgins' behaviour to justify a finding of offensive conduct on the basis of a personal attribute under s 17(1). However age disparity was relevant to a finding of sexual harassment under s 17(2): in particular a reasonable person, having regard to the age disparity among other factors, would have anticipated that the complainant would be offended or humiliated by the relevant conduct (as required by s 17(3)): [52]-[53].

- The member's statement that "[s]uch an award is reflective of the need to advance public policy behind the Act and discourage breaches of its provisions" did not indicate that the member's assessment of the award included a punitive element. The impugned comments simply reflected the underlying policy of the legislation which is to discourage prohibited conduct, including sexual harassment: [56]-[57].

- The primary judge and member erred in awarding double compensation to Ms Orchard by not identifying or taking into account the compensation Ms Orchard received from Toll: [61], [81]-[84]. The Commissioner referred the entire complaint, against both Mr Higgins and Toll, to the Tribunal (ss 59A and 78 of the Act): [64]-[69]. The complaint against Toll alleged its responsibility under s 104 for all of the appellant's conduct, including that which the tribunal member took into account when assessing aggravated damages: [71]-[73], [81]-[82].

- In accordance with the intent of the Act, the fact that the *Wrongs Act 1954* (Tas) is not directly applicable, and the fact that compensation is not intended to be punitive, it was more appropriate to order the appellant to pay one half of the compensation assessed as appropriate by the Tribunal, being $22,500: [85]-[89], [94]-[95].

Asia Pacific Decision of Interest

Contempt Proceedings; Statutory Interpretation

Sun Min and Others v Chu Kong **[2022] HKCFA 24; FACV 6/2022**

Decision date: 6 December 2022

Court: Hong Kong Court of Final Appeal

Chief Justice Cheung, Mr Justice Ribeiro PJ, Mr Justice Fok PJ, Mr Justice Lam PJ and Lord Neuberger of Abbotsbury NPJ

A motor vessel "Grain Pearl" was owned by Joint Silver Limited, a company 50% owned by the respondent and two associates, and 50% owned by Lau Wing Yan and his associates, Sun Min ("Sun"), Chang Dafa ("Chang") ("Lau and associates"). When a dispute arose over the ownership of the vessel, Lau and associates and Pacific Bulk Shipping (Cayman) Ltd ("the plaintiffs") commenced proceedings and obtained an injunction against the respondent. When applying for their injunction, the plaintiffs relied, inter alia, on three emails which had been altered by one Yan Donghai. The respondent applied for leave to commence contempt proceedings against the appellants and Yan, based on the alteration of the emails, allegedly false statements in affirmations, and an allegedly fabricated invoice. DHCJ Kent Yee granted the respondent leave to bring the contempt proceedings. DHCJ Saunders then set aside the grant of leave on the ground of material non-disclosure, but held it would have been unnecessary for the respondent to obtain the Secretary for Justice's ("SJ's") consent to the Contempt Proceedings. The Court of Appeal overruled DHCJ Saunders's finding of material non-disclosure, but agreed that the SJ's consent was not needed. The appellants appealed that decision.

Held: dismissing the appeals

- The authorities hold that all contempt proceedings, even for criminal contempt, are civil in nature: [34], [35]. That conclusion is strengthened by the observation that, in the one fact pattern, there may be an ordinary crime as well as a criminal contempt, and parallel proceedings can be brought for the crime and the contempt: if criminal contempt involved a criminal proceeding, this would be impossible: [33]. Contempt is a matter for the court and not for the executive because in many cases, the court will have a much better idea of the background, and all citizens have an interest in courts and court orders being respected: [39], [44], [53]. Order 52 r 2 of the *Rules of the High Court* (Hong Kong) cap 4A is drafted to avoid having to delve into whether the alleged contempt is civil or criminal. Furthermore, there is no suggestion in O 52 that an applicant needs to apply to the SJ, or that the SJ has any gatekeeping function over contempt applications: [63]-[66].

- Clear and unambiguous words would be required before concluding that a legislative provision, or even a provision in the *Basic Law of the Hong Kong Administrative Region of the People's Republic of China*, enabled the SJ to prevent the court from considering an alleged contempt: [68]. Section 3(3) of the *Judicial Proceedings (Regulation of Reports) Ordinance* (Cap 287) indicates that where the SJ's consent is required, that requirement is made explicit: [72], [73].

- There is no domestic case law or other material, nor English case law, nor other international case law (although Singapore differs marginally), that supports the claim that proceedings for criminal contempt must be commenced by the SJ: [74], [76], [82]-[94], [99]. Unlike contempt proceedings in Singapore, the private litigant is not required to join the SJ as a party or lay the relevant facts before the court including any views on the contempt charge expressed by the SJ: [93]-[94], [101]-[102].

International Decision of Interest

Reserved Matters; Devolution

REFERENCE by the Attorney General for Northern Ireland – Abortion Services (Safe Access Zones) (Northern Ireland) Bill **[2022] UKSC 32**

Court: United Kingdom Supreme Court

Decision date: 7 December 2022

Lord Reed (President), Lord Kitchin, Lady Burrows, Lady Rose, Lord Lloyd-Jones, Lord Carloway and Dame Siobhan Keegan

The Northern Ireland Assembly drafted an Abortion Services (Safe Access Zones) (Northern Ireland) Bill which, if passed, would prohibit anti-abortion protests and other specified behaviour within "safe access zones" around abortion clinics and related premises. Under cl 5(2)(a), it is an offence to do anything, intentionally or recklessly, in a safe access zone which has the effect of influencing a person who is attending an abortion clinic or other protected premises for "protected purposes". There is no defence for those who act with reasonable excuse. Section 6(2)(c) of the *Northern Ireland Act 1998* (UK) states that a provision of a bill is outside the competence of the Northern Ireland Assembly if it is incompatible with the rights protected by the *Convention for the Protection of Human Rights and Fundamental Freedoms*, opened for signature 4 November 1950, 213 UNTS 221 (entered into force 3 September 1953) ("the Convention"). These include the rights to freedom of thought, conscience and religion, freedom of expression and freedom of assembly and association protected by art 9, 10 and 11. The question referred was whether cl 5(2)(a) of the Bill is outside the legislative competence of the Assembly as a disproportionate interference with the freedom of conscience, speech and assembly of anti-abortion protestors and demonstrators.

Held: the provision in question was within the legislative competence of the Assembly

- A provision of devolved legislation can only be said to beyond legislative competence on the ground that it is a disproportionate interference with a Convention right if it would always, or almost always, have that effect: [12]-[19]. Where the exercise of rights under articles 9 to 11 of the Convention is raised by the defendant to a criminal prosecution, there need not always be an assessment of the proportionality of any interference with those rights on the facts of the individual case: [29], [34]-[41], [45]-[51], [63]. The ingredients of an offence can in themselves ensure the compatibility of a conviction with the Convention rights: [34]-[41], [45]-[51], [55], [65]. The assessment of whether there is an interference with a Convention right involves a series of legal tests within the factual context: [30]-[34], [66]. Consequently, it need not be decided by the body responsible for finding the facts at any trial: [67].

- Clause 5(2)(a) was compatible with the Convention rights of anti-abortion protestors and was therefore within the legislative competence of the Assembly: [154]-[157]. Although cl 5(2)(a) did impose a restriction on behaviour falling within the scope of one or more Convention rights, this restriction was justified because: the restriction on the exercise of Convention rights was prescribed by law; cl 5(2)(a) pursued legitimate aims that fell within the qualifications in art 9(2), 10(2) and 11(2) of the Convention, which permit the restriction of rights to prevent disorder, protect health and protect the rights and freedoms of others; the restrictions imposed by cl 5(2)(a) were proportionate because the aim of the clause was sufficiently important and the restrictions had a rational connection to that aim; and cl 5(2)(a) was not unduly restrictive rather, it was rationally coherent and necessary if the Bill was to achieve its aims: [111]-[123]. The clause struck a fair balance between competing rights: [154].