IN THE HIGH COURT OF AUSTRALIA)
PERTH OFFICE OF THE REGISTRY) **NO. P71 of 2004**

B E T W E E N:

OLBERS CO LTD
Applicant

and

THE COMMONWEALTH OF AUSTRALIA
First Respondent

and

AUSTRALIAN FISHERIES MANAGEMENT AUTHORITY
Second Respondent

APPLICANT'S SUMMARY OF ARGUMENT

PART I

1. The applicant seeks leave to appeal the decision of the full Federal Court given on 16 September 2004. The central question on the appeal is whether the provision under s106A of the Fisheries Amendment Act 1991 ("**Act**"), that a vessel is forfeit if used in an offence under the Act, means that the Commonwealth can seize a vessel wherever it is found, using force if necessary, without having to pay regard to the provisions of the Act (or international obligations) which provide for seizure only if certain conditions are met, and, that the owner of the vessel so forfeit and seized has no claim for relief in respect of a seizure carried out in a manner which is contrary to the Act's provisions and international law.

2. The following questions are raised on the application for special leave:

   (a) What is the correct interpretation and application of the Fisheries Management Act 1991 ("**Act**") insofar as it relates to the power of the Commonwealth to seize and detain a vessel flying the flag of another state on the High Seas by the use of force?

   (b) Does the provision in s106A of the Act, that certain things are forfeited to the Commonwealth if used in an offence, mean that the Commonwealth can seize a vessel which has committed an offence under the Act wherever it is found outside the limits of the sovereignty of the Commonwealth, without complying with the provisions of the Act relating to the exercise of powers of seizure under the Act on the High Seas (ss84(1)(ga) and 87)?

   (c) Does the provision that a thing is forfeited in s106A mean that the provisions in ss87 and 106 B-G are of no practical effect so that the Commonwealth can disregard them and the dispossessed owner has no remedy?

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(d) What is the proper interpretation of ss106 B-G? Is the effect of the rules, under which the Commonwealth must give notice after a seizure and which can lead to the thing seized being "condemned as forfeited" (see 106(C)2(c)), that the forfeiture under s106A is not immediate but subject to confirmation by the statutory process?

(e) Where proceedings are commenced under the process in ss106 B-G, does the owner or person in possession of the thing seized at the time of seizure have a statutory remedy in the proceedings "to recover the thing" or for "a declaration that the thing is not forfeited", where the Commonwealth has failed to comply with s87 of the Act in exercising its powers of seizure on the High Seas?

(f) If the Act provides no remedy in the process under s106 B-G where the Commonwealth acts in breach of s87, does the owner, or person in possession at the time of seizure, have a remedy at common law?

3. These questions give rise to issues of general public importance. They relate to the interpretation of a statute which operates at the limits of the Commonwealth's territorial sovereignty. The position reached in the Federal Court and the Full Federal Court means that the Act, as interpreted, would permit a wide range of conduct by the Commonwealth outside the area of Australia's territorial sovereignty and allow vessels to be seized by the Commonwealth, its servants or agents, in a manner which is wholly inconsistent with Australia's international obligations, international good order and the common law.

PART II - BACKGROUND

4. The key facts of the case are as follows:

(a) At 1012 local time on 7 February 2002 the HMAS *Canberra*, which was patrolling the Australian Fishing Zone ("**AFZ**") around the Heard and McDonalds, altered course to investigate a contact that had been reported by a patrol aircraft within the AFZ. The *Canberra* launched a helicopter to investigate the contact and at 1158 the helicopter detected the contact on its radar. The helicopter reported the contact's position as 51 38.6S 078 43.8E, approximately 0.7 nautical miles within the AFZ.

(b) At 1203 the vessel's position was determined on the helicopter's radar as being 51 37.11S 078 44.03E. The *Canberra* incorrectly informed the helicopter that the vessel was within the AFZ. In fact, the *Volga* was 0.5 nautical miles outside the AFZ and, at all material times, from 1203 was outside the AFZ on the High Seas. At 1204 the *Canberra* directed the helicopter crew to board the vessel, if it was deemed by the aircrew to be a suspected foreign fishing vessel.

(c) At 1205 the helicopter broadcast a challenge to the vessel on VHF Marine Channel 16. The position of the vessel at the time of the challenge was 51.36.3S 078.44.10E, outside the AFZ.

(d) At 1206 the *Canberra* rescinded the instruction to board. The helicopter was instructed to intercept the vessel and standby.

(e) At 1212 the helicopter flew over the vessel and identified it as the *Volga*. At 1213 the helicopter broadcast radio requests for the *Volga* to divert towards the *Canberra*.

(f) At 1220 the Commanding Officer of the *Canberra* gave the helicopter permission to board and at 1223 the first armed crewmen

were landed on the *Volga* from the helicopter. Shortly after boarding the Master of the *Volga* was given a notice of apprehension under s 106C of the Act.

(g) On 21 March 2002 the second respondent issued to the applicant a notice pursuant to s106F of the Act.

5. The applicant is the owner of the vessel *Volga*. It has applied for recovery of the vessel, or otherwise for compensation, under the provisions of the Act after the Commonwealth triggered the statutory process under s106 B-G by the service of a notice under s106C. Alternatively, the applicant brings claims at common law in negligence, detinue and for misfeasance in a public office or for other such remedy as the Court sees fit. The claims are based on the wrongful exercise of powers under the Act by the respondents.

THE DECISIONS IN THE FEDERAL COURT AND FULL FEDERAL COURT

6. In the Federal Court, at first instance and on appeal, it was held that the effect of s106A of the Act was to bring about an automatic forfeiture at the time of any offence so that the Commonwealth was at liberty to seize the vessel as its own property at any time and in any place and, in so doing, did not have to follow any particular process under the Act. Neither Court decided whether the pursuit and seizure of the *Volga* contravened s87 of the Act. Both Courts suggested that the pursuit and seizure were in accordance with s87 but both found that this was not a relevant issue because they regarded s106A as permitting the Commonwealth to act as it pleases to seize a vessel even when the vessel is on the High Seas.

PART III – SUMMARY OF ARGUMENT

7. The applicant seeks special leave to appeal the findings of the Full Federal Court. As already noted, the decisions of the Federal Court, at first instance and on appeal, focus almost exclusively on s 106A as determinative of the applicant's case. The applicant's submission is that the Courts below approached the statute in the wrong way and further ignored well established fundamental principles of statutory interpretation. An Act of Parliament should be read as a whole and each section, and its effect, interpreted in the overall context of the statute, *K & S Lake City Frieghters Pty Ltd v Gordon & Gotch Ltd* (1985) 157 CLR 309 (p 315). Further, where a particular construction is consistent with the terms of Australia's international obligations, that construction should be preferred, *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273 (p 287), *Sellers v Maritime Safety Inspector* [1999] 2 NZLR 44 (CA) p 57.

8. On the appeal it will be argued that:

(a) The Federal Court was wrong to interpret the Act and, in particular, s106A as giving the Commonwealth an absolute right to seize and detain any vessel flying the flag of a foreign state which had committed an offence under the Act, no matter where it was located.

(b) The interpretation at (a) above fails to have any proper regard to:

(i) The express provisions in s87 of the Act which seek to limit the powers of the Commonwealth to seize vessels in a manner which is consistent with the international obligations of the Commonwealth under UNCLOS (in particular the "hot pursuit" exception to seizure on the High Seas under Article 111) and which were incorporated in the Act expressly to uphold those obligations (refer Explanatory Memorandum).

(ii) The basic presumption that legislative provisions will, insofar as possible in the event of ambiguity, be interpreted in a manner which is consistent with the international obligations owed by the Commonwealth.

(iii) The basic presumption that legislation will not be interpreted to have extra-territorial effect in the absence of express provisions to that effect and that no extra-territorial effect, beyond that which is expressly provided for by the legislature, should be found by a Court.

(c) The Act makes express provision for the circumstances in which the Commonwealth can seize a vessel flying the flag of another state on the High Seas (see s87). The Act provides for no alternative method of seizure (other than that in s84(1)(ga)) purely on the basis that s106A applies. Section 87 is clearly intended to apply where the Commonwealth wishes to seize property as forfeit under s106A by exercising the power under s84(1)(ga). The alternative approach found by the Federal Court is not properly available on the construction of the statute. Further, an interpretation which requires the Commonwealth to act in accordance with s87 in seizing the vessel on the High Seas is consistent with Australia's international obligations under UNCLOS (in particular, Article 111 of UNCLOS) and the fundamental principles regulating the use of the High Seas which underpin that Convention. The intention to legislate consistently with UNCLOS as regards "hot pursuit" onto the High Seas is underlined by the explanatory memorandum in relation to s87.

(d) The approach adopted in the Federal Court leaves an owner or other person in possession of a ship flying a foreign flag, who is dispossessed on the High Seas by the Commonwealth in breach of international law, without remedy under Australian law.

(e) It is submitted that, if the Act is interpreted as a whole consistently with international law, it should be interpreted to provide a remedy where the Commonwealth fails to follow its own enactment regulating the seizure of foreign ships on the High Seas.

(f) The Act should be interpreted as providing for a process under ss106 B-G by which the forfeiture of a ship is not immediate and absolute but is to be confirmed after a mandatory statutory process. Forfeiture is, in that sense, inchoate and is subject to a process under which a court can either confirm or deny the forfeiture to the Commonwealth. In this process there is a remedy for a dispossessed owner under s106G(1)(a) and (b) which is available if the seizure is in breach of the provisions of the Act.

(g) Alternatively, where the Commonwealth has not acted in accordance with the provisions of the Act relating to the seizure of vessels on the High Seas, the owner or person in possession of a vessel at the time of the seizure has a statutory right to a remedy for breach of s87 or can bring a claim at common law.

(h) The interpretation of the Act at (e), (f) and (g) above should be preferred to that adopted in the Courts below. This interpretation is consistent with Australia's obligations under international law which have been adopted by Australia and other nations for the sake of peaceful good order on the High Seas. The construction adopted by the Federal Court is at odds with those obligations and, if maintained, is contrary to established fundamental principles.

The arguments in more detail

9. The applicant contends that the seizure of the Volga was unlawful, being conducted in a manner contrary to the express provisions of the Act, in particular ss84 and 87. Under those provisions, a foreign vessel on the High Seas may only be seized as forfeit if the vessel has been pursued, without interruption, from within the AFZ. Only in those circumstances will there be a hot pursuit permitting an exception to the basic rule under international law that a vessel on the High Seas is under the exclusive jurisdiction of its flag state.

Pursuit

10. The applicant argues (as it did below) that there was no valid pursuit under s87 so as to justify the boarding and apprehension of the vessel on the High Seas. An ordinary and natural interpretation of the term "pursuit", as used in s87, requires the "chasing" of a vessel with intent to exercise the powers under s84, and not merely moving to investigate a contact. The Shorter Oxford English Dictionary defines pursuit as "*the act of pursuing, with intent to overtake and catch or harm; an instance of this; a chase*". Section 87 (1)(b) supports this interpretation. It requires that the pursuit not be interrupted "*before the officer concerned arrived at such a place with a view to exercising that power*" (emphasis added). No pursuit began within the AFZ: initially the Canberra was only moving to investigate, not pursue, an unknown contact. Only when the *Volga* was identified outside the AFZ at 1212 could there be a pursuit in any proper sense of the word. (*R v Lijo* & Ors [2004] WADC 29, is wrongly decided, it is submitted).

11. Section 87 should also be interpreted consistently with Article 111 of UNCLOS which it is drafted to reflect (cf Explanatory Memorandum to clause 85 which became s87). In enacting s87 Parliament has reflected the provisions of UNCLOS, which allow for action to be taken against a foreign vessel on the High Seas in cases of "hot pursuit". For there to be a valid "hot pursuit" a stop order must be given in the AFZ and the pursuit must start in the AFZ. At no time was the *Volga* ordered to stop. All radio communications to the *Volga* ordering it to divert were made once the *Volga* had left Australian jurisdiction and was on the High Seas.

Unlawful Seizure

12. The Federal Court did not decide whether or not there had been a pursuit in accordance with s87. Instead, the Court held that, as the vessel was forfeit to the Commonwealth under s106A from the time of offending, the Commonwealth was entitled to take steps to recover its property without having to rely on the express authorisation to apprehend and seize in s84 and without having to comply with the statutory limitation in s87. The applicant submits that this finding rests on an erroneous and inconsistent interpretation of the provisions of the Act.

13. There is no basis for concluding that, in enacting the specific and limited (by s87) powers in s84, Parliament contemplated that it would allow any other means of seizure on the High Seas outside Australia's territory. Section 84(1)(ga) specifically refers to property "forfeit" under s106A. It is clearly the intention of Parliament that the power to seize will only be exercised under s84 (see the note to s106A which refers to the power of seizure under s84(1)(ga)). For the acts of the officer in boarding and apprehending the vessel to be lawful, they have to be carried out in accordance with the officer's powers under s84.

14. The Federal Court's decision wrongfully gives provisions of the Act an extra-territorial effect that Parliament cannot have intended. The power of seizure was exercised over the *Volga* on the High Seas, outside Australian waters and outside Australian jurisdiction. Section 7 of the Act acknowledges that

some provisions of the Act will have extra-territorial effect, and the note to s7(1) identifies s87 as one such section. Section 87 provides for the extra-territorial effect of s84, and, at the same time, expressly limits the extra-territorial exercise of powers under s 84 to situations where a vessel on the High Seas has been pursued from a place within the AFZ. No other provisions allow for the general exercise of powers under s84 on the High Seas over foreign flagged vessels (cf Australian vessels and FSA vessels). The Court should not find an extra-territorial effect that Parliament does not expressly provide for (see *Jumbunna Coal Mine NL v Victorian Coal Miners' Association* (1908) 6 CLR 309 at 363).

15. The applicant submits that the Federal Court failed to interpret the Act in accordance with the presumption that a statute should be construed in a manner consistent with international law and Australia's international obligations, *Jumbunna Coal Mine NL v Victorian Coal Miners' Assoc* at 363. The United Nations Convention on the Law of the Sea 1982 ("**UNCLOS**") governs the position of a vessel on the High Seas under international law. Australia is a party to and has obligations under UNCLOS. Indeed, Australia's claim to the AFZ rests on the rights granted to Australia under UNCLOS (cf Art 55 UNCLOS, Sea and Submerged Lands Act 1973). Under UNCLOS, vessels have the freedom of navigation on the High Seas (Article 87) and no state shall subject any part of the High Seas to its sovereignty (Article 89). A vessel on the High Seas shall be under the exclusive jurisdiction of its flag state (Article 92). There are certain (very limited) exceptions to this which permit a warship from one State to board a ship on the High Seas (see Article 110). The right of hot pursuit is a further exception under international law. The Federal Court's interpretation of the Act fails to accord with the requirements of international law. Far from suggesting that it should be interpreted as providing for an unlimited right of seizure by s106A, the Act, in fact, throughout contains provisions which reflect the established international order under UNCLOS (eg. ss7, 8, 12, 16A, 84(1)(aa), 84(1B), 84(1C), 84(1D), 87H, 105A, which reflect various provisions of UNCLOS and the Fish Stocks Agreement international treaty). It makes no sense in that context for s106A to be interpreted as allowing the Commonwealth to act in complete disregard of such principles.

16. Even if a non-statutory right to seize could in some way exist alongside the express provisions of the Act, it is submitted that no such right can exist at common law under Australian law in respect of a foreign-flagged vessel on the High Seas, regardless of whether or not that vessel is forfeit. Any such seizure would be in breach of the principles of customary international law applying to the High Seas. These principles include the right to free navigation on the High Seas, without interference, and the general rule that a vessel on the High Seas is subject only to international law and the laws of its flag state (in this case the Russian Federation). The principles of customary international law are part of the common law, insofar as they are not inconsistent with statute or the decisions of a court of final authority, *Chung Chi Cheung v R* [1939] AC 160 at 168. Further, in any event, relevant international obligations, such as Articles 87, 89, 92 and 111 UNCLOS, should influence the courts' interpretation and development of the common law, *Mabo v Queensland (No 2)* (1992) 175 CLR 1. It is submitted that the international legal principles of freedom of the High Seas and non-interference are incorporated into the common law of Australia and, at common law, govern the rights that the Commonwealth has against a foreign-flagged vessel on the High Seas. Once the vessel left the AFZ and was on the High Seas, there existed no right at common law to seize the vessel except in accordance with the rules of international law. Under the provisions of international law, the *Volga* must have been pursued from within the AFZ in order to allow it to be seized by the respondents.

17. The applicant submits that on a proper construction of the statute it is clear that Parliament intended that the powers to apprehend a vessel on the High Seas can only be exercised in accordance with ss84 and 87 (whether or not

the vessel is "immediately" forfeit under s106A). A vessel can, it is submitted, only be boarded and apprehended on the High Seas where it has been pursued from within the AFZ in accordance with s87 as that section is properly interpreted. That, it is submitted, did not occur in the case of the *Volga*. The vessel ought to have been allowed to sail.

Forfeiture inchoate - process under s106B-G

18. The applicant also seeks leave to appeal the Federal Court's interpretation of the effect of s106A. The term "forfeit" is ambiguous and, as recognised by the Judge at first instance, can mean immediate forfeiture or that forfeiture will result on completion of certain required steps. The Federal Court chose, by analogy to decisions on customs legislation, to interpret s106A as providing for immediate forfeiture. Yet it does not follow from the context of the statute that forfeiture, while automatic, should be immediate. The Federal Court's construction makes the statutory process under ss106B – 106G irrelevant. If no notice of seizure was issued under s106C (in breach of the mandatory provision for giving notice), the interpretation would mean that the property was already forfeit and the former owner had no remedy or right to bring a claim. Such an interpretation would be contrary to Chapter III of the Constitution in giving the courts no role in a forfeiture and that interpretation should be avoided.

19. The applicant will contend that, while forfeiture under s106A is automatic, it is not immediate. Instead, the forfeiture provisions of s106A give rise to an inchoate transfer of property to the Commonwealth which is capable of challenge by the owner of the property under the process set out in ss106B – 106G before there is any ultimate condemnation. The vessel is forfeit on the commission of an offence, but any forfeiture to the Commonwealth does not take place until the steps in Subdivision C have been complied with. Disqualifying conduct on the part of the Commonwealth, such as the unlawful seizure of the vessel, can properly be considered by the court before forfeiture is complete. Only at the end of the process does the Commonwealth have its title by forfeiture. Whereas the Federal Court's approach is to start and end with s106A, when regard is had to the effect of ss106B – 106G, forfeiture is not complete until the process set out in those sections is complete. Read as a whole, the Act provides a scheme under which failures to follow the process in the Act (whether s84 and s87 or under s106B – s106G) can result in orders that the property be returned or is not forfeit under s106G (cf s108A, where forfeiture and seizure are treated as separate events). Again, this interpretation is consistent with the international obligations which the Act reflects.

Remedy

20. The applicant contends that, whether or not forfeiture is immediate, it is entitled to a remedy as a result of the unlawful seizure of the vessel. If the applicant is correct as to the inchoate forfeiture of the vessel under s106A, then it will have rights to a remedy for the unlawful seizure, either under the Act or at common law.

21. The Federal Court held that the applicant had no right to a remedy as, upon immediate forfeiture of the vessel, it had lost all its rights in the vessel absolutely. However, even on the "automatic" forfeiture approach of the Federal Court, the Act should, it is submitted, be interpreted to provide a remedy for the illegal seizure of the vessel on the High Seas. (Such an interpretation would be consistent with Article 111 (8) of UNCLOS which provides for compensation to be paid to the owner where the right of hot pursuit is improperly exercised). It is a fundamental principle of the rule of law that the state itself must be bound to act lawfully. If there is no remedy, there is no consequence for a failure by the Commonwealth to act lawfully and follow the mandated process for seizure. Conduct in breach of the statute itself (and the international legal order) will go unremedied under Australian

law, notwithstanding Parliament's intention to control the exercise of powers on the High Seas consistently with international law.

22. If there is an automatic forfeiture, the applicant submits that the provisions in Subdivision C (ss106B – 106G) still provide a statutory mechanism to give a remedy where a person has been deprived of property by a process which breaches the Act. Section 106G (3) provides that a court may make orders for recovery of the thing forfeited, payment of any proceeds of sale of a forfeited thing, or payment of compensation. The Federal Court found that s106G(3) applies only where a thing is found not to have been forfeited (ie. there was no relevant offence committed). The applicant contends that this interpretation is without justification in the overall context of the Act. Under ss106B and 106E the provisions of Subdivision C (including s106G(3)) are available to the owner, or person who had possession, custody or control, of a vessel immediately before it was seized as forfeit or believed to be forfeit. These provisions do not restrict the right to bring a claim only to the cases where forfeiture may not have occurred, but grant rights to those who have lost ownership, possession, custody or control of a vessel through forfeiture. It is submitted that this interpretation is consistent with the purpose of ensuring that the Act operates in a manner which is consistent with international legal order which underpins the Act.

23. Alternatively, the applicant submits that it has the right to seek damages from the Commonwealth for breach of statutory duty owed to the applicant, *Byrne v Australian Airlines* (1995) 185 CLR 410 at 459. It is submitted that, in the context of the statutory provisions restricting the right of seizure, and in the context of the directly applicable international obligations under UNCLOS (specifically Article 111 which requires that a remedy be given to the owner) which the Act itself reflects, this is an appropriate case to hold that the Commonwealth owed the applicant a duty to act in accordance with the Act. The unlawful seizure of the vessel by the Commonwealth was a breach of that duty, for which the applicant is entitled to damages. If the Commonwealth had complied with its statutory duty, the vessel would have been allowed to sail freely on the High Seas. Damages to the applicant should follow, *London Passenger Transport Board v Upson* [1949] AC 155 at 168.

24. In any event, the applicant retains its rights at common law to bring claims against the Commonwealth for the unlawful interference with its possession of the vessel. Such claims rely, not on ownership, but on the applicant's possession and custody of the vessel at the time of seizure. Ownership does not itself equal possession. In this case, it is submitted that a forfeiture, even if it grants title, does not grant the right to possession. Rather it is the process of seizure, as set out in s84 of the Act, which gives the Commonwealth the right to possession of the vessel. The applicant's possession of the vessel is extinguished by the Commonwealth exercising the powers of apprehension and seizure in accordance with ss84 and 87 of the Act. The failure to extinguish the applicant's possession by not complying with the provisions of the Act, and the unlawful seizure of the vessel in the applicant's possession and custody, gives rise to the applicant's right to damages at common law.

PART IV – GROUNDS FOR GRANTING SPECIAL LEAVE

25. It is submitted that matters of public importance arise on the appeal that make it appropriate for this Court to grant special leave under s 35A of the Judiciary Act 1903 (Commonwealth). The questions in this appeal concern:

(a) The interpretation and application of a statute which regulates the conduct of the Commonwealth and its agents in the management of its territory and on the High Seas, and, in particular, the lawfulness of conduct regarding the seizure, detention and condemnation of vessels flying the flag of foreign states; and

(b) The interpretation and application of the Act raises important questions concerning the international obligations owed by the Commonwealth to other states and whether the domestic law of the Commonwealth is consistent with those international obligations.

26. Given the wide ranging coverage of the Act, its extra-territorial effect and its application to vessels under the jurisdiction of another state, it is of wide and general importance that these questions be resolved and the correct approach applied. Whether or not a seizure must be conducted in accordance with the Act and its limitations is also of significance given the circumstances in which the question arises. The events leading to this proceeding involved an armed party from an Australian warship boarding and seizing a foreign flagged vessel on the High Seas. Given the very real potential for the use of force against a foreign vessel on the High Seas, it is important that the source and limit of powers exercised by the Commonwealth in such cases be clearly defined.

27. The applicant submits that in this case the possible international ramifications of the interpretation of the Act alone justify the granting of special leave to appeal. The freedom of navigation on the High Seas, and the exercise of authority by one state over the vessel of another state, is a matter affecting the interests of all nations, including Australia. Such interests include matters of trade, commerce and state sovereignty. The importance of UNCLOS lies in regulating these interests, and any conflict between them, through common rules by which all nations abide. These obligations are of particular importance where the actions of the Commonwealth directly affect the rights and interests of another state. As a Russian flagged vessel on the High Seas, the *Volga* was under Russian jurisdiction at the time of boarding and the seizure of the vessel has been the subject of an official complaint by the Russian Federation. A broad question of comity arises in an area where comity is important. Is Australia in accord with international legal norms in its legislation and what precedent should Australian courts set, when that precedent might be applied against Australian vessels in foreign courts?

PART VI – TABLE OF AUTHORITIES

28. The applicant seeks to rely on the following authorities:

- *K & S Lake City Freighters Pty Ltd v Gordon & Gotch Ltd* (1985) 157 CLR 309
- *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273
- *Jumbunna Coal Mine NL v Victorian Coal Miners' Association* (1908) 6 CLR 309
- *Chung Chi Cheung v R* [1939] AC 160
- *Mabo v Queensland (No 2)* (1992) 175 CLR 1
- *Byrne v Australian Airlines* (1995) 185 CLR 410
- *London Passenger Transport Board v Upson* [1949] AC 155
- *Sellers v Maritime Safety Inspector* [1999] 2 NZLR 44 (CA)
- Fisheries Management Act 1991 (Cth), sections 84, 87, 106A, 106B – 106G
- Sea and Submerged Lands Act 1973 (Cth), Preamble, sections 3, 10A, 10B, Schedule

- United Nations Convention on the Law of the Sea 1982, articles 55 – 58, 86 – 92, 110, 11

PART VII – ORAL ARGUMENT

29. The applicant seeks to present oral submissions on the application for special leave.

Dated the 10th day of November 2004

Jackson McDonald

Solicitors for the Applicant