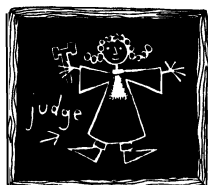


4. See especially, Justice Gaudron's judgment, ref. 3 above, point 95; see also: Glasbeek, H. and Mitchell, R., 'Breaking Custom on Labour Law', *Australian Financial Review (AFR)*, 27 April 1998, p.18.
5. s.298L *Workplace Relations Act 1996* (Cth).
6. Professor Ron McCallum, *ABC Law Report* (transcripts), Radio National, 21 April 1998, p.3.
7. Gaudron J, *Patrick Stevedores v MUA*, 17 April 1998, Office of the Registry of the HCA (transcripts). See also: Davis, and others, 'Fight spirals across nation', *AFR*, 18-19 April 1998 p.4.
8. See comment by Professor Ron McCallum, above, p.1. See also Glasbeek and Mitchell above, who argue that 'the orders of the Federal Court threaten to throw the world of commerce into disarray'.
9. McHugh J, *Patrick Stevedores v MUA*, HCA Transcripts 27 April 1998, p.20.
10. *Patrick Stevedores v MUA* [1998] 397 FCA, 23 April 1998 per Wilcox CJ, von Doussa and Finkelstein JJ, p.5.
11. *Patrick Stevedores v MUA*, above, pp.4-5.
12. Hayne J (in Chambers), *Patrick Stevedores Operations v MUA*, Transcripts — 23-24 April.
13. Susanna Lobe, *ABC Law Report* (transcripts), Radio National, 28 August, together with Professor McCallum's comment: 'In my entire life, Susanna, I have never known a case proceed from first instance last Tuesday to a Full Bench of the Federal Court and to the High Court

- last Monday, where the Bench of seven rearranged their lives to sit. Normally, on a leave application, it's three judges with the appeal being heard by five', p.1. See also, Ackland, R., 'High Court keen to end wharf issue', *Sydney Morning Herald* 1 May 1998, Opinion 21: 'Clearly, the Chief Justice felt that the public importance of this special leave application by Patrick Stevedores demanded that the entire court be hauled into action ...'
14. See, for example, Tom Burton, *AFR*, 28 April 1998, p.7 who suggested 4:3 or 'quite possibly' 5:2.
15. Julian Burnside QC, *Patrick Stevedores v MUA*, High Court Transcripts, 28 April 1998, p.31.
16. *Patrick Stevedores v MUA* [1998] HCA 30, 4 May 1998, per Brennan CJ, McHugh, Gummow, Kirby and Hayne JJ, point 37.
17. See, for example, Tom Burton, 'Waterfront: everyone claims a slice of the cake', *AFR* 16 June 1998, p.4; also *AFR* 26 June 1998, pp. 24-27 and *The Weekend Australian* June 27-28, pp.22-23. For role of ACCC in continuing negotiations see Murphy, K., 'Continuing threat to waterfront peace', *AFR*, 15-16 August 1998; Grattan, M. and Murphy, K., 'Fels faces his biggest cartel', *AFR*, 15-16 August 1998, p.30.
18. Justice Gaudron made this order on 17 April 1998 and gave reasons for judgment on 21 April 1998 in *PCS Operations v MUA*; *MUA v Patrick Stevedores* [1998] HCA 29.
19. *Patrick Stevedores v MUA* [1998] HCA 30, point 54, 4 May 1998.
20. *Patrick Stevedores v MUA* [1998] HCA 30, point 83, 4 May 1998.



## LEGAL STUDIES

The suggestions for class work and discussions below are based on the article *When Money Doesn't Matter* by Rebecca La Forgia on p. 164.

### Questions

1. Why are the Mirrar people saying no to uranium mining at Jabiluka? Does the traditional owner have the right to say no to ERA's mine?
2. Outline the process an individual can take if they wish to complain under the Optional Protocol of the ICCPR. What other international instruments provide a complaint mechanism?
3. In the case of *Lansmann v Finland* the Human Rights Committee outlined the factors to be considered when determining whether or not a country has breached Article 27 of the ICCPR. What does Article 27 protect? What are the factors to decide if it has been breached? Are these factors made out by the present experience of the Mirrar people of the uranium mine at Jabiluka?
4. The Sami people were unsuccessful in their claim that Finland had breached Article 27 of the ICCPR. Why? Is the experience of the Sami any different to the experience of

the Mirrar people? Could this lead to a different result?

5. Why does the author of *When Money Doesn't Matter* think that the international law on Article 27 of ICCPR has domestic application?

### Discussion

1. Jabiluka and the proposed uranium mine on Mirrar land, on which construction has already begun, lie in a World Heritage protected area. Kakadu is a major Australian tourist attraction and an area of great beauty and environmental importance. Has Australian law operated effectively in dealing with this issue?
2. Uranium mining in Kakadu is a very complex issue. It is about environmental, economic, political, cultural and Indigenous interests — can the law ever effectively operate in such a context? Should it be expected to? If the law is not an effective tool in this kind of matter, what other kinds of action are legitimate?

### Research

Research the impact, both positive and negative, of mining on Indigenous people

in other countries. Consideration should be given to legal actions that have been brought by Indigenous groups against mining companies and governments in other countries. Look in particular at the situation in South America where Indigenous groups are legally challenging American oil companies and at the experience of groups in Papua New Guinea against BHP. Are these actions ever successful? If yes, why?

### Debate

Uranium mining in Kakadu is a matter for the Australian Government. International agencies shouldn't get involved in domestic matters and they certainly shouldn't be able to make judgments about Australia's behaviour on any given issue.

Consider this with reference to other matters in which the domestic/international debate has surfaced, for example human rights in China, the Indonesian presence in East Timor and the issue of democracy in Burma. Also consider Australia's position on commenting on human rights and other issues related to trade and economics in other countries.

**Catherine Duff**

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