

Minister for Environment & Conservation v Jack Sims & Son Pty Ltd
[2007] SASC 88 – Variation to Water Licence -

Jake Jervis-Bardy – Norman Waterhouse

This case was an appeal against a decision of the ERD Court to dismiss an application of the Minister for Environment and Conservation (“the Minister”). The Minister had initially applied to the ERD Court for an order dismissing an appeal of Jack Sims & Son Pty Ltd (“Sims”) against the Minister’s decision not to vary a water licence. The Minister’s application was on the grounds that the appeal of Sims was “*frivolous or vexatious or had been instituted for an improper purpose*”. The Minister was concerned that the application to vary the water licence was so similar to a separate application heard and resolved in the ERD Court, that it was unjust harassment and an abuse of process.

Debelle J of the Supreme Court found that the application lodged by Sims was not an abuse of process. In dismissing the appeal, Debelle J stated that “*a fresh application has been made as permitted by the relevant legislation with fresh evidence in support of it. There is no suggestion of any dishonesty. It cannot be said that this is an instance of successive actions amounting to unjust harassment*”.

Resourceco Pty Ltd v Harvey [2007] SASC 38 –
Breach of the Environment Protection Act 1993 -

Jake Jervis-Bardy – Norman Waterhouse

This was an appeal to the Supreme Court against fines imposed on Resourceco Pty Ltd (“the Appellant”) by the Environment, Resources and Development Court (“the ERD Court”) for breaches of the *Environment Protection Act 1993* (“the Act”). The Appellant appealed against fines totalling \$62,400 on the grounds they were manifestly excessive.

The Appellant had a licence pursuant to the Act to conduct a waste recycling depot. In November 2006 the Appellant pleaded guilty to offences regarding the height of stockpiled materials at the Appellant’s site. The Appellant argued that since both offences concerned the same conduct a fine should have been imposed for the first offence and suspended for the second offence in consideration of the totality principle. However, Debelle J stated that even if the ERD Court failed to have regard to the totality principle, “*I do not think this requires any alterations to the penalty*”. Further, Debelle J found that since the Appellant was guilty of “*very serious offending ... it was appropriate for the Environment Court to mark its disapproval with a very substantial financial penalty*”. Consequently, the appeal was dismissed with the relevant fines upheld.

Brinkworth & Anor v Dendy [2007] SASC 120 – Native Vegetation –

by Rebecca McAulay – Associate – Norman Waterhouse

This appeal was in respect of three complaints against Mr and Mrs Brinkworth in respect of the alleged illegal clearance of native vegetation contrary to Section 26 of the Native Vegetation Act 1997. Previously, the Magistrates Court held that a number of the counts within the complaints were duplicitous. The matter was appealed to the Supreme Court which held that the counts were not duplicitous. On appeal to the Full Court of the Supreme Court it was again held that the counts were not duplicitous, however should the evidence later disclose that the clearance was undertaken at completely different times and in different locations, not being part of one project or operation, it may then be appropriate for the question of duplicity to be reconsidered.