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Federal Court of Australia

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Campisi v Commonwealth of Australia (includes Corrigendum dated 29 April 2010) [2010] FCA 379 (16 April 2010)

Last Updated: 5 May 2010

FEDERAL COURT OF AUSTRALIA

Campisi v Commonwealth of Australia [\[2010\] FCA 379](#)

Citation: Campisi v Commonwealth of Australia [\[2010\] FCA 379](#)

Parties: **DOMENICO CAMPISI v COMMONWEALTH OF AUSTRALIA, STATE OF VICTORIA and LOWER MURRAY URBAN RURAL WATER CORPORATION**

File number(s): VID 260 of 2009

Judge: **TRACEY J**

Date of judgment: 16 April 2010

Corrigendum: 29 April 2010

Catchwords: **CONSTITUTIONAL LAW** - s 100 of [Constitution](#) does not impinge on validity of [Water Act 1989](#) (Vic) - summary dismissal of matter – no reasonable prospect of success - absence of “matter” therefore no jurisdiction

Legislation: *Commonwealth of Australia* [Constitution Act s 100](#)
[Federal Court of Australia Act 1976](#) (Cth) [s 31A\(2\)](#)
[Judiciary Act 1903](#) (Cth) [s 39B](#)
[Water Act 1989](#) (Vic) [s 85](#)

Date of hearing: 16 April 2010

Place: Melbourne

Division: GENERAL DIVISION

Category: Catchwords

Number of paragraphs: 12

Counsel for the Applicant: Mr D C Fitzgibbon

Solicitor for the Applicant: Waters Lawyers

Counsel for the First Respondent: Dr S Donaghue SC

Solicitor for the First Respondent: Australian Government Solicitor

Counsel for the Second Respondent: Ms Z Maud

Solicitor for the Second Respondent: Victorian Government Solicitor

Counsel for the Third
Respondent:

Mr F J Tiernan SC and Mr A M Dinelli

Solicitor for the Third
Respondent:

McMullan Solicitors

**IN THE FEDERAL
COURT OF AUSTRALIA
VICTORIA DISTRICT
REGISTRY
GENERAL DIVISION**

VID 260 of 2009

BETWEEN:

DOMENICO CAMPISI

Applicant

AND:

COMMONWEALTH OF AUSTRALIA

First Respondent

STATE OF VICTORIA

Second Respondent

**LOWER MURRAY URBAN RURAL WATER
CORPORATION**

Third Respondent

JUDGE:

TRACEY J

DATE OF ORDER:

16 APRIL 2010

WHERE MADE:

MELBOURNE

CORRIGENDUM

1. On the cover sheet of the judgment Counsel for the First Respondent should read “Dr S Donaghue”.

I certify that the preceding one (1) numbered paragraph is a true copy of the Corrigendum to the Reasons for Judgment herein of the Honourable

Justice Tracey.

Associate:

Dated: 23 April 2010

**IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY
GENERAL DIVISION**

VID 260 of 2009

**BETWEEN: DOMENICO CAMPISI
Applicant**

**AND: COMMONWEALTH OF AUSTRALIA
First Respondent**

**STATE OF VICTORIA
Second Respondent**

**LOWER MURRAY URBAN RURAL WATER
CORPORATION
Third Respondent**

**JUDGE: TRACEY J
DATE OF ORDER: 16 APRIL 2010
WHERE MADE: MELBOURNE**

THE COURT ORDERS THAT:

1. Judgment be entered for each Respondent pursuant to [s 31A\(2\)](#) of the [Federal Court of Australia Act 1976](#) (Cth).
2. The Applicant pay each Respondent's costs of the proceeding including the costs of their respective strike-out motions.
3. The name of the Third Respondent to the proceeding be amended to read "Lower Murray Urban Rural Water Corporation".

Note: Settlement and entry of orders is dealt with in Order 36 of the [Federal Court Rules](#). The text of entered orders can be located using

Federal Law Search on the Court's website.

**IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY
GENERAL DIVISION**

VID 260 of 2009

BETWEEN: DOMENICO CAMPISI
Applicant
AND: COMMONWEALTH OF AUSTRALIA
First Respondent

STATE OF VICTORIA
Second Respondent

**LOWER MURRAY URBAN RURAL WATER
CORPORATION**
Third Respondent

JUDGE: TRACEY J
DATE: 16 APRIL 2010
PLACE: MELBOURNE

REASONS FOR JUDGMENT

1. This proceeding was commenced by application on 21 April 2009. At the earliest opportunity the Respondents drew attention to what they submitted were significant deficiencies in the manner in which the Applicant sought to plead his case. An adjournment of some months was granted following which an Amended Application and a Statement of Claim were filed.
2. The Respondents continued to object to the efficacy of the pleadings and sought orders that the proceeding be dismissed pursuant to [s 31A\(2\)](#) of the *Federal Court of Australia Act 1976* (Cth).
3. The Respondents filed and served detailed written submissions in support of their motions for summary dismissal. The Applicant had the opportunity of considering those submissions and filed and served answering submissions.

4. The notices of motion were made returnable this morning and each Respondent developed its submissions in support of its motion.
5. In substance the Applicant's case was that the Commonwealth, aided and abetted in various ways by the State of Victoria and the Third Respondent (which is a statutory authority created under Victorian legislation), had contravened [s 100](#) of the [Constitution](#). [Section 100](#) provides:

“The Commonwealth shall not, by any law or regulation of trade or commerce, abridge the right of the State or of the residents therein to the reasonable use of the waters of rivers for conservation or irrigation.”

1. The Commonwealth contended that the application was incompetent because it did not give rise to a “matter” within the meaning of Chapter III of the [Constitution](#) and [s 39B](#) of the [Judiciary Act 1903](#) (Cth) and because the Applicant did not have reasonable prospects of successfully prosecuting the proceeding.
2. The Commonwealth submitted that the Court should be satisfied that there was no reasonable prospect of the Applicant's succeeding because of the absence of a “matter” (and, therefore, jurisdiction) and the failure of the Applicant to identify any law or regulation of trade or commerce which abridged the Applicant's rights to reasonable use of the waters of the Murray River for irrigation.
3. The State of Victoria supported the Commonwealth's application. It submitted that any restrictions or limitations on the Applicant's right to use River Murray waters for irrigation were imposed under the [Water Act 1989](#) (Vic). [Section 100](#) of the [Constitution](#) did not impinge on the validity of the Victorian Act. Furthermore, the Applicant's Statement of Claim did not identify any legislative or factual basis for submitting that the State of Victoria relevantly acted as an agent of the Commonwealth.
4. The Third Respondent also supported the summary dismissal application. It pointed out that it was established pursuant to [s 85](#) of the [Water Act 1989](#) (Vic). All its powers, functions and duties were derived from that Act. It did not have any powers, functions or duties conferred upon it under any Commonwealth legislation.
5. It is not necessary to recount the Respondents' arguments in any greater detail. This is because, having heard the Respondents develop their arguments, counsel for the Applicant sought a short adjournment during which he obtained instructions from his client to

consent to the making of orders under [s 31A](#) of the [Federal Court of Australia Act 1976](#) (Cth). Counsel acknowledged the force of the arguments raised against his client and accepted that the statement of claim suffered from such deficiencies as to justify the Court concluding that he had no reasonable prospect of successfully prosecuting the proceeding.

6. In these circumstances he consented to orders that the proceeding be dismissed and that his client should pay the costs of each Respondent. These orders will be made.
7. The Third Respondent also sought an order amending the title under which it was sued. It is properly entitled the “Lower Murray Urban and Rural Water Corporation”. The Applicant did not oppose this application. An order amending the title of the Third Respondent will be made.

I certify that the preceding twelve (12) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Tracey.

Associate:

Dated: 23 April 2010