

JULY 2022

The Authorised Reports of the Supreme Court of the
Northern Territory of Australia

THE
NORTHERN
TERRITORY
LAW REPORTS
2020

EDITOR
CAMERON FORD

VOL 42 — PART 2

PAGES 80-157

PUBLISHED FOR THE NORTHERN TERRITORY COUNCIL OF LAW REPORTING INC BY LAWBOOK CO.
FUNDED BY THE LAW SOCIETY PUBLIC PURPOSE TRUST

The mode of citation of this part will be:
42 NTLR

TABLE OF CASES REPORTED

Part 2 — Pages 80-157

ABB Australia Pty Ltd; James Engineering Pty Ltd v	51
Attorney-General (NT) v SJE	141
Austin; Sunbuild Pty Ltd v	105
Bennett; R v	152
Civmec Constructions and Engineering Pty Ltd; Jemena Northern Gas Pipeline Pty Ltd v	37
Cumberland; R v	1
Ferguson v The Queen	31
Gardiner; R v	99
Ichthys LNG Pty Ltd v JKC Australia LNG Pty Ltd	72
James Engineering Pty Ltd v ABB Australia Pty Ltd	51
Jemena Northern Gas Pipeline Pty Ltd v Civmec Constructions and Engineering Pty Ltd	37
JKC Australia LNG Pty Ltd; Ichthys LNG Pty Ltd v	72
JL v The Queen	17
Knight, Re Application by	80
R v Bennett	152
R v Cumberland	1
R v Gardiner	99
R; Ferguson v	31
R; JL v	17
SJE; Attorney-General (NT) v	141
Sunbuild Pty Ltd v Austin	105

(Cases in **bold** reported in this part)

Published in Sydney



THOMSON REUTERS

© 2022 Thomson Reuters (Professional) Australia Limited

ABN 64 058 914 668

Lawbook Co.

Published in Sydney

© Northern Territory Council of Law Reporting Inc
ISSN 1038-9237

TABLE OF CASES JUDICIALLY CONSIDERED IN THIS PART

<i>Attorney-General (NT) v EE</i> (2013) 33 NTLR 102	
Cited. <i>Attorney-General (NT) v SJE</i>	141
<i>Attorney-General (NT) v JD</i> (2015) 257 A Crim R 156	
Cited. <i>Attorney-General (NT) v SJE</i>	141
<i>Attorney-General (NT) v JR</i> (2017) 352 FLR 220	
Cited. <i>Attorney-General (NT) v SJE</i>	141
<i>B (Court of Protection: Notice of Proceedings), Re</i> [1987] 1 WLR 552	
Referred to. <i>Re Application by Knight</i>	80
<i>Banks v Goodfellow</i> (1870) LR 5 QB 549	
Cited. <i>Re Application by Knight</i>	80
<i>Boulton v Sanders</i> (2004) 9 VR 495	
Referred to. <i>Re Application by Knight</i>	80
<i>Boulton v Sanders</i> [2003] VSC 405	
Referred to. <i>Re Application by Knight</i>	80
<i>Bridget, Re</i> [2018] NSWSC 1509	
Applied. <i>Re Application by Knight</i>	80
<i>Briginshaw v Briginshaw</i> (1938) 60 CLR 336	
Cited. <i>Re Application by Knight</i>	80
<i>Builders Licensing Board v Sperway Constructions (Syd) Pty Ltd</i> (1976) 135 CLR 616	
Cited. <i>R v Gardiner</i>	99
<i>C (Spinster and Mental Patient), Re</i> [1991] 3 All ER 866	
Applied. <i>Re Application by Knight</i>	80
<i>CH v Mental Health Review Tribunal</i> (2017) 320 FLR 417	
Distinguished. <i>R v Gardiner</i>	99
<i>Edwards v Edwards</i> (2009) 25 VR 40	
Cited. <i>Re Application by Knight</i>	80
<i>Fenwick, Re</i> (2009) 76 NSWLR 22	
Applied. <i>Re Application by Knight</i>	80
Cited. <i>Re Application by Knight</i>	80
<i>Kadlunga Proprietors v Electricity Trust (SA)</i> (1985) 39 SASR 410	
Distinguished. <i>Sunbuild Pty Ltd v Austin and Another</i>	105
<i>Lee v MacMahon Contractors Pty Ltd</i> (2018) 41 NTLR 168	
Cited. <i>Sunbuild Pty Ltd v Austin and Another</i>	105

TABLE OF CASES JUDICIALLY CONSIDERED

<i>Maddalozzo v Maddick</i> (1992) 84 NTR 27	
Cited. <i>Sunbuild Pty Ltd v Austin and Another</i>	105
<i>Nigro v Secretary to Department of Justice</i> (2013) 41 VR 359	
Cited. <i>Attorney-General (NT) v SJE</i>	141
<i>O'Brien v Quin</i> (2003) 13 NTLR 122	
Distinguished. <i>R v Bennett</i>	152
<i>Perrett v Attorney-General (Cth)</i> (2015) 232 FCR 467	
Cited. <i>Attorney-General (NT) v SJE</i>	141
<i>Ross v Toohey</i> [2006] NTSC 92	
Not followed. <i>R v Bennett</i>	152
<i>Stark Investments (NT) No 2 Pty Ltd v Ware</i> (2018) 41 NTLR 224	
Cited. <i>Sunbuild Pty Ltd v Austin and Another</i>	105
<i>State Trustees Ltd v Do</i> [2011] VSC 45	
Considered. <i>Re Application by Knight</i>	80
<i>Taylor Enterprises (NT) Pty Ltd v Pointon</i> [2009] NTMC 29	
Approved. <i>Sunbuild Pty Ltd v Austin and Another</i>	105
<i>Traut v Faustmann Bros Pty Ltd</i> (1983) 77 FLR 98	
Cited. <i>R v Gardiner</i>	99
<i>Van Dongen v Northern Territory</i> [2009] NTSC 1	
Cited. <i>Sunbuild Pty Ltd v Austin and Another</i>	105

STATUTES, RULES, ETC JUDICIALLY CONSIDERED IN THIS PART

COMMONWEALTH

Criminal Code 1995

s 474	141
s 474.27	141
s 474.27A	141

NEW SOUTH WALES

Succession Act 2006

s 18	80
s 19	80
s 20	80
s 21	80
s 22	80

NORTHERN TERRITORY

Administration and Probate Act 1969

s 61	80
s 61(2)	80
s 61(2)(b)	80

Bail Act 1982

s 16	99
s 19	99
s 19(1)	99
s 19(4)	99
s 33	99
s 33(6)	99
s 34	99
s 34(2)	99
s 35	99
s 36A	99
s 36A(2)	99
s 36A(4)	99
s 36A(4)(a)	99
s 36A(7)	99
s 36A(10)	99

Criminal Code 1983

s 132	141
s 132(2)	141
s 132(2)(b)	141
s 132(2)(d)	141
s 132(2)(e)	141

Guardianship of Adults Act 2016

s 5	80
-----------	----

STATUTES, RULES, ETC JUDICIALLY CONSIDERED

s 24	80
Interpretation Act 1978	
s 62A	141
Return to Work Act 1986	
s 3A	105
s 53	105
s 53(1)	105
s 53(1)(c)	105
s 71	105
s 72	105
s 80	105
s 80(1)	105
s 85	105
Sentencing Act 1995	
s 5	152
s 5(1)	152
s 5(1)(b)	152
s 7	152
s 7(g)	152
s 7(h)	152
s 40	152
s 40(1)	152
s 44	152
s 44(1)	152
s 48	152
s 48(6)	152
s 48(6)(b)	152
s 78DF	152
s 78DG	152
s 78DH	152
Serious Sex Offenders Act 2013	
s 4	141
s 7	141
s 7(2)	141
s 22	141
s 23	141
s 23(1)	141
Supreme Court Rules 1987	
r 88.05B	80
Wills Act 2000	
s 19	80
s 19(1)	80
s 19(1)(a)	80
s 20	80

STATUTES, RULES, ETC JUDICIALLY CONSIDERED

s 20(1)	80
s 20(2)	80
s 20(2)(d)	80
s 21	80
s 21(a)	80
s 21(b)	80
s 21(c)	80
s 21(d)	80
s 21(e)	80
s 22	80
s 23	80
s 24	80

Work Health Court Rules 1999

r 12.02	105
r 12.02(1)	105
r 12.02(1)(b)	105
r 12.02(1)(b)(ii)	105
r 21.02	105

VICTORIA

Serious Sex Offenders (Detention and Supervision) Act 2009

s 9	141
s 9(2)	141

INDEX

Part 2 — Pages 80-157

CIVIL PROCEDURE

- Judicial review — Jurisdiction — Work Health Court exceeding — Denial of procedural fairness — Relying on evidence for unnotified purpose.
Sunbuild Pty Ltd v Austin and Another 105
- Judicial review — Jurisdiction — Work Health Court exceeding — Order for discovery impugning legal professional privilege — Work Health Court Rules 1999 (NT), rr 12.02, 12.02(1), 12.02(1)(b), 12.02(1)(b)(ii).
Sunbuild Pty Ltd v Austin and Another 105
- Pleadings — Form and content of pleading — Importance of — Plead facts, not evidence — Use language of statute.
Sunbuild Pty Ltd v Austin and Another 105
- Pleadings — Reply — When appropriate — Defence of no notice of workers compensation injury — Reply to plead estoppel.
Sunbuild Pty Ltd v Austin and Another 105
- Summary disposal — Judgment for plaintiff — No defence — Inappropriate on one allegation — Consider strike-out instead — Work Health Court Rules 1999 (NT), r 21.02.
Sunbuild Pty Ltd v Austin and Another 105

CRIMINAL LAW

- Bail — Review application — Nature of review — Re-hearing de novo — Bail Act 1982 (NT), ss 16, 19, 19(1), 19(4), 33, 33(6), 34, 34(2), 35, 36A, 36A(2), 36A(4), 36A(4)(a), 36A(7), 36A(10).
R v Gardiner 99

EVIDENCE

- Privilege — Legal professional privilege — Litigation — Surveillance photographs and videos — Order for disclosure of date and time impugns privilege — Work Health Court Rules 1999 (NT), rr 12.02, 12.02(1), 12.02(1)(b), 12.02(1)(b)(ii).
Sunbuild Pty Ltd v Austin and Another 105

INTERPRETATION

- “Might” — “Reasonably likely” — “Testamentary capacity”.
Re Application by Knight 80
- “Document” — “Injury” — “Symptom”.
Sunbuild Pty Ltd v Austin and Another 105

INDEX

LEGISLATION

- Bail Act 1982 (NT), ss 16, 19, 19(1), 19(4), 33, 33(6), 34, 34(2), 35, 36A, 36A(2), 36A(4), 36A(4)(a), 36A(7), 36A(10).
R v Gardiner 99
- Return to Work Act 1986 (NT), ss 3A, 53, 53(1), 53(1)(c), 80, 80(1), 85 — Work Health Court Rules 1999 (NT), rr 12.02, 12.02(1), 12.02(1)(b), 12.02(1)(b)(ii), 21.02.
Sunbuild Pty Ltd v Austin and Another 105
- Sentencing Act 1995 (NT), ss 5, 5(1), 5(1)(b), 7, 7(g), 7(h), 40, 40(1), 44, 44(1), 48, 48(6), 48(6)(b), 78DF, 78DG, 78DH.
R v Bennett 152
- Wills Act 2000 (NT), ss 19, 19(1), 19(1)(a), 20, 20(1), 20(2), 20(2)(d), 21, 21(a), 21(b), 21(c), 21(d), 21(e), 22, 23, 24 — Guardianship of Adults Act 2016 (NT), ss 5, 24 — Administration and Probate Act 1969 (NT), ss 61, 61(2), 61(2)(b) — Succession Act 2006 (NSW), ss 18, 19, 20, 21, 22 — Supreme Court Rules 1987 (NT), r 88.05B.
Re Application by Knight 80

SENTENCING

- Penalties — Home detention — Suspended sentences — Home detention after suspended sentence — Power of court — Court has power — Sentencing Act 1995 (NT), ss 5, 5(1), 5(1)(b), 7, 7(g), 7(h), 40, 40(1), 44, 44(1), 48, 48(6), 48(6)(b), 78DF, 78DG, 78DH.
R v Bennett 152

STATUTORY INTERPRETATION

- Criminal Code 1983 (NT), ss 132, 132(2), 132(2)(b), 132(2)(d), 132(2)(e) — Criminal Code 1995 (Cth), ss 474, 474.27, 474.27A — Interpretation Act 1978 (NT), s 62A — Serious Sex Offenders Act 2013 (NT), ss 4, 7, 7(2), 22, 23, 23(1) — Serious Sex Offenders (Detention and Supervision) Act 2009 (Vic), ss 9, 9(2).
Attorney-General (NT) v SJE 141
- Immediate context — Consistency of meaning — “Review”.
R v Gardiner 99
- Principle of legality — Criminal proceedings — Clear words required to limit sentencing provisions — Sentencing Act 1995 (NT), ss 5, 5(1), 5(1)(b), 7, 7(g), 7(h), 40, 40(1), 44, 44(1), 48, 48(6), 48(6)(b), 78DF, 78DG, 78DH.
R v Bennett 152
- Principle of legality — Criminal proceedings — Liberty of the subject — Ambiguity in statute to be resolved in favour of the subject.
Attorney-General (NT) v SJE 141
- Qualifying offender — Serious sex offence — Offences substantially corresponding to Scheduled offences — Equivalent in substance and elements of the offence — Serious Sex Offenders Act 2013 (NT), ss 4, 22, 23.
Attorney-General (NT) v SJE 141

INDEX

SUCCESSION

- Testamentary capacity — Person lacking from birth — Authorisation to make will for — Considerations — Appropriate person to make application — Lack of testamentary capacity — Proof of — Best evidence required — Professional evidence — Proposed dispositions — Appropriateness of — Objective test for — Whether person would make them — Potential beneficiaries — Inquiries for — Wills Act 2000 (NT), ss 19, 19(1), 19(1)(a), 20, 20(1), 20(2), 20(2)(d), 21, 21(a), 21(b), 21(c), 21(d), 21(e), 22, 23, 24 — Guardianship of Adults Act 2016 (NT), ss 5, 24 — Administration and Probate Act 1969 (NT), ss 61, 61(2), 61(2)(b) — Supreme Court Rules 1987 (NT), r 88.05B.
Re Application by Knight 80

WORKERS COMPENSATION

- Injury — Consequential condition — Depression following physical injury — Proof of — Occurrence of — Causal link with primary injury — Notice essential — Second claim not necessary — Return to Work Act 1986 (NT), ss 3A, 53, 53(1), 53(1)(c), 80, 80(1), 85.
Sunbuild Pty Ltd v Austin and Another 105
- Liability — Partial acceptance of liability — Acceptance of primary injury — Premature undertaking impairment assessment of consequential condition — Not acceptance of consequential condition — Return to Work Act 1986 (NT), ss 71, 72.
Sunbuild Pty Ltd v Austin and Another 105
- Medical assessment — Assessment of degree of permanent impairment — Premature before liability accepted or determined — Return to Work Act 1986 (NT), ss 71, 72.
Sunbuild Pty Ltd v Austin and Another 105
- Notice of injury to employer — Failure to give notice — Notice is essence of right to compensation — Notice of injury, not symptoms or claim — Return to Work Act 1986 (NT), ss 3A, 53, 53(1), 53(1)(c), 80, 80(1), 85.
Sunbuild Pty Ltd v Austin and Another 105
- Proceedings before Work Health Court — Conduct of proceedings — Evidence — Resolve issues before hearing.
Sunbuild Pty Ltd v Austin and Another 105
- Proceedings before Work Health Court — Conduct of proceedings — Summary judgment — Care in granting — Not on one allegation — Consider strike-out instead — Work Health Court Rules 1999 (NT), r 21.02.
Sunbuild Pty Ltd v Austin and Another 105