



HIGH COURT OF AUSTRALIA

3 June 2020

BINSARIS v NORTHERN TERRITORY OF AUSTRALIA; WEBSTER v NORTHERN
TERRITORY OF AUSTRALIA; O'SHEA v NORTHERN TERRITORY OF AUSTRALIA;
AUSTRAL v NORTHERN TERRITORY OF AUSTRALIA
[2020] HCA 22

Today the High Court unanimously allowed four appeals from a judgment of the Court of Appeal of the Supreme Court of the Northern Territory. The appeals concerned the use in the Don Dale Youth Detention Centre in Darwin ("the Detention Centre") of a CS fogger, which is a dispersal device for CS gas (a form of tear gas) and a prohibited weapon under the *Weapons Control Act* (NT).

The appellants were exposed to CS gas on 21 August 2014 whilst detained in the Behavioural Management Unit ("BMU") of the Detention Centre. The prison officer who deployed the CS gas using a CS fogger was a member of an Immediate Action Team from Berrimah Correctional Centre, an adult prison. The team had been mobilised to respond to an emergency situation in the BMU and deployed the CS gas to render one detainee compliant. The appellants were exposed to and affected by the CS gas. Section 6 of the *Weapons Control Act* provides that a person must not "possess, use or carry ... a prohibited weapon except if permitted to do so by an exemption under section 12". Section 12(2)(a) exempts a "prescribed person acting in the course of his or her duties as a prescribed person in respect of a prohibited weapon" that is supplied to him or her by his or her employer "for the performance of his or her duties as a prescribed person". A prison officer under the *Prisons (Correctional Services) Act* (NT) is a prescribed person, however a youth justice officer and the superintendent of a youth detention centre are not.

The appellants commenced proceedings in the Supreme Court of the Northern Territory against the respondent, relevantly claiming damages for batteries alleged to have been committed by the prison officer who deployed CS gas in the Detention Centre on 21 August 2014. The primary judge dismissed those claims. Her Honour found that the prison officer was acting in the course of his duties, having been called upon to assist in an emergency situation under s 157(2) of the *Youth Justice Act* (NT) and directed by the Director of Correctional Services to deploy the gas; that the exemption under s 12(2) of the *Weapons Control Act* was engaged; and that the prison officer had been delegated all powers necessary for the superintendent to maintain order and ensure the safe custody and protection of persons within the precincts of the Detention Centre. The appellants' appeals to the Court of Appeal were dismissed. By grant of special leave, the appellants appealed to the High Court in relation to their exposure to CS gas.

Allowing the appeal, the High Court unanimously held that the appellants were entitled to damages in respect of their claims for battery. By majority, the Court found that the deliberate and intentional use by the prison officer of a CS fogger to deploy CS gas in the Detention Centre was not lawful. The use of the CS fogger was not authorised by s 157(2) or other provisions of the *Youth Justice Act*. Nor was it authorised by provisions of the *Prisons (Correctional Services) Act* that conferred the powers of police officers on prison officers acting in the course of their duties, or authorised prison officers to possess and use a weapon in a prison. The exemption in s 12(2) of the *Weapons Control Act* was not therefore engaged.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*