

Current Search >> General

Babaniaris v Lutony Fashions Pty Ltd

Citation: [163 CLR 1^{\[PDF\]}](#), 61 ALJR 304, 71 ALR 225, [\[1987\] HCA 19](#)
Court: High Court of Australia (AUS)
Judges: Mason, Wilson, Brennan, Deane, Dawson
Judgment Date: 5/6/1987

[Digest](#) | [Top](#)

[Workers' compensation](#) > [Entitlement to compensation](#) > [Persons entitled to compensation](#) > [Who is a worker or employee](#) > [Particular occupations](#) > [Outworkers and pieceworkers](#)

"Outworker" - Independent contractor

Held: (by Mason, Wilson and Dawson JJ, Brennan and Deane JJ dissenting) An independent contractor who was an "outworker" within the Workers Compensation Act 1958 Vic, s 3(1) (in its form prior to amendment by the Accident Compensation Act 1985 Vic), was not a "worker" within that subsection.

[Procedure](#) > [Courts and judges generally](#) > [Precedents](#) > [Precedents generally](#) > [Decisions accepted and acted upon for considerable period](#)

Perpetuating obvious misconstruction of statute

Held (by Mason, Wilson and Dawson JJ (Brennan and Deane JJ dissenting)), that, while reluctant to depart from long standing decisions of State courts upon the construction of State statutes of doubtful meaning, the High Court could not accept any invitation to perpetuate the obvious misconstruction of a statute and to disregard the legislature's obvious intention. No line of authority, however long standing, could justify such a course. Where an ultimate appellate court was convinced that a previous interpretation was plainly wrong, it could not allow earlier error to stand in the way of declaring the true intent of the statute in question. *Per* Mason J —The Workers' Compensation Board (Vic) exercised judicial power with the consequence that, on the ground of *stare decisis*, it might regard itself as bound to follow its earlier decision on a question of law and correspondingly, a higher court might decline on the same ground to overrule a decision of the board. But countervailing considerations had special force in cases of statutory construction. It was no part of a court's function to perpetuate error and to insist on an interpretation which, it was convinced, did not give effect to the legislative intention.

[Procedure](#) > [Courts and judges generally](#) > [Precedents](#) > [Precedents generally](#) > [General](#)

Doctrine of stare decisis - Interpretative role of courts

Held (by Mason, Wilson and Dawson JJ (Brennan and Deane JJ dissenting)), that, while reluctant to depart from long standing decisions of State courts upon the construction of State statutes of doubtful meaning, the High Court could not accept any invitation to perpetuate the obvious misconstruction of a statute and to disregard the legislature's obvious intention. No line of authority, however long standing, could justify such a course. Where an ultimate appellate court was convinced that a previous interpretation was plainly wrong, it could not allow earlier error to stand in the way of declaring the true intent of the statute in question. *Per* Mason J —The Workers' Compensation Board (Vic) exercised judicial power with the consequence that, on the ground of *stare decisis*, it might regard itself as bound to follow its earlier decision on a question of law and, correspondingly, a higher court might decline on the same ground to overrule a decision of the board. But countervailing considerations had special force in cases of statutory construction. It was no part of a court's function to perpetuate error and to insist on an interpretation which, it was convinced, did not give effect to the legislative intention.

[Litigation History](#) | [Top](#)

Earlier Proceedings of [Babaniaris v Lutony Fashions Pty Ltd, 163 CLR 1]

- [Affirmed](#) - *Lutony Fashions Pty Ltd v Babaniaris* [1986] VR 469

Cases Citing | [Sort by Court](#) | [Sort by Year](#) | [Top](#)

Applied by | [Top](#)

- *Peninsula Group Pty Ltd v Registrar-General (NT)* (1996) 136 FLR 8^[PDF]
- *Pfizer Products Inc v Karam* (2006) 237 ALR 787, 70 IPR 599, [2007] AIPC 92-232, [2006] FCA 1663^[DOC], [2007] ALMD 3100, [2007] ALMD 3101
- *Royal Women's Hospital v Medical Practitioners Board of Victoria* [2005] VSC 225^{[HTML][RTF]}

Followed by | [Top](#)

- *Commissioner of Taxation v Energy Resources of Australia Ltd* (2003) 135 FCR 346^[PDF], 54 ATR 608, 204 ALR 487, 2003 ATC 5179, [2003] FCAFC 314^[DOC], [2004] ALMD 1869, [2004] ALMD 1896

Considered by | [Top](#)

- *DSG Pty Ltd v Victorian WorkCover Authority* (2008) 20 VR 514, [2008] VSCA 42^[RTF], [2010] ALMD 584, [2010] ALMD 585, [2010] ALMD 582
- *Cramer v Geraldton Building Company* (2004) 29 WAR 410^[PDF], [2004] WASCA 289^[DOC], [2005] ALMD 4530
- *Jeffrey James Prebble Pty Ltd v Commissioner of Taxation* (2003) 131 FCR 130^[PDF], 53 ATR 513, 2003 ATC 4770, [2003] FCAFC 165^[DOC], [2003] ALMD 7457, [2003] ALMD 7445, [2003] ALMD 7347
- *Clutha Developments Pty Ltd v Barry* (1989) 18 NSWLR 86
- *Royal Women's Hospital v Medical Practitioners Board of Victoria* [2005] VSC 225^{[HTML][RTF]}

Referred to by | [Top](#)

- *Attorney-General (Cth) v Alinta Ltd* (2008) 233 CLR 542^[PDF], 82 ALJR 382^[PDF], 242 ALR 1, 34 ACSR 507, 26 ACLC 1, [2008] HCA 2^{[HTML][RTF]}, [2008] ALMD 2208, [2008] ALMD 2210, [2008] ALMD 2041
- *Australian Broadcasting Corporation v O'Neill* (2006) 227 CLR 57^[PDF], 80 ALJR 1672^[PDF], 229 ALR 457, [2006] HCA 46^[RTF], [2006] ALMD 8143
- *McNamara v Consumer Trader and Tenancy Tribunal* (2005) 221 CLR 646^[PDF], 79 ALJR 1789, 221 ALR 285, [2005] HCA 55^{[HTML][RTF]}, [2005] ALMD 8028, [2005] ALMD 8029, [2005] ALMD 8494, [2005] ALMD 8335
- *Attorney-General (Cth) v Breckler* (1999) 197 CLR 83^[PDF], 73 ALJR 981, 42 ATR 313, 163 ALR 576, [1999] HCA 28
- *Re Wakim; Ex parte McNally* (1999) 198 CLR 511^[PDF], 73 ALJR 839, 163 ALR 270, 24 Fam LR 669, 31 ACSR 99, 17 ACLC 1,055, [1999] HCA 27
- *Thompson v His Honour Judge Byrne* (1999) 196 CLR 141^[PDF], 73 ALJR 642, 161 ALR 632, 29 MVR 1, [1999] HCA 16
- *Wik Peoples v Queensland* (1996) 187 CLR 1^[PDF], 71 ALJR 173, 141 ALR 129, 18 Qld Lawyer Reps 96
- *John v Federal Commissioner of Taxation* (1989) 166 CLR 417^[PDF], 20 ATR 1, 63 ALJR 166, 83 ALR 606, 89 ATC 4101, [1989] ACL 36017, [1989] HCA 5

Cases Cited | [Sort by Court](#) | [Sort by Year](#) | [Top](#)

Overrules | [Top](#)

- *Little v Levin Cuttings Pty Ltd* (1953) 3 WCBD (Vic) 71

Refers to | [Top](#)

- *Flaherty v Girgis* (1987) 162 CLR 574^[PDF], 61 ALJR 255, 71 ALR 1
- *Coulton v Holcombe* (1986) 162 CLR 1^[PDF], 60 ALJR 470, 65 ALR 656, [1986] HCA 33
- *Baker v Campbell* (1983) 153 CLR 52^[PDF], 14 ATR 713, 57 ALJR 749, 49 ALR 385, 83 ATC 4606, [1983] HCA 39
- *McCormack v Federal Commissioner of Taxation* (1979) 143 CLR 284^[PDF], 9 ATR 610, 53 ALJR 436, 23 ALR 583, 79 ATC 4111, [1979] HCA 18
- *Queensland v The Commonwealth* (1977) 139 CLR 585^[PDF], 52 ALJR 100, 16 ALR 487
- *Geelong Harbour Trust Commissioners v Gibbs Bright & Co* (1974) 129 CLR 576^[PDF], 48 ALJR 1, 2 ALR 362, [1974] AC 810, [1974] 2 WLR 507, [1974] 1 Lloyd's Rep 344, (1974) 118 SJ 258
- *R v Ireland* (1970) 126 CLR 321^[PDF], 44 ALJR 263, [1970] ALR 727, [1970] HCA 21
- *R v Trade Practices Tribunal; Ex parte Tasmanian Breweries Pty Ltd* (1970) 123 CLR 361^[PDF], 44 ALJR 126, [1970] ALR 449, [1970] HCA 8
- *Bacon v Salamane* (1965) 112 CLR 85^[PDF], 39 ALJR 27, [1965] ALR 843
- *R v Reynhoudt* (1962) 107 CLR 381^[PDF], 36 ALJR 26, [1962] ALR 483
- *Wilson v Wilson's Tile Works Pty. Ltd.* (1960) 104 CLR 328^[PDF], 34 ALJR 234, [1960] ALR 715, [1960] HCA 63
- *R v Davison* (1954) 90 CLR 353^[PDF], 17 ABC 90, [1954] ALR 877, 28 ALJ 285
- *Humberstone v Northern Timber Mills* (1949) 79 CLR 389^[PDF], [1950] VLR 44, [1949] ALR 985, 23 ALJ 584
- *Platz v Osborne* (1943) 68 CLR 133^[PDF], 38 QJPR 121, 17 ALJ 309
- *Blair v Curran* (1939) 62 CLR 464^[PDF], [1941] ALR (CN) 365, 35 Tas LR 1 at 39, 13 ALJ 131
- *Concrete Constructions Pty Ltd v Barnes* (1938) 61 CLR 209^[PDF], 56 WN (NSW) 32, 12 ALJ 410
- *Huddart, Parker & Co Pty Ltd v Moorehead* (1909) 8 CLR 330^[PDF], 15 ALR 241, [1909] HCA 36
- *Hunter v Chasemore* [1959] VR 433, [1959] ALR 966
- *Connally v Victorian Railways Commissioners* [1957] VR 466, [1957] ALR 1097
- *Cohen v Cohen* (1942) 43 SR (NSW) 37, 60 WN (NSW) 37
- *University of Wollongong v Metwally [No 2]* (1985) 59 ALJR 481, 60 ALR 68, [1985] HCA 28
- *Salvation Army (Vic) Property Trust v Fern Tree Gully, Shire of* [1952] VLR 55
- *Selwood v John Vicars & Co Ltd* [1965] WCR (NSW) 41
- *Kirkland v Gilmore* [1949] WCR (NSW) 127
- *Jones v Secretary of State for Social Services* [1972] AC 944
- *Bourne v Keane* [1919] AC 815
- *Pate v Pate* [1915] AC 1100
- *Hanau v Ehrlich* [1912] AC 39
- *West Ham Union v Edmonton Union* [1908] AC 1
- *Emmerson v Maddison* [1906] AC 569
- *Barraclough v Brown* [1897] AC 615

- *Browsea Haven Properties Ltd v Poole Corporation* [1958] Ch 574
- *Morgan v Crawshay* (1871) LR 5 HL 304
- *Campbell College, Belfast (Governors) v Northern Ireland Valuation Commissioner* [1964] 1 WLR 912
- *Hamilton v Baker* (1889) (1889) LR 14 App Cas 209
- *Lancashire & Yorkshire Railway Co v Bury Corporation* (1889) (1889) LR 14 App Cas 417

Words and Phrases Judicially Considered | [Top](#)

Outworker; Worker

Noted in Journals | [Top](#)

'The Expected Impact of the Supreme Court on New Zealand Tax Cases' (2006) 22 NZULR 76