



Express law

fast track information for clients

27 SEPTEMBER 2018

Update: special leave refused in relation to penalty privilege

[Frugtniet v Migration Agents Registration Authority \[2018\] HCATrans 157 \(17 August 2018\)](#)

High Court refuses application for special leave to appeal regarding penalty privilege

In *Migration Agents Registration Authority v Frugtniet* (2018) 351 ALR 650 the Full Federal Court explained the effect of various High Court decisions regarding the privilege against self-exposure to a penalty. The Court held that in the federal context penalty privilege will only apply in a non-judicial setting if there is a statutory basis for it. As a result, penalty privilege did not prevent the Administrative Appeals Tribunal from making the ordinary directions requiring an applicant to file material in advance of the hearing.

On 17 August 2018, the High Court dismissed an application for special leave to appeal the Full Federal Court's decision. Gageler J, with Nettle and Edelman JJ, stated that the case was 'an inappropriate vehicle to consider any general issue of principle concerning the application of penalty privilege in non-curial proceedings' because the outcome of the case would be unlikely to be different on appeal.

Implications

The High Court is yet to rule definitively on the application of penalty privilege in the non-curial context. Until it does, the position in the federal context remains as explained by the Full Federal Court. The effect and implications of that decision were addressed in AGS *Express Law No 265*, 15 February 2018.

Tim Begbie, Senior General Counsel, and Stephen Rebikoff appeared for MARA. Emily Nance, Senior Executive Lawyer, and Ned Rogers, Senior Lawyer, acted for MARA.

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