



Friday, 9 November 2018

Daily Banking A Daily Bulletin listing Decisions of Superior Courts of Australia

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CIVIL (Banking)

Executive Summary (1 minute read)

Hanson-Young v Leyonhjelm (FCA) - defamation - respondent sought strike out of statement of claim and permanent stay or dismissal of proceedings - amended interlocutory application dismissed

Nationwide News Pty Ltd v Vass (NSWCA) - defamation - offer of compromise was not a counteroffer to offer of amends - open to respondent to accept offer of amends - appeal dismissed

Bank of Queensland Ltd v AIG Australia Ltd (NSWSC) - banking - insurance - claim for indemnity under Civil Liability Insurance Policy - loss for which insurers liable arose from multiple "Claims" - bank to bear multiple Retentions

Hawker v Powercor Australia Ltd (VSC) - judgments and orders - group proceeding - misleading statements in newspaper article - Court satisfied to include 'clarifying statement' in opt-out notice

Creenaune v Workcover Queensland (QCA) - judgments and orders - corporations - administrators' acceptance of service did not constitute consent to commencement of proceedings against company in administration - appeal dismissed

Re Gawley (deceased) (QSC) - wills and estates - probate - deceased executed three last wills 'of identical content' - Court satisfied Registrar should 'simply select and place an identifying

mark' on one of the Wills for purposes of grant of probate

Attorney-General (SA) v Raschke & Anor (SASC) - judgments and orders - application for leave to appeal against orders made by South Australian Civil and Administrative Tribunal that Tribunal lacked jurisdiction to determine tenancy dispute which involved different States' residents - leave to appeal granted

Summaries With Link (Five Minute Read)

Hanson-Young v Leyonhjelm [2018] FCA 1688

Federal Court of Australia

White J

Defamation - pleadings - stay - respondent sought to strike out statement of claim in proceedings pursuant to r16.21 *Federal Court Rules 2011* (Cth) (Rules) - respondent also sought that proceedings be dismissed or permanently stayed - contention that applicant had pleaded defamatory imputations as "particulars" instead of "substantive averments" - contention that allegation concerning 'places of publication' was "selfevidently false" - whether form of pleading concerning 'contemplated provision of further particulars' attracted r16.21(1)(b), (c) & (d) of the Rules - 'grapevine effect' - whether dismissal or permanent stay warranted under s16 *Parliamentary Privileges Act 1987* (Cth) - held: amended interlocutory application dismissed.

[Hanson-Young](#)

Nationwide News Pty Ltd v Vass [2018] NSWCA 259

Court of Appeal of New South Wales

McColl, Basten & Leeming JJA

Defamation - applicant published article claiming respondent bought five-panelled painting and sold one panel separately in breach of sale contract - respondent sued applicant in defamation - applicant served 'offer to make amends' under Pt 3, Div 1 *Defamation Act 2005* (NSW) (Defamation Act) - respondent accepted offer of amends in letter to applicant - trial judge declared letter was a 'valid acceptance of the offer' and vacated hearing date - applicant sought to challenge declaration on basis that 'well after' making of offer of amends respondent had served offer of compromise on applicant pursuant to r20.26 *Uniform Civil Procedure Rules 2005* (NSW) - applicant contended the offer of compromise constituted rejection of offer of amends - whether offer of compromise 'had the effect of a counteroffer' - provisions concerning offers to make amends in Pt 3, Div 1 Defamation Act (amends provisions) - whether common law contract principles operated within amends provisions' framework - held: offer of compromise was not a counteroffer - open to respondent to accept offer of amends - appeal dismissed.

[View Decision](#)

Bank of Queensland Ltd v AIG Australia Ltd [2018] NSWSC 1689

Supreme Court of New South Wales

Stevenson J

Banking - insurance - plaintiff sought indemnity under Civil Liability Insurance Policy which defendants issued - Bank sought "Loss" and "Defence Costs" incurred in defending and settling "Representative Proceedings" against Bank and its agent - first defendant lead insurer under policy liable for 37.5 per cent of insured loss - third defendant liable for 25 per cent of insured loss - Bank had settled with second defendant - whether loss which insurers were liable for arose from single "Claim" under Policy or multiple "Claims" - if multiple "Claims", multiple 'Retentions' would apply such that insurers would have no liability to make payment to Bank - held: loss arose from multiple "Claims" - Claims did not arise from, were not 'based on', or 'attributable to', a series of related Wrongful Acts' - Bank required to bear multiple Retentions.

[View Decision](#)

Hawker v Powercor Australia Ltd [2018] VSC 661

Supreme Court of Victoria

John Dixon J

Judgments and orders - group proceeding - group members claimed loss due to bushfire - newspaper published article: 'Leading bushfire lawyer says insurance companies cannot take control of bushfire claims' - plaintiff proposed opt-out notice and procedure - insurers expressed concern statements in article were misleading - insurers proposed amendments to opt-out notice clarifying statements - standing - whether statements misleading - s33ZF *Supreme Court Act 1986* (Vic) - held: Court satisfied to include 'clarifying statement' in opt-out notice.

[Hawker](#)

Creenaune v Workcover Queensland [2018] QCA 235

Court of Appeal of Queensland

Holmes CH

Judgments and orders - corporations - District Court judge refused to grant appellant default judgment in personal injuries action on basis applicant failed to obtain consent of second respondent's administrators 'before commencing or continuing' proceedings - appellant appealed - whether administrators' consent to postal service on them of claim and statement of claim constituted consent to 'beginning or proceeding with the proceeding' against second respondent in administration - s440D(1)(a) *Corporations Act 2001* (Cth) - held: Court not satisfied that acceptance of service constituted permission to commence proceedings - appeal dismissed.

[Creenaune](#)

Re Gawley (deceased) [2018] QSC 242

Supreme Court of Queensland

Henry J

Wills and estates - deceased executed three last wills 'of identical content' - executor sought

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grant of probate - proceedings concerned which of the three wills executed last - whether wills contained 'revocation clause' - whether 'temporal inconsistency or content inconsistency' between wills - *Townsend v Moore* [1905] P66, 83 - held: Court satisfied Registrar should 'simply select and place an identifying mark' on one of the Wills for purposes of grant of probate.

[Re Gawley](#)

Attorney-General (SA) v Raschke & Anor [2018] SASC 165

Supreme Court of South Australia

Doyle J

Judgments and orders - application for leave to appeal to Full Court of the Supreme Court against orders made by South Australian Civil and Administrative Tribunal - President of Tribunal had found that Tribunal lacked jurisdiction to determine tenancy dispute under *Residential Tenancies Act 1995* (SA) which involved different States' residents - r289 *Supreme Court Civil Rules 2006* (SA) - ss71(1)(a)(i) & 71(2) *South Australian Civil and Administrative Tribunal Act 2013* (SA) - whether 'reasonably arguable issue of law' raised by appeal - whether issues was 'of general importance' warranting Full Court's attention - held: leave to appeal granted.

[Attorney-General](#)

CRIMINAL

Executive Summary

Summaries With Link



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Floating Island

By: Dorothy Wordsworth

Harmonious Powers with Nature work

On sky, earth, river, lake, and sea:

Sunshine and storm, whirlwind and breeze

All in one duteous task agree.

Once did I see a slip of earth,
By throbbing waves long undermined,
Loosed from its hold; — how no one knew
But all might see it float, obedient to the wind.

Might see it, from the mossy shore
Dissevered float upon the Lake,
Float, with its crest of trees adorned
On which the warbling birds their pastime take.

Food, shelter, safety there they find
There berries ripen, flowerets bloom;
There insects live their lives — and die:
A peopled world it is; in size a tiny room.

And thus through many seasons' space
This little Island may survive
But Nature, though we mark her not,
Will take away — may cease to give.

Perchance when you are wandering forth
Upon some vacant sunny day
Without an object, hope, or fear,
Thither your eyes may turn — the Isle is passed away.

Buried beneath the glittering Lake!
Its place no longer to be found,
Yet the lost fragments shall remain,
To fertilize some other ground.

https://en.wikipedia.org/wiki/Dorothy_Wordsworth

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