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

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Executive Summary (1 minute read)

Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union (The Nine Brisbane Sites Appeal) (FCAFC) - industrial law - proceedings concerning 'strikes and stop-work' meetings - s417 *Fair Work Act 2009* (Cth) - penalties - appeal allowed in part

Stoltenberg v Bolton (NSWCA) - defamation - security for costs - appeal stayed until appellant's payment of security for respondent's costs in sum of \$20,000

Local Democracy Matters Incorporated v Infrastructure NSW (NSWCA) - environment and planning - development consent granted for work including football stadium's demolition - appeal dismissed

Hill v Dunn (NSWSC) - equity - trusts and trustees - defendant's 'legal interest' in property held 'on resulting trust' for plaintiff - declaratory relief granted - orders made

De Bono v Victorian WorkCover Authority (VSCA) - accident compensation - refusal of leave to commence proceeding to claim 'pecuniary loss damages' set aside - appeal allowed

Delta Pty Ltd v Mechanical and Construction Insurance Pty Ltd (QCA) - insurance - appellant unsuccessfully claimed under insurance policy - claims arose from breach of contract by appellant's subcontractor - appellant claimed as insured's assignee or as an insured under policy - appeal dismissed

Mills v Return to Work Corporation of South Australia (SASC) - workers compensation -

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injury suffered in car accident while 'driving home from work' - 'real and substantial connection' - permission to appeal from decision of Full Bench of the South Australian Employment Tribunal granted

Summaries With Link (Five Minute Read)

Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union (The Nine Brisbane Sites Appeal) [2019] FCAFC 59

Full Court of the Federal Court of Australia

Allsop CJ; Griffiths & Rangiah JJ

Industrial law - proceedings concerning 'strikes and stop-work meetings' at construction sites - appellant contended that respondents, 'by organising' the strikes and stop-work meetings, contravened ss346(b), 355, & 417 *Fair Work Act 2009* (Cth) (Fair Work Act) - respondents denied stop-work meetings had contravened of s417 Fair Work Act but otherwise admitted allegations - primary judge found stop-work meetings did not contravene s417 - primary judge imposed penalties on first respondent for 'admitted contraventions' - whether erroneous finding of no contravention of s417 Fair Work Act - whether failure to 'impose adequate penalties' - held: appeal allowed in part.

[Australian Building and Construction Commissioner](#)

Stoltenberg v Bolton [2019] NSWCA 71

Court of Appeal of New South Wales

Emmett AJA

Defamation - security for costs - primary judge ordered appellant to pay respondent damages for defamation - primary judge made orders to restrain appellant 'from publishing or broadcasting various allegations' concerning respondent - appellant served notice to appeal - respondent, under r51.50 *Uniform Civil Procedure Rules 2005* (NSW) sought that appellant provide security for costs - whether 'special circumstances' established - stultification - impecuniosity - whether appellant intended 'to denude himself' of assets potentially available to satisfy his incurred obligations - 'modest order' - held: Court satisfied to order that appellant should pay security for costs - appeal stayed until payment of security for costs in sum of \$20,000.

[View Decision](#)

Local Democracy Matters Incorporated v Infrastructure NSW [2019] NSWCA 65

Court of Appeal of New South Wales

Leeming JA; Sackville & Emmett AJJA

Environment and planning - Land and Environment Court of New South Wales dismissed appellant's challenge to third respondent's decision to grant development consent for work including football stadium's demolition - appellant appealed pursuant to s58(1) *Land and Environment Court Act 1979* (NSW) - whether third respondent's 28 day 'public exhibition' of

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'Concept DA' breached *Environmental Planning and Assessment Act 1979* (NSW) - whether third respondent did not form opinion concerning 'design excellence', which cl 6.21(3) Sydney Local Environmental Plan 2012 (Sydney LEP) required - whether third respondent, when consenting to Concept DA, failed to comply with cl 7 State Environmental Planning Policy No 55 – Remediation of Land (SEPP 55) - held: appeal dismissed.

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Hill v Dunn [2019] NSWSC 419

Supreme Court of New South Wales

Henry J

Equity - trusts and trustees - plaintiff purchased property - plaintiff registered property in name of plaintiff and name of defendant - plaintiff wished to sell property - plaintiff had paid purchase price and 'all costs associated with the property' - plaintiff sought transfer of defendant's 'legal interest' to her - whether defendant held legal interest in property 'on resulting trust' for plaintiff - whether appropriate to grant relief sought by plaintiff where defendant 'had taken no active steps' in proceedings - whether to grant any 'other relief' - whether to grant 'vesting order' under s71 *Trustee Act 1925* (NSW) - defendant's absence - plaintiff's evidence - held: Court satisfied defendant held legal interest on resulting trust for plaintiff - declaratory relief granted as sought - orders made.

[View Decision](#)

De Bono v Victorian WorkCover Authority [2019] VSCA 85

Court of Appeal of Victoria

Priest, Beach & McLeish JJA

Accident compensation - applicant, pursuant to s134AB(16)(b) *Accident Compensation Act 1985* (Vic), sought, in reliance on s134AB(37) of the Act, to bring proceeding to claim damages for injury - primary judge granted applicant leave to claim for recovery of 'pain and suffering' damages, but not 'pecuniary loss damages' - adequacy of reasons - whether erroneous failure to determine whether applicant had 'full or part time employment' capacity - whether erroneous findings concerning earnings - whether erroneous findings concerning 'pecuniary loss consequences' - 'permanent serious impairment or loss of a body function' - held: appeal allowed - primary judge's refusal of leave to commence proceeding to claim pecuniary loss damages set aside.

[De Bono](#)

Delta Pty Ltd v Mechanical and Construction Insurance Pty Ltd [2019] QCA 62

Court of Appeal of Queensland

Fraser & McMurdo JJA; Flanagan J

Insurance - contract - proceedings concerning whether insurance policy which respondent issued covered claims which appellant made - appellant's claims arose from breach of contract by appellant's subcontractor - appellant made claim as assignee of subcontractor's 'claimed right to an indemnity' of "Settlement Amount" under 'settlement deed', or amount assessed by

court - alternatively appellant claimed as an insured under policy for costs of 'temporary protective repairs' - primary judge gave judgment for respondent - construction of policy - construction of settlement deed - whether subcontractor liable under settlement deed to pay Settlement Amount - whether Settlement Amount reasonable - whether subcontractor was liable to pay amount 'in compensation of Property Loss' - whether appellant was an insured under 'schedule of cover' - held: appeal dismissed.

[Delta](#)

Mills v Return to Work Corporation of South Australia [2019] SASC 56

Supreme Court of South Australia

Hinton J

Workers compensation - applicant injured in car accident while 'driving home from work' - applicant claimed compensation under *Workers Rehabilitation and Compensation Act 1986* (SA) - Return to Work SA rejected claim - application concerned question whether there was a 'real and substantial connection between' applicant's employment and accident - applicant sought 'permission to appeal' from decision of Full Bench of the South Australian Employment Tribunal - applicant contended Full Bench has misconstrued Tribunal's reasons and erroneously concluded Tribunal's reasons were adequate - interests of justice - held: permission to appeal granted.

[Mills](#)

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