



Tuesday, 17 April 2018

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

 Follow @Benchmark\_Legal

### Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

### Executive Summary (1 minute read)

**Matson v United States of America** (FCAFC) - extradition - extradition request did not fail to comply with s19(2)(b) *Extradition Act 1988* (Cth) and para (3)(c) Article XI *Treaty on Extradition between Australia and the United States of America* - appeal dismissed - judicial review of Minister's decision to issue notice refused

**Joyce (Trustee), in the matter of Carr (Bankrupt) (Deceased)** (FCA) - bankruptcy - trusts and trustees - trustee granted consolidation of two bankrupt estates

**W Hoy Pty Ltd v W.T.H. Pty Ltd (No 2)** (FCA) - costs - unsuccessful prospective applicant to pay prospective respondent's costs forthwith

**Lukac v The Royal Australian and New Zealand College of Obstetricians and Gynaecologists** (NSWSC) - associations and clubs - equity - removal of plaintiff from training programme - failure to consider plaintiff's argument - decision of Appeals Committee invalid

**Spear v Hallenstein** (VSC) - statutory interpretation - Supreme Court of Victoria did not have jurisdiction to hear and determine application under s59 *Coroners Act 1985* (Vic) (repealed) - separate question answered in the negative

**Lysaght v John Francis Lysaght as Executor of the Estate of Paul Joseph Lysaght** (WASC) - wills and estates - succession - application by adult children for provision from estate of deceased father granted

**Toll Transport Pty Ltd v Medwin** (TASSC) - workers compensation - no error in Chief

Commissioner's decision to dismiss employer's reference to Tribunal - appeal dismissed

## Summaries With Link (Five Minute Read)

### **Matson v United States of America [2018] FCAFC 57**

Full Court of the Federal Court of Australia

Dowsett, Wigney & Bromwich JJ

Extradition - proceedings concerned first respondent's request for applicant's extradition from Australia to United States in order to prosecute him for 'mail fraud, wire fraud, conspiracy to commit mail fraud and wire fraud, and conspiracy to commit money laundering' - issue on appeal was whether primary judge erroneously found that extradition request complied with requirements of s19(2)(b) *Extradition Act 1988* (Cth) (Extradition Act) and para (3)(c) Article XI *Treaty on Extradition between Australia and the United States of America* - whether affidavit contained reasonable grounds to believe applicant committed offences - delay - adequacy of explanation for delay - abuse of process - whether Minister erred by not conducting inquiries or not taking into account the delay - held: no error by primary judge established - appeal dismissed - judicial review of Minister's decision to give notice under s16 Extradition Act refused.

[Matson](#)

### **Joyce (Trustee), in the matter of Carr (Bankrupt) (Deceased) [2018] FCA 507**

Federal Court of Australia

Barker J

Bankruptcy - trusts and trustees - trustee of two bankrupt estates sought, pursuant to ss53 & 248A *Bankruptcy Act 1966* (Cth), estates' consolidation to facilitate joint estate's proper administration - trustee also sought orders approving amounts of fees - whether consolidation of estates was in best interests of estates' creditors - held: application for consolidation of estates granted - orders not granted concerning fees as orders not supported by affidavit.

[Joyce](#)

### **W Hoy Pty Ltd v W.T.H. Pty Ltd (No 2) [2018] FCA 506**

Federal Court of Australia

Barker J

Costs - Court dismissed prospective applicant's application for interlocutory injunctions against prospective respondent - determination of costs - issue was whether prospective applicant should pay costs forthwith - r40.13 *Federal Court Rules 2011* (Cth) - whether application was strategy to gain 'tactical advantage' - whether costs should be assessed at conclusion of proceeding not yet commenced - held: Court satisfied that prospective applicant should pay prospective respondent's costs forthwith.

[W Hoy](#)

**Lukac v The Royal Australian and New Zealand College of Obstetricians and Gynaecologists [2018] NSWSC 436**

Supreme Court of New South Wales

Davies J

Associations and clubs - equity - Progression Review Committee of the College determined plaintiff should be removed from the FRANZCOG training program - Appeals Committee of the Royal Australian and New Zealand College of Obstetricians and Gynaecologists (Appeals Committee) dismissed appeal - plaintiff contended denial of procedural fairness by Appeals Committee - plaintiff sought declaration Appeals Committee's decision was void - jurisdiction - nature of relief where decision of private association - held: Appeals Committee failed to respond to plaintiff's argument - declaration to be made concerning decision's invalidity - mandatory injunction to be ordered requiring Appeals Committee to consider plaintiff's appeal according to law.

[View Decision](#)

**Spear v Hallenstein [2018] VSC 169**

Supreme Court of Victoria

Niall JA

Statutory interpretation - separate question - deceased shot by member of Victoria Police while attempting to apprehend him - inquest into deceased's death occurred under *Coroners Act 1985* (Vic) (1985 Act) - 1985 Act repealed by *Coroners Act 2008* (Vic) - State Coroner concluded deceased contributed to own death (contribution finding) - deceased's sister, purportedly pursuant to s59 1985 Act sought order that contribution finding void and inquest be re-opened - plaintiff contended s59 1985 Act survived repeal - separate question was 'whether the Supreme Court of Victoria has jurisdiction to hear and determine the Plaintiff's application under s59 of the Coroners Act 1985 (Vic) (now repealed)?' - held: separate question answered in the negative.

[Spear](#)

**Lysaght v John Francis Lysaght as Executor of the Estate of Paul Joseph Lysaght [2018] WASC 88**

Supreme Court of Western Australia

Tottle J

Wills and estates - succession - first plaintiff and second plaintiff were adult children of deceased - plaintiffs sought, pursuant to s6 *Family Provision Act 1972* (WA), provision from deceased's estate - deceased made no provision for plaintiffs in will - estrangement - whether 'disentitling conduct' - claim of deceased's mother on estate - held: Court satisfied to make provision in plaintiffs' favour - adjustments made to residuary estate's distribution - application granted.

[Lysaght](#)

**Toll Transport Pty Ltd v Medwin [2018] TASSC 15**



Supreme Court of Tasmania

Wood J

Workers compensation - appeal concerned Chief Commissioner of Workers Rehabilitation and Compensation Tribunal's determination under s81A *Workers Rehabilitation and Compensation Act 1988* (Tas) that he was not satisfied employer had 'reasonably arguable case' concerning claim for workers compensation - 'reasonable action' - 'reasonable administrative action' - whether employment contributed 'to a substantial degree' pursuant to s25(1)(b) to any injury suffered by worker - whether employer discharged onus of proof - held: appellant failed to demonstrate error by Chief Commissioner - appeal dismissed.

[Toll Transport](#)

[Click Here to access our Benchmark Search Engine](#)