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## Daily Civil Law A Daily Bulletin listing Decisions of Superior Courts of Australia

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### Executive Summary (1 minute read)

**Battunga Country Lions Club v Paues (SASCA)** - negligence - proceedings arising from collision between go-kart and spectators - respondent, respondent's wife, and two of their children were injured - appellant admitted liability in respect of children - Court gave judgment in favour of respondent, and judgment in favour of respondent's wife - appellant appealed against Court's judgment in favour of respondent - appeal confined to trial judge's allowance for 'future loss of earning capacity' - appeal allowed - judgment in respondent's favour reduced (I B)

**Thaler v Commissioner of Patents (FCA)** - patent - applicant sought judicial review of decisions of respondent - erroneous determination that an "inventor" could not be 'an artificial intelligence system' - other decisions also erroneous - judicial review application upheld - respondent's determinations set aside (I B C G)

**Roberts-Smith v Fairfax Media Publications Pty Limited (No 20) (FCA)** - defamation - adjournment - respondents sought recommencement of trial on 26/7/21 for 'limited purpose' of hearing evidence of 'four Afghan witnesses' - *Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Order 2021* - application granted (I B C G)

**I and J Formwork Pty Ltd v Donya Constructions Pty Ltd (NSWSC)** - security for costs - defendants sought security for costs in proceedings - plaintiff's 'sole director and shareholder' offered undertaking - plaintiff to pay security for costs in sum of \$100,000 (I B C G)

**Young v SMYBB Pty Ltd (t/as Best Bottlers Pty Ltd) (VSC)** - negligence - statutory duty -

plaintiff injured whilst working for defendant - plaintiff sued defendant in negligence and for breach of statutory duty - negligence claim failed - plaintiff succeeded on claim of breach of statutory duty (I B C G)

## Summaries With Link (Five Minute Read)

### **Battunga Country Lions Club v Paues [2021] SASCA 72**

Court of Appeal of South Australia

Kelly P; Doyle & Bleby JJ

Negligence - proceedings arising from collision between go-kart and spectators - respondent, respondent's wife, and two of their children were injured - appellant admitted liability in respect of children - Court gave judgment in favour of respondent, and judgment in favour of respondent's wife - appellant appealed against Court's judgment in favour of respondent - appeal confined to trial judge's allowance for 'future loss of earning capacity' - assessment of damages - 'appellate intervention' - *Pitt v Commissioner for Consumer Affairs* [2021] SASCA 24 - whether sum awarded was 'excessive' - held: appeal allowed - judgment in respondent's favour reduced.

[Battunga](#) (I B)

### **Thaler v Commissioner of Patents [2021] FCA 879**

Federal Court of Australia

Beach J

Patent - respondent determined patent application was non-compliant with reg 3.2C(2)(aa) *Patents Regulations 1991* (Cth) (Regulations), which required applicant to provide name of invention's inventor - applicant named 'artificial intelligence system' as inventor - respondent found artificial intelligence system 'could not be an inventor', finding s15(1) *Patents Act 1990* (Cth) and reg 3.2C(2)(aa) were 'inconsistent with an artificial intelligence machine being treated as an inventor' - respondent found applicant's application and its deficiencies 'incapable of remedy', that applicant did not comply with direction under reg 3.2C(4) Regulations, and that applicant's application 'had lapsed' - applicant sought judicial review of respondent's decision - whether an "inventor" could be 'an artificial intelligence system or device' - held: judicial review application upheld - respondent's determinations set aside.

[Thaler](#) (I B C G)

### **Roberts-Smith v Fairfax Media Publications Pty Limited (No 20) [2021] FCA 824**

Federal Court of Australia

Besanko J

Defamation - adjournment - respondents sought recommencement of trial on 26/7/21 for 'limited purpose' of hearing evidence of 'four Afghan witnesses' - whether 'substantial risk' Afghan witnesses' evidence would 'become unavailable if' 'not taken soon' - importance of evidence as 'part of' 'respondents' case' - interests of justice - *Public Health (COVID-19 Temporary*



*Movement and Gathering Restrictions) Order 2021* - held: application granted.

[Roberts-Smith](#) (I B C G)

**I and J Formwork Pty Ltd v Donya Constructions Pty Ltd [2021] NSWSC 940**

Supreme Court of New South Wales

Stevenson J

Security for costs - plaintiff brought proceedings against first defendant arising from contract between parties - defendants sought security for costs - plaintiff offered 'a personal undertaking by' 'sole director and shareholder' of plaintiff - 'weight to be given to' personal undertaking - assets' nature - whether undertaking 'sufficient reason' to decline to make order for security for costs - held: plaintiff to pay security for costs in sum of \$100,000.

[View Decision](#) (I B C G)

**Young v SMYBB Pty Ltd (t/as Best Bottlers Pty Ltd) [2021] VSC 445**

Supreme Court of Victoria

Forbes J

Negligence - statutory duty - plaintiff injured whilst working for defendant - plaintiff sued defendant in negligence and for breach of statutory duty - whether system 'reasonably safe' - whether activity which plaintiff undertook was "hazardous manual handling" - causation - *Workplace Injury Rehabilitation and Compensation Act Vic 2013 (Vic)* - *Occupational Health and Safety Regulations 2007* - held: negligence claim failed - plaintiff succeeded on claim of breach of statutory duty.

[Young](#) (I B C G)

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