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

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

National Tertiary Education Industry Union v University of Sydney (FCAFC) - industrial law - 'intellectual freedom' - termination of second appellant's employment - primary judge erred in dismissing appellants' originating application seeking declarations of ss340(1) & 50 *Fair Work Act 2009* (Cth), second appellant's reinstatement, payment of compensation to second appellant, and payment of pecuniary penalties to first appellant - appeal allowed - matter remitted (I B C G)

Seven Network v Cricket Australia (No 2) (FCA) - discovery - journalist made 'non-party search request' under r2.32(4) *Federal Court Rules 2011* (Cth) - leave to inspect 'restricted documents' granted 'subject to certain documents being redacted or marked confidential' (I B C G)

Chia v Ku-ring-gai Council (NSWCCA) - criminal law - environmental law - injury to trees - appellant challenged conviction for offence contrary to s125(1) *Environmental Planning and Assessment Act 1979* (NSW) - "10/50 Vegetation Clearing Code of Practice for NSW" - appeal allowed - conviction quashed - new trial (I B C G)

Chronis v Karan & Ors (No 2) (SASC) - costs - wills and estates - Court pronounced 'force and validity of' will and ordered will's admission to probate - determination of costs - offer of settlement - parties costs to be paid from estate on standard basis (B)

Westerman v Edwards [No 2] (WASC) - pleadings - defamation - third defendant sought to strike out paragraphs of plaintiff's 'further further re-amended statement of claim' - application allowed in part - leave to replead granted (I B C G)

Summaries With Link (Five Minute Read)

National Tertiary Education Industry Union v University of Sydney [2021] FCAFC 159

Full Court of the Federal Court of Australia

Allsop CJ; Jagot & Rangiah JJ

Industrial law - respondent terminated employment of second appellant without notice - termination of employment occurred after warnings concerning 'comments and posts by' second appellant on social media and convening of 'review committee' - appellants sought declarations of contravention of ss340(1) & 50 *Fair Work Act 2009* (Cth), that second appellant be reinstated, payment of compensation to second appellant, and payment of pecuniary penalties to first appellant - primary judge dismissed application - appellants appealed - 'intellectual freedom' - 'lunch photo' - whether erroneous construction of enterprise agreement - whether 'misconduct or serious misconduct' - whether respondent gave 'lawful and reasonable direction to remove' lunch photo - whether appeal moot - held: primary judge erred in dismissing application - appeal allowed - matter remitted to primary judge.

[National Tertiary Education](#) (I B C G)

Seven Network v Cricket Australia (No 2) [2021] FCA 1032

Federal Court of Australia

Anastassiou J

Discovery - preliminary discovery - journalist made request for access to 'restricted documents on Court's file ('Request') - Request was 'non-party search request' under r2.32(4) of Federal Court Rules 2011 (Cth) - prospective applicant contended that Court should grant leave to 'any interested non-party' to inspect the restricted documents, except those covered by 'suppression order' - prospective respondent opposed grant of leave 'unless appropriate redactions' made - "assist in the fair and accurate reporting of matters of journalistic interest" - 'open justice' - s37AF *Federal Court of Australia Act 1976* (Cth) - held: leave granted 'subject to certain documents being redacted or marked confidential'.

[Seven Network](#) (I B C G)

Chia v Ku-ring-gai Council [2021] NSWCCA 189

Court of Criminal Appeal of New South Wales

Hoeben CJ at CL; Harrison & Wilson JJ

Criminal law - environmental law - appellant convicted for causing injury to trees subject of Ku-ring-gai Council Tree Preservation Order without consent - s125(1) *Environmental Planning and Assessment Act 1979* (NSW) - appellant received \$40,000 fine and ordered to pay prosecutor's costs - appellant challenged conviction - *Rural Fires Amendment (Vegetation Clearing) Act 2014*

NSW) - "10/50 Vegetation Clearing Code of Practice for NSW" ('10/50 Code') - held: primary judge did not make 'clear finding' on issue 'central to' appellant's defence as to whether appellant had directed contractors 'to comply with all relevant regulations and legislation, including the 10/50 Code' - appeal allowed - conviction quashed - new trial.

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

Chronis v Karan & Ors (No 2) [2021] SASC 101

Supreme Court of South Australia

Parker J

Costs - wills and estates - Court pronounced 'force and validity of' will and ordered will's admission to probate - determination of costs - applicant sought order for costs on solicitor/client basis in reliance on offer of settlement - respondent sought payment of parties costs from estate on standard basis or that no costs order should be made or that parties bear own costs - *Roche v Roche & Anor (No 2)* [2017] SASC 75 - whether imprudent refusal of settlement offer - held.

[Chronis](#) (B)

Westerman v Edwards [No 2] [2021] WASC 281

Supreme Court of Western Australia

Tottle J

Pleadings - defamation - third defendant sought to strike out paragraphs of plaintiff's 'further further re-amended statement of claim' - whether disclosure of reasonable cause of action - 'prejudice, embarrass or delay the fair trial of the action' - 'trial by interlocutory ordeal' - O20 r19(1)(a) & (c) *Rules of the Supreme Court 1971* (WA) - held: application allowed in part - leave to replead granted.

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

Summaries With Link



From: Evening Songs

By: John Vance Cheney

THE BIRDS have hid, the winds are low,
The brake is awake, the grass aglow:
The bat is the rover,
No bee on the clover,
The day is over, 5
And evening come.

The heavy beetle spreads her wings,
The toad has the road, the cricket sings:
The bat is the rover,
No bee on the clover, 10
The day is over,
And evening come.

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

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