

Friday, 5 November 2021

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

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (One Minute Read)

Hamilton (a pseudonym) v The Queen (HCA) - criminal law - appellant 'charged with ten counts of aggravated indecent assault' - jury found appellant guilty on all counts - appellant appealed - Court of Criminal Appeal of New South Wales did not err in refusing appellant leave to appeal on ground trial had miscarried due to trial judge's failure to give 'anti-tendency direction' - appeal dismissed (I B C G)

Larter v Hazzard (NSWSC) - subpoena - notice to produce - COVID-19 - defendants sought that subpoena issued at plaintiff's request be set aside and that notice to produce, which plaintiff had served on them, be set aside - applications granted (I B C G)

Insurance Australia Group Ltd t/as NRMA Insurance v Welsh (NSWSC) - judicial review - plaintiff sought extension of time to seek judicial review of medical assessment of third defendant and decision of fourth defendant to dismiss application for review of third defendant's certificate - application granted - certificate set aside - decision set aside - matter remitted (I B G)

Lonergan v Trustees of the Sisters of Saint Joseph & Anor (Costs Ruling) (VSC) - costs - indemnity costs - parties agreed that Court should give judgment for plaintiff against defendants - parties disputed costs orders - judgment for plaintiff in amount agreed by parties - defendants to pay plaintiff's costs on standard basis (I B C G)

Kincaid v Lumsden & Ors (SASC) - security for costs - wills and estates - applicant sought order for family provision on basis she was deceased's domestic partner - third and fourth defendants sought security for costs - application granted - proceeding stayed until security provided (B)

HABEAS CANEM

Freedom Day



Summaries With Link (Five Minute Read)

Hamilton (a pseudonym) v The Queen [2021] HCA 33

High Court of Australia

Kiefel CJ; Keane, Edelman, Steward & Gleeson JJ

Criminal law - appellant 'charged with ten counts of aggravated indecent assault' - jury found appellant guilty on all counts - appellant appealed - appellant sought to appeal on ground trial miscarried due to trial judge's failure to give 'anti-tendency direction' - whether Court of Criminal Appeal of New South Wales erred in refusing leave to appeal - rule 'that evidence admitted for one purpose is not admissible for another purpose, and cannot be used for another purpose' - *Sutton v The Queen* (1984) 152 CLR 528 - whether miscarriage of justice - s61M(2) *Crimes Act 1900* (NSW) - s6(1) *Criminal Appeal Act 1912* (NSW) - held: appeal dismissed.

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

Larter v Hazzard [2021] NSWSC 1411

Supreme Court of New South Wales

Adamson J

Subpoena - notice to produce - COVID-19 - defendants, by notice of motion, sought that subpoena issued at plaintiff's request be set aside - defendants also sought that notice to produce, which plaintiff had served on them, be set aside - s7 *Public Health Act 2010* (NSW) - *Public Health (COVID-19 Vaccination of Health Care Workers) Order 2021* (NSW) - *Public Health (COVID-19 Vaccination of Health Care Workers) Order (No 2) 2021* (NSW) - r59.9 *Uniform Civil Procedure Rules 2005* (NSW) - held: subpoena set aside - paragraph of notice to produce, which was the only paragraph remaining in dispute, set aside - directions made.

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

Insurance Australia Group Ltd t/as NRMA Insurance v Welsh [2021] NSWSC 1368

Supreme Court of New South Wales

Macfarlan JA

Judicial review - plaintiff sought extension of time to seek judicial review of medical assessment of third defendant and decision of fourth defendant to dismiss application for review of third defendant's certificate - whether third defendant's certification concerning 'degree of permanent impairment' of first defendant was legally or jurisdictionally erroneous - whether fourth defendant's decision was erroneous by failure to identify or suspect existence of error in third defendant's certification - "incorrect in a material respect" - held: plaintiff's contentions accepted - certificate set aside - decision set aside - matter remitted.

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

Lonergan v Trustees of the Sisters of Saint Joseph & Anor (Costs Ruling) [2021] VSC 717

Supreme Court of Victoria

Keogh J

Costs - parties agreed that Court should give judgment for plaintiff against defendants - parties



disputed costs orders - plaintiff sought that defendants pay his costs on standard basis - defendants sought indemnity costs order in reliance on Calderbank offer - *Calderbank v Calderbank* [1975] 3 All ER 333 - *Hazeldene's Chicken Farm v VWA* (No 2) [2005] VSCA 298 - *Gill v Gill (No 2)* [2014] VSC 612 - held: judgment for plaintiff in amount agreed by parties - defendants to pay plaintiff's costs on standard basis.

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

Kincaid v Lumsden & Ors [2021] SASC 117

Supreme Court of South Australia

Judge Dart

Security for costs - wills and estates - applicant sought order for family provision on basis she was deceased's domestic partner - third and fourth defendants sought security for costs - *Inheritance (Family Provision) Act 1972* (SA) - *Family Relationships Act 1975* (SA) - interests of justice - amount of security - held: order for security for costs granted in sum of \$40,000 - proceeding stayed until payment of security made.

[Kincaid](#) (B)

Poem for Friday

The Circle [2]

By: Hester Pulter

Those that the hidden chemic art profess
And visit Nature in her morning dress,
To mercury and sulphur philtres give
That they, consumed with love, may live
In their posterity and in them shine
Though they their being unto them resign;
Glorying to shine in silver and in gold
Which fretting vermeil poison doth enfold,
Forgetting quite that they were once refined.
By time and fate to dust are all calcined
Lying obliterated in their urn
Till they to their great ancestors return.
So man, the universe's chiefest glory,
His primitive's dust (alas) doth end his story.

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

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