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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)

Hutchison v Australian Securities and Investments Commission (FCA) - administrative law - discovery - Administrative Appeals Tribunal refused to order documents' production - purported appeal incompetent - proceedings dismissed (I B C G)

Adelaide Brighton Cement Limited, in the matter of Concrete Supply Pty Ltd v Concrete Supply Pty Ltd (Subject to Deed of Company Arrangement) (No 2) (FCA) - corporations - application for variation of Deed of Company Arrangement - application for order that proceeding proceed on pleadings - applications granted (I B C G)

Southern Cross Electrical Engineering v Steve Magill Earthmoving (NSWSC) - security of payments - challenges to adjudicator's determination that plaintiff liable to pay amount to first defendant failed - summons dismissed (B C I G)

NSW Trustee and Guardian v . (NSWSC) - wills and estates - intestacy - trustee's application for 'Benjamin order' granted (B)

Bendigo and Adelaide Bank Limited v Heath (NSWSC) - cross-vesting - proceedings arising from collapse of investment scheme - application for transfer of proceedings to Supreme Court of Victoria granted (B C I G)

In the matter of PrimeSpace Property Investment Limited (in liquidation) (NSWSC) -

corporations - liquidators' application for judicial advice under ss479(3) & 511 *Corporations Act 2001* (Cth) - direction granted (B C I G)

Behan v Stonehouse [No 2] (WASC) - discovery - defamation - applications from both parties to proceedings for further and better particulars from the other - plaintiff's application allowed - defendant's application dismissed (B C I G)

Summaries With Link (Five Minute Read)

Hutchison v Australian Securities and Investments Commission [2018] FCA 1002

Federal Court of Australia

Banks-Smith J

Administrative law - discovery - objection to competency of appeal - Administrative Appeals Tribunal refused to exercise power under s37 *Administrative Appeals Tribunal Act 1975* (Cth) to order certain documents' production in proceedings - respondent contended there could be no appeal under s44 *Administrative Appeals Tribunal Act 1975* (Cth) because Tribunal's decision was not a 'decision' within s44's meaning - held: Tribunal's refusal to order documents' production was not 'an effective decision or determination of the application for review' - purported appeal was incompetent - proceedings dismissed.

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

Adelaide Brighton Cement Limited, in the matter of Concrete Supply Pty Ltd v Concrete Supply Pty Ltd (Subject to Deed of Company Arrangement) (No 2) [2018] FCA 1003

Federal Court of Australia

Besanko J

Corporations - two applications - application by Deed Administrators for order for variation of Deed of Company Arrangement (DOCA) under s447A *Corporations Act 2001* (Cth) - application by directors for order that proceeding proceed on pleadings - r2.4 *Federal Court (Corporations) Rules 2000* (Cth) - held: Court satisfied it was appropriate to exercise power under s447A to vary DOCA - Court satisfied there should be order that there was statement of claim and defences - applications granted.

[Adelaide Brighton Cement](#) (I B C G)

Southern Cross Electrical Engineering v Steve Magill Earthmoving [2018] NSWSC 1027

Supreme Court of New South Wales

McDougall J

Security of payments - plaintiff contractor and first defendant subcontractor entered subcontract under which first defendant was to perform works for plaintiff - first defendant served payment claim on plaintiff - plaintiff disputed liability to pay - adjudicator determined amount was owed by plaintiff to first defendant - plaintiff sought declaration determination was void, or to quash determination - plaintiff contended adjudicator erred in imposing onus on plaintiff to prove there

had not been a 'variation of or change to the scope of works' under subcontract - plaintiff also contended determination was "unreasonable" - *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332 - *Building and Construction Industry Security of Payment Act 1999* (NSW) - held: challenges to adjudicator's decision failed - summons dismissed.

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

NSW Trustee and Guardian v . [2018] NSWSC 1020

Supreme Court of New South Wales

Parker J

Wills and estates - intestacy - trustee sought 'Benjamin order' to permit trustee to distribute estate on basis there was 'no person entitled on the deceased's intestacy' and that estate should pass to Crown 'bona vacantia' - whether the possibility 'there was some person entitled to the deceased's estate' was 'so remote' that it could be disregarded - held: Court satisfied to make Benjamin order authorising trustee's transfer of estate to Crown 'bona vacantia'.

[View Decision](#) (B)

Bendigo and Adelaide Bank Limited v Heath [2018] NSWSC 1030

Supreme Court of New South Wales

Campbell J

Cross-vesting - proceedings arising from collapse of 'Great Southern' investment scheme which had been subject of class action in Supreme Court of Victoria - application for removal of pending District Court proceedings to Supreme Court for consideration whether proceedings should be transferred to Supreme Court of Victoria - *Jurisdiction of Courts (Cross-Vesting) Act 1987* (NSW) (Cross-Vesting Act) - held: Court concluded it was in interests of justice to transfer proceedings, pursuant to s5(2) Cross-Vesting Act, to Supreme Court of Victoria.

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

In the matter of PrimeSpace Property Investment Limited (in liquidation) [2018] NSWSC 919

Supreme Court of New South Wales

Black J

Corporations - judicial advice - plaintiffs were liquidators of company (PPIL) - plaintiffs sought direction they were justified to distribute funds which PPIL held as trustee of trust (PSNT) on basis that claim which PPIL made (as trustee of property fund 'PAPF') against PPIL (as trustee for PSNT) could be 'wholly set off against amount claimed pursuant to a Deed of Guarantee' and supplemental deed by PPIL ('as trustee for PSNT') against PPIL ('as trustee for PAPF') - ss479(3) & 511 *Corporations Act 2001* (Cth) (Corporations Act) - s63 *Trustee Act 1925* (NSW) - Court's inherent jurisdiction - ss21(1) & 90(2)(a) *Civil Procedure Act 2005* (NSW) - s553C *Corporations Act* - held: judicial advice granted - liquidators justified to set off liabilities of (PAPF) and (PSNT) against the other to result in net liability of PPIL (as PAPF's trustee) to PPIL (as PSNT's trustee) - direction made.

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

Behan v Stonehouse [No 2] [2018] WASC 205

Supreme Court of Western Australia

Kenneth Martin J

Discovery - defamation - both parties sought further and better discovery from the other - whether the 'two fundamental criteria' met - whether 'more likely than not' on balance of probabilities that documents existed or were likely to exist in party's possession - whether documents sought were 'potentially relevant to an issue arising or potentially arising' - held: defendant's application dismissed - plaintiff's application allowed.

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

CRIMINAL

Executive Summary

Dayment v R (NSWCCA) - criminal law - drug offences - 'objective seriousness' - parity - appeal against aggregate sentence dismissed

Patsan v R (NSWCCA) - criminal law - recklessly causing grievous bodily harm - sentence imposed not manifestly excessive - leave to appeal against sentence refused

Summaries With Link

Dayment v R [2018] NSWCCA 132

Court of Criminal Appeal of New South Wales

Payne JA; RA Hulme & Fagan JJ

Criminal law - drug offences - applicant sought to appeal against aggregate sentence of 5 years 6 months in prison with 3 years 3 months non-parole period - applicant was sentenced for two offences, with two more offences on Form 1 taken into account in respect of first offence - first offence was offence contrary to s25(1) *Drugs Misuse and Trafficking Act 1985* (NSW) (DMTA) - second offence was offence contrary to s25(2) DMTA - applicant contended sentencing judge erred in assessing 'objective seriousness' of second offence - applicant also contended that she had a 'justifiable sense of grievance' arising from sentence imposed on co-offender - parity - held: judge's finding concerning objective seriousness was 'well open' to sentencing judge - 'legitimate sense of grievance' not established - appeal dismissed.

[View Decision](#)

Patsan v R [2018] NSWCCA 129



Court of Criminal Appeal of New South Wales

Bathurst CJ, Leeming JA & Adamson J

Criminal law - applicant pleaded guilty to recklessly causing grievous bodily harm - applicant sought to appeal against sentence of 2 year 3 months in prison with 1 year 4 months non-parole period - charge of assault occasioning actual bodily harm also taken into account on sentencing on Form 1 - ss35(2) & 59 *Crimes Act 1900* (NSW) - applicant contended sentence was manifestly excessive - domestic violence - 'specific deterrence' - denunciation - held: sentence was not 'unreasonable or plainly unjust' - leave to appeal refused.

[View Decision](#)



When I Read the Book

By: Walt Whitman

When I read the book, the biography famous,
And is this then (said I) what the author calls a man's life?
And so will some one when I am dead and gone write my
life?
(As if any man really knew aught my life,
Why even I myself I often think know little or nothing of my
real life,
Only a few hints, a few diffused faint clues and indirections
I seek for my own use to trace out here.)

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

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