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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)

Nationwide News Pty Limited v Rush (FCAFC) - defamation - damages - publications 'seriously defamatory' of respondent - respondent awarded damages and interest in sum of \$2,872,753.10 - appeal dismissed (I B C G)

KSMC Holdings Pty Ltd t/as Hubba Bubba Childcare on Haig v Bowden (No 2) (NSWCA) - discovery - defamation - third party costs order - subpoena - notice to produce - paragraphs of subpoena and notices to produce set aside (I B C G)

Chief Commissioner of State Revenue v Downer EDI Engineering Pty Ltd (NSWCA) - taxation - payroll tax - statutory interpretation - payroll tax assessments set aside - appeal dismissed (B C I G)

Liprini v Hale (NSWCA) - negligence - contract - solicitors' duties - wills and estates - succession - family provision - dismissal of claim against solicitors - appeal dismissed (B C I G)

Banyule City Council v The Minister for Planning & Ors (Discovery Ruling) (VSC) - planning and development - discovery - rulings concerning 'scope of discovery to be provided by' State - orders to be made (I B C G)

Public Trustee v Taylor & Ors (SASC) - trusts and trustees - wills and estates - succession - application for 'advice and directions' and orders - orders granted as sought (B)

Bessell v AQA Oysters Ltd (TASSC) - workers compensation - claim by 'surviving spouse' of worker - refusal of referral of claim to Tribunal - denial of procedural fairness in making of costs orders - appeal allowed (I B C G)

Summaries With Link (Five Minute Read)

Nationwide News Pty Limited v Rush [2020] FCAFC 115

Full Court of the Federal Court of Australia

White, Gleeson & Wheelahan JJ

Defamation - damages - primary judge found 'three publications' 'seriously defamatory' of respondent - respondent awarded damages and interest in sum of \$2,872,753.10 - appellants appealed - challenge to finding that pleaded imputation was conveyed by the publications - challenge to rejection of justification defence - whether erroneous finding concerning credibility of witness (Ms Norvill) - challenge to damages - whether non-economic loss damages 'manifestly excessive' - whether entitlement to economic loss damages on basis of 'inability to work' - whether erroneous failure to find evidence inadmissible - whether *Bauer Media Pty Ltd v Wilson (No 2)* [2018] VSCA 154 erroneously followed concerning construction of s35 *Defamation Act 2005* (NSW) - *Evidence Act 1995* (Cth) - held: appeal dismissed.

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

KSMC Holdings Pty Ltd t/as Hubba Bubba Childcare on Haig v Bowden (No 2) [2020] NSWCA 131

Court of Appeal of New South Wales

Payne JA

Discovery - defamation - third party costs order - subpoena - notice to produce - application to set aside paragraphs of subpoena and notices to produce - privilege - oppression - "otherwise order" - r34.2(1) *Uniform Civil Procedure Rules 2005* (NSW) - ss118 & 119 *Evidence Act 1995* (NSW) - ss56 & 98 *Civil Procedure Act 2005* (NSW) - held: paragraphs of subpoena and notices to produce set aside.

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

Chief Commissioner of State Revenue v Downer EDI Engineering Pty Ltd [2020] NSWCA 126

Court of Appeal of New South Wales

Bathurst CJ; Macfarlan & Meagher JJA

Taxation - payroll tax - statutory interpretation - appellant made payroll tax assessments against respondent - primary judge set assessments aside and ordered appellant to issue 'replacement Notices of Assessment' - appellant appealed - ss32(2)(a) & 32(2)(d)(i) *Payroll Tax Act 2007* (NSW) (Payroll Tax Act) - whether 'relevant subcontracts' fell within exemption in s32(2)(a) and/or s32(2)(d)(i) Payroll Tax Act - whether 'power to remit' penalty tax in s33 *Taxation Administration Act 1996* (NSW) (TAA) limited by 'mandatory reductions' in ss28 & 29 TAA

- *Smith's Snackfood Company Ltd v Chief Commissioner of State Revenue* (NSW) [2013] NSWCA 470 - held: appeal dismissed.

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

Liprini v Hale [2020] NSWCA 130

Court of Appeal of New South Wales

Macfarlan & McCallum JJA; Emmett AJA

Negligence - father of appellant and appellant's brother died - appellant's brother appointed 'sole executor' - appellant sought provision from deceased's estate under *Family Provision Act 1982* (NSW) - respondents were solicitors who acted for appellant - mother of appellant and appellant's brother subsequently died - appellant's brother named 'sole executor' - appellant's brother obtained grant of probate of will - appellant and brother and representatives met to mediate appellant's family provision claim against father's estate and 'foreshadowed claim against his mother's estate' - settlement occurred - orders provided for appellant to receive provision from father's estate - orders also included notation orders 'in contemplation of a claim against his mother's estate' - appellant unsuccessfully attempted to enforce orders - appellant claimed against respondents 'for breach of a contractual or tortious duty of care' - primary judge rejected appellant's claim - appellant appealed - respondents, by Notice of Contention, sought finding appellant's barrister and appellant's brother were concurrent wrongdoers and that appellant's claim was apportionable - held: appeal dismissed.

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

Banyule City Council v The Minister for Planning & Ors (Discovery Ruling) [2020] VSC 382

Supreme Court of Victoria

Garde J

Discovery - defendant approved 'amendment to seven planning schemes' - plaintiff sought judicial review - issue concerned 'scope of discovery to be provided by' State - whether plaintiffs had 'good or at least arguable case' which discovery would aid - whether 'countervailing authority' or discretionary factors against granting discovery - relevance - held: orders to be made.

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

Public Trustee v Taylor & Ors [2020] SASC 122

Supreme Court of South Australia

Justice Stanley

Trusts and trustees - wills and estates - succession - Public Trustee, pursuant to s69 *Administration and Probate Act 1919* (SA), sought 'advice and direction' concerning disposition of deceased married couple's 'jointly owned assets' - evidence did not establish which of the couple had 'died first' - Public Trustee also sought orders under s9(1)(d) *Public Trustee Act 1995* (SA) - held: orders granted as sought.

[Public Trustee](#) (B)



Bessell v AQA Oysters Ltd [2020] TASSC 29

Supreme Court of Tasmania

Blow CJ

Workers compensation - costs - procedural fairness - worker employed by respondent injured in course of employment - worker received compensation under *Workers Rehabilitation and Compensation Act 1988* (Tas) (WRCA) - worker suicided - appellant sought compensation on basis she was worker's 'surviving spouse' - Tribunal dismissed referral of claim on basis worker's death was not result of compensable back injury' - appellant appealed - causation - costs - whether denial of procedural fairness - s25(1)(a) WRCA - *Medical Board of Australia v Aloe* [2016] QCA 120 - held: denial of procedural fairness in ordering appellant to pay employer's costs without giving appellant opportunity to make arguments against order - appeal allowed.

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

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