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

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### Executive Summary (1 minute read)

**Murphy v Nationwide News Pty Limited** (FCA) - defamation - respondents refused permission to defer filing of defence until objections to statement of claim resolved (I B C G)

**Australian Youth & Health Foundation v Perpetual Trustee Company Ltd** (NSWCA) - trusts and trustees - judicial advice - erroneous construction of proviso of deceased's Will - appeal allowed - orders set aside (I B C G)

**Application by Michael Bar-Mordecai** (NSWSC) - vexatious litigant - application for leave to file Notice of Appeal out of time against orders of NSW Civil and Administrative Tribunal - Court had already determined same application adversely to applicant - summons dismissed as vexatious (I B C G)

**Hobson v Northern Sydney Local Health District** (NSWSC) - costs - rejection of offer of compromise served on all defendants jointly was not unreasonable - indemnity costs refused (I B C G)

**Reihana v QCAT Client Services Manager** (QCA) - judgments and orders - costs - appellant not entitled, on basis of equitable cause of action, to compensation in nature of "Reasonable Man's Remuneration" - appeal dismissed (I B C G)

**National Australia Bank Ltd v Palermo** (QCA) - summary judgment - standing - bankruptcy - appellant had no standing to bring appeal - appeal dismissed (I B C G)

**Roche v Roche & Anor (No 2)** (SASC) - wills and estates - succession - testamentary capacity - application to revoke grant of probate of deceased will refused - no reason to depart from usual rule that costs follow event - defendants to pay costs thrown away for late disclosure (B)

## Summaries With Link (Five Minute Read)

### **Murphy v Nationwide News Pty Limited [2017] FCA 603**

Federal Court of Australia

White J

Defamation - respondents sought to defer filing of defences until objections to applicant's statement of claim were resolved - respondent's knowledge of imputations to be pursued by applicant - prospect of proceedings being determined by judge and jury - overarching purpose in s37M *Federal Court of Australia Act 1976* (Cth) - potential for delay and wastage - held: Court declined to make orders sought - application refused.

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

### **Australian Youth & Health Foundation v Perpetual Trustee Company Ltd [2017] NSWCA 127**

Court of Appeal of New South Wales

Bathurst CJ; Beazley P & Meagher JA

Trusts and trustees - judicial advice - deceased by Will settled charitable trust (Trust) - Trustee sought Court's advice whether it was justified in forming opinion that Foundation, which was beneficiary named in Will, had 'ceased to operate under its fundamental objects and purposes' and had not applied funds received from Trust in accordance with Centre's philosophy and practices - Trustee also sought advice whether distributions should be paid to charities referred to in proviso of Will - primary judge found some money received by Foundation from Trust was not applied in accordance with Centre's philosophy and practices, and that once Trustee formed that opinion, it should cease applying money to Foundation and was not obliged to reconsider Foundation's entitlement - whether erroneous construction of proviso and erroneous conclusion that Trustee was justified in forming the opinion money was applied other than for Will's purposes - whether proviso required a retrospective, not prospective, inquiry - held: primary judge erred in construing proviso - orders set aside - appeal allowed.

[Australian Youth & Health Foundation](#) (I B C G)

### **Application by Michael Bar-Mordecai [2017] NSWSC 706**

Supreme Court of New South Wales

Wilson J

Vexatious litigant - applicant sought leave to file Notice of Appeal out of time against orders of NSW Civil and Administrative Tribunal (NCAT) - Court found application vexatious and dismissed - applicant again seeking leave to file a Notice of Appeal out of time against same

orders - there was 'no material difference' between applications - ss6 & 15(1) *Vexatious Proceedings Act 2008* (NSW) - held: Court had already determined present application adversely to applicant - proceedings had been instituted without reasonable ground - summons was vexatious and therefore dismissed.

[Michael Bar-Mordecai](#) (I B C G)

## **Hobson v Northern Sydney Local Health District [2017] NSWSC 704**

Supreme Court of New South Wales

Harrison J

Costs - indemnity costs - plaintiff sought order for indemnity costs on basis of offer of compromise served on all defendants jointly - offer of compromise was not accepted and plaintiff obtained judgment no less favourable than offer - second and fourth defendants opposed making of indemnity costs order - held: offer of compromise was invalid - no common interest between all defendants - no defendant able to bind others in settlement - rejection of offer not unreasonable - indemnity costs refused.

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

## **Reihana v QCAT Client Services Manager [2017] QCA 117**

Court of Appeal of Queensland

Morrison & McMurdo JJA; Byrne SJA

Judgments and orders - costs - leases and tenancies - appellant obtained statutory order of review against respondents - appellant also sought compensation for legal expenses and 'time, labour and preparation in successfully prosecuting his review against the respondents' - order sought on basis of equitable cause of action entitling him to 'Reasonable Man's Remuneration' - ultimately, appellant's argument was rejected - appellant awarded \$160 rather than amount sought of \$3,844 - appellant appealed, contending Court should find he had equitable entitlement to sum sought and further sum for appeal's prosecution - held: 'no legitimate means' to uphold appellant's claim for compensation - appeal dismissed.

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

## **National Australia Bank Ltd v Palermo [2017] QCA 118**

Court of Appeal of Queensland

Morrison JA

Summary judgment - standing - bankruptcy - respondent sought dismissal of appeal in proceedings - respondent contended appellant, due to being an undischarged bankrupt, had no standing to bring the appeal, and also that appeal should be dismissed for want of prosecution under r775(1) *Uniform Civil Procedure Rules 1999* (Qld) - held: appellant had no standing to bring appeal - appellant's trustee had standing but did not intend to bring appeal - no need to determine application on basis of want of prosecution - appeal dismissed due to appellant's lack of standing.

[National Australia Bank](#) (I B C G)



**Roche v Roche & Anor (No 2) [2017] SASC 75**

Supreme Court of South Australia

Kourakis CJ

Wills and estates - succession - plaintiff sought that grant of probate to first and second defendant in respect of a will executed by deceased be revoked - plaintiff also sought that deceased's penultimate will be admitted to probate - whether deceased lacked testamentary capacity - whether probate costs exceptions applied - lack of disclosure - held: evidentiary material that was available to plaintiff before proceedings instituted strongly supported deceased's testamentary capacity - application to revoke grant of probate dismissed - no reason to depart from ordinary rule that costs follow event - defendants to pay costs thrown away for late disclosure.

[Roche](#) (B)

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