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

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### CIVIL (Insurance, Banking, Construction & Government)

### Executive Summary (1 minute read)

**SAW (SW) 2010 Ltd & Anor v Wilson & Ors** (EWCA) - corporations - declaration that joint administrators' appointment to company was invalid refused - appeal dismissed (I B C G)

**Cryovac Australia Pty Ltd v Aus-Lid Enterprises Pty Ltd** (FCA) - corporations - applicant granted leave to proceed company in liquidation (I B C G)

**Dimoski v The Workers Compensation Nominal Insurer** (NSWSC) - transfer of proceedings - jurisdiction - personal injury - industrial accident - damages awarded could exceed District Court's jurisdictional limit - proceedings transferred from District Court to Supreme Court (I B C G)

**Laurent v Unilever Australia Ltd** (VSC) - evidence - plaintiff suffering from mesothelioma living on Isle of Jersey, United Kingdom - evidence of plaintiff and witnesses to be taken in Jersey - application granted (I B C G)

**Paskins v Hail Creek Coal Pty Ltd & Anor** (QSC) - negligence - worker injured in course of employment with first defendant - incident due to negligence of second defendant's employee - both defendants liable - second defendant obliged to indemnify first defendant under labour hire contract with third party (I B C G)

**South Australian Employers' Chamber of Commerce & Industry Incorporated v**

**Commissioner of State Taxation (SASC)** - taxation - payroll tax - refusal of application for recognition that appellant was exempt from payroll tax under charitable purpose exemption and for refund of payroll tax paid - appeal dismissed (I B C G)

**Baker Investments Pty Ltd v City of Vincent (WASC)** - planning and development - refusal of amendment of development approval previously granted by City - no error in Tribunal's refusal to remove 'obscure glazing obligation' - appeal dismissed (I B C G)

## Summaries With Link (Five Minute Read)

### **SAW (SW) 2010 Ltd & Anor v Wilson & Ors [2017] EWCA Civ 1001**

England and Wales Court of Appeal

Lady Justice Arden; Lord Justice Briggs

Corporations - conditions for validity of joint administrators' appointment to company - appellants were company's shareholders and creditors respectively - appeal concerned whether first respondents' purported appointment as joint administrators of company was valid - appellants contended appointment was invalid - judge struck out appellants' application for declaration that first respondents' appointment was invalid, finding that Debenture was 'a qualifying floating charge' enforceable at time of first respondents' appointment - whether 'qualifying floating charge' within meaning of para14 Sch B1 *Insolvency Act 1986* was created by Debenture - whether, if floating charge created by Debenture, it was enforceable at date of first respondents' appointment - 'the automatic crystallisation clause' - common mistake - held: appeal dismissed.

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

### **Cryovac Australia Pty Ltd v Aus-Lid Enterprises Pty Ltd [2017] FCA 1027**

Federal Court of Australia

Kenny J

Corporations - patent - applicant sought leave to proceed against second respondent company in liquidation - liquidators did not oppose leave - Court's power to grant leave in s471B *Corporations Act 2001* (Cth) - held: Court satisfied applicant's claims against second respondent had 'solid foundation' and gave rise to 'serious dispute' - issues between applicant and second respondent likely to have ramifications for issues between applicant and other parties - no apparent risk of prejudice to non-party creditors - leave to proceed granted.

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

### **Dimoski v The Workers Compensation Nominal Insurer [2017] NSWSC 1195**

Supreme Court of New South Wales

Campbell J

Transfer of proceedings - jurisdiction - personal injury proceeding arising from industrial accident - plaintiff pursuant to s140 *Civil Procedure Act 2005* (NSW) sought transfer of

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proceedings pending in District Court to Supreme Court on basis that amount likely to be awarded to plaintiff if successful exceeded District Court's jurisdictional limit - whether damages likely to exceed statutory limit - *Griffiths v Kerkemeyer* damages - overriding purpose in s56 *Civil Procedure Act 2005* (NSW) - whether 'real chance' damages could exceed \$750,000 - delay - held: available evidence could justify award greater than \$750,000 - explanation for delay accepted - transfer of proceedings granted.

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

## **Laurent v Unilever Australia Ltd [2017] VSC 527**

Supreme Court of Victoria

J Forrest J

Evidence - plaintiff was 78 and dying of mesothelioma - plaintiff sued defendant in relation to his exposure to asbestos at defendant's premises - plaintiff lived on Isle of Jersey in the English Channel - plaintiff sought taking of his evidence and witnesses' evidence in Jersey under *Foreign Evidence Act 1994* (Cth) (FEA) - defendant contended plaintiff's evidence be taken 'on commission by video link' and orders made under FEA only if case did not settle - cost and efficiency - interests of justice - held: defendant's proposed 'halfway house' was not in interests of justice - plaintiff's evidence, and evidence of witnesses in Jersey and United Kingdom, should be taken only once in Jersey - application granted.

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

## **Paskins v Hail Creek Coal Pty Ltd & Anor [2017] QSC 190**

Supreme Court of Queensland

McMeekin J

Negligence - employer's duty of care - vicarious liability - non-delegable duty of care - labour hire contract - plaintiff claimed damages for injuries suffered in course of employment with first defendant while operating haul truck at mine which first defendant operated - plaintiff alleged second defendant's employee caused his injuries - labour of second defendant's employee had been hired to first defendant under contract between second defendant and third party - *Civil Proceedings Act 2011* (Qld) - *Coal Mining Safety and Health Act 1999* (Qld) - *Superannuation Guarantee (Administration) Act 1992* (Cth) - *Workers' Compensation and Rehabilitation Act 2003* (Qld) - held: incident occurred due to negligence of second defendant's employee - both first and second defendant liable for negligence of second defendant's employee - no contributory negligence - second respondent was required under its contract with third party to indemnify first defendant for its liability in relation to plaintiff - judgment for plaintiff against first defendant in sum of \$709,408.26 - judgment for plaintiff against second defendant in sum of \$966,991.38.

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

## **South Australian Employers' Chamber of Commerce & Industry Incorporated v Commissioner of State Taxation [2017] SASC 127**

Supreme Court of South Australia

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Blue J

Taxation - payroll tax - charitable purpose exemption - respondent refused application for recognition that appellant was exempt from payroll tax under charitable purpose exemption and for refund of payroll tax paid - objection to respondent's decision disallowed - whether Chamber had charitable purpose or purposes as sole or dominant purpose - whether wages paid by Chamber were to persons 'engaged exclusively in and for performing work of a kind ordinarily performed in connection with its charitable purposes' - s48 *Payroll Tax Act 2009* (SA) - whether appellant's activities undertaken for charitable purpose of 'promoting trade and commerce in South Australia' - held: appellant did not prove that its dominant purpose or purposes were charitable - appeal dismissed.

[South Australian Employers'](#) (I B C G)

## **Baker Investments Pty Ltd v City of Vincent [2017] WASC 263**

Supreme Court of Western Australia

Le Miere J

Planning and development - appellant sought amendment of development approval granted by City - City refused amendment - appellant appealed against Tribunal's refusal to remove 'obscure glazing obligation' - appellant contended Tribunal erred by failing to find that glazing's removal was a development exempt from requirement to obtain planning approval, by not finding that planning instruments had effect that proposed development must be approved, and by not finding development complied with *Residential Design Codes* (R-Codes) - appellant also contended that no reasonable decision-maker could have refused proposed development - construction of Town Planning Scheme, Deemed Provisions and policy documents - *Planning and Development (Local Planning Schemes) Regulations 2015* (WA) - *Planning and Development Act 2005* (WA), held: contention failed that no development permission was required - amended development did not satisfy 'deemed to comply' provisions of R Codes - Tribunal's decision not unreasonable - appeal dismissed.

[Baker Investments](#) (I B C G)

## CRIMINAL

### Executive Summary

**The Queen v Holliday** (HCA) - criminal law - incitement - respondent convicted of offence of incitement on basis he urged inmate to procure third party to kidnap witnesses - appeal against dismissal of conviction - Criminal Code did not contain offence of 'incitement to procure' - appeal dismissed

**Pun v The Queen** (VSCA) - criminal law - applicant erroneously sentenced for negligently dealing in proceeds of crime - appeal allowed - applicant resentenced

## Summaries With Link

### **The Queen v Holliday [2017] HCA 35**

High Court of Australia

Kiefel CJ; Bell, Gageler, Nettle and Gordon JJ

Criminal law - appeal concerned offence of incitement - appellant contended respondent, while in custody, offered inmate reward for organising people to kidnap witnesses, force them to adopt statement he prepared, and kill them - inmate did not carry out plan - Court of Appeal of the Supreme Court of the Australian Capital Territory set aside respondent's conviction for "offence of incitement in that he urged [Mr Powell] to kidnap" witnesses - ss45 & 47 *Criminal Code 2002* (ACT) - whether it was sufficient to constitute incitement for an accused to urge another to procure third person to commit offence against Criminal Code where the person urged did not procure the third person - whether inciting procurement of substantive offence was offence under Criminal Code - whether ss45(2)(a) & 45(3) Criminal Code were "limitation[s] or qualifying provision[s]" under s47(5) - held: Criminal Code did not contain offence of incitement to procure - therefore the question whether ss45(2)(a) & 45(3) Criminal Code were "limitation[s] or qualifying provision[s]" under s47(5) was 'not reached' - appeal dismissed.

[The Queen](#)

### **Pun v The Queen [2017] VSCA 219**

Court of Appeal of Victoria

Redlich & McLeish JJA; Croucher AJA

Criminal law - attempting to obtain a financial advantage by deception - trafficking a drug of dependence - possessing a drug of dependence - negligently dealing in the proceeds of crime - attempting to obtain property by deception - applicant pleaded guilty to 19 offences charged on one indictment - applicant sentenced to five years in prison - applicant contended total effective sentence and non-parole period breached totality and were manifestly excessive - applicant also contended sentences for negligently dealing in proceeds of crime and trafficking were manifestly excessive - applicant contended he was erroneously sentenced for negligently dealing in proceeds of crime - held: applicant mistakenly sentenced for negligently dealing in proceeds of crime 'as though they involved an element that he knew the funds he withdrew were the proceeds of crime' - applicant sentenced for more serious offence than that charged constituting breach of rule in *R v De Simoni* (1981) 147 CLR 383 - appeal allowed - applicant resentenced.

[Pun](#)



# Benchmark

## Inviting a Friend to Supper

BY [BEN JONSON](#)

Tonight, grave sir, both my poor house, and I  
Do equally desire your company;  
Not that we think us worthy such a guest,  
But that your worth will dignify our feast  
With those that come, whose grace may make that seem  
Something, which else could hope for no esteem.  
It is the fair acceptance, sir, creates  
The entertainment perfect, not the cates.  
Yet shall you have, to rectify your palate,  
An olive, capers, or some better salad  
Ushering the mutton; with a short-legged hen,  
If we can get her, full of eggs, and then  
Lemons, and wine for sauce; to these a cony  
Is not to be despaired of, for our money;  
And, though fowl now be scarce, yet there are clerks,  
The sky not falling, think we may have larks.  
I'll tell you of more, and lie, so you will come:  
Of partridge, pheasant, woodcock, of which some  
May yet be there, and godwit, if we can;  
Knat, rail, and ruff too. Howsoe'er, my man  
Shall read a piece of Virgil, Tacitus,  
Livy, or of some better book to us,  
Of which we'll speak our minds, amidst our meat;  
And I'll profess no verses to repeat.  
To this, if ought appear which I not know of,  
That will the pastry, not my paper, show of.  
Digestive cheese and fruit there sure will be;  
But that which most doth take my Muse and me,  
Is a pure cup of rich Canary wine,  
Which is the Mermaid's now, but shall be mine;  
Of which had Horace, or Anacreon tasted,  
Their lives, as so their lines, till now had lasted.  
Tobacco, nectar, or the Thespian spring,  
Are all but Luther's beer to this I sing.  
Of this we will sup free, but moderately,  
And we will have no Pooley, or Parrot by,  
Nor shall our cups make any guilty men;  
But, at our parting we will be as when  
We innocently met. No simple word  
That shall be uttered at our mirthful board,

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AR CONOLLY & COMPANY  
L A W Y E R S

Shall make us sad next morning or affright  
The liberty that we'll enjoy tonight.

<https://www.poetryfoundation.org/poets/ben-jonson?>

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