




Friday, 8 November 2019

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)

Phonographic Performance Company of Australia Limited v Copyright Tribunal of Australia (Costs) (FCAFC) - costs - judicial review - copyright - Court allowed application in part - determination of costs (I B)

Rathner (Liquidator), in the matter of Reliance Franchise Partners Pty Ltd (in liq) (FCA) - corporations - Registrar made orders for issue of examination summonses to parties including orders for documents' production - parties sought deletion of 'categories of documents' - certain categories deleted or amended (B)

Dempsey v Director of Public Prosecutions (NSWCA) - judicial review - costs - applicant sought judicial review of costs orders - procedural unfairness established - appeal allowed - matter remitted (I B G)

Ghosh v Medical Council of NSW (NSWCA) - want of due despatch - respondent sought dismissal of appeal - paragraphs of amended notice of appeal struck out - respondent's submissions to be filed and served by certain date - appellant's submissions in reply to be filed and served by certain date (I G)

Mayberry v Mornington Peninsula Shire Council (No 2) (VSC) - costs - Court made declaration sought by plaintiffs in proceeding - plaintiff succeeded on one of two issues - parties to bear own costs (I B C G)

Celestina v Secretary of the Department of Environment, Land, Water and Planning (VSC)
- judicial review - application for 'stay or suspension' of Research Permit concerning 'translocation' of Eastern Barred Bandicoots - application refused (I B C G)

Hutchings v The State of Western Australia (WASC) - confiscation of property - Director of Public Prosecutions sought dismissal of plaintiff's objections to frozen property's confiscation and declarations concerning property's confiscation - orders granted in summons' terms (I B)

Summaries With Link (Five Minute Read)

Phonographic Performance Company of Australia Limited v Copyright Tribunal of Australia (Costs) [2019] FCAFC 192

Full Court of the Federal Court of Australia
Besanko, Middleton & Burley JJ

Costs - copyright - proceedings concerned judicial review application in respect of Tribunal's decision to vary 'licence scheme' - Court allowed application in part - determination of costs - consideration of case's 'two aspects' - 'Power Issue' - 'Issues 1-4' - 'percentage reduction approach' - 'broad brush approach' - whether to award costs on lump sum basis as sought by parties - *GlaxoSmithKline Consumer Healthcare Investments (Ireland) (No 2) Limited v Generic Partners Pty Limited (No 2)* [2018] FCAFC 100 - r40.02(b) *Federal Court Rules 2011* (Cth) - *Idenix and in Sandvik Intellectual Property AB v Quarry Mining & Construction Equipment Pty Ltd (No 2)* [2017] FCAFC 158. s154(4) *Copyright Act 1968* (Cth) - held: applicant to pay 50% of second respondent's costs fixed as lump sum - second respondent to pay 70% of costs of second to fourth applicants (excluding 'joinder application' costs) fixed as lump sum - orders made.

[Phonographic](#) (I B)

Rathner (Liquidator), in the matter of Reliance Franchise Partners Pty Ltd (in liq) [2019] FCA 1816

Federal Court of Australia
Colvin J

Corporations - Registrar, on liquidators' application, made orders for issue of examination summonses to three parties - orders required documents' production - parties (applicants) sought deletion of 'categories of documents', or to set summons and orders aside - applicants also sought that liquidators be required to produce affidavit supporting their application - consideration of 'disputed categories' - ss596A, 596B, 596C & 596F *Corporations Act 2001* (Cth) - s35A *Federal Court of Australia Act 1976* (Cth) - held: certain categories deleted or amended - application for affidavit's production refused.

[Rathner](#) (B)

Dempsey v Director of Public Prosecutions [2019] NSWCA 267

Court of Appeal of New South Wales

Meagher & White JJA; Emmett AJA

Judicial review - costs - applicant sought judicial review of costs orders of primary judge ('impugned orders') - applicant contended that primary judge denied applicant procedural fairness by failure to inform applicant of certain matters, namely that 'proceedings were summary rather than indictable' and that 'a party is not entitled to recover all of its costs' - applicant contended she was denied opportunity to address these matters - alternatively applicant contended that primary judge's 30% reduction by taking the matters into account 'was illogical or irrational and constituted jurisdictional error' - applicant sought to set impugned orders aside or that matter be remitted to primary judge - *Crimes (Appeal and Review) Act 2001* (NSW) - *Criminal Procedure Act 1986* (NSW) - held: denial of procedural fairness established - appeal allowed - matter remitted.

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

Ghosh v Medical Council of NSW [2019] NSWCA 264

Court of Appeal of New South Wales

Barrett AJA

Want of due despatch - appellant challenged New South Wales Civil and Administrative Tribunal's decision to impose condition that appellant not practise as medical practitioner - respondent, by notice of motion, sought appeal's dismissal for want of due despatch, for failure to show 'reasonable cause of action', or for abuse of process - rr12.7(1), 13.4(1)(b) & 13.4(1)(c) *Uniform Civil Procedure Rules 2005* (NSW) - held: paragraphs of amended notice of appeal struck out - respondent's submissions to be filed and served by certain date - appellant's submissions in reply to be filed and served by certain date.

[View Decision](#) (I G)

Mayberry v Mornington Peninsula Shire Council (No 2) [2019] VSC 715

Supreme Court of Victoria

Richards J

Costs - Court made declaration sought by plaintiffs in proceedings - plaintiffs succeeded on one of two issues - determination of declaration's form - determination of costs - plaintiffs submitted parties should bear own costs - defendant sought that plaintiff pay 50% of its costs or its 'costs up to and including' date on which plaintiffs amended originating motion 'to include a claim for a declaration' - apportionment - whether either party was 'clear winner' in proceedings - held: Court satisfied parties should bear own costs.

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

Celestina v Secretary of the Department of Environment, Land, Water and Planning [2019] VSC 717

Supreme Court of Victoria

Ginnane J

Judicial review - plaintiff brought proceedings against defendant, challenging a Research Permit issued under *Wildlife Act 1975* (Vic) and *National Parks Act 1975* (Vic) - Research Permit concerned 'translocation' of Eastern Barred Bandicoots' (bandicoots) to French Island - Research Permit permitted the capture, microchipping and transport to French Island of 'up to 100' bandicoots - plaintiff resident of French Island sought 'stay or suspension' of Research Permit's grant - whether power to permit translocation - whether denial of natural justice or procedural fairness - balance of convenience - held: stay or suspension refused.

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

Hutchings v The State of Western Australia [2019] WASC 402

Supreme Court of Western Australia

Tottle J

Confiscation of property - Director of Public Prosecutions (DPP), by summons, sought dismissal of plaintiff's objections to frozen property's confiscation and declarations concerning property's confiscation - whether DPP established plaintiff was declared drug trafficker under *Misuse of Drugs Act 1981* (WA), that declaration made due to 'confiscation offence', that offence committed after *Criminal Property Confiscation Act 2000* (WA)'s commencement, that plaintiff 'owned or effectively controlled' property in summons at time 'drug trafficker declaration' - - held: Court satisfied to make orders in summons' terms.

[Hutchings](#) (I B)

CRIMINAL

Executive Summary

Summaries With Link



Ode to Psyche

By: John Keats

O Goddess! hear these tuneless numbers, wrung
 By sweet enforcement and remembrance dear,
And pardon that thy secrets should be sung
 Even into thine own soft-conched ear:
Surely I dreamt to-day, or did I see
 The winged Psyche with awaken'd eyes?
I wander'd in a forest thoughtlessly,
 And, on the sudden, fainting with surprise,
Saw two fair creatures, couched side by side
 In deepest grass, beneath the whisp'ring roof
Of leaves and trembled blossoms, where there ran
 A brooklet, scarce espied:

Mid hush'd, cool-rooted flowers, fragrant-eyed,
 Blue, silver-white, and budded Tyrian,
They lay calm-breathing, on the bedded grass;
 Their arms embraced, and their pinions too;
 Their lips touch'd not, but had not bade adieu,
As if disjointed by soft-handed slumber,
And ready still past kisses to outnumber
 At tender eye-dawn of aurorean love:
 The winged boy I knew;
But who wast thou, O happy, happy dove?
 His Psyche true!

O latest born and loveliest vision far
 Of all Olympus' faded hierarchy!
Fairer than Phoebe's sapphire-region'd star,
 Or Vesper, amorous glow-worm of the sky;
Fairer than these, though temple thou hast none,
 Nor altar heap'd with flowers;
Nor virgin-choir to make delicious moan
 Upon the midnight hours;
No voice, no lute, no pipe, no incense sweet
 From chain-swung censer teeming;
No shrine, no grove, no oracle, no heat
 Of pale-mouth'd prophet dreaming.

O brightest! though too late for antique vows,

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Too, too late for the fond believing lyre,
When holy were the haunted forest boughs,
Holy the air, the water, and the fire;
Yet even in these days so far retir'd
From happy pieties, thy lucent fans,
Fluttering among the faint Olympians,
I see, and sing, by my own eyes inspir'd.
So let me be thy choir, and make a moan
Upon the midnight hours;
Thy voice, thy lute, thy pipe, thy incense sweet
From swung censer teeming;
Thy shrine, thy grove, thy oracle, thy heat
Of pale-mouth'd prophet dreaming.

Yes, I will be thy priest, and build a fane
In some untrodden region of my mind,
Where branched thoughts, new grown with pleasant pain,
Instead of pines shall murmur in the wind:
Far, far around shall those dark-cluster'd trees
Fledge the wild-ridged mountains steep by steep;
And there by zephyrs, streams, and birds, and bees,
The moss-lain Dryads shall be lull'd to sleep;
And in the midst of this wide quietness
A rosy sanctuary will I dress
With the wreath'd trellis of a working brain,
With buds, and bells, and stars without a name,
With all the gardener Fancy e'er could feign,
Who breeding flowers, will never breed the same:
And there shall be for thee all soft delight
That shadowy thought can win,
A bright torch, and a casement ope at night,
To let the warm Love in!

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

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