



Friday, 9 April 2021

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

 Follow @Benchmark\_Legal

### Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

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

### Executive Summary (1 minute read)

**DQU16 v Minister for Home Affairs** (HCA) - migration law - refusal to grant appellants protection visas - 'principle in' *Appellant S395/2002 v Minister for Immigration and Multicultural Affairs* [2003] HCA 71 did not apply to statutory task in Authority's consideration of 'complementary protection criterion' - appeal dismissed (I B C G)

**Victoria International Container Terminal Limited v Lunt** (HCA) - industrial law - proceedings seeking to quash approval of enterprise agreement - proceedings summarily dismissed for abuse of process - appeal dismissed (I B C G)

**Doueih v State of New South Wales** (NSWSC) - summary dismissal - pleadings - misfeasance in public office - defendant sought dismissal or strike out of certain paragraphs of statement of claim - notice of motion dismissed (I B C G)

**Hall v Carney & Ors (No 2)** (SASC) - wills and estates - extension of time - adjournment - applicant sought extension of time to file documents and adjournment of appeal - interlocutory application dismissed (I B C G)

**Volanne Pty Ltd & Ors v Donohue** (ACTSC) - advocate's immunity - summary dismissal - professional negligence - solicitors' duties - defendant sought summary dismissal of claim - application dismissed (I B C G)

## Summaries With Link (Five Minute Read)

### **DQU16 v Minister for Home Affairs [2021] HCA 10**

High Court of Australia

Kiefel CJ; Keane, Gordon, Edelman & Steward JJ

Migration law - Minister's delegate refused to grant appellants protection visas - Immigration Assessment Authority affirmed delegate's decision - Judge Street, of Federal Circuit Court of Australia, dismissed judicial review application - Reeves J, of Federal Court of Australia, dismissed appeal - 'sole question' on appeal was whether Authority erred by failure to apply 'principle in' *Appellant S395/2002 v Minister for Immigration and Multicultural Affairs* [2003] HCA 71 (Appellant S395) when considering first appellant's 'complementary protection' application under s36(2)(aa) *Migration Act 1958* (Cth) (Migration Act) - 'differences in the text, context and purpose of' ss36(2)(a) & 36(2)(aa) Migration Act - whether principle in Appellant S395 applied to Authority's statutory task in consideration of 'complementary protection criterion' - held: principle in Appellant S395 did not apply - appeal dismissed..

[DQU16](#) (I B C G)

### **Victoria International Container Terminal Limited v Lunt [2021] HCA 11**

High Court of Australia

Kiefel CJ; Gageler, Keane, Gordon & Edelman JJ

Summary dismissal - abuse of process - industrial law - Fair Work Commission approved enterprise agreement on appellant's application - application supported by Maritime Union of Australia, which subsequently 'amalgamated with' Construction, Forestry, Mining and Energy Union to form fourth respondent - fourth respondent 'arranged for' first respondent to seek to quash approval of enterprise agreement on basis approval was beyond Fair Work Commission's jurisdiction. - primary judge, on appellant's application, found proceedings 'should be summarily dismissed as an abuse of process' on basis proceedings brought for 'improper purpose of benefiting' fourth respondent - Full Court of the Federal Court of Australia reversed primary judge's decision - appellant appealed - held: no error in Full Court's decision - appeal dismissed.

[Victoria International Container](#) (I B C G)

### **Doueih v State of New South Wales [2021] NSWSC 341**

Supreme Court of New South Wales

Harrison AsJ

Summary dismissal - pleadings - misfeasance in public office - defendant sought dismissal of plaintiff's second further amended statement of claim ("2FASOC") under r13.4 *Uniform Civil Procedure Rules 2005* (NSW) 'insofar as it' pertained to certain incident ("The Burwood Police Station Incident") or that paragraphs of 2FASOC be struck out under r14.28 Rules - ss14 & 33 *Bail Act 2013* (NSW) - s545B *Crimes Act 1900* (NSW) - ss7 & 13 *Crimes (Domestic and Personal Violence) Act 2007* (NSW) - whether disclosure of 'reasonable cause of action' - *General Steel Industries Inc v Commissioner for Railways* (NSW) [1964] HCA 69 - held: notice

of motion dismissed.

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

## **Hall v Carney & Ors (No 2) [2021] SASC 32**

Supreme Court of South Australia

Livesey J

Wills and estates - extension of time - adjournment - applicant, by interlocutory application. sought extension of time to file documents and adjournment of appeal - delay in hearing sought on bases of concurrent involvement in 'District Court proceedings' and 'chronic and serious ill health' - interests of justice - held: interlocutory application dismissed.

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

## **Volanne Pty Ltd & Ors v Donohue [2021] ACTSC 48**

Supreme Court of the Australian Capital Territory

McWilliam AsJ

Advocate's immunity - summary dismissal - professional negligence - solicitors' duties - defendant sought summary dismissal of claim against him under r1147 *Court Procedures Rules* 2006 (ACT) on basis of 'doctrine of advocates' immunity from suit' - whether 'triable issues' raised concerning whether advocate's immunity applied - held: application dismissed.

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

## Summaries With Link

# Benchmark



AR CONOLLY & COMPANY  
L A W Y E R S

**On Music**

**By:** Anon.

Music

Our passion

Puts us nearest

To God

Moves us

To tears and joy

Away from life

Into the heavens

As with

Hearing

Site

And art

But More so

Of infinite variety

And space

Our ultimate muse

[Click Here to access our Benchmark Search Engine](#)