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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)

Izzo v State of Victoria (Department of Education and Training) (FCA) - pleadings - human rights - disability discrimination - parts of statement of claim struck out - applicants 'to provide further particulars' (I B C G)

Ehrke v Australian Building and Construction Commissioner (No 2) (FCA) - costs - applicant sought declaration of invalidity of 'Examination Notice - proceeding dismissed - applicant to pay Commissioner's costs (I B C G)

Zoo Sport (Europe) Ltd v Zoo International Pte Ltd (No 2) (FCA) - costs - trade mark - applicants sought 'declarations, injunctions, damages and other relief' against respondents - proceeding dismissed - determination of costs (I B C G)

Wigmans v AMP Ltd (NSWCA) - representative proceedings - orders contrary to Pt 10 *Civil Procedure Act 2005* (NSW) - orders 'not within power' - appeal allowed - orders set aside (B C I G)

Schembri v State of Victoria (Department of Human Services Victoria) (ABN 93 785 850 801) (VSCA) - negligence - accident compensation - 'youth justice worker' injured at centre - respondent not liable - leave to appeal against verdicts of jury refused (I B C G)

Re Estate of Badstuebner (QSC) - wills and estates - succession - executor sought payment of 'executor's commission' - conduct - application refused (B)

Mishpocha Pty Ltd v Tyrepower Marketing (Qld) Limited & Anor (QSC) - corporations - 'sub-licence and dealer agreement' - application for appointment of expert - application adjourned (B)

Summaries With Link (Five Minute Read)

Izzo v State of Victoria (Department of Education and Training) [2020] FCA 770

Federal Court of Australia

Moshinsky J

Pleadings - human rights - disability discrimination - respondent, pursuant to r16.21 *Federal Court Rules 2011* (Cth) (Federal Court Rules), sought striking out of paragraphs of applicants' 'second further amended statement of claim' ('statement of claim') - alternatively respondent, pursuant to r16.45 Federal Court Rules, sought provision by applicants of 'further and better particulars of certain allegations' - *Disability Discrimination Act 1992* (Cth) - *Varasdi v State of Victoria* [2018] FCA 1655 - held: parts of statement of claim struck out applicants 'to provide further particulars' - interlocutory application 'otherwise dismissed'.

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

Ehrke v Australian Building and Construction Commissioner (No 2) [2020] FCA 754

Federal Court of Australia

Rangiah J

Costs - applicant sought declaration of invalidity of 'Examination Notice issued under' s61 *Building and Construction Industry (Improving Productivity) Act 2016* (Cth) - Court dismissed proceeding - first respondent Commissioner sought that applicant pay Commissioner's costs - applicant sought that there 'be no order as to costs' - applicant's success on one of two 'major issues in contention' - "'public interest" arguments' - held: applicant to pay Commissioner's costs.

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

Zoo Sport (Europe) Ltd v Zoo International Pte Ltd (No 2) [2020] FCA 755

Federal Court of Australia

Rangiah J

Costs - trade mark - dispute concerning trademarks' 'ownership and use' - applicants sought 'declarations, injunctions, damages and other relief' against respondents - proceedings dismissed for want of prosecution - respondents sought that applicants pay costs on indemnity basis in fixed amount, and payment of amount, with interest, which applicants had paid into Court - s43(2) *Federal Court of Australia Act 1976* (Cth) - r40.02 *Federal Court Rules 2011* (Cth) - *TSG Franchise Management Pty Ltd v Cigarette & Gift Warehouse (Franchising) Pty Ltd (No 3)* [2016] FCA 828 - whether applicants' conduct of proceeding unreasonable - whether applicants unreasonably rejected offer - whether to make lump sum costs order - held:

indemnity costs order granted - lump sum costs order granted - amount paid into Court to be paid to respondents' solicitors, with 'any interest earned'.

[Zoo Sport](#) (I B C G)

Wigmans v AMP Ltd [2020] NSWCA 104

Court of Appeal of New South Wales

Macfarlan, Leeming & White JJA

Representative proceedings - two pending representative proceedings brought on AMP shareholders' behalf - first proceeding, in which appellant was representative plaintiff, was stayed - in second proceeding, in which company (Komlotex) was first representative plaintiff, orders had been made providing for 'imminent distribution of notices to group members and other steps to culminate in a mediation' - appellant sought leave to renew challenge to orders, contending they were made without power or, if there was power to make them, that Court's discretion had miscarried with regard to orders' potential impact on appellant's proceedings 'subject of a High Court appeal' - whether orders should be set aside on same basis as Court set aside orders in *Haselhurst v Toyota Motor Corporation Australia Ltd* [2020] NSWCA 66 - held: orders were contrary to Pt 10 *Civil Procedure Act 2005* (NSW) - orders 'not within power' - appeal allowed - orders set aside.

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

Schembri v State of Victoria (Department of Human Services Victoria) (ABN 93 785 850 801) [2020] VSCA 145

Court of Appeal of Victoria

Beach, Hargrave & T Forrest JJA

Negligence - accident compensation - applicant was 'youth justice worker' at centre - applicant alleged he was injured when client 'kicked out and injured' his knee - applicant sued respondent 'in negligence and for breach of statutory duty' - jury found for respondent - applicant sought to appeal, contending verdicts were 'against the evidence and the weight of the evidence' - *Calin v Greater Union Organisation Pty Ltd* [1991] HCA 23 - *Occupational Health and Safety Regulations 2007* - whether verdicts open to jury - held: leave to appeal refused.

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

Re Estate of Badstuebner [2020] QSC 144

Supreme Court of Queensland

Henry J

Wills and estates - deceased appointed one of deceased's children as executor - no provision made in will for executor to be paid fee for performance of role - executor sought 'executor's commission' under s68 *Succession Act 1981* (Qld) - executor's conduct - delay of administration - r657C *Uniform Civil Procedure Rules 1999* (Qld) - held: application refused.

[Re Estate of Badstuebner](#) (B)

Mishpocha Pty Ltd v Tyrepower Marketing (Qld) Limited & Anor [2020] QSC 153



Supreme Court of Queensland

Henry J

Corporations - 'sub-licence and dealer agreement' - plaintiff sought that expert be appointed to 'determine a just price at which compulsory purchase of the applicant's shareholding in each of the defendants might occur under ss232 and 233 *Corporations Act 2001* (Cth)' - valuation of shares - whether appointment would 'like be of material assistance to court and avoid unnecessary costs' - whether appointment "would serve only to introduce a further expert" - whether appointment would be 'premature' - held: application adjourned.

[Mispocha](#) (B)

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