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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)

Victorian Building Authority v Andriotis (HCA) - statutory interpretation - "mutual recognition principle" - erroneous refusal of respondent's application for registration, in reliance on *Mutual Recognition Act 1992* (Cth), as waterproofer in Victoria - appeal dismissed (I B C G)

Comcare v Banerji (HCA) - administrative law - constitutional law - 'impugned provisions' of *Public Service Act 1999* (Cth) did not impose 'unjustified burden' on implied freedom of political communication - termination of respondent's employment 'not unlawful' - appeal allowed (I B C G)

Auschem Pacific Group Pty Ltd v Tismor Health & Wellness Pty Limited (FCA) - transfer of proceedings - respondent/cross-claimant sought transfer of proceeding from Victoria District Registry to New South Wales District Registry - transfer of proceeding refused (I B)

Lazarus v Kane (NSWCA) - summary judgment - applicant sought judicial review of "decision" involving direction to Registrar 'to issue warrants of commitment' concerning imposed sentences - amended summons dismissed (B I)

Keys Consulting Pty Ltd v CAT Enterprises Pty Ltd [No 2] (VSCA) - costs - appellants partly successful on appeal - respondents to pay 75% of appellants' appeal costs (I B)

Waterfront Place Pty Ltd v Minister for Planning & Ors [No 2] (VSCA) - costs - applicant

refused leave to appeal against decision concerning validity of first respondent Minister's 'exercise of his 'call in' power' in relation to planning permit application - applicant to pay costs of both Minister and third respondent (I B)

Pix v Suncoast Marine Pty Ltd & Anor (QSC) - costs - contract - negligence - sale of goods - one of plaintiff's claims upheld against second defendants - second defendants to pay plaintiff's costs - plaintiff granted indemnity costs order granted (I B C)

Summaries With Link (Five Minute Read)

Victorian Building Authority v Andriotis [2019] HCA 22

High Court of Australia

Kiefel CJ; Bell, Gageler, Keane, Nettle, Gordon & Edelman JJ

Statutory interpretation - "mutual recognition principle" - respondent registered as waterproofer in New South Wales - respondent, in application to 'New South Wales local registration authority', had said, untruthfully, that 'he had certain work experience' - respondent sought, in reliance on *Mutual Recognition Act 1992* (Cth) (MRA), registration as waterproofer in Victoria - Victorian Building Practitioners Board (Board) refused respondent's application on basis respondent was 'not of "good character" 'as required by' *Building Act 1993* (Vic) (Building Act) - whether MRA permitted Board, when considering respondent's registration application, to consider whether respondent was of good character under s170(1)(c) Building Act - whether respondent's registration in New South Wales sufficient to entitle him to registration for 'equivalent occupation in Victoria' - held: appeal dismissed.

[Victorian Building Authority](#) (I B C G)

Comcare v Banerji [2019] HCA 23

High Court of Australia

Kiefel CJ; Bell, Gageler, Keane, Nettle, Gordon & Edelman JJ

Administrative law - constitutional law - respondent's employment with Commonwealth terminated for breach of Australian Public Service Code of Conduct - appeal concerned whether ss10(1), 13(11) & 15(1) *Public Service Act 1999* (Cth) ('impugned provisions') imposed 'unjustified burden' on implied freedom of political communication with result employment's termination was 'not reasonable administrative action taken in a reasonable manner' within 'exclusion in' s5A(1) *Safety, Rehabilitation and Compensation Act 1988* (Cth) - held: no unjustified burden on implied freedom of political communication imposed by impugned provision - termination of employment 'not unlawful' - appeal allowed.

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

Auschem Pacific Group Pty Ltd v Tismor Health & Wellness Pty Limited [2019] FCA 1216

Federal Court of Australia

Anderson J

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Transfer of proceedings - applicant initiated proceeding in Supreme Court of Victoria District Registry - respondent/cross-claimant, by interlocutory application, sought transfer of proceeding from Victoria District Registry to New South Wales District Registry - whether, with regard to circumstances, there was 'sufficient justification to change the status quo' - s48 *Federal Court of Australia Act 1976* (Cth) - *Mortimer v Opes Prime Stockbroking Ltd (ACN 086 294 028) (Administrators Appointed) (in liq)* [2009] FCA 227 - held: transfer of proceeding refused.
[Auschem](#) (I B)

Lazarus v Kane [2019] NSWCA 194

Court of Appeal of New South Wales

Bell P; Basten & Meagher JJA

Summary judgment - judicial review - applicant sentenced for offences under s178BB *Crimes Act 1900* (NSW) - applicant, by summons, sought judicial review of "decision" of Judge Hoy involving direction to Registrar 'to issue warrants of commitment' concerning imposed sentences - Director sought proceeding's dismissal on basis there was 'no reviewable decision' - whether s69C *Supreme Court Act* (NSW) applied to stay sentences' execution - held: amended summons dismissed.

[View Decision](#) (B I)

Keys Consulting Pty Ltd v CAT Enterprises Pty Ltd [No 2] [2019] VSCA 169

Court of Appeal of Victoria

Maxwell P, Niall JA & Macaulay AJA

Costs - Court allowed appeal in proceedings - appellants succeeded in part on appeal - respondents had been 'substantially successful' in Court below - determination of costs of appeal and of trial - held: respondents to pay 75% of appellants' appeal costs - Court not satisfied to revisit primary judge's costs order in respect of costs of trial.

[Keys Consulting](#) (I B)

Waterfront Place Pty Ltd v Minister for Planning & Ors [No 2] [2019] VSCA 166

Court of Appeal of Victoria

Maxwell P, T Forrest & Emerton JJA

Costs - applicant was refused leave appeal against decision of trial judge as to validity of first respondent Minister's 'exercise of his 'call in' power' in relation to planning permit application - Minister and third respondent sought costs - applicant sought that it should pay only Minister's costs - *Local Democracy Matters Incorporated v Infrastructure New South Wales [No 2]* [2019] NSWCA 118 - 'when there is no possible conflict of interest between them in the presentation of their cases' - held: applicant to pay costs of both Minister and third respondent.

[Waterfront](#) (I B)

Pix v Suncoast Marine Pty Ltd & Anor [2019] QSC 195

Supreme Court of Queensland

Holmes CJ

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Costs - plaintiff brought proceedings against first and second defendants in negligence and for breach of contract concerning defects in vessel - plaintiff amended claim to add claim for breach of implied 'term as to merchantable quality' under *Sale of Goods Act 1896* (Qld) (merchantable quality claim) - Court upheld merchantable quality claim against second defendants - claim against first defendant dismissed - determination of costs - whether basis to make *Sanderson* order - offers of settlement - whether second defendants' failure to accept offer was reasonable - whether to grant indemnity costs - r360 *Uniform Civil Procedure Rules 1999* (Qld) - *Aircraft Technicians of Australia Pty Ltd v St Clair* [2011] QCA 188 - held: second defendants to pay plaintiff's costs - plaintiff granted indemnity costs order granted.

[Pix](#) (I B C)

CRIMINAL

Executive Summary

Summaries With Link



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A Spring Morning

By: John Clare

The Spring comes in with all her hues and smells,
In freshness breathing over hills and dells;
O'er woods where May her gorgeous drapery flings,
And meads washed fragrant by their laughing springs.
Fresh are new opened flowers, untouched and free
From the bold rifling of the amorous bee.
The happy time of singing birds is come,
And Love's lone pilgrimage now finds a home;
Among the mossy oaks now coos the dove,
And the hoarse crow finds softer notes for love.
The foxes play around their dens, and bark
In joy's excess, 'mid woodland shadows dark.
The flowers join lips below; the leaves above;
And every sound that meets the ear is Love.

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

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