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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)

**Carolyn Deigan as executrix for the estate of the late James Boyd Lockrey v Barnard James Fussell (No. 2)** (NSWCA) - costs - wills and estates - successful appellant sought that respondent pay costs of 'proceedings below' - respondent to pay costs of proceedings below (B C I G)

**SSPeetham Pty Ltd as trustee for the CHB CDI Trust v Marcos Accountants Pty Ltd** (NSWSC) - security for costs - first and second defendants sought further security for costs - notice of motion dismissed (B C I G)

**Darwin v Norman** (NSWSC) - defamation - action arising from publication of 'allegedly defamatory material' in newspaper and on internet - judgment for second and third plaintiffs against first defendant - judgment for first and second defendants against the fourth plaintiff - permanent injunction against first defendant (I)

**Lenehan v Powercor Australia Ltd (No 2)** (VSC) - group proceedings - Court satisfied to approve settlement agreement (B C I G)

**Nemesis v Meatpak Australia Pty Ltd** (SASCFC) - workers compensation - Full Bench of South Australian Employment Tribunal allowed appeal against decision to set aside set aside consent orders - appeal allowed (B C I G)

**Bazzo v Kirman** (WASCA) - bankruptcy - corporations - summonses for examination - refusal to grant orders that examinations be held in private - appeals dismissed (B)

**Barboutis v The Kart Centre Pty Ltd [No 2]** (WASCA) - corporations - dismissal of application to wind up company on insolvency ground or just and equitable ground - appeal dismissed (B)

## Summaries With Link (Five Minute Read)

### **Carolyn Deigan as executrix for the estate of the late James Boyd Lockrey v Barnard James Fussell (No. 2) [2020] NSWCA 60**

Court of Appeal of New South Wales

Bathurst CJ; Macfarlan & White JJA

Costs - wills and estates - Court allowed appellant's appeal - Court ordered respondent to pay appellant's appeal costs - appellant, by notice of motion, sought that respondent pay costs of 'proceedings below' - 'ordinary course' that costs should follow event - 'unclear why' no order for costs of proceeding below made - whether principles in *Autodesk Inc v Dyason [No. 2]* (1993) 176 CLR 300 applied - held: respondent to pay costs of proceedings below.

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

### **SSPeetham Pty Ltd as trustee for the CHB CDI Trust v Marcos Accountants Pty Ltd [2020] NSWSC 378**

Supreme Court of New South Wales

Stevenson J

Security for costs - plaintiffs contended first and second defendants ('Marcos Parties') were in possession of "confidential documents" belonging to plaintiffs - plaintiffs sought to restrain Marcos Parties from using documents and that documents be delivered up - Marcos Parties sought further security for costs - whether basis to grant further security for costs - "material change in circumstances" - held: notice of motion dismissed.

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

### **Darwin v Norman [2020] NSWSC 357**

Supreme Court of New South Wales

Fagan J

Defamation - action arising from publication of 'allegedly defamatory material' in newspaper and on internet - 'approximately 80 separate imputations' pleaded - defendant admitted 'approximately 20' of the alleged imputations conveyed - defence of truth under s25 *Defamation Act 2005* (NSW) - whether 'Matters' 'would have conveyed' imputations to ordinary reader - *Trkulja v Google LLC [2018] HCA 25* - 'ordinary reasonable listener' - *Amalgamated Television Services Pty Ltd v Marsden* (1998) 43 NSWLR 158 - whether truth of imputations proved - whether to grant injunction - damages - held: judgment for second and third plaintiffs against first defendant - judgment for first and second defendants against the

fourth plaintiff - permanent injunction against first defendant.

[View Decision](#) (I)

## **Lenehan v Powercor Australia Ltd (No 2) [2020] VSC 159**

Supreme Court of Victoria

Nichols J

Group proceedings - approval of settlement - parties settled proceeding - whether to approve 'settlement distribution scheme' - s33V *Supreme Court Act 1986* (Vic) - whether 'fair and reasonable compromise' - whether compromise 'in interests of group members' - *Williams v FAI Home Security Pty Ltd (2000)* 184 ALR 459 - 'persons under a disability' - r15.08 *Supreme Court (General Civil Procedure) Rules 2015* (Vic) - held: Court satisfied to approve settlement agreement.

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

## **Nemesis v Meatpak Australia Pty Ltd [2020] SASCFC 22**

Full Court of the Supreme Court of South Australia

Kourakis CJ; Nicholson & Parker JJ

Workers compensation - appellant injured in 2009 - in 2012 consent orders made - consent orders 'purported to award lump sum compensation for permanent impairments' pursuant to s43 of 'now repealed' *Workers Rehabilitation and Compensation Act 1986* (SA) (WRCA), which appellant 'was suffering, or might suffer in the future' due to injury - consent orders expressly mentioned impairments to right knee of appellant but ordered also that appellant had 'no further or other entitlements pursuant to section 43' - Full Bench of South Australian Employment Tribunal allowed appeal against Deputy President's decision to set aside consent orders - application to set aside consent orders had been made under s110 *Return to Work Act 2014* (SA) - whether s88DA WRCA empowered Workers Rehabilitation and Compensation Tribunal to make consent orders purporting to resolve lump sum compensation claims 'for future disabilities which neither existed nor were claimed to exist as at the time the order was made' - whether order invalid to extent it precluded lump sum compensation award for permanent impairment contracted after order's date - scope of Tribunal's power to set aside its determinations - held: appeal allowed.

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

## **Bazzo v Kirman [2020] WASCA 43**

Court of Appeal of Western Australia

Buss P; Mitchell & Beech JJA

Bankruptcy - corporations - respondents were joint liquidators of GH1 'formerly called' 'Gucce Holdings' - Mr Kirman was liquidator of ACN 142 745 337 Pty Ltd, formerly called 'Mammoth Civil' - appellant in one proceeding was sole director of Gucce Holdings - appellant in other proceedings was sole director of Mammoth Civil - summonses for examination issued to appellants - appellants sought orders including that 'examinations be held in private' - primary judge was not persuaded examination should be held in private - appellants appealed - ss596A,

596B, 596F & 597 *Corporations Act 2001* (Cth) - held: appeals dismissed.

[Bazzo](#) (B)

## **Barboutis v The Kart Centre Pty Ltd [No 2] [2020] WASCA 41**

Court of Appeal of Western Australia

Buss P; Mitchell & Vaughan JJA

Corporations - winding up - Acting Master dismissed application to wind-up first respondent on insolvency ground of insolvency and just and equitable ground - appellants appealed - appellants contended they had standing on basis first appellant was director of company (director) and second appellant was creditor of company (creditor) - appellants challenged primary judge's findings that first defendant was not director and second appellant not creditor - appellants contended company was insolvent - appellants contended it was 'just and equitable' to wind up company because there was 'deadlock in the management' of company's affairs - ss1274B(2) & 201D *Corporations Act 2001* (Cth) - whether appellants discharged onus to prove first appellant 'validly appointed' as director - whether Master erred in failing to find debt owed by company to second appellant - 'repayment terms' of debt - whether loan 'due and payable' - whether company should have been wound up in insolvency or on just and equitable ground - held: appeal dismissed.

[Barboutis](#) (B)

## CRIMINAL

### Executive Summary

### Summaries With Link



# Benchmark

This is the time to be slow,  
Lie low to the wall  
Until the bitter weather passes.  
Try, as best you can, not to let  
The wire brush of doubt  
Scrape from your heart  
All sense of yourself  
And your hesitant light.  
If you remain generous,  
Time will come good;  
And you will find your feet  
Again on fresh pastures of promise,  
Where the air will be kind  
And blushed with beginning.  
**John Donahue**

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