

Friday, 10 July 2020

## 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)

**TFM Epping Land Pty Ltd v Decon Australia Pty Ltd (FCA)** - costs - corporations - statutory demand - adjournment - costs thrown away - lump sum costs order - defendant sought quantification of costs - application granted (I B C G)

**Rooney v AGL Energy Limited (No 2) (FCA)** - vacation of trial dates - industrial law - COVID-19 - trial dates vacated (I B C G)

**Michael Brown Planning Strategies Pty Ltd v Wingecarribee Shire Council (NSWCA)** - environment and planning - refusal of development consent - incompatibility with 'flood hazard' - leave to appeal granted - appeal dismissed (I B C G)

**Cohen v Zanzoul trading as Uniq Building Group (No 2) (NSWSC)** - building and construction - 'Scott Schedule' - 'General Building Defects and Hydraulic Defects' - 'competing contentions' - expert valuation - determination of issues in Scott Schedule (I B C G)

**Re Rush; Holt v Rush (VSC)** - costs - wills and estates - parties resolved plaintiff's application for removal of defendants as executors - defendants personally to pay plaintiff's costs on standard basis (I B C G)

**Chairperson of the Royal Commission into the Management of Police Informants v DPP (VSCA)** - suppression orders - applicant sought 'variation of 52 non-publication orders' -

application granted (I B C G)

**Duncan as Liquidator of WDR Iron Ore Pty Ltd (In Liquidation) v SMA Industries Pty Ltd (No 2)** (SASC) - costs - corporations - Court gave judgment for first applicant 'Mr Duncan' as liquidator of 'WDRIO' against respondent - Court dismissed claim of second applicant 'Mr Duncan' as liquidator of 'WDR' - determination of costs (I B C G)

## Summaries With Link (Five Minute Read)

### **TFM Epping Land Pty Ltd v Decon Australia Pty Ltd [2020] FCA 955**

Federal Court of Australia

Markovic J

Costs - lump sum costs order - quantification of costs - corporations - statutory demand - plaintiffs sought to set aside statutory demand served by defendant on second plaintiff - adjournment granted - plaintiffs ordered to pay defendant's 'costs thrown away', such costs 'payable forthwith and in a lump sum to be assessed' - defendant sought costs' quantification - defendant sought that costs be quantified in sum of '\$27,492 excluding GST' - whether defendant's costs claim limited to costs thrown away - whether defendant's costs could be 'properly quantified' - held: defendant's costs quantified in sum of '\$13,034 excluding GST.

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

### **Rooney v AGL Energy Limited (No 2) [2020] FCA 942**

Federal Court of Australia

Snaden J

Vacation of trial dates - industrial law - applicant contended she was subjected to 'adverse treatment in contravention of' "GENERAL PROTECTIONS" provisions of pt 3-1 *Fair Work Act 2009* (Cth) - Court, due to COVID-19, suspended 'in-person hearings' in Melbourne until end of July - proceedings concerned determination whether matter 'could proceed by remote means' or whether Court should vacate trial dates - prejudice - delay - costs - assessment of witnesses - 'remote-hearing technology' - identification of 'least-bad option' - interests of justice - held: trial dates vacated.

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

### **Michael Brown Planning Strategies Pty Ltd v Wingecarribee Shire Council [2020] NSWCA 137**

Court of Appeal of New South Wales

Basten & Meagher JJA; Emmett AJA

Environment and planning - applicant sought development consent concerning land - respondent refused to grant consent, not being satisfied development 'compatible with' 'flood hazard' - Land and Environment Court of New South Wales confirmed respondent's decision - primary judge dismissed appeal - applicant sought to appeal - whether erroneous construction

of cl7.9(3)(a) Wingecarribee Local Environmental Plan 2010 - whether respondent required to be satisfied of compatibility with flood hazard at date of development application's determination - whether refusal of consent erroneous - held: leave to appeal granted - appeal dismissed.

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

## **Cohen v Zanzoul trading as Uniq Building Group (No 2) [2020] NSWSC 838**

Supreme Court of New South Wales

Stevenson J

Building and construction - Court gave primary judgment in proceedings - parties prepared 'Scott Schedule' concerning 'amount recoverable' for 'General Building Defects and Hydraulic Defects' - Scott Schedule identified 'competing contentions' of parties concerning and assessment of experts as to defects' value - determination of issues in Scott Schedule - 'defective work's rectification - mitigation - 'incomplete work' - held: conclusions set out in Schedule to reasons.

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

## **Re Rush; Holt v Rush [2020] VSC 412**

Supreme Court of Victoria

McMillan J

Costs - wills and estates - plaintiff sought account of estate's administration and defendants' ('application for account') and defendants' removal as executors ('removal application') - defendants ordered 'to file administration accounts' - parties resolved 'removal application' - Court ordered defendants personally to pay plaintiff's costs of application for account - determination of costs in respect of 'removal application' - conduct - whether to award indemnity costs - whether defendants should pay plaintiff's costs personally - *Seng Hpa v Walker* [2017] VSC 320 - *Re Minister for Immigration and Ethnic Affairs; Ex Parte Lai Qin* [1997] HCA 6 - held: defendants personally to pay plaintiff's costs of 'removal application' on standard basis.

[Re Rush](#) (I B C G)

## **Chairperson of the Royal Commission into the Management of Police Informants v DPP [2020] VSCA 184**

Court of Appeal of Victoria

Beach, McLeish & Weinberg JJA

Suppression orders - applicant sought 'variation of 52 non-publication orders' made in proceedings in 'Supreme, County, and Magistrates' Courts of Victoria', such that the following words were added at end of each suppression order: 'PROVIDED THAT nothing in this order prevents the disclosure of information by a person to the Royal Commission into the management of police informants or prevents any disclosure of information by that Royal Commission, in accordance with the provisions of the Inquiries Act 2014 and the Witness Protection Act 1991' - jurisdiction - *Open Courts Act 2013* (Vic) - held: application granted.

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



**Duncan as Liquidator of WDR Iron Ore Pty Ltd (In Liquidation) v SMA Industries Pty Ltd (No 2) [2020] SASC 127**

Supreme Court of South Australia

Blue J

Costs - corporations - Court gave judgment for first applicant 'Mr Duncan' as liquidator of 'WDRIO' against respondent - Court dismissed claim of second applicant 'Mr Duncan' as liquidator of 'WDR' - Mr Duncan sought that respondent pay applicants' costs on indemnity basis on basis that he, as liquidator of WDRIO, 'bettered a formal offer filed on 9 May 2018' - respondent sought that it pay Mr Duncan's costs as WDRIO's liquidator on party/party basis, and that that Mr Duncan, as WDR's liquidator, pay its costs - r188F *Supreme Court Civil Rules 2006* (SA) - held: costs determined.

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

## CRIMINAL

### Executive Summary

### Summaries With Link

# Benchmark

## **The Elephant**

**By:** John Donne

Nature's great masterpiece, an elephant  
(The only harmless great thing), the giant  
Of beasts, who thought none had to make him wise,  
But to be just and thankful, loth to offend  
(Yet nature hath given him no knees to bend)  
Himself he up-props, on himself relies,  
And, foe to none, suspects no enemies,  
Still sleeping stood; vex'd not his fantasy  
Black dreams; like an unbent bow carelessly  
His sinewy proboscis did remissly lie.

[John Donne](#)

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