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

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

### Executive Summary (1 minute read)

**Edwards v Commonwealth Superannuation Corporation** (FCAFC) - superannuation - administrative law - no error in finding appellant was not entitled to payments made to his children under s114 *Superannuation Act 1976* (Cth) - appeals dismissed (I B C G)

**John Hillam v JPSF Pty Ltd** (NSWSC) - contract - leases and tenancies - no agreement for lease of premises, either oral or written - declarations refused - judgment for defendant (I B C G)

**Huang v Drumm** (NSWSC) - judgments and orders - enforcement - costs - application for stay of enforcement of costs orders refused (I B C G)

**Adventure Golf Systems Australia Pty Ltd v Belgravia Health & Leisure Group Pty Ltd** (VSCA) - contract - parties did not owe fiduciary duties under agreement concerning adventure golf course business - appeal dismissed (I B C G)

**Htoo v Victorian Workcover Authority** (VSCA) - accident compensation - refusal of leave to bring proceedings for pain and suffering damages - failure to have regard to whole case - insufficient reasons - appeal allowed (I B C G)

**Re Queensland Nickel (in liq)** (QSC) - judgments and orders - multiple proceedings - Court refused consolidation order - Court refused to maintain status quo - 'hybrid course' (I B C G)

**LC by his litigation guardian KS v Australian Capital Territory (ACTSC)** - negligence - plaintiff injured when he jumped from car park in hospital complex - defendant liable (I B C G)

## Summaries With Link (Five Minute Read)

### **Edwards v Commonwealth Superannuation Corporation [2017] FCAFC 173**

Full Court of the Federal Court of Australia

Griffiths, Pagone & Davies JJ

Superannuation - administrative law - deceased was member of Commonwealth Superannuation Scheme Fund - appeals concerned appellant's central claim he was entitled to certain payments made to his children under s114 *Superannuation Act 1976* (Cth) - Superannuation Complaints Tribunal had found appellant's children were entitled to part of amount payable to mother as de facto spouse of deceased - appeals depended on whether Tribunal's decision, affirmed by primary judge, that arrears of pension be paid directly to children rather than to appellant, was erroneous - held: appellant's claim rejected - appeals dismissed.

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

### **John Hillam v JPSF Pty Ltd [2017] NSWSC 1510**

Supreme Court of New South Wales

Sackar J

Contract - leases and tenancies - plaintiff contended he had oral agreement with defendant for lease of premises or written lease he executed and forwarded to defendant's agent - plaintiff sought declarations of valid and binding lease and that agreement was 'partly performed' - plaintiff also sought order for specific performance and declaration that notice to quit was invalid - defendant denied existence of contract - *Conveyancing Act 1919* (NSW) - *Corporations Act 2001* (Cth) - *Electronic Transactions Act 2000* (NSW) - authority to bind - *Jones v Dunkel* - 'factual consideration' - 'legal consideration' - whether intention to bind - offer and acceptance - held: Court not satisfied parties intended to bind themselves to oral or written agreement - parties had agreed there was no contract until a formal lease document was executed by both of them - execution of formal lease document did not occur - judgment for defendant.

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

### **Huang v Drumm [2017] NSWSC 1515**

Supreme Court of New South Wales

Harrison J

Judgments and orders - enforcement - costs - plaintiff sought stay of enforcement of costs orders in separate Local Court proceedings, pending decision in Court of Appeal in other proceedings - plaintiff submitted that enforcement proceedings against her could frustrate her 'anticipated victory' on costs in Court of Appeal - held: no evidence to support orders which plaintiff sought - Court unable to restrain defendant from taking 'steps to enforce a legal right'

on basis of plaintiff's assertions about defendant's motives - application dismissed.

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

## **Adventure Golf Systems Australia Pty Ltd v Belgravia Health & Leisure Group Pty Ltd [2017] VSCA 326**

Court of Appeal of Victoria

Santamaria, Kaye & Ashley JJA

Equity - contract - respondent managed site where golf course was located under management agreement with Parks Victoria - parties executed agreement governing an adventure golf course's 'construction and operation', and revenue-sharing - agreement was to be effective as long respondent occupied site 'in accordance with' management agreement - management agreement expired - parties' agreement expired - respondent occupied site under short-term arrangement negotiated with Parks Victoria - applicant alleged parties owed fiduciary obligations to each other which respondent breached by negotiating arrangement with Parks Victoria for own benefit to applicant's exclusion - primary judge dismissed applicant's claim - held: parties did not owe fiduciary duties under their agreement - appeal dismissed.

[Adventure Golf Systems](#) (I B C G)

## **Htoo v Victorian Workcover Authority [2017] VSCA 321**

Court of Appeal of Victoria

Osborn, Priest & Ashley JJA

Accident compensation - serious injury - applicant injured hand in course of her employment - respondent rejected applicant's application for serious injury certificate in relation to hand injury - County Court refused applicant leave to bring proceedings for pain and suffering damages - whether failure to correctly apply narrative test for seriousness of injury's consequences - whether failure to have regard to whole of evidence in assessing pain and disability from injury - adequacy of reasons - s134AB(16) *Accident Compensation Act 1985* (Vic) - held: County Court judge failed to consider applicant's whole case - County Court judge's reasons were insufficient - appeal allowed.

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

## **Re Queensland Nickel (in liq) [2017] QSC 258**

Supreme Court of Queensland

Bond J

Judgments and orders - consolidation of proceedings - defendants to various proceedings sought that Court make orders to consolidate some proceedings and discontinue other proceedings - determination of course which Court should take in management of multiple proceedings - *Corporations Act 2001* (Cth) - *Uniform Civil Procedure Rules 1999* (Qld) - held: Court not satisfied to make order for consolidation - Court not satisfied to allow Queensland Nickel and liquidators to continue status quo - Court 'forced into taking hybrid course' - parties to bring in minutes of order giving effect to reasons.

[Re Queensland Nickel \(in liq\)](#) (I B C G)

## **LC by his litigation guardian KS v Australian Capital Territory [2017] ACTSC 324**

Supreme Court of the Australian Capital Territory

Burns J

Negligence - plaintiff injured when he jumped from car park in hospital complex - plaintiff sued defendant in negligence - plaintiff claimed defendant ought to have known he was suffering from 'delusional psychosis' and 'had a tendency towards self-harm', but had not put procedures in place to stop him from harming himself - *Mental Health (Treatment and Care) Act 1994 (ACT)* - held: defendant failed to respond adequately to knowledge plaintiff 'delusional and prone to self-harm' - mental health assessment within four hours of plaintiff arriving at hospital would have resulted in involuntary detention order under s41 of the Act - 'competent authority' would have complied with Act's requirements - defendant breached duty of care to plaintiff - causation established - damages assessed - judgment for plaintiff.

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

## CRIMINAL

### Executive Summary

**Attorney-General for the State of South Australia v Gates (SASCFC)** - criminal law - aggravated robbery - respondent was not a 'high risk offender' - application for interim supervision order refused

**Standage v Tasmania (TASCCA)** - criminal law - murder - no error in admission of scenario evidence - no miscarriage of justice - appeal against convictions dismissed

### Summaries With Link

## **Attorney-General for the State of South Australia v Gates [2017] SASC 154**

Supreme Court of South Australia

Vanstone J

Criminal law - aggravated robbery - 'high risk offenders' - respondent pleaded guilty to aggravated robbery - respondent and co-offender sentenced to four years two months in prison - non-parole period of three years fixed for respondent - sentence backdated and said to be wholly satisfied on 25/11/17 - Attorney-General sought interim supervision order for period between release and receipt of medical practitioner's report, which Court was asked to order under s7 *Criminal Law (High Risk Offenders) Act 2015 (SA)* - held: Court not satisfied to make interim supervision order - respondent did not commit 'a serious offence of violence' - respondent was not a high risk offender - application dismissed.



[Attorney-General](#)

**Standage v Tasmania [2017] TASCCA 23**

Court of Criminal Appeal of Tasmania

Tennent, Wood & Pearce JJ

Criminal law - scenario evidence - appellant convicted of two counts of murder - appellant sentenced to 48 years in prison with one half non-parole period - appellant appealed, contending there was miscarriage of justice arising from admission of 'scenario evidence' contrary to s137 *Evidence Act 2001* (Tas) - probative value of evidence - 'danger of unfair prejudice' - whether miscarriage of justice - held: scenario evidence's probative value was high - 'evaluative task' pursuant to s137 *Evidence Act* weighed in favour of evidence's admission - no error in admission of evidence - no miscarriage of justice - appeal dismissed.

[Standage](#)



# Benchmark

## **An Invite to Eternity**

**By:** John Clare

Wilt thou go with me sweet maid  
Say maiden wilt thou go with me  
Through the valley depths of shade  
Of night and dark obscurity  
Where the path hath lost its way  
Where the sun forgets the day  
Where there's nor life nor light to see  
Sweet maiden wilt thou go with me  
Where stones will turn to flooding streams,  
Where plains will rise like ocean waves,  
Where life will fade like visioned dreams  
And mountains darken into caves.  
Say maiden wilt thou go with me  
Through this sad non-identity  
Where parents live and are forgot  
And sisters live and know us not  
Say maiden wilt thou go with me  
In this strange death of life to be  
To live in death and be the same  
Without this life, or home, or name  
At once to be, and not to be  
That was, and is not – yet to see  
Things pass like shadows – and the sky  
Above, below, around us lie  
The land of shadows wilt thou trace  
And look – nor know each other's face  
The present mixed with reasons gone  
And past, and present all as one  
Say maiden can thy life be led  
To join the living to the dead  
Then trace thy footsteps on with me  
We're wed to one eternity?

[https://en.wikipedia.org/wiki/John\\_Clare](https://en.wikipedia.org/wiki/John_Clare)

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