

Tuesday, 12 February 2019

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

 Follow @Benchmark_Legal

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (1 minute read)

Hocking v Director-General of the National Archives of Australia (FCAFC) - administrative law - refusal to grant access to records - refusal to declare records were 'Commonwealth records' under *Archives Act 1983* (Cth) - appeal dismissed (I B C G)

Hayson v Nationwide News Pty Limited (FCA) - pleadings - defamation - "strike-in" application by respondents seeking inclusion of additional material in statement of claim - application dismissed (I B C G)

Perera v Genworth Financial Mortgage Insurance Pty Ltd (NSWCA) - summary dismissal - malicious prosecution - no error in summary dismissal of proceedings - application for leave to appeal dismissed (B C I G)

Starr v George (NSWSC) - real property - easements - parties reached resolution - consent orders included declaration of 'right of carriageway' - Court satisfied to make consent orders (B C I G)

In the matter of Bias Boating Pty Limited (receivers and managers appointed) (in liquidation) (NSWSC) - costs - separate question determined in plaintiffs' favour - 'remaining defendants' heard as to costs - costs orders made against 'remaining defendants' (B C I G)

RJB Wolfe Pty Ltd v Mornington Peninsula Eye Clinic Pty Ltd (VSC) - trade practices - claims of misleading or deceptive conduct and passing off dismissed (I B)

Woolnough & Anor v Isaac Regional Council (QSC) - trespass - nuisance - claims arising from installation of sewer line on property - claims dismissed (B C I G)

Summaries With Link (Five Minute Read)

Hocking v Director-General of the National Archives of Australia [2019] FCAFC 12

Full Court of the Federal Court of Australia

Allsop CJ; Flick & Robertson JJ

Administrative law - primary judge refused appellant's application for access to certain records and refused declaration that the records were 'Commonwealth records' under *Archives Act 1983* (Cth) - whether records were Commonwealth's property - whether primary judge erred in rejecting submission that records were to be viewed as Commonwealth's property because subject-matter of records related to Governor-General's performance of 'role and function' - held: appeal dismissed.

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

Hayson v Nationwide News Pty Limited [2019] FCA 81

Federal Court of Australia

Bromwich J

Pleadings - defamation - respondents, by "strike-in" application, sought directions for inclusion of 'additional material' in statement of claim to form part of matters complained of - whether material 'could be regarded as separate and distinct' - ss4(a) & 8 *Defamation Act 2005* (NSW) - held: respondents failed to exclude 'as a reasonable way to read' material that it could be regarded as being separate and distinct - application dismissed.

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

Perera v Genworth Financial Mortgage Insurance Pty Ltd [2019] NSWCA 10

Court of Appeal of New South Wales

Basten & Macfarlan JJA

Summary dismissal - malicious prosecution - primary judge dismissed applicant's claim in malicious prosecution on basis proceedings 'misconceived and disclosed no reasonable cause of action' - whether tort of malicious prosecution extended to 'commencement and carrying on of civil proceedings' - whether primary judge erred in approach to application for summary dismissal - whether failure by primary judge to 'take exceptional caution' - whether primary judge erred in relation to elements of cause of action - r13.4(1) *Uniform Civil Procedure Rules 2005* (NSW) - held: no error in summary dismissal of proceedings - application for leave to appeal dismissed.

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

Starr v George [2019] NSWSC 60

Supreme Court of New South Wales

Henry J

Real property - easements - plaintiffs sought declaratory relief concerning right of way for their property's benefit - plaintiffs contended that right of way arose by 'express grant' or 'prescriptive easement by long user' - parties reached resolution - consent orders included declaration that right of way was 'right of carriageway' - whether appropriate for Court to make consent orders proposed by parties - held: Court satisfied to make consent orders.

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

In the matter of Bias Boating Pty Limited (receivers and managers appointed) (in liquidation) [2019] NSWSC 47

Supreme Court of New South Wales

Black J

Costs - Court determined separate question in proceeding concerning whether 'Bias Boating' was 'continuously insolvent' during certain period - Court found insolvency established - 'remaining defendants' sought opportunity to be heard on costs, seeking that separate hearing's costs be 'costs in the cause', or that costs be 'Plaintiffs' costs in the cause' - held: plaintiffs succeeded against defendants on separate question - Court not satisfied to make orders sought by defendants - costs order against each of remaining defendants 'amply justified' - order made.

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

RJB Wolfe Pty Ltd v Mornington Peninsula Eye Clinic Pty Ltd [2019] VSC 27

Supreme Court of Victoria

Sifris J

Trade practices - plaintiff provided services under name 'Peninsula Eye Centre' - first defendant established business with name 'Mornington Peninsula Eye Clinic' - plaintiff claimed names 'similar and apt to confuse' and sought that second and third defendants cease using word 'Peninsula' - plaintiff made claims of misleading or deceptive conduct and passing off against defendants - s18 *Australian Consumer Law* - 'descriptive names & secondary meaning' - 'necessary reputation' - whether 'Peninsula Eye Centre' a 'sufficiently distinctive' name - whether first defendant's use of name would lead into error the 'relevant classes of persons' - 'intention to deceive' - held: claims dismissed.

[RJB Wolfe](#) (I B)

Woolnough & Anor v Isaac Regional Council [2019] QSC 17

Supreme Court of Queensland

Henry J

Trespass - nuisance - plaintiffs contended that defendant by installation of sewer line trespassed at plaintiffs' property - plaintiffs also contended installation caused subsidence and leakage of sewage at property - plaintiffs claimed in trespass and nuisance against defendant - time of installation of sewer - whether owners consented to installation - whether installation



caused sewage leak and/or subsidence - held: claims dismissed.

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

[Click Here to access our Benchmark Search Engine](#)