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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)

**Laycock v J & C Independent Carriers Pty Ltd** (FCA) - industrial law - dismissal of claim of entitlement to 'loading and unloading allowance entitlement' - Road Transport (Long Distance Operations) Award 2010 - appeal dismissed (I B)

**Yacht Club Sopot SP. Z.O.O. v The Yacht "Monster Project"** (FCA) - admiralty - interlocutory application for stay of sale of arrested ship - stay of sale refused (I B C G)

**Capic v Ford Motor Company of Australia Limited (Costs Forthwith)** (FCA) - costs - respondent to have costs of Anti-suit Injunction Application - orders made (I B C G)

**El-Hanania v Vella** (NSWSC) - judicial review - solicitors' costs - application for extension of time - application for security for costs - extension of time granted on condition of payment of sum into Court - security for costs granted (I B C G)

**Jarosz v State of New South Wales (No 2)** (NSWSC) - costs - Court dismissed plaintiffs' claims - plaintiffs to pay costs of State and Council - plaintiffs to pay part of Council's costs on indemnity basis (I B C G)

**The Public Advocate & Ors v C, B (No 2)** (SASCFC) - costs - dismissal of appeal against declaration BC 'had been unlawfully detained in a locked ward' and against decision 'to issue a writ of habeas corpus' - determination of costs dispute (I B C G)

**Powell v Depuy International Ltd & Anor (SASC)** - cross-vesting - negligence - trade practices - statutory warranty - defendant sought transfer of proceedings to Federal Court - application dismissed (I B C G)

## Summaries With Link (Five Minute Read)

### **Laycock v J & C Independent Carriers Pty Ltd [2019] FCA 1060**

Federal Court of Australia

Collier J

Industrial law - appellant, under *Fair Work Act 2009* (Cth), claimed entitlement to payment of 'loading and unloading allowance entitlement' - primary judge dismissed application - appellant appealed - principles concerning appeal under s24(1)(d) *Federal Court of Australia Act 1976* (Cth) - *Thredgold v Fyfe Pty Ltd* [2013] FCA 1363 - whether erroneous interpretation of term "loading" and term "unloading" in Road Transport (Long Distance Operations) Award 2010 - whether erroneous findings concerning delivery of 'jiffy bags' - credit - whether denial of natural justice - held: appeal dismissed.

[Laycock](#) (I B)

### **Yacht Club Sopot SP. Z.O.O. v The Yacht "Monster Project" [2019] FCA 1083**

Federal Court of Australia

Rares ACJ

Admiralty - ship arrested in December 2018 - ship took on water and 'partially' sank 'while under arrest' in April 2019 - Court 'made orders' for Marshal's sale of ship in May 2019 - Marshal informed parties she would seek order for sale of ship for highest of 12 bids received - owners of ship, by interlocutory application, sought stay of sale orders and documents from Marshal - owners and individual claiming to be mortgagee seeking to investigate whether they might have claims against Marshal concerning ship's taking on of water - creditors' interests - whether owners had paid security - *Inglis v Commonwealth Trading Bank of Australia* (1972) 126 CLR 161 - held: stay of ship's sale refused.

[Yacht Club](#) (I B C G)

### **Capic v Ford Motor Company of Australia Limited (Costs Forthwith) [2019] FCA 1065**

Federal Court of Australia

Perram J

Costs - respondent sought costs of application for anti-suit injunction against applicant ('Anti-suit Injunction Application') which was 'brought to restrain' applicant's discovery application in United States ('US Application') - 'Anti-suit Injunction Application' had been 'rendered unnecessary' by US Application's dismissal - respondent also sought that costs of applications be paid 'forthwith': 'Communications Application', 'Pleadings Amendment Applications' and Anti-suit Injunction Application - r40.13 *Federal Court Rules 2011* (Cth) - whether to displace

# Benchmark

'ordinary rule' - interests of justice - held: respondent to have costs of Anti-suit Injunction Application.

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

## **El-Hanania v Vella [2019] NSWCA 167**

Court of Appeal of New South Wales

Gleeson, Payne & McCallum JJA

Judicial review - solicitors' costs - 'preliminary determination' of applicant's application for extension of time and first respondent's application for security for costs - rr59.10(2) & 59.10(3) *Uniform Civil Procedure Rules 2005* (NSW) - delay - reason for delay - whether 'fairly arguable case' - whether 'exceptional circumstances' to justify security for costs - held: extension of time granted on condition of sum being paid into Court - security for costs granted.

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

## **Jarosz v State of New South Wales (No 2) [2019] NSWSC 861**

Supreme Court of New South Wales

Darke J

Costs - Court dismissed plaintiffs' claim that a road 'became a public road at common law in about the mid-nineteenth century' and also dismissed plaintiffs' private nuisance claim - plaintiffs sought that parties pay own costs of proceedings - State sought that plaintiff pay State's costs on ordinary basis - Council sought indemnity costs order in respect of its costs, 'or at least some of them' - whether to depart from general rule that costs follow event - whether proceedings were 'public interest litigation' - *Oshlack v Richmond River Council* (1998) 193 CLR 72 - whether plaintiffs should have known claim concerning road was 'almost certainly doomed to fail' - whether 'relevant delinquency' - held: plaintiffs to pay costs of State and Council - plaintiffs to pay part of Council's costs on indemnity basis.

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

## **The Public Advocate & Ors v C, B (No 2) [2019] SASCF 78**

Full Court of the Supreme Court of South Australia

Kourakis CJ; Kelly & Hinton JJ

Costs - appeal against declaration BC 'had been unlawfully detained in a locked ward' and against decision 'to issue a writ of habeas corpus' dismissed - determination of costs dispute between Public Advocate, BC's son (DC) and BC's wife (BMC) - 'relevant interest' of DC in proceedings - held: Public Advocate to pay 50% of DC's representation costs on appeal, such order having been made with regard to Public Advocate's application against DC for costs order concerning DC's notice of contention - DC's application against BMC for costs of BMC's failed application for permission to appeal against interlocutory decision dismissed.

[The Public Advocate](#) (I B C G)

## **Powell v Depuy International Ltd & Anor [2019] SASC 116**

Supreme Court of South Australia



# Benchmark

Parker J

Cross-vesting - plaintiff claimed against defendants concerning 'manufacture, supply or fitting of a surgical hip implant' - plaintiff claimed negligence, 'breach of statutory warranty' and also claimed under ss74B & 74D *Trade Practices Act 1974* (Cth) - defendants, under *Jurisdiction of Courts (Cross-vesting) Act 1987* (Cth) (Cross-vesting Act), sought transfer of proceedings to Federal Court - s4 *Manufacturers Warranties Act 1974* (SA) - whether in interests of justice to transfer proceedings to Federal Court - held: application dismissed.

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

## CRIMINAL

### Executive Summary

### Summaries With Link



**Places [III. Winter Sun]**

**By:** Sara Teasdale - 1884-1933

(Lenox)

There was a bush with scarlet berries,  
And there were hemlocks heaped with snow,  
With a sound like surf on long sea-beaches  
They took the wind and let it go.

The hills were shining in their samite,  
Fold after fold they flowed away;  
"Let come what may," your eyes were saying,  
"At least we two have had to-day."

[https://en.wikipedia.org/wiki/Sara\\_Teasdale](https://en.wikipedia.org/wiki/Sara_Teasdale)

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