

Friday, 13 May 2016

## Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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

### Executive Summary (1 minute read)

**Military Rehabilitation and Compensation Commission v May** (HCA) - workers compensation - dizziness was not compensable injury for purposes of *Safety, Rehabilitation and Compensation Act 1988* (Cth) - appeal allowed (I B C G)

**Badenach v Calvert** (HCA) - negligence - solicitors' duties - no duty of care to beneficiary of Will to advise client of possible testator's family maintenance claim by daughter and options to avoid claim - appeal allowed (I B C G)

**Richtoll Pty Ltd v WW Lawyers (in Liquidation) Pty Ltd (No 2)** (NSWSC) - costs - offer of compromise - no reason to "order otherwise" - successful defendant entitled to indemnity costs (I B)

**Buckworth v Gladio Pty Ltd** (NSWCA) - stay - extension of stay of enforcement of primary judgment pending determination of High Court proceedings refused (B)

**Re B Personal Pty Ltd** (VSC) - corporations - oppression - oppressive conduct and breach of statutory and fiduciary duties - plaintiff director entitled to relief (I B)

**Adelaide (SA Pools & Spa) Manufacturing and Installation Pty Ltd v Westcourt General Insurance Brokers Pty Ltd** (SASC) - security for costs - no error in Master's decision to order payment of security - appeal dismissed (I B C G)

**City of South Perth v ALH Group Property Holdings Pty Ltd (WASC)** - judicial review - approval of application for development - no failure to have due regard to Development Control Policy - application for judicial review dismissed (I B C G)

## Summaries With Link (Five Minute Read)

### **Military Rehabilitation and Compensation Commission v May [2016] HCA 19**

High Court of Australia

French CJ; Kiefel, Gageler, Nettle & Gordon JJ

Workers compensation - respondent served in airforce (RAAF) before being discharged - respondent claimed he had adverse reactions to vaccinations received in course of employment and sought compensation under s14(1) *Safety, Rehabilitation and Compensation Act 1988* (Cth) - whether dizziness was compensable "injury" for purposes of Act - held: Full Court of the Federal Court erred in finding dizziness was compensable injury - respondent had not established he suffered an "injury (other than a disease)" - respondent had not suffered injury or disease - bases for liability against appellant not made out - appeal allowed.

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

### **Badenach v Calvert [2016] HCA 18**

High Court of Australia

French CJ; Kiefel, Gageler, Keane & Gordon JJ

Negligence - solicitors' duties - wills and estates - legal practitioner took instructions from client for preparation of Will - Will prepared and executed by testator - testator left whole estate to respondent - testator died - testator made no provision for daughter - daughter made application under *Testator's Family Maintenance Act 1912* (Tas) - judge ordered payment of amount out of estate - respondent contended solicitor and firm negligent in failing to advise testator of risk of daughter making claim and failing to advise him of options to arrange affairs so as to avoid claim - respondent's case based on for breach of duty based on decision in *Hill v Van Erp* (1997) 188 CLR 159 - whether there was chance that client might have taken steps to protect the properties from a claim under Act - held: solicitor did not owe alleged duty of care to beneficiary - even if solicitor came under duty to advise client as alleged, course of action which client would have taken could not be concluded - *Hill v Van Erp* did not apply - appeal allowed.

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

### **Richtoll Pty Ltd v WW Lawyers (in Liquidation) Pty Ltd (No 2) [2016] NSWSC 578**

Supreme Court of New South Wales

Hoeben CJ at CL

Costs - Court entered judgment for defendant in proceedings - defendant sought indemnity costs in reliance on offer of compromise and written offer - plaintiff did not accept either offer - rr20.26 & 42.15 *Uniform Civil Procedure Rules* (NSW) - held: offer of compromise complied with r20.26 - no reason why Court would "order otherwise" - defendant entitled to variation of costs

order sought.

[Richtoll](#) (I B)

## **Buckworth v Gladio Pty Ltd [2016] NSWCA 104**

Court of Appeal of New South Wales

Meagher JA

Stay - Court dismissed appeal in proceedings - applicant had sought special leave to appeal to High Court - applicant sought extension of stay of enforcement of primary judgment until determination of proceedings in High Court - applicant contended questions raised by appeal justified extension of stay - "exceptional circumstances must be shown" - held: applicant's prospects of success in special leave applicant not substantial - no significant likelihood leave would be granted - issue was a factual issue whether evidence justified primary judge's inference - no question of principle - issue was not of general application - notice of motion dismissed.

[Buckworth](#) (B)

## **Re B Personal Pty Ltd [2016] VSC 211**

Supreme Court of Victoria

Robson J

Corporations - oppression - fiduciary and statutory duties - plaintiff director and shareholder of company sought relief arising out from conduct of first defendant - first defendant was plaintiff's brother and was also a director and shareholder of company- plaintiff contended first defendant wrongfully diverted payments which were due to company to third defendant, first defendant's privately owned company - ss232, 233, 180 & 181 *Corporations Act 2001* (Cth) - held: first defendant had engaged in oppressive conduct under ss232(d) & 232(e) - plaintiff entitled to relief under s233 - first defendant acted in manner contrary to duties in ss181(1) & 182(1) - first defendant had failed to act "in good faith in the bests interests of the corporation ... and for a proper purpose" and had improperly used position to gain advantage for himself causing detriment to corporation - judgment for plaintiff.

[Re B Personal](#) (I B)

## **Adelaide (SA Pools & Spa) Manufacturing and Installation Pty Ltd v Westcourt General Insurance Brokers Pty Ltd [2016] SASC 60**

Supreme Court of South Australia

Doyle J

Security for costs - insurance - appellants sued respondent, claiming that its authorised representative failed to provide appropriate insurance advice with result they appellants uninsured - Master ordered first to fifth appellants provide security for second defendant's costs by payment of amount into Suitors' Fund - appellants appealed - r194(1) *Supreme Court Rules 2006* (SA) - ss1335 & 439A *Corporations Act 2001* (Cth) - held: Court not satisfied appellants established error by Master in *House v The King* sense - appeal dismissed.

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

## **City of South Perth v ALH Group Property Holdings Pty Ltd [2016] WASC 141**

Supreme Court of Western Australia

Martino J

Judicial review - planning and development - applicant City sought judicial review of decision of Metro Central Joint Development Assessment Panel to approve second respondent's application for development - applicant claimed Panel acted outside jurisdiction by erroneous failure to have regard to Development Control Policy 5.1 (DCP 5.1) - *Planning and Development (Development Assessment Panels) Regulations 2011 (WA)* - held: City did not establish Panel failed to have due regard to DCP 5.1 - application for judicial review dismissed.

[City of South Perth](#) (I B C G)

## CRIMINAL

### Executive Summary

**Nguyen v The Queen** (HCA) - criminal law - manslaughter - wounding with intent to cause grievous bodily harm - manifest inadequacy of sentence - Court of Criminal Appeal correct in re-sentencing appellant - appeal dismissed

**R v Knight** (SASCFC) - criminal law - burglary - rape - failure to have regard to forensic psychologist's evidence - appellant re-sentenced - sentence reduced - appeal allowed

### Summaries With Link

## **Nguyen v The Queen [2016] HCA 17**

High Court of Australia

Bell, Gageler, Keane, Nettle & Gordon JJ

Criminal law - appellant pleaded guilty to one count of manslaughter and one count of wounding with intent to cause grievous bodily harm - appellant sentenced to nine years and six months for manslaughter and six years and three months for wounding with intent to cause grievous bodily harm - sentences backdated - sentencing judge correctly took additional offence into account of unauthorised possession of prohibited firearm when imposing sentence - Court of Criminal Appeal of the Supreme Court of New South Wales resentenced appellant to six years imprisonment for wounding and twelve years for manslaughter - appellant appealed - whether erroneous application of principle in *R v Simoni* (1981) 147 CLR 383 - accumulation of sentences - *Crimes (Sentencing Procedure) Act 1999 (NSW)* - held: sentence imposed for manslaughter and thus total effective sentence was manifestly inadequate - Court of Criminal Appeal was incorrect to find breach of *De Simoni* principle but error was not material - Court of



Criminal Appeal correct to quash sentences and re-sentence appellant - appeal dismissed.

[Nguyen](#)

**R v Knight [2016] SASCFC 40**

Full Court of the Supreme Court of South Australia

Kourakis CJ; Blue & Doyle JJ

Criminal law - burglary - rape - appellant convicted for one count of burglary and two counts of rape - appellant was sentenced to 12 years and seven months imprisonment - sentence reduced from starting point of 14 years - non-parole period of eight years and six months imposed - appellant appealed against sentence - ss48 & 168 *Criminal Law Consolidation Act 1935* (SA) - sentence not manifestly excessive - judge erroneously failed to have regard to forensic psychologist's evidence - appellant re-sentenced - sentence reduced to 10 years and 10 months with non-parole period of six years and six months - appeal allowed.

[Knight](#)



# Benchmark

## **Sonnet XIII**

By William Shakespeare

O! that you were your self; but, love, you are  
No longer yours, than you your self here live:  
Against this coming end you should prepare,  
And your sweet semblance to some other give:  
So should that beauty which you hold in lease  
Find no determination; then you were  
Yourself again, after yourself's decease,  
When your sweet issue your sweet form should bear.  
Who lets so fair a house fall to decay,  
Which husbandry in honour might uphold,  
Against the stormy gusts of winter's day  
And barren rage of death's eternal cold?  
O! none but unthrifths. Dear my love, you know,  
You had a father: let your son say so.

[William Shakespeare](#)

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