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

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Executive Summary (1 minute read)

Association of Professional Engineers, Scientists and Managers Australia v Bulga Underground Operations Pty Ltd (No 2) (FCA) - industrial law - pecuniary penalty of \$10,000.00 imposed for contravention of s323(1) *Fair Work Act 2009* (Cth) (I B C G)

State of Western Australia v Australian Securities and Investment Commission (FCA) - corporations - plaintiff sought that defendant reinstate registration of company - application granted (B)

Commissioner of Police (NSW) v Supple (NSWSC) - public assembly - COVID-19 - Commissioner sought order prohibiting proposed public assembly - s25 *Summary Offences Act 1988* (NSW) - order granted (B C I G)

Folwell v Mayer (QSC) - limitations - personal injury - applicant sought leave to bring proceeding after expiry of limitation period - leave granted (I B C G)

Eustice v Channel Seven Adelaide Pty Ltd & Ors (SASC) - security for costs - defamation - stay - respondents sought that appellant pay security for costs of appeal - appellant to pay security in sum of \$30,000 (I B C G)

Harvis Capital Pty Ltd v Mid-West/Wheatbelt Joint Development Assessment Panel (WASC) - planning and assessment - applicant sought to quash development approval - application granted (I B C G)

McMurray and Jennifer Grace McMurray v AIG Insurance Australia Ltd [No 4] (WASC) - evidence - first defendant sought leave to file and serve forensic chemist's expert report and to rely on the expert report at trial - leave refused (I B C G)

Summaries With Link (Five Minute Read)

Association of Professional Engineers, Scientists and Managers Australia v Bulga Underground Operations Pty Ltd (No 2) [2020] FCA 812

Federal Court of Australia

Wigney J

Industrial law - Court declared respondent, by failure to make 'untaken long service leave' payment to its employee, contravened s323(1) *Fair Work Act 2009* (Cth) (Fair Work Act) and s39CB(2) *Coal Mining Industry (Long Service Leave) Administration Act 1992* (Cth) - 'appropriate pecuniary penalty' for contravention of s323(1) Fair Work Act - s556 Fair Work Act - Court's discretion to impose penalty - whether to impose penalty - contravention's seriousness - *Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union* (2017) 254 FCR 68 - held: pecuniary penalty of \$10,000.00 imposed.

[Association of Professional Engineers](#) (I B C G)

State of Western Australia v Australian Securities and Investment Commission [2020] FCA 810

Federal Court of Australia

McKerracher J

Corporations - plaintiff, pursuant to s601AH(2) *Corporations Act 2001* (Cth) (Corporations Act) sought that defendant reinstate registration of company (Inspire Acacia) - whether plaintiff was 'person aggrieved' by Inspire Acacia's deregistration - plaintiff's 'deemed right of subrogation' 'rendered obsolete' by deregistration - whether just to reinstate Inspire Acacia - whether to make order under s601AH(2) Corporations Act - held: application granted.

[State of Western Australia](#) (B)

Commissioner of Police (NSW) v Supple [2020] NSWSC 727

Supreme Court of New South Wales

Walton J

Public assembly - COVID-19 - Commissioner sought order pursuant to s25 *Summary Offences Act 1988* (NSW) prohibiting proposed public assembly - public assembly was identified in "Notice of Intention to Hold a Public Assembly" signed by defendant member of 'Refugee Action Coalition' - Public Health Order - risk of COVID-19 infections - evidence of Chief Health Officer, Dr Kerry Chant - Australia Health Protection Principle Committee statement - risks to 'front line workers' - balance of 'public health risks' against 'the rights to public assembly and freedom of speech' - held: order granted.

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

Folwell v Mayer [2020] QSC 162

Supreme Court of Queensland

Bowskill J

Limitations - personal injury - applicant sought to claim damages for injuries allegedly sustained due to 'chiropractic treatment' - applicant gave respondent notice of claim under s9 *Personal Injuries Proceedings Act 2002* (Qld) (PIPA) within limitation period but did not bring proceedings before limitation period's expiry - applicant sought alteration of limitation period under s59(2)(b) PIPA - held: order granted - applicant granted leave to bring proceeding outside limitation period.

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

Eustice v Channel Seven Adelaide Pty Ltd & Ors [2020] SASC 94

Supreme Court of South Australia

Kelly J

Security for costs - defamation - respondents, by interlocutory application, sought stay of appellant's appeal unless appellant paid security in sum of \$50,000 - impecuniosity - prospects of success - stultification - whether appellant would be unable to pay costs order if appeal unsuccessful - interests of justice - held: appellant to pay security in sum of \$30,000.

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

Harvis Capital Pty Ltd v Mid-West/Wheatbelt Joint Development Assessment Panel [2020] WASC 205

Supreme Court of Western Australia

Allanson J

Planning and assessment - respondent approved development application for 'feed mill and other incidental uses' at property zoned 'Agricultural Resource' under planning scheme. - applicant sought judicial review of respondent's decision and to quash development approval - whether respondent exceeded jurisdiction - whether respondent erred in not finding proposal prohibited within 'agricultural resource' zone - whether approval was 'manifestly unreasonable' - whether failure to take 'mandatory relevant consideration' into account - Shire of Chittering Local Planning Scheme No 6 - Shire of Chittering Local Planning Strategy - *Planning and Development Act 2005* (WA) - *Environmental Protection Act 1986* (WA) - *Planning and Development (Development Assessment Panels) Regulations 2011* (WA) - *Planning and Development (Local Planning Schemes) Regulations 2015* (WA) - held: development application was not within 'Industry Rural' 'use class' - development application could not be approved Agriculture Resource zone - application allowed.

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

McMurray and Jennifer Grace McMurray v AIG Insurance Australia Ltd [No 4] [2020] WASC 210

Supreme Court of Western Australia

Smith J

Evidence - first defendant sought leave to file and serve forensic chemist's expert report and to rely on the expert report at trial - interests of justice - *AON Risk Services Australia Ltd v Australian National University* [2009] HCA 27 - *Hamersley Iron Pty Ltd v James* [2015] WASC 10 - adequacy of explanation for delay - prejudice - proposed evidence's 'nature and importance' - effect of application on Court and 'other litigants' - held: leave refused.

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

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