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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)

**Pike v Tighe** (HCA) - town planning - successor in title to ownership of land created by reconfiguration of larger parcel obliged to comply with condition of reconfiguration's approval that original owner failed to satisfy - Planning and Environment Court of Queensland could make "enforcement order" to require condition's fulfilment - appeal allowed (I B C G)

**Prysmian Cavi E Sistemi S.R.L. v Australian Competition and Consumer Commission** (FCAFC) - trade practices - cartel agreement - contraventions of *Trade Practices Act 1974* (Cth) established - appeal dismissed (I B C G)

**Quigley (Liquidator) v Minesite Maintenance Pty Ltd, in the matter of Perthmetro Pty Ltd (in liq)** (FCA) - corporations - winding up - claim by liquidator for amount of payments that were allegedly unfair preferences - judgment for liquidator (I B C G) (I B C G)

**Penson v Titan National Pty Ltd** (NSWCA) - costs - notices of motion in respect of costs dismissed - notice of motion seeking to set aside or vary judgment in proceedings dismissed (I B C G)

**Wakim v Kolotouros** (NSWCA) - judgments and orders - want of due despatch - appellant had failed to comply with directions for appeal's preparation - appellant granted 'one last opportunity' to prepare appeal (I B C G)

# Benchmark

**Soens v Rathborne** (NSWSC) - succession - family provision - application by plaintiff child of deceased for further provision from deceased's will granted - plaintiff granted lump sum - notional estate order to be made (B)

**O'Reilly v Green** (WASC) - contract - loan agreements - guarantees - plaintiff entitled to judgment against guarantor in respect of loan agreements - plaintiff to bring in minutes of order (B)

## Summaries With Link (Five Minute Read)

### **Pike v Tighe [2018] HCA 9**

High Court of Australia

Kiefel CJ; Bell, Keane, Gordon & Edelman JJ

Town planning - statutory construction - appeal concerned two questions: first question was whether a successor in title to ownership of land created by reconfiguration of larger parcel was obliged by s245 *Sustainable Planning Act 2009* (Qld) to comply with condition of reconfiguration's approval that original owner failed to satisfy before reconfiguration's completion - if first question answered in the affirmative, second question was whether Planning and Environment Court of Queensland could make "enforcement order" under ss601, 604 and 605 to require successor's fulfilment of condition - 'access and utilities easement' allowing for provision access, on-site manoeuvring and for services and utilities to be connected - whether fact that successor in title was not party to development approval meant enforcement order could not be made against successor in title - held: both questions answered in the affirmative - appeal allowed.

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

### **Prysmian Cavi E Sistemi S.R.L. v Australian Competition and Consumer Commission [2018] FCAFC 30**

Full Court of the Federal Court of Australia

Middleton, Perram & Griffiths JJ

Trade practices - competition - respondent alleged appellant entered arrangement with companies which involving market sharing and price fixing (A/R Cartel Agreement) - respondent alleged impugned conduct (Snowy Hydro Project Agreement) gave effect to A/R Cartel Agreement in contravention of *Trade Practices Act 1974* (Cth) - primary judge found contraventions based on impugned conduct made out - whether open to primary judge to find contraventions in view of conclusions regarding other company (Nexans) - whether primary judge's findings contrary to evidence or inconsistent with respondent's case - whether appellant acted 'unilaterally' and outside process which A/R Cartel Agreement envisaged - whether improper consideration of evidence - held: appeal dismissed.

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

**Quigley (Liquidator) v Minesite Maintenance Pty Ltd, in the matter of Perthmetro Pty Ltd (in liq) [2018] FCA 316**

Federal Court of Australia  
Siopis J

Corporations - winding up - plaintiff liquidator of company (Perthmetro) claimed against defendant under s588FF(1) *Corporations Act 2001* (Cth), seeking payment of amount of payments made by defendant to Perthmetro - plaintiff contended the payments were unfair preferences - whether payments were transactions entered 'during the six months ending on the relation-back day' - whether company insolvent when payments made - whether defence made out under s588FG(2) of the Act - held: judgment for plaintiff.

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

**Penson v Titan National Pty Ltd [2018] NSWCA 44**

Court of Appeal of New South Wales  
Simpson JA

Costs - Court gave three judgments against applicant in December 2015 - Court ordered applicant to pay applications' costs - second respondent by four notices of motion sought costs on indemnity basis as gross sum - applicant by notice of motion sought to set aside or vary 'the judgment' and stay of costs orders - applicant declared bankrupt - Kunc J noted trustee in bankruptcy had been appointed and that he did not intend to proceed with 'any outstanding applications' applicant had commenced - parties invited to inform Kunc J whether second respondent intended to seek leave from Federal Court to proceed against applicant in respect of costs application and whether trustee in bankruptcy elected to continue with notice of motion - held: Court had received no reply - notices of motion dismissed.

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

**Wakim v Kolotouros [2018] NSWCA 46**

Court of Appeal of New South Wales  
Simpson JA

Judgments and orders - proceedings concerned Fagan J's decision to refuse appellant's application for adjournment and to enter judgment for respondents - respondents sought dismissal of Notice of Appeal for want of due despatch - Macfarlan JA had earlier found appellant should have opportunity to rectify defaults and that respondents' notices of motion should be stood over - r51.22 *Uniform Civil Procedure Rules 2005* (NSW) - held: appellant had failed to comply with directions for appeal's preparation - Court concluded that appellant, as some 'minimal progress' had been made, should be given 'one last opportunity' to prepare appeal - directions made.

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

**Soens v Rathborne [2018] NSWSC 302**

Supreme Court of New South Wales  
Hallen J

# Benchmark

Succession - family provision - plaintiff child of deceased sought provision from deceased's estate and notional estate of under Ch 3 *Succession Act 2006* (NSW) - unusual case as plaintiff had not seen deceased for first 24 years of life - deceased's will made no provision for plaintiff - defendant widow of deceased held property which could be designated as notional estate - assessment of plaintiff's financial position - size of estate - defendant's competing claim - plaintiff's relationship with deceased - contribution by plaintiff to deceased's welfare - deceased's entitlement to testamentary freedom - held: adequate provision not made for plaintiff by deceased's will - provision in form of lump sum granted to plaintiff - deceased's actual estate not sufficient to make order - notional estate order required to be made - orders and directions made.

[View Decision](#) (B)

## **O'Reilly v Green [2018] WASC 70**

Supreme Court of Western Australia

Allanson J

Contract - plaintiff sought repayment of amounts owing under two loan agreements - default judgment entered against four of seven defendants - trial proceeded only between plaintiff and second defendant as guarantor of both debts under guarantees - held: plaintiff made out claim against second defendant - plaintiff entitled to judgment against second defendant - plaintiff to provide minute of orders.

[O'Reilly](#) (B)

## CRIMINAL

### Executive Summary

**Kalbasi v Western Australia** (HCA) - criminal law - drug offences - attempting to supply prohibited drug with intent to sell or supply to another - jury erroneously instructed and directed in accordance with s11 *Misuse of Drugs Act 1981* (WA) - wrong direction to jury did not result in substantial miscarriage of justice - appeal against conviction dismissed

**Irwin v The Queen** (HCA) - criminal law - appellant convicted of one count of grievous bodily harm - verdict not unreasonable or incapable of support by evidence - appeal dismissed

### Summaries With Link

## **Kalbasi v Western Australia [2018] HCA 7**

High Court of Australia

Kiefel CJ; Bell, Gageler, Keane, Nettle, Gordon & Edelman JJ

# Benchmark

Criminal law - drug offences - proviso - appellant charged with attempting to supply prohibited drug with intent to sell or supply to another - judge, prosecutor and defence counsel assumed that s11 *Misuse of Drugs Act 1981* (WA) applied - *Krakouer v The Queen* (1998) 194 CLR 202 had held s11 did not apply on prosecution of charge of attempted possession of prohibited drug - however jury was directed to, and instructed in accordance with s11 presumption that if it was satisfied appellant was in possession of "drugs", then intention to sell or supply the "drugs" to another was proved beyond reasonable doubt - appellant appealed against conviction pursuant to s30 *Criminal Appeals Act 2004* (WA) - State conceded wrongness of direction on proof of intention but sought to dismiss appeal on basis there was no substantial miscarriage of justice - Court of Appeal of Western Australian found conviction inevitable and dismissed the appeal - whether Court of Appeal erred in finding no substantial miscarriage of justice and dismissal of appeal - held: wrong direction to jury had not resulted in a substantial miscarriage of justice - appeal dismissed.

[Kalbasi](#)

## **Irwin v The Queen [2018] HCA 8**

High Court of Australia

Kiefel CJ; Bell, Gageler, Nettle & Gordon JJ

Criminal law - grievous bodily harm - appellant convicted of one count of unlawfully doing grievous bodily harm - appellant acquitted of count of assault occasioning bodily harm Court of Appeal of the Supreme Court of Queensland dismissed appeal - whether Court of Appeal erred by not finding that guilty verdict was 'unreasonable or could not be supported having regard to the evidence' - held: verdict not unreasonable - verdict not incapable of support by the evidence - appeal dismissed.

[Irwin](#)



# Benchmark

## Sonnet 105

**By:** William Shakespeare

Let not my love be call'd idolatry,  
Nor my beloved as an idol show,  
Since all alike my songs and praises be  
To one, of one, still such, and ever so.  
Kind is my love to-day, to-morrow kind,  
Still constant in a wondrous excellence;  
Therefore my verse to constancy confined,  
One thing expressing, leaves out difference.  
'Fair, kind and true' is all my argument,  
'Fair, kind, and true' varying to other words;  
And in this change is my invention spent,  
Three themes in one, which wondrous scope affords.  
'Fair, kind, and true,' have often lived alone,  
Which three till now never kept seat in one.

[https://en.wikipedia.org/wiki/William\\_Shakespeare](https://en.wikipedia.org/wiki/William_Shakespeare)

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