

Friday, 17 May 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.

CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

Frugniet v Australian Securities and Investments Commission (HCA) - administrative law - criminal law - Administrative Appeals Tribunal, on review of respondent's decision to impose a 'banning order', could not take into account appellant's 'spent convictions' - appeal allowed (I B C G)

Degroma Trading Inc v Viva Energy Australia Pty Ltd (FCA) - arbitration - application under s7(2) *International Arbitration Act 1974* (Cth) for stay of proceeding and transfer of dispute to arbitration - application granted (I B C G)

Keyzer v La Trobe University (FCA) - employment - interveners sought 'suppression or non-publication order' concerning their names and complaints - application refused (B C I G)

In the matter of Electrical Energy Pty Limited (NSWSC) - corporations - statutory demand - company sought to set aside statutory demand served on it by Deputy Commissioner of Taxation - originating process dismissed (B C I G)

Hackett v State of South Australia (VSC) - cross-vesting - plaintiff injured at wildlife park in South Australia commenced proceedings in Bendigo, Victoria - defendant sought transfer of proceedings to South Australia - application granted (I B C G)

Peters Properties Maddington Pty Ltd v Keen (WASC) - contract - planning and environment

- consumer law - 'written Land Sale Agreement' - breach of warranty - misleading or deceptive conduct - judgment for plaintiff (I B C G)

IVO Nominees Pty Ltd v Shire of Murray (WASC) - planning and development - criminal law - appellant convicted of two offences under s218 *Planning and Development Act 2005* (WA) - leave to appeal granted - appeal allowed (I B C G)

Summaries With Link (Five Minute Read)

Frugniet v Australian Securities and Investments Commission [2019] HCA 16

High Court of Australia

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

Administrative law - criminal law - respondent made 'banning order' against appellant - respondent, in making banning order, could not take into account appellant's 'spent convictions' under Pt VIIC *Crimes Act 1914* (Cth) (*Crimes Act*) - appeal concerned question whether Administrative Appeals Tribunal (AAT), on review of respondent's decision to impose banning order, could take into account the spent convictions - statutory construction - whether AAT's 'decision-making power', in exercising jurisdiction conferred by s327 *National Consumer Credit Protection Act 2009* (Cth) & ss25 & 43 *Administrative Appeals Tribunal Act 1975* (Cth), was constrained by Pt VIIC *Crimes Act* - held: Court answered question in the negative - AAT not entitled to take into account spent convictions - appeal allowed.

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

Degroma Trading Inc v Viva Energy Australia Pty Ltd [2019] FCA 649

Federal Court of Australia

O'Callaghan J

Arbitration - applicant, pursuant to s7(2) *International Arbitration Act 1974* (Cth), sought stay of respondent's proceeding against it and transfer of dispute to arbitration - applicant contended parties 'concluded an arbitration agreement' under which disputes were to be resolved by 'London arbitration' at either party's election - applicant contended it had made election 'by notice to' respondent - respondent denied there was 'valid arbitration agreement' and contended entitlement to bring claims in Court - principles in *Hancock v Rinehart* (2017) 257 FCR 442 - 'doctrine of separability' - held: Court satisfied to stay proceeding and remit matter to arbitrator.

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

Keyzer v La Trobe University [2019] FCA 646

Federal Court of Australia

Anastassiou J

Employment - 'suppression or non-publication order' - applicant's employment suspended by respondent pending its investigation into 'alleged misconduct' by applicant - investigation arose from complaints by interveners - interveners sought suppression or non-publication order

as to their identities and 'material which would tend to reveal' complaints' nature - Court had made interim suppression order - whether to extend the interim suppression order further - whether necessary to grant interveners leave to intervene - whether to grant leave to intervene - r9.12 *Federal Court of Australia Rules 2011* (Cth) - 37AG(1)(a) *Federal Court of Australia Act 1976* (Cth) - whether interveners' 'legitimate personal interest' in maintaining privacy sufficient for conclusion that their interests' protection was 'necessary to prevent prejudice to the administration of justice' - held: application refused.

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

In the matter of Electrical Energy Pty Limited [2019] NSWSC 547

Supreme Court of New South Wales

Rees J

Corporations - statutory demand - plaintiff company (Electrical Energy Pty Limited), under s459G *Corporations Act 2001* (Cth), sought to set aside statutory demand which Deputy Commissioner of Taxation served on it - plaintiff contended the demand did not take into account payment which plaintiff made 'at or about the time' of issue of demand - whether amount which debtor paid and which was accepted by creditor was "offsetting claim" or gave rise to defect such that Court should set demand aside - held: originating process dismissed.

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

Hackett v State of South Australia [2019] VSC 311

Supreme Court of Victoria

Daly AsJ

Cross-vesting - plaintiff lived in Bendigo, Victoria - plaintiff injured at wildlife park in South Australia - plaintiff commenced proceedings in Bendigo - defendant, under s5 *Jurisdiction of Courts (Cross-vesting) Act 1987* (Vic), sought transfer of proceedings to South Australia - interests of justice - held: Court satisfied Supreme Court of South Australia was 'more appropriate forum' for proceeding's 'conduct and hearing' - application granted.

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

Peters Properties Maddington Pty Ltd v Keen [2019] WASC 138

Supreme Court of Western Australia

Allanson J

Contract - planning and environment - consumer law - plaintiff and defendants entered 'written Land Sale Agreement' (agreement) in which plaintiff purchased land from defendants - plaintiff contended defendants breached warranties in agreement by failure to disclose 'Development Approval' conditions on land's use and failure to disclose land's use was unlawful - plaintiff also claimed misleading or deceptive conduct by defendants concerning land's sale before agreement and in between agreement's date and settlement - *Planning and Development Act 2005* (WA) - *Town Planning and Development Act 1928* (WA) - 'environmental buffer' - held: plaintiff established breach of warranty and misleading or deceptive conduct - judgment for plaintiff including costs of complying with Development Approval.



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

IVO Nominees Pty Ltd v Shire of Murray [2019] WASC 67

Supreme Court of Western Australia

Curthoys J

Planning and development - criminal law - appellant convicted by Magistrate of two offences under s218 *Planning and Development Act 2005 (WA)* - appellant sought to appeal - appellant contended Magistrate erroneously found activities required development approval and erred in conclusion concerning extent of appellant's 'non-conforming use rights' - appellant alternatively contended sentence excessive - whether appeal grounds had 'reasonable prospect of success' - land clearing - 'drain excavation' - cl8.1(i) Shire of Murray Town Planning Scheme No 4 - held: leave to appeal granted - appeal allowed.

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

CRIMINAL

Executive Summary

Summaries With Link



From The Tempest

By: William Shakespeare

Where the bee sucks, there suck I;
In a cowslip's bell I lie;
There I couch when owls do cry.
On the bat's back I do fly
After summer merrily.
Merrily, merrily shall I live now
Under the blossom that hangs on the bough.

https://en.wikipedia.org/wiki/William_Shakespeare

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