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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)

Barnes v Repatriation Commission (FCA) - administrative law - refusal of application for increase in disability pension's rate - appeal dismissed (I B C G)

Omya Investments Pty Ltd v Nationwide News Pty Ltd (Injunction Application) (FCA) - injunction - application for injunction requiring publication's alteration and to restrain 'future publications' - Court satisfied to grant injunction concerning paragraphs of publication but not restraining future publications (I B C G)

Croghan v Blacktown City Council (NSWCA) - costs - indemnity costs - land and environment - compulsory acquisition of land - appeal against costs orders allowed (I B C G)

National Australia Bank Limited v Human Group Pty Ltd (NSWSC) - stay - first and second defendants sought 'temporary stay' of present proceedings pending criminal proceedings' determination - stay granted with respect to second defendant (I B)

Allianz Australia Insurance Ltd v Byrne (NSWSC) - judicial review - motor accidents compensation - permanent impairment - plaintiff sought declaration that Certificate of Medical Review Panel was invalid - summons dismissed (B I G)

Stephen Richard O'Ryan v Gregory Ray Golding No.3 (NSWSC) - corporations - winding up - liquidators sought orders they were justified to enter funding agreement, to 'appoint

themselves as voluntary administrators' and ancillary orders modifying Pt 5.3A *Corporations Act 2001* (Cth) - orders granted (B)

Kheir v Robertson (VSCA) - administrative law - refusal of application for reduction of prison sentence and non-parole period under s58E *Corrections Act 1986* (Vic) - leave to appeal refused (I B C G)

Summaries With Link (Five Minute Read)

Barnes v Repatriation Commission [2019] FCA 1685

Federal Court of Australia

Kenny J

Administrative law - applicant sought increase in disability pension's rate - delegate of Repatriation Commission refused applicant's application - Veterans' Review Board affirmed delegate's decision - Administrative Appeals Tribunal affirmed Board's decision - applicant appealed - whether entitlement to receipt of pension at "Intermediate or Special rate" - whether Tribunal 'failed to address the correct statutory question' in consideration of whether applicant met 'statutory requirement' in s23(3)(b) *Veterans' Entitlements Act 1986* (Cth) - whether failure by Tribunal to provide reasons in accordance with requirement in s43 *Administrative Appeals Tribunal Act 1975* (Cth) - held: appeal dismissed.

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

Omayya Investments Pty Ltd v Nationwide News Pty Ltd (Injunction Application) [2019] FCA 1652

Federal Court of Australia

Perram J

Injunction - application for injunction requiring respondent's alteration of 'online publication' - application extended to restraining of respondent from 'certain future publications' - whether paragraphs in publication false - whether likelihood respondent would publish story in which message 'along the lines' of paragraphs in publication would be conveyed again - held: Court satisfied to grant injunction in respect of paragraphs of publication - Court not satisfied to grant injunction restraining future publications - orders to be made.

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

Croghan v Blacktown City Council [2019] NSWCA 248

Court of Appeal of New South Wales

Meagher & McCallum JJA; Simpson AJA

Costs - indemnity costs - land and environment - compulsory acquisition of land - applicant sought to appeal against costs orders made under r42.15 *Uniform Civil Procedure Rules 2005* (NSW) (Rules) - applicant had rejected respondent's offer of compromise - applicant obtained judgment less than amount of offer - whether erroneous application of r42.15 Rules in

'Class 3 proceeding' - whether failure to determine whether presumption that claimant bear litigation's costs, on indemnity basis, from time offer was rejected, should be displaced - held: appeal allowed.

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

National Australia Bank Limited v Human Group Pty Ltd [2019] NSWSC 1404

Supreme Court of New South Wales

Henry J

Stay - second defendant was facing charges in criminal proceedings - in present proceedings plaintiff claimed second defendant and first defendant (defendants) 'engaged in a fraudulent scheme' which resulted in loss to plaintiff - facts in present proceedings overlapped with facts allegedly giving rise to criminal proceedings - defendants, under s67 *Civil Procedure Act 2005* (NSW) sought 'temporary stay' of present proceedings pending criminal proceedings' determination - principles applicable to civil proceeding's stay - *Australian Securities and Investments Commission v Australia and New Zealand Banking Group Limited* [2019] FCA 964 - 'right to silence' - 'privilege against self-incrimination' - held: Court granted temporary stay of proceedings against second defendant - stay refused concerning first defendant - plaintiff entitled to use Court's processes to access documents 'produced under subpoena'.

[View Decision](#) (I B)

Allianz Australia Insurance Ltd v Byrne [2019] NSWSC 1377

Supreme Court of New South Wales

Loneragan J

Judicial review - motor accidents compensation - permanent impairment - first defendant lodged compensation claim with plaintiff under *Motor Accidents Compensation Act 1999* (NSW) - plaintiff sought declaration that Certificate of Medical Review Panel was invalid and that matter be remitted for determination - plaintiff contended there was no evidence in support of Panel's causation decision and that Panel had 'failed to carry out its statutory duty' - whether jurisdictional error established - held: summons dismissed.

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

Stephen Richard O'Ryan v Gregory Ray Golding No.3 [2019] NSWSC 1372

Supreme Court of New South Wales

Hammerschlag J

Corporations - winding up - liquidators sought order they were justified to enter funding agreement, order they 'appoint themselves as voluntary administrators', and ancillary orders modifying Pt 5.3A *Corporations Act 2001* (Cth) (Corporations Act) - ss477(2B), 436B(2)(g) & 438A Corporations Act - held: orders granted.

[View Decision](#) (B)

Kheir v Robertson [2019] VSCA 229

Court of Appeal of Victoria

Whelan, McLeish & Weinberg JJA

Administrative law - applicant sought reduction of prison sentence and non-parole period under s58E *Corrections Act 1986* (Vic) - first respondent was delegate of third respondent - first respondent refused application - primary judge dismissed application for judicial review - applicant sought to appeal - whether failure by first respondent to consider 'committal transcript' - whether denial of procedural fairness - 'emergency management days' - held: leave to appeal refused.

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

CRIMINAL

Executive Summary

Summaries With Link



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Fairy-Land

BY: EDGAR ALLAN POE

Dim vales—and shadowy floods—
And cloudy-looking woods,
Whose forms we can't discover
For the tears that drip all over:
Huge moons there wax and wane—
Again—again—again—
Every moment of the night—
Forever changing places—
And they put out the star-light
With the breath from their pale faces.
About twelve by the moon-dial,
One more filmy than the rest
(A kind which, upon trial,
They have found to be the best)
Comes down—still down—and down
With its centre on the crown
Of a mountain's eminence,
While its wide circumference
In easy drapery falls
Over hamlets, over halls,
Wherever they may be—
O'er the strange woods—o'er the sea—
Over spirits on the wing—
Over every drowsy thing—
And buries them up quite
In a labyrinth of light—
And then, how, deep! —O, deep,
Is the passion of their sleep.
In the morning they arise,
And their moony covering
Is soaring in the skies,
With the tempests as they toss,
Like—almost any thing—
Or a yellow Albatross.
They use that moon no more
For the same end as before,
Videlicet, a tent—
Which I think extravagant:



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Its atomies, however,
Into a shower dissever,
Of which those butterflies
Of Earth, who seek the skies,
And so come down again
(Never-contented things!)
Have brought a specimen
Upon their quivering wings.

[EDGAR ALLAN POE](#)

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