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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)

Carter v Australian Securities & Investments Commission (FCA) - service - corporations - disqualification - applicant served with notice of disqualification in accordance with requirements in s206F(3) *Corporations Act 2001* (Cth) - declaration that disqualification decision was yet to take effect refused (I B C G)

Poseidon Nickel Ltd, in the matter of Poseidon Nickel Ltd (FCA) - corporations - disclosure - securities issues (Share Issues) made without disclosure in contravention of ss707(3) & 727(1), Pt 6D.2 *Corporations Act 2001* (Cth) - relief granted (I B C G)

Berrell v Allianz Australia Insurance Ltd (NSWSC) - judicial review - whole person impairment - refusal to refer medical assessment to review panel - no error in proper officer's decision - amended summons dismissed (B C I G)

Sergent v Glass (No 2) (NSWSC) - wills and estates - succession - family provision - intestacy - judicial advice - two sons of deceased sought provision from deceased father's estate and notional estate - defendant appointed as administrator ad litem - defendant entitled to resolve proceedings on terms sought - orders made (B)

Glenister v Wayne Horne Earthmoving Pty Ltd (VSC) - judicial review - challenge to Magistrate's dismissal of charge alleging contravention of s21 *Occupational Health and Safety Act 2004* (Vic) - inadequately explained failure to exercise statutory right of appeal - relief

refused on discretionary grounds (I B C G)

Tucker v State of Victoria (VSC) - pleadings - transfer of proceeding - joinder - summary judgment - determination of applications (I B C G)

Hart v Melbourne Underwater World Pty Ltd (VSC) - judicial review - damages - non-economic loss - permanent impairment - plaintiff sought to quash Medical Panel's determination that her injuries did not satisfy threshold level for damages - proceedings dismissed (I B C G)

Summaries With Link (Five Minute Read)

Carter v Australian Securities & Investments Commission [2018] FCA 1064

Federal Court of Australia

Colvin J

Service - corporations - disqualification - respondent, pursuant to s206F(3) *Corporations Act 2001* (Cth), decided to disqualify applicant from managing corporations for four years (disqualification decision) - applicant contended, that on s206F(3)'s proper construction and in events which occurred, he had not yet been served notice of disqualification - applicant sought declaration that disqualification decision was yet to take effect - requirements for service - held: Court satisfied that service in accordance with requirements s206F(3) had occurred - application dismissed.

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

Poseidon Nickel Ltd, in the matter of Poseidon Nickel Ltd [2018] FCA 1063

Federal Court of Australia

Colvin J

Corporations - plaintiff made securities issues (Share Issues) without disclosure in contravention of ss707(3) & 727(1), Pt 6D.2 *Corporations Act 2001* (Cth) (*Corporations Act*) - there had been trading in securities subject of Share Issues prior to plaintiff's provision of disclosure by lodging a prospectus with Australian Securities and Investments Commission on 5 April 2018 - plaintiff, pursuant to 1322(4) *Corporations Act*, sought orders that dealings in shares were not invalid due to failure to comply with ss707(3) & 727(1) - plaintiff also sought that shares' sellers be granted relief from civil liability - protection of interests of shares' holders - protection of innocent participants - integrity of 'future dealings' - held: Court satisfied to grant relief - relief not extended to parties involved in 'conduct that may have resulted in contravention' - orders made.

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

Berrell v Allianz Australia Insurance Ltd [2018] NSWSC 1114

Supreme Court of New South Wales

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Fagan J

Judicial review - plaintiff claimed he was injured in motor vehicle accident - plaintiff's compensation claim gave rise to "medical dispute" under Pt 3.4 *Motor Accidents Compensation Act 1999* (NSW) - medical dispute referred to assessor under s62 of the Act - Medical Assessment Certificate issued by assessor for nil whole person impairment - proper officer of State Insurance Regulatory Authority refused to refer assessment to review panel under s63 of the Act - plaintiff sought review - *Meeuwissen v Boden* (2010) 78 NSWLR 143 - 'reasonable cause to suspect that the medical assessment is incorrect in a material respect' - held: no error in decision of proper officer - amended summons dismissed.

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

Sergent v Glass (No 2) [2018] NSWSC 1100

Supreme Court of New South Wales

Hallen J

Wills and estates - succession - family provision - intestacy - plaintiffs were sons of deceased who sought provision from deceased's estate and notional estate under *Succession Act 2006* (NSW) - beneficiary was entitled to whole estate under rules of intestacy - beneficiary unable to be located - defendant did not have interest in estate - defendant, appointed as administrator ad litem, sought compromise of proceeding on basis the two plaintiffs should share whole estate equally - alternatively, parties sought that application be treated as an application by defendant for judicial advice under s63 *Trustee Act 1925* (NSW) that he would be justified to compromise proceedings according to Consent Orders - one plaintiff was a minor - whether to compromise proceedings - s76 *Civil Procedure Act 2005* (NSW) - held: no provision made for plaintiffs - defendant entitled to form view deceased did not make adequate provision for plaintiffs by intestacy rules' operation - defendant entitled to resolve proceedings on terms defendant considered appropriate.

[View Decision](#) (B)

Glenister v Wayne Horne Earthmoving Pty Ltd [2018] VSC 390

Supreme Court of Victoria

McDonald J

Judicial review - plaintiff brought two charges of contravention of *Occupational Health and Safety Act 2004* (Vic) (OHSA) against first defendant - one charge was abandoned - Magistrate dismissed second charge - plaintiff did not exercise right of appeal under s272 *Criminal Procedure Act 2009* (Vic) (CPA) within time - plaintiff sought judicial review under O56 *Supreme Court (General Civil Procedure) Rules 2015* (Vic) - plaintiff sought to quash Magistrate's dismissal of second charge - held: Magistrate erred in finding that second charge, which alleged breach of s21 OHSA, was misconceived. - Magistrate erred on face of the record but error was 'within jurisdiction' - application for relief was to be determined in accordance with *Kuek v Victoria Legal Aid* [2001] VSCA 80 - plaintiff had not exercised its statutory right of appeal under s272 CPA - no adequate explanation for failure to exercise statutory right of appeal - judicial review grounds raised were identical to those which could have been advanced by appeal -

relief refused on discretionary grounds.

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

Tucker v State of Victoria [2018] VSC 389

Supreme Court of Victoria

McDonald J

Pleadings - transfer of proceedings - summary judgment - plaintiff sought relief concerning investigations into misconduct he allegedly engaged in while employed by State Revenue Office - sought to amend statement of claim and to join further defendant in capacity of Commissioner of State Revenue - plaintiff also sought transfer of proceeding to Federal Court of Australia under *Jurisdiction of Courts (Cross-vesting) Act 1987* (Cth) - defendant sought summary judgment, contending proceeding had no real prospect of success, or was abuse of process - held: plaintiff's application for leave to amend statement of claim allowed in part - leave granted to join further defendant - plaintiff refused leave to plead breach of s50 *Fair Work Act 2009* (Cth) - application for transfer of proceeding dismissed - application for summary judgment dismissed.

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

Hart v Melbourne Underwater World Pty Ltd [2018] VSC 394

Supreme Court of Victoria

Cavanough J

Judicial review - damages - non-economic loss - permanent impairment - plaintiff claimed she injured spine due to fault of first defendant - plaintiff underwent spinal surgery - Medical Panel found claimed injuries did not satisfy threshold level for damages - plaintiff sought to quash Medical Panel's determination - whether Medical Panel omitted to consider 'pre-surgery injuries' - whether Medical Panel 'wrongly regarded itself as being precluded' from including evaluation of any impairment due to spinal surgery by 'direction' in the AMA Guides - application and interpretation of AMA Guides - Pt VBA *Wrongs Act 1958* (Vic) - held: proceeding dismissed.

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

CRIMINAL

Executive Summary

The Queen v Charani (Ruling 1) (VSC) - criminal law - terrorism - applicant wife sought to wear nikab while in public gallery during trial of husband - Court not satisfied to vary orders that spectators in gallery must have their faces uncovered

R v MCI (No 2) (QCA) - criminal law - sexual offences - conviction following re-trial on four counts of child sex offences - miscarriage of justice not established - appeal dismissed

Summaries With Link

The Queen v Chaarani (Ruling 1) [2018] VSC 387

Supreme Court of Victoria

Beale J

Criminal law - applicants were husband and wife - husband was one of three charged with conspiring 'to do acts in preparation for, or planning, a terrorist act' - wife sought to wear nikab in court during trial - applicants sought variation of Court's earlier order that spectators in public gallery must have faces uncovered 'chiefly for security reasons' - open justice - religious freedom - right to participation in public life - ss14 & 18 *Charter of Human Rights and Responsibilities Act 2006* - held: Court concluded that it was a 'reasonable limitation', which was "demonstrably justified in a free and democratic society based on human dignity, equality and freedom", to require spectators in public gallery to have uncovered faces.

[The Queen](#)

R v MCI (No 2) [2018] QCA 141

Court of Appeal of Queensland

Fraser, Gotterson & Philippides JJA

Criminal law - sexual offences - appellant convicted at re-trial of convictions of four child sex offences - appellant appealed - whether miscarriage of justice consistent with *R v Manning* [2017] QCA 23. arising from Crown's failure to call appellant's mother - whether miscarriage of justice arising from admission of evidence 'led in direct proof of count 4' when the evidence in fact related to offence in respect of which applicant had been acquitted - whether miscarriage of justice arising from appellant's cross-examination - whether miscarriage of justice arising from judge's failure to direct jury concerning use of evidence - held: appeal dismissed.

[R v MCI](#)



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Sonnet 109

By: William Shakespeare

O, never say that I was false of heart,
Though absence seemed my flame to qualify.
As easy might I from my self depart
As from my soul which in thy breast doth lie.
That is my home of love; if I have ranged,
Like him that travels I return again,
Just to the time, not with the time exchanged,
So that myself bring water for my stain.
Never believe though in my nature reigned
All frailties that besiege all kinds of blood,
That it could so preposterously be stained
To leave for nothing all thy sum of good;
For nothing this wide universe I call
Save thou, my rose, in it thou art my all
https://en.wikipedia.org/wiki/William_Shakespeare

Early life. William Shakespeare was the son of John Shakespeare, an alderman and a successful glover (glove-maker) originally from Snitterfield, and Mary Arden, the daughter of an affluent landowning farmer.

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