



Friday, 20 October 2017

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

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### CIVIL (Insurance, Banking, Construction & Government)

### Executive Summary (1 minute read)

**Webster v Super Smart Strategies Pty Ltd (No 4)** - costs - dismissal of first cross-claim against first cross-defendant - gross sum costs order granted to first cross-defendant (I B C G)

**Morris Finance Ltd v Free** (NSWSC) - equity - plaintiff entitled to enforce equitable charge against third defendant's half-share in property - orders made for sale of property and vacant possession (I B C G)

**Williams & Ors v AusNet & Ors (Ruling No 4)** (VSC) - costs - solicitors' costs - settlement of class action - \$6.6 million to be paid to lawyers for representative plaintiff (I B C G)

**Robinson v The Owners of Reflections Waterfront Apartments West Tower Strata Plan 58085** (WASCA) - negligence - slip and fall in strata complex's common area - strata company not liable - appeal dismissed (I B C G)

**Global Advanced Metals Pty Ltd v Metallurg Inc** (WASCA) - contract - shareholders deed - injunction - construction of shareholders deed - injunctive relief - appeal dismissed (I B C G)

**La Trobe Financial Asset Management Ltd v Mdivest Pty Ltd** (WASC) - contract - three actions in which plaintiff sought payment due pursuant to loan agreements, mortgages, and guarantees, and sought possession of properties - judgment for plaintiff (I B C G)

**Motor Accidents Insurance Board v Britton (TASSC)** - traffic law - motor accident - jurisdiction of Motor Accidents Compensation Tribunal to make retrospective determination of eligibility for scheduled benefits - appeal dismissed (I B C G)

## Summaries With Link (Five Minute Read)

### **Webster v Super Smart Strategies Pty Ltd (No 4) [2017] NSWSC 1416**

Supreme Court of New South Wales

Adamson J

Costs - Court dismissed first cross-claim against first cross-defendant - first cross-defendant sought gross sum costs orders against first and second cross-claimants - s98 *Civil Procedure Act 2005* (NSW) - r20.26 *Uniform Civil Procedure Rules 2005* (NSW) - held: Court satisfied there was 'sufficient material to determine an appropriate sum' - Court satisfied cross-claimants had 'unnecessarily contributed' to proceedings' costs by filing cross-claims which they decided not to pursue, and by their adoption of positions and tactics which were 'unproductive, unmeritorious and inefficient' - gross sum costs order granted.

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

### **Morris Finance Ltd v Free [2017] NSWSC 1417**

Supreme Court of New South Wales

Ward CJ in Eq

Equity - equitable charge - plaintiff sought judicial sale of property and orders for possession - third and fourth defendants, prior to bankruptcies, held title in equal shares to property - first and second defendants were trustees of bankrupt estate of third and fourth defendants - sequestration orders made in respect of third and fourth defendants - fifth defendant was first registered mortgagee - plaintiff sought to enforce alleged equitable charge against property, which secured unpaid money under commercial lease agreement entered with third defendant, whose obligations were guaranteed by fourth defendant - held: plaintiff entitled to enforce equitable charge over third defendant's half-share of property - property to be sold subject Court's supervision - third and fourth defendants ordered to give vacant possession of property to plaintiff.

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

### **Williams & Ors v AusNet & Ors (Ruling No 4) [2017] VSC 619**

Supreme Court of Victoria

J Forrest J

Costs - solicitors' costs - class action settled for \$16 million including costs - settlement approved - question concerning costs payable to lawyers for representative plaintiff referred to Associate Judge - Court's role under s33V *Supreme Court Act 1986* (Vic) to ensure settlement, including allowance of lawyers' costs, was fair and reasonable - amendment of Supreme Court scale of fees in 2012 to provide for taxation on standard basis - power of Court to make orders -

application of costs rules - requirement that Court exercise 'particular care' in examining legal costs claimed in class actions - rr63.34(3) & 63.48 *Supreme Court (General Civil Procedure) Rules 2015* (Vic) - held: \$6.6 million to be paid to lawyers for representative plaintiff.

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

## **Robinson v The Owners of Reflections Waterfront Apartments West Tower Strata Plan 58085 [2017] WASCA 190**

Court of Appeal of Western Australia

Martin CJ; Murphy & Mitchell JJA

Negligence - appellant injured when she slipped and fell in strata complex's common area - respondent strata company managed the strata complex - primary judge dismissed appellant's claim in negligence against respondent - whether erroneous findings that appellant did not prove causation, that respondent had 'adequate and reasonable cleaning regime', and that respondent was not negligent - ss5B, 5C & 5D *Civil Liability Act 2002* (WA) (CLA) - s5 *Occupiers' Liability Act 1985* (WA) (OLA) - whether stain, tile or walkway was a 'danger' under OLA or 'risk of harm' under s5B(2) CLA - held: no error in primary judge's finding that there was no evidence that stain on floor had caused appellant to slip - grounds of appeal failed - appeal dismissed.

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

## **Global Advanced Metals Pty Ltd v Metallurg Inc [2017] WASCA 188**

Court of Appeal of Western Australia

Buss P, Murphy & Mitchell JJA

Contract - shareholders deed - applicant sought declarations concerning construction of shareholders deed as to its rights to inspect and copy appellant's documents, and injunction to compel appellant to allow it to inspect and copy certain documents - primary judge granted orders substantively in terms sought by applicant - whether primary judge erred in proper construction of shareholders deed - whether erroneous finding that there had 'not been intentional breaches of confidentiality obligations' - whether alleged breaches constituted 'unclean hands' - whether injunctive relief should have been denied - held: no error in decision of primary judge - grounds of appeal failed - appeal dismissed.

[Global Advanced Metals](#) (I B C G)

## **La Trobe Financial Asset Management Ltd v Mdivest Pty Ltd [2017] WASC 272**

Supreme Court of Western Australia

Chaney J

Contract - three actions in which plaintiff sought payment due pursuant to loan agreements, mortgages, and guarantees, and sought possession of properties which were security for loans - same defendants in two of the actions - no issue amounts were owing and unpaid - overlap of defences between actions - one defence common to all actions - whether 'lack of clarity' in documents disentitled plaintiff from suing on agreements - effectiveness of assignment of loan agreement, guarantee and mortgage - whether plaintiff barred from claiming relief due to

agreement with defendants to forebear action, or due to an estoppel - whether plaintiff failed to comply with s81B(2)(b) *Residential Tenancies Act 1987* (WA), precluding Court from making order for possession - whether s81B applied in the context of one the actions, precluding Court from making order for possession - held: defences unsuccessful - plaintiff entitled to judgment in all three actions.

[La Trobe](#) (I B C G)

## **Motor Accidents Insurance Board v Britton [2017] TASSC 60**

Supreme Court of Tasmania

Blow CJ

Traffic law - motor accident - respondent driver of motor vehicle injured in collision with cow - respondent claimed scheduled benefits from appellant under *Motor Accidents (Liabilities and Compensation) Act 1973* (Tas) - appellant paid disability allowance and medical expenses, before determining respondent not entitled to further payments of disability allowance on 29/6/14 - appellant referred matter of right to disability allowance to Motor Accidents Compensation Tribunal - reference was out of time - respondent did not seek extension of time - Tribunal found it had no jurisdiction in respect of purported reference - respondent's solicitors claimed disability allowance from appellant on basis respondent was 'wholly disabled' Board refused allowance - respondent's solicitors referred matter to Tribunal, following which Board accepted respondent entitled to disability allowance - dispute arose as to date from which Tribunal could require Board to pay - respondent contended Tribunal had jurisdiction to make determination back-dated to date when payments ceased on 29/6/14 - Tribunal determined jurisdiction issue as preliminary point, finding it had "jurisdiction to determine the ... claim for the employed person's allowance from and including 30 June 2014 to 19 November 2015" - Board appealed - scope of right of appeal under s28(6) of the Act - extent of Tribunal's jurisdiction to make retrospective determination - held: appeal dismissed.

[Motor Accidents Insurance Board](#) (I B C G)

## CRIMINAL

### Executive Summary

**Director of Public Prosecutions v Dalglish (a pseudonym)** (HCA) - criminal law - sentencing appeal - incest - manifest inadequacy - Court of Appeal of Victoria erroneously treated range indicated by current sentencing practices as determinative of Director's appeal against sentence - appeal allowed

**JWM v Tasmania** (TASCCA) - criminal law - sexual offences - indecent assault - maintaining sexual relationship with son under 17 - no error in severity of sentence imposed - appeal dismissed

## Summaries With Link

### **Director of Public Prosecutions v Dalglish (a pseudonym) [2017] HCA 41**

High Court of Australia

Kiefel CJ, Bell, Gageler, Keane & Gordon JJ

Criminal law - incest - sentence appeal - current sentencing practices - Director of Public Prosecutions appealed against sentence imposed for offence of incest on ground of manifest inadequacy - appeal concerned sentence imposed for one charge, in which offender was sentenced to three years and six months' in prison - Court of Appeal of Supreme Court of Victoria dismissed appeal, finding sentence was within range of current sentencing practices i - however Court also found that the range "reveals error in principle" because it was so low it was not proportionate to offending's 'objective gravity' or offender's 'moral culpability' - Director contended Court of Appeal erred by not concluding sentencing judge had erroneously imposed manifestly inadequate sentence - Director contended Court of Appeal erroneously elevated current sentencing practices' significance such that 'they were determinative of the issue' - s5(2) *Sentencing Act 1991* (Vic) - held: Court of Appeal erred by treating range which current sentencing practices established as decisive of appeal - appeal allowed.

[Director of Public Prosecutions](#)

### **JWM v Tasmania [2017] TASCRA 22**

Court of Criminal Appeal of Tasmania

Pearce & Brett JJA; Porter AJ

Criminal law - sexual offences - indecent assault - sentencing practices - sentence appeal - appellant pleaded guilty to charge of 'maintaining a sexual relationship with his son' when son was between 10 and 15 years - appellant sentence to four years in prison without eligibility for parole until half the sentence was served - order made that appellant's name be placed on register under *Community Protection (Offender Reporting) Act 2005* (Tas) for five years - whether sentence manifestly excessive - held: no error in severity of sentence imposed - sentence did not exceed ambit of sentencing discretion - appeal dismissed.

[JWM](#)



# Benchmark

## **Moonrise**

By [Gerard Manley Hopkins](#)

I AWOKE in the Midsummer not to call night, in the  
white and the walk of the morning:  
The moon, dwindled and thinned to the fringe of a  
finger-nail held to the candle,  
Or paring of paradisaical fruit, lovely in waning but  
lustreless,  
Stepped from the stool, drew back from the barrow, of  
dark Maenefa the mountain;  
A cusp still clasped him, a fluke yet fanged him, en-  
tangled him, not quit utterly.  
This was the prized, the desirable sight, unsought, pre-  
sented so easily,  
Parted me leaf and leaf, divided me, eyelid and eyelid of  
slumber.

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