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## Daily Composite Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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

### Executive Summary (1 minute read)

**van Haandel v Byron Bay Beach Hotel Properties Pty Ltd** (NSWSC) - real property - caveat - right of first refusal pursuant to Put and Call Option Deed varied by a Deed of Variation - plaintiff did not have interest in property claimed under caveat - summons dismissed (I B C G)

**Sarb Management Group Pty Ltd v Responsive Prospects Pty Ltd** (NSWSC) - contract - settlement agreement - proceedings had settled on certain terms - no grounds to set aside settlement agreement - order made (I B)

**Case & Anor v Eaton & Anor** (QSC) - damages - motor vehicle accident - compromise by terms of settlement - management fees in respect of primary damages order were recoverable - orders made (I B)

**In the Estate of Molnar (No. 2)** (SASC) - costs - wills and estates - application for rectification of deceased's Will granted and extension of time to make application granted - determination of costs (B)

**Forte v Raith Nominees Pty Ltd ATF for the Bitdorf Family Trust** (WASC) - summary judgment - claim for money owing under deed - Court satisfied there was issue to be tried - defendant granted leave to defend - judgment in plaintiff's favour set aside (B)

**Mineral Resources Ltd v Pilbara Minerals Ltd** (WASC) - contract - stay - dispute concerning

validity of notice issued under 'right of first refusal' regime - defendant granted stay of proceedings on basis dispute amenable to resolution by appointed expert  
(I B C G)

**The Retirement Benefits Fund Board v Wood** (TASFC) - superannuation - respondent Magistrate upon resignation ceased to be a contributor to Contributory Scheme - appeal upheld  
(I B)

## Summaries With Link (Five Minute Read)

### **van Haandel v Byron Bay Beach Hotel Properties Pty Ltd [2016] NSWSC 1484**

Supreme Court of New South Wales

Darke J

Real property - plaintiff sought extension of operation of caveat over property - plaintiff claimed interest under right of first refusal pursuant to Put and Call Option Deed varied by Deed of Variation - plaintiff sought declaration that on Deed's property construction defendant required to give plaintiff right of first refusal before offering property for sale - whether right of first refusal continued to operate where neither call option nor put option exercised within specified periods - common ground periods expired about 5 years ago - contractual construction - held: Court concluded defendant's construction was preferable - right of first refusal under Deed no longer existed - plaintiff did not have interest claimed under caveat - summons dismissed.

[van Haandel](#) (I B C G)

### **Sarb Management Group Pty Ltd v Responsive Prospects Pty Ltd [2016] NSWSC 1486**

Supreme Court of New South Wales

Darke J

Contract - settlement agreement - plaintiff sought relief concerning alleged breaches of duty in respect of confidential information pertaining to database - plaintiff contended that solicitors for respective parties had made agreement to settle proceedings - plaintiff sought order under s73 *Civil Procedure Act 2005* (NSW) that proceedings settled on certain terms - held: Court satisfied proceedings had settled on certain terms - no grounds to set settlement agreement aside - order made.

[Sarb](#) (I B)

### **Case & Anor v Eaton & Anor [2016] QSC 239**

Supreme Court of Queensland

Henry J

Damages - motor vehicle accident - deceased died when struck by police car leaving widow and baby daughter - claim for damages for loss of dependency compromised by terms of settlement - primary damages order sought involved second respondent's payment share of settlement sum - issue was whether second respondent should be ordered to pay further damages for

management fees in respect of primary damages order - s64 *Civil Proceedings Act 2011* (Qld) - s59 *Public Trustee Act 1978* (Qld) - s66 *Succession Act 1981* (Qld) - ss17 & 18 *Supreme Court Act 1995* (Qld) - held: Court concluded that management fees were recoverable as damages - orders made.

[Case](#) (I B)

## **In the Estate of Molnar (No. 2) [2016] SASC 159**

Supreme Court of South Australia

Stanley J

Costs - wills and estates - Court granted application for rectification of deceased's Will and granted an extension of time to make application under s25AA *Wills Act 1936* (SA) - determination of costs - s25AA *Wills Act 1936* (SA) - s40(1) *Supreme Court Act 1935* (SA) - r263 *Supreme Court Civil Rules 2006* (SA) - r195 *Supreme Court Civil Supplementary Rules 2014* (SA) - held: executor/solicitor who drafted Will to pay costs of residuary beneficiaries on indemnity and 50% of applicant's costs taxed between party and party - executors to repay costs charged to estate except for specific costs which were to be repaid by executor/solicitor - executor/solicitor to indemnify other executors as to balance of costs to be repaid to estate.

[Molnar](#) (B)

## **Forte v Raith Nominees Pty Ltd ATF for the Bitdorf Family Trust [2016] WASC 337**

Supreme Court of Western Australia

Allanson J

Summary judgment - plaintiff sought summary judgment for money owing under a deed with defendants - Registrar entered judgment for plaintiff - defendants appealed - ss18, 237 & 243 *Australian Consumer Law* - O14 & O60A *Rules of the Supreme Court 1971* (WA) - held: Court satisfied by defendants' evidence that there was issue to be tried - defendants granted leave to defend - judgment for plaintiff set aside.

[Forte](#) (B)

## **Mineral Resources Ltd v Pilbara Minerals Ltd [2016] WASC 338**

Supreme Court of Western Australia

Banks-Smith J

Contract - stay - dispute concerning validity of a notice issued by defendant to second plaintiff under 'right of first refusal' regime - application for stay of proceedings on basis parties contractually agreed to dispute's resolution by expert determination - held: second plaintiff did not meet 'heavy onus' of establishing why Court should refuse stay in the circumstances - dispute was amenable to determination by appointed expert - defendant entitled to stay.

[Mineral Resources](#)

(I B C G)

## **The Retirement Benefits Fund Board v Wood [2016] TASFC 9**

Full Court of the Supreme Court of Tasmania

Byrne, Emmett & Fraser JJA

Superannuation - respondent magistrate appointed pursuant to *Supreme Court Act 1887* (Tas) as judge of the Supreme Court of Tasmania - prior to appointment respondent was a magistrate appointed under *Magistrates Court Act 1987* (Tas) - dispute concerned whether respondent, upon resignation as magistrate, ceased to be contributor to Contributory Scheme - primary judge found that resignation did not have effect that magistrate ceased to be contributor and member of Contributory Scheme - respondent's retirements benefits position - vested rights argument - continuity argument - *Retirement Benefits Act 1993* (Tas) - meaning of 'contributor' under *Retirement Benefit Fund Regulations 2005* - held: upon resigning as magistrate, respondent ceased to be contributor and member of Contributory Scheme - appeal upheld.

[The Retirement Benefits Fund Board](#) (I B)

## CRIMINAL

### Executive Summary

**Hitchcock v R** (NSWCCA) - criminal law - wound with intent to murder - effect of brain damage on offending - lesser sentence imposed - appeal allowed

**R v Donald; R v Pitt; R v Whitaker** (SASCFC) - criminal law - three applicants sentenced for drug trafficking offences - principles applicable to multiple offending - miscarriage of sentencing process - applicants resentenced - appeal allowed

### Summaries With Link

#### **Hitchcock v R [2016] NSWCCA 226**

Court of Criminal Appeal of New South Wales

Hoeben CJ at CL; Harrison & Campbell JJ

Criminal law - applicant was charged with offence of wound with intent to murder contrary to s27 *Crimes Act 1900* (NSW) - applicant entered plea of guilty and sentenced to imprisonment with non-parole period of 8 years with a balance of term of 4 years - applicant sought to appeal against sentence on ground judge failed to quantify discount for applicant's assistance to authorities - s27 *Crimes Act 1900* (NSW) - ss23 & 101A *Crimes (Sentencing Procedure) Act 1999* (NSW) - s5(1)(c) *Criminal Appeal Act 1912* (NSW) - *Motor Accident Compensation Act 1999* (NSW) - held: Court concluded that lesser sentence warranted than that which was imposed at first instance, principally on basis of giving substantial weight to 'causal effect of applicant's brain damage on the offending' - special circumstances existed - Court imposed a period of imprisonment with non-parole period of 6 years and balance of term of 3 years - appeal allowed.





[Hitchcock](#)

**R v Donald; R v Pitt; R v Whitaker [2016] SASCFC 117**

Full Court of the Supreme Court of South Australia

Nicholson, Parker & Lovell JJ

Criminal law - three applicants sentenced for offences involving drug trafficking - sentencing of three applicants for 'combined total of 57 serious drug offences and one count of drive dangerously to escape police pursuit' - two of the applicants (Donald and Whitaker) sentenced to 15 years in prison with non-parole period of nine years - other applicant (Pitt) sentenced to 11 years and nine months in prison with non-parole period of six years - applicants contended sentences were manifestly excessive or that judge erred in approach to sentencing task - totality and concurrency - discounts - sentencing principles applicable to multiple offending - held: sentencing process miscarried due to primary judge's approach - each applicant resentenced - appeal allowed.

[DonaldPittWhitaker](#)



## **The Poppy**

By [Jane Taylor](#)

High on a bright and sunny bed  
A scarlet poppy grew  
And up it held its staring head,  
And thrust it full in view.

Yet no attention did it win,  
By all these efforts made,  
And less unwelcome had it been  
In some retired shade.

Although within its scarlet breast  
No sweet perfume was found,  
It seemed to think itself the best  
Of all the flowers round,

From this I may a hint obtain  
And take great care indeed,  
Lest I appear as pert and vain  
As does this gaudy weed.?

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