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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)

Quaker Chemical (Australasia) Pty Ltd v Fuchs Lubricants (Australasia) Pty Ltd (FCA) - evidence - objection to admission of documents produced by third party - certain pages of respondent's tender bundle admitted (I B C G)

Bezer v Bassan (NSWCA) - negligence - motor vehicle accident - dispute concerning whether appellant or respondent was driver of vehicle when vehicle crashed - primary judge found appellant was driver and gave judgment in respondent's favour - appeal dismissed (B C I G)

Neoen Australia Pty Ltd v Minister for Planning (VSC) - planning and environment - application to quash Ministers' 'deferral determination' - application dismissed (I B C G)

El-Saafin & Anor v Franek & Ors (No 3) (VSC) - corporations - appeal against decisions at meeting of company's creditors - 'rejected proofs' - 'challenged proofs' - liquidator to provide report on company's solvency - direction made (I B C G)

Courtney v Ray (VSC) - limitations - application in reliance on *Limitation of Actions Amendment (Child Abuse) Act 2015* (Vic) to reinstate proceeding - proceeding reinstated (I B C G)

McDermott and Potts in their capacities as joint and several liquidators of Lonnex Pty Ltd (in liq) [No 2] (VSCA) - costs - refusal of orders directing appellants that they were justified to compromise proceeding and approving entry into settlement terms - determination of costs (I B

C G)

Summaries With Link (Five Minute Read)

Quaker Chemical (Australasia) Pty Ltd v Fuchs Lubricants (Australasia) Pty Ltd [2019] FCA 370

Federal Court of Australia

Robertson J

Evidence - applicant objected to admission to evidence of documents from third party in respondent's tender bundle - documents produced to Court on subpoena issued at applicant's request - ss58 & 69 *Evidence Act 1995* (Cth) - whether authenticity a 'ground of admissibility' - held: emails excluded under 'business records exception' - certain pages of tender bundle admitted.

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

Bezer v Bassan [2019] NSWCA 50

Court of Appeal of New South Wales

Macfarlan, Leeming & Payne JJA

Negligence - motor vehicle accident - parties were occupants of motor vehicle which travelled off road and crashed - appellant 'severely injured' - respondent 'slightly injured' - appellant sued respondent - liability issue was whether appellant or respondent was driving vehicle at time of accident - primary judge found appellant was driver and that respondent was entitled to judgment - appellant appealed - whether appellant had proved on balance of probabilities that respondent was driver - 'segmented fact finding' - whether miscarriage of 'fact finding process' - credit - whether re-trial necessary - whether 'material error' by primary judge - held: appeal dismissed.

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

Neoen Australia Pty Ltd v Minister for Planning [2019] VSC 162

Supreme Court of Victoria

Ierodiasconou AsJ

Planning and environment - applicant sought planning permit under *Planning and Environment Act 1987* (Vic) - applicant sought to quash respondent's 'deferral determination' and order that Minister make decision within 'certain time or a reasonable time' - held: applicant did not meet threshold to enable matter to progress - application not properly within *Administrative Law Act 1978* (Vic) - applicant did not establish prima facie case - application dismissed.

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

El-Saafin & Anor v Franek & Ors (No 3) [2019] VSC 155

Supreme Court of Victoria

Lyons J

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Corporations - plaintiffs appealed against 'certain decisions of Mr Ivan Glavas' at meeting of company's creditors and sought termination of order that company be wound up - plaintiffs sought to 'reverse' decisions concerning 'rejected proofs' and 'challenged proofs' - plaintiffs also sought order directing Mr Caspany to report to creditors under s70-40 [*Insolvency Practice Rules (Corporations) 2016* (Cth) by certain date and to call meeting creditors of company 'as soon as reasonably practicable thereafter' to resolve whether company 'should remain in liquidation' - held: conclusions made concerning rejected proofs and challenged proofs - creditors would have voted against company's winding up - creditors would have voted to end administration - liquidator to provide a report on company's solvency - direction made. [El-Saafin](#) (I B C G)

Courtney v Ray [2019] VSC 175

Supreme Court of Victoria
Ierodionou AsJ

Limitations - plaintiff, in reliance on *Limitation of Actions Amendment (Child Abuse) Act 2015* (Vic), sought to reinstate proceeding 'finalised over 15 years ago' - proceeding concerned allegations of 'institutional abuse' - reinstatement application made against second defendant State - rr24.06(a) & 24.05(b) *Supreme Court (General Civil Procedure) Rules 2015* (Vic) whether 'adequate grounds' to reinstate proceeding - prejudice - interests of justice - State's lack of opposition to reinstatement - held: Court satisfied to reinstate proceeding.

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

McDermott and Potts in their capacities as joint and several liquidators of Lonnex Pty Ltd (in liq) [No 2] [2019] VSCA 62

Court of Appeal of Victoria
Whelan, McLeish & Hargrave JJA

Costs - appellants, under ss477(2B) & 511 *Corporations Act 2001* (Cth), sought orders directing that they were justified to compromise proceeding and approving entry into settlement terms - associate judge refused application - Court granted appellants leave to appeal and dismissed appeal - determination of costs - Commissioner sought costs of application for leave to appeal and appeal 'personally' - whether appellants had 'right of indemnity' from company's assets - whether costs to be treated as 'cost or expense' in company's liquidation - held: appellants to pay Commissioner's costs of application for leave to appeal and appeal - appellants had no right of indemnity against company's assets - costs of proceeding at first instance to be paid out of company's assets.

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

CRIMINAL

Executive Summary



Summaries With Link



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The Cricket

By: Edwin Markham

The twilight is the morning of his day.

While Sleep drops seaward from the fading shore,
With purpling sail and dip of silver oar,
He cheers the shadowed time with roundelay,
Until the dark east softens into gray.

Now as the noisy hours are coming—hark!
His song dies gently—it is growing dark—
His night, with its one star, is on the way!

Faintly the light breaks over the blowing oats—

Sleep, little brother, sleep: I am astir.

We worship Song, and servants are of her—
I in the bright hours, thou in shadow-time:
Lead thou the starlit night with merry notes,
And I will lead the clamoring day with rhyme.

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

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