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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)

**Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science (FCAFC)** - administrative law - judicial review - anti-dumping proceeding - *Customs (International Obligations) Regulation 2015* (Cth) - calculation of 'actual amounts' - appeal allowed (I B C G)

**Breen v Clough (No 2) (NSWSC)** - costs - easement - successful plaintiffs to pay defendant's costs of unsuccessful aspect of claim - no unreasonable rejection of defendant's Calderbank offers - orders made (I B C G)

**Mrdajl v Southern Cross Constructions (NSW) Pty Ltd (In Liq) (NSWSC)** - judgments and orders - pleadings - *Civil Liability (Third Party Claims Against Insurers) Act 2017* (NSW) - no proper basis to bring proceedings against other insurer - notice of motion dismissed (I B C G)

**National Australia Bank Ltd v Charlton; Charlton v The General Manager, NSW Rural Assistance Authority (NSWSC)** - summary dismissal - judicial review - farm debt - possession - notice of motion dismissed (I B C G)

**The Estate of Mark Edward Tighe (NSWSC)** - succession - intestacy - indigenous provisions of *Succession Act 2006* (NSW) - letters of administration and distribution order granted to applicant (B)

**DRA Industries Pty Ltd v Kuredale Pty Ltd (WASCA)** - negligence - contract - appellant engaged to paint steel pipes respondent successful in proceedings for recovery of costs of rectification work when pipes corroded - appeal dismissed (I B C G)

**Myers v Paton (ACTSC)** - evidence - motor vehicle accident - application for taking of evidence in London granted (I B C G)

## Summaries With Link (Five Minute Read)

### **Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science [2018] FCAFC 20**

Full Court of the Federal Court of Australia

Perram, Pagone & Bromwich JJ

Administrative law - statutory interpretation - second appellant manufactured steel pipes in China - first appellant imported pipes into Australia - primary judge dismissed application for judicial review in anti-dumping proceeding concerning the pipes - appellant had sought review of amount of dumping duty in 2014 - Commissioner had divided review into 'variable factors' including 'ascertained 'export price'' and 'ascertained 'normal value'' of goods (HSS) - procedural fairness - 'no evidence' ground - 'same general category of goods' - 'actual amounts' - calculation of 'normal value of HSS sections exported to Australia' governed by s269TAC *Customs Act 1901* (Cth) - 'determination of the cost of production' - held: appeal successful on ground concerning calculation of 'actual amounts' - reg 45(3)(a) *Customs (International Obligations) Regulation 2015* (Cth) was not satisfied - appeal allowed.

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

### **Breen v Clough (No 2) [2018] NSWSC 158**

Supreme Court of New South Wales

Darke J

Costs - easement - Calderbank offers - Court required defendant to undertake works at own expense in respect of subject of easement, provide keys to plaintiffs and damages to plaintiff - determination of costs - held: Court satisfied to depart from ordinary rule that costs follow event to extent that plaintiffs failed on nuisance aspect of their claim - plaintiffs to pay defendant's costs of nuisance claim and unjust enrichment claim - no unreasonable failure to accept defendant's Calderbank offers - orders made.

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

### **Mrdajl v Southern Cross Constructions (NSW) Pty Ltd (In Liq) [2018] NSWSC 161**

Supreme Court of New South Wales

Walton J

Judgments and orders - applicant sought to file fifth further amended statement of claim pursuant to s4 *Civil Liability (Third Party Claims Against Insurers) Act 2017* (NSW) - applicant

seeking permission that proceedings be brought against another insurer (respondent) - whether requirements in s4(1) for the granting of leave satisfied - sufficiency of evidence - whether 'jurisdictional foundation' for order - held: Court found there was not a proper basis to grant order sought - notice of motion dismissed.

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

## **National Australia Bank Ltd v Charlton; Charlton v The General Manager, NSW Rural Assistance Authority [2018] NSWSC 157**

Supreme Court of New South Wales

Walton J

Summary dismissal - judicial review - farm debt - Ms Charlton sought summary dismissal of 'debt and possession proceedings' brought by bank (NAB) against her - alternatively Ms Charlton sought separate hearing of 'judicial review proceedings' brought by Ms Charlton and trustee of trust against NAB and General Manager, NSW Rural Assistance Authority, before hearing of debt and possession proceedings - *Farm Debt Mediation Act 1994* (NSW) - held: Ms Charlton failed to establish that debt and possession proceedings ought to be summarily dismissed or that separate hearing of judicial review proceedings should occur before debt and possession proceedings - notice of motion dismissed.

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

## **The Estate of Mark Edward Tighe [2018] NSWSC 163**

Supreme Court of New South Wales

Kunc J

Succession - intestacy - 'kinship' relationship - deceased was Kamilaroi man who died intestate - deceased not survived by person entitled to intestate estate under *Succession Act 2006* (NSW) - deceased had cared for applicant Kamilaroi - applicant had lived with deceased's family and then with deceased - according to deceased and community, deceased and applicant were brothers - applicant, under the Act's indigenous persons' estates provisions in Pt 4.4, sought order giving effect to scheme for distribution that he be paid intestate estate - applicant also sought letters of administration - Kamilaroi elders' evidence - whether any other person had advanced claim - deceased's testamentary intentions - held: Court satisfied it was just and equitable that to make distribution order sought by applicant and to grant administration to applicant.

[View Decision](#) (B)

## **DRA Industries Pty Ltd v Kuredale Pty Ltd [2018] WASCA 17**

Court of Appeal of Western Australia

Buss P; Murphy & Mitchell JJA

Negligence - contract - respondent sued appellant contractor for breach of contract and breach of duty of care concerning appellant's performance of protective paint treatment to steelworks for respondent - respondent supplied steelworks for construction of stadium - respondent rectified corrosion at its cost - respondent sought to recover from appellant costs of rectification

work - primary judge found in favour of respondent - appellant appealed - whether failure to address correct issues - whether erroneous finding or implicit finding, that percentage of corrosion was attributable to appellant - held: grounds of appeal not made out - appeal dismissed.

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

## **Myers v Paton [2018] ACTSC 20**

Supreme Court of the Australian Capital Territory  
Burns J

Evidence - motor vehicle accident - plaintiff passenger in motor vehicle was injured in collision with motor vehicle driven by first defendant - plaintiff sued first defendant and Nominal defendant - plaintiff sought fixing of date for taking of evidence in London - Div 6.10.8, r6813 *Court Procedures Rules 2006* (ACT) - interests of justice - held: Court satisfied plaintiff suffered from post-traumatic stress disorder arising from accident, that there was risk that return to Australia would exacerbate her condition, that there was risk that symptoms' exacerbation would adversely affected plaintiff's ability to participate in hearing, and that risk of symptoms' exacerbation would be reduced by taking evidence in London - it was in interests of justice to take evidence in London - application granted.

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

## CRIMINAL

### Executive Summary

**Mourkakos v The Queen** (VSCA) - criminal law - drug offences - firearm offences - appeal against conviction dismissed - leave to appeal against sentence refused

**R v SCW** (QCA) - criminal law - sexual offences - *Robinson* direction - rule in *Browne v Dunn* - appeal against conviction dismissed

### Summaries With Link

## **Mourkakos v The Queen [2018] VSCA 26**

Court of Appeal of Victoria

Whelan, Santamaria & Kyrou JJA

Criminal law - applicant was convicted and sentenced for drug offences and firearm offences - applicant sought to appeal against conviction and sentence - in relation to conviction, applicant contended judge 'impermissibly dictated to the jury the sequence of its deliberations', and that verdict on one charge was 'inconsistent and irreconcilable' with a not guilty verdict on another



charge - in relation to sentence applicant contended judge erroneously found applicant was 'prepared to prey on others notwithstanding that he knew the misery that was caused by ice', and that judge used this erroneous finding adversely to him - applicant sought to add new ground of appeal that judge failed to take into account 'punitive element' of applicant's stay at rehabilitation facility while on bail - principles of 'quasi-custody' in *Akoka v The Queen* [2017] VSCA 214 - 'fettering of the jury's deliberations' - 'inconsistent jury verdicts' - held: application to add new ground of appeal refused - leave to appeal against sentence refused - leave to appeal against conviction granted on ground of appeal concerning jury's deliberations, but not on ground concerning inconsistent jury verdicts - appeal against conviction dismissed.

[Mourkakos](#)

## **R v SCW [2018] QCA 10**

Court of Appeal of Queensland

Fraser & Gotterson JJA; Brown J

Criminal law - sexual offences - appellant found guilty of 12 counts of sexual offending - all counts except one against a female child - other count alleged offending against younger sister of the female child - appellant convicted and sentenced - appellant appealed against convictions - whether 'particular features of the case' demanded *Robinson* direction - whether prosecutor implied to jury that defence witnesses had inappropriately collected - whether, in failing to put to the defence witnesses that they had inappropriately colluded, prosecutor violated rule in *Browne v Dunn* - whether miscarriage of justice - held: grounds of appeal failed - appeal dismissed.

[R v SCW](#)



# Benchmark

## Seaweed

**By:** Henry Wadsworth Longfellow

When descends on the Atlantic  
The gigantic  
Storm-wind of the equinox,  
Landward in his wrath he scourges  
The toiling surges,  
Laden with seaweed from the rocks:

From Bermuda's reefs; from edges  
Of sunken ledges,  
In some far-off, bright Azore;  
From Bahama, and the dashing,  
Silver-flashing  
Surges of San Salvador;

From the tumbling surf, that buries  
The Orkneyan skerries,  
Answering the hoarse Hebrides;  
And from wrecks of ships, and drifting  
Spars, uplifting  
On the desolate, rainy seas; —

Ever drifting, drifting, drifting  
On the shifting  
Currents of the restless main;  
Till in sheltered coves, and reaches  
Of sandy beaches,  
All have found repose again.

So when storms of wild emotion  
Strike the ocean  
Of the poet's soul, erelong  
From each cave and rocky fastness,  
In its vastness,  
Floats some fragment of a song:

From the far-off isles enchanted,  
Heaven has planted  
With the golden fruit of Truth;



# Benchmark

From the flashing surf, whose vision  
Gleams Elysian  
In the tropic clime of Youth;

From the strong Will, and the Endeavor  
That forever  
Wrestle with the tides of Fate;  
From the wreck of Hopes far-scattered,  
Tempest-shattered,  
Floating waste and desolate; —

Ever drifting, drifting, drifting  
On the shifting  
Currents of the restless heart;  
Till at length in books recorded,  
They, like hoarded  
Household words, no more depart.

[https://en.wikipedia.org/wiki/Henry\\_Wadsworth\\_Longfellow](https://en.wikipedia.org/wiki/Henry_Wadsworth_Longfellow)

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