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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)

Awabakal Local Aboriginal Land Council v Attorney General of New South Wales (FCA) - native title - 'non-claimant application' - applicant sought determination of native title concerning land ('application areas') and determination of non-existence of native title in application areas - orders granted as sought (I B C G)

Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union known as The Australian Manufacturing Union (AMWU) v BR & I Pty Ltd (FCA) - discovery - industrial law - 'prospective applicant' sought preliminary discovery from 'prospective respondent' - application granted (I B C G)

Brien v Mrad (NSWCA) - defamation - slander - applicant unsuccessfully brought defamation proceedings concerning 'words allegedly spoken by' respondent - appeal allowed (I B C G)

In the matter of Railway & Transport Health Fund Ltd (NSWSC) - corporations - plaintiff sought declarations that notices under ss203D & 249D *Corporations Act 2001* (Cth) were invalid and declaration that plaintiff's directors were 'not compelled' to call general meeting of plaintiff - declarations granted (B)

Acciona Infrastructure Australia Pty Ltd v Chess Engineering Pty Ltd (NSWSC) - security of payments - plaintiff sought to set aside second defendant's adjudication determination - error established concerning one variation claim - parties to make submissions concerning 'relief and

draft final orders' (I B C G)

Re Ray (VSC) - wills and estates - probate - plaintiffs, pursuant to s9 *Wills Act 1997* (Vic), sought to admit informal will to probate - application granted (B)

Toowoomba Regional Council v Wagner Investments Pty Ltd & Anor (QCA) - costs - environment and planning - 'mixed success' - respondents to pay two-thirds of appellant's costs of application for leave to appeal and appeal (I B C G)

Summaries With Link (Five Minute Read)

Awabakal Local Aboriginal Land Council v Attorney General of New South Wales [2020]

FCA 1507

Federal Court of Australia

Griffiths J

Native title - 'non-claimant application' - applicant, under s61(1) *Native Title Act 1993* (Cth) (Native Title Act), sought determination of native title concerning parcels of land ('Application Areas') - applicant sought determination under s86G Native Title Act of non-existence of native title concerning 'land and waters' in Application Areas - application unopposed - whether native title had not been claimed - whether native title extinguished - whether orders sought by application were 'within power and appropriate' - held: orders granted as sought.

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

Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union known as The Australian Manufacturing Union (AMWU) v BR & I Pty Ltd [2020] FCA 1498

Federal Court of Australia

Abraham J

Discovery - industrial law - 'prospective applicant', pursuant to r7.23 *Federal Court Rules 2011* (Cth) (Rules), sought preliminary discovery from 'prospective respondent' - whether conditions in r7.23 Rules satisfied - *Fair Work Act 2009* (Cth) - *Judiciary Act 1903* (Cth) - held: preliminary discovery order granted.

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

Brien v Mrad [2020] NSWCA 259

Court of Appeal of New South Wales

Macfarlan, Payne & McCallum JJA

Defamation - slander - applicant unsuccessfully brought defamation proceedings concerning 'words allegedly spoken by' respondent - applicant sought to appeal - whether erroneous finding that 'words proved to have been spoken by' respondent 'amounted to a fatal variance from' words which statement of claim pleaded - whether misapplication of 'legal principle' - whether misapplication of test in *Coles Supermarkets Australia Ltd v Clarke* [2013] NSWCA 272 - held:

appeal allowed.

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

In the matter of Railway & Transport Health Fund Ltd [2020] NSWSC 1435

Supreme Court of New South Wales

Black J

Corporations - plaintiff sought declaration that notice which first defendant provided to it under s203D *Corporations Act 2001* (Cth) (Corporations Act) was invalid - plaintiff also sought declaration that notice which first defendant provided to it under s249D Corporations Act was invalid - plaintiff also sought declaration that plaintiff's directors were 'not compelled under' s249D Corporations Act to call general meeting of plaintiff - construction of constitution - whether new directors could be appointed only at AGM - whether constitution excluded 'any implied power or residual power of members to appoint a director' except at AGM - held: declarations granted.

[View Decision](#) (B)

Acciona Infrastructure Australia Pty Ltd v Chess Engineering Pty Ltd [2020] NSWSC 1423

Supreme Court of New South Wales

Henry J

Security of payments - plaintiff sought to set aside second defendant's adjudication determination in favour of first defendant - plaintiff contended failure by second defendant 'to fulfil his statutory function' and denial of procedural fairness - whether error in respect of 'eight variation claims' - ss20(2B) & 22(2) *Building and Construction Industry Security of Payment Act 1999* (NSW) - held: second defendant erred concerning one variation - parties to make submissions concerning 'relief and draft final orders'.

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

Re Ray [2020] VSC 699

Supreme Court of Victoria

McMillan J

Wills and estates - probate - plaintiffs, pursuant to s9 *Wills Act 1997* (Vic), sought to admit informal will to probate - 'draft will' - whether a 'document' - whether document expressed or recorded deceased's 'testamentary intentions' - whether deceased intended document 'to be her or his last will' - testamentary capacity - 'knowledge and approval' - 'suspicious circumstances' - *Banks v Goodfellow* (1870) LR 5 QB 549 - *Veall v Veall* [2015] VSCA 60; (2015) 46 VR 123 - held: application granted.

[Re Ray](#) (B)

Toowoomba Regional Council v Wagner Investments Pty Ltd & Anor [2020] QCA 225

Court of Appeal of Queensland

Fraser, Morrison and Mullins JJA

Costs - planning and environment - 'mixed success' - determination of costs - Council's



'significant monetary success' - whether outcome was "contestable" - whether costs should follow event - whether to make deduction for time spent on ground in respect of which leave to appeal was not granted, and for Council's lack of success concerning 'storm water charges' - held: respondents to pay two-thirds of appellant's costs of application for leave to appeal and appeal.

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

Summaries With Link



“Bright star, would I were stedfast as thou art”

By: John Keats

Bright star, would I were stedfast as thou art—
 Not in lone splendour hung aloft the night
And watching, with eternal lids apart,
 Like nature's patient, sleepless Eremite,
The moving waters at their priestlike task
 Of pure ablution round earth's human shores,
Or gazing on the new soft-fallen mask
 Of snow upon the mountains and the moors—
No—yet still stedfast, still unchangeable,
 Pillow'd upon my fair love's ripening breast,
To feel for ever its soft fall and swell,
 Awake for ever in a sweet unrest,
Still, still to hear her tender-taken breath,
And so live ever—or else swoon to death.

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

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