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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)

**Talbott v Minister for the Environment** (FCA) - administrative law - Minister declined to make declarations under s10 *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) - applicant sought judicial review - application dismissed (I B C G)

**Kuzminski v Accent Blinds Australia Pty Ltd** (NSWCA) - application for leave to appeal - pleadings - primary judge dismissed applicant's proceedings against 'present first respondent' and struck out applicant's statement of claim in relation to 'remaining defendant' - leave to appeal refused (I B C G)

**Hannell v Lo** (NSWSC) - pleadings - medical negligence - plaintiff granted leave to file amended statement of claim - hearing date confirmed (I B C G)

**Knight v Assafiri** (VSC) - vexatious proceedings - 'general litigation restraint order' - plaintiff prisoner sought leave to commence 'proposed proceeding' - leave refused (I B C G)

**Rafati v Victorian WorkCover Authority** (VSC) - administrative law - accident compensation - plaintiff sought to quash Medical Panel's determination - 'work-related aggravation injury' - decision quashed (I B C G)

**Keilor Melton Quarries v The Queen** (VSCA) - occupational health and safety - criminal law - worker died in accident while working at quarry - applicant convicted of breaching s26(1)

*Occupational Health and Safety Act 2004 (Vic) - leave to appeal refused (I B C G)*

**BWS v ARV (WASCA)** - stay - pre-action discovery - defamation - appellant, by application in an appeal, sought, primarily, stay of pre-action discovery order - stay granted (I B C G)

## Summaries With Link (Five Minute Read)

### **Talbott v Minister for the Environment [2020] FCA 1042**

Federal Court of Australia

Abraham J

Administrative law - Minister declined to make declarations under s10 *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) (Heritage Act) - applicant sought judicial review - whether s10(1)(d) Heritage Act permitted Minister to consider 'social and economic impacts on the local community of' mine - whether there was limitation arising from s51(xxvi) Constitution on matters which Minister could lawfully take into account - whether social and economic impacts on the local community were irrelevant considerations - held: application dismissed.

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

### **Kuzminski v Accent Blinds Australia Pty Ltd [2020] NSWCA 150**

Court of Appeal of New South Wales

Macfarlan, Leeming & McCallum JJA

Application for leave to appeal - pleadings - primary judge, pursuant to r13.4 *Uniform Civil Procedure Rules 2005* (NSW) (Rules), dismissed applicant's proceedings against 'present first respondent' - primary judge, pursuant to r14.28 (Rules), struck out applicant's statement of claim in relation to 'remaining defendant' - remaining defendant was 'present second respondent' - primary judge intended to grant leave to replead but orders did not 'expressly grant' leave - applicant sought to appeal - s56(3) *Civil Procedure Act 2005* (NSW) - whether applicant ought to have sought leave to replead from primary judge - whether misapprehension that proceedings against present second respondent had been dismissed - whether applicant should have sought leave from primary judge to replead - 'unnecessary and inappropriate' application - held: application dismissed.

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

### **Hannell v Lo [2020] NSWSC 929**

Supreme Court of New South Wales

Harrison J

Pleadings - medical negligence - plaintiff sued defendant in negligence - proceedings expedited due to plaintiff's 'life expectancy' - 'eight clear business days' remained before hearing's commencement - plaintiff sought to file amended statement of claim - whether to grant to file amended statement of claim - whether defendant would have time to address 'new proposals

with experts - whether experts could accommodate amended statement of claim in 'anticipated conclave' - timetabling 'falling into arrears' - reduced prospect of 'successful mediation' - whether to retain hearing date - held: leave to file amended statement of claim granted - hearing date confirmed.

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

## **Knight v Assafiri [2020] VSC 439**

Supreme Court of Victoria

Richards J

Vexatious proceedings - 'proposed plaintiff' was prisoner - prisoner declared vexatious litigant under s21 *Supreme Court Act 1986* (Vic) - prisoner 'subject to an indefinite general litigation restraint order' under *Vexatious Proceedings Act 2014* (Vic) (*Vexatious Proceedings Act*) - prisoner, under s54 *Vexatious Proceedings Act*, sought to commence proceeding seeking certain declarations - whether 'real or reasonable prospect' of success on claimed relief - held: leave to commence 'proposed proceeding' refused.

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

## **Rafati v Victorian WorkCover Authority [2020] VSC 444**

Supreme Court of Victoria

Ierodiaconou AsJ

Administrative law - accident compensation - plaintiff sought to quash Medical Panel's determination concerning assessment of plaintiff's hands - dispute concerned whether there was 'work-related aggravation injury' - plaintiff contended work caused his 'asymptomatic arthritis to become symptomatic' such that he had a work-related aggravation injury - Medical Panel found 'no material contribution' of 'alleged work-related injuries' to plaintiff's 'pre-existing osteoarthritis' - nature of plaintiff's medical condition - whether Medical Panel mistook or misinterpreted previous panel's findings - whether mistake constituting jurisdictional error - s134AB *Accident Compensation Act 1985* (Vic) - *Wingfoot Australia Partners Pty Ltd v Kocak* [2013] HCA 43 - *Chang v Neill* [2019] VSCA 151 - held: decision quashed.

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

## **Keilor Melton Quarries v The Queen [2020] VSCA 169**

Court of Appeal of Victoria

Maxwell P, Hargrave & Weinberg JJA

Occupational health and safety - criminal law - worker died in accident while working at quarry - applicant convicted of breaching s26(1) *Occupational Health and Safety Act 2004* (Vic) - applicant sought to appeal against conviction on 'unreasonableness ground', contending verdict was unreasonable or could not be supported with regard to evidence - applicant contended it was not 'reasonably open to' jury 'to be satisfied' applicant 'had management or control' over quarry operations' 'relevant aspects' 'or that it was reasonably practicable for applicant to take the 'safety measures' which it had been alleged applicant 'should have taken' - whether 'risk to safety' - whether reasonably practicable for application to eliminate risk - *Mineral Resources*



*(Sustainable Development) Act 1990* held: leave to appeal refused.

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

## **BWS v ARV [2020] WASCA 108**

Court of Appeal of Western Australia

Murphy & Mitchell JJA

Stay - pre-action discovery - defamation - appellant, by application in an appeal, sought, primarily, stay of pre-action discovery order - *Eastland Technology Australia Pty Ltd v Whisson* [2003] WASCA 30 - ss15 & 40 *Limitation Act 2005* (WA) - whether appeal would be 'rendered nugatory' if stay refused - prospects of success - balance of convenience - held: master's orders stayed until appeal's determination or further order - applicant for 'urgent appeal order' dismissed - 'leave to appeal' application referred to hearing of appeal.

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

## CRIMINAL

### Executive Summary

### Summaries With Link

# Benchmark

## The Wall-flower

**By:** Walter Savage Landor (1775–1864)

THE PLACE where soon I think to lie,  
In its old creviced nook hard-by  
    Rears many a weed:  
If parties bring you there, will you  
Drop slyly in a grain or two           5  
    Of wall-flower seed?

I shall not see it, and (too sure!)  
I shall not ever hear that your  
    Light step was there;  
But the rich odour some fine day           10  
Will, what I cannot do, repay  
    That little care.

[https://en.wikipedia.org/wiki/Walter\\_Savage\\_Landor](https://en.wikipedia.org/wiki/Walter_Savage_Landor)

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