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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)

**Attorney-General of New South Wales v McGuire** (NSWSC) - mental health - forensic patient - defendant be subject to extension order for one year from date of order - non-publication order refused (I B C G)

**Watton v Whitton as Trustee in Bankruptcy Estate of Steven Leonard Watton** (NSWSC) - costs - refusal to dismiss proceedings - extension of plaintiff's caveat until Federal Court proceedings' determination - defendant to pay plaintiff's costs (I B C G)

**Hunter Quarries Pty Limited v Alexandra Mexon as Administrator for the Estate of Ryan Messenger** (NSWSC) - administrative law - workers compensation - no error in assessment of deceased worker's permanent impairment at 100% - proceedings dismissed (I B C G)

**Fitzgerald v State of New South Wales** (NSWSC) - limitations - claim against State arising from alleged psychiatric injury while working as police officer - separate determination of issues - orders made (I B C G)

**Slea Pty Ltd v Connective Services Pty Ltd & Ors** (VSC) - two applications in separate proceedings - leave granted to use Accommodation Agreement to commence Pre-emptive Rights Proceeding - stay lifted (I B C G)

**Logan APZ Pty Ltd v Council of the City of Logan** (QCA) - security for costs - leases and

tenancies - appeal against form and quantum of security for costs dismissed (I B C G)

**Hughes v Pluton Resources Ltd** (WASCA) - corporations - deed of company arrangement - *Personal Property Securities Act 2009* (Cth) - liquidators' appeal against dismissal of application dismissed - receivers' appeal against dismissal of application allowed (I B C G)

## Summaries With Link (Five Minute Read)

### **Attorney-General of New South Wales v McGuire [2017] NSWSC 1572**

Supreme Court of New South Wales

Bellew J

Mental health - plaintiff, pursuant to Clause 1 of Sch1 *Mental Health (Forensic Provisions) Act 1990* (NSW), sought that defendant be subject to extension order for one year from date of order - whether to make non-publication order - *Court Suppression and Non-Publication Orders Act 2010* (NSW) - *Guardianship Act 1987* (NSW) - *Mental Health Act 2007* (NSW) - whether defendant posed 'unacceptable risk of causing serious harm to others' if he ceased to be forensic patient - whether 'no other less restrictive means' of managing defendant - whether risk defendant would not continue to take medication - held: defendant subject to extension order for one year from date of order - non-publication order refused.

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

### **Watton v Whitton as Trustee in Bankruptcy Estate of Steven Leonard Watton [2017] NSWSC 1598**

Supreme Court of New South Wales

Darke J

Costs - defendant was trustee in bankruptcy of plaintiff's former spouse - plaintiff sought extension of operation of caveat over land and that defendant transfer property to plaintiff - plaintiff commenced proceedings in Federal Court in respect of substantive dispute between parties - defendant sought dismissal of Supreme Court proceedings on basis it would undertake to consent to extension of caveat's operation in Federal Court proceedings - Court refused to dismiss proceedings, and ordered extension of plaintiff's caveat until Federal Court proceedings' determination - whether plaintiff had abandoned claim for final relief - delay - whether proceedings 'should always have been commenced in Federal Court' - held: plaintiff had been successful and should have costs - defendant to pay plaintiff's costs.

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

### **Hunter Quarries Pty Limited v Alexandra Mexon as Administrator for the Estate of Ryan Messenger [2017] NSWSC 1587**

Supreme Court of New South Wales

Schmidt J

Administrative law - workers compensation - deceased worker died at workplace while operating

# Benchmark

excavator - plaintiff resisted claim for whole person impairment under s66 *Workers Compensation Act 1987* (NSW) - appellant challenged Appeal Panel's assessment of permanent impairment at 100% - meaning of 'permanent impairment' - held: there was 'permanent impairment' when worker suffered injury 'so serious that her or she cannot recover from it, even with treatment' - assessment of worker's permanent impairment at 100% 'reflected that it had later resulted in his death' - no error in decision of appeal panel - appeal dismissed.

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

## **Fitzgerald v State of New South Wales [2017] NSWSC 1602**

Supreme Court of New South Wales

Schmidt J

Limitations - plaintiff sought damages from defendant, alleging he suffered psychiatric injury from being exposed to traumatic events between 1983 and 1988 while serving as police officer - plaintiff contended defendant failed to provide safe system of work - defendant contended limitation period under ss14 and/or 18A *Limitation Act 1969* (NSW) had expired - plaintiff had not replied or sought extension of limitation period - defendant sought separate determination of issues or summary dismissal of proceedings - whether plaintiff's claim out of time - whether plaintiff entitled to extension of time - held: issues determined - orders made.

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

## **Slea Pty Ltd v Connective Services Pty Ltd & Ors [2017] VSC 706**

Supreme Court of Victoria

Judd J

Discovery - stay - two applications by applicants (Connective Companies) - each application made in different proceedings: 'Oppression Proceeding' and 'Pre-emptive Proceeding' - proceedings involved same subject matter and parties - by first summons Connective Companies sought leave to use discovered document ('Accommodation Agreement') in the Pre-emptive Rights Proceeding - by second summons Connective Companies sought to lift stay of Pre-emptive Rights Proceeding - contempt - limitations - special circumstances - held: leave granted to use Accommodation Agreement to commence Pre-emptive Rights Proceeding - stay lifted - applications granted on condition applicants pay Slea's costs of summonses on indemnity basis.

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

## **Logan APZ Pty Ltd v Council of the City of Logan [2017] QCA 288**

Court of Appeal of New South Wales

Gotterson & McMurdo JJA; Mullins J

Security for costs - leases and tenancies - parties entered agreement for lease of land - respondent asserted it terminated agreement - appellant sought specific performance of agreement or lease, and damages for breach of contract or delayed performance - trial judge heard respondent's application for security for costs, and appellant's application for order for

# Benchmark

separate determination of liability - trial judge granted security for costs and refused separate determination - appellant appealed against two aspects of orders for security for costs orders - quantum of security for costs - form of security for costs - held: grounds of appeal failed - appeal dismissed.

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

## **Hughes v Pluton Resources Ltd [2017] WASCA 213**

Court of Appeal of Western Australia

Buss P; Murphy & Beech JJA

Corporations - deed of company arrangement - *Personal Property Securities Act 2009* (Cth) - liquidators of company (Pluton) sought orders under s 511(1) *Corporations Act 2001* (Cth) concerning funds paid to Pluton under deed of company arrangement which was terminated - liquidators sought that funds remaining in Pluton after deed's termination were held by liquidators and were to be paid out under s556 *Corporations Act* (liquidators' first application) - Master granted liquidators' first application - Pluton's receivers contended remaining funds were subject to security interest of secured creditor (GNR) - Master dismissed receivers' application - liquidators also sought order they were entitled to pay costs from funds in Pluton which they incurred as former Deed Administrators (liquidators second application) - Master dismissed liquidators' second application - receivers appealed against dismissal of their application - liquidators appealed against dismissal of liquidators' second application - held: receivers' appeal allowed - liquidators' appeal dismissed.

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

## CRIMINAL

### Executive Summary

**Miles v R** (NSWCCA) - criminal law - drug offences - parity principle - judge erred in sentencing applicant on basis of erroneous Form 1 - appeal upheld - sentence reduced

**R v Smith** (SASCFC) - criminal law - identification evidence - sexual offences - appellant convicted of rape - trial judge not required to give identification warning - appeal dismissed

### Summaries With Link

## **Miles v R [2017] NSWCCA 266**

Court of Criminal Appeal of New South Wales

Leeming JA; Rothman & Hamill JJ

Criminal law - applicant pleaded guilty to 5 counts of supplying prohibited drugs - judge made

# Benchmark

25% discount for plea of guilty and made finding of special circumstances - judge sentenced applicant to 8 years in prison with 4 years and 6 months non-parole period - applicant's co-offender sentenced to 4 years and 6 months in prison, with 2 years 6 months non-parole period - applicant appealed against sentence - Form 1 - parity principle - held: Crown conceded error in relation to Form 1 - judge erred in sentencing applicant on basis of erroneous Form 1 - appeal upheld - sentence reduced.

[View Decision](#)

## **R v Smith [2017] SASCFC 153**

Full Court of the Supreme Court of South Australia

Kourakis CJ; Stanley and Hinton JJ

Criminal law - appellant convicted of two counts of rape - no dispute rapes occurred - issue at trial was whether appellant was rapist - complainant's evidence identified man who raped her as driver of motor vehicle who, shortly before offending, drove past her three times - issue on appeal was whether judge was required to warn jury in relation to complainant's identification evidence - Domican warning - *Domican v The Queen* (1992) 173 CLR 555 - s34AB *Evidence Act 1929* (SA) - held: trial judge was not required to give identification warning - even if identification evidence disregarded, reasonable jury would have convicted appellant - appeal dismissed.

[R v Smith](#)

# Benchmark

**Love's Growth**      **By:** John Donne

I scarce believe my love to be so pure  
As I had thought it was,  
Because it doth endure  
Vicissitude, and season, as the grass;  
Methinks I lied all winter, when I swore  
My love was infinite, if spring make' it more.

But if medicine, love, which cures all sorrow  
With more, not only be no quintessence,  
But mixed of all stuffs paining soul or sense,  
And of the sun his working vigor borrow,  
Love's not so pure, and abstract, as they use  
To say, which have no mistress but their muse,  
But as all else, being elemented too,  
Love sometimes would contemplate, sometimes do.

And yet no greater, but more eminent,  
Love by the spring is grown;  
As, in the firmament,  
Stars by the sun are not enlarged, but shown,  
Gentle love deeds, as blossoms on a bough,  
From love's awakened root do bud out now.

If, as water stirred more circles be  
Produced by one, love such additions take,  
Those, like so many spheres, but one heaven make,  
For they are all concentric unto thee;  
And though each spring do add to love new heat,  
As princes do in time of action get  
New taxes, and remit them not in peace,  
No winter shall abate the spring's increase.

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