

Friday, 26 May 2017

Daily Civil Law Review A Daily Bulletin listing Decisions of Superior Courts of Australia

 Follow @Benchmark_Legal

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

Workers Compensation (Dust Diseases) Authority v Cunha (NSWCA) - workers compensation - erroneous disregard of receipt of pension in assessment of widow's dependency on deceased husband - appeal allowed - cross-appeal dismissed (I B C G)

AAI Limited t/as Vero Insurance v GEO Group Australia Pty Limited (NSWCA) - insurance - inmate injured at correction centre when he jumped off landing - inmate's claim against respondent and others settled - respondent's claim for indemnity against appellant insurer upheld - appeal dismissed (I B C G)

Boral Limited v Foley & Bear Pty Ltd trading as J&R Industries (No 2) (NSWCA) - judgments and orders - slip rule - accidental omission to seek order for restitution - successful appellants granted restitution order and interest (I B C G)

Free Serbian Orthodox Church Diocese for Australia and New Zealand Property Trust v Bishop Irinej Dobrijevic (No 3) (NSWCA) - costs - indemnity costs - trusts and trustees - indemnification from trust assets - costs orders made (I B C G)

Feldman v GNM Australia Ltd (NSWCA) - contract - agency - primary judge erred in staying defamation proceedings on basis parties settled dispute - no binding agreement between parties - appeal allowed (I B C G)

Re Western Port Holdings Pty Ltd (VSC) - corporations - Deed Administrators sought to be appointed as receivers in order to sell assets which company held on trust - Court satisfied it should make orders sought - orders made (I B C G)

Siam Steel International PLC v Compass Group (Australia) Pty Ltd (WASC) - costs - arbitration - sources of jurisdiction identified by claimant did not provide Court with jurisdiction to make orders sought (I B C G)

Summaries With Link (Five Minute Read)

Workers Compensation (Dust Diseases) Authority v Cunha [2017] NSWCA 111

Court of Appeal of New South Wales

Meagher, Leeming & Simpson JJA

Workers compensation - respondent was widow of deceased who died from asbestosis and lung cancer after working as boilermaker - Workers Compensation (Dust Diseases) Authority found deceased's disease attributable to exposure in New South Wales and granted award to respondent - respondent appealed against lump sum component of award, challenging Authority's finding that she was partially dependent on deceased, instead contending she was wholly dependent for support on him - primary judge upheld appeal - Authority appealed and respondent cross-appealed - s8(2B) *Workers' Compensation (Dust Diseases) Act 1942* (NSW) considered - held: primary judge erroneously disregarded widow's receipt of aged pension in assessment of dependency - error of law established - appeal allowed - cross-appeal dismissed.

[Workers Compensation \(Dust Diseases\) Authority](#) (I B C G)

AAI Limited t/as Vero Insurance v GEO Group Australia Pty Limited [2017] NSWCA 110

Court of Appeal of New South Wales

Macfarlan, Simpson & Payne JJA

Insurance - inmate injured at correction centre when he jumped off landing - inmate sued respondent and others in negligence - at time of injury, respondent was centre's private operator - claims settled - respondent had 'Medical Malpractice Civil Liability Insurance Policy' with appellant - respondent claimed under policy in respect of inmate's claim - primary judge found appellant liability to indemnify respondent for payment it made to inmate - construction of policy - whether claim within insuring clause's scope - held: Court concluded that respondent's claim had arisen from its conduct in provision of Healthcare Services, arising directly from 'faulty operation' of system to address risks to inmates' mental health - claim was within policy's terms - appeal dismissed.

[AAI Limited](#) (I B C G)

Boral Limited v Foley & Bear Pty Ltd trading as J&R Industries (No 2) [2017] NSWCA 108

Court of Appeal of New South Wales

McColl & Payne JJA; Emmett AJA

Judgments and orders - restitution - slip rule - appellants successful in proceedings - appellant sought order for restitution - appellants accepted they did not seek restitution order in Notice of Appeal and that question was raised in oral argument - held: Court empowered to deal with application for restitution as omission to raise restitution at hearing was accidental - appellant granted order for restitution and interest.

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

Free Serbian Orthodox Church Diocese for Australia and New Zealand Property Trust v Bishop Irinej Dobrijevic (No 3) [2017] NSWCA 109

Court of Appeal of New South Wales

Ward, Gleeson & Payne JJA

Costs - indemnity costs - trusts and trustees - proceeding concerned charitable trust and application of s9 *Charitable Trusts Act 1993* (NSW) - Court dismissed appeal in proceeding - determination of costs - issues were whether 'Property Trust Company' should be indemnified for costs from trust property, whether individual appellants should pay first and second respondents' costs, basis of any costs order and whether indemnity costs were appropriate - held: orders made.

[Free Serbian Orthodox Church](#) (I B C G)

Feldman v GNM Australia Ltd [2017] NSWCA 107

Court of Appeal of New South Wales

Beazley, McColl & Macfarlan JJA

Contract - agency - primary judge permanently stayed defamation proceedings which applicant brought against respondents, finding that parties settled their dispute - applicant principally contended primary judge erred in finding a solicitor had 'ostensible authority to bind a client to a contract where litigation is not on foot', erred in finding binding agreement, and erred in application of *Masters v Cameron* (1954) 91 CLR 353 - held: primary judge erred in finding parties entered binding agreement - decision to stay proceedings wrongly deprived applicant of right to bring action - primary judge erred in staying proceedings - appeal allowed.

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

Re Western Port Holdings Pty Ltd [2017] VSC 280

Supreme Court of Victoria

Kennedy J

Corporations - Deed Administrators sought to be appointed as receivers in order to sell assets which first plaintiff company held on trust - s37 of the *Supreme Court Act 1986* (Vic) - 'just and convenient' - whether real risk to company's assets or trust - held: there was 'great risk', if order not made, that sale could be 'adversely affected and/or delayed' - if sale facilitated, trustee would be able to discharge liabilities as trustee - there were other factors favouring making of orders - Court satisfied it should make orders sought - orders made.

[Re Western Port](#) (I B C G)

Siam Steel International PLC v Compass Group (Australia) Pty Ltd [2017] WASC 137

Supreme Court of Western Australia

Martin CJ

Costs - arbitration - jurisdiction - claimant in present proceedings (Siam) was claimant in arbitral proceedings against respondent in present proceedings (Compass) - proceedings settled - arbitrator dismissed proceedings and ordered Compass to pay Siam's costs - Siam sought assessment of costs order made against Compass without reference to limits in respect of items in *Legal Profession (Supreme Court) (Contentious Business) Determination 2014 (WA)* and *Legal Profession (Supreme Court) (Contentious Business) Determination 2016 (WA)* - whether court had jurisdiction to make orders - held: no sources of jurisdiction which Siam identified gave Court jurisdiction to make orders it sought - Court invited further submissions and evidence.

[Siam Steel](#) (I B C G)

CRIMINAL

Executive Summary

Tootle v R (NSWCCA) - criminal law - sexual offences - trial judge's invitation to jury to formulate questions for witnesses occasioned miscarriage of justice - appeal allowed - convictions quashed - new trial

Beqiri v The Queen; Hajko v The Queen (VSCA) - criminal law - importation of drugs - attempting to possess commercial quantity of border controlled drug - appeals against convictions and sentences dismissed

Summaries With Link

Tootle v R [2017] NSWCCA 103

Court of Criminal Appeal of New South Wales

Simpson JA; McCallum & Fagan JJ

Criminal law - appellant found guilty of sexual offences against complainant - appellant sentenced to 8 years in prison with non-parole period of 5 years - appellant contended trial judge erred in direction that jury entitled to ask witnesses questions - held: trial judge's encouragement of jury 'to formulate questions of each witness beyond those which either the Crown or the accused had seen fit to put' occasioned a miscarriage of justice - process that followed to facilitate questioning was not a 'trial according to law' - appeal allowed.

[Tootle](#)

Beqiri v The Queen; Hajko v The Queen [2017] VSCA 112

Court of Appeal of Victoria

Weinberg, Osborn & Whelan JJA

Criminal law - importation of drugs - applicants sought to appeal against convictions and sentences arising from joint trial involving them and a third man - applicants found guilty of attempting to possess commercial quantity methamphetamine - applicants challenged jury empanelment procedure and telephone intercept evidence's admissibility - applicants contended sentences were manifestly excessive - additional grounds of appeal by individual applicants concerned trial judge's directions and whether on applicant should have been granted separate trial - s87 *Evidence Act 2008* (Vic) - held: leave to appeal granted in relation to common grounds of appeal - appeals against convictions and sentences dismissed.

[Beqiri](#)

Benchmark

from The Prelude: Book 2: School-time (Continued)

By [William Wordsworth](#)

Thus far, O Friend! have we, though leaving much
Unvisited, endeavour'd to retrace
My life through its first years, and measured back
The way I travell'd when I first began
To love the woods and fields; the passion yet
Was in its birth, sustain'd, as might befall,
By nourishment that came unsought, for still,
From week to week, from month to month, we liv'd
A round of tumult: duly were our games
Prolong'd in summer till the day-light fail'd;
No chair remain'd before the doors, the bench
And threshold steps were empty; fast asleep
The Labourer, and the old Man who had sate,
A later lingerer, yet the revelry
Continued, and the loud uproar: at last,
When all the ground was dark, and the huge clouds
Were edged with twinkling stars, to bed we went,
With weary joints, and with a beating mind.
Ah! is there one who ever has been young,
Nor needs a monitory voice to tame
The pride of virtue, and of intellect?
And is there one, the wisest and the best
Of all mankind, who does not sometimes wish
For things which cannot be, who would not give,
If so he might, to duty and to truth
The eagerness of infantine desire?
A tranquillizing spirit presses now
On my corporeal frame: so wide appears
The vacancy between me and those days,
Which yet have such self-presence in my mind
That, sometimes, when I think of them, I seem
Two consciousnesses, conscious of myself
And of some other Being.

[Click Here to access our Benchmark Search Engine](#)