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

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Executive Summary (1 minute read)

Grapsas v Minister for Infrastructure and Regional Development (FCA) - administrative law - refusal of application to import vehicle into Australia - appeal dismissed (I B C G)

Australian Information Commission v Facebook Inc (FCA) - service - privacy - interim orders under s37A1 *Federal Court of Australia Act 1976* (Cth) granted - leave to serve respondents 'outside Australia' granted - substituted service orders granted (I B C G)

Smith v Ulan Coal Mines Limited (No 2) (NSWSC) - negligence - plaintiff's hand injured while in vicinity of machine at mine - second defendant employer of plaintiff supplied plaintiff to first defendant operator of mine - claim against second defendant settled - first defendant not liable - judgment for first defendant (I B C G)

Jason Tang and Ozem Kassem in their capacity as joint and several liquidators of Elite Plant Hire P/L (in liq) v MECON Winsure Insurance Group P/L (NSWSC) - pleadings - subpoena - insurer's application to amend Commercial List Response refused - liquidators' application to set aside subpoenas granted (B C I G)

Armidale Local Aboriginal Lands Council v Moran (NSWSC) - contempt - applicant sought 'discharge from a contempt' - application granted (B C I G)

Lonergan v Stilgoe & Ors (QSC) - administrative law - first respondent recommended granting of mining lease and issuing of 'environmental authority' - application for statutory order for

review dismissed (I B C G)

Reschke v Trevor Reschke Nominees Pty Ltd; Reschke v Australian Executor Trustees Ltd (SASC) - security for costs - two actions in which plaintiff claimed entitlement to 'beneficial ownership of' or 'lien over' land - defendants sought security for costs - security for costs granted (I B C G)

Summaries With Link (Five Minute Read)

Grapsas v Minister for Infrastructure and Regional Development [2020] FCA 525

Federal Court of Australia

Wheelahan J

Administrative law - applicant sought to import '2004 Mercedes-Benz CLK500 Avantgarde motor vehicle' into Australia - applicant claimed he acquired vehicle in United Kingdom, then took it to Greece - Minister's delegate refused application - Administrative Appeals Tribunal affirmed delegate's decision - applicant appealed - *Motor Vehicle Standards Act 1989* (Cth) - *Motor Vehicle Standards Regulations 1989* (Cth) - regs 11 & 13 Regulations - proper construction of reg 13(1)(ac) Regulations - whether failure to exercise 'purported second discretionary power' in regs 11(2) & 11(3) Regulations - whether failure to exercise discretion under reg 11 Regulations - procedural fairness - held: no error in decision of Tribunal - appeal dismissed.

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

Australian Information Commission v Facebook Inc [2020] FCA 531

Federal Court of Australia

Thawley J

Service - privacy - Commissioner alleged Facebook Inc and Face Book Ireland contravened 13G *Privacy Act 1988* (Cth) - Commissioner, under rr10.42 & 10.43(2) *Federal Court Rules 2011* (Cth) (Rules), sought leave to serve documents on Facebook Inc and Facebook Ireland 'in accordance with' art 5 *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, done at the Hague on 15 November 1965* (Hague Convention) - Commissioner sought substituted service orders under r10.24 Rules and 'interim suppression and non-publication orders' - held: Court satisfied to make interim orders under s37A1 *Federal Court of Australia Act 1976* (Cth) - applicant granted leave to serve respondents 'outside Australia' - substituted service orders granted.

[Australian Information Commission](#) (I B C G)

Smith v Ulan Coal Mines Limited (No 2) [2020] NSWSC 416

Supreme Court of New South Wales

Hoeben CJ at CL

Negligence - first defendant was operator of coal mine - plaintiff was employee of company (Trade Services) - first defendant contracted with second defendant Trade Services for labour

hire personnel's supply - . Trade Services supplied plaintiff to first defendant - plaintiff's suffered injury to hand while at mine in vicinity of machine ('Feeder Breaker') - plaintiff sued first defendant in negligence - plaintiff settled claim against second defendant - whether plaintiff's evidence concerning accident was accurate - whether accident occurred in a way different from that described by plaintiff - whether plaintiff established 'factual aspect' of case - consideration of 'alternative scenario' advanced by plaintiff - application of principles in *TNT Australia v Christie and Ors* [2003] NSWCA 47 - ss5B & 5C *Civil Liability Act 2002* (NSW) - whether foreseeable risk of harm of 'high pressure fluid injury to a person' 'positioned at or around the Feeder Breaker' - principle of 'res ipsa loquitur' - *Schellenberg v Tunnel Holding* [2000] HCA 18 - held: first defendant not negligent - judgment for first defendant.

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

Jason Tang and Ozem Kassem in their capacity as joint and several liquidators of Elite Plant Hire P/L (in liq) v MECON Winsure Insurance Group P/L [2020] NSWSC 441

Supreme Court of New South Wales

Stevenson J

Pleadings - subpoena - defendant insurer sought to amend Commercial List Response in relation to defendant's contention of failure by second plaintiff to 'to comply with its duty of disclosure' under ss21 & 28 *Insurance Contracts Act 1984* (Cth) - first plaintiffs (liquidators) sought to set aside four subpoenas 'issued at the defendant's request' - proposed amendments' expansion of ambit of defendant's case - whether proposed amendments adequately explained or justified - necessity to vacate hearing date if amendment permitted - fishing - relevance - "on the cards" - "materially assist" - held: permission to amend Commercial List Response refused - subpoenas set aside.

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

Armidale Local Aboriginal Lands Council v Moran [2020] NSWSC 442

Supreme Court of New South Wales

Lonergan J

Contempt - applicant sought 'discharge from a contempt' - Pt 55 r 14 *Supreme Court Rules 1970* (NSW) - 'changes in circumstances' - "contrition and true acknowledgement of error" - *Young v Registrar, Court of Appeal (No 3)* (1993) 32 NSWLR 262 - whether discretion enlivened - whether to exercise discretion - held: application granted - defendant to be discharged from correctional centre.

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

Lonergan v Stilgoe & Ors [2020] QSC 86

Supreme Court of Queensland

Applegarth J

Administrative law - first respondent Land Court member recommended granting of mining lease over 'application area' and issuing of 'environmental authority' - applicant sought statutory order of review - whether decision to recommend granting of mining lease unauthorised

because there was 'no evidence or other material' on basis of which first respondent could be 'reasonably satisfied' that required declaration under s252B *Mineral Resources Act 1989* (Qld) had been given - whether failure to take into account relevant consideration of mining lease's impact on 'local environment in relation to koala habitat' - s152 *Environmental Protection Act 1994* (Qld) - procedural fairness - held: application dismissed.

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

Reschke v Trevor Reschke Nominees Pty Ltd; Reschke v Australian Executor Trustees Ltd [2020] SASC 60

Supreme Court of South Australia

Blue J

Security for costs - two actions in which plaintiff claimed entitlement to 'beneficial ownership of' or 'lien over' land in region which his father and grandmother 'formerly owned or controlled' - defendants sought security for costs - defendants contended order for security for costs was in interests of justice within r194(1)(e) *Supreme Court Civil Rules 2006* (SA) - whether plaintiff would have 'sufficient resources' 'to meet adverse costs orders' - stultification - held: plaintiff to provide security for costs in each action.

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

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