

Friday, 27 August 2021

Daily Civil Law 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)

Commissioner of Taxation v Burswood Nominees Limited as trustee for the Burswood Property Trust (FCAFC) - taxation - gambling - junkets - goods and services tax - primary judge erred in finding 'special rules' in Div 126 *A New Tax System (Goods and Services Tax) Act 1999* (Cth) applied to certain amounts - appeals allowed (I B C G)

Watton v Whitton (Trustee), in the matter of Watton (No 2) (FCA) - costs - indemnity costs - offer of compromise - bankruptcy - trusts and trustees - Court dismissed applicant's application in proceedings - applicant's refusal to accept respondent's Calderbank offer was unreasonable - indemnity costs order granted (I B C G)

Polsen v Harrison (No 6) (NSWSC) - subpoena - medical negligence - contract - defendant sought to set aside subpoena issued by plaintiff to "Services Australia" - subpoena lacked legitimate forensic purpose and relevance - subpoena set aside (I B C G)

Stuart v Said (VSCA) - security for costs - respondent obtained order for security for costs against applicant - applicant sought to appeal - leave to appeal refused (I B C G)

The Corporation of the City of Norwood Payneham and St Peters v Minister for Infrastructure and Transport and Ors (SASC) - judicial review - planning and development - highways - applicant sought review of decision of delegate of Commissioner of Highway to authorise developers to undertake work - applicant also sought declarations and injunctive relief

- application dismissed (I B C G)

Summaries With Link (Five Minute Read)

Commissioner of Taxation v Burswood Nominees Limited as trustee for the Burswood Property Trust [2021] FCAFC 151

Full Court of the Federal Court of Australia

Jagot, Moshinsky & Colvin JJ

Taxation - respondents owned and operated casinos - casinos entered agreements with "junket tour operators" concerning "junkets" - depending which program junket tour operator selected, 'commissions and/or rebates' were payable by casino to junket tour operator, and rebates payable by junket tour operator to casino - commissions and rebates 'taken into account' in calculation of 'total amount payable' at junket's end by junket tour operator to casino or casino to junket tour operator - appeal concerned treatment for goods and services tax (GST) purposes, of commissions and rebates, and total amount payable - whether 'special rules for gambling supplies' in Div 126 *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (the GST Act) applied - whether commissions and rebates and total amount payable formed part of "total monetary prizes" or "total amount wagered" to be taken into account in calculation of "global GST amount" - whether assessments excessive - held: appeals allowed.

[Commissioner of Taxation](#) (I B C G)

Watton v Whitton (Trustee), in the matter of Watton (No 2) [2021] FCA 1003

Federal Court of Australia

Farrell J

Costs - indemnity costs - offer of compromise - bankruptcy - trusts and trustees - Court dismissed applicant's application in proceedings - respondent sought indemnity costs in reliance on Calderbank offer - s43 *Federal Court of Australia Act 1976* (Cth) - r25.14 *Federal Court Rules 2011* (Cth) - whether unreasonable refusal to accept offer - held: applicant's refusal to accept offer was unreasonable - indemnity costs order granted.

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

Polsen v Harrison (No 6) [2021] NSWSC 1050

Supreme Court of New South Wales

Loneragan J

Subpoena - medical negligence - contract - defendant sought to set aside subpoena issued by plaintiff to "Services Australia", contending the subpoena lacked forensic purpose - defendant also contended that sought documents had 'no relevance' to proceeding's issues - plaintiff contended the documents 'would shed light on the veracity or otherwise of assertions' in paragraphs of evidentiary statement - r33.4 *Uniform Civil Procedure Rules 2005* (NSW) - held: - subpoena misconceived - subpoena lacked legitimate forensic purpose and relevance - subpoena set aside.

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

Stuart v Said [2021] VSCA 226

Court of Appeal of Victoria

Maxwell P & McLeish JA

Security for costs - respondent obtained order for security for costs against applicant - applicant sought to appeal - senior counsel for applicant conceded applicant 'failed to articulate an adequately pleaded claim against' respondent and was 'responsible for excessive costs and delay' but contended judge erroneously relied 'on this finding as a basis' for ordering security for costs - whether submission was 'wrong in law' - r62.02 *Supreme Court (General Civil Procedure) Rules 2015* (Vic) - *Lines v Tana Pty Ltd* [1987] VicRp 53; [1987] VR 641 - *Von Marburg v Aldred* [No 3] [2017] VSC 146 - held: leave to appeal refused.

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

The Corporation of the City of Norwood Payneham and St Peters v Minister for Infrastructure and Transport and Ors [2021] SASC 97

Supreme Court of South Australia

Parker J

Judicial review - planning and development - highways - applicant sought review of decision of delegate of Commissioner of Highway to authorise developers to undertake work - applicant also sought declarations and injunctive relief - *The Highways Act 1926* (SA) (Highways Act) - *The Local Government Act 1999* (SA) - whether trespass - whether 'lack of valid authorisation' - 'power over trees' - s26A Highways Act - uncertainty - whether bias - 'Draft Developer Deed' - held: application dismissed.

[The Corporation of the City](#) (I B C G)

Summaries With Link



The Bush

By: James Lister Cuthbertson

GIVE us from dawn to dark
Blue of Australian skies,
Let there be none to mark
Whither our pathway lies.

Give us when noontide comes 5
Rest in the woodland free—
Fragrant breath of the gums,
Cold, sweet scent of the sea.

Give us the wattle's gold
And the dew-laden air, 10
And the loveliness bold
Loneliest landscapes wear.

These are the haunts we love,
Glad with enchanted hours,
Bright as the heavens above, 15
Fresh as the wild bush flowers.

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

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