

Friday, 28 June 2019

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)

The Environmental Group Ltd v Bowd (FCA) - industrial law - contract - detinue - copyright - two proceedings - company and two subsidiaries established claims of breach of contract and copyright infringement against company's former employee (I B C G)

Comcare v ZZRP (FCA) - administrative law - Administrative Appeals Tribunal failed to provide adequate reasons for setting aside applicant's decision - appeal allowed - matter remitted (I B C G)

Eckford v Six Mile Creek Pty Ltd (FCA) - contract - interlocutory application - applicant sought declaration that 'binding settlement agreement' reached between parties - application dismissed (I B C G)

Rodney Jane Racing Pty Ltd v Monster Energy Company (FCA) - trade mark - appeal against refusal of application to register trade marks - opposition grounds not made out - appeal allowed (I B)

Misrachi v Public Guardian (NSWSC) - administrative law - guardianship - appeal against orders of New South Wales Civil and Administrative Tribunal - proceedings dismissed (I B C G)

Singleton v Victorian Building Authority (VSC) - judicial review - plaintiff sought judicial review of a Victorian Building Authority's decision 'not to take further disciplinary action' against

building surveyor - relief refused (I B C G)

Moloney v Glenelg Community Hospital Inc (SASC) - associations and clubs - Board's resolution that defendant was 'unfit and incapable of performing his duties' as Board member was ultra vires - resolution quashed (I B C G)

Summaries With Link (Five Minute Read)

The Environmental Group Ltd v Bowd [2019] FCA 951

Federal Court of Australia

Steward J

Industrial law - contract - copyright - two proceedings - in one proceeding, Mr Bowd sued 'former employer' (The Environmental Group Ltd) and managing director for alleged contraventions of ss340 & 352 *Fair Work Act 2009* (Cth) and Pt 9.4AAA *Corporations Act 2001* (Cth) - in other proceeding The Environmental Group Ltd and two subsidiaries sued Mr Bowd 'for breach of contract, detinue and breach of copyright' concerning 'confidential information and property' which Mr Bowd retained after dismissal - separate determination of liability - held: Mr Bowd's claims dismissed - Mr Bowd breached contract by failure to return property to The Environmental Group Ltd - claim in detinue failed - copyright infringement by Mr Bowd established.

[The Environmental Group](#) (I B C G)

Comcare v ZZRP [2019] FCA 952

Federal Court of Australia

Flick J

Administrative law - respondent former employee of Australian Taxation Office claimed compensation under *Safety, Rehabilitation and Compensation Act 1988* (Cth) - claim accepted - applicant determined respondent 'no longer entitled to compensation' on basis his condition was 'no longer attributable to his former employment' - Administrative Appeals Tribunal (Tribunal) set respondent's decision aside - respondent appealed - s43(2B) *Administrative Appeals Tribunal Act 1975* (Cth) - held: Tribunal failed to give adequate reasons - appeal allowed - matter remitted.

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

Eckford v Six Mile Creek Pty Ltd [2019] FCA 982

Federal Court of Australia

Jagot J

Contract - applicant, by interlocutory application, sought declaration 'binding settlement agreement' was reached by parties in respect of proceedings - whether 'binding contract' entered by parties - *Archer Capital 4A Ltd as Trustee for the Archer Capital Trust 4A v Sage Group PLC* [2015] FCA 960 - *Masters v Cameron* [1954] HCA 72 (*Masters v Cameron*) - held:

Court concluded that matter was 'in the third class' of *Masters v Cameron* - no binding agreement reached between parties - application dismissed.

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

Rodney Jane Racing Pty Ltd v Monster Energy Company [2019] FCA 923

Federal Court of Australia

O'Bryan J

Trade mark - appellant, under Pt 4 *Trade Marks Act 1995* (Cth) (*Trade Marks Act*), sought three trade marks' registration - Registrar's delegate refused registration - delegate found respondent's ground of opposition under s60 *Trade Marks Act* was established - appellant appealed - respondent, by notice of contention, added further opposition grounds under ss42(b), 58 & 59 *Trade Marks Act* - 'ownership' - 'intended use' - 'likely to deceive or cause confusion' - held: opposition grounds not made out - appeal allowed.

[Rodney](#) (I B)

Misrachi v Public Guardian [2019] NSWSC 752

Supreme Court of New South Wales

Emmett AJA

Administrative law - guardianship - New South Wales Civil and Administrative Tribunal (Tribunal) made 'guardianship order' under *Guardianship Act 1987* (NSW), appointing first defendant as guardian of plaintiff's mother for three years and revoking plaintiff's appointment as mother's 'enduring guardian' - plaintiff appealed - whether procedural fairness afforded - whether failure 'to have proper regard for the principles' in s4 *Guardianship Act* - whether decision 'manifestly unreasonable' - 'relevant considerations' - whether erroneous rejection of evidence - 'recusal' - held: proceedings dismissed.

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

Singleton v Victorian Building Authority [2019] VSC 416

Supreme Court of Victoria

Garde J

Judicial review - plaintiff sought judicial review of a Victorian Building Authority's decision 'not to take further disciplinary action' against building surveyor - whether to 'grant mandamus' - whether Authority had 'refused to perform its functions or denied its public duty' - whether Authority should 'initiate a show cause process' - *Building Act 1993* (Vic) - held: no basis for Court to grant mandamus - relief refused.

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

Moloney v Glenelg Community Hospital Inc [2019] SASC 101

Supreme Court of South Australia

Kourakis CJ

Associations and clubs - plaintiff brought proceedings against defendant under s61 *Associations Incorporation Act 1985* (SA) - plaintiff sought declaration defendant had 'acted oppressively' due

to Board's failure to accept '127 persons' as members and Board's resolution that defendant was 'unfit and incapable of performing his duties' as Board member - held: Board's resolution that defendant was 'unfit and incapable of performing his duties' as Board member was ultra vires - resolution quashed.

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

CRIMINAL

Executive Summary

Summaries With Link



Benchmark

'The Opal Sea'

By: Ella Higginson

An inland sea – blue as a sapphire – set

 Within a sparkling, emerald mountain chain

 Where day and night fir-needles sift like rain

Thro' the voluptuous air. The soft winds fret

The waves, and beat them wantonly to foam.

 The golden distances across the sea

 Are shot with rose and purple. Languorously

The silver seabirds in wide circles roam.

The sun drops slowly down the flaming West

 And flings its rays across to set aglow

 The islands rocking on the cool waves' crest

And the great glistening domes of snow on snow.

 And thro' the mist the Olympics flash and float

 Like opals linked around a beating throat.

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

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