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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)

**Friends of Leadbeater's Possum Inc v VicForests (No 4)** (FCA) - environmental law - effect of 'forestry operations' on Greater Glider and Leadbeater's Possum - *Victorian Code of Practice for Timber Production 201* - 'significant impact' - applicant successful - parties to have opportunity to agree on orders - if parties unable to agree, parties to file 'proposed minutes of orders' (I B C G)

**Friends of Leadbeater's Possum Inc v VicForests (No 5)** (FCA) - costs - indemnity costs - separate determination of 'outstanding costs application' by applicant arising from adjournment of trial - applicant granted costs order on party party basis (I B C G)

**NL Investment Group Pty Ltd v Parc Vue Project Botanic Pty Ltd (Trustee)** (FCA) - pleadings - corporations - applicant sought to amend 'originating application and statement of claim' - interlocutory application dismissed (I B C G)

**TFM Epping Land Pty Ltd v Decon Australia Pty Ltd** (NSWCA) - security of payments - building contract - summary judgment in favour of respondent contractor - principal's appeal dismissed (I B C G)

**Duncan as Liquidator of WDR Iron Ore Pty Ltd (In Liq) v Downer EDI Works Pty Ltd** (SASC) - corporations - claim against fifth defendant for amount of payments as 'recoverable unfair preferences' - judgment for plaintiff (B)

**Easy Stay Mining Accommodation Pty Ltd v Mt Morgans WA Mining Pty Ltd (WASCA)** - stay - preliminary issue - 'stay applications' - direction for removal of third respondent as party granted - applications otherwise dismissed (I B C G)

**In the Estate of Jansen (ACTSC)** - wills and estates - probate - applicants sought declaration under s11A *Wills Act 1968* (ACT) that 'undated document' - applicants also sought probate in respect of will - application granted (B)

## Summaries With Link (Five Minute Read)

### **Friends of Leadbeater's Possum Inc v VicForests (No 4) [2020] FCA 704**

Federal Court of Australia

Mortimer J

Environmental law - Greater Glider and Leadbeater's Possum listed as 'threatened species' under *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) - proceeding concerned effect of 'forestry operations' in 66 coupes on Greater Glider and Leadbeater's Possum - whether 'past and proposed forestry operations' were or would be conducted "in accordance with" *Victorian Code of Practice for Timber Production 201* - whether exemption in s38(1) EPBC Act applied - whether forestry operations had or likely to have 'significant impact' on Greater Glider and Leadbeater's Possum - whether contravention of s18 EPBC Act - 'precautionary principle' - held: applicant succeeded in making out its case - parties to have opportunity to agree on orders - if parties could not agree, parties to file 'proposed minutes of orders'.

[Friends of Leadbeater](#) (I B C G)

### **Friends of Leadbeater's Possum Inc v VicForests (No 5) [2020] FCA 705**

Federal Court of Australia

Mortimer J

Costs - Court gave 'liability reasons' in proceedings - no costs orders yet made concerning 'proceeding as whole' - separate determination of 'outstanding costs application' which applicant made prior to trial's commencement - costs application concerned trial's adjournment in February 2019 - adjournment had arisen upon grant of leave to VicForests to file fourth affidavit by 'principal witness' - whether applicant should be granted 'specific order' for 'particular costs' sought on costs application - whether to grant indemnity costs order - held: applicants to have separate costs order on party party basis.

[Friends of Leadbeater](#) (I B C G)

### **NL Investment Group Pty Ltd v Parc Vue Project Botanic Pty Ltd (Trustee) [2020] FCA 711**

Federal Court of Australia

Anderson J

Pleadings - corporations - proceedings concerned applicant's investment in property development - applicant contended respondents made, or were involved in making of, representations concerning investment which were 'amongst other things, false, misleading or deceitful' - applicant sought declarations of contravention by each respondent of 'one or more of s1041E, 1041F & 1041H *Corporations Act 2001* (Cth) - applicant also sought damages - applicant, by interlocutory application, sought to amend 'originating application and statement of claim' - whether failure to plead case 'with sufficient particularity to enable' response by respondent - held: interlocutory application dismissed - leave granted to file 'further proposed amended statement of claim'.

[NL Investment](#) (I B C G)

## **TFM Epping Land Pty Ltd v Decon Australia Pty Ltd [2020] NSWCA 93**

Court of Appeal of New South Wales

Basten, Meagher & Emmett JJA

Security of payments - dispute arising from building contract between appellants ('Principal') and respondent ('Contractor') - proceedings concerned respondent's service on appellants of payment claim - appellants did not pay payment claim - respondent sought judgment against appellants under *Building and Construction Industry Security of Payment Act 1999* (NSW) (Security of Payment Act) - primary judge ordered summary judgment in respondent's favour - appellants sought leave to appeal - validity of payment claim - whether payment claim invalid because it claimed payment for variations which were 'quantum meruit claims', not claims under contract - whether payment claim invalid due to its not having been made in respect of 'available reference date' - whether payment claim's 'supporting statement' did not comply with s13(7) Security of Payment Act - held: appeal dismissed.

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

## **Duncan as Liquidator of WDR Iron Ore Pty Ltd (In Liq) v Downer EDI Works Pty Ltd [2020] SASC 89**

Supreme Court of South Australia

Blue J

Corporations - plaintiff was liquidator of company (WDRIO) - fifth defendant supplied services to WDRIO - plaintiff sued fifth defendant for amount of four payments as 'as recoverable unfair preferences under' ss588FA, 588FC, 588FE and 588FF *Corporations Act 2001* (Cth) (Corporations Act) - whether insolvency proved in respect of three of four payments - whether 'statutory defence' under s588FG Corporations Act - held: judgment for plaintiff.

[Duncan](#) (B)

## **Easy Stay Mining Accommodation Pty Ltd v Mt Morgans WA Mining Pty Ltd [2020] WASCA 86**

Court of Appeal of Western Australia

Murphy & Mitchell JJA

Stay - preliminary issue - first respondent, under s58 *Civil Judgments Enforcement Act 2004*

(WA), sought that money paid into Court, 'purportedly standing' to appellant's credit, be paid to first respondent - judge dismissed application - judge found application had 'erroneously assumed' that money stood to appellant's credit - judge found money was payable to first respondent upon correction of earlier order's 'irregularity' - money ordered to be paid to first respondent - appellant appealed - appellant, by 'stay applications', sought stay of orders concerning payment of money to first respondent, direction that there be determination of preliminary issue, and direction for removal of third respondent as party - *Construction Contracts Act 2004* (WA) - held: direction for removal of third respondent granted - applications otherwise dismissed.

[Easy Stay](#) (I B C G)

## **In the Estate of Jansen [2020] ACTSC 130**

Supreme Court of the Australian Capital Territory

Mossop J

Wills and estates - succession - probate - applicants, by 'Application in Proceeding', sought declaration under s11A *Wills Act 1968* (ACT) that 'undated document' which deceased signed constituted deceased's will even though will was not executed in accordance with Wills Act's requirements - grant of probate to applicants was also sought - rr3030 & 3034 *Court Procedures Rules 2006* (ACT) - held: application granted.

[In the Estate of Jansen](#) (B)

## CRIMINAL

### Executive Summary

### Summaries With Link



# Benchmark

**From: Coogee**

**By: Henry Kendall (1839–1882)**

SING the song of wave-worn Coogee,—Coogee in the  
distance white  
With its jags and points disrupted, gaps and fractures  
fringed with light!  
Haunt of gledes and restless plovers of the melancholy  
wail  
Ever lending deeper pathos to the melancholy gale.  
There, my brothers, down the fissures, chasms deep and  
wan and wild,           5  
Grows the sea-bloom, one that blushes like a shrinking, fair,  
blind child;  
And amongst the oozing forelands many a glad green rock-  
vine runs,  
Getting ease on earthy ledges sheltered from December  
suns.

Often, when a gusty morning, rising cold and gray and  
strange,  
Lifts its face from watery spaces, vistas full with cloudy  
change;           10  
Bearing up a gloomy burden which anon begins to wane,  
Fading in the sudden shadow of a dark determined rain;  
Do I seek an eastern window, so to watch the breakers  
beat  
Round the steadfast crags of Coogee, dim with drifts of  
driving sleet:  
Hearing hollow mournful noises sweeping down a solemn  
shore           15  
While the grim sea-caves are tideless and the storm strives  
at their core.

[https://en.wikipedia.org/wiki/Henry\\_Kendall\\_\(poet\)](https://en.wikipedia.org/wiki/Henry_Kendall_(poet))

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