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

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### CIVIL (Insurance, Banking, Construction & Government)

### Executive Summary (1 minute read)

**Wilkie v The Commonwealth; Australian Marriage Equality Ltd v Cormann** (HCA) - constitutional law - survey on same-sex marriage - validity of *Appropriation Act (No 1) 2017-2018* (Cth) upheld - 'Advance to the Finance Minister Determination' and 'Statistics Direction valid - reserved questions answered - proceedings dismissed (I B C G)

**Australian Securities and Investments Commission v Diploma Group Limited (No 5)** (FCA) - corporations - liquidators of company granted leave to appoint themselves as its administrators (I B C G)

**Australian Securities and Investments Commission v Schlaepfer** (NSWCA) - limitations - defamation - interlocutory order extending time to bring proceedings - leave to appeal refused (I)

**Henderson bhnf Sullivan v State of Queensland** (NSWSC) - cross-vesting - medical negligence - application to transfer proceedings to Supreme Court of Queensland refused (I)

**Grace Worldwide (Australia) Pty Limited (ACN 070 345 845) v Steve Alves** (NSWSC) - contract - employment agreement - employer entitled to place employee on 'garden leave' - employee bound by post-employment restraints - no repudiation of agreement (I B C G)

**Spiliotopoulos v National Australia Bank Limited** (NSWSC) - costs - application for indemnity costs in reliance on offer of compromise - indemnity costs awarded (I B C G)

**Trumino v Coles Group Ltd [2017] QSC 211 Trumino v Coles Group Ltd (QSC)** - workers compensation - worker entitled to claim damages for physical and psychological injuries allegedly suffered in course of employment - declaration (I B C G)

**Modscape Pty Ltd v Francis (TASSC)** - security of payments - adjudicator erred in relation to issue estoppel but error did not affect determination's validity - determination not quashed (I B C G)

## Summaries With Link (Five Minute Read)

### **Wilkie v The Commonwealth; Australian Marriage Equality Ltd v Cormann [2017] HCA 40**

High Court of Australia

Kiefel CJ; Bell, Gageler, Keane, Nettle, Gordon & Edelman JJ

Constitutional law - delegated legislation - marriage equality - two proceedings ('Wilkie proceeding' and 'AME proceeding') challenged lawfulness of measures 'taken and proposed to be taken' to implement Australian Government's decision to direct and fund survey concerning whether law should be changed to allow same-sex marriage - questions reserved in 'AME proceeding' - whether s10 *Appropriation Act (No 1) 2017-2018* (Cth) (Appropriation Act) was valid - whether Advance to the Finance Minister Determination (Finance Determination) was invalid because criterion in s10(1)(b) Appropriation Act was not met - whether s10 Appropriation Act authorised Finance Minister to make Finance Determination - challenge to 'Statistics Direction' in Wilkie proceeding - whether 'Statistics Direction' exceeded Treasurer's power under s9(1)(b) *Census and Statistics Act 1905* (Cth) - held: Appropriation Act's validity upheld - Finance Determination not invalid - s10 authorised Finance Minister to make Finance Determination - Statistics Determination was valid - grounds of challenges were without merit - reserved questions answered - Wilkie proceeding dismissed.

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

### **Australian Securities and Investments Commission v Diploma Group Limited (No 5) [2017] FCA 1147**

Federal Court of Australia

McKerracher J

Corporations - applicants pursuant to s436B(2)(g) *Corporations Act 2001* (Cth) were Liquidators of company who sought extension time to seek leave to appoint themselves as company's administrators - applicants also sought that need for holding first meeting of company's creditors be dispensed with, and variation of second meeting of creditors such that it may be convened 'at the earliest convenient date determine by the administrators' - appropriateness of appointment of liquidators as voluntary administrators - whether conflict between Liquidators' duties as company's administrator and Liquidators' duties as liquidator of second to twenty-first defendant - 'threat to independence' - held: Court satisfied to make orders in terms sought by

liquidators.

[Australian Securities and Investments Commission](#) (I B C G)

## **Australian Securities and Investments Commission v Schlaepfer [2017] NSWCA 247**

Court of Appeal of New South Wales

Meagher & Payne JJA; Sackville JA

Limitations - defamation - applicant sought to appeal against interlocutory order pursuant to s56A *Limitation Act 1969* (NSW) (Limitation Act) extending limitation period for first respondent to commence defamation action against applicants - ss75 & 135 *Evidence Act 1995* (NSW) - ss14B, 56A & 56D *Limitation Act 1969* (NSW) - held: not established that primary judge erred in finding respondent proved on balance of probabilities he was unaware of oral slander before certain date - no question of principle raised - not established that refusal of grant of leave to appeal would result in 'significant injustice' to applicants - leave to appeal refused.

[View Decision](#) (I)

## **Henderson bhnf Sullivan v State of Queensland [2017] NSWSC 1313**

Supreme Court of New South Wales

Adamson J

Cross-vesting - medical negligence - defendant sought pursuant to s5(2) *Jurisdiction of Courts (Cross Vesting) Act 1987* (NSW) transfer of proceedings to Supreme Court of Queensland - proper law of tort - location of witnesses, solicitors and expert witnesses - interests of justice - held: Court not satisfied it was in interests of justice to transfer proceedings to Supreme Court of Queensland - transfer of proceedings refused.

[View Decision](#) (I)

## **Grace Worldwide (Australia) Pty Limited (ACN 070 345 845) v Steve Alves [2017] NSWSC 1296**

Supreme Court of New South Wales

Slattery J

Contract - employment contract - defendant commenced employment under contract (employment agreement) as plaintiff's 'National Manager - Quality, Risk and Environment' - defendant gave notice to plaintiff that he would be taking up position with competitor - plaintiff notified defendant he should proceed on 'garden leave' under three-month notice clause in employment agreement - plaintiff sought declaration that defendant's employment agreement continued for three months and injunction based on post-employment restraints - whether plaintiff repudiated contract - whether defendant bound by restraints - whether restraints should be read down under *Restraints of Trade Act 1976* (NSW) - held: plaintiff did not repudiate employment agreement - plaintiff entitled under implied term of employment agreement to direct defendant to take garden leave - defendant was bound by restraints - restraints exceeded what was reasonable to protect 'legitimate business interests of plaintiff' - restraints should be read down - orders made.

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

## **Spiliotopoulos v National Australia Bank Limited [2017] NSWSC 1069**

Supreme Court of New South Wales

Harrison J

Costs - first and third defendants obtained dismissal of proceedings against them - third defendant sought indemnity costs on basis of offer of compromise which was not accepted - r20.26 *Uniform Civil Procedure Rules 2005* (NSW) - held: offer of compromise was valid - proceedings were unmeritorious - third defendant's success on strike out application was 'obvious vindication' of offer's reasonableness - indemnity costs granted.

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

## **Trumino v Coles Group Ltd [2017] QSC 211 Trumino v Coles Group Ltd [2017] QSC 211**

Supreme Court of Queensland

Henry J

Workers compensation - applicant was employed by respondent as filler at shopping centre - applicant allegedly injured in course of employment in slip and fall in freezer storage room - applicant sought declaration under s10 *Civil Proceedings Act 2011* (Qld) that he was entitled to claim damages for physical and subsequent psychiatric injuries - applicant received two notices of assessment - applicant's total degree of permanent impairment (DPI) for physical injuries was over threshold entitling him to seek damages, but his total DPI for psychological injuries was below threshold - ss179, 185, 188, 189, 193 & 237 *Workers' Compensation and Rehabilitation Act 2003* (Qld) - s237 *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2013* (Qld) - held: applicant, having passed the threshold in respect of physical injuries, was entitled to claim damages for both psychological and physical injuries - declaration made.

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

## **Modscape Pty Ltd v Francis [2017] TASSC 55**

Supreme Court of Tasmania

Blow CJ

Security of payments - issue estoppel - applicant contended that adjudicator denied parties natural justice 'by not seeking submissions about *Kuligowski v Metrobus*' in relation to issue estoppel, and that adjudication determination should be quashed - s24(2) *Building and Construction Industry Security of Payment Act 2009* (Tas) - held: adjudicator erred in interpretation of *Kuligowski v Metrobus* in relation to issue estoppel - there was no denial of natural justice - adjudicator made error which did not affect determination's validity - determination not quashed.

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

## CRIMINAL

## Executive Summary

**Senior v R** (NSWCCA) - criminal law - dangerous driving - occasioning grievous bodily harm - challenge to guilty pleas and contentions concerning 'incompetent counsel' failed - no miscarriage of justice - leave to appeal against convictions refused

## Summaries With Link

### **Senior v R [2017] NSWCCA 220**

Court of Criminal Appeal of New South Wales

Basten JA; McCallum & Wilson JJ

Criminal law - semi-trailer driven applicant collided with motor vehicle - applicant pleaded guilty to two charges of dangerous driving and occasioning grievous bodily harm - applicant sentenced to 3 years 9 months in prison on each count - applicant challenged conviction on each count - applicant contended plea of guilty was 'not attributable to a genuine consciousness of guilt' and 'entered without a full understanding' of 'implications and consequences' - alternatively applicant argued legal representative's advice to make plea was 'imprudent and inappropriate' - held: challenge to pleas rejected - counsel's advice not 'imprudent' or 'wrong' or 'inappropriate' - no miscarriage of justice - leave to appeal refused.

[View Decision](#)



# Benchmark

**Song: 'The feathers of the willow'**

By Richard Watson Dixon

THE FEATHERS of the willow  
Are half of them grown yellow  
Above the swelling stream;  
And ragged are the bushes,  
And rusty now the rushes,  
And wild the clouded gleam.

The thistle now is older,  
His stalk begins to moulder,  
His head is white as snow;  
The branches all are barer,  
The linnet's song is rarer,  
The robin pipeth now.

[https://en.wikipedia.org/wiki/Richard\\_Watson\\_Dixon?](https://en.wikipedia.org/wiki/Richard_Watson_Dixon?)

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