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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)

ESCO Corporation v Ronneby Road Pty Ltd (FCAFC) - intellectual property - patent - challenge to findings of lack of novelty and inutility - appeal allowed (I B C G)

Chen v NSW Crime Commission (NSWCA) - judgments and orders - leave to appeal from two orders under *Criminal Assets Recovery Act 1990* (NSW) refused (I B C G)

Re Connective Services Pty Ltd (No 2) (NSWSC) - stay - plaintiff granted leave to proceed in name of company - special circumstances for stay not established - stay refused (I B C G)

Pham v Enterprise ICT Pty Ltd and Others; Pham v Sebie (No. 3) (NSWSC) - real property - corporations - director refused leave to appear on behalf of company - motion for removal of caveat dismissed (I B C G)

Hingst v Construction Engineering (Aust) Pty Ltd (No 3) (VSC) - negligence - workplace bullying - unfair dismissal - employment law - contract - proceedings dismissed (I B C G)

Menzies Aviation Group (Australian) Pty Ltd v Vegter (VSC) - judicial review - accident compensation - current work capacity - challenge to opinion of Medical Panel - grounds of review not established - proceedings dismissed (I B C G)

Shadda Abercrombie v Salter Architects & Anor (VSCA) - planning and environment -

administrative law - height control - grant of conditional permit for development by Victorian Civil and Administrative Tribunal - appeal dismissed (I B C G)

Summaries With Link (Five Minute Read)

ESCO Corporation v Ronneby Road Pty Ltd [2018] FCAFC 46

Full Court of the Federal Court of Australia

Greenwood, Rares & Moshinsky JJ

Intellectual property - applicant sought grant of Australian standard patent - respondent opposed grant of patent under s59 *Patents Act 1990* (Cth) on basis lack of novelty and inventive step, and that the claim or claims were not 'clear and succinct or fairly based on matter disclosed in the specification and not fully described' - company (CQMS) opposed grant of patent on same grounds as respondent with additional objection that invention did not 'constitute a manner of manufacture' - another company (Caterpillar) also opposed grant of patent on same grounds as respondent and CQMS, with additional contention that claim or claims not useful - delegate of Commissioner rejected all grounds of opposition - applicant sought to challenge primary judge's findings of lack of novelty and inutility - held: appeal upheld.

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

Chen v NSW Crime Commission [2018] NSWCA 63

Court of Appeal of New South Wales

Meagher & Simpson JJA

Judgments and orders - criminal assets recovery - applicant sought to appeal from two orders made by primary judge under *Criminal Assets Recovery Act 1990* (NSW) - by one order primary judge dismissed applicant's application under s10C of the Act to set aside restraining orders - by other order primary judge granted restraining orders to Commission under s10A of the Act - whether existence of 'arguable error' justifying grant of leave in respect of order under s10A - held: leave to appeal refused in respect of s10A order - unnecessary to consider application for leave in respect of s10C order - leave to appeal refused.

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

Re Connective Services Pty Ltd (No 2) [2018] VSC 128

Supreme Court of Victoria

Robson J

Stay - Court gave plaintiff leave to proceed in name of company (Connective Services and Connective OSN) under s237 *Corporations Act 2001* (Cth) in proceedings - applicants sought stay under r66.16 *Supreme Court (General Civil Procedure) Rules 2005* (Vic) and Court's inherent jurisdiction pending application for leave to appeal and appeal - held: special circumstances not established for grant of stay - stay refused.

[Re Connective Services](#) (I B C G)

Pham v Enterprise ICT Pty Ltd and Others; Pham v Sebie (No. 3) [2018] NSWSC 381

Supreme Court of New South Wales

Slattery J

Real property - corporations - proceedings determining two issues: whether director (Mr Sebie) should have leave to appear on behalf of company (ENA) and orders on two motions - in one motion plaintiffs sought removal of ENA's caveat from title to property - in other motion ENA sought leave to cross-claim against plaintiffs to maintain caveat - held: director refused leave to appeal for company - hearing to proceed in absence of representation of ENA - plaintiffs' motion to file cross-claim dismissed - orders made in respect of cross-claim.

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

Hingst v Construction Engineering (Aust) Pty Ltd (No 3) [2018] VSC 136

Supreme Court of Victoria

Zammit J

Negligence - employment law - contract - psychiatric injury - workplace bullying - plaintiff employed by defendant - plaintiff claimed he was bullied in workplace resulting in psychiatric and physical injuries - plaintiff also contended defendant unlawfully terminated employment, and that he signed documents in settlement of unfair dismissal proceeding under duress (unfair dismissal claim) - held: Court not persuaded plaintiff was bullied in workplace, or that defendant should have known plaintiff was suffering 'depressive or stress-related condition' and was negligent in not intervening - unfair dismissal claim was without merit - proceeding dismissed

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

Menzies Aviation Group (Australian) Pty Ltd v Vegter [2018] VSC 13

Supreme Court of Victoria

Administrative law - judicial review - accident compensation - plaintiff sought to challenge opinion of Medical Panel that worker had no current work capacity and was likely to continue to have no current work capacity indefinitely - *Accident Compensation Act 1985 (Vic)* - *Workplace Injury Rehabilitation & Compensation Act 2013 (Vic)* - whether Panel asked itself wrong question, took into account irrelevant consideration and/or failed to give 'adequate written statement' of reasons - held: grounds of review not made out - proceedings dismissed.

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

Shadda Abercrombie v Salter Architects & Anor [2018] VSCA 74

Court of Appeal of Victoria

Ferguson CJ; Tate & Osborn JJA

Planning and environment - first respondent sought to develop land - development required planning scheme's permission - first respondent sought permit pursuant to Design and Development Overlay (DDO) provisions - DDO regulated height - applicant contended proposed development too high - Minister granted conditional permit - Victorian Civil and Administrative Tribunal granted permit with additional condition - primary judge dismissed applicant's appeal -

applicant sought to appeal - whether erroneous construction of DDO control 'as not imposing a mandatory height limit' - whether erroneous conclusion that Tribunal's imposition of condition was not unreasonable - held: Tribunal had discretionary power to permit variation on relevant height control requirement - condition sought to be impugned by applicant did not have 'no reasonable basis' - appeal dismissed.

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

CRIMINAL

Executive Summary

Odisho v R (NSWCCA) - criminal law - wounding with intent to cause grievous bodily harm - using pistol without being authorised - appeal dismissed

DPP Reference No 1 of 2017 (VSCA) - criminal law - referred question following acquittal of person for murder - *Prasad* direction not unlawful when given 'in appropriate circumstances

Summaries With Link

Odisho v R [2018] NSWCCA 19

Court of Criminal Appeal of New South Wales

Price, Bellew & Hamill JJ

Criminal law - appellant tried on count of wounding 'with intent to cause grievous bodily harm' (Count 1), or, while in Witness X's company, wounding 'reckless as to causing actual bodily harm' to victim (Count 2) - appellant also tried on count of using pistol without being authorised (Count 3) - appellant found guilty of Counts 1 and 3 - appellant appealed against conviction - whether miscarriage of justice due to Crown being permitted to cross examine witness concerning credibility without leave under s38(3) *Evidence Act 1995* (NSW) and/or miscarriage of justice due to failure of trial judge, in summing up, to adequately balance cases of Crown and defence - whether verdict on Count 1 unreasonable and not supportable by evidence - whether erroneous directions by trial judge to jury concerning intention - held: appeal dismissed.

[View Decision](#)

DPP Reference No 1 of 2017 [2018] VSCA 69

Court of Appeal of Victoria

Maxwell P; Weinberg & Beach JJA

Criminal law - Director of Public Prosecutions (DPP), pursuant to s308 *Criminal Procedure Act 2009* (Vic), referred question on point of law to Court - question followed acquittal of person for murder charge, where judge had given a *Prasad* direction to jury in proceedings - DPP invited



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Court to declare that *Prasad* direction was 'contrary to law and should not be administered to a jury determining a criminal trial between the Crown and an accused person' -
whether *Prasad* direction unlawful - whether *Prasad* direction an 'invitation to acquit' -
whether *Prasad* direction interfered with 'division of functions' between the judge and jury -
held: not contrary to law to give a *Prasad* direction in 'appropriate circumstances' - referred question answered.

[DPP](#)



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The Exposed Nest

By: Robert Frost

You were forever finding some new play.
So when I saw you down on hands and knees
In the meadow, busy with the new-cut hay,
Trying, I thought, to set it up on end,
I went to show you how to make it stay,
If that was your idea, against the breeze,
And, if you asked me, even help pretend
To make it root again and grow afresh.
But 'twas no make-believe with you to-day,
Nor was the grass itself your real concern,
Though I found your hand full of wilted fern,
Steel-bright June-grass, and blackening heads of clover.
'Twas a nest full of young birds on the ground
The cutter-bar had just gone champing over
(Miraculously without tasting flesh)
And left defenseless to the heat and light.
You wanted to restore them to their right
Of something interposed between their sight
And too much world at once—could means be found.
The way the nest-full every time we stirred
Stood up to us as to a mother-bird
Whose coming home has been too long deferred,
Made me ask would the mother-bird return
And care for them in such a change of scene
And might our meddling make her more afraid.
That was a thing we could not wait to learn.
We saw the risk we took in doing good,
But dared not spare to do the best we could
Though harm should come of it; so built the screen
You had begun, and gave them back their shade.
All this to prove we cared. Why is there then
No more to tell? We turned to other things.
I haven't any memory—have you?—
Of ever coming to the place again
To see if the birds lived the first night through,
And so at last to learn to use their wings.

[Robert Frost](#)

Robert Frost - Wikipedia



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Robert Frost was born in San Francisco, California, to journalist William Prescott Frost, Jr., and Isabelle Moodie. His mother was a Scottish immigrant, and his ...

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