

Friday, 30 June 2017

## Daily Civil Law Review 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)

**Novosel v Comcare** (FCA) - administrative law - work-related injury - abuse of process - refusal of compensation by Comcare - no error in Tribunal's dismissal of review application - application for review dismissed (I B C G)

**Fitzgerald v Deputy Commissioner of Taxation** (NSWCA) - taxation - PAYG withholding amounts - director penalties - DPN Notice was served on appellant as required by s269-50 TA Act 1953 (Cth) - appeal dismissed (B)

**Re Acquire Learning Pty Ltd (Administrators Appointed)** (VSC) - corporations - voluntary administration - extension of convening period for second meeting of creditors in voluntary administrations granted together with ancillary orders (I B C G)

**Tri-Star Petroleum Company v Australia Pacific LNG Pty Limited** (QSC) - discovery - confidentiality - sale and purchase deed - defendant to provide further particulars - confidentiality protocol to be imposed (I B C G)

**Foster v Carter** (QSC) - damages - assessment of damages - motor vehicle collision - nature and extent of plaintiff's injuries - consequences of injuries for employment - *Civil Liability Act 2003* (Qld) applied to claim for damages - judgment for plaintiff in sum of \$539,765 (I B C G)

**Taylor & Anor v Hobson & Ors** (QSC) - stay - trade practices - deed of settlement -

impermissible meddling - application to lift stay on proceedings adjourned (I B C G)

## Summaries With Link (Five Minute Read)

### **Novosel v Comcare [2017] FCA 722**

Federal Court of Australia

Perry J

Administrative law - applicant alleged respondent was liable under s19 *Safety, Rehabilitation and Compensation Act 1988* (Cth) to compensate him for incapacity arising from work-related injury - respondent found compensation not payable - applicant sought review of Administrative Appeals Tribunal's dismissal of application for review on grounds of abuse of process and no reasonable prospect of success - application to Tribunal had been applicant's sixth - earlier applications either been withdrawn or applicant had conceded to decisions - s43B(1)(c) *Administrative Appeals Tribunal Act 1975* (Cth) - held: no reviewable error by Tribunal - application dismissed.

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

### **Fitzgerald v Deputy Commissioner of Taxation [2017] NSWCA 158**

Court of Appeal of New South Wales

Ward & Gleeson JJA; Sackville AJA

Taxation - director penalties - PAYG withholding amounts - Commissioner claimed penalties against appellant pursuant to s269-15 *Taxation Administration Act 1953* (Cth) (TA Act) - issue was whether primary judge erred in finding Commissioner validly gave written notice (DPN Notice) to appellant of penalties in conformity with Schedule 1 TA Act - held: no error in primary judge's finding that DPN Notice was served as required by s269-50 TA Act - appeal dismissed.

[Fitzgerald](#) (B)

### **Re Acquire Learning Pty Ltd (Administrators Appointed) [2017] VSC 376**

Supreme Court of Victoria

Gardiner AsJ

Corporations - voluntary administration - administrators of companies sought extension of convening period for second meeting of creditors in voluntary administrations - s439A(6) *Corporations Act 2001* (Cth) - held: there were 'substantial reasons' to grant extensions of time - administrators unable 'to prepare and circulate a meaningful report to creditors' - 'large and complex' administrations - administrators unable to complete preliminary investigations into companies' affairs and activities - Court granted extension and ancillary orders including 'Daisytek' order

[Re Acquire Learning](#) (I B C G)

### **Tri-Star Petroleum Company v Australia Pacific LNG Pty Limited [2017] QSC 136**

Supreme Court of Queensland

## Bond J

Discovery - dispute arising from terms of Sale and Purchase Deed between plaintiffs and defendant - defendant contended that confidentiality concerns justified imposition of constraints on manner of plaintiffs' access to and use of documents defendant might be required to produce - whether Court should impose proposed 'Confidentiality Protocol' - adequacy of defendant's response to requests for further and better particulars - held: defendant to provide particulars - appropriate to make order creating protocol giving defendant 'some further protection than the implied obligation' - parties to bring in proposed minutes of order.

[Tri-Star Petroleum](#) (I B C G)

## **Foster v Carter [2017] QSC 135**

Supreme Court of Queensland

Mullins J

Damages - plaintiff injured in course of employment when vehicle driven by first defendant collided with rear of bus driven by plaintiff - defendants admitted liability - parties disputed quantum of damages - whether damages to be assessed at common law or under *Civil Liability Act 2003* (Qld) (CLA) - nature and extent of plaintiff's injuries - consequences of injuries for plaintiff's employability - held: CLA applied to plaintiff's claim for damages - damages assessed - judgment for plaintiff in sum of \$539,765.

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

## **Taylor & Anor v Hobson & Ors [2017] QSC 139**

Supreme Court of Queensland

McMeekin J

Stay - trade practices - claims arising from sale of business agreement - proceeding between plaintiffs, and third and fourth defendants settled - deed of settlement entered - terms of deed of settlement caused Boddice J to stay proceedings between plaintiffs, and first and second defendants - plaintiffs sought that stay be lifted - plaintiffs had entered new deed with fourth defendant's insurer and contended the 'impermissible meddling' which concerned Boddice J was no longer a 'legitimate concern' - ss52 & 53A *Trade Practices Act 1974* (Cth) - held: terms of new deed did not meet risk which had concerned Boddice J, 'of possibility of the case being conducted in a manner contrary to the way it would have been conducted absent the settlement' - application adjourned.

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

## CRIMINAL

### Executive Summary

**GAX v The Queen** (HCA) - criminal law - aggravated indecent dealing - there was real possibility, which could not be excluded from reasonable doubt, that complainant's evidence

# Benchmark

was reconstruction, not actual memory - not open to jury to find appellant guilty - appeal allowed - conviction quashed

**The Queen v Dickman** (HCA) - criminal law - intentionally causing serious injury and making threat to kill - admission of identification evidence - no error finding identification evidence posed minimal risk to defence - even if identification evidence 'put to one side', respondent's conviction inevitable - appeal allowed - conviction restored

**Rizeq v Western Australia** (HCA) - criminal law - conviction by majority verdict - s6(1)(a) *Misuse of Drugs Act 1981* (WA) applied to appellant as law of Western Australia even though trial was in federal jurisdiction - s80 Constitution did not apply - unanimous verdict not required - appeal dismissed

## Summaries With Link

### **GAX v The Queen [2017] HCA 25**

High Court of Australia

Bell, Gageler, Nettle, Gordon & Edelman JJ

Criminal law - aggravated indecent dealing - appellant convicted of aggravated indecent dealing with child, an offence which was third of three counts charged - appellant contended verdict unreasonable and inconsistent with "not guilty" verdicts returned on two other counts of aggravated indecent dealing with same child - Court of Appeal of Queensland found verdict on third count not inconsistent with other two verdicts, a finding which appellant did not challenge - appellant contended Court of Appeal majority failed to make 'independent assessment of the sufficiency and quality of the evidence' in determining it was open to jury to convict, and erred in concluding verdict was not unreasonable - sufficiency of evidence - whether verdict unreasonable - held: there was real possibility, which could not be excluded from reasonable doubt, that complainant's evidence was a reconstruction, not actual memory - not open to jury to conclude appellant was guilty - appeal allowed - conviction quashed.

[GAX](#)

### **The Queen v Dickman [2017] HCA 24**

High Court of Australia

Kiefel CJ; Bell, Keane, Nettle & Edelman JJ

Criminal law - respondent convicted of intentionally causing serious injury and making a threat to kill - Court of Appeal of Victoria allowed respondent's appeal, finding trial judge erred in failing to exclude identification evidence under s137 *Evidence Act 2008* (Vic) resulting in miscarriage of justice - new trial was ordered - prosecution granted special leave to appeal, challenging finding that it was an error to admit evidence, and alternatively challenging conclusion that admission of evidence caused substantial miscarriage of justice - whether



probative value possessed by 'August 2011 identification' outweighed by danger of unfair prejudice to respondent - held: trial judge did not err in finding minimal risk that August 2011 identification would unfairly prejudice defence - if August 2011 identification 'put to one side, the respondent's conviction was nonetheless inevitable' - appeal allowed - conviction restored.

[The Queen](#)

## **Rizeq v Western Australia [2017] HCA 23**

High Court of Australia

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

Criminal law - appellant convicted by majority verdict in accordance with s114(2) *Criminal Procedure Act 2004* (WA) of offences against s6(1)(a) *Misuse of Drugs Act 1981* (WA) (MDA) - appellant was not a Western Australian resident, thus trial was in federal jurisdiction - appellant contended conviction unlawful because s80 Constitution required unanimous verdict in trial of an 'offence against any law of the Commonwealth' - appellant contended that his trial was of offence against law of Commonwealth because District Court was exercising federal jurisdiction, and that s6(1)(a) MDA could only apply if picked up and applied as law of Commonwealth by s79 *Judiciary Act 1903* (Cth) - held: s6(1)(a) MDA applied to appellant as law of Western Australia, governing appellant's criminal liability notwithstanding District Court was exercising federal jurisdiction - s79 *Judiciary Act* not engaged to pick up s6(1)(a) MDA - s80 Constitution had no application - appeal dismissed.

[Rizeq](#)



# Benchmark

## **For Once, Then, Something**

By [Robert Frost](#)

Others taunt me with having knelt at well-curbs  
Always wrong to the light, so never seeing  
Deeper down in the well than where the water  
Gives me back in a shining surface picture  
Me myself in the summer heaven godlike  
Looking out of a wreath of fern and cloud puffs.  
*Once*, when trying with chin against a well-curb,  
I discerned, as I thought, beyond the picture,  
Through the picture, a something white, uncertain,  
Something more of the depths—and then I lost it.  
Water came to rebuke the too clear water.  
One drop fell from a fern, and lo, a ripple  
Shook whatever it was lay there at bottom,  
Blurred it, blotted it out. What was that whiteness?  
Truth? A pebble of quartz? For once, then, something.

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