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Daily Construction A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Minogue v Victoria (HCA) - constitutional law - questions for Court's determination - s74AB *Corrections Act 1986* (Vic) not invalid - validity of s74AAA *Corrections Act* did not arise - appellant to pay costs of Special Case

Inabu Pty Ltd as trustee for the Alidas Superannuation Fund v CIMIC Group Ltd (FCA) - corporations - pleadings - respondents sought to strike out five paragraphs of 'further amended statement of claim' - four paragraphs struck out with leave to replead

Martin v Norton Rose Fulbright Australia (No 5) (FCA) - bias - application for recusal of judge from proceedings' 'further management and conduct' - application refused - no costs order

Deguisa & Anor v Lynn & Ors (SASCFC) - real property - appeal against two judgments upholding restrictive covenants' enforceability over land appellants owned and prohibiting appellants from erecting dwellings despite planning approval - appeal dismissed

Summaries With Link (Five Minute Read)

Minogue v Victoria 2019] HCA 31

High Court of Australia

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

Constitutional law - appellant convicted of murder and sentenced by Supreme Court of Victoria to life in prison with 28-year non-parole period - following expiry of non-parole period appellant

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sought parole - parole application as yet undetermined - appellant challenged 'constitutional validity' of s74AB *Corrections Act 1986* (Vic) (Corrections Act) and constitutional validity of 74AAA *Corrections Act* (if it applied) - appellant contended provisions 'impermissibly legislatively resentenced' appellant and Victorian Parliament did not have 'legislative resentencing' power - appellant contended provisions contrary to Ch III Constitution - four questions for Court's determination - whether 74AB *Corrections Act* invalid - whether s74AAA *Corrections Act*'s validity arose and if so, whether s74AAA was invalid - determination of who should pay costs of Special Case - held: s74AB *Corrections Act* was not invalid - s74AAA *Corrections Act*'s validity did not arise - appellant to pay costs of Special Case.

[Minogue](#)

Inabu Pty Ltd as trustee for the Alidas Superannuation Fund v CIMIC Group Ltd [2019] FCA 1480

Federal Court of Australia

Jagot J

Corporations - pleadings - respondent sought to strike out five paragraphs of 'further amended statement of claim' of applicant - r16.21(1) *Federal Court Rules 2011* (Cth) - ambiguity - prejudice - alleged "forest of contingencies" - whether paragraphs 'sufficiently clear' - whether paragraph contained 'same kind of defect' which was identified in *Zonia Holdings Pty Ltd v Commonwealth Bank of Australia Ltd* [2018] FCA 659 - held: four paragraphs struck out with leave to replead - one paragraph not struck out.

[Inabu](#)

Martin v Norton Rose Fulbright Australia (No 5) [2019] FCA 1481

Federal Court of Australia

Kerr J

Bias - costs - industrial law - consumer law - deceit - Mr Martin sought recusal of judge from proceedings' 'further management and conduct' - whether 'fair minded lay observer might reasonably apprehend' judge 'might not bring an impartial mind' to outstanding issues' resolution - whether bias arising from 'email correspondence' - *Ebner v Official Trustee in Bankruptcy* [2000] HCA 63 - held: recusal application refused - no costs order made.

[Martin](#)

Deguisa & Anor v Lynn & Ors [2019] SASCFC 107

Full Court of the Supreme Court of South Australia

Kourakis CJ; Peek & Hughes JJ

Real property - appeal against two District Court judgments which upheld restrictive covenants' enforceability over land which appellants owned, and prohibited appellants from erecting two dwellings ('proposed development') despite planning approval - whether the restrictive covenants bound appellants - whether respondents, or any respondent, had standing to enforce restrictive covenants - whether covenants prohibited proposed development - *Electronic Conveyancing National Law (South Australia) Act 2013* (SA) - *Real Property Act 1886* (SA) -



Town Planning Act 1929 (SA) - held: appeal dismissed.

[Deguisa](#)

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