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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)

**Drive My Car Rental Pty Ltd v Gabriel** (NSWCA) - motor vehicle collision - notices of motion - two 'related applications' by applicant and respondents - direction given for 'concurrent hearing' of application for leave to appeal and, if leave granted, appeal - stay refused

**Cosco v Hutley (No 3)** (NSWSC) - costs - interest - defamation - successful plaintiff sought indemnity costs order - defendant sought variation of interest rate - orders varied

**Samios Plumbing Pty Ltd v John R Keith (NSW) Pty Ltd** (NSWSC) - privilege - second cross-defendant claimed 'legal professional (and common interest privilege)' or 'settlement negotiation privilege' over document - notice of motion dismissed

**MKP Management Pty Ltd v Shire of Kalamunda** (WASCA) - *Building Act 2011* (WA) - 'demolition work' - criminal law - appellant convicted of contravention of s10(a) *Building Act 2011* (WA) - appeal allowed

**Quayle v Smith & Nephew Surgical Pty Ltd** (ACTSC) - preliminary discovery - negligence - consumer law - applicant alleged he was injured as result of receipt of 'two hip prostheses' - preliminary discovery orders against 'sponsor of the prostheses' granted with respect to certain documents

**HN v NTCAT & Ors** (NTSC) - administrative law - first respondent made orders under s11 *Guardianship of Adults Act 2016* (NT) - leave to appeal refused

## Summaries With Link (Five Minute Read)

### **Drive My Car Rental Pty Ltd v Gabriel [2020] NSWCA 194**

Court of Appeal of New South Wales

Gleeson JA

Motor vehicle collision - notices of motion - proceedings arising from damage sustained to motor vehicle allegedly owned by respondent - two 'related applications' by applicant and respondent to set orders of Registrar aside - Registrar, by orders, fixed 'concurrent hearing' of applicant's application for leave to appeal (leave application), if leave granted, the 'appeal itself' - applicant accepted there should be concurrent hearing - applicant sought that concurrent hearing occur after 'final determination of' 'proceedings below' - applicant sought to stay proceedings pending final determination of proceedings below - respondent sought separate hearing of leave application and appeal itself - 'case management decision' - 'need for the just, quick and cheap disposition of the real issues in dispute' - s59 *Civil Procedure Act 2005* (NSW) - held: direction given for concurrent hearing of leave application and, if leave granted, appeal; - stay refused.

[View Decision](#)

### **Cosco v Hutley (No 3) [2020] NSWSC 1125**

Supreme Court of New South Wales

Rothman J

Costs - interest - defamation - Court gave judgment for plaintiff in sum of \$300,000 - Court made orders concerning 'interest and costs' - plaintiff sought indemnity costs order under s40 *Defamation Act 2005* (NSW) or under r42.14 *Uniform Civil Procedure Rules 2005* (NSW) - defendant sought variation of interest rate - ss100 & 101 *Civil Procedure Act 2005* (NSW) - *Polias v Ryall (No 2) [2015] NSWSC 1* - held: indemnity costs order granted - variation of interest rate granted - orders varied.

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### **Samios Plumbing Pty Ltd v John R Keith (NSW) Pty Ltd [2020] NSWSC 1128**

Supreme Court of New South Wales

Hammerschlag J

Privilege - proceedings concerning single document's disclosure - second cross-defendant claimed 'legal professional (and common interest privilege)' or 'settlement negotiation privilege' over document ss119, 122(5)(c) & 131(1)(b) *Evidence Act 1995* (NSW) - 'dominant purpose' - whether 'voluntary disclosure' inconsistent with maintenance of privilege - whether document 'prepared in connection with an attempt to negotiate settlement' - held: notice of motion dismissed.

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### **MKP Management Pty Ltd v Shire of Kalamunda [2020] WASCA 130**

Court of Appeal of Western Australia

Buss P; Mazza & Vaughan JJA

# Benchmark

*Building Act 2011 (WA)* - 'demolition work' - criminal law - appellant convicted of contravention of s10(a) *Building Act 2011 (WA)* - appellant fined and ordered to pay costs of respondent - Court made 'spent conviction order' - appeal against conviction dismissed even though Court found magistrate erred in fact and law - judge found there was no 'substantial miscarriage of justice' - appellant appealed - whether erroneous finding of no substantial miscarriage of justice - whether erroneous finding that conviction 'could have been sustained under' s7(d) Criminal Code (WA) - held: appeal allowed.

[MKP Management](#)

## **Quayle v Smith & Nephew Surgical Pty Ltd [2020] ACTSC 229**

Supreme Court of the Australian Capital Territory

McWilliam AsJ

Preliminary discovery - negligence - consumer law - applicant alleged he was injured as result of receipt of 'two hip prostheses' - applicant sought preliminary discovery against 'sponsor of the prostheses' - 'necessary in the interests of justice' - whether 'potential cause of action' - whether 'reasonable inquiries' had been made - whether 'reasonable grounds for believing' sponsor possessed information which could assist in decision whether to bring proceedings - whether documents' inspection would help applicant decide whether to bring proceedings - *Arnaut v Arnaut* [2019] NSWSC 565 - *John Fairfax & Sons Ltd v Cojuangco* [1988] HCA 54 - *Central Exchange Ltd v Anaconda Nickel Ltd* [2002] WASCA 94 - r651 *Court Procedures Rules 2006* (ACT) - held: orders granted with respect to certain documents.

[Quayle](#)

## **HN v NTCAT & Ors [2020] NTSC 48**

Supreme Court of the Northern Territory

Hiley J

Administrative law - first respondent made orders under s11 *Guardianship of Adults Act 2016* (NT) concerning guardianship of personal and financial matters of 'CNN' - applicant sought to appeal against orders - ss140 & 141 *Northern Territory Civil and Administrative Tribunal Act 2014* (NT) - applicant contended he was 'not informed of his right to ask questions' - applicant also complained concerning first respondent's 'dealings with' photographs and evidence in relation to breakdown of relationship between UNN and her children - procedural fairness - held: leave to appeal refused.

[HN](#)

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