

Friday, 3 April 2020

## Daily Insurance A Daily Bulletin listing Decisions of Superior Courts of Australia

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### Executive Summary (1 minute read)

**Feldman v Polaris Media Pty Ltd as Trustee of the Polaris Media Trust t/as The Australian Jewish News** (NSWCA) - defamation - dismissal of action arising from publication of articles and editorial in newspaper - appeal dismissed

**Rural Funds Management Limited as Responsible Entity for the Rural Funds Trust and RF Active v Bonitas Research LLC [No 2]** (NSWSC) - damages - costs - corporations - contravention of ss1041E, 1041F & 1041H *Corporations Act 2001* (Cth) and s12DA(1) *Australian Securities and Investments Act 2001* (Cth) - determination of quantum of loss and damage - determination of costs

**Tyndall v Kestrel Coal Pty Ltd** (QSC) - workers compensation - application for orders by defendant - plaintiff to attend examinations by surgeon and rheumatologist - 'inspection and testing order' refused - 'order for entry for trial' refused

**Coober Pedy Roadhouse Pty Ltd v District Council of Coober Pedy & Ors** (SASC) - judicial review - planning and development - application for extension of time and permission to seek judicial review of 'impugned decisions' by Council - application granted

**Ayton v City of Armadale** (WASCA) - occupational safety and health - criminal law - contravention of ss21(2) & 21A(2) *Occupational Safety and Health Act 1984* (WA) - appeal against sentence allowed

## Summaries With Link (Five Minute Read)

### **Feldman v Polaris Media Pty Ltd as Trustee of the Polaris Media Trust t/as The Australian Jewish News [2020] NSWCA 56**

Court of Appeal of New South Wales

White JA; Emmett & Simpson AJJA

Defamation - appellant sued respondents for defamation concerning articles and editorial in newspaper - primary judge gave judgment for respondents - appellant appealed - appeal was out of time - whether leave to appeal required - whether amount in issue 'more than \$100,000' - competency of appeal - whether to grant leave to appeal - rr51.2, 51.9, 51.22 & 51.41 *Uniform Civil Procedure Rules 2005* (NSW) - "material date" - honest opinion - whether defamatory imputations 'substantially true' - statutory qualified privilege - fair report - procedural fairness - bias - ss8, 25, 26, 29, 30 & 31 *Defamation Act 2005* (NSW) - held: appeal dismissed.

[View Decision](#)

### **Rural Funds Management Limited as Responsible Entity for the Rural Funds Trust and RF Active v Bonitas Research LLC [No 2] [2020] NSWSC 335**

Supreme Court of New South Wales

Hammerschlag J

Damages - costs - corporations - Court gave verdict for plaintiff in proceedings - publication of 'Bonitas report' on 'Bonitas website' in contravention of ss1041E, 1041F & 1041H *Corporations Act 2001* (Cth) (Corporations Act) and s12DA(1) *Australian Securities and Investments Act 2001* (Cth) - determination of quantum of loss and damage - determination of costs - s601FC *Corporations Act 2001* (Cth) (Corporations Act) - whether amounts claimed were recoverable - amount paid to 'EY' for production of EY report - legal fees - 'internal costs' - whether plaintiff entitled to gross sum costs order - held: declarations made - costs orders made - judgment for plaintiff in sum of \$530,201.

[View Decision](#)

### **Tyndall v Kestrel Coal Pty Ltd [2020] QSC 56**

Supreme Court of Queensland

Crow J

Workers compensation - defendant sought that plaintiff be 'compelled to undergo' examination by surgeon and examination by rheumatologist - plaintiff opposed examination by surgeon - defendant also sought 'procedural orders', 'order for inspection and testing' and 'order for entry for trial' - r250 *Uniform Civil Procedure Rules 1999* (Qld) - s282 *Workers' Compensation and Rehabilitation Act 2003* (Qld) - held: plaintiff to attend examinations by surgeon and rheumatologist - inspection and testing order refused - order for entry for trial refused.

[Tyndall](#)

### **Coober Pedy Roadhouse Pty Ltd v District Council of Coober Pedy & Ors [2020] SASC 25**

Supreme Court of South Australia

Parker J

Judicial review - planning and development - plaintiff, under r200(2) *Supreme Court Civil Rules 2006* (SA), sought extension of time and permission to seek judicial review of 'impugned decisions' by first defendant - grant of 'provisional development plan (or planning) consent' for development pursuant to s33(1)(a) *Development Act 1993* (SA) - alleged 'implicit decision' that development was 'not seriously at variance with the Council's Development Plan' - delay - prejudice - public interest - prospects of success - held: extension of time and permission to seek judicial review granted.

[Cooper Pedy](#)

## **Ayton v City of Armadale [2020] WASCA 39**

Court of Appeal of Western Australia

Mazza, Beech & Vaughan JJA

Occupational safety and health - criminal law - respondent pleaded guilty to charges under *Occupational Safety and Health Act 1984* (WA) (OSHA) - proceedings concerned charge of contravention of ss21(2) & 21A(2) OSHA - Magistrate fined respondent \$30,000 - primary judge dismissed appellant's appeal against sentence - appellant appealed - appellant contended primary judge erred in characterisation of 'offending behaviour', in assessing value of 'mitigating factors' and in failing to find fine 'manifestly inadequate' - held: appeal allowed - respondent resentenced - respondent fined \$110,000.

[Ayton](#)



## **The Wind**

**By:** Harold Monro

SO wayward is the wind to-night

'Twill send the planets tumbling down;

And all the waving trees are dight

In gauzes wafted from the moon.

Faint streaky wisps of roaming cloud

Are swiftly from the mountains swirl'd;

The wind is like a floating shroud

Wound light about the shivering world.

I think I see a little star

Entangled in a knotty tree,

As trembling fishes captured are

In nets from the eternal sea.

There seems a bevy in the air

Of spirits from the sparkling skies:

There seems a maiden with her hair

All tumbled in my blinded eyes.

O, how they whisper, how conspire,

And shrill to one another call!



I fear that, if they cannot tire,

The moon, her shining self, will fall.

Blow! Scatter even if you will

Like spray the stars about mine eyes!

Wind, overturn the goblet, spill

On me the everlasting skies!

[https://en.wikipedia.org/wiki/Harold\\_Monro](https://en.wikipedia.org/wiki/Harold_Monro)

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