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

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### Executive Summary (1 minute read)

**Hocking v Director-General of the National Archives of Australia** (FCAFC) - administrative law - refusal to grant access to records - refusal to declare records were 'Commonwealth records' under *Archives Act 1983* (Cth) - appeal dismissed

**Hayson v Nationwide News Pty Limited** (FCA) - pleadings - defamation - "strike-in" application by respondents seeking inclusion of additional material in statement of claim - application dismissed

**Perera v Genworth Financial Mortgage Insurance Pty Ltd** (NSWCA) - summary dismissal - malicious prosecution - no error in summary dismissal of proceedings - application for leave to appeal dismissed

**Starr v George** (NSWSC) - real property - easements - parties reached resolution - consent orders included declaration of 'right of carriageway' - Court satisfied to make consent orders

**In the matter of Bias Boating Pty Limited (receivers and managers appointed) (in liquidation)** (NSWSC) - costs - separate question determined in plaintiffs' favour - 'remaining defendants' heard as to costs - costs orders made against 'remaining defendants'

**RJB Wolfe Pty Ltd v Mornington Peninsula Eye Clinic Pty Ltd** (VSC) - trade practices - claims of misleading or deceptive conduct and passing off dismissed

**Woolnough & Anor v Isaac Regional Council** (QSC) - trespass - nuisance - claims arising from installation of sewer line on property - claims dismissed

## Summaries With Link (Five Minute Read)

### **Hocking v Director-General of the National Archives of Australia [2019] FCAFC 12**

Full Court of the Federal Court of Australia

Allsop CJ; Flick & Robertson JJ

Administrative law - primary judge refused appellant's application for access to certain records and refused declaration that the records were 'Commonwealth records' under *Archives Act 1983* (Cth) - whether records were Commonwealth's property - whether primary judge erred in rejecting submission that records were to be viewed as Commonwealth's property because subject-matter of records related to Governor-General's performance of 'role and function' - held: appeal dismissed.

[Hocking](#)

### **Hayson v Nationwide News Pty Limited [2019] FCA 81**

Federal Court of Australia

Bromwich J

Pleadings - defamation - respondents, by "strike-in" application, sought directions for inclusion of 'additional material' in statement of claim to form part of matters complained of - whether material 'could be regarded as separate and distinct' - ss4(a) & 8 *Defamation Act 2005* (NSW) - held: respondents failed to exclude 'as a reasonable way to read' material that it could be regarded as being separate and distinct - application dismissed.

[Hayson](#)

### **Perera v Genworth Financial Mortgage Insurance Pty Ltd [2019] NSWCA 10**

Court of Appeal of New South Wales

Basten & Macfarlan JJA

Summary dismissal - malicious prosecution - primary judge dismissed applicant's claim in malicious prosecution on basis proceedings 'misconceived and disclosed no reasonable cause of action' - whether tort of malicious prosecution extended to 'commencement and carrying on of civil proceedings' - whether primary judge erred in approach to application for summary dismissal - whether failure by primary judge to 'take exceptional caution' - whether primary judge erred in relation to elements of cause of action - r13.4(1) *Uniform Civil Procedure Rules 2005* (NSW) - held: no error in summary dismissal of proceedings - application for leave to appeal dismissed.

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### **Starr v George [2019] NSWSC 60**

Supreme Court of New South Wales

Henry J

Real property - easements - plaintiffs sought declaratory relief concerning right of way for their

property's benefit - plaintiffs contended that right of way arose by 'express grant' or 'prescriptive easement by long user' - parties reached resolution - consent orders included declaration that right of way was 'right of carriageway' - whether appropriate for Court to make consent orders proposed by parties - held: Court satisfied to make consent orders.

[View Decision](#)

**In the matter of Bias Boating Pty Limited (receivers and managers appointed) (in liquidation) [2019] NSWSC 47**

Supreme Court of New South Wales

Black J

Costs - Court determined separate question in proceeding concerning whether 'Bias Boating' was 'continuously insolvent' during certain period - Court found insolvency established - 'remaining defendants' sought opportunity to be heard on costs, seeking that separate hearing's costs be 'costs in the cause', or that costs be 'Plaintiffs' costs in the cause' - held: plaintiffs succeeded against defendants on separate question- Court not satisfied to make orders sought by defendants - costs order against each of remaining defendants 'amply justified'- order made.

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**RJB Wolfe Pty Ltd v Mornington Peninsula Eye Clinic Pty Ltd [2019] VSC 27**

Supreme Court of Victoria

Sifris J

Trade practices - plaintiff provided services under name 'Peninsula Eye Centre' - first defendant established business with name 'Mornington Peninsula Eye Clinic' - plaintiff claimed names 'similar and apt to confuse' and sought that second and third defendants cease using word 'Peninsula' - plaintiff made claims of misleading or deceptive conduct and passing off against defendants - s18 *Australian Consumer Law* - 'descriptive names & secondary meaning' - 'necessary reputation' - whether 'Peninsula Eye Centre' a 'sufficiently distinctive' name - whether first defendant's use of name would lead into error the 'relevant classes of persons' - 'intention to deceive' - held: claims dismissed.

[RJB Wolfe](#)

**Woolnough & Anor v Isaac Regional Council [2019] QSC 17**

Supreme Court of Queensland

Henry J

Trespass - nuisance - plaintiffs contended that defendant by installation of sewer line trespassed at plaintiffs' property - plaintiffs also contended installation caused subsidence and leakage of sewage at property - plaintiffs claimed in trespass and nuisance against defendant - time of installation of sewer - whether owners consented to installation - whether installation caused sewage leak and/or subsidence - held: claims dismissed.

[Woolnough](#)



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