

Monday, 19 August 2019

## Daily Insurance 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.

### Executive Summary (1 minute read)

**Mwango v Fair Work Commission (FCA)** - industrial law - applicant sought judicial review of decisions Commissioner and Full Bench - jurisdictional error not established - application dismissed

**Ayre v Swan (NSWCA)** - negligence - respondent motorcyclist collided with appellant's vehicle - appeal against findings of liability and damages dismissed - appeal against contributory negligence finding allowed - appeal allowed in part

**Quach v New South Wales Civil and Administrative Tribunal (NSWCA)** - vexatious proceedings - application to set aside 'vexatious proceedings order' - notice of motion seeking review of Registrar's refusal to direct respondents 'file and serve written submissions in response' - Court declined to consider application - notice of motion dismissed

**Bacchus Resources Pty Ltd v Talisman Mining Limited (NSWSC)** - contract - 'Opportunity Notice Proposal' - Court satisfied that binding joint venture agreement existed between plaintiff and first defendant - declaration

**Elegant Resources Pty Ltd v Creation Holdings (WA) Pty Ltd (WASC)** - administrative law - application for enforcement of orders of State Administrative Tribunal - application dismissed

### Summaries With Link (Five Minute Read)

## **Mwango v Fair Work Commission [2019] FCA 1274**

Federal Court of Australia

Thawley J

Industrial law - applicant formerly employed by second respondent - applicant brought proceedings in Fair Work Commission concerning 'claimed unfair dismissal' - Commissioner dismissed application, finding dismissal 'not harsh, unjust or unreasonable' - applicant sought to appeal - Full Bench of Fair Work Commission not satisfied 'it would be in public interest' to grant leave to appeal - applicant sought judicial review - s400(1) *Fair Work Act 2009* (Cth) - held: jurisdictional error not established - application dismissed.

[Mwango](#)

## **Ayre v Swan [2019] NSWCA 202**

Court of Appeal of New South Wales

Basten, Macfarlan & McCallum JJA

Negligence - respondent motorcyclist collided with appellant's vehicle - respondent sued appellant, contending his injuries caused by appellant's negligence - primary judge found appellant liable - respondent's contributory negligence assessed at 50% - appellant challenged findings on liability, contributory negligence and damages - ss5B, 5R & 54 *Civil Liability Act 2002* (NSW) - ss126 & 138 *Motor Accidents Compensation Act 1999* (NSW) - held: no error in finding on liability or damages - respondent's contributory negligence assessed at 80% - judgment in respondent's favour reduced - appeal allowed in part.

[View Decision](#)

## **Quach v New South Wales Civil and Administrative Tribunal [2019] NSWCA 200**

Court of Appeal of New South Wales

Gleeson, Leeming & McCallum

Vexatious proceedings - Court made 'vexatious proceedings order' under ss8(7)(a) & 8(7)(b) *Vexatious Proceedings Act 2008* (NSW) - applicant sought to set vexatious proceedings order aside - applicant, by further notice of motion, also sought review of Registrar's refusal to direct respondents to 'file and serve written submissions in response' to applicant's application - Court had previously dismissed two applications to set vexatious proceedings order aside - application advanced 'same contention' raised in relation to the prior applications - applicant's contention was that Court 'was not properly convened' when it made the vexatious proceedings order, due to the age of one of its members exceeding 70 years - Court had already explained in prior judgments why contention did not have merit - whether to consider application - held: Court did not consider application - notice of motion dismissed.

[View Decision](#)

## **Bacchus Resources Pty Ltd v Talisman Mining Limited [2019] NSWSC 1044**

Supreme Court of New South Wales

Hammerschlag J

Contract - plaintiff and first defendant executed 'Opportunity Notice Proposal' (Proposal) -



dispute concerned whether the Proposal 'brought into existence a binding joint venture agreement between' plaintiff and first defendant - whether, on payment of amount in clause of Proposal, a binding joint venture agreement 'came into effect and stayed on foot' even though parties had failed to 'agree and execute' a 'formal JV Agreement' - whether 'MinterEllison's letters' ended joint venture - "Masters v Cameron" - held: Court satisfied, as contended by plaintiff, that a binding joint venture agreement existed between plaintiff and first defendant - declaration granted.

[View Decision](#)

## **Elegant Resources Pty Ltd v Creation Holdings (WA) Pty Ltd [2019] WASC 286**

Supreme Court of Western Australia

Master Sanderson

Administrative law - enforcement - plaintiff, by originating motion, sought enforcement of orders of State Administrative Tribunal under s99 *Civil Judgments Enforcements Act 2004* (WA) - whether compliance with order 2 of Member's determination - if no compliance with order 2, whether compliance with order 1 - *State Administrative Tribunal Act 2004* (WA) - held: application dismissed.

[Elegant](#)

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