

Friday, 30 October 2020

## Weekly Corporate Governance A Weekly Bulletin listing Decisions of Superior Courts of Australia covering Corporate Governance Law

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### Executive Summary (1 minute read)

**Chief Executive Officer of the Australian Transaction Reports and Analysis Centre v Westpac Banking Corporation** (FCA) - corporations - *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) - 'admitted contraventions' - \$1.3 billion pecuniary penalty appropriate - declarations and orders made

**Gregg v R** (NSWCCA) - criminal law - corporations - appellant convicted of offences contrary to s1307(1) *Corporations Act 2001* (Cth) - appeal against conviction allowed - verdicts quashed - appellant acquitted

**Whitehawk Ltd** (WASC) - corporations - 'cleansing notice' - plaintiff, under ss1322(4)(a) & 1322(4)(d) *Corporations Act 2001* (Cth), sought orders concerning 'three separate share issues' - orders granted

**TEC Hedland Pty Ltd v The Pilbara Infrastructure Pty Ltd** (WASC) - discovery - plaintiff sought 'production of unredacted copies' of 'Disputed Documents' - Court 'to inspect 61 documents' prior to Court making 'final ruling' on claim concerning document - claim otherwise dismissed

**Instyle Estate Agents Gungahlin Pty Ltd v Hambrook** (ACTSC) - subpoena - interlocutory application - plaintiff sought to set aside three subpoenas issued by defendant - subpoenas set aside

# Benchmark

## Summaries With Link (Five Minute Read)

### **Chief Executive Officer of the Australian Transaction Reports and Analysis Centre v Westpac Banking Corporation [2020] FCA 1538**

Federal Court of Australia

Beach J

Corporations - applicant sought declarations respondent contravened provisions of *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) and order that respondent pay \$1.3 billion pecuniary penalty to Commonwealth - parties provided 'statement of agreed facts and admissions' and 'joint written submission' - s191 *Evidence Act 1995* (Cth) - *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* (Cth) - 'admitted contraventions' - general and specific deterrence - whether \$1.3 billion pecuniary penalty appropriate - held: \$1.3 billion pecuniary penalty appropriate - declarations and orders made.

[Chief Executive Officer](#)

[From Benchmark Wednesday, 28 October 2020]

### **Gregg v R [2020] NSWCCA 245**

Court of Criminal Appeal of New South Wales

Bathurst CJ, Hoeben CJ at CL & Leeming JA

Criminal law - corporations - appellant convicted of offences contrary to s1307(1) *Corporations Act 2001* (Cth) - appellant sentenced to 12 months in prison on 'count 1' and 2 years in prison 'count 2', 'to be served concurrently by way of an Intensive Correction Order' - appellant appealed against conviction and sentence - whether verdicts unreasonable - whether primary judge erred in admitting evidence 'on the viability of centralised procurement of steel' - whether primary judge erred in rejection of tender by appellant of 'Global Business Overview presentation' - whether primary judge erred in directions to jury - whether miscarriage of justice arising from 'closing address' of prosecutor - whether miscarriage of justice arising from 'summing up' - held: appeal allowed - verdicts quashed - appellant acquitted.

[View Decision](#)

[From Benchmark Thursday, 29 October 2020]

### **Whitehawk Ltd [2020] WASC 388**

Supreme Court of Western Australia

Hill J

Corporations - 'cleansing notice' - plaintiff, under ss1322(4)(a) & 1322(4)(d) *Corporations Act 2001* (Cth) (*Corporations Act*), sought orders concerning 'three separate share issues' - plaintiff sought extension of timeframe for giving of cleansing notice under s708A *Corporations Act* and validation of 'offers or sales of shares' - whether 'inadvertence' - whether 'deliberate disregard of' obligations - held: orders granted.

[Whitehawk](#)

[From Benchmark Thursday, 29 October 2020]

**TEC Hedland Pty Ltd v The Pilbara Infrastructure Pty Ltd [2020] WASC 364**

Supreme Court of Western Australia

Hill J

Discovery - plaintiff, under O26 r9 *Rules of the Supreme Court 1971 (WA)*, sought 'production of unredacted copies' of 'Disputed Documents' - 'communications sent to multiple addressees' - 'communications forwarded to an in-house lawyer of defendant's parent company' - 'communications between non-lawyers' - communications in respect of which it was asserted privilege had 'been waived' - held: Court 'to inspect 61 documents' prior to Court making 'final ruling' on claim concerning document - claim otherwise dismissed.

[TEC Hedland](#)

[From Benchmark Friday, 30 October 2020]

**Instyle Estate Agents Gungahlin Pty Ltd v Hambrook [2020] ACTSC 293**

Supreme Court of the Australian Capital Territory

McWilliam AsJ

Subpoena - interlocutory application - plaintiff sought to set aside three subpoenas issued by defendant - r6604 *Court Procedure Rules 2006 (ACT)* - whether 'legitimate forensic purpose' - whether 'seriously and unfairly burdensome or prejudicial' - whether 'relevance' - whether subpoenas effectively seeking 'discovery from non-parties' - whether 'fishing' - whether schedules' terms 'so wide as to be oppressive' - 'conduct money' - 'reasonable expenses' - *Corporations Act 2002 (Cth)* - held: subpoenas set aside.

[Instyle Estate Agents](#)

[From Benchmark Friday, 30 October 2020]



# Benchmark

## **The Grasshopper**

**By:** Richard Lovelace

O THOU that swing'st upon the waving hair  
Of some well-fillèd oaten beard,  
Drunk every night with a delicious tear  
Dropt thee from heaven, where thou wert rear'd!

The joys of earth and air are thine entire,  
That with thy feet and wings dost hop and fly;  
And when thy poppy works, thou dost retire  
To thy carved acorn-bed to lie.

5

Up with the day, the Sun thou welcom'st then,  
Sport'st in the gilt plaits of his beams, 10  
And all these merry days mak'st merry men,  
Thyself, and melancholy streams.

[https://en.wikipedia.org/wiki/Richard\\_Lovelace](https://en.wikipedia.org/wiki/Richard_Lovelace)

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