



Friday, 18 October 2019

## Weekly Criminal Law

A Weekly Bulletin listing Decisions  
of Superior Courts of Australia covering criminal

 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

**National Australia Bank Limited v Human Group Pty Ltd** (NSWSC) - stay - first and second defendants sought 'temporary stay' of proceedings pending criminal proceedings' determination - stay granted with respect to second defendant

**Dempsey (a Pseudonym) v The Queen** (VSCA) - criminal law - armed robbery - tendency evidence - coincidence evidence - 'photoboard identification evidence' - no error in finding evidence admissible - leave to appeal refused

**Kheir v Robertson** (VSCA) - administrative law - refusal of application for reduction of prison sentence and non-parole period under s58E *Corrections Act 1986* (Vic) - leave to appeal refused

**Trail v The Queen** (SASCFC) - criminal law - 'aggravated serious trespass in a place of residence' - 'aggravated causing serious harm with intent to cause serious harm' - 'aggravated assault' - 'theft' - no deficiency in trial judge's directions concerning 'recognition evidence' - leave to appeal refused

### Summaries With Link (Five Minute Read)

**National Australia Bank Limited v Human Group Pty Ltd [2019] NSWSC 1404**  
Supreme Court of New South Wales

Henry J

Stay - second defendant was facing charges in criminal proceedings - in present proceedings plaintiff claimed second defendant and first defendant (defendants) 'engaged in a fraudulent scheme' which resulted in loss to plaintiff - facts in present proceedings overlapped with facts allegedly giving rise to criminal proceedings - defendants, under s67 *Civil Procedure Act 2005* (NSW), sought 'temporary stay' of present proceedings pending criminal proceedings' determination - principles applicable to civil proceeding's stay - *Australian Securities and Investments Commission v Australia and New Zealand Banking Group Limited* [2019] FCA 964 - 'right to silence' - 'privilege against self-incrimination' - held: Court granted temporary stay of proceedings against second defendant - stay refused concerning first defendant - plaintiff entitled to use Court's processes to access documents 'produced under subpoena'.

[View Decision](#)

## **Dempsey (a Pseudonym) v The Queen [2019] VSCA 224**

Court of Appeal of Victoria

Beach, Kaye & Ashley JJ

Criminal law - tendency evidence - coincidence evidence - applicant charged with one count 'armed robbery', one count 'murder' and one count 'intentionally causing injury' - applicant objected to admissibility of tendency evidence and 'photoboard identification evidence' - trial judge found evidence admissible - applicant, by interlocutory appeal, sought to appeal against trial judge's finding that items admissible - whether tendency evidence was 'substantially probative of facts in issue' concerning charges - whether tendency evidence's probative value outweighed 'potential prejudicial effect' - whether photoboard identification evidence's probative value was 'low' and 'outweighed by the danger of unfair prejudice' - held: leave to appeal refused.

[Dempsey](#)

## **Kheir v Robertson [2019] VSCA 229**

Court of Appeal of Victoria

Whelan, McLeish & Weinberg JJA

Administrative law - applicant sought reduction of prison sentence and non-parole period under s58E *Corrections Act 1986* (Vic) - first respondent was delegate of third respondent - first respondent refused application - primary judge dismissed application for judicial review - applicant sought to appeal - whether failure by first respondent to consider 'committal transcript' - whether denial of procedural fairness - 'emergency management days' - held: leave to appeal refused.

[Kheir](#)

## **Trail v The Queen [2019] SASCF 122**

Full Court of the Supreme Court of South Australia

Kelly & Parker JJ; David AJ

Criminal law - 'recognition evidence' - applicant tried together with son - applicant and son



# Benchmark

convicted of 'aggravated serious trespass in a place of residence', 'aggravated causing serious harm with intent to cause serious harm', 'aggravated assault' and 'theft' - applicant sought to appeal against convictions - applicant contended that deficiency in trial judge's directions concerning identification resulted in 'miscarriage of justice' - principles in *Domican v The Queen* (1992) 173 CLR 555 - 'recognition evidence' - held: Court satisfied trial judge's directions were 'thorough and fair' - leave to appeal refused.

[Traill](#)



# Benchmark

## Fairy-Land

**BY:EDGAR ALLAN POE**

Dim vales—and shadowy floods—  
And cloudy-looking woods,  
Whose forms we can't discover  
For the tears that drip all over:  
Huge moons there wax and wane—  
Again—again—again—  
Every moment of the night—  
Forever changing places—  
And they put out the star-light  
With the breath from their pale faces.  
About twelve by the moon-dial,  
One more filmy than the rest  
(A kind which, upon trial,  
They have found to be the best)  
Comes down—still down—and down  
With its centre on the crown  
Of a mountain's eminence,  
While its wide circumference  
In easy drapery falls  
Over hamlets, over halls,  
Wherever they may be—  
O'er the strange woods—o'er the sea—  
Over spirits on the wing—  
Over every drowsy thing—  
And buries them up quite  
In a labyrinth of light—  
And then, how, deep! —O, deep,  
Is the passion of their sleep.  
In the morning they arise,  
And their moony covering  
Is soaring in the skies,  
With the tempests as they toss,  
Like—almost any thing—  
Or a yellow Albatross.  
They use that moon no more  
For the same end as before,  
Videlicet, a tent—  
Which I think extravagant:



# Benchmark

Its atomies, however,  
Into a shower dissever,  
Of which those butterflies  
Of Earth, who seek the skies,  
And so come down again  
(Never-contented things!)  
Have brought a specimen  
Upon their quivering wings.

[EDGAR ALLAN POE](#)

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