

Friday, 5 April 2019

Weekly Employment Law Selected Bulletins covering Employment

[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)

POTENTIA3 PTY LTD (IN LIQUIDATION) v Hislop (NSWSC) - corporations - loan - employment - claim for amount owing under 'director's loan' - defendant to pay plaintiff claimed amount

Hingst v Construction Engineering (Aust) Pty Ltd (VSCA) - negligence - workplace bullying - unfair dismissal - employment - self-represented litigant - Court's duty to unrepresented litigant - proceeding dismissed - leave to appeal refused

Khan v Return to Work Corporation of South Australia (SASC) - workers compensation - dismissal of 'lump sum compensation' claim - leave to appeal granted

Return to Work Corporation of South Australia v Renfrey (SASC) - administrative law - hearing loss claim - respondent entitled to compensation under *Workers Rehabilitation and Compensation Act 1986* (SA) - appeal dismissed

Laghaifar v Sealasash Window Renewal System Pty Ltd (TASSC) - workers compensation - preliminary question - not open to Tribunal to find appellant was not a 'worker' under *Workers Rehabilitation and Compensation Act 1988* - appeal allowed - matter remitted

Summaries With Link (Five Minute Read)

POTENTIA3 PTY LTD (IN LIQUIDATION) v Hislop [2019] NSWSC 323
Supreme Court of New South Wales

Rothman J

Corporations - loan - employment - plaintiff claimed against defendant for amount owing under 'director's loan' (loan) - issue was whether 'any portion of' alleged loan was 'not a loan, but attributable to wages' which defendant was paid - consideration of evidence arising from documents - 'financial records' - 'PAYG Payment Summary' - s1305 *Corporations Act 2001* (Cth) - whether Court could infer employment contract - held: defendant to pay plaintiff claimed amount.

[View Decision](#)

[From Benchmark Friday, 5 April 2019]

Hingst v Construction Engineering (Aust) Pty Ltd [2019] VSCA 67

Court of Appeal of Victoria

Priest AP & Beach JA

Negligence - workplace bullying - unfair dismissal - employment - self-represented litigant - applicant employed by respondent - applicant claimed he was bullied in workplace with result he developed injuries - applicant also claimed respondent had 'unlawfully terminated his employment' and that he had executed 'Deed of Release and Settlement' 'under duress' - primary judge dismissed proceeding - applicant challenged primary judge's 'factual findings' - applicant also contended trial was unfair due to primary judge's breach of duty to unrepresented litigant - held: applicant's grounds of appeal lacked substance - leave to appeal refused.

[Hingst](#)

[From Benchmark Friday, 5 April 2019]

Khan v Return to Work Corporation of South Australia [2019] SASC 46

Supreme Court of South Australia

Stanley J

Workers compensation - Full Bench of South Australian Employment Tribunal dismissed applicant's appeal against dismissal of applicant's 'lump sum compensation' claim for non-economic loss under s43 *Workers Rehabilitation and Compensation Act 1986* (SA) (repealed Act) - applicant sought to appeal - statutory construction - ss43 & 43A & 43A(9)(b) repealed Act - whether determination of impairment due to 'compensable injury' precluded further claim - whether judge exceeded jurisdiction in finding 'no good basis for a further assessment' - whether misconstruction or misapplication of s43A(9)(b) of the Act in relation to impairment's assessment - whether erroneous approach to 'deduction issue' - held: leave to appeal granted on certain grounds.

[Khan](#)

[From Benchmark Friday, 5 April 2019]

Return to Work Corporation of South Australia v Renfrey [2019] SASCFC 26

Full Court of the Supreme Court of South Australia

Kourakis CJ; Nicholson & Parker JJ

Benchmark

Administrative law - respondent claimed for 'noise induced hearing loss' on 15/2/13 - appellant rejected claim in reliance on 'deeming provision of' s113(2) *Workers Rehabilitation and Compensation Act 1986* (SA) (WRC Act), contending it was not liable to compensate respondent because respondent had made claim after employment had concluded, and that when employer had last employed respondent 'he was not subject to the WRC Act' - appellant contended respondent's entitlements governed by *Safety, Rehabilitation and Compensation Act 1988* (Cth) - President of South Australian Employment Tribunal found respondent entitled to compensation under WRC Act - Full Bench of Tribunal dismissed appeal - time at which respondent suffered hearing loss - whether respondent's hearing loss occurred while entitlements governed by WRC Act - time at which respondent became entitled to 'lump sum' for hearing loss - whether deeming provision deemed hearing loss to have occurred after employment's conclusion - meaning of 'employment' in s113(2) WRC Act - whether employer licensed under SRC Act at time of respondent's impairment - held: appeal dismissed.

[Return to Work Corporation](#)

[From Benchmark Friday, 5 April 2019]

Laghaifar v Sealasash Window Renewal System Pty Ltd [2019] TASSC 9

Supreme Court of Tasmania

Pearce J

Workers compensation - preliminary question - appellant claimed compensation from respondent under *Workers Rehabilitation and Compensation Act 1988* - parties agreed Workers Compensation and Rehabilitation Tribunal would determine preliminary question whether appellant was 'worker' under s3 of the Act - whether appellant working for respondent 'under a contract of service' - whether appellant an independent contractor working 'under contract for services' - Tribunal found appellant was not worker - appellant appealed - totality of parties' relationship - test for existence of 'contract of service' - held: not open to Tribunal to find appellant was not a worker - appeal allowed - matter remitted.

[Laghaifar](#)

[From Benchmark Friday, 5 April 2019]



From: Baby Tortoise

By: D. H. Lawrence

You know what it is to be born alone,
Baby tortoise!

The first day to heave your feet little by little from
the shell,
Not yet awake,
And remain lapsed on earth,
Not quite alive.

A tiny, fragile, half-animate bean.

To open your tiny beak-mouth, that looks as if it would
never open
Like some iron door;
To lift the upper hawk-beak from the lower base
And reach your skinny neck
And take your first bite at some dim bit of herbage,
Alone, small insect,
Tiny bright-eye,
Slow one.

To take your first solitary bite
And move on your slow, solitary hunt.
Your bright, dark little eye,
Your eye of a dark disturbed night,
Under its slow lid, tiny baby tortoise,
So indomitable.

https://en.wikipedia.org/wiki/D._H._Lawrence

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