

Friday, 7 December 2018

## Weekly Employment Law Selected Bulletins covering Employment

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### Executive Summary (1 minute read)

**Commissioner of Taxation v Cassaniti** (FCAFC) - taxation - respondent entitled to tax credits arising from amounts withheld by employers - appeal dismissed

**Pacific Shoji Pty Ltd v Xia** (NSWCA) - contract - employment - appeal against judgment in respondent's favour in claims for commission repayment of loan - appellant succeeded in challenge to repayment of loan - not established payment was a loan - appeal allowed in part

**Pacific National Pty Ltd v Baldacchino** (NSWCA) - workers compensation - worker's total knee replacement was an "artificial aid" under s59A(6)(a) *Workers Compensation Act 1987* (NSW) - appeal dismissed - application for leave to appeal dismissed

**Lalor Bowling Club v Mazzei** (VSC) - accident compensation - Panel found worker had 30% permanent psychiatric impairment, and that the impairment was not attributable to a pre-existing condition - grounds of review failed - proceeding dismissed

**Argus Administration Pty Ltd & Ors v Caldwell & Anor** (QSC) - judgments and orders - employment contracts - restraint of trade - confidentiality - defendants granted summary judgment against second and third plaintiffs - defendants' strike-out application granted against first plaintiff - defendants' 'partial summary judgment' application against first plaintiff adjourned - plaintiffs' application for injunction dismissed

### Summaries With Link (Five Minute Read)

## **Commissioner of Taxation v Cassaniti [2018] FCAFC 212**

Full Court of the Federal Court of Australia

Greenwood, Logan & Steward JJ

Taxation - respondent contended she was entitled, under s18-15(1), Sch 1 *Taxation Administration Act 1953* (Cth) (Taxation Administration Act), to tax credits arising from amounts withheld by her former employers and 'related relief' - primary judge granted declaration in respondent's favour - appellant appealed - whether there had been a withholding for purpose of s18-15 Taxation Administration Act in respect of respondent's salary payment - whether erroneous acceptance of documents' veracity - credit - whether erroneous acceptance of respondent's evidence 'as truthful' - whether respondent given 'proper notice' of 'recent invention' contention - whether erroneous failure to draw inference from failure to call witnesses - held: grounds of appeal failed - appeal dismissed.

[Commissioner of Taxation](#)

[From Benchmark Tuesday, 4 December 2018]

## **Pacific Shoji Pty Ltd v Xia [2018] NSWCA 290**

Court of Appeal of New South Wales

McCull & Leeming JJA; Sackville AJA

Contract - employment - appellant appealed against part of judgment in respondent's favour - respondent former employee had sued appellant in respect of 'contractual entitlements' including claims for commission and repayment of loan - appellant challenged finding respondent entitled to repayment of loan to appellant and finding respondent entitled to commission - appellant also challenged rejection of its cross-claim - held: appellant succeeded in challenge to appellant's entitlement to repayment of loan - claim that payment was a loan was not established - appeal allowed in part.

[View Decision](#)

[From Benchmark Friday, 7 December 2018]

## **Pacific National Pty Ltd v Baldacchino [2018] NSWCA 281**

Court of Appeal of New South Wales

Macfarlan & Payne JJA; Simpson AJA

Workers compensation - appellant appealed against decision in which Deputy President Snell of the Workers Compensation Commission held that a 'total knee replacement' was an "artificial aid" under s59A(6)(a) *Workers Compensation Act 1987* (NSW) (Workers Compensation Act) - decision's effect was that total left knee replacement that respondent 'reasonably needs' due to workplace injury was 'not subject to the time limits on compensation' in ss59A(1) & (2) Workers Compensation Act - *Thomas v Ferguson Transformers Pty Ltd* [1979] 1 NSWLR 216 - held: no error in finding that the total knee replacement was an "artificial aid" under s59A(6)(a) Workers Compensation Act - appeal dismissed - application for leave to appeal dismissed.

[View Decision](#)

[From Benchmark Friday, 7 December 2018]

**Lalor Bowling Club v Mazzei [2018] VSC 727**

Supreme Court of Victoria

Ginnane J

Accident compensation - permanent psychiatric impairment - lump sum compensation - plaintiff sought judicial review of opinion of medical panel concerning first defendant's degree of impairment caused by injuries in course of employment - Panel found first defendant had 30% permanent psychiatric impairment, and that none of the 30% impairment was attributable to first defendant's 'pre-existing anxiety condition' - whether failure to take into account mandatory considerations - whether 'fundamental mistake of fact' - adequacy of reasons - s91 *Accident Compensation Act 1985* (Vic) - held: grounds of review not established - proceeding dismissed.

[Lalor](#)

[From Benchmark Friday, 7 December 2018]

**Argus Administration Pty Ltd & Ors v Caldwell & Anor [2018] QSC 281**

Supreme Court of Queensland

Henry J

Judgments and orders - summary judgment - injunction - employment contracts - restraint of trade - plaintiffs were companies which claimed "damages for breach of contract and future economic loss" against defendants - plaintiffs claimed defendants breached restraint of trade clause and confidentiality clause in employment contracts - defendants sought summary judgment against second and third plaintiffs - defendants sought 'partial summary judgment' against first plaintiff or to strike out paragraphs of first plaintiff's statement of claim - plaintiffs sought injunction to restrain defendants from 'working for or with or "making a solicited approach" to' plaintiff's clients or former clients - rr292 & 293 *Uniform Civil Procedure Rules 1999* (Qld) - held: summary judgment granted against second and third plaintiffs - strike-out application granted with leave to re-plead - partial summary judgment application adjourned - injunction refused.

[Argus Administration](#)

[From Benchmark Tuesday, 4 December 2018]

# Benchmark

## Dream On

**By:** David Conolly

A child in a gallery sits,  
takes paper and pencil,  
and starts to draw.  
The paintings around her  
disappear.  
They have served  
their purpose.

womb of  
They have sparked in her  
the spirit to create –  
the spirit formed in her  
along with bone and blood  
in the mystic dark of  
her mother's womb –  
humanity's sacred site.

Thus is passed  
from age to age  
imagination,  
Dream  
wonder,  
passes  
dreams.  
unborn.

From another womb  
in a faraway age  
another child emerged  
with a dream –  
the Great Dream  
of a world renewed by  
peace and justice,  
formed in the

love.

He said that children  
show us  
what God is like.

No wonder  
we celebrate  
his birth.

No wonder that  
still lives, and  
to children yet

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