

Friday, 17 August 2018

Weekly Employment Law Selected Bulletins covering Employment

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Executive Summary (1 minute read)

United Voice v Berkeley Challenge Pty Limited (No 2) (FCA) - industrial law - penalties contraventions of ss44(1), 117 & 119 *Fair Work Act 2009* (Cth) - respondent to pay pecuniary penalties to applicant

Gropel v Comcare (FCA) - administrative law - erroneous determination that applicant's condition was within exclusion in definition of 'injury' in *Safety, Rehabilitation and Compensation Act 1988* (Cth) - appeal allowed - matter remitted

Hunter Quarries Pty Ltd v Alexandra Mexon as Administrator for the Estate of the Late Ryan Messenger (NSWCA) - administrative law - workers compensation - appellant not obliged to pay compensation for permanent impairment for period of seconds between worker's injury and death - appeal allowed

Inghams Enterprises Pty Ltd v Kim Yen Tat (QCA) - negligence - worker attacked by third party in car park of employer - causation not established - employer not liable - appeal allowed

D'Arcy v Caltex Australia Limited (ACTSC) - negligence - plaintiff injured when relining petrol tank - employer liable - judgment for plaintiff

Summaries With Link (Five Minute Read)

United Voice v Berkeley Challenge Pty Limited (No 2) [2018] FCA 1189
Federal Court of Australia

Reeves J

Industrial law - penalties - Court delivered judgment concerning liability in proceedings determination of 'penalty issues' - 'appropriate pecuniary penalties' to be imposed on respondent for contravening ss44(1), 117 & 119 Fair Work Act 2009 (Cth) - whether to order payment of imposed pecuniary penalties to applicant - number of contraventions - whether respondent had previous contraventions - 'notice contravention' - 'redundancy contravention' - held: respondent to pay applicant \$9,000 for contraventions of ss44(1) & 117 of the Act respondent to pay applicant \$4,500 for contraventions of ss44(1) & 119 of the Act.

[United Voice](#)

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Gropel v Comcare [2018] FCA 1146

Federal Court of Australia

Davies J

Administrative law - applicant sought compensation for 'psychological condition' - no dispute applicant suffered psychological condition which her employment had contributed to 'to a significant degree' and that the psychological condition was a 'disease' under s5B *Safety, Rehabilitation and Compensation Act 1988* (Cth) - Administrative Appeals Tribunal affirmed respondent's decision it was not liable to pay compensation to applicant on basis applicant's condition was within exclusion contained in definition of "injury" under s5A of the Act - held: Tribunal erred in application of 'causal test and the connection required' by 'exclusionary phrase' - appeal allowed - matter remitted.

[Gropel](#)

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Hunter Quarries Pty Ltd v Alexandra Mexon as Administrator for the Estate of the Late Ryan Messenger [2018] NSWCA 178

Court of Appeal of New South Wales

Basten, Gleeson & Payne JJA; Sackville & Simpson AJJA

Administrative law - workers compensation - appellant operated quarry - worker injured and died at quarry - appellant paid death benefits to worker's dependants under ss25-26 *Workers Compensation Act 1987* (NSW) (*Workers Compensation Act*) - respondent was administrator of worker's estate - respondent sought, on worker's behalf, payment of compensation under s66 *Workers Compensation Act* for "permanent impairment" of worker for period of "a few minutes" between injury and death - Workers Compensation Appeal Panel found that appellant should pay respondent lump sum compensation in respect of worker's 100 per cent permanent impairment - primary judge upheld Appeal Panel's decision - appellant appealed - meaning of "permanent impairment" - whether Appeal Panel erroneously set aside "Reconsideration Medical Assessment Certificate" - held: appeal allowed - application to Workers Compensation Appeal Panel dismissed.

[View Decision](#)

[From Benchmark Friday, 17 August 2018]

Inghams Enterprises Pty Ltd v Kim Yen Tat [2018] QCA 182

Court of Appeal of Queensland
Gotterson & Morrison JJA; Bond J

Negligence - respondent was shift worker at applicant's factory - applicant attacked in factory's car park by third party - applicant suffered post-traumatic stress disorder - respondent sued applicant in negligence - primary judge gave judgment for applicant - finding of causation based on applicant's breach of duty in to 'educate staff to report suspicious behaviour in and about the car park' - whether erroneous finding of breach of duty - adequacy of reasons - whether erroneous evaluation of evidence concerning causation - test for factual causation - "but for" test - ss305D *Workers' Compensation and Rehabilitation Act 2003* (Qld) - held: primary judge erred concerning whether respondent's injury was caused by applicant's breach of duty - appeal allowed.

[Inghams](#)

[From Benchmark Friday, 17 August 2018]

D'Arcy v Caltex Australia Limited [2018] ACTSC 206

Supreme Court of the Australian Capital Territory
Burns J

Negligence - plaintiff suffered injuries including burns when relining petrol tank - plaintiff sued first defendant and second defendant in negligence - second defendant was plaintiff's employer - first defendant sued as 'alleged de facto occupier' of premises where tanks situated - first defendant denied it was owner or occupier and denied breach of duty - second defendant accepted there was evidence it breached non-delegable duty of care to plaintiff but contended plaintiff was contributorily negligent - whether failure to provide safe system of work - whether statutory breaches - held: no duty of care owed by first defendant - even if first defendant had owed duty of care under s42 *Civil Laws (Wrongs) Act 2002* (ACT) it did not breach it - second defendant breached duty of care to plaintiff - no contributory negligence by plaintiff - judgment for plaintiff.

[D'Arcy](#)

[From Benchmark Friday, 17 August 2018]



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The Fallow Deer At The Lonely House

By: Thomas Hardy

One without looks in tonight
Through the curtain-chink
From the sheet of glistening white;
One without looks in tonight
As we sit and think
By the fender-brink.

We do not discern those eyes
Watching in the snow;
Lit by lamps of rosy dyes
We do not discern those eyes
Wandering, aglow
Four-footed, tiptoe.

https://en.wikipedia.org/wiki/Thomas_Hardy

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