



Friday, 21 December 2018

## Weekly Employment Law Selected Bulletins covering Employment

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### Executive Summary (1 minute read)

**Australian Education Union v Royal Melbourne Institute of Technology (FCA)** - industrial law - application for interlocutory relief concerning 'voting process' in relation to 'proposed agreement' - application dismissed

**Baker & McAuliffe Holdings Pty Ltd t/as JSB Lighting v Carey (FCA)** - corporations - application for interlocutory injunction to restrain former employees from contacting three of applicant's clients and from giving assistance on three projects - application dismissed

**Samoiloff v Grandiflora Nurseries Pty Ltd (VSC)** - workers compensation - appeal against dismissal of claim under *Workplace Injury Rehabilitation and Compensation Act 2013 (Vic)* - Magistrate made finding unsupported by evidence - denial of procedural fairness - appeal allowed

**Creagh v MPR Pty Ltd (VSC)** - workplace injury - *Workplace Injury Rehabilitation and Compensation Act 2013 (Vic)* - motor vehicle allowance not to be included in weekly payments' calculation - appeal dismissed

**Tomasevic v State of Victoria (VSCA)** - work injury - issue estoppel - accident compensation - claim for damages for psychological injury in course of employment - no issue estoppel arising from earlier County Court claim for same injury under *Accident Compensation Act 1985 (Vic)* - leave to appeal refused

### Summaries With Link (Five Minute Read)

## **Australian Education Union v Royal Melbourne Institute of Technology [2018] FCA 1985**

Federal Court of Australia

Wheelahan J

Interlocutory injunction - industrial law - applicant claimed respondent made misleading representations in 'information package' concerning "RMIT Vocational Education Workplace Agreement 2018" ('proposed agreement') - applicant claimed respondent contravened s345(1) *Fair Work Act 2009* (Cth) (Fair Work Act) and s18 Australian Consumer Law - applicant sought interlocutory concerning 'voting process' in relation to proposed agreement's approval - whether prima facie case established concerning 'representations about superannuation entitlements' and/or 'representations about attendance times' - balance of convenience - whether 'arguable case' concerning 'mental element' under s345 Fair Work Act - balance of convenience - held: application dismissed.

[Australian Education Union](#)

[From Benchmark Friday, 21 December 2018]

## **Baker & McAuliffe Holdings Pty Ltd t/as JSB Lighting v Carey [2018] FCA 1972**

Federal Court of Australia

Markovic J

Corporations - interlocutory injunction - first and third respondents were applicant's former employees - applicant contended first and third respondents with assistance of fourth respondent, in breach of their employment contracts, statutory and/or fiduciary duties, devised scheme to form second respondent company and use it as a 'vehicle to take away' the business' of one of applicant's 'major suppliers' - applicant sought interlocutory relief to restrain first and third respondents from contacting three of its clients and from giving assistance on three projects - whether serious question to be tried - whether damages adequate remedy - delay - balance of convenience - held: application dismissed.

[Baker](#)

[From Benchmark Friday, 21 December 2018]

## **Samoiloff v Grandiflora Nurseries Pty Ltd [2018] VSC 765**

Supreme Court of Victoria

Richards J

Workers compensation - applicant worker claimed compensation under *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) (WIRC Act) - Magistrate dismissed claim, finding applicant had not suffered a 'work injury' - applicant appealed - whether Magistrate erroneously failed to apply legal test in s39(1) WIRC Act - whether Magistrate erroneously made finding that applicant 'threw her head back when showering' without evidence and in denial of procedural fairness - rule in *Browne v Dunn* - held: Magistrate's finding that applicant 'threw her head back when showering' was not supported by evidence - it was unfair of Magistrate to make the finding when it was not raised with applicant at hearing - procedural fairness established - appeal allowed.

[Samoiloff](#)

[From Benchmark Friday, 21 December 2018]

**Creagh v MPR Pty Ltd [2018] VSC 763**

Supreme Court of Victoria

Daly AsJ

Workplace injury - appellant was employed by respondent - appellant lodged weekly payments claim for injury under *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) (WIRC Act) - respondent accepted claim but excluded motor vehicle allowance (allowance) from appellant's earnings - appellant sought to reinstate inclusion of allowance for purposes of preinjury average weekly earnings' calculation and weekly payments - Magistrate found allowance was 'monetary allowance' under of s156 WIRC Act not to be included in weekly payments' calculation - whether findings of fact unreasonable or not open to Magistrate - whether erroneous construction of WIRC Act - adequacy of Magistrate's reasons - held: appeal dismissed.

[Creagh](#)

[From Benchmark Tuesday, 18 December 2018]

**Tomasevic v State of Victoria [2018] VSCA 325**

Court of Appeal of Victoria

Kaye & Emerton JJA; Almond AJA

Work injury - issue estoppel - accident compensation - applicant claimed damages for psychological injury sustained in course of employment with respondent - applicant had previously, in County Court, successfully claimed compensation for same injury under *Accident Compensation Act 1985* (Vic) - proceedings concerned whether issue estoppel arose concerning findings made in County Court - primary judge found there was no issue estoppel and dismissed application to strike out paragraph of defence - applicant sought to appeal - held: no error in primary judge's find that no issue estoppel arose - leave to appeal refused.

[Tomasevic](#)

[From Benchmark Friday, 21 December 2018]

# Benchmark

## **To Mrs K\_\_\_\_, On Her Sending Me an English Christmas Plum-Cake at Paris**

**By:** Helen Maria Williams

What crowding thoughts around me wake,  
What marvels in a Christmas-cake!  
Ah say, what strange enchantment dwells  
Enclosed within its odorous cells?  
Is there no small magician bound  
Encrusted in its snowy round?  
For magic surely lurks in this,  
A cake that tells of vanished bliss;  
A cake that conjures up to view  
The early scenes, when life was new;  
When memory knew no sorrows past,  
And hope believed in joys that last! —  
Mysterious cake, whose folds contain  
Life's calendar of bliss and pain;  
That speaks of friends for ever fled,  
And wakes the tears I love to shed.  
Oft shall I breathe her cherished name  
From whose fair hand the offering came:  
For she recalls the artless smile  
Of nymphs that deck my native isle;  
Of beauty that we love to trace,  
Allied with tender, modest grace;  
Of those who, while abroad they roam,  
Retain each charm that gladdens home,  
And whose dear friendships can impart  
A Christmas banquet for the heart!

[https://en.wikipedia.org/wiki/Helen\\_Maria\\_Williams](https://en.wikipedia.org/wiki/Helen_Maria_Williams)

Helen Maria Williams (17 June 1759 – 15 December 1827) was a British novelist, poet, and translator of French-language works. A religious dissenter, she was a supporter of abolitionism and of the ideals of the French Revolution; she was imprisoned in Paris during the Reign of Terror, but nonetheless spent much of the rest of her life in France.. A controversial figure in her own time, the ..

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