

Friday, 22 March 2019

Weekly Employment Law Selected Bulletins covering Employment

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Executive Summary (1 minute read)

Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union (the costs of the Cup of Tea Case) (FCAFC) - costs - Commissioner sought leave to appeal against costs order of primary judge - leave to appeal refused - application dismissed

Liu v Stephen Grubits and Associates (No 2) (FCAFC) - costs - dismissal of appeal against costs order - determination of costs of appeal - costs order against unsuccessful appellant not justified - no order made as to costs

Moffet v Dental Corporation Pty Ltd (FCA) - industrial law - claims under *Fair Work Act 2009* (Cth) - claims in respect of superannuation entitlements and long service leave - superannuation claim accepted

Ballas v Department of Education (State of NSW) (NSWSC) - judicial review - plaintiff sought that appeal from medical assessment proceed - Registrar of the Workers Compensation Commission of New South Wales refused application - summons dismissed

Aycicek v Flowline Industries Pty Ltd (VSCA) - negligence - injury in course of employment - appeal against jury's findings of contributory negligence allowed

Summaries With Link (Five Minute Read)

[Australian Building and Construction Commissioner v Construction, Forestry, Mining](#)

and Energy Union (the costs of the Cup of Tea Case) [2019] FCAFC 36

Full Court of the Federal Court of Australia

Flick, Reeves & O'Callaghan JJ

Costs - Commissioner sought to appeal against costs order of primary judge - whether decision 'attended by sufficient doubt to warrant' Full Court's reconsideration - whether, supposing decision wrong, there would be 'substantial injustice' if leave to appeal refused - whether erroneous construction of "unreasonable act or omission" in s570(2)(b) *Fair Work Act 2009* (Cth) - whether erroneous finding Calderbank offer was "unreasonable act" - whether erroneous satisfaction that Calderbank offer "caused the other party to incur costs" - held: leave to appeal refused - application dismissed.

[Australian Building and Construction](#)

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Liu v Stephen Grubits and Associates (No 2) [2019] FCAFC 42

Full Court of the Federal Court of Australia

Reeves, Kerr & Lee JJ

Costs - Court dismissed appeal against costs order which Federal Circuit Court of Australia made in relation to application under *Fair Work Act 2009* (Cth) - appellant unsuccessfully contended Federal Circuit Court of Australia did not have power to make order - determination of costs of appeal - whether conditions in s570(2) of the Act were met such that costs order against appellant justified - conduct - whether appeal instituted 'vexatiously or without reasonable cause' - held: costs order against appellant not satisfied - no order made as to costs.

[Liu](#)

[From Benchmark Friday, 22 March 2019]

Moffet v Dental Corporation Pty Ltd [2019] FCA 344

Federal Court of Australia

Flick J

Industrial law - applicant sought relief under *Fair Work Act 2009* (Cth) (Fair Work Act), and also claimed in respect of superannuation entitlements and long service leave - 'principal issue' concerned whether applicant engaged to work for respondent as employee or independent contractor - whether respondent contravened s357 Fair Work Act - whether respondent contravened ss90(2) & 323 Fair Work Act - whether respondent breached section s4(2)(a) *Long Service Leave Act 1955* (NSW) (Long Service Leave Act) - whether applicant an 'employee' under *Superannuation Guarantee (Administration) Act 1992* (Cth) (Superannuation Guarantee Act) - held: applicant was engaged as independent contractor - applicant was not a 'worker' under Long Service Leave Act - applicant was within 'extended definition' of 'employee' in Superannuation Guarantee Act - claim under Superannuation Guarantee Act accepted.

[Moffet](#)

[From Benchmark Friday, 22 March 2019]



Ballas v Department of Education (State of NSW) [2019] NSWSC 234

Supreme Court of New South Wales

Wright J

Judicial review - workers compensation - 'Approved Medical Specialist' made medical assessment - plaintiff sought that appeal from medical assessment proceed - Registrar of the Workers Compensation Commission of New South Wales refused application - whether failure to assess argument in refusing to allow appeal to proceed - whether irrelevant considerations taken into account - whether failure to take into account relevant considerations - 'Discretion as to Category Ground' - Psychiatric Impairment Rating Scale - Workers Compensation Guidelines - *Workers Compensation Act 1987* (NSW) - held: summons dismissed.

[View Decision](#)

[From Benchmark Friday, 22 March 2019]

Aycicek v Flowline Industries Pty Ltd [2019] VSCA 37

Court of Appeal of Victoria

Beach, Kyrou & Emerton JJA

Negligence - applicant employed by respondent - applicant sued respondent for injuries suffered in course of employment - jury found respondent was negligent and breached *Occupational Health and Safety (Manual Handling) Regulations 1999* - jury found applicant entitled to damages - jury found contributory negligence on applicant's part - damages reduced by 38 per cent - applicant challenged contributory negligence findings - whether contributory negligence finding open to jury - whether open to jury to reduce damages by 38 per cent - whether breach of 'system of work' by applicant - held: jury's finding of contributory negligence not open, or alternatively was unreasonable - appeal allowed.

[Aycicek](#)

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The Cricket

By: Edwin Markham

The twilight is the morning of his day.

While Sleep drops seaward from the fading shore,
With purpling sail and dip of silver oar,
He cheers the shadowed time with roundelay,
Until the dark east softens into gray.

Now as the noisy hours are coming—hark!
His song dies gently—it is growing dark—
His night, with its one star, is on the way!

Faintly the light breaks over the blowing oats—

Sleep, little brother, sleep: I am astir.

We worship Song, and servants are of her—
I in the bright hours, thou in shadow-time:
Lead thou the starlit night with merry notes,
And I will lead the clamoring day with rhyme.

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

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