

Friday, 28 February 2020

Weekly Employment Law A Weekly Bulletin listing Decisions of Superior Courts of Australia covering Employment Law

 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)

Von Schoeler v Allen Taylor and Company Ltd Trading as Boral Timber (No 2) (FCAFC) - human rights - sexual harassment - appeal from dismissal of vicarious liability claim against employer - appeal allowed

PIA Mortgage Services Pty Ltd v King (FCAFC) - industrial law - employment contract - pecuniary penalties - *Fair Work Act 2009* (Cth) - respondent dismissed from employment - appeal allowed in part - cross-appeal allowed in part

Charter Hall Real Estate Management Services (NSW) Pty Limited v State of New South Wales (NSWCA) - workers compensation - worker injured in course of employment - worker was respondent's employee - respondent entitled to be indemnified by appellant for payments it made to worker - appeal dismissed

Hole v Gregory Ronald Lyons trading as Greg Lyons Building Constructions (NSWSC) - workers compensation - s151D(2) *Workers Compensation Act 1987* (NSW) - plaintiff granted leave to commence proceedings against employer

PG Nominees Pty Ltd v WBHO Infrastructure Pty Ltd (VSC) - pleadings - defendant sought to withdraw admission in defence concerning 'employee share plan' - plaintiffs sought to cross-examine solicitor concerning affidavit - defendant's application granted - plaintiffs' application refused

The State of South Australia v Van Hattem (SASC) - costs - interlocutory application - respondent sought variation to order permitting appellant to appeal to add condition concerning

payment of respondent's costs by appellant - interlocutory application granted

Summaries With Link (Five Minute Read)

Von Schoeler v Allen Taylor and Company Ltd Trading as Boral Timber (No 2) [2020] FCAFC 13

Full Court of the Federal Court of Australia

Flick, Robertson & Rangiah JJ

Human rights - sexual harassment - appellant employed by first respondent - second respondent and third respondent were employees of first respondent - appellant contended she was sexually harassed by second respondent, then 'victimised and discriminated against' by second respondent, third respondent and other employees of first respondent - appellant contended first respondent vicariously liable for sexual harassment by the employees - Federal Court dismissed proceeding against first and third respondents - judgment not delivered until 'more than six years after' trial and final submissions' delivery - appellant appealed - appellant contended judgment was unsafe due to delay in its delivery - appellant also contended reasons inadequate and that primary judge erred in finding first respondent not vicariously liable - held: appeal allowed.

[Von Schoeler](#)

[From Benchmark Monday, 24 February 2020]

PIA Mortgage Services Pty Ltd v King [2020] FCAFC 15

Full Court of the Federal Court of Australia

Rangiah, Charlesworth & Snaden JJ

Industrial law - contract - respondent was first appellant's former chief executive officer - second appellant was first appellant's 'sole director and shareholder' - respondent's employment terminated - respondent contended first appellant's termination of his employment contravened s340(1) *Fair Work Act 2009* (Cth), that second appellant was accessory to contravention and that first appellant contravened s90(2) *Fair Work Act* by failure to pay respondent amount of accrued 'untaken annual leave entitlements' - primary judge found for respondent and awarded respondent statutory compensation of \$100,000.00 (liability judgment) - pecuniary penalty imposed on appellants for contravention of s90(2) *Fair Work Act* (penalty judgment) - first appellant and respondent appealed from liability judgment and penalty judgment - whether respondent dismissed in contravention of s340(1) *Fair Work Act* - whether, if there was contravention, respondent suffered loss due to contravention - whether penalty manifestly excessive - whether compensation insufficient - whether damages for breach of contract should have been awarded to respondent - whether Court should have imposed penalty on appellants for contraventions of s340(1) *Fair Work Act* - held: penalty for breach of s90(2) was manifestly excessive - Court should have imposed penalty for contraventions of s340(1) *Fair Work Act* - first appellant entitled to terminate contract of employment - compensation amount of \$100,000 not disturbed - appeal allowed in part - cross-appeal allowed in part.

[PIA](#)

[From Benchmark Thursday, 27 February 2020]

Charter Hall Real Estate Management Services (NSW) Pty Limited v State of New South Wales [2020] NSWCA 26

Court of Appeal of New South Wales

Macfarlan & White JJA; Simpson AJA

Workers compensation - worker injured in course of employment - worker was respondent's employee - primary judge found respondent entitled to be indemnified by appellant for payments it made to worker - appellant appealed - no dispute appellant assumed occupier's obligation in respect of worker's safety - whether appellant had 'actual knowledge' of risk of harm - whether risk of harm 'not insignificant' - whether appellant breached duty of care to worker - whether respondent breached duty of care to worker - s151Z(1)(d) *Workers Compensation Act 1987* (NSW) - *Civil Liability Act 2002* (NSW) - held: appeal dismissed.

[View Decision](#)

[From Benchmark Thursday, 27 February 2020]

Hole v Gregory Ronald Lyons trading as Greg Lyons Building Constructions [2020] NSWSC 102

Supreme Court of New South Wales

Button J

Workers compensation - plaintiff 'on-site workman' claimed he was injured at premises - plaintiff sought leave to proceed against second defendant employer out of time - s151D(2) *Workers Compensation Act 1987* (NSW) (*Workers Compensation Act*) - whether "fair and just" to grant plaintiff leave - prejudice - held: plaintiff granted leave to commence proceedings against employer under s151D(2) *Workers Compensation Act*.

[View Decision](#)

[From Benchmark Wednesday, 26 February 2020]

PG Nominees Pty Ltd v WBHO Infrastructure Pty Ltd [2020] VSC 48

Supreme Court of Victoria

Ierodionou AsJ

Pleadings - defendant sought to withdraw admission in defence - admission concerned 'adoption of rules' concerning 'employee share plan' - plaintiffs opposed defendant's application - plaintiffs sought to cross-examine solicitor of defendant concerning affidavit sworn by solicitor in application's support - rr25.02(4)–(5), 40.04(1) & 40.04(3) *Supreme Court (General Civil Procedure) Rules 2015* (Vic) - held: defendant permitted to withdraw admission - plaintiffs' application dismissed.

[PG Nominees](#)

[From Benchmark Monday, 24 February 2020]

The State of South Australia v Van Hattem [2020] SASC 26

Supreme Court of South Australia

Parker J

Costs - employment - Court granted appellant permission to appeal against Full Bench of the South Australian Employment Tribunal's decision in *Department of Education v van Hattem* [2019] SAET 193 - respondent, by interlocutory application, sought to vary order granting permission to appeal 'to attach a condition' that appellant pay 'respondent's reasonable costs of and incidental to the appeal' - respondent relied on decision in *Return to Work Corporation of South Australia v Brealey* [2018] SASCFC 4 - *CSR Limited v Eddy* [2005] HCA 64 - *State of New South Wales v Corby* [2010] NSWCA 27 - whether respondent 'well positioned to meet an adverse costs order' - respondent's success in Tribunal and before Full Bench - appellant a 'large and recurrent litigant' - importance of resolution of point on appeal to State and Return to Work Corporation - held: interlocutory application granted.

[The State of South Australia](#)

[From Benchmark Wednesday, 26 February 2020]



Benchmark

On an Hour-Glass

By: John Hall (1627–1656)

MY life is measur'd by this glass, this glass
By all those little sands that thorough pass.
See how they press, see how they strive, which shall
With greatest speed and greatest quickness fall.
See how they raise a little mount, and then
With their own weight do level it again.
But when th' have all got thorough, they give o'er
Their nimble sliding down, and move no more.
Just such is man, whose hours still forward run,
Being almost finish'd ere they are begun;
So perfect nothings, such light blasts are we,
That ere we're aught at all, we cease to be.
Do what we will, our hasty minutes fly,
And while we sleep, what do we else but die?
How transient are our joys, how short their day!
They creep on towards us, but fly away.
How stinging are our sorrows! where they gain
But the least footing, there they will remain.
How groundless are our hopes, how they deceive
Our childish thoughts, and only sorrow leave!
How real are our fears! they blast us still,
Still rend us, still with gnawing passions fill;
How senseless are our wishes, yet how great!
With what toil we pursue them, with what sweat!
Yet most times for our hurts, so small we see,
Like children crying for some Mercury.
This gapes for marriage, yet his fickle head
Knows not what cares wait on a marriage bed:
This vows virginity, yet knows not what
Loneness, grief, discontent, attends that state.
Desires of wealth another's wishes hold,
And yet how many have been chok'd with gold?
This only hunts for honour, yet who shall
Ascend the higher, shall more wretched fall.
This thirsts for knowledge, yet how is it bought?
With many a sleepless night, and racking thought.
This needs will travel, yet how dangers lay
Most secret ambuscados in the way?
These triumph in their beauty, though it shall



Benchmark

Like a pluck'd rose or fading lily fall.
Another boasts strong arms: 'las! giants have
By silly dwarfs been dragg'd unto their grave.
These ruffle in rich silk: though ne'er so gay,
A well-plum'd peacock is more gay than they.
Poor man! what art? A tennis-ball of error,
A ship of glass toss'd in a sea of terror;
Issuing in blood and sorrow from the womb,
Crawling in tears and mourning to the tomb:
How slippery are thy paths! How sure thy fall!
How art thou nothing, when th' art most all!

[https://en.wikipedia.org/wiki/John_Hall_\(poet\)](https://en.wikipedia.org/wiki/John_Hall_(poet))

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