



Friday, 20 December 2024

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

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Executive Summary (One Minute Read)

Lake Macquarie City Council v Newcastle Resources Pty Ltd (No 2) (NSWSC) - Court refused leave to Council to amend its pleadings where the disputed amendments would considerably expand the case Council sought to make

Allen v Yarra Valley Railway Incorporated (VSC) - interlocutory injunction restraining from restoring and reconstructing a historic railway line outside normal business hours, on the basis of alleged nuisance, refused

Wilson v City of Onkaparinga (SASC) - Supreme Court largely rejected appeal from Tribunal, which had affirmed Council's order prohibiting applicant from owning dogs and requiring his current dog to be destroyed

Forrest v City of Bussleton (WASC) - Magistrate erred in convicting property developer for carrying out development otherwise than in accordance with a condition under a local planning scheme



HABEAS CANEM

Merry Christmas from McGregor

Summaries With Link (Five Minute Read)

Lake Macquarie City Council v Newcastle Resources Pty Ltd (No 2) [2024] NSWSC 1131

Supreme Court of New South Wales

Stevenson J

Civil procedure - Council sued the defendant for damage allegedly caused by a steel slag road-base the defendant had supplied for use in roads installed by the Council and by third parties in the Council's local government area - Council alleged the road-base had caused degradation to the roads and also damage to properties owned by third parties who were now claiming compensation from Council - Council sought to amend its Summons and Commercial List Statement - the defendant opposed certain amendments, which sought to expand Council's case in contract from one arising from the most recent of five contracts made between Council and the defendant between 2006 and 2011, to one arising from all five contracts, and to expand the Council's case for contractual indemnity from one relating to any claim arising 'out of the performance of the Contracts' to one relating to 'all loss, cost and expense' that the Council might incur by reason of any loss of or damage to property caused by the defendant by failure to perform an obligation in the contracts - held: Council had provided no reason for the delay in making these amendments - the disputed amendments would be a significant expansion of the Council's case - they would expand Council's case as one relying on claims for breach of identified terms in the most recent contract, breach of duty of care, and allegations of misleading or deceptive conduct contrary to s18 of the *Australian Consumer Law*, to a case seeking in effect impose on the defendant something tantamount to an absolute contractual duty to indemnify the Council in respect of its own losses - leave for the disputed amendments refused.

[View Decision](#)

[From Benchmark Thursday, 19 December 2024]

Allen v Yarra Valley Railway Incorporated [2024] VSC 796

Supreme Court of Victoria

Quigley J

Nuisance - the plaintiffs lived on a large rural property in a green wedge zone - YVR was a not for profit incorporated association who leased a rail corridor adjacent to the plaintiffs' property, and who was restoring and reconstructing a historic railway line in that corridor - the plaintiffs contended YVR's work caused a nuisance, in that that works were carried out before and after hours, and on weekends - the plaintiffs said their mental and physical health was being affected, as was that of their children, their horses, and their other animals - the plaintiffs sought an interlocutory injunction restraining YVR from doing work outside normal business hours - held: the tort of private nuisance occurs where a person interferes with another person's use or enjoyment of their land in a way that is both substantial and unreasonable - one type of interference that can constitute nuisance is unduly interfering with the comfortable and convenient enjoyment of land - public benefit may be relevant to the reasonableness of the interference, but does not operate as a defence - the strength of the plaintiff's nuisance claim

was marginal, although it was possibly arguable - however, damages would potentially be an adequate remedy after trial - the plaintiffs had proffered no undertaking as to damages and no explanation for not having done so - the balance of convenience favoured refusing the injunction - interlocutory injunction refused.

[Allen](#)

[From Benchmark Friday, 20 December 2024]

Wilson v City of Onkaparinga [2024] SASC 139

Supreme Court of South Australia

Boyle J

Administrative law - applicant owned an American Bulldog, which attacked a Golden Retriever while subject to a Control (Dangerous Dog) Order - Council made a prohibition order prohibiting the applicant owning a dog for five years and requiring each dog owned by the applicant to be destroyed - SA Civil and Administrative Tribunal affirmed - applicant sought leave to appeal to Supreme Court - held: overriding principle regarding leave was the interests of justice, having regard to whether appeal was reasonably arguable, whether any matter of principle or general importance, and whether subject matter involved sufficient substance - Council had discretion whether and in what form to make a prohibition order, so the *House v The King* standard applied - reasonably arguable Tribunal denied procedural fairness, and leave to appeal should be granted on that issue - on balance the Tribunal did not deny procedural fairness - the criteria for prohibition order had been met - Tribunal made no error of principle to justify interfering with the decision to impose a prohibition order - if correctness standard applied, Tribunal's decision was correct - Tribunal erred by not independently considering whether five-year ban was 'preferable' decision - period should be two and a half years - insufficient basis to find Tribunal erred in deciding dog could not be re-homed and should be destroyed - leave to appeal granted but appeal dismissed (other than regarding period of prohibition).

[Wilson](#)

[From Benchmark Wednesday, 18 December 2024]

Forrest v City of Bussleton [2024] WASC 478

Supreme Court of Western Australia

Musikanth J

Planning law - the appellant property developer was convicted of having carried out development otherwise than in accordance with a condition imposed under a local planning scheme contrary to s218(c) of the *Planning and Development Act 2005 (WA)* - the appellant sought leave to appeal against conviction - held: leave must not be granted on a ground of appeal unless the court is satisfied the ground has a reasonable prospect of succeeding - 'development' encompasses both 'use' of land for particular purposes and development in the sense of the physical alteration of land such as the construction of works - on its proper construction, the relevant planning condition was that the appellant not cause or permit excavation below a level of 1.25 Australian Height Datum (AHD) at any part of the site, based on the ordinary meaning of 'excavation' and other textual considerations - the Magistrate had

therefore misdirected herself as to the appropriate legal test and erred in finding that the appellant carried on development merely by being in 'control' of the site, and by failing to find, instead, that it was necessary to determine what, if anything, the appellant had in fact 'done' - the Court considered that the prosecution failed to prove, beyond reasonable doubt, that the appellant caused or permitted excavation below a level of 1.25 AHD at the site - leave to appeal granted and appeal allowed.

[Forrest](#)

[From Benchmark Thursday, 19 December 2024]

Benchmark

INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Khachatryan v Armenia (EUHR5S) - In a matter of first impression, the European Court of Human Rights found that a member state has an obligation to provide a mechanism whereby victims of domestic violence may seek compensation for non-pecuniary damage from the perpetrator of the violence

Summaries With Link (Five Minute Read)

Khachatryan v Armenia, Case 11829/16

European Court of Human Rights

Guyomar P, Elósegui, Harutyunyan, Felici, Zünd, Sârcu, & Šimáková JJ

In Armenia, the victim had been subjected to numerous events of serious physical and emotional abuse by her former spouse. He repeatedly threatened and insulted her. He also repeatedly beat her, breaking bones and causing concussions and other grievous injuries. The perpetrator was charged with aggravated torture of a person who was dependent on the perpetrator. However, he was convicted of non-aggravated torture and sentenced to 18 months imprisonment. He did not serve any time as he was exempted under an Amnesty Act. The victim of the abuse unsuccessfully launched civil legal proceedings seeking compensation for both pecuniary and non-pecuniary damage for emotional and psychological suffering due to ill-treatment. Armenian domestic law did not provide for compensation for non-pecuniary damages in this situation. The judgment was affirmed by the local court of appeal. Armenia is one of the 46 member states comprising the Council of Europe and is subject to the European Convention on Human Rights and the jurisdiction of the European Court of Human Rights. The victim sought review of the decision by the Armenian courts by alleging that Armenia had acted in violation of Article 3 of the *European Convention on Human Rights*, which states that 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment'. The Court found that the Armenian criminal-law mechanisms were so defective in terms of protecting the victim that they amounted to a breach of Armenia's obligations under Article 3. The European Court said that Armenia had repeatedly failed to discharge its procedural obligation to respond adequately to the serious acts of domestic abuse. In a decision of first impression, the Court also found that Article 3 imposed an obligation on the state to allow claims by the victim against the perpetrator for compensation for non-pecuniary damages in matters of serious domestic abuse. The Court stated that Article 3 created a positive obligation on the part of a member state in respect of allowing claims for non-pecuniary damage from the perpetrators of such violence directly, or indirectly through the member state. The European Court awarded the victim €24,000 plus €2000 in costs as against Armenia.

[Khachatryan](#)



Poem for Friday

Somewhere

By Rev David Conolly

Somewhere,
unexpectedly,
hope is born.

A voice.
At first, only the cry
of a new-born
gulping for breath.

In time, a voice.

The voice speaks to
a world grown used to
darkness, despair.

The voice says,
*You are light for the world;
Let it shine.
Love, and forgive*

And suddenly, hope is born.

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