

Friday, 22 November 2019

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

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Executive Summary (1 minute read)

Visual Building Construction Pty Ltd v Armitstead (No 2) (NSWCA) - contract - no error in primary judge's finding that termination of building contract was valid - appeal dismissed

Traspunt No 4 Pty Ltd v Moreton Bay Regional Council (QCA) - costs - Court determined two applications for leave to appeal - no reason to depart from 'usual rule' that costs follow event - Traspunt to pay Council's costs

Stirling McGregor v Tilt Renewables Australia Pty Ltd & Ors (SASCFC) - environment and planning - Court confirmed development approval for wind farm's development - appeal dismissed

Southern Waste Resource Co Pty Ltd v Adelaide Hills Region Waste Management Authority [No 2] (SASC) - mediation - application for referral of proceedings to mediation - application granted

Summaries With Link (Five Minute Read)

Visual Building Construction Pty Ltd v Armitstead (No 2) [2019] NSWCA 280

Court of Appeal of New South Wales

Bell ACJ; Macfarlan JA & White JA

Contract - primary judge found respondents 'validly terminated a twice varied building contract' with appellant - appellant appealed, contending primary judge erred in finding valid termination

of contract - appellant contended termination invalid because there was failure to provide '10 business days' notice' in which to remedy defaults which Notice of Termination detailed - respondents, by notice of contention, contended there were additional grounds in support of finding that contract was validly terminated - whether contract required provision of 10 business days' notice prior to termination - whether, if such requirement existed, it applied only if default 'capable of being remedied' within period of 10 business days - held: no error in primary judge's decision - appeal dismissed.

[View Decision](#)

[From Benchmark Friday, 22 November 2019]

Traspunt No 4 Pty Ltd v Moreton Bay Regional Council [2019] QCA 253

Court of Appeal of Queensland

Gotterson & McMurdo JJA; Davis J

Costs - Court determined two applications for leave to appeal - Council succeeded against Traspunt on its application - Traspunt failed in its application against Council - Council sought costs of applications for leave to appeal - whether to depart from 'usual rule' that costs follow event - whether 'neither side was entirely successful' - whether Traspunt was 'litigating in the public interest' - held: Traspunt to pay Council's costs.

[Traspunt](#)

[From Benchmark Tuesday, 19 November 2019]

Stirling McGregor v Tilt Renewables Australia Pty Ltd & Ors [2019] SASCFC 142

Full Court of the Supreme Court of South Australia

Kourakis CJ; Kelly & Hinton JJ

Environment and planning - Environment, Resources and Development Court confirmed development approval for wind farm's development by Council - appellant was objector to development approval - appellant challenged findings and reasons' adequacy concerning effect of wind farm's noise on 'health and amenity of nearby residents' and finding of 'no credible evidence' that development would be non-compliant with *Environment Protection (Noise) Policy 2007* - appellant also contended '2009 Guidelines' concerning noise emissions by wind farms 'were flawed' and that Court should have place no weight, or little weight on 2009 Guidelines - appellant also contended Court had mistakenly found expert's experience 'did not include undertaking noise predictions' - held: appeal dismissed.

[Stirling](#)

[From Benchmark Friday, 22 November 2019]

Southern Waste Resource Co Pty Ltd v Adelaide Hills Region Waste Management Authority [No 2] [2019] SASC 191

Supreme Court of South Australia

Hinton J

Mediation - plaintiff sought referral of proceedings to mediation under s65 *Supreme Court Act 1935 (SA)* (SCA) and r207 *Supreme Court Civil Supplementary Rules 2014 (SA)* - defendant

opposed referral - whether 'mandatory mediation' could be effective - costs and 'procedural consequences' which mandatory mediation would incur - prospects of mediation's success - whether to exercise discretion to order mediation - whether demonstration of 'exceptional circumstances' required - *Baulderstone Hornibrook Engineering v Dare Sutton Clark & Ors* [2000] SASC 159 - *Cawthorne v Olsen & Ors (Cawthorne)* [2005] SASC 34 - *Dimento v Dimento & Anor* [2007] NSWSC 420 - held: application granted.

[Southern Waste Resource](#)

[From Benchmark Thursday, 21 November 2019]



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To Flush, My Dog

By: Elizabeth Barrett Browning
LOVING friend, the gift of one,
Who, her own true faith, hath run,
Through thy lower nature ;
Be my benediction said
With my hand upon thy head,
Gentle fellow-creature !

Like a lady's ringlets brown,
Flow thy silken ears adown
Either side demurely,
Of thy silver-suited breast
Shining out from all the rest
Of thy body purely.

Darkly brown thy body is,
Till the sunshine, striking this,
Alchemize its dulness, —
When the sleek curls manifold
Flash all over into gold,
With a burnished fulness.

Underneath my stroking hand,
Startled eyes of hazel bland
Kindling, growing larger, —
Up thou leapest with a spring,
Full of prank and curvetting,
Leaping like a charger.

Leap ! thy broad tail waves a light ;
Leap ! thy slender feet are bright,
Canopied in fringes.
Leap — those tasselled ears of thine
Flicker strangely, fair and fine,
Down their golden inches

Yet, my pretty sportive friend,
Little is 't to such an end
That I praise thy rareness !
Other dogs may be thy peers
Haply in these drooping ears,



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And this glossy fairness.

But of thee it shall be said,
This dog watched beside a bed
Day and night unwearied, —
Watched within a curtained room,
Where no sunbeam broke the gloom
Round the sick and dreary.

Roses, gathered for a vase,
In that chamber died apace,
Beam and breeze resigning —
This dog only, waited on,
Knowing that when light is gone,
Love remains for shining.

Other dogs in thymy dew
Tracked the hares and followed through
Sunny moor or meadow —
This dog only, crept and crept
Next a languid cheek that slept,
Sharing in the shadow.

Other dogs of loyal cheer
Bounded at the whistle clear,
Up the woodside hieing —
This dog only, watched in reach
Of a faintly uttered speech,
Or a louder sighing.

And if one or two quick tears
Dropped upon his glossy ears,
Or a sigh came double, —
Up he sprang in eager haste,
Fawning, fondling, breathing fast,
In a tender trouble.

And this dog was satisfied,
If a pale thin hand would glide,
Down his dewlaps sloping, —
Which he pushed his nose within,
After, — platforming his chin



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On the palm left open.

This dog, if a friendly voice
Call him now to blyther choice
Than such chamber-keeping,
Come out ! ' praying from the door, —
Presseth backward as before,
Up against me leaping.

Therefore to this dog will I,
Tenderly not scornfully,
Render praise and favour !
With my hand upon his head,
Is my benediction said
Therefore, and for ever.

And because he loves me so,
Better than his kind will do
Often, man or woman,
Give I back more love again
Than dogs often take of men, —
Leaning from my Human.

Blessings on thee, dog of mine,
Pretty collars make thee fine,
Sugared milk make fat thee !
Pleasures wag on in thy tail —
Hands of gentle motion fail
Nevermore, to pat thee !

Downy pillow take thy head,
Silken coverlid bestead,
Sunshine help thy sleeping !
No fly 's buzzing wake thee up —
No man break thy purple cup,
Set for drinking deep in.

Whiskered cats aointed flee —
Sturdy stoppers keep from thee
Cologne distillations ;
Nuts lie in thy path for stones,
And thy feast-day macaroons



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Turn to daily rations !

Mock I thee, in wishing weal ? —
Tears are in my eyes to feel
Thou art made so straightly,
Blessing needs must straighten too, —
Little canst thou joy or do,
Thou who lovest greatly.

Yet be blessed to the height
Of all good and all delight
Pervious to thy nature, —
Only loved beyond that line,
With a love that answers thine,
Loving fellow-creature !

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

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