



Friday, 20 September 2019

## Weekly Government Review A Weekly Bulletin listing Decisions of Superior Courts of Australia covering government

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### Executive Summary (1 minute read)

**Cherry, Reclaiming Motion By Joanna Cherry QC MP And Others Against The Advocate General** (ScotCS CSIH) - reclaiming motion - decision of Government 'to prorogue Parliament' unlawful - reclaiming motion allowed - declarator granted

**Globaltech Corporation Pty Ltd v Australian Mud Company Pty Ltd** (FCAFC) - patent - appellant's 'Orifinder v5' tool infringed 'claims in suit' - no error in primary judge's construction of claims or conclusion of Patent infringement - appeal dismissed

**Cappello v Roads and Maritime Services** (NSWCA) - administrative law - compulsory acquisition of land - no error in rejection of appellants' challenge to validity of 'proposed acquisition notices' - appeal dismissed

**Wollert Epping Developments Pty Ltd v Batten** (VSC) - contract - sale of land - plaintiff purchaser sought determination of questions concerning 'three warranties' and declarations - questions 'rephrased and answered' - 'motion and summons' dismissed

**Eaton v Rare Nominees Pty Limited** (QCA) - joint venture - erroneous finding of fiduciary duty owed by company to respondent - appeal allowed

**Murphy Operator & Ors v Gladstone Ports Corporation & Anor (No 4)** (QSC) - champerty - maintenance - determination of 'Funding Application' - funding agreements not unenforceable - declarations and orders

# Benchmark

## Summaries With Link (Five Minute Read)

### **Cherry, Reclaiming Motion By Joanna Cherry QC MP And Others Against The Advocate General [2019] ScotCS CSIH 49**

First Division, Inner House, Court of Session

Lord President Carloway, Lord Brodie & Lord Drummond Young

'Reclaiming motion' concerning 'two central questions' - whether prorogation could be 'judicially reviewed' where it was alleged that prorogation requested for 'improper motive' viz. the stymying of Parliamentary debate on the issue of the UK leaving the European Union' - whether improper motive demonstrated - 'subsidiary questions' concerned press's access documents in 'court practice' and whether to call for 'unredacted copies' of documents - Government contended purpose legitimate - whether decision of Government 'to prorogue Parliament' was 'proper exercise of the executive's power' - held: reclaiming motion allowed - declarator granted.

[Cherry](#)

[From Benchmark Tuesday, 17 September 2019]

### **Globaltech Corporation Pty Ltd v Australian Mud Company Pty Ltd [2019] FCAFC 162**

Full Court of the Federal Court of Australia

Kenny, Robertson & Moshinsky JJ

Patent - first respondent contended appellant infringed claims in Patent - appellant cross-claimed, challenging validity of 'claims in suit' - primary judge resolved 'construction issues' in first respondent's favour, found appellant infringed claims in suit, rejected appellant's 'validity arguments' to extent they relied on construction issues, and rejected other grounds on which appellant contended Patent invalid - appellant challenged primary judge's approach to claims' construction and conclusion that 'Orifinder v5' infringed claims in suit - *Patents Act 1990* (Cth) - *Patents Regulations 1991* (Cth) - *Intellectual Property Laws Amendment (Raising the Bar) Act 2012* (Cth) - held: no error in decision of primary judge - appeal dismissed.

[Globaltech](#)

[From Benchmark Tuesday, 17 September 2019]

### **Cappello v Roads and Maritime Services [2019] NSWCA 227**

Court of Appeal of New South Wales

Payne & Brereton JJA; Emmett AJA

Administrative law - compulsory acquisition of land - appellants were land's registered proprietors - land subject to 'proposed acquisition notices' issued by first respondent to appellants under s11 *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) (Just Terms Act) - appellants challenged proposed acquisition notices' validity - appellants contended notices outside scope of *Roads Act 1993* (NSW)'s purposes and thus 'unauthorised and ultra vires' - appellants sought declarations and order restraining land's compulsory acquisition - primary judge dismissed proceedings - first respondent became land's registered proprietor under s19 Just Terms Act - appellants appealed - "purposes of the Roads Act 1993 in connection with the construction, operation and maintenance of WestConnex M4 – M5 Link

tunnels" - held: no error in rejection of appellants' challenge to acquisition notices' validity - appeal dismissed.

[View Decision](#)

[From Benchmark Wednesday, 18 September 2019]

## **Wollert Epping Developments Pty Ltd v Batten [2019] VSC 61**

Supreme Court of Victoria

Derham AsJ

Contract - sale of land - defendants were vendors who, by contract of sale, agreed to sell property to plaintiff purchaser - parties in dispute concerning contract's interpretation - plaintiff, under s49 *Property Law Act 1958* (Vic), sought determination of questions concerning whether defendants had breached 'three warranties' in contract and declarations - 'vendor and purchaser summons' provision' - effect of 'identity clause' - effect of 's27 Notice' on purchaser's rights - held: questions 'rephrased and answered' - plaintiff's 'motion and summons' dismissed.

[Wollert](#)

[From Benchmark Monday, 16 September 2019]

## **Eaton v Rare Nominees Pty Limited [2019] QCA 190**

Court of Appeal of Queensland

Philippides & McMurdo JJA; Davis J

Joint venture - proceedings concerned joint venture agreement (JVA) between company (E-Coastal) as proprietor and respondent as one of the "Contributors" - respondent claimed against appellant 'sole director and controlling mind of E-Coastal (Mr Eaton) and Mrs Eaton - respondent claimed that E-Coastal breached fiduciary duties to respondent - trial judge found E-Coastal had fiduciary duties to respondent which were breached - trial judge found against Mr Eaton under Barnes v Addy's 'second limb' - Mr Eaton appealed - construction of "Receipts" in JVA - whether erroneous finding E-Coastal breached fiduciary duty - whether erroneous finding Mr Eaton was liable under Barnes by Addy's second limb - held: trial judge erred in finding there was 'relevant fiduciary obligation' owed to respondent - appeal allowed.

[Eaton](#)

[From Benchmark Monday, 16 September 2019]

## **Murphy Operator & Ors v Gladstone Ports Corporation & Anor (No 4) [2019] QSC 228**

Supreme Court of Queensland

Crow J

Champerty - maintenance - plaintiffs sought declarations 'funding agreements' with second respondent and between group members and second respondent were "not, by reason of maintenance, champerty or public policy, unenforceable" - plaintiffs alternatively sought. under s103ZA *Civil Proceedings Act 2011* (Qld) (Civil Proceedings Act), 'common fund order' concerning funding agreements - ancillary orders also sought - determination of 'Funding Application' - "Representative Proceeding Funding Agreement, Representative, The 2017 Gladstone Fisheries Scheme" - "Representative Proceeding Funding Agreement, Member, The



# Benchmark

2017 Gladstone Fisheries Scheme” - held: funding agreements did 'not involve unlawful conduct or purpose' - funding agreements 'not prejudicial' to justice's administration - funding agreements were in accordance with 'public policy' of Civil Proceedings Act - funding agreements not unenforceable - declarations and orders.

[Murphy](#)

[From Benchmark Monday, 16 September 2019]



# Benchmark

**To My Friends**

**By:** Henry Lawson

From: Skyline Riders.

These are the songs of the Friends I neglected -  
And the Foes too, in part;  
These are songs that were mostly rejected -  
And songs from my heart.

[https://en.wikipedia.org/wiki/Henry\\_Lawson](https://en.wikipedia.org/wiki/Henry_Lawson) - circa 1910

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