

Friday, 7 June 2019

## Weekly Wills Estates and Superannuation Law A Weekly Bulletin listing Decisions of Superior Courts of Australia covering Wills Estates and Superannuation Law

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### Executive Summary (1 minute read)

**Bluescope Steel (AIS) Pty Ltd v Australian Workers' Union** (FCAFC) - industrial law - superannuation - statutory interpretation - appeal against decision that first appellant had contravened item 15 of Sch 16 *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) and s50 *Fair Work Act 2009* (Cth) - appeal allowed

**Walters v Perton** (VSC) - subpoena - wills and estates - probate - application to set aside subpoenas - application dismissed

**Re Arklie (No 2)** (VSC) - wills and estates - succession - plaintiffs and defendants passed over as executrices - Letters of Administration with will annexed granted to 'independent administrator'

**In the Estate of Dixon (Deceased)** (SASC) - wills and estates - administrator sought that requirement for compliance with s65 *Administration and Probate Act 1919* (SA) be dispensed with - application granted

### Summaries With Link (Five Minute Read)

**[Bluescope Steel \(AIS\) Pty Ltd v Australian Workers' Union \[2019\] FCAFC 84](#)**

Full Court of the Federal Court of Australia  
Allsop CJ; Collier & Rangiah JJ

# Benchmark

Industrial law - superannuation - Court found that first appellant, by failure 'to make appropriate superannuation contributions to its employees', contravened item 15 of Sch 16 *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) and s50 *Fair Work Act 2009* (Cth) - appellants ('Bluescope') appealed - 'threshold question' whether '2006 Award' and 'enterprise agreements' ('2012 and 2105 agreements') capable of contravention - whether to grant Commissioner of Taxation leave to intervene - statutory interpretation - s6 *Superannuation Guarantee (Administration) Act 1992* (Cth) - "ordinary time earnings" - "ordinary hours of work" - held: appeal allowed.

[Bluescope](#)

[From Benchmark Wednesday, 5 June 2019]

## **Walters v Perton [2019] VSC 356**

Supreme Court of Victoria

Derham AsJ

Subpoena - wills and estates - probate - plaintiff filed two subpoenas: subpoena to defendant and subpoena to bank - defendant sought that both subpoenas be set aside under r42.04 *Supreme Court (General Civil Procedure) Rules 2015* (Vic) on basis they were 'abuse of the process of the court, vexatious and oblique or oppressive' - *Skrijel v Mengler* [2003] VSC 55 - *Atlas v Director of Public Prosecutions* [2001] VSC 209 - legitimate forensic purpose - categories' width - held: application to set aside subpoenas refused.

[Walters](#)

[From Benchmark Monday, 3 June 2019]

## **Re Arklie (No 2) [2019] VSC 350**

Supreme Court of Victoria

Moore J

Wills and estates - succession - plaintiffs and defendant were executors of deceased's will - plaintiffs sought that plaintiffs and defendant 'be passed over as executrices' - plaintiffs sought that Letters of Administration with will annexed 'be granted to State Trustees Ltd' - whether Court satisfied to appoint independent administrator - parties' relationship - 'acrimonious and dysfunctional' - beneficiaries' best interests - interests of estate - whether 'due and proper administration of estate' jeopardised by if parties' appointment continued - held: plaintiffs and defendant passed over - Letters of Administration with will annexed granted to State Trustees Ltd.

[Re Arklie](#)

[From Benchmark Thursday, 6 June 2019]

## **In the Estate of Dixon (Deceased) [2019] SASC 87**

Supreme Court of South Australia

Bampton J

Wills and estates - administrator, under s67 *Administration and Probate Act 1919* (SA) (Administration and Probate Act) sought that requirement for compliance with s65



Administration and Probate Act be dispensed with - beneficiary lacking capacity - whether order under s67 could have retrospective operation - held: application granted - order made dispensing with administrator's obligation to comply with s65 to pay beneficiary's beneficial interest in deceased's estate to Public Trustee.

[In the Estate of Dixon](#)

[From Benchmark Thursday, 6 June 2019]



# Benchmark

## **To a Locomotive in Winter**

**By:** Walt Whitman

Thee for my recitative,  
Thee in the driving storm even as now, the snow, the winter-  
day declining,  
Thee in thy panoply, thy measur'd dual throbbing and thy  
beat convulsive,  
Thy black cylindric body, golden brass, and silvery steel,  
Thy ponderous side-bars, parallel and connecting rods,  
gyrating, shuttling at thy sides,  
Thy metrical, now swelling pant and roar, now tapering in  
the distance,  
Thy great protruding head-light fix'd in front,  
Thy long, pale, floating vapor-pennants, tinged with delicate  
purple,  
The dense and murky clouds out-belching from thy smoke-  
stack,  
Thy knitted frame, thy springs and valves, the tremulous  
twinkle of thy wheels,  
Thy train of cars behind, obedient, merrily following,  
Through gale or calm, now swift, now slack, yet steadily  
careering;  
Type of the modern—emblem of motion and power—pulse of  
the continent,  
For once come serve the Muse and merge in verse, even  
as here I see thee,  
With storm and buffeting gusts of wind and falling  
snow,  
By day thy warning ringing bell to sound its notes,  
By night thy silent signal lamps to swing.

Fierce-throated beauty!  
Roll through my chant with all thy lawless music, thy  
swinging lamps at night,  
Thy madly-whistled laughter, echoing, rumbling like an  
earthquake, rousing all,  
Law of thyself complete, thine own track firmly holding,  
(No sweetness debonair of tearful harp or glib piano thine,)  
Thy trills of shrieks by rocks and hills return'd,  
Launch'd o'er the prairies wide, across the lakes,  
To the free skies unpent and glad and strong.



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