

JOURNAL OF CIVIL LITIGATION AND PRACTICE

Volume 11, Number 4

2024

EDITORIAL – AUSTRALIA – *General Editor: Professor Michael Legg*

Costs Protection Adopted for Applicants in Australian Discrimination Litigation 123

EDITORIAL – NEW ZEALAND – *General Editor: Roderick Joyce QSO KC*

A Sign of the Times? 125

ARTICLES

Freezing Orders, Proprietary Injunctions and Crypto Assets: A Discussion of Common Issues in the Australian Context – *Lachlan Goddard*

This is a civil procedure article which discusses issues that commonly arise in applications for freezing orders and proprietary injunctions in relation to cryptocurrencies and non-fungible tokens. As these technologies are relatively new, the common law pertaining to them is in a developing state. Despite a small number of domestic Australian decisions on this topic, courts in other common law countries have made a series of decisions demonstrating that the existing civil procedure framework is well-suited to deal with the issues which arise in these proceedings. Academic writing tends to support this position. This article expands on the existing civil procedure literature by analysing the decisions made by courts in other common law countries and interpreting those decisions in the Australian context. Ultimately, this article contends that the existing framework for interim relief in Australia is equipped to deal with these new technologies, and the nature of crypto assets will not be a bar to victims of fraud or misappropriation being able to obtain interim relief pending an outcome of their disputes. 127

Distortions of Legal and Other Relationships: Has the Internet Changed Our Perceptions of Reality and Each Other? – *The Hon Steven Rares KC*

Over the last three decades the internet and advances in digital technologies have changed the ways we communicate with one another and receive much of the information that, previously, we obtained from physical books and the traditional media. Artificial intelligence or AI is an emerging phenomenon. AI can generate plausible, but manufactured, material conveying what appears to be real or accurate information. These innovations permeate our contemporary existence and have had broad impacts, including on litigation. Each of these developments has forced adjustments to how, from moment to moment, we perceive and can distinguish between what is reality, fact and fiction. Lies are now called by their tellers “alternative facts” and truthful information is derided as “fake news”. The author discusses how it is becoming ever harder to distinguish what is truth from, in Lord Blackburn’s description of a fraud, “lies like truth,” and the way in which we, as members of society, have changed our relationships with each other and the broader world. 150

CASE NOTES – AUSTRALIA – *Editor: Michael Legg*

Security for Costs in the Probate Jurisdiction – *Xavier P Walsh and Amir Chowdhury* 162

Pure Economic Loss: In an Action for the Tort of Negligence, When Does a Duty of Care Arise?: *Mallonland Pty Ltd v Advanta Seeds Pty Ltd* – *Jeremy Harrison* 168

Bruce Lehrmann Went Back for His Hat and Lost His Shirt: Costs in Australian Litigation – *Michael Legg and Felicity Bell* 171

CASE NOTE – NEW ZEALAND – *Editors: William Fotherby and Roderick Joyce QSO KC*

Rasier Operations BV v E Tū Inc [2024] NZCA 403 – *William Fotherby and Michael Kil Kelly* 175

VOLUME 11 – 2023–2024

Table of Authors 183

Index 185