



Decisions of Interest

15 October 2025 to 31 October 2025

Summaries of recent decisions of the New South Wales Court of Appeal, other Australian intermediate appellate courts, Asia Pacific appellate courts and other international appellate courts, with the aim of collecting and promoting awareness and accessibility of particularly significant recent decisions.

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New South Wales Court of Appeal Decisions of Interest

Contract law: meaning of “youth”

Student A by his tutor Peter Johnston v Council of Newington College [\[2025\] NSWCA 230](#)

Decision date: 20 October 2025

Bell CJ, Ward P, Free JA

The proceedings concern a decision of the first respondent, the Council of Newington College (the Council) to introduce co-education and admit girls to the historically male-only school, Newington College (the College). A current student at the College challenged that decision on the basis that it was contrary to the objects clause in an 1873 deed of trust (the Deed), namely “to provide an efficient course of education for youth”. Student A’s contention was that the Deed precluded the admission of girls because, understood in its historical context, its reference to “youth” was limited to males. Student A relied both at first instance and on appeal on the definition of “youth” in the 1848 edition of *Barclays Complete and Universal English Dictionary* as well as a number of surrounding circumstances. Student A also sought to rely on the “ancient documents rule” to admit evidence of conduct subsequent to the settlement of the trust, as well as contemporaneous newspaper articles, said to inform the meaning or usage of the term “youth” as of 1873. At trial and on appeal, Student A relied on quotations in five such articles which were said to equate the meaning of “youth” with “boys”. The primary judge found that the meaning of “youth” in cl 3 of the Deed was unambiguously gender neutral. Student A appealed on four grounds. The first two challenged the meaning of the term “youth”. The third concerned the non-admission of the newspaper articles and the fourth challenged the finding that the “ancient documents rule” was not enlivened.

The Court held (per curiam), dismissing the appeal:

- The primary judge did not err in placing no reliance on the newspaper articles. The select quotations which did connect the meaning of “youth” with “boys” were driven by the context of the subject matter of the articles and were contrary to the greater number of articles that used “youth” in a non-gendered way: [22]-[30].
- The primary judge did not err in finding that the “ancient documents rule” was not enlivened, given that doctrine cannot be used to create ambiguities which the judge construing the instrument does not consider exist: [31]-[36].
- The primary judge did not err in construing “youth” to be gender neutral. This construction accorded with the ordinary English meaning of the term “youth” and was consistent with most of the dictionaries referred to, the use of other gender-neutral words elsewhere in the Deed (e.g., “children” and “pupils”), the broad discretion investing in the members of the Council in relation to the admission of pupils, and the historical materials evincing a changing attitude towards the education of girls at the time: [37]-[51].

Constitutional law: inconsistency between State and Federal laws

Attorney General for NSW v MM (a pseudonym) by his tutor Barbara Ramjan
[2025] NSWCA 238

Decision date: 28 October 2025

Ward P, Stern JA, Griffiths AJA

In 2022, the respondent (hereafter referred to by the pseudonym MM) was found subject to a qualified finding of guilt for an offence of aggravated sexual assault and became a forensic patient pursuant to s 72(1)(b) of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (the MHCIFP Act). MM has a mild neurocognitive disorder and is a National Disability Insurance Scheme (NDIS) participant. MM's status as a forensic patient was set to expire on 27 May 2024. The applicant, the Attorney General of NSW, commenced proceedings seeking an order to extend MM's status as a forensic patient for 18 months. In proceedings before Ierace J, MM objected to the tender of material obtained from Little Blue Wren (LBW), a registered NDIS provider which acted as MM's support coordinator. MM contended that there is an operational inconsistency between s 67G of the *National Disability Insurance Scheme Act 2013* (Cth) (NDIS Act), which prohibits the requirement of a person to produce documents in the person's possession because of the performance of duties, functions or powers under the NDIS Act, and s 138 of the MHCIFP Act which empowers the Minister to require production of information relating to a forensic patient, such that s 67G is partially inoperative pursuant to s 109 of the Constitution. An interim order was made by Ierace J extending MM's status as a forensic patient until 15 November 2025. Weinstein J heard the constitutional issue and concluded that registered NDIS providers are performing duties, functions or powers under the NDIS Act and made a declaration that s 138 of the MHCIFP Act was invalid to the extent of that inconsistency and, therefore, LBW could not be compelled to produce documents in its possession concerning MM's behaviour and mental condition. The applicant sought leave to appeal that decision, contending that s 67G of the NDIS Act captures only documents held by the NDIS provider because of the exercise or performance of a power, function or duty, the carrying out of which is enabled or mandated (as opposed to merely regulated) by the NDIS Act.

The Court held (per curiam), granting leave to appeal and allowing the appeal:

- The documents produced by LBW under the s 138 orders were not held or in the possession of LBW in the performance of its "duties" under the Act: [128]-[153].
- Duties, functions or powers "under" the NDIS Act do not extend beyond functions conferred or imposed directly by the Act. The proper enquiry is whether the duty, power or function is being performed or exercised pursuant to some statutory obligation or enabling provision derived from the NDIS Act itself: [165]-[172].
- Properly construed, s 67G of the NDIS Act captures documents held by the NDIS because of the exercise of a power, function or duty, the carrying out of which is enabled or mandated (as opposed to regulated) by the NDIS Act: [173]-[174].

Equity: intention to create a trust

Li v Ye [\[2025\] NSWCA 227](#)

Decision date: 16 October 2025

Mitchelmore JA, Kirk JA, Adamson JA

Ms Li, Mr Qian and Mr Ross Waters-Marsh (the first to third appellants) and Mr Ye (the first respondent) together conducted a timber export business through a group of companies (the Shield Group). In 2018, some realty in Chinchilla, Queensland (the Chinchilla Property) was acquired and registered in the name of Mr Ye's personal corporate vehicle, Thomas Gem Stone Pty Ltd (TGS). A company in the Shield Group (Shield Resources) provided TGS a sum of approximately \$435,000 to enable the purchase. The appellants argued, in the context of an oppression claim, that the funds were advanced by Shield Resources to TGS in a manner that gave rise to a trust of some type. The primary judge rejected that claim, finding that a conversation to which Ms Li deposed, which was said to evince the parties' intention to create a trust, had not occurred. His Honour made orders winding up companies in the Shield Group. Three issues arose on appeal: first, whether the Chinchilla Property was held on trust by TGS for Shield Resources; secondly, whether the appellants had standing to seek a declaration of trust over the Chinchilla Property; and thirdly, whether the primary judge erred in apportioning costs by ordering the appellants to pay the whole of the respondents' costs below when his Honour had accepted that there was merit in the appellants' claims as to unpaid loan, salary and superannuation entitlements.

The Court held (Kirk JA, Mitchelmore JA agreeing, Adamson JA dissenting in part), dismissing the appeal save on the costs issue:

- Whether a trust arose turned on whether, at the time the funds were advanced from Shield Resources to TGS to purchase the Chinchilla Property, Mr Ye and Ms Li should be understood to have agreed that the property would be beneficially owned by a new special purpose company (which had yet to be established) once created for that purpose, and that otherwise the property would be held on trust for Shield Resources. The evidence taken at its highest did not establish that intention, with the result that each trust claim failed: [45] (Kirk JA).
- In dissent, Adamson JA found that the primary judge erred in finding the claimed conversation did not occur. The conversation proved a common intention to create an express trust and attracted the operation of the presumptions of constructive and resulting trusts: [145], [149]-[151] (Adamson JA).
- In deciding not to determine the merits of the money claims, the primary judge failed to take into account the material consideration that the appellants were entitled to seek determination by the Court of their loan and debt claims, and that was so even if it had been likely or practically inevitable that the Court would make orders winding up some or all of the companies in the Shield Group. The appropriate order was for the plaintiffs to pay 80% of the costs of the proceedings at first instance: [1] (Mitchelmore JA); [102]-[103] (Kirk JA); [157] (Adamson JA).

Australian Intermediate Appellate Decision of Interest

Misuse of confidential information: causation

Mulcahy & Co Accounting Services Pty Ltd v Porter [\[2025\] VSCA 261](#)

Decision date: 29 October 2025

Kennedy JA, Orr JA, Richards JA

The appellant, Mulcahy & Co Accounting Services Pty Ltd (M&C) provides accounting and business advisory services. Mr Mulcahy is the director of M&C (together, the Mulcahy parties). Chris Debono Pty Ltd t/as Chris' Body Builders (CBB) is a business that manufactures tipping bodies and tipping trailers. The respondent, Mr Porter, was a long-term customer of CBB. In 2017, Mr Porter and Mr Conheady sought to purchase a controlling interest in CBB. Both Mr Porter and Mr Conheady retained M&C to advise on the proposed acquisition. At the end of 2017, Mr Mulcahy engaged in negotiations to obtain a controlling interest in CBB for himself and some co-investors. On 14 September, Mr Porter made an offer to purchase a controlling interest in CBB subject to bank finance. On 18 December 2017, the Mulcahy parties made a cash offer to purchase a controlling interest in CBB on the same terms as Mr Porter's proposal. This offer was accepted and the Mulcahy parties obtained a controlling interest in CBB. Mr Porter and Mr Conheady brought proceedings against the Mulcahy parties seeking damages for loss of a commercial opportunity. They claimed that the Mulcahy parties breached the terms of each retainer and their fiduciary duties. The primary judge held that the Mulcahy parties did not owe fiduciary duties to Mr Porter but nonetheless found for Mr Porter on the basis that the Mulcahy parties had breached ongoing confidentiality obligations which persisted after the termination of the retainer on 15 November 2017. On appeal, the Mulcahy parties contended that the primary judge erred in finding that the use of confidential information caused Mr Porter's loss.

The Court held (per curiam), allowing the appeal on the causation point:

- The primary judge erred in finding the Mulcahy parties' use of the form and contents of Mr Porter's offer in making the 18 December 2017 offer caused Mr Porter's loss of opportunity to purchase a controlling interest in CBB. Relevantly, there was no positive finding that Mr Porter's offer had been provided to the Mulcahy parties prior to the 18 December 2017 meeting. In these circumstances, it could not be said that any misuse of the information in Mr Porter's offer made any contribution (material or otherwise) to Mr Mulcahy's offer. Thus, Mr Mulcahy's use of the confidential information could not have caused the loss: [126]-[130].
- Additionally, the Court held that even if the Porter offer had been provided to Mr Mulcahy prior to 18 December 2017, by that point, Mr Mulcahy had obtained all the relevant information from other non-confidential sources. In this regard, the Court was not satisfied that knowledge of the form and contents of the Porter offer could have materially contributed to Mr Mulcahy making the offer: [131]-[135].

Asia Pacific Decision of Interest

Constitutional law: motions of no confidence

Application by the Pangu Pati Inc [\[2025\] PGSC 88](#)

Decision date: 16 October 2025

Mogish J, Hartshorn J, Kariko J, Toliken J, Wawun-Kuvi J

Section 18(1) of the Constitution of Papua New Guinea reposes in the Supreme Court original jurisdiction to hear any question relating to the interpretation or application of the Constitution. The applicant, the political party Pangu Pati Inc (PPI), applied to the Supreme Court for a declaration that it has standing to make a further application for a declaration pursuant to s 18(1) concerning the eligibility of a person under the Constitution and the *Organic Law of the Integrity of Political Parties and Candidates* (the Organic Law) to be appointed Prime Minister following a motion of no confidence. Under the *Somare Rules*, factors relevant to consideration of a person's standing to make an application under s 18(1) include whether the person has a sufficient interest in the subject matter of the application and whether the application raises significant constitutional issues.

The Court held (per curiam), declining to make the declaration sought:

- The Court retains discretion as to whether an applicant has standing to make an application under s 18(1) of the Constitution. The Court held that the applicant must demonstrate that he or she has a sufficient interest in the matter, the application must raise significant constitutional issues, and the applicant must not be merely meddling in the affairs of other people or engaging in litigation for some improper motive. The fact the Supreme Court may determine the constitutional issue in other ways does not mean that a person must be denied standing: [5]-[7].
- In this instance, there was no evidence that the required approval to initiate proceedings had been obtained from Party Executives of PPI and/ or a committee and/ or party members as required under the party Constitution or Rules. Therefore, PPI did not have proper approval to institute the proceedings. Further, PPI did not meet the formality requirements for a company making a s 18(1) application to the Supreme Court, namely the affixing of the common seal of the company on the application. On this basis, PPI failed to satisfy the test for standing: [8]-[25].
- In any case, the proposed application did not raise any significant constitutional matters, as the Court found no link between the Organic Law's rule for forming government after elections, and motions of no confidence passed during the parliamentary term. Instead, motions of no confidence are decided by a majority. Therefore, the issue raised was not of sufficient significance: [35]-[43].

International Decision of Interest

Procedure: costs awards in foreign currency

Process & Industrial Developments Limited (Appellant) v The Federal Republic of Nigeria (Respondent) [\[2025\] UKSC 36](#)

Decision date: 22 October 2025

Lord Reed (President), Lord Hodge (Deputy President), Lord Stephens, Lord Richards, Lady Simler

The appellant, Process & Industrial Developments Limited (P&I) contracted with the respondent, the Federal Republic of Nigeria (Nigeria), for the construction of a gas processing facility in Nigeria. In 2016 and 2017, arbitral awards totalling US\$6.6 billion were made in favour of P&I for breach of contract. Nigeria challenged the arbitral awards in the High Court of Justice under s 68 of the *Arbitration Act 1996* (UK). The High Court set these awards aside, finding that they were obtained by fraud and in a manner contrary to public policy. The High Court ordered P&I to pay Nigeria's costs and heard arguments on the currency in which costs should be paid. The value of sterling had appreciated against the naira (the currency of Nigeria) meaning significant value turned on whether costs were paid in sterling or naira. Nigeria argued that the costs awarded should be in sterling as it instructed English solicitors, the forum was in England, the costs were invoiced in sterling, and it had paid all invoices in sterling. P&I argued that the appropriate currency was naira as it could be presumed that Nigeria took naira from its central government funds and converted it into sterling to pay for its solicitors' bills and that an award of costs in sterling would give Nigeria a substantial windfall at P&I's expense.

The Court held (Lord Hodge and Lady Simler, Lord Reed, Lord Stephens and Lord Richards agreeing) ordering that the costs award be paid in sterling:

- An order for costs is not intended to provide compensation for loss in the same way as an award of damages in tort or for breach of contracts: [11].
- Distinct from an award of damages, an order for costs is a discretionary remedy with a statutory basis. Distinct from an award of damages, an award of costs is not an attempt to restore a party to the position it would have been in if it had not had to litigate to assert its rights: [12]-[15].
- A court's task is to identify the reasonable amount to be paid by the party against which the costs order is made. This is not the same as the sums which the receiving party has paid its lawyers and it excludes the costs of funding the litigation, such as the cost of borrowing or the sums paid to commercial litigation funders: [16].
- Although there is no statutory requirement that costs orders may only be made in sterling, there is a general rule that an order should be made in sterling or in the currency in which the solicitor has billed the client and in which the client has paid or there is liability to pay: [25].