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## Daily Banking A Daily Bulletin listing Decisions of Superior Courts of Australia

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### Executive Summary (1 minute read)

**Alcan Gove Pty Ltd v Zabic** (HCA) - limitations - negligence - claim for damages for mesothelioma caused by inhalation of asbestos fibres - cause of action accrued before provisions of *Workers Rehabilitation and Compensation Act* (NT) came into force - respondent's cause of action not statute-barred - appeal dismissed

**McCloy v New South Wales** (HCA) - constitutional law - special case - implied freedom of communication on governmental and political matters - validity of provisions of *Election Funding, Expenditure and Disclosures Act 1981* (NSW) upheld

**Wang v Kaymet Corporation Pty Ltd** (NSWSC) - contract - purchase of units "off the plan" - draft Strata Documents not registered by date for Registration - vendors did not fail to use "reasonable endeavours"- vendors entitled to rescind contracts - proceedings dismissed

**Gardencity Altona v Grech** (VSC) - restrictive covenant - application to remove materials restriction dismissed

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## Summaries With Link (Five Minute Read)

### **Alcan Gove Pty Ltd v Zabic [2015] HCA 33**

High Court of Australia

French CJ; Keifel, Bell, Keane & Nettle JJ

Limitations - respondent claimed damages in negligence for mesothelioma caused by inhalation of asbestos fibres in course of employment with appellant between 1974 and 1977 -- substantive provisions of *Workers Rehabilitation and Compensation Act (NT)*, which abolished common law actions in negligence for workplace injuries and provided limited statutory rights to compensation, came into force on 1 January 1987 - if respondent's cause of action accrued on or after 1 January 1987 it would be statute-barred - judge at first instance found cause of action did not accrue until after 1 January 1987 - Court of Appeal of the Northern Territory reversed decision - hindsight - nature of trigger - whether risk of mesothelioma sufficient to constitute compensable damage - held: Court of Appeal correct to find it was possible to say with benefit of hindsight that respondent's mesothelial cells so damaged shortly after respondent inhaled asbestos fibres between 1974 and 1977 as to lead to onset of malignant mesothelioma "inevitably and inexorably" - Court of Appeal correct to find damage done to the mesothelial cells shortly after inhalation was non-negligible compensable damage sufficient to found cause of action and malignant mesothelioma was part of damage arising in accrued cause of action - appeal dismissed.

[Alcan](#)

### **McCloy v New South Wales [2015] HCA 34**

High Court of Australia

French CJ; Kiefel, Bell, Gageler, Keane, Nettle & Gordon JJ

Constitutional law - special case - implied freedom of communication on governmental and political matters - plaintiffs contended provisions of *Election Funding, Expenditure and Disclosures Act 1981 (NSW)* which imposed cap on political donations, prohibited property developers from making donations, and restricted indirect campaign contributions, were invalid because they infringed freedom of political communication on governmental and political matters implied by Australian Constitution - Pt 6, Divs 2A, 4A, s96E- ss7, 24, 62, 64, 128 Constitution - held: Court upheld provisions' validity - challenged provisions did not impose impermissible burden on the implied constitutional freedom - burdens imposed by donation caps in Div 2A not impermissible - anti-avoidance provision in s96E upheld on basis its validity depended on validity of Div 2A - prohibition on donations by property developers in Div 4A valid.

[McCloy](#)

### **Wang v Kaymet Corporation Pty Ltd [2015] NSWSC 145**

Supreme Court of New South Wales

Stevenson J

Contract - plaintiff purchasers exchanged contracts with defendant vendors for purchase of units "off the plan" - contracts contained clause requiring completion 21 days after date on

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which defendants served notice of registration of strata plan on purchaser's solicitors - contracts also contained condition that defendants use "reasonable endeavours" to register "draft Strata Documents" by the "Date for Registration" - contracts provided that either party could rescind if "for any reason" draft Strata Documents not registered by the Date for Registration - draft Strata Documents not registered by the Date for Registration or at all - defendants purported to rescind contracts - whether defendants were entitled to rescind - whether defendants used their reasonable endeavours to register draft Strata Documents by Date for Registration - held: plaintiffs established development delayed for want of reasonable endeavours by defendants' in certain period in relation to piling but delay did not cause defendants to fail to register draft Strata Documents by Dates for Registration - plaintiffs failed to establish relevant breach of clause of contracts, nor that defendants were not entitled to rescind contracts - proceedings dismissed

[Wang](#)

## **Gardencity Altona v Grech [2015] VSC 538**

Supreme Court of Victoria

Lansdowne AsJ

Restrictive covenant - plaintiffs sought pursuant to s84(1) *Property Law Act 1958* (Vic) to remove restriction on materials which could be used to build on subject land - plaintiffs contended restriction obsolete and modification or discharge would not substantially injure persons entitled to restriction's benefit - defendants were persons entitled to restriction's benefit - held: plaintiff did not show materials restriction was obsolete or that removal of restriction would not substantially injure defendants - application dismissed.

[Gardencity](#)

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