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Daily Composite Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Queensland Nickel Pty Ltd v Commonwealth of Australia (HCA) - Constitutional law - special case - Div 48, Pt 3 Sch 1 *Clean Energy Regulations 2011* (Cth) did not contravene s99 Constitution (I B C G)

Fernando v Commonwealth of Australia (No 2) (FCAFC) - costs - offer of compromise - rejection of offer not unreasonable - indemnity costs refused (I)

Dallas Buyers Club LLC v iiNet Ltd (FCA) - preliminary discovery granted to owner of copyright in film on conditions (I B)

Community Association DP270253 v Woollahra Municipal Council (NSWCA) - costs - appeal from costs judgment in Land and Environment Court dismissed (I C)

Singh v TAJ (Syd) Pty Ltd (NSWSC) - workers compensation - leave to revoke election to accept permanent loss compensation - extension of time to commence common law proceedings (I)

Lisec Australia Pty Ltd and Saremach Pty Ltd v Lisec Australia (NSWSC) - contract - evidence - interim preservation order in respect of machinery (I B)

Amos v Wiltshire (QCA) - costs - bias - unreasonable litigation conduct - no error in costs order against appellant - appeal dismissed (I)

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Summaries with links (5 Minute Read)

Queensland Nickel Pty Ltd v Commonwealth of Australia [2015] HCA 12

High Court of Australia

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

Constitutional law - special case to determine whether Div 48, Pt 3 Sch 1 *Clean Energy Regulations 2011* (Cth) was invalid in application to plaintiff as result of giving preference to one State over another contrary to s99 Constitution - plaintiff contended Jobs and Competitiveness Program contravened s99 because allocative baselines it prescribed by were fixed by reference to industry averages and resulted in same number of free carbon units per unit volume of production regardless of differences between producers' inputs, production processes and outputs - held: validity of provisions of Regulations upheld - Div 48 did not give preference to one State over another - no contravention of s99 Constitution.

[QueenslandNickel](#) (I B C G)

Fernando v Commonwealth of Australia (No 2) [2015] FCAFC 49

Full Court of the Federal Court of Australia

Besanko, Barker & Robertson JJ

Costs - offer of compromise - Court dismissed appellant's appeal which was brought by his tutor - Court allowed Commonwealth's cross-appeal - respondents sought that appellant pay their costs of appeal on indemnity basis - whether Court should make costs orders against mentally disabled person - rr9.61, 9.66, 25.14, 40.01 *Federal Court Rules 2011* (Cth) - held: order for costs should be made against appellant on basis he was unsuccessful on appeal and Commonwealth successful on cross-appeal - result of appeal and cross-appeal were less favourable to appellant than terms of offer made to him by respondents - not unreasonable for appellant to reject offer - appellant to pay respondents' costs on party and party basis - cross-respondent pay cross-appellant's costs on party and party basis.

[Fernando](#) (I)

Dallas Buyers Club LLC v iiNet Ltd [2015] FCA 317

Federal Court of Australia

Perram J

Preliminary discovery - owner of copyright in film sought preliminary discovery of documents - internet service providers were respondents to application - applicants claimed they had identified 4,726 unique IP addresses from which their film was shared on-line their permission contrary to *Copyright Act 1968* (Cth) - held: ISPs to divulge names and physical addresses of customers associated with each of IP addresses identified by applicants on condition information only be used for purposes of recovering compensation for infringements and not otherwise disclosed without Court's leave - Court also imposed condition that applicants were to submit draft of any letter they proposed to send to account holders associated with IP addresses.

[Dallas](#) (I B)

Community Association DP270253 v Woollahra Municipal Council [2015] NSWCA 80

Court of Appeal of New South Wales

Barrett, Emmett & Leeming JJA

Costs - Association challenged costs orders made in Land and Environment Court proceedings - Association successful in application for revocation of order issued Council under s121B *Environmental Planning and Assessment Act 1979* (NSW) - primary judge decided there should be no order as to costs - correctness of primary judge's decision that it was not "fair and reasonable" that costs order be made - reasonableness of Council's conduct in mounting defence to action - r3.7 *Land and Environment Court Rules 2007* (NSW) - held: Association failed to establish Council's conduct as a litigant in proceedings made it fair and reasonable that Council was required to pay Association's costs - no error of law in primary judge's decision on costs - appeal dismissed.

[Community](#) (I C)

Singh v TAJ (Syd) Pty Ltd [2015] NSWSC 368

Supreme Court of New South Wales

Campbell J

Workers compensation - plaintiff sought order under s151A(5) *Workers Compensation Act 1987* (NSW) granting leave to revoke election in 2002 to accept permanent loss compensation rather than claiming common law damages - held: Court satisfied that when plaintiff made election in 2002 no reasonable cause to believe dramatic further deterioration in 2011 would occur - no active opposition from Workers Compensation insurer - leave to revoke election granted - reasonable explanation for delay in bringing proceedings - time to commence common law proceedings extended.

[Singh](#) (I)

Lisec Australia Pty Ltd and Saremach Pty Ltd v Lisec Australia [2015] NSWSC 365

Supreme Court of New South Wales

Campbell J

Contract - proceedings relating to sale of complex machinery - plaintiff sought interim preservation order in respect of machinery so that evidence could be gathered for it to defend proceedings - plaintiff concerned that moving machine might cause loss of data which would make it impossible to diagnose any difficulty and, specifically, may make it impossible to obtain expert evidence to defend the case - r 25.3 *Uniform Civil Procedure Rules 2005* (NSW) - held: Court made interim preservation order for a limited period and timetable to facilitate prompt exchange of evidence.

[Lisec](#) (I B)

Amos v Wiltshire [2015] QCA 44

Court of Appeal of Queensland

Carmody CJ; Gotterson & Morrison JJA

Costs - bias - appeal from indemnity costs order made against appellant on basis of



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unreasonable litigation conduct - appellant contended primary judge made order despite being disqualified for apprehended bias and awarded excessive costs to wrong party - held: no rational basis for appellant's contention primary judge impermissibly prejudged costs issue or underlying facts - findings of fact fairly opening on evidence - nothing to suggest costs power was exercised inconsistently with legal principles or requirement of reasonableness - costs order sound - appeal dismissed.

[Amos \(I\)](#)

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