

Thursday, 11 December 2014

Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

 Follow @Benchmark_Legal

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (1 minute read)

Argos Pty Ltd v Corbell, Minister for the Environment and Sustainable Development (HCA) - judicial review - standing - supermarket businesses were persons aggrieved by Minister's decision to approve development - appeal allowed (I C G)

Insurance Australia Ltd t/as NRMA Insurance v El Kabbout (NSWCA) - insurance - policy responded to driver's claim to recover value of vehicle written off after collision with tree - appeal dismissed (I)

State of NSW v Fuller-Lyons (NSWCA) - negligence - child fell from moving train - insufficiency of evidence - appeal allowed (I)

Whyalla Electrical Discounters Pty Ltd v Narta International Pty Ltd (SASC) - corporations - injunction restraining company from conducting special general meeting refused (B)

Maher v Nationwide News Pty Ltd (WASC) - pleadings - defamation - paragraphs of amended defence struck out - leave to plead (I)

Ellis v Cordwell (TASSC) - traffic law - driver's explanation insufficient to throw doubt on death by negligent driving charge (I)

Savage v Modern Mustering Pty Ltd (NTSC) - discovery - legal professional privilege - waiver - appeals against orders for discovery of documents allowed (I)

Summaries with links (5 minute read)

Argos Pty Ltd v Corbell, Minister for the Environment and Sustainable Development [2014] HCA 50

High Court of Australia

French CJ; Hayne, Bell, Gageler & Keane JJ

Judicial review - standing - Minister approved development application made by second and third respondents for commercial development under s162 Planning and Development Act 2007 (ACT) - development was to include supermarket and specialty shops at centre - second and third appellants each conducted supermarket business at nearby centre - first appellant was second appellant's landlord - primary judge concluded appellants were not persons aggrieved by Minister's decision because adverse effects were 'too remote' and interests not sufficiently 'directly affected' - Court of Appeal dismissed appeal - held: Court rejected existence of general rule that mere detriment to economic interests of business would not give rise to standing - Court held supermarket businesses were persons aggrieved by Minister's decision and allowed their appeals - landlord's appeal dismissed.

[Argos Pty Ltd](#) (I C G)

Insurance Australia Ltd t/as NRMA Insurance v El Kabbout [2014] NSWCA 426

Court of Appeal of New South Wales

McColl & Macfarlan JJA

Insurance - insurer sought leave to appeal from judgment in which trial judge found driver established motor vehicle insurance policy responded to driver's claim to recover agreed value of motor vehicle which was written off after colliding with tree - held: trial judge did not reverse onus of proof - even if trial judge misstated passage of evidence, such error did not even arguably invalidate overall assessment of logic of events and rejection of evidence as demonstrating driver's account should not be accepted - no arguable case in relation to truthful and frank defence ground - applicant did not demonstrate any arguable case of error in principle, demonstrating fundamental injustice in primary judgment if uncorrected which would warrant a grant of leave to appeal - leave to appeal refused.

[Insurance Australia Ltd t/as NRMA Insurance](#) (I)

State of NSW v Fuller-Lyons [2014] NSWCA 424

Court of Appeal of New South Wales

McColl & Macfarlan JJA; Sackville AJA

Negligence - child passenger injured in fall from moving train after being trapped by train door - child claimed injuries caused by State's negligence - primary judge found negligence established by failure of station staff to observe gap in door where child was located and those parts of his body that protruded before signalling for train to leave station - primary judge unable to conclude

whether child had become unwittingly trapped or had intentionally interfered with the doors, but accepted denials of child's brothers, with whom he was travelling, of any observation of child's fall and any knowledge of how it occurred - State appealed - held: insufficient evidence to enable affirmative conclusion that substantial part of child's body protruding from doors when train left station - no equally available hypotheses that his body prevented the doors from closing but did not protrude significantly or that doors were prevented from closing by some other object that had been placed between them - child should not be given leave to file notice of contention alleging State was liable to him even if body was not protruding significantly from doors - appeal allowed.

[State of NSW](#) (I)

Whyalla Electrical Discounters Pty Ltd v Narta International Pty Ltd [2014] SASC 186

Supreme Court of South Australia

Parker J

Corporations - injunction - plaintiff was member of defendant company - plaintiff sought interlocutory injunction restraining company from conducting a special general meeting called with a view to considering proposed special resolution by company's board to expel plaintiff from membership due to alleged breaches of company's code of conduct - balance of convenience - held: plaintiff's case that there had been a denial of procedural fairness amounting to oppressive or unfairly prejudicial conduct within the meaning of s232 *Corporations Act 2001* (Cth) not sufficiently strong to grant an interlocutory injunction - application dismissed.

[Whyalla Electrical Discounters Pty Ltd](#) (B)

Maher v Nationwide News Pty Ltd [No 4] [2014] WASC 461

Supreme Court of Western Australia

K Martin J

Pleadings - defamation - plaintiffs challenged paragraphs of defendant's amended defence - justification - new plea of contextual truth - s26 *Defamation Act 2005* (WA) - held: pleadings of justification inadequate - defence failed to declare conflicts of interest or explicitly state abuse of position - contextual truth pleas conceptually defective and lacked clarity - paragraphs of defence struck out - leave to replead.

[Maher](#) (I)

Ellis v Cordwell [2014] TASSC 62

Supreme Court of Tasmania

Harper AJ

Traffic law - charge of death by negligent driving - applicant sought review of decision of Magistrates Court that applicant was guilty of breach of s32(2A) *Traffic Act 1925* (Tas) which provides that a person must not cause the death of another person by driving a motor vehicle on a public street negligently - applicant attempted explanation - whether explanation sufficient to throw a reasonable doubt on the prosecution case - falling asleep - impairment of perception - held:

evidence as a whole could not sustain hypothesis put forward by applicant - evidence as a whole not susceptible of any reasonable explanation other than that of negligence - applicant's submission was not one that could be accepted as being of assistance to the defence - Magistrate justified in finding charge proved - reasons not inadequate - motion to review refused.

[Ellis](#) (I)

Savage v Modern Mustering Pty Ltd [2014] NTSC 55

Supreme Court of the Northern Territory

Kelly J

Discovery - legal professional privilege - three appeals against interlocutory decisions of Master ordering particular discovery of documents in two related actions arising out of helicopter accident - held: Master erred in holding legal professional privilege over certain documents had been waived - Master proceeded on mistaken view of construction of deed of settlement in holding that an inference could legitimately be drawn from that deed that gave rise to a "question" as to whether the common law proceeding was an abuse of process - party who pleaded reasonableness of a settlement did not *ipso facto* waive privilege in relation to any legal advice received in relation to settlement - appeals allowed.

[Savage](#) (I)

[Click Here to access our Benchmark Search Engine](#)