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Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Ferella v Chief Commissioner of State Revenue (NSWCA) - land tax - dominant use of land not for primary production - land not exempt - appeal dismissed (B)

Cunneen v Independent Commission Against Corruption (NSWSC) - administrative law - corrupt conduct - ICAC not restrained from investigating Deputy Senior Crown Prosecutor (G)

McFarlane v Nationwide News Pty Ltd (NSWSC) - defamation - three articles published in newspaper - plaintiff entitled to choose mode of pleading - strike-in of fourth article refused (I)

In the matter of Douglas Webber Events Pty Ltd (NSWSC) - private international law - proceedings brought under *Trans-Tasman Proceedings Act* - stay refused (B)

Newcastle Airport Pty Ltd v Chief Commissioner of State Revenue (NSWSC) - taxes and duties - wages paid to employees to develop and run airport exempt from payroll tax (B C)

Elton v Public Trustee (SASC) - costs - probate - testator's conduct caused litigation - both parties entitled to indemnity costs payable out of estate (B)

Western Desert Lands Aboriginal Corporation (Jamukurnu-Yapalikunu) RNTBC v Martu People Ltd as Trustee for the Martu Charitable Trust (WASC) - trusts and trustees - injunction restraining trustee from winding up trusts refused (B)

Deliver Western Australia Pty Ltd v Truckworld (WA) Pty Ltd (WASC) - corporations - defect in statutory demand rectified in substance - no injustice - statutory demand not set aside (B)

Summaries with links (5 minute read)

Ferella v Chief Commissioner of State Revenue [2014] NSWCA 378

Court of Appeal of New South Wales

Barrett & Leeming JJA; White J

Taxes and duties - land tax - appellants were owners of rural land - appellants assessed for land tax by Commissioner - appellants lodged objection claiming dominant use of land was for primary production and thus exempt from land tax under s10AA *Land Tax Management Act 1956* (NSW) - portion of the land fenced off and contained residence let out by appellants to tenant - Commissioner rejected appellants' objection - appellants applied to Administrative Decisions Tribunal for review - Tribunal found primary production activity was minimal and affirmed Commissioner's decision - Appeal Panel dismissed appeal - held: Tribunal correct in weighing use of land for rental purposes against other uses in determining which use was dominant, and in considering parcel of the land as a whole and not as separate parcels - Tribunal and Appeal Panel did not err in deciding objectively whether asserted use of land for primary production was the dominant use, or fail to consider subjective intention of users of the land - appeal dismissed.

[Ferella](#) (B)

Cunneen v Independent Commission Against Corruption [2014] NSWSC 1571

Supreme Court of New South Wales

Hoeben CJ at CL

Administrative law - ICAC decided to investigate Deputy Senior Crown Prosecutor - Prosecutor sought to restrain ICAC - held: failure to give reasons did not invalidate decision to investigate - s111 *Independent Commission Against Corruption Act 1988* (NSW) - no general duty at common law to give reasons for administrative decisions - no right of alleged wrongdoers to have alleged crimes investigated only by police - definition of *corrupt conduct* in s8(2) *Independent Commission Against Corruption Act* - in that definition, conduct "that could adversely affect ... the exercise of official functions by a public official" may be the same conduct "which could involve ... perverting the course of justice" - ICAC had not taken irrelevant considerations into account - ICAC may consider the status of a person alleged to have engaged in corrupt conduct, even where the alleged corrupt conduct allegedly occurred in a private capacity - alleged conduct was capable of constituting perversion of the course of justice - it could not be said that no rational or reasonable decision maker could have decided to investigate the Prosecutor by way of public hearing - ICAC not restrained.

[Cunneen](#) (G)

McFarlane v Nationwide News Pty Ltd [2014] NSWSC 1574

Supreme Court of New South Wales

McCallum J

Defamation - strike-in application - action arising out of publication of series of three articles in newspaper on same day - defendant contended that a further article appearing on the same page as a number of the articles sued on ought also be included as part of the matter complained of - defendant sought order striking that material in - defendant contended additional article would have been read by ordinary reasonable reader in conjunction with matter complained of - defendant also submitted additional article was capable of affecting the sense of the matter complained of - plaintiff's entitlement to choose mode of pleading - held: it would have been open to plaintiff to add additional article to matter complained of as a single publication but it could not be concluded that plaintiff's chosen mode of pleading only three of the four articles was untenable - plaintiff could not be compelled to include article in the matter complained of - strike-in application refused.

[McFarlane \(I\)](#)

In the matter of Douglas Webber Events Pty Ltd [2014] NSWSC 1544

Supreme Court of New South Wales

Brereton J

Private international law - stay - plaintiff New Zealander claimed leave pursuant to s237 *Corporations Act 2001* (Cth) to bring proceedings in name of third defendant Australian company against first defendant New Zealander for compensation for alleged breaches of duties as director of company - plaintiff also sought compulsory purchase order in respect of shareholding in company and damages for breach of limited partnership agreement - proceedings served on first defendant in New Zealand in reliance on *Trans-Tasman Proceedings Act 2010* (NSW) (TTPA) - first defendant sought order staying proceeding pursuant to s17 TTPA on grounds the High Court of New Zealand was the more appropriate court to determine the matters in issue - held: no *exclusive choice of court agreement* between parties to proceedings designated a New Zealand court, to the exclusion of any other courts, as the court to determine disputes between them - s20(1)(a) TTPA not engaged - New Zealand courts did not have jurisdiction to grant relief claimed under *Corporations Act* - requirements of s19(1)(a) TTPA not satisfied - stay refused.

[In the matter of Douglas Webber Events Pty Ltd \(B\)](#)

Newcastle Airport Pty Ltd v Chief Commissioner of State Revenue [2014] NSWSC 1501

Supreme Court of New South Wales

White J

Taxes and duties - equity - plaintiff managed civil aviation facility on behalf of council - plaintiff sought review under s97 *Taxation Administration Act 1996* (NSW) of Commissioner's decision to assess plaintiff for payroll tax in respect of wages paid to individuals employed to develop and

operate airport - plaintiff claimed wages were exempt wages pursuant to s58 *Payroll Tax Act 2007* (NSW) - held: wages in respect of which payroll tax was levied were exempt wages as they were taken to have been paid and payable by councils by reason of operation of s49(6) *Interpretation Act 1987* (NSW) - Commissioner's decision to issue notice of assessment to plaintiff should be revoked - plaintiff entitled to a refund with interest on the tax paid.

[Newcastle Airport Pty Ltd](#) (B C)

Elton v Public Trustee [2014] SASC 169

Supreme Court of South Australia

Stanley J

Costs - probate - plaintiff sought orders revoking grant of probate of deceased's Will and admitting reconstruction of document to probate as last Will and Testament of deceased - plaintiff's claim dismissed - plaintiff and the defendant both sought order that costs be paid out of estate - parties sought orders on an indemnity basis - Public Trustee opposed plaintiff's application for costs - Public Trustee sought that plaintiff pay costs on a party/party basis - alternatively Public Trustee contended there should be no order in relation to plaintiff's costs - held: Public Trustee entitled to payment of its costs out of estate as successful party to litigation - estate should pay Public Trustee's costs on indemnity basis - plaintiff's action caused by testator's conduct in creating uncertainty and confusion as to his testamentary intentions so as to instil in plaintiff a bona fide belief that he had been left an interest in testator's property - deceased had by his own conduct caused the litigation - application of recognised exception entitling unsuccessful plaintiff to costs out of the estate - plaintiff's costs to be paid from deceased's estate on indemnity basis.

[Elton](#) (B)

Western Desert Lands Aboriginal Corporation (Jamukurnu-Yapalikunu) RNTBC v Martu People Ltd as Trustee for the Martu Charitable Trust [2014] WASC 417

Supreme Court of Western Australia

Le Miere J

Trusts and trustees - injunction - plaintiff sought order restraining first defendant trustee from winding up trusts or distributing surplus trust assets - plaintiff claimed trustee intended to wind up the trust and distribute its surplus assets otherwise than in accordance with Pt III *Charitable Trusts Act 1962* (WA) - plaintiff also claimed trustee intended to wind up sub fund of trust without consent of the plaintiff, contrary to terms of trust deed - held: plaintiff failed to make out prima facie case that it was entitled to any final relief - not necessary to consider the balance of convenience or the adequacy of damages - application dismissed.

[Western Desert Lands Aboriginal Corporation \(Jamukurnu-Yapalikunu\) RNTBC](#) (B)



Deliver Western Australia Pty Ltd v Truckworld (WA) Pty Ltd [2014] WASC 411

Supreme Court of Western Australia

Acting Master Gething

Corporations - defendant served statutory demand on plaintiff - plaintiff sought to set demand aside - director of plaintiff identified breaches of *Oaths, Affidavits and Statutory Declarations Act 2005* (WA) in affidavit of defendant's director, which accompanied statutory demand - plaintiff's director claimed that affidavit of defendant's director, which accompanied demand, did not state it was witnessed by an authorised witness as required by s9(2)(a) - plaintiff's director also claimed person who witnessed affidavit was not named as required by s9(5)(ii) - held: plaintiff had in substance remedied defect in statutory demand by filing affidavit of witness identifying herself and confirming she was authorised witness - Court not satisfied plaintiff would suffer any injustice by reason of defects in demand - Court not prepared to set aside demand pursuant to s459J(1)(a) *Corporations Act 2001* (Cth) - Court not satisfied there was *some other reason* to set aside demand pursuant to 459J(1)(b) - Court not satisfied demand should be set aside pursuant to s459P - statutory demand valid.

[Deliver Western Australia Pty Ltd](#) (B)

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