

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

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Executive Summary (1 minute read)

Wicks & Sheehan v State Rail Authority of NSW - Negligence - "pure mental harm" - Part 3 of *Civil Liability Act* 2002 (NSW) - rescuers - appeals allowed (I, C)

Demetriou v Gusdote Pty Ltd - *Corporations Act* 2001 (Cth) - directors' duties - contracts - fiduciary duties - constructive trusts - costs (I, B)

Construction, Forestry, Mining & Energy Union v BHP Coal Pty Ltd - *Fair Work Act* 2009 (Cth) - alleged breach of workplace agreement at meeting related to investigation of incident at mine site - relevance of distinction between investigatory & disciplinary purposes of the meeting - application dismissed (I, B, C)

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing & Allied Services Union of Australia v QR Ltd - *Fair Work Act* 2009 (Cth) - constitutional law - federally registered union collective agreements - employer's obligation to consult with employees (I, B, C)

University of Western Australia v Gray (No 28) - Damages - costs - assessment of damages - loss of commercial opportunity - whether legal costs recoverable as damages (I, B, C)

Alstom Ltd v Liberty Mutual Insurance Company - Production of documents - defendants' claims for production of documents & further & better discovery - whether document within the power of a party (I)

Watkins v The State of Victoria & Ors - Torts - appellant had alleged assault by three police officers - fingerprinting - whether relevant compliance with s464K(2) *Crimes Act* 1958 (Vic) - appeal allowed - damages assessed at \$98,000 (I)

Roads Corporation v Love - Legal Professional Privilege - expert witnesses - *Evidence Act* 2008 - communications with prospective witness (I, B, C)

Hobsons Bay City Council v Tonkin & Ors - Production of documents - adequacy of discovery (I, B, C)

Groeneveld Australia Pty Ltd & Ors v Nolten & Ors - Joinder - corporations - whether shareholder can sue for loss where separate duty owed to it - reflective loss - New Zealand company seeking to sue in Victoria in respect of New Zealand claims (I, B)

Blundstone v Johnson & Allianz Insurance Australia Ltd - *Motor Accidents Insurance Act* 1994 (Qld) - consent order - limitation of actions (I)

Whiting v Somerset Regional Council - *Local Government Act* 1993 (Qld) - Council's resolution by which it resolved to levy a special charge on land invalid (C)

Summaries with links (5 minute read)

Thursday 17 June 2010

Wicks & Sheehan v State Rail Authority of NSW [2010] HCA 22

High Court of Australia

French CJ; Gummow, Hayne, Heydon, Crennan, Kiefel & Bell JJ

Negligence - claim for damages by two police officers who attended the scene of the Waterfall train disaster - arrival at scene a short time after train derailment - both officers participated in rescue operations at the scene - consideration of Part 3 of *Civil Liability Act* 2002 (NSW) - "pure mental harm" - "sudden shock" - claims at first instance failed and appeals to Court of Appeal of NSW dismissed (for decision appealed from, see Benchmark 2 September 2009 and link below). Held: interpretation of having "witnessed, at the scene, a person being killed, injured or put in

peril" pursuant to s30 of the Act should not be confined to events that begin and end in an instant or which are measured in a matter of minutes. Appeals allowed and remitted to Court of Appeal.

[Wicks](#) (I, C)

[Sheehan](#) - decision of Court of Appeal of NSW 31 August 2009 - Personal injuries - rescuers - psychiatric injury - appellants were both serving police officers who attended scene of train derailment at Waterfall, south of Sydney, in which seven people were killed & many were injured - for decision appealed from, see 'Benchmark' I & IBC Wednesday 5 December 2007 & link below - whether defendant owed a rescuer a common law duty of care - whether a rescuer is entitled to damages pursuant to the *Civil Liability Act* 2002 (NSW) Pt 3 - primary judge had held that that neither appellant satisfied s30(2)(a) & s32(2)(b) & that neither was entitled to damages for pure mental harm - each appeal dismissed - comprehensive consideration of legislation, text & case law from UK & Australia.

[Wicks](#)

Demetriou v Gusdote Pty Ltd [2010] FCA 581

Federal Court of Australia

Cowdroy J (in Sydney)

Corporations Act 2001 (Cth) - directors' duties - contracts - fiduciary duties - constructive trusts - indemnity costs - failure to notify ASIC of additional directors & shareholders - failure to record names of directors & shareholders on ASIC register - one director subsequently contracting on behalf of the company without authority - Court should make declarations requiring amendments to company records & of the ASIC register.

[Demetriou](#) (I, B)

Construction, Forestry, Mining & Energy Union v BHP Coal Pty Ltd [2010] FCA 590

Federal Court of Australia

Collier J (in Brisbane)

Fair Work Act 2009 (Cth) - *Workplace Relations Act* 1996 (Cth) - employer investigation into incident at mine site - application by union seeking declaration & imposition of penalties against employer for contravention of

s340 *Fair Work Act* - alleged breach of workplace agreement at meeting related to investigation - relevance of distinction between investigatory & disciplinary purposes of the meeting - application dismissed.

[Construction, Forestry, Mining and Energy Union](#) (I, B, C)

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing & Allied Services Union of Australia v QR Ltd [2010] FCA 591

Federal Court of Australia

Logan J (in Brisbane)

Fair Work Act 2009 (Cth) - constitutional law - federally registered union collective agreements - employer's obligation to consult with employees - Obligation to consult arose and was contravened by government owned corporations - "consult" - "impact" - "proposal to be implemented" - "terms and conditions of employment" - comprehensive consideration of Australian legislation - *Australian National Railways Commission Sale Act 1997* (Cth) - *Government Owned Corporations Act 1993* (Qld) - *Transport Infrastructure Act 1994* (Qld) - consideration of legislation from the United Kingdom & Canada - United Kingdom & Australian case law considered in a lengthy, interesting decision.

[Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia](#) (I, B, C)

University of Western Australia v Gray (No 28) [2010] FCA 586

Federal Court of Australia

Barker J (in Perth)

Damages - costs - assessment of damages for loss of commercial opportunity in relation to entry of judgment on cross-claim against Dr Gray in favour of Sirtex on Sirtex's cross-claim in primary proceedings against Dr Gray - whether legal costs recoverable as damages - comprehensive review of text & case law from the United Kingdom & Australia in an interesting decision.

[University of Western Australia](#) (I, B, C)

[University of Western Australia](#) - decision 17 April, 2008 - intellectual property - patents - inventions made by employees - treatment of liver cancer - trade practices - tort - defamation - contract of employment - academic staff - whether duty to invent - comprehensive consideration of text & case law from the United Kingdom, Australia, USA & Canada.

Alstom Ltd v Liberty Mutual Insurance Company [2010] FCA 588

Federal Court of Australia

Siopis J (in Perth)

Production of documents - two gas turbine transformers manufactured in Mumbai & packed in sealed steel tanks for shipment to Western Australia - transformers damaged - claim by Alstom on its marine cargo insurance policy - defendants' claims for production of documents & further &

better discovery - whether document within the power of a party - third party claimed document was confidential - order for production made in relation to a drawing but not other documents.

[Alstom](#) (I)

Watkins v The State of Victoria & Ors [2010] VSCA 138

Court of Appeal of Victoria

Ashley & Mandie JJA; Beach AJA

Torts - appellant had alleged assault by three police officers at police station - primary judge had dismissed all aspects of claim - fingerprinting - whether relevant compliance with s464K(2) *Crimes Act* 1958 (Vic) - reasonable force - whether, if one or more of police defendants were held liable, State of Victoria was rendered liable under s123(2) *Police Regulation Act* 1958 (Vic) - appeal allowed - damages assessed at \$98,000.

[Watkins](#) (I)

Roads Corporation v Love [2010] VSC 253

Supreme Court of Victoria

Vickery J

Legal Professional Privilege - expert witnesses - Evidence Act 2008 - communications with prospective witness - Evidence Act 2008 s122(2) - loss of privilege - waiver of privilege upon witness giving evidence at trial - proper practice for legal practitioners to take proofs of evidence from witnesses separately & to encourage witnesses not to discuss their evidence with others, & particularly with other potential witnesses - meeting of expert witnesses convened in part to discuss evidence in preparation for filing reports improper - extensive consideration of principles, texts, reports & case law from the United Kingdom & Australia in an interesting decision.

[Roads Corporation](#) (I, B, C)

Hobsons Bay City Council v Tonkin & Ors [2010] VSC 252

Supreme Court of Victoria

Mukhtar As J

Production of documents - three applications concerning discovery - ownership of land in Altona North - question at trial will be as to whether estoppel by representation - relevance - Council had not been inadequate in its discovery obligations.

[Hobsons Bay City Council](#) (I, B, C)

**Groeneveld Australia Pty Ltd & Ors v Nolten & Ors [2010] VSC 249**

Supreme Court of Victoria

Ferguson J

Joinder - corporations - whether shareholder can sue for loss where separate duty owed to it - reflective loss - whether leave to appeal should be granted from orders of Associate Judge dismissing application for joinder of further plaintiff & staying paragraphs of further amended statement of claim - New Zealand company seeking to sue in Victoria in respect of New Zealand claims - Victoria inappropriate forum for determination of dispute between proposed further plaintiff & first defendant.

[Groeneveld Australia](#) (I, B)**Blundstone v Johnson & Allianz Insurance Australia Ltd [2010] QCA 148**

Court of Appeal of Queensland

Holmes & Chesterman JJA; Atkinson J

Motor Accidents Insurance Act 1994 (Qld) - consent order was made extending limitation period for the bringing of personal injuries action in relation to a motor vehicle accident - respondent failed to proceed with the action within the time allowed under the consent order - whether primary judge erred in granting a further extension of the limitation period - whether the consent order a contract - exercise of discretion - no error - leave to appeal refused.

[Blundstone](#) (I)[Blundstone](#) - District Court decision 26 November 2009**Whiting v Somerset Regional Council [2010] QSC 200**

Supreme Court of Queensland

McMurdo J

Local Government Act 1993 (Qld) - respondent carried out works which improved the access to land owned by applicant - respondent subsequently resolved to impose a special charge on the applicant's land under s971 - whether the respondent's resolution is valid - Council's resolution by which it resolved to levy a special charge was invalid & of no effect.

[Whiting](#) (C)

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