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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)

**Cassar v New South Wales Crime Commission (NSWCA)** - confiscation of proceeds of crime - solicitor authorised to sign warranty on client's behalf (I B)

**DPN Solutions Pty Ltd v Tridant Pty Ltd (VSC)** - contract - no unconscionable termination of contractor's agreement - damages for unpaid variable component (I B)

**Victorian WorkCover Authority v Crestwood Developments Pty Ltd (No. 2) (VSC)** - recovery proceeding - settlement of claim against third party - entitlement to interest - delay (I G)

**Liesfield v Ausnet Electricity Services Pty Ltd (Ruling No 4) (VSC)** - Black Saturday bushfires - substitution of lead plaintiff - no conditions as to potential costs liability (I B C G)

**Monto Coal 2 Pty Ltd v Sanrus Pty Ltd as trustee of the QC Trust (QCA)** - pleadings - joint venture - leave to deliver amended statement of claim (B C)

**Sino Iron Pty Ltd v Palmer (QSC)** - stay - contract - alleged breaches of trust - stay refused (I B C)

**Re: Ascot Community Sports Club Incorporated (in liq) (QSC)** - corporations - winding up - replacement of liquidators (I B)

## Summaries with links (5 minute read)

### **Cassar v New South Wales Crime Commission [2014] NSWCA**

Court of Appeal of New South Wales

Bathurst CJ, Beazley P & Emmett JA

Confiscation of proceeds of crime - orders made by consent pursuant to s22 *Criminal Assets Recovery Act 1990* (NSW) forfeiting appellant's assets to Crown - Consent Orders document had contained warranty from appellant that he had no interests in property other than those specified at date of signing - document was signed by appellant's solicitor - Commission learned of Swiss bank accounts in which appellant had interest - Commission applied pursuant s31A to forfeit to and vest in Crown appellant's interest in accounts on basis of non-disclosure of interest - primary judge made assets forfeiture order - primary judge found s55(4) applied - conduct engaged in on behalf of person by an agent within scope of agent's actual or apparent authority - held: s31A did not exclude operation of principles of agency or require warranty to be given personally - solicitor's conduct taken to have been engaged in by appellant - solicitor had apparent authority to settle asset forfeiture proceedings - authority extended to giving warranty - appeal dismissed.

[Cassar](#) (I B)

### **DPN Solutions Pty Ltd v Tridant Pty Ltd [2014] VSC 511**

Supreme Court of Victoria

Hargrave J

Contract - contractor's agreement - Tridant engaged DPN to provide IT consultancy services - mutual right to terminate on one month's notice - Tridant notified DPN it was terminating agreement - DPN claimed it was entitled to variable component for software sales and services sales by Tridant after termination of agreement *arising from* services provided to Tridant by DPN prior to termination - DPN also contended it was entitled to unpaid variable component in respect of sales in certain circumstances - DPN claimed Tridant had breached implied obligations that notice would be served in good faith and would not be served if it were unconscionable - DPN also claimed Tridant breached prohibition in s21 *Australian Consumer Law* - DPN claimed breaches precluded Tridant's right to terminate - DPN also claimed Tridant had engaged in misleading and deceptive conduct on which DPN had relied - held: no unconscionability as termination notice given for legitimate commercial purpose - DPN entitled to damages for unpaid variable component of its fees in respect of a particular services sale - DPN also entitled to variable component on any software or services sales concluded, but not paid or invoiced, prior to termination, and in respect of which consultant played meaningful role - DPN did not establish entitlement to relief on any other basis.

[DPN Solutions Pty Ltd](#) (I B)

**Victorian WorkCover Authority v Crestwood Developments Pty Ltd (No. 2) [2014] VSC 513**

Supreme Court of Victoria

Dixon J

Accident compensation - interest - parties sought further clarification of plaintiff's entitlements in proceeding - plaintiff claimed interest on sum calculated pursuant to formula under s138 *Accident Compensation Act 1985* (Vic) following Court's declaration of value of factor X - defendant contended plaintiff had delayed in prosecuting recovery proceeding and that credit should be allowed by general percentage deduction in interest that plaintiff should recover - defendant also raised issue of relevance of amount received by plaintiff from another party in settlement of claim under s138 for indemnity against it - held: Court not persuaded procedure adopted in recovery proceeding involved breach of s25 or that there was delay that ought to affect calculation of interest - relevance of settlement amount was issue which should have been raised at trial and which concerned execution of judgments not liability - Court not concerned with issues about recovery of judgment or settlement sums in proceeding - defendant ought not have been permitted to raise issue - judgment for plaintiff - judgment for plaintiff to recover damages by way of interest in sum of \$69,706 and thereafter at daily rate of \$66.75 until judgment satisfied.

[Victorian WorkCover Authority](#) (I G)

**Liesfield v Ausnet Electricity Services Pty Ltd (Ruling No 4) [2014] VSC 496**

Supreme Court of Victoria

Dixon J

Black Saturday bushfires - group proceeding - claims arising from fire ignited near mill - application for substitution of lead plaintiff - proposed lead plaintiff content for substitution to occur - defendants sought that any order be made subject to certain conditions to protect their position in respect of pre-substitution costs - defendants contended there would be uncertainty as to who would be liable, as between existing lead plaintiff and proposed lead plaintiff, to pay pre-substitution costs and submitted that a condition was necessary to avoid possibility neither was liable - ss24 & 33ZD *Supreme Court Act 1986* (Vic) - whether a former lead plaintiff was immune from costs - whether a newly substituted lead plaintiff was immune from costs incurred prior to substitution - r9.06 *Supreme Court (General Civil Procedure) Rules 2005* (Vic) - ss33W & 43 *Federal Court of Australia Act 1976* (Cth) - held: Court not persuaded that there was any justification to exercise discretion to require that substitution be conditional.

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

**Monto Coal 2 Pty Ltd v Sanrus Pty Ltd as trustee of the QC Trust [2014] QCA 267**

Court of Appeal of Queensland

M McMurdo P, Morrison JA &amp; Flanagan J

Pleadings - contract - respondents claimed damages for breach of written joint venture agreement concerning coal exploration and mining development - appellants sought orders that plaintiffs be refused leave to file proposed amended consolidated statement of claim, that certain paragraphs



of pleading be struck out, and that plaintiffs be prohibited from repleading any positive allegation of economic viability without Court's leave - primary judge refused to strike out paragraphs - primary judge found it could not be said that pleading disclosed no reasonable cause of action, and that respondents' allegations raised real questions to be determined, resolution of which would involve findings of fact in respect of matters in dispute - rr378 & 379 *Uniform Civil Procedure Rules 1999* (Qld) - application of principles identified by High Court in *Aon Risk Services Australia Ltd v Australian National University* (2009) 239 CLR 175 - held: no error identified in decision of primary judge to warrant Court interfering with exercise of discretion - appeal dismissed.

[Monto Coal 2 Pty Ltd](#) (B C)

### **Sino Iron Pty Ltd v Palmer [2014] QSC 259**

Supreme Court of Queensland

Jackson J

Stay - contract - trusts and trustees - parties entered contractual arrangement where plaintiffs paid money into fund to be used for specified purposes - plaintiffs alleged defendants were involved in breaches of trust - defendants sought stay of proceedings as abuse of process on primary basis it could not be shown funds were impressed with a trust - held: proceeding not without reasonable grounds - no collateral and improper purpose - no fictitious cause of action involved - proceedings did not bring administration of justice into disrepute - application dismissed.

[Sino Iron Pty Ltd](#) (I B C)

### **Re: Ascot Community Sports Club Incorporated (in liq) [2014] QSC 258**

Supreme Court of Queensland

A Wilson J

Corporations - winding up - sports club was voluntarily wound up - liquidators appointed - company which claimed to be a creditor sought order for liquidators' removal and replacement by different liquidators - after that application was brought, another creditor challenged company's claims to be a lawful creditor - present liquidators had insufficient funds limiting ability to effectively proceed towards finalisation of litigation - standing - s503 *Corporations Act 2001* (Cth) - whether removal could be seen to be for better conduct of liquidation or to general advantage of those interested in assets of company - held: liquidators' letter construed as acceptance of company's proof of debt - evidence of involvement between company's director and proposed new liquidators gave rise to perception of possible lack of impartiality - company during hearing proposed appointment of a different liquidator without earlier involvement with director or creditors - liquidator appointed.

[Re: Ascot Community Sports Club Incorporated](#) (I B)

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