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## Daily Composite Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia Each Friday includes Crimes

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### Executive Summary (1 minute read)

**Wormleaton v Thomas & Coffey Ltd (No 4)** (NSWSC) - work injury damages - employer's duty of care - severe crush injury - employer not liable (I C)

**IAG Ltd trading as NRMA Insurance v Tran** (NSWSC) - motor accidents compensation - no error in assessment for future loss of earning capacity (I G)

**Moore v Scenic Tours Pty Ltd** (NSWSC) - representative proceedings - firm of solicitors not restrained from acting for plaintiff (I)

**Dustday Investments Pty Ltd v Minister for Planning** (VSC) - environment and planning - amendment to planning scheme to include building in heritage overlay - no error by panel - proceeding dismissed (C G)

**Devren Pty Ltd v Old Coach Developments Pty Ltd** (QSC) - contract - joint venture - no breach of contractual or fiduciary duties - claim dismissed (I B)

**City of Albany v Cuscuna Nominees Pty Ltd** (WASC) - planning and development - prosecution for failure to obtain planning approval - no case to answer - appeal dismissed (C G)

**Lane v Chaplin** (TASFC) - traffic law - driver's negligent driving caused death of child - appeal allowed (I)

# Benchmark

## Summaries with links (5 Minute Read)

### **Wormleaton v Thomas & Coffey Ltd (No 4) [2015] NSWSC 260**

Supreme Court of New South Wales

Campbell J

Work injury damages - employer's duty of care - quantum of damages - plaintiff claimed damages for severe crush injury suffered at work - two defendants admitted breach of duty of care - workers compensation nominal insurer, which was party instead of employer, disputed liability - quantum of damages - held: particular risk which materialised was beyond scope of employer/employee relationship - even if there was breach by employer, it did not cause worker's injury - employer not liable - no contributory negligence by worker - damages assessed - judgment for worker against first defendant in sum of \$2,286,832.00 - judgment for worker against second defendant in sum of \$2,286,832.00

[Wormleaton](#) (I C)

### **IAG Ltd trading as NRMA Insurance v Tran [2015] NSWSC 263**

Supreme Court of New South Wales

Hall J

Motor accidents compensation - claims assessor made assessment in favour of claimant - insurer sought to challenge component of award for future loss of earning capacity - insurer contended award not an assessment properly made under s94 *Motor Accidents Compensation Act 1999* (NSW) - judicial fact-finding in case involving expert evidence - whether evidence for finding of ageing process compounding injuries - held: nature of claim for future impairment of earning capacity was for assessment of 'a buffer', not an award based on assessed weekly loss of future earnings - medical evidence put insurer plainly on notice of nature of claim - no procedural unfairness in way claims assessor approached assessment - no error of law established - summons dismissed.

[IAG](#) (I G)

### **Moore v Scenic Tours Pty Ltd [2015] NSWSC 237**

Supreme Court of New South Wales

Garling J

Representative proceedings - plaintiff commenced representative proceedings pursuant to Pt 10 *Civil Procedure Act 2005* (NSW) against defendant - defendant sought to have firm restrained from acting for plaintiff as his legal advisers - ultimate controller and majority owner of firm fell within definition of group members - son of ultimate controller was sole director of litigation funder - whether there was a *family interest* principle - held: defendant did not demonstrate any direct or indirect financial connection between firm and litigation funder - ultimate controller had no role to play as solicitor for plaintiff and group members - no inappropriate arrangement or offence to administration of justice - plaintiff entitled to solicitor of his choice - notice of motion dismissed.

[Moore](#) (I)

## **Dustday Investments Pty Ltd v Minister for Planning [2015] VSC 101**

Supreme Court of Victoria

Garde J

Environment and planning - plaintiff sought permit under *Planning and Environment Act 1987* (Vic) to demolish building it owned - delegate authorised Council to prepare amendment to planning scheme which included building in heritage overlay of scheme - plaintiff opposed amendment - panel recommended amendment be adopted - council resolved to adopt amendment - plaintiff sought declaration that panel's recommendation and Council's resolution were invalid - held: panel did not identify wrong issue or ask wrong question - panel did not make legal error by failing to take into account social or economic matters or condition and potential for conversion and adaptive reuse of building - proceeding dismissed.

[Dustday](#) (C G)

## **Devren Pty Ltd v Old Coach Developments Pty Ltd [2015] QSC 53**

Supreme Court of Queensland

Boddice J

Corporations - plaintiff sought relief against defendants in respect of transactions entered in consequence of joint venture agreement - plaintiff claimed it suffered loss due to defendants' breaches of agreement and breaches of fiduciary duty - multiple causes of action relied upon - central issue whether person listed as director of plaintiff had authority to bind plaintiff - whether person convicted of fraud was director - whether actual or ostensible authority to act on plaintiff's behalf - doctrine of *lingering apparent authority* - held: plaintiff failed to establish any breach of contractual duty by defendants - defendants' actions in accordance with instructions of person who at all times had ostensible authority to bind plaintiff - no breach of fiduciary duty by defendants - claim dismissed.

[Devren](#) (I B)

## **City of Albany v Cuscuna Nominees Pty Ltd [2015] WASC 91**

Supreme Court of Western Australia

Chaney J

Planning and development - respondent charged with offence under s218(1)(a) *Planning and Development Act 2005* (WA) for carrying out development without obtaining planning consent from council - Magistrate upheld respondent's submission there was no case to answer - appellant sought to appeal decision - proper construction of approval - held: Magistrate did not err in finding respondent had applied for planning consent for shopping centre development being carried out during prosecution period - no error in analysis of departures in construction from approved plans - appeal dismissed.

[Albany](#) (C G)

## **Lane v Chaplin [2015] TASFC 4**

Full Court of the Supreme Court of Tasmania

Tennent, Wood & Escourt JJ



Traffic law - negligent driving - child struck and killed by vehicle while crossing road - Magistrate found driver's negligent driving caused child's death - driver also found guilty of speeding - driver sought review of decision - Chief Justice dismissed count of causing death by negligent driving - appellant contended Chief Justice erred in finding it was not open to Magistrate to conclude defendant's driving was negligent and causative of child's death- held: for 50 metres prior to collision and only seconds before collision, driver was under duty of care to travel at 40km/h and he did not - had driver done so, collision would not have occurred - common sense notions of causation resolved question adversely to driver - driver's negligence necessary and sufficient cause of occurrence of harm to child - appeal allowed.

[Lane](#) (1)

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