



Monday, 16 February 2015

## Construction 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)

**Allianz Australia Insurance Ltd v Pomfret** (NSWCA) - workers compensation - dust diseases - arguable case insurer liable to indemnify employer for its liability to worker

**General Trade Industries Pty Ltd v AGL Energy Ltd** (QSC) - construction contract - prima facie case for entitlement to return of guarantees under deed of release not made out

**HWE Mining Pty Ltd v Robertson** (WASCA) - prosecution of employer for death of employee in motor vehicle collision at mine - appeal allowed

## Summaries with links (5 Minute Read)

### **Allianz Australia Insurance Ltd v Pomfret [2015] NSWCA 4**

Court of Appeal of New South Wales

Beazley P; McColl, Basten, Macfarlan & Meagher JJA

Workers compensation - insurance - employer's liability for occupational disease - worker employed by company (Ceeco) in 1974 - worker employed by Ceeco again from early 1976 until 23/12/78 - worker exposed to asbestos dust and fibre during periods - up to 31/1/78, contract of insurance between Allianz and Ceeco indemnified Ceeco against liability as employer during policy period. - Ceeco deregistered - worker sued Allianz for compensation for asbestosis and related diseases - Allianz contended relevant *disease* under s151AB(1) Workers Compensation Act 1987 (NSW) was asbestosis and that it was not liable because worker employed by Ceeco until 23/12/78 - when worker 'last employed' in conditions to nature of which occupational disease due Allianz claimed it was not 'on risk' - *divisible* or *indivisible* harm or injury - held: purpose of s151AB was to identify insurer liable to indemnify employer liable for occupational disease of gradual onset contracted over period of employment involving exposure to relevant harmful conditions - must be established that period of exposure caused or substantially contributed to harm subject of claim - primary judge correctly concluded there was arguable case Allianz liable to indemnify Ceeco in respect of claimed liability to worker - appeal dismissed.

[Allianz Australia Insurance Ltd](#)

### **General Trade Industries Pty Ltd v AGL Energy Ltd [2014] QSC 319**

Supreme Court of Queensland

Carmody CJ

Contract - guarantee - applicant sought interim relief from burden of two guarantees provided to respondent under construction contract - applicant conceded obligation to demonstrate a prima facie case - whether applicant had present entitlement to return of guarantees under deed of release dated 13/8/14 - contractual construction - held: Court not persuaded there was prima facie case that applicant had present entitlement to release and return of either or both securities because construction contract not terminated on 13/8/14 - application dismissed.

[General Trade Industries Pty Ltd](#)

### **HWE Mining Pty Ltd v Robertson [2015] WASCA 26**

Court of Appeal of Western Australia

Buss, Murphy & Mazza JJA

Motor vehicle collision - prosecution of employer arising from death of employee at employer's mine site - prosecution brought pursuant to ss9(1) & 9A(2) *Mines Safety and Inspection Act 1994* (WA) - primary judge upheld grounds of appeal against magistrate's acquittal in favour of employer - primary judge remitted matter for retrial by different magistrate - employer appealed - held: primary judge erred in finding magistrate erred in fact in finding intersection not 'hidden' - magistrate did not misapply or misdirect himself as to operation of s9(1) in respect of allegation

# Benchmark



AR CONOLLY & COMPANY  
L A W Y E R S

concerning failure to install advanced intersection signs or allegation concerning failure to install signs on road - appeal allowed.

[HWE Mining Pty Ltd](#)

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