



Wednesday 29 October 2014

Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Austructures Pty Ltd v Makin (VSC) - corporations - pleadings - leave to amend certain paragraphs of statement of claim

Oram v BHP Mitsui Coal Pty Ltd (VSC) - limitation of actions - psychiatric injury arising out of mine disaster in 1994 - prejudice

Summaries with links (5 minute read)

Austructures Pty Ltd v Makin [2014] VSC 544

Supreme Court of Victoria

Almond J

Corporations - pleadings - limitations - plaintiffs alleged contraventions by first defendant of duties under ss180(1), 181(1), 182(1) & 183(1) *Corporations Act 2001* (Cth) - statement of claim also set out limited claims against second defendant - plaintiffs sought to amend statement of claim - plaintiffs submitted proposed amendments expanded existing claims based on breaches of the Act to include claims against second defendant - plaintiff also submitted amendments would allow plaintiffs to seek extension of time, if necessary, for commencing proceeding for breach of statutory obligations, and that they claimed from second defendant any benefit it received from first defendant's breaches of fiduciary obligations - addition of statute-barred causes of action -



discretion to extend time - ss1317K & 1322(4) - *no later than* - held: Court did not have discretion to extend time for commencing claim for compensation order under s1317H - leave to amend pleadings in respect of new claims of knowledge of contravening conduct refused - leave to amend concerning claims of advantage obtained by second defendant allowed so that question of first defendant's legal capacity between himself and second defendant at relevant times could be determined at trial.

[Astructures Pty Ltd](#)

Oram v BHP Mitsui Coal Pty Ltd [2014] QSC 230

Supreme Court of Queensland

McMeekin J

Limitation of actions - applicant sought damages in 2011 from employer for psychiatric illness arising from mine disaster which occurred in 1994 - applicant sought to extend limitation period - ss30 & 31 *Limitation of Actions Act 1974* (Qld) - employer's liability for psychiatric harm - delay - applicant's onus of showing that the justice of the case required the exercise of discretion - held: applicant had reasonable prospect of persuading tribunal of fact that psychiatric injury to surviving employee was foreseeable outcome of exposure to disaster - however prejudice to employer was sufficiently great that Court could not be satisfied that fair trial could be held - applicant had not discharged onus - proceedings left on foot to allow applicant to pursue issue of expiration of limitation period - application dismissed unless submissions are received on or before 4pm on 26 September 2014.

[Oram](#)

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