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Insurance

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Challenger Life Company Ltd v Estate of the late Real (FCA) - life insurance - competing claims - payment of amount owing under policy into Court discharged insurer's obligations

Cunneen v ICAC (NSWCA) - administrative law - ICAC had no power to investigate allegation against Prosecutor - appeal allowed

2 Elizabeth Bay Road Pty Ltd v The Owners - Strata Plan No 73943 (NSWCA) - strata titles - proceedings commenced by owners' corporation without authority not a nullity

State of NSW v Abed (NSWCA) - malicious prosecution - false imprisonment - appeal against vicarious liability of State allowed in part

Divadeus Pty Ltd v Victorian WorkCover Authority (VSC) - WorkCover insurance - industry classifications - calculation of premiums - meaning of *labour hire* - appeal allowed

Summaries with links (5 minute read)

Challenger Life Company Ltd v Estate of the late Real [2014] FCA 1325

Federal Court of Australia

Jacobson J

Life insurance - competing arguable claims between beneficiary nominated by policyholder and beneficiaries under Will - insurance company plaintiff sought direction under s215 *Life Insurance Act 1995* (Cth) that it pay proceeds of policy into Court to be dealt with in accordance with orders of Court - plaintiff sought declaration that by doing so it had discharged its obligations under the policy - construction of policy documentation - held: Court had power to decide between competing claims as an incident of exercise of the jurisdiction of Court under s215 - upon payment into Court, insurance company discharged from any further liability.

[Challenger Life Company Ltd](#)

Cunneen v ICAC [2014] NSWCA 421

Court of Appeal of New South Wales

Bathurst CJ; Basten & Ward JJA

Administrative law - ICAC decided to investigate Deputy Senior Crown Prosecutor - Prosecutor challenged inquiry on basis allegations could not constitute *corrupt conduct* under s8(2) *Independent Commission Against Corruption 1988* (NSW) and also that ICAC provide reasons for its decision to investigate and that it hold public inquiry - primary judge dismissed proceedings - Prosecutor sought leave to appeal - held: *adversely affects* in s8(2) only extended to conduct with capacity to compromise integrity of public administration - unlawful conduct was not *corrupt conduct* unless it could lead a public official to exercise his or her functions dishonestly, partially or otherwise improperly - alleged conduct could amount to attempt to pervert course of justice but was not *corrupt conduct* as it could not be said a police officer might be led to exercise powers improperly - Commission had no power to investigate the allegation - appeal allowed.

[Cunneen](#)

2 Elizabeth Bay Road Pty Ltd v The Owners - Strata Plan No 73943 [2014] NSWCA 409

Court of Appeal of New South Wales

Basten, Barrett & Leeming JJA

Strata titles - owners corporation sued developer for breach of building warranties implied under *Home Building Act 1989* (NSW) - executive committee began proceedings without approval of a general meeting of owners corporation as required by s80D *Strata Schemes Management Act 1996* (NSW) - primary judge held that subsequent approval at annual general meeting sufficient to cure any breach of provision - developer appealed - s312 *Body Corporate and Community Management Act 1997* (Qld) - ss5F & 124 *Corporations Act 2001* (Cth) - ss18B, 18C, 18E, Sch 4 cl 109 *Home Building Act 1989* (NSW) - held: provision prohibited the bringing of proceedings

without prior approval of a general meeting of owners corporation but breach did not render proceedings a nullity - breach was cured shortly after proceedings commenced and before application made for summary dismissal - proper to allow proceedings to continue - appeal dismissed.

[2 Elizabeth Bay Road Pty Ltd](#)

State of NSW v Abed [2014] NSWCA 419

Court of Appeal of New South Wales

Bathurst CJ; Macfarlan & Gleeson JJA

Malicious prosecution - primary judge found State vicariously liable, and second and third respondents liable, for malicious prosecution, false arrest and false imprisonment arising out of actions of police and persons within Office of Director of Public Prosecutions (ODPP) - State appealed - held: primary judge erred in finding ODPP and police had proceeded upon an improper purpose and concluding conduct was malicious - findings of false arrest and false imprisonment against State upheld - finding of malicious prosecution against second and third respondents upheld - State's cross-claim against second respondent upheld - second respondent liable to indemnify State for damages awarded against it for false arrest and false imprisonment on basis she had maliciously induced arrest of first respondent - part of first respondent's cross-appeal on damages upheld - appeal allowed in part.

[State of NSW](#)

Morton v Mangan [2014] NSWSC 1731

Supreme Court of New South Wales

Hallen J

Succession - plaintiffs were two children of deceased - plaintiffs sought family provision order from estate pursuant to *Succession Act 2006* (NSW) - first defendant was friend of deceased and executor - other executor was first defendant's husband who predeceased deceased - second and third defendants were the two children of first defendant and husband, and niece and nephew of deceased's second wife - second and third defendants were sole beneficiaries - Will made no reference to plaintiffs and no explanation for deceased not making provision for them - held: no dispute that plaintiffs were *eligible persons* under s57(1)(c) - each of the plaintiffs should receive additional provision which would provide capital sum for exigencies of life - lump sum provision orders made.

[Morton](#)

Divadeus Pty Ltd v Victorian WorkCover Authority [2014] VSC 578

Supreme Court of Victoria

McMillan J

Insurance - company appealed pursuant to s36J *Accident Compensation (WorkCover Insurance) Act 1993* (VSC) from determination of Victorian WorkCover Authority that its WorkCover premiums



should be assessed on basis that workplace industry classification which most closely corresponded with company's predominant activity at certain workplace (Kilsyth workplace) was security services - company contended correct workplace industry classification was *labour hire* - meaning of *labour hire* - held: premiums payable by company should be reassessed on basis work conducted at the various imputed workplaces was that which most closely corresponded to the predominant activity of the particular client, but that the workplace industry classification that most closely corresponded to company's predominant activity at the Kilsyth workplace was to remain security services - appeal allowed.

[Divadeus Pty Ltd](#)

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