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Insurance

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Eagle v Civil Aviation Safety Authority (FCA) - negligence - breach of statutory duty - claim by pilot against CASA - CASA owes no duty to pilots not to delay in issuing medical certificates - claim dismissed

Essendon Football Club v CEO of the Australian Sports Anti-Doping Authority (FCA) - administrative law - ASADA and AFL investigated Essendon - investigation complied with the rule of law

Lee v Carlton Crest Hotel (Sydney) Pty Ltd (NSWSC) - negligence - driver killed when he reversed car through barrier on second level of car park - car park owner and council negligent

Vo v Rawlings (QCA) - deceit - buyer of business claimed sellers made fraudulent misrepresentations - not established who made representations or that sellers knew they were false

May v Thomas (WASCA) - trespass to the person - primary judge dismissed assault claim - failed to make sufficient findings of fact to resolve statutory and common law defences - appeal allowed - retrial

Tasmania v Treloar (TASSC) - workers compensation - *suitably qualified* medical practitioners for medical panel do not need to be qualified for the particular medical question at issue - error of law - decision quashed

Summaries with links (5 minute read)

Eagle v Civil Aviation Safety Authority [2014] FCA 1016

Federal Court of Australia

Bennett J

Negligence - Eagle was a Qantas Boeing 737 Captain - required Class 1 Medical Certificate - diagnosed with sleep disorder - CASA delayed issuing Medical Certificate - Eagle sued CASA - breach of statutory duty - negligence - CASA applied to have statement of claim struck out - held: statutory duty to issue Medical Certificate without undue delay not established - CASA may have a common law duty of care in some circumstances - however, under its statutory regime, CASA acts for the safety of the public generally, rather than for the benefit of pilots - alleged duty of care not to delay unreasonably would be inconsistent with CASA's statutory imperative to place safety first - would divert decision-makers' attention from their duties - statement of claim disclosed no reasonable cause of action - further, no reasonable cause of action was available - proceedings dismissed.

[Eagle](#)

Essendon Football Club v CEO of the Australian Sports Anti-Doping Authority [2014] FCA 1019

Federal Court of Australia

Middleton J

Administrative law - *Australian Sports Anti-Doping Authority Act 2006* (Cth) - ASADA and AFL jointly investigated Essendon - ASADA had no statutory power to compel provision of information - AFL used its contractual powers to do so - ASADA issued notices of possible doping violations to 34 players - Essendon and its coach sued to have notices set aside - alleged ASADA had no statutory power for joint investigation with AFL - alleged ASADA had unlawfully communicated confidential information to AFL - alleged joint investigation was for improper purpose of enabling AFL to use its contractual power where ASADA had no statutory power - held: ASADA has statutory power to do all things convenient to be done in connection with its functions - includes calling on AFL to assist or cooperate - no unlawful disclosure of information - information communicated to the AFL directly, not via ASADA - statutory power must be exercised for the purpose for which it was conferred - ASADA's purpose is to investigate doping - ASADA acted for this purpose - use of AFL's contractual power to compel provision of information did not frustrate ASADA's statutory purpose - ASADA could not, and did not, compel provision of any information -



no abrogation of privilege against self-incrimination - ASADA complied with the rule of law - application dismissed.

[Essendon Football Club](#)

Lee v Carlton Crest Hotel (Sydney) Pty Ltd [2014] NSWSC 1280

Supreme Court of New South Wales

Beech-Jones J

Negligence - Mr Lee was killed when he reversed his vehicle through the barrier on the second floor of a hotel car park - Mrs Lee sued owner of car park and local Council - held: car park owner had been negligent - had duty to have a reasonable system of inspection to identify any potential and obvious defects, including defects in external railings and wheel stops - had no such system - inspection would have shown further inspection by an engineer required - further inspection would have resulted in correction of problems with wheel stop and barrier - Mrs Lee did not have contract with car park owner - Mr Lee did, but this did not advance Mrs Lee's case beyond her case in negligence - Council also negligent - car park did not comply with former Ordinance 70 under *Local Government Act 1919* (NSW) - Council issued building certificate - no material on which Council could have been satisfied barrier conformed with relevant standard - car park owner should bear 75% of judgment and Council 25% - damages reduced by 20% for Mr Lee's contributory negligence.

[Lee](#)

Vo v Rawlings [2014] QCA 236

Court of Appeal of Queensland

Fraser & Gotterson JJA & Philippides J

Deceit - Vo bought a health food business from Rawlings and another - Vo claimed the vendors had made fraudulent representations - primary judge rejected Vo's claim - held: the primary judge was correct not to apply the rule in *Jones v Dunkel* against the vendors due to their failure to call their selling agent to give evidence - rule in *Jones v Dunkel* only applies where a party is required to explain or contradict something - no evidence that the vendors had been the authors of representations made by the selling agent - no evidence that the vendors knew of the falsity of the representations - fraud must be clearly proved - appeal dismissed.

[Vo](#)

May v Thomas [2014] WASCA 176

Court of Appeal of Western Australia

Martin CJ, Buss JA & Chaney J

Trespass to the person - Thomas hit May at a party - May sued - Thomas claimed he was acting in defence of himself, of others, and of property - common law defences - defences under ss244, 248, 250, 254, *Criminal Code Act 1913* (WA) - primary judge dismissed claim - held: *Criminal Code* defences apply to civil actions - common law defence of self-defence requires that the



defendant believed on reasonable grounds it was necessary in self-defence to do what he or she did - reasons of primary judge deficient - did not separately address statutory defences - did not make findings necessary to resolve statutory defences - did not make findings regarding Thomas' state of mind necessary to resolve common law defences - appeal must be allowed - desirable that Court of Appeal make its own findings of fact and finalise the proceedings - nature of case and conflict of evidence prevented this - retrial ordered.

[May](#)

Tasmania v Treloar [2014] TASSC 51

Supreme Court of Tasmania

Blow CJ

Workers compensation - permanent impairment from psychiatric injury - percentage of whole person impairment referred to Chief Commissioner of Workers Rehabilitation and Compensation Panel - Chief Commissioner considered Tribunal had no power to refer question to medical panel as *suitably qualified* medical practitioners were not available - *Workers Rehabilitation and Compensation Act 1988* (Tas) - available medical practitioners not qualified in psychiatry - held: requirement that medical practitioner be *suitably qualified* has nothing to do with qualification to consider a particular medical question - refers to qualification to be on the register from whom medical practitioners are chosen - Chief Commissioner erred in law - appeal allowed and decision set aside - remitted for re-decision.

[Tasmania](#)

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