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Insurance

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Richardson v Oracle Corporation Australia Pty Ltd (No 2) (FCAFC) - costs - sexual harassment proceedings - presumptive entitlement to indemnity costs

Jones v TCN Channel Nine Pty Ltd (NSWSC) - defamation - defences - contextual truth - imputations struck out

Ahmet v Chief Commissioner of Police (VSCA) - subpoena - public interest immunity - failure to weigh competing considerations - appeal allowed

Wilson v Liquorland Australia Pty Ltd (VSC) - administrative law - *significant injury* - erroneous determination by medical panel quashed

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)

Richardson v Oracle Corporation Australia Pty Ltd (No 2) [2014] FCAFC 139

Full Court of the Federal Court of Australia

Kenny, Besanko & Perry JJ

Indemnity costs - Full Court determined appellant entitled to increase in damages awarded to her in sexual harassment proceedings - appellant sought pre-judgment interest and indemnity costs on basis of offer of compromise - held: respondent did not oppose order for pre-judgment interest - respondent did not accept offer - appellant succeeded in obtaining judgment sum larger than offer - Court not satisfied presumptive entitlement of appellant to indemnity costs should be displaced - mere fact that something unexpected or unforeseen happened during litigation unlikely to provide reasons justifying displacement - Court's decision had effected a change to level of awards for damages in sexual harassment cases - however Court's decision was not other than orderly development of pre-existing principle - indemnity costs ordered.

[Richardson](#)

Jones v TCN Channel Nine Pty Ltd [2014] NSWSC 1453

Supreme Court of New South Wales

McCallum J

Defamation - defences - contextual truth - action arising out segment on television programme - plaintiff objected to two contextual implications specified by defendants - requirement that contextual imputation be one carried in addition to the defamatory imputations complained of by plaintiff - s16 *Defamation Act 1974* (NSW) - s26 *Defamation Act 2005* (NSW) - held: one contextual imputation struck out on basis it was not capable of meeting the requirements of s26 - other contextual imputation struck out on basis it was not capable of arising.

[Jones](#)

Ahmet v Chief Commissioner of Police [2014] VSCA 265

Court of Appeal of Victoria

Nettle JA & Sloss AJA

Subpoena - public interest immunity - applicant alleged police assaulted him, that he was falsely imprisoned, battered and maliciously prosecuted - trial judge set aside applicant's subpoena for production of documents held by Commissioner concerning police officers - trial judge found public interest in preserving confidentiality of documents outweighed public interest in permitting disclosure - applicant sought extension of time to appeal - r64.20(1) *Supreme Court (General Civil Procedure) Rules 2005* (Vic) - held: trial judge failed to weigh or balance competing interests between public interest in keeping subpoenaed documents confidential and public interest in proper administration of justice - trial judge erred in acting on basis of general statements made by

a sergeant, rather than by inspecting subpoenaed documents for himself and forming view about whether any damage might result from disclosure - appeal allowed.

[Ahmet](#)

Wilson v Liquorland Australia Pty Ltd [2014] VSC 545

Supreme Court of Victoria

Rush J

Administrative law - plaintiff injured arm and neck when she slipped and fell at Liquorland's premises - plaintiff sought judicial review of determination of medical panel that degree of impairment from her injury did not meet threshold level for *significant injury* under *Wrongs Act 1958* (Vic) - ss28LJ & 28LL - held: by disregarding a level of impairment which it determined was due to a pre-existing, asymptomatic condition, the Panel relied upon an irrelevant consideration, applied a wrong legal test and reached an erroneous conclusion which invalidated its decision - Panel fell into jurisdictional error - determination quashed.

[Wilson](#)

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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