

Monday, 30 March 2015

## Insurance

### A Daily Bulletin listing Decisions of Superior Courts of Australia

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## Executive Summary (1 minute read)

**Maher v Nationwide News Pty Ltd [No 5]** (WASC) - pleadings - defamation - false innuendo - paragraph of statement of claim struck out - leave to replead

**Kidd v The State of Western Australia** (WASCA) - contract - government agreement for construction of hotel ratified by legislation - appeal dismissed

**Munro v Munro** (QSC) - superannuation - self-managed fund - death benefit nomination form not binding under trust deed - declaration refused

**Metricon Homes Pty Ltd v Hooper** (VSC) - judicial review - house damaged due to movement in slab - VCAT upheld owner's claim against builder - appeal dismissed

**Grills v Leighton Contractors Pty Ltd** (NSWCA) - work injury damages - police officer injured when boom gate lowered in error - erroneous finding of contributory negligence - appeal allowed in part

**Ritson v Leighton** (NSWCA) - security for costs - defamation - security for costs of judicial review application refused

## Summaries with links (5 Minute Read)

### **Maher -v- Nationwide News Pty Ltd [No 5] [2015] WASC 103**

Supreme Court of Western Australia

K Martin J

Pleadings - defamation - defendants sought to strike out paragraphs of statement of claim raising false innuendo on basis of presently pleaded imputation being either unduly obscure or failing to disclose reasonable cause of action - O 20 r19(1)(c) & (a) *Rules of the Supreme Court 1971* (WA) - held: current plea was embarrassing - paragraph struck out with leave to replead.

[Maher](#)

### **Kidd -v- The State of Western Australia 2[2015] WASCA 62**

Court of Appeal of Western Australia

Martin CJ; Newnes & Murphy JJA

Contract - planning and development - statutory interpretation - appellants owned or leased apartments near casino - appellants objected to third respondent's proposal to construct and operate hotel as part of complex pursuant to Minister's approval but without town planning or development approval - respondents claimed no other approval required due to combined effect of government agreement and *Casino (Burswood Island) Agreement Act 1985* (WA) which authorised implementation of agreement - held: appellants' propositions rejected on basis they were contrary to natural and ordinary meaning of words used in Act and agreement - appeal dismissed.

[Kidd](#)

### **Munro v Munro [2015] QSC 61**

Supreme Court of Queensland

Mullins

Superannuation - trusts and trustees - deceased survived by wife and two daughters from previous marriage - dispute arose between wife and daughters concerning benefits under self-managed superannuation fund - whether deceased's death benefit nomination had to comply with requirements of reg 6.17A *Superannuation Industry (Supervision) Regulations 1994* (Cth) - construction of nomination - *Trustee of Deceased's Estate* - held: reg 6.17A did not apply to fund - nomination form did not comply with clauses of trust deed or reg 6.22 SIS Regulations, as the nomination was of neither his executors or one or more Nominated Dependents - nomination form not binding for purpose of trust deed - daughters refused declaration that nomination form was a binding death benefit nomination under trust deed.

[Munro](#)

### **Metricon Homes Pty Ltd v Hooper [2015] VSC 110**

Supreme Court of Victoria

Digby J

Judicial review - Victorian Civil and Administrative Tribunal upheld defendant owner's claim for

costs involved in demolition and reconstruction of house damaged by unacceptable movement of slab - Senior Member found earthen fill on which slab founded had not been adequately compacted by plaintiff builder - builder claimed Senior Member had no evidentiary basis upon which to conclude it imported and placed fill under slab or that fill inadequately compacted - reasonableness of factual findings - *Wednesbury* unreasonableness - obligations to accord natural justice and to act fairly - application of *Building Code of Australia 2006* - held: VCAT erred in decision as to non-compliant placement of scoria - error was of no consequence because VCAT correctly found other breaches by builder caused slab's unacceptable movement and distress to dwelling - appeal dismissed.

[Metricon](#)

## **Grills v Leighton Contractors Pty Ltd [2015] NSWCA 72**

Court of Appeal of New South Wales

Beazley P; Barrett & Gleeson JJA

Work injury damages - police officer injured in course of duties during security operation when motorcycle collided with boom gate lowered on Eastern Distributor in error by motorway controller employed by first respondent - plaintiff sued first respondent and State as his employer - primary judge found respondents negligent - appellant appealed against finding of liability against State and finding of contributory negligence against him - ss3B, 5B, 5C, & 5R *Civil Liability Act 2002* (NSW) - held: primary judge correct to find first respondent breached duty of care by lowering boom gate - State owed breached employer's duty of care by failing to give clear directions to first respondent as to what was required in closing Eastern Distributor for security operation - apportionment not in error - primary judge erred in finding of contributory negligence - appeal allowed in part.

[Grills](#)

## **Ritson v Leighton [2015] NSWCA 62**

Court of Appeal of New South Wales

Ward JA

Security for costs - first respondent sought security for costs and order that proceedings be stayed until security provided - proceedings involved application for judicial review of decisions in defamation proceedings which applicant brought against first respondent - r42.21 & 59.11 *Uniform Civil Procedure Rules 2005* (NSW) - whether failure to provide residential address was with intention to deceive - held: Court unable to conclude there was reason to believe applicant's failure to state his residential address on summons was with intention of deceiving - threshold test to be satisfied in rr42.21(1)(b) & (c) not met - power to award security of costs not enlivened - no exceptional circumstances to permit order for security for costs of judicial review application.

[Ritson](#)

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