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

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### Executive Summary (1 minute read)

**North Australian Aboriginal Justice Agency Limited v Northern Territory** (HCA) - statutory interpretation - constitutional law - challenge to validity of Div 4AA of Pt VII *Police Administration Act* (NT) failed - matter remitted to single Justice for further directions

**The White Ant Co Pty Ltd v Robson** (NSWCA) - contract - deed of arrangement - liability term not enlivened - appeal allowed

**Hunter Development Corporation v Save Our Rail NSW Incorporated** (NSWCA) - administrative law - acquisition of land - assets did not vest in appellant under *Transport Administration Act 1988* (NSW) - appellant was not a "rain infrastructure owner" - appeal allowed

**Harrison v Retail Employees Superannuation Pty Ltd** (NSWSC) - contract - insurance policy - superannuation - plaintiff entitled to receive total and permanent disablement benefit under policy

**In the matter of Asciano Ltd (No 2)** (NSWSC) - corporations - schemes of arrangement - postponement of scheme of arrangement granted

**Schijf v Mydomaine Pty Ltd** (WASC) - pleadings - limitations - permission to amend Indorsement on Amended Writ of Summons to refer to breach of fiduciary duty

# Benchmark

## Summaries With Link (Five Minute Read)

### **North Australian Aboriginal Justice Agency Limited v Northern Territory [2015] HCA 41**

High Court of Australia

French CJ; Kiefel, Bell, Gageler, Keane, Nettle & Gordon JJ

Statutory interpretation - constitutional law - first plaintiff corporation provided legal services to Aboriginal and Torres Strait Islanders - second plaintiff was Aboriginal person resident in Northern Territory arrested by officer or officers of Police Force and taken into custody under s133AB *Police Administration Act* (NT) - second plaintiff held in custody and issued with infringement notice which recorded offences and provided for payment of fines - plaintiffs alleged Div 4AA of Pt VII in which s133AB appeared was invalid, contending it purported to confer on Executive of the Northern Territory power to detain which was penal or punitive in character and beyond powers of Legislative Assembly of Northern Territory to pass - plaintiffs also contended Division 4AA conferred on Executive of Northern Territory power of detention which undermined or interfered with courts' institutional contrary to Constitution - second plaintiff also alleged false imprisonment - separate questions - issues of validity - costs of the proceedings - orders to be made in light of answers - held (by majority): plaintiffs' challenge to validity of Div 4AA failed - questions in Special Case answered accordingly - matter remitted to single Justice for further directions.

[North Australian](#)

### **The White Ant Co Pty Ltd v Robson [2015] NSWCA 345**

Court of Appeal of New South Wales

Macfarlan & Gleeson JJA; Emmett AJA

Contract - appellant contractor and respondents (homeowner) made deed of arrangement relating to termite infestation in house Homeowner constructed on property - homeowner claimed contractor liable under deed to pay reasonable costs of rectification of damage - District Court judge gave judgment for homeowner - contractor contended primary judge erred in drawing inference there was evidence of actual damage caused by termites and in finding contractor liable under deed - construction of deed - whether clause of deed (liability term) enlivened other than by operation of deed's other provisions - held: primary judge's conclusion that contractor was liable had been based not on operative provisions of deed but on estoppels binding contractor as consequence of entering deed - homeowner's construction of deed rejected - clause of deed (liability term) was not enlivened - leave to appeal revoked insofar it related to quantification of damages - appeal allowed.

[The White Ant](#)

### **Hunter Development Corporation v Save Our Rail NSW Incorporated [2015] NSWCA 34**

Court of Appeal of New South Wales

Beazley ACJ; Macfarlan & Meagher JJA

Administrative law - appellant entered agreements for acquisition of land and assets from RailCorp - first respondent sought to restrain RailCorp, Transport NSW and appellant from

acting contrary to law in disposing of land or undertaking proposed removal works - first respondent relied on s99A *Transport Administration Act 1988* (NSW) which provided that a "rail infrastructure owner" must not close railway line unless authorised by Act of Parliament - no such Act at time of proceedings below or on appeal - appellant appealed against trial judge's declaration that assets had "vested by or under" Act and appellant had become a "rail infrastructure owner" - first respondent cross-appealed against trial judge's finding that land transfer did not constitute closure of a railway line and RailCorp had not "otherwise disposed of" under s99A - held: Ministerial direction to RailCorp under s3B required it to sell assets but did not effect a transfer to or vesting of assets in appellant - assets vested in appellant pursuant to Asset Sale Agreement - assets did not "vest" in appellant "by or under" Act - appellant was not a "rail infrastructure owner" - appeal allowed - cross-appeal dismissed.

[Hunter](#) -

## **Harrison v Retail Employees Superannuation Pty Ltd [2015] NSWSC 1665**

Supreme Court of New South Wales

Lindsay J

Contract - insurance policy - superannuation - plaintiff claimed "Total and Permanent Disablement (TPD) Benefit" against first defendant trustee of superannuation trust and second defendant insurer who issued insurance policy to trustee - plaintiff's only contradictor was insurer - it was agreed that nothing in trust deed was critical to determination of plaintiff's claim - question was whether insurance policy answered plaintiff's claim - ss14 & 54 *Insurance Contracts Act 1984* (Cth) - proper construction of "total and permanent disablement" - held: plaintiff was entitled to receive a TPD benefit under policy of insurance - judgment for plaintiff.

[Harrison](#)

## **In the matter of Asciano Ltd (No 2) [2015] NSWSC 1651**

Supreme Court of New South Wales

Brereton J

Corporations - schemes of arrangement - application for postponement of scheme meeting - whether Court should exercise power to postpone meeting to enable shareholders to have adequate time to consider new information - interests of shareholders in context of proposed scheme - maximisation of realisable value of shares - ss411 & 1319 *Corporations Act 2001* (Cth) - held: current state of affairs was fluid - scheme appeared prima facie fair and reasonable and in shareholders' interests but there were signs that alternative offers or proposals may emerge - orders made postponing meeting.

[Asciano](#)

## **Schijf v Mydomaine Pty Ltd [2015] WASC 428**

Supreme Court of Western Australia

Mitchell J

Pleadings - limitations - plaintiff sought to amend writ of summons and statement of claim to introduce reference to claim for 'damages for breach of fiduciary duty' - defendant opposed application on ground amendment involved adding new cause of action for which limitation

period had expired - *Limitation Act 1938 (WA)* - O21, rr5(1) & 5(5) *Supreme Court Rules 1971 (WA)* - held: limitation provision barred remedy not right - allowing amendment would not prejudice defendants' right to plead limitation point in proceedings - limitations question should be dealt with at trial - amendment did not introduce new cause of action - there was overlap between facts underlying breach of fiduciary duty claim and facts underlying claim based on negligent misrepresentation or misleading and deceptive conduct - interests of justice favoured grant of leave to amend - application to amend granted.

[Schijf](#)

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