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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)

Australian Competition and Consumer Commission v Chrisco Hampers Australia Ltd (FCA) - consumer law - supply of Christmas hampers to customers - breaches of Australian Consumer Law established

The Owners – Strata Plan No 74602 v Brookfield Australia Investments Ltd (NSWSC) - leave to reopen - proceedings concerning alleged defects in strata title residential development - leave to reopen case to tender emails, photographs and documents refused

Buses + 4WD Hire Pty Ltd v Oz Snow Adventures Pty Ltd (NSWSC) - negligence - bus crash - unusual order sought pursuant to r7.8 *Uniform Civil Procedure Rules 2005* (NSW) refused

Orbito Nominees Pty Ltd v Betts Nominees Pty Ltd (WASC) - subpoena - legitimate forensic purpose - abuse of process - application to set aside subpoenas dismissed

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Summaries With Link (Five Minute Read)

Australian Competition and Consumer Commission v Chrisco Hampers Australia Ltd [2015] FCA 1204

Federal Court of Australia

Edelman J

Consumer law - applicant claimed respondent contravened Australian Consumer Law (ACL) in course of supplying customers with Christmas hampers - respondent's contracts contained term (HeadStart term) requiring customers to allow it to withdraw funds from customer's bank account even after full payment made for goods - term applied unless opted out of - whether HeadStart term "unfair term" under s24 ACL - whether HeadStart term caused significant imbalance in parties' rights and obligations under contract - duty in s97(3) ACL on supplier who was party to lay-by agreement to "ensure" amount of termination charge not more than supplier's reasonable costs - whether Chrisco contravened s29(1)(m) ACL by making false or misleading representation that consumer could not cancel lay-by agreement once order fully paid and before delivery of goods - held: term was unfair - ACCC did not prove respondent contravened s97(3) by agreements' cancellation charges - respondent's representation in website terms and conditions and Order Confirmation that "your order cannot be cancelled once it is fully paid for" contravened s29(1)(m) ACL - parties to confer on programme for hearing of issues on penalty and consequential orders.

[ACCC](#)

The Owners – Strata Plan No 74602 v Brookfield Australia Investments Ltd [2015] NSWSC 1682

Supreme Court of New South Wales

Stevenson J

Leave to reopen - alleged defects in strata title residential development - plaintiff was owners corporation - plaintiff sued builder and builder's sub-contractor - plaintiff sought leave to reopen its case to tender emails, documents and photographs - relevance of material - explanation for failure to adduce evidence - prejudice - possibility of need to reconvene hearing - *Evidence Act 1995* (NSW) - held: Court not prepared to allow owners corporation to reopen its case - motion dismissed.

[The Owners](#)

Buses + 4WD Hire Pty Ltd v Oz Snow Adventures Pty Ltd [2015] NSWSC 1687

Supreme Court of New South Wales

Schmidt J

Negligence - bus accident in which bus hired by first plaintiff to first and/or second defendant, driven by second plaintiff crashed through guardrail and rolled down embankment injuring passengers - proceedings commenced in District Court and transferred to Supreme Court - plaintiffs sought unusual order pursuant to r7.8 *Uniform Civil Procedure Rules 2005* (NSW) that senior associate of law firm be appointed to conduct issues between first plaintiff and first and



second defendants - motion supported by plaintiffs' solicitor who was acting for statutory insurer under policy issued to first plaintiff - defendants and senior associate opposed order - law firm acted for property insurer of bus and senior associate had carriage of matter - held: Court not satisfied order sought could justly be made given senior associate's interest in proceedings flowed only from employment by law firm and current retainer with insurer - problems lying between first plaintiff, insurer of bus and the defendants must be resolved in some other way - motion dismissed.

[Buses](#)

Orbito Nominees Pty Ltd v Betts Nominees Pty Ltd [2015] WASC 431

Supreme Court of Western Australia

Master Gething

Subpoena - plaintiff sought to set aside subpoenas on ground of abuse of process - application made in context of application pursuant to s77 *Trustees Act 1962* (WA) (TA) to remove trustee of unit trust - plaintiff submitted each subpoenas sought material which had no apparent relevance to issues or legitimate forensic purpose - O36B *Rules of the Supreme Court 1971* (WA) - held: application to set aside subpoenas failed - application dismissed.

[Orbito](#)

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