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Daily Composite Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Newport v Australian Postal Corporation (FCAFC) - workers compensation - permanent impairment - no error in refusal of compensation - appeal dismissed (I G)

Comcare v Power (FCA) - workers compensation - erroneous finding that pain from compensable injury contributed to significant degree to development of adjustment disorder - appeal allowed in part - matter remitted (I G)

Sahade v Bischoff (NSWCA) - assault - malicious prosecution - trespass - damages - altercation between neighbours - appeal dismissed - leave to file amended cross-summons refused - cross-summons for leave to cross-appeal dismissed (I)

Fraser v Health Care Complaints Commission (NSWCA) - health practitioners - cancellation of nurse's registration for professional misconduct and unsatisfactory professional conduct - appeal dismissed (I G)

Lee v Woolworths Ltd (NSWSC) - negligence - truck driver subcontracted to third defendant injured while attempting to restack failed load - third defendant not liable (I)

McIntyre v O'Regan (NSWSC) - succession - family provision - claim for provision by adult children of deceased mother - failure to show inadequacy of provision - claims dismissed (B)

Metropolitan Fire and Emergency Services Board v Yarra City Council (VSC) - environment and planning - negligence - entitlement to compensation - separate question -

Court could order defendant to compensate plaintiff (I B C)

Summaries With Link (Five Minute Read)

Newport v Australian Postal Corporation [2015] FCAFC 194

Full Court of the Federal Court of Australia

Allsop CJ, Besanko & Flick JJ

Administrative law - workers compensation - permanent impairment - former employee of respondent claimed compensation pursuant to *Safety, Rehabilitation and Compensation Act 1988* (Cth) - employee assessed as having: 5% permanent impairment to right shoulder; and 6% permanent impairment to left shoulder - compensation denied on basis neither impairment exceeded minimum threshold of 10% - whether the two assessments could be combined to meet 10% threshold - held: Tribunal did not err in refusing compensation for either injury where either impairment less than 10% - assessor separately assessed "impairment" resulting from "injuries" in accordance with Table 9.11 of the Guide to the Assessment of Permanent Impairment - s24(7) precluded combination of separately assessed "impairments" resulting from separate "injuries" - appeal dismissed.

[Newport](#) (I G)

Comcare v Power [2015] FCA 1502

Federal Court of Australia

Katzmann J

Administrative law - Comcare accepted liability to pay respondent Commonwealth employee compensation for back injury sustained in course of employment - Comcare subsequently determined injury's effects had ceased - respondent later diagnosed with adjustment disorder and claimed compensation - Comcare denied liability - Administrative Appeals Tribunal concluded respondent exaggerated symptoms and evidence "not entirely reliable" - however AAT found substantially in respondent's favour - held: AAT misconstrued "to a significant degree" in s5B *Safety, Rehabilitation and Compensation Act 1988* (Cth) - AAT erred in finding respondent's pain from compensable injury, contributed to significant degree to development of adjustment disorder - appeal allowed in part - matter remitted to AAT.

[Power](#) (I G)

Sahade v Bischoff [2015] NSWCA18

Court of Appeal of New South Wales

Basten & Gleeson JJA; Beech-Jones J

Assault - malicious prosecution - trespass - damages - proceedings concerning altercation between appellants and first respondent at property - first respondent and second respondent occupied separate residences at property - appellants charged with assault and assault occasioning actual bodily harm in company - charges dismissed - appellants claimed damages for malicious prosecution - first appellant claimed damages for assaults and batteries from first

respondent - respondents cross-claimed for trespass - primary judge dismissed claims - in second judgment primary judge found he was wrong to find that actual damage required to be proven in claim for trespass before damages could be awarded - primary judge awarded \$500 damages against first appellant for trespass - Pt 2, ss3B, 52 & 53 *Civil Liability Act 2002* (NSW) - s98(1) *Civil Procedure Act 2005* (NSW) - ss59, 61, 418, 419 *Crimes Act 1900* (NSW) - *Crimes Amendment (Self-defence) Act 2001* (NSW) - *Home Invasion (Occupants Protection) Act 1998* (NSW) - s101(2) *Supreme Court Act 1970* (NSW) - rr42.1& 51.36(2) *Uniform Civil Procedure Rules 2005* (NSW) - held: no error established by primary judge - appeal dismissed - leave to file amended cross-summons refused - cross-summons for leave to cross-appeal dismissed.

[Sahade](#) (I)

Fraser v Health Care Complaints Commission [2015] NSWCA 421

Court of Appeal of New South Wales

Basten, Ward & Leeming JJA

Health practitioners - appellant registered general nurse and midwife - appellant sought to overturn Occupational Division of Civil and Administrative Tribunal's cancellation of registration for professional misconduct in relation to administration of experimental cancer treatment - conduct of proceedings as a whole - specific aspects of treatment of four patients - whether penalty "unjust" - whether appellant recklessly indifferent to whether supervising practitioner registered as medical practitioner - "reckless indifference" - Sch 5, Pt 6, cl 29 *Civil and Administrative Tribunal Act 2013* (NSW) - s34A *Health Care Complaints Act 1993* (NSW) - ss139B, 139E *Health Practitioner Regulation National Law* (NSW) - held: challenges to Tribunal's decision failed - appeal dismissed.

[Fraser](#) (I G)

Lee v Woolworths Ltd [2015] NSWSC 1789

Supreme Court of New South Wales

Harrison J

Negligence - industrial law - plaintiff truck driver sub-contracted to third defendant company to haul loads - plaintiff drove semi-trailer from Windsor to Sydney - during journey part of load in truck collapsed - plaintiff injured while attempting to restack failed load - whether third defendant responsible - s5B *Civil Liability Act 2002* (NSW) - held: third defendant did not owe duty of care to plaintiff - third defendant did not exercise control over plaintiff - control reposed in employer - it was not the case that a reasonable person in third defendant's position would have taken precautions to prevent injury to plaintiff - unnecessary to consider defence in s151Z (2) (c) *Workers Compensation Act 1987* (NSW) - proceedings dismissed.

[Lee](#) (I)

McIntyre v O'Regan [2015] NSWSC 1985

Supreme Court of New South Wales

Stevenson J

Succession - family provision - plaintiffs were adult children of deceased mother - plaintiffs sought family provision from deceased's estate - plaintiffs sought sum amounting to nearly

whole value of actual estate - adequacy of provision for plaintiffs - gifts made by deceased to association and carer before her death - s59 *Family Provision Act 1982* (NSW) - parties' character and conduct - held: provision made for plaintiffs was within range of adequate provision - plaintiffs failed to show that adequate provision not made for them by deceased in Will - claims dismissed.

[McIntyre](#) (B)

Metropolitan Fire and Emergency Services Board v Yarra City Council [2015] VSC 773

Supreme Court of Victoria

Riordan J

Environment and planning - negligence - plaintiff acquired site from State - plaintiff claimed compensation and damages against first defendant arising from remediation of contamination on site - preliminary issue of plaintiff's entitlement to compensation and damages - whether defendant liable for breaches of alleged duties of care and provisions of *Environment Protection Act 1970* (Vic) - whether bluestone pit found on site was storage tank previously used by City for storing coal tar - liability pursuant to s62A(2) - disclosure duty - demolition duty - non-pollution duty - planning duty - statutory duty in s45(1) - causation - held: s62A(2) provided occupier who incurred costs complying with clean up notice could claim compensation from certain persons - defendant was person described in ss62A(1)(b) & (c) - Court could order defendant to compensate plaintiff - plaintiff did not establish any other causes of action.

[Metropolitan](#) (I B C)

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