



## Insurance Banking & Construction

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

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#### Executive Summary (1 minute read)

**Commissioner of Taxation v Luxottica Retail Australia Pty Ltd** - A New Tax System (Goods & Services Tax) Act 1999 (Cth) (B)

**Forest Marsh Pty Ltd v Pleash** - s180, s181 s182 *Corporations Act* 2001 (Cth) - receiver's duties (I, B)

**Meaden v Bell Potter Securities Ltd** - Representative proceedings - application by respondent for an order for provide further and better particulars (B)

**Joseph Street Pty Ltd & Ors v Tan & Ors (No 2)** - Costs - apportionment of costs (I, B, C)

**Kermani v Gaylard & Ors** - Professional negligence - solicitors - claim dismissed (I, B)

**Felhaber v Rockhampton City Council** - Personal injuries - voluntary recreational activity - judgment for defendant (I)

**State of Tasmania v Clifford** - s81A(3) *Workers Rehabilitation & Compensation Act* 1988 (Tas) (I)

**Door of Hope Christian Church Inc v Resource Management and Planning Appeal Tribunal - Nation Building & Jobs Plan Facilitation (Tasmania) Act 2009** - planning schemes (C)



## Summaries with links (5 minute read)

**Tuesday 1 March 2011**

**Commissioner of Taxation v Luxottica Retail Australia Pty Ltd [2011] FCAFC 20**

Full Court of the Federal Court of Australia

Ryan, Stone & Jagot JJ - Adelaide (heard in Sydney)

*A New Tax System (Goods & Services Tax) Act 1999* (Cth) - statutory interpretation - sale of spectacles comprising a frame with lenses fitted - appeal from Administrative Appeals Tribunal dismissed.

[Luxottica Retail Australia](#) (B)

**Forest Marsh Pty Ltd v Pleash [2011] FCA 134**

Federal Court of Australia

Yates J (in Sydney)

s180, s181 s182 *Corporations Act 2001* (Cth) - receiver's duties - application to remove receiver & manager - statutory duties - care & diligence - business judgment rule - good faith - *Trade Practices Act 1974* (Cth) - misleading or deceptive conduct - application dismissed.

[Forest Marsh](#) (I, B)

**Meaden v Bell Potter Securities Ltd [2011] FCA 136**

Federal Court of Australia

Edmonds J (in Sydney)

Representative proceedings - application by respondent for an order that the applicant provide further and better particulars of her statement of claim - alleged contraventions of *Australian Securities & Investment Commission Act 2001* (Cth) & *Corporations Act 2001* (Cth) - particularisation of identity of each of the claimants - detailed examination of Australian case law.

[Meaden](#) (B)



## **Joseph Street Pty Ltd & Ors v Tan & Ors (No 2) [2011] VSC 41**

Supreme Court of Victoria

J Forrest J

Costs - apportionment of costs - plaintiffs had failed on primary issue, but successful on other issues - plaintiffs to pay seventy-five percent of defendants' costs, including reserved costs.

[Joseph Street](#) (I, B, C)

[Joseph Street](#) - decision 17 December 2010: see 'Benchmark' B, C & IBC Wednesday 22 December 2010 - sale of land - the plaintiffs agreed to purchase a unit "off the plan" from the defendants - the contract contained a clause allowing either party to rescind if a plan of subdivision were not registered within 15 months of the date of the contract - another clause stated that the vendors would use their best endeavours to procure registration of the plan of subdivision - the vendors purported to rescind as the plan of subdivision had not been registered - the plaintiffs sought specific performance of the contract - held: the vendors did not breach their obligation to use their best endeavours - there was no basis for an estoppel against the vendors - claim for specific performance dismissed.

## **Kermani v Gaylard & Ors [2011] VSC 46**

Supreme Court of Victoria

Sifris J

Professional negligence - solicitors - legal advice - alleged breach of retainer - alleged failure to advise adequately about effect of signing letter of offer - causation - *Fair Trading Act 1999* (Vic) - claim dismissed.

[Kermani](#) (I, B)

## **Felhaber v Rockhampton City Council [2011] QSC 23**

Supreme Court of Queensland

McMeekin J

Personal injuries - voluntary recreational activity - parkland - injury when diving into water - duty of care of local authority - causation - voluntary assumption of risk - judgment for defendant.

[Felhaber](#) (I)

## **State of Tasmania v Clifford [2011] TASSC 10**

Supreme Court of Tasmania

Blow J

s81A(3) *Workers Rehabilitation & Compensation Act 1988* (Tas) - State Service Code of Conduct - before a commissioner of the Workers Rehabilitation & Compensation Tribunal, the State had contended that, pending the determination of the worker's claim, it should not be required to



make weekly payments - appeal allowed - determination of Tribunal set aside - "reasonable administrative action taken in a reasonable manner."

[Clifford](#) (I)

**Door of Hope Christian Church Inc v Resource Management and Planning Appeal Tribunal [2011] TASSC 5**

Supreme Court of Tasmania

Blow J

*Nation Building & Jobs Plan Facilitation (Tasmania) Act 2009* - "NPA project" (National Partnership Agreement) - proposed social housing project in Launceston - impact of the Act on ability of Resource Management & Planning Appeal Tribunal to enforce compliance with planning schemes - appellant did not have a right to appeal from impugned decision - appeal dismissed.

[Door of Hope Christian Church](#) (C)



## And on St. David's Day ...

Fair laughs the morn, & soft the zephyr blows

... On a rock, whose haughty brow  
 Frowns o'er old Conway's foaming flood,  
 Robed in the sable garb of woe,  
 With haggard eyes the Poet stood;  
 (Loose his beard, & hoary hair  
 Stream'd, like a meteor, to the troubled air)  
 And with a master's hand, & prophet's fire,  
 Struck the deep sorrows of his lyre.  
 "Hark, how each giant-oak, & desert cave,  
 Sighs to the torrent's awful voice beneath!  
 O'er thee, oh King! their hundred arms they wave,  
 Revenge on thee in hoarser murmurs breathe;  
 Vocal no more, since Cambria's fatal day,  
 To high-born Hoel's harp, or soft Llewellyn's lay ...

"The Bard. A Pindaric Ode" (1757)

by Thomas Gray

(26 December 1716 - 30 July 1771)

*The Ode is founded on a tradition of Wales that after conquering the country in 1283, Edward the First ordered all the bards that fell into his hands to be put to death. At the beginning of the Ode, Edward and his army, marching through a valley and approaching Mount Snowdon, encounter a wild Welsh Poet, standing high above them on a rock, who vehemently denounces the King in a high-wrought lamentation, pronounces a curse on him & prophesies the fall of the House of Plantagenet. The Poet sings of the glories that will come with the house of Tudor, and of the poets of that age. At the end, the Bard hurls himself to his death from the top of a mountain.*

[The Bard](#)

[Thomas Gray - Wikipedia, the free encyclopedia](#)

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