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Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Smith v Comcare (FCAFC) - administrative law - AAT erred by stating conclusions as to when *disease was sustained* - appeal allowed (I, G)

ASIC v Cassimatis (FCA) - corporations - financial advice - alleged breaches of directors' duties - summary dismissal refused (I, B, G)

Weston v Wickham Freight Lines Pty Ltd (NSWSC) - motor accidents compensation - leave granted to amend statement of claim on basis of *blameless accident* (I)

Carr v O'Donnell Griffin; Carr v Wagga Mini Mix and Pre-Cast Concrete Pty Ltd (NSWSC) - work injury damages - bulldozer accident - joint tortfeasors - liability apportioned - damages assessed (I)

Echin v Southern Tablelands Gliding Club (No. 2) (NSWSC) - costs - Calderbank offers - reasonable to reject settlement offers - indemnity costs refused (I, B, C)

Agripower Australia Ltd v J & D Rigging Pty Ltd (QSC) - security of payments - dismantling of mining plant not *construction work* under *construction contract* - adjudication void (I, C)



Raspin v Motor Accidents Insurance Board (TASSC) - insurance - motor vehicle accident - extension of time to bring claim refused (I, G)

Summaries with links (5 minute read)

Smith v Comcare [2013] FCAFC 65

Full Court of the Federal Court of Australia

Greenwood, Buchanan & Bromberg JJ

Administrative law - workers compensation - appellant worked as meat inspector for Commonwealth (Cth) - appellant suffered osteoarthritis which led to medical retirement - appellant claimed workers compensation from Cth, contending osteoarthritis was aggravated by employment - Cth denied claim - AAT also rejected claim - whether primary judge was correct to dismiss appeal from AAT's decision on basis no error of law was identified - held (by majority, Bromberg J dissenting): AAT erred in law by stating conclusions as to when *disease* was *sustained* under *Safety Rehabilitation and Compensation Act 1988* (Cth) - appeal allowed - matter remitted to AAT.

[Smith](#) (I, G)

ASIC v Cassimatis [2013] FCA 641

Federal Court of Australia

Reeves J

Corporations - summary dismissal - defendants were directors of company which provided financial advice - ASIC sought declarations that defendants breached duties of care and diligence under s180(1) *Corporations Act 2001* (Cth) - defendants sought summary dismissal of proceedings under s31A(2) *Federal Court of Australia Act 1976* (Cth) (FCA Act) - requirements of s31A - held: defendants failed to persuade court ASIC did not have reasonable prospects of successfully prosecuting proceedings - proceedings involved complex and difficult factual and legal disputes which warranted determination at trial - application dismissed.

[ASIC](#) (I, B, G)



Weston v Wickham Freight Lines Pty Ltd [2013] NSWSC 867

Supreme Court of New South Wales

Schmidt J

Motor accidents compensation - 11 year old plaintiff was struck while riding bicycle by prime mover owned by first defendant and driven by second defendant - plaintiff sought leave to file amended statement of claim on basis of *blameless accident* under s7B *Motor Accidents Compensation Act 1999* (NSW) - held: application to amend rested on decision in *Axiak v Ingram* [2012] NSWCA 311 concerning operation of blameless accident provisions - amendment complied with rr14.14(1) & 14.18(2) *Uniform Civil Procedure Rules 2005* (NSW) - no prejudice flowing from amendment - dictates of justice required grant of leave.

[Weston](#) (I)

Carr v O'Donnell Griffin; Carr v Wagga Mini Mix and Pre-Cast Concrete Pty Ltd

[2013] NSWSC 840

Supreme Court of New South Wales

Harrison AsJ

Work injury damages - joint tortfeasors - plaintiff bulldozer operator claimed damages in negligence from two defendants for injuries sustained during course of employment - first defendant was plaintiff's employer - second defendant contracted with employer for supply of workers and equipment - application of *Civil Liability Act 2002* (NSW) - medical evidence - held: both defendants breached duty of care to plaintiff and were negligent - no contributory negligence - apportionment of liability determined at 25% for employer, 75% for contractor - damages assessed.

[Carr](#) (I)

Echin v Southern Tablelands Gliding Club (No. 2) [2013] NSWSC 744

Supreme Court of New South Wales

Davies J

Costs - *Calderbank* offers - in principal proceedings, first defendant was found not liable to plaintiff - plaintiff was ordered to pay first defendant's costs - first defendant sought costs on indemnity basis for one of two periods, each period specified on basis of an offer of settlement - held: plaintiff reasonably rejected first offer due to stage of proceedings at the time - plaintiff reasonably rejected second offer because time for acceptance was too short - no variation to costs order.

[Echin](#) (I, B, C)

**Agripower Australia Ltd v J & D Rigging Pty Ltd [2013] QSC 164**

Supreme Court of Queensland

MA Wilson J

Security of payments - contract for dismantling mining plant - applicant sought declaration that adjudication under *Building and Construction Industry Payments Act 2004* (Qld) was void - statutory interpretation - held: *land* in s10 of the Act did not include mining leases - plant may have formed part of mining leases - mining plant did not *form part of land* within meaning of s10 - dismantling of plant was therefore not *construction work* under a *construction contract* - adjudication decision void for lack of jurisdiction.

[Agripower Australia](#) (I, C)**Raspin v Motor Accidents Insurance Board [2013] TASSC 30**

Supreme Court of Tasmania

Holt AsJ

Insurance - motor vehicle accident - defendants were driver of vehicle in which plaintiff was a passenger and Motor Accidents Insurance Board in respect of an unidentified driver - plaintiff claimed accident was due to fault of unidentified driver - plaintiff sought extension of time within which to give notice to Board of intention to make claim - held: cause of action under s16 *Motor Accidents (Liabilities and Compensation) Act 1973* (Tas) did not accrue against Board until notice given within time specified in Act or allowed by court - cause of action against Board was premature and liable to be dismissed - delay - prejudice - requirements of justice - extension of time refused.

[Raspin](#) (I, G)

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