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

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### CIVIL (Insurance, Banking, Construction & Government)

### Executive Summary (1 minute read)

**Plaintiff M68-2015 v Minister for Immigration and Border Protection** (HCA) - migration - Commonwealth authorised by 198AHA of the Migration Act to participate in plaintiff's detention at Regional Processing Centre - declaration refused (I B C G)

**Mega-top Cargo Pty Ltd v Moneytech Services Pty Ltd** (NSWCA) - costs - "walk away" offer - no significant compromise - variation of costs order refused (I B C)

**SU v Commonwealth of Australia; BS v Commonwealth of Australia** (NSWSC) - wrongful imprisonment - Indonesian nationals unlawfully arrested and wrongly imprisoned for short period (I)

**Finch v Arnold Thomas & Becker Pty Ltd** (VSCA) - directions - solicitors' fees - solicitors' duties - permission to supplement appeal book - vacation of hearing date refused (I)

**Allianz Australia Insurance Ltd v Inglis** (WASCA) - insurance - preliminary question - legal liability cover - exclusion clause for injury to person who was normally living with insured - appeal allowed (I B C)

**Sakari Resources Ltd v Purvis** (WASCA) - stay - conflict of laws - continuation of proceedings would not vexatious or oppressive - appeal dismissed (I B)

**Motor Accidents Insurance Board v Lester** (TASSC) - negligence - driver injured in collision with steer or steers which had escaped from farming property and onto road - non-indemnifiable defendants liable for scheduled benefits paid or to be paid by Motor Accidents Insurance Board (I B C)

## Summaries With Link (Five Minute Read)

### **Plaintiff M68-2015 v Minister for Immigration and Border Protection [2016] HCA 1**

High Court of Australia

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

Migration - plaintiff Bangladeshi national was "unauthorised maritime arrival" pursuant to s5AA *Migration Act 1958* (Cth) - plaintiff taken to Nauru - plaintiff sought declaration Commonwealth's conduct in relation to detention, was unlawful - ss198AB, 198AD & 198AHA. - ss51(xix) & 61 *Constitution* - non-statutory executive power - authorisation for participation in detention at Regional Processing Centre - Nauru Constitution - held (by majority): Commonwealth authorised by 198AHA of the Migration Act to participate in plaintiff's detention - declaration refused.

[Plaintiff-M68-2015](#) (I B C G)

### **Mega-top Cargo Pty Ltd v Moneytech Services Pty Ltd [2016] NSWCA 3**

Court of Appeal of New South Wales

Gleeson & Leeming JJA; Emmett AJA

Costs - offer of compromise - Court dismissed appeal with costs - respondent sought variation of costs order on basis of offer of compromise that appeal be dismissed with no order as to costs - respondent claimed offer was valid offer of compromise - appellant submitted offer was "capitulation" which did not warrant variation of order - "walk away" offer - rr20.26, 42.15A, 51.47 & 51.48 *Uniform Civil Procedure Rules 2005* (NSW) - held: no significant compromise made - variation of costs order refused.

[Mega-top](#) (I B C)

### **SU v Commonwealth of Australia; BS v Commonwealth of Australia [2016] NSWSC 8**

Supreme Court of New South Wales

Hamill J

Wrongful imprisonment - plaintiffs were two Indonesian nationals detained by defendants - plaintiffs sued defendants for damages for false or wrongful imprisonment on basis that short period of their detention unlawful - plaintiffs contended arrest was unlawful and they were wrongly imprisoned as result of arrest - residual liberty - "umbrella of lawfulness" - s3W *Crimes Act 1914* (Cth) - s5 *Migration Act 1958* (Cth) - held: arrest of plaintiffs was unlawful - plaintiffs were wrongly imprisoned for around 2 hours and 15 minutes - judgment for plaintiffs.

[SU](#) (I)

## **Finch v Arnold Thomas & Becker Pty Ltd [2016] VSCA 2**

Court of Appeal of Victoria

Beach JA

Directions - solicitors' fees - solicitors' duties - applicant was respondent's former client - respondent sued former client to recover legal fees - applicant counter-claimed in relation to respondent's conduct - respondent's claim dismissed - applicant largely unsuccessful - application for leave to appeal fixed for hearing - applicant sought to supplement application/appeal books and vacation of hearing date - held: applicant permitted to file 'supplementary book' - no basis for vacation of hearing date.

[Finch](#) (I)

## **Allianz Australia Insurance Ltd v Inglis [2016] WASCA 25**

Court of Appeal of Western Australia

McLure P, Buss JA & Mitchell J

Insurance - Mr and Mrs Inglis were parents of James and Georgia Inglis - Georgia Inglis, while present at home of Daniel Sweeney, Elaine Sweeney and their son Stephen Sweeney, was injured when run over by ride-on lawnmower driven by Stephen Sweeney - lawnmower owned by Stuart Inglis - lawnmower was allegedly driven by James Inglis from home to Sweeneys' home - preliminary question whether Allianz liable to indemnify Stuart and James Inglis under policy which insured Inglis' home and contents, and also provided legal liability cover, for any liability to Sweeneys in third party proceedings - primary judge found Allianz not entitled to refuse claim - s54 *Insurance Contracts Act 1984* (Cth) - s7 *Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947* (WA) - construction of policy - exclusion of liability for injury to a person who was normally living with insured - whether fact Georgia Inglis was normally living with insured was an act under s 54 rather than state of affairs pertaining to or characteristic of life as 10 year old - held: Court not satisfied that the fact that a person normally lives with an insured does not constitute an 'act' within s 54(1) - appeal allowed.

[Allianz](#) (I B C)

## **Sakari Resources Ltd v Purvis [2016] WASCA 24**

Court of Appeal of Western Australia

Buss, Newnes & Murphy JJA

Stay - conflict of laws - respondent sued appellant for balance of termination payment owing under contract of employment - Master dismissed appellant's application for stay of proceedings commenced in Singapore on ground that continuing proceedings would be vexatious or oppressive - held: Master erred by not turning mind to whether continuation of WA proceedings would be vexatious or oppressive in sense in *Voth v Manildra Flour Mills Pty Ltd* [1990] HCA 55 - Court not persuaded continuation of proceedings vexatious or oppressive - appeal dismissed.

[Sakari](#) (I B)

## **Motor Accidents Insurance Board v Lester [2016] TASSC 2**

Supreme Court of Tasmania

Tennent J

# Benchmark

Negligence - driver catastrophically injured in motor vehicle collision with steer or steers wandering on highway, which had escaped farming property - Motor Accidents Insurance Board entitled under of *Motor Accidents (Liabilities and Compensation) Act 1973* (Tas) to recover from certain people scheduled benefits it had to pay for driver's benefit - Board sued owners of farming property (first and second defendants) and third defendant, contracted by first and second defendant to replace portion of fencing - defendants were non-indemnifiable persons for purposes of Act - held: Court satisfied defendants owed and breached duty of care to driver by negligent acts - as result of defendants' negligence steers escaped from property and wandered onto highway - clearly foreseeable that if steers escaped they would wander onto roads posing significant risk to road users - risk resulted in injury to driver - defendants are liable to pay scheduled benefits paid or to be paid by Board.

[Motor Accidents Insurance Board](#) (I B C)

## CRIMINAL

### Executive Summary

**R v Harper** (QCA) - criminal law - drug trafficking - possession of thing for use in connection with producing dangerous drug - appeal against conviction dismissed - leave to appeal against sentence refused

**R v Cheng** (SASCFC) - criminal law - sexual exploitation - failure to give directions and Murray/Robinson warning - conviction overturned - new trial

### Summaries With Link

**R v Harper [2015] QCA 273**

Court of Appeal of Queensland

Morrison JA, Mullins and Burns JJ

Criminal law - drug trafficking and possession - appellant convicted of one count trafficking in dangerous drug and three counts of possessing 'a thing for use in connection with producing a dangerous drug' - respondent acquitted of two counts of producing dangerous drug in excess of two grams and twelve counts of possessing a thing for use in connection with producing a dangerous drug - respondent sentenced to 10 years for trafficking offence and concurrent sentences of five years for each count of possessing a thing for use in connection with producing a dangerous drug - appellant appealed - whether loss of forensic advantage - whether unfair trial - whether guilty verdict for trafficking unreasonable - challenges to judge's directions on lies and elements of trafficking - ss25A & 30 *Australian Crime Commission Act 2002* (Cth) - s590AE *Criminal Code* (Qld) - held: all grounds of appeal against conviction failed -



sentences not manifestly excessive - appeal against conviction dismissed - leave to appeal against sentence refused.

[Harper](#)

## **R v Cheng [2015] SASCFC 189**

Full Court of the Supreme Court of South Australia

Sulan, Peek & Stanley JJ

Criminal law - appellant's wife ran child-care centre - appellant convicted of persistent sexual exploitation of child who attended centre - primary judge questioned child via audio-visual link in presence of counsel and appellant before empanelling jury - DVD of police interview with child admitted into evidence - appellant contended primary judge erred in directing jury in relation to interview - appellant also claimed judge erred in failing to direct jury in relation to requirement to scrutinise complainant's evidence with special care - ss4, 6, 6(5), 9, 9(1), 9(2), 9(2)(a)(i), 9(2)(a)(ii), 9(2)(b), 9(4), 12A, 34CA, 34CA(1)(a), 34D, 34D(1) & 34L *Evidence Act 1929 (SA)* - s50(1) *Criminal Law Consolidation Act 1935 (SA)* - s93A *Evidence Act 1977 (Qld)* - s 294AA *Criminal Procedure Act 1986 (NSW)* - held: judge failed to give directions in relation to interview - judge erred in not being satisfied that general law required a 'Murray/Robinson' warning to be given - appeal allowed - conviction overturned - new trial.

[Cheng](#)



# Benchmark

## **The Grasshopper**

BY RICHARD LOVELACE

To My Noble Friend, Mr. Charles Cotton

O thou that swing'st upon the waving hair  
Of some well-fillèd oaten beard,  
Drunk every night with a delicious tear  
Dropped thee from heaven, where now th' art reared;

The joys of earth and air are thine entire,  
That with thy feet and wings dost hop and fly;  
And, when thy poppy works, thou dost retire  
To thy carved acorn-bed to lie.

Up with the day, the sun thou welcom'st then,  
Sport'st in the gilt-plats of his beams,  
And all these merry days mak'st merry men,  
Thyself, and melancholy streams.

But ah, the sickle! Golden ears are cropped;  
Ceres and Bacchus bid good night;  
Sharp, frosty fingers all your flowers have topped,  
And what scythes spared, winds shave off quite.

Poor verdant fool, and now green ice! thy joys,  
Large and as lasting as thy perch of grass,  
Bid us lay in 'gainst winter rain, and poise  
Their floods with an o'erflowing glass.

Thou best of men and friends! we will create  
A genuine summer in each other's breast,  
And spite of this cold time and frozen fate,  
Thaw us a warm seat to our rest.

Our sacred hearths shall burn eternally,  
As vestal flames; the North Wind, he  
Shall strike his frost-stretched wings, dissolve, and fly  
This Etna in epitome.

Dropping December shall come weeping in,  
Bewail th'usurping of his reign:  
But when in showers of old Greek we begin,  
Shall cry he hath his crown again!



# Benchmark

Night, as clear Hesper, shall our tapers whip  
From the light casements where we play,  
And the dark hag from her black mantle strip,  
And stick there everlasting day.

Thus richer than untempted kings are we,  
That, asking nothing, nothing need:  
Though lords of all what seas embrace, yet he  
That wants himself is poor indeed.?

[RICHARD LOVELACE](#)

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