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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)

Comcare v Reardon (FCA) - workers compensation - aggravation of medical condition by employment - no error in decision of Administrative Appeals Tribunal - appeal dismissed (I G)

Donnelly v Australia and New Zealand Banking Group Ltd (NSWCA) - summary dismissal - summons disclosed no reasonable cause of action - extension of time refused - summons seeking leave to appeal dismissed (B)

Lowe v Lowe (No 2) (NSWSC) - succession - family provision - further provision ordered in favour of deceased's widow by second marriage (B)

Amaca Pty Ltd v CSR Ltd (No 2) (VSC) - interest - judgments under *Wrongs Act 1958* (Vic) and in equity attracted interest under s60 - interest awarded (I B C)

Barbon v Tessari (No 2) (VSC) - costs - probate - unsuccessful challenge to plaintiff's application for grant of probate - unreasonable rejection of Calderbank offer - pursuit of hopeless case - indemnity costs awarded in plaintiff (B)

Wiggins Island Coal Export Terminal Pty Ltd v Monadelphous (QSC) - pleadings - guarantee - untenable cause of action - parts of statement struck out with leave to replead (I B C)

Baju Henley Square P/L v Bruce (SASC) - contract for purchase of apartment off the plan - invalid notices of termination - drawing bearing notation of dimensions of apartment not of contractual effect - vendor entitled to specific performance (I B C)

Summaries With Link (Five Minute Read)

Comcare v Reardon [2015] FCA 1166

Federal Court of Australia

Mortimer J

Workers compensation - respondent claimed compensation for injury identified as “Hyperacusis related to workplace noise exposure, with sensorineural hearing loss and tinnitus” - Comcare denied liability under s14 *Safety, Rehabilitation and Compensation Act 1988* (Cth) - Administrative Appeals Tribunal found Comcare liable on basis respondent’s employment had contributed to a significant degree to aggravation of hyperacusis - Comcare appealed - test for aggravation - ss5A, 5B & 14 - held: no error in Tribunal’s finding in favour of respondent only on aggravation of hyperacusis by her employment - Tribunal correctly understood task in assessing respondent’s injuries and carefully and independently assessed medical evidence - no error of law - appeal dismissed.

[Comcare](#) (I G)

Donnelly v Australia and New Zealand Banking Group Ltd [2015] NSWCA 341

Court of Appeal of New South Wales

Meagher & Gleeson JJA

Summary dismissal - loans and mortgages - possession - applicant sought extension of time for leave to appeal against dismissal of proceedings on ground no reasonable cause of action was disclosed - *Banking Act 1959* (Cth) - *Contracts Review Act 1980* (NSW) - s101(2)(e) *Supreme Court Act 1970* (NSW) - rr13.4, 51.10 *Uniform Civil Procedure Rules 2005* (NSW) - held: no error in primary judge’s conclusion that applicant’s summons disclosed no reasonable cause of action - even if no timing difficulties, leave to appeal would not be granted - notice of motion for an extension of time and the summons seeking leave to appeal dismissed.

[Donnelly](#) (B)

Lowe v Lowe (No 2) [2015] NSWSC 1626

Supreme Court of New South Wales

Kunc J

Succession - family provision - plaintiff was widow of deceased by second marriage for both of them - plaintiff sought provision out of deceased’s estate under s59 *Succession Act 2006* (NSW) - defendants conceded jurisdictional question whether provision not adequate for plaintiff - dispute concerned what amount of provision should be ordered - separate financial affairs - plaintiff’s financial position and needs - other interested persons - community expectation for proper provision for plaintiff’s maintenance, education or advancement in life - ss57, 58, 59, 60

- held: additional provision ordered in plaintiff's favour in amount of \$100,000.

[Lowe](#) (B)

Amaca Pty Ltd v CSR Ltd (No 2) [2015] VSC 605

Supreme Court of Victoria

Macaulay J

Interest - Court awarded contribution in plaintiff's favour against one or both defendants - contribution awarded in two cases pursuant to Pt IV *Wrongs Act 1958* (Vic) and three cases by equitable remedy on discharge of coordinate liability - appropriate calculation of interest on four of the five judgments - whether judgments attract interest under ss58 or 60 *Supreme Court Act 1986* (Vic) - whether defendants had shown 'good cause' why Court should order interest to run only from commencement of each case's action - whether letters sent by plaintiff before action constituted 'demand of payment' under s 58 - held: s58 did not apply to sums recovered under *Wrongs Act* or in equity - interest awarded under s60 in each case.

[Amaca](#) (I B C)

Barbon v Tessari (No 2) [2015] VSC 597

Supreme Court of Victoria

McMillan J

Costs - probate - defendant unsuccessfully challenged plaintiff's application for grant of probate - plaintiff sought indemnity costs against defendant on basis of Calderbank offer - s24(1) *Supreme Court Act 1986* (Vic) - held: defendant persisted in pursuing case which was hopeless - no reasonable grounds justifying challenge to validity of deceased's will - defendant's failure to respond to Calderbank offer was unreasonable rejection by her - indemnity costs awarded to plaintiff.

[Barbon](#) (B)

Wiggins Island Coal Export Terminal Pty Ltd v Monadelphous [2015] QSC 309

Supreme Court of Queensland

Jackson J

Pleadings - fourth defendant sought to strike out parts of statement of claim as not disclosing reasonable cause of action against applicant as guarantor and indemnifier of first and second defendants - applicant submitted that on proper construction of contracts between respondent and first and second defendants no sum yet due to respondent on causes of action - applicant contended corresponding causes of action alleged by respondent against applicant must fail because obligation to pay on guarantee or indemnity had not arisen - r171 *Uniform Civil Procedure Rules 1999* (Qld) - held: respondent's claim of applicant's liability under guarantee and indemnity depended on existence of relevant debt due and payable by first and second defendants to respondent under clause - respondent's case so clearly untenable it could not succeed on proper construction of contract - application granted - leave to amend statement of claim granted.

[Wiggins](#) (I B C)

Baju Henley Square P/L v Bruce [2015] SASC 169

Supreme Court of South Australia

Bampton J

Contract - defendant contracted with plaintiff to purchase apartment off plan in development - defendant commissioned internal measurement survey on scheduled settlement date and following receipt of survey served Notice of Termination on basis of alleged breach by plaintiff of Area Condition of the Contract - defendant asserted that a marketing plan drawing bearing 130 square metres notation was of contractual effect - plaintiff served Notice to Complete on defendant - defendant served second Notice of Termination alleging plaintiff's failure to obtain development approval by contract's satisfaction date - plaintiff sought specific performance of contract - held: neither of defendant's notices of terminations was valid - drawing not of contractual effect - plaintiff entitled to specific performance - judgment for plaintiff - cross-claim dismissed.

[Baju](#) (I B C)

CRIMINAL

Executive Summary

Armstrong v Regina (NSWCCA) - criminal law - manslaughter - failure to take into account 'ceiling' principle - sentence set aside - appellant resentenced

Sgarlata v The State Of Western Australia (WASCA) - criminal law - prohibiting or supplying prohibited drug - State did not need to prove, as element of each offence, knowledge by accused of 'prohibited nature' of the drug - question referred for determination answered in the negative

Summaries With Link

Armstrong v Regina [2015] NSWCCA 273

Court of Criminal Appeal of New South Wales

Bathurst CJ; Price & Beech-Jones JJ

Criminal law - applicant pleaded guilty to manslaughter of deceased - basis for liability for manslaughter was provocation - sentencing judge sentenced applicant to imprisonment of 13 years and 3 months - applicant had initially been convicted of murder and sentenced to term of imprisonment in 2010 - applicant had also been previously convicted for unrelated sexual offences and sentenced in 2010 - applicant had successfully appealed against murder conviction - applicant appealed against sentence for manslaughter on ground sentencing judge had failed to take into account previous sentences imposed in District Court for conviction of

murder and sexual offences - held: sentencing judge erred by failing to consider 'ceiling' principle - sentence imposed on applicant set aside - applicant sentence to imprisonment for 12 years and 3 months with a nonparole period of 9 years and 2 months, expiring on 19 May 2021.

[Armstrong](#)

Sgarlata v The State Of Western Australia [2015] WASCA 215

Supreme Court of Western Australia

McLure P; Buss & Mazza JJA

Criminal law - referral of a question of law to Court of Appeal under s98(2)(d) *Criminal Procedure Act 2004* (WA) in accordance with s46 *Criminal Appeals Act 2004* (WA) - whether, in order to prove knowledge component for offences of possessing or supplying prohibited drug, prosecution needed to prove accused knew drug was one to which the *Misuse of Drugs Act 1981* applied by virtue of s4 of Act - held: appellant's contention rejected that State must prove, as element of each offence in question, knowledge by accused of 'prohibited nature' of the drug - answer to referred question was 'No'.

[Sgarlata](#)



Benchmark

I dwell in Possibility – (466)

By Emily Dickinson

I dwell in Possibility –
A fairer House than Prose –
More numerous of Windows –
Superior – for Doors –

Of Chambers as the Cedars –
Impregnable of eye –
And for an everlasting Roof
The Gambrels of the Sky –

Of Visitors – the fairest –
For Occupation – This –
The spreading wide my narrow Hands
To gather Paradise –

[Emily Dickinson](#)

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