

Wednesday 9 July 2014

Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

 Follow @Benchmark_Legal

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (1 minute read)

Inghams Enterprises Pty Ltd v Sok (NSWCA) - workers compensation - nature of appeals - work capacity decision - appeal dismissed (I G)

Curnow v Curnow (NSWSC) - family provision - intestacy - lump sums awarded to stepchild and children of deceased (B)

WK Marble & Granite Pty Ltd v Elia (NSWSC) - real property - possession of land - occupier of property not entitled to be joined to proceedings - application dismissed (B)

Perpetual Trustee Company Ltd v Papantoniou (No. 3) (NSWSC) - costs - Calderbank offer not a genuine offer of compromise - indemnity costs refused (I B)

Langmaid v Dobsons Vegetable Machinery Pty Ltd (TASFC) - negligence - fire at industrial premises caused by hot work carried out by company - appeal allowed (I C)

Hillman v Box, Box & Box as executors of the estate of Box (No 5) (ACTSC) - costs - family provision proceedings - re-opening of costs orders - rejection of Calderbank offer not unreasonable (B)



Concerned Citizens of Canberra v Chief Planning Executive (Planning and Land Authority) (ACTSC) - planning and development - incorporated association had no standing to challenge decisions of Chief Planning Executive (C G)

Summaries with links (5 minute read)

Inghams Enterprises Pty Ltd v Sok [2014] NSWCA 217

Court of Appeal of New South Wales

Basten & Barrett JJA; Sackville AJA

Workers compensation - worker injured back while employed by former employer - injury aggravated while employed by appellant (Inghams) - worker applied to Workers Compensation Commission to resolve claim for weekly compensation payments - arbitrator upheld worker's claim and apportioned liability equally between employers - Inghams appealed under s352 *Workplace Injury Management and Workers Compensation Act 1998* (NSW) - Deputy President found challenge to findings of fact demonstrated no relevant error and that in absence of *work capacity decision* s43 *Workers Compensation Act 1987* (NSW) (WCA) was not an obstacle to award for weekly payments after 1 January 2013 - held: Deputy President did not fail to determine whether errors of fact made - Deputy President did not misconceive nature of appeal as limited to errors of law - s43 WCA did not exclude jurisdiction with respect to matters that could be subject of *work capacity decision* absent such a decision - Commission did not exceed jurisdiction in allowing weekly compensation payments after 1 January 2013 - appeal dismissed.

[Inghams Enterprises Pty Ltd](#) (I G)

Curnow v Curnow [2014] NSWSC 896

Supreme Court of New South Wales

Hallen J

Family provision - three plaintiffs sought family provision orders under Ch 3 *Succession Act 2006* (NSW) - stepchild applied on the basis that she was a member of deceased's household and wholly or partly dependant on him - children of deceased also applied - deceased died intestate - no will or other testamentary instrument located - defendant was deceased's wife - held: operation of intestacy rules did not make adequate provision for proper maintenance, education or advancement in life of each plaintiff - defendant was in stronger financial position than each plaintiff and position would improve when she received her share of her mother's estate of which she was a beneficiary - lump sum awarded in favour of the each plaintiff.

[Curnow](#) (B)

WK Marble & Granite Pty Ltd v Elia [2014] NSWSC 898

Supreme Court of New South Wales

Davies J



Real property - possession of land - interlocutory application - plaintiff was registered second mortgagee of property - plaintiff entitled to possession of property against defendant registered proprietor - occupier sought to be joined as second defendant on basis of transactions he claimed to have entered into with defendant, his mother - held: application for adjournment refused - no claimed interest in land could displace plaintiff's right to possession - only document capable of registration was a mortgage registered - documents upon which occupier relied had not been stamped under *Duties Act 1997* (NSW) - no basis to join occupier to proceedings - application dismissed.

[WK Marble & Granite Pty Ltd](#) (B)

Perpetual Trustee Company Ltd v Papantoniou (No. 3) [2014] NSWSC 885

Supreme Court of New South Wales

Campbell J

Costs - indemnity costs - parties who obtained relief under *Contracts Review Act 1980* (NSW) sought indemnity costs on basis of Calderbank offer which was not accepted - held: Court not persuaded conduct in rejecting offer was *relevantly unreasonable* - offer was not a genuine attempt to compromise - offer called for capitulation or unconditional surrender - reasonableness is decided when offer made - indemnity costs refused.

[Perpetual Trustee Company Ltd](#) (I B)

Langmaid v Dobsons Vegetable Machinery Pty Ltd [2014] TASFC 6

Full Court of the Supreme Court of Tasmania

Blow CJ; Porter & Pearce JJ

Negligence - fire in industrial premises - operators of cool store business and owner of premises and equipment contended fire resulted from hot work carried out by respondent and sued for damages for breach of statutory duty, negligence, and breach of contract - primary judge not satisfied there was causal relationship between hot work and fire and dismissed claim - held (by majority): company breached statutory duty, duty to take reasonable care and implied terms of contract by failing to take precautions required by Australian Standard 1674 in relation to hot work - trial judge erred in failing to find company's hot work caused fire and that the established breach of duty was a necessary element of occurrence of damage - whole of the evidence justified drawing of the inference of causal connection - appeal allowed.

[Langmaid](#) (I C)

Hillman v Box, Box & Box as executors of the estate of Box (No 5) [2014] ACTSC 150

Supreme Court of the Australian Capital Territory

Refshauge J

Costs - offer of compromise - Court made order for family provision for plaintiff out of estate but dismissed claims which occupied majority of proceedings - Court ordered that one fifth of plaintiff's costs be paid on a common fund basis out of estate and that defendants' costs be paid out of estate on trustee basis - orders not perfected - defendants sought to re-open costs order and that



plaintiff should pay part of their costs - defendants relied on Calderbank letter - enforcement of Calderbank letters in family provision proceedings - held: without assessment of costs Court was not in position to say that plaintiff had by Court's order received less than amount offered to her - time for plaintiff to consider offer was not reasonable - not unreasonable for plaintiff to have rejected offer - explanation of costs on common fund basis - costs order originally proposed made.

[Hillman](#) (B)

Concerned Citizens of Canberra v Chief Planning Executive (Planning and Land Authority)
[2014] ACTSC 165

Supreme Court of Australian Capital Territory

Mossop M

Environment and planning - incorporated association challenged two decisions of Chief Planning Executive in relation to development application for construction of mosque - Chief Planning Executive decided not to extend public notification period for DA (extension decision) and approved DA - plaintiff sought relief including orders under s17 *Administrative Decisions (Judicial Review) Act 1989* (ACT) - ss10, 21, 27-30, 50-51, 54, 119, 120-121, 139, 141-157, 162, 169-170, 411, 419, & 425 *Planning and Development Act 2007* (ACT) - held: plaintiff did not have standing to challenge extension decision because it did not exist when decision was made - by time of approval plaintiff's only activity was to commence proceedings in relation to extension decision - plaintiff did not have standing in relation to either decision - proceedings would in any event fail on merits - proceedings dismissed.

[Concerned Citizens of Canberra](#) (C G)

[Click Here to access our Benchmark Search Engine](#)