



Tuesday 10 December 2013

Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

Important Announcement



Follow us on Twitter today!

[@Benchmark Legal](https://twitter.com/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)

Kline v Official Secretary to the Governor General (HCA) – freedom of information – Order of Australia - documents were not *matters of an administrative nature* – Official Secretary not required to disclose documents – appeal dismissed (G)

Jones v Trad (NSWCA) – anti-discrimination – racial vilification – Tribunal erred in finding impugned public act had capacity to incite requisite emotion – appeal allowed (I G)

Australia and New Zealand Banking Group Ltd v Pola (NSWSC) - mortgages - bank breached duty to ensure property sold at market value - cross-claims dismissed (I B)



Woodley v TAC (VSCA) - transport accident - horse escaped property and collided with car - no breach of duty by property's owner/occupier - no duty owed by occupier of house on property – appeals allowed (I G)

Birla Mt Gordon Pty Ltd v Miccon Hire Pty Ltd (QCA) - contract - refusal of leave to adduce new evidence - prejudice - appeal allowed (I B C)

Hall v Don Faulkner Motors Pty Ltd (QSC) – limitation of actions – dependency claim arising from husband's death from mesothelioma statute-barred (I)

Rodgers v Tasmanian Perpetual Trustees Ltd (TASSC) - succession - family provision - testator did not make adequate provision for daughter in will - provision made (B)

Summaries with links (5 minute read)

Kline v Official Secretary to the Governor General [2013] HCA 52

High Court of Australia

French CJ; Crennan, Kiefel, Bell & Gageler JJ

Administrative law – freedom of information - appellant sought access to documents under *Freedom of Information Act 1982* (Cth) – documents related to nominations by appellant of a person to Order of Australia – documents held by Official Secretary - Official Secretary refused request on basis that no documents relating to matters of an administrative nature pursuant to s6A(1) of the Act had been identified – Australian Information Commissioner and Administrative Appeals Tribunal affirmed Official Secretary's decision - Full Court of Federal Court upheld Tribunal's decision – ss5, 6 & 6A of the Act - held: *matters of an administrative nature* referred to documents concerning management and administration of office resources of Official Secretary or provision of logistical support - documents sought by appellant excluded from disclosure by s6A(1) of the Act – appeal dismissed.

[Kline](#) (G)

**Jones v Trad [2013] NSWCA 389**

Court of Appeal of New South Wales

Ward, Emmett & Gleeson JJA

Administrative law – anti-discrimination – racial vilification - President of Lebanese Muslim Association alleged radio host made derogatory comments about him, Australian Muslim community and Lebanese community – radio host and radio company appealed from Tribunal’s decision that complaint of racial vilification in broadcast concerning car hoons was substantiated – ss20C & 20C(2) *Anti-Discrimination Act 1977* (NSW) – *public act* – capacity to *incite* - held: no error in dismissal of radio host’s contention he had not engaged in a public act when speaking words comprising broadcast – Tribunal erred in finding that impugned public act had capacity to incite requisite emotion because it failed to identify particular audience to which act was directed and to assess likely effect of broadcast on ordinary member of audience – Tribunal also erred in failing to consider applicability of s20C(2)(c) of the Act to radio company’s defence – appeal allowed.

[Jones](#) (I G)**Australia and New Zealand Banking Group Ltd v Pola [2013] NSWSC 1801**

Supreme Court of New South Wales

Stevenson J

Loans and mortgages - trade practices - bank sought judgment for debt from mortgagor and possession of properties owned by him - mortgagor did not dispute bank’s claim but mortgagor and wife cross-claimed for set off arising out of bank’s sale as mortgagee in possession of another property they owned - cross-claimants alleged bank breached duty to take reasonable care to ensure property was sold at market value pursuant to s85(1) *Property Law Act 1974* (Qld), that bank and its agents breached ss52 & 53A *Trade Practices Act 1974* in relation to advertising of property’s sale and that agents breached duty concerning marketing and advertising of property - causation - held: agents did not owe duty of care to mortgagor - bank breached duty under s85 *Property Law Act* - cross-claims otherwise dismissed.

[ANZ](#) (I B)**Woodley v TAC [2013] VSCA 350**

Court of Appeal of Victoria

Maxwell P; Tate & Priest JJA

Transport accident - horse on agistment escaped from paddock onto highway - car collided with horse - driver’s wife was killed and daughter injured - Commission paid compensation for death and injury pursuant to *Transport Accident Act 1986* (Vic) - Commission commenced indemnity



proceedings under s104 against owner of property and tenant of house on neighbouring land - owner and tenant appealed separately from judgment upholding Commission's claim - owner claimed judge erred in finding that it breached its duty to avoid risk of injury to users of highway resulting from escape of horse - tenant contended judge erred in holding he owed any duty of care to users of highway to keep gate closed or in finding he breached his duty - held: no breach of duty by owner - tenant owed no duty of care to road users in respect of any risk associated with horse - appeals allowed.

[Woodley](#) (I G)

Birla Mt Gordon Pty Ltd v Miccon Hire Pty Ltd [2013] QCA 363

Court of Appeal of Queensland

Holmes & Morrison JJA; Boddice J

Contract - company sued mine site owner for money due under haulage contract - judgment given for company - owner appealed from primary judge's refusal of leave to adduce new expert report prepared day before trial commenced - r427 *Uniform Civil Procedure Rules 1999* (Qld) - prejudice - held: primary judge was swayed too much by question whether new evidence was contrary to pre-trial regime or r427 of the Rules - more fundamental question was whether unfairness to owner in refusing it chance to go to trial with evidence was outweighed by unfairness to company in allowing evidence - primary judge erred in insisting on trial proceeding on basis of owner being prevented from adducing the evidence - appeal allowed.

[Birla Mt Gordon](#) (I B C)

Hall v Don Faulkner Motors Pty Ltd [2013] QSC 331

Supreme Court of Queensland

Mullins J

Limitation of actions - plaintiff brought dependency claim under s64 *Civil Proceedings Act 2011* (Qld) on behalf of herself and her children in respect of death of husband 16 years after husband's death - plaintiff claimed husband's death caused by mesothelioma as result of negligence, breach of contract or breach of statutory duty by deceased's employers - employer and WorkCover Queensland sought determination of separate question whether plaintiff's claim for damages was barred by reason of s11(1) *Limitation of Actions Act 1974* (Qld) - held: s11(1) *Limitation of Actions Act* applied to a dependency claim - s11(2), which abolished limitation period for right of action relating to personal injury resulting from a dust-related condition, did not extend to dependency claim - effect of s11(1) was that plaintiff's dependency claim that accrued on deceased's death expired three years after his death - claim for damages statute-barred - orders made.

[Hall](#) (I)



Rodgers v Tasmanian Perpetual Trustees Ltd [2013] TASSC 73

Supreme Court of Tasmania

Holt AsJ

Succession - family provision – applicant child of testator sought order under s3(1) *Testator's Family Maintenance Act 1912* (Tas) substituting life interest in entirety of estate with absolute interest - s8A of the Act - held: applicant eligible to bring application - by failing to give applicant access to capital of his estate, testator had left applicant without adequate provision for proper maintenance and support - applicant did not require access to whole of capital in order to be properly provided for – provisions concerning accommodation and access to capital made.

[Rodgers](#) (B)

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