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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)

**CGU Insurance Ltd v Blakeley** (HCA) - joinder - Supreme Court of Victoria had authority to join insurer and grant relief sought - appeal dismissed (I B C G)

**Quach v New South Wales Health Care Complaints Commission** (NSWCA) - administrative law - cancellation of medical practitioner's registration - amended summons dismissed (I G)

**Stankovic v State of NSW** (NSWSC) - summary dismissal - plaintiff claimed State vicariously liable for tort of Land and Environment Court - claim unarguable and doomed to fail - proceedings abuse of process - proceedings dismissed (I)

**1ST Available v Melocco** (NSWSC) - contempt - contempt established against defendant - Court took into account defendant's apology - no penalty imposed (I)

**Stollery v Stollery** (NSWSC) - succession - claim by adult son for family provision from late father's estate - estrangement - failure to disclose financial position - claim refused (B)

**Sheehan v Brett-Young (No. 3)** (VSC) - pleadings - misfeasance in public office - malicious prosecution - plaintiff's claims not assigned to trustee in bankruptcy and could be maintained in proceedings against State and regulatory defendants (I B)

**The Salvation Army v Jarvis** (VSC) - statutory interpretation - accident compensation -

Magistrate erred in setting aside notice issued by insurer refusing to pay weekly payments to worker (I B)

## Summaries With Link (Five Minute Read)

### **CGU Insurance Ltd v Blakeley [2016] HCA 2**

High Court of Australia

French, Kiefel, Bell & Keane JJ

Joinder - corporations - insurance - claim under s588M *Corporations Act 2001* (Cth) in which plaintiffs were liquidators and company in liquidation who alleged company's directors breached s588G by failing to prevent company from incurring debts when it was insolvent - defendants' insurer sought leave to appeal against order joining it as a defendant - Court of Appeal of Victoria dismissed appeal - insurer appealed - whether Supreme Court of Victoria authorised to entertain claim for declaration that defendant's insurer liable to indemnify defendant - held: Supreme Court of Victoria had federal jurisdiction authorising it to entertain claim - Supreme Court of Victoria had power to grant relief sought in respect of insurance contract between directors and insurer - appeal dismissed.

[CGU Insurance](#) (I B C G)

### **Quach v New South Wales Health Care Complaints Commission [2016] NSWCA 10**

Court of Appeal of New South Wales

McColl, Meagher & Leeming JJ

Administrative law - judicial review of decisions of New South Wales Civil and Administrative Tribunal (NCAT) which found unsatisfactory professional conduct and professional misconduct against medical practitioner and cancelled his registration - Sch 5, Pt 6, cl 29, ss4, 8, 9, 10 & 15 *Civil and Administrative Tribunal Act 2013* (NSW) - s18 *District Court Act 1973* (NSW) - ss48 & 69 *Supreme Court Act 1970* (NSW) - procedural fairness - apprehended bias - failure to exercise right of appeal - held: no basis for granting any of relief which practitioner sought - amended summons dismissed.

[Quach](#) (I G)

### **Stankovic v State of NSW [2016] NSWSC 18**

Supreme Court of New South Wales

Davies J

Summary dismissal - negligence - plaintiff claimed State vicariously liable for tort committed by Land and Environment Court - defendants sought dismissal of statement of claim pursuant to r13.4 *Uniform Civil Procedure Rules 2005* (NSW) - plaintiff sought directions in relation to Notice to Produce and declaration proceedings in Land and Environment Court dismissed and not reinstated - plaintiff also sought refund of filing fees paid to commence present proceedings and application for leave to Court of Appeal - whether order made by judge was a nullity - judicial immunity - abuse of process - doctrine of extended estoppel - held: proceedings were attempt to

re-litigate matters decided adversely to plaintiff - proceedings were collateral attack on Court of Appeal's judgment - claim unarguable and doomed to fail - proceedings dismissed - plaintiffs' notices of motion dismissed.

[Stankovic](#) (I)

## **1ST Available v Melocco [2016] NSWSC 30**

Supreme Court of New South Wales

Hidden J

Contempt - plaintiffs alleged defendants breached undertakings in relation to proceedings between parties - whether contempt established beyond reasonable doubt - requirements for establishment of civil contempt - *National Australia Bank (NAB) Limited v Juric* [2001] VSC 375 - ss9 & 10 *Crimes (Sentencing Procedure) Act 1999* (NSW) - held: Court satisfied material gave rise to representations complained of - Court satisfied beyond reasonable doubt that defendant breached undertaking in respect of representations in manner alleged - breaches amounted to contempt - Court took defendant's apology into account and imposed no penalty.

[1ST](#) (I)

## **Stollery v Stollery [2016] NSWSC 54**

Supreme Court of New South Wales

Stevenson J

Succession - family provision - plaintiff sought family provision pursuant to s59 *Succession Act 2006* (NSW) from estate of late father - estrangement - disclosure of financial position - held: Court not satisfied deceased did not make adequate provision - plaintiff had not placed accurate statement of financial position before Court - plaintiff and deceased estranged for almost 25 years before deceased died - Court not satisfied modest provision made in deceased's Will inadequate - summons dismissed.

[Stollery](#) (B)

## **Sheehan v Brett-Young (No. 3) [2016] VSC 39**

Supreme Court of Victoria

John Dixon J

Pleadings - misfeasance in public office - malicious prosecution - plaintiff sought to file substitute proposed statement of claim - plaintiff claimed misfeasance in public office against regulatory defendants and malicious prosecution against State - plaintiff claimed damages and loss - regulatory and State defendants contested application - State contended proposed malicious prosecution claim had 'no real prospect of success' and should not be permitted - effect of plaintiff's bankruptcy on claims - whether maintainable claims - ss58, 60(4), 116(1), 116(2)(c) & 116(2)(g) *Bankruptcy Act 1966* (Cth) - held: claims not assigned to plaintiff's trustee in bankruptcy by ss58 & 116 - claims may be maintained by plaintiff subject to issues yet to be determined as to form of pleading.

[Sheehan](#) (I B)

## **The Salvation Army v Jarvis [2016] VSC 34**

Supreme Court of Victoria

Riordan J

Statutory interpretation - accident compensation - respondent worker employed by appellant - Magistrate set aside notice issued by insurer as Victorian WorkCover Authority's agent, of determination pursuant to s114(2A) *Accident Compensation Act 1985* (Vic) not to pay weekly payments to worker - employer appealed - held: Magistrate erred in setting aside insurer's decision by taking into account irrelevant consideration and not exercising discretion on basis of evidence and according to law - insurer entitled not to resume payments if preconditions in s114(2A) satisfied - no issue preconditions satisfied - insurer had exercised its discretion - no basis for court to re-exercise discretion.

[The Salvation Army](#) (I B)

## CRIMINAL

### Executive Summary

**Henderson v R** (NSWCCA) - criminal law - indecent assault - old offences - sentencing error established - applicant re-sentenced - appeal allowed

**Ryder v The Queen** (VSCA) - criminal law - incest - appellant's intellectual disability contributed to offending - appellant re-sentenced - appeal allowed

### Summaries With Link

#### **Henderson v R [2016] NSWCCA 8**

Court of Criminal Appeal of New South Wales

Bathurst CJ; Hoeben CJ at CL & RS Hulme AJ

Criminal law - indecent assault - old offences - applicant pleaded guilty to counts of indecent assault which took place between 1961 and 1978/9 against complainants - aggregate sentence imposed - applicant appealed against sentence - ss76 & 81 *Crimes Act 1900* (NSW) - s21A(2)(k); ss44 & 53A *Crimes (Sentencing Procedure) Act 1999* - s 5(1) *Criminal Appeal Act 1912* (NSW) - held: sentencing judge failed to have regard to sentencing practice at the time of offences - sentencing judge erred in relation to application of discount for early guilty plea - sentencing judge erred in finding applicant in position of trust or offending on sequences, and in finding applicant not unlikely to reoffend - Court satisfied applicant should be re-sentenced - appeal allowed.

[Henderson](#)

#### **Ryder v The Queen [2016] VSCA 3**



Court of Appeal of Victoria

Whelan JA & Cavenough AJA

Criminal law - incest - appellant pleaded guilty to one charge of incest - appellant sentenced to four years in prison with two year non-parole period - appellant contended sentencing judge erred in concluding his intellectual disability did not contribute to offending and failing to mitigate sentence for that contribution - appellant also contended head sentence and non-parole period manifestly excessive - s44(1) *Crimes Act 1958* (Vic) - held: appellant succeeded on ground of appeal in relation to contribution of intellectual disability to offending and mitigation of sentence - appellant resentenced - appeal allowed.

[Ryder](#)



# Benchmark

## **Interim**

Lola Ridge, 1873

The earth is motionless  
And poised in space ...  
A great bird resting in its flight  
Between the alleys of the stars.  
It is the wind's hour off ....  
The wind has nestled down among the corn ....  
The two speak privately together,  
Awaiting the whirr of wings.

[Lola Ridge](#)

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