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Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Prince v Malouf (NSWCA) - defamation - defences - surgeon's letter to patients attracted defence of common law qualified privilege - appeal allowed in part (I)

GIO General Ltd v Centennial Newstan Pty Ltd (NSWCA) - insurance - *combined business policy* - insurer liable to indemnify operator of coal mine for its liability to injured worker who was agent of company insured under policy (I B C)

Goodwin v Motor Accidents Authority of New South Wales (NSWSC) - motor accidents compensation - permanent impairment - decisions of Motor Accident Authority set aside (I G)

Pasqualotto v Pasqualotto (No 3) (VSC) - work injury damages - son employed by parents - parents negligent and in breach of statutory duty - son's contributory negligence 20% (I)

Roberts v Charterarm Investments Pty Ltd (VSC) - building contract - non-compliance with *Domestic Building Contracts Act 1995* (Vic) - matter remitted to VCAT (C G)

Stagg v North (QSC) - workers compensation - judicial review - no error in Medical Assessment Tribunal's decision that worker not suffering chronic regional pain syndrome (I G)

Psaros Builders Pty Ltd -v- Owners of Strata Plan 52843 (WASC) - administrative law - Building Commissioner may make more than one order to deal with complaint - appeal dismissed (C G)

Summaries with links (5 minute read)

Prince v Malouf [2014] NSWCA 12

Court of Appeal of New South Wales

McColl, Basten & Ward JJA

Defamation - qualified privilege - parties were ear nose and throat surgeons - appellant surgeon sent letters to hospital administrators and letter to patients referring to concerns as to post-operative care of patients on whom hospital was proposing respondent should conduct surgery - respondent sought damages for defamation - trial judge found in favour of respondent that patient letter had conveyed two defamatory imputations - trial judge found defamatory imputations were conveyed in respect of hospital administrator letters but that defence of common law qualified privilege made out - ss18, 27, 31, Sch 1, item 27 *Defamation Act 2005* (NSW) - ss20E, 20F, 20J, Div 6B, Pt 2 *Health Administration Act 1982* (NSW) - appellant contended patients letter attracted defence of qualified privilege or honest opinion and challenged quantum of damages - held: patients letter attracted common law qualified privilege - publication of copies of hospital administration letters to AMA and UMP did not attract defence of qualified privilege - damages awarded in respect of the publications to the AMA and UMP - appeal allowed in part.

[Prince](#) (I)

GIO General Ltd v Centennial Newstan Pty Ltd [2014] NSWCA 13

Court of Appeal of New South Wales

Meagher, Hoeben & Gleeson JJA

Contract - insurance - operator of coal mine (Centennial) entered agreement with company (Advantage) for supply of labour to Centennial's mine) - worker was supplied by Advantage to perform work - Advantage had agreement with worker's employer (Labourforce) under which it would make available services of persons, including worker, to Centennial - Advantage maintained *combined business policy* of insurance with appellant (GIO) - worker injured while



working at mine - worker sued Centennial, Labourforce and Advantage in negligence, who sued each other for contribution and indemnity - Centennial sought indemnity from GIO claiming it had benefit under policy issued to Advantage - primary judge found Centennial, Labourforce and Advantage each liable to worker and that Centennial should bear 100% of liability less a deduction pursuant to s151Z *Workers Compensation Act 1987* (NSW) - primary judge found GIO should indemnify Centennial - GIO accepted on appeal that if Advantage was contractually obliged to obtain insurance for Centennial's liability to worker, then Centennial was an insured within meaning of policy and entitled to indemnity - construction of Site Regulations - *respective liabilities* - *third parties* - held: not overwhelmingly improbable that parties intended Advantage would maintain insurance cover in respect of Centennial's liability for negligence to an employee, agent, or subcontractor of Advantage - clause of Site Regulations backed up by indemnity in event Advantage failed to obtain required insurance policies was directed to providing Centennial with cover of same character under policy for its own interests in performance of agreement by Advantage - appeal dismissed.

[GIO General](#) (I B C)

Goodwin v Motor Accidents Authority of New South Wales [2014] NSWSC 40

Supreme Court of New South Wales

Bellew J

Motor accidents compensation - judicial review - permanent impairment - plaintiff injured in motor accident sought review of two decisions of Motor Accidents Authority pursuant to *Motor Accidents Compensation Act 1999* (NSW) arising from error in medical assessment certificate - held: Proper Officer adopted legally erroneous approach in determining application for correction of assessor's certificate because he identified wrong issue or asked himself the wrong question - Proper Officer erred by accepting insurer's application for review of medical assessment and determining there was reasonable cause to suspect assessment of plaintiff's injuries was incorrect in material respect - decisions refusing application for correction of certificate and referring assessment of assessor to Medical Review Panel pursuant to s63 of the Act set aside.

[Goodwin](#) (I G)

Pasqualotto v Pasqualotto (No 3) [2014] VSC 26

Supreme Court of Victoria

Bell J

Negligence - breach of statutory duty - contributory negligence - plaintiff injured back during course of employment by parents on family farm – son had medical advice not to work on the farm due to pre-existing condition, known to his parents - plaintiff sued parents for negligence and breach of statutory duty - judgment entered in son's favour reduced by 70% for contributory negligence- plaintiff's appeal against jury verdict upheld - determination of remitted questions on basis parents negligent and breached statutory duty - held: son guilty of contributory negligence by working on farm against medical advice - parents in control of workplace and system of work - parents had full knowledge of son's back condition and medical advice - parents (through one parent) directed son to continue working contrary to his request not to do so - son's proportionate contribution assessed at 20% - parents' responsibility 80%.

[Pasqualotto](#) (I)**Roberts v Charterarm Investments Pty Ltd [2014] VSC 22**

Supreme Court of Victoria

Kaye J

Administrative law - cost-plus building contract - director of building company engaged appellant estate agent to purchase residential sites for re-development and sale of development - parties entered contract for works on property purchased by agent - dispute arose concerning time taken to complete works and cost of works - company suspended work - contract terminated - agent appealed from decision in which VCAT upheld company's claim for unpaid progress payments - held: Senior Member erred in concluding contract complied with s13 *Domestic Building Contracts Act 1995* (Vic) - estimated price stated by builder in contract was not a fair and reasonable estimate of total amount of money builder likely to receive under contract for purposes of s 13(2) of the Act - Senior Member did not err in finding company had reasonably incurred costs of building works claimed by it in progress claims - matter remitted for determination pursuant to s13(3)(b) of the Act.

[Roberts](#) (C G)

**Stagg v North [2014] QSC 8**

Supreme Court of Queensland

P McMurdo J

Administrative law - workers compensation - worker sought statutory order of review of decision of Medical Assessment Tribunal which rejected claim that she sustained a work injury being a chronic regional pain syndrome for purpose of *Workers' Compensation and Rehabilitation Act 2003* (Qld) - ss20(2)(e) 23(b) & 23(g) *Judicial Review Act 1991* (Qld) (JRA Act) - held: worker seeking merits review rather than identification of ground of review under JRA Act in submissions that Tribunal failed to take into consideration parts of American Medical Association Guides to the Evaluation of Permanent Impairment and evidence of doctor's report - court not satisfied Tribunal's decision could not have been reached by reasonable person, or that there was no evidence or other material to justify decision - application dismissed.

[Stagg](#) (C G)**Psaros Builders Pty Ltd -v- Owners of Strata Plan 52843 [2014] WASC 34**

Supreme Court of Western Australia

Allanson J

Administrative law - building and construction - appellant was builder of mixed use development - respondent was body corporate under s32 *Strata Titles Act 1985* (WA) - builder sought leave to appeal from decision of Building Commissioner under s105 *State Administrative Tribunal Act 2004* (WA) - builder contended State Administrative Tribunal acted beyond power by ordering it both to pay compensation and to remedy building services and that *Building Services (Complaint Resolution and Administration) Act 2001* (WA) (BSA) permitted it to make a building remedy order that consisted of one only of several alternative building remedy orders - statutory construction - comparison between ss36 & 41 BSA - *one of the following - one or more* - held: Tribunal may make more than one building remedy order where that is required to deal with a complaint - appeal dismissed.

[Psaros Builders](#) (C G)



Sonnet XL: Take all my loves, my love, yea, take them all

By William Shakespeare

Take all my loves, my love, yea, take them all:
What hast thou then more than thou hadst before?
No love, my love, that thou mayst true love call—
All mine was thine before thou hadst this more.
Then if for my love thou my love receivest,
I cannot blame thee for my love thou usest;
But yet be blamed if thou this self deceivest
By wilful taste of what thyself refuseth.
I do forgive thy robb'ry, gentle thief,
Although thou steal thee all my poverty;
And yet love knows it is a greater grief
To bear love's wrong than hate's known injury.
Lascivious grace, in whom all ill well shows,
Kill me with spites, yet we must not be foes.

[William Shakespeare](#)

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