



## Insurance Banking & Construction

### A Daily Bulletin listing Decisions of Superior Courts of Australia

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#### Executive Summary (1 minute read)

**Australian Competition & Consumer Commission v Singtel Optus Pty Ltd** – s52 *Trade Practices Act 1974* (Cth) - misleading & deceptive conduct (B)

**Kirk, in the matter of Primebroker Securities Ltd (Receivers and Managers Appointed) (in liq)** - s424(1) *Corporations Act 2001* (Cth) - application for directions (B)

**Vreman & Morris v Albury City Council** - Personal injuries - *Civil Liability Act 2002* (NSW) - purpose built skate park constructed & controlled by defendant - dangerous recreational activity (I)

**Carberry v Drice as Rep of Brisbane Junior Rugby Union (an unincorporated Body)** - Striking out application - circumstances in which Courts will intervene in affairs of voluntary associations (I)

**Hargans v Kemenes & Anor** - *Limitation of Actions Act 1974* (Qld) - personal injuries (I)

**K Page Main Beach Pty Ltd v Gold Coast City Council & Ors** - Residential Choice Domain - proposed high rise residential building on beach front site at Main Beach (C)



**Rossen v Airey** - Defamation - plaintiff applying for leave to amend writ of summons (I, B, C)

**Allianz Australia Insurance Ltd v Insurance Australia Ltd** - Double insurance - "bodily injury to a person caused by or arising out of the use of a motor vehicle" (I)

## Summaries with links (5 minute read)

### Wednesday 16 February 2011

**Australian Competition & Consumer Commission v Singtel Optus Pty Ltd [2011] FCA 87**

Federal Court of Australia

North J (in Melbourne)

s52 *Trade Practices Act* 1974 (Cth) - misleading & deceptive conduct - advertising - "unlimited" broadband - whether the public interest required an early application for interlocutory relief - declaration made.

[Singtel Optus](#) (B)

**Kirk, in the matter of Primebroker Securities Ltd (Receivers and Managers Appointed) (in liq) [2011] FCA 86**

Federal Court of Australia

North J (in Melbourne)

s424(1) *Corporations Act* 2001 (Cth) - application for directions by plaintiff receivers & managers that they are justified & are otherwise acting reasonably & appropriately in causing PSL to enter into & perform terms of a settlement in a proceeding in this Court brought against it by Bruval Enterprises Pty Ltd - application refused but confidentiality orders to be made.

[Kirk](#) (B)

**Vreman & Morris v Albury City Council [2011] NSWSC 39**

Supreme Court of New South Wales

Harrison J

Personal injuries - *Civil Liability Act* 2002 (NSW) - purpose built skate park constructed & controlled by defendant - each plaintiff alleging his fall from bike was caused by slippery & dangerous condition of skate park that resulted from application of paint - dangerous recreational



activity - risk warning - in each case, verdict for defendant - detailed consideration of legislation & Australian case law.

[Vreman and Morris](#) (I)

**Carberry v Drice as Rep of Brisbane Junior Rugby Union (an unincorporated Body) [2011] QSC 16**

Supreme Court of Queensland

Wilson J

Disciplinary proceedings - applicant suspended as junior rugby coach then excluded from rugby grounds for life - striking out applications; applicant seeking declaration of deemed admissions - circumstances in which Courts will intervene in affairs of voluntary associations - whether applicant can recover damages - statement of claim struck out with leave to replead - an interesting review of case law including *Cameron v Hogan* (1934) 51 CLR 358.

[Carberry](#) (I)

[Cameron](#) - decision High Court of Australia 3 August 1934

**Hargans v Kemenes & Anor [2011] QSC 15**

Supreme Court of Queensland

Ann Lyons J

*Limitation of Actions Act* 1974 (Qld) - personal injuries - motor accident while applicant a school student - knowledge of material facts - material facts of a decisive character - application dismissed.

[Hargans](#) (I)

**K Page Main Beach Pty Ltd v Gold Coast City Council & Ors [2011] QPEC 1**

Planning & Environment Court of Queensland

Rackemann DCJ

Residential Choice Domain - proposed high rise residential building on beach front site at Main Beach - whether building too tall & bulky given its location & site area - relevant performance criterion - whether in keeping with predominant residential character of surrounding area - whether height would result in a significant loss of visual amenity appeal allowed - development Application approved subject to conditions; adjournment granted for parties to consider the conditions.

[K Page Main Beach](#) (C)

**Rossen v Airey [2011] WASC 22**

Supreme Court of Western Australia

Le Miere J

Defamation - plaintiff applying for leave to amend his writ of summons – the United Kingdom & Australian case law considered as to determining whether an amendment raises a new cause of action which a statute of limitation prohibits or a new description or formulation of a cause of action already within the indorsement - application to amend dismissed.

[Rossen](#) (I, B, C)

**Allianz Australia Insurance Ltd v Insurance Australia Ltd [2011] ACTSC 19**

Supreme Court of the Australian Capital Territory

Foster J - Sydney (via video link to Canberra)

Double insurance - whether principles of double insurance applied as between statutory workers compensation insurer & statutory compulsory third party motor vehicle insurer of employer whose employee was injured during loading of his tipper truck - as at April 1996, s54(1)(b) *Motor Traffic Act* 1936 (A.C.T) - “bodily injury to a person caused by or arising out of the use of a motor vehicle ...” - principles of double insurance applied - judgment for plaintiff against defendant in sum of \$172,081.03.

[Allianz Australia Insurance](#) (I)

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