

Thursday 16 February 2012

Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Cicciarelli v Qantas Airways Ltd - *Workplace Relations Act 1996* (Cth) - whether breach of employment contract - application dismissed (I, B, C, G)

Comcare v Transpacific Industries Pty Ltd - *s16 Occupational Health & Safety Act 1991* (Cth) (I, C)

Lewis v Motor Accident Authority of New South Wales & Ors - *Motor Accidents Compensation Act 1999* (NSW) (I)

Guijar v Australia & New Zealand Banking Group Ltd; Australia & New Zealand Banking Group Ltd v Guijar - Banking - contracts - applications for leave to appeal (B)

Free Serbian Orthodox Church Diocese for Australia and New Zealand Property Trust - *Trustee Act 1925* (NSW) - order pursuant to s63 (B)

AMP Capital Investors Ltd as Responsible Entity for the KSC Trust - *s63 Trustee Act 1925* (NSW) - application for judicial advice (B)



Robinson & Aballa Pty Ltd v Gollan & Gollan - Wills - estoppel (B)

Twinbrook Corporation Pty Ltd v WMP Pty Ltd - s12A *Builders' Registration Act* 1939 (WA) - statutory interpretation - standing (C)

Summaries with links (5 minute read)

Cicciarelli v Qantas Airways Ltd [2012] FCA 56

Federal Court of Australia

Kenny J

Workplace Relations Act 1996 (Cth) - termination of employment of first & second applicants - applicants delegates of industrial organisation - whether applicants' employment was terminated for a prohibited reason - summary dismissal - whether breach of employment contract - answer 'no' - applicant's amended application dismissed - Australian case law considered.

[Cicciarelli](#) (I, B, C, G)

Comcare v Transpacific Industries Pty Ltd [2012] FCA 90

Federal Court of Australia

Barker J

S16 *Occupational Health & Safety Act* 1991 (Cth) - contravening conduct - open manholes - fall hazard - pecuniary penalty.

[Comcare](#) (I, C)

Lewis v Motor Accident Authority of New South Wales & Ors [2012] NSWSC 56

Supreme Court of New South Wales

Adams J

Motor Accidents Compensation Act 1999 (NSW) - causation - medical assessment - assessor had certified plaintiff's impairment did not exceed 10% - plaintiff had applied under s63(1) for a referral of medical assessment to a review panel - the proper officer dismissed the application for review as she was "not satisfied that there is reasonable cause to suspect that the medical assessment is incorrect in a material respect" - no error of law by proper officer - summons dismissed.

[Lewis](#) (I)



Guijar v Australia & New Zealand Banking Group Ltd; Australia & New Zealand Banking Group Ltd v Guijar [2012] NSWCA 10

Court of Appeal of New South Wales

Campbell JA, Handley & Sackville AJJA

Banking - contracts - both parties seeking leave to appeal from Supreme Court decision: Bank's application for leave granted - Supreme Court orders set aside - appeal from magistrate's decision dismissed.

[Guijar](#) (B)

[Guijar](#) - decision Supreme Court 3 March 2011 - appeal from magistrate upheld.

Free Serbian Orthodox Church Diocese for Australia and New Zealand Property Trust [2012] NSWSC 47

Supreme Court of New South Wales

Ball J

Trustee Act 1925 (NSW) - order pursuant to s63 that plaintiff Property Trust justified in seeking instructions & obtaining legal advice as to its prospects of successfully defending proceedings.

[Free Serbian Orthodox Church Diocese](#) (B)

AMP Capital Investors Ltd as Responsible Entity for the KSC Trust [2012] NSWSC 67

Supreme Court of New South Wales

Slattery J

S63 *Trustee Act* 1925 (NSW) - application for judicial advice - applicant justified in defending proceedings using resources of the trust.

[AMP Capital Investors](#) (B)

Robinson & Aballa Pty Ltd v Gollan & Gollan [2012] NSWSC 51

Supreme Court of New South Wales

Black J

Wills - possession - construction of will - estoppel - equitable compensation - whether pleaded representations established - whether detriment established - unconscionability - extensive consideration of text & case law from UK & Australia.

[Robinson](#) (B)



Twinbrook Corporation Pty Ltd v WMP Pty Ltd [2012] WASC 41

Supreme Court of Western Australia

Hall J

Builders' Registration Act 1939 (WA) - statutory interpretation - strata plan development - standing - s12A: Order to remedy unsatisfactory building work - application for leave to appeal from a decision of State Administrative Tribunal - leave to appeal refused.

[Twinbrook](#) (C)

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