

Monday 16 July 2012

## Insurance, Banking, Construction & Government

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

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#### Executive Summary (1 minute read)

**Spaul v Comcare** - administrative law - AAT failed to deal with argument put by applicant - decision set aside - matter remitted to AAT (I, G)

**Stevenson v Regents Park Sporting & Community Club Ltd** - contract - plaintiff contracted to run a bistro in club operated by defendant - termination of contract valid (B)

**Police and Community Youth Clubs NSW Ltd v Millenium Training and Hyper Martial Arts Pty Ltd** - contract - plaintiff engaged defendant to provide martial arts program - termination of contract invalid (B)

**Wyong Shire Council v Jenbuild** - commercial arbitration - contract contained arbitration agreement within meaning of *s7 Commercial Arbitration Act 2010 (NSW)* (I, B)

**Grant v Hall** - security for costs - Court has inherent jurisdiction to order security for costs against a natural person - security for costs not ordered (I)



**In the matter of Central Petroleum Ltd** - company law - shareholder sought declaration that scheduled general meeting of Central Petroleum had been called for an improper purpose - application refused (B)

**Lowes v Amaca Pty Ltd** - asbestos litigation - *Calderbank* offer - defendant did not adopt unreasonable view of its prospects of defending claim (I, C)

## Summaries with links (5 minute read)

### **Spaul v Comcare [2012] FCA 741**

Federal Court of Australia

Gray J

Administrative law - applicant injured while employed by Medicare - AAT assessed compensation payable under *Safety, Rehabilitation and Compensation Act 1988* (Cth) - applicant appealed to Federal Court - held: AAT failed to deal with argument put by applicant - thereby committed error of law - not appropriate for Court to make finding of fact - AAT's decision set aside - matter remitted to AAT.

[Spaul](#) (I, G)

### **Stevenson v Regents Park Sporting & Community Club Ltd [2012] NSWSC 424 & 736**

Supreme Court of New South Wales

Fullerton J

Contract - plaintiff contracted to run a bistro in club operated by defendant - voluntary administrator took control of defendant under deed of company arrangement - administrator terminated contract - alleged failure to remedy breaches - plaintiff sued for damages - held: parties intended their written agreement to regulate their relationship, irrespective of earlier oral communications - on proper construction, defendant could require plaintiff to operate bistro throughout club's opening hours - plaintiff given adequate notice of intention to terminate - termination valid - verdict for defendant - *Calderbank* offer - plaintiff to pay defendant's costs on indemnity basis.

[Stevenson](#) (B)

[Stevenson \(costs\)](#)



## **Police and Community Youth Clubs NSW Ltd v Millenium Training and Hyper Martial Arts Pty Ltd [2012] NSWSC 754**

Supreme Court of New South Wales

Fullerton J

Contract - plaintiff engaged defendant to provide martial arts program - defendant had Australian rights to certain intellectual property - rights to intellectual property revoked by third party - plaintiff then purported to terminate contract - plaintiff sued to recover money paid under contract - Local Court found for defendant - held: appeal on question of law, as no leave sought to appeal on mixed question of fact and law - wrong finding of fact not an error of law unless no evidence to support it - termination invalid - appeal dismissed.

[Police and Community Youth Clubs](#) (B)

## **Wyong Shire Council v Jenbuild [2012] NSWSC 720**

Supreme Court of New South Wales

McDougall J

Commercial arbitration - Council engaged defendant to upgrade holiday park - disputes arose - question whether contracts contained arbitration agreement within meaning of *s7 Commercial Arbitration Act 2010 (NSW)* - held: on proper construction of contracts, parties failed to achieve agreement on dispute resolution procedure - parties' later correspondence resulted in a later ancillary contract governing dispute resolution - this contract was an arbitration agreement within meaning of *s7* - further, Council would be estopped from denying the existence of this contract.

[Wyong Shire Council](#) (I, B)

## **Grant v Hall [2012] NSWSC 779**

Supreme Court of New South Wales

Nicholas J

Security for costs - plaintiff sought exclusive possession of land on Hawkesbury River - defendant sought security for costs - defendant said plaintiff had not paid costs of earlier similar proceedings, was an elderly woman of limited means, and had a weak case - held: Court has inherent jurisdiction to order security for costs against a natural person - no absolute rule to control the discretion - plaintiff's poverty no reason in itself to make order - may be a relevant consideration - failure to meet costs order in unrelated litigation ten years previously was little indication of ability to meet costs orders in these proceedings - security for costs not ordered.

[Grant](#) (I)

**In the matter of Central Petroleum Ltd [2012] QSC 191**

Supreme Court of Queensland

Philippides J

Company law - shareholder sought declaration that scheduled general meeting of Central Petroleum had been called for an improper purpose - s181 *Corporations Act* 2001 (Cth) - allegedly for purpose of neutering attempt to remove directors at later meeting - held: Court was unable to draw inference of improper purpose - open to shareholders simply to vote against resolutions proposed at first meeting - nothing impeded shareholders removing directors at later meeting - application refused.

[Central Petroleum](#) (B)

**Lowes v Amaca Pty Ltd [2011] WASC 287 (S)**

Supreme Court of Western Australia

Corboy J

Negligence - asbestos litigation - defendant had been found liable - plaintiff applied for indemnity costs and for judgment to be amended to correct error in calculating damages - held: *Calderbank* offer will only justify indemnity costs when rejection was unreasonable - matter of impression and judgment - defendant did not adopt unreasonable view of its prospects of defending claim - defendant did not conduct case unreasonably - error in judgment should be corrected as sought by plaintiff.

[Lowes](#) (I, C)

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