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Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

Important Announcement



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Executive Summary (1 minute read)

The Commonwealth v Australian Capital Territory (HCA) - constitutional law - *Marriage Equality (Same Sex) Act 2013* (ACT) could not operate concurrently with *Marriage Act 1961* (Cth) and was of no effect (G)

Australian Competition and Consumer Commission v TPG Internet Pty Ltd (HCA) - internet service provider engaged in misleading and deceptive conduct - penalty reinstated (I B G)

Compagnie Francaise D'Assurance Pour le Commerce Exterieur t/as Coface Australia v Sims Group Australia Holdings Ltd (NSWCA) - contract - claim under trade credit insurance policy - business sale agreement - insurer's appeal allowed in part (I B C)



Waratah Engineering Pty Ltd v Baggs (NSWCA) - workers compensation - worker was not a *coal miner* at time of motor vehicle accident - appeal allowed (I C)

Parkview Qld Pty Ltd v Commonwealth Bank of Australia (NSWCA) - equity - trusts and trustees - building contract - bank not obliged to account to contractor for retention money - appeal dismissed (I B C)

QBE Insurance (Australia) Ltd v NSW Self Insurance Corporation (NSWSC) - motor accidents compensation - Self Insurance Corporation not obliged to contribute to settlement sum paid to injured police officer (I G)

Eaton v ISS Catering Pty Ltd (VSCA) - slip and fall - expert reports - no error in trial judge's refusal to grant adjournments to allow for *wet and dry slip test* (I)

Summaries with links (5 minute read)

The Commonwealth v Australian Capital Territory [2013] HCA 55

High Court of Australia

French CJ; Hayne, Crennan, Kiefel, Bell & Keane JJ

Constitutional law - same sex marriage – ACT legislature passed *Marriage Equality (Same Sex) Act 2013* (Marriage Equality Act) purporting to authorise same sex marriage – Commonwealth challenged its validity - held: Commonwealth Parliament has power to make laws with respect to same sex marriage under s51(xxi) Constitution - *Marriage Act 1961* (Cth) does not currently permit same sex marriage - s28 *Australian Capital Territory (Self-Government) Act 1988* (Cth) provides ACT legislation has no effect to the extent it cannot operate concurrently with Commonwealth laws - Marriage Equality Act could not operate concurrently with *Marriage Act 1961* - whole of Marriage Equality Act of no effect.

[The Commonwealth](#) (G)

Australian Competition and Consumer Commission v TPG Internet Pty Ltd [2013] HCA 54

High Court of Australia

French CJ, Crennan, Bell, Gageler & Keane JJ

Consumer law - misleading and deceptive conduct - TPG engaged in advertising campaign which offered consumers attractive price for service - ACCC alleged advertisements were misleading



and deceptive due to disparity between prominent headline offering service and less prominent terms qualifying offer - ACCC also alleged some advertisements contravened s53C(1)(c) *Trade Practices Act 1974* (Cth) by failing to specify *in a prominent way and as a single figure, the single price* for package of services - held (by majority): Full Court of Federal Court erred in finding primary judge wrong to regard advertisements' *dominant message* as critically important - Full Court also erred in failing to appreciate that its attribution to members of target audience of knowledge that services may be offered as a *bundle* did not neutralise advertisements' tendency to mislead - Full Court erred in performance of its appellate function - pecuniary penalty of \$2 million imposed by primary judge reinstated.

[ACCC](#) (I B G)

Compagnie Francaise D'Assurance Pour le Commerce Exterieur t/as Coface Australia v Sims Group Australia Holdings Ltd [2013] NSWCA 418

Court of Appeal of New South Wales

Barrett & Ward JJA; Sackville AJA

Contract - insurance - respondent company made claim on trade credit insurance policy - insurer denied claim - primary judge held insurer liable under policy - insurer appealed against liability and quantum - insurer contended company breached clause of policy by releasing its charge over assets of purchaser to which it sold its steel distribution business - whether amounts owed to respondent under contracts with supplier of steel were *in connection with* business sale agreement - held: challenge to findings on liability failed - primary judge erred in calculation of quantum - insurer not liable for debts contained in four disputed invoices which had already been paid by purchaser - appeal allowed in part.

[Compagnie Francaise D'Assurance Pour le Commerce Exterieur t/as Coface Australia](#) (I B C)

Waratah Engineering Pty Ltd v Baggs [2013] NSWCA 427

Court of Appeal of New South Wales

Basten & Meagher JJA; Sackville AJA

Workers compensation - worker injured in motor vehicle accident when travelling to work at coal mine - entitlement to damages from employer depended on whether he was employed as *coal miner* for purpose of *Workers Compensation Act 1987* (NSW) (WCA) and *Workplace Injury Management and Workers Compensation Act 1998* (NSW) at time of accident - Sch6, Pt18, Cl3, ss3, 10, 11, 35, 150A, 151E-151IA, 151U & 282 WCA - *employed in or about a mine* - held (by majority): primary judge's approach did not address correct question whether at time of accident work in which worker was engaged was being undertaken in or in physical proximity to mine for



purposes connected with business or operation of mine - worker was travelling by road to mine at time of accident and had not commenced any activity or duty - worker not in sufficient proximity to mine to be *in or about* it - appeal allowed.

[Waratah Engineering](#) (I C)

Parkview Qld Pty Ltd v Commonwealth Bank of Australia [2013] NSWCA 422

Court of Appeal of New South Wales

Meagher, Ward & Leeming JJA

Equity - trusts and trustees - contract - contractor built a development under building contract with developer – bank financed construction - developer placed into liquidation after practical completion - whether bank obliged to account to contractor for money developer had been contractually obliged to retain out of progress payments - developer had breached contract by not separately retaining such funds - held: developer's failure to retain funds meant there were no relevant trust assets - bank not liable as constructive trustee or trustee *de son tort* - claim based on representations failed - in taking delivery of bank guarantee bank was acting only as developer's agent - bank should not account for funds not retained - appeal dismissed.

[Parkview QLD](#) (I B C)

QBE Insurance (Australia) Ltd v NSW Self Insurance Corporation [2013] NSWSC 1841

Supreme Court of New South Wales

Hammerschlag J

Insurance - equity - motor accidents compensation - workers compensation - contribution - police officer was passenger in motor vehicle owned by employer and driven by another police officer - police officer injured in course of employment when motor vehicle was involved in accident caused by driver's negligence - vehicle insured by insurer under policy prescribed by *Motor Accidents Compensation Act 1999* (NSW) - police officer claimed damages from police force and driver - insurer granted police force indemnity under policy - police officer and insurer entered settlement for amount - insurer contended Self Insurance Corporation had common obligation with insurer to indemnify police force under the Treasury Managed Fund (TMF) - insurer claimed Self Insurance Corporation obliged to contribute half settlement sum - held: TMF provided no risk cover in nature of insurance to anyone - Self Insurance Corporation's obligation was to manage TMF by meeting claims made against Government agencies - obligation not co-ordinate with that of insurer under motor-vehicle policy - proceedings dismissed.

[QBE Insurance \(Australia\)](#) (I G)



Eaton v ISS Catering Pty Ltd [2013] VSCA 361

Court of Appeal of Victoria

Neave JA; Hargrave & Dixon AJJA

Adjournment - expert reports - appellant claimed she was injured in fall on wet mossy concrete surface covered with loose pebbles - appellant claimed damages from employer, council and property owner - appellant failed to comply with order for filing of expert report's by certain date - appellant appealed from trial judge's refusal to grant adjournments in jury trial for purpose of obtaining *wet and dry slip test* - held: primary judge did not incorrectly treat applications for adjournment as attempts to extend case beyond pleadings - primary judge implicitly took account of earlier refusal to grant adjournment and took in to account matters in s9 *Civil Procedure Act 2010* (Vic) - appellant did not demonstrate primary judge erred in exercise of discretion - primary judge's refusal to grant adjournments not so plainly unreasonable that it can be inferred that he must have erred - appeal dismissed.

[Eaton](#) (I)

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