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## Daily Composite Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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### CIVIL (Insurance, Banking, Construction & Government)

### Executive Summary (1 minute read)

**Duncan v NSW; NuCoal Resources Ltd v NSW; Cascade Coal Pty Ltd v NSW** (HCA) - constitutional law - cancellation of exploration licences - validity of provisions of Sched 6A *Mining Act 1992* (NSW) upheld (I B C G)

**White v The Local Health Authority** (NSWSC) - habeas corpus - plaintiff under guardianship released from mental health facility (I B)

**Application of the NSW Trustee and Guardian; Estate of SGB** (NSWSC) - trusts and trustees - intestacy - judicial advice given concerning distribution of estate (B)

**Big Country Developments Pty Ltd v Griffiths** (NSWSC) - evidence - cross-examination of witness by video link refused (I B)

**Fast v Rockman** (VSCA) - trusts and trustees - refusal of application for directions - hypothetical questions about future events - appeal dismissed (B)

**Walsh v WorleyParsons Ltd** (VSC) - discovery - subpoenas set aside on grounds they constituted impermissible fishing (I B)

**Lawrie v Lawler** (NTSC) - administrative law - inquiry into proposed grant of lease of Crown land by Minister - no denial of procedural fairness - report not quashed (B G)

## Executive Summary (1 minute read) with Link

### **Duncan v NSW; NuCoal Resources Ltd v NSW; Cascade Coal Pty Ltd v NSW [2015] HCA 13**

High Court of Australia

French CJ; Hayne, Kiefel, Bell, Gageler, Keane & Nettle JJ

Constitutional law - special case - questions for determination - three proceedings challenging validity of provisions of Sched 6A *Mining Act 1992* (NSW) inserted into Mining Act by *Mining Amendment (ICAC Operations Jasper and Acacia) Act 2014* (NSW) which cancelled three exploration licences without compensation - Amendment Act was enacted following consideration by New South Wales Parliament of reports of ICAC investigations - proceedings brought by the corporate licensees of two of the cancelled exploration licences, their parent company and one of its former directors, and the parent company of the corporate licensee of the other cancelled exploration licence - held: validity of provisions upheld - Amendment Act was a law within competence of New South Wales Parliament - Amendment Act did not involve exercise of judicial power so the existence and scope of an implied limitation on the ability to exercise judicial power did not arise for consideration.

[Duncan](#) (I B C G)

### **White v The Local Health Authority [2015] NSWSC 417**

Supreme Court of New South Wales

Slattery J

Mental health - habeas corpus - plaintiff being kept against will in Adult Mental Health Unit since November 2013 - plaintiff neither “mentally ill person” or “mentally disordered person” under *Mental Health Act 2007* (NSW) - plaintiff with assistance of tutor sought order in nature of habeas corpus under s61 *Supreme Court Act 1970* (NSW) for release and alternatively under s166 *Mental Health Act* - operation of *Guardianship Act 1987* (NSW) and *Mental Health Act* - whether Public Guardian authorised under *Guardianship Act* and *Mental Health Act* to make decision to admit plaintiff to facility - whether power validly exercised on the evidence - held: plaintiff entitled to be released - Court had grave misgivings about releasing plaintiff without plan for immediate future - Court prepared to grant short stay to enable parties to consult concerning plan for plaintiff.

[White](#) (I B)

### **Application of the NSW Trustee and Guardian; Estate of SGB [2015] NSWSC 398**

Supreme Court of New South Wales

White J

Wills and estates - trusts and trustees - intestacy - application for judicial advice concerning distribution of estate - deceased died intestate with no spouse or issue - deceased's mother identified and half of estate distributed to her - deceased's father located - father not capable -

evidence that father's attorney had informed NSW Trustee by telephone that no claim would be made on estate - held: NSW Trustee entitled to proceed on basis telephone advice was genuine, that the disclaimer effective, and that it was justified in distributing balance of estate to deceased's mother - procedure to be undertaken in accordance with s63 *Trustee Act 1925* (NSW) - orders made.

[SGB](#) (B)

## **Big Country Developments Pty Ltd v Griffiths [2015] NSWSC 414**

Supreme Court of New South Wales

Kunc J

Evidence - fourth defendant sought order pursuant to Pt 31 r31.3 *Uniform Civil Procedure Rules 2005* (NSW) for cross-examination of witness to be taken by audio-visual link from London - held: evidence did not sustain finding that witness unable to travel to Australia - Court not satisfied cost of coming to Australia so disproportionate to amount of money at stake that it would otherwise depart from usual position - no explanation for absence of medical evidence as to witness's illness or for delay in making application - no evidence video link could take place - application dismissed.

[BigCountry](#) (I B)

## **Fast v Rockman [2015] VSCA 61**

Court of Appeal of Victoria

Warren CJ, Santamaria JA & Ginnane AJA

Trusts and trustees - first, second and third appellants were executors of deceased's estate - respondents were infant children of deceased - appeal against dismissal of application in which appellants sought directions about their duties as trustees or as directors of companies which were trustees - primary judge held questions in originating motion were hypothetical questions about future events - r54.02 *Supreme Court (General Civil Procedure) Rules 2005* (Vic) - held: Court not persuaded primary judge erred in dismissing application - no inadequacy of reasons - no error in exercise of discretion as to costs - appeal dismissed.

[Fast](#) (B)

## **Walsh v WorleyParsons Ltd [2015] VSC 135**

Supreme Court of Victoria

Almond J

Discovery - plaintiff sought order that subpoenas be set aside on grounds they were fishing, vexatious, oppressive, abuse of process and breach of defendant's overarching obligations under ss16, 19, 20 & 24 *Civil Procedure Act 2010* (Vic) - legitimate forensic purpose - r42.04(1) *Supreme Court (General Civil Procedure) Rules 2005* (Vic) - held: certain subpoenas set aside on grounds they constituted impermissible fishing.

[Walsh](#) (I B)

## **Lawrie v Lawler [2015] NTSC 19**

Supreme Court of the Northern Territory

Southwood J

Administrative law - Legislative Assembly of the Northern Territory resolved under s4A *Inquiries Act* (NT) that person be appointed to inquire into circumstances of Minister's decision to grant a lease over lot and report to Administrator - plaintiff claimed Commissioner's report contained adverse findings and recommendations which damaged her reputation - plaintiff claimed she was denied procedural fairness by denied an opportunity to respond to the adverse findings about her before Commissioner finalised report - plaintiff sought to quash report - held: plaintiff's claim could not be sustained - plaintiff was accorded procedural fairness - even if Court wrong in that conclusion, plaintiff had waived any right to greater procedural fairness than Commissioner accorded her

[Lawrie](#) (B G)

## CRIMINAL

### Executive Summary

**R v Simmons; R v Moore** (NSWSC) - criminal law - assumed identities - orders to protect identities of undercover operatives - non-publication orders

**R v Simmons (No 6)** (NSWSC) - criminal law - evidence - privilege against self-incrimination - witness required to give evidence

### Executive Summary (1 minute read) with Link

**R v Simmons; R v Moore [2015] NSWSC 73**

Supreme Court of New South Wales

Hamill J

Criminal law - assumed identities - New South Wales Commissioner of Police sought orders to protect identity of witnesses who were undercover operatives - orders sought under *Law Enforcement and National Security (Assumed Identities) Act 2010* (NSW) - Commissioner also sought non-publication orders under *Court Suppression and Non-publication Orders Act 2010* (NSW) - held: in interests of justice to do what was necessary to protect witnesses' identities - Court satisfied non-publication order necessary to prevent prejudice to the proper administration - orders made. [RvSimmons](#)

**R v Simmons (No 6) [2015] NSWSC 418**

Supreme Court of New South Wales

Hamill J

Criminal law - evidence - privilege against self-incrimination - accused was on trial for murder -



Crown called witness who was previously co-accused to give evidence - witness's charge reduced to accessory after the fact to murder - whether witness should be required to give evidence over anticipated objection pursuant to s 128 *Evidence Act 1995* (NSW) on basis it might tend to prove he committed offence - seriousness of charge of murder - potential significance of evidence - no pending charges against witness - unlikelihood that decision to discontinue would be revisited by DPP - *X7 v Australian Crime Commission* [2013] HCA 29 - held: there were reasonable grounds for objection taken by witness - it was in interests of justice that witness be required to give evidence

[RvSimmonsNo.6](#)

## **Tall Nettles**

By Edward Thomas

TALL nettles cover up, as they have done  
These many springs, the rusty harrow, the plough  
Long worn out, and the roller made of stone:  
Only the elm butt tops the nettles now.

This corner of the farmyard I like most:  
As well as any bloom upon a flower  
I like the dust on the nettles, never lost  
Except to prove the sweetness of a shower.

[Edward Thomas](#)

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