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

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Executive Summary (1 minute read)

In the matter of Securities Exchanges Guarantee Corporation Limited as trustee for the National Guarantee Fund (NSWSC) - trusts and trustees - judicial advice granted to trustees in relation to compensation regime under Pt 7.5 *Corporations Act 2001* (Cth) (I B)

Henry v Hancock (NSWSC) - succession -summons filed out of time by adult daughter of deceased seeking provision from deceased's notional estate - summons dismissed (B)

Manning v Matsen (No. 2) (NSWSC) - costs - indemnity costs - unsuccessful plaintiff unreasonably rejected Calderbank offer - defendant granted indemnity costs (B C)

Swindells v State of Victoria (VSCA) - misleading and deceptive conduct - employment law - no unlawful appointment and removal of mining warden - appeal dismissed (I B)

Petrogas Pty Ltd v Doolan (VSC) - judicial review - accident compensation - Medical Panel's reasons manifestly inadequate - Medical Panel's opinion quashed (I G)

Ragless v The South Australian Field & Game Association Southern Branch Inc (SASC) - associations and clubs - preliminary issue - appellant had resigned from membership and had no standing to bring action - appeal dismissed (B)

Re Janette Eleanor Counsel; Ex Parte The Public Trustee (WASC) - Wills and estates - probate - Public Trustee granted leave to withdraw affidavits lodged in relation to validity of Will (B)

Summaries With Link (Five Minute Read)

In the matter of Securities Exchanges Guarantee Corporation Limited as trustee for the National Guarantee Fund [2016] NSWSC 76

Supreme Court of New South Wales

Ball J

Trusts and trustees - judicial advice - Securities Exchanges Guarantee Corporation Limited (SEGC) was trustee of fund established to compensate retail clients for loss due to default by participant in financial market operated by ASX - SEGC sought judicial advice pursuant to s63 *Trustee Act 1925* (NSW) regarding settling contract guarantee claims on fund - compensation regime under Pt 7.5 *Corporations Act 2001* (Cth) - standing - jurisdiction - whether advice should be given - whether trustee justified to allow and settle contract guarantee claims made under subdivision 4.3 of Div 4 of Pt 7.5 *Corporations Regulations 2001* (Cth) - held: judicial advice granted.

[Securities Exchanges](#) (I B)

Henry v Hancock [2016] NSWSC 71

Supreme Court of New South Wales

Brereton J

Succession - adult daughter of deceased filed summons nearly 6 years out of time seeking provision from notional estate - whether sufficient cause to make application out of time - whether special circumstances for designating order to be made - adequacy of provision for plaintiff - ss436A & 439A *Corporations Act 2001* (NSW) - *Testator's Family Maintenance and Guardianship of Infants Act 1916* (NSW) - ss7, 9(2), 9(3)(a), 16, 27(1)(a) & 28(5) *Family Provision Act 1982* (NSW) - s90 *Succession Act 2006* (NSW) - held: Court did not exercise discretion to extend time - plaintiff had not been left with inadequate provision - even if provision inadequate, Court would not exercise discretion to make order in plaintiff's favour - summons dismissed.

[Henry](#) (B)

Manning v Matsen (No. 2) [2016] NSWSC 70

Supreme Court of New South Wales

Slattery J

Indemnity costs - Court declined to make family provision order in plaintiff's favour - defendant sought indemnity costs on basis of two Calderbank letters - plaintiff argued rejection of Calderbank offers was not unreasonable - plaintiff contended there was difficult point of law at stake, that neither offer was a genuine offer of compromise; and that it was not unreasonable for plaintiff to reject offers given state of evidence at the time offers were sent - public interest - held: plaintiff unreasonably rejected one of the Calderbank offers - indemnity costs order granted to defendant.

[Manning](#) (B C)

Swindells v State of Victoria [2016] VSCA 9

Court of Appeal of Victoria

Warren CJ; Tate & Santamaria JJA

Misleading and deceptive conduct - employment law - applicant alleged he was unlawfully appointed to and removed from office of mining warden by State and Minister - applicant claimed damages for loss of salary and entitlements under employment contract, loss of earning capacity, reputational harm and emotional distress - primary judge found State and Minister did not contravene s13 *Fair Trading Act 1999* (Vic) when appointing appellant and in removing plaintiff State and Minister did not repudiate or breach any term of employment contract, deny him procedural fairness, act for an improper purpose or with apprehended bias - applicant contended primary judge erred in holding respondents had not misled him by failing to disclose that *Mineral Resources (Sustainable Development) Act 1990* was under review which could lead to abolition of mining warden's office - applicant contended primary judge reversed onus of proof and erred in finding no denial of procedural fairness - held: application for leave had no reasonable prospects of success - application dismissed.

[Swindells](#) (I B)

Petrogas Pty Ltd v Doolan [2016] VSC 46

Supreme Court of Victoria

McDonald J

Judicial review - accident compensation - worker sought resumption of weekly payments pursuant to *Accident Compensation Act 1985* (Vic) - Magistrates' Court referred questions to Medical Panel - Panel found worker had no current work capacity and that this was likely to continue indefinitely - held: Panel's reasons were manifestly inadequate - opinion quashed - medical questions remitted to differently constituted Panel for determination in accordance with law.

[Petrogas](#) (I G)

Ragless v The South Australian Field & Game Association Southern Branch Inc [2016] SASC 8

Supreme Court of South Australia

Vanstone J

Associations and clubs - preliminary issue - standing - plaintiff alleged breaches by defendant of Constitution of *Association and Associations Incorporation Act 1985* (SA) - plaintiff sought orders regulating Association's conduct, expulsion of certain members, damages and reimbursement - Magistrate found appellant had resigned from membership and had no standing to bring proceedings - held: Magistrate correct in finding on preliminary issue - appellant had resigned by time action was commenced - appeal dismissed.

[Ragless](#) (B)

Re Janette Eleanor Counsel; Ex Parte The Public Trustee [2016] WASC 47



Supreme Court of Western Australia
Registrar C Boyle

Wills and estates - probate - evidence required to prove validity - Public Trustee sought probate of deceased's Will - there was suggestion of invalidity of Will - Public Trustee had lodged a number of affidavits on basis invalidity needed to be brought to Court's attention and evidence in relation to it must be disclosed - r8 *Non-contentious Probate Rules 1967 (WA)* - O37 rr6 & 7 *Rules of the Supreme Court 1971 (WA)* - s8 *Wills Act 1970 (WA)* - held: it was not necessary for Public Trustee to disclose evidence - it was inappropriate to do so - Court invited applicant to apply to withdraw affidavits before proceeding to determine application - held: leave granted for applicant to withdraw affidavits.

[Re Janette](#) (B)

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