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Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Assistant Commissioner Michael James Condon v Pompano Pty Ltd - constitutional law - validity of statutory provisions empowering Supreme Court to declare organisation a criminal organisation - impugned provisions not repugnant to or inconsistent with Supreme Court's institutional integrity (I, B, C, G)

Berhad v Commissioner of Taxation - taxation - application for leave to appeal from refusal to set aside notice to produce where compliance would breach Samoan criminal law - application by Samoa to intervene or be heard as *amicus curiae* - applications refused (I, B, G)

Sedco Forex International Inc v Nexus Energy WA Proprietary Ltd (No 2) - discovery - application for further and better particulars of defence and amendment of discovery orders (I, C)

Cabport Pty Ltd v Marinchek - contract - building and construction - claims for defects and overpayment compromised and released by settlement agreement (I, C)



Ekermai v Harbour Radio Pty Ltd - discrimination - application for leave to appeal - self-represented litigant - no right of appeal to Supreme Court from decisions of Administrative Decisions Tribunal - leave to appeal refused (I, G)

Crown in right of the State of New South Wales v Maund; Maund v FSS Trustee Corporation - industrial law - insurance - claim for recovery of debt pursuant to undertaking in deed - claim for alleged shortfall in total and permanent disability benefit (I, B, G)

Taylor & Anor v Lederman & Ors - pleadings - managed investment schemes - application to strike out paragraphs of statement of claim - application granted (I, B)

Summaries with links (5 minute read)

Assistant Commissioner Michael James Condon v Pompano Pty Ltd [2013] HCA 7

High Court of Australia

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

Constitutional law - institutional integrity of Supreme Court - procedural fairness - agreed special case asking court to determine whether sections of *Criminal Organisation Act 2006* (Qld) (**Act**) were invalid for infringement of Ch III of the Constitution - s10 of the Act permitted Supreme Court, on application by Commissioner of Police Service, to declare organisation a *criminal organisation* - respondents submitted s10 invalid because procedures with respect to criminal intelligence prescribed by Act impaired Supreme Court's institutional integrity - judicial suitability of question which Act required Supreme Court to determine, namely whether organisation was *an unacceptable risk to the safety, welfare or order of the community* - whether time limit prescribed by Act for respondent to reply to application for declaration required such departure from judicial process that it impaired Supreme Court's institutional integrity - held: impugned provisions not repugnant to or inconsistent with institutional integrity of Supreme Court.

[Assistant Commissioner](#) (I, B, C, G)



Berhad v Commissioner of Taxation [2013] FCAFC 28

Full Court of the Federal Court of Australia

Logan, Jagot & Robertson JJ

Taxation - notice to produce - application for leave to appeal from refusal to set aside notice to produce in circumstances where compliance would require bank's employees to breach criminal law of Samoa - application by Independent State of Samoa pursuant to r36.32 *Federal Court Rules 2011* (Cth) to intervene or be heard as *amicus curiae* in bank's application - held: conclusion of primary judge reasonably open and not attended by error requiring appellate intervention - applications refused.

[Berhad](#) (I, B, G)

Sedco Forex International Inc v Nexus Energy WA Proprietary Ltd (No 2) [2013] FCA 216

Federal Court of Australia

Barker J

Discovery - interlocutory applications - applicant applied for further and better particulars of defence and amendment of discovery orders - respondent applied for amendment of discovery plan - held: discovery sought by respondent was a fishing expedition - even if not a fishing expedition, not appropriate to order discovery of such broad scope - applicant's level of disclosure sufficient for respondent to particularise defects upon which it wished to rely - court's overarching purpose to facilitate just resolution of disputes according to law and as quickly, inexpensively and efficiently as possible: s37M(1) *Federal Court of Australia Act 1976* (Cth).

[Sedco](#) (I, C)

Cabport Pty Ltd v Marinchek [2013] NSWCA 51

Court of Appeal of New South Wales

Meagher & Barrett JJA; Tobias AJA

Contract - building and construction - builder carried out works on homeowner's property - parties made agreement terminating builder's engagement as builder and handing over site to new builder - homeowner sought to make claims in respect of defects or recover payments made as result of alleged overcharging - appeal from decision that homeowner was not precluded from claims - construction of settlement agreement - held: primary judge did not address correct factual issues having regard to proper construction of settlement agreement - primary judge erred in failing to hold that overpayment claims were compromised and released by settlement agreement



- appeal allowed - judgment for respondent set aside and replaced by judgment for respondent in reduced sum.

[Cabport](#) (I, C)

Ekermawi v Harbour Radio Pty Ltd [2013] NSWCA 54

Court of Appeal of New South Wales

Beazley P; Barrett & Emmett JJA

Refusal of leave to appeal - discrimination - self-represented litigant - applicant sought leave to appeal summary dismissal of summons which was, on its face, an appeal from two decisions of Administrative Decisions Tribunal - court's obligation to provide fair hearing to all litigants: *Jeray v Blue Mountains City Council* (No 2) [2010] NSWCA 367, s51 *Supreme Court Act 1970* (NSW) - held: no appeal lies to Supreme Court from decisions of Administrative Decisions Tribunal - only right of appeal flowing from proceedings commenced in the Tribunal was an appeal from Appeal Panel's refusal to grant extension of time - even if applicant were able to transform process in Supreme Court to appeal from decision of Appeal Panel, appeal would not succeed - summons dismissed with costs.

[Ekermawi](#) (I, G)

Crown in right of the State of New South Wales v Maund; Maund v FSS Trustee Corporation [2013] NSWSC 183

Supreme Court of New South Wales

Lindsay J

Industrial law - accident and sickness insurance - two proceedings arising from entitlements of former police officer on and following medical discharge - claim by Crown to recover debt pursuant to deed between parties in contemplation of *Crown Employees (Police Officers Death and Disability) Award 2005* (NSW) - claim by officer against trustee for alleged shortfall in disability benefit paid to her under superannuation scheme - Metlife Insurance issued policy of insurance to trustee to cover trustee's liability under scheme - judgment for Crown against officer - judgment for officer against trustee.

[Crown in the right of the State of New South Wales](#) (I, B, G)



Taylor & Anor v Lederman & Ors [2013] VSC 99

Supreme Court of Victoria

Ferguson J

Pleadings - application by accountant to strike out part of claim pursuant to r23.02 *Supreme Court (General Civil Procedure) Rules 2005 (VIC)* - plaintiffs claimed they entered into managed investment schemes which should have been but were not registered resulting in loss to plaintiffs - investors contended they had claims against accountant for misleading and deceptive conduct, negligence and breach of *Corporations Act 2001 (Cth)* - held: claims against accountant not properly pleaded - defects could not be corrected by particulars - paragraphs of pleading struck out.

[Taylor](#) (I, B)

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