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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)

**Coverdale v West Coast Council** (HCA) - statutory interpretation - seabed and water above it that were subject to marine leases were "Crown lands" over which Council could levy rates (I B C)

**Lim by his tutor Kyung Ae Beak v Cho** (NSWSC) - motor vehicle accident - case did not raise complex issues or issues of general public importance - proceedings transferred to District Court (I)

**El-Kabbout v Insurance Australia Ltd t/as NRMA Insurance** (NSWSC) - insurance law - plaintiff took casual approach to lodging appeal - no error in Local Court judgment - extension of time to appeal refused (I)

**Moorabbin Transit Pty Ltd v Bekhit** (VCA) - jurisdiction of courts - apparent ruling made by judge in conversation with Counsel was not a judgment or order from which an appeal might be brought - Court of Appeal had no jurisdiction (I)

**Adnow Pty Ltd (as Trustee for the Adnow Pension Fund) v Greenwells Wollert Pty Ltd** (VSC) - contract - land valuation under option deed by independent valuer complied with requirements set out in deed and was valid (B C)

**McDonald v South Australia** (SASCFC) - appeals - permission refused to appeal from orders of trial judge refusing to disqualify solicitors (I)

## Summaries With Link (Five Minute Read)

### **Coverdale v West Coast Council [2016] HCA 15**

High Court of Australia

French CJ, Keifel, Keane, Nettle & Gordon JJ

Statutory interpretation - West Coast Council sought to levy rates on eight marine farming leases - Valuer-General declined to value leases on basis that they were not over "lands" or "Crown lands that are liable to be rated" - s11(1), Valuation of Land Act 2001 (Tas) - Council sought declaration - first instance judge held in favour of Valuer-General - Full Court of the Supreme Court held in favour of Council - appeal to High Court - held: contradictory definitions of "Crown lands" in Crown Lands Act 1976 (Tas) and Acts Interpretation Act 1931 (Tas) - scope and purpose of Valuation of Land Act 2001 (Tas) favoured a construction of "Crown lands" that included the seabed and waters above it - area subject to marine leases was Crown land - Council therefore entitled to levy rates on those leases - appeal dismissed.

[Coverdale](#) (I B C)

### **Lim by his tutor Kyung Ae Beak v Cho [2016] NSWSC 432**

Supreme Court of New South Wales

Campbell J

Motor vehicle accident - plaintiff alighted from car during argument with wife - suffered catastrophic head injury - whole person impairment assessed at 96% - accepted as lifetime participant in the Lifetime Care and Support Scheme - defendant applied for transfer of case to District Court - s146, Civil Procedure Act 2005 - held: NSW District Court has unlimited jurisdiction in motor accident claims - two claims pending in District Court by the plaintiff's parents for nervous shock - common liability issue that should be determined currently - proceedings must be transferred to District Court unless Court satisfied damages likely to exceed \$1million, and case involves complex legal issues or issues of general public importance - s146(4), Civil Procedure Act 2005 - damages likely to exceed \$1million - plaintiff bore onus of showing complex legal issues or issues of general public importance and that the case should therefore remain in the Supreme Court - Court not satisfied matter involved such issues - proceedings transferred to District Court.

[Lim](#) (I)

### **El-Kabbout v Insurance Australia Ltd t/as NRMA Insurance [2016] NSWSC 417**

Supreme Court of New South Wales

Harrison AsJ

Insurance law - plaintiff's vehicle damaged in flash flood - insurer denied indemnity - Local Court dismissed plaintiff's claim against insurer - found plaintiff not truthful or credible - plaintiff sought extension of time to appeal to Court of Appeal - held: party seeking extension must persuade the Court that an extension is in the interests of justice - this will usually require a satisfactory explanation of delay - relevant factors will be the length of delay, the reason for the delay, the strength of the case, and any prejudice to the respondent - held: delay was lengthy -

explanation for delay was not satisfactory - plaintiff had taken a casual attitude to commencing an appeal - in any event, the appeal would fail - the Local Court had been entitled to make general findings on the plaintiff's truthfulness and credibility - Magistrate set out clear reasons that disclosed her reasoning process - such reasons were sufficient - leave for extension of time to appeal refused.

[El-Kabbout \(I\)](#)

## **Moorabbin Transit Pty Ltd v Bekhit [2016] VSCA 70**

Court of Appeal of Victoria

Tate, Ferguson & McLeish JJA

Jurisdiction of courts - bus driver sought leave to bring common law case in County Court for employment injury - leave required injury be "serious injury" - s134AB(19)(a), Accident Compensation Act 1985 - impermissible to aggregate effect of distinct non-serious injuries to establish serious injury - aggravation of a previous non-serious injury must be a serious injury in its own right - plaintiff claimed single serious injury arose from repetitive activity as part of system of work - defendant claimed plaintiff had suffered distinct non-serious aggravations of a prior non-serious injury - during discussion with Counsel, the trial judge appeared to rule that, where plaintiff made an arguable allegation of a single injury arising from repetitive actions, defendant was shut out from leading evidence of a succession of aggravating non-serious injuries - employer sought leave to appeal to Court of Appeal - held: civil appeals to the Court of Appeal can only be brought under s74, County Court Act 1958 - such appeals can only be brought from a "judgment" or "order" - in conversation with Counsel, the judge did not, either in terms or in substance, finally dispose of any rights or liabilities of the parties - any ruling made in that way did not bind him, and he was free to depart from the views he had expressed - any such ruling was not a judgment or order - the Court of Appeal therefore had no jurisdiction to hear the appeal.

[Moorabbin Transit \(I\)](#)

## **Adnow Pty Ltd v Greenwells Wollert Pty Ltd [2016] VSC 153**

Supreme Court of Victoria

Judd J

Contract - land valuation - Adnow owned land - granted Greenwells a call option to purchase the land - purchase price to be determined by negotiation, and, if that failed, by an independent valuer - option exercised - negotiation of purchase price failed - independent valuer valued land - Adnow sought a declaration the independent valuer had failed to comply with valuation method set out in the option deed and that the valuation be set aside - held: option deed should be construed according to the parties' objectively determined intentions - deed should be construed to provide that the parties had agreed that the decision of the independent valuer was binding and final - deed required valuer to express an opinion on the value of the land under the terms of the contract of sale - valuer had done this - deed required valuer to assume ministerial approval to a Precinct Structure plan - valuer had done so - deed required valuer to comply with the Valuation Guidelines of the Australian Property Institute - valuer had done so - valuer had

complied with all other requirements in the deed - valuation was valid - Adnow's application dismissed.

[Adnow](#) (B C)

**McDonald v South Australia [2016] SASCFC 39**

Full Court of the Supreme Court of South Australia

Sulan, Lovell & Doyle JJ

Appeals - plaintiffs in District Court litigation claimed that lawyers for the Attorney-General had committed numerous crimes and torts - applied to have solicitors disqualified from acting in the proceedings while an investigation into their conduct took place - trial judge refused applications - not a reasonable possibility that a fair minded, reasonably informed, member of the public would conclude that the proper administration of justice required the solicitors be disqualified - no power to order an investigation as sought - plaintiffs sought permission to appeal to Full Court of the Supreme Court - held: application for permission to appeal from interlocutory orders requires assessment of whether the correctness of those orders is attended by sufficient doubt to warrant reconsideration on appeal, and whether substantial injustice will be caused to the applicant if those orders stand - notice of appeal failed to identify any alleged error of fact or law - nothing in the materials before the Court identified any potential error - no basis to conclude that the orders of the trial judge were attended by any doubt so as to warrant reconsideration - no injustice to plaintiffs in refusing permission to appeal - permission to appeal refused.

[McDonald](#) (I)

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