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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)

Chel v Fairfax Media Publications Pty Ltd (NSWCA) - stay - defamation - interim relief granted to prevent hearing at first instance of proceeding without jury (I)

Golden v V'landys (NSWSC) - judicial review - suspension of trainer's licence - warned off racetracks - challenges to decisions failed - no misfeasance in public office - judgment for defendants (I G)

In the matter of Urban Purveyor Group Pty Ltd (NSWSC) - corporations - statutory demand varied by amounts in respect of which there was a genuine dispute (I B C)

Vella v Cardona (VSCA) - accident compensation - jury verdict - assessment of damages for pain and suffering - leave to appeal refused (I)

Wilson v Building Commission of Victoria (VSC) - building and construction - conviction for carrying out work without building permit - dismissal of application to commence judicial review proceedings - appeal dismissed (I B C G)

A, DC v Prince Alfred College Inc (SASCFC) - negligence - school vicariously liable for damage to boarder due to abuse by boarding master - appeal allowed - extension of time to bring proceedings granted (I)

Gunns Ltd v State of Tasmania (TASSC) - negligence - claim against State in relation to handling of water licence application - causes of action in negligence, negligent misstatement

and estoppel failed (I B C)

Summaries With Link (Five Minute Read)

Chel v Fairfax Media Publications Pty Ltd [2015] NSWCA 355

Court of Appeal of New South Wales

Macfarlan JA

Defamation - applicant sought interim relief pending hearing of summons for leave to appeal against dismissal of its notice of motion and order that proceedings be tried by judge alone, not by jury - s14 *Civil Procedure Act 2005* (NSW) - s21 *Defamation Act 2005* (NSW) - r29.2A *Uniform Civil Procedure Rules 2005* (NSW) - held: there was arguable case on alleged errors of law - primary judge's decision was not discretionary - party's right to elect for defamation proceedings to be heard by jury of value and importance - if primary judge erred, appeal following conclusion of proceedings at first instance would involve waste of time and expense - Court able to offer early hearing date for hearing - interim stay should be granted in respect of hearing at first instance - relief granted.

[Chel \(I\)](#)

Golden v V'landys [2015] NSWSC 1709

Supreme Court of New South Wales

Adamson J

Judicial review - plaintiff challenged two decisions by first defendant on behalf of second defendant (NSW) - first decision resulted in plaintiff's trainer's licence being suspended - second decision resulted in plaintiff being warned off racetracks controlled by Racing NSW - plaintiff also claimed damages for alleged misfeasance in public office by first defendant - s13 *Racing Administration Act 1998* (NSW) - cl 5 & 6 *Racing Appeals Regulation 2010* (NSW) - ss15, 16 & 18 *Racing Appeals Tribunal Act 1983* (NSW) - ss4, 6, 11, 11A, 12, 13, 14, 14AA, 21 & 24 *Thoroughbred Racing Act 1996* (NSW) - held: allegations of actual bias and apprehended bias not made out - no improper purpose, irrelevant considerations, bad faith, or unreasonableness and serious illogicality - plaintiff failed to make out claim for misfeasance in public office - judgment for defendants.

[Golden \(I G\)](#)

In the matter of Urban Purveyor Group Pty Ltd [2015] NSWSC 1705

Supreme Court of New South Wales

Bergin CJ in Eq

Corporations - statutory demand - plaintiff pursuant to 459H(4) *Corporations Act 2001* (Cth) sought that statutory demand issued by defendant be varied by reducing amount claimed - plaintiff also sought declaration pursuant to ss459F(2) & 459H(4) that statutory demand had effect, as varied, from date it was served on plaintiff - plaintiff contended there was genuine dispute about amount of debt relating to two aspects of claims made in invoices - first aspect

was that amounts claimed were outside agreed rates - the second aspect was that some services listed in invoices had to be approved by plaintiff and weren't approved - held: statutory demand varied by reducing it to take into account and arithmetical error, and genuine disputes in respect of both the overcharging claim and the unauthorised work claim - statutory demand varied.

[Urban Purveyor Group](#) (I B C)

Vella v Cardona [2015] VSCA 306

Court of Appeal of Victoria

Beach & Kyrou JJA; Cavanough AJA

Accident compensation - applicant injured in transport accident - applicant claimed damages against respondent for injuries - respondent admitted negligence - jury assessed applicant's pain and suffering damages in sum of \$130,000 - jury rejected claim for pecuniary loss damages - appellant sought leave to appeal against award of pain and suffering damages - appellant contended verdict against evidence and weight of the evidence, that no jury could or should have assessed pain and suffering damages at \$130,000, that jury should have found plaintiff's hip injury resulted from transport accident and that damages were manifestly unjust - held: contention that jury bound to find accident was cause of hip injury rejected - Court not persuaded jury's award of damages manifestly inadequate or outside range of damages reasonably open on evidence - leave to appeal refused.

[Vella](#) (I)

Wilson v Building Commission of Victoria [2015] VSC 629

Supreme Court of Victoria

John Dixon J

Building and construction - judicial review - appellant convicted of carrying out work without building permit contrary to s16(1) *Building Act 1993* (Vic) - appellant sought to appeal in County Court but filed appeal out of time - County Court judge refused leave to appeal - appellant wrote to Court enclosing judicial review application - registry informed appellant he was out of time, which would need to be addressed in his application- appellant successfully filed application for judicial review more than 28 months out of time - associate judge refused application - appellant appealed under r77.06 *Supreme Court (General Civil Procedure Rules) 2005* (Vic) - held: appellant did not demonstrate error by associate judge in identification of proper test or application and consideration of relevant factors in relation to establishment of "special circumstances"- error not demonstrated in associate judge's decision - appeal dismissed.

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

A, DC v Prince Alfred College Inc [2015] SASCF 161

Full Court of the Supreme Court of South Australia

Kourakis CJ; Gray & Peek JJ

Negligence - appellant was boarder at respondent college - teacher employed by college appointed as boarding house master - teacher sexually abused appellant and was dismissed shortly after college became aware of abuse - appellant claimed college liable for loss and

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damage he sustained from abuse - trial judge found appellant failed to establish liability on part of college and refused to exercise discretion to extend the time to bring proceedings under *Limitation of Actions Act 1936 (SA)* - ss45 & 48 *Limitation of Actions Act 1936 (SA)* - held: liability for employee's intentional criminal wrongdoing appropriately dealt with through vicarious liability not non-delegable duty - respondent vicariously liable for damage suffered by appellant due to consequence of teacher's sexual abuse - time for appellant to bring proceedings should be extended- matter remitted for assessment of damages - appeal allowed. [A, DC \(I\)](#)

Gunns Ltd v State of Tasmania [2015] TASSC 52

Supreme Court of Tasmania

Pearce J

Negligence - plaintiff applied under *Water Management Act 1999 (Tas)* to build dam on to irrigate a planned vineyard development for its business - plaintiff sought licence to take water for dam from watercourse - dam permit was approved - dam constructed - plaintiff notified that without further information it would be allocated less water than amount it had applied - plaintiff claimed damages against State arising from the manner in which water licence application dealt with - held: defendant did not owe duty of care to plaintiff - causes of action in negligence, negligent misstatement and estoppel failed - action dismissed.

[Gunns \(I B C\)](#)

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