



Monday 20 February 2012

Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Allianz Australia Insurance Ltd v Kerr - *Motor Accidents Compensation Act 1999* (NSW) - appeal dismissed (I)

Insurance Australia Ltd t/as NRMA Insurance v Falco - *Motor Accidents Compensation Act 1999* (NSW) (I)

George v Webb & Ors - Costs (I, B)

Reysson Pty Ltd v Roads and Maritime Services - *Environmental Planning & Assessment Act 1979* (NSW) - principles of construction of development consents - preliminary question for determination (C)

Glasscock v The Trust Company (Australia) Pty Ltd - *Trusts Act 1973* (Qld) - application under s96 (B)



Summaries with links (5 minute read)

Allianz Australia Insurance Ltd v Kerr [2012] NSWCA 13

Court of Appeal of New South Wales

McColl, Basten & Macfarlan JJA

Motor Accidents Compensation Act 1999 (NSW) - assessor had certified awards for future economic loss, past gratuitous domestic assistance & future domestic assistance - insurer had sought judicial review & primary judge had dismissed summons - leave to appeal allowed on three of the grounds of appeal - appeal dismissed.

[Allianz \(I\)](#)

[Allianz Australia Insurance](#)

[Allianz Australia Insurance](#) - decision Supreme Court of New South Wales 29 April 2011 - Claims Assessment & Resolution Service - certiorari - prohibition - mandamus - first defendant sustained injuries in motor accident - plaintiff the compulsory third party insurer of the driver at fault - damages assessment by claims assessor - no jurisdictional error or error on face of record.

Insurance Australia Ltd t/as NRMA Insurance v Falco [2012] NSWSC 54

Supreme Court of New South Wales

Hislop J

Motor Accidents Compensation Act 1999 (NSW) - first defendant had lodged an application to "Proper Officer" for further assessment pursuant to s62(1)(a) - that application had been unsuccessful - decision of Proper Officer quashed and remitted to Motor Accidents Authority.

[Insurance Australia \(I\)](#)

George v Webb & Ors [2012] NSWSC 86

Supreme Court of New South Wales

Ward J

Costs - offer of compromise - *Calderbank* offers - amendment to order for interest previously made under slip rule - extensive review of UK & Australian case law.

[George \(I, B\)](#)

[George](#) - *George v Webb & Ors* [2011] NSWSC 1608 - decision 20 December 2011: see Benchmark I, B & IBC Thursday 22 December 2011 - trusts - negligence - duty of care - proportionate liability - *Civil Liability Act 2002* (NSW) -



judgment for plaintiff on claim against first & second defendants for equitable compensation for breach of Quistclose trust & against third defendant for accessorial liability in respect of that breach of trust - claim against first & second defendants not an apportionable claim for purposes of statutory proportionate liability regime - judgment for cross-claimants on cross-claim against third defendant for misleading & deceptive conduct in breach of *Fair Trading Act* 1987 (NSW) - comprehensive review of text & case law from UK & Australia.

[Barclays Bank](#) - decision House of Lords 31 October 1968 reported at [1970] AC 567

Reysson Pty Ltd v Roads and Maritime Services [2012] NSWLEC 17

Land & Environment Court of Australia

Biscoe J

Environmental Planning & Assessment Act 1979 (NSW) - principles of construction of development consents - preliminary question for determination - under the former s99, by reason of surveying & roundabout works (but not the earthworks) development consent had not lapsed - “engineering works” - extensive review of case law from UK, USA & Australia.

[Reysson](#) (C)

Glassock v The Trust Company (Australia) Pty Ltd [2012] QSC 15

Supreme Court of Queensland

Boddice J

Trusts Act 1973 (Qld) - application under s96 by two of three executors & trustees of a deceased estate that the applicants, acting alone, “can and ought to start proceedings” to set aside an *inter vivos* transfer of property owned by deceased & spouse as joint tenants - order should be made advising that the applicants can & ought to commence proceedings - not appropriate for an order that costs of proceedings be borne by the estate.

[Glassock](#) (B)

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