

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

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Executive Summary (1 minute read)

Commissioner of Taxation v Secretary to the Department of Transport (Victoria) - *A New Tax System (Goods & Services Tax) Act 1999* (Cth) - transport of individuals with disabilities via taxi (B)

Construction, Forestry, Mining & Energy Union v John Holland Pty Ltd - ss760, 767 & 768 *Workplace Relations Act 1996* (Cth) - construction of greenfield workplace agreement - rights of entry (I, C)

Cheung Kong Infrastructure Holdings Ltd v BlueScope Steel Ltd - Application to set aside Notice to Produce - New Zealand arbitration (I, B, C)

Betfair Pty Ltd v Racing New South Wales (No 15) - s50 *Federal Court of Australia Act 1976* (Cth) - prohibition of publication of evidence - confidentiality régimes (B)

Sportsbet Pty Ltd v State of New South Wales (No 16) [2010] FCA 737 - s50 *Federal Court of Australia Act 1976* (Cth) (B)

Courier Pete Pty Ltd v Metroll Queensland Pty Ltd - *Designs Act 2003* (Cth) - whether designs created in course of employment or under a contract with respondent (I, B, C)

Sanhueza v AAMI Ltd - *Motor Accidents Compensation Act 1999* (NSW) - assessment of degree of whole person impairment - post-traumatic stress disorder - application for review of Proper Officer's decision dismissed - application for review of Review Panel allowed (I)

Barkley v Barkley-Brown - Civil contempt - failure to comply with subpoena - application dismissed - costs (I, B, C)

Tavitian v Commissioner of Highways & Anor - Nuisance - judicial review - challenge to validity of recommendation made by first defendant that Governor proclaim a portion of highway (I, C)

Summaries with links (5 minute read)

Tuesday 20 July 2010

Commissioner of Taxation v Secretary to the Department of Transport (Victoria) [2010] FCAFC 84

Full Court of the Federal Court of Australia

Kenny, Dodds-Streeton & Jessup JJ (in Melbourne)

A New Tax System (Goods & Services Tax) Act 1999 (Cth) - transport of individuals with disabilities via taxi - for decision appealed from, see 'Benchmark' B & IBC Friday 30 October 2009 - by majority, appeal dismissed.

[Commissioner of Taxation](#) (B)

[Secretary to the Department of Transport \(Victoria\)](#) - decision 28 October 2009 - whether Dept of Transport entitled to input tax credits under s11-1 of the Act for the GST component of payments made to taxi-cab operators under the "Multi Purpose Taxi Program" from October 2006 to April 2007 - answer 'yes' - extensive consideration of text & case law.

Construction, Forestry, Mining & Energy Union v John Holland Pty Ltd [2010] FCAFC 90

Full Court of the Federal Court of Australia

Spender, Dowsett & Logan JJ (in Brisbane)

ss760, 767 & 768 *Workplace Relations Act 1996* (Cth) - construction of greenfield workplace agreement - primary judge had found Expansion Agreement applied exhaustively to work

performed by employees of John Holland at X50 Expansion worksite, Bargaining Period Notices were invalid & of no effect; penalties imposed - appeal allowed - matter remitted.

[Construction, Forestry, Mining and Energy Union](#) (I, C)

[John Holland](#) - decision Federal Court 13 August 2009 - pecuniary penalties;

[John Holland](#) - decision Federal Court 24 July 2009

[John Holland](#) - decision 19 June 2009: see 'Benchmark' I, C & IBC Monday 22 June 2009 - rights of entry - trespass to land - *Occupational Health & Safety Act 2000 (NSW)* - s109 *the Constitution* - *Workplace Relations Act 1996 (Cth)*: alleged contraventions of s767(1) and 768(1) - applicants involved in construction of Sydney Desalination Plant in Kurnell area - in September 2007, 2nd & 3rd respondents entered site - applicants contending unlawful entry - "authorised representative", "officer", "office" - applicants succeeded in establishing that 2nd & 3rd respondents were not authorised under OHS Act to enter the premises: declaration made to that effect - in all other respects applicants' claims was dismissed.

Cheung Kong Infrastructure Holdings Ltd v BlueScope Steel Ltd [2010] FCA 739

Federal Court of Australia

Foster J (in Sydney)

Application to set aside a Notice to Produce issued by first respondent to applicant requiring production of evidence tendered in New Zealand arbitration & an interim award in that arbitration - Notice to Produce set aside in part insofar as it required the production of evidence tendered in New Zealand arbitration - applicant compelled to produce Interim Award.

[Cheung Kong Infrastructure Holdings](#) (I, B, C)

Betfair Pty Ltd v Racing New South Wales (No 15) [2010] FCA 736

Federal Court of Australia

Perram J (in Sydney)

s50 *Federal Court of Australia Act 1976 (Cth)* - prohibition of publication of evidence - confidentiality régimes.

[Betfair](#) (B)

[Sportsbet](#) - decision 16 July 2010 - s50 *Federal Court of Australia Act 1976 (Cth)*

Courier Pete Pty Ltd v Metroll Queensland Pty Ltd [2010] FCA 735

Federal Court of Australia

Spender J (in Brisbane)

Designs Act 2003 (Cth) - rainwater tanks having modular construction - registered designs revoked by Deputy Registrar of Designs under s52 - whether designs created in course of employment or under a contract with respondent - appeal allowed - cross-appeal dismissed.

[Courier Pete](#) (I, B, C)

Sanhueza v AAMI Ltd [2010] NSWSC 774

Supreme Court of New South Wales

Smart AJ

Motor Accidents Compensation Act 1999 (NSW) - plaintiff bus-driver seeking review of decision of MAA Proper Officer Review Panel assessment of degree of whole person impairment - whether plaintiff's chronic post-traumatic stress disorder with co-morbid depression gave rise to whole person impairment greater than 10% - diagnosis undisputed, but dispute as to severity of plaintiff's condition - application for review of Proper Officer's decision dismissed - application for review of Review Panel allowed.

[Sanhueza](#) (I)

Barkley v Barkley-Brown [2010] NSWSC 746

Supreme Court of New South Wales

Ball J

Civil contempt - failure to comply with subpoena - applicant failed to prove respondent had documents in his possession or power - conduct engaged in by respondent not wilful - application dismissed - costs.

[Barkley](#) (I, B, C)

[Barkley](#) - decision 6 July 2010: see 'Benchmark' 12 July 2010 - contempt - subpoenas seeking accounting records relating to deceased's affairs - application that first respondent to contempt motion had no case to answer dismissed - charge of contempt based on a failure to comply with a court order does not depend on establishing that the court was actually misled.



Tavitian v Commissioner of Highways & Anor [2010] SASC 206

Supreme Court of South Australia

Kourakis J

Nuisance - negligence - judicial review - challenge to validity of recommendation made by first defendant that Governor proclaim a portion of highway - plaintiff claimed effect of proclamation was to close off a means of access from highway to his property - plaintiff's action for declaratory relief dismissed on discretionary grounds despite first defendant's failure to give statutory notice to plaintiff - plaintiff's claim for nuisance also dismissed.

[Tavitian](#) (I, C)

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