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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)

Hunter v Minister for Corrections (NSWSC) - summary dismissal - challenge to validity of regulation banning inmates from smoking in NSW prisons - no reasonable cause of action - summons dismissed (I)

Young v Roads and Maritime Services (No 2) (NSWSC) - transfer of proceedings - claim of fraud sufficiently pleaded to found transfer of proceedings from Local Court to Supreme Court - transfer ordered (I B C)

Ennis Paint Australia Holding Pty Ltd v Jimmy Poh Wing Lei (NSWSC) - damages - breach of share sale and purchase agreement - loss of opportunity - loss and interest calculated - parties to bring in short minutes reflecting reasons (I B C)

Baiada Poultry v VWA (VSCA) - judicial review - workplace injury resulting in death - challenge to validity of charge under *Occupational Health and Safety Act 2004* (Vic) - appeal dismissed (I B C G)

OZ Minerals Holdings Pty Ltd v AIG Australia Ltd (VSCA) - insurance - major shareholder exclusion clause - exclusion clause enlivened - no entitlement to indemnity under policy - appeal dismissed (I B C)

Doggett v Commonwealth Bank of Australia (VSCA) - banking - contract - bank's compromise letter released it from claims for breach of Code of Banking Practice - appeal dismissed (I B C)

Baytech Trades Pty Ltd (ACN 147 997 788) v Coinvest Ltd (ACN 078 004 985) (VSCA) - employer and employee - appellant labour hire company not liable to pay long service leave charge - appeal allowed (I B C)

Summaries With Link (Five Minute Read)

Hunter v Minister for Corrections [2015] NSWSC 1930

Supreme Court of New South Wales

Harrison J

Summary dismissal - human rights - standing - self-represented litigant - former inmate of New South Wales correctional centre challenged validity of regulation banning inmates from smoking in NSW prisons - Minister sought to have summons dismissed or struck out pursuant to rr4.15 or 13.4(1). *Uniform Civil Procedure Rules 2005* (NSW) - reg 322 *Crimes (Administration of Sentences) Regulation 2014* (NSW) - *Corrections Act 2004* New Zealand - *National Security Act 1939-1943* held: relief sought not supported by reasonable cause of action - summons dismissed.

[Hunter](#) (I)

Young v Roads and Maritime Services (No 2) [2015] NSWSC 1944

Supreme Court of New South Wales

Button J

Transfer of proceedings - fraud - plaintiff sought to transfer proceedings pending in Local Court of New South Wales to this Court pursuant to s140 *Civil Procedure Act 2005* (NSW) - whether "there is sufficient reason for hearing the proceedings in the higher court" - rule that fraud must be specifically pleaded - held: plaintiff's primary contention in amended cross-claim tolerably clear - plaintiff had sufficiently pleaded primary claim to found transfer - pleading not so defective that plaintiff should be prevented from litigating claim in only court with jurisdiction to hear the claim - proceedings transferred.

[Young](#) (I B C)

Ennis Paint Australia Holding Pty Ltd v Jimmy Poh Wing Lei [2015] NSWSC 1933

Supreme Court of New South Wales

Sackar J

Damages - share sale and purchase agreement - restraint covenant - plaintiff sought relief and damages for alleged breaches of share sale and purchase agreement - defendants admitted liability during trial - remaining issue was damages - loss of opportunity - causation - *Browne v Dunn* - quantification - contentions on loss - discount for vicissitudes - *Evidence Act 1995* (NSW) - held: loss and interest calculated - parties to bring in short minutes reflecting reasons.

[Ennis](#) (I B C)

Baiada Poultry v VWA [2015] VSCA 344

Court of Appeal of Victoria

Ferguson & McLeish JJA; Robson AJA

Judicial review - appellant engaged cleaning contractor - cleaning contractor employed deceased who was killed in workplace injury while cleaning chicken processing machine - appellant charged with offence under *Occupational Health and Safety Act 2004* (Vic) in relation to adequacy of its system - validity of charge - whether charge failed to identify measures appellant should have taken - whether charge failed to identify factual elements for proposition it was reasonably practicable for appellant to implement measures and/or failed to identify factual elements for assertion appellant had control of a 'workplace' - held: it would be insufficient if charge-sheet merely recited statutory language however the charge-sheet specified it was failure to ensure chicken processing line not operating, and to ensure adequate system to prevent contact with processing line when it was being cleaned, that allegedly resulted in breach of 26(1) - appellant knew particulars necessary to give it reasonable information as to nature of charge - appeal dismissed.

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

OZ Minerals Holdings Pty Ltd v AIG Australia Ltd [2015] VSCA 346

Court of Appeal of Victoria

Maxwell P, Kyrou AJA & Robson AJA

Insurance - major shareholder exclusion clause - first applicant was company of which second to fifth applicants were its former directors - first applicant and another company announced intention to merge mining businesses - merger implemented - Oxiana re-named OZ Minerals Ltd - OZ Minerals Ltd acquired all issued shares in appellant company - first applicant company's shareholders were issued shares in OZ Minerals Ltd - first applicant company initially renamed OZ Minerals Holdings Pty Ltd but changed name to OZ Mineral Holdings Pty Ltd - representative proceeding commenced against OZ Minerals alleging breach of continuous disclosure requirements and misrepresentations - contribution proceeding commenced by Oxiana against applicants - applicants claimed insurer obliged to indemnify them against any liability arising from contribution claims based on policy of insurance - point or points in time at which claimant was to be assessed against conditions in exclusion clause - primary judge preferred insurer's construction finding that applicants' construction required strained approach to find ambiguity in exclusion clause, was ungrammatical and inconsistent with policy's structure - whether exclusion clause was enlivened - held: primary judge correct to conclude exclusion clause was enlivened and applicants not entitled to be indemnified under policy - appeal dismissed.

[OZ Minerals](#) (I B C)

Doggett v Commonwealth Bank of Australia [2015] VSCA 351

Court of Appeal of Victoria

Whelan & McLeish JJA; Garde AJA

Banking - contract - appellant alleged Bank owed the a contractual obligation to exercise care and skill of diligent and prudent banker in assessing borrower's loan application and forming

opinion about borrower's ability to repay the loan - obligation allegedly arose under cl 25.1 Code of Banking Practice - trial judge found cl 25.1 gave rise to the obligation for and that bank breached obligation - trial judge concluded that the loss caused by breach extinguished bank's claims under guarantees - trial judge found bank's remaining claim under loan facility to be set off in amount of additional losses incurred attributable to breach - however trial judge held compromise letter defeated appellants' claims pursuant to cl 25.1 - judgment entered for bank in amount of claimed indebtedness - held: cl 25.1 of Code, both in guarantees and borrower's bill facility, required bank to exercise care and skill of diligent and prudent banker in forming opinion about borrower's ability to repay - bank breached cl 25.1 - appellants should not be permitted to raise new arguments on appeal - trial judge correct to conclude compromise letter released appellants' claims against bank - appellants' agreement to compromise not vitiated by duress - appeal dismissed.

[Doggett](#) (I B C)

Baytech Trades Pty Ltd (ACN 147 997 788) v Coinvest Ltd (ACN 078 004 985) [2015] VSCA 342

Court of Appeal of Victoria

Maxwell P, Tate JA & John Dixon AJA

Employer and employee - respondent was trustee of Construction Industry Long Service Leave Fund established by *Construction Industry Long Service Leave Act 1997* (Vic) and under trust deed it executed - appellant was labour hire company whose client (NHP) built electrical switchboards and electrical panel boards - NHP engaged appellant to supplement its workforce on casual basis - whether appellant obliged under s4(1) to pay trustee long service leave charge in respect of work done by its employees for NHP - whether workers employed 'to perform construction work in the construction industry' - appellant challenged primary judge's findings that NHP contract work constituted provision of 'electrical services'; and that, in supplying services of its employees to NHP, appellant was an 'electrical contractor' - appellant contended work did not constitute provision of 'electrical services' but was 'work of a kind' performed by employee electricians as part of manufacturing process, therefore not 'work of a kind' for which Electrical Contracting Industry Award fixed a rate of pay - held: Court upheld appellant's submissions - appellant not liable for the long service leave charge - appeal allowed.

[Baytech](#) (I B C)

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