



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Australian Securities & Investments Commission v Fortescue Metals Group Ltd - *Corporations Act 2001 (Cth)* - whether continuous disclosure obligations had been breached - whether obligation not to engage in misleading or deceptive conduct had been breached - appeal allowed (I, B, C)

Fitzgerald v Westpac Banking Corporation - Production of documents - applications to set aside notices to produce (I, B)

Albany Molecular Research Inc v Alphapharm Pty Ltd - *Patents Act 1990 (Cth)* - lack of novelty (I, B, C)

The Owners Strata Plan No. 855 v Gosford City Council - Gosford Planning Scheme Ordinance - appeal following refusal of development consent appeal upheld (C)



Summaries with links (5 minute read)

Wednesday 23 February 2011

Australian Securities & Investments Commission v Fortescue Metals Group Ltd [2011] FCAFC 19

Full Court of the Federal Court of Australia

Keane CJ; Emmett & Finkelstein JJ (in Perth)

s674(2) & s1041H; s180(1) & s674(2A) *Corporations Act* 2001 (Cth) - continuous disclosure - misleading and deceptive conduct - listed company made announcements that it had entered binding agreements - agreements were merely agreements to negotiate - whether continuous disclosure obligations had been breached - whether obligation not to engage in misleading or deceptive conduct had been breached - appeal allowed - extensive consideration of the United Kingdom, New Zealand & Australian case law.

[Fortescue Metals Group](#) (I, B, C)

[Fortescue Metals Group](#) - decision 23 December 2009: see 'Benchmark' Monday 1 February 2010 - *Corporations Act* 2001 (Cth) - continuous disclosure - obligation to disclose information to ASX under Chapter 6CA - directors' duties - whether director had breached duty to exercise reasonable care & diligence required by s180(1) - misleading or deceptive conduct under s1041H - relevance of belief or opinion - relevance of context at time disclosures made to market - "information", "aware", "not generally available."

Fitzgerald v Westpac Banking Corporation [2011] FCA 124

Federal Court of Australia

Jagot J (in Sydney)

Production of documents - applications to set aside six notices to produce served by cross-claimants - notices to produce all in the same terms, seeking that each of the two insurers in each matter produce "all claim files & documents relating to the claims made by the cross-claimant" - insurers seeking to have the notices to produce set aside on two grounds - abuse of process - whether notices to produce had not been issued for a legitimate forensic purpose - relevance of documents sought - notices to produce set aside as an impermissible attempt to obtain general discovery by other means.

[Fitzgerald](#) (I, B)



Albany Molecular Research Inc v Alphapharm Pty Ltd [2011] FCA 120

Federal Court of Australia

Jessup J (in Melbourne)

Patents Act 1990 (Cth) - patent in suit should be revoked under s138(3)(b) for lack of novelty - infringement proceeding to be dismissed.

[Albany Molecular Research](#) (I, B, C)

The Owners Strata Plan No. 855 v Gosford City Council [2011] NSWLEC 9

Land & Environment Court of New South Wales

Craig J

Gosford Planning Scheme Ordinance - Gosford Development Control Plan No. 159 (Character) Amendment One - appeal following refusal of development consent - applicant proposing to demolish existing residential flat building on Avoca Drive - applicant's development application further proposes erection of a new residential flat building - appeal upheld.

[The Owners Strata Plan No. 855](#) (C)

A Selection of Five Famous Fishers *- Fisher One:*

Ronald Aylmer Fisher

(b. London 17th February, 1890 – d. Adelaide 29th July, 1962)

English mathematician & biologist – built the mathematical foundations of evolution – his groundbreaking "*The Correlation Between Relatives on the Supposition of Mendelian Inheritance*" written in 1916 & published in 1918, wedded Darwin's theories with Mendel's: natural selection/the origin of species/adaptive genetic mutation - elected Fellow of Royal Society 1929 ; knighted in 1952 - in his retirement from the Arthur Balfour Chair of Genetics, University of Cambridge, Fisher was invited to Adelaide by the head of the Division of Mathematical Statistics in the Commonwealth Scientific & Industrial Research Organization (CSIRO.) When Fisher arrived in 1959, the original idea was that he complete a six-month stint as a Senior Research Fellow at the CSIRO, but he was to settle in Adelaide for the rest of his life.

Ronald Aylmer Fisher

[Ronald Fisher](#) - Wikipedia, the free encyclopedia



Recommended reading: "The Price of Altruism: George Price & the Search for the Origins of Kindness" by Oren Harman (Bodley Head 2010)

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