

Wednesday 23 October 2013

## Insurance, Banking, Construction & Government

### A Daily Bulletin listing Decisions of Superior Courts of Australia

#### Important Announcement



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#### Executive Summary (1 minute read)

**Australian Competition and Consumer Commission v Koyo Australia Pty Ltd (FCA)** - trade practices - admitted contraventions - proposed penalty appropriate (I B G)

**Centennial Mandalong v Delta Electricity (NSWSC)** - contract - coal supply agreement - purchaser obliged to pay part of supplier's carbon costs (B G)

**Australia and New Zealand Banking Group Ltd v Kavia Holdings Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed) (NSWSC)** - real property - mortgages - bank entitled to possession of property (B)



**Seeley International v Jeffrey** (VSCA) - negligence - product liability - manufacturer liable for cause of fire - appeal dismissed (I C)

**Edwards v Transport Accident Commission** (VSC) - administrative law - loss of earnings benefit - extension of time and leave to appeal refused (I G)

**Kozlowski v Kozlowski** (SASCFC) - succession - intestacy - family provision orders - appeal allowed (B)

**Snell v BP Refinery (Bulwer Island) Pty Ltd** (QSC) - work injury damages - liability admitted - pre-existing condition affecting future economic loss - damages assessed (I)

## Summaries with links (5 minute read)

### **Australian Competition and Consumer Commission v Koyo Australia Pty Ltd [2013] FCA 1051**

Federal Court of Australia

Edmonds J

Trade practices - applicant alleged respondent contravened ss45(2)(a)(ii) & 45(2)(b)(ii) *Trade Practices Act 1974* (Cth), now *Competition and Consumer Act 2010* (Cth) (CCA) and s45ZZRK CCA by agreeing with competitors to increase prices of products - parties signed statement of agreed facts and admissions pursuant to s191(3)(a) *Evidence Act 1995* (Cth) and agreed on consent orders and proposed penalty of \$2,000,000 - s76(1) CCA - determination of appropriate penalty - *permissible range* - held: court satisfied pecuniary penalty agreed by parties was appropriate.

[Australian Competition and Consumer Commission](#) (I B G)

### **Centennial Mandalong v Delta Electricity [2013] NSWSC 1505**

Supreme Court of New South Wales

McDougall J

Contract - coal supply agreement - plaintiff operated coal mine - defendant operated power station - plaintiff sold coal to defendant - plaintiff obliged to pay carbon costs under *Clean Energy Act 2011* (Cth) - whether plaintiff could pass part of carbon costs on to defendant under contract - carbon pricing scheme - construction of contract - *attributable* - causation - held: there was sufficient connection between charge levied and sale and delivery of coal under agreement to render charge attributable to sale and delivery of coal - defendant liable for part of payment of



carbon charges - appropriate method of quantification would be to take totality of emissions caused by mining and prorate emissions between total quantity of coal produced and quantity sold to defendant - plaintiff entitled to declaration sought - parties to make submissions regarding means of overall division of liability.

[Centennial Mandalong](#) (B G)

**Australia and New Zealand Banking Group Ltd v Kavia Holdings Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed) [2013] NSWSC 1532**

Supreme Court of New South Wales

Stevenson J

Real property - mortgages - possession of land - plaintiff bank sought possession of property from first defendant registered proprietor and mortgagor - *all moneys* mortgage - no dispute first defendant was liable for amount subject of demand - second and third defendants were directors of first defendant and resisted possession - construction of mortgage - held: debt was secured by mortgage - demand was sufficient to enliven clause of mortgage providing that first defendant was to pay bank amount due - no special circumstances warranting creation of a tenancy under s125(4) *Residential Tenancies Act 2010* (NSW) - bank entitled to possession of property.

[Australia and New Zealand Banking Group Ltd](#) (B)

**Seeley International v Jeffrey [2013] VSCA 288**

Court of Appeal of Victoria

Warren CJ; Nettle & Whelan JJA

Negligence - product liability - appeal from judgment in which primary judge found manufacturer guilty of negligence in manufacture of evaporative air cooler with result that it caught fire and caused damage to respondents' home - judge also held that manufacture contravened s75G *Trade Practices Act 1974* (Cth) - manufacturer alleged fire was caused by downlights igniting roof cavity insulation - analysis of expert evidence - circumstantial evidence - *probability theory* - held: primary judge did not err in finding that start capacitor of cooler caused fire - no error in judge's process of reasoning or findings against weight of evidence - appeal dismissed.

[Seeley International](#) (I C)

**Edwards v Transport Accident Commission [2013] VSC 557**

Supreme Court of Victoria

Derham AsJ

Administrative law - evidence - plaintiff sought loss of earnings benefit arising out of transport accident whilst riding his motorcycle - Victorian Civil and Administrative Tribunal refused to order benefits sought on basis plaintiff had not paid transport accident charge - plaintiff applied pursuant to s148 *Victorian Civil and Administrative Tribunal Act 1998* (Vic) (VCAT Act) to extend time for leave to appeal and leave to appeal from VCAT's decision - delay - s40(1)(b) *Transport Accident Act 1986* (Vic) - s148(5) VCAT Act - held: plaintiff did not discharge onus of proving extension of time should be granted - no real or significant argument that VCAT erred in law when it concluded that, at the time of his transport accident, plaintiff had not paid transport accident charge in respect of his vehicle - application dismissed.

[Edwards](#) (I G)**Kozlowski v Kozlowski [2013] SASFC 112**

Full Court of the Supreme Court of South Australia

Sulan, Vanstone &amp; Anderson JJ

Succession - deceased died intestate - deceased's estate consisted of house purchased by deceased for use and benefit of his respondent son - wife of deceased appealed from orders of primary judge granting son's application for provision under s7 *Inheritance (Family Provision) Act 1972* (SA) - held: primary judge erred in misconstruing effect of finding that son had established moral claim to house - finding of moral claim enlivened court's discretion to make and order but it did not follow that son was entitled to whole of property - primary judge's finding that son's proper maintenance, education or advancement in life required him to receive all proceeds of sale of property not supportable - appropriate order was that deceased's funeral expenses and costs of administration should be paid from proceeds of sale - of remaining balance, one quarter should go to deceased's daughter and remaining three quarters to be divided equally between wife and son - personal effects of deceased be given to wife.

[Kozlowski](#) (B)**Snell v BP Refinery (Bulwer Island) Pty Ltd [2013] QSC 284**

Supreme Court of Queensland

A Lyons J

Work injury damages - plaintiff process technician injured in course of employment - liability was admitted - calculation of damages - medical evidence - held: plaintiff had pre-existing back



condition and depressive condition affecting future economic loss - court satisfied on balance of probabilities that it was more probable than not that plaintiff would retire due to combination of pain from degenerative changes and depression - award of damages for future economic loss should cease at age 60 - damages assessed - judgment for plaintiff.

[Snell \(I\)](#)

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