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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)

Lobban v Minister for Justice (FCAFC) - extradition - judicial review - surrender determination to surrender appellant to United States of America - appeal dismissed (I B C G)

Hinton v Alpha Westmead Private Hospital (FCAFC) - disability discrimination - dismissal of application for declaration and orders against hospital - case not abuse of process - denial of procedural fairness - apprehended bias - matter remitted (I B C G)

Dr David Amos v Western New South Wales Local Health District (NSWSC) - administrative law - procedural fairness - visiting medical officer under consideration for suspension - injunctions refused (I B C G)

Porter v Le (NSWSC) - approval of settlement - medical negligence - disabled person - settlement in plaintiff's best interests - settlement approved (I B C G)

Fullford v Maccas Ferry Services Pty Ltd (NSWSC) - administrative law - workplace injury - whole person impairment - Appeal Panel's confirmation of medical certificate quashed (I B C G)

Budulica v Budulica (QSC) - succession - family provision - extension of time to make application for further provision refused (B)

Astell v Australian Capital Territory (ACTSC) - statutory interpretation - claim against Territory for damages arising from sale of property at unidentified fraudster's instructions -

plaintiff entitled to damages (I B C G)

Summaries With Link (Five Minute Read)

Lobban v Minister for Justice [2016] FCAFC 109

Full Court of the Federal Court of Australia

Siopis, Barker & Charlesworth JJ

Extradition - judicial review - appellant contended Minister erred in making surrender determination under s22(2) *Extradition Act 1988* (Cth) to surrender appellant to United States of America - proper construction of Article V Treaty on Extradition between Australia and the United States of America as amended by Protocol in context of ss22(3)(e) & 22(3)(f) Extradition Act - grounds of appeal arising from Article XIII of the Treaty - held: contention failed that departmental brief on which Minister relied to make determination misstated Article V's effect with consequence Minister failed to adopt correct approach to fact that appellant was Australian citizen - provisions of Article XIII of Treaty did not apply to process which Attorney-General engaged in, in affording natural justice to requesting State - appeal dismissed.

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

Hinton v Alpha Westmead Private Hospital [2016] FCAFC 107

Full Court of the Federal Court of Australia

Collier, Jagot & Perry JJ

Disability discrimination - appellant sought declaration and orders against respondent hospital for discrimination under s46PO *Australian Human Rights Commission Act 1986* (Cth) - appellant alleged respondent discriminated against her as associate of person with disability in breach of *Disability Discrimination Act 1992* (Cth) arising from respondent's refusal to provide sign language interpreting services to deaf husband concerning birth of their child at hospital - primary judge dismissed application - s46PO *Australian Human Rights Commission Act 1986* (Cth) - ss3, 4, 5, 7, 11, 24, 29A & 123 *Disability Discrimination Act 1992* (Cth) - s17A *Federal Circuit Court of Australia Act 1999* (Cth) - r13.10 *Federal Circuit Court Rules 2001* (Cth) - sch 2, cl 4 *Legal Profession Uniform Law Application Act 2014* (NSW) - held: primary judge erred in finding case abuse of process - primary judge denied appellant procedural fairness - primary judge precluded from hearing matter on remittal due to apprehended bias - appeal allowed.

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

Dr David Amos v Western New South Wales Local Health District [2016] NSWSC 1162

Supreme Court of New South Wales

Beech-Jones J

Administrative law - plaintiff cardiologist held visiting medical officer appointment at health service operated by first defendant - first defendant was considering suspending plaintiff's appointment as visiting medical officer - plaintiff sought injunction to prevent suspension and injunction preventing him being reported on grounds of denial of procedural fairness - plaintiff

also sought to quash certain report prepared for first defendant (Zeitz report). 'warning decision' and 'warning letter' - Court's function to determine 'legal validity of the impugned conduct and the threatened suspension' - held: procedural fairness not required to be observed prior to completion of Zietz report or issue of Warning Letter - plaintiff failed to demonstrate decision to report him under s99A *Health Services Act 1977* (NSW) would involve denial of procedural fairness - application dismissed.

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

Porter v Le [2016] NSWSC 1164

Supreme Court of New South Wales

Harrison J

Approval of settlement - medical negligence - disabled person - defendant general practitioner prescribed corticosteroid to plaintiff - plaintiff contended prescription and dosage inappropriate and unreasonable and caused development of conditions and illnesses - plaintiff's status as legally disabled person directly related to the conditions and illnesses - Court had previously rejected settlement of proceedings - held: Court satisfied 'significant additional differences in litigious balance' had emerged in six years since original rejection of settlement - settlement of proceedings was in plaintiff's best interests - settlement approved in accordance with s76 *Civil Procedure Act 2005* (NSW).

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

Fullford v Maccas Ferry Services Pty Ltd [2016] NSWSC 1161

Supreme Court of New South Wales

Harrison J

Administrative law - workplace injury - whole person impairment - plaintiff ferry driver injured when assaulted while working for first defendant - plaintiff sought to quash decision of Appeal Panel to confirm medical assessment certificate purportedly pursuant to s328 *Workplace Injury Management and Workers Compensation Act 1998* (NSW) - held: plaintiff succeeded on ground of appeal alleging Appeal Panel erred in use of "Combined Tables Chart" to calculate whole person impairment percentage in relation to head injury - parties to bring in short minutes of order.

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

Budulica v Budulica [2016] QSC 184

Supreme Court of Queensland

Byrne SJA

Succession - family provision - plaintiff sought pursuant to s41(8) *Succession Act 1981* (Qld) extension of time to seek further provision from deceased mother's estate - prospects of success - explanation for delay - prejudice - held: plaintiff had no reasonable prospect of obtaining further provision - reason that application not made in time did not favour extension of time - justice of case did not require extension of time - extension of time refused.

[Budulica](#) (B)



Astell v Australian Capital Territory [2016] ACTSC 238

Supreme Court of the Australian Capital Territory

Mossop AsJ

Statutory interpretation - fraud - plaintiff victim of identity theft - house owned by plaintiff sold on fraudster's instructions to real estate agent and solicitor - property sold - proceeds lost - fraudster not identified - plaintiff sued Territory pursuant to s155 *Land Titles Act 1925* (ACT) - defendant accepted plaintiff sustained loss or damage for reason identified in s155 - defendant accepted plaintiff was 'by this Act ... barred from bringing an action of ejectment or other action for the recovery of the land' - liability of Territory turned on third precondition that it was a 'case in which the remedy by action for recovery of damages as provided in this part is inapplicable' - meaning of 'applicable' - what 'remedy by action for recovery of damages' was provided for in Pt 16 Land Titles Act - ss143, 152, 154 & 155 Land Titles Act - s139 *Legislation Act 2001* (ACT) - held: fraudster unidentified - plaintiff could not bring proceedings against fraudster - third precondition satisfied - plaintiff entitled to damages - damages assessed - judgment for plaintiff.

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

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