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Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Munday v Commonwealth of Australia (No 2) (FCA) - human rights - early access to superannuation fund refused - no unlawful discrimination (B G)

Queensland Mining Corporation Ltd v Renshaw (No 3) (FCA) - costs - successful plaintiffs' breach contributed to need for proceedings - plaintiffs to pay 20% of own costs (B C)

Harvey by her tutor Barton v Barton (NSWSC) - trusts and trustees - application for orders that defendant vacate property - adjourned on basis of medical certificate (B)

Sporting Shooters Association of Australia (NSW) Inc v McGuire (NSWSC) - defamation - dictates of justice - transfer of proceedings to District Court refused (I)

Gillett v Nelson (No. 3) (NSWSC) - succession - family provision - substitution orders (B)

Legal Services Commissioner v Scott (QCA) - legal practitioners - non-disclosure of income - mental deficits arising from head injury - solicitors' admission not set aside (I)

Quarmby v Qasair Investments Pty Ltd (TASFC) - preliminary question - issue estoppel - defence struck out - declarations and injunctions made - appeal dismissed (B)

Summaries with links (5 minute read)

Munday v Commonwealth of Australia (No 2) [2014] FCA 1123

Federal Court of Australia

Katzmann J

Superannuation - human rights - discrimination - husband and wife claimed Commonwealth discriminated against wife contrary to *Disability Discrimination Act 1992* (Cth) concerning conduct of program under which superannuant may acquire early access to superannuation funds on compassionate grounds - wife sought early release to pay for IVF treatment on basis it was necessary to alleviate depression - first application rejected because decision-maker not satisfied IVF necessary to alleviate depression or that she lacked financial capacity to meet expense arising from proposed treatment by other means - second application rejected because decision-maker not satisfied IVF necessary to alleviate depression and because superannuation funds would be used for purpose not permitted under Australian law - requirement of lawful purpose not specified in *Superannuation Industry (Supervision) Act 1993* (Cth) or *Superannuation Industry (Supervision) Regulations 1994* (Cth) - whether imposition of requirement involved unlawful discrimination on basis of wife's infertility - whether failure to obtain independent legal advice before imposing requirement involved a failure to make a *reasonable adjustment* - ss5 & 6 *Disability Discrimination Act 1992* (Cth) - held: applicants unable to prove any unlawful discrimination - application dismissed.

[Munday](#) (B G)

Queensland Mining Corporation Ltd v Renshaw (No 3) [2014] FCA 1126

Federal Court of Australia

Perry J

Costs - Court held plaintiff (QMCL) entitled under s200J *Corporations Act 2001* (Cth) (Act) to recover termination payments from Renshaw defendants on ground they were made in contravention of s200B and were held on trust by recipients for QMCL - Renshaw defendants contended each party should bear own costs on application for recovery of termination benefits - held: QMCL successful on all grounds in litigation - Renshaw defendant's conduct in failing to repay money necessitated bringing of proceedings - QMCL's conduct in freely entering into settlement deed and paying over money not too remote to take into account in determining appropriate award of costs - QCML had acted in breach of s200B - QMCL's part in creating situation leading to need for recovery proceedings should fairly find reflection in costs order - appropriate order was that Renshaw defendants pay 80% of QCML's costs.

[Queensland Mining Corporation Ltd](#) (B C)

Harvey by her tutor Barton v Barton [2014] NSWSC 1422

Supreme Court of New South Wales

Slattery J

Trusts and trustees - trustees appointed to sell property in which plaintiff and defendant were interested - defendant still in occupation of property - trustees sought orders that defendant vacate premises - trustees also sought order for possession and writ for possession be issued against her for that purpose - trustees also sought increase in remuneration which they could deduct from proceeds of sale of property, occasioned by unexpected delays they had encountered associated with the sale - defendant provided medical certificate concerning slip and fall in store to excuse non-attendance at hearing - held: Court unwilling to proceed with motion in absence of defendant in light of medical certificate - Court disinclined to give defendant lengthy adjournment because of scanty material provided in medical certificate - short adjournment granted.

[Harvey by her tutor Barton](#) (B)**Sporting Shooters Association of Australia (NSW) Inc v McGuire [2014] NSWSC 1370**

Supreme Court of New South Wales

McCallum J

Defamation - association and branch sued member of another branch to vindicate reputation against allegedly defamatory remarks contained in emails - plaintiffs sought to have proceedings transferred to District Court - s146(1) *Civil Procedure Act 2005* (NSW) - plaintiffs contended likely award of damages would be relatively small and that publications were 'private communications' by way of email - plaintiffs claimed there was unlikely to be any issue of principle that would warrant Supreme Court's attention and that there were other proceedings on foot brought by same plaintiffs against different person, which had been transferred to District Court by consent - held: proceedings could properly have been commenced in District Court - transfer of proceedings at this stage would occasion further delay where plaintiffs had already been authors of some delay - Court accepted the two proceedings raised common issues of fact, however efficiencies appeared to be in favour of plaintiffs and to detriment of defendants - dictates of justice required that proceedings remain in Supreme Court and be listed for hearing promptly

[Sporting Shooters Association of Australia \(NSW\) Inc](#) (I)**Gillett v Nelson (No. 3) [2014] NSWSC 1415**

Supreme Court of New South Wales

Darke J

Succession - Court concluded family provision order should be made in favour of plaintiff out of estate or notional estate of late father - parties provided competing versions of orders they contended should be made - parties disputed whether certain substitution orders should be made as proposed by defendants under ss92(1)(b) & 92(2)(b) *Succession Act 2006* (NSW) - held: proposed family provision order was one that affected property for purposes of s92(1) - substitution orders proposed by defendants were appropriate in circumstances of case - Court

satisfied replacement property could properly be substituted for relevant property proposed to be affected by family provision order and could properly be substituted for relevant property proposed to be designated as notional estate - orders made.

[Gillett](#) (B)

Legal Services Commissioner v Scott [2014] QCA 266

Court of Appeal of Queensland

Fraser JA, Atkinson & A Wilson JJ

Legal practitioners - solicitor admitted to legal profession in 2010 failed to declare income to Australian Tax Office and Centrelink between 2004 and 2008 - undeclared income brought to Legal Services Commissioner's attention in 2012 when solicitor brought personal injury proceedings following motor vehicle accident - Commissioner sought that Court make order it deemed appropriate as to solicitor's admission - held: non-disclosure was serious - persuasive grounds for accepting solicitor's explanation - no grounds for rejecting explanation - acceptance involved acknowledging presence of mental deficits consequent upon a serious head injury - no cause for setting original admission aside - to do so would be to punish solicitor for oversight for which, on the available evidence, she was blameless - solicitor to pay Commissioner's costs of application.

[Legal Services Commissioner](#) (I)

Quarmby v Qasair Investments Pty Ltd [2014] TASFC 11

Full Court of the Supreme Court of Tasmania

Porter, Wood & Pearce JJ

Issue estoppel - dispute concerning respective entitlements of parties to strip of land along shared boundary - primary judge struck out appellant's defence in actions brought by company and granted declaratory and injunctive relief sought by company - primary judge ruled appellant estopped from relying on issues because those issues had been finally determined against appellant in earlier proceedings in which both he and company were parties - held: matters raised in defence raised no fact or issue, other than those he was estopped from raising, capable of establishing some other interest that would preclude company from relief ordered - taking into account admissions in defences and effect of estoppel, there was no error in primary judge proceeding to strike out defences and grant relief- appellant had no *statutory rights* to disputed land other than purportedly arising from issues found against him in earlier proceedings - appellant's claim to interest in land, as pleaded in the actions, had been finally determined against him in earlier proceedings - no error in primary judge's decision to deal with issue estoppel question as a separate question - appeal dismissed.

[Quarmby](#) (B)

Redbirds

By Sara Teasdale

Redbirds, redbirds,
Long and long ago,
What a honey-call you had
In hills I used to know;

Redbud, buckberry,
Wild plum-tree
And proud river sweeping
Southward to the sea,

Brown and gold in the sun
Sparkling far below,
Trailing stately round her bluffs
Where the poplars grow -

Redbirds, redbirds,
Are you singing still
As you sang one May day
On Saxton's Hill?

[Sara Teasdale](#)

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