

Wednesday 25 July 2012

Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (1 minute read)

Dennis v Chambers Investment Planners Pty Ltd (No 2) - practice and procedure - leave to amend statement of claim - requests for particulars - *Federal Court Rules 2011* (Cth) (I, B)

Re R - administrative law - appeal from determination of Mental Health Review Tribunal - *Mental Health Act 2007* (NSW) - *Mental Health Regulation 2007* (NSW) (G)

Estate of Puruto - wills, probate and administration - construction and execution of will - *Uniform Civil Procedure Rules 2005* (NSW) (B)

Purton v Jackson - environment and planning - power of tribunal to vary decision - *Resource Management and Planning Appeal Tribunal Act 1993* (Tas) (C, G)

Kennedy v CCB (ACT) Pty Ltd t/as Construction Control - practice and procedure - adjournment of hearing - amendment of documents - *Court Procedure Rules 2006* (ACT) (I, C)



Summaries with links (5 minute read)

Dennis v Chambers Investment Planners Pty Ltd (No 2) [2012] FCA 780

Federal Court of Australia

Barker J

Practice and procedure - application for leave to amend statement of claim in relation to failed investment claim proceeding - respondents allege proposed pleading gives rise to limitation defence and fails to provide adequate particulars including dates of alleged loss - whether proposed pleading states amount of money paid or liable to be paid by applicant as required by r16.44(1) *Federal Court Rules* 2011 (Cth) - whether requests for particulars constitute sufficient reasons for withholding leave to file proposed pleadings or requiring provision of further particulars - whether sufficient particularisation of claimed loss and damage pleaded - whether proposed pleading sufficiently clear.

[Dennis](#) (I, B)

Re R [2012] NSWSC 829

Supreme Court of New South Wales

White J

Administrative law - appeal from determination of the Mental Health Review Tribunal (**Tribunal**) for order that community treatment order made by the Tribunal under the *Mental Health Act* 2007 (NSW) (**Act**) be set aside - the Tribunal was not constituted by three persons as required by the *Mental Health Regulation* 2007 (NSW) - whether community treatment order should be quashed - whether the Tribunal made an inquiry in accordance with s35 of the Act - whether constructive failure to exercise jurisdiction - whether appeal can proceed under the Act despite the Tribunal's procedural defects - whether court could vary community treatment order - Parliament's expectation that determinations as to plaintiff's mental state and community treatment order be made by a specialist tribunal that is properly constituted - whether to make order for costs.

[Re R](#) (G)

Estate of Puruto [2012] NSWSC 827

Supreme Court of New South Wales

White J

Wills, probate and administration - application under *Uniform Civil Procedure Rules* 2005 (NSW) for review of Registrar's declaration that court not satisfied that deceased intended a document signed by deceased (**document**) to form deceased's will - plaintiff seeks declaration that the document forms the deceased's will - whether the document constitutes instructions only -



whether deceased intended the document to operate as will - consideration of format of the document to ascertain its purpose - consideration of statements contained in the document and deceased's verbal statement to her mother in relation to ascertaining deceased's intentions - whether, on balance, court satisfied that deceased intended the document to form will and to what extent the document formed deceased's will.

[Estate of Puruto](#) (B)

Purton v Jackson [2012] TASFC 2

Full Court of the Supreme Court of Tasmania

Crawford CJ; Evans and Blow JJ

Environment and planning - appeal against Court's decision to set aside decision of the Resource Management and Planning Appeal Tribunal (**Tribunal**) that it had jurisdiction to hear and determine an appeal regarding a planning permit for construction of a residence - the Tribunal's decision reversed its earlier decision of that it had no jurisdiction to hear and determine the appeal - consideration of case law as to effect of decisions of tribunals which involve jurisdictional error - whether tribunal has power to vary or reverse statutory decision - whether the *Resource Management and Planning Appeal Tribunal Act 1993* (Tas) (**RMPATA**) prohibits the Tribunal from varying or reversing decision - consideration of limited powers of correction and amendment conferred by s23(5) and (6) of the RMPATA - whether contrary to scheme of legislation for the Tribunal to be held to have any further powers to change its decision.

[Purton](#) (C, G)

Kennedy v CCB (ACT) Pty Ltd t/as Construction Control [2012] ACTSC 120

Supreme Court of the Australian Capital Territory

Master Harper

Practice and procedure - defendant seeking adjournment of hearing - plaintiff's amended statement of claim increased claims for future economic loss, future treatment expenses and future care expenses - defendant seeking further time to be in a position to respond to new claims made - plaintiff submits no real change in the way plaintiff's claim will be presented - consideration of decision of High Court of Australia in *Aon Risk Services Australia Ltd v Australian National University* (2009) 239 CLR 175 - consideration of Pt 2.7 of *Court Procedures Rules 2006* (ACT) in relation to amendment of pleadings and court's power to grant leave to amend - whether leave should have been sought before amended statement of particulars filed - whether amendments are for the purpose of deciding the real issues in the proceedings - whether grant of leave to amend is for the purpose of resolution of the real issues in the proceedings.

[Kennedy](#) (I, C)

[Click Here to access our Benchmark Search Engine](#)