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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)

Lee v Napier (FCA) - judicial review - health insurance - failure of Minister to consult Australian Medical Association before making appointments to Professional Services Review Panel - appointments invalid (I, G)

Bushara v Nobananas Pty Ltd (NSWSC) - defamation - defences - publication of material on website - offer of amends - truth and contextual truth - qualified privilege and reply to attack - judgment for plaintiff (I)

McLeary v Swift (NSWSC) - equitable remedies - injunction - specific performance - plaintiff sought freezing orders with respect to defendant's property and corporations in which defendant had interest - freezing order made (B)



Update Pty Ltd v Commissioner of State Revenue (VSC) - taxation - applications for extension of time to appeal and leave to appeal from Tribunal's decision to affirm liability for Growth Areas Infrastructure Contribution - extension granted - appeal allowed (B, G)

Halligan & Ors v Curtin & Anor (VSC) - tort - negligence - mode of trial - plaintiffs sought to dispense with jury in personal injury proceedings - question of liability to heard by jury and for trial judge to determine quantum of claim (I)

Waratah Coal Pty Ltd v Nicholls & Anor (QSC) - judicial review - direction and decision to terminate process for development of port terminals - decision excluded from judicial review - no evidence of direction - dismissal deferred to enable applicant to obtain disclosure of documents evidencing direction (I, C, G)

Summaries with links (5 minute read)

Lee v Napier [2013] FCA 236

Federal Court of Australia

Katzmann J

Health insurance law - Professional Services Review Scheme - general practitioner sought judicial review of decision of Professional Services Review Committee - separate determination whether members of Committee were not validly appointed to Professional Services Review Panel because Minister failed to consult with Australian Medical Association (AMA) as mandated by s84(3) *Health Insurance Act 1973* (Cth) before making appointments - meaning and scope of consultation requirement - held: consultation was still underway when appointments made - Minister pre-empted outcome of consultation - appointments invalid.

[Lee](#) (I, G)

Bushara v Nobananas Pty Ltd [2013] NSWSC 225

Supreme Court of New South Wales

Rothman J

Defamation - defences - truth and contextual truth - qualified privilege and reply to attack - offer of amends - plaintiff and defendants sold electric engines to be fitted to push bikes - plaintiff was



in competition with defendants - plaintiff sued defendants for defamation in respect of publication of material on website - defendants raised offer of amends as defence or partial defence to defamation, damages arising, or extent of damages - held: offer to make amends not reasonable within meaning of s18 *Defamation Act 2005* (NSW) so did not constitute a defence to action for defamation - neither truth nor contextual truth proved - imputations not relevant to qualified privilege - judgment for plaintiff.

[Bushara](#) (I)

McLeary v Swift [2013] NSWSC 216

Supreme Court of New South Wales

Young AJ

Equity - equitable remedies - injunctions - plaintiff and defendant made agreement concerning their respective tax liabilities in relation to various corporate entities under which they had conducted business - plaintiff obtained judgment in specific performance proceedings brought against defendant in respect of agreement - defendant appealed decision but appeal not yet argued - plaintiff sought various freezing orders with respect to defendant's property and corporations in which defendant had an interest because of fear that judgment in proceedings might be nullified by defendant's activities - merits of motion - defences to motion - held: plaintiff had established case for freezing order - freezing order made.

[McLeary](#) (B)

Update Pty Ltd v Commissioner of State Revenue [2013] VSC 122

Supreme Court of Victoria

Davies J

Taxation - administrative law - two applications by taxpayer under s148 *Victorian Civil and Administrative Tribunal Act 1998* (Vic) - applications for extension of time to apply for leave to appeal, and for leave to appeal from decision of Victorian Civil and Administrative Tribunal affirming taxpayer's liability for Growth Areas Infrastructure Contribution - held: interests of justice favoured grant of extension of time - leave to appeal granted - Tribunal erred in approach to construction of and in construing s201RB(d)(iii) *Planning and Environment Act 1987* (Vic) in relation to the provision's application to contracts for sale of land - Tribunal's conclusion concerning parties' intention to form contractual relations failed to have regard to whole of evidence - appeal allowed - matter remitted to Tribunal for determination in accordance with law.

[Update](#) (B, G)



Halligan & Ors v Curtin & Anor [2013] VSC 124

Supreme Court of Victoria

J Forrest J

Tort - negligence - mode of trial - plaintiffs were injured in melee at hotel - plaintiffs sued licensee and proprietor of hotel alleging liability for failure to control action of assailants - plaintiffs sought to dispense with jury and have trial heard by judge alone - principles applicable to mode of trial: *Supreme Court (General Civil Procedure) Rules 2005 (Vic)*, ss7(1) & 49 *Civil Procedure Act 2010 (Vic)*, *Trevor Roller Shutter Services Pty Ltd v Crowe [2011] VSCA 16* - held: assessment of damages for non-economic loss under *Civil Liability Act 2002 (Vic)* should not be performed by jury - question of liability of defendants to plaintiffs should be heard by jury and trial judge should determine quantum of claim or claims if necessary.

[Halligan](#) (I)

Waratah Coal Pty Ltd v Nicholls & Anor [2013] QSC 68

Supreme Court of Queensland

Applegarth J

Judicial review - powers of courts - discovery - applicant alleged two shareholding ministers of second respondent gave direction to second respondent to terminate process for proposed development of port terminals and that second respondent implemented direction - applicant alleged direction and termination were invalid and sought relief under *Judicial Review Act 1991 (Qld)* (Act) - respondents denied direction was given and that proceedings should be dismissed or set aside - held: no direction was given - no merit to proceedings or prospect of success - dismissal deferred to enable applicant to obtain disclosure of documents evidencing a direction - decision of second respondent to terminate process was not made under an enactment and was thus excluded from judicial review by s18A of the Act.

[Waratah](#) (I, C, G)

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