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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)

Clement v Comcare (FCA) - administrative law - workers compensation - no compensable incapacity - appeal dismissed (I G)

In the matter of Mirabela Nickel Ltd (NSWSC) - corporations - voluntary administration - deed administrators granted leave to transfer company shares (B)

Barakat v The Law Society of New South Wales (NSWSC) - legal practitioners - suspended former partners of law firm were fit and proper persons to hold practising certificates - appeal allowed (I)

Pedrana v Racing NSW (No 3) (NSWSC) - costs - Calderbank offer not open for reasonable time or a true compromise - indemnity costs refused (I)

Love v Roads Corporation (VSCA) - compulsory acquisition of land - no error in determination of compensation - appeal dismissed (C G)

JNJ Resources Pty Ltd v Crouch & Lyndon (a firm) (No 2) (QSC) - security for costs to be refused if appropriate undertakings given by company directors (I)



Ailakis v Olivero [No 2] (WASCA) - contract - promise of shares in company in return for services was enforceable contract - loss of bargain damages (B)

Summaries with links (5 minute read)

Clement v Comcare [2014] FCA 654

Federal Court of Australia

Flick J

Administrative law - self-represented litigant - applicant employed by Australian Bureau of Statistics in early 1990s lodged claim with Comcare for psychological injury arising from treatment at work - claim accepted - compensation paid - employment ended - applicant made further compensation claims which Comcare rejected - Administrative Appeals Tribunal found no work-caused incapacity or injury after 1994 - Federal Court and Full Court dismissed applicant's appeals - Tribunal resolved outstanding issues adversely to applicant concerning choice of rehabilitation provider and closure of rehabilitation plan - applicant appealed - ss36, 37 *Safety, Rehabilitation and Compensation Act 1988* (Cth) - held: no questions of law identified - Tribunal's findings of fact were open to it - no error in Tribunal's decision that it could, but should not, depart from earlier finding that any present incapacity was not compensable under Act - appeal dismissed.

[Clement](#) (I G)

In the matter of Mirabela Nickel Ltd [2014] NSWSC 836

Supreme Court of New South Wales

Black J

Corporations - voluntary administration - deed administrators sought leave under s444GA *Corporations Act 2001* (Cth) to transfer 98.2% of shares in company in accordance with deed of company arrangement - proposed transfer was step in recapitalisation and restructure plan contemplated by deed and put forward by a majority of company's unsecured noteholders - company in distressed financial position - held: recapitalisation proposal, so far as it contemplated shareholders would retain minimal equity in company, was more favourable to them than loss of entire equity in a winding up - no unfair prejudice to shareholders in proposed transfer - leave granted.

[In the matter of Mirabela Nickel Ltd](#) (B)

Barakat v The Law Society of New South Wales [2014] NSWSC 773

Supreme Court of New South Wales

Beech-Jones J

Legal practitioners - former partners of law firm appealed from Law Society's decisions to deny them practising certificates on basis they were not fit and proper persons - s108 *Legal Profession Act 2004* (NSW) - whether a legal practitioner whose practising certificate was suspended could



apply for a renewal - relevance of acting on advice of insolvency practitioner in impugned transactions - ss4, 5, 6, 9, 14, 42, 43, 48, 68, 72 & 548 *Legal Profession Act 2004* (NSW) - held: Court rejected Law Society's submission that partners had deliberately sought to benefit themselves and had displayed reckless disregard for their creditors by undertaking transactions - partners had not acted dishonestly and while they had furthered own interests they had also considered creditors' interests - balance of evidence demonstrated partners were fit and proper persons to hold a practising certificate - appeals allowed.

[Barakat](#) (I)

Pedrana v Racing NSW (No 3) [2014] NSWSC 791

Supreme Court of New South Wales

Rothman J

Costs - indemnity costs - challenge to licensing system by vets who treated racehorses dismissed - Racing NSW sought indemnity costs on basis of *Calderbank* offer which required vets to walk away from proceeding and pay to 90% of its assessed costs in circumstances where vets had obtained interlocutory relief over its opposition - held: vets' case not unreasonable or unarguable - given history of matter and negotiations, offer was not open for reasonable period of time and not made a reasonable time before hearing - offer little more than a walk away offer and was not a true compromise - offer was demand to capitulate and ought not be basis for indemnity costs - motion dismissed.

[Pedrana](#) (I)

Love v Roads Corporation [2014] VSCA 129

Court of Appeal of Victoria

Nettle & Whelan JJA; Almond AJA

Land valuation and compensation - Roads Corporation compulsorily acquired land to construct interchange on bypass - Roads Corporation and owner could not agree on compensation - owner appealed from trial judge's determination of amount of compensation payable under s89(1) *Land Acquisition and Compensation Act 1986* (Vic) - ss41(1)(a) & 41(3) - treatment of expert evidence - loss attributable to severance of land - whether access to owner's interest *before* acquisition would be different from access *after* construction of interchange - held: none of owner's grounds of appeal or submissions raised any error of law - trial judge's conclusions open on evidence - appeal dismissed.

[Love](#) (C G)

JNJ Resources Pty Ltd v Crouch & Lyndon (a firm) (No 2) [2014] QSC 137

Supreme Court of Queensland

Jackson J

Security for costs - plaintiff company claimed defendant solicitor gave negligent advice regarding contracts for sale of land - firm sought security for costs under r670 *Uniform Civil Procedure Rules 1999* (Qld) or s1335 *Corporations Act 2001* (Cth) - held: firm satisfied threshold question that by

credible testimony there was reason to believe company would be unable to pay its costs if successful - delay in bringing application not determinative - unconditional guarantees offered by company's directors for payment of adverse costs order were valuable - value of security assessed against firm's estimate of sum required - items deducted from estimate - appropriate exercise of discretion was that if directors offered appropriate undertakings to pay firm's costs, application for security should be dismissed - if undertakings not made there should be order for security.

[JNJ Resources Pty Ltd \(I\)](#)

Ailakis v Olivero [No 2] [2014] WASCA 127

Court of Appeal of Western Australia

Martin CJ; Buss & Murphy JJA

Contract - loss of bargain - appellants were two brothers who were company director and service-provider - respondent was a non-executive director who also provided consultancy services to company - appellants promised to give respondent shares in company for his services which resulted in restoration of mineral tenement to company - appellants contended promises did not give rise to contract - trial judge found contract existed and appellants breached it - damages awarded - admissibility of similar fact evidence - election - continuing repudiation - *Chancery Amendment Act 1858* (WA) - s180(1) *Corporations Act 2001* (Cth) - held: primary judge erred in admitting evidence but evidence had no effect on reasoning process - parties intended to create a legally enforceable contract - respondent's promise to provide services was good consideration - respondent entitled to accept appellants' repudiation and to claim damages for loss of bargain - challenge to assessment of damages failed - appeal dismissed.

[Ailakis](#) (B)

From the Telephone

by Florence Ripley Mastin

Out of the dark cup
Your voice broke like a flower.
It trembled, swaying on its taut stem.
The caress in its touch
Made my eyes close.

[Florence Ripley Mastin](#)

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