



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Australian Competition & Consumer Commission v Global One Mobile Entertainment Ltd - *Trade Practices Act 1974* (Cth) - contraventions - television advertisements broadcast by mobile content services providers (I, B)

Norddeutsche Landesbank Girozentrale v The Ship "Beluga Notification" - Application by Admiralty Marshal to move vessel to another port (I, B)

Cutler v Donric Pty Ltd - Costs (I, B, C)

Maricic v the Registrar, Workers Compensation Commission - *Workplace Injury Management & Workers Compensation Act 1998* (NSW) no breach of obligation of procedural fairness (I)

Frontier Assets Pty Ltd v Fishburn - Costs - compliance with subpoena (I, B, C)

Supercar International Holdings Ltd v Sommers; Tinkler Group Holdings Pty Ltd v Sommers - *Fair Trading Act 1987* (NSW) - *Corporations Act 2001* (Cth) s729 - share purchase agreement - service contracts - conversion (B)



Koutroulis v Transport Accident Commission - *Transport Accident Act 1986* (Vic) - "transport accident" (I)

Qantas Airways Ltd v Portelli - *Accident Compensation Act 1985* (Vic) - legal professional privilege (I)

Brisbane City Council v City Point Hotels Pty Ltd - *City of Brisbane Act 1924* (Qld) - rates & charges - fire service levy (B, C)

Fugro Spatial Solutions Pty Ltd v Cifuentes - Negligence - apportionment of liability - pure economic loss - *Law Reform (Contributory Negligence & Tortfeasors' Contribution) Act 1947* (WA) (I, C)

McKay v Western Australian Planning Commission - *Planning & Development Act 2005* (WA) - appointment of Arbitrator deferred - referral of questions to Court of Appeal (C)

Wireton Holdings Pty Limited v Price & Ors - Contracts for sale - *Building Act 2004* (ACT) - *A New Tax System (Goods & Services Tax) Act 1999* (Cth) - notice to complete (C)

Phelps v Development Consent Authority & Ors - *Planning Act* (NT) (C)

Summaries with links (5 minute read)

Friday 29 April 2011

Australian Competition & Consumer Commission v Global One Mobile Entertainment Ltd
[2011] FCA 393

Federal Court of Australia

Bennett J (in Sydney)

Trade Practices Act 1974 (Cth): the Act was replaced by *Competition & Consumer Act 2010* (Cth) from 1 January 2011 by operation of *Trade Practices Amendment (Australian Consumer Law) Act* (No 2) 2010 (Cth): however, pursuant to s7(1) of Schedule 7 of the *Amendment Act*, the Act continued to apply to these proceedings - contraventions - television advertisements broadcast by mobile



content services providers including advertisement by which consumers could obtain song as mobile phone ringtone - liability - pecuniary penalties.

[Global One Mobile Entertainment](#) (I, B)

Norddeutsche Landesbank Girozentrale v The Ship "Beluga Notification" [2011] FCA 410

Federal Court of Australia

Buchanan J (in Sydney)

Admiralty - arrest of ship - mortgage - application by Admiralty Marshal to move vessel to another port granted.

[Norddeutsche Landesbank Girozentrale](#) (I, B)

Cutler v Donric Pty Ltd [2011] FCA 396

Federal Court of Australia

Marshall J (in Melbourne)

Costs - moving party sent emails advising would not be attending court & would not be represented - application of respondent for costs pursuant to s666(1) *Workplace Relations Act 1996* (Cth) dismissed.

[Cutler](#) (I, B, C)

Maricic v the Registrar, Workers Compensation Commission [2011] NSWCA 42

Court of Appeal of New South Wales

Beazley, Hodgson & Campbell JJA

Workplace Injury Management & Workers Compensation Act 1998 (NSW) - medical assessment - appeal against decision of approved medical specialist - obligation of appeal panel to afford procedural fairness - no breach of obligation - appeal dismissed.

[Maricic](#) (I)

[Maricic](#) - decision 8 September 2009: see 'Benchmark' I & IBC Thursday 10 September 2009 - plaintiff seeking to set aside two decisions of Appeal Panel of Workers Compensation Commission - plaintiff had applied for reconsideration of its original decision - review of original medical assessment - member of Appeal Panel conducted medical examination pursuant to s324(3) - Appeal Panel declined to alter its decision - no denial of procedural fairness - application dismissed - case law considered including *Estate of Heinrich Christian Joseph Brockmann v Brockmann Metal Roofing Pty Limited & Ors* [2006] NSWSC 235 & *Skillen v MKT Removals Pty Ltd* [2007] NSWSC 608.

**Frontier Assets Pty Ltd v Fishburn [2011] NSWSC 334**

Supreme Court of New South Wales

Harrison J

Costs - whether respondent ought to pay applicant's reasonable loss & expense incurred in complying with subpoena - answer 'yes.'

[Frontier Assets](#) (I, B, C)

[Frontier Assets](#) - decision 22 March 2011: see 'Benchmark' Friday 25 March 2011 - subpoenas - entitlement of third party to claim loss & expense incurred in complying with subpoena - analysis of *Uniform Civil Procedure Rule* 33.11.

Supercar International Holdings Ltd v Sommers;Tinkler Group Holdings Pty Ltd v Sommers [2011] NSWSC 336

Supreme Court of New South Wales

White J

Fair Trading Act 1987 (NSW) - *s729 Corporations Act* 2001 (Cth) - share purchase agreement - service contracts - two proceedings heard together - alleged misappropriation - use of motor vehicles - subscription deed - alleged warranties - conversion - detinue - oppression - His Honour's conclusions set out at para. 221 of judgment.

[Supercar International Holdings](#) (B)

Koutroulis v Transport Accident Commission [2011] VSC 159

Supreme Court of Victoria

Kaye J

Transport Accident Act 1986 (Vic) - "transport accident" - appellant's arm caught in bus door while alighting from bus - appellant contending Victorian Civil & Administrative Tribunal erred in finding that she was injured as a result of transport accident - appeal allowed.

[Koutroulis](#) (I)

Qantas Airways Ltd v Portelli [2011] VSC 162

Supreme Court of Victoria

Habersberger J

Accident Compensation Act 1985 (Vic) - legal professional privilege - appeal from order by Magistrates' Court to provide copy of medical report - questions of law - whether s104B(2)(g) abrogated legal professional privilege - appeal dismissed.

[Qantas Airways](#) (I)



Brisbane City Council v City Point Hotels Pty Ltd [2011] QSC 93

Supreme Court of Queensland

Margaret Wilson J

City of Brisbane Act 1924 (Qld) - water, sewerage & drainage rates & charges - fire service levy - defendant property owner converted commercial office building into multi-storey residential building - application for summary judgment dismissed.

[Brisbane City Council](#) (B, C)

Fugro Spatial Solutions Pty Ltd v Cifuentes [2011] WASCA 102

Court of Appeal of Western Australia

Martin CJ, McLure P, Mazza J

Negligence - apportionment of liability - pure economic loss - *Law Reform (Contributory Negligence & Tortfeasors' Contribution) Act 1947* (WA) - appeals from orders in two Supreme Court actions arising out of crash of Cessna 404 Titan twin-engine aircraft near Jandakot Airport - second appellant the pilot employed by first appellant - five passengers on board all employed by first-named sixth respondent who had taken an assignment of second-named sixth respondent's causes of action - appeal allowed in part - sixth respondent's cross-appeal dismissed - seventh respondent aero-nautical engineer's cross-appeal allowed in part.

[Fugro Spatial Solutions](#) (I, C)

[Cifuentes](#) - decision 11 November 2009: see 'Benchmark' I, C & IBC Friday 13 November 2009 - personal injuries - contract - s74 *Trade Practices Act 1974* (Cth) - duty of care as to economic loss - apportionment of liability between tortfeasors - charter hire of aircraft - in 2003 Cessna twin-engine aircraft crashed just east of Jandakot Airport - whether pilot negligent - failure of fuel pump - defendant Mr. Barclay aeronautical engineer employed by Aeronautical Engineers Australia Pty Ltd - expert evidence - claim for loss of aircraft - all five passengers on board employees of sixth plaintiffs ("Nautronix") - two passengers died, others suffered burn injuries - *Fatal Accidents Act 1959* (WA) - claim by Nautronix against Fugro Spatial Solutions as to charter contract for hire of aircraft: that claim for breach of contract dismissed - findings as to liability & contribution at paras. 433 to 488 in relation to CIV:1312/2008 & CIV:2279/2009.

McKay v Western Australian Planning Commission [2011] WASC 109

Supreme Court of Western Australia

Kenneth Martin J

Planning & Development Act 2005 (WA) - claim for injurious affection over land at North Yunderup - dispute as to whether or not final & determinative input, as regards s179(1)(b), is provided by Board of Valuers valuation work under s183(1) - statutory interpretation - *Commercial Arbitration*



Act 1985 (WA) - appointment of Arbitrator deferred - points of law at issue of general importance to many compensation cases - referral of questions to Court of Appeal.

[McKay](#) (C)

Wireton Holdings Pty Limited v Price & Ors [2011] ACTSC 65

Supreme Court of the Australian Capital Territory

Higgins CJ

Contracts for sale - penthouse unit at Turner in Australian Capital Territory - *Building Act 2004* (ACT) - *A New Tax System (Goods & Services Tax) Act 1999* (Cth) - whether, as at the date of the notice to complete, plaintiff was in breach of its obligations so as to be disentitled to issue it - plaintiff entitled to require completion & to terminate contract upon default - damages.

[Wireton Holdings](#) (C)

Phelps v Development Consent Authority & Ors [2011] NTSC 34

Supreme Court of the Northern Territory

Kelly J

Planning Act (NT) - appellant owner of land in the vicinity of Knuckey Lagoons south of Darwin seeking consent to subdivide his land - Development Consent Authority had refused consent - appeals in Land Planning & Mining Tribunal & Supreme Court - appeal dismissed.

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