



Monday 30 June 2014

## Insurance, Banking, Construction & Government

### A Daily Bulletin listing Decisions of Superior Courts of Australia

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#### Executive Summary (1 minute read)

**Commissioner of Taxation v Hunger Project Australia** (FCAFC) - fringe benefits tax - Hunger Project Australia was a *public benevolent institution* - appeal dismissed (B G)

**Toben v Milne** (NSWCA) - pleadings - defamation - imputation that *plaintiff fabricated history* was too imprecise and wide - imputation struck out - appeal dismissed (I)

**Workers Compensation Nominal Insurer v Bui** (NSWSC) - permanent impairment - failure to give adequate reasons - decision of Medical Appeal Panel quashed (I G)

**PPK Willoughby v Eighty Eight Construction (No.2)** (NSWSC) - security of payments - stay of order that money paid into court for interlocutory relief to be paid to contractor (C)

**Eccles v Koolan Iron Ore Pty Ltd [No 3]** (WASC) - costs - refusal to accept Calderbank offers not unreasonable - indemnity costs refused (B)

**Chan v Du Buisson Perrine** (WASC) - sellers validly terminated contract for sale of land - sellers entitled to deposit (B)



**Maher v Nationwide New Pty Ltd [No 3]** (WASC) - pleadings - defamation - pleas of justification too vague - paragraphs of defence struck out (I)

## Summaries with links (5 minute read)

### **Commissioner of Taxation v Hunger Project Australia [2014] FCAFC 69**

Full Court of the Federal Court of Australia

Edmonds, Pagone & Wigney JJ

Taxation - fringe benefits tax - Hunger Project Australia (HPA) was a not-for-profit company - principal objective to relieve global hunger - HPA raised funds that were disseminated to related entities which directly performed charitable acts - Commissioner contended HPA not a *public benevolent institution* within s57A(1) *Fringe Benefits Tax Assessment Act 1986* (Cth) - held: primary judge correct to find HPA was a public benevolent institution even though predominately engaged in fund raising - ordinary meaning of public benevolent institution included an institution which was organised, conducted for, or promoted relief of poverty or distress - ordinary meaning broad enough to encompass HPA - fact that such HPA did not itself directly give or provide relief was no bar to it being a public benevolent institution - appeal dismissed.

[Commissioner of Taxation](#) (B G)

### **Toben v Milne [2014] NSWCA 200**

Court of Appeal of New South Wales

Beazley P; Meagher & Ward JJA

Pleadings - defamation - alleged Holocaust denier appealed primary judge's decision to strike out imputation that *plaintiff fabricated history* - imputation said to have been conveyed by newspaper article - ss8, 25 & 26 *Defamation Act 2005* (NSW) - r14.30 *Uniform Civil Procedure Rules 2005* (NSW) - held: imputation was too vague and imprecise - respondent should not be required to defend such an imprecise and wide imputation - if appellant wished to rely on imputation relating to fabrication of history he ought to plead imputation having regard to context of article as a whole - appeal dismissed.

[Toben](#) (I)

### **Workers Compensation Nominal Insurer v Bui [2014] NSWSC 832**

Supreme Court of New South Wales

McCallum J

Administrative law - workers compensation - plaintiff was victim of robbery at work - plaintiff suffered psychological injury and claimed lump sum compensation for permanent impairment - insurer retained investigator who observed plaintiff behaving inconsistently with presentation to psychiatrists - insurer rejected claim - approved medical specialist assessed plaintiff as having 26% whole person impairment - insurer appealed to Medical Appeal Panel - Panel admitted surveillance as fresh evidence and reduced WPI to 24% - insurer appealed - s328(3) *Workplace*



*Injury Management and Workers Compensation Act 1998* (NSW) - held: Panel did not err in taking into account plaintiff's statement in response to surveillance evidence when it had not admitted it into evidence - Panel failed to give adequate reasons for decision that fresh evidence warranted revision in one category of psychiatric impairment rating scale - failure to comply with implied statutory obligation to give reasons - error of law on face of the record - decision quashed.

[Workers Compensation Nominal Insurer](#) (I G)

## **PPK Willoughby v Eighty Eight Construction (No.2) [2014] NSWSC 839**

Supreme Court of New South Wales

McDougall J

Costs - security of payments - principal's challenge to adjudicator's determination of payment dispute failed - principal's claim and cross-claim dismissed - principal sought stay of order that money paid into court be paid to contractor on basis that contractor would not be able to repay it if principal's position was vindicated - principal was considering whether to appeal - held stay granted - first cross-claim for contractual right to payment in respect of same payment claim stood over to final hearing.

[PPK Willoughby](#) (C)

## **Eccles v Koolan Iron Ore Pty Ltd [No 3] [2013] WASC 418**

Supreme Court of Western Australia

Le Miere J

Costs - indemnity costs - *Calderbank* offers - providers of health and fitness services claimed damages for breach of contract - Court found providers failed to establish agreement on terms alleged and dismissed claim - companies sought indemnity costs on basis of informal offers of settlement - held: not unreasonable for providers to reject companies' offers of compromise - indemnity costs refused.

[Eccles](#) (B)

## **Chan v Du Buisson Perrine [2014] WASC 219**

Supreme Court of Western Australia

Jenkins J

Contract for sale of land - sellers served default notice on buyers asserting they were in default of contract by failing to complete - default notice required remedy within 11 days - default not remedied - buyers served notice of termination - sellers sought declarations contract was terminated and they were entitled to contractual deposit held by deposit holder - buyers asserted contract was terms contract as defined in s5 *Sale of Land Act 1970* (WA) (SLA) and that sellers did not lawfully terminate because default notice did not give buyers 28 days to remedy default as required by s6(2)(a) - sellers claimed that even if contract was terms contract, s6(2)(a) did not apply as it was not terminated for *failure to pay a sum of money* - analogy with s72(1) *Property Law Act 1974* (Qld) - statutory definition of *deposit* - held: contract was a terms contract - buyers' breach relied on by sellers was failure to comply with contractual obligations involved in settlement



- Court satisfied 11 business days provided by default notice was reasonable time within which buyers could remedy breach - declarations granted.

[Chan](#) (B)

## **Maher v Nationwide New Pty Ltd [No 3] [2014] WASC 194**

Supreme Court of Western Australia

K Martin J

Pleadings - defamation - defences - publication in newspaper article - plaintiffs sought to strike out paragraphs of amended defence which contained pleas of justification - contention of disclosure of *confidential information* - requirements of pleas of justification - held: plaintiff entitled to know with far greater clarity and certainty what she was alleged to have disclosed and discussed - further information may then be tested against criteria of whether or not it could arguably carry confidential character - description of information at present is too vague - paragraphs struck out with leave to replead.

[Maher](#) (I)

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