



## Insurance Banking & Construction

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

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#### Executive Summary (1 minute read)

**Federal Treasury Enterprise (FKP) Sojuzplodoimport v Spirits International BV** - Application for determination of separate questions (B)

**Yara Australia Pty Ltd v Burrup Holdings Limited (No 2)** - Confidentiality orders (B)

**Roads & Traffic Authority of NSW v Birchfield; Roads & Traffic Authority of NSW v Dunlop** - *Road Rules* 2008 (NSW) - whether traffic signs made in accordance with Road Rule 105 (I)

**XY v Featherstone** - Personal injuries - assessment of damages - psychiatric injuries (I)

**Willis & Anor v Teparyl Pty Ltd & Ors** - Guarantees (I, B, C)

**Tebb v Filsee Pty Ltd & Anor; Tebb v KKV Pty Ltd & Anor** - Guarantees (I, B, C)

**Roads Corporation v Love** - *Land Acquisition & Compensation Act* 1986 (Vic) - Market value of land- Compensation (I, B, C)

**State of Queensland v RAF** - *Limitation of Actions Act* 1974 (Qld) - personal injuries (I)



**Metroplex Management Pty Ltd v Brisbane City Council & Ors** - *Integrated Planning Act 1997* (Qld) - appeal allowed (C)

**Vu v Nominal Defendant & NRMA Insurance Ltd** - Limitation of actions - ss73 & s109(3)(a) *Motor Accidents Compensation Act 1999* (I)

## Summaries with links (5 minute read)

**Tuesday 30 November 2010**

**Federal Treasury Enterprise (FKP) Sojuzplodoimport v Spirits International BV [2010] FCA 1293**

Federal Court of Australia

Edmonds J (in Sydney)

Application for determination of separate questions - trademarks including 'the Stolichnaya Label Mark' - Russian judgments - interests of efficient case management of this proceeding - application by cross-claimants for separate determination of four questions granted.

[Federal Treasury Enterprise Sojuzplodoimport](#) (B)

**Yara Australia Pty Ltd v Burrup Holdings Ltd (No 2) [2010] FCA 1304**

Federal Court of Australia

Barker J (in Perth)

Application for continuation of confidentiality orders – s50 *Federal Court Act 1976* - *Hogan v Australian Crime Commission* [2010] HCA 21; (2010) 240 CLR 651 - discharge of order for confidentiality initially made on 12 November 2010, & varied on 17 November 2010 - in its place, orders as set out in paragraph 33 made.

[Yara Australia](#) (B)

[Yara Australia](#) - decision 18 November 2010 - applications for interlocutory relief under shareholders deed & s1324(4) *Corporations Act 2001* (Cth) dismissed - order for inspection of books under s247A(1) in respect of first respondent.



**Roads & Traffic Authority of NSW v Birchfield; Roads & Traffic Authority of NSW v Dunlop [2010] NSWSC 1253**

Supreme Court of New South Wales

Davies J

*Road Rules* 2008 (NSW) - traffic signs & notices - offences - whether signs made in accordance with Road Rule 105 - whether traffic signs amounted to instruments - whether traffic signs should be read down to be within the power of the Rules - appeal from magistrate's decision dismissing charges - necessity for strict or substantial compliance of signs with Road Rules - magistrate not in error in dismissing charges.

[Roads and Traffic Authority](#) (I)

**XY v Featherstone [2010] NSWSC 1366**

Supreme Court of New South Wales

McCallum J

Personal injuries - assessment of damages - psychiatric injuries - sexual abuse while plaintiff a ward of the State - judgment for plaintiff in sum of \$2,405,912, being \$2,963,412 less deduction from that sum of benefit obtained by plaintiff (net of legal costs) from settlement with second defendant.

[XY](#) (I)

**Willis & Anor v Teparyl Pty Ltd & Ors [2010] VSCA 318**

Court of Appeal of Victoria

Mandie & Hansen JJA; Vickery AJA

Guarantees - lease - assignment - line of case law relating to right of recoupment considered in judgment of Mandie JA - appeal dismissed.

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

[Teparyl](#) - decision 3 July 2009 - release did not have effect of releasing the assignee's guarantors.

**Tebb v Filsee Pty Ltd & Anor; Tebb v KKV Pty Ltd & Anor [2010] VSCA 311**

Court of Appeal of Victoria

Nettle, Redlich & Harper JJA

Guarantees - damages for repudiation of lease - measure of damages - appeal dismissed.

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

[KKV](#) - County Court decision 15 July 2009: [2009] VCC 0791

**Roads Corporation v Love [2010] VSC 537**

Supreme Court of Victoria

Vickery J

*Land Acquisition & Compensation Act 1986 (Vic)* - respondent claiming \$30,420,000.00 by way of compensation for loss of market value of his land - applicant Corporation contending compensation for loss of market value should be in the sum of \$2.5 million - total compensation awarded \$2,822,042.32.

[Roads Corporation](#) (I, B, C)

**State of Queensland v RAF [2010] QCA 332**

Court of Appeal of Queensland

McMurdo P, White JA & McMeekin J

*Limitation of Actions Act 1974 (Qld)* - personal injuries consequent upon sexual abuse - plaintiff alleging failure by relevant government department to protect her - whether primary judge had overlooked certain evidence, & thereby erred, in accepting expert medical opinion that respondent was under a relevant disability (s.29) - whether requirements of s31 satisfied, the primary attack being on whether the claimed material fact was decisive in the relevant sense - appeal dismissed.

[State of Queensland](#) (I)

**Metroplex Management Pty Ltd v Brisbane City Council & Ors [2010] QCA 333**

Court of Appeal of Queensland

McMurdo P, Chesterman JA & Atkinson J

*Integrated Planning Act 1997 (Qld)* - applicant had sought preliminary approval for development of site of former Wacol Army Barracks, located near Ipswich motorway-Centenary highway interchange - applicant had appealed against Council's deemed refusal to Planning & Environment Court - whether application could be approved with excision of non-ancillary office space - where no traffic & infrastructure agreement was in place in respect of applicant's proposed development - whether the P & E Court had power to adjourn the hearing to allow further evidence to be adduced - appeal allowed - matter remitted.

[Metroplex Management](#) (C)

[Metroplex Management](#)- decision 11 November 2009: [2009] QPEC 110 - whether proposed uses appropriate, particularly having regard to provision for up to 98,000 m2 of offices not ancillary to industry or warehouse development - impact on road system - environmental values - appeal against Council's deemed refusal dismissed.





## From the District Court of New South Wales...

### Vu v Nominal Defendant & NRMA Insurance Ltd [2010] NSWDC 262

District Court of New South Wales

Levy SC DCJ

Limitation of actions - ss73 & 109(3)(a) *Motor Accidents Compensation Act 1999*, - second defendant's application for dismissal of plaintiff's claim - whether full & satisfactory explanation for delays - *Zotti v Australian Associated Motor Insurers Ltd [2009] NSWCA 323* - application by second defendant dismissed.

Vu (I)

Zotti - decision NSW Court of Appeal 8 October 2009: see 'Benchmark' I & IBC Monday 12 October 2009 - road accident cases - compulsory third party insurance - appellant in accident on his motorbike at intersection where less than two hours beforehand there had been another collision - whether appellant's accident fell within scope of *Motor Accidents Compensation Act 1999* (NSW) - statutory interpretation - "collision" - "injury" - "as a result of" - "caused during" - appeal dismissed - detailed analysis of legislation, including from South Australia, Western Australia & Queensland - case law considered from the United Kingdom, United States of America & Australia.

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