

Thursday, 31 March 2016

## Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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### Executive Summary (1 minute read)

**Australian Competition and Consumer Commission v Safety Compliance Pty Ltd (in liq) (No 3)** (FCA) - deemed service - email addresses used by respondents during proceeding and to which email attaching orders had been sent - Court satisfied respondents aware of orders - orders for deemed service granted to ACCC (I B C)

**Bankstown City Council v Zraika; Roads and Maritime Services v Zraika** (NSWCA) - negligence - motor vehicle collision while plaintiff in utero - Council and Roads and Maritime Service not liable - plaintiff's father who was driving car in which plaintiff's pregnant mother was a passenger liable - father's liability greater than liability of owner and driver of other vehicle - appeals allowed - liability reapportioned (I B C G)

**Johnston v Johnston** (NSWCA) - costs - contested probate proceedings - offer was mixed offer to which r42.13A did not apply - not appropriate to remit matter for exercise of residual discretion as to costs - leave to appeal granted - appeal dismissed (I B)

**Skyscanner Ltd v Hotels Combined Pty Ltd (No. 2)** (NSWSC) - discovery - confidentiality regime ordered in respect of documents - costs orders made (I B)

**In the Estate of Edmonds (Deceased)** (SASC) - wills and estates - succession - intestacy - deceased's sister granted letters of administration on grounds of intestacy (I B)

**Western Australian Planning Commission v Southregal Pty Ltd** (WASCA) - town planning - compensation for injurious affection upon refusal of approval to develop land due to its reservation for public purpose - appeals dismissed (I B C G)

**Sakari Resources Ltd v Purvis** (WASCA) - costs - indemnity costs - stay - appellant's refusal of offer was unreasonable - respondent granted indemnity costs (I B C)

## Summaries With Link (Five Minute Read)

### **Australian Competition and Consumer Commission v Safety Compliance Pty Ltd (in liq) (No 3) [2016] FCA 303**

Federal Court of Australia

Farrell J

Deemed service - Court made orders for injunctions, disqualification and pecuniary penalties against second and third respondents - ACCC unable to effect personal service of orders on second and third respondents - ACCC sought orders for deemed service under r10.23 *Federal Court Rules 2011* (Cth) in relation to email addresses which second and third respondents had used during proceedings and to which ACCC's lawyer had sent copy of orders - held: time for compliance with orders had passed however Court satisfied second and third respondent were fully aware orders made - orders for deemed service granted.

[ACCC](#) (I B C)

### **Bankstown City Council v Zraika; Roads and Maritime Services v Zraika [2016] NSWCA 51**

Court of Appeal of New South Wales

Gleeson, Leeming & Simpson JJA

Negligence - motor vehicle collision - apportionment - plaintiff claimed damages for injuries suffered in motor vehicle collision when he was in utero - pregnant mother was passenger in care driven by plaintiff's father - driver and owner of other vehicle involved in collision admitted breach of duty - plaintiff also sued father, Council and Roads and Maritime Services (RMS) - primary judge found RMS and Council breached duty of care to plaintiff, that breaches were cause of collision and that father did not breach duty of care - primary judge assessed liability of driver and owner of other vehicle at 50%, RMS's liability at 25% and Council's liability 25% - RMS and Council appealed - held: father breached duty of care and if he had not breached duty collision would not have occurred - father's liability was greater than that of driver and owner of vehicle - liability reapportioned - primary judge erred in finding Council's breach of standard imposed by s43A *Civil Liability Act 2002* (NSW) - even if Council owed duty there was no breach - primary judge erred in finding RMS breached duty of care - appeals allowed.

[Bankstown](#) (I B C G)

### **Johnston v Johnston [2016] NSWCA 52**

Court of Appeal of New South Wales

Ward, Leeming & Simpson JJA

Costs - contested probate proceedings - applicants were executors and sole beneficiaries of

deceased's Will - applicants gave notice of intention to apply for probate - applicants sought removal of caveat filed by respondents - applicants served offer of compromise on respondents which they accepted - primary judge made costs order pursuant to r42.13A(3) *Uniform Civil Procedure Rules 2005* (NSW) - applicants contended judgment proposed in offer did not enliven r 42.13A(3) but enlivened r42.13A(2) or was a mixed offer - held: offer mixed offer to which r42.13A did not apply - not appropriate to remit matter in order to exercise residual costs discretion due to disproportionate costs of doing so in relation to amount in dispute and there was no substantial wrong or miscarriage in any case - leave to appeal granted - appeal dismissed.

[Johnston](#) (I B)

## **Skyscanner Ltd v Hotels Combined Pty Ltd (No. 2) [2016] NSWSC 326**

Supreme Court of New South Wales

Slattery J

Discovery - confidentiality regime - parties disputed form of orders flowing from principal judgment - parties unable to agree which documents were confidential and what access regime should apply to discovered documents - parties also disputed appropriate costs orders - r42.7 *Uniform Civil Procedure Rules 2005* (NSW) - held: Court ordered confidentiality regime for categories of documents and that plaintiff was to pay two-thirds of defendant's costs motion.

[Skyscanner](#) (I B)

## **In the Estate of Edmonds (Deceased) [2016] SASC 41**

Stanley J

Wills and estates - succession - intestacy - deceased's sister sought grant of Letters of Administration on grounds of intestacy - s8 *Wills Act 1936* (SA) - rr34(1)(a), 34(1)(b), 34(1)(c) & 37(1) *Probate Rules 2015* (SA) - held: Court satisfied presumption of revocation had not been rebutted and that there was no person more entitled than applicant to make application - letters of administration granted to applicant.

[Edmonds](#) (I B)

## **Western Australian Planning Commission v Southregal Pty Ltd [2016] WASCA 53**

Court of Appeal of Western Australia

Martin CJ; Newnes & Murphy JJA

Town planning - appeals against determination of question of law - Planning Commission challenged primary judge's findings that person who was not registered proprietor of land when that land reserved for public purpose was entitled to compensation for injurious affection upon refusal of approval to develop land or granted approval subject to conditions unacceptable to applicant - s36 *Metropolitan Region Town Planning Scheme Act 1959* (WA) - ss173, 174, 176, 177, 178, 179 & 181 *Planning and Development Act 2005* (WA) - s11 *Town Planning and Development Act 1928* (WA) - s33 *Western Australian Planning Commission Act 1985* (WA) - held: primary judge correct to answer question of law affirmatively - appeals dismissed.

[Western Australian Planning Commission](#) (I B C G)



**Sakari Resources Ltd v Purvis [2016] WASCA 24 (S)**

Court of Appeal of Western Australia

Buss, Newnes & Murphy JJA

Costs - indemnity costs - Court dismissed appellant's appeal against dismissal of application for stay of proceedings which respondent had commenced against appellant - respondent sought order that appellant pay costs of appeal on indemnity basis on basis of rejection of Calderbank offer - held: it was unreasonable in the circumstances for appellant to reject offer - respondent entitled to indemnity costs.

[Sakari](#) (I B C)

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