

Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

Executive Summary (1 minute read)

Newcastle City Council v Wescombe - Costs – leave to appeal from costs orders in Land & Environment Court refused (C)

Ackling v QBE Insurance (Australia) Ltd & Motor Accidents Authority of New South Wales - s28(1)(d), s63 *Accidents Compensation Act* 1999 (NSW) – statutory interpretation - medical assessment of degree of permanent impairment of injured person - – certiorari - causation – costs (I)

Addenbrooke Pty Ltd v Woollahra Municipal Council (No 2) - Environment & planning - Rose Bay Marina & Point Piper Marina (I,B,C)

Wenco Industrial Pty Ltd v W W Industries Pty Ltd & Anor - Special referee's report – challenge to adoption by Court – need for leave to appeal – leave refused. (B)

Brett v Rees - Personal injuries – foreseeability – primary judge had dismissed claim - fall from ladder while working - appeal dismissed (I)

Matken Constructions Pty Ltd v Trevor James & Dianne James - Caveats – building dispute - s105 *Land Titles Act* 1925 (ACT) – case law considered as to circumstances in which Court will order removal of caveat conditionally upon payment into Court (C)

Rice v Ray - *Property Agents & Motor Dealers Act* 2000 (Qld) – PAMDA warning statement Form 30c - contract for sale of property at Mermaid Beach (B)

WorkCover Queensland v Jones - *Workers Compensation & Rehabilitation Act* 2003 (Qld) – statutory interpretation – legal professional privilege – ‘relevant document’ under s279 – whether document was also “correspondence between a party & a party's lawyer” so as to fall within limited exception to the duty to disclose documents as per s284(2)(d) (I)



Mercy Health & Aged Care Central Queensland Ltd v Steele - *Personal Injuries Proceedings Act 2002 (Qld)* – medical negligence – claimant ordered to provide hospital with amended Part 1 Notice of Claim & medical report (I)

Summaries with links (5 minute read)

Monday 31 August 2009

Newcastle City Council v Wescombe [2009] NSWCA 265

Court of Appeal of New South Wales

McColl, Campbell, & Young JJA

Costs – applicant seeking to reverse costs orders made against it in Land & Environment Court - Class 4 proceedings brought by Council had been partly settled & otherwise dismissed – Calderbank letter - leave to appeal refused.

[Newcastle City Council](#)

Ackling v QBE Insurance (Australia) Ltd & Motor Accidents Authority of New South Wales [2009] NSWSC 881

Supreme Court of New South Wales

Johnson J

s28(1)(d), s63 *Motor Accidents Compensation Act* 1999 (NSW) – statutory interpretation - medical assessment of degree of permanent impairment of injured person - relief under s69 *Supreme Court Act* 1970 (NSW) – certiorari - causation – costs - Certificate of Determination of Review Panel & Statement of Reasons of Review Panel set aside - second defendant to refer medical dispute to differently constituted Review Panel – detailed consideration of legislation & case law.

[Ackling](#)

Addenbrooke Pty Ltd v Woollahra Municipal Council (No 2) [2009] NSWLEC 134

Land & Environment Court of New South Wales

Biscoe J

Environmental Planning & Assessment Act 1979 - Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 – proposed redevelopment of Rose Bay Marina & Point Piper Marina - impact on views – benefits - whether there should be a height limit for berthed motorboats – conditional consents granted.

[Addenbrooke](#)

[Addenbrooke](#) – decision 13 June 2008 – see ‘Benchmark’ Wednesday 18 June 2008 - extension to marinas at Rose Bay, Sydney Harbour - visual impact - development in vicinity of heritage items - public access to, & use of, foreshores & waterways - working harbour – night lighting for proposed marinas: minimisation of adverse impact on night navigation & neighbours through appropriate design & management measures - Australian Standard AS 4282 – 1997 - marine safety - parking – noise – development application refused.

Wenco Industrial Pty Ltd v W W Industries Pty Ltd & Anor [2009] VSCA 191

Court of Appeal of Victoria

Redlich & Bongiorno JJA & Beach AJA

Special referee's report – assessment of quantum of matters in issue between parties – challenge to adoption by Court – dissolution of partnership – closing stock figures – gross profits - amounts properly standing to credit or debit of capital accounts &/or loan accounts of the partners - order adopting Referee's report an interlocutory judgment – need for leave to appeal – leave refused.

[Wenco Industrial Pty Ltd](#)

Brett v Rees [2009] WASCA 159

Court of Appeal of Western Australia

Martin CJ, Owen & Miller JJA

Personal injuries – foreseeability - renovation of bungalows at resort in Broome - appellant & first respondent were (independently) working on the project - appellant injured in fall from ladder which was leaning against door opened by first respondent – appeal dismissed.

[Brett](#)

[Brett](#) – District Court decision 1 February 2008 – plaintiff's claim dismissed but provisional assessment of damages made.

Matken Constructions Pty Ltd v Trevor James & Dianne James [2009] ACTSC 100

Supreme Court of the Australian Capital Territory

Master Harper

Caveats – building dispute - s105 *Land Titles Act 1925* (ACT) — action by builder – defendants had engaged plaintiff company to build house on their land at Gungahlin - standard building contract – application by defendants for order that, upon their paying into Court an appropriate amount, a caveat lodged by plaintiff over their residential property be removed – case law considered as to circumstances in which Court will order removal of caveat conditionally upon payment into Court.

[Matken Constructions Pty Ltd](#)

From the District Court of Queensland...

Rice v Ray [2009] QDC 275

District Court of Queensland

Wall QC DCJ

Property Agents & Motor Dealers Act 2000 (Qld) – PAMDA warning statement Form 30c - scheme of Chapter 11 Parts 1 & 2 - contract for sale of property at Mermaid Beach – application by defendant purchaser for summary judgment – plaintiff vendor suing defendant for \$250,000 deposit – two offers by defendant to purchase property, in each case contained in a Real Estate Institute of Qld (REIQ) contract prepared by plaintiff's agent – right to waive cooling off period – defendant entitled

to summary judgment – on defendant’s counterclaim, declaration made that defendant duly terminated contract pursuant to s367.

[Rice](#)

WorkCover Queensland v Jones [2009] QDC 274

District Court of Queensland

Rackemann DCJ

Workers Compensation & Rehabilitation Act 2003 (Qld) – statutory interpretation – costs - applicant seeking order that respondent give it copy of ‘relevant document’ pursuant to s279 – respondent resisting order on basis of claim of legal professional privilege – common ground that document in question one to which legal professional privilege would ordinarily attach, but also a ‘relevant document’ under s279 – whether document was also “correspondence between a party & a party’s lawyer” so as to fall within limited exception to the duty to disclose documents as per s284(2)(d) – “correspondence” – document bore hallmarks of statement made by plaintiff, rather than a letter or piece of correspondence – order made for disclosure of statement – an interesting decision.

[WorkCover Queensland](#)

[James](#) - Court of Appeal Qld decision 24 October 2000 referred to at p.4 of judgment in [Workcover v Jones](#) : factual circumstances different.

Mercy Health & Aged Care Central Queensland Ltd v Steele [2009] QDC 268

District Court of

Robin QC DCJ

Personal Injuries Proceedings Act 2002 (Qld) – medical negligence – Personal Injuries Proceedings Regulation 2002 – adverse outcome from surgery to deal with hernia –Notice of Claim made case of inadequate post-operative care by surgeon, not a hospital employee, but who used its facilities – claimant was surgeon's private patient - basis of claim against hospital appeared to be that it operated the premises - hospital should be informed whether any complaint was made about its own or its employee's performance & why it was considered responsible – claimant ordered to provide hospital with amended Part 1 Notice of Claim & medical report.

[Mercy Health](#)

Key: (I) Insurance, (B) Banking, (C) Construction