

Tuesday, 5 April 2016

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

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### Executive Summary (1 minute read)

**State of New South Wales (NSW Department of Education) v Kaur** (NSWSC) - administrative law - permanent impairment - Appeal Panel did not err in confirming decision of Approved Medical Specialist - summons dismissed

**De Jong v Carnival PLC** (NSWSC) - security for costs - representative proceedings - capacity and willingness of group members to contribute to fund to satisfy order for security - notice of motion adjourned

**Edmonds v Morrissey** (NSWSC) - Wills and estates - judicial advice - meaning of "issue children" in Will - entitlement to gift in remainder - declaration

**Commonwealth Bank of Australia v Codovo Developments Pty Ltd** (VSC) - summary judgment - bank entitled to payment of debt - summary judgment refused in respect of counterclaim

**Brisbane City Council v Gerhardt** (QCA) - environment and planning - application by home owners to building certifier to make alterations and additions - no separate application need be made to council - building certifier entitled to approve application - appeal dismissed

**Citygate Properties Pty Ltd v BGC Construction Pty Ltd** (WASC) - construction contract - leave granted to enforce adjudication determination in plaintiff's favour

# Benchmark

## Summaries With Link (Five Minute Read)

### **State of New South Wales (NSW Department of Education) v Kaur [2016] NSWSC 346**

Supreme Court of New South Wales

Campbell J

Administrative law - State sought review of decision of Medical Appeal Panel constituted under s328 *Work Injury Management and Workers Compensation Act 1998* (NSW) to confirm decision of Approved Medical Specialist assessing first defendant's permanent impairment at 17% - whether erroneous failure to consider whether applicant's psychological condition was secondary psychological injury - "secondary psychological injury" - "physical injury" - held: jurisdictional error or error on face of record not established - summons dismissed.

[State of New South Wales](#)

### **De Jong v Carnival PLC [2016] NSWSC 347**

Supreme Court of New South Wales

Beech-Jones J

Security for costs - representative action under Pt 10 *Civil Procedure Act 2005* (NSW) - defendant sought that plaintiff representative party provide security for costs - defendant sought adjournment of notice of motion for purpose of obtaining information from group members as to willingness and capacity to contribute to security for costs - plaintiff contended Court had no power to order security for costs in representative action - held: Court had power to order security but did not have power to order it against group members - defendant had reasonably strong case for order for security against plaintiff representative - notice of motion adjourned enable information to be gained as to capacity and willingness of group members to contribute to pool of funds to satisfy order for security.

[De Jong](#)

### **Edmonds v Morrissey [2016] NSWSC 342**

Supreme Court of New South Wales

Darke J

Wills and estates - application for judicial advice - plaintiff and first defendant were children of testator's son - testator's son now deceased - testator's son had also had another child, also now deceased - whether gift in remainder of real estate was shared equally between plaintiff and first defendant or whether it was shared by plaintiff and defendant at one third each, with the final third being shared by the children of the deceased child - construction of Will - "issue children" - held: "issue children" encompassed only children of testator's son - gift in remainder shared equally by plaintiff and first defendant as tenants in common - declaration.

[Edmonds](#)

### **Commonwealth Bank of Australia v Codovo Developments Pty Ltd [2016] VSC 122**

Supreme Court of Victoria

Almond J

Summary judgment - plaintiff sued first defendant for recovery of money advanced pursuant to banking facilities - plaintiff also sued second, third and fourth defendants as guarantors - defendants counterclaimed against bank for misleading and deceptive conduct, negligent misstatement and unconscionable conduct - bank sought summary judgment - plaintiff contended defendants had no real prospect of defending claim or prosecuting counterclaim - plaintiff contended counterclaim's subject matter had been released clause in Deed of Forbearance - held: plaintiff entitled to payment of debt - Court satisfied defendants had real prospect of success as to limiting scope of release - application for summary judgment on counterclaim rejected.

[Commonwealth Bank of Australia](#)

## **Brisbane City Council v Gerhardt [2016] QCA 76**

Court of Appeal of Queensland

Holmes CJ, McMurdo JA & Daubney J

Environment and planning - owners of house sought permission from respondent private building certifier to make additions and alterations - Council contended owners should have made two applications, one to respondent and one to council - respondent sought declaration no separate application need be made to council and that respondent entitled to approve application - declaration granted - Council sought to appeal under s498 *Sustainable Planning Act 2009* (Qld) (Planning Act) - proper interpretation of Planning Act and *Building Act 1975* (Qld) - held: Council's arguments rejected - no restriction on respondent to grant sought approval - respondent entitled to declarations - appeal dismissed.

[Brisbane](#)

## **Citygate Properties Pty Ltd v BGC Construction Pty Ltd [2016] WASC 101**

Supreme Court of Western Australia

Tottle J

Construction contract - plaintiff sought to enter judgment against defendant under s8(1)(a) *Civil Judgments Enforcement Act 2004* (WA).- adjudicator had determined payment dispute in plaintiff's favour - ss39(2) & 43(2) *Construction Contracts Act 2004* (WA) Construction Contracts Act - held: defendant had not challenged adjudicator's determination in plaintiff's favour - earlier determinations in defendant's favour had been quashed so there was not manifest injustice in enforcing determination in plaintiff's favour - enforcements was not contrary to object of Construction Contracts Act or inconsistent with purpose of Act - leave to enforce determination granted.

[Citygate Properties](#)

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