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

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Executive Summary (1 minute read)

Westrupp v BIS Industries Ltd (FCAFC) - workers compensation - physical assault outside tavern in remote mining town - injury occurred in course of employment - appeal allowed

Bahramy v Medical Council of New South Wales (NSWCA) - administrative law - dismissal of application for reinstatement as registered medical practitioner - appeal dismissed

Margan v Manias (NSWCA) - human rights - homosexual vilification - dismissal of summons for review of Tribunal's decision in relation to incidents of verbal abuse and physical attack - appeal dismissed

Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales v Industrial Relations Secretary on behalf of the Department of Justice (NSWCA) - industrial law - workplace injury - Full Bench of Industrial Relations Commission had jurisdiction to order Corrective Services to reinstate injured police officer - matter remitted

Distinctive FX v Van Der Slot (VSCA) - interlocutory injunction - freezing order - trial judge's order as to payments being permitted to be made out of life insurance proceeds set aside - appeal allowed

Malec Holdings Pty Ltd v Scotts Agencies Pty Ltd (in liq) (VSCA) - corporations - statutory demand varied on basis of off-setting claim but not set aside - leave to appeal refused

Jackson v Abram (SASCFC) - negligence - accounting and taxation services - erroneous

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failure to find liability for losses - appeal allowed - appeal in relation to costs also allowed

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Summaries With Link (Five Minute Read)

Westrupp v BIS Industries Ltd [2015] FCAFC 173

Full Court of the Federal Court of Australia

Buchanan, McKerracher & Katzmann JJ

Workers compensation - appellant employed as silo operator by first respondent in mining town operated by BHP Billiton - appellant worked on two-week roster followed by one week off - appellant injured shoulder when assaulted after day shift and before night shift by first respondent's employee outside entrance to tavern - appellant would be entitled to compensation under s14 *Safety, Rehabilitation and Compensation Act 1988* (Cth) Act if he sustained "injury" within of s14 - claim for compensation rejected by first respondent - Administrative Appeals Tribunal affirmed first respondent's decision - "arising out of, or in the course of, the employee's employment" in s 5A - liability of employers of "fly in/fly out workers" to pay compensation for injuries in remote locations where employees required to live and work but incurred when employees not engaged in work - consideration of *Hatzimanolis v ANI Corporation Ltd* [1992] HCA 21 as explained by *Comcare v PVYW* [2013] HCA 41 - held: injury occurred during interval between actual periods of work but in overall period or episode of work - first respondent induced or encouraged appellant to spend time between shifts in camp vicinity - appellant did not act to take himself outside course of employment or guilty of serious and wilful misconduct disentitling him to compensation - injury arose in course of employment - appellant entitled to compensation - appeal allowed

[Westrupp](#)

Bahramy v Medical Council of New South Wales [2015] NSWCA 384

Court of Appeal of New South Wales

Beazley P, Simpson JA & Tobias AJA

Administrative law - complaints of indecent assault made against appellant medical practitioner in NSW in 1998. by two female patients - conditions placed on appellant's registration - Medical Tribunal of NSW in 2008 found appellant engaged in professional misconduct by falsifying copies of his registration and ordered removal of appellant's name from Register of Practitioners, an order could not be reviewed for period of three years - appellant sought reinstatement in New South Wales Civil and Administrative Tribunal pursuant to s163A *Health Practitioner Regulation National Law* (NSW) (National Law) - NCAT dismissed application - whether NCAT had jurisdiction to make the orders it made - *Health Care Complaints Commission v Do* [2014] NSWCA 307 - held: Court refused appellant leave to appeal in relation to factual findings - appellant's deregistration under *Medical Practice Act 1992* (NSW) constituted cancellation of registration under s287(1) National Law - effect of s287 was that 2008 Medical Tribunal decision continued as if made under National Law by NCAT - order against appellant under s64 was continuing order precluding appellant from practising as medical practitioner, constituting a "relevant order" subject of review - NCAT entitled to make own assessment of credibility of witness - appeal dismissed.

[Bahramy](#)

Margan v Manias [2015] NSWCA 388

Court of Appeal of New South Wales
Macfarlan & Gleeson JJA; Tobias AJA

Human rights - homosexual vilification - statutory construction - appellant was victim of two incidents during he was first verbally abused (first incident) then physically attacked (second incident) by respondent - appellant complained to Anti-Discrimination Board alleging unlawful homosexual vilification and serious homosexual vilification under ss49ZT & 49ZTA *Anti-Discrimination Act 1977* (NSW) - Tribunal found first incident constituted unlawful homosexual vilification but second incident did not - Appeal Panel upheld Tribunal's decision - primary judge dismissed summons for review - appellant contended primary judge erred in construing ss49ZS & 49Z - "public act" - whether for purposes of s49ZT ordinary member of relevant audience to whom public acts directed ought to be assumed to have had knowledge of acts - held: assumption contended for by appellant inconsistent with facts found by Tribunal and unsupported by proper construction of s49ZT - "common witness" argument failed - appeal dismissed.

[Margan](#)

Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales v Industrial Relations Secretary on behalf of the Department of Justice [2015] NSWCA 386

Court of Appeal of New South Wales
Basten & Ward JJA; Emmett AJA

Industrial law - workplace injury - statutory interpretation - prison officer injured at work received compensation and damages - employer refused application for reinstatement to employer - police officer applied to Industrial Relations Commission of New South Wales for a reinstatement order - Full Bench determined police officer was no longer entitled to seek reinstatement having received damages - meaning of "injured worker" in Pt 8 *Workers Compensation Act 1987* (NSW) which conferred right to apply for reinstatement to employment - whether injured worker ceased to be eligible apply for reinstatement after recovering damages for injury under Pt 5 - ss91, 92, 179, 187, 188 *Industrial Relations Act 1996* (NSW) - s5 *Law Reform (Miscellaneous Provisions) Act 1946* (NSW) - held: police officer was "injured worker" within meaning of s240 *Workers Compensation Act* at time he sought reinstatement and entitled to apply to Commission for reinstatement order - Commission had jurisdiction under s243 to order Corrective Services to reinstate worker - Commission wrongly refused to exercise jurisdiction constituting jurisdictional error - decision of Full Bench quashed.

[Public Service Association](#)

Distinctive FX v Van Der Slot [2015] VSCA 328

Court of Appeal of Victoria
Beach & McLeish JJA; Ginnane AJA

Interlocutory injunction - freezing order - applicants sought to recover sums allegedly misappropriated by deceased - dispute concerned respondent's ability to deal with proceeds of

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life insurance policy taken out on deceased's life pending trial of applicants' proceeding - applicants sought that balance of proceeds be preserved in separate trust account opened for that purpose - principle in *Foskett v McKeown* [2000] UKHL 29 - held: applicants had established prima facie entitlement to whole of proceeds of policy - judge erred by approaching interlocutory application on basis that extent to which premiums might be from legitimate sources remained uncertain - judge's order as to permitting payments to be made out of proceeds should be set aside - question of what if any proceeds respondent should be permitted to access should be left to judge of Trial Division - appeal allowed.

[Distinctive FX](#)

Malec Holdings Pty Ltd v Scotts Agencies Pty Ltd (in liq) [2015] VSCA 330

Court of Appeal of Victoria

Kyrou, Ferguson & Kaye JJA

Corporations - statutory demand - applicant operated transport company - respondent supplied applicant with fuel and other fluids - liquidators appointed to respondent which served statutory demand on applicant in relation to a debt for fuel - applicant sought to set aside demand pursuant to s459G *Corporations Act 2001* (Cth) on basis of genuine dispute about existence and amount of debt and that it had offsetting claim - trial judge found applicant established offsetting claim but no genuine dispute - trial judge varied demand - applicant sought to appeal - application of 'real prospect of success' test adopted in *Kennedy v Shire of Campaspe* [2015] VSCA 47 - held: Court concluded that the application for leave to appeal should be refused as it did not have 'a real prospect of success' - leave to appeal refused.

[Malec](#)

Jackson v Abram [2015] SASCFC 175

Full Court of the Supreme Court of South Australia

Peek, Stanley & Lovell JJ

Negligence - accounting and taxation services - appellants engaged respondents for accounting and taxation services - appellants alleged they suffered loss as result of negligent advice and breaches of statutory duty - trial judge dismissed most of appellant's claims in relation to respondents' advice to invest in schemes but awarded damages against respondent for negligence for failure advise appellant of need to diversify his investments - held: judge erred in not finding respondent liable to appellant for loss from investment in 2006 cattle project and loss for amount invested in 2007 beef cattle project - appellant had benefit of taxation deductions in respect of investments which were to be brought to account in assessment of damages but judge erred in calculating amount lost due to respondent's negligence - appeal allowed - appeal in relation to costs also allowed.

[Jackson](#)

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