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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)

**Tsvetnenko v United States of America (FCAFC)** - extradition - refusal of applicant's bail application - *Extradition Act 1988* (Cth) - appeal dismissed

**Capar v SPG Investments Pty Limited t/a Lidcombe Power Centre & Ors. (No 5) (NSWSC)** - negligence - mental harm - claims by security guard arising from incident involving intruder at premises - claims and cross-claims dismissed

**Capilano Honey Ltd v Dowling (No 3) (NSWSC)** - injurious falsehood - defamation - recusal application refused - leave to file contempt motion refused - certain paragraphs of defence struck out

**AAI Limited v Feng (NSWSC)** - judicial review - motor accidents compensation - refusal of application to have first defendant's damages exempted from Claims Assessment and Resolution Service (CARS) assessment - amended summons dismissed

**Fairmont Group Pty Ltd v Moreton Bay Regional Council (QCA)** - environment and planning - respondent refused to grant appellant approval for works on basis of works' inconsistency with planning scheme - appeal dismissed

**Masson v State of Queensland (QCA)** - negligence - deceased suffered brain damage in asthma attack and later died - ambulance officer negligently failed to administer adrenaline to deceased 'at the outset' - respondent vicariously liable - appeal allowed

**Vickery v Department of Environment and Natural Resources (SASC)** - environment and

planning - Magistrate found appellant guilty of 'three counts of clearing native vegetation' - 'count 3' was 'duplicitous' - appeal allowed to extent that count 3 conviction set aside

## Summaries With Link (Five Minute Read)

### **Tsvetnenko v United States of America [2019] FCAFC 74**

Full Court of Federal Court of Australia

Besanko, Banks-Smith & Colvin JJ

Extradition - bail - respondent made request for appellant's extradition - warrant for appellant's arrest was issued - applicant arrested and held in custody - magistrate refused applicant's bail application - appellant remanded in custody - judicial review application dismissed - appellant appealed - whether to grant bail - whether 'special circumstances' - 'risk of flight' - whether 'error of law' - whether 'legal unreasonableness' - s15(2) *Extradition Act 1988* (Cth) - held: appeal dismissed.

[Tsvetnenko](#)

### **Capar v SPG Investments Pty Limited t/a Lidcombe Power Centre & Ors. (No 5) [2019] NSWSC 507**

Supreme Court of New South Wales

Bellew J

Negligence - mental harm - plaintiff security guard contended he suffered psychological injury and 'ongoing psychological sequelae' due to incident involving intruder at premises - plaintiff contended he was 'rendered permanently unfit' for employment in any form - plaintiff sued first defendant owner of premises, second defendant provider of security services for first defendant, and third defendant nominal insurer of plaintiff's employer, in negligence - 'system of work' - 'inherent risk' - whether duty of care - whether non-delegable duty of care - *Civil Liability Act 2002* (NSW) - *Occupational Health and Safety Act 2000* (NSW) - held: claims and cross-claims dismissed.

[View Decision](#) (I B C G W WI WB WC WG)

### **Capilano Honey Ltd v Dowling (No 3) [2019] NSWSC 539**

Supreme Court of New South Wales

Hoeben CJ at CL

Injurious falsehood - defamation - proceedings concerning determination of defendant's application that Hoeben CJ at CL recuse himself ('recusal application'), determination of defendant's 'contempt motion' and determination of plaintiffs 'strike out motion' in respect of defendant's defence - held: recusal application refused - leave to file contempt motion refused - certain paragraphs of defence struck out.

[View Decision](#)

## **AAI Limited v Feng [2019] NSWSC 535**

Supreme Court of New South Wales

Adamson J

Judicial review - motor accidents compensation - plaintiff sought to set aside two decisions of assessors appointed by State Insurance Regulatory Authority (SIRA) - decisions' effect 'was to decline' plaintiff's application to have first defendant's damages exempted from Claims Assessment and Resolution Service (CARS) assessment - third defendant 'principal claims assessor' found plaintiff was 'not entitled to mandatory exemption' under s92(1)(a) *Motor Accidents Compensation Act 1999* (NSW) (Motor Accidents Compensation Act) - fourth defendant 'claims assessor' declined to grant plaintiff 'discretionary exemption' under s92(1)(b) Motor Accidents Compensation Act - "fault" - cl 8.11.1 "Motor Accidents Claims Assessment Guidelines" s3 Motor Accidents Compensation Act - held: 'amended summons' dismissed.

[View Decision](#)

## **Fairmont Group Pty Ltd v Moreton Bay Regional Council [2019] QCA 81**

Court of Appeal of Queensland

Gotterson & McMurdo JJA; Crow J

Environment and planning - applicant sought respondent's approval 'to clear vegetation' on its land - respondent refused approval on basis of inconsistency with planning scheme - applicant sought declarations in Planning and Environment Court that approval not required - primary judge dismissed application - whether approval required by planning scheme's terms - 'proper interpretation' of *Planning Regulation 2017* (Qld) (Regulation) - whether erroneous failure to find 'exempt clearing works were accepted development' - whether erroneous failure to find Regulation, not planning scheme, applied - whether erroneous failure to find Regulation prevailed and planning scheme inconsistent - whether erroneous categorisation of 'clearing works' - s44 *Planning Act 2016* (Qld) - held: appeal dismissed.

[Fairmont](#)

## **Masson v State of Queensland [2019] QCA 80**

Court of Appeal of Queensland

Fraser & McMurdo JJA & Boddice J

Negligence - deceased suffered asthma attack in in 2002 - deceased suffered 'irreversible brain damage' - plaintiff died in 2016 - appellant sued state in negligence - trial judge found deceased's injury would have been avoided if ambulance officers had treated her with adrenaline 'immediately, or at least within a couple of minutes' - however trial judge found ambulance officers were not negligent in administering salbutamol, and delaying deceased's treatment with adrenaline - trial judge also found that Queensland Ambulance Service was not negligent in failing to instruct officers 'to do otherwise' than administer salbutamol - whether trial judge erred in rejecting negligence allegations - whether treatment conformed to 'clinical practice manual' - whether clinical practice manual ambiguous - whether ambulance officer misunderstood clinical practice manual - whether 'responsible body of opinion in the medical



profession' to support salbutamol's administration - held: ambulance officer negligent in not administering adrenaline 'at the outset' - respondent vicariously liable - appeal allowed.

[Masson](#)

**Vickery v Department of Environment and Natural Resources [2019] SASC 73**

Supreme Court of South Australia

Hinton J

Environment and planning - criminal law - Magistrate found appellant guilty of 'three counts of clearing native vegetation' - appellant appealed - respondent conceded ground of appeal contending that 'count 3' was 'duplicitous' - adequacy of reasons - whether erroneous assessment of prosecution's burden of proof - whether erroneous failure to find appellant could rely on exemption in reg 5(1)(zf) *Native Vegetation Regulations 2003* (SA) - s26(1) *Native Vegetation Act 1991* (SA) - held: appeal allowed to extent that count 3 conviction set aside.

[Vickery](#)

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