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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)

Dino Dinov v Allianz Australia Insurance Limited (NSWCA) - building and construction - home warranty insurance - insurer's claim against indemnifiers was not a 'building action' under s109ZK(1 *Environmental Planning and Assessment Act 1979* (NSW) - action not time-barred - appeal dismissed

Jemena Gas Networks (NSW) Ltd v AGL Energy Limited (NSWCA) - judgments and orders - contract - commercial arbitration - refusal to stay proceedings - leave to appeal refused

Victorian WorkCover Authority v BSA Ltd (VSCA) - judicial review - accident compensation - right of subrogation - construction of s71(4) *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) - appeal allowed - matter remitted

State of Queensland v Roane-Spray (QCA) - negligence - respondent injured when one end of stretcher collapsed when being moved by paramedic - State vicariously liable - State was not an entity to which s27 *Civil Liability Act 2003* (Qld) applied - appeal dismissed

Commonwealth Bank of Australia v Nugawela (WASC) - summary judgment - loan agreement - no triable issue raised by defendant - plaintiff granted summary judgment for possession of properties

Lafferty v Waterton [No 4] (WASC) - equitable estoppel - trusts and trustees - plaintiff claimed entitlement to one third of her mother's estate - claim against defendants dismissed

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Summaries With Link (Five Minute Read)

Dino Dinov v Allianz Australia Insurance Limited [2017] NSWCA 270

Court of Appeal of New South Wales

Beazley P, Meagher JA & McDougall J

Building and construction - home warranty insurance - respondent issued insurance contract to builder - policy insured person on whose behalf builder was performing work, and insured person's successors-in-title, against risk of being unable to have builder rectify, or pay compensation for, defective building work - appellants indemnified respondent against "all amounts which [it] must pay and is liable to or may become liable to pay under the said policy" up to \$200,000 - first respondent sought to enforce indemnity against appellants - whether insurer's claim was a 'building action' brought in relation to 'building work' under s109ZK(1) *Environmental Planning and Assessment Act 1979* (NSW) and thus time-barred - primary judge found the action was not a 'building action' - whether erroneous construction of definition of 'building action' - s99 *Home Building Act 1989* (NSW) - held: no error in primary judge's conclusion that 109ZK(1) did not apply to insurer's action against indemnifiers - appeal dismissed.

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

Jemena Gas Networks (NSW) Ltd v AGL Energy Limited [2017] NSWCA 266

Court of Appeal of New South Wales

Basten & Payne JJA

Judgments and orders - contract - commercial arbitration - respondent sued applicant for breach of contract - primary judge refused to stay proceedings to allow arbitration, which applicant had commenced, to proceed - applicant sought to appeal against primary judge's decision - whether clause of Agreement between parties constituted an arbitration agreement under s7 *Commercial Arbitration Act 2010* (NSW) - whether s8 of the Act afforded 'primacy to arbitration' whether it was commenced before or after litigation - whether there was 'issue of principle or matter of general public importance' involved in appeal - held: there was insufficient doubt attending primary judge's decision to warrant leave to appeal - leave to appeal refused.

[View Decision](#)

State of Queensland v Roane-Spray [2017] QCA 245

Court of Appeal Queensland

Fraser & Philippides JJA; Bowskill J

Negligence - respondent injured when one end of stretcher collapsed when being moved by paramedic - respondent claimed damages from State of Queensland as paramedic's employer - respondent claimed State was vicariously liable for paramedic's negligence - trial judge found in respondent's favour - trial judge found State was not a prescribed entity under s27 *Civil Liability Act 2003* (Qld), and thus s27 did not apply to State's vicarious - whether State entitled to s27's protection because Queensland Ambulance Service was 'an emanation of the Crown in right of the State of Queensland' - held: no error in trial judge's finding that State was not a

prescribed entity under s27 of the Act - appeal dismissed.

[State of Queensland](#)

Victorian WorkCover Authority v BSA Ltd [2017] VSCA 276

Court of Appeal of Victoria

Maxwell P; Osborn & Kaye JJA

Judicial review - accident compensation - claimant claimed he injured back while installing Foxtel cable television connection during course of employment with first respondent - claimant sought compensation under *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) - Victorian WorkCover Authority disputed that claimant's injury arose from, or in course of employment - first respondent disputed claimant was its employee, contending claimant was employed by independent contractor which was carrying out work for first respondent - claimant sued first respondent for compensation - Authority defended proceeding pursuant to right of subrogation under s71(4) - first respondent disputed Authority's right to conduct proceeding - Magistrate found that in order to determine issue as to right of subrogation, he needed to be satisfied whether claimant was employed by first respondent under the Act - trial judge dismissed Authority's challenge to Magistrate's procedural decision - whether claimant's allegation that first respondent was his employer was sufficient to engage right of subrogation - held: Authority's construction of s71(4) of the Act upheld - appeal allowed - matter remitted to Magistrate.

[Victorian WorkCover Authority](#)

Commonwealth Bank of Australia v Nugawela [2017] WASC 303

Supreme Court of Western Australia

Allanson J

Summary judgment - loan agreement - possession - plaintiff sought summary judgment for possession of properties against defendant on basis of three loan agreements secured by the properties - s58 *Bankruptcy Act 1966* (Cth) - s441D (2) *Corporations Act 2001* (Cth) - O14 r1 & O14 r2 *Rules of the Supreme Court 1971* (WA) - held: defendant raised no triable issue - plaintiff entitled to possession - summary judgment granted on mortgages.

[Commonwealth Bank of Australia](#)

Lafferty v Waterton [No 4] [2017] WASC 302

Supreme Court of Western Australia

Allanson J

Equitable estoppel - trusts and trustees - plaintiff was child of deceased parents - plaintiff made claim, based on letter written by mother, that she was entitled to one third of her mother's estate - plaintiff also claimed that property mother gave to other children was impressed with a trust as to one third interest - plaintiff contended mother's estate estopped from acting except in accordance with letter's representations - whether defendants estopped from denying plaintiff's one third entitlement to mother's assets - identification of 'assumption or expectation' - reliance - detriment - pt IV *Administration and Probate Act 1958* (Vic) - s79C *Evidence Act 1906* (WA) -



held: claim against defendants dismissed.

[Lafferty](#)

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