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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)

**Howes v Comcare (No 1)** (FCA) - administrative law - interlocutory application for vacation of hearing date due to unavailability of senior counsel dismissed

**Bellbird Ridge Pty Ltd as trustee for Bellbird Ridge Unit Trust v Chief Commissioner of State Revenue** (NSWSC) - taxes and duties - exemption pursuant to s10AA *Land Tax Management Act 1956* (NSW) - 2011 assessment revoked - 2012-2015 assessments confirmed

**Moloney v Adams t/as Tri-Meridian Corporate and Commercial Law** (SASC) - solicitors' costs - compromise of proceedings did not preclude appellant from invoking remedies under s42(7) *Legal Practitioners Act 1981* (SA) - appeal allowed

**Habitat 1 Pty Ltd v Formby** (WASC) - restraint of trade - balance of convenience favoured injunction - interlocutory injunction granted

**Allianz Australia Insurance Ltd v Smeaton** (ACTCA) - insurance - boating accident - loss giving rise to claim not caused by unlicensed driving - insurer not entitled to refuse to indemnify respondents - appeal dismissed

**Fogarty v CGU Insurance Ltd** (ACTCA) - contract - insurance - no breach by insurer of obligation to repair or duty of utmost good faith - appeal dismissed

### Summaries With Link (Five Minute Read)

**Howes v Comcare (No 1) [2016] FCA 1396**

Federal Court of Australia

Griffiths J

Administrative law - adjournment - appeal against rejection of claim for reimbursement for breast reduction surgery - application sought vacation of hearing date on basis senior counsel would be overseas receiving medical treatment - s44 *Administrative Appeals Tribunal Act 1975* (Cth) - s37M(2) *Federal Court of Australia Act 1976* (Cth) - s16 *Safety, Rehabilitation and Compensation Act 1988* (Cth) - held: counsel's unavailability not sufficient basis for vacating hearing date - no reason to doubt competency of junior counsel to represent applicant - interlocutory application dismissed.

[Howes](#)

**Bellbird Ridge Pty Ltd as trustee for Bellbird Ridge Unit Trust v Chief Commissioner of State Revenue [2016] NSWSC 1637**

Supreme Court of New South Wales

White J

Taxes and duties - taxpayer sought review of Chief Commissioner of State Revenue's decisions to issue land tax assessments on basis of exemption pursuant to s10AA *Land Tax Management Act 1956* (NSW) - held: use of land for grazing cattle was dominant use for land tax years in question - 2011 assessment revoked - in relation to 2012-2015 years Court concluded land's primary production use did not have commercial purpose or character under s10AA - 2012-2015 assessments confirmed.

[Bellbird](#)

**Moloney v Adams t/as Tri-Meridian Corporate and Commercial Law [2016] SASC 177**

Supreme Court of South Australia

Stanley J

Solicitors' costs - appellant retained respondent to represent him in proceedings - appellant executed costs agreement - dispute arose concerning payment of fees - respondent sought in District Court to recover fees - appellant sought fixing of legal costs - appellant challenged validity of costs agreement and sought that it be 'set aside' - appellant, in application for fixing of costs, sought adjudication of invoices - District Court proceedings settled by Deed of Settlement and Release - appellant appealed from decision in which Master held appellant precluded by deed from entitlement to seek that costs agreement be rescinded or varied - s42 *Legal Practitioners Act 1981* (SA) - held: compromise preserved appellant's right to invoke remedies under s42(7) of the Act - appeal allowed.

[Moloney](#)

**Habitat 1 Pty Ltd v Formby [2016] WASC 376**

Supreme Court of Western Australia

Banks-Smith J

Restraint of trade - plaintiff contended first defendant, which it formerly employed, had taken

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steps to establish business and interfere with plaintiff's relationship with clients and suppliers, and had sought to transfer plaintiff's name to third defendant company he controlled - plaintiff sought to enforce restraint of trade clause in executive sale agreement and sought recovery of loans - plaintiff sought injunction to enforce aspects of restraint of trade clause - held: Court satisfied that balance of convenience favoured injunction - interlocutory injunction granted.

[Habitat 1](#)

## **Allianz Australia Insurance Ltd v Smeaton [2016] ACTCA 59**

Court of Appeal of the Australian Capital Territory

Burns, Elkaim & Perry JJ

Insurance - third respondent injured in boating accident involving jet ski driven by second respondent and owned by first respondent - appellant insured jet ski - third respondent sued first and second respondents - appellant refused to indemnify respondents - appellant joined to the proceedings - primary judge found in third respondent's favour against first and second respondents - primary judge found in first and second respondents' favour against appellant - primary judge found loss giving rise to claim not caused by unlicensed driving and insurer not entitled to refuse to pay claim for that reason - s19 *Civil Liability Act 2003* (Qld) - ss54(2) & 54(3) *Insurance Contracts Act 1984* (Cth) - s95(3) *Transport Operations (Marine Safety) Regulations 2004* (Qld) - held: relevant licencing requirements were New South Wales - compliance with licencing requirements prior to accident would not have made different to second respondent's actions - result would have been no different if Queensland licencing requirements applied - appeal dismissed.

[Allianz](#)

## **Fogarty v CGU Insurance Ltd [2016] ACTCA 62**

Court of Appeal of the Australian Capital Territory

Refshauge, Burns & Perry JJ

Contract - insurance - respondent insurer entered contract with appellant insured to insure building and contents against accidental loss or damage, including damage by fire - fire occurred in kitchen of premises - insurer accepted claim and elected to repair damage - dispute arose in relation to damage caused to three kitchen floorboards - insured sued insurer under s57 *Insurance Contracts Act 1984* (Cth) for cost of repairs - primary judge found Magistrate erred in finding insurer breached contractual obligation to repair and in finding insurer breached duty of utmost good faith - insured appealed - held: insurer stood willing to discharge obligations - no occasion for breach of insurance contract had arisen - no error in decision of primary judge on liability - appeal dismissed.

[Fogarty](#)

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