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Weekly Construction Law Review A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Metgasco Ltd v Minister for Resources and Energy (NSWSC) - judicial review - unlawful suspension of operations at gas exploration well - decisions quashed

Field Deployment Solutions Pty Ltd v Jones (WASC) - judicial review - futility - availability of alternative remedy - application to quash adjudication decisions dismissed

Delmere Holdings Pty Ltd v Green (WASC) - security of payments - construction contract - adjudication decision quashed

Summaries With Link (Five Minute Read)

Metgasco Ltd v Minister for Resources and Energy [2015] NSWSC 453

Supreme Court of New South Wales

Button J

Judicial review - plaintiff sought judicial review of decision of Minister by delegate to suspend operations approved under Petroleum Exploration License at gas exploration well pursuant to s22(3A) *Petroleum (Onshore) Act 1991* (NSW) - construction of Act and instruments created pursuant to Act - lawfulness of delegate's decisions - ss3, 22, 22(3A), 22(3A)(b), 22(3B)(b), 22(6), 22(6)(a), 22(6)(b), 22(6)(c), 22(7) & 136A - held: decision to suspend (the first decision) was invalid because it was not preceded by compliance with procedural fairness regime under Act - decision to confirm the first decision was invalid because it purported to confirm a decision that was itself invalid - second decision was also separately invalid on various grounds - decisions quashed.

[Metgasco](#)

[From Benchmark 28 April 2015]

Field Deployment Solutions Pty Ltd v Jones [2015] WASC 136

Supreme Court of Western Australia

Mitchell J

Judicial review - Court held State Administrative Tribunal erred in finding agreement was not a construction contract under *Construction Contracts Act 2004* (WA) - applicant sought to quash adjudication decisions made between time of Tribunal's decision and determination of appeal - decisions had been made on basis the agreement was not a construction contract - ss28, 31(3) & 46 *Construction Contracts Act 2004* (WA) - held: even if jurisdictional error established, appropriate to dismiss application for the two discretionary reasons of futility due to operation of s31(3), and the availability of alternative remedy - application dismissed without determining whether jurisdictional error established.

[Field](#)

[From Benchmark 23 April 2015]

Delmere Holdings Pty Ltd v Green [2015] WASC 148

Supreme Court of Western Australia

K Martin J

Security of payments - construction contract - applicant and other party entered subcontract accepted to be a "construction contract" under *Construction Contracts Act 2004* - applicant sought to quash determination of adjudication dispute by respondent adjudicator under the Act which required applicant to pay other party amount - applicant contended adjudicator never jurisdictionally enabled to proceed with adjudication as there was no relevant 'payment claim' issued by other party - ss3, 6, 25, 26 & 31 - held: adjudicator failed to recognise relevance of material put before him by applicant and to appreciate significance of material under Act - adjudicator wrongly proceeded to determine application on incorrect and misconceived basis



that payment claim existed and payment dispute existed - decision quashed.

[Delmere](#)

[From Benchmark 28 April 2015]

Constancy

By George Herbert

Who is the honest man?

He that doth still and strongly good pursue,
To God, his neighbour, and himself most true:
Whom neither force nor fawning can
Unpin, or wrench from giving all their due.

Whose honesty is not

So loose or easy, that a ruffling wind
Can blow away, or glittering look it blind:
Who rides his sure and even trot,
While the world now rides by, now lags behind.

Who, when great trials come,

Nor seeks, nor shuns them; but doth calmly stay,
Till he the thing and the example weigh:
All being brought into a sum,
What place or person calls for, he doth pay.

Whom none can work or woo

To use in any thing a trick or sleight;
For above all things he abhors deceit:
His words and works and fashion too
All of a piece, and all are clear and straight.

Who never melts or thaws

At close temptations: when the day is done,
His goodness sets not, but in dark can run:
The sun to others writeth laws,
And is their virtue; Virtue is his Sun.

Who, when he is to treat

With sick folks, women, those whom passions sway,
Allows for that, and keeps his constant way:
Whom others' faults do not defeat;
But though men fail him, yet his part doth play.



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Whom nothing can procure,
When the wide world runs bias from his will,
To writhe his limbs, and share, not mend the ill.
This is the Marksman, safe and sure,
Who still is right, and prays to be so still.

[George Herbert](#)

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