

Friday, 2 October 2015

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

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### Executive Summary (1 minute read)

**Lewence Construction Pty Ltd v Southern Han Breakfast Point Pty Ltd (NSWCA)** - security of payments - existence of reference date to support payment claim not a jurisdictional fact - appeal allowed

**NuCoal Resources Ltd v Independent Commission Against Corruption (NSWSC)** - judicial review - recommendation in relation to revocation of exploration licence - Commission did not breach duty to "fully investigate" - summons dismissed

### Summaries With Link (Five Minute Read)

**Lewence Construction Pty Ltd v Southern Han Breakfast Point Pty Ltd [2015] NSWCA 288**

Court of Appeal of New South Wales

Ward & Emmett JJA; Sackville AJA

Security of payments - first respondent sought declaration that adjudication determination made by adjudicator under s22 *Building and Construction Industry Security of Payment Act 1999* (NSW) in respect of payment claim made by appellant was void - first respondent submitted adjudicator wrongly determined that reference date within meaning of s8 had arisen in respect of work subject of payment claim - first respondent also submitted adjudicator denied it natural justice - primary judge found there was no reference date supporting payment claim and no denial of natural justice - primary judge found first respondent entitled to declaration sought - appellant appealed - construction of ss8 & 13 - held: appellant was person who claimed entitlement under construction contract to progress payments in general sense contemplated by



Act - appellant satisfied description in s8(1)(a) & (b) - existence of reference date to support payment claim was not a jurisdictional fact and not an essential pre-condition for making valid payment claim - appeal allowed.

[Lewence](#)

[From Benchmark Tuesday, 29 September 2015]

**NuCoal Resources Ltd v Independent Commission Against Corruption [2015] NSWSC 1400**

Supreme Court of New South Wales

Rothman J

Judicial review - plaintiff sought judicial review of Independent Commission against Corruption's recommendation in relation to revocation of exploration licence - plaintiff alleged recommendation performed in breach of conditions necessary for performance - plaintiff's critical challenge related to Commission's duty to "fully investigate" - s73(2) *Independent Commission Against Corruption Act 1988* (NSW) - *Mining Amendment (ICAC Operations Jasper and Acacia) Act 2014* (NSW) - held: no breach of duty to investigate - Commission did not act otherwise than in accordance with law - findings if made were not made otherwise than in accordance with law - summons dismissed.

[NuCoal](#)

[From Benchmark Wednesday, 30 September 2015]



# Benchmark

## **To An Old Mate**

By Henry Lawson

Old Mate! In the gusty old weather,  
When our hopes and our troubles were new,  
In the years spent in wearing out leather,  
I found you unselfish and true --  
I have gathered these verses together  
For the sake of our friendship and you.

You may think for awhile, and with reason,  
Though still with a kindly regret,  
That I've left it full late in the season  
To prove I remember you yet;  
But you'll never judge me by their treason  
Who profit by friends -- and forget.

I remember, Old Man, I remember --  
The tracks that we followed are clear --  
The jovial last nights of December,  
The solemn first days of the year,  
Long tramps through the clearings and timber,  
Short partings on platform and pier.

I can still feel the spirit that bore us,  
And often the old stars will shine --  
I remember the last spree in chorus  
For the sake of that other Lang Syne,  
When the tracks lay divided before us,  
Your path through the future and mine.

Through the frost-wind that cut like whip-lashes,  
Through the ever-blind haze of the drought --  
And in fancy at times by the flashes  
Of light in the darkness of doubt --  
I have followed the tent poles and ashes  
Of camps that we moved further out.

You will find in these pages a trace of  
That side of our past which was bright,  
And recognise sometimes the face of  
A friend who has dropped out of sight --

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I send them along in the place of  
The letters I promised to write.

<http://www.poetrylibrary.edu.au/poets/lawson-henry/>

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