

Friday, 17 September 2021

Weekly Insurance Law Review Selected from our Daily Bulletins covering Insurance

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Executive Summary (1 minute read)

Fairfax Media Publications Pty Ltd v Voller Nationwide News Pty Limited v Voller Australian News Channel Pty Ltd v Voller (HCA) - defamation - separate question - appeal arising from three proceedings in which respondent claimed appellants were liable as publishers of defamatory comments by Facebook users - 'publication element' established - appeal against determination of separate question dismissed

Campbell v Northern Territory of Australia (No 3) (FCA) - false imprisonment - battery - assault - negligence - discrimination - limitations - breach of duty - youth justice - claims arising from applicant's time spent in custody - applicant established unlawful imprisonment claim for period between 2/1/12 and 9/1/12, however claim time-barred - application dismissed

Sara v G & S Sara Pty Ltd (NSWPIC) - workers compensation - COVID-19 - Mr Georges Sara (Mr Sara) diagnosed with COVID-19 in hospital in New York on 23/7/20 - Mr Sara died during hospitalisation due to COVID-19 complications on 21/11/20 - applicant was Mr Sara's widow and executor of Mr Sara's estate - Mr Sara died from injury sustained in course of employment with respondent - applicant was a dependant of Mr Sara - applicant entitled to weekly compensation and lump sum death benefit and expenses

Sydney Seaplanes Pty Ltd v Page (NSWCA) - jurisdiction - constitutional law - limitations - aviation - traffic law - s34 *Civil Aviation (Carriers' Liability) Act 1959* (Cth) - *Civil Aviation (Carriers' Liability) Act 1967* (NSW) - respondent claimed damages for psychological injury arising from death of respondent's daughter in seaplane crash - respondent filed originating application in NSW Registry of Federal Court - Federal Court judge dismissed proceedings for want of jurisdiction - appeal against primary judge's order under s11(3) *Federal Courts (State*

Benchmark

Jurisdiction) Act 1999 (NSW) that the Federal Court proceedings be treated as Supreme Court proceedings - appeal allowed

Prouten v Chapman (NSWCA) - negligence - appellant delivered mail by motorbike and claimed she had fallen due to 'evasive action' she needed to take 'when negotiating around' respondents' caravan - appellant claimed in negligence against respondents - appeal from dismissal of claim - appeal dismissed

KEPCO Bylong Australia Pty Ltd v Bylong Valley Protection Alliance Inc (NSWCA) - administrative law - judicial review - environment and planning - Independent Planning Commission refused to grant appellant development consent for 'new coal mine' - primary judge dismissed judicial review proceeding - appellant appealed - appeal dismissed

Meadowlands BFT Pty Ltd v Shoalhaven City Council (NSWSC) - contract - conversion - *Impounding Act 1993 (NSW)* - plaintiff contended defendant was not authorised to enter property and seize cattle - plaintiff contended breach of contract and conversion by defendant - statement of claim dismissed - defendant entitled to deduction of 'fees and charges payable' for cattle's maintenance

160 Leicester Pty Ltd v Melbourne City Council (VSCA) - contempt - administrative law - environmental law - criminal law - Tribunal found company and two directors guilty of contempt - company and directors sought to appeal against sentences - leave to appeal refused

Onslow Resources Ltd v Hon William Joseph Johnston MLA in capacity as Minister for Mines and Petroleum (WASCA) - judicial review - mining law - Officer of Department of Mines and Petroleum decided to record that application for mining lease 'null and void' on basis it was unaccompanied by statement required by s74(1)(ca)(ii) *Mining Act 1978 (WA)* - appeal dismissed

Hutchison v Horan (TASSC) - traffic law - negligence - applicant sought review of order of Magistrate in proceeding in which applicant was found guilty of offence against s32(2A) *Traffic Act 1925 (Tas)* - review application dismissed

Summaries With Link (Five Minute Read)

Fairfax Media Publications Pty Ltd v Voller Nationwide News Pty Limited v Voller Australian News Channel Pty Ltd v Voller [2021] HCA 27

High Court of Australia

Kiefel CJ; Gageler, Keane, Gordon, Edelman, Steward and Gleeson JJ

Defamation - separate question - appeal arising from three proceedings in which respondent

claimed appellants were liable as publishers of defamatory comments by Facebook users - no dispute that posting of comments constituted publication - separate question was whether respondent "has established the publication element of the cause of action of defamation against the defendant[s] in respect of each of the Facebook comments by third-party users" - primary judge answered question in the affirmative - s7(2) *Defamation Act 2005* (NSW) - held: appeals dismissed.

[Fairfax](#)

[From Benchmark Monday, 13 September 2021]

Campbell v Northern Territory of Australia (No 3) [2021] FCA 1089

Federal Court of Australia

White J

False imprisonment - battery - assault - negligence - discrimination - breach of duty - limitations - youth justice - *Youth Justice Act 2005* (NT) - *Youth Justice Regulations 2006* (NT) - *Racial Discrimination Act 1975* (Cth) - *Australian Human Rights Commission Act 1986* (Cth) - claims arising from applicant's time spent in custody from April 2011 to July 2012 - whether claims substantiated - *Limitations of Actions Act 1981* (NT) - held: applicant established unlawful imprisonment claim for period between 2/1/12 and 9/1/12, however claim time-barred - application dismissed.

[Campbell](#)

[From Benchmark Wednesday, 15 September 2021]

Sara v G & S Sara Pty Ltd [2021] NSW PIC 286

Personal Injury Commission of New South Wales

Principal Member John Harris

Workers compensation - COVID-19 - Mr Georges Sara (Mr Sara) diagnosed with COVID-19 in hospital in New York on 23/7/20 - Mr Sara died during hospitalisation due to COVID-19 complications on 21/11/20 - applicant was Mr Sara's widow and executor of Mr Sara's estate - respondent was G & S Sara Pty Ltd - applicant claimed 'weekly compensation benefits' and 'lump sum death benefit' and 'funeral and associated expenses' - 'principal issue' was whether Mr Sara was in course of employment with respondent when he contracted COVID-19 - respondent claimed work performed which Mr Sara performed in United States was for Stoneglass Inc ('Stoneglass US') - respondent claimed it bore no liability under provisions *Workers Compensation Act 1987* (NSW) (*Workers Compensation Act*) - 'corporate structure of the Stoneglass Group' - "worker" - s19B *Workers Compensation Act* - s25 *Workplace Injury Management and Workers Compensation Act 1998* (NSW) - *Personal Injury Commission Act 2020* (NSW) - held: Mr Sara died from injury sustained in course of employment with respondent - applicant was a dependant of Mr Sara - applicant entitled to weekly compensation and lump sum death benefit and expenses - proceedings' balance stood over.

[Sara](#)

[From Benchmark Thursday, 16 September 2021]

Sydney Seaplanes Pty Ltd v Page [2021] NSWCA 204

Court of Appeal of New South Wales

Bell P, Leeming JA & Emmett AJA

Jurisdiction - constitutional law - limitations - aviation - traffic law - respondent, on 23/12/19, pursuant to *Civil Aviation (Carriers' Liability) Act 1959* (Cth) (CACLA Cth), filed originating application in NSW Registry of Federal Court, claiming 'damages for psychological injury' arising from death of respondent's daughter in seaplane crash - Griffiths J, of Federal Court, dismissed proceeding for want of jurisdiction, finding action was brought pursuant to CACLA Cth 'as incorporated by' *Civil Aviation (Carriers' Liability) Act 1967* (NSW) (CACLA NSW) - whether Federal Court proceeding was 'deemed to have been brought in the Supreme Court on' on 23/12/19, 'so as to avoid the consequences of' s34 CACLA Cth 'as incorporated by' s5 CACLA NSW, which would otherwise have extinguished respondent's cause of action, under CACLA NSW - primary judge, s11(3) *Federal Courts (State Jurisdiction) Act 1999* (NSW) (FCSJA) ordered Federal Court proceedings to be treated as Supreme Court proceeding - applicant sought to appeal - whether Griffiths J's dismissal of Federal Court proceedings was 'relevant order' under s11 FCSJA - whether s34 CACLA Cth a 'limitation law' - whether s34 CACLA Cth inconsistent with s11(3)(b) FCSJA - held: appeal allowed.

[View Decision](#)

[From Benchmark Tuesday, 14 September 2021]

Prouten v Chapman [2021] NSWCA 207

Court of Appeal of New South Wales

Meagher & Leeming JJA; Brereton JA

Negligence - appellant claimed in negligence against respondents - appellant delivered mail by motorbike and claimed she had fallen due to 'evasive action' she needed to take 'when negotiating around' respondents' caravan - caravan was parked on nature strip outside respondents' home - primary judge dismissed claim - appellant appealed - whether accident occurred as claimed by appellant - whether breach of duty of care - whether claimed 'injuries and disabilities' caused by accident - risk of harm - foreseeability - credit - demeanour - factual findings - procedural fairness - reasons' adequacy - *Civil Liability Act 2002* (NSW) - held: appeal dismissed.

[View Decision](#)

[From Benchmark Thursday, 16 September 2021]

KEPCO Bylong Australia Pty Ltd v Bylong Valley Protection Alliance Inc [2021] NSWCA 216

Court of Appeal of New South Wales

Basten & Payne JJA; Preston CJ of LEC

Administrative law - judicial review - environment and planning - Independent Planning Commission refused to grant appellant development consent for 'new coal mine' - primary judge dismissed judicial review proceeding - appellant appealed, contending Commission's decision 'was invalidated by legal error' - whether misconstruction of cl 14 *State Environmental Planning*

Policy (Mining, Petroleum Production and Extractive Industries) 2007 (NSW) - whether error concerning 'groundwater resources' - 'applicable policies' - 'alternative sources ignored' - 'no evidence ground' - held: appeal dismissed.

[View Decision](#)

[From Benchmark Friday, 17 September 2021]

Meadowlands BFT Pty Ltd v Shoalhaven City Council [2021] NSWSC 1139

Supreme Court of New South Wales

Beech-Jones J

Contract - conversion - *Impounding Act 1993 (NSW)* (Impounding Act) - cattle - defendant entered 'onto private land' it owned - defendant impounded cattle on property - plaintiff claimed ownership of impounded cattle and claimed defendant was not authorised to enter property and seize cattle - plaintiff contended breach of contract and conversion by defendant - defendant contended Impounding Act authorised its actions - defendant, by cross-claim sought to recover 'impounding expenses' from proceeds of cattle's sale - held: statement of claim dismissed - defendant entitled to deduction of 'fees and charges payable' for cattle's maintenance.

[View Decision](#)

[From Benchmark Monday, 13 September 2021]

160 Leicester Pty Ltd v Melbourne City Council [2021] VSCA 250

Court of Appeal of Victoria

Priest, Beach & Kaye JJA

Contempt - administrative law - environmental law - criminal law - Tribunal found company and two directors guilty of contempt by 'their wilful and deliberately defiant non-compliance' with enforcement orders - company and directors sought to appeal against sentences including costs orders - directors contended Tribunal erred in assessment of conduct's gravity and of circumstances forming basis for contempt - directors and company contended orders manifestly excessive - held: leave to appeal refused.

[160 Leicester](#)

[From Benchmark Wednesday, 15 September 2021]

Onslow Resources Ltd v Hon William Joseph Johnston MLA in capacity as Minister for Mines and Petroleum [2021] WASCA 151

Court of Appeal of Western Australia

Quinlan CJ, Buss P & Beech JA

Judicial review - mining law - Officer of Department of Mines and Petroleum decided to record that application for mining lease 'null and void' on basis it was unaccompanied by statement required by s74(1)(ca)(ii) *Mining Act 1978 (WA)* - appellant contended application was accompanied by required 'mining operations statement' - primary judge refused leave to bring judicial review application out of time, finding no error by decision maker - appellant appealed - whether letter could be characterised as mining operations statement - held: appeal dismissed.

[Onslow Resources](#)



[From Benchmark Wednesday, 15 September 2021]

Hutchison v Horan [2021] TASSC 36

Supreme Court of Tasmania

Marshall AJ

Traffic law - negligence - applicant sought review of order of Magistrate in proceeding in which applicant was found guilty of offence against s32(2A) *Traffic Act 1925* (Tas) - whether a 'reasonable person would not have arrived at' same conclusions as Magistrate - whether Magistrate entitled to not take into account reasons attempting to explain why applicant 'did not see' deceased - 'proper lookout' - 'blind spot' - 'beyond reasonable doubt' - whether misinterpretation of Magistrate's reasons concerning blind spots - *Shi v Wilkie* [2021] TASFC 1 - held: review application dismissed.

[Hutchison](#)

[From Benchmark Friday, 17 September 2021]



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