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Insurance, Banking, Construction & Government

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Dening v Oltoy Pty Ltd t/as Noble Toyota (NSWSC) - workers compensation - decision of Medical Appeal Panel and certificate of determination quashed (I G)

Wilcox v Brydens Compensation Lawyers (NSWSC) - solicitor's lien - equitable charge over part of proceeds of claim - declaration and injunction granted (I B)

Sadsad v NRMA Insurance Ltd (NSWSC) - motor accidents compensation - medical assessor failed to disclose pathway of reasoning - decision quashed (I G)

Colbron v Freeman (NSWSC) - barrister's fees - costs assessment incomplete - not open to barrister to bring claim in Local Court - appeal allowed (I)

Tuari v Transport Accident Commission (VSCA) - administrative law - Commission erred in refusal to contribute to purchase of modified vehicle - appeal allowed (I G)

Gallagher v McClintock (QCA) - real property - revocation of church attendee's licence - no right to enter church land - appeal dismissed (I)

Heugh v Central Petroleum Ltd [No 5] (WASC) - contract - wrongful termination of employment contract - serious breach had been remedied - damages (I B C)

Summaries with links (5 minute read)

Dening v Oltoy Pty Ltd t/as Noble Toyota [2014] NSWSC 1224

Supreme Court of New South Wales

Harrison AsJ

Judicial review - workers compensation - worker was exposed to noise in course of employment as car salesman - worker sought to quash Medical Appeal Panel's decision that employment not noisy enough to cause worker's hearing loss, and Commission's determination of no entitlement to lump sum compensation for permanent impairment - ss4, 17, 65(1), 65(3) & 66 *Workers Compensation Act 1987* (NSW) - ss 4, 105, 319, 323, 322, 323, 325, 326, 327, 328 & 366 *Workplace Injury Management and Workers Compensation Act 1998* (NSW) - held: Appeal Panel misconstrued jurisdiction by failing to take into account employer's concession email that it was last noisy employer - Appeal Panel's engagement with s323 in assessing whether permanent impairment should be reduced to nil fell outside ambit of referral by Registrar - decisions quashed.

[Dening](#) (I G)

Wilcox v Brydens Compensation Lawyers [2014] NSWSC 1222

Supreme Court of New South Wales

Hamill J

Solicitors' fees - two proceedings - client sought order commanding previous legal representatives (Brydens) to release file to current solicitors - Brydens sought orders securing payment of legal fees for professional services provided to client in relation to action for family provision under *Succession Act 2006* (NSW) - whether there was enforceable agreement whereby legal costs attached or charged to any prospective award of damages or settlement arising from successful outcome of personal injuries claim - held: Court satisfied that a debt for legal costs "crystallised" upon successful conclusion of settlement negotiations in family provision matter and entry into heads of agreement - Court satisfied conversation between client and solicitor created equitable charge over part of proceeds of client's unconcluded personal injury claim - declaration and injunction granted.

[Wilcox](#) (I B)

Sadsad v NRMA Insurance Ltd [2014] NSWSC 1216

Supreme Court of New South Wales

Hamill J

Motor accidents compensation - plaintiff injured when struck by car while riding bicycle - plaintiff sought compensation from driver's third party personal injury insurer - plaintiff sought review of



medical assessor's decision that plaintiff had suffered a 10% permanent impairment - held: medical assessor's reasons did not disclose pathway of reasoning - Court not satisfied it was necessarily implicit in medical assessor's reasoning that there were only two possible causes for plaintiff's impairment - if medical assessor acting on assumption that whole person impairment of 1% was the same thing as 1% less than average mobility, basis of assumption should have been contained in explanation - decision quashed.

[Sadsad](#) (I G)

Colbron v Freeman [2014] NSWSC 1210

Supreme Court of New South Wales

McCallum J

Barristers' fees - barrister commenced proceedings against solicitor in Local Court seeking payment of fees - solicitor contended that since barrister had applied to have fees assessed pursuant to *Legal Profession Act 2004* (NSW) and assessment was not yet 'completed', barrister was not entitled to proceed with claim in the Local Court - Magistrate found there was a valid costs agreement in place when services charged for in disputed accounts were undertaken - Magistrate found there was no need to determine issue whether assessment completed - parties agreed Magistrate ought to have determined issue - held: costs assessment not completed within the meaning of s355 - not open to barrister to prosecute claim in Local Court - proceedings in Local Court contravened s355 - Magistrate ought to have held accordingly - appeal allowed.

[Colbron](#) (I)

Tuari v Transport Accident Commission [2014] VSCA 203

Court of Appeal of Victoria

Osborn, Beach & Garde JJA

Administrative law - applicant injured in transport accident - Commission refused to contribute to purchase of modified vehicle - applicant sought to appeal from Victorian Civil and Administrative Tribunal's dismissal of application for review of Commission's decision - ss60(3), 60(3A) & 60(2)(a) *Transport Accident Act 1986* (Vic) - held: Commission's concession it erred in its determination in relation to adequacy of its explanations was properly made - matter should be remitted - appeal allowed.

[Tuari](#) (I G)

Gallagher v McClintock [2014] QCA 224

Court of Appeal of Queensland

Holmes JA; A Lyons & Flanagan JJ

Real property - licence - trespass - appellant was attendee at, but non-member of Church - respondents were members of Church Board - appellant distributed pamphlets in pigeon holes at Church that made unfavourable comments on respondents' ideologies - appellant asked to leave and informed by letter that he was no longer welcome to attend Church - primary judge held



appellant did not demonstrate any serious question to be tried in terms of establishing right to go onto Church's land - appellant sought to challenge primary judge's construction of article 9 *Bill of Rights* 1688 and contended primary judge ought to have granted him access to Church land - held: appellant's right to be upon Church land was that of a licensee - letter and directions given to appellant had constituted a clear revocation of licence - no error in construction of article 9 - appeal dismissed.

[Gallagher](#) (I)

Heugh v Central Petroleum Ltd [No 5] [2014] WASC 311

Supreme Court of Western Australia

Le Miere J

Employment contract - plaintiff was managing director of defendant oil and gas exploration company - defendant terminated plaintiff's employment - plaintiff claimed defendant not entitled to terminate his employment and had breached and repudiated his contract of employment - construction of contract - held: employment was not terminated pursuant to an ulterior purpose - plaintiff committed a serious breach of employment contract - it was open to plaintiff to remedy specified breach without necessarily complying with all of defendant's requirements - plaintiff remedied breach - not a reasonable exercise of discretion to terminate employment - plaintiff's employment wrongfully terminated - damages assessed - judgment for plaintiff.

[Heugh](#) (I B C)

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