



Insurance Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Virgin Blue Airlines Pty Ltd v Commissioner of Taxation – Div 10A *Fringe Benefits Tax Assessment Act 1936* (Cth) - car parking fringe benefit - appeal allowed (B)

Rawson Finances Pty Ltd v Deputy Commissioner of Taxation - Application for leave to appeal declined (B)

Williams v MacMahon Mining Services Pty Ltd – s227 *Workplace Relations Act 1996* (Cth) - 'casual employee' (I)

Grave v Blazevic Holdings – ss14 & 15 *Building & Construction Industry Security of Payment Act 1999* (NSW) (I, C)

Allianz Australia Insurance Ltd v Roger Ward & Ors - *Motor Accidents Compensation Act 1999* (NSW) - certificate & determination of claims assessor set aside (I)

Benic v State of New South Wales - Personal injuries - duty of care – police service – causation - verdict for defendant (I)

Georges & Anor v Peter Wieland & Ors - Directors' duties (I, B)



Waite v Hornsby Shire Council - Legal professional privilege - *Freedom of Information Act 1989* (NSW) (C)

Nicholas v Wesfarmers Curragh Pty Ltd & Ors - *Insurance Contracts Act 1984* (Cth) - whether "other insurance" provision rendered void by s45 of the Act - meaning of "entered into" in s45 (I)

City of Gosnells v Heydon - Local government - statutory interpretation - placing vehicles on a verge without a permit (I)

Summaries with links (5 minute read)

Thursday 2 December 2010

Virgin Blue Airlines Pty Ltd v Commissioner of Taxation [2010] FCAFC 137

Full Federal Court of Australia

Edmonds, Jessup & Gilmour JJ (in Sydney)

Div 10A *Fringe Benefits Tax Assessment Act 1936* (Cth)– statutory interpretation – "vicinity" - car parking fringe benefit - car parking facilities provided 1.9 to 2 kilometres by road from primary place of employment were not "at, or in the vicinity" of that place – appeal allowed.

[Virgin Blue Airlines](#) (B)

[Virgin Blue Airlines](#) – decision 18 June 2010: see 'Benchmark' B & IBC Tuesday 22 June 2010 - *Fringe Benefits Tax Assessment Act 1986* (Cth) - whether Melrose Car Park is "in the vicinity of" Melbourne Airport's Terminal 3 within the meaning of s39A(1)(f) – appeal dismissed.

Rawson Finances Pty Ltd v Deputy Commissioner of Taxation [2010] FCAFC 139

Full Federal Court of Australia

Ryan, Stone & Jagot JJ (in Sydney)

Application for leave to appeal interlocutory orders refused – test in *Décor Corporation Pty Ltd v Dart Industries Inc* [1991] FCA 655; (1991) 33 FCR 397.

[Rawson Finances](#) (B)

[Rawson Finances](#) - decision 31 May 2010: see 'Benchmark' B & IBC Thursday 3 June 2010 - *Taxation Administration Act 1953* (Cth) - whether a decision by respondent to commence legal action to recover income tax assessed to



applicant & a decision to refuse to refrain from commencing that legal action were reviewable decisions – challenged decisions not reviewable under the *Administrative Decisions (Judicial Review) Act 1977* (Cth) [“AD(JR) Act”] - application struck out – leave granted to file an application based on jurisdiction conferred by s39B *Judiciary Act 1903* (Cth) – an interesting decision with detailed consideration of Australian case law including conflicting case law as to whether a decision to sue to recover the amount of a tax-related liability is a reviewable decision under the AD(JR) Act.

Williams v MacMahon Mining Services Pty Ltd [2010] FCA 1321

Federal Court of Australia

Barker J in Perth

s227 *Workplace Relations Act 1996* (Cth) – appeals from three decisions of Federal Magistrates’ Court - meaning of ‘casual employee’ – whether Federal Magistrate erred in finding employee was not a casual employee for the purposes of s 227 of the *Workplace Relations Act 1996* (Cth) – payment of loading in lieu of paid leave entitlements – set-off – contravention & penalty – appeals dismissed.

[Williams](#) (I)

Grave v Blazevic Holdings [2010] NSWCA 324

Court of Appeal of New South Wales

Allsop P, Macfarlan JA, & McDougall J,

ss14 & 15 *Building & Construction Industry Security of Payment Act 1999* (NSW) – statutory interpretation – primary judge had refused to set aside default judgment entered in favour of respondent against applicant – whether arguable defence - meaning of “person who, under the construction contract concerned, is or may be liable to make payment” in s 13(1) – appeal allowed – proceedings removed from District to Supreme Court – Supreme Court order concerning provision of a guarantee set aside.

[Grave](#) (I, C)

Allianz Australia Insurance Ltd v Ward & Ors [2010] NSWSC 720

Supreme Court of New South Wales

Hidden J

Motor Accidents Compensation Act 1999 (NSW) - CARS assessment of damages - future gratuitous assistance - determination of retirement age for claim for future economic loss - certificate & determination of claims assessor set aside - matter remitted for re-determination by different assessor - cross-claim dismissed.

[Allianz Australia Insurance](#) (I)

**Benic v State of New South Wales [2010] NSWSC 1039**

Supreme Court of New South Wales

Garling J

Personal injuries - duty of care — police service — post-traumatic stress disorder – s5B *Civil Liability Act* 2002 (NSW) – causation – test under s 5D - assessment of damages - assessment of future economic loss under s 13 - verdict for defendant – comprehensive consideration of legislation, text & case law.

[Benic](#) (I)

Georges & Anor v Wieland & Ors [2010] NSWSC 1378

Supreme Court of New South Wales

Brereton J

Directors' duties - fiduciary & related statutory duties – ss181(1) & 182(1) *Corporations Act* 2001 (Cth) - assessment of compensation.

[Georges](#) (I, B)

[Georges](#) – decision 18 June 2009 - application for specific performance for contract for sale of shares & loan agreement - order that agreement for sale of shares and loan agreement be specifically performed

Waite v Hornsby Shire Council [2010] NSWADT 280

Administrative Decisions Tribunal of New South Wales

Higgins S - Deputy President

Legal professional privilege - *Freedom of Information Act* 1989 (NSW) – audio recording of Council meeting - decision of Council varied - applicant to be provided with copy of audio recording of confidential discussions about 'Outstanding Sullage Issues' with exempt matter deleted.

[Waite](#) (C)

Nicholas v Wesfarmers Curragh Pty Ltd & Ors [2010] QSC 447

Supreme Court of Queensland

McMeekin J

Insurance Contracts Act 1984 (Cth) - personal injuries claim – if a company enters into a contract of insurance on behalf of the group of companies, of which it is the parent company & the others its wholly owned subsidiaries, does it enter the contract of insurance, at least so far as s 45(1) is concerned, on behalf of each company independently, or does it act merely as the subsidiaries' agent, or is it the only party "entering into" the contract ? (at para 27) - application by first



defendant for determination of two separate questions - allegation of injury at Curragh North Mine near Blackwater - proceedings commenced against first defendant Curragh as operator of mine and G & S Engineering as employer – first defendant made claim upon a policy of insurance with the third party Brit Syndicates Ltd for indemnity in respect of claim – third party refused claim – whether “other insurance” provision rendered void by s45 of the Act - meaning of “entered into” in s45 - declaration made that “Other Insurance” clause (condition 5) in the Brit insurance policy void – detailed consideration of text & case law from the United Kingdom & Australia in an interesting decision.

[Nicholas \(I\)](#)

[Zurich Australian Insurance](#) - decision High Court 2 December 2009 : see ‘Benchmark’ I, C & IBC Thursday 3 December 2009 in relation to this decision & also summary & link to West Australian decision the subject of the appeal to the High Court - double insurance – validity of “other insurance” provision – whether rendered void by s.45 *Insurance Contracts Act 1984* (Cth) – contract for the provision of rail grinding services: one of its terms required Speno to indemnify Hamersley & insure itself against all claims occurring as a result of anything done in the performance of the contract causing death or injury to any person - also a term that Speno's insurance policy be endorsed to include Hamersley as a named insured - appeal arising out of contribution proceedings brought by Zurich against MMI in Supreme Court of Western Australia – for decision WA Court of Appeal 6 February 2009, see ‘Benchmark’ I, C & IBC Tuesday 2 February 2009 & link below – appeal dismissed - “double insurance”, “entered into”, “excess insurance”, “other insurance”, “provision”.

City of Gosnells v Heydon [2010] WASC 344

Supreme Court of Western Australia

Jenkins J

Local government - statutory interpretation – *City of Gosnells Activities on Thoroughfares & Trading in Thoroughfares and Public Places Local Law 2000* (WA) - a magistrate had found respondent had no case to answer on a charge of placing vehicles on a verge without a permit - wrecked & damaged vehicles; vehicle bodies - prosecution appeal dismissed.

[City of Gosnells \(I\)](#)

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