



## Insurance Banking & Construction

### A Daily Bulletin listing Decisions of Superior Courts of Australia

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#### Executive Summary (1 minute read)

**Commissioner of Taxation v Administrative Appeals Tribunal - Tax Laws Amendment (Simplified Superannuation) Act 2007 (Cth) (B)**

**Lindholm, in the matter of Munday Group Pty Limited (Receivers and Managers Appointed) (in liq'n) v Tsourlinis Distributors Pty Ltd - Deed administration - commercial leases - relief from forfeiture (B, C)**

**AMI Australia Holdings Pty Ltd v PHD Networks Pty Ltd - Corporations Act 2001 (Cth) - application under s459G to set aside statutory demand (I, B)**

**Nicol v Whiteoak - Personal injuries - s48 Insurance Contracts Act 1984 (Cth) - whether section extends to a plaintiff suing an insured - boating accident (I)**

**Robbie Waterhouse v The Age Company Ltd & Ors; Robbie Waterhouse v Fairfax Media Pty Ltd & Anor; Robbie Waterhouse v Fairfax Digital Australia & New Zealand Pty Ltd & Ors - Defamation Act 2005 (NSW) (I)**

**Woods v Ross - Limitation Act 1969 (NSW) - medical negligence claim (I)**



**Trust Company Ltd ATF Opera House Car Park Infrastructure Trust No 1 v The Valuer-General (No 2)** - *Valuation of Land Act 1916* (NSW) (C)

**Singh v Singh** - Discovery of documents (I, B, C)

**Dimanopoulos v the State of Western Australia** - Criminal law - appeal against sentence - stealing as a servant (I)

## Summaries with links (5 minute read)

### Monday 21 March 2011

**Commissioner of Taxation v Administrative Appeals Tribunal [2011] FCAFC 37**

Full Court of the Federal Court of Australia

Keane CJ; Gordon & Downes JJ

*Tax Laws Amendment (Simplified Superannuation) Act 2007* (Cth) & other legislation - whether Administrative Appeals Tribunal's conclusion that it did not have jurisdiction to review Commissioner's decision not to make a determination under s292-465 was correct - appeal dismissed - comprehensive review of legislation & case law.

[Commissioner of Taxation](#) (B)

[McMennemin](#) - decision Administrative Appeals Tribunal 3 August 2010

**Lindholm, in the matter of Munday Group Pty Limited (Receivers and Managers Appointed) (in liq'n) v Tsourlinis Distributors Pty Ltd [2011] FCA 195**

Federal Court of Australia

Finkelstein J (in Melbourne)

Deed administration - share sale agreement - commercial leases - relief from forfeiture - extensive consideration of case law from the United States of America, Canada, the United Kingdom & Australia.

[Lindholm](#) (B, C)



**AMI Australia Holdings Pty Ltd v PHD Networks Pty Ltd [2011] NSWSC**

Supreme Court of New South Wales

Macready AJ

*Corporations Act* 2001 (Cth) - application under s459G to set aside statutory demand - plaintiff relying on eleven grounds for setting aside demand - grounds include whether defendant was the plaintiff's agent at law - offsetting claim in malicious falsehood - offsetting claim under s52 *Trade Practices Act* 1874 (Cth) - email - quantification of offsetting claim - "debt," "liquidated claim," "liquidated sum" - detailed consideration of Australian case law.

[AMI Australia Holdings](#) (I, B)

**Nicol v Whiteoak [2011] NSWSC 168**

Supreme Court of New South Wales

Harrison J

Personal injuries - s48 *Insurance Contracts Act* 1984 (Cth) - whether section extends to a plaintiff suing an insured - whether plaintiff a person to whom the insurance cover provided by contract extended - plaintiff seriously injured when a passenger in a boat driven by person killed in the accident - owner of the boat was insured to cover liability to pay plaintiff for personal injury pursuant to policy issued by Club Marine Ltd - second defendant the driver of the other boat involved in the accident - plaintiff's application to file fourth amended statement of claim in which Club Marine names as fourth defendant dismissed.

[Nicol](#) (I)

**Robbie Waterhouse v The Age Company Ltd & Ors; Robbie Waterhouse v Fairfax Media Pty Ltd & Anor; Robbie Waterhouse v Fairfax Digital Australia & New Zealand Pty Ltd & Ors [2011] NSWSC 159**

Supreme Court of New South Wales

Nicholas J

*Defamation Act* 2005 (NSW) - three proceedings - exercise of discretion as to whether or not imputations should be struck out - capacity - whether separate items should be regarded as individual or composite - internet - s23 "matter."

[Waterhouse](#) (I)

**Woods v Ross [2011] NSWSC 155**

Supreme Court of New South Wales

Harrison AsJ



*Limitation Act 1969* (NSW) - medical negligence claim - whether plaintiff was under a disability from June 1998 to at least 7 September 2005 so that the running of the limitation period was suspended during that time - answer 'yes' - expedition granted.

[Woods](#) (I)

**Trust Company Limited ATF Opera House Car Park Infrastructure Trust No 1 v The Valuer-General (No 2) [2011] NSWLEC 34**

Land & Environment Court of New South Wales

Pain J

*Valuation of Land Act 1916* (NSW) - the Court did not have jurisdiction in these Class 3 appeals to determine whether reascertainments out of which the proceedings arise were not authorised by s14A(6.)

[Trust Company Limited ATF Opera House Car Park Infrastructure Trust No 1](#) (C)

[Trust Company Limited ATF Opera House Car Park Infrastructure Trust No 1](#) - decision 26 August 2010: see 'Benchmark' B, C & IBC Wednesday 22 September 2010 - reported Decision: 178 LGERA 1 - *Valuation of Land Act 1916* (NSW) - *Bennelong Point (Parking Station) Act 1985* (NSW) - whether Opera House car park lot a stratum or land - no definition of land in the *Valuation of Land Act*; definition of stratum in s4 of that Act - car park lot should be valued as land under s6A of the VL Act - Australian case law considered.

**Singh v Singh [2011] VSC 82**

Supreme Court of Victoria

Mukhtar As J

Discovery of documents - both parties making applications - whether unreasonable or oppressive to order further discovery if documents are in Canada - documents concerning transfer of monies - discovery sought not to be characterised as "quantum" but going to the extent of final relief & availability of remedy.

[Singh](#) (I, B, C)

**Dimanopoulos v the State of Western Australia [2011] WASCA 62**

Court of Appeal of Western Australia

McLure P, Buss JA

Criminal law - appeal against sentence - stealing as a servant - appellant was employed as a book-keeper in family-owned business - false entries in business records - significant adverse financial impact on her employer - leave to appeal refused - appeal dismissed.

[Dimanopoulos](#) (I)





..... On Mount Yagami  
 The setting sun has left the sky.  
 The light grows dim.  
 I thought I was a brave man.  
 My thin sleeves are wet with tears.

*Kakuroi kureba  
 Ama zutau  
 Iri hi sashinure  
 Masurao to  
 Omoeru ware mo  
 Shikita no  
 Koromo no sode wa  
 Toorite nurenu*

Kakinomoto no Hitomaro

(c. 662 – 710 A.D.)

The passage of poetry above comes at the conclusion of one of Hitomaro's naga uta [lit. 'long poems' but actually elegies of moderate length] in which he writes about parting from his wife to journey from Iwami – Iwami was an old province of Japan in the area that is today the western part of Shimane Prefecture – the poem begins "In the sea of ivy-clothed Iwami ...." "*Tusunusa hau / Iwami no umi so...*"

[Kakinomoto no Hitomaro - eNotes.com Reference](#)



Out in the marsh reeds  
A bird cries out in sorrow  
As though it had recalled  
Something better forgotten.

*Wasurete mo  
Aru beki mono wo  
Ashi hara ni  
Omoi izuru no  
Naku zo kanashiki*

Ki no Tsurayuki

(c. 882 – 946 A.D.)

Poet, author, calligrapher –like

Hitomaro, a major figure in Japanese literature.

[\*Ki no Tsurayuki - Wikipedia, the free encyclopedia\*](#)

recommended reading: Kenneth Toxteth's "One Hundred Poems from the Japanese"

UNESCO [World Poetry Day](#)

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