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

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### CIVIL (Insurance, Banking, Construction & Government)

### Executive Summary (1 minute read)

**Australian Competition and Consumer Commission v Superfone Pty Ltd** (FCA) - consumer law - 'admitted contraventions' of Australian Consumer Law - penalty imposed - injunctive relief granted - orders made (I B C G)

**Construction, Forestry, Maritime, Mining and Energy Union v Hay Point Services Pty Ltd (No 3)** (FCA) - industrial law - contravention of s50 *Fair Work Act 2009* (Cth) - determination of penalty (I B C G)

**Mount Arthur Coal Pty Ltd v Duffin** (NSWCA) - negligence - appellant liable for respondent's injuries - appellant challenged contributory negligence findings, aspects of findings concerning damages and indemnity costs order - appeal allowed in part (I B C G)

**Graf v Flammea** (VSC) - contract - loan - plaintiff sought to recover money from defendant - identities of borrower and lender - 'proper plaintiff' - 'proper defendant' - claim dismissed (B)

**Boland v Clarence City Council** (TASFC) - environment and planning - first respondent planning authority refused to approve development - appeal dismissed (I B C G)

### Summaries With Link (Five Minute Read)

**Australian Competition and Consumer Commission v Superfone Pty Ltd [2020] FCA 278**

Federal Court of Australia

Murphy J

Consumer law - 'declarations of contravention' of Australian Consumer Law 'made by consent' - applicant sought 'relief for' 'admitted contraventions' - respondent contended pecuniary penalty sought by applicant was excessive - respondent also contended 'cohort of consumers to whom the non-party consumer redress orders' applied 'should be more limited than' that proposed by applicant - determination of penalty, orders and costs - deterrence - consumer redress orders - 'corrective publication' orders - costs orders - held: \$300,000 penalty imposed - injunctive relief granted - orders made.

[Australian Competition and Consumer Commission](#) (I B C G)

**Construction, Forestry, Maritime, Mining and Energy Union v Hay Point Services Pty Ltd (No 3) [2021] FCA 282**

Federal Court of Australia

Collier J

Industrial law - Court found respondent contravened s50 *Fair Work Act 2009* (Cth) (Fair Work Act) - determination of 'appropriate penalty' - ss545(1) & 545(2) Fair Work Act - *PIA Mortgage Services Pty Ltd v King* (2020) 292 IR 317 - whether conduct amounting to 'single contravention' - deterrence - "taking the odds" - whether appropriate that respondent pay applicant pecuniary penalty under s546(3) Fair Work Act - *Sayed v Construction, Forestry, Mining and Energy Union* (2016) 239 FCR 336 - held: respondent to pay penalty of \$40,500 to applicant under s546(3) Fair Work Act.

[Construction, Forestry, Maritime, Mining and Energy Union](#) (I B C G)

**Mount Arthur Coal Pty Ltd v Duffin [2021] NSWCA 49**

Court of Appeal of New South Wales

Meagher, Gleeson & Payne JJA

Negligence - appellant was responsible for mine - primary judge found appellant liable for injuries suffered by respondent when grader driven by respondent struck lamination in road 'which was part of the mine' - respondent was awarded damages of \$2,494,386.40 - appellant did not challenge finding of liability - appellant challenged contributory negligence findings and aspects of findings concerning damages - appellant also challenged indemnity costs order - held: appeal allowed in part.

[Mount Arthur Coal](#) (I B C G)

**Graf v Flammea [2021] VSC 149**

Supreme Court of Victoria

Almond J

Contract - loan - plaintiff sought to recover money from defendant - no issue amounts advanced or advanced had 'character of a loan or loans' - whether loans were between parties - whether loans were between companies which plaintiff controlled to corporate entity or subsidiary of the



corporate entity - lender's identity - 'proper plaintiff' - borrower's identity - 'proper defendant' - held: claim dismissed.

[Graf](#) (B)

**Boland v Clarence City Council [2021] TASFC 5**

Full Court of the Supreme Court of Tasmania

Wood, Pearce & Brett JJ

Environment and planning - appellant sought that first respondent planning authority approve development - first respondent refused to grant approval - Resource Management and Planning Appeal Tribunal dismissed appeal - Supreme Court dismissed appeal - 'interpretation and operation of' Clarence Interim Planning Scheme 2015 - whether Tribunal bound to disregard 'acceptable solution' - *Henry Design and Consulting v Clarence City Council* [2017] TASRMPAT 11 - whether proposal complied with 'all applicable standards' in zone - held: appeal dismissed.

[Boland](#) (I B C G)

## Summaries With Link



## **Easter Day**

**By:** Oscar Wilde

The silver trumpets rang across the Dome:  
The people knelt upon the ground with awe:  
And borne upon the necks of men I saw,  
Like some great God, the Holy Lord of Rome.

Priest-like, he wore a robe more white than foam,  
And, king-like, swathed himself in royal red,  
Three crowns of gold rose high upon his head:  
In splendour and in light the Pope passed home.

My heart stole back across wide wastes of years  
To One who wandered by a lonely sea,  
And sought in vain for any place of rest:  
'Foxes have holes, and every bird its nest,  
I, only I, must wander wearily,  
And bruise my feet, and drink wine salt with tears.'

[https://en.wikipedia.org/wiki/Oscar\\_Wilde](https://en.wikipedia.org/wiki/Oscar_Wilde)

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