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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 Securities and Investments Commission v TAL Life Limited (No 2)** (FCA) - corporations - insurance - constitutional law - superannuation - breaches of s13 *Insurance Contracts Act 1984* (Cth) established - proceedings otherwise dismissed (I B C G)

**Martires v Endura Paint Pty Ltd (No 1) [2021]** (FCA) - employment law - dismissal from employment - appellant's application to Federal Circuit Court dismissed - procedural fairness not accorded - appeal allowed - new trial ordered ( )

**Hungry Jack's Pty Ltd v Fourtounas (No 2)** (NSWCA) - costs - indemnity costs - offer of compromise - Court dismissed applicant's application for leave to appeal from judgment in respondent's favour - respondent sought variation of costs order - application granted (I B C G)

**Kralcopic Pty Ltd (admins apptd) v Minister for Resources** (VSC) - judicial review - refusal to renew licences issued under *Mineral Resources (Sustainable Development) Act 1990* (Vic) - grounds of review not established (I B C G)

**Wilson v Indigenous Services Pty Ltd** (WASC) - trusts - charitable trust - indemnification from Trust Fund - plaintiffs' application for interim relief dismissed (B)

**Northern Midlands Council v Smith** (TASSC) - environment and planning - respondents objected to condition on permit - appeal against decision of Resource Management and

Planning Appeal Tribunal in respondents' favour - appeal dismissed (I B C G)

## Summaries With Link (Five Minute Read)

### **Australian Securities and Investments Commission v TAL Life Limited (No 2) [2021] FCA 193**

Federal Court of Australia

Allsop CJ

Corporations - insurance - constitutional law - superannuation - applicant complained about respondent's conduct concerning respondent's treatment of 'person who had become an insured under an income protection policy' - applicant brought proceeding after Commission into Misconduct in the Banking, Superannuation and Financial Services Industry - whether misleading and deceptive conduct - 'lack of good faith' - jurisdiction - requirements of s78B *Judiciary Act 1903* (Cth) - standing - s1041H(1) *Corporations Act 2001* (Cth) - ss12DA(1) & 12BD(1) *Australian Securities and Investments Commission Act 2001* (Cth) - s13 *Insurance Contracts Act 1984* (Cth) (Insurance Contracts Act) - held: breaches of s13 Insurance Contracts Act established - proceeding otherwise dismissed.

[Australian Securities and Investments Commission](#) (I B C G)

### **Martires v Endura Paint Pty Ltd (No 1) [2021] FCA 178**

Federal Court of Australia

Jackson J

Employment law - respondent dismissed appellant from employment - appellant made application to Federal Circuit Court on basis he was 'fired for having workplace rights or proposing to exercise them' - primary judge dismissed application - appellant appealed - appellant self-represented - whether appellant denied procedural fairness - whether reliance by primary judge on evidence which was 'improbable or dubious' - 'receipt and consideration of the Email Chain' - duty to self-represented litigant - whether deprivation of 'possibility of a successful outcome' - *Evidence Act 1995* (Cth) - *Fair Work Act 2009* (Cth) - *Federal Circuit Court of Australia Act 1999* (Cth) - held: appellant 'not accorded procedural fairness' - appeal allowed - new trial ordered.

[Martires](#) ()

### **Hungry Jack's Pty Ltd v Fourtounas (No 2) [2021] NSWCA 26**

Court of Appeal of New South Wales

Basten J & White JA

Costs - Court dismissed applicant's application for leave to appeal from judgment in respondent's favour - Court directed that applicant pay costs of respondent - respondent, by notice of motion, sought variation of costs order - respondent sought indemnity costs order in reliance on offer of compromise and that applicant pay costs of notice of motion on indemnity basis - *Regency Media Pty Ltd v AAV Australia Pty Ltd*. [2009] NSWCA 368 - rr20.26, 42.15A,

51.47 *Uniform Civil Procedure Rules 2005* (NSW) - held: variation of costs order granted.

[Hungry Jack's](#) (I B C G)

## **Kralcopic Pty Ltd (admins apptd) v Minister for Resources [2021] VSC 101**

Supreme Court of Victoria

Ginnane J

Judicial review - Minister approved three mining licences' transfer from Unity Mining Ltd to plaintiff - plaintiff sought judicial review of Minister's refusal, by delegate, to renew licences - licences issued under *Mineral Resources (Sustainable Development) Act 1990* (Vic) - plaintiff sought declaration refusal 'void ab initio' and that licences 'continued in operation' - plaintiff alternatively sought to quash refusal and order that Minister 'decide its applications for licence renewals according to law' - plaintiff also sought declaration that property of plaintiff left on one mining site had not vested in Minister - held: grounds of review not established.

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

## **Wilson v Indigenous Services Pty Ltd [2021] WASC 56**

Supreme Court of Western Australia

Allanson J

Trusts - charitable trust - plaintiffs sought relief including declarations first respondent had been removed as 'trustee of the Njamal Peoples Trust, and Njamal Community Corporation Pty Ltd' 'validly appointed and' remained Trust's 'validly appointed trustee' - plaintiffs sought indemnification from Trust Fund concerning proceedings' costs - plaintiffs, as interim relief, sought payment by Trustee to them of sum from Trust Fund 'in respect of their legal costs of this application' - held: application dismissed.

[Wilson](#) (B)

## **Northern Midlands Council v Smith [2021] TASSC 8**

Supreme Court of Tasmania

Blow CJ

Environment and planning - respondents aggrieved by condition imposed on permit to subdivide land - Council appealed against decision of Resource Management and Planning Appeal Tribunal in respondents' favour - s25(1) *Resource Management and Planning Appeal Tribunal Act 1993* - *Land Use Planning and Approvals Act 1993* - *Western Australian Planning Commission v Temwood Holdings Pty Ltd* [2004] HCA 63 - *Reid v Western Australian Planning Commission* [2016] WASCA 181 - held: appeal dismissed.

[Northern Midlands Council](#) (I B C G)

## Summaries With Link



## Sonnet 78

**By:** William Shakespeare

So oft have I invoked thee for my Muse,  
And found such fair assistance in my verse  
As every alien pen hath got my use  
And under thee their poesy disperse.  
Thine eyes, that taught the dumb on high to sing  
And heavy ignorance aloft to fly,  
Have added feathers to the learned's wing  
And given grace a double majesty.  
Yet be most proud of that which I compile,  
Whose influence is thine, and born of thee:  
In others' works thou dost but mend the style,  
And arts with thy sweet graces graced be;  
But thou art all my art, and dost advance  
As high as learning, my rude ignorance.

[https://en.wikipedia.org/wiki/William\\_Shakespeare](https://en.wikipedia.org/wiki/William_Shakespeare)

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