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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)

Australia Bay Seafoods Pty Ltd v Northern Territory of Australia (FCA) - commercial fisheries - jurisdiction - proceeding arising from 'Proposed Framework' for establishment of 'new fishery' - applicant challenged "proposed management plan" in Proposed Framework - 'Territory Respondents' sought that Originating Application be set aside on basis it did not raise "matter" under *39B of the Judiciary Act 1903* (Cth), or proceeding's dismissal on basis applicant had no reasonable prospect of succeeding in proceeding's prosecution - interlocutory application upheld (I B C G)

Australian Education Union v Yooralla Society of Victoria (FCA) - industrial law - penalties - primary judge ordered payment of pecuniary penalties by respondent to appellant under s546(1) of *Fair Work Act 2009* (Cth) - appeal challenging penalty's assessment - appeal dismissed (I B C G)

Hintz v Illawarra Shoalhaven Local Health District (NSWSC) - transfer of proceedings - negligence - plaintiff sought damages for nervous shock arising from father's death - 'associated matters' had settled - plaintiff sought proceeding's transfer to District Court - amount of 'total damages claimed' 'well within' District Court's 'jurisdictional limit' - proceedings transferred (I B C G)

Grahame v Bendigo Bank (VSCA) - contract - loan - applicant entered 'Loan Agreement' with respondent bank - applicant defaulted under defaulted under Loan Agreement and failed to

comply with default notices - respondent sought recovery of land - Judicial Registrar granted respondents summary judgment application (I B C G)

Technip Oceania Pty Ltd v Commonwealth Director of Public Prosecutions (WASCA) - criminal law - environmental law - appellant acquitted of charge of 'performing work at a facility' 'in Commonwealth waters' in manner contrary to Safety Case in force for facility - respondent's appeal against acquittal upheld - appellant appealed - not open to magistrate to be 'satisfied beyond reasonable doubt' appellant was reckless - appeal allowed (I B C G)

Summaries With Link (Five Minute Read)

Australia Bay Seafoods Pty Ltd v Northern Territory of Australia [2021] FCA 414

Federal Court of Australia

White J

Commercial fisheries - jurisdiction - proceeding arising from 'Proposed Framework' for establishment of 'new fishery' - applicant challenged "proposed management plan" in Proposed Framework - applicant sought declarations, injunctions and relief in nature of certiorari - 'Territory Respondents' by interlocutory application, sought that Originating Application be set aside on basis it did not raise "matter" under *39B of the Judiciary Act 1903* (Cth), or proceeding's dismissal on basis applicant had no reasonable prospect of succeeding in proceeding's prosecution - r13.01(1)(a) *Federal Court Rules 2011* (Cth) - s31A(2) *Federal Court of Australia Act 1976* (Cth) - held: applicant's application was premature, raising hypothetical matters and matters not involving 'any immediate effect on' applicant's 'rights, duties and liabilities' - application upheld.

[Australia Bay Seafoods](#) (I B C G)

Australian Education Union v Yooralla Society of Victoria [2021] FCA 954

Federal Court of Australia

Wheelahan J

Industrial law - penalties - primary judge ordered payment of pecuniary penalties by respondent to appellant under s546(1) of *Fair Work Act 2009* (Cth) - appeal concerned penalty's assessment - whether penalties 'manifestly inadequate and not of appropriate deterrent value' - whether misunderstanding or misapplication of 'totality principle' - whether 50% reduction on account of totality principle's application 'manifestly excessive' - whether "undue weight" given to fact that respondent 'sought professional advice' - whether failure 'to have adequate regard to' respondent's 'lack of apology' - held: appeal dismissed.

[Australian Education Union](#) (I B C G)

Hintz v Illawarra Shoalhaven Local Health District [2021] NSWSC 1001

Supreme Court of Victoria

Adamson J

Transfer of proceedings - negligence - plaintiff sought damages for nervous shock arising from father's death - 'associated matters' had settled - plaintiff sought proceeding's transfer to District Court - s146(4) *Civil Procedure Act 2005* (NSW) - 'interesting and possibly complex factual questions of causation and negligence' - amount of 'total damages claimed' 'well within' District Court's 'jurisdictional limit' - held: proceedings transferred.

[View Decision](#) (I B C G)

Grahame v Bendigo Bank [2021] VSCA 222

Court of Appeal of Victoria

Kennedy & Walker JJA

Contract - loan - applicant entered 'Loan Agreement' with respondent bank - loan secured by mortgage over land applicant owned - applicant defaulted under defaulted under Loan Agreement and failed to comply with default notices - respondent sought recovery of land - Judicial Registrar granted respondents summary judgment application - applicant sought leave to appeal against primary judge's orders dismissing appeal and costs orders - whether bias - whether erroneous conclusion that applicant's defence and counterclaim lacked prospects of success - whether failure to exercise 'due caution' in awarding summary judgment - *Lysaght Building Solutions Pty Ltd v Blanalko Pty Ltd* (2013) 42 VR 27 - whether erroneous failure to consider whether matter should go to trial on basis proceeding raised matters 'of public importance' - whether trial judge erroneously placed 'efficiency ahead of justice' - held: appeal grounds did not have prospects of success - leave to appeal refused.

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

Technip Oceania Pty Ltd v Commonwealth Director of Public Prosecutions [2021] WASCA 139

Court of Appeal of Western Australia

Mazza, Mitchell & Beech JJA

Criminal law - environmental law - appellant was acquitted of charge of 'performing work at a facility' 'in Commonwealth waters' in manner contrary to Safety Case in force for facility - respondent appealed against acquittal, contending magistrate 'misdirected himself' concerning 'relevant fault element' of recklessness - appellant accepted magistrate erred but sought appeal's dismissal on basis acquittal inevitable - primary judge found it was 'reasonably open' to magistrate to accept respondent's submission concerning appellant's 'state of mind' - appellant appealed, contending acquittal inevitable on basis it was not open to magistrate to be 'satisfied beyond reasonable doubt' appellant was reckless - *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009* (Cth) - held: appellant's contention upheld - appeal allowed - respondent's appeal dismissed.

[Technip Oceania](#) (I B C G)

Summaries With Link



Winged Words

By: Robert Crawford

THE WINGÈD words, they pass
Still everywhere,
Seeds of the spirit-grass
The dream-winds bear
From that heart-field to this, 5
Where thought as feeling is;
There's not a seed will miss
Life, once sown there.

They pass, the faery words,
In shade and shine, 10
As they were magic birds
This heart of mine
Gave shape and colour to,
As in the light and dew
The primal creatures grew 15
From germs divine.

[https://en.wikipedia.org/wiki/Robert_Crawford_\(Australian_poet\)](https://en.wikipedia.org/wiki/Robert_Crawford_(Australian_poet))

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