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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)

**Registered Organisations Commissioner v Australian Workers' Union (FCA)** - industrial law - penalties - eight admitted contraventions of *Fair Work (Registered Organisations) Act 2009* (Cth) - five penalties imposed in total sum of \$20,590 (I B C G)

**Visual Building Construction Pty Ltd v Armitstead (No 2) (NSWCA)** - contract - no error in primary judge's finding that termination of building contract was valid - appeal dismissed (B C I G)

**Sergienko v AXL Financial Pty Ltd (NSWSC)** - joinder - fourth and fifth defendants sought to add 'Lawcover' as cross-defendant and 'leave to bring or continue' proceedings against Lawcover - joinder refused - notice of motion dismissed (I B)

**NEXTracker Inc v ACN 003 905 093 Pty Ltd (formerly RCR O'Donnell Griffin Pty Ltd) (In Liquidation) (NSWSC)** - contract - plaintiff sought relief giving effect to its contention concerning time at which title to equipment 'passed or was to pass' under contract - amended summons dismissed (B C I)

**Pivovarov v Michelsen (QCA)** - administrative law - building contract - leave to appeal against 'Second Appeal Tribunal decision' refused (I B C G)

**Stirling McGregor v Tilt Renewables Australia Pty Ltd & Ors (SASCFC)** - environment and

planning - Court confirmed development approval for wind farm's development - appeal dismissed (I B C G)

**Beckett v Lemanski** (ACTSC) - cross-vesting - motor vehicle collision - application for transfer of proceedings to Supreme Court of New South Wales - application dismissed (I)

## Summaries With Link (Five Minute Read)

### **Registered Organisations Commissioner v Australian Workers' Union [2019] FCA 1852**

Federal Court of Australia

Mortimer J

Industrial law - penalties - parties reached agreement concerning liability of second respondent for admitted contraventions of *Fair Work (Registered Organisations) Act 2009* (Cth) (FWROA) - eight contraventions admitted in respect of ss285 & 286 FWROA - no dispute concerning declaratory relief - dispute concerned 'size of the penalties' - consideration of 'applicable maximum penalties' - deterrence - mitigation - 'principle of totality' - whether imposition of five penalties reflected 'intended operation' of s306(3) FWROA - held: Court imposed five penalties on second respondent in total sum of \$20,590.

[Registered Organisations](#) (I B C G)

### **Visual Building Construction Pty Ltd v Armitstead (No 2) [2019] NSWCA 280**

Court of Appeal of New South Wales

Bell ACJ; Macfarlan JA & White JA

Contract - primary judge found respondents 'validly terminated a twice varied building contract' with appellant - appellant appealed, contending primary judge erred in finding valid termination of contract - appellant contended termination invalid because there was failure to provide '10 business days' notice' in which to remedy defaults which Notice of Termination detailed - respondents, by notice of contention, contended there were additional grounds in support of finding that contract was validly terminated - whether contract required provision of 10 business days' notice prior to termination - whether, if such requirement existed, it applied only if default 'capable of being remedied' within period of 10 business days - held: no error in primary judge's decision - appeal dismissed.

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

### **Sergienko v AXL Financial Pty Ltd [2019] NSWSC 1610**

Supreme Court of New South Wales

Ward CJ in Eq

Joinder - fourth and fifth defendants, by amended notice of motion, sought to add Lawcover Insurance Pty Ltd ('Lawcover') as cross-defendant to proceedings - fourth and fifth defendants, pursuant to s5 *Civil Liability (Third Party Claims Against Insurers) Act 2017* (NSW) also sought 'leave to bring or continue' proceedings against Lawcover - whether to join insurer -

reasonableness - utility - adequacy of pleading against insured - whether 'proposed third cross-claim' established 'reasonably arguable cause of action' against insurer - "run-off" policy - held: joinder of Lawcover refused - notice of motion dismissed.

[View Decision](#) (I B)

**NEXTracker Inc v ACN 003 905 093 Pty Ltd (formerly RCR O'Donnell Griffin Pty Ltd) (In Liquidation) [2019] NSWSC 1604**

Supreme Court of New South Wales

Ball J

Contract - parties entered contract for plaintiff's supply of 'equipment' for use in solar farm's construction - proceedings concerned question of time at which, under contract, title to equipment 'passed or was to pass' - plaintiff contended title was to pass when defendant paid for equipment and that payment had not occurred - plaintiff sought 'declarations and orders' giving effect to its contention - defendant contended title passed when equipment 'loaded for shipping at the point of origin' and plaintiff supplied 'certain documents' and that those events had occurred - construction of contract - *Mount Bruce Mining Pty Limited v Wright Prospecting Pty Limited* (2015) 256 - held: amended summons dismissed.

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

**Pivovarov v Michelsen [2019] QCA 256**

Court of Appeal of Queensland

Fraser JA; Boddice & Crow JJ

Administrative law - building contract - applicant sought to appeal against 'Second Appeal Tribunal decision' in proceedings - whether s150(3)(a) *Queensland Civil and Administrative Tribunal Act 2009* (Qld) comprehended appeal 'only on a question of law, not a mixed question of fact and law' - whether question of law raised by proposed appeal grounds - whether Court had jurisdiction in respect of questions applicant raised - held: leave to appeal refused.

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

**Stirling McGregor v Tilt Renewables Australia Pty Ltd & Ors [2019] SASCFC 142**

Full Court of the Supreme Court of South Australia

Kourakis CJ; Kelly & Hinton JJ

Environment and planning - Environment, Resources and Development Court confirmed development approval for wind farm's development by Council - appellant was objector to development approval - appellant challenged findings and reasons' adequacy concerning effect of wind farm's noise on 'health and amenity of nearby residents' and finding of 'no credible evidence' that development would be non-compliant with *Environment Protection (Noise) Policy 2007* - appellant also contended '2009 Guidelines' concerning noise emissions by wind farms 'were flawed' and that Court should have placed no weight, or little weight on 2009 Guidelines - appellant also contended Court had mistakenly found expert's experience 'did not include undertaking noise predictions' - held: appeal dismissed.

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

## **Beckett v Lemanski [2019] ACTSC 322**

Supreme Court of the Australian Capital Territory

Crowe AJ

Cross-vesting - deceased died in motor vehicle collision - deceased's widow in own right and as litigation guardian for children sought damages due to deceased's death - defendants admitted liability - defendants, by Application in Proceeding, sought, pursuant to sub-s5(2) *Jurisdiction of Courts (Cross-vesting) Act 1993* (ACT), transfer of proceedings to Supreme Court of NSW - principles in *Bateman v Fairfax Media Publications Pty Ltd & ors* [2013] ACTSC 78 - uncertainty - interests of justice - held: Court not satisfied to transfer proceedings - Application in Proceeding dismissed.

[Beckett](#) (I)

## CRIMINAL

### Executive Summary

### Summaries With Link



# Benchmark

## **To Flush, My Dog**

**By:** Elizabeth Barrett Browning  
LOVING friend, the gift of one,  
Who, her own true faith, hath run,  
Through thy lower nature ;  
Be my benediction said  
With my hand upon thy head,  
Gentle fellow-creature !

Like a lady's ringlets brown,  
Flow thy silken ears adown  
Either side demurely,  
Of thy silver-suited breast  
Shining out from all the rest  
Of thy body purely.

Darkly brown thy body is,  
Till the sunshine, striking this,  
Alchemize its dulness, —  
When the sleek curls manifold  
Flash all over into gold,  
With a burnished fulness.

Underneath my stroking hand,  
Startled eyes of hazel bland  
Kindling, growing larger, —  
Up thou leapest with a spring,  
Full of prank and curvetting,  
Leaping like a charger.

Leap ! thy broad tail waves a light ;  
Leap ! thy slender feet are bright,  
Canopied in fringes.  
Leap — those tasselled ears of thine  
Flicker strangely, fair and fine,  
Down their golden inches

Yet, my pretty sportive friend,  
Little is 't to such an end  
That I praise thy rareness !  
Other dogs may be thy peers  
Haply in these drooping ears,



# Benchmark

And this glossy fairness.

But of thee it shall be said,  
This dog watched beside a bed  
Day and night unwearied, —  
Watched within a curtained room,  
Where no sunbeam brake the gloom  
Round the sick and dreary.

Roses, gathered for a vase,  
In that chamber died apace,  
Beam and breeze resigning —  
This dog only, waited on,  
Knowing that when light is gone,  
Love remains for shining.

Other dogs in thymy dew  
Tracked the hares and followed through  
Sunny moor or meadow —  
This dog only, crept and crept  
Next a languid cheek that slept,  
Sharing in the shadow.

Other dogs of loyal cheer  
Bounded at the whistle clear,  
Up the woodside hieing —  
This dog only, watched in reach  
Of a faintly uttered speech,  
Or a louder sighing.

And if one or two quick tears  
Dropped upon his glossy ears,  
Or a sigh came double, —  
Up he sprang in eager haste,  
Fawning, fondling, breathing fast,  
In a tender trouble.

And this dog was satisfied,  
If a pale thin hand would glide,  
Down his dewlaps sloping, —  
Which he pushed his nose within,  
After, — platforming his chin



# Benchmark

On the palm left open.

This dog, if a friendly voice  
Call him now to blyther choice  
Than such chamber-keeping,  
Come out ! ' praying from the door, —  
Presseth backward as before,  
Up against me leaping.

Therefore to this dog will I,  
Tenderly not scornfully,  
Render praise and favour !  
With my hand upon his head,  
Is my benediction said  
Therefore, and for ever.

And because he loves me so,  
Better than his kind will do  
Often, man or woman,  
Give I back more love again  
Than dogs often take of men, —  
Leaning from my Human.

Blessings on thee, dog of mine,  
Pretty collars make thee fine,  
Sugared milk make fat thee !  
Pleasures wag on in thy tail —  
Hands of gentle motion fail  
Nevermore, to pat thee !

Downy pillow take thy head,  
Silken coverlid bestead,  
Sunshine help thy sleeping !  
No fly 's buzzing wake thee up —  
No man break thy purple cup,  
Set for drinking deep in.

Whiskered cats aointed flee —  
Sturdy stoppers keep from thee  
Cologne distillations ;  
Nuts lie in thy path for stones,  
And thy feast-day macaroons



# Benchmark

Turn to daily rations !

Mock I thee, in wishing weal ? —  
Tears are in my eyes to feel  
Thou art made so straightly,  
Blessing needs must straighten too, —  
Little canst thou joy or do,  
Thou who lovest greatly.

Yet be blessed to the height  
Of all good and all delight  
Pervious to thy nature, —  
Only loved beyond that line,  
With a love that answers thine,  
Loving fellow-creature !

[https://en.wikipedia.org/wiki/Elizabeth\\_Barrett\\_Browning](https://en.wikipedia.org/wiki/Elizabeth_Barrett_Browning)

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