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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)

Transport Workers' Union of Australia v Registered Organisations Commissioner [No 2] (FCAFC) - industrial law - imposition of pecuniary penalties on appellant for contraventions of ss172(1) & 231(1) *Fair Work (Registered Organisations) Act 2009* (Cth) - denial of procedural fairness established - appellant resentenced (I B C G)

Banerjee v Commissioner of Police (NSWCA) - constitutional law - corporations - *Security Industry Act 1997* (NSW) - referral of separate question concerning whether State laws requiring revocation of 'master security licence' were constitutionally valid - laws not invalid pursuant to Constitution (B C I G)

Simoes v Kel Campbell Pty Ltd; Simoes v Moon (NSWCA) - judgments and orders - motor vehicle collision - evidence - extension of time to seek leave to appeal in respect of two matters granted - leave to appeal refused (B C I G)

Haragli v Tan (NSWSC) - judgments and orders - medical negligence - application for referral for pro bono legal assistance granted (B C I G)

Webb v Spectre Group Pty Ltd (in liquidation) (VSC) - damages - contract - building contract - error by Victorian Civil and Administrative Tribunal in assessment of damages for costs of completion of building work - appeal allowed - matter remitted (I B C G)

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Springfield Land Corporation Pty Limited v Cherish Enterprises Pty Ltd & Anor (QCA) - costs - appellant's appeal was allowed in part - appellant succeeded on one of two principal issues - determination of costs - orders made (I B C G)

Southern Cross Care (Tasmania) Incorporated v Paul (TASFC) - real property - exemption from rates - charitable purpose - erroneous construction of s87(1)(d) *Local Government Act 1993* (Tas) - appeal allowed (I B C G)

Summaries With Link (Five Minute Read)

Transport Workers' Union of Australia v Registered Organisations Commissioner [No 2] [2018] FCAFC 203

Full Court of the Federal Court of Australia

Allsop CJ; Collier & Rangiah JJ

Industrial law - Court imposed pecuniary penalties on appellant for contraventions of ss172(1) & 231(1) *Fair Work (Registered Organisations) Act 2009* (Cth) - appellant appealed on 'principal ground' of denial of procedural fairness - appellant contended that it was 'parties' common position' that only one penalty should be imposed for contraventions of s172(1) and one penalty for contraventions of s231(1), and that primary judge should have disclosed 'intention to depart from that position' - appellant also contended it was not open to primary judge to depart from common position - whether there was a common position - whether primary judge departed from common position - whether primary judge gave notice of intention to depart from common position - whether denial of procedural fairness - held: denial of procedural fairness established - imposed penalties set aside - appellant resentenced.

[Transport Workers' Union](#) (I B C G)

Banerjee v Commissioner of Police [2018] NSWCA 283

Court of Appeal of New South Wales

Bathurst CJ; Beazley P & Basten JA

Constitutional law - corporations - *Security Industry Act 1997* (NSW) - separate question - applicants were administrators of company - company, in order to operate business, was required to hold to 'master security licence' under *Security Industry Act 1997* (NSW) - respondent, under provisions of *Security Industry Act* and clause 13(3) of *Security Industry Regulation 2016* (NSW), revoked master security licence when company entered voluntary administration - applicants challenged 'constitutional validity of the State laws' which required licence to be revoked - Sackar J referred separate question for Court's determination - question was: 'Whether clause 13(3) of the *Security Industry Regulation 2016* (NSW), in its operation pursuant to sections 15(4) and 26(1A) of the *Security Industry Act 1997* (NSW), is inconsistent with the provisions of Part 5.3A of the *Corporations Act 2001* (Cth) and therefore invalid or inoperative to the extent of any inconsistency by reason of s109 of the Commonwealth Constitution' - held: Court answered separate question as follows: 'There is no inconsistency;

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the relevant provisions of the Security Industry Act and the Regulation are not invalid pursuant to s109 of the Constitution’.

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

Simoes v Kel Campbell Pty Ltd; Simoes v Moon [2018] NSWCA 284

Court of Appeal of New South Wales

McColl & Basten JJA; Lonergan J

Judgments and orders - motor vehicle collision - evidence - applicant was driving vehicle which collided with petrol tanker - respondent company brought proceeding against applicant concerning damage to tanker - applicant brought proceedings against respondent driver of tanker for personal injury - primary judge found in favour of respondent company son claim for damage and dismissed applicant’s claim for personal injury - applicant filed notices of appeal - invalidity of notices of appeal, which had been filed without leave, was conceded - summons seeking leave to appeal in each matter was provided out of time - whether primary judge erred in approach to medical records - whether primary judge erroneously failed to advert to evidence of independent witness - whether primary judge erroneously ignored evidence of a ‘red light camera’ - whether erroneous failure to allow applicant ‘to adduce evidence from his de facto partner’ - admissibility of evidence in ‘police note book’ -held: no prejudice to respondents in late filing of summonses seeking leave to appeal - extension of time granted - grant of leave to appeal not warranted in respect of either matter - leave to appeal refused.

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

Haragli v Tan [2018] NSWSC 1792

Supreme Court of New South Wales

Harrison J

Judgments and orders - medical negligence - plaintiff commenced proceedings against defendant arising from defendant’s alleged failure appropriately to examine or diagnose her or refer her for investigation - plaintiff sought to be referred for pro bono legal assistance - whether Court satisfied of circumstances in r7.36 *Uniform Civil Procedure Rules 2005* (NSW) - held: application granted - order made.

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

Webb v Spectre Group Pty Ltd (in liquidation) [2018] VSC 704

Supreme Court of Victoria

Garde J

Damages - contract - building contract - plaintiffs owned house which defendant ‘partially constructed’ under contract - owners succeeded in claims in Victorian Civil and Administrative Tribunal (Tribunal) for damages for completion costs in respect of construction and for builder’s ‘defective workmanship’ - owners sought to appeal, contending Tribunal erroneously quantified award of completion damages - held: Tribunal erroneously found it was not open to Tribunal to adopt completion’s ‘actual cost’ as ‘appropriate method’ for damages’ assessment - Tribunal also erroneously failed to disclose ‘path of reasoning’ in respect of why completion’s actual

cost 'should not be adopted' - appeal allowed - proceeding remitted.

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

Springfield Land Corporation Pty Limited v Cherish Enterprises Pty Ltd & Anor [2018]

QCA 323

Court of Appeal of Queensland

Fraser & Gotterson JJA; Burns J

Costs - appellant 'obtained a measure of success' on appeal - appeal was allowed in part - one of two 'principal issues' was decided against appellant in respondents' favour - appellant succeeded on other principal issue - second respondent Council succeeded in 'its limited resistance' to appeal and succeeded wholly on cross-appeal - determination of costs - held: Court satisfied that first respondent should pay 50% of appellant's costs of appeal on standard basis - no order made concerning first respondent's appeal costs - appellant and first respondent to bear equally second respondent's costs of appeal and cross-appeal - orders made.

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

Southern Cross Care (Tasmania) Incorporated v Paul [2018] TASFC 9

Full Court of the Supreme Court of Tasmania

Blow CJ, Estcourt J, Geason J

Real property - five appeals arising from decision of Magistrate - Magistrate found appellant owned land upon which 'independent living units' were constructed 'exclusively for charitable purposes' but that the land was 'not both owned and occupied exclusively for charitable purposes' - Magistrate construed s87(1)(d) *Local Government Act 1993* (Tas) to require that land, in order to be exempt from rates which respondents levied under Local Government Act, must be both 'owned and occupied for charitable purposes' - appellant appealed - whether Magistrate erred in statutory construction - whether Magistrate erred in construing 'residents' agreements' in respect of land - whether appellant both owned and occupied land exclusively for charitable purposes 'at all times' - whether a resident who entered an agreement with appellant in respect of an 'independent living unit' was occupant - held: Magistrate erred in construction of s87(1)(d) Local Government Act - appeal allowed.

[Southern Cross Care](#) (I B C G)

CRIMINAL

Executive Summary

Summaries With Link



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The Rainbow

By: Charlotte Richardson

Soft falls the shower, the thunders cease!
And see the messenger of peace
Illumes the eastern skies;
Blest sign of firm unchanging love!
While others seek the cause to prove,
That bids thy beauties rise.

My soul, content with humbler views,
Well pleased admires thy varied hues,
And can with joy behold
Thy beauteous form, and wondering gaze
Enraptured on thy mingled rays
Of purple, green, and gold.

Enough for me to deem divine
The hand that paints each glowing line;
To think that thou art given
A transient gleam of that bright place
Where Beauty owns celestial grace,
A faint display of Heaven!

https://en.wikipedia.org/wiki/Charlotte_Richardson

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