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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)

**Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Registered Organisations Commissioner** (FCAFC) - industrial law - contravention of *Fair Work (Registered Organisations) Act 2009* (Cth) - appeal against pecuniary penalty order - appeal allowed - penalties determined (I B C G)

**Australian Energy Regulator v Snowtown Wind Farm Stage 2 Pty Ltd** (FCA) - consumer law - declaration - civil penalty - 'compliance program' - admitted contravention of NER 4.4.3 & cl S5.2.2 National Electricity Rules (NER) - Court satisfied to make declaration and orders agreed upon by parties (I B C G)

**F45 Training Pty Ltd v Body Fit Training Company Pty Ltd** (NSWSC) - cross-vesting - misleading and deceptive conduct - passing off - trade mark - patent - first defendant and directors of first defendant sought proceedings' transfer to New South Wales Registry of Federal Court of Australia - notice of motion dismissed (I B C G)

**Attorney-General v University of Tasmania** (TASFC) - planning and development - judicial review - procedural fairness - refusal of amendment to Hobart Interim Planning Scheme 2015 - appeal against decision of primary judge to uphold judicial review application - appeal allowed (I B C G)

## Summaries With Link (Five Minute Read)

### **Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Registered Organisations Commissioner [2020] FCAFC 232**

Full Court of the Federal Court of Australia

Bromberg, Rangiah & Bromwich JJ

Industrial law - Court declared appellant contravened ss230(1)(b) & (c) & 233(2) *Fair Work (Registered Organisations) Act 2009* (Cth) - Court ordered appellant to pay penalty of \$445,000 - appellant appealed against pecuniary penalty order - whether erroneous failure to apply 'particular penalty to each contravention' - whether misunderstanding of totality principle - whether erroneous finding that 'no reduction was warranted' on basis 'course of conduct principle had already been applied' to some contraventions - whether mistake concerning facts - whether erroneous conclusion that 'specific deterrence relevant' - whether erroneous conclusion that some contraventions 'not part of a single course of conduct' - whether total penalty manifestly excessive - held: ground of appeal contending erroneous failure to apply particular penalty to each contravention upheld - penalty set aside - penalties determined - appellant to pay penalties in total of \$200,000.

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

### **Australian Energy Regulator v Snowtown Wind Farm Stage 2 Pty Ltd [2020] FCA 1845**

Federal Court of Australia

White J

Consumer law - respondent admitted contravention of NER 4.4.3 & cl S5.2.2 National Electricity Rules (NER) - respondent admitted declaration should be made, that it was liable to civil penalty's imposition under s44AAG *Competition and Consumer Act 2010* (Cth), and admitted it was appropriate for Court to order imposition of 'compliance program' - parties agreed civil penalty of \$1 million appropriate and on orders' terms - whether Court satisfied it was 'appropriate to give effect to the parties' agreement' - held: Court satisfied to give effect to parties' agreement - Court to make orders in terms which parties proposed.

[Australian Energy Regulator](#) (I B C G)

### **F45 Training Pty Ltd v Body Fit Training Company Pty Ltd [2020] NSWSC 1879**

Supreme Court of New South Wales

Emmett AJA

Cross-vesting - misleading and deceptive conduct - passing off - trade mark - patent - first defendant and directors of first defendant, under s5(1) *Jurisdiction of Courts (Cross-vesting) Act 1987* (NSW) or s5(1) *Jurisdiction of Courts (Cross-vesting) Act 1987* (Cth), sought proceedings' transfer to New South Wales Registry of Federal Court of Australia - plaintiff opposed application - interests of justice - "natural forum" - 'more appropriate forum' - whether 'more appropriate' for Federal Court to determine proceedings - "an experienced intellectual property court" - held: notice of motion dismissed.

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



## **Attorney-General v University of Tasmania [2020] TASFC 12**

Full Court of the Supreme Court of Tasmania

Pearce & Geason JJ; Marshall AJ

Planning and development - judicial review - procedural fairness - respondent requested amendment to Hobart Interim Planning Scheme 2015 - Tasmanian Planning Commission rejected amendment - respondent sought judicial review - judicial review application upheld on basis that Commission, by failure to give respondent 'opportunity to be heard' on its application for assessment's deferral, had breached procedural fairness obligation - appellant appealed - respondent, by notice of contention, sought to uphold primary judge's decision on basis he erred in rejecting other grounds on which respondent had challenged decision of Commission - respondent also cross-appealed against primary judge's decision on costs - Land Use Planning and Approvals Act 1993 (Tas) - *Russell v Duke of Norfolk* [1949] 1 All ER 109 - *Sullivan v Department of Transport* [1978] FCA 48 - *Kioa v West* [1985] HCA 81 - held: appeal allowed.

[Attorney-General](#) (I B C G)

## Summaries With Link

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AR CONOLLY & COMPANY  
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## Somewhere

By: David Conolly

Somewhere,  
unexpectedly,  
hope is born.

The voice speaks to  
a world grown used to  
darkness, despair.

A voice.  
At first, only the cry  
of a new-born  
gulping for breath.

The voice says,  
*You are light for the world;*  
*Let it shine.*  
*Love, and forgive.*

In time, a voice.

And suddenly, hope is born.

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