

Thursday, 13 June 2019

## Daily Insurance A Daily Bulletin listing Decisions of Superior Courts of Australia

 Follow @Benchmark\_Legal

### Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

### Executive Summary (1 minute read)

**Phonographic Performance Company of Australia Limited v Copyright Tribunal of Australia** (FCAFC) - administrative law - copyright - Copyright Tribunal of Australia lacked jurisdiction to order licence scheme's variation to include certain rights - relief granted - matter remitted

**Spectur Limited, in the matter of Spectur Limited** (FCA) - corporations - application for extension of period to give 'cleansing notices' under s708A(5) *Corporations Act 2001* (Cth) granted

**Jonsson, in the matter of Institute for Aboriginal Development (Aboriginal Corporation) (administrator appointed)** (FCA) - corporations - administrator sought 8-week extension of convening period in administration - extension granted

**South 32 Ltd v Allfab Constructions Pty Ltd** (NSWCA) - negligence - occupier's' liability - proceedings settled between appellants and injured worker - appellants sought 'statutory contribution' from respondent - challenge to finding that worker would not have established breach against respondent - appeal dismissed

**Jarosz v State of New South Wales** (NSWSC) - public roads - nuisance - 'W10' not a public road - nuisance claim failed - mandatory injunction requiring nuisance to be remedied - amended statement of claim dismissed

**Attorney-General v Copper Mines of Tasmania Pty Ltd** (TASFC) - work accident - evidence - respondent sought that coroner be prohibited from receiving evidence - proceedings succeeded

in part - Attorney-General as intervenor appealed - appeal allowed - cross-appeal dismissed

**Hargrave v Singh** (ACTSC) - negligence - plaintiff pedestrian struck by taxi which first defendant was driving - defendants liable - 10% reduction for contributory negligence - judgment for plaintiff in sum of \$275,082.26

## Summaries With Link (Five Minute Read)

### **Phonographic Performance Company of Australia Limited v Copyright Tribunal of Australia [2019] FCAFC 95**

Full Court of the Federal Court of Australia

Besanko, Middleton & Burley JJ

Administrative law - copyright - Copyright Tribunal of Australia (Tribunal) varied 'licence scheme' - applicant sought review of Tribunal's decision, seeking declarations - applicant contended Tribunal not empowered under s154(4) *Copyright Act 1968* (Cth) to vary licence scheme to include rights which applicant did not hold and did not have authority or power to grant - applicant also contended 'variation order' not "reasonable in the circumstances" - held: Tribunal lacked jurisdiction to order licence scheme's variation 'to include the non-PPCA rights' - matter remitted.

[Phonographic](#)

### **Spectur Limited, in the matter of Spectur Limited [2019] FCA 867**

Federal Court of Australia

Colvin J

Corporations - company (Spectur), at time of issue of shares, did not give 'cleansing notice' under s708A(5) *Corporations Act 2001* (Cth) (Corporations Act) - Spectur, pursuant to s1322(4)(d) Corporations Act, sought extension of period to give cleansing notices - whether 'substantial injustice' if extension of period granted - whether 'proper basis' to grant extension - whether to give 'retrospective operation' to cleansing notice - held: extension of time granted - order granting retrospective operation refused.

[Spectur](#)

### **Jonsson, in the matter of Institute for Aboriginal Development (Aboriginal Corporation) (administrator appointed) [2019] FCA 862**

Federal Court of Australia

Derrington J

Corporations - administrator of Institute for Aboriginal Development (Aboriginal Corporation) sought 8-week extension of convening period in administration - whether Court had power to grant extension of convening period in respect of company incorporated under *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) - whether to grant extension - held: Court satisfied to grant extension of convening period - orders made.

## [Jonsson](#)

### **South 32 Ltd v Allfab Constructions Pty Ltd [2019] NSWCA 132**

Court of Appeal of New South Wales

Leeming JA; Emmett & Simpson AJJA

Negligence - occupier's liability - appellants operated 'coal preparation plant' - Mr Corbett employed by company which appellants had engaged for provision of services - Mr Corbett 'injured in a workplace accident' - appellants consented to judgment against them - appellants sought 'statutory contribution' from respondent 'maintenance contractor' - primary judge found Mr Corbett would not have established breach by respondent - appellants appealed - whether primary judge failed to engage with appellants' 'principal case' - ss5B & 5D *Civil Liability Act 2002* (NSW) - held: appeal dismissed.

[View Decision](#)

### **Jarosz v State of New South Wales [2019] NSWSC 692**

Supreme Court of New South Wales

Darke J

Public roads - nuisance - plaintiffs sought declaration that 'W10' was a public road, that first defendant or second defendant was 'road authority for W10' responsible for W10's maintenance - plaintiffs contended road's condition constituted a nuisance and sought mandatory injunction requiring first defendant or second defendant 'to remedy the nuisance' - whether W10 had become a public road - held: W10 not public road - nuisance claim failed - relief refused - amended statement of claim dismissed.

[View Decision](#)

### **Attorney-General v Copper Mines of Tasmania Pty Ltd [2019] TASFC 4**

Full Court of the Supreme Court of Tasmania

Blow CJ, Pearce J, Marshall AJ

Work accident - evidence - coroners - miner employed by respondent - miner killed at mine at which he was working - mine operated and leased by respondent - coroner commenced inquest into miner's death - respondent contended there would be a denial of procedural fairness if coroner received evidence from 'mining consultant' - respondent sought that coroner be prohibited from receiving the evidence - proceedings succeeded in part - Attorney-General as intervenor appealed - respondent cross-appealed - held: appeal allowed - cross-appeal dismissed.

[Attorney-General](#)

### **Hargrave v Singh [2019] ACTSC 139**

Supreme Court of the Australian Capital Territory

Burns J

Negligence - plaintiff pedestrian contended he was struck by taxi which first defendant was driving - defendants admitted taxi which first defendant was driving struck plaintiff - defendants



denied collision caused by first defendant's negligence - alternatively defendants alleged contributory negligence by plaintiff - intoxication - s95 *Civil Law (Wrongs) Act 2002* (ACT) - held: judgment for plaintiff against defendants - 10% reduction for contributory negligence - judgment for plaintiff in sum of \$275,082.26.

[Hargrave](#)

[Click Here to access our Benchmark Search Engine](#)