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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)

**Red Bull GmbH v Bullstone Co Ltd** (FCA) - trade mark - interlocutory application - applicant sought cancellation of trade mark and costs - lack of participation by respondent in proceedings - orders granted (I B)

**State of Queensland (Department of Agriculture and Fisheries) v Humane Society International (Australia) Inc** (FCA) - administrative law - State sought stay of decision of Administrative Appeals Tribunal to vary permit granted to State - application granted (I B C G)

**Champions Quarry Pty Ltd v GSQ Holdings Pty Ltd, in the matter of Champions Quarry 2 Pty Ltd** (FCA) - corporations - winding up - interlocutory application seeking appointment of provisional liquidators granted (I B C G)

**Verimark Pty Ltd v Passiontree Velvet Pty Ltd** (NSWSC) - corporations - statutory demand - genuine dispute and off-settling claim established - statutory demand set aside (B C I G)

**Moore v Tatura Milk Industries & Anor** (VSC) - accident compensation - insurance - contract - Victorian Workcover Authority obliged to indemnify defendant for its liability to independent contractor (I B C G)

**In the matter of Lek Management Consulting Pty Ltd (ACN 152 615 060) (Deregistered)** (VSC) - corporations - Commissioner of State Revenue sought reinstatement of

company - application granted (I B C)

**Albury & Anor v Sammut** (QSC) - wills and estates - family provision - plaintiffs granted pronouncement of 'later' will's 'full force and validity' - defendant's counterclaim dismissed - defendant granted further provision (B)

## Summaries With Link (Five Minute Read)

### **Red Bull GmbH v Bullstone Co Ltd [2019] FCA 545**

Federal Court of Australia

Allsop CJ

Trade mark - applicant, by originating application, sought cancellation of 'Australian trade mark registration number 1860130' under s88(1)(a) *Trade Marks Act 1995* (Cth) and costs order - respondent failed to take part in proceedings - applicant, by interlocutory application, sought 'substantive orders' in originating application under r5.23(2)(c) *Federal Court Rules 2011* (Cth) - principles in *Blacktown Workers Club Limited v Blacktown Workers Basketball Association Incorporated* [2017] FCA 576 - held: orders granted.

[Red Bull](#) (I B IP) (I B)

### **State of Queensland (Department of Agriculture and Fisheries) v Humane Society International (Australia) Inc [2019] FCA 534**

Federal Court of Australia

Logan J

Administrative law - State sought stay of decision of Administrative Appeals Tribunal's decision to vary permit granted by Great Barrier Reef Marine Park Authority to State in relation to marine park - *Great Barrier Reef Marine Park Regulations 1983* (Cth) - whether 'persuasive case' that stay of decision's 'operation and implementation' was necessary to secure effectiveness of appeal's 'hearing and determination' - held: stay granted.

[State of Queensland](#) (I B C G)

### **Champions Quarry Pty Ltd v GSQ Holdings Pty Ltd, in the matter of Champions Quarry 2 Pty Ltd [2019] FCA 459**

Federal Court of Australia

Greenwood J

Corporations - winding up - plaintiff sought winding up of company - plaintiff, by interlocutory application, sought appointment of 'provisional liquidators' of company - whether to exercise discretion to appoint provisional liquidators - ss233(1)(a), 232(d), 232(e), 461(1)(e), 461(1)(f), 461(1)(k) & 472(2) *Corporations Act 2001* (Cth) held: Court satisfied to appoint provisional liquidators - orders made.

[Champions Quarry](#) (I B C G)

# Benchmark

## **Verimark Pty Ltd v Passiontree Velvet Pty Ltd [2019] NSWSC 455**

Supreme Court of New South Wales

Ward CJ in Eq

Corporations - statutory demand - plaintiff, under s459G *Corporations Act 2001* (Cth) (Corporations Act), sought to set aside 'creditor's statutory demand' which defendant served on it - plaintiff contended debt underpinning demand did not relate to debt 'presently due and payable' - plaintiff also contended it had an off-setting claim exceeding statutory demand's amount - defendant contended Court did not have jurisdiction to entertain plaintiff's application because originating process not filed within required time under Corporations Act - "within 21 days after the demand is so served" - whether to count 'the day of service' - ss459H, 459J & s 459G(2) Corporations Act - held: genuine dispute and off-setting claim established - demand set aside.

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

## **Moore v Tatura Milk Industries & Anor [2019] VSC 259**

Supreme Court of Victoria

McDonald J

Accident compensation - contract - insurance - negligence - plaintiff was working as independent contractor under contract between defendant and company - plaintiff injured while at work - proceedings concerned whether Victorian Workcover Authority (VWA) obliged to indemnify defendant for its liability to plaintiff - VWA contended it was not obliged to indemnify defendant for its 'liability at common law and for breach of statutory duty' because worker was not an employee - whether VWA relieved from liability on basis worker was independent contractor when injured - construction of 'WorkCover insurance policy' - estoppel - election - *Accident Compensation Act 1985* (Vic) - *Accident Compensation (WorkCover Insurance) Act 1993* (Vic) - held: VWA liable to indemnify defendant.

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

## **In the matter of Lek Management Consulting Pty Ltd (ACN 152 615 060) (Deregistered) [2019] VSC 261**

Supreme Court of Victoria

Hetyey JR

Corporations - Commissioner of State Revenue (Commissioner) sought company's winding up - company was deregistered - Commissioner sought company's reinstatement under s601AH(2) *Corporations Act 2001* (Cth) - company's 'former director' opposed reinstatement on basis there was no utility in reinstating company - whether Commissioner was 'person aggrieved' by deregistration - whether just to reinstate company - held: Court satisfied to reinstate registration of company.

[In the matter of Lek](#) (I B C)

## **Albury & Anor v Sammut [2019] QSC105**

Supreme Court of Queensland



Mullins J

Wills and estates - deceased made 'earlier will' and 'later will' - plaintiffs were named executors in later will and sought to prove later will - defendant challenged later will's validity, contending deceased lacked testamentary capacity or later will was procured by plaintiffs' undue influence - defendant put plaintiffs to proof deceased 'knew and approved of' later will's contents - defendant counterclaimed for declaration of earlier will's 'force and validity' and sought family provision - held: Court pronounced 'full force and validity' of later will - counterclaim dismissed - order for further provision granted.

[Albury](#) (B)

## CRIMINAL

### Executive Summary

### Summaries With Link



# Benchmark

## Why I Love Thee?

**By:** Sadakichi Hartmann

Why I love thee?

Ask why the seawind wanders,  
Why the shore is aflush with the tide,  
Why the moon through heaven meanders  
Like seafaring ships that ride  
On a sullen, motionless deep;  
Why the seabirds are fluttering the strand  
Where the waves sing themselves to sleep  
And starshine lives in the curves of the sand!

[https://en.wikipedia.org/wiki/Sadakichi\\_Hartmann](https://en.wikipedia.org/wiki/Sadakichi_Hartmann)

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