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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)

**Patrick Stevedores Holdings Pty Ltd v Construction, Forestry, Maritime, Mining and Energy Union** (FCA) - industrial law - respondent admitted contravention of s417 *Fair Work Act 2009* (Cth) - Court invited 'to make orders in accordance with' parties' agreement - Court satisfied to make declaration sought - Court satisfied penalty was appropriate (I B C G)

**In the matter of Bowery Bar Pty Ltd** (NSWSC) - *Personal Property Securities Act 2009* (Cth) (PPSA) - plaintiff sought 'relief including' declaration that interest held by company in "Hotel Licence" and "Gaming Entitlements" constituted "security interest" - plaintiff also declaration that, at time of its entry into external administration, the security interest 'was unperfected and vested in' plaintiff 'immediately before' 'appointment time' under s267 PPSA - plaintiff not entitled to declarations (I B)

**In the matter of Mortgage Choice Limited** (NSWSC) - corporations - plaintiff sought approval of scheme of arrangement 'between Mortgage Choice and scheme shareholders' - plaintiff also sought that it be exempted from compliance with requirement of s411(11) *Corporations Act 2001* (Cth) - orders granted (B)

**Ahwang v Torres Strait Island Regional Council** (QSC) - administrative law - applicant aggrieved by respondent's decision to grant lease of property to person other than applicant - applicant sought extension of time to seek statutory order of review - extension of time granted - respondent's decision set aside (I B C G)

**JD v Department of Communities** (WASC) - child protection - appellants sought to appeal against 'protection order' made by Children's Court magistrate concerning grandchild of appellants - leave to bring appeal out of time refused - appeal by fourth respondent dismissed (I B C G)

## Summaries With Link (Five Minute Read)

### **Patrick Stevedores Holdings Pty Ltd v Construction, Forestry, Maritime, Mining and Energy Union [2021] FCA 492**

Federal Court of Australia

Katzmann J

Industrial law - respondent admitted contravention of s417 *Fair Work Act 2009* (Cth) - parties agreed to facts and declaratory relief's terms - parties also agreed on penalty, that penalty be paid to applicant, and that there be no order for costs - Court invited 'to make orders in accordance with' parties' agreement - held: Court satisfied to make declaration sought - Court satisfied penalty was appropriate.

[Patrick Stevedores](#) (I B C G)

### **In the matter of Bowery Bar Pty Ltd [2021] NSWSC 697**

Supreme Court of New South Wales

Black J

*Personal Property Securities Act 2009* (Cth) - plaintiff sought 'relief including' declaration that interest held by company ("Investa") in "Hotel Licence" and "Gaming Entitlements" constituted "security interest" under s12 *Personal Property Securities Act 2009* (Cth) (PPSA) - plaintiff also sought declaration that, at time of its entry into external administration, security interest 'was unperfected and vested in' plaintiff 'immediately before' 'appointment time' under s267 PPSA - *Gaming Machines Act 2001* (NSW) - *Liquor Act 2007* (NSW) - held: plaintiff not entitled to declarations - Court to hear parties concerning 'remaining issues'.

[View Decision](#) (I B)

### **In the matter of Mortgage Choice Limited [2021] NSWSC 819**

Supreme Court of New South Wales

Black J

Corporations - plaintiff sought approval of scheme of arrangement 'between Mortgage Choice and scheme shareholders' - plaintiff also sought that it be exempted from compliance with requirement of s411(11) *Corporations Act 2001* (Cth) (Corporations Act) - s411(4)(b) & 411(12) Corporations Act - *Re GBST Holdings Limited* [2019] NSWSC 1503 - *Re TriAusMin Ltd (No 2)* [2014] FCA 833 - held: orders granted.

[View Decision](#) (B)

**Ahwang v Torres Strait Island Regional Council [2021] QSC 147**

Supreme Court of Queensland

Henry J

Administrative law - respondent granted '99 year lease of residential property at St Pauls on Moa Island' (property) - respondent was trustee of 'St Pauls Deed of Grant in Trust' (DOGIT), grant of land in fee simple' which included property - DOGIT expressly obliged respondent as trustee "hold the land in trust for the benefit of Islander inhabitants" - applicant, and other person (Mr Pilot), each submitted to respondent an 'expression of interest in leasing the property' - respondent granted lease of property to Mr Pilot - applicant 'aggrieved by' decision and sought extension of time to seek statutory order of review - *Judicial Review Act 1991* (Qld) - *Torres Strait Islander Land Act 1991* (Qld) - held: extension of time granted - respondent's decision set aside.

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

**JD v Department of Communities [2021] WASC 218**

Supreme Court of Western Australia

Smith J

Child protection - appellants sought, out of time, to appeal against 'protection order' made by Children's Court magistrate concerning grandchild of appellants - appellants were joined at hearing's outset - applicant to proceeding was Chief Executive Officer of the Department of Communities - *Children and Community Services Act 2004* (WA) - *Criminal Appeals Act 2004* (WA) - standing - whether Court could hear appeal in absence of appeal grounds - held: leave to bring appeal out of time refused - appeal by fourth respondent dismissed.

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

## Summaries With Link



## **The Cliffside Path**

**(from A Midsummer Holiday and Other Poems, 1884)**

**By:** Algernon Charles Swinburne

Seaward goes the sun, and homeward by the down  
We, before the night upon his grave be sealed.  
Low behind us lies the bright steep murmuring town,  
High before us heaves the steep rough silent field.  
Breach by ghastlier breach, the cliffs collapsing yield:  
Half the path is broken, half the banks divide;  
Flawed and crumbled, riven and rent, they cleave and slide  
Toward the ridged and wrinkled waste of girdling sand  
Deep beneath, whose furrows tell how far and wide  
Wind is lord and change is sovereign of the strand.

Star by star on the unsunned waters twirling down,  
Golden spear-points glance against a silver shield.  
Over banks and bents, across the headland's crown,  
As by pulse of gradual plumes through twilight wheeled,  
Soft as sleep, the waking wind awakes the weald.  
Moor and copse and fallow, near or far descried.  
Feel the mild wings move, and gladden where they glide:  
Silence, uttering love that all things understand,  
Bids the quiet fields forget that hard beside  
Wind is lord and change is sovereign of the strand.

Yet may sight, ere all the hoar soft shade grow brown,  
Hardly reckon half the rifts and rents unhealed  
Where the scarred cliffs downward sundering drive and  
drown,  
Hewn as if with stroke of swords in tempest steeled,  
Wielded as the night's will and the wind's may wield.  
Crowned and zoned in vain with flowers of autumn-tide,  
Soon the blasts shall break them, soon the waters hide,  
Soon, where late we stood, shall no man ever stand.  
Life and love seek harbourage on the landward side:  
Wind is lord and change is sovereign of the strand.

Friend, though man be less than these, for all his pride,  
Yet, for all his weakness, shall not hope abide?  
Wind and change can wreck but life and waste but land:  
Truth and trust are sure, though here till all subside

# Benchmark



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Wind is lord and change is sovereign of the strand.

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