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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)

**Palmer v State of Western Australia (No 5)** (FCA) - costs - respondents unsuccessfully submitted Attorney-General of Commonwealth 'required leave to withdraw or discontinue' intervention and that leave 'should only be granted upon particular conditions' - application for indemnity costs order against respondents refused (I B C G)

**NPP Australia Limited v Ripple Labs, Inc (No 2)** (FCA) - interlocutory injunction - trade mark - consumer law - applicant sought interlocutory injunction - interlocutory injunction granted (I B C G)

**Roberts-Smith v Fairfax Media Publications Pty Limited (No 6)** (FCA) - public interest immunity - defamation - discovery - Inspector-General of Australian Defence Force (IGADF) claimed public interest immunity in respect of documents - IGADF to file 'any further confidential affidavit evidence' concerning claim (B C I G)

**Fulton on behalf of the Mambali Amaling-Gan, Murungun Igalumba, Murungun Milgawirri, Budal Yuwaran and Guyal Bardi Bardi Dumnyun-Ngatanyana Estate Groups v Northern Territory of Australia** (FCA) - native title - parties to two applications sought 'determination of native title by consent' - determination made (B C I G)

**Quach v New South Wales Civil and Administrative Tribunal (NSWCA)** - apprehended bias - vexatious proceedings - applicant sought recusal of Court's 'present members' - application

refused (B C I G)

**Stanojevic v Riboskic** (VSCA) - wills and estates - succession - family provision - respondent entitled to provision from deceased's estate - leave to appeal refused (B)

**VB v Chief Executive Officer of the Department of Communities** (WASCA) - administrative law - cancellation of arrangement for child's placement in appellant's care - appeal dismissed (I B C G)

## Summaries With Link (Five Minute Read)

### **Palmer v State of Western Australia (No 5) [2020] FCA 1286**

Federal Court of Australia

Rangiah J

Costs - indemnity costs - respondents submitted Attorney-General of Commonwealth 'required leave to withdraw or discontinue' intervention - respondents submitted leave 'should only be granted upon particular conditions' - Court rejected respondents' submissions - applicants sought that respondents pay their costs on indemnity basis to extent cost not covered by 'order against the Commonwealth' - ss43(1), (2) & (3)(g) *Federal Court Act 1976* (Cth) - held: application refused.

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

### **NPP Australia Limited v Ripple Labs, Inc (No 2) [2020] FCA 1253**

Federal Court of Australia

Thawley J

Interlocutory injunction - trade mark - consumer law - applicant sought to restrain respondent 'from advertising, promoting, providing or offering to provide electronic payment services in Australia under or by reference to the words "PAY ID" or "PayID" or any similar mark, sign or brand using or incorporating the words "PAY ID" or "PayID", in relation to electronic services, without the licence or authority or the Applicant' - whether 'prima facie case' - whether 'inconvenience or injury' which applicant 'would be likely to suffer' if injunction refused outweighed injury which 'respondent would suffer' if injunction granted - *Australian Broadcasting Corporation v O'Neill* (2006) 227 CLR 57 - adequacy of damages as remedy - delay - whether undertaking appropriate - held: interlocutory injunction granted.

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

### **Roberts-Smith v Fairfax Media Publications Pty Limited (No 6) [2020] FCA 1285**

Federal Court of Australia

Colvin J

Public interest immunity - defamation - discovery - respondents required applicant to produce certain documents - Inspector-General of Australian Defence Force (IGADF) claimed public

interest immunity in respect of documents - 'contentious documents' - *Esso Australia Resources Ltd v Commissioner of Taxation* (Cth) [1999] HCA 67 - 'three steps' in *Alister v The Queen* [1984] HCA 85 - *Sankey v Whitlam* [1978] HCA 43 - held: Court satisfied there should be production of contentious documents on basis indicated by Court subject to 'any further confidential evidence' which IGADF may adduce - IGADF to file 'any further confidential affidavit evidence' supporting claim for public interest immunity.

[Roberts-Smith](#) (B C I G)

**Fulton on behalf of the Mambali Amaling-Gan, Murungun Igalumba, Murungun Milgawirri, Budal Yuwaran and Gyal Bardi Bardi Dumnyun-Ngatanyana Estate Groups v Northern Territory of Australia [2020] FCA 1271**

Federal Court of Australia

White J

Native title - parties to two applications ('Hodgson River application' and 'Nutwood Downs application') sought 'determination of native title by consent' - s87 *Native Title Act 1993* (Cth) - *King on behalf of the Eringa Native Title Claim Group v State of South Australia* [2011] FCA 1386 - "native title rights and interests" - held: Court satisfied to make determination sought by parties.

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

**Quach v New South Wales Civil and Administrative Tribunal [2020] NSWCA 214**

Court of Appeal of New South Wales

Gleeson, Leeming & McCallum JJA

Apprehended bias - vexatious proceedings - applicant, by notice of motion, sought 'variety of relief' including that Court's 'present members' 'recuse themselves' on basis of apprehended bias - determination of recusal application - *Concrete Pty Ltd v Parramatta Design & Developments Pty Ltd* (2006) 229 CLR 577 - *Michael Wilson & Partners Limited v Nicholls* (2011) 244 CLR 427 - *Johnson v Johnson* (2000) 201 CLR 488 - *Ebner v The Official Trustee in Bankruptcy* (2000) 205 CLR 337 - *Re JRL; Ex parte CJL* (1986) 161 CLR 342 - held: recusal application refused.

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

**Stanojevic v Riboskic [2020] VSCA 230**

Court of Appeal of Victoria

Tate, Kaye & Emerton JJA

Wills and estates - succession - family provision - respondent, under s91 *Administration and Probate Act 1958* (Vic), sought provision from deceased's estate - applicant contended respondent and deceased were not in 'genuine domestic partnership' 'at all' or 'during the 16 years preceding' death of deceased - primary judge found respondent entitled to provision from estate of deceased on basis she was 'eligible person' as deceased's 'former domestic partner' - applicant sought to appeal - whether respondent was 'eligible person' - whether judge erred in weighing of evidence - whether improper application of 'tests' in s35(2) *Relationships Act 2008*

(Vic) - whether erroneous costs order - held: leave to appeal refused.

[Stanjojevic](#) (B)

## **VB v Chief Executive Officer of the Department of Communities [2020] WASCA 146**

Court of Appeal of Western Australia

Quinlan CJ; Murphy & Mitchell JJA

Administrative law - first respondent, pursuant to order under *Children and Community Services Act 2004* (WA), had 'parental responsibility of child' until child reached 18 years - third respondent was delegate of first respondent - third respondent cancelled arrangement for child's placement in appellant's care - appellant sought judicial review - primary judge found third respondent's decision erroneous but declined relief - appellant appealed - whether failure to consider whether to exercise 'discretion to grant declaratory relief' - held: appeal dismissed.

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

## CRIMINAL

### Executive Summary

### Summaries With Link



**Sonnet.**

**By:** Edward Lord Herbert, Baron of Cherbery and Castle-Island

YOu well compacted Groves, whose light & shade  
Mixt equally, produce nor heat, nor cold,  
Either to burn the young, or freeze the old,  
But to one even temper being made,  
Upon a Grave embroidering through each Glade  
An Airy Silver, and a Sunny Gold,  
So cloath the poorest that they do behold  
Themselves, in riches which can never fade,  
While the wind whistles, and the birds do sing?  
While your twigs clip, and while the leaves do friss,  
While the fruit ripens which those trunks do bring,  
Senseless to all but love, do you not spring  
Pleasure of such a kind, as truly is  
A self-renewing vegetable bliss.

Made upon the Groves near Merlow Castle.

[https://en.wikipedia.org/wiki/Edward\\_Herbert,\\_1st\\_Baron\\_Herbert\\_of\\_Cherbury](https://en.wikipedia.org/wiki/Edward_Herbert,_1st_Baron_Herbert_of_Cherbury)

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