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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)

**Australian Competition and Consumer Commission v Quantum Housing Group Pty Ltd (No 2)** (FCA) - consumer law - applicant claimed first respondent contravened Australian Consumer Law and second respondent involved in contravention - respondents agreed and submitted minute of orders - Court, with certain exceptions, satisfied orders should be made (B C I G)

**Raul Bassi v Commissioner of Police (NSW)** (NSWCA) - public assembly - Black Lives Matter - COVID-19 - appeal against refusal to authorise proposed public assembly - appeal allowed (I B C G)

**Windsor v Health Care Complaints Commission** (NSWCA) - administrative law - appeal against cancellation of registration dismissed - purported appeal against suspension of registration incompetent and dismissed (B C I G)

**Vlaming v von Marburg** (VSC) - damages - assessment of damages - medical negligence - judgment in default of defence - damages assessed at \$449,233.80 (I B C G)

**Knight v Ippoliti** (VSC) - defamation - limitations - plaintiff sought extension of time to bring proceeding - extension of time refused (I B)

**Kember v Carl & Anor** (QSC) - personal injury - transfer of proceedings - requirement for

defendant to sign 'request for trial date' dispensed with - applications granted (I B C G)

**Raindale Holdings Pty Ltd v Hundermark [No 2]** (WASC) - pleadings - joinder - plaintiff sought leave to amend writ of summons to join fourth defendant and vacation of 'earlier orders' - orders granted as sought (B C I G)

## Summaries With Link (Five Minute Read)

### **Australian Competition and Consumer Commission v Quantum Housing Group Pty Ltd (No 2) [2020] FCA 802**

Federal Court of Australia

Colvin J

Consumer law - applicant claimed first respondent, 'by engaging in systemic unconscionable conduct and misleading conduct', contravened Australian Consumer Law - applicant contended second respondent involved in first respondent's 'contravening conduct' - respondents agreed with applicant's contentions - parties submitted 'minute of orders' - whether Court satisfied orders should be made in terms of minute of orders - declarations - 'disqualification order' - 'pecuniary penalties' - 'publication orders' - costs orders - held: Court satisfied that orders should be made except that there be no orders declaring unconscionable conduct by first respondent, or orders that certain representations contravened s29(1)(m) ACL or that second respondent was 'involved in conduct of that particular character'.

[Australian Competition and Consumer](#) (B C I G)

### **Raul Bassi v Commissioner of Police (NSW) [2020] NSWCA 109**

Court of Appeal of New South Wales

Bathurst CJ, Bell P, Leeming JA

Public assembly - Black Lives Matter - COVID-19 - proceedings concerned 'proposed public assembly' - appellant organised proposed public assembly in response to death of George Floyd in United States of America - proposed public assembly was 'in furtherance of the Black Lives Matter cause' and 'particular memory of an indigenous Australian, Mr David Dungay' - respondent sought that proposed public assembly be prohibited - primary judge 'declined to authorise' public assembly - whether primary judge erred in finding appellant did not give notice on 29/5/20 under s23(1) *Summary Offences Act 1988* (NSW) (*Summary Offences Act*) concerning public assembly to be held on 6/6/20 - whether primary judge erred in finding that notice's amendment had effect that 'new notice had been given' - whether primary judge erred in refusing to grant declaration that respondent had notified appellant that respondent 'did not oppose the holding of a public assembly' as described in notice amended on 4/6/20 - whether primary judge erred in dismissing respondent's application under s25 *Summary Offences Act* and in requiring appellant to apply under s26 *Summary Offences Act* - held: appeal allowed.

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

## **Windsor v Health Care Complaints Commission [2020] NSWCA 110**

Court of Appeal of New South Wales

Gleeson, Leeming & McCallum JJA

Administrative law - appellant was medical practitioner - second respondent directed that appellant undergo psychiatric examination - appellant refused - second respondent suspended appellant's registration under s150(1)(a) (NSW) Health Practitioner Regulation National Law - New South Wales Civil and Administrative Tribunal cancelled appellant's registration following complaint by first respondent - registration cancelled on basis appellant was 'not currently competent to practise as a general practitioner' and 'presently unsuitable to hold registration' - appellant appealed against registration's cancellation and purported to appeal against registration's suspension - appellant essentially contended neither respondent had 'arguable case based on provable and undisputed facts' - appellant contended Tribunal's decision should be set aside with summary judgment in her favour - held: appeal against registration's cancellation dismissed - appeal against registration's suspension incompetent and dismissed.

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

## **Vlaming v von Marburg [2020] VSC 340**

Supreme Court of Victoria

Judicial Registrar Clayton

Damages - medical negligence - plaintiff alleged he was injured due to 'negligent surgery' which defendant performed - plaintiff, under r60.08 *Supreme Court (General Civil Procedure) Rules 2015* (Vic), 'obtained judgment in default of defence' - assessment of damages - general damages - pecuniary loss - 'loss of earnings' - 'loss of earning capacity' - held: damages assessed at \$449,233.80.

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

## **Knight v Ippoliti [2020] VSC 286**

Supreme Court of Victoria

Daly AsJ

Defamation - limitations - action arising from 'anonymous review' concerning plaintiff which was posted on 'US website' - plaintiff brought proceeding out of time - plaintiff sought extension of limitation period - defendant opposed application and contended plaintiff also required leave to proceed under s23 *Limitation of Actions Act 1958* (Vic) (Limitations Act) due to plaintiff bringing a proceeding in California - whether 'not reasonable' for plaintiff to issue proceeding within limitation period - whether 'cogent explanation' for delay - prejudice - ss5(1AAA) & 23B (Limitations Act) - *Casley v Australian Broadcasting Corporation* [2013] VSC 251 - *Brott v FGD Pty Ltd and Ors* [2018] VSC 182 - held: extension of time to bring proceeding refused.

[Knight](#) (I B)

## **Kember v Carl & Anor [2020] QSC 105**

Supreme Court of Queensland

Crow J



Personal injury - transfer of proceedings - plaintiff sought that requirement for defendant to sign 'request for trial date' be 'dispensed with' and setting of trial date - second defendant sought transfer of proceedings from Supreme Court of Rockhampton to Supreme Court of Queensland - place of residence of parties and witnesses - place 'cause of action arose' - availability of 'earlier trial dates' - COVID-19 - whether possible to make finding concerning 'relative risks of possible infection by COVID-19' by holding trial in Rockhampton not Brisbane - rr39 & 469 *Uniform Civil Procedure Rules 1999* (Cth) - *Wurth Australia Pty Ltd v Burgess* [2012] WASC 504 - held: applications granted.

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

## **Raindale Holdings Pty Ltd v Hundermark [No 2] [2020] WASC 202**

Supreme Court of Western Australia

Smith J

Pleadings - joinder - vacation of orders - plaintiff sought leave to amend writ of summons to join fourth defendant pursuant to O18 r 6(2)(b) *Rules of the Supreme Court 1971* (WA) - plaintiff also sought vacation of 'earlier orders' requiring expert evidence's exchange and particulars of damages - *Wurth Australia Pty Ltd v Burgess* [2012] WASC 504 - held: orders granted as sought.

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

## CRIMINAL

### Executive Summary

### Summaries With Link



# Benchmark

## **The Green Linnet**

**By:** William Wordsworth

Beneath these fruit-tree boughs that shed  
Their snow-white blossoms on my head,  
With brightest sunshine round me spread  
Of spring's unclouded weather,  
In this sequestered nook how sweet  
To sit upon my orchard-seat!  
And birds and flowers once more to greet,  
My last year's friends together.

One have I marked, the happiest guest  
In all this covert of the blest:  
Hail to Thee, far above the rest  
In joy of voice and pinion!  
Thou, Linnet! in thy green array,  
Presiding Spirit here to-day,  
Dost lead the revels of the May;  
And this is thy dominion.

While birds, and butterflies, and flowers,  
Make all one band of paramours,  
Thou, ranging up and down the bowers,  
Art sole in thy employment:  
A Life, a Presence like the Air,  
Scattering thy gladness without care,  
Too blest with any one to pair;  
Thyself thy own enjoyment.

Amid yon tuft of hazel trees,  
That twinkle to the gusty breeze,  
Behold him perched in ecstasies,  
Yet seeming still to hover;  
There! where the flutter of his wings  
Upon his back and body flings  
Shadows and sunny glimmerings,  
That cover him all over.

My dazzled sight he oft deceives,  
A brother of the dancing leaves;  
Then flits, and from the cottage-eaves  
Pours forth his song in gushes;



# Benchmark

As if by that exulting strain  
He mocked and treated with disdain  
The voiceless Form he chose to feign,  
While fluttering in the bushes.

[https://en.wikipedia.org/wiki/William\\_Wordsworth](https://en.wikipedia.org/wiki/William_Wordsworth)

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