

Friday, 13 August 2021

## 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)

**Quach v Marks (No 2)** (FCA) - want of jurisdiction - administrative law - bias - applicant sought relief concerning decisions of New South Wales Civil and Administrative Tribunal - Attorney General sought proceedings' dismissal for want of jurisdiction or proceedings' summary dismissal - recusal application refused - proceedings dismissed for want of jurisdiction (I B C G)

**Alexakis v Wan** (NSWCA) - contract - respondent vendors 'purported to terminate' contract with appellant for purchase of appellant's property - respondents purported to terminate contract on basis appellant breached 'obligation to pay' deposit's second instalment by certain date thus breaching 'essential term' - construction of contract - appeal dismissed (I B C G)

**Infosys Technologies Limited v State of Victoria** (VSCA) - employment law - long service leave entitlements - plaintiff not obliged to pay long service leave entitlements to two former employees - declaration granted (B C I)

**Salemade Pty Limited & Ors v Commissioner of State Revenue** (QCA) - taxation - appellants dissatisfied with respondent's decisions on appellants' objections to 'payroll tax assessments and amended assessments' under *Payroll Tax Act 1971* (Qld) - primary judge dismissed appeal - appeal dismissed (I B C G)

**R v Dumble & Ors** (QCA) - environmental law - criminal law - corporations - respondents each charged with offence under s493(2) *Environmental Protection Act 1994* (Qld) - no error in ruling

of primary judge (I B C G)

**Secretary, Commonwealth Attorney General's Department & Bashir** (FamCAFC) - family law - child support - appellant sought extension of time to seek 'declaration of parentage' concerning child, 'parentage testing' orders and 'declaration under' s106A(2) *Child Support (Assessment) Act 1989* (Cth) that second respondent be assessed in respect concerning costs of child - primary judge dismissed application for want of jurisdiction - appellant sought to appeal - leave to appeal granted - appeal allowed ( )

## Summaries With Link (Five Minute Read)

### **Quach v Marks (No 2) [2021] FCA 922**

Federal Court of Australia

Abraham J

Want of jurisdiction - summary dismissal - administrative law - bias - applicant sought relief concerning decisions of New South Wales Civil and Administrative Tribunal - Attorney General was granted leave to intervene - Attorney General, by interlocutory application, sought proceedings' dismissal for want of jurisdiction or proceedings' summary dismissal - whether to grant applicant's recusal application - whether 'a "colourable" federal claim' - rr13.01 & 26.01 *Federal Court Rules 2011* (Cth) - s31A(2) *Federal Court of Australia Act 1976* (Cth) - held: recusal application refused - proceedings dismissed for want of jurisdiction.

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

### **Alexakis v Wan [2021] NSWCA 172**

Court of Appeal of New South Wales

Meagher & Payne JJA; Emmett AJA

Contract - respondent vendors 'purported to terminate' contract with appellant for purchase of appellant's property - respondents purported to terminate contract on basis appellant breached 'obligation to pay' deposit's second instalment by certain date thus breaching 'essential term' - contract was in form of '2018 edition approved by the Law Society of New South Wales and the Real Estate Institute of New South Wales' - whether respondents entitled to terminate contract - whether clause of contract extended time for payment of deposit's second instalment - whether primary judge erred in finding exception in clause of contract was enlivened to exclude 'extension to the next business day' - construction of contract - held: contract validly terminated - appeal dismissed.

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

### **Infosys Technologies Limited v State of Victoria [2021] VSCA 219**

Court of Appeal of Victoria

Niall & Kennedy JJA; McDonald AJA

Employment law - proceedings concerned whether two employees 'based in India' were

'entitled to long service leave' under *Long Service Leave Act 2018* (Vic) (LSL Act) when their employment with plaintiff ended - whether LSL Act conferred long service leave entitlement on employment which partially occurred outside Victoria - whether employees' employment formed part of employees' 'continuous employment' under LSA Act - whether employees' employment had connection with Victoria - held: plaintiff not obliged to pay long service leave entitlements to employees - declaration granted.

[Infosys](#) (I B C G W WI WB WC WG WEL) (B C I)

## **Salemade Pty Limited & Ors v Commissioner of State Revenue [2021] QCA 164**

Court of Appeal of Queensland

Morrison, Mullins & Bond JJA

Taxation - appellants dissatisfied with respondent's decisions on appellants' objections to 'payroll tax assessments and amended assessments' under *Payroll Tax Act 1971* (Qld) (PTA) - primary judge dismissed appeal - whether 'erroneous identification of the payroll tax group' - whether erroneous construction of s71(2)(c)(i) PTA - whether 'sufficient evidence' that 'New South Wales payments relied on' as subject assessments' basis 'were not "interstate wages" for PTA's purposes - held: appeal dismissed.

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

## **R v Dumble & Ors [2021] QCA 161**

Court of Appeal of Queensland

Sofronoff P; Mullins and Bond JJA

Environmental law - criminal law - corporations - respondents each charged with offence under s493(2) *Environmental Protection Act 1994* (Qld) - respondents, under s590AA *Criminal Code* (Qld), sought ruling to effect that prosecution was required, in order to prove charged offences' commission, to 'allege and prove that' company committed 'alleged offence' against s437(1) EPA during period when accused 'was one of its executive officers' - appellant referred issue for Court's opinion - whether primary judge's ruling was erroneous - held: Court agreed with primary judge's ruling - corporation taken to have offended s437(1) EPA 'when serious environmental harm' resulted from its 'causative wilful act' - person who was executive officer of corporation when harm 'actually caused' was guilty of offence under s493(2) EPA 'subject to the statutory defences'.

[R v Dumble](#) (I B C G)

## **Secretary, Commonwealth Attorney General's Department & Bashir [2021] FamCAFC 137**

Full Court of the Family Court of Australia

Strickland, Aldridge & Tree JJ

Family law - child support - appellant sought extension of time to seek 'declaration of parentage' concerning child, 'parentage testing' orders and 'declaration under' s106A(2) *Child Support (Assessment) Act 1989* (Cth) that second respondent be assessed in respect concerning costs of child - primary judge dismissed application for want of jurisdiction - appellant sought to appeal - Federal Circuit Court of Australia's jurisdiction - whether primary



judge misconstrued requirements for exercise of power to make declaration - held: leave to appeal granted - appeal allowed.

[Secretary](#) ()

## Summaries With Link

## A Midsummer Noon in the Australian Forest

**By:** Charles Harpur

NOT a sound disturbs the air,  
There is quiet everywhere;  
Over plains and over woods  
What a mighty stillness broods!

All the birds and insects keep                      5  
Where the coolest shadows sleep;  
Even the busy ants are found  
Resting in their pebbled mound;  
Even the locust clingeth now  
Silent to the barky bough:                      10  
Over hills and over plains  
Quiet, vast and slumbrous, reigns.

Only there 's a drowsy humming  
From yon warm lagoon slow coming:  
'Tis the dragon-hornet—see!                      15  
All bedaubed resplendently,  
Yellow on a tawny ground—  
Each rich spot nor square nor round,  
Rudely heart-shaped, as it were  
The blurred and hasty impress there                      20  
Of a vermeil-crusted seal,  
Dusted o'er with golden meal.  
Only there 's a droning where  
Yon bright beetle shines in air,  
Tracks it in its gleaming flight                      25  
With a slanting beam of light,  
Rising in the sunshine higher,  
Till its shards flame out like fire.

Every other thing is still,                      30  
Save the ever-wakeful rill,  
Whose cool murmur only throws  
Cooler comfort round repose;  
Or some ripple in the sea  
Of leafy boughs, where, lazily,





Tired summer, in her bower 35  
Turning with the noontide hour,  
Heaves a slumbrous breath ere she  
Once more slumbers peacefully.

Oh, 'tis easeful here to lie  
Hidden from noon's scorching eye, 40  
In this grassy cool recess  
Musing thus of quietness.

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