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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)

**Yanunijarra Aboriginal Corporation RNTBC v State of Western Australia** (FCAFC) - native title - dismissal of "right to negotiate" application' made under s32(3) *Native Title Act 1993* (Cth) - appeal dismissed (I B C G)

**Baker & Provan Defence Pty Limited v Supacat Pty Limited** (NSWSC) - costs - discovery - plaintiff sought discovery from defendant - parties agreed on categories following hearing in which Court found plaintiff entitled to discovery of some documents sought - 'mixed outcome' - plaintiff's costs to be 'costs in the cause' (I B C G)

**Re LTB** (VSC) - custodial supervision order - application for grant of 'further extended leave' - custodial supervision order confirmed - further extended leave granted (I B C G)

**Towers v Hevilift Ltd (No 2)** (QSC) - damages - negligence - plaintiff pilot rendered 'incomplete quadriplegic' in helicopter crash - defendant negligent - assessment of damages - judgment awarded to plaintiff in sum of \$5,652,072.74 (I B C G)

**Kitay v Frigger [No 3] [No 3]** (WASCA) - bankruptcy - application in an appeal - application for substitution of 'new party' as third respondent in appeal - application adjourned (B)

**KMD v The Mental Health Review Tribunal & Anor** (NTSC) - health law - 'involuntary admission' - *Mental Health and Related Services Act 1998* - Tribunal erred in ordering that

appellant be admitted to hospital and undergo treatment - appeal allowed (I B C G)

## Summaries With Link (Five Minute Read)

### **Yanunijarra Aboriginal Corporation RNTBC v State of Western Australia [2020] FCAFC 64**

Full Court of the Federal Court of Australia

Rares, White & Banks-Smith JJ

Native title - National Native Title Tribunal dismissed "'right to negotiate' application', which had been made under s32(3) *Native Title Act 1993* (Cth) (NTA) concerning 'a future act' - application was dismissed on basis it was not made by entity entitled to make it under the NTA - first applicant should have lodged application as 'registered native title body corporate for the area in question' - second applicant had lodged application - second applicant was the 'previously registered native title claimant' - Tribunal found second applicant not competent to lodge application and that Tribunal not empowered to allow application's amendment to correct the position - Tribunal found it was not entitled to deal with application - Tribunal dismissed application under s148 NTA - statutory construction - 'misdescription' - ss109(1) & 109(3) NTA - *Project Blue Sky Inc v Australian Broadcasting Authority* [1998] HCA 28 - s25C *Acts Interpretation Act 1901* (Cth) - held: appeal dismissed.

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

### **Baker & Provan Defence Pty Limited v Supacat Pty Limited [2020] NSWSC 387**

Supreme Court of New South Wales

Henry J

Costs - discovery - plaintiff sought discovery from defendant - Court found that defendant should discover some of the documents which plaintiff sought - motion adjourned - parties reached agreement on discovery categories - determination of costs - plaintiff sought that defendant pay its costs assessable under Practice Note SC Eq 3 - defendant sought that plaintiff pay costs on indemnity basis - 'mixed outcome' in proceedings - held: plaintiff's costs to be 'costs in the cause'.

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

### **Re LTB [2020] VSC 173**

Supreme Court of Victoria

Taylor J

Custodial supervision order - applicant was 'forensic patient subject to a 'custodial supervision order' made under *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) (CMIUTA) - applicant sought 'grant of further extended leave' on the same conditions as 'current grant of extended leave' - 'serious endangerment' - whether Court satisfied that community's safety and applicant's safety would not be 'seriously endangered' if extended leave granted - 'principal of parsimony' in s39(1) CMIUTA - factors in s40(1) CMIUTA - whether to confirm custodial supervision order - held: custodial supervision ordered confirmed - application for

further extended leave granted.

[Re LTB](#) (I B C G)

## **Towers v Hevilift Ltd (No 2) [2020] QSC 77**

Supreme Court of Queensland

Henry J

Damages - negligence - plaintiff piloting helicopter for defendant's business in highlands of Papua New Guinea - helicopter crashed after becoming 'enveloped in cloud' - plaintiff rendered 'incomplete quadriplegic' - plaintiff sued defendant, alleging it negligently failed adequately to warn of 'danger of rapid cloud envelopment' in locality - Court gave judgment for plaintiff - assessment concerning aspects of damages not agreed on by parties - life expectancy - economic loss - household maintenance costs - held: damages assessed - judgment for plaintiff in sum of \$5,652,072.74.

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

## **Kitay v Frigger [No 3] [No 3] [2020] WASCA 55**

Court of Appeal of Western Australia

Buss P & Mitchell JA

Bankruptcy - primary judge extended time for respondents' compliance with 'springing order' - appellants appealed - appellants, by application in an appeal, sought to substitute 'current trustee' of Frigger Superannuation Fund (fund) as third respondent in appeal - held: appellants' application for substitution of 'new trustee' was a 'fresh step in a legal proceeding in respect of a provable debt' - inappropriate for Court to substitute fund's current trustee as third respondent until court with 'bankruptcy jurisdiction' gave leave under s58(3)(b) *Bankruptcy Act 1966* (Cth) - application adjourned.

[Kitay](#) (B)

## **KMD v The Mental Health Review Tribunal & Anor [2020] NTSC 13**

Supreme Court of the Northern Territory

Barr J

Health law - first respondent determined that appellant 'satisfied all requirements for involuntary admission under' under *Mental Health and Related Services Act 1998* (MHRSA) - Tribunal ordered that appellant be admitted hospital and undergo 'management treatment plan' - appellant appealed - whether appellant had mental illness - whether appellant 'likely to cause serious harm without treatment' - held: evidence before first respondent did not satisfy criteria in s14(b)(iii) MHRSA - appeal allowed.

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

## CRIMINAL

### Executive Summary



## Summaries With Link



# Benchmark

## CIII

By Emily Dickinson

THE MOON was but a chin of gold

A night or two ago,

And now she turns her perfect face

Upon the world below.

Her forehead is of amplest blond;

5

Her cheek like beryl stone;

Her eye unto the summer dew

The likest I have known.

Her lips of amber never part;

But what must be the smile

10

Upon her friend she could bestow

Were such her silver will!

And what a privilege to be

But the remotest star!

For certainly her way might pass

15

Beside your twinkling door.

Her bonnet is the firmament,

The universe her shoe,

The stars the trinkets at her belt,

Her dimities of blue.

[https://en.wikipedia.org/wiki/Emily\\_Dickinson](https://en.wikipedia.org/wiki/Emily_Dickinson)

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