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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)

Nikitins (Liquidator) v EncoreFX (Australia) Pty Ltd (in liq), in the matter of EncoreFX (Australia) Pty Ltd (in liq) (FCA) - corporations - liquidators, under s90-15 *Insolvency Practice Schedule (Corporations)*, sought 'final relief' - orders granted 'substantially in terms' sought (B)

Australian Securities and Investments Commission v M101 Nominees Pty Ltd, in the matter of M101 Nominees Pty Ltd (FCA) - corporations - plaintiff sought provisional liquidators' appointment to first defendant, 'travel restraint orders' against second defendant, 'injunctions and ancillary orders' - orders granted as sought (B)

Hurst, in the matter of Liquor National Pty Ltd (in liq) (No 2) (FCA) - corporations - applicant sought approval to enter 'deed of assignment' - approval granted (B)

Re Kara (NSWSC) - *parens patriae* jurisdiction - plaintiffs sought orders authorising child's removal to 'medical facility' and confinement at medical facility to undergo 'medically supervised detoxification and withdrawal program' - orders granted (I B C G)

In the matter of TPG Telecom Limited (NSWSC) - corporations - TPG Telecom Limited sought approval of scheme of arrangement under s411(4)(b) *Corporations Act 2001* (Cth) - orders granted (B)

Gardiner v Attorney-General (No 3) (VSC) - judicial review - native title - entry into

'Taungurung Recognition and Settlement Agreement' - proceeding stayed until determination of Federal Court proceedings (B C I G)

Nathan v Williams & Anor (QCA) - costs - appellant succeeded on 'one discrete ground of appeal' (ground 8) and was unsuccessful on 'remaining 11 grounds - determination of costs (I B C G)

Summaries With Link (Five Minute Read)

Nikitins (Liquidator) v EncoreFX (Australia) Pty Ltd (in liq), in the matter of EncoreFX (Australia) Pty Ltd (in liq) [2020] FCA 1189

Federal Court of Australia

Colvin J

Corporations - liquidators, under s90-15 *Insolvency Practice Schedule (Corporations)*, sought 'final relief' to effect liquidators were justified to pool 'identified funds' and 'any funds recovered' from company in liquidation and to treat and distribute 'pooled funds as company in liquidation's assets 'not subject to any proprietary claim' - liquidators also sought appointment as pool funds' 'receivers and managers' to extend any proprietary claim to liquidators was disputed - held: orders granted 'substantially in terms' sought.

[Nikitins](#) (B)

Australian Securities and Investments Commission v M101 Nominees Pty Ltd, in the matter of M101 Nominees Pty Ltd [2020] FCA 1166

Federal Court of Australia

Anderson J

Corporations - plaintiff sought 'urgent, ex parte, interlocutory relief' for provisional liquidators' appointment to first defendant, 'travel restraint orders' against second defendant, 'injunctions and ancillary orders - ss472(2), 1101B(1), 1101B(5), 1323(1), 1323(3), 1324(1) & 1324(4) *Corporations Act 2001* (Cth) - s23 *Federal Court of Australia Act 1976* (Cth) - 'asset preservation orders' - 'restraining orders' - jurisdiction - held: orders granted as sought.

[Australian Securities and Investments](#) (B)

Hurst, in the matter of Liquor National Pty Ltd (in liq) (No 2) [2020] FCA 1177

Federal Court of Australia

Stewart J

Corporations - applicant was 'liquidator and special purpose liquidator of seven companies' ('Rabobank companies') - applicant sought approval to enter 'deed of assignment' pursuant to s477(2B) *Corporations Act 2001* (Cth) - applicant did not press application for suppression order - over deed of assignment - whether to approve entry into deed of assignment - whether 'good faith' - whether prejudice to 'secured creditor' - ss37AF & 37AG *Federal Court of Australia Act 1976* (Cth) - held: approval granted.

[Hurst](#) (B)

Re Kara [2020] NSWSC 1083

Supreme Court of New South Wales

Williams J

Parens patriae jurisdiction - cross-vesting - plaintiffs sought orders in exercise of Court's *parens patriae* jurisdiction and 'statutory jurisdiction under' Pt VII, Div 8 *Family Law Act 1975* (Cth) to authorise child's removal to 'medical facility' and confinement at medical facility to undergo 'medically supervised detoxification and withdrawal program' - s4 *Jurisdiction of Courts (Cross-Vesting) Act 1987* (Cth) - 'serious interference with' child's liberty - whether orders necessary to protect child - held: orders granted.

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

In the matter of TPG Telecom Limited [2020] NSWSC 978

Supreme Court of New South Wales

Black J

Corporations - TPG Telecom Limited sought approval of scheme of arrangement under s411(4)(b) *Corporations Act 2001* (Cth) - 'good faith' - 'proper purpose' - 'fair and reasonable' - 'full and fair disclosure' - oppression - competition - public policy - interests of groups not parties to scheme - utility - held: Court satisfied to grant orders sought.

[View Decision](#) (B)

Gardiner v Attorney-General (No 3) [2020] VSC 516

Supreme Court of Victoria

Richards J

Judicial review - native title - plaintiffs sought judicial review of first defendant's decision under s4 *Traditional Owner Settlement Act 2010* (Vic) to enter 'Taungurung Recognition and Settlement Agreement' with Taungurung Land and Waters Council (Council) - three plaintiffs commenced proceedings in Federal Court in which they sought judicial review of decision of Registrar to accept Taungurung Indigenous Land Use Agreement (ILUA) for registration under s24CK(1) *Native Title Act 1993* (Cth) - Council sought to strike out paragraphs of originating motion for abuse of process, contending it would be abuse of process for plaintiffs to continue proceeding, given decision of delegate to register Taungurung ILUA and issues which were 'raised for determination' in Federal Court proceeding - held: proceeding stayed until Federal Court proceeding's determination.

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

Nathan v Williams & Anor [2020] QCA 172

Court of Appeal of Queensland

Sofronoff P and Philippides JA & Brown J

Costs - appellant succeeded on 'one discrete ground of appeal' (ground 8) and was unsuccessful on 'remaining 11 grounds' - determination of costs - appellant sought costs on



ground on which he was successful - appellant sought discount on costs order in respondents' favour of 15 per cent - apportionment - held: appellant to pay 95% of first respondent's costs on standard basis - appellant to pay second respondent's costs except with 'respect to ground 8' on standard basis.

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

CRIMINAL

Executive Summary

Summaries With Link



Sonnet to the Nightingale

By: John Milton

O NIGHTINGALE that on yon blooming spray
Warblest at eve, when all the woods are still,
Thou with fresh hopes the Lover's heart dost fill,
While the jolly Hours lead on propitious May.
Thy liquid notes that close the eye of Day, 5
First heard before the shallow cuckoo's bill,
Portend success in love. O if Jove's will
Have linked that amorous power to thy soft lay,
Now timely sing, ere the rude bird of hate
Foretell my hopeless doom, in some grove nigh; 10
As thou from year to year hast sung too late
For my relief, yet had'st no reason why.
Whether the Muse or Love call thee his mate,
Both them I serve, and of their train am I.

https://en.wikipedia.org/wiki/John_Milton

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