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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)

**Kitchen v Director of Professional Services Review under s83 of the Health Insurance Act 1973 (Cth) (No 3)** (FCA) - subpoena - two interlocutory applications - Dr Kitchen sought production of documents by Chief Executive, Medicare - Dr Kitchen's interlocutory application granted subject to provision of 'extra time' for Chief Executive to respond - Chief Executive's interlocutory application dismissed (I B C G)

**Strawbridge (Administrator), in the matter of CBCH Group Pty Ltd (Administrators Appointed) (No 4)** (FCA) - corporations - administrators of companies sought further extension of convening period for second meetings of creditors and ancillary orders - extension of confidentiality orders also sought - orders granted (B)

**Swancom Pty Ltd v The Jazz Corner Hotel Pty Ltd** (FCA) - evidence - trade mark - 'evidentiary rulings' - consideration of objections to affidavits - evidentiary rulings made (I B)

**Rakovich v Marszalek** (NSWSC) - wills and estates - succession - family provision - application for family provision by deceased's 'close friend for over 30 years' - family provision order granted - plaintiff to receive lump sum from deceased's estate (B)

**BWP Management Limited & Anor v Ipswich City Council** (QCA) - real property - categorisation of lands for levying of rates - error by Land Appeal Court - appeal allowed (I B C G)

**Re Kinetiko Energy Ltd; Ex Parte Kinetiko Energy Ltd (WASC)** - corporations - plaintiff sought extension of time for 'admission to quotation' by 'ASX' of securities and, subject to securities' admission, 'validation and confirmation' of issue of securities - held: orders granted (B)

**Carlos v Commonwealth Bank of Australia (TASSC)** - administrative law - possession - applicant sought review of decision granting possession of land - review sought under *Judicial Review Act 2000* - decision a judicial decision - decision not reviewable under *Judicial Review Act 2000* - application dismissed (I B C G)

## Summaries With Link (Five Minute Read)

### **Kitchen v Director of Professional Services Review under s83 of the Health Insurance Act 1973 (Cth) (No 3) [2020] FCA 634**

Federal Court of Australia

Collier J

Subpoena - two interlocutory applications - Dr Kitchen sought production by The Chief Executive, Medicare (Chief Executive) of certain documents - documents referable to subpoena served by Dr Kitchen on Chief Executive - Chief Executive resisted applicant's interlocutory application on basis subpoena was 'drafted unclearly', was 'impermissibly broad' and was oppressive - Chief Executive also contended applicant was seeking documents 'broader than the terms' of subpoena - whether documents identified 'with reasonable particularity' - whether documents sought were outside scope of subpoena - relevance - legitimate forensic purpose - whether subpoena oppressive - held: Chief Executive's interlocutory application dismissed - Dr Kitchen entitled to interlocutory orders sought subject to provision of 'extra time' for Chief Executive to respond.

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

### **Strawbridge (Administrator), in the matter of CBCH Group Pty Ltd (Administrators Appointed) (No 4) [2020] FCA 671**

Federal Court of Australia

Markovic J

Corporations - plaintiffs in capacity as joint and several administrators of companies ('CBCH Group', 'CBCH Australia', 'CBCH Buying Co' and 'Colette International') sought further extension of convening period for each company for 'second meeting of creditors' and ancillary orders - plaintiffs also sought extension of confidentiality orders - ss435A, 439A. 447A(1) & 439A(1) *Corporations Act 2001* (Cth) - *Re Acquire Learning & Careers Pty Ltd (administrators appointed) [2017] VSC 572 - Crawford, in the matter of North Queensland Heavy Haulage Services Pty Ltd (Administrators Appointed) [2017] FCA 635* - held: orders granted.

[Strawbridge](#) (B)

## **Swancom Pty Ltd v The Jazz Corner Hotel Pty Ltd [2020] FCA 396**

Federal Court of Australia

O'Bryan J

Evidence - trade mark - applicant alleged respondents infringed its trade marks by using "The Jazz Corner Hotel", "Jazz Corner", "Jazz Corner of Melbourne" and "Jazz Corner of the World" as trade marks - respondents denied infringement and cross-claimed, seeking rectification of Register of Trade Marks - respondents contended trade marks were 'not capable of distinguishing' services of applicant that their use was 'likely to deceive or cause confusion' - 'evidentiary rulings' - consideration of objections to affidavits - admissibility of evidence - hearsay - relevance - *Evidence Act 1995* (Cth) - *Trade Marks Act 1995* (Cth) - held: evidentiary rulings made.

[Swancom](#) (I B)

## **Rakovich v Marszalek [2020] NSWSC 589**

Supreme Court of New South Wales

Hallen J

Wills and estates - succession - family provision - deceased died intestate - deceased had not married or had children - first defendant was widow of deceased's brother - second and third defendants were children of deceased's deceased sister - deceased was living with plaintiff at time of his death - plaintiff was deceased's 'close friend for over 30 years' - plaintiff, under Ch 3 *Succession Act 2006* (NSW) sought family provision order - no dispute plaintiff was 'eligible person' - credit - relationship between plaintiff and deceased - deceased's testamentary intentions - 'adequacy of provision' - held: family provision order granted - plaintiff to receive lump sum from deceased's estate 'calculated as 45 per cent of' estate's net value.

[Rakovic](#) (B)

## **BWP Management Limited & Anor v Ipswich City Council [2020] QCA 104**

Court of Appeal of Queensland

Morrison & McMurdo JJA; Boddice J

Real property - a 'Bunnings Warehouse' was present on land of first application and land of second applicant (lands) - lands were within area 'governed by the Ipswich City Council' - dispute concerned categorisation of lands for 'levying of rates' - respondent categorised each property as a "Drive-In Shopping Centre" - applicants contended "Shop – Single" was correct category - applicants succeeded in Land Court but Land Appeal Court overturned Land Court's decision - applicants sought to appeal - whether error by Land Appeal Court - proper construction of 'Budget' - s92 *Local Government Act 2009* (Qld) - s81 *Local Government Regulations 2012* (Qld) - held: appeal allowed.

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

## **Re Kinetiko Energy Ltd; Ex Parte Kinetiko Energy Ltd [2020] WASC 169**

Supreme Court of Western Australia



Hill J

Corporations - plaintiff, under s1322(4)(d) *Corporations Act 2001* (Cth) (Corporations Act), sought extension of time under ss723(3)(b) & 724(1)(b)(ii) Corporations Act for 'admission to quotation' by 'ASX' of 'securities issued' by plaintiff - plaintiff, under ss254E & 1322(4)(a) Corporations Act, also sought, subject to securities' admission, 'validation and confirmation of issue of securities' - held: orders granted.

[Re Kinetiko](#) (B)

## **Carlos v Commonwealth Bank of Australia [2020] TASSC 14**

Supreme Court of Tasmania

Pearce J

Administrative law - possession - Holt AsJ ordered that respondent be given possession of land unless money owing under mortgage 'paid within 28 days' - applicant sought review under *Judicial Review Act 2000* (Judicial Review Act) - whether Judicial Review Act applied to challenged decision - s146 *Land Titles Act 1980* - held: Judicial Review Act did not apply - Holt AsJ's decision was a judicial decision, not of administrative character - Holt AsJ's decision not reviewable under Judicial Review Act - application dismissed.

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

## CRIMINAL

### Executive Summary

### Summaries With Link



## **The Bee**

**By:** Emily Dickinson

Like trains of cars on tracks of plush  
I hear the level bee:  
A jar across the flowers goes,  
Their velvet masonry  
Withstands until the sweet assault  
Their chivalry consumes,  
While he, victorious, tilts away  
To vanquish other blooms.  
His feet are shod with gauze,  
His helmet is of gold;  
His breast, a single onyx  
With chrysoprase, inlaid.  
His labor is a chant,  
His idleness a tune;  
Oh, for a bee's experience  
Of clovers and of noon!

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

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