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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)

**Polaris Coomera Pty Ltd v Minister for the Environment** (FCA) - administrative law - Minister's delegate decided 'Proposed Development' was "controlled action" and "controlling provisions" were ss18 & 18A *Environment Protection and Biodiversity Conservation Act 1999* (Cth) - judicial review application dismissed (I B C G)

**Qantas Airways Limited v Nick Rohrlach** (NSWSC) - contract - employment law - 'exclusive jurisdiction clause' - 'restraint covenant' - 'interference with contractual relations' - stay - determination of two applications (I B C G)

**In the adoption of Natalie** (NSWSC) - adoption - guardianship - Court satisfied 'proper testamentary guardianship arrangements' had been made - order for adoption to be made (B C G)

**Moran v Argonaut Equity Partners Pty Ltd** (WASCA) - equity - penalties - first respondent commenced proceedings in debt against appellant - primary judge upheld claims - appeal dismissed (I B C G)

**Whittens Pty Ltd v Judge Fong Lim & Anor** (NTSC) - judicial review - 'workplace death' - s32 *Work Health and Safety (National Uniform Legislation) Act 2011* (NT) - application for judicial review - 'originating motion and summons' dismissed (I B C G)

## Summaries With Link (Five Minute Read)

### **Polaris Coomera Pty Ltd v Minister for the Environment [2021] FCA 254**

Federal Court of Australia

Rangiah J

Administrative law - Minister's delegate, under s75(1) *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act), decided 'Proposed Development' was "controlled action" and "controlling provisions" were ss18 & 18A EPBC Act - applicant sought judicial review - s5 *Administrative Decisions (Judicial Review) Act 1977* (Cth) - s39B *Judiciary Act 1903* (Cth) - 'likely to have a "significant impact" on the Koala' - whether natural justice rules breached - adequacy of reasons - whether irrelevant considerations taken into account - whether failure to take relevant considerations into account - whether 'improper exercise of power' - whether misconstruction and misapplication of ss18 & 18A EPBC Act - whether 'irrational, illogical or unreasonable' findings - whether findings lacked 'evident and justifiable basis' - held: judicial review application dismissed.

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

### **Qantas Airways Limited v Nick Rohrlach [2021] NSWSC 260**

Supreme Court of New South Wales

Hammerschlag J

Contract - employment law - 'exclusive jurisdiction clause' - 'restraint covenant' - 'interference with contractual relations' - stay - two applications - Qantas commenced proceedings against Mr Rohrlach (employee of Qantas) and second defendant (Virgin) - Qantas seeking to enforce 'restraint covenant' against Mr Rohrlach and claimed interference with contractual relations against Virgin - Qantas sought anti-anti-suit injunction to restrain Mr Rohrlach 'from moving the Singapore High Court for an order' restraining Qantas from proceeding - Rohrlach sought stay of proceedings - Mr Rohrlach had commenced proceedings in High Court of Singapore seeking 'negative declaration' he was not bound by restraint - whether exclusive jurisdiction clause in employment agreement captured proceedings - held: claim of Qantas was caught by exclusive jurisdiction clause - Qantas' application dismissed - proceedings stayed.

[Qantas Airways](#) (I B C G)

### **In the adoption of Natalie [2021] NSWSC 254**

Supreme Court of New South Wales

Kunc J

Adoption - guardianship - Court satisfied to order that 'Natalie' be adopted by 'Veronica' - whether Court was satisfied that 'proper testamentary guardianship arrangements' had been, or would be, made for child by 'proposed adoptive parent' - child's best interests - *Adoption Act 2000* (NSW) - *Guardianship of Infants Act 1916* (NSW) - held: Court satisfied 'proper testamentary guardianship arrangements' had been made - order for adoption to be made

[In the adoption of Natalie](#) (B C G)

**Moran v Argonaut Equity Partners Pty Ltd [2021] WASCA 45**

Court of Appeal of Western Australia

Buss P; Murphy & Mitchell JJA

Equity - penalties - first respondent (AEP) 'facility agent for a syndicate of lenders' (including AEP) commenced proceedings in debt against appellant - primary judge upheld claims of lenders and dismissed appellant's counterclaims against AEP and second and third respondents - appellant contended primary judge erroneously failed to characterise 'First Extension Letter' and 'Second Extension Letter' as a penalty ('Penalty Issue') - 'a collateral stipulation, a detriment imposed on a contracting party in the event that it does not observe the principal stipulation' - whether question of penalty arose - *Andrews v Australia and New Zealand Banking Group Ltd* [2012] HCA 30 - *Paciocco v Australia and New Zealand Banking Group Ltd* [2016] HCA 28 - held: appeal dismissed.

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

**Whittens Pty Ltd v Judge Fong Lim & Anor [2021] NTSC 9**

Supreme Court of the Northern Territory

Brownhill J

Judicial review - second defendant made complaint against plaintiff, charging plaintiff with 'offence against' s32 *Work Health and Safety (National Uniform Legislation) Act 2011* (NT) after 'workplace death' of plaintiff's employee - plaintiff contended complaint was invalid and that its invalidity could not be cured due to expiry of limitation period - plaintiff alternatively contended complaint was 'bad for duplicity' - first defendant found complaint valid, that complaint 'could be amended', and that second defendant could cure complaint's duplicity - plaintiff sought judicial review - plaintiff sought to quash first defendant's decision - *Local Court (Criminal Procedure) Act 1928* (NT) - held: 'originating motion and summons' dismissed.

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

## Summaries With Link



## **Lost in the Flood**

**By:** Henry Kendall

When God drave the ruthless waters  
From our cornfields to the sea,  
Came she where our wives and daughters  
Sobbed their thanks on bended knee.  
Hidden faces! there ye found her  
Mute as death, and staring wild  
At the shadow waxing round her  
Like the presence of her child—  
Of her drenched and drowning child!

Dark thoughts live when tears won't gather;  
Who can tell us what she felt?  
It was human, O my Father,  
If she blamed Thee while she knelt!  
Ever, as a benediction  
Fell like balm on all and each,  
Rose a young face whose affliction  
Choked and stayed the founts of speech—  
Stayed and shut the founts of speech!

Often doth she sit and ponder  
Over gleams of happy hair!  
How her white hands used to wander,  
Like a flood of moonlight there!  
Lord—our Lord! Thou know'st her weakness:  
Give her faith that she may pray;  
And the subtle strength of meekness,  
Lest she falter by the way—  
Falter, fainting, by the way!

"Darling!" saith she, wildly moaning  
Where the grass-grown silence lies,  
"Is there rest from sobs and groaning—  
Rest with you beyond the skies?  
Child of mine, so far above me!  
Late it waxeth—dark and late;  
Will the love with which I love thee,  
Lift me where you sit and wait—  
Darling! where you sit and wait?"

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