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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)

**Minister for the Environment v ACN 089 171 415 Pty Ltd** (FCA) - environmental law - admitted contravention of s13(1)(a)(iii) *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth) - penalty of \$500,000 imposed - declarations and orders made as sought by parties (I B C G)

**Tapp v Australian Bushmen's Campdraft & Rodeo Association Ltd** (NSWCA) - negligence - appellant injured in fall from horse whilst participating in 'campdraft organised by respondent - respondent not liable - appeal dismissed (I B)

**Arcidiacono v The Owners – Strata Plan No 17719; Arcidiacono v The Owners – Strata Plan No 61233** (NSWCA) - easements - respondents had 'present entitlement' to 'easements by prescription' over two land parcels - leave to appeal granted - appeal dismissed (I B C G)

**Khowly v Amoud** (NSWSC) - negligence - Local Court appeal - motor vehicle accident - error by Magistrate established - "a substantial wrong or miscarriage" - 'fresh hearing' warranted - appeal allowed (I B)

**Commissioner of Police v Barbaro** (QCA) - warrants - legal professional privilege - criminal law - respondent's entitlement 'to protect privileged information' was 'reasonable excuse' for refusal to give information to police - appeal dismissed (I B C G)

**TEC Hedland Pty Ltd v The Pilbara Infrastructure Pty Ltd (WASC)** - discovery - plaintiff sought 'production of unredacted copies' of 'Disputed Documents' - Court 'to inspect 61 documents' prior to Court making 'final ruling' on claim concerning document - claim otherwise dismissed (I B C G)

**Instyle Estate Agents Gungahlin Pty Ltd v Hambrook (ACTSC)** - subpoena - interlocutory application - plaintiff sought to set aside three subpoenas issued by defendant - subpoenas set aside (I B C G)

## Summaries With Link (Five Minute Read)

### **Minister for the Environment v ACN 089 171 415 Pty Ltd [2020] FCA 1557**

Federal Court of Australia

Mortimer J

Environmental law - respondent admitted contravention of s13(1)(a)(iii) *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth) - 'agreed statement of facts' - 'amended joint submissions' - whether contravention was proved - whether appropriate to make 'declarations and orders' which parties proposed - held: contravention was proved - penalty of \$500,000 imposed - declarations and orders made as sought by parties.

[Minister for the Environment](#) (I B C G)

### **Tapp v Australian Bushmen & Campdraft & Rodeo Association Ltd [2020] NSWCA 263**

Court of Appeal of New South Wales

Basten, Payne & McCallum JJA

Negligence - appellant participated in 'campdraft event' which respondent organised - appellant fell from horse and injured spine - appellant sought damages in negligence against respondent - quantum was agreed in sum of \$6,750,000 - primary judge found in respondent's favour - appellant appealed - whether breach of duty of care - whether appellant's injury resulted from 'materialisation of an obvious risk of a dangerous recreational activity' - whether respondent had 'duty to warn' appellant of risk - ss5L, 5F & 5K *Civil Liability Act 2002* (NSW) - s60 Australian Consumer Law - held: appeal dismissed.

[View Decision](#) (I B)

### **Arcidiacono v The Owners & Strata Plan No 17719; Arcidiacono v The Owners & Strata Plan No 61233 [2020] NSWCA 269**

Court of Appeal of New South Wales

Macfarlan, White & McCallum JJA

Easements - respondents owned properties which adjoined 'two small parcels of land' (parcels) - primary judge found respondents had 'present entitlement to 'easements by prescription' over parcels - primary judge held that if respondents had not had present entitlement to the

easements, she would have imposed easements under s88K *Conveyancing Act 1919* (NSW) - appellants owned 'servient tenements' and 'another two adjacent allotments of land' - appellant sought to appeal - appellants contended that requirements for establishing easements by prescription were unsatisfied - appellants also contended requirements for easements' imposition under s88K *Conveyancing Act* were unsatisfied - held: leave to appeal granted - appeal dismissed.

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

## **Howly v Amoud [2020] NSWSC 1445**

Supreme Court of New South Wales

Ierace J

Negligence - Local Court appeal - motor vehicle accident - self-represented litigant - plaintiff sought to appeal from Magistrate's judgment 'concerning liability arising from a motor vehicle accident' - Magistrate had ordered plaintiff to pay amounts to first and second defendants - whether erroneous finding of no contributory negligence by first defendant - whether erroneous rejection of evidence - whether 'lack of procedural fairness' - whether erroneous failure to admit 'COPS entry' - whether misconstruction of s69 *Civil Liability Act 2002* (NSW) - r51.53(1)(b) *Uniform Civil Procedure Rules 2005* (NSW) - s40 *Local Court Act 2007* (NSW) - held: Magistrate erred in rejecting 'COPS entry' and in disallowing plaintiff's cross-examination of first defendant - a substantial wrong or miscarriage established - 'fresh hearing' warranted - appeal allowed.

[View Decision](#) (I B)

## **Commissioner of Police v Barbaro [2020] QCA 230**

Court of Appeal of Queensland

Sofronoff P; Philippides & Mullins JJA

Warrants - legal professional privilege - criminal law - police executed warrant at premises - proceedings arising from respondent's refusal to give PIN to police officer for purpose of unlocking respondent's mobile phone - respondent charged with refusing 'without a reasonable excuse' and was charged under s205A *Criminal Code* (Qld) - respondent claimed phone contained 'privileged communications' between him and his solicitor - respondent claimed that 'a right to protect privileged information' was a reasonable excuse for his refusal - Magistrate found respondent guilty - respondent appealed - primary judge found in respondent's favour - appellant appealed - held: respondent 'entitled to prevent police' from reading respondent's 'privileged material' - respondent's entitlement was a 'reasonable excuse' - appeal dismissed.

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

## **TEC Hedland Pty Ltd v The Pilbara Infrastructure Pty Ltd [2020] WASC 364**

Supreme Court of Western Australia

Hill J

Discovery - plaintiff, under O26 r9 *Rules of the Supreme Court 1971* (WA), sought 'production of unredacted copies' of 'Disputed Documents' - 'communications sent to multiple addressees' -



'communications forwarded to an in-house lawyer of defendant's parent company -  
'communications between non-lawyers' - communications in respect of which it was asserted  
privilege had 'been waived' - held: Court 'to inspect 61 documents' prior to Court making 'final  
ruling' on claim concerning document - claim otherwise dismissed.

[TEC Hedland](#) (I B C G)

## **Instyle Estate Agents Gungahlin Pty Ltd v Hambrook [2020] ACTSC 293**

Supreme Court of the Australian Capital Territory

McWilliam AsJ

Subpoena - interlocutory application - plaintiff sought to set aside three subpoenas issued by  
defendant - r6604 *Court Procedure Rules 2006* (ACT) - whether 'legitimate forensic purpose' -  
whether 'seriously and unfairly burdensome or prejudicial' - whether 'relevance' - whether  
subpoenas effectively seeking 'discovery from non-parties' - whether 'fishing' - whether  
schedules' terms 'so wide as to be oppressive' - 'conduct money' - 'reasonable expenses' -  
*Corporations Act 2002* (Cth) - held: subpoenas set aside.

[Instyle Estate Agents](#) (I B C G)

## Summaries With Link



## **The Grasshopper**

**By:** Richard Lovelace

O THOU that swing'st upon the waving hair  
Of some well-fillèd oaten beard,  
Drunk every night with a delicious tear  
Dropt thee from heaven, where thou wert rear'd!

The joys of earth and air are thine entire,  
That with thy feet and wings dost hop and fly;  
And when thy poppy works, thou dost retire  
To thy carved acorn-bed to lie.

5

Up with the day, the Sun thou welcom'st then,  
Sport'st in the gilt plaits of his beams, 10  
And all these merry days mak'st merry men,  
Thyself, and melancholy streams.

[https://en.wikipedia.org/wiki/Richard\\_Lovelace](https://en.wikipedia.org/wiki/Richard_Lovelace)

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