



Friday, 30 October 2020

Daily Construction A Daily Bulletin listing Decisions of Superior Courts of Australia

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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

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

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

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

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

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](#)

Arcidiacono v The Owners â€“ Strata Plan No 17719; Arcidiacono v The Owners â€“ 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](#)

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](#)

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](#)

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](#)



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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

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