



# HIGH COURT BULLETIN

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High Court of Australia Library  
[2015] HCAB 1 (20 February 2015)

A record of recent High Court of Australia cases: decided, reserved for judgment, awaiting hearing in the Court's original jurisdiction, granted special leave to appeal, refused special leave to appeal and not proceeding or vacated

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## SUMMARY OF NEW ENTRIES

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| <a href="#">Plaintiff S297/2013 v Minister for Immigration and Border Protection &amp; Anor</a> | Migration         |
| <a href="#">Commissioner of the Australian Federal Police v Zhao &amp; Anor</a>                 | Proceeds of Crime |
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| <b>Case</b>   | <b>Title</b>       |
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| <a href="#"><u>CMB v Attorney General for New South Wales</u></a>   | Criminal Law       |
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### 3: Original Jurisdiction

| <b>Case</b>  | <b>Title</b> |
|--|--------------|
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| <b>Case</b>  | <b>Title</b>       |
|--|--------------------|
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| <a href="#"><u>Selig &amp; Selig v Wealthsure Pty Ltd &amp; Ors</u></a>  | Corporations Law   |
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| <a href="#"><u>Firebird Global Master Fund II Ltd v Republic of Nauru &amp; Anor</u></a>                             | Foreign Judgments  |
| <a href="#"><u>Uelese v Minister for Immigration and Border Protection</u></a>                                       | Migration          |
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| <a href="#"><u>Ausnet Transmission Group Pty Ltd v Commissioner of Taxation of the Commonwealth of Australia</u></a> | Taxation           |
| <a href="#"><u>King v Philcox</u></a>  | Tort Law           |

# 1: CASES HANDED DOWN

The following cases were handed down by the High Court of Australia during the February 2015 sittings.

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## Equity

*Lavin & Anor v Toppi & Ors*

[S258/2014](#): [\[2015\] HCA 4](#).

**Judgment Delivered:** 11 February 2015.

**Coram:** French CJ, Kiefel, Bell, Gageler and Keane JJ.

**Catchwords:**

Contribution – Requirement of coordinate liabilities – Where appellants and first and second respondents were co-sureties of guaranteed debt – Where first and second respondents paid creditor disproportionate amount of guaranteed debt – Where creditor gave appellants covenant not to sue – Whether first and second respondents entitled to contribution from appellants – Whether appellants and first and second respondents shared coordinate liabilities despite creditor's covenant not to sue.

Words and phrases – "contribution", "contribution in equity", "coordinate liabilities", "covenant not to sue", "of the same nature and to the same extent".

**Appealed from NSWSC (CA):** [\[2014\] NSWCA 160](#).

**Held:** Appeal dismissed.

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## Migration

*CPCF v Minister for Immigration and Border Protection & Anor*

[S169/2014](#): [\[2015\] HCA 1](#).

**Judgment Delivered:** 28 January 2015.

**Coram:** French CJ, Hayne, Crennan, Kiefel, Bell, Gageler and Keane JJ.

**Catchwords:**

Migration – Refugees – Section 72(4) of Maritime Powers Act 2013 (Cth) authorised maritime officer to detain person for purpose of

taking person to place outside Australia – Plaintiff on board vessel intercepted by Commonwealth officers in Australia's contiguous zone – Plaintiff detained on Commonwealth vessel which sailed to India in implementation of decision of National Security Committee of Cabinet ("NSC") – Where no agreement existed between Australia and India applicable to reception of plaintiff prior to commencement of taking of plaintiff to India – Where maritime officer implemented decision of NSC without independent consideration of whether plaintiff should be taken to India – Whether decision to detain and take plaintiff lawful – Whether power under s 72(4) subject to obligation to afford procedural fairness – Whether power constrained by Australia's international non-refoulement obligations.

Constitutional law (Cth) – Executive power of Commonwealth – Whether Commonwealth has power derived from s 61 of Constitution to authorise maritime officer to detain person for purposes of taking person outside Australia – Whether any such power subject to obligation to afford procedural fairness.

Words and phrases – "detain", "maritime officer", "non-refoulement obligations", "procedural fairness", "reasonable time", "take".

**Held:** Questions answered.

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*Plaintiff S297/2013 v Minister for Immigration and Border Protection & Anor*

**S297/2013:** [\[2015\] HCA 3](#).

**Judgment Delivered:** 11 February 2015.

**Coram:** French CJ, Hayne, Kiefel, Bell, Gageler and Keane JJ.

**Catchwords:**

Migration – Refugees – Protection visas – Power of Minister under Sched 2, cl 866.226 of Migration Regulations 1994 (Cth) to decide application for protection visa if Minister satisfied that grant of visa "is in the national interest" – Whether cl 866.226 invalid – Whether cl 866.226 permitted Minister to refuse to grant protection visa solely on ground that application for visa made by unauthorised maritime arrival.

Administrative law – Judicial review – Mandamus – Return of writ insufficient – Plaintiff sought order issuing peremptory writ of mandamus – Reg 2.08F of Migration Regulations 1994 (Cth) applied where court quashed decision of Minister in relation to application for protection visa and ordered Minister to reconsider application in accordance with law – Whether reg 2.08F applied.

Words and phrases – "is in the national interest", "peremptory mandamus", "unauthorised maritime arrival".

**Held:** Questions answered.

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## Proceeds of Crime

*Commissioner of the Australian Federal Police v Zhao & Anor*  
**[M92/2014](#)**: [\[2015\] HCA 5](#).

**Judgment Delivered:** 12 February 2015.

**Coram:** French CJ, Hayne, Kiefel, Bell and Keane JJ.

**Catchwords:**

Jurisdiction, practice and procedure – Adjudgment, stay of proceedings or order restraining proceedings – Matters connected with conduct of defence – Where respondent charged with offence – Where appellant applied for forfeiture order under s 49 of the Proceeds of Crime Act 2002 (Cth) ("the Act") against property that is proceeds of crime – Whether forfeiture proceedings should be stayed until criminal proceedings are finalised – Whether refusal to stay forfeiture proceedings creates risk of prejudice in criminal proceedings – Whether respondent must state specific matters of prejudice before stay will be granted.

Statutes – Interpretation – Forfeiture of proceeds of crime – Stay of forfeiture proceedings – Where appellant applied for forfeiture order under s 49 of the Act – Where issues in forfeiture proceedings and criminal proceedings are substantially identical – Whether forfeiture proceedings should ordinarily continue.

Words and phrases – "prejudice".

**Appealed from VSC (CA):** [\[2014\] VSCA 137](#).

**Held:** Appeal dismissed.

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## Property Law

*Cassegrain v Gerard Cassegrain & Co Pty Ltd*  
**[S141/2014](#)**: [\[2015\] HCA 2](#).

**Judgement Delivered:** 4 February 2015.

**Coram:** French CJ, Hayne, Bell, Gageler and Keane JJ.

**Catchwords:**

Real property – Torrens system land – Indefeasibility of title – Respondent company transferred property to appellant and appellant's husband ("Claude") – Claude acted fraudulently in purchasing property – Claude later transferred his interest in property to appellant for nominal consideration – Whether fraud brought home to appellant as registered proprietor or to her agent – Whether Claude appellant's agent – Whether appellant's title defeasible because Claude had acted as appellant's agent – Whether appellant's title defeasible because Claude and appellant were registered as joint tenants – Whether appellant's title defeasible because of Claude's fraud pursuant to s 118(1)(d) of Real Property Act 1900 (NSW).

Words and phrases – "agent", "brought home to the person whose registered title is impeached or to his agents", "fraud", "joint proprietor", "joint tenant", "registered as proprietor of the land through fraud", "through".

**Appealed from NSWSC (CA):** [\[2013\] NSWCA 453](#).

**Held:** Appeal allowed in part.

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## 2: CASES RESERVED

The following cases have been reserved or part heard by the High Court of Australia.

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### Administrative Law

*Australian Communications and Media Authority v Today FM (Sydney) Pty Ltd*

[S225/2014](#): [\[2014\] HCATrans 246](#).

**Date heard:** 11 November 2014.

**Coram:** French CJ, Hayne, Kiefel, Bell, Gageler and Keane JJ.

**Catchwords:**

Administrative law – Powers of Australian Communications and Media Authority (“ACMA”) – Respondent held commercial radio broadcasting licence under *Broadcasting Services Act 1992* (Cth) (“BSA”) – Respondent recorded and broadcast conversation for radio segment – ACMA investigated segment under s 170 of BSA – Investigation concerned whether respondent breached licence condition contained in cl 8(1)(g), Sch 2 of BSA which is engaged where offence is committed against another law – ACMA’s preliminary investigation report found that respondent contravened s 11(1) of *Surveillance Devices Act 2007* (NSW) – Whether ACMA can only make administrative finding of commission of offence once conviction is recorded by criminal court – Whether ACMA is required to defer enforcement action until after criminal process has concluded – Whether ACMA is bound conclusively in its administrative findings by the outcome of such criminal process.

Constitutional law – Judicial power – Whether ACMA’s conclusion of breach of licence condition involves exercise of judicial power reserved to Ch III courts.

**Appealed from FCA (FC):** [\[2014\] FCAFC 22](#).

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## Constitutional Law

*Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia & Ors v Queensland Rail & Anor*

**B63/2013:** [\[2015\] HCATrans 6](#) and [\[2015\] HCATrans 7](#).

**Date Heard:** 3 and 4 February 2015.

**Coram:** French CJ, Hayne, Kiefel, Bell, Gageler, Keane, Nettle JJ.

**Catchwords:**

Constitutional law – Commonwealth Constitution, ss 51(xx) and 109 – Employees who are members of ten unions previously employed by Queensland Rail Limited were transferred to Queensland Rail – Queensland Government intended to implement New Generation Rolling Stock project (“NGR project”) – Unions informed Queensland Rail of their concerns for potential impact of NGR project and sought discussions pursuant to cl 22 of Rollingstock Agreement – Queensland Rail did not consider itself bound by *Fair Work Act 2009* (Cth) (“FW Act”) but instead bound by *Industrial Relations Act 1999* (Qld) (“IR Act”) and by reason of s 691C of IR Act, considered Rollingstock Agreement of no effect – Unions informed Queensland Rail of desire to pursue negotiations for new enterprise agreement to replace Traincrew Agreement in accordance with FW Act – New enterprise agreement certified pursuant to IR Act – Whether Queensland Rail is corporation within meaning of s 51(xx) of Constitution – Whether Queensland Rail is trading corporation within meaning of s 51(xx) of Constitution – Whether FW Act applies to Queensland Rail and its employees by operation of s 109 of Constitution to exclusion of *Queensland Rail Transit Authority Act 2013* (Qld) or IR Act or both.

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*Queensland Nickel Pty Limited v Commonwealth of Australia*

**B25/2013:** [\[2015\] HCATrans 8](#).

**Date Heard:** 5 February 2015.

**Coram:** French CJ, Hayne, Kiefel, Bell, Gageler, Keane, Nettle JJ.

**Catchwords:**

Constitutional law – Preference between States – Commonwealth Constitution, s 99 – *Clean Energy Act 2011* (Cth) (“Act”) – *Clean Energy Regulations 2011* (Cth) (“Regulations”) – Plaintiff operates nickel and cobalt refinery in Queensland and was “liable entity” for

purposes of s 20(3) of Act – Despite repeal of Act, its operation was preserved insofar as it related to liability of liable entities to pay unit shortfall charges for years beginning on 1 July 2012 and 1 July 2013 by items 323(1) and 324(3) of Schedule 1, Part 3 of *Clean Energy Legislation (Carbon Tax Repeal) Act 2014* (Cth) – In carrying out operational activities, there are differences with respect to level of covered emissions per unit of production produced by plaintiff and other similar refineries in Western Australia – Whether Divisions 48 of Part 3 of Schedule 1 to Regulations invalid in its application to plaintiff on ground that it gave preference to one State over another contrary to s 99 of Constitution – Whether impugned provisions should be read down so as to avoid contravening s 99 of Constitution – Whether, upon their proper construction, impugned provisions imposed upon plaintiff any liability for any “unit shortfall charge” in respect of production of nickel.

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*Duncan v The State of New South Wales; NuCoal Resources Ltd v State of New South Wales; Cascade Coal Pty Ltd & Ors v The State of New South Wales*

[S119/2014](#); [S138/2014](#); [S206/2014](#): [\[2015\] HCATrans 9](#) and [\[2015\] HCATrans 11](#).

**Date Heard:** 10 and 11 February 2015.

**Coram:** French CJ, Hayne, Kiefel, Bell, Gageler, Keane, Nettle JJ.

**Catchwords:**

Constitutional law – Chapter III – Judicial power – Independent Commission Against Corruption (ICAC) commenced public inquiry styled “Operation Acacia” investigating the application and allocation of mining lease – ICAC commenced second public inquiry styled “Operation Jasper” investigating, amongst other things, decision of Minister for Mineral Resources to open mining area for coal exploration and award mining licences – Both inquiries produced reports which recommended Parliament pass special legislation to expunge or cancel authorities granted under *Mining Act 1992* (NSW) (“Mining Act”) – *Mining Amendment (Operations Jasper and Acacia) Act 2014* (NSW) inserted Sch 6A into Mining Act – Whether cl 1 to 13 of Sch 6A of Act are invalid because they constitute exercise of judicial power and Parliament of NSW may not exercise judicial power.

Constitutional law – Commonwealth Constitution, s 109 – Inconsistency between Commonwealth law and State law – Cl 11 of Sch 6A of Mining Act authorises appropriate official to publish or reproduce literary or artistic works in which plaintiffs hold copyright –

Whether cl 11 of Sch 6A of Mining Act inconsistent with *Copyright Act 1968* (Cth).

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See also [Administrative Law](#): *Australian Communications and Media Authority v Today FM (Sydney) Pty Ltd*

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## Corporations

*Grant Samuel Corporate Finance Pty Limited v William John Fletcher and Katherine Elizabeth Barnet as Liquidators of Octaviar Limited (Receivers and Managers Appointed) (In Liquidation) & Ors; JP Morgan Chase Bank National Association & Anor v William John Fletcher and Katherine Elizabeth Barnet as Liquidators of Octaviar Limited (Receivers and Managers Appointed) (In Liquidation) & Ors*  
[S228/2014](#): [\[2014\] HCATrans 248](#).

**Date heard:** 12 November 2014.

**Coram:** French CJ, Hayne, Kiefel, Bell, Gageler and Keane JJ.

### Catchwords:

Corporations – Insolvency – Voidable transactions – *Corporations Act 2001* (Cth) (“Act”), s 588FF(3) – Under s 588FF(3)(b), court made order extending time for first respondent to bring proceedings under s 588(1) of Act against second respondent – After expiry of period within which any application under 588FF(3)(b) was able to be made, further court order was made under r 36.16(2)(b) of *Uniform Civil Procedure Rules 2005* (NSW) (“UCPR”) varying original extension order – Effect of variation order was to extend period within which any s 588(1) application had to be brought by further six months – Whether r 36.16(2)(b) of UCPR permits further extension of three year period specified in s 588FF(3)(a) of Act by order varying earlier valid extension in circumstances where the application for such variation is made on a date after the expiry of original three year period.

**Appealed from NSWSC (CA):** [\[2014\] NSWCA 31](#).

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*Fortress Credit Corporation (Australia) II & Anor v William John Fletcher and Katherine Elizabeth Barnet as Liquidators of Octaviar Limited (Receivers and Managers Appointed) (In Liquidation) and Octaviar Administration Pty Ltd & Ors*

[S276/2014](#): [\[2014\] HCATrans 279](#).

**Date heard:** 11 December 2014.

**Coram:** French CJ, Hayne, Kiefel, Gageler and Keane JJ.

**Catchwords:**

Corporations – Insolvency – Voidable transactions – Extension of time – *Corporations Act 2001* (Cth) (“Act”) – First respondents were appointed liquidators of second and third respondents – Liquidators granted extension under s 588FF(3)(b) to make applications under s 588FF(1) (“shelf order”) – Liquidators brought proceedings seeking relief under s 588FF(1) against appellants with respect to certain transactions between appellants and second and third respondents – Liquidators sought to have shelf order reheard as against appellants and varied so extension of time for bringing claims applied to appellants – Appellants sought to have themselves excluded from operation of shelf order – Whether Court had power under s 588FF(3)(b) of Act to make order extending time for liquidator to make application under s 588FF(1), by reference to, or capable of comprehending, transactions that are neither known nor identified as possible subject of an application under s 588FF(1).

**Appealed from NSWSC (CA):** [\[2014\] NSWCA 148](#).

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## Criminal Law

*CMB v Attorney General for New South Wales*

[S257/2014](#): [\[2014\] HCATrans 275](#).

**Date heard:** 5 December 2014.

**Coram:** French CJ, Kiefel, Bell, Gageler and Keane JJ.

**Catchwords:**

Criminal law – Sentencing – Appeal against sentence – *Criminal Appeal Act 1912* (NSW) (“CAA”), s 5D – *Crimes (Sentencing Procedure) Act 1999* (NSW) (“CSPA”), s 23 – Appellant sexually assaulted daughter and charged – Director of Public Prosecutions (DPP) successfully applied to have charges remitted to Local Court for referral to pre-trial diversion program – During program appellant

revealed other offences committed against daughter – Appellant charged with further counts of aggravated sexual and indecent assault – At hearing appellant pleaded guilty to four counts of aggravated sexual assault and one count of aggravated indecent assault – Appellant sentenced to good behaviour bonds with requirement that appellant complete program – Attorney-General for New South Wales filed notice of appeal pursuant to s 5D of CAA – Court of Criminal Appeal allowed appeal and re-sentenced appellant to five years and six months' imprisonment – Whether Court of Criminal Appeal erred in not exercising its residual discretion to decline to interfere under s 5D of CAA - Whether Court of Criminal Appeal erred in holding that the onus lay upon appellant contrary to authority and limited purpose of Crown appeals – Whether Court of Criminal Appeal erred in its application of both s 23 of CSPA and principle in *R v Ellis* in determining what leniency should be afforded to appellant.

**Appealed from NSWSC (CCA):** [\[2014\] NSWCCA 5](#).

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## Equity

*Korda & Ors v Australian Executor Trustees (SA) Limited*  
**M82/2014:** [\[2014\] HCATrans 244](#).

**Date heard:** 6 November 2014.

**Coram:** French CJ, Hayne, Kiefel, Gageler and Keane JJ.

**Catchwords:**

Equity – Trusts – Investment scheme – Investors invited to invest in timber plantation – Different operating companies undertook cultivation, milling and sale of timber – According to Trust Deed, trustee was to hold proceeds of timber sales for investors – Operating companies were liquidated before sale proceeds were paid to trustee – Whether commercial necessity mandated imputation of unstated trust over timber proceeds before payment to trustee.

**Appealed from VSC (CA):** [\[2014\] VSCA 65](#).

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## Native Title

*State of Queensland v Congoo & Ors*

**B39/2014:** [\[2014\] HCATrans 271](#); [\[2014\] HCATrans 273](#).

**Date heard:** 2 and 3 December 2014.

**Coram:** French CJ, Hayne, Kiefel, Bell, Gageler and Keane JJ.

**Catchwords:**

Native title – Extinguishment – *National Security Act 1939* (Cth) (“NSA”), s 5(1) – *National Security (General) Regulations*, reg 54 – NSA enacted shortly after Australia’s entry into World War II authorising Governor-General to make regulations for securing public safety and defence of Commonwealth – Between 1943 and 1945 five orders were made under reg 54 over land over which native title determination sought – Whether orders made under reg 54 have effect of extinguishing all native title rights and interests on land – Whether reg 54 enabled Commonwealth to take possession of land simply by making orders purporting to take possession of land.

**Appealed from FCA (FC):** [\[2014\] FCAFC 9](#).

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## 3: ORIGINAL JURISDICTION

The following cases are ready for hearing in the original jurisdiction of the High Court of Australia.

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### Constitutional Law

See also [Native Title](#): *Quandamooka Yoolooburrabee Aboriginal Corporation RNTBC v State of Queensland*

See also [Statutes](#): *McCloy & Ors v State of New South Wales & Anor*

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### Native Title

*Quandamooka Yoolooburrabee Aboriginal Corporation RNTBC v State of Queensland*

[B26/2014](#): *Special case.*

#### Catchwords:

Native title – Indigenous Land Use Agreement (“ILUA”) – *North Stradbroke Island Protection and Sustainability Act 2011* (Qld) (“Principal Act”) – *North Stradbroke Island Protection and Sustainability and Another Act Amendment Act 2013* (Qld) (“Amendment Act”) – Amendment Act allowed for renewal of four mining leases for periods longer than those provided in Principal Act – Amendment Act replaced environmental authority provisions in Principal Act with new s 17 which no longer applied conditions to two mining leases – ILUA registered as area agreement under ss 24CA to 24CL of *Native Title Act 1993* (Cth) (“NTA”) – Whether ILUA binds defendant not to enact ss 9 and 12 of Amendment Act.

Constitutional law – Inconsistency – Commonwealth Constitution, s 109 – Whether Amendment Act is invalid under s 109 of Constitution by reason of inconsistency between Amendment Act and ss 24EA and 87 of NTA.

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### Statutes

*McCloy & Ors v State of New South Wales & Anor*

[S211/2014](#): *Special case.*

**Catchwords:**

Statutes – Acts of Parliament – Validity of legislation – *Election Funding Expenditure and Disclosure Act 1981* (NSW) – Where the first plaintiff was subjected to compulsory examination pursuant to s 30 of the *Independent Commissioner Against Corruption Act 1988* (NSW) by the second defendant concerning the circumstances of a donation made for the benefit of persons including a candidate in connection with the 2011 New South Wales election in breach of the *Funding Expenditure and Disclosure Act 1981* (NSW) - Where the plaintiffs claim the provisions that they purportedly breached, Divs 2A and 4A of Pt 6, and s 96E in Div 4 of Pt 6 of the Act infringe the implied freedom of communication regarding political or governmental matters.

Constitutional Law – Operation and Effect of Commonwealth Constitution – Restrictions on Commonwealth and State Legislation – Rights and freedoms implied in Commonwealth Constitution – Freedom of Political Communication – Whether Divs 2A and 4A of Pt 6, and s 96E in Div 4 of Pt 6 of the *Funding Expenditure and Disclosure Act 1981* (NSW) infringe the implied freedom of communication regarding political or governmental matters.

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## 4: SPECIAL LEAVE GRANTED

The following cases have been granted special leave to appeal to the High Court of Australia.

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### Administrative Law

*Isbester v Knox City Council*  
M106/2014: [\[2015\] HCATrans 25](#).

**Date Heard:** 13 February 2015 – *Special leave granted*.

**Catchwords:**

Administrative law – Procedural Fairness – Where respondent's delegate ordered pursuant to s 84P of the *Domestic Animals Act 1994* (Vic) (Act) for the destruction of appellant's dog due to an incident the year before in which the appellant's dog bit a person – Where appellant plead guilty to offences under the Act relating to that incident – Where appellant claimed that she was not afforded procedural fairness at the hearing to determine whether appellant's dog should be destroyed – Where appellant claims that there was apprehended bias because one of the panel members had previously been an accuser in appellant's criminal prosecution for the same incident – Whether the Victorian Court of Appeal erred in failing to find that the decision was affected by apprehended bias.

Animals – Various statutory provisions – Regulation of Companion animals – seizure and destruction.

**Appealed from VSC (CA):** [\[2014\] VSCA 214](#)

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### Animals

See also [Administrative Law](#): *Isbester v Knox City Council*

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### Corporations

*Selig & Selig v Wealthsure Pty Ltd & Ors*  
A11/2014: [\[2014\] HCATrans 251](#).

**Date heard:** 14 November 2014 – *Special leave granted on limited grounds.*

**Catchwords:**

Corporations – Provision of financial advice – Contravention of *Corporations Act 2001* (Cth) (Act) – First and second respondents were appellants' financial advisors - First and second respondents recommended financial product and provided appellants with disclosure document that did not comply with s 953A of Act – Financial product was insolvent and appellants lost their investment – First and second respondents argued that loss was apportionable and that promoters of financial product should bear majority of claim – Whether claim for damages for misleading financial advice pursuant to ss 769C, 945A, 945B and/or 1041E of Act apportionable under ss 1041H-1041S of Act – Whether claims should be reduced by reference to contributory conduct under s 1041I(1B) of Act.

**Appealed from FCA (FC):** [\[2014\] FCAFC 64](#).

**Listed:** 12 March 2015.

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## Criminal Law

*Lindsay v The Queen*

[A24/2014](#): [\[2014\] HCATrans 252](#).

**Date heard:** 14 November 2014 – *Special leave granted.*

**Catchwords:**

Criminal law – Defences – Provocation – Appellant convicted of murder – Circumstances of offence included two incidents where victim had made homosexual advances – Court of Criminal Appeal found errors in directions of trial judge as to provocation – Court of Criminal Appeal applied proviso without positive submission by prosecution and held that partial defence of provocation should not have been left to jury – Court of Criminal Appeal relied on academic literature on contemporary attitudes to homosexual behaviour to support conclusion – Whether appropriate for Court of Criminal Appeal to initiate consideration of and then apply proviso – Whether academic literature is relevant in consideration of objective limb of provocation – Whether it is permissible for Court of Criminal Appeal to rely on academic literature without affording parties opportunity to make submissions.

**Appealed from SASC (CCA):** [\[2014\] SASCF 56](#).

**Listed:** 11 March 2015.

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## Estoppel

*Tomlinson v Ramsey Food Processing Pty Limited*  
**S7/2015:** [\[2014\] HCATrans 284](#).

**Date heard:** 12 December 2014 – *Special leave granted*.

### Catchwords:

Estoppel – Issue estoppel – Appellant was employee at abattoir owned by respondent – Appellant was injured as result of respondent’s negligence – Appellant and others complained to Fair Work Ombudsman about abattoir’s failure to pay all wage entitlements – Fair Work Ombudsman brought proceedings in its name against respondent – Appellant separately commenced proceedings claiming damages against respondent for personal injury under *Civil Liability Act 2002* (NSW) – Appellant argued in proceedings that abattoir was relevant employer – Respondent pleaded by way of defence that appellant was issue estopped by reason of earlier proceedings on the issue of employee/employer such that respondent was appellant’s relevant employer – Whether Fair Work Ombudsman was privy of appellant employee in earlier proceedings – Whether appellant was issue estopped by earlier decision made in proceedings commenced by Fair Work Ombudsman to which appellant was not party.

**Appealed from NSWSC (CA):** [\[2014\] NSWCA 237](#).

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## Foreign Judgments

*Firebird Global Master Fund II Ltd v Republic of Nauru & Anor*  
**S274/2014:** [\[2015\] HCATrans 15](#)

**Date heard:** 13 February 2015 - *Special leave granted*.

### Catchwords:

Recognition, effect and enforcement of foreign judgments – enforcement of foreign judgments – Foreign States immunity –

Where appellant is the holder of bonds issued by an entity which was guaranteed by the government of Nauru – where the bond issuer and guarantor defaulted – Where appellant recovered a judgment in Japan equivalent to 31 million Australian dollars – Whether s 9 of the *Foreign States Immunities Act 1985* (Cth) renders first respondent immune to an application to the Court for an order for the registration of the foreign judgment under s 6 of the *Foreign Judgments Act 1991* (Cth).

**Appealed from NSWSC (CA):** [\[2014\] NSWCA 360](#).

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## Migration

*Uelese v Minister for Immigration and Border Protection*  
**S277/2014:** [\[2014\] HCATrans 239](#).

**Date heard:** 17 October 2014 – *Special leave granted*.

### Catchwords:

Migration – Application of s 500(6H) of *Migration Act 1958* (Cth) (“Act”) – Appellant’s visa was cancelled – In deciding whether to affirm Minister’s decision, Administrative Affairs Tribunal (AAT) was required to take into account best interests of minor children in Australia – AAT declined to consider or make determination as to best interests of two of appellant’s children – Information as to those children was not adduced by appellant but was apparent from documents tendered by first respondent – Whether Full Court erred in failing to find jurisdictional error in decision of AAT holding that s 500(6H) of Act prohibited AAT from having regard to information concerning two of appellant’s children unless appellant had set out information in written statement to first respondent at least two days before hearing – Whether Full Court erred in failing to find jurisdictional error in AAT holding that date upon which AAT “holds a hearing” for purposes of ss 500(6H) and 500(6I) of Act is first day of any such hearing, and does not include date upon which adjourned hearing is resumed.

**Appealed from FCA (FC):** [\[2013\] FCAFC 86](#).

**Listed:** 6 March 2015.

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*Minister for Immigration and Border Protection v WZAPN & Anor*  
**S99/2014:** [\[2015\] HCATrans 26](#).

**Date heard:** 13 February 2015 – *Special leave granted.*

**Catchwords:**

Migration – Refugee and humanitarian visas – Definition of refugee – Fear of Persecution – Serious Harm – Whether under s 91R of the *Migration Act 1958* (Cth) a refugee claimant will suffer “serious harm” if detained for a reason mentioned in the *Convention Relating to the Status of Refugees 1951* as amended by the *Protocol Relating to the Status of Refugees 1967* without any need to assess the severity of that detention - Where the respondent is a stateless Faili Kurd – Where respondent claimed a fear of persecution if he was returned to Iran due to his Kurdish ethnicity and stateless personhood – Where the refugee status assessment officer concluded that the applicant was not a refugee within the meaning of the Convention – Where the officer found that whilst respondent would face arbitrary questioning and detention due to his lack of documentation this did not amount to a serious harm within the meaning of the *Migration Act 1958* (Cth) – Federal Court found that the assessment officer had erred by undertaking a qualitative assessment of the detention that was likely to occur if respondent was returned to Iran – Whether a qualitative assessment of the seriousness of the harm suffered by the respondent was required pursuant to s 91R of the *Migration Act 1958* (Cth).

**Appealed from FCA:** [\[2014\] FCA 947](#).

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## Patents

*D’Arcy v Myriad Genetics & Anor*

S25/2014: [\[2015\] HCATrans 12](#).

**Date Heard:** 13 February 2015 – *Special leave granted.*

**Catchwords:**

Intellectual Property – Patents – Requirements for a valid patent – Human beings and their biological processes – s 18(1)(a) of the *Patents Act 1990* (Cth) – Where appellant submitted that the Full Court of the Federal Court erred in holding that each of claims 1 -3 of Australian Patent No 686004 claimed a patentable invention being a manner of manufacture – Australian Patent No 686004 is described as the identification of “a human breast and ovarian cancer disposing gene (BRCA1)” – Whether claims 1 – 3, which relate to isolated nucleic acid, are claims for a manner of

manufacture for the purposes of s 18(1)(a) of the *Patents Act 1990* (Cth).

**Appealed from FCA(FC):** [\[2014\] FCAFC 115](#).

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## Procedure

*Construction, Forestry, Mining and Energy Union v Boral Resources (Vic) Pty Ltd & Ors*

**M117/2014:** [\[2015\] HCATrans 23](#).

**Date heard:** 13 February 2015 – *Special leave granted*.

### Catchwords:

Procedure – Contempt – Disobedience of Court Orders – Where first to sixth respondents sought orders in the Supreme Court of Victoria that appellant be punished for contempt of Court constituted by alleged disobedience in relation to orders made by the Supreme Court of Victoria on 5 April 2013 – Where first to sixth respondents obtained orders requiring the appellant to make discovery of documents in accordance with r 29.07 of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic) for the purpose of proving appellant's liability – Whether the Victorian Court of Appeal erred by refusing leave to appeal against the decision to order discovery because of the criminal nature of contempt proceedings – Whether a plaintiff in contempt proceedings can invoke court processes to compel the production of documents by a corporate defendant.

**Appealed from VSCA:** [\[2014\] VSCA 261](#).

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## Statutes

*Independent Commission Against Corruption v Cunneen & Ors*

**S302/2014:** [\[2014\] HCATrans 296](#).

**Date heard:** 12 December 2014 – *Referred to Full Court*.

### Catchwords:

Statutes – Interpretation – *Independent Commission Against Corruption Act 1988* (NSW) ("Act"), ss 8(2) and 13(1) – Respondents were summoned to public inquiry by applicant regarding allegations

that first and second respondents had intended to pervert course of justice – Respondents challenged inquiry on basis that allegations could not constitute “corrupt conduct” under Act – Whether allegation amounting to perverting the course of justice could also amount to conduct that “adversely affects, or could adversely affect... the exercise of official functions by any public official” within meaning of s 8(2) of Act – Whether allegation capable of being investigated by applicant.

**Appealed from NSWSC (CA):** [\[2014\] NSWCA 421](#).

**Listed:** 4 and 5 March 2015.

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## Taxation

*Ausnet Transmission Group Pty Ltd v Commissioner of Taxation of the Commonwealth of Australia*

**M35/2014:** [\[2014\] HCATrans 288](#).

**Date heard:** 12 December 2014 – *Special leave granted*.

**Catchwords:**

Taxation – Income Tax – *Income Tax Assessment Act 1997* (Cth) (“ITAA”) – Appellant paid three imposts to State of Victoria under s 163AA(1) of *Electricity Industry Act 1993* (Vic) on purchase of transmission licence – Whether three imposts deductible pursuant to s 8-1 of ITAA – Whether observations of Fullagar J in *Colonial Mutual Life Assurance Society Ltd v Federal Commissioner of Taxation* were qualified by Court’s decision in *Cliffs International Inc v FCT* – Whether practical and business advantage secured by payment of compulsory exaction to State can be capital in nature.

**Appealed from FCA (FC):** [\[2014\] FCAFC 36](#).

**Note:** *Ausnet Transmission Group Pty Ltd* formallyly *SPI Powernet Pty Ltd*.

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## Tort Law

*King v Philcox*

**A26/2014:** [\[2014\] HCATrans 253](#).

**Date heard:** 14 November 2014 – *Special leave granted*.

**Catchwords:**

Tort law – Negligence – Duty of care – Mental harm – Respondent’s brother (victim) was passenger in car driven by appellant which was involved in collision killing victim – Respondent drove past the accident scene five times, each time unaware that victim was his brother – Respondent later developed psychiatric illness upon realising scene of accident was where victim died – Whether appellant owes duty of care to sibling of victim to avoid causing mental harm caused by learning about death of victim in motor accident – Whether existence of duty of care determined solely by reference to s 33(1), *Civil Liability Act 1936* (SA) (“CLA”) – Whether respondent’s psychiatric illness reasonably foreseeable – Whether respondent was “present at the scene of the accident when the accident occurred” as required by s 51(1)(a) of CLA.

**Appealed from SASC (FC):** [\[2014\] SASCF 38](#).

**Listed:** 10 March 2015.

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# **5: CASES NOT PROCEEDING OR VACATED**

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## 6: SPECIAL LEAVE REFUSED

### 13 February 2015 (Melbourne)

| <i>No.</i> | <i>Applicant</i>                                | <i>Respondent</i>  | <i>Court appealed from</i>                                  | <i>Result</i>  |
|------------|---|--|---|--|
| 1.         | Glascott  | The Queen (M49/2014)                                     | Supreme Court of Victoria (Court of Appeal) [2011] VSCA 109 | Application dismissed<br><a href="#">[2015] HCATrans 22</a>            |
| 2.         | Tatts Group Limited                             | The Treasurer of Victoria (M67/2014)                     | Supreme Court of Victoria (Court of Appeal) [2014] VSCA 143 | Application dismissed with costs<br><a href="#">[2015] HCATrans 27</a> |
| 3.         | Tabcorp Holding Limited                         | The Treasurer of Victoria (M68/2014)                     | Supreme Court of Victoria (Court of Appeal) [2014] VSCA 143 | Application dismissed with costs<br><a href="#">[2015] HCATrans 27</a> |
| 4.         | Cromwell Property Securities Limited            | Financial Ombudsman Service Limited & Ors (M94/2014)     | Supreme Court of Victoria (Court of Appeal) [2014] VSCA 179 | Application dismissed with costs<br><a href="#">[2015] HCATrans 24</a> |
| 5.         | Papazoglou                                      | The Queen (M98/2014)                                     | Supreme Court of Victoria (Court of Appeal) [2014] VSCA 194 | Application dismissed<br><a href="#">[2015] HCATrans 30</a>            |
| 6.         | Texxcon Pty Ltd                                 | Porz & Anor (M102/2014)                                  | Supreme Court of Victoria (Court of Appeal) [2014] VSCA 199 | Application dismissed with costs<br><a href="#">[2015] HCATrans 21</a> |
| 7.         | Texxcon Pty Ltd                                 | Wieland & Anor (M103/2014)                               | Supreme Court of Victoria (Court of Appeal) [2014] VSCA 199 | Application dismissed with costs<br><a href="#">[2015] HCATrans 21</a> |
| 8.         | Nominex Pty Ltd & Anor                          | Wieland & Ors (M104/2014)                                | Supreme Court of Victoria (Court of Appeal) [2014] VSCA 199 | Application dismissed with costs<br><a href="#">[2015] HCATrans 21</a> |
| 9.         | JRW   | The Queen (M111/2014)                                    | Supreme Court of Victoria (Court of Appeal) [2014] VSCA 255 | Application dismissed<br><a href="#">[2015] HCATrans 29</a>            |
| 10.        | Construction, Forestry, Mining and Energy Union | Grocon Constructors (Victoria) Pty Ltd & Ors (M118/2014) | Supreme Court of Victoria (Court of Appeal) [2014] VSCA 261 | Application dismissed with costs<br><a href="#">[2015] HCATrans 24</a> |

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## 13 February 2015 (Sydney)

| <i>No.</i> | <i>Applicant</i>     | <i>Respondent</i>   | <i>Court appealed from</i>  | <i>Result</i>  |
|------------|----------------------|---|---|--|
| 1.         | Wildsmith            | The Queen<br>(S226/2014)  | Supreme Court of New South Wales (Court of Criminal Appeal) [2012] NSWCCA 116 | Application dismissed<br><a href="#">[2015] HCATrans 18</a>            |
| 2.         | Hunter               | Hanson<br>(S243/2014)   | Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA 263           | Application dismissed with costs<br><a href="#">[2015] HCATrans 16</a> |
| 3.         | Jaffarie             | Director General of Security & Ors<br>(S251/2014)   | Full Court of the Federal Court of Australia [2014] FCAFC 102                 | Application dismissed with costs<br><a href="#">[2015] HCATrans 13</a> |
| 4.         | SZSWB                | Minister for Immigration and Border Protection & Anor<br>(S255/2014)  | Full Court of the Federal Court of Australia [2014] FCAFC 106                 | Application dismissed with costs<br><a href="#">[2015] HCATrans 17</a> |
| 5.         | Harden Shire Council | John Curtis on behalf of himself and Jasmine Patterson, Jacob Patterson, Angus Curtis and Emily Curtin<br>(S263/2014) | Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA 314           | Application dismissed with costs<br><a href="#">[2015] HCATrans 14</a> |
| 6.         | Harden Shire Council | Curtis<br>(S264/2014)   | Supreme Court of New South Wales (Court of Appeal) [2014] NSWCA 314           | Application dismissed with costs<br><a href="#">[2015] HCATrans 14</a> |
| 7.         | Stoeski              | The Queen<br>(S280/2014)  | Supreme Court of New South Wales (Court of Criminal Appeal) [2014] NSWCCA 161 | Application dismissed<br><a href="#">[2015] HCATrans 19</a>            |

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