



# HIGH COURT BULLETIN

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High Court of Australia Library  
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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

### 1: Cases Handed Down

Case	Title
<a href="#"><i>Cunningham &amp; Ors v Commonwealth of Australia &amp; Anor</i></a>	Constitutional Law
<a href="#"><i>Lyons v State of Queensland</i></a>	Discrimination Law
<a href="#"><i>Ainsworth &amp; Ors v Albrecht &amp; Anor</i></a>	Real Property
<a href="#"><i>Prince Alfred College Incorporated v ADC</i></a>	Torts

### 2: Cases Reserved

Case	Title
<a href="#"><i>Southern Han Breakfast Point Pty Ltd (In Liquidation) v Lewence Construction Pty Ltd &amp; Ors</i></a>	Administrative Law
<a href="#"><i>The Queen v Kilic</i></a>	Criminal Law

<a href="#"><i>New South Wales Aboriginal Land Council v Minister Administering the Crown Lands Act</i></a>	Land
<a href="#"><i>Commissioner of State Revenue v ACN 005 057 349 Pty Ltd</i></a>	Taxation
<a href="#"><i>Elecnet (Aust) Pty Ltd (as Trustee for the Electrical Industry Severance Scheme) v Commissioner of Taxation of the Commonwealth of Australia</i></a>	Taxation

### 3: Original Jurisdiction

<b>Case</b>	<b>Title</b>
<a href="#"><i>Palmer v Marcus William Ayres, Stephen James Parbery and Michael Andrew Owen in their capacities as liquidators of Queensland Nickel Pty Ltd (in liq) &amp; Ors</i></a>	Constitutional Law
<a href="#"><i>Ferguson v Marcus William Ayres, Stephen James Parbery and Michael Andrew Owen in their capacities as liquidators of Queensland Nickel Pty Ltd (in liq)</i></a>	Constitutional Law

### 4: Special Leave Granted

<b>Case</b>	<b>Title</b>
<a href="#"><i>Air New Zealand Ltd v Australian Competition and Consumer Commission</i></a>	Competition Law
<a href="#"><i>PT Garuda Indonesia Ltd v Australian Competition and Consumer Commission</i></a>	Competition Law
<a href="#"><i>Rizeq v State of Western Australia</i></a>	Constitutional Law
<a href="#"><i>Ecosse Property Holdings Pty Ltd v Gee Dee Nominees Pty Ltd</i></a>	Contract
<a href="#"><i>Van Ryn v The Queen</i></a>	Criminal Law
<a href="#"><i>The Queen v Afford</i></a>	Criminal Law
<a href="#"><i>Smith v The Queen</i></a>	Criminal Law
<a href="#"><i>Bondelmonte v Bondelmonte &amp; Anor</i></a>	Family Law

## 5: Cases Not Proceeding or Vacated

<b>Case</b>	<b>Title</b>
<a href="#"><u><i>Plaintiff S61/2016 v Minister for Immigration and Border Protection</i></u></a>	Constitutional Law

# 1: CASES HANDED DOWN

The following cases were handed down by the High Court of Australia during the August 2016 sittings.

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## Constitutional Law

*Cunningham & Ors v Commonwealth of Australia & Anor*  
**S140/2015:** [\[2016\] HCA 39](#)

**Judgement delivered:** 12 October 2016

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

### Catchwords:

Constitutional law (Cth) – Legislative power – Acquisition of property on just terms – Where amendments to Parliamentary Contributory Superannuation Act 1948 (Cth) and Remuneration Tribunal Act 1973 (Cth) and Determinations by Remuneration Tribunal modified method by which allowances paid to retired members of Parliament calculated – Where enactment of and subsequent amendment to Members of Parliament (Life Gold Pass) Act 2002 (Cth) modified entitlement conferred on retired members of Parliament to payment of travel expenses – Whether amendments and Determinations constitute or authorise acquisition of property otherwise than on just terms within meaning of s 51(xxxi) of Constitution.

Words and phrases – "acquisition of property", "inherently defeasible", "inherently liable to variation", "just terms", "Life Gold Pass", "parliamentary allowance", "property", "retiring allowance", "subject to this Act", "until the Parliament otherwise provides".

Constitution – ss 48, 51(xxxi), 51(xxxvi), 66.

Members of Parliament (Life Gold Pass) Act 2002 (Cth) – s 11(2).

Members of Parliament (Life Gold Pass) and Other Legislation Amendment Act 2012 (Cth) – s 3.

Parliamentary Contributory Superannuation Act 1948 (Cth) – ss 18, 22T.

Remuneration and Other Legislation Amendment Act 2011 (Cth) – s 3.

Remuneration Tribunal Act 1973 (Cth) – ss 7(1A), 7(1B), 7(1C), 7(2A).

**Held:** Questions answered.

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## Discrimination Law

*Lyons v State of Queensland*

**B16/2016:** [\[2016\] HCA 38](#)

**Judgment delivered:** 5 October 2016

**Coram:** French CJ, Bell, Gageler, Keane and Nettle JJ

**Catchwords:**

Discrimination law – Disability discrimination – Where deaf person summoned for jury service – Where deaf person required assistance of Auslan interpreters to participate as juror – Where deaf person excluded from jury panel – Whether exclusion was unlawful discrimination.

Juries – Persons constituting jury – Jury deliberations – Whether permissible for interpreter to be present in jury room during deliberations – Whether deaf person who requires assistance of interpreter in jury room eligible for jury service under Jury Act 1995 (Q).

Words and phrases – "deaf person", "direct discrimination", "functions of a juror", "indirect discrimination", "jury deliberations", "jury service", "separation of the jury".

Anti-Discrimination Act 1991 (Q), ss 10, 11, 101.

Jury Act 1995 (Q) – ss 4(3), 54, 70.

**Appealed from QSC (CA):** [\[2015\] QCA 159](#).

**Held:** Appeal dismissed.

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## Real Property

*Ainsworth & Ors v Albrecht & Anor*

**B37/2016:** [\[2016\] HCA 40](#)

**Judgment delivered:** 12 October 2016

**Coram:** French CJ, Bell, Keane, Nettle & Gordon JJ

**Catchwords:**

Real property – Community titles scheme – Use of common property – Body Corporate and Community Management Act 1997 (Q) – Dispute between owners of lots in community titles scheme – Where one lot owner sought to use common property airspace to expand balconies – Where proposal put to body corporate for alteration of rights of lot owners to allow lot owner exclusive use of common property – Where proposal required resolution without dissent – Where motion defeated – Where proponent applied for dispute resolution – Where adjudicator concluded that opposition by other lot owners to proposal unreasonable – Whether adjudicator erred in approach to decision – Whether grounds for opposition to motion by individual lot owners unreasonable – Whether necessary to balance competing interests.

Words and phrases – "adjudicator", "body corporate", "common property", "original design intent", "resolution without dissent", "unreasonable in the circumstances".

Body Corporate and Community Management Act 1997 (Q) – ss 94(2), 276, Sched 5, Item 10.

**Appealed from QSC (CA):** [\[2015\] QCA 220](#)

**Held:** Appeal allowed with costs.

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## Torts

*Prince Alfred College Incorporated v ADC*

**A20/2016:** [\[2016\] HCA 37](#)

**Judgment delivered:** 5 October 2016

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

**Catchwords:**

Limitation of actions – Extension or postponement of limitation periods – Extension of time in personal injury matters – Principles upon which discretion exercised – Where extraordinary delay – Where deficiencies in evidence due to passage of time – Where absence or death of witnesses – Where loss of documentary evidence – Where earlier decision by claimant not to institute proceedings – Whether just in all the circumstances to grant extension of time.

Tort – Vicarious liability – Course of employment – Where boarding school employed housemaster – Where housemaster sexually abused boarder – Consideration of correct approach to vicarious liability of employer for intentional criminal acts of employee – Whether employment gave "occasion" for wrongdoing – Whether employee placed in special position vis-à-vis victim – Whether features of special position warrant finding of liability.

Procedure – Courts and judges generally – Determination of issues – Whether appropriate for trial judge to determine all litigated issues.

Words and phrases – "authority", "close connection", "control", "course or scope of employment", "extension of time", "extraordinary delay", "fair and just", "intimacy", "occasion", "opportunity", "power", "special features", "special position", "trust", "vicarious liability".

Limitation of Actions Act 1936 (SA) – s 48

**Appeal from SASC (FC):** [\[2015\] SASCF 161](#)

**Held:** Appeal allowed with costs.

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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

*Southern Han Breakfast Point Pty Ltd (In Liquidation) v Lewence Construction Pty Ltd & Ors*

**S199/2016:** [\[2016\] HCATrans 239](#)

**Date heard:** 12 October 2016

**Coram:** Kiefel, Bell, Gageler, Keane and Gordon JJ

**Catchwords:**

Administrative law – Jurisdictional error – Reference date – Whether the existence of a reference date in s 8 of the *Building and Construction Industry Security of Payment Act 1999* (NSW) to support a payment claim is a jurisdictional fact.

**Appealed from NSWSC (CA):** [\[2015\] NSWCA 288](#)

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### Competition

*Australian Competition & Consumer Commission v Flight Centre Travel Group Limited*

**B15/2016:** [\[2016\] HCATrans 167](#)

**Date heard:** 27 July 2016

**Coram:** French CJ, Kiefel, Gageler, Nettle & Gordon JJ

**Catchwords:**

Competition – Whether appellant travel agent attempted to induce specific airlines to make a contract, arrangement or arrive at an understanding which had the purpose or effect of substantially lessening competition in a market – Consideration of relevant market – Characterisation of relevant services supplied by airlines and travel agents – Whether airlines and travel agents competed in a market for booking and distribution services, or whether the only relevant market was the market for international passenger air



travel services – Whether travel agents competed with airlines in that market given they were the agent of the airlines when supplying such services – Application of ss 45 and 45A of the *Trade Practices Act 1974* (Cth).

**Appealed from FCA (FC):** [\[2015\] FCAFC 104](#).

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## Contract Law

*Simic & Ors v NSW Land and Housing Corporation & Ors*  
**S136/2016:** [\[2016\] HCATrans 160](#)

**Date heard:** 20 July 2016

**Coram:** French CJ, Kiefel, Gageler, Nettle and Gordon JJ

**Catchwords:**

Contract – Letters of credit – Whether a misdescription of the beneficiary of a bank guarantee entitled the bank to refuse to pay out the credit – Whether regard could be had to the underlying contract to confirm the correct description of the beneficiary – Autonomy principle – Principle of strict compliance

**Appealed from NSWSC (CA):** [\[2015\] NSWCA 413](#)

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## Criminal Law

*Bucca v The Queen*  
**A26/2016:** [2016 HCATrans 189](#)

**Date heard:** 31 August 2016

**Coram:** Kiefel, Bell, Gageler, Keane & Nettle JJ

**Catchwords:**

Criminal law – Evidence – Confessions and admissions – Application of proviso – Where statement was incorrectly admitted – Misdirection and non-direction

Criminal law – Evidence – Propensity evidence – Possession of firearms – Whether court of appeal erred in holding that evidence regarding the possession of firearms was correctly admitted.

**Appealed from SASC (CCA):** [\[2015\] SASCF 180](#)

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*Castle v The Queen*

**A24/2016:** [2016 HCATrans 189](#)

**Date heard:** 31 August 2016

**Coram:** Kiefel, Bell, Gageler, Keane & Nettle JJ

**Catchwords:**

Criminal law – Evidence – Confession and admissions – Application of proviso – Whether possibility jury relied on inadmissible statement made by the co-accused to reject oral evidence could be excluded.

Criminal law – Extended joint enterprise – Application of *McAuliffe v The Queen* (1995) 183 CLR 108.

**Appealed from SASC (CCA):** [\[2015\] SASCF 180](#)

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*The Queen v Kilic*

**M105/2016:** [\[2016\] HCATrans 240](#)

**Date heard:** 13 October 2016

**Coram:** Bell, Gageler, Keane, Nettle and Gordon JJ

**Catchwords:**

Criminal law – Sentencing – Where respondent doused victim with petrol and set her alight – Where respondent pleaded guilty to intentionally causing serious injury – Where offence carries a maximum of 20 years imprisonment – Where respondent was sentenced to 14 years for primary offence – Where Court of Appeal found that the sentence was manifestly excessive – Where Court of Appeal reduced sentence – Principles regarding the review of sentencing.

**Appealed from VSC (CA):** [\[2015\] VSCA 331](#)

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## Land

*New South Wales Aboriginal Land Council v Minister Administering the Crown Lands Act*

**S168/2016:** [\[2016\] HCATrans 228](#); [\[2016\] HCATrans 229](#)

**Date heard:** 4 October 2016; 5 October 2016

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

**Catchwords:**

Land – Aboriginal land rights – *Aboriginal Land Rights Act 1983* (NSW) – Claim to Crown Land – Where land had been dedicated to gaol – Where gaol decommissioned but dedications not revoked – Whether land was lawfully occupied within the meaning of s 36(1)(b) of Act.

**Appealed from NSWSC (CA):** [\[2015\] NSWCA 349](#)

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## Procedure

*Timbercorp Finance Pty Ltd (In Liquidation) v Collins & Anor*

**M98/2016:** [\[2016\] HCATrans 193](#)

**Date heard:** 1 September 2016

**Coram:** French CJ, Kiefel, Keane, Nettle & Gordon JJ

**Catchwords:**

Procedure – Group proceedings – Part 4A of the *Supreme Court Act 1986* (Vic) – Managed investment schemes – Collapse of schemes – Group proceeding on behalf of investors in schemes – Defendants include lender to investors – Dismissal of group proceeding – opt out provisions – Subsequent recovery proceedings by lender against group members – Group members had not opted out of group proceeding – Group members raised individual claims and defences in recovery proceedings – Whether failure to opt out of group proceeding precluded group members from raising individual claims and defences in recovery proceedings.

Procedure – Group proceedings – *Anshun* estoppel – Test – Whether unreasonable of group members not to have raised individual claims and defences during group proceeding – Whether group members estopped from raising individual claims and defenced in subsequent proceedings by a reason of failure to raise individual claims and defences in the group proceedings – *Port of Melbourne Authority v Anshun Pty Ltd* (1981) 147 CLR 589.

Procedure – Group proceedings – Abuse of process – Failure of plaintiff of group members to raise individual claims in group proceedings – Whether raising individual claims and defences by group members in subsequent proceedings is oppressive or brings administration of justice into disrepute.

**Appealed from VSC (CA):** [\[2016\] VSCA 128](#)

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*Timbercorp Finance Pty Ltd (In Liquidation) v Tomes*  
**M101/2016:** [\[2016\] HCATrans 193](#)

**Date heard:** 1 September 2016

**Coram:** French CJ, Kiefel, Keane, Nettle & Gordon JJ

**Catchwords:**

Procedure – Group proceedings – Part 4A of the *Supreme Court Act 1986* (Vic) – Managed investment schemes – Collapse of schemes – Group proceeding on behalf of investors in schemes – Defendants include lender to investors – Dismissal of group proceeding – opt out provisions – Subsequent recovery proceedings by lender against group members – Group members had not opted out of group proceeding – Group members raised individual claims and defences in recovery proceedings – Whether failure to opt out of group proceeding precluded group members from raising individual claims and defences in recovery proceedings.

Procedure – Group proceedings – *Anshun* estoppel – Test – Whether unreasonable of group members not to have raised individual claims and defences during group proceeding – Whether group members estopped from raising individual claims and defenced in subsequent proceedings by a reason of failure to raise individual claims and defences in the group proceedings – *Port of Melbourne Authority v Anshun Pty Ltd* (1981) 147 CLR 589.

Procedure – Group proceedings – Abuse of process – Failure of plaintiff of group members to raise individual claims in group proceedings – Whether raising individual claims and defences by

group members in subsequent proceedings is oppressive or brings administration of justice into disrepute.

**Appealed from VSC (CA):** [\[2016\] VSCA 128](#)

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## Taxation

*Blank v Commissioner of Taxation*

**S144/2016:** [\[2016\] HCATrans 181](#); [\[2016\] HCATrans 182](#)

**Date heard:** 23 August 2016; 24 August 2016

**Coram:** French CJ, Kiefel, Gageler, Keane, & Gordon JJ

**Catchwords:**

Income tax – Where appellant participated in profit participation schemes as an employee of company group in foreign countries and in Australia – Where employee allocated ‘profit participation units’ and equal number of shares in holding company – Whether amount assessable as ordinary income or as a capital gain.

**Appeal from FCA (FC):** [\[2015\] FCAFC 154](#)

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*Bywater Investments Limited & Ors v Commissioner of Taxation*

**S134/2016:** [\[2016\] HCATrans 183](#); [\[2016\] HCATrans 184](#)

**Date heard:** 24 August 2016; 25 August 2016

**Coram:** French CJ, Kiefel, Bell, Nettle & Gordon JJ

**Catchwords:**

Income Tax – Whether company is resident of Australia – Place of central management and control – Real business – Relevant principles in determining place of central management and control – Construction of s 70-40(2) of the *Income Tax Assessment Act 1997* (Cth).

**Appealed from FCA (FC):** [\[2015\] FCAFC 176](#)

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*Hua Wang Bank Berhad v Commissioner of Taxation*  
**S135/2016:** [\[2016\] HCATrans 183](#); [\[2016\] HCATrans 184](#)

**Date heard:** 24 August 2016; 25 August 2016

**Coram:** French CJ, Kiefel, Bell, Nettle & Gordon JJ

**Catchwords:**

Income Tax – Whether company is resident of Australia – Place of central management and control – Real business – Relevant principles in determining place of central management and control – Profits from sale of shares – Trading stock – Construction of s 70-40(2) of the *Income Tax Assessment Act 1997* (Cth).

**Appealed from FCA (FC):** [\[2015\] FCAFC 176](#)

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*Commissioner of State Revenue v ACN 005 057 349 Pty Ltd*  
**M88/2016; M89/2016:** [\[2016\] HCATrans 230](#)

**Date heard:** 6 October 2016

**Coram:** Kiefel, Bell, Gageler, Keane and Gordon JJ.

**Catchwords:**

Taxation – Land tax – Where Commissioner of State Revenue raised a land tax liability under the *Land Tax Act 1958* (Vic) – Duplication error – Discretionary power of the Commissioner to amend assessments – Where the Commissioner refuses to amend assessments – Whether the issue of a tax assessment creates a tax debt.

**Appealed from the VSC (CA):** [\[2015\] VSCA 332](#)

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*Elecnet (Aust) Pty Ltd (as Trustee for the Electrical Industry Severance Scheme) v Commissioner of Taxation of the Commonwealth of Australia*  
**M104/2016:** [\[2016\] HCATrans 237](#)

**Date heard:** 11 October 2016

**Coram:** Kiefel, Gageler, Keane, Nettle and Gordon JJ

**Catchwords:**

Taxation – Statutory construction – “Unit trust” – Meaning of a “unit trust” within Division 6C of *Income Tax Assessment Act 1936* (Cth) – Whether definition of “unit for the purposes of a “prescribed trust estate” can inform the meaning of a “unit trust” – Whether Electrical Industry Severance Scheme is a unit trust.

**Appealed from FCA (FC):** [\[2015\] FCAFC 178](#)

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## Workers Compensation

*Comcare v Martin*

**S142/2016:** [\[2016\] HCATrans 186](#)

**Date heard:** 26 August 2016

**Coram:** French CJ, Bell, Gageler, Keane & Nettle JJ

**Catchwords:**

Workers compensation – The operation and exclusion in s 5A of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) – Causation of injury, disease or aggravation under the Act – Whether injury, disease or aggravation suffered ‘as a result of’ administrative action – Whether administrative action taken ‘in a reasonable manner’.

**Appealed from FCA (FC):** [\[2015\] FCAFC 169](#)

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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

*ResourceCo Material Solutions Pty Ltd & Anor v State of Victoria & Anor*

**[M32/2016](#)**: *Demurrer*

**Catchwords:**

Constitutional law – Section 92 – Trade within the Commonwealth to be free – *Environment Protection Act 1970* (Vic) – *Environment Protection (Industrial Waste Resource) Regulations 2009* (Vic) – Where plaintiffs operate in national waste collection, recycling and disposal industry - Contract to dispose of contaminated soil in Victoria by transporting to and disposing of in South Australia - 2nd plaintiff obtained approval from Environment Protection Authority South Australia for treatment of soil in South Australia - 1st plaintiff sought approval from Environment Protection Victoria for transport of waste from Victoria to South Australia – Where approval refused - EPA Vic not satisfied waste would be deposited at facility in SA with better environmental performance standards than in Vic - Whether reg 26 or 26(3) *Environment Protection (Industrial Waste Resource) Regulations 2009* (Vic) contrary to s92 Commonwealth Constitution and therefore invalid - Whether refusal decision contrary to s92 Commonwealth Constitution and therefore invalid or ultra vires the Regulations.

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*Palmer v Marcus William Ayres, Stephen James Parbery and Michael Andrew Owen in their capacities as liquidators of Queensland Nickel Pty Ltd (in liq) & Ors*

**[B52/2016](#)**: *Writ of Summons*

**Catchwords:**

Constitutional law – Validity of the *Corporations Act 2001* (Cth) – Where plaintiff had been a director of a company on a number of occasions – Where company was subsequently placed into administration – Where Federal Court issued summons, pursuant to s 596A of the *Corporations Act 2001* (Cth), to plaintiff requiring



plaintiff's attendance to be examined and to produce documents – Whether s 596A is an exercise of judicial power.

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*Ferguson v Marcus William Ayres, Stephen James Parbery and Michael Andrew Owen in their capacities as liquidators of Queensland Nickel Pty Ltd (in liq)*

**[B55/2016](#)**: *Writ of Summons*

**Catchwords:**

Constitutional law – Validity of the *Corporations Act 2001* (Cth) – Where plaintiff had been a director of a company – Where company was subsequently placed into administration – Where Federal Court issued summons, pursuant to s 596A of the *Corporations Act 2001* (Cth), to plaintiff requiring plaintiff's attendance to be examined and to produce documents – Whether s 596A is an exercise of judicial power.

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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

*AAR15 v Minister for Immigration and Border Protection*

**P50/2016:** [\[2016\] HCATrans 196](#)

**Date heard:** 2 September 2016 – *Special leave granted.*

**Catchwords:**

Administrative law – Jurisdictional error – Provision of reasons – Where Refugee Review Tribunal preferred one piece of evidence over another piece of contrary evidence closer in time to the decision being made – Where no reasons were provided for preference of one piece of evidence contrary to another – Where appellants speculated as to why Tribunal made preference of one piece of evidence contrary to another.

**Appealed from FCA:** [\[2016\] FCA 150](#)

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### Competition Law

*Air New Zealand Ltd v Australian Competition and Consumer Commission*

**S110/2016:** [\[2016\] HCATrans 245](#)

**Date heard:** 14 October 2016 – *Special leave granted.*

**Catchwords:**

Competition – *Trade Practices Act 1974* (Cth) – Price fixing – s 4E of the *Trade Practices Act 1974* (Cth) – Meaning of a market ‘in Australia’ – Whether markets for airborne cargo out of Hong Kong, Singapore and Indonesia to ports in Australia were markets ‘in Australia’.

**Appealed from FCA (FC):** [\[2016\] FCAFC 42](#)

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*PT Garuda Indonesia Ltd v Australian Competition and Consumer Commission*

**S112/2016:** [\[2016\] HCATrans 245](#)

**Date heard:** 14 October 2016 – *Special leave granted.*

**Catchwords:**

Competition – *Trade Practices Act 1974* (Cth) – Price fixing – s 4E of the *Trade Practices Act 1974* (Cth) – Meaning of a market ‘in Australia’ – Whether markets for airborne cargo out of Hong Kong, Singapore and Indonesia to ports in Australia were markets ‘in Australia’.

**Appealed from FCA (FC):** [\[2016\] FCAFC 42](#)

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## Constitutional Law

*Rizeq v State of Western Australia*

**P39/2015:** [\[2016\] HCATrans 233](#)

**Date heard:** 7 October 2016 – *Special leave granted on limited grounds.*

**Catchwords:**

Constitutional law – s 80 of the Constitution – *Judiciary Act 1903* (Cth) – Where appellant was a resident of NSW – Where appellant was charged and convicted for drug offences in Western Australia under the *Misuse of Drugs Act 1981* (WA) – Where appellant was convicted by majority - Whether sections of the *Misuse of Drugs Act 1981* (WA) were picked up and applied as Commonwealth Law under s 79(1) of the *Judiciary Act 1903* (Cth) – Whether s 80 of the Constitution applied to the appellants trial.

**Appealed from WASC (CA):** [\[2015\] WASCA 164](#)

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## Contract

*Ecosse Property Holdings Pty Ltd v Gee Dee Nominees Pty Ltd*

**M43/2016:** [\[2016\] HCATrans 231](#)

**Date heard:** 7 October 2016 – *Special leave granted.*

**Catchwords:**

Contract law – Construction of contract – Long term farm lease – Where planning scheme restrictions prevented freehold sale – Where parties entered into 99 year lease for total rental of \$70,000 paid in full at commencement of lease – Where clause 13 referred to intention of lessor to sell and lessee to purchase freehold for consideration of \$70,000 – Where clause 4 provided that lessee to pay ‘all rates taxes assessments and outgoings whatsoever excepting land tax ... payable by the Landholder or tenant’ – Whether the Court should consider parties mutual subjective intention when constructing a contract.

**Appealed from VSC (CA):** [\[2016\] VSCA 23](#)

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## Criminal Law

*RP v The Queen*

**S193/2016:** [\[2016\] HCATrans 162](#)

**Date determined:** 21 July 2016 – *Special leave granted on limited grounds.*

**Catchwords**

Criminal law – Sexual intercourse with a child under 10 years – Where accused was aged between 11 and 13 years – *Doli incapax* – Whether presumption rebutted – Test for establishing whether *doli incapax* presumption rebutted.

**Appealed from NSWSC (CCA):** [\[2015\] NSWCCA 215](#)

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*Perara-Cathcart v The Queen*

**A39/2016:** [\[2016\] HCATrans 191](#)

**Date heard:** 1 September 2016 – *Special leave granted.*

**Catchwords:**

Criminal law – Directions to jury – Proviso – Application of proviso – Where evidence was led at trial about the appellants drug possession – Where Court of Criminal Appeal held that evidence of the appellant’s drug possession was relevant and correctly admitted

– Where a majority of the Court of Criminal Appeal held that the trial Judge failed to provide satisfactory directions regarding the permissible use of the evidence of the appellant’s drug possession – Whether the Court of Criminal Appeal correctly applied the proviso.

**Appealed from SASC (CCA):** [\[2015\] SASCF 103](#)

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*Prior v Mole*

**S226/2016:** [\[2016\] HCATrans 192](#)

**Date heard:** 1 September 2016 – *Special leave granted on limited grounds.*

**Catchwords:**

Criminal law – Where appellant was taken into ‘protective custody’ under the *Police Administration Act* (NT) s 128 – Where appellant spat on police officer – Where appellant was convicted of assault – Construction of s 128(1) of the *Police Administration Act* (NT) – Exercise of power under s 128(1) – Whether the Police Officer had reasonable grounds to establish that the appellant was likely to commit another offence – Whether the appellants apprehension was lawful.

**Appealed from NTSC (CA):** [\[2016\] NTCA 2](#)

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*Hughes v The Queen*

**S226/2016:** [\[2016\] HCATrans 201](#)

**Date heard:** 2 September 2016 – *Special leave granted on limited grounds.*

**Catchwords:**

Criminal law – Tendency evidence – Significant probative value – Whether trial judge erred in admitting tendency evidence – Whether trial judge properly accounted for risk of contamination and concoction in assessing significant probative value – Evidence Act 1995 (NSW) s 97 – Prejudicial effect of tendency evidence – Evidence Act 1995 (NSW) s 101 – Whether directions to jury sufficient.

**Appealed from NSWSC (CCA):** [\[2015\] NSWCCA 330](#)

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*Van Ryn v The Queen*

**S56/2016:** [\[2016\] HCATrans 246](#)

**Date heard:** 14 October 2016 – *Special leave granted on limited grounds.*

**Catchwords:**

Criminal law – Sentencing – Where appellant pleaded guilty to multiple child sexual assault offences against nine victims – Where Court of Appeal erred in determining an aggregate sentence on the basis that Count 9 of the first indictment was an offence contrary to s 61M(2) of the *Crimes Act 1900* (NSW) – Where Count 9 was an offence under s 61M(1) – Where s 61M(1) and s 61M(2) have different maximum sentences.

**Appealed from NSWSC (CCA):** [\[2016\] NSWCCA 1](#)

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*The Queen v Afford*

**M44/2016:** [\[2016\] HCATrans 248](#)

**Date determined:** 14 October 2016 – *Special leave granted.*

**Catchwords:**

Criminal law – Criminal Code (Cth) s 307.1 – Intention – Factual inferential reasoning – Application of *Kural v The Queen* (1987) 162 CLR 502 – Whether ‘awareness of the likelihood’ can be used to establish intention under the Criminal Code (Cth).

**Appealed from VSC (CA):** [\[2016\] VSCA 56](#)

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*Smith v The Queen*

**S153/2016:** [\[2016\] HCATrans 247](#)

**Date determined:** 14 October 2016 – *Special leave granted.*

**Catchwords:**

Criminal law – Criminal Code (Cth) s 307.1 – Intention – Factual inferential reasoning – Application of *Kural v The Queen* (1987) 162 CLR 502 – Whether ‘awareness of the likelihood’ can be used to establish intention under the Criminal Code (Cth).

**Appealed from NSWSC (CCA):** [\[2016\] NSWCCA 93](#)

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## Family Law

*Bondelmonte v Bondelmonte & Anor*

**S111/2016:** [\[2016\] HCATrans 243](#)

**Date heard:** 14 October 2016 – *Special leave granted.*

### Catchwords:

Family law – Children – Parenting orders – *Family Law Act 1975* (Cth) – Where children retained in United States after travelling there for a holiday – Where retention in breach of order for equal shared parental responsibility – Where the father appeals against interim orders which require him to return the children to Sydney pending determination of whether the children are permitted to relocate to the United States – Where children, aged almost 15 and almost 17, express desire to stay in the United States – Whether the trial judge failed to consider and evaluate the relevant statutory considerations – Whether the trial judge gave adequate weight to the views expressed by the children – Consideration of living arrangements on the children’s return – Whether the orders made by the primary judge were in the best interests of the children – Whether trial judge was required to make further findings before issuing parenting order.

**Appealed from FamFC (FC):** [\[2016\] FamCAFC 48](#)

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## Migration

*Minister for Immigration and Border Protection v Kumar & Ors*

**P49/2016:** [\[2016\] HCATrans 197](#)

**Date heard:** 2 September 2016 – *Special leave granted.*

### Catchwords:

Migration – Requirement that visa applicant holds a certain visa at the time of application – Where visa application lodged on the Monday immediately following expiry on Sunday of the previously held visa – Application of s 36(2) of the *Acts Interpretation Act 1901* (Cth).

**Appealed from FCA:** [\[2016\] FCA 177](#)

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## Negligence

*Kendirjian v Lepore & Anor*

**S170/2016:** [\[2016\] HCATrans 141](#); [\[2016\] HCASL 140](#)

**Date heard:** 17 June 2016 – *Special leave granted.*

**Catchwords:**

Negligence – Professional negligence – Lawyers – Advocates immunity – Duties and liabilities – Settlement of proceedings – Whether alleged failure in advice in relation to settlement offer was a decision affecting the conduct of the case in Court – Application of test in *D’Orta-Ekenaike v Victorian Legal Aid* (2005) 223 CLR 1.

**Appealed from NSWSC (CA):** [\[2015\] NSWCA 132](#)

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## Planning

*Western Australian Planning Commission v Leith; Western Australian Planning Commission v Southregal Pty Ltd & Anor*

**P47/2016; P48/2016:** [\[2016\] HCATrans 190](#)

**Date determined:** 1 September 2016 – *Special leave granted.*

**Catchwords:**

Planning – Statutory construction – *Planning and Development Act 2005* (WA), s 173, s 177 – Planning Scheme – Amendment to planning scheme – Injurious affection – Compensation – Whether compensation available to person who subsequently purchased property from owner at the time scheme came into effect.

**Appealed from WASC (CA):** [\[2016\] WASCA 53](#)

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## 5: CASES NOT PROCEEDING OR VACATED

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*Plaintiff S61/2016 v Minister for Immigration and Border Protection*  
**[S61/2016](#)**: Discontinued.

**Catchwords:**

Migration – Family Stream – Direction by Minister – Where Minister gave written Direction 62 – order for considering and disposing of Family Stream visa applications, under s 499 of the *Migration Act 1958* (Cth) – Where direction provides an order of priority for the processing of Family Stream visa applications – Whether the Direction is a legislative instrument per *Legislation Act 2003* (Cth) – Whether Direction obliged delegates of the Minister to follow the order of priority set out in s 8 of the Direction in every case – Whether Direction is inconsistent with the Minister’s obligation under the *Migration Act* to consider and determine each Family Stream visa application within a reasonable time - Whether Direction is inconsistent with s 51(1) of the *Migration Act*.

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## 6: SPECIAL LEAVE REFUSED

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### Publication of Reasons: 5 October 2016

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Ayre	Western Australia Police (P17/2016)	Application for removal	Application dismissed with costs <a href="#">[2016] HCA 216</a>
2.	Singh	Minister for Immigration and Border Protection & Anor (B38/2016)	Federal Court of Australia [2016] FCA 575	Application dismissed <a href="#">[2016] HCA 217</a>
3.	Sanderson & Anor	Bank of Queensland Limited (B41/2016)	Supreme Court of Queensland (Court of Appeal) [2016] QCA 137	Application dismissed <a href="#">[2016] HCA 218</a>
4.	MZADZ	Minister for Immigration and Border Protection & Anor (D1/2016)	Federal Court of Australia [2016] FCA 9	Application dismissed <a href="#">[2016] HCA 219</a>
5.	Dean & Anor	Legal Practice Board (P22/2016)	Supreme Court of Western Australia (Court of Appeal) [2016] WASCA 63	Application dismissed <a href="#">[2016] HCA 220</a>
6.	Santos	The State of Western Australia (P36/2016)	Supreme Court of Western Australia (Court of Appeal) [2016] WASCA 107	Application dismissed <a href="#">[2016] HCA 221</a>
7.	SZUMS	Minister for Immigration and Border Protection & Anor (S157/2016)	Federal Court of Australia [2016] FCA 542	Application dismissed <a href="#">[2016] HCA 222</a>
8.	SZTXS	Minister for Immigration and Border Protection & Anor (S163/2016)	Federal Court of Australia [2016] FCA 726	Application dismissed <a href="#">[2016] HCA 223</a>
9.	SZUOW	Minister for Immigration and Border Protection & Anor (S198/2016)	Federal Court of Australia [2016] FCA 871	Application dismissed <a href="#">[2016] HCA 224</a>

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**7 October 2016: Canberra**

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<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	
1.	Commissioner of Taxation	Financial Holdings Pty Ltd (M46/2016)	Synergy Full Court of the Federal Court of Australia [2016] FCAFC 31	Application dismissed <a href="#">[2016] HCATrans 232</a>

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## Publication of Reasons: 12 October 2016

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	BZAGD	Minister for Immigration and Border Protection & Anor (M77/2016)	Federal Court of Australia [2016] FCA 670	Application dismissed <a href="#">[2016] HCASL 226</a>
2.	SZQDR	Minister for Immigration and Border Protection & Anor (S158/2016)	Federal Court of Australia [2016] FCA 543	Application dismissed <a href="#">[2016] HCASL 227</a>
3.	SZNQS	Minister for Immigration and Border Protection & Anor (S169/2016)	Federal Court of Australia [2016] FCA 637	Application dismissed <a href="#">[2016] HCASL 228</a>
4.	Dean	Pepper Finance Corporation Limited as Trustee of the Collection Service Trust 1 (S172/2016)	Federal Court of Australia [2016] FCA 648	Application dismissed <a href="#">[2016] HCASL 229</a>
5.	Waterhouse	Independent Commission Against Corruption & Anor (S180/2016)	Supreme Court of New South Wales (Court of Appeal) [2016] NSWCA 133 and related judgments	Application dismissed <a href="#">[2016] HCASL 230</a>
6.	Paxton	Child Support Registrar & Anor (S188/2016)	Full Court of the Family Court of Australia	Application dismissed <a href="#">[2016] HCASL 231</a>
7.	Paxton	Child Support Registrar & Anor (S208/2016)	Full Court of the Family Court of Australia	Application dismissed <a href="#">[2016] HCASL 232</a>
8.	SZNJE & Anor	Minister for Immigration and Border Protection & Anor (S197/2016)	Federal Court of Australia [2016] FCA 803	Application dismissed <a href="#">[2016] HCASL 233</a>
9.	Advertiser-News Weekend Publishing Company Pty Limited	De Poi (A22/2016)	Full Court of the Supreme Court of South Australia [2016] SASCFC 25; [2016] SASCFC 45	Application dismissed with costs <a href="#">[2016] HCASL 234</a>
10.	Amos	Wiltshire (B26/2016)	Supreme Court of Queensland (Court of Appeal) [2016] QCA 77	Application dismissed with costs <a href="#">[2016] HCASL 235</a>
11.	Grant-Taylor & Ors	Babcock & Brown Limited (In Liquidation) & Anor (S137/2016)	Full Court of the Federal Court of Australia [2016] FCAFC 60	Application dismissed with costs <a href="#">[2016] HCASL 236</a>

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
12.	George	Biggs & Ors (S152/2016)	Supreme Court of New South Wales (Court of Appeal) [2016] NSWCA 113	Application dismissed with costs <a href="#">[2016] HCASL 237</a>
13.	Ellimark Pty Ltd	Athalie Calvo as Executrix of the Estate of The Late Peter Calvo & Ors (S181/2016)	Supreme Court of New South Wales (Court of Appeal) [2016] NSWCA 136	Application dismissed with costs <a href="#">[2016] HCASL 238</a>
14.	MZARK	Minister for Immigration and Border Protection & Anor (M85/2016)	High Court of Australia [2016] HCATrans 132	Application dismissed <a href="#">[2016] HCASL 239</a>
15.	Theophane	Hunt & Anor (B42/2016)	Full Court of the Family Court of Australia	Application dismissed <a href="#">[2016] HCASL 240</a>
16.	Giza	Waybecca Pty Ltd (M63/2016 & M64/2016)	Supreme Court of Victoria (Court of Appeal) [2016] VSCA 78	Applications dismissed <a href="#">[2016] HCASL 241</a>
17.	Conomy	Maden (P19/2016)	Supreme Court of Western Australia (Court of Appeal) [2016] WASCA 30	Application dismissed <a href="#">[2016] HCASL 242</a>
18.	Standen	The Queen (S94/2016)	Supreme Court of New South Wales (Court of Criminal Appeal) [2015] NSWCCA 211	Application dismissed <a href="#">[2016] HCASL 243</a>
19.	BFT15	Minister for Immigration and Border Protection & Anor (S147/2016)	Federal Court of Australia [2016] FCA 499	Application dismissed <a href="#">[2016] HCASL 244</a>
20.	SZVJY	Minister for Immigration and Border Protection & Anor (S159/2016)	Federal Court of Australia [2016] FCA 618	Application dismissed <a href="#">[2016] HCASL 245</a>
21.	Tayef	Minister for Immigration and Border Protection & Anor (S165/2016)	Federal Court of Australia [2016] FCA 633	Application dismissed <a href="#">[2016] HCASL 246</a>
22.	BFC15	Minister for Immigration and Border Protection & Anor (S187/2016)	Federal Court of Australia [2016] FCA 735	Application dismissed <a href="#">[2016] HCASL 247</a>

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## Publication of Reasons: 13 October 2016.

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Cekic	The Queen (A18/2016)	Supreme Court of South Australia (Court of Criminal Appeal) [2016] SASCFC 31	Application dismissed <a href="#">[2016] HCASL 248</a>
2.	Ciantar	The Queen (A28/2016)	Supreme Court of South Australia (Court of Criminal Appeal) [2016] SASCFC 31	Application dismissed <a href="#">[2016] HCASL 249</a>
3.	Versac	The Queen (B21/2016)	Supreme Court of Queensland (Court of Appeal) [2011] QCA 318	Application dismissed <a href="#">[2016] HCASL 250</a>
4.	Blick	Franklin (C4/2016)	Supreme Court of the Australian Capital Territory (Court of Appeal) [2016] ACTCA 17	Application dismissed with costs <a href="#">[2016] HCASL 251</a>
5.	Singh	Minister for Immigration and Border Protection & Anor (M69/2016)	Full Court of the Federal Court of Australia [2015] FCAFC 151	Application dismissed with costs <a href="#">[2016] HCASL 252</a>
6.	Derley	The Queen (S138/2016)	Supreme Court of New South Wales (Court of Criminal Appeal) [2016] NSWCCA 60	Application dismissed <a href="#">[2016] HCASL 253</a>

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## Publication of Reasons: 14 October 2016

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Stone	Moore (A25/2016)	Full Court of the Supreme Court of South Australia [2016] SASCFC 50	Application dismissed with costs <a href="#">[2016] HCASL 254</a>
2.	Shambayati	The Queen (B32/2016)	Supreme Court of Queensland (Court of Appeal) [2016] QCA 100	Application dismissed <a href="#">[2016] HCASL 255</a>
3.	AXG15	Minister for Immigration and Border Protection & Anor (B35/2016)	Federal Court of Australia [2016] FCA 492	Application dismissed with costs <a href="#">[2016] HCASL 256</a>
4.	Tran	The Queen (M66/2016)	Supreme Court of Victoria (Court of Appeal) [2016] VSCA 79	Application dismissed <a href="#">[2016] HCASL 257</a>
5.	Chang	The Queen (M67/2016)	Supreme Court of Victoria (Court of Appeal) [2016] VSCA 79	Application dismissed <a href="#">[2016] HCASL 258</a>
6.	Higgs	The Queen (M68/2016)	Supreme Court of Victoria (Court of Appeal) [2015] VSCA 223	Application dismissed <a href="#">[2016] HCASL 259</a>
7.	Babington & Ors	Commonwealth Australia & Anor (S130/2016)	of Full Court of the Federal Court of Australia [2016] FCAFC 45	Application dismissed with costs <a href="#">[2016] HCASL 260</a>

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**14 October 2016: Sydney**

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Results</i>
1.	Graham & Ors	St Ives Gold Mining Company Pty Limited & Ors (P15/2016 & P16/2016)	Full Court of the Federal Court of Australia [2016] FCAFC 47	Special leave refused <a href="#">[2016] HCATrans 241</a>
2.	CGU Insurance Limited & Ors	Barrie Toepfer Earthmoving and Land Management Pty Ltd (S122/2016)	Supreme Court of New South Wales (Court of Appeal) [2016] NSWCA 67	Special leave refused with costs <a href="#">[2016] HCATrans 244</a>
3.	Jones & Anor	Treasury Wine Estates Limited (S128/2016)	Full Court of the Federal Court of Australia [2016] FCAFC 59	Special leave refused with costs <a href="#">[2016] HCATrans 242</a>

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