



HIGH COURT BULLETIN

Produced by the Legal Research Officer,
High Court of Australia Library
[2018] HCAB 6 (23 August 2018)

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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1: SUMMARY OF NEW ENTRIES

2: Cases Handed Down

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<i>The Queen v Falzon</i>	Criminal Law
<i>HFM043 v The Republic of Nauru</i>	Migration
<i>Hossain v Minister for Immigration and Border Protection & Anor</i>	Migration
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3: Cases Reserved

Case	Title
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4: Original Jurisdiction

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Case	Title
<u>Australian Securities and Investments Commission v Kobelt</u>	Consumer Law
<u>Frugtniet v Australian Securities & Investments Commission</u>	Consumer Law
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<u>Victorian Building Authority v Andriotis</u>	Interpretation

[7: Cases Not Proceeding or Vacated](#)

2: CASES HANDED DOWN

The following cases were handed down by the High Court of Australia during the August 2018 sittings.

Criminal Law

DL v The Queen

S309/2017: [\[2018\] HCA 32](#)

Judgment delivered: 8 August 2018

Coram: Bell, Keane, Nettle, Gordon and Edelman JJ

Catchwords:

Criminal law – Appeal against sentence – Where appellant convicted of murder – Where primary judge found it probable that appellant acting under influence of some psychosis at time of offence – Where primary judge not satisfied appellant possessed intention to kill – Where primary judge's discretion miscarried by giving primary significance to standard non-parole period – Where Court of Criminal Appeal excised power to re-sentence – Where prosecutor conceded there was no issue with primary judge's factual findings – Where Court of Criminal Appeal found primary judge's findings open – Where Court of Criminal Appeal rejected primary judge's finding that appellant had suffered temporary psychosis which precluded forming intention to kill – Where Court of Criminal Appeal took into account evidence of appellant's progress since sentence on the "usual basis" as discussed in *Betts v The Queen* (2016) 258 CLR 420 – Where Court of Criminal Appeal failed to put appellant on notice of inclination not to act on concession made by prosecution – Whether denial of procedural fairness – Whether miscarriage of justice.

Words and phrases – "circumstance of aggravation", "concession", "miscarriage of justice", "new evidence", "objective seriousness", "procedural fairness", "re-sentencing", "unchallenged factual findings", "usual basis".

Criminal Appeal Act 1912 (NSW) – s 6(3).

Appealed from NSW (CA): [\[2017\] NSWCCA 58](#)

Held: Appeal allowed

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The Queen v Falzon

M161/2017: [\[2018\] HCA 29](#)

Reasons delivered: 8 August 2018

Coram: Kiefel CJ, Bell, Keane, Nettle and Gordon JJ

Catchwords:

Criminal law – Appeal against conviction – Where cannabis and drug paraphernalia found at four properties including respondent's home – Where \$120,800 in cash found at respondent's home – Where respondent charged with cultivation and trafficking of cannabis found at three properties not including his home – Where Crown alleged offences of trafficking constituted of possession of cannabis on particular date for purpose of sale – Where evidence of cash led as evidence respondent engaged in business of cultivating cannabis for sale – Whether evidence of cash wrongly admitted at trial.

Words and phrases – "accoutrements of drug trafficking", "business of trafficking", "cash", "drug trafficking", "indicia of trafficking", "intermediate appellate court", "possession", "profit making enterprise", "propensity", "purpose of sale", "tendency".

Drugs – *Poisons and Controlled Substances Act* 1981 (Vic), ss 4, 5, 70(1), 71AC, 72A.

Evidence Act 2008 (Vic) – ss 55, 56, 136, 137.

Jury Directions Act 2015 (Vic) – ss 12, 15, 16.

Appealed from VSC (CA): [\[2017\] VSCA 74](#)

Held: Appeal allowed

Orders made on 19 April 2018 allowing appeal.

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Migration

HFM043 v The Republic of Nauru

M146/2017: [\[2018\] HCA 37](#)

Judgment delivered: 15 August 2018

Coram: Kiefel CJ, Gageler and Nettle JJ

Catchwords:

Migration – Refugees – Appeal as of right from Supreme Court of Nauru – Where Secretary of Department of Justice and Border Control determined appellant not refugee – Where Refugee Status Review Tribunal affirmed Secretary's determination – Where Supreme Court of Nauru held Tribunal made error of law – Where Supreme Court of Nauru dismissed appeal – Whether Supreme Court of Nauru erred holding remittal to Tribunal futile.

Words and phrases – "dependant", "derivative status", "futile", "refugee", "Refugee Determination Record", "remit", "taken to have been validly determined".

Refugees Convention Act 2012 (Nr) – ss 3, 5, 6, 31(5).

Refugees Convention (Amendment) Act 2014 (Nr).

Refugees Convention (Derivative Status & Other Measures) (Amendment) Act 2016 (Nr).

Appealed from Supreme Court of Nauru: [\[2017\] NRSC 76](#)

Held: Appeal allowed

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Hossain v Minister for Immigration and Border Protection & Anor
S1/2018: [\[2018\] HCA 34](#)

Judgment delivered: 15 August 2018

Coram: Kiefel CJ, Gageler, Keane, Nettle and Edelman JJ

Catchwords:

Migration – Partner visa – Criteria prescribed for grant of visa – Where Minister for Immigration and Border Protection must refuse to grant visa if not satisfied that criteria prescribed for grant of visa met – Where delegate of Minister refused to grant visa – Review of decision by Administrative Appeals Tribunal – Where Tribunal not satisfied that visa application made within 28 days or that there were compelling reasons for not applying that criterion – Where Tribunal also not satisfied that visa applicant did not have outstanding debts to the Commonwealth or that appropriate arrangements had been made for payment of debts – Where Tribunal made error of law by assessing whether compelling reasons existed as at time of visa application instead of as at time of Tribunal's decision – Whether error of law in relation to one criterion was jurisdictional error where another criterion was not met.

Words and phrases – "compelling reasons", "discretion to refuse relief", "error of law", "error of law on the face of the record", "fundamental error", "independent basis", "jurisdictional error", "materiality", "non-jurisdictional error", "reasonably and on a correct understanding and application of the applicable law", "residual discretion", "satisfied", "void", "voidable".

Migration Act 1958 (Cth) – s 65.

Migration Regulations 1994 (Cth) – Sched 2, cl 820. 211, 820. 223, Sched 4, public interest criterion 4004.

Appealed from FCA (FC): [\[2017\] FCAFC 82](#); (2017) 252 FCR 31

Held: Appeal dismissed with costs

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Minister for Immigration and Border Protection v SZVFW & Ors
S244/2017: [\[2018\] HCA 30](#)

Judgment delivered: 8 August 2018

Coram: Kiefel CJ, Gageler, Nettle, Gordon and Edelman JJ

Catchwords:

Migration – Refugee Review Tribunal – Review of decisions – Where first and second respondents sought review by Refugee Review Tribunal ("Tribunal") of decision of delegate of appellant to refuse applications for protection visas – Where respondents failed to respond to invitations from Tribunal to appear or provide submissions – Where s 426A(1) of *Migration Act* 1958 (Cth) empowered Tribunal to proceed to make decision on review without taking further action to allow or enable respondents to appear – Where Tribunal made decision to proceed under s 426A(1) – Whether Tribunal's decision to proceed in absence of respondents was legally unreasonable.

Appeal – Rehearing – Where primary judge held decision of Tribunal was legally unreasonable – Where Full Court of Federal Court dismissed appeal from primary judge's decision, holding that appellant was required to demonstrate error in reasoning of primary judge akin to that required in appeals from discretionary judgments – Whether principles stated in *House v The King* (1936) 55 CLR 499 apply to appeal from decision on judicial review that administrative decision is legally unreasonable.

Words and phrases – "appeal by way of rehearing", "appealable error", "discretionary", "discretionary decision", "discretionary power", "evaluative approach", "evaluative judgment", "evaluative

process", "legally unreasonable", "standard of appellate review", "unreasonable".

Migration Act 1958 (Cth) – ss 425, 425A, 426A, 441A, 441C, 476.

Appealed from FCA (FC): [\[2017\] FCAFC 33](#); (2017) 248 FCR 1

Held: Appeal allowed

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Shrestha v Minister for Immigration and Border Protection & Anor;
Ghimire v Minister for Immigration and Border Protection & Anor;
Acharya v Minister for Immigration and Border Protection & Anor
M141/2017, M142/2017, M143/2017: [\[2018\] HCA 35](#)

Judgment delivered: 15 August 2018

Coram: Kiefel CJ, Gageler, Keane, Nettle and Edelman JJ

Catchwords:

Migration – Cancellation of visa – Student visa – Where Minister for Immigration and Border Protection empowered to cancel visa if satisfied that any circumstances which permitted grant of visa no longer existed – Where delegate of Minister decided to cancel visa – Review of decision by Migration Review Tribunal – Where each appellant granted visa as "eligible higher degree student" – Where definition of "eligible higher degree student" required that visa applicant who proposed to undertake another course of study before and for purposes of principal course of study be enrolled in that other course of study – Where visa holder was enrolled in another course of study for purposes of principal course of study at time of grant of visa – Where visa holder ceased to be enrolled in that other course of study – Where Tribunal concluded that visa holder no longer "eligible higher degree student" – Where Tribunal concluded that circumstance which permitted grant of visa no longer existed – Whether Tribunal made error of law by considering legal characterisation of circumstance rather than circumstance itself – Whether jurisdictional error.

Words and phrases – "another course of study", "circumstances", "eligible higher degree student", "error of law", "factual circumstances", "jurisdictional error", "principal course of study", "reasonably and on a correct understanding and application of the applicable law", "satisfied".

Migration Act 1958 (Cth) – s 116.

Migration Regulations 1994 (Cth) – Sched 2, cl 573. 111, 573. 223.

Appealed from FCA (FC): [\[2017\] FCAFC 69](#); (2017) 251 FCR 143

Held: Appeals dismissed with costs

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Practice and procedure

Nobarani v Mariconte

S270/2017: [\[2018\] HCA 36](#)

Judgment delivered: 15 August 2018

Coram: Kiefel CJ, Gageler, Nettle, Gordon and Edelman JJ

Catchwords:

Practice and procedure – Appeals – Denial of procedural fairness – Where appellant unrepresented – Where nature of hearing altered at short notice – Where appellant's applications for adjournments refused – Whether appellant denied procedural fairness at trial – Whether denial of procedural fairness amounted to "substantial wrong or miscarriage" – Whether appellant denied possibility of successful outcome – Whether new trial should be ordered.

Succession law – Wills, probate, and administration – Grant of probate – Where appellant claimed interest in challenging will – Where respondent granted probate of will in solemn form – Whether appellant had interest in challenging will.

Words and phrases – "adjournment", "caveat", "denial of procedural fairness", "possibility of a successful outcome", "probate", "procedural fairness", "substantial wrong or miscarriage".

Supreme Court Act 1970 (NSW) – ss 75A, 101(1)(a).

Supreme Court Rules 1970 (NSW) – Pt 78 rr 42, 43, 44(4), 66, 69, 71.

Uniform Civil Procedure Rules 2005 (NSW) – r 51. 53(1).

Appealed from NSW (CA): [\[2017\] NSWCA 124](#)

Held: Appeal allowed

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Taxation

The Commissioner of Taxation of the Commonwealth of Australia v Thomas; The Commissioner of Taxation of the Commonwealth of Australia v Martin Andrew Pty Ltd; The Commissioner of Taxation of the Commonwealth of Australia v Thomas Nominees Pty Ltd; The Commissioner of Taxation of the Commonwealth of Australia v Thomas

[B60/2017](#); [B61/2017](#); [B62/2017](#); [B63/2017](#): [\[2018\] HCA 31](#)

Judgment delivered: 8 August 2018

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

Catchwords:

Taxation – Division 207 in Pt 3-6 of *Income Tax Assessment Act 1997* (Cth) – Where trustee passed resolutions purporting to distribute franking credits to beneficiaries of trust separately from and in different proportions to income comprising franked distributions – Where directions made by Supreme Court of Queensland pursuant to s 96 of *Trusts Act 1973* (Q) concerning the resolutions – Whether directions determined against Commissioner of Taxation the application of Div 207.

Words and phrases – "deemed assessment", "determine conclusively", "directions", "franked distribution", "franking credit", "imputation credit", "income tax return", "judicial advice", "notice of amended assessment", "notionally allocated", "streaming", "tax offset".

Income Tax Assessment Act 1936 (Cth) – ss 95, 97.

Income Tax Assessment Act 1997 (Cth) – Div 207.

Taxation Administration Act 1953 (Cth) – Pt IVC.

Trusts Act 1973 (Q) – s 96.

Appealed from FCA (FC): [\[2017\] FCAFC 57](#); (2017) 105 ATR 413; (2017) 2017 ATC 20-612

Held: Appeal allowed in part and cross-appeal dismissed; appeal allowed; appeal dismissed; appeal dismissed

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3: CASES RESERVED

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

Constitutional Law

Work Health Authority v Outback Ballooning Pty Ltd & Anor

D4/2018: [\[2018\] HCATrans 144](#); [\[2018\] HCATrans 146](#)

Date heard: 14 and 15 August 2018

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

Catchwords:

Constitutional law – Inconsistency – *Work Health and Safety (National Uniform Legislation) Act 2011* (NT) – Where hot air balloon passenger died from injuries suffered as result of scarf being sucked into inflation fan – Where appellant alleged first respondent breached s 32 of Act – Where magistrate dismissed complaint on basis *Air Navigation Act 1920* (Cth), *Civil Aviation Act 1988* (Cth) and other Commonwealth regulation covered field of safety of air navigation – Where Supreme Court quashed magistrate’s decision – Where Court of Appeal allowed appeal – Whether Court of Appeal erred in concluding federal civil aviation legislation excluded operation of *Work Health and Safety (National Uniform Legislation) Act 2011* (NT).

Appealed from NTSC (CA): [\[2017\] NTCA 7](#); (2017) 326 FLR 1

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Contracts

Pipikos v Trayans

A30/2017: [\[2018\] HCATrans 47](#)

Date heard: 15 March 2018

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

Catchwords:

Contracts – Enforceability – *Law of Property Act 1936* (SA) s 26 – Memorandum or note of agreement – Part performance – Where

appellant alleges parties entered into oral agreement that appellant would pay share of deposit on property in exchange for respondent selling interest in another property – Where trial judge held no oral agreement existed – Where Full Court held agreement existed but unenforceable – Whether Full Court erred in failing to find appellant’s payment of deposit amounted to part performance sufficient to entitle appellant to enforce agreement – Whether Full Court erred in holding handwritten note not sufficient “memorandum or note” of agreement for purposes of s 26 – Whether Full Court erred in holding appellant not entitled to enforce agreement in circumstances where respondent acknowledged agreement – Whether Full Court erred in failing to consider concessions in handwritten note to identify acts of part performance.

Appealed from SASC (CA): [\[2016\] SASCF 138](#); (2016) 126 SASR 436

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Corporations

Mighty River International Limited v Hughes & Ors; Mighty River International Limited v Mineral Resources Limited & Ors

P7/2018, P8/2018: [\[2018\] HCATrans 120](#)

Date heard: 19 June 2018

Coram: Kiefel CJ, Gageler, Nettle, Gordon and Edelman JJ

Catchwords:

Corporations – Deed of company arrangement – *Corporations Act* 2001 (Cth) ss 444A, 445G – Where company entered into deed of company arrangement – Where cl 8 provided no property of company available for distribution to creditors – Where appellant brought proceedings seeking declaration deed void or order setting deed aside – Where Supreme Court made declaration under s 445G(2) deed not void – Where Court of Appeal dismissed appeal – Whether Court of Appeal erred in holding deed complied with mandatory requirements of s 444A(4)(b) – Whether Court of Appeal erred in failing to hold deed void or invalid pursuant to s 445G(2).

Appealed from WASC (CA): [\[2017\] WASCA 152](#); (2017) 52 WAR 1; (2017) 323 FLR 8

Orders made on 19 June 2018 dismissing appeals with costs. Written reasons of the Court to be published at a future date.

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Criminal Law

Johnson v The Queen

A9/2018: [\[2018\] HCATrans 121](#)

Date heard: 20 June 2018

Coram: Kiefel CJ, Bell, Gageler, Nettle and Gordon JJ

Catchwords:

Criminal law – Evidence – Probative value – Doli incapax – Where jury convicted appellant of five counts of sexual offences against younger sister – Where Court of Criminal Appeal quashed convictions in respect of count 1 (“shed incident”) because prosecution failed to rebut presumption of doli incapax and count 3 (persistent sexual exploitation) because evidence did not identify any particular act – Where Court of Criminal Appeal upheld remaining convictions – Whether Court of Criminal Appeal erred by failing to set aside remaining convictions because evidence led in respect of counts 1 and 3 inadmissible in respect of other counts or permissible use not sufficiently identified – Whether Court of Criminal Appeal erred in failing to find substantial miscarriage of justice.

Appealed from SASC (FC): [\[2015\] SASCF 170](#)

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Rodi v State of Western Australia

P24/2018: [\[2018\] HCATrans 137](#)

Date heard: 7 August 2018

Coram: Kiefel CJ, Bell, Keane, Nettle and Gordon JJ

Catchwords:

Criminal law – Miscarriage of justice – Fresh evidence – *Criminal Appeals Act* 2004 (WA) – Where appellant convicted at trial of possession with intent to sell or supply contrary to s 6(1)(a) of *Misuse of Drugs Act* 1981 (WA) – Where prosecution witness gave evidence at trial about cannabis yields – Where witness’ evidence inconsistent with witness’ earlier evidence – Where majority of Court of Appeal characterised witness’ earlier evidence as fresh evidence but dismissed appeal on basis no significant possibility appellant would have been acquitted if fresh evidence before jury –

Whether majority of Court of Appeal erred in concluding no significant possibility of acquittal – Whether majority of Court of Appeal erred in holding that if prosecutor breached duty of disclosure, breach did not give rise to miscarriage of justice.

Appealed from WASC (CA): [\[2017\] WASCA 81](#); (2017) 51 WAR 96

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Strickland (a pseudonym) v Commonwealth Director of Public Prosecutions & Ors; Tucker (a pseudonym) v Commonwealth Director of Public Prosecutions & Ors; Hodges (a pseudonym) v Commonwealth Director of Public Prosecutions & Ors; Galloway (a pseudonym) v Commonwealth Director of Public Prosecutions & Ors

[M168/2017](#); [M176/2017](#); [M175/2017](#); [M174/2017](#): [\[2018\] HCATrans 75](#); [\[2018\] HCATrans 78](#)

Date heard: 8 and 9 May 2018

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

Catchwords:

Criminal law – Stay of proceedings – *Australian Crime Commission Act 2002* (Cth) – Investigations – Where Australian Federal Police (“AFP”) commenced investigation – Where appellants summoned by Australian Crime Commission for compulsory examination – Where examiner failed to make non-publication direction under s 25A(9) of Act prohibiting publication of examination material concerning appellants to AFP and Commonwealth Director of Public Prosecutions – Where primary judge found examination conducted for improper purpose of assisting AFP and had unfair consequences for trial – Where primary judge ordered permanent stay of proceedings – Where Court of Appeal quashed order – Whether Court of Appeal erred in finding unlawful compulsory examination for purpose of achieving forensic advantage insufficient in circumstances to justify permanent stay of proceedings.

Appealed from VSC (CA): [\[2017\] VSCA 120](#)

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The Queen v Dennis Bauer (A Pseudonym) (No 2)

[M1/2018](#): [\[2018\] HCATrans 111](#)

Date heard: 13 June 2018

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

Catchwords:

Criminal law – Appeal against conviction – Sexual offences against child – Re-trial after appeal – Where trial judge permitted previously recorded evidence of complainant to be tendered – Whether Court of Appeal erred in finding trial judge erred in permitting previously recorded evidence to be tendered as evidence in re-trial – Tendency evidence – Whether Court of Appeal erred in holding substantial miscarriage of justice because of admission of tendency evidence – Proper approach to tendency evidence where prosecution seeks to prove tendency on evidence from complainant and source independent of complainant – Severance – Whether Court of Appeal erred in holding failure to sever charge 2 occasioned substantial miscarriage of justice – Whether Court of Appeal erred in holding admission of previous statement of complaint occasioned substantial miscarriage of justice.

Appealed from VSC (CA): [\[2017\] VSCA 176](#)

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Equity

Ancient Order of Foresters in Victoria Friendly Society Limited v Lifeplan Australia Friendly Society Limited & Anor

A37/2017: [\[2018\] HCATrans 64](#)

Date heard: 12 April 2018

Coram: Kiefel CJ, Gageler, Keane, Nettle and Edelman JJ

Catchwords:

Equity – Account of profits – *Corporations Act* 2001 (Cth) ss 181-183, 1317H – Where appellant employed former employees of respondents – Where respondents brought claim against appellant for knowing assistance in former employees’ breaches of contractual and fiduciary duties and duties of confidence and involvement in contraventions of ss 181-183 – Where primary judge held appellant knowingly participated in breaches of fiduciary duties and duties of confidence but dismissed claim for account of profits on basis no profits attributable to use of confidential information or breaches of duties – Where Full Court held sufficient causal connection established and awarded account of profits in equity – Where Full Court also held facts constituting knowing participation amounted to involvement in contraventions of ss 181-183 and made same order for account of profits under s 1317H –

Whether Full Court erred in finding sufficient causal connection – Whether Full Court erred in ordering account of profits calculated on basis of net present value of future potential profits where no profits actually made and without regard to accumulated losses incurred by appellant.

Appealed from FCA (FC): [\[2017\] FCAFC 99](#)

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Evidence

McPhillamy v The Queen

S121/2018: [\[2018\] HCATrans 141](#)

Date heard: 9 August 2018

Coram: Kiefel CJ, Bell, Keane, Nettle and Edelman JJ

Catchwords:

Evidence – Tendency evidence – Where appellant charged with offences involving child sexual abuse – Where trial judge admitted tendency evidence – Where appellant convicted at trial – Where Court of Criminal Appeal dismissed appeal – Whether majority of Court of Criminal Appeal erred in holding tendency evidence had significant probative value – Whether majority of Court of Criminal Appeal erred in holding probative value of tendency evidence substantially outweighed prejudicial effect.

Appealed from NSW (CA): [\[2017\] NSWCCA 130](#)

Orders made on 9 August 2018 allowing the appeal.

Written reasons of the Court to be published at a future date.

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Interpretation

Commissioner of Taxation for the Commonwealth of Australia v Tomaras & Ors

B9/2018: [\[2018\] HCATrans 143](#)

Date heard: 10 August 2018

Coram: Kiefel CJ, Gageler, Keane, Gordon and Edelman JJ

Catchwords:

Interpretation – Crown immunity – *Family Law Act 1975* (Cth) s 90AE – Presumption that statutory provisions expressed in general terms do not bind Crown – Where wife commenced proceedings against husband seeking alteration of property interests including order under s 90AE substituting husband for wife in respect of indebtedness to Commissioner – Where Full Family Court held s 90AE conferred power to make order – Whether Full Family Court erred in concluding presumption Crown not bound by statute did not apply in construction of s 90AE – If yes, whether Full Family Court erred in concluding presumption would have been rebutted – Whether Full Family Court erred in failing to conclude neither Commissioner nor Commonwealth “creditor” or “third party” for purposes of s 90AE.

Appealed from Fam CA (FC): [\[2017\] FamCAFC 216](#); (2017) 327 FLR 228; (2017) 106 ATR 878

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Comptroller General of Customs v Zappia

S91/2018: [\[2018\] HCATrans 140](#)

Date heard: 8 August 2018

Coram: Kiefel CJ, Bell, Gageler, Nettle and Gordon JJ

Catchwords:

Interpretation – *Customs Act 1901* (Cth) s 35A – Where respondent employed as general manager of company operating warehouse – Where cigarettes stolen from warehouse – Where respondent served with notice under s 35A of Act requiring payment of amount of duty payable on stolen cigarettes – Where Administrative Appeals Tribunal dismissed application for review of decision to issue notice – Where Full Federal Court allowed appeal – Whether majority of Full Court erred in holding employee of entity holding license to warehouse dutiable goods not capable of being “person who has, or has been entrusted with, the possession, custody or control of dutiable goods” within meaning of s 35A(1) – Whether majority of Full Court erred in holding that on proper construction of s 35A(1), statutory demand issued by appellant to respondent invalid and of no effect.

Appealed from FCA (FC): [\[2017\] FCAFC 147](#); (2017) 254 FCR 363

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SAS Trustee Corporation v Miles
S260/2017: [\[2018\] HCATrans 147](#)

Date heard: 16 August 2018

Coram: Kiefel CJ, Bell, Gageler, Nettle and Edelman JJ

Catchwords:

Interpretation – *Police Regulation (Superannuation) Act 1906* (NSW) – Where respondent discharged from police force due to infirmities as result of being “hurt on duty” – Where respondent applied for increase in annual superannuation allowance – Where application rejected by trustee – Where trustee’s decision upheld by District Court – Where Court of Appeal allowed appeal – Whether Court of Appeal erred in failing to construe s 10(1A)(b) in context – Whether s 10(1A)(b) authorises payment of additional superannuation allowance where incapacity not due to infirmity determined by Commissioner under s 10B(3) to have been caused by being “hurt on duty”.

Appealed from NSWSC (CA): [\[2017\] NSWCA 86](#)

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Migration

ETA067 v The Republic of Nauru
M167/2017: [\[2018\] HCATrans 114](#)

Date heard: 14 June 2018

Coram: Bell, Keane and Gordon JJ

Catchwords:

Migration – *Nauru (High Court Appeals) Act 1976* (Cth) – *Refugees Convention Act 2012* (Nr) – Where appellant applied for refugee status determination – Where Secretary of Nauru Department of Justice determined appellant not refugee and not entitled to complementary protection – Where Refugee Status Review Tribunal affirmed Secretary’s determination – Where Supreme Court of Nauru dismissed appeal – Whether Supreme Court erred in failing to find Tribunal breached s 22(b) and s 40(1) of *Refugees Convention Act* by failing to consider evidence provided by appellant and failing to act in accordance with principles of natural justice.

Appealed from Supreme Court of Nauru: [\[2017\] NRSC 99](#)

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WET052 v The Republic of Nauru

[S267/2017](#): [\[2018\] HCATrans 115](#)

Date heard: 15 June 2018

Coram: Gageler, Keane and Edelman JJ

Catchwords:

Migration – *Nauru (High Court Appeals) Act 1976 (Cth)* – *Refugees Convention Act 2012 (Nr)* – Where appellant applied for refugee status determination – Where Secretary of Nauru Department of Justice determined appellant not refugee and not entitled to complementary protection – Where Refugee Status Review Tribunal affirmed Secretary’s determination – Where Supreme Court of Nauru dismissed appeal – Whether Supreme Court erred in failing to find Tribunal’s adverse credibility finding illogical and without probative foundation or unreasonable – Whether Supreme Court erred in failing to find Tribunal failed to consider integer of claims to protection and/or consider claims cumulatively.

Appealed from Supreme Court of Nauru: [\[2017\] NRSC 96](#)

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Procedure

UBS AG v Scott Francis Tyne as Trustee of the Argot Trust

[B54/2017](#): [\[2018\] HCATrans 67](#)

Date heard: 18 April 2018

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

Catchwords:

Procedure – *Federal Court of Australia Act 1976 (Cth)* s 37M – Abuse of process – Where appellant commenced proceedings in High Court of Singapore in 2010 against first respondent and another party – Where respondents and other party subsequently commenced proceedings in Supreme Court of New South Wales – Where Supreme Court proceedings permanently stayed in 2013 – Where respondents commenced proceedings in Federal Court in 2014 raising same factual matters – Where proceedings permanently stayed by primary judge as abuse of process – Where

majority of Full Federal Court allowed appeal – Whether majority of Full Federal Court erred in failing to take into account manifest unfairness to appellant and effect of proceedings in bringing administration of justice into disrepute – Whether majority erred in failing to take into account Singapore proceedings in determining whether abuse of process.

Appealed from FCA (FC): [\[2017\] FCAFC 5](#); (2017) 250 FCR 341; (2017) 341 ALR 415

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Stamp Duty

Commissioner of State Revenue v Placer Dome Inc

P6/2018: [\[2018\] HCATrans 119](#)

Date heard: 18 June 2018

Coram: Kiefel CJ, Bell, Gageler, Nettle and Gordon JJ

Catchwords:

Stamp duty – *Stamp Act* 1921 (WA) s 76ATI – Assessment – Acquisition of shares – Where Commissioner assessed stamp duty payable for share acquisition on basis value of respondent’s land was value of all respondent’s property less value of “non-land assets” – Where Tribunal affirmed Commissioner’s decision – Where Court of Appeal allowed appeal on basis Tribunal failed to distinguish between value of respondent’s land and value of respondent’s business – Whether Court of Appeal erred in holding Tribunal erred in failing to apply “conventional *Spencer* principles” in valuing land – Whether Court of Appeal erred in concluding evidence supported finding respondent’s business had material goodwill.

Appealed from WASC (CA): [\[2017\] WASCA 165](#); (2017) 106 ATR 511

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4: ORIGINAL JURISDICTION

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

Constitutional Law

The Commonwealth of Australia & Anor v Commissioner Bret Walker SC & Anor

C7/2018: Special Case referred to Full Court on 30 July 2017

Catchwords:

Constitutional law – Constitution ss 75, 76, 77(iii) – Judicial power – Crown immunity – Crown immunity from State laws – Where Governor of South Australia established Commission – Where first defendant appointed to constitute Commission – Where Commission issued summonses to Department of Agriculture and Water Resources and Murray-Darling Basin Authority to produce specified documents and things and to current and former staff of Murray-Darling Basin Authority to attend for examination – Whether s 10(b) and (c) of *Royal Commissions Act 1917* (SA) authorise Commission to require attendance, answers or returns to inquiries of, or production of documents by, Commonwealth, Murray-Darling Basin Authority, current or former officers or employees of the Commonwealth or Murray-Darling Basin Authority, or resident of State other than South Australia – Whether s 11(1) of Act authorises Commission to commit to gaol or impose penalty on Commonwealth, Murray-Darling Basin Authority, current or former officers or employees of the Commonwealth or Murray-Darling Basin Authority, or resident of State other than South Australia – Whether ss 10(b), 10(c), 11(1)(a), 11(1)(f), 11(2) and 11(3) of Act invalid in application to Commonwealth, Murray-Darling Basin Authority, current or former officers or employees of the Commonwealth or Murray-Darling Basin Authority, or resident of State other than South Australia.

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5: SECTION 40 REMOVAL

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

Constitutional Law

Clubb v Edwards & Anor

M46/2018: *Removed into High Court under s 40 of Judiciary Act 1903 (Cth) on 23 March 2018*

Catchwords:

Constitutional law – Implied freedom of political communication – *Public Health and Wellbeing Act 2008 (Vic) s 185D* – Where s 185D prohibits engaging in “prohibited behaviour” within “safe access zone” – Where “prohibited behaviour” defined to include “communicating by any means in relation to abortions in a manner that is able to be seen or heard by a person accessing, or attempting to access, or leaving premises at which abortions are provided and is reasonably likely to cause distress or anxiety” – Where appellant convicted of charge under s 185D in Magistrates’ Court – Whether 185D impermissibly burdens implied freedom of political communication.

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Preston v Avery & Anor

H2/2018: *Removed into High Court under s 40 of Judiciary Act 1903 (Cth) on 23 March 2018*

Catchwords:

Constitutional law – Implied freedom of political communication – *Reproductive Health (Access to Termination) Act 2013 (Tas) s 9(2)* – Where s 9(2) prohibits protest in relation to terminations that is able to be seen or heard by person accessing or attempting to access premises at which terminations provided – Where appellant convicted in Hobart Court of Petty Sessions of contraventions of s 9(2) – Whether s 9(2) impermissibly burdens implied freedom of political communication.

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6: SPECIAL LEAVE GRANTED

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

Arbitration

Rinehart & Anor v Hancock Prospecting Pty Ltd & Ors; Rinehart & Anor v Georgina Hope Rinehart (in her personal capacity and as trustee of the Hope Margaret Hancock Trust and as trustee of the HFMF Trust) & Ors

S143/2018; S144/2018: [\[2018\] HCATrans 90](#)

Date heard: 18 May 2018 – *Special leave granted on limited grounds.*

Catchwords:

Arbitration – Arbitration agreements – Interpretation – Where parties entered into series of deeds containing arbitration agreements – Where primary judge ordered trial of question whether arbitration agreements in deeds null and void, inoperative or incapable of being performed – Where Full Court stayed proceeding and referred parties to arbitration – Whether Full Court erred in concluding arbitration clauses expressed to cover disputes “under” agreement extended to disputes concerning the validity of the deeds or provisions thereof.

Appealed from FCA (FC): [\[2017\] FCAFC 170](#); (2017) 350 ALR 658 and [\[2017\] FCAFC 208](#)

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Consumer Law

Australian Securities and Investments Commission v Kobelt

A11/2018: [\[2018\] HCATrans 153](#)

Date heard: 17 August 2018 – *Special leave granted.*

Catchwords:

Consumer law – *Australian Securities and Investments Act 2001* (Cth) s 12CB, 12CC – Unconscionable conduct – Where respondent operated general store in remote town – Where respondent provided credit to indigenous customers – Where primary judge

held respondent contravened s 12CB(1) by engaging in system of unconscionable conduct in connection with supply of financial services to customers – Where Full Federal Court allowed appeal – Whether Full Federal Court erred in construction and application of ss 12CB and 12CC.

Appealed from FCA (FC): [\[2018\] FCAFC 18](#)

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Frugtniet v Australian Securities & Investments Commission

M163/2017: [\[2018\] HCATrans 155](#)

Date heard: 17 August 2018 – *Special leave granted.*

Catchwords:

Consumer law – Banning orders – *National Consumer Credit Protection Act 2009* (Cth) s 80 – *Crimes Act 1914* (Cth) s 85ZZH – Where Commission made banning order under s 80 on basis appellant not “fit and proper person to engage in credit activities” – Where Administrative Appeals Tribunal affirmed Commission’s order – Where primary judge and Full Federal Court dismissed appeals – Whether Full Federal Court erred in holding Tribunal not prevented by *Crimes Act* from considering “spent convictions”.

Appealed from FCA (FC): [\[2017\] FCAFC 162](#); (2017) 255 FCR 96

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Corporations

Australian Securities & Investments Commission v Lewski & Anor;
Australian Securities & Investments Commission v Wooldridge & Anor;
Australian Securities & Investments Commission v Butler & Anor;
Australian Securities & Investments Commission v Jaques & Anor;
Australian Securities & Investments Commission v Clarke & Anor

M79/2018; M80/2018; M81/2018; M82/2018; M83/2018: [\[2018\] HCATrans 91](#)

Date heard: 18 May 2018 – *Special leave granted.*

Catchwords:

Corporations – Managed investment schemes – Third party transactions – *Corporations Act 2001* (Cth) ss 208, 209, 601FC,

601FD, 601GC – Where directors resolved to lodge deed purporting to amend constitution to authorise payment of fee to responsible entity – Where appellant brought civil penalty proceedings for contraventions of Act against responsible entity and directors – Where trial judge concluded directors breached duties in resolving to lodge deed and authorising payment of fee – Where Full Court allowed appeals – Whether Full Court erred in concluding deed purporting to amend constitution valid until set aside by Court – Whether Full Court erred in concluding deed binding on responsible entity – Whether Full Court erred in failing to find directors involved in contravention of s 208 by authorising payment of fee to responsible entity.

Appealed from FCA (FC): [\[2017\] FCAFC 171](#); (2017) 352 ALR 64

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Carter Holt Harvey Woodproducts Australia Pty Ltd v Commonwealth of Australia & Ors

M43/2018: [\[2018\] HCATrans 156](#)

Date heard: 17 August 2018 – *Special leave granted.*

Catchwords:

Corporations – Trustee corporations – *Corporations Act* 2001 (Cth) s 433(2) – Where creditors resolved to wind up corporate trustee – Where receivers sought directions – Where primary judge held receivers justified in proceeding on basis receivership surplus properly characterised as trust property and s 433 did not apply to surplus – Where Court of Appeal allowed appeal – Whether Court of Appeal erred in concluding “property of the company” in s 433(2) included not only trustee’s right of indemnity but also underlying trust assets to which trustee company could have recourse – Whether Court of Appeal erred in concluding corporate trustee’s right of indemnity from trust assets was “property comprised in or subject to a circulating security interest” for purposes of s 433(2).

Appealed from VSC (CA): [\[2018\] VSCA 41](#); (2018) 330 FLR 149; (2018) 354 ALR 789; (2018) 124 ACSR 246

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Criminal Law

Director of Public Prosecutions Reference No 1 of 2017

M53/2018: [\[2018\] HCATrans 145](#)

Date determined: 15 August 2018 – *Special leave granted.*

Catchwords:

Criminal law – Trial by jury – *Prasad* direction – Where accused charged with murder – Where counsel for accused sought *Prasad* direction on basis prosecution case not strong insofar as prosecution required to prove beyond reasonable doubt accused not acting in self-defence – Where trial judge gave *Prasad* direction – Where jury returned verdicts of not guilty of murder or manslaughter – Where Director of Public Prosecutions referred point of law to Court of Appeal under s 308 of *Criminal Procedure Act 2009* (Vic) – Where Court of Appeal determined giving of *Prasad* direction not contrary to law – Where majority of Court of Appeal determined direction may continue to be administered to jury in criminal trial – Whether Court of Appeal erred in determining giving of *Prasad* direction not contrary to law – Whether majority of Court of Appeal erred in determining *Prasad* direction may continue to be administered to jury in criminal trial.

Appealed from VSC (CA): [\[2018\] VSCA 69](#)

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Grajewski v Director of Public Prosecutions (NSW)

S141/2018: [\[2018\] HCATrans 89](#)

Date heard: 18 May 2018 – *Special leave granted.*

Catchwords:

Criminal law – Destroy or damage property – *Crimes Act 1900* (NSW) s 195(1) – Meaning of “damage” – Where appellant climbed machine causing operator to shut down machine – Where appellant convicted of intentionally or recklessly damaging property contrary to s 195(1)(a) – Where District Court dismissed appeal and referred question whether facts can support finding of guilt to Court of Criminal Appeal – Where Court of Criminal Appeal answered “yes” – Whether Court of Criminal Appeal erred in concluding “damage” can be established where no physical derangement of property – Whether Court of Criminal Appeal erred in concluding temporary physical interference with functionality of property may constitute “damage” for purpose of s 195.

Appealed from NSWSC (CA): [\[2017\] NSWCCA 251](#)

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McKell v The Queen

S114/2018: [\[2018\] HCATrans 151](#)

Date heard: 17 August 2018 – *Special leave granted.*

Catchwords:

Criminal law – Trial by jury – Summing up – Where appellant intercepted two consignments between arrival in Sydney and transfer to freight forwarding agency – Where second consignment contained prohibited drug – Where appellant charged with importing commercial quantity of prohibited drug, conspiring to import commercial quantity of prohibited drug and dealing with proceeds of crime – Where appellant tried before jury – Where trial judge commented on evidence in summing up – Where appellant convicted of charges – Where majority of Court of Appeal dismissed appeal against convictions – Whether majority of Court of Appeal erred in failing to find trial judge’s summing up unbalanced and caused miscarriage of justice.

Appealed from NSWSC (CA): [\[2017\] NSWCCA 291](#)

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Interpretation

Victorian Building Authority v Andriotis

M33/2018: [\[2018\] HCATrans 154](#)

Date heard: 17 August 2018 – *Special leave granted.*

Catchwords:

Interpretation – *Mutual Recognition Act* 1999 (Cth) s 17, 20 – Where respondent registered in New South Wales as waterproofing technician – Where respondent applied to appellant for registration under *Building Act* 1993 (Vic) – Where appellant refused to grant registration because respondent not of “good character” as required by s 170(1)(c) of *Building Act* – Where Administrative Appeals Tribunal affirmed decision – Where Full Federal Court allowed appeal – Whether Full Federal Court erred in holding appellant required by s 20(2) to register respondent for equivalent occupation under *Building Act* notwithstanding appellant found respondent not of good character – Whether Full Federal Court erred in holding exception to mutual recognition principle in s 17(2) of *Mutual Recognition Act* does not quality “entitlement” to be registered under s 20(1) – Whether Full Court erred in holding “good character” requirement in *Building Act* not law regulating “manner”

of carrying out occupation within meaning of s 17(2) of *Mutual Recognition Act*.

Appealed from FCA (FC): [\[2018\] FCAFC 24](#)

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Williams v Wreck Bay Aboriginal Community Council & Anor
C5/2018: [\[2018\] HCATrans 50](#)

Date determined: 21 March 2018 – *Special leave granted*.

Catchwords:

Interpretation – Concurrent operation – Where Council leased property to appellant under residential tenancy agreement – Where appellant commenced proceedings in ACT Civil and Administrative Tribunal seeking orders for repairs and compensation – Where Tribunal referred questions of law to Supreme Court for determination – Where Court of Appeal allowed appeal – Whether Court of Appeal erred in concluding ACT laws retain subordinate status when applied to Jervis Bay Territory by force of s 4A of *Jervis Bay Territory Acceptance Act 1915* (Cth) – Whether Court of Appeal erred in concluding ss 8 and 9 of *Residential Tenancies Act 1997* (ACT) not capable of operating concurrently with *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* (Cth) such that ss 8 and 9 do not apply to “Aboriginal Land” for purposes of s 46 of *Aboriginal Land Grant (Jervis Bay Territory) Act*.

Appealed from ACT (CA): [\[2017\] ACTCA 46](#); (2017) 12 ACTLR 207; (2017) 326 FLR 58

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Migration

BEG15 v Minister for Immigration and Border Protection & Anor
S135/2018: [\[2018\] HCATrans 80](#)

Date determined: 10 May 2018 – *Special leave granted*.

Catchwords:

Migration – Jurisdictional error – *Migration Act 1958* (Cth) s 438 – Where appellant applied for protection visa – Where application refused by delegate – Where appellant applied to Refugee Review Tribunal for review of decision – Where delegate issued certificate under s 438(1)(a) that disclosure of certain information would be

contrary to public interest – Where certificate invalid – Where Tribunal did not inform appellant of certificate or disclose information to appellant – Where Tribunal affirmed delegate’s decision – Where Federal Circuit Court dismissed application for judicial review – Where Full Federal Court dismissed appeal – Whether Full Court erred in failing to find Tribunal fell into jurisdictional error in acting on invalid certificate – Whether Full Court erred in failing to find not open to primary judge to withhold relief where decision affected by jurisdictional error – Whether necessary for applicant to show denial of procedural fairness in addition to invalidity of certificate.

Appealed from FCA (FC): [\[2017\] FCAFC 198](#); (2017) 253 FCR 36

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CQZ15 v Minister for Immigration and Border Protection & Anor
M75/2018: [\[2018\] HCATrans 79](#)

Date determined: 10 May 2018 – *Special leave granted.*

Catchwords:

Migration – Jurisdictional error – *Migration Act* 1958 (Cth) s 438 – Where appellant applied for protection visa – Where application refused by delegate – Where appellant applied to Administrative Appeals Tribunal for review of decision – Where delegate issued certificate under s 438(1)(a) that disclosure of certain information would be contrary to public interest – Where certificate invalid – Where delegate issued further certificate – Where Tribunal did not inform appellant of certificates or disclose information to appellant – Where Tribunal affirmed delegate’s decision – Where Federal Circuit Court concluded Tribunal fell into jurisdictional error in acting upon invalid certificate and failing to disclose existence of certificates to appellant – Where Full Federal Court allowed appeal – Whether Full Court erred in departing from *Minister for Immigration and Border Protection v Singh* (2016) 244 FCR 305 by failing to find Tribunal fell into jurisdictional error in not disclosing certificates – Whether Full Court erred in failing to find not open to primary judge to withhold relief where decision affected by jurisdictional error.

Appealed from FCA (FC): [\[2017\] FCAFC 194](#); (2017) 253 FCR 1

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Minister for Immigration and Border Protection v SZMTA & Anor
S36/2018: [\[2018\] HCATrans 34](#)

Date heard: 16 February 2018 – *Special leave granted.*

Catchwords:

Migration – Procedural fairness – *Migration Act* 1958 (Cth) s 438(2) – Where first respondent applied for Protection (Class XA) visa – Where application refused by delegate – Where first respondent applied to Administrative Appeals Tribunal for review of decision – Where delegate notified Tribunal s 438(2)(a) applied to certain documents because given in confidence to Minister or Department – Where Tribunal did not inform first respondent of notification – Where copies of documents previously provided to first respondent – Where Federal Circuit Court dismissed application for judicial review – Where Federal Court allowed appeal on basis Tribunal denied first respondent procedural fairness – Whether Federal Court erred in relying on possibility Tribunal may not have had regard to certain information because of notification under s 438(2) in finding Tribunal denied first respondent procedural fairness – Whether Federal Court erred in holding Tribunal denied first respondent procedural fairness in circumstances where documents in possession of first respondent prior to Tribunal hearing.

Appealed from FCA: [\[2017\] FCA 1055](#); (2017) 255 FCR 215

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Native Title

KN (deceased) and Others on behalf of the Tjiwarl and Tjiwarl#2 Native Title Claim Groups v State of Western Australia & Ors

P38/2018: [\[2018\] HCATrans 124](#)

Date heard: 21 June – *Special leave granted.*

Catchwords:

Native title – Extinguishment – Exploration licence – *Native Title Act* 1993 (Cth) s 47B – Where unallocated Crown land subject to exploration licence granted under *Mining Act* 1978 (WA) – Where native title determination application filed in respect of land – Where primary judge concluded s 47B applied because exploration licence not “lease” within meaning of s 47B(1)(b)(i) – Where Federal Court allowed appeal – Whether Federal Court erred in concluding exploration licence is “lease” within meaning of s 47B(1)(b)(i).

Appealed from FCA (FC): [\[2018\] FCAFC 8](#); (2018) 351 ALR 491

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Northern Territory of Australia v Mr Griffiths and Lorraine Jones on behalf of the Ngaliwurru and Nungali Peoples & Anor; Commonwealth of Australia v Mr Griffiths and Lorraine Jones on behalf of the Ngaliwurru and Nungali Peoples & Anor; Mr Griffiths and Lorraine Jones on behalf of the Ngaliwurru and Nungali Peoples v Northern Territory of Australia & Anor
[D1/2018](#); [D2/2018](#); [D3/2018](#): [\[2018\] HCATrans 28](#)

Date heard: 16 February 2018 – *Special leave granted.*

Catchwords:

Native title – Extinguishment – Compensation for extinguishment – *Native Title Act* 1993 (Cth) – Where claim brought against Commonwealth and Northern Territory for extinguishment of non-exclusive native title rights and interests in Timber Creek – Where primary judge awarded claim group compensation for economic value of extinguished rights, interest, and solatium for loss or impairment of rights and interests – Where Full Court held primary judge erred in assessing value of extinguished rights and concluded value of rights was 65% of value of freehold title – Whether Full Court’s assessment of economic value of rights erroneous or manifestly excessive in light of restrictions and limitations on rights – Whether Full Court erred in failing to find primary judge erred in awarding interest as part of compensation under s 51(1) of Act and not as interest on compensation – Whether Full Court erred in assessing interest by reference to 65% of value of freehold title – Whether Full Court erred in failing to find primary judge erred in assessing compensation for non-economic loss – Whether Full Court erred in failing to find primary judge’s assessment of compensation for non-economic loss manifestly excessive – Whether Full Court erred in finding commercial agreements entered into by claimants containing solatium-type payments irrelevant to assessment of compensation.

Appealed from FCA (FC): [\[2017\] FCAFC 106](#); (2017) 346 ALR 247

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Tjungarrayi & Ors v State of Western Australia & Ors
[P37/2018](#): [\[2018\] HCATrans 124](#)

Date heard: 21 June – *Special leave granted.*

Catchwords:

Native title – Extinguishment – Petroleum exploration permits – *Native Title Act* 1993 (Cth) s 47B – Where land subject to

petroleum exploration permits granted under *Petroleum and Geothermal Energy Resources Act 1967* (WA) – Where native title determination application filed in respect of land – Where primary judge concluded s 47B applied because petroleum exploration permits not “leases” within meaning of s 47B(1)(b)(i) – Where Federal Court allowed appeal – Whether Federal Court erred in concluding petroleum exploration permits “leases” within meaning of s 47B(1)(b)(i).

Appealed from FCA (FC): [\[2018\] FCAFC 35](#)

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Tort

Parkes Shire Council v South West Helicopters Pty Ltd

S140/2018: [\[2018\] HCATrans 92](#)

Date heard: 18 May 2018 – *Special leave granted on limited grounds.*

Catchwords:

Tort – Negligence – Psychiatric injury – Where Council engaged South West Helicopters to provide helicopter and pilot for aerial survey – Where Council employees died in helicopter crash – Where relatives brought proceedings in negligence for nervous shock against Council and South West Helicopters under *Compensation to Relatives Act 1897* (NSW) – Where primary judge upheld claim – Where majority of Court of Appeal allowed appeal on basis any liability South West Helicopters might have had under *Compensation to Relatives Act* or general law excluded by *Civil Aviation (Carriers’ Liability) Act 1959* (Cth) – Whether majority of Court of Appeal erred in construction of s 35 of *Civil Aviation (Carriers’ Liability) Act* – Whether majority of Court of Appeal erred in failing to conclude claims against carriers brought by non-passengers following death of passenger not regulated by s 35.

Appealed from NSW (CA): [\[2017\] NSWCA 312](#); (2017) 327 FLR 110

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7: CASES NOT PROCEEDING OR VACATED

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8: SPECIAL LEAVE REFUSED

Publication of Reasons: 8 August 2018

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	AQV16	Minister for Immigration and Border Protection & Anor (A21/2018)	Federal Court of Australia [2018] FCA 134	Application dismissed [2018] HCASL 186
2.	Squires	The Queen (B24/2018)	Supreme Court of Queensland (Court of Appeal) [2018] QCA 8	Application dismissed [2018] HCASL 187
3.	CED15	Minister for Immigration and Border Protection & Anor (M52/2018)	Federal Court of Australia [2018] FCA 451	Application dismissed [2018] HCASL 188
4.	Salby	Macquarie University & Anor (M54/2018)	Federal Court of Australia [2017] FCA 67	Application dismissed [2018] HCASL 189
5.	MZARG	Minister for Immigration and Border Protection & Anor (M71/2018)	Federal Court of Australia [2018] FCA 624	Application dismissed [2018] HCASL 190
6.	May	The State of Western Australia (P16/2018)	Supreme Court of Western Australia (Court of Appeal) [2018] WASCA 24	Application dismissed [2018] HCASL 191
7.	CDJ15	Minister for Immigration and Border Protection & Anor (S102/2018)	Federal Court of Australia [2018] FCA 298	Application dismissed [2018] HCASL 192
8.	ACI15	Minister for Immigration and Border Protection & Anor (S103/2018)	Federal Court of Australia [2018] FCA 335	Application dismissed [2018] HCASL 193
9.	CVZ16	Minister for Immigration and Border Protection & Anor (S110/2018)	Federal Court of Australia [2018] FCA 309	Application dismissed [2018] HCASL 194
10.	CYG16	Minister for Immigration and Border Protection & Anor (S116/2018)	Federal Court of Australia [2018] FCA 433	Application dismissed [2018] HCASL 195

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
11.	BRU15	Minister for Immigration and Border Protection & Anor (S124/2018)	Federal Court of Australia [2018] FCA 453	Application dismissed [2018] HCASL 196
12.	ABG16	Minister for Immigration and Border Protection & Anor (S130/2018)	Federal Court of Australia [2018] FCA 369	Application dismissed [2018] HCASL 197
13.	Tedaja	Minister for Immigration and Border Protection & Anor (S145/2018)	Federal Court of Australia [2018] FCA 693	Application dismissed [2018] HCASL 198
14.	QRS	Legal Profession Board of Tasmania & Anor (H5/2017)	Full Court of the Supreme Court of Tasmania [2017] TASFC 13	Application dismissed [2018] HCASL 199
15.	Eckert	Roberts (A10/2018)	Full Court of the Supreme Court of South Australia [2017] SASCFC 176	Application dismissed with costs [2018] HCASL 200
16.	Prysmian Cavi e Sistemi S.R.L	Australian Competition and Consumer Commission (A14/2018)	Full Court of the Federal Court of Australia [2018] FCAFC 30	Application dismissed with costs [2018] HCASL 201
17.	Jess	Garvey (B13/2018)	Family Court of Australia	Application dismissed with costs [2018] HCASL 202
18.	Rahman	Commissioner of Taxation (S108/2018)	Full Court of the Federal Court of Australia [2018] FCAFC 54	Application dismissed with costs [2018] HCASL 203
19.	Rahman	Commonwealth of Australia as represented by the Australian Taxation Office (S109/2018)	Full Court of the Federal Court of Australia [2018] FCAFC 54	Application dismissed [2018] HCASL 204
20.	Bodycorp Repairers Pty Ltd	Maisano & Ors [No 2] (M152/2017)	Supreme Court of Victoria (Court of Appeal) [2017] VSCA 252	Application dismissed [2018] HCASL 205

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Publication of Reasons: 15 August 2018

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Re Conomy (P20/2018)		High Court of Australia	Application dismissed [2018] HCASL 205A
2.	Re Quach (C3/2018)		High Court of Australia	Application dismissed [2018] HCASL 206
3.	Re Quach (C4/2018)		High Court of Australia	Application dismissed [2018] HCASL 207
4.	DHB16	Minister for Immigration and Border Protection & Anor (A22/2018)	Federal Court of Australia [2018] FCA 673	Application dismissed [2018] HCASL 208
5.	BZK16 & Ors	Minister for Immigration and Border Protection & Anor (B25/2018)	Federal Court of Australia [2018] FCA 567	Application dismissed [2018] HCASL 209
6.	ANL16	Minister for Immigration and Border Protection & Anor (M59/2018)	Federal Court of Australia [2018] FCA 438	Application dismissed [2018] HCASL 210
7.	BDQ15	Minister for Immigration and Border Protection & Anor (M60/2018)	Federal Court of Australia [2018] FCA 436	Application dismissed [2018] HCASL 211
8.	Welton	Welton (M62/2018)	Full Court of the Family Court of Australia	Application dismissed [2018] HCASL 212
9.	AXZ15	Minister for Immigration and Border Protection & Anor (M69/2018)	Federal Court of Australia [2018] FCA 623	Application dismissed [2018] HCASL 213
10.	CLW16	Minister for Immigration and Border Protection & Anor (S101/2018)	Federal Court of Australia [2018] FCA 299	Application dismissed [2018] HCASL 214
11.	AUH17	Minister for Immigration and Border Protection & Anor (S112/2018)	Federal Court of Australia [2018] FCA 388	Application dismissed [2018] HCASL 215
12.	Whitby	Zeller & Anor (S119/2018)	Family Court of Australia	Application dismissed [2018] HCASL 216
13.	BGK16	Minister for Immigration and Border Protection & Anor (S133/2018)	Federal Court of Australia [2018] FCA 413	Application dismissed [2018] HCASL 217
14.	BUL15 & Ors	Minister for Immigration and Border Protection & Anor (S137/2018)	Federal Court of Australia [2018] FCA 597	Application dismissed [2018] HCASL 218

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
15.	DLG16	Minister for Immigration and Border Protection & Anor (S142/2018)	Federal Court of Australia [2018] FCA 641	Application dismissed [2018] HCASL 219
16.	Dickson	Commissioner of the Australian Federal Police (S146/2018)	Supreme Court of New South Wales (Court of Appeal) [2018] NSWCA 89	Application dismissed [2018] HCASL 220
17.	CQH16	Minister for Immigration and Border Protection & Anor (A23/2018)	Federal Court of Australia [2018] FCA 672	Application dismissed [2018] HCASL 221
18.	AUX16	Minister for Immigration and Border Protection & Anor (B15/2018)	Federal Court of Australia [2018] FCA 416	Application dismissed [2018] HCASL 222
19.	Harvey	Queensland Police Service (B19/2018, B20/2018, B21/2018, B22/2018, B23/2018)	Supreme Court of Queensland (Court of Appeal) [2018] QCA 64	Application dismissed [2018] HCASL 223
20.	Kerinauia	Crown in the Right of The Northern Territory (D5/2018)	Removal application	Application dismissed [2018] HCASL 224
21.	Gomez	Carrafa & Anor (M50/2018)	Federal Court of Australia [2018] FCA 201	Application dismissed [2018] HCASL 225
22.	CGV15	Minister for Immigration and Border Protection & Anor (M55/2018)	Federal Court of Australia [2017] FCA 1610	Application dismissed [2018] HCASL 226
23.	AXD17	Minister for Immigration and Border Protection & Anor (P17/2018)	Federal Court of Australia [2018] FCA161	Application dismissed [2018] HCASL 227
24.	Saldanha & Anor	City of Belmont & Anor (P19/2018)	Supreme Court of Western Australia (Court of Appeal) [2018] WASCA 7	Application dismissed [2018] HCASL 228
25.	Watiwat	Dixon & Ors (S104/2018)	Supreme Court of New South Wales (Court of Appeal) [2018] NSWCA 48	Application dismissed [2018] HCASL 229
26.	CCB15	Minister for Immigration and Border Protection & Anor (S107/2018)	Federal Court of Australia [2018] FCA 371	Application dismissed [2018] HCAS 230
27.	CTP15	Minister for Immigration and Border Protection & Anor (S115/2018)	Federal Court of Australia [2018] FCA 296	Application dismissed [2018] HCASL 231

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
28.	AGI15	Minister for Immigration and Border Protection & Anor (S125/2018)	Federal Court of Australia [2018] FCA 232	Application dismissed [2018] HCASL 232
29.	CWO16	Minister for Immigration and Border Protection & Anor (S127/2018)	Federal Court of Australia [2018] FCA 522	Application dismissed [2018] HCASL 233
30.	Singh	Singh & Ors (S131/2018)	Supreme Court of New South Wales (Court of Appeal) [2018] NSWCA 30	Application dismissed [2018] HCASL 234
31.	CSI15	Minister for Immigration and Border Protection & Anor (S134/2018)	Federal Court of Australia [2018] FCA 350	Application dismissed [2018] HCASL 235
32.	Chowder Bay Pty Ltd & Ors	Paganin & Ors (P12/2018)	Full Court of the Federal Court of Australia [2018] FCAFC 25	Application dismissed with costs [2018] HCASL 236
33.	Tuiketei	Minister for Immigration and Border Protection & Anor (S80/2018)	Federal Court of Australia [2018] FCA 206	Application dismissed with costs [2018] HCASL 237
34.	Saba	Plumb & Anor (S117/2018)	Supreme Court of New South Wales (Court of Appeal) [2018] NSWCA 60	Application dismissed with costs [2018] HCASL 238
35.	Geju Pty Ltd	Central Highlands Regional Council (B14/2018)	Supreme Court of Queensland (Court of Appeal) [2018] QCA 38	Application dismissed with costs [2018] HCASL 239
36.	GP	The Queen (S96/2018)	Supreme Court of New South Wales (Court of Criminal Appeal) [2016] NSWCCA 150	Application dismissed [2018] HCASL 240

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17 August 2018: Sydney

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	PAZ	The Queen (B3/2018)	Supreme Court of Queensland (Court of Appeal) [2017] QCA 263	Application dismissed [2018] HCATrans 148
2.	Mead	David John Neale Lemon (as Executor of the Estate of the late Michael John Maynard Wright) & Ors (P66/2017)	Supreme Court of Western Australia (Court of Appeal) [2017] WASCA 215	Application dismissed with costs to be paid from the estate [2018] HCATrans 152
3.	Anchorage Capital Partners Pty Limited	ACPA Pty Ltd & Anor (S38/2018)	Full Court of the Federal Court of Australia [2018] FCAFC 6	Application dismissed with costs [2018] HCATrans 150
4.	Apotex Pty Limited	Warner-Lambert Company LLC & Ors (S66/2018)	Full Court of the Federal Court of Australia [2018] FCAFC 26	Application dismissed with costs [2018] HCATrans 149

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17 August 2018: Melbourne

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Frugniet	Migration Agents Registration Authority (M21/2018)	Full Court of the Federal Court of Australia [2017] FCAFC 5	Application dismissed with costs [2018] HCATrans 157

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