



# HIGH COURT BULLETIN

Produced by the Legal Research Officer,  
High Court of Australia Library  
[2022] HCAB 3 (14 April 2022)

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

1: Summary of New Entries .....	1
2: Cases Handed Down .....	3
3: Cases Reserved.....	8
4: Original Jurisdiction .....	16
5: Section 40 Removal .....	17
6: Special Leave Granted.....	18
7: Cases Not Proceeding or Vacated .....	30
8: Special Leave Refused.....	31

## 1: SUMMARY OF NEW ENTRIES

### 2: Cases Handed Down

Case	Title
<a href="#"><i>Hoang v The Queen</i></a>	Criminal Practice
<a href="#"><i>Commissioner of Taxation v Carter &amp; Ors</i></a>	Income Tax
<a href="#"><i>Australian Building and Construction Commissioner v Pattinson &amp; Anor</i></a>	Industrial Law
<a href="#"><i>Kozarov v Victoria</i></a>	Negligence
<a href="#"><i>Tapp v Australian Bushmen's Campdraft &amp; Rodeo Association Limited</i></a>	Tort

### 3: Cases Reserved

Case	Title
------	-------

<a href="#"><u><i>Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs &amp; Anor v Montgomery</i></u></a>	Constitutional Law
<a href="#"><u><i>Hill v Zuda Pty Ltd as Trustee for The Holly Superannuation Fund &amp; Ors</i></u></a>	Superannuation

#### 4: Original Jurisdiction

#### 5: Section 40 Removal

#### 6: Special Leave Granted

<b>Case</b>	<b>Title</b>
<a href="#"><u><i>Page v Sydney Seaplanes Pty Ltd trading as Sydney Seaplanes ABN 95112379629</i></u></a>	Constitutional Law
<a href="#"><u><i>RP Data Pty Limited v Hardingham &amp; Ors; Realestate.com.au v Hardingham &amp; Ors</i></u></a>	Copyright
<a href="#"><u><i>Stephens v The Queen</i></u></a>	Criminal Law
<a href="#"><u><i>Bosanac v Commissioner of Taxation &amp; Anor</i></u></a>	Equity
<a href="#"><u><i>TL v The Queen</i></u></a>	Evidence

#### 7: Cases Not Proceeding or Vacated

#### 8: Special Leave Refused

## 2: CASES HANDED DOWN

The following cases were handed down by the High Court of Australia during the April 2022 sittings.

---

### Criminal Practice

*Hoang v The Queen*

**S146 to S149/2021:** [\[2022\] HCA 14](#)

**Judgment:** 13 April 2022

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

**Catchwords:**

Criminal practice – Jury trial – Where s 53A(1)(c) of *Jury Act 1977* (NSW) provided for mandatory discharge of juror where juror engaged in misconduct in relation to trial – Where misconduct included conduct constituting offence against *Jury Act* – Where offence against s 68C(1) of *Jury Act* for juror to make inquiry for purpose of obtaining information about any matters relevant to trial – Where evidence led as to Working with Children Check – Where evidence subject of submissions and referred to in summing up – Where jury note disclosed juror had searched internet for requirements of Working with Children Check – Where trial judge took verdicts which jury indicated they had reached unanimous verdict on before discharging juror – Whether information subject of inquiry about matter relevant to trial – Whether inquiry made for purpose of obtaining information about that matter – Whether mandatory discharge of juror required.

Words and phrases – "constitution and authority of the jury", "discharge of jurors", "jury deliberations", "making an inquiry", "mandatory discharge", "matters relevant to the trial", "misconduct in relation to the trial", "purpose of obtaining information", "true verdict according to the evidence".

*Jury Act 1977* (NSW), ss 53A, 53B, 55DA, 68C.

**Appealed from NSWSC (CCA):** [\[2018\] NSWCCA 166](#); (2018) 98 NSWLR 406; (2020) 273 A Crim R 501

**Held:** Appeals allowed in part.

[Return to Top](#)

---

# Income Tax

*Commissioner of Taxation v Carter & Ors*

**[S62/2021](#)**: [\[2022\] HCA 10](#)

**Judgment:** 6 April 2022

**Coram:** Gageler, Gordon, Edelman, Steward and Gleeson JJ

**Catchwords:**

Income Tax (Cth) – Trusts – Where s 97(1) of *Income Tax Assessment Act 1936* (Cth) provides that where beneficiary of trust estate not under any legal disability is presently entitled to share of income of trust estate, assessable income of beneficiary shall include so much of that share of net income of trust estate as is attributable to period when beneficiary was resident – Where trust deed provided that, if trustee made no effective determination to pay, apply, set aside or accumulate any part of trust income in given accounting period, income held on trust for specified beneficiaries – Where trustee failed to pay, apply, set aside or accumulate income in income year – Where share of trust income in income year held on trust for beneficiaries – Where Commissioner of Taxation assessed each beneficiary on basis that beneficiaries "presently entitled" to share of income within meaning of s 97(1) – Where beneficiaries subsequently disclaimed interest in share of income – Whether present entitlement under s 97(1) determined immediately prior to end of income year – Whether disclaimers operated retrospectively so as to disapply s 97(1) in respect of income year.

Words and phrases – "default distribution", "disclaimer", "end of the year of income", "presently entitled", "presumption of assent", "retrospectively disapply", "right to demand and receive payment", "trust estate", "vested in interest and vested in possession".

*Income Tax Assessment Act 1936* (Cth), ss 95A, 96, 97, 98, 99, 99A.

**Appealed from FCA (FC):** [\[2020\] FCAFC 150](#); (2020) 279 FCR 83; (2020) 112 ATR 493

**Held:** Appeal allowed.

[Return to Top](#)

---

# Industrial Law

*Australian Building and Construction Commissioner v Pattinson & Anor*

**[M34/2021](#)**: [\[2022\] HCA 13](#)

**Judgment:** 13 April 2022

**Coram:** Kiefel CJ, Gageler, Keane, Gordon, Edelman, Steward and Gleeson JJ

**Catchwords:**

Industrial law (Cth) – Pecuniary penalties – Determination of appropriate penalty – Where s 349(1) of *Fair Work Act 2009* (Cth) ("Act") relevantly provided that person must not knowingly or recklessly make false or misleading representation about another person's obligation to engage in industrial activity – Where s 546 of Act empowered Federal Court of Australia to order person to pay pecuniary penalty that court considered "appropriate" in respect of contravention of civil remedy provision – Where first respondent union officer and second respondent union each contravened s 349(1) of Act twice – Where second respondent had longstanding history of contraventions of Act – Whether discretion under s 546 of Act constrained by notion of proportionality drawn from criminal law – Whether statutory maximum penalty for civil remedy provision may be imposed only for worst category of contravening conduct.

Words and phrases – "appropriate penalty", "civil penalty regime", "civil remedy provision", "deterrence", "discretion", "maximum penalty", "pecuniary penalty", "proportionality", "retribution".

*Fair Work Act 2009* (Cth), ss 349, 546.

**Appealed from FCA (FC):** [\[2020\] FCAFC 177](#); (2020) 384 ALR 75; (2020) 299 IR 404

**Held:** Appeal allowed.

[Return to Top](#)

---

## Negligence

*Kozarov v State of Victoria*

**M36/2021:** [\[2022\] HCA 12](#)

**Judgment:** 13 April 2022

**Coram:** Kiefel CJ, Gageler, Keane, Gordon, Edelman, Steward and Gleeson JJ

**Catchwords:**

Negligence – Causation – Workplace injury – Psychiatric injury – Where appellant employed in Specialist Sexual Offences Unit of

Victorian Office of Public Prosecutions ("OPP") – Where appellant found to have suffered psychiatric injury resulting from vicarious trauma suffered in employment – Whether respondent failed to take reasonable measures in response to evident signs of psychiatric injury – Whether respondent's failure caused exacerbation of psychiatric injury.

Negligence – Duty of care – Content of employer's duty to employee to take reasonable care to avoid psychiatric injury – Where OPP adopted Vicarious Trauma Policy to protect psychiatric health of employees – Whether appellant needed to show evident signs warning of possibility of psychiatric injury – Effect of decision in *Koehler v Cerebos (Australia) Ltd* (2005) 222 CLR 44.

Words and phrases – "duty of care", "evident signs", "psychiatric injury", "real review", "safe system of work", "sentinel event", "tort", "vicarious trauma".

**Appealed from VSC (CA):** [\[2020\] VSCA 301](#); (2020) 301 IR 446

**Appealed from VSC (CA):** [\[2020\] VSCA 316](#)

**Held:** Appeal allowed with costs.

[Return to Top](#)

---

---

## Tort

*Tapp v Australian Bushmen's Campdraft & Rodeo Association Limited*

**S63/2021:** [\[2022\] HCA 11](#)

**Judgment:** 6 April 2022

**Coram:** Kiefel CJ, Keane, Gordon, Edelman and Gleeson JJ

**Catchwords:**

Tort – Negligence – Breach of duty of care – Causation – Obvious risk of dangerous recreational activity – Where appellant competing in campdraft competition – Where campdrafting a dangerous recreational activity – Where appellant's horse slipped and fell causing serious injury to appellant – Where four other contestants had falls prior to appellant's fall – Where experienced contestant warned organisers about condition of arena surface – Where organisers twice refused to stop competition – Whether respondent breached duty of care – Whether breach of duty of care caused appellant's injuries – Whether harm suffered by appellant result of materialisation of obvious risk of dangerous recreational activity.

Words and phrases – "breach of duty", "causation", "dangerous recreational activity", "liability for harm", "obvious risk", "precautions against a risk of harm", "reasonable person", "significant risk of physical harm".

*Civil Liability Act 2002 (NSW)*, ss 5B, 5C, 5D, 5F, 5L.

**Appealed from NSWSC (CA):** [\[2020\] NSWCA 263](#)

**Held:** Appeal allowed with costs.

[Return to Top](#)

---

## 3: CASES RESERVED

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

---

### Administrative Law

*Nathanson v Minister for Home Affairs & Anor*

**M73/2021:** [\[2022\] HCATrans 26](#)

**Date heard:** 10 March 2022

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

**Catchwords:**

Administrative law – Jurisdictional error – Procedural fairness – Materiality – Where appellant's visa cancelled by delegate on character grounds – Where, after delegate's decision but before Tribunal review, Minister issued new direction, which relevantly included as additional factor that violent crimes against women or children viewed "very seriously, regardless of sentence imposed" – Where appellant not put on notice prior to Tribunal hearing that past incidents of alleged domestic violence would be taken into account, despite not having been charged or convicted of any crimes – Where appellant not given opportunity to call further evidence or make further submissions on domestic violence issue – Where appellant applied for judicial review of Tribunal decision – Where Minister conceded Tribunal denied procedural fairness and majority of Full Federal Court dismissed application on basis appellant failed to show realistic possibility of different outcome – Whether Full Federal Court applied correct test of materiality – Whether appellant's denial of procedural fairness material and constituted jurisdictional error.

**Appealed from FCA (FC):** [\[2020\] FCAFC 172](#); (2020) 281 FCR 23; (2020) 171 ALD 497

[Return to Top](#)

---

### Constitutional Law

*Citta Hobart Pty Ltd & Anor v Cawthorn*

**H7/2021:** [\[2022\] HCATrans 1](#); [\[2022\] HCATrans 4](#)

**Date heard:** 8 and 9 February 2022



**Coram:** Kiefel CJ, Gageler, Keane, Gordon, Edelman, Steward and Gleeson JJ

**Catchwords:**

Constitutional law – Federal jurisdiction – Jurisdiction of State Tribunal – Inconsistency between Commonwealth and State laws – Discrimination – Disability Discrimination – Where respondent complained to Tasmania Anti-Discrimination Tribunal on basis appellants' building development constituted disability discrimination under *Anti-Discrimination Act 1998* (Tas) – Where appellants pleaded in defence inconsistency with *Disability Discrimination Act 1992* (Cth) pursuant to s 109 of *Constitution* – Where Tribunal dismissed complaint for lack of jurisdiction because determination of s 109 defence exercise of federal jurisdiction – Where Full Court allowed appeal on basis s 109 defence would not succeed – Whether Full Court applied correct test as to jurisdiction of State Tribunal – Whether *Anti-Discrimination Act 1998* (Tas) inconsistent with *Disability Discrimination Act 1992* (Cth).

**Appealed from TASSC (FC):** [\[2020\] TASFC 15](#); (2020) 387 ALR 356

[Return to Top](#)

---

*Delil Alexander (by his litigation guardian Berivan Alexander) v Minister for Home Affairs & Anor*

**S103/2021:** [\[2022\] HCATrans 8](#); [\[2022\] HCATrans 11](#)

**Date heard:** 16 and 17 February 2022

**Coram:** Kiefel CJ, Gageler, Keane, Gordon, Edelman, Steward and Gleeson JJ

**Catchwords:**

Constitutional law – Legislative power – Citizenship – Cessation of Australian citizenship – Where s 36B of *Australian Citizenship Act 2007* (Cth) provided Minister may make determination person ceases to be Australian citizen if Minister satisfied person dual citizen and person engaged in terrorist activities – Where plaintiff Australian citizen by birth and also Turkish citizen – Where, in 2013, plaintiff entered Al Raqqa Province of Syria – Where Al Raqqa province declared area for purposes of terrorism offences – Where, in 2018, plaintiff arrested and incarcerated by Syrian Government – Where plaintiff found guilty of terrorism offences against Syrian Penal Code on basis of evidence allegedly procured by torture – Where Australian Security and Intelligence Organisation advised Minister plaintiff likely engaged in foreign incursions and recruitment by remaining in declared area – Where, on 2 July 2021, Minister determined plaintiff ceased to be Australian citizen under s 36B – Where plaintiff

pardoned under Syrian law, but remains in indefinite detention because no lawful right to be in Syria, cannot be removed to Turkey because citizenship under different name, and cannot be removed to Australia because of citizenship cessation – Whether s 36B within scope of aliens power in s 51(xix) of *Constitution*, defence power in s 51(vi) of *Constitution*, external affairs power in s 51(xxix) of *Constitution* or implied nationhood power – Whether implied constitutional limitation on legislative power preventing "people of Commonwealth" from being deprived of their status as such – Whether constitutionally prescribed system of representative government incompatible with s 36B, which operates to permanently disenfranchise Australian citizens – Whether s 36B impermissibly disqualifies plaintiff from eligibility to sit as member of Parliament, contrary to ss 34 and 44 of *Constitution* – Whether s 36B punitive and unlawful exercise of judicial power by Parliament – Whether s 36B within legislative competence of Commonwealth Parliament.

*Special case referred to the Full Court on 26 October 2021.*

[Return to Top](#)

---

### ***Farm Transparency International Ltd & Anor v State of New South Wales***

**S83/2021:** [\[2022\] HCATrans 5](#); [\[2022\] HCATrans 6](#)

**Date heard:** 10 and 11 February 2022

**Coram:** Kiefel CJ, Gageler, Keane, Gordon, Edelman, Steward and Gleeson JJ

#### **Catchwords:**

Constitutional law – Implied freedom of political communication – Where s 7 of *Surveillance Devices Act 2007* (NSW) prohibited installation, use and maintenance of listening devices to record private conversations – Where s 8 prohibited installation, use and maintenance of optical surveillance devices on premises without owner or occupier's consent – Where s 11 created offence to communicate or publish material recorded in contravention of ss 7 or 8 – Where s 12 created offence to possess material knowing it had been recorded in contravention of ss 7 or 8 – Where plaintiffs published photographs and recordings of animal agricultural practices in New South Wales in contravention of ss 11 and 12 and intends to continue to engage in such activity – Whether ss 11 and 12 impermissibly burden implied freedom of communication – If so, whether ss 11 and 12 severable in respect of operation on political communication.

*Special case referred to the Full Court on 27 September 2021.*

[Return to Top](#)

---

***Garlett v The State of Western Australia & Anor***

**P56/2021**: [\[2022\] HCATrans 27](#); [\[2022\] HCATrans 28](#)

**Date heard:** 10 and 11 March 2022

**Coram:** Kiefel CJ, Gageler, Keane, Gordon, Edelman, Steward and Gleeson JJ

**Catchwords:**

Constitutional law – Chapter III – Where appellant was sentenced to imprisonment after pleading guilty to two charges – Where appellant's previous offending included robbery – Where appellant referred to State Solicitor's Office to consider whether application should be made under s 35 of *High Risk Serious Offenders Act 2020* (WA) ("HRSO Act"), which provided for State to apply for restriction order in relation to "serious offender under custodial sentence who is not a serious offender under restriction" – Where application was made for restriction order under s 48 of HRSO Act – Where appellant argued parts of HRSO Act were incompatible with Chapter III of *Constitution* – Whether provisions of HRSO Act contravene any requirement of Chapter III as they apply to serious offender under custodial sentence who has been convicted of robbery, referred to in item 34 of Schedule 1 Division 1 of HRSO Act.

*Removed from the Court of Appeal of the Supreme Court of Western Australia.*

[Return to Top](#)

---

***Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor v Montgomery***

**S192/2021**: [\[2022\] HCATrans 51](#); [\[2022\] HCATrans 52](#)

**Date heard:** 6 and 7 April 2022

**Coram:** Kiefel CJ, Gageler, Keane, Gordon, Edelman, Steward and Gleeson JJ

**Catchwords:**

Constitutional law – Aliens power – Immigration detention – Indigenous Australians – Where applicant born in and citizen of New Zealand and not Australian citizen – Where applicant's parents and ancestors not Aboriginal Australian or Torres Strait Islanders – Where applicant granted visa to live in Australia in 1997 – Where Mununjali people Indigenous society existing in Australia since prior to 1788 –

Where applicant identifies as member of Mununjali people, recognised by Mununjali elders and by Mununjali traditional law and customs as such – Where, in 2018, applicant's visa cancelled – Where in 2019, applicant taken into immigration detention – Where, in *Love v Commonwealth; Thoms v Commonwealth* [2020] HCA 3, majority of High Court held Aboriginal Australian who satisfies tripartite test identified in *Mabo v Queensland (No 2)* (1992) 175 CLR 1 beyond reach of aliens power in s 51(xix) of *Constitution* – Where applicant commenced proceedings in Federal Court of Australia, relevantly seeking declaration not alien within meaning of s 51(xix) following *Love/Thoms* – Whether decision in *Love/Thoms* should be overturned – Whether applicant satisfies tripartite test despite not being biologically descended from Indigenous people – Whether applicant alien.

Courts – Jurisdiction – Appeal from single judge of Federal Court of Australia – Habeas corpus – Competent court – Where appellate jurisdiction of Federal Court defined by s 24(1)(a) of *Federal Court of Australia Act 1976* (Cth) – Where cause removed was appeal to Full Court of Federal Court from orders of single judge – Where single judge exercised original jurisdiction, relevantly issuing writ of habeas corpus – Whether appeal lies from order for issue of writ of habeas corpus.

*Removed from the Federal Court of Australia.*

[Return to Top](#)

---

### *Thoms v Commonwealth of Australia*

**B56/2021:** [\[2022\] HCA Trans 24](#)

**Date heard:** 9 March 2022

**Coram:** Kiefel CJ, Gageler, Keane, Gordon, Edelman, Steward and Gleeson JJ

**Catchwords:**

Constitutional law – Aliens power – Immigration detention – Wrongful imprisonment – Where applicant held in immigration detention pursuant to s 189 of *Migration Act 1958* (Cth) – Where officers who detained applicant suspected he was unlawful non-citizen because not Australian citizen and did not have visa – Where, in *Love v Commonwealth; Thoms v Commonwealth* [2020] HCA 3, majority of High Court declared applicant not alien for purposes of s 51(xix) of *Constitution*, and applicant released from immigration detention – Where applicant's claim remitted to Federal Court of Australia, where applicant sought declaration detention unlawful and not supported by s 189 of *Migration Act*, and damages for wrongful imprisonment – Where Federal Court ordered question of whether detention unlawful

be determined separately – Whether within scope of aliens power for s 189 of *Migration Act* to validly authorise immigration detention of persons subjectively suspected to be unlawful non-citizen, even if person later found not alien – Whether applicant's detention unlawful.

*Removed from the Federal Court of Australia.*

[Return to Top](#)

---

## Family Law

*Fairbairn v Radecki*

**S179/2021:** [\[2022\] HCATrans 22](#)

**Date heard:** 8 March 2022

**Coram:** Kiefel CJ, Gageler, Keane, Gordon, Edelman, Steward and Gleeson JJ

### **Catchwords:**

Family law – De-facto relationship – Breakdown – Proper test for determination of breakdown of de-facto relationship – Where s 90SM of *Family Law Act 1975* (Cth) provides, in property settlement proceedings after breakdown of de-facto relationship, court may make order altering interest of parties to de-facto relationship in property – Where, in 2005 or 2006, appellant and respondent entered into de-facto relationship – Where basis of relationship living together on domestic basis with clear understanding as to separation of each other's financial affairs and property interests – Where, in 2015, appellant began to suffer from rapid cognitive decline – Where appellant incapable of managing own affairs and, in 2018, New South Wales Trustee & Guardian appointed to act for appellant – Where Public Guardian placed appellant into aged care facility – Where respondent did not provide financial support for appellant, continued to reside in appellant's property and prevented Trustee from selling appellant's property – Where Trustee commenced proceedings against respondent in Federal Circuit Court seeking order for property settlement pursuant to s 90SM, claiming appellant and respondent's de-facto relationship had broken down – Where primary judge declared de-facto relationship had broken down no later than 25 May 2018 – Where respondent successfully appealed to Full Family Court – Whether basis of appellant and respondent's de-facto relationship no longer existed – Whether de-facto relationship had broken down.

**Appealed from FamCA (FC):** [\[2020\] FamCAFC 307](#); (2020) 62 Fam LR 62

[Return to Top](#)

---

---

## Immigration

*Plaintiff M1/2021 v Minister for Home Affairs*

**M1/2021:** [\[2021\] HCATrans 203](#)

**Date heard:** 30 November 2021

**Coram:** Kiefel CJ, Gageler, Keane, Gordon, Edelman, Steward and Gleeson JJ

**Catchwords:**

Immigration – Judicial review – Non-refoulement obligations – Where plaintiff granted Refugee and Humanitarian (Class XB) Subclass 202 (Global Special Humanitarian) visa in 2006 – Where, on 19 September 2017, plaintiff convicted of unlawful assault and sentenced to 12 months' imprisonment – Where, on 27 October 2017, delegate of Minister cancelled plaintiff's visa pursuant to s 501(3A) of *Migration Act 1958* (Cth) – Where plaintiff made representations to Minister regarding possibility of refoulement if plaintiff returned to home country – Where, on 9 August 2018, delegate of Minister decided not to revoke cancellation decision pursuant to s 501CA(4) of *Migration Act* – Where, in making decision, delegate did not consider whether non-refoulement obligations owed to plaintiff because plaintiff able to apply for protection visa under *Migration Act* – Whether delegate required to consider plaintiff's representations concerning non-refoulement obligations in making non-revocation decision pursuant to s 501CA(4) where plaintiff can apply for protection visa – If so, whether delegate failed to consider representations – If so, whether delegate failed to exercise jurisdiction under *Migration Act* or denied plaintiff procedural fairness – Whether non-revocation decision affected by jurisdictional error.

*Special case referred to the Full Court on 30 March 2021.*

[Return to Top](#)

---

---

## Superannuation

*Hill v Zuda Pty Ltd as Trustee for The Holly Superannuation Fund & Ors*

**P48/2021:** [\[2022\] HCATrans 49](#)

**Date heard:** 5 April 2022

**Coram:** Kiefel CJ, Gageler, Keane, Gordon, Edelman, Steward and Gleeson JJ

**Catchwords:**

Superannuation – Self-managed superannuation fund (SMSF) – Binding death benefit nomination – Where reg 6.17A(4), (6) and (7) of *Superannuation Industry (Supervision) Regulations 1994* (Cth), provided for requirements for validity of binding death benefit requirement in respect of superannuation funds – Where reg 6.17A authorised by multiple provisions, relevantly, ss 31, 55A and 59 of *Superannuation Industry (Supervision) Act 1993* (Cth) – Where applicant child and dependant of deceased person – Where deceased person established SMSF with deceased person's partner as sole members – Where cl 5 and 6 of SMSF trust deed made binding death benefit nomination, requiring trustee to distribute whole of deceased member's balance to surviving member – Where applicant argued cl 5 and 6 of deed did not constitute valid binding death benefit notification due to non-compliance with reg 6.17A(6) and (7) of Regulations and claimed portion of deceased person's account – Where claim dismissed and appeal to WA Court of Appeal dismissed – Whether reg 6.17A(4), (6) and (7) of Regulations apply to SMSF.

Courts – Comity – Intermediate appellate courts – Where WA Court of Appeal held principle of comity required it to follow decision of SA Full Court in *Cantor Management Services Pty Ltd v Booth* [2017] SASCFC 122 – Where SA Full Court held reg 6.17A did not apply to SMSF because s 59 of Act did not apply to SMSF but did not consider ss 33 or 55A – Whether intermediate appellate court bound to follow decision of other intermediate appellate court where no consideration of relevant aspect of legislation.

**Appealed from WASC (CA):** [\[2021\] WASCA 59](#)

[Return to Top](#)

---

---

## 4: ORIGINAL JURISDICTION

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

---

### Administrative Law

*Tu'uta Katoa v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor*

[S135/2021](#): [2021] HCATrans 214

#### Catchwords:

Administrative law – Judicial review – Writ of certiorari – Writ of mandamus – Where plaintiff holder of visa cancelled by Minister pursuant to s 501(3)(b) of *Migration Act 1958* (Cth) – Where plaintiff applied for extension of time, pursuant to s 477A(2) of *Migration Act*, seeking review of Minister's decision – Where application for extension of time was refused by judge of Federal Court of Australia – Whether judge erred in assessing, in respect of plaintiff's proposed second ground of review of Minister's decision, whether plaintiff's claim had reasonable prospects of success so as to justify extension of time pursuant to s 477A(2) of the *Migration Act* – Proper test for extension of time.

*Application for constitutional writs referred to the Full Court on 9 December 2021.*

[Return to Top](#)

---



## 5: SECTION 40 REMOVAL

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

---

---

[Return to Top](#)

---

---

## 6: SPECIAL LEAVE GRANTED

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

---

### Constitutional Law

*Page v Sydney Seaplanes Pty Ltd trading as Sydney Seaplanes*  
**S60/2022:** [\[2022\] HCATrans 70](#)

**Date heard:** 13 April 2022 – *Special leave granted*

**Catchwords:**

Constitutional law – Jurisdiction – Inconsistency – Where s 11(2) of *Federal Courts (State Jurisdiction) Act 1999* (NSW) ("NSW Jurisdiction Act") enabled party to proceeding in which "relevant order" was made to apply to NSW Supreme Court for order that proceeding be treated as one in Supreme Court – Where appellant commenced proceedings in Federal Court of Australia seeking damages from respondent in connection with seaplane accident pursuant to provisions of *Civil Aviation (Carriers' Liability) Act 1959* (Cth) ("Commonwealth Act"), incorporated by s 5 of *Civil Aviation (Carriers' Liability) Act 1967* (NSW) – Where Federal Court judge dismissed application for want of jurisdiction because accident occurred solely in New South Wales – Where action subject to two-year limitation and extinguishment of right to damages – Where two years had passed before Federal Court decision – Where appellant sought orders in NSW Supreme Court under s 11 that Federal Court proceedings be treated as Supreme Court proceedings such that proceedings commenced within limitation period – Where Court of Appeal held "relevant order" in s 11 of NSW Jurisdiction Act refers to not to general want of jurisdiction but to general want of jurisdiction by reason of constitutionally invalid conferral of jurisdiction as considered in *Re Wakim; Ex parte McNally* (1999) 198 CLR 511 – Whether order of Federal Court dismissing Federal Court proceeding for want of jurisdiction was "relevant order" within meaning of s 11 of NSW Jurisdiction Act.

**Appealed from NSW (CA):** [\[2021\] NSWCA 204](#); (2021) 362 FLR 1; (2021) 393 ALR 485

[Return to Top](#)

---

*SDCV v Director-General of Security & Anor*  
**S27/2022:** [\[2022\] HCATrans 20](#)

**Date heard:** 21 February 2022 – *Special leave granted*

**Catchwords:**

Constitutional law – Judicial power of Commonwealth – Ch III of *Constitution* – Validity of s 46(2) of *Administrative Appeals Tribunal Act 1975* (Cth) ("AAT Act") – Where appellant subject to adverse security assessment (ASA) by Australian Security Intelligence Office (ASIO) – Where appellant sought review of ASA by Administrative Appeal Tribunal ("AAT") – Where s 39A(8) of AAT Act provided ASIO Minister may certify evidence proposed to be adduced or submissions proposed to be made by Director-General of Security are of such nature that disclosure be contrary to public interest – Where s 39B(2)(a) of AAT Act provided ASIO Minister may certify disclosure of information in certificate, or disclosure of contents of document, would be contrary to public interest – Where ASIO Minister issued certificates under ss 39A(8) and 39B(2)(a) of AAT Act – Where AAT affirmed ASA decision – Where, when appealed to Federal Court, AAT obliged under s 46(1) of AAT Act to send documents before AAT to Court – Where, because certificates in force in respect of certain documents, Federal Court required by s 46(2) of AAT Act to do all things necessary to ensure matter not disclosed to person other than a member of Court – Where Federal Court determined s 46(2) of AAT Act valid and proceeded to determine appeal grounds adversely to appellant while having regard to submissions and evidence to which appellant did not have access by reason of s 46(2) – Whether s 46(2) of AAT Act denies appellant procedural fairness – Whether s 46(2) is invalid by reason of Ch III of Constitution in that it requires Federal Court to act in procedurally unfair manner – Whether decisions in *Gypsy Jokers Motorcycle Club Inc v Commissioner of Police* (2008) 234 CLR 532; *Assistant Commissioner Pompano v Condon Pty Ltd* (2013) 252 CLR 38; or *Graham v Minister for Immigration and Border Protection* (2017) 263 CLR 1 should be qualified or overruled.

**Appealed from FCA (FC):** [\[2021\] FCAFC 51](#); (2021) 284 FCR 357; (2021) 389 ALR 372

[Return to Top](#)

## Copyright

*RP Data Pty Limited v Hardingham & Ors; Realestate.com.au Pty Ltd v Hardingham & Ors*

**S57/2022; S58/2022:** [\[2022\] HCATrans 64](#)

**Date heard:** 12 April 2022 – *Special leave granted*

**Catchwords:**

Copyright – Informal oral agreements – Inferred term – Implied term – Where Hardingham professional photographer and sole director of Real Estate Marketing Australia Pty Ltd ("REMA") – Where REMA commissioned by agencies to take photographs and prepare floor plans of properties for use on platforms concerning marketing of properties for sale or lease – Where retainer of Hardingham and REMA by agencies oral, informal and said nothing of copyright in photographs and floorplans – Where Hardingham entered into "deed of licence" with REMA by which Hardingham granted REMA exclusive licence of copyright subsisting in works originated by him – Where photographs and floor plans provided to each agency were uploaded to appellant's platform – Where appellant's terms and conditions provided that agency granted licence to appellant to use and adapt content provided by agency – Where s 15 of *Copyright Act 1968* (Cth) provided "act shall be deemed to have been done with licence of copyright owner if doing of act was authorized by a licence binding copyright owner" – Whether, in informal agreement under which owner of copyright in works intends to grant another person licence to use works, including right to grant sub-licence to third party, it is necessary for licensor and licensee to know precise terms of grant by sub-licence – Whether, for purposes of engaging s 15 of *Copyright Act*, it is necessary to show what licence binding on owner allowed, and whether infringer acted consistently with licence.

**Appealed from FCA (FC):** [\[2021\] FCAFC 148](#); (2021) 395 ALR 644; (2021) 162 IPR 1

[Return to Top](#)

---

## Corporations Law

*Bryant & Ors as Liquidators of Gunns Limited and Auspine Limited v Badenoch Integrated Logging Pty Ltd*

**A10/2022:** [\[2022\] HCATrans 42](#)

**Date heard:** 18 March 2022 – *Special leave granted*

### Catchwords:

Corporations law – Voidable transactions – Unfair preferences – "Peak indebtedness" rule – Interpretation of s 588FA of *Corporations Act 2001* (Cth) – Where, pursuant to s 588FA(1), transaction an unfair preference given by company to creditor if company and creditor are parties to transaction and, as a result of transaction, creditor receives more than creditor would have were creditor to prove for debt in winding up – Where s 588FA(3)(c) provided s 588FA(1) applies to all transactions forming part of relationship as if single transaction where, relevantly, transaction an integral part of a

continuing business relationship – Where Full Court set aside primary judge's finding that liquidators entitled to choose point of peak indebtedness during statutory period in endeavouring to show, from that point, preferential payment under s 588FA(1) – Whether, by enacting s 588FA(3)(c), Parliament intended to abrogate liquidator's right to choose any point during statutory period, including point of peak indebtedness, to show point from which preferential payment under s 588FA(1) – Proper point for single transaction under s 588FA(3)(c) – Whether continuing business relationship will cease if operative and mutual purpose of inducing further support is subordinated to predominant purpose of recovering past indebtedness.

**Appealed from FCA (FC):** [\[2021\] FCAFC 64](#); (2021) 284 FCR 590

**Appealed from FCA (FC):** [\[2021\] FCAFC 111](#)

[Return to Top](#)

---

---

## Criminal Law

*Dansie v The Queen*

**A4/2022:** [\[2022\] HCATrans 14](#)

**Date heard:** 18 February 2022 – *Special leave granted*

### Catchwords:

Criminal law – Murder – Unreasonable verdict – Verdict unsupported by evidence – Where appellant's wife drowned after her wheelchair entered pond – Where prosecution alleged intentional drowning – Where, on defence case, drowning accidental – Where s 158(1)(a) of *Criminal Procedure Act 1921* (SA) provided for appeal to be allowed where Court considers verdict should be set aside on ground that conviction unreasonable or cannot be supporting having regard to evidence – Whether Court of Criminal Appeal failed to conduct independent assessment of whole of evidence – Whether open to trial judge to exclude hypothesis of accidental drowning – Proper approach by intermediate appellate court to "unreasonable verdict" limb of common form appeal provision following judge-alone trial.

**Appealed from SASC (CCA):** [\[2020\] SASCF 103](#)

[Return to Top](#)

---

*Hore v The Queen; Wichen v The Queen*

**A5/2022; A6/2022:** [\[2022\] HCATrans 18](#)

**Date heard:** 21 February 2022 – *Special leave granted*

**Catchwords:**

Criminal law – Sentence – Sentencing Orders – Offenders incapable of controlling, or unwilling to control, sexual instincts – Meaning of "willing" – Where appellants detained by Court order, following application by Crown, on grounds they were incapable or unwilling to control sexual instincts – Where s 59(1a)(a) of *Sentencing Act 2017* provided person detained cannot be released unless Court satisfied person "capable of controlling and willing to control" person's sexual instincts – Where s 57, providing authority for Court to make order for indefinite detention, contained definition of "unwilling" – Where Court of Appeal held "willing" in s 59(1a)(a) had converse meaning to defined term "unwilling" in s 57(1) such that appellants could only be regarded as willing to control sexual instincts if established no significant risk they would, given opportunity to commit relevant offence, fail to exercise appropriate control of sexual instincts – Whether meaning of "willing" in s 59(1a)(a) is converse of word "unwilling" as defined in s 57 – Proper meaning of term "willing" in s 59(1a)(a).

**Appealed from SASC (CCA):** [\[2021\] SASCA 29](#)

**Appealed from SASC (CCA):** [\[2021\] SASCA 30](#); (2021) 138 SASR 134

[Return to Top](#)

---

*O'Dea v The State of Western Australia*

**P53/2021:** [\[2021\] HCATrans 210](#)

**Date heard:** 3 December 2021 – *Special leave granted on limited grounds*

**Catchwords:**

Criminal law – Joint liability – Acting in concert – Where appellant and co-accused stood trial on one count of doing grievous bodily harm with intent to do grievous bodily harm contrary to s 294(1) of *Criminal Code* (WA) – Where appellant and co-accused alleged jointly criminally responsible – Where trial judge gave jury handout, relevantly describing circumstances in which two accused may be criminally responsible as "joint principals" under s 7(a) of Code – Where appellant was convicted but co-accused discharged with jury unable to reach verdict – Where Court of Appeal held criminal responsibility under s 7(a) of Code extended to cases where several persons are "acting in concert" – Whether appellant and co-accused can be criminally liable as joint principals in circumstances where acts of co-accused were not proved unlawful – Whether trial judge was required to direct jury that "acting in concert" requires two accused

to have reached an understanding or arrangement amounting to agreement to commit crime.

**Appealed from WASC (CA):** [\[2021\] WASCA 61](#); (2021) 288 A Crim R 451

[Return to Top](#)

---

*Stephens v The Queen*

**S53/2022:** [\[2022\] HCATrans 58](#)

**Date heard:** 8 April 2021 – *Special leave granted*

**Catchwords:**

Criminal law – Presumption against retrospectivity – Where, on 8 June 1984, *Crimes Act 1900* (NSW) amended to repeal s 81, which proscribed indecent assault on male person, and inserted s 78K, which proscribed homosexual intercourse with male person between ages of 10 and 18 years – Where appellant prosecuted for alleged sexual offences committed against complainant between January 1982 and December 1987 – Where complainant turned 16 years old on 6 July 1987 – Where, on 29 November 2018, appellant arraigned on indictment containing 18 counts – Where date range for alleged offences extended across 8 June 1984, with indictment drafted so that one count alleged offence against s 81, and another count, pleaded in alternative, alleged offence against s 78K, with dates commensurate with dates provisions were in force – Where, on 1 December 2018, s 80AF of *Crimes Act* came into effect – Where s 80AF applied if: (a) uncertainty as to when during period conduct alleged to have occurred; (b) victim of alleged conduct child (under age of 16 years) for whole of period; (c) no time during that period that alleged conduct, if proven, would not have constituted sexual offence; and (d) because of change in law or change in age of child during that period, alleged conduct, if proven, would have constituted more than one sexual offence during that period – Where s 80AF provided that prosecution could rely on offence carrying lesser maximum penalty for entirety of charged period – Where indictment amended on 5 February 2019 to take benefit of s 80AF, with s 81 carrying lesser maximum penalty – Whether s 80AF of *Crimes Act*, which came into effect on 1 December 2018, had retrospective application to appellant's trial, which commenced no later than 29 November 2018 upon arraignment – Whether principles against retrospectivity infringed – Whether s 80AF procedural or substantive.

**Appealed from NSWSC (CCA):** [\[2021\] NSWCCA 152](#); (2021) 290 A Crim R 303

[Return to Top](#)

---

---

## Defamation

*Google LLC v Defferos*

**M86/2021:** [\[2021\] HCATrans 216](#)

**Date heard:** 10 December 2021 – *Special leave granted on conditions*

**Catchwords:**

Defamation – Publication – Qualified privilege defence – Common law qualified privilege – Statutory qualified privilege – Where respondent alleged that certain webpages were published by appellant and were defamatory – Where two webpages consisted of set of search results displayed on website [www.google.com.au](http://www.google.com.au) in response to search of respondent's name and hyperlinked article, included in search results, entitled "Underworld loses valued friend at court" (Web Matter) – Where appellant alleged it was for "common convenience and welfare of society" for appellant to return search results that hyperlinked articles published by reputable sources – Where appellant claimed material was matter of considerable public interest such that recipients had necessary interest in material for purposes of s 30(1) of *Defamation Act 2005* (Vic) – Whether appellant published Web Matter – Whether common law qualified privilege defence applies – Whether statutory qualified privilege defence in s 30(1) applies.

**Appealed from VSC (CA):** [\[2021\] VSCA 167](#)

[Return to Top](#)

---

## Equity

*Bosanac v Commissioner of Taxation & Anor*

**P9/2022:** [\[2022\] HCATrans 63](#)

**Date heard:** 12 April 2022 – *Special leave granted*

**Catchwords:**

Equity – Presumption of advancement – Beneficial ownership – Matrimonial home – Where Mr and Ms Bosanac ("Bosanacs") married in 1998 – Where Ms Bosanac offered to purchase matrimonial home for \$4.5 million ("Property") – Where Bosanacs applied for two joint loans to purchase Property – Where Property transferred into sole name of Ms Bosanac – Where Commissioner applied for declaration that Ms Bosanac held 50% of her interest in Property on trust for Mr Bosanac – Where primary judge held presumption of advancement



not rebutted – Where Full Court relied on fact Mr Bosanac borrowed money with Ms Bosanac to purchase Property to found rebuttal of presumption of advancement – Where Full Court relied on statement in *The Trustees of the Property of Cummins (a bankrupt) v Cummins* (2006) 227 CLR 278 at [71] that where husband and wife purchase matrimonial home, each contributing to purchase price and title is taken by one spouse, it be inferred each spouse intended to have one-half interest, regardless of amounts contributed – Whether rebuttal of presumption of advancement, applying to purchase by spouses of matrimonial home, can be founded on same facts giving rise to presumption of advancement – Whether, in considering whether presumption of advancement rebutted, court should consider spouses' intentions or any joint intention – Proper approach to rebuttal of presumption of advancement.

**Appealed from FCA (FC):** [\[2021\] FCAFC 158](#)

**Appealed from FCA (FC):** [\[2022\] FCAFC 5](#)

[Return to Top](#)

---

## Evidence

*TL v The Queen*

**S134/2021:** [\[2022\] HCATrans 69](#)

**Date heard:** 13 April 2021 – *Special leave granted*

### Catchwords:

Evidence – Tendency evidence – Proof of identity – Where appellant convicted of murder of partner's child – Where blunt force trauma to abdomen cause of death – Where, 10 days prior, child had suffered burns after appellant placed child in hot water – Where evidence of burns was admitted as tendency evidence pursuant to s 97 of *Evidence Act 1995* (NSW) to prove appellant's tendency to "deliberately inflict physical harm on child" – Where appellant convicted and appealed against conviction on grounds including that tendency evidence should not have been admitted – Where appellant relied on statement in *Hughes v The Queen* (2017) 263 CLR 388 concerning requirement for "close similarity" between tendency alleged and offence charged – Where Court of Criminal Appeal held requirement for "close similarity" should arise when tendency evidence is only or predominant evidence that goes to identity – Whether, where tendency evidence is adduced to prove identity of offender for known offence, probative value of tendency evidence will depend upon close similarity between conduct evidencing tendency and offence – Proper approach to principle articulated in *Hughes*.

**Appealed from NSW (CCA):** [\[2020\] NSWCCA 265](#)

[Return to Top](#)

---

## Insurance

*Allianz Australia Insurance Limited v Delor Vue Apartments CTS*  
39788

**S42/2022:** [\[2022\] HCATrans 35](#)

**Date heard:** 17 March 2022 – *Special leave granted*

**Catchwords:**

Insurance – Insurance contracts – Indemnity – Election – Estoppel – Waiver – Duty of utmost good faith – Where s 28(3) of *Insurance Contracts Act 1984* (Cth) enables insurer to reduce liability in respect of claim where, relevantly, insured breached duty of disclosure – Where insured notified claim under insurance policy following cyclone damage – Where insurer agreed to indemnify despite non-disclosure of prior defects – Where insurer took steps consistent with providing indemnity – Where insurer emailed insured stating, despite non-disclosure, claim would be honoured – Where insurer subsequently sought to disclaim liability on basis of non-disclosure – Where majority of Full Court of Federal Court of Australia dismissed appeal, holding insurer had elected not to raise defence under s 28(3) – Whether insurer elected not to raise defence under s 28(3) – Whether, if doctrine of election did not apply, insurer waived entitlement to raise defence under s 28(3) – Whether insurer estopped from raising defence under s 28(3) – Whether insured suffered detriment – Whether insurer breached duty of utmost good faith and, if so, whether insured suffered loss justifying relief.

**Appealed from FCA (FC):** [\[2021\] FCAFC 121](#); (2021) 396 ALR 27; (2021) 153 ACSR 522

[Return to Top](#)

---

## Intellectual Property

*Aristocrat Technologies Australia Pty Ltd v Commissioner of Patents*

**S40/2022:** [\[2022\] HCATrans 25](#)

**Date determined:** 10 March 2022 – *Special leave granted*

**Catchwords:**

Intellectual property – Patents – Manner of manufacture – Electronic gaming machine ("EGM") – Where ss 18(1)(a) and 18(1A)(a) of *Patents Act 1990* (Cth) provide invention will be patentable if "manner of manufacture" within meaning of s 6 of *Statute of Monopolies* (21 Jac 1 c 3) – Where question before Federal Court whether invention disclosed by Claim 1 to Patent 967 constituted patentable subject matter – Where Claim 1 described EGM with particular feature game – Where primary judge approached question of patentability by asking: first, whether Claim 1 for mere business scheme; and secondly, if for mere business scheme, one implemented in computer, did invention lie in manner of implementation into computer – Where majority of Full Court adopted alternative approach whereby computer-implemented inventions would be patentable where invention claimed could broadly be described as "advance in computer technology" – Where majority concluded invention disclosed in Claim 1 computer-implemented invention and did not advance computer technology – Whether general principles of patentability apply to computer-implemented inventions – Whether computer-implemented inventions must be advance in computer technology to be patentable – Proper test of patentability for computer-implemented inventions.

**Appealed from FCA (FC):** [\[2021\] FCAFC 202](#); (2021) 396 ALR 380; (2021) 163 IPR 231

[Return to Top](#)

## Private International Law

*Kingdom of Spain v Infrastructure Services Luxembourg S.à.r.l. & Anor*

**S43/2022:** [\[2022\] HCATrans 39](#)

**Date heard:** 18 March 2022 – *Special leave granted*

### Catchwords:

Private international law – Foreign state immunity – Interaction between s 9 of *Foreign States Immunities Act 1985* (Cth) ("Immunities Act") and *Convention on the Settlement of Investment Disputes between States and Nationals of Other States* ("ICSID Convention") – Where proceedings commenced in Federal Court for recognition of award of International Centre for Settlement of Investment Disputes ("ICSID") under s 35(4) of *International Arbitration Act 1974* (Cth) ("Arbitration Act") – Where Kingdom of Spain asserted sovereign immunity – Where s 9 of Immunities Act provided that foreign state immune from jurisdiction of courts of Australia in proceeding – Where s 10 of Immunities Act provided foreign state not immune in proceeding in which it submitted to

jurisdiction whether by agreement or otherwise – Where Art 54(1) provided each Contracting State shall recognize award rendered pursuant to ICSID Convention as binding – Where Art 54(2) of ICSID Convention referred to recognition or enforcement of award – Whether, by Art 54 of ICSID Convention, Kingdom of Spain agreed to submit itself to jurisdiction within meaning of s 10 of Immunities Act – Whether ICSID Convention excludes claims for foreign state immunity in proceedings for recognition and enforcement of an award – Proper meaning of "recognition" and "enforcement" in Art 54.

**Appealed from FCA (FC):** [\[2021\] FCAFC 112](#); (2021) 392 ALR 443; (2021) 153 ACSR 59

[Return to Top](#)

---

---

## Representative Proceedings

*BHP Group Limited v Impiombato & Anor*

**M12/2022:** [\[2022\] HCATrans 13](#)

**Date heard:** 18 February 2022 – *Special leave granted*

### Catchwords:

Representative proceedings – Shareholder class action – Non-resident shareholders – Pt IVA of *Federal Court of Australia Act 1976* (Cth) ("FCA Act") – Presumption against extraterritoriality – Dual listed company structure – Where claims brought on behalf of non-resident shareholders of BHP Group Limited (Australian company) and BHP Group Plc (United Kingdom company) – Where claims brought in Federal Court of Australia under Pt IVA concerning representative proceedings – Whether Pt IVA of FCA Act applies to claims brought on behalf of non-resident group members – Whether presumption against extraterritorial operation of legislation applies to Pt IVA of FCA Act – Whether Part IVA of FCA Act confers on Federal Court jurisdiction or power to determine claims of group members outside territory.

**Appealed from FCA (FC):** [\[2021\] FCAFC 93](#); (2021) 151 ACSR 634

[Return to Top](#)

---

---

## Torts

*Electricity Networks Corporation Trading as Western Power v Herridge Parties & Ors*

**P5/2022:** [\[2022\] HCATrans 37](#)

**Date heard:** 17 March 2022– *Special leave granted*

**Catchwords:**

Torts – Negligence – Duty of care – Breach of duty – Statutory authority – Where Western Power ("WP") statutory authority established under *Electricity Corporations Act 2005* (WA) with functions including management, provision and improvement of electricity transmission and distribution services in South West Interconnected System ("SWIS") – Where service cable owned by WP ran from WP's termination pole into mains connection box secured adjacent to top of point of attachment pole ("PA pole") on Mrs Campbell's property – Where PA pole owned by Mrs Campbell – Where electricity passed from wires of WP's service cable to wires of Mrs Campbell's consumer mains cable – Where WP had systems for regular inspection of WP's network assets, but did not regularly inspect or maintain consumer-owned PA poles – Where WP engaged Thiess to replace WP's network poles in Parkerville area, including termination pole, but inspection did not comply with industry standards or Thiess' contractual obligations – Where PA pole fell causing electrical arcing, igniting dry vegetation around base of pole – Where resulting fire spread, becoming Parkerville bushfire, and causing property damage – Where primary judge found WP owed duty to take reasonable care to inspect PA pole to ascertain whether safe and fit condition for supply of electricity before and when undertaking works on pole, but duty discharged by engaging Thiess – Where trial judge apportioned liability for losses 70% as to Thiess and 30% as to Mrs Campbell, and dismissed claims against WP – Where Court of Appeal formulated duty as one owed to persons in vicinity of SWIS to take reasonable care to avoid or minimise risk of injury, and loss to property, from ignition and spread of fire in connection with delivery of electricity through distribution system – Where Court of Appeal held WP had breached duty by failing to have system in place to respond to risk of harm and apportioned liability for losses 50% as to WP, 35% as to Thiess and 15% as to Mrs Campbell – Whether WP, as statutory authority with defined duties, owes common law duty to take reasonable care to avoid fire, discharge of which would oblige WP to exercise discretionary statutory powers in relation to property not owned or controlled by WP – Whether duty of care asserted inconsistent with statute – Proper test for inconsistency between common law duty and statutory scheme which regulates statutory authority.

**Appealed from WASC (CA):** [\[2021\] WASCA 111](#)

[Return to Top](#)

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

---

---

[Return to Top](#)

---

---

## 8: SPECIAL LEAVE REFUSED

### Publication of Reasons: 7 April 2022 (Canberra)

No.	Applicant	Respondent	Court appealed from	Result
1.	Harradine	Chief Executive of the Department for Education (A1/2022)	Supreme Court of South Australia (Court of Appeal) [2021] SASCA 145	Application dismissed <a href="#">[2022] HCASL 62</a>
2.	Parmar & Anor	Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor (B65/2021)	Federal Court of Australia [2021] FCA 1294	Application dismissed <a href="#">[2022] HCASL 63</a>
3.	Tingalpa Tyre & Mechanical Pty Ltd	Onza Industries Pty Ltd (B79/2021)	Supreme Court of Queensland (Court of Appeal) [2021] QCA 252	Application dismissed <a href="#">[2022] HCASL 64</a>
4.	Austin	Dwyer & Anor (M81/2021)	Supreme Court of Victoria (Court of Appeal) [2021] VSCA 306	Application dismissed <a href="#">[2022] HCASL 65</a>
5.	Austin	Dobbs & Ors (M82/2021)	Supreme Court of Victoria (Court of Appeal) [2021] VSCA 306	Application dismissed <a href="#">[2022] HCASL 65</a>
6.	Bowers	Judicial Commission of NSW (S14/2022)	Supreme Court of New South Wales (Court of Appeal) [2021] NSWCA 323	Application dismissed <a href="#">[2022] HCASL 66</a>
7.	Bowers	Judicial Commission of NSW (S15/2022)	Supreme Court of New South Wales (Court of Appeal) [2021] NSWCA 118	Application dismissed <a href="#">[2022] HCASL 66</a>
8.	In the matter of an application by Duncan Dickson for leave to appeal (S17/2022)		High Court of Australia (Unreported)	Application dismissed <a href="#">[2022] HCASL 67</a>
9.	Boensch	Somerville Legal Pty Ltd (S119/2021)	Full Court of the Federal Court of Australia [2021] FCAFC 79	Application dismissed <a href="#">[2022] HCASL 68</a>

---

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
10.	McDonough	The Queen (D1/2022)	Court of Criminal Appeal of the Northern Territory [2021] NTCCA 9	Application dismissed <a href="#">[2022] HCASL 69</a>
11.	Reckitt Benckiser (Australia) Pty Ltd	AFT Pharmaceuticals (AU) Pty Ltd (S1/2022)	Full Court of the Federal Court of Australia [2021] FCAFC 222	Application dismissed with costs <a href="#">[2022] HCASL 70</a>



## 8 April 2022: Canberra and by video link

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	VicForests	Kinglake Friends of the Forests Inc. (M50/2021)	Supreme Court of Victoria (Court of Appeal) [2021] VSCA 195	Application refused with costs <a href="#">[2022] HCATrans 56</a>
2.	Parklands Darwin Pty Ltd ACN 166 220 248	Minister for Infrastructure, Planning and Logistics (D3/2021)	Full Court of the Supreme Court of the Northern Territory [2021] NTSCFC 4	Application refused with costs <a href="#">[2022] HCATrans 55</a>
3.	Langley	Tarelli & Ors (S109/2021)	Family Court of Australia	Application refused <a href="#">[2022] HCATrans 59</a>
4.	Dawson	The Queen (S102/2021)	Supreme Court of New South Wales (Court of Criminal Appeal) [2021] NSWCCA 117	Application refused <a href="#">[2022] HCATrans 54</a>
5.	Masters & Ors	David Lombe in his capacity as Liquidator of Babcock & Brown Limited (CAN 108 614 955) (in Liquidation) (S157/2021)	Full Court of the Federal Court of Australia [2021] FCAFC 161	Application refused with costs <a href="#">[2022] HCATrans 57</a>
6.	Broome & Ors	David Lombe in his capacity as Liquidator of Babcock & Brown Limited (ACN 108 614 955) (in Liquidation) (S158/2021)	Full Court of the Federal Court of Australia [2021] FCAFC 161	Application refused with costs <a href="#">[2022] HCATrans 57</a>
7.	Wilhelm & Ors	David Lombe in his capacity as Liquidator of Babcock & Brown Limited (ACN 108 614 955) (in Liquidation) (S159/2021)	Full Court of the Federal Court of Australia [2021] FCAFC 161	Application refused with costs <a href="#">[2022] HCATrans 57</a>
8.	Camenzuli	Morrison & Ors (S45/2022)	Supreme Court of New South Wales (Court of Appeal) [2022] NSWCA 51	Application refused with costs <a href="#">[2022] HCATrans 60</a>

## 12 April 2022: Canberra and by video link

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Results</i>
1.	Duke Unley Pty Ltd & Ors	The Corporation of the City of Unley (A34/2021)	Supreme Court of South Australia (Court of Appeal) [2021] SASCA 91	Application refused with costs <a href="#">[2022] HCATrans 65</a>
2.	Rodriguez & Sons Pty Ltd	Queensland Bulk Water Supply Authority t/as Seqwater & Ors (S165/2021)	Supreme Court of New South Wales (Court of Appeal) [2021] NSWCA 206	Application refused with costs <a href="#">[2022] HCATrans 61</a>
3.	Lloyd	Belconnen Lakeview Pty Ltd & Ors (S189/2021)	Full Court of the Federal Court of Australia [2021] FCAFC 187	Application refused with costs <a href="#">[2022] HCATrans 62</a>

## 13 April 2022: Canberra and by video link

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Results</i>
1.	Lake Vermont Resources Pty Limited	Adani Abbot Point Terminal Pty Limited & Ors (B52/2021)	Supreme Court of Queensland (Court of Appeal) [2021] QCA 187	Application adjourned to a later date <a href="#">[2022] HCATrans 67</a>
2.	QCoal Pty Limited & Ors	Adani Abbot Point Terminal Pty Limited & Anor (B53/2021)	Supreme Court of Queensland (Court of Appeal) [2021] QCA 187	Application adjourned to a later date <a href="#">[2022] HCATrans 67</a>
3.	Attorney-General of the Commonwealth	Collaery & Anor (C22/2021)	Supreme Court of the Australian Capital Territory (Court of Appeal) [2021] ACTCA 28	Application stood out of the list <a href="#">[2022] HCATrans 66</a>
4.	Saad & Ors	Commissioner of the Australian Federal Police (M63/2021)	Supreme Court of Victoria (Court of Appeal) [2021] VSCA 246	Application refused with costs <a href="#">[2022] HCATrans 71</a>
5.	Khalif	Khalif & Anor (S154/2021)	Family Court of Australia	Application refused with costs <a href="#">[2022] HCATrans 68</a>

## Publication of Reasons: 20 April 2022 (Canberra)

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
1.	Zollo & Anor	Polley & Ors (A45/2021)	Full Court of the Supreme Court of South Australia [2021] SASCF 100	Application dismissed <a href="#">[2022] HCASL 72</a>
2.	Dacombe	Paddison (C3/2022)	Federal Circuit and Family Court of Australia	Application dismissed <a href="#">[2022] HCASL 73</a>
3.	Jeevaratnam	Angelie Pty Ltd (as trustee of the Angelie Superannuation Trust) & Ors (M2/2022)	Supreme Court of Victoria (Court of Appeal) [2021] VSCA 333	Application dismissed <a href="#">[2022] HCASL 74</a>
4.	Eliezer	The Council of St Andrew's Cathedral School & Ors (S206/2021)	Supreme Court of New South Wales (Court of Appeal) [2021] NSWCA 227	Application dismissed <a href="#">[2022] HCASL 75</a>
5.	Eliezer	The Council of St Andrew's Cathedral School & Ors (S7/2022)	Supreme Court of New South Wales (Court of Appeal) [2021] NSWCA 114	Application dismissed <a href="#">[2022] HCASL 86</a>
6.	Valasco	Pellam (S208/2021)	Federal Circuit and Family Court of Australia	Application dismissed <a href="#">[2022] HCASL 76</a>
7.	Collins	Director of Public Prosecutions (A44/2021)	Supreme Court of South Australia (Court of Criminal Appeal) [2020] SASCF 96	Application dismissed <a href="#">[2022] HCASL 77</a>
8.	Smith	State Training Board & Anor (P49/2021)	Supreme Court of Western Australia (Court of Appeal) [2021] WASCA 190	Application dismissed <a href="#">[2022] HCASL 78</a>
9.	Stevenson	Zafra Pty Ltd & Anor (P52/2021)	Supreme Court of Western Australia (Court of Appeal) [2021] WASCA 181	Application dismissed <a href="#">[2022] HCASL 79</a>
10.	CVRZ	Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor (P55/2021)	Full Court of the Federal Court of Australia [2021] FCAFC 205	Application dismissed <a href="#">[2022] HCASL 80</a>

<i>No.</i>	<i>Applicant</i>	<i>Respondent</i>	<i>Court appealed from</i>	<i>Result</i>
11.	Riddell	The Queen (S10/2022)	Supreme Court of New South Wales (Court of Criminal Appeal) [2017] NSWCCA 92	Application dismissed <a href="#">[2022] HCASL 81</a>
12.	Alston	Alston (S12/2022)	Federal Circuit and Family Court of Australia	Application dismissed <a href="#">[2022] HCASL 82</a>
13.	Johnson	CUB Pty Ltd & Ors (M1/2022)	Full Court of the Federal Court of Australia [2021] FCAFC 219	Application dismissed with costs <a href="#">[2022] HCASL 83</a>
14.	Beckert	Beckert (M78/2021)	Federal Circuit and Family Court of Australia	Application dismissed with costs <a href="#">[2022] HCASL 84</a>
15.	Rogers	The Queen (S182/2021)	Supreme Court of New South Wales (Court of Criminal Appeal) [2021] NSWCCA 61	Application dismissed <a href="#">[2022] HCASL 85</a>